VOLUME I

CODE OF IOWA

2003

CONTAINING

ALL STATUTES OF A GENERAL AND PERMANENT NATURE

Including the Acts of a permanent nature
of the Seventy-ninth General Assembly, 2001, 2002

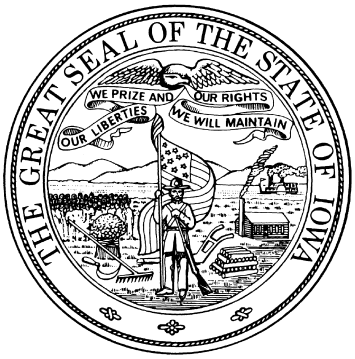

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Des Moines
—
2002

PREFACE TO 2003 IOWA CODE

The 2003 Iowa Code is published pursuant to Code chapter 2B. Its form is substantially the same as the 2001 Iowa Code, and it covers the permanent enactments of the 2001 and 2002 sessions of the Seventy-ninth General Assembly. The 2003 Code is published in four textual volumes and one Tables and Index volume. A Skeleton and Popular Name Index printed on colored paper appears at the end of each volume.

ARRANGEMENTS OF CODE TITLES, SUBTITLES, AND CHAPTERS. The Table of Contents on page v enumerates the titles and subtitles found in the Code, and each volume contains an Analysis by Titles, Subtitles, and Chapters for that volume.

EDITORIAL DECISIONS. If multiple amendments were enacted to a section or part of a section, all changes that are duplicative or otherwise do not appear to conflict are harmonized as required by Code section 4.11. It is generally assumed that a strike or repeal prevails over an amendment to the same material and does not create an irreconcilable conflict, and that the substitution of the correct title of an officer or department as authorized by law does not create a conflict. Code sections 4.4 through 4.11 provide guidance for codifying conflicting provisions. References to the Iowa court rules have been updated to reflect changes made in the 4th edition of that publication. Code section 2B.13 governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of the changes. At the end of Volume IV are Code Editor's Notes which explain the major editorial decisions relating to enactments of the 2002 session. The Code Editor's Notes relating to enactments of the 2001 session appear at the end of the 2001 Code Supplement.

HISTORIES. Bracketed material at the end of many Code sections traces the history of the subject matter of those sections up through 1982. Beginning with the 1985 Code, that form of section history was not updated. An amendment to or enactment of a section which occurred during or after the 1983 legislative session is indicated by the addition of an Acts citation at the end of the section. If a section is transferred to a new location, the section history will indicate the Code or Code Supplement in which the transfer took place.

CONSTITUTIONS. A codified version of the 1857 Constitution of the State of Iowa, as well as the original version, is included with the introductory material at the beginning of Volume I.

TABLES. The tables appear at the beginning of the index volume which is entitled "Tables and Index."

The editorial staff of the Iowa Code welcomes your comments and suggestions for improvements.

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DESIGNATION OF GENERAL ASSEMBLY

CITATIONS

OFFICIAL STATUTES

2.2 Designation of general assembly.

Each regular session of the general assembly shall be designated by the year in which it convenes and by a number with a new consecutive number assigned with the session beginning in each odd-numbered year.

A special session of the general assembly shall be designated as an extraordinary session in the particular year of a numbered general assembly.

2B.17 Citations — official statutes.

1. The permanent and official printed versions of the Iowa Codes and Code Supplements published subsequent to the adjournment of the 1982 regular session of the Sixty-ninth General Assembly shall be known and may be cited as "Iowa Code chapter (or section) . . . . ", or "Iowa Code Supplement chapter (or section) . . . . ", inserting the appropriate chapter or section number. If the year of edition is needed, it may be inserted before or after the words "Iowa Code" or "Iowa Code Supplement". In Iowa publications, the word "Iowa" may be omitted if the meaning is clear.

2. The session laws of each general assembly shall be known as "Acts of the . . . . General Assembly, ... Session, Chapter (or File No.) . . . . , Section . . . . " (inserting the appropriate numbers) and shall be cited as " . . . . Iowa Acts, chapter . . . . , section . . . . " (inserting the appropriate year, chapter, and section number).

3. The official printed versions of the Iowa Code, Code Supplement, and session laws published under authority of the state are the only authoritative publications of the statutes of this state. No other publications of the statutes of the state shall be cited in the courts or in the reports or rules of the courts.

4. The Iowa administrative code and the Iowa administrative bulletin shall be cited as provided in section 17A.6.

5. The printed version of the Iowa administrative code is the permanent publication of administrative rules in this state and the Iowa administrative bulletin and the Iowa administrative code published pursuant to chapter 17A are the official publications of the administrative rules of this state, and are the only authoritative publications of the administrative rules of this state. Other publications of the administrative rules of this state shall not be cited in the courts or in the reports or rules of the courts.

Chapters of the Code are cited as whole numerals; as chapter 124 or chapter 124A.

Sections are cited as decimal numerals; as section 124.401 or section 124A.3. Occasionally, sections are divided into subsections as 1., 2., 3., etc.; subsections into paragraphs *a, b, c,* etc.; paragraphs into subparagraphs as (1), (2), (3), etc.; and subparagraphs into subparagraph subdivisions as (a), (b), (c), etc. Example: section 124.401, subsection 1, paragraph *"a"*, subparagraph (2), subparagraph subdivision (a). This may be abbreviated as 124.401(1)(*a*)(2)(a) or 124.401[1*a*(2)(a)].

ABBREVIATIONS

C51	Code of 1851
R60	Revision of 1860
C73	Code of 1873
C97	Code of 1897
S'02	Supplement of 1902
S'07	Supplement of 1907
S13	Supplement of 1913
SS15	Supplemental Supplement 1915
C24	Code of 1924
C27	Code of 1927
C31	Code of 1931
C35	Code of 1935
C39	Code of 1939
C46	Code of 1946
C50	Code of 1950
C54	Code of 1954
C58	Code of 1958
C62	Code of 1962
C66	Code of 1966
C71	Code of 1971
C73	Code of 1973
C75	Code of 1975
C77	Code of 1977
C79	Code of 1979
S79	Supplement of 1979
C81	Code of 1981
S81	Supplement of 1981
C83	Code of 1983
CS83	Supplement of 1983
C85	Code of 1985
CS85	Code Supplement of 1985
C87	Code of 1987
CS87	Code Supplement of 1987
C89	Code of 1989
CS89	Code Supplement of 1989
C91	Code of 1991
CS91	Code Supplement of 1991
C93	Code of 1993
CS93	Code Supplement of 1993
C95	Code of 1995
CS95	Code Supplement of 1995
C97	Code of 1997
CS97	Code Supplement of 1997
C99	Code of 1999
CS99	Code Supplement of 1999
C2001	Code of 2001
CS2001	Code Supplement of 2001
C2003	Code of 2003
GA	General Assembly
§ or Sec.	Section
Ch	Chapter
1st Ex	First Extra Session
2nd Ex	Second Extra Session
R (in tables)	Repealed
Vol	Volume
R.C.P.	Rules of Civil Procedure
R.Cr.P.	Rules of Criminal Procedure
R.App.P.	Rules of Appellate Procedure
Stat. L.	Statutes at Large (U. S.)
U.S.C.	United States Code
Pub. L. No.	Public Law Number (U. S.)
C.F.R.	Code of Federal Regulations (U. S.)

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THE DECLARATION OF INDEPENDENCE

IN CONGRESS, JULY 4, 1776
[*Literal reprint of the Declaration of Independence as it appears in the Revised Statutes of the United States, 1878*]

The unanimous Declaration of the thirteen united States of America.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britian is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Government:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britian is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

New Hampshire. — JOSIAH BARTLETT, WM. WHIPPLE, MATTHEW THORNTON.

Massachusetts Bay. — SAML. ADAMS, JOHN ADAMS, ROBT. TREAT PAINE, ELBRIDGE GERRY.

Rhode Island. — STEP. HOPKINS, WILLIAM ELLERY.

Connecticut. — ROGER SHERMAN, SAMEL. HUNTINGTON, WM. WILLIAMS, OLIVER WOLCOTT.

New York. — WM. FLOYD, PHIL. LIVINGSTON, FRANS. LEWIS, LEWIS MORRIS.

New Jersey. — RICHD. STOCKTON, JNO. WITHERSPOON, FRANS. HOPKINSON, JOHN HART, ABRA. CLARK.

Pennsylvania. — ROBT. MORRIS, BENJAMIN RUSH, BENJA. FRANKLIN, JOHN MORTON, GEO. CLYMER, JAS. SMITH, GEO. TAYLOR, JAMES WILSON, GEO. ROSS.

Delaware. — CEASAR RODNEY, GEO. READ, THO. M'KEAN.

Maryland. — SAMUEL CHASE, WM. PACA, THOS. STONE, CHARLES CARROLL of Carrollton.

Virginia. — GEORGE WYTHE, RICHARD HENRY LEE, TH. JEFFERSON, BENJA. HARRISON, THOS. NELSON, JR., FRANCIS LIGHTFOOT LEE, CARTER BRAXTON.

North Carolina. — WM. HOOPER, JOSEPH HEWES, JOHN PENN.

South Carolina. — EDWARD RUTLEDGE, THOS. HEYWARD, JUNR., THOMAS LYNCH, JUNR., ARTHUR MIDDLETON.

Georgia. — BUTTON GWINNETT, LYMAN HALL, GEO. WALTON.

ARTICLES OF CONFEDERATION

[*Adopted by the Congress of the United States November 15, 1777, and submitted for ratification to the several states. Ratification consummated and proclaimed March 1, 1781.*]

PREAMBLE.

ARTICLE I. Style of confederacy.

ARTICLE II. Each state retains all powers not expressly delegated to congress.

ARTICLE III. Obligations and purposes of the league of the states.

ARTICLE IV. Freedom of intercourse between the states — surrender of fugitives from justice — records, acts and judicial proceedings of courts to be received with full faith and credit by other states.

ARTICLE V. Congress — how organized and maintained — each state to have one vote — privileges of delegates.

ARTICLE VI. No state may send embassies or make treaties — persons holding office not to accept presents, emoluments or titles from foreign states — nor shall titles of nobility be granted — no two or more states to make treaties without consent of congress — no state duties to interfere with foreign treaties — restriction upon naval armaments and military forces — militia — arms and munitions — war powers limited and defined.

ARTICLE VII. Military appointments.

ARTICLE VIII. Equalization of war charges and expenses for the common defence — based upon the value of land and improvements thereon — taxes to be levied by states.

ARTICLE IX. Powers of congress — declaring peace and war — entering into treaties — captures and prizes — letters of marque and reprisal — courts for trial of piracies and felonies on high seas — appeals in case of captures — differences between states — mode of choosing commissioners or judges — private right of soil claimed under two or more states — coining money — weights and measures — Indian affairs — post routes — army — navy — committee of the states — other committees — civil officers — president — public expenses — borrowing money — bills of credit — land and naval forces — quotas based on a census — states to raise and equip men at expense of United States — enumeration of measures requiring the assent of a majority of the states — adjournments of congress — journals — copies of proceedings to be furnished to states if desired.

ARTICLE X. Powers of the committee of the states.

ARTICLE XI. Canada allowed to join the Union — other colonies to require the assent of nine states.

ARTICLE XII. United States pledged for payment of bills of credit and borrowed moneys.

ARTICLE XIII. States bound by decisions of congress — union to be perpetual — changes in articles to be agreed to by every state — ratification and pledge.

[*Literal reprint of the articles of confederation as they appear in the Revised Statutes of the United States, 1878.*]

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventy seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz.

"Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland, and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

Article I. The stile of this confederacy shall be "The United States of America."

Article II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

Article V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Article VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and

constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Article VII. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of said courts.

The United States in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned:

provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States. — fixing the standard of weights and measures throughout the United States. — regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated — establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office — appointing all officers of the land forces, in the service of the United States, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States — making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction — to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted, — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjournment from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

Article X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we re[s]pectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

On the part & behalf of the State of New Hampshire.

JOSIAH BARTLETT, JOHN WENTWORTH, JUNR., August 8th, 1778.

On the part and behalf of the State of Massachusetts Bay.

JOHN HANCOCK, FRANCIS DANA,
SAMUEL ADAMS, JAMES LOVELL,
ELBRIDGE GERRY, SAMUEL HOLTEN.

On the part and behalf of the State of Rhode Island and Providence Plantations.

WILLIAM ELLERY, JOHN COLLINS.
HENRY MARCHANT,

On the part and behalf of the State of Connecticut.

ROGER SHERMAN, TITUS HOSMER,
SAMUEL HUNTINGTON, ANDREW ADAMS.
OLIVER WOLCOTT,

On the part and behalf of the State of New York.

JAS. DUANE, WM. DUER,
FRA. LEWIS, GOUV. MORRIS.

On the part and in behalf of the State of New Jersey, Novr. 26, 1778.

JNO. WITHERSPOON, NATHL. SCUDDER.

On the part and behalf of the State of Pennsylvania.

ROBT. MORRIS, WILLIAM CLINGAN,
DANIEL ROBERDEAU, JOSEPH REED, 22d July, 1778.
JONA. BAYARD SMITH,

On the part & behalf of the State of Delaware.

THO. M'KEAN, Feby. 12, 1779, NICHOLAS VAN DYKE.
JOHN DICKINSON, May 5th, 1779,

On the part and behalf of the State of Maryland.

JOHN HANSON, March 1, 1781,
DANIEL CARROLL, Mar. 1, 1781.

On the part and behalf of the State of Virginia.

RICHARD HENRY LEE,
JOHN BANISTER,
THOMAS ADAMS,
JNO. HARVIE,
FRANCIS LIGHTFOOT LEE.

On the part and behalf of the State of No. Carolina.

JOHN PENN, July 21st, 1778,
CORNS. HARTNETT,
JNO. WILLIAMS.

On the part & behalf of the State of South Carolina.

HENRY LAURENS,
WILLIAM HENRY DRAYTON,
JNO. MATHEWS,
RICHD. HUTSON,
THOS. HEYWARD, JUNR.

On the part & behalf of the State of Georgia.

JNO. WALTON, 24th July, 1778,
EDWD. TELFAIR,
EDWD. LANGWORTHY.

AUTHENTICATION OF RECORDS

Section 2B.12, subsection 6, paragraph *"e"*, requires that each official publication of the Code shall contain the laws of the United States relating to the authentication of records.

Pursuant to that requirement the following laws of the United States are published.

AUTHENTICATION OF RECORDS
[28 U.S.C. § 1738, 1739]

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

§ 1739. State and Territorial nonjudicial records; full faith and credit

All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers.

If the certificate is given by a judge, it shall be further authenticated by the clerk or prothonotary of the court, who shall certify, under his hand and the seal of his office, that such judge is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or Possession in which it is made.

Such records or books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States and its Territories and Possessions as they have by law or usage in the courts or offices of the State, Territory, or Possession from which they are taken.

See also Federal Rule of Civil Procedure 44, 28 U.S.C. app., and Federal Rule of Criminal Procedure 27, 18 U.S.C. app.

CONSTITUTION OF THE UNITED STATES OF AMERICA

[*Recommended by the convention of the states to congress on September 17, 1787, and by it submitted on September 28, 1787, to the states for ratification, which, by the concurrence of nine states, was consummated and proclaimed, and, on March 4, 1789, the government commenced operations under the new constitution.*]

PREAMBLE.

ARTICLE I. — LEGISLATIVE DEPARTMENT.

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2. House of representatives — composition — term — electors.
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Elections to fill vacancies.
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3. Senate — composition — term.
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AMENDMENTS

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[*Literal reprint of the constitution of the United States as it appears in Senate Document No. 96, Sixty-Seventh Congress, Second Session.*]

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, in-

cluding those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof: but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or expost facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State

over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, expost facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE. II.

SECTION. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE. III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE. IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into

another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names,

Attest WILLIAM JACKSON Secretary — G°WASHINGTON– Presid^{t} and deputy from Virginia

New Hampshire	(JOHN LANGDON (NICHOLAS GILMAN
Massachusetts	(NATHANIEL GORHAM (RUFUS KING
Connecticut	(W^{m} SAM^{l} JOHNSON (ROGER SHERMAN
New York	(ALEXANDER HAMILTON
New Jersey	(WIL: LIVINGSTON (DAVID BREARLEY. (W^{m}. PATERSON. (JONA: DAYTON.
Pennsylvania	(B FRANKLIN (THOMAS MIFFLIN (ROB^{t} MORRIS (GEO. CLYMER (THO^{s} FITZSIMONS (JARED INGERSOLL (JAMES WILSON (GOUV MORRIS
Delaware	(GEO: READ (GUNNING BEDFORD jun (JOHN DICKINSON (RICHARD BASSETT (JACO: BROOM
Maryland	(JAMES MCHENRY (DAN OF S^{t} THO^{s} JENIFER (DAN^{l} CAROLL

Virginia	(JOHN BLAIR–
	(JAMES MADISON JR.
	(Wm BLOUNT
North Carolina	(RICHd DOBBS SPAIGHT.
	(HU WILLIAMSON
	(J. RUTLEDGE
South Carolina	(CHARLES COTESWORTH PINCKNEY
	(CHARLES PINCKNEY
	(PIERCE BUTLER.
Georgia	(WILLIAM FEW
	(ABR BALDWIN

In Convention Monday, September 17th 1787.

Present

The States of
New Hampshire, Massachusetts, Connecticut, Mr Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, Resolved,

That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled.

Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the Unanimous Order of the Convention.

Go WASHINGTON Presidt.

W. JACKSON Secretary.

AMENDMENTS TO THE CONSTITUTION.

AMENDMENT 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 2.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT 3.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of

trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 9.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The first ten amendments were proposed by Congress to the legislatures of the several states on September 25, 1789, and were ratified by all of the states, except Connecticut, Georgia and Massachusetts, before the end of the year 1791, thereby becoming a part of the organic law, pursuant to the fifth article of the original constitution.

AMENDMENT 11.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The above amendment was submitted by Congress to the legislatures of the several states on March 4, 1794, and was, in a message of the president to Congress January 8, 1798, declared to have been duly ratified by the legislatures of three-fourths of the states.

AMENDMENT 12.

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

The above amendment was submitted by Congress to the legislatures of the several states on December 12, 1803, in lieu of the original third paragraph of the first section of the second article, and was proclaimed by the secretary of state on September 25, 1804, to have been duly ratified.

AMENDMENT 13.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

The above amendment was submitted by Congress to the legislatures of the several states on February 1, 1865, and was proclaimed by the secretary of state on December 18, 1865, to have been duly ratified.

AMENDMENT 14.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisidiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice

President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The above amendment was submitted by Congress to the legislatures of the several states on June 16, 1866, and was proclaimed by the secretary of state on July 28, 1868, to have been duly ratified.

AMENDMENT 15.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

The above amendment was submitted by Congress to the legislatures of the several states on February 27, 1869, and was proclaimed by the secretary of state on March 30, 1870, to have been duly ratified.

AMENDMENT 16.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The above amendment was submitted by Congress to the legislatures of the several states on July 12, 1909, and was proclaimed by the secretary of state on February 25, 1913, to have been duly ratified.

AMENDMENT 17.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

The above amendment was submitted by Congress to the legislatures of the several states on May 16, 1912, and was proclaimed by the secretary of state on May 31, 1913, to have been duly ratified.

AMENDMENT 18.

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

The above amendment was submitted by Congress to the legislatures of the several states on December 17, 1917, and was proclaimed by the acting secretary of state on January 29, 1919, to have been duly ratified.

Repealed by amendment 21, December 5, 1933.

AMENDMENT 19.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

The above amendment was submitted by Congress to the legislatures of the several states on June 5, 1919, and was proclaimed by the secretary of state on August 26, 1920, to have been duly ratified.

AMENDMENT 20.

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SEC. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SEC. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SEC. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SEC. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SEC. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

The above amendment was submitted by Congress to the legislatures of the several states on March 8, 1932, and was proclaimed by the secretary of state on February 6, 1933, to have been duly ratified.

AMENDMENT 21.

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SEC. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

The above amendment was submitted by Congress to the several states on February 21, 1933, for ratification by convention, and was proclaimed by the acting secretary of state on December 5, 1933, to have been duly ratified.

AMENDMENT 22.

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

SECTION 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

The above amendment was submitted by Congress to the legislatures of the several states on March 24, 1947, and was proclaimed by the administrator of general services on March 1, 1951, to have been duly ratified.

AMENDMENT 23.

SECTION 1. The District constituting the seat of the Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice-President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SEC. 2. The Congress shall have the power to enforce this article by appropriate legislation.

The above amendment was submitted by Congress to the legislatures of the several states on June 16, 1960, and was proclaimed by the administrator of general services on March 29, 1961, to have been duly ratified.

AMENDMENT 24.

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The above amendment was submitted by Congress to the legislatures of the several states on August 27, 1962, and was proclaimed by the administrator of general services on February 4, 1964, to have been duly ratified.

AMENDMENT 25.

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SEC. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SEC. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

The above amendment was submitted by Congress to the legislatures of the several states on July 6, 1965, and was proclaimed by the administrator of general services on February 23, 1967, to have been duly ratified.

AMENDMENT 26.

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The above amendment was submitted by Congress to the legislatures of the several states on January 21, 1971, and proclaimed by the administrator of general services on July 5, 1971, to have been duly ratified.

AMENDMENT 27.

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

The above amendment was submitted to the several states pursuant to a resolution passed by the first Congress of the United States, at its first session, on September 25, 1789, and was certified by the Archivist of the United States on May 19, 1992, 57 Fed. Reg. 21187.

1857 CONSTITUTION OF THE STATE OF IOWA — CODIFIED

[*This version of the Constitution incorporates into the original document all amendments adopted through the 1998 general election and omits certain provisions apparently superseded or obsolete. The footnote following an amended section is the latest action only. See the original Constitution for the original text and amendments in chronological order.*
This codified version generally adopts the rules for capitalization and punctuation used in drafting legislation.]

PREAMBLE.

Boundaries.

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3. Religion.
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6. Laws uniform.
7. Liberty of speech and press.
8. Personal security — searches and seizures.
9. Right of trial by jury — due process of law.
10. Rights of persons accused.
11. When indictment necessary — grand jury.
12. Twice tried — bail.
13. Habeas corpus.
14. Military.
15. Quartering soldiers.
16. Treason.
17. Bail — punishments.
18. Eminent domain — drainage ditches and levees.
19. Imprisonment for debt.
20. Right of assemblage — petition.
21. Attainder — ex post facto law — obligation of contract.
22. Resident aliens.
23. Slavery — penal servitude.
24. Agricultural leases.
25. Rights reserved.

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SEC. 1. Electors.
2. Privileged from arrest.
3. From military duty.
4. Persons in military service.
5. Disqualified persons.
6. Ballot.
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6. Senators — number and classification.
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8. Quorum.
9. Authority of the houses.
10. Protest — record of vote.
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12. Vacancies.
13. Doors open.
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15. Bills.
16. Executive approval — veto — item veto by governor.
17. Passage of bills.
18. Receipts and expenditures.
19. Impeachment.
20. Officers subject to impeachment — judgment.
21. Members not appointed to office.
22. Disqualification.
23. Failure to account.
24. Appropriations.
25. Compensation and expenses of general assembly.
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27. Divorce.
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29. Acts — one subject — expressed in title.
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31. Extra compensation — payment of claims — appropriations for local or private purposes.
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33. Census. [Repealed]
34. Senate and house of representatives — limitation.
35. Senators and representatives — number and districts.
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37. Congressional districts.
38. Elections by general assembly.
38A. Municipal home rule.
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39A. Counties home rule.
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4. Election by general assembly in case of tie — succession by lieutenant governor.
5. Contested elections.
6. Eligibility.
7. Commander in chief.
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11. Convening general assembly.
12. Message.
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15. Terms — compensation.
16. Pardons — reprieves — commutations.
17. Lieutenant governor to act as governor.
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21. Grants and commissions.
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6. Jurisdiction of district court.
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8. Style of process.
9. Salaries. [Repealed]
10. Judicial districts.
11. Judges — when chosen. [Repealed]
12. Attorney general.
13. District attorney. [Repealed]
14. System of court practice.
15. Vacancies in courts.
16. State and district nominating commissions.
17. Terms — judicial elections.
18. Salaries — qualifications — retirement.
19. Retirement and discipline of judges.

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2. Limitation.
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5. Contracting debt — submission to the people.
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4. Municipal corporations.
5. Banking associations.
6. State bank.
7. Specie basis.
8. General banking law.
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11. Specie payments — suspension.
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2. Eligibility. [Omitted]
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7. Rules and regulations. [Omitted]
8. Power to legislate. [Omitted]
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11. State university. [Omitted]
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2nd. School Funds and School Lands.

SEC. 1. Control — management.
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4. Fines — how appropriated. [Repealed]
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6. Agents of school funds.
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2. More than one amendment.
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5. Oath of office.
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3. Proceedings not affected. [Omitted]
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7. First election of officers. [Omitted]
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9. General assembly — first session. [Omitted]
10. Senators. [Omitted]
11. Offices not vacated. [Omitted]
12. Judicial districts. [Omitted]
13. Submission of constitution. [Omitted]
14. Proposition to strike out the word "white". [Omitted]
15. Mills county. [Omitted]
16. General election. [Omitted]

Preamble. WE THE PEOPLE OF THE STATE OF IOWA, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows:

Boundaries. Beginning in the middle of the main channel of the Mississippi River, at a point due East of the middle of the mouth of the main channel of the Des Moines River, thence up the middle of the main channel of the said Des Moines River, to a point on said river where the Northern boundary line of the State of Missouri — as established by the constitution of that State — adopted June 12th, 1820 — crosses the said middle of the main channel of the said Des Moines River; thence Westwardly along the said Northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of the main channel of the Missouri River; thence up the middle of the main channel of the said Missouri River to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollett's Map; thence up the main channel of the said Big Sioux River, according to the said map, until it is intersected by the parallel of forty three degrees and thirty minutes North latitude; thence East along said parallel of forty three degrees and thirty minutes until said parallel intersects the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning.

See boundary compromise agreements at the end of Volume IV of the Code

ARTICLE I.

BILL OF RIGHTS.

Rights of persons. SECTION 1. All men and women are, by nature, free and equal, and have certain inalienable rights — among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.
Amended 1998, Amendment [45]

Political power. SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it.

Religion. SEC. 3. The general assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

Religious test — witnesses. SEC. 4. No religious test shall be required as a qualification for any office, or public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.
Referred to in §729.1 of the Code

Dueling. SEC. 5.
Repealed 1992, Amendment [43]

Laws uniform. SEC. 6. All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

Liberty of speech and press. SEC. 7. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libellous was true, and was published with good motives and for justifiable ends, the party shall be acquitted.

Personal security — searches and seizures. SEC. 8. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.
Referred to in §190C.22, 200A.10, 717.2A, 717B.5 of the Code

Right of trial by jury — due process of law. SEC. 9. The right of trial by jury shall remain inviolate; but the general assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.
See also R.Cr.P. 2.17, 2.21(2), 2.67; R.C.P. 1.902, 1.903, 1.1108

Rights of persons accused. SEC. 10. In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him, to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and, to have the assistance of counsel.
See §602.1601 of the Code

When indictment necessary — grand jury. SEC. 11. All offenses less than felony and in which the maximum permissible imprisonment does not exceed thirty days shall be tried summarily before an officer authorized by law, on information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on presentment or indictment by a grand jury, except in cases arising in the army, or navy, or in the militia, when in actual service, in time of war or public danger.

The grand jury may consist of any number of members not less than five, nor more than fifteen, as the general assembly may by law provide, or the general assembly may provide for holding persons to answer for any criminal offense without the intervention of a grand jury.
Paragraph 2 added 1884, Amendment [9]
Paragraph 1 amended 1998, Amendment [46]
As to indictment and the number of grand jurors, see R.Cr.P. 2.3, 2.4
Magistrate jurisdiction, see §602.6405 of the Code

Twice tried — bail. SEC. 12. No person shall after acquittal, be tried for the same offence. All persons shall, before conviction, be bailable, by sufficient sureties, except for capital offences where the proof is evident, or the presumption great.

Habeas corpus. SEC. 13. The writ of habeas corpus shall not be suspended, or refused when application is made as required by law, unless in case of rebellion, or invasion the public safety may require it.

Military. SEC. 14. The military shall be subordinate to the civil power. No standing army shall be kept up by the state in time of peace; and in time of war, no appropriation for a standing army shall be for a longer time than two years.

Quartering soldiers. SEC. 15. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

Treason. SEC. 16. Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open court.

Bail — punishments. SEC. 17. Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted.

Eminent domain — drainage ditches and levees. SEC. 18. Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

The general assembly, however, may pass laws permitting the owners of lands to construct drains, ditches, and levees for agricultural, sanitary or mining purposes across the lands of others, and provide for the organization of drainage districts, vest the proper authorities with power to construct and maintain levees, drains and ditches and to keep in repair all drains, ditches, and levees heretofore constructed under the laws of the state, by special assessments upon the property benefited thereby. The general assembly may provide by law for the condemnation of such real estate as shall be necessary for the construction and maintenance of such drains, ditches and levees, and prescribe the method of making such condemnation.

Paragraph 2 added 1908, Amendment [13]

Imprisonment for debt. SEC. 19. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in case of fraud; and no person shall be imprisoned for a militia fine in time of peace.

Right of assemblage — petition. SEC. 20. The people have the right freely to assemble together to counsel for the common good; to make known their opinions to their representatives and to petition for a redress of grievances.

Attainder — ex post facto law — obligation of contract. SEC. 21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Referred to in §12E.11, 16.2 of the Code

Resident aliens. SEC. 22. Foreigners who are, or may hereafter become residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and descent of property, as native born citizens.

Slavery — penal servitude. SEC. 23. There shall be no slavery in this state; nor shall there be involuntary servitude, unless for the punishment of crime.

Agricultural leases. SEC. 24. No lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years.

Referred to in §461A.25 of the Code

Rights reserved. SEC. 25. This enumeration of rights shall not be construed to impair or deny others, retained by the people.

ARTICLE II.

RIGHT OF SUFFRAGE.

Electors. SEC. 1. Every citizen of the United States of the age of twenty-one years, who shall have been a resident of this state for such period of time as shall be provided by law and of the county in which he claims his vote for such period of time as shall be provided by law, shall be en-

titled to vote at all elections which are now or hereafter may be authorized by law. The general assembly may provide by law for different periods of residence in order to vote for various officers or in order to vote in various elections. The required periods of residence shall not exceed six months in this state and sixty days in the county.

Repealed and rewritten 1970, Amendment [30]
See Amendments 19 and 26 to U. S. Constitution

Privileged from arrest. SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

From military duty. SEC. 3. No elector shall be obliged to perform military duty on the day of election, except in time of war, or public danger.

Persons in military service. SEC. 4. No person in the military, naval, or marine service of the United States shall be considered a resident of this state by being stationed in any garrison, barrack, or military or naval place, or station within this state.

Disqualified persons. SEC. 5. No idiot, or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector.

Ballot. SEC. 6. All elections by the people shall be by ballot.

General election. SEC. 7. The general election for state, district, county and township officers in the year 1916 shall be held in the same month and on the same day as that fixed by the laws of the United States for the election of presidential electors, or of president and vice-president of the United States; and thereafter such election shall be held at such time as the general assembly may by law provide.

Repealed and rewritten 1916, Amendment [14]
For statutory provisions, see §39.1 of the Code

ARTICLE III.

OF THE DISTRIBUTION OF POWERS.

Departments of government. SECTION 1. The powers of the government of Iowa shall be divided into three separate departments — the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT.

General assembly. SECTION 1. The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives: and the style of every law shall be. "Be it enacted by the General Assembly of the State of Iowa."

Annual sessions of general assembly — special sessions. SEC. 2. The general assembly shall meet in session on the second Monday of January of each year. Upon written request to the presiding officer of each house of the general assembly by two-thirds of the members of each house, the general assembly shall convene in special session. The governor of the state may convene the general assembly by proclamation in the interim.

Repealed and rewritten 1974, Amendment [36]
Special sessions, see also Art. IV, §11

Representatives. SEC. 3. The members of the house of representatives shall be chosen every second year, by the qualified electors of their respective districts, [* * *]* and their term of office shall commence on the first day of January next after their election, and continue two years, and until their successors are elected and qualified.

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.
For provisions relative to the time of holding the general election, see Art. II, §7; see also §39.1 of the Code

Qualifications. SEC. 4. No person shall be a member of the house of representatives who shall not have attained the age of twenty-one years, be a citizen of the United States, and shall have been an inhabitant of this state one year next preceding his election, and at the time of his election shall have had an actual residence of sixty days in the county, or district he may have been chosen to represent.

Amended 1880, Amendment [6] and 1926, Amendment [15]

Senators — qualifications. SEC. 5. Senators shall be chosen for the term of four years, at

the same time and place as representatives; they shall be twenty-five years of age, and possess the qualifications of representatives as to residence and citizenship.

Senators — number and classification. SEC. 6. The number of senators shall total not more than one-half the membership of the house of representatives. Senators shall be classified so that as nearly as possible one-half of the members of the senate shall be elected every two years.
Repealed and rewritten 1968, Amendment [26]
See also Art. III, §34
Referred to in §42.4 of the Code

Officers — elections determined. SEC. 7. Each house shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

Quorum. SEC. 8. A majority of each house shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Authority of the houses. SEC. 9. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the general assembly of a free and independent state.

Protest — record of vote. SEC. 10. Every member of the general assembly shall have the liberty to dissent from, or protest against any act or resolution which he may think injurious to the public, or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals.

Privileged from arrest. SEC. 11. Senators and representatives, in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the general assembly, and in going to and returning from the same.

Vacancies. SEC. 12. When vacancies occur in either house, the governor or the person exercising the functions of governor, shall issue writs of election to fill such vacancies.

Doors open. SEC. 13. The doors of each house shall be open, except on such occasions, as, in the opinion of the house, may require secrecy.

Adjournments. SEC. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.
Referred to in §2.1 of the Code

Bills. SEC. 15. Bills may originate in either house, and may be amended, altered, or rejected by the other; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

Executive approval — veto — item veto by governor. SEC. 16. Every bill which shall have passed the general assembly, shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon their journal, and proceed to reconsider it; if, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two thirds of the members of each house, it shall become a law, notwithstanding the governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the general assembly, by adjournment, prevent such return. Any bill submitted to the governor for his approval during the last three days of a session of the general assembly, shall be deposited by him in the office of the secretary of state, within thirty days after the adjournment, with his approval, if approved by him, and with his objections, if he disapproves thereof.

The governor may approve appropriation bills in whole or in part, and may disapprove any item of an appropriation bill; and the part approved shall become a law. Any item of an appropriation bill disapproved by the governor shall be returned, with his objections, to the house in which it originated, or shall be deposited by him in the office of the secretary of state in the case of an appropriation bill submitted to the governor for his approval during the last three days of a session of the general assembly, and the procedure in each case shall be the same as provided for other bills. Any such item of an appropriation bill may be enacted into law notwithstanding the governor's objections, in the same manner as provided for other bills.
Paragraph 2 added 1968, Amendment [27]
Statutory provisions, §3.4, 3.5 of the Code
Referred to in §3.7 of the Code

Passage of bills. SEC. 17. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the general assembly, and the question upon the final passage shall be taken immediately upon its last reading,

and the yeas and nays entered on the journal.
Referred to in §3.7 of the Code

Receipts and expenditures. SEC. 18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the general assembly.
Statutory provisions, §2B.10(4) of the Code

Impeachment. SEC. 19. The house of representatives shall have the sole power of impeachment, and all impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.
Referred to in Art. V, §19

Officers subject to impeachment — judgment. SEC. 20. The governor, judges of the supreme and district courts, and other state officers, shall be liable to impeachment for any misdemeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under this state; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanors and malfeasance in office, in such manner as the general assembly may provide.
Referred to in Art. V, §19

Members not appointed to office. SEC. 21. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

Disqualification. SEC. 22. No person holding any lucrative office under the United States, or this state, or any other power, shall be eligible to hold a seat in the general assembly; but offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmaster whose compensation does not exceed one hundred dollars per annum, or notary public, shall not be deemed lucrative.

Failure to account. SEC. 23. No person who may hereafter be a collector or holder of public monies, shall have a seat in either house of the general assembly, or be eligible to hold any office of trust or profit in this state, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

Appropriations. SEC. 24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Compensation and expenses of general assembly. SEC. 25. Each member of the general assembly shall receive such compensation and allowances for expenses as shall be fixed by law but no general assembly shall have the power to increase compensation and allowances effective prior to the convening of the next general assembly following the session in which any increase is adopted.
Repealed and rewritten 1968, Amendment [28]
Statutory provisions, §2.10 through 2.14 of the Code

Time laws to take effect. SEC. 26. An act of the general assembly passed at a regular session of a general assembly shall take effect on July 1 following its passage unless a different effective date is stated in an act of the general assembly. An act passed at a special session of a general assembly shall take effect ninety days after adjournment of the special session unless a different effective date is stated in an act of the general assembly. The general assembly may establish by law a procedure for giving notice of the contents of acts of immediate importance which become law.
Amended 1966, Amendment [23], and repealed and rewritten 1986, Amendment [40]
Supplementary provisions, §3.7 et seq. of the Code

Divorce. SEC. 27. No divorce shall be granted by the general assembly.

Lotteries. SEC. 28.
Repealed 1972, Amendment [34]

Acts — one subject — expressed in title. SEC. 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

Local or special laws — general and uniform — boundaries of counties. SEC. 30. The general assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for state, county, or road purposes;

For laying out, opening, and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys, or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made ap-

plicable, all laws shall be general, and of uniform operation throughout the state; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

Laws uniform, see Art. I, §6

Extra compensation — payment of claims — appropriations for local or private purposes. SEC. 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim, the subject matter of which shall not have been provided for by preexisting laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two thirds of the members elected to each branch of the general assembly.

See §3.14 of the Code

Oath of members. SEC. 32. Members of the general assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of senator, (or representative, as the case may be,) according to the best of my ability." And members of the general assembly are hereby empowered to administer to each other the said oath or affirmation.

Census. SEC. 33.

Repealed 1936, Amendment [17]

Senate and house of representatives — limitation. SEC. 34. The senate shall be composed of not more than fifty and the house of representatives of not more than one hundred members. Senators and representatives shall be elected from districts established by law. Each district so established shall be of compact and contiguous territory. The state shall be apportioned into senatorial and representative districts on the basis of population. The general assembly may provide by law for factors in addition to population, not in conflict with the Constitution of the United States, which may be considered in the apportioning of senatorial districts. No law so adopted shall permit the establishment of senatorial districts whereby a majority of the members of the senate shall represent less than forty percent of the population of the state as shown by the most recent United States decennial census.

Repealed and rewritten 1968, Amendment [26]
See also Art. III, §6, 39

Senators and representatives — number and districts. SEC. 35. The general assembly shall in 1971 and in each year immediately following the United States decennial census determine the number of senators and representatives to be elected to the general assembly and establish senatorial and representative districts. The general assembly shall complete the apportionment prior to September 1 of the year so required. If the apportionment fails to become law prior to September 15 of such year, the supreme court shall cause the state to be apportioned into senatorial and representative districts to comply with the requirements of the constitution prior to December 31 of such year. The reapportioning authority shall, where necessary in establishing senatorial districts, shorten the term of any senator prior to completion of the term. Any senator whose term is so terminated shall not be compensated for the uncompleted part of the term.

Repealed and rewritten 1968, Amendment [26]
Referred to in §49.3 of the Code

Review by supreme court. SEC. 36. Upon verified application by any qualified elector, the supreme court shall review an apportionment plan adopted by the general assembly which has been enacted into law. Should the supreme court determine such plan does not comply with the requirements of the constitution, the court shall within ninety days adopt or cause to be adopted an apportionment plan which shall so comply. The supreme court shall have original jurisdiction of all litigation questioning the apportionment of the general assembly or any apportionment plan adopted by the general assembly.

Repealed and rewritten 1968, Amendment [26]

Congressional districts. SEC. 37. When a congressional district is composed of two or more counties it shall not be entirely separated by a county belonging to another district and no county shall be divided in forming a congressional district.

Repealed and rewritten 1968, Amendment [26]
Referred to in §42.3, 42.4 of the Code

Elections by general assembly. SEC. 38. In all elections by the general assembly, the members thereof shall vote viva voce and the votes shall be entered on the journal.

Municipal home rule. SEC. 38A. Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.

The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.

Added 1968, Amendment [25]

Legislative districts. SEC. 39. In establishing senatorial and representative districts, the state shall be divided into as many senatorial districts as there are members of the senate and into as many representative districts as there are members of the house of representatives. One senator shall be elected from each senatorial district and one representative shall be elected from each representative district.

Added 1970, Amendment [29]

Counties home rule. SEC. 39A. Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly. The general assembly may provide for the creation and dissolution of joint county-municipal corporation governments. The general assembly may provide for the establishment of charters in county or joint-municipal corporation governments.

If the power or authority of a county conflicts with the power and authority of a municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction.

The proposition or rule of law that a county or joint county-municipal corporation government possesses and can exercise only those powers granted in express words is not a part of the law of this state.

Added 1978, Amendment [37]

Nullification of administrative rules. SEC. 40. The general assembly may nullify an adopted administrative rule of a state agency by the passage of a resolution by a majority of all of the members of each house of the general assembly.

Added 1984, Amendment [38]
Referred to in §3.6, 17A.6 of the Code

ARTICLE IV.

EXECUTIVE DEPARTMENT.

Governor. SECTION 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.

Election and term. SEC. 2. The governor and the lieutenant governor shall be elected by the qualified electors at the time and place of voting for members of the general assembly. Each of them shall hold office for four years from the time of installation in office and until a successor is elected and qualifies.

Repealed and rewritten 1988, Amendment [41]

Governor and lieutenant governor elected jointly — returns of elections. SEC. 3. The electors shall designate their selections for governor and lieutenant governor as if these two offices were one and the same. The names of nominees for the governor and the lieutenant governor shall be grouped together in a set on the ballot according to which nominee for governor is seeking office with which nominee for lieutenant governor, as prescribed by law. An elector shall cast only one vote for both a nominee for governor and a nominee for lieutenant governor. The returns of every election for governor and lieutenant governor shall be sealed and transmitted to the seat of government of the state, and directed to the speaker of the house of representatives who shall open and publish them in the presence of both houses of the general assembly.

Repealed and rewritten 1988, Amendment [41]
For statutory provisions, see §50.35 of the Code

Election by general assembly in case of tie — succession by lieutenant governor. SEC. 4. The nominees for governor and lieutenant governor jointly having the highest number of votes cast for them shall be declared duly elected. If two or more sets of nominees for governor and lieutenant governor have an equal and the highest number of votes for the offices jointly, the general assembly shall by joint vote proceed, as soon as is possible, to elect one set of nominees for governor and lieutenant governor. If, upon the completion by the general assembly of the canvass of votes for governor and lieutenant governor, it appears that the nominee for governor in the set of nominees for governor and lieutenant governor receiving the highest number of votes has since died or resigned, is unable to qualify, fails to qualify, or is for any other reason unable to assume the duties of the office of governor for the ensuing term, the powers and duties shall devolve to the nominee for lieutenant governor of the same set of nominees for governor and lieutenant governor, who shall assume the powers and duties of governor upon inauguration and until the disability is removed. If both nominees for governor and lieutenant governor are unable to assume the duties of the office of

governor, the person next in succession shall act as governor.
Repealed and rewritten 1988, Amendment [41]

Contested elections. SEC. 5. Contested elections for the offices of governor and lieutenant governor shall be determined by the general assembly as prescribed by law.
Repealed and rewritten 1988, Amendment [41]
For statutory provisions, see chapter 58 of the Code

Eligibility. SEC. 6. No person shall be eligible to the office of governor, or lieutenant governor, who shall not have been a citizen of the United States, and a resident of the state, two years next preceding the election, and attained the age of thirty years at the time of said election.

Commander in chief. SEC. 7. The governor shall be commander in chief of the militia, the army, and navy of this state.

Duties of governor. SEC. 8. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.
Duty as to state accounts, §70A.8 of the Code

Execution of laws. SEC. 9. He shall take care that the laws are faithfully executed.

Vacancies. SEC. 10. When any office shall, from any cause, become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the general assembly, or at the next election by the people.

Convening general assembly. SEC. 11. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.
See also Art. III, §2

Message. SEC. 12. He shall communicate, by message, to the general assembly, at every regular session, the condition of the state, and recommend such matters as he shall deem expedient.

Adjournment. SEC. 13. In case of disagreement between the two houses with respect to the time of adjournment, the governor shall have power to adjourn the general assembly to such time as he may think proper; but no such adjournment shall be beyond the time fixed for the regular meeting of the next general assembly.

Disqualification. SEC. 14. No persons shall, while holding any office under the authority of the United States, or this state, execute the office of governor, or lieutenant governor, except as hereinafter expressly provided.

Terms — compensation. SEC. 15. The official terms of the governor and lieutenant governor shall commence on the Tuesday after the second Monday of January next after their election and shall continue until their successors are elected and qualify. The governor and lieutenant governor shall be paid compensation and expenses as provided by law. The lieutenant governor, while acting as governor, shall be paid the compensation and expenses prescribed for the governor.
Repealed and rewritten 1988, Amendment [42]

Pardons — reprieves — commutations. SEC. 16. The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the general assembly at its next meeting, when the general assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the general assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reasons therefor; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

Lieutenant governor to act as governor. SEC. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.
Referred to in §7.14 of the Code

Duties of lieutenant governor. SEC. 18. The lieutenant governor shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.
Repealed and rewritten 1988, Amendment [42]

Succession to office of governor and lieutenant governor. SEC. 19. If there be a vacancy in the office of the governor and the lieutenant governor shall by reason of death, impeachment, resignation, removal from office, or other disabili-

ty become incapable of performing the duties pertaining to the office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties of the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

Repealed and rewritten 1988, Amendment [42]
Referred to in §7.14(2) of the Code

Seal of state. SEC. 20. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

See chapter 1A of the Code for a description of the great seal of Iowa

Grants and commissions. SEC. 21. All grants and commissions shall be in the name and by the authority of the people of the state of Iowa, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

Secretary — auditor — treasurer. SEC. 22. A secretary of state, an auditor of state and a treasurer of state shall be elected by the qualified electors at the same time that the governor is elected and for a four-year term commencing on the first day of January next after their election, and they shall perform such duties as may be provided by law.

Repealed and rewritten 1972, Amendment [32]

ARTICLE V.

JUDICIAL DEPARTMENT.

Courts. SECTION 1. The judicial power shall be vested in a supreme court, district courts, and such other courts, inferior to the supreme court, as the general assembly may, from time to time, establish.

Court of appeals, §602.5101 of the Code

Supreme court. SEC. 2. The supreme court shall consist of three judges, two of whom shall constitute a quorum to hold court.

But see this Art., sec. 10 following; see also §602.4101 of the Code

Election of judges — term. SEC. 3.

Repealed 1962, Amendment [21]

Jurisdiction of supreme court. SEC. 4. The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.

Amended 1962, Amendment [21]
See §602.4102, 602.4201, 602.4202, 624.2 of the Code

District court and judge. SEC. 5.

Repealed 1962, Amendment [21]

Jurisdiction of district court. SEC. 6. The district court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law.

Statutory provision, §602.6101 of the Code

Conservators of the peace. SEC. 7. The judges of the supreme and district courts shall be conservators of the peace throughout the state.

Style of process. SEC. 8. The style of all process shall be, "The State of Iowa", and all prosecutions shall be conducted in the name and by the authority of the same.

Salaries. SEC. 9.

Repealed 1962, Amendment [21]

Judicial districts. SEC. 10. [* * *]* The general assembly may reorganize the judicial districts and increase or diminish the number of districts, or the number of judges of the said court, and may increase the number of judges of the supreme court; but such increase or diminution shall not be more than one district, or one judge of either court, at any one session; and no reorganization of the districts, or diminution of the number of judges, shall have the effect of removing a judge from office. Such reorganization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of judges, shall take place every four years thereafter, if necessary, and at no other time.

At any regular session of the general assembly the state may be divided into the necessary judicial districts for district court purposes, or the said districts may be reorganized and the number of the districts and the judges of said courts increased or diminished; but no reorganization of the districts or diminution of the judges shall have the effect of removing a judge from office.

Paragraph 2 added 1884, Amendment [8]. Much of paragraph 1 apparently superseded by paragraph 2

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language

Judges — when chosen. SEC. 11.
Repealed 1962, Amendment [21]

Attorney general. SEC. 12. The general assembly shall provide, by law, for the election of an attorney general by the people, whose term of office shall be four years, and until his successor is elected and qualifies.
Repealed and rewritten 1972, Amendment [32]

District attorney. SEC. 13.
Repealed 1970, Amendment [31]

System of court practice. SEC. 14. It shall be the duty of the general assembly to provide for the carrying into effect of this article, and to provide for a general system of practice in all the courts of this state.
For provisions relative to the grand jury, see Art. I, §11

Vacancies in courts. SEC. 15. Vacancies in the supreme court and district court shall be filled by appointment by the governor from lists of nominees submitted by the appropriate judicial nominating commission. Three nominees shall be submitted for each supreme court vacancy, and two nominees shall be submitted for each district court vacancy. If the governor fails for thirty days to make the appointment, it shall be made from such nominees by the chief justice of the supreme court.
Added 1962, Amendment [21]

State and district nominating commissions. SEC. 16. There shall be a state judicial nominating commission. Such commission shall make nominations to fill vacancies in the supreme court. Until July 4, 1973, and thereafter unless otherwise provided by law, the state judicial nominating commission shall be composed and selected as follows: There shall be not less than three nor more than eight appointive members, as provided by law, and an equal number of elective members on such commission, all of whom shall be electors of the state. The appointive members shall be appointed by the governor subject to confirmation by the senate. The elective members shall be elected by the resident members of the bar of the state. The judge of the supreme court who is senior in length of service on said court, other than the chief justice, shall also be a member of such commission and shall be its chairman.

There shall be a district judicial nominating commission in each judicial district of the state. Such commissions shall make nominations to fill vacancies in the district court within their respective districts. Until July 4, 1973, and thereafter unless otherwise provided by law, district judicial nominating commissions shall be composed and selected as follows: There shall be not less than three nor more than six appointive members, as provided by law, and an equal number of elective members on each such commission, all of whom shall be electors of the district. The appointive members shall be appointed by the governor. The elective members shall be elected by the resident members of the bar of the district. The district judge of such district who is senior in length of service shall also be a member of such commission and shall be its chairman.

Due consideration shall be given to area representation in the appointment and election of judicial nominating commission members. Appointive and elective members of judicial nominating commissions shall serve for six-year terms, shall be ineligible for a second six-year term on the same commission, shall hold no office of profit of the United States or of the state during their terms, shall be chosen without reference to political affiliation, and shall have such other qualifications as may be prescribed by law. As near as may be, the terms of one-third of such members shall expire every two years.
Added 1962, Amendment [21]

Terms — judicial elections. SEC. 17. Members of all courts shall have such tenure in office as may be fixed by law, but terms of supreme court judges shall be not less than eight years and terms of district court judges shall be not less than six years. Judges shall serve for one year after appointment and until the first day of January following the next judicial election after the expiration of such year. They shall at such judicial election stand for retention in office on a separate ballot which shall submit the question of whether such judge shall be retained in office for the tenure prescribed for such office and when such tenure is a term of years, on their request, they shall, at the judicial election next before the end of each term, stand again for retention on such ballot. Present supreme court and district court judges, at the expiration of their respective terms, may be retained in office in like manner for the tenure prescribed for such office. The general assembly shall prescribe the time for holding judicial elections.
Added 1962, Amendment [21]

Salaries — qualifications — retirement. SEC. 18. Judges of the supreme court and district court shall receive salaries from the state, shall be members of the bar of the state and

shall have such other qualifications as may be prescribed by law. Judges of the supreme court and district court shall be ineligible to any other office of the state while serving on said court and for two years thereafter, except that district judges shall be eligible to the office of supreme court judge. Other judicial officers shall be selected in such manner and shall have such tenure, compensation and other qualification as may be fixed by law. The general assembly shall prescribe mandatory retirement for judges of the supreme court and district court at a specified age and shall provide for adequate retirement compensation. Retired judges may be subject to special assignment to temporary judicial duties by the supreme court, as provided by law.

Added 1962, Amendment [21]

Retirement and discipline of judges. SEC. 19. In addition to the legislative power of impeachment of judges as set forth in article three (III), sections nineteen (19) and twenty (20) of the constitution, the supreme court shall have power to retire judges for disability and to discipline or remove them for good cause, upon application by a commission on judicial qualifications. The general assembly shall provide by law for the implementation of this section.

Added 1972, Amendment [33]

ARTICLE VI.

MILITIA.

Composition — training. SECTION 1. The militia of this state shall be composed of all able-bodied male citizens, between the ages of eighteen and forty-five years, except such as are or may hereafter be exempt by the laws of the United States, or of this state, and shall be armed, equipped, and trained, as the general assembly may provide by law.

Amended 1868, Amendment [5]

Exemption. SEC. 2. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do military duty in time of peace: Provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

Officers. SEC. 3. All commissioned officers of the militia, (staff officers excepted,) shall be elected by the persons liable to perform military duty, and shall be commissioned by the governor.

ARTICLE VII.

STATE DEBTS.

Credit not to be loaned. SECTION 1. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the state shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the state.

Limitation. SEC. 2. The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed the sum of two hundred and fifty thousand dollars; and the money arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

Losses to school funds. SEC. 3. All losses to the permanent, school, or university fund of this state, which shall have been occasioned by the defalcation, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state, in favor of the respective fund, sustaining the loss, upon which not less than six per cent. annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article.

War debts. SEC. 4. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the debts so contracted shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Contracting debt — submission to the people. SEC. 5. Except the debts herein before specified in this article, no debt shall be hereafter contracted by, or on behalf of this state, unless such debt shall be authorized by some law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax, sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt, within twenty years from the time of the contracting thereof; but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt created thereby; and such law shall be published in at least one newspaper in each county, if one is published therein, throughout the state, for three months preceding the election at which it is submitted to the people.

For statutory provisions, see §49A.1 to 49A.9 of the Code

Legislature may repeal. SEC. 6. The legislature may, at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may, at any time, forbid the contracting of any further debt, or liability, under such law; but the tax imposed by such law, in proportion to the debt or liability, which may have been contracted in pursuance thereof, shall remain in force and be irrepealable, and be annually collected, until the principal and interest are fully paid.

Tax imposed distinctly stated. SEC. 7. Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

Motor vehicle fees and fuel taxes. SEC. 8. All motor vehicle registration fees and all licenses and excise taxes on motor vehicle fuel, except cost of administration, shall be used exclusively for the construction, maintenance and supervision of the public highways exclusively within the state or for the payment of bonds issued or to be issued for the construction of such public highways and the payment of interest on such bonds.

Added 1942, Amendment [18]

Fish and wildlife protection funds. SEC. 9. All revenue derived from state license fees for hunting, fishing, and trapping, and all state funds appropriated for, and federal or private funds received by the state for, the regulation or advancement of hunting, fishing, or trapping, or the protection, propagation, restoration, management, or harvest of fish or wildlife, shall be used exclusively for the performance and administration of activities related to those purposes.

Added 1996, Amendment [44]

ARTICLE VIII.

CORPORATIONS.

Referred to in §12C.13 of the Code

How created. SECTION 1. No corporation shall be created by special laws; but the general assembly shall provide, by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

Taxation of corporations. SEC. 2. The property of all corporations for pecuniary profit, shall be subject to taxation, the same as that of individuals.

State not to be a stockholder. SEC. 3. The state shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless incurred in time of war for the benefit of the state.

Referred to in §509A.12 of the Code

Municipal corporations. SEC. 4. No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly.

Banking associations. SEC. 5. No act of the general assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto shall take effect, or in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election.

State bank. SEC. 6. Subject to the provisions of the foregoing section, the general assembly may also provide for the establishment of a state bank with branches.*

*Sections 6 to 11, apply to banks of issue only. See 63 Iowa 11, also 220 Iowa 794 and 221 Iowa 102

Specie basis. SEC. 7. If a state bank be established, it shall be founded on an actual specie basis, and the branches shall be mutually responsible for each other's liabilities upon all notes, bills, and other issues intended for circulation as money.

General banking law. SEC. 8. If a general banking law shall be enacted, it shall provide for the registry and countersigning, by an officer of state, of all bills, or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the state treasurer, in United States stocks, or in interest paying stocks of states in good credit and standing, to be rated at ten per cent. below their average value in the city of New York, for the thirty days next preceding their deposit; and in case of a depreciation of any portion of said stocks, to the amount of ten per cent. on the dollar, the bank or banks owning such stock shall be required to make up said deficiency by depositing additional stocks: and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer, and to whom.

Stockholders' responsibility. SEC. 9. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held for all of its liabilities, accruing while he or she remains such stockholder.

Billholders preferred. SEC. 10. In case of the insolvency of any banking institution, the billholders shall have a preference over its other creditors.

Specie payments — suspension. SEC. 11. The suspension of specie payments by banking institutions shall never be permitted or sanctioned.

Amendment or repeal of laws — exclusive privileges. SEC. 12. Subject to the provisions of this article, the general assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two thirds of each branch of the general assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

Analogous provision, §491.39 of the Code

ARTICLE IX.

EDUCATION AND SCHOOL LANDS.

1ST. EDUCATION.**

**See note at the end of this 1st division.

Board of education. SECTION 1. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Eligibility. SEC. 2. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Election of members. SEC. 3. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

First session. SEC. 4. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Limitation of sessions. SEC. 5. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Secretary. SEC. 6. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Rules and regulations. SEC. 7. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Power to legislate. SEC. 8. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Governor ex officio a member. SEC. 9. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Expenses. SEC. 10. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

State university. SEC. 11. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

See Laws of the Board of Education, Act 10, December 25, 1858, which provides for the management of the state university by a board of trustees appointed by the board of education. See also sec. 2 of 2nd. division of this article.

Common schools. SEC. 12. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Compensation. SEC. 13. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Quorum — style of acts. SEC. 14. [* * *]*

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Board may be abolished. SEC. 15. [* * *]* The general assembly shall have power to abolish or reorganize said board of education, and provide for the educational interest of the state in any other manner that to them shall seem best and proper.**

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

**The board of education was abolished in 1864 by 1864 Acts, ch 52, §1. For statutory provisions, see chapters 256 and 262 of the Code.

2ND. SCHOOL FUNDS AND SCHOOL LANDS.

Control — management. SECTION 1. The educational and school funds and lands shall be under the control and management of the general assembly of this state.

Permanent fund. SEC. 2. The university lands, and the proceeds thereof, and all monies belonging to said fund shall be a permanent fund for the sole use of the state university. The interest arising from the same shall be annually appropriated for the support and benefit of said university.

Perpetual support fund. SEC. 3. The general assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this state, for the support of schools, which may have been or shall hereafter be sold, or disposed of, and the five hundred thousand acres of land granted to the new states, under an act of congress, distributing the proceeds of the public lands among the several states of the union, approved in the year of our Lord one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such percent as has been or may hereafter be granted by congress, on the sale of lands in this state, shall be, and remain a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the general assembly may provide, shall be inviolably appropriated to the support of common schools throughout the state.

Referred to in §175.4 of the Code

Fines — how appropriated. SEC. 4.

Repealed 1974, Amendment [35]

Proceeds of lands. SEC. 5. The general assembly shall take measures for the protection, improvement, or other disposition of such lands as have been, or may hereafter be reserved, or granted by the United States, or any person or persons, to this state, for the use of the university, and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be, and remain, a permanent fund, the interest of which shall be applied to the support of said university, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the general assembly as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said university.

Agents of school funds. SEC. 6. The financial agents of the school funds shall be the same, that by law, receive and control the state and county revenue for other civil purposes, under such regulations as may be provided by law.

Distribution. SEC. 7.

Repealed 1984, Amendment [39]

ARTICLE X.

AMENDMENTS TO THE CONSTITUTION.

How proposed — submission. SECTION 1. Any amendment or amendments to this constitution may be proposed in either house of the general assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the general assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to, by a majority of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people, in such manner, and at such time as the general assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the general assembly, voting thereon, such amendment or amendments shall become a part of the constitution of this state.

For statutory provisions, see §49.43 through 49.50 and 49A.1 through 49A.11 of the Code

More than one amendment. SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Constitutional convention. SEC. 3. At the general election to be held in the year one thousand nine hundred and seventy, and in each tenth year thereafter, and also at such times as the general assembly may, by law, provide, the question, "Shall there be a convention to revise the constitution, and propose amendment or amendments to same?" shall be decided by the electors qualified to vote for members of the general assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a convention for such purpose, the general assembly, at its next session, shall provide by law for the election of delegates to such convention, and for submitting the results of said convention to the people, in such manner and at such time as the general assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the general assembly, voting thereon, such amendment or amendments shall become a part of the constitution of this state. If two or more amendments shall be submitted at the same time, they shall be submitted in such a manner that electors may vote for or against each such amendment separately.

Repealed and rewritten 1964, Amendment [22]
Statutory provision, §39.4 of the Code

ARTICLE XI.

MISCELLANEOUS.

Justice of peace — jurisdiction. SECTION 1. The jurisdiction of justices of the peace shall extend to all civil cases, (except cases in chancery, and cases where the question of title to real estate may arise,) where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding three hundred dollars.

Nonindictable misdemeanors, jurisdiction, Art. I, §11
[The office of justice of peace has been abolished by 72 Acts, ch 1124.]

Counties. SEC. 2. No new county shall be hereafter created containing less than four hundred and thirty two square miles; nor shall the territory of any organized county be reduced below that area; except the county of Worth, and the counties west of it, along the northern boundary of this state, may be organized without additional territory.

Indebtedness of political or municipal corporations. SEC. 3. No county, or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation — to be ascertained by the last state and county tax lists, previous to the incurring of such indebtedness.

Statutory limitation, §346.24 of the Code
See 72 Acts, ch 1088

Boundaries of state. SEC. 4. The boundaries of the state may be enlarged, with the consent of congress and the general assembly.

See boundary compromise agreements at the end of Volume IV of the Code

Oath of office. SEC. 5. Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirma-

tion to support the constitution of the United States, and of this state, and also an oath of office.
See §63.10 of the Code

How vacancies filled. SEC. 6. In all cases of elections to fill vacancies in office occurring before the expiration of a full term, the person so elected shall hold for the residue of the unexpired term; and all persons appointed to fill vacancies in office, shall hold until the next general election, and until their successors are elected and qualified.

Land grants located. SEC. 7. The general assembly shall not locate any of the public lands, which have been, or may be granted by congress to this state, and the location of which may be given to the general assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant, so exempted, shall not exceed three hundred and twenty acres.

Seat of government established — state university. SEC. 8. The seat of government is hereby permanently established, as now fixed by law, at the city of Des Moines, in the county of Polk; and the state university, at Iowa City, in the county of Johnson.
See 1855 Acts, ch 72

ARTICLE XII.

SCHEDULE.

Supreme law — constitutionality of acts. SECTION 1. This constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void. The general assembly shall pass all laws necessary to carry this constitution into effect.

Laws in force. SEC. 2. All laws now in force and not inconsistent with this constitution, shall remain in force until they shall expire or be repealed.

Proceedings not affected. SEC. 3. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Fines inure to the state. SEC. 4.
Repealed 1974, Amendment [35]

Bonds in force. SEC. 5. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

First election for governor and lieutenant governor. SEC. 6. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

First election of officers. SEC. 7. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

For judges of supreme court. SEC. 8. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

General assembly — first session. SEC. 9. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Senators. SEC. 10. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Offices not vacated. SEC. 11. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Judicial districts. SEC. 12. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Submission of constitution. SEC. 13. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Proposition to strike out the word "white". SEC. 14. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

Mills county. SEC. 15. [* * *]*
*Certain transitional provisions of Art. XII have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

General election. SEC. 16. [* * *]*
Added 1904, Amendment [11]. Apparently superseded by Art. II, §7.

*Certain provisions, apparently superseded or obsolete, have been omitted from this codified Constitution. See original Constitution (following) for omitted language.

1857 CONSTITUTION OF THE STATE OF IOWA — ORIGINAL

[*With the exception of the summary which appears at the beginning of the Constitution and the catchwords which precede each section, the Constitution as it appears here is a literal print of the original Constitution on file in the office of the secretary of state.*]

[*The amendments appear at the end, following the original text, in this version of the Constitution. In the codified Constitution (preceding), the amendments appear at the appropriate place in the text.*]

[*Repealed or superseded parts of the Constitution have been printed in italics.*]

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Preamble. WE THE PEOPLE OF THE STATE OF IOWA, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows:

Boundaries. Beginning in the middle of the main channel of the Mississippi River, at a point due East of the middle of the mouth of the main channel of the Des Moines River, thence up the middle of the main channel of the said Des Moines River, to a point on said river where the Northern boundary line of the State of Missouri — as established by the constitution of that State — adopted June 12th. 1820 — crosses the said middle of the main channel of the said Des Moines River; thence Westwardly along the said Northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of the main channel of the Missouri River; thence up the middle of the main channel of the said Missouri River to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollett's Map; thence up the main channel of the said Big Sioux River, according to the said map, until it is intersected by the parallel of forty three degrees and thirty minutes North latitude; thence East along said parallel of forty three degrees and thirty minutes until said parallel intersects the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning.

See boundary compromise agreements at the end of Volume IV of the Code

ARTICLE I.

BILL OF RIGHTS.

Rights of persons. SECTION 1. All men are, by nature, free and equal, and have certain inalienable rights — among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

In 1998, this section was amended by adding the words "and women": See Amendment **[45]**

Political power. SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it.

Religion. SEC. 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

Religious test — witnesses. SEC. 4. No religious test shall be required as a qualification for any office, or public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

Referred to in §729.1 of the Code

Dueling. SEC. 5. [*Any citizen of this State who may hereafter be engaged, either directly, or indirectly, in a duel, either as principal, or accessory before the fact, shall forever be disqualified from holding any office under the Constitution and laws of this State.*]*

*This section repealed by Amendment **[43]**

Laws uniform. SEC. 6. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

Liberty of speech and press. SEC. 7. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libellous was true, and was published with good motives and for justifiable ends, the party shall be acquitted.

Personal security — searches and seizures. SEC. 8. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

Referred to in §190C.22, 200A.10, 717.2A, 717B.5 of the Code

Right of trial by jury — due process of law. SEC. 9. The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.

See also R.Cr.P. 2.17, 2.21(2), 2.67; R.C.P. 1.902, 1.903, 1.1108

Rights of persons accused. SEC. 10. In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him, to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and, to have the assistance of counsel.

See §602.1601 of the Code

When indictment necessary. SEC. 11. All offences less than felony and in which the punishment does not exceed a fine of One hundred dollars, or imprisonment for thirty days, shall be tried summarily before a Justice of the Peace, or other officer authorized by law, on information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offence, unless on presentment or indictment by a grand jury,* except in cases arising in the army, or navy, or in the militia, when in actual service, in time of war or public danger.

*As to indictment and the number of grand jurors, see Amendment **[9]**, R.Cr.P. 2.3, 2.4

In 1998, unnumbered paragraph 1 of this section was amended: See Amendment **[46]**

Magistrate jurisdiction, §602.6405 of the Code

Twice tried — bail. SEC. 12. No person shall after acquittal, be tried for the same offence. All persons shall, before conviction, be bailable, by sufficient sureties, except for capital offences where the proof is evident, or the presumption great.

Habeas corpus. SEC. 13. The writ of habeas corpus shall not be suspended, or refused when application is made as required by law, unless in case of rebellion, or invasion the public safety may require it.

Military. SEC. 14. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace; and in time of war, no appropriation for a standing army shall be for a longer time than two years.

Quartering soldiers. SEC. 15. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

Treason. SEC. 16. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

Bail — punishments. SEC. 17. Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted.

Eminent domain. SEC. 18. Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.*

*See Amendment **[13]**

Imprisonment for debt. SEC. 19. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in case of fraud; and no person shall be imprisoned for a militia fine in time of peace.

Right of assemblage — petition. SEC. 20. The people have the right freely to assemble together to counsel for the common good; to make known their opinions to their representatives and to petition for a redress of grievances.

Attainder — ex post facto law — obligation of contract. SEC. 21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Referred to in §12E.11, 16.2 of the Code

Resident aliens. SEC. 22. Foreigners who are, or may hereafter become residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and descent of property, as native born citizens.

Slavery — penal servitude. SEC. 23. There shall be no slavery in this State; nor shall there be involuntary servitude, unless for the punishment of crime.

Agricultural leases. SEC. 24. No lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years.

Referred to in §461A.25 of the Code

Rights reserved. SEC. 25. This enumeration of rights shall not be construed to impair or deny others, retained by the people.

An additional section (section 26) was added to article I by the amendment of 1882. The supreme court, however, in the case of Koehler v. Hill, 60 Iowa 543, on April 21, 1883, held that, owing to certain irregularities, the amendment did not become a part of the Constitution. [Prohibition of intoxicating liquors]

ARTICLE II.

RIGHT OF SUFFRAGE.

Electors. SECTION 1. [*Every (white)* male citizen of the United States, of the age of twenty one years, who shall have been a resident of this State six months next preceding the election, and of the County in which he claims his vote sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorised by law.*]**

*The above section was amended in 1868 by striking the word "white" from the first line thereof: See Amendment **[1]**

For qualifications of electors, see also Amendments 19 and 26, U. S. Constitution

A proposal to strike the word "male" was defeated in 1916

In 1970, this section was repealed and a substitute adopted in lieu thereof: See Amendment **[30]

Privileged from arrest. SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

From military duty. SEC. 3. No elector shall be obliged to perform military duty on the day of election, except in time of war, or public danger.

Persons in military service. SEC. 4. No person in the military, naval, or marine service of the United States shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place, or station within this State.

Disqualified persons. SEC. 5. No idiot, or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector.

Ballot. SEC. 6. All elections by the people shall be by ballot.

General election. SEC. 7. See Amendments **[7], [11]** and **[14]**

See §39.1 of the Code

ARTICLE III.

OF THE DISTRIBUTION OF POWERS.

Departments of government. SECTION 1. The powers of the government of Iowa shall be divided into three separate departments — the Legislative, the Executive, and the Judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT.

General assembly. SECTION 1. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives: and the style of every law shall be. "Be it enacted by the General Assembly of the State of Iowa."

Sessions. SEC. 2. [*The sessions of the General Assembly shall be biennial, and shall commence on the second Monday in January next ensuing the election of its members; unless the Governor of the State shall, in the meantime, convene the General Assembly by proclamation.*]*

*In 1968 this section was repealed and a substitute adopted in lieu thereof: See Amendments **[24]** and **[36]**

Special sessions, Art. IV, §11 and Amendment **[36]**

Representatives. SEC. 3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, [*on the second Tuesday in October,* except the years of the Presidential election, when the election shall be on the Tuesday next after the first Monday in November;*]* and their term of office shall commence on the first day of January next after their election, and continue two years, and until their successors are elected and qualified.

*For provisions relative to the time of holding the general election, see Amendment **[14]**; See also §39.1 of the Code

Qualifications. SEC. 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, be a [*free white*] [*male*]* citizen of the United States, and shall have been an inhabitant of this State one year next preceding his election, and at the time of his election shall have had an actual residence of sixty days in the County, or District he may have been chosen to represent.

*For amendments striking "free white" and "male", see Amendments **[6]** and **[15]**

Senators — qualifications. SEC. 5. Senators shall be chosen for the term of four years, at the same time and place as Representatives; they shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

Number and classification. SEC. 6. [*The number of Senators shall not be less than one third, nor more than one half the representative body; and shall be so classified by lot, that one class, being as nearly one half as possible, shall be elected every two years. When the number of Senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable.*]*

*In 1968 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[26]**

Referred to in §42.4 of the Code

Officers — elections determined. SEC. 7. Each house shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

Quorum. SEC. 8. A majority of each house shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Authority of the houses. SEC. 9. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

Protest — record of vote. SEC. 10. Every member of the General Assembly shall have the liberty to dissent from, or protest against any Act or resolution which he may think injurious to the public, or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals.

Privileged from arrest. SEC. 11. Senators and Representatives, in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

Vacancies. SEC. 12. When vacancies occur in either house, the Governor or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

Doors open. SEC. 13. The doors of each house shall be open, except on such occasions, as, in the opinion of the house, may require secrecy.

Adjournments. SEC. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Referred to in §2.1 of the Code

Bills. SEC. 15. Bills may originate in either house, and may be amended, altered, or rejected by the other; and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

Executive approval — veto. SEC. 16. Every bill which shall have passed the General Assembly, shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon their journal, and proceed to re-consider it; if, after such re-consideration, it again pass both houses, by yeas and nays, by a majority of two thirds of the members of each house, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return. Any bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, shall be deposited by him in the office of the Secretary of State, within thirty days after the adjournment, with his approval, if approved by him, and with his objections, if he disapproves thereof.*

Statutory provisions, §3.4, 3.5 of the Code

*In 1968 an additional paragraph was added to this section: See Amendment **[27]**

Referred to in §3.7 of the Code

Passage of bills. SEC. 17. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

Referred to in §3.7 of the Code

Receipts and expenditures. SEC. 18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

Statutory provisions, §2B.10(4) of the Code

Impeachment. SEC. 19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.

Referred to in Amendment **[33]**

Officers subject to impeachment — judgment. SEC. 20. The Governor, Judges of the Supreme and District Courts, and other State officers, shall be liable to impeachment for any misdemeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanors and malfeasance in office, in such manner as the General Assembly may provide.

Referred to in Amendment **[33]**

Members not appointed to office. SEC. 21. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

Disqualification. SEC. 22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to hold a seat in the General Assembly; but offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmaster whose compensation does not exceed one hundred dollars per annum, or notary public, shall not be deemed lucrative.

Failure to account. SEC. 23. No person who may hereafter be a collector or holder of public monies, shall have a seat in either House of the General Assembly, or be eligible to hold any office of trust or profit in this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

Appropriations. SEC. 24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Compensation of members. SEC. 25. [*Each member of the first General Assembly under this Constitution, shall receive three dollars per diem while in session; and the further sum of three dollars for every twenty miles traveled, in going to and returning from the place where such session is held, by the nearest traveled route; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have power to increase the compensation of its own members. And when convened in extra session they shall receive the same mileage and per diem compensation, as fixed by law for the regular session, and none other.*]*

Statutory provisions, §2.10 to 2.14 of the Code

*In 1968 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[28]**

Time laws to take effect. SEC. 26. No law of the General Assembly, passed at a regular session, of a public nature, shall take effect until the *fourth** day of July next after the passage thereof. Laws passed at a special session, shall take effect ninety days after the adjournment of the General Assembly by which they were passed. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State.**

Supplementary provisions, §3.7 et seq. of the Code

*For provision changing effective date, see Amendment **[23]**

In 1986 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[40]

Divorce. SEC. 27. No divorce shall be granted by the General Assembly.

Lotteries. SEC. 28. [*No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.*]*

*This section repealed by Amendment **[34]**

Acts — one subject — expressed in title. SEC. 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

Local or special laws — general and uniform — boundaries of counties. SEC. 30. The General Assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for State, County, or road purposes;

For laying out, opening, and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys, or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

Laws uniform, see Art. I, §6

Extra compensation — payment of claims — appropriations for local or private purposes. SEC. 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.

See §3.14 of the Code

Oath of members. SEC. 32. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability." And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

Census. SEC. 33. [*The General Assembly shall, in the years One thousand eight hundred and fifty nine, One thousand eight hundred and sixty three, One thousand eight hundred and sixty five, One thousand eight hundred and sixty seven, One thousand eight hundred and sixty nine, and One thousand eight hundred and seventy five, and every ten years thereafter, cause an enumeration to be made of all the [white]* inhabitants of the State.*]**

*The above section was amended in 1868 by striking the word "white" therefrom: See Amendment **[2]**

This section repealed by Amendment **[17]

Senators — number — method of apportionment. SEC. 34. [*The number of senators shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties, according to the number of [white]* inhabitants in each.*]**

*The above section has been amended three times: In 1868 it was amended by striking the word "white" therefrom: See Amendment **[3]**

In 1904 this section was repealed and a substitute adopted in lieu thereof. See Amendment **[12]: Also **[16]**: See also Amendment **[26]**

Senators — representatives — number — apportionment — districts. SEC. 35. [*The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred; and they shall be apportioned among the several counties and representative districts of the State, according to the number of [white]* inhabitants in each, upon ratios to be fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one representative. Every county and district which shall have a number*

of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative; and any one county containing in addition to the ratio fixed by law, one half of that number, or more, shall be entitled to one additional representative. No floating district shall hereafter be formed.]**

*The above section has been amended twice. In 1868 it was amended by striking the word "white" therefrom: See Amendment **[4]**

In 1904 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[12]: See also Amendment **[26]**

Referred to in §49.3 of the Code

Ratio of representation. SEC. 36. [*At its first session under this Constitution, and at every subsequent regular session, the General Assembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a representative.*]*

*In 1904 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[12]**: See also Amendment **[26]**

Districts. SEC. 37. [*When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.*]*

See Amendment **[12]**

*In 1968 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[26]**

Referred to in §42.3, 42.4 of the Code

Elections by general assembly. SEC. 38. In all elections by the General Assembly, the members thereof shall vote viva voce and the votes shall be entered on the journal.

Municipal home rule. SEC. 38A. Amendment **[25]**

Legislative districts. SEC. 39. Amendment **[29]**

Counties home rule. SEC. 39A. Amendment **[37]**

Nullification of administrative rules. SEC. 40. Amendment **[38]**

ARTICLE IV.

EXECUTIVE DEPARTMENT.

Governor. SECTION 1. The Supreme Executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Iowa.

Election and term. SEC. 2. [*The Governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office two years from the time of his installation, and until his successor is elected and qualified.*]*

*In 1972 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[32]**; also Amendment **[41]**

Lieutenant governor — returns of elections. SEC. 3. [*There shall be a Lieutenant Governor, who shall hold his office two years, and be elected at the same time as the Governor. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor, and Lieutenant Governor, shall be sealed up and transmitted to the seat of government of the State, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.*]*

For statutory provisions, see §50.35 of the Code

*In 1972 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[32]**; also Amendment **[41]**

Election by general assembly. SEC. 4. [*The persons respectively having the highest number of votes for Governor and Lieutenant Governor, shall be declared duly elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of said persons Governor, or Lieutenant Governor, as the case may be.*]*

*In 1988 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[41]**

See Amendment **[19]** relating to death or failure to qualify

Contested elections. SEC. 5. [*Contested elections for Governor, or Lieutenant Governor, shall be determined by the General Assembly in such manner as may be prescribed by law.*]*

*In 1988 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[41]**

For statutory provisions, see chapter 58 of the Code

Eligibility. SEC. 6. No person shall be eligible to the office of Governor, or Lieutenant Governor, who shall not have been a citizen of the United States, and a resident of the State, two years next preceding the election, and attained the age of thirty years at the time of said election.

Commander in chief. SEC. 7. The Governor shall be commander in chief of the militia, the army, and navy of this State.

Duties of governor. SEC. 8. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

Duty as to state accounts, §70A.8 of the Code

Execution of laws. SEC. 9. He shall take care that the laws are faithfully executed.

Vacancies. SEC. 10. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

Convening general assembly. SEC. 11. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both Houses, when assembled, the purpose for which they shall have been convened.

See Amendment of 1974 No. 2 **[36]**

Message. SEC. 12. He shall communicate, by message, to the General Assembly, at every regular session, the condition of the State, and recommend such matters as he shall deem expedient.

Adjournment. SEC. 13. In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he may think proper; but no such adjournment shall be beyond the time fixed for the regular meeting of the next General Assembly.

Disqualification. SEC. 14. No persons shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as hereinafter expressly provided.

Terms — compensation of lieutenant governor. SEC. 15. [*The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified. The Lieutenant Governor, while acting as Governor, shall receive the same pay as provided for Governor; and while presiding in the Senate, shall receive as compensation therefor, the same mileage and double the per diem pay provided for a Senator, and none other.*]*

*In 1972 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[32]**; also Amendment **[42]**

Pardons — reprieves — commutations. SEC. 16. The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reasons therefor; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

Lieutenant governor to act as governor. SEC. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the Governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

Referred to in §7.14 of the Code

President of senate. SEC. 18. [*The Lieutenant Governor shall be President of the Senate, but shall only vote when the Senate is equally divided;* and in case of his absence, or impeachment, or when he shall exercise the office of Governor, the Senate shall choose a President pro tempore.*]**

*Majority vote required on passage of a bill in G. A., see Art. III, §17

In 1988 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[42]

Vacancies. SEC. 19. [*If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.*]*

*In 1952 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[20]**; also Amendment **[42]**

Referred to in §7.14(2) of the Code

Seal of state. SEC. 20. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

See chapter 1A of the Code for a description of the Great Seal of Iowa

Grants and commissions. SEC. 21. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Secretary — auditor — treasurer. SEC. 22. [*A Secretary of State, Auditor of State and Treasurer of State, shall be elected by the qualified electors, who shall continue in office two years, and until their successors are elected and qualified; and perform such duties as may be required by law.*]*

*In 1972 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[32]**

ARTICLE V.

JUDICIAL DEPARTMENT.

Courts. SECTION 1. The Judicial power shall be vested in a Supreme Court, District Courts, and such other Courts, inferior to the Supreme Court, as the General Assembly may, from time to time, establish.

Court of appeals, §602.5101 of the Code

Supreme court. SEC. 2. The Supreme Court shall consist of three Judges, two of whom shall constitute a quorum to hold Court.

But see this Art., sec. 10 following; see also §602.4101 of the Code

Election of judges — term. SEC. 3. [*The Judges of the Supreme Court shall be elected by the qualified electors of the State, and shall hold their Court at such time and place as the General Assembly may prescribe. The Judges of the Supreme Court so elected, shall be classified so that one Judge shall go out of office every two years; and the Judge holding the shortest term of office under such classification, shall be Chief Justice of the Court, during his term, and so on in rotation. After the expiration of their terms of office, under such classification, the term of each Judge of the Supreme Court shall be six years, and until his successor shall have been elected and qualified. The Judges of the Supreme Court shall be ineligible to any other office in the State, during the term for which they shall have been elected.*]*

*In 1962 this section was repealed: See Amendment **[21]**

Jurisdiction of supreme court. SEC. 4. The Supreme Court shall have appellate jurisdiction only in cases in chancery, and shall constitute a Court for the correction of errors at law, under such restrictions as the General Assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior Judicial tribunals throughout the State.*

See §602.4102, 602.4201, 602.4202, 624.2 of the Code

*This section was amended in 1962: See Amendment **[21]**

District court and judge. SEC. 5. [*The District Court shall consist of a single Judge, who shall be elected by the qualified electors of the District in which he resides. The Judge of the District Court shall hold his office for the term of four years, and until his successor shall have been elected and qualified; and shall be ineligible to any other office, except that of Judge of the Supreme Court, during the term for which he was elected.*]*

*In 1962 this section was repealed: See Amendment **[21(2)]**: See also Amendment **[21(1)]**

Jurisdiction of district court. SEC. 6. The District Court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law.

Statutory provision, §602.6101 of the Code

Conservators of the peace. SEC. 7. The Judges of the Supreme and District Courts shall be conservators of the peace throughout the State.

Style of process. SEC. 8. The style of all process shall be, "The State of Iowa", and all prosecutions shall be conducted in the name and by the authority of the same.

Salaries. SEC. 9. [*The salary of each Judge of the Supreme Court shall be two thousand dollars per annum; and that of each District Judge, one thousand six hundred dollars per annum, until the year Eighteen hundred and Sixty; after which time, they shall severally receive such compensation as the General Assembly may, by law, prescribe; which compensation shall not be increased or diminished during the term for which they shall have been elected.*]*

*In 1962 this section was repealed: See Amendment **[21]**

Judicial districts — supreme court. SEC. 10. *The state shall be divided into eleven judicial districts; and after the year eighteen hundred and sixty,* the general assembly may re-organize the judicial districts and increase or diminish the number of districts, or the number of judges of the said court, and may increase the number of judges of the supreme court; but such increase or diminution shall not be more than one district, or one judge of either court, at any one session; and no re-

organization of the districts, or diminution of the number of judges, shall have the effect of removing a judge from office. Such re-organization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of judges, shall take place every four years thereafter, if necessary, and at no other time.*

*Much of this section apparently superseded by Amendment **[8]**

Judges — when chosen. SEC. 11. [*The Judges of the Supreme and District Courts shall be chosen at the general election; and the term of office of each Judge shall commence on the first day of January next, after his election.*]*

*In 1962 this section was repealed: See Amendment **[21]**

Attorney general. SEC. 12. [*The General Assembly shall provide, by law, for the election of an Attorney General by the people, whose term of office shall be two years, and until his successor shall have been elected and qualified.*]*

*In 1972 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[32]**

District attorney. SEC. 13. [*The qualified electors of each judicial district shall, at the time of the election of District Judge, elect a District Attorney, who shall be a resident of the district for which he is elected, and who shall hold his office for the term of four years, and until his successor shall have been elected and qualified.*]*

*In 1884 this section was repealed and a substitute adopted in lieu thereof. See Amendment **[10]**. In 1970 this substitute was repealed: See Amendment **[31]**

System of court practice. SEC. 14. It shall be the duty of the General Assembly to provide for the carrying into effect of this article, and to provide for a general system of practice in all the Courts of this State.

For provisions relative to the grand jury, see Amendment **[9]**

Vacancies in courts. SEC. 15. Amendment **[21]**

State and district nominating commissions. SEC. 16. Amendment **[21]**

Terms — judicial elections. SEC. 17. Amendment **[21]**

Salaries — qualifications — retirements. SEC. 18. Amendment **[21]**

Retirement and discipline of judges. SEC. 19. Amendment **[33]**

ARTICLE VI.

MILITIA.

Composition — training. SECTION 1. The militia of this State shall be composed of all able-bodied [*white*]* male citizens, between the ages of eighteen and forty five years, except such as are or may hereafter be exempt by the laws of the United States, or of this State, and shall be armed, equipped, and trained, as the General Assembly may provide by law.

*The above section was amended in 1868 by striking the word "white" therefrom: See Amendment **[5]**

Exemption. SEC. 2. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do military duty in time of peace: Provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

Officers. SEC. 3. All commissioned officers of the militia, (staff officers excepted,) shall be elected by the persons liable to perform military duty, and shall be commissioned by the Governor.

ARTICLE VII.

STATE DEBTS.

Credit not to be loaned. SECTION 1. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the State shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the State.

Limitation. SEC. 2. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed the sum of two hundred and fifty thousand dollars; and the

money arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

Losses to school funds. SEC. 3. All losses to the permanent, School, or University fund of this State, which shall have been occasioned by the defalcation, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded debt against the State, in favor of the respective fund, sustaining the loss, upon which not less than six per cent. annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article.

War debts. SEC. 4. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the debts so contracted shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Contracting debt — submission to the people. SEC. 5. Except the debts herein before specified in this article, no debt shall be hereafter contracted by, or on behalf of this State, unless such debt shall be authorized by some law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax, sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt, within twenty years from the time of the contracting thereof; but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt created thereby; and such law shall be published in at least one news paper in each County, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.

For statutory provisions, see §49A.1 to 49A.9 of the Code

Legislature may repeal. SEC. 6. The Legislature may, at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may, at any time, forbid the contracting of any further debt, or liability, under such law; but the tax imposed by such law, in proportion to the debt or liability, which may have been contracted in pursuance thereof, shall remain in force and be irrepealable, and be annually collected, until the principal and interest are fully paid.

Tax imposed distinctly stated. SEC. 7. Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

Motor vehicle fees and fuel taxes. SEC. 8. Amendment **[18]**

Fish and wildlife protection funds. SEC. 9. Amendment **[44]**

ARTICLE VIII.

CORPORATIONS.

Referred to in §12C.13 of the Code

How created. SECTION 1. No corporation shall be created by special laws; but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

Taxation of corporations. SEC. 2. The property of all corporations for pecuniary profit, shall be subject to taxation, the same as that of individuals.

State not to be a stockholder. SEC. 3. The State shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless incurred in time of war for the benefit of the State.

Referred to in §509A.12 of the Code

Municipal corporations. SEC. 4. No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly.

Banking associations. SEC. 5. No Act of the General Assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto shall take effect, or in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the Act, and shall have been approved by a majority of all the electors voting for and against it at such election.

State bank. SEC. 6. Subject to the provisions of the foregoing section, the General Assembly may also provide for the establishment of a State Bank with branches.*

*Sections 6 to 11, apply to banks of issue only. See 63 Iowa 11, also 220 Iowa 794 and 221 Iowa 102

Specie basis. SEC. 7. If a State Bank be established, it shall be founded on an actual specie basis, and the branches shall be mutually responsible for each others liabilities upon all notes, bills, and other issues intended for circulation as money.

General banking law. SEC. 8. If a general Banking law shall be enacted, it shall provide for the registry and countersigning, by an officer of State, of all bills, or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State Treasurer, in United States stocks, or in interest paying stocks of States in good credit and standing, to be rated at ten per cent. below their average value in the City of New York, for the thirty days next preceding their deposit; and in case of a depreciation of any portion of said stocks, to the amount of ten per cent. on the dollar, the bank or banks owning such stock shall be required to make up said deficiency by depositing additional stocks: and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer, and to whom.

Stockholders' responsibility. SEC. 9. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held for all of its liabilities, accruing while he or she remains such stockholder.

Bill-holders preferred. SEC. 10. In case of the insolvency of any banking institution, the bill-holders shall have a preference over its other creditors.

Specie payments — suspension. SEC. 11. The suspension of specie payments by banking institutions shall never be permitted or sanctioned.

Amendment or repeal of laws — exclusive privileges. SEC. 12. Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

Analogous provision, §491.39 of the Code

ARTICLE IX.

EDUCATION AND SCHOOL LANDS.

1ST. EDUCATION.*

*See note at the end of this 1st division

Board of education. SECTION 1. *The educational interest of the State, including Common Schools and other educational institutions, shall be under the management of a Board of Education, which shall consist of the Lieutenant Governor, who shall be the presiding officer of the Board, and have the casting vote in case of a tie, and one member to be elected from each judicial district in the State.*

Eligibility. SEC. 2. *No person shall be eligible as a member of said Board who shall not have attained the age of twenty five years, and shall have been one year a citizen of the State.*

Election of members. SEC. 3. *One member of said Board shall be chosen by the qualified electors of each district, and shall hold the office for the term of four years, and until his successor is elected and qualified. After the first election under this Constitution, the Board shall be divided, as nearly as practicable, into two equal classes, and the seats of the first class shall be vacated after the expiration of two years; and one half of the Board shall be chosen every two years thereafter.*

First session. SEC. 4. *The first session of the Board of Education shall be held at the Seat of Government, on the first Monday of December, after their election; after which the General Assembly may fix the time and place of meeting.*

Limitation of sessions. SEC. 5. *The session of the Board shall be limited to twenty days, and but one session shall be held in any one year, except upon extraordinary occasions, when, upon the recommendation of two thirds of the Board, the Governor may order a special session.*

Secretary. SEC. 6. *The Board of Education shall appoint a Secretary, who shall be the executive officer of the Board, and perform such duties as may be imposed upon him by the Board, and the laws of the State. They shall keep a journal of their proceedings, which shall be published and distributed in the same manner as the journals of the General Assembly.*

Rules and regulations. SEC. 7. *All rules and regulations made by the Board shall be published and distributed to the several Counties, Townships, and School Districts, as may be provided for by the Board, and when so made, published and distributed, they shall have the force and effect of law.*

Power to legislate. SEC. 8. *The Board of Education shall have full power and authority to legislate and make all needful rules and regulations in relation to Common Schools, and other educational institutions, that are instituted, to receive aid from the School or University fund of this State; but all acts, rules, and regulations of said Board may be altered, amended or repealed by the General Assembly; and when so altered, amended, or repealed they shall not be re-enacted by the Board of Education.*

Governor ex officio a member. SEC. 9. *The Governor of the State shall be, ex officio, a member of said Board.*

Expenses. SEC. 10. *The board shall have no power to levy taxes, or make appropriations of money. Their contingent expenses shall be provided for by the General Assembly.*

State university. SEC. 11. *The State University shall be established at one place without branches at any other place, and the University fund shall be applied to that Institution and no other.*

See Laws of the Board of Education, Act 10, December 25, 1858, which provides for the management of the state University by a Board of Trustees appointed by the Board of Education. See also sec. 2 of 2nd. division of this Article

Common schools. SEC. 12. *The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools and such school shall be organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school as aforesaid may be deprived of their portion of the school fund.*

Compensation. SEC. 13. *The members of the Board of Education shall each receive the same per diem during the time of their session, and mileage going to and returning therefrom, as members of the General Assembly.*

Quorum — style of acts. SEC. 14. *A majority of the Board shall constitute a quorum for the transaction of business; but no rule, regulation, or law, for the government of Common Schools or other educational institutions, shall pass without the concurrence of a majority of all the members of the Board, which shall be expressed by the yeas and nays on the final passage. The style of all acts of the Board shall be, "Be it enacted by the Board of Education of the State of Iowa."*

Board may be abolished.* SEC. 15. *At any time after the year One thousand eight hundred and sixty three, the General Assembly shall have power to abolish or re-organize said Board of Education, and provide for the educational interest of the State in any other manner that to them shall seem best and proper.*

*The board of education was abolished in 1864 by 1864 Acts, ch 52, §1. For statutory provisions, see chapters 256 and 262 of the Code

2ND. SCHOOL FUNDS AND SCHOOL LANDS.

Control — management. SECTION 1. The educational and school funds and lands, shall be under the control and management of the General Assembly of this State.

Permanent fund. SEC. 2. The University lands, and the proceeds thereof, and all monies belonging to said fund shall be a permanent fund for the sole use of the State University. The interest arising from the same shall be annually appropriated for the support and benefit of said University.

Perpetual support fund. SEC. 3. The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State, for the support of schools, which may have been or shall hereafter be sold, or disposed of, and the five hundred thousand acres of land granted to the new States, under an act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved in the year of our Lord one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such percent as has been or may hereafter be granted by Congress, on the sale of lands in this State, shall be, and remain a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of Common schools throughout the State.

Referred to in §175.4 of the Code

Fines — how appropriated. SEC. 4. [*The money which may have been or shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several Counties for any breach of the penal laws, shall be exclusively applied, in the several Counties in which such money is paid, or fine collected, among the several school districts of said Counties, in proportion to the number of youths subject to enumeration in such districts, to the support of Common Schools, or the establishment of libraries, as the Board of Education shall, from time to time provide.*]*

*This section repealed by Amendment **[35]**

Proceeds of lands. SEC. 5. The General Assembly shall take measures for the protection, improvement, or other disposition of such lands as have been, or may hereafter be reserved, or granted by the United States, or any person or persons, to this State, for the use of the University, and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be, and remain, a permanent fund, the interest of which shall be applied to the support of said University, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the General Assembly as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

Agents of school funds. SEC. 6. The financial agents of the school funds shall be the same, that by law, receive and control the State and county revenue for other civil purposes, under such regulations as may be provided by law.

Distribution. SEC. 7. [*The money subject to the support and maintenance of common schools shall be distributed to the districts in proportion to the number of youths, between the ages of five and twenty-one years, in such manner as may be provided by the General Assembly.*]*

*In 1984 this section was repealed: See Amendment **[39]**

ARTICLE X.

AMENDMENTS TO THE CONSTITUTION.

How proposed — submission. SECTION 1. Any amendment or amendments to this Constitution may be proposed in either House of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the General Assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to, by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner, and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become a part of the Constitution of this State.

For statutory provisions, see §49.43 to 49.50, and 49A.1 to 49A.11 of the Code

More than one amendment. SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Convention. SEC. 3. [*At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, "Shall there be a Convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention.*]*

*In 1964 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[22]**
Statutory provision, §39.4

ARTICLE XI.

MISCELLANEOUS.

Justice of peace — jurisdiction. SECTION 1. *The jurisdiction of Justices of the Peace shall extend to all civil cases, (except cases in chancery, and cases where the question of title to real estate may arise,) where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding three hundred dollars.*
Nonindictable misdemeanors, jurisdiction, Art. I, §11
[The office of Justice of Peace has been abolished by 72 Acts, ch 1124.]

Counties. SEC. 2. No new County shall be hereafter created containing less than four hundred and thirty two square miles; nor shall the territory of any organized county be reduced below that area; except the County of Worth, and the counties west of it, along the Northern boundary of this State, may be organized without additional territory.

Indebtedness of political or municipal corporations. SEC. 3. No county, or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five percentum on the value of the taxable property within such county or corporation — to be ascertained by the last State and county tax lists, previous to the incurring of such indebtedness.
Statutory limitation, §346.24 of the Code
See 72 Acts, ch 1088

Boundaries of state. SEC. 4. The boundaries of the State may be enlarged, with the consent of Congress and the General Assembly.
See boundary compromise agreements at the end of Volume IV of the Code

Oath of office. SEC. 5. Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.
See §63.10 of the Code

How vacancies filled. SEC. 6. In all cases of elections to fill vacancies in office occurring before the expiration of a full term, the person so elected shall hold for the residue of the unexpired term; and all persons appointed to fill vacancies in office, shall hold until the next general election, and until their successors are elected and qualified.

Land grants located. SEC. 7. The General Assembly shall not locate any of the public lands, which have been, or may be granted by Congress to this State, and the location of which may be given to the General Assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant, so exempted, shall not exceed three hundred and twenty acres.

Seat of government established — state university. SEC. 8. The seat of Government is hereby permanently established, as now fixed by law, at the City of Des Moines, in the County of Polk; and the State University, at Iowa City, in the County of Johnson.
See 1855 Acts, ch 72

ARTICLE XII.

SCHEDULE.

Supreme law — constitutionality of acts. SECTION 1. This Constitution shall be the supreme law of the State, and any law inconsistent therewith, shall be void. The General Assembly shall pass all laws necessary to carry this Constitution into effect.

Laws in force. SEC. 2. All laws now in force and not inconsistent with this Constitution, shall remain in force until they shall expire or be repealed.

Proceedings not affected. SEC. 3. All in-

dictments, prosecutions, suits, pleas, plaints, process, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as now provided by law; and all offences, misdemeanors, and crimes that may have been committed before the taking effect of this Constitution, shall be subject to indictment, trial and punishment, in the same manner as they would have been, had not this Constitution been made.

Fines inure to the state. SEC. 4. [*All fines, penalties, or forfeitures due, or to become due, or accruing to the State, or to any County therein, or to the school fund, shall inure to the State, county, or school fund, in the manner prescribed by law.*]*

*This section repealed by Amendment **[35]**

Bonds in force. SEC. 5. All bonds executed to the State, or to any officer in his official capacity, shall remain in force and inure to the use of those concerned.

First election for governor and lieutenant governor. SEC. 6. The first election under this Constitution shall be held on the second Tuesday in October, in the year one thousand eight hundred and fifty seven, at which time the electors of the State shall elect the Governor and Lieutenant Governor. There shall also be elected at such election, the successors of such State Senators as were elected at the August election, in the year one thousand eight hundred and fifty-four, and members of the House of Representatives, who shall be elected in accordance with the act of apportionment, enacted at the session of the General Assembly which commenced on the first Monday of December One thousand eight hundred and fifty six.

First election of officers. SEC. 7. The first election for Secretary, Auditor, and Treasurer of State, Attorney General, District Judges, Members of the Board of Education, District Attorneys, members of Congress and such State officers as shall be elected at the April election in the year One thousand eight hundred and fifty seven, (except the Superintendent of Public Instruction,) and such county officers as were elected at the August election, in the year One thousand eight hundred and fifty-six, except Prosecuting Attorneys, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-eight: *Provided,* That the time for which any District Judge or other State or County officer elected at the April election in the year One thousand eight hundred and fifty eight, shall not extend beyond the time fixed for filling like offices at the October election in the year one thousand eight hundred and fifty eight.

For judges of supreme court. SEC. 8. The first election for Judges of the Supreme Court, and such County officers as shall be elected at the August election, in the year one thousand eight hundred and fifty-seven, shall be held on the second Tuesday of October, in the year One thousand eight hundred and fifty-nine.

General assembly — first session. SEC. 9. The first regular session of the General Assembly shall be held in the year One thousand eight hundred and fifty-eight, commencing on the second Monday of January of said year.

Senators. SEC. 10. Senators elected at the August election, in the year one thousand eight hundred and fifty-six, shall continue in office until the second Tuesday of October, in the year one thousand eight hundred and fifty nine, at which time their successors shall be elected as may be prescribed by law.

Offices not vacated. SEC. 11. Every person elected by popular vote, by vote of the General Assembly, or who may hold office by executive appointment, which office is continued by this Constitution, and every person who shall be so elected or appointed, to any such office, before the taking effect of this constitution, (except as in this Constitution otherwise provided,) shall continue in office until the term for which such person has been or may be elected or appointed shall expire: but no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office, in this Constitution prescribed.

Judicial districts. SEC. 12. The General Assembly, at the first session under this Constitution, shall district the State into eleven Judicial Districts, for District Court purposes; and shall also provide for the apportionment of the members of the General Assembly, in accordance with the provisions of this Constitution.

Submission of constitution. SEC. 13. This Constitution shall be submitted to the electors of the State at the August election, in the year one thousand eight hundred and fifty-seven, in the several election districts in this State. The ballots at such election shall be written or printed as follows: Those in favor of the Constitution, "New Constitution — Yes." Those against the Constitution, "New Constitution — No." The election shall be conducted in the same manner as the general elections of the State, and the poll-books shall be returned and canvassed as provided in the twenty-fifth chapter of the code, and abstracts shall be forwarded to the Secretary of State, which abstracts shall be canvassed in the manner provided for the canvass of State officers. And if it shall appear

that a majority of all the votes cast at such election for and against this Constitution are in favor of the same, the Governor shall immediately issue his proclamation stating that fact, and such Constitution shall be the Constitution of the State of Iowa, and shall take effect from and after the publication of said proclamation.

Proposition to strike out the word "white". SEC. 14. At the same election that this Constitution is submitted to the people for its adoption or rejection, a proposition to amend the same by striking out the word "White" from the article on the Right of Suffrage, shall be separately submitted to the electors of this State for adoption or rejection in manner following — Namely:

A separate ballot may be given by every person having a right to vote at said election, to be deposited in a separate box; and those given for the adoption of such proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? Yes." And those given against the proposition shall have the words, "Shall the word 'White' be stricken out of the Article on the Right of Suffrage? No." And if at said election the number of ballots cast in favor of said proposition shall be equal to a majority of those cast for and against this Constitution, then said word "White" shall be stricken from said Article and be no part thereof.

This proposition failed to be adopted but see Amendment **[1]**

Mills county. SEC. 15. Until otherwise directed by law, the County of Mills shall be in and a part of the sixth Judicial District of this State.

Sec. 16. For provisions relative to biennial election, see Amendment **[11]**: See also Amendment **[14]**

Done in Convention at Iowa City, this fifth day of March in the year of our Lord One thousand eight hundred and fifty seven, and of the Independence of the United States of America, the eighty first.

In testimony whereof we have hereunto subscribed our names.

TIMOTHY DAY	A. H. MARVIN	S. AYERS
S. G. WINCHESTER	J. H. EMERSON	HARVEY J. SKIFF
DAVID BUNKER	R. L. B. CLARKE	J. A. PARVIN
D. P. PALMER	JAMES A. YOUNG	W. PENN. CLARKE
GEO. W. ELLS	D. H. SOLOMON	JEREMIAH HOLLINGSWORTH
J. C. HALL	M. W. ROBINSON	WM. PATTERSON
JOHN. H. PETERS	LEWIS TODHUNTER	D. W. PRICE.
WM. A. WARREN	JOHN EDWARDS	ALPHIEUS SCOTT
H. W. GRAY	J. C. TRAER	GEORGE GILLASPY
ROBT. GOWER	JAMES F. WILSON	EDWARD JOHNSTONE
H. D. GIBSON	AMOS HARRIS	AYLETT R COTTON.
THOMAS SEELY	JNO T. CLARK	

Attest:
TH: J. SAUNDERS, *Secretary.*
E. N. BATES *Asst. Secretary.*

FRANCIS SPRINGER *President*

PROCLAMATION.

Whereas an instrument known as the "New Constitution of the State of Iowa" adopted by the constitutional convention of said State on the fifth day of March A.D. 1857 was submitted to the qualified electors of said State at the annual election held on Monday the third day of August 1857 for their approval or rejection.

And whereas an official canvass of the votes cast at said election shows that there were Forty thousand three hundred and eleven votes cast for the adoption of said Constitution and Thirty eight thousand six hundred and eighty-one votes were cast against its adoption, leaving a majority of sixteen hundred and thirty votes in favor of its adoption.

Now therefore I, JAMES W. GRIMES, Governor of said State, by virtue of the authority conferred upon me, hereby declare the said New Constitution to be adopted, and declare it to be the supreme law of the State of Iowa.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Iowa.

L.S. Done at Iowa City this Third day of September A.D. 1857 of the Independence of the United States the eighty second and of the State of Iowa the eleventh.

JAMES W. GRIMES

By the Governor.
ELIJAH SELLS,
Secretary of State.

AMENDMENTS TO THE CONSTITUTION

AMENDMENTS OF 1868

[1] 1st Strike the word "white," from Section 1 of Article II thereof; [Electors]

[2] 2d Strike the word "white," from Section 33 of Article III thereof; [Census]

[3] 3d Strike the word "white," from Section 34 of Article III thereof; [Senators]

[4] 4th Strike the word "white," from Section 35 of Article III thereof; [Apportionment]

[5] 5th Strike the word "white," from Section 1 of Article VI thereof; [Militia]

The first of these amendments was submitted to the electorate with the Constitution in 1857 but was defeated.

AMENDMENT OF 1880

[6] Strike out the words "free white" from the third line of Section four (4) of Article three (III) of said Constitution, relating to the legislative department.

AMENDMENTS OF 1884

[7] General election. [*Amendment 1. The general election for State, District County and Township officers shall be held on the Tuesday next after the first Monday in November.*]*

*The above amendment, published as section 7 of Article II was repealed by Amendment **[14]**

[8] Judicial districts. Amendment 2. At any regular session of the General Assembly the State may be divided into the necessary Judicial Districts for District Court purposes, or the said Districts may be reorganized and the number of the Districts and the Judges of said Courts increased or diminished; but no re-organization of the Districts or diminution of the Judges shall have the effect of removing a Judge from office.

See section 10 of Article V

[9] Grand jury. Amendment 3. The Grand Jury may consist of any number of members not less than five, nor more than fifteen, as the General Assembly may by law provide, or the General Assembly may provide for holding persons to answer for any criminal offense without the intervention of a Grand Jury.

See section 11 of Article I

[10] Amendment 4. That Section 13 of Article V of the Constitution be stricken therefrom, and the following adopted as such Section.

County attorney. SEC. 13. [*The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter elect a County Attorney, who shall be a resident of the county for which he is elected, and shall hold his office for two years, and until his successor shall have been elected and qualified.*]*

*In 1970 this section was repealed: See Amendment **[31]**

AMENDMENTS OF 1904

[11]

AMENDMENT NO. 1

Add as Section 16, to Article XII of the Constitution, the following:

General election. SEC. 16. [*The first general election after the adoption of this amendment shall be held on the Tuesday next after the first Monday in November in the year one thousand nine hundred and six, and general elections shall be held biennially thereafter. In the year one thousand nine hundred and six there shall be elected a governor, lieutenant-governor, secretary of state, auditor of state, treasurer of state, attorney general, two judges of the supreme court, the successors of the judges of the district court whose terms of office expire on December 31st, one thousand nine hundred and six, state senators who would otherwise be chosen in the year one thousand nine hundred and five, and members of the house of representatives. The terms of office of the judges of the supreme court which would otherwise expire on December 31st, in odd numbered years, and all other elective state, county and township officers whose terms of office would otherwise expire in January in the year one thousand nine hundred and six, and members of the general assembly whose successors would otherwise be chosen at the general election in the year one thousand nine hundred and five, are hereby extended one year and until their successors are elected and qualified. The terms of offices of senators whose successors would otherwise be chosen in the year one thousand nine hundred and seven are hereby extended one year and until their successors are elected and qualified. The general assembly shall make such changes in the law governing the time of election and term of office of all other elective officers as shall be necessary to make the time of their election and terms of office conform to this amendment, and shall provide which of the judges of the supreme court shall serve as chief justice. The general assembly shall meet in regular session on the second Monday in January, in the year one thousand nine hundred and six, and also on the second Monday in January in the year one thousand nine hundred and seven, and biennially thereafter.*]*

Practically the same amendment as the above was ratified in 1900, but the supreme court, in the case of State ex rel. Bailey v. Brookhart, 113 Iowa

250, held that said amendment was not proposed and adopted as required by the constitution, and did not become a part thereof

*The above amendment of 1904 has apparently been superseded by Amendment **[14]**

[12]
AMENDMENT NO. 2*

That Sections thirty-four (34) thirty-five (35) and thirty-six (36) of Article three (III) of the Constitution of the State of Iowa, be repealed and the following be adopted in lieu thereof.

Senators — number — method of apportionment. SEC. 34. [*The Senate shall be composed of fifty members to be elected from the several senatorial districts, established by law and at the next session of the general assembly held following the taking of the state and national census, they shall be apportioned among the several counties or districts of the state, according to population as shown by the last preceding census.*]**

*In 1968 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[26]**

See Amendment **[16]; also Art. III, sec. 6

Representatives — number — apportionment. SEC. 35. [*The House of Representatives shall consist of not more than one hundred and eight members. The Ratio of representation shall be determined by dividing the whole number of the population of the state as shown by the last preceding state or national census, by the whole number of counties then existing or organized, but each county shall constitute one representative district and be entitled to one representative, but each county having a population in excess of the ratio number, as herein provided of three fifths or more of such ratio number shall be entitled to one additional representative, but said addition shall extend only to the nine counties having the greatest population.*]*

*In 1968 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[26]**

Ratio of representation. SEC. 36. [*The General Assembly shall, at the first regular session held following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as herein before required.*]*

*In 1968 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[26]**

[13] AMENDMENT OF 1908

That there be added to Section eighteen (18) of Article one (I) of the Constitution of the State of Iowa, the following:

Drainage ditches and levees. The general assembly, however, may pass laws permitting the owners of lands to construct drains, ditches, and levees for agricultural, sanitary or mining purposes across the lands of others, and provide for the organization of drainage districts, vest the proper authorities with power to construct and maintain levees, drains and ditches and to keep in repair all drains, ditches, and levees heretofore constructed under the laws of the state, by special assessments upon the property benefited thereby. The General Assembly may provide by law for the condemnation of such real estate as shall be necessary for the construction and maintenance of such drains, ditches and levees, and prescribe the method of making such condemnation.

[14] AMENDMENT OF 1916

To repeal Section seven (7) of Article two (II) of the Constitution of Iowa and to adopt in lieu thereof the following, to-wit:

General election. [SEC. 7.] The general election for state, district, county and township officers in the year 1916 shall be held in the same month and on the same day as that fixed by the laws of the United States for the election of presidential electors, or of president and vice-president of the United States; and thereafter such election shall be held at such time as the general assembly may by law provide.

The above amendment repealed Amendment **[7]**, which was published as section 7 of Article II: See also Amendment **[11]**

For statutory provisions, see §39.1 of the Code

In 1916 a proposed amendment to extend the election franchise to women was defeated by the people

In 1917 a second proposed prohibition amendment was defeated by the people

In 1919 a second proposed amendment to enfranchise women was nullified by a procedural defect in failure to publish

[15] AMENDMENT OF 1926

Strike out the word "male" from Section four (4) of Article three (III) of said constitution, relating to the legislative department.

[16] AMENDMENT OF 1928*

[*That the period (.) at the end of said section thirty-four (34) of Article three (III) of the Constitution of the state of Iowa be stricken and the following inserted:*

", but no county shall be entitled to more than one (1) senator."]**

See Art. III, sec. 6

*The above amendment was repealed by Amendment **[26]**

Applicable to Amendment **[12]

[17] AMENDMENT OF 1936

Amend Article three (III) by repealing Section thirty-three (33) relating to the state census.

[18] AMENDMENT OF 1942

That Article Seven (VII) of the Constitution of the State of Iowa be amended by adding thereto, as Section eight (8) thereof, the following:

Motor vehicle fees and fuel taxes. [SEC. 8.] All motor vehicle registration fees and all licenses and excise taxes on motor vehicle fuel, except cost of administration, shall be used exclusively for the construction, maintenance and supervision of the public highways exclusively within the state or for the payment of bonds issued or to be issued for the construction of such public highways and the payment of interest on such bonds.

AMENDMENTS OF 1952

[19] Amendment 1. Section four (4) of Article IV of the Constitution of Iowa is amended by adding thereto the following:

Death of governor-elect or failure to qualify. [*If, upon the completion of the canvass of votes for Governor and Lieutenant Governor by the General Assembly, it shall appear that the person who received the highest number of votes for Governor has since died, resigned, is unable to qualify, fails to qualify, or for any other reason is unable to assume the duties of the office of Governor for the ensuing term, the powers and duties of the office shall devolve upon the person who received the highest number of votes for Lieutenant Governor until the disability is removed and, upon inauguration, he shall assume the powers and duties of Governor.*]*

*In 1988 the above amendment was repealed by Amendment **[41]**

[20] Amendment 2. Section nineteen (19) of Article IV of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

Gubernatorial succession. SEC. 19. [*If there be a vacancy in the office of Governor and the Lieutenant Governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of Governor, the President pro tempore of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the President pro tempore of the Senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of Governor the same shall devolve upon the Speaker of the House of Representatives; and if the Speaker of the House of Representatives, for any of the above causes, shall be incapable of performing the duties of the office of Governor, the Justices of the Supreme Court shall convene the General Assembly by proclamation and the General Assembly shall organize by the election of a President pro tempore by the Senate and a Speaker by the House of Representatives. The General Assembly shall thereupon immediately proceed to the election of a Governor and Lieutenant Governor in joint convention.*]*

Practically the same amendments were proposed in 1947 but nullified by a procedural defect in 1949 by failure to publish before the election

*In 1988 this section was repealed and a substitute was adopted in lieu thereof: See Amendment **[42]**

Referred to in §7.14(2) of the Code

AMENDMENT OF 1962

[21] Article Five (V) is amended in the following manner:

1. Section four (4) is amended by striking from lines eight (8) and nine (9) of such section the words, "exercise a supervisory" and inserting in lieu thereof the words, "shall exercise a supervisory and administrative".
2. Sections three (3), five (5), nine (9) and eleven (11) are repealed.
3. The following sections are added thereto:

Vacancies in courts. SEC. 15. Vacancies in the Supreme Court and District Court shall be filled by appointment by the Governor from lists of nominees submitted by the appropriate judicial nominating commission. Three nominees shall be submitted for each Supreme Court vacancy, and two nominees shall be submitted for each District Court vacancy. If the Governor fails for thirty days to make the appointment, it shall be made from such nominees by the Chief Justice of the Supreme Court.

State and district nominating commissions. SEC. 16. There shall be a State Judicial Nominating Commission. Such commission shall make nominations to fill vacancies in the Supreme Court. Until July 4, 1973, and thereafter unless otherwise provided by law, the State Judicial Nominating Commission shall be composed and selected as follows: There shall be not less than three nor more than eight appointive members, as provided by law, and an equal number of elective members on such Commission, all of whom shall be electors of the state. The appointive members shall be appointed by the Governor subject to confirmation by the Senate. The elective members shall be elected by the resident members of the bar of the state. The judge of the Supreme Court who is senior in length of service on said Court, other than the Chief Justice, shall also be a member of such Commission and shall be its chairman.

There shall be a District Judicial Nominating Commission in each judicial district of the state. Such commissions shall make nominations to fill vacancies in the District Court within their respective districts. Until July 4, 1973, and thereafter unless otherwise provided by law, District Judicial Nominating Commissions shall be composed and selected as follows: There shall be not less than three nor more than six appointive members, as provided by law, and an equal number of elective members on each such commission, all of whom shall be electors of the district. The appoint-

ive members shall be appointed by the Governor. The elective members shall be elected by the resident members of the bar of the district. The district judge of such district who is senior in length of service shall also be a member of such commission and shall be its chairman.

Due consideration shall be given to area representation in the appointment and election of Judicial Nominating Commission members. Appointive and elective members of Judicial Nominating Commissions shall serve for six year terms, shall be ineligible for a second six year term on the same commission, shall hold no office of profit of the United States or of the state during their terms, shall be chosen without reference to political affiliation, and shall have such other qualifications as may be prescribed by law. As near as may be, the terms of one-third of such members shall expire every two years.

Terms — judicial elections. SEC. 17. Members of all courts shall have such tenure in office as may be fixed by law, but terms of Supreme Court Judges shall be not less than eight years and terms of District Court Judges shall be not less than six years. Judges shall serve for one year after appointment and until the first day of January following the next judicial election after the expiration of such year. They shall at such judicial election stand for retention in office on a separate ballot which shall submit the question of whether such judge shall be retained in office for the tenure prescribed for such office and when such tenure is a term of years, on their request, they shall, at the judicial election next before the end of each term, stand again for retention on such ballot. Present Supreme Court and District Court Judges, at the expiration of their respective terms, may be retained in office in like manner for the tenure prescribed for such office. The General Assembly shall prescribe the time for holding judicial elections.

Salaries — qualifications — retirement. SEC. 18. Judges of the Supreme Court and District Court shall receive salaries from the state, shall be members of the bar of the state and shall have such other qualifications as may be prescribed by law. Judges of the Supreme Court and District Court shall be ineligible to any other office of the state while serving on said court and for two years thereafter, except that District Judges shall be eligible to the office of Supreme Court Judge. Other judicial officers shall be selected in such manner and shall have such tenure, compensation and other qualification as may be fixed by law. The General Assembly shall prescribe mandatory retirement for Judges of the Supreme Court and District Court at a specified age and shall provide for adequate retirement compensation. Retired judges may be subject to special assignment to temporary judicial duties by the Supreme Court, as provided by law.

AMENDMENT OF 1964

[22] Section three (3) of Article ten (X) of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

Constitutional convention. SEC. 3. At the general election to be held in the year one thousand nine hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, "Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention, and for submitting the results of said Convention to the people, in such manner and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become a part of the constitution of this state. If two or more amendments shall be submitted at the same time, they shall be submitted in such a manner that electors may vote for or against each such amendment separately.

AMENDMENT OF 1966

[23] Section twenty-six (26) of Article III is amended by striking from line four (4) the word "fourth" and inserting in lieu thereof the word "first".

AMENDMENTS OF 1968

[24] Amendment 1. Section two (2) of Article three (III) of the Constitution of the State of Iowa is hereby repealed and the following adopted in lieu thereof:

Annual sessions of General Assembly. SEC. 2. [*The General Assembly shall meet in session on the second Monday of January of each year. The Governor of the state may convene the General Assembly by proclamation in the interim.*]*

*In 1974 this section was repealed and a substitute adopted: See Amendment **[36]**

[25] Amendment 2. Article three (III), legislative department, Constitution of the State of Iowa is hereby amended by adding the following new section:

Municipal home rule. [SEC. 38A.] Munici-

pal corporations are granted home rule power and authority, not inconsistent with the laws of the General Assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the General Assembly.

The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.

[26] Amendment 3. Section six (6) of Article three (III) section thirty-four (34) of Article three (III) and the 1904 and 1928 amendments thereto, sections thirty-five (35) and thirty-six (36) of Article three (III) and the 1904 amendment to each such section, and section thirty-seven (37) of Article three (III) are hereby repealed and the following adopted in lieu thereof:

Senators — number and classification. SEC. 6. The number of senators shall total not more than one-half the membership of the house of representatives. Senators shall be classified so that as nearly as possible one-half of the members of the senate shall be elected every two years.

Referred to in § 42.4 of the Code

Senate and House of Representatives — limitation. SEC. 34. The senate shall be composed of not more than fifty and the house of representatives of not more than one hundred members. Senators and representatives shall be elected from districts established by law. Each district so established shall be of compact and contiguous territory. The state shall be apportioned into senatorial and representative districts on the basis of population. The General Assembly may provide by law for factors in addition to population, not in conflict with the Constitution of the United States, which may be considered in the apportioning of senatorial districts. No law so adopted shall permit the establishment of senatorial districts whereby a majority of the members of the senate shall represent less than forty percent of the population of the state as shown by the most recent United States decennial census.

Senators and representatives — number and districts. SEC. 35. The General Assembly shall in 1971 and in each year immediately following the United States decennial census determine the number of senators and representatives to be elected to the General Assembly and establish senatorial and representative districts. The General Assembly shall complete the apportionment prior to September 1 of the year so required. If the apportionment fails to become law prior to September 15 of such year, the Supreme Court shall cause the state to be apportioned into senatorial and representative districts to comply with the requirements of the Constitution prior to December 31 of such year. The reapportioning authority shall, where necessary in establishing senatorial districts, shorten the term of any senator prior to completion of the term. Any senator whose term is so terminated shall not be compensated for the uncompleted part of the term.

Referred to in § 49.3 of the Code

Review by Supreme Court. SEC. 36. Upon verified application by any qualified elector, the Supreme Court shall review an apportionment plan adopted by the General Assembly which has been enacted into law. Should the Supreme Court determine such plan does not comply with the requirements of the Constitution, the court shall within ninety days adopt or cause to be adopted an apportionment plan which shall so comply. The Supreme Court shall have original jurisdiction of all litigation questioning the apportionment of the General Assembly or any apportionment plan adopted by the General Assembly.

Congressional districts. SEC. 37. When a congressional district is composed of two or more counties it shall not be entirely separated by a county belonging to another district and no county shall be divided in forming a congressional district.

Referred to in § 42.3, 42.4 of the Code

[27] Amendment 4. Section sixteen (16) of article three (III) of the Constitution of the State of Iowa is hereby amended by adding the following new paragraph at the end thereof:

Item veto by Governor. The Governor may approve appropriation bills in whole or in part, and may disapprove any item of an appropriation bill; and the part approved shall become a law. Any item of an appropriation bill disapproved by the Governor shall be returned, with his objections, to the house in which it originated, or shall be deposited by him in the office of the Secretary of State in the case of an appropriation bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, and the procedure in each case shall be the same as provided for other bills. Any such item of an appropriation bill may be enacted into law notwithstanding the Governor's objections, in the same manner as provided for other bills.

[28] Amendment 5. Section twenty-five (25) of Article three (III) of the Constitution of the State of Iowa is hereby repealed and the following adopted in lieu thereof:

Compensation and expenses of General Assembly. SEC. 25. Each member of the General Assembly shall receive such compensation and allowances for expenses as shall be fixed by law but no General Assembly shall have the power

to increase compensation and allowances effective prior to the convening of the next General Assembly following the session in which any increase is adopted.

AMENDMENTS OF 1970

[29] Amendment 1. Article three (III) of the Constitution of the State of Iowa is hereby amended by adding thereto the following new section:

Legislative districts. SEC. 39. In establishing senatorial and representative districts, the state shall be divided into as many senatorial districts as there are members of the senate and into as many representative districts as there are members of the house of representatives. One senator shall be elected from each senatorial district and one representative shall be elected from each representative district.

[30] Amendment 2. Section one (1) of Article two (II) of the Constitution, as amended in 1868, is hereby repealed and the following is hereby adopted in lieu thereof:

Electors. SEC. 1. Every citizen of the United States of the age of twenty-one years, who shall have been a resident of this state for such period of time as shall be provided by law and of the county in which he claims his vote for such period of time as shall be provided by law, shall be entitled to vote at all elections which are now or hereafter may be authorized by law. The General Assembly may provide by law for different periods of residence in order to vote for various officers or in order to vote in various elections. The required periods of residence shall not exceed six months in this state and sixty days in the county.

See Amendments 19 and 26 to U. S. Constitution

[31] Amendment 3. Section thirteen (13) of Article five (V) of the Constitution of the State of Iowa as amended by Amendment 4 of the Amendments of 1884 is hereby repealed. [County Attorney]

AMENDMENTS OF 1972

[32] Amendment 1. Section two (2) of Article four (IV) of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

Election and term [governor]. SEC. 2. [*The Governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office for four years from the time of his installation, and until his successor is elected and qualifies.*]*

*In 1988 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[41]**

Section three (3) of Article four (IV) of the Constitution of the State of Iowa is hereby repealed and the following adopted in lieu thereof:

Lieutenant governor — returns of elections. SEC. 3. [*There shall be a Lieutenant Governor who shall hold his office for the same term, and be elected at the same time as the Governor. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor, and Lieutenant Governor, shall be sealed up and transmitted to the seat of government of the State, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.*]*

*In 1988 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[41]**

Section fifteen (15) of Article four (IV) of the Constitution of the State of Iowa is hereby repealed and the following adopted in lieu thereof:

Terms — compensation of lieutenant governor. SEC. 15. [*The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualify. The Lieutenant Governor, while acting as Governor, shall receive the same compensation as provided for Governor; and while presiding in the Senate, and between sessions such compensation and expenses as provided by law.*]*

*In 1988 this section was repealed and a substitute adopted in lieu thereof: See Amendment **[42]**

Section twenty-two (22) of Article four (IV) of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

Secretary — auditor — treasurer. SEC. 22. A Secretary of State, an Auditor of State and a Treasurer of State shall be elected by the qualified electors at the same time that the governor is elected and for a four-year term commencing on the first day of January next after their election, and they shall perform such duties as may be provided by law.

Section twelve (12) of Article five (V) of the Constitution of the State of Iowa is repealed and the following adopted in lieu thereof:

Attorney general. SEC. 12. The General Assembly shall provide, by law, for the election of an Attorney General by the people, whose term of office shall be four years, and until his successor is elected and qualifies.

[33] Amendment 2. Article five (V), Constitu-

tion of the State of Iowa, is hereby amended by adding thereto the following new section:

Retirement and discipline of judges. [SEC. 19.] In addition to the legislative power of impeachment of judges as set forth in Article three (III), sections nineteen (19) and twenty (20) of the Constitution, the Supreme Court shall have power to retire judges for disability and to discipline or remove them for good cause, upon application by a commission on judicial qualifications. The General Assembly shall provide by law for the implementation of this section.

[34] Amendment 3. Section twenty-eight (28) of Article three (III) of the Constitution of the State of Iowa is hereby repealed. [Lottery prohibition]

AMENDMENTS OF 1974

[35] Amendment 1. **Apportionment of fines.**

Section four (4), subdivision two (2) entitled "School Funds and School Lands", of Article nine (IX) of the Constitution of the State of Iowa is hereby repealed.

Section four (4) of Article twelve (XII) of the Constitution of the State of Iowa is hereby repealed.

[36] Amendment 2. Section two (2) of Article three (III) of the Constitution of the State of Iowa, as amended by amendment number one (1) of the Amendments of 1968 to the Constitution of the State of Iowa, is repealed and the following adopted in lieu thereof:

Annual sessions of General Assembly — special sessions. The General Assembly shall meet in session on the second Monday of January of each year. Upon written request to the presiding officer of each House of the General Assembly by two-thirds of the members of each House, the General Assembly shall convene in special session. The Governor of the state may convene the General Assembly by proclamation in the interim.

AMENDMENT OF 1978

[37] Article three (III), legislative department, Constitution of the State of Iowa is hereby amended by adding the following new section:

Counties home rule. [SEC. 39A.] Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly. The general assembly may provide for the creation and dissolution of joint county-municipal corporation governments. The general assembly may provide for the establishment of charters in county or joint county-municipal corporation governments.

If the power or authority of a county conflicts with the power and authority of a municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction.

The proposition or rule of law that a county or joint county-municipal corporation government possesses and can exercise only those powers granted in express words is not a part of the law of this state.

In 1980 a proposed amendment to Article I, section 1, relating to equal rights of men and women was defeated by the people

AMENDMENTS OF 1984

[38] Amendment 1. Article III, Legislative Department, Constitution of the State of Iowa, is amended by adding the following new section:

Nullification of administrative rules. [SEC. 40.] The general assembly may nullify an adopted administrative rule of a state agency by the passage of a resolution by a majority of all of the members of each house of the general assembly.

Referred to in §3.6, 17A.6 of the Code

[39] Amendment 2. **Distribution.** Section 7, subdivision 2 entitled "School Funds and School Lands", of Article IX of the Constitution of the State of Iowa is repealed.

AMENDMENT OF 1986

[40] Section 26 of Article III of the Constitution of the State of Iowa, as amended by the Amendment of 1966, is repealed and the following adopted in lieu thereof:

Time laws to take effect. SEC. 26. An act of the general assembly passed at a regular session of a general assembly shall take effect on July 1 following its passage unless a different effective date is stated in an act of the general assembly. An act passed at a special session of a general assembly shall take effect ninety days after adjournment of the special session unless a different effective date is stated in an act of the general assembly. The general assembly may establish by law a procedure for giving notice of the contents of acts of immediate importance which become law.

AMENDMENTS OF 1988

[41] Amendment 1. Section 2 of Article IV of the Constitution of the State of Iowa, as amended by amendment number 1 of the Amendments of

1972, is repealed beginning with the general election in the year 1990 and the following adopted in lieu thereof:

Election and term. SEC. 2. The governor and the lieutenant governor shall be elected by the qualified electors at the time and place of voting for members of the general assembly. Each of them shall hold office for four years from the time of installation in office and until a successor is elected and qualifies.

Section 3 of Article IV of the Constitution of the State of Iowa, as amended by amendment number 1 of the Amendments of 1972, is repealed beginning with the general election in the year 1990 and the following adopted in lieu thereof:

Governor and lieutenant governor elected jointly — returns of elections. SEC. 3. The electors shall designate their selections for governor and lieutenant governor as if these two offices were one and the same. The names of nominees for the governor and the lieutenant governor shall be grouped together in a set on the ballot according to which nominee for governor is seeking office with which nominee for lieutenant governor, as prescribed by law. An elector shall cast only one vote for both a nominee for governor and a nominee for lieutenant governor. The returns of every election for governor and lieutenant governor shall be sealed and transmitted to the seat of government of the state, and directed to the speaker of the house of representatives who shall open and publish them in the presence of both houses of the general assembly.

Section 4 of Article IV of the Constitution of the State of Iowa, as amended by amendment number 1 of the Amendments of 1952, is repealed beginning with the general election in the year 1990 and the following adopted in lieu thereof:

Election by general assembly in case of tie — succession by lieutenant governor. SEC. 4. The nominees for governor and lieutenant governor jointly having the highest number of votes cast for them shall be declared duly elected. If two or more sets of nominees for governor and lieutenant governor have an equal and the highest number of votes for the offices jointly, the general assembly shall by joint vote proceed, as soon as is possible, to elect one set of nominees for governor and lieutenant governor. If, upon the completion by the general assembly of the canvass of votes for governor and lieutenant governor, it appears that the nominee for governor in the set of nominees for governor and lieutenant governor receiving the highest number of votes has since died or resigned, is unable to qualify, fails to qualify, or is for any other reason unable to assume the duties of the office of governor for the ensuing term, the powers and duties shall devolve to the nominee for lieutenant governor of the same set of nominees for governor and lieutenant governor, who shall assume the powers and duties of governor upon inauguration and until the disability is removed. If both nominees for governor and lieutenant governor are unable to assume the duties of the office of governor, the person next in succession shall act as governor.

Section 5 of Article IV of the Constitution of the State of Iowa is repealed beginning with the general election in the year 1990 and the following adopted in lieu thereof:

Contested elections. SEC. 5. Contested elections for the offices of governor and lieutenant governor shall be determined by the general assembly as prescribed by law.

[42] Amendment 2. Section 15 of Article IV of the Constitution of the State of Iowa, as amended by amendment number 1 of the Amendments of 1972, is repealed beginning with the second Monday in January 1991, and the following adopted in lieu thereof:

Terms — compensation. SEC. 15. The official terms of the governor and lieutenant governor shall commence on the Tuesday after the second Monday of January next after their election and shall continue until their successors are elected and qualify. The governor and lieutenant governor shall be paid compensation and expenses as provided by law. The lieutenant governor, while acting as governor, shall be paid the compensation and expenses prescribed for the governor.

Section 18 of Article IV of the Constitution of the State of Iowa is repealed beginning with the second Monday in January 1991, and the following adopted in lieu thereof:

Duties of lieutenant governor. SEC. 18. The lieutenant governor shall have the duties provided by law and those duties of the governor assigned to the lieutenant governor by the governor.

Section 19 of Article IV of the Constitution of the State of Iowa as amended by amendment number 2 of the Amendments of 1952 is repealed beginning with the second Monday in January 1991, and the following adopted in lieu thereof:

Succession to office of governor and lieutenant governor. SEC. 19. If there be a vacancy in the office of the governor and the lieutenant

governor shall by reason of death, impeachment, resignation, removal from office, or other disability become incapable of performing the duties pertaining to the office of governor, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above causes, shall be incapable of performing the duties pertaining to the office of governor the same shall devolve upon the speaker of the house of representatives; and if the speaker of the house of representatives, for any of the above causes, shall be incapable of performing the duties of the office of governor, the justices of the supreme court shall convene the general assembly by proclamation and the general assembly shall organize by the election of a president by the senate and a speaker by the house of representatives. The general assembly shall thereupon immediately proceed to the election of a governor and lieutenant governor in joint convention.

AMENDMENT OF 1992

[43] Section 5 of Article I of the Constitution of the State of Iowa is repealed. [Dueling]

A proposed amendment relating to the equality of rights of men and women under the law was defeated by the electors at the 1992 general election

AMENDMENT OF 1996

[44] Article VII of the Constitution of the State of Iowa is amended by adding the following new section:

Fish and wildlife protection funds. SEC. 9. All revenue derived from state license fees for hunting, fishing, and trapping, and all state funds appropriated for, and federal or private funds received by the state for, the regulation or advancement of hunting, fishing, or trapping, or the protection, propagation, restoration, management, or harvest of fish or wildlife, shall be used exclusively for the performance and administration of activities related to those purposes.

AMENDMENTS OF 1998

[45] Amendment 1. Section 1 of Article I of the Constitution of the State of Iowa is amended to read as follows:

Rights of persons. SECTION 1. All men and women are, by nature, free and equal, and have certain inalienable rights — among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

[46] Amendment 2. Section 11, unnumbered paragraph 1, Article I of the Constitution of the State of Iowa is amended to read as follows:

When indictment necessary — grand jury. SEC. 11. All offenses less than felony and in which the maximum permissible imprisonment does not exceed thirty days shall be tried summarily before an officer authorized by law, on information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on presentment or indictment by a grand jury, except in cases arising in the army, or navy, or in the militia, when in actual service, in time of war or public danger.

Proposed amendments relating to the state budget by limiting state general fund expenditures and restricting certain state tax revenue changes were defeated by the people at a special election held on June 29, 1999

THE CODE OF IOWA

2003

AS AUTHORIZED BY CHAPTER 2B

TITLE I

STATE SOVEREIGNTY AND MANAGEMENT

SUBTITLE 1

SOVEREIGNTY

CHAPTER 1

SOVEREIGNTY AND JURISDICTION OF THE STATE

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1.1 State boundaries.

The boundaries of the state are as defined in the preamble of the Constitution.

[C51, §1; R60, §1; C73, §1; C97, §1; C24, 27, 31, 35, 39, §**1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.1]

1.2 Sovereignty.

The state possesses sovereignty coextensive with the boundaries referred to in section 1.1, subject to such rights as may at any time exist in the United States in relation to public lands, or to any establishment of the national government.

[C51, §2; R60, §2; C73, §2; C97, §2; C24, 27, 31, 35, 39, §**2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.2]

1.3 Concurrent jurisdiction.

The state has concurrent jurisdiction on the waters of any river or lake which forms a common boundary between this and any other state.

[C51, §3; R60, §3; C73, §3; C97, §3; C24, 27, 31, 35, 39, §**3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.3]

See Act of Congress, Aug. 4, 1846, 9 Stat. L. p. 52

1.4 Acquisition of lands by United States.

The United States of America may acquire by condemnation or otherwise for any of its uses or

purposes any real estate in this state, and may exercise jurisdiction thereover but not to the extent of limiting the provisions of the laws of this state.

This state reserves, when not in conflict with the Constitution of the United States or any law enacted in pursuance thereof, the right of service on real estate held by the United States of any notice or process authorized by its laws; and reserves jurisdiction, except when used for naval or military purposes, over all offenses committed thereon against its laws and regulations and ordinances adopted in pursuance thereof.

Such real estate shall be exempt from all taxation, including special assessments, while held by the United States except when taxation of such property is authorized by the United States.

[R60, §2197, 2198; C73, §4; C97, §4; S13, §4-a – 4-d, 2024-c; C24, 27, 31, 35, 39, §**4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.4]

1.5 Federal fish and game refuge.

The state of Iowa hereby consents that the government of the United States may in any manner acquire in this state such areas of land or water or of land and water as said government may deem necessary for the establishment of the *"Upper Mississippi River Wild Life and Fish Refuge"* in accordance with the Act of Congress, approved June 7, 1924, [16 USC, ch 8] provided the states of Illinois, Wisconsin, and Minnesota grant a like consent.

[C27, 31, 35, §4-a1; C39, §**4.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.5]

1.6 Approval required.

Any acquisition by the government of the United States of land and water, or of land or water, under section 1.5 shall be first approved by the natural resource commission and the director of the department of natural resources of this state.

[C27, 31, 35, §4-a2; C39, §**4.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.6]

86 Acts, ch 1245, §1971

1.7 Legislative grant.

There is hereby granted to the government of the United States, so long as it shall use the same as a part and for the purposes of the said *"Upper Mississippi River Wild Life and Fish Refuge"*, all areas of land subject to overflow and not used for agricultural purposes or state fish hatcheries or salvaging stations, owned by this state within the boundaries of the said refuge, as the same may be established from time to time under authority of the said Act of Congress.

[C27, 31, 35, §4-a3; C39, §**4.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.7]

1.8 Applicability of statute.

Section 1.4 shall apply to all lands acquired under sections 1.5 to 1.7.

[C27, 31, 35, §4-a4; C39, §**4.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.8]

1.9 National forests.

The consent of the state of Iowa is hereby given to the acquisition by the United States, by purchase, gift, or condemnation with adequate compensation, of such lands in Iowa as in the opinion of the federal government may be needed for the establishment, consolidation and extension of national forests or for the establishment and extension of wild life, fish and game refuges and for other conservation uses in the state, and may exercise jurisdiction thereover but not to the extent of limiting the provisions of the laws of this state. This section shall not, in any manner or to any extent, modify, limit or affect the title and ownership of the state to all wild life as provided in section 481A.2; provided, that the state of Iowa shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the state of Iowa against any persons charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this law had not been passed.

[C35, §4-f1; C39, §**4.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.9]

1.10 Offenses.

Power is hereby conferred upon the Congress of the United States to pass such laws and to make or provide for the making of such rules, of both a civil and criminal nature, and provide punishment therefor, as in its judgment may be necessary for the administration, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this law.

[C35, §4-f2; C39, §**4.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §1.10]

1.11 Keokuk cemetery and Knoxville hospital — assumption of jurisdiction.

At the time of the return of jurisdiction over lands occupied by the veterans administration hospital located in Knoxville, Marion county, Iowa, and the Keokuk National Cemetery at Keokuk located in Lee county, Iowa, by the administrator of veterans affairs to the state of Iowa, the state of Iowa assumes criminal and civil jurisdiction on both grounds in the same manner as provided in section 1.4.

[C77, 79, 81, §1.11]

1.12 Jurisdiction of Indian settlement.

The state of Iowa hereby assumes jurisdiction over civil causes of actions between Indians or other persons or to which Indians or other persons are parties arising within the Sac and Fox Indian settlement in Tama county. The civil laws of this

state shall obtain on the settlement and shall be enforced in the same manner as elsewhere throughout the state.

[C71, 73, 75, 77, 79, 81, §1.12]

1.13 Existing trusts not affected.

Nothing in sections 1.12 to 1.15 shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

[C71, 73, 75, 77, 79, 81, §1.13]

1.14 Tribal ordinances or customs enforced.

Any tribal ordinance or custom heretofore or hereafter adopted by the governing council of the Sac and Fox Indian settlement in Tama county in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to sections 1.12 to 1.15.

[C71, 73, 75, 77, 79, 81, §1.14]

1.15 Attorney appointed by state in civil actions.

In all civil causes of action where the state of Iowa or any of its subdivisions or departments is a party, and a member of the Sac and Fox Indian settlement is a party, the district court of Iowa shall appoint competent legal counsel at all stages of hearing, appeal, and final determination for any Indian not otherwise represented by legal counsel, in any domestic relations matter, including, but not limited to, matters pertaining to dependency, neglect, delinquency, care, or custody of minors. The court shall fix and allow reasonable compensation for the services of the attorney, costs of transcripts and depositions, and investigative expense, which shall be paid as a claim out of any funds in the state treasury not otherwise appropriated, upon filing the claim with the director of revenue and finance.

[C71, 73, 75, 77, 79, 81, §1.15]

83 Acts, ch 123, §27, 209; 94 Acts, ch 1173, §1

1.16 Concurrent jurisdiction over lands and waters dedicated to national park purposes.

1. Concurrent legislative jurisdiction over crimes and offenses under the laws of the state of Iowa is ceded to the United States over and within all lands and waters within the state dedicated to national park purposes.

2. The concurrent jurisdiction ceded by subsection 1 is vested upon acceptance by the United States by and through its appropriate officials and shall continue so long as the lands and waters within the designated areas are dedicated to national park purposes.

3. The governor of the state of Iowa is authorized and empowered to execute all proper conveyances in the cession granted by this section, upon request of the United States by and through its appropriate officials.

4. The state of Iowa retains concurrent jurisdiction, both civil and criminal, with the United States over all lands and waters affected by this section.

84 Acts, ch 1024, §1

1.17 Cession or retrocession of federal jurisdiction.

By appropriate executive order, the governor may accept on behalf of the state full or partial cession or retrocession of federal jurisdiction, criminal or civil, over any lands, except Indian lands, in federal enclaves within the state where such cession or retrocession has been offered by appropriate federal authority. An executive order accepting a cession or retrocession of jurisdiction shall be filed in the office of the secretary of state and in the office of the recorder of the county in which the affected real estate is located.

90 Acts, ch 1146, §1

1.18 Iowa English language reaffirmation.

1. The general assembly of the state of Iowa finds and declares the following:

a. The state of Iowa is comprised of individuals from different ethnic, cultural, and linguistic backgrounds. The state of Iowa encourages the assimilation of Iowans into Iowa's rich culture.

b. Throughout the history of Iowa and of the United States, the common thread binding individuals of differing backgrounds together has been the English language.

c. Among the powers reserved to each state is the power to establish the English language as the official language of the state, and otherwise to promote the English language within the state, subject to the prohibitions enumerated in the Constitution of the United States and in laws of the state.

2. In order to encourage every citizen of this state to become more proficient in the English language, thereby facilitating participation in the economic, political, and cultural activities of this state and of the United States, the English language is hereby declared to be the official language of the state of Iowa.

3. Except as otherwise provided for in subsec-

tions 4 and 5, the English language shall be the language of government in Iowa. All official documents, regulations, orders, transactions, proceedings, programs, meetings, publications, or actions taken or issued, which are conducted or regulated by, or on behalf of, or representing the state and all of its political subdivisions shall be in the English language.

For the purposes of this section, *"official action"* means any action taken by the government in Iowa or by an authorized officer or agent of the government in Iowa that does any of the following:

a. Binds the government.

b. Is required by law.

c. Is otherwise subject to scrutiny by either the press or the public.

4. This section shall not apply to:

a. The teaching of languages.

b. Requirements under the federal Individuals with Disabilities Education Act.

c. Actions, documents, or policies necessary for trade, tourism, or commerce.

d. Actions or documents that protect the public health and safety.

e. Actions or documents that facilitate activities pertaining to compiling any census of populations.

f. Actions or documents that protect the rights of victims of crimes or criminal defendants.

g. Use of proper names, terms of art, or phrases from languages other than English.

h. Any language usage required by or necessary to secure the rights guaranteed by the Constitution and laws of the United States of America or the Constitution of the State of Iowa.

i. Any oral or written communications, examinations, or publications produced or utilized by a driver's license station, provided public safety is not jeopardized.

5. Nothing in this section shall be construed to do any of the following:

a. Prohibit an individual member of the general assembly or officer of state government, while performing official business, from communicating through any medium with another person in a language other than English, if that member or officer deems it necessary or desirable to do so.

b. Limit the preservation or use of Native American languages, as defined in the federal Native American Languages Act of 1992.

c. Disparage any language other than English or discourage any person from learning or using a language other than English.

2002 Acts, ch 1007, §1

NEW section

CHAPTER 1A

GREAT SEAL OF IOWA

1A.1 Seal — device — motto.

1A.1 Seal — device — motto.

The secretary of state be, and is, hereby authorized to procure a seal which shall be the great seal of the state of Iowa, two inches in diameter, upon which shall be engraved the following device, surrounded by the words, *"The Great Seal of the State of Iowa"* — a sheaf and field of standing wheat, with a sickle and other farming utensils, on the left side near the bottom; a lead furnace and pile of pig lead on the right side; the citizen soldier, with a plow in his rear, supporting the American flag and liberty cap with his right hand, and his gun with his left, in the center and near the bottom; the Mississippi river in the rear of the whole, with the steamer *Iowa* under way; an eagle near the upper edge, holding in his beak a scroll, with the following inscription upon it: Our liberties we prize, and our rights we will maintain.

[1GA, ch 112; C75, 77, 79, 81, §1A.1]

Editor's Note: The Act of the First General Assembly of the State of Iowa creating the Great Seal, approved February 25, 1847, is hereby reproduced in the descriptive part.

There seem to be no further enactments, repeals or amendments and no codification of this law appears in the various Codes. See *Annals of Iowa,* Volume XI, pages 561, 576. Constitutional provision for a great seal is contained in Article IV, section 20 but no description is there provided.

CHAPTER 1B

STATE FLAG

1B.1 Specifications of state flag.
1B.2 Use of state flag.
1B.3 Flags on public buildings.

1B.1 Specifications of state flag.

The banner designed by the Iowa society of the Daughters of the American Revolution and presented to the state is hereby adopted as the state flag for use on all occasions where a state flag may be fittingly displayed. The design consists of three vertical stripes of blue, white, and red, the blue stripe being nearest the staff and the white stripe* being in the center. On the central white stripe is depicted a spreading eagle bearing in its beak blue streamers on which is inscribed the state motto, *"Our liberties we prize and our rights we will maintain"* in white letters, with the word *"Iowa"* in red letters below the streamers.

[C24, 27, 31, 35, 39, §**468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.1]

C93, §1B.1

95 Acts, ch 1, §1

*Editor's Note: On the original design, the white stripe was about equal to the sum of the others

1B.2 Use of state flag.

The design shall be used as the state flag and may be displayed on all proper occasions where the state is officially represented, either at home or abroad, or wherever it may be proper to distinguish the citizens of Iowa from the citizens of other states. When displayed with the national emblem, the state flag shall in all cases be subservient to and placed beneath the stars and stripes.

[C24, 27, 31, 35, 39, §**469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.2]

C93, §1B.2

95 Acts, ch 1, §2

1B.3 Flags on public buildings.

It shall be the duty of any board of public officers charged with providing supplies for a public building in the state to provide a suitable state flag and it shall be the duty of the custodian of that public building to raise the flags of the United States of America and the state of Iowa, upon each secular day when weather conditions are favorable.

[S13, §2804-c; C24, 27, 31, 35, 39, §**470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.3]

C93, §1B.3

95 Acts, ch 1, §3

Display of flags on school sites, see §280.5

CHAPTER 1C

PUBLIC HOLIDAYS AND RECOGNITION DAYS

This chapter not enacted as a part of this title; sections 1C.1 and 1C.2 transferred from sections 33.1 and 33.2; sections 1C.3 through 1C.9 from sections 31.4 through 31.10; and section 1C.10 from section 186A.1 in Code 1993

1C.1 Legal public holidays.
1C.2 Paid holidays.
1C.3 Mother's Day — Father's Day.
1C.4 Independence Sunday.
1C.5 Columbus Day.
1C.6 Veterans Day.
1C.7 Youth Honor Day.
1C.8 Herbert Hoover Day.
1C.9 Dr. Martin Luther King, Jr. Day.
1C.10 Arbor Day and Week.
1C.11 Iowa State Flag Day.
1C.12 Dr. Norman E. Borlaug World Food Prize Day.
1C.13 Bill of Rights Day.
1C.14 Juneteenth National Freedom Day.

1C.1 Legal public holidays.

The following are legal public holidays:

1. New Year's Day, January 1.
2. Dr. Martin Luther King, Jr.'s Birthday, the third Monday in January.
3. Lincoln's Birthday, February 12.
4. Washington's Birthday, the third Monday in February.
5. Memorial Day, the last Monday in May.
6. Independence Day, July 4.

7. Labor Day, the first Monday in September.
8. Veterans Day, November 11.
9. Thanksgiving Day, the fourth Thursday in November.
10. Christmas Day, December 25.
[C71, 73, 75, 77, 79, 81, §33.1]
86 Acts, ch 1164, §1
C93, §1C.1

1C.2 Paid holidays.

State employees are granted, except as provided in the fourth paragraph of this section, the following holidays off from employment with pay:
1. New Year's Day, January 1.
2. Martin Luther King, Jr.'s Birthday, the third Monday in January.
3. Memorial Day, the last Monday in May.
4. Independence Day, July 4.
5. Labor Day, the first Monday in September.
6. Veterans Day, November 11.
7. Thanksgiving Day, the fourth Thursday in November.
8. Friday after Thanksgiving, the Friday following Thanksgiving Day.
9. Christmas Day, December 25.
10. Two days of paid leave each year to be added to the vacation allowance and accrued under the provisions of section 70A.1.

The appointing authority shall grant not more than four additional days of paid leave each year as required to implement contract provisions negotiated pursuant to chapter 20.

The executive council may designate days off from employment with pay in addition to those enumerated in this section for state employees at its discretion.

If a holiday enumerated in this section falls on Saturday, the preceding Friday shall be granted and if a holiday enumerated in this section falls on Sunday, the following Monday shall be granted. In those cases, where by nature of the employment a state employee must be required to work on a holiday the provisions of the first paragraph of this section shall not apply, however, compensation shall be made on the basis of the employee's straight time hourly rate for a forty-hour work week and shall be made in either compensatory time off or cash payment, at the discretion of the appointing authority unless otherwise provided for in a collective bargaining agreement. Notwithstanding any other provision of this section, an employee of the state who does not accrue sick leave or vacation, and who works on a holiday, shall receive regular pay for the hours worked on that holiday and shall not otherwise earn holiday compensatory pay.

A holiday or paid leave granted to a state employee under this section shall be in addition to vacation time to which a state employee is entitled under section 70A.1.
[C75, 77, 79, 81, §33.2]
84 Acts, ch 1180, §7; 86 Acts, ch 1163, §1 – 3
C93, §1C.2

1C.3 Mother's Day — Father's Day.

The governor of this state is authorized and requested to issue annually a proclamation calling upon our state officials to display the American flag on all state and school buildings, and the people of the state to display the flag at their homes, lodges, churches, and places of business, on the second Sunday in May, known as Mother's Day, and on the third Sunday in June, known as Father's Day, as a public expression of reverence for the homes of our state, and to urge the celebration of Mother's Day and Father's Day in the proclamation in such a way as will deepen home ties, and inspire better homes and closer union between the commonwealth, its homes, and their children.
[C24, 27, 31, 35, 39, §**471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.4]
85 Acts, ch 99, §1
C93, §1C.3

1C.4 Independence Sunday.

The governor is hereby authorized and requested to issue annually a proclamation, calling upon the citizens of Iowa to assemble themselves in their respective communities for the purpose of holding suitable religious-patriotic services and the display of the American colors, in commemoration of the signing of the Declaration of Independence, on Independence Sunday, which is hereby established as the Sunday preceding the Fourth of July of each year, or on the Fourth when that date falls on Sunday.
[C27, 31, 35, §471-b1; C39, §**471.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.5]
C93, §1C.4

1C.5 Columbus Day.

The governor of this state is hereby authorized and requested to issue annually a proclamation, calling upon our state officials to display the American flag on all state and school buildings and the people of the state to display the flag at their homes, lodges, churches, and places of business on the twelfth day of October, known as Columbus Day; to commemorate the life and history of Christopher Columbus and to urge that services and exercises be had in churches, halls and other suitable places expressive of the public sentiment befitting the anniversary of the discovery of America.
[C35, §471-g1; C39, §**471.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §31.6]
C93, §1C.5

1C.6 Veterans Day.

The governor is hereby authorized and requested to issue annually a proclamation designating the eleventh day of November as Veterans Day and calling upon the people of Iowa to observe it as a legal holiday in honor of those who have been members of the armed forces of the United States, and urging state officials to display the American flag on all state and school buildings and the people of the state to display the flag at their homes, lodges, churches and places of business; that business activities be held to the necessary minimum; and that appropriate services and exercises be had expressive of the public sentiments befitting the occasion.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §31.7]
C93, §1C.6

1C.7 Youth Honor Day.

The governor of this state is hereby requested and authorized to issue annually a proclamation designating the thirty-first day of October of each year as *"Youth Honor Day."*

[C62, 66, 71, 73, 75, 77, 79, 81, §31.8]
C93, §1C.7

1C.8 Herbert Hoover Day.

The Sunday which falls on or nearest the tenth day of August of each year is hereby designated as Herbert Hoover Day, which shall be a recognition day in honor of the late President Herbert Hoover. The governor is hereby authorized and requested to issue annually a proclamation designating such Sunday as Herbert Hoover Day and calling on the people and officials of the state of Iowa to commemorate the life and principles of Herbert Hoover, to display the American flag, and to hold appropriate services and ceremonies.

[C71, 73, 75, 77, 79, 81, §31.9]
C93, §1C.8

1C.9 Dr. Martin Luther King, Jr. Day.

The third Monday of January of each year is designated as Dr. Martin Luther King, Jr. Day, which shall be a recognition day in honor of the late civil rights leader and Nobel Peace Prize recipient, Dr. Martin Luther King, Jr.

The governor is authorized and requested to issue annually a proclamation designating such Monday as Dr. Martin Luther King, Jr. Day and calling on the people and officials of the state of Iowa to commemorate the life and principles of Dr. King, to display the American flag, and to hold appropriate private services and ceremonies.

[C79, 81, §31.10]
86 Acts, ch 1164, §2
C93, §1C.9

1C.10 Arbor Day and Week.

The last Friday in April in each year shall be observed in Iowa as Arbor Day and the week in which this Friday falls shall be observed as Arbor Week. This day and week shall be designated annually by the governor with suitable proclamation urging that schools, civic organizations, governmental departments and all citizens and groups give serious thought to and appreciation of the contribution of trees to the beauty and economic welfare of Iowa.

[C62, 66, 71, 73, 75, 77, 79, 81, §186A.1]
C93, §1C.10

1C.11 Iowa State Flag Day.

The governor of this state is hereby requested and authorized to issue annually a proclamation designating the twenty-ninth day of March as "Iowa State Flag Day" and to urge that schools, civic organizations, governmental departments, and all citizens and groups display the Iowa state flag on that day and to reflect on and consider the heritage of the state flag.

98 Acts, ch 1023, §1

1C.12 Dr. Norman E. Borlaug World Food Prize Day.

The governor of this state is hereby authorized and requested to issue annually a proclamation designating the sixteenth day of October as Dr. Norman E. Borlaug World Food Prize Day and to encourage all governmental entities, civic organizations, schools, and institutions of higher education in the state to observe the day in a manner that emphasizes the meaning and importance of the work, accomplishments, and heroic contributions to humanity of Nobel peace prize laureate Dr. Norman E. Borlaug and to give attention and support to the programs and activities of the world food prize which was inspired and created by Dr. Norman E. Borlaug to alleviate poverty, hunger, and malnutrition throughout the world.

2002 Acts, ch 1160, §1
NEW section

1C.13 Bill of Rights Day.

The governor of this state is hereby authorized and requested to issue annually a proclamation designating the fifteenth day of December as Bill of Rights Day and to encourage all governmental bodies in the state to observe the day in a manner that emphasizes the meaning and importance of the first ten amendments to the Constitution of the United States, and encourage a formal recitation of the Bill of Rights in its entirety in all schools, government meetings, and courtrooms on or about that date.

2002 Acts, ch 1053, §1
NEW section

1C.14 Juneteenth National Freedom Day.

The governor of this state is hereby authorized and requested to issue annually a proclamation

designating the third Saturday in June as Juneteenth National Freedom Day and to encourage all governmental entities, civic organizations, schools, and institutions of higher education in the state to observe the day in a manner that emphasizes the meaning and importance of the emancipation proclamation that ended slavery in the United States and to recognize and celebrate the importance of this day to every person who cherishes liberty and equality for all people.

2002 Acts, ch 1105, §1
NEW section

CHAPTER 1D

IOWA STANDARD TIME

1D.1 Standard time and daylight saving time.
1D.2 Effect of time change.

1D.1 Standard time and daylight saving time.

The standard time in this state is the solar time of the ninetieth meridian of longitude west of Greenwich,* commonly known as central standard time, except that from two o'clock ante meridiem of the first Sunday of April in every year until two o'clock ante meridiem of the last Sunday of October in the same year, standard time shall be advanced one hour. The period of time so advanced shall be known as *"daylight saving time."*

[C66, 71, 73, 75, 77, 79, 81, §122A.1]
89 Acts, ch 83, §25
C93, §1D.1
*England

1D.2 Effect of time change.

In all laws, statutes, orders, decrees, rules, and regulations relating to the time of performance of any act by any officer or department of this state, including the legislative, executive, and judicial branches of the state government, or any county, city or district thereof, relating to the time in which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of this state and in all the public schools and institutions of this state, or of any county, city or district thereof, and in all contracts and choses in action made or to be performed in this state, the time shall be the time established in section 1D.1.

[C66, 71, 73, 75, 77, 79, 81, §122A.2]
C93, §1D.2

SUBTITLE 2

LEGISLATIVE BRANCH

CHAPTER 2

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2.2 Designation of general assembly.
2.3 Temporary organization.
2.4 Certificates of election.
2.5 Temporary officers — committee on credentials.
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2.49 Functions of legislative fiscal bureau.
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2.1 Sessions — place.

The sessions of the general assembly shall be held annually at the seat of government, unless the governor shall convene them at some other place in times of pestilence or public danger. Each annual session of the general assembly shall commence on the second Monday in January of each year. The general assembly may recess from time to time during each year in such manner as it may provide, subject to Article III, section 14 of the Constitution of the state of Iowa.

[C51, §4; R60, §13; C73, §5; C97, §5; C24, 27, 31, 35, 39, §**5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §2.1]

2.2 Designation of general assembly.

Each regular session of the general assembly shall be designated by the year in which it convenes and by a number with a new consecutive number assigned with the session beginning in each odd-numbered year.

A special session of the general assembly shall be designated as an extraordinary session in the particular year of a numbered general assembly.

[C71, 73, 75, 77, 79, 81, §2.2]

See also §2B.17

2.3 Temporary organization.

At ten o'clock a.m. on the second Monday in January of each odd-numbered year, the general assembly shall convene. The president of the senate, or in the president's absence some person claiming to be a member, shall call the senate to order. If necessary, a temporary president shall be chosen from the persons claiming to be elected senators. Some person claiming to be elected a member of the house of representatives shall call the house to order. The persons present claiming to be elected to the senate shall choose a secretary, and those of the house of representatives, a clerk on a temporary basis.

[C51, §5; R60, §14; C73, §6; C97, §6; C24, 27, 31, 35, 39, §**6;** C46, 50, 54, 58, 62, 66, §2.2; C71, 73, 75, 77, 79, 81, §2.3]

2.4 Certificates of election.

The selected secretary and clerk shall receive and file the certificates of election presented for their respective houses, and make a list therefrom of the persons who appear to have been elected members of the respective houses.

[C51, §6; R60, §15; C73, §7; C97, §7; C24, 27, 31, 35, 39, §**7;** C46, 50, 54, 58, 62, 66, §2.3; C71, 73, 75, 77, 79, 81, §2.4]

2.5 Temporary officers — committee on credentials.

The persons appearing to be members shall proceed to elect such other officers as may be requisite and when so temporarily organized shall choose a committee of five, who shall examine and report upon the credentials of the persons claiming to be members.

[C51, §7; R60, §4; C73, §8; C97, §8; C24, 27, 31, 35, 39, §**8;** C46, 50, 54, 58, 62, 66, §2.4; C71, 73, 75, 77, 79, 81, §2.5]

2.6 Permanent organization.

The members reported by the committee as holding certificates of election from the proper authority shall proceed to the permanent organization of their respective houses by the election of officers and shall not be challenged as to their qualifications during the remainder of the term for which they were elected.

[C51, §8; R60, §5; C73, §9; C97, §9; C24, 27, 31, 35, 39, §**9;** C46, 50, 54, 58, 62, 66, §2.5; C71, 73, 75, 77, 79, 81, §2.6]

2.7 Officers — tenure.

The president of the senate and the speaker of the house of representatives shall hold their offices until the first day of the meeting of the next general assembly. All other officers elected by either house shall hold their offices for the same terms, unless sooner removed, except as may be otherwise provided by resolution or rules of the general assembly.

[R60, §16; C73, §13; C97, §17; C24, 27, 31, 35, 39, §**10;** C46, 50, 54, 58, 62, 66, §2.6; C71, 73, 75, 77, 79, 81, §2.7]

90 Acts, ch 1223, §1

2.8 Oaths.

Any member may administer oaths necessary in the course of business of the house of which that person is a member, and, while acting on a committee, in the course of business of such committee.

[C51, §10; R60, §7; C73, §10; C97, §10; C24, 27, 31, 35, 39, §**11;** C46, 50, 54, 58, 62, 66, §2.7; C71, 73, 75, 77, 79, 81, §2.8]

2.9 Journals.

The secretary of the senate and the clerk of the house of representatives shall preserve copies of the printed daily journals of their respective bodies, as corrected, certify to their correctness, and file them with the secretary of state at the adjournment of each session of the general assembly. The secretary of state shall cause the journals to be bound and preserved as the original journals of the senate and the house in the manner specified by the majority leader of the senate and speaker of the house.

[C97, §132; C24, 27, 31, 35, 39, §**13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §2.9]

86 Acts, ch 1245, §2001

Printing of journals, §7A.15 – 7A.17

2.10 Salaries and expenses — members of general assembly.

Members of the general assembly shall receive salaries and expenses as provided by this section.

1. Every member of the general assembly except the presiding officer of the senate, the speaker of the house, the majority and minority floor leader of each house, and the president pro tempore of the senate and speaker pro tempore of the house, shall receive an annual salary of twenty thousand one hundred twenty dollars for the year 1997 and subsequent years while serving as a member of the general assembly. In addition, each such member shall receive the sum of eighty-six dollars per day for expenses of office, except travel, for each day the general assembly is in session commencing with the first day of a legislative session and ending with the day of final adjournment of each legislative session as indicated by the journals of the house and senate, except that if the length of the first regular session of the general assembly exceeds one hundred ten calendar days and the second regular session exceeds one hundred calendar days, the payments shall be made only for one hundred ten calendar days for the first session and one hundred calendar days for the second session. Members from Polk county shall receive sixty-five dollars per day. Each member shall receive a two hundred dollar per month allowance for legislative district constituency postage, travel, telephone costs, and other expenses. Travel expenses shall be paid at the rate established by section 18.117 for actual travel in going to and returning from the seat of government by the nearest traveled route for not more than one time per week during a legislative session.

2. The speaker of the house, presiding officer of the senate, and the majority and minority floor leader of each house shall each receive an annual salary of thirty-one thousand thirty dollars for the year 1997 and subsequent years while serving in that capacity. The president pro tempore of the senate and the speaker pro tempore of the house shall receive an annual salary of twenty-one thousand two hundred ninety dollars for the year 1997 and subsequent years while serving in that capacity. Expense and travel allowances shall be the same for the speaker of the house and the presiding officer of the senate, the president pro tempore of the senate and the speaker pro tempore of the house, and the majority and minority leader of each house as provided for other members of the general assembly.

3. When a vacancy occurs and the term of any member of the general assembly is not completed, the member shall receive a salary or compensation proportional to the length of the member's service computed to the nearest whole month. A successor elected to fill such vacancy shall receive a salary or compensation proportional to the successor's length of service computed to the nearest whole month commencing with such time as the successor is officially determined to have succeeded to such office.

4. The director of revenue and finance shall pay the travel and expenses of the members of the general assembly commencing with the first pay period after the names of such persons are officially certified. The salaries of the members of the general assembly shall be paid pursuant to any of the following alternative methods:

a. During each month of the year at the same time state employees are paid.

b. During each pay period during the first six months of each calendar year.

c. During the first six months of each calendar year by allocating two-thirds of the annual salary to the pay periods during those six months and one-third of the annual salary to the pay periods during the second six months of a calendar year. Each member of the general assembly shall file with the director of revenue and finance a statement as to the method the member selects for receiving payment of salary. The presiding officers of the two houses of the general assembly shall jointly certify to the director of revenue and finance the names of the members, officers, and employees of their respective houses and the salaries and mileage to which each is entitled. Travel and expense allowances shall be paid upon the submission of vouchers to the director of revenue and finance indicating a claim for the same.

5. In addition to the salaries and expenses authorized by this section, a member of the general assembly shall be paid eighty-six dollars per day, and necessary travel and actual expenses incurred in attending meetings for which per diem or expenses are authorized by law for members of the general assembly who serve on statutory boards, commissions, or councils, and for standing or interim committee or subcommittee meetings subject to the provisions of section 2.14, or when on authorized legislative business when the general assembly is not in session. However, if a member of the general assembly is engaged in authorized legislative business at a location other than at the seat of government during the time the general assembly is in session, payment may be made for the actual transportation and lodging costs incurred because of the business. Such per diem or expenses shall be paid promptly from funds appropriated pursuant to section 2.12.

6. If a special session of the general assembly is convened, members of the general assembly shall receive, in addition to their annual salaries, the sum of eighty-six dollars per day for each day the general assembly is actually in special session, and the same travel allowances and expenses as authorized by this section. A member of the general assembly shall receive the additional per diem, travel allowances and expenses only for the days of attendance during a special session.

7. A member of the general assembly may return to the state treasury all or a part of the salary, per diem, or expenses paid to the member pursuant to this section. The member may specify the public use for the returned money. A member has no income tax liability for that portion of the member's salary or per diem which is returned to the state treasury pursuant to this subsection. The administrative officer of each house shall provide a form at the convening of each legislative session to allow legislators to return any portion of their salaries or expenses according to this section.

8. Commencing upon the convening of the Seventy-eighth General Assembly in January 1999, the annual salaries of members and officers of the general assembly, as the annual salaries existed during the preceding calendar year, shall be adjusted by an amount equal to the average of the annual cost-of-living pay adjustments negotiated for the members of the collective bargaining units represented by the state police officers council labor union, the American federation of state, county, and municipal employees, and the Iowa united professionals for the fiscal year beginning July 1, 1997. For the calendar year 2000, during the month of January, the annual salaries of members and officers of the general assembly shall be adjusted by an amount equal to the average of the annual cost-of-living pay adjustments received by the members of those collective bargaining units for the fiscal year beginning July 1, 1998. The annual salaries determined for the members and officers as provided in this section for the calendar year 2000 shall remain in effect for subsequent calendar years until otherwise provided by the general assembly.

[C51, §11; R60, §18; C73, §12; C97, §12, 14; S13, §12; C24, 27, 31, 35, §14-a1, 14-a2, 14-a3; C39, §**14, 14.1, 14.2, 14.3, 15, 16, 17;** C46, 50, 54, 58, 62, 66, §2.11, 2.12, 2.13, 2.14, 2.15, 2.16, 2.17; C71, 73, 75, 77, 79, 81, §2.10]

83 Acts, ch 205, §20; 87 Acts, ch 227, §14; 88 Acts, ch 1267, §12, 13; 88 Acts, ch 1275, §29; 89 Acts, ch 302, §10; 89 Acts, ch 303, §13; 90 Acts, ch 1223, §2; 90 Acts, ch 1256, §19; 91 Acts, ch 258, §1; 93 Acts, ch 177, §16 – 18; 95 Acts, ch 211, §14, 17; 97 Acts, ch 204, §16

See Constitution, Art. III, §25

2.11 Officers and employees — compensation — prohibitions.

Each house of the general assembly may employ such officers and employees as it shall deem necessary for the conduct of its business. The compensation of the chaplains, officers, and employees of the general assembly shall be fixed by joint action of the house and senate by resolution at the opening of each session, or as soon thereafter as conveniently can be done. Such persons shall be furnished by the state such supplies as may be necessary for the proper discharge of their duties.

Each house of the general assembly shall implement the sexual harassment prohibitions and grievance, violation, and disposition procedures of section 19B.12 for its respective full-time, part-time, and temporary employees, including, but not limited to, interns, clerks, and pages. Each house shall develop and cause to be distributed, at the time of hiring or orientation, a guide that describes for its employees the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures. This section does not supersede the remedies provided under chapter 216.

[C73, §12; C97, §13, 152; C24, 27, 31, 35, 39, §**18, 19;** C46, 50, 54, 58, 62, 66, §2.18, 2.19; C71, 73, 75, 77, 79, 81, §2.11]

92 Acts, ch 1086, §1

2.12 Expenses of general assembly and legislative agencies — budgets.

There is appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to pay for legislative printing and all current and miscellaneous expenses of the general assembly, authorized by either the senate or the house, and the director of revenue and finance shall issue warrants for such items of expense upon requisition of the president, majority leader, and secretary of the senate or the speaker and chief clerk of the house.

There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as are necessary, for each house of the general assembly for the payment of any unpaid expense of the general assembly incurred during or in the interim between sessions of the general assembly, including but not limited to salaries and necessary travel and actual expenses of members, expenses of standing and interim committees or subcommittees, and per diem or expenses for members of the general assembly who serve on statutory boards, commissions, or councils for which per diem or expenses are authorized by law. The director of revenue and finance shall issue warrants for such items of expense upon requisition of the president, majority leader, and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as are necessary for the renovation, remodeling, or preparation of the legislative chambers, legislative offices, or other areas or facilities used or to be used by the legislative branch of government, and for the purchase of legislative equipment and supplies deemed necessary to properly carry out the functions of the general assembly. The director of revenue and finance shall issue warrants for such items of expense, whether incurred during or between sessions of the general assembly, upon requisition of the president, ma-

jority leader, and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is appropriated out of any funds in the state treasury not otherwise appropriated such sums as may be necessary for the fiscal year budgets of the legislative service bureau, the legislative fiscal bureau, the citizens' aide office and the computer support bureau for salaries, support, maintenance, and miscellaneous purposes to carry out their statutory responsibilities. The legislative service bureau, the legislative fiscal bureau, the citizens' aide office and the computer support bureau shall submit their proposed budgets to the legislative council not later than September 1 of each year. The legislative council shall review and approve the proposed budgets not later than December 1 of each year. The budget approved by the legislative council for each of its statutory legislative agencies shall be transmitted by the legislative council to the department of management on or before December 1 of each year for the fiscal year beginning July 1 of the following year. The department of management shall submit the approved budgets received from the legislative council to the governor for inclusion in the governor's proposed budget for the succeeding fiscal year. The approved budgets shall also be submitted to the chairpersons of the committees on appropriations. The committees on appropriations may allocate from the funds appropriated by this section the funds contained in the approved budgets, or such other amounts as specified, pursuant to a concurrent resolution to be approved by both houses of the general assembly. The director of revenue and finance shall issue warrants for salaries, support, maintenance, and miscellaneous purposes upon requisition by the administrative head of each statutory legislative agency. If the legislative council elects to change the approved budget for a legislative agency prior to July 1, the legislative council shall transmit the amount of the budget revision to the department of management prior to July 1 of the fiscal year, however, if the general assembly approved the budget it cannot be changed except pursuant to a concurrent resolution approved by the general assembly.

[C46, 50, 54, 58, 62, 66, §2.10, 2.20; C71, 73, 75, 77, 79, 81, §2.12]

85 Acts, ch 65, §1; 86 Acts, ch 1244, §1; 90 Acts, ch 1223, §3

Sick leave and vacation incentive and other early termination programs; reports to general assembly; 2001 Acts, 2nd Ex, ch 5, §3, 4, 8; 2002 Acts, 2nd Ex, ch 1001, §50 – 52

2.12A Legal expenses reviewed by the court.

If a member or members of the general assembly are involved in court proceedings on behalf of the general assembly, and are represented by an attorney who is not an employee of the state, and the legislative council determines that the reasonable expense of the court proceedings, including reasonable attorneys' fees, shall be paid from funds in the state treasury appropriated pursuant to section 2.12, at the conclusion of the court proceedings, the court shall review the fees charged to the state to determine if the fees are fair and reasonable. The legislative council shall not reimburse attorneys' fees in excess of those determined by the court to be fair and reasonable.

92 Acts, ch 1240, §11

2.13 Issuance of warrants.

The director of revenue and finance shall also issue to each officer and employee of the general assembly, during legislative sessions or interim periods, upon vouchers signed by the president, majority leader, and secretary of the senate or the speaker and chief clerk of the house, warrants for the amount due for services rendered. The warrants shall be paid out of any moneys in the treasury not otherwise appropriated.

[C97, §15, 16; C24, 27, 31, 35, 39, §**20;** C46, 50, 54, 58, 62, 66, §2.21, 2.22; C71, 73, 75, 77, 79, 81, §2.13]

86 Acts, ch 1244, §2; 90 Acts, ch 1223, §4

2.14 Meetings of standing committees.

1. A standing committee of either house or a subcommittee when authorized by the chairperson of the standing committee, may meet when the general assembly is not in session in the manner provided in this section and upon call pursuant to the rules of the house or senate. In case of vacancy in the chair or in the chairperson's absence, the ranking member shall act as chairperson. A standing committee or subcommittee may act on bills and resolutions in the interim between the first and second regular sessions of a general assembly. The date, time and place of any meeting of a standing committee shall, by the person or persons calling the meeting, be reported to and be available to the public in the office of the director of the legislative service bureau at least five days prior to the meeting.

2. The legislative service bureau shall provide staff assistance for standing committees when authorized by the legislative council. The chairperson of the committee or subcommittee shall notify the legislative service bureau in advance of each meeting.

3. Interim studies utilizing the services of the legislative service bureau must be authorized by the general assembly or the legislative council. A standing committee may also study and draft proposed committee bills. However, unless the subject matter of a study or proposed committee bill has been assigned to a standing committee for study by the general assembly or legislative council, the services of the legislative service bureau cannot be utilized. Nonlegislative members shall not serve upon any study committee, unless ap-

proved by the legislative council. A standing committee may hold public hearings and receive testimony upon any subject matter within its jurisdiction.

Nonlegislative members of study committees shall be paid their necessary travel and actual expenses incurred in attending committee or subcommittee meetings for the purposes of the study.

4. Standing committees and subcommittees of standing committees may meet when the general assembly is not in session under the following conditions:

a. A standing committee may meet one time at the discretion of the chairperson.

b. Additional meetings of standing committees or their subcommittees shall be authorized by the legislative council; however, such authorization may be given at any one time for as many meetings as deemed necessary by the legislative council.

c. Any study committee, other than an interim committee provided for in subsection 3 of this section, which utilizes staff of the legislative service bureau may meet at such times as authorized by the legislative council.

5. When the general assembly is not in session, a member of the general assembly shall be paid the per diem and necessary travel and actual expenses, as specified in section 2.10, subsection 5, incurred in attending meetings of a standing committee or subcommittee of which the legislator is a member in addition to regular compensation. However, the per diem and expenses shall be allowed only if the member attends a meeting of the committee or subcommittee for at least four hours.

[C71, 73, 75, 77, 79, 81, §2.14]
91 Acts, ch 258, §2

2.15 Powers and duties of standing committees.

The powers and duties of standing committees shall include, but shall not be limited to, the following:

1. Introducing legislative bills and resolutions.

2. Conducting investigations with the approval of either or both houses during the session, or the legislative council during the interim, with authority to call witnesses, administer oaths, issue subpoenas, and cite for contempt.

3. Requiring reports and information from state agencies as well as the full co-operation of their personnel.

4. Selecting nonlegislative members when conducting studies as provided in section 2.14.

5. Undertaking in-depth studies of governmental matters within their assigned jurisdiction, not only for the purpose of evaluating proposed legislation, but also for studying existing laws and governmental operations and functions to determine their usefulness and effectiveness, as provided in section 2.14.

6. Reviewing the operations of state agencies and departments.

7. Giving thorough consideration to, establishing priorities for, and making recommendations on all bills assigned to committees.

8. Preparing reports to be made available to members of the general assembly containing the committee's findings, recommendations, and proposed legislation.

A standing committee may call upon any department, agency or office of the state, or any political subdivision of the state, for information and assistance as needed in the performance of its duties and the information and assistance shall be furnished to the extent that they are within the resources and authority of the department, agency, office or political subdivision. This paragraph does not require the production or opening of any records which are required by law to be kept private or confidential.

[C71, 73, 75, 77, 79, 81, §2.15]
84 Acts, ch 1171, §1; 85 Acts, ch 67, §1

2.16 Prefiling legislative bills.

Any member of the general assembly or any person elected to serve in the general assembly, or any standing committee, may sponsor and submit legislative bills and joint resolutions for consideration by the general assembly, before the convening of any session of the general assembly. Each house may approve rules for placing prefiled standing committee bills or joint resolutions on its calendar. Such bills and resolutions shall be numbered, printed, and distributed in a manner to be determined by joint rule of the general assembly or, in the absence of such rule, by the legislative council. All such bills and resolutions, except those sponsored by standing committees, shall be assigned to regular standing committees by the presiding officers of the houses when the general assembly convenes.

Departments and agencies of state government shall, at least forty-five days prior to the convening of each session of the general assembly, submit copies to the legislative service bureau of proposed legislative bills and joint resolutions which such departments desire to be considered by the general assembly. The proposed legislative bills and joint resolutions of the governor must be submitted by the Friday prior to the convening of the session of the general assembly, except in the year of the governor's initial inauguration. The legislative service bureau shall review such proposals and submit them in proper form to the presiding officer in each house of the general assembly for referral to the proper standing committee. Before submitting any proposal prepared under this section to the presiding officers, the legislative service bureau shall return it for review to, as appropriate, the relevant department or agency or the governor's office and such department or

agency or the governor's office shall review and return it within seven days of such delivery.

The costs of carrying out the provisions of this section shall be paid pursuant to section 2.12.

[C71, 73, 75, 77, 79, 81, §2.16]

86 Acts, ch 1245, §2002

2.17 Freedom of speech.

A member of the general assembly shall not be held for slander or libel in any court for words used in any speech or debate in either house or at any session of a standing committee.

[C51, §9; R60, §6; C73, §11; C97, §11; C24, 27, 31, 35, 39, §**22;** C46, 50, 54, 58, 62, 66, §2.23; C71, 73, 75, 77, 79, 81, §2.17]

2.18 Contempt.

Each house has authority to punish for contempt, by fine or imprisonment or both, any person who commits any of the following offenses against its authority:

1. Arresting a member, knowing the member to be such, in violation of the member's privilege, or assaulting, or threatening to assault, or threatening any harm to the person or property of, a member, knowing the member to be such, for anything said or done by the member in such house as a member thereof.
2. Attempting by menace, or by force, or by any corrupt means to control or influence a member in giving a vote, or to prevent giving it.
3. Disorderly or contemptuous conduct, tending to disturb its proceedings.
4. Refusal to attend, or to be sworn, or to affirm, or to be examined, as a witness before it, or before a committee thereof, when duly subpoenaed.
5. Assaulting or preventing any person going before it, or before any of its committees, by its order, the offender knowing such fact.
6. Rescuing or attempting to rescue any person arrested by its order, the offender knowing of such arrest.
7. Impeding any officer of such house in the discharge of the officer's duties as such, the offender knowing the officer's official character.

[C51, §12; R60, §8; C73, §14; C97, §18; C24, 27, 31, 35, 39, §**23;** C46, 50, 54, 58, 62, 66, §2.24; C71, 73, 75, 77, 79, 81, §2.18]

2.19 Punishment for contempt.

Fines and imprisonment for contempt shall be only by virtue of an order of the proper house, entered on its journals, stating the grounds thereof.

[C51, §14; R60, §10; C73, §15; C97, §19; C24, 27, 31, 35, 39, §**24;** C46, 50, 54, 58, 62, 66, §2.25; C71, 73, 75, 77, 79, 81, §2.19]

2.20 Warrant — execution.

Imprisonment for contempt shall be effected by a warrant, under the hand of the presiding officer, for the time being, of the house ordering it, countersigned by the acting secretary or clerk, in the name of the state, and directed to the sheriff or jailer of the proper county. Under such warrant, the proper officer will be authorized to commit and detain the person.

[C51, §14; R60, §10; C73, §15; C97, §19; C24, 27, 31, 35, 39, §**25;** C46, 50, 54, 58, 62, 66, §2.26; C71, 73, 75, 77, 79, 81, §2.20]

2.21 Fines — collection.

Fines for contempt shall be collected by a warrant, directed to any proper officer of any county in which the offender has property, and executed in the same manner as executions for fines issued from courts of record, and the proceeds paid into the state treasury.

[C51, §14; R60, §10; C73, §15; C97, §19; C24, 27, 31, 35, 39, §**26;** C46, 50, 54, 58, 62, 66, §2.27; C71, 73, 75, 77, 79, 81, §2.21]

2.22 Punishment — effect.

Imprisonment for contempt shall not extend beyond the session at which it is ordered, and shall be in a facility designated by the presiding officer.

Punishment for contempt shall not constitute a bar to any other proceeding, civil or criminal, for the same act.

[C51, §13, 15; R60, §9, 11; C73, §16; C97, §20; C24, 27, 31, 35, 39, §**27;** C46, 50, 54, 58, 62, 66, §2.28; C71, 73, 75, 77, 79, 81, §2.22]

2.23 Witness — attendance compulsory.

Whenever a committee of either house, or a joint committee of both, is conducting an investigation requiring the personal attendance of witnesses, any person may be compelled to appear before such committee as a witness by serving an order upon the person, which service shall be made in the manner required in case of a subpoena in a civil action in the district court. Such order shall state the time and place a person is required to appear, be signed by the presiding officer of the body by which the committee was appointed, and attested by its acting secretary or clerk; or, in case of a joint committee, signed and attested by such officers of that body.

[C73, §17; C97, §21; C24, 27, 31, 35, 39, §**28;** C46, 50, 54, 58, 62, 66, §2.29; C71, 73, 75, 77, 79, 81, §2.23]

2.24 Witnesses — compensation.

Witnesses called by a standing or joint committee shall be entitled to the same compensation for attendance under section 2.23 as before the district court but shall not have the right to demand payment of their fees in advance.

[C73, §18; C97, §22; C24, 27, 31, 35, 39, §**29;** C46, 50, 54, 58, 62, 66, §2.30; C71, 73, 75, 77, 79, 81, §2.24]

See §622.69, 622.72

2.25 Joint conventions.

Joint conventions of the general assembly shall meet in the house of representatives for such purposes as are provided by law. The president of the senate, or, in the president's absence, the president pro tempore of the senate shall preside at such joint conventions.

The speaker of the house of representatives may, for purposes of canvass of votes for governor and lieutenant governor and for the inauguration of such officers, designate any suitable hall at the seat of government as the hall of the house of representatives.

[R60, §674, 675; C73, §19; C97, §23; C24, 27, 31, 35, 39, §**30;** C46, 50, 54, 58, 62, 66, §2.31; C71, 73, 75, 77, 79, 81, §2.25]

2.26 Secretary — record.

The clerk of the house of representatives shall act as secretary of the convention, and the clerk and the secretary of the senate shall keep a fair and correct record of the proceedings of the convention, which shall be entered on the journal of each house.

[R60, §677; C73, §21; C97, §25; C24, 27, 31, 35, 39, §**31;** C46, 50, 54, 58, 62, 66, §2.32; C71, 73, 75, 77, 79, 81, §2.26]

2.27 Canvass of votes for governor.

The general assembly shall meet in joint session on the same day the assembly first convenes in January of 1979 and every four years thereafter as soon as both houses have been organized, and canvass the votes cast for governor and lieutenant governor and determine the election. If an election is necessary under section 69.13 to fill a vacancy in the office of lieutenant governor, the general assembly shall similarly meet on the day it convenes in the January following that election and canvass the vote cast for the office. When the canvass is completed, the oath of office shall be administered to the persons or person so declared elected. Upon being inaugurated the governor shall deliver to the joint assembly any message the governor may deem expedient.

[S13, §30-a; C24, 27, 31, 35, 39, §**32;** C46, 50, 54, 58, 62, 66, §2.33; C71, 73, 75, 77, 79, 81, §2.27]

2.28 Tellers.

After the time for the meeting of the joint convention has been designated each house shall appoint three tellers, and the six shall act as judges of the election.

Canvassing the votes for governor and lieutenant governor shall be conducted substantially according to the provisions of sections 2.25 to 2.28.

[R60, §676; C73, §20, 26; C97, §24, 30; C24, 27, 31, 35, 39, §**33, 34;** C46, 50, 54, 58, 62, 66, §2.34, 2.35; C71, 73, 75, 77, 79, 81, §2.28]

2.29 Election — vote — how taken — second poll.

When any officer is to be elected by joint convention, the names of the members shall be arranged in alphabetical order by the secretaries, and each member shall vote in the order in which the member's name stands when so arranged. The name of the person voted for, and the names of the members voting, shall be entered in writing by the tellers, who, after the secretary shall have called the names of the members a second time, and the name of the person for whom each member has voted, shall report to the president of the convention the number of votes given for each candidate.

If no person shall receive the votes of a majority of the members present, a second poll may be taken, or as many polls as may be required until some person receives a majority.

[R60, §678, 679, 680; C73, §22, 23; C97, §26, 27; C24, 27, 31, 35, 39, §**35, 36;** C46, 50, 54, 58, 62, 66, §2.36, 2.37; C71, 73, 75, 77, 79, 81, §2.29]

2.30 Certificates of election.

When any person shall have received a majority of the votes, the president shall declare the person to be elected, and shall, in the presence of the convention, sign two certificates of such election, attested by the tellers, one of which the president shall transmit to the governor, and the other shall be preserved among the records of the convention and entered at length on the journal of each house. The governor shall issue a commission to the person so elected.

[R60, §682; C73, §25; C97, §29; C24, 27, 31, 35, 39, §**37;** C46, 50, 54, 58, 62, 66, §2.38; C71, 73, 75, 77, 79, 81, §2.30]

2.31 Adjournment.

If the purpose for which the joint convention is assembled is not concluded, the president shall adjourn or recess the same from time to time as the members present may determine.

[R60, §681; C73, §24; C97, §28; C24, 27, 31, 35, 39, §**38;** C46, 50, 54, 58, 62, 66, §2.39; C71, 73, 75, 77, 79, 81, §2.31]

2.32 Confirmation of appointments — procedures.

1. The governor shall either make an appointment or file a notice of deferred appointment by March 15 for the following appointments which are subject to confirmation by the senate:

a. An appointment to fill a term beginning on May 1 of that year.

b. An appointment to fill a vacancy, other than as provided for in paragraph *"d,"* existing prior to the convening of the general assembly in regular session in that year.

c. An appointment to fill a vacancy, other than as provided for in paragraph *"d,"* which is known, prior to the convening of the general assembly in

regular session, will occur before May 1 of that year.

d. An appointment to fill a vacancy existing in a full-time compensated position on December 15 prior to the convening of the general assembly.

2. If a vacancy in a position requiring confirmation by the senate, other than a full-time compensated position, occurs after the convening of the general assembly in regular session, the governor shall, within sixty calendar days after the vacancy occurs, either make an appointment or file a notice of deferred appointment unless the general assembly has adjourned its regular session before the sixty-day period expires. If a vacancy in a full-time compensated position requiring senate confirmation occurs after December 15, the governor shall, within ninety calendar days after the vacancy occurs, make an appointment or file a notice of deferred appointment unless the general assembly has adjourned its regular session before the ninety-day period expires.

3. If an appointment is submitted pursuant to subsection 1, the senate shall by April 15 of that year either approve, disapprove, or by resolution defer consideration of confirmation of the appointment. If an appointment is submitted pursuant to subsection 2, the senate shall either approve, disapprove, or by resolution defer consideration of confirmation of the appointment within thirty days after receiving the appointment from the governor. The senate may defer consideration of an appointment until a later time during that session, but the senate shall not adjourn that session until all appointments submitted pursuant to this section before the last thirty days of the session are approved or disapproved. If a nomination is submitted during the last thirty days of the session, the senate may by resolution defer consideration of the appointment until the next regular session of the general assembly and the nomination shall be considered as though made during the legislative interim.

Sixty days after a person's appointment has been disapproved by the senate, that person shall not serve in that position as an interim appointment or by holding over in office and the governor shall submit another appointment or file a notice of deferred appointment before the sixty-day period expires.

4. The governor shall submit all appointments requiring confirmation by the senate and notices of deferred appointment to the secretary of the senate who shall provide the governor's office with receipts of submission. Each notice of appointment shall be accompanied by a statement of the appointee's political affiliation. The notice of a deferred appointment shall be filed by the governor with the secretary of the senate and accompanied by a statement of reasons for the deferral.

5. The senate shall adopt rules governing the referral of appointments to committees, the reports of committees on appointments, and the confirmation of appointments by the senate.

6. The confirmation of every appointment submitted to the senate requires the approval of two-thirds of the members of the senate.

A person whose appointment is subject to senate confirmation shall make available to the senate committee to which the appointment is referred, upon the committee's request, a notarized statement that the person has filed federal and state income tax returns for the three years immediately preceding the appointment, or a notarized statement of the legal reason for failure to file. If the appointment is to a board, commission, council, or other body empowered to take disciplinary action, all complaints and statements of charges, settlement agreements, findings of fact, and orders pertaining to any disciplinary action taken by that board, commission, council, or body in a contested case against the person whose appointment is being reviewed by the senate shall be made available to the senate committee to which the appointment is referred upon its request.

All tax records, complaint files, investigation files, other investigation reports, and other investigative information in the possession of the committee which relate to appointee tax filings or complaints and statements of charges, settlement agreements, findings of fact, and orders from any past disciplinary action in a contested case against the appointee are privileged and confidential and they are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the appointee unless otherwise provided by law.

7. The governor shall file by February 1 with the secretary of the senate a list of all the appointment positions requiring gubernatorial action pursuant to subsection 1. The secretary of the senate shall provide the governor a written acknowledgment of the list within five days of its receipt. The senate shall approve the list or request corrections by resolution by February 15.

8. A gubernatorial appointee, whose appointment is subject to confirmation by the senate and who serves at the pleasure of the governor, is subject to reconfirmation by the senate during the regular session of the general assembly convening in January if the appointee will complete the appointee's fourth year in office on or before the following April 30. For the purposes of this section, the submission of an appointee for reconfirmation is deemed the same as the submission of an appointee for confirmation and the procedures of this section regarding confirmation and the consequences of refusal to confirm are the same for reconfirmation.

9. If an appointment subject to senate confirmation is required by statute to be made by an appointing authority other than the governor, the duties assigned under this section to the governor shall be performed by the appointing authority.

[C27, 31, 35, §38-b1; C39, §**38.1;** C46, 50, 54, 58,

62, 66, §2.40; C71, 73, 75, 77, 79, 81, §2.32]
85 Acts, ch 145, §1; 86 Acts, ch 1245, §2003; 88 Acts, ch 1128, §1; 94 Acts, ch 1184, §1

2.33 Differential treatment.
The general assembly shall not pass a bill that uses gender as the basis for differential treatment unless there is a compelling reason for the differential treatment and no reasonable alternatives exist by which the treatment could be mitigated or avoided.
84 Acts, ch 1042, §1

2.34 Reserved.

2.35 Communications review committee established.
A communications review committee is established, consisting of three members of the senate appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and three members of the house of representatives appointed by the speaker of the house. The committee shall select a chairperson and vice chairperson. Meetings may be called by the chairperson or a majority of the members.
Members shall be appointed prior to the adjournment of the first regular session of each general assembly and shall serve for terms ending upon the convening of the following general assembly or when their successors are appointed, whichever is later. Vacancies shall be filled in the same manner as original appointments are made and shall be for the remainder of the unexpired term of the vacancy. The members of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of their duties and shall be paid the per diem specified in section 2.10, subsection 5, for each day in which engaged in the performance of their duties. However, per diem compensation and expenses shall not be paid when the general assembly is actually in session at the seat of government. Expenses and per diem shall be paid from funds appropriated pursuant to section 2.12.
Administrative assistance shall be provided by the legislative service bureau to the extent possible.
[C75, 77, §750.8; C79, §693.8; C81, §2.35]
86 Acts, ch 1245, §2004; 90 Acts, ch 1223, §5; 91 Acts, ch 258, §3

2.36 Duties of committee.
The committee shall review the present and proposed uses of communications by state agencies and the development of a statewide communications plan. It shall meet as often as deemed necessary and annually shall make recommendations to the legislative council and the general assembly, accompanied by bill drafts to implement its recommendations.
[C75, 77, §750.8; C79, §693.8; C81, §2.36]
87 Acts, ch 115, §1

2.37 to 2.39 Reserved.

2.40 Membership in state insurance plans.
1. A member of the general assembly may elect to become a member of a state group insurance plan for employees of the state established under chapter 509A subject to the following conditions:
a. The member shall be eligible for all state group insurance plans on the basis of enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20.
b. The member shall pay the premium for the plan selected on the same basis as a full-time state employee excluded from collective bargaining as provided in chapter 20.
c. The member shall authorize a payroll deduction of the premium due according to the member's pay plan selected pursuant to section 2.10, subsection 4.
d. The premium rate shall be the same as the premium rate paid by a state employee for the plan selected.
A member of the general assembly may elect to become a member of a state group insurance plan. A member of the general assembly may continue membership in a state group insurance plan without reapplication during the member's tenure as a member of consecutive general assemblies. For the purpose of electing to become a member of the state health or medical service group insurance plan, a member of the general assembly has the status of a *"new hire"*, full-time state employee following each election of that member in a general or special election, or during the first subsequent annual open enrollment. In lieu of membership in a state health or medical group insurance plan, a member of the general assembly may elect to receive reimbursement for the costs paid by the member for a continuation of a group coverage (COBRA) health or medical insurance plan. The member shall apply for reimbursement by submitting evidence of payment for a COBRA health or medical insurance plan. The maximum reimbursement shall be no greater than the state's contribution for health or medical insurance family plan II. A member of the general assembly who elects to become a member of a state health or medical group insurance plan shall be exempted from preexisting medical condition waiting periods. A member of the general assembly may change programs or coverage under the state health or medical service group insurance plan during the month of January of odd-numbered years, but program and coverage change selections shall be subject to the enrollment rules es-

tablished for full-time state employees excluded from collective bargaining as provided in chapter 20. A person who has been a member of the general assembly for two years and who has elected to be a member of a state health or medical group insurance plan may continue to be a member of such state health or medical group insurance plan by requesting continuation in writing to the finance officer within thirty-one days after leaving office. The continuing former member of the general assembly shall pay the total premium for the state plan and shall have the same rights to change programs or coverage as state employees. In the event of the death of a former member of the general assembly who has elected to continue to be a member of a state health or medical group insurance plan, the surviving spouse of the former member whose insurance would otherwise terminate because of the death of the former member may elect to continue to be a member of such state health or medical group insurance plan by requesting continuation in writing to the finance officer within thirty-one days after the death of the former member. The surviving spouse of the former member shall pay the total premium for the state plan and shall have the same rights to change programs or coverage as state employees.

2. A part-time employee of the general assembly may elect to become a member of a state group insurance plan for employees of the state established under chapter 509A subject to the following conditions:

a. The part-time employee shall be eligible for all state group insurance plans on the basis of enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20 and shall have the same rights to change programs or coverage as are afforded such state employees.

b. The part-time employee shall pay the total premium.

c. A part-time employee may continue membership in a state group insurance plan without reapplication during the employee's employment during consecutive sessions of the general assembly. For the purpose of electing to become a member of the state group insurance plan, a part-time employee of the general assembly has the status of a *"new hire"*, full-time state employee when the employee is initially eligible or during the first subsequent enrollment change period.

d. (1) A part-time employee of the general assembly who elects membership in a state group insurance plan shall state each year whether the membership is to extend through the interim period between consecutive sessions of the general assembly.

(2) If the membership is to extend through the interim period the part-time employee shall authorize payment of the total annual premium through direct payment of the monthly premium for the plan selected to the state group insurance plan provider.

(3) The part-time employee shall notify the finance officer within thirty-one days after the conclusion of the general assembly whether the person's decision to extend the membership through the interim period is confirmed.

e. A member of a state group insurance plan pursuant to this subsection shall have the same rights upon final termination of employment as a part-time employee as are afforded full-time state employees excluded from collective bargaining as provided in chapter 20.

f. A part-time employee of the general assembly who elects membership in a state life insurance plan shall authorize payment of the premium through a total of two payments during each annual period made to the department of personnel on dates prescribed by the department.

83 Acts, ch 205, §21; 88 Acts, ch 1267, §14; 89 Acts, ch 303, §14; 90 Acts, ch 1122, §1, 2; 95 Acts, ch 211, §15

LEGISLATIVE COUNCIL

2.41 Legislative council created.

A continuing legislative council of twenty-four members is created. The council is composed of the president and president pro tempore of the senate, the speaker and speaker pro tempore of the house of representatives, the majority and minority floor leaders of the senate, the chairperson of the senate committee on appropriations, the minority party ranking member of the senate committee on appropriations, six members of the senate appointed by the majority leader of the senate, the majority and minority floor leaders of the house of representatives, the chairperson of the house committee on appropriations, the minority party ranking member of the house committee on appropriations, and six members of the house of representatives appointed by the speaker of the house of representatives. Of the six members appointed by the majority leader of the senate and speaker of the house, three from each house shall be appointed from the majority party and three from each house shall be appointed from the minority party. Members shall be appointed prior to the fourth Monday in January of the first regular session of each general assembly and shall serve for two-year terms ending upon the convening of the following general assembly or when their successors are appointed. Vacancies on the council, including vacancies which occur when a member of the council ceases to be a member of the general assembly, shall be filled by the majority leader of the senate and the speaker of the house respectively. Insofar as possible at least two members of the council from each house shall be reappointed. The council shall hold regular meetings at a time and place fixed by the council and shall meet at any other time and place as the council deems necessary.

[C58, §2.46; C62, 66, 71, 73, §2.49; C75, 77, 79, 81, §2.41]
86 Acts, ch 1245, §2005; 90 Acts, ch 1223, §6

2.42 Powers and duties of council.

The legislative council shall select its officers and prescribe its rules and procedure. The powers and duties of the council shall include, but not be limited to, the following:

1. To establish policies for the operation of the legislative service bureau, including the priority to be given to research requests and the distribution of research reports.

2. To appoint the director of the legislative service bureau for such term of office as may be set by the council.

3. To prepare reports to be submitted to the general assembly at its regular sessions.

4. To appoint interim study committees consisting of members of the legislative council and members of the general assembly of such number as the council shall determine. Nonlegislative members may be included on such committees when the council deems the participation of such members advantageous to the conduct of the study.

5. To conduct studies and evaluate reports of studies assigned to study committees and make recommendations for legislative or administrative action thereon. Recommendations shall include such bills as the legislative council may deem advisable.

6. To cooperate with other states to discuss mutual legislative and governmental problems.

7. To recommend staff for the legislative council and the standing committees in cooperation with the chairperson of such standing committees.

8. To recommend changes or revisions in the senate and house rules and the joint rules for more efficient operation of the general assembly and draft proposed rule amendments, resolutions, and bills as may be required to carry out such recommendations, for consideration by the general assembly.

9. To recommend to the general assembly the names and numbers of standing committees of both houses.

10. To establish rules for the style and format for drafting and preparing of legislative bills and resolutions.

11. To approve the appointment of the Iowa Code editor and the administrative code editor and establish the salaries of the persons employed in that office.

12. To establish policies for the distribution of information which is stored by the general assembly in an electronic format, including the contents of statutes or rules, other than electronic publications as provided in section 7A.22. The legislative council shall establish payment rates that encourage the distribution of such information to the public, including private vendors reselling that information. The legislative council shall not establish a price that attempts to recover more than is attributable to costs related to reproducing and delivering the information.

13. To establish policies with regard to the publishing of printed and electronic versions of the Iowa administrative code, the Iowa administrative bulletin, the Iowa Code, the Code Supplement, and the session laws, or any part of those publications. The publishing policies may include, but are not limited to: the style and format to be used; the frequency of publication; the contents of the publications; the numbering system to be used in the Iowa Code, the Code Supplement, and the session laws; the preparation of editorial comments or notations; the correction of errors; the type of print or electronic media and data processing software to be used; the number of printed volumes to be published; recommended revisions of the Iowa Code, the Code Supplement, and the session laws; the letting of contracts for the publication of the Iowa Code, Code Supplement, and session laws; the pricing of the publications to which section 22.3 does not apply; access to, and the use, reproduction, legal protection, sale or distribution, and pricing of related data processing software consistent with chapter 22; and any other matters deemed necessary to the publication of uniform and understandable publications.

14. To establish policies for the operation of the legislative fiscal bureau.

15. To appoint the director of the legislative fiscal bureau for such term of office as may be set by the council.

16. To hear and act upon appeals of aggrieved employees of the legislative service bureau, legislative fiscal bureau, computer support bureau, and the office of the citizens' aide pursuant to rules of procedure established by the council.

17. Authority to review and delay the effective dates of rules and forms submitted by the supreme court pursuant to section 602.4202.

18. To establish policies for the operation of the computer support bureau.

19. To appoint the director of the computer support bureau for a term of office set by the council.

20. To implement the sexual harassment prohibitions and grievance, violation, and disposition procedures of section 19B.12 with respect to full-time, part-time, and temporary central legislative staff agency employees and to develop and distribute, at the time of hiring or orientation, a guide that describes for its employees the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures. This subsection does not supersede the remedies provided under chapter 216.

[C58, §2.47; C62, 66, 71, 73, §2.50; C75, 77, 79, 81, §2.42]
83 Acts, ch 186, §10001, 10201; 84 Acts, ch 1067,

§1; 85 Acts, ch 65, §2, 3; 85 Acts, ch 197, §1; 87 Acts, ch 115, §2; 91 Acts, ch 258, §4; 92 Acts, ch 1086, §2; 96 Acts, ch 1099, §1

2.43 General supervision over legislative facilities, equipment, and arrangements.

The legislative council in cooperation with the officers of the senate and house shall have the duty and responsibility for preparing for each session of the general assembly. Pursuant to such duty and responsibility, the legislative council shall assign the use of areas in the state capitol except for the areas used by the governor as of January 1, 1986, and by the courts as of November 1, 2002, and, in consultation with the director of the department of general services and the capitol planning commission, may assign areas in other state office buildings for use of the general assembly or legislative agencies. The legislative council may authorize the renovation, remodeling and preparation of the physical facilities used or to be used by the general assembly or legislative agencies subject to the jurisdiction of the legislative council and award contracts pursuant to such authority to carry out such preparation. The legislative council may purchase supplies and equipment deemed necessary for the proper functioning of the legislative branch of government.

In carrying out its duties under this section, the legislative council shall consult with the director of the department of general services and the capitol planning commission, but shall not be bound by any decision of the director in respect to the responsibilities and duties provided for in this section. The legislative council may direct the director of the department of general services or other state employees to carry out its directives in regard to the physical facilities of the general assembly, or may employ other personnel to carry out such functions.

The costs of carrying out the provisions of this section shall be paid pursuant to section 2.12.

[C71, 73, §2.51; C75, 77, 79, 81, §2.43]

86 Acts, ch 1245, §301; 2002 Acts, ch 1173, §23

Capitol space allocation; see also §18.8

Unnumbered paragraph 1 amended

2.44 Expenses of council and special interim committees.

Members of the legislative council shall be reimbursed for actual and necessary expenses incurred in the performance of their duties, and shall be paid the per diem specified in section 2.10, subsection 5, for each day in which engaged in the performance of their duties. However, the per diem and expenses shall not be paid when the general assembly is actually in session at the seat of government. The expenses and per diem shall be paid in the manner provided for in section 2.12.

Members of special interim study committees which may from time to time be created and members of the legislative fiscal committee who are not members of the legislative council shall be entitled to receive the same expenses and compensation provided for the members of the legislative council.

[C97, §181; S13, §181; C24, 27, 31, 35, 39, §**44;** C46, 50, §2.46; C54, §2.45; C58, §2.45, 2.48; C62, 66, §2.45, 2.51; C71, 73, §2.45, 2.52; C75, 77, 79, 81, §2.44]

91 Acts, ch 258, §5

2.45 Committees of the legislative council.

The legislative council shall be divided into committees, which shall include but not be limited to:

1. The legislative service committee which shall be composed of six members of the legislative council, consisting of three members from each house, to be appointed by the legislative council. The legislative service committee shall select a chairperson from its membership, and shall determine policies relating to the operation of the legislative service bureau, subject to the approval of the legislative council.

2. The legislative fiscal committee, composed of the chairpersons or their designated committee member and the ranking minority party members or their designated committee member of the committees of the house and senate responsible for developing a state budget and appropriating funds, the chairpersons or their designated committee member and the ranking minority party members or their designated committee member of the committees on ways and means, and two members, one appointed from the majority party of the senate by the majority leader of the senate and one appointed from the majority party of the house by the speaker of the house of representatives. In each house, unless one of the members who represent the committee on ways and means is also a member of the legislative council, the person appointed from the membership of the majority party in that house shall also be appointed from the membership of the legislative council. The legislative fiscal committee shall determine policies for the legislative fiscal bureau and shall direct the administration of performance audits and visitations, subject to the approval of the legislative council.

3. The legislative administration committee which shall be composed of six members of the legislative council, consisting of three members from each house, to be appointed by the legislative council. The legislative administration committee shall perform such duties as are assigned it by the legislative council.

4. The legislative capital projects committee which shall be composed of ten members appointed as follows:

a. Two senate members of the legislative fiscal committee or the senate committee on appropriations, one to be appointed by the majority leader of

the senate and one to be appointed by the minority leader of the senate.

b. Two house members of the legislative fiscal committee or the house committee on appropriations, one to be appointed by the speaker of the house and one to be appointed by the minority leader of the house.

c. The chairpersons of the senate and house committees on appropriations.

d. Four members of the legislative council, one appointed by the speaker of the house, one by the majority leader of the senate, one by the minority leader of the house, and one by the minority leader of the senate.

The chairperson of the legislative council shall designate the chairperson or chairpersons of the legislative capital projects committee.

5. *a.* The legislative oversight committee composed of members designated by the legislative council. In addition to the duties assigned by the legislative council, the committee shall systematically review the programs, agencies, and functions of the executive and judicial branches of government to ensure that public resources are used in the most efficient manner to benefit the people of Iowa.

b. The committee shall implement a systematic process of assessing the programs, agencies, and functions. Annually, by October 1, the committee shall identify the programs, agencies, and functions that will be subject to review and evaluation in the succeeding calendar year. An agency of state government selected by the committee for review and evaluation shall provide information as required by the committee, which may include but is not limited to the following:

(1) Identifying the activities, services, products, and functions of the agency, including identifying those that are required and the source of the requirement. At minimum, the sources identified shall include state law, state administrative rule, federal law, and federal regulation.

(2) Specifying for all activities, services, products, and functions, the users or clientele, and the current level of need for and the level of satisfaction with the activity, service, product, or function.

(3) Listing each discretionary activity, service, product, or function of the agency that is not required by state law, state administrative rule, federal law, or federal regulation.

(4) Identifying the degree of alignment between the agency strategic plan adopted pursuant to section 8E.206 and the requirements of the agency in state law and administrative rule.

(5) Identifying alternative methods of providing the agency's existing activities, services, products, and functions, and quantifying the impact to Iowans if such activities, services, products, or functions are no longer provided by the agency.

[C97, §181; S13, §181; C24, 27, 31, 35, 39, §**39, 40;** C46, 50, §2.41, 2.42; C54, 58, 62, 66, 71, 73, §2.41; C75, 77, 79, 81, §2.45]

86 Acts, ch 1245, §2006; 89 Acts, ch 298, §1; 2002 Acts, ch 1162, §74

NEW subsection 5

2.46 Powers of legislative fiscal committee.

The legislative fiscal committee may, subject to the approval of the legislative council:

1. *Budget.* Gather information relative to budget matters for the purpose of aiding the legislature to properly appropriate money for the functions of government, and to report their findings to the legislature.

2. *Examination.* Examine the reports and official acts of the executive council and of each officer, board, commission, and department of the state, in respect to the conduct and expenditures thereof and the receipts and disbursements of public funds thereby. All state departments and agencies are required to immediately notify the legislative fiscal committee of the legislative council and the director of the legislative fiscal bureau if any state facilities within their jurisdiction have been cited for violations of any federal, state, or local laws or regulations or have been decertified or notified of the threat of decertification from compliance with any state, federal, or other nationally recognized certification or accreditation agency or organization.

3. *Reorganization.* Make a continuous study of all offices, departments, agencies, boards, bureaus and commissions of the state government and shall determine and recommend to each session of the legislature what changes therein are necessary to accomplish the following purposes:

a. To reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of state government.

b. To increase the efficiency of the operations of the state government to the fullest extent practicable within the available revenues.

c. To group, co-ordinate, and consolidate judicial districts, agencies and functions of the government, as nearly as may be according to major purposes.

d. To reduce the number of offices, agencies, boards, commissions, and departments by consolidating those having similar functions, and to abolish such offices, agencies, boards, commissions and departments, or functions thereof, as may not be necessary for the efficient and economical conduct of state government.

e. To eliminate overlapping and duplication of effort on the part of such offices, agencies, boards, commissions and departments of the state government.

4. *Administration of legislative data base.* Determine the policy for the content and administration of a legislative data base.

5. *Information needs determination.* Deter-

mine the information needs of the general assembly and report them to the director of the department of general services who shall consider such needs in establishing the operating policies for a data base management system.

[C97, §181, 182; S13, §181; C24, 27, 31, 35, 39, §**42, 45;** C46, 50, §2.44, 2.47; C54, 58, 62, 66, 71, 73, §2.43; C75, 77, §2.46; C79, §2.46, 2.54; C81, §2.46]

86 Acts, ch 1245, §302; 89 Acts, ch 298, §2

2.47 Procedure.

The chairpersons of the committees on budget shall serve as cochairpersons of the legislative fiscal committee. The legislative fiscal committee shall determine its own method of procedure and shall meet as often as deemed necessary, subject to the approval of the legislative council. It shall keep a record of its proceedings which shall be open to public inspection, and it shall inform the legislative council in advance concerning the dates of meetings of the committee.

[C75, 77, 79, 81, §2.47]

2.47A Powers and duties of legislative capital projects committee.

1. The legislative capital projects committee shall do all of the following:

a. Receive the recommendations of the governor regarding the funding and priorities of proposed capital projects pursuant to section 8.3A, subsection 2, paragraph *"b"*.

b. Receive the reports of all capital project budgeting requests of all state agencies, with individual state agency priorities noted, pursuant to section 8.6, subsection 13.

c. Receive annual status reports for all ongoing capital projects of state agencies, pursuant to section 18.12, subsection 14.

d. Examine and evaluate, on a continuing basis, the state's system of contracting and subcontracting in regard to capital projects.

2. The legislative capital projects committee, subject to the approval of the legislative council, may do all of the following:

a. Gather information relative to capital projects, for the purpose of aiding the general assembly to properly appropriate moneys for capital projects.

b. Examine the reports and official acts of the state agencies, as defined in section 8.3A, with regard to capital project planning and budgeting and the receipt and disbursement of capital project funding.

c. Establish advisory bodies to the committee in areas where technical expertise is not otherwise readily available to the committee. Advisory body members may be reimbursed for actual and necessary expenses from funds appropriated pursuant to section 2.12, but only if the reimbursement is approved by the legislative council.

d. Compensate experts from outside state government for the provision of services to the committee from funds appropriated pursuant to section 2.12, but only if the compensation is approved by the legislative council.

e. Make recommendations to the legislative fiscal committee, legislative council, and the general assembly regarding issues relating to the planning, budgeting, and expenditure of capital project funding.

3. The capital projects committee shall determine its own method of procedure and shall keep a record of its proceedings which shall be open to public inspection. The committee shall meet as often as deemed necessary, subject to the approval of the legislative council, and the committee shall inform the legislative council in advance of its meeting dates.

89 Acts, ch 298, §3; 90 Acts, ch 1168, §1; 91 Acts, ch 268, §601; 95 Acts, ch 214, §1; 2001 Acts, 2nd Ex, ch 2, §1, 13

2001 amendment takes effect November 16, 2001, and first applies to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

LEGISLATIVE FISCAL BUREAU

2.48 Legislative fiscal bureau established.

There is established a legislative fiscal bureau which shall operate under the direction and control of the legislative fiscal committee, subject to the approval of the legislative council. The administrative head of the legislative fiscal bureau shall be the legislative fiscal director. The legislative fiscal bureau shall co-operate with and serve all members of the general assembly, the legislative fiscal committee, and committees of the general assembly.

The legislative fiscal director shall be appointed by the legislative council, upon recommendation of the legislative fiscal committee. The director's compensation, and the compensation of employees of the legislative fiscal bureau, shall be fixed by the legislative council.

[C62, 66, 71, 73, §2.46; C75, 77, 79, 81, §2.48]

2.49 Functions of legislative fiscal bureau.

The legislative fiscal bureau shall:

1. By continuous review of state expenditures, revenues and analysis of budget through an audit, performance audit, and preaudit, if necessary, or such other means deemed necessary, ascertain the facts, compare cost, workload and other data, and make recommendations to the general assembly concerning the state's budget and revenue of the departments, boards, commissions, and agencies of the state.

2. Report to the legislative fiscal committee as required by the legislative fiscal committee and the legislative council and to the general assembly after the convening of each legislative session of a

general assembly and make such other reports as may be required by either the legislative council or the general assembly.

3. Furnish information and act in an advisory capacity to the committees on budget and committees on ways and means of the general assembly and their several subcommittees when so requested.

4. Assist standing committees and members of the general assembly in attaching fiscal notes to legislative bills and resolutions as provided by the rules of the general assembly.

5. Submit to each member of the general assembly quarterly a report of the current status of major state funds, a comparison of income with estimates used by the general assembly and other revenue and expenditure information which the legislative fiscal committee determines will be informative for members of the general assembly. The department of revenue and finance and the department of management shall co-operate with the legislative fiscal bureau in the development of the report. The legislative fiscal committee shall approve the style and format of the report.

6. Perform such other duties as shall be assigned to the bureau by the legislative fiscal committee or by the general assembly.

[C62, 66, 71, 73, §2.47; C75, 77, 79, 81, §2.49]
88 Acts, ch 1134, §1

2.50 Duties of legislative fiscal director.

The legislative fiscal director shall:

1. Employ and supervise all employees of the legislative fiscal bureau in such positions and at such salaries as shall be authorized by the legislative council.

2. Supervise all expenditures of the legislative fiscal bureau with the approval of the legislative council.

3. Attend, or designate a representative who shall attend, the budget hearings required by section 8.26 and may offer explanations or suggestions and make inquiries with respect to such budget hearings.

4. Perform the duties pertaining to the preparation of correctional impact statements, as provided in section 2.56.

[C62, 66, 71, 73, §2.47; C75, 77, 79, 81, §2.50]
93 Acts, ch 171, §13

2.51 Visitations.

The legislative fiscal committee, with the approval of the legislative council, may direct a subcommittee, which shall be composed of the chairpersons and minority party ranking members of the appropriate subcommittees of the committees on budget of the senate and the house of representatives and the chairpersons of the appropriate standing committees of the general assembly, to visit the offices and facilities of any state office, department, agency, board, bureau, or commission to review programs authorized by the general assembly and the administration of the programs. When the legislative fiscal committee visits the offices and facilities of any state office, department, agency, board, bureau, or commission to review programs authorized by the general assembly and the administration of the programs, there shall be included the chairpersons and minority party ranking members of the appropriate subcommittees of the committees on budget of the senate and the house of representatives. The legislative council may appoint a member of the subcommittee or standing committee to serve in place of that subcommittee's or standing committee's chairperson or minority party ranking member on the legislative fiscal visitation committee or subcommittee if that person will be absent. The subcommittee and the legislative fiscal committee shall be provided with information by the legislative fiscal bureau concerning budgets, programs, and legislation authorizing programs prior to any visitation. Members of a committee shall be compensated pursuant to section 2.10, subsection 5. The subcommittee shall make reports and recommendations as required by the legislative fiscal committee.

[C75, 77, 79, 81, §2.51]
84 Acts, ch 1026, §1

2.52 Access — subpoenas.

The director and agents and employees of the legislative fiscal bureau shall at all times have access to all offices, departments, agencies, boards, bureaus, and commissions of the state and its political subdivisions and private organizations providing services to individuals under contracts with state agencies, and to the books, records, and other instrumentalities and properties used in the performance of their statutory duties or contractual arrangements. All offices, departments, agencies, boards, bureaus, and commissions of the state and its political subdivisions and such private organizations shall co-operate with the director, and shall make available such books, records, instrumentalities, and property.

If the information sought by the legislative fiscal bureau is required by law to be kept confidential, the bureau shall have access to the information, but shall maintain the confidentiality of the information and is subject to the same penalties as the lawful custodian of the information for dissemination of the information. However, the legislative fiscal bureau shall not have access to tax return information except for individual income tax sample data as provided in section 422.72, subsection 1.

The director may issue subpoenas for production of any records, books, or papers to which the director is authorized to have access. If any person subpoenaed refuses to produce the records, books, or papers, the director may apply to the district court having jurisdiction over that person for the enforcement of the subpoena.

[C62, 66, 71, 73, §2.48; C75, 77, 79, 81, §2.52]
84 Acts, ch 1172, §1; 85 Acts, ch 67, §2; 86 Acts, ch 1245, §2007

2.53 Actuarial services. Repealed by 83 Acts, ch 200, § 14.

2.54 Repealed by 80 Acts, ch 1011, § 4. See § 2.46.

2.55 Government accountability.

1. It is the intent of the general assembly to establish in the legislative branch of government the capability to independently and intensively review the performance of state agencies in operating the programs, to evaluate their efficiency and effectiveness, and to consider alternatives which may improve the benefits of a program or may reduce its costs to the citizens. The legislative fiscal bureau is intended to provide the technical and professional support for the general assembly's oversight responsibility.

2. The general assembly may by concurrent resolution or the legislative council may direct the legislative fiscal bureau to conduct a program evaluation or performance audit of any agency of the state government. Upon the passage of the concurrent resolution or receiving the direction of the legislative council, the legislative fiscal director shall inform the chairpersons of the committees responsible for appropriations of the anticipated cost of the program evaluation and the number and nature of additional personnel needed to conduct the program evaluation and shall notify the official responsible for the program to be evaluated. The director, after consulting with the responsible official and the requesting party, shall determine the goals and objectives of the agency or program for the purpose of the performance audit or program evaluation.

3. In conducting the program evaluation or performance audit, the legislative fiscal bureau shall make certain determinations including but not limited to the following:

a. The organizational framework of the agency, its adequacy and relationship to the overall structure of state government, and whether the program under the agency's jurisdiction could be more effective if consolidated with another program, transferred to another program, modified, or abolished.

b. Whether the state agency is conducting programs and activities and expending funds appropriated to it in compliance with the Acts of the general assembly, the Code, and any federal, state, or local rules, or policies assigned to it by the governor, and whether administrative or statutory changes are needed to achieve the intent of the general assembly.

c. Whether the state agency is conducting authorized activities and programs pursuant to goals and objectives established by statute, specific legislative intent, the budget, the governor, or a long-range plan, and whether alternatives which might produce the desired results at a lower cost have been considered.

d. Whether the state agency is conducting programs and activities and expending funds appropriated to it in an efficient and effective manner, has complied with all applicable laws and, if not, determine the causes.

e. Relationships within and among other governmental agencies and programs including financial exchanges, coordination, inconsistent programs, and areas of duplication or overlapping programs.

f. The productivity of the agency's operations measured in terms of cost-benefit relationships or other accepted measures of effectiveness.

g. Other criteria determined by the director.

4. Upon the completion of the program evaluation or performance audit, the legislative fiscal director shall provide a copy of the report to the governing official or board of the agency and afford the agency a reasonable opportunity to respond to the findings and recommendations of the report. The response shall be included in the report and the report released to the legislative council. Until its release the report shall be regarded as confidential by all persons properly having custody of it.

[C81, §2.55]
85 Acts, ch 65, §4; 86 Acts, ch 1245, §2008

2.55A Departmental information required.

1. The department of agriculture and land stewardship and the department of natural resources, in cooperation as necessary with the department of management and the department of personnel, shall provide a list to the legislative fiscal bureau, on a quarterly basis, of all permanent positions added to or deleted from the departments' table of organization in the previous fiscal quarter. This list shall include at least the position number, salary range, projected funding source or sources of each position, and the reason for the addition or deletion. The legislative fiscal bureau may use this information to assist in the establishment of the full-time equivalent position limits authorized in law for the departments.

2. The department of natural resources shall provide the legislative fiscal bureau information and financial data by cost center, on at least a monthly basis, relating to the indirect cost accounting procedure, the amount of funding from each funding source for each cost center, and the internal budget system used by the department. The information shall include but is not limited to financial data covering the department's budget by cost center and funding source prior to the start of the fiscal year, and to the department's actual expenditures by cost center and funding source after the accounting system has been closed for that

fiscal year.

3. The department of agriculture and land stewardship shall provide the legislative fiscal bureau information and financial data on at least a monthly basis, relating to the internal budget system used by the department. The information shall include but is not limited to financial data covering the department's budget prior to the start of the fiscal year, and to the department's actual expenditures after the accounting system has been closed for that fiscal year.

96 Acts, ch 1214, §28

2.56 Correctional impact statements.

1. Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures. The statement shall include information concerning the estimated number of criminal cases per year that the legislation will impact, the fiscal impact of confining persons pursuant to the legislation, the impact of the legislation upon existing correctional institutions, community-based correctional facilities and services, and jails, the likelihood that the legislation may create a need for additional prison capacity, and other relevant matters. The statement shall be factual and shall, if possible, provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.

2. *a.* The preliminary determination of whether a bill, joint resolution, or amendment appears to require a correctional impact statement shall be made by the legislative service bureau, which shall send a copy of the bill, joint resolution, or amendment, upon completion of the draft, to the legislative fiscal director for review, unless the requestor specifies the request is to be confidential.

b. When a committee of the general assembly reports a bill, joint resolution, or amendment to the floor, the committee shall state in the report whether a correctional impact statement is or is not required.

c. The legislative fiscal director shall review all bills and joint resolutions placed on the calendar of either chamber of the general assembly, as well as amendments filed to bills or joint resolutions on the calendar, to determine whether a correctional impact statement is required.

d. A member of the general assembly may request the preparation of a correctional impact statement by submitting a request to the legislative fiscal bureau.

3. The legislative fiscal director shall cause to be prepared and shall approve a correctional impact statement within a reasonable time after receiving a request or determining that a proposal is subject to this section. All correctional impact statements approved by the legislative fiscal director shall be transmitted immediately to either the chief clerk of the house or the secretary of the senate, after notifying the sponsor of the legislation that the statement has been prepared, for publication in the daily clip sheet. The chief clerk of the house or the secretary of the senate shall attach the statement to the bill, joint resolution, or amendment affected as soon as it is available.

4. The legislative fiscal director may request the cooperation of any state department or agency or political subdivision in preparing a correctional impact statement.

5. A revised correctional impact statement shall be prepared if the correctional impact has been changed by the adoption of an amendment, and may be requested by a member of the general assembly or be prepared upon a determination made by the legislative fiscal director. However, a request for a revised correctional impact statement shall not delay action on the bill, joint resolution, or amendment unless so ordered by the presiding officer of the chamber.

93 Acts, ch 171, §14

2.57 Reserved.

LEGISLATIVE SERVICE BUREAU

2.58 Service bureau.

There is hereby created a legislative service bureau which shall operate under the direction and control of the legislative council. The administrative head of the legislative service bureau shall be the director of the bureau. The bureau shall cooperate with and serve all members of the general assembly, the legislative council, and committees of the general assembly. It shall upon proper request of members and committees of the general assembly prepare research reports upon any governmental matter. Such research reports and the findings therein shall not contain any recommendations. The bureau shall assist and serve any standing or interim committee of the general assembly upon request, approved by the legislative council. The bureau shall draft and prepare bills for committees and individual members of the general assembly. Research and bill drafting requests made between sessions shall be in the manner provided for by the legislative council. The legislative council shall have the sole power and duty to allocate the work load of the bureau but may delegate such duty to the legislative service bureau director.

[C58, §2.49; C62, 66, §2.52; C71, 73, 75, 77, 79, 81, §2.58]

2.59 Director.

The director of the service bureau shall serve on

a full-time basis and shall have the following powers and duties:

1. The director shall be in charge of the research and bill drafting functions of the bureau.

2. The director shall employ and supervise all employees of the legislative service bureau in such positions and at such salaries as shall be authorized by the legislative council.

3. To employ, with the approval of the legislative council or its chairperson, such temporary employees as may be required to provide research and bill drafting services prior to and during sessions of the general assembly. Such employees shall be under the supervision of the director and shall be paid from the funds appropriated to the bureau.

4. With the approval of the legislative council or its chairperson, the director may employ such technical consultants as may be necessary to provide research and bill drafting services on a salary or fee basis.

[C58, §2.50; C62, 66, §2.53; C71, 73, 75, 77, 79, 81, §2.59]

2.60 Salary of director.

The salary of the director of the legislative service bureau shall be set by the legislative council.

[C58, §2.51; C62, 66, §2.54; C71, 73, 75, 77, 79, 81, §2.60]

2.61 Requests for research.

Requests for research on governmental matters may be made to the legislative service bureau by either house of the general assembly, committees of either house of the general assembly, special interim committees of the general assembly, the legislative council, or upon petition by twenty or more members of the general assembly. Any legislative committee may request the service bureau to do research on any matter under consideration by such committee. For each such request the legislative council may, if deemed advisable, authorize a special interim study committee to conduct the research study or may request a standing committee to conduct such study. Members on a study committee shall be appointed by the council and shall consist of at least one member of the council and such other members of the majority and minority parties of the senate and the house of representatives as the council may designate. As far as practicable, a study committee shall include members of standing committees concerned with the subject matter of the study. No legislator shall serve on more than two study committees. Nonlegislative members having special knowledge of the subject under study may be appointed by the council to a study committee but such members shall be nonvoting members of such committee. The legislative service bureau shall assist study committees on research studies when authorized by the legislative council.

[C58, §2.52; C62, 66, §2.55; C71, 73, 75, 77, 79, 81, §2.61]

2.62 Powers.

Special interim study committees shall have the following powers and duties:

1. Elect officers and adopt necessary rules for the conduct of business.

2. Conduct research on any matter connected with the study assigned by the legislative council.

3. Hold hearings.

4. Make regular progress reports to the legislative council.

5. Make a report, which may include recommendations, to the legislative council. Copies of study committee reports shall be made available to members of the general assembly and may be made available to other interested individuals upon request. The reports shall not be final until approved by the legislative council.

[C62, 66, §2.57; C71, 73, 75, 77, 79, 81, §2.62]

2.63 Meetings.

Special interim study committees shall first meet at the call of the ranking legislative council member assigned to the study committee, and shall thereafter meet at such time as study committee members shall so designate. Any legislator may attend any study committee meeting or any hearing held by a study committee. All study committee meetings shall be open to the public.

[C62, 66, §2.58; C71, 73, 75, 77, 79, 81, §2.63]

2.64 Assistance by bureau.

The legislative service bureau may provide the following assistance to standing and special interim study committees, as authorized by the legislative council:

1. Handle administrative affairs, including correspondence, record keeping, and scheduling of meetings.

2. Perform the research required for any study. Priority for studies shall be determined by the legislative council.

3. Arrange for the help of state employees and technical consultants whose assistance is needed.

4. Prepare research reports, and, upon the request of a committee, prepare that committee's report.

[C62, 66, §2.60; C71, 73, 75, 77, 79, 81, §2.64]

2.65 Information and assistance.

The legislative service bureau may call upon any department, agency or office in the state, or any political subdivision of the state, for such information and assistance as may be needed in the performance of the duties of the service bureau and such information and assistance shall be furnished insofar as the same shall be within the resources and authority of such departments, agencies, offices, and political subdivisions. Nothing

herein shall be construed to require the production or opening of any public records which are required by law to be kept private or confidential.

The service bureau may co-operate with other states and the federal government in the exchange of research reports, information, and materials.

[C58, §2.53; C62, 66, §2.61; C71, 73, 75, 77, 79, 81, §2.65]

2.66 Office and supplies — expenses.

The office of the service bureau shall be located in the statehouse. Supplies, postage, and equipment may be requisitioned from the department of general services. Expenses of the legislative service bureau shall be paid upon the approval of the director of the bureau and, if an extraordinary expense, upon the approval of the legislative council or its chairperson. Funds appropriated for per diem and expenses of the legislative council, legislative fiscal committee, and special interim study committees shall be paid and administered in the manner provided by the legislative council.

[C58, §2.54; C62, 66, §2.62; C71, 73, 75, 77, 79, 81, §2.66]

2.67 Official sales — tax exemption.

The legislative service bureau and its legislative information office may sell mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, on the premises of property under the control of the legislative council, at the state capitol, and on other state property. The legislative service bureau and its legislative information office are not retailers under chapter 422 and the sale of such mementos and other such items by the legislative service bureau or its legislative information office is not a retail sale under chapter 422, division IV, and is exempt from the sales tax.

2002 Acts, ch 1122, §1, 4
NEW section

2.68 Cities authorized to draw proposed precincts. Repealed by 94 Acts, ch 1023, § 125.

2.69 through 2.90 Reserved.

BOUNDARY COMMISSION

2.91 Iowa boundary commission. Repealed by 86 Acts, ch 1245, § 2052; 90 Acts, ch 1028, § 1.

2.92 through 2.99 Reserved.

COMPUTER SUPPORT BUREAU

2.100 Computer support bureau.

A computer support bureau is established under the direction and control of the legislative council. The administrative head of the computer support bureau is the director of the bureau. The computer support bureau shall serve the general assembly and the legislative council. The computer support bureau shall also provide services and support for the computer systems used by the legislative staff, the legislative service bureau, the legislative information office, the Code editor's office, the office of the citizens' aide, and the legislative fiscal bureau.

85 Acts, ch 65, §5; 94 Acts, ch 1023, §1

2.101 Director.

The director of the computer support bureau shall serve on a full-time basis, and shall:

1. Employ and supervise all employees of the computer support bureau in positions and at salaries authorized by the legislative council.
2. Supervise all expenditures of the computer support bureau with the approval of the legislative council.
3. Advise the legislative council on matters relating to computer services and computer needs and uses of the legislative computer system.
4. Cooperate with legislative agencies under the control of the legislative council and the secretary of the senate and the chief clerk of the house in developing and maintaining computer services required by the legislative council and the general assembly.

85 Acts, ch 65, §6

2.102 Director — salary.

The salary of the director of the computer support bureau shall be set by the legislative council.

85 Acts, ch 65, §7

2.103 Powers and duties.

The computer support bureau is responsible for the operation and maintenance of the legislative computer system. The bureau shall also advise the legislative council and legislative agencies under its control on uses and expanded capabilities of the legislative computer system.

85 Acts, ch 65, §8

2.104 Budget.

Expenses of the computer support bureau shall be paid upon approval of the director of the bureau. The budget of the computer support bureau for each fiscal year shall be prepared by the director and submitted to the legislative council.

85 Acts, ch 65, §9

CHAPTER 2A

COMMISSION ON COMPENSATION, EXPENSES, AND SALARIES FOR ELECTED STATE OFFICIALS

Repealed by 2002 Acts, ch 1175, §68

CHAPTER 2B

LEGAL PUBLICATIONS

2B.1 Iowa Code and administrative code divisions — editors.
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2B.1 Iowa Code and administrative code divisions — editors.

1. The Iowa Code and administrative code divisions are established within the legislative service bureau.

2. The director of the legislative service bureau shall appoint the Iowa Code editor and the administrative code editor, subject to the approval of the legislative council, as provided in section 2.42. The Iowa Code editor and the administrative code editor shall serve as the heads of their respective divisions, at the pleasure of the director of the legislative service bureau, and subject to the approval of the legislative council.

3. The Iowa Code and administrative code divisions are responsible for the editing, compiling, and proofreading of the publications they prepare, as provided in this chapter. The Iowa Code division is entitled to the temporary possession of the original enrolled Acts and resolutions as necessary to prepare them for publication.

[C51, §46; R60, §62, 113, 115, 144; C73, §35, 155, 156; C97, p. 5, §38, 216; S13, p. 3; SS15, §224-c, -h; C24, 27, 31, 35, 39, §**156;** C46, 50, 54, 58, 62, 66, §14.3; C71, §14.5; C73, 75, 77, 79, 81, §14.1]

91 Acts, ch 258, §8
C93, §2B.1
98 Acts, ch 1119, §13; 98 Acts, ch 1164, §1
See also §2.42(11)

2B.2 through 2B.4 Reserved.

2B.5 Duties of administrative code division.

The administrative code division shall:

1. Cause the Iowa administrative bulletin and the Iowa administrative code to be published as provided in chapter 17A.

2. Cause the Iowa court rules to be published, as directed by the supreme court after consultation with the legislative council. The Iowa court rules shall consist of all rules prescribed by the supreme court. The court rules shall be published in loose-leaf form and supplements shall be prepared and distributed as directed by the supreme court. The Iowa court rules and supplements to the court rules shall be priced as provided in section 7A.22.

3. Cause to be published annually in pamphlet form a correct list of state officers and deputies, members of boards and commissions, judges of the supreme, appellate, and district courts including district associate judges and judicial magistrates, and members of the general assembly. The offices of the governor and secretary of state shall cooperate in the preparation of the list. This pamphlet shall be published as soon after July 1 as it becomes apparent that it will be reasonably current.

4. Notify the administrative rules coordinator if a rule is not in proper style or form.

5. Perform other duties as directed by the director of the legislative service bureau, the legislative council, or the administrative rules review committee and as provided by law.

91 Acts, ch 258, §9
CS91, §14.5
C93, §2B.5
98 Acts, ch 1115, §1, 21
See §7.17, 17A.6

2B.6 Duties of Iowa Code division.

The Iowa Code division shall:

1. Submit recommendations as the Iowa Code editor deems proper to each general assembly for

the purpose of amending, revising, codifying, and repealing portions of the statutes which are inaccurate, inconsistent, outdated, conflicting, redundant, or ambiguous, and present the recommendations in bill form to the appropriate committees of the general assembly.

2. Cause the annual session laws to be published, as provided in section 2B.10, including copies of all Acts and joint resolutions passed at each session of the general assembly.

3. Cause the Iowa Code and Iowa Code Supplement to be published as provided in section 2B.12.

4. Perform other duties as directed by the director of the legislative service bureau or the legislative council and as provided by law.

[C51, §46; R60, §62, 113, 115, 144; C73, §35, 155, 156; C97, p. 5, §38, 216; S13, p. 3; SS15, §224-c, -h; C24, 27, 31, 35, 39, §**156;** C46, 50, 54, §14.3; C54, 58, 62, 66, §14.3, 17A.9; C71, 73, 75, 77, 79, 81, §14.6; 82 Acts, ch 1061, §1]

91 Acts, ch 258, §10

C93, §2B.6

2B.7 through 2B.9 Reserved.

2B.10 Session laws.

1. The arrangement of the Acts and resolutions, and the size, style, type, binding, general arrangement, and tables of the session laws shall be printed and published in the manner determined by the Iowa Code editor in accordance with the policies set by the legislative council as provided in section 2.42.

2. Chapters of the first regular session shall be numbered from one and chapters of the second regular session shall be numbered from one thousand one.

3. A list of elective state officers and deputies, supreme court justices, judges of the court of appeals, and members of the general assembly shall be published annually with the session laws.

4. A statement of the condition of the state treasury shall be included, as provided by the Constitution of the State of Iowa. The statement shall be furnished by the director of revenue and finance.

5. The enrolling clerks of the house and senate shall arrange for the Iowa Code division to receive suitable copies of all Acts and resolutions as soon as they are enrolled.

6. A notation of the filing of an estimate of a state mandate prepared by the legislative fiscal bureau pursuant to section 25B.5 shall be included in the session laws with the text of an enacted bill or joint resolution containing the state mandate.

[C73, §36; C97, §39; SS15, §224-i; C24, 27, 31, 35, §162, 162-d1, 163, 164, 165, 167; C39, §**221.1 – 221.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.10]

83 Acts, ch 186, §10004, 10201; 91 Acts, ch 258, §11; 92 Acts, ch 1123, §3

C93, §2B.10

98 Acts, ch 1115, §2, 21

See Constitution, Art. III, §18; §7A.3

2B.11 Reserved.

2B.12 Iowa Code and Code Supplement.

1. A new Iowa Code shall be issued as soon as possible after the final adjournment of the second regular session of the general assembly. A new Code Supplement shall be issued as soon as possible after the first regular session of the general assembly. A Code Supplement may be issued after a special session of the general assembly or as required by the legislative council.

2. The entire Iowa Code shall be maintained on a computer data base which shall be updated as soon as possible after each session of the general assembly. The Iowa Code and Code Supplement shall be prepared and printed on a good quality of paper in one or more volumes, in the manner determined by the Iowa Code editor in accordance with the policies of the legislative council, as provided in section 2.42.

3. An edition of the Iowa Code or Code Supplement shall contain each Code section in its new or amended form. However, a new section or amendment which does not take effect until after the probable publication date of a succeeding Iowa Code or Code Supplement may be deferred for publication in that succeeding Iowa Code or Code Supplement. The sections shall be inserted in each edition in a logical order as determined by the Iowa Code editor in accordance with the policies of the legislative council.

4. Each section of an Iowa Code or Code Supplement shall be indicated by a number printed in boldface type and shall have an appropriate headnote printed in boldface type.

5. Appropriate historical references or source notes may be placed following each section.

6. The Iowa Code published after the second regular session of the general assembly shall include:

a. An analysis of the Code by titles and chapters.

b. The Declaration of Independence.

c. The Articles of Confederation.

d. The Constitution of the United States.

e. The laws of the United States relating to the authentication of records.

f. The Constitution of the State of Iowa.

g. The Act admitting Iowa into the union as a state.

h. A chapter title, number, and chapter analysis at the head of each chapter. The chapter number shall be printed at the top of each page.

i. All of the statutes of Iowa of a general and permanent nature, except as provided in subsection 3.

j. A comprehensive index and a summary index covering the Constitution and statutes of the state of Iowa.

7. The Code Supplement published after the first regular session of the general assembly shall include:

a. All of the statutes of Iowa of a general and permanent nature which were enacted or amended during that session, except as provided in subsection 3, and an indication of all sections repealed during that session, and any amendments to the Constitution of the State of Iowa approved by the voters at the preceding general election.

b. A chapter title and number for each chapter or part of a chapter included.

c. An index covering the material included.

8. A Code or Code Supplement may include appropriate tables showing the disposition of Acts of the general assembly and other reference material as determined by the Iowa Code editor in accordance with policies of the legislative council.

[C97, p. 5; S13, p. 3; C24, 27, 31, 35, 39, §**168;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.12; 82 Acts, ch 1061, §2 – 4]

91 Acts, ch 258, §12

C93, §2B.12

94 Acts, ch 1107, §19

See also §2.42

2B.13 Editorial powers and duties.

1. The Iowa Code editor in preparing the copy for an edition of the Iowa Code or a Code Supplement, and the administrative code editor in preparing the copy for an edition of the Iowa administrative code or bulletin may:

a. Correct misspelled words and grammatical and clerical errors including punctuation but without changing the meaning.

b. Correct internal references to sections which are cited erroneously or have been repealed, and names of agencies, officers, or other entities which have been changed, when there appears to be no doubt as to the proper methods of making the corrections. The Code editor shall maintain a record of the corrections made under this paragraph. The record shall be available to the public.

c. Transfer, divide, or combine sections or parts of sections and add or amend headnotes to sections and subsections. Pursuant to section 3.3, the headnotes are not part of the law.

2. The Iowa Code editor may prepare and publish comments deemed necessary for a proper explanation of the manner of printing a section or chapter of the Iowa Code.

3. The Iowa Code editor, in preparing the copy for an edition of the Iowa Code or a Code Supplement, and the administrative code editor in preparing the copy for an edition of the Iowa administrative code, shall edit the copy in order that words which designate one gender are changed to reflect both genders when the provisions of law apply to persons of both genders.

4. The Iowa Code editor shall seek direction from the senate committee on judiciary and the house committee on judiciary when making Iowa Code or Code Supplement changes, and the administrative code editor shall seek direction from the administrative rules review committee and the administrative rules coordinator when making Iowa administrative code changes, which appear to require substantial editing and which might otherwise be interpreted to exceed the scope of the authority granted in this section.

5. The Iowa Code editor and the administrative code editor shall maintain a record of the changes made under this section. The record shall be available to the public.

6. The Iowa Code editor and the administrative code editor shall not make editorial changes which go beyond the authority granted in this section or other law.

7. The effective date of all editorial changes in an edition of the Iowa Code or a Code Supplement is the effective date of the selling price for that publication as established by the legislative council or the legislative council's designee. The effective date of all editorial changes for the Iowa administrative code is the date those changes are published in the Iowa administrative code.

[C24, 27, 31, 35, 39, §**169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.13]

84 Acts, ch 1117, §1; 85 Acts, ch 195, §1; 86 Acts, ch 1242, §5, 6; 91 Acts, ch 258, §13

C93, §2B.13

95 Acts, ch 67, §1; 96 Acts, ch 1099, §2

2B.14 through 2B.16 Reserved.

2B.17 Citations — official statutes.

1. The permanent and official printed versions of the Iowa Codes and Code Supplements published subsequent to the adjournment of the 1982 regular session of the Sixty-ninth General Assembly shall be known and may be cited as "Iowa Code chapter (or section) . . . . ", or "Iowa Code Supplement chapter (or section) . . . . ", inserting the appropriate chapter or section number. If the year of edition is needed, it may be inserted before or after the words "Iowa Code" or "Iowa Code Supplement". In Iowa publications, the word "Iowa" may be omitted if the meaning is clear.

2. The session laws of each general assembly shall be known as "Acts of the . . . . General Assembly, ... Session, Chapter (or File No.) . . . . , Section . . . . " (inserting the appropriate numbers) and shall be cited as ". . . . Iowa Acts, chapter . . . . , section . . . . " (inserting the appropriate year, chapter, and section number).

3. The official printed versions of the Iowa Code, Code Supplement, and session laws published under authority of the state are the only au-

thoritative publications of the statutes of this state. No other publications of the statutes of the state shall be cited in the courts or in the reports or rules of the courts.

4. The Iowa administrative code and the Iowa administrative bulletin shall be cited as provided in section 17A.6.

5. The printed version of the Iowa administrative code is the permanent publication of administrative rules in this state and the Iowa administrative bulletin and the Iowa administrative code published pursuant to chapter 17A are the official publications of the administrative rules of this state, and are the only authoritative publications of the administrative rules of this state. Other publications of the administrative rules of this state shall not be cited in the courts or in the reports or rules of the courts.

[C24, 27, 31, 35, 39, §**172;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.17; 82 Acts, ch 1061, §5]
91 Acts, ch 258, §14
C93, §2B.17
96 Acts, ch 1099, §3, 4

2B.18 through 2B.20 Reserved.

2B.21 Availability of parts of the Iowa Code and administrative code.

The Iowa Code division and the administrative code division, in accordance with policies established by the legislative council, may cause parts of the Iowa Code or administrative code to be made available for the use of public officers and other persons. This authority shall be exercised in a manner planned to avoid delay in the other publications of the divisions.

[C97, p. 5; S13, p. 3; C24, 27, 31, 35, 39, §**176;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.21]
83 Acts, ch 181, §1; 85 Acts, ch 197, §2; 86 Acts, ch 1238, §1; 91 Acts, ch 258, §15
C93, §2B.21
See also §7A.27

2B.22 Appropriation.

There is hereby appropriated out of any money in the treasury not otherwise appropriated an amount sufficient to defray all expenses incurred in the carrying out of the provisions of this chapter.

[C24, 27, 31, 35, 39, §**177;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §14.22]
C93, §2B.22

CHAPTER 2C

CITIZENS' AIDE

This chapter not enacted as a part of this title; transferred from chapter 601G in Code 1993

2C.1 Definitions.
2C.2 Office established.
2C.3 Appointment — vacancy.
2C.4 Citizen of United States and resident of Iowa.
2C.5 Term — removal.
2C.6 Deputy — assistant for penal agencies.
2C.7 Prohibited activities.
2C.8 Closed files.
2C.9 Powers.
2C.10 No charge for services.
2C.11 Subjects for investigations.
2C.12 Complaints investigated.
2C.13 No investigation — notice to complainant.
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2C.15 Reports critical of agency or officer.
2C.16 Recommendations to agency.
2C.17 Publication of conclusions.
2C.18 Report to general assembly.
2C.19 Disciplinary action recommended.
2C.20 Immunities.
2C.21 Witnesses.
2C.22 Penalties.
2C.23 Citation.

2C.1 Definitions.

As used in this chapter:

1. *"Administrative action"* means any policy or action taken by an agency or failure to act pursuant to law.

2. *"Agency"* means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties, but it does not include:

a. Any court or judge or appurtenant judicial staff.

b. The members, committees, or permanent or temporary staffs of the Iowa general assembly.

c. The governor of Iowa or the governor's personal staff.

d. Any instrumentality formed pursuant to an interstate compact and answerable to more than

one state.

3. *"Employee"* means any employee of an agency.

4. *"Officer"* means any officer of an agency.

5. *"Person"* means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.

[C73, 75, 77, 79, 81, §601G.1]
C93, §2C.1

2C.2 Office established.

The office of citizens' aide is established.

[C73, 75, 77, 79, 81, §601G.2]
C93, §2C.2

2C.3 Appointment — vacancy.

The citizens' aide shall be appointed by the legislative council with the approval and confirmation of a constitutional majority of the senate and with the approval and confirmation of a constitutional majority of the house of representatives. The legislative council shall fill a vacancy in this office in the same manner as the original appointment. If the appointment or vacancy occurs while the general assembly is not in session, such appointment shall be reported to the senate and the house of representatives within thirty days of their convening at their next regular session for approval and confirmation.

The citizens' aide shall employ and supervise all employees under the citizens' aide's direction in such positions and at such salaries as shall be authorized by the legislative council. The legislative council shall hear and act upon appeals of aggrieved employees of the office of the citizens' aide.

[C73, 75, 77, 79, 81, §601G.3]
C93, §2C.3

2C.4 Citizen of United States and resident of Iowa.

The citizens' aide shall be a citizen of the United States and a resident of the state of Iowa, and shall be qualified to analyze problems of law, administration and public policy.

[C73, 75, 77, 79, 81, §601G.4]
C93, §2C.4

2C.5 Term — removal.

The citizens' aide shall hold office for four years from the first day in July of the year of approval by the senate and the house of representatives, and until a successor is appointed by the legislative council, unless the citizens' aide can no longer perform the official duties, or is removed from office. The citizens' aide may at any time be removed from office by constitutional majority vote of the two houses of the general assembly or as provided by chapter 66. If a vacancy occurs in the office of citizens' aide, the deputy citizens' aide shall act as citizens' aide until the vacancy is filled by the legislative council.

[C73, 75, 77, 79, 81, §601G.5]
C93, §2C.5

2C.6 Deputy — assistant for penal agencies.

The citizens' aide shall designate one of the members of the staff as the deputy citizens' aide, with authority to act as citizens' aide when the citizens' aide is absent from the state or becomes disabled. The citizens' aide may delegate to members of the staff any of the citizens' aide's authority or duties except the duty of formally making recommendations to agencies or reports to the governor or the general assembly.

The citizens' aide shall appoint an assistant who shall be primarily responsible for investigating complaints relating to penal or correctional agencies.

[C73, 75, 77, 79, 81, §601G.6]
84 Acts, ch 1046, §1
C93, §2C.6

2C.7 Prohibited activities.

Neither the citizens' aide nor any member of the staff shall:

1. Hold another public office of trust or profit under the laws of this state other than the office of notary public.

2. Engage in other employment for remuneration with an agency against which a complaint may be filed under this chapter or that could create a conflict of interest or interfere in the performance of the person's duties under this chapter.

3. Knowingly engage in or maintain any business transactions with persons employed by agencies against whom complaints may be made under the provisions of this chapter.

4. Be actively involved in partisan affairs.

[C73, 75, 77, 79, 81, §601G.7]
84 Acts, ch 1046, §2
C93, §2C.7

2C.8 Closed files.

The citizens' aide may maintain secrecy in respect to all matters including the identities of the complainants or witnesses coming before the citizens' aide, except that the general assembly, any standing committee of the general assembly or the governor may require disclosure of any matter and shall have complete access to the records and files of the citizens' aide. The citizens' aide may conduct private hearings.

[C73, 75, 77, 79, 81, §601G.8]
C93, §2C.8

2C.9 Powers.

The citizens' aide may:

1. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any agency, without regard to the finality of the

administrative action, except that the citizens' aide shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency. A communication or receipt of information made pursuant to the powers prescribed in this chapter shall not be considered an ex parte communication as described in the provisions of section 17A.17.

2. Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of this chapter, determine the form, frequency, and distribution of the conclusions and recommendations of the citizens' aide.

3. Request and receive from each agency assistance and information as necessary in the performance of the duties of the office. Notwithstanding section 22.7, pursuant to an investigation the citizens' aide may examine any and all records and documents of any agency unless its custodian demonstrates that the examination would violate federal law or result in the denial of federal funds to the agency. Confidential documents provided to the citizens' aide by other agencies shall continue to maintain their confidential status. The citizens' aide is subject to the same policies and penalties regarding the confidentiality of the document as an employee of the agency. The citizens' aide may enter and inspect premises within any agency's control and may observe proceedings and attend hearings, with the consent of the interested party, including those held under a provision of confidentiality, conducted by any agency unless the agency demonstrates that the attendance or observation would violate federal law or result in the denial of federal funds to that agency. This subsection does not permit the examination of records or access to hearings and proceedings which are the work product of an attorney under section 22.7, subsection 4, or which are privileged communications under section 622.10.

4. Issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry. The citizens' aide, deputies, and assistants of the citizens' aide may administer oaths to persons giving testimony before them. If a witness either fails or refuses to obey a subpoena issued by the citizens' aide, the citizens' aide may petition the district court having jurisdiction for an order directing obedience to the subpoena. If the court finds that the subpoena should be obeyed, it shall enter an order requiring obedience to the subpoena, and refusal to obey the court order is subject to punishment for contempt.

5. Establish rules relating to the operation, organization, and procedure of the office of the citizens' aide. The rules are exempt from chapter 17A and shall be published in the Iowa administrative code.

[C73, 75, 77, 79, 81, §601G.9; 82 Acts, ch 1026, §1]
88 Acts, ch 1247, §1; 89 Acts, ch 296, §78
C93, §2C.9

2C.10 No charge for services.

No monetary or other charge shall be levied upon any person as a prerequisite to presentation of a complaint to the citizens' aide.

[C73, 75, 77, 79, 81, §601G.10]
C93, §2C.10

2C.11 Subjects for investigations.

An appropriate subject for investigation by the office of the citizens' aide is an administrative action that might be:

1. Contrary to law or regulation.
2. Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.
3. Based on a mistake of law or arbitrary in ascertainments of fact.
4. Based on improper motivation or irrelevant consideration.
5. Unaccompanied by an adequate statement of reasons. The citizens' aide may also be concerned with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur.

[C73, 75, 77, 79, 81, §601G.11]
C93, §2C.11

2C.12 Complaints investigated.

The citizens' aide may receive a complaint from any source concerning an administrative action. The citizens' aide shall conduct a suitable investigation into the administrative actions complained of unless the citizens' aide finds substantiating facts that:

1. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use.
2. The grievance pertains to a matter outside the citizens' aide power.
3. The complainant has no substantive or procedural interest which is directly affected by the matter complained about.
4. The complaint is trivial, frivolous, vexatious, or not made in good faith.
5. Other complaints are more worthy of attention.
6. The citizens' aide resources are insufficient for adequate investigation.
7. The complaint has been delayed too long to justify present examination of its merit.

The citizens' aide may decline to investigate a complaint, but shall not be prohibited from inquiring into the matter complained about or into related problems at some future time.

[C73, 75, 77, 79, 81, §601G.12]
C93, §2C.12

2C.13 No investigation — notice to complainant.

If the citizens' aide decides not to investigate, the complainant shall be informed of the reasons for the decision. If the citizens' aide decides to investigate, the complainant and the agency shall be notified of the decision. After completing consideration of a complaint, whether or not it has been investigated, the citizens' aide shall without delay inform the complainant of the fact, and if appropriate, shall inform the administrative agency involved. The citizens' aide shall on request of the complainant, and as appropriate, report the status of the investigation to the complainant.

[C73, 75, 77, 79, 81, §601G.13; 82 Acts, ch 1026, §2]

C93, §2C.13

2C.14 Institutionalized complainants.

A letter to the citizens' aide from a person in a correctional institution, a hospital, or other institution under the control of an administrative agency shall be immediately forwarded, unopened to the citizens' aide by the institution where the writer of the letter is a resident. A letter from the citizens' aide to such a person shall be immediately delivered, unopened to the person.

[C73, 75, 77, 79, 81, §601G.14]

C93, §2C.14

2C.15 Reports critical of agency or officer.

Before announcing a conclusion or recommendation that criticizes an agency or any officer or employee, the citizens' aide shall consult with that agency, officer or employee, and shall attach to every report sent or made under the provisions of this chapter a copy of any unedited comments made by or on behalf of the officer, employee, or agency.

[C73, 75, 77, 79, 81, §601G.15]

C93, §2C.15

2C.16 Recommendations to agency.

If, having considered a complaint and whatever material the citizens' aide deems pertinent, the citizens' aide finds substantiating facts that:

1. A matter should be further considered by the agency;
2. An administrative action should be modified or canceled;
3. A rule on which an administrative action is based should be altered;
4. Reasons should be given for an administrative action; or
5. Any other action should be taken by the agency, the citizens' aide shall state the recommendations to the agency. If the citizens' aide requests, the agency shall, within twenty working days notify the citizens' aide of any action taken on the recommendations or the reasons for not complying with them.

If the citizens' aide believes that an administrative action has occurred because of laws of which results are unfair or otherwise objectionable, the citizens' aide shall notify the general assembly concerning desirable statutory change.

[C73, 75, 77, 79, 81, §601G.16]

C93, §2C.16

2C.17 Publication of conclusions.

The citizens' aide may publish the conclusions, recommendations, and suggestions and transmit them to the governor, the general assembly or any of its committees. When publishing an opinion adverse to an administrative agency or official the citizens' aide shall, unless excused by the agency or official affected, include with the opinion any unedited reply made by the agency.

Any conclusions, recommendations, and suggestions so published may at the same time be made available to the news media or others who may be concerned.

[C73, 75, 77, 79, 81, §601G.17]

C93, §2C.17

2C.18 Report to general assembly.

The citizens' aide shall by April 1 of each year submit an economically designed and reproduced report to the general assembly and to the governor concerning the exercise of the citizens' aide functions during the preceding calendar year. In discussing matters with which the citizens' aide has been concerned, the citizens' aide shall not identify specific persons if to do so would cause needless hardship. If the annual report criticizes a named agency or official, it shall also include unedited replies made by the agency or official to the criticism, unless excused by the agency or official affected.

[C73, 75, 77, 79, 81, §601G.18; 82 Acts, ch 1026, §3]

C93, §2C.18

2C.19 Disciplinary action recommended.

If the citizens' aide believes that any public official, employee or other person has acted in a manner warranting criminal or disciplinary proceedings, the citizens' aide shall refer the matter to the appropriate authorities.

[C73, 75, 77, 79, 81, §601G.19]

C93, §2C.19

2C.20 Immunities.

No civil action, except removal from office as provided in chapter 66, or proceeding shall be commenced against the citizens' aide or any member of the staff for any act or omission performed pursuant to the provisions of this chapter unless the act or omission is actuated by malice or is grossly negligent, nor shall the citizens' aide or any member of the staff be compelled to testify in any court

with respect to any matter involving the exercise of the citizens' aide's official duties except as may be necessary to enforce the provisions of this chapter.

[C73, 75, 77, 79, 81, §601G.20]
C93, §2C.20

2C.21 Witnesses.

A person required by the citizens' aide to provide information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance has been required in the district courts of this state. Officers and employees of an agency shall not be entitled to such fees and allowances. A person who, with or without service of compulsory process, provides oral or documentary information requested by the citizens' aide shall be accorded the same privileges and immunities as are extended to witnesses in the courts of this state, and shall also be entitled to be accompanied and advised by counsel while being questioned.

[C73, 75, 77, 79, 81, §601G.21]
C93, §2C.21

2C.22 Penalties.

A person who willfully obstructs or hinders the lawful actions of the citizens' aide or the citizens' aide's staff, or who willfully misleads or attempts to mislead the citizens' aide in the citizens' aide's inquiries, shall be guilty of a simple misdemeanor.

[C73, 75, 77, 79, 81, §601G.22]
C93, §2C.22

2C.23 Citation.

This chapter shall be known and may be cited as the *"Iowa Citizens' Aide Act"*.

[C73, 75, 77, 79, 81, §601G.23]
C93, §2C.23

CHAPTER 2D

INTERNATIONAL RELATIONS

2D.1 International relations advisory council.
2D.2 International relations committee — protocol.
2D.3 Legislative branch protocol officer.
2D.4 Executive branch protocol officer.

2D.1 International relations advisory council.

1. An international relations advisory council is created to provide coordination of state and local international relations activities, through both the public and private sectors, and to provide recommendations to the governor and to the general assembly relating to international relations activities.

2. The international relations advisory council shall consist of all of the following members:

a. The cochairpersons of the international relations committee established by the legislative council, or their designees.

b. Two members of the senate who are members of the international relations committee of the legislative council, appointed by the majority leader of the senate, after consultation with the president of the senate and the minority leader of the senate, and two members of the house of representatives who are members of the international relations committee of the legislative council, appointed by the speaker of the house, after consultation with the majority leader and the minority leader of the house of representatives.

c. The director of the department of economic development, or the director's designee.

d. The secretary of agriculture, or the secretary's designee.

e. The director of the department of general services, or the director's designee.

f. The director of the department of workforce development, or the director's designee.

g. The director of the department of cultural affairs, or the director's designee.

h. The director of the department of education, or the director's designee.

i. The director of public health, or the director's designee.

j. Representatives of agriculture, private business and industry, international programs provided through universities and colleges located in this state, Iowa sister states, the refugee services center of the department of human services, and others, selected by the legislative council, based upon recommendations made by the international relations committee of the legislative council.

3. The cochairpersons of the international relations committee of the legislative council shall serve as cochairpersons of the advisory council.

4. The executive branch protocol officer and the legislative branch protocol officer shall act in a consultative capacity to the advisory council. The legislative branch protocol officer shall provide staff support to the advisory council.

5. The advisory council shall do all of the following:

a. Create a statewide network to coordinate

international relations activities involving the executive and legislative branches, business and industry, public and private educational institutions, and other entities involved in promoting international relations. The network shall include provision of information to the public via electronic access utilizing the most advanced and cost-effective and efficient technology.

b. Coordinate existing resources, provided through state agencies and other entities with international relations expertise, to facilitate international relations activities. Resources shall be utilized in a manner which is most appropriate to the type of international relations activity involved.

c. Provide continuity, over time, at the state level in the development and enhancement of partnerships with international colleagues.

d. Develop a comprehensive, state international relations policy and define the state's role in the international relations arena.

e. Coordinate efforts with the executive branch and legislative branch protocol officers.

f. Sponsor an annual state summit on international relations capacity to promote international relations activities in a variety of arenas including but not limited to international market development and civic, cultural, and educational opportunities. The summit should incorporate input from city, county, and state entities from both the public and private sectors.

g. Inform and educate the public, workforce, students, businesses, and state policymakers regarding the importance of international involvement in both economic and noneconomic international relations activities.

h. Compile reference materials and a listing of resources to be available to policymakers and the public in preparing for international relations activities and travel. The compiled materials and listing of resources shall be provided via electronic access utilizing the most advanced and cost-effective and efficient technology.

2000 Acts, ch 1102, §1

2D.2 International relations committee — protocol.

1. The international relations committee of the legislative council shall establish and utilize protocol for visitors to the capitol, who may include state, national, or international visitors. The protocol established shall include provisions relating to transportation of visitors to and from the capitol, the designation of an official point of entry and a receiving area for visitors, security provisions, official introduction of visitors to the general assembly while the general assembly is in session, the provision of gifts to visitors, and other provisions appropriate to the visitor's position.

2. The international relations committee shall work with the executive branch protocol officer and with the legislative branch protocol officer in developing the protocol and in coordinating the visits of state, national, and international visitors to the capitol.

2000 Acts, ch 1102, §2

2D.3 Legislative branch protocol officer.

The legislative service bureau shall employ a legislative branch protocol officer to coordinate activities related to state, national, and international visitors to the state capitol or with an interest in the general assembly, and related to travel of members of the general assembly abroad. The protocol officer shall serve in a consultative capacity and shall provide staff support to the international relations advisory council. The protocol officer shall also work with the executive branch protocol officer to coordinate state, national, and international relations activities. The legislative branch protocol officer shall submit periodic reports to the international relations committee of the legislative council regarding the visits of state, national, and international visitors and regarding international activities.

2000 Acts, ch 1102, §3; 2000 Acts, ch 1232, §41

2D.4 Executive branch protocol officer.

The lieutenant governor, or the lieutenant governor's designee, shall be the executive branch protocol officer. The protocol officer shall serve in a consultative capacity to the international relations advisory council. The protocol officer shall work with the international relations committee of the legislative council and the legislative branch protocol officer in developing and implementing protocol for state, national, and international visitors to the state capitol and in improving coordination between the legislative and executive branches in international relations activities.

2000 Acts, ch 1102, §4

CHAPTER 3

STATUTES AND RELATED MATTERS

3.1 Form of bills.
3.2 Bill drafting instructions.
3.3 Headnotes and historical references.
3.4 Bills — approval — passage over veto.
3.5 Failure of governor to return bill.
3.6 Acts — where deposited — nullification resolutions.
3.7 Effective dates of Acts and resolutions.

3.8 Publication of Acts. Repealed by 87 Acts, ch 1, §2.
3.9 Designation of papers. Repealed by 87 Acts, ch 1, §2.
3.10 Acts effective — certification. Repealed by 87 Acts, ch 1, §2.
3.11 Private Acts — when effective.
3.12 Appropriations — effective for fiscal year.
3.13 Pro rata disbursement of appropriations.
3.14 Certain appropriations prohibited.
3.15 Copies of Acts effective by publication. Repealed by 87 Acts, ch 1, §2.
3.16 Cost of publishing. Repealed by 87 Acts, ch 1, §2.
3.17 to 3.19 Reserved.
3.20 Directions to future general assemblies.

3.1 Form of bills.

Bills designed to amend, revise, codify, or repeal a law:

1. Shall refer to the numbers of the sections or chapters of the Code or Code Supplement to be amended or repealed, but it is not necessary to refer to the sections or chapters in the title.

2. Shall refer to the session of the general assembly and the sections and chapters of the Acts to be amended if the bill relates to a section or sections of an Act not appearing in the Code or codified in a supplement to the Code.

3. All references to statutes shall be expressed in numerals, and if omitted the Code editor in preparing Acts for publication in the session laws shall supply the numerals.

4. The title to a bill shall contain a brief statement of the purpose of the bill, however all detail matters properly connected with the subject so expressed may be omitted from the title.

[C73, §38; C97, §41; S13, §41-a, -b; C24, 27, 31, 35, 39, §**47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.1]

84 Acts, ch 1067, §2; 90 Acts, ch 1168, §2

Form and style of printing bills, §7A.18

3.2 Bill drafting instructions.

The legislative council shall, in consultation with the director of the legislative service bureau and the Code editor, promulgate rules and instructions for the drafting of legislative bills and resolutions not otherwise in conflict with the provisions of law and the rules of the senate and the house.

[C71, 73, 75, 77, 79, 81, §3.2]

3.3 Headnotes and historical references.

Proper headnotes may be placed at the beginning of a section of a bill, and at the end of the section there may be placed a reference to the section number of the Code, or any session law from which the matter of the bill was taken, but, except as provided in the Uniform Commercial Code, section 554.1109, neither said headnotes nor said historical references shall be considered as a part of the law as enacted.

[C24, 27, 31, 35, 39, §**49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.3]

3.4 Bills — approval — passage over veto.

If the governor approves a bill, the governor shall sign and date it; if the governor returns it with objections and it afterwards passes as provided in the Constitution, a certificate, signed by the presiding officer of each house in the following form, shall be endorsed thereon or attached thereto: "This bill (or this item of an appropriation bill, as the case may be), having been returned by the governor, with objections, to the house in which it originated, and, after reconsideration, having again passed both houses by yeas and nays by a vote of two-thirds of the members of each house, has become a law this . . . . . day of . . . . . ".

An *"appropriation bill"* means a bill which has as its primary purpose the making of appropriations of money from the public treasury.

[C51, §16, 17; R60, §19, 20; C73, §28, 29; C97, §32; C24, 27, 31, 35, 39, §**50;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.4]

86 Acts, ch 1245, §2011

Constitutional provision, (codified) Art. III, §16

3.5 Failure of governor to return bill.

When a bill has passed the general assembly, and is not returned by the governor within three days as provided in the Constitution, it shall be authenticated by the secretary of state endorsing thereon: "This bill, having remained with the governor three days (Sunday excepted), the general assembly being in session, has become a law this . . . . . day of . . . . . , ... ,
. . . . . ,
Secretary of State."

[C51, §18; R60, §21; C73, §30; C97, §33; C24, 27, 31, 35, 39, §**51;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.5]

Constitutional provision, (codified) Art. III, §16

3.6 Acts — where deposited — nullification resolutions.

The original Acts of the general assembly shall be deposited with and kept by the secretary of state.

The secretary of state shall submit to the administrative code editor a copy of any resolution nullifying an administrative rule which is passed by the general assembly pursuant to Article III, sec-

tion 40 of the Constitution of the State of Iowa.

[C51, §19; R60, §22; C73, §31; C97, §34; C24, 27, 31, 35, 39, §**52;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.6]

91 Acts, ch 42, §1

3.7 Effective dates of Acts and resolutions.

1. All Acts and resolutions of a public nature passed at regular sessions of the general assembly shall take effect on the first day of July following their passage, unless some other specified time is provided in an Act or resolution.

2. All Acts and resolutions of a public nature which are passed prior to July 1 at a regular session of the general assembly and which are approved by the governor on or after July 1, shall take effect forty-five days after approval. However, this subsection shall not apply to Acts provided for in section 3.12 or Acts and resolutions which specify when they take effect.

3. All Acts and resolutions passed at a special session of the general assembly shall take effect ninety days after adjournment of the special session unless a different effective day is stated in an Act or resolution.

4. An Act which is effective upon enactment is effective upon the date of signature by the governor; or if the governor fails to sign it and returns it with objections, upon the date of passage by the general assembly after reconsideration as provided in Article III, section 16 of the Constitution of the State of Iowa; or if the governor fails to sign or return an Act submitted during session, but prior to the last three days of a session, on the fourth day after it is presented to the governor for the governor's approval. An Act which has an effective date which is dependent upon the time of enactment shall have the time of enactment determined by the standards of this subsection.

5. A concurrent or joint resolution which is effective upon enactment is effective upon the date of final passage by both chambers of the general assembly, except that such a concurrent or joint resolution requiring the approval of the governor under section 262A.4 or otherwise requiring the approval of the governor is effective upon the date of such approval. A resolution which is effective upon enactment is effective upon the date of passage. A concurrent or joint resolution or resolution which has an effective date which is dependent upon the time of enactment shall have the time of enactment determined by the standards of this subsection.

6. Unless retroactive effectiveness is specifically provided for in an Act or resolution, an Act or resolution which is enacted after an effective date provided in the Act or resolution shall take effect upon the date of enactment.

7. Proposed legalizing Acts shall be published prior to passage as provided in chapter 585.

8. An Act or resolution under this section is also subject to the applicable provisions of sections 16 and 17 of Article III of the Constitution of the State of Iowa.

[C51, §22; R60, §25; C73, §34; C97, §37; C24, 27, 31, 35, 39, §**53;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.7]

87 Acts, ch 1, §1

Amendment by 87 Acts, ch 1, §1, effective February 19, 1987, applies to all Acts and resolutions of 1987 regular session and subsequent sessions; 87 Acts, ch 1, §3, 4

Acts of private nature, §3.11

Constitution (codified), Art. III, §26

3.8 Publication of Acts. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.9 Designation of papers. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.10 Acts effective — certification. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.11 Private Acts — when effective.

Acts of a private nature which do not prescribe the time when they take effect, shall do so on the thirtieth day next after they have been approved by the governor, or endorsed as provided in this chapter.

[C51, §20; R60, §23; C73, §32; C97, §35; C24, 27, 31, 35, 39, §**57;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.11]

3.12 Appropriations — effective for fiscal year.

All annual appropriations shall be for the fiscal year beginning with July 1 and ending with June 30 of the succeeding year and when such appropriations are made payable quarterly, the quarters shall end with September 30, December 31, March 31, and June 30; but nothing in this section shall be construed as increasing the amount of any annual appropriation.

[S13, §116-a; C24, 27, 31, 35, 39, §**58;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.12]

3.13 Pro rata disbursement of appropriations.

Annual appropriations shall be disbursed in accordance with the provisions of the Acts granting the same pro rata from the time such Acts shall take effect up to the first day of the succeeding quarter as provided in section 3.12.

[S13, §116-b; C24, 27, 31, 35, 39, §**59;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.13]

3.14 Certain appropriations prohibited.

No appropriations shall be made to any institution not wholly under the control of the state.

[S13, §116-c1; C24, 27, 31, 35, 39, §**60;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §3.14]

Constitution, Art. III, §31

3.15 Copies of Acts effective by publication. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.16 Cost of publishing. Repealed by 87 Acts, ch 1, § 2. See § 3.7.

3.17 to 3.19 Reserved.

3.20 Directions to future general assemblies.

The following principles shall be used by the general assembly in determining whether a procedure should be established and the type of procedure which should be established, for the state licensure of an occupation or profession:

1. The state shall engage in licensing procedures for those professions and occupations where it believes it can assure an objective and measurable level of competence concerning the public health, safety, and well-being which other sources cannot effectively provide.

2. The examining board shall pursue a meaningful examination and enforcement procedure which upholds the level of competency of the licensee to insure that the public interest is protected.

[C75, 77, 79, 81, §3.20]

CHAPTER 4

CONSTRUCTION OF STATUTES

4.1 Rules.
4.2 Common law rule of construction.
4.3 References to other statutes.
4.4 Presumption of enactment.
4.5 Prospective statutes.
4.6 Ambiguous statutes — interpretation.
4.7 Conflicts between general and special statutes.
4.8 Irreconcilable statutes.
4.9 Official copy prevails.
4.10 Re-enactment of statutes — continuation.
4.11 Conflicting amendments to same statutes — interpretation.
4.12 Acts or statutes are severable.
4.13 General savings provision.
4.14 General rules of construction for English language laws.

4.1 Rules.

In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute:

1. *Appellate court.* The term *"appellate court"* means and includes both the supreme court and the court of appeals. Where an act, omission, right, or liability is by statute conditioned upon the filing of a decision by an appellate court, the term means any final decision of either the supreme court or the court of appeals.

2. *"Child"* includes child by adoption.

3. *Clerk — clerk's office.* The word *"clerk"* means clerk of the court in which the action or proceeding is brought or is pending; and the words *"clerk's office"* mean the office of that clerk.

4. *Consanguinity and affinity.* Degrees of consanguinity and affinity shall be computed according to the civil law.

5. *"Court employee"* and *"employee of the judicial branch"* include every officer or employee of the judicial branch except a judicial officer.

6. *Deed — bond — indenture — undertaking.* The word *"deed"* is applied to an instrument conveying lands, but does not imply a sealed instrument; and the words *"bond"* and *"indenture"* do not necessarily imply a seal, and the word *"undertaking"* means a promise or security in any form.

7. *Executor — administrator.* The term *"executor"* includes administrator, and the term *"administrator"* includes executor, where the subject matter justifies such use.

8. *Figures and words.* If there is a conflict between figures and words in expressing a number, the words govern.

9. *Highway — road.* The words *"highway"* and *"road"* include public bridges, and may be held equivalent to the words *"county way"*, *"county road"*, *"common road"*, and *"state road"*.

9A. *"Internet"* means the federated international system that is composed of allied electronic communication networks linked by telecommunication channels, that uses standardized protocols, and that facilitates electronic communication services, including but not limited to use of the world wide web; the transmission of electronic mail or messages; the transfer of files and data or other electronic information; and the transmission of voice, image, and video.

10. *Issue.* The word *"issue"* as applied to descent of estates includes all lawful lineal descendants.

11. *Joint authority.* Words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them, unless it be otherwise expressed in the Act giving the authority.

12. *"Judicial officer"* means a supreme court justice, a judge of the court of appeals, a district judge, a district associate judge, an associate juvenile judge, an associate probate judge, or a magistrate. The term also includes a person who is temporarily serving as a justice, judge, or magistrate as permitted by section 602.1612 or 602.9206.

13. *Land — real estate.* The word *"land"* and the phrases *"real estate"* and *"real property"* include lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal.

13A. *"Livestock"* includes but is not limited to an animal classified as an ostrich, rhea, or emu.

14. *"Magistrate"* means a judicial officer appointed under chapter 602, article 6, part 4.

15. Reserved.

16. *Month — year — A.D.* The word *"month"* means a calendar month, and the word *"year"* and the abbreviation *"A.D."* are equivalent to the expression *"year of our Lord"*.

17. *Number and gender.* Unless otherwise specifically provided by law the singular includes the plural, and the plural includes the singular. Words of one gender include the other genders.

18. *Numerals — figures.* The Roman numerals and the Arabic figures are to be taken as parts of the English language.

19. *Oath — affirmation.* The word *"oath"* includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word *"swear"* includes *"affirm"*.

20. *Person.* Unless otherwise provided by law, *"person"* means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

21. *Personal property.* The words *"personal property"* include money, goods, chattels, evidences of debt, and things in action.

21A. *Persons with mental illness.* The words *"persons with mental illness"* include persons with psychosis, persons who are severely depressed, and persons with any type of mental disease or mental disorder, except that mental illness does not refer to mental retardation as defined in section 222.2, or to insanity, diminished responsibility, or mental incompetency as defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules. A person who is hospitalized or detained for treatment of mental illness shall not be deemed or presumed to be incompetent in the absence of a finding of incompetence made pursuant to section 229.27.

22. *Population.* The word *"population"* where used in this Code or any statute means the population shown by the latest preceding certified federal census, unless otherwise specifically provided.

23. *"Preceding"* and *"following"* when used by way of reference to a chapter or other part of a statute mean the next preceding or next following chapter or other part.

24. *Property.* The word *"property"* includes personal and real property.

25. *Quorum.* A quorum of a public body is a majority of the number of members fixed by statute.

26. *Repeal — effect of.* The repeal of a statute, after it becomes effective, does not revive a statute previously repealed, nor affect any right which has accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the statute repealed.

27. *"Rule"* includes *"regulation"*.

28. *Seal.* Where the seal of a court, public office or officer, or public or private corporation, may be required to be affixed to any paper, the word *"seal"* shall include an impression upon the paper alone, as well as upon wax or a wafer affixed thereto or an official ink stamp if a notarial seal.

29. *Series.* If a statute refers to a series of numbers or letters, the first and the last numbers or letters are included.

30. *Shall, must, and may.* Unless otherwise specifically provided by the general assembly, whenever the following words are used in a statute enacted after July 1, 1971, their meaning and application shall be:

a. The word *"shall"* imposes a duty.

b. The word *"must"* states a requirement.

c. The word *"may"* confers a power.

31. *Sheriff.* The term *"sheriff"* may be extended to any person performing the duties of the sheriff, either generally or in special cases.

32. *State.* The word *"state"*, when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words *"United States"* may include the said district and territories.

33. *Tense.* Words in the present tense include the future.

34. *Time — legal holidays.* In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. However, when by the provisions of a statute or rule prescribed under authority of a statute, the last day for the commencement of an action or proceedings, the filing of a pleading or motion in a pending action or proceedings, or the perfecting or filing of an appeal from the decision or award of a court, board, commission, or official falls on a Saturday, a Sunday, a day on which the office of the clerk of

the district court is closed in whole or in part pursuant to the authority of the supreme court, the first day of January, the third Monday in January, the twelfth day of February, the third Monday in February, the last Monday in May, the fourth day of July, the first Monday in September, the eleventh day of November, the fourth Thursday in November, the twenty-fifth day of December, and the following Monday when any of the foregoing named legal holidays fall on a Sunday, and any day appointed or recommended by the governor of Iowa or the president of the United States as a day of fasting or thanksgiving, the time shall be extended to include the next day which the office of the clerk of the court or the office of the board, commission, or official is open to receive the filing of a commencement of an action, pleading or a motion in a pending action or proceeding, or the perfecting or filing of an appeal.

35. *"United States"* includes all the states.

36. The word *"week"* means seven consecutive days.

37. *Will.* The word *"will"* includes codicils.

38. *Words and phrases.* Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such meaning.

39. *Written — in writing — signature.* The words *"written"* and *"in writing"* may include any mode of representing words or letters in general use, and include an electronic record as defined in section 554D.103. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. *"Signature"* includes an electronic or digital signature as defined in section 554D.103. If a person is unable due to a physical disability to make a written signature or mark, that person may substitute either of the following in lieu of a signature required by law:

a. The name of the person with a disability written by another upon the request and in the presence of the person with a disability.

b. A rubber stamp reproduction of the name or facsimile of the actual signature when adopted by the person with a disability for all purposes requiring a signature and then only when affixed by that person or another upon request and in the presence of the person with a disability.

40. The word *"year"* means twelve consecutive months.

[C51, §26, 2513; R60, §29, 4121, 4123, 4124; C73, §45; C97, §48; C24, 27, 31, 35, 39, §**63;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §4.1]

83 Acts, ch 186, §10002, 10201; 87 Acts, ch 115, §3; 92 Acts, ch 1151, §1; 93 Acts, ch 9, §1; 95 Acts, ch 43, §1; 96 Acts, ch 1129, §1; 96 Acts, ch 1153, §1; 98 Acts, ch 1047, §1; 99 Acts, ch 146, §42; 2000 Acts, ch 1189, §24; 2002 Acts, ch 1119, §106; 2002 Acts, ch 1137, §1, 71

Similar provision on population, §9F.6
Transition provisions for court reorganization in chapter 602, article 11
NEW subsection 9A
Subsection 21A amended

4.2 Common law rule of construction.

The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. Its provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice.

[C51, §2503; R60, §2622; C73, §2528; C97, §3446; C24, 27, 31, 35, 39, §**64;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §4.2]

4.3 References to other statutes.

Any statute which adopts by reference the whole or a portion of another statute of this state shall be construed to include subsequent amendments of the statute or the portion thereof so adopted by reference unless a contrary intent is expressed.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §4.3]

4.4 Presumption of enactment.

In enacting a statute, it is presumed that:

1. Compliance with the Constitutions of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over any private interest.

[C73, 75, 77, 79, 81, §4.4]

4.5 Prospective statutes.

A statute is presumed to be prospective in its operation unless expressly made retrospective.

[C73, 75, 77, 79, 81, §4.5]

4.6 Ambiguous statutes — interpretation.

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble or statement of policy.

[C73, 75, 77, 79, 81, §4.6]

4.7 Conflicts between general and special statutes.

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.

[C73, 75, 77, 79, 81, §4.7]

Intent of general assembly that §7E.6 govern compensation of members of boards, committees, commissions, or councils; see §7E.6(8)

4.8 Irreconcilable statutes.

If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment* by the general assembly prevails. If provisions of the same Act are irreconcilable, the provision listed last in the Act prevails.

[C73, 75, 77, 79, 81, §4.8]

*See Attorney General opinion, May 16, 1973

Intent of general assembly that §7E.6 govern compensation of members of boards, committees, commissions, or councils; see §7E.6(8)

4.9 Official copy prevails.

If the language of the official copy of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the official copy prevails.

[C73, 75, 77, 79, 81, §4.9]

4.10 Re-enactment of statutes — continuation.

A statute which is re-enacted, revised or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute.

[C73, 75, 77, 79, 81, §4.10]

4.11 Conflicting amendments to same statutes — interpretation.

If amendments to the same statute are enacted at the same or different sessions of the general assembly, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment by the general assembly prevails.

[C73, 75, 77, 79, 81, §4.11]

4.12 Acts or statutes are severable.

If any provision of an Act or statute or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act or statute which can be given effect without the invalid provision or application, and to this end the provisions of the Act or statute are severable.

[C73, 75, 77, 79, 81, §4.12]

4.13 General savings provision.

The re-enactment, revision, amendment, or repeal of a statute does not affect:

1. The prior operation of the statute or any prior action taken thereunder;
2. Any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder;
3. Any violation thereof or penalty, forfeiture, or punishment incurred in respect thereto, prior to the amendment or repeal; or
4. Any investigation, proceeding, or remedy in respect of any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

If the penalty, forfeiture, or punishment for any offense is reduced by a re-enactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment if not already imposed shall be imposed according to the statute as amended.

[C73, 75, 77, 79, 81, §4.13]

4.14 General rules of construction for English language laws.

It is presumed that English language requirements in the public sector are consistent with the laws of Iowa and any ambiguity in the English language text of the laws of Iowa shall be resolved, in accordance with the ninth and tenth amendments of the Constitution of the United States, not to deny or disparage rights retained by the people, and to reserve powers to the states or to the people.

2002 Acts, ch 1007, §2

NEW section

CHAPTER 5

UNIFORM STATE LAWS

5.1 Commission on uniform laws — vacancies.
5.2 Tenure — compensation — expenses.
5.3 Organization.
5.4 Duties — reports.

5.1 Commission on uniform laws — vacancies.

The governor shall appoint three commissioners, each of whom shall be a member of the bar of this state, in good standing, who shall constitute and be known as the commission on uniform state laws, and upon the death, resignation, or refusal to serve of any of the commissioners so appointed, the governor shall make an appointment to fill the vacancy so caused, such new appointment to be for the unexpired balance of the term of the original appointee.

[C24, 27, 31, 35, 39, §**65;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §5.1]

5.2 Tenure — compensation — expenses.

Said commissioners shall hold office for a term of four years, and until their successors are duly appointed, but nothing herein contained shall be construed to render a commissioner who has faithfully performed the duties of commissioner ineligible for reappointment. No member of said commission shall receive any compensation for services as a commissioner, but each commissioner shall be entitled to receive actual disbursements for expenses in performing the duties of the office.

[C24, 27, 31, 35, 39, §**66;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §5.2]

5.3 Organization.

The commissioners shall meet at the state capitol at least once in two years and shall organize by the election of one of their number as chairperson and another as secretary, who shall hold their respective offices for a term of two years and until their successors are elected and qualified.

[C24, 27, 31, 35, 39, §**67;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §5.3]

5.4 Duties — reports.

The commissioners shall attend the meeting of the national conference of commissioners on uniform state laws, or arrange for the attendance of at least one of their number at the national conference, and both in and out of the national conference they shall do all in their power to promote uniformity in state laws, upon all subjects where uniformity is deemed desirable and practicable. The commission shall report to the legislative council of the general assembly, an account of its transactions, and its advice and recommendations for legislation. This report shall be printed for presentation to the council. The council shall submit the report to the speaker of the house and president of the senate who shall forward it to the appropriate committees of the general assembly for further study. The commission shall bring about as far as practicable the uniform judicial interpretation of all uniform laws and generally devise and recommend additional legislation or other or further course of action as shall tend to accomplish the purposes of this chapter.

[C24, 27, 31, 35, 39, §**68;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §5.4]

89 Acts, ch 296, §1

SUBTITLE 3

EMINENT DOMAIN

CHAPTER 6

CONSTITUTIONAL AMENDMENTS AND PUBLIC MEASURES

Transferred to chapter 49A

CHAPTER 6A

EMINENT DOMAIN LAW (CONDEMNATION)

This chapter not enacted as a part of this title; transferred from chapter 471 in Code 1993

6A.1 Exercise of power by state.
6A.2 On behalf of federal government.
6A.3 Conveyance by state to federal government.
6A.4 Right conferred.
6A.5 Right to purchase.
6A.6 Railways.
6A.7 Cemetery lands.
6A.8 Limitation on right of way.
6A.9 Additional purposes.
6A.10 Initiating railroad condemnation.
6A.11 Lands for water stations — how set aside.
6A.12 Access to water — overflow limited.
6A.13 Change in streams.
6A.14 Unlawful diversion prohibited.
6A.15 Reserved.
6A.16 Right to condemn abandoned right-of-way.
6A.17 Reserved.
6A.18 No double damages.
6A.19 Interpretative clause.
6A.20 Description of land furnished.
6A.21 Condemnation of agricultural land — definitions.

6A.1 Exercise of power by state.

Proceedings may be instituted and maintained by the state of Iowa, or for the use and benefit thereof, for the condemnation of such private property as may be necessary for any public improvement which the general assembly has authorized to be undertaken by the state, and for which an available appropriation has been made. The executive council shall institute and maintain such proceedings in case authority to so do be not otherwise delegated.

[C73, §1271; C97, §2024; S13, §2024-d; C24, 27, 31, 35, 39, §**7803;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.1]

C93, §6A.1

State parks and highways connecting therewith, §461A.7, 461A.8

6A.2 On behalf of federal government.

The executive council may institute and maintain such proceedings when private property is necessary for any use of the government of the United States.

[S13, §2024-a; C24, 27, 31, 35, 39, §**7804;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.2]

C93, §6A.2

Condemnation by federal government, §1.4

6A.3 Conveyance by state to federal government.

When land or any easement therein is condemned by the state for the use and benefit of the United States, the governor, after the land has been finally acquired, shall have power to convey, to the United States, the easement or lands so acquired and all rights of the state therein.

[S13, §2024-b; C24, 27, 31, 35, 39, §**7805;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.3]

C93, §6A.3

6A.4 Right conferred.

The right to take private property for public use is hereby conferred:

1. *Counties.* Upon all counties for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon counties.

2. *Owners of land without a way to the land.* Upon the owner or lessee of lands, which

have no public or private way to the lands, for the purpose of providing a public way, not exceeding forty feet in width, which will connect with an existing public road. The condemned public way shall be located on a division, subdivision or *"forty"* line, or immediately adjacent thereto, and along the line which is the nearest feasible route to an existing public road, or along a route established for a period of ten years or more by an easement of record or by use and travel to and from the property by the owner and the general public. The public way shall not interfere with buildings, orchards, or cemeteries. When passing through enclosed lands, the public way shall be fenced on both sides by the condemner upon request of the owner of the condemned land. The condemner or the condemner's assignee, shall provide easement for access to the owner of property severed by the condemnation. The public way shall be maintained by the condemner or the condemner's assignee, and shall not be considered any part of the primary or secondary road systems.

A public way condemned under this subsection shall not be considered an existing public road in subsequent condemnations to provide a public way for access to an existing public road.

3. *Owners of mineral lands.* Upon all owners, lessees, or possessors of land, for a railway right of way thereto not exceeding one hundred feet in width and located wherever necessary or practical, when such lands have no railway thereto and contain coal, stone, gravel, lead, or other minerals and such railway is necessary in order to reach and operate any mine, quarry, or gravel bed on said land and transport the products thereof to market. Such right of way shall not interfere with buildings, orchards, or cemeteries, and when passing through enclosed lands, fences shall be built and maintained on both sides thereof by the party condemning the land and by that party's assignees. The jury, in the assessment of damages, shall consider the fact that a railway is to be constructed thereon.

4. *Cemetery associations.* Upon any private cemetery or cemetery association which is incorporated under the laws of this state relating to corporations not for pecuniary profit, and having its cemetery located outside the limits of a city, for the purpose of acquiring necessary grounds for cemetery use or reasonable additions thereto. The right granted in this subsection shall not be exercised until the board of supervisors, of the county in which the land sought to be condemned is located, has, on written application and hearing, on such reasonable notice to all interested parties as it may fix, found that the land, describing it, sought to be condemned, is necessary for cemetery purposes. The association shall pay all costs attending such hearing.

5. *Subdistricts of soil and water conservation districts.* Upon a subdistrict of a soil and water conservation district for land or rights or interests in the land as reasonable and necessary to carry out the purposes of the subdistrict.

6. *Cities.* Upon all cities for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon cities.

1. [S13, §2024-f; C24, 27, 31, 35, 39, §**7806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4; 81 Acts, ch 117, §1084]

2. [C97, §2028; S13, §2028; C24, 27, 31, 35, 39, §**7806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4]

3. [C97, §2028, 2031; S13, §2028; C24, 27, 31, 35, 39, §**7806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4]

4. [S13, §1644-a – e; C24, 27, 31, 35, 39, §**7806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4]

5. [C62, 66, 71, 73, 75, 77, 79, 81, S81, §471.4]

6. [R60, §1064; C73, §464, 470, 474; C97, §722, 880, 881; S13, §722, 729-b, 741-s; SS15, §741-d, 879-t, 880, 881; C24, 27, 31, 35, 39, §**6134, 6195 – 6197, 6740;** C46, §397.8, 403.1 – 403.3; C50, §391A.3, 397.8, 403.1 – 403.3, 420.51; C54, 62, 66, 71, 73, §368.37, 397.8; C75, 77, 79, 81, S81, §471.4]

83 Acts, ch 67, §1; 87 Acts, ch 23, §55

C93, §6A.4

6A.5 Right to purchase.

Whenever the power to condemn private property for a public use is granted to any officer, board, commission, or other official, or to any county, township, or municipality, such grant shall, unless otherwise declared, be construed as granting authority to the officer, board, or official body having jurisdiction over the matter, to acquire, at its fair market value, and from the parties having legal authority to convey, such right as would be acquired by condemnation.

[R60, §1317; C73, §1244, 1247; C97, §1999, 2002, 2014, 2029; S13, §1644-a; C24, 27, 31, 35, 39, §**7807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.5]

C93, §6A.5

6A.6 Railways.

The Iowa railway finance authority or any railway corporation, may acquire by condemnation property as necessary for the location, construction, and convenient use of a railway. The Iowa railway finance authority may acquire fee title or a lesser property interest. The authority shall offer to sell its interest in the property at fair market value to the adjoining property owners upon abandonment. The acquisition shall carry the right to use for the construction and repair of the railway and its appurtenances any earth, gravel, stone, timber, or other material, on or from the land taken.

[R60, §1314; C73, §1241; C97, §1995; S13, §1995; C24, 27, 31, 35, 39, §**7808;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §471.6]
83 Acts, ch 121, §9
C93, §6A.6

6A.7 Cemetery lands.
No lands actually platted, used, and devoted to cemetery purposes shall be taken for any railway purpose without the consent of the proper officers or owners thereof.
[S13, §1995; C24, 27, 31, 35, 39, §**7809;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.7]
C93, §6A.7

6A.8 Limitation on right of way.
Land taken for railway right of way, otherwise than by consent of the owner, shall not exceed one hundred feet in width unless greater width is necessary for excavation, embankment, or depositing waste earth.
[R60, §1314; C73, §1241; C97, §1995; S13, §1995; C24, 27, 31, 35, 39, §**7810;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.8]
C93, §6A.8

6A.9 Additional purposes.
The Iowa railway finance authority or a railway corporation may, by condemnation or otherwise, acquire lands for the following additional purposes:
1. For necessary additional depot grounds or yards.
2. For constructing a track or tracks to any mine, quarry, gravel pit, manufacturing plant, warehouse, or mercantile establishment.
3. For additional or new right of way for constructing double track, reducing or straightening curves, changing grades, shortening or relocating portions of the line, and for excavations, embankments, or places for depositing waste earth.
4. For the preservation of abandoned railroad right of way for future railroad use.
[R60, §1314; C73, §1241, 1242; C97, §1995, 1996, 1998; S13, §1995, 1998; C24, 27, 31, 35, 39, §**7811;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.9]
83 Acts, ch 121, §10
C93, §6A.9

6A.10 Initiating railroad condemnation.
1. The railway corporation shall apply to the department of transportation for permission to condemn. The railway corporation shall serve notice of the application and hearing and provide a copy of the legal description of the property to be condemned to the owner and any recordholders of liens and encumbrances on any land described in the application. The department may, after hearing, report to the clerk of the district court of the county in which the land is situated the description of the land sought to be condemned. The corporation may begin condemnation procedures in district court for the land described by the department.
2. The railway finance authority may begin condemnation proceedings in district court.
[C97, §1998; S13, §1998; C24, 27, 31, 35, 39, §**7812;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.10; 81 Acts, ch 22, §22]
83 Acts, ch 121, §11
C93, §6A.10
93 Acts, ch 47, §17; 93 Acts, ch 87, §1

6A.11 Lands for water stations — how set aside.
Lands which are sought to be condemned for water stations, dams, or reservoirs, including all the overflowed lands, if any, shall, if requested by the owner, be set aside in a square or rectangular shape by the department of transportation or district court.
[C73, §1242; C97, §1996; C24, 27, 31, 35, 39, §**7813;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.11; 81 Acts, ch 22, §22]
83 Acts, ch 121, §12
C93, §6A.11

6A.12 Access to water — overflow limited.
An owner of land, which has in part been condemned for water stations, dams, or reservoirs, shall not be deprived, without the owner's consent, of access to the water, or the use thereof, in common with the company, on the owner's own land, nor, without the owner's consent, shall the owner's dwelling, outhouses, or orchards be overflowed, or otherwise injuriously affected by such condemnation.
[C73, §1242; C97, §1996; C24, 27, 31, 35, 39, §**7814;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.12]
C93, §6A.12

6A.13 Change in streams.
When a railway company would have the right to excavate a channel or ditch and thereby change and straighten the course of a stream or watercourse, which is too frequently crossed by such railway, and thereby protect the right of way and roadbed, or promote safety and convenience in the operation of the railway, it may, by condemnation or otherwise, acquire sufficient land on which to excavate such ditch or channel.
[C97, §2014; C24, 27, 31, 35, 39, §**7815;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.13]
C93, §6A.13

6A.14 Unlawful diversion prohibited.
Nothing in section 6A.13 shall give such corporation the right to change the course of any stream or watercourse where such right does not otherwise exist, nor, without the owner's consent, to di-

vert such stream or watercourse from any cultivated meadow or pasture land, when it only touches such lands at one point.

[C97, §2014; C24, 27, 31, 35, 39, §**7816;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.14]

C93, §6A.14

6A.15 Reserved.

6A.16 Right to condemn abandoned right-of-way.

Railroad right-of-way which has been abandoned by order of the proper authority, may be condemned by a railway corporation or the Iowa railway finance authority before or after the track materials have been removed. The procedure to condemn abandoned right-of-way shall be the same as for an original condemnation.

[C73, §1260; C97, §2015; C24, 27, 31, 35, 39, §**7818;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.16]

83 Acts, ch 121, §13

C93, §6A.16

6A.17 Reserved.

6A.18 No double damages.

Owners of abandoned right-of-way which was originally condemned for rail purposes shall not receive additional compensation unless the track materials were removed prior to the second condemnation.

[C73, §1261; C97, §2016; C24, 27, 31, 35, 39, §**7820;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.18]

83 Acts, ch 121, §14

C93, §6A.18

6A.19 Interpretative clause.

A grant in this chapter of right to take private property for a public use shall not be construed as limiting a like grant elsewhere in the Code for another and different use.

[C24, 27, 31, 35, 39, §**7821;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.19]

C93, §6A.19

6A.20 Description of land furnished.

Whenever any person, state department, or political subdivision takes title to land in fee simple for a public use by condemnation or by purchase in lieu of condemnation, the purchaser shall furnish to the owner of the land a legal description of the part taken and a legal description of the remainder which is compatible with the existing abstract description of the entire tract of land. For the purposes of this section a center line description is compatible only when it contains reference points which are a part of and tied to the abstract description.

[C71, 73, 75, 77, 79, 81, §471.20]

C93, §6A.20

6A.21 Condemnation of agricultural land — definitions.

1. Except as otherwise provided, for purposes of this chapter and chapter 6B:

a. "Agricultural land" means real property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. Agricultural land includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. Agricultural land includes land taken out of agricultural production for purposes of environmental protection or preservation.

b. "Private development purposes" means the construction of, or improvement related to, recreational trails, recreational development paid for primarily with private funds, housing and residential development, or commercial or industrial enterprise development.

c. "Public use" or *"public purpose"* or *"public improvement"* does not include the authority to condemn agricultural land for private development purposes unless the owner of the agricultural land consents to the condemnation.

2. The limitation on the definition of public use, public purpose, or public improvement does not apply to a slum area or blighted area as defined in section 403.17, or to agricultural land acquired for industry as that term is defined in section 260E.2, or to the establishment, relocation, or improvement of a road pursuant to chapter 306, or to the establishment of a railway under the supervision of the department of transportation as provided in section 327C.2, or to an airport as defined in section 328.1, or to land acquired in order to replace or mitigate land used in a road project when federal law requires replacement or mitigation. This limitation also does not apply to utilities or persons under the jurisdiction of the Iowa utilities board in the department of commerce or to any

other utility conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain.

99 Acts, ch 171, §1, 41, 42

Section applies to urban renewal areas established before, on, or after July 1, 1999, and to amendments to such urban renewal areas; see 99 Acts, ch 171, §41

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

CHAPTER 6B

PROCEDURE UNDER EMINENT DOMAIN

This chapter not enacted as a part of this title; transferred from chapter 472 in Code 1993

6B.1 Definitions.
6B.1A Procedure provided.
6B.2 By whom conducted.
6B.2A Notice of proposed public improvement.
6B.2B Acquisition negotiation statement of rights.
6B.2C Approval of the public improvement.
6B.3 Application — recording — notice — time for appraisement — new proceedings.
6B.4 Commission to assess damages.
6B.4A Review of applications by compensation commission.
6B.5 Challenges to commissioners — filling vacancies on commission.
6B.6 Sheriff to coordinate meeting of commissioners and provide meeting place.
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6B.8 Notice of assessment.
6B.9 Form of notice.
6B.10 Signing of notice.
6B.11 Filing of notices and return of service.
6B.12 Notice when residence unknown. Repealed by 2000 Acts, ch 1179, §29, 30.
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6B.14 Appraisement — report.
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6B.54 Federally assisted project and displacing activities — acquisition policies.
6B.55 Buildings, structures, and improvements on federally assisted programs and projects.
6B.56 Disposition of condemned property.
6B.57 Procedural compliance.
6B.58 Acquiring agency — definition.
6B.59 Sale of acquired property — reimbursement to landowner.

6B.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §6B.1 transferred to §6B.1A

6B.1A Procedure provided.

The procedure for the condemnation of private property for works of internal improvement, and for other public projects, uses, or purposes, unless and except as otherwise provided by law, shall be in accordance with the provisions of this chapter. This chapter shall not apply to the dedication of property to an acquiring agency or to the voluntary negotiation and purchase of property by an acquiring agency.

[C24, 27, 31, 35, 39, §**7822;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.1]

C93, §6B.1

2000 Acts, ch 1179, §1, 30

C2001, §6B.1A

6B.2 By whom conducted.

Such proceedings shall be conducted:

1. By the attorney general when the damages are payable from the state treasury.

2. By the county attorney, when the damages are payable from funds disbursed by the county, or by any township, or school corporation.

3. By the city attorney, when the damages are payable from funds disbursed by the city.

This section shall not be construed as prohibiting any other authorized representative from conducting such proceedings.

[C73, §1271; C97, §2024; S13, §2024-a, -d, -f; C24, 27, 31, 35, 39, §**7823;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.2]

C93, §6B.2

6B.2A Notice of proposed public improvement.

1. An acquiring agency shall provide written notice of a public hearing to each owner and any contract purchaser of record of agricultural land that may be the subject of condemnation. The authority under this chapter is not conferred and condemnation proceedings shall not begin unless a good faith effort is made to mail and publish the notice as provided in this section on the owner and any contract purchaser of record of the property subject to condemnation. The notice shall be mailed by ordinary mail, not less than thirty days before the date the hearing is held, to the owner and any contract purchaser of record of each property or property interest at the owner's and contract purchaser's last known address as shown in the records of the county auditor not less than seven days nor more than fourteen days prior to the date of mailing. A change in ownership of any such property which is not reflected in the records of the county auditor during the period those records are searched as above provided shall not affect the validity of the notice or any condemnation proceeding commenced on the basis of such notice. The notice shall be given and the public hearing held before adoption of the ordinance, resolution, motion, or other declaration of intent to fund the final site-specific design for the public improvement, to make the final selection of the route or site location for the public improvement, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement. If the location of the public improvement is changed or expanded after the decision has been made to proceed with the public improvement, a notice shall be mailed by ordinary mail no less than thirty days before the adoption of the ordinance, resolution, motion, or other declaration of intent to proceed with a change in the location of the public improvement to the owner and any contract purchaser of record of the land to be acquired or condemned, if necessary, in the new location of the public improvement affected by the change. The mailed notice shall, at a minimum, include the following information:

a. The general nature of the public improvement.

b. A statement of the possibility that the acquiring agency may acquire part or all of the property or interest in the property by condemnation for the public improvement.

c. The process to be followed by the acquiring agency in making the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

d. The time and place of a public hearing at which an opportunity is provided for public input into the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

e. The name, address, and telephone number of the person designated by the acquiring agency as the person to contact regarding the public improvement.

f. A statement of rights of individual property owners with respect to the acquisition of their property and the availability of relocation benefits. The attorney general shall adopt by rule pursuant to chapter 17A a statement of rights which may be used in substantial form by any person required to provide the statement of rights as provided in this section.

2. The acquiring agency shall cause a notice to be published once in a newspaper of general circulation in the county or city where the agricultural land is located. The notice shall be published at least four but no more than twenty days before the public hearing is held as referred to in subsection 1. The published notice shall, at a minimum, include the following information:

a. The general nature of the public improvement.

b. A statement of the possibility that the acquiring agency may acquire part or all of the property or an interest in the property by condemnation for the public improvement.

c. The process to be followed by the acquiring agency in making the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

d. The time and place of a public hearing at which an opportunity is provided for public input into the decision to fund the final site-specific design for the public improvement, to make the final selection of the route or site location, or to acquire or condemn, if necessary, all or a portion of the property or an interest in the property for the public improvement.

e. The name, address, and telephone number of the contact person regarding the public improvement.

3. If the acquiring agency is a person required to obtain a franchise under chapter 478, compliance with section 478.2 shall satisfy the requirements of this section. If the acquiring agency is a person required to obtain a permit under chapter 479, compliance with section 479.5 shall satisfy the requirements of this section.

4. This section shall not apply to a condemnation of property by the state department of transportation or a county for right-of-way that is contiguous to an existing road right-of-way and necessary for the maintenance, safety improvement, repair, or upgrade of the existing road. Notwithstanding section 6B.2C, a condemnation of property by the state department of transportation pursuant to this subsection shall be approved by the director of the department of transportation. For purposes of this subsection, *"upgrade"* means to bring a road or bridge up to currently acceptable standards, including improved geometrics, passing lanes, turning lanes, climbing lanes, and improved shoulders. *"Upgrade"* does not include expanding a highway from two lanes to four lanes.

5. The time deadlines in this section do not apply during the existence of an emergency requiring the construction or repair of public improvements in situations where failure to immediately construct or repair would result in immediate danger to public health, safety, or welfare. The notices required in this section shall be provided to the owner as soon as practicable.

99 Acts, ch 171, §2, 42; 2000 Acts, ch 1178, §1; 2000 Acts, ch 1179, §2 – 4, 30; 2002 Acts, ch 1063, §1

Subsection 4 amended

6B.2B Acquisition negotiation statement of rights.

The acquiring agency shall make a good faith effort to negotiate with the owner to purchase the private property or property interest before filing an application for condemnation or otherwise proceeding with the condemnation process. An acquiring agency shall not make an offer to purchase the property or property interest that is less than the fair market value the acquiring agency has established for the property or property interest pursuant to the appraisal required in section 6B.45. However, an acquiring agency need not make an offer in excess of that amount in order to satisfy the requirement to negotiate in good faith. An acquiring agency is deemed to have met the requirements of this section if the acquiring agency complies with section 6B.54.

99 Acts, ch 171, §3, 42; 2000 Acts, ch 1179, §5, 6, 30

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.2C Approval of the public improvement.

The authority to condemn is not conferred, and the condemnation proceedings shall not commence, unless the governing body for the acquiring agency approves the use of condemnation and there is a reasonable expectation the applicant will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits.

2000 Acts, ch 1179, §7, 30

6B.3 Application — recording — notice — time for appraisement — new proceedings.

1. The proceedings shall be instituted by a written application filed with the chief judge of the judicial district of the county in which the land sought to be condemned is located. The application shall set forth:

a. A description of all the property in the county affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots, by the numbers of the lot and block, and plat designation.

b. A plat showing the location of the right-of-way or other property sought to be condemned with reference to such description.

c. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and encumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.

d. The purpose for which condemnation is sought. For purposes of section 6B.4A, if condemnation of agricultural land is sought by a city or county, or an agency of a city or county, for location of an industry as that term is defined in section 260E.2, the application shall so state. However, the city or county shall not be required to dis-

close information on an industrial prospect with which the city or county is currently negotiating.

e. A request for the appointment of a commission to appraise the damages.

f. If the damages are to be paid by the state and the land to be condemned is within an agricultural area as provided in chapter 352, a statement disclosing whether any of that land is classified as class I or class II land under the United States department of agriculture natural resources conservation service land capability classification system contained in the agriculture handbook number 210, 1961 edition and, if so classified, stating that the class I or class II land is reasonably necessary for the work of internal improvement for which condemnation is sought.

g. A showing of the minimum amount of land necessary to achieve the public purpose and the amount of land to be acquired by condemnation for the public improvement. Any land to be acquired by condemnation beyond the necessary minimum to complete the project shall be presumed not to be necessary for a public use or public purpose unless the applicant can show that a substantial need exists for the additional property to achieve the public use or public purpose, or that the land in question constitutes an uneconomical remnant that has little or no value or utility to the owner, or that the owner consents to the condemnation.

h. A statement indicating the efforts made by the applicant to negotiate in good faith with the owner to acquire the private property sought to be condemned.

2. The applicant shall mail a copy of the application by certified mail to the owner at the owner's last known address and to any record lienholder or encumbrancer of the property at the lienholder's or encumbrancer's last known address. The applicant shall also cause the application to be published once in a newspaper of general circulation in the county, not less than four nor more than twenty days before the meeting of the compensation commission to assess the damages. Service of the application by publication shall be deemed complete on the day of publication.

In lieu of mailing and publishing the application, the applicant may cause the application to be served upon the owner, lienholders, and encumbrancers of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. The application shall be mailed and published or served, as above provided, prior to or contemporaneously with the mailing and publication or service of the list of compensation commissioners as provided in section 6B.4.

3. The applicant shall promptly certify that its application for condemnation has been approved by the chief judge and shall file the original approved application with the county recorder in the manner required under section 6B.37. The county recorder shall file and index the application in the record of deeds and preserve the application as required by sections 6B.38 and 558.55. The filing and indexing constitute constructive notice to all parties that a proceeding to condemn the property is pending and that the applicant has the right to acquire the property from all owners, lienholders, and encumbrancers whose interests are of record at the time of the filing. After filing and indexing, the county recorder shall file a copy of the application with the office of secretary of state.

When indexed, the proceeding is considered pending so as to charge all persons not having an interest in the property with notice of its pendency, and while pending no interest can be acquired by the third parties in the property against the rights of the applicant. If the appraisement of damages is not made within one hundred twenty days, the proceedings instituted under this section are terminated and all rights and interests of the applicant arising out of the application for condemnation terminate. The applicant may reinstitute a new condemnation proceeding at any time. The reinstituted proceedings are entirely new proceedings and not a revival of the terminated proceeding.

[R60, §1230; C73, §1247; C97, §2002; C24, 27, 31, 35, 39, §**7824;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.3; 82 Acts, ch 1245, §19]

84 Acts, ch 1065, §1, 2

C93, §6B.3

95 Acts, ch 216, §25; 99 Acts, ch 171, §4, 42; 2000 Acts, ch 1179, §8, 9, 30

1999 amendments apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.4 Commission to assess damages.

Annually the board of supervisors of a county shall appoint not less than twenty-eight residents of the county and the names of such persons shall be placed on a list and they shall be eligible to serve as members of a compensation commission. One-fourth of the persons appointed shall be owner-operators of agricultural property, one-fourth of the persons appointed shall be owners of city property, one-fourth shall be licensed real estate salespersons or real estate brokers, and one-fourth shall be persons having knowledge of property values in the county by reason of their occupation, such as bankers, auctioneers, property managers, property appraisers, and persons responsible for making loans on property.

The chief judge of the judicial district or the chief judge's designee shall select by lot six persons from the list, two persons who are owner-operators of agricultural property when the property to be condemned is agricultural property; two persons who are owners of city property when the property to be condemned is other than agricultural property; and two persons from each of the remaining two representative groups, who shall

constitute a compensation commission to assess the damages to all property to be taken by the applicant and located in the county, and shall name a chairperson from the persons selected. The chief judge or the judge's designee may appoint such alternate members and chairpersons to the commission as are deemed necessary and appropriate under the circumstances. A person shall not be selected as a member or alternate member of the compensation commission if the person possesses any interest in the proceeding which would cause the person to render a biased decision. The applicant shall mail a copy of the list of commissioners and alternates appointed by the chief judge by certified mail to the property owner at the owner's last known address. The applicant shall also cause the list of commissioners and alternates to be published once in a newspaper of general circulation in the county, not less than four nor more than twenty days before the meeting of the compensation commission to assess the damages. Service of the list of commissioners and alternates by publication shall be deemed complete on the day of publication. In lieu of mailing and publishing the list of commissioners and alternates, the applicant may cause the list to be served upon the owner of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. The list of commissioners and alternates shall be mailed and published or served, as above provided, prior to or contemporaneously with service of the notice of assessment as provided in section 6B.8.

[R60, §1317, 1318; C73, §1244, 1245; C97, §1999, 2029; C24, 27, 31, 35, 39, §**7825;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.4]

C93, §6B.4

99 Acts, ch 171, §5, 6, 42; 2000 Acts, ch 1032, §1; 2000 Acts, ch 1179, §10, 11, 30

1999 amendments apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.4A Review of applications by compensation commission.

1. If a city or county, or an agency of a city or county, has filed an application for condemnation of agricultural land for industry, the application is subject to review by the compensation commission pursuant to this section.

2. At any time before the thirty-day notice of assessment expires pursuant to section 6B.8, a landowner may apply to the compensation commission for review of the condemnation application to determine whether the use of condemnation is necessary for the placement of an industry in the community. When reviewing an application, the commission shall consider all of the following:

a. The feasibility of acquiring the agricultural land by methods other than condemnation.

b. The public cost and public benefit from locating the industry on the agricultural land.

c. The ability to adapt the industry development plans to avoid the use of condemnation.

d. The existence of a specific industry to be located on the agricultural land.

e. The amount of agricultural land requested to be condemned compared to the total amount of agricultural land needed for the project.

3. The commission shall approve or deny the application for condemnation within thirty days of receiving a request to review the condemnation application. A majority vote of the commission members is necessary to approve or deny a condemnation application. The sheriff shall notify the landowner and condemner of the commission's determination by certified mail.

4. A determination made by the compensation commission pursuant to this section shall be final unless appealed from. An appeal must be filed with the district court within thirty days of mailing the commission's determination to the condemner and the landowner. At the time of appeal, the appellant shall give written notice that the appeal has been taken to the adverse party, or the adverse party's agent or attorney. Notice of an appeal shall be served in the same manner as an original notice. The appeal shall be docketed in the name of the person appealing and all other interested parties to the action shall be defendants.

5. This section does not apply to condemnation of agricultural land if the industry is an eligible business under section 15.329 and the department of economic development enters into an agreement under section 15.330 with the industry.

6. For purposes of this section, *"industry"* means the same as defined in section 260E.2.

99 Acts, ch 171, §7, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.5 Challenges to commissioners — filling vacancies on commission.

1. Persons appointed by the chief judge to serve on the compensation commission are excused from the commission if they are removed for cause, stricken by a challenge pursuant to this section, unavailable to serve on the commission, or fail to act in their capacity as commissioners.

2. The applicant may challenge one commissioner without stating cause and the person or persons representing the fee ownership interest in the property may challenge one commissioner without stating cause. A challenge to the appointment of a commissioner shall be filed, in writing, with the sheriff not less than seven days prior to the meeting of the compensation commission, and shall be mailed to the other party by ordinary mail on the day of filing. An alternate commissioner may not be challenged without cause. A challenge filed less than seven days prior to the meeting of

the commission shall have no effect.

3. If a person is excused from the commission, the sheriff shall select and notify, not less than twenty-four hours prior to the meeting, the alternate commissioners appointed for that condemnation proceeding, to complete the membership of the commission. Alternate commissioners selected and notified shall have the same qualifications as the person who is being replaced. If no alternates have been appointed, the chief judge of the judicial district shall appoint another person from the list, possessing the same qualifications as the person who is being replaced to complete the membership of the commission.

4. The sheriff shall notify alternate commissioners in the order directed by the chief judge, and the alternate commissioner first notified who is available to serve as a compensation commissioner shall serve in the place of the commissioner who was unable to serve or who was stricken from the panel.

5. If a person is excused from the commission, the applicant and the property owner may stipulate in writing to the selection and notification of a particular alternate having the same qualifications as the person who is being replaced, to complete the membership of the commission. Such stipulation shall be filed with the sheriff not less than seventy-two hours prior to the meeting of the commission.

[R60, §1319; C73, §1251; C97, §2006; C24, 27, 31, 35, 39, §**7826;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.5]

C93, §6B.5

2000 Acts, ch 1179, §12, 30

6B.6 Sheriff to coordinate meeting of commissioners and provide meeting place.

The sheriff of the county in which the property to be condemned is located shall coordinate the meeting of commissioners, shall arrange an appropriate meeting place for commissioners, shall assure that appointed commissioners receive the order of the court appointing them and directing their attendance at the meeting of commissioners, and shall report the unavailability or absence of appointed commissioners to the chief judge, to the applicant, and to the landowner.

2000 Acts, ch 1179, §13, 30

6B.7 Commissioners to qualify.

Before meeting to assess the damages for the taking, all commissioners shall qualify by filing with the sheriff a written oath that they will to the best of their ability faithfully and impartially assess damages and make a written report assessing the damages to the sheriff.

[C24, 27, 31, 35, 39, §**7828;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.7]

C93, §6B.7

99 Acts, ch 171, §8, 42; 2000 Acts, ch 1179, §14, 30

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.8 Notice of assessment.

The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, thirty days' notice, in writing. The notice shall specify the day and the hour when the compensation commission will meet, view the premises, and assess the damages. The notice shall be personally served upon all necessary parties in the same manner provided by the Iowa rules of civil procedure for the personal service of original notice. If a city or county, or an agency of a city or county, is seeking to condemn agricultural land for an industry as that term is defined in section 260E.2, the notice shall inform the landowner that the landowner may request that the compensation commission review the application as provided in section 6B.4A.

[R60, §1318; C73, §1245; C97, §2000; C24, 27, 31, 35, 39, §**7829;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.8]

C93, §6B.8

99 Acts, ch 171, §9, 42; 2000 Acts, ch 1179, §15, 30

Manner of service, R.C.P. 1.302 – 1.315

1999 amendments apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.9 Form of notice.

Said notice shall be in substantially the following form, with such changes therein as will render it applicable to the party giving and receiving the notice, and to the particular case pending, to wit:

To . . . . . (here name each person whose land is to be taken or affected and each record lienholder or encumbrancer thereof) and all other persons, companies, or corporations having any interest in or owning any of the following described real estate:

(Here describe the land as in the application.)

You are hereby notified that . . . . . (here enter the name of the applicant) desires the condemnation of the following described land: (Here describe the particular land or portion thereof sought to be condemned, in such manner that it will be clearly identified.)

That such condemnation is sought for the following purpose: (Here clearly specify the purpose.)

That a commission has been appointed as pro-

vided by law for the purpose of appraising the damages which will be caused by said condemnation.

That said commissioners will, on the . . . . . day of . . . . . (month), ... (year), at . . . . . o'clock . . . . .m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

. . . . . .
Applicant.

[R60, §1320; C73, §1247; C97, §2002; C24, 27, 31, 35, 39, §**7830;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.9]

C93, §6B.9

2000 Acts, ch 1058, §56

6B.10 Signing of notice.

The notice may be signed by the applicant, by the applicant's attorney, or by any other authorized representative.

[R60, §1320; C73, §1247; C97, §2002; C24, 27, 31, 35, 39, §**7831;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.10]

C93, §6B.10

6B.11 Filing of notices and return of service.

Notices, immediately after the service thereof, shall, with proper return of service endorsed thereon or attached thereto, be filed with the sheriff. The sheriff shall at once cause the commissioners to be notified of the day and hour when they will be required to proceed with the appraisement. The notice to the commissioners shall also be published by the sheriff pursuant to section 331.305.

[C24, 27, 31, 35, 39, §**7832;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.11]

C93, §6B.11

99 Acts, ch 171, §10, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.12 Notice when residence unknown. Repealed by 2000 Acts, ch 1179, § 29, 30.

6B.13 Service outside state. Repealed by 2000 Acts, ch 1179, § 29, 30.

6B.14 Appraisement — report.

The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation. The commission shall file its written report, signed by all commissioners, with the sheriff. At the request of the condemner or the condemnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisement and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisement shall be made of the different portions as they are known to be owned.

Prior to the meeting of the commission, the commission or a commissioner shall not communicate with the applicant, property owner, or tenant, or their agents, regarding the condemnation proceedings. The commissioners shall meet in open session to view the property and to receive evidence, but may deliberate in closed session. After deliberations commence, the commission and each commissioner is prohibited from communicating with any party to the proceeding, unless such communication occurs in the presence of or with the consent of the property owner and the other parties who appeared before the commission. The commission shall keep minutes of all its meetings showing the date, time, and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

In assessing the damages the owner or tenant will sustain, the commissioners shall consider and make allowance for personal property which is damaged or destroyed or reduced in value.

An owner or tenant occupying land which is proposed to be acquired by condemnation shall be awarded a sum sufficient to remove such owner's or tenant's personal property from the land to be acquired, which sum shall represent reasonable costs of moving the personal property from the land to be acquired to a point no greater than fifty miles; but in any event, damages awarded under this section for moving shall not exceed five thousand dollars for each owner or tenant occupying land proposed to be condemned. An owner or tenant may apply for an award pursuant to this section only if all other damages provided by law have been awarded and such amount awarded is insufficient to pay the owner's or tenant's reasonable costs of moving.

[C73, §1249; C97, §2004, 2029; C24, 27, 31, 35, 39, §**7835;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.14]

C93, §6B.14

99 Acts, ch 171, §12, 42; 2000 Acts, ch 1179, §16, 17, 30

1999 amendment applies to state highway construction projects ap-

proved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.15 Guardianship.

In all cases where any interest in lands sought to be condemned is owned by a person who is under legal disability and has no guardian of the person's property, the applicant shall, prior to the filing of the application with the sheriff, apply to the district court for the appointment of a guardian of the property of such person.

[C24, 27, 31, 35, 39, §**7836;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.15]

C93, §6B.15

6B.16 Power of guardian.

If the owner of any lands is under guardianship, such guardian may, under the direction of the district court, or judge thereof, agree and settle with the applicant for all damages resulting from the taking of such lands, and give valid conveyances thereof.

[R60, §1316; C73, §1246; C97, §2001; C24, 27, 31, 35, 39, §**7837;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.16]

C93, §6B.16

6B.17 When appraisement final.

The appraisement of damages returned by the commissioners shall be final unless appealed from.

[C24, 27, 31, 35, 39, §**7838;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.17]

C93, §6B.17

6B.18 Notice of appraisement — appeal of award — notice of appeal.

1. After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice, by ordinary mail, to the condemner and the condemnee of the date on which the appraisement of damages was made, the amount of the appraisement, and that any interested party may, within thirty days from the date of mailing the notice of the appraisement of damages, appeal to the district court by filing notice of appeal with the district court of the county in which the real estate is located and by giving written notice to the sheriff that the appeal has been taken. The sheriff shall endorse the date of mailing of notice upon the original appraisement of damages.

2. An appeal of appraisement of damages is deemed to be perfected upon filing of a notice of appeal with the district court within thirty days from the date of mailing the notice of appraisement of damages. The notice of appeal shall be served on the adverse party, or the adverse party's agent or attorney, any lienholders and encumbrancers of the property in the same manner as an original notice within thirty days from the date of filing the notice of appeal unless, for good cause shown, the court grants more than thirty days. If after reasonable diligence, the notice cannot be personally served, the court may prescribe an alternative method of service consistent with due process of law.

3. In case of condemnation proceedings instituted by the state department of transportation, when the owner appeals from the assessment made, such notice of appeal shall be served upon the attorney general, or the department general counsel to the state department of transportation, or the chief highway engineer for the department.

[R60, §1317; C73, §1254; C97, §2009; S13, §2009; C24, 27, 31, 35, 39, §**7839;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.18]

C93, §6B.18

2002 Acts, ch 1063, §2

Section amended

6B.19 Service of notice — highway matters. Repealed by 2002 Acts, ch 1063, § 15.

6B.20 Sheriff to file certified copy.

When an appeal is taken, the sheriff shall at once file with the clerk of the district court a certified copy of as much of the assessment as applies to the part for which the appeal is taken.

[R60, §1317; C73, §1254; C97, §2009; S13, §2009; C24, 27, 31, 35, 39, §**7840;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.20]

84 Acts, ch 1065, §3

C93, §6B.20

6B.21 Appeals — how docketed and tried.

The appeal shall be docketed in the name of the person appealing and all other interested parties to the action shall be defendants. In the event the condemner and the condemnee appeal, the appeal shall be docketed in the name of the appellant which filed the application for condemnation and all other parties to the action shall be defendants. The appeal shall be tried as in an action by ordinary proceedings.

[R60, §1317; C73, §1254; C97, §2009; S13, §2009, 2024-h; C24, 27, 31, 35, 39, §**7841;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.21]

84 Acts, ch 1119, §1

C93, §6B.21

99 Acts, ch 171, §13, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.22 Pleadings on appeal.

A written petition shall be filed by the plaintiff within thirty days after perfection of the appeal, stating specifically the items of damage and the amount thereof. The court may for good cause

shown grant additional time for the filing of the petition. The defendant shall file a written answer to plaintiff's petition, or such other pleadings as may be proper.

[C31, 35, §7841-c1; C39, §**7841.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.22]

C93, §6B.22

2002 Acts, ch 1063, §3

Section amended

6B.23 Question determined.

On the trial of the appeal, no judgment shall be rendered except for costs, but the amount of damages shall be ascertained and entered of record.

[C73, §1257; C97, §2011; C24, 27, 31, 35, 39, §**7842;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.23]

C93, §6B.23

6B.24 Reduction of damages — interest on increased award.

If the amount of damages awarded by the commissioners is decreased on appeal, the reduced amount shall be paid to the landowner. If the amount of damages awarded by the commissioners is increased on appeal, interest shall be paid from the date of the condemnation. Interest shall not be paid on any amount which was previously paid. Interest shall be calculated at an annual rate equal to the treasury constant maturity index published by the federal reserve in the H15 Report settled immediately before the date of the award.

[C73, §1259; C97, §2013; C24, 27, 31, 35, 39, §**7843;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.24]

C93, §6B.24

95 Acts, ch 135, §1; 2002 Acts, ch 1063, §4

Section amended

6B.25 Right to take possession of lands — title.

Upon the filing of the commissioners' report with the sheriff, the applicant may deposit with the sheriff the amount assessed in favor of a claimant, and the applicant, except as otherwise provided, may take possession of the land condemned and proceed with the improvement. An appeal from the assessment does not affect the right, except as otherwise provided. Prior to expiration of the time provided for appeal, the property owner may apply to the district court for release of that part of the damages deposited which the court finds proper. If there is not an appeal by any party, the property owner shall be entitled to the whole of the damages awarded. Upon appeal from the commissioners' award of damages, the district court may direct that the part of the amount of damages deposited with the sheriff, as it finds just and proper, be paid to the claimant. If upon trial of the appeal a lesser amount is awarded, the difference between the amount so awarded and the amount paid shall be repaid by the person to whom it was paid and upon failure to make the repayment the party shall have judgment entered against the person who received the excess payment. Title to the property or the interests in property passes to the applicant when damages have been finally determined and paid.

[R60, §1317; C73, §1244, 1255, 1256, 1272; C97, §1999, 2010, 2025, 2029; S13, §2024-e, -g, -h; C24, 27, 31, 35, 39, §**7844, 7847, 7848;** C46, 50, 54, 58, §472.25, 472.28, 472.29; C62, 66, 71, 73, 75, 77, 79, 81, §472.25]

84 Acts, ch 1065, §4

C93, §6B.25

2000 Acts, ch 1179, §18, 30

6B.26 Dispossession of owner.

A landowner shall not be dispossessed under condemnation proceedings of the landowner's residence, dwelling house, outbuildings if the residence or dwelling house is also acquired, orchard, or garden, until the damages thereto have been finally determined and paid. However, if the property described in this section is condemned for highway purposes by the state department of transportation, the condemning authority may take possession of the property either after the damages have been finally determined and paid or one hundred eighty days after the compensation commission has determined and filed its award, in which event all of the appraisement of damages shall be paid to the property owner before the dispossession can take place. This section shall not apply to condemnation proceedings for drainage or levee improvements, or for public school purposes. For the purposes of this section, *"outbuildings"* means structures and improvements located in proximity to the landowner's residence.

[C24, 27, 31, 35, 39, §**7845;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.26]

C93, §6B.26

99 Acts, ch 171, §14, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.27 Erection of dam — limitation.

If it appears from the finding of the commissioners that the dwelling house, outhouse, orchard, or garden of the owner of any land taken will be overflowed or otherwise injuriously affected by any dam or reservoir to be constructed as authorized by this chapter, such dam shall not be erected until the question of such overflowing or other injury has been determined in favor of the corporation upon appeal.

[C73, §1250; C97, §2005; C24, 27, 31, 35, 39, §**7846;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.27]

C93, §6B.27

6B.28 and 6B.29 Reserved.

6B.30 Additional deposit.

If, on the trial of the appeal, the damages awarded by the commissioners are increased, the condemner shall, if the condemner is already in possession of the property, make such additional deposit with the sheriff, as will, with the deposit already made, equal the entire damages allowed. If the condemner be not already in possession, the condemner shall deposit with the sheriff the entire damages awarded, before entering on, using, or controlling the premises.

[C73, §1258; C97, §2012; C24, 27, 31, 35, 39, §**7849;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.30]

C93, §6B.30

6B.31 Payment by public authorities.

When damages, by reason of condemnation, are payable from public funds, the sheriff, or clerk of the district court, as the case may be, shall certify to the officer, board, or commission having power to audit claims for the purchase price of said lands, the amount legally payable to each claimant, and, separately, a detailed statement of the cost legally payable from such public funds. Said officer, board, or commission shall audit said claims, and the warrant-issuing officer shall issue warrants therefor on any funds appropriated therefor, or otherwise legally available for the payment of the same. Warrants shall be drawn in favor of each claimant to whom damages are payable. The warrant in payment of costs shall be issued in favor of the officer certifying thereto.

[C73, §1272; C97, §2025; S13, §2024-b, -e, -g; C24, 27, 31, 35, 39, §**7850;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.31]

C93, §6B.31

6B.32 Removal of condemner.

The sheriff, upon being furnished with a copy of the assessment as determined on appeal, certified to by the clerk of the district court, may remove from said premises the condemner and all persons acting for or under the condemner, unless the amount of the assessment is forthwith paid or deposited as hereinbefore provided.

[C73, §1258; C97, §2012; C24, 27, 31, 35, 39, §**7851;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.32]

C93, §6B.32

6B.33 Costs and attorney fees.

The applicant shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the condemnee as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the applicant prior to condemnation. The condemnee shall submit an application for fees and costs prior to adjournment of the final meeting of the compensation commission held on the matter. The applicant shall file with the sheriff an affidavit setting forth the most recent offer made to the person whose property is sought to be condemned. Members of such commissions shall receive a per diem of two hundred dollars and actual and necessary expenses incurred in the performance of their official duties. The applicant shall reimburse the county sheriff for the per diem and expense amounts paid by the sheriff to the members. The applicant shall reimburse the owner for the expenses the owner incurred for recording fees, penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the property, and for similar expenses incidental to conveying the property to the applicant. The applicant shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial thereof the same or a lesser amount of damages is awarded than was allowed by the tribunal from which the appeal was taken.

[R60, §1317; C73, §1252; C97, §2007; C24, 27, 31, 35, 39, §**7852;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.33]

C93, §6B.33

99 Acts, ch 171, §15, 42; 2000 Acts, ch 1179, §19, 30; 2002 Acts, ch 1063, §5

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

Section amended

6B.34 Refusal to pay final award.

Should the applicant decline, at any time after an appeal is taken as provided in section 6B.18, to take the property and pay the damages awarded, the applicant shall pay, in addition to the costs and damages actually suffered by the landowner, reasonable attorney fees to be taxed by the court.

[C97, §2011; C24, 27, 31, 35, 39, §**7853;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.34]

C93, §6B.34

6B.35 Sheriff to file record.

Thirty days after the date of mailing the notice of appraisement of damages, the sheriff shall file with the county recorder of the county in which the condemned land is situated, the following papers:

1. A certified copy of the application for condemnation.
2. All notices, together with all returns of service endorsed on the returns or attached to the returns.
3. The report of the commissioners.
4. All other papers filed with the sheriff in the proceedings.
5. A written statement by the sheriff of all

money received in payment of damages, from whom received, to whom paid, and the amount paid to each claimant and reference to the application for condemnation by document reference or instrument number and the date the application was filed with the county recorder.

[C73, §1253; C97, §2008; C24, 27, 31, 35, 39, §**7854;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.35]

84 Acts, ch 1065, §5
C93, §6B.35
2001 Acts, ch 44, §1

6B.36 Clerk to file record.

The clerk of the district court, in case an appeal is taken in condemnation proceedings, shall file with the county recorder:

1. A copy of the final judgment entry of the court showing the amount of damages determined on appeal.

2. A written statement by the clerk of all money received by the clerk in payment of damages, from whom received, to whom paid, and the amount paid to each claimant.

3. A copy of the description of the property condemned and the interest acquired in the property.

[C24, 27, 31, 35, 39, §**7855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.36]

84 Acts, ch 1065, §6
C93, §6B.36

6B.37 Form of record — certificate.

Said papers shall be securely fastened together, arranged in the order named above, and be accompanied by a certificate of the officer filing the papers that the papers are true and correct copies of the original files in the proceedings and that the statements accompanying the papers are true.

[C24, 27, 31, 35, 39, §**7856;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.37]

91 Acts, ch 116, §3
C93, §6B.37

6B.38 Record of proceedings.

The county recorder shall record the papers, statements, and certificate in the record of deeds and properly index them. The recorder may return the recorded instrument to the sender or dispose of that instrument if the sender does not wish to have the instrument returned. A document filed in the recorder's office before July 1, 1990, may be returned to the sender or disposed of if the sender does not wish to have the document returned and if there is an official copy of that document in the recorder's office.

The county recorder shall file a copy of the sheriff's statement required by section 6B.35, subsection 5, with the office of the secretary of state.

[C73, §1253; C97, §2008; C24, 27, 31, 35, 39, §**7857;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.38]

90 Acts, ch 1021, §3; 91 Acts, ch 116, §4
C93, §6B.38
99 Acts, ch 171, §16, 42

Unnumbered paragraph 2 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.39 Fee for recording.

The sheriff or clerk, as the case may be, shall collect from the condemner such fee as the county recorder would have legal right to demand for making such record, and pay such fee to the recorder upon presenting the papers for record.

[C24, 27, 31, 35, 39, §**7858;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.39]

C93, §6B.39

Recorder fee, §331.604

6B.40 Failure to record — liability.

Any sheriff, or clerk of the district court, as the case may be, who fails to present said papers, statements, and certificate for record, and any recorder who fails to record the same as above provided shall be liable for all damages caused by such failure.

[C24, 27, 31, 35, 39, §**7859;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.40]

C93, §6B.40

6B.41 Presumption.

The said original papers, statements, and certificate, or the record thereof shall be presumptive evidence of title in the condemner, and shall constitute constructive notice of the right of such condemner to the lands condemned.

[C73, §1253; C97, §2008; C24, 27, 31, 35, 39, §**7860;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.41]

C93, §6B.41

6B.42 Eminent domain — payment to displaced persons.

1. *a.* The acquiring agency shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316.

b. A person aggrieved by a determination made as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the appropriate acquiring agency.

c. An acquiring agency subject to this section that proposes to displace a person shall inform the person of the person's right to receive relocation assistance and payments, and of an aggrieved person's right to appeal a determination as to assistance and payments.

2. *a.* A utility or railroad subject to section 327C.2, or chapters 476, 478, 479, 479A, and 479B,

authorized by law to acquire property by condemnation, which acquires the property of a person or displaces a person for a program or project which has received or will receive federal financial assistance as defined in section 316.1, shall provide to the person, in addition to any other sums of money in payment of just compensation, the payments and assistance required by law, in accordance with chapter 316.

b. A person aggrieved by a determination made by a utility as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the utilities division of the department of commerce.

c. A person aggrieved by a determination made by a railroad as to eligibility for relocation assistance, a payment, or the amount of the payment, upon application, may have the matter reviewed by the state department of transportation.

d. A utility or railroad subject to this section that proposes to displace a person shall inform the person of the person's right to receive relocation assistance and payments, and of an aggrieved person's right to appeal to the utilities division of the department of commerce or the state department of transportation.

[C71, 73, 75, 77, 79, 81, §472.42; 81 Acts, ch 22, §21, 22]

89 Acts, ch 20, §18

C93, §6B.42

95 Acts, ch 192, §1; 99 Acts, ch 171, §17, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.43 Chief justice to prepare instructions.

Written instructions for members of compensation commissions shall be prepared under the direction of the chief justice of the supreme court and distributed to the sheriff in each county. The sheriff shall transmit copies of the instructions to each member of a compensation commission, and such instructions shall be read aloud to each commission before it commences its duties.

[C71, 73, 75, 77, 79, 81, §472.43]

C93, §6B.43

6B.44 Taking property for highway — buildings and fences moved.

When real property or an interest therein is purchased or condemned for highway purposes and a fence or building is located on such property, the governmental agency shall be responsible for all costs incurred by the property owner in replacing or moving the fence or moving the building onto property owned by the landowner and abutting the property purchased or condemned for highway purposes, or the governmental agency may replace or move the fence or move the building. Such costs shall not constitute an additional element of damages which would permit unjust enrichment or a duplication of payments to any condemnee.

[C71, 73, 75, 77, 79, 81, §472.44]

C93, §6B.44

6B.45 Mailing copy of appraisal.

When any real property or interest in real property is to be purchased, or in lieu thereof to be condemned, the acquiring agency or its agent shall submit to the person, corporation, or entity whose property or interest in the property is to be taken, by ordinary mail, at least ten days prior to the date upon which the acquiring agency or its agent contacts the property owner to commence negotiations, a copy of the appraisal in its entirety upon such real property or interest in such real property prepared for the acquiring agency or its agent, which shall include, at a minimum, an itemization of the appraised value of the real property or interest in the property, any buildings on the property, all other improvements including fences, severance damages, and loss of access. The appraisal sent to the condemnee shall be that appraisal upon which the condemnor will rely to establish an amount which the condemnor believes to be just compensation for the real property. All other appraisals made on the property as a result of the condemnation proceeding shall be made available to the condemnee upon request. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days prior to negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component. An acquiring agency may obtain a signed written waiver from the landowner to allow negotiations to commence prior to the expiration of the applicable waiting period for the commencement of negotiations.

[C71, 73, 75, 77, 79, 81, §472.45]

C93, §6B.45

99 Acts, ch 171, §18, 42; 2000 Acts, ch 1179, §20, 30

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.46 Special proceedings to condemn existing utility.

When any city has voted at an election to purchase, establish, erect, maintain and operate heating plants, waterworks, gasworks or electric light or power plants, or when it has voted to contract an indebtedness and issue bonds for such purposes, and in such city there exists any such utility, or incomplete parts thereof or more than one,

not publicly owned, and the contract or franchise of the owner of the utility has expired or been surrendered, and the owner and the city cannot agree upon terms of purchase, it may, by resolution, proceed to acquire by condemnation any one or more of the utilities or incomplete parts thereof. When so acquired it may apply the proceeds of the bonds in payment therefor and in making extensions and improvements to such works or plants so acquired, but not more than one utility may be so acquired when the municipality is indebted in excess of the statutory limitation of indebtedness for such purposes for any such acquired property.

[C73, §474; C97, §722; S13, §722; C24, 27, 31, 35, 39, §**6135;** C46, 50, 54, 58, 62, 66, 71, §397.20; C73, 75, 77, 79, 81, §472.46]

C93, §6B.46

6B.47 Court of condemnation.

Upon the passage of the resolution as provided in section 6B.46 and the presentation of a certified copy thereof to the supreme court while in session, or to the chief justice of the supreme court, the court or chief justice shall within five days appoint as a court of condemnation three district court judges from three judicial districts, one of whom shall be from the district in which the city is located, if not a resident of the city, and shall enter an order requiring the judges to attend as such court of condemnation at the county seat of the county in which the city is located within ten days. The district court judges shall attend and constitute a court of condemnation.

[SS15, §722-a; C24, 27, 31, 35, 39, §**6136;** C46, 50, 54, 58, 62, 66, 71, §397.21; C73, 75, 77, 79, 81, §472.47]

C93, §6B.47

6B.48 Procedure.

Said court when it meets to organize or at any time during the proceedings, which may be adjourned from time to time for any purpose, may fix the time for the appearance of any person that any party desires to have joined in the proceedings, and whom the court deems necessary. The time for appearance shall be sufficiently remote to serve notice upon the parties, but if the time for appearance occurs after the proceedings are begun, the proceedings may be reviewed by the court to give all parties a full opportunity to be heard.

[SS15, §722-a; C24, 27, 31, 35, 39, §**6137;** C46, 50, 54, 58, 62, 66, 71, §397.22; C73, 75, 77, 79, 81, §472.48]

C93, §6B.48

6B.49 Notice — service.

Persons not voluntarily appearing, but having any right, title, or interest in or to the property which is the subject of condemnation, or any part thereof, including all leaseholders, mortgagees and trustees of bondholders, who are to be made parties to the proceedings shall be served with notice of the proceedings and the time and place of meeting of the court in the same manner and for the same length of time as for the service of original notice, either by personal service, or by service by publication, the time so set being the time at which the parties so served are required to appear, and actual personal service of the notice within or without the state shall supersede the necessity for publication.

[SS15, §722-a; C24, 27, 31, 35, 39, §**6138;** C46, 50, 54, 58, 62, 66, 71, §397.23; C73, 75, 77, 79, 81, §472.49]

C93, §6B.49

Time and manner of service, R.C.P. 1.302 – 1.315

6B.50 Powers of court — duty of clerk — vacancy.

The court of condemnation shall have power to summon and swear witnesses, take evidence, order the taking of depositions, require the production of any books or papers, and may appoint a shorthand reporter. It shall perform all the duties of commissioners in the condemnation of property. The duties and the method of procedure and condemnation, including provisions for appeal shall be except as otherwise specifically provided, as provided for the taking of private property for works of internal improvement. The clerk of the district court of the county where the city is located shall perform all of the duties required of the sheriff in the condemnation; and in case of a vacancy in the court, the vacancy shall be filled in the manner in which the original appointment was made. When necessary by reason of a vacancy, the court may review any evidence in its record.

[SS15, §722-a; C24, 27, 31, 35, 39, §**6139;** C46, 50, 54, 58, 62, 66, 71, §397.24; C73, 75, 77, 79, 81, §472.50]

C93, §6B.50

6B.51 Costs — expenses.

The costs of the proceedings shall be the same and paid in the same manner as in proceedings in the district court, and the district court judges of the court of condemnation shall receive, while engaged in such service, their actual expenses, which expenses shall be taxed as costs in the case.

[S13, §722-b; C24, 27, 31, 35, 39, §**6140;** C46, 50, 54, 58, 62, 66, 71, §397.25; C73, 75, 77, 79, 81, §472.51]

C93, §6B.51

Costs generally, chapter 625

6B.52 Renegotiation of damages.

Whenever property or an interest therein has been taken by condemnation or has been purchased for a public use and a settlement for construction or maintenance damages has been thereafter entered into pursuant to said condemnation or purchase, the owner shall have five

years from the date of said settlement to renegotiate construction or maintenance damages not apparent at the time of said settlement. The condemner or purchaser shall give written notice to the owner of such right of renegotiation at the time said settlement is entered into.

[C73, 75, 77, 79, 81, §472.52]
C93, §6B.52

6B.53 Procedure for homesteading projects.

If the purpose of condemnation is to obtain property for use as part of an Iowa homesteading project under section 16.14, the application required under section 6B.3 may contain a verified statement that the property sought to be condemned is abandoned and deteriorating in condition, or is inhabited but is not safe for human habitation, or is or is likely to become a public nuisance, and that the property is suitable for use and is to be used in an Iowa homesteading project. Other information may be included. The statement must be verified by the Iowa finance authority or by a local agency authorized under rules of the authority. Upon proper filing of the statement and the report of the condemnation commission assessing damages, and deposit of the amount assessed with the sheriff, the applicant for condemnation may take possession as provided in section 6B.25 if the property is abandoned, or may take steps to obtain possession after ninety days from the date of the filing of the statement, report, and deposit, if the property is inhabited.

[C77, 79, 81, §472.53]
C93, §6B.53

6B.54 Federally assisted project and displacing activities — acquisition policies.

For any project or displacing activity that has received or will receive federal financial assistance as defined in section 316.1, for any state-funded projects, or for any other public improvement for which condemnation is sought, an acquiring agency shall, at a minimum, satisfy the following policies:

1. Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

2. Real property shall be appraised as required by section 6B.45 before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during an inspection of the property, except that an acquiring agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value. In lieu of an appraisal, a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, shall provide in writing by certified mail to the owner of record thirty days before negotiations, the methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component.

3. Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation for the real property, and shall make a prompt offer to acquire the property for the full amount established by the agency. In no event shall the amount be less than the lowest appraisal of the fair market value of the property. In the case of a utility or person under the jurisdiction of the utilities board of the department of commerce, or any other utility conferred the right by statute to condemn private property, the amount shall not be less than the amount indicated by the methods and factors used in arriving at an offered price for a voluntary easement.

4. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move the person's business or farm operation without at least ninety days' written notice of the date by which the move is required.

5. If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

6. In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

7. If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

8. If the acquisition of only a portion of property would leave the owner with an uneconomical remnant, the acquiring agency shall offer to acquire that remnant. For the purposes of this chapter, an *"uneconomical remnant"* is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, where the acquiring agency determines that the parcel has little or no value or utility to the owner.

9. A person whose real property is being acquired in accordance with this chapter, after the person has been fully informed of the person's right to receive just compensation for the property, may donate the property, any part of the property, any interest in the property, or any compensation

paid for it as the person may determine.

10. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, the acquiring agency shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses the owner necessarily incurred for all of the following:

a. Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring agency.

b. Penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.

Payments and expenditures under this subsection are incident to and arise out of the program or project for which the acquisition activity takes place. Such payments and expenditures may be made from the funds made available for the program or project.

A person aggrieved by a determination as to the eligibility for or amount of a reimbursement may have the matter reviewed in accordance with section 316.9.

11. An owner shall not be required to surrender possession of real property before the acquiring agency concerned pays the agreed purchase price.

89 Acts, ch 20, §19
CS89, §472.54
C93, §6B.54
99 Acts, ch 171, §19, 20, 42

1999 amendments to unnumbered paragraph 1 and subsections 2, 3, 8, and 9 apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.55 Buildings, structures, and improvements on federally assisted programs and projects.

For any program or project that has received or will receive federal financial assistance as defined in section 316.1, for any state-funded projects, or for any other public improvement for which condemnation is sought, an acquiring agency shall at a minimum satisfy the following policies:

1. If an interest in real property is acquired, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property which are required to be removed from the real property or which are determined to be adversely affected by the use to which the real property will be put.

2. For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under this section, the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant of the lands, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the tenant's term. The fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the owner of the building, structure, or improvement.

3. Payment for the building, structure, or improvement under this section shall not result in duplication of any payments otherwise authorized by state law. The payment shall not be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all the tenant's right, title, and interest in and to the improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures, or other improvements shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for the property interests in accordance with other laws of this state.

89 Acts, ch 20, §20
CS89, §472.55
C93, §6B.55
99 Acts, ch 171, §21, 42

1999 amendment to unnumbered paragraph 1 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.56 Disposition of condemned property.

1. If real property condemned pursuant to this chapter is not used for the purpose stated in the application filed pursuant to section 6B.3 and the condemner seeks to dispose of the real property, the condemner shall first offer the property for sale to the prior owner of the condemned property as provided in this section. For purposes of this section, the prior owner of the real property includes the successor in interest of the real property.

2. Before the real property may be offered for sale to the general public, the condemner shall notify the prior owner of the real property condemned in writing of the condemner's intent to dispose of the real property, of the current appraised value of the real property, and of the prior owner's right to purchase the real property within sixty days from the date the notice is served at a price equal to the current appraised value of the real property. The notice sent by the condemner as provided in this subsection shall be filed with the office of the recorder in the county in which the real property is located.

3. If the prior owner elects to purchase the real property at the price established in subsection 2, before the expiration of the sixty-day period, the

prior owner shall notify the condemner in writing of this intention and file a copy of this notice with the office of the recorder in the county in which the real property is located.

4. The provisions of this section do not apply to the sale of unused right-of-way property as provided in chapter 306.

97 Acts, ch 149, §1

6B.57 Procedural compliance.

If an acquiring agency makes a good faith effort to serve, send, or provide the notices or documents required under this chapter to the owner and any contract purchaser of private property that is or may be the subject of condemnation, but fails to provide the notice or documents to the owner and any contract purchaser, such failure shall not constitute grounds for invalidation of the condemnation proceeding if the chief judge of the judicial district determines that such failure can be corrected by delaying the condemnation proceedings to allow compliance with the requirement or such failure does not unreasonably prejudice the owner or any contract purchaser.

99 Acts, ch 171, §22, 42; 2000 Acts, ch 1179, §21, 30

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.58 Acquiring agency — definition.

For purposes of this chapter, an *"acquiring agency"* means the state of Iowa or any person or entity conferred the right by statute to condemn private property or to otherwise exercise the power of eminent domain.

99 Acts, ch 171, §23, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

6B.59 Sale of acquired property — reimbursement to landowner.

If an acquiring agency acquires property by condemnation, or by otherwise exercising the power of eminent domain, and that property is later sold by the acquiring agency for more than the acquisition price paid to the landowner, the acquiring agency shall pay to the landowner from whom the property was acquired the difference between the price at which it was acquired and the price at which it was sold by the acquiring agency less the cost of any improvements made to or benefiting the land by the acquiring agency. This section does not apply to property acquired by the state department of transportation.

99 Acts, ch 171, §24, 42; 2000 Acts, ch 1058, §1

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

SUBTITLE 4

EXECUTIVE BRANCH

CHAPTER 7

GOVERNOR AND LIEUTENANT GOVERNOR

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7.1 Office — secretary.

The governor shall keep the governor's office at the seat of government, in which shall be transacted the business of the executive department of the state. The governor shall keep a secretary at the office during the governor's absence.

[C73, §55; C97, §60; C24, 27, 31, 35, 39, §**78;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.1]

7.2 Journal.

The governor shall cause a journal to be kept in the executive office, in which a record shall be made of each official act as done, except if in cases of emergency an act is done away from the office, such entry shall be made as soon thereafter as may be. The governor shall cause a like military record to be kept of the acts done as commander in chief.

[C73, §56, 57; C97, §61; C24, 27, 31, 35, 39, §**79;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.2]

7.3 Counsel.

Whenever the governor is satisfied that an action or proceeding has been commenced which may affect the rights or interests of the state, the governor may employ counsel to protect such rights or interests; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the state, the governor may employ additional counsel to assist in the cause.

[C51, §40; R60, §44; C73, §59; C97, §63; C24, 27, 31, 35, 39, §**80;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.3]

Employment by executive council, §13.7

7.4 Expenses.

The expenses thus incurred, and those caused in executing the laws, may be allowed by the governor and paid from the contingent fund.

[C51, §41; R60, §45; C73, §60; C97, §64; C24, 27, 31, 35, 39, §**81;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.4]

7.5 Highway construction patents.

The governor, whenever the governor deems such action to be in the interest of the public, shall have power to direct the attorney general to appear for and on behalf of any county, city or other municipality of this state or for and on behalf of any officer thereof or contractor therewith, whenever any such county, city or other municipality or officer or contractor is a party to any action or proceeding in any court wherein is involved the validity of any alleged patent on any matter or thing entering into highway, bridge, or culvert construction, or on any parts thereof, and may employ such legal assistance in addition to the attorney general as the governor may deem necessary and may pay for the same out of any fund in the state treasury not otherwise appropriated. Whenever the attorney general is so directed by the governor it shall be the attorney general's duty to comply therewith.

[S13, §64-a; C24, 27, 31, 35, 39, §**82;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.5]

Employment by executive council, §13.7

7.6 Reward for arrest.

Whenever the governor is satisfied that a crime has been committed within the state, punishable by imprisonment in the penitentiary for a term of

ten years or more, and the person committing the same has not been arrested or has escaped from arrest or custody or the person's whereabouts is unknown, the governor may in the governor's discretion, offer a reward not exceeding five hundred dollars for the arrest and delivery to the proper authorities of such persons, which reward, upon the certificate of the governor that the same has been earned, shall be audited and paid by the state.

The reward shall be paid only upon the conviction of the person, and if appealed, only after a final decision of an appellate court has been rendered which affirms that conviction.

[R60, §57; C73, §58; C97, §62; C24, 27, 31, 35, 39, §**83;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.6]

7.7 Accounting.

All fees paid to the governor shall be turned over to the treasurer of state.

[SS15, §4-e; C24, 27, 31, 35, 39, §**84;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.7]

7.8 Salary — governor, lieutenant governor.

The salary of the governor shall be as fixed by the general assembly.

The salary, payment of expenses, and any per diem of the lieutenant governor shall be as fixed by the general assembly.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §7.8]
90 Acts, ch 1223, §8

7.9 Federal funds accepted.

The governor is authorized to accept for the state, the funds provided by any Act of Congress for the benefit of the state of Iowa, or its political subdivisions, provided there is no agency to accept and administer such funds, and the governor is authorized to administer or designate an agency to administer the funds until such time as an agency of the state is established for that purpose.

[C66, 71, 73, 75, 77, 79, 81, §7.9]

7.10 Emergency highway peace officers.

Whenever the governor is satisfied that a state of emergency exists, or is likely to exist, on the public streets or highways of this state, because of violations of chapter 321, the governor shall designate any employee or employees of this state as peace officers pursuant to section 801.4, subsection 11, paragraph *"j"*, until such time as the governor is satisfied the state of emergency is ended.

[C66, 71, 73, 75, 77, 79, 81, §7.10]

7.11 Purpose.

Individuals so designated shall have the full duties and rights of peace officers under the Code, for the purpose of enforcing the motor vehicle laws and ordinances of this state, and shall be provided with an identifying badge and card.

[C66, 71, 73, 75, 77, 79, 81, §7.11]

7.12 Supervisor designated.

The governor, in exercising the power conferred by sections 7.10 and 7.11, may designate one employee or officer of the state to supervise all persons designated as peace officers hereunder, and they shall be fully responsible to that employee or officer for all acts performed pursuant to these sections.

[C66, 71, 73, 75, 77, 79, 81, §7.12]

7.13 Governor-elect expense fund.

There is hereby created as a permanent fund in the office of the treasurer of state a fund to be known as the *"governor-elect expense fund"*. For the purpose of establishing and maintaining said fund, for each biennium, there is hereby appropriated thereto from funds in the general fund not otherwise appropriated the sum of ten thousand dollars, or so much thereof as may be necessary, to pay for office space, supplies, postage, and secretarial and clerical salaries after the day of the election and before the day of the inauguration for a first term governor-elect. Any balance in said fund at the end of each biennium shall revert to the general fund. Said fund shall be subject at all times to the warrant of the director of revenue and finance drawn upon written requisition of the governor-elect. In event of a contested election, no distribution of the fund will be made until such time as the general assembly certifies the results of the election.

[C66, 71, 73, 75, 77, 79, 81, §7.13]

7.14 Disability of governor to act.

1. Whenever it appears that the governor is unable to discharge the duties of office for reason of disability pursuant to Article IV, section 17, Constitution of Iowa, the person next in line of succession to the office of the governor, or the chief justice, may call a conference consisting of the person who is chief justice, the person who is director of mental health, and the person who is the dean of medicine at the state university of Iowa. Provided, if either the director or dean is not a physician duly licensed to practice medicine by this state the director or dean may assign a member of the director's or dean's staff so licensed to assist and advise on the conference. The three members of the conference shall within ten days after the conference is called examine the governor. Within seven days after the examination, or if upon attempting to examine the governor the members of the conference are unable to examine the governor because of circumstances beyond their control, they shall conduct a secret ballot and by unanimous vote may find that the governor is temporarily unable to discharge the duties of the office.

2. The finding of or failure to find a disability shall be immediately made public, and if the gov-

ernor is found to be unable to discharge the duties of the office, the person next in line of succession to the office of governor shall be immediately notified. After receiving the notification that person may, under Article IV, sections 17 and 19, Constitution of the State of Iowa, become governor until the disability is removed.

3. Whenever a governor who is unable to discharge the duties of the office believes the disability to be removed, the governor may call a conference consisting of the three persons referred to as members of such a conference in subsection 1. The three members of the conference shall within ten days examine the governor. Within seven days after the examination they shall conduct a secret ballot and by unanimous vote may find the disability removed.

4. The finding of or failure to find the disability removed shall be immediately made public.

[C66, 71, 73, 75, 77, 79, 81, §7.14]

91 Acts, ch 97, §2; 96 Acts, ch 1129, §2

7.15 Federal funds for highway safety.

The governor, in addition to other duties and responsibilities conferred by the Constitution and laws of this state, is hereby empowered to contract for the benefits available to this state under any Act of Congress for highway safety, law enforcement, or other related programs, and in so doing, to co-operate with federal and state agencies, private and public organizations, and with individuals, to effectuate the purposes of these enactments. The governor shall be responsible for and is hereby empowered to administer, either through the governor's office or through one or more state departments or agencies designated by the governor or any combination of the foregoing the highway safety, law enforcement and related programs of this state and those of its political subdivisions, all in accordance with said Acts and the Constitution of the state of Iowa, in implementation thereof.

[C71, 73, 75, 77, 79, 81, §7.15]

Department of public safety designated as state highway safety agency to receive federal funds; Executive Order No. 23; June 9, 1986

7.16 Vacancies filled at less than statutory salary.

The governor or other appointing authority may, when appointing or employing any person for which a salary is specifically provided by the appropriation bill, appoint a person to fill the vacancy at a lesser salary than that provided by the appropriation bill.

[C71, 73, 75, 77, 79, 81, §7.16]

7.17 Office of administrative rules co-ordinator.

The governor shall establish the office of the administrative rules co-ordinator, and appoint its staff, which shall be a part of the governor's office. The administrative rules co-ordinator shall receive all notices and rules adopted pursuant to chapter 17A and provide the governor with an opportunity to review and object to any rule as provided in chapter 17A. The administrative rules co-ordinator in consultation with the administrative code editor shall prescribe a uniform style and form by which an agency shall prepare and file a rule pursuant to chapter 17A, which shall correlate each rule to a uniform numbering system devised by the administrative rules co-ordinator. The administrative rules co-ordinator shall review all submitted rules for style and form and may return or revise a rule which is not in proper style and form. In prescribing the style and form, the administrative rules co-ordinator shall require that the agency include a reference to the statute which the rules are intended to implement.

[C79, 81, §7.17]

90 Acts, ch 1266, §28; 91 Acts, ch 258, §7

7.18 Model community projects.

1. As used in this section, unless the context otherwise suggests, *"community"* means a city, county, or any combination of cities and counties.

2. During any project, pilot project, or similar initiative undertaken by the governor or the executive branch which includes the designation of a model community in the state, the approval of all of the following entities must be obtained by a simple majority vote prior to the granting of an official model community designation and prior to any state financial support being disbursed to any person under the project, pilot project, or similar initiative:

a. The city council of any city included in a proposed model community.

b. The county board of supervisors of a county included in a proposed model community.

c. Each school board of a school district serving students in a proposed model community.

2001 Acts, ch 40, §1

7.19 Reserved.

7.20 Executive order — use of vacant school property.

The governor shall issue an executive order requiring all state agencies to consider the leasing of a vacant facility or building which is appropriately located and which is owned by a public school corporation before a state agency leases, purchases, or constructs a facility or building. The state agency may lease a facility or building owned by a public school corporation with an option to purchase the facility or building in compliance with section 297.22. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corpora-

tion shall notify the state agency at least thirty days before the termination of the lease.

[82 Acts, ch 1148, §1]

97 Acts, ch 184, §1

7.21 Reserved.

7.22 Exchange of offenders under treaty — consent by governor.

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which the offenders are citizens or nationals, the governor or the governor's designee, on behalf of the state and subject to the terms of the treaty, may authorize the transfer or exchange of offenders.

83 Acts, ch 203, §13

CHAPTER 7A

OFFICIAL REPORTS AND PUBLICATIONS

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7A.1 Official reports — preparation.

State officials, boards, commissions, and heads of departments shall prepare and file written official reports, in simple language and in the most concise form consistent with clearness and comprehensiveness of matter, required by law or by the governor.

Before filing any report its author shall carefully edit the same and strike therefrom all minutes of proceedings, and all correspondence, petitions, orders, and other matter which can be briefly stated, or which is not important information concerning public affairs, and consolidate so far as practicable all statistical tables.

Any report failing to comply substantially with this section shall be returned to its author for correction, and until made so to comply shall not be printed.

This section shall not be construed as depriving the state printing administrator of the right to edit and revise said report.

[C24, 27, 31, 35, 39, §**244;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.1]

C93, §7A.1

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.2 Made to governor.

All official reports shall be made to the governor unless otherwise provided.

Reports after being filed with the governor and considered by the governor shall be delivered to the state printing administrator.

[C24, 27, 31, 35, 39, §**245;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.2]

C93, §7A.2

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

Departmental annual reports to governor and legislature; see §7E.3(4)

7A.3 Biennial reports — time covered and date of filing.

Reports of the following officials and departments shall cover the biennial period ending June 30 in each even-numbered year, and shall be filed as soon as practicable after the end of the reporting period:

1. Director of revenue and finance on fiscal condition of state.
2. Treasurer of state as to the condition of the treasury.
3. Director of the department of education.

4. Director of the department of human services.
5. Board of regents.
6. State printing administrator.
7. State historical society board of trustees.
8. State librarian.
9. Commission of libraries.
10. Department of general services.
11. Director of department of natural resources.
12. Adjutant general.

The officials and departments required by this section to file biennial reports shall, in addition thereto, in each odd-numbered year, file summary reports relating to their operations for the preceding fiscal year. Such reports shall be filed as soon as practicable after June 30 of each odd-numbered year and shall be as detailed as may be required by the governor, or in case the reports are to be filed with the general assembly, the presiding officers of the two houses of the general assembly.

The officials and departments required by this section to file reports shall submit the reports on standardized forms furnished by the director of the department of management. All officials and agencies submitting reports shall consult with the director of the department of management and shall devise standardized report forms for submission to the governor and members of the general assembly.

[C73, §125; C97, §122; S13, §122; C24, 27, 31, 35, 39, §**246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.3]

83 Acts, ch 96, §157, 159; 85 Acts, ch 212, §21; 86 Acts, ch 1245, §904; 91 Acts, ch 258, §16

C93, §7A.3

93 Acts, ch 48, §1; 94 Acts, ch 1107, §1; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2001 Acts, ch 129, §1

7A.4 Annual reports — time covered and date of filing.

Reports of the following officials and departments shall cover the year ending December 31 of each year, and shall be filed as soon as practicable after said date:

1. Commissioner of insurance.
2. Apiarist.
3. State geologist.
4. Fire marshal.
5. College student aid commission.

[C24, 27, 31, 35, 39, §**247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.4]

88 Acts, ch 1134, §13; 90 Acts, ch 1253, §122

C93, §7A.4

98 Acts, ch 1119, §7

7A.5 Governor.

The biennial report of the governor to the general assembly on reprieves, commutations, pardons, and remission of fines and forfeitures shall cover the two years ending with December 31 immediately preceding the convening of the general assembly in regular session, in odd-numbered years, and shall be filed as soon as practicable after said date.

[C24, 27, 31, 35, 39, §**248;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.5]

C93, §7A.5

7A.6 Attorney general.

The biennial report of the attorney general shall cover the two-year period ending with December 31 in even-numbered years and shall be filed as soon as practicable after the expiration of said period but not later than March 1.

[C24, 27, 31, 35, 39, §**249;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.6]

C93, §7A.6

7A.7 Reserved.

7A.8 Superintendent of banking.

The annual report of the superintendent of banking shall cover the year ending June 30 of each year, and shall be filed as soon as practicable after said date and not later than December 31.

[C24, 27, 31, 35, 39, §**251;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.8]

91 Acts, ch 220, §1

C93, §7A.8

Annual report, §524.216

7A.9 State department of transportation.

The annual report of the state department of transportation shall cover the year ending June 30 and shall be filed not later than September 1 of each year.

[C24, 27, 31, 35, 39, §**252;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.9]

84 Acts, ch 1102, §1

C93, §7A.9

7A.10 Utilities board.

The annual report of the utilities board shall, as to all statistical data, cover the year ending December 31 preceding the filing of the report, and the proceedings of the board to date of filing the report each year. The report shall be filed on or before December 1. The board shall determine the manner in which the annual report shall be published.

[C24, 27, 31, 35, 39, §**253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.10]

88 Acts, ch 1134, §14

C93, §7A.10

7A.11 Documents filed with the general assembly.

1. It is the intent of the general assembly that a department or official may notify the chief clerk of the house of representatives and the secretary

of the senate of the availability of documents and materials other than those covered by subsection 2.

2. A department or official required to file a document with the general assembly shall only be required to send one copy of the document to each of the following:

a. The chief clerk of the house of representatives.

b. The secretary of the senate.

c. Each caucus or research staff director of the general assembly.

3. The chief clerk of the house of representatives and the secretary of the senate shall transmit a list of the documents received, and a list of the documents and materials available to the general assembly to the legislative service bureau, which shall maintain the lists, as well as a list of addresses where copies of the documents may be ordered. The legislative service bureau shall periodically distribute copies of these lists to members of the general assembly. The chief clerk of the house of representatives and the secretary of the senate may transmit the actual documents received to the legislative service bureau for temporary storage.

91 Acts, ch 47, §1
CS91, §17.11
C93, §7A.11
96 Acts, ch 1099, §5

7A.11A Reports to the general assembly.

All reports required to be filed with the general assembly by a state department or agency shall be filed by delivering one printed copy and one copy in electronic format as prescribed by the secretary of the senate and the chief clerk of the house.

93 Acts, ch 178, §27

7A.12 Delay.

Should the governor deem the delay in filing a report to be unreasonable the governor shall take such steps as will correct the delinquency.

[C24, 27, 31, 35, 39, §**255;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.12]
C93, §7A.12

7A.13 Governor may grant extension.

The governor shall have authority to grant an extension of time for the completion of any report or any portion thereof, but in the case of any delay deemed by the governor to be unnecessary or unreasonable the governor shall take whatever steps may be necessary to have the delayed report prepared for filing.

[C24, 27, 31, 35, 39, §**256;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.13]
C93, §7A.13

7A.14 Number of copies — style.

The annual and biennial reports shall be published, printed, and bound in such number as the state printing administrator may order. The officials and heads of departments shall furnish the administrator with information necessary to determine the number of copies to be printed.

They shall be printed on good paper, in legible type with pages substantially six inches by nine inches in size. They may be divided for binding where one portion should receive larger distribution than another, or be issued in parts or sections for greater convenience.

[C73, §130; C97, §125; S13, §125; C24, 27, 31, 35, 39, §**257;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.14]
C93, §7A.14
98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.15 Legislative journals.

The record of the transactions of the senate and house shall be published in a daily journal, printed in number as authorized by the general assembly or directed by the state printing administrator. The completed journals shall be published in book form, with index and record of bills, in an edition of such number as shall jointly be specified by the presiding officers of the two houses of the general assembly in library binding and such number as shall jointly be specified by the presiding officers of the two houses of the general assembly in paper covers. There shall also be printed for the general assembly or the members thereof such other material necessary for the transaction of legislative business.

[C97, §127, 130; SS15, §132-b, -d; C24, 27, 31, 35, 39, §**259;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.15]
C93, §7A.15
98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.16 Legislative proceedings.

The reports of the legislative proceedings shall be delivered by the secretary of the senate and the chief clerk of the house to the state printing administrator promptly upon completion, and the state printing administrator shall cause the reports to be printed in accordance with the contracts covering them. The state printing administrator shall require that proof copies of the daily journal be furnished the next legislative day after date and shall promptly deliver them to the sergeants at arms of each house. The corrections and changes made in the journal by the general assembly shall be made before the printing of the corrected or completed journal.

[C24, 27, 31, 35, 39, §**260;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.16]
85 Acts, ch 195, §3
C93, §7A.16
98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.17 Corrected journals.

The journal, as corrected by order of the general assembly, shall be printed promptly and be delivered by the state printing administrator to the sergeants at arms of each house. An index, record and history of bills, and list of bills passed, shall be prepared by the state printing administrator for the completed edition of the journal.

[C24, 27, 31, 35, 39, §**261;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.17]

C93, §7A.17

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.18 Legislative bills.

The bills introduced in the general assembly shall be printed on good paper. The style and format of such bills shall be specified by the rules but in the absence of such rules by the legislative council. The number of copies of each bill to be printed unless otherwise ordered shall be fixed by the state printing administrator according to the needs of the general assembly, and to supply subscribers therefor.

[C24, 27, 31, 35, 39, §**262;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.18]

C93, §7A.18

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.19 Legalizing acts of local nature.

A bill which seeks to legalize the acts of any official or board or other official body, in regard to any matter of public nature or for any person or persons, company or corporation, shall not be considered until it is printed as a bill and distributed to members of the general assembly, and the printing shall be without expense to the state. The state printing administrator shall not order any such bill printed until the administrator has received a deposit to cover the cost thereof at the rate which shall be fixed under the current contract for legislative printing for the bills, and shall exclude from the journals all such bills and the newspaper publication of such bill shall be without expense to the state, and same shall not be published until the cost of same has been paid to the secretary of state.

[C24, 27, 31, 35, 39, §**263;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.19]

C93, §7A.19

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

Additional requirements, §585.1

7A.20 Miscellaneous documents.

There shall be published, printed, and bound, uniform with the official reports, unless otherwise provided, and for the periods indicated, the following miscellaneous documents, each of which shall be compiled by the head or secretary of the department or association having charge thereof:

1. Iowa official register, biennially.

2. Assessments by department of revenue and finance relative to public utilities, annually.

[C24, 27, 31, 35, 39, §**264;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.20]

C93, §7A.20

2002 Acts, ch 1119, §1

Publication requirement inapplicable to Iowa official register during 2001 and 2002 calendar years; 2001 Acts, ch 187, §25

Subsection 1 stricken and former subsections 2 and 3 renumbered as 1 and 2

7A.21 Printed legal publications.

The official versions of the Iowa Code, Iowa Code Supplement, and other supplements, the Iowa administrative code and its supplements, the Iowa administrative bulletin, Iowa court rules, session laws, annotations, tables of corresponding sections, and reports of the supreme court, unless otherwise specifically provided by law, shall be printed and paid for in the same manner as other public printing.

[C97, §218 – 224; SS15, §224-d; C24, 27, 31, 35, 39, §**265;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.21]

92 Acts, ch 1163, §4

C93, §7A.21

96 Acts, ch 1099, §6

7A.22 Pricing and related policies.

The publications listed in this section shall be sold at a price to be established by the legislative council. In determining these prices, the legislative council shall consider the costs of printing, binding, distribution, paper stock, and compilation and editing labor costs. The legislative council shall also consider the number of volumes to be printed, sold, and distributed in the determination of these prices.

1. The Iowa Code, Iowa Code Supplement, or other supplements, the Iowa administrative code or its supplements, and the Iowa administrative bulletin.

2. Session laws.

3. Iowa court rules.

The Iowa administrative code, its supplements, or the Iowa administrative bulletin may be distributed with the Iowa Code or separately. There shall be established separate prices for the Iowa administrative code, for its supplements, for the Iowa administrative bulletin, for the Iowa Code, the Iowa Code Supplement, and other supplements.

When the Iowa Code is published in more than one volume the state printing administrator may distribute each volume on order, after payment of the estimated purchase price for the set, when the volume becomes available.

The legislative council may establish policies for producing, editing, distributing, and pricing electronic publications which contain information stored by the general assembly in an electronic format, including information contained in publications described in this section together with programming not originally part of the stored information. As part of those policies, the council may

provide for electronic publications containing specialized search and retrieval functions, and shall ensure the widest possible dissemination of versions of electronic publications containing search and retrieval functions at the lowest price practicable which shall not be more than costs attributable to producing, editing, and disseminating those versions.

[C27, 31, 35, §265-a1; C39, §**265.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.22]

83 Acts, ch 181, §2; 86 Acts, ch 1238, §2; 87 Acts, ch 20, §1; 92 Acts, ch 1163, §5

C93, §7A.22

96 Acts, ch 1099, §7, 8; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.23 Price of departmental reports.

The state printing administrator shall establish and fix a selling price for all state departmental reports and any other state publications the administrator may designate, which price per volume shall be the amount charged any person, other than public officials, who purchases the publication. The price shall cover the cost of printing and distribution. The administrator may distribute gratis to state or local public officials or offices, as the administrator deems necessary, copies of departmental annual reports.

[C35, §265-e1; C39, §**265.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.23]

84 Acts, ch 1067, §5

C93, §7A.23

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.24 Reserved.

7A.25 New editions.

New editions of the Iowa Code, Iowa Code Supplement, or other supplements, reports of the supreme court, and reports of the court of appeals may be published by the state printing administrator when the supply on hand of the last edition becomes exhausted and when a new edition is necessary in order to meet the demand.

[C24, 27, 31, 35, 39, §**267;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.25]

92 Acts, ch 1163, §6

C93, §7A.25

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.26 Number printed.

The number of each edition of the Iowa Code, Iowa Code Supplement, or other supplements, and session laws shall be determined by the state printing administrator and the Iowa Code editor unless expressly determined by presiding officers of the general assembly.

[C73, §37; C97, §40; C24, 27, 31, 35, 39, §**268;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.26]

92 Acts, ch 1163, §7

C93, §7A.26

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.27 Other necessary publications — when necessary to sell.

There may be published other miscellaneous documents, reports, bulletins, books, and booklets that are needed for the use of the various officials and departments of state, or are of value for the information of the general assembly or the public, in form and number most useful and convenient, to be determined by the state printing administrator.

When such publications, except supplements to the Iowa administrative code, paid for by public funds furnished by the state, contain reprints of statutes or rules, or both, they shall be sold and distributed at cost by the department ordering same if the cost per publication is one dollar or more, unless a central library or depository is established. Such publications shall be obtained from the state printing administrator on requisition by the department and the selling price, if any, shall be determined by the administrator by dividing the total cost of printing, paper, distribution, and binding by the number printed. Said price shall be set at the nearest multiple of ten to the quotient thus obtained. Distribution of such publications shall be made by the administrator gratis to public officers, purchasers of licenses from state departments required by statute and departments. Funds from the sale of such publications shall be deposited monthly in the general fund of the state except the cost of distribution shall be deposited in the permanent revolving fund established in section 18.57.

[C24, 27, 31, 35, 39, §**269;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.27]

C93, §7A.27

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

Additional geological reports, §456.9

Publication of director of institutions bulletins, §218.46

Publication of parts of Code or administrative code, §2B.21

7A.28 Governor may fix filing date.

The governor shall have the right to fix a date for the completion of or filing of any copy or manuscript for any miscellaneous document or other publication, or for any portion of the manuscript, and to compel compliance with such orders the same as in the case of the official reports. The state printing administrator shall report to the governor any failure to furnish manuscript or other delay affecting any publication.

[C24, 27, 31, 35, 39, §**270;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.28]

C93, §7A.28

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.29 Title pages — complimentary insertions.

The state printing administrator shall provide

the necessary printer's copy for a suitable title page for each publication requiring such title which shall contain the name of the author, but no such title shall have written or printed thereon or attached thereto the words *"Compliments of"* followed by the name of the author, nor any other words of similar import.

[C24, 27, 31, 35, 39, §**271;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §17.29]

C93, §7A.29

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

7A.30 Inventory of state property.

Each state board, commission, department and division of state government and each institution under the control of the department of human services, the Iowa department of corrections and the state board of regents and each division of the state department of transportation are responsible for keeping a written, detailed, up-to-date inventory of all real and personal property belonging to the state and under their charge, control and management. The inventories shall be in the form prescribed by the director of the department of general services.

Inventories maintained in the files of each such agency of state government shall be open to public inspection and available for the information of the executive council and director of the department of general services.

[C46, 50, 54, 58, §17.30 – 17.32; C62, 66, 71, 73, 75, 77, 79, 81, §17.30]

83 Acts, ch 96, §157, 159; 85 Acts, ch 195, §4

C93, §7A.30

CHAPTER 7B

JOB TRAINING PARTNERSHIP PROGRAM

Repealed by 2001 Acts, ch 61, §18

CHAPTER 7C

PRIVATE ACTIVITY BOND ALLOCATION ACT

7C.1 Short title.
7C.2 Declaration of intent.
7C.3 Definitions.
7C.4 Maximum amount of bonds.
7C.4A Allocation of state ceiling.
7C.5 Formula for allocation.
7C.6 Application for allocation.
7C.7 Certification of allocation.
7C.8 State ceiling carryforwards.
7C.9 Nonbusiness days.
7C.10 Resubmission of expired allocations.
7C.11 Priority allocations.
7C.12 Authority and duties of the governor and governor's designee.

7C.1 Short title.

This chapter shall be known and may be cited as the *"Private Activity Bond Allocation Act"*.

85 Acts, ch 225, §3

7C.2 Declaration of intent.

It is the intention of the general assembly in enacting this chapter to:

1. Implement section 146 of the Internal Revenue Code by providing a different formula for allocating the state ceiling among the various governmental units which are authorized to issue private activity bonds under the laws of this state.

2. Maximize the availability of the state ceiling to the issuers of private activity bonds within the state and thereby maximize the economic benefit to the citizens of the state from the issuance of private activity bonds.

85 Acts, ch 225, §4; 87 Acts, ch 171, §1

7C.3 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. *"Allocation"* means that portion of the state ceiling which is allocated and certified to a political subdivision hereby or by the governor's designee pursuant to section 7C.8 with respect to an issue of bonds for a specific project or purpose.

2. *"Bond"* or *"private activity bond"* means a private activity bond as defined in section 141 of the Internal Revenue Code.

3. *"Carryforward project"* means a carryforward project or carryforward purpose as defined in section 146(f) of the Internal Revenue Code.

4. *"First-time farmer"* means a first-time farmer as defined in section 147(c) of the Internal Revenue Code.

5. *"Governor's designee"* means the person, department, or authority designated by the governor to administer this chapter.

6. *"Internal Revenue Code"* means the Internal Revenue Code as defined in section 422.3.

7. *"Political subdivision"* means a political subdivision, authority, or department of the state which is authorized under the laws of the state to issue private activity bonds.

8. *"Qualified mortgage bond"* means a qualified mortgage bond as defined in section 143(a) of the Internal Revenue Code.

9. *"Qualified small issue bond"* means a qualified small issue bond as defined in section 144(a) of the Internal Revenue Code.

10. *"Qualified student loan bond"* means a qualified student loan bond as defined in section 144(b) of the Internal Revenue Code.

11. *"State ceiling"* means the same as defined in section 146(d) of the Internal Revenue Code.

85 Acts, ch 225, §5; 87 Acts, ch 171, §2

7C.4 Maximum amount of bonds.

The aggregate principal amount of bonds which are subject to section 146 of the Internal Revenue Code which may be issued by all political subdivisions during a calendar year shall not exceed the state ceiling for that calendar year, except as provided in section 7C.8.

85 Acts, ch 225, §6; 87 Acts, ch 171, §3

7C.4A Allocation of state ceiling.

For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes as follows:

1. Thirty percent of the state ceiling shall be allocated solely to the Iowa finance authority for the following purposes:

a. Issuing qualified mortgage bonds.

b. Reallocating the amount, or any portion thereof, to another qualified political subdivision for the purpose of issuing qualified mortgage bonds; or

c. Exchanging the allocation, or any portion thereof, for the authority to issue mortgage credit certificates by election under section 25(c) of the Internal Revenue Code.

However, at any time during the calendar year the executive director of the Iowa finance authority may determine that a lesser amount need be allocated to the Iowa finance authority and on that date this lesser amount shall be the amount allocated to the authority and the excess shall be allocated under subsection 7.

2. Twelve percent of the state ceiling shall be allocated to bonds issued to carry out programs established under chapters 260C, 260E, and 260F. However, at any time during the calendar year the director of the Iowa department of economic development may determine that a lesser amount need be allocated and on that date this lesser amount shall be the amount allocated for those programs and the excess shall be allocated under subsection 7.

3. Sixteen percent of the state ceiling shall be allocated to qualified student loan bonds. However, at any time during the calendar year the governor's designee, with the approval of the Iowa student loan liquidity corporation, may determine that a lesser amount need be allocated to qualified student loan bonds and on that date the lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 7.

4. Twenty-one percent of the state ceiling shall be allocated to qualified small issue bonds issued for first-time farmers. However, at any time during the calendar year the governor's designee, with the approval of the Iowa agricultural development authority, may determine that a lesser amount need be allocated to qualified small issue bonds for first-time farmers and on that date this lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 7.

5. Eighteen percent of the state ceiling shall be allocated to bonds issued by political subdivisions to finance a qualified industry or industries for the manufacturing, processing, or assembly of agricultural or manufactured products even though the processed products may require further treatment before delivery to the ultimate consumer.

6. During the period of January 1 through June 30, three percent of the state ceiling shall be reserved for private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions.

7. *a.* The amount of the state ceiling which is not otherwise allocated under subsections 1 through 5, and after June 30, the amount of the state ceiling reserved under subsection 6 and not allocated, shall be allocated to all bonds requiring an allocation under section 146 of the Internal Revenue Code without priority for any type of bond over another, except as otherwise provided in sections 7C.5 and 7C.11.

b. The population of the state shall be determined in accordance with the Internal Revenue Code.

87 Acts, ch 171, §4; 90 Acts, ch 1011, §1; 91 Acts, ch 25, §1; 98 Acts, ch 1165, §1

Approval date of March 1 for applications made under subsection 5 for industrial bonds for calendar year beginning January 1, 2001; 2000 Acts, ch 1166, §8

7C.5 Formula for allocation.

Except as provided in section 7C.4A, subsections 1 through 5, the state ceiling shall be allocated among all political subdivisions on a statewide basis on the basis of the chronological orders of receipt by the governor's designee of the applications described in section 7C.6 with respect to a definitive issue of bonds, as determined by the day, hour, and minute time-stamped on the application immediately upon receipt by the governor's designee. However, for the period January 1 through June 30 of each year, allocations to bonds for which

an amount of the state ceiling has been reserved pursuant to section 7C.4A, subsection 6, shall be made to the political subdivisions submitting the applications first from the reserved amount until the reserved amount has been fully allocated and then from the amount specified in section 7C.4A, subsection 7.

85 Acts, ch 225, §7; 87 Acts, ch 171, §5; 98 Acts, ch 1165, §2

7C.6 Application for allocation.

A political subdivision which proposes to issue bonds for a particular project or purpose for which an allocation of the state ceiling is required and has not already been made under section 7C.4A, subsections 1 through 5, must make an application for allocation before issuance of the bonds. The application may be made by the political subdivision or its representative, the beneficiary of the project or purpose, or by a person acting on behalf of the beneficiary. The application shall be submitted to the governor's designee, in the form prescribed by the governor's designee. The application shall contain, where appropriate, the following information:

1. Name and mailing address of the political subdivision.
2. Name of the chief elected or appointed executive officer of the political subdivision.
3. If the project to be financed by the bonds is not to be owned by the political subdivision, the name or description and location by mailing address or other definitive description of the project for which the allocation is requested.
4. Name and mailing address of both the initial owner, beneficiary, or operator of the project and an appropriate person from whom information regarding the project or purpose can be obtained.
5. Date of adoption by the governing body of the political subdivision of any initial governmental act with respect to the bonds.
6. Amount of the state ceiling which the political subdivision is requesting be allocated to the bonds.
7. Other information which the governor's designee deems reasonably required to carry out the purposes of this chapter.

85 Acts, ch 225, §8; 87 Acts, ch 171, §6; 98 Acts, ch 1165, §3

7C.7 Certification of allocation.

Upon the receipt of a completed application pursuant to section 7C.6, the governor's designee shall promptly certify to the political subdivision the amount of the state ceiling allocated to the bonds for the purpose or project with respect to which the application was submitted. The allocation shall remain valid for thirty days from the date the allocation was certified, subject to the following conditions:

1. If the bonds are issued and delivered for the purpose or project within the thirty-day period or the forty-five day extension period provided in subsection 2, the political subdivision or its representative shall within ten days following the issuance and delivery of the bonds or not later than June 30 of that year, if the bonds were issued and delivered on or before that date, file with the governor's designee, in the form or manner the governor's designee may prescribe, a notification of the date of issuance and the delivery of the bonds, and the actual principal amount of bonds issued and delivered. The filing of the notification shall be done by actual delivery or by posting in a United States post office depository with correct first class postage paid. If the actual principal amount of bonds issued and delivered is less than the amount of the allocation, the amount of the allocation is automatically reduced to the actual principal amount of the bonds issued and delivered.
2. If the political subdivision does not reasonably expect to issue and deliver the bonds within the thirty-day period and evidence of an executed, valid and binding agreement to purchase the bonds is obtained from an entity with the legal ability to purchase and this agreement is filed with the governor's designee, the thirty-day allocation period is automatically extended for an additional forty-five days. The allocation period shall not be extended beyond that additional forty-five days.
3. The allocation is no longer valid unless the bonds are issued and delivered prior to December 24 or in the case of bonds described in section 7C.11 are issued and delivered prior to December 31 of the calendar year in which the allocation is certified, except as provided in section 7C.8.

85 Acts, ch 225, §9; 87 Acts, ch 171, §7; 88 Acts, ch 1134, §2; 98 Acts, ch 1165, §4

7C.8 State ceiling carryforwards.

It is the intention of the general assembly that the maximum use be made of all carryforward provisions in the Internal Revenue Code. Therefore, if the aggregate principal amount of bonds, subject to section 146 of the Internal Revenue Code, issued by all political subdivisions in a calendar year is less than the state ceiling for that calendar year, a political subdivision may apply to the governor's designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The governor's designee shall determine the time and manner in which applications for an allocation of excess state ceiling shall be made for this purpose and may, in the designee's discretion, refuse any requests. However, the procedures for applications, the method of identifying, and the types permitted of carryforward projects shall comply with the carryforward provisions of the Internal Revenue Code and regulations promulgated under those provisions.

85 Acts, ch 225, §10; 87 Acts, ch 171, §8

7C.9 Nonbusiness days.

If the expiration date of either the thirty-day period or the forty-five day extension period described in subsection 1 or 2 of section 7C.7 is a Saturday, Sunday or any day on which the offices of the state, banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday or other previously described day.

85 Acts, ch 225, §11; 87 Acts, ch 171, §9

7C.10 Resubmission of expired allocations.

If an allocation becomes no longer valid as provided in section 7C.7, the political subdivision may resubmit its application for the same project or purpose. The resubmitted application shall be treated as a new application and preference, priority, or prejudice shall not be given to the application or the political subdivision as a result of the prior application.

85 Acts, ch 225, §12; 87 Acts, ch 171, §10

7C.11 Priority allocations.

Notwithstanding any other provision of this chapter, the governor's designee shall give priority in allocation of the state ceiling not yet allocated to bonds which must be issued and delivered on or prior to December 31 of the calendar year in order for the interest on the bonds to be exempt from federal income taxation. Applications for an allocation with respect to these bonds shall be accompanied by an opinion of a nationally recognized bond counsel to the effect that the bonds must be issued and delivered on or prior to December 31 in that calendar year in order for the interest on the bonds to be exempt from federal income taxation.

85 Acts, ch 225, §13; 87 Acts, ch 171, §11

7C.12 Authority and duties of the governor and governor's designee.

1. The governor shall designate a person, department, or authority to administer this chapter. The person, department, or authority so designated shall serve at the pleasure of the governor and shall be selected primarily for administrative ability and knowledge in the area of public finance.

2. In addition to the powers and duties specified in sections 7C.1 to 7C.11, the governor's designee:

a. Shall promulgate rules which are necessary or expedient to carry out the intent and purposes of the private activity bond allocation Act.

b. Shall maintain records of all applications filed by political subdivisions pursuant to section 7C.6 and all bonds issued pursuant to these applications including, but not limited to, a daily accounting of the amount of the state ceiling available for allocation, the amount of the state ceiling which has been allocated but not used, and the names, addresses, and telephone numbers of those political subdivisions for whom an allocation has been approved or disapproved and the amount of the allocation approved or disapproved for the political subdivisions.

85 Acts, ch 225, §14; 87 Acts, ch 171, §12

CHAPTER 7D

EXECUTIVE COUNCIL

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7D.1 Membership.

The executive council shall consist of the:

1. Governor.
2. Secretary of state.
3. Auditor of state.
4. Treasurer of state.

5. Secretary of agriculture.

A majority shall constitute a quorum. No deputy shall act on the council for the deputy's principal.

[R60, §993; C73, §111; C97, §155; C24, 27, 31, 35, 39, §**276;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.1]

C93, §7D.1

7D.2 Secretary.

The executive council shall choose a secretary who shall hold office during its pleasure, and perform such duties as may be required by law or by the executive council.

[R60, §999; C73, §119, 120; C97, §156, 157; S13, §156, 157; C24, 27, 31, 35, 39, §**277;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.2]

C93, §7D.2

7D.3 Records kept.

The secretary shall keep a complete record of the proceedings of the executive council.

[C73, §119; C97, §156, 157; S13, §157; C24, 27, 31, 35, 39, §**278;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.3]

C93, §7D.3

7D.4 and 7D.5 Reserved.

7D.6 Report for official register.

The secretary shall, as soon as practicable after January 1 of each odd-numbered year, prepare a report of the proceedings of the executive council for the two preceding calendar years. Said report shall include a statement of:

1. The official canvass of the votes cast at the last general election.

2. Other acts of said council that are of general interest.

Said report shall be published in the Iowa official register.

[C73, §120; C97, §157; S13, §157; C24, 27, 31, 35, 39, §**284;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.6]

C93, §7D.6

7D.7 Reserved.

7D.8 Anticipation of revenues.

The executive council may anticipate the revenues for any year, when the current revenues for that year are insufficient to pay all warrants issued in that year, by causing state warrants, in an amount not exceeding the estimated state revenues for that year, and bearing interest at a rate not exceeding that permitted by chapter 74A, to be issued, advertised, and sold on sealed bids, and to the bidder offering the lowest interest rate. All bids and all records pertaining thereto shall be kept on file. The treasurer of state shall comply with the provisions of chapter 74.

[S13, §170-a; C24, 27, 31, 35, 39, §**287;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.8]

C93, §7D.8

7D.9 Compromise of claims.

The executive council, on a written report to it by the attorney general together with the attorney general's opinion as to the legal effect of the facts, may determine by resolution to be duly entered in its official records, the terms on which claims of doubtful equity or collectibility, and in favor of the state, may be compromised and settled with all or any of the parties thereto. Such terms may be withdrawn prior to acceptance, or in case the debtor fails to comply therewith within a reasonable time. The attorney general shall have full authority to execute all papers necessary to effect any such settlement.

[S13, §170-h; C24, 27, 31, 35, 39, §**288;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.9]

C93, §7D.9

7D.10 Court costs.

If sufficient funds for court costs have not been appropriated to a state department, or if sufficient funds are not otherwise available for such purposes within the budget of a state department, the executive council may pay, out of any money in the state treasury not otherwise appropriated, expenses incurred, or costs taxed to the state, in any proceeding brought by or against any of the state departments or in which the state is a party or is interested. This section shall not be construed to authorize the payment of travel or other personal expenses of state officers or employees.

[S13, §170-i; C24, 27, 31, 35, 39, §**289;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.10]

C93, §7D.10

7D.10A Allocation to manure storage indemnity fund.

If moneys are not sufficient to support the manure storage indemnity fund as provided in chapter 459, subchapter V, the executive council may allocate from moneys in the general fund of the state, which are not otherwise obligated or encumbered, an amount to the manure storage indemnity fund as provided under section 459.501. However, not more than a total of one million dollars shall be allocated to the manure storage indemnity fund at any time.

98 Acts, ch 1209, §1

7D.11 Report of unexpended balances.

All commissions, boards, officers, or persons placed in charge, by statute, of special work for which a specific appropriation of state funds has been made, shall, biennially, report to the executive council the progress of such special work, the balance on hand in such fund, a list of all unpaid

bills, and the amount of each, then outstanding, with such other information as the council shall from time to time require.

[SS15, §170-q; C24, 27, 31, 35, 39, §**290;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.11]

C93, §7D.11

7D.12 Notice to transfer balance.

When said council is satisfied that the work for which such special fund was created has been completed or abandoned, it shall fix a day for hearing on the question whether the unexpended balance then on hand should be transferred to the general revenue fund of the state, and shall cause a ten days' notice of such hearing to be given such commission, board, officer, or person, at which hearing showing may be made why such unexpended balance should not be so transferred.

[SS15, §170-q; C24, 27, 31, 35, 39, §**291;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.12]

C93, §7D.12

7D.13 Order of transfer.

If after such hearing the council shall find that said special work has been completed or abandoned, and that there is no good reason why such transfer should not then be made, such findings shall be made a matter of record in the minutes of its proceedings, and the secretary of the council shall at once file a copy of such proceedings with the director of revenue and finance.

[SS15, §170-q; C24, 27, 31, 35, 39, §**292;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.13]

C93, §7D.13

7D.14 Duty to transfer.

The director of revenue and finance shall, on receipt from the secretary of the council of a copy of such record, make such transfer.

[SS15, §170-q; C24, 27, 31, 35, 39, §**293;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.14]

C93, §7D.14

7D.15 Public policy research foundation.

1. The public policy research foundation is created for the purpose of conducting studies and making recommendations on critical and long-term issues needing the attention of state government. The foundation is authorized to establish an endowment fund to assist in the financing of its activities. The foundation may exercise any power authorized by chapter 504A and this section.

2. The executive council shall cause a public policy research foundation to be created under chapter 504A and this section. The foundation shall be created so that donations and bequests to it qualify as tax deductible under the federal and state income tax laws. The foundation is not a state agency and shall not exercise any sovereign power of the state. The state is not liable for any debts of the foundation.

3. The public policy research foundation shall have a board of directors of ten members. One member shall be appointed by the state board of regents and one member shall be appointed by the Iowa association of independent colleges and universities. Four members shall be appointed by the governor and four members shall be appointed by the legislative council, one by each appointing authority representing the interests of each of the following four categories:

a. Business.

b. Labor.

c. Community-based organizations.

d. Farming.

4. The terms of the members of the board of directors shall be two years beginning on July 1 and ending on June 30. A vacancy on the board shall be filled in the same manner as the original appointment for the remainder of the term. Not more than two of the governor's appointees and two of the legislative council's appointees, respectively, shall be of the same gender or of the same political party.

5. The governor, the legislative council by motion, and the general assembly by concurrent resolution may request that studies be conducted by the public policy research foundation. The board of directors of the foundation shall establish the priorities of the research requests based upon available financial resources.

6. For the purposes of this section *"community-based organizations"* means private nonprofit organizations which are representative of communities or significant segments of communities. Examples include United Way of America, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities as defined in section 7, subsection 10, of the federal Rehabilitation Act of 1973, tribal governments, and agencies serving youth, persons with disabilities, displaced homemakers, or on-reservation Indians.

86 Acts, ch 1154, §1

C87, §19.15

C93, §7D.15

96 Acts, ch 1129, §113

7D.16 through 7D.28 Reserved.

7D.29 Performance of duty — expense.

The executive council shall not employ others, or incur any expense, for the purpose of performing any duty imposed upon the council when the duty may, without neglect of their usual duties, be performed by the members, or by their regular employees, but, subject to this limitation, the council may incur the necessary expense to perform or cause to be performed any legal duty imposed on the council, and pay the same out of any money in the state treasury not otherwise appropriated.

[S13, §170-l, -n, -p; C24, 27, 31, 35, 39, §**306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.29]
88 Acts, ch 1275, §30; 89 Acts, ch 315, §25
C93, §7D.29

7D.30 Necessary record.
Before incurring any expense authorized by section 7D.29, the council shall, in each case, by resolution, entered upon its records, set forth the necessity for incurring such expense, the special fitness of the one employed to perform such work, the definite rate of compensation or salary allowed, and the total amount of money that may be expended. Compensation or salary for personal services in such cases must be determined by unanimous vote of all members of the council.
[S13, §170-m, -n; C24, 27, 31, 35, 39, §**307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.30]
C93, §7D.30

7D.31 Additional compensation and expenses.
Members of the executive council and its regular employees shall be paid no additional salary or compensation for special service, but shall receive their necessary traveling expenses, including subsistence, when absent from the seat of government on official business.
[S13, §170-o; C24, 27, 31, 35, 39, §**308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §19.31]
C93, §7D.31

7D.32 Reserved.

7D.33 State employee suggestion system.
1. There is created a state employee suggestion system for the purpose of encouraging state employees to develop and submit ideas which will reduce costs and increase efficiency in state government and which will make monetary and other awards to state employees whose cost reduction ideas are adopted under the system.
2. The department of management shall provide necessary personnel for the efficient operation of the system. The department of management with approval of the executive council shall adopt rules as necessary for the administration of the system and to establish the award policy under which the system will operate. The rules shall include:
a. Eligibility standards and restrictions for both the state employee submitting the suggestion and the suggestion being submitted. The rules shall provide that suggestions relating to academic affairs, including teaching, research, and patient care programs at a university teaching hospital are ineligible.
b. Procedures for submitting and evaluating suggestions, including the responsibilities of each person involved in the system and providing that the final decision to implement shall be made by the director of the agency.
c. The method of presentation of awards to employees.
d. The method of promoting the suggestion program in the broadest possible manner to state employees.
e. Any other policies necessary to properly administer the system.
3. *a.* When a suggestion is implemented and results in a direct cost reduction within state government, the suggester shall be awarded ten percent of the first year's net savings, not exceeding two thousand five hundred dollars, and a certificate. A cash award shall not be awarded for a suggestion which saves less than one hundred dollars during the first year of implementation. The department head shall approve all awards and determine the amount to be awarded. Appeals of award amounts shall be submitted to the director of the department of management whose decision is final.
b. Certificates shall be awarded to suggesters of implemented suggestions that result in a direct cost reduction of less than one hundred dollars. The department head shall make the determination as to who will receive certificates. That decision is final.
4. An award made pursuant to this section shall be paid for out of the appropriated funds of the department realizing the cost savings, but the payment for awards shall not violate any state or federal contract, law or regulation, or impair any agency contractual obligation.
5. *a.* A department shall keep records of each suggestion implemented and the cost savings resulting from the suggestion for a period of one year from the date of implementation of the suggestion.
b. The director of the department of management shall file a report with the governor and the general assembly for each fiscal year, relating to the administration and implementation of the suggestion system and the benefits for the state, the state departments, and state employees.
6. The ability of employees to patent ideas submitted under this section is subject to all other agency rules and Code requirements pertaining to patents.
7. As used in this section, *"department"* means any department, agency, board, bureau, commission or other administrative office or unit of this state.
[C71, 73, 75, 77, 79, 81, §19.33; 82 Acts, ch 1029, §1]
84 Acts, ch 1191, §1 – 3
C93, §7D.33
2002 Acts, 2nd Ex, ch 1003, §29, 30, 35
Item veto applied
Subsection 2, NEW paragraph d and former paragraph d redesignated as e
Subsection 3, paragraph a amended

7D.34 Energy conservation lease-purchase.

1. As used in this section:

a. "Energy conservation measure" means installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source, which may contain integral control and measurement devices.

b. "State agency" means a board, department, commission or authority of or acting on behalf of the state having the power to enter into contracts with or without the approval of the executive council to acquire property in its own name or in the name of the state. *"State agency"* does not mean the general assembly, the courts, the governor or a political subdivision of the state.

2. *a.* A state agency may, with the approval of the executive council, lease as lessee real and personal properties and facilities for use as or in connection with any energy conservation measure for which it may so acquire real and personal properties and facilities, upon the terms, conditions and considerations the official or officials having the authority with or without the approval of the executive council to commit the state agency to acquire real and personal property and facilities deem in the best interests of the state agency. A lease may include provisions for ultimate ownership by the state or by the state agency and may obligate the state agency to pay costs of maintenance, operation, insurance and taxes. The state agency shall pay the rentals and the additional costs from the annual appropriations for the state agency by the general assembly or from other funds legally available. The lessor of the properties or facilities may retain a security interest in them until title passes to the state or state agency. The security interest may be assigned or pledged by the lessor. In connection with the lease, the state agency may contract for a letter of credit, insurance or other security enhancement obligation with respect to its rental and other obligations and pay the cost from annual appropriations for such state agency by the general assembly or from other funds legally available. The security enhancement arrangement may contain customary terms and provisions, including reimbursement and acceleration if appropriate. This section is a complete and independent authorization and procedure for a state agency, with the approval of the executive council, to enter into a lease and related security enhancement arrangements and this section is not a qualification of any other powers which a state agency may possess, including those under chapter 262, and the authorization and powers granted under this section are not subject to the terms or requirements of any other provision of the Code.

b. Before a state agency seeks approval of the executive council for leasing real or personal properties or facilities for use as or in connection with any energy conservation measure, the state agency shall have a comprehensive engineering analysis done on a building in which it seeks to improve the energy efficiency by an engineering firm approved by the department of natural resources through a competitive selection process and the engineering firm is subject to approval of the executive council. Provisions of this section shall only apply to energy conservation measures identified in the comprehensive engineering analysis.

c. Before the executive council gives its approval for a state agency to lease real and personal properties or facilities for use as or in connection with any energy conservation measure, the executive council shall in conjunction with the department of natural resources and after review of the engineering analysis submitted by the state agency make a determination that the properties or facilities will result in energy cost savings to the state in an amount that results in the state recovering the cost of the properties or facilities within six years after the initial acquisition of the properties or facilities.

85 Acts, ch 55, §1
CS85, §19.34
C93, §7D.34

7D.35 Dispute resolution.

The executive council shall resolve any disputes transmitted to it by the department of natural resources, the state building code commissioner, or both, arising under section 470.7.

89 Acts, ch 315, §26
CS89, §19.35
C93, §7D.35

CHAPTER 7E

EXECUTIVE BRANCH ORGANIZATION AND RESPONSIBILITIES

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7E.6 Compensation of members of boards, committees, commissions, and councils.
7E.7 Organizational structure.

7E.1 Policy — purposes.

1. *Declaration of policy: three branches of government.* The separation of powers within state government among the legislative, the executive, and the judicial branches of the government is a traditional American concept. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies, and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws.

2. *Goals of executive branch organization.*

a. The governor, as the chief executive officer of the state, should be provided with the facilities and the authority to carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

b. The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments, consistent with executive capacity to administer effectively at all levels.

c. The executive branch shall be organized on a functional basis, so that programs can be coordinated.

d. Each agency in the executive branch should be assigned a name commensurate with the scope of its responsibilities, and should be integrated into one of the departments of the executive branch as closely as the goals of administrative integration and responsiveness to the legislature and citizenry permit.

3. *Goals of continuing reorganization.* Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

a. The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policymaking capability and to improve the administrative capability of the executive to carry out the policies.

b. The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization, through coordination of related programs in function-oriented departments, to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

c. The organization of state government should assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

86 Acts, ch 1245, §1

7E.2 Offices, departments and independent agencies.

The constitutional and statutory offices, administrative departments, and independent agencies which comprise the executive branch of state government are structured as follows:

1. *Separate constitutional offices.* The elective constitutional and statutory officers who do not head operating departments each head a staff to be termed the *"office"* of the respective elective officer, but the office of the governor shall be known as the *"executive office"*.

2. *Principal administrative units.* The principal administrative unit of the executive branch is a *"department"* and there may be one or more *"independent agencies"*.

3. *Internal structure.*

a. The director of each department, subject to applicable statute, approval by the governor, and the provisions of subsection 4 of this section, may establish the internal structure within the office of the director so as to best suit the purposes of the department.

b. For field operations, departments may establish district or area offices which may cut

across divisional lines of responsibility.

c. For their internal structure, all departments shall adhere to the following standard terms unless otherwise specified by law, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

(1) The principal subunit of the department is the *"division"*. Each division shall be headed by an *"administrator"*.

(2) The principal subunit of the division is the *"bureau"*. Each bureau shall be headed by a *"chief"*.

(3) If further subdivision is necessary, bureaus may be divided into subunits which shall be known as *"sections"* and which shall be headed by *"supervisors"* and sections may be divided into subunits which shall be known as *"units"* and which shall be headed by *"unit managers"*.

4. *Internal organization and allocation of functions.* Subject to applicable law, the head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency.

5. *Attachment for limited purposes.* Any commission, board, or other unit attached under this section to a department or independent agency, or a specified division of one, shall be a distinct unit of that department, independent agency, or specified division. Any commission, board, or other unit so attached shall exercise its powers, duties, and functions as may be prescribed by law, including rulemaking, licensing and regulation, and operational planning within the area of program responsibility of the commission, board, or other unit independently of the head of the department or independent agency, but budgeting, program coordination, and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, unless otherwise provided by law.

86 Acts, ch 1245, §2

7E.3 Heads of departments and independent agencies — powers and duties.

Each head of a department or independent agency shall, except as otherwise provided by law:

1. *Supervision.* Plan, direct, coordinate, and execute the functions vested in the department or independent agency.

2. *Budget.* Annually compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram, and activity in the department or agency.

3. *Advisory bodies.* In addition to any councils specifically created by law, create by rule and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their expenses.

4. *Annual report.* Unless otherwise provided by law, submit a report in November of each year to the governor and the legislature on the operation of the department or independent agency during the fiscal year concluded on the preceding June 30, and projecting the goals and objectives of the department or independent agency as developed in the program budget report for the fiscal year under way. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require.

86 Acts, ch 1245, §3

See also §7A.3 – 7A.11A

7E.4 Definitions and terminology for executive branch organization.

In statutory references and administrative usage, the following terminology and definitions shall be used as guidelines for the terminology applicable to state governmental structure and organization to the extent practicable:

1. *"Authority"* means a body with independent power to issue and sell bonds.

2. *a.* *"Board"* means a policymaking body that has the power to hear contested cases.

b. A policymaking body that has powers for both rulemaking and hearing contested cases shall be termed a *"board"*.

3. *"Commission"* means a policymaking body that has rulemaking powers.

4. *"Committee"* means a part-time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment.

5. *"Council"* means an advisory body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

6. *"Department"* means a principal administrative agency within the executive branch of state government, but does not include independent agencies.

7. *"Division"*, *"bureau"*, *"section"*, and *"unit"* mean the subunits of a department, whether specifically created by law or created by the head of the department for the more economic and efficient administration and operation of the programs assigned to the department.

8. *"Examining board"* means a body which sets standards of professional competence and conduct for the profession or occupation under its

supervision, which may prepare and grade the examinations of prospective new practitioners when authorized by law, which may issue licenses when authorized by law, which investigates complaints of alleged unprofessional conduct, and which performs other functions assigned to it by law.

9. *"Head of the department"* means the elective officer, director, commissioner, or other official in charge of a department.

10. *"Independent agency"* is an administrative unit which, because of its unique operations, does not fit into the general pattern of operating departments.

86 Acts, ch 1245, §4; 88 Acts, ch 1278, §21

7E.5 Principal departments and primary responsibilities.

1. The principal central departments of the executive branch as established by law are listed in this section for central reference purposes as follows:

a. The department of management, created in section 8.4, which has primary responsibility for coordination of state policy planning, management of interagency programs, economic reports, and program development.

b. The department of personnel, created in section 19A.1, which has primary responsibility for personnel management.

c. The department of general services, created in section 18.2, which has primary responsibility for property management, risk management, purchasing, printing, and data processing.

d. The department of revenue and finance, created in section 421.2, which has primary responsibility for revenue collection and revenue law compliance, financial management and assistance, and the Iowa lottery.

e. The department of inspections and appeals, created in section 10A.102, which has primary responsibility for coordinating the conducting of various inspections, investigations, appeals, hearings, and audits.

f. The department of agriculture and land stewardship, created in section 159.2, which has primary responsibility for encouraging, promoting, and advancing the interests of agriculture and allied industries. The secretary of agriculture is the director of the department of agriculture and land stewardship.

g. The department of commerce, created in section 546.2, which has primary responsibility for business and professional regulatory, service, and licensing functions.

h. The Iowa department of economic development, created in section 15.105, which has primary responsibility for programs for carrying out the economic development policies of the state.

i. The department of workforce development, created in section 84A.1, which has primary responsibility for administering the laws relating to unemployment compensation insurance, job placement and training, employment safety, labor standards, workers' compensation, and related matters.

j. The department of human services, created in section 217.1, which has primary responsibility for services to individuals to promote the well-being and the social and economic development of the people of the state.

k. The Iowa department of public health, created in chapter 135, which has primary responsibility for supervision of public health programs, promotion of public hygiene and sanitation, treatment and prevention of substance abuse, and enforcement of related laws.

l. The department of elder affairs, created in section 231.21, which has primary responsibility for leadership and program management for programs which serve the senior citizens of the state.

m. The department of cultural affairs, created in section 303.1, which has primary responsibility for managing the state's interests in the areas of the arts, history, the state archives and records program, and other cultural matters.

n. The department of education, created in section 256.1, which has primary responsibility for supervising public education at the elementary and secondary levels and for supervising the community colleges.

o. The department of corrections, created in section 904.102, which has primary responsibility for corrections administration, corrections institutions, prison industries, and the development, funding, and monitoring of community-based corrections programs.

p. The department of public safety, created in section 80.1, which has primary responsibility for statewide law enforcement and public safety programs that complement and supplement local law enforcement agencies and local inspection services.

q. The department of public defense, created in section 29.1, which has primary responsibility for state military forces and emergency management.

r. The department of natural resources, created in section 455A.2, which has primary responsibility for state parks and forests, protecting the environment, and managing energy, fish, wildlife, and land and water resources.

s. The department of transportation, created in section 307.2, which has primary responsibility for development and regulation of highway, railway, and air transportation throughout the state, including public transit.

t. The department of human rights, created in section 216A.1, which has primary responsibility for services relating to Latino persons, women, persons with disabilities, community action agencies, criminal and juvenile justice planning, the status of African-Americans, and deaf and hard-of-hearing persons.

u. In the area of higher education, an agency headed by the state board of regents and including all the institutions administered by the state board of regents, which has primary responsibility for state involvement in higher education.

v. The department for the blind, created in chapter 216B, which has primary responsibility for services relating to blind persons.

w. The commission of veterans affairs, which has primary responsibility for state veterans affairs.

x. The information technology department, created in chapter 14B, which has primary responsibility for the development and application of information technology in state government.

2. *a.* There is a civil rights commission, a public employment relations board, an interstate cooperation commission, an ethics and campaign disclosure board, and an Iowa law enforcement academy.

b. The listing of additional state agencies in this subsection is for reference purposes only and is not exhaustive.

3. The responsibilities listed for each department and agency in this section are generally descriptive of the department's or agency's duties, are not all-inclusive, and do not exclude duties and powers specifically prescribed for by statute, or delegated to, each department or agency.

86 Acts, ch 1245, §5; 88 Acts, ch 1277, §20, 21; 89 Acts, ch 83, §1; 90 Acts, ch 1180, §1; 92 Acts, ch 1139, §19; 92 Acts, ch 1140, §1, 2; 92 Acts, ch 1163, §1; 93 Acts, ch 48, §2; 93 Acts, ch 75, §1; 93 Acts, ch 163, §38; 96 Acts, ch 1186, §23; 98 Acts, ch 1017, §1; 2000 Acts, ch 1058, §2; 2000 Acts, ch 1141, §11, 19; 2002 Acts, ch 1050, §1

Subsection 1, paragraph h amended

7E.5A Buildings and infrastructure — funding.

1. For each new vertical infrastructure project, the department in control of the vertical infrastructure shall identify and recommend to the general assembly funding sufficient to meet the projected maintenance, repair, and replacement needs of the vertical infrastructure.

2. A department shall, within its five-year capital budget request, identify specific instances where the failure to address deferred maintenance has had a negative impact on the department's ability to implement its mission and the proposed costs for annual routine and preventive maintenance based on an industry standard of one percent of the estimated replacement cost of the department's facilities. This subsection shall not apply to the state department of transportation.

3. A department requesting state moneys for a vertical infrastructure project shall actively pursue any federal funds for which the proposed project may be eligible and shall demonstrate such pursuit prior to receiving state moneys for the project. The department shall report the receipt of any such federal funds to the department of management and the legislative fiscal bureau in the manner described in section 8.23.

4. As used in this section, *"vertical infrastructure"* means the same as defined in section 8.57, subsection 5, paragraph *"c"*.

97 Acts, ch 215, §28; 2001 Acts, ch 185, §32

7E.6 Compensation of members of boards, committees, commissions, and councils.

1. *a.* Any position of membership on any board, committee, commission, or council in the executive branch of state government which is compensated by the payment of a per diem to the holder of that position under statutory law shall be compensated at the rate of fifty dollars per diem, notwithstanding any other law to the contrary.

b. Reimbursement of expenses to the holder of any position governed by this subsection shall be as provided in the applicable law.

c. In regard to any board, committee, commission, or council which has its name or organizational location altered after January 1, 1986, the statutory provision on the subject of per diem compensation which was applicable to it on January 1, 1986, shall continue to govern such agency and its successor agency, notwithstanding the change in name or organizational location.

2. Any position of membership on any board, committee, commission, or council in the state government which has a compensation level limited to expenses only is eligible to receive, in addition to such actual expense reimbursement, an additional expense allowance of fifty dollars per day if the holder of any such position applies for such additional expense allowance and the holder of the position has an income level of one hundred fifty percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

3. Any position of membership on the lottery board shall receive compensation of fifty dollars per day and expenses.

4. Any position of membership on the transportation commission shall be compensated at an annual rate of ten thousand dollars.

5. Any position of membership on the board of parole, the public employment relations board, the utilities board, and the employment appeal board shall be compensated as otherwise provided in law.

6. All of the compensation provisions of this section are subject to the proper appropriations being made in the state budget legislation.

7. The Code editor may change any reference to the compensation of any position of membership on any board, committee, commission, or council in the state government so that the reference is

consistent with this section.

8. It is the intent of the general assembly that this section shall be the governing provision on the subject of the compensation of any position of membership on any board, committee, commission, or council in the state government and that the provisions of this section shall govern over any conflicting provision of law except provisions enacted subsequent to July 1, 1986, notwithstanding the provisions of section 4.7.

86 Acts, ch 1245, §2055; 88 Acts, ch 1277, §22; 89 Acts, ch 296, §2, 3; 89 Acts, ch 303, §15, 16

7E.7 Organizational structure.

For organizational purposes only, the following apply:

1. The Iowa finance authority and the Iowa economic protective and investment authority shall be considered parts of the Iowa department of economic development. The Iowa department of economic development may provide staff assistance and administrative support to the authorities.

2. The agricultural development authority shall be considered part of the department of agriculture and land stewardship. The department of agriculture and land stewardship may provide staff assistance and administrative support to the authority.

3. The Iowa higher education loan authority shall be attached to the college student aid commission.

4. The Iowa railway finance authority shall be considered part of the department of transportation. The department of transportation may provide staff assistance and administrative support to the authority.

5. The Iowa advance funding authority shall be considered part of the department of education. The department of education may provide staff assistance and administrative support to the authority.

86 Acts, ch 1245, §850; 90 Acts, ch 1253, §122

CHAPTER 7F

OFFICE FOR STATE-FEDERAL RELATIONS

7F.1 Office for state-federal relations.

7F.1 Office for state-federal relations.

1. *Purpose.* The purpose of this section is to establish, as an independent agency, an office for state-federal relations which will develop a nonpartisan state-federal relations program accessible to all three branches of state government.

2. *Definition.* As used in this section, unless the context otherwise requires, *"office"* means the office for state-federal relations established pursuant to this section.

3. *Office established.* A state-federal relations office is established as an independent agency. The office shall be located in Washington D.C. and shall be administered by the director of the office who is appointed by the governor, subject to confirmation by the senate, and who serves at the pleasure of the governor. The office and its personnel are exempt from the merit system provisions of chapter 19A.

4. *Office duties.* The office shall:

a. Coordinate the development of Iowa's state-federal relations efforts which shall include an annual state-federal program to be presented to Iowa's congressional delegation, the sponsorship of training sessions for state government officials, and the maintenance of a management information system.

b. Provide state government officials with greater access to current information on federal legislative and executive actions affecting state government.

c. Advocate federal policies and positions which benefit the state or are important to state government.

d. Monitor federal budget policies and assistance programs and assess their impact on the state.

e. Strengthen the working relationships between state government officials and Iowa's congressional delegation.

f. Improve the state's ability to establish key contacts with federal officials, officials from other states, organizations, business groups, and professional associations in order to share information and form cooperative agreements.

87 Acts, ch 233, §126

Confirmation; see §2.32

CHAPTER 7G

IOWA STATEHOOD SESQUICENTENNIAL

Repealed by 99 Acts, ch 114, §55

CHAPTER 7H

STATEWIDE ELECTED OFFICIALS — SALARIES

Repealed by 2000 Acts, ch 1219, §18

CHAPTER 7I

COMMUNITY EMPOWERMENT ACT

Transferred to chapter 28; 99 Acts, ch 190, §19, 20

CHAPTER 8

DEPARTMENT OF MANAGEMENT — BUDGET AND FINANCIAL CONTROL ACT

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8.1 Title.

This chapter shall be known and may be cited as the *"Budget and Financial Control Act"*.

[C35, §84-e1; C39, §**84.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.1]

8.2 Definitions.

When used in this chapter:

1. *"Block grant"* means funds from the federal government awarded in broad program areas within which the state is given considerable latitude in determining how funds are used and for which the state develops its own plan for spending according to general federal guidelines. *"Block grant"* does not include education research grants.

2. *"Budget"* means the budget document required by this chapter to be transmitted to the legislature.

3. *"Categorical grant"* means federal funds applied for and received by the state which are in the form of entitlements, formula grants, discretionary grants, open-ended entitlements or another form that may be used only for specific narrowly defined activities except funds for student aid and assistance; grants, contracts and co-operative agreements for research and training for which no appropriated matching funds are required; and reimbursements for services rendered.

4. *"Code"* or *"the Code"* means the Code of Iowa.

5. The terms *"department and establishment"* and *"department"* or *"establishment",* mean any executive department, commission, board, institution, bureau, office, or other agency of the state government, including the state department of transportation, except for funds which are required to match federal aid allotted to the state by the federal government for highway special purposes, and except the courts, by whatever name called, other than the legislature, that uses, expends or receives any state funds.

6. *"Government"* means the government of the state of Iowa.

7. *"Private trust funds"* means any and all endowment funds and any and all moneys received by a department or establishment from private persons to be held in trust and expended as directed by the donor.

8. *"Repayment receipts"* means those moneys collected by a department or establishment that supplement an appropriation made by the legislature.

9. *"Special fund"* means any and all government fees and other revenue receipts earmarked to finance a governmental agency to which no general fund appropriation is made by the state.

10. *"State funds"* means any and all moneys appropriated by the legislature, or money collected by or for the state, or an agency thereof, pursuant to authority granted by any of its laws.

11. *"Unencumbered balance"* means the unobligated balance of an appropriation after charging thereto all unpaid liabilities for goods and services and all contracts or agreements payable from an appropriation or a special fund.

[C35, §84-e2; C39, §**84.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.2; 81 Acts, ch 17, §1]

8.3 Governor.

The governor of the state shall have:

1. Direct and effective financial supervision over all departments and establishments, and every state agency by whatever name now or hereafter called, including the same power and supervision over such private corporations, persons and organizations that may receive, pursuant to statute, any funds, either appropriated by, or collected for, the state, or any of its departments, boards, commissions, institutions, divisions and agencies.

2. The efficient and economical administration of all departments and establishments of the government.

3. The initiation and preparation of a balanced budget of any and all revenues and expenditures for each regular session of the legislature.

[C35, §84-e3; C39, §**84.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.3]

8.3A Capital project planning and budgeting — governor's duties.

1. *Definitions.* For the purposes of this section:

a. *"Capital project"* does not include highway and right-of-way projects or airport capital projects undertaken by the state department of transportation and financed from dedicated funds or capital projects funded by nonstate grants, gifts, or contracts obtained at or through state universities, if the projects do not require a commitment of

additional state resources for maintenance, operations, or staffing.

A capital project shall not be divided into smaller projects in such a manner as to thwart the intent of this section to provide for the evaluation of a capital project whose cost cumulatively equals or exceeds two hundred fifty thousand dollars.

b. *"Facility"* means a distinct parcel of land or a building used by the state or a state agency for a specific purpose.

c. *"State agency"* means any executive, judicial, or legislative department, commission, board, institution, division, bureau, office, agency, or other entity of state government.

2. *Duties.* The governor shall:

a. Develop criteria for the evaluation of proposed capital projects which shall include but not be limited to the following:

(1) Fiscal impacts on costs and revenues.

(2) Health and safety effects.

(3) Community economic effects.

(4) Environmental, aesthetic, and social effects.

(5) Amount of disruption and inconvenience caused by the capital project.

(6) Distributional effects.

(7) Feasibility, including public support and project readiness.

(8) Implications of deferring the project.

(9) Amount of uncertainty and risk.

(10) Effects on interjurisdictional relationships.

(11) Advantages accruing from relationships to other capital project proposals.

(12) Private sector contracting for construction, operation, or maintenance.

b. Make recommendations to the general assembly and the legislative capital projects committee regarding the funding and priorities of proposed capital projects.

c. Develop maintenance standards and guidelines for capital projects.

d. Review financing alternatives available to fund capital projects, including the evaluation of the advantages and disadvantages of bonding for all types of capital projects undertaken by all state agencies.

e. Monitor the debt of the state or a state agency.

89 Acts, ch 298, §4

DEPARTMENT OF MANAGEMENT

8.4 Department of management.

The department of management is created, which is directly attached to the office of the governor and under the general direction, supervision, and control of the governor. The office is in immediate charge of an officer to be known as "the director", who shall be appointed by the governor, subject to confirmation by the senate, and shall hold office at the governor's pleasure and shall receive a salary as set by the governor. Before entering upon the discharge of duties, the director shall take the constitutional oath of office and give a surety bond in the penalty fixed by the governor, payable to the state, which shall not be less than twenty-five thousand dollars, conditioned upon the faithful discharge of the director's duties. The premium on the bond shall be paid out of the state treasury.

[C24, §309, 311 – 316; C27, §309, 311, 313 – 316; C31, §309, 311, 314 – 316, 1063; C35, §84-e4; C39, §**84.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.4]

86 Acts, ch 1245, §103

Confirmation, see §2.32

8.5 General powers and duties.

The director of the department of management shall have the power and authority to:

1. *Assistants.* Employ, with the approval of the governor, two assistants and such clerical assistants as the director may find necessary.

2. *Compensation of employees.* Fix the compensation, with the approval of the governor, of any person employed by the director, provided that the total amount paid in salaries shall not exceed the appropriation made for that purpose.

3. *Discharge of employees.* Discharge any employee of the department of management.

4. *Miscellaneous duties.* Exercise and perform such other powers and duties as may be prescribed by law.

[C51, §50 – 58; R60, §71 – 79, 1967; C73, §66 – 74; C97, §89 – 97, 162; S13, §89, 162, 163-a, 170-e, -f; SS15, §170-r, -s, -t, -u; C24, §102 – 109, 391 – 407; C27, §102 – 109, 130-a1, 391 – 407; C31, §102 – 109, 130-a1, 391 – 397, 397-d1, 398 – 407; C35, §84-e5; C39, §**84.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.5]

See chapter 19A for merit system

Consultation with department of personnel on initiatives for state government productivity; 2001 Acts, 2nd Ex, ch 5, §6, 8

8.6 Specific powers and duties.

The specific duties of the director of the department of management shall be:

1. *Forms.* To consult with all state officers and agencies which receive reports and forms from county officers, in order to devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and to prescribe forms on which each municipality, at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:

a. For the immediate prior fiscal year, revenue from all sources, other than revenue received from property taxation, allocated to each of the several funds and separately stated as to each such

source, and for each fund the unencumbered cash balance thereof at the beginning and end of the year, the amount received by property taxation allocated to each fund, and the amount of actual expenditure for each fund.

b. For the current fiscal year, actual and estimated revenue, from all sources, other than revenue received from property taxation, and separately stated as to each such source, allocated to each of the several funds, and for each fund the actual unencumbered cash balance available at the beginning of the year, the amount to be received from property taxation allocated to each fund, and the amount of actual and estimated expenditures, whichever is applicable.

c. For the proposed budget year, an estimate of revenue from all sources, other than revenue to be received from property taxation, separately stated as to each such source, to be allocated to each of the several funds, and for each fund the actual or estimated unencumbered cash balance, whichever is applicable, to be available at the beginning of the year, the amount proposed to be received from property taxation allocated to each fund, and the amount proposed to be expended during the year plus the amount of cash reserve, based on actual experience of prior years, which shall be the necessary cash reserve of the budget adopted exclusive of capital outlay items. The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated or actual unencumbered balances at the beginning of the year and less the estimated income from all sources other than property taxation shall equal the amount to be received from property taxes, and such amount shall be shown on the proposed budget estimate.

d. To insure uniformity, accuracy, and efficiency in the preparation of budget estimates by municipalities subject to chapter 24, the director shall prescribe the procedures to be used and instruct the appropriate officials of the various municipalities on implementation of the procedures.

2. *Report of standing appropriations.* To annually prepare a separate report containing a complete list of all standing appropriations showing the amount of each appropriation and the purpose for which the appropriation is made and furnish a copy of the report to each member of the general assembly on or before the first day of each regular session.

3. *Budget document.* To prepare the budget document and draft the legislation to make it effective.

4. *Allotments.* To perform the necessary work involved in reviewing requests for allotments as are submitted to the governor for approval.

5. Reserved.

6. *Investigations.* To make such investigations of the organization, activities and methods of procedure of the several departments and establishments as the director of management may be called upon to make by the governor or the governor and executive council, or the legislature.

7. *Legislative aid.* To furnish to any committee of either house of the legislature having jurisdiction over revenues or appropriations such aid and information regarding the financial affairs of the government as it may request.

8. *Rules.* To make such rules, subject to the approval of the governor, as may be necessary for effectively carrying on the work of the department of management. The director may, with the approval of the executive council, require any state official, agency, department or commission, to require any applicant, registrant, filer, permit holder or license holder, whether individual, partnership, trust or corporation, to submit to said official, agency, department or commission, the social security or the tax number or both so assigned to said individual, partnership, trust or corporation.

9. *Budget report.* The director shall prepare and file in the department of management, on or before the first day of December of each year, a state budget report, which shall show in detail the following:

a. Classified estimates in detail of the expenditures necessary, in the director's judgment, for the support of each department and each institution and department thereof for the ensuing fiscal year.

b. A schedule showing a comparison of such estimates with the askings of the several departments for the current fiscal year and with the expenditures of like character for the last two preceding fiscal years.

c. A statement setting forth in detail the reasons for any recommended increases or decreases in the estimated requirements of the various departments, institutions, and departments thereof.

d. Estimates of all receipts of the state other than from direct taxation and the sources thereof for the ensuing fiscal year.

e. A comparison of such estimates and askings with receipts of a like character for the last two preceding fiscal years.

f. The expenditures and receipts of the state for the last completed fiscal year, and estimates of the expenditures and receipts of the state for the current fiscal year.

g. A detailed statement of all appropriations made during the two preceding fiscal years, also of unexpended balances of appropriations at the end of the last fiscal year and estimated balances at the end of the current fiscal year.

h. Estimates in detail of the appropriations necessary to meet the requirements of the several departments and institutions for the next fiscal year.

i. Statements showing:

(1) The condition of the treasury at the end of the last fiscal year.

(2) The estimated condition of the treasury at the end of the current fiscal year.

(3) The estimated condition of the treasury at the end of the next fiscal year, if the director's recommendations are adopted.

(4) An estimate of the taxable value of all the property within the state.

(5) The estimated aggregate amount necessary to be raised by a state levy.

(6) The amount per thousand dollars of taxable value necessary to produce such amount.

(7) Other data or information as the director deems advisable.

10. *General control*. To perform such other duties as may be required to effectively control the financial operations of the government as limited by this chapter.

11. *Targeted small businesses*. To assist the director of the department of economic development as requested in the establishment and implementation of the Iowa targeted small business procurement Act and the targeted small business loan guarantee program.

12. *State programs for equal opportunity*. To perform specific powers and duties as provided in chapter 19B and other provisions of law with respect to oversight and the imposition of sanctions in connection with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and procurement set-aside requirements.

13. *Capital project budgeting requests*. To compile annually all capital project budgeting requests of all state agencies, as defined in section 8.3A, and to consolidate the requests, with individual state agency priorities noted, into a report for submission with the budget documents by the governor pursuant to section 8.22. Any additional information regarding the capital project budgeting requests or priorities shall be compiled and submitted in the same report.

14. *Capital project planning and budgeting authority*. To call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under subsection 13. All state agencies, upon the request of the director, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

[C51, §50; R60, §71, 1967; C73, §66; C97, §89; S13, §89, 161-a; C24, 27, 31, §102, 130, 329; C35, §84-e6; C39, §**84.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.6]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1067, §3; 85 Acts, ch 212, §21; 86 Acts, ch 1244, §3; 86 Acts, ch 1245, §104, 105, 2014; 86 Acts, ch 1246, §121; 86 Acts, ch 1016, §1; 89 Acts, ch 284, §1; 89 Acts, ch 298, §5; 90 Acts, ch 1168, §3, 4; 90 Acts, ch 1266, §29; 91 Acts, ch 268, §602, 603; 99 Acts, ch 204, §21, 22; 2001 Acts, 2nd Ex, ch 2, §2, 3, 13

2001 amendments take effect November 16, 2001, and first apply to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

8.7 Reserved.

8.8 Special olympics fund — appropriation.

A special olympics fund is created in the office of the treasurer of state under the control of the department of management. There is appropriated annually from the general fund of the state to the special olympics fund thirty thousand dollars for distribution to one or more organizations which administer special olympics programs benefiting the citizens of Iowa with disabilities.

94 Acts, ch 1199, §1; 99 Acts, ch 208, §15

8.9 through 8.20 Repealed by 86 Acts, ch 1245, § 451. See § 421.32 through 421.45.

THE BUDGET

See §8.6(9)

8.21 Budget transmitted.

Not later than February 1 of each legislative session, the governor shall transmit to the legislature a document to be known as a budget, setting forth the governor's financial program for the ensuing fiscal year and having the character and scope set forth in sections 8.22 through 8.29.

If the governor is required to use a lesser amount in the budget process because of a later meeting of the state revenue estimating conference under section 8.22A, subsection 3, the governor shall transmit recommendations for a budget in conformance with that requirement within fourteen days of the later meeting of the state revenue estimating conference.

[SS15, §191-b; C24, 27, 31, §334; C35, §84-e14; C39, §**84.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.21]

86 Acts, ch 1245, §2015; 92 Acts, ch 1227, §1; 2001 Acts, 2nd Ex, ch 2, §4, 13

2001 amendment takes effect November 16, 2001, and first applies to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

8.22 Nature and contents of budget.

The budget shall consist of four parts, the nature and contents of which shall be as follows:

PART I

Governor's budget message. Part I shall consist of the governor's budget message, in which the governor shall set forth:

1. The governor's program for meeting all the expenditure needs of the government for the fiscal year, indicating the classes of funds, general or special, from which appropriations are to be made

and the means through which the expenditures shall be financed.

The governor's program shall include a single budget request for all capital projects proposed by the governor. The request shall include but is not limited to the following:

a. The purpose and need for each capital project.

b. A priority listing of capital projects.

c. The costs of acquisition, lease, construction, renovation, or demolition of each capital project.

d. The identification of the means and source of funding each capital project.

e. The estimated operating costs of each capital project after completion.

f. The estimated maintenance costs of each capital project after completion.

g. The consequences of delaying or abandoning each capital project.

h. Alternative approaches to meeting the purpose or need for each capital project.

i. Alternative financing mechanisms.

j. A cost-benefit analysis or economic impact of each capital project.

2. Financial statements giving in summary form:

a. The condition of the treasury at the end of the last completed fiscal year, the estimated condition of the treasury at the end of the year in progress, and the estimated condition of the treasury at the end of the following fiscal year if the governor's budget proposals are put into effect.

b. Statements showing the bonded indebtedness of the government, debt authorized and unissued, debt redemption and interest requirements, and condition of the sinking funds, if any.

c. A summary of appropriations recommended for the following fiscal year for each department and establishment and for the government as a whole, in comparison with the actual expenditures for the last completed fiscal year and the estimated expenditures for the year in progress.

d. A summary of the revenue, estimated to be received by the government during the following fiscal year, classified according to sources, in comparison with the actual revenue received by the government during the last completed fiscal year and estimated income during the year in progress.

e. A statement of federal funds received in the form of block or categorical grants which were not included in the governor's budget for the previous fiscal year and a statement of anticipated block grants and categorical grants. The budget shall indicate how the federal funds will be used and the programs to which they will be allocated. The amount of state funds required to implement the programs to which the federal funds will apply shall also be indicated. The departments shall provide information to the director on the anticipated federal block grants and categorical grants to be received on or before November 1 of each year. The director shall use this information to develop an annual update of the statement of federal funds received which shall be provided to the general assembly.

f. Other financial statements, data, and comments as in the governor's opinion are necessary or desirable in order to make known in all practicable detail the financial condition and operation of the government and the effect that the budget as proposed by the governor will have on the financial condition and operation.

If the estimated revenues of the government for the ensuing fiscal year as set forth in the budget on the basis of existing laws, plus the estimated amounts in the treasury at the close of the year in progress, available for expenditure in the ensuing fiscal year are less than the aggregate recommended for the ensuing fiscal year as contained in the budget, the governor shall make recommendations to the legislature in respect to the manner in which the deficit shall be met, whether by an increase in the state tax or the imposition of new taxes, increased rates on existing taxes, or otherwise, and if the aggregate of the estimated revenues, plus estimated balances in the treasury, is greater than the recommended appropriations for the ensuing fiscal year, the governor shall make recommendations in reference to the application of the surplus to the reduction of debt or otherwise, to the reduction in taxation, or to such other action as in the governor's opinion is in the interest of the public welfare.

PART II

Recommended appropriations. Part II shall present in detail for the ensuing fiscal year the governor's recommendations for appropriations to meet the expenditure needs of the government from each general class of funds, in comparison with actual expenditures for each of the purposes during the last completed fiscal year and estimated expenditures for the year in progress, classified by departments and establishments and indicating for each the appropriations recommended for:

1. Meeting the cost of administration, operation, and maintenance of the departments and establishments.

2. Appropriations for meeting the cost of land, public improvements, and other capital outlays in connection with the departments and establishments.

Each item of expenditure, actual or estimated, and appropriations recommended for administration, operation, and maintenance of each department or establishment shall be supported by detailed statements showing the actual and estimated expenditures and appropriations classified by objects according to a standard scheme of classification to be prescribed by the director.

PART III

Appropriation bills. Part III shall include a draft or drafts of appropriation bills having for their purpose to give legal sanction to the appropriations recommended to be made in Parts I and II. The appropriation bills shall indicate the funds, general or special, from which the appropriations shall be paid, but the appropriations need not be in greater detail than to indicate the total appropriation to be made for:

1. Administration, operation, and maintenance of each department and establishment for the fiscal year.

2. The cost of land, public improvements, and other capital outlays for each department and establishment, itemized by specific projects or classes of projects of the same general character.

PART IV

Strategic plan. Part IV shall include an explanation that correlates the budget with the enterprise strategic plan adopted pursuant to section 8E.204. The budget shall provide an explanation of appropriations recommended for the administration and maintenance of an agency as defined in section 8E.103 with the general evaluation of the agency in meeting enterprise strategic goals, including identifying goals that require legislation.

[SS15, §191-b; C24, 27, 31, §332, 333, 335; C35, §84-e15; C39, §**84.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.22; 81 Acts, ch 17, §2]

84 Acts, ch 1231, §2; 86 Acts, ch 1245, §2016; 89 Acts, ch 298, §6; 90 Acts, ch 1168, §5; 2001 Acts, ch 169, §1, 2

8.22A Revenue estimating conference.

1. The state revenue estimating conference is created consisting of the governor or the governor's designee, the director of the legislative fiscal bureau, and a third member agreed to by the other two.

2. The conference shall meet as often as deemed necessary, but shall meet at least quarterly. The conference may use sources of information deemed appropriate.

3. By December 15 of each fiscal year the conference shall agree to a revenue estimate for the fiscal year beginning the following July 1. That estimate shall be used by the governor in the preparation of the budget message under section 8.22 and by the general assembly in the budget process. If the conference agrees to a different estimate at a later meeting which projects a greater amount of revenue than the initial estimate amount agreed to by December 15, the governor and the general assembly shall continue to use the initial estimate amount in the budget process for that fiscal year. However, if the conference agrees to a different estimate at a later meeting which projects a lesser amount of revenue than the initial estimate amount, the governor and the general assembly shall use the lesser amount in the budget process for that fiscal year. As used in this subsection, *"later meeting"* means only those later meetings which are held prior to the conclusion of the regular session of the general assembly.

4. At the meeting in which the conference agrees to the revenue estimate for the following fiscal year in accordance with the provisions of subsection 3, the conference shall agree to an estimate for tax refunds payable from that estimated revenue. The estimates required by this subsection shall be used in determining the adjusted revenue estimate under section 8.54.

5. At the meeting in which the conference agrees to the revenue estimate for the succeeding fiscal year in accordance with the provisions of subsection 3, the conference shall also agree to the following estimates which shall be used by the governor in preparation of the budget message under section 8.22 and the general assembly in the budget process for the succeeding fiscal year:

a. The amount of lottery revenues for the following fiscal year to be available for disbursement following the deductions made pursuant to section 99E.10, subsection 1.

b. The amount of revenue for the following fiscal year from gambling revenues and from interest earned on the cash reserve fund and the economic emergency fund to be deposited in the rebuild Iowa infrastructure fund under section 8.57, subsection 5, paragraph *"e"*.

c. The amount of accruals of those revenues collected by or due from entities other than the state on or before June 30 of the fiscal year but not remitted to the state until after June 30.

d. The amount of accrued lottery revenues collected on or before June 30 of the fiscal year but not transferred to the general fund of the state until after June 30.

86 Acts, ch 1245, §2045; 92 Acts, ch 1227, §2; 94 Acts, ch 1181, §4; 95 Acts, ch 214, §5; 96 Acts, ch 1218, §24; 2001 Acts, 2nd Ex, ch 2, §5, 13

2001 amendment takes effect November 16, 2001, and first applies to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

8.23 Annual departmental estimates.

1. On or before October 1, prior to each legislative session, all departments and establishments of the government shall transmit to the director, on blanks to be furnished by the director, estimates of their expenditure requirements, including every proposed expenditure, for the ensuing fiscal year, classified so as to distinguish between expenditures estimated for administration, operation, and maintenance, and the cost of each project involving the purchase of land or the making of a public improvement or capital outlay of a permanent character, together with supporting data and explanations as called for by the director.

a. The budget estimates shall include for those agencies which pay for energy directly a line item for energy expenses itemized by type of energy and location.

b. The estimates of expenditure requirements shall be based upon seventy-five percent of the funding provided for the current fiscal year accounted for by program reduced by the historical employee vacancy factor in form specified by the director and the remainder of the estimate of expenditure requirements prioritized by program. The estimates shall be accompanied with performance measures for evaluating the effectiveness of the program.

c. The budget estimates for an agency as defined in section 8E.103 shall be based on achieving goals contained in the enterprise strategic plan and the agency's strategic plan as provided for in chapter 8E. The estimates shall be accompanied by a description of the measurable and other results to be achieved by the agency. Performance measures shall be based on the goals developed pursuant to sections 8E.205, 8E.206, and 8E.208. The estimates shall be accompanied by an explanation of the manner in which appropriations requested for the administration and maintenance of the agency meet goals contained in the enterprise strategic plan and the agency's strategic plan, including identifying goals that require legislation.

d. If a department or establishment fails to submit estimates within the time specified, the legislative fiscal bureau shall use the amounts of the appropriations to the department or establishment for the fiscal year in process at the time the estimates are required to be submitted as the amounts for the department's or establishment's request in the documents submitted to the general assembly for the ensuing fiscal year and the governor shall cause estimates to be prepared for that department or establishment as in the governor's opinion are reasonable and proper.

e. The director shall furnish standard budget request forms to each department or agency of state government.

2. On or before November 15 all departments and establishments of government and the judicial branch shall transmit to the department of management and the legislative fiscal bureau estimates of their receipts and expenditure requirements from federal or other nonstate grants, receipts, and funds for the ensuing fiscal year. The transmittal shall include the names of the grantor and the grant or the source of the funds, the estimated amount of the funds, and the planned expenditures and use of the funds. The format of the transmittal shall be specified by the legislative fiscal bureau.

[S13, §163-a; SS15, §191-a; C24, 27, 31, §327, 328; C35, §84-e16; C39, §**84.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.23]

86 Acts, ch 1245, §2017; 90 Acts, ch 1252, §1; 90 Acts, ch 1263, §53; 91 Acts, ch 263, §31; 95 Acts, ch 214, §20; 98 Acts, ch 1047, §2; 2001 Acts, ch 169, §3

8.24 Annual estimate of income. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

8.25 Tentative budget.

Upon the receipt of the estimates of expenditure requirements called for by section 8.23 and not later than the following December 1, the director of the department of management shall cause to be prepared a tentative budget conforming as to scope, contents, and character to the requirements of section 8.22 and containing the estimates of expenditures as called for by section 8.23, which tentative budget shall be transmitted to the governor.

[C24, 27, 31, §332; C35, §84-e18; C39, §**84.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.25]

2001 Acts, 2nd Ex, ch 2, §6, 13

8.26 Hearings.

Immediately upon the receipt of the tentative budget provided for by section 8.25 the governor shall make provision for public hearings thereon, at which the governor may require the attendance of the heads and other officers of all departments, establishments and other persons receiving or requesting the grant of state funds and the giving by them of such explanations and suggestions as they may be called upon to give or as they may desire to offer in respect to items of requested appropriations in which they are interested. The governor shall also extend invitations to the governor-elect and the director of the department of management to be present at such hearings and to participate in the hearings through the asking of questions or the expression of opinion in regard to the items of the tentative budget.

[C24, 27, 31, §331; C35, §84-e19; C39, §**84.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.26]

8.27 Preparation of budget.

Following the inauguration, the governor shall proceed to the formulation of the budget provided for by sections 8.21 and 8.22.

[C35, §84-e20; C39, §**84.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.27]

8.28 Supplemental estimates.

The governor shall transmit to the legislature supplemental estimates for such appropriations as in the governor's judgment may be necessary on account of laws enacted after transmission of the budget, or as the governor deems otherwise in the public interest. The governor shall accompany such estimates with a statement of the reasons therefor, including the reasons for their omission from the budget. Whenever such supplemental estimates amount to an aggregate which, if they had been contained in the budget, would have required

the governor to make a recommendation for the raising of additional revenue, the governor shall make such recommendation.

[C35, §84-e21; C39, §**84.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.28]

8.29 Regents universities — uniform accounting system.

The state board of regents, with the approval of the director of the department of management, shall establish a uniform budgeting and accounting system for the institutions of higher education under its control, and shall require each of the institutions of higher education to begin operating under the uniform system not later than June 30, 1994.

[C71, 73, 75, 77, 79, 81, §8.29]

92 Acts, ch 1246, §23; 2001 Acts, 2nd Ex, ch 2, §7, 13

2001 amendments take effect November 16, 2001, and first apply to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

EXECUTION OF THE BUDGET

8.30 Availability of appropriations.

The appropriations made are not available for expenditure until allotted as provided for in section 8.31. All appropriations are declared to be maximum and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named if the estimated budget resources during the fiscal year for which the appropriations are made, are sufficient to pay all of the appropriations in full. The governor shall restrict allotments only to prevent an overdraft or deficit in any fiscal year for which appropriations are made.

[C35, §84-e23; C39, §**84.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.30]

86 Acts, ch 1245, §2019

8.31 Quarterly requisitions — allotments — exceptions — modifications.

Before an appropriation for administration, operation and maintenance of any department or establishment shall become available, there shall be submitted to the director of the department of management, not less than twenty days before the beginning of each quarter of each fiscal year, a requisition for an allotment of the amount estimated to be necessary to carry on its work during the ensuing quarter. The requisition shall contain details of proposed expenditures as may be required by the director of the department of management subject to review by the governor.

The director of the department of management shall approve the allotments subject to review by the governor, unless it is found that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, in which event such allotments may be modified to the extent the governor may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of the fiscal year, and the director shall submit copies of the allotments thus approved or modified to the head of the department or establishment concerned, who shall set up such allotments on the books and be governed accordingly in the control of expenditures.

Allotments of appropriations made for equipment, land, permanent improvements, and other capital projects may, however, be allotted in one amount by major classes or projects for which they are expendable without regard to quarterly periods. For fiscal years beginning on or after July 1, 1989, allotments of appropriations for equipment, land, permanent improvements, and other capital projects, except where contracts have been entered into with regard to the acquisition or project prior to July 1, 1989, shall not be allotted in one amount but shall be allotted at quarterly periods as provided in this section.

Allotments thus made may be subsequently modified by the director of the department of management at the direction of the governor either upon the written request of the head of the department or establishment concerned, or in the event the governor finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, upon the governor's own initiative to the extent the governor may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of the fiscal year; and the head of the department or establishment shall be given notice of a modification in the same way as in the case of original allotments.

Provided, however, that the allotment requests of all departments and establishments collecting governmental fees and other revenue which supplement a state appropriation shall attach to the summary of requests a statement showing how much of the proposed allotments are to be financed from (1) state appropriations, (2) stores, and (3) repayment receipts.

The procedure to be employed in controlling the expenditures and receipts of the state fair board and the institutions under the state board of regents, whose collections are not deposited in the state treasury, is that outlined in section 421.31, subsection 6.

If the governor determines that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, the reductions shall be uniform and prorated between all departments, agencies and establishments upon the basis of their respective appropriations.

Allotments from appropriations for the foreign trade offices of the department of economic development, if the appropriations are described by line item in the department's appropriation Act or another Act, may be made without regard to quarter-

ly periods as is necessary to take advantage of the most favorable foreign currency exchange rates.

[C35, §84-e24; C39, §**84.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.31; 81 Acts, ch 18, §1]

86 Acts, ch 1245, §1972; 87 Acts, ch 115, §4; 89 Acts, ch 309, §6; 94 Acts, ch 1063, §1

8.32 Conditional availability of appropriations.

All appropriations made to any department or establishment of the government as receive or collect moneys available for expenditure by them under present laws, are declared to be in addition to such repayment receipts, and such appropriations are to be available as and to the extent that such receipts are insufficient to meet the costs of administration, operation, and maintenance, or public improvements of such departments:

Provided, that such receipts or collections shall be deposited in the state treasury as part of the general fund or special funds in all cases, except those collections made by the state fair board, the institutions under the state board of regents and the natural resource commission.

Provided further, that no repayment receipts shall be available for expenditures until allotted as provided in section 8.31; and

Provided further, that the collection of repayment receipts by the state fair board and the institutions under the state board of regents shall be deposited in a bank or banks duly designated and qualified as state depositories, in the name of the state of Iowa, for the use of such boards and institutions, and such funds shall be available only on the check of such boards or institutions depositing them, which are hereby authorized to withdraw such funds, but only after allotment by the governor as provided in section 8.31; and

Provided further, that this chapter shall not apply to endowment or private trust funds or to gifts to institutions owned or controlled by the state or to the income from such endowment or private trust funds, or to private funds belonging to students or inmates of state institutions.

The provisions of this chapter shall not be construed to prohibit the state fair board from creating an emergency or sinking fund out of the receipts of the state fair and state appropriation for the purpose of taking care of any emergency that might arise beyond the control of the board of not to exceed three hundred thousand dollars. Neither shall this chapter be construed to prohibit the state fair board from retaining an additional sum of not to exceed three hundred fifty thousand dollars to be used in carrying out the provisions of chapter 173.

[C35, §84-e25; C39, §**84.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.32]

86 Acts, ch 1244, §4

8.33 Time limit on obligations — reversion.

No obligation of any kind shall be incurred or created subsequent to the last day of the fiscal year for which an appropriation is made, except when specific provision otherwise is made in the Act making the appropriation. On August 31, or as otherwise provided in an appropriation Act, following the close of each fiscal year, all unencumbered or unobligated balances of appropriations made for that fiscal term revert to the state treasury and to the credit of the funds from which the appropriations were made, except that capital expenditures for the purchase of land or the erection of buildings or new construction continue in force until the attainment of the object or the completion of the work for which the appropriations were made unless the Act making an appropriation for the capital expenditure contains a specific provision relating to a time limit for incurring an obligation or reversion of funds. This section does not repeal sections 7D.11 through 7D.14.

No payment of an obligation for goods and services shall be charged to an appropriation subsequent to the last day of the fiscal year for which the appropriation is made unless the goods or services are received on or before the last day of the fiscal year, except that repair projects, purchase of specialized equipment and furnishings, and other contracts for services and capital expenditures for the purchase of land or the erection of buildings or new construction or remodeling, which were committed and in progress prior to the end of the fiscal year are excluded from this provision.

[C35, §84-e26; C39, §**84.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.33]

83 Acts, ch 172, §1; 84 Acts, ch 1091, §1; 84 Acts, ch 1305, §17; 86 Acts, ch 1245, §2020; 86 Acts, ch 1246, §770; 89 Acts, ch 284, §2

8.34 Charging off unexpended appropriations.

Except as otherwise provided by law, the director of the department of revenue and finance shall transfer to the fund from which an appropriation was made, any unexpended or unencumbered balance of that appropriation remaining at the expiration of two months after the close of the fiscal term for which the appropriation was made. At the time the transfer is made on the books of the department of revenue and finance, the director shall certify that fact to the treasurer of state, who shall make corresponding entries on the books of the treasurer's office.

[C27, 31, §130-a1; C35, §84-a1; C39, §**84.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.34]

88 Acts, ch 1134, §3; 89 Acts, ch 284, §3

8.35 General supervisory control.

The governor and the director of the department of management and any officer of the department of management, hereinabove provided for, when authorized by the governor, are hereby authorized to make such inquiries regarding the receipts, custody and application of state funds, existing organization, activities and methods of business of the departments and establishments, assignments of particular activities to particular services and regrouping of such services, as in the opinion of the governor, will enable the governor to make recommendations to the legislature, and, within the scope of the powers possessed by the governor, to order action to be taken, having for their purpose to bring about increased economy and efficiency in the conduct of the affairs of government.

[C35, §84-e27; C39, §**84.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.35]

8.35A Information to be given to legislative fiscal bureau.

1. By July 1, the director of the department of management, in conjunction with the director of revenue and finance, shall provide a projected expenditure breakdown of each appropriation for the beginning fiscal year to the legislative fiscal bureau in the form and level of detail requested by the bureau. By the fifteenth of each month, the director, in conjunction with the director of revenue and finance, shall transmit to the legislative fiscal bureau a record for each appropriation of actual expenditures for the prior month of the fiscal year and the fiscal year to date in the form and level of detail as requested by the bureau. By October 1, the director, in conjunction with the director of revenue and finance, shall transmit the total record of an appropriation, including reversions and transfers for the prior fiscal year ending June 30, to the legislative fiscal bureau.

2. Commencing October 1, the director shall provide weekly budget tapes in the form and level of detail requested by the legislative fiscal bureau reflecting finalized agency budget requests for the following fiscal year as submitted to the governor. The director shall transmit all agency requests in final form to the legislative fiscal bureau by November 15. Final budget records containing the governor's recommendation and final agency requests shall be transmitted to the legislative fiscal bureau by January 1 or no later than the date the governor's budget document is delivered to the printer. The governor's recommendation included on this record shall be considered confidential by the legislative fiscal bureau until it is made public by the governor. The legislative fiscal bureau shall use this data in the preparation of information for the legislative appropriation process.

3. The director shall communicate any changes or anticipated changes to the budgeting system or the accounting system in writing to the legislative fiscal bureau prior to implementation.

4. A government agency which receives state funds directly from the state or indirectly through a political subdivision as directed by statute and which is not a city, county, or school district is subject to this subsection. A government agency which is subject to this subsection shall submit a copy of its budget to the legislative fiscal bureau, identifying it as being submitted under this subsection, when the budget of that government agency has received approval from the governing head or body of that agency. The copy of the budget submitted to the legislative fiscal bureau shall be on the budget forms provided by the department of management to state agencies under this chapter. The government agency shall also submit a statement identifying any funds available to the agency which are not included in the budget.

5. The department shall transmit the enterprise strategic plan and related information and an agency shall transmit its agency strategic plan, performance report, and related information as required by chapter 8E to the legislative fiscal bureau.

86 Acts, ch 1245, §2013; 89 Acts, ch 284, §4; 95 Acts, ch 214, §21; 2001 Acts, ch 169, §4; 2001 Acts, 2nd Ex, ch 2, §8, 13

2001 amendment to subsection 1 takes effect November 16, 2001, and first applies to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

8.36 Fiscal year.

The fiscal year of the government shall commence on the first day of July and end on the thirtieth day of June. This fiscal year shall be used for purposes of making appropriations and of financial reporting and shall be uniformly adopted by all departments and establishments of the government.

However, the department of workforce development may use the federal fiscal year instead of the fiscal year commencing on July 1.

[C35, §84-e28; C39, §**84.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.36; 81 Acts, ch 19, §1]

96 Acts, ch 1186, §23

8.36A Full-time equivalent position.

For purposes of making appropriations and financial reports and as used in appropriations statutes, *"full-time equivalent position"* means a budgeting and monitoring unit that equates the aggregate of full-time positions, part-time positions, a vacancy and turnover factor, and other adjustments. One full-time equivalent position represents two thousand eighty working hours, which is the regular number of hours one full-time person works in one fiscal year. The number of full-time equivalent positions shall be calculated by totaling the regular number of hours that could be annually worked by persons in all authorized positions, reducing those hours by a vacancy and turnover factor and dividing that amount by two thou-

sand eighty hours. In order to achieve the full-time equivalent position level, the number of filled positions may exceed the number of full-time equivalent positions during parts of the fiscal year to compensate for time periods when the number of filled positions is below the authorized number of full-time equivalent positions.

90 Acts, ch 1247, §1

8.37 Fiscal term. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

8.38 Misuse of appropriations.

No state department, institution, or agency, or any board member, commissioner, director, manager, or other person connected with any such department, institution, or agency, shall expend funds or approve claims in excess of the appropriations made thereto, nor expend funds for any purpose other than that for which the money was appropriated, except as otherwise provided by law. A violation of the foregoing provision shall make any person violating same, or consenting to the violation of same liable to the state for such sum so expended together with interest and costs, which shall be recoverable in an action to be instituted by the attorney general for the use of the state, which action may be brought in any county of the state.

[C35, §84-e29; C39, §**84.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.38]

8.39 Use of appropriations — transfer.

1. Except as otherwise provided by law, an appropriation or any part of it shall not be used for any other purpose than that for which it was made. However, with the prior written consent and approval of the governor and the director of the department of management, the governing board or head of any state department, institution, or agency may, at any time during the fiscal year, make a whole or partial intradepartmental transfer of its unexpended appropriations for purposes within the scope of such department, institution, or agency.

2. If the appropriation of a department, institution, or agency is insufficient to properly meet the legitimate expenses of the department, institution, or agency, the director, with the approval of the governor, may make an interdepartmental transfer from any other department, institution, or agency of the state having an appropriation in excess of its needs, of sufficient funds to meet that deficiency. An interdepartmental transfer to an appropriation which is not an entitlement appropriation is not authorized when the general assembly is in regular session and, in addition, the sum of interdepartmental transfers in a fiscal year to an appropriation which is not an entitlement appropriation shall not exceed fifty percent of the amount of the appropriation as enacted by the general assembly. For the purposes of this subsection, an entitlement appropriation is a line item appropriation to the state public defender for indigent defense or to the department of human services for foster care, state supplementary assistance, or medical assistance, or for the family investment program.

3. Prior to any transfer of funds pursuant to subsection 1 or 2 of this section or a transfer of an allocation from a subunit of a department which statutorily has independent budgeting authority, the director shall notify the chairpersons of the standing committees on budget of the senate and the house of representatives and the chairpersons of subcommittees of such committees of the proposed transfer. The notice from the director shall include information concerning the amount of the proposed transfer, the departments, institutions or agencies affected by the proposed transfer and the reasons for the proposed transfer. Chairpersons notified shall be given at least two weeks to review and comment on the proposed transfer before the transfer of funds is made.

4. Any transfer made under the provisions of this section shall be reported to the legislative fiscal committee on a monthly basis. The report shall cover each calendar month and shall be due the tenth day of the following month. The report shall contain the following: The amount of each transfer; the date of each transfer; the departments and funds affected; a brief explanation of the reason for the transfer; and such other information as may be required by the committee. A summary of all transfers made under the provisions of this section shall be included in the annual report of the legislative fiscal committee.

[C97, §187; SS15, §170-q; C24, 27, 31, §345; C35, §84-a3; C39, §**84.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.39]

86 Acts, ch 1245, §2022; 87 Acts, ch 115, §5; 94 Acts, ch 1181, §6; 94 Acts, ch 1199, §44

8.39A Transfer of moneys or positions — changes in tables of organization — notification. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

8.40 Penalty — removal — impeachment.

A refusal to perform any of the requirements of this chapter, or a refusal to perform a rule or requirement or request of the governor or the director of the department of management made pursuant to this chapter, by a board member, commissioner, director, manager, building committee, other officer or person connected with any institution, or other state department or establishment, subjects the offender to a penalty of two hundred fifty dollars, to be recovered in an action instituted in the district court of Polk county by the attorney general for the use of the state. If the offender is not an officer elected by vote of the people, the offense is sufficient cause for removal from office or

dismissal from employment by the governor upon thirty days' notice in writing to the offender; and if the offender is an officer elected by vote of the people, the offense is sufficient cause to subject the offender to impeachment.

[S13, §163-a; C24, 27, 31, §330; C35, §84-e30; C39, §**84.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.40]

88 Acts, ch 1134, §4

8.41 Federal funds — deposit — block grant plans — affected political subdivisions.

1. Commencing with the fiscal year beginning July 1, 1981, federal funds received in the form of block grants shall be deposited in a special fund in the state treasury and are subject to appropriation by the general assembly upon a recommendation by the governor. In determining a general fund balance, the federal funds deposited in the special fund shall not be included, but shall remain segregated in the special fund until appropriated by the general assembly.

2. Federal funds deposited in the state treasury as provided in subsection 1 shall either be included as part of the governor's budget required by section 8.22 or shall be included in a separate recommendation made by the governor to the general assembly. If federal funds received in the form of block grants or categorical grants have not been included in the governor's budget for the current fiscal year because of time constraints or because a budget is not being submitted for the next fiscal year, the governor shall submit a supplemental statement to the general assembly listing the federal funds received and including the same information for the federal funds required by section 8.22, part I, subsection 2, paragraph *"e"*, for the statement of federal funds in the governor's budget.

3. *a.* If, in any federal fiscal year, the federal government provides for a block grant which requires a new or revised program than was required in the prior fiscal year, each state agency required to administer the block grant program shall develop a block grant plan detailing program changes.

b. To the extent allowed by federal law, the block grant plan shall be developed in accordance with the following:

(1) The primary goal of the plan shall be to attain savings for taxpayers and to avoid shifting costs from the federal government to state and local governments.

(2) State agency planning meetings shall be held jointly with officials of the affected political subdivision and affected members of the public.

(3) The plan shall address proposed expenditures and accountability measures and shall be published so as to provide reasonable opportunity for public review and comment.

(4) (a) Preference shall be given to any existing service delivery system capable of delivering the required service. If an existing service delivery system is not used, the plan shall identify those existing delivery systems which were considered and the reasons those systems were rejected. This subparagraph subdivision applies to any service delivered pursuant to a federal block grant, including, but not limited to, any of the following block grant areas: health, human services, education, employment, community and economic development, and criminal justice.

(b) If a service delivered pursuant to a federal block grant and implemented by a political subdivision was previously provided for by a categorical grant, the state agency shall allow the political subdivision adequate transition time to accommodate related changes in federal and state policy. Transition activities may include, but are not limited to, revision of the political subdivision's laws, budgets, and administrative procedures.

(c) The state agency shall allow the political subdivision the flexibility to implement a service in a manner so as to address identifiable needs within the context of meeting broad national objectives.

(5) State administrative costs shall not exceed the limits allowed for under the federal law enacting the block grant.

(6) A federal mandate that is eliminated or waived for the state shall be eliminated or waived for a political subdivision.

(7) Federal block grants shall not be used to supplant existing funding efforts by the state.

c. The state agency shall send copies of the proposed block grant plan to the legislative fiscal committee and to the appropriate appropriations subcommittee chairpersons and ranking members of the general assembly. The plan and any program changes contained within the plan shall be adopted as rules in accordance with chapter 17A.

[81 Acts, ch 17, §3]

84 Acts, ch 1067, §4; 86 Acts, ch 1245, §2023; 96 Acts, ch 1105, §1

8.42 Payroll accrual account. Repealed by 2001 Acts, 2nd Ex, ch 2, § 12, 13.

8.43 Salary adjustment fund.

A *"salary adjustment fund"* is created, to be used to segregate funds appropriated by the general assembly for distribution to various state departments to fund salary increases for designated state employees. Moneys distributed from the salary adjustment fund are subject to the approval of the governor and director of the department of management.

[C77, 79, 81, §8.43]

88 Acts, ch 1134, §6

8.44 Reporting additional funds received.

Upon receiving federal funds or any other funds from any public or private sources except gifts or donations made to institutions for the personal use or for the benefit of members, patients, or inmates and receipts from the gift shop of merchandise manufactured by members, patients, or inmates, the state departments, agencies, boards, and institutions receiving such funds shall submit a written report within thirty days after receipt of the funds to the director of the department of management. The report shall state the source of the funds that supplement or replace state appropriations for institutional operations, the amount received, and the terms under which the funds are received.

All departments and establishments of government and the judicial branch shall notify the department of management and the legislative fiscal bureau of any change in the receipt of federal or other nonstate grants, receipts, and funds from the funding levels on which appropriations for the current or ensuing fiscal year were or are based. Changes which must be reported include, but are not limited to, any request, approval, award, or loss changes affecting federal or other nonstate grants, receipts, or funds. The notifications shall be made on a quarterly basis. The format of the notifications shall be specified by the legislative fiscal bureau.

[C71, 73, 75, 77, 79, 81, §8.44]

88 Acts, ch 1134, §7; 90 Acts, ch 1263, §54; 98 Acts, ch 1047, §3

8.45 Purchase of real estate by state departments.

Purchases of real estate as provided by law may be made by a state department on written contracts providing for payment over a period of years but the obligations thereon shall not constitute a debt or charge against the state of Iowa nor against the funds of the department for which said purchases are made. Purchase payments shall be made from only capital funds appropriated for that purpose. All state-appropriated capital funds used for any one purchase contract shall be taken entirely from a single capital appropriation and shall be set aside for that purpose. In event of default, the only remedy of the seller shall be against the property itself in rem, pursuant to chapter 654. In no event shall a deficiency judgment be entered or enforced against the state or the department making the purchase. The provisions of chapter 656 prescribing how a real estate contract may be forfeited shall, in no event, be applicable. In a foreclosure proceeding pursuant to this section and chapter 654, the department making the purchase and the attorney general shall be the only defendants who need be named and such department and the attorney general may be served personally or by restricted certified mail. The department and the attorney general shall have thirty days from the date of completed service in which to appear.

[C71, 73, 75, 77, 79, 81, §8.45]

8.46 Lease-purchase — reporting.

1. For the purposes of this section, unless the context otherwise requires:

a. "Installment acquisition" includes, but is not limited to, an arrangement in which title of ownership passes when the first installment payment is made.

b. "Lease-purchase arrangement" includes, but is not limited to, an arrangement in which title of ownership passes when the final installment payment is made.

c. "State agency" means any executive, judicial, or legislative department, commission, board, institution, division, bureau, office, agency, or other entity of state government.

2. At least thirty days prior to entering into a contract involving a lease-purchase or installment acquisition arrangement in which any part or the total amount of the contract is at least fifty thousand dollars, a state agency shall notify the legislative fiscal bureau concerning the contract. The legislative fiscal bureau shall compile the notifications for submission to the legislative fiscal committee of the legislative council. The notification is required regardless of the source of payment for the lease-purchase or installment acquisition arrangement. The notification shall include all of the following information:

a. A description of the object of the lease-purchase or installment acquisition arrangement.

b. The proposed terms of the contract.

c. The cost of the contract, including principal and interest costs. If the actual cost of a contract is not known at least thirty days prior to entering into the contract, the state agency shall estimate the principal and interest costs for the contract.

d. An identification of the means and source of payment of the contract.

e. An analysis of consequences of delaying or abandoning the commencement of the contract.

3. The legislative fiscal committee shall report to the legislative council concerning the notifications it receives pursuant to this section.

91 Acts, ch 268, §606; 95 Acts, ch 214, §2

8.47 Service contracts.

1. The department of general services, in cooperation with the office of attorney general, the department of management, the department of personnel, and the department of revenue and finance, shall adopt uniform terms and conditions for service contracts executed by a department or establishment benefiting from service contracts. The terms and conditions shall include but are not limited to all of the following:

a. The amount or basis for paying consider-

ation to the party based on the party's performance under the service contract.

b. Methods to effectively oversee the party's compliance with the service contract by the department or establishment receiving the services during performance, including the delivery of invoices itemizing work performed under the service contract prior to payment.

c. Methods to effectively review performance of a service contract, including but not limited to performance measurements developed pursuant to chapter 8E.

2. Departments or establishments, with the approval of the department of management acting in cooperation with the office of attorney general, the department of general services, the department of personnel, and the department of revenue and finance, may adopt special terms and conditions for use by the departments or establishments in their service contracts.

3. The state board of regents shall establish terms and conditions for service contracts executed by institutions governed by the state board of regents.

4. This section does not apply to service contracts or other agreements for services by the department of public defense that are funded with at least seventy-five percent federal moneys. The department of public defense shall establish terms and conditions for service contracts and other agreements for services that comply with this section to the greatest extent possible.

2001 Acts, ch 169, §5; 2002 Acts, ch 1117, §1, 23
NEW subsection 4

8.48 through 8.50 Reserved.

8.51 Fiscal year of political subdivisions.

The fiscal year of cities, counties, and other political subdivisions of the state shall begin July 1 and end the following June 30. For the purpose of this section, the term political subdivision includes school districts.

[C75, 77, 79, 81, §8.51]

8.52 Planning responsibility.

The department of management shall:

1. Provide coordination of state planning, performance measurement, and management of interagency programs of the state, and recommend policies to the governor and the general assembly.

2. Maintain and make available demographic and other information useful for state and local planning.

3. Prepare and submit economic reports appraising the economic condition, growth, and development of the state.

4. Analyze the quality and quantity of services required for the orderly growth of the state, taking into consideration the relationship of activities, capabilities, and future plans of private enterprise, the local, state, and federal governments, and regional units established under state or federal legislation, and shall make recommendations to the governor and the general assembly for the establishment and improvement of such services.

5. Inquire into methods of planning, performance measurement, and program development and the conduct of affairs of state government; prescribe adequate systems of records for planning, performance measurement, and programming; establish standards for effective planning, performance measurement, and programming in consultation with affected state agencies; and exercise all other powers necessary in discharging the powers and duties of this chapter.

6. Administer the accountable government Act as provided in chapter 8E.

86 Acts, ch 1245, §106; 2001 Acts, ch 169, §6, 7

8.53 GAAP deficit — GAAP implementation.

For the fiscal year beginning July 1, 1996, and each succeeding fiscal year, the governor shall recommend in the governor's budget and the general assembly shall provide funds to eliminate the GAAP deficit of the general fund of the state, as reported in the state's comprehensive annual financial report issued during the prior fiscal year, either through the appropriation of specific funds to correct a GAAP adjustment or by setting funds aside in a special account in an amount equal to the GAAP deficit.

92 Acts, ch 1227, §3; 94 Acts, ch 1181, §7; 2001 Acts, 2nd Ex, ch 2, §9, 13

8.54 General fund expenditure limitation.

1. For the purposes of section 8.22A, this section, and sections 8.55 through 8.57:

a. *"Adjusted revenue estimate"* means the appropriate revenue estimate for the general fund for the following fiscal year as determined by the revenue estimating conference under section 8.22A, subsection 3, adjusted by subtracting estimated tax refunds payable from that estimated revenue and as determined by the conference, adding any new revenues which may be considered to be eligible for deposit in the general fund.

b. *"New revenues"* means moneys which are received by the state due to increased tax rates and fees or newly created taxes and fees over and above those moneys which are received due to state taxes and fees which are in effect as of January 1 following the December state revenue estimating conference. *"New revenues"* also includes moneys received by the general fund of the state due to new transfers over and above those moneys received by the general fund of the state due to transfers which are in effect as of January 1 following the December state revenue estimating conference. The department of management shall

obtain concurrence from the revenue estimating conference on the eligibility of transfers to the general fund of the state which are to be considered as new revenue in determining the state general fund expenditure limitation.

2. There is created a state general fund expenditure limitation for each fiscal year beginning on or after July 1, 1993, calculated as provided in this section.

3. Except as otherwise provided in this section, the state general fund expenditure limitation for a fiscal year shall be ninety-nine percent of the adjusted revenue estimate.

4. The state general fund expenditure limitation amount provided for in this section shall be used by the governor in the preparation of the budget under section 8.22 and approval of the budget and by the general assembly in the budget process. If a source for new revenues is proposed, the budget revenue projection used for that new revenue source for the period beginning on the effective date of the new revenue source and ending in the fiscal year in which the source is included in the revenue base shall be an amount determined by subtracting estimated tax refunds payable from the projected revenue from that new revenue source, multiplied by ninety-five percent. If a new revenue source is established and implemented, the original state general fund expenditure limitation amount provided for in subsection 3 shall be readjusted to include ninety-five percent of the estimated revenue from the new revenue source.

5. For fiscal years in which section 8.55, subsection 2, results in moneys being transferred to the general fund, the original state general fund expenditure limitation amount provided for in subsection 3 shall be readjusted to include the moneys which are so transferred.

6. The scope of the expenditure limitation under subsection 3 shall not encompass federal funds, donations, constitutionally dedicated moneys, and moneys in expenditures from state retirement system moneys.

7. The governor shall transmit to the general assembly, in accordance with section 8.21, a budget which does not exceed the state general fund expenditure limitation. The general assembly shall pass a budget which does not exceed the state general fund expenditure limitation. The governor shall not transmit a budget with recommended appropriations in excess of the state general fund expenditure limitation and the general assembly shall not pass a budget with appropriations in excess of the state general fund expenditure limitation. The governor shall not approve or disapprove appropriation bills or items of appropriation bills passed by the general assembly in a manner that would cause the final budget approved by the governor to exceed the state general fund expenditure limitation. In complying with the requirements of this subsection, the governor and the general assembly shall not rely on any anticipated reversion of appropriations in order to meet the state general fund expenditure limitation.

92 Acts, ch 1227, §4; 92 Acts, 2nd Ex, ch 1001, §228; 94 Acts, ch 1181, §1, 5; 2001 Acts, 2nd Ex, ch 2, §10, 11, 13

2001 amendments take effect November 16, 2001, and first apply to the budget and appropriations made for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2001 Acts, 2nd Ex, ch 2, §13

ECONOMIC EMERGENCY FUND,
CASH RESERVE FUND,
REBUILD IOWA INFRASTRUCTURE FUND,
AND ENVIRONMENT FIRST FUND

8.55 Iowa economic emergency fund.

1. The Iowa economic emergency fund is created. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. The moneys credited to the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section.

2. *a.* The maximum balance of the fund is the amount equal to five percent of the adjusted revenue estimate for the fiscal year. If the amount of moneys in the Iowa economic emergency fund is equal to the maximum balance, moneys in excess of this amount shall be transferred to the general fund.

b. Notwithstanding paragraph *"a"*, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2002, and subsequent fiscal years, shall not be transferred to the general fund of the state but shall be transferred to the endowment for Iowa's health account of the tobacco settlement trust fund. The amount transferred under this paragraph shall not exceed the difference between forty million dollars and the total amount transferred to the endowment for Iowa's health account pursuant to 2001 Iowa Acts, chapter 177, section 2, as amended by 2001 Iowa Acts, chapter 187, section 28, and previous fiscal years.

c. Notwithstanding paragraph *"a"*, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of each fiscal year and after the appropriate amount has been transferred pursuant to paragraph *"b"*, shall not be transferred to the general fund of the state but shall be transferred to the senior living trust fund. The total amount transferred, in the aggregate, under this paragraph for all fiscal years shall not exceed fifty-one million five hundred thousand dollars.

d. Notwithstanding paragraph *"a"*, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of each fiscal year and after the appropriate amounts have been transferred pursuant to paragraphs *"b"* and *"c"* shall not be transferred to the general fund of the state but shall be transferred to the endowment for Iowa's health account of the tobacco settlement trust fund. The total amount transferred, in the aggregate, under this paragraph for all fiscal years shall not exceed the difference between sixty million five hundred thousand dollars and the amounts transferred to the endowment for Iowa's health account to repay the amounts transferred or appropriated from the endowment for Iowa's health account in 2002 Iowa Acts, chapter 1165, 2002 Iowa Acts, chapter 1166, 2002 Iowa Acts, chapter 1167, and 2002 Iowa Acts, Second Extraordinary Session, chapter 1003.

3. *a.* Except as provided in paragraphs *"b"* and *"c"*, the moneys in the Iowa economic emergency fund shall only be used pursuant to an appropriation made by the general assembly. An appropriation shall only be made for the fiscal year in which the appropriation is made. The moneys shall only be appropriated by the general assembly for emergency expenditures.

b. Moneys in the fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the fund by the end of that fiscal year.

c. There is appropriated from the Iowa economic emergency fund to the general fund of the state for the fiscal year in which moneys in the fund were used for cash flow purposes, for the purposes of reducing or preventing any overdraft on or deficit in the general fund of the state, the amount from the Iowa economic emergency fund that was used for cash flow purposes pursuant to paragraph *"b"* and that was not returned to the Iowa economic emergency fund by June 30 of the fiscal year. The appropriation in this paragraph shall not exceed fifty million dollars and is contingent upon all of the following having occurred:

(1) The revenue estimating conference estimate of general fund receipts made during the last quarter of the fiscal year was or the actual fiscal year receipts and accruals were at least one-half of one percent less than the comparable estimate made during the third quarter of the fiscal year.

(2) The governor has implemented the uniform reductions in appropriations required in section 8.31 as a result of subparagraph (1) and such reduction was insufficient to prevent an overdraft on or deficit in the general fund of the state or the governor did not implement uniform reductions in appropriations because of the lateness of the estimated or actual receipts and accruals under subparagraph (1).

(3) The balance of the general fund of the state at the end of the fiscal year prior to the appropriation made in this paragraph was negative.

(4) The governor has issued an official proclamation and has notified the cochairpersons of the fiscal committee of the legislative council and the legislative fiscal bureau that the contingencies in subparagraphs (1) through (3) have occurred and the reasons why the uniform reductions specified in subparagraph (2) were insufficient or were not implemented to prevent an overdraft on or deficit in the general fund of the state.

d. If an appropriation is made pursuant to paragraph *"c"* for a fiscal year, there is appropriated from the general fund of the state to the Iowa economic emergency fund for the following fiscal year, the amount of the appropriation made pursuant to paragraph *"c"*.

e. Except as provided in section 8.58, the Iowa economic emergency fund shall be considered a special account for the purposes of section 8.53 in determining the cash position of the general fund of the state for the payment of state obligations.

4. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the Iowa economic emergency fund shall be credited to the rebuild Iowa infrastructure fund.

84 Acts, ch 1305, §21; 92 Acts, ch 1227, §5; 94 Acts, ch 1181, §8; 95 Acts, ch 214, §13; 2001 Acts, 2nd Ex, ch 6, §27, 28, 37; 2002 Acts, ch 1169, §1; 2002 Acts, ch 1175, §73; 2002 Acts, 2nd Ex, ch 1001, §26, 52

For future amendment to subsection 2, paragraph a, effective July 1, 2003, see 2002 Acts, 2nd Ex, ch 1001, §25, 33

See Code editor's note at the end of Vol IV

Subsection 2 amended

8.56 Cash reserve fund.

1. A cash reserve fund is created in the state treasury. The cash reserve fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state except in determining the cash position of the state as provided in subsection 3. The moneys in the cash reserve fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the cash reserve fund shall be credited to the rebuild Iowa infrastructure fund created in section 8.57. Moneys in the cash reserve fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the cash reserve fund by the end of that fiscal year.

2. The maximum balance of the cash reserve fund is the amount equal to the cash reserve goal percentage, as defined in section 8.57, multiplied by the adjusted revenue estimate for the general fund of the state for the current fiscal year.

3. The moneys in the cash reserve fund shall only be used pursuant to an appropriation made

by the general assembly. An appropriation shall be made in accordance with subsection 4 only for the fiscal year in which the appropriation is made. The moneys shall only be appropriated by the general assembly for nonrecurring emergency expenditures and shall not be appropriated for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20. Except as provided in section 8.58, the cash reserve fund shall be considered a special account for the purposes of section 8.53 in determining the cash position of the general fund of the state for the payment of state obligations.

4. *a.* Except as provided in subsection 1, an appropriation shall not be made from the cash reserve fund unless the appropriation is in accordance with all of the following:

(1) The appropriation is contained in a bill or joint resolution in which the appropriation is the only subject matter of the bill or joint resolution.

(2) The bill or joint resolution states the reasons the appropriation is necessary.

b. In addition to the requirements of paragraph *"a"*, an appropriation shall not be made from the cash reserve fund which would cause the fund's balance to be less than three percent of the adjusted revenue estimate for the year for which the appropriation is made unless the bill or joint resolution is approved by vote of at least three-fifths of the members of both chambers of the general assembly and is signed by the governor.

92 Acts, ch 1227, §6; 94 Acts, ch 1181, §9; 95 Acts, ch 214, §14; 2001 Acts, 2nd Ex, ch 6, §29 – 31

2001 amendments to subsections 1 and 3 are effective July 1, 2002; 2001 Acts, 2nd Ex, ch 6, §31

For future amendments to this section, effective July 1, 2003, see 2002 Acts, 2nd Ex, ch 1001, §27, 33

Subsections 1 and 3 amended

8.57 Annual appropriations — reduction of GAAP deficit — rebuild Iowa infrastructure fund.

1. *a.* The *"cash reserve goal percentage"* for fiscal years beginning on or after July 1, 1995, is five percent of the adjusted revenue estimate. For each fiscal year beginning on or after July 1, 1995, in which the appropriation of the surplus existing in the general fund of the state at the conclusion of the prior fiscal year pursuant to paragraph *"b"* was not sufficient for the cash reserve fund to reach the cash reserve goal percentage for the current fiscal year, there is appropriated from the general fund of the state an amount to be determined as follows:

(1) If the balance of the cash reserve fund in the current fiscal year is not more than four percent of the adjusted revenue estimate for the current fiscal year, the amount of the appropriation under this lettered paragraph is one percent of the adjusted revenue estimate for the current fiscal year.

(2) If the balance of the cash reserve fund in the current fiscal year is more than four percent but less than five percent of the adjusted revenue estimate for that fiscal year, the amount of the appropriation under this lettered paragraph is the amount necessary for the cash reserve fund to reach five percent of the adjusted revenue estimate for the current fiscal year.

(3) The moneys appropriated under this lettered paragraph shall be credited in equal and proportionate amounts in each quarter of the current fiscal year.

b. The surplus existing in the general fund of the state at the conclusion of the fiscal year is appropriated for distribution in the succeeding fiscal year as provided in subsections 2 and 3. Moneys credited to the cash reserve fund from the appropriation made in this paragraph shall not exceed the amount necessary for the cash reserve fund to reach the cash reserve goal percentage for the succeeding fiscal year. As used in this paragraph, *"surplus"* means the excess of revenues and other financing sources over expenditures and other financing uses for the general fund of the state in a fiscal year.

c. The amount appropriated in this section is not subject to the provisions of section 8.31, relating to quarterly requisitions and allotment, or to section 8.32, relating to conditional availability of appropriations.

2. Moneys appropriated under subsection 1 shall be first credited to the cash reserve fund. To the extent that moneys appropriated under subsection 1 would make the moneys in the cash reserve fund exceed the cash reserve goal percentage of the adjusted revenue estimate for the fiscal year, the moneys are appropriated to the department of management to be spent for the purpose of eliminating Iowa's GAAP deficit, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year. These moneys shall be deposited into a GAAP deficit reduction account established within the department of management. The department of management shall annually file with both houses of the general assembly at the time of the submission of the governor's budget, a schedule of the items for which moneys appropriated under this subsection for the purpose of eliminating Iowa's GAAP deficit, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year, shall be spent. The schedule shall indicate the fiscal year in which the spending for an item is to take place and shall incorporate the items detailed in 1994 Iowa Acts, chapter 1181, section 17. The schedule shall list each item of expenditure and the estimated dollar amount of moneys to be spent on that item for the fiscal year. The department of management may submit during a regular legislative session an amended schedule for legislative consideration. If moneys appropriated under this

subsection are not enough to pay for all listed expenditures, the department of management shall distribute the payments among the listed expenditure items. Moneys appropriated to the department of management under this subsection shall not be spent on items other than those included in the filed schedule. On September 1 following the close of a fiscal year, moneys in the GAAP deficit reduction account which remain unexpended for items on the filed schedule for the previous fiscal year shall be credited to the Iowa economic emergency fund.

3. To the extent that moneys appropriated under subsection 1 exceed the amounts necessary for the cash reserve fund to reach its maximum balance and the amounts necessary to eliminate Iowa's GAAP deficit, including elimination of the making of any appropriation in an incorrect fiscal year, the moneys shall be appropriated to the Iowa economic emergency fund.

4. As used in this section, *"GAAP"* means generally accepted accounting principles as established by the governmental accounting standards board.

5. *a.* A rebuild Iowa infrastructure fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

b. Moneys in the infrastructure fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the infrastructure fund shall be credited to the infrastructure fund. Moneys in the infrastructure fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the infrastructure fund by the end of that fiscal year.

c. Moneys in the fund in a fiscal year shall be used as directed by the general assembly for public vertical infrastructure projects. For the purposes of this subsection, *"vertical infrastructure"* includes only land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. *"Vertical infrastructure"* does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement. However, appropriations may be made for the fiscal years beginning July 1, 1997, and July 1, 1998, for the purpose of funding the completion of Part III of the Iowa communications network.

d. The general assembly may provide that all or part of the moneys deposited in the GAAP deficit reduction account created in this section shall be transferred to the infrastructure fund in lieu of appropriation of the moneys to the Iowa economic emergency fund.

e. Notwithstanding provisions to the contrary in sections 99D.17 and 99F.11, for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter, not more than a total of sixty million dollars shall be deposited in the general fund of the state in any fiscal year pursuant to sections 99D.17 and 99F.11. The next fifteen million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the vision Iowa fund created in section 12.72 for the fiscal year beginning July 1, 2000, and for each fiscal year through the fiscal year beginning July 1, 2019. The next five million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the school infrastructure fund created in section 12.82 for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter until the principal and interest on all bonds issued by the treasurer of state pursuant to section 12.81 are paid, as determined by the treasurer of state. The total moneys in excess of the moneys deposited in the general fund of the state, the vision Iowa fund, and the school infrastructure fund in a fiscal year shall be deposited in the rebuild Iowa infrastructure fund and shall be used as provided in this section, notwithstanding section 8.60.

If the total amount of moneys directed to be deposited in the general fund of the state under sections 99D.17 and 99F.11 in a fiscal year is less than the total amount of moneys directed to be deposited in the vision Iowa fund and the school infrastructure fund in the fiscal year pursuant to this paragraph *"e"*, the difference shall be paid from lottery revenues in the manner provided in section 99E.10, subsection 3.

92 Acts, ch 1227, §7; 92 Acts, 2nd Ex, ch 1001, §229, 230; 94 Acts, ch 1181, §10, 11; 95 Acts, ch 209, §11, 12; 95 Acts, ch 214, §15, 16; 96 Acts, ch 1218, §25, 26, 71; 2000 Acts, ch 1225, §30, 38, 39; 2001 Acts, ch 185, §33, 49; 2002 Acts, 2nd Ex, ch 1001, §29, 52

For temporary exceptions to appropriations contained in this section, see appropriations and other noncodified enactments in annual Acts of the general assembly

For future amendment to this section effective July 1, 2003, see 2002 Acts, 2nd Ex, ch 1001, §28, 33

Subsection 5, paragraph b amended

8.57A Environment first fund.

1. An environment first fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and

moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the environment first fund shall be credited to the rebuild Iowa infrastructure fund.

3. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for the protection, conservation, enhancement, or improvement of natural resources or the environment.

4. There is appropriated from the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter, the sum of thirty-five million dollars to the environment first fund, notwithstanding section 8.57, subsection 5, paragraph *"c"*.

2000 Acts, ch 1225, §22

8.58 Exemption from automatic application.

To the extent that moneys appropriated under section 8.57 do not result in moneys being credited to the general fund under section 8.55, subsection 2, moneys appropriated under section 8.57 and moneys contained in the cash reserve fund, rebuild Iowa infrastructure fund, environment first fund, and Iowa economic emergency fund shall not be considered in the application of any formula, index, or other statutory triggering mechanism which would affect appropriations, payments, or taxation rates, contrary provisions of the Code notwithstanding.

To the extent that moneys appropriated under section 8.57 do not result in moneys being credited to the general fund under section 8.55, subsection 2, moneys appropriated under section 8.57 and moneys contained in the cash reserve fund, rebuild Iowa infrastructure fund, environment first fund, and Iowa economic emergency fund shall not be considered by an arbitrator or in negotiations under chapter 20.

92 Acts, ch 1227, §8; 95 Acts, ch 214, §17; 2000 Acts, ch 1225, §23

APPROPRIATIONS FREEZE — USE OF DESIGNATED MONEYS

8.59 Appropriations freeze.

Notwithstanding contrary provisions of the Code, the amounts appropriated under the applicable sections of the Code for fiscal years commencing on or after July 1, 1993, are limited to those amounts expended under those sections for the fiscal year commencing July 1, 1992. If an applicable section appropriates moneys to be distributed to different recipients and the operation of this section reduces the total amount to be distributed under the applicable section, the moneys shall be prorated among the recipients. As used in this section, *"applicable sections"* means the following sections: 53.50, 229.35, 230.8, 230.11, 405A.8, 411.20, and 663.44.

92 Acts, ch 1227, §9; 93 Acts, ch 180, §1; 97 Acts, ch 206, §5; 99 Acts, ch 135, §1

8.60 Use of designated moneys.

Moneys credited to or deposited in the general fund of the state on or after July 1, 1993, which under law were previously collected to be used for specific purposes, or to be credited to, or be deposited to a particular account or fund shall only be used for the purposes for which the moneys were collected, including but not limited to moneys collected in accordance with any of the following provisions:

1. Pari-mutuel regulation fund created in section 99D.17, Code Supplement 1993.
2. Excursion boat gambling special account pursuant to section 99F.4, subsection 2, Code Supplement 1993.
3. Milk fund created in section 192.111, Code Supplement 1993.
4. Commercial feed fund created in section 198.9, Code Supplement 1993.
5. Fertilizer fund created in section 200.9, Code Supplement 1993, and moneys collected for the administration of chapter 201A relating to the regulation of limestone products which were deposited in the fertilizer fund pursuant to section 201.13, Code 1993 and Code 1995.
6. Pesticide fund created in section 206.12, Code Supplement 1993.
7. Motor vehicle fraud account pursuant to section 312.2, subsection 13, Code Supplement 1993.
8. Public transit assistance fund pursuant to section 312.2, subsection 15, Code Supplement 1993, and section 324A.6, Code Supplement 1993.
9. Salvage vehicle fee paid to the Iowa law enforcement academy pursuant to section 321.52, Code Supplement 1993.
10. Railroad assistance fund created in section 327H.18, Code Supplement 1993.
11. Special railroad facility fund created in section 327I.23, Code Supplement 1993.
12. State aviation fund created in section 328.36, Code Supplement 1993.
13. Marine fuel tax fund created in section 452A.79, Code Supplement 1993.
14. Public outdoor recreation and resources fund pursuant to section 461A.79, Code Supplement 1993.
15. Energy research and development fund created in section 473.11, Code Supplement 1993.
16. Utilities trust fund created in section

476.10, Code Supplement 1993.

17. Banking revolving fund created in section 524.207, Code Supplement 1993.

18. Credit union revolving fund created in section 533.67, Code Supplement 1993.

19. Professional licensing revolving fund created in section 546.10, Code Supplement 1993.

93 Acts, ch 131, §1; 94 Acts, ch 1107, §32; 94 Acts, ch 1199, §64; 96 Acts, ch 1096, §1, 15; 96 Acts, ch 1219, §34; 2000 Acts, ch 1224, §22, 32

8.61 Trust fund information.

The department of revenue and finance in cooperation with each appropriate agency shall track receipts to the general fund of the state which under law were previously collected to be used for specific purposes, or to be credited to, or be deposited to a particular account or fund, as provided in section 8.60.

The department of revenue and finance and each appropriate agency shall prepare reports detailing revenue from receipts previously deposited into each of the funds. A report shall be submitted to the legislative fiscal bureau at least once for each three-month period as designated by the legislative fiscal bureau.

96 Acts, ch 1214, §29

USE OF REVERSIONS —
INNOVATIONS FUND

8.62 Use of reversions.

1. For the purposes of this section, *"operational appropriation"* means an appropriation from the general fund of the state providing for salary, support, administrative expenses, or other personnel-related costs.

2. Notwithstanding the provisions of section 8.33 or any other provision of law to the contrary, if on June 30 of a fiscal year, a balance of an operational appropriation remains unexpended or unencumbered, not more than fifty percent of the balance may be encumbered by the agency to which the appropriation was made and used as provided in this section and the remaining balance shall be deposited in the cash reserve fund created in section 8.56. Moneys encumbered under this section shall only be used by the agency during the succeeding fiscal year for employee training, technology enhancement, or purchases of goods and services from Iowa prison industries. Unused moneys encumbered under this section shall be deposited in the cash reserve fund on June 30 of the succeeding fiscal year.

3. On or before June 30 of the fiscal year following the fiscal year in which funds were encumbered under this section, an agency encumbering funds under this section shall report to the joint appropriations subcommittee which recommends funding for the agency, the legislative fiscal bureau, the department of management, and the legislative fiscal committee of the legislative council detailing how the moneys were expended. Moneys shall not be encumbered under this section from an appropriation which received a transfer from another appropriation pursuant to section 8.39.

94 Acts, ch 1181, §2; 96 Acts, ch 1219, §1; 99 Acts, ch 182, §1, 2

8.63 Innovations fund.

1. An innovations fund is created in the state treasury under the control of the department of management for the purpose of stimulating and encouraging innovation in state government by the awarding of repayable loans to state agencies.

2. The director of the department of management shall establish an eight-member committee to be called the state innovations fund committee. The committee shall review all requests for funds and approve loans of funds if the committee determines that an agency request would result in cost savings or added revenue to the general fund of the state. Eligible projects are projects which cannot be funded from an agency's operating budget without adversely affecting the agency's normal service levels. Projects may include, but are not limited to, purchase of advanced technology, contracting for expert services, and acquisition of equipment or supplies.

3. A state agency seeking a loan from the innovations fund shall complete an application form designed by the state innovations fund committee which employs a return on investment concept and demonstrates how state general fund expenditures will be reduced or how state general fund revenues will increase. Minimum loan requirements for state agency requests shall be determined by the committee. As an incentive to increase state general fund revenues, an agency may retain up to fifty percent of savings realized in connection with a loan from the innovations fund. The amount retained shall be determined by the innovations fund committee.

4. *a.* In order for the innovations fund to be self-supporting, the innovations fund committee shall establish repayment schedules for each innovation fund loan awarded. Agencies shall repay the funds over a period not to exceed five years with interest, at a rate to be determined by the innovations fund committee.

b. If the department of management and the department of revenue and finance certify that the savings from a proposed innovations fund project will result in a net increase in the balance of the general fund of the state without a corresponding cost savings to the requesting agency, and if the requesting agency meets all other eligibility requirements, the innovations fund committee may approve the loan for the project and not require repayment by the requesting agency. There is appropriated from the general fund of the state to the department of revenue and finance an amount suf-

ficient to repay the loan amount.

5. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the innovations fund shall be credited to the innovations fund. Notwithstanding section 8.33, moneys remaining in the innovations fund at the end of a fiscal year shall not revert to the general fund of the state.

95 Acts, ch 214, §18; 99 Acts, ch 208, §16

CHAPTER 8A

IOWA COUNCIL ON HUMAN INVESTMENT

Repealed by 2000 Acts, ch 1231, §39; 2001 Acts, ch 24, §72, 74

CHAPTER 8B

MIDWEST NUCLEAR COMPACT

Transferred to chapter 15D

CHAPTER 8C

MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

Transferred to chapter 457B

CHAPTER 8D

IOWA COMMUNICATIONS NETWORK

8D.1 Purpose.
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8D.1 Purpose.

It is the intent of the general assembly that communications of state government be co-ordinated to effect maximum practical consolidation and joint use of communications services.

[C71, 73, §8A.1; C75, 77, 79, 81, §18.132]
83 Acts, ch 126, §3; 94 Acts, ch 1184, §29
C95, §8D.1

8D.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the Iowa telecommunications and technology commission established in section 8D.3.

2. *"Director"* means the executive director appointed pursuant to section 8D.4.

3. *"Network"* means the Iowa or state communications network.

4. *"Private agency"* means an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, or a hospital licensed pursuant to chapter 135B or a physician clinic to the extent provided in section 8D.13, subsection 16.

5. *a. "Public agency"* means a state agency, an institution under the control of the board of re-

gents, the judicial branch as provided in section 8D.13, subsection 17, a school corporation, a city library, a library service area as provided in chapter 256, a county library as provided in chapter 336, or a judicial district department of correctional services established in section 905.2, to the extent provided in section 8D.13, subsection 15, an agency of the federal government, or a United States post office which receives a federal grant for pilot and demonstration projects.

b. For the purposes of this chapter, *"public agency"* also includes any homeland security or defense facility established by the administrator of the emergency management division of the department of public defense or the governor or any facility connected with a security or defense system as required by the administrator of the emergency management division of the department of public defense or the governor. A facility that is considered a public agency pursuant to this paragraph shall be authorized to access the Iowa communications network strictly for homeland security communication purposes. Any utilization of the network that is not related to communications concerning homeland security is expressly prohibited.

6. *"State communications"* refers to the transmission of voice, data, video, the written word or other visual signals by electronic means but does not include radio and television facilities and other educational telecommunications systems and services including narrowcast and broadcast systems under the public broadcasting division of the department of education, department of transportation distributed data processing and mobile radio network, or law enforcement communications systems.

[C71, 73, §8A.2; C75, 77, 79, 81, §18.133]

83 Acts, ch 126, §4, 5; 86 Acts, ch 1245, §308, 2049; 87 Acts, ch 211, §1; 89 Acts, ch 319, §31; 93 Acts, ch 48, §8; 94 Acts, ch 1184, §3, 4, 29

C95, §8D.2

98 Acts, ch 1047, §4; 2001 Acts, ch 158, §1; 2002 Acts, ch 1065, §1

Subsection 5 amended

8D.3 Iowa telecommunications and technology commission — members — duties.

1. *Commission established*. A telecommunications and technology commission is established with the sole authority to supervise the management, development, and operation of the network and ensure that all components of the network are technically compatible. The management, development, and operation of the network shall not be subject to the jurisdiction or control of any other state agency. However, the commission is subject to the general operations practices and procedures which are generally applicable to other state agencies.

The commission shall ensure that the network operates in an efficient and responsible manner consistent with the provisions of this chapter for the purpose of providing the best economic service attainable to the network users consistent with the state's financial capacity. The commission shall ensure that educational users and the use, design, and implementation for educational applications be given the highest priority concerning use of the network. The commission shall provide for the centralized, coordinated use and control of the network.

2. *Members*. The commission is composed of five members appointed by the governor and subject to confirmation by the senate. Members of the commission shall not serve in any manner or be employed by an authorized user of the network or by an entity seeking to do or doing business with the network. The governor shall appoint a member as the chairperson of the commission from the five members appointed by the governor, subject to confirmation by the senate. Members of the commission shall serve six-year staggered terms as designated by the governor and appointments to the commission are subject to the requirements of sections 69.16, 69.16A, and 69.19. Vacancies shall be filled by the governor for the duration of the unexpired term. The salary of the members of the commission shall be twelve thousand dollars per year, except that the salary of the chairperson shall be seventeen thousand dollars per year. Members of the commission shall also be reimbursed for all actual and necessary expenses incurred in the performance of duties as members. Meetings of the commission shall be held at the call of the chairperson of the commission. In addition to the members appointed by the governor, the auditor of state or the auditor's designee shall serve as a nonvoting, ex officio member of the commission.

The benefits and salary paid to the members of the commission shall be adjusted annually equal to the average of the annual pay adjustments, expense reimbursements, and related benefits provided under collective bargaining agreements negotiated pursuant to chapter 20.

3. *Duties*. The commission shall do all of the following:

a. Enter into agreements pursuant to chapter 28E as necessary and appropriate for the purposes of the commission. However, the commission shall not enter into an agreement with an unauthorized user or any other person pursuant to chapter 28E for the purpose of providing such user or person access to the network.

b. Adopt rules pursuant to chapter 17A as deemed appropriate and necessary, and directly related to the implementation and administration of the duties of the commission. The commission, in consultation with the department of general services, shall also adopt and provide for standard communications procedures and policies relating to the use of the network which recognize, at a minimum, the need for reliable communications

services.

c. Establish an appeal process for review by the commission of a scheduling conflict decision, including a scheduling conflict involving an educational user, or the establishment of a fee associated with the network upon the request of a person affected by such decision or fee. A determination made by the commission pursuant to this paragraph shall be final.

d. Review and approve for adoption, rules as proposed and submitted by an authorized user group necessary for the authorized user group's access and use of the network. The commission may refuse to approve and adopt a proposed rule, and upon such refusal, shall return the proposed rule to the respective authorized user group proposing the rule with a statement indicating the commission's reason for refusing to approve and adopt the rule.

e. (1) Develop and issue for response all requests for proposals for any construction, installation, repair, maintenance, or equipment and parts necessary for the network. In preparing the request for proposals, the commission shall do all of the following:

(a) Review existing requests for proposals related to the network.

(b) Consider and evaluate all competing technologies which could be used in any construction, installation, repair, or maintenance project.

(c) Allow flexibility for proposals to be submitted in response to a request for proposals issued by the commission such that any qualified provider may submit a bid on a site-by-site basis, or on a merged area or defined geographic area basis, or both, and by permitting proposals to be submitted for use of competing or alternative technologies in each defined area.

(d) Ensure that rural communities have access to comparable services to the services provided in urban areas resulting from any plans to construct, install, repair, or maintain any part of the network.

(2) In determining which proposal to recommend to the general assembly to accept, consider what is in the long-term best interests of the citizens of the state and the network, and utilize, if possible, the provision of services with existing service providers consistent with those best interests. In determining what is in the long-term best interests of the citizens of the state and the network, the commission, at a minimum, shall consider the cost to taxpayers of the state.

(3) Deliver a written report and all proposals submitted in response to the request for proposals for Part III to the general assembly no later than January 1, 1995. The commission shall not enter into any agreement related to such proposals without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor.

f. Annually prepare a written five-year financial plan for the network which shall be provided to the general assembly and the governor no later than January 15 of each year. The plan shall include estimates for income and expenses for the network for the five-year period and the actual income and expenses for the preceding fiscal year. The plan shall include the amount of general fund appropriations to be requested for the payment of operating expenses and debt service. The plan shall also include any recommendations of the commission related to changes in the system and other items as deemed appropriate by the commission. The recommendations of the commission contained in the plan shall include a detailed plan for the connection of all public schools to the network, including a discussion and evaluation of all potential financing options, an estimate of all costs incurred in providing such connections, and a schedule for completing such connections, including the anticipated final completion date for such connections.

g. Review existing maintenance contracts and past contracts to determine vendor capability to perform the obligations under such contracts. The commission shall report to the general assembly prior to January 1 of each year as to the performance of all vendors under each contract and shall make recommendations concerning continued funding for the contracts.

h. Pursue available opportunities to cooperate and coordinate with the federal government for the use and potential expansion of the network and for the financing of any such expansion.

i. Evaluate existing and projected rates for use of the system and ensure that rates are sufficient to pay for the operation of the system excluding the cost of construction and lease costs for Parts I, II, and III. The commission shall establish all hourly rates to be charged to all authorized users for the use of the network. A fee established by the commission to be charged to a hospital licensed pursuant to chapter 135B, a physician clinic, or the federal government shall be at an appropriate rate so that, at a minimum, there is no state subsidy related to the costs of the connection or use of the network related to such user.

j. Make recommendations to the general assembly, as deemed appropriate by the commission, concerning the operation of the network.

k. Provide necessary telecommunications cabling to provide state communications.

94 Acts, ch 1184, §5; 95 Acts, ch 210, §1; 96 Acts, ch 1200, §1; 99 Acts, ch 207, §8; 2000 Acts, ch 1141, §12, 19

Confirmation, see §2.32

Contingent appropriation of funds for network technology conversion based on federal certification of network as defense security network test bed; notice received by Code editor of filing with secretary of state of 28E agreement between commission and army national guard for use of network as defense security network test bed for homeland defense initiatives on July 8, 2002; see 2002 Acts, ch 1173, §1

8D.4 Executive director appointed.

The commission shall appoint an executive director of the commission, subject to confirmation by the senate. Such individual shall not serve as a member of the commission. The executive director shall serve at the pleasure of the commission. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation. The governor shall establish the salary of the executive director within range nine as established by the general assembly. The salary and support of the executive director shall be paid from funds deposited in the Iowa communications network fund.

94 Acts, ch 1184, §6

Confirmation, see §2.32

8D.5 Education telecommunications council established — regional councils established.

1. An education telecommunications council is established. The council consists of eighteen members and shall include the following: two persons appointed by the state board of regents; two persons appointed by the Iowa association of community college trustees; two persons appointed by the area education agency boards; two persons appointed by the Iowa association of school boards; two persons appointed by the school administrators of Iowa; two persons appointed by the Iowa association of independent colleges and universities; two persons appointed by the Iowa state education association; three persons appointed by the director of the department of education including one person representing libraries and one person representing the Iowa association of nonpublic school administrators; and one person appointed by the administrator of the public broadcasting division of the department of education. The council shall establish scheduling and site usage policies for educational users of the network, coordinate the activities of the regional telecommunications councils, and develop proposed rules and changes to rules for recommendation to the commission. The council shall also recommend long-range plans for enhancements needed for educational applications. Administrative support and staffing for the council shall be provided by the department of education.

2. A regional telecommunications council is established in each of the merged areas established pursuant to chapter 260C consisting of nine members, including one member each to be appointed by each of the appointing authorities under subsection 1. Additional ex officio, nonvoting members may also be appointed to the regional telecommunications councils. The regional telecommunications councils shall advise the education telecommunications council on the assessment of local educational needs, and the coordination of program activities including scheduling. The community college located in the merged area of a regional telecommunications council shall staff and facilitate the activities of the council. The community college and the council may enter into a chapter 28E agreement for such arrangement.

3. The community college in each of the merged areas shall be responsible for switching of Parts II and III of the network and for facilitating the organization and meetings of the regional telecommunications council.

94 Acts, ch 1184, §7

8D.6 Advisory groups established.

1. The commission shall establish an advisory group to examine the use of the network for telemedicine applications. The advisory group shall consist of representatives of hospitals and other health care facilities as determined by the commission.

2. The commission may establish other advisory committees as necessary representing authorized users of the network.

94 Acts, ch 1184, §8

8D.7 Telecommunications advisory committee.

A telecommunications advisory committee is established to advise the commission on telecommunications matters. The commission shall appoint five members to the advisory committee who shall represent specific telecommunications industries or persons with technical expertise related to the network.

94 Acts, ch 1184, §9

8D.8 Scheduling for authorized users.

Except as provided in section 8D.5, an authorized user is responsible for all scheduling of the use of the authorized user's facility. A person who disputes a scheduling decision of such user may petition the commission for a review of such decision pursuant to section 8D.3, subsection 3, paragraph *"c"*.

94 Acts, ch 1184, §10

8D.9 Certification of use — network use by certain authorized users.

1. A private or public agency, other than a state agency, local school district or nonpublic school, city library, library service area, county library, judicial branch, judicial district department of correctional services, agency of the federal government, a hospital or physician clinic, or a post office authorized to be offered access pursuant to this chapter as of May 18, 1994, shall certify to the commission no later than July 1, 1994, that the agency is a part of or intends to become a part of the network. Upon receiving such certification from an agency not a part of the network on May 18, 1994, the commission shall provide for the con-

nection of such agency as soon as practical. An agency which does not certify to the commission that the agency is a part of or intends to become a part of the network as required by this subsection shall be prohibited from using the network.

2. *a.* A private or public agency which certifies to the commission pursuant to subsection 1 that the agency is a part of or intends to become a part of the network shall use the network for all video, data, and voice requirements of the agency unless the private or public agency petitions the commission for a waiver and one of the following applies:

(1) The costs to the authorized user for services provided on the network are not competitive with the same services provided by another provider.

(2) The authorized user is under contract with another provider for such services, provided the contract was entered into prior to April 1, 1994. The agency shall use the network for video, data, and voice requirements which are not provided pursuant to such contract.

(3) The authorized user has entered into an agreement with the commission to become part of the network prior to June 1, 1994, which does not provide for use of the network for all video, data, and voice requirements of the agency. The commission may enter into an agreement described in this subparagraph upon a determination that the use of the network for all video, data, and voice requirements of the agency would not be in the best interests of the agency.

b. A private or public agency shall petition the commission for a waiver of the requirement to use the network as provided in paragraph *"a"*, if the agency determines that paragraph *"a"*, subparagraph (1) or (2) applies. The commission shall establish by rule a review process for determining, upon application of an authorized user, whether paragraph *"a"*, subparagraph (1) or (2) applies. An authorized user found by the commission to be under contract for such services as provided in paragraph *"a"*, subparagraph (2), shall not enter into another contract upon the expiration of such contract, but shall utilize the network for such services as provided in this section unless paragraph *"a"*, subparagraph (1), applies.

94 Acts, ch 1184, §11; 98 Acts, ch 1047, §5; 2001 Acts, ch 158, §2

8D.10 Report of savings by state agencies.

A state agency which is a part of the network shall annually provide a written report to the general assembly certifying the identified savings associated with the state agency's use of the network. The report shall be delivered on or before January 15 for the previous fiscal year of the state agency.

94 Acts, ch 1184, §12

8D.11 Powers — facilities — leases.

1. The commission may purchase, lease, and improve property, equipment, and services for telecommunications for public and private agencies and may dispose of property and equipment when not necessary for its purposes. However, the commission shall not enter into a contract for the purchase, lease, or improvement of property, equipment, or services for telecommunications pursuant to this subsection in an amount greater than one million dollars without prior authorization by a constitutional majority of each house of the general assembly, or approval by the legislative council if the general assembly is not in session. The commission shall not issue any bonding or other long-term financing arrangements as defined in section 12.30, subsection 1, paragraph *"b"*. Real or personal property to be purchased by the commission through the use of a financing agreement shall be done in accordance with the provisions of section 12.28, provided, however, that the commission shall not purchase property, equipment, or services for telecommunications pursuant to this subsection in an amount greater than one million dollars without prior authorization by a constitutional majority of each house of the general assembly, or approval by the legislative council if the general assembly is not in session.

2. The commission also shall not provide or resell communications services to entities other than public and private agencies. The public or private agency shall not provide communication services of the network to another entity unless otherwise authorized pursuant to this chapter. The commission may arrange for joint use of available services and facilities, and may enter into leases and agreements with private and public agencies with respect to the Iowa communications network, and public agencies are authorized to enter into leases and agreements with respect to the network for their use and operation. Rentals and other amounts due under the agreements or leases entered into pursuant to this section by a state agency are payable from funds annually appropriated by the general assembly or from other funds legally available. Other public agencies may pay the rental costs and other amounts due under an agreement or lease from their annual budgeted funds or other funds legally available or to become available.

3. This section comprises a complete and independent authorization and procedure for a public agency, with the approval of the commission, to enter into a lease or agreement and this section is not a qualification of any other powers which a public agency may possess and the authorizations and powers granted under this section are not subject to the terms, requirements, or limitations of any other provisions of law, except that the commission must comply with the provisions of section

12.28 when entering into financing agreements for the purchase of real or personal property. All moneys received by the commission from agreements and leases entered into pursuant to this section with private and public agencies shall be deposited in the Iowa communications network fund.

4. A political subdivision receiving communications services from the state as of April 1, 1986, may continue to do so but communications services shall not be provided or resold to additional political subdivisions other than a school corporation, a city library, a library service area as provided in chapter 256, and a county library as provided in chapter 336. The rates charged to the political subdivision shall be the same as the rates charged to state agencies.

86 Acts, ch 1245, §309
C87, §18.134
87 Acts, ch 233, §131; 89 Acts, ch 319, §32; 93 Acts, ch 48, §9; 94 Acts, ch 1184, §13, 29
C95, §8D.11
96 Acts, ch 1177, §1; 2001 Acts, ch 158, §3

8D.11A Proprietary interests.

The commission may charge a negotiated fee, to recover a share of the costs related to the research and development, initial production, and derivative products of its proprietary software and hardware, telecommunications architecture design, and proprietary technology applications developed to support authorized users, to private vendors and to other political entities and subdivisions, including but not limited to states, territories, protectorates, and foreign countries. The commission may enter into nondisclosure agreements to protect the state of Iowa's proprietary interests. The provisions of chapter 23A relating to noncompetition by state agencies and political subdivisions with private enterprise shall not apply to commission activities authorized under this section.

2001 Acts, ch 22, §1

8D.12 Disposition of network — approval of general assembly and governor.

Notwithstanding any provision to the contrary, the commission or the department of general services shall not sell, lease, or otherwise dispose of the network without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor.

94 Acts, ch 1184, §14

8D.13 Iowa communications network.

1. Moneys in the Iowa communications network fund are appropriated to the Iowa telecommunications and technology commission for purposes of providing financing for the procurement, operation, and maintenance of the Iowa communications network with sufficient capacity to serve the video, data, and voice requirements of the educational telecommunications system consisting of Part I, Part II, and Part III, and other public and private agencies.

2. For purposes of this section, unless the context otherwise requires:

a. "Part I" means the communications connections between central switching and institutions under the control of the board of regents, nonprofit institutions of higher education eligible for tuition grants, and the regional switching centers for the remainder of the network.

b. "Part II" means the communications connections between the regional switching centers and the secondary switching centers.

c. "Part III" means the communications connection between the secondary switching centers and the agencies defined in section 8D.2, subsections 4 and 5, excluding state agencies, institutions under the control of the board of regents, nonprofit institutions of higher education eligible for tuition grants, and the judicial branch, judicial district departments of correctional services, hospitals and physician clinics, agencies of the federal government, and post offices.

3. The financing for the procurement costs for the entirety of Part I except for the communications connections between central switching and institutions under the control of the board of regents, and nonprofit institutions of higher education eligible for tuition grants, and for the video, data, and voice capacity for state agencies and for Part II and Part III, shall be provided by the state. The financing for the procurement and maintenance costs for Part III shall be provided by the state. A local school board, governing authority of a nonpublic school, or an area education agency board may elect to provide one hundred percent of the financing for the procurement and maintenance costs for Part III to become part of the network. The basis for the amount of state financing is one hundred percent of a single interactive audio and interactive video connection for Part III, and such data and voice capacity as is necessary. If a school board, governing authority of a nonpublic school, or area education agency board elects to provide one hundred percent of the financing for the leasing costs for Part III, the school district or area education agency may become part of the network as soon as the network can reasonably connect the district or agency. A local school board, governing authority of a nonpublic school, or an area education agency board may also elect not to become part of the network. Construction of Part III, related to a school board, governing authority of a nonpublic school, or area education agency board which provides one hundred percent of the financing for the leasing costs for Part III, may proceed as determined by the commission and consistent with the purpose of this chapter.

4. The commission shall develop the requests for proposals that are needed for the Iowa communications network with sufficient capacity to serve the video, data, and voice requirements of state agencies and for educational telecommunications applications. The commission shall develop a request for proposals for each of the systems that will make up the network. The commission may develop a request for proposals for each definitive component of the network or the commission may provide in the request for proposals for each such system that separate contracts may be entered into for each definitive component covered by the request for proposals. The requests for proposals may be for the purchase, lease-purchase, or lease of the component parts of the network consistent with the provisions of this chapter, may require maintenance costs to be identified, and the resulting contract may provide for maintenance for parts of the network. The master contract may provide for electronic classrooms, satellite equipment, receiving equipment, studio and production equipment, and other associated equipment as required.

5. The state shall lease all fiberoptic cable facilities or facilities with DS-3 capacity for Part III connections for which state funding is provided. The state shall lease all fiberoptic cable facilities or facilities with DS-3 or DS-1 capacity for the judicial branch, judicial district department of correctional services, and state agency connections for which state funding is provided. Such facilities shall be leased from qualified providers. The state shall not own such facilities, except for those facilities owned by the state as of January 1, 1994.

The lease provisions of this subsection do not apply to a school district which elects to provide one hundred percent of the financing for the district's connection.

6. It is the intent of the general assembly that during the implementation of Parts I and II of the system, the department of general services shall employ a consultant to report to it on the impact of changing technology on the potential cost and capabilities of the system. It is also the intent of the general assembly that the department of education shall study new techniques in distant teaching. These reports shall be made available to the general assembly.

7. The commission shall be responsible for the network design and shall be responsible for the implementation of each component of the network as it is incorporated into the network. The final design selected shall optimize the routing for all users in order to assure maximum utilization by all agencies of the state. Efficiencies achieved in the implementation of the network shall be used to fund further implementation and enhancement of the network, and shall be considered part of the operational cost of the network. The commission shall be responsible for all management, operations, control switching, diagnostics, and maintenance functions of network operations as provided in this chapter. The performance of these duties is intended to provide optimal utilization of the facilities, and the assurance that future growth requirements will be provided for, and that sufficient network capacity will be available to meet the needs of all users.

8. The education telecommunications council shall review all requests for grants for educational telecommunications applications, if they are a part of the Iowa communications network, to ensure that the educational telecommunications application is consistent with the telecommunications plan. All other grant requests shall be reviewed as determined by the commission. If the education telecommunications council finds that a grant request is inconsistent with the telecommunications plan, the grant request shall not be allowed.

9. The procurement and maintenance of electronic equipment including, but not limited to, master receiver antenna systems, studio and production equipment, and broadcast system components shall be provided for under the commission's contracts. The Iowa public broadcasting board and other educational entities within the state have the option to use their existing or replacement resources and agreements in the operation and maintenance of these systems.

10. In addition to the other evaluation criteria specified in the request for proposals issued pursuant to this section, the commission, in evaluating proposals, shall base up to two percent of the total possible points on the public benefit that can be derived from a given proposal due to the increased private telecommunications capacity available to Iowa citizens located in rural Iowa. For purposes of this subsection, an area of the state is considered rural if it is not part of a federally designated standard metropolitan statistical area.

11. The fees charged for use of the network and state communications shall be based on the ongoing operational costs of the network and of providing state communications only. For the services rendered to state agencies by the commission, the commission shall prepare a statement of services rendered and the agencies shall pay in a manner consistent with procedures established by the department of revenue and finance.

12. The commission, on its own or as recommended by an advisory committee of the commission and approved by the commission, shall permit a fee to be charged by a receiving site to the originator of the communication provided on the network. The fee charged shall be for the purpose of recovering the operating costs of a receiving site. The fee charged shall be reduced by an amount received by the receiving site pursuant to a state appropriation for such costs, or federal assistance received for such costs. Fees established under this

subsection shall be paid by the originator of the communication directly to the receiving site. For purposes of this section, *"operating costs"* include the costs associated with the management or coordination, operations, utilities, classroom, equipment, maintenance, and other costs directly related to providing the receiving site.

13. The auditor of state shall, no less than annually, examine the financial condition and transactions of the commission as provided in chapter 11. A copy of the auditor's report concerning such examination shall be provided to the general assembly.

14. Access to the network shall be offered on an equal basis to public and private agencies under subsection 8 if the private agency contributes an amount toward the match requirement comparable to its share of use for the part of the system in which it participates.

15. Access to the network shall be offered to the judicial district departments of correctional services established in section 905.2, provided that such departments contribute an amount consistent with their share of use for the part of the system in which the departments participate, as determined by the commission.

16. Access shall be offered to hospitals licensed pursuant to chapter 135B and physician clinics for diagnostic, clinical, consultative, data, and educational services for the purpose of developing a comprehensive, statewide telemedicine network, to an agency of the federal government, and to a post office defined as a public agency pursuant to section 8D.2, subsection 5. A hospital, physician clinic, an agency of the federal government, or a post office defined as a public agency pursuant to section 8D.2, subsection 5, shall be responsible for all costs associated with becoming a part of the network.

17. Access shall be offered to the judicial branch provided that the judicial branch contributes an amount consistent with the judicial branch's share of use for the part of the network in which the judicial branch participates, as determined by the commission.

18. Notwithstanding chapter 476, the provisions of chapter 476 shall not apply to a public utility in furnishing a telecommunications service or facility to the commission for the Iowa communications network or to any authorized user of the Iowa communications network for such authorized user's connection to the network.

19. Access to the network shall be offered to the department of public safety and the department of public defense for the purpose of establishing and operating a shared data-only network providing law enforcement, emergency management, disaster service, emergency warning, and other emergency information dissemination services to federal, state, and local law enforcement agencies as provided in section 80.9, and local emergency management offices established under the authority of sections 29C.9 and 29C.10.

89 Acts, ch 319, §33
CS89, §18.136
90 Acts, ch 1266, §35; 90 Acts, ch 1272, §34; 92 Acts, ch 1246, §24; 93 Acts, ch 179, §16; 94 Acts, ch 1184, §15 – 20, 29
C95, §8D.13
95 Acts, ch 20, §1; 96 Acts, ch 1034, §1; 96 Acts, ch 1218, §27; 97 Acts, ch 210, §17; 98 Acts, ch 1047, §6 – 8
See Iowa Acts for provisions relating to appropriations for network costs in a given year

8D.14 Iowa communications network fund.

There is created in the office of the treasurer of state a fund to be known as the Iowa communications network fund under the control of the Iowa telecommunications and technology commission. There shall be deposited into the Iowa communications network fund proceeds from bonds issued for purposes of projects authorized pursuant to section 8D.13, funds received from leases pursuant to section 8D.11, and other moneys by law credited to or designated by a person for deposit into the fund.

89 Acts, ch 319, §34
CS89, §18.137
90 Acts, ch 1266, §36; 91 Acts, ch 264, §610; 94 Acts, ch 1184, §21, 29
C95, §8D.14
95 Acts, ch 210, §7

CHAPTER 8E

STATE GOVERNMENT ACCOUNTABILITY (ACCOUNTABLE GOVERNMENT ACT)

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SUBCHAPTER I

GENERAL PROVISIONS

8E.101 Title.

This chapter shall be known and may be cited as the *"Accountable Government Act"*.

2001 Acts, ch 169, §8

8E.102 Purposes.

This chapter is intended to create mechanisms to most effectively and efficiently respond to the needs of Iowans and continuously improve state government performance, including by doing all of the following:

1. Allocating human and material resources available to state government to maximize measurable results for Iowans.
2. Improving decision making at all levels of state government.
3. Enhancing state government's relationship with citizens and taxpayers by providing for the greatest possible accountability of the government to the public.

2001 Acts, ch 169, §9

8E.103 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agency"* means a principal central department enumerated in section 7E.5. For purposes of this chapter, each division within the department of commerce shall be considered an agency, and each bureau within a division of the department of commerce shall be considered a division, as otherwise provided in chapter 7E.
2. *"Agency performance plan"* means an action plan based on an agency strategic plan which utilizes performance measures, data sources, and performance targets to achieve the agency's goals adopted pursuant to section 8E.208.
3. *"Agency strategic plan"* means the strategic plan for the agency adopted pursuant to section 8E.206.
4. *"Department"* means the department of management.
5. *"Enterprise strategic plan"* means the strategic plan for the executive branch of state government adopted pursuant to section 8E.204.
6. *"Performance target"* means a desired level of performance, demonstrating specific progress toward the attainment of a goal which is part of a strategic plan as provided in section 8E.208.
7. *"Strategic plan"* means an enterprise strategic plan or an agency strategic plan.

2001 Acts, ch 169, §10

8E.104 Administration.

The department shall oversee the administration of this chapter in cooperation with agencies as provided in this chapter. The department shall adopt rules as necessary in order to administer this chapter. However, the state board of regents shall oversee and implement the provisions of this chapter for institutions governed under chapter 262.

2001 Acts, ch 169, §11

8E.105 Chapter evaluation.

The department shall conduct an evaluation of the effectiveness of this chapter in carrying out the purposes of this chapter as provided in section

8E.102. The department shall submit a report of its findings and recommendations to the governor and general assembly not later than January 10, 2006.

2001 Acts, ch 169, §12

SUBCHAPTER II

STRATEGIC PLANNING AND PERFORMANCE MEASUREMENT

8E.201 Agency duties and powers.

Each agency shall administer the application of this chapter to the agency in cooperation with the department. Each agency shall measure and monitor progress toward achieving goals which relate to programs administered by the agency pursuant to the enterprise strategic plan, the agency strategic plan, and the agency performance plan.

2001 Acts, ch 169, §13

8E.202 Reports and records — access and purpose.

1. The department and each agency shall provide for the widest possible dissemination of information between agencies and the public relating to the enterprise strategic plan and agency strategic plans, including but not limited to internet access. This section does not require the department or an agency to release information which is classified as a confidential record under this Code, including but not limited to section 22.7.

a. In administering this subsection, the department shall provide for the dissemination of all of the following:

(1) The enterprise strategic plan, performance measures, performance targets based on performance data, performance data, and data sources used to evaluate agency performance, and explanations of the plan's provisions.

(2) Methods for the public and state employees to provide input including written and oral comments for the enterprise strategic plan, including a schedule of any public hearings relating to the plan or revisions.

b. In administering this subsection, each agency shall provide for the dissemination of all of the following:

(1) The agency strategic plan, performance measures, performance targets based on performance data, performance data, and data sources used by the agency to evaluate its performance, and explanations of the plan's provisions.

(2) Methods for the public and agency employees to provide input including written and oral comments for the agency strategic plan, including a schedule of any public hearings relating to the plan or revisions.

2. The department may review any records of an agency that relate to an agency strategic plan, an agency performance plan, or a performance audit conducted pursuant to section 8E.209.

3. A record which is confidential under this Code, including but not limited to section 22.7, shall not be released to the public under this section.

2001 Acts, ch 169, §14

8E.203 Strategic plan — purposes.

The purposes of strategic plans are to promote long-term and broad thinking, focus on results for Iowans, and guide the allocation of human and material resources and day-to-day activities.

2001 Acts, ch 169, §15

8E.204 Adoption and revision of an enterprise strategic plan and agency strategic plans.

1. The department, in consultation with agencies, shall adopt an enterprise strategic plan. Each agency shall adopt an agency strategic plan aligned with the enterprise strategic plan.

2. The department or an agency shall adopt and revise a strategic plan which includes input from customers and stakeholders following an opportunity for broad public participation in strategic planning. The department or an agency developing or revising a strategic plan shall include input from state employees, including written and oral comments. Upon adoption of the enterprise strategic plan by the department, the plan shall be disseminated to each agency and made available to all state employees. Upon adoption of the agency's strategic plan, the agency shall provide the department with a copy of the agency strategic plan and make the strategic plan available to all agency employees. The enterprise strategic plan and all agency strategic plans shall be available to the public.

3. The department and agencies shall annually review the enterprise strategic plan. An agency shall conduct an annual review of its agency strategic plan. Revisions in the strategic plan may be prompted by a reexamination of priorities or the need to redirect state resources based on new circumstances, including events or trends.

2001 Acts, ch 169, §16

8E.205 Enterprise strategic plan.

The enterprise strategic plan shall identify major policy goals of the state. The enterprise strategic plan shall also describe multiagency strategies to achieve major policy goals, and establish the means to gauge progress toward achieving the major policy goals.

2001 Acts, ch 169, §17

8E.206 Agency strategic plans.

1. An agency shall adopt an agency strategic plan which shall follow a format and include elements as determined by the department in consultation with agencies.

2. An agency shall align its agency strategic plan with the enterprise strategic plan and show the alignment.

2001 Acts, ch 169, §18

8E.207 Agency performance plans.

Each agency shall develop an annual performance plan to achieve the goals provided in the agency strategic plan, including the development of performance targets using its performance measures. The agency shall use its performance plan to guide its day-to-day operations and track its progress in achieving the goals specified in its agency strategic plan.

1. An agency shall align its agency performance plan with the agency strategic plan and show the alignment in the agency performance plan.

2. An agency shall align individual performance instruments with its agency performance plan.

2001 Acts, ch 169, §19

8E.208 Performance measures, performance targets, and performance data.

The department, in consultation with agencies, shall establish guidelines that will be used to create performance measures, performance targets, and data sources for each agency and each agency's functions.

2001 Acts, ch 169, §20

8E.209 Periodic performance audits and performance data validation.

1. The department, in consultation with the legislative fiscal bureau, the auditor of state, and agencies, shall establish and implement a system of periodic performance audits. The purpose of a performance audit is to assess the performance of an agency in carrying out its programs in light of the agency strategic plan, including the effectiveness of its programs, based on performance measures, performance targets, and performance data. The department may make recommendations to improve agency performance which may include modifying, streamlining, consolidating, expanding, redesigning, or eliminating programs.

2. The department, in cooperation with the legislative fiscal bureau and the auditor of state, shall provide for the analysis of the integrity and validity of performance data.

2001 Acts, ch 169, §21

8E.210 Reporting requirements.

1. Each agency shall prepare an annual performance report stating the agency's progress in meeting performance targets and achieving its goals consistent with the enterprise strategic plan, its agency strategic plan, and its performance plan. An annual performance report shall include a description of how the agency has reallocated human and material resources in the previous fiscal year. The department, in conjunction with agencies, shall develop guidelines for annual performance reports, including but not limited to a reporting schedule. An agency may incorporate its annual performance report into another report that the agency is required to submit to the department.

2. The annual performance reporting required under this section shall be used to improve performance, improve strategic planning and policy decision making, better allocate human and material resources, recognize superior performance, and inform Iowans about their return from investment in state government.

2001 Acts, ch 169, §22

SUBCHAPTER III

INVESTMENT DECISIONS

8E.301 Scope.

The department, in cooperation with agencies, shall establish methodologies for use in making major investment decisions, including methodologies based on return on investment and cost-benefit analysis. The department and agencies may also utilize these methodologies to review current investment decisions. The department shall establish procedures for implementing the methodologies, requiring independent verification and validation of investment results, and providing reports to the governor and the legislative fiscal bureau regarding the implementation.

2001 Acts, ch 169, §23

See also §12B.10

CHAPTER 9

SECRETARY OF STATE

9.1 Duties — records.
9.2 Records relating to cities.
9.2A Records relating to condemnation.
9.3 Commissions.
9.4 Fees.
9.5 Salary.
9.6 Iowa official register.
9.7 Access to corporation records.

9.1 Duties — records.

The secretary of state shall keep the secretary of state's office at the seat of government, and perform all duties required by law; the secretary shall have charge of and keep all the Acts and resolutions of the territorial legislature and of the general assembly of the state, the enrolled copies of the Constitutions of the state, and all bonds, books, records, maps, registers, and papers which are now or may hereafter be deposited to be kept in the secretary of state's office, including all books, records, papers, and property pertaining to the state land office.

[C51, §43; R60, §59; C73, §61; C97, §66; C24, 27, 31, 35, 39, §**85;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §9.1]

Designated as state commissioner of elections, §47.1

Duties relating to filing of federal liens; see §331.609

9.2 Records relating to cities.

The secretary of state shall receive and preserve in the secretary's office all papers transmitted to the secretary in relation to city development, including incorporation, discontinuance, or boundary adjustment; and shall keep an alphabetical list of cities in a book provided for that purpose, in which shall be entered the name of the city, the county in which situated, and the date of incorporation, discontinuance, or boundary adjustment.

[R60, §1046; C73, §65; C97, §67; C24, 27, 31, 35, 39, §**86;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §9.2]

9.2A Records relating to condemnation.

The secretary of state shall receive and preserve in the secretary's office all papers transmitted to the secretary in relation to condemnation and shall keep an alphabetical list of acquiring agencies in a book provided for that purpose, in which shall be entered the name of the acquiring agency, the county in which the real property is located, and the date the condemnation application was filed.

99 Acts, ch 171, §25, 42

Section applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

9.3 Commissions.

All commissions issued by the governor shall be countersigned by the secretary, who shall register each commission in a book to be kept for that purpose, specifying the office, name of officer, date of commission, and tenure of office, and forthwith forward to the directors of the departments of management and of revenue and finance copies of the registration.

[C51, §44; R60, §60; C73, §62; C97, §68; S13, §68; C24, 27, 31, 35, 39, §**87;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §9.3]

88 Acts, ch 1134, §8

9.4 Fees.

The secretary of state shall collect all fees directed by law to be collected by the secretary of state, including the following:

1. For certificate, with seal attached, three dollars.

2. For a copy of any law or record, upon the request of any person, a fee to be determined by the secretary of state by rule adopted pursuant to chapter 17A.

[C51, §2524; R60, §4133; C73, §3756; C97, §85; C24, 27, 31, 35, 39, §**88;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §9.4; 81 Acts, ch 21, §1]

93 Acts, ch 143, §1

9.5 Salary.

The salary of the secretary of state shall be as fixed by the general assembly.

[C31, 35, §88-c1; C39, §**88.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §9.5]

9.6 Iowa official register.

In odd-numbered years, the secretary of state shall compile for publication the Iowa official register which shall contain historical, political, and other statistics of general value, but nothing of a partisan character.

83 Acts, ch 196, §10

See §7A.20

Data for official register, §7D.6, 9F.4

Publication requirement inapplicable to Iowa official register during 2001 and 2002 calendar years; 2001 Acts, ch 187, §25

9.7 Access to corporation records.

The secretary of state shall offer to county recorders electronic access to corporation records. The secretary of state shall adopt rules providing for the electronic access and for the dissemination of the information by the county recorders.

91 Acts, ch 211, §1

CHAPTER 9A

REGISTRATION OF ATHLETE AGENTS

9A.1 Title.
9A.2 Definitions.
9A.3 Registration requirements for athlete agents.
9A.4 Resident agent required.
9A.5 Denial of certificate of registration.
9A.6 Bond required from athlete agent.

9A.7 Agent contract.
9A.8 Prohibited activities.
9A.9 On-campus athlete agent interviews.
9A.10 Contract void.
9A.11 Penalties — enforcement.
9A.12 Costs.

9A.1 Title.

This chapter shall be known as the *"Registration of Athlete Agents Act"*.

88 Acts, ch 1248, §1

9A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Athlete agent"* means a person representing a student athlete for compensation or any person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract or professional sports services contract with the person, or who for a fee procures, offers, promises, or attempts to obtain employment for a student athlete with a professional sports team. *"Athlete agent"* does not include an individual licensed to practice as an attorney in this state when the individual is acting as a representative for a student athlete, unless the attorney also represents the student athlete in negotiations for an agent contract.

2. *"Institution of higher education"* means a public or private college or university in this state.

3. *"Student athlete"* means an individual enrolled at an institution of higher education who is eligible to participate in intercollegiate sports contests as a member of a sports team of an institution of higher education, or who is receiving partial or full financial assistance by way of an athletic scholarship and may in the future be eligible to participate in intercollegiate sports contests as a member of a sports team of an institution of higher education.

88 Acts, ch 1248, §2

9A.3 Registration requirements for athlete agents.

1. An athlete agent shall register with, and obtain a certificate of registration from, the secretary of state before contacting, either directly or indirectly, a student athlete concerning the possibility of the athlete agent's representing the student athlete. The athlete agent may apply for a certificate of registration by submitting the forms provided for that purpose and must provide all the information required by the secretary of state, including all of the following:

a. Name of the applicant and the address of the applicant's principal place of business.

b. Business or occupation engaged in by the applicant for the five years immediately preceding the date of application.

c. The athlete agent's educational background, training, and experience relating to being an athlete agent.

d. Names and addresses of all persons, except bona fide employees on stated salaries, who are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent.

e. Record of all felony charges and convictions, and all misdemeanor charges and convictions of the athlete agent.

f. Record of all felony charges and convictions, and misdemeanor charges and convictions of all persons, except bona fide employees, who are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent.

g. Record of all sanctions issued to or disciplinary actions taken against the athlete agent or against any student athlete or any institution of higher education in connection with any transaction or occurrence involving the athlete agent.

h. Additional information as deemed appropriate by the secretary of state.

2. In addition to the requirements of subsection 1, an athlete agent who is not a resident of this state must file with the secretary of state an irrevocable consent to service of process on a form prescribed by the secretary. The consent to service shall be signed by the athlete agent, or by an authorized representative of the athlete agent, and notarized. If the athlete agent is a corporation, the consent to service shall be accompanied by a copy of the corporation's authorization to do business in this state and a copy of the resolution of the corporation authorizing the consent to service. The consent to service shall indicate that service upon the secretary of state is sufficient service upon the athlete agent, if the plaintiff forwards by certified mail one copy of the service to the business address of the athlete agent on file at the office of the secretary of state.

3. A certificate of registration issued under this section is valid for one year from the date of issuance. A registered athlete agent may renew the certificate by filing a renewal application in the form prescribed by the secretary of state, accompanied by any applicable renewal fee.

4. The secretary of state shall:

a. Establish a reasonable registration fee sufficient to offset expenses incurred in the administration of this chapter.

b. Adopt rules necessary for the implementa-

tion and administration of this chapter.

88 Acts, ch 1248, §3

9A.4 Resident agent required.

A person registered under this chapter as an athlete agent who is not a resident of this state, or does not have a principal place of business in this state, shall not engage in any activity as an athlete agent in this state unless that person has entered into an agreement with a person who is a resident of this state or whose principal place of business is in this state, who is licensed pursuant to section 602.10101, and who is registered under this chapter as an athlete agent, to act on behalf of the nonresident athlete agent. The agreement shall provide that the resident athlete agent shall act as attorney in fact, on whom all process in any action involving the nonresident athlete agent may be served, as well as any other duties as negotiated by the nonresident and resident athlete agent. The agreement shall be filed with the secretary of state and shall include the name and address of the resident athlete agent.

88 Acts, ch 1248, §4

9A.5 Denial of certificate of registration.

The secretary of state may deny, suspend, or revoke an athlete agent's certificate of registration, following a hearing where a determination is made that the athlete agent has engaged in any of the following activities:

1. Made false or misleading statements of a material nature in the athlete agent's application for a certificate of registration or renewal of a certificate of registration.

2. Misappropriated funds, or engaged in other specific acts such as embezzlement, theft, or fraud, which in the judgment of the secretary of state would render the athlete agent unfit to serve in a fiduciary capacity.

3. Engaged in other conduct, including, but not limited to, conduct contributing to sanctions or disciplinary action against any student athlete or institution of higher education, whether within this state or not, which in the judgment of the secretary of state relates to the athlete agent's fitness to serve in a fiduciary capacity.

4. Engaged in a material violation of this chapter or a rule adopted pursuant to this chapter, as shown by a preponderance of the evidence. The suspension or revocation of an agent's registration may be reviewed pursuant to chapter 17A.

88 Acts, ch 1248, §5

9A.6 Bond required from athlete agent.

1. An athlete agent shall have on file with the secretary of state before the issuance or renewal of a registration certificate, a surety bond executed by a surety company authorized to do business in this state in the sum of twenty-five thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days' notice in writing to the agent and to the secretary of state indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the athlete agent's willingness to comply with this chapter, pay all amounts due to any individual or group of individuals when due, and pay all damages caused to any student athlete or institution of higher education by reason of intentional misstatement, misrepresentation, fraud, deceit or any unlawful or negligent acts or omissions by the registered athlete agent or the athlete agent's representative or employee while acting within the scope of employment. This section shall not limit the recovery of damages to the amount of the surety bond.

2. The bond shall be made in a form prescribed by the secretary of state and written by a company authorized by the secretary of state to do business within the state.

88 Acts, ch 1248, §6

9A.7 Agent contract.

1. An agent contract to be entered into by a registered athlete agent and a student athlete who has not previously signed a contract of employment with a professional sports team shall be on a form approved by the secretary of state. Approval of the form shall not be withheld unless the proposed form is unfair, unjust, or oppressive to the student athlete. If the form of the contract is in compliance with any players association form contract, the contract shall be approved by the secretary of state.

2. The agent contract shall have printed on the face of the contract in bold print the following: **"The athlete agent is registered with the secretary of state. Registration does not imply approval or endorsement by the secretary of state of the specific terms and conditions of this contract or competence of the athlete agent. You have the right to terminate this contract within five calendar days after it is signed. You may jeopardize your standing as a student athlete by entering into this contract under the rules for eligibility established by or adhered to by your institution of higher education."**

3. A registered athlete agent shall file with the secretary of state a schedule of fees chargeable and collectible from a student athlete who has not previously signed a contract of employment with a professional sports team and shall file a description of the various professional services to be rendered in return for each fee. The athlete agent may impose charges only in accordance with the fee schedule. Changes in the fee schedule may be made from time to time, except that a change shall not become effective until the seventh day after

the date the change is filed with the secretary of state.

88 Acts, ch 1248, §7

9A.8 Prohibited activities.

A person shall not do any of the following:

1. Act or offer to act as an athlete agent unless registered pursuant to this chapter.

2. Engage in conduct which violates, or causes or contributes to causing a student or institution of higher education to violate, any rule or regulation adopted by the national collegiate athletic association governing student athletes and their relationship with athlete agents and institutions of higher education.

3. Except as provided in subsection 5, enter into a written or oral agreement by which the athlete agent will represent a student athlete, or give anything of value to a student athlete, until after completion of the student athlete's last intercollegiate athletic contest including any postseason contest.

4. Enter into an agreement before the student athlete's last intercollegiate contest that purports to take effect at a time after that contest is completed.

5. Enter into an agreement where the athlete agent gives, offers, or promises anything of value to an employee or student of an institution of higher education in return for the referral of a student athlete by the employee or student.

6. Interfere with, impede, or obstruct the administration and enforcement of this chapter.

88 Acts, ch 1248, §8

9A.9 On-campus athlete agent interviews.

If an institution of higher education located in this state elects to permit athlete agent interviews on its campus during a student athlete's final year as a student athlete, a registered athlete agent may interview the student athlete to discuss the registered athlete agent's representation of the student athlete in the marketing of the student athlete's athletic ability and reputation. The registered athlete agent shall strictly adhere to the conditions imposed by each institution with regard to the time, place, manner, and duration of the interviews.

88 Acts, ch 1248, §9

9A.10 Contract void.

An agent contract negotiated by an athlete agent who has failed to comply with the provisions of this chapter is void. If the contract is void pursuant to this section, the athlete agent does not have a right of repayment of anything of value received by the student athlete as an inducement to enter into an agent contract or received by a student athlete before completion of the student athlete's last intercollegiate contest, and the athlete agent shall refund any consideration paid to the athlete agent by the student athlete or on the student athlete's behalf.

88 Acts, ch 1248, §10

9A.11 Penalties — enforcement.

1. The attorney general may institute a legal proceeding against an athlete agent on behalf of the state, and shall institute legal proceedings at the request of the secretary of state, to enforce this chapter.

2. A person who knowingly and willfully violates a provision of this chapter is subject to a civil penalty in an amount not to exceed ten thousand dollars.

3. A person who violates a provision of section 9A.8 commits a serious misdemeanor.

88 Acts, ch 1248, §11; 89 Acts, ch 83, §2

9A.12 Costs.

A student athlete and an institution of higher education are entitled to recover reasonable attorney's fees and court costs against an athlete agent found to be in violation of this chapter.

88 Acts, ch 1248, §12

CHAPTER 9B

REGISTRATION OF WASTE TIRE HAULERS

Repealed by 2002 Acts, ch 1121, §6; see §455D.11I

CHAPTER 9C

TRANSIENT MERCHANTS

This chapter not enacted as a part of this title; transferred from chapter 81A in Code 1993

9C.1 Definitions.
9C.2 License required.
9C.3 Application for license.
9C.4 Bond required — applicability — forfeiture.
9C.5 Issuance of license.
9C.6 License fee.
9C.7 Misrepresentation.
9C.8 Revocation.
9C.9 Penalty.
9C.10 Enforcement.

9C.1 Definitions.

The term *"transient merchant"* as used herein shall mean and include every merchant, whether an individual person, a firm, corporation, partnership or association, and whether owner, agent, bailee, consignee or employee, who shall bring or cause to be brought within the state of Iowa any goods, wares or merchandise of any kind, nature or description, with the intention of temporarily or intermittently selling or offering to sell at retail such goods, wares or merchandise within the state of Iowa. The term *"transient merchant"* shall also mean and include every merchant, whether an individual person, a firm, corporation, partnership or an association, who shall by itself, or by agent, consignee or employee temporarily or intermittently engage in or conduct at one or more locations a business within the state of Iowa for the sale at retail of any goods, wares or merchandise of any nature or description. A merchant engaging in business shall be presumed to be temporarily or intermittently in business unless it is the intention of such merchant to remain continuously in business at each location where the merchant is engaged in business within the state of Iowa as a merchant for a period of more than sixty days. The provisions of this chapter shall not be construed to apply to persons selling at wholesale to merchants, nor to transient vendors of drugs, nor to persons running a huckster wagon, or selling or distributing livestock feeds, fresh meats, fish, fruit, or vegetables, nor to persons selling their own work or production either by themselves or employees.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.1]
C93, §9C.1

9C.2 License required.

It shall be unlawful for any transient merchant as herein defined, to sell, dispose of, or offer for sale any goods, wares or merchandise of any kind, nature or description, at any time or place within the state of Iowa, outside the limits of any city in the state of Iowa, or within the limits of any city in the state of Iowa that has not by ordinance provided for the licensing of transient merchants, unless such transient merchant, as herein defined, shall have a valid license as herein provided and shall have complied with the regulations herein set forth.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.2]
C93, §9C.2

9C.3 Application for license.

Any transient merchant as defined herein, desiring a transient merchant's license shall at least ten days prior to the first day any sale is made, file with the secretary of state of the state of Iowa an application in writing duly verified by the person, firm, corporation, partnership or association proposing to sell or offer to sell at retail any goods, wares or merchandise, or to engage in or conduct a temporary or intermittent business for the sale at retail of any goods, wares or merchandise, which application shall state the following facts:

1. The name, residence and post-office address of the person, firm, corporation, partnership or association making the application, and if a corporation, the names and addresses of the officers thereof, and if a firm, partnership or association and not a corporation, the names and addresses of all members thereof.

2. If the application be made by an agent, bailee, consignee or employee, the application shall so state and set out the name and address of such agent, bailee, consignee or employee and shall also set out the name and address of the owner of the goods, wares and merchandise to be sold or offered for sale.

3. The application shall state whether or not the applicant has an Iowa retailers sales tax permit and if the applicant has such permit, shall state the number of such permit.

4. If the applicant be a corporation, the application shall state whether or not the applicant is an Iowa corporation or a foreign corporation, and if a foreign corporation, shall state whether or not such corporation is authorized to do business in Iowa.

5. The value of the goods to be sold or offered

for sale or the average inventory to be carried by any such transient merchant engaging in or conducting an intermittent or temporary business as the case may be.

6. The date or dates upon which said goods, wares or merchandise shall be sold or offered for sale, or the date or dates upon which it is the intention of the applicant to engage in or conduct a temporary or intermittent business.

7. The location and address where such goods, wares or merchandise shall be sold or offered for sale, or such business engaged in or conducted.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.3]
C93, §9C.3

9C.4 Bond required — applicability — forfeiture.

At the time of filing said application and as a part thereof, the applicant shall file with the secretary of state a bond, with sureties to be approved by the secretary of state, in a penal sum two times the value of the goods, wares or merchandise to be sold or offered for sale or the average inventory to be carried by such transient merchant engaged in or conducting an intermittent or temporary business as the case may be as shown by the application, running to the state of Iowa, for the use and benefit of any purchaser of any merchandise from such transient merchant who might have a cause of action of any nature arising from or out of such sale against the applicant or the owner of such merchandise if other than the applicant; the bond to be further conditioned on the payment by the applicant of all taxes that may be payable by, or due from, the applicant to the state of Iowa or any subdivision thereof, the bond to be further conditioned for the payment of any fines that may be assessed by any court against the applicant for violation of the provision of this chapter, and further conditioned for the payment and satisfaction of any and all causes of action against the applicant commenced within one year from the date of sale thereof, and arising from such sale, provided, however, that the aggregate liability of the surety for all such taxes, fines and causes of action shall in no event exceed the principal sum of such bond.

In such bond the applicant and surety shall appoint the secretary of state, the agent of the applicant and surety for the service of process. In the event of such service, the agent upon whom such service is made shall within five days after the date of service, mail by ordinary mail a true copy of the process served upon the agent to each party for whom the agent is served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the jurisdiction of the court.

Such bond shall contain the consent of the applicant and surety that the district court of the county in which the plaintiff may reside or Polk county, Iowa shall have jurisdiction of all actions against the applicant or surety, or both, arising out of the sale. The state of Iowa, or any subdivision thereof, or any person having a cause of action against the applicant or surety arising out of said sale may join the applicant and surety on such bond in the same action, or may in such action sue either the applicant or the surety alone.

The requirements of this section also apply to transient merchants who are licensed in accordance with an ordinance of a city in the state of Iowa.

Notwithstanding the above provisions, the bond provided for in this section shall be forfeited to the state of Iowa upon the applicant's failure to pay the total of all taxes payable by or due from the applicant to the state which taxes are administered by the department of revenue and finance. The department shall adopt administrative rules for the collection of the forfeiture. Notice shall be provided to the surety and to the applicant. Notice to the applicant shall be mailed to the applicant's last known address. The applicant or the surety shall have the opportunity to apply to the director of revenue and finance for a hearing within thirty days after the giving of such notice. Upon the failure to timely request a hearing, the bond shall be forfeited. If, after the hearing upon timely request, the director finds that the applicant has failed to pay the total of all taxes payable and the bond is forfeited, the director shall order the bond forfeited. The amount of the forfeiture shall be the amount of taxes payable or the amount of the bond. The surety shall not have standing to contest the amount of any taxes payable. For purposes of this section *"taxes payable"* means all tax, penalties, interest, and fees that the department has previously determined to be due by assessment or in an appeal of an assessment.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.4]
87 Acts, ch 60, §1
C93, §9C.4

9C.5 Issuance of license.

Upon receiving an application for a transient merchant's license, the secretary of state shall investigate or cause to be investigated, the reputation and character of the applicant. If, upon making such investigation, the secretary of state is satisfied that the statements and representations contained in the application are true, and that the applicant is of good reputation and character, and the holder of an Iowa retailer's sales tax permit, and if a foreign corporation, has authority to do business in the state of Iowa, the secretary shall issue to the applicant a license as a transient merchant upon payment of the fee as herein prescribed for the period of time requested in said application and for use at the location and place where it is stated in said application the sale will be held or the business conducted, both of which shall be set out in said license. Such license shall be valid only for the period of time and at the loca-

tion and place described therein.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.5]
C93, §9C.5

9C.6 License fee.
Prior to issuing the said transient merchant's license, the secretary of state shall collect for the state of Iowa a license fee in the sum of twenty-five dollars for each day the applicant, as shown by the application, shall propose to sell or offer for sale any goods, wares or merchandise, or for each day the applicant, as shown by the application, proposes to engage in and conduct a business as a transient merchant as the case may be.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.6]
C93, §9C.6

9C.7 Misrepresentation.
It shall be unlawful for any transient merchant making sales or engaging in or conducting a business under a transient merchant's license to make any false or misleading statements or representation regarding any article sold or offered for sale by such transient merchant as to condition, quality, original cost, or cost to such transient merchant of any article sold or offered for sale or to sell or offer for sale goods, wares or merchandise of a value in excess of the value thereof as shown by said application, or to sell or offer for sale at retail any goods, wares or merchandise, or to engage in or conduct an intermittent or temporary business on any days or at any place other than those shown by such license.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.7]
C93, §9C.7

9C.8 Revocation.
The secretary of state may revoke any license issued under the provisions of this chapter after proper hearing before the secretary, by the sending of due notice of said hearing by registered letter to the transient merchant at the merchant's last known address, return receipt requested, not less than twenty days before the date of said hearing, for any of the following causes:
1. For any violations of the provisions of this chapter.
2. For failure to pay the sales tax as provided by law or misrepresentation of the source, condition, quality, weight or measure of the product sold by the transient merchant.
3. If any judgment recovered against any transient merchant with reference to the operation of that business remains unpaid for a period of six months provided such judgment be not stayed under a supersedeas bond upon appeal from such judgment.
The secretary of state shall give immediate notice of the revocation of any license issued under the provisions of this chapter to the surety or sureties furnishing the bond provided for herein.
In the event of such revocation, no other transient merchant license shall be issued to such applicant for a period of two years thereafter.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.8]
C93, §9C.8

9C.9 Penalty.
Any merchant, whether an individual person, a firm, corporation, partnership or association violating any of the provisions of this chapter shall be guilty of a simple misdemeanor. Each sale made in violation of the provisions hereof shall be and constitute a separate offense.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §81A.9]
C93, §9C.9

9C.10 Enforcement.
The attorney general, or designees of the attorney general, may seek an injunction from a court of competent jurisdiction in order to prohibit sales by a transient merchant who is in violation of this chapter.
87 Acts, ch 60, §2
CS87, §81A.10
C93, §9C.10

CHAPTER 9D

TRAVEL AGENCIES AND AGENTS

This chapter not enacted as a part of this
title; transferred from chapter 120 in Code 1993

9D.1 Definitions.
9D.2 Registration required.
9D.3 Evidence of financial security.
9D.4 Penalties.
9D.5 Exemptions.

9D.1 Definitions.

1. *"Applicant"* means a person applying for registration under this chapter.

2. *"Customer"* means a person who is offered or who purchases travel services.

3. *"Registrant"* means a person registered pursuant to this chapter.

4. *"Secretary"* means the secretary of state.

5. *"Solicitation"* means contact by a travel agency or travel agent of a customer for the purpose of selling or offering to sell travel services.

6. *"Travel agency"* means a person who represents, directly or indirectly, that the person is offering or undertaking by any means or method, to provide travel services for a fee, commission, or other valuable consideration, direct or indirect.

7. *"Travel agent"* means a person employed by a travel agency whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations.

8. *"Travel services"* means arranging or booking vacation or travel packages, travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations. Travel services include travel related prizes or awards for which the customer must pay a fee or, in connection with the prize or award, expend moneys for the direct or indirect monetary benefit of the person making the award, in order for the customer to collect or enjoy the benefits of the prize or award.

89 Acts, ch 274, §1
CS89, §120.1
C93, §9D.1

9D.2 Registration required.

1. *a.* A travel agency doing business in this state shall register with the secretary of state as a travel agency if it or its travel agent conducts the solicitation of an Iowa resident.

b. A travel agency required to register under paragraph *"a"* shall not permit a travel agent employed by the travel agency to do business in this state unless the agency has filed the required registration statement.

2. A travel agent shall not knowingly do business in this state unless and until the travel agency employing the travel agent has registered with the secretary of state as a travel agency if the travel agency or any of the agency's travel agents conduct the solicitation of an Iowa resident.

3. This section does not require registration for, or prohibit, solicitation by mail or telecommunications of a person with whom the travel agency has a previous travel services provider-customer relationship, having previously arranged travel related services for that customer on at least one prior occasion.

4. *"Doing business"* in this state, for purposes of this chapter, means any of the following:

a. Offering to sell or selling travel services, if the offer is made or received within the state.

b. Offering to arrange, or arranging, travel services for a fee or commission, direct or indirect, if the offer is made or received in this state.

c. Offering to, or awarding travel services as a prize or award, if the offer or award is made in or received in this state.

5. An applicant shall complete the registration statement form provided by the secretary. The registration statement must be accompanied by the required bond or evidence of financial responsibility and the registration fee. The registration statement shall include all of the following:

a. The name and signature of an officer or partner of a business entity or the names and signatures of the principal owner and operator if the agency is a sole proprietorship.

b. The name, address, and telephone number of the applicant and the name of all travel agents employed by the applicant travel agency.

c. The name, address, and telephone number of any person who owns or controls, directly or indirectly, ten percent or more of the applicant.

d. If the applicant is a foreign corporation or business, the name and address of the corporation's agent in this state for service of process.

e. Any additional information required by rule adopted by the secretary pursuant to chapter 17A.

The application shall be accompanied by a written irrevocable consent to service of process. The consent must provide that actions in connection with doing business in this state may be commenced against the registrant in the proper jurisdiction in this state in which the cause of action may arise, or in which the plaintiff may reside, by service of process on the secretary as the registrant's agent and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if service of process had been made upon the person according to the laws of this or any other state. The consent to service of process shall be in such form and supported by such additional information as the secretary may by rule require.

An annual registration fee as established by the secretary by rule is required at the time the registration statement is filed with the secretary, and on or before the anniversary date of the effective date of registration for each subsequent year. The registration fee shall be established at a rate deemed reasonably necessary by the secretary to support the administration of this chapter, but not to exceed fifteen dollars per year per agency. If a registrant fails to pay the annual registration fee, the registration lapses and becomes ineffective.

A registrant shall submit to the secretary corrections to the information supplied in the registration statement within a reasonable time after a change in circumstances, which circumstances would be required to be reported in an initial regis-

tration statement, except travel agents' names as required in subsection 5, paragraph *"b"*. The names of travel agents shall be updated at the time of annual registration.

The secretary may revoke or suspend a registration for cause subject to the contested case provisions of chapter 17A.

89 Acts, ch 274, §2
CS89, §120.2
C93, §9D.2

9D.3 Evidence of financial security.

1. An application for a travel agency must be accompanied by a surety or cash performance bond in conformity with rules adopted by the secretary in the principal amount of ten thousand dollars, with an aggregate limit of ten thousand dollars. The bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than sixty days' written notice to both the registrant and to the secretary. The notice shall indicate the surety's intent to cancel the bond on a date at least sixty days after the date of the notice.

2. The bond shall be payable to the state for the use and benefit of either:

a. A person who is injured by the fraud, misrepresentation, or financial failure of the travel agency or a travel agent employed by the travel agency.

b. The state on behalf of a person or persons under paragraph *"a"*.

The bond shall be conditioned such that the registrant will pay any judgment recovered by a person in a court of this state in a suit for actual damages, including reasonable attorney's fees, or for rescission, resulting from a cause of action involving the sale or offer of sale of travel services. The bond shall be open to successive claims, but the aggregate amount of the claims paid shall not exceed the principal amount of the bond.

3. If a registrant has contracted with the airlines reporting corporation or the passenger network services corporation, or similar organizations approved by the secretary of state with equivalent bonding requirements for participation, in lieu of the bond required by subsection 1, the registrant may file with the secretary a certified copy of the official approval and appointment of the applicant from the airlines reporting corporation or the passenger network services corporation.

4. In lieu of any bond or guarantee required to be provided by this section, a registrant may do any of the following:

a. File with secretary proof of professional liability and errors and omissions insurance in an amount of at least one million dollars annually.

b. Deposit with the secretary cash, securities, or a statement from a federally insured financial institution guaranteeing the performance of the registrant up to a maximum of ten thousand dollars to be held or applied to the purposes to which the proceeds of the bond would otherwise be applied.

89 Acts, ch 274, §3
CS89, §120.3
C93, §9D.3

9D.4 Penalties.

1. A person required to register as a travel agency, or an owner of ten percent or more of a travel agency, required to register by this chapter, which fails to register, fails to make required corrections to its registration statement, or fails to pay the required fee on or before thirty days after the fee becomes due, commits a serious misdemeanor.

2. If a person required to be registered or listed upon a registration statement by this chapter receives money, as a fee, commission, compensation, or profit in connection with doing business in this state in violation of section 9D.2, the person, in addition to the criminal penalty in subsection 1, shall be liable for a civil penalty of not less than three times the sum so received, as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person, or by the attorney general for the benefit of an aggrieved person or class of persons.

3. A violation of this chapter is also a violation of section 714.16.

89 Acts, ch 274, §4
CS89, §120.4
C93, §9D.4

9D.5 Exemptions.

1. This chapter does not apply to:

a. A bona fide employee of a travel agency who is engaged solely in the business of the agency, and whose principal duties do not include consulting with and advising persons concerning travel arrangements or accommodations.

b. A direct common carrier of passengers or property regulated by an agency of the federal government or employees of a common carrier when engaged solely in the transportation business of the carrier as identified in the carrier's certificate.

2. A travel agency is subject to this chapter, notwithstanding that the customer's name was obtained from the customer as part of a promotion where the customer signed up to receive a sales presentation or to enter a drawing for a prize prior to the solicitation. These activities do not constitute a previous travel services provider-customer relationship.

89 Acts, ch 274, §5
CS89, §120.5
C93, §9D.5

CHAPTER 9E

NOTARIAL ACTS

This chapter not enacted as a part of this title; transferred from chapter 77A in Code 1993

9E.1 Title.
9E.2 Definitions.
9E.3 Appointment — revocation.
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9E.15 Short forms.
9E.16 Fees — certification.
9E.17 Powers of the secretary of state.

9E.1 Title.

This chapter shall be known as the *"Iowa Law on Notarial Acts"*.

89 Acts, ch 50, §1
CS89, §77A.1
C93, §9E.1

9E.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Acknowledgment"* means a declaration by a person that the person has executed an instrument for the purposes stated in the document and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the document.

2. *"Notarial act"* means any act that a notary public of this state is authorized to perform, and includes, but is not limited to, taking an acknowledgment, administering an oath or affirmation, taking verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

3. *"Notarial officer"* means a notary public or other officer authorized to perform notarial acts.

4. *"Representative capacity"* means any of the following:

a. A representative on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative.

b. A public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument.

c. An attorney in fact for a principal.

d. Any other capacity as an authorized representative of another.

5. *"Verification upon oath or affirmation"* means a declaration that a statement is true, made by a person upon oath or affirmation.

89 Acts, ch 50, §2
CS89, §77A.2
C93, §9E.2

9E.3 Appointment — revocation.

1. The secretary of state may appoint residents of this state as notaries public and may revoke an appointment for cause.

2. The secretary of state shall appoint members of the general assembly as notaries public, upon request, and may revoke an appointment for cause.

3. The secretary of state may appoint as a notary public a resident of a state bordering Iowa if that person's place of work or business is within the state of Iowa. If a notary who is a resident of a state bordering Iowa ceases to work or maintain a place of business in Iowa, the notary commission expires.

4. A person shall not be appointed as a notary public by the secretary of state unless the person is at least eighteen years of age and not disqualified from voting as provided in section 48A.6.

89 Acts, ch 50, §3
CS89, §77A.3
C93, §9E.3
2001 Acts, ch 38, §1; 2001 Acts, ch 176, §45, 46

9E.4 Term of commission.

The term of a notary public who is an Iowa resident is three years. The term of a notary who is a resident of a state bordering Iowa and whose place of work or business is in Iowa, is one year. The term of a notary who is a member of the general as-

sembly is the member's term of office.
89 Acts, ch 50, §4
CS89, §77A.4
C93, §9E.4

9E.5 Notice of expiration of term.
The secretary of state shall, two months preceding the expiration of a commission, notify the notary public of the expiration date and furnish a blank application for reappointment.
89 Acts, ch 50, §5
CS89, §77A.5
C93, §9E.5

9E.6 Application — fee.
1. Before a commission is delivered to a person appointed as a notary public, the person shall:
a. Complete an application for appointment as a notary public on a form prescribed by the secretary of state.
b. Remit the sum of thirty dollars to the secretary of state. However, persons appointed as notaries public under section 9E.3, subsection 2, are not subject to the fee imposed by this subsection.
2. When the secretary of state determines that the requirements of this section are satisfied, the secretary shall execute and deliver a certificate of commission to the person appointed.
89 Acts, ch 50, §6
CS89, §77A.6
C93, §9E.6
2001 Acts, ch 38, §2; 2001 Acts, ch 176, §45, 46

9E.6A Acquisition and use of stamp or seal.
Each person performing a notarial act pursuant to section 9E.10 must acquire and use a stamp or seal as provided in this chapter. However, this section shall not apply to a notarial act performed by a judicial officer as defined in section 602.1101, if the notarial act is performed in accordance with state or federal statutory authority.
The stamp or seal as required in this section shall contain all of the following:
1. For a person appointed as a notary public pursuant to section 9E.3, all of the following:
a. The words "Notarial Seal" and "Iowa".
b. The person's name.
c. The words "Commission Number" followed by a number assigned to the notary public by the secretary of state.
d. The words "My Commission Expires" followed either by the date that the notary public's term would ordinarily expire as provided in section 9E.4 or a blank line. If the seal or stamp contains a blank line, the person must print the date that the notary public's term would ordinarily expire on the blank line imprinted on each document, instrument, or paper subject to a notarial act.
2. For any other person, all of the following:
a. The words "Notarial Seal" and "Iowa".
b. The person's name.
c. The person's title under which the person may perform a notarial act under section 9E.10.
2001 Acts, ch 38, §3; 2001 Acts, ch 176, §45, 46; 2002 Acts, ch 1144, §1
Unnumbered paragraph 1 amended

9E.7 Revocation — notice and hearing — rules.
If the commission of a person appointed notary public is revoked by the secretary of state, the secretary shall immediately notify the person through the mail. The notice shall state the cause of the revocation and shall inform the person of the right to a hearing on the revocation. The secretary of state shall adopt rules under chapter 17A to provide for a hearing for persons whose commission is revoked.
89 Acts, ch 50, §7
CS89, §77A.7
C93, §9E.7

9E.8 Discretion — limitation.
A notary public may exercise reasonable discretion in performing or declining to perform notarial services, but a notary shall not condition the performance of notarial services upon the requirement that the person served be a customer or client of the establishment by which the notary is employed.
The employer of a notary public shall not condition the performing of notarial services upon the requirement that the person served be a customer or client of the establishment by which the notary is employed.
89 Acts, ch 50, §8
CS89, §77A.8
C93, §9E.8

9E.9 Notarial acts.
1. In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary and making the acknowledgment is the person whose true signature is on the instrument.
2. In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.
3. In witnessing or attesting a signature, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named on the instrument.
4. In certifying or attesting a copy of a document or other item, the notarial officer must deter-

mine that the copy is a full, true, and accurate transcription or reproduction of that which was copied.

5. In making or noting a protest of a negotiable instrument, the notarial officer must determine whether there is evidence of dishonor as provided in section 554.3505.

6. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document in any of the following circumstances:

a. The person is personally known to the notarial officer.

b. The person is identified upon the oath or affirmation of a credible witness personally known to the notarial officer.

c. The person is identified on the basis of identification documents.

89 Acts, ch 50, §9
CS89, §77A.9
C93, §9E.9
94 Acts, ch 1167, §1

9E.9A Defective notarial act.

An instrument in writing to which is attached a defective certificate of acknowledgment attached by a notary public more than ten years earlier is valid, legal, and binding as if the instrument had been properly acknowledged by the notary public.

96 Acts, ch 1060, §1

9E.10 Notarial acts in this state.

1. A notarial act may be performed within this state by the following persons:

a. A notary public appointed by the secretary of state pursuant to section 9E.3.

b. A judge, clerk, or deputy clerk of a court of this state.

c. A person authorized by the law of this state to administer oaths.

d. Any other person authorized to perform the specific act by the law of this state.

e. A registrar of vital statistics or a designee of a registrar of vital statistics.

2. Notarial acts performed within this state under federal authority have the same effect as if performed by a notarial officer of this state.

3. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

89 Acts, ch 50, §10
CS89, §77A.10
C93, §9E.10
97 Acts, ch 58, §1

9E.10A Notarial acts — validity.

The validity of a notarial act shall not be affected or impaired by the fact that the notarial officer performing the notarial act is an officer, director, or shareholder of a corporation that may have a beneficial interest or other interest in the subject matter of the notarial act.

95 Acts, ch 105, §1, 2

9E.11 Notarial acts in other jurisdictions of the United States.

1. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if the notarial act is performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

a. A notary public of that jurisdiction.

b. A judge, clerk, or deputy clerk of a court of that jurisdiction.

c. Any other person authorized by the law of that jurisdiction to perform notarial acts.

2. Notarial acts performed in other jurisdictions of the United States under federal authority as provided in section 9E.12 have the same effect as if performed by a notarial officer of this state.

3. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

4. The signature and indicated title of an officer listed in subsection 1, paragraph *"a"* or *"b"* conclusively establish the authority of a holder of that title to perform a notarial act.

90 Acts, ch 1205, §4
C91, §77A.11
C93, §9E.11

9E.12 Notarial acts under federal authority.

1. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if the notarial act is performed anywhere by any of the following persons under authority granted by the law of the United States:

a. A judge, clerk, or deputy clerk of a court.

b. A commissioned officer on active duty in the military service of the United States.

c. An officer of the foreign service or consular officer of the United States.

d. Any other person authorized by federal law to perform notarial acts.

2. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

3. The signature and indicated title of an officer listed in subsection 1, paragraph *"a"*, *"b"*, or *"c"*, conclusively establish the authority of a holder of that title to perform a notarial act.

4. A certificate of a notarial act on an instrument to be recorded must also comply with the requirements of section 331.602, subsection 1.

90 Acts, ch 1205, §5
C91, §77A.12
C93, §9E.12

9E.13 Foreign notarial acts.

1. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if the notarial act is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

a. A notary public or notary.

b. A judge, clerk, or deputy clerk of a court of record.

c. Any other person authorized by the law of that jurisdiction to perform notarial acts.

2. An *"apostille"* in the form prescribed by the Hague convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

3. A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

4. An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

5. An official stamp or seal of an officer listed in subsection 1, paragraph *"a"* or *"b"*, is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

6. If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

90 Acts, ch 1205, §6
C91, §77A.13
C93, §9E.13

9E.14 Certificate of notarial acts.

1. A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and shall include the official stamp or seal of the office. If the notarial officer is a commissioned officer on active duty in the military service of the United States, the certificate must also include the officer's rank.

2. A certificate of a notarial act is sufficient if it meets the requirements of subsection 1, and is in any of the following forms:

a. The short form set forth in section 9E.15.

b. A form otherwise prescribed by the law of this state, including those forms set out in chapter 558.

c. A form prescribed by the laws or regulations applicable in the place in which the notarial act was performed.

d. A form which sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

3. By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by section 9E.9.

90 Acts, ch 1205, §7
C91, §77A.14
C93, §9E.14
2001 Acts, ch 38, §4; 2001 Acts, ch 176, §45, 46

9E.15 Short forms.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by section 9E.14, subsection 1.

1. For an acknowledgment in an individual capacity:

State of . . . . . .
(County) of . . . . . .
This instrument was acknowledged before me on . . . . . by . . . . . .
(date) (name(s) of person(s))
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

2. For an acknowledgment in a representative capacity:

State of . . . . . .
(County) of . . . . . .
This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

3. For a verification upon oath or affirmation:

State of . . . . . .
(County) of . . . . . .
Signed and sworn to (or affirmed) before me on . . . . . by . . . . . .
(date) (name(s) of person(s) making statement)
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

4. For witnessing or attesting a signature:

State of . . . . . .
(County) of . . . . . .
Signed or attested before me on . . . . . by . . . . . .
(date) (name(s) of person(s))
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

5. For attestation of a copy of a document:

State of . . . . . .
(County) of . . . . . .
I certify that this is a true and correct copy of a document in the possession of . . . . . .
Dated . . . . . .
. . . . . .
(signature of notarial officer)
(Stamp or Seal)
. . . . . .
Title (and Rank)

90 Acts, ch 1205, §8
C91, §77A.15
C93, §9E.15
2001 Acts, ch 38, §5; 2001 Acts, ch 176, §45, 46; 2002 Acts, ch 1119, §2
Stamp or seal requirements, §9E.6A
Section amended

9E.16 Fees — certification.

The secretary of state shall collect the following fees, for use in offsetting the cost of administering this chapter:

1. For furnishing a certified copy of any document, instrument, or paper relating to a notary public, one dollar per page and five dollars for the certificate.

2. For furnishing an uncertified copy of any document, instrument, or paper relating to a notary public, one dollar per page.

3. For certifying, under seal of the secretary of state, a statement as to the status of a notary commission which would not appear from a certified copy of documents on file in the secretary of state's office, five dollars.

89 Acts, ch 50, §11
CS89, §77A.11
C91, §77A.16
C93, §9E.16

9E.17 Powers of the secretary of state.

The secretary of state has the power and authority reasonably necessary to administer this chapter efficiently and to perform the duties imposed upon the secretary of state. This power and authority includes rulemaking authority to provide for reciprocity in recognizing notarial acts performed under any other jurisdiction.

89 Acts, ch 50, §12
CS89, §77A.12
C91, §77A.17
C93, §9E.17

CHAPTER 9F

CENSUS

9F.1 Federal and state co-operation.
9F.2 Federal census.
9F.3 Certification — copies.
9F.4 Publication in official register.
9F.5 Evidence.
9F.6 Population of counties, townships and cities.

9F.1 Federal and state co-operation.

The secretary of state is authorized, so far as practicable, to co-operate with the census bureau of the United States in the gathering, compilation, and publication of census statistics.

[S13, §177-a; C24, 27, 31, 35, 39, §**424;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.1]
86 Acts, ch 1245, §1978
C93, §9F.1

9F.2 Federal census.

The secretary of state shall, whenever a general census is taken by the federal government, procure from the supervisor of such census, or other proper federal official, a copy of such part of said census as gives the population of the state of Iowa by counties, by townships, and by cities, and file the same in the secretary of state's office and attach thereto, dated and signed by the secretary, a certificate that the same is the census report furnished by said federal official.

[S13, §177-c; C24, 27, 31, 35, 39, §**425;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.2]

C93, §9F.2

9F.3 Certification — copies.

When certified by the secretary of state the census shall be in full force and effect throughout the state. On payment of a fee of two dollars by a requesting party, the secretary of state shall furnish a certified copy of the whole or any part of such census report.

[S13, §177-c; C24, 27, 31, 35, 39, §**426;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.3; 81 Acts, ch 29, §1]

C93, §9F.3

9F.4 Publication in official register.

The state printing administrator shall publish said federal census report and certificate aforesaid in full in each copy of the Iowa official register.

[S13, §177-c; C24, 27, 31, 35, 39, §**427;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.4]

C93, §9F.4

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

9F.5 Evidence.

Said certified census records in the office of the secretary of state, and said authorized publications, including the certificates attached thereto, shall be competent evidence of all matters therein contained.

[S13, §177-c; C24, 27, 31, 35, 39, §**428;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.5]

C93, §9F.5

9F.6 Population of counties, townships and cities.

Whenever the population of any county, township or city is referred to in any law of this state, it shall be determined by the last preceding certified federal census unless otherwise provided. Whenever a special federal census is taken by any city, the mayor and council shall certify the census as soon as possible to the secretary of state and to the treasurer of state as otherwise herein provided, and upon the failure to do so, the treasurer of state shall, after six months from the date of the special census, withhold allocation from the state to the city of any moneys the amount of which is based on the population of the city, and shall continue to do so until such time as certification by the mayor and council is made, or until the next decennial federal census. If there be a difference between the original certified record in the office of the secretary of state and the published census the former shall prevail.

[C97, §177; S13, §177-c; C24, 27, 31, 35, 39, §**429;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §26.6]

C93, §9F.6

Similar provision, §4.1(22)

CHAPTER 9G

LAND OFFICE

9G.1 Records.
9G.2 Separate grants.
9G.3 Tract books.
9G.4 Land office — how kept — certified copies.
9G.5 Patents.
9G.6 When patents issued.
9G.7 Corrections.
9G.8 Maps — field notes — records — papers.
9G.9 Color of title relinquished.
9G.10 Quitclaim deeds.
9G.11 Lists of federal granted lands.
9G.12 Dubuque and Pacific Railroad lands.
9G.13 University lands.
9G.14 Effect of patents.

9G.1 Records.

The books and records of the land office shall be so kept as to show and preserve an accurate chain of title from the general government to the purchaser of each smallest subdivision of land; to preserve a permanent record, in books suitably indexed, of all correspondence with any of the departments of the general government in relation to state lands; to preserve, by proper records, copies of the original lists furnished by the selecting

agents of the state, and of all other papers in relation to such lands which are of permanent interest.

[R60, §92, 95; C73, §83; C97, §72; C24, 27, 31, 35, 39, §**89;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.1]

C93, §9G.1

9G.2 Separate grants.

Separate tract books shall be kept for the university lands, the saline lands, the half-million acre grant, the sixteenth sections, the swamplands, and such other lands as the state now owns or may hereafter own, so that each description of state lands shall be kept separate from all others, and each set of tract books shall be a complete record of all the lands to which they relate.

[R60, §94; C73, §84; C97, §73; C24, 27, 31, 35, 39, §**90;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.2]

C93, §9G.2

9G.3 Tract books.

Said tract books shall be ruled in a manner similar to those used in the United States land offices, so as to record each tract by its smallest legal subdivisions, its section, township, and range, to whom sold, and when, the price per acre, to whom patented, and when.

[R60, §93; C73, §85; C97, §74; C24, 27, 31, 35, 39, §**91;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.3]

C93, §9G.3

9G.4 Land office — how kept — certified copies.

The land office shall be kept open during business hours. The documents and records therein shall be subject to inspection by parties having an interest therein, and certified copies thereof, signed by the secretary, with the seal of office attached, shall be deemed presumptive evidence of the facts to which they relate, and on request they shall be furnished by the secretary for a reasonable compensation.

[R60, §101; C73, §86; C97, §75; C24, 27, 31, 35, 39, §**92;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.4]

C93, §9G.4

9G.5 Patents.

Patents for lands shall issue from the land office, shall be signed by the governor and recorded by the secretary; and each patent shall contain therein a marginal certificate of the book and page on which it is recorded, which certificate shall be signed by the secretary, and all patents shall be delivered free of charge.

[R60, §97; C73, §87; C97, §76; C24, 27, 31, 35, 39, §**93;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.5]

C93, §9G.5

9G.6 When patents issued.

No patents shall be issued for any lands belonging to the state, except upon the certificate of the person or officer specially charged with the custody of the same, setting forth the appraised value per acre, name of person to whom sold, date of sale, price per acre, amount paid, name of person making final payment, and of person who is entitled to the patent, and, if thus entitled by assignment from the original purchaser, setting forth fully such assignment, which certificate shall be filed and preserved in the land office.

Whenever the governor is satisfied that the purchase price has been paid by the person to whom the sale has been made and that a patent has not been issued to the purchaser, a patent shall be issued, signed by the governor and secretary of state and recorded by the secretary of state. The passage of seventy-five years from the date of sale without issuance of a patent shall be conclusive proof that the purchase price has been paid.

[R60, §98, 99; C73, §88; C97, §77; C24, 27, 31, 35, 39, §**94;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.6]

C93, §9G.6

9G.7 Corrections.

The secretary is authorized and required to correct all clerical errors of the secretary's office in name of grantee and description of tract of land conveyed by the state, found upon the records of such office; the secretary shall attach an official certificate to each conveyance so corrected, giving the reasons therefor; record the same with the record of the original conveyance, and make the necessary corrections in the tract and plat books of the secretary's office. Such corrections, when made in accordance with the foregoing provisions, shall have the force and effect of a deed originally correct, subject to prior rights accrued without notice.

[C73, §89; C97, §78; C24, 27, 31, 35, 39, §**95;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.7]

C93, §9G.7

9G.8 Maps — field notes — records — papers.

The secretary of state shall receive and safely keep in the secretary's office, as public records, any field notes, maps, records, or other papers relating to the public survey of this state, whenever turned over to the state in pursuance of law; the United States at all times to have free access thereto for the purpose of taking extracts therefrom or making copies thereof.

[C73, §90; C97, §79; C24, 27, 31, 35, 39, §**96;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.8]

C93, §9G.8

9G.9 Color of title relinquished.

Whenever the governor is satisfied by the commissioner of the general land office that the title to any lands which may have been certified to the state under any of the several grants is inferior to the rights of any valid interfering pre-emptor or claimant, the governor is authorized and required to release by deed of relinquishment such color of title to the United States, to the end that the requirements of the interior department may be complied with, and that such tract or tracts of land may be patented by the general government to the legal claimants.

[C73, §91; C97, §80; C24, 27, 31, 35, 39, §**97;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.9]

C93, §9G.9

9G.10 Quitclaim deeds.

Whenever the governor is satisfied by proper record evidence that any tract of land which may have been deeded by virtue of any donation or sale to the state is not the land intended to have been described, and that an error has been committed in making out the transfers, in order that such error may be corrected, the governor is authorized to quitclaim the same to the proper owner thereof, and to receive a deed or deeds for the lands intended to have been deeded to the state originally.

[C73, §92; C97, §81; C24, 27, 31, 35, 39, §**98;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.10]

C93, §9G.10

9G.11 Lists of federal granted lands.

In cases where lands have been granted to the state of Iowa by Act of Congress, and certified lists of lands inuring under the grant have been made to the state by the commissioner of the general land office, as required by Act of Congress, and such lands have been granted, by Act of the general assembly, to any person or company, and such person or company shall have complied with and fulfilled the conditions of the grant, the secretary of state is hereby authorized to prepare, on the application of such person or company, or on the application of a party claiming title to any land through such person or company, a list or lists of lands situated in each county inuring to such applicant, from the lists certified by the commissioner of the general land office, as aforesaid, which shall be signed by the governor of the state, and attested by the secretary of state, with the state seal, and then be certified to by the secretary to be true and correct copies of the lists made to this state, and deliver them to such applicant, who is hereby authorized to have them recorded in the proper county, and when so recorded they shall be notice to all persons the same as deeds now are, and shall be evidence of title in such grantee, or the grantee's assigns, to the lands therein described, under the grant of Congress by which the lands were certified to the state, so far as the certified lists made by the commissioner aforesaid conferred title to the state; but where lands embraced in such lists are not of the character embraced by such Acts of Congress or the Acts of the general assembly of the state, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be void; but lands in litigation shall not be included in such lists until the actions are determined and such lands adjudged to be the property of the company; nor shall the secretary include, in any of the lists so certified to the state, lands which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or individual under the swampland grant, or any homestead or pre-emption settlement; nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified.

[C73, §93; C97, §82; C24, 27, 31, 35, 39, §**99;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.11]

C93, §9G.11

9G.12 Dubuque and Pacific Railroad lands.

The secretary of state is hereby authorized upon the application of any person claiming title under the trust deeds executed by the Dubuque and Pacific Railroad Company, to secure its construction bonds, to any lands included in the list of lands certified to the state of Iowa, by the commissioner of the general land office and approved by the secretary of the interior, as selected to satisfy the grant made to the state of Iowa, by Act of Congress approved May 15, 1856 [11 Stat. L. 9], in aid of the construction of a railroad from Dubuque to Sioux City; to certify said land as inuring to the grantees of the said Dubuque and Pacific Railroad Company, which certificate shall be signed by the governor, and attested by the secretary of state, with the seal of the state, and deliver the same to such applicant who is hereby authorized to have said certificate recorded in the county in which the land so certified is situated, and when so recorded, shall be notice to all persons the same as deeds now are, and shall be evidence of the title from the state of Iowa to any person deriving title to said land under the Dubuque and Pacific Railroad Company, to the land therein described under the grant of Congress by which the land was certified to the state so far as the certified lists made by the commissioner aforesaid, conferred title to the state, but where lands embraced in such lists are not of the character embraced by such Acts of Congress or the Acts of the general assembly of the state, and are not intended to be granted thereby, the lists so far as these lands are concerned, shall be void; nor shall the secretary include, in any of the lists so certified to the state, lands which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or in-

dividual under the swampland grant, or any homestead or pre-emption settlement; nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified.

[C39, §**99.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.12]

C93, §9G.12

9G.13 University lands.

The secretary of state is hereby authorized to issue patents for lands, the legal title to which is vested in the state University of Iowa, in cases wherein it is shown to the satisfaction of the governor and attorney general that such lands have been in fact sold by the authority of the state and paid for, and that the certificates of purchase have been lost or destroyed.

[C97, §83; C24, 27, 31, 35, 39, §**100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.13]

C93, §9G.13

9G.14 Effect of patents.

The patents thus issued shall inure to the benefit of the original purchaser and the original purchaser's grantees only, and a clause to this effect shall be inserted in the patent.

[C97, §84; C24, 27, 31, 35, 39, §**101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §10.14]

C93, §9G.14

CHAPTER 9H

CORPORATE OR PARTNERSHIP FARMING

Life insurance company or association is a corporation for purposes of this chapter; §511.8A
This chapter not enacted as a part of this title; transferred from chapter 172C in Code 1993

9H.1 Definitions.
9H.2 Prohibited operations and activities — exceptions.
9H.2A Compliance requirements.
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9H.14 Duties of secretary of state.
9H.15 Additional information.

9H.1 Definitions.

For the purposes of this chapter:

1. *"Actively engaged in farming"* means that a natural person who is a shareholder and an officer, director or employee of the corporation or who is a member or manager of the limited liability company either:

a. Inspects the production activities periodically and furnishes at least half of the value of the tools and pays at least half the direct cost of production; or

b. Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation; or

c. Performs physical work which significantly contributes to crop or livestock production.

2. *"Agricultural land"* means land suitable for use in farming.

3. *"Authorized farm corporation"* means a corporation other than a family farm corporation founded for the purpose of farming and the ownership of agricultural land in which:

a. The stockholders do not exceed twenty-five in number; and

b. The stockholders are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

4. *"Authorized limited liability company"* means a limited liability company other than a family farm limited liability company founded for the purpose of farming and the ownership of agricultural land in which all of the following apply:

a. The members do not exceed twenty-five in

number.

b. The members are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

5. *"Authorized trust"* means a trust other than a family trust in which:

a. The beneficiaries do not exceed twenty-five in number; and

b. The beneficiaries are all natural persons, who are not acting as a trustee or in a similar capacity for a trust as defined in subsection 34 of this section, or persons acting in a fiduciary capacity, or nonprofit corporations; and

c. Its income is not exempt from taxation under the laws of either the United States or the state of Iowa.

6. *"Base price"* means the price paid for swine, delivered to the processor, before application of any premiums or discounts, and expressed in dollars per hundred pounds of hot carcass weight as calculated in the same manner as provided in 7 C.F.R. § 59.30.

7. *"Beneficial ownership"* includes interests held by a nonresident alien individual directly or indirectly holding or acquiring a ten percent or greater share in the partnership, limited partnership, corporation, limited liability company, or trust, or directly or indirectly through two or more such entities. In addition, the term beneficial ownership shall include interests held by all nonresident alien individuals if the nonresident alien individuals in the aggregate directly or indirectly hold or acquire twenty-five percent or more of the partnership, limited partnership, corporation, limited liability company, or trust.

8. *"Business association"* means a person organized under statute or common law in this state or another jurisdiction for purposes of engaging in a commercial activity on a profit, cooperative, or not-for-profit basis, including but not limited to a corporation or entity taxed as a corporation under the Internal Revenue Code, nonprofit corporation, cooperative association, partnership, limited partnership, limited liability company, limited liability partnership, investment company, joint stock company, joint stock association, or trust, including but not limited to a business trust.

9. *"Cash or spot market purchase"* means the purchase of swine by a processor from a seller, if the swine are slaughtered not more than fourteen days after the date that the seller and the processor agree on a date of delivery of the swine for slaughter and the base price for purchasing the swine is determined by an oral or written agreement between seller and processor executed on the day the swine are delivered for slaughter.

10. *"Cattle operation"* means a location including but not limited to a building, lot, yard, corral, or other place where cattle for slaughter are fed or otherwise maintained.

11. *"Contract feeder"* means a person owning in the applicable reporting year, as provided in section 9H.5B, more than two thousand five hundred swine or five thousand head of poultry, if the swine or poultry are subject to a contract or contracts for care and feeding by a person or persons other than the owner on land which is not owned, leased, or held by the owner.

12. *"Contract for the care and feeding of swine"* means an oral or written agreement executed between a person and the owner of swine, under which the person agrees to care for and feed the owner's swine on the person's premises. A contract for the care and feeding of swine does not include an agreement for the sale or purchase of swine.

13. *"Cooperative association"* means the same as defined in section 10.1.

14. *"Corporation"* means a domestic or foreign corporation subject to chapter 490, a nonprofit corporation, or a cooperative.

15. *"Family farm corporation"* means a corporation:

a. Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related;

b. All of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts as defined in subsection 18 of this section; and

c. Sixty percent of the gross revenues of the corporation over the last consecutive three-year period comes from farming.

16. *"Family farm limited liability company"* means a limited liability company which meets all of the following conditions:

a. The limited liability company is founded for the purpose of farming and the ownership of agricultural land in which the majority of the members are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related.

b. All of the members of the limited liability company are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts.

c. Sixty percent of the gross revenues of the limited liability company over the last consecutive three-year period comes from farming.

17. *"Family farm limited partnership"* means a limited partnership which meets all of the following conditions:

a. The limited partnership is formed for the purpose of farming and the ownership of agricultural land in which the general partner and a ma-

jority of the partnership interest is held by and the majority of limited partners are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related.

b. The general partner manages and supervises the day-to-day farming operations on the agricultural land.

c. All of the limited partners are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts.

d. Sixty percent of the gross revenues of the partnership over the last consecutive three-year period come from farming.

18. *"Family trust"* means a trust:

a. In which a majority interest in the trust is held by and the majority of the beneficiaries are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related; and

b. In which all the beneficiaries are natural persons, who are not acting as a trustee or in a similar capacity for a trust, as defined in subsection 34 of this section, or persons acting in a fiduciary capacity, or nonprofit corporations; and

c. If the trust is established on or after July 1, 1988, the trust must be established for the purpose of farming and sixty percent of the gross revenues of the trust over the last consecutive three-year period must come from farming.

19. *"Farming"* means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming shall not include the production of timber, forest products, nursery products, or sod and farming shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

20. *"Fiduciary capacity"* means an undertaking to act as executor, administrator, personal representative, guardian, conservator or receiver.

21. *"Grantor"* means a natural person, other than a nonresident alien as defined under this section, who is the creator of a revocable trust or a trust.

22. *"Indirect"* means to act or attempt to accomplish an act through an interest in a business association, through one or more affiliates or intermediaries, or by any method other than a direct approach, including by any circuitous or oblique method.

23. *"Limited liability company"* means a limited liability company as defined in section 490A.102.

24. *"Limited partnership"* means a partnership as defined in section 487.101, subsection 7, and a limited liability limited partnership under section 487.1301, which owns or leases agricultural land or is engaged in farming.

25. *"Nonprofit corporation"* means:

a. Corporations organized under the provisions of chapter 504 or 504A; or

b. Corporations which qualify under Title 26, section 501, "c", (3) of the United States Code.

26. *"Nonresident alien"* means:

a. An individual who is not a citizen of the United States and who is not domiciled in the United States.

b. A corporation incorporated under the law of any foreign country.

c. A corporation organized in the United States, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

d. A trust organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

e. A partnership or limited partnership organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

f. A limited liability company organized in the United States or elsewhere, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

27. *"Processor"* means a person who alone or in conjunction with others directly or indirectly controls the manufacturing, processing, or preparation for sale of beef or pork products, including the slaughtering of cattle or swine or the manufacturing or preparation of carcasses or goods originating from the carcasses, if the beef or pork products have a total annual wholesale value of eighty million dollars or more for the person's tax year. A person shall be deemed to be a processor if any of the following apply:

a. The person has a threshold interest in a processor which is a business association. *"Threshold interest"* means a direct or indirect interest in the business association, calculated as follows:

(1) For a processor of beef products, the person's threshold interest begins at ten percent.

(2) For a processor of pork products, the person's threshold interest begins at ten percent for a processor of pork products having a total annual wholesale value of at least eighty million dollars and decreases to one percent for a processor of pork products having a total annual wholesale value of at least two hundred sixty million dollars. The amount of the decrease in the amount of the threshold interest shall equal one percent for each increased increment of twenty million dollars in total annual wholesale value.

b. The person holds an executive position in a processor of pork products or owes a processor of

pork products a fiduciary duty if the processor directly or indirectly controls the processing of pork products having a total annual wholesale value of two hundred sixty million dollars or more. A person who held such an executive position or owed a fiduciary duty shall be deemed to still hold the position or owe the duty for a two-year period following the date that the person relinquishes the position or duty. An executive position in a processor organized as a business association includes but is not limited to a member of a board of directors or an officer of a corporation or cooperative association, a director or officer of a joint stock company or joint stock association, a manager of a limited liability company, a general partner of a limited partnership, or a trustee of a trust.

28. *"Qualified processor"* means a processor of pork products if all of the following apply:

a. (1) (a) Swine producers exercise a controlling interest in the processor. *"Controlling interest"* means actual control or the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a processor, whether through the ownership of voting securities, by contract, or otherwise.

(b) Of the total interest held by all persons in the processor, swine producers hold at least sixty percent of the interest. In addition, of the total interest held by all persons in the processor, swine producers hold at least sixty percent of interests with voting rights.

(2) Of the total interest held by all persons in the processor, all retailers hold a total of not more than twenty percent of the interest.

b. Another processor does not hold a direct or indirect interest in the processor. However, this paragraph does not apply to a person deemed to be a processor solely because the person holds a threshold interest in the processor.

c. Not less than twenty-five percent of the swine slaughtered by the processor each day are purchased through cash or spot market purchases from sellers of swine who do not hold a direct or indirect interest in the processor.

29. *"Retailer"* means a person who is engaged in the business of selling pork products in this state, if all of the following apply:

a. The pork products are sold only on a retail basis directly to the ultimate purchasers of the pork products for consumption and not for resale.

b. The person is not engaged in the slaughter of swine.

c. A processor does not have a direct or indirect interest in the person.

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

31. *"Swine operation"* means a location where swine are fed or otherwise maintained, including a building, lot, yard, or corral; and swine which are fed or otherwise maintained at the location.

32. *"Swine producer"* means a person who owns, controls, or operates a swine operation in this state or who contracts for the care and feeding of swine in this state.

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

34. *"Trust"* means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. Trust does not include a person acting in a fiduciary capacity, as defined in subsection 20, or a revocable trust. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney in fact, and in any similar capacity.

[C77, 79, 81, §172C.1; 82 Acts, ch 1103, §1108]

84 Acts, ch 1219, §6; 88 Acts, ch 1191, §1, 2; 91 Acts, ch 172, §2; 92 Acts, ch 1151, §2 – 4

C93, §9H.1

93 Acts, ch 39, §1 – 4; 94 Acts, ch 1153, §1 – 3; 99 Acts, ch 169, §1; 2000 Acts, ch 1024, §1; 2000 Acts, ch 1048, §1, 3; 2002 Acts, ch 1095, §1 – 3, 10 – 12

Legislative intent; 2002 Acts, ch 1095, §8

2002 amendments, and terminology change substituting "swine" for "hogs", take effect April 9, 2002, and apply retroactively to January 1, 2002; 2002 Acts, ch 1095, §11, 12

Terminology change applied

Former subsections 3A and 4 renumbered as 4 and 5

NEW subsection 6 and former subsection 5 renumbered as 7

NEW subsections 8 – 10 and former subsections 6 and 6A renumbered as 11 and 12

NEW subsection 13 and former subsections 7, 8, 8A, and 9 – 11 renumbered as 14 – 19

Subsection 12 stricken and former subsections 13 and 14 renumbered as 20 and 21

NEW subsection 22 and former subsections 15 – 19 renumbered as 23 – 27

Subsection 27 amended

NEW subsections 28 and 29 and former subsection 20 renumbered as 30

NEW subsections 31 and 32 and former subsections 21 and 22 renumbered as 33 and 34

9H.2 Prohibited operations and activities — exceptions.

The purpose of this section is to preserve free and private enterprise, prevent monopoly, and also to protect consumers.

1. Except as provided in subsections 2 through 4, and section 9H.2A, all of the following apply:

a. For cattle, a processor shall not own, control, or operate a cattle operation in this state.

b. For swine, a processor shall not do any of the following:

(1) (a) Directly or indirectly own, control, or operate a swine operation in this state.

(b) Finance a swine operation in this state or

finance a person who directly or indirectly contracts for the care and feeding of swine in this state.

For purposes of subparagraph subdivision (a) and this subparagraph subdivision, all of the following apply:

(i) *"Finance"* means an action by a processor to directly or indirectly loan money or to guarantee or otherwise act as a surety.

(ii) *"Finance"* or *"control"* does not include executing a contract for the purchase of swine by a processor, including but not limited to a contract that contains an unsecured ledger balance or other price risk sharing arrangement. *"Finance"* also does not include providing an unsecured open account or an unsecured loan, if the unsecured open account or unsecured loan is used for the purchase of feed for the swine and the outstanding amount due by the debtor does not exceed five hundred thousand dollars. However, the outstanding amount due to support a single swine operation shall not exceed two hundred fifty thousand dollars.

(c) Obtain a benefit of production associated with feeding or otherwise maintaining swine, by directly or indirectly assuming a morbidity or mortality production risk, if the swine are fed or otherwise maintained as part of a swine operation in this state or by a person who contracts for the care and feeding of swine in this state.

(d) Directly or indirectly receive the net revenue derived from a swine operation in this state or from a person who contracts for the care and feeding of swine in this state.

(2) Directly or indirectly contract for the care and feeding of swine in this state. However, this subparagraph does not apply to a cooperative association organized under chapter 497, 498, 499, or 501, if the cooperative association contracts for the care and feeding of swine with a member of the cooperative association who is actively engaged in farming. This subparagraph does not apply to an association organized as a cooperative in which another cooperative association organized under chapter 497, 498, 499, or 501 is a member, if the association contracts with a member which is a cooperative association organized under chapter 497, 498, 499, or 501, which contracts for the care and feeding of swine with a member of the cooperative who is actively engaged in farming.

2. Subsection 1 shall not apply to a swine producer who holds a threshold interest in a qualified processor in the manner provided in section 9H.1, if all of the following apply:

a. The swine producer's threshold interest in the qualified processor is not more than ten percent.

b. The swine producer is not a processor. However, this paragraph does not apply to a swine producer deemed to be a processor solely because the swine producer holds a threshold interest in the qualified processor as otherwise allowed under this subsection or because the swine producer holds an executive position in the qualified processor or owes the qualified processor a fiduciary duty.

3. This section shall not preclude a processor from doing any of the following:

a. Contracting for the purchase of cattle or swine, provided that where the contract sets a date for delivery which is more than twenty days after the making of the contract, the contract shall do one of the following:

(1) Specify a calendar day for delivery of the cattle or swine.

(2) Specify the month for the delivery, and shall allow the farmer to set the week for the delivery within such month and the processor to set the date for delivery within such week.

b. Carrying on legitimate research, educational, or demonstration activities.

c. Owning and operating facilities to provide normal care and feeding of cattle or swine for a period not to exceed ten days immediately prior to slaughter, or for a longer period in an emergency.

4. A processor which was in compliance with this section prior to April 5, 2000, and which was in violation of this section as a result of 2000 Iowa Acts, chapter 1048, shall have until June 30, 2004, to comply with 2000 Iowa Acts, chapter 1048. A processor shall not take action on or after April 5, 2000, which would be in violation of this section.

[C77, 79, 81, §172C.2]

88 Acts, ch 1191, §3; 92 Acts, ch 1151, §5

C93, §9H.2

93 Acts, ch 39, §5, 6; 2000 Acts, ch 1048, §2, 3; 2002 Acts, ch 1095, §4, 10 – 12

Legislative intent; 2002 Acts, ch 1095, §8

Subsection 4 to be stricken from 2005 Code; 2002 Acts, ch 1095, §10

2002 amendment takes effect April 9, 2002, and applies retroactively to January 1, 2002; 2002 Acts, ch 1095, §11, 12

Section amended

9H.2A Compliance requirements.

1. A processor that was in compliance with section 9H.2, Code 2001, prior to January 1, 2002, and which is in violation of section 9H.2, as amended by this Act,* shall have until June 30, 2004, to comply with section 9H.2, as amended by this Act.*

2. Notwithstanding any provision of this section, a processor shall not take an action on or after January 1, 2002, that would be in violation of section 9H.2, as amended by this Act.*

3. The two-year period that a person who holds an executive position in a processor or owes a processor a fiduciary duty and thus is deemed to be a processor as provided in section 9H.1, subsection 27, paragraph *"b"*, shall not apply if the person held the position or owed the duty on January 1, 2002, and relinquishes the position or duty on or before June 30, 2004.

4. This section is repealed on July 1, 2006.

2002 Acts, ch 1095, §5, 11, 12

*2002 Acts, ch 1095

Legislative intent; 2002 Acts, ch 1095, §8

Section takes effect April 9, 2002, and applies retroactively to January 1, 2002; 2002 Acts, ch 1095, §11, 12

NEW section

9H.3 Penalties — injunctive relief.

1. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

2. *a.* A processor who violates section 9H.2 is subject to a civil penalty of not more than twenty-five thousand dollars. Each day that a violation continues shall be considered a separate offense.

b. If the attorney general or a county attorney is the prevailing party in an action for a violation of section 9H.2, the prevailing party shall be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the action. If the attorney general is the prevailing party, the moneys shall be deposited in the general fund of the state. If the county is the prevailing party, the moneys shall be deposited in the general fund of the county.

[C77, 79, 81, §172C.3]

91 Acts, ch 172, §3

C93, §9H.3

2002 Acts, ch 1095, §6, 11, 12

Legislative intent; 2002 Acts, ch 1095, §8

2002 amendment takes effect April 9, 2002, and applies retroactively to January 1, 2002; 2002 Acts, ch 1095, §11, 12

Section amended

9H.3A Limited liability companies — prohibitions. Repealed by 93 Acts, ch 39, § 37.

9H.4 Restriction on increase of holdings — exceptions — penalty.

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

1. A bona fide encumbrance taken for purposes of security.

2. Agricultural land acquired for research or experimental purposes. Agricultural land is used for research or experimental purposes if any of the following apply:

a. Research and experimental activities are undertaken on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to the research or experimental purposes of the corporation or limited liability company. Commercial sales are incidental to the research or experimental purposes of the corporation or limited liability company when such sales are less than twenty-five percent of the gross sales of the primary product of the research.

b. The agricultural land is used for the primary purpose of testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock. Grain which is not sold as seed stock is an incidental sale and must be less than twenty-five percent of the gross sales of the primary product of the research and experimental activities.

c. The agricultural land is used by a corporation or limited liability company, including any trade or business which is under common control, as provided in 26 U.S.C. § 414 for the primary purpose of testing, developing, or producing animals for sale or resale to farmers as breeding stock. However, after July 1, 1989, to qualify under this paragraph, the following conditions must be satisfied:

(1) The corporation or limited liability company must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. The corporation or limited liability company shall not renew a lease. The corporation or limited liability company shall not enter into a lease under this paragraph, if the corporation or limited liability company has ever entered into another lease under this paragraph *"c"*, whether or not the lease is in effect. However, this subparagraph does not apply to a domestic corporation organized under chapter 504 or 504A.

(2) A term or condition of sale, including resale, of breeding stock must not relate to the direct or indirect control by the corporation or limited liability company of the breeding stock or breeding stock progeny subsequent to the sale.

(3) The number of acres of agricultural land held by the corporation or limited liability company must not exceed six hundred forty acres.

(4) The corporation or limited liability company must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the lease. However, this subparagraph does not apply to a domestic corporation organized under chapter 504 or 504A.

Culls and test animals may be sold under this paragraph *"c"*. For a three-year period beginning on the date that the corporation or limited liability company acquires an interest in the agricultural land, the gross sales for any year shall not be greater than five hundred thousand dollars. After the three-year period ends, the gross sales for any year shall not be greater than twenty-five percent of the gross sales for that year of the breeding stock, or five hundred thousand dollars, whichever is less.

3. Agricultural land, including leasehold interests, acquired by a nonprofit corporation organized under the provisions of chapters 504 and 504A including land acquired and operated by or for a state university for research, experimental, demonstration, foundation seed increase or test purposes and land acquired and operated by or for nonprofit corporations organized specifically for research, experimental, demonstration, foundation seed increase or test purposes in support of or in conjunction with a state university.

4. Agricultural land acquired by a corporation or limited liability company for immediate or potential use in nonfarming purposes.

5. Agricultural land acquired by a corporation or limited liability company by process of law in the collection of debts, or pursuant to a contract for deed executed prior to August 15, 1975, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.

6. A municipal corporation.

7. Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as trustee for a family trust, authorized trust or testamentary trust or for nonprofit corporations.

8. A corporation or its subsidiary organized under chapter 490 or a limited liability company organized under chapter 490A and to which section 312.8 is applicable.

9. Agricultural land held or leased by a corporation on July 1, 1975, as long as the corporation holding or leasing the land on this date continues to hold or lease such agricultural land.

10. Agricultural land held or leased by a trust on July 1, 1977, as long as the trust holding or leasing such land on this date continues to hold or lease such agricultural land.

11. Agricultural land acquired by a trust for immediate use in nonfarming purposes.

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

[C77, 79, 81, §172C.4]

89 Acts, ch 311, §23; 91 Acts, ch 172, §4

C93, §9H.4

93 Acts, ch 39, §7 – 13; 94 Acts, ch 1153, §4, 5

Exception to restrictions for cooperative corporations organized under chapter 501; requirements; see §501.103

9H.5 Restrictions on authorized farm corporations, authorized limited liability companies, authorized trusts, and limited partnerships — penalty.

1. An authorized farm corporation, authorized limited liability company, or authorized trust shall not, on or after July 1, 1987, and a limited partnership other than a family farm limited partnership shall not, on or after July 1, 1988, either directly or indirectly, acquire or otherwise obtain or lease agricultural land, if the total agricultural land either directly or indirectly owned or leased by the authorized farm corporation, authorized limited liability company, limited partnership, or authorized trust would then exceed one thousand five hundred acres.

a. However, the restrictions provided in this subsection do not apply to agricultural land that is leased by an authorized farm corporation, authorized trust, or limited partnership to the immediate prior owner of the land for the purpose of farming, as defined in section 9H.1. Upon cessation of the lease to the immediate prior owner, the authorized farm corporation, authorized trust, or limited partnership shall, within three years following the date of the cessation, sell or otherwise dispose of the agricultural land leased to the immediate prior owner.

b. This subsection also does not apply to land that is held or acquired and maintained by an authorized farm corporation, authorized trust, or limited partnership to protect significant elements of the state's natural open space heritage, including but not limited to significant river, lake, wetland, prairie, forest areas, other biologically significant areas, land containing significant archaeological, historical, or cultural value, or fish or wildlife habitats, as defined in rules adopted by the department of natural resources.

2. A person shall not, after July 1, 1988, become a stockholder of an authorized farm corporation, a beneficiary of an authorized trust, a member of an authorized limited liability company, or a limited partner in a limited partnership which owns or leases agricultural land if the person is also any of the following:

a. A stockholder of an authorized farm corporation.

b. A beneficiary of an authorized trust.

c. A limited partner in a limited partnership which owns or leases agricultural land.

d. A member of an authorized limited liability company.

However, this subsection shall not apply to limited partners in a family farm limited partnership.

3. *a.* An authorized farm corporation, authorized trust, authorized limited liability company, or limited partnership violating this section shall be assessed a civil penalty of not more than

twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. A civil penalty of not more than one thousand dollars may be imposed on a person who becomes a stockholder of an authorized farm corporation, beneficiary of an authorized trust, member of an authorized limited liability company, or limited partner in a limited partnership in violation of this section. The person shall divest the interest held by the person in the corporation, trust, limited liability company, or limited partnership to comply with this section. The court may determine the method of divesting an interest held by a person found to be in violation of this chapter. A financial gain realized by a person who disposes of an interest held in violation of this chapter shall be forfeited to the state's general fund. All court costs and fees shall be paid by the person holding the interest in violation of this chapter.

b. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section.

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

87 Acts, ch 146, §1
CS87, §172C.5
88 Acts, ch 1191, §4; 91 Acts, ch 172, §5
C93, §9H.5
93 Acts, ch 39, §14 – 16; 94 Acts, ch 1153, §6

9H.5A Reports.

1. An annual report shall be filed by a reporting entity with the secretary of state on or before June 30 of 1989, and thereafter on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state.

2. As used in this section, a *"reporting entity"* means any of the following:

a. A person serving as the president or other officer or authorized representative of a corporation (other than a family farm corporation) and including an authorized farm corporation, owning or leasing agricultural land or engaged in farming in this state.

b. A person acting as the general partner of a limited partnership, other than a family farm limited partnership, owning or leasing agricultural land or engaged in farming in this state.

c. A person acting in a fiduciary capacity or as a trustee on behalf of a person, including a corporation, limited partnership, or nonresident alien, who holds in a trust (other than through a family trust) including through an authorized trust, agricultural land in this state.

d. A person who is a member, manager, or authorized representative of a limited liability company, other than a family farm limited liability company, including an authorized limited liability company, owning or leasing agricultural land or engaged in farming in this state.

3. The report shall contain information for the last year regarding the reporting entity's corporation, limited partnership, limited liability company, or trust, and the agricultural land owned, leased, or held. However, this subsection shall not apply to a family farm corporation, a family farm limited partnership, a family farm limited liability company, or a family trust. The report shall contain the following information, if applicable:

a. Whether the reporting entity represents a corporation, trust, limited liability company, or limited partnership. If the reporting entity represents a corporation or limited liability company, the report shall specify if the corporation or limited liability company is foreign or domestic, profit or nonprofit, or an authorized farm corporation or authorized limited liability company. If the reporting entity represents a trust, the report shall specify if the trust is an authorized trust.

b. The name of the reporting entity and the name and address of the person supervising the daily operations on the agricultural land.

c. The name, address, and citizenship if not from the United States, of each shareholder, limited partner, member, or beneficiary of a corporation, trust, limited liability company, or limited partnership.

d. The total approximate number of acres, and the approximate number of acres by named county, of agricultural land which is owned, leased, or held by the corporation, trust, limited liability company, or limited partnership.

e. The approximate number of acres of agricultural land which is owned and operated by the corporation, limited liability company, or limited partnership; the approximate number of acres of agricultural land which is leased by the corporation, limited liability company, limited partnership, or trust as a lessee; the approximate number of acres of agricultural land which is leased from the corporation, limited liability company, limited partnership, or trust as a lessor; and the approximate number of acres of agricultural land which is held in fee and operated by a trust.

f. The approximate number of acres of agricultural land which the corporation, limited liability company, trust, or limited partnership used for the production of row crops.

g. The approximate number of livestock, including cattle, sheep, swine, ostriches, rheas, emus, or poultry, owned, contracted for, or kept by the corporation, limited liability company, trust, or limited partnership, and the approximate number of offspring produced from the livestock.

4. A reporting entity shall be excused from filing a report with the secretary of state during any year in which the reporting entity's corporation, limited partnership, trust, or limited liability company owns, leases, and holds less than twenty

acres of agricultural land in this state and the gross revenue produced from all farming on the land equals less than ten thousand dollars.

88 Acts, ch 1191, §5
C89, §172C.5A
C93, §9H.5A
93 Acts, ch 39, §17, 18; 94 Acts, ch 1039, §1; 95 Acts, ch 43, §2
Suspension of filing requirement, §10B.4A

9H.5B Reports by contract feeders.

A contract feeder shall file with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state an annual report containing all of the following information, if applicable:

1. The name and address of the person.
2. For each county, which the contractor shall identify, the approximate total number of swine or head of poultry subject to a contract for feeding and care as described in section 9H.1, subsection 8.
3. The name and address of the purchaser of the swine or poultry.

88 Acts, ch 1191, §6
C89, §172C.5B
C93, §9H.5B
2002 Acts, ch 1095, §10 – 12
Terminology change replacing the term "hogs" with "swine" takes effect April 9, 2002, and applies retroactively to January 1, 2002; legislative intent; 2002 Acts, ch 1095, §8, 11, 12
Terminology change applied

9H.6 Lessees conducting research or experiments — reports.

Lessees of agricultural land under section 9H.4, subsection 2, paragraph *"c"*, for research or experimental purposes, shall file a report with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state. The report shall contain the following information for the last year:

1. The name and principal place of business of the lessee.
2. The location of the agricultural land used for research or experimental purposes.
3. The date that the lease became effective.
4. The name and address of each person purchasing breeding stock produced on the agricultural land.
5. The number or volume of breeding stock purchased by each person purchasing breeding stock produced on the agricultural land.

89 Acts, ch 311, §24
CS89, §172C.6
C93, §9H.6

9H.7 and 9H.8 Reserved.

9H.9 Reports by processors.

A processor shall file a report with the secretary of state on or before March 31 of each year, as follows:

1. For all processors, the report shall include all of the following:

a. The number of swine and the number of cattle owned and fed more than thirty days by the processor in this state during the processor's preceding tax year.

b. The total number of swine and the total number of cattle owned and fed more than thirty days by the processor during the processor's preceding tax year.

c. The number of swine and the number of cattle slaughtered in this state by the processor during the processor's preceding tax year.

d. The total number of swine and the total number of cattle slaughtered by the processor during the processor's preceding tax year.

e. The total wholesale value of beef or pork products that have been processed by the processor during the preceding tax year.

f. The total number of swine for which the processor has contracted for feeding as provided in section 9H.2.

2. For a qualified processor, the report shall include all of the following:

a. The total number of swine slaughtered each day during the qualified processor's preceding tax year.

b. The total number of swine slaughtered each day that are purchased through cash or spot market purchases during the qualified processor's preceding tax year.

[C77, 79, 81, §172C.9]
88 Acts, ch 1191, §7
C93, §9H.9
2000 Acts, ch 1022, §1; 2002 Acts, ch 1095, §7, 11, 12
Legislative intent; 2002 Acts, ch 1095, §8
2002 amendment takes effect April 1, 2002, and applies retroactively to January 1, 2002; 2002 Acts, ch 1095, §11, 12
Section amended

9H.10 Signing reports.

Reports by corporations shall be signed by the president or other officer or authorized representative. Reports by limited liability companies shall be signed by a manager or other authorized representative. Reports by limited partnerships shall be signed by the president or other authorized representative of the partnership. Reports by individuals shall be signed by the individual or an authorized representative.

[C77, 79, 81, §172C.10]
C93, §9H.10
93 Acts, ch 39, §19

9H.11 Penalties — reports.

Failure to timely file a report or the filing of false information is punishable by a civil penalty not to exceed one thousand dollars.

For purposes of this section a report is timely filed if the report is filed prior to May 1 of the year in which it is required to be filed.

The secretary of state shall notify a person who

the secretary has reason to believe is required to file a report as provided by this chapter and who has not filed a timely report, that the person may be in violation of this section. The secretary of state shall include in the notice, a statement of the penalty which may be assessed if the required report is not filed within thirty days. The secretary of state shall refer to the attorney general any person who the secretary has reason to believe is required to report under this chapter if, after thirty days from receipt of the notice, the person has not filed the required report. The attorney general may, upon referral from the secretary of state, file an action in district court to seek the assessment of a civil penalty of one hundred dollars for each day the report is not filed.

[C77, 79, 81, §172C.11]
91 Acts, ch 172, §6
C93, §9H.11

9H.12 and 9H.13 Reserved.

9H.14 Duties of secretary of state.

The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of this chapter has occurred. It is the intent of this section that information shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent of farming being carried out in this state by corporations and other business entities and the effect of such farming practices upon the economy of this state. The reports of corporations, limited liability companies, limited partnerships, trusts, contractors, and processors required in this chapter shall be confidential reports except as to the attorney general for review and appropriate action when necessary. The secretary of state shall assist any committee of the general assembly existing or established for the purposes of studying the effects of this chapter and the practices this chapter seeks to study and regulate.

[C77, 79, 81, §172C.14]
88 Acts, ch 1191, §9; 91 Acts, ch 172, §7
C93, §9H.14
93 Acts, ch 39, §20

9H.15 Additional information.

The secretary of state shall request additional information as may be necessary or appropriate to enable the secretary of state to administer this chapter.

[C77, 79, 81, §172C.15]
C93, §9H.15

CHAPTER 9I

NONRESIDENT ALIENS — LAND OWNERSHIP

Transferred from chapter 567 in Code 2003 pursuant to Code editor directive; 2002 Acts, ch 1095, §10

9I.1 Definitions.
9I.2 Alien rights.
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9I.11 Escheat.
9I.12 Penalty — failure to timely file.

9I.1 Definitions.

For the purpose of this chapter:

1. *"Agricultural land"* means land suitable for use in farming.

2. *"Farming"* means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming includes the production of timber, forest products, nursery products, or sod. Farming does not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

3. *"Foreign business"* means a corporation incorporated under the laws of a foreign country, or a business entity whether or not incorporated, in which a majority interest is owned directly or indirectly by nonresident aliens. Legal entities, including but not limited to trusts, holding companies, multiple corporations and other business arrangements, do not affect the determination of ownership or control of a foreign business.

4. *"Foreign government"* means a government other than the government of the United States, its states, territories or possessions.

5. *"Nonresident alien"* means an individual who is not any of the following:

a. A citizen of the United States.

b. A person lawfully admitted into the United States for permanent residence by the United States immigration and naturalization service. An individual is lawfully admitted for permanent residence regardless of whether the individual's lawful permanent resident status is conditional.

[C79, §567.10; C81, §567.1]

2002 Acts, ch 1066, §1; 2002 Acts, ch 1095, §10

C2003, §9I.1

Section transferred from §567.1 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

Subsection 5 amended

9I.2 Alien rights.

A nonresident alien, foreign business or foreign government may acquire, by grant, purchase, devise or descent, real property, except agricultural land or any interest in agricultural land in this state, and may own, hold, devise or alienate the real property, and shall incur the same duties and liabilities in relation thereto as a citizen and resident of the United States.

[C97, §1641; S13, §1641; C24, 27, 31, 35, 39, §**8403;** C46, 50, §491.67; C54, 58, 62, 66, 71, 73, 75, 77, 79, §491.67, 567.8; C81, §567.2]

2002 Acts, ch 1095, §10

C2003, §9I.2

Section transferred from §567.2 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.3 Restriction on agricultural land holdings.

1. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, shall not purchase or otherwise acquire agricultural land in this state. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, which owns or holds agricultural land in this state on January 1, 1980, may continue to own or hold the land, but shall not purchase or otherwise acquire additional agricultural land in this state.

2. A person who acquires agricultural land in violation of this chapter or who fails to convert the land to the purpose other than farming within five years, as provided for in this chapter, remains in violation of this chapter for as long as the person holds an interest in the land.

3. The restriction set forth in subsection 1 of this section does not apply to the following:

a. Agricultural land acquired by devise or descent.

b. A bona fide encumbrance on agricultural land taken for purposes of security.

c. Agricultural land acquired by a process of law in the collection of debts, by a deed in lieu of foreclosure, pursuant to a forfeiture of a contract for deed, or by any procedure for the enforcement of a lien or claim on the land, whether created by mortgage or otherwise. However, agricultural land so acquired shall be sold or otherwise disposed of within two years after title is transferred. Pending the sale or disposition, the land shall not be used for any purpose other than farming, and the land shall not be used for farming except under lease to an individual, trust, corporation, partnership or other business entity not subject to the restriction on the increase in agricultural land holdings imposed by section 9H.4. Agricultural land which has been acquired pursuant to this paragraph shall not be acquired or utilized by the nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary thereof, under either paragraph *"d"* or paragraph *"e"*.

d. Agricultural land acquired for research or experimental purposes. Agricultural land is used for research or experimental purposes if any of the following apply:

(1) Research and experimental activities are undertaken on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to the research or experimental purposes of the corporation. Commercial sales are incidental to the research or experimental purposes of the corporation when such sales are less than twenty-five percent of the gross sales of the primary product of the research.

(2) The agricultural land is used for the primary purpose of testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock. Grain which is not sold as seed stock is an incidental sale and must be less than twenty-five percent of the gross sales of the primary product of the research and experimental activities.

(3) Until July 1, 2001, the agricultural land is used for the primary purpose of testing, developing, or producing animals for sale or resale to farmers as breeding stock. However, after July 1, 1989, to qualify under this paragraph, the following conditions must be satisfied:

(a) The nonresident alien, foreign business, or foreign government or an agent, trustee, or fiduciary of the alien, business, or government must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. A lessee shall not renew a lease entered into under this subparagraph (3). The lessee shall not enter into a lease under this paragraph, if another lease under this paragraph has been entered into by the lessee.

(b) A term or condition of sale, including resale, of seed stock or breeding stock must not relate to the direct or indirect control by the lessee of the breeding stock or breeding stock progeny subsequent to the sale.

(c) The number of acres of agricultural land held by the lessee must not exceed six hundred forty acres.

(d) The lessee must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the lease.

(4) Culls and test animals may be sold under subparagraph (3). For a three-year period beginning on the date that the lease takes effect, the gross sales for any year shall not be greater than five hundred thousand dollars. After the three-year period ends, the gross sales for any year shall not be greater than twenty-five percent of the gross sales for that year of the breeding stock, or five hundred thousand dollars, whichever is less. As used in subparagraph (3), *"lessee"* means a nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary acting on behalf of the nonresident alien, foreign business, or foreign government, or any other trade or business which is under the lessee's common control as provided in 26 U.S.C. § 414.

(5) Effective July 1, 2001, subparagraph (3) shall not be effective. However, a lessee may continue for the duration of the period of the lease to lease the agricultural land under subparagraph (3) if the lease was entered into prior to July 1, 2001.

(6) Effective July 1, 2001, a nonresident alien, foreign business, or foreign government or an agent, trustee, or fiduciary of the alien, business, or government shall not, except as provided in subparagraph (5), acquire or hold agricultural land used for the primary purpose of testing, developing, or producing animals.

e. An interest in agricultural land, not to exceed three hundred twenty acres, acquired for an immediate or pending use other than farming. However, a nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, who lawfully owns over three hundred twenty acres on January 1, 1980, may continue to own or hold the land, but shall not purchase or otherwise acquire additional agricultural land in this state except by devise or descent from a nonresident alien. Pending the development of the agricultural land for purpose other than farming, the land shall not be used for farming except under lease to an individual, trust, corporation, partnership or other business entity not subject to the restriction on the increase in agricultural land holdings imposed by section 9H.4.

4. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof shall not transfer title to or interest in agricultural land to a nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof except by devise or descent.

[C73, §1908; C97, §2889; C24, 27, 31, 35, 39, §**10214;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §567.1; C81, §567.3]

86 Acts, ch 1214, §9; 89 Acts, ch 311, §31, 33; 2002 Acts, ch 1095, §10

C2003, §9I.3

Subsection 3, paragraph d, subparagraph (5), stricken effective July 1, 2013; 89 Acts, ch 311, §33

Section transferred from §567.3 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.4 Development of land acquired for nonfarming purposes.

Development of the agricultural land which is not subject to the restrictions of section 9I.3, subsections 1 and 2, because the land or interest in the land was acquired for an immediate or pending use other than farming, shall convert the land to the purpose other than farming, within five years after the acquisition of the agricultural land or the acquisition of the interest in the agricultural land.

[C81, §567.4]

2002 Acts, ch 1095, §10

C2003, §9I.4

Section transferred from §567.4 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.5 Land acquired by devise or descent.

A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, which acquires agricultural land or an interest in agricultural land, by devise or descent after January 1, 1980, shall divest itself of all right, title and interest in the land within two years from the date of acquiring the land or interest. This section shall not require divestment of agricultural land or an interest in agricultural land, acquired by devise or descent from a nonresident alien, if such land or an interest in such land was acquired by any nonresident alien prior to July 1, 1979.

[C73, §1909; C97, §2889; C24, 27, 31, 35, 39, §**10214;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §567.1; C81, §567.5]

2002 Acts, ch 1095, §10

C2003, §9I.5

Section transferred from §567.5 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.6 Change of status — divestment.

A person or business which purchases or otherwise acquires agricultural land in this state except by devise or descent, after January 1, 1980, and whose status changes so that it becomes a foreign business or nonresident alien subject to this chapter, shall divest itself of all right, title and interest in the land within two years from the date that its status changed.

[C81, §567.6]

2002 Acts, ch 1095, §10

C2003, §9I.6

Section transferred from §567.6 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.7 Registration.

A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, which owns an interest in agricultural

land within this state on or after January 1, 1980, shall register the agricultural land with the secretary of state. The registration shall be made within sixty days after January 1, 1980, or within sixty days after acquiring the land or the interest in land, whichever time is the later. The registration shall be in the form and manner prescribed by the secretary and shall contain the name of the owner and the location and number of acres of the agricultural land by township and county. If the owner of the agricultural land or owner of the interest in agricultural land is an agent, trustee or fiduciary of a nonresident alien, foreign business or foreign government, the registration shall also include the name of any principal for whom that land, or interest in that land was purchased as agent.

[C81, §567.7]

2002 Acts, ch 1095, §10

C2003, §9I.7

Exception for persons required to file a report under chapter 10B, see §10B.4A

Section transferred from §567.7 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.8 Reports.

A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, who acquires agricultural land not subject to the restrictions of section 9I.3 because the land was acquired for an immediate or pending use other than farming, shall file a report with the secretary of state before March 31 of each year. The report shall be in the form and manner prescribed by the secretary and shall contain the following:

1. The name of the owner of the agricultural land or owner of the interest in the agricultural land.

2. If the owner of the agricultural land or interest in agricultural land is an agent, trustee or fiduciary of a nonresident alien, foreign business or foreign government, the name of any principal for whom that land or interest in that land was acquired as agent.

3. The location and number of acres of the agricultural land by township and county.

4. The date the agricultural land or interest in agricultural land was acquired.

5. The immediate or pending use other than farming, for which the agricultural land or interest in agricultural land was acquired and the status of the land's development for the purpose other than farming.

6. The present use of the agricultural land.

[C77, 79, §567.9; C81, §567.8]

2002 Acts, ch 1095, §10

C2003, §9I.8

Suspension of filing requirement, §10B.4A

Section transferred from §567.8 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.9 Lessees conducting research or experiments.

Lessees of agricultural land under section 9I.3, subsection 3, paragraph *"d"*, subparagraph (3), for research or experimental purposes, shall file a report with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state. The report shall contain the following information for the last year:

1. The name and principal place of business of the lessee.

2. The location of the agricultural land used for research or experimental purposes.

3. The date that the lease became effective.

4. The name and address of each person purchasing breeding stock produced on the agricultural land.

5. The number or volume of breeding stock purchased by each person purchasing breeding stock produced on the agricultural land.

89 Acts, ch 311, §32

CS89, §567.8A

2002 Acts, ch 1095, §10

C2003, §9I.9

Section transferred from §567.8A in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.10 Enforcement.

1. If the secretary of state finds that a nonresident alien, foreign business, foreign government, or an agent, trustee, or other fiduciary thereof, has acquired or holds title to or interest in agricultural land in this state in violation of this chapter or has failed to timely register as required under section 9I.7 or has failed to timely report as required under section 9I.8, the secretary shall report the violation to the attorney general.

2. Upon receipt of the report from the secretary of state, the attorney general shall initiate an action in the district court of any county in which the land is located.

3. The attorney general shall file a notice of the pendency of the action with the recorder of deeds of each county in which any of the land is located. If the court finds that the land in question has been acquired or held in violation of this chapter or the required registration has not been timely filed, it shall enter an order so declaring and shall file a copy of the order with the recorder of deeds of each county in which any portion of the land is located.

[C97, §2891; C24, 27, 31, 35, 39, §**10218;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §567.5; C81, §567.9]

2002 Acts, ch 1095, §10

C2003, §9I.10

Section transferred from §567.9 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.11 Escheat.

If the court finds that the land in question has been acquired in violation of this chapter or that the land has not been converted to the purpose other than farming within five years as provided for in this chapter, the court shall declare the land escheated to the state. When escheat is decreed by the court, the clerk of court shall notify the governor that the title to the real estate is vested in the state by decree of the court. Any real estate, the title to which is acquired by the state under this chapter, shall be sold in the manner provided by law for the foreclosure of a mortgage on real estate for default of payment, the proceeds of the sale shall be used to pay court costs, and the remaining funds, if any, shall be paid to the person divested of the property but only in an amount not exceeding the actual cost paid by the person for that property. Proceeds remaining after the payment of court costs and the payment to the person divested of the property shall become a part of the funds of the county or counties in which the land is located, in proportion to the part of the land in each county.

[C97, §2891; C24, 27, 31, 35, 39, §**10218;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §567.5; C81, §567.10]

83 Acts, ch 123, §192, 209; 2002 Acts, ch 1095, §10

C2003, §9I.11

Section transferred from §567.10 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

9I.12 Penalty — failure to timely file.

A nonresident alien, foreign business or foreign government, or an agent, trustee or other fiduciary thereof, who fails to timely file the registration as required by section 9I.7, or who fails to timely file a report required by section 9I.8 shall, for each offense, be punished by a fine of not more than two thousand dollars.

[C81, §567.11]

2002 Acts, ch 1095, §10

C2003, §9I.12

Section transferred from §567.11 in Code 2003 pursuant to directive in 2002 Acts, ch 1095, §10

CHAPTER 10

AGRICULTURAL LANDHOLDING RESTRICTIONS

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SUBCHAPTER I

GENERAL PROVISIONS

10.1 Definitions.

As used in this chapter and in chapter 10B, unless the context otherwise requires:

1. *"Actively engaged in farming"* means that a natural person, including a shareholder or an officer, director, or employee of a corporation, or a member or manager of a limited liability company, does any of the following:

a. Inspects the production activities periodically and furnishes at least half of the value of the tools used for crop or livestock production and pays at least half the direct cost of crop or livestock production.

b. Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation.

c. Performs physical work which significantly contributes to crop or livestock production.

2. *"Agricultural land"* means the same as defined in section 9H.1.

3. *"Authorized entity"* means an authorized farm corporation; authorized limited liability company; limited partnership, other than a family farm limited partnership; or an authorized trust as defined in section 9H.1.

4. *"Commodity share landlord"* means a natural person or a general partnership as provided in chapter 486A in which all partners are natural persons, who owns at least one hundred fifty acres of agricultural land, if the owner receives rent on a commodity share basis, which may be either a share of the crops or livestock produced on the land.

5. *"Cooperative association"* means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

6. *"Family farm entity"* means a family farm corporation, family farm limited liability company, family farm limited partnership, or family trust, as defined in section 9H.1.

7. *"Farm estate"* means the real and personal property of a decedent, a ward, or a trust as provided in chapter 633, if at least sixty percent of the gross receipts from the estate comes from farming.

8. *"Farmers cooperative association"* means a cooperative association organized under chapter 490 or 499, if all of the following conditions are satisfied:

a. All of the following apply:

(1) Qualified farmers must hold at least a fifty-one percent equity interest in the cooperative association, including fifty-one percent of each class of members' equity.

(2) The following persons must hold at least a seventy percent equity interest in the cooperative association, including seventy percent of each class of members' equity:

(a) A qualified farmer.

(b) A family farm entity.

(c) A commodity share landlord.

b. As used in this subsection, *"members' equity"* includes but is not limited to issued shares, including common stock or preferred stock, regardless of a right to receive dividends or earning distributions. However, *"members' equity"* does not include nonvoting common stock or nonvoting membership interests. A security such as a warrant or option that may be converted to voting stock shall be considered as issued shares.

c. For purposes of this subsection, a person who was a qualified person within the last ten years shall be treated as a qualified person.

9. *"Farmers cooperative limited liability company"* means a limited liability company organized under chapter 490A, if cooperative associations hold one hundred percent of all membership interests in the limited liability company. Farmers cooperative associations must hold at least seventy percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, farmers cooperative associations must hold at least seventy percent of all membership interests of that type.

10. *"Farmers entity"* means a networking farmers entity, farmers cooperative limited liability company, or farmers cooperative association.

11. *"Farming"* means the same as defined in section 9H.1.

12. *"Grain"* means the same as defined in section 203.1.

13. *"Intra-company loan agreement"* means an agreement involving a loan, if the parties to the agreement are members of the same farmers cooperative limited liability company, and according to the terms of the loan a member which is a regional cooperative association directly or indirectly loans money to a member which is a farmers cooperative association, on condition that the money, including any interest, must be repaid by the member which is a farmers cooperative association to the regional cooperative association or another person. A loan agreement does not include an operating loan agreement, in which all of the following apply:

a. The money is required to be repaid within ninety days from the date that the farmers cooperative association receives the money, and the money is actually repaid by that date.

b. The money is used to pay for reasonable and ordinary expenses of the farmers cooperative association in conducting its affairs.

14. *"Livestock"* means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus, farm deer as defined in section 481A.1, or poultry.

15. *"Networking farmers corporation"* means a corporation, other than a family farm corporation as defined in section 9H.1, organized under chapter 490 if all of the following conditions are satisfied:

a. All of the following apply:

(1) Qualified farmers must hold at least fifty-one percent of all issued shares of the corporation. If more than one class of shares is authorized, qualified farmers must hold at least fifty-one percent of all issued shares in each class.

(2) Qualified persons must hold at least seventy percent of all issued shares of the corporation. If more than one class of shares is authorized, qualified persons must hold at least seventy percent of all issued shares in each class.

b. As used in paragraph *"a"*, *"issued shares"* includes but is not limited to common stock or preferred stock, or each class of common stock or preferred stock, regardless of voting rights or a right to receive dividends or earning distributions. A security such as a warrant or option that may be converted to stock shall be considered as issued shares.

16. *"Networking farmers entity"* means a networking farmers corporation or networking farmers limited liability company.

17. *"Networking farmers limited liability company"* means a limited liability company, other than a family farm limited liability company as defined in section 9H.1, organized under chapter 490A if all of the following conditions are satisfied:

a. Qualified farmers must hold at least fifty-one percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, qualified farmers must hold at least fifty-one percent of all membership interests of that type.

b. Qualified persons must hold at least seventy percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, qualified persons must hold at least seventy percent of all membership interests of that type.

18. *"Operation of law"* means a transfer by inheritance, devise, or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.

19. *"Qualified farmer"* means any of the following:

a. A natural person actively engaged in farming.

b. A general partnership as provided in chapter 486A in which all partners are natural persons actively engaged in farming.

c. A farm estate.

20. *"Qualified commodity share landlord"* means a commodity share landlord, if the owner of the agricultural land was actively engaged in farming the land or a family member of the owner is or was actively engaged in farming the land, if the family member is related to the owner as a spouse, parent, grandparent, lineal ascendant of a grandparent or spouse, or other lineal descendant of a grandparent or spouse.

21. *"Qualified person"* means a person who is any of the following:

a. A qualified farmer.

b. A family farm entity.

c. A qualified commodity share landlord.

22. *"Regional cooperative association"* means a cooperative association other than a farmers cooperative association.

98 Acts, ch 1110, §101, 301; 2002 Acts, ch 1119, §114, 115

Subsection 4 amended

Subsection 19, paragraph b amended

10.2 Interests described.

As used in this chapter, the following apply:

1. A person holds an interest in agricultural land if the person either directly or indirectly owns or leases the agricultural land in this state.

2. A person holds an interest in a farmers entity if the person holds an interest as any of the following:

a. A shareholder of a networking farmers corporation.

b. A member of a networking farmers limited liability company.

c. A member of a farmers cooperative association.

d. A member of a farmers cooperative limited liability company.

98 Acts, ch 1110, §102, 301

SUBCHAPTER II

RESTRICTIONS

PART 1

NETWORKING FARMERS CORPORATIONS

10.3 Landholdings restricted.

1. Notwithstanding section 9H.4, a networking farmers corporation may hold agricultural land in this state if it meets all of the following conditions:

a. The networking farmers corporation does not hold an interest in agricultural land of more than six hundred forty acres.

b. At least seventy-five percent of the networking farmers corporation's gross receipts are from the sale of livestock or livestock products.

2. *a.* An interest in agricultural land held by a networking farmers corporation shall be attributable as an interest in agricultural land held by a shareholder having an interest in the networking farmers corporation. The shareholder shall be deemed to hold an interest in agricultural land held by the networking farmers corporation in proportion to the interest that the shareholder holds in the networking farmers corporation.

b. Except to the extent provided in this paragraph, a shareholder holding agricultural land by

attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 9I.3, and 501.103. However, notwithstanding section 9H.4, a cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

c. The shareholder's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the networking farmers corporation by the percentage interest in the networking farmers corporation held by the shareholder.

3. In the event of a transfer of an interest in the networking farmers corporation by operation of law, the corporation may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

98 Acts, ch 1110, §103, 301

10.4 Multiple interests restricted.

1. A person who holds an interest in a networking farmers corporation holding an interest in agricultural land pursuant to section 10.3 shall not hold an interest in another farmers entity if any of the following applies:

a. The person holds a twenty-five percent or greater interest in a networking farmers corporation having six or fewer stockholders.

b. The person holds a fifteen percent or greater interest in a networking farmers corporation having seven or more stockholders.

2. A person who holds a majority interest in an authorized entity shall not hold a majority interest in a networking farmers corporation.

3. A qualified commodity share landlord who owns an interest in a networking farmers corporation holding agricultural land under section 10.3 must rent an additional one hundred fifty acres of agricultural land on a commodity share basis for each farmers entity holding agricultural land under this chapter in which the commodity share landlord acquires an interest.

98 Acts, ch 1110, §104, 301

PART 2

NETWORKING FARMERS LIMITED LIABILITY COMPANIES

10.5 Landholdings restricted.

1. Notwithstanding section 9H.4, a networking farmers limited liability company may hold agricultural land in this state if it meets all of the following conditions:

a. The networking farmers limited liability company does not hold an interest in agricultural land of more than six hundred forty acres.

b. At least seventy-five percent of the networking farmers limited liability company's gross receipts from farming are from the sale of livestock or livestock products.

2. *a.* An interest in agricultural land held by a networking farmers limited liability company shall be attributable as an interest in agricultural land held by a member having an interest in the networking farmers limited liability company. The member shall be deemed to hold an interest in agricultural land held by the networking farmers limited liability company in proportion to the interest that the member holds in the networking farmers limited liability company.

b. Except to the extent provided in this paragraph, a member holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 9I.3, and 501.103. However, notwithstanding section 9H.4, a cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

c. The member's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the networking farmers limited liability company by the percentage interest in the networking farmers limited liability company held by the member.

3. In the event of a transfer of an interest in the networking farmers limited liability company by operation of law, the networking farmers limited liability company may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

98 Acts, ch 1110, §105, 301

10.6 Multiple interests restricted.

1. A person who holds an interest in a networking farmers limited liability company holding an interest in agricultural land pursuant to section 10.5 shall not hold an interest in another farmers entity, if any of the following applies:

a. The person holds a twenty-five percent or greater interest in a networking farmers limited liability company having six or fewer members.

b. The person holds a fifteen percent or greater interest in a networking farmers limited liability company having seven or more members.

2. A person who holds a majority interest in an authorized entity shall not hold a majority interest in a networking farmers limited liability company.

3. A qualified commodity share landlord who owns an interest in a networking farmers limited liability company holding agricultural land under section 10.5 must rent an additional one hundred fifty acres of agricultural land on a commodity share basis for each farmers entity holding agricultural land under this chapter in which the commodity share landlord acquires an interest.

98 Acts, ch 1110, §106, 301

PART 3

FARMERS COOPERATIVE ASSOCIATIONS

10.7 Landholdings restricted.

1. Notwithstanding section 9H.4, a farmers cooperative association may hold agricultural land in this state if it meets all of the following conditions:

a. The farmers cooperative association does not hold an interest in agricultural land of more than six hundred forty acres.

b. The farmers cooperative association does not produce, including by planting or harvesting, forage or grain on agricultural land in which the farmers cooperative association holds an interest. However, the farmers cooperative association may enter into an agreement under a lease or production contract with a person to produce the forage or grain, if the farmers cooperative association does not receive forage or grain in payment under the agreement. The lease or contract may specify the type of forage or grain that must be produced and provide that the farmers cooperative association has a right to purchase the forage or grain on the same terms and conditions as the highest bona fide offer received by the person for the forage or grain, within a period agreed to by the parties to the lease or production contract.

2. *a.* Except as provided in this section, an interest in agricultural land held by a farmers cooperative association shall be attributable as an interest in agricultural land held by a member having an interest in the farmers cooperative association. The member shall be deemed to hold an interest in agricultural land held by the farmers cooperative association in proportion to the interest that the member holds in the farmers cooperative association.

b. Except to the extent provided in this paragraph, a member holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 9I.3, and 501.103. However, notwithstanding section 9H.4, all of the following shall apply:

(1) A cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

(2) An interest in agricultural land held by a farmers cooperative association shall not be attributable to a member who is an entity organized under state law, if the entity holds a five percent or less interest in the farmers cooperative association.

c. The member's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the farmers cooperative association by the percentage interest in the farmers cooperative association held by the member.

3. In the event of a transfer of an interest in a farmers cooperative association by operation of law, the association may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

98 Acts, ch 1110, §107, 301

10.8 Multiple interests restricted.

1. A person who holds an interest in a farmers cooperative association holding an interest in agricultural land pursuant to section 10.7 shall not hold an interest in another farmers entity if any of the following applies:

a. The person holds a twenty-five percent or greater interest in a farmers cooperative association having six or fewer members.

b. The person holds a fifteen percent or greater interest in a farmers cooperative association having seven or more members.

2. A person who holds a majority interest in an authorized entity shall not hold a majority interest in a farmers cooperative association.

98 Acts, ch 1110, §108, 301

10.9 Procedure for acquisition — reverse referendum — dissent.

A farmers cooperative association shall not acquire an interest in agricultural land or in a farmers entity, unless all of the following apply:

1. The board of directors of the farmers cooperative association adopts a resolution authorizing the acquisition. Except as provided in this section, the resolution shall become effective thirty-one days from the date that the resolution was adopted. The farmers cooperative association is not required to comply with the procedures of this section for as long as the resolution remains in effect. The resolution shall contain all of the following:

a. A declaration stating that the farmers cooperative association reserves the right to acquire agricultural land or an interest in a farmers entity under this chapter.

b. A description of a planned acquisition, if any, including the location of agricultural land planned to be acquired, the identity of any farmers entity in which the farmers cooperative association plans to acquire an interest, and the nature of any farming operation which is planned to occur on land acquired by the farmers cooperative association or conducted by the farmers entity.

c. The date that the resolution was adopted and the date that it will take effect.

2. Within five days following the date that the resolution authorizing the farmers cooperative association to acquire an interest in agricultural land or acquire an interest in a farmers entity is adopted, the farmers cooperative association must provide notice of the resolution as provided in this section. The notice shall be in the following form:

NOTICE
MEMBERS OF THE (INSERT
NAME OF THE FARMERS
COOPERATIVE ASSOCIATION)

THE (INSERT NAME OF THE FARMERS COOPERATIVE ASSOCIATION) IS PLANNING ON ACQUIRING AN INTEREST IN AGRICULTURAL LAND WHICH MAY BE USED FOR FARMING OR ACQUIRING AN INTEREST IN A BUSINESS THAT OWNS AGRICULTURAL LAND THAT MAY BE USED FOR FARMING. UNDER IOWA CODE CHAPTER 10, THE (INSERT NAME OF THE FARMERS COOPERATIVE ASSOCIATION) IS A FARMERS COOPERATIVE ASSOCIATION. WITHIN A LIMITED TIME PERIOD: (1) VOTING MEMBERS MAY PETITION A FARMERS COOPERATIVE ASSOCIATION TO REQUIRE A MEMBERSHIP VOTE TO APPROVE THE ACQUISITION; AND (2) ALL HOLDERS OF MEMBERS' EQUITY MAY DEMAND PAYMENT OF THE FAIR VALUE OF THEIR INTERESTS.

a. The notice must be published in a newspaper having a general circulation in the county where the farmers cooperative association is located as provided in section 618.3. The notice shall be printed as provided in section 618.17.

b. The notice shall be delivered to all holders of members' equity in the farmers cooperative association, including members and shareholders, by mailing the notice to the holder's last known address as shown on the books of the farmers cooperative association. The notice shall be accompanied by a copy of the resolution adopted by the board pursuant to this section, and a copy of this section.

3. Within thirty days following the date that the resolution authorizing the farmers cooperative association to acquire an interest in agricultural land or acquire an interest in a farmers entity is adopted, at least twenty percent of the voting members of the farmers cooperative association may file a petition with the board of directors demanding a referendum under this subsection.

a. If a valid petition is filed, the board of directors shall call a special referendum of voting members at a regular or special meeting, as provided in section 499.27. The filing of the petition suspends the effectiveness of the resolution until a referendum is conducted as provided in this subsection.

b. The resolution shall not become effective as otherwise provided in this section, until the resolution is approved by a majority vote of the voting members of the farmers cooperative association casting ballots at the meeting to conduct the referendum.

4. *a.* Within thirty days following the date that the resolution authorizing the farmers cooperative association to acquire an interest in agricultural land or acquire an interest in a farmers entity is adopted, a holder of members' equity, including a member or shareholder, may dissent to an acquisition as expressed in the resolution adopted by the board of directors under this section.

b. The holder of members' equity shall dissent by filing a demand with the board of directors. The farmers cooperative association shall pay the holder the fair value of that holder's interest as if the holder were a member dissenting to a merger or consolidation, as provided in section 499.66, upon surrender of the holder's evidence of equity in the farmers cooperative association, including a certificate of membership or shares.

c. The farmers cooperative association is not required to pay the holder of members' equity the fair value of that holder's interest as provided in this subsection, if the resolution provided for in this section does not become effective.

98 Acts, ch 1110, §109, 301

PART 4

FARMERS COOPERATIVE LIMITED
LIABILITY COMPANIES

10.10 Landholdings restricted.

1. Notwithstanding section 9H.4, a farmers cooperative limited liability company may hold agricultural land in this state if it meets all of the following conditions:

a. The farmers cooperative limited liability company does not hold an interest in agricultural land of more than six hundred forty acres.

b. The farmers cooperative limited liability company does not produce, including by planting or harvesting, forage or grain on agricultural land in which the farmers cooperative limited liability company holds an interest. However, the farmers cooperative limited liability company may enter into an agreement under a lease or production contract with a person to produce the forage or grain, if the farmers limited liability company does not receive forage or grain in payment under the agreement. The lease or contract may specify the type of forage or grain that must be produced and provide that the farmers cooperative limited liability company has a right to purchase the forage or grain on the same terms and conditions as the highest bona fide offer received by the person for the forage or grain, within a period agreed to by the parties to the lease or production contract.

c. Less than fifty percent of the interest in the farmers cooperative limited liability company is held by members which are parties to intra-company loan agreements. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, less than fifty percent of the interest in each type of membership shall be held by members which are parties to intra-company loan agreements.

d. The farmers cooperative limited liability company does not own swine or contract for the

care and feeding of swine, if a member of the farmers cooperative limited liability company is a regional cooperative association.

2. *a.* An interest in agricultural land held by a farmers cooperative limited liability company shall be attributable as an interest in agricultural land held by a member cooperative association of the farmers cooperative limited liability company. The member cooperative association shall be deemed to hold an interest in agricultural land held by the farmers cooperative limited liability company in proportion to the interest that the member cooperative association holds in the limited liability company.

b. Except to the extent provided in this paragraph, a member holding agricultural land by attribution shall be subject to landholding restrictions imposed pursuant to the Code, including sections 9H.4, 9H.5, 9I.3, and 501.103. However, notwithstanding section 9H.4, a cooperative association may hold an interest in any number of farmers entities, if the total number of acres held by the farmers entities and attributable to the cooperative association is six hundred forty acres or less.

c. The member cooperative association's proportionate interest shall be calculated by multiplying the number of acres of agricultural land held by the farmers cooperative limited liability company by the percentage interest in the limited liability company held by the cooperative association as a member.

3. In the event of a transfer of an interest in the farmers cooperative limited liability company by operation of law, the farmers cooperative limited liability company may disregard the transfer for purposes of determining compliance with subsection 1 for a period of two years after the transfer.

98 Acts, ch 1110, §110, 301

SUBCHAPTER III

PENALTIES

10.11 Landholding restrictions — penalties.

A person violating the landholding restrictions in section 10.3, 10.5, 10.7, or 10.10 shall be assessed a civil penalty of not more than ten thousand dollars and shall divest itself of any land held in violation of the section within one year after judgment is entered ordering the farmers entity to comply with that section, as provided in section 10.13.

98 Acts, ch 1110, §111, 301

10.12 Multiple interests restricted — penalties.

1. A civil penalty of not more than one thousand dollars may be imposed on a person who becomes one of the following:

a. A stockholder of a networking farmers corporation as prohibited in section 10.4.

b. A member of a networking farmers limited liability company as prohibited in section 10.6.

c. A member of a farmers cooperative association as prohibited in section 10.8.

2. The person violating the section shall divest the interest held by the person in a farmers entity or authorized entity as is necessary to comply with this chapter, as provided in section 10.13.

98 Acts, ch 1110, §112, 301

10.13 Divestiture proceedings.

The court may determine the method of divesting an interest held by a person found to be in violation of this chapter. A financial gain realized by a person who disposes of an interest held in violation of this chapter shall be forfeited to the state's general fund. All court costs and fees shall be paid by the person holding the interest in violation of the section.

98 Acts, ch 1110, §113, 301

10.14 Injunctive relief.

The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

98 Acts, ch 1110, §114, 301

CHAPTER 10A

DEPARTMENT OF INSPECTIONS AND APPEALS

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ARTICLE I

ORGANIZATION

10A.101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means a person coordinating the administration of a division of the department.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"Department"* means the department of inspections and appeals.

4. *"Director"* means the director of inspections and appeals.

86 Acts, ch 1245, §501; 88 Acts, ch 1109, §1; 89 Acts, ch 231, §1; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201; 2002 Acts, ch 1162, §1

Subsection 1 amended

10A.102 Department established.

The department of inspections and appeals is established. The director of the department shall be appointed by the governor to serve at the pleasure of the governor subject to confirmation by the senate no less frequently than every four years, whether or not there has been a new director appointed during that time. If the office becomes vacant, the vacancy shall be filled in the same manner as provided for the original appointment.

86 Acts, ch 1245, §502

Confirmation, see §2.32

10A.103 Purpose of the department.

The department is created for the purpose of coordinating and conducting various audits, appeals, hearings, inspections, and investigations related to the operations of the executive branch of state government.

86 Acts, ch 1245, §503

10A.104 Powers and duties of the director.

The director or designees of the director shall:

1. Coordinate the internal operations of the department and develop and implement policies and procedures designed to ensure the efficient administration of the department.

2. Appoint the administrators of the divisions within the department and all other personnel deemed necessary for the administration of this chapter, except the state public defender, assistant state public defenders, administrator of the racing and gaming commission, members of the employment appeal board, and administrator of the child advocacy board created in section 237.16. All persons appointed and employed in the department are covered by the provisions of chapter 19A, but persons not appointed by the director are exempt from the merit system provisions of chapter 19A.

3. Prepare an annual budget for the department.

4. Develop and recommend legislative proposals deemed necessary for the continued efficiency of department functions, and review legislative proposals generated outside of the department which are related to matters within the department's purview.

5. Adopt rules deemed necessary for the implementation and administration of this chapter in accordance with chapter 17A.

6. Issue subpoenas and distress warrants, administer oaths, and take depositions in connection with audits, appeals, investigations, inspections, and hearings conducted by the department. If a person refuses to obey a subpoena or distress warrant issued by the department or otherwise fails to cooperate in proceedings of the department, the director may enlist the assistance of a court of competent jurisdiction in requiring the person's compliance. Failure to obey orders of the court renders the person in contempt of the court and subject to penalties provided for that offense.

7. Enter into contracts for the receipt and provision of services as deemed necessary. The director and the governor may obtain and accept federal grants and receipts to or for the state to be used for the administration of this chapter.

8. Establish by rule standards and procedures for certifying that targeted small businesses are eligible to participate in the procurement program established in sections 73.15 through 73.21. The procedure for determination of eligibility shall not include self-certification by a business. The director shall maintain a current directory of targeted small businesses that have been certified pursuant to this subsection.

9. Administer and enforce this chapter, and chapters 99B, 135B, 135C, 135H, 135J, 137C, 137D, and 137F.

10. Enter into and implement agreements or compacts between the state of Iowa and Indian tribes located in the state which are entered into under the authority of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). The agreements or compacts shall contain provisions intended to implement the policies and objectives of the Indian Gaming Regulatory Act.

11. Administer inspection and licensing of social and charitable gambling pursuant to chapter 99B.

86 Acts, ch 1245, §504; 88 Acts, ch 1273, §3; 89 Acts, ch 231, §2 – 4; 92 Acts, ch 1141, §1; 93 Acts, ch 53, §1; 94 Acts, ch 1076, §1; 95 Acts, ch 67, §2; 96 Acts, ch 1052, §1; 96 Acts, ch 1079, §1; 98 Acts, ch 1162, §1, 30; 98 Acts, ch 1202, §1, 46; 2000 Acts, ch 1155, §1; 2002 Acts, ch 1162, §2, 3, 15, 75

Subsections 2, 8, and 9 amended
NEW subsection 11

10A.105 Confidentiality.

1. For the purposes of this section, *"governmental entity"* includes an administrative division within the department.

2. The confidentiality of all information in the department produced or collected during or as a result of a hearing, appeal, investigation, inspection, audit, or other function performed by the department on behalf of another governmental entity is governed by the law applicable to the records of that governmental entity. The department may provide information to a governmental entity for which it is conducting a hearing, appeal, inspection, audit, investigation, or other function.

3. The state shall maintain records and materials related to an agreement or compact entered into pursuant to the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.), as confidential records if confidentiality is required by the terms of the agreement or compact.

4. The lawful custodian of all records produced or collected during or as a result of any function performed by the department on behalf of another governmental entity is that governmental entity for the purpose of examination and copying pursuant to chapter 22.

5. If information in the possession of the department indicates that a criminal offense may have been committed, the information may be reported to the appropriate criminal justice or regulatory agency.

6. However, this section does not prohibit the department from releasing the minimal amount of information necessary in its judgment to conduct audits, inspections, investigations, appeals, and hearings, and does not prohibit the introduction of the information as evidence at any hearing conducted by the department.

7. The director, administrators, and their designees shall have access to all records deemed by the department to be pertinent to a hearing, appeal, audit, investigation, inspection, or other related function assigned under this chapter.

86 Acts, ch 1245, §505; 89 Acts, ch 231, §5

10A.106 Divisions of the department.

The department is comprised of the following divisions:

1. Administrative hearings division.
2. Investigations division.
3. Inspections division.
4. Health facilities division.

The allocation of departmental duties to the divisions of the department in sections 10A.402, 10A.502, 10A.702, and 10A.801 does not prohibit the director from reallocating departmental duties within the department.

86 Acts, ch 1245, §506; 87 Acts, ch 234, §420; 88

Acts, ch 1134, §9; 89 Acts, ch 231, §6, 7; 98 Acts, ch 1202, §2, 46; 2000 Acts, ch 1155, §2; 2002 Acts, ch 1162, §4, 5

Subsection 2 stricken and former subsections 3 – 5 renumbered as 2 – 4

Unnumbered paragraph 2 amended

10A.107 Repayment receipts.

The department may charge state departments, agencies, and commissions for services rendered and the payment received shall be considered repayment receipts as defined in section 8.2.

90 Acts, ch 1247, §2

10A.108 Lien for entitlement benefits or provider payments inappropriately obtained from the department of human services — debt established — collection — action authorized.

1. If a person refuses or neglects to repay benefits or provider payments inappropriately obtained from the department of human services, the amount inappropriately obtained, including any interest, penalty, or costs attached to the amount, constitutes a debt and is a lien in favor of the state upon all property and any rights or title to or interest in property, whether real or personal, belonging to the person for the period established in subsection 2, with the exception of property which is exempt from execution pursuant to chapter 627.

A lien under this section shall not attach to any amount of inappropriately obtained benefits or provider payments, or portions of the benefits or provider payments, attributable to errors by the department of human services. Liens shall only attach to the amounts of inappropriately obtained benefits or provider payments or portions of the benefits or provider payments which were obtained due to false, misleading, incomplete, or inaccurate information submitted by a person in connection with the application for or receipt of benefits or provider payments.

2. *a.* The lien attaches at the time the notice of the lien is filed under subsection 3, and continues for ten years from that date, unless released or otherwise discharged at an earlier time.

b. The lien may be extended, within ten years from the date of attachment, if a person files a notice with the county recorder or other appropriate county official of the county in which the property is located at the time of filing the extension. From the time of the filing of the notice, the lien period shall be extended for ten years to apply to the property in the county in which the notice is filed, unless released or otherwise discharged at an earlier time. The number of extensions is not limited.

c. The director shall discharge any lien which is allowed to lapse and may charge off any account and release the corresponding lien before the lien has lapsed if the director determines, under uniform rules prescribed by the director, that the account is uncollectible or collection costs involved would not warrant collection of the amount due.

3. To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property located in a county, the director shall file a notice of the lien with the recorder of the county in which the property is located at the time of filing of the notice.

4. The county recorder of each county shall prepare and maintain in the recorder's office an index of liens of debts established based upon benefits or provider payments inappropriately obtained from and owed the department of human services, which provides appropriate columns for all of the following data, under the names of debtors, arranged alphabetically:

a. The name of the debtor.

b. "State of Iowa, Department of Human Services" as claimant.

c. The time that the notice of the lien was received.

d. The date of notice.

e. The amount of the lien currently due.

f. The date of the assessment.

g. The date of satisfaction of the debt.

h. Any extension of the time period for application of the lien and the date that the notice for extension was filed.

5. The recorder shall endorse on each notice of lien the day and time received and shall preserve the notice. The recorder shall index the notice and shall record the lien in the manner provided for recording real estate mortgages. The lien shall be effective from the time of the indexing.

6. The department shall pay, from moneys appropriated to the department for this purpose, a recording fee as provided in section 331.604, for the recording of the lien, or for satisfaction of the lien.

7. Upon payment of a debt for which the director has filed notice with a county recorder, the director shall file a satisfaction of the debt with the recorder and the recorder shall enter the satisfaction on the notice on file in the recorder's office.

8. The department of inspections and appeals, as provided in this chapter and chapter 626, shall proceed to collect all debts owed the department of human services as soon as practicable after the debt becomes delinquent. If service has not been made on a distress warrant by the officer to whom addressed within five days from the date the distress warrant was received by the officer, the authorized investigators of the department of inspections and appeals may serve and make return of the warrant to the clerk of the district court of the county named in the distress warrant, and all subsequent procedures shall be in compliance with chapter 626.

9. The distress warrant shall be in a form as prescribed by the director, shall be directed to the sheriff of the appropriate county, and shall identi-

fy the debtor, the type of debt, and the delinquent amount. The distress warrant shall direct the sheriff to distrain, seize, garnish, or levy upon, and sell, as provided by law, any real or personal property belonging to the debtor to satisfy the amount of the delinquency plus costs. The distress warrant shall also direct the sheriff to make due and prompt return to the department or to the district court under chapter 626 of all amounts collected.

10. The attorney general, upon the request of the director of inspections and appeals, shall bring an action, as the facts may justify, without bond, to enforce payment of any debts under this section, and in the action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

11. The remedies of the state shall be cumulative and no action taken by the director of inspections and appeals or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy provided by law.

94 Acts, ch 1112, §1; 96 Acts, ch 1052, §2; 97 Acts, ch 23, §2, 3; 2002 Acts, ch 1113, §1

Subsection 5 amended

ARTICLE II

APPEALS AND FAIR HEARINGS DIVISION

See §10A.801

10A.201 Definitions. Repealed by 98 Acts, ch 1202, § 45, 46.

10A.202 Responsibilities. Repealed by 98 Acts, ch 1202, § 45, 46.

ARTICLE III

AUDITS DIVISION

10A.301 and 10A.302 Repealed by 2002 Acts, ch 1162, § 14.

ARTICLE IV

INVESTIGATIONS DIVISION

10A.401 Definitions.

As used in this article, unless the context otherwise requires:

1. *"Administrator"* means the person coordinating the administration of this division.

2. *"Division"* means the investigations division of the department of inspections and appeals.

86 Acts, ch 1245, §511; 2002 Acts, ch 1162, §6

Subsection 1 amended

10A.402 Responsibilities.

The administrator shall coordinate the division's conduct of various audits and investigations as provided by law including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of medical examiners, the board of pharmacy examiners, the board of dental examiners, and the board of nursing.

2. Audits relative to the administration of hospitals and health care facilities.

3. Audits relative to administration and disbursement of funding under the state supplementary assistance program and the medical assistance program.

4. Investigations and collections relative to the liquidation of overpayment debts owed to the department of human services. Collection methods include but are not limited to small claims filings, debt setoff, distress warrants, and repayment agreements, and are subject to approval by the department of human services.

5. Investigations relative to the operations of the department of elder affairs.

6. Investigations relative to the administration of the state supplementary assistance program, the state medical assistance program, the food stamp program, the family investment program, and any other state or federal benefit assistance program.

7. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.

86 Acts, ch 1245, §512; 90 Acts, ch 1204, §1; 91 Acts, ch 107, §1; 93 Acts, ch 53, §2; 93 Acts, ch 97, §23; 2000 Acts, ch 1155, §3; 2002 Acts, ch 1162, §7

Section amended

10A.403 Investigators — peace officer status.

Investigators of the division shall have the powers and authority of peace officers when acting within the scope of their responsibilities to conduct investigations as specified in section 10A.402, subsection 6. An investigator shall not carry a weapon to perform responsibilities as described in this section.

99 Acts, ch 80, §1

ARTICLE V

INSPECTIONS DIVISION

10A.501 Definitions.

As used in this article, unless the context otherwise requires:

1. *"Administrator"* means the person coordinating the administration of this division.

2. *"Division"* means the inspections division of the department of inspections and appeals.

86 Acts, ch 1245, §513; 2002 Acts, ch 1162, §8
Subsection 1 amended

10A.502 Responsibilities.

The administrator shall coordinate the division's conduct of various inspections as provided by law including but not limited to the following:

1. Inspections of hotels, home food establishments, and egg handlers.

2. Inspections of food establishments, including restaurants, vending machines, food processing plants, grocery stores, convenience stores, temporary food establishments, and mobile food units.

3. Inspections for sanitation in any locality of the state upon the written petition of five or more residents of the locality.

86 Acts, ch 1245, §514; 2000 Acts, ch 1155, §4; 2002 Acts, ch 1162, §9
Section amended

ARTICLE VI

EMPLOYMENT APPEAL BOARD

10A.601 Employment appeal board — created — duties.

1. A full-time employment appeal board is created within the department of inspections and appeals to hear and decide contested cases under chapters 19A, 80, 88, 89A, 91C, 96, and 97B.

2. The employment appeal board is composed of three members appointed by the governor, subject to confirmation by the senate, to six-year staggered terms beginning and ending as provided in section 69.19. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. No more than two members shall be members of the same political party. A vacancy in membership shall be filled in the same manner as the original appointment. A member of the appeal board may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office. The members of the employment appeal board shall receive an annual salary as set by the governor.

3. The members of the appeal board shall select a chairperson and vice chairperson from their membership. The appeal board shall meet at least once per month but may meet as often as necessary. Meetings shall be set by a majority of the appeal board or upon the call of the chairperson, or in the chairperson's absence, upon the call of the vice chairperson. The employment appeal board, subject to the approval of the director, may appoint personnel necessary for carrying out its functions and duties.

4. The appeal board may on its own motion affirm, modify, or set aside a decision of an administrative law judge on the basis of the evidence previously submitted in the contested case, or direct the taking of additional evidence, or may permit any of the parties to the decision to initiate further appeals before the appeal board. The appeal board shall permit further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

5. The appeal board may order testimony to be taken by deposition, and may compel persons to appear and testify and to produce books, papers, and documents in the same manner as witnesses may be deposed and compelled to appear and testify and produce documentary evidence before the district court. In the discharge of the duties imposed by this chapter, the chairperson of the appeal board and any duly authorized representative designated by the appeal board, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas. Persons deposed or compelled to testify or produce documentary evidence shall be allowed the same fees and traveling expenses as allowed witnesses in the district court.

6. The appeal board shall adopt rules pursuant to chapter 17A to establish the manner in which contested cases are to be presented, reports are to be required from the parties, and hearings and appeals are to be conducted. The appeal board shall keep a full and complete record of all proceedings in connection with a contested case. All testimony at a hearing shall be recorded, but need not be transcribed unless the contested case is further appealed. The appeal board shall retain the record for at least sixty days following the final date for appeal of a contested case. A decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court. Any party to a contested case may appeal the decision to the district court.

7. An application for rehearing before the appeal board shall be filed pursuant to section 17A.16, unless otherwise provided in chapter 19A, 80, 88, 89A, 91C, 96, or 97B. A petition for judicial review of a decision of the appeal board shall be filed pursuant to section 17A.19. The appeal board may be represented in any such judicial review by an attorney who is a regular salaried employee of the appeal board or who has been designated by the appeal board for that purpose, or at the appeal board's request, by the attorney general. Notwithstanding the petitioner's residency requirement in section 17A.19, subsection 2, a petition for judicial review may be filed in the district court of the

county in which the petitioner was last employed or resides, provided that if the petitioner does not reside in this state, the action shall be brought in the district court of Polk county, Iowa, and any other party to the proceeding before the appeal board shall be named in the petition. Notwithstanding the thirty-day requirement in section 17A.19, subsection 6, the appeal board shall, within sixty days after filing of the petition for judicial review or within a longer period of time allowed by the court, transmit to the reviewing court the original or a certified copy of the entire records of a contested case. The appeal board may also certify to the court, questions of law involved in any decision by the appeal board. Petitions for judicial review and the questions so certified shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state. No bond shall be required for entering an appeal from any final order, judgment, or decree of the district court to the supreme court.

86 Acts, ch 1245, §515; 88 Acts, ch 1025, §1; 88 Acts, ch 1162, §10; 88 Acts, ch 1109, §3

Confirmation, see §2.32

ARTICLE VII

HEALTH FACILITIES DIVISION

10A.701 Definitions.

As used in this article, unless the context otherwise requires:

1. *"Administrator"* means the person coordinating the administration of this division.

2. *"Division"* means the health facilities division of the department of inspections and appeals.

2000 Acts, ch 1155, §5; 2002 Acts, ch 1162, §10

Subsection 1 amended

10A.702 Responsibilities.

The administrator shall coordinate the division's conduct of various inspections and investigations as otherwise provided by law including, but not limited to, all of the following:

1. Investigations relative to the standards and practices of hospitals, hospices, and health care facilities.

2. Inspections and other licensing procedures relative to the hospice program, hospitals, and health care facilities. The division is designated as the sole licensing authority for these programs and facilities.

3. Inspections relative to hospital and health care facility construction projects.

4. Inspections of child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.

2000 Acts, ch 1155, §6; 2002 Acts, ch 1162, §76

Subsections 1 and 2 amended

ARTICLE VIII

ADMINISTRATIVE HEARINGS DIVISION

10A.801 Division of administrative hearings — creation, powers, duties.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. *"Administrator"* means the person coordinating the administration of the division.

b. *"Division"* means the administrative hearings division of the department of inspections and appeals.

2. The administrator shall coordinate the division's conduct of appeals and administrative hearings as provided by law.

3. *a.* The department shall employ a sufficient number of administrative law judges to conduct proceedings for which agencies are required, by section 17A.11 or any other provision of law, to use an administrative law judge employed by the division. An administrative law judge employed by the division shall not perform duties inconsistent with the judge's duties and responsibilities as an administrative law judge and shall be located in an office that is separated from the offices of the agencies for which that person acts as a presiding officer. Administrative law judges shall be covered by the merit system provisions of chapter 19A.

b. The division shall facilitate, insofar as practicable, specialization by its administrative law judges so that particular judges may become expert in presiding over cases in particular agencies. An agency may, by rule, identify particular classes of its contested cases for which the administrative law judge who acts as presiding officer shall have specified technical expertness. After the adoption of such a rule, the division may assign administrative law judges to preside over those identified particular classes of contested cases only if the administrative law judge possesses the technical expertness specified by agency rule. The division may charge the applicable agency for the costs of any training required by the division's administrative law judges to acquire or maintain the technical expertise specified by agency rule.

4. If the division cannot furnish one of its administrative law judges in response to an agency request, the administrator shall designate in writing a full-time employee of an agency other than the requesting agency to serve as administrative law judge for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of administrative law judges employed by the division.

5. The division may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding.

6. After July 1, 1999, a person shall not be newly employed by the division as an administra-

tive law judge to preside over contested case proceedings unless that person has a license to practice law in this state.

7. The division shall adopt rules pursuant to this chapter and chapter 17A to do all of the following:

a. To establish procedures for agencies to request and for the administrator to assign administrative law judges employed by the division.

b. To establish procedures and adopt forms, consistent with chapter 17A and other provisions of law, to govern administrative law judges employed by the division, but any rules adopted under this paragraph shall be applicable to a particular contested case proceeding only to the extent that they are not inconsistent with the rules of the agency under whose authority that proceeding is conducted. Nothing in this paragraph precludes an agency from establishing procedural requirements otherwise within its authority to govern its contested case proceedings, including requirements with respect to the timeliness of decisions rendered for it by administrative law judges.

c. To establish standards and procedures for the evaluation, training, promotion, and discipline for the administrative law judges employed by the division. The procedures shall include provisions for each agency for whom a particular administrative law judge presides to submit to the division on a periodic basis the agency's views with respect to the performance of that administrative law judge or the need for specified additional training for that administrative law judge. However, the evaluation, training, promotion, and discipline of all administrative law judges employed by the division shall remain solely within the authority of the department.

d. To establish, consistent with the provisions of this section and chapter 17A, a code of administrative judicial conduct that is similar in function and substantially equivalent to the Iowa code of judicial conduct, to govern the conduct, in relation to their quasi-judicial functions in contested cases, of all persons who act as presiding officers under the authority of section 17A.11, subsection 1. The code of administrative judicial conduct shall separately specify which provisions are applicable to agency heads or members of multimembered agency heads when they act as presiding officers, taking into account the objectives of the code and the fact that agency heads, unlike administrative law judges, have other duties imposed upon them by law. The code of administrative judicial conduct may also contain separate provisions, that are appropriate and consistent with the objectives of such a code, to govern the conduct of agency heads or the members of multimember agency heads when they act as presiding officers. However, a provision of the code of administrative judicial conduct shall not be made applicable to agency heads or members of multimember agency heads unless the application of that provision to agency heads and members of multimember agency heads has previously been approved by the administrative rules coordinator.

e. To facilitate the performance of the responsibilities conferred upon the division by this section, chapter 17A, and any other provision of law.

8. The division may do all of the following:

a. Provide administrative law judges, upon request, to any agency that is required to or wishes to utilize the services of an administrative law judge employed by the division.

b. Maintain a staff of reporters and other personnel.

c. Administer the provisions of this section and rules adopted under its authority.

9. The division may charge agencies for services rendered and the payment received shall be considered repayment receipts as defined in section 8.2.

10. Except to the extent specified otherwise by statute, decisions of administrative law judges employed by the division are subject to review by the agencies for which they act as presiding officers as provided by section 17A.15 or any other provision of law.

98 Acts, ch 1202, §3, 46; 2002 Acts, ch 1162, §11 – 13

Subsection 1, paragraph a amended
Subsection 2 amended
Subsection 7, paragraph c amended

CHAPTER 10B

AGRICULTURAL LANDHOLDING REPORTING

10B.1 Definitions.
10B.2 Interests described.
10B.3 Persons required to file reports.
10B.4 Reporting requirements.
10B.4A Suspension of other filing requirements.
10B.5 Use of reports.
10B.6 Penalties.

10B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agricultural land"* means the same as defined in section 9H.1.

2. *"Cooperative association"* means any entity organized on a cooperative basis, including an association of persons organized under chapter 497, 498, or 499; an entity composed of entities organized under those chapters; or a cooperative organized under chapter 501.

3. *"Corporation"* means a domestic or foreign corporation, including an entity organized pursuant to chapter 490, or a nonprofit corporation.

4. *"Farming"* means the same as defined in section 9H.1.

5. *"Foreign business"* means the same as defined in section 9I.1.

6. *"Foreign government"* means the same as defined in section 9I.1.

7. *"Limited liability company"* means a foreign or domestic limited liability company, including a limited liability company as defined in section 490A.102.

8. *"Limited partnership"* means a foreign or domestic limited partnership, including a limited partnership as defined in section 487.101, subsection 7, and a domestic or foreign limited liability limited partnership under section 487.1301 or 487.1303.

9. *"Nonprofit corporation"* means any of the following:

a. A corporation organized under the provisions of former chapter 504 or chapter 504A.

b. A corporation which qualifies under Title 26, section 501, of the United States Code.

10. *"Nonresident alien"* means the same as defined in section 9I.1.

11. *"Reporting entity"* means any of the following:

a. A corporation, other than a family farm corporation as defined in section 9H.1, including an authorized farm corporation as defined in section 9H.1 or networking farmers corporation as defined in section 10.1, holding an interest in agricultural land in this state.

b. A cooperative association holding an interest in agricultural land in this state.

c. A limited partnership, other than a family farm limited partnership as defined in section 9H.1, holding an interest in agricultural land in this state.

d. A person acting in a fiduciary capacity or as a trustee on behalf of a person, including a corporation, cooperative association, limited liability company, or limited partnership, which holds in a trust, other than through a family trust as defined in section 9H.1, including through an authorized trust, an interest in agricultural land in this state.

e. A limited liability company, other than a family farm limited liability company as defined in section 9H.1, including an authorized limited liability company as defined in section 9H.1, or a networking farmers limited liability company or farmers cooperative limited liability company as defined in section 10.1, holding an interest in agricultural land in this state.

f. A foreign business holding an interest in agricultural land in this state as provided in chapter 9I.

g. A foreign government holding an interest in agricultural land in this state as provided in chapter 9I.

h. A nonresident alien holding an interest in agricultural land in this state as provided in chapter 9I.

98 Acts, ch 1110, §201, 301; 2000 Acts, ch 1024, §2; 2002 Acts, ch 1050, §2

Subsection 2 amended

10B.2 Interests described.

A reporting entity holds an interest in agricultural land if the reporting entity directly or indirectly owns or leases agricultural land in this state.

98 Acts, ch 1110, §202, 301

10B.3 Persons required to file reports.

The reports required under section 10B.4 shall be signed and filed by the following individuals required to submit reports pursuant to that section for their respective reporting entities:

1. A person serving as the president or other officer or authorized representative of a corporation.

2. A person serving as the president or other officer or authorized representative of a cooperative association.

3. A person acting as the general partner of a limited partnership.

4. A person acting in a fiduciary capacity or as a trustee on behalf of a person.

5. A person who is a member, manager, or authorized representative of a limited liability company.

6. A person serving as the president or other officer or authorized representative of a foreign business.

7. A person authorized to make the report by a foreign government.

8. A nonresident alien or an agent, trustee, or fiduciary of the nonresident alien.

98 Acts, ch 1110, §203, 301

10B.4 Reporting requirements.

1. An annual report shall be filed by a reporting entity with the secretary of state on or before March 31 of each year as required by rules adopted by the secretary of state pursuant to chapter 17A. The reports shall be filed on forms prepared and supplied by the secretary of state.

2. A report required pursuant to this section shall contain information for the last year regard-

ing the reporting entity as required by the secretary of state which shall at least include all of the following:

a. The name and address of the reporting entity.

b. The name and address of the person supervising the daily operations on the agricultural land in which the reporting entity holds an interest.

c. The following information regarding each person who holds an interest in the reporting entity:

(1) The name and address of the person.

(2) The person's citizenship, if other than the United States.

(3) The percentage interest held by the person in the reporting entity, unless the person is a natural person who holds less than a ten percent interest in a reporting entity.

d. The percentage interest that a reporting entity holds in another reporting entity, and the number of acres of agricultural land that is attributable to the reporting entity which holds an interest in another reporting entity as provided in chapter 10.

e. A certification that the reporting entity meets all of the requirements to lawfully hold agricultural land in this state.

f. The number of acres of agricultural land held by the reporting entity, including the following:

(1) The total number of acres in the state.

(2) The number of acres in each county identified by county name.

(3) The number of acres owned.

(4) The number of acres leased.

(5) The number of acres held other than by ownership or lease.

(6) The number of acres used for the production of row crops.

g. If the reporting entity is a life science enterprise, as provided in chapter 10C, as that chapter exists on or before June 30, 2004, the total amount of commercial sale of life science products and products other than life science products which are produced from the agricultural land held by the life science enterprise.

3. A reporting entity other than a foreign business, foreign government, or nonresident alien shall be excused from filing a report with the secretary of state during any year in which the reporting entity holds an interest in less than twenty acres of agricultural land in this state and the gross revenue produced from all farming on the land equals less than ten thousand dollars.

98 Acts, ch 1110, §204, 301; 2000 Acts, ch 1197, §1, 10

10B.4A Suspension of other filing requirements.

The secretary of state shall not prepare or distribute forms for reports or file reports otherwise required pursuant to section 9H.5A, 9I.8, or 501.103. A person required to file a report pursuant to this chapter is not required to file a report under those sections.

A person required to file a report pursuant to this chapter is not required to register with the secretary of state as otherwise required in any chapter enumerated in this section.

2000 Acts, ch 1022, §2; 2002 Acts, ch 1028, §2, 6
NEW unnumbered paragraph 2

10B.5 Use of reports.

1. The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of this chapter has occurred.

2. Information provided in reports required in this chapter shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent that agricultural land is held in this state by corporations and other business and foreign entities and the effect of such land ownership upon the economy of this state. The secretary of state shall assist any committee of the general assembly studying these issues.

98 Acts, ch 1110, §205, 301

10B.6 Penalties.

1. The failure to timely file a report or the filing of false information in a report as provided in section 10B.4 is punishable by a civil penalty not to exceed one thousand dollars.

2. The secretary of state shall notify a reporting entity which the secretary of state has reason to believe is required to file a report and who has not filed a timely report, that the person may be in violation of section 10B.4. The secretary of state shall include in the notice a statement of the penalty which may be assessed if the required report is not filed within thirty days. The secretary of state shall refer to the attorney general any reporting entity which the secretary of state has reason to believe is required to report if, after thirty days from receipt of the notice, the reporting entity has not filed the required report. The attorney general may, upon referral from the secretary of state, file an action in district court to seek the assessment of a civil penalty of one hundred dollars for each day the report is not filed.

98 Acts, ch 1110, §206, 301

CHAPTER 10C

LIFE SCIENCE PRODUCTS

10C.1 Definitions.
10C.2 Purpose.
10C.3 Life science enterprises — agricultural land interests.
10C.4 Enforcement — penalties.
10C.5 Repeal.
10C.6 Existing life science enterprises.

10C.1 Definitions.

1. *"Actively engaged in farming"* means the same as defined in section 10.1.

2. *"Agricultural commodity"* means the same as defined in section 190C.1.

3. *"Agricultural land"* means land suitable for use in farming as defined in section 9H.1.

4. *"Animal"* means a creature belonging to the bovine, caprine, equine, ovine, or porcine species.

5. *"Corporation"* means a domestic or foreign corporation subject to chapter 490, a nonprofit corporation, or a cooperative.

6. *"Economic development board"* or *"board"* means the economic development board created pursuant to section 15.103.

7. *"Family farm entity"* means the same as defined in section 10.1.

8. *"Life science by-product"* means a commodity, other than a life science product, if the commodity derives from the production of a life science product and the commodity is not intended or used for human consumption.

9. *"Life science enterprise"* or *"enterprise"* means a corporation or limited liability company organized for the purpose of using biotechnological systems or techniques for the production of life science products.

10. *"Life science product"* or *"product"* means a product derived from an animal by using biotechnological systems or techniques and which includes only the following:

a. Embryos or oocytes for use in animal implantation.

b. Blood, milk, or urine for use in the manufacture of pharmaceuticals or nutriceuticals.

c. Cells, tissue, or organs for use in animal or human transplantation.

11. *"Limited liability company"* means a limited liability company as defined in section 490A.102.

2000 Acts, ch 1197, §2, 10

10C.2 Purpose.

The purpose of this chapter is to promote economic growth in this state during this period of revolutionary technological advancement in animal and human health sciences, by providing for the development of industries unrelated to traditional farming, but devoted to the production of life science products derived from animals.

2000 Acts, ch 1197, §3, 10

10C.3 Life science enterprises — agricultural land interests.

Notwithstanding any other provision of law, a life science enterprise may acquire or hold an ownership or leasehold interest in agricultural land if the economic development board approves a life science enterprise plan as provided in section 15.104. A life science enterprise must acquire or hold the agricultural land pursuant to the plan which may be amended as provided by the board. However, the life science enterprise shall not hold a total of more than three hundred twenty acres of agricultural land. The life science enterprise shall hold the land only for purposes of producing life science products according to the life science enterprise plan. In addition, the life science enterprise shall not acquire or hold agricultural land if the life science enterprise receives any form of financing from an Iowa agricultural industry finance corporation as provided in chapter 15E. A life science enterprise that complies with this section may hold the interest in the agricultural land, as provided in the plan, for as long as commercial sales of products produced from the agricultural land are subject to the following:

1. The sale of life science products.

2. The sale of cull livestock kept on the agricultural land, surplus commodities produced as feed for livestock kept on the agricultural land, or life science by-products.

2000 Acts, ch 1197, §4, 10

10C.4 Enforcement — penalties.

1. The office of attorney general or a county at-

torney shall enforce the provisions of this chapter.

2. A life science enterprise violating this chapter shall be assessed a civil penalty of not more than twenty-five thousand dollars. Each day that a violation exists shall constitute a separate offense. In addition, the life science enterprise shall divest itself of any land held in violation of this chapter within one year after judgment. The court may determine the method of divesting an interest held by a life science enterprise found to be in violation of this chapter. A financial gain realized by the enterprise which disposes of an interest held in violation of this chapter shall be forfeited to the general fund of the state. All court costs and fees shall be paid by the enterprise holding the interest in violation of this chapter.

3. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

2000 Acts, ch 1197, §5, 10

10C.5 Repeal.

Sections 10C.1 through 10C.4 and this section are repealed July 1, 2004.

2000 Acts, ch 1197, §6, 10

10C.6 Existing life science enterprises.

This section applies on and after July 1, 2004.

1. *a.* A life science enterprise may acquire or hold agricultural land, notwithstanding section 10C.5 as that section exists in the 2003 Code or 2003 Code Supplement, if all of the following apply:

(1) The life science enterprise acquires the agricultural land on or before June 30, 2004.

(2) The enterprise acquires or holds the agricultural land pursuant to chapter 10C as that chapter exists in the 2003 Code or 2003 Code Supplement.

(3) The economic development board has approved a life science enterprise plan filed on or before June 30, 2004, with the board. The enterprise must acquire or hold the agricultural land pursuant to the plan which may be amended at any time and approved by the board pursuant to section 15.104.

b. The life science enterprise must file a report with the secretary of state as provided in section 10B.4.

2. A person who is a successor in interest to a life science enterprise may acquire or hold agricultural land, notwithstanding section 10C.5 as that section exists in the 2003 Code or 2003 Code Supplement, if all of the following apply:

a. The person meets the qualifications of a life science enterprise and acquires or holds the agricultural land as provided in chapter 10C as that chapter exists in the 2003 Code or 2003 Code Supplement.

b. The person acquires or holds the agricultural land according to the life science enterprise plan filed by the person's predecessor in interest and approved by the economic development board. The plan may be amended at any time and approved by the board pursuant to section 15.104.

c. The person has filed a notice with the economic development board as required by the board. The notice shall state that the person is a successor in interest. The notice must be filed with the board within thirty days following the person's acquisition of the interest.

d. The person must file a report as a life science enterprise with the secretary of state as provided in section 10B.4.

2000 Acts, ch 1197, §7, 10

CHAPTER 10D

AGRICULTURAL LAND INTERESTS OF QUALIFIED ENTERPRISES

Legislative purpose; 2002 Acts, ch 1028, §1

10D.1 Definitions.
10D.2 Qualified enterprises — agricultural land interests.
10D.3 Enforcement — penalties.

10D.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agricultural land"* means land suitable for use in farming as defined in section 9H.1.

2. *"Baby chicks"* means the same as defined in

section 168.1.

3. *"Qualified enterprise"* or *"enterprise"* means a domestic or foreign corporation subject to chapter 490, a nonprofit corporation organized under chapter 504A, a limited liability company as defined in section 490A.102, a cooperative association as defined in section 10.1, or a foreign business as defined in section 9I.1.

2002 Acts, ch 1028, §3, 6; 2002 Acts, ch 1175, §74
NEW section

10D.2 Qualified enterprises — agricultural land interests.

Notwithstanding any other provision of law, a qualified enterprise may acquire or hold an ownership or leasehold interest in agricultural land as long as the qualified enterprise complies with all of the following requirements:

1. The enterprise files a notice with the secretary of state not later than June 30, 2002. The notice shall be a simple statement providing the name of the enterprise and the address of the enterprise's registered office or registered agent. The notice shall indicate that the enterprise intends to acquire or hold an interest in agricultural land under this chapter. The secretary of state shall file the notice together with reports required for the enterprise as required in chapter 10B.

2. The enterprise holds a total of not more than one thousand two hundred eighty acres of agricultural land. The enterprise must hold not more than eight hundred acres of agricultural land in any one county.

3. The enterprise only holds the agricultural land for a designated or incidental use.

a. A designated use must relate to producing baby chicks or fertile chicken eggs for any of the following purposes:

(1) Sale or resale as breeding stock or breeding stock progeny.

(2) Research, testing, or experimentation related to the genetic characteristics of chickens.

(3) The production and sale of products using biotechnological systems or techniques for purposes of manufacturing animal vaccine, pharmaceutical, or nutriceutical products.

b. An incidental use must be for a purpose related to the sale of a surplus commodity or cull animal that is produced or kept on the agricultural land, or to the sale of any by-product that is produced as part of a designated use.

2002 Acts, ch 1028, §4, 6
NEW section

10D.3 Enforcement — penalties.

1. The office of attorney general or a county attorney shall enforce the provisions of this chapter.

2. A person who violates a provision of this chapter shall be subject to all of the following:

a. The person shall be assessed a civil penalty of not more than twenty-five thousand dollars. Each day that a violation exists constitutes a separate offense.

b. The person shall be divested of any land held in violation of this chapter within one year after judgment. The court may determine the method of divesting an interest held by a person found to be in violation of this chapter. A financial gain realized by the person that disposes of an interest held in violation of this chapter shall be forfeited.

c. The person shall pay all court costs and fees associated with any enforcement action which shall be taxed as court costs.

3. If the attorney general is the prevailing party, the moneys required to be paid or forfeited by a person who violates a provision of this chapter shall be deposited in the general fund of the state. If the county attorney is the prevailing party, the moneys shall be deposited in the general fund of the county.

4. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

5. A person who is in violation of this chapter shall not be subject to an enforcement action other than as provided in this section.

2002 Acts, ch 1028, §5, 6
NEW section

CHAPTER 11

AUDITOR OF STATE

AUDIT OF STATE DEPARTMENTS

11.1 Definitions.
11.2 Annual settlements.
11.3 Repealed by 75 Acts, ch 70, §1.
11.4 Report of audits.
11.5 Method of keeping accounts.
11.5A Audit costs.
11.5B Repayment of audit expenses by state departments and agencies.

AUDIT OF COUNTIES, CITIES, AND SCHOOL DISTRICTS

11.6 Examination of governmental subdivisions — consultative services — association of counties.
11.7 State auditors.
11.8 Assistants.
11.9 County, municipal and school auditors' salaries and expenses.
11.10 Examinations.
11.11 Scope of examinations.
11.12 Subpoenas.
11.13 Refusal to testify.
11.14 Reports — public inspection.
11.15 Report filed with county attorney.
11.16 Duty of attorney general.
11.17 Disclosures prohibited.
11.18 Examination of governmental subdivisions. Repealed by 89 Acts, ch 264, §10.
11.19 Auditor's powers and duties.
11.20 Bills — audit and payment.
11.21 Repayment — objections.
11.22 Uniform system of accounting. Repealed by 83 Acts, ch 123, §206, 209.
11.23 Duty to install.

REPORTS

11.24 Title of Act.
11.25 Reports required.
11.26 Repealed by 72 Acts, ch 1088, §206.
11.27 Biennial report.
11.28 Individual audit reports.
11.29 Fees. Repealed by 87 Acts, ch 115, §83.

SALARY

11.30 Salary.
11.31 Repealed by 72 Acts, ch 1088, §206.

OUTSIDE ACCOUNTANTS

11.32 Certified accountants employed.
11.33 through 11.35 Reserved.

ACCOUNTING SYSTEMS OF PRIVATE AGENCIES

11.36 Awards to private agencies — accounting system audit requirement.

AUDIT OF STATE DEPARTMENTS

11.1 Definitions.

The term *"department"* shall be construed to mean any authority charged by law with official responsibility for the expenditure of public money of the state and any agency receiving money from the general revenues of the state.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

[C24, 27, 31, §339; C35, §101-a1; C39, §**101.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.1]

2000 Acts, ch 1148, §1

11.2 Annual settlements.

1. The auditor of state shall annually, and more often if deemed necessary, make a full settlement between the state and all state officers and departments and all persons receiving or expending state funds, and shall annually make a complete audit of the books and accounts of every department of the state.

Provided, that the accounts, records, and documents of the treasury department shall be audited daily.

Provided further, that a preliminary audit of the educational institutions and the state fair board shall be made periodically, at least quarterly, to check the monthly reports submitted to the director of revenue and finance as required by section 421.31, subsection 4, and that a final audit of such state agencies shall be made at the close of each fiscal year.

2. In conjunction with the audit of the state board of regents required under this section, the auditor of state, in accordance with generally accepted auditing standards, shall perform audit testing on the state board of regents' investments. The auditor shall report to the state board of regents concerning compliance with state law and state board of regents' investment policies. The state board of regents is responsible for remedying any reported noncompliance with its own policy or practices.

The state board of regents shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an institution governed by the board.

All contracts or agreements with an investment entity or investment professional employed by an institution governed by the state board of regents shall require the investment entity or investment professional employed by an institution governed by the state board of regents to notify in writing the state board of regents within thirty days of receipt of all communication from an independent auditor or the auditor of state or any regulatory authority of the existence of a material weakness in internal control structure, or regulatory orders or sanctions against the investment entity or investment professional, with regard to the type of services being performed under the contracts or

agreements. This provision shall not be limited or avoided by another contractual provision.

The audit under this section shall not be certified until the most recent annual reports of any investment entity or investment professional employed by an institution governed by the state board of regents are reviewed by the auditor of state.

The review of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), pursuant to 17 C.F.R. § 270.30d-1 or the review, by the person performing the audit, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

As used in this subsection, *"investment entity"* and *"investment professional"* exclude a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 12C.

[C97, §161; S13, §161-a; C24, 27, 31, §340; C35, §101-a2; C39, §**101.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.2]

92 Acts, ch 1156, §1

11.3 Repealed by 75 Acts, ch 70, § 1.

11.4 Report of audits.

The auditor of state shall make or cause to be made and filed and kept in the auditor's office written reports of all audits and examinations, which reports shall set out in detail the following:

1. The actual condition of such department found to exist on every examination.

2. Whether, in the auditor's opinion,

a. All funds have been expended for the purpose for which appropriated.

b. The department so audited and examined is efficiently conducted, and if the maximum results for the money expended are obtained.

c. The work of the departments so audited or examined needlessly conflicts with or duplicates the work done by any other department.

3. All illegal or unbusinesslike practices.

4. Any recommendations for greater simplicity, accuracy, efficiency, or economy in the operation of the business of the several departments and institutions.

5. Comparisons of prices paid and terms obtained by the various departments for goods and services of like character and reasons for differences therein, if any.

6. Any other information which, in the auditor's judgment, may be of value to the auditor.

All such reports shall be filed and kept in the auditor's office.

The state auditor is hereby authorized to obtain, maintain, and operate, under the auditor's exclusive control such machinery as may be necessary to print confidential reports and documents originating in the auditor's office.

[S13, §161-a; C24, 27, 31, §342; C35, §101-a4; C39, §**101.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.4]

92 Acts, ch 1242, §14

11.5 Method of keeping accounts.

Each department and institution of the state shall keep its records and accounts in such form and by such methods as to be able to exhibit in its reports the matters required by the auditor of state, unless otherwise specifically prescribed by law. Each department and institution of the state shall keep its records and accounts in a current condition. The failure of the head of any department of the state to comply with this provision shall be ground for the department head's suspension from office.

[S13, §161-a; C24, 27, 31, §343; C35, §101-a5; C39, §**101.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.5]

Suspension of state officers, chapter 67

11.5A Audit costs.

When requested by the auditor of state, the department of management shall transfer from any unappropriated funds in the state treasury an amount not exceeding the expenses and prorated salary costs already paid to perform examinations of state executive agencies and the offices of the judicial branch, and federal financial assistance, as defined in Pub. L. No. 98-502, received by all other departments for which payments by agencies have not been made. Upon payment by the departments, the auditor of state shall credit the payments to the state treasury.

87 Acts, ch 234, §422; 98 Acts, ch 1047, §9

11.5B Repayment of audit expenses by state departments and agencies.

The auditor of state shall be reimbursed by a department or agency for performing examinations of the following state departments or agencies, or funds received by a department or agency:

1. Department of commerce.
2. Department of human services.
3. State department of transportation.
4. Iowa department of public health.
5. State board of regents.
6. Department of agriculture and land stewardship.
7. Iowa veterans home.
8. Department of education.
9. Department of workforce development.
10. Department of natural resources.
11. Offices of the clerks of the district court of

the judicial branch.

12. The Iowa public employees' retirement system.

13. Federal financial assistance, as defined in Pub. L. No. 98-502, received by all other departments.

14. Information technology department.

90 Acts, ch 1247, §3; 90 Acts, ch 1261, §24; 94 Acts, ch 1187, §16; 96 Acts, ch 1186, §23; 98 Acts, ch 1047, §10; 2000 Acts, ch 1141, §13, 19

AUDIT OF COUNTIES, CITIES, AND SCHOOL DISTRICTS

11.6 Examination of governmental subdivisions — consultative services — association of counties.

1. *a.* The financial condition and transactions of all cities and city offices, counties, county hospitals organized under chapters 347 and 347A, memorial hospitals organized under chapter 37, entities organized under chapter 28E having gross receipts in excess of one hundred thousand dollars in a fiscal year, merged areas, area education agencies, and all school offices in school districts, shall be examined at least once each year, except that cities having a population of seven hundred or more but less than two thousand shall be examined at least once every four years, and cities having a population of less than seven hundred may be examined as otherwise provided in this section. The examination shall cover the fiscal year next preceding the year in which the audit is conducted. The examination of school offices shall include an audit of all school funds, the certified annual financial report, and the certified enrollment as provided in section 257.6. Differences in certified enrollment shall be reported to the department of management.

Subject to the exceptions and requirements of subsection 2 and subsection 4, paragraph *"c"*, examinations shall be made as determined by the governmental subdivision either by the auditor of state or by certified public accountants, certified in the state of Iowa, and they shall be paid from the proper public funds of the governmental subdivision.

b. (1) In conjunction with the audit of the governmental subdivision required under this section, the person performing the audit shall also perform tests for compliance with the investment policy of a reasonable number of investment transactions in relation to the total investments and quantity of transactions in the period audited. The results of the compliance testing shall be reported in accordance with generally accepted auditing standards. The person performing the audit may also make recommendations for changes to investment policy or practices. The governmental subdivision is responsible for the remedy of reported noncompliance with its policy or practices.

(2) As part of its audit, the governmental subdivision is responsible for obtaining and providing to the person performing the audit the audited financial statements and related report on internal control structure of outside persons, performing any of the following during the period under audit for the governmental subdivision:

(a) Investing public funds.

(b) Advising on the investment of public funds.

(c) Directing the deposit or investment of public funds.

(d) Acting in a fiduciary capacity for the governmental subdivision.

The audit under this section shall not be certified until all material information required by this subparagraph is reviewed by the person performing the audit.

(3) The review by the person performing the audit of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), pursuant to 17 C.F.R. § 270.30d-1 or the review, by the person performing the audit, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

(4) All contracts or agreements with outside persons performing any of the functions listed in subparagraph (2) shall require the outside person to notify in writing the governmental subdivision within thirty days of receipt of all communication from the person performing the audit or any regulatory authority of the existence of a material weakness in internal control structure, or regulatory orders or sanctions against the outside person, with regard to the type of services being performed under the contracts or agreements. This provision shall not be limited or avoided by another contractual provision.

(5) As used in this subsection, *"outside person"* excludes a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 12C.

(6) A joint investment trust organized pursuant to chapter 28E shall file the audit reports required by this chapter with the administrator of the securities bureau of the insurance division of the department of commerce within ten days of receipt from the auditor. The auditor of a joint investment trust shall provide written notice to the administrator of the time of delivery of the reports to the joint investment trust.

(7) If during the course of an audit of a joint investment trust organized pursuant to chapter 28E, the auditor determines the existence of a material weakness in the internal control structure

or a material violation of the internal control structure, the auditor shall report the determination to the joint investment trust which shall notify the administrator in writing within twenty-four hours, and provide a copy of the notification to the auditor. The auditor shall provide, within twenty-four hours of the receipt of the copy of the notice, written acknowledgment of the receipt to the administrator. If the joint investment trust does not make the notification within twenty-four hours, or the auditor does not receive a copy of the notification within twenty-four hours, the auditor shall immediately notify the administrator in writing of the material weakness in the internal control structure or the material violation of the internal control structure.

2. *a.* A city, community college, school district, area education agency, entity organized under chapter 28E, county, county hospital, or memorial hospital desiring to contract with or employ certified public accountants shall utilize procedures which include a request for proposals.

b. The governing body of a city, community college, school district, area education agency, entity organized under chapter 28E, county, county hospital, or memorial hospital utilizing the auditor of state instead of a certified public accountant to perform an audit shall notify the auditor of state by June 1 of the year to be audited. If the governing body fails to notify the auditor of state of the decision to use the auditor of state, the auditor of state may perform the audit required in subsection 1 only if provisions are not made by the governing body to contract for the audit.

3. A township or city for which examinations are not required under subsection 1 may contract with or employ the auditor of state or certified public accountants for an examination of its financial transactions and condition of its funds. A financial examination is mandatory on application by one hundred or more taxpayers, or if there are fewer than five hundred taxpayers in the township or city, then by fifteen percent of the taxpayers. Payment for the examination shall be made from the proper public funds of the township or city.

4. In addition to the powers and duties under other provisions of the Code, the auditor of state may at any time cause to be made a complete or partial reaudit of the financial condition and transactions of any city, county, county hospital, memorial hospital, entity organized under chapter 28E, merged area, area education agency, school corporation, township, or other governmental subdivision, or an office of any of these, if one of the following conditions exists:

a. The auditor of state has probable cause to believe such action is necessary in the public interest because of a material deficiency in an audit of the governmental subdivision filed with the auditor of state or because of a substantial failure of the audit to comply with the standards and procedures established and published by the auditor of state.

b. The auditor of state receives from an elected official or employee of the governmental subdivision a written request for a complete or partial reaudit of the governmental subdivision.

c. The auditor of state receives a petition signed by at least fifty eligible electors of the governmental subdivision requesting a complete or partial reaudit of the governmental subdivision. If the governmental subdivision has not contracted with or employed a certified public accountant to perform an audit of the fiscal year in which the petition is received by the auditor of state, the auditor of state may perform an audit required by subsection 1 or 3.

The state audit shall be paid from the proper public funds available in the office of the auditor of state. In the event the audited governmental subdivision recovers damages from a person performing a previous audit due to negligent performance of that audit or breach of the audit contract, the auditor of state shall be entitled to reimbursement on an equitable basis for funds expended from any recovery made by the governmental subdivision.

An examination under this subsection shall include a determination of whether investments by the governmental subdivision are authorized by state law.

5. The auditor of state may, within three years of filing, during normal business hours upon reasonable notice of at least twenty-four hours, review the audit work papers prepared in the performance of an audit or examination conducted pursuant to this section.

6. An audit required by this section shall be completed within nine months following the end of the fiscal year that is subject to the audit. At the request of the governmental subdivision, the auditor of state may extend the nine-month time limitation upon a finding that the extension is necessary and not contrary to the public interest and that the failure to meet the deadline was not intentional.

7. The auditor of state shall make guidelines available to the public setting forth accounting and auditing standards and procedures and audit and legal compliance programs to be applied in the examination of the governmental subdivisions of the state, which shall require a review of the internal control structure and specify testing of transactions for compliance. The guidelines shall include a requirement that the certified public accountant immediately notify the auditor of state regarding any suspected embezzlement or theft. The auditor shall also provide standard reporting formats for use in reporting the results of an examination of a governmental subdivision.

8. The auditor of state shall provide advice and counsel to public entities and certified public accountants concerning audit and examination matters. The auditor of state shall adopt rules in ac-

cordance with chapter 17A to establish a fee schedule based upon the prevailing rate for the service rendered. The auditor of state shall obtain payment from a public entity or certified public accountant for advisory and consultation services rendered pursuant to this subsection. The auditor of state may waive any charge provided in this subsection and may determine to provide certain services without cost.

9. The Iowa state association of counties shall keep accounts as required by the auditor of state. These accounts shall be audited annually by either the auditor of state or a certified public accountant certified in the state of Iowa. The audit shall state all moneys expended for expenses incurred by and salaries paid to legislative representatives and lobbyists of the association.

10. The auditor of state shall adopt rules in accordance with chapter 17A to establish and collect a filing fee for the filing of each report of examination conducted pursuant to subsections 1 through 3. The funds collected shall be maintained in a segregated account for use by the office of the auditor of state in performing audits conducted pursuant to subsection 4 and for work paper reviews conducted pursuant to subsection 5. Any funds collected by the auditor pursuant to subsection 4 shall be deposited in this account. Notwithstanding section 8.33, the funds in this account shall not revert at the end of any fiscal year.

[S13, §100-d, 1056-a11, -a13; C24, 27, 31, 35, 39, §**113;** C46, 50, 54, 58, 62, 66, 71, §11.6; C73, 75, 77, 79, 81, §11.6, 332.3(27); S81, §11.6; 81 Acts, ch 117, §1000]

84 Acts, ch 1123, §1; 84 Acts, ch 1128, §1; 89 Acts, ch 264, §1; 90 Acts, ch 1013, §1; 91 Acts, ch 267, §222; 92 Acts, ch 1156, §2 – 4; 92 Acts, ch 1187, §1; 92 Acts, ch 1232, §301; 92 Acts, ch 1242, §16, 17; 96 Acts, ch 1215, §20

11.7 State auditors.

The auditor of state shall appoint such number of state auditors as may be necessary to make such examinations. Said auditors shall be of recognized skill and integrity, familiar with the system of accounting in county, school and municipal offices, and with the laws relating to the county, school and municipal affairs. Each auditor shall give bond in the sum of two thousand dollars, conditioned as bonds of county officers, which bonds shall be approved and filed as bonds of state officers. Such auditors shall be subject at all times to the direction of said auditor of state.

[S13, §100-a, 1056-a11; C24, 27, 31, 35, 39, §**114;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.7]

Conditions, approval, filing of bonds, § 64.2, 64.19, 64.23

11.8 Assistants.

The auditor of state shall appoint such additional assistants to the auditors as may be necessary, who shall be subject to discharge at any time by the auditor.

[S13, §100-a; C24, 27, 31, 35, 39, §**115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.8]

11.9 County, municipal and school auditors' salaries and expenses.

Except as otherwise provided in section 11.6, subsection 4, for reaudits, county, municipal and school auditors and their assistants shall, in addition to salary, be reimbursed for their actual and necessary expenses. Salary payments shall include a prorated amount for vacation and sick leave. All payments shall be paid from funds in the state treasury upon certification of the auditor of state, and the general fund shall be reimbursed as provided in sections 11.20 and 11.21.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.9]

89 Acts, ch 264, §2

11.10 Examinations.

Said auditors shall have the right while making said examinations, to examine all papers, books, records, and documents of any of said officers and shall have the right, in the presence of the custodian or the custodian's deputy, to have access to the cash drawers and cash in the official custody of such officer, and a like right, during business hours, to examine the public accounts of the county, school or city in any depository which has public funds in its custody pursuant to the law.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §**116;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.10]

11.11 Scope of examinations.

All examinations shall be made without notice to the office examined. On every examination inquiry shall be made as to the financial condition and resources of the county, school or city; whether the cost price for improvements and material in said county, school or city is in excess of the cost price for like things in other counties, schools or cities of the state; whether the county, school or city authorities are complying with the law; and whether the accounts and reports are being accurately kept.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §**117;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.11]

11.12 Subpoenas.

The auditor of state and all auditors shall, in all matters pertaining to an authorized examination, have power to issue subpoenas of all kinds, administer oaths and examine witnesses, either orally or in writing, and the expense attending the same, including the expense of taking oral examinations in shorthand, shall be paid as other expenses of the auditor.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §**118;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.12]

Expenses, §11.21

11.13 Refusal to testify.

In case any witness duly subpoenaed refuses to attend, or refuses to produce documents, books, and papers, or shall attend and refuse to make oath or affirmation, or, being sworn or affirmed, shall refuse to testify, the auditor of state or the auditor's designee may apply to the district court, or any judge of said district having jurisdiction thereof, for the enforcement of attendance and answers to questions as provided by law in the matter of taking depositions.

[S13, §100-d; C24, 27, 31, 35, 39, §**119;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.13]

Procedure for contempt, §622.76, 622.77, 622.84, 622.102; also chapter 665

11.14 Reports — public inspection.

A report of such examination shall be made in triplicate signed and verified by the officers making the examination; one copy to be filed with the auditor of state, one copy with the officer under investigation, and one copy to the county auditor who shall transmit same to the board of supervisors if a county office is under investigation, or with the president of the school board if a school is under investigation, or with the mayor and the council if a city office is under examination. All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with the state auditor shall constitute a simple misdemeanor.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the county, municipality or school district which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, such notice shall be sent to the official newspapers of the county.

[S13, §100-d, 1056-a11; C24, 27, 31, 35, 39, §**120;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.14]

11.15 Report filed with county attorney.

If said examination discloses any irregularity in the collection or disbursement of public funds or in the abatement of taxes a copy of said report shall be filed with the county attorney and it shall be the county attorney's duty to co-operate with the state auditor, and, in proper cases, with the attorney general, to secure the correction of the irregularity.

[S13, §100-d; C24, 27, 31, 35, 39, §**121;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.15]

11.16 Duty of attorney general.

In the event such examination discloses any grounds which would be ground for removal from office, a fourth copy of said report shall be provided and filed by the auditor of state in the office of the attorney general of the state, who shall thereupon take such action as, in the attorney general's judgment, the facts and circumstances warrant.

[S13, §100-d; C24, 27, 31, 35, 39, §**122;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.16]

11.17 Disclosures prohibited.

No such auditor shall make any disclosure of the result of any investigation, except as the auditor is required by law to report the same or to testify in court. Any violation of this provision shall be ground for removal.

[S13, §100-d; C24, 27, 31, 35, 39, §**123;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.17]

11.18 Examination of governmental subdivisions. Repealed by 89 Acts, ch 264, § 10. See § 11.6.

11.19 Auditor's powers and duties.

Where an examination is made under contract with, or employment of, certified or registered public accountants, the auditor shall, in all matters pertaining to an authorized examination, have all of the powers and be vested with all the authority of state auditors employed by the auditor of state, and the cost and expense of the examination shall be paid by the city, school district, or township procuring the examination. An itemized sworn statement of the per diem and expense of the auditor shall be filed with the clerk of the city, township, or school district, before payment thereof. Upon completion of such examination, a signed copy thereof shall be filed by the accountant employed with the auditor of state.

All reports shall be open to public inspection, including copies on file in the office of the state auditor, and refusal on the part of any public official to permit such inspection when such reports have been filed with the state auditor, shall constitute a simple misdemeanor.

In addition to the foregoing, notice that the report has been filed shall be forwarded immediately to each newspaper, radio station or television station located in the city, school district or township which is under investigation or audit; except that if there is no newspaper, radio station or television station located therein, the notice shall be sent to the official newspapers of the county.

Failure to file the report with the auditor of state within thirty days after receiving notification of not receiving the audit report shall bar the accountant from making any governmental subdivision audits under section 11.6 for the following fiscal year.

[C39, §**124.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.19]

89 Acts, ch 264, §3

11.20 Bills — audit and payment.

If the examination is made by the auditor of state under this chapter, each auditor shall file with the auditor of state an itemized, certified and sworn voucher of expense for the time the auditor is actually engaged in the examination. The salaries shall be included in a two-week payroll period. Upon approval of the auditor of state the director of revenue and finance may issue warrants for the payment of the vouchers and salary payments, including a prorated amount for vacation and sick leave, from any unappropriated funds in the state treasury. Repayment to the state shall be made as provided by section 11.21.

[S13, §100-a, -e, 1056-a11; C24, 27, 31, 35, 39, §**125;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.20]

84 Acts, ch 1118, §1; 85 Acts, ch 67, §4

11.21 Repayment — objections.

Upon payment by the state of the salary and expenses, the auditor of state shall file with the warrant-issuing officer of the county, municipality or school, whose offices were examined, a sworn statement consisting of the itemized expenses paid and prorated salary costs paid under section 11.20. Upon audit and approval by the board of supervisors, council or school board, the warrant-issuing officer shall draw a warrant for the amount on the county, or on the general fund of the municipality or school in favor of the auditor of state, which warrant shall be placed to the credit of the general fund of the state. In the event of the disapproval of any items of said statement by the county, municipality, or school authorities, written objections shall be filed with the auditor of state within thirty days from the filing thereof. Disapproved items of the statement shall be paid the auditor of state upon receiving final decisions emanating from public hearing established by the auditor of state.

Whenever the county board of supervisors, the school board, or the council shall file written objections on the question of compensation and expenses with the auditor of state, the auditor or the auditor's representative shall hold a public hearing in the municipality where the examination was made and shall give the complaining board notice of the time and place of hearing. After such hearing the auditor shall have the power to reduce the compensation and expenses of the auditor whose bills have been questioned. Any auditor who shall be found guilty of falsifying an expense voucher or engagement report shall be immediately discharged by the auditor of state and shall not be eligible for re-employment. Such auditor must thereupon reimburse the auditor of state for all such compensation and expenses so found to have been overpaid and in the event of failure to do so, the auditor of state may collect the same amount from the auditor's surety by suit, if necessary.

[S13, §100-a, -e, 1056-a11; C24, 27, 31, 35, 39, §**126;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.21]

83 Acts, ch 123, §28, 209

11.22 Uniform system of accounting. Repealed by 83 Acts, ch 123, § 206, 209. See § 333A.4.

11.23 Duty to install.

Each school officer shall install and use in the office a system of uniform blanks and forms as prescribed by law. State auditors shall assist the school officers in installing the system.

[S13, §100-b, -c, 1056-a10; C24, 27, 31, §112; C35, §130-a3; C39, §**130.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.23]

83 Acts, ch 123, §29, 209

REPORTS

11.24 Title of Act.

This Act* shall be known and may be cited as the *"State Audit Act"*.

[C35, §130-e1; C39, §**130.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.24]

*See 33 Acts, ch 5

11.25 Reports required.

The auditor of state shall make the following reports:

1. A biennial report to the governor and the general assembly of all operations of the auditor's office.

2. Individual audit reports giving the results of all examinations and audits of all departments and establishments and all fiscal officers of the state and local governments.

[C35, §130-e2; C39, §**130.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.25]

11.26 Repealed by 72 Acts, ch 1088, § 206.

11.27 Biennial report.

The biennial report shall include:

1. A narrative report and such statistical statements as the state auditor deems essential to display the results of audits of the state departments and establishments.

2. The results of an audit of the documents and the records of the department of management created in the budget and financial control Act, which records shall be audited by the auditor; and, the results of the auditor's audit of all taxes and other revenue collected and paid into the treasury, and the sources thereof.

3. The auditor's recommendations to improve the business methods of the government and any other matters having for their purpose to bring about increased economy and efficiency in the conduct of the affairs of the government.

[C35, §130-e4; C39, §**130.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.27]

94 Acts, ch 1023, §2

11.28 Individual audit reports.

The individual audit reports shall include exhibits and schedules to report data similar to that now required by section 11.4, and shall as nearly as possible correspond and be prepared similar in form to the audit reports rendered by certified public accountants, and such reports shall include information as to the assets and liabilities of the various departments and institutions audited as of the beginning and close of the fiscal year audited, the receipts and expenditures of cash, the disposition of materials and other properties, and the net income and net operating cost. These reports shall also set forth the cost as to each inmate, member, or student per year in the various classifications of expenses, and shall make comparisons thereof, and shall give such other information, suggestions, and recommendations as may be deemed of advantage and to the best interests of the taxpayers of the state; provided, that the daily audit report of the state treasury shall be submitted to the director of the department of revenue and finance and the director of the department of management; provided, further, that copies of all individual audit reports of all state departments and establishments shall be transmitted to the directors' offices after the completion of each audit, and that copies of all local government audits shall, until otherwise provided, be also supplied to the directors' offices; provided, further, that copies of such audit reports shall also be supplied to the officers of the counties, schools, and cities, as now provided by law; and, provided further, that summaries of the findings, recommendations, and comparisons, together with any other information deemed essential, shall be printed and distributed to members of the general assembly.

[C35, §130-e5; C39, §**130.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.28]

86 Acts, ch 1245, §1973

11.29 Fees. Repealed by 87 Acts, ch 115, § 83.

SALARY

11.30 Salary.

The salary of the auditor of state shall be as fixed by the general assembly.

[C31, 35, §130-c1; C39, §**130.9;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §11.30]

11.31 Repealed by 72 Acts, ch 1088, § 206.

OUTSIDE ACCOUNTANTS

11.32 Certified accountants employed.

Nothing in this chapter will prohibit the auditor of state, with the prior written permission of the state executive council, from employing certified public accountants or registered public accountants for specific assignments. Under the provision of this section, the auditor of state may employ such accountants for any assignment now expressly reserved to the auditor of state. Payments, after approval by the executive council, will be made to the accountants so employed from funds from which the auditor of state would have been paid had the auditor of state performed the assignment, or if no such specific funds are indicated, then payment will be made from the funds of the executive council.

[C66, 71, 73, 75, 77, 79, 81, §11.32]

11.33 through 11.35 Reserved.

ACCOUNTING SYSTEMS OF PRIVATE AGENCIES

11.36 Awards to private agencies — accounting system audit requirement.

The governor or a state agency, prior to awarding a grant or purchase of service contract to a private agency, shall obtain from the auditor of state or the auditor's designee a certification stating that the grantee or contractor has an accounting system adequate to effect compliance with the terms and conditions of the grant or contract. The certification shall include an evaluation of internal controls in the accounting system to determine whether the system provides reliable information and promotes efficient operation of the agency. A private agency awarded a grant or purchase of service contract by or through the governor or a state agency shall submit to the audit required by this section prior to the actual transfer of funds and shall pay for the audit under chapter 11. The auditor of state may accept an audit report by an independent certified public accountant as evidence of adequacy. To the extent possible, the auditor of state shall use existing records on file in the auditor's office to make a determination of adequacy. This section shall apply only when the grant or contract exceeds one hundred fifty thousand dollars or when the grant or contract together with other grants or contracts awarded by the governor or a state agency during the fiscal year exceeds one hundred fifty thousand dollars in the aggregate.

[C81, §7A.8]

C87, §11.36

See also §216A.98

CHAPTER 12

TREASURER OF STATE

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12.1 Office — accounts — reports.

The treasurer shall keep the treasurer's office at the seat of government, and shall keep an accurate account of the receipts and disbursements at the treasury in books kept for that purpose, in which the treasurer shall specify the names of the persons from whom money is received, and on what account, and the time thereof.

The treasurer is responsible for reporting on the bonding activities of all political subdivisions, instrumentalities, and agencies of the state and shall make recommendations to the general assembly and the governor on modification in the bonding authority. The treasurer shall notify each political subdivision, instrumentality, and agency of the state to report to the treasurer the amount of bonds outstanding and each new bond issue. The treasurer shall adopt rules and establish forms for carrying out this provision. Each political subdivision, instrumentality, and agency of the state shall provide all the information required by the treasurer under this provision.

[C51, §62; R60, §83; C73, §75; C97, §101; C24, 27, 31, 35, 39, §**131;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.1]

86 Acts, ch 1245, §823

12.2 Daily balance sheet.

The treasurer of state shall so keep the books of the treasurer's office that at the close of each day's business the account of each fund will show the balance or deficit therein, and show also the total amount of the money in the state treasury, and should the books not be in balance, the daily statement shall show the amount of the surplus or deficit by which the books fail to balance.

[C24, 27, 31, 35, 39, §**132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.2]

12.3 Record and payment of warrants.

The treasurer of state shall keep a record of warrants issued as certified by the director of revenue and finance, and receive in payment of public dues the warrants so issued in conformity with law, and redeem the same, if there be money in the treasury not otherwise appropriated, and on receiving any such warrant shall cause the person presenting it to endorse it, and shall indicate on its face in a suitable manner that it has been redeemed, and keep a record of warrants redeemed showing the name of the person to whom paid, date of payment, and amount of interest paid.

[C51, §63; R60, §84; C73, §76; C97, §102; C24, 27, 31, 35, 39, §**133;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.3]

12.4 Receipts.

When money is paid to the treasurer, the treasurer shall execute receipts in duplicate therefor, stating the fund to which it belongs, one of which must be delivered to the director of revenue and finance in order to obtain the proper credit, and the treasurer must be charged therewith.

[C51, §64; R60, §85; C73, §77; C97, §103; C24, 27, 31, 35, 39, §**134;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.4]

12.5 Payment.

The treasurer shall pay no money from the treasury but upon the warrants of the director of revenue and finance, and only in the order of their presentation.

[C51, §65; R60, §86; C73, §78; C97, §104; S13, §104; C24, 27, 31, 35, 39, §**135;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.5]

Warrants not paid for want of funds, chapter 74

12.6 Report to and account with director of revenue and finance.

Once in each week the treasurer shall certify to the director of revenue and finance the number, date, amount, and payee of each warrant taken up by the treasurer, with the date when taken up, and the amount of interest allowed; and on the first Monday of January, and the first day of April, July, and October, annually, the treasurer is directed to account with the director of revenue and finance and deposit with the department of revenue and finance all such warrants received at the treasury, and take the director's receipt therefor.

[C51, §67; R60, §88; C73, §80; C97, §106; S13, §106; C24, 27, 31, 35, 39, §**137;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.6]

12.7 Interest on bonds.

When interest on any bonds of the state becomes due, the treasurer shall provide funds for the payment thereof on the day and at the place where payable; and persons holding such bonds are required to present the same at such place within ten days from such day, at the expiration of which time the funds remaining unexpended and vouchers for interest paid shall be returned to the treasury.

[C73, §82; C97, §108; C24, 27, 31, 35, 39, §**138;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.7]

Deposits in general, §12C.1

12.8 Investment or deposit of surplus — appropriation — investment income — lending securities.

The treasurer of state shall invest or deposit, as provided by law, any of the public funds not currently needed for operating expenses and shall do so upon receipt of monthly notice from the director of revenue and finance of the amount not so needed. In the event of loss on redemption or sale of securities invested as prescribed by law, and if the transaction is reported to the executive council, neither the treasurer nor director of revenue and finance is personally liable but the loss shall be

charged against the funds which would have received the profits or interest of the investment and there is appropriated from the funds the amount so required.

Investment income may be used to maintain compensating balances, pay transaction costs for investments made by the treasurer of state, and pay administrative and related overhead costs incurred by the treasurer of state in the management of money. The treasurer of state shall coordinate with the affected departments to determine how compensating balances, transaction costs, or money management and related costs will be established. All charges against a retirement system must be documented and notification of the charges shall be made to the appropriate administration of the retirement system affected.

The treasurer of state, with the approval of the investment board of the Iowa public employees' retirement system, may conduct a program of lending securities in the Iowa public employees' retirement system portfolio. When securities are loaned as provided by this paragraph, the treasurer shall act in the manner provided for investment of moneys in the Iowa public employees' retirement fund under section 97B.7A. The treasurer of state shall report at least annually to the investment board of the Iowa public employees' retirement system on the program and shall provide additional information on the program upon the request of the investment board or the employees of the Iowa public employees' retirement system division of the department of personnel.

[C24, 27, 31, 35, 39, §**141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.8]

84 Acts, ch 1180, §6; 85 Acts, ch 227, §6; 88 Acts, ch 1242, §1; 91 Acts, ch 268, §123; 94 Acts, ch 1001, §1; 2001 Acts, ch 68, §1, 24

Investment or deposit, §12B.10

2001 amendment to unnumbered paragraph 3 takes effect July 1, 2002; 2001 Acts, ch 68, §24

Unnumbered paragraph 3 amended

12.9 Annual report of filing fees. Repealed by 95 Acts, ch 219, § 46.

12.10 Deposits by state officers.

Except as otherwise provided, all elective and appointive state officers, boards, commissions, and departments shall, within ten days succeeding the collection, deposit with the treasurer of state, or to the credit of the treasurer of state in any depository designated by the treasurer of state, ninety percent of all fees, commissions, and moneys collected or received. The balance actually collected in cash, remaining in the hands of any officer, board, or department shall not exceed the sum of five thousand dollars and money collected shall not be held more than thirty days. This section does not apply to the state fair board, the state board of regents, the utilities board of the department of commerce, the director of the department of human services, the Iowa finance authority or to the funds received by the state racing and gaming commission under sections 99D.7 and 99D.14.

[C73, §3778; C97, §191; S13, §170-d; C24, 27, 31, 35, 39, §**143;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.10]

83 Acts, ch 96, §157, 159; 83 Acts, ch 187, §29; 84 Acts, ch 1266, §2

12.11 Unclaimed fees. Repealed by 90 Acts, ch 1090, § 1. See chapter 556.

12.12 Statement required. Repealed by 95 Acts, ch 219, § 46.

12.13 Payment of claims. Repealed by 95 Acts, ch 219, § 46.

12.14 Statement itemized.

Each deposit shall be accompanied by an itemized statement of the sources from which the money has been collected, and the funds to be credited, a duplicate of which shall, at the time, be filed with the department of revenue and finance.

[S13, §170-d; C24, 27, 31, 35, 39, §**144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.14]

12.15 Director and treasurer to keep account.

The treasurer and director of revenue and finance shall each keep an accurate account of the moneys so deposited.

[S13, §170-f; C24, 27, 31, 35, 39, §**145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.15]

12.16 Swampland indemnity.

All swampland indemnity money paid by the federal government to this state under any Act of Congress relating thereto shall be paid by the treasurer of state to the county treasurer of the county where the land, on account of which such payment is made, is located. The county treasurer shall be liable on a bond for the safe custody of said funds and shall promptly notify the board of supervisors of the receipt thereof. Said funds shall be applied by the said supervisors as required by law.

[S13, §116-d, -e, -f; C24, 27, 31, 35, 39, §**146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.16]

12.17 Biennial report.

The treasurer of state shall, biennially, at the time provided by law, report to the governor the state of the treasury and exhibit therein the amount received and paid out by the treasurer since the last report, and the balance remaining in the treasury.

[C51, §68; R60, §89; C73, §81; C97, §107; C24, 27, 31, 35, 39, §**147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.17]

See also §258.12

12.18 Salary.

The salary of the treasurer of state shall be as fixed by the general assembly.

[C31, 35, §147-c1; C39, §**147.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.18]

12.19 Six-months' limit on checks.

On the first day of each quarter of each fiscal year of the state, the state treasurer shall stop payment on and make void all treasury checks dated six months or more prior to that date, and the state treasurer shall not redeem any such check thereafter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.19]

12.20 Issuance of new check.

Upon presentation of any check voided as above provided by the holder thereof after said six months' period, the state treasurer is hereby authorized to issue to said holder, a new check for the amount of the original check.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §12.20]

12.21 Accepting credit card payments.

The treasurer of state may enter into an agreement with a financial institution to provide credit card receipt processing for state departments which are authorized by the treasurer of state to accept payment by credit card. A department which accepts credit card payments may adjust its fees to reflect the cost of processing as determined by the treasurer of state. A fee may be charged by a department for using the credit card payment method notwithstanding any other provision of the Code setting specific fees. The treasurer of state shall adopt rules to implement this section.

89 Acts, ch 120, §1; 92 Acts, ch 1126, §1; 95 Acts, ch 219, §36

12.22 through 12.24 Reserved.

12.25 Legislative findings.

The general assembly finds and declares that because of differences in the timing of the receipt of tax and other revenues and the expenditure of funds by the state, the state has been unable to remain timely on its obligations, including its payments of school aid; the untimely payment of state aid has created a hardship for schools by increasing their costs and hindering their ability to remain timely on their obligations; it would be advantageous to the state to be able to issue notes in anticipation of its tax and other revenues in order to coordinate its cash flow; and pending their use, the proceeds of notes issued in anticipation of tax and other revenues should be invested in order to pay the cost of issuing the notes and as a benefit to the state. It is the purpose of this section and section 12.26 to enable the state to make timely payments of its obligations, including its school aid payments, by securing funds through the issuance of notes in anticipation of the state's tax and other revenues.

85 Acts, ch 34, §18

12.26 Issuance of revenue anticipation notes.

1. In anticipation of the collection of revenues in and for a fiscal year, the treasurer of state may borrow money, and issue notes for the money, in an amount not exceeding the estimated state revenues for that year. The sums so anticipated are appropriated for the payment of the notes with interest at maturity. The notes may be issued prior to the beginning of a fiscal year, but the notes shall be payable not later than the end of the fiscal year for which they are issued. More than one series of notes may be issued in a fiscal year and the proceeds of notes may be used to retire a prior issue of notes provided that the total outstanding at any one time shall not exceed the limit prescribed in this section. The proceeds from the issuance of notes shall be invested in the same manner as other public funds and shall be used only for the purposes for which the anticipated tax revenues were levied, collected, and appropriated.

2. The principal of and the interest on notes are payable solely out of the taxes and revenues of the state for the fiscal year for which the notes are issued. The notes of each issue shall be dated, shall bear interest at a rate or rates which may be variable according to a method approved by the treasurer of state, without regard to any limit contained in chapter 74A or any other law of this state, and shall mature at a time or times not later than the end of the fiscal year, all as determined by the treasurer of state. The notes may be made redeemable before maturity, at the option of the treasurer of state, at the price and under the terms and conditions provided by the treasurer of state. The treasurer of state shall determine the form of the notes and shall fix the denomination of the notes and the place of payment of principal and interest which may be at any bank within or without the state. The notes shall be executed by the manual or facsimile signatures of the treasurer of state, the director of management, and the director of revenue and finance. If an official whose signature or a facsimile of whose signature appears on any notes ceases to hold office before the delivery of the notes, the signature or the facsimile is valid and sufficient for all purposes the same as if the official had remained in office until the delivery. All notes issued under this section have the qualities and incidents of negotiable instruments under the laws of this state and without regard to any other law. The notes shall be issued in registered form. The notes may be sold in a manner, at public or private sale, as the treasurer of state may

determine without regard to chapter 75.

3. Notes may be issued under this section without obtaining the consent of any officer or agency of this state, and without any other proceedings or conditions other than those proceedings and conditions which are specifically required by this section. The treasurer of state, the director of management, and the director of revenue and finance are not liable personally on the notes or subject to any personal liability or accountability by reason of the issuance of the notes.

4. As used in this section, *"notes"* means notes and other obligations, including short term obligations backed by a commercial letter of credit, issued by the treasurer of state pursuant to this section.

85 Acts, ch 34, §19; 88 Acts, ch 1134, §11

12.27 Credit rules. Repealed by 99 Acts, ch 73, § 1.

12.28 Centralized financing for state agency purchase of real and personal property.

1. As used in this section, unless the context otherwise requires:

a. "Financing agreement" means any lease, lease-purchase agreement, or installment acquisition contract in which the lessee may purchase the leased property at a price which is less than the fair market value of the property at the end of the lease term, or any lease, agreement, or transaction which would be considered under criteria established by the internal revenue service to be a conditional sale agreement for tax purposes.

b. "State agency" means a board, commission, bureau, division, office, department, or branch of state government. However, state agency does not mean the state board of regents, institutions governed by the board of regents, or authorities created under chapter 16, 16A, 175, 257C, 261A, or 327I.

2. The treasurer of state shall have sole authority to enter into financing agreements on behalf of state agencies. The treasurer of state may enter into financing agreements, including master lease-purchase agreements, for the purpose of funding state agency requests for the financing of real or personal property, wherever located within the state, including equipment, buildings, facilities, and structures, or additions or improvements to existing buildings, facilities, and structures. Subject to the selection procedures of section 12.30, the treasurer may employ financial consultants, banks, trustees, insurers, underwriters, accountants, attorneys, and other advisors or consultants as necessary to implement the provisions of this section. The costs of professional services and any other costs of entering into the financing agreements may be included in the financing agreement as a cost of the property being financed.

3. The financing agreement may provide for ultimate ownership of the property by the state. Title to all property acquired in this manner shall be taken and held in the name of the state. The state shall be the lessee or contracting party under all financing agreements entered into pursuant to this section. The financing agreements may contain provisions pertaining, but not limited to, interest, term, prepayment, and the state's obligation to make payments on the financing agreement beyond the current budget year subject to availability of appropriations. All projects financed under this section shall be deemed to be for an essential governmental purpose.

4. The treasurer of state may contract for additional security or liquidity for a financing agreement and may enter into agreements for letters of credit, lines of credit, insurance, or other forms of security with respect to rental and other payments due under a financing agreement. Fees for the costs of additional security or liquidity are a cost of entering into the financing agreement and may be paid from funds annually appropriated by the general assembly to the state agency for which the property is being obtained, from other funds legally available, or from proceeds of the financing agreement. The provision of a financing agreement which provides that a portion of the periodic rental or lease payment be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 does not apply to financing agreements entered into pursuant to this section.

5. Payments and other costs due under financing agreements entered into pursuant to this section shall be payable from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available. The treasurer of state, in cooperation with the department of revenue and finance, shall implement procedures to ensure that state agencies are timely in making payments due under the financing agreements.

6. The maximum principal amount of financing agreements which the treasurer of state can enter into shall be one million dollars per state agency in a fiscal year, subject to the requirements of section 8.46. For the fiscal year, the treasurer of state shall not enter into more than one million dollars of financing agreements per state agency, not considering interest expense. However, the treasurer of state may enter into financing agreements in excess of the one million dollar per agency per fiscal year limit if a constitutional majority of each house of the general assembly, or the legislative council if the general assembly is not in session, and the governor, authorize the treasurer of state to enter into additional financing agreements above the one million dollar authorization contained in this section. The treasurer of state shall not enter into a financing agreement for real or personal property which is to be constructed for

use as a prison or prison-related facility without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be financed. However, financing agreements for an energy conservation measure, as defined in section 7D.34, are exempt from the provisions of this subsection, but are subject to the requirements of section 7D.34 or 473.20A. In addition, financing agreements funded through the materials and equipment revolving fund established in section 307.47 are exempt from the provisions of this subsection.

7. The treasurer of state shall decide upon the most economical method of financing a state agency's request for funds. The treasurer of state may utilize master lease-purchase agreements, issue certificates of participation in lease-purchase agreements, or use any other financing method or method of sale which the treasurer believes will provide savings to the state in issuance or interest costs.

8. A financing agreement to which the state is a party is an obligation of the state for purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and other fiduciaries responsible for the investment of funds.

9. Publication of any notice, whether under section 73A.12 or otherwise, and other or further proceedings with respect to the financing agreements referred to in this section are not required except as set forth in this section, notwithstanding any provisions of other statutes of the state to the contrary.

96 Acts, ch 1177, §2

12.29 Reserved.

12.30 Coordination of bonding activities.

1. As used in this section, unless the context otherwise requires:

a. *"Authority"* means a department, or public or quasi-public instrumentality of the state including, but not limited to, the authority created under chapter 12E, 16, 16A, 175, 257C, 261A, or 327I, which has the power to issue obligations, except that *"authority"* does not include the state board of regents or the Iowa finance authority to the extent it acts pursuant to chapter 260C.

b. *"Obligations"* means notes, bonds, including refunding bonds, and other evidences of indebtedness of an authority.

2. Notwithstanding any other provision of the Code the treasurer shall coordinate the issuance of obligations by authorities. The treasurer, or the treasurer's designee, shall serve as ex officio nonvoting member of each authority. Prior to the issuance of obligations, an authority shall notify the treasurer of its intention to do so. The treasurer shall:

a. Select and fix the compensation for, in consultation with the respective authority, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the treasurer's judgment are necessary to carry out the authority's intention. Prior to the initial selection, the treasurer shall, after consultation with the authorities, establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The treasurer shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of the engagement. The treasurer may waive the requirements for a competitive selection procedure for any specific employment upon written notice to the executive council stating why the waiver is in the public interest. Upon selection by the treasurer, the authority shall promptly employ the individual or firm and be responsible for payment of costs.

b. Submit an account to the respective authority for all costs incurred in each transaction. The treasurer will charge an authority for costs of administration. The authority shall disburse to the treasurer the amounts set forth in the account.

c. Direct the investment or deposit of the proceeds of the sale of the obligations, in accordance with the language of the documents drafted to effectuate issuance of the obligations, except for the proceeds necessary to fund the ongoing operations of the authority. This paragraph does not apply to proceeds of obligations issued before July 1, 1986.

d. Collect from an authority and other sources, any statistical and financial information necessary to draft an offering document or prepare a presentation necessary for the issuance or marketing of the obligations.

3. Each respective authority shall consult with the treasurer on the following:

a. Amount, terms, and conditions of the obligations to be issued by the authority including other provisions deemed necessary by the treasurer or the authority.

b. The documents or instruments necessary to effectuate issuance of the obligation.

c. Presentations to rating agencies and marketing activities. The treasurer may choose to participate in these presentations.

4. Professional services, including but not limited to attorneys, accountants, financial advisors, banks, underwriters, insurers, and other em-

ployees employed by a project sponsor may be selected by the project sponsor, if the obligation is issued in behalf of the project sponsor and the purchaser of the obligation does not have recourse to the authority or state.

5. The treasurer may delay implementation of this section for up to six months following July 1, 1986, for an authority to facilitate an orderly transition.

86 Acts, ch 1245, §824; 90 Acts, ch 1254, §29; 2000 Acts, ch 1208, §19, 25

LINKED INVESTMENTS

12.31 Short title.

This section and sections 12.32 through 12.43B shall be known as the *"Linked Investments for Tomorrow Act"*.

86 Acts, ch 1096, §1; 89 Acts, ch 234, §1; 2000 Acts, ch 1058, §3

12.32 Definitions.

As used in section 12.31, this section, and sections 12.33 through 12.43B, unless the context otherwise requires:

1. *"Eligible borrower"* means any person who is in the business or is entering the business of producing, processing, or marketing horticultural crops or nontraditional crops in this state or any person in this state who is qualified to participate in one of the programs in this section and sections 12.33 through 12.43B. *"Eligible borrower"* does not include a person who has been determined to be delinquent in making child support payments or any other payments due the state.

2. *"Eligible lending institution"* means a financial institution that is empowered to make commercial loans and is eligible pursuant to chapter 12C to be a depository of state funds.

3. *"Linked investment"* means a certificate of deposit placed pursuant to this section and sections 12.33 through 12.43B by the treasurer of state with an eligible lending institution, at an interest rate not more than three percent below current market rate on the condition that the institution agrees to lend the value of the deposit, according to the investment agreement provided in section 12.35, to an eligible borrower at a rate not to exceed four percent above the rate paid on the certificate of deposit. The treasurer of state shall determine and make available the current market rate which shall be used each month.

4. *"Qualified linked investment"* means a linked investment in which a certificate of deposit is placed by the treasurer of state with an eligible lending institution under the traditional livestock producers linked investment loan program established under section 12.43A.

86 Acts, ch 1096, §2; 89 Acts, ch 234, §2; 96 Acts, ch 1058, §1; 97 Acts, ch 195, §1, 2, 10; 99 Acts, ch 177, §1, 9; 2000 Acts, ch 1058, §4, 5; 2001 Acts, ch 24, §1

12.33 Public policy.

It is the public policy of this state that a linked investments for tomorrow program be established to provide statewide availability of lower cost funds for lending purposes that will inject needed capital into the business of, and stimulate existing or encourage new businesses in, the area of producing, processing, or marketing horticultural or nontraditional crops.

86 Acts, ch 1096, §3; 89 Acts, ch 234, §3; 97 Acts, ch 195, §3, 10

12.34 Linked investments — limitations — rules — maturity and renewal of certificates.

1. The treasurer of state may invest up to the lesser of one hundred eight million dollars or ten percent of the balance of the state pooled money fund in certificates of deposit in eligible lending institutions as provided in sections 12.32 and 12.33, this section, and sections 12.35 through 12.43B. The moneys invested pursuant to this section shall be used as follows:

a. The treasurer of state may invest up to sixty-eight million dollars to support programs provided in sections 12.32 and 12.33, this section, and sections 12.35 through 12.43B other than the traditional livestock producers linked investment loan program as provided in section 12.43A and the value-added agricultural linked investment loan program as provided in section 12.43B.

b. The treasurer of state shall invest the remaining amount as follows:

(1) At least twenty million dollars shall be invested in order to support the traditional livestock producers linked investment loan program as provided in section 12.43A.

(2) At least twenty million dollars shall be invested in order to support the value-added agricultural linked investment loan program as provided in section 12.43B.

2. *a.* The treasurer of state shall adopt rules pursuant to chapter 17A to administer sections 12.32 and 12.33, this section, and sections 12.35 through 12.43B.

b. The treasurer of state in cooperation with the board of directors of the agricultural development authority as established in section 175.3 shall adopt rules for the administration of the traditional livestock producers linked investment loan program as provided in section 12.43A. The treasurer of state in cooperation with the agricultural products advisory council established in section 15.203 shall adopt rules for the administration of the value-added agricultural linked investment loan program as provided in section 15.204.

3. A certificate of deposit, which is placed by the treasurer of state with an eligible lending institution on or after July 1, 1996, may be renewed

at the option of the treasurer. The following shall apply to the certificate of deposit:

a. For a linked investment other than a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed five years.

b. For a qualified linked investment, the initial certificate of deposit for a given borrower shall have a maturity of one year. The certificate of deposit may be renewed on an annual basis for a total term not to exceed three years.

86 Acts, ch 1096, §4; 89 Acts, ch 234, §4; 96 Acts, ch 1058, §2, 3, 9, 10, 12; 97 Acts, ch 195, §4, 10; 99 Acts, ch 177, §2, 7, 9; 2001 Acts, ch 24, §2

12.35 Agreement — loan applications.

1. An eligible lending institution that desires to receive a linked investment shall enter into an agreement with the treasurer of state, which shall include requirements necessary for the eligible lending institution to comply with sections 12.32 through 12.34, this section, and sections 12.36 through 12.43B.

2. An eligible lending institution that desires to receive a linked investment shall accept and review applications for loans from eligible borrowers.

3. The eligible lending institution shall forward to the treasurer of state a linked investment loan package in the form and manner as prescribed by the treasurer of state. The package shall include information required by the treasurer of state, including but not limited to the amount of the loan requested and the purpose of the loan. The institution shall certify that the applicant is an eligible borrower.

86 Acts, ch 1096, §5; 89 Acts, ch 234, §5; 96 Acts, ch 1058, §4; 2001 Acts, ch 24, §3

12.36 Actions by treasurer.

1. The treasurer of state shall accept or reject a linked investment loan package or any portion of the package based on the type or terms of the loan involved, the availability of state funds, or the compliance of the eligible borrower or eligible lending institution.

2. Upon acceptance of the linked investment loan package or any portion of the package, the treasurer of state shall place certificates of deposit with the eligible lending institution at a rate not more than three percent below the current market rate. The treasurer of state shall not place a certificate of deposit with an eligible lending institution pursuant to sections 12.32 through 12.35, this section, and sections 12.37 through 12.43B, unless the certificate of deposit earns a rate of interest of at least two percent. Interest earned on the certificate of deposit and principal not renewed shall be remitted to the treasurer of state at the time the certificate of deposit matures. Certificates of deposit placed pursuant to sections 12.32 through 12.35, this section, and sections 12.37 through 12.43B are not subject to a penalty for early withdrawal.

86 Acts, ch 1096, §6; 89 Acts, ch 234, §6; 92 Acts, ch 1105, §1; 96 Acts, ch 1058, §5; 2001 Acts, ch 24, §4

12.37 Loans.

1. Upon the placement of a linked investment with an eligible lending institution, the institution is required to lend the funds to the eligible borrower listed in the linked investment loan package and in accordance with the investment agreement. The loan shall be at a rate not more than four percent above the rate paid the treasurer by the financial institution. The eligible lending institution shall be required to submit a certification of compliance with this section in the form and manner as prescribed by the treasurer of state.

2. The treasurer of state shall take all steps necessary to implement the linked investments for tomorrow program and monitor compliance of eligible lending institutions and eligible borrowers.

86 Acts, ch 1096, §7; 89 Acts, ch 234, §7

12.38 Reports.

By February 1 of each year, the treasurer of state shall report on the linked investments for tomorrow programs for the preceding calendar year to the governor, the department of economic development, the speaker of the house of representatives, and the president of the senate. The speaker of the house shall transmit copies of this report to the house co-chair of the joint economic development appropriations subcommittee and the chairs of the standing committees in the house which customarily consider legislation regarding agriculture and commerce, and the president of the senate shall transmit copies of this report to the senate co-chair of the joint economic development appropriations subcommittee and the chairs of the standing committees in the senate which customarily consider legislation regarding agriculture and commerce. The report shall set forth the linked investments made by the treasurer of state under the program during the year, the total amount deposited, the number of deposits, and an estimate of foregone interest, and shall include information regarding the nature, terms, and amounts of the loans upon which the linked investments were based and the eligible borrowers to which the loans were made.

86 Acts, ch 1096, §8; 89 Acts, ch 234, §8; 94 Acts, ch 1188, §31; 96 Acts, ch 1058, §6

12.39 Liability.

The state and the treasurer of state are not liable to an eligible lending institution in any manner for payment of the principal or interest on the

loan to an eligible borrower. Any delay in payments or default on the part of an eligible borrower does not in any manner affect the investment agreement between the eligible lending institution and the treasurer of state.

86 Acts, ch 1096, §9; 90 Acts, ch 1168, §6

12.40 Rural small business transfer linked investment loan program.

1. As used in this section, *"rural small business"* means an existing rural small business, for which local competition does not exist in the principal realm of business activity of that business, and the loss of which will work a hardship on the rural community. A rural small business may include a grocery store, drug store, gasoline station, convenience store, hardware business, or farm supply store. A rural small business does not include a new business.

2. The treasurer of state shall adopt rules consistent with sections 12.32 through 12.39, this section, and sections 12.41 through 12.43B to implement a rural small business transfer linked investment loan program to maintain and expand existing employment opportunities and the provision of retail goods on a local level in small rural communities by assisting in the transfer of ownership of retail-oriented businesses where, in the absence of sufficient financial assistance, the businesses may close.

3. In order to qualify as an eligible borrower, the rural small business must be located in a city with a population of five thousand or less. A rural small business located in a city located in a county with a population in excess of three hundred thousand, if the city is contiguous to another city in the county and that other city is contiguous to the largest city in that county, shall be ineligible to qualify as a borrower. In order to qualify under this program, all owners of the business or borrowers must not have a combined net worth exceeding five hundred thousand dollars as defined in rules adopted by the treasurer of state pursuant to chapter 17A and the rural small business must meet all of the following criteria:

a. Be a for-profit business.

b. Have annual sales of two million dollars or less.

c. Not be operated out of the home of any person, unless the person is eligible for a deduction on federal income taxes pursuant to 26 U.S.C. § 280A.

d. Not involve real estate investments, rental of real estate, leasing of real estate, or real estate speculation.

e. Liquor, beer, and wine sales must not exceed twenty percent of annual sales for establishments holding a class "C" liquor license issued pursuant to section 123.30.

4. In order to qualify as an eligible borrower, the transfer of the rural small business must be by purchase, lease-purchase, or contract of sale. The purchase must be for a portion of the business which is essential to its continued viability, including real estate where the business is located, fixtures attached to the real estate, equipment, supplies, and machinery relied upon by the business, and inventory for sale by the business.

5. In order to qualify as an eligible borrower, a borrower and the seller of the rural small business shall not be within the third degree of consanguinity or affinity.

6. Loan proceeds shall not be used to refinance existing debt, including credit card debt. However, proceeds may be used to refinance a short-term bridge loan made in anticipation of the treasurer's approval of the linked investment loan package.

7. During the lifetime of this loan program, the maximum amount of assistance that an eligible borrower or a business may receive through this loan program shall be fifty thousand dollars.

92 Acts, ch 1105, §2; 96 Acts, ch 1058, §7; 97 Acts, ch 23, §4; 97 Acts, ch 195, §5 – 7, 10; 2001 Acts, ch 24, §5

12.41 Horticultural and nontraditional crops linked investment loan program.

The treasurer of state shall adopt rules to implement a horticultural and nontraditional crops linked investment loan program to provide statewide availability of lower cost funds for lending that will stimulate existing or encourage new businesses in the areas of producing, processing, or marketing horticultural or nontraditional crops. The rules shall be in accordance with the following:

1. In order to qualify as an eligible borrower, the loan application must be for the purchase or lease of land, machinery, equipment, or the purchase of other inputs used in the business of producing, processing, or marketing horticultural or nontraditional crops as defined in rules adopted by the treasurer.

2. The gross income earned by the borrower's business of producing, processing, or marketing horticultural or nontraditional crops is not more than three hundred thousand dollars for the borrower's last tax year.

3. Loan proceeds shall not be used to refinance existing debt, including credit card debt. However, proceeds may be used to refinance a short-term bridge loan made in anticipation of the treasurer's approval of the linked investment loan package.

4. The maximum loan amount that an eligible borrower may receive under this program is two hundred thousand dollars for a production loan and five hundred thousand dollars for processing or marketing facilities.

96 Acts, ch 1058, §8; 97 Acts, ch 195, §8, 10; 99 Acts, ch 177, §3, 9

12.42 Reserved.

12.43 Focused small business linked investments program created — definitions.

The treasurer of state shall adopt rules to implement a focused small business linked investments program to increase the availability of lower cost funds to inject needed capital into small businesses owned and operated by women or minorities, which is the public policy of the state. The rules shall be in accordance with the following:

1. As used in this section:

a. "Disability" is defined as provided in section 15.102, subsection 5.

b. "Focused small business" means a new small business which is fifty-one percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with a disability, provided the business meets all the requirements of subsection 5.

c. "Major life activity" is defined as provided in section 15.102, subsection 5.

d. "Minority person" is defined as provided in section 15.102, subsection 5.

2. Loan applications for a focused small business shall be for the purchase of land, machinery, equipment, or licenses, or patent, trademark, or copyright fees and expenses.

3. During the lifetime of this loan program, the maximum amount of assistance that an eligible borrower or business may borrow or receive through this loan program shall be one hundred thousand dollars. An eligible borrower or business under this program shall be limited to one loan from one financial institution.

4. A preference shall be given to those persons who are less able than other persons to secure funds for a focused small business without participation in the focused small business linked investment program.

5. In order to qualify under this program, all owners of the business or borrowers must not have a combined net worth exceeding five hundred thousand dollars as defined in rules adopted by the treasurer of state pursuant to chapter 17A and the focused small business must meet all of the following criteria:

a. Be a for-profit business.

b. Have annual sales of two million dollars or less.

c. Not be operated out of the home of any person, unless the person is eligible for a deduction on federal income taxes pursuant to 26 U.S.C. § 280A.

d. Not involve real estate investments, rental of real estate, leasing of real estate, or real estate speculation.

e. Liquor, beer, and wine sales must not exceed twenty percent of annual sales for establishments holding a class "C" liquor license issued pursuant to section 123.30.

6. Loan proceeds shall not be used to refinance existing debt, including credit card debt. However, proceeds may be used to refinance a short-term bridge loan made in anticipation of the treasurer of state's approval of the linked investment loan package.

7. Eligible lending institutions shall verify the borrower is eligible to participate under the provisions of this section pursuant to rules adopted by the treasurer of state pursuant to chapter 17A.

87 Acts, ch 233, §128; 88 Acts, ch 1273, §4; 89 Acts, ch 234, §9; 94 Acts, ch 1201, §13; 97 Acts, ch 195, §9, 10

12.43A Traditional livestock producer's linked investment loan program.

1. As used in this section, unless the context otherwise requires:

a. "Farm operation" means the same as defined in section 352.2.

b. "Livestock" means cattle or swine.

c. "Livestock operation" means an animal feeding operation as defined in section 459.102 in which livestock is provided care and feeding, or any other area which is used for raising crops or other vegetation and upon which livestock is fed or allowed to graze.

d. "Traditional livestock producer" means a person who is the owner and operator of livestock subject to care and feeding at a livestock operation in which the person holds a legal interest. The person may own the livestock or own the livestock jointly with another person. The person must be actively engaged in the livestock operation by making management decisions and performing physical work relating to the care and feeding of the livestock on a regular, continuous, and substantial basis in a manner that is essential to the success of the livestock operation.

2. The treasurer of state shall adopt rules as provided in section 12.34 to implement a traditional livestock producers linked investment loan program. The purpose of the program is to increase the availability of lower cost loans to traditional livestock producers.

3. In order to qualify for a loan in accordance with an investment agreement under sections 12.32 through 12.43, this section, and section 12.43B, all of the following requirements must be satisfied:

a. In order to be an eligible borrower, all of the following must apply:

(1) The borrower must be a traditional livestock producer.

(2) The borrower must be a resident of this state who is at least eighteen years of age.

(3) The borrower must not be any of the following:

(a) A party to a pending legal or administrative action, including a contested case proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, re-

gardless of whether the pending action is brought by the department or the attorney general.

(b) Classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

b. The livestock operation must be located in this state.

c. The gross income earned by the borrower's farm operation must be more than fifty thousand dollars but not more than five hundred thousand dollars for the borrower's last tax year.

d. At least fifty percent of the average annual gross income earned by the borrower's farm operation derives from livestock owned and sold by the borrower. The average annual gross income shall be computed as the average of the gross income earned by the farm operation in the three preceding tax years.

4. An investment agreement shall not be for a loan of more than one hundred thousand dollars.

5. A borrower is not eligible to receive a loan as part of a linked investment loan package under this program if the borrower has received three loans pursuant to a linked investment loan package under this program approved by the treasurer of state within the last ten years. For purposes of this subsection, a loan provided as part of a renewed certificate of deposit shall be deemed to be a new loan.

99 Acts, ch 177, §4, 9; 2000 Acts, ch 1172, §2, 3; 2001 Acts, ch 24, §6

12.43B Value-added agricultural linked investment loan program.

1. The treasurer of state shall establish and administer, and adopt rules as necessary to establish and administer, a value-added agricultural linked investment loan program. The purpose of the program is to provide capital in the form of low-interest loans in order to do any of the following:

a. Stimulate existing businesses or encourage the establishment of new businesses that add value through the processing of agricultural commodities.

b. Encourage the production of agricultural commodities, if a shortage in production exists.

2. A borrower shall be eligible to participate in the value-added agricultural linked investment loan program, to the extent that the borrower meets eligibility requirements established by the treasurer of state as provided in section 12.34.

3. A borrower shall not receive a loan of more than two hundred fifty thousand dollars under this program.

99 Acts, ch 177, §5, 9

TARGETED SMALL BUSINESSES — WAIVER OF BOND REQUIREMENT

12.44 Iowa satisfaction and performance bond program.

Agencies of state government shall be required to waive the requirement of satisfaction, performance, surety, or bid bonds for targeted small businesses which are able to demonstrate the inability of securing such a bond because of a lack of experience, lack of net worth, or lack of capital. This waiver shall not apply to businesses with a record of repeated failure of substantial performance or material breach of contract in prior circumstances. The waiver shall be applied only to a project or individual transaction amounting to fifty thousand dollars or less, notwithstanding section 573.2. In order to qualify, the targeted small business shall provide written evidence to the department of inspections and appeals that the bond would otherwise be denied the business. The granting of the waiver shall in no way relieve the business from its contractual obligations and shall not preclude the state agency from pursuing any remedies under law upon default or breach of contract.

The department of inspections and appeals shall certify targeted small businesses for eligibility and participation in this program and shall make this information available to other state agencies.

Subdivisions of state government may also grant such a waiver under similar circumstances.

87 Acts, ch 233, §129; 88 Acts, ch 1273, §5; 90 Acts, ch 1156, §1; 92 Acts, ch 1244, §10

12.45 through 12.50 Reserved.

MAIN STREET LINKED INVESTMENTS LOAN PROGRAM

12.51 Main street linked investments loan program. Repealed by 96 Acts, ch 1058, § 10 – 12.

12.52 Application process. Repealed by 96 Acts, ch 1058, § 10 – 12.

12.53 through 12.60 Reserved.

STATE-SPONSORED CREDIT CARD

12.61 State-sponsored credit card.

1. For purposes of this section, unless the context otherwise requires:

a. "Financial institution" means a state bank as defined in section 524.103, subsection 33, a federally chartered state bank having its principal office within this state, a federally chartered credit

union having its principal office within this state, a federally chartered savings and loan association having its principal office within the state, a credit union organized under chapter 533, an association incorporated or authorized to do business under chapter 534, or a trust company organized or incorporated under the laws of this state.

b. "Financial institution credit card" means a credit card that entitles the holder to make open-account purchases up to an approved amount and is issued through the agency of a financial institution.

c. "Sponsoring entity" means an entity that allows its name or logo to be used on a particular financial institution credit card in exchange for a fee from the credit card issuer.

2. The treasurer is authorized to participate in a financial institution credit card program for the benefit of the state. Within six months of May 27, 1989, the treasurer shall contact each financial institution to determine if:

a. The financial institution or its Iowa holding company or Iowa affiliate currently administers a credit card program.

b. The credit card program provides a fee or commission on retail sales to the sponsoring entity for the issuance and use of the credit card.

c. The credit card program would accept the state as a sponsoring entity.

If the treasurer determines that the state may be a sponsoring entity for a financial institution credit card, the treasurer shall negotiate the most favorable rate for the state's fee by a credit card issuer. The state shall not offer a more favorable rate to any other credit card issuer. The rate must be expressed as a percentage of the gross sales from the use of the credit card. The proceeds of the fee shall be deposited in the Iowa resources enhancement and protection fund created under section 455A.18. The treasurer shall recommend a logo or design for the state-sponsored credit card indicating the use for which the revenues will be used.

In selecting a credit card issuer, the treasurer shall consider the issuer's record of investments in the state, shall take into consideration credit card features which will enhance the promotion of the state-sponsored credit card including, but not limited to, favorable interest rates, annual fees, and other fees for using the card, and shall require that the card be available to any person who qualifies for a credit card. Upon entering into an agreement with the financial institution, the treasurer shall notify all state agencies then possessing a credit card to obtain the new state-sponsored credit card.

89 Acts, ch 236, §8; 90 Acts, ch 1255, §1

TECHNICAL INFORMATION AND ASSISTANCE

12.62 Investments by agencies and political subdivisions — technical information and assistance.

The treasurer of state shall adopt rules pursuant to chapter 17A for providing technical information and assistance to political subdivisions, the state board of regents, instrumentalities, and agencies of the state authorized to invest funds which are seeking to invest public funds. The treasurer or the treasurer's designee shall provide technical information and assistance to a political subdivision, the state board of regents, or an instrumentality, or agency of the state authorized to invest funds at the request of the political subdivision, the state board of regents, or an instrumentality, or agency of the state authorized to invest funds, including but not limited to technical information regarding the statutory requirements for investments by the political subdivision, the state board of regents, or an instrumentality, or agency and technical assistance to enable the political subdivision, the state board of regents, or an instrumentality, or agency to invest funds in accordance with state law. However, the fact that information and assistance are provided under this section to a political subdivision, the state board of regents, or an instrumentality, or agency authorized to invest funds shall not make the state, the treasurer of state, or the treasurer's designee liable to a political subdivision, the state board of regents, or an instrumentality, or agency of the state in any manner for any loss, damage, or expense incurred by the political subdivision, the state board of regents, or an instrumentality, or agency as a result of an investment.

92 Acts, ch 1156, §5

12.63 and 12.64 Reserved.

HEALTHY IOWANS TOBACCO TRUST

12.65 Healthy Iowans tobacco trust.

1. A healthy Iowans tobacco trust is created in the office of the treasurer of state. Moneys transferred to the healthy Iowans tobacco trust from the endowment for Iowa's health account of the tobacco settlement trust fund established in section 12E.12 and appropriated or transferred from any other source shall be deposited in the healthy Iowans tobacco trust.

2. Moneys deposited in the healthy Iowans tobacco trust shall be used only in accordance with appropriations from the healthy Iowans tobacco trust for purposes related to health care, substance abuse treatment and enforcement, tobacco use prevention and control, and other purposes related to the needs of children, adults, and families in the state.

3. Notwithstanding section 8.33, any unexpended balance in the healthy Iowans tobacco trust at the end of the fiscal year shall be retained in the trust. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the healthy Iowans tobacco trust shall be credited to the healthy Iowans tobacco trust.

4. Moneys in the healthy Iowans tobacco trust shall be considered part of the general fund of the state for cash flow purposes only, provided any moneys used for cash flow purposes are returned to the trust by the close of each fiscal year.

97 Acts, ch 209, §19; 2000 Acts, ch 1232, §12, 17; 2001 Acts, ch 164, §1, 21; 2001 Acts, ch 184, §5, 16

12.66 through 12.70 Reserved.

VISION IOWA PROGRAM

12.71 General and specific bonding powers — vision Iowa program.

1. The treasurer of state may issue bonds upon the request of the vision Iowa board created in section 15F.102 and do all things necessary with respect to the purposes of the vision Iowa fund. The treasurer of state shall have all of the powers which are necessary to issue and secure bonds and carry out the purposes of the fund. The treasurer of state may issue bonds in principal amounts which, in the opinion of the board, are necessary to provide sufficient funds for the vision Iowa fund created in section 12.72, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the treasurer of state incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the board necessary or convenient to administer the fund; provided, however, excluding the issuance of refunding bonds, bonds issued pursuant to this section shall not be issued in an aggregate principal amount which exceeds three hundred million dollars. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

2. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the vision Iowa fund and any bond reserve funds established pursuant to section 12.72, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the board to the payment thereof. Bonds issued under this section shall contain on their face a statement that the bonds do not constitute an indebtedness of the state. The treasurer of state shall not pledge the credit or taxing power of this state or any political subdivision of this state or make bonds issued pursuant to this section payable out of any moneys except those in the vision Iowa fund.

3. The proceeds of bonds issued by the treasurer of state and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested or reinvested in any investment as directed by the board and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

4. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the treasurer of state. Chapters 73A, 74, 74A, and 75 do not apply to the sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this section and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

5. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

6. Bonds must be authorized by a trust indenture, resolution, or other instrument of the treasurer of state approved by the board. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the board the power to negotiate and fix the details of an issue of bonds.

7. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code to be valid, binding, or

effective.

8. Bonds issued under the provisions of this section are declared to be issued for a general public and governmental purpose and all bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

9. Subject to the terms of any bond documents, moneys in the vision Iowa fund may be expended for administration expenses.

10. The treasurer of state may issue bonds for the purpose of refunding any bonds or notes issued pursuant to this section then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this section. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the board for deposit in the vision Iowa fund established in section 12.72. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this section.

2000 Acts, ch 1174, §15

12.72 Vision Iowa fund and reserve funds.

1. A vision Iowa fund is created and established as a separate and distinct fund in the state treasury. The moneys in the fund are appropriated to the vision Iowa board for purposes of the vision Iowa program established in section 15F.302. Moneys in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes of the vision Iowa fund. The treasurer of state shall act as custodian of the fund and disburse moneys contained in the fund as directed by the vision Iowa board, including automatic disbursements of funds received pursuant to the terms of bond indentures and documents and security provisions to trustees. The fund shall be administered by the vision Iowa board which shall make expenditures from the fund consistent with the purposes of the vision Iowa program without further appropriation. An applicant under the vision Iowa program shall not receive more than seventy-five million dollars in financial assistance from the fund.

2. Revenue for the vision Iowa fund shall include, but is not limited to, the following, which shall be deposited with the treasurer of state or the treasurer's designee as provided by any bond or security documents and credited to the fund:

a. The proceeds of bonds issued to capitalize and pay the costs of the fund and investment earnings on the proceeds.

b. Interest attributable to investment of money in the fund or an account of the fund.

c. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

3. Moneys in the vision Iowa fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

4. *a.* The treasurer of state may create and establish one or more special funds, to be known as *"bond reserve funds"*, to secure one or more issues of bonds or notes issued pursuant to section 12.71. The treasurer of state shall pay into each bond reserve fund any moneys appropriated and made available by the state or the treasurer for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions authorizing their issuance, and any other moneys which may be available to the treasurer for the purpose of the fund from any other sources. All moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

b. Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this subsection, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums, and the sinking fund payments with respect to the bonds for the payment of which other moneys of the treasurer are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the treasurer to other funds or accounts to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

c. The treasurer of state shall not at any time issue bonds, secured in whole or in part by a bond

reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the treasurer at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund, will not be less than the bond reserve fund requirement for the fund. For the purposes of this subsection, the term *"bond reserve fund requirement"* means, as of any particular date of computation, an amount of money, as provided in the resolutions authorizing the bonds with respect to which the fund is established.

d. To assure the continued solvency of any bonds secured by the bond reserve fund, provision is made in paragraph *"a"* for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the treasurer shall, on or before January 1 of each calendar year, make and deliver to the governor the treasurer's certificate stating the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor shall submit to both houses printed copies of a budget including the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the treasurer pursuant to this subsection shall be deposited by the treasurer in the applicable bond reserve fund.

2000 Acts, ch 1174, §16; 2001 Acts, ch 24, §7, 8; 2001 Acts, 1st Ex, ch 5, §3, 7; 2002 Acts, ch 1119, §3

2001 amendment to subsection 4 is effective July 5, 2001, and applies retroactively to July 1, 2001; 2001 Acts, 1st Ex, ch 5, §7

Subsection 4, paragraph d amended

12.73 Vision Iowa fund moneys — administrative costs.

During the term of the vision Iowa program established in section 15F.302, two hundred thousand dollars of the moneys deposited each fiscal year in the vision Iowa fund and appropriated for the vision Iowa program shall be allocated each fiscal year to the department of economic development for administrative costs incurred by the department for purposes of administering the vision Iowa program.

2000 Acts, ch 1225, §31, 38, 39; 2001 Acts, ch 185, §34

12.74 Pledges.

It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the treasurer of state shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the treasurer of state whether or not the parties have notice of the lien.

2000 Acts, ch 1174, §17; 2000 Acts, ch 1232, §42; 2001 Acts, ch 24, §9; 2001 Acts, ch 185, §35, 49

12.75 Projects.

1. The vision Iowa board may undertake a project for two or more applicants jointly or for any combination of applicants, and may combine for financing purposes, with the consent of all of the applicants which are involved, the project and some or all future projects of any applicant, and sections 12.71, 12.72, and 12.74, this section, and sections 12.76 and 12.77 apply to and for the benefit of the vision Iowa board and the joint applicants. However, the money set aside in a fund or funds pledged for any series or issue of bonds or notes shall be held for the sole benefit of the series or issue separate and apart from money pledged for another series or issue of bonds or notes of the treasurer of state. To facilitate the combining of projects, bonds or notes may be issued in series under one or more resolutions or trust agreements and may be fully open-ended, thus providing for the unlimited issuance of additional series, or partially open-ended, limited as to additional series.

2. For purposes of this section, *"applicant"* means a city or county or public organization applying for financial assistance under the vision Iowa program established in section 15F.302.

2000 Acts, ch 1174, §18

12.76 Limitations.

Bonds or notes issued pursuant to section 12.71 are not debts of the state, or of any political subdivision of the state, and do not constitute a pledge of the faith and credit of the state or a charge against the general credit or general fund of the state. The issuance of any bonds or notes pursuant to section 12.71 by the treasurer of state does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply moneys from, or to levy or pledge any form of taxation whatever, to the payment of the bonds or notes. Bonds and notes issued under section 12.71 are payable solely and only from the sources and special fund provided in section 12.72.

2000 Acts, ch 1174, §19

12.77 Construction.

Sections 12.71 through 12.76, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

2000 Acts, ch 1174, §20

12.78 through 12.80 Reserved.

SCHOOL INFRASTRUCTURE PROGRAM

12.81 General and specific bonding powers — school infrastructure program.

1. The treasurer of state may issue bonds for purposes of the school infrastructure program established in section 292.2. Excluding the issuance of refunding bonds, the treasurer of state shall not issue bonds which result in the deposit of bond proceeds of more than fifty million dollars into the school infrastructure fund. The treasurer of state shall have all of the powers which are necessary to issue and secure bonds and carry out the purposes of the fund. The treasurer of state may issue bonds in principal amounts which are necessary to provide funds for the fund as provided by this section, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the treasurer of state incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the treasurer of state necessary or convenient to administer the fund. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

2. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the school infrastructure fund and any bond reserve funds, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the treasurer of state to the payment thereof. Bonds issued under this section shall contain on their face a statement that the bonds do not constitute an indebtedness of the state. The treasurer of state shall not pledge the credit or taxing power of this state or any political subdivision of this state or make bonds issued pursuant to this section payable out of any moneys except those in the school infrastructure fund.

3. The proceeds of bonds issued by the treasurer of state and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested or reinvested in any investment approved by the treasurer of state and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

4. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the treasurer of state. Chapters 73A, 74, 74A, and 75 do not apply to the sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this section and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

5. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

6. Bonds must be authorized by a trust indenture, resolution, or other instrument of the treasurer of state. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

7. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code to be valid, binding, or effective.

8. Bonds issued under the provisions of this section are declared to be issued for a general public and governmental purpose and all bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

9. Subject to the terms of any bond documents, moneys in the school infrastructure fund may be expended for administration expenses.

10. The treasurer of state may issue bonds for the purpose of refunding any bonds or notes issued pursuant to this section then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be

placed in escrow and be invested and reinvested in accordance with the provisions of this section. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned and deposited in the school infrastructure fund. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this section.

2000 Acts, ch 1174, §21

12.82 School infrastructure fund and reserve funds.

1. A school infrastructure fund is created and established as a separate and distinct fund in the state treasury under the control of the department of education. The fund shall be used for purposes of the school infrastructure program established in section 292.2.

2. Revenue for the school infrastructure fund shall include, but is not limited to, the following, which shall be deposited with the treasurer of state or its designee as provided by any bond or security documents and credited to the fund:

a. The proceeds of bonds issued to capitalize and pay the costs of the fund and investment earnings on the proceeds.

b. Interest attributable to investment of money in the fund or an account of the fund.

c. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

3. Moneys in the school infrastructure fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

4. *a.* The treasurer of state may create and establish one or more special funds, to be known as *"bond reserve funds"*, to secure one or more issues of bonds or notes issued pursuant to section 12.81. The treasurer of state shall pay into each bond reserve fund any moneys appropriated and made available by the state or the treasurer for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions authorizing their issuance, and any other moneys which may be available to the treasurer for the purpose of the fund from any other sources. All moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

b. Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this subsection, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums, and the sinking fund payments with respect to the bonds for the payment of which other moneys of the treasurer are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the treasurer to other funds or accounts to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

c. The treasurer of state shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the treasurer at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund, will not be less than the bond reserve fund requirement for the fund. For the purposes of this subsection, the term *"bond reserve fund requirement"* means, as of any particular date of computation, an amount of money, as provided in the resolutions authorizing the bonds with respect to which the fund is established.

d. To assure the continued solvency of any bonds secured by the bond reserve fund, provision is made in paragraph *"a"* for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the treasurer shall, on or before January 1 of each calendar year, make and deliver to the governor the treasurer's certificate stating the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor shall submit to both houses printed copies of a budget including the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the treasurer pursuant to this subsection shall be deposited by

the treasurer in the applicable bond reserve fund.

2000 Acts, ch 1174, §22; 2001 Acts, 1st Ex, ch 5, §4, 7; 2002 Acts, ch 1119, §4

2001 amendment to subsection 4 is effective July 5, 2001, and applies retroactively to July 1, 2001; 2001 Acts, 1st Ex, ch 5, §7

Contingent appropriation of funds for deposit in certain school district accounts within local sales and services tax fund under §422B.10, subsection 1, if treasurer of state determines that appropriation will not affect tax exempt status of outstanding bonds under §292.1; letter to Code editor from treasurer of state stating that appropriation of funds is consistent with use of tax exempt proceeds and should proceed as authorized by general assembly and governor; 2002 Acts, 2nd Ex, ch 1003, §193, 194, 213

Subsection 4, paragraph d amended

12.83 School infrastructure fund moneys — state fire marshal.

During the term of the school infrastructure program established in section 292.2, up to fifty thousand dollars of the moneys deposited each fiscal year in the school infrastructure fund shall be allocated each fiscal year to the department of public safety for the use of the state fire marshal. The funds shall be used by the state fire marshal solely for the purpose of retaining an architect or architectural firm to evaluate structures for which school infrastructure program grant applications are made, to consult with school district representatives, to review construction drawings and blueprints, and to perform related duties at the direction of the state fire marshal to ensure the best possible use of moneys received by a school district under the school infrastructure program. The state fire marshal shall provide for the review of plans, drawings, and blueprints in a timely manner.

2000 Acts, ch 1225, §32, 38, 39

12.84 Pledges.

It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the treasurer of state shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the treasurer of state whether or not the parties have notice of the lien.

2000 Acts, ch 1174, §23; 2000 Acts, ch 1232, §43; 2001 Acts, ch 185, §36, 49

12.85 Limitations.

Bonds or notes issued pursuant to section 12.81 are not debts of the state, or of any political subdivision of the state, and do not constitute a pledge of the faith and credit of the state or a charge against the general credit or general fund of the state. The issuance of any bonds or notes pursuant to section 12.81 by the treasurer of state does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply moneys from, or to levy or pledge any form of taxation whatever to, the payment of the bonds or notes. Bonds and notes issued under section 12.81 are payable solely and only from the sources and special fund provided in section 12.82. Expenses incurred in carrying out sections 12.81 through 12.84, this section, and section 12.86 are payable solely from funds available under those sections.

2000 Acts, ch 1174, §24

12.86 Construction.

Sections 12.81 through 12.85, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

2000 Acts, ch 1174, §25

CHAPTER 12A

RESTRICTIONS ON SOUTH AFRICA-RELATED INVESTMENTS AND DEPOSITS

Repealed effective February 1, 1994, by 94 Acts, ch 1001, §5, 6

CHAPTER 12B

SECURITY OF THE REVENUE

This chapter not enacted as a part of this title; transferred from chapter 452 in Code 1993

12B.1 Definitions.
12B.1A County responsible to state.
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12B.8 Supervisors to report to state auditor.
12B.9 Correct balances.
12B.10 Public funds investment standards.
12B.10A Public investment maturity and procedural limitations.
12B.10B Written investment policies.

12B.10C Regulation of public funds custodial agreements.
12B.11 Manner and details of settlement.
12B.12 Duty of examining officer.
12B.13 Report of settlement filed.
12B.14 False statements or reports.
12B.15 Official delinquency.
12B.16 Refund to counties.
12B.17 Warrant for excess.
12B.18 Delivery to treasurer.

12B.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §12B.1 transferred to §12B.1A

12B.1A County responsible to state.

Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double, or erroneous assessments.

[R60, §793; C73, §908; C97, §1453; C24, 27, 31, 35, 39, §**7398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.1]

C93, §12B.1

C2001, §12B.1A

12B.2 Interest on warrants.

When interest is due and allowed by the treasurer of state on the redemption of state warrants, or by the county treasurer on the redemption of county warrants, the same shall be receipted on the warrants by the holder, with the date of the payment, and no interest shall be allowed by the department of revenue and finance or board of supervisors except such as is thus receipted.

[R60, §795; C73, §910; C97, §1455; C24, 27, 31, 35, 39, §**7400;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.2]

C93, §12B.2

Analogous section, §74.7

12B.3 Discounting warrants.

If the treasurer of state or any county treasurer, personally or through another, discounts the director of revenue and finance's or auditor's warrants, either directly or indirectly, the treasurer shall be guilty of a serious misdemeanor.

[R60, §796; C73, §911; C97, §1456; C24, 27, 31, 35, 39, §**7401;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.3]

C93, §12B.3

12B.4 Loans by county treasurer.

A county treasurer shall be guilty of a serious misdemeanor for loaning out, or in any manner using for private purposes, state, county, or other funds in the treasurer's hands.

[R60, §797; C73, §912; C97, §1457; S13, §1457; C24, 27, 31, 35, 39, §**7402;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.4]

C93, §12B.4

12B.5 Loans by treasurer of state.

The treasurer of state shall be guilty of a serious misdemeanor for loaning out, or in any manner using for private purposes, state, county, or other funds in the treasurer's hands.

[R60, §797; C73, §912; C97, §1457; S13, §1457; C24, 27, 31, 35, 39, §**7403;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.5]

C93, §12B.5

12B.6 Reserved.

12B.7 Settlement by retiring treasurer.

When a county treasurer goes out of office, the treasurer shall make a full and complete settlement with the board of supervisors, and deliver up all books, papers, moneys, and all other property pertaining to the office, to the treasurer's successor, taking a receipt therefor.

[R60, §802; C73, §917; C97, §1461; C24, 27, 31, 35, 39, §**7409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.7]

C93, §12B.7

12B.8 Supervisors to report to state auditor.

The board of supervisors shall make a statement of state dues to the auditor of state, showing all charges against the treasurer during the treasurer's term of office, and all credits made, the delinquent taxes and other unfinished business charged over to the treasurer's successor, and the amount of money paid over to the treasurer's successor, showing to what year and to what account the amount so paid over belongs.

[R60, §802; C73, §917; C97, §1461; C24, 27, 31, 35, 39, §**7410;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.8]

C93, §12B.8

12B.9 Correct balances.

The board of supervisors shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer-elect.

[R60, §802; C73, §917; C97, §1461; C24, 27, 31, 35, 39, §**7411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.9]

C93, §12B.9

12B.10 Public funds investment standards.

1. In addition to investment standards and requirements otherwise provided by law, the investment of public funds by the treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, shall comply with this section, except where otherwise provided by another statute specifically referring to this section.

The treasurer of state and the treasurer of each political subdivision shall at all times keep funds coming into their possession as public money in a vault or safe to be provided for that purpose or in one or more depositories approved pursuant to chapter 12C. However, the treasurer of state and the treasurer of each political subdivision shall invest, unless otherwise provided, any public funds not currently needed in investments authorized by this section.

2. The treasurer of state, state agencies authorized to invest funds, and political subdivisions of this state, when investing or depositing public funds, shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the goals of this subsection. This standard requires that when making investment decisions, a public entity shall consider the role that the investment or deposit plays within the portfolio of assets of the public entity and the goals of this subsection. The primary goals of investment prudence shall be based in the following order of priority:

a. Safety of principal is the first priority.

b. Maintaining the necessary liquidity to match expected liabilities is the second priority.

c. Obtaining a reasonable return is the third priority.

3. Investments of public funds shall be made in accordance with written policies. A written investment policy shall address the goals set out in subsection 2 and shall also address, but is not limited to, compliance with state law, diversification, maturity, quality, and capability of investment management.

The trading of securities in which any public funds are invested for the purpose of speculation and the realization of short-term trading profits is prohibited.

Investments by a political subdivision must have maturities that are consistent with the needs and use of that political subdivision or agency.

4. The treasurer of state and all other state agencies authorized to invest funds shall only purchase and invest in the following:

a. Obligations of the United States government, its agencies and instrumentalities.

b. Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 12C.

c. Prime bankers' acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

d. Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

e. Repurchase agreements whose underlying collateral consists of the investments set out in paragraphs *"a"* through *"d"* if the treasurer of state or state agency takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

f. Investments authorized for the Iowa public employees' retirement system in section 97B.7A, except that investment in common stocks is not permitted.

g. An open-end management investment company organized in trust form registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7.

Futures and options contracts are not permissible investments.

5. Political subdivisions of this state, including entities organized pursuant to chapter 28E whose primary function is other than to jointly invest public funds, shall purchase and invest only in the following:

a. Obligations of the United States government, its agencies and instrumentalities.

b. Certificates of deposit and other evidences of deposit at federally insured depository institutions approved pursuant to chapter 12C.

c. Prime bankers' acceptances that mature within two hundred seventy days and that are eligible for purchase by a federal reserve bank, provided that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

d. Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

e. Repurchase agreements whose underlying collateral consists of the investments set out in paragraph *"a"* if the political subdivision takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

f. An open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7.

g. A joint investment trust organized pursuant to chapter 28E prior to and existing in good standing on the effective date of this Act or a joint investment trust organized pursuant to chapter 28E after April 28, 1992, provided that the joint investment trust shall either be rated within the two highest classifications by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A and operated in accordance with 17 C.F.R. § 270.2a-7, or be registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7. The manager or investment advisor of the joint investment trust shall be registered with the federal securities and exchange commission under the Investment Advisor Act of 1940, 15 U.S.C. § 80(b).

h. Warrants or improvement certificates of a levee or drainage district.

Futures and options contracts are not permissible investments.

6. The following investments are not subject to this section:

a. Investments by the public safety peace officers' retirement system governed by chapter 97A.

b. Investments by the Iowa public employees' retirement system governed by chapter 97B.

c. Investments by the Iowa finance authority governed by chapter 16.

d. Investments by the state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are limited to the following:

(1) Those investments set out in subsection 4.

(2) The common fund for nonprofit organizations.

(3) Common stocks.

(4) For investments of short-term operating funds, the funds shall not be invested in investments having maturities exceeding sixty-three months.

e. A pension and annuity retirement system governed by chapter 294.

f. Investments by the statewide fire and police retirement system governed by chapter 411.

g. Investments by the judicial retirement system governed by chapter 602, article 9.

h. Investments under the deferred compensation plan established by the executive council pursuant to section 509A.12.

i. Investments made by city hospitals as provided in section 392.6. However, investments by city hospitals are limited to the following:

(1) The same types of investments as the treasurer of state and other state agencies may make under this section.

(2) Investment in common stocks.

j. Investments by the tobacco settlement authority governed by chapter 12E.

k. Investments by municipal utility retirement systems governed under chapter 412.

[R60, §804; C73, §918; C97, §1462; S13, §1462; C24, 27, 31, 35, 39, §**7412;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.10]

84 Acts, ch 1194, §1; 84 Acts, ch 1230, §4; 85 Acts, ch 194, §1; 87 Acts, ch 105, §3; 88 Acts, ch 1027, §1; 88 Acts, ch 1187, §1; 90 Acts, ch 1233, §30; 91 Acts, ch 249, §1; 92 Acts, ch 1156, §16

C93, §12B.10

94 Acts, ch 1012, §1; 96 Acts, ch 1187, §75; 97 Acts, ch 185, §1; 2000 Acts, ch 1156, §1; 2000 Acts, ch 1208, §20, 25; 2001 Acts, ch 68, §2, 24; 2001 Acts, ch 102, §1

2001 amendment to subsection 4, paragraph f, takes effect July 1, 2002; 2001 Acts, ch 68, §24

Subsection 4, paragraph f amended

12B.10A Public investment maturity and procedural limitations.

1. The investment of public funds which are operating funds by a political subdivision shall be subject to the following:

a. As used in this section, *"operating funds"* means those funds which are reasonably expected

to be expended during a current budget year or within fifteen months of receipt.

b. Operating funds must be identified and distinguished from all other funds available for investment.

c. Operating funds may only be invested in investments which mature within three hundred ninety-seven days or less and which are authorized by law for the investing public entity.

2. All investments of public funds by political subdivisions shall be subject to the following:

a. Each investment must be authorized by applicable law and the written investment policy of the political subdivision.

b. Each political subdivision whose investments involve the use of a public funds custodial agreement, as defined in section 12B.10C, shall comply with rules adopted pursuant to section 12B.10C relating to those investments. All contracts providing for the investment of public funds shall be in writing and shall contain a provision requiring that all investments shall be made in accordance with the laws of this state.

c. A contract for the investment or deposit of public funds shall not provide for compensation of an agent or fiduciary based upon investment performance.

3. A treasurer of a political subdivision may invest funds of the political subdivision or agency that are not operating funds in investments having maturities longer than three hundred and ninety-seven days.

4. As used in this section, *"public funds"* means all funds that are public funds within the meaning of section 12C.1, subsection 2, paragraph *"e"*, except state funds invested by the treasurer of state.

5. This section shall not be construed to supersede any provision of this chapter or of chapter 12C.

6. The following entities are not subject to this section:

a. The public safety peace officers' retirement system governed by chapter 97A.

b. The Iowa public employees' retirement system governed by chapter 97B.

c. The Iowa finance authority governed by chapter 16.

d. The state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are limited to the following:

(1) Those investments set out in section 12B.10, subsection 4.

(2) The common fund for nonprofit organizations.

(3) Common stocks.

(4) For investments of short-term operating funds, the funds shall not be invested in investments having maturities exceeding sixty-three months.

e. A pension and annuity retirement system governed by chapter 294.

f. The statewide fire and police retirement system governed by chapter 411.

g. The judicial retirement system governed by chapter 602, article 9.

h. The deferred compensation plan established by the executive council pursuant to section 509A.12.

i. The tobacco settlement authority governed by chapter 12E.

7. A joint investment trust organized pursuant to chapter 28E whose primary function is to invest public funds shall report to the general assembly not later than January 1 of each year the amount of any trust royalty, residual payment, administrative or service fee, or other fee paid by the trust, the services performed for the fee, and the person receiving the fee.

92 Acts, ch 1156, §17; 96 Acts, ch 1187, §76; 97 Acts, ch 185, §2; 2000 Acts, ch 1208, §21, 25

12B.10B Written investment policies.

1. Political subdivisions shall approve written investment policies which incorporate the guidelines specified in section 12B.10, sections 12B.10A through 12B.10C, and any other provisions deemed necessary to adequately safeguard invested public funds.

2. The written investment policy required by section 12B.10 shall be delivered to all of the following:

a. The governing body or officer of the public entity to which the policy applies.

b. All depository institutions or fiduciaries for public funds of the public entity.

c. The auditor of the public entity.

3. The following entities are not subject to this section:

a. The public safety peace officers' retirement system governed by chapter 97A.

b. The Iowa public employees' retirement system governed by chapter 97B.

c. The Iowa finance authority governed by chapter 16.

d. The state board of regents governed by chapter 262.

e. A pension and annuity retirement system governed by chapter 294.

f. The statewide fire and police retirement system governed by chapter 411.

g. The judicial retirement system governed by chapter 602, article 9.

h. The deferred compensation plan established by the executive council pursuant to section 509A.12.

i. The tobacco settlement authority governed by chapter 12E.

j. Municipal utility retirement systems governed under chapter 412.

92 Acts, ch 1156, §18; 96 Acts, ch 1187, §77; 97 Acts, ch 185, §3; 2000 Acts, ch 1208, §22, 25; 2001 Acts, ch 102, §2

12B.10C Regulation of public funds custodial agreements.

The treasurer of state, in consultation with the attorney general, shall adopt rules under chapter 17A requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds.

As used in this section, *"public funds custodial agreement"* means any contractual arrangement pursuant to which one or more persons, including but not limited to, investment advisors, investment companies, trustees, agents and custodians, are authorized to act as a custodian of or to designate another person to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments other than custodial agreements between an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a) and a custodian bank.

As used in this section *"public funds"* means public funds as defined in section 12C.1. However, this section does not apply to public funds that are invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness. To the extent that a provision of this section conflicts with federal law, it shall be construed to avoid the conflict.

The following entities are not subject to this section:

1. The public safety peace officers' retirement system governed by chapter 97A.
2. The Iowa public employees' retirement system governed by chapter 97B.
3. Investments by the Iowa finance authority governed by chapter 16.
4. A pension and annuity retirement system governed by chapter 294.
5. The statewide fire and police retirement system governed by chapter 411.
6. The judicial retirement system governed by chapter 602, article 9.
7. The deferred compensation plan established by the executive council pursuant to section 509A.12.
8. The tobacco settlement authority governed by chapter 12E.
9. Municipal utility retirement systems governed under chapter 412.

92 Acts, ch 1156, §19; 96 Acts, ch 1187, §78; 97 Acts, ch 185, §4; 2000 Acts, ch 1208, §23, 25; 2001 Acts, ch 102, §3

12B.11 Manner and details of settlement.

At the time of any examination of any such office, or at the time of any settlement with the treasurer in charge of any such public funds, the treasurer shall produce and count in the presence of the officer or officers making such examination or settlement, all moneys or funds then on deposit in the safe or vault in the treasurer's office, and shall produce a statement of all money or funds on deposit with any depository wherein the treasurer is authorized to deposit such funds, which statement shall be certified by one or more officers of such depository, and shall correctly show the balance remaining on deposit in such depository at the close of business on the day preceding the day of such settlement. The treasurer shall also file a statement setting forth the numbers, dates, and amounts of all outstanding checks, or other items of difference, reconciling the balance as shown by the treasurer's books with those of the depositories. The state treasurer shall also file a statement showing the numbers, dates and amounts of all United States government bonds held as part of said public fund.

[R60, §804; C73, §918; C97, §1462; S13, §1462; C24, 27, 31, 35, 39, §**7413;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.11]

C93, §12B.11

12B.12 Duty of examining officer.

It shall be the duty of the officer or officers making such settlement to see that the amount of securities and money produced and counted, together with the amounts so certified by the legally designated depositories, agrees with the balance with which such treasurer should be charged, and the officer shall make a report in writing of any such settlement or examination, and attach thereto the certified statement of all such depositories.

[S13, §1462; C24, 27, 31, 35, 39, §**7414;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.12]

C93, §12B.12

12B.13 Report of settlement filed.

The report of any such settlement with the treasurer of state shall be filed in the office of the director of the department of management, and the report of a settlement with a county treasurer with the auditor of the county.

[S13, §1462; C24, 27, 31, 35, 39, §**7415;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.13]

C93, §12B.13

12B.14 False statements or reports.

Any officer or other person making a false statement or report or in any manner violating any of the provisions of sections 12B.10 to 12B.13 shall be guilty of a fraudulent practice.

[S13, §1462-a; C24, 27, 31, 35, 39, §**7416;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.14]

C93, §12B.14

12B.15 Official delinquency.

If any auditor or treasurer or other officer shall neglect or refuse to perform any act or duty specifically required of the officer, such officer shall be guilty of a simple misdemeanor, and the officer

and the officer's surety shall be liable on the official bond for any fine imposed, and for the damages sustained by any person through such neglect or refusal.

[R60, §744, 749, 805; C73, §919; C97, §1463; C24, 27, 31, 35, 39, §**7417;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.15]

C93, §12B.15

12B.16 Refund to counties.

The director of revenue and finance shall draw the warrant on the state treasury in favor of any county in the state for the amount of any excess in any fund or tax due the state from said county, excepting the state taxes.

[C97, §1464; C24, 27, 31, 35, 39, §**7418;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.16]

C93, §12B.16

12B.17 Warrant for excess.

When it shall appear from the books in the department of revenue and finance that there is a balance due any county in excess of any revenue due the state, except state taxes, the director of revenue and finance shall draw a warrant for such excess in favor of the county entitled thereto, and forward the same by mail, or otherwise, to the county auditor of the county to which it belongs, and charge the amount so sent to such county.

[C97, §1465; C24, 27, 31, 35, 39, §**7419;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.17]

C93, §12B.17

12B.18 Delivery to treasurer.

The auditor to whom said warrant is sent shall immediately, upon receipt thereof, deliver it to the treasurer of the county, and charge the amount thereof to the treasurer, and shall acknowledge the receipt of the amount to the director of revenue and finance.

[C97, §1466; C24, 27, 31, 35, 39, §**7420;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §452.18]

C93, §12B.18

CHAPTER 12C

DEPOSIT OF PUBLIC FUNDS

This chapter not enacted as a part of this title; transferred from chapter 453 in Code 1993

12C.1 Deposits in general — definitions.
12C.2 Approval — requirements.
12C.3 Reserved.
12C.4 Location of depositories.
12C.5 Refusal of deposits — procedure.
12C.6 Interest rate — committee — notice.
12C.6A Eligibility for state public funds — procedures.
12C.7 Interest — where credited.
12C.8 Liability of public officers.
12C.9 Investment of sinking funds — bond proceeds.
12C.10 Investment of funds created by election.
12C.11 Investment officer.
12C.12 Service charge by depository.
12C.13 Deposit not membership.
12C.14 School bonds and earnings. Repealed by 95 Acts, ch 25, §3.
12C.15 Restriction on requiring collateral.
12C.16 Security for deposit of public funds.
12C.17 Deposit of securities.
12C.18 Condition of security.
12C.19 Withdrawals, exchanges of security.
12C.20 Public funds reports.
12C.21 Required collateral — banks. Repealed by 99 Acts, ch 117, §14, 15.
12C.22 Required collateral — banks.
12C.23 Payment of losses in a credit union.
12C.23A Payment of losses in a bank.
12C.24 Liability.
12C.25 State sinking funds created.
12C.26 Refund from sinking funds.
12C.27 Failure to maintain required collateral.
12C.28 Electronic reporting.

12C.1 Deposits in general — definitions.

1. All funds held by the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated: for the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, and sheriff, by the board of supervisors; for the city treasurer or other designated financial officer of a city, by the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; for a library service area established under chapter 256, by the library

service area board of trustees; and for an electric power agency as defined in section 28F.2 or 476A.20, by the governing body of the electric power agency. However, the treasurer of state and the treasurer of each political subdivision or the designated financial officer of a city shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 12B.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of "public funds" contained in subsection 2. Notwithstanding provisions of this section to the contrary, public funds of a state government deferred compensation plan established by the executive council may also be invested in the investment products authorized under section 509A.12.

2. As used in this chapter unless the context otherwise requires:

a. "Bank" means a corporation engaged in the business of banking authorized by law to receive deposits and whose deposits are insured by the bank insurance fund or the savings association insurance fund of the federal deposit insurance corporation and includes any office of a bank. *"Bank"* also means a savings and loan or savings association.

b. "Credit union" means a cooperative, nonprofit association incorporated under chapter 533 or the federal Credit Union Act, 12 U.S.C. § 1751, et seq., and that is insured by the national credit union administration and includes an office of a credit union.

c. "Depository" means a bank, a savings and loan, or a credit union in which public funds are deposited under this chapter.

d. "Financial institution" means a bank or a credit union.

e. "Public funds" and *"public deposits"* mean the moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in subsection 1; a legal or administrative entity created pursuant to chapter 28E; an electric power agency as defined in section 28F.2 or 476A.20; and federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

f. "Public officer" means the person authorized by and acting for a public body to deposit public funds of the public body.

g. "Savings and loan" means a corporation authorized to operate under chapter 534 or the federal Home Owner's Loan Act of 1933, 12 U.S.C. § 1461, et seq., and includes a savings and loan association, a savings bank, or any branch of a savings and loan association or savings bank.

h. "Uninsured public funds" means any amount of public funds of a public funds depositor on deposit in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the federal deposit insurance corporation or the national credit union administration.

3. A deposit of public funds in a depository pursuant to this chapter shall be secured as follows:

a. If a depository is a credit union, then public deposits in the credit union shall be secured pursuant to sections 12C.16 through 12C.19 and sections 12C.23 and 12C.24.

b. If a depository is a bank, public deposits in the bank shall be secured pursuant to sections 12C.23A and 12C.24.

4. Ambiguities in the application of this section shall be resolved in favor of preventing the loss of public funds on deposit in a depository.

[C24, 27, §139, 4319, 5548, 5651, 7404; C31, 35, §7420-d1; C39, §**7420.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §453.1; 81 Acts, ch 148, §1; 82 Acts, ch 1202, §1]

83 Acts, ch 97, §1, 3; 83 Acts, ch 186, §1014, 10201; 84 Acts, ch 1230, §5; 85 Acts, ch 194, §2; 89 Acts, ch 39, §12; 92 Acts, ch 1156, §20 – 22

C93, §12C.1

93 Acts, ch 48, §3; 97 Acts, ch 185, §5; 99 Acts, ch 117, §1 – 4, 15; 99 Acts, ch 208, §42, 74; 2001 Acts, ch 158, §4; 2001 Acts, 1st Ex, ch 4, §1, 2, 36; 2002 Acts, ch 1096, §1, 2, 17

Supreme court shall approve institutions in which a court employee may deposit public funds commencing on the date the employee becomes a member of the judicial branch; see chapter 602, article 11

Subsection 2, paragraphs a, b, c, d, e, and f renumbered as c, e, a, g, b, and d respectively

Subsection 2, paragraph c amended and NEW paragraphs f and h

12C.2 Approval — requirements.

The approval of a financial institution as a depository of public funds for a public body shall be by written resolution or order that shall be entered of record in the minutes of the approving board, and that shall distinctly name each depository approved, and specify the maximum amount that may be kept on deposit in each depository.

[C24, 27, §139; C31, 35, §7420-d2; C39, §**7420.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §453.2]

84 Acts, ch 1230, §6

C93, §12C.2

2002 Acts, ch 1096, §3, 17

Section amended

12C.3 Reserved.

12C.4 Location of depositories.

Deposits by the treasurer of state shall be in depositories located in this state; by a county officer or county public hospital officer or merged area hospital officer, in depositories located in the county or in an adjoining county within this state; by a memorial hospital treasurer, in a depository

located within this state which shall be selected by the memorial hospital treasurer and approved by the memorial hospital commission; by a city treasurer or other city financial officer, in depositories located in the county in which the city is located or in an adjoining county, but if there is no depository in the county in which the city is located or in an adjoining county then in any other depository located in this state which shall be selected as a depository by the city council; by a school treasurer or by a school secretary in a depository within this state which shall be selected by the board of directors or the trustees of the school district; by a township clerk in a depository located within this state which shall be selected by the township clerk and approved by the trustees of the township. However, deposits may be made in depositories outside of Iowa for the purpose of paying principal and interest on bonded indebtedness of any municipality when the deposit is made not more than ten days before the date the principal or interest becomes due. Further, the treasurer of state may maintain an account or accounts outside the state of Iowa for the purpose of providing custodial services for the state and state retirement fund accounts.

[C24, 27, §139, 4319, 5548, 5651, 7404; C31, 35, §7420-d4; C39, §**7420.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §453.4; 82 Acts, ch 1202, §2]
84 Acts, ch 1230, §8; 86 Acts, ch 1243, §31
C93, §12C.4

12C.5 Refusal of deposits — procedure.

If the approved depositories will not accept the deposits under the conditions prescribed or authorized in this chapter, the funds may be deposited, on the same or better terms as were offered to the depositories, in one or more approved depositories conveniently located within the state.

The treasurer of state may invest in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7A except that investment in common stocks shall not be permitted.

[C24, 27, §5653; C31, 35, §7420-d5; C39, §**7420.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §453.5; 81 Acts, ch 149, §1]
84 Acts, ch 1230, §9
C93, §12C.5
2001 Acts, ch 68, §3, 24
2001 amendment is effective July 1, 2002; 2001 Acts, ch 68, §24
Section amended

12C.6 Interest rate — committee — notice.

Public deposits shall be deposited with reasonable promptness in a depository legally designated as depository for the funds. A committee composed of the superintendent of banking, the superintendent of credit unions, the auditor of state or a designee, and the treasurer of state shall meet on or about the first of each month or at other times as the committee may prescribe and by majority action shall establish a minimum rate to be earned on state funds placed in time deposits. State funds invested in depository time certificates of deposit shall draw interest at not less than the rate established, effective on the date of investment. An interest rate established by the committee under this section shall be in effect commencing on the eighth calendar day following the day the rate is established and until a different rate is established and takes effect. The committee shall give advisory notice of an interest rate established under this section. This notice may be given by publication in one or more newspapers, by publication in the Iowa administrative bulletin, by ordinary mail to persons directly affected, by any other method determined by the committee, or by a combination of these. In all cases, the notice shall be published in the Iowa administrative bulletin. The notice shall contain the following words:

"The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens."

The notice shall also provide the name and address of a state official to whom inquiries can be sent. Actions of the committee under this section and section 12C.6A are exempt from chapter 17A.

Public funds invested in depositories' time certificates of deposit by a public body or officer other than the treasurer of state shall draw interest at rates to be determined by the public body or officer and the depository, which rates shall not be less than the minimum rate set under this section for state funds.

[C24, 27, §140, 4319, 5548, 5651, 7404; C31, 35, §7420-d6; C39, §**7420.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §453.6; 81 Acts, ch 39, §2, ch 149, §2]
84 Acts, ch 1230, §10
C93, §12C.6
96 Acts, ch 1021, §1
See §74A.6 for interest rates on public obligations

12C.6A Eligibility for state public funds — procedures.

1. Public funds of the state shall not be deposited in a financial institution which does not demonstrate a commitment to serve the needs of the lo-

cal community in which it is chartered to do business, including the needs of neighborhoods, rural areas, and small businesses in communities served by the financial institution. These needs include credit services as well as deposit services.

2. In addition to establishing a minimum interest rate for public funds pursuant to section 12C.6, the committee composed of the superintendent of banking, the superintendent of credit unions, the auditor of state or a designee, and the treasurer of state shall develop a list of financial institutions eligible to accept state public funds. The committee shall require that a financial institution seeking to qualify for the list shall annually provide the committee a written statement that the financial institution has complied with the requirements of this chapter* and has a commitment to community reinvestment consistent with the safe and sound operation of a financial institution, unless the financial institution has received a rating of satisfactory or higher pursuant to the federal Community Reinvestment Act, 12 U.S.C. § 2901 et seq., and such rating is certified to the committee by the superintendent of banking. To qualify for the list, a financial institution must demonstrate a continuing commitment to meet the credit needs of the local community in which it is chartered.

3. The committee may require a financial institution to provide public notice inviting the public to submit comments to the financial institution regarding its community lending activities. Each financial institution shall maintain a file open to public inspection which contains public comments received on its community investment activities, and the financial institution's response to those comments. The committee shall adopt procedures for both of the following:

a. To receive information relating to a financial institution's commitment to community reinvestment.

b. To receive challenges from any person to a financial institution's continued eligibility to receive public funds.

4. At least once a year the committee shall review any challenges that have been filed pursuant to subsection 3. The committee may hold a public hearing to consider the challenge. In considering a challenge, the committee shall review documents filed with federal regulatory authorities pursuant to the Community Reinvestment Act, 12 U.S.C. § 2901 et seq., and regulations adopted pursuant to the Act, as amended to January 1, 1990. In addition, consistent with the confidentiality of financial institution records the committee shall consider other factors including, but not limited to, the following:

a. Activities conducted to determine the credit needs of the community.

b. Marketing and special credit-related programs to make citizens in the community aware of the credit services offered.

c. A description of how services actually provided satisfied the needs described under paragraph *"a"*.

d. Practices intended to discourage application for home mortgages, small business loans, small farm loans, community development loans, and, if consumer lending constitutes a substantial majority of a financial institution's business, consumer loans.

e. Geographic distribution of credit extensions, credit applications and credit denials.

f. Evidence of prohibited discriminatory or other illegal credit practices.

g. Participation in local community and rural development and redevelopment projects, and in state and federal business and economic development programs, including investment in an Iowa agricultural industry finance corporation formed under the Iowa agricultural industry finance Act pursuant to chapter 15E.

h. Origination or purchase of residential mortgage loans, housing rehabilitation loans, home improvement loans and business or farm loans within the community.

i. Ability to meet various community credit needs based on financial condition, size, legal impediments, and local economic conditions.

5. *a.* A person who believes a bank has failed to meet its community reinvestment responsibility may file a complaint with the committee detailing the basis for that belief.

b. If any committee member, in the member's discretion, finds that the complaint has merit, the member may order the bank alleged to have failed to meet its community reinvestment responsibility to attend and participate in a meeting with the complainant. The committee member may specify who, at minimum, shall represent the bank at the meeting. At the meeting, or at any other time, the bank may, but is not required to, enter into an agreement with a complainant to correct alleged failings.

c. A majority of the committee may order a bank against which a complaint has been filed pursuant to this subsection, to disclose such additional information relating to community reinvestment as required by the order of the majority of the committee.

d. This subsection does not preempt any other remedies available under statutory or common law available to the committee, the superintendent of banking, or aggrieved persons to cure violations of this section or chapter 524, or rules adopted pursuant to this section or chapter 524. The committee may conduct a public hearing as provided in subsection 4 based upon the same complaint. An order finding merit in a complaint and

ordering a meeting is not an election of remedies.
84 Acts, ch 1230, §11
C85, §453.6A
90 Acts, ch 1002, §1
C93, §12C.6A
96 Acts, ch 1021, §2, 3; 99 Acts, ch 53, §1; 99 Acts, ch 117, §5, 15; 2000 Acts, ch 1154, §1; 2002 Acts, ch 1096, §4, 5, 17
*Certification to the superintendent under §12C.20, subsection 1, is not required until January 31, 2003; notification by the superintendent to the treasurer of state under §12C.20, subsection 4, is not required until April 30, 2003; the pledging of collateral to the treasurer of state pursuant to §12C.22 is not required until July 1, 2003; 2002 Acts, ch 1096, §17
Subsection 2 amended
Subsection 3, paragraph b amended

12C.7 Interest — where credited.

1. A depository shall not directly or indirectly pay interest to a public officer on a demand deposit of public funds, and a public officer shall not take or receive interest on demand deposits of public funds. This provision does not apply to interest on time certificates of deposit or savings accounts for public funds.

2. Interest or earnings on investments and time deposits made in accordance with the provisions of sections 12.8, 12B.10, 12C.1, and 12C.6 shall be credited to the general fund of the governmental body making the investment or deposit, with the exception of specific funds for which investments are otherwise provided by law, constitutional funds, or when legally diverted to the state sinking fund for public deposits. Funds so excepted shall receive credit for interest or earnings derived from such investments or time deposits made from such funds.

[C31, 35, §7420-d7; C39, §**7420.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §453.7]
84 Acts, ch 1230, §12
C93, §12C.7
95 Acts, ch 25, §1

12C.8 Liability of public officers.

An officer who is referred to in section 12C.1 is not liable for loss of funds by reason of the insolvency of the depository institution when the funds have been deposited or invested as provided in this chapter.

[C27, §1090-a20; C31, 35, §7420-d8; C39, §**7420.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §453.8]
84 Acts, ch 1230, §13
C93, §12C.8

12C.9 Investment of sinking funds — bond proceeds.

1. The treasurer of state and all other state agencies authorized to invest funds and the treasurer or other designated financial officer of each political subdivision including each school corporation shall invest the proceeds of notes, bonds, refunding bonds, and other evidences of indebtedness, and funds being accumulated for the payment of principal and interest or reserves in investments set out in section 12B.10, subsection 4, paragraphs *"a"* through *"g"*, section 12B.10, subsection 5, paragraphs *"a"* through *"g"*, an investment contract, or tax-exempt bonds. The investment shall be as defined and permitted by section 148 of the Internal Revenue Code and applicable regulations under that section. An investment contract or tax-exempt bonds shall be rated within the two highest classifications as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A.

2. Earnings and interest from investments pursuant to subsection 1 shall be used to pay the principal or interest as the principal or interest comes due on the indebtedness or to fund the construction of the project for which the indebtedness was issued, or shall be credited to the capital project fund for which the indebtedness was issued.

[C27, 31, 35, §12775-b1; C39, §**7420.43;** C46, 50, 54, §454.35; C58, 62, 66, 71, 73, 75, 77, 79, 81, §453.9]
84 Acts, ch 1230, §14; 91 Acts, ch 249, §2; 92 Acts, ch 1156, §23
C93, §12C.9
95 Acts, ch 25, §2

12C.10 Investment of funds created by election.

The governing council or board, who by law have control of any fund created by direct vote of the people, may invest any portion of the fund not currently needed, in investments authorized in section 12B.10. The treasurer of state may invest in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7A except that investment in common stocks shall not be permitted. Interest or earnings on such funds shall be credited as provided in section 12C.7, subsection 2.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §453.10]
84 Acts, ch 1230, §15
C93, §12C.10
2001 Acts, ch 68, §4, 24
2001 amendment is effective July 1, 2002; 2001 Acts, ch 68, §24
Section amended

12C.11 Investment officer.

A county, city, county public hospital, merged area hospital, memorial hospital or school corporation governing body may delegate its investment authority, under the provisions of this chapter, to the treasurer or other financial officer of the governmental unit, who shall thereafter be responsible for handling investment transactions until such delegation of authority is revoked.

[C66, 71, 73, 75, 77, 79, 81, §453.11]
C93, §12C.11

12C.12 Service charge by depository.

A depository may make reasonable service charges with respect to the handling of public funds, but the service charges shall not be greater than the depository customarily requires from other depositors for similar services.

[C66, 71, 73, 75, 77, 79, 81, §453.12]
84 Acts, ch 1230, §16
C93, §12C.12

12C.13 Deposit not membership.

Notwithstanding chapter 534, the deposit of public funds in an association defined in section 533.1 or 534.102 does not constitute being a shareholder, stockholder, or owner of a corporation in violation of Article VIII of the Constitution of the State of Iowa or any other provision of law.

84 Acts, ch 1230, §17
C85, §453.13
C93, §12C.13

12C.14 School bonds and earnings. Repealed by 95 Acts, ch 25, § 3. See § 12C.9.

12C.15 Restriction on requiring collateral.

A local government shall not require a pledge of collateral for that portion of the local government's deposits in a credit union that is covered by insurance of a federal agency or instrumentality.

84 Acts, ch 1230, §19
C85, §453.15
92 Acts, ch 1156, §24
C93, §12C.15
99 Acts, ch 117, §6, 15

12C.16 Security for deposit of public funds.

1. Before a deposit of public funds is made by a public officer with a credit union in excess of the amount federally insured, the public officer shall obtain security for the deposit by one or more of the following:

a. The credit union may give to the public officer a corporate surety bond of a surety corporation approved by the treasury department of the United States and authorized to do business in this state, which bond shall be in an amount equal to the public funds on deposit at any time. The bond shall be conditioned that the deposit shall be paid promptly on the order of the public officer making the deposit and shall be approved by the officer making the deposit.

b. The credit union may deposit, maintain, pledge and assign for the benefit of the public officer in the manner provided in this chapter, securities approved by the public officer, the market value of which is not less than one hundred ten percent of the total deposits of public funds placed by that public officer in the credit union. The securities shall consist of any of the following:

(1) Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America or an agency or instrumentality of the United States of America.

(2) Public bonds or obligations of this state or a political subdivision of this state.

(3) Public bonds or obligations of another state or a political subdivision of another state whose bonds are rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A.

(4) To the extent of the guarantee, loans, obligations, or nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or the U.S. central credit union, and the rating of the U.S. central credit union remains within the two highest classifications of prime established by at least one of the standard rating services approved by the superintendent of banking by rule pursuant to chapter 17A. The treasurer of state shall adopt rules pursuant to chapter 17A to implement this section.

(5) First lien mortgages which are valued according to practices acceptable to the treasurer of state.

(6) Investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), which is operated in accordance with 17 C.F.R. § 270.2a-7.

Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America, which may be used to secure the deposit of public funds under subparagraph (1), include investments in an investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to the United States government obligations described in subparagraph (1) and to repurchase agreements fully collateralized by the United States government obligations described in subparagraph (1), if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

2. If public funds are secured by both the assets of a credit union and a bond of a surety company, the assets and bond shall be held as security for a rateable proportion of the deposit on the basis of the market value of the assets and of the total amount of the surety bonds.

84 Acts, ch 1230, §20
C85, §453.16
85 Acts, ch 194, §3; 88 Acts, ch 1090, §1; 92 Acts, ch 1156, §25 – 30
C93, §12C.16
99 Acts, ch 117, §7, 15

12C.17 Deposit of securities.

1. A credit union which receives public funds shall pledge securities owned by it as required by this chapter in one of the following methods:

a. The securities shall be deposited with the county, city, or other public officers at the option of the officers.

b. The securities shall be deposited pursuant to a bailment agreement with a financial institution having facilities for the safekeeping of securities and doing business in the state. A financial institution which receives securities for safekeeping is liable to the public officer to whom the securities are pledged for any loss suffered by the public officer if the financial institution relinquishes custody of the securities contrary to the provisions of this chapter or the instrument governing the pledge of the securities.

c. The securities shall be deposited with the federal reserve bank, the federal home loan bank of Des Moines, Iowa, or the U.S. central credit union pursuant to a bailment agreement or a pledge custody agreement.

d. The securities may be deposited by any combination of methods specified in paragraphs *"a"*, *"b"*, and *"c"*.

2. A deposit of securities shall not be made in a facility owned or controlled directly or indirectly by the financial institution which deposits the securities.

3. All deposits of securities, other than deposits of securities with the appropriate public officer, shall have a joint custody receipt taken for the securities with one copy delivered to the public officer and one copy delivered to the credit union. A credit union pledging securities with a public officer may cause the securities to be examined in the officer's office to show the securities are placed with the officer as collateral security and are not transferable except upon the conditions provided in this chapter.

4. Upon written request from the appropriate public officer but not less than monthly, the federal home loan bank of Des Moines, Iowa, or the U.S. central credit union, shall report a description, the par value and the market value of any pledged collateral by a credit union.

84 Acts, ch 1230, §21
C85, §453.17
85 Acts, ch 194, §4; 92 Acts, ch 1156, §31 – 33
C93, §12C.17
99 Acts, ch 117, §8, 15

12C.18 Condition of security.

The condition of the surety bond or the deposit of securities, instruments, or a joint custody receipt, must be that the credit union will promptly pay to the parties entitled public funds, including any interest on the funds, in its custody upon lawful demand and, when required by law, pay the funds to the public officer who made the deposit.

84 Acts, ch 1230, §22
C85, §453.18
92 Acts, ch 1156, §34
C93, §12C.18
99 Acts, ch 117, §9, 15

12C.19 Withdrawals, exchanges of security.

1. Securities pledged pursuant to this chapter* may be withdrawn on application of the pledging depository institution, and as to securities pledged by a credit union, upon approval of the public officer to whom the securities are pledged, if the deposit of securities is no longer necessary to comply with this chapter, or is required for collection by virtue of its maturity or for exchange. The depository institution shall replace securities so withdrawn for collection or exchange.

2. In an exchange of deposited securities for new securities, the amount of security on deposit at any time shall not be decreased below that otherwise required by this chapter.

3. In the event of substitution, addition, or exchange of securities, the holder or custodian of the securities shall, on the same day, forward by regular mail to the public officer and the credit union, a receipt specifically describing and identifying both the substituted or additional securities.

4. The public officer which deposits public funds with a credit union shall require, if the market value of the securities deposited with or for the benefit of the officer falls below one hundred ten percent of the deposit liability to the public officer, the deposit of additional security to bring the total market value of the security to one hundred ten percent of the amount of public funds held by the credit union.

84 Acts, ch 1230, §23
C85, §453.19
92 Acts, ch 1156, §35
C93, §12C.19
99 Acts, ch 117, §10, 15; 2002 Acts, ch 1096, §6, 17

*The pledging of collateral by a bank to the treasurer of state pursuant to §12C.22 is not required until July 1, 2003; 2002 Acts, ch 1096, §17
Subsection 1 amended

12C.20 Public funds reports.

1. On or before the tenth day of February, May, August, and November of each year, each savings and loan and each out-of-state bank that has one or more branches in the state shall calculate and certify to the superintendent of banking in the form prescribed by the superintendent the amount of public funds on deposit at the savings and loan and at each such branch of the out-of-state bank as of the end of the previous calendar quarter.

2. A bank shall, upon request of the superintendent, certify to the superintendent the amount of public funds on deposit at the bank and at each

branch of an out-of-state bank on any day specified by the superintendent in such request.

3. The superintendent may at any time make such investigation as the superintendent deems necessary and appropriate to verify the information provided to the superintendent pursuant to subsections 1 and 2.

4. On or before the twentieth day of February, May, August, and November of each year, the superintendent shall notify the treasurer of state of the amount of collateral required to be pledged as of the end of the previous calendar quarter based upon the certification provided to the superintendent under subsection 1 or 2 and a review by the superintendent of the quarterly call report filed by each bank that is not a savings and loan or an out-of-state bank.

2002 Acts, ch 1096, §7, 17

Certification to the superintendent of banking pursuant to subsection 1 is not required until January 1, 2003; 2002 Acts, ch 1096, §17

Notification by the superintendent of banking to the treasurer of state pursuant to subsection 4 is not required until April 30, 2003; 2002 Acts, ch 1096, §17

NEW section

12C.21 Required collateral — banks. Repealed by 99 Acts, ch 117, § 14, 15.

12C.22 Required collateral — banks.*

1. A bank shall pledge to the treasurer of state the amount of collateral required under subsection 2 by depositing the collateral in restricted accounts at a financial institution that has been designated by the treasurer of state and that is not owned or controlled directly or indirectly by the bank pledging the collateral or any affiliate of the bank as defined in section 524.1101. Each bank shall execute as debtor and deliver to the treasurer of state a security agreement and such other documents, instruments, and agreements in form approved by the treasurer of state as are required to grant to the treasurer of state, as secured party in its capacity as agent for the depositors of all public funds from time to time deposited in the bank, a perfected security interest in the collateral described in the security agreement. The security agreement shall among other provisions contain all of the following provisions:

a. A security interest in the collateral is granted as collateral for the obligation of the bank to repay all uninsured public funds deposited in the bank.

b. The security interest in the collateral is also granted as collateral security for the obligation of the bank to repay the uninsured public funds deposited in a closed bank by paying an assessment to the treasurer of state to the extent required under section 12C.23A, subsection 3.

c. In the event an assessment is paid by a bank to the treasurer of state pursuant to section 12C.23A, or in the event that collateral pledged by the bank is liquidated pursuant to section 12C.23A, subsection 3, paragraph *"e"*, and the proceeds are used to pay the assessment, the bank is subrogated to the claim of a public funds depositor to the extent the claim is paid from funds paid by the bank or proceeds of collateral pledged by the bank are used to pay the assessment.

d. The treasurer of state is appointed as agent of the bank to assert the claim on behalf of the bank as subrogee. Any amount recovered by the treasurer by reason of the claim shall be deposited in the state sinking fund for public deposits in banks.

2. The amount of the collateral required to be pledged by a bank shall at all times equal or exceed the total of the amount by which the public funds deposits in the bank exceeds the total capital of the bank. For purposes of this chapter, unless the context otherwise requires, *"total capital of the bank"* means its tier one capital plus both of the following components of tier two capital:

a. Qualifying subordinated debt and redeemable preferred stock.

b. Cumulative perpetual preferred stock.

3. The amount of collateral pledged by an out-of-state bank that operates a branch in Iowa shall be calculated in accordance with the following formula:

a. Total deposits of the bank.

b. Total deposits in Iowa branches of the bank.

c. The total of paragraph *"b"* divided by the total of paragraph *"a"*, in order to establish the deposits of Iowa branches as a percentage of total deposits.

d. Total capital of the bank as defined in subsection 2.

e. The total of paragraph *"d"* multiplied by the total of paragraph *"c"*, in order to establish Iowa branch capital.

f. Total public funds deposits in the bank.

g. The excess of the total of paragraph *"f"* over the total of paragraph *"e"*, if any.

4. The value of the collateral shall be its market value.

5. The treasurer of state shall adopt rules pursuant to chapter 17A to administer this section, including rules to do the following:

a. Designate not less than four financial institutions that may be custodians of collateral pledged under this chapter and establish regulations for qualification and compliance by the custodians and remedies and sanctions for noncompliance by the custodians.

b. Establish requirements for reporting to the treasurer of state by a financial institution of the amount and value of collateral held by the financial institution as custodian of collateral for the uninsured public funds on deposit in a bank.

c. Establish procedures for the valuation of collateral that does not have a readily ascertainable market value.

d. Establish procedures for substituting different collateral for collateral pledged under this section.

e. Establish procedures to determine the amount of the uninsured public funds of each bank or branch of an out-of-state bank as of the date of closing of a closed bank and the amount of the assessment to be made upon each bank.

f. Establish additional procedures necessary to administer this chapter and other rules as may be necessary to accomplish the purposes of this chapter.

g. Provide forms and procedures for compliance with this chapter, including electronic compliance.

h. Establish amounts and procedures for payment of fees to cover the costs of administration of this chapter.

6. The collateral used to secure public deposits shall be in one or more of the following forms acceptable to the treasurer of state:

a. Investment securities and shares in which a bank is permitted to invest under section 524.901, subsections 1, 2, and 3.

b. Investment securities, as defined in section 524.901, subsection 1, paragraph *"a"*, representing general obligations of a state or a political subdivision of a state that is geographically contiguous with the state, provided that such investment securities are rated within the four highest grades according to a reputable rating service or represent unrated issues of equivalent value.

c. Investment securities, as defined in section 524.901, subsection 1, paragraph *"a"*, representing general obligations of a state or a political subdivision of a state that is not contiguous with the state, provided that such investment securities are rated within the two highest grades according to a reputable rating service.

d. Nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality, including government-sponsored enterprises of the United States of America.

e. Private insurance policies or bonds written by companies approved by the superintendent.

7. A bank may borrow collateral to be pledged under subsection 2 if the collateral is free of any liens, security interests, claims, or encumbrances.

2002 Acts, ch 1096, §8, 17

*The pledging of collateral to the treasurer of state as provided in this section is not required until July 1, 2003; 2002 Acts, ch 1096, §17

NEW section

12C.23 Payment of losses in a credit union.

1. The pledging of securities by a credit union pursuant to this chapter constitutes consent by the credit union to the disposition of the securities in accordance with this section.

The acceptance of public funds by a credit union pursuant to this chapter constitutes consent by the credit union to assessments by the treasurer of state in accordance with this chapter.

2. The credit union and the security given for the public funds in its hands are liable for payment if the credit union fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order, or certificates of deposit, or any public funds entrusted to it if, in failing to pay, the credit union acts contrary to the terms of an agreement between the credit union and the public body treasurer. The credit union and the security given for the public funds in its hands are also liable for payment if the credit union fails to pay an assessment by the treasurer of state when the assessment is due.

3. If a credit union is closed by its primary regulatory officials, the public body with deposits in the credit union may sell the collateral to pay for any loss of principal and accrued interest.

a. In cooperation with the responsible regulatory officials for the credit union, the public body shall validate the amount of public funds on deposit at the defaulting credit union and the amount of deposit insurance applicable to the deposits.

b. The loss to public depositors shall be satisfied, first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting credit union, and then the assets of the defaulting credit union. The priority of claims are those established pursuant to section 533.22, subsection 1, paragraph *"b"*. To the extent permitted by federal law, in the distribution of an insolvent federally chartered credit union's assets, the order of payment of liabilities if its assets are insufficient to pay in full all its liabilities for which claims are made shall be in the same order as for the equivalent type of state chartered credit union as provided in section 533.22, subsection 1, paragraph *"b"*.

c. The claim of a public depositor for purposes of this section shall be the amount of the depositor's deposits plus interest to the date the funds are distributed to the public depositor at the rate the credit union agreed to pay on the funds reduced by the portion of the funds which is insured by federal deposit insurance.

d. If the loss to public funds is not covered by insurance and the proceeds of the failed credit union's assets which are liquidated within thirty days of the closing of the credit union and pledged collateral, the treasurer shall provide coverage of the remaining loss from the state sinking fund for public deposits in credit unions. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other credit unions who hold public funds. The assessment shall be determined by multiplying the total amount of the remaining loss to public depositors by a percentage that represents the average of public funds deposits held by all credit unions during the preceding twelve-month period ending on the last day of the month immediately preceding the month the credit union was closed. Each credit

union shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a credit union fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a credit union is found to have failed to pay the assessment as required by this paragraph, the court shall order it to pay the assessment, court costs, reasonable attorney's fees based upon the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state's office. Idle balances in the fund are to be invested by the treasurer with earnings credited to the fund. Fees paid by credit unions for administration of this chapter will be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

e. Any amount realized from the sale of collateral pursuant to paragraph *"d"*, in excess of the amount of a credit union's assessment, shall continue to be held by the treasurer, in the same interest bearing investments available for public funds, as collateral until that credit union provides substitute collateral or is otherwise entitled to its release.

85 Acts, ch 194, §6
CS85, §453.23
92 Acts, ch 1156, §37 – 40
C93, §12C.23
94 Acts, ch 1023, §3; 99 Acts, ch 117, §11, 15; 99 Acts, ch 208, §43, 74

12C.23A Payment of losses in a bank.

1. The acceptance of public funds by a bank pursuant to this chapter constitutes all of the following:

a. Agreement by the bank to pledge collateral as required by section 12C.22.*

b. Consent by the bank to the disposition of the collateral in accordance with this section.

c. Consent by the bank to assessments by the treasurer of state in accordance with this chapter.

d. Agreement by the bank to provide accurate information and to otherwise comply with the requirements of this chapter.

2. A bank is liable for payment if the bank fails to pay a check, draft, or warrant drawn by a public funds depositor or to account for a check, draft, warrant, order, or certificate of deposit, or any public funds entrusted to the bank if, in failing to pay, the bank acts contrary to the terms of an agreement between the bank and the public funds depositor. The bank is also liable to the treasurer of state for payment if the bank fails to pay an assessment by the treasurer of state under subsection 3 when the assessment is due.

3. If a bank is closed by its primary state or federal regulator, each public funds depositor with deposits in the bank shall notify the treasurer of state of the amount of any claim within thirty days of the closing. The treasurer of state shall implement the following procedures:

a. In cooperation with the responsible regulatory officials for the closed bank, the treasurer shall validate the amount of public funds on deposit at the closed bank and the amount of deposit insurance applicable to the deposits.

b. Any loss to a public funds depositor shall be satisfied first by any federal deposit insurance, then by the sale or other disposition of collateral pledged by the closed bank, then from the assets of the closed bank. To the extent permitted by federal law, the priority of claims are those established pursuant to section 524.1312, subsection 2. To the extent permitted by federal law, in the distribution of an insolvent federally chartered bank's assets, the order of payment of liabilities, if its assets are insufficient to pay in full all its liabilities for which claims are made, shall be in the same order as for a state bank as provided in section 524.1312, subsection 2.

c. The claim of a public funds depositor for purposes of this section shall be the amount of the depositor's public funds deposits plus interest to the date the funds are distributed to the public funds depositor at the rate the bank agreed to pay on the public funds reduced by the portion of the public funds that is insured by federal deposit insurance.

d. If the loss of public funds is not covered by federal deposit insurance and the proceeds of the closed bank's assets that are liquidated within thirty days of the closing of the bank are not sufficient to cover the loss, then any further payments to cover the loss will come from the state sinking fund for public deposits in banks. If the balance in that sinking fund is inadequate to pay the entire loss, then the treasurer shall obtain the additional amount needed by making an assessment against other banks whose public funds deposits exceed federal deposit insurance coverage. A bank's assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors in the closed bank by a percentage that represents the assessed bank's proportional share of the total of uninsured public funds deposits held by all banks and all branches of out-of-state banks, based upon the average of the uninsured public funds of the assessed bank or branch of an out-of-state bank as of the end of the four calendar quarters prior to the date of closing of the closed bank and the average of the uninsured public funds in all banks and branches of out-of-state banks as of the end of the four calendar quarters prior to the date of closing of the closed bank, excluding the amount of uninsured public funds held by the closed bank at the end of the four calendar quarters held by the closed bank. Each bank shall pay its assessment to the treasurer of state within three business days after it receives notice of assessment.

e. If a bank fails to pay its assessment when due, the treasurer of state shall satisfy the assess-

ment by liquidating collateral pledged by the bank upon such notice as is required by chapter 554. If the collateral pledged by the bank is inadequate to pay the assessment, the treasurer of state shall make additional assessments as may be necessary against other banks that hold uninsured public funds to satisfy any unpaid assessment. Any additional assessments shall be determined, collected, and satisfied in the same manner as the first assessment except that in calculating the amount of each such additional assessment, the amount of uninsured public funds held by the bank that fails to pay the assessment shall not be counted.

f. If the treasurer of state liquidates collateral pledged by a bank, the bank shall within three business days following receipt of notice from the treasurer of state deposit additional collateral to provide the collateral required under section 12C.22.*

g. If a bank fails to pay its assessment when due and the proceeds from liquidation of the collateral pledged by the bank are not sufficient to pay the assessment against the bank, the treasurer of state shall notify the superintendent or the comptroller of the currency, as applicable, of the failure to pay the assessment. If the bank that has failed to pay the assessment is a nationally chartered financial institution, the superintendent shall immediately notify the bank's primary federal regulator. If the assessment is not paid within thirty days after the bank received the notice of assessment, the treasurer of state shall initiate a lawsuit to collect the amount of the assessment. If a bank is found to have failed to pay the assessment as required by this subsection and is ordered to pay the assessment, the court shall also order that the bank pay court costs and reasonable attorney fees based on the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state.

h. Following collection of the assessments, the treasurer of state shall distribute funds to the public depositors of the closed bank according to their validated claims unless a public depositor requests in writing that the claims of other public depositors be paid prior to payment to the public depositor making the request. By receiving payment under this section, a public depositor shall be deemed to have assigned to the treasurer of state any claim the public depositor may have against the closed bank by reason of the deposit of its public funds and all rights the public depositor may have in funds that subsequently become available to depositors of the closed bank.

99 Acts, ch 117, §12, 15; 99 Acts, ch 208, §44, 45, 74; 2002 Acts, ch 1096, §9, 17

*The pledging of collateral to the treasurer of state under §12C.22 is not required until July 1, 2003; 2002 Acts, ch 1096, §17

Section amended

12C.24 Liability.

When public deposits are made in accordance with this chapter in a financial institution that is eligible to accept public funds deposits at the time a deposit of public funds is made, a public body depositing public funds, and any person that is an agent, employee, officer, or board member of the public funds depositor, is exempt from liability for any loss resulting from the loss of public funds in the absence of negligence, malfeasance, misfeasance, or nonfeasance on the part of the public body or such person.

85 Acts, ch 194, §7
CS85, §453.24
C93, §12C.24
2002 Acts, ch 1096, §10, 17

Section amended

12C.25 State sinking funds created.

1. There are created in the treasurer of state's office the following funds:

a. A state sinking fund for public deposits in banks.

b. A state sinking fund for public deposits in credit unions.

2. Idle balances in the state sinking fund for public deposits in banks shall be invested by the treasurer of state with earnings credited to that fund. Fees paid by banks for administration of this chapter shall be credited to the state sinking fund for public deposits in banks and the treasurer of state may deduct actual costs of administration from that fund.

3. The funds shall be used to receive and disburse moneys pursuant to section 12C.23, subsection 3, paragraph *"d"* and section 12C.23A, subsection 3, paragraph *"d"*.

85 Acts, ch 194, §8
CS85, §453.25
86 Acts, ch 1237, §28
C93, §12C.25
99 Acts, ch 117, §13, 15; 2000 Acts, ch 1154, §2; 2002 Acts, ch 1096, §11, 17

Former unnumbered paragraph 1 redesignated as subsection 1
Former subsections 1 and 2 redesignated as subsection 1, paragraphs a and b
NEW subsection 2
Former unnumbered paragraph 2 redesignated as subsection 3

12C.26 Refund from sinking funds.

1. If at the end of any calendar year the amount in the sinking fund exceeds three million one hundred thousand dollars, then to the extent the amount in the sinking fund exceeds three million dollars, the treasurer shall, on or before January 31 of the following year, refund to each bank that paid an assessment after the year 1999 to the sinking fund resulting from the closing of a bank, its pro rata share of the unreimbursed portion of

the total assessment paid by all banks. If assessments remain unreimbursed by reason of the closing of more than one bank, the reimbursements shall be made to the banks that paid assessments by reason of the bank which closed first until those banks are reimbursed in full, and then to the banks that paid assessments by reason of the bank which closed next. Such a refund shall not be made to a bank if the refund would exceed the amount of previous assessments paid by the bank.

2. Upon recovery of a loss of public funds due to a closed credit union, the treasurer of state may refund all or a portion of the recovered amount to the credit unions that paid an assessment under this chapter as a result of the closing of that credit union.

2000 Acts, ch 1232, §22, 40; 2002 Acts, ch 1096, §12, 17

Section stricken and rewritten

12C.27 Failure to maintain required collateral.

If a bank fails to maintain the amount of collateral subject to a perfected security interest held by the treasurer of state required to comply with section 12C.22, subsections 2 and 3,* the treasurer of state shall notify the bank of the amount of additional collateral required. If the bank fails to provide the additional required collateral within ten days following the date the notice is given, the treasurer shall notify the office of thrift supervision, the office of the comptroller of the currency, or the superintendent as applicable, who may take such action against the bank, its board of directors and officers as permitted by law.

2002 Acts, ch 1096, §13, 17

*The pledging of collateral to the treasurer of state pursuant to §12C.22 is not required until July 1, 2003; 2002 Acts, ch 1096, §17

NEW section

12C.28 Electronic reporting.

Any notice, information, report, or other communication required by this chapter shall be deemed effective and in compliance with this chapter if sent or given electronically as provided in rules adopted pursuant to chapter 17A by the superintendent or the treasurer of state.

2002 Acts, ch 1096, §14, 17

NEW section

CHAPTER 12D

IOWA EDUCATIONAL SAVINGS PLAN TRUST

12D.1 Purpose and definitions.
12D.2 Creation of Iowa educational savings plan trust.
12D.3 Participation agreements for trust.
12D.4 Program, endowment, and administrative funds — investment and payments.
12D.4A Administrative fund — appropriation. Repealed by 2000 Acts, ch 1231, §39; 2001 Acts, ch 24, §72, 74.
12D.5 Cancellation of agreements.
12D.6 Repayment and ownership of payments and investment income — transfer of ownership rights.
12D.7 Effect of payments on determination of need and eligibility for student financial aid.
12D.8 Annual audited financial report to governor and general assembly.
12D.9 Tax considerations.
12D.10 Property rights to assets in trust.
12D.11 Construction.

12D.1 Purpose and definitions.

The general assembly finds that the general welfare and well-being of the state are directly related to educational levels and skills of the citizens of the state, and that a vital and valid public purpose is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the state. The state has limited resources to provide additional programs for higher education funding and the continued operation and maintenance of the state's public institutions of higher education and the general welfare of the citizens of the state will be enhanced by establishing a program which allows citizens of the state to invest money in a public trust for future application to the payment of higher education costs. The creation of the means of encouragement for citizens to invest in such a program represents the carrying out of a vital and valid public purpose. In order to make available to the citizens of the state an opportunity to fund future higher education needs, it is necessary that a public trust be established in which moneys may be invested for future educational use. It is also necessary to establish an endowment fund which may be funded with public funds, among other sources, the income from which will be made available to participants in the trust to enhance their savings invested for the payment of future higher education costs.

As used in this chapter, unless the context otherwise requires:

1. *"Account balance limit"* means the maximum allowable aggregate balance of accounts established for the same beneficiary. Account earn-

ings, if any, are included in the account balance limit.

2. *"Administrative fund"* means the administrative fund established under section 12D.4.

3. *"Beneficiary"* means the individual designated by a participation agreement to benefit from advance payments of higher education costs on behalf of the beneficiary.

4. *"Benefits"* means the payment of higher education costs on behalf of a beneficiary by the trust during the beneficiary's attendance at an institution of higher education.

5. *"Endowment fund"* means the endowment fund established under section 12D.4.

6. *"Higher education costs"* means the certified costs of tuition, fees, books, supplies, and equipment required for enrollment or attendance at an institution of higher education. Reasonable room and board expenses, based on the minimum amount applicable for the institution of higher education during the period of enrollment, shall be included as a higher education cost for those students enrolled on at least a half-time basis.

7. *"Institution of higher education"* means an institution described in section 481 of the federal Higher Education Act of 1965, 20 U.S.C. § 1088, which is eligible to participate in the United States department of education's student aid programs.

8. *"Internal Revenue Code"* means the same as defined in section 422.3.

9. *"Iowa educational savings plan trust"* or *"trust"* means the trust created under section 12D.2.

10. *"Participant"* means an individual, or an individual's legal representative, who has entered into a participation agreement under this chapter for the advance payment of higher education costs on behalf of a beneficiary.

11. *"Participation agreement"* means an agreement between a participant and the trust entered into under this chapter.

12. *"Program fund"* means the program fund established under section 12D.4.

13. *"Refund penalty"* means the amount assessed by the treasurer of state for cancellation of a participation agreement which is not considered a de minimus penalty pursuant to section 529 of the Internal Revenue Code.

14. *"Tuition and fees"* means the quarter or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

98 Acts, ch 1172, §1; 2000 Acts, ch 1163, §1, 6

12D.2 Creation of Iowa educational savings plan trust.

An Iowa educational savings plan trust is created. The treasurer of state is the trustee of the trust, and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this chapter pertaining to the trust, including the power to do all of the following:

1. Make and enter into contracts necessary for the administration of the trust created under this chapter.

2. Enter into agreements with any institution of higher education, the state, or any federal or other state agency, or other entity as required to implement this chapter.

3. Carry out the duties and obligations of the trust pursuant to this chapter.

4. Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation which the treasurer of state shall deposit into the administrative fund, the endowment fund, or the program fund.

5. Carry out studies and projections so the treasurer of state may advise participants regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives.

6. Participate in any federal, state, or local governmental program for the benefit of the trust.

7. Procure insurance against any loss in connection with the property, assets, or activities of the trust.

8. Solicit and accept for the benefit of the endowment fund gifts, grants, and other moneys, including legislative appropriations and grants from any federal, state, or local governmental agency.

9. Enter into participation agreements with participants.

10. Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries.

11. Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in this chapter.

12. Invest moneys from the endowment fund and the program fund in any investments which are determined by the treasurer of state to be appropriate.

13. Engage investment advisors, if necessary, to assist in the investment of trust assets.

14. Contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, legal counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice to the treasurer of state regarding trust administration and operation.

15. Establish, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations and late payments with respect to participation agreements.

16. Administer the funds of the trust.

17. Adopt rules pursuant to chapter 17A for the administration of the trust.

98 Acts, ch 1172, §2; 99 Acts, ch 114, §1; 99 Acts, ch 122, §1, 10

1999 amendment striking unnumbered paragraph 2 applies retroactively to July 1, 1998; 99 Acts, ch 122, §10

12D.3 Participation agreements for trust.

The trust may enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

1. *a.* Each participation agreement may require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. A participant shall not be required to make an annual contribution on behalf of a beneficiary. The minimum contribution per beneficiary per year, in a year in which a participant is making a contribution, shall be fifty dollars. The maximum contribution that may be deducted for Iowa income tax purposes shall not exceed two thousand dollars per beneficiary per year adjusted annually to reflect increases in the consumer price index. The treasurer of state shall set an account balance limit to maintain compliance with section 529 of the Internal Revenue Code. A contribution shall not be permitted to the extent it causes the aggregate balance of all accounts established for the same beneficiary to exceed the applicable account balance limit.

b. Participation agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.

2. Beneficiaries designated in participation agreements may be designated from date of birth up to, but not including, their eighteenth birthday. A substitute beneficiary may be older than age eighteen provided that the substitute beneficiary is not older than the original beneficiary.

3. A participant's account balance shall be refunded to the participant, less endowment fund earnings, and less a refund penalty levied by the trust against account balance earnings, if any, in the event an account balance remains in the account for a thirty-day period following the beneficiary's thirtieth birthday.

4. The execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will attain any of the following:

a. Be admitted to an institution of higher education.

b. If admitted, be determined a resident for tuition purposes by the institution of higher education.

c. Be allowed to continue attendance at the institution of higher education following admission.

d. Graduate from the institution of higher education.

5. *a.* A beneficiary under a participation agreement may be changed as permitted under rules adopted by the treasurer of state upon written request of the participant as long as the substitute beneficiary is eligible for participation.

b. Participation agreements may otherwise be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters as authorized by rule.

6. Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions, and upon payment of applicable fees and costs set forth and contained in the rules adopted by the treasurer of state.

98 Acts, ch 1172, §3; 99 Acts, ch 122, §2 – 4, 10; 2000 Acts, ch 1163, §2 – 4, 6

1999 amendments to subsection 1, paragraph a, and subsections 2 and 3 are retroactively applicable to July 1, 1998; 99 Acts, ch 122, §10

12D.4 Program, endowment, and administrative funds — investment and payments.

1. *a.* The treasurer of state shall segregate moneys received by the trust into three funds: the program fund, the endowment fund, and the administrative fund.

b. All moneys paid by participants in connection with participation agreements shall be deposited as received into separate accounts within the program fund.

c. All moneys received by the trust from the proceeds of gifts and other endowments for the purposes of the trust shall be deposited as received into the endowment fund.

d. The program fund and the endowment fund shall be separately administered.

e. Any gifts, grants, or donations made by any governmental entity or any person, firm, partnership, or corporation to the trust for deposit to the endowment fund shall be a grant, gift, or donation to the state for the accomplishment of a valid public eleemosynary, charitable, and educational purpose and shall not be included in the income of the donor for Iowa tax purposes.

f. Contributions to the trust made by participants or received in the form of gifts, grants, or donations may only be made in the form of cash.

g. A participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

2. *a.* Each beneficiary under a participation agreement shall receive a pro rata interest in the investment income derived by the endowment fund each year after any transfers to the administrative fund have been made.

b. The amount of interest received from the endowment fund shall be in the ratio that the principal amount paid by the participant under the

participation agreement and investment income earned to date under the agreement bears to the principal amount of all moneys, funds, and securities then held in the program fund, but not to exceed the amount which, in combination with the current payment due from the program fund, equals the beneficiary's higher education costs for the current period of enrollment.

c. Moneys accrued by participants in the program fund of the trust may be used for payments to any institution of higher education.

d. No rights to any moneys derived from the endowment fund shall exist if moneys payable under the participation agreement are paid to an educational institution which is not an institution of higher education.

98 Acts, ch 1172, §4

12D.4A Administrative fund — appropriation. Repealed by 2000 Acts, ch 1231, § 39; 2001 Acts, ch 24, § 72, 74.

12D.5 Cancellation of agreements.

1. A participant may cancel a participation agreement at will. Upon cancellation of a participation agreement, a participant shall be entitled to the return of the participant's account balance, less endowment fund investment earnings, and less a refund penalty levied by the trust against the participant's account balance earnings, if any. The penalty shall be deposited into the administrative fund.

2. *a.* Upon the occurrence of any of the following circumstances, no refund penalty shall be levied by the trust in the event of cancellation of a participation agreement:

(1) Death of the beneficiary.

(2) Permanent disability or mental incapacity of the beneficiary.

(3) The beneficiary is awarded a scholarship, as defined in section 529 of the Internal Revenue Code, but only to the extent the refund of earnings does not exceed the scholarship amount.

b. In the event of cancellation of a participation agreement for any of the causes listed in paragraph *"a"*, the participant shall be entitled to receive the participant's account balance, less endowment fund investment income.

98 Acts, ch 1172, §5; 99 Acts, ch 96, §1; 99 Acts, ch 122, §6, 7, 10

1999 amendments to subsection 1 and subsection 2, paragraph b, apply retroactively to July 1, 1998; 99 Acts, ch 122, §10

12D.6 Repayment and ownership of payments and investment income — transfer of ownership rights.

1. *a.* A participant retains ownership of all payments made under a participation agreement up to the date of utilization for payment of higher education costs for the beneficiary.

b. All income derived from the investment of the payments made by the participant shall be considered to be held in trust for the benefit of the beneficiary.

2. In the event the program is terminated prior to payment of higher education costs for the beneficiary, the participant is entitled to a refund of the participant's account balance.

No right to receive investment income shall exist in cases of voluntary participant cancellation except as provided in section 12D.5.

3. If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, the treasurer of state shall pay the balance to the participant.

4. The institution of higher education shall obtain ownership of the payments made for the higher education costs paid to the institution at the time each payment is made to the institution.

5. Any amounts which may be paid to any person or persons pursuant to the Iowa educational savings plan trust but which are not listed in this section are owned by the trust.

6. A participant may transfer ownership rights to another eligible individual, including a gift of the ownership rights to a minor beneficiary. The transfer shall be made and the property distributed in accordance with rules adopted by the treasurer of state or with the terms of the participation agreement.

7. A participant shall not be entitled to utilize any interest in the trust as security for a loan.

98 Acts, ch 1172, §6; 99 Acts, ch 96, §2; 99 Acts, ch 114, §2; 99 Acts, ch 122, §8, 10

1999 amendment to subsection 2, unnumbered paragraph 1 applies retroactively to July 1, 1998; 99 Acts, ch 122, §10

12D.7 Effect of payments on determination of need and eligibility for student financial aid.

A student loan program, student grant program, or other program administered by any agency of the state, except as may be otherwise provided by federal law or the provisions of any specific grant applicable to that law, shall not take into account and shall not consider amounts available for the payment of higher education costs pursuant to the Iowa educational savings plan trust in determining need and eligibility for student aid.

98 Acts, ch 1172, §7

12D.8 Annual audited financial report to governor and general assembly.

1. The treasurer of state shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the trust by November 1 to the governor and the general assembly.

The annual audit shall be made either by the auditor of state or by an independent certified public accountant designated by the auditor of state and shall include direct and indirect costs attributable to the use of outside consultants, independent con-

tractors, and any other persons who are not state employees.

2. The annual audit shall be supplemented by all of the following information prepared by the treasurer of state:

a. Any related studies or evaluations prepared in the preceding year.

b. A summary of the benefits provided by the trust including the number of participants and beneficiaries in the trust.

c. Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the trust.

98 Acts, ch 1172, §8

12D.9 Tax considerations.

1. For federal income tax purposes, the Iowa educational savings plan trust shall be considered a qualified state tuition program exempt from taxation pursuant to section 529 of the Internal Revenue Code. The Iowa educational savings plan trust meets the requirements of section 529(b), of the Internal Revenue Code, as follows:

a. Pursuant to section 12D.3, subsection 1, paragraph *"a"*, a participant may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

b. Pursuant to section 12D.3, subsection 1, a maximum contribution level is established.

c. Pursuant to section 12D.4, subsection 1, paragraph *"b"*, a separate account is established for each beneficiary.

d. Pursuant to section 12D.4, subsection 1, paragraph *"f"*, contributions may only be made in the form of cash.

e. Pursuant to section 12D.4, subsection 1, paragraph *"g"*, a participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

f. Pursuant to section 12D.5, subsection 1, penalties are provided on refunds of earnings which are not used for qualified higher education expenses of the beneficiary, made on account of the death or disability of the designated beneficiary, or made due to scholarship, allowance, or payment receipt as provided in section 529(b)(3) of the Internal Revenue Code.

g. Pursuant to section 12D.6, subsection 7, a participant shall not pledge any interest in the trust as security for a loan.

2. State income tax treatment of the Iowa educational savings plan trust shall be as provided in section 422.7, subsections 32, 33, and 34, and section 422.35, subsection 14.

98 Acts, ch 1172, §9; 99 Acts, ch 122, §9, 10

1999 amendment to subsection 1, paragraph f applies retroactively to July 1, 1998; 99 Acts, ch 122, §10

12D.10 Property rights to assets in trust.

1. The assets of the trust, including the program fund and the endowment fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries.

2. No property rights in the trust shall exist in favor of the state.

3. The assets of the trust shall not be transferred or used by the state for any purposes other than the purposes of the trust.

98 Acts, ch 1172, §10

12D.11 Construction.

This chapter shall be construed liberally in order to effectuate its purpose.

98 Acts, ch 1172, §11

CHAPTER 12E

TOBACCO SETTLEMENT AUTHORITY

Chapter repeal rescinded; 2000 Acts, ch 1208, §24, 25; 2001 Acts, ch 5, §1, 2; 2001 Acts, ch 164, §19, 21

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12E.1 Title.

This chapter shall be known and may be cited as the *"Tobacco Settlement Authority Act"*.

2000 Acts, ch 1208, §1, 25

12E.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Authority"* means the tobacco settlement authority created in this chapter.

2. *"Board"* means the governing board of the authority.

3. *"Bonds"* means bonds, notes, and other obligations and financing arrangements issued or entered into by the authority pursuant to this chapter.

4. *"Financial institution"* means a bank or credit union as defined in section 12C.1.

5. *"Healthy Iowans tobacco trust"* means the healthy Iowans tobacco trust created in section 12.65.

6. *"Interest rate agreement"* means an interest rate swap or exchange agreement, an agreement establishing an interest rate floor or ceiling or both, or any similar agreement. Any such agreement may include the option to enter into or cancel the agreement or to reverse or extend the agreement.

7. *"Master settlement agreement"* means the master settlement agreement as defined in section 453C.1.

8. *"Net proceeds"* means the amount of proceeds remaining following each sale of bonds which are not required by the authority to establish and fund reserve funds and to pay the costs of issuance and other expenses and fees directly related to the authorization and issuance of bonds.

9. *"Notes"* means notes, warrants, loan agreements, and all other forms of evidence of indebtedness authorized under this chapter.

10. *"Program plan"* means the tobacco settlement program plan dated February 14, 2001, including exhibits to the program plan, submitted by the authority to the legislative council and the executive council, to provide the state with a secure and stable source of funding for the purposes designated by this chapter and section 12.65.

11. *"Qualified investments"* means investments of the authority authorized pursuant to this chapter.

12. *"Sales agreement"* means any agreement authorized pursuant to this chapter in which the state provides for the sale of all or a portion of the state's share to the authority.

13. *"State's share"* means all of the following:

a. All payments required to be made by tobacco product manufacturers to the state, and the state's rights to receive such payments, under the master settlement agreement.

b. To the extent that such amounts have been assigned to the state, all payments of attorney fees required to be made by tobacco product manufacturers under the master settlement agreement, and all rights to receive such attorney fees.

14. *"Tax-exempt bonds"* means bonds issued by the authority that are accompanied by a written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

15. *"Taxable bonds"* means bonds issued by the authority that are not accompanied by a written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

16. *"Tobacco settlement trust fund"* means the tobacco settlement trust fund created in this chapter.

2000 Acts, ch 1208, §2, 25; 2000 Acts, ch 1232, §13, 15; 2001 Acts, ch 164, §2 – 5, 21

12E.3 Tobacco settlement authority — created — purposes — powers — restrictions.

1. A tobacco settlement authority is created and constitutes a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential governmental functions.

2. The purposes of the authority include all of the following:

a. To implement and administer the program plan and to establish a stable source of revenue to be used for the purposes designated in this chapter and section 12.65.

b. To enter into sales agreements.

c. To issue bonds and enter into funding options, consistent with this chapter, including refunding and refinancing its debt and obligations.

d. To sell, pledge, or assign, as security or consideration, all or a portion of the state's share sold to the authority pursuant to a sales agreement, to provide for and secure the issuance and repayment of its bonds.

e. To invest funds available under this chapter to provide for a source of revenue in accordance with the program plan.

f. To enter into agreements with the state for the periodic distribution of amounts due the state under any sales agreement.

g. To refund and refinance the authority's debts and obligations, and to manage its funds, obligations, and investments as necessary and if consistent with its purpose.

h. To sell, pledge, or assign, as security or consideration, all or a portion of the state's share to implement alternative funding options.

i. To implement the purposes of this chapter.

3. The authority shall invest its funds and accounts in accordance with this chapter and shall not take action or invest in any manner that would cause the state to become a stockholder in any corporation or that would cause the state to assume

or agree to pay the debt or liability of any corporation in violation of the United States Constitution or the Constitution of the State of Iowa.

4. The authority shall not create any obligation of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitation.

5. The authority shall not pledge the credit or taxing power of this state or any political subdivision of this state, or make its debts payable out of any moneys except those of the authority specifically pledged for their payment.

6. The authority shall not pledge or make its debts payable out of the moneys deposited in the tobacco settlement trust fund.

2000 Acts, ch 1208, §3, 25; 2000 Acts, ch 1232, §14, 15; 2001 Acts, ch 164, §6, 21

12E.4 Powers not restricted — law complete in itself.

This chapter shall not restrict or limit the powers which the authority has under any other law of this state, but is cumulative as to any such powers. A proceeding, notice, or approval is not required for the creation of the authority or the issuance of obligations or an instrument as security, except as provided in this chapter.

2000 Acts, ch 1208, §4, 25

12E.5 Governing board.

1. The powers of the authority are vested in and shall be exercised by a board consisting of the treasurer of state, the auditor of state, and the director of the department of management. Notwithstanding the provisions of section 12.30, subsection 2, regarding ex officio nonvoting status, the treasurer of state shall act as a voting member of the authority.

2. Two members of the board constitute a quorum.

3. The members shall elect a chairperson, vice chairperson, and secretary, annually, and other officers as the members determine necessary. The treasurer of state shall serve as treasurer of the authority.

4. Meetings of the board shall be held at the call of the chairperson or when a majority of the members so requests.

5. The members of the board shall not receive compensation by reason of their membership on the board.

2000 Acts, ch 1208, §5, 25

12E.6 Staff — assistance by state officers, agencies, and departments.

1. The staff of the office of the treasurer of state shall also serve as staff of the authority under the supervision of the treasurer.

2. State officers, agencies, and departments may render services to the authority within their respective functions, as requested by the authority.

2000 Acts, ch 1208, §6, 25

12E.7 Limitation of liability.

Members of the board and persons acting on the authority's behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties conferred on them under this chapter.

2000 Acts, ch 1208, §7, 25

12E.8 General powers.

1. The authority has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers, including but not limited to all of the following powers:

a. The power to issue its bonds and to enter into other funding options as provided in this chapter.

b. The power to have perpetual succession as a public instrumentality and agency of the state, until dissolved in accordance with this chapter.

c. The power to sue and be sued in its own name.

d. The power to make and execute agreements, contracts, and other instruments, with any public or private person, in accordance with this chapter.

e. The power to hire and compensate legal counsel, notwithstanding chapter 13.

f. The power to hire investment advisors and other persons as necessary to fulfill its purpose.

g. The power to invest or deposit moneys of or held by the authority in any manner determined by the authority, notwithstanding chapter 12B or 12C.

h. The power to procure insurance, other credit enhancements, and other financing arrangements, and to execute instruments and contracts and to enter into agreements convenient or necessary to facilitate financing arrangements of the authority and to fulfill the purposes of the authority under this chapter, including but not limited to such arrangements, instruments, contracts, and agreements as municipal bond insurance, liquidity facilities, interest rate agreements, and letters of credit.

i. The power to accept appropriations, gifts, grants, loans, or other aid from public or private entities.

j. The power to adopt rules, consistent with this chapter and in accordance with chapter 17A, as the board determines necessary.

k. The power to acquire, own, hold, administer, and dispose of property.

l. The power to determine, in connection with the issuance of bonds, and subject to the sales agreement, the terms and other details of financing, and the method of implementation of the program plan.

m. The power to perform any act not inconsistent with federal or state law necessary to carry out the purposes of the authority.

2. The authority is exempt from the requirements of chapter 18.

2000 Acts, ch 1208, §8, 25; 2001 Acts, ch 164, §7, 8, 21

12E.9 Authorization of the sale of rights in the master settlement agreement.

1. *a.* The governor or the governor's designee shall sell and assign all or a portion of the state's share to the authority pursuant to one or more sales agreements for the purpose of securitization as described in the program plan and as specified in section 12E.10. The attorney general shall assist the governor in the preparation and review of all necessary documentation to effect such a sale as soon as reasonably practicable.

b. Any sales agreement shall be consistent with the program plan and this chapter. The terms and conditions of the sale established in such sales agreement may include but are not limited to any of the following:

(1) A requirement that the state enforce, at the sole expense of the authority, the provisions of the master settlement agreement that require payment of the state's share that has been sold to the authority under a sales agreement.

(2) A requirement that the state not agree to any amendment of the master settlement agreement that materially and adversely affects the authority's ability to receive the state's share that has been sold to the authority.

(3) An agreement that the anticipated use by the state of bond proceeds received pursuant to the sales agreement shall be for capital projects, certain debt service on outstanding obligations that funded capital projects, payment of attorney fees related to the master settlement agreement, and to provide a secure and stable source of funding to the state for purposes designated by this chapter and section 12.65.

(4) A statement that the net proceeds from the sale of bonds shall be deposited in the tobacco settlement trust fund established under section 12E.12 and that in no event shall the amounts in the trust fund be available or be applied for payment of bonds or any claim against the authority or any debt or obligation of the authority.

(5) A requirement that the net proceeds received by the authority from the sale of any tax-exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement be paid by the authority to the state as consideration for the sale of that portion of the state's share, that such net proceeds be deposited by the state upon receipt in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, and that such proceeds are to be held by the authority solely for the benefit of the state, subject to annual appropriation by the state in accordance with section 12E.10, subsection 1, paragraph *"b"*.

(6) A requirement that the net proceeds received by the authority from the sale of taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in section 12.65 be deposited in the endowment for Iowa's health account of the tobacco settlement trust fund as moneys of the authority until transferred to the state pursuant to section 12E.12, subsection 1, paragraph *"b"*, subparagraph (2). Each amount transferred shall be the consideration received by the state for that portion of the state's share.

(7) An agreement that the effective date of the sale is the date of receipt of the bond proceeds by the authority and the deposits of the net proceeds of the tax-exempt bonds and any taxable bonds in the respective accounts of the tobacco settlement trust fund.

2. The sale made under this section shall be irrevocable during the time when bonds are outstanding under this chapter, and shall be a part of the contractual obligation owed to the bondholders. The sale shall constitute and be treated as a true sale and absolute transfer of the property so transferred and not as a pledge or other security interest for any borrowing. The characterization of such a sale as an absolute transfer shall not be negated or adversely affected by the fact that only a portion of the state's share is being sold, or by the state's acquisition or retention of an ownership interest in the residual assets.

3. On or after the effective date of such sale, the state shall not have any right, title, or interest in the portion of the master settlement agreement sold and such portion shall be the property of the authority and not the state, and shall be owned, received, held, and disbursed by the authority or its trustee or assignee, and not the state.

4. On or before the effective date of the sale, the state shall notify the escrow agent under the master settlement agreement of the sale and shall instruct the escrow agent that subsequent to that date, all payments constituting the portion sold shall be made directly to the authority.

5. The authority, the treasurer of state, and the attorney general shall report to the legislative council and the executive council on or before the date of the sale, advising them of the status of the sale, its terms, and conditions.

2000 Acts, ch 1208, §9, 25; 2001 Acts, ch 164, §9, 10, 21

Deposit of state's share in healthy Iowans tobacco trust under §12.65 until effective date of sale; 2001 Acts, ch 164, §20

12E.10 Tobacco settlement program plan.

1. *a.* (1) The authority shall implement the program plan and shall proceed with a securitization to maximize the transference of risks associated with the master settlement agreement.

(2) The authority shall issue tax-exempt bonds in an amount that is sufficient to provide net proceeds in an amount of not more than five hundred forty million dollars for deposit in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, to be used for capital projects, certain debt service on outstanding obligations which funded capital projects, and attorney fees related to the master settlement agreement.

(3) The authority may also issue taxable bonds or tax-exempt bonds to provide additional amounts to be used for the purposes specified in section 12.65.

(4) Notwithstanding subparagraphs (1) and (2), the authority is not required to issue tax-exempt bonds if the authority determines that the issuance would not be in the best interest of the state due to market conditions.

b. It is the expectation of the state that not less than eighty-five percent of the proceeds deposited in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund will be expended within five years from the effective date of the sale, consistent with the requirements of federal law, and that the specific capital projects, debt service, and attorney fees payments shall be determined annually through appropriations authorized by a constitutional majority of each house of the general assembly and approved by the governor.

2. The authority shall periodically report to the legislative council and the governor regarding implementation of the program plan and shall, prior to any public offering of bonds, submit a report to the legislative council and the governor describing the terms of the proposed bond issue.

3. Any amendment to the program plan shall be authorized by a constitutional majority of each house of the general assembly and approved by the governor.

4. To the extent that any provision of the program plan is inconsistent with this chapter, the provisions of this chapter shall govern.

2000 Acts, ch 1208, §10, 25; 2001 Acts, ch 164, §11, 21

12E.11 Authority — bonds.

1. The authority may issue bonds and, if bonds are issued, shall make the proceeds from the bonds available to the state pursuant to the sales agreement to fund capital projects, certain debt service on outstanding obligations that funded capital projects, and attorney fees related to the master settlement agreement, and to provide a secure and stable source of funding to the state, consistent with the purposes of this chapter and section 12.65. In connection with the issuance of bonds and subject to the terms of the sales agreement, the authority shall determine the terms and other details of the financing and the method of implementation of the program plan. Bonds issued pursuant to this section may be secured by a pledge of all or a portion of the state's share and any moneys derived from the state's share, and any other sources available to the authority with the exception of moneys in the tobacco settlement trust fund. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds, and may issue other types of bonds, debt obligations, and financing arrangements necessary to fulfill its purposes or the purposes of this chapter.

2. The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its purposes, the payment of interest on its bonds, the establishment of reserves to secure the bonds, the costs of issuance of its bonds, and all other expenditures of the authority incident to and necessary to carry out its purposes or powers. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of the uniform commercial code.

3. Bonds issued by the authority are payable solely and only out of the moneys, assets, or revenues pledged by the authority and are not a general obligation or indebtedness of the authority or an obligation or indebtedness of the state or any subdivision of the state. The authority shall not pledge the credit or taxing power of the state or any political subdivision of the state, or create a debt or obligation of the state, or make its debts payable out of any moneys except those of the authority, excluding those moneys deposited in the tobacco settlement trust fund.

4. Bonds shall state on their face that they are payable both as to principal and interest solely out of the assets of the authority pledged for their purpose and do not constitute an indebtedness of the state or any political subdivision of the state; are secured solely by and payable solely from assets of the authority pledged for such purpose; constitute neither a general, legal, or moral obligation of the state or any of its political subdivisions; and that the state has no obligation or intention to satisfy any deficiency or default of any payment of the bonds.

5. Any amount pledged by the authority to be received under the master settlement agreement shall be valid and binding at the time the pledge is made. Amounts so pledged and then or thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, whether such parties have notice of the lien. Notwithstanding any other provision to the contrary, the resolution of the authority or any other instrument by which a pledge is created need not be recorded or filed to perfect

such pledge.

6. The proceeds of bonds issued by the authority and not required for deposit in the tobacco settlement trust fund may be invested in any manner approved by the board and specified in the trust indenture or resolution pursuant to which the bonds must be issued, notwithstanding any other provision to the contrary.

7. The bonds shall comply with all of the following:

a. The bonds shall be in a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, as the board prescribes in the resolution authorizing their issuance.

b. The bonds shall be fully negotiable instruments under the laws of this state and may be sold at prices, at public or private sale, and in a manner as prescribed by the board. Chapters 73A, 74, 74A, and 75 shall not apply to the sale or issuance of bonds under this chapter.

c. The bonds shall be subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest which may be fixed or variable during any period the bonds are outstanding, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by resolution of the board authorizing their issuance.

8. The bonds issued under this chapter are securities in which insurance companies and associations and other persons engaged in the business of insurance; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

9. Bonds must be authorized by a resolution of the board. However, a resolution authorizing the issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds by an appropriate certificate of the authorized officer.

10. To comply with federal law with respect to the issuance of bonds, the interest of which is tax-exempt pursuant to the Internal Revenue Code, the authority may issue a certain series of bonds, or periodically issue several series of bonds, so that interest on the bonds remains exempt from federal taxation or to comply with the purposes specified in this chapter.

11. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the authority, including the power to terminate the authority, except that a law shall not be enacted that impairs any obligation made pursuant to a sales agreement or any contract entered into by the authority with or on behalf of the holders of the bonds to the extent that any such law would contravene Article I, section 21, of the Constitution of the State of Iowa or Article I, section 10, of the Constitution of the United States.

2000 Acts, ch 1208, §11, 25; 2001 Acts, ch 164, §12 – 14, 21

12E.12 Tobacco settlement trust fund — established — investment — liability.

1. *a.* A tobacco settlement trust fund is established, separate and apart from all other public moneys or funds of the state, under the control of the authority. The fund shall consist of moneys paid to the authority and not pledged to the payment of bonds or otherwise obligated. Such moneys shall include but are not limited to payments received from the master settlement agreement which are not pledged to the payment of bonds or which are subsequently released from a pledge to the payment of any bonds; payments which, in accordance with any sales agreement with the state, are to be paid to the state and not pledged to the bonds, including that portion of the proceeds of any bonds designated for purchase of all or a portion of the state's share, which are designated for deposit in the fund, together with all interest, dividends, and rents on the bonds; and all securities or investment income and other assets acquired by and through the use of the moneys belonging to the fund and any other moneys deposited in the fund. Moneys in the fund are to be used solely and only for the payment of all amounts due and to become due to the state, and shall not be used for any other purpose. Such moneys shall not be available for the payment of any claim against the authority or any debt or obligation of the authority.

b. The fund shall consist of the following accounts:

(1) The tax-exempt bond proceeds restricted capital funds account. The net proceeds of tax-exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement which the state treasurer is authorized and directed to deposit on behalf of the state shall be deposited in the account and shall be used to fund capital projects, certain debt service, and the payment of attorney fees related to the master settlement agreement. With respect to capital projects, it is the intent of the general assembly to fund capital projects that qualify as vertical infrastructure projects as defined in section 8.57, subsection 5, paragraph *"c"*, to the extent practicable in any fiscal year and without limiting other qualifying capital expenditures considered and approved by a constitutional majority of each house of the general assembly and the governor.

(2) The endowment for Iowa's health account. The net proceeds of any taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in section 12.65 which the author-

ity is directed to deposit in the account, any portion of the state's share which is not sold to the authority, and any other moneys appropriated by the state for deposit in the account shall be deposited in the account and shall be used for the purposes specified in section 12.65.

(a) There is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund to the healthy Iowans tobacco trust for the fiscal year beginning July 1, 2001, and ending June 30, 2002, the amount of fifty-five million dollars, to be used for the purposes specified in section 12.65.

(b) For each fiscal year beginning July 1, 2002, and annually thereafter, there is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund to the healthy Iowans tobacco trust fifty-five million dollars plus an inflationary factor of one and one-half percent of the amount transferred in the previous fiscal year. Any transfer in an amount not in accordance with this subparagraph shall not be made unless authorized by a three-fifths majority of each house and approved by the governor.

2. The treasurer of the authority shall act as custodian and trustee of the fund and shall administer the fund as directed by the authority. The treasurer of the authority shall do all of the following:

a. Hold the funds.

b. Invest the portion of the funds which, as deemed by the authority, is not necessary for current payment of sums to the state under this chapter or the program plan.

c. Disburse funds, if directed by the authority.

d. Sell any securities or other property held by the fund and reinvest the proceeds as directed by the authority, when deemed advisable by the authority for the protection of the fund or the preservation of the value of the investment. Such sale of securities or other property held by the fund shall only be made with the advice of the board in the manner and to the extent provided in this chapter with regard to the purchase of investments.

e. Subscribe, at the direction of the authority, for the purchase of securities for future delivery in anticipation of future income. Such securities shall be paid for by such anticipated income or from funds from the sale of securities or other property held by the fund.

f. Pay for securities, as directed by the authority, on the receipt of the purchasing entity's paid statement or paid confirmation of purchase.

3. The authority shall execute the disposition and investment of moneys in the fund in accordance with the investment policy and goal statement established by the board.

a. In establishing the investment policy and goal statement of the fund, the standard utilized by the board shall be the exercise of judgment and care, under the prevailing circumstances, which persons of prudence, discretion, and intelligence exercise in the management of their own financial affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital.

b. Within the limitations of the standard prescribed in this subsection and the program plan, the treasurer of the authority, the authority, and the board may acquire and retain any type of property or investment which persons of prudence, discretion, and intelligence would acquire or retain for their own financial interests.

c. The authority and the board shall give appropriate consideration to those facts and circumstances that the authority and board know or should know are relevant to the particular investment or investment policy involved, including the role the investment plays in the total value of the fund. For the purposes of this paragraph, *"appropriate consideration"* includes, but is not limited to, a determination by the authority and the board that the particular investment or investment policy is reasonably designed to further the purposes of the tobacco settlement program plan, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment policy and consideration of all of the following as they relate to the tobacco settlement trust fund:

(1) The composition of the fund with regard to diversification.

(2) The liquidity and current return of the investments in the fund relative to the anticipated cash flow requirements of the program plan.

(3) The projected return of the investments relative to the funding objectives of the program plan.

d. Investments of moneys in the funds are not subject to sections 73.15 through 73.21.

e. If consistent with the investment policy established by the board, the authority may invest moneys of or held by the authority in structured notes and investment agreements, the repayment of the principal amount of which is protected or guaranteed.

4. The authority, its staff, members of the board, and the treasurer of the authority are not personally liable for actions or omissions under this chapter that do not involve malicious or wanton misconduct even if those actions or omissions violate the standards established in this section.

5. Except as provided in this section, if there is loss to the fund, the treasurer, the authority, the board, and the staff are not personally liable, and the loss shall be charged against the fund. The amount required to cover a loss may be paid from the fund.

6. *a.* Expenses incurred in the sale and purchase of securities belonging to the fund shall be charged to the fund, and the amount required for the investment management expenses may be

paid from the fund, subject to the limitations stated in this subsection. The amount paid for investment management expenses for a fiscal year under this section shall not exceed the reasonable and customary charge to similar funds for similar purposes. The authority shall report the investment management expenses for a fiscal year as a percent of the market value of the fund in the annual report to the governor submitted pursuant to section 12E.15.

b. A person who has entered into a contract with the authority for investment management purposes shall meet the requirements for doing business in Iowa sufficient to be subject to taxation under the rules of the department of revenue and finance.

7. All moneys paid to or deposited in the fund are available to the authority to be used for the exclusive purpose of the program plan in accordance with this chapter, including but not limited to all of the following:

a. For payment of amounts due to the state pursuant to the terms of the sales agreements entered into between the state and the authority.

b. For payment of other amounts provided for in the program plan.

c. For payment of the costs of administering the program plan and the costs of the authority.

8. With respect to the payment of certain debt service, the debt service to be paid shall be those installments of debt service on bonds selected by the treasurer of state and identified in the authority's tax certificate delivered at the time of the issuance of the bonds issued pursuant to this chapter, or as otherwise selected by the treasurer of state. Once the bonds and the installments of debt service thereon are so selected, that debt service and bonds shall not be paid, or provided to be paid, from any other source including the state or any of its departments or agencies. Provided, however, that if funds are not appropriated to pay debt service on such bonds when due, the issuing agency shall pay such debt service from any available source as provided in the bond covenants for such bonds.

2000 Acts, ch 1208, §12, 25; 2001 Acts, ch 164, §15, 16, 21; 2002 Acts, 2nd Ex, ch 1001, §35, 46; 2002 Acts, 2nd Ex, ch 1003, §229, 233

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions

Contingent appropriation of state general fund moneys; 2001 Acts, ch 174, §1 – 3; 2001 Acts, 2nd Ex, ch 6, §1, 37; 2002 Acts, ch 1166, §16, 18, 26

NEW subsection 8

12E.13 Moneys of the authority.

1. Moneys of the authority, except as otherwise provided in this chapter or specified in a trust indenture or resolution pursuant to which the bonds are issued, shall be paid to the authority and shall be deposited in a financial institution designated by the authority. The moneys shall be withdrawn on the order of the authority or its designee. Deposits shall be secured in the manner determined by the authority.

2. The auditor of state or the auditor's designee, which may include a person hired by the auditor with the approval of the board, may periodically examine the accounts and books, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing. The authority shall pay the costs of any such examination.

3. The authority may contract with the holders of its bonds relating to the custody, collection, security, investment, and payment of moneys of the authority, and relating to the moneys held in trust or otherwise for payment of bonds, with the exception of moneys in the tobacco settlement trust fund. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of the moneys may be secured in the same manner as moneys of the authority, and financial institutions and trust companies may provide security for the deposits.

4. The authority shall submit to the governor, the attorney general, the auditor of state, the department of management, and the legislative fiscal bureau, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority, other than copies of the reports of examinations of the auditor of state.

5. All moneys of the authority or moneys held by the authority shall be invested and held in the name of the authority, whether they are held for the benefit, security, or future payment to holders of bonds or to the state. All such moneys and investments shall be considered moneys and investments of the authority with the exception of moneys in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund which are moneys of the state.

2000 Acts, ch 1208, §13, 25; 2001 Acts, ch 164, §17, 21

12E.14 Exemption from competitive bid laws.

The authority and contracts entered into by the authority in carrying out its public and essential governmental functions are exempt from the laws of the state which provide for competitive bids and hearings in connection with contracts, except as provided in section 12.30.

2000 Acts, ch 1208, §14, 25

12E.15 Annual report.

1. The authority shall submit to the governor, the general assembly, and the attorney general, on

or before December 31, annually, a report including information regarding all of the following:

a. Its operations and accomplishments.

b. Its receipts and expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.

d. A schedule of its bonds outstanding at the end of the previous fiscal year, and a statement of the amounts redeemed and issued during the previous fiscal year.

e. A statement of its proposed and projected activities.

f. Recommendations to the governor and the general assembly, as deemed necessary.

g. Any other information deemed necessary.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress, during the reporting period, in attaining these goals.

2000 Acts, ch 1208, §15, 25

12E.16 Bankruptcy.

Prior to the date which is three hundred sixty-six days after which the authority no longer has any bonds outstanding, the authority is prohibited from filing a voluntary petition under chapter 9 of the federal bankruptcy code or such corresponding chapter or section as may, from time to time, be in effect, and a public official or organization, entity, or other person shall not authorize the authority to be or become a debtor under chapter 9 or any successor or corresponding chapter or sections during such periods. The provisions of this section shall be part of any contractual obligation owed to the holders of bonds issued under this chapter. Any such contractual obligation shall not subsequently be modified by state law, during the period of the contractual obligation.

2000 Acts, ch 1208, §16, 25

12E.17 Dissolution of the authority.

The authority shall dissolve no later than two years from the date of final payment of all outstanding bonds and the satisfaction of all outstanding obligations of the authority, except to the extent necessary to remain in existence to fulfill any outstanding covenants or provisions with bondholders or third parties made in accordance with this chapter. Upon dissolution of the authority, all assets of the authority shall be returned to the state and shall be deposited in the healthy Iowans tobacco trust, unless otherwise directed by the general assembly, and the authority shall execute any necessary assignments or instruments, including any assignment of any right, title, or ownership to the state for receipt of payments under the master settlement agreement.

2000 Acts, ch 1208, §17, 25; 2001 Acts, ch 164, §18, 21

12E.18 Liberal interpretation.

This chapter, being deemed necessary for the welfare of the state and its people, shall be liberally construed to effect its purpose.

2000 Acts, ch 1208, §18, 25

CHAPTER 13

ATTORNEY GENERAL

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SUBCHAPTER I

GENERAL PROVISIONS

13.1 Department of justice.

The department of justice, with the attorney general as head thereof, shall be located at the seat of government.

[R60, §124; C73, §150, 3770; C97, §208, 211; S13, §208, 211; C24, 27, 31, 35, 39, §**148;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.1]

13.2 Duties.

It shall be the duty of the attorney general, except as otherwise provided by law to:

1. Prosecute and defend all causes in the appellate courts in which the state is a party or interested.

2. Prosecute and defend in any other court or tribunal, all actions and proceedings, civil or criminal, in which the state may be a party or interested, when, in the attorney general's judgment, the interest of the state requires such action, or when requested to do so by the governor, executive council, or general assembly.

3. Prosecute and defend all actions and proceedings brought by or against any state officer in the officer's official capacity.

4. Prosecute and defend all actions and proceedings brought by or against any employee of a judicial district department of correctional services in the performance of an assessment of risk pursuant to chapter 692A.

5. Give an opinion in writing, when requested, upon all questions of law submitted by the general assembly or by either house thereof, or by any state officer, elective or appointive. Questions submitted by state officers must be of a public nature and relate to the duties of such officer.

6. Prepare drafts for contracts, forms, and other writings which may be required for the use of the state.

7. Report to the governor, at the time provided by law, the condition of the attorney general's office, opinions rendered, and business transacted of public interest.

8. Supervise county attorneys in all matters pertaining to the duties of their offices, and from time to time to require of them reports as to the condition of public business entrusted to their charge.

9. Promptly account, to the treasurer of state, for all state funds received by the attorney general.

10. Keep in proper books a record of all official opinions, and a register of all actions, prosecuted and defended by the attorney general, and of all proceedings had in relation thereto, which books shall be delivered to the attorney general's successor.

11. Perform all other duties required by law.

12. Inform prosecuting attorneys and assistant prosecuting attorneys to the state of all changes in law and matters pertaining to their office and establish programs for the continuing education of prosecuting attorneys and assistant prosecuting attorneys. The attorney general may accept funds, grants and gifts from any public or private source which shall be used to defray the expenses incident to implementing duties under this subsection.

13. Establish and administer, in cooperation with the law schools of Drake university and the state university of Iowa, a prosecutor intern program incorporating the essential elements of the pilot program denominated *"law student intern program in prosecutors' office"* funded by the Iowa crime commission and participating counties. The attorney general shall consult with an advisory committee including representatives of each participating law school and the Iowa county attorneys association, inc. concerning development, administration, and critique of this program. The attorney general shall report on the program's operation annually to the general assembly and the supreme court.

14. Develop written procedures and policies to be followed by prosecuting attorneys in the prosecution of domestic abuse cases under chapters 236 and 708.

[R60, §124 – 127, 130, 131; C73, §150 – 153; C97, §208 – 210; S13, §208-a; C24, 27, 31, 35, 39, §**149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.2]
95 Acts, ch 180, §1; 99 Acts, ch 112, §1

13.3 Disqualification — substitute.

1. If, for any reason, the attorney general be disqualified from appearing in any action or proceeding, the executive council shall appoint some suitable person for that purpose and defray the reasonable expense thereof from any unappropriated funds in the state treasury. The department involved in the action or proceeding shall be requested to recommend a suitable person to represent the department and when the executive council concurs in the recommendation, the person recommended shall be appointed.

2. If the governor or a department is represented by an attorney other than the attorney general in a court proceeding as provided in this section, at the conclusion of the court proceedings, the court shall review the fees charged to the state to determine if the fees are fair and reasonable. The executive council shall not reimburse attorneys' fees in excess of those determined by the court to be fair and reasonable.

[C24, 27, 31, 35, 39, §**150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.3]
92 Acts, ch 1240, §12

13.4 Assistant attorneys general.

The attorney general may appoint a first assistant attorney general and such other assistant attorneys general as may be authorized by law, who shall devote their entire time to the duties of their positions. The assistant attorneys general shall, subject to the direction of the attorney general, have the same power and authority as the attorney general.

[C97, §212; S13, §212; C24, 27, 31, 35, 39, §**151;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.4]

13.5 Assistant for department of revenue and finance.

The attorney general may appoint one assistant attorney general to perform and supervise the legal work of the department of revenue and finance, and in such event the salary and necessary traveling expenses of such assistant attorney general shall be paid from the appropriation to said department of revenue and finance, and upon request of the attorney general the department of revenue and finance shall provide and equip a suitable office and the necessary secretarial assistance for such assistant attorney general.

[C39, §**151.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.5]

13.6 Assistant for human services department.

The attorney general may appoint one assistant attorney general to perform and supervise the legal work of the division of child and family services of the department of human services, and in such event the salary and necessary traveling expenses of such assistant attorney general shall be paid from the appropriation to said division, and upon request of the attorney general the director of the department of human services shall provide and equip a suitable office and the necessary secretarial assistance for such assistant attorney general.

[C39, §**151.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.6]
83 Acts, ch 96, §157, 159

13.7 Special counsel.

Compensation shall not be allowed to any person for services as an attorney or counselor to an executive department of the state government, or the head thereof, or to a state board or commission. However, the executive council may employ legal assistance, at a reasonable compensation, in a pending action or proceeding to protect the interests of the state, but only upon a sufficient showing, in writing, made by the attorney general, that the department of justice cannot for reasons stated by the attorney general perform the service, which reasons and action of the council shall be entered upon its records. When the attorney general determines that the department of justice cannot perform legal service in an action or proceeding, the executive council shall request the department involved in the action or proceeding to recommend legal counsel to represent the department. If the attorney general concurs with the department that the person recommended is qualified and suitable to represent the department, the person recommended shall be employed. If the attorney general does not concur in the recommendation, the department shall submit a new recommendation. This section does not affect the general counsel for the utilities board of the department of commerce, or the legal counsel of the department of workforce development.

[S13, §208-b; C24, 27, 31, 35, 39, §**152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.7; 81 Acts, ch 22, §1]
83 Acts, ch 127, §1; 96 Acts, ch 1186, §23

13.8 Expenses.

The attorney general and the attorney general's assistants shall be repaid their actual and necessary expenses incurred in transacting their offi-

cial duties at places other than the seat of government.

[C73, §3770; C97, §211; S13, §211; C24, 27, 31, 35, 39, §**153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.8]

13.9 Salary.

The salary of the attorney general shall be as fixed by the general assembly, and the salaries of the first assistant attorney general and other assistant attorneys general shall be such as may be fixed by law.

[C31, 35, §153-c1; C39, §**153.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §13.9]

13.10 Physical criminal evidence — DNA profiling.

1. The attorney general shall adopt rules in consultation with the division of criminal investigation, department of public safety, for the purpose of classifying felonies and indictable misdemeanors which shall require the offender to submit a physical specimen for DNA profiling upon confinement in or prior to release from a county jail, upon commitment to the custody of the director of the department of corrections, or prior to discharge of sentence, or as a condition of probation. Factors to be considered shall include the deterrent effect of DNA profiling, the likelihood of repeated violations, and the seriousness of the offense. The offenses that require the offender to submit a physical specimen for DNA profiling shall include but are not limited to the following:

a. Murder in violation of section 707.2 or 707.3.

b. Attempt to commit murder in violation of section 707.11.

c. Kidnapping in violation of section 710.1, 710.2, or 710.3.

d. Sexual abuse in violation of section 709.2, 709.3, or 709.4.

e. Assault with intent to commit sexual abuse in violation of section 709.11.

f. Assault while participating in a felony in violation of section 708.3.

g. Burglary in the first degree in violation of section 713.3.

2. The division of criminal investigation shall carry out DNA profiling of submitted physical specimens. The division may contract with private entities for DNA profiling. *"DNA profiling"* means the procedure established by the division of criminal investigation, department of public safety, for determining a person's genetic identity.

89 Acts, ch 156, §1; 2000 Acts, ch 1122, §1

For future repeal of section effective upon appropriation or receipt of funds, see 2002 Acts, ch 1080, §5, 6

13.11 and 13.12 Reserved.

SUBCHAPTER II

FARM ASSISTANCE PROGRAM

Legislative findings; 90 Acts, ch 1143, §1

13.13 Farm assistance program coordinator — contract for mediation services.

1. The attorney general or the attorney general's designee shall serve as the farm assistance program coordinator. The coordinator has the powers and duties specified in this subchapter.

2. The farm assistance program coordinator shall contract with a nonprofit organization chartered in this state to provide mediation services as provided in chapters 654A, 654B, and 654C. The contract may be terminated by the coordinator upon written notice and for good cause. The organization awarded the contract is designated as the farm mediation service for the duration of the contract. The organization may, upon approval by the coordinator, provide mediation services other than as provided by law. The farm mediation service is not a state agency for the purposes of chapters 19A, 20, and 669.

90 Acts, ch 1143, §3; 95 Acts, ch 195, §1

13.14 Farm mediation service — confidentiality.

1. Meetings of the farm mediation service are closed meetings and are not subject to chapter 21.

2. Confidentiality is also protected as provided in section 679C.2.

90 Acts, ch 1143, §4; 98 Acts, ch 1062, §6

13.15 Rules and forms — fees.

The farm mediation service shall recommend rules to the farm assistance program coordinator. The coordinator shall adopt rules pursuant to chapter 17A to set the compensation of mediators and to implement this subchapter and chapters 654A, 654B, and 654C.

The rules shall provide for an hourly mediation fee not to exceed fifty dollars for the borrower and one hundred dollars for the creditor. The hourly mediation fee may be waived for any party demonstrating financial hardship upon application to the farm mediation service.

The compensation of a mediator shall be no more than twenty-five dollars per hour, and all parties shall contribute an equal amount of the cost.

The coordinator shall adopt voluntary mediation application and mediation request forms.

90 Acts, ch 1143, §5; 91 Acts, ch 267, §410; 95 Acts, ch 195, §2

13.16 Limitation on liability — immunity from special actions.

1. A member of the farm mediation staff, including a mediator, employee, or agent of the service, or member of a board for the service, is not liable for civil damages for a statement or decision

made in the process of mediation, unless the member acts in bad faith, with malicious purpose, or in a manner exhibiting willful and wanton disregard of human rights, safety, or property.

2. A judicial action which seeks an injunction, mandamus, or similar equitable relief shall not be brought against the farm mediation service, including a mediator, employee, or agent of the service, or a member of a board for the service until completion of the mediation process.

90 Acts, ch 1143, §6

13.17 through 13.19 Reserved.

13.20 Authority to contract for legal assistance program.

The farm assistance program coordinator, provided in this subchapter, shall contract with an eligible nonprofit organization to provide legal assistance to financially distressed farmers. The contract shall be awarded within thirty days after May 30, 1986. The contract may be terminated by the coordinator upon written notice and for good cause.

86 Acts, ch 1214, §2; 90 Acts, ch 1143, §7

13.21 Eligible organization.

To be eligible for a contract under section 13.20, an organization must:

1. Be a nonprofit organization chartered in the state.
2. Have attorneys admitted to practice in the Iowa supreme court and the United States district courts.
3. Have offices throughout the state of Iowa.
4. Have attorneys and staff qualified to address agricultural legal problems and agricultural credit problems affecting financially distressed farmers.

86 Acts, ch 1214, §3

13.22 Program requirements.

A legal services provider which enters into a contract with the coordinator under authority of section 13.20 shall:

1. Offer direct representation of individual farmers in litigation and administrative cases.
2. Offer technical support to individual farmers.
3. Cooperate to the fullest extent feasible with the Iowa state university agricultural extension service so that its economic and farm management counseling services are utilized by eligible persons.
4. Utilize, to the fullest extent feasible, existing resources of accredited law schools within the state of Iowa to provide consulting assistance to attorneys in the agricultural law field.
5. Assist, to the fullest extent feasible, accredited law schools within the state of Iowa in enhancing their expertise in the area of agricultural law so that all attorneys within the state will have a resource available to provide training and experience in the agricultural law field.
6. Cooperate to the fullest extent feasible with the existing informational and referral networks among farmers, farmer advocates, and others concerned with the economic crisis in agricultural areas. The legal services provider is not a state agency for the purposes of chapters 19A, 20, and 669.

86 Acts, ch 1214, §4

13.23 Persons eligible for legal assistance.

A person may obtain legal representation and legal assistance from the contracting legal services provider if the person meets all of the following criteria:

1. Is a resident of the state of Iowa.
2. Is a farmer, or a family shareholder of a family farm corporation, and has an occupation of farming.
3. Is engaged in a farm business that has a debt-to-asset ratio greater than fifty percent.
4. Has received less than twenty thousand dollars of taxable income in the last taxable year.
5. Is financially unable to acquire legal assistance.

86 Acts, ch 1214, §5

13.24 Report.

1. The legal services provider which enters into a contract with the coordinator under authority of 1986 Iowa Acts, chapter 1214 shall submit to the coordinator a working plan for the accomplishment of the objectives of chapter 1214 within thirty days after the contract is awarded. The plan must establish priorities and procedures, and set forth its annual operating budget for the fiscal year including projected salaries and all anticipated expenses. This budget shall set forth the maximum obligation of financial aid proposed for payment by the state and the availability of any additional funds or resources from the federal government and other sources to meet such expenses of operation.

2. At the end of each fiscal year the contracting legal services provider shall provide to the coordinator an audited statement of actual expenses incurred. The report shall also summarize the legal services provided and make recommendations for improved services for financially distressed farmers.

3. The contract entered into pursuant to section 13.20 shall provide that any contractual payments to the legal services provider are to be made monthly.

86 Acts, ch 1214, §6

13.25 Repeal of farm mediation and legal assistance provisions. Repealed by 94 Acts, ch 1106, § 1.

13.26 through 13.30 Reserved.

SUBCHAPTER III

VICTIM ASSISTANCE PROGRAM

13.31 Victim assistance program.

A victim assistance program is established in the department of justice, which shall do all of the following:

1. Administer grants received under the federal Victims of Crime Act pursuant to Pub. L. No. 98-473, title 2, chapter 14, 42 U.S.C. § 10601, as amended by the federal Children's Justice and Assistance Act, Pub. L. No. 99-401, 100 Stat. 903 (1986).

2. Administer the state crime victim compensation program as provided in chapter 915.

3. Administer the domestic abuse program provided in chapter 236.

4. Administer the family violence prevention and services grants pursuant to the federal Child Abuse Amendments of 1984, Pub. L. No. 98-457, 42 U.S.C. § 10401.

5. Administer payment for sexual abuse medical examinations pursuant to section 915.41.

6. Administer the violence against women program and grants received pursuant to the federal Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 42 U.S.C. § 13701.

89 Acts, ch 279, §1; 90 Acts, ch 1251, §1; 91 Acts, ch 181, §16; 98 Acts, ch 1090, §58, 84; 2002 Acts, ch 1016, §1

NEW subsection 6

13.32 and 13.33 Reserved.

SUBCHAPTER IV

LEGAL ASSISTANCE FOR PERSONS IN POVERTY

13.34 Legal services for persons in poverty grant program.

1. For the purposes of this section, *"eligible individual"* means an individual or household with an annual income which is less than one hundred twenty-five percent of the poverty guidelines established by the United States office of management and budget. The attorney general shall contract with an eligible nonprofit organization to provide legal assistance to eligible individuals in poverty. The contract shall be awarded within thirty days after May 30, 1996. The contract may be terminated by the attorney general after a hearing upon written notice and for good cause.

2. A nonprofit organization must comply with all of the following to be eligible for a contract under this section:

a. Be a nonprofit organization incorporated in this state.

b. Has lost or will lose funding due to a reduction in federal funding for the legal services corporation for federal fiscal year 1995-1996.

c. Employ attorneys admitted to practice before the Iowa supreme court and the United States district courts.

d. Employ attorneys and staff qualified to address legal problems experienced by eligible individuals.

3. The contracting nonprofit organization shall do all of the following:

a. Offer direct representation of eligible individuals in litigation and administrative cases, in accordance with priorities established by the organization's board.

b. Offer technical support to eligible individuals.

c. Involve private attorneys through volunteer lawyer projects to represent eligible individuals.

d. Utilize, to the fullest extent feasible, existing resources of accredited law schools within this state to provide consulting assistance to attorneys in the practice of law in their representation of persons in poverty.

e. Assist, to the fullest extent feasible, accredited law schools within this state in enhancing the schools' expertise in the practice of law representing persons in poverty so that all attorneys within the state will have a resource available to provide training and experience in the practice of law representing persons in poverty.

f. Cooperate, to the fullest extent feasible, with existing informational and referral networks among persons in poverty, providers of assistance to persons in poverty, and others concerned with assistance to persons in poverty.

4. The contracting nonprofit organization is not a state agency for the purposes of chapters 19A, 20, and 669.

5. An individual is eligible to obtain legal representation and legal assistance from the contracting nonprofit organization if the eligible individual meets all of the following criteria:

a. The eligible individual is a resident of this state.

b. The eligible individual is financially unable to acquire legal assistance, in accordance with criteria established by the organization's board.

96 Acts, ch 1216, §27

CHAPTER 13A

PROSECUTING ATTORNEYS TRAINING COORDINATOR

See also chapter 679

13A.1 Definitions.
13A.2 Establishment of office and council — coordinator.
13A.3 Membership and terms.
13A.4 Organization.
13A.5 Meetings.
13A.6 Report required.
13A.7 Expenses paid.
13A.8 Duties.
13A.9 Authority.
13A.10 Receipt of funds.
13A.11 Citation.

13A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Coordinator"* means the prosecuting attorneys training coordinator.
2. *"Council"* means the prosecuting attorneys training coordination council.
3. *"Office"* means the office of prosecuting attorneys training coordinator established in this chapter.
4. *"Prosecuting attorneys"* means county attorney, district attorney, or any attorney charged with responsibility of prosecution of violation of state laws.

[C77, 79, 81, §13A.1]

13A.2 Establishment of office and council — coordinator.

1. The office of the prosecuting attorneys training coordinator is established as an entity in the department of justice.
2. The prosecuting attorneys training coordination council is established to consult with and advise the attorney general and the coordinator on the operation of the office.
3. The attorney general shall, with the advice and consent of the council, appoint an attorney with knowledge and experience in prosecution to the office of prosecuting attorneys training coordinator. The prosecuting attorneys training coordinator shall be the administrator of the office of the prosecuting attorneys training coordinator. The coordinator's term of office is four years, beginning on July 1 of the year of appointment and ending on June 30 of the year of expiration.
4. If a vacancy occurs in the office of prosecuting attorneys training coordinator, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment was made.
5. The attorney general may, with the advice of the council, remove the prosecuting attorneys training coordinator for malfeasance or nonfeasance in office, for any cause which renders the coordinator ineligible for appointment, or for any cause which renders the coordinator incapable or unfit to discharge the duties of office. The prosecuting attorneys training coordinator may also be removed upon the unanimous vote of the council. The removal of a prosecuting attorneys training coordinator under this section is final.

[C77, 79, 81, §13A.2]
86 Acts, ch 1245, §2056; 93 Acts, ch 171, §16, 17

13A.3 Membership and terms.

The council shall consist of five members as follows:

1. The attorney general or the attorney general's designated representative.
2. The president of the Iowa county attorneys association or its successor.
3. Three members elected by the Iowa county attorneys association or its successor.

A member shall vacate an appointment upon termination of the member's official position as a prosecuting attorney or an attorney general. A vacancy shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy created other than by expiration of a term on the council shall be appointed for the unexpired term of the member whom the new member is to succeed in the same manner as the original appointment. Any member may be reappointed for an additional term.

The terms of the elected members shall be three years and shall begin January 1, 1976, but initial terms shall be staggered so that the elected members shall serve terms of one, two, and three years respectively.

[C77, 79, 81, §13A.3]

13A.4 Organization.

The council shall designate from among its members a chairperson and vice chairperson who shall serve for one-year terms and who may be reelected. Membership on the council shall not constitute holding a public office, and members of the council shall not be required to take and file oaths of office before serving on the council. A

member of the council shall not be disqualified from holding any public office or employment by reason of membership on the council, nor shall one member forfeit the office or employment, by reason of appointment under this chapter, notwithstanding the provisions of any law, ordinance or city charter.

[C77, 79, 81, §13A.4]

13A.5 Meetings.

The council shall meet at least four times each year and shall hold meetings when called by the chairperson, or in the absence of the chairperson, by the vice chairperson or when called by the chairperson upon the written request of three members of the council. The council shall establish its own procedures and requirements with respect to quorum, place and conduct of its meetings and other matters.

[C77, 79, 81, §13A.5]

13A.6 Report required.

The prosecuting attorneys training coordinator shall make an annual report to the attorney general, the governor, and to the Iowa county attorneys association or its successor regarding the efforts of the office to implement the purposes of this chapter.

[C77, 79, 81, §13A.6]
86 Acts, ch 1245, §2057

13A.7 Expenses paid.

The members of the council shall serve without compensation but shall be entitled to their actual expenses in attending meetings and in the performance of their duties.

[C77, 79, 81, §13A.7]

13A.8 Duties.

The office shall keep the prosecuting attorneys and assistant prosecuting attorneys of the state informed of all changes in law and matters pertaining to their office to the end that a uniform system of conduct, duty and procedure is established in each county of the state.

[C77, 79, 81, §13A.8]
86 Acts, ch 1245, §2058

13A.9 Authority.

The prosecuting attorneys training coordinator may:

1. Enter into agreements with other public or private agencies or organizations to implement this chapter.
2. Co-operate with and assist other public or private agencies or organizations to implement this chapter.
3. Make recommendations to the general assembly on matters pertaining to the responsibilities of the office under this chapter.

[C77, 79, 81, §13A.9]
86 Acts, ch 1245, §2059

13A.10 Receipt of funds.

The office of the prosecuting attorneys training coordinator may accept funds, grants and gifts from any public or private source which shall be used to defray the expenses incident to implementing the responsibilities of the office under this chapter.

[C77, 79, 81, §13A.10]
86 Acts, ch 1245, §2060

13A.11 Citation.

This chapter shall be known and may be cited as the *"Prosecuting Attorneys Training Coordinator Act of 1975"*.

[C77, 79, 81, §13A.11]

CHAPTER 13B

PUBLIC DEFENDERS

13B.1 Definitions.
13B.2 Position established.
13B.2A Indigent defense advisory commission.
13B.2B Duties and powers of the indigent defense advisory commission. Repealed by 91 Acts, ch 268, §439.
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13B.4 Duties and powers of state public defender.
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13B.10 Determination of indigence.
13B.11 State appellate defender.

13B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Appointed attorney"* means an attorney appointed by the court and compensated by the state to represent an indigent defendant.

2. *"Department"* means the department of inspections and appeals.

3. *"Financial statement"* means a full written disclosure of all assets, liabilities, current income, dependents, and other information required to determine if a client qualifies for legal assistance by an appointed attorney.

4. *"State public defender"* means the state public defender appointed pursuant to this chapter.

[81 Acts, ch 23, §1, 8]

88 Acts, ch 1161, §1; 91 Acts, ch 268, §408, 439; 96 Acts, ch 1040, §1; 96 Acts, ch 1193, §1

13B.2 Position established.

The position of state public defender is established within the department of inspections and appeals. The governor shall appoint the state public defender, who shall serve at the pleasure of the governor, subject to confirmation by the senate, no less frequently than once every four years, whether or not there has been a new state public defender appointed during that time, and shall establish the state public defender's salary.

[81 Acts, ch 23, §2, 8]

86 Acts, ch 1245, §516; 88 Acts, ch 1161, §2

Confirmation, see §2.32

13B.2A Indigent defense advisory commission.

An indigent defense advisory commission is established within the department to advise and make recommendations to the legislature and the state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations. These recommendations shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel.

The advisory commission shall consist of five members. The governor shall appoint three members, including one member from nominations by the Iowa state bar association and one member from nominations by the supreme court. Two members, one from each chamber of the general assembly, shall be appointed, with no more than one appointed from the same political party. Each member shall serve a three-year term, with initial terms to be staggered. No more than three members shall be licensed to practice law in Iowa. The state public defender shall serve as an ex officio member of the commission and shall serve as the nonvoting chair of the commission.

The members of the commission are entitled to receive reimbursement for actual expenses incurred as provided for in section 7E.6, subsection 2, while engaged in the performance of the duties of the commission.

The advisory commission shall file a written report every three years with the governor and the general assembly by January 1 of a year in which a report is due regarding the recommendations and activities of the commission. The first such report shall be due on January 1, 2003.

99 Acts, ch 135, §2

13B.2B Duties and powers of the indigent defense advisory commission. Repealed by 91 Acts, ch 268, § 439.

13B.3 Qualifications of state public defender.

Only persons admitted to practice law in this state shall be appointed state public defender or assistant state public defender.

[81 Acts, ch 23, §3, 8]

88 Acts, ch 1161, §3

13B.4 Duties and powers of state public defender.

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under chapter 229A, in juvenile proceedings, on appeal in criminal cases, on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and on a reopening of a sentence proceeding, and may provide for the representation of indigents in proceedings instituted pursuant to section 908.11. The state public defender shall not engage in the private practice of law.

2. The state public defender shall file with the clerk of the district court in each county served by a public defender a designation of which local public defender office shall receive notice of appointment of cases. Except as otherwise provided, in each county in which the state public defender files such designation, the state public defender or its designee shall be appointed by the court to represent all eligible indigents, in all of the cases and proceedings specified under subsection 1. The appointment shall not be made if the state public defender notifies the court that the local public defender will not provide legal representation in cases as identified in the designation by the state public defender.

3. The state public defender may contract with persons admitted to practice law in this state for the provision of legal services to indigent persons.

4. *a.* The state public defender shall establish fee limitations for particular categories of cases. The fee limitations shall be reviewed at least every three years. In establishing and reviewing the fee

limitations, the state public defender shall consider public input during the establishment and review process, and any available information regarding ordinary and customary charges for like services; the number of cases in which legal services to indigents are anticipated; the seriousness of the charge; an appropriate allocation of resources among the types of cases; experience with existing hourly rates, claims, and fee limitations; and any other factors determined to be relevant.

b. The state public defender shall establish a procedure for the submission of all claims for payment of indigent defense costs, including the submission of interim claims in appropriate cases.

c. The state public defender may review any claim for payment of indigent defense costs and may take any of the following actions:

(1) If the charges are appropriate and reasonable, approve the claim for payment.

(2) Deny the claim under any of the following circumstances:

(a) If it is not timely.

(b) If it is not payable as an indigent defense claim under chapter 815.

(c) If it is not payable under the contract between the claimant and the state public defender.

(d) If the appointment of the claimant was obtained without complying with section 814.11, subsection 6, or section 815.10, subsection 5.

(3) Request additional information or return the claim to the attorney, if the claim is incomplete.

(4) If any portion of the claim is excessive, notify the attorney that the claim is excessive and will be reduced to an amount which is not excessive, and reduce and approve the balance of the claim.

(5) If any portion of the claim is not payable within the scope of appointment of the attorney, notify the attorney that a portion of the claim is not within the scope of appointment and is not payable, deny those portions of the claim that are not payable, and approve the balance of the claim.

d. Notwithstanding chapter 17A, the attorney may seek review of any action or intended action denying or reducing any claim by filing a motion with the court with jurisdiction over the original appointment for review.

(1) The motion must be filed within twenty days of any action taken by the state public defender.

(2) The state public defender shall be provided with at least ten days' notice of any hearing on the motion.

(3) The state public defender or the attorney may participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for all telephone charges.

(4) The filing of a motion shall not delay the payment of the amount approved by the state public defender.

(5) If a claim or portion of the claim is denied, the action of the state public defender shall be affirmed unless the action conflicts with an administrative rule or the law.

(6) If the claim is reduced for being excessive, the attorney shall have the burden to establish by a preponderance of the evidence that the amount of compensation and expenses is reasonable and necessary to competently represent the client.

5. In reviewing a claim for compensation submitted by an attorney who had been retained or agreed to represent an indigent person prior to appointment, the state public defender may consider any moneys earned or paid to the attorney prior to the appointment in determining whether the claim is reasonable and necessary or excessive. The attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

6. The state public defender is authorized to contract with county attorneys to provide collection services related to court-ordered indigent defense restitution of court-appointed attorney fees or the expense of a public defender.

7. The state public defender shall adopt rules, as necessary, pursuant to chapter 17A to administer this chapter and chapter 815.

[81 Acts, ch 23, §4, 8]

85 Acts, ch 36, §1; 88 Acts, ch 1161, §4; 89 Acts, ch 51, §1; 91 Acts, ch 268, §411, 439; 92 Acts, ch 1242, §18; 93 Acts, ch 175, §15; 94 Acts, ch 1107, §20; 94 Acts, ch 1187, §17; 96 Acts, ch 1040, §2; 99 Acts, ch 12, §1; 99 Acts, ch 135, §3 – 6; 99 Acts, ch 208, §46; 2000 Acts, ch 1154, §3; 2002 Acts, ch 1067, §1 – 5; 2002 Acts, ch 1119, §116

Intent that state public defender provide for defense of major felony case defendants by public defenders on regional basis; 91 Acts, ch 268, §440

See Code editor's note to §8.55 at the end of Vol IV

Subsection 1 amended

Subsection 4, paragraph c amended and paragraph d stricken and rewritten

Subsection 5 stricken and rewritten

Subsection 7 stricken and former subsection 8 renumbered as 7

13B.5 Staff.

The state public defender may appoint assistant state public defenders who, subject to the direction of the state public defender, shall have the same duties as the state public defender and shall not engage in the private practice of law. The salaries of the staff shall be fixed by the state public defender. The state public defender and the state public defender's staff shall receive actual and necessary expenses, including travel at the state rate set forth in section 18.117.

[81 Acts, ch 23, §5, 8]

88 Acts, ch 1161, §5

13B.6 Account established.

1. There is established in the state general fund an account to be known as the state public de-

fender operating account. The state public defender may bill a county for services rendered to the county by the office of the state public defender. Receipts shall be deposited in the operating account established under this section. There is appropriated from the state general fund all amounts deposited in the state public defender operating account for use in maintaining the operations of the office of state public defender.

2. The department of inspections and appeals shall provide internal accounting and related fiscal services for the state public defender.

[81 Acts, ch 23, §6, 8]

83 Acts, ch 200, §10; 86 Acts, ch 1245, §517; 88 Acts, ch 1161, §6

13B.7 Legal services to inmates.

The state public defender may supervise the provision of legal services, funded by an appropriation to the Iowa department of corrections, to inmates of adult correctional institutions in civil cases involving prison litigation.

83 Acts, ch 96, §160; 83 Acts, ch 203, §12; 88 Acts, ch 1161, §7

13B.8 Office of local public defender.

1. The state public defender may establish or abolish local public defender offices. In determining whether to establish or abolish a local public defender office, the state public defender shall consider the following:

a. The number of cases or potential cases where a local public defender is or would be involved.

b. The population of the area served or to be served.

c. The willingness of the local private bar to participate in cases where a public defender is or would be involved.

d. Other factors which the state public defender deems to be important.

2. The state public defender may appoint and may, for cause, remove the local public defender, assistant local public defenders, clerks, investigators, secretaries, or other employees. Each local public defender, and any assistant local public defender, must be an attorney admitted to the practice of law before the Iowa supreme court.

3. The compensation of the local public defender and staff of the local public defender offices shall be fixed by the state public defender.

4. The state public defender shall provide separate and suitable office space, furniture, equipment, computers, computer networks, support staff, and supplies for each office of the local public defender out of funds appropriated to the state public defender for this purpose.

5. An employee of a local public defender office shall not have access to any confidential client information in any other local public defender office, and the state public defender shall not have access to such confidential information.

88 Acts, ch 1161, §8; 91 Acts, ch 268, §412, 439; 95 Acts, ch 67, §3; 99 Acts, ch 135, §7; 2000 Acts, ch 1115, §1; 2000 Acts, ch 1154, §4; 2002 Acts, ch 1067, §6 – 8; 2002 Acts, ch 1119, §117

Subsection 1, unnumbered paragraph 2 stricken
Subsections 2 and 4 amended
NEW subsection 5

13B.8A Public defender property.

1. Notwithstanding section 13B.8, subsection 4, public property referred to in subsection 2 in the custody of a person or agency referred to in subsection 3 shall not be property of the department of inspections and appeals, but shall be devoted for the use of the department of inspections and appeals in its course of business. The department of inspections and appeals shall only be responsible for maintenance contracts or contracts for purchase entered into by the department of inspections and appeals. Upon replacement of the property by the department of inspections and appeals, the property shall revert to the use of the appropriate county.

2. This section applies to the following property:

a. Books, accounts, and records that pertain to the operation of the public defender's offices.

b. Forms, materials, and supplies that are consumed in the usual course of business.

c. Tables, chairs, desks, lamps, curtains, window blinds, rugs and carpeting, flags and flag standards, pictures and other wall decorations, and other similar furnishings.

d. Typewriters, adding machines, desk calculators, cash registers and similar business machines, reproduction machines and equipment, microfiche projectors, tape recorders and associated equipment, microphones, amplifiers and speakers, film projectors and screens, overhead projectors, and similar personal property.

e. Filing cabinets, shelving, storage cabinets, and other property used for storage.

f. Books of statutes, books of ordinances, books of judicial decisions, and reference books, except those that are customarily held in a law library for use by the public.

g. All other personal property that is in use in the operation of the offices of the public defender.

3. This section applies to the following persons and agencies:

a. Offices of the public defender.

b. Persons who are employed by an office of the public defender.

4. Subsections 1 through 3 and 5 do not apply to electronic data storage equipment, commonly referred to as computers, or to computer terminals or any machinery, equipment, or supplies used in the operation of computers. Those counties providing computer services to the public defender shall continue to provide these services until the

general assembly provides otherwise. The state shall reimburse these counties for the cost of providing these services. Each county providing computer services to an office of the public defender shall submit a bill for these services to the department of inspections and appeals at the end of each calendar quarter. Reimbursement shall be payable from funds appropriated to the department for operating expenses of the offices of the public defender and shall be paid within thirty days after receipt by the department of inspections and appeals of the quarterly billing.

5. Personal property of a type that is subject to subsections 1 through 3 shall be subject to the control of the offices of the public defender. The offices of the public defender may issue necessary orders to preserve the use of the property by the public defender. The offices of the public defender shall establish and maintain an inventory of property used by the offices of the public defender.

89 Acts, ch 321, §23

13B.9 Powers and duties of local public defenders — referrals to outside counsel.

1. The local public defender shall do all of the following:

a. Represent without fee an indigent person who is under arrest or charged with a crime if the indigent person requests representation or the court orders representation. The local public defender shall counsel and defend an indigent defendant at every stage of the criminal proceedings and prosecute before or after conviction any appeals or other remedies which the local public defender considers to be in the interest of justice unless other counsel is appointed to the case.

b. Represent an indigent party, without fee and upon an order of the court, in child in need of assistance, family in need of assistance, delinquency, and termination of parental rights proceedings pursuant to chapter 232 in a county served by a public defender. The local public defender shall counsel and represent an indigent party in all proceedings pursuant to chapter 232 in a county served by a public defender and prosecute before or after judgment any appeals or other remedies which the local public defender considers to be in the interest of justice unless other counsel is appointed to the case.

c. Make an annual report to the state public defender. The report shall include all cases handled by the local public defender during the preceding calendar year.

2. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

3. The local public defender shall handle every case to which the local public defender is appointed if the local public defender can reasonably handle the case. The local public defender shall be responsible for assigning cases to individual attorneys within the local public defender office and for making decisions concerning cases in which the local public defender has been appointed.

4. If a conflict of interest arises or if the local public defender is unable to handle a case because of a temporary overload of cases, the local public defender shall return the case to the court. If the case is returned and the state public defender has filed a successor designation, the court shall appoint the successor designee. If there is no successor designee on file, the court shall make the appointment pursuant to section 815.10.

88 Acts, ch 1161, §9; 89 Acts, ch 83, §4; 91 Acts, ch 268, §413, 439; 94 Acts, ch 1187, §18, 19; 96 Acts, ch 1040, §3, 4; 99 Acts, ch 135, §8 – 10; 2002 Acts, ch 1067, §9 – 12

Subsections 2 – 4 amended
Subsection 5 stricken

13B.10 Determination of indigence.

For purposes of this chapter, a determination of indigence shall be made pursuant to section 815.9.

88 Acts, ch 1161, §10; 89 Acts, ch 83, §5; 93 Acts, ch 175, §16; 96 Acts, ch 1193, §2; 99 Acts, ch 135, §11

13B.11 State appellate defender.

The state public defender shall appoint a state appellate defender who shall represent indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed to do so by the district court in which the judgment or order was issued, and may represent indigents in proceedings instituted pursuant to chapter 908 when required to do so by the state public defender, and shall not engage in the private practice of law.

89 Acts, ch 51, §2

CHAPTER 13C

ORGANIZATIONS SOLICITING PUBLIC DONATIONS

This chapter not enacted as a part of this
title; transferred from chapter 122 in Code 1993

13C.1 Definitions.
13C.2 Registration permit required — disclosure.
13C.3 Use of another organization's name in solicitation.
13C.4 through 13C.7 Reserved.
13C.8 Enforcement — penalty.

13C.1 Definitions.

1. *"Charitable organization"* means a person who solicits or purports to solicit contributions for a charitable purpose and which receives contributions. *"Charitable organization"* does not include a political organization, a religious organization, or a state, regionally, or nationally accredited college or university.

2. *"Charitable purpose"* means a benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective. In the case of law enforcement, emergency medical technician, paramedic, and fire fighter organizations, *"charitable purpose"* does not include funds raised through the sale of advertisements, products, or tickets for an event unless the organization represents that part of proceeds will be used to assist individuals other than the organization, its members, or their families.

3. *"Political organization"* means a political party, a candidate for office, or a political action committee required to file financial information with federal or state election or campaign commissions.

4. *"Professional commercial fund-raiser"* means any person who for compensation solicits contributions in Iowa for a charitable organization other than the person. A person whose sole responsibility is to mail fund-raising literature is not a professional commercial fund-raiser. A lawyer, investment counselor, or banker who advises a person to make a charitable contribution is not, as a result of such advice, a professional commercial fund-raiser. A bona fide salaried officer, employee, or volunteer of a charitable organization is not a professional commercial fund-raiser.

5. *"Religious organization"* means a religious corporation, trust, foundation, association, or organization incorporated or established for religious purposes.

6. *"Solicit"* or *"solicitation"* means the request, directly or indirectly, for a contribution on the pleas or representation that the contribution will be used for a charitable purpose. A solicitation is deemed to have taken place whether or not the person making the solicitation receives a contribution. *"Solicitation"* does not include an application for a grant from any governmental entity or private nonprofit foundation.

[S13, §5077-c; C24, §1916; C27, 31, 35, §1921-b1; C39, §**1915.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §122.1]

89 Acts, ch 93, §1; 90 Acts, ch 1202, §1

C93, §13C.1

13C.2 Registration permit required — disclosure.

1. *a.* A professional commercial fund-raiser shall not solicit contributions for charitable purposes in this state unless the professional commercial fund-raiser has registered with the attorney general, has provided the attorney general with a listing of the professional commercial fund-raiser's clients, and has obtained a registration permit from the attorney general. The attorney general may require that registration information be updated on a quarterly basis.

b. The attorney general shall prescribe and furnish the registration permit application form which shall include provisions for financial disclosure information concerning contributions received and disbursements made during the previous year by the professional commercial fund-raiser applying for registration. Financial disclosure information shall not include an applicant's donor lists.

c. In lieu of filing the financial disclosure information at the time of registration, the professional commercial fund-raiser may file a statement with its permit application where it agrees to provide, without cost, the financial disclosure information required to be disclosed pursuant to this subsection to a person or government entity requesting the information within one day of the request. The statement shall include the telephone number, mailing address, and names of persons to be contacted to obtain the financial disclosure information of the fund-raiser. Failure to provide this information upon request shall be a violation of this chapter.

2. A charitable organization shall provide, upon request and without cost to the requesting party, financial disclosure information concerning contributions received and disbursements for the organization's last complete fiscal year, or, if the organization has not completed a full fiscal year, for its current fiscal year, to the attorney general or a person requesting the information within five days of the request.

3. *a.* If a professional commercial fund-raiser or charitable organization fails to provide financial information as required or requested, the fund-raiser or organization shall file the financial disclosure information with the attorney general within seven days of its failure to have provided the disclosure information and, thereafter, file, if required by the attorney general, annual financial disclosure information with the attorney general.

b. The attorney general may seek an injunction pursuant to section 714.16 prohibiting the professional commercial fund-raiser or charitable organization from soliciting contributions until the required financial information has been disclosed to the attorney general, person, or government entity making the request.

4. The client lists of a professional commercial fund-raiser, if required to be filed as part of the application for registration, shall be confidential and may be used only for law enforcement purposes.

5. The attorney general shall collect a fee of ten dollars for each registration permit issued. A permit shall expire twelve months following the date of issuance.

6. The attorney general may make reasonable rules to enforce the provisions of this chapter.

[S13, §5077-c; C24, §1917; C27, 31, 35, §1921-b2; C39, §**1915.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §122.2]

89 Acts, ch 93, §2; 90 Acts, ch 1202, §2

C93, §13C.2

13C.3 Use of another organization's name in solicitation.

A charitable organization shall not solicit contributions for a charitable purpose in this state, where the charitable organization claims that a portion or all of the contributions received will be given to another charitable organization in this state, without permission from the other charitable organization that its name may be referred to as part of the solicitation.

90 Acts, ch 1202, §3

C93, §13C.3

13C.4 through 13C.7 Reserved.

13C.8 Enforcement — penalty.

The attorney general shall enforce the provisions of this chapter.

A violation of this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*. The provisions of section 714.16, including but not limited to provisions relating to investigation, injunctive relief, and penalties, shall apply to this chapter.

[C24, §1918; C27, 31, 35, §1921-b3; C39, §**1915.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §122.3]

89 Acts, ch 93, §3; 90 Acts, ch 1202, §4

C91, §122.8

C93, §13C.8

CHAPTER 14

IOWA CODE AND ADMINISTRATIVE CODE

Transferred to chapter 2B

CHAPTER 14A

DEPUTIES OF STATE OFFICERS

14A.1 Deputies.

14A.2 Deputy to qualify.

14A.1 Deputies.

The secretary, auditor, treasurer of state, and secretary of agriculture may each appoint, in writing, any person, except one holding a state office, as deputy, for whose acts the appointing officer shall be responsible, and from whom the appointing officer shall require bond, which appointment and bond must be approved by the officer having the approval of the principal's bond, and such appointment may be revoked in the same manner. The appointment and revocation shall be filed with and kept by the secretary of state. The state shall pay the reasonable cost of the bonds required by this section.

[C51, §411 – 413, 416; R60, §642 – 644, 647; C73, §766 – 768, 770, 3756 – 3758; C97, §87, 99, 116; S13, §87, 99, 116; C24, 27, 31, 35, 39, §**430;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §27.1]

C93, §14A.1

14A.2 Deputy to qualify.

The deputy shall qualify by taking the oath of the principal, to be endorsed upon and filed with the certificate of appointment, and when so qualified shall, in the absence or disability of the appointing officer, unless otherwise provided, perform all the duties pertaining to the office of the appointing officer.

[C51, §411, 412, 416; R60, §642, 643, 647; C73, §766, 767, 770; C97, §87, 99, 116; S13, §87, 99, 116; C24, 27, 31, 35, 39, §**431;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §27.2]

C93, §14A.2

Deputy may not act on executive council, §7D.1
Oath of principal, §63.10

CHAPTER 14B

INFORMATION TECHNOLOGY DEPARTMENT

Legislative findings; 2000 Acts, ch 1141, §1
Appropriations; pooled technology account;
2000 Acts, ch 1226, §4, 5, 28;
2001 Acts, ch 189, §4, 5, 12, 13, 15, 18;
2002 Acts, ch 1166, §17, 18, 26;
2002 Acts, ch 1173, §18, 19

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DIVISION I

GENERAL PROVISIONS

14B.101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agency"* means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in section 7E.4, including but not limited to each principal central department enumerated in section 7E.5. However, *"agency"* does not mean any of the following:

a. The office of the governor or the office of an elective constitutional or statutory officer.

b. The general assembly, or any office or unit under its administrative authority.

c. The judicial branch, as provided in section 602.1102.

d. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

2. *"Department"* means the information technology department.

3. *"Director"* means the director of the information technology department appointed as provided in section 14B.104.

4. *"Governmental entity"* means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; or any unit of the United States government.

5. *"Information technology"* means computing and electronics applications used to process and distribute information in digital and other forms and includes information technology devices and information technology services.

6. *"Information technology council"* means the information technology council established in section 14B.105.

7. *"Information technology device"* means equipment or associated software, including pro-

grams, languages, procedures, or associated documentation, used in operating the equipment which is designed for utilizing information stored in an electronic format. *"Information technology device"* includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

8. *"Information technology services"* means services designed to do any of the following:

a. Provide functions, maintenance, and support of information technology devices.

b. Provide services including, but not limited to, any of the following:

(1) Computer systems application development and maintenance.

(2) Systems integration and interoperability.

(3) Operating systems maintenance and design.

(4) Computer systems programming.

(5) Computer systems software support.

(6) Planning and security relating to information technology devices.

(7) Data management consultation.

(8) Information technology education and consulting.

(9) Information technology planning and standards.

(10) Establishment of local area network and workstation management standards.

9. *"Participating agency"* means any agency other than any of the following:

a. The state board of regents and institutions operated under the authority of the state board of regents.

b. The public broadcasting division of the department of education.

c. The state department of transportation mobile radio network.

d. The department of public safety law enforcement communications systems.

e. The Iowa telecommunications and technology commission established in section 8D.3, with respect to information technology that is unique to the Iowa communications network.

10. *"Public records"* means the same as defined in section 22.1.

11. *"Value-added services"* means government information which requires special sorts or formatting, or other action to provide such information, or to provide access to government information which is responsive to special requests for multiple government records in customized formats.

2000 Acts, ch 1141, §2, 19; 2001 Acts, ch 24, §10; 2002 Acts, ch 1119, §118

NEW subsection 2 and former subsections 2 – 10 renumbered as 3 – 11

14B.102 Department established — mission — powers and duties.

1. *Department established.* The information technology department is established as a state department. The mission of the department is to foster the development and application of information technology to improve the lives of Iowans.

2. *Powers and duties of department.* The powers and duties of the department shall include, but are not limited to, all of the following:

a. Providing information technology to participating agencies and other governmental entities as provided in this chapter.

b. Implementing the strategic information technology plan as prepared and updated by the information technology council.

c. Developing and implementing a business continuity plan, as the director determines is appropriate, to be used if a disruption occurs in the provision of information technology to participating agencies and other governmental entities.

d. Developing and implementing recommended standards for information technology, including but not limited to system design and systems integration and interoperability, which when implemented shall apply to all participating agencies except as otherwise provided in this chapter. The department shall implement information technology standards as established pursuant to this chapter which are applicable to information technology procurements for participating agencies.

e. Recommending and implementing standards for an electronic repository for maintaining mandated agency reports as provided in section 304.13A. Such repository shall be developed and maintained for the purpose of providing public access to such mandated reports. The department shall develop such standards in consultation with the state librarian.

f. Developing and maintaining security policies and systems to ensure the integrity of the state's information resources and to prevent the disclosure of confidential records.

g. Developing and implementing effective and efficient strategies for the use and provision of information technology for participating agencies and other governmental entities.

h. Coordinating the acquisition of information technology by participating agencies in furtherance of the purposes of this chapter. The information technology department shall review a request for information technology submitted by a participating agency for purposes of determining whether such request meets the applicable standards established pursuant to this chapter. Upon a determination that the request meets such standards, the information technology shall be procured for the participating agency by the department of general services. Nothing in this chapter shall be construed to prohibit or limit a participating agency from entering into an agreement or contract for information technology with a qualified private entity.

i. Entering into agreements pursuant to chapter 28D or 28E, or memorandums of understand-

ing or other agreements as necessary and appropriate to administer this chapter.

j. Establishing and maintaining, in cooperation with the department of revenue and finance and the department of general services, an inventory of information technology devices used by participating agencies and other governmental entities using the information technology department's services. The information technology department may request a participating agency to provide such information as is necessary to establish and maintain an inventory as required under this paragraph, and such participating agency shall provide such information to the department in a timely manner.

k. Receiving and accepting donations, gifts, and contributions in the form of money, services, materials, or otherwise, from the United States or any of its agencies, from this state or any of its agencies, or from any other person, and to using or expending such moneys, services, materials, or other contributions in carrying on information technology operations.

l. Charging a negotiated fee, to recover a share of the costs related to the research and development, initial production, and derivative products of the department's proprietary software and hardware, information technology architecture design, and proprietary technology applications developed to support authorized users, to private vendors and to other political entities and subdivisions, including but not limited to states, territories, protectorates, and foreign countries. The department may enter into nondisclosure agreements to protect the state of Iowa's proprietary interests. The provisions of chapter 23A relating to noncompetition by state agencies and political subdivisions with private enterprise shall not apply to department activities authorized under this paragraph.

3. *Service charges.* The department shall render a statement to a participating agency or other governmental entity for a reasonable and necessary amount for information technology provided by the department to such agency or entity. An amount indicated on a statement rendered to a participating agency or other governmental entity shall be paid by such agency or entity in a manner determined by the department of revenue and finance. Amounts charged and paid pursuant to this subsection shall be deposited in the operations revolving fund created in section 14B.103.

4. *Dispute resolution.* If a dispute arises between the department or information technology council and an agency for which the department provides or refuses to provide information technology, the dispute shall be resolved as provided in section 679A.19.

2000 Acts, ch 1141, §3, 19; 2000 Acts, ch 1226, §7; 2001 Acts, ch 70, §1

14B.103 Operations revolving fund.

An operations revolving fund is created in the state treasury. The operations revolving fund shall be administered by the department and shall consist of moneys collected by the department as fees, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund are appropriated to and shall be used by the department for the operations of the department consistent with this chapter. The department shall submit an annual report not later than January 31 to the members of the general assembly and the legislative fiscal bureau, of the activities funded by and expenditures made from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

2000 Acts, ch 1226, §8, 28, 30

14B.104 Director — powers and duties — appeals.

1. *Director appointed.* The chief administrative officer of the department is the director. The director shall be appointed by the governor, subject to confirmation by the senate. The director shall serve at the pleasure of the governor. The governor shall set the salary of the director within the applicable salary range established by the general assembly. The director shall be selected on the ability to administer the duties and functions granted to the director and the department and shall devote full time to the duties of the director. If the office of director becomes vacant, the vacancy shall be filled in the same manner as the original appointment was made.

The director shall also serve as the chief information officer for the state.

2. *Powers and duties.* The director of the department shall do all of the following:

a. Plan, direct, coordinate, and execute the functions necessary to carry out the duties of the department.

b. Provide overall supervision, direction, and coordination of functions of the department.

c. Employ personnel as necessary to carry out the functions vested in the department consistent with chapter 19A and enhance the recruitment, retention, and training of professional staff.

d. Supervise and manage employees of the department, and provide for the internal organization of the department and for the allocation of functions within the department consistent with section 7E.2.

e. Recommend to the information technology council an annual budget for the department.

f. Recommend to the information technology council rules deemed necessary for the implementation of this chapter and proper administration of the department.

g. Recommend to the information technology council information technology standards.

h. Develop and implement operational policies of the department and be responsible for the day-to-day operations of the department.

i. Develop and recommend to the information technology council legislative proposals deemed necessary for the continued efficiency of department functions, and review legislative proposals generated outside of the department which are related to matters within the department's purview.

j. Provide advice to the governor on issues related to information technology.

k. Consult with agencies and other governmental entities on issues relating to information technology.

l. Work with all governmental entities in an effort to achieve the information technology goals established by the information technology council.

3. *Delegation of powers and duties.* Powers and duties vested in the director may be delegated by the director to an employee of the department, but the director retains the responsibility for an employee's acts within the scope of the delegation.

4. *Appeal of director's decision.* A decision by the director may be appealed to the information technology council. A person aggrieved by such decision of the director shall provide notice of such appeal to the information technology council within thirty calendar days of the decision of the director. An appeal of a decision of the director shall be treated as a contested case under chapter 17A.

2000 Acts, ch 1141, §4, 19

14B.105 Information technology council — members — powers and duties.

1. *Membership.*

a. An information technology council is established with the authority to oversee the department and information technology activities of participating agencies as provided in this chapter. The information technology council is composed of seventeen members including the following:

(1) The director of the information technology department.

(2) The administrator of the public broadcasting division of the department of education.

(3) The chairperson of the IowAccess advisory council established in section 14B.201, or the chairperson's designee.

(4) The state technology advisor in the department of economic development.

(5) The executive director of the Iowa communications network, or the executive director's designee.

(6) Two executive branch department heads appointed by the governor.

(7) Five persons appointed by the governor who are knowledgeable in information technology matters.

(8) One person representing the judicial branch appointed by the chief justice of the supreme court who shall serve in an ex officio, nonvoting capacity.

(9) Four members of the general assembly with not more than one member from each chamber being from the same political party. The two senators shall be designated by the president of the senate after consultation with the majority and minority leaders of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

b. The members appointed pursuant to paragraph *"a"*, subparagraphs (3) through (7), shall serve four-year staggered terms and such appointments to the information technology council are subject to the requirements of sections 69.16, 69.16A, and 69.19. The four-year terms of members appointed by the governor shall be staggered as designated by the governor. Members appointed by the governor pursuant to paragraph *"a"*, subparagraphs (3) through (7), shall not serve consecutive four-year terms. Members appointed by the governor are subject to senate confirmation and may also be eligible to receive compensation as provided in section 7E.6. Members shall be reimbursed for actual and necessary expenses incurred in performance of the members' duties.

The information technology council shall annually elect its own chairperson from among the voting members of the council other than the director of the information technology department.

2. *Duties.* The information technology council shall do all of the following:

a. Adopt rules in accordance with chapter 17A which are necessary for the exercise of the powers and duties granted by this chapter and the proper administration of the department.

b. Develop recommended standards for consideration with respect to the procurement of information technology by all participating agencies.

c. Appoint advisory committees as appropriate to assist the information technology council in developing strategies for the use and provision of information technology and establishing other advisory committees as necessary to assist the information technology council in carrying out its duties under this chapter. The number of advisory committees and their membership shall be determined by the information technology council to assure that the public and agencies and other governmental entities have an opportunity to comment on the services provided and the service

goals and objectives of the department.

d. Prepare and annually update a strategic information technology plan for the use of information technology throughout state government. The plan shall promote participation in cooperative projects with other governmental entities. The plan shall establish a mission, goals, and objectives for the use of information technology, including goals for electronic access to public records, information, and services. The plan shall be submitted annually to the governor and the general assembly.

e. Review and recommend to the general assembly, as deemed appropriate by the information technology council, legislative proposals recommended by the director, or other legislative proposals as developed and deemed necessary by the information technology council.

f. Review the recommendations of the IowAccess advisory council regarding rates to be charged for access to and for value-added services performed through IowAccess. The information technology council shall report the establishment of a new rate or change in the level of an existing rate to the department of management, and the department of management shall notify the legislative fiscal bureau regarding the rate establishment or change.

g. Review and approve, as deemed appropriate by the information technology council, the annual budget recommendation for the department as proposed by the director.

3. *Waiver.* The information technology council, upon the written request of a participating agency and for good cause shown, may grant a waiver from a requirement otherwise applicable to a participating agency relating to an information technology standard established by the information technology council.

4. *Final agency action.* A decision by the council is a final agency action as provided under chapter 17A and an appeal of the decision shall be made directly to the district court. Any party to a contested case may appeal the decision to the district court.

2000 Acts, ch 1141, §5, 19; 2001 Acts, ch 189, §7; 2002 Acts, ch 1119, §119, 203

Confirmation; §2.32

2002 amendments to subsection 1, paragraph b, unnumbered paragraph 1, take effect April 22, 2002, and apply retroactively to April 25, 2000; 2002 Acts, ch 1119, §203

Subsection 1, paragraph b, unnumbered paragraph 1 amended

14B.106 Divisions of the department — responsibilities.

1. *a.* The department shall include the following divisions:

(1) A policy and planning division which is responsible for the integration of information technology into all business aspects of state government. The division shall cooperate with the customer liaison division to coordinate the activities of both divisions in promoting, integrating, and supporting information technology in all business aspects of state government.

(2) An operations division which is responsible for providing all of the following:

(a) Server systems, including mainframe and other server operations.

(b) Desktop support.

(c) Applications integration.

(3) A customer liaison division which is responsible for support and promotion of departmental services and information technology, and for providing applications development, support, and training, and advice and assistance in developing and supporting business applications throughout state government. The division shall cooperate with the policy and planning division to coordinate the activities of both divisions in promoting, integrating, and supporting information technology in all business aspects of state government.

(4) An administration division which is responsible for the financial, personnel, and other administrative functions of the department. The administration division is also responsible for all information technology purchasing and contract administration for the information technology department.

b. Each division established under paragraph *"a"* shall be headed by an administrator appointed by the governor subject to confirmation by the senate. An administrator appointed pursuant to this paragraph shall serve at the pleasure of the governor, except that an administrator shall not serve for a term greater than three years unless reappointed by the governor. An administrator shall report to the director regarding the day-to-day operations of the division headed by the administrator and the performance of the administrator's duties. The term shall begin and end in the same manner as set forth in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. An administrator may hire other assistants and employees as necessary to carry out the duties of the division.

2. Notwithstanding subsection 1, the department shall also include the following subunits:

a. A digital government bureau as provided for in section 14B.107.

b. An IowAccess advisory council as provided for in section 14B.201.

2000 Acts, ch 1141, §6, 19

Confirmation; §2.32

14B.107 Digital government bureau.

1. A digital government bureau is established within the department which shall be headed by an administrator appointed by the governor subject to confirmation by the senate. The administrator shall serve a three-year term. The term shall begin and end in the same manner as set forth in section 69.19. A vacancy shall be filled for

the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator shall report to the director regarding the day-to-day operations of the bureau and the performance of the administrator's duties. The administrator may hire other assistants and employees as necessary to carry out the bureau's duties.

2. The bureau is responsible for initiating and supporting the development of electronic commerce, electronic government, and internet applications across participating agencies and in cooperation with other governmental entities.

3. The bureau shall do all of the following:

a. Recommend standards to the information technology council, consistent with other state law, for the implementation of electronic commerce, including standards for digital signatures, electronic currency, and other items associated with electronic commerce.

b. Recommend guidelines to the information technology council for the appearance and functioning of applications.

c. Recommend standards to the information technology council for the integration of electronic data across state agencies.

d. Foster joint development of electronic commerce and electronic government involving the public and private sectors.

e. Develop customer surveys and citizen outreach and education programs and material, and provide for citizen input regarding the state's electronic commerce and electronic government applications.

f. Provide staff support for the IowAccess advisory council.

2000 Acts, ch 1141, §7, 19
Confirmation; §2.32

14B.108 Information technology standards.

The information technology council shall develop recommended standards for consideration with respect to the procurement of information technology by all participating agencies. It is the intent of the general assembly that information technology standards be established for the purpose of guiding such procurements. Such standards, unless waived by the council, shall apply to all information technology procurements for participating agencies.

The office of the governor or the office of an elective constitutional or statutory officer shall consult with the department prior to procuring information technology and consider the standards recommended by the council, and provide a written report to the department relating to the office's decision regarding such acquisitions.

2000 Acts, ch 1141, §8, 19

14B.109 Procurement of information technology.

1. Notwithstanding the provisions of this section, the information technology department and the department of general services shall enter into an interagency agreement regarding the division of responsibilities between the departments associated with the procurement of information technology which is acceptable to both departments. The interagency agreement shall be subject to renegotiation at least every two years, unless an earlier time is provided for in the interagency agreement. If the departments are unable to agree on the terms of an interagency agreement or upon a failure of either department to satisfy the terms of the agreement, the departments shall inform the department of management that an agreement has not been reached or that one of the departments has failed to satisfy the terms of the agreement. The department of management, upon receipt and review of such information, may direct the information technology department to proceed with the procurement of information technology as provided in subsections 2 through 5.

2. *a.* Standards established by the information technology council, unless waived pursuant to section 14B.105, shall apply to all information technology procurements for participating agencies.

b. A participating agency shall submit a request to the department for the procurement of any information technology. The department, prior to any acquisition of such information technology, shall make a determination whether the requested information technology complies with the information technology standards established by the information technology council.

The information technology department, at the request of a participating agency other than a participating agency that is granted independent procurement authority, shall acquire the information technology for the participating agency requesting such information technology if it is determined to be compliant with the standards established by the information technology council.

A participating agency that is granted independent procurement authority, upon a determination by the information technology department that a proposed information technology acquisition complies with the information technology standards established by the information technology council, may proceed with such acquisition. The information technology department shall provide advice to such participating agency regarding the procurement of such information technology, including any opportunity to aggregate such purchases with other participating agencies.

c. If a determination is made that the information technology does not comply with such standards, the department shall disapprove the request and such information technology shall not be procured unless a waiver is granted pursuant to section 14B.105.

3. The information technology department, by rule, may implement a prequalification procedure for contractors with which the department has entered or intends to enter into agreements regarding the procurement of information technology.

4. Notwithstanding the provisions of chapter 18, the department may procure information technology as provided in this section. The department may cooperate with other governmental entities in the procurement of information technology in an effort to make such procurements in a cost-effective, efficient manner as provided in this section. The department, as deemed appropriate and cost-effective, may procure information technology using any of the following methods:

a. Cooperative procurement agreement. The department may enter into a cooperative procurement agreement with another governmental entity for the purpose of pooling funds for the purchase of information technology, whether such information technology is for the use of the department or multiple governmental entities. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which such purpose will be accomplished. Any power exercised under such agreement shall not exceed the power granted to any party to the agreement.

b. Negotiated contract. The department may enter into an agreement for the purchase of information technology if any of the following applies:

(1) The contract price, terms, and conditions are pursuant to the current federal supply contract, and the purchase order adequately identifies the federal supply contract under which the procurement is to be made.

(2) The contract price, terms, and conditions are no less favorable than the contractor's current federal supply contract price, terms, and conditions; the contractor has indicated in writing a willingness to extend such price, terms, and conditions to the department; and the purchase order adequately identifies the contract relied upon.

(3) The contract is with a vendor which has a current exclusive or nonexclusive price agreement with the state for the information technology to be procured, and such information technology meets the same standards and specifications as the items to be procured and both of the following apply:

(a) The quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement.

(b) The purchase order adequately identifies the price agreement relied upon.

c. Contracts let by another government entity. The department, on its own behalf or on the behalf of another participating agency, may procure information technology under a contract let by another state agency or political subdivision of this state, or approve such procurement in the same manner by a participating agency.

d. Reverse auction.

(1) The department may enter into an agreement for the purchase of information technology utilizing a reverse auction process. Such process shall result in the purchase of information technology from the vendor submitting the lowest responsible bid amount for the information technology to be acquired. The department, in establishing a reverse auction process shall do all of the following:

(a) Determine the specifications and requirements of the information technology to be acquired.

(b) Identify and provide notice to potential vendors concerning the proposed acquisition.

(c) Establish prequalification requirements to be met by a vendor to be eligible to participate in the reverse auction.

(d) Conduct the reverse auction in a manner as deemed appropriate by the department, and consistent with rules adopted by the department.

(2) Prior to conducting a reverse auction, the department shall establish a threshold amount which shall be the maximum amount which the department is willing to pay for the information technology to be acquired.

(3) The department shall enter into an agreement with a vendor who is the lowest responsible bidder which meets the specifications or description of the information technology to be procured, or the department may reject all bids and begin the process again. In determining the lowest responsible bidder, the department may consider various factors, including, but not limited to, the past performance of the vendor relative to quality of product or service, the past experience of the department in relation to the product or service, the relative quality of products or services, the proposed terms of delivery, and the best interest of the state.

e. Competitive bidding. The department may enter into an agreement for the purchase of information technology in the same manner as provided under section 18.6, with respect to the department of general services.

f. Other agreements. In addition to the competitive bidding procedure provided for under paragraph *"e"*, the information technology department may enter into an agreement for the purchase, disposal, or other disposition of information technology in any other manner provided under chapter 18, in the same manner and subject to the same limitations as the department of general services. The information technology department, by rule, shall provide for such procedures.

5. The department shall adopt rules pursuant

to chapter 17A to implement the procurement methods and procedures provided for in subsections 2 through 4.

2000 Acts, ch 1141, §9, 19; 2001 Acts, ch 24, §11 – 13

DIVISION II

IOWACCESS

14B.201 IowAccess advisory council established — duties — membership.

1. *Advisory council established.* An IowAccess advisory council is established within the department for the purpose of creating and providing a service to the citizens of this state that is the gateway for one-stop electronic access to government information and transactions, whether federal, state, or local. Except as provided in this section, IowAccess shall be a state-funded service providing access to government information and transactions. The information technology council, in establishing the fees for value-added services, shall consider the reasonable cost of creating and organizing such government information through IowAccess.

This section shall not be construed to impair the right of a person to contract to purchase information or data from the Iowa court information system or any other governmental entity. This section shall not be construed to affect a data purchase agreement or contract in existence on the effective date of this section.

2. *Duties.*

a. The advisory council shall do all of the following:

(1) Recommend to the information technology council rates to be charged for access to and for value-added services performed through IowAccess.

(2) Recommend to the director and the information technology council the priority of projects associated with IowAccess.

(3) Recommend to the director and the information technology council expected outcomes and effects of the use of IowAccess and determine the manner in which such outcomes are to be measured and evaluated.

(4) Review and recommend to the director and the information technology council the IowAccess total budget request and ensure that such request reflects the priorities and goals of IowAccess as established by the advisory council.

(5) Review and recommend to the director and the information technology council all rules to be adopted by the information technology council that are related to IowAccess.

(6) Advocate for access to government information and services through IowAccess and for data privacy protection, information ethics, accuracy, and security in IowAccess programs and services.

(7) Receive status and operations reports associated with IowAccess.

(8) Other duties as assigned by the information technology council or the director.

b. The advisory council shall also advise the information technology council and the director with respect to the operation of IowAccess and encourage and implement access to government and its public records by the citizens of this state.

c. The advisory council shall serve as a link between the users of public records, the lawful custodians of such public records, and the citizens of this state who are the owners of such public records.

d. The advisory council shall ensure that IowAccess gives priority to serving the needs of the citizens of this state.

3. *Membership.*

a. The advisory council shall be composed of nineteen members including the following:

(1) Five persons appointed by the governor representing the primary customers of IowAccess.

(2) Six persons representing lawful custodians as follows:

(a) One person representing the legislative branch, who shall not be a legislator, to be appointed jointly by the president of the senate, after consultation with the majority and minority leaders of the senate, and by the speaker of the house of representatives, after consultation with the majority and minority leaders of the house of representatives.

(b) One person representing the judicial branch as designated by the chief justice of the supreme court.

(c) One person representing the executive branch as designated by the governor.

(d) One person to be appointed by the governor representing cities who shall be actively engaged in the administration of a city.

(e) One person to be appointed by the governor representing counties who shall be actively engaged in the administration of a county.

(f) One person to be appointed by the governor representing the federal government.

(3) Four members to be appointed by the governor representing a cross section of the citizens of the state.

(4) Four members of the general assembly, two from the senate and two from the house of representatives, with not more than one member from each chamber being from the same political party. The two senators shall be designated by the president of the senate after consultation with the majority and minority leaders of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

b. Members appointed by the governor are subject to confirmation by the senate and shall serve four-year staggered terms as designated by the governor. The advisory council shall annually elect its own chairperson from among the voting members of the board. Members appointed by the governor are subject to the requirements of sections 69.16, 69.16A, and 69.19. Members appointed by the governor shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Such members may also be eligible to receive compensation as provided in section 7E.6.

2000 Acts, ch 1141, §10, 19; 2001 Acts, ch 24, §14

Confirmation; §2.32

Initial appointments to IowAccess advisory council; 2000 Acts, ch 1141, §18, 19

14B.202 Powers and responsibilities vested in individual government agencies.

1. The government agency that is the lawful custodian of a public record shall be responsible for determining whether a record is required by state statute to be confidential. The transmission of a record by a government agency by use of electronic means established, maintained, or managed by the department shall not constitute a transfer of the legal custody of the record from the individual government agency to the department or to any other person or entity.

2. The department shall not have authority to determine whether an individual government agency should automate records of which the individual government agency is the lawful custodian. However, the department may encourage governmental agencies to implement electronic access to government records.

3. A government agency shall not limit access to a record by requiring a citizen to receive the record electronically as the only means of providing the record. A person shall have the right to examine and copy a printed form of a public record as provided in section 22.2, unless the public record is confidential.

4. A person who contracts with a government agency to provide access or disseminate public records by electronic or other means shall pay the same fee which would be charged to the public under chapter 22 for any public record that is in any manner utilized by the person in a venture that is not part of the contract with the government agency.

98 Acts, ch 1224, §13; 99 Acts, ch 96, §4

CS99, §18.183

2000 Acts, ch 1226, §9, 28, 30

C2001, §14B.202

2000 amendments to subsections 1 and 2 take effect April 25, 2000; 2000 Acts, ch 1141; 2000 Acts, ch 1226, §28, 30

14B.203 Financial transactions.

1. Moneys paid to a participating governmental entity from persons who complete an electronic financial transaction with the governmental entity by accessing IowAccess shall be transferred to the treasurer of state for deposit in the general fund, unless the disposition of the moneys is specifically provided for under other law. The moneys may include all of the following:

a. Fees required to obtain an electronic public record as provided in section 22.3A.

b. Fees required to process an application or file a document, including but not limited to fees required to obtain a license issued by a licensing authority.

c. Moneys owed to a governmental entity by a person accessing IowAccess in order to satisfy a liability arising from the operation of law, including the payment of assessments, taxes, fines, and civil penalties.

2. Moneys transferred using IowAccess may include amounts owed by a governmental entity to a person accessing IowAccess in order to satisfy a liability of the governmental entity. The moneys may include the payment of tax refunds, and the disbursement of support payments as defined in section 252D.16 or 598.1 as required for orders issued pursuant to section 252B.14.

3. In addition to other forms of payment, credit cards shall be accepted in payment for moneys owed to a governmental entity as provided in this section, according to rules which shall be adopted by the treasurer of state. The fees to be charged shall not exceed those permitted by statute. A governmental entity may adjust its fees to reflect the cost of processing as determined by the treasurer of state. The discount charged by the credit card issuer may be included in determining the fees to be paid for completing a financial transaction under this section by using a credit card.

4. Notwithstanding any other provision of this section, the department may establish for the fiscal years beginning July 1, 2001, and ending June 30, 2005, a pilot project for fee collection. Fees shall be collected based on the ability to access court information from remote locations.

98 Acts, ch 1224, §14

C99, §18.184

2000 Acts, ch 1226, §10, 28, 30

C2001, §14B.203

2001 Acts, ch 70, §2, 3; 2001 Acts, ch 189, §8

14B.204 Audits required.

A technology audit of the electronic transmission system by which government records are transmitted electronically to the public shall be conducted not less than once annually for the purpose of determining that government records and other electronic data are not misappropriated or misused by the department or a contractor of the department. A financial audit shall be conducted not less than once annually to determine the financial condition of the department and to make

other relevant inquiries.
98 Acts, ch 1224, §15
C99, §18.185
2000 Acts, ch 1226, §11, 28, 30
C2001, §14B.204

14B.205 Credit cards accepted.
In addition to other forms of payment, credit cards may be accepted in payment for any fees, including but not limited to interest, penalties, subscriptions, registrations, purchases, applications, licenses, permits, or other filings transmitted or transactions conducted electronically. The fees to be charged shall not exceed those permitted by statute, except that the discount charged by the credit card issuer may be included in determining the fee to be charged for records transmitted or transactions conducted electronically.
98 Acts, ch 1224, §16
C99, §18.186
C2001, §14B.205

14B.206 IowAccess revolving fund.
An IowAccess revolving fund is created in the state treasury. The revolving fund shall be administered by the department and shall consist of moneys collected by the department as fees, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund are appropriated to and shall be used by the department to maintain, develop, operate, and expand IowAccess consistent with this subchapter. The department shall submit an annual report not later than January 31 to the members of the general assembly and the legislative fiscal bureau, of the activities funded by and expenditures made from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.
99 Acts, ch 207, §11
CS99, §18.187
2000 Acts, ch 1226, §12, 28, 30
C2001, §14B.206

SUBTITLE 5

ECONOMIC DEVELOPMENT

CHAPTER 15

DEPARTMENT OF ECONOMIC DEVELOPMENT

Department includes Iowa finance authority and Iowa economic protective and investment authority; §7E.7
Department to recognize the value of health insurance benefit packages provided by employers in evaluating grant and loan requests; 89 Acts, ch 304, §409

SUBCHAPTER I

DEPARTMENT — ORGANIZATION

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SUBCHAPTER I

DEPARTMENT — ORGANIZATION

15.101 Mission.

The mission of the Iowa department of economic development is to enhance the economic development of the state and provide for job creation and increased prosperity and opportunities for the citizens of the state by providing direct financial and technical assistance and training to businesses and individuals and by coordinating other state, local, and federal economic development programs.

86 Acts, ch 1245, §801

15.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the Iowa economic development board.

2. *"Department"* means the Iowa department of economic development.

3. *"Director"* means the director of the department or the director's designee.

4. *"Small business"* means any enterprise which is located in this state, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than three million dollars computed as the average of the three preceding fiscal years. This definition does not apply to any program or activity for which a definition for small business is provided for the program or activity by federal law or regulation or other state law.

5. *a.* *"Targeted small business"* means a small business which is fifty-one percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with a disability provided the business meets all of the following requirements:

(1) Is located in this state.

(2) Is operated for profit.

(3) Has an annual gross income of less than three million dollars computed as an average of the three preceding fiscal years.

b. As used in this subsection:

(1) *"Disability"* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. *"Disability"* does not include any of the following:

(a) Homosexuality or bisexuality.

(b) Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.

(c) Compulsive gambling, kleptomania, or pyromania.

(d) Psychoactive substance abuse disorders resulting from current illegal use of drugs.

(2) *"Major life activity"* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

(3) *"Minority person"* means an individual who is a Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan native American.

86 Acts, ch 1245, §802; 90 Acts, ch 1156, §2; 91 Acts, ch 103, §1; 94 Acts, ch 1076, §2

15.103 Economic development board.

The Iowa economic development board is created, consisting of eleven voting members appointed by the governor and seven ex officio nonvoting members. The ex officio nonvoting members are four legislative members; one president, or the president's designee, of the University of Northern Iowa, the University of Iowa, or Iowa State University of science and technology designated by the state board of regents on a rotating basis; and one president, or the president's designee, of a private college or university appointed by the Iowa association of independent colleges and universities; and one superintendent, or the superintendent's designee, of a community college, appointed by the Iowa association of community college presidents. The legislative members are two state senators, one appointed by the president of the senate, after consultation with the majority leader of the senate, and one appointed by the minority leader of the senate, after consultation with the president of the senate, from their respective parties; and two state representatives, one appointed by the speaker and one appointed by the minority leader of the house of representatives from their respective parties. Not more than six of the voting members shall be from the same political party. The secretary of agriculture shall be one of the voting members. The governor shall appoint the remaining ten voting members of the board for a term of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate, and the governor's appointments shall include persons knowledgeable of the various elements of the department's responsibilities.

A vacancy on the board shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

The board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. However, the chairperson and the vice chairperson shall not be from the same politi-

cal party. The board shall meet at the call of the chairperson or when any six members of the board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the voting members constitutes a quorum.

Members of the board, the director, and other employees of the department shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations for those purposes and the department is subject to the budget requirements of chapter 8. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

If a member of the board has an interest, either direct or indirect, in a contract to which the department is or is to be a party, the interest shall be disclosed to the board in writing and shall be set forth in the minutes of a meeting of the board. The member having the interest shall not participate in action by the board with respect to the contract. This paragraph does not limit the right of a member of the board to acquire an interest in bonds, or limit the right of a member to have an interest in a bank or other financial institution in which the funds of the department are deposited or which is acting as trustee or paying agent under a trust indenture to which the department is a party.

86 Acts, ch 1245, §803; 88 Acts, ch 1081, §1; 90 Acts, ch 1223, §9; 90 Acts, ch 1253, §121

Confirmation, see §2.32

15.104 Duties of the board.

The board shall:

1. Prepare a three-year comprehensive strategic plan of specific goals, objectives, and policies for state economic growth. All other state agencies involved in economic development activities shall annually submit to the board for its review and potential inclusion in the strategic plan their specific strategic plans and programs. The three-year strategic plan for state economic growth shall be updated annually.

2. Develop a method of evaluation of the attainment of goals and objectives from pursuing the policies of the three-year plan.

3. Implement the requirements of chapter 73.

4. Review and approve or disapprove a life science enterprise plan or amendments to that plan as provided in chapter 10C as that chapter exists on or before June 30, 2004, and according to rules adopted by the board. A life science plan shall make a reasonable effort to provide for participation by persons who are individuals or family farm entities actively engaged in farming as defined in section 10.1. The persons may participate in the life science enterprise by holding an equity position in the life science enterprise or providing goods or service to the enterprise under contract. The plan must be filed with the board not later than June 30, 2004. The life science enterprise may file an amendment to a plan at any time. A life science enterprise is not eligible to file a plan, unless the life science enterprise files a notice with the board. The notice shall be a simple statement indicating that the life science enterprise may file a plan as provided in this section. The notice must be filed with the board not later than June 30, 2001. The notice, plan, or amendments shall be submitted by a life science enterprise as provided by the board. The board shall consult with the department of agriculture and land stewardship during its review of a life science plan or amendments to that plan. The plan shall include information regarding the life science enterprise as required by rules adopted by the board, including but not limited to all of the following:

a. A description of life science products to be developed by the enterprise.

b. The time frame required by the enterprise to develop the life science products.

c. The amount of capital investment required by the enterprise to develop the life science products.

d. The number of acres of land required to produce the life science products.

e. The type and extent of participation in the life science enterprise by persons who are individuals or family farm entities. If the plan does not provide for participation or minimal participation, the plan shall include a detailed explanation of the reasonable effort made by the life science enterprise to provide for participation.

5. Approve the budget of the department as prepared by the director.

6. Establish guidelines, procedures, and policies for the awarding of grants or contracts administered by the department.

7. Review grants or contracts awarded by the department, with respect to the department's adherence to the guidelines and procedures and the impact on the three-year strategic plan for economic growth.

8. Adopt all necessary rules recommended by the director or administrators of divisions prior to their adoption pursuant to chapter 17A.

86 Acts, ch 1245, §804; 86 Acts, ch 1238, §43; 87 Acts, ch 17, §2; 2000 Acts, ch 1197, §8, 10; 2001 Acts, ch 11, §1

15.105 Department of economic development — director.

The Iowa department of economic development is created. The department shall be administered by a director who shall be appointed by the governor subject to confirmation by the senate and shall serve at the pleasure of the governor. If the office of the director becomes vacant, the vacancy shall be filled in the same manner as provided for the original appointment.

86 Acts, ch 1245, §805

Confirmation, see §2.32

15.106 Duties of the director.

The director shall:

1. Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department.

2. Employ personnel as necessary to carry out the duties and responsibilities of the department, consistent with the merit system provisions of chapter 19A for nonprofessional employees. Professional staff of the department are exempt from the merit system provisions of chapter 19A.

3. Prepare a budget for the department, subject to the approval of the board, and prepare reports required by law or by the board.

4. Appoint the administrators of the divisions of the department.

5. Review and submit to the board legislative proposals necessary to maintain current state economic development and tourism laws.

6. Recommend rules to the board for the implementation of this chapter.

7. Report to the board, on at least a quarterly basis, on grants and contracts awarded by the department.

8. Seek to implement the comprehensive strategic plan approved by the board under section 15.104, subsection 1.

9. Implement the requirements of chapter 73.

86 Acts, ch 1245, §806; 88 Acts, ch 1158, §1; 2001 Acts, ch 11, §2; 2001 Acts, ch 61, §1

15.107 Divisions.

The director may establish administrative divisions within the department in order to most efficiently and effectively carry out the department's responsibilities, subject to the following:

1. That, initially, there exist a finance division and a job training and entrepreneurship assistance division among the department's divisions.

2. That any creation or modification of departmental divisions be set in place only after consultation with the board.

86 Acts, ch 1245, §807

15.108 Primary responsibilities.

The department has the following areas of primary responsibility:

1. *Finance.* To provide for financial assistance to businesses, local governments, and educational institutions through loans and grants of state and federal funds to enable them to promote and achieve economic development within the state. To carry out this responsibility, the department shall:

a. Expend federal funds received as community development block grants as provided in section 8.41.

b. Provide staff assistance to the corporation formed under authority of sections 15E.11 to 15E.16 to receive and disburse funds to further the overall development and well-being of the state.

2. *Marketing.* To coordinate, develop, and make available technical services on the state and local levels in order to aid businesses in their start-up or expansion in the state. To carry out this responsibility, the department shall:

a. Establish within the department a federal procurement office staffed with individuals experienced in marketing to federal agencies.

b. Aid in the marketing and promotion of Iowa products and services. The department may adopt, subject to the approval of the board, a label or trademark identifying Iowa products and services together with any other appropriate design or inscription and this label or trademark shall be registered in the office of the secretary of state. In authorizing the use of a marketing label or trademark to an applicant, the state, and any state agency, official, or employee involved in the authorization, is immune from a civil suit for damages, including but not limited to a suit based on contract, breach of warranty, negligence, strict liability, or tort. Authorization of the use of a marketing label or trademark by the state, or any state agency, official, or employee, is not an express or implied guarantee or warranty concerning the safety, fitness, merchantability, or use of the applicant's product or service. This paragraph does not create a duty of care to the applicant or any other person.

(1) The department may register or file the label or trademark under the laws of the United States or any foreign country which permits registration, making the registration as an association or through an individual for the use and benefit of the department.

(2) The department shall establish guidelines for granting authority to use the label or trademark to persons or firms who make a satisfactory showing to the department that the product or service meets the guidelines as manufactured, processed, or originating in Iowa. The trademark or label use shall be registered with the department.

(3) A person shall not use the label or trademark or advertise it, or attach it on any promotional literature, manufactured article or agricultural product without the approval of the department.

(4) The department may deny permission to use the label or trademark if the department believes that the planned use would adversely affect the use of the label or trademark as a marketing tool for Iowa products or its use would be inconsistent with the marketing objectives of the department. Notwithstanding chapter 17A, the Iowa administrative procedure Act, the department may suspend permission to use the label or trademark prior to an evidentiary hearing which shall be held within a reasonable period of time following the denial.

c. Promote an import substitution program to encourage the purchase of domestically produced

Iowa goods by identifying and inventorying potential purchasers and the firms that can supply them, contacting the suppliers to determine their interest and ability in meeting the potential demand, and making the buyers aware of the potential suppliers.

d. Aid in the promotion and development of the agricultural processing industry in the state.

3. *Local government and service coordination.* To coordinate the development of state and local government economic development-related programs in order to promote efficient and economic use of federal, state, local, and private resources.

a. To carry out this responsibility, the department shall:

(1) Provide the mechanisms to promote and facilitate the coordination of management and technical assistance services to Iowa businesses and industries and to communities by the department, by the community colleges, and by the state board of regents institutions, including the small business development centers, the center for industrial research and service, and extension activities. In order to achieve this goal, the department may establish periodic meetings with representatives from the community colleges and the state board of regents institutions to develop this coordination. The community colleges and the state board of regents institutions shall cooperate with the department in seeking to avoid duplication of economic development services through greater coordinating efforts in the utilization of space, personnel, and materials and in the development of referral and outreach networks. The department shall annually report on the degree to which economic development activities have been coordinated and the degree to which there are future coordination needs, and the community colleges and the state board of regents institutions shall be given an opportunity to review and comment on this report prior to its printing or release. The department shall also establish a registry of applications for federal funds related to management and technical assistance programs.

(2) Provide office space and staff assistance to the city development board as provided in section 368.9.

(3) Provide technical and financial assistance to local and regional government organizations in Iowa, analyze intergovernmental relations in Iowa, and recommend policies to state agencies, local governments, the governor, and the general assembly as these pertain to economic development.

(4) Train field experts in local development and through them provide continuing support to small local organizations.

(5) Encourage cities, counties, local and regional government organizations, and local and regional economic development organizations to develop and implement comprehensive community and economic development plans. In evaluating financial assistance applications, the department shall award supplementary credit to applications submitted by cities, counties, local and regional government organizations, and local and regional economic development organizations that have developed a comprehensive community and economic development plan.

b. In addition to the duties specified in paragraph *"a"*, the department may:

(1) Perform state and interstate comprehensive planning and related activities.

(2) Perform planning for metropolitan or regional areas or areas of rapid urbanization including interstate areas.

(3) Provide planning assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations. Subject to the availability of funds for this purpose, the department may provide financial assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations for the purpose of developing community and economic development plans.

(4) Assist public or private universities and colleges and urban centers to:

(a) Organize, initiate, develop, and expand programs which will provide special training in skills needed for economic and efficient community development.

(b) Support state and local research that is needed in connection with community development.

4. *Exporting.* To promote and aid in the marketing and sale of Iowa industrial and agricultural products and services outside of the state. To carry out this responsibility, the department shall:

a. Prepare a report for the governor and the general assembly indicating the areas of export development in which this state could be more actively involved and how this involvement could occur. The initial report shall be available to the governor and members of the general assembly by December 1, 1986. Subsequent reports may be submitted as deemed necessary. The report shall include, but is not limited to:

(1) Information on the financial requirements of export trade activity and the potential roles for state involvement in export trade financing.

(2) Information on financing of export trade activity undertaken by other states and the results of this activity.

(3) Recommendations for a long-term export trade policy for the state.

(4) Recommendations regarding state involvement in export trade financing requirements.

(5) Other findings and recommendations deemed relevant to the understanding of export trade development.

b. Perform the duties and activities specified for the agricultural marketing program under sec-

tions 15.201 and 15.202.

c. Perform the duties and activities specified for the industrial and business export trade plan under section 15.231.

d. To the extent deemed feasible and in coordination with the board of regents and the area community colleges, work to establish a conversational foreign language training program.

e. To the extent deemed feasible, promote and assist in the creation of one or more international currency and barter exchanges.

f. Seek assistance and advice from the export advisory board appointed by the governor and the Iowa district export council which advises the United States department of commerce. The governor is authorized to appoint an export advisory board.

g. To the extent deemed feasible, develop a program in which graduates of Iowa institutions of higher education or former residents of the state who are residing in foreign countries and who are familiar with the language and customs of those countries are utilized as cultural advisors for the department and for Iowa businesses participating in trade missions and other foreign trade activities, and in which foreign students studying at Iowa institutions of higher education are provided means to establish contact with Iowa businesses engaged in export activities, and in which foreign students returning to their home countries are used as contacts for trading purposes.

5. *Tourism.* To promote Iowa's public and private recreation and tourism opportunities to Iowans and out-of-state visitors and aid promotional and development efforts by local governments and the private sector. To carry out this responsibility, the department shall:

a. Build general public consensus and support for Iowa's public and private recreation, tourism, and leisure opportunities and needs.

b. Recommend high quality site management and maintenance standards for all public and private recreation and tourism opportunities.

c. Coordinate and develop with the state department of transportation, the state department of natural resources, the state department of cultural affairs, and other state agencies public interpretation and education programs which encourage Iowans and out-of-state visitors to participate in recreation and leisure opportunities available in Iowa.

d. Coordinate with other divisions of the department to add Iowa's recreation, tourism, and leisure resources to the agricultural and other images which characterize the state on a national level.

e. Consolidate and coordinate the many existing sources of information about local, regional, statewide, and national opportunities into a comprehensive, state-of-the-art information delivery system for Iowans and out-of-state visitors.

f. Formulate and direct marketing and promotion programs to specific out-of-state market populations exhibiting the highest potential for consuming Iowa's public and private tourism products.

g. Provide ongoing long-range planning on a statewide basis for improvements in Iowa's public and private tourism opportunities.

h. Provide the private sector and local communities with advisory services including analysis of existing resources and deficiencies, general development and financial planning, marketing guidance, hospitality training, and others.

i. Measure the change in public opinion of Iowans regarding the importance of recreation, tourism, and leisure.

j. Provide annual monitoring of tourism visitation by Iowans and out-of-state visitors to Iowa attractions, public and private employment levels, and other economic indicators of the recreation and tourism industry and report predictable trends.

k. Identify new business investment opportunities for private enterprise in the recreation and tourism industry.

l. Cooperate with and seek assistance from the state department of cultural affairs.

m. Seek coordination with and assistance from the state department of natural resources in regard to the Mississippi river parkway under chapter 308 for the purposes of furthering tourism efforts.

n. Collect, assemble, and publish a list of farmers who have agreed to host overnight guests, for purposes of promoting agriculture in the state and farm tourism, to the extent that funds are available.

o. Establish a revolving fund to receive contributions to be used for cooperative advertising efforts. Fees and royalties obtained as a result of licensing the use of logos and other creative materials for sale by private vendors on selected products may be deposited in the fund. The department shall adopt by rule a schedule for fees and royalties to be charged.

The department may establish a revolving fund to receive contributions and funds from the product sales center to be used for start-up or expansion of tourism special events, fairs, and festivals as established by department rule.

6. *Employee training and retraining.* To develop employee training and retraining strategies in coordination with the department of education and department of workforce development as tools for business development, business expansion, and enhanced competitiveness of Iowa industry, which will promote economic growth and the creation of new job opportunities and to administer related programs. To carry out this responsibility, the department shall:

a. Coordinate and perform the duties specified under the Iowa industrial new jobs training Act in chapter 260E, the Iowa jobs training Act in chap-

ter 260F, and the workforce development fund in section 15.341.

b. In performing the duties set out in paragraph *"a"*, the department shall:

(1) Work closely with representatives of business and industry, labor organizations, the council on human investment, the department of education, the department of workforce development, and educational institutions to determine the employee training needs of Iowa employers, and where possible, provide for the development of industry-specific training programs.

(2) Promote Iowa employee training programs to potential and existing Iowa employers and to employer associations.

(3) Develop annual goals and objectives which will identify both short-term and long-term methods to improve program performance, create employment opportunities for residents, and enhance the delivery of services.

(4) Stimulate the creation of innovative employee training and skills development activities, including business consortium and supplier network training programs, and new employee development training models.

(5) Coordinate employee training activities with other economic development finance programs to stimulate job growth.

(6) Review workforce development initiatives as they relate to the state's economic development agenda, recommending action as necessary to meet the needs of Iowa's communities and businesses.

(7) Incorporate workforce development as a component of community-based economic development activities.

7. *Small business.* To provide assistance to small business, targeted small business, and entrepreneurs creating small businesses to ensure continued viability and growth. To carry out this responsibility, the department shall:

a. Receive and review complaints from individual small businesses that relate to rules or decisions of state agencies, and refer questions and complaints to a governmental agency where appropriate.

b. Establish and administer the regulatory information service provided for in section 15E.17.

c. Aid for the development and implementation of the Iowa targeted small business procurement Act established in sections 73.15 through 73.21 and the targeted small business financial assistance program established in section 15.247. The duties of the director under this paragraph include the following:

(1) The director, in conjunction with the director of the department of management, shall publicize the procurement goal program for targeted small businesses and to agencies of state government, attempt to locate targeted small businesses able to perform contracts, and encourage program participation. The director may request the cooperation of the department of general services, the department of transportation, the state board of regents, or any other agency of state government in publicizing this program.

(2) The director, in conjunction with the director of the department of management, shall publicize the financial assistance program established in section 15.247 to targeted small businesses.

(3) When the director determines, or is notified by the head of another agency of state government, that a targeted small business is unable to perform a procurement contract, the director shall assist the small business in attempting to remedy the causes of the inability to perform. In assisting the small business, the director may use any management or financial assistance programs available through state or governmental agencies or private sources.

(4) The director, in conjunction with the director of the department of management and jointly with the universities under the jurisdiction of the state board of regents, and the community colleges, shall develop and make available in all areas of the state, programs to offer and deliver concentrated, in-depth advice and services to assist targeted small businesses. The advice and services shall extend to all areas of business management in its practical application, including but not limited to accounting, engineering, drafting, grant writing, obtaining financing, locating bond markets, market analysis, and projections of profit and loss.

d. If determined necessary by the board, provide training for bank loan officers to increase their level of expertise in regard to business loans.

e. To the extent feasible, cooperate with the department of workforce development to establish a program to educate existing employers and new or potential employers on the rates and workings of the state unemployment compensation program and the state workers' compensation program.

f. Study the feasibility of reducing the total number of state licenses, permits, and certificates required to conduct small businesses.

g. Encourage and assist small businesses to obtain state contracts and subcontracts by cooperating with the directors of purchasing in the department of general services, the state board of regents, and the department of transportation in performing the following functions:

(1) Developing a uniform small business vendor application form which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses which desire to sell goods and services to the state. This form shall also contain information which can be used to determine certification as a targeted small business pursuant to section 10A.104, subsection 8.

(2) Compiling and maintaining a comprehensive source list of small businesses.

(3) Assuring that responsible small busi-

nesses are solicited on each suitable purchase.

(4) Assisting small businesses in complying with the procedures for bidding and negotiating for contracts.

(5) Simplifying procurement specifications and terms in order to increase the opportunities for small business participation.

(6) When economically feasible, dividing total purchases into tasks or quantities to permit maximum small business participation.

(7) Preparing timely forecasts of repetitive contracting requirements by dollar volume and types of contracts to enhance the participation of responsible small businesses in the public purchasing process.

(8) Developing a mechanism to measure and monitor the amount of participation by small businesses in state procurement.

h. In addition, the department shall provide assistance to a small business advisory council which shall consist of nine members appointed as follows:

(1) Not more than five of the members shall be from the same political party. The governor shall appoint the members of the advisory council to four-year terms beginning and ending as provided by section 69.19, subject to confirmation by the senate. Two-thirds of the membership of the advisory council shall consist of individuals who own and operate a small business or individuals employed in the management of a small business.

(2) A vacancy on the advisory council shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

(3) The advisory council shall meet in May of each year for the purpose of electing one of its members as chairperson and one of its members as vice chairperson. However, the chairperson and vice chairperson shall not be from the same political party. The advisory council shall meet at least quarterly.

(4) Members of the advisory council shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations to the department for those purposes.

(5) The duties of the advisory council may include but shall not be limited to the following:

(a) Advise and consult with the board with respect to matters which are of concern to small business.

(b) Submit recommendations to the board relating to actual or proposed activities concerning small business.

(c) Submit recommendations for legislative or administrative action.

(d) Review and monitor small business programs and agencies in order to determine their effectiveness and whether they complement or compete with each other, and to coordinate the delivery of programs and services aimed at small businesses.

(e) Initiate small business studies as deemed necessary.

(f) Provide other information or perform other duties which would be of assistance to small business.

i. Administer the Iowa "self-employment loan program" under section 15.241.

8. *Case management*. To provide case management assistance to low-income persons for the purpose of establishing or expanding small business ventures as provided in section 15.246.

9. *Miscellaneous*. To provide other necessary services, the department shall:

a. Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial, agricultural, and public and private recreation and tourism opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced from them; power and water resources; transportation facilities; available markets; the banking and financing facilities; the availability of industrial sites; the advantages of the state as a whole, and the particular sections of the state, as industrial locations; the development of a grain alcohol motor fuel industry and its related products; and other fields of research and study as the board deems necessary. This information, as far as possible, shall consider both the encouragement of new industrial enterprises in the state and the expansion of industries now existing within the state, and allied fields to those industries. The information shall also consider the changing composition of the Iowa family and the level of poverty among different age groups and different family structures in Iowa society and their impact on Iowa families.

b. Apply for, receive, contract for, and expend federal funds and grants and funds and grants from other sources.

c. Except as otherwise provided in sections 7D.33, 260C.14, and 262.9, provide that an inventor whose research is funded in whole or in part by the state shall assign to the state a proportionate part of the inventor's rights to a letter patent resulting from that research. Royalties or earnings derived from a letter patent shall be paid to the treasurer of state and credited by the treasurer to the general fund of the state. However, the department in conjunction with other state agencies, including the board of regents, shall provide incentives to inventors whose research is funded in whole or in part by the state for having their products produced in the state. These incentives may include taking a smaller portion of the inventor's royalties or earnings than would otherwise occur under this paragraph or other provisions of the law.

d. Administer or oversee federal rural economic development programs in the state.

e. At the director's discretion, accept payment

by credit card of any fees, interest, penalties, subscriptions, registrations, purchases, or other payments, or any portion of such payments, which are due or collected by the department. The department may adjust the amount of the payment to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

f. Provide technical assistance to individuals who are pursuing the purchase and operation of employee-owned businesses.

10. *Economic development planning and research activities.* To provide leadership and support for economic and community development activities statewide. To carry out this responsibility, the department may establish a research center for economic development programs and services whose duties may include but are not limited to the following:

a. Implementation of a comprehensive statewide economic development planning process and provision of leadership, coordination, and support to regional and local economic and community planning efforts.

b. Coordination of the delivery of economic and community development programs with other local, regional, state, federal, and private sector programs and activities.

c. Collection and analysis of data and information, development of databases and performing research to keep abreast of Iowa's present economic base, changing market demands, and emerging trends, including identification of targeted markets and development of marketing strategies.

d. Provision of access to databases to facilitate sales and exports by Iowa businesses.

e. Establishment of a database of community and economic information to aid local, regional, and statewide economic development and service delivery efforts.

11. *Housing development.*

a. To provide assistance to local governments, housing organizations, economic development groups, and other local entities to increase the development of housing in the state and to improve the quality of existing housing in order to maximize the effects of other economic development efforts.

b. To carry out this responsibility, the department shall:

(1) Provide housing needs assessments.

(2) Provide a one-stop source, in coordination with other agencies of the state, for housing development assistance.

(3) Establish programs which assist communities or local entities in developing housing to meet a range of community needs, including programs to assist homeless shelter operations and programs to assist in the development of housing to enhance economic development opportunities in the community.

86 Acts, ch 1142, §1; 86 Acts, ch 1238, §44; 86 Acts, ch 1245, §808; 87 Acts, ch 101, §2; 87 Acts, ch 106, §1; 88 Acts, ch 1098, §1; 88 Acts, ch 1273, §6 – 8; 89 Acts, ch 196, §1; 89 Acts, ch 209, §1; 89 Acts, ch 258, §12; 90 Acts, ch 1047, §1; 90 Acts, ch 1140, §1; 90 Acts, ch 1156, §3; 90 Acts, ch 1255, §2; 91 Acts, ch 28, §1; 91 Acts, ch 109, §1; 92 Acts, ch 1089, §1; 92 Acts, ch 1244, §11; 93 Acts, ch 167, §9; 93 Acts, ch 180, §34, 35; 94 Acts, ch 1023, §4; 94 Acts, ch 1199, §16; 96 Acts, ch 1186, §1 – 4, 23; 97 Acts, ch 15, §1, 2; 97 Acts, ch 214, §1; 98 Acts, ch 1175, §1, 2; 99 Acts, ch 197, §20, 23; 2001 Acts, ch 61, §2 – 5

Confirmation, see §2.32

15.109 Additional duties.

The department of economic development shall coordinate the development of state and local government programs in order to promote efficient and economic use of federal, state, local, and private resources. The department shall:

1. Provide technical and financial assistance to local and regional government organizations in Iowa, analyze intergovernmental relations in Iowa, and recommend policies to state agencies, local governments, the governor, and the general assembly.

2. Apply for, receive, administer, and use federal or other funds available for achieving the purposes of this chapter.

3. At the time the department approves assistance for an applicant, provide the person with information regarding the nature and source of other technical assistance available in the state to assist the applicant on design and management matters concerning energy efficiency and waste reduction. The department shall review the extent to which recommendations made to grantees are in fact implemented by the grantees.

[C71, 73, 75, 77, 79, 81, §7A.3, 7A.7; 82 Acts, ch 1210, §5]

C83, §7A.3

86 Acts, ch 1245, §101, 102

C87, §15.109

90 Acts, ch 1252, §2

15.110 Restrictions relating to councils of governments.

The department shall not require a city or county to be a dues paying member of a council of governments.

90 Acts, ch 1262, §23

Councils of governments; see chapter 28H

15.111 Rural development coordination. Repealed by 2001 Acts, ch 61, § 19.

15.112 Farmworks matching funds.

If the federal government funds the "farmworks" national demonstration project for distressed family farmers, the department shall allo-

cate to the project from the rural enterprise fund or another fund, an amount equal to four percent of the federal funding each year for a three-year period on a dollar-for-dollar matching basis with local or private contributions.

93 Acts, ch 180, §38

15.113 Economic development assistance — report.

In order for the general assembly to have accurate and complete information regarding expenditures for economic development and job training incentives and to respond to the job training needs of Iowa workers, the department shall provide to the legislative fiscal bureau by January 15 of each year data on all assistance or benefits provided under the community economic betterment program, the new jobs and income program, and the Iowa industrial new jobs training Act during the previous calendar year. The department shall meet with the legislative fiscal bureau prior to submitting the data to assure that its form and specificity are sufficient to provide accurate and complete information to the general assembly. The department shall also contact other state agencies providing financial assistance to Iowa businesses and, to the extent practical, coordinate the submission of the data to the legislative fiscal bureau.

96 Acts, ch 1219, §93

15.114 Microbusiness enterprise assistance.

1. As used in this section:

a. "Department" means the department of economic development.

b. "Microbusiness" or *"microbusiness enterprise"* means a business producing services with five or fewer full-time equivalent employee positions and with assistance requirements of not more than twenty-five thousand dollars.

c. "Microenterprise organization" means a nonprofit corporation organized under chapter 504A which is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code and which has a principal mission of actively engaging in microbusiness development, training, technical assistance, and capital access for the start-up or expansion of microbusinesses.

2. The department shall contract with a microenterprise organization actively engaged in microbusiness enterprise to assist in the establishment of this program. In order to qualify for the contract, the microenterprise organization shall do all of the following:

a. Demonstrate a past performance of and a capacity to successfully engage in microbusiness development.

b. Have a statewide commitment to and focus on microbusiness development.

c. Provide training and technical assistance.

d. Demonstrate an ability to provide access to capital for start-up or expansion of a microbusiness.

e. Have established linkages with financial institutions.

f. Demonstrate an ability to provide follow-up technical assistance after a microbusiness start-up or expansion.

3. Moneys allocated pursuant to this section which remain unexpended or unobligated at the end of a fiscal year shall remain available to the department to support the assistance program or may be credited to the value-added agricultural products and processes financial assistance fund created in section 15E.112 and shall not revert notwithstanding section 8.33.

4. The department shall submit a report in accordance with section 7A.11 not later than November 1 of each year detailing the activities of the microenterprise organization and describing the success of the project.

96 Acts, ch 1219, §94; 97 Acts, ch 23, §5

15.115 through 15.200 Reserved.

SUBCHAPTER II

ACTIVITIES

PART 1

15.201 Agricultural marketing program.

The department shall operate an agricultural marketing program designed to lead to more advantageous marketing of Iowa agricultural products. The department may develop and carry out activities to implement this program, and shall:

1. Investigate the subject of marketing agricultural products and recommend efficient and economical methods of marketing.

2. Promote the sales, distribution, and merchandising of agricultural products.

3. Furnish information and assistance to the public concerning the marketing of agricultural products.

4. Cooperate with the division of agriculture of the Iowa state university of science and technology in farm marketing education and research and avoid unnecessary duplications.

5. Gather and diffuse useful information concerning all phases of the marketing of Iowa farm products in cooperation with other public or private agencies.

6. Ascertain sources of supply of Iowa agricultural products, and prepare and publish from time to time lists of names and addresses of producers and consignors and furnish the lists to persons applying for them.

7. Aid in the promotion and development of the agricultural processing industry in the state.

86 Acts, ch 1245, §809

15.202 Grants and gifts.

The department may, with the approval of the director, accept grants and allotments of funds from the federal government and enter into cooperative agreements with the secretary of agriculture of the United States for projects to effectuate any of the purposes of the agricultural marketing program; and may accept grants, gifts, or allotments of funds from any person for the purpose of carrying out the agricultural marketing program. The department shall make an itemized accounting of such funds to the director at the end of each fiscal year.

86 Acts, ch 1245, §810

15.203 Agricultural products advisory council — duties.

1. The department shall establish, in consultation with the department of agriculture and land stewardship, an agricultural products advisory council for the purpose of advising the two departments in relation to the promotion, marketing and export of agricultural commodities and value-added agricultural products processed in Iowa and for the purpose of assisting in the coordination of the respective agricultural marketing programs of the two departments. The council shall seek to promote the agricultural commodities and products of the state by providing advice in the development of and by monitoring the implementation of a program and plan which provide for the participation and cooperation of the two departments. The council shall consist of five members appointed by the secretary of agriculture, and five members appointed by the director, who are experienced in marketing or exporting agricultural commodities or products, financing the export of agricultural commodities or products, or adding value to and processing of agricultural products.

2. The department and the department of agriculture and land stewardship shall jointly develop a comprehensive five-year agricultural commodities and products promotion program for the state not later than January 15, 1990, which shall be submitted to the council for its review, consideration, and approval, and shall develop a comprehensive agricultural commodities and products promotion plan by April 1, 1990, and update the program and plan annually. The program and any accompanying recommendations of the council and the departments shall be submitted to the governor and the general assembly. The program and plan shall include, but are not limited to, the following:

a. A review of the promotional or marketing programs of the department of agriculture and land stewardship, the implementation of the programs, and recommendations to improve the programs and their implementation.

b. A review of the promotional or marketing programs of the department of economic development, the implementation of the programs, and recommendations to improve the programs and their implementation.

c. A review of the promotional programs which the two departments can jointly administer and recommendations on the implementation of the programs.

d. A review of the current division of areas of agricultural products, including but not limited to processed or value-added products and agricultural commodities.

e. A review of the products and commodities promoted by the two departments individually or jointly and any recommendations for new programs for promotions of the products or commodities.

3. The agricultural products advisory council shall seek to maximize the resources of the programs of the two departments, eliminate the unnecessary duplication of efforts, and successfully promote the state's agricultural commodities and products.

4. The agricultural products advisory council shall evaluate the current role of the private sector in promoting and marketing agricultural commodities and products and make recommendations for the utilization of the private sector programs in the state agricultural products promotion plan.

5. The agricultural products advisory council may employ or contract with a consultant or specialist to assist in developing and implementing the program and plan of the departments and the council. In the event a promotion program and plan as set forth in subsection 2 are not adopted by the council by April 1, 1990, the council shall employ or contract with a consultant or specialist to assist in the development of a promotion program and plan.

86 Acts, ch 1245, §811; 89 Acts, ch 219, §1

Value-added agricultural products and processes financial assistance program; §15E.111

15.204 Value-added agricultural linked investment loan program — eligibility requirements.

The agricultural products advisory council established in section 15.203, in cooperation with the department of economic development and the department of agriculture and land stewardship, shall recommend to the treasurer of state eligibility requirements for borrowers to participate in the value-added agricultural linked investment loan program established in section 12.43B. The treasurer of state shall establish the eligibility requirements by rule adopted pursuant to section 12.34.

99 Acts, ch 177, §6, 9

15.205 through 15.220 Reserved.

PART 2

15.221 Iowa Lewis and Clark bicentennial commission.

1. The Iowa Lewis and Clark bicentennial commission is established in the department of economic development for purposes of coordinating and promoting the observance of this state's bicentennial commemoration of the Lewis and Clark expedition. The commission shall be organized and shall operate as a nonprofit corporation within this state in accordance with chapter 504A.

2. The commission shall be composed of seven members consisting of all of the following:

a. The director of the department of cultural affairs, or the director's designee.

b. The administrator of the division of tourism within the department of economic development, or the administrator's designee.

c. The director of the department of natural resources or the director's designee.

d. The administrator of the historical division within the department of cultural affairs, or the administrator's designee.

e. The remaining three members shall be appointed by the governor, subject to confirmation by the senate. The members appointed by the governor shall have an interest or expertise in the history of the Lewis and Clark expedition. At least one of the members appointed by the governor shall be a member of an Indian tribe encountered by the Lewis and Clark expedition.

3. The members appointed by the governor shall be appointed in compliance with sections 69.16 and 69.16A and shall serve three-year terms beginning and ending as provided by section 69.19. Members appointed by the governor may be reappointed.

4. The commission shall annually elect a chairperson and vice chairperson from the members of the commission.

5. Commission members shall serve without compensation, but shall be reimbursed for actual and necessary expenses.

2000 Acts, ch 1127, §1, 6; 2002 Acts, ch 1162, §26
Confirmation; §2.32
Subsection 2, paragraph c stricken and rewritten

15.222 Powers.

The commission may do all of the following:

1. Cooperate with other entities conducting national, regional, state, or local events promoting the bicentennial.

2. Plan, assist, coordinate, or conduct bicentennial events.

3. Engage in fund-raising activities, including revenue-earning enterprises and the solicitation of grants, gifts, and donations.

4. Promote public education concerning the Lewis and Clark expedition.

5. Coordinate interagency participation in the observance and work with appropriate federal entities such as the national park service, the United States forest service, and the United States army.

6. Appoint various local and regional advisory committees.

7. Perform any other related duties.

2000 Acts, ch 1127, §2, 6

15.223 Iowa Lewis and Clark bicentennial fund.

An Iowa Lewis and Clark bicentennial fund is created as a separate fund in the state treasury under the control of the commission. The assets of the fund shall be used by the commission only for carrying out the purposes of this part. The fund shall consist of any moneys appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the commission for placement in the fund. Notwithstanding section 8.33, moneys in the Iowa Lewis and Clark bicentennial fund at the end of each fiscal year shall not revert to any other fund but shall remain in the Lewis and Clark bicentennial fund for expenditure for subsequent fiscal years.

2000 Acts, ch 1127, §3, 6

15.224 Rules.

The department, in cooperation with the commission, may adopt administrative rules pursuant to chapter 17A necessary to accomplish the purpose of the commission.

2000 Acts, ch 1127, §4, 6

15.225 Termination.

The Iowa Lewis and Clark bicentennial commission shall dissolve by December 31, 2007.

2000 Acts, ch 1127, §5, 6

15.226 through 15.230 Repealed by 96 Acts, ch 1186, § 26. See § 84A.7.

PART 3

15.231 Industrial and business export trade plan.

The department shall establish an industrial and business export trade plan, with trade related programs in the following areas:

1. Education and training programs, such as seminars and workshops, publications, and training and recruiting, directed at businesses engaged in exporting and businesses with the potential to become involved in exporting.

2. Marketing and promotion programs including market research that focuses on sectors and markets that have promising growth potentials for the state; strengthening Iowa's overseas markets in which overseas representation would be desirable; continuing overseas trade missions

which emphasize advance planning and postmission assistance; and serving as a catalyst or broker to facilitate the development of joint exporting ventures between Iowa businesses.

3. Trade financing programs combining public and private sources and supporting the private sector in educating businesses as to sources of financing within and outside the state.

4. Sales programs not involving the department in direct sales but encouraging the development of the middleman structure necessary for the small and medium-sized businesses to consummate sales and support and expand overseas sales through the department's marketing functions.

86 Acts, ch 1245, §815

15.232 Ambassador's program established. Repealed by 91 Acts, ch 267, § 319.

15.233 through 15.239 Reserved.

PART 4

15.240 Microenterprise development program — microenterprise development revolving fund. Repealed by 2001 Acts, ch 61, § 19.

15.241 Iowa "self-employment loan program".

1. A "self-employment loan program account" is established within the strategic investment fund created in section 15.313 to provide funding for the self-employment loan program. The department may contract with local community action agencies or other local entities in administering the program, and shall work with the department of workforce development and the department of human services in developing the program. The department shall cooperate with the division of vocational rehabilitation under the department of education to implement a business development initiative for entrepreneurs with disabilities.

The self-employment loan program shall administer a low-interest loan program to provide loans to low-income persons and persons with disabilities for the purpose of establishing or expanding small business ventures. The terms of the loans shall be determined by the department, but shall not be in excess of ten thousand dollars to any single applicant or at a rate to exceed five percent simple interest per annum. The department shall maintain records of all loans approved and the effectiveness of those loans in establishing or expanding small business ventures.

The department may provide grants of not more than five thousand dollars under the program, if the grants are used to secure additional financing from private sources. The department may provide a service fee to financial institutions for administering loans provided under this section.

Payments of interest, recaptures of awards, and repayments of moneys loaned under this program shall be deposited into the strategic investment fund. Receipts from loans or grants under the business development initiative for entrepreneurs with disabilities may be maintained in a separate account within the fund.

2. *a.* The department shall implement and administer an entrepreneurs with disabilities technical assistance program designed to provide only technical assistance to a qualified business under this subsection.

b. A business qualifies for assistance under this program if the business is fifty-one percent or more owned, operated, and actively managed by one or more persons with a disability and is located in this state, operated for profit, and has a gross income of less than three million dollars computed as an average of the three preceding years. *"Disability"* means disability as defined in section 15.102.

c. A person shall not be required to be a client of the division of vocational rehabilitation services or the department for the blind in order to qualify for assistance under this program.

d. The department shall adopt rules as necessary for the administration of the program.

86 Acts, ch 1244, §5; 87 Acts, ch 233, §308; 92 Acts, ch 1244, §12, 13; 94 Acts, ch 1076, §3; 96 Acts, ch 1186, §23; 98 Acts, ch 1045, §1; 98 Acts, ch 1223, §16; 99 Acts, ch 114, §3

15.242 through 15.245 Reserved.

15.246 Case management program.

The department shall establish and administer a case management program, contingent upon the availability of funds authorized for the program, and conducted in coordination with the self-employment loan program and other state or federal programs providing financial or technical assistance administered by the department. The case management program shall assist in furnishing information about available assistance to clients seeking to establish or expand small business ventures, furnishing information about available financial or technical assistance, evaluating small business venture proposals, completing viable business start-up or expansion plans, and completing applications for financial or technical assistance under the programs administered by the department. As used in this section, *"client"* means a low-income person eligible for assistance under the self-employment loan program established in section 15.241.

In administering the program, the department may contract with service providers to deliver case management assistance under this section. A service provider may be any entity which the depart-

ment determines is qualified to deliver case management assistance, including a state agency, a private for-profit or not-for-profit corporation, or other association or organization. The department shall establish rules necessary to carry out this section, including schedules for providing contract payments to service providers, based on the number of hours of case management assistance provided to a client.

88 Acts, ch 1098, §2; 2001 Acts, ch 61, §6

15.247 Targeted small business financial assistance program.

1. As used in this section, *"small business"* and *"targeted small business"* mean the same as defined in section 15.102, subsections 4 and 5.

2. A "targeted small business financial assistance program account" is established within the strategic investment fund created in section 15.313, to provide for loans, loan guarantees, revolving loans, loans secured by accounts receivable, or grants to targeted small businesses. A targeted small business in any year shall receive under this program not more than twenty-five thousand dollars in a loan or grant, and not more than forty thousand dollars in a guarantee, or a combination of loans, grants, or guarantees. The program shall provide guarantees not to exceed seventy-five percent for loans made by qualified lenders. The department shall establish a financial assistance reserve account from funds allocated to the program account, from which any default on a guaranteed loan under this section shall be paid. In administering the program the department shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the loan reserve account may be used for the payment of a default.

3. All moneys designated for the targeted small business financial assistance program shall be credited to the program account. The department shall determine the actuarially sound reserve requirement for the amount of guaranteed loans outstanding.

4. The department shall adopt rules as necessary for the administration of the financial assistance program under this section.

5. The general assembly is not obligated to appropriate moneys to pay for any defaults or to appropriate moneys to be credited to the loan reserve account. The loan guarantee program does not obligate the state except to the extent provided in this section, and the department in administering the program shall not give or lend the credit of the state of Iowa.

6. Payments of interest, recaptures of awards, and repayments of moneys loaned under this program shall be deposited into the strategic investment fund.

88 Acts, ch 1273, §9; 89 Acts, ch 83, §6; 90 Acts, ch 1156, §4; 92 Acts, ch 1244, §14, 15

15.248 through 15.250 Reserved.

PART 5

15.251 Industrial new job training program certificates — fee.

The department may charge, within thirty days following the sale of certificates under chapter 260E, the board of directors of the merged area a fee of up to one percent of the gross sale amount of the certificates issued. The amount of this fee shall be deposited and allowed to accumulate in a job training fund created in the department. At the end of each fiscal year, all funds deposited under this subsection into the job training fund during the fiscal year shall be transferred to the workforce development fund account established in section 15.342A.

86 Acts, ch 1245, §816; 89 Acts, ch 270, §1; 90 Acts, ch 1255, §3; 93 Acts, ch 180, §40; 94 Acts, ch 1199, §17; 99 Acts, ch 183, §1; 2001 Acts, ch 61, §7

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying the funding provided for in this section

15.252 Rules.

The department shall adopt rules pursuant to chapter 17A to implement this part.

86 Acts, ch 1238, §45; 86 Acts, ch 1245, §817; 89 Acts, ch 270, §2

15.253 through 15.256 Repealed by 89 Acts, ch 270, § 3. See § 15.251.

15.257 Repealed by 89 Acts, ch 83, § 87; 89 Acts, ch 270, § 3.

15.258 through 15.260 Reserved.

PART 6

15.261 through 15.268 Repealed by 2001 Acts, ch 61, § 19.

15.269 and 15.270 Reserved.

PART 7

15.271 Statement of purpose — intent.

1. The general assembly finds that:

a. Highway travelers have special needs for information and travel services.

b. Highway travelers have a significant positive influence on the state's economy.

c. A principal goal of economic development in this state is to increase the influence which travel and hospitality services, tourism, and recreation opportunities have on the state's economic expansion.

d. Facilities and programs are needed where travelers can obtain information about travel and hospitality services, tourism attractions, parks and recreation opportunities, cultural and natural resources, and the state in general.

e. A program shall be established to plan, acquire, develop, promote, operate, and maintain a variety of welcome centers at strategic locations to meet the needs of travelers in the state. The program is intended to be accomplished by 1992.

2. The primary goals of a statewide program for welcome centers are to provide to travelers the following:

a. High quality, accurate, and interesting information about travel in the state; national, statewide, and local attractions of all types; lodging, medical service, food service, vehicle service, and other kinds of necessities; and general information about the state.

b. Needed and convenient services, including but not limited to, restrooms; lodging information and event reservation services; vehicle services; and others. Services shall also include the distribution and sale of souvenirs, crafts, arts, and food products originating in the state; food and beverages; fishing, hunting, and other permits and licenses needed for recreation activities; and other products normally desired by travelers.

c. Settings that will convey a sense of being welcomed to the state through hospitable attitudes of personnel; high quality of site landscape architecture, architectural theme, and interior design of the buildings; special events that occur at the centers; and high levels of maintenance.

87 Acts, ch 178, §1

15.272 Statewide welcome center program — objectives and agency responsibilities — pilot projects.

The state agencies, as indicated in this section, shall undertake certain specific functions to implement the goals of a statewide program, including the pilot projects, for welcome centers.

1. The department and the state department of transportation shall jointly establish a statewide long-range plan for developing and operating welcome centers throughout the state. The plan shall be submitted to the general assembly by January 15, 1988. The plan shall address, but not be limited to, the following:

a. Integrating state, regional, and local tourism and recreation marketing and promotion plans.

b. Recommending a wide range of centers, including state-developed and state-operated to privately managed facilities.

c. Establishing design, service, and maintenance quality standards which all welcome centers will maintain. Included in the standards shall be a provision requiring that space or facilities be available for purposes of displaying and offering for sale Iowa-made products, crafts, and arts. The space or facilities may be operated by the department or leased to and operated by other persons.

d. Making projections of increased tourist spending, indirect economic benefits, and direct revenue production which are estimated to occur as a result of implementing a statewide welcome center program.

e. Projecting estimated acquisition, construction, exhibit, staffing, and maintenance costs.

f. Integrating electronic data telecommunications systems.

g. Identifying sites for maintaining existing centers as well as locations for new centers.

The departments may enter into contracts for the preparation of the long-range plan. The departments shall involve the department of natural resources and the department of cultural affairs in the preparation of the plan. The recommendations and comments of organizations representing hospitality and tourism services, including but not limited to, the regional tourism councils, convention and visitors bureaus, and the Iowa travel council, and others with interests in this program will be considered for incorporation in the plan. Prior to submission of the plan to the general assembly, the plan shall be submitted to the regional tourism councils, the convention and visitors bureaus, and the Iowa travel council for their comments and criticisms which shall be submitted by the department along with the plan to the general assembly.

2. The responsibilities of the department include the following:

a. Seeing to the acquisition of property and the construction of all new welcome centers including the pilot projects selected by the department pursuant to paragraph *"e"*. In carrying out this responsibility the department may, but is not limited to, the following:

(1) Arrange for the state department of transportation to acquire title to land and buildings for use as and undertake construction of state-owned welcome centers. In acquiring property and constructing the welcome centers, including any pilot projects, the state department of transportation may use any funds available to it, including but not limited to, the RISE fund,* matching funds from local units of government or organizations, the primary road fund, federal grants, and moneys specifically appropriated for these purposes.

(2) Contract with other state agencies, local units of government, or private groups, organizations, or entities for the use of land, buildings, or facilities as state welcome centers or in connection with state welcome centers, whether or not the property is actually owned by the state. If the local match required for pilot projects or which may be required for other welcome centers is met by providing land, buildings, or facilities, the entity providing the local match shall enter into an agreement with the department to either transfer title

of the property to the state or to dedicate the use of the property under the conditions and period of time set by the department.

b. Providing for the operations, management, and maintenance of the state-owned and state-operated welcome centers, including the collection and distribution of tourism literature, telecommunication services, and other travel-related services, and the display and offering for sale of Iowa-made products, crafts, and arts.

c. Providing, at the discretion of the department, financial assistance in the form of loans and grants to privately operated information centers to the extent the centers are consistent with the long-range plan.

d. Developing a common theme or graphic logo which will be identified with all welcome centers which meet the standards of operations established for those centers.

e. Selecting the sites for the pilot projects. In selecting the pilot project sites, the following apply:

(1) Up to three sites may be located in proximity to the interstates and up to three sites may be located in proximity to the other primary roads. The department shall select at least one site which is in proximity to a primary road which is not an interstate.

(2) Proposals for the sites must be submitted prior to September 1, 1987 and shall contain a commitment of at least a one-dollar-per-dollar match of state financial assistance. The local match may be in terms of land, buildings, or other noncash items which are acceptable by the department.

(3) Priority shall be given to proposals that have the best local match, that are to be located where there is a very high number of travelers passing, and for which the department, after consultation with the departments of transportation, natural resources, and cultural affairs, considers the chances of success to be nearly perfect.

(4) The department shall select the sites by September 15, 1987.

87 Acts, ch 178, §2

*RISE fund, see chapter 315

15.273 Cooperative tourism program.

The department shall assist the department of natural resources in promoting the state parks, state recreation areas, lakes, rivers, and streams under the jurisdiction of the natural resource commission for tourism purposes. The department of natural resources shall provide the department with brochures and other printed information concerning hunting and fishing opportunities, recreational opportunities in state parks and recreation areas, and other natural and historic information of interest to tourists.

The department shall disseminate the brochures and other information provided by the department of natural resources through the welcome centers, sports and vacation shows, direct information requests, and other programs implemented by the department to promote tourism and related forms of economic development in this state.

89 Acts, ch 236, §9

15.274 through 15.280 Reserved.

PART 8

15.281 through 15.288 Repealed by 2001 Acts, ch 61, § 19.

15.289 and 15.290 Reserved.

PART 9

15.291 Definitions.

As used in this part, unless the context otherwise requires:

1. *"Brownfield site"* means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the property on which the individual or commercial facility is located. A brownfield site shall not include property which has been placed or is proposed to be included on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

2. *"Sponsorship"* means an agreement between a city or county and an applicant for assistance under the brownfield redevelopment program where the city or county agrees to offer assistance or guidance to the applicant.

2000 Acts, ch 1101, §1

15.292 Brownfield redevelopment program.

1. The department shall establish and administer a brownfield redevelopment program for purposes of providing financial and technical assistance for the acquisition, remediation, or redevelopment of brownfield sites. Financial assistance under the program shall be provided from the brownfield redevelopment fund created in section 15.293. Technical assistance under the program shall be in the form of providing an applicant with assistance in identifying other alternative forms of assistance for which the applicant may be eligible.

2. A person owning a site may apply for assistance under the program if the site for which assistance is sought meets the definition of a brown-

field site and the applicant has secured sponsorship prior to applying. Sponsorship is not required if the applicant is a city or county.

3. *a.* A person who is not an owner of a site may apply for financial assistance under the program if the site for which financial assistance is sought meets the definition of a brownfield site and the applicant has secured sponsorship prior to applying. Sponsorship is not required if the applicant is a city or county.

b. Prior to applying for financial assistance under this subsection, an applicant shall enter into an agreement with the owner of the brownfield site for which financial assistance is sought. The agreement shall be submitted with an application for financial assistance and shall include, at a minimum, the following:

(1) An agreement regarding the estimated total cost for remediating the brownfield site.

(2) An agreement that the owner shall transfer title of the property to the applicant upon completion of the remediation of the property.

(3) An agreement that, upon the subsequent sale of the property by the applicant to a person other than the original owner, the original owner shall receive not more than seventy-five percent of the estimated total cost of remediation.

c. An applicant shall not receive financial assistance of more than twenty-five percent of the agreed-upon estimated total cost of remediation.

d. Upon the subsequent sale of the property by the applicant to a person other than the original owner, the applicant shall repay the department for financial assistance received by the applicant. The repayment shall be in an amount equal to the sales price less the amount paid to the original owner pursuant to the agreement between the applicant and the original owner. The repayment amount shall not exceed the amount of financial assistance received by the applicant.

4. An application for assistance under the program shall include any information required by the department including, but not limited to, all of the following:

a. A business plan which includes a remediation plan.

b. A budget for remediating or redeveloping the site.

c. A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

d. Evidence of sponsorship.

5. In reviewing an application for financial assistance, the department and the brownfield redevelopment advisory council established in section 15.294 shall consider all of the following:

a. Whether the brownfield site meets the definition of a brownfield site.

b. Whether other alternative forms of assistance exist for which the applicant may be eligible.

6. The board may approve, deny, or defer each application for financial assistance from the brownfield redevelopment fund created in section 15.293.

2000 Acts, ch 1101, §2

15.293 Brownfield redevelopment fund.

1. A brownfield redevelopment fund is created in the state treasury under the control of the department and consisting of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the department for placement in the fund.

2. Payments of interest, repayments of moneys loaned pursuant to this part, and recaptures of loans shall be deposited in the fund.

3. The fund shall be used to provide grants, loans, forgivable loans, loan guarantees, and other forms of assistance under the brownfield redevelopment program established in section 15.292.

4. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.

2000 Acts, ch 1101, §3

15.294 Brownfield redevelopment advisory council.

1. The department shall establish a brownfield redevelopment advisory council consisting of five members. The advisory council shall be composed of all of the following:

a. The director of the department of economic development, or the director's designee.

b. The director of the department of natural resources, or the director's designee.

c. The director of transportation, or the director's designee.

d. One person selected by the board of directors of the Iowa league of cities.

e. One member of the Iowa economic development board selected by the board.

2. The director of the department of economic development, or the director's designee, shall serve as the chairperson of the advisory council.

3. The advisory council shall review each application received by the department of economic development for assistance under the brownfield redevelopment program and make recommendations to the department regarding all of the following:

a. The completeness of the application.

b. Suggestions for alternative forms of assistance for which the applicant may be eligible. The alternative forms of assistance may include assistance programs available through other departments.

c. Whether the applicant should receive financial assistance from the brownfield redevelopment fund created in section 15.293.

2000 Acts, ch 1101, §4

15.295 Rules.
The department, in consultation with the department of natural resources, shall adopt rules pursuant to chapter 17A as necessary to administer this part.
2000 Acts, ch 1101, §5

15.296 through 15.298 Repealed by 92 Acts, ch 1042, § 11. See chapter 260F.

15.299 and 15.300 Reserved.

PART 10

15.301 through 15.307 Repealed by 92 Acts, ch 1244, § 51.

15.308 Community builder program. Repealed by 98 Acts, ch 1175, § 14.

15.309 and 15.310 Reserved.

PART 11

15.311 Title.
This part shall be known as the *"Iowa Strategic Investment Fund"* program.
92 Acts, ch 1244, §16

15.312 Purpose.
The purpose of this part shall be to provide a mechanism for the funding of programs which meet the descriptions provided in section 15.313, subsection 2.
92 Acts, ch 1244, §17; 2002 Acts, ch 1041, §1
Section amended

15.313 Strategic investment fund.
1. An Iowa strategic investment fund is created as a revolving fund consisting of any money appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The fund shall also include all of the following:
a. All unencumbered and unobligated funds from the special community economic betterment program fund created under 1990 Iowa Acts, chapter 1262, section 1, subsection 18, remaining on June 30, 1992, all repayments of loans or other awards made under the community economic betterment account or under the community economic betterment program during any fiscal year beginning on or after July 1, 1985, and recaptures of awards.
b. All unencumbered and unobligated funds from the self-employment loan program, the targeted small business financial assistance program, the microenterprise development revolving fund, financing rural economic development or successor loan program, and the value-added agricultural products and processes financial assistance fund remaining on June 30, 1992, and all repayments of loans or other awards or recaptures of awards made under these programs.
Notwithstanding section 8.33, moneys in the strategic investment fund at the end of each fiscal year shall not revert to any other fund but shall remain in the strategic investment fund for expenditure for subsequent fiscal years.
2. The assets of the fund shall be used by the department to assist in relocation or expansion projects for existing businesses as well as entrepreneurial start-up and expansion projects. Moneys in the fund shall be used for projects designed to meet any of the following purposes:
a. To assist communities in the state by providing financial assistance for small business gap financing, new business opportunities, and new product and entrepreneurial development.
b. To provide financial and technical assistance to early-stage industry companies and entrepreneurs.
c. To provide financial and technical assistance to targeted small businesses as defined in section 15.102.
d. To provide comprehensive management assistance for applicants or recipients of assistance from the fund.
e. To access federal funds available under any federal microloan demonstration program.
f. To provide technical and financial assistance to help persons with disabilities become self-sufficient by establishing or expanding business ventures.
g. To assist businesses in retooling or upgrading production equipment to meet contemporary technology standards.
3. At the beginning of each fiscal year, the board shall establish goals for the strategic investment fund relating to the intended strategic focus for the fiscal year. The director shall report on a monthly basis to the board on the status of the fund. Unobligated and unencumbered moneys remaining in the strategic investment fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.
92 Acts, ch 1244, §18; 94 Acts, ch 1119, §2, 3; 96 Acts, ch 1219, §95; 99 Acts, ch 197, §21; 2000 Acts, ch 1230, §14; 2002 Acts, ch 1041, §2
Subsection 2 amended
Subsection 3 stricken and former subsection 4 amended and renumbered as 3

15.314 Reserved.

PART 12

15.315 Community economic betterment program.

This part shall be known as the *"Community Economic Betterment Program"*.

92 Acts, ch 1244, §19

15.316 Purpose.

The purpose of this program is to assist communities and rural areas of the state with their economic development efforts and to increase employment opportunities for Iowans by increasing the level of economic activity and development within the state.

92 Acts, ch 1244, §20

15.317 Program.

1. The department shall establish a program to effectuate the purposes of this part by providing financial assistance for small business gap financing, new business opportunities, and new product and entrepreneurial development. These purposes may be accomplished by providing the following types of assistance:

a. A principal buy-down program to reduce the principal of a business loan.

b. An interest buy-down program to reduce the interest of a business loan.

c. Loans or forgivable loans to aid in economic development.

d. Loan guarantees for business loans made by commercial lenders.

e. Equity-like investments.

2. Only a political subdivision of this state may apply to receive funds for any of the purposes specified in subsection 1. The political subdivision shall make application to the department specifying the purpose for which the funds will be used.

3. The department shall not provide more than one million dollars for any project, unless approved by at least two-thirds of the members of the economic development board.

4. Assistance approved by the board shall be utilized by the business within two years of the date of the approval of the assistance. Funds not utilized in accordance with this subsection shall revert to the control of the board. The business may reapply for assistance in that case.

92 Acts, ch 1244, §21; 95 Acts, ch 204, §15

15.318 Rating factors and criteria.

In ranking applications for funds, the department shall consider a variety of factors including, but not limited to, the following:

1. The proportion of local match to be provided.

2. The proportion of private contributions to be provided, including the involvement of financial institutions.

3. The total number of jobs to be created or retained.

4. The size of the business receiving assistance. The department shall award more points to small businesses as defined by the United States small business administration than to other businesses.

5. The potential for future growth in the industry represented by the business being considered for assistance.

6. The need of the business for financial assistance from governmental sources. The department shall award more points to a business for which the department determines that governmental assistance is most necessary to the success of a project, than to other businesses.

7. The quality of the jobs to be created. In rating the quality of the jobs the department shall award more points to those jobs that have a higher wage scale, have a lower turnover rate, are full-time or career-type positions, provide comprehensive health benefits, or have other related factors which could be considered to be higher in quality, than to other jobs. Businesses that have wage scales substantially below that of existing Iowa businesses in that area should be rated as providing the lowest quality of jobs and should therefore be given the lowest ranking for providing such assistance.

8. The level of need of the political subdivision.

9. The impact of the proposed project on the economy of the political subdivision.

10. The impact of the proposed project on other businesses in competition with the business being considered for assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

11. The impact to the state of the proposed project. In measuring the economic impact the department shall award more points for projects which have greater consistency with the state strategic plan than other projects. Greater consistency may include any or all of the following:

a. A business with a greater percentage of sales out-of-state or of import substitution.

b. A business with a higher proportion of in-state suppliers.

c. A project which would provide greater diversification of the state economy.

d. A business with fewer in-state competitors.

e. A potential for future job growth.

f. A project which is not a retail operation.

12. If a business has a record of violations of the law over a period of time that tends to show a consistent pattern, the business shall be given the lowest ranking for providing assistance. The department shall make a good faith effort to compile this information.

13. If a business has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, whether the business has made a good faith effort to hire the workers of the acquired or merged company.

14. Whether a business provides for a preference for hiring residents of the state or of the economic development area, except for out-of-state employees offered a transfer to Iowa or to the economic development area.

15. Whether all known required environmental permits have been issued and regulations met before moneys are released.

16. In cases where projects being reviewed at the same time are given equivalent ratings under subsections 1 through 15, preference in funding shall be given to the project which is located in the county which has the highest percentage of low- and moderate-income individuals. If the projects are located in the same county, preference in funding shall be given to the project which is located in the city which has the highest percentage of low- and moderate-income individuals.

17. The capacity of the proposed project to create products by adding value to agricultural commodities.

18. The degree to which the proposed project relies upon agricultural or value-added research conducted at a college or university, including a regents institution, community college, or a private university or college.

92 Acts, ch 1244, §22; 94 Acts, ch 1119, §4; 94 Acts, ch 1201, §14

15.319 Monitoring of job creation and retention.

1. The department shall develop definitions for the terms *"job creation"* and *"job retention"* to measure and identify the actual number of permanent, full-time positions which businesses actually create or retain and which can be documented by comparison of the payroll reports during the twenty-four-month period after awards to the businesses are made.

2. The department shall document the actual job creation and retention effects of all businesses receiving financial assistance from the program in the context of the employer contribution and payroll reports filed by the businesses.

3. The department shall require businesses which receive assistance from the program to submit historical copies of the employer contributions and payroll reports with the application for funds, require businesses to submit the reports after an award is made on a timely basis, and require businesses to estimate the expected job creation and retention effects for the twelve-month and twenty-four-month periods after an award is made in terms of the number of employees and total wages as documented in the payroll reports.

92 Acts, ch 1244, §23

15.320 Community economic betterment program account.

1. A community economic betterment program account is established within the strategic investment fund to be used by the department for the community economic betterment program. The account shall consist of all appropriations, grants, or gifts received by the department specifically for use under this part and any moneys allocated to the community economic betterment program account from the strategic investment fund.

2. Payments of interest, repayments of moneys loaned under the community economic betterment program, or recaptures of awards shall be deposited into the strategic investment fund.

92 Acts, ch 1244, §24

Strategic investment fund, §15.313

15.321 through 15.324 Reserved.

15.325 Negotiations — state and local officials — restrictions.

A state or local government official acting in an official capacity shall not offer to a business economic development benefits unless those benefits are authorized under the law of this state in effect at the time of the negotiations or those benefits have been enacted, but not yet taken effect.

94 Acts, ch 1008, §3

PART 13

Legislative declaration; see 94 Acts, ch 1008, §1

15.326 Short title.

This part shall be known and may be cited as the *"New Jobs and Income Act"*.

94 Acts, ch 1008, §4

15.327 Definitions.

As used in this part, unless the context otherwise requires:

1. *"Community"* means a city, county, or entity established pursuant to chapter 28E.

2. *"Contractor or subcontractor"* means a person who contracts with the eligible business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development area, of the eligible business or a supporting business.

3. *"Department"* means the Iowa department of economic development.

4. *"Director"* means the director of the department or the director's designee.

5. *"Economic development area"* means a site or sites designated by the department of economic development for the purpose of attracting an eligible business and supporting businesses to locate facilities within the state.

6. *"Eligible business"* means a business meeting the conditions of section 15.329.

7. *"Program"* means the new jobs and income program.

8. *"Project completion"* means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the eligible business within the economic development area is at least fifty percent of the initial design capacity of the facility. The eligible business shall inform the department of revenue and finance in writing within two weeks of project completion.

9. *"Supporting business"* means a business under contract with the eligible business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the economic development area and the revenue from fulfilling the contract with the eligible business shall constitute at least seventy-five percent of the revenue generated by the business from all activities undertaken from the facility within the economic development area.

94 Acts, ch 1008, §5; 96 Acts, ch 1185, §1; 96 Acts, ch 1199, §1; 98 Acts, ch 1175, §5

15.328 Reserved.

15.329 Eligible business.

1. To be eligible to receive benefits under this part, a business shall, individually or as part of a group of businesses, meet all of the following requirements:

a. The community has approved by ordinance or resolution the start-up, location, or expansion of the business for the purpose of receiving the benefits of this part.

b. The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This subsection does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

c. Provide and pay at least eighty percent of the cost of a standard medical and dental insurance plan for all full-time employees working at the facility in which the new investment occurred.

d. The business shall agree to pay a median wage for new full-time hourly nonmanagement production jobs of at least eleven dollars per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States department of commerce or one hundred thirty percent of the average wage in the county in which the community is located, whichever is higher.

e. The business will make a capital investment of at least ten million dollars indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States department of commerce. If the business is occupying a vacant building suitable for industrial use, the fair market value of the building shall be counted toward the capital investment threshold.

f. The business shall agree to create at least fifty or the group of businesses at least seventy-five full-time positions at a facility located in Iowa or expanded under the program for a specified period which will be negotiated with the department and the community, but which shall be at least five years.

2. In addition to the requirements of subsection 1, a business or group of businesses shall do at least three of the following in order to be eligible for incentives under the program:

a. Offer a pension or profit sharing plan to full-time employees.

b. Produce or manufacture high value-added goods or services or be in one of the following industries:

(1) Value-added agricultural products.
(2) Insurance and financial services.
(3) Plastics.
(4) Metals.
(5) Printing paper or packaging products.
(6) Drugs and pharmaceuticals.
(7) Software development.
(8) Instruments and measuring devices and medical instruments.
(9) Recycling and waste management.
(10) Telecommunications.

Retail business shall not be eligible for benefits under this part.

c. The business makes child care services available to its employees.

d. Invest annually no less than one percent of pretax profits from the facility located to Iowa or expanded under the program in research and development in Iowa.

e. Invest annually no less than one percent of pretax profits from the facility located to Iowa or expanded under the program in worker training and skills enhancement.

f. Have an active productivity and safety improvement program involving management and worker participation and cooperation with benchmarks for gauging compliance.

g. Occupy an existing facility at least one of the buildings of which shall be vacant and shall contain at least twenty thousand square feet.

3. Any business located in a quality jobs enterprise zone is ineligible to receive the economic development incentives under the program.

4. If the department finds that a business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the business shall not qualify for economic development assistance under this part, unless the department finds that the violations did not seriously affect public health or safety, or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether the business is disqualified for economic development assistance under this part, the department shall be exempt from chapter 17A.

5. The department shall also consider a variety of factors, including but not limited to the following in determining the eligibility of a business to participate in the program:

a. The quality of the jobs to be created. In rating the quality of the jobs the department shall place greater emphasis on those jobs that have a higher wage scale, have a lower turnover rate, are full-time or career-type positions, provide comprehensive health benefits, or have other related factors which could be considered to be higher in quality, than to other jobs. Businesses that have wage scales substantially below that of existing Iowa businesses in that area should be rated as providing the lowest quality of jobs and should therefore be given the lowest ranking for providing such assistance.

b. The impact of the proposed project on other businesses in competition with the business being considered for assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

c. The impact to the state of the proposed project. In measuring the economic impact the department shall place greater emphasis on projects which have greater consistency with the state strategic plan than other projects. Greater consistency may include any or all of the following:

(1) A business with a greater percentage of sales out-of-state or of import substitution.

(2) A business with a higher proportion of in-state suppliers.

(3) A project which would provide greater diversification of the state economy.

(4) A business with fewer in-state competitors.

(5) A potential for future job growth.

(6) A project which is not a retail operation.

d. If a business has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, whether the business has made a good faith effort to hire the workers of the acquired or merged company.

e. Whether a business provides for a preference for hiring residents of the state or of the economic development area, except for out-of-state employees offered a transfer to Iowa or to the economic development area.

f. Whether all known required environmental permits have been issued and regulations met before moneys are released.

94 Acts, ch 1008, §6; 99 Acts, ch 192, §33

15.330 Agreement — noncompliance — penalties.

A business or group of businesses shall enter into an agreement with the department specifying the requirements which must be met to satisfy the criteria of section 15.329. The department shall consult with the community during negotiations relating to the agreement. The agreement shall contain the following provisions:

1. If the business or group of businesses has not met more than ninety percent of the job creation requirement in section 15.329, subsection 1, paragraph *"f"*, it shall pay a percentage of the incentive received under section 15.334, or if the business or group of businesses does not receive the incentive under section 15.334, then under section 15.333 as follows:

a. If the business or group of businesses has met fifty percent or less of the requirement, the business or group of businesses shall pay the same percentage in benefits as the business or group of businesses failed to create in jobs.

b. If the business or group of businesses has met more than fifty percent but not more than seventy-five percent of the requirement, the business or group of businesses shall pay one-half of the percentage in benefits as the business or group of businesses failed to create in jobs.

c. If the business or group of businesses has met more than seventy-five percent but not more than ninety percent of the requirement, the business or group of businesses shall pay one quarter of the percentage in benefits as the business or group of businesses failed to create in jobs.

2. If a business or group of businesses does not meet the wage requirement of section 15.329, subsection 1, or any of the three criteria selected by the business or group of businesses under section 15.329, subsection 2, in any one year, it must meet that requirement in the following year or forfeit the incentives for that year.

The department shall adopt rules for repayment of incentives by the business or group of businesses if the business or group of businesses has

not met any of the requirements of this part.

94 Acts, ch 1008, §7

15.331 New jobs credit from withholding.

An eligible business may enter into an agreement with the department of revenue and finance and a community college, for a supplemental new jobs credit from withholding from jobs created under the program. The agreement shall be for program services for an additional job training project, as defined in chapter 260E. The agreement shall provide for the following:

1. That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the eligible business pursuant to section 422.16 is authorized to fund the program services for the additional project.

2. That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

3. That the auditor of state shall perform an annual audit regarding how the training funds are being used.

To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including but not limited to, providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this section is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

94 Acts, ch 1008, §8

15.331A Sales, services, and use tax refund — contractor or subcontractor.

The eligible business or a supporting business shall be entitled to a refund of the taxes paid under chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area of the eligible business or a supporting business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive the refund a claim shall be filed by the eligible business or a supporting business with the department of revenue and finance as follows:

1. The contractor or subcontractor shall state under oath, on forms provided by the department, the amount of the sales of goods, wares, or merchandise or services rendered, furnished, or performed including water, sewer, gas, and electric utility services for use in the economic development area upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the eligible business or supporting business before final settlement is made.

2. The eligible business or a supporting business shall, not more than one year after project completion, make application to the department for any refund of the amount of the taxes paid pursuant to chapter 422 or 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services. The application shall be made in the manner and upon forms to be provided by the department, and the department shall audit the claim and, if approved, issue a warrant to the eligible business or supporting business in the amount of the sales or use tax which has been paid to the state of Iowa under a contract. A claim filed by the eligible business or a supporting business in accordance with this section shall not be denied by reason of a limitation provision set forth in chapter 421, 422, or 423.

3. A contractor or subcontractor who willfully makes a false report of tax paid under the provisions of this section is guilty of a simple misdemeanor and in addition is liable for the payment of the tax and any applicable penalty and interest.

96 Acts, ch 1199, §2; 2001 Acts, ch 116, §1

15.331B Exemption from land ownership restrictions for nonresident aliens.

1. The eligible business, to the extent the eligible business is not actively engaged in farming within the economic development area, may acquire and own up to one thousand acres of land in the economic development area, notwithstanding the provisions of section 9I.3 if the eligible business has been designated an exempt business under subsection 3. An eligible business may lease up to an additional two hundred eighty acres of land in the economic development area.

The eligible business may receive one or more one-year extensions of the time limit for complying with the requirements of section 9I.4. Each extension must be approved by the community prior to approval by the department. The eligible business shall comply with the remaining provisions of chapter 9I to the extent they do not conflict with this subsection.

2. *"Actively engaged in farming"* means any of the following:

a. Inspecting agricultural production activities within the economic development area periodically and furnishing at least half of the value of the tools and paying at least half the direct cost of production.

b. Regularly and frequently making or taking an important part in making management decisions substantially contributing to or affecting the success of the farm operations within the economic development area.

c. Performing physical work which significantly contributes to crop or livestock production.

3. An eligible business shall not receive the exemption under this section unless it has applied to be designated an exempt business by July 1, 2002.

4. The department of economic development shall monitor the activities of eligible businesses receiving the exemption under this section and report to the general assembly by December 15 of each year.

5. An eligible business that complies with this section shall be considered to be acquiring, owning, or leasing agricultural land for immediate or potential use in nonfarming purposes under section 9H.4, subsection 4.

96 Acts, ch 1185, §2; 97 Acts, ch 20, §1

15.332 Value-added property tax exemption.

1. The community may exempt from taxation all or a portion of the actual value added by improvements to real property directly related to new jobs created by the location or expansion of an eligible business under the program and used in the operations of the eligible business. The exemption may be allowed for a period not to exceed twenty years beginning the year the improvements are first assessed for taxation.

2. For purposes of this section, *"improvements"* includes new construction and rehabilitation of and additions to existing structures. The exemption shall apply to all taxing districts in which the real property is located.

94 Acts, ch 1008, §9; 94 Acts, ch 1165, §43

15.333 Investment tax credit.

1. An eligible business may claim a corporate tax credit up to a maximum of ten percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business under the program. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. Subject to prior approval by the department of economic development in consultation with the department of revenue and finance, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund of all or a portion of an unused tax credit. For purposes of this section, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. The refund may be used against a tax liability imposed under chapter 422, division II, III, or V. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

For purposes of this section, *"new investment directly related to new jobs created by the location or expansion of an eligible business under the program"* means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, and the cost of improvements made to real property which is used in the operation of the eligible business.

2. An eligible business whose project primarily involves the production of value-added agricultural products, that elects to receive a refund of all or a portion of an unused tax credit, shall apply to the department of economic development for tax credit certificates. An eligible business whose project primarily involves the production of value-added agricultural products shall not claim a tax credit under this section unless a tax credit certificate issued by the department of economic development is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. For purposes of this section, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. For purposes of this section, an eligible business also includes a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol. Such cooperative may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro rata share of the member's earnings of the cooperative.

A tax credit certificate shall not be valid until the tax year following the date of the project completion. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of the tax credit, and other information required by the department of revenue and finance. The department of economic development shall not issue tax credit certificates which total more than four million dollars during a fiscal year. If the department receives applications for tax credit certificates in excess of four million dollars, the applicants shall receive certificates for a prorated amount. The tax credit certificates shall not be transferred except as provided in this subsection

for a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol. For a cooperative described in section 521 of the Internal Revenue Code, the department of economic development shall require that the cooperative submit a list of its members and the share of each member's interest in the cooperative. The department shall issue a tax credit certificate to each member contained on the submitted list.

3. For purposes of this section, the purchase price of real property and any buildings and structures located on the real property will be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five full years after being placed in service.

94 Acts, ch 1008, §10; 99 Acts, ch 172, §1; 2000 Acts, ch 1213, §1, 10; 2001 Acts, ch 123, §1; 2001 Acts, ch 141, §1, 8; 2002 Acts, ch 1119, §5; 2002 Acts, 2nd Ex, ch 1001, §47, 49, 52

2000 amendments to subsection 1 and new subsection 2 and relating to businesses involved in production of value-added agricultural products take effect July 1, 2001, and apply to tax years beginning on or after that date; 2000 Acts, ch 1213, §10

2001 amendment to subsection 1 affecting the definition of "new investment directly related to new jobs created by the location or expansion of an eligible business under the program" is retroactively applicable on and after January 1, 2001; 2001 Acts, ch 141, §8

2002 amendments to subsections 1 and 2 take effect June 4, 2002, and apply retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, 2nd Ex, ch 1001, §49, 52

Subsections 1 and 2 amended

15.333A Insurance premium tax credits.

1. An eligible business may claim an insurance premium tax credit up to a maximum of ten percent of the new investment directly related to new jobs created by the location or expansion of an eligible business under the program. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier.

For purposes of this section, *"new investment directly related to new jobs created by the location or expansion of an eligible business under the program"* means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, and the cost of improvements made to real property which is used in the operation of the eligible business.

For purposes of this section, the purchase price of real property and any buildings and structures located on the real property is considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which an insurance premium tax credit was claimed under this section, the insurance premium tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one year after being placed in service.

b. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two years after being placed in service.

c. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three years after being placed in service.

d. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four years after being placed in service.

e. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five years after being placed in service.

2. An eligible business which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of a business without a base employment level, adds new jobs within the time set in the agreement is entitled to a new jobs insurance premium tax credit for the tax year selected by the business. In determining if the business has increased its base employment level by ten percent or added new jobs, only the new jobs directly re-

sulting from the project covered by the agreement and the new jobs directly related to those new jobs shall be counted. The amount of the credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the business shall either begin or end during the period beginning with the date by which the project is to be completed under the agreement. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. For purposes of this subsection, *"agreement"*, *"new job"*, and *"project"* mean the same as defined in section 260E.2 and *"base employment level"* means the number of full-time jobs a business employs at the site which is covered by an agreement under chapter 260E on the date of that agreement.

98 Acts, ch 1084, §1; 2000 Acts, ch 1213, §2, 10

15.334 Exemption from taxation for machinery, equipment, and computers.

An eligible business may claim as exempt from taxation all or a portion of the value of property, directly related to new jobs created by the location or expansion of an eligible business under the program, defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, used by the eligible business. In order to be eligible for this exemption, the property shall be acquired or initially leased by the eligible business or relocated by the eligible business to the facility from a facility outside the state of Iowa. The duration of the exemption shall not exceed twenty years.

94 Acts, ch 1008, §11

15.334A Sales and use tax exemption.

An eligible business may claim an exemption from sales and use taxation under section 422.45, subsection 27, for property which is exempt from taxation under section 15.334, notwithstanding the requirements of section 422.45, subsection 27, or any other provision of the Code to the contrary.

96 Acts, ch 1199, §3

15.335 Research activities credit.

1. An eligible business may claim a corporate tax credit for increasing research activities in this state during the period the eligible business is participating in the program.

a. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph *"a"*, subparagraph (1), an eligible business may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph *"b"*, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

2. The credit allowed in this section is in addition to the credit authorized in section 422.10 and section 422.33, subsection 5. However, if the alternative credit computation method is used in section 422.10 or section 422.33, subsection 5, the credit allowed in this section shall also be computed using that method.

3. If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

4. For purposes of this section, *"base amount"*, *"basic research payment"*, and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state. For purposes of this section, *"Internal Revenue Code"* means the Internal Revenue Code in effect on January 1, 2002.

5. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return

credited to the tax liability for the following year.

94 Acts, ch 1008, §12; 94 Acts, ch 1165, §44; 96 Acts, ch 1199, §4; 97 Acts, ch 135, §1, 9; 98 Acts, ch 1078, §1, 10, 14; 99 Acts, ch 95, §1, 12, 13; 2000 Acts, ch 1146, §1, 9, 11; 2000 Acts, ch 1194, §1, 21; 2001 Acts, ch 127, §1, 9, 10; 2002 Acts, ch 1069, §1, 10, 14

For 2000 amendment to former unnumbered paragraph 1 providing for corporate tax credits for increasing research activities, which takes effect April 26, 2000, and applies retroactively to tax years beginning on or after January 1, 1999, see 2000 Acts, ch 1146, §1, 9, 11

2000 amendments amending and renumbering former unnumbered paragraphs 1 and 2 as subsections 1 – 5, and providing alternative methods of computing the corporate tax credit for increasing research activities, apply retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21

2001 amendment to subsection 4 is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

2002 amendment to subsection 4 takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1069, §10, 14

Subsection 4 amended

15.336 Other incentives.

An eligible business may receive other applicable federal, state, and local incentives and credits in addition to those provided in this part. However, a business which participates in the program under this part shall not receive any funds from the community economic development account under the community economic betterment program.

94 Acts, ch 1008, §13

15.337 Waiver of program qualification requirements.

A community may request the waiver of the capital investment requirement or the requirement for number of positions created under section 15.329. However, in no event shall the minimum number of jobs created be less than fifteen or the minimum capital investment be less than three million dollars per application under the program. The department shall develop an appropriate formula of minimum jobs created and capital investment required per program application which can be authorized under the waiver. The department may grant a waiver for good cause shown and approve the program application.

As used in this section, *"good cause shown"* includes but is not limited to a demonstrated lack of growth in the community, a significant percentage of persons in the community who have incomes at or below the poverty level, community unemployment rate higher than the state average, a unique opportunity to use existing unutilized or underutilized facilities in the community, or an immediate threat posed to the community's workforce due to business downsizing or closure.

96 Acts, ch 1199, §5; 97 Acts, ch 20, §2

PART 14

15.338 Short title.

This part shall be known and may be cited as the *"Entrepreneurial Ventures Assistance Program"*.

97 Acts, ch 47, §1

15.339 Entrepreneurial ventures assistance program.

1. As used in this section, unless the context otherwise requires, *"early-stage industry company"* means a company with three years or less of experience in a particular industry.

2. The department shall establish a program to provide financial and technical assistance to early-stage industry companies and entrepreneurs. The purpose of the program is to encourage the development of entrepreneurial venture planning and managerial skills in conjunction with the delivery of a financial assistance program for business start-ups and expansions. An applicant eligible for the program includes an individual who is participating in or has successfully completed a recognized entrepreneurial venture development curriculum, or a business whose principal participants have successfully completed a recognized entrepreneurial venture development curriculum.

3. Each application for financial assistance submitted to the department must include a business plan, a marketing plan, a budget, and a statement of purpose stating how the financial assistance will be used.

4. Unless otherwise authorized by the director, the department shall not provide more than five thousand dollars of technical assistance per project, and shall not provide more than a total of twenty thousand dollars in financial assistance per project.

5. In addition to funds appropriated for the program, the department may allocate resources from the Iowa strategic investment fund under section 15.313 for the administration and operation of the program.

6. The department shall adopt administrative rules pursuant to chapter 17A to administer this section.

97 Acts, ch 47, §2

15.340 Reserved.

PART 15

15.341 Workforce development fund program.

This part shall be known as the *"Workforce Development Fund"* program.

95 Acts, ch 184, §1

15.342 Purpose.

The purpose of this part shall be to provide a

mechanism for funding workforce development programs listed in section 15.343, subsection 2, in order to more efficiently meet the needs identified within those individual programs.

95 Acts, ch 184, §2

15.342A Workforce development fund account.

A workforce development fund account is established in the office of the treasurer of state under the control of the department. The account shall receive funds pursuant to section 422.16A up to a maximum of four million dollars per year. The account shall also receive funds pursuant to section 15.251 with no dollar limitation.

96 Acts, ch 1180, §1; 99 Acts, ch 183, §2; 2000 Acts, ch 1196, §1, 10; 2000 Acts, ch 1230, §15, 35; 2001 Acts, ch 188, §21

15.343 Workforce development fund.

1. A workforce development fund is created as a revolving fund in the state treasury under the control of the department consisting of any moneys appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The fund shall also include all of the following:

a. Notwithstanding section 8.33, all unencumbered and unobligated funds from 1994 Iowa Acts, chapter 1201, section 1, subsection 6, except paragraph *"d"*; section 3, subsections 1 and 3; and section 10, remaining on July 1, 1995, and all unencumbered and unobligated funds in the Iowa conservation corps escrow account established in section 84A.7 and the job training fund established in section 260F.6.

b. Moneys appropriated to the fund from the workforce development fund account established in section 15.342A.

Notwithstanding section 8.33, moneys in the workforce development fund at the end of each fiscal year shall not revert to any other fund but shall remain in the workforce development fund for expenditure for subsequent fiscal years.

2. The assets of the fund shall be used by the department for the following programs and purposes:

a. Training and retraining programs for targeted industries.

b. Projects under chapter 260F. The department shall require a match from all businesses participating in a training project under chapter 260F.

c. Apprenticeship programs under section 260C.44, including new or statewide building trades apprenticeship programs.

d. Innovative skill development activities.

e. To cover the costs of the administration of workforce development programs and services available through the department. A portion of these funds may be used to support efforts by the community colleges to provide workforce services to Iowa employers.

3. *a.* The director shall submit not later than January 1 of each year at a regular or special meeting, for approval by the economic development board, the proposed allocation of funds from the workforce development fund to be made for the next fiscal year for the programs and purposes contained in subsection 2. The director shall also submit a copy of the proposed allocation to the chairpersons of the joint economic development appropriations subcommittee of the general assembly. Notwithstanding section 8.39, the plan may provide for increased or decreased allocations if the demand for a program indicates that the need is greater or lesser than the allocation for that program. The director shall report on a quarterly basis to the board on the status of the funds and may present proposed revisions for approval by the board in January and April of each year. The director shall also provide quarterly reports to the legislative fiscal bureau on the status of the funds. Unobligated and unencumbered moneys remaining in the workforce development fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

b. Moneys in the workforce development fund shall be allocated as follows:

(1) Three million dollars shall be used for purposes provided in section 260F.6.

(2) One million dollars shall be used for purposes provided in section 260F.6B.

95 Acts, ch 184, §3; 96 Acts, ch 1180, §2, 4 – 6; 96 Acts, ch 1186, §5 – 7; 99 Acts, ch 183, §3; 2000 Acts, ch 1230, §16; 2001 Acts, ch 188, §22

15.344 Common system — assessment and tracking.

The department shall use information from the customer tracking system administered by the department of workforce development under section 84A.5 to determine the economic impact of the programs. To the extent possible, the department shall track individuals and businesses who have received assistance or services through the fund to determine whether the assistance or services have resulted in increased wages paid to the individuals or paid by the businesses.

96 Acts, ch 1180, §7

15.345 Loan loss reserve account established. Repealed by 96 Acts, ch 1180, § 20.

15.346 Purpose — authorized loans. Repealed by 96 Acts, ch 1180, § 20.

15.347 Workforce investment program established. Repealed by 96 Acts, ch 1186, § 26. See § 84A.8.

15.348 Purpose. Repealed by 96 Acts, ch 1186, § 26. See § 84A.8.

PART 16

15.349 Shelter assistance fund.

A shelter assistance fund is created as a revolving fund in the state treasury under the control of the department consisting of any moneys appropriated by the general assembly and received under section 428A.8 for purposes of the construction, rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters. Of the moneys in the fund, not less than five hundred forty-six thousand dollars shall be spent annually on homeless shelter projects. Notwithstanding section 8.33, all moneys in the shelter assistance fund which remain unexpended or unobligated at the close of the fiscal year shall not revert to the general fund of the state but shall remain available for expenditure for subsequent fiscal years.

97 Acts, ch 201, §16

15.350 Reserved.

PART 17

15.351 Short title.

This part shall be known and may be cited as the *"Local Housing Assistance Program"*.

97 Acts, ch 214, §2

15.352 Purpose — rules.

The purpose of this part is to assist communities on a cooperative basis to address the housing development needs in the communities in order to better position the communities for economic development or to meet housing needs arising as a result of other economic development efforts in the area. Assistance may be either technical or financial and shall be provided pursuant to rules established by the department in accordance with the provisions of this part and be coordinated with existing housing assessment and assistance programs when feasible.

97 Acts, ch 214, §3

15.353 Program.

The department shall establish the local housing assistance program in coordination with the Iowa finance authority to effectuate the purposes of this part, subject to the following provisions:

1. The department shall provide financial assistance on a competitive basis for housing projects. Requests for assistance for housing projects may be made by a city, county, housing trust fund, local housing organization, recognized neighborhood organization, economic development organization, or other entity or by a local housing group on behalf of a local entity. To be eligible to receive assistance, a housing needs assessment must have been completed for the community in which the project will be undertaken within the five years prior to the date of the application.

2. The department shall also provide technical assistance to local housing groups or entities. Technical assistance provided under the program shall be coordinated with existing departmental programs or resources and existing programs or resources of the Iowa finance authority, to the extent feasible.

3. A local housing group which applies to the department on behalf of a local entity shall not directly administer a project receiving financial assistance under the program. The project shall be administered by the entity for which the local housing group made the application.

4. In reviewing applications for financial assistance, the department shall consider a variety of factors including, but not limited to, the following:

a. Whether the project is consistent with the recommendations of the housing needs assessment.

b. Whether the need for the project arose as a result of economic development efforts or opportunities not reflected in the housing needs assessment. When considering projects not consistent with the housing needs assessment, the department shall consider whether failure to fund the project will cause the economic development activity necessitating the project to fail.

c. Whether the local housing group or entity has adopted a comprehensive housing plan for the community in which the project will be undertaken.

d. The extent to which financial assistance under the program will leverage local or private matching funds or financial assistance or other state or federal financial assistance.

5. As used in this part:

a. *"Community"* means a city or county, or an entity established pursuant to chapter 28E.

b. *"Local housing group"* means an entity organized to represent community housing development interests.

97 Acts, ch 214, §4; 98 Acts, ch 1100, §1

15.354 Local housing assistance program fund.

1. The local housing assistance program fund is created consisting of one million dollars appropriated from the rebuild Iowa infrastructure fund each fiscal year starting with the fiscal year begin-

ning July 1, 1997, and ending June 30, 1998, and ending with the fiscal year beginning July 1, 2001, and ending June 30, 2002, notwithstanding section 8.57, subsection 5, paragraph *"c"*, and any other moneys appropriated to or received by the department for deposit in the fund.

2. Payments of interest, recaptures of awards, or other repayments to the fund shall be deposited in the fund. Moneys in the local housing assistance program fund are not subject to section 8.33.

3. The fund is subject to an annual audit by the auditor of state. Moneys in the fund, which may be subject to warrants written by the director of revenue and finance, shall be drawn upon the written requisition of the director of the department of economic development or an authorized representative of the director.

97 Acts, ch 214, §5

15.355 through 15.360 Reserved.

PART 18

Future repeal of part; see §15.367

15.361 Title.

This part shall be known and may be cited as the *"Certified School-to-Career Program"*.

98 Acts, ch 1225, §15, 40

15.362 Definitions.

As used in this part, unless the context otherwise requires:

1. *"Certified school-to-career program"* or *"certified program"* means a sequenced and articulated secondary and postsecondary program registered as an apprenticeship program under 29 C.F.R. subtit. A, pt. 29, which is conducted pursuant to an agreement as provided in section 15.364 or an individual program of study developed jointly by a secondary school, postsecondary institution, and an employer that meets the standards enumerated in section 15.363, that integrates a secondary school curriculum with private sector job training which places students in job internships, and which is designed to continue into postsecondary education and that will result in teaching new skills and adding value to the wage-earning potential of participants and increase their long-term employability in the state, and which is conducted pursuant to an agreement as provided in section 15.364.

2. *"Employer"* means an employer or a consortium of two or more employers.

3. *"Participant"* means an individual between the ages of sixteen and twenty-four who is enrolled in a public or private secondary or postsecondary school and who initiated participation in a certified school-to-career program no later than the start of the student's senior year of high school.

4. *"Payroll expenditures"* means the base wages actually paid by an employer to a participant plus the amount held in trust to be applied toward the participant's postsecondary education.

5. *"Sponsor"* means any person, association, committee, or organization operating a school-to-career program and in whose name the program is or will be registered or approved.

98 Acts, ch 1225, §16, 40; 2000 Acts, ch 1013, §1; 2001 Acts, ch 167, §1

15.363 Certification standards.

The state board of education shall adopt rules pursuant to chapter 17A to guide school districts in determining whether a potential school-to-career program meets the standards for certification.

A certified school-to-career program other than a sequenced and articulated secondary and postsecondary program registered as an apprenticeship program under 29 C.F.R. subtit. A, pt. 29, shall comply with all of the following standards:

1. The program is conducted pursuant to an organized, written plan embodying the terms and conditions of employment, job training, classroom instruction, and supervision of one or more participants, subscribed to by a sponsor who has undertaken to carry out the school-to-career program.

2. The program complies with all state and federal laws pertaining to the workplace.

3. The employer agrees to assign an employee to serve as a mentor for a participant. The mentor's occupation shall be in the same career pathway as the career interests of the participant.

4. The program involves an eligible postsecondary institution as defined in section 261C.3.

5. Other standards adopted by rule by the state board of education after consultation with the department of economic development.

6. The participant's high school agrees to file with the department of education an initial notice of intent to conduct a certified program, and shall include in the notice the name of the contact person charged with overseeing the school district's certified program. The participant's high school shall maintain on file the certified program agreement required by section 15.364.

98 Acts, ch 1225, §17, 40; 2000 Acts, ch 1013, §2, 3

15.364 Certified program agreement.

The certified program shall be conducted pursuant to a signed written agreement between each participant and the employer which contains at least the following provisions:

1. The names and signatures of the participant and the sponsor or employer and the signature of a parent or guardian if the participant is a minor.

2. A description of the career field in which the participant is to be trained, and the beginning date and duration of the training and employment.

3. The employer's agreement to provide paid employment, at a base wage, for the participant beginning no earlier than the participant's junior year in high school and ending no later than the fall after the participant's second year of postsecondary education.

4. The participant and employer shall agree upon set minimum academic standards which must be maintained through the participant's secondary and postsecondary education.

5. This base wage paid to the participant shall not be less than the minimum wage prescribed by Iowa law or the federal Fair Labor Standards Act, whichever is applicable.

6. That in addition to the base wage paid to the participant, the employer shall pay an additional sum to be held in trust to be applied toward the participant's postsecondary education required for completion of the certified program. The additional amount must be not less than an amount determined by the department of economic development to be sufficient to provide payment of tuition expenses toward completion of not more than two academic years of the required postsecondary education component of the certified program at an Iowa community college or an Iowa public or private college or university. This amount shall be held in trust for the benefit of the participant pursuant to rules adopted by the department of economic development. Payment into an ERISA-approved fund for the benefit of the participant shall satisfy this requirement. The specific fund shall be specified in the agreement. An employer that is a consortium of two or more employers shall not be subject to the requirements of this subsection if tuition is included as part of a stipend paid by the employer to a participant and can be identified as such.

7. *a.* That if a participant does not complete the certified program contemplated by the agreement after entering a postsecondary education program, any unexpended funds being held in trust for the participant's postsecondary education shall be paid back to the employer. In addition the participant must repay to the employer amounts paid from the trust which were expended on the participant's behalf for postsecondary education.

b. That if a participant does not complete the certified program contemplated by the agreement prior to entering a postsecondary education program, one-half of the moneys being held in trust for the participant's postsecondary education shall be paid either to a postsecondary education institution as defined in section 261C.3 of the participant's choice or, notwithstanding any provision of this part to the contrary, to an apprenticeship program of the participant's choice which has been approved under 29 C.F.R., subtit. A, pt. 29, to pay tuition or expenses of the participant. The other one-half of the trust moneys shall be paid back to the employer. Any moneys to be transferred for the benefit of the participant which are not transferred within five years for purposes of education at the designated postsecondary institution, shall be paid back to the employer.

98 Acts, ch 1225, §18, 40; 99 Acts, ch 24, §1; 2000 Acts, ch 1013, §4; 2001 Acts, ch 167, §2, 3

15.365 Payroll expenditure refund.

1. An employer who employs a participant in a certified school-to-career program may claim a refund of twenty percent of the employer's payroll expenditures for each participant in the certified program or twenty percent of the employer's expenditures for participant experience expenses provided for in the certified program agreement which may include instructor expenses, instructional materials, up to one hundred fifty thousand dollars of training facility costs per program, and project coordination. The refund is limited to the first four hundred hours of payroll or participant experience expenditures per participant for each calendar year the participant is in the certified program, not to exceed three years per participant.

2. To receive a refund under subsection 1 for a calendar year, the employer shall file the claim by July 1 of the following calendar year. The claim shall be filed on forms provided by the department of economic development and the employer shall provide such information regarding the employer's participation in a certified school-to-career program as the department may require. Forms should be designed such that claims for refunds for more than one participant may be made on a single form.

3. For each fiscal year of the fiscal period beginning July 1, 1999, and ending June 30, 2004, there is appropriated up to five hundred thousand dollars annually from the general fund of the state to the department of economic development to pay refunds under this section. If the amount appropriated in a fiscal year is insufficient to pay all refund claims for the calendar year in full, each claimant shall receive a proportion of the claimant's refund claim equal to the ratio of the amount appropriated to the total amount of refund claims. Any unpaid portion of a claim shall not be paid from a subsequent fiscal year appropriation.

4. The department of economic development shall consult with the department of revenue and finance for purposes of this section. The department of economic development shall adopt rules as deemed necessary to carry out the purposes of the certified school-to-career program.

98 Acts, ch 1225, §19, 40; 2001 Acts, ch 167, §4

15.366 Customer tracking system.

All participants and sponsors participating in a certified school-to-career program shall be included in the customer tracking system implemented by the department of workforce develop-

ment pursuant to section 84A.5.
98 Acts, ch 1225, §20, 40

15.367 Repeal.
This part of chapter 15 is repealed June 30, 2004. However, any contracts in existence on June 30, 2004, shall continue to be valid and each party to such contract is obligated to perform as required under such contract. However, no employer is entitled to any payroll expenditure refund for payroll expenditures incurred after December 31, 2002.
98 Acts, ch 1225, §21, 40

15.368 through 15.370 Reserved.

PART 19

15.371 through 15.373 Repealed by 2000 Acts, ch 1174, § 30. See chapter 15F.

CHAPTER 15A

USE OF PUBLIC FUNDS TO AID ECONOMIC DEVELOPMENT

Legislative findings; 87 Acts, ch 183, §1; 94 Acts, ch 1008, §1

15A.1 Economic development — public purpose — environmental protection and waste disposal requirements.
15A.2 Conflicts of interest.
15A.3 Public economic development assistance — violations — criminal penalties.
15A.4 Competitive programs — good neighbor agreement — additional consideration.
15A.5 Reserved.
15A.6 State assistance for federal project. Repealed effective January 1, 1996, by its own terms; 92 Acts, ch 1223, §1.
15A.7 Supplemental new jobs credit from withholding.
15A.8 Loans payable from new jobs credit from withholding.

QUALITY JOBS ENTERPRISE ZONE

15A.9 Quality jobs enterprise zone — state assistance.

15A.1 Economic development — public purpose — environmental protection and waste disposal requirements.

1. Economic development is a public purpose for which the state, a city, or a county may provide grants, loans, guarantees, tax incentives, and other financial assistance to or for the benefit of private persons.

For purposes of this chapter, *"economic development"* means private or joint public and private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost.

2. Before public funds are used for grants, loans, tax incentives, or other financial assistance to private persons or on behalf of private persons for economic development, the governing body of the state, city, county, or other public body dispensing those funds or the governing body's designee, shall determine that a public purpose will reasonably be accomplished by the dispensing or use of those funds. In determining whether the funds should be dispensed, the governing body or designee of the governing body shall consider any or all of the following factors:

a. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.

b. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes or which generate tourism-related activities.

c. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.

d. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds.

3. In addition to the requirements of subsection 2, a state agency shall not provide a grant, loan, or other financial assistance to a private person or on behalf of a private person unless the business for whose benefit the financial assistance is to be provided meets, to the satisfaction of the state agency, all of the following:

a. The business makes a report detailing the circumstances of its violations, if any, of a federal or state environmental protection statute, regulation, or rule within the previous five years. The state agency shall take into consideration before allowing financial assistance this report of the business.

b. If the business generates solid or hazardous waste, that the business conducts in-house audits and management plans to reduce the amount of the waste and to safely dispose of the waste. For purposes of this paragraph, a business may, in lieu of conducting in-house audits, authorize the department of natural resources or the Iowa waste reduction center established under section 268.4 to provide the audits.

4. A state agency shall disburse public moneys used for grants, loans, tax incentives, or other financial assistance for economic development without discrimination or without the use of terms or conditions which are more onerous than those regularly extended to persons of similar economic backgrounds and based on an applicant's age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

5. In addition to the other requirements of this section, a state agency may give additional consideration or additional points in the application of rating or evaluation criteria in providing a grant, loan, or other financial assistance for economic development-related purposes to a person or business for whose benefit the financial assistance is to be provided if the person or business is located in an area that meets one of the following criteria:

a. The area is a brownfield site as defined in section 15.291.

b. The area is a blighted area as defined in section 403.17.

c. The area is located in a city or county that meets the distress criteria provided under the enterprise zone program in section 15E.194, subsection 1 or 2.

87 Acts, ch 183, §2; 90 Acts, ch 1125, §1; 92 Acts, ch 1239, §21; 94 Acts, ch 1008, §14, 15; 99 Acts, ch 197, §22; 2001 Acts, ch 7, §1; 2001 Acts, ch 156, §1; 2002 Acts, ch 1162, §27

Subsection 3, paragraph b amended

15A.2 Conflicts of interest.

If a member of the governing body of a city or county or an employee of a state, city, or county board, agency, commission, or other governmental entity of the state, city, or county has an interest, either direct or indirect, in a private person for which grants, loans, guarantees, tax incentives, or other financial assistance may be provided by the governing board or governmental entity, the interest shall be disclosed to that governing body or governmental entity in writing. The member or employee having the interest shall not participate in the decision-making process with regard to the providing of such financial assistance to the private person.

Employment by a public body, its agencies, or institutions or by any other person having such an interest shall not be deemed an indicia of an interest by the employee or of any ownership or control by the employee of interests of the employee's employer.

The word *"participate"* or *"participation"* shall be deemed not to include discussion or debate preliminary to a vote of a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.

The designation of a bank or trust company as depository, paying agent, or agent for investment of funds shall not be deemed a matter of interest or personal interest.

Stock ownership in a corporation having such an interest shall not be deemed an indicia of an interest or of ownership or control by the person owning the stocks when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by that person.

The phrase *"decision-making process"* shall not be deemed to include resolutions advisory to the local governing body or agency by any citizens group, board, body, or commission designated to serve a purely advisory approving or recommending function for economic development.

A violation of a provision of this section is misconduct in office under section 721.2. However, a decision of the governing board or governmental entity is not invalid because of the participation of the member or employee in the decision-making process or because of a vote cast by a member or employee in violation of this section unless the participation or vote was decisive in the awarding of the financial assistance.

87 Acts, ch 183, §3; 88 Acts, ch 1134, §12; 94 Acts, ch 1008, §16

15A.3 Public economic development assistance — violations — criminal penalties.

A person who engages in deception and knowingly makes or causes to be made, directly or indirectly, a false statement in writing, for the purpose of procuring economic development assistance from a state agency or political subdivision, for the benefit of the person or for whom the person is acting, is guilty of a fraudulent practice in the first degree as defined in section 714.9. For purposes of this section, *"deception"* means deception as de-

fined in section 702.9.

90 Acts, ch 1135, §1

15A.4 Competitive programs — good neighbor agreement — additional consideration.

For any program providing financial assistance for economic development in which the assistance is provided on a competitive basis, a business which enters into a good neighbor agreement shall receive extra consideration of at least ten points or the equivalent. A good neighbor agreement is an enforceable contract between the business and a community group or coalition of community groups which requires the business to adhere to negotiated environmental, economic, labor, or other social and community standards.

A business which fails to abide by the good neighbor agreement shall repay all financial assistance received under the program.

96 Acts, ch 1219, §96

15A.5 Reserved.

15A.6 State assistance for federal project. Repealed effective January 1, 1996, by its own terms; 92 Acts, ch 1223, § 1.

15A.7 Supplemental new jobs credit from withholding.

In order to promote the creation of additional high-quality new jobs within the state, an agreement under section 260E.3 may include a provision for a supplemental new jobs credit from withholding from jobs created under the agreement. A provision in an agreement for which a supplemental credit from withholding is included shall provide for the following:

1. That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the employer pursuant to section 422.16 is authorized to fund the program services for the additional project.

2. That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

3. That the employer shall agree to pay wages for the jobs for which the credit is taken of at least the average county wage or average regional wage, whichever is lower, as compiled annually by the department of economic development for the community economic betterment program. For the purposes of this section, the average regional wage shall be compiled based upon the service delivery areas in section 84B.2. Eligibility for the supplemental credit shall be based on a one-time determination of starting wages by the community college.

4. To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including, but not limited to, providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this section are in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

96 Acts, ch 1180, §8; 97 Acts, ch 23, §6; 2002 Acts, ch 1050, §3

Subsection 3 amended

15A.8 Loans payable from new jobs credit from withholding.

1. As an additional means to provide moneys for the payment of the costs of a new jobs training project or multiple projects under chapter 260E and this chapter, a community college may make an advance or loan, including an interfund transfer or a loan from moneys on hand and legally available, to be paid from the same sources and secured in the same manner as certificates described in sections 15A.7 and 260E.6.

2. Revenues from a job training agreement received prior to the completion by a business of its repayment obligation for a project and not pledged to certificates, loans, or advances, and not necessary for the payment of principal and interest maturing on such certificates, loans, or advances, may be applied by the community college to the reduction of any other outstanding certificates, loans, or advances.

98 Acts, ch 1225, §22

QUALITY JOBS ENTERPRISE ZONE

15A.9 Quality jobs enterprise zone — state assistance.

1. *Findings — zone designation.*

a. The general assembly finds and declares that the designation of a quality jobs enterprise zone or zones and the provision of economic development assistance within the zone or zones are necessary to diversify the Iowa economy, enhance opportunities for Iowans to obtain quality industrial jobs, and provide significant economic benefits to the state through the expansion of Iowa's economy. Establishment of the quality jobs enterprise zone or zones and the economic development assistance provided by the state or a local community will be for the well-being and benefit of the residents of the state and will be for a public purpose.

b. In order to assist a community or communities located within the state to secure new industrial manufacturing jobs, the state of Iowa makes economic development assistance available within the zone or zones, and the department of economic development shall designate a site or sites, which shall not be larger than two thousand five hundred acres, within thirty days of March 4, 1994, as a quality jobs enterprise zone or zones for the purpose of attracting a primary business and supporting businesses to locate facilities within the state.

The primary business or a supporting business shall not be prohibited from participating in or receiving other economic development programs or services or electing to utilize other tax provisions to the extent authorized elsewhere by law.

2. *Definitions.* As used in this section:

a. *"Contractor or subcontractor"* means a person who contracts with the primary business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the zone, of the primary business or a supporting business.

b. *"Primary business"* means a business which pays its full-time production employees at the facility average cash compensation, which shall not include the cost of the business's contribution to retirement or health benefit plans, equating to fifteen dollars per hour worked by the end of the second full year of operation following project completion, and which provides the department of economic development within thirty days of March 4, 1994, with notice of its intent to develop and operate a new manufacturing facility on a specific location within the state, including the legal description of the site which shall not contain more than two thousand five hundred acres, to invest at least two hundred fifty million dollars in the facility, and to commence construction of the facility by December 31, 1994, providing all necessary permits have been issued and zoning changes made in time for construction to begin by that date. The business shall also guarantee that it will create at least three hundred full-time jobs at the facility. The headquarters of the primary business need not be within the zone.

c. *"Project completion"* means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the primary business within the zone is at least fifty percent of the initial design capacity of the facility. The primary business shall inform the department of revenue and finance in writing within two weeks of project completion.

d. *"Supporting business"* means a business under contract with the primary business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the zone and the revenue from fulfilling the contract with the primary business shall constitute at least seventy-five percent of the revenue generated by the business from all activities undertaken from the facility within the zone.

e. *"Zone or zones"* means a quality jobs enterprise zone or zones.

3. *New jobs credit.* At the request of the primary business or a supporting business, an agreement authorizing a supplemental new jobs credit from withholding from jobs within the zone may be entered into between the department of revenue and finance, a community college, and the primary business or a supporting business. The agreement shall be for program services for an additional job training project, as defined in chapter 260E. The agreement shall provide for the following:

a. That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the primary business or a supporting business pursuant to section 422.16 is authorized to fund the program services for the additional project.

b. That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

c. That the community college shall not be allowed any expenses for administering the additional project except those expenses which are directly attributable to the additional project and which are in excess of the expenses allowed for the project under chapter 260E.

To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including, but not limited to, providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this subsection is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

4. *Investment tax credit.* The primary business and a supporting business shall be entitled to a corporate tax credit equal to ten percent of the new investment made within the zone by the primary business or a supporting business prior to project completion. A credit in excess of the tax liability for the tax year may be credited to the tax liability for the following twenty years or until depleted, whichever comes first.

For purposes of this section, *"new investment made within the zone"* means the capitalized cost of all real and personal property, including buildings and other improvements to real estate, purchased or otherwise acquired or relocated to the

zone for use in the operation of the primary business or a supporting business within the zone. New investment in the zone does not include land, intangible property, or furniture and furnishings. The capitalized cost of property shall for the purposes of this section be determined in accordance with generally accepted accounting principles.

5. *Property tax exemption.*

a. All property, as defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, Code 1993, used by the primary business or a supporting business and located within the zone, shall be exempt from property taxation for a period of twenty years beginning with the year it is first assessed for taxation. In order to be eligible for this exemption, the property shall be acquired or leased by the primary business or a supporting business or relocated by the primary business or a supporting business to the zone from outside the state prior to project completion.

b. Property which is exempt for property tax purposes under this subsection is eligible for the sales and use tax exemption under section 422.45, subsection 27, notwithstanding that subsection or any other provision of the Code to the contrary.

6. *Sales, services, and use tax refund.* Taxes paid pursuant to chapter 422 or 423 on the gross receipts or rental price of property purchased or rented by the primary business or a supporting business for use by the primary business or a supporting business within the zone or on gas, electricity, water, and sewer utility services prior to project completion shall be refunded to the primary business or supporting business if the item was purchased or the service was performed or received prior to project completion. Claims under this section shall be submitted on forms provided by the department of revenue and finance not later than six months after project completion. The refund in this subsection shall not apply to furniture or furnishings, or intangible property.

7. *Sales, services, and use tax refund — contractor or subcontractor.* The primary business or a supporting business shall be entitled to a refund of the taxes paid under chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the zone of the primary business or a supporting business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive the refund a claim shall be filed by the primary business or a supporting business with the department of revenue and finance as follows:

a. The contractor or subcontractor shall state under oath, on forms provided by the department, the amount of the sales of goods, wares, or merchandise or services rendered, furnished, or performed including water, sewer, gas, and electric utility services for use in the zone upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the primary business or supporting business before final settlement is made.

b. The primary business or a supporting business shall, not more than six months after project completion, make application to the department for any refund of the amount of the taxes paid pursuant to chapter 422 or 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services. The application shall be made in the manner and upon forms to be provided by the department, and the department shall audit the claim and, if approved, issue a warrant to the primary business or supporting business in the amount of the sales or use tax which has been paid to the state of Iowa under a contract. A claim filed by the primary business or a supporting business in accordance with this subsection shall not be denied by reason of a limitation provision set forth in chapter 421, 422, or 423.

c. A contractor or subcontractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition is liable for the payment of the tax and any applicable penalty and interest.

8. *Corporate tax research credit.* A corporate tax credit shall be available to the primary business or a supporting business for increasing research activities in this state within the zone.

a. The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Thirteen percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state within the zone to total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph *"a"*, subparagraph (1), a business may elect to compute the credit amount for qualified research expenses incurred in this state within the zone in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit com-

putation method in paragraph *"b"*, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are three and thirty hundredths percent, four and forty hundredths percent, and five and fifty hundredths percent, respectively.

d. Any credit in excess of the tax liability for the tax year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, the primary business or a supporting business may elect to have the overpayment shown on its final return credited to its tax liability for the following tax year.

e. For the purposes of this subsection, *"base amount"*, *"basic research payment"*, and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state within the zone. For purposes of this subsection, *"Internal Revenue Code"* means the Internal Revenue Code in effect on January 1, 2002.

f. The credit authorized in this subsection is in lieu of the credit authorized in section 422.10 and section 422.33, subsection 5.

9. *Exemption from land ownership restrictions for nonresident aliens.*

a. The primary business and a supporting business, to the extent the primary business or the supporting business is not actively engaged in farming within the zone, may acquire, own, and lease land in the zone, notwithstanding the provisions of sections 9H.4, 9H.5, and 9I.3, and shall be exempt from the requirements of section 9I.4. The primary business and supporting business shall comply with the remaining provisions of chapters 9H and 9I to the extent they do not conflict with this subsection.

b. *"Actively engaged in farming"* means any of the following:

(1) Inspecting agricultural production activities within the zone periodically and furnishing at least half of the value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in making management decisions substantially contributing to or affecting the success of the farm operations within the zone.

(3) Performing physical work which significantly contributes to crop or livestock production.

10. *Limitation on assistance.* Economic development assistance under subsections 3 through 9 shall only be available to the primary business or a supporting business. However, if the department of economic development finds that a primary business or a supporting business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the primary business or supporting business shall not qualify for economic development assistance under subsections 3 through 9, unless the department of economic development finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether a primary business or a supporting business is eligible for economic development assistance under subsections 3 through 9, the department of economic development shall be exempt from chapter 17A.

11. *Economic cost-benefit analysis.* An economic cost-benefit analysis shall be conducted by the legislative fiscal bureau for each zone established under this section for every five-year period through the duration of the zone. The analysis shall measure the impact upon both revenues and costs of the state and affected governmental subdivisions due to economic activities within the zone. The legislative fiscal bureau may contract for any services deemed necessary by the director to complete the analysis.

94 Acts, ch 1008, §17; 95 Acts, ch 152, §1, 7; 96 Acts, ch 1166, §1, 4; 97 Acts, ch 135, §2, 9; 98 Acts, ch 1078, §2, 10, 14; 99 Acts, ch 95, §2, 12, 13; 2000 Acts, ch 1146, §2, 9, 11; 2000 Acts, ch 1194, §2, 21; 2001 Acts, ch 127, §2, 9, 10; 2002 Acts, ch 1050, §4; 2002 Acts, ch 1069, §2, 10, 14

For 2000 amendment to unnumbered paragraph 2 of former text of subsection 8, which takes effect April 26, 2000, and relates to the availability of the corporate tax credit for increasing research activities for tax years beginning on or after January 1, 1999, see 2000 Acts, ch 1146, §2, 9, 11

2000 amendment to subsection 8 which relates to alternative computations of the corporate tax credit for increasing research activities applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21

2001 amendment to subsection 8, paragraph e, is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

2002 amendment to subsection 8, paragraph e, takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1069, §10, 14

Subsection 8, paragraph e amended

Subsection 10 amended

CHAPTER 15B

INTERNATIONAL NETWORK ON TRADE (INTERNET)

Repealed by 93 Acts, ch 167, §13, effective July 1, 1994

CHAPTER 15C

WORLD TRADE CENTER

15C.1 Declaration of policy and purpose for state involvement in Iowa world trade center.
15C.2 Creation of selection advisory committee.
15C.3 Duties of the committee.
15C.4 State participation in the world trade center.

15C.1 Declaration of policy and purpose for state involvement in Iowa world trade center.

It is found and declared that there exists a need to promote, develop, maintain, and expand export and trade opportunities for agricultural, commercial, and manufactured products and services and any other products and services of the state in order to protect and advance the welfare and interests of residents of the state; that such export and trade opportunities with other nations can be promoted, developed, maintained, and expanded by the Iowa world trade center; that jobs can be maintained and created in the state as a result of increased export and trade opportunities; and that such economic results will benefit all residents of the state.

It is further found and declared that the promotion, development, maintenance, and expansion of exports and trade opportunities are public purposes and uses for which public moneys may be expended, advanced, loaned, or granted; that such activities serve a public purpose in improving export and trade opportunities or otherwise benefiting the people of this state; and that the state's purchase, operation and marketing of a building or facility as part of a world trade center will aid in accomplishing these purposes.

85 Acts, ch 33, §501
CS85, §18C.1
C93, §15C.1

15C.2 Creation of selection advisory committee.

1. There is created an Iowa world trade center selection advisory committee, hereafter referred to as *"the committee"*. The committee shall be comprised of five members with one member appointed by the governor, one member appointed by the speaker of the house of representatives, one member appointed by the minority leader of the house of representatives, one member appointed by the majority leader of the senate, and one member appointed by the minority leader of the senate. No two members shall be from the same congressional district. Vacancies shall be filled in the same manner as the appointment of the original members. Members shall not be compensated for their services.

2. The committee shall elect from among its members a chairperson. Meetings shall be held at the call of the chairperson or whenever two committee members request it. Three members shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by the committee.

85 Acts, ch 33, §502
CS85, §18C.2
C93, §15C.2

15C.3 Duties of the committee.

1. It shall be the duty of the Iowa world trade center selection advisory committee to accept and review proposals from private groups to organize, construct, operate, and market the Iowa world trade center. In submitting a proposal, the private group shall also submit a study outlining the feasibility of its proposal. A private group submitting a proposal must include among its investors a significant number of Iowa-based companies and individuals. The committee is empowered to contract for an independent analysis of a proposal submitted. The committee is empowered to recommend for ratification by the executive council a proposal to obligate, but not in excess of thirty million dollars, the state in the construction of the Iowa world trade center under the recommended proposal. However, a proposal shall not be recommended unless the proposal provides that the private group shall provide moneys at least equal to the amount which the committee has recommended for obligation by the state. The proposal recommended by the committee must include an

agreement from the private group that construction of the Iowa world trade center will begin no later than December 15, 1985, and that a nonprofit corporation will be created by the private group pursuant to section 15C.4 to facilitate the state's involvement in the construction, operation, and marketing of the Iowa world trade center. In approving a proposal of a private group, the committee may employ other selection criteria that are consistent with the above standards. Once the committee has recommended a contract proposal, it shall be submitted for ratification to the executive council. The committee shall present a proposal by August 1, 1985 for ratification by the executive council.

2. The committee shall cease to exist upon ratification of the contract submitted to the executive council.

3. The members of the committee, upon ratification of the contract by the executive council, shall automatically become the state's representatives on the board of directors of the nonprofit corporation organized to facilitate the state's involvement in the Iowa world trade center pursuant to section 15C.4.

85 Acts, ch 33, §503
CS85, §18C.3
C93, §15C.3

15C.4 State participation in the world trade center.

1. The state recognizes the nonprofit corporation organized pursuant to the contract ratified by the executive council as the entity that will facilitate the state's involvement in the construction, operation and marketing of the Iowa world trade center. The board of directors of the nonprofit corporation shall consist of nine members.

2. State representation on the nonprofit corporation's board of directors shall consist of five directors serving six-year terms. The initial directors shall be the five members appointed to the committee pursuant to section 15C.2. Vacancies shall be filled in the same manner as the appointment of the original directors.

3. Private representation on the nonprofit corporation's board of directors shall consist of four directors chosen pursuant to the corporation's articles of incorporation.

4. Amendments to the nonprofit corporation's articles of incorporation relating to the governance of the corporation shall not be made without all of the following:

a. A majority approval of the entire board of directors.

b. A majority approval of the five directors appointed to represent the state interests.

c. A majority approval by the four directors appointed to represent the private interests.

5. The nonprofit corporation shall:

a. Provide for the management, operation, and marketing of the state-owned portion of the Iowa world trade center. A fee may be negotiated which will be paid by the state for necessary services provided to or for the state-owned portion. The management, operation, and marketing may be done by entering into a service agreement with a management firm. If such an agreement is entered into, the board of directors shall require periodic reports from the firm on the operation, marketing, costs, and revenues of the state-owned portion.

b. Provide for the leasing of space in the state-owned portion to the extent space is available and the leasing of it will fulfill the purposes of the state's involvement in the Iowa world trade center.

c. Use, operate, and market the state-owned portion for the purposes of promoting, developing, maintaining, and expanding export and trade opportunities for agricultural, commercial, and manufactured products and services and other products and services of the state in order to protect and advance the welfare and interests of residents of the state.

6. The nonprofit corporation organized pursuant to the contract ratified by the executive council as the entity that will facilitate the state's involvement in the construction, operation, and marketing of the Iowa world trade center shall not be construed to be a state agency, board, commission, department, or other administrative unit of the state.

85 Acts, ch 33, §504
CS85, §18C.4
C93, §15C.4

CHAPTER 15D

MIDWEST NUCLEAR COMPACT

15D.1 Form of compact.
15D.2 Board member appointed by governor.
15D.3 Bylaws filed.
15D.4 Workers' compensation.

15D.1 Form of compact.

The midwest nuclear compact, hereinafter called *"the compact"*, is hereby enacted and entered into with all other states legally joining therein, in the form substantially as follows:

ARTICLE I — POLICY AND PURPOSE

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the midwest and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a co-operative basis. It is the policy of the party states to undertake such co-operation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a co-operative effort in nuclear and related fields, to enhance the economy of the midwest and contribute to the individual and community well-being of the region's people.

ARTICLE II — THE BOARD

a. There is hereby created an agency of the party states to be known as the *"midwest nuclear board"*, hereinafter called *"the board"*. The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which the member represents, and serving and subject to removal in accordance with such law. The law of each state also shall make specific provision for the appointment of alternates who are authorized and empowered to act for and on behalf of the board member in the member's absence. The designating or appointing authority promptly shall inform the board of the identity of its member thereon, designated alternate or alternates, and changes therein. If more than one alternate is designated, the designating authority also shall inform the board of the order in which the alternates are empowered to act.

b. The federal government may be represented on the board without vote, if provision is made by federal law for such representation.

c. The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

d. The board shall have a seal.

e. The board shall elect annually, from among its members, a chairperson, a vice chairperson, and a treasurer. The board shall appoint an executive director who shall serve at its pleasure and who also shall act as secretary, and who, together with the treasurer and such other personnel as the board may require, shall be bonded in such amounts as the board may require.

f. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions.

g. The board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old-age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

h. The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

i. The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. Any arrangements pursuant to this paragraph or paragraph *"h"* of this Article shall be detailed in the annual report of the board. Such report shall include the identity of the donor, lender or contractor, the nature of the transaction, and the conditions, if any.

j. The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

k. The board shall adopt bylaws for the conduct of its business, and shall have the power to amend and rescind these bylaws. The board shall publish its bylaws in convenient form, and shall file a copy thereof, and of any amendment thereto, with the designated agency or officer in each of the party states.

l. The board annually shall make to the governor and legislature of each party state, a report covering the activities of the board for the preced-

ing year, and embodying such recommendations as may have been adopted by the board. The board may issue such additional reports as it may deem desirable.

ARTICLE III — FINANCE

a. The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

b. Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial federal census; one-quarter of each such budget shall be apportioned among the party states in equal shares; and one-quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

c. The board may meet any of its obligations in whole or in part with funds available to it under Article II *"i"* of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under Article II *"i"* hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

d. Expenses and other reasonable costs for each member of the board in attending board meetings shall be met by the board.

e. The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the board.

f. The accounts of the board shall be open at any reasonable time for inspection by duly authorized representatives of the party states and by persons authorized by the board.

ARTICLE IV — ADVISORY AND TECHNICAL COMMITTEES

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include representatives of industry, labor, commerce, agriculture, medicine, health and education; other professional, scientific, and civic groups and interests; officials of local, state and federal government; and representatives of the general public, and may co-operate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE V — POWERS

The board shall have power to:

a. Encourage and promote co-operation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

b. Ascertain and analyze on a continuing basis the position of the midwest with respect to the employment in industry of nuclear and related scientific findings and technologies.

c. Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products, and all other appropriate adaptations of scientific and technological advances and discoveries.

d. Collect, correlate, and disseminate information relating to civilian uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

e. Conduct, or co-operate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial, commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

f. Organize and conduct, or assist and co-operate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

g. Undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and gen-

eral welfare of the midwest.

h. Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

i. Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

j. Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

k. Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

l. Advise and consult with the federal government concerning the common position of the party states in respect to nuclear and related fields.

m. Co-operate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

n. Act as licensee, contractor or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the board by this compact.

o. Prepare, publish and distribute, with or without charge, such reports, bulletins, newsletters, or other materials as it deems appropriate.

p. Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to co-ordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact. Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall co-ordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto. Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states. However, the plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances. From time to time, the board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

ARTICLE VI — MUTUAL AID

a. Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

b. Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

c. No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

d. All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

e. Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or dam-

age to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such request: Provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

f. Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

ARTICLE VII — SUPPLEMENTARY AGREEMENTS

a. To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this Article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

b. Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. The board, if requested, may administer or otherwise assist in the operation of any supplementary agreement.

c. No party to a supplementary agreement entered into pursuant to this Article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

d. The provisions of this Article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake co-operative arrangements or projects.

ARTICLE VIII — OTHER LAWS AND RELATIONS

Nothing in this compact shall be construed to:

a. Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

b. Limit, diminish, affect, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative Act of Congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

c. Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

d. Permit or authorize the board to exercise any regulatory authority or to own or operate any nuclear reactor for the commercial generation of electric energy; nor shall the board own or operate any nuclear facility or installation on a commercial or profit-making basis.

ARTICLE IX — ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL

a. Any or all of the states of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin shall be eligible to become party to this compact.

b. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law: Provided that it shall not become initially effective until enacted into law by six states.

c. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until two years after the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw. A withdrawing state shall be liable for any obligations which it may have incurred on account of its party status up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal it shall remain liable to the extent of such obligation.

ARTICLE X — SEVERABILITY AND CONSTRUCTION

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the Constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

[C73, 75, 77, 79, 81, §8B.1]
C93, §15D.1

15D.2 Board member appointed by governor.

The member and any alternate member of the midwest nuclear board representing the state shall be appointed by the governor.

[C73, 75, 77, 79, 81, §8B.2]
C93, §15D.2

15D.3 Bylaws filed.

The midwest nuclear board shall file with the secretary of state copies of its bylaws and any amendments thereto as required under Article II *"k"* of the compact.

[C73, 75, 77, 79, 81, §8B.3]
C93, §15D.3

15D.4 Workers' compensation.

The provisions of chapter 85 and any benefits payable thereunder shall apply and be payable to any persons dispatched to another state pursuant to Article VI of the compact. If the aiding personnel are officers or employees of subdivisions of this state, they shall be entitled to the same workers' compensation or other benefits in case of injury or death to which they would have been entitled if injured or killed while engaged in coping with a nuclear incident in their jurisdictions of regular employment.

[C73, 75, 77, 79, 81, §8B.4]
C93, §15D.4

CHAPTER 15E

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DIVISION I

GENERAL PROVISIONS

15E.1 Definition.

As used in this chapter, unless the context otherwise requires, *"department"* means the Iowa department of economic development.

2002 Acts, ch 1119, §6
NEW section

15E.2 through 15E.10 Reserved.

DIVISION II

CORPORATION FOR RECEIVING AND DISBURSING FUNDS

15E.11 Corporation for receiving and disbursing funds.

The Iowa development commission is hereby authorized to form a corporation under the provisions of former chapter 504 for the purpose of receiving and disbursing funds from public or private sources to be used to further the overall development and well-being of the state.

[C66, 71, 73, 75, 77, 79, 81, §28.11]
C93, §15E.11

15E.12 and 15E.13 Reserved.

15E.14 Incorporators.

The incorporators of the corporation formed under sections 15E.11, 15E.15 and 15E.16, shall be:

1. The chairperson of the Iowa development commission.
2. The director of the Iowa development commission.
3. A member of the Iowa development commission selected by the chairperson.

[C66, 71, 73, 75, 77, 79, 81, §28.14]
C93, §15E.14

15E.15 Board of directors.

The board of directors of the corporation formed under sections 15E.11, 15E.14 and 15E.16 shall be the members of the Iowa development commission or their successors in office.

[C66, 71, 73, 75, 77, 79, 81, §28.15]
C93, §15E.15

15E.16 Accepting grants in aid.

The corporation formed under sections 15E.11, 15E.14 and 15E.15 is hereby authorized to accept grants of money or property from the federal government or any other source and may upon its own order use its money, property or other resources for any of the purposes herein.

[C66, 71, 73, 75, 77, 79, 81, §28.16]
C93, §15E.16

DIVISION III

REGULATORY INFORMATION SERVICE
("CALL ONE")

15E.17 Regulatory information service.

1. The Iowa department of economic development shall provide a regulatory information service. The purpose of the service shall be to provide a center of information where a person interested in establishing a commercial facility or engaging in a commercial activity may be informed of any registration, license, or other approval of a state regulatory agency that is required for that facility or activity or of the existence of standards, criteria, or requirements which the laws of this state require that facility or activity to meet.

2. Each state agency which requires a permit, license, or other regulatory approval or maintains standards or criteria with which an activity or facility must comply shall inform the Iowa department of economic development of the following:

a. The activity or facility that is subject to regulation.

b. The existence of any threshold levels which would exempt the activity or facility from regulation.

c. The nature of the regulatory program.

d. The amount of any fees.

e. How to apply for any permits or regulatory approvals.

f. A brief statement of the purpose of requiring the permit or regulatory approval or requiring compliance with the standards or criteria.

3. Each state agency shall promptly inform the Iowa department of economic development of any changes in the information provided under subsection 2 or the establishment of a new regulatory program. The information provided to or disseminated by the department shall not be binding upon the regulatory program of a state agency; however, a person shall not be subject to the imposition of a penalty for failure to comply with a regulatory program if the person demonstrates that the person relied upon information provided by the department indicating compliance was not required and either ceases the activity upon notification by the regulatory agency or brings the activity or facility into compliance.

4. Subsections 2 and 3 do not apply to the following:

a. The utilities division of the department of commerce insofar as the information relates to public utilities.

b. The banking division of the department of commerce.

c. The savings and loan division of the department of commerce.

d. The credit union division of the department of commerce.

[82 Acts, ch 1099, §1]
C83, §28.17
C93, §15E.17

15E.18 through 15E.24 Reserved.

DIVISION IV

LOCAL DEVELOPMENT CORPORATIONS

15E.25 through 15E.29 Repealed by 2001 Acts, ch 61, § 19.

15E.30 through 15E.40 Reserved.

DIVISION V

INVESTMENTS IN QUALIFYING
BUSINESSES AND COMMUNITY-BASED
SEED CAPITAL FUNDS — TAX CREDIT

15E.41 Purpose.

The purpose of this division is to enhance the quality of life for citizens of this state through the increased availability of and accessibility to venture capital, particularly at the seed capital investment stage, which encourages the creation of wealth through high-paid, new jobs that increase the wage base and promote industrial development and innovative products that use new technology. The purpose of this division is also to encourage individuals to invest seed capital in Iowa businesses and in community-based seed capital funds.

2002 Acts, ch 1006, §1, 13
Section takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13
NEW section

15E.42 Definitions.

For purposes of this division, unless the context otherwise requires:

1. *"Affiliate"* means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.

2. *"Board"* means the Iowa capital investment board, if created in House File 2078 as enacted by the Seventy-ninth General Assembly.*

3. *"Investor"* means an individual making a cash investment in a qualifying business or a person making a cash investment in a community-

based seed capital fund. *"Investor"* does not include a person which is a current or previous owner, member, or shareholder in a qualifying business.

4. *"Near equity"* means debt that may be converted to equity at the option of the debt holder, and royalty agreements.

5. *"Qualifying business"* means a business meeting the criteria defined in section 15E.44.

2002 Acts, ch 1006, §2, 13; 2002 Acts, ch 1175, §75

*The phrase "created in section 15E.63" is probably intended; corrective legislation is pending

Section takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

NEW section

15E.43 Investment tax credits.

1. *a.* For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, division II, for a portion of an individual taxpayer's equity investment, as provided in subsection 2, in a qualifying business. An individual shall not claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual.

b. For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24, for a portion of a taxpayer's equity investment, as provided in subsection 2, in a community-based seed capital fund. An individual may claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

c. A tax credit shall be allowed only for an investment made in the form of cash to purchase equity in a qualifying business or in a community-based seed capital fund. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

2. A tax credit shall equal twenty percent of the taxpayer's equity investment. The maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be fifty thousand dollars. Each year, an investor and all affiliates of the investor shall not claim tax credits under this section for more than five different investments in five different qualifying businesses.

3. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. An investment made prior to January 1, 2002, shall not qualify for a tax credit under this division.

4. The aggregate amount of tax credits issued pursuant to this division shall not exceed a total of ten million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2002, shall not exceed three million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2003, shall not exceed three million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2004, shall not exceed four million dollars.

5. A tax credit shall not be redeemed during any tax year beginning prior to January 1, 2005. A tax credit shall not be transferable to any other taxpayer.

6. The board shall develop a system for registration and authorization of tax credits authorized pursuant to this division and shall control distribution of all tax credits distributed to investors pursuant to this division. The board shall develop rules for the qualification and administration of qualifying businesses and community-based seed capital funds. The department of revenue and finance shall adopt these criteria as administrative rules and any other rules pursuant to chapter 17A necessary for the administration of this division.

7. The board may cooperate with the small business development centers in an effort to disseminate information regarding the availability of tax credits for investments in qualifying businesses under this division. The board may also cooperate with the small business development centers to develop a standard seed capital application form that the small business development centers may submit to the board on behalf of clients seeking seed capital. The board shall distribute copies of the application forms to all community-based seed capital funds and potential individual investors.

2002 Acts, ch 1006, §3, 13; 2002 Acts, ch 1175, §76

Section takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

NEW section

15E.44 Qualifying businesses.

1. In order for an equity investment to qualify for a tax credit, the business in which the equity investment is made shall, within one hundred twenty days of the date of the first investment, notify the board of the names, addresses, taxpayer identification numbers, shares issued, consideration paid for the shares, and the amount of any tax credits, of all shareholders who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The list

of shareholders who may qualify for the tax credits shall be amended as new equity investments are sold or as any information on the list shall change.

2. In order to be a qualifying business, a business must meet all of the following criteria:

a. The principal business operations of the business are located in this state.

b. The business has been in operation for three years or less.

c. The business has an owner who has successfully completed one of the following:

(1) An entrepreneurial venture development curriculum.

(2) Three years of relevant business experience.

(3) A four-year college degree in business management, business administration, or a related field.

(4) Other training or experience as the board may specify by rule or order as sufficient to increase the probability of success of the qualifying business.

d. The business is not a business engaged primarily in retail sales, real estate, or the provision of health care or other professional services.

e. The business shall not have a net worth that exceeds three million dollars.

f. The business shall have secured, within twenty-four months following the first date on which the equity investments qualifying for tax credits have been made, total equity or near equity financing equal to at least two hundred fifty thousand dollars.

3. A qualifying business shall have the burden of proof to demonstrate to the board its qualifications under this section, and shall have the obligation to notify the board in a timely manner of any changes in the qualifications of the business or in the eligibility of investors to redeem the investment tax credits in any tax year.

4. After verifying the eligibility of a qualifying business, the board shall issue a tax credit certificate to be attached to the equity investor's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of credit, the name of the qualifying business, and other information required by the department of revenue and finance. The tax credit certificate, unless rescinded by the board, shall be accepted by the department of revenue and finance as payment for taxes imposed pursuant to chapter 422, division II, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of section 15E.43.

2002 Acts, ch 1006, §4, 13

Section takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

NEW section

15E.45 Community-based seed capital funds.

1. An investment in a community seed capital fund shall qualify for a tax credit under section 15E.43 provided that all requirements of sections 15E.43, 15E.44, and this section are met.

2. In order to be a community-based seed capital fund qualifying under this section, a community-based seed capital fund must meet all of the following criteria:

a. The fund is a limited partnership or limited liability company.

b. The fund has, on or after January 1, 2002, a total of both capital commitments from investors and investments in qualifying businesses of at least five hundred thousand dollars, but not more than three million dollars.

c. The fund has no fewer than ten individual investors who are not affiliates, with no single investor and affiliates of that investor together owning a total of more than twenty-five percent of the ownership interests outstanding in the fund.

3. In order for an investment in a community-based seed capital fund to qualify for a tax credit, the community-based seed capital fund in which the investment is made shall, within one hundred twenty days of the date of the first investment, notify the board of the names, addresses, taxpayer identification numbers, equity interests issued, consideration paid for the interests, and the amount of any tax credits, of which all limited partners or members who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The list of limited partners or members who may qualify for the tax credits shall be amended as new equity interests are sold or as any information on the list shall change.

4. After verifying the eligibility of the community-based seed capital fund, the board shall issue a tax credit certificate to be attached to the taxpayer's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit, the name of the community-based seed capital fund, and other information required by the department of revenue and finance. The tax credit certificate, unless rescinded by the board, shall be accepted by the department of revenue and finance or a local taxing district, as applicable, as payment for taxes imposed pursuant to chapter 422, divisions II, III, and V, and chapter 432, and as payment for the moneys and credits tax imposed pursuant to section 533.24, subject to any conditions or restrictions placed by the board on the face of the tax credit certificate and subject to the limitations of section 15E.43.

5. The manager of the community-based seed capital fund shall have the burden of proof to demonstrate to the board the community-based seed capital fund's qualifications under this section, and shall have the obligation to notify the board in a timely manner of any changes in the qualifications of the community-based seed capital fund, in the qualifications of any qualifying business in which the fund has invested, or in the eligibility of limited partners or members to redeem the investment tax credits in any year.

6. In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this section, or in the event that the community-based seed capital fund has not invested at least thirty-three percent of its invested capital in no fewer than two separate qualifying businesses, measured at the end of the thirty-sixth month after commencing the fund's investing activities, the board shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue and finance that it has done so, and the tax credit certificates shall be null and void. However, a community-based seed capital fund may apply to the board for a one-year waiver from the requirements of this subsection.

7. An investor in a community-based seed capital fund shall receive a tax credit pursuant to this division only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments in a qualifying business made by the community-based seed capital fund. However, an investor in a community-based seed capital fund may receive a tax credit under this division with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

8. A community-based seed capital fund shall not invest in the Iowa fund of funds, if organized pursuant to 2002 Iowa Acts, House File 2078, if enacted.*

2002 Acts, ch 1006, §5, 13

*The phrase "organized pursuant to section 15E.65" probably is intended; corrective legislation is pending

Section takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

NEW section

15E.46 Reports.

The board shall publish an annual report of the activities conducted pursuant to this division and shall submit the report to the governor and the general assembly. The report shall include a listing of eligible qualifying businesses and the number of tax credit certificates and the amount of tax credits issued by the board.

2002 Acts, ch 1006, §6, 13

Section takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

NEW section

15E.47 through 15E.50 Reserved.

DIVISION VI

VENTURE CAPITAL FUND INVESTMENTS — TAX CREDIT

15E.51 Venture capital fund investment tax credits.

1. For purposes of this section, *"venture capital fund"* means a private seed and venture capital partnership or entity fund that has been certified by the Iowa capital investment board created in section 15E.63, pursuant to subsection 7.

2. A tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24, for a portion of a taxpayer's equity investment in a venture capital fund. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

3. The amount of a tax credit shall not exceed six percent of the taxpayer's equity investment in venture capital funds.

4. A taxpayer shall not claim a tax credit under this section if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds created in section 15E.65 or an investor that receives a tax credit for an investment in a community-based seed capital fund as defined in 2002 Iowa Acts, House File 2271.*

5. *a.* The Iowa capital investment board created in section 15E.63 shall issue certificates which may be redeemed for tax credits. The Iowa capital investment board created in section 15E.63 shall issue certificates so that not more than a total of five million dollars of tax credits may be claimed. The certificates shall not be transferable.

b. The Iowa capital investment board created in section 15E.63 shall, in cooperation with the department of revenue and finance, establish criteria and procedures for the allocation and issuance of tax credits by means of certificates issued by the Iowa capital investment board created in section 15E.63. The criteria shall include the contingencies that must be met for a certificate to be redeemable in order to receive a tax credit. The procedures established by the Iowa capital investment board created in section 15E.63, in cooperation with the department of revenue and finance, shall relate to the procedures for the issuance of the certificates and for the redemption of a certificate and related tax credit.

6. A taxpayer shall not redeem a certificate and related tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer's li-

ability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

7. A venture capital fund shall submit an application for certification to the Iowa capital investment board created in section 15E.63. The board shall approve the application and certify the venture capital fund if all of the following criteria are met:

a. The venture capital fund is a private seed and venture capital partnership or entity fund.

b. The venture capital fund maintains a physical presence within the state of Iowa.

c. The venture capital fund makes a commitment to consider equity investments in businesses located within the state of Iowa.

2002 Acts, ch 1156, §1, 8

*The phrase "as described in section 15E.45" probably intended; corrective legislation is pending

Section takes effect May 8, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1156, §8

NEW section

15E.52 through 15E.60 Reserved.

DIVISION VII

CAPITAL INVESTMENT
— IOWA FUND OF FUNDS

15E.61 Findings — purpose.

The general assembly finds the following: Fundamental changes have occurred in national and international financial markets and in the financial markets of this state. A critical shortage of seed and venture capital resources exists in the state, and such shortage is impairing the growth of commerce in the state. A need exists to increase the availability of venture equity capital for emerging, expanding, and restructuring enterprises in Iowa, including, without limitation, enterprises in the life sciences, advanced manufacturing, information technology, and value-added agriculture areas. Such investments will create jobs for Iowans and will help to diversify the state's economic base.

This division is enacted to fulfill the following purposes:

1. To mobilize private investment in a broad variety of venture capital partnerships in diversified industries and locales.

2. To retain the private-sector culture of focusing on rate of return in the investing process.

3. To secure the services of the best managers in the venture capital industry, regardless of location.

4. To facilitate the organization of the Iowa fund of funds in which to seek such private investment and to create interest in such investments by offering state incentives for private persons to make investments in the Iowa fund of funds.

5. To enhance the venture capital culture and infrastructure in the state of Iowa so as to increase venture capital investment within the state and to promote venture capital investing within Iowa.

6. To accomplish these purposes in such a manner as to minimize any appropriations by the state of Iowa.

7. To effectuate specific, measurable results, including all of the following:

a. The creation of three new venture capital fund offices in Iowa within three years of February 28, 2002.

b. The investment of resources from the Iowa fund of funds in Iowa businesses within three years of February 28, 2002.

c. A cumulative rate of return on venture investments of the Iowa fund of funds equal to a minimum of one and one-half percentage points above the ten-year treasury bill rate in effect at the end of five years following February 28, 2002.

2002 Acts, ch 1005, §1; 2002 Acts, ch 1006, §13, 14

Legislation enacting a special effective date for this section contains a January 1, 2002, retroactive applicability provision; 2002 Acts, ch 1006, §13, 14

NEW section

15E.62 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Board"* means the Iowa capital investment board created in section 15E.63.

2. *"Certificate"* means a contract between the board and a designated investor pursuant to which a tax credit is available and issued to the designated investor.

3. *"Designated investor"* means a person, other than the Iowa capital investment corporation, who purchases an equity interest in the Iowa fund of funds or a transferee of a certificate or tax credit.

4. *"Iowa capital investment corporation"* means a private, nonprofit corporation created pursuant to section 15E.64.

5. *"Iowa fund of funds"* means a private, for-profit limited partnership or limited liability company established by the Iowa capital investment corporation pursuant to section 15E.65 in which a designated investor purchases an equity interest.

6. *"Tax credit"* means a contingent tax credit issued pursuant to section 15E.66 that is available against tax liabilities imposed by chapter 422, divisions II, III, and V, and by chapter 432 and against the moneys and credits tax imposed by section 533.24.

2002 Acts, ch 1005, §2; 2002 Acts, ch 1006, §13, 14

Legislation enacting a special effective date for this section contains a January 1, 2002, retroactive applicability provision; 2002 Acts, ch 1006, §13, 14

NEW section

15E.63 Iowa capital investment board.

1. The Iowa capital investment board is creat-

ed as a state governmental board and the exercise by the board of powers conferred by this division shall be deemed and held to be the performance of essential public purposes. The purpose of the board shall be to mobilize venture equity capital for investment in such a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state.

2. The board shall consist of five voting members and two nonvoting advisory members. The five voting members shall be appointed by the governor and confirmed by the senate pursuant to section 2.32. The five voting members shall be appointed to five-year staggered terms that shall be structured to allow the term of one member to expire each year. One nonvoting member shall be appointed by the majority leader of the senate after consultation with the president of the senate and the minority leader of the senate. One nonvoting member shall be appointed by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. The nonvoting members shall be appointed for two-year terms which shall expire upon the convening of a new general assembly. Vacancies shall be filled in the same manner as the appointment of the original members. Members shall be compensated by the board for direct expenses and mileage but members shall not receive a director's fee, per diem, or salary for service on the board. Members shall be selected based upon demonstrated expertise and competence in the supervision of investment managers, in the fiduciary management of investment funds, or in the management and administration of tax credit allocation programs. Members shall not have an interest in any person to whom a tax credit is allocated and issued by the board.

3. The board shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose, provided, however, that the board shall not hire employees.

4. Members of the board shall be indemnified against loss to the broadest extent permissible under chapter 669.

5. Meetings of the board shall, except to the extent necessary to protect confidential information with respect to investments in the Iowa fund of funds, be subject to chapter 21.

6. The board shall, in cooperation with the department of revenue and finance, establish criteria and procedures for the allocation and issuance of tax credits to designated investors by means of certificates issued by the board. The criteria shall include the contingencies that must be met for a certificate to be redeemable by a designated investor or transferee in order to receive a tax credit. The contingencies to redemption shall be tied to the scheduled rates of return and scheduled redemptions of equity interests purchased by designated investors in the Iowa fund of funds. The procedures established by the board, in cooperation with the department of revenue and finance, shall relate to the procedures for the issuance of the certificates and the related tax credits, for the transfer of a certificate and related tax credit by a designated investor, and for the redemption of a certificate and related tax credit by a designated investor or transferee. The board shall also establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors and transferees, including, without limitation, criteria and procedures for evaluating the value of investments made by the Iowa fund of funds and the returns from the Iowa fund of funds.

7. Pursuant to section 15E.66, the board shall issue certificates which may be redeemable for tax credits to provide incentives to designated investors to make equity investments in the Iowa fund of funds. The board shall issue the certificates so that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax certificate the principal amount of the tax credit and the taxable year or years for which the credit may be claimed.

8. The board may charge a placement fee to the Iowa fund of funds with respect to the issuance of a certificate and related tax credit to a designated investor, but the fee shall be charged only to pay for reasonable and necessary costs of the board and shall not exceed one-half of one percent of the equity investment of the designated investor.

9. The board shall, in consultation with the Iowa capital investment corporation, publish an annual report of the activities conducted by the Iowa fund of funds, and present the report to the governor and the general assembly. The annual report shall include a copy of the audit of the Iowa fund of funds and a valuation of the assets of the Iowa fund of funds, review the progress of the investment fund allocation manager in implementing its investment plan, and describe any redemption or transfer of a certificate issued pursuant to this division, provided, however, that the annual report shall not identify any specific designated investor who has redeemed or transferred a certificate. Every five years, the board shall publish a progress report which shall evaluate the progress of the state of Iowa in accomplishing the purposes stated in section 15E.61.

10. The board shall redeem a certificate submitted to the board by a designated investor and shall calculate the amount of the allowable tax credit based upon the investment returns received by the designated investor and its predecessors in interest and the provisions of the certificate. Upon submission of a certificate for redemption, the board shall issue a verification to the department of revenue and finance setting forth the maximum tax credit which may be claimed by the designated investor with respect to the redemption of the cer-

tificate.

11. The board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board.

2002 Acts, ch 1005, §3; 2002 Acts, ch 1006, §13, 14

Additional board duties; §15E.41 – 15E.46, 15E.51

Legislation enacting a special effective date for this section contains a January 1, 2002, retroactive applicability provision; 2002 Acts, ch 1006, §13, 14

NEW section

15E.64 Iowa capital investment corporation.

1. An Iowa capital investment corporation may be organized as a private, not-for-profit corporation under chapter 504A. The Iowa capital investment corporation is not a public corporation or instrumentality of the state and shall not enjoy any of the privileges and shall not be required to comply with the requirements of a state agency. Except as otherwise provided in this division, this division does not exempt the corporation from the requirements under state law which apply to other corporations organized under chapter 504A. The purposes of an Iowa capital investment corporation shall be to organize the Iowa fund of funds, to select a venture capital investment fund allocation manager to select venture capital fund investments by the Iowa fund of funds, to negotiate the terms of a contract with the venture capital investment fund allocation manager, to execute the contract with the selected venture capital investment fund allocation manager on behalf of the Iowa fund of funds, to receive investment returns from the Iowa fund of funds, and to reinvest the investment returns in additional venture capital investments designed to result in a significant potential to create jobs and to diversify and stabilize the economy of the state. The corporation shall not exercise governmental functions and shall not have members. The obligations of the corporation are not obligations of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds. The corporation shall not and cannot pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except those of the corporation.

2. To facilitate the organization of an Iowa capital investment corporation, both of the following persons shall serve as incorporators as provided in section 504A.28:

a. The chairperson of the Iowa economic development board or a designee of the chairperson.

b. The director of the department of economic development or a designee of the director.

3. After incorporation, the initial board of directors shall be elected by the members of an appointment committee. The members of the appointment committee shall be appointed by the Iowa economic development board. The initial board of directors shall consist of five members. The persons elected to the initial board of directors by the appointment committee shall include persons who have an expertise in the areas of the selection and supervision of investment managers or in the fiduciary management of investment funds, and other areas of expertise as deemed appropriate by the appointment committee. After the election of the initial board of directors, vacancies in the board of directors of the corporation shall be elected by the remaining directors of the corporation. Members of the board of directors shall be subject to any restrictions on conflicts of interest specified in the organizational documents and shall have no interest in any venture capital investment fund allocation manager selected by the corporation pursuant to the provisions of this division or in any investments made by the Iowa fund of funds.

4. The members of the appointment committee shall exercise due care to assure that persons elected to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this division, including in areas related to venture capital investment, investment management, and supervision of investment managers and investment funds.

5. Upon the election of the initial board of directors, the terms of the members of the appointment committee shall expire.

6. The department of economic development shall assist the incorporators and the appointment committee in any manner determined necessary and appropriate by the incorporators and appointment committee in order to administer this section.

7. After incorporation, the Iowa capital investment corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Iowa fund of funds in accordance with the requirements of this division. Any proposed investment plan shall address the applicant's level of experience, quality of management, investment philosophy and process, probability of success in fundraising, prior investment fund results, and plan for achieving the purposes of this division. The selected venture capital investment fund allocation manager shall be a person with substantial, successful experience in the design, implementation, and management of seed and venture capital investment programs and in capital formation. The corporation shall only select a venture capital investment fund allocation manager with demonstrated expertise in the management and fund allocation of investments in venture capital funds. The corporation shall select the venture capital investment fund allocation manager deemed best qualified to generate the amount of capital re-

quired by this division and to invest the capital of the Iowa fund of funds.

8. The Iowa capital investment corporation may charge a management fee on assets under management in the Iowa fund of funds. The fee shall be in addition to any fee charged to the Iowa fund of funds by the venture capital investment fund allocation manager selected by the corporation, but the fee shall be charged only to pay for reasonable and necessary costs of the Iowa capital investment corporation and shall not exceed one-half of one percent per year of the value of assets under management.

9. Directors of the Iowa capital investment corporation shall be compensated for direct expenses and mileage but shall not receive a director's fee or salary for service as directors.

10. The Iowa capital investment corporation shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose. However, the corporation shall not hire staff as employees except to administer the rural and small business loan guarantee program of the Iowa fund of funds.

11. Upon the dissolution of the Iowa fund of funds, the Iowa capital investment corporation shall be liquidated and dissolved, and any assets owned by the corporation shall be distributed to the state of Iowa and deposited in the general fund.

2002 Acts, ch 1005, §4; 2002 Acts, ch 1006, §13, 14; 2002 Acts, ch 1175, §77

Legislation enacting a special effective date for this section contains a January 1, 2002, retroactive applicability provision; 2002 Acts, ch 1006, §13, 14

NEW section

15E.65 Iowa fund of funds.

1. The Iowa capital investment corporation shall organize the Iowa fund of funds. The Iowa fund of funds shall be authorized to make investments in private seed and venture capital partnerships or entities in a manner which will encourage the availability of a wide variety of venture capital in the state, strengthen the economy of the state, help business in Iowa gain access to sources of capital, help build a significant, permanent source of capital available to serve the needs of Iowa businesses, and accomplish all these benefits in a way that minimizes the use of tax credits.

2. The Iowa capital investment corporation shall organize the Iowa fund of funds in the following manner:

a. The Iowa fund of funds shall be organized as a private, for-profit, limited partnership or limited liability company under Iowa law pursuant to which the Iowa capital investment corporation shall be the general partner or manager. The entity shall be organized so as to provide for equity interests for designated investors which provide for a designated scheduled rate of return and a scheduled redemption which shall occur not less than five years following the issuance of such equity interests. The interest of the Iowa capital investment corporation in the Iowa fund of funds shall be to serve as general partner or manager and to be paid a management fee for the service as provided in section 15E.64, subsection 8, and to receive investment returns of the Iowa fund of funds in excess of those payable to designated investors. Any returns in excess of those payable to designated investors shall be reinvested by the Iowa capital investment corporation by being held in the Iowa fund of funds as a revolving fund for reinvestment in venture capital funds or investments until the termination of the Iowa fund of funds. Any returns received from these reinvestments shall be deposited in the revolving fund.

b. The Iowa fund of funds shall principally make investments in high-quality venture capital funds managed by investment managers who have made a commitment to consider equity investments in businesses located within the state of Iowa and which have committed to maintain a physical presence within the state of Iowa. The investments by the Iowa fund of funds shall be focused principally on partnership interests in private venture capital funds and not in direct investments in individual businesses. The Iowa fund of funds shall invest in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of venture capital funds. The Iowa fund of funds may invest in newly created venture capital funds as long as the managers or management teams of the funds have the experience, expertise, and a successful history in the investment of venture capital funds described in this paragraph.

c. The Iowa fund of funds shall establish and administer a program to provide loan guarantees and other related credit enhancements on loans to rural and small business borrowers within the state of Iowa. The Iowa fund of funds shall invest five percent of its assets in investments for this program.

d. The Iowa fund of funds shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose, including, without limitation, engaging and agreeing to compensate a venture capital investment fund allocation manager. Such compensation shall be in addition to the management fee paid to the Iowa capital investment corporation. However, the Iowa fund of funds shall not hire employees except to administer its rural and small business loan guarantee and credit enhancement program.

e. The Iowa fund of funds may issue debt and borrow such funds as may be needed to accomplish its goals. However, such debt shall not be secured

by tax credits issued by the board. The Iowa fund of funds may open and manage bank and short-term investment accounts as deemed necessary by the venture capital investment fund allocation manager.

f. The Iowa fund of funds may expend moneys to secure investment ratings for investments by designated investors in the Iowa fund of funds.

g. Each calendar year, the auditor of state shall conduct an annual audit of the activities of the Iowa fund of funds or shall engage an independent auditor to conduct the audit, provided that the independent auditor has no business, contractual, or other connection to the Iowa capital investment corporation or the Iowa fund of funds. The corporation shall reimburse the auditor of state for costs associated with the annual audit. The audit shall be delivered to the Iowa capital investment corporation and the board each year and shall include a valuation of the assets owned by the Iowa fund of funds as of the end of each year.

h. Fifty years after the organization of the Iowa fund of funds, the Iowa capital investment corporation shall cause the Iowa fund of funds to be liquidated with all of its assets distributed to its owners in accordance with the provisions of its organizational documents.

i. Upon the liquidation of the Iowa fund of funds, the Iowa capital investment corporation shall file a report with the general assembly stating how many jobs in this state were created through investments made by the Iowa fund of funds.

2002 Acts, ch 1005, §5; 2002 Acts, ch 1006, §13, 14

Legislation enacting a special effective date for this section contains a January 1, 2002, retroactive applicability provision; 2002 Acts, ch 1006, §13, 14

NEW section

15E.66 Certificates and tax credits.

1. The board may issue certificates and related tax credits to designated investors which, if redeemed for the maximum possible amount, shall not exceed a total aggregate of one hundred million dollars of tax credits. The certificates shall be issued contemporaneously with an investment in the Iowa fund of funds by a designated investor. A certificate issued by the board shall have a specific calendar year maturity date designated by the board of not less than five years after the date of issuance and shall be redeemable on a schedule similar to the scheduled redemption of investments by designated investors. A certificate and the related tax credit shall be transferable by the designated investor. A tax credit shall not be claimed or redeemed except by a designated investor or transferee in accordance with the terms of a certificate from the board. A tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate. An individual may claim the credit of a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following seven years, or until depleted, whichever is earlier.

2. The board shall certify the maximum amount of a tax credit which could be issued to a designated investor and identify the specific calendar year the certificate may be redeemed pursuant to this division. The amount of the tax credit shall be limited to an amount equivalent to any difference between the scheduled aggregate return to the designated investor at rates of return authorized by the board and aggregate actual return received by the designated investor and any predecessor in interest of capital and interest on the capital. The rates, whether fixed rates or variable rates, shall be determined pursuant to a formula stipulated in the certificate. The board shall clearly indicate on the certificate the schedule, the amount of equity investment, the calculation formula for determining the scheduled aggregate return on invested capital, and the calculation formula for determining the amount of the tax credit that may be claimed. Once moneys are invested by a designated investor, the certificate shall be binding on the board and the department of revenue and finance and shall not be modified, terminated, or rescinded.

3. If a designated investor elects to redeem a certificate, the certificate shall be redeemed on June 30 of the calendar year maturity date stated on the certificate. At the time of redemption, the board shall determine the amount of the tax credit that may be claimed by the designated investor based upon the returns received by the designated investor and its predecessors in interest and the provisions of the certificate. The board shall issue a verification to the department of revenue and finance setting forth the maximum tax credit which can be claimed by the designated investor with respect to the redemption of the certificate.

4. The board shall, in conjunction with the department of revenue and finance, develop a system for registration of any certificate and related tax credit issued or transferred pursuant to this section and a system that permits verification that any tax credit claimed upon a tax return is valid and that any transfers of the certificate and related tax credit are made in accordance with the requirements of this division.

5. The board shall issue the tax credits in such a manner that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax certificate the principal amount of the tax credit

and the taxable year or years for which the credit may be claimed.

6. A certificate or tax credit issued or transferred pursuant to this division shall not be considered a security pursuant to chapter 502.

7. In determining the one hundred million dollar maximum limit in subsection 1 and the twenty million dollar limitation in subsection 5, the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors. However, certificates and related tax credits which have expired shall not be included and certificates and related tax credits which have been redeemed shall be included only to the extent of tax credits actually allowed.

2002 Acts, ch 1005, §6; 2002 Acts, ch 1006, §13, 14

Legislation enacting a special effective date for this section contains a January 1, 2002, retroactive applicability provision; 2002 Acts, ch 1006, §13, 14

NEW section

15E.67 Powers and effectiveness.

This division shall not be construed as a restriction or limitation upon any power which the board might otherwise have under any other law of this state and the provisions of this division are cumulative to such powers. This division shall be construed to provide a complete, additional, and alternative method for performing the duties authorized and shall be regarded as supplemental and additional powers conferred by any other laws. The level, timing, or degree of success of the Iowa fund of funds or the investment funds in which the Iowa fund of funds invests in, or the extent to which the investment funds are invested in Iowa venture capital projects, or are successful in accomplishing any economic development objectives, shall not compromise, diminish, invalidate, or affect the provisions of any contract entered into by the board or the Iowa fund of funds.

2002 Acts, ch 1005, §7; 2002 Acts, ch 1006, §13, 14

Legislation enacting a special effective date for this section contains a January 1, 2002, retroactive applicability provision; 2002 Acts, ch 1006, §13, 14

NEW section

15E.68 Permissible investments.

Investments by designated investors in the Iowa fund of funds shall be deemed permissible investments for state-chartered banks, for credit unions, and for domestic insurance companies under applicable state laws.

2002 Acts, ch 1005, §8; 2002 Acts, ch 1006, §13, 14

Insurance companies; §511.8, 515.35

Banks; §524.901

Credit unions; §533.47

Legislation enacting a special effective date for this section contains a January 1, 2002, retroactive applicability provision; 2002 Acts, ch 1006, §13, 14

NEW section

15E.69 Enforcement.

The attorney general may enforce the provisions of this division and conduct any investigations necessary for such enforcement.

2002 Acts, ch 1005, §9; 2002 Acts, ch 1006, §13, 14

Legislation enacting a special effective date for this section contains a January 1, 2002, retroactive applicability provision; 2002 Acts, ch 1006, §13, 14

NEW section

15E.70 through 15E.80 Reserved.

DIVISION VIII

IOWA SEED CAPITAL CORPORATION

15E.81 through 15E.85 Repealed by 2001 Acts, ch 61, § 19.

15E.86 President. Repealed by 98 Acts, ch 1225, § 39.

15E.87 through 15E.94 Repealed by 2001 Acts, ch 61, § 19.

15E.95 through 15E.105 Reserved.

DIVISION IX

IOWA EXPORT TRADING COMPANY

15E.106 through 15E.108 Repealed by 2001 Acts, ch 61, § 19.

15E.109 and 15E.110 Reserved.

DIVISION X

VALUE-ADDED AGRICULTURAL PRODUCTS AND PROCESSES — ASSISTANCE

15E.111 Value-added agricultural products and processes financial assistance program.

1. The department shall establish a value-added agricultural products and processes financial assistance program. The department shall consult with the Iowa corn growers association and the Iowa soybean association. The purpose of the program is to encourage the increased utilization of agricultural commodities produced in this state. The program shall assist in efforts to revitalize rural regions of this state, by committing resources to provide financial assistance to new or existing value-added production facilities. In awarding financial assistance, the department shall commit resources to assist the following:

a. Facilities which are involved in the development of new innovative products and processes related to agriculture. The facility must do either of the following: produce a good derived from an agricultural commodity, if the good is not commonly produced from an agricultural commodity; or use a process to produce a good derived from an agricultural process, if the process is not commonly used to produce the good.

b. Renewable fuel production facilities. As used in this section, *"renewable fuel"* means an energy source which is derived from an organic compound capable of powering machinery, including an engine or power plant.

Financial assistance awarded under this section may be in the form of a loan, loan guarantee, grant, production incentive payment, or a combination of financial assistance. The department shall not award more than twenty-five percent of the amount allocated to the value-added agricultural products and processes financial assistance fund during any fiscal year to support a single person. The department may finance any size of facility. However, the department shall reserve up to fifty percent of the total amount allocated to the fund, for purposes of assisting persons requiring one hundred thousand dollars or less in financial assistance. The amount shall be reserved until the end of the third quarter of the fiscal year. The department shall not provide financial assistance to support a value-added production facility if the facility or a person owning a controlling interest in the facility has demonstrated a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of workforce development pursuant to chapter 84A, or rules enforced by the department of natural resources pursuant to chapter 455B or 459, subchapters II and III.

2. A person is eligible to apply for assistance under this section, if the person satisfies the following requirements:

a. The existing or proposed facility is located in this state.

b. The person applies to the department of economic development in a manner and according to procedures required by the department.

c. The person submits a business plan which demonstrates managerial and technical expertise.

3. The department of economic development shall grant financial assistance to a person determined by the department to be eligible to receive assistance under this section, upon review and evaluation of the person's application by the agricultural products advisory council as established in section 15.203. The department shall consider the council's evaluation in granting or denying assistance. The department shall not approve an application for assistance under this section to refinance an existing loan. The department shall not directly award financial assistance to support an activity directly related to farming as defined in section 9H.1, including the establishment or operation of a livestock production operation, regardless of whether the activity is related to a renewable fuel production facility.

4. The department shall select an applicant to receive financial assistance based on the following criteria:

a. The feasibility of the existing or proposed facility to remain a viable enterprise and the degree to which the facility will increase the utilization of agricultural commodities produced in this state.

b. The extent to which the existing or proposed facility is located in a rural region of the state.

c. The proportion of local match to be contributed to the project.

d. The level of need of the region where the existing facility is or the proposed facility is to be located.

e. The degree to which the facility produces a coproduct which is marketed in the same locality as the facility.

5. An application based on innovation shall be considered if any of the following apply:

a. The production process is not commonly available in this state.

b. The product is not commonly produced in this state.

6. *a.* The department shall consider an application to assist a renewable fuel production facility. An application based on ethanol fuel production shall be considered by the department if all of the following apply:

(1) All fermentation, distillation, and dehydration of the ethanol will occur at the proposed facility.

(2) The ethanol produced at the proposed facility will be at least one hundred ninety proof and must be denatured. However, if the facility markets the ethanol for further refining, the facility must demonstrate that the refiner will produce one hundred ninety proof ethanol from the ethanol purchased from the facility.

b. The department shall give priority to supporting proposed renewable fuel production facilities which directly support livestock production operations. The highest priority shall be provided to a renewable fuel production facility which produces coproducts which are used to produce livestock raised in the same locality as the production facility. If the department has several proposals having the highest priority, a preference shall be given to a proposal in which the livestock operation:

(1) Is located in an agricultural area as provided in chapter 352.

(2) Is located in close proximity to and is an integral part of the renewable fuel production facility. However, the owner of the facility is not required to hold an interest in the land on which the livestock are produced. The livestock may be produced under the terms of a contract, in which a person regularly engaged in livestock production provides for the care and feeding of the livestock on behalf of the facility's owner.

c. The department shall cooperate with the office of renewable fuels and coproducts in order to carry out this subsection, as provided in section 159A.6B. The office shall be primarily responsible for providing technical expertise regarding the operation of a renewable fuel production facility, and specifically a facility which supports livestock production operations. The department shall cooperate with any contract consultant supported by the office as provided in section 159A.6B. The agricultural products advisory council as established in section 15.203 shall coordinate the activities of the department and the office. In administering this part of the program, the department and the office shall cooperate with the department of natural resources which shall assist an applicant in complying with all applicable environmental regulations. The department of natural resources shall acknowledge receipt of a completed application for a permit not later than two weeks following receipt of a completed application by the department. Within twelve weeks following receipt of the application, the department shall issue the permit or reply to the applicant describing reasons why the permit cannot be issued.

7. The university of Iowa, Iowa state university, and the university of northern Iowa shall cooperate in assisting facilities receiving financial assistance under this section. Iowa state university, including the Iowa cooperative extension service in agriculture and home economics, shall cooperate in assisting each renewable fuel production facility supporting livestock operations, including advising producers regarding nutrition and management practices. Community colleges and private universities and colleges are not precluded from providing this assistance.

8. The department of economic development and the office of renewable fuels and coproducts shall prepare a report each six months detailing the progress of the department and other agencies provided in this section. The office of renewable fuels and coproducts, the department of natural resources, and Iowa state university may contribute a summary of their activities. The report shall be delivered to the secretary of the senate and the chief clerk of the house; the legislative service bureau; the chairpersons and ranking members of the senate standing committee on agriculture; the senate standing committee on small business, economic development, and tourism; the house of representatives standing committee on agriculture; and the house of representatives standing committee on economic development.

90 Acts, ch 1138, §2
C91, §28.111
92 Acts, ch 1244, §25
C93, §15E.111
94 Acts, ch 1119, §5; 96 Acts, ch 1186, §23; 2002 Acts, ch 1050, §5; 2002 Acts, ch 1162, §28
Subsection 1, unnumbered paragraph 2 amended
Subsection 8 amended

15E.112 Value-added agricultural products and processes financial assistance fund.

1. A value-added agricultural products and processes financial assistance fund is created within the state treasury under the control of the department. The fund shall consist of moneys allocated from the Iowa strategic investment fund created in section 15.313, those appropriated moneys, and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The assets of the fund shall be used by the department only for administration and carrying out the purposes of section 15E.111.

2. In administering the fund and the value-added agricultural products and processes financial assistance program, the department may do any of the following:

a. Contract, sue and be sued, and adopt administrative rules necessary to carry out the provisions of this section and section 15E.111. However, the department shall not in any manner directly or indirectly pledge the credit of the state.

b. Authorize payment from the fund for costs, commissions, attorney fees, and other reasonable expenses, including expenses related to carrying out duties necessary for insuring or guaranteeing loans under section 15E.111, and for the recovery of loan moneys insured or guaranteed or the management of property acquired in connection with such loans.

3. Payments of interest, recaptures of awards, or repayments of moneys loaned under the value-added agricultural products and processes financial assistance program shall be deposited into the fund. Section 8.33 does not apply to any moneys in the fund.

4. The fund is subject to an annual audit by the auditor of state. Moneys in the fund, which may be subject to warrants written by the director of revenue and finance, shall be drawn upon the written requisition of the director of the department of economic development or an authorized

representative of the director.
90 Acts, ch 1138, §3
C91, §28.112
91 Acts, ch 260, §1202; 92 Acts, ch 1244, §26
C93, §15E.112
94 Acts, ch 1119, §6; 96 Acts, ch 1219, §97; 97 Acts, ch 207, §6, 15; 2000 Acts, ch 1230, §17, 18; 2002 Acts, ch 1175, §22; 2002 Acts, 2nd Ex, ch 1003, §66, 79
Subsection 1 amended
Subsection 5 stricken

15E.113 through 15E.115 Reserved.

DIVISION XI

IOWA WINE AND BEER PROMOTION

15E.116 Iowa wine and beer promotion board.

An Iowa wine and beer promotion board is created. The board consists of three members appointed by the director of the department of economic development. Each member shall serve a term of two years on the board. One member shall represent the department, one member shall represent the Iowa wine makers, and one member shall represent the Iowa beer makers. The board shall advise the department on the best means to promote wine and beer made in Iowa.
86 Acts, ch 1246, §719
C87, §28.116
C93, §15E.116

15E.117 Promotion of Iowa wine and beer.

The department of economic development shall consult with the Iowa wine and beer promotion board on the best means to promote wine and beer made in Iowa. The department has the authority to contract with private persons for the promotion of beer and wine made in Iowa. At the direction of the department, the director of revenue and finance shall issue warrants to the department of economic development on the barrel tax fund created in section 123.143 and the wine gallonage tax fund created in section 123.183, which moneys may be used by the department for the purpose of this section, including administrative expenses incurred under this section.
86 Acts, ch 1246, §720
C87, §28.117
C93, §15E.117
2002 Acts, ch 1050, §6
Section amended

15E.118 and 15E.119 Reserved.

DIVISION XII

LOAN REPAYMENTS

15E.120 Loan repayments.

1. Cities which have received loans under the former Iowa community development loan program, sections 7A.41 through 7A.49, Code 1985, are still obligated to repay borrowed funds to the state and to comply with terms and conditions of existing promissory notes.

2. After July 1, 1986, loan repayments made by recipient cities are payable to the Iowa department of economic development in an amount and at the time required by existing promissory notes.

3. Loan agreements with cities receiving loans under the former Iowa community development loan program for projects which have not been completed as of July 1, 1986, shall be amended by substituting "Iowa department of economic development" for "office for planning and programming". The Iowa department of economic development shall assume the state's administrative responsibilities for these uncompleted projects.

4. All loan agreements and promissory notes with cities with completed projects shall, on July 1, 1986, be amended by substituting "Iowa department of economic development" for "office for planning and programming".

5. Loan repayments received by the Iowa department of economic development shall be deposited into a special account to be used at its discretion as matching funds to attract financial assistance from and to participate in programs with national rural development and finance corporations or as provided in subsection 6. Funds in this special account shall not revert to the state general fund at the end of any fiscal year. If the programs for which the funds in the special account are to be used are terminated or expire, the funds in the special account and funds that would be repaid, if any, to the special account shall be transferred or repaid to the community economic betterment account of the strategic investment fund established in section 15.313.

6. If the Iowa department of economic development determines that sufficient funds exist in the special account provided in subsection 5 for the purposes provided in subsection 5, up to twenty-five percent of the loan repayments for the fiscal year received by the Iowa department of economic development may be deposited in the revolving loan fund to operate the self-employment loan program as both were established in section 15.241 under the department of economic development. Funds in this revolving loan fund shall not revert to the state general fund at the end of any fiscal year. Loan repayments from the self-employment loan program shall be deposited in the revolving loan fund. Deposits of funds under this subsection may occur for the fiscal years beginning July 1,

1986, July 1, 1987, July 1, 1988, and July 1, 1989.
86 Acts, ch 1185, §1
C87, §28.120
90 Acts, ch 1262, §28; 91 Acts, ch 23, §12; 91 Acts, ch 264, §512; 91 Acts, ch 267, §313
C93, §15E.120
95 Acts, ch 67, §5; 2001 Acts, ch 61, §8

15E.121 through 15E.130 Reserved.

DIVISION XIII

BUSINESS DEVELOPMENT FINANCE

15E.131 Title of Act.
This division shall be known and may be cited as the *"Iowa Business Development Finance Act"*.
88 Acts, ch 1207, §1
C89, §28.131
C93, §15E.131

15E.132 Definitions.
As used in this division, unless the context otherwise requires, the term:
1. *"Board"* means the board of directors of the corporation constituted under section 15E.143 in office from time to time.
2. *"Business"* means a business which meets the United States small business administration's definition of small business for that type of business, except a business whose primary activity is retail sales.
3. *"Corporation"* means the business development finance corporation organized pursuant to this division and for the purpose of assisting businesses in any phase of business or product development in the state of Iowa by the loaning of money to and investing money in the business, and otherwise organizing for the purposes in section 15E.133.
4. *"Department"* means the Iowa department of economic development or any agency which succeeds to the functions of the Iowa department of economic development.
5. *"Financial institution"* means a bank, trust company, savings and loan association, insurance company or related corporation, partnership, foundation or other institution licensed to do business in the state of Iowa and engaged primarily in lending or investing funds, or any private or public retirement fund.
6. *"Member"* means a financial institution which has been accepted for membership in the corporation in accordance with section 15E.137.
7. *"Private director"* means a member of the board representing the shareholders of the corporation.
8. *"Public director"* means a member of the board representing the state of Iowa.
88 Acts, ch 1207, §2
C89, §28.132
C93, §15E.132

15E.133 Purposes.
The purposes of the corporation shall be limited to those provided in this section and shall be to promote, stimulate, develop and advance business prosperity of the state of Iowa and its citizens; to encourage and assist through loans, investments, or other business transactions, the location of new businesses in the state; to rehabilitate and assist existing businesses in this state; to stimulate and assist in the expansion of any kind of business activity which would tend to promote business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of business development in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state, in situations in which assistance would not otherwise be reasonably available from commercial sources.
This division being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.
88 Acts, ch 1207, §3
C89, §28.133
C93, §15E.133

15E.134 Powers.
The corporation shall, subject to the restrictions and limits contained in this division, have the following powers:
1. To provide letters of credit or guarantees to businesses for any phase of product or business development, not to exceed thirty percent of the total loan amount.
2. To provide equity financing to businesses for any phase of business or product development.
3. To provide loans for businesses in any phase of product or business development when serviced by an Iowa financial institution.
4. To underwrite the public offering of shares by businesses.
5. To request, as a condition of participation or assistance, royalty, equity ownership, or fees, as it determines appropriate, for its assistance.
6. To make contracts and incur liabilities for any of the purposes of the corporation.
7. To borrow money and to issue its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and when necessary to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature, or any part thereof or interest therein, with-

out securing shareholder approval.

8. To do all acts and things necessary or convenient to carry out the powers expressly granted in this division and such other powers not in conflict with this division granted under chapter 490, including the power and authority to sell any and all of the stock or ownership interest of any corporation formed pursuant to this division notwithstanding any contrary provisions or restrictions of this division. Any proceeds of the sale of stock or ownership interest shall be deposited in the strategic investment fund created in section 15.313 to be allocated by the Iowa economic development board to programs for which the assets of the fund may be used.

9. To enter into lending arrangements with state and federal agencies or instrumentalities whereby the corporation may participate in lending operations or secure guarantees or qualify under applicable laws to further state or federal lending programs by becoming a participant therein.

10. To accept broker deposits from financial institutions.

11. To use not more than five percent of its funds for management assistance.

88 Acts, ch 1207, §4
C89, §28.134
C93, §15E.134
98 Acts, ch 1085, §1

15E.135 Stock — limitations.

Capital stock shall be issued only on receipt by the corporation of cash in an amount not less than the par value as may be determined by the board. A shareholder of the corporation shall not be entitled as of right to purchase or subscribe for any unissued or treasury shares of the corporation, and the shareholder shall not be entitled as of right to purchase or subscribe for any bonds, notes, certificates of indebtedness, debentures, or other obligations convertible into shares of the corporation.

88 Acts, ch 1207, §5
C89, §28.135
C93, §15E.135

15E.136 Stockholders' privileges.

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective articles of incorporation, agreements of association, or trust indentures; a person is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bond, security or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owner of said shares to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state.

88 Acts, ch 1207, §6
C89, §28.136
C93, §15E.136

15E.137 Corporation membership.

1. A financial institution is authorized to become a member of the corporation and to make loans to the corporation.

2. A financial institution may request membership in the corporation by making application to the board on forms and in the manner as the board may require and membership shall become effective upon acceptance of the application by the board.

3. Each financial institution which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, mortgage, pledge, or otherwise dispose of, bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, of which it is a member and while owner of such shares to exercise all rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state. The amount of capital stock of the corporation which a member is authorized to acquire is in addition to the amount of capital stock in other corporations which the member may otherwise be authorized to acquire.

88 Acts, ch 1207, §7
C89, §28.137
C93, §15E.137

15E.138 Eligibility to participate.

A financial institution is not eligible to receive benefits from the corporation unless it becomes a shareholder, a member, or both. If, as determined by the president of the corporation, there is an insufficient number of eligible financial institutions to ensure reasonable access by businesses to assistance by the corporation, the board may designate additional eligible financial institutions.

88 Acts, ch 1207, §8
C89, §28.138
C93, §15E.138

15E.139 Loan to the corporation by members.

Each member of the corporation may make loans to the corporation as and when called upon by the corporation to do so on terms and conditions as shall be approved from time to time by the board subject to the following:

1. All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with this section.

2. A loan to the corporation shall not be made if immediately thereafter the total amount of the obligations of the corporation calling for the loan would exceed ten times the amount then paid in on the outstanding capital stock of the corporation.

3. The total amount outstanding at any one time on loans to the corporation made by a member of the corporation when added to the amount of the investment in the capital stock of the corporation held by the member, shall not exceed the lesser of:

a. Twenty percent of the total amount then outstanding on loans to the corporation by all members, including in that total amount outstanding amounts validly called for loan but not yet loaned.

b. The limit, to be determined as of the time the member becomes a member, on the basis of the audited balance sheet of the member at the close of its fiscal year immediately preceding its application for membership, as follows:

(1) Banks and trust companies — five percent of the paid-in capital, surplus, and undivided profits.

(2) Savings and loan associations — two percent of the general reserve account, surplus and undivided profits.

(3) Stock life insurance companies — one percent of capital and unassigned surplus.

(4) Mutual life insurance companies — one percent of the unassigned surplus.

(5) All other insurance companies — one-tenth of one percent of the assets.

(6) Other financial institutions — such limits as may be approved by the board of the business development finance corporation.

4. Each call for loan shall be prorated among the members in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of the member's loan limit, reduced by the balance of outstanding obligations of the corporation to the member and the investment in capital stock of the corporation held by the member at the time of the call.

5. All loans to the corporation by a member shall be evidenced by registered bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable by the registered holder thereof on the books of the corporation.

88 Acts, ch 1207, §9
C89, §28.139
C93, §15E.139

15E.140 Duration of membership.

Membership in the corporation shall be for the duration of the corporation. However, upon written notice given to the corporation five years in advance a member may withdraw from membership in the corporation at the expiration date of the notice. A financial institution may at any time withdraw from membership without such notice in the event of its merger with another financial institution, after commencement of proceedings for voluntary or involuntary dissolution, receivership, or reorganization pursuant to or by operation of federal or state law or in the event of conversion from a state financial institution to a federal financial institution or the reverse. If there shall be a legislative amendment of this division affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation of the corporation which shall not have been approved by the public and private directors within the time set forth and in the manner provided in this division, a member may immediately withdraw from membership upon giving written notice to the corporation not later than ninety days from the effective date of the amendment. A member shall not be obligated to make loans to the corporation pursuant to calls made subsequent to the withdrawal of the member from the corporation.

88 Acts, ch 1207, §10
C89, §28.140
C93, §15E.140

15E.141 Powers of shareholders.

The shareholders of the corporation shall have the following powers of the corporation:

1. Those powers granted in chapter 490 which are not inconsistent with this division.

2. To elect the private directors as provided in this division.

3. To exercise other powers of the corporation as may be conferred on the shareholders by the bylaws.

As to all matters requiring action by the shareholders of the corporation, except as may be otherwise provided in this division, approval of the matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting are entitled. Each shareholder shall have one vote, in person or by proxy, for each share of capital stock held by the shareholder.

88 Acts, ch 1207, §11
C89, §28.141
C93, §15E.141

15E.142 Articles amended.

The articles of incorporation of the corporation may be amended by a majority vote of both the public and private directors. An amendment shall not be made which is inconsistent with this division, authorizes an additional class or classes of shares of capital stock, or eliminates or curtails the authority of the department with respect to the corporation. Without the consent of each of the members affected, an amendment shall not be made which increases the obligation of a member to make loans to the corporation; makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of an outstanding loan of a member to the corporation; affects a member's right to withdraw from

membership, as provided in this division; or affects a member's voting rights, if the member is a shareholder, in the corporation. Within thirty days after a meeting at which amendment of the articles has been adopted, articles of amendment signed and sworn to by the president, secretary, and majority of the directors, setting forth the amendment and the due adoption of them, shall be submitted to the director of the department who shall examine them, and if the director finds that they conform to the requirements of this division, shall certify and endorse the director's approval of them. Thereupon, the articles of amendment shall be filed in the office of the secretary of state in the manner set forth and as provided in chapter 490 and the amendment shall not take effect until the articles of amendment shall have been approved and filed as provided in this section. Within sixty days after the effective date of a legislative amendment affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation, the approval of the legislative amendment shall be voted on by the public and private directors of the corporation at a meeting duly called for that purpose. Within thirty days after any meeting at which a legislative amendment affecting the articles of incorporation of the corporation has been voted on, a certificate filed and sworn to by the secretary or other recording officer of the corporation setting forth the action taken at the meeting with respect to the amendment shall be submitted to the director of the department and upon receipt of the approval shall be filed in the office of the secretary of state.

88 Acts, ch 1207, §12
C89, §28.142
C93, §15E.142

15E.143 Board of directors.

1. The board shall consist of twelve directors, seven of which represent the public and five of which represent the shareholders. The seven public directors consist of:

a. The director of the department.
b. The director of the Iowa finance authority.
c. The superintendent of banking.
d. The superintendent of credit unions.
e. The commissioner of insurance.
f. The treasurer of state.
g. Or the designees of the officials named in paragraphs *"a"* through *"f"*.

2. The director of the department, or the director's designee, shall serve as chairperson of the board.

3. Within sixty days of July 1, 1988, the chairperson shall convene the public directors for the purpose of organizing the corporation under chapter 490.

4. Within sixty days of the completion of the initial stock offering, the chairperson shall convene a meeting of the shareholders for the purpose of the initial election of the private directors. The private directors hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election, and until their successors are elected and qualify unless sooner removed in accordance with the bylaws. A vacancy in the office of a director elected by the shareholders shall be filled by the other directors elected by the shareholders.

5. If stock is not issued and private directors are not elected, all powers of the board shall be exercised by the public directors.

Notwithstanding any provisions of law to the contrary, officers and directors of insurance companies and other financial institutions may be members of the board of the corporation organized for the purposes of this division to which the insurance company or other financial institution may make a loan or may make an investment.

88 Acts, ch 1207, §13
C89, §28.143
91 Acts, ch 267, §314
C93, §15E.143
2001 Acts, ch 61, §9, 10

15E.144 President of the corporation.

The director of the department shall appoint the president of the corporation from the division within the department that administers business financial assistance programs. Administrative and staff support shall be furnished by the department.

88 Acts, ch 1207, §14
C89, §28.144
91 Acts, ch 267, §315
C93, §15E.144

15E.145 Applications for financial assistance.

1. Applications for financial assistance shall be forwarded by a business in conjunction with an eligible financial institution or by a city, county, or local community economic development corporation on behalf of a business, together with an application fee prescribed by the corporation, to the president of the corporation. The president, after preparing the necessary records for the corporation, shall forward each application to the staff of the corporation for an investigation and report concerning the advisability of approving the financial assistance for the business and concerning any other factors found relevant by the corporation. The investigation and report shall include information as deemed necessary by the president.

2. Criteria for assistance shall be developed by the president with approval of the board and consistent with the strategic plan for state economic growth prepared by the Iowa economic development board.

3. The president shall award assistance in consultation with the board upon review and rat-

ing of each application by the staff of the corporation.

4. Appeals of the president's decisions concerning awards of assistance shall be heard by the board. However, the president's decision cannot be reversed except by a majority vote of the directors.

88 Acts, ch 1207, §15
C89, §28.145
C93, §15E.145

15E.146 Earned surplus set aside.

Net earnings and surplus shall be determined by the board, after providing for the reserves as the directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

88 Acts, ch 1207, §16
C89, §28.146
C93, §15E.146

15E.147 Reports to governor and general assembly.

The corporation shall submit annually a record of its operations and condition to the governor and general assembly. The department may request the superintendent of banking to examine the condition of the corporation and submit a report to the department, copies of which shall also be sent to the governor and general assembly.

88 Acts, ch 1207, §17
C89, §28.147
C93, §15E.147

15E.148 State assistance fund.

There is created in the treasurer of state's office a "business development finance corporation assistance fund". The fund shall consist of all appropriations, grants, or gifts received by the treasurer specifically for assistance under this division and moneys allocated from the strategic investment fund created in section 15.313. Moneys in this fund are appropriated to the corporation for the purposes stated in this division. Moneys allocated to this fund for purposes of the capital access program and repayments of moneys or recaptures of awards from the capital access program which remain unobligated at the end of a fiscal year may be returned to the strategic investment fund upon approval of the board of directors of the business development finance corporation.

88 Acts, ch 1207, §18
C89, §28.148
92 Acts, ch 1244, §27
C93, §15E.148

15E.149 Multiple corporations.

The public directors, by a majority vote, may create more than one corporation. Each additional corporation shall be governed by this division. An additional corporation may act as a general partner in a limited partnership under chapter 487.

89 Acts, ch 180, §1
CS89, §28.149
C93, §15E.149

15E.150 and 15E.151 Reserved.

DIVISION XIV

WALLACE TECHNOLOGY TRANSFER FOUNDATION

15E.152 through 15E.155 Repealed by 99 Acts, ch 208, § 73.

15E.156 Executive director — duties. Repealed by 93 Acts, ch 49, § 7.

15E.157 through 15E.159 Repealed by 99 Acts, ch 208, § 73.

15E.160 Science and technology advisory council. Repealed by 99 Acts, ch 208, § 73.

15E.161 Wallace technology transfer foundation fund. Repealed by 99 Acts, ch 208, § 73.

15E.162 through 15E.164 Reserved.

15E.165 Manufacturing technology program — purpose — intent. Repealed by 99 Acts, ch 208, § 73.

15E.166 Regionally based manufacturing technology program. Repealed by 99 Acts, ch 208, § 73.

DIVISION XV

IOWA BUSINESS INVESTMENT CORPORATION

15E.167 and 15E.168 Reserved.

15E.169 through 15E.171 Repealed by 2001 Acts, ch 61, § 19.

15E.172 through 15E.174 Reserved.

DIVISION XVI

PHYSICAL INFRASTRUCTURE ASSISTANCE

15E.175 Physical infrastructure assistance program.

1. The Iowa department of economic development shall establish a physical infrastructure financial assistance program to provide financial assistance for business or community physical infrastructure development or redevelopment projects. Physical infrastructure projects that create the necessary infrastructure for economic success throughout Iowa, that provide the opportunity for the creation of quality, high-wage jobs, and that involve substantial capital investment may be eligible for financial assistance under the program, provided, however, that the project could not be assisted through or eligible for financial assistance from other existing private, local, or state funds or programs. Physical infrastructure development or redevelopment projects include, but are not limited to, projects involving any mode of transportation infrastructure, public works and utilities such as sewer, water, power or telecommunications, physical improvements which mitigate, prevent or eliminate environmental contaminants, and any other project deemed appropriate by the department.

2. A physical infrastructure assistance fund is created within the state treasury under the control of the Iowa department of economic development.

a. The fund shall include any moneys appropriated to the fund by the general assembly, payments of interest earned, recaptures of awards, repayments of moneys loaned or expended from the physical infrastructure assistance program, and any other moneys designated by the department for placement in the fund.

b. The fund shall be used for the following:

(1) To provide reimbursement to the department of natural resources for activities related to physical infrastructure assistance projects under this section.

(2) To provide financial assistance for qualifying projects.

(3) To provide funding for any other purpose consistent with this section and deemed appropriate by the department.

c. Section 8.33 shall not apply to the physical infrastructure assistance fund. Notwithstanding section 12C.7, interest earned on moneys in the fund shall be credited to the fund.

3. The department shall establish procedures and guidelines for the physical infrastructure assistance program and shall proceed in accordance with the following:

a. Consult with and coordinate with the state department of transportation, the department of natural resources, and any other appropriate state agency which is responsible for the development or redevelopment of physical infrastructure in this state to ensure that activities conducted pursuant to this section are consistent with the policies and plans of other state agencies and are coordinated with other physical infrastructure projects.

b. Provide financial assistance in the form of a loan, forgivable loan, loan guarantee, cost-share, indemnification of costs, or any combination of financial assistance deemed by the department to be most efficient in facilitating the physical infrastructure project.

c. Enter into contracts and to sue and be sued. However, the department shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

d. Authorize payment of costs, commissions, attorney fees, consultant fees, and other reasonable expenses from the fund. Expenses may include costs relating to carrying out the duties necessary for insuring or guaranteeing loans, co-sharing or indemnifying costs under the physical infrastructure financial assistance program, and for the recovery of loans insured or guaranteed, costs co-shared or indemnified, or the management of property acquired in connection with such loans or costs.

e. Adopt administrative rules necessary to carry out the provisions of this section.

96 Acts, ch 1218, §52

15E.176 through 15E.180 Reserved.

DIVISION XVII

IOWA CAPITAL INVESTMENT BOARD

15E.181 through 15E.184 Repealed by 2001 Acts, ch 61, § 19.

15E.185 through 15E.190 Reserved.

DIVISION XVIII

ENTERPRISE ZONES

15E.191 Intent.

It is the intent of the general assembly that this division be administered in a manner to promote new economic development in economically distressed areas by encouraging communities to target resources in ways that attract productive private investment.

97 Acts, ch 144, §1

15E.192 Enterprise zones.

1. A county may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating up to one percent of the county area for that purpose. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to chapter 28E regarding the establishment of the enterprise zone. A county may establish more than one enterprise zone.

2. A city with a population of twenty-four thousand or more, as shown by the 2000 certified federal census, may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating one or more contiguous census tracts, as determined in the most recent federal census, or designating other geographic units approved by the department of economic development for that purpose. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated by the state as an economic development enterprise zone. The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the area limitation pursuant to subsection 3. In creating an enterprise zone, a city with a population of twenty-four thousand or more, as shown by the 2000 certified federal census, may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units meet the criteria and the city agrees to being included. The city may establish more than one enterprise zone. Reference in this division to *"city"* means a city with a population of twenty-four thousand or more, as shown by the 2000 certified federal census.

3. *a.* A county or city which meets the distress criteria provided in section 15E.194, Code 2001, may apply to the department for an area to be certified as an enterprise zone at any time prior to July 1, 2003. However, the total amount of land designated as enterprise zones under subsections 1 and 2, and any other enterprise zones certified by the department, excluding those approved pursuant to section 15E.194, subsection 4, shall not exceed in the aggregate one percent of the total county area.

b. An enterprise zone certified by the department shall not be decertified or amended.

c. A county or city may apply to the department for an area to be certified as an enterprise zone at any time prior to July 1, 2005. However, the total amount of land designated as enterprise zones under subsections 1 and 2, and any other enterprise zones certified by the department, excluding those approved pursuant to section 15E.194, subsection 4, shall not exceed in the aggregate one percent of the total county area.

4. An enterprise zone designation shall remain in effect for ten years following the date of certification. Any state or local incentives or assistance that may be conferred must be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration.

97 Acts, ch 144, §2; 98 Acts, ch 1175, §6; 2000 Acts, ch 1213, §3, 4, 10; 2002 Acts, ch 1145, §1

For future amendment striking subsection 3, paragraph a, effective July 1, 2003, see 2002 Acts, ch 1145, §7, 10

Subsection 2 amended

Subsection 3 stricken and former subsection 4 amended and renumbered as 3

Former subsection 5 renumbered as 4

15E.193 Eligible business.

1. A business which is or will be located in an enterprise zone is eligible to receive incentives and assistance under this division if the business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone and if the business meets all of the following:

a. Is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

b. Provides all full-time employees with the option of choosing one of the following:

(1) The business pays eighty percent of both of the following:

(a) The cost of a standard medical insurance plan.

(b) The cost of a standard dental insurance plan or an equivalent plan.

(2) The business provides the employee with a monetarily equivalent plan to the plan provided for in subparagraph (1).

c. Pays an average wage that is at or greater than ninety percent of the lesser of the average county wage or average regional wage, as determined by the department. However, the wage paid

by the business shall not be less than seven dollars and fifty cents per hour.

d. Creates at least ten full-time positions and maintains them for at least ten years. For an existing business in counties with a population of ten thousand or less or in cities with a population of two thousand or less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional jobs to be added in five years. The business shall include in its strategic plan the timeline for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives or assistance will cease immediately.

e. Makes a capital investment of at least five hundred thousand dollars. If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed two hundred fifty thousand dollars, shall be counted toward the capital investment requirement. An existing business that has been operating in the enterprise zone for at least five years is exempt from the capital investment requirement of this paragraph of up to two hundred fifty thousand dollars of the fair market value, as established by an appraisal, of the building and land.

2. In addition to meeting the requirements under subsection 1, an eligible business shall provide the enterprise zone commission with all of the following:

a. The long-term strategic plan for the business which shall include labor and infrastructure needs.

b. Information dealing with the benefits the business will bring to the area.

c. Examples of why the business should be considered or would be considered a good business enterprise.

d. The impact the business will have on other businesses in competition with it.

e. An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

3. If a business has received incentives or assistance under section 15E.196 and fails to maintain the requirements of subsection 1 to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under section 15E.196. The value of state incentives provided under section 15E.196 includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of subsection 1. In addition, a business that fails to maintain the requirements of subsection 1 shall not receive incentives or assistance for each year during which the business is not in compliance.

97 Acts, ch 144, §3; 98 Acts, ch 1175, §7 – 9

15E.193A Alternative eligible business criteria. Repealed by 2002 Acts, ch 1145, § 9.

15E.193B Eligible housing business.

1. A housing business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. An eligible housing business shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to section 15E.194, subsection 4. Sections 15E.193 and 15E.196 do not apply to an eligible housing business qualifying under this section.

2. An eligible housing business under this section includes a housing developer, housing contractor, or nonprofit organization that builds or rehabilitates a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone.

3. The single-family homes and dwelling units which are rehabilitated or constructed by the eligible housing business shall be modest homes or units but shall include the necessary amenities. When completed and made available for occupancy, the single-family homes and dwelling units shall meet the United States department of housing and urban development's housing quality standards and local safety standards.

4. The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business becoming ineligible and subject to the repayment requirements and penalties enumerated in subsection 7.

5. An eligible housing business shall provide the enterprise zone commission with all of the following information:

a. The long-term strategic plan for the housing business which shall include labor and infrastructure needs.

b. Information dealing with the benefits the

housing business will bring to the area.

c. Examples of why the housing business should be considered or would be considered a good business enterprise.

d. An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

e. Information showing the total costs and sources of project financing that will be utilized for the new investment directly related to housing for which the business is seeking approval for a tax credit provided in subsection 6, paragraph *"a"*.

6. An eligible housing business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195 shall receive all of the following incentives and assistance for a period not to exceed ten years:

a. An eligible housing business may claim a tax credit up to a maximum of ten percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone. The new investment that may be used to compute the tax credit shall not exceed the new investment used for the first one hundred forty thousand dollars of value for each single-family home or for each unit of a multiple dwelling unit building containing three or more units. The tax credit may be used to reduce the tax liability imposed under chapter 422, division II, III, or V, or chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Sales, services, and use tax refund for taxes paid by an eligible business including an eligible business acting as a contractor or subcontractor, as provided in section 15.331A.

7. If a business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible housing business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under this section. The value of state incentives provided under this section includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of this section. In addition, a business that fails to maintain the requirements of this section shall not receive incentives or assistance for each year during which the business is not in compliance.

8. The amount of the tax credits determined pursuant to subsection 6, paragraph *"a"*, for each project shall be approved by the department of economic development. The department shall utilize the financial information required to be provided under subsection 5, paragraph *"e"*, to determine the tax credits allowed for each project. In determining the amount of tax credits to be allowed for a project, the department shall not include the portion of the project cost financed through federal, state, and local government tax credits, grants, and forgivable loans.

9. The department of economic development and the department of revenue and finance shall each adopt rules to jointly administer this section.

98 Acts, ch 1179, §1; 2000 Acts, ch 1213, §5 – 8, 10; 2001 Acts, ch 141, §2 – 4, 8; 2002 Acts, ch 1145, §2, 3

2000 amendments to subsections 2, 5, and 6 take effect May 26, 2000, and apply retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1213, §10

2001 amendments to subsection 2 and subsection 6, paragraph a, apply retroactively on and after January 1, 2001; 2001 Acts, ch 141, §8

2001 amendment to subsection 6, paragraph b, is effective May 16, 2001, and applies retroactively to July 1, 1998; 2001 Acts, ch 141, §8

Subsection 1 amended

Subsection 6, paragraph a amended

15E.193C Eligible development business.

1. A development business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. Sections 15E.193, 15E.193B, and 15E.196 do not apply to an eligible development business qualifying under this section.

2. An eligible development business includes a developer or development contractor that constructs, expands, or rehabilitates a building space within a designated enterprise zone with a minimum capital investment of at least five hundred thousand dollars. A development business is eligible to receive incentives and assistance under this section if businesses locating into the building space have not closed or reduced its operation in one area of the state or a city and relocated substantially the same operation in the enterprise zone. An eligible development business is eligible for one, but not both, of the following exemptions to the capital investment requirements:

a. For an eligible development business purchasing a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed two hundred fifty thousand dollars, as determined by the local enterprise zone commission, shall be deducted from the capital investment requirement.

b. For an eligible development business that rehabilitates a building space that has been in an enterprise zone for at least five years, the fair market value as established by an appraisal of the building, not to exceed two hundred fifty thousand dollars, shall be deducted from the capital investment requirement.

3. Upon completion of the construction, expansion, or rehabilitation project by the eligible development business, the building space shall not be occupied by a retail business.

4. An eligible development business shall complete its construction, expansion, or rehabilitation within three years from the time the eligible development business receives approval from the department. The failure to complete construction, expansion, or rehabilitation within three years shall result in the eligible development business becoming ineligible and subject to the repayment requirements and penalties provided in subsection 8.

5. Prior to applying for assistance under this section, an eligible development business shall enter into an agreement with at least one business for purposes of locating the business in all or a portion of the building space for a period of at least five years. Nonretail businesses locating in a building space must create at least ten full-time positions, meet the criteria provided in section 15E.193, subsection 1, paragraphs *"a"*, *"b"*, and *"c"*, and not share common ownership or common management with the development business. A development business shall receive a pro rata share of the total incentives and assistance available to the development business based on the percentage of the building that is leased to nonretail businesses. The department shall determine the procedure for issuing the incentives and assistance on a pro rata basis.

6. An eligible development business shall provide the enterprise zone commission with all of the following information:

a. The long-term strategic plan for the development business which shall include infrastructure needs and a copy of any agreement entered into by the eligible development business as required under subsection 5.

b. Information relating to the benefits the development business will bring to the area.

c. Examples of why the development business should be considered or would be considered a good business enterprise.

d. An affidavit that the development business has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or the violations did not seriously affect public health or safety or the environment.

7. An eligible development business, which has been approved to receive incentives and assistance by the department of economic development pursuant to section 15E.195, shall be eligible to receive all of the following incentives and assistance for a period not to exceed ten years:

a. An eligible development business may claim a tax credit up to a maximum of ten percent of the new investment that is directly related to the construction, expansion, or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities. For purposes of this section, *"new investment"* includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business for the tax year in which the construction, expansion, or rehabilitation is completed. The tax credit may be used to reduce the tax liability imposed under chapter 422, division II, III, or V, or chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

b. Sales, services, and use tax refund, as provided in section 15.331A.

c. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible development business constructs, expands, or rehabilitates property in an enterprise zone. The amount of value added for purposes of this paragraph shall be the amount of the increase in assessed valuation of the property following the construction, expansion, or rehabilitation by the development business in the enterprise zone. If an exemption provided pursuant to this paragraph is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria that further some planning objective established by the city or county enterprise zone commission and approved by the city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible development busi-

ness enters into an agreement with the county or city to construct, expand, or rehabilitate property in an enterprise zone.

8. If a development business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible development business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under this section. The value of state incentives provided under this section includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into an agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of this section. In addition, a business that fails to maintain the requirements of this section shall not receive incentives or assistance for each year during which the business is not in compliance.

9. The department of economic development and the department of revenue and finance shall each adopt rules pursuant to chapter 17A to jointly administer this section.

10. If, within five years of the completion of a construction, expansion, or rehabilitation project, the development business or its successor sells or leases any space to any retail business, the development business shall proportionally refund any tax credits, refunds, or exemptions which were claimed under this section.

11. An approved development business shall submit an annual report to the department of economic development detailing and certifying the number of signed leases, jobs created, and total occupancy of the building. An approved development business shall begin submitting annual reports the year upon approval of the application and shall continue to submit annual reports until incentives and assistance provided pursuant to this section are no longer received by the approved development business.

2001 Acts, ch 141, §5, 8; 2002 Acts, ch 1119, §7; 2002 Acts, ch 1145, §4, 5, 10; 2002 Acts, ch 1175, §99; 2002 Acts, 2nd Ex, ch 1001, §48, 49, 52

2002 amendments to subsections 2 and 5 and striking former subsection 10 apply retroactively to April 30, 2002; 2002 Acts, ch 1145, §10; 2002 Acts, ch 1175, §99

2002 amendment to subsection 7, paragraph a, takes effect June 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, 2nd Ex, ch 1001, §49, 52

Subsections 2 and 5 amended

Subsection 7, paragraphs a and c amended

Subsection 10 stricken and former subsection 11 renumbered as 10

NEW subsection 11

15E.194 Distress criteria.

1. An enterprise zone may be designated by a county which meets at least two of the following criteria:

a. The county has an average weekly wage that ranks among the bottom twenty-five counties in the state based on the 2000 annual average weekly wage for employees in private business.

b. The county has a family poverty rate that ranks among the top twenty-five counties in the state based on the 2000 census.

c. The county has experienced a percentage population loss that ranks among the top twenty-five counties in the state between 1995 and 2000.

d. The county has a percentage of persons sixty-five years of age or older that ranks among the top twenty-five counties in the state based on the 2000 census.

2. An enterprise zone may be designated by a city which meets at least two of the following criteria:

a. The area has a per capita income of twelve thousand six hundred forty-eight dollars or less based on the 2000 census.

b. The area has a family poverty rate of twelve percent or higher based on the 2000 census.

c. Ten percent or more of the housing units are vacant in the area.

d. The valuations of each class of property in the designated area is seventy-five percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

e. The area is a blighted area, as defined in section 403.17.

3. The department of economic development shall certify eligible enterprise zones that meet the requirements of subsection 1 upon request by the county or subsection 2 upon request by the city, as applicable.

4. *a.* A city of any size or any county may designate an enterprise zone at any time prior to July 1, 2010, when a business closure occurs involving the loss of full-time employees, not including retail employees, at one place of business totaling at least one thousand employees or four percent or more of the county's resident labor force based on the most recent annual resident labor force statistics from the department of workforce development, whichever is lower. The enterprise zone may be established on the property of the place of business that has closed and the enterprise zone may include an area up to an additional three miles adjacent to the property. The area meeting the requirements for enterprise zone eligibility under this subsection shall not be included for the purpose of determining the area limitation pursuant to section 15E.192, subsection 3. An eligible housing business under section 15E.193B shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to this subsection.

b. The area included in an enterprise zone designated under this subsection on or after June 1,

2000, may be amended to change the boundaries of the enterprise zone. Such an amendment must be approved by the department within three years of the date the enterprise zone was certified.

97 Acts, ch 144, §4; 2000 Acts, ch 1213, §9, 10; 2002 Acts, ch 1145, §6

Subsections 1, 2, and 4 amended

15E.195 Enterprise zone commission.

1. A county which designates an enterprise zone pursuant to section 15E.194, subsection 1, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone designated pursuant to section 15E.194, subsection 1, to receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall also review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193B. The enterprise zone commission shall also review applications from qualified development businesses requesting to receive incentives or assistance as provided in section 15E.193C. The commission shall consist of nine members. Five of these members shall consist of one representative of the board of supervisors, one member with economic development expertise chosen by the department of economic development, one representative of the county zoning board, one member of the local community college board of directors, and one representative of the local workforce development center. These five members shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that community. A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses located within or requesting to locate within a certified enterprise zone designated pursuant to section 15E.194, subsection 1.

2. A city with a population of twenty-four thousand or more which designates an enterprise zone pursuant to section 15E.194, subsection 2, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance as provided in section 15E.196. The enterprise zone commission shall review applications from qualified housing businesses requesting to receive incentives or assistance as provided in section 15E.193B. The enterprise zone commission shall also review applications from qualified development businesses requesting to receive incentives or assistance as provided in section 15E.193C. The commission shall consist of nine members. Six of these members shall consist of one representative of an international labor organization, one member with economic development expertise chosen by the department of economic development, one representative of the city council, one member of the local community college board of directors, one member of the city planning and zoning commission, and one representative of the local workforce development center. These six members shall select the remaining three members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission. A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. If a city has established an enterprise zone commission prior to July 1, 1998, the city may petition to the department of economic development to change the structure of the existing commission.

3. The commission may adopt more stringent requirements, including requirements related to compensation and benefits, for a business to be eligible for incentives or assistance than provided in sections 15E.193, 15E.193B, and 15E.193C. The commission may develop as an additional requirement that preference in hiring be given to individuals who live within the enterprise zone. The commission shall work with the local workforce development center to determine the labor availability in the area. The commission shall examine and evaluate building codes and zoning in the enterprise zone and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

4. If the enterprise zone commission determines that a business qualifies and is eligible to receive incentives or assistance as provided in section 15E.193B, 15E.193C, or 15E.196, the commission shall submit an application for incentives or assistance to the department of economic development. The department may approve, defer, or deny the application.

5. In making its decision, the commission or department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives or assistance. The commission or department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for incentives or assistance. The commission or department shall also make a good

faith effort to determine the probability that the proposed incentives or assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

However, if the commission or department finds that an eligible business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the eligible business shall not qualify for incentives or assistance under section 15E.193B, 15E.193C, or 15E.196, unless the commission or department finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether an eligible business is eligible for incentives or assistance under section 15E.193B, 15E.193C, or 15E.196, the commission or department shall be exempt from chapter 17A. If requested by the commission or department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and any other information which would assist the commission or department in assessing the nature of any violation.

6. A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department of economic development its compliance with the requirements of section 15E.193, 15E.193B, or 15E.193C.

97 Acts, ch 144, §5; 98 Acts, ch 1175, §12; 98 Acts, ch 1223, §17; 2001 Acts, ch 141, §6, 8; 2002 Acts, ch 1119, §120

2001 amendments apply retroactively on and after January 1, 2001; 2001 Acts, ch 141, §8

Subsection 2 amended

15E.196 Incentives — assistance.

For purposes of determining the incentives or assistance provided in this section, *"eligible business"* means a business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195. The incentives and assistance provided under this division for businesses located in enterprise zones shall be for a period not to exceed ten years and shall include all of the following:

1. *a.* New jobs credit from withholding, as provided in section 15.331.

b. (1) As an alternative to paragraph *"a"*, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs, as defined in section 260E.2, who buy or rent housing located within any certified enterprise zone. A business establishing a housing assistance program shall fund this program through a credit from withholding based on the wages paid to the employees participating in the housing assistance program. An amount equal to one and one-half percent of the gross wages paid by the employer to each employee participating in the housing assistance program shall be credited from the payment made by an employer pursuant to section 422.16. If the amount of the withholding by the employer is less than one and one-half percent of the gross wages paid to the employees, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall deposit the amount of the credit quarterly into a housing assistance fund created by the business out of which the business shall provide employees enrolled in the housing assistance program with down payment assistance or rental assistance.

(2) A business may enter into an agreement with the county or city designating the enterprise zone pursuant to section 15E.194 to borrow initial moneys to fund a housing assistance program. The county or city may appropriate from the general fund of the county or city for the assistance program an amount not to exceed an amount estimated by the department of revenue and finance to be equal to the total amount of credit from withholding for employees determined by the business to be enrolled in the program during the first two years. The business shall pay the principal and interest on the loan out of moneys received from the credit from withholding provided for in subparagraph (1). The terms of the loan agreement shall include the principal amount, the interest rate, the terms of repayment, and the term of the loan. The terms of the loan agreement shall not extend beyond the period during which the enterprise zone is certified.

(3) The employer shall certify to the department of revenue and finance that the credit from withholding is in accordance with an agreement and shall provide other information the department may require.

(4) An employee participating in the housing assistance program will receive full credit for the amount withheld as provided in section 422.16.

2. Sales, services, and use tax refund, as provided in section 15.331A.

3. Investment tax credit, as provided in section 15.333.

4. Research activities credit, as provided in section 15.335.

5. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which

is used in the operation of the eligible business. The amount of value added for purposes of this subsection shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone. If an exemption provided pursuant to this subsection is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria which further some planning objective established by the city or county enterprise zone commission and approved by the eligible city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations in an enterprise zone.

6. Insurance premium tax credit, as provided in section 15.333A.

7. A business eligible to receive incentives and assistance described in this section and located in a building for which incentives and assistance are or have been claimed by an approved development business under section 15E.193C is not eligible to receive the following incentives and assistance:

a. An investment tax credit under subsection 3 for the portion of the investment tax credit that is claimed on the purchase price of land or improvements to real property by an approved development business pursuant to section 15E.193C, subsection 7, paragraph *"a"*.

b. Sales, services, and use tax refund under subsection 2 that is made pursuant to section 15E.193C, subsection 7, paragraph *"b"*.

c. A property tax exemption under subsection 5 for improvements to real property that are exempted from property taxation pursuant to section 15E.193C, subsection 7, paragraph *"c"*.

97 Acts, ch 144, §6; 98 Acts, ch 1175, §13; 98 Acts, ch 1179, §3; 99 Acts, ch 172, §2; 2001 Acts, ch 141, §7, 8

Subsection 7 applies retroactively on and after January 1, 2001; 2001 Acts, ch 141, §8

15E.197 through 15E.200 Reserved.

DIVISION XIX

IOWA AGRICULTURAL INDUSTRY FINANCE ACT

15E.201 Short title.

This division shall be known and may be cited as the *"Iowa Agricultural Industry Finance Act"*.

98 Acts, ch 1207, §2

15E.202 Definitions.

Except as otherwise provided in this division, or unless the context otherwise requires, the words and phrases used in this division shall have the same meaning as the words and phrases used in chapter 490, including but not limited to the words and phrases used in section 490.140. In addition, all of the following shall apply:

1. *"Actively engaged in agriculture"* means to do any of the following:

a. Inspect agricultural operations periodically and furnish at least half the direct cost of the operations.

b. Regularly and frequently make or take an important part in making management decisions substantially contributing to or affecting the success of the agricultural operation.

c. Perform physical work which significantly contributes to agricultural operation.

2. *"Agricultural commodity"* means any unprocessed agricultural product, including livestock as defined in section 717.1, agricultural crops, and forestry products grown, raised, produced, or fed in this state for sale in commercial channels.

3. *"Agricultural operation"* means an operation concerned with the production of agricultural commodities for processing into agricultural processed products.

4. *"Agricultural processed product"* means an agricultural commodity that has been processed for sale in commercial markets.

5. *"Agricultural producer"* means a person who is any of the following:

a. An individual actively engaged in agricultural production.

b. A person other than an individual, if the person is any of the following:

(1) A general partnership in which all the partners are natural persons, and one of the partners is actively engaged in agricultural production.

(2) A family farm entity if any of the following individuals is actively engaged in agricultural production:

(a) A shareholder and an officer, director, or employee of a family farm corporation.

(b) A member or manager of a family farm limited liability company.

(c) A general partner of a family farm limited partnership.

(d) A beneficiary of a family trust.

(3) A networking farmers entity.

6. *"Agricultural product"* means an agricultural commodity or an agricultural processed product.

7. *"Biotechnology enterprise"* means an enterprise organized under the laws of this state using biological techniques for the development of specialized plant or animal characteristics for beneficial nutritional, commercial, or industrial purposes.

8. *"Certified facility"* means a facility used to process agricultural products as certified by a corporation pursuant to section 15E.209.

9. *"Department"* means the department of economic development as created in section 15.101.

10. *"Economic development board"* means the economic development board created pursuant to section 15.103.

11. *"Family farm entity"* means a family farm corporation, family farm limited liability company, family farm limited partnership, or family trust as defined in section 9H.1.

12. *"Iowa agricultural industry finance corporation"* or *"corporation"* means a corporation formed under this division.

13. *"Iowa agricultural industry finance loan"* means a loan made to a qualified Iowa agricultural industry finance corporation pursuant to section 15E.208.

14. *"Iowa agricultural industry venture"* means an enterprise involving any of the following:

a. Agricultural producers investing in a new facility or acquiring or expanding an existing facility in this state which is used to process agricultural commodities produced in this state, if the purpose of the enterprise is to accomplish all of the following:

(1) The creation and retention of wealth in this state derived from processing and marketing agricultural commodities produced in this state.

(2) Increasing production, processing, and marketing of value-added agricultural products in this state.

(3) Providing for a substantial equitable ownership interest in the enterprise by Iowa agricultural producers.

(4) Providing an alternative in this state to corporate vertical integration in the production, processing, and marketing of agricultural products.

b. An agricultural biotechnology enterprise located in this state, if the purpose of research and application of biological techniques conducted by the enterprise is to accomplish all of the following:

(1) The creation and retention of wealth in this state.

(2) Increasing the value of agricultural commodities.

15. *"Loan"* means providing financing to a person under an agreement requiring that the amount in financing be repaid at a maturity date, with an interest rate, and other conditions as specified in the agreement.

16. *"Networking farmers entity"* means the same as defined in section 10.1.

17. *"Qualified investor"* means any of the following:

a. An agricultural producer.

b. A cooperative organized under chapter 501.

c. A networking farmers entity.

18. *"Qualified Iowa agricultural industry finance corporation"* or *"qualified corporation"* means an Iowa agricultural industry financing corporation which meets the eligibility requirements of and is approved by the department pursuant to section 15E.208.

98 Acts, ch 1207, §3; 2002 Acts, ch 1050, §7
Subsection 17, paragraph b amended

15E.203 Findings — intent and purposes.

1. The general assembly finds that this state is in a period when the economic structure of agriculture and the production, processing, and marketing of agricultural products is undergoing a period of rapid transformation.

2. It is the intent of the general assembly and purpose of this division that this state capture the greatest benefit from opportunities created during this period, by encouraging local agricultural producer-led ventures to expand production and processing of high value agricultural products, including agricultural processed products, to organize new business structures within the state to carry out these ventures, and to market and deliver increasingly high value agricultural products to consumers around the world. In carrying out this purpose, state resources provided by this division shall be used to assure all of the following:

a. That the majority of the wealth created by Iowa agricultural productivity is retained in this state.

b. That employment in the production, processing, and marketing of agricultural products, and especially agricultural processed products, is increased in this state.

c. That agricultural producers in this state are provided with an opportunity to acquire a majority ownership interest in Iowa agricultural industry ventures promoted under this division.

d. That this state becomes a world model for agricultural producer-based vertical cooperation which depends upon broadly shared access to information, capital, and cooperative action.

e. That the use of private resources with state incentives establish Iowa as the world leader in responsibly produced agricultural products that meet the needs of consumers throughout the world.

3. It is the intent of the general assembly and the purpose of this division that the state encourage Iowa agricultural industry ventures which promote the research and application of biological techniques for the development of specialized plant or animal characteristics for beneficial nutritional, commercial, or industrial purposes.

98 Acts, ch 1207, §4
Additional legislative findings; 98 Acts, ch 1207, §1

15E.204 Iowa agricultural industry finance corporations — scope of powers and duties.

1. An Iowa agricultural industry finance corporation formed under this division shall be subject to and have the powers and privileges conferred by provisions of chapter 490, unless otherwise limited by or inconsistent with the provisions

of this division.

2. Nothing in this division requires any of the following:

a. That a limited number of Iowa agricultural industry finance corporations are authorized to be formed. However, the department may strictly interpret and apply the requirements of this division in determining whether a corporation is a qualified corporation under section 15E.208.

b. That a corporation be organized on a cooperative basis, including structured, organized, or operated pursuant to 26 U.S.C. § 1381(a).

c. That a corporation is restricted from holding, acquiring, or transferring financial or security instruments, including but not limited to a security regulated under chapter 502, money, accounts, and chattel paper under chapter 554, security interests under chapter 554, or a mortgage or deed of trust under chapter 654.

3. An Iowa agricultural industry finance corporation is a private business corporation and not a public corporation or instrumentality of the state. Except as provided in this division, nothing in this division exempts an Iowa agricultural industry finance corporation from the same requirements under state law which apply to other corporations organized under chapter 490, including taxation provisions under chapter 422 or Title X, subtitle 2 of this Code, or security regulations under chapter 502.

98 Acts, ch 1207, §5

15E.205 Iowa agricultural industry finance corporations — requirements.

1. A corporation incorporated under chapter 490 is an Iowa agricultural industry finance corporation if the corporation complies with the requirements of this section and section 15E.206. In addition to the other requirements for a corporation organized under chapter 490, all of the following shall apply:

a. Agricultural producers must hold at least fifty-one percent of the corporation's common stock and at least fifty-one percent of the corporation's voting stock. The status of an agricultural producer shall be determined at the time of the transfer of stock from the corporation to the shareholder in a manner and as provided in the corporation's articles of incorporation or bylaws.

b. A director of the corporation's board of directors shall not serve for more than seven consecutive years as a board director.

c. The purpose of the corporation must be limited to providing financing to eligible persons under section 15E.209 who are engaging in Iowa agricultural industry ventures limited to establishing a business structure in which agricultural producers produce agricultural commodities for processing and marketing as agricultural processed products.

2. The requirements of this section shall be memorialized in the corporation's articles of incorporation.

98 Acts, ch 1207, §6; 99 Acts, ch 66, §1

15E.206 Formation of an Iowa agricultural industry finance corporation.

1. This section authorizes the formation of Iowa agricultural industry finance corporations in order to perfect the manner in which such corporations are formed and operate. Such a corporation is a private business corporation and not a public corporation or instrumentality of the state. The corporation shall not enjoy any of the privileges nor be required to comply with any of the requirements of a state agency.

2. In facilitating the formation of an Iowa agricultural industry finance corporation, the following persons shall serve as incorporators as provided in section 490.201:

a. The chairperson of the economic development board or a designee of the chairperson.

b. The director of the department of economic development, or a designee of the director.

c. The secretary of agriculture or a designee of the secretary.

3. *a.* After incorporation, such a corporation shall be organized by an initial board of directors as provided in chapter 490, division II. The initial board of directors shall be elected by the members of an appointment committee. The members of the appointment committee shall be appointed by the economic development board. The initial board of directors shall consist of seven members. The members of the appointment committee shall include persons who have an expertise in areas of banking, agricultural lending, business development, agricultural production and processing, seed and venture capital investment, and other areas of expertise as deemed appropriate by the interim board of directors.

b. The members of the appointment committee shall exercise due care to assure that persons appointed to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this division, including in areas related to agricultural lending, commercial banking, and investment management.

c. Upon the election of the initial board of directors, the terms of the members of the appointment committee shall expire.

d. The department shall assist the incorporators and the appointment committee in any manner determined necessary and appropriate by the economic development board and the director of the department in order to administer this section.

98 Acts, ch 1207, §7

15E.207 Iowa agricultural industry finance corporations — guiding principles.

In carrying out its duties and exercising its powers under this division, an Iowa agricultural industry finance corporation shall be guided by the following principles:

1. The corporation must exercise diligence and care in the selection of persons and projects to receive financing as provided in section 15E.209. The corporation must apply customary and acceptable business and lending standards and practices in selecting persons and projects designated for financing and managing agreements under which financing is provided.

In selecting projects to receive financing, it is the intent of the general assembly that the corporation seek projects with wage, benefit, and work safety plans which improve the quality of employment in the state and which would not displace employees of existing Iowa agricultural industry ventures.

2. Except as otherwise provided in this section, the corporation shall not become an owner of real or depreciable property, including agricultural land, as provided in section 9H.4. However, this subsection shall not preclude the corporation from holding an interest in real or depreciable property if any of the following apply:

a. The corporation holds nonagricultural property for purposes of carrying out the management of its corporate affairs, including office space, furniture, and supplies.

b. The corporation holds an interest in real or depreciable property on a temporary basis, and any of the following apply:

(1) The interest is a bona fide encumbrance taken for purposes of security in connection with providing financing under section 15E.209.

(2) The interest is acquired by operation of law, including by any of the following:

(a) Devise or bequest.

(b) Court order.

(c) Dissolution under chapter 490, division XIV.

(d) Order in bankruptcy.

(e) Pursuant to a proceeding to enforce a debt against real property under chapter 654, to forfeit a contract to purchase real property under chapter 656, to enforce a secured interest in real or depreciable property under chapter 554, or to otherwise garnish, levy on, execute on, seize, or attach real or depreciable property in the collection of debts, or by any procedure for the enforcement of a lien or claim.

(3) The interest is acquired in order to facilitate a transfer between persons pursuant to a transaction authorized under this division.

98 Acts, ch 1207, §8

15E.208 Qualified corporations — Iowa agricultural industry finance loans.

1. The department may award an Iowa agricultural industry finance loan to an Iowa agricultural industry finance corporation if the department in its discretion determines that the corporation is qualified under this section.

2. The corporation must apply for an Iowa agricultural industry finance loan on forms and according to procedures required by the department.

3. The department shall loan all of the amounts available to the department pursuant to this division to a qualified corporation with provisions and restrictions as determined by the department and contained in a loan agreement executed between the department and the qualified corporation.

a. The department may attach conditions to the granting of the loan as it deems desirable, including any restrictions on the subordination of the moneys loaned. The attorney general shall assist the department in drafting loan agreements and in collecting on the loan agreement.

b. The loan shall be repayable upon terms and conditions negotiated by the parties. The repayment period shall begin six years following the date when the loan is awarded and end twenty-five years after the date that the repayment period begins. At least four percent of the amount due shall be paid each year to the department. The corporation shall not be subject to a prepayment penalty.

c. The corporation shall not expend moneys originating from the state, including moneys loaned under this section, on political activity or on any attempt to influence legislation.

4. A corporation shall not provide financing to support a person who is any of the following:

a. An agricultural producer, if any of the following applies:

(1) The agricultural producer is a party to a pending action for a violation of chapter 455B or 459, subchapters II and III, concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) The agricultural producer or a confinement feeding operation in which the agricultural producer holds a controlling interest is classified as a habitual violator under section 459.604.

b. An agricultural products processor, if the processor or a person owning a controlling interest in the processor has demonstrated, within the most recent consecutive three-year period prior to the application for financing, a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Viola-

tions of environmental protection statutes, rules, or regulations shall be reported for the most recent five-year period prior to application. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of workforce development pursuant to chapter 84A, or rules enforced by the department of natural resources pursuant to chapter 455B or 459, subchapters II and III.

c. A member of the economic development board, an employee of the department of economic development, an elected state official, or any director or other officer or an employee of the corporation.

5. In order to be eligible as a qualified Iowa agricultural industry finance corporation, all of the following conditions must be satisfied:

a. The corporation must only provide financing to persons and ventures eligible under section 15E.209.

b. The corporation must demonstrate that it complies with guiding principles for the corporation as provided in section 15E.207.

c. The corporation must adopt policies and procedures which maximize public oversight into the affairs of the corporation, by providing a forum for public comment, an opportunity for public review of the corporation's actions, and methods to ensure accountability for the expenditure of public moneys loaned to the corporation.

d. The corporation's articles of incorporation must comply with requirements established by the department relating to the capacity and integrity of the corporation to carry out the purposes of this division, including but not limited to all of the following:

(1) The capitalization of the corporation.

(2) The manner in which financing is provided by the corporation, including the manner in which an Iowa agricultural industry finance loan can be used by the corporation.

(3) The composition of the corporation's board of directors. The board must be composed of persons knowledgeable in Iowa agricultural industries including a representative number of individuals experienced and knowledgeable in financing new agricultural industries.

(4) The manner of oversight required by the department or the auditor of state. The articles must provide that the corporation shall submit a report to the governor, the general assembly, and the department. The report shall provide a description of the corporation's activities and a summary of its finances, including financial awards. The report shall be submitted not later than January 10 of each year. The articles shall provide that an audit of the corporation must be conducted each year for the preceding year by a certified public accountant licensed pursuant to chapter 542. The auditor of state may audit the books and accounts of the corporation at any time. The results of the annual audit and any audit for the current year conducted by the auditor of state shall be included as part of the report.

(5) The execution of an agreement between the corporation and an eligible recipient as required by the department as a condition of providing financing, in which the eligible recipient agrees to become a shareholder in the corporation. If the eligible recipient is an agricultural producer as provided in section 15E.209, the agreement shall provide that the agricultural producer becomes a shareholder of voting common stock in the corporation equal to at least five percent of the financing provided to the agricultural producer pursuant to the agreement. The agreement shall be for a period of not less than ten years. An agreement shall at least provide all of the following:

(a) The establishment of a common stock pricing system. The stock shall be frozen against price appreciation for the first five years of the life of the corporation. The articles shall contain waivers for death and disability.

(b) The maintenance of stock ownership by an eligible recipient until a financial assistance obligation due the corporation is satisfied.

(c) A requirement that the par value of participating common stock be established prior to providing financial assistance to an eligible recipient.

e. To the extent feasible and fiscally prudent, the corporation must maintain a portfolio which is diversified among the various types of agricultural commodities and agribusiness.

f. Not more than seventy-five percent of moneys originating from the state, including moneys loaned to the corporation pursuant to this section, may be used to finance any one Iowa agricultural industry venture.

g. The corporation may only be terminated by the following methods, unless approved by the department:

(1) Merger or share exchange under chapter 490, division XI.

(2) Dissolution as provided in chapter 490, division XIV, part A.

(3) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

6. The department shall provide for the default of the loan if the qualified corporation does any of the following:

a. Violates a provision of the articles of incorporation or an amendment to the articles of incor-

poration that is required by this division which violation is not approved by the department.

b. Violates the terms of the loan agreement executed between the department and the corporation, which violation is not approved by the department.

c. Fails to comply with the requirements of section 15E.205.

d. Completes a transaction, if all of the following apply:

(1) The transaction involves any of the following:

(a) A merger or share exchange under chapter 490, division XI.

(b) The sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(2) The surviving entity of a merger or share exchange, or the entity acquiring the assets of the corporation fails to meet the requirements of section 15E.205.

7. In an action to enforce a judgment against a qualified corporation, the interest of the state shall be subrogated to the interests of holders of bonds issued by the corporation.

8. Moneys repaid or collected by the department under this section shall be deposited into the road use tax fund created pursuant to section 312.1.

98 Acts, ch 1207, §9; 99 Acts, ch 66, §2; 2000 Acts, ch 1058, §6; 2001 Acts, ch 55, §20, 38; 2002 Acts, ch 1162, §29

2001 amendment to subsection 5, paragraph d, subparagraph (4), takes effect July 1, 2002; 2001 Acts, ch 55, §38

Subsection 4, paragraph b amended

Subsection 5, paragraph d, subparagraph (4) amended

15E.209 Financing provided by an Iowa agricultural industry finance corporation.

1. An Iowa agricultural industry finance corporation may only provide financing to a person determined eligible by the corporation according to requirements of the corporation and this section. At a minimum, an eligible person must be one of the following:

a. An agricultural producer participating in an Iowa agricultural industry venture as provided according to the terms of an agreement executed by the agricultural producer and the corporation. The agreement may require that the agricultural producer acquire an interest in an agricultural products processor certified by the corporation, or enter into a marketing agreement under which the agricultural producer agrees to market an amount of the agricultural producer's agricultural commodities to the agricultural products processor.

b. An agricultural products processor which participates as part of an Iowa agricultural industry venture as provided according to the terms of an agreement executed by the agricultural products processor and the corporation. The corporation shall only provide financing if the venture involves the construction, expansion, or acquisition of an agricultural products processing facility as certified by the corporation and if all of the following apply:

(1) The certified facility must be located in this state.

(2) Either of the following apply:

(a) More than fifty percent of the ownership interest in the certified facility must be held by qualified investors. If the certified facility is owned by an entity rather than by individuals, more than fifty percent of the interest in the entity and more than fifty percent of the voting interest in the entity must be held by qualified investors.

(b) More than fifty percent of the commodities processed by the certified facility during any twelve-month period is produced in this state. However, the corporation may provide financing, if its board of directors determines that adequate supplies of the commodity are not available for processing as otherwise required in this subparagraph subdivision.

c. An agricultural biotechnology enterprise which qualifies as an Iowa agricultural industry venture as provided according to the terms of an agreement executed by the agricultural biotechnology enterprise and the corporation, if the board of directors for the corporation determines that the enterprise would advance the intent and purposes set out in section 15E.203.

2. Financing may be in the form of a loan, loan guarantee, sale and purchase of mortgage instruments for eligible recipients, or other similar forms of financing. The financing shall be awarded pursuant to an agreement between the corporation and the eligible person.

3. A corporation shall not provide financing to support an outstanding debt or other obligation, regardless of whether the original financing was provided by a corporation.

98 Acts, ch 1207, §10

15E.210 Obligations.

The obligations of the corporation are not obligations of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds. The corporation shall not pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except

for those of the corporation.
98 Acts, ch 1207, §11

15E.211 Rules.
The department may adopt rules pursuant to chapter 17A necessary to administer this division.
98 Acts, ch 1207, §12

CHAPTER 15F

COMMUNITY ATTRACTION AND TOURISM DEVELOPMENT

Legislative intent relating to continuation of prior statutes, nonreversion of funds, and continuation of prior awards; 2000 Acts, ch 1174, §31

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SUBCHAPTER I

VISION IOWA BOARD

15F.101 Definitions.
As used in this chapter, unless the context otherwise requires:
1. *"Board"* means the vision Iowa board as created in section 15F.102.
2. *"Department"* means the Iowa department of economic development created in section 15.105.
2000 Acts, ch 1174, §1

15F.102 Vision Iowa board.
1. The vision Iowa board is established consisting of thirteen members and is located for administrative purposes within the department. The director of the department shall provide office space, staff assistance, and necessary supplies and equipment for the board. The director shall budget funds to pay the compensation and expenses of the board. In performing its functions the board is performing a public function on behalf of the state and is a public instrumentality of the state.
2. The membership of the board shall be appointed as follows:
a. Three members of the general public, one member from each of the three tourism regions.
b. One mayor of a city with a population of less than twenty thousand.
c. One county supervisor from a county that has a population ranking in the bottom thirty-three counties according to the 1990 census.
d. Four members of the general public.
e. One mayor of a city with a population of twenty thousand or more.
f. The director of the department of economic development.
g. The treasurer of state or the treasurer of state's designee.
h. The auditor of state or the auditor of state's designee.
3. All appointments, except the director of the department of economic development, the treasurer of state, and the auditor of state, shall be made by the governor, shall comply with sections 69.16 and 69.16A, and shall be subject to confirmation by the senate. All appointed members of the board shall have demonstrable experience or expertise in the field of tourism development and promotion, public financing, architecture, engineering, or major facility development or construction.

4. All members of the board, except the director of the department of economic development, the treasurer of state, and the auditor of state, shall be residents of different counties.

5. The chairperson and vice chairperson of the board shall be designated by the governor from the board members listed in subsection 2, paragraphs *"a"* through *"e"*. In case of the absence or disability of the chairperson and vice chairperson, the members of the board shall elect a temporary chairperson by a majority vote of those members who are present and voting.

6. The members, except the director of the department of economic development, the treasurer of state, and the auditor of state, shall be appointed to three-year staggered terms and the terms shall commence and end as provided by section 69.19. If a vacancy occurs, a successor shall be appointed to serve the unexpired term. A successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term.

7. A majority of the board constitutes a quorum.

2000 Acts, ch 1174, §2

15F.103 Board duties.

The board shall do all of the following:

1. Organize.

2. Establish the vision Iowa program and the community attraction and tourism program.

3. Oversee and provide approval of the administration of the vision Iowa program and the community attraction and tourism program by the department.

4. Request the treasurer of state to issue bonds on behalf of the board for purposes of the vision Iowa program.

2000 Acts, ch 1174, §3

15F.104 Department duties.

The department, subject to approval by the board, shall adopt administrative rules pursuant to chapter 17A necessary to administer the community attraction and tourism program and the vision Iowa program. The department shall provide the board with assistance in implementing administrative functions, marketing the programs, providing technical assistance and application assistance to applicants under the programs, negotiating contracts, and providing project follow-up. The department, in cooperation with the treasurer of state, may conduct negotiations on behalf of the board with applicants regarding terms and conditions applicable to awards under the programs.

2000 Acts, ch 1174, §4

15F.105 Compensation and expenses.

The members of the board are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties. A member of the board may also be eligible to receive compensation as provided in section 7E.6.

2000 Acts, ch 1174, §5

15F.106 Benefits.

Any applicant awarded financial assistance by the board under both the vision Iowa program established in section 15F.302 and the community attraction and tourism program established in section 15F.202 shall provide and pay at least fifty percent of the cost of a standard medical insurance plan for all full-time employees working at the project after the completion of the project for which financial assistance was received.

2000 Acts, ch 1174, §6

SUBCHAPTER II

COMMUNITY ATTRACTION AND TOURISM PROGRAM AND FUND

15F.201 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Fund"* means the community attraction and tourism fund created in section 15F.204.

2. *"Program"* means the community attraction and tourism program established in section 15F.202.

2000 Acts, ch 1174, §7

15F.202 Community attraction and tourism program.

1. The board shall establish and the department, subject to direction and approval by the board, shall administer a community attraction and tourism program to assist communities in the development and creation of multiple-purpose attraction or tourism facilities.

2. A city or county in the state or public organization may submit an application to the board for financial assistance for a project under the program. The assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancement and financing instruments. The application shall include, but not be limited to, the following information:

a. The total capital investment of the project, including but not limited to costs for construction, site acquisition, and infrastructure improvement.

b. The amount or percentage of local and private matching moneys which will be or have been provided for the project.

c. The total number of jobs to be created or retained by the project.

d. The need of the community for the project and for the financial assistance.

e. The long-term tax-generating impact of the

project.

3. A school district, in cooperation with a city or county, may submit a joint application for financial assistance for a project under the program. The assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancement and financing instruments. In addition to the information required in subsection 2, the application shall include a demonstration that the intended future use of the project shall be by both joint applicants.

2000 Acts, ch 1174, §8; 2001 Acts, ch 185, §37, 38, 49

15F.203 Community attraction and tourism program application review.

1. Applications for assistance under the program shall be submitted to the department. For those applications that meet the eligibility criteria, the department shall provide a staff review analysis and evaluation to the community attraction and tourism program review committee referred to in subsection 2 and the board.

2. A review committee composed of five members of the board shall review community attraction and tourism program applications submitted to the board and make recommendations regarding the applications to the board. The review committee shall consist of members of the board listed in section 15F.102, subsection 2, paragraphs *"a"* through *"c"*.

3. When reviewing the applications, the review committee and the department shall consider, at a minimum, all of the following:

a. Whether the wages, benefits, including health benefits, safety, and other attributes of the project would improve the quality of life or the quality of attraction or tourism employment in the community.

b. The extent to which such a project would generate additional recreational and cultural attractions or tourism opportunities.

c. The ability of the project to produce a long-term, tax-generating economic impact.

d. The location of the projects and geographic diversity of the applications.

e. The project is primarily a vertical infrastructure project with demonstrated substantial regional or statewide economic impact. For purposes of the program, *"vertical infrastructure"* means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. *"Vertical infrastructure"* does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

f. Whether the applicant has received financial assistance under the program for the same project.

g. The extent to which the project has taken the following planning principles into consideration:

(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

(2) Provision for a variety of transportation choices, including pedestrian traffic.

(3) Maintenance of a unique sense of place by respecting local cultural and natural environmental features.

(4) Conservation of open space and farmland and preservation of critical environmental areas.

(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

4. Upon review of the recommendations of the review committee, the board shall approve, defer, or deny the applications.

5. Upon approval of an application for financial assistance under the program, the board shall notify the treasurer of state regarding the amount of moneys needed to satisfy the award of financial assistance and the terms of the award. The treasurer of state shall notify the department anytime moneys are disbursed to a recipient of financial assistance under the program.

2000 Acts, ch 1174, §9

15F.204 Community attraction and tourism fund.

1. A community attraction and tourism fund is created as a separate fund in the state treasury under the control of the board, consisting of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the board for placement in the fund.

2. Payments of interest, repayments of moneys loaned pursuant to this subchapter, and recaptures of grants or loans shall be deposited in the fund.

3. The fund shall be used to provide assistance only from funds, rights, and assets legally available to the board in the form of grants, loans, forgivable loans, and credit enhancements and financing instruments under the community attraction and tourism program established in section 15F.202. An applicant under the community attraction and tourism program shall not receive financial assistance from the fund in an amount exceeding fifty percent of the total cost of the project.

4. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

5. At the beginning of each fiscal year, the board shall allocate all moneys in the fund in the following manner:

a. One-third of the moneys shall be allocated to provide assistance to cities and counties which meet the following criteria:

(1) A city which has a population of ten thousand or less according to the most recently published census.

(2) A county which has a population that ranks in the bottom thirty-three counties according to the most recently published census.

b. Two-thirds of the moneys shall be allocated to provide assistance to any city and county in the state, which may include a city or county included under paragraph *"a"*.

6. If two or more cities or counties submit a joint project application for financial assistance under the program, all joint applicants must meet the criteria of subsection 5, paragraph *"a"*, in order to receive any moneys allocated under that paragraph.

7. If any portion of the allocated moneys under subsection 5, paragraph *"a"*, has not been awarded by April 1 of the fiscal year for which the allocation is made, the portion which has not been awarded may be utilized by the board to provide financial assistance under the program to any city or county in the state.

2000 Acts, ch 1174, §10; 2001 Acts, ch 185, §39, 49

SUBCHAPTER III

VISION IOWA PROGRAM

15F.301 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Fund"* means the vision Iowa fund created in section 12.72.

2. *"Program"* means the vision Iowa program established in section 15F.302.

2000 Acts, ch 1174, §11

15F.302 Vision Iowa program.

1. The board shall establish and the department, subject to direction and approval by the board, shall administer a vision Iowa program to assist communities in the development of major tourism facilities.

2. A city or county or a public organization in the state may submit an application to the board for financial assistance for a project under the program. For purposes of this subsection, *"public organization"* means a nonprofit economic development organization or other nonprofit organization that sponsors or supports community or tourism attractions and activities. The financial assistance from the fund shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, pledges, and credit enhancements and financing instruments. The application shall include, but not be limited to, the following information:

a. The total capital investment of the project, including but not limited to costs for construction, site acquisition, and infrastructure improvement.

b. A description of the proposed financing including the amount or percentage of local and private matching moneys to be provided for the project.

c. The total number of jobs to be created or retained by the project.

d. The need of the community for the project and for financial assistance.

e. The long-term, tax-generating impact of the project.

f. A discussion of how the project meets other criteria established in this subchapter.

g. The projected long-term economic viability of the project, including projected revenues and expenses.

3. A school district, in cooperation with a city or county, may submit a joint application for financial assistance for a project under the program. The financial assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancements and financing instruments. In addition to the information required in subsection 2, the application shall include a demonstration that the intended future use of the project shall be by both joint applicants.

2000 Acts, ch 1174, §12; 2001 Acts, ch 185, §40, 41, 49

15F.303 Eligibility.

1. The total cost for a project must be at least twenty million dollars in order for an applicant to receive financial assistance under the program. An applicant or the board may divide a proposed project into component parts. The board may choose to provide financial assistance under the program to one or more component parts instead of providing financial assistance under the program for the entire project.

2. An applicant must demonstrate financial and nonfinancial support for the project which may be from a public or private source. Nonfinancial support may include, but is not limited to, the value of labor and services, real and personal property donated for purposes of the project, and the use of real and personal property for purposes of the project. The financial and nonfinancial support for the project described under this subsection shall equal at least fifty percent of the total cost of the project.

3. In order for a project to be eligible to receive financial assistance, the project must satisfy all of the following criteria:

a. The project is primarily a vertical infrastructure project with demonstrated substantial regional or statewide economic impact. For purposes of the program, *"vertical infrastructure"*

means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. *"Vertical infrastructure"* does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

b. The project supports or is strategically aligned with other existing regional or statewide cultural, recreational, entertainment, or educational activities.

c. The project provides benefits to persons living outside the county in which the project is located or to persons living outside the state.

d. The project will increase the diversity of activities available to citizens, workers, families, and tourists, and enhance recruitment and retention of young people as residents.

e. The project has economic or other obstacles impeding local financing of the project.

4. The board shall not approve an application for assistance for any of the following purposes:

a. To refinance a loan existing prior to the initial application date.

b. For a project that has previously received assistance under the program, unless the applicant demonstrates that the assistance would be used for a significant expansion of a project.

2000 Acts, ch 1174, §13

15F.304 Vision Iowa program application review.

1. Applications for assistance under the program shall be submitted to the department. For those applications that meet the eligibility criteria, the department shall provide a staff review and evaluation to the vision Iowa program review committee referred to in subsection 2 and the board.

2. A review committee composed of eight members of the board shall review vision Iowa program applications submitted to the board and make recommendations regarding the applications to the board. The review committee shall consist of members of the board listed in section 15F.102, subsection 2, paragraphs *"d"* through *"h"*.

3. When reviewing the applications, the review committee and the department shall consider, in addition to other criteria established in this subchapter, all of the following:

a. Whether wages, benefits, including health benefits, safety, and other attributes of the project would improve the quality of other existing regional or statewide cultural, recreational, entertainment, and educational activities or employment in the community.

b. The extent to which the project would generate additional attraction and tourism opportunities.

c. The ability of the project to produce a long-term, tax-generating economic impact in excess of the proposed financial assistance from the vision Iowa fund.

d. The geographic diversity of the project in combination with other proposed projects.

e. The investment of the city, county, or region in the overall project.

f. Other funding mechanisms.

g. The long-term economic viability of the project.

h. The extent to which the project has taken the following planning principles into consideration:

(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

(2) Provision for a variety of transportation choices, including pedestrian traffic.

(3) Maintenance of a unique sense of place by respecting local cultural and natural environmental features.

(4) Conservation of open space and farmland and preservation of critical environmental areas.

(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

4. Upon review of the recommendations of the review committee, the board shall approve, defer, or deny the applications. If an application is approved, the board may enter into an agreement with the applicant to provide financial assistance authorized under section 15F.302.

2000 Acts, ch 1174, §14; 2000 Acts, ch 1232, §44; 2001 Acts, ch 185, §43, 49

CHAPTER 16

IOWA FINANCE AUTHORITY

Duties with respect to Iowa advance funding authority; see §257C.7
This chapter not enacted as a part of this title; transferred from chapter 220 in Code 1993
See §218.95 for provisions pertaining to construction of synonymous terms

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16.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. When used in the context of an assumption of a loan, *"assume"* or *"assumed"* means any type of transaction involving the sale or transfer of an ownership interest in real estate financed by the authority, whether the conveyance involves a transfer by deed or real estate contract or some other device.

2. *"Authority"* means the Iowa finance authority established in section 16.2.

3. *"Bond"* means a bond issued by the authority pursuant to sections 16.26 to 16.30.

4. *"Child foster care facilities"* means the same as defined in section 237.1.

5. *"Cost"* as applied to Iowa small business loan program projects means the cost of acquisition, construction, or both including the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for acquisition, construction, or both. It also means the cost of demolishing or removing structures on acquired land, the cost of access roads to private property, including the cost of land or easements, and the cost of all machinery, furnishings, and equipment, financing charges, and interest prior to and during construction and for no more than eighteen months after completion of construction. Cost also means the cost of engineering, legal expenses, plans, specifications, surveys, estimates of cost and revenues, as well as other expenses incidental to determining the feasibility or practicability of acquiring or constructing a project. It also means other expenses incidental to the acquisition or construction of the project, the financing of the acquisition or construction, including the amount authorized in the resolution of the authority providing for the issuance of bonds, to be paid into any special funds from the proceeds of the bonds, and the financing of the placing of a project in operation.

6. *"Dilapidated"* means decayed, deteriorated, or fallen into partial disuse through neglect or misuse.

7. Reserved.

8. *"Displaced"* means displaced by governmental action, or by having one's dwelling extensively damaged or destroyed as a result of a disaster.

9. *"Division"* means the title guaranty division.

10. *"Elderly families"* means families of low or moderate income where the head of the household or the head's spouse is at least sixty-two years of age or older, or the surviving member of any such tenant family.

11. *"Export business"* means a profit or nonprofit business, including but not limited to, an individual, partnership, corporation, joint venture, association, or cooperative that does international exporting from the state where at least twenty-five percent of the value of the international exports is derived from goods or services whose final

production process occurs in the state.

12. *"Export business finance program"* means the program established under sections 16.121 to 16.125.

13. *a. "Families"* includes but is not limited to families consisting of a single adult person who is primarily responsible for the person's own support, is at least sixty-two years of age, is a person with a disability, is displaced, or is the remaining member of a tenant family.

b. "Families" includes but is not limited to two or more persons living together who are at least sixty-two years of age, are persons with disabilities, or one or more such individuals living with another person who is essential to such individual's care or well-being.

14. Reserved.

15. *"Health care facilities"* means those facilities referred to in section 135C.1, subsection 6, which contain fifteen beds or less.

16. *a. "Housing"* means single family and multifamily dwellings, and facilities incidental or appurtenant to the dwellings, and includes group homes of fifteen beds or less licensed as health care facilities or child foster care facilities and modular or mobile homes which are permanently affixed to a foundation and are assessed as realty.

b. "Adequate housing" means housing which meets minimum structural, heating, lighting, ventilation, sanitary, occupancy, and maintenance standards compatible with applicable building and housing codes, as determined under rules of the authority.

17. *"Housing program"* means any work or undertaking of new construction or rehabilitation of one or more housing units, or the acquisition of existing residential structures, for the provision of housing, which is financed pursuant to the provisions of this chapter for the primary purpose of providing housing for low or moderate income families. A housing program may include housing for other economic groups as part of an overall plan to develop new or rehabilitated communities or neighborhoods, where housing low or moderate income families is a primary goal. A housing program may include any buildings, land, equipment, facilities, or other real or personal property which is necessary or convenient in connection with the provision of housing, including, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities, such as administrative, community, health, recreational, educational, and commercial facilities, as the authority determines to be necessary or convenient in relation to the purposes of this chapter.

18. *"Housing sponsor"* means any individual, joint venture, partnership, limited partnership, trust, corporation, housing cooperative, local public entity, governmental unit, or other legal entity, or any combination thereof, approved by the authority or pursuant to standards adopted by the authority as qualified to either own, construct, acquire, rehabilitate, operate, manage, or maintain a housing program, whether for profit, nonprofit or limited profit, subject to the regulatory powers of the authority and other terms and conditions set forth in this chapter.

19. *"Income"* means income from all sources of each member of the household, with appropriate exceptions and exemptions reasonably related to an equitable determination of the family's available income, as established by rule of the authority.

20. *"International exports"* means goods or services transported or sent from the United States to a foreign country.

21. *"Iowa small business loan program"* or *"loan program"* means the program for lending moneys to small business established under sections 16.61 to 16.65.

22. *"Lower income families"* means families whose incomes do not exceed eighty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area, and includes, but is not limited to, very low income families.

23. *"Low income housing credit"* means the low income housing credit as defined in Internal Revenue Code § 42(a).

24. *"Low or moderate income families"* means families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use, and also includes, but is not limited to, (1) elderly families, families in which one or more persons are persons with disabilities, lower income families and very low income families, and (2) families purchasing or renting qualified residential housing.

25. *"Mortgage"* means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions acceptable to the authority, on a fee interest in real property which includes completed housing located within this state, or on a leasehold on such a fee interest which has a remaining term at the time of computation that exceeds by not less than ten years the maturity date of the mortgage loan.

26. *"Mortgage-backed security"* means a security issued by the authority which is secured by residential mortgage loans owned by the authority.

27. *"Mortgage lender"* means any bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any governmental agency, or any other financial institution authorized to make mortgage loans in this state and includes a financial institution as defined in section 496B.2, subsection 2, which lends moneys for industrial or business purposes.

28. *"Mortgage loan"* means a financial obligation secured by a mortgage.

29. *"Note"* means a bond anticipation note or a housing development fund note issued by the authority pursuant to this chapter.

29A. *"Person with a disability"* means a person who is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment, or a person having a physical or mental impairment which is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions.

30. *"Project"* means real or personal property connected with a facility to be acquired, constructed, improved, or equipped, with the aid of the Iowa small business loan program as provided in sections 16.61 to 16.65. However, for purposes of sections 16.101 through 16.106, *"project"* means as defined in section 16.102.

31. *"Property improvement loan"* means a financial obligation secured by collateral acceptable to the authority, the proceeds of which shall be used for improvement or rehabilitation of housing which is deemed by the authority to be substandard in its protective coatings or its structural, plumbing, heating, cooling, or electrical systems; and regardless of the condition of the property the term *"property improvement loan"* may include loans to increase the energy efficiency of housing or to finance solar or other renewable energy systems for use in that housing.

32. *"Qualified residential housing"* means any of the following:

a. Owner-occupied residences purchased in a manner which satisfies the requirements contained in section 103A of the Internal Revenue Code in order to be financed with tax exempt mortgage subsidy bonds.

b. Residential property qualifying pursuant to section 103(b)(4) of the Internal Revenue Code to be financed with tax exempt residential rental property bonds.

c. Housing for low or moderate income families, elderly families, and families which include one or more persons with disabilities.

33. *"Residential mortgage interest reduction program"* means the program for buying-down interest rates on residential mortgage loans pursuant to sections 16.81 through 16.84.

34. *"Residential mortgage loan"* means a financial obligation secured by a mortgage on a single-family or two-family home.

35. *"Residential mortgage marketing program"* means the program for buying and selling residential mortgage loans and the selling of mortgage-backed securities pursuant to sections 16.71 through 16.73.

36. *"Small business"* means a profit or nonprofit business, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which the following apply:

a. It is not an affiliate or subsidiary of a business dominant in its field of operation.

b. It has either twenty or fewer full-time equivalent positions or not more than the equivalent of three million dollars in annual gross revenues as computed, for the preceding fiscal year or as the average of the three preceding fiscal years.

c. It does not involve the operation of a farm and does not involve the practice of a profession.

"Small business" includes an employee-owned business which has been an employee-owned business for less than three years or which meets the conditions of paragraphs *"a"* through *"c"*.

For purposes of this definition *"dominant in its field of operation"* means having more than twenty full-time equivalent positions and more than three million dollars in annual gross revenues, and *"affiliate or subsidiary of a business dominant in its field of operation"* means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

The authority may, by resolution, waive any or all of the requirements of paragraph *"b"* in connection with a loan to a small business, as defined under applicable federal law and regulations that have been enacted or adopted by April 1, 1983, in which federal assistance, insurance, or guaranties are sought.

37. *"State agency"* means any board, commission, department, public officer, or other agency of the state of Iowa.

38. *"State housing credit ceiling"* means the state housing credit ceiling as defined in Internal Revenue Code § 42(h)(3)(C).

39. *"Title guaranty"* means a guaranty against loss or damage caused by defective title to real property.

40. *"Very low income families"* means families whose incomes do not exceed fifty percent of the median income for the area, with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

The authority shall establish by rule further definitions applicable to this chapter, and clarification of the definitions in this section, as necessary to assure eligibility for funds available under federal housing laws, or to assure compliance with federal tax laws relating to the issuance of tax exempt mortgage subsidy bonds pursuant to Internal Revenue Code § 103A, or relating to the issuance of tax exempt residential rental property bonds for qualified residential housing under Internal Revenue Code § 103, or relating to the allowance of low income credits under Internal Revenue Code § 42.

[C77, 79, 81, §16.1; 81 Acts, ch 76, §1; 82 Acts, ch 1173, §1, 2, ch 1187, §1 – 3]
83 Acts, ch 124, §1, 2; 84 Acts, ch 1281, §1 – 5; 85 Acts, ch 225, §1; 85 Acts, ch 252, §24, 25; 86 Acts, ch 1212, §1; 86 Acts, ch 1245, §840; 87 Acts, ch 125, §1, 2; 87 Acts, ch 141, §1
C93, §16.1
96 Acts, ch 1129, §5 – 8

16.2 Establishment of authority — title guaranty division.

1. The Iowa finance authority is established, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions, to undertake programs which assist in attainment of adequate housing for low or moderate income families, elderly families, and families which include one or more persons with disabilities, and to undertake the Iowa homesteading program, the small business loan program, the export business finance program, and other finance programs. The powers of the authority are vested in and shall be exercised by a board of nine members appointed by the governor subject to confirmation by the senate. No more than five members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent community and housing development industries, housing finance industries, the real estate sales industry, elderly families, minorities, lower income families, very low income families, families which include persons with disabilities, average taxpayers, local government, business and international trade interests, and any other person specially interested in community housing, finance, small business, or export business development.

A title guaranty division is created within the authority. The powers of the division relating to the issuance of title guaranties are vested in and shall be exercised by a division board of five members appointed by the governor subject to confirmation by the senate. The membership of the board shall include an attorney, an abstractor, a real estate broker, a representative of a mortgage-lender, and a representative of the housing development industry. The executive director of the authority shall appoint an attorney as director of the title guaranty division who shall serve as an ex officio member of the board. The appointment of and compensation for the division director are exempt from the merit system provisions of chapter 19A.

a. Members of the board of the division shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person shall not serve on the division board while serving on the authority board. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the division board may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or for other just cause, after notice and hearing, unless notice and hearing is expressly waived in writing.

b. Three members of the board shall constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the division.

c. Members of the board are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

d. Members of the board and the director shall give bond as required for public officers in chapter 64.

e. Meetings of the board shall be held at the call of the chair of the board or on written request of two members.

f. Members shall elect a chair and vice chair annually and other officers as they determine. The director shall serve as secretary to the board.

g. The net earnings of the division, beyond that necessary for reserves, backing, guaranties issued or to otherwise implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state and are subject to subsection 8.

2. Members of the authority shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

3. Five members of the authority constitute a quorum and the affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. Members of the authority are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. Members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two mem-

bers so request.

7. Members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations, or to implement the public purposes and programs herein authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs or activities of the authority, including the power to terminate the authority, except that no law shall ever be passed impairing the obligation of any contract or contracts entered into by the authority to the extent that any such law would contravene Article I, section 21 of the Constitution of the state of Iowa or Article I, section 10 of the Constitution of the United States.

[C77, 79, 81, §220.2; 81 Acts, ch 76, §2]

84 Acts, ch 1281, §6; 85 Acts, ch 252, §26; 87 Acts, ch 141, §2; 88 Acts, ch 1158, §49; 90 Acts, ch 1256, §37, 38

C93, §16.2

96 Acts, ch 1129, §9

Confirmation, see §2.32

16.3 Legislative findings.

The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare, and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious shortage of safe and sanitary residential housing available to low or moderate income families.

4. This shortage is conducive to disease, crime, environmental decline and poverty and impairs the economic value of large areas, which are characterized by depreciated values, impaired investments, and reduced capacity to pay taxes and are a menace to the health, safety, morals and welfare of the citizens of the state.

5. These conditions result in a loss in population and further deterioration, accompanied by added costs to communities for creation of new public facilities and services elsewhere.

6. One major cause of this condition has been recurrent shortages of funds in private channels.

7. These shortages have contributed to reductions in construction of new residential units, and have made the sale and purchase of existing residential units a virtual impossibility in many parts of the state.

8. The ordinary operations of private enterprise have not in the past corrected these conditions.

9. A stable supply of adequate funds for residential financing is required to encourage new housing and the rehabilitation of existing housing in an orderly and sustained manner and to reduce the problems described in this section.

10. It is necessary to create a state finance authority to encourage the investment of private capital and stimulate the construction and rehabilitation of adequate housing through the use of public financing.

11. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

12. The interest costs paid by group homes of fifteen beds or less licensed as health care facilities or child foster care facilities for facility acquisition and indirectly reimbursed by the department of human services through payments for patients at those facilities who are recipients of medical assistance or state supplementary assistance are severe drains on the state's budget. A reduction in these costs obtained through financing with tax-exempt revenue bonds would clearly be in the public interest.

13. There is a need in areas of the state for new construction of certain group homes of fifteen beds or less licensed as health care facilities or child foster care facilities to provide adequate housing and care for elderly Iowans and Iowans with disabilities, and to provide adequate housing and foster care for children.

14. There is a need to provide for early intensive intervention on behalf of juveniles which is designed to meet the juveniles' needs and prevent future antisocial and criminal behavior and there is a need in areas of the state to establish facilities providing residential housing or treatment facilities for juveniles requiring a more enhanced level of services than those services currently available in the state's existing foster care system.

15. The abstract-attorney's title opinion system promotes land title stability for determining the marketability of land titles and is a public purpose. A public purpose will be served by providing, as an adjunct to the abstract-attorney's title opinion system, a low cost mechanism to provide for additional guaranties of real property titles in Iowa. The title guaranties will facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state.

[C77, 79, 81, §220.3; 82 Acts, ch 1187, §4]
83 Acts, ch 96, §157, 159; 85 Acts, ch 252, §27; 90 Acts, ch 1239, §5
C93, §16.3
96 Acts, ch 1129, §10

16.4 Guiding principles.

In the performance of its duties and implementation of its powers, and in the selection of specific programs and projects to receive its assistance, the authority shall be guided by the following principles:

1. The authority shall not become an owner of real property, except on a temporary basis where necessary in order to implement its programs, protect its investments by means of foreclosure or other means, or to facilitate transfer of real property for the use of low or moderate income families.

2. The authority shall function in cooperation with local governmental units and local or regional housing agencies, and in fulfillment of local or regional housing plans, and to that end shall provide technical assistance to local governmental units and local or regional agencies in need of that assistance.

3. A local contributing effort shall be required of each project assisted by the authority. As used in this subsection, *"project"* includes one or more programs authorized under the provisions of this chapter. The local contribution may be provided by local governmental units or by local or regional agencies, public or private. Unless otherwise specified in this chapter, the percentage and type of local contribution shall be determined by the authority, and may include, but should not be limited to, cash match, land contribution, tax abatement, or ancillary facilities. The authority shall encourage ingenuity and creativity in local effort.

4. The authority shall encourage units of local government and local and regional housing agencies to use federal revenue-sharing funds for programs which increase or improve the supply of adequate housing for low or moderate income families.

5. The authority shall encourage cooperative housing efforts at the local level, both with respect to the cooperation of public bodies with private enterprise and civic groups, and with respect to the formation of regional or multicity units engaged in housing.

6. Wherever practicable, the authority shall give preference to the following types of programs:

a. Those which treat housing problems in the context of the total needs of individuals and communities, recognizing that individuals may have other problems and needs closely related to their need for adequate housing, and that the development of isolated housing units without regard for neighborhood and community development tends to create undesirable consequences.

b. Those which promote home ownership by families of low or moderate income, recognizing the need for educational counseling programs in family financial management and home maintenance in order to achieve this goal.

c. Those which involve the rehabilitation and conservation of existing housing units, and the preservation of existing neighborhoods and communities.

d. Those designed to serve elderly families, families which include one or more persons with disabilities, lower income families, or very low income families.

7. The authority shall encourage the protection, restoration and rehabilitation of historic properties, and the preservation of other properties of special value for architectural or esthetic reasons. As used in this subsection, *"historic properties"* means landmarks, landmark sites, or districts which are significant in the history, architecture, archaeology, or culture of this state, its communities, or the nation.

8. The authority shall exercise diligence and care in selection of projects to receive its assistance, and shall apply customary and acceptable business and lending standards in selection and subsequent implementation of such projects.

[C77, 79, 81, §220.4]
C93, §16.4
96 Acts, ch 1129, §113

16.5 General powers.

The authority has all of the general powers needed to carry out its purposes and duties, and exercise its specific powers, including but not limited to the power to:

1. Issue its negotiable bonds and notes as provided in sections 16.26 to 16.30 in order to finance its programs.

2. Sue and be sued in its own name.

3. Have and alter a corporate seal.

4. Make and alter bylaws for its management consistent with the provisions of this chapter.

5. Make and execute agreements, contracts and other instruments, with any public or private entity. All political subdivisions, public housing agencies, other public agencies and state departments and agencies may enter into contracts and otherwise co-operate with the authority.

6. Acquire, hold, improve, mortgage, lease and dispose of real and personal property, including, but not limited to, the power to sell at public or private sale, with or without public bidding, any such property, mortgage loan, or other obligation held by it.

7. Procure insurance against any loss in connection with its operations and property interests.

8. Fix and collect fees and charges for its services.

9. Subject to an agreement with bondholders or noteholders, invest or deposit moneys of the authority in a manner determined by the authority, notwithstanding chapter 12B or 12C.

10. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.

11. Provide technical assistance and counseling related to the authority's purposes, to public and private entities.

12. In cooperation with other local, state or federal governmental agencies, conduct research studies, develop estimates of unmet housing needs, and gather and compile data useful to facilitate decision making.

13. Cooperate in development of, and initiate housing demonstration projects.

14. Contract with architects, engineers, attorneys, accountants, housing construction and finance experts, and other advisors. However, the authority may enter into contracts or agreements for such services with local, state or federal governmental agencies.

15. Through the title guaranty division, make and issue title guaranties on Iowa real property in a form acceptable to the secondary market, to fix and collect the charges for the guaranties and to procure reinsurance against any loss in connection with the guaranties.

16. Provide moneys to the shelter assistance fund created in section 15.349.

17. Make, alter and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A.

[C77, 79, 81, §220.5]
84 Acts, ch 1230, §2; 85 Acts, ch 252, §28
C93, §16.5
97 Acts, ch 201, §17

16.5A Nonprofit corporations.

Any nonprofit corporation created by or in association with the Iowa finance authority since January 1, 1989, shall file a report by January 15 of each year with the chairpersons and ranking members of the appropriate appropriations subcommittees of the general assembly. Any nonprofit corporation created by or in association with the authority since January 1, 1989, shall adopt a written conflict of interests policy.

98 Acts, ch 1225, §33

16.5B Housing corporation board.

The board of directors of the Iowa housing corporation shall consist of seven voting members serving staggered three-year terms. One member of the board of directors shall be a representative of the home builders association of Iowa and one member of the board of directors shall be a representative of the Iowa bankers association.

98 Acts, ch 1225, §34

16.6 Executive director — responsibilities.

1. The governor, subject to confirmation by the senate, shall appoint an executive director of the authority, who shall serve at the pleasure of the governor. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation. The executive director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

2. The executive director shall advise the authority on matters relating to housing and housing finance, carry out all directives from the authority, and hire and supervise the authority's staff pursuant to its directions. All employees of the authority are exempt from the merit system.

3. The executive director, as secretary of the authority, shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. The executive director shall have authority to cause to be made copies of all minutes and other records and documents of the authority and to give certificates under the seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely upon such certificates.

[C77, 79, 81, §220.6]
86 Acts, ch 1237, §10; 88 Acts, ch 1158, §50; 89 Acts, ch 302, §11
C93, §16.6
Confirmation, see §2.32

16.7 Annual report.

1. The authority shall submit to the governor and to the general assembly, not later than January 15 each year, a complete report setting forth:

a. Its operations and accomplishments.

b. Its receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of its fiscal year and the status of reserve, special and other funds.

d. A schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and issued during its fiscal year.

e. A statement of its proposed and projected activities.

f. Recommendations to the general assembly, as it deems necessary.

g. An analysis of current housing needs in the state.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period, in attaining the goals. Where possible, results shall be expressed in terms of housing units.

[C77, 79, 81, §220.7]
C93, §16.7

16.8 Reserved.

16.9 Nondiscrimination and affirmative action.

1. Housing financed or otherwise assisted by the authority, directly or indirectly, shall be open to all persons regardless of race, creed, color, sex, national origin, age, physical or mental impairment, or religion except that preference may be given to elderly families, families which include one or more persons with disabilities, lower income families, or very low income families.

2. The authority shall promote marketing plans to make housing available to all persons without discrimination.

3. The authority shall require adoption and submission of an affirmative action program for employment by all contractors and subcontractors of housing financed or otherwise assisted by the authority.

4. The authority shall require all mortgage lenders who participate in programs financed or otherwise assisted by it to agree that they will not designate certain areas as unsuitable for the making of mortgage loans because of the prevailing income, racial, ethnic, or other characteristics of the inhabitants of the area. This subsection is intended to prohibit all mortgage lenders who participate in authority programs from engaging in the practice commonly known as "redlining".

5. The authority may require mortgage lenders who participate in programs financed or otherwise assisted by the authority to take affirmative action to make mortgage loans in areas with a higher than average concentration of lower-income families or members of racial or ethnic minorities.

[C77, 79, 81, §220.9]
C93, §16.9
96 Acts, ch 1129, §113

16.10 Surplus moneys — loan and grant fund.

1. Moneys declared by the authority to be surplus moneys which are not required to service bonds and notes issued by the authority, to pay administrative expenses of the authority, or to accumulate necessary operating or loss reserves, shall be used by the authority to provide grants, subsidies, and services to lower income families and very low income families through the programs authorized in this chapter or to provide funds for the residential mortgage interest reduction program established pursuant to section 16.81. In addition, the authority may use such surplus moneys to provide assistance to the local housing assistance program established in sections 15.351 through 15.354 for purposes of providing assistance to low and moderate income families. Surplus moneys shall not be used for infrastructure or administration purposes under the local housing assistance program.

2. The authority may establish a loan and grant fund which may be comprised of the proceeds of appropriations, grants, contributions, surplus moneys transferred as provided in this section and repayment of authority loans made from such fund.

[C77, 79, 81, §220.10]
83 Acts, ch 124, §3; 84 Acts, ch 1236, §2; 86 Acts, ch 1245, §841
C93, §16.10
2000 Acts, ch 1071, §1, 2

16.11 Combination programs.

Any programs authorized in this chapter may be combined with any other programs authorized in this chapter or in the Iowa agricultural development Act in order to facilitate as far as practicable the provision of adequate housing to low and moderate income families.

[C77, 79, 81, §220.11]
C93, §16.11

16.12 Property improvement loans and mortgage loans.

1. The authority may make property improvement loans and mortgage loans, including but not limited to mortgage loans insured, guaranteed, or otherwise secured by the federal government or by private mortgage insurers, to housing sponsors to provide financing of adequate housing for low or moderate income families, elderly families, families which include one or more persons with disabilities, child foster care facilities, and health care facilities.

2. A property improvement loan or mortgage loan under this section may be made only when the authority determines that the housing sponsor is unable to obtain the necessary financing from nongovernmental sources upon terms and conditions which the sponsor reasonably could be expected to fulfill.

3. The authority shall make and execute contracts with mortgage lenders for the servicing of property improvement loans and mortgage loans made under this section. The authority may pay the reasonable value of services rendered pursuant to such contracts.

4. Mortgage loans and property improvement loans shall contain terms and provisions including interest rates, and be in a form as established by rules of the authority. The authority shall require the housing sponsor to execute assurances and guarantees reasonably related to protecting the security of the mortgage loan, as the authority deems necessary.

5. In considering an application for a property improvement loan or mortgage loan under this section, the authority shall determine that the

housing will be adequate and provide for the special needs of families of low or moderate income, elderly families, or families which include one or more persons with disabilities, or will meet state standards for health care facilities or child foster care facilities, and shall also give consideration to:

a. The comparative need for housing, child foster care facilities, or health care facilities in the area.

b. The ability of the applicant to operate, manage, and maintain the proposed housing.

6. Each property improvement loan or mortgage loan shall be subject to an agreement between the authority and the housing sponsor which will subject the housing sponsor to limitations established by the authority as to rentals and other charges, builders' and developers' profits and fees, and dispositions of interests in the property mortgaged, including provisions to prohibit assumption of a mortgage without permission of the mortgagee.

7. As a condition of a property improvement loan or mortgage loan, the authority may, upon reasonable notice, during construction or rehabilitation of the housing and during its operation:

a. Enter upon and inspect the physical condition of the premises, examine books and records of the housing sponsor, and impose fees to cover the cost of the inspections and examinations.

b. Require alterations or repairs as necessary to protect the security of its investment and the welfare of the occupants, and to ensure that the housing is in conformity with applicable federal, state, and local laws.

c. Require whatever action is necessary to comply with applicable federal, state, and local laws, and file and prosecute a complaint or seek injunctive relief for a violation of applicable federal, state, or local laws.

8. A property improvement loan or mortgage loan may be prepaid to maturity after a period of years as determined by rule of the authority, if the authority determines that the prepayment will not result in a material escalation of rents or fees charged to the occupants.

9. The authority may require as a condition of a property improvement loan that the improvements to be made therewith shall include bringing the property into compliance with thermal efficiency standards established by the state building code commissioner for existing structures or into compliance with such other thermal efficiency standards as the authority may deem appropriate.

[C77, 79, 81, §220.12; 81 Acts, ch 76, §3; 82 Acts, ch 1187, §5]

C93, §16.12

96 Acts, ch 1129, §113

16.13 Lease-purchase agreements.

In order to encourage eventual home ownership by low or moderate income families who are able to establish home ownership capability by showing regularity of payment and property maintenance, the authority may assist in the provision of housing to such families by means of down payment grants made pursuant to the lease-purchase program.

1. To the extent funds are available, the authority may provide down payment grants on behalf of low and moderate income families to nonprofit sponsors to defray all or part of the down payment on real property that is transferred by such sponsors to such families under the terms of the lease-purchase program.

2. To qualify for a down payment grant, the tenant shall have occupied the property for at least one year, have performed all routine maintenance, and have made all lease or rental payments on time and in full, during the year ending on the date of transfer.

3. Not more than thirty days prior to transfer of a property, an independent appraisal of such property shall be obtained, and the down payment shall not exceed ten percent of the lesser of the appraised value or agreed upon price.

4. Such down payment grant may be collectible in full and immediately by the authority in the following cases, when the beneficiary of the grant has lived in and occupied the property for less than five continuous years.

a. If the purchaser, at any future time, resells the property to a family that is not eligible for assistance under this section.

b. If the property is totally destroyed and insurance settlement is made.

[C77, 79, 81, §220.13]

C93, §16.13

16.14 Iowa homesteading program.

1. The Iowa homesteading program is established under the supervision of the authority to alleviate problems of slums and blighted areas, to provide for rehabilitation of deteriorating housing, and to provide the opportunity to rehabilitate and occupy such housing, to low and moderate income families, all of which are deemed to be public purposes. The authority may establish homesteading projects in any part of the state, subject to approval of the local governing body; and, in cooperation with suitable local agencies, the authority may provide financial and technical assistance to housing sponsors for the establishment and implementation of homesteading projects which meet the requirements of this chapter, and the authority may cooperate with similar local projects to provide housing.

2. Homesteading projects which meet the requirements of this chapter may be designated by the authority as Iowa homesteading projects. The conditional and absolute conveyance of fee simple title to real property, to a homesteading applicant, shall result in the inclusion of such real property in a designated Iowa homesteading project. The

result of such designation shall be the cancellation of back taxes, penalties, interest and costs of the real property pursuant to sections 446.39 and 569.8, notwithstanding any other financial, technical or principal involvement in the property by the authority.

3. The authority may provide property improvement or mortgage loans to facilitate designated Iowa homesteading projects. Such loans may be for the purpose of financing acquisition, improvement or rehabilitation of housing included in a designated homesteading project. Such loans shall be made only upon property for which a conditional conveyance will be granted. The interest rates, security requirements and other terms of such loans shall be established by the authority and shall be as low as practical considering market conditions.

a. The housing sponsor of the designated homesteading project shall agree to:

(1) Approval of homesteading applicants on a first-in-time is first-in-right basis, unless probability of success with a subsequent applicant is substantially higher. In cases of two or more applicants for a single property, priority may be given to a resident of the city or county where the property is located, or to the applicant with the lowest income who is otherwise qualified.

(2) Assistance to approved applicants in seeking and obtaining counseling and financial assistance from appropriate sources during homesteading, and for a period of three years after the date of absolute conveyance.

(3) Conditional conveyance of unoccupied residential property to the applicant with or without any substantial consideration, which consideration may include the value of work performed by the applicant in rehabilitating the property during the period of the conditional conveyance.

(4) Arrangement of local supervision and administration of the designated homesteading project, including announced quarterly inspections of homesteads during rehabilitation.

(5) Revocation of the conditional conveyance, at option of the authority, upon any material breach of the agreement between the housing sponsor and the authority.

(6) Repossession of property, subject to authority approval and upon proper notice and hearing unless waived in writing by the homesteading applicant, for unreasonable failure to complete rehabilitation as agreed upon at the time of conditional conveyance.

(7) Absolute conveyance of fee simple title to the applicant, upon satisfactory completion of rehabilitation and arrangement of mortgage financing from the authority or other institutions, as appropriate.

b. An approved applicant for a designated homesteading project shall:

(1) Agree to rehabilitate the property to meet applicable building or housing code standards within a two-year period after conditional conveyance. However, the two-year period may be extended for just cause.

(2) Agree to live in and occupy the homesteading property for five continuous years from the date of conditional conveyance. Such agreement may be waived by mutual agreement of the authority, the housing sponsor, and the applicant.

c. The authority may:

(1) Encourage homesteading sponsors and participating political subdivisions to coordinate approaches to neighborhood and area wide improvement through upgrading the public services and facilities through a designated Iowa homesteading project.

(2) Recommend legislation to provide appropriate exemptions from real property tax laws for properties included in a designated homesteading project.

(3) Recommend temporary suspension or temporary or permanent modification of building and housing code requirements to the extent necessary to permit safe and economical rehabilitation of housing included in a designated homesteading project.

[C77, 79, 81, §220.14]
C93, §16.14

16.15 Housing assistance for very low income and lower income families.

1. The authority shall participate in the housing assistance payments program under section 8 of the United States Housing Act of 1937, section 1401 et seq., title 42, United States Code, as amended by section 201 of the Housing and Community Development Act of 1974 (Public Law 93-383). The purpose of participation is to enable the authority to obtain, on behalf of the state of Iowa, set-asides of contract authorization reserved by the United States secretary of housing and urban development for public housing agencies, to enter into annual contributions contracts, to otherwise expedite use of the program through the use of state housing finance funds, and to encourage new construction and substantial rehabilitation of housing suitable for assistance under the program. Assistance may be provided for existing housing units made available by owners for the program, as well as for newly constructed housing units. Maximum rents shall be established by the authority in conformity with federal law.

2. To establish maximum eligibility for set-asides the authority shall:

a. Develop and implement procedures which will to the fullest possible extent compliment the allocation system of the United States department of housing and urban development.

b. Evaluate statewide and local housing needs and develop a program to provide housing in areas of most critical need, within its allocation of set-aside contract authority.

c. Comply with all documentation and applica-

tion requirements of the federal law.

3. The authority shall co-operate to the fullest extent possible with local housing agencies for implementation of the housing assistance payments program. The agency may enter into agreements with local housing agencies, housing cooperatives, or other public or private entities for commitment of housing assistance upon completion of an approved proposal, and may subsequently execute with such entities housing assistance payments contracts.

4. Permanent financing for units to be subsidized under the housing assistance payments program may be provided by the authority, directly or indirectly, by the proceeds from the sale of bonds and notes as provided in this Act, or by other moneys available to the authority, by appropriations or otherwise.

5. The authority shall, when appropriate, take necessary steps to co-operate with the United States department of agriculture in implementation of sections 517 and 521 of the Housing Act of 1949, sections 1487 and 1490a, title 42, United States Code, as amended by section 514 of the Housing and Community Development Act of 1974 (Public Law 93-383). The purpose of such programs is to extend to rural areas the provisions of housing assistance payments programs.

6. The authority shall, when appropriate, take necessary steps to participate in the programs of federal assistance to state housing finance agencies for expanding the supply of housing available to low or moderate income families, as provided in section 802 of the Housing and Community Development Act of 1974 (Public Law 93-383).

7. The authority may participate in other programs under the Housing and Community Development Act of 1974 (Public Law 93-383), and in other federal programs designed to increase the supply of adequate housing for low or moderate income families and may recommend appropriate legislation to the general assembly where further legislation is needed to accomplish such participation. However, failure of the authority to participate in the federal programs set out in this section does not invalidate any bonds, notes or other obligations of the authority.

8. The authority shall ensure that moneys allocated to an eligible person administering a program to provide housing assistance under this section shall include moneys necessary to pay for all expenses relating to providing the housing assistance, including administrative expenses. However, not more than twenty percent of the total moneys allocated to a person shall be used for purposes of paying administrative expenses.

[C77, 79, 81, §220.15]
92 Acts, ch 1064, §1
C93, §16.15

16.16 Rent supplements.

1. The authority may establish and administer through local public or private agencies an eighteen month demonstration program of rent supplements designed for very low income and lower income families, to provide for payment of a maximum of the difference between twenty-five percent of an eligible family's income and the fair market rental of a unit of housing, as established by the authority. Eligibility of a housing unit for participation in the demonstration rent supplement program is subject to approval by the authority based on compliance with the definition of adequate housing in this chapter, and agreement by the owner to comply with authority rules pertaining to equal housing opportunity, maintenance, occupancy, and other authority policies. The authority shall, by rule, establish criteria for participation in the demonstration project, based upon the provisions of this section and section 16.4, including but not limited to the selection of target groups, determined by geographical location or special needs, to receive the benefits of the program under the demonstration project. It shall then receive applications for participation in the demonstration project from agencies or organizations described in subsection 2, prepare a detailed plan for the total demonstration project including a statement of funding needs, and submit the plan to the general assembly with its budget request.

2. A governing body of a city or county, a public housing agency, or a private, nonprofit organization which provides or wishes to provide housing to lower income families, is eligible to apply for participation in the rent supplement program. Funds available for the rent supplement program, whether from appropriations or from other sources, shall be made available by the authority to cities, counties, public housing agencies, or private, nonprofit organizations on a one-to-one matching basis with funds supplied by the cities, counties, public housing agencies, or private, nonprofit organizations that participate.

[C77, 79, 81, §220.16]
C93, §16.16

16.17 Emergency housing fund.

The authority may make grants and temporary loans at interest rates and terms as determined by the authority, for the following purposes:

1. To defray the local contribution requirement for housing sponsors who apply for rent supplement assistance as provided in section 16.16 and who, in the judgment of the authority, would not be able to provide the local contribution without undue hardship.

2. To defray temporary housing costs that result from displacement by natural or other disas-

ter, if the disaster has been proclaimed by the governor.

3. To defray a portion of the expense required to develop and initiate housing which deals creatively with the housing problems of low or moderate income families, elderly families, and families which include one or more persons with disabilities.

[C77, 79, 81, §220.17]
C93, §16.17
96 Acts, ch 1129, §113

16.18 Special housing assistance.

1. The authority may make temporary loans at interest rates and terms as determined by the authority, to defray development costs for housing for low or moderate income families provided by housing sponsors. A "development cost" loan shall be repaid in full by the borrower concurrent with obtaining a construction loan, unless the authority extends the period for repayment, but the period for repayment shall not be extended beyond the date of obtaining a mortgage loan on the housing. As used in this section, *"development costs"* means the costs approved by the authority as appropriate expenditures which may be incurred by builders and developers prior to commitment and initial advance of the proceeds of a construction loan or a mortgage loan, including but not limited to:

a. Payments for options to purchase properties on the proposed housing site, deposits on contracts of purchase, or, with approval of the authority, payments for the purchasing of such properties.

b. Legal and organizational expenses including payment of attorney fees, project manager, clerical, and other staff salaries, office rent, and other incidental expenses.

c. Payment of fees for preliminary feasibility studies and advances for planning, engineering, and architectural work.

d. Expenses for tenant surveys and market analysis.

e. Necessary application and other fees.

2. The authority may make or participate in the making of property improvement loans or mortgage loans for rehabilitation or preservation of existing dwellings for the use of low or moderate income families, elderly families, or families which include one or more persons with disabilities. A rehabilitation or preservation loan may be for the estimated cost of the rehabilitation work to be done, for the purpose of refinancing an existing mortgage loan, for the purpose of doing the rehabilitation work, or for the purpose of acquiring housing in which rehabilitation work is to be done. The rehabilitation or preservation loan shall not exceed, with all other existing indebtedness of the property, the estimated market value of the property as determined by the authority, after the rehabilitation or preservation is completed, and the term of a loan shall not exceed the estimated useful life of the property as determined by the authority, after rehabilitation or preservation. The proposed rehabilitation or preservation shall assure that the property will not contain any substantial violation of applicable housing codes. A rehabilitation or preservation loan under this subsection may be made only when the authority determines that the proposed mortgagor is unable to obtain the necessary financing from nongovernmental sources upon terms and conditions which the proposed mortgagor reasonably could be expected to fulfill. A rehabilitation or preservation loan under this subsection may be provided only within an area of a city for which an authorized city agency submits a satisfactory affirmative neighborhood preservation program, or in other areas within or outside of cities where the authority determines that rehabilitation or preservation is economically sound and a program of neighborhood preservation is appropriate. The following criteria, along with others reasonably related to the purposes of this chapter, which may be determined by the authority, shall be considered in determining whether an affirmative neighborhood preservation program is satisfactory:

a. The degree of blight, decay, or deterioration of housing or the imminent threat of blight, decay, or deterioration of housing within the area.

b. The degree to which financing for repairs, remodeling, or rehabilitation of housing within the area is available.

c. The proportion of residential structures within the area which are owner-occupied.

d. The degree to which the financial resources of proposed occupants of the housing, including resources available to them under this chapter or other federal, state, and local laws and programs, provide reasonable assurances of the economic feasibility of the financing of rehabilitation or preservation.

e. The expressed commitment of the city to provide a concentrated effort to enforce the applicable housing codes within the area.

f. The expressed commitment of the city to provide capital improvements and other city services so as to stabilize, improve, and restore the neighborhood.

[C77, 79, 81, §220.18; 81 Acts, ch 76, §4]
C93, §16.18
96 Acts, ch 1129, §113

16.19 Housing assistance fund notes.

The authority may issue housing assistance fund notes, the principal and interest of which shall be payable solely from the housing assistance fund established under section 16.18. The fund notes of each issue shall be dated, shall mature at such times not exceeding ten years from their dates, and may be made redeemable before

maturity, at the option of the authority, at prices and under terms and conditions as determined by the authority. The authority shall determine the form and manner of execution of the fund notes, including any interest coupons to be attached thereto, and shall fix the denominations and the places of payment of principal and interest, which may be any financial institution within or without the state or any agent, including the lender. If any officer whose signature or a facsimile of whose signature appears on fund notes or coupons shall cease to be that officer before the delivery of the notes or coupons, the signature or facsimile shall be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. The fund notes may be issued in coupon or in registered form, or both, as the authority determines, and provision may be made for the registration of coupon fund notes as to principal alone and also as to both principal and interest, and for the conversion into coupon fund notes of any fund notes registered as to both principal and interest, and for the interchange of registered and coupon fund notes. Fund notes shall bear interest at rates as determined by the authority and may be sold in a manner, either at public or private sale, and for a price as the authority determines to be best to effectuate the purposes of the housing assistance fund. The proceeds of fund notes shall be used solely for the purposes for which issued and shall be disbursed in a manner and under restrictions as provided in this section and in the resolution of the authority providing for their issuance. The authority may provide for the replacement of fund notes which become mutilated or are destroyed or lost.

[C77, 79, 81, §220.19]
C93, §16.19

16.20 Loans to mortgage lenders.

1. The authority may make, and contract to make, loans to mortgage lenders on terms and conditions as it determines which are reasonably related to protecting the security of the authority's investment and to implementing the purposes of this chapter, and subject to this section, and all mortgage lenders are authorized to borrow from the authority in accordance with the provisions of this section and the rules of the authority.

2. The authority shall require as a condition of each loan to a mortgage lender that the mortgage lender, within a reasonable period after receipt of the loan proceeds as the authority prescribes by rule, shall have entered into written commitments to make, and, within a reasonable period thereafter as the authority prescribes by rule, shall have disbursed the loan proceeds in new mortgage loans to low or moderate income families in an aggregate principal amount equal to the amount of the loan. New mortgage loans shall have terms and conditions as the authority prescribes by rules which are reasonably related to implementing the purposes of this chapter.

3. The authority shall require the submission to it by each mortgage lender to which the authority has made a loan, of evidence satisfactory to the authority of the making of new mortgage loans to low or moderate income families as required by this section, and in that connection may, through its members, employees or agents, inspect the books and records of a mortgage lender.

4. Compliance by a mortgage lender with the terms of its agreement with the authority with respect to the making of new mortgage loans to low or moderate income families may be enforced by decree of any district court of this state. The authority may require as a condition of a loan to a national banking association or a federally chartered savings and loan association, the consent of the association to the jurisdiction of courts of this state over any such proceeding. The authority may also require, as a condition of a loan to a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority, and the penalties shall be recoverable at the suit of the authority.

5. The authority shall require that each mortgage lender receiving a loan pursuant to this section shall issue and deliver to the authority an evidence of its indebtedness to the authority which shall constitute a general obligation of the mortgage lender and shall bear a date, mature at a time, be subject to prepayment, and contain other provisions consistent with this section and reasonably related to protecting the security of the authority's investment, as the authority determines.

6. Notwithstanding any other provision of this section to the contrary, the interest rate and other terms of loans to mortgage lenders made from the proceeds of an issue of bonds or notes of the authority shall be at least sufficient to assure the payment of the bonds or notes and the interest on them as they become due.

7. The authority shall require that loans to mortgage lenders are additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security by special escrow funds or other forms of guarantee and in such amounts and forms as the authority shall by resolution determine to be necessary to assure the payment of the loans and the interest thereon as they become due. Collateral security shall consist of direct obligations of, or obligations guaranteed by, the United States or one of its agencies, obligations satisfactory to the authority which are issued by other federal agencies, direct obligations of or obligations guaranteed by a state or a political subdivision of a state, or investment quality obligations approved by the authority.

8. The authority may require that collateral for loans be deposited with a bank, trust company or other financial institution acceptable to the au-

thority located in this state and designated by the authority as custodian. In the absence of such a requirement, each mortgage lender shall enter into an agreement with the authority containing provisions as the authority deems necessary to adequately identify and maintain the collateral, service the collateral, and require the mortgage lender to hold the collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition of the collateral and the income from it. The authority may also establish additional requirements as it deems necessary with respect to the pledging, assigning, setting aside, or holding of collateral and the making of substitutions for it or additions to it and the disposition of income and receipts from it.

9. The authority may require as a condition of loans to mortgage lenders, any representations and warranties it determines are necessary to secure the loans and carry out the purposes of this section.

10. If a provision of this section is inconsistent with a provision of law of this state governing mortgage lenders, the provision of this section controls for the purposes of this section.

[C77, 79, 81, §220.20]
C93, §16.20

16.21 Purchase of mortgage loans.

1. The authority may purchase, and make advance commitments to purchase, mortgage loans from mortgage lenders at prices and upon terms and conditions as it determines subject to this section. However, the total purchase price for all mortgage loans which the authority commits to purchase from a mortgage lender at any one time shall not exceed the total of the unpaid principal balances of the mortgage loans purchased. Mortgage lenders are authorized to sell mortgage loans to the authority in accordance with the provisions of this section and the rules of the authority.

2. The authority shall require as a condition of purchase of mortgage loans from mortgage lenders that the mortgage lenders, within a reasonable period after receipt of the purchase price as the authority prescribes by rule, shall enter into written commitments to loan and, within a reasonable period thereafter as the authority prescribes by rule, shall loan an amount equal to the entire purchase price of the mortgage loans, on new mortgage loans to low or moderate income families or certify that mortgage loans purchased are mortgage loans made to low or moderate income families. New mortgage loans to be made by mortgage lenders shall have terms and conditions as the authority prescribes by rule. The authority may make a commitment to purchase mortgage loans from mortgage lenders in advance of the time such loans are made by mortgage lenders. The authority shall require as a condition of such commitment that mortgage lenders certify in writing that all mortgage loans represented by the commitment will be made to low or moderate income families, and that other authority specifications will be complied with.

3. The authority shall require the submission to it by each mortgage lender from which the authority has purchased mortgages, of evidence satisfactory to the authority of the making of new mortgage loans to low or moderate income families as required by this section and in that connection may, through its members, employees or agents, inspect the books and records of a mortgage lender.

4. Compliance by a mortgage lender with the terms of its agreement with the authority with respect to the making of new mortgage loans to low or moderate income families may be enforced by decree of any district court of this state. The authority may require as a condition of purchase of mortgage loans from any national banking association or federally chartered savings and loan association, the consent of the association to the jurisdiction of courts of this state over any such proceeding. The authority may also require as a condition of the authority's purchase of mortgage loans from a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority, and the penalties shall be recoverable at the suit of the authority.

5. The authority may require as a condition of purchase of a mortgage loan from a mortgage lender that the mortgage lender represent and warrant to the authority that:

a. The unpaid principal balance of the mortgage loan and the interest rate on it have been accurately stated to the authority.

b. The amount of the unpaid principal balance is justly due and owing.

c. The mortgage lender has no notice of the existence of any counterclaim, offset or defense asserted by the mortgagor or the mortgagor's successor in interest.

d. The mortgage loan is evidenced by a bond or promissory note and a mortgage which has been properly recorded with the appropriate public official.

e. The mortgage constitutes a valid first lien on the real property described to the authority subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value of the real property or improvements on it.

f. The mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, real property taxes or otherwise in the performance of obligations under the mortgage documents and has not to the knowledge of the mortgage lender been in default in the per-

formance of any obligation under the mortgage for a period of longer than sixty days during the life of the mortgage.

g. The improvements to the mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized to issue such policies in this state and providing fire and extended coverage in amounts as the authority prescribes by rule.

h. The mortgage loan meets the prevailing investment quality standards for mortgage loans in this state.

6. A mortgage lender is liable to the authority for damages suffered by the authority by reason of the untruth of a representation or the breach of a warranty and, in the event that a representation proves to be untrue when made or in the event of a breach of warranty, the mortgage lender shall, at the option of the authority, repurchase the mortgage loan for the original purchase price adjusted for amounts subsequently paid on it, as the authority determines.

7. The authority shall require the recording of an assignment of a mortgage loan purchased by it from a mortgage lender and shall not be required to notify the mortgagor of its purchase of the mortgage loan. The authority shall not be required to inspect or take possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased by the authority enters into a contract to service the mortgage loan and account to the authority for it.

8. If a provision of this section is inconsistent with another provision of law of this state governing mortgage lenders, the provision of this section controls for the purposes of this section.

[C77, 79, 81, §220.21]
C93, §16.21

16.22 Rules — loans to mortgage lenders and purchase of mortgage loans.

The rules of the authority relating to the making of loans to mortgage lenders or the purchase of mortgage loans shall provide at least for the following:

1. Procedures for the submission by mortgage lenders to the authority of request for loans and offers to sell mortgage loans.

2. Standards for allocating bond proceeds among mortgage lenders requesting loans from, or offering to sell mortgage loans to, the authority.

3. Standards for determining the principal amount to be loaned to each mortgage lender and the interest rate on each loan.

4. Standards for determining the aggregate principal amount of mortgage loans to be purchased from each mortgage lender and the purchase price.

5. Qualifications or characteristics of housing and the purchasers to be financed by new mortgage loans made in satisfaction of the requirements of section 16.20, subsection 2 or section 16.21, subsection 2.

6. Restrictions as to the interest rates to be allowed on new mortgage loans and the return to be realized by mortgage lenders.

7. Requirements as to commitments and disbursements by mortgage lenders with respect to new mortgage loans.

8. Schedules of fees and charges to be imposed by the authority.

9. Requirements for provisions that prohibit mortgage loans made under this program from being assumed without permission of the mortgagee.

[C77, 79, 81, §220.22]
C93, §16.22

16.23 Powers relating to loans.

Subject to any agreement with bondholders or noteholders, the authority may renegotiate a mortgage loan or loan to a mortgage lender in default, waive a default or consent to the modification of the terms of a mortgage loan or a loan to a mortgage lender, forgive or forbear all or part of a mortgage loan or a loan to a mortgage lender, and commence, prosecute and enforce a judgment in any action, including but not limited to a foreclosure action, to protect or enforce any right conferred upon it by law, mortgage loan agreement, contract or other agreement, and in connection with any such action, bid for and purchase the property or acquire or take possession of it, complete, administer, pay the principal of and interest on any obligations incurred in connection with the property and dispose of and otherwise deal with the property in a manner as the authority deems advisable to protect its interests.

[C77, 79, 81, §220.23]
C93, §16.23

16.24 Certification of amortization periods.

Before the authority provides money, either directly or indirectly, for any mortgage loan including property improvement loans authorized under section 16.37, it must obtain the certificate of a competent appraiser to the effect that the economic lifespan of the property on which the mortgage loan or property improvement loan is to be made is in excess of the period of amortization of the mortgage loan or property improvement loan. If an appraiser is used for the purpose of this section or for valuation of property for which the authority will provide money, either directly or indirectly, the authority shall give preference to the use of a local appraiser.

[C77, 79, 81, §220.24]
C93, §16.24

16.25 Planning, zoning and building laws.

All housing provided or assisted by the authority is subject to any applicable master plan, official

map, zoning regulation, building code, housing code and any other law or regulation governing land use, pollution control, environmental quality, planning or construction, for the area in which the housing is to be located.

[C77, 79, 81, §220.25]
C93, §16.25

16.26 Bonds and notes.

1. The authority may issue its negotiable bonds and notes in principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

2. Bonds and notes issued by the authority are payable solely and only out of the moneys, assets, or revenues of the authority, and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets, or revenues. Bonds or notes are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority may not pledge the credit or taxing power of this state or any political subdivision of this state other than the authority, or make its debts payable out of any moneys except those of the authority.

3. Bonds and notes must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the authority or a facsimile of it, and the coupons attached shall be signed with the facsimile signature of the chairperson or vice chairperson, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places, and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums, and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the bonds as to:

(1) Pledging or creating a lien, to the extent provided by the resolution, on moneys or property of the authority or moneys held in trust or otherwise by others to secure the payment of the bonds.

(2) Providing for the custody, collection, securing, investment, and payment of any moneys of or due to the authority.

(3) The setting aside of reserves or sinking funds and the regulation or disposition of them.

(4) Limitations on the purpose to which the proceeds of sale of an issue of bonds then or thereafter to be issued may be applied.

(5) Limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds.

(6) The procedure by which the terms of a contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which consent may be given.

(7) The creation of special funds into which moneys of the authority may be deposited.

(8) Vesting in a trustee properties, rights, powers, and duties in trust as the authority determines, which may include the rights, powers, and duties of the trustee appointed for the holders of any issue of bonds pursuant to section 16.28, in which event the provisions of that section authorizing appointment of a trustee by the holders of bonds shall not apply, or limiting or abrogating the right of the holders of bonds to appoint a trustee under that section, or limiting the rights, duties, and powers of the trustee.

(9) Defining the acts or omissions which constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of a default. However, rights and remedies shall be

consistent with the laws of this state and other provisions of this chapter.

(10) Any other matters which affect the security and protection of the bonds and the rights of the holders.

5. The authority may issue its bonds for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this chapter. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

6. The authority may issue negotiable bond anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged, or from the proceeds of the sale of bonds of the authority in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds, and notes and the resolution authorizing them may contain any provisions, conditions, or limitations, not inconsistent with the provisions of this subsection, which the bonds or a bond resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under chapter 554, article 9 of the uniform commercial code, or any other law of the state shall be required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Neither the members of the authority nor any person executing its bonds, notes, or other obligations shall be liable personally on the bonds, notes, or other obligations or be subject to any personal liability or accountability by reason of the issuance of the authority's bonds or notes.

9. The authority may make or participate in the making of loans to housing sponsors to provide interim construction financing for the construction or rehabilitation of adequate housing for low or moderate income persons or families, elderly persons or families, and persons or families which include one or more persons with disabilities, and of noninstitutional residential care facilities. An interim construction loan may be made under this section only if the loan is the subject of a commitment from an agency or instrumentality of the United States government or from the authority, to provide long-term financing for the mortgage loan, and interim construction advances made under the interim construction loan will be insured or guaranteed by an agency or instrumentality of the United States government.

[C77, 79, 81, §220.26; 82 Acts, ch 1173, §3]

83 Acts, ch 124, §4; 84 Acts, ch 1281, §7; 85 Acts, ch 225, §2

C93, §16.26

96 Acts, ch 1129, §113; 2000 Acts, ch 1149, §161, 187

16.27 Reserve funds and appropriations.

1. The authority may create and establish one or more special funds, to be known as *"bond reserve funds"*, and shall pay into each bond reserve fund any moneys appropriated and made available by the state for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions of the authority authorizing their issuance, and any other moneys which may be available to the authority for the purpose of the fund from any other sources. All moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

2. Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this section, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums and the sinking fund payments with respect to the

bonds for the payment of which other moneys of the authority are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the authority to other funds or accounts of the authority to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

3. The authority shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the authority at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund will not be less than the bond reserve fund requirement for the fund. For the purposes of this section, the term *"bond reserve fund requirement"* means, as of any particular date of computation, an amount of money, as provided in the resolutions of the authority authorizing the bonds with respect to which the fund is established, equal to not more than ten percent of the outstanding principal amount of bonds of the authority secured in whole or in part by the fund.

4. To assure the continued operation and solvency of the authority for the carrying out of its corporate purposes, provision is made in subsection 1 for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the chairperson of the authority shall, on or before July 1 of each calendar year, make and deliver to the governor the chairperson's certificate stating the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited by the authority in the applicable bond reserve fund.

5. All amounts paid over to the authority by the state pursuant to the provisions of this section shall constitute and be accounted for as advances by the state to the authority and, subject to the rights of the holders of any bonds or notes of the authority theretofore or thereafter issued, shall be repaid to the state without interest from all available operating revenues of the authority in excess of amounts required for the payment of bonds, notes or obligations of the authority, the bond reserve fund and operating expenses.

6. The authority shall cause to be delivered to the legislative fiscal committee within ninety days of the close of its fiscal year its annual report certified by an independent certified public accountant (who may be the accountant or a member of the firm of accountants who regularly audits the books and accounts of the authority) selected by the authority. In the event that the principal amount of any bonds or notes deposited in a bond reserve fund is withdrawn for payment of principal or interest thereby reducing the amount of that fund to less than the bond reserve fund requirement, the authority shall immediately notify the general assembly of this event and shall thereafter take steps to restore such bond reserve to the bond reserve fund requirement for that fund from any amounts available, other than principal of a bond issue, which are not pledged to the payment of other bonds or notes.

[C77, 79, 81, §220.27]
C93, §16.27

16.28 Remedies of bondholders and noteholders.

1. If the authority defaults in the payment of principal or interest on an issue of bonds or notes after they become due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the authority fails or refuses to comply with the provisions of this chapter, or defaults in an agreement made with the holders of an issue of bonds or notes, the holders of twenty-five percent in aggregate principal amount of bonds or notes of the issue then outstanding, by instrument filed in the office of the clerk of the county in which the principal office of the authority is located, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds or notes for the purposes provided in this section.

2. The authority or any trustee appointed under the indenture under which the bonds are issued may, and upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of bonds or notes then outstanding shall:

a. Enforce all rights of the bondholders or noteholders, including the right to require the authority to carry out its agreements with the holders and to perform its duties under this chapter.

b. Bring suit upon the bonds or notes.

c. By action require the authority to account as if it were the trustee of an express trust for the holders.

d. By action enjoin any acts or things which are unlawful or in violation of the rights of the holders.

e. Declare all the bonds or notes due and payable and if all defaults are made good then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of bonds or notes then outstanding, annul the declaration

and its consequences.

The bondholders or noteholders, to the extent provided in the resolution by which the bonds or notes were issued or in their agreement with the authority, may enforce any of the remedies in paragraphs *"a"* to *"e"* or the remedies provided in those agreements for and on their own behalf.

3. The trustee shall also have and possess all powers necessary or appropriate for the exercise of functions specifically set forth or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

4. Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority and to the attorney general of the state.

5. The district court has jurisdiction of any action by the trustee on behalf of bondholders or noteholders. The venue of the action shall be in the county in which the principal office of the authority is located.

[C77, 79, 81, §220.28; 82 Acts, ch 1187, §6]
C93, §16.28

16.29 Local urban homesteading.

Units of local government shall have authority to enact ordinances in relation to locally originated, sponsored, and funded urban homesteading programs which, upon approval by the authority, can modify building and housing code requirements to the extent and for the purpose enumerated in section 16.14, subsection 3, paragraph *"b"*.

[C79, 81, §220.29]
C93, §16.29

16.30 Bonds and notes as legal investments.

Bonds and notes of the authority are securities in which public officers, state departments and agencies, political subdivisions, insurance companies, and other persons carrying on an insurance business, banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, administrators, executors, guardians, conservators, trustees and other fiduciaries, and other persons authorized to invest in bonds or other obligations of this state, may properly and legally invest funds including capital in their control or belonging to them. The bonds and notes are also securities which may be deposited with and may be received by public officers, state departments and agencies, and political subdivisions, for any purpose for which the deposit of bonds or other obligations of this state is authorized.

[C77, 79, 81, §220.30]
C93, §16.30

16.31 Moneys of the authority.

1. Moneys of the authority from whatever source derived, except as otherwise provided in this chapter, shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall, if required by the authority, be secured in the manner determined by the authority. The auditor of state and the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and the authority shall not be required to pay a fee for the examination.

2. The authority may contract with holders of its bonds or notes as to the custody, collection, security, investment, and payment of moneys of the authority, of moneys held in trust or otherwise for the payment of bonds or notes, and to carry out the contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of the moneys may be secured in the same manner as moneys of the authority, and banks and trust companies may give security for the deposits.

3. Subject to the provisions of any contract with bondholders or noteholders and to the approval of the director of revenue and finance, the authority shall prescribe a system of accounts.

4. The authority shall submit to the governor, the auditor of state, the department of management, and the department of revenue and finance, within thirty days of its receipt by the authority, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

[C77, 79, 81, §220.31]
88 Acts, ch 1158, §51
C93, §16.31

16.32 Limitation of liability.

Neither the members of the authority, nor persons acting in its behalf, while acting within the scope of their employment or agency, are subject to personal liability resulting from carrying out the powers and duties given in this chapter.

[C77, 79, 81, §220.32]
C93, §16.32

16.33 Assistance by state officers, agencies and departments.

State officers and state departments and agencies may render services to the authority within their respective functions as requested by the authority.

[C77, 79, 81, §220.33]
C93, §16.33

16.34 Liberal interpretation.

This chapter, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

[C77, 79, 81, §220.34]
C93, §16.34

16.35 Conflicts of interest.

1. If a member or employee other than the executive director of the authority has an interest, either direct or indirect, in a contract to which the authority is, or is to be, a party, or in a mortgage lender requesting a loan from, or offering to sell mortgage loans to, the authority, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member or employee having the interest shall not participate in action by the authority with respect to that contract or mortgage lender.

A violation of a provision of this subsection is misconduct in office under section 721.2. However, a resolution of the authority is not invalid because of a vote cast by a member in violation of this subsection unless the vote was decisive in the passage of the resolution.

For the purposes of this subsection, *"action of the authority with respect to that contract or mortgage lender"* means only an action directly affecting a separate contract or mortgage lender, and does not include an action which benefits the general public or which affects all or a substantial portion of the contracts or mortgage lenders included in a program of the authority.

2. Nothing in this section shall be deemed to limit the right of a member, officer or employee of the authority to acquire an interest in bonds or notes of the authority or to limit the right of a member or employee other than the executive director to have an interest in a bank or other financial institution in which the funds of the authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under a trust indenture to which the authority is a party.

3. The executive director shall not have an interest in a bank or other financial institution in which the funds of the authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under a trust indenture to which the authority is a party. The executive director shall not receive, in addition to fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, recommending or aiding in any purchase or sale of property, or loan, made by the authority, nor shall the executive director be pecuniarily interested, either as principal, coprincipal, agent or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation or business unit, in any such purchase, sale or loan.

[C77, 79, 81, §220.35]
C93, §16.35

16.36 Exemption from competitive bid laws.

The authority and all contracts made by it in carrying out its public and essential governmental functions under sections 16.12 to 16.16, 16.18, 16.20 and 16.21, shall be exempt from the provisions and requirements of all laws of the state which provide for competitive bids in connection with such contracts.

[C77, 79, 81, §220.36]
C93, §16.36

16.37 Solar and renewable energy systems loans.

The authority may make loans to mortgage lenders under section 16.20 or purchase loans from mortgage lenders under section 16.21 to be used to finance property improvement loans for solar and other renewable energy systems. These loans shall be limited to low or moderate income families.

[C81, §220.37]
C93, §16.37

16.38 Limitation on loans.

1. The borrower must occupy the property as the borrower's primary residence.

2. Only individuals who meet the principal requirements for an original mortgagor are eligible to assume a mortgage loan issued under this chapter.

3. Any sale of a residence securing a mortgage loan financed by the authority, either directly or indirectly, must be reported to the authority by the borrower.

[C81, §220.38; 81 Acts, ch 76, §5]
84 Acts, ch 1219, §10
C93, §16.38

16.39 New construction and housing rehabilitation requirements.

If demand exists for new construction financing, as evidenced by timely filed and executed application commitment agreements, the authority shall ensure that up to twenty-five percent of the proceeds from sales of obligations of the authority are made available to finance newly constructed housing units. The authority shall also provide that up to an additional twenty-five percent of the proceeds from the sale of obligations of the authority may be made available to finance newly constructed housing units at the request of parties submitting timely filed and executed application commitment agreements. The authority may limit the period during which requests for the additional twenty-five percent of the proceeds may be made and may charge the requesting parties fees in amounts equal to the authority's cost of making

the additional twenty-five percent of the proceeds available to finance newly constructed housing units. Failure to comply with this requirement does not invalidate any obligations of the authority, but in the event of noncompliance with this requirement, the authority shall make a special report to the governor and to the general assembly as to the reasons for noncompliance.

If the authority determines that sufficient demand exists for housing rehabilitation financing, it shall endeavor to issue obligations to finance that demand. If the authority finds it is unable to issue obligations to meet that demand, it shall file, within six months of the date of the determination that a demand exists, a full report with the governor, secretary of the senate, and chief clerk of the house of representatives explaining the demand and the reason it was not possible to satisfy that demand.

[81 Acts, ch 77, §1]
C83, §220.39
86 Acts, ch 1128, §1
C93, §16.39

16.40 Housing program fund.

A housing program fund is created within the treasurer of state's office. The moneys shall be used by the authority and are appropriated for the following purposes:

1. To cover initial commitment costs of authority bond issues and loans in order to facilitate and ensure equal access across the state to funds for programs for first-time home buyers.
2. For the home maintenance and repair program under section 16.100, subsection 2, paragraph *"a"*.
3. For the rental rehabilitation program under section 16.100, subsection 2, paragraph *"b"*.
4. For the home ownership incentive program under section 16.100, subsection 2, paragraph *"c"*.

Moneys in the fund shall not revert to the general fund and interest on the moneys in the fund shall be retained as part of the fund and not accrue to the general fund.

85 Acts, ch 252, §29
CS85, §220.40
88 Acts, ch 1145, §1
C93, §16.40
97 Acts, ch 201, §18

16.41 Reserved.

16.42 Inconsistent provisions.

This chapter takes precedence over any conflicting provisions contained in section 535.8, subsection 2, with respect to the use or enforcement of a due-on-sale or similar clause in a mortgage loan agreement, and takes precedence over any conflicting provisions contained in laws enacted after July 1, 1981, with respect to the use or enforcement of a due-on-sale or similar clause in a mortgage loan agreement unless those laws expressly provide that they take precedence over this chapter.

[81 Acts, ch 76, §6]
C83, §220.42
C93, §16.42

16.43 Economic distress areas named.

The authority shall be the agency of this state to designate *"areas of economic distress"* for purposes of section 103A(k)(3)(A)(i) of the United States Internal Revenue Code, as amended.

[81 Acts, ch 76, §7]
C83, §220.43
C93, §16.43

16.44 Application of funds from sales of obligations.

All moneys received by or on behalf of the authority, whether as proceeds from the sale of obligations or as revenues, are trust funds to be held and applied solely for the purposes specified in the appropriation, bond resolution, or other document authorizing receipt of the moneys by the authority. A person with which the moneys are deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purposes specified in this chapter subject to limitations specified in this chapter and in the bond resolution authorizing the issuance of the obligations.

[82 Acts, ch 1173, §6]
C83, §220.44
C93, §16.44

16.45 Qualified mortgage bonds — allocation of state ceiling.

1. For purposes of this section, *"Internal Revenue Code"* means the same as defined in section 422.3, *"state ceiling"* means the same as defined in section 103A(g)(4) of the Internal Revenue Code, and *"qualified mortgage bonds"* means the same as defined in section 103A(c) of the Internal Revenue Code.
2. Pursuant to section 103A(g)(6) of the Internal Revenue Code, the amount of the state ceiling for qualified mortgage bonds is allocated to the authority. The authority may provide pursuant to subsection 3 for reallocation of an amount, not in excess of fifty percent of the state ceiling, among other governmental units in the state having authority to issue qualified mortgage bonds.
3. An allocation to a governmental unit shall not exceed the amount which the governmental unit has shown can reasonably be anticipated to be fully utilized during that calendar year. In considering a request for allocation, the authority shall consider the following factors:

a. The number of requests received and expected to be received from other governmental units for the calendar year and the volume of bonds represented by those requests.

b. The population of the governmental unit

making the request.

c. The volume of bonds issued or to be issued by the authority in the calendar year the proceeds of which will be allocated to the same geographical area.

d. The amount of bond proceeds to be targeted to areas of chronic economic distress as defined in section 103A(k)(3) of the Internal Revenue Code.

e. The economies of a bond issue of a larger or smaller size.

f. Allocations made under this section in the same or previous calendar years to the governmental unit.

g. If another governmental unit having authority to issue qualified mortgage bonds has jurisdiction over all or part of the same geographical area as the unit requesting an allocation and the realistic plans of that other unit to issue the bonds.

h. The probability that a governmental unit will be able to use the funds allocated within a reasonable period of time.

i. Other factors and considerations the authority deems necessary or appropriate.

[82 Acts, ch 1187, §7]
C83, §220.45
84 Acts, ch 1305, §24
C93, §16.45

16.46 through 16.50 Reserved.

16.51 Additional loan program.

1. The authority may enter into a loan agreement with a housing sponsor to finance in whole or in part the acquisition of housing by construction or purchase. The repayment obligation of the housing sponsor may be unsecured, secured by a mortgage or security agreement, or secured by other security as the authority deems advisable, and may be evidenced by one or more notes of the housing sponsor. The loan agreement may contain terms and conditions the authority deems advisable.

2. The authority may issue its bonds and notes for the purposes set forth in subsection 1 and may enter into a lending agreement or purchase agreement with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders may enter into an agreement to provide for any of the following:

a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the bondholders or noteholders, or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority, may collect, invest, and apply the amounts payable under the loan agreement or any other security instrument securing the debt obligation of the housing sponsor.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreement or security instrument on their own behalf without the appointment or designation of a trustee and if there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained in the agreement or instrument, the payment or performance may be enforced in accordance with the provisions contained in the agreement or instrument.

d. That if there is a default in the payment of the principal or interest on a mortgage or security instrument or a violation of an agreement contained in the mortgage or security instrument, the mortgage or security instrument may be foreclosed or enforced and any collateral sold under proceedings or actions permitted by law and a trustee under the mortgage or security agreement or the holder of any bonds or notes secured thereby may become a purchaser if it is the highest bidder.

e. Other terms and conditions.

3. The authority may provide in the resolution authorizing the issuance of the bonds or notes that the principal and interest shall be limited obligations payable solely out of the revenues derived from the debt obligation, collateral, or other security furnished by or on behalf of the housing sponsor, and that the principal and interest does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

4. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 16.28, subsection 4, apply to bonds or notes issued pursuant to and powers granted to the authority under this section except to the extent that they are inconsistent with this section.

[82 Acts, ch 1187, §7]
C83, §220.51
83 Acts, ch 124, §5
C93, §16.51

16.52 State housing credit ceiling allocation.

1. The authority is designated the housing credit agency for the allowance of low-income housing credit under the state housing credit ceiling.

2. The authority shall adopt rules and allocation procedures which will ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state. The authority shall consider the following factors in the adoption and application of the allocation rules:

a. Timeliness of the application.

b. Location of the proposed housing project.

c. Relative need in the proposed area for low-income housing.

d. Availability of low-income housing in the

proposed area.

e. Economic feasibility of the proposed project.

f. Ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

The authority shall adopt rules specifying the application procedure and the allowance of low-income housing credits under the state housing credit ceiling.

3. The authority shall not allow more than ninety percent of the low-income housing credits under the state housing credit ceiling to projects other than qualified low-income housing projects as defined in Internal Revenue Code § 42(h)(5)(B).

87 Acts, ch 125, §3
CS87, §220.52
C93, §16.52

16.53 Residential reverse annuity mortgage model program.

The authority shall develop a model reverse annuity mortgage conforming to the requirements of this chapter, and shall offer reverse annuity mortgages to qualified participants.

89 Acts, ch 267, §10
CS89, §220.53
C93, §16.53

Iowa finance authority authorized to issue bonds for the residential reverse annuity mortgage model program, to be repaid from program proceeds; 89 Acts, ch 267, §11

16.54 through 16.60 Reserved.

SMALL BUSINESS LOAN PROGRAM

16.61 Legislative findings — purposes — public policy.

1. The general assembly finds and declares as follows:

a. A viable small business community is essential to the continuing welfare of Iowans who depend on small business for employment.

b. Iowa small business must continue to expand and develop if they are to remain competitive in state and local markets.

c. Small business expansion and development is dependent upon the availability of financing for expansion and development at interest rates which small businesses may reasonably pay.

d. Private financing for small businesses at low interest rates is unavailable to assist small business expansion and development. The Iowa small business loan program is necessary to encourage the investment of private capital in small business expansion and development through the use of public financing as provided in this section and sections 16.62 to 16.65.

2. The purposes of the small business loan program are:

a. To promote the business prosperity and economic welfare of Iowa and Iowans.

b. To assist, through loans, investments, and other transactions, the location of new small business and industry in the state.

c. To assist through loans, investments, and other transactions, existing small business and industry in the state.

d. To provide employment opportunities and thereby improve the standard of living of Iowans.

e. To promote industrial, commercial, and recreational development in this state.

3. All of the purposes stated in this section are public purposes and uses for which public moneys provided by the sale of revenue bonds may be used.

4. It is the public policy of the state through the establishment of the small business loan program to promote the economic welfare of Iowans and to improve employment opportunities for Iowans. To advance that public policy, the authority may make loans to borrowers for both the acquisition and the construction of projects and may issue obligations of this state payable solely from bond proceeds, to pay the cost of the projects.

[82 Acts, ch 1173, §5]
C83, §220.61
C93, §16.61

16.62 Small business loan program.

1. The authority shall initiate a program to assist the development and expansion of small business in Iowa. The authority may issue bonds and notes the proceeds of which shall be used to make program loans. Bonds and notes issued under this section are subject to all provisions of this chapter relating to the issuance of bonds.

2. The authority may contract with the Iowa business development credit corporation or any other corporation organized under chapter 496B for the provision by the corporation of lending and other administrative services relative to the loan program to the authority.

[82 Acts, ch 1173, §5]
C83, §220.62
83 Acts, ch 124, §6
C93, §16.62
94 Acts, ch 1023, §74

16.63 Small business loan program — specific powers.

In assisting Iowa small businesses through the loan program, the authority may do any of the following:

1. Make loans, secured and unsecured, for both the acquisition and the construction of projects on terms the authority determines. The authority may take any action which is reasonable and lawful to protect its security and to avoid losses from its loans. Before making a loan, the authority shall find that the proposed project shall result in one or more of the following:

a. The creation of jobs in Iowa.

b. Increased revenues for the borrower from a

more modern or expanded facility.

c. Providing a service facility needed in the community where the project will be located.

2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used as a project.

3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of projects under the terms the authority determines. However, in the lease, sale, or loan agreement relating to a project, the authority shall provide for adequate maintenance of the project.

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on a project, revenues, or reserve or other funds established in connection with obligations, or with respect to a lease, sale, or loan relating to a project, or a guaranty or insurance agreement relating to a project, or an interest, secured or unsecured, of the authority in a project or part of a project.

5. Provide that the interest on obligations may vary in accordance with a base or formula authorized by the authority.

6. Contract for the acquisition, construction, or both of a project or part of a project and for the leasing, subleasing, sale, or other disposition of a project in a manner determined by the authority.

7. Cooperate with the Iowa department of economic development and use its facilities to assist and encourage organizations in Iowa communities in the promotion and development of small business prosperity in those communities.

[82 Acts, ch 1173, §5]
C83, §220.63
C93, §16.63

16.64 Small business loan criteria.

In determining whether a small business is eligible for a loan from the small business loan program, the authority shall consider the following criteria:

1. The applicant shall be of good character as determined by rule which shall be adopted by the authority.

2. The applicant shall show evidence that the applicant is able to operate the business successfully.

3. The applicant shall have enough capital in the business so that with assistance from the loan program, the applicant will be able to operate the business on a financially sound basis.

4. The loan shall be so secured or of such sound value as to reasonably assure repayment.

5. The business' past earnings record and future prospects shall indicate an ability to repay the loan out of income from the business.

6. Whether the granting of the loan will increase employment or have other favorable effects upon the economic life of the community where the business is located.

[82 Acts, ch 1173, §5]
C83, §220.64
C93, §16.64

16.65 Loan agreement with sponsors.

1. The authority may enter into a loan agreement with a project sponsor to finance in whole or in part the acquisition of a project by construction or purchase. The repayment obligation of the project sponsor may be unsecured, secured by a mortgage or security agreement, or secured by other security as the authority deems advisable, and may be evidenced by one or more notes of the project sponsor. The loan agreement may contain terms and conditions the authority deems advisable.

2. The authority may issue its bonds and notes for the purposes set forth in subsection 1 and may enter into a lending agreement or purchase agreement with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders may enter into an agreement to provide for any of the following:

a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the bondholders or noteholders, or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority, may collect, invest, and apply the amounts payable under the loan agreement or any other security instrument securing the debt obligation of the project sponsor.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreement or security instrument on their own behalf without the appointment or designation of a trustee and if there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained in the agreement or instrument, the payment or performance may be enforced in accordance with the provisions contained in the agreement or instrument.

d. That if there is a default in the payment of the principal or interest on a mortgage or security instrument or a violation of an agreement contained in the mortgage or security instrument, the mortgage or security instrument may be foreclosed or enforced and any collateral sold under proceedings or actions permitted by law and a trustee under the mortgage or security agreement or the holder of any bonds or notes secured thereby may become a purchaser if it is the highest bidder.

e. Other terms and conditions.

3. The authority may provide in the resolution authorizing the issuance of the bonds or notes that the principal and interest shall be limited obligations payable solely out of the revenues derived from the debt obligation, collateral, or other security furnished by or on behalf of the project spon-

sor, and that the principal and interest does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

4. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 16.28, subsection 4, apply to bonds or notes issued pursuant to and powers granted to the authority under this section except to the extent that they are inconsistent with this section.

[82 Acts, ch 1173, §5]
C83, §220.65
C93, §16.65

16.66 through 16.70 Reserved.

RESIDENTIAL MORTGAGE MARKETING PROGRAM

16.71 Residential mortgage marketing program.

The authority shall establish a program to assist lenders to sell residential mortgage loans in the organized and unorganized secondary mortgage market. The authority may issue taxable and tax-exempt bonds and notes. The proceeds of the bonds shall be used to purchase residential mortgage loans from lenders. Bonds and notes issued under this section are subject to all provisions of this chapter relating to the issuance of bonds.

83 Acts, ch 124, §7
CS83, §220.71
C93, §16.71
94 Acts, ch 1023, §75

16.72 Powers.

1. The authority may purchase, and make advance commitments to purchase, residential mortgage loans from mortgage lenders at prices and upon terms and conditions it determines subject to this section. However, the total purchase price for all residential mortgage loans which the authority commits to purchase from a mortgage lender at any one time shall not exceed the total of the unpaid principal balances of the residential mortgage loans purchased. Mortgage lenders are authorized to sell residential mortgage loans to the authority in accordance with this section and the rules of the authority. The authority may charge a mortgage lender a commitment fee or other fees as set by rule as a condition for the authority purchasing residential mortgage loans.

2. The authority may sell or make advanced commitments to sell residential mortgage loans in the organized or unorganized secondary mortgage market. The authority may issue and sell securities that are secured by residential mortgage loans held by the authority. The authority may aggregate the residential mortgage loans sold in the secondary market or used as security on the mortgage-backed securities. The amount of mortgage-backed securities sold shall not exceed principal of the mortgages retained by the authority as security.

3. The authority may require as a condition of purchase of a residential mortgage loan from a mortgage lender that the mortgage lender represent and warrant to the authority that:

a. The unpaid principal balance of the residential mortgage loan and the interest rate on it have been accurately stated to the authority.

b. The amount of the unpaid principal balance is justly due and owing.

c. The mortgage lender has no notice of the existence of a counterclaim, offset, or defense asserted by the mortgagor or the mortgagor's successor in interest.

d. The residential mortgage loan is evidenced by a bond or promissory note and a mortgage which has been properly recorded with the appropriate public official.

e. The mortgage constitutes a valid first lien on the real property described in the mortgage to the authority subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value of the real property or improvements on it.

f. The mortgagor is not now in default in the payment of an installment of principal or interest, escrow funds, real property taxes, or otherwise in the performance of obligations under the mortgage documents and has not to the knowledge of the mortgage lender been in default in the performance of an obligation under the mortgage for a period of longer than sixty days during the life of the mortgage.

g. The improvements to the mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized to issue policies in this state and providing fire and extended coverage in amounts as the authority prescribes by rule.

h. The residential mortgage loan meets the prevailing investment quality standards for residential mortgage loans in this state.

83 Acts, ch 124, §8
CS83, §220.72
C93, §16.72

16.73 Rules.

The authority shall adopt rules pursuant to chapter 17A relating to the purchase and sale of residential mortgage loans and the sale of mortgage-backed securities. The rules shall provide at least for the following:

1. Procedures for the submission by mortgage lenders to the authority of offers to sell mortgage loans.

2. Standards for allocating bond proceeds

among mortgage lenders offering to sell mortgage loans to the authority.

3. Standards for determining the aggregate principal amount of mortgage loans to be purchased from each mortgage lender and the purchase price.

4. Schedules of fees and charges to be imposed by the authority.

5. Procedures for issuing mortgage-backed securities.

83 Acts, ch 124, §9
CS83, §220.73
C93, §16.73

16.74 through 16.80 Reserved.

RESIDENTIAL MORTGAGE INTEREST REDUCTION PROGRAM

16.81 Residential mortgage interest reduction program.

1. The authority shall initiate a residential mortgage interest reduction program to reduce the interest costs on groups of mortgage loans. The authority shall use the money specially appropriated to operate this program, and the authority may use moneys declared to be surplus as provided in section 16.10, subsection 1, or moneys obtained from grants, gifts, bequests, contributions, and other uncommitted funds to operate this program.

2. Each mortgage loan included in this program shall be for the purpose of acquiring a single-family dwelling to be occupied by the owner of that dwelling, or a two-family dwelling where the owner will occupy one of the units. The authority shall adopt rules establishing the maximum purchase prices for both single-family dwellings and two-family dwellings in order to be included in a particular group of mortgages. These maximum purchase prices shall not exceed the maximum prices established by section 103A, Internal Revenue Code. These rules shall only apply to mortgages financed from the sale of tax-exempt bonds.

3. The interest reduction established by the authority for a group of loans shall meet the requirements of this subsection. The interest rate of a loan shall be reduced for a period not to exceed five years. The interest rate of a loan during the first year shall be reduced by not less than three percent and not more than five percent. The amount of the reduction in the interest rate of the loan in each subsequent year of the reduction period, if there are any subsequent years, shall be equal to the percent reduction in the first year multiplied times a fraction which has as its denominator the total number of years of the interest reduction period and has as its numerator the number of years remaining in the interest reduction period at the beginning of the subsequent year. For purposes of this subsection the first year of the interest reduction period starts on the date the loan is closed and ends eleven months after the date of the first monthly payment.

4. The authority shall implement this program by allocating a specified amount of money to reduce the interest rate on some or all of the mortgage loans purchased. The authority shall pay for the interest reduction on a group of loans to mortgage lenders, mortgage purchasers, or investors at the same time that it purchases that group of loans. For each bond issue using this program the authority shall establish the interest rate reductions it will purchase, the amount the authority will pay for the interest rate reductions, and the method of determining which of the eligible loans will be reduced.

83 Acts, ch 124, §10
CS83, §220.81
C93, §16.81

16.82 Lien.

The authority shall file a lien on the property for which an interest reduction payment is made in the amount of the payment. The lien shall be filed in the recorder's office of the county in which the property is located.

83 Acts, ch 124, §11
CS83, §220.82
C93, §16.82

16.83 Recapture of interest reduction payment.

1. A mortgagor shall repay the authority the lesser of the amount of interest reduction payment actually paid by the authority on behalf of the mortgagor or fifty percent of the net appreciation of the property. The term *"net appreciation of the property"* as used in this section means an increase in the value of the property over the purchase price less the reasonable costs of sale and the reasonable costs of improvements made to the property.

2. Repayment shall be made when any of the following occur:

a. The mortgagor sells or otherwise transfers the property. However, repayment is not required if the transfer is to the surviving spouse of the mortgagor upon the mortgagor's death.

b. The mortgagor rents the property for more than twelve months.

c. The mortgagor requests the authority to release the lien on the property.

d. The mortgage lender files a court action to foreclose on the mortgage. However, the authority may abate payment pending the outcome of the foreclosure action.

83 Acts, ch 124, §12
CS83, §220.83
C93, §16.83

16.84 Rules.

The authority shall adopt rules pursuant to chapter 17A for the administration of the residential mortgage interest reduction program. The rules shall include, but are not limited to, the following:

1. Standards for eligibility of a mortgagor including a minimum down payment or interest in the property.
2. Standards for the eligibility of the property.
3. Procedures for application to participate in the program.
4. Procedures for payment of the interest reduction payment to the mortgage lender or mortgage investor.
5. Standards for determining the amount of interest reduction that will be approved.
6. Schedules of fees and charges to be imposed by the authority.

83 Acts, ch 124, §13
CS83, §220.84
C93, §16.84

16.85 through 16.90 Reserved.

TITLE GUARANTY PROGRAM

16.91 Title guaranty program.

1. The authority through the title guaranty division shall initiate and operate a program in which the division shall offer guaranties of real property titles in this state. The terms, conditions and form of the guaranty contract shall be forms approved by the division board. The division shall fix a charge for the guaranty in an amount sufficient to permit the program to operate on a self-sustaining basis, including payment of administrative costs and the maintenance of an adequate reserve against claims under the title guaranty program. A title guaranty fund is created in the office of the treasurer of state. Funds collected under this program shall be placed in the title guaranty fund and are available to pay all claims, necessary reserves and all administrative costs of the title guaranty program. Moneys in the fund shall not revert to the general fund and interest on the moneys in the fund shall be transferred to the department of economic development for deposit in the local housing assistance program fund established in section 15.354 and shall not accrue to the general fund. If the authority board in consultation with the division board determines that there are surplus funds in the title guaranty fund after providing for adequate reserves and operating expenses of the division, the surplus funds shall be transferred to the housing program fund created pursuant to section 16.40.

2. A title guaranty, closing protection letter, or gap coverage issued under this program is an obligation of the division only and claims are payable solely and only out of the moneys, assets, and revenues of the title guaranty fund and are not an indebtedness or liability of the state. The state is not liable on any guaranty, closing protection letter, or gap coverage.

3. With the approval of the authority board the division and its board shall consult with the insurance division of the department of commerce in developing a guaranty contract acceptable to the secondary market and developing any other feature of the program with which the insurance division may have special expertise. The insurance division shall establish the amount for a loss reserve fund. Except as provided in this subsection, the title guaranty program is not subject to the jurisdiction of or regulation by the insurance division or the commissioner of insurance.

4. Each participating attorney and abstractor may be required to pay an annual participation fee to be eligible to participate in the title guaranty program. The fee, if any, shall be set by the division, subject to the approval of the authority.

5. The participation of abstractors and attorneys shall be in accordance with rules established by the division and adopted by the authority pursuant to chapter 17A. Each participant shall at all times maintain liability coverage in amounts approved by the division. Upon payment of a claim by the division, the division shall be subrogated to the rights of the claimant against all persons relating to the claim.

Additionally, each participating abstractor is required to own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division. The tract indices shall contain a reference to all instruments affecting the real estate which are recorded in the office of the county recorder, and shall commence not less than forty years prior to the date the abstractor commences participation in the title guaranty program. However, a participating attorney providing abstract services continuously from November 12, 1986, to the date of application, either personally or through persons under the attorney's supervision and control is exempt from the requirements of this paragraph.

The division may waive the requirements of this subsection pursuant to an application of an attorney or abstractor which shows that the requirements impose a hardship to the attorney or abstractor and that the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state.

6. Prior to the issuance of a title guaranty, the division shall require evidence that an abstract of title to the property in question has been brought up-to-date and certified by a participating abstractor in a form approved by division rules and a title opinion issued by a participating attorney in

the form approved in the rules stating the attorney's opinion as to the title. The division shall require evidence of the abstract being brought up-to-date and the abstractor shall retain evidence of the abstract as determined by the board.

7. The attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the authority.

8. The authority shall adopt rules pursuant to chapter 17A that are necessary for the implementation of the title guaranty program as established by the division and that have been approved by the authority.

85 Acts, ch 252, §30
CS85, §220.91
87 Acts, ch 75, §1; 88 Acts, ch 1145, §2 – 5; 92 Acts, ch 1090, §1
C93, §16.91
97 Acts, ch 214, §6; 2000 Acts, ch 1166, §1

16.92 Real estate transfer — mortgage release certificate.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Division" means the title guaranty division in the Iowa finance authority.

b. "Mortgage" means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of five hundred thousand dollars or less.

c. "Mortgagee" means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.

d. "Mortgage servicer" means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor's successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.

e. "Mortgagor" means the grantor of a mortgage.

f. "Payoff statement" means a written statement furnished by the mortgage servicer which sets forth all of the following:

(1) The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the amount required to be paid in order to release or partially release the mortgage.

(2) Interest on a per-day basis for an amount set forth pursuant to subparagraph (1).

(3) The address where payment is to be sent or other specific instructions for making a payment.

(4) If after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will be released from the mortgage.

g. "Real estate lender or closer" means a person licensed to regularly lend moneys to be secured by a mortgage on real property in this state, a licensed real estate broker, or a licensed attorney.

2. *Execution of certificate of release.* A duly authorized officer or employee of the division may execute and record a certificate of release in the real property records of each county in which a mortgage is recorded as provided in this section if all of the following are satisfied:

a. The real estate lender or closer has certified in writing to the division all of the following:

(1) That the payoff statement satisfies one of the following:

(a) The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.

(b) The statement contains the legal description of the property to be released from the mortgage.

(2) That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(a) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(b) Other documentary evidence of payment to the mortgagee or mortgage servicer.

(3) That more than thirty days have elapsed since the date the payment was sent.

b. The division determines that an effective satisfaction or release of the mortgage has not been executed and recorded within thirty days after the date payment was sent or otherwise made in accordance with a payoff statement.

c. The division, at least thirty days prior to executing the certificate of release, sends by certified mail, to the last known address of the mortgage servicer, written notice of its intention to execute and record a certificate of release pursuant to this section after expiration of the thirty-day period following the sending of such notice, including instructions to notify the division of any reason why the certificate of release should not be executed and recorded. If, prior to executing and recording the certificate of release, the division receives written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded by the division, the division shall not execute and record the certificate of release.

3. *Contents.* A certificate of release executed under this section must contain substantially the information set forth as follows:

a. The name of the mortgagor; the name of the

original mortgagee, and, if applicable, the mortgage servicer; the date of the mortgage; the date of recording, including the volume and page or other applicable recording information in the real property records where the mortgage is recorded, and the same information for the last recorded assignment of the mortgage.

b. A statement that the original mortgage principal was in an amount of five hundred thousand dollars or less.

c. A statement that the person executing the certificate of release is a duly authorized officer or employee of the division.

d. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and that does not indicate that the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee.

(2) A statement that the certificate is a partial release of the mortgage and the legal description of the property that will be released from the mortgage.

e. A statement that payment was made in accordance with the payoff statement, and the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence of payment to the mortgagee or mortgage servicer.

f. A statement that more than thirty days have elapsed since the date payment in accordance with the payoff statement was sent.

g. A statement that the division has sent the thirty-day notice required under subsection 2, paragraph *"c"*, and that thirty days have elapsed since the date the notice was sent.

h. A statement that the division has not received written notification of any reason satisfactory to the division why the certificate of release should not be executed and recorded after the expiration of the thirty-day notice period under subsection 2, paragraph *"c"*.

4. *Execution.* A certificate of release under this section shall be executed and acknowledged in the same manner as required by law for the execution of a deed.

5. *Effect.*

a. For purposes of a release or partial release of the mortgage, a certificate of release executed under this section that contains the information and statements required under subsection 3 is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

b. Recording of a wrongful or erroneous certificate of release by the division shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

c. In addition to any other remedy provided by law, if the division wrongfully or erroneously records a certificate of release under this section, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release.

d. Upon payment of a claim relating to the recording of a certificate of release, the division is subrogated to the rights of the claimant against all persons relating to the claim.

6. *Recording.* If a mortgage is recorded in more than one county and a certificate of release or partial release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release or partial release shall be entered and indexed in the manner that a satisfaction of mortgage is entered and indexed.

7. *Prior mortgages.*

a. If the real estate lender or closer has notified the division that a mortgage has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record, the division may execute and record a certificate of release without certification by the real estate lender or closer that payment was made pursuant to a payoff statement and the date payment was received by the mortgagee. A certificate of release filed pursuant to this subsection is subject to the requirements of subsection 2, paragraph *"c"*.

b. For purposes of this subsection, an effective release has not been filed of record if it appears that a mortgagee in the record chain of title to the mortgage has not, either on the mortgagee's own behalf or by the mortgagee's duly appointed servicer or attorney in fact as established of record by a filed servicing agreement or power of attorney, filed of record either an assignment of the mortgage to another mortgagee in the record chain of title to the mortgage or a release of the mortgagee's interest in the mortgage. For the purposes of this subsection and subsection 2, paragraph *"c"*, *"mortgage servicer"* includes a mortgagee for which an effective release has not been filed of record as provided in this paragraph.

8. *Application.* This section applies only to a mortgage in an original principal amount of five

hundred thousand dollars or less.

99 Acts, ch 54, §1; 2000 Acts, ch 1166, §2 – 5; 2001 Acts, ch 24, §15

16.93 Closing protection letters.

1. The authority through the title guaranty division may issue a closing protection letter to a person to whom a proposed title guaranty is to be issued, upon the request of the person, if the division issues a commitment for title guaranty or title guaranty certificate. The closing protection letter shall conform to the terms of coverage and form of the instrument as approved by the division board and may indemnify a person to whom a proposed title guaranty is to be issued against loss of settlement funds due to only the following acts of the division's named participating attorney or participating abstractor:

a. Theft of settlement funds.

b. Failure by the participating attorney or participating abstractor to comply with written closing instructions of the person to whom a proposed title guaranty is to be issued relating to title certificate coverage when agreed to by the participating attorney or participating abstractor.

2. A closing protection letter shall only be issued to a person to whom a proposed title guaranty is to be issued for real property transactions in which the division has committed to issue an owner or lender certificate and for which the division receives a premium and other payments or fees for a title guaranty certificate or other coverage.

3. The division board shall establish the amount of coverage to be provided and may distinguish between classes of property including, but not limited to, residential, agricultural, or commercial, provided that the total amount of coverage provided by the closing protection letter shall not exceed the amount of the commitment or title guaranty to be issued. Liability under the closing protection letter shall be coextensive with liability under the certificate to be issued in connection with a transaction such that payments under the terms of the closing protection letter shall reduce by the same amount the liability under the title guaranty certificate and payment under the title guaranty certificate shall reduce the liability under the terms of the closing protection letter.

4. The division may adopt a required fee for providing closing protection letter coverage.

5. The division shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

6. The authority shall adopt rules pursuant to chapter 17A as necessary to administer this section.

2000 Acts, ch 1166, §6

16.94 through 16.99 Reserved.

HOUSING IMPROVEMENT FUND PROGRAM

16.100 Housing improvement fund program.

1. A housing improvement fund is created within the authority. The moneys in the housing improvement fund are annually appropriated to the authority which shall allocate the available funds among and within the programs authorized by this section. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining in the fund on June 30 of any fiscal year shall not revert to any other fund but shall be available for expenditure for subsequent fiscal years. Notwithstanding section 12C.7, interest or earnings on moneys in the fund or appropriated to the fund shall be credited to the fund. The authority may expend up to four percent of the moneys appropriated for the programs in this section for administrative costs of the authority for those programs. The authority may provide financial assistance to a housing sponsor or an individual in the form of loans, guarantees, grants, interest subsidies, or by other means for the programs authorized by this section.

2. By rule, the authority shall establish the following financial assistance programs and provide the requirements for their proper administration:

a. A home maintenance and repair program providing repair services to families which include persons who are elderly or persons with disabilities and which qualify as lower income or very low income families.

b. A rental rehabilitation program for the construction or rehabilitation of single or multifamily rental properties leased to lower income or very low income families.

c. A home ownership incentive program to help lower income and very low income families achieve single family home ownership. Funds provided under this program shall not be restricted to first-time home buyers but shall be limited to mortgages under fifty-five thousand dollars, except in those areas of the state where the median price of homes exceeds the state average. The assistance provided shall include at least one of the following kinds of assistance:

(1) Closing costs assistance.

(2) Down payment assistance.

(3) Home maintenance and repair assistance.

(4) Loan processing assistance through a loan endorser review contractor who acts on behalf of the authority in assisting lenders in processing loans that will qualify for government insurance or guarantee or for financing under the authority's mortgage revenue bond program.

(5) Mortgage insurance program.

Five percent of the moneys expended under this program shall be used to finance the purchase or acquisition, in communities with a population of less than ten thousand, of manufactured homes as defined in 42 U.S.C. § 5403. Moneys available for

this purpose which are unencumbered or unobligated at the end of the fiscal year shall revert to the housing improvement fund for reallocation for the next fiscal year.

Not more than fifty percent of the assistance provided under this program shall be provided under subparagraphs (4) and (5). So long as at least one of the kinds of assistance described in subparagraphs (1) through (5) is provided, additional assistance not described in subparagraphs (1) through (5) may also be provided.

3. The authority shall coordinate the programs authorized by this section with the other programs under the jurisdiction of the authority.

4. Each application for financial assistance shall be rated based on local, housing sponsor, and recipient financial commitment, proposals for leveraging other financial assistance, experience with the recipient group involved, consideration for the housing project in the context of overall community needs, including vacancy rate of rental property and ratio of subsidized rental housing to nonsubsidized housing, ability to provide a counseling support system to the recipients, and a demonstrated capability by the housing sponsor to provide follow-up monitoring of recipients to determine if identifiable results have been achieved.

5. For the purposes of this section, *"housing sponsor"* is a for-profit entity, nonprofit corporation, local government, or a joint venture involving a for-profit entity, nonprofit corporation or local government.

6. None of the funds provided to a housing sponsor under this section shall be used for the costs of administration.

7. During each regular session of the general assembly, the authority shall present, to the appropriate appropriations subcommittee, a report concerning the total estimated resources to be available for expenditure under this section for the next fiscal year and the amount the authority proposes to allocate to each program under this section.

8. A homelessness advisory committee is created consisting of the executive director or the executive director's designee, the directors or their designees from the departments of economic development, elder affairs, human services, and human rights, and at least three individuals from the private sector to be selected by the executive director. The advisory committee shall advise the authority in coordinating programs that provide for the homeless.

87 Acts, ch 220, §1
CS87, §220.100
88 Acts, ch 1217, §19; 90 Acts, ch 1262, §38, 39; 91 Acts, ch 267, §316
C93, §16.100
96 Acts, ch 1129, §11; 97 Acts, ch 201, §19; 2001 Acts, ch 61, §11

IOWA ECONOMIC DEVELOPMENT
BOND BANK PROGRAM

16.101 Legislative findings.

The general assembly finds and declares that:

1. Economic development and expansion of business, industry, and farming in the state is dependent upon the availability of financing of the development and expansion at affordable interest rates.

2. Private financing at low interest rates for small business under the Iowa finance authority small business loan program, for beginning farmers under the agricultural development authority beginning farmer loan program or soil conservation loan program, and for commercial, industrial, and other business enterprises pursuant to chapter 419 is severely limited because of the unattractiveness of tax exempt financing to financial institutions in the state.

3. The pooling of private financing enhances the marketability of the obligations involved and increases access to other state, regional, and national credit markets.

4. The creation of an Iowa economic development bond bank program will make the pooling of private financing available to small businesses, farmers, agricultural landowners and operators, and commercial, industrial, and other business enterprises at favorable interest rates with reduced marketing costs.

5. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

86 Acts, ch 1212, §2
C87, §220.101
C93, §16.101

16.102 Establishment of bond bank program — bonds and notes — projects.

The authority shall assist the development and expansion of family farming, soil conservation, housing, and business in the state through the establishment of the Iowa economic development bond bank program. The authority may issue its bonds or notes, or series of bonds or notes for the purpose of defraying the cost of one or more projects and make secured and unsecured loans for the acquisition and construction of projects on terms the authority determines. For purposes of this section, projects shall include any of the following:

1. A project defined in section 16.1, subsection 30, for which loans may be made by the authority pursuant to the small business loan program.

2. The acquisition of agricultural land and improvements and depreciable agricultural property by beginning farmers for the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equip-

ment, or any other purpose for which loans may be made by the Iowa agricultural development authority pursuant to chapter 175.

3. A project defined in section 419.1, subsection 12, for which bonds or notes may be issued by a city or a county.

86 Acts, ch 1212, §3
C87, §220.102
C93, §16.102

16.103 Iowa economic development bond bank program — specific powers.

In carrying out the Iowa economic development bond bank program, the authority may do any of the following:

1. Make secured and unsecured loans for both the acquisition and the construction of projects on terms the authority determines. Any loan made with respect to any project for which a loan may be made pursuant to chapter 175 shall be made only upon the request and with the consent of the agricultural development authority. The loans may be made to any person or entity including, but not limited to, a city, a county, and the agricultural development authority for projects approved by the Iowa finance authority. The Iowa finance authority may take any action which is reasonable and lawful to protect its security and to avoid losses from its loans.

2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used as a project.

3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more projects under the terms the authority determines. However, in the lease, sale, or loan agreement relating to a project, the authority shall provide for adequate maintenance of the project.

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more projects, revenues, or reserve or other funds established in connection with obligations, or with respect to a lease, sale, or loan relating to one or more projects, or a guaranty or insurance agreement relating to one or more projects, or a secured or unsecured interest of the authority in one or more projects or parts of one or more projects.

5. Provide that the interest on obligations may vary in accordance with a base or formula authorized by the authority.

6. Contract for the acquisition, construction, or both of one or more projects or parts of one or more projects and for the leasing, subleasing, sale, or other disposition of one or more projects in a manner determined by the authority.

86 Acts, ch 1212, §4
C87, §220.103
C93, §16.103

16.104 Loan agreements.

1. The authority may enter into loan agreements with one or more borrowers to finance in whole or in part the acquisition of one or more projects by construction or purchase. The repayment obligation of the borrower or borrowers may be unsecured, secured by a mortgage or security agreement, or secured by other security as the authority deems advisable. The repayment obligation may be evidenced by one or more notes of the borrower or borrowers. The loan agreements may contain terms and conditions the authority deems advisable.

2. The authority may issue its bonds and notes for the projects set forth in section 16.102 and may enter into one or more lending agreements or purchase agreements with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders or a trustee or agent designated by the authority may enter into agreements to provide for any of the following:

a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the bondholders or noteholders, or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority may collect, invest, and apply the amounts payable under the loan agreements or any other security instruments securing the debt obligations of the borrower or borrowers.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreements or security instruments on their own behalf without the appointment or designation of a trustee. If there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained in the loan agreements or security instruments, the payment or performance may be enforced in accordance with the loan agreement or security instrument.

d. That if there is a default in the payment of the principal or interest on a mortgage or security instrument or if there is a violation of an agreement contained in the mortgage or security instrument, the mortgage or security instrument may be foreclosed or enforced. Collateral may be sold under proceedings or actions permitted by law. A trustee under the mortgage or security agreement or the holder of any bonds or notes secured by the mortgage or security agreement may become a purchaser if the trustee or holder is the highest bidder.

e. Other terms and conditions as deemed necessary or appropriate by the authority.

86 Acts, ch 1212, §5
C87, §220.104
87 Acts, ch 115, §33
C93, §16.104

16.105 Security for bonds — reserve funds — validity of pledge — nonliability — irrevocable contracts.

1. The authority may provide in the resolution authorizing the issuance of its bonds or notes for the Iowa economic development bond bank program that the principal of, premium, if any, and interest on the bonds or notes are payable exclusively from any of the following:

a. The income and receipts or other money derived from the projects financed with the proceeds of the bonds or notes.

b. The income and receipts or other money derived from designated projects whether or not the projects are financed in whole or in part with the proceeds of the bonds or notes.

c. The authority's income and receipts of other assets generally, or a designated part or parts of them.

2. For the purpose of securing one or more issues of its bonds or notes, the authority may establish one or more special funds, called *"capital reserve funds"*. The authority may pay into the capital reserve funds the proceeds of the sale of its bonds or notes and other money which may be made available to the authority from other sources for the purposes of the capital reserve funds. Except as provided in this section, money in a capital reserve fund shall be used only as required for any of the following:

a. The payment of the principal of and interest on bonds or notes or of the sinking fund payments with respect to those bonds or notes.

b. The purchase or redemption of the bonds or notes.

c. The payment of a redemption premium required to be paid when the bonds or notes are redeemed before maturity.

However, money in a capital reserve fund shall not be withdrawn if the withdrawal would reduce the amount in the capital reserve fund to less than the capital reserve fund requirement, except for the purpose of making payment, when due, of principal, interest, redemption premiums on the bonds or notes, and making sinking fund payments when other money pledged to the payment of the bonds or notes is not available for the payments. Income or interest earned by, or increment to, a capital reserve fund from the investment of all or part of the fund may be transferred by the authority to other funds or accounts of the authority if the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

3. If the authority decides to issue bonds or notes secured by a capital reserve fund, the bonds or notes shall not be issued if the amount in the capital reserve fund is less than the capital reserve fund requirement, unless at the time of issuance of the bonds or notes the authority deposits in the capital reserve fund from the proceeds of the bonds or notes to be issued or from other sources, an amount which, together with the amount then in the fund, is not less than the capital reserve fund requirement.

4. In computing the amount of a capital reserve fund for the purpose of this section, securities in which all or a portion of the fund is invested shall be valued by a reasonable method established by the authority by resolution. Valuation shall include the amount of interest earned or accrued as of the date of valuation.

5. In this section, *"capital reserve fund requirement"* means the amount required to be on deposit in the capital reserve fund as of the date of computation as determined by resolution of the authority.

6. To assure maintenance of the capital reserve funds, the chairperson of the authority shall, on or before July 1 of each calendar year, make and deliver to the governor the chairperson's certificate stating the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited by the authority in the applicable capital reserve fund.

7. All amounts paid to the authority by the state pursuant to this section shall be considered advances by the state to the authority and, subject to the rights of the holders of any bonds or notes of the authority that have previously been issued or will be issued, shall be repaid to the state without interest from all available operating revenues of the authority in excess of amounts required for the payment of bonds, notes, or obligations of the authority, the capital reserve fund, and operating expenses.

8. If any amount deposited in a capital reserve fund is withdrawn for payment of principal, premium, or interest on the bonds or notes or sinking fund payments with respect to bonds or notes thus reducing the amount of that fund to less than the capital reserve fund requirement, the authority shall immediately notify the general assembly of this event and shall take steps to restore the capital reserve fund to the capital reserve fund requirement for that fund from any amounts designated as being available for such purpose.

9. The authority may establish reserve funds,

other than capital reserve funds, to secure one or more issues of its bonds or notes. The authority may deposit in a reserve fund established under this subsection the proceeds of the sale of its bonds or notes and other money which is made available from any other source. The authority may allow a reserve fund established under this subsection to be depleted without complying with subsection 6 or subsection 8.

10. It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority whether or not the parties have notice of the lien. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code to be valid, binding, or effective against the parties.

11. Neither the members of the authority nor a person executing the bonds or notes are liable personally on the bonds or notes or are subject to personal liability or accountability by reason of the issuance of the bonds or notes.

12. The bonds or notes issued by the authority are not an indebtedness or other liability of the state or of a political subdivision of the state, except the authority, and are payable solely from the income and receipts or other funds or property of the authority which are designated in the resolution of the authority authorizing the issuance of the bonds or notes as being available as security for bonds or notes. The authority shall not pledge the faith or credit of the state or of a political subdivision of the state, except the authority, to the payment of a bond or note. The issuance of a bond or note by the authority does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply money from, or levy or pledge any form of taxation whatever to the payment of the bond or note.

13. The state pledges to and agrees with the holders of bonds or notes issued under the Iowa economic development bond bank program, that the state will not limit or alter the rights and powers vested in the authority to fulfill the terms of a contract made by the authority with respect to the bonds or notes, or in any way impair the rights and remedies of the holders until the bonds and notes, together with the interest on them including interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, as it refers to holders of bonds or notes of the authority, in a contract with the holders.

86 Acts, ch 1212, §6
C87, §220.105
C93, §16.105

16.106 Adoption of rules.

The board of directors of the authority shall adopt rules pursuant to chapter 17A to implement sections 16.101 through 16.105.

86 Acts, ch 1212, §7
C87, §220.106
C93, §16.106

16.107 Infrastructure loan program. Repealed by 2001 Acts, ch 61, § 19.

16.108 through 16.120 Reserved.

EXPORT BUSINESS FINANCE PROGRAM

16.121 Legislative findings — purposes — public policy.

1. The general assembly finds and declares as follows:

a. The economy of the state of Iowa and opportunities for employment within the state are increasingly dependent upon the international exports of Iowa manufactured goods and services and the growth of international export markets for those manufactured goods and services.

b. Other states have utilized or are preparing to utilize the resources of their state governments to stimulate, facilitate, and promote international exports.

c. Competition among businesses and countries will endure and intensify as more countries seek to expand their international export capacities.

d. Expanding international export markets is essential in order to maintain a vigorous and growing economy and to provide adequate job opportunities for Iowa citizens.

e. Iowa has a responsibility to create employment opportunities by encouraging and stimulating the development of international export sales and markets by export businesses.

f. Iowa export businesses find it increasingly difficult to compete with foreign exporters which benefit from their governmentally supported financing programs.

g. Increased export sales may best be stimulated by making financial assistance available to export businesses to develop and expand international export markets and to ensure the competitiveness of Iowa products and services in foreign markets, thereby increasing employment opportunities available to the citizens of Iowa.

h. Export businesses seeking to enter foreign markets face severe problems financing and insuring their transactions.

i. Export business expansion and develop-

ment is dependent upon the availability of financing for expansion at interest rates, terms, and conditions which are reasonable to export businesses.

j. Private and public financing for export businesses with reasonable rates, terms, and conditions is unavailable to assist export business expansion and development.

k. The Iowa export business finance program is necessary to encourage the investment of private capital in export business expansion and development.

2. The purposes of the export business finance program are to:

a. Promote the business prosperity and economic welfare of Iowa and Iowans.

b. Provide financial assistance for the location of new or the expansion of existing export businesses in Iowa through the sale of bonds and notes, subsidies, loans, guarantees, insurance, grants, investments, contracts, or other transactions.

c. Provide employment opportunities and thereby improve the standard of living of Iowans.

d. Promote industrial, commercial, and recreational development in Iowa.

3. All of the purposes stated in this section are public purposes and uses for which public moneys provided by the sale of bonds and notes, or otherwise available through appropriations, grants, contributions, or declared surplus moneys may be used.

4. It is the public policy of the state through the establishment of the export business finance program to promote the economic welfare of Iowans and to improve employment opportunities for Iowans. To advance the public policy the authority may provide financial assistance for export businesses through the sale of bonds and notes, loans, guarantees, insurance, grants, subsidies, investments, contracts, or other transactions.

87 Acts, ch 141, §3
CS87, §220.121
C93, §16.121

16.122 Iowa export business finance program.

The authority shall initiate a program to assist the development and expansion of export business in the state. The authority may issue bonds and notes the proceeds of which shall be used to provide financial assistance for export businesses. The authority may also provide financial assistance to export businesses through the use of loans, guarantees, insurance, grants, subsidies, investments, contracts, or other transactions.

87 Acts, ch 141, §4
CS87, §220.122
C93, §16.122

16.123 Export business finance program — powers.

In assisting Iowa export businesses, the authority has all the powers specified in section 16.5 and in this part including, but not limited to, the following:

1. The authority may provide financial assistance, including guarantees described in subsection 2, to mortgage lenders or export businesses to finance international exports from the state which, in the judgment of the authority, will create or maintain employment in Iowa. Financial assistance shall only be provided where at least twenty-five percent of the value of the international exports is derived from goods or services whose final production process occurs in the state. The authority may charge reasonable fees for providing financial assistance.

2. The authority may provide guarantees for international exports against political or commercial loss, in whole or in part, of principal and interest. The guarantees may include, without limitation, insurance against a loss up to a stated amount which shall be set by the authority. Guarantees may include a pool of individual export transactions. A guarantee entered into by the authority shall not constitute a general obligation of the state of Iowa. Guarantees made by the authority shall not be terminated, canceled, or otherwise revoked except in accordance with the terms of the guarantees.

3. The authority shall provide financial assistance only to the extent that the financial assistance is reasonably necessary to stimulate or facilitate the making of an international export transaction including, without limitation, the making of the international export transaction upon terms which will enable the transaction to be reasonably competitive with transactions in other states or in foreign countries. The authority may condition the provision of financial assistance upon such other terms and conditions as it may deem desirable to carry out the purposes of the program. Prior to providing financial assistance, the participating mortgage lender shall make an investigation of a line of credit to the export business in order to determine its viability, the economic benefits to be derived from the line of credit, the prospects for repayment, and other facts as it deems necessary in order to determine that financial assistance is consistent with the purposes of the program.

87 Acts, ch 141, §5
CS87, §220.123
C93, §16.123

16.124 Advisory board.

The executive director may appoint a three-member advisory board to advise the authority on matters relating to international exporting and

the export business finance program. Advisory board members shall be selected primarily for knowledge in the areas of international trade, finance, or business management.

87 Acts, ch 141, §6
CS87, §220.124
C93, §16.124

16.125 Coordination of programs.

The authority shall coordinate with the department of economic development the marketing and educational aspects of the export business finance program. The authority and the department shall also coordinate economic development efforts and existing programs with the export business finance program.

87 Acts, ch 141, §7
CS87, §220.125
C93, §16.125

16.126 through 16.130 Reserved.

WATER POLLUTION CONTROL WORKS AND DRINKING WATER FACILITIES FINANCING

16.131 Iowa water pollution control works and drinking water facilities financing program — definitions — funding — bonds and notes.

1. The authority shall cooperate with the department of natural resources in the creation, administration, and financing of the Iowa water pollution control works and drinking water facilities financing program established in sections 455B.291 through 455B.299.

2. Terms used in this part have the meanings given them in sections 455B.101 and 455B.291 unless the context requires otherwise.

3. The authority may issue its bonds and notes for the purpose of funding the revolving loan funds created under section 455B.295 and defraying the costs of payment of the twenty percent state matching funds required for federal funds received for projects.

4. The authority may issue its bonds and notes for the purposes established and may enter into one or more lending agreements or purchase agreements with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders or a trustee agent designated by the authority may enter into agreements to provide for any of the following:

a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the authority or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority may collect, invest, and apply the amount payable under the loan agreements or any other instruments securing the debt obligations under the loan agreements.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreements or other instruments on their own behalf without the appointment or designation of a trustee. If there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained in the loan agreements or other instruments, the payment or performance may be enforced in accordance with the loan agreement or other instrument.

d. Other terms and conditions as deemed necessary or appropriate by the authority.

5. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 16.28, subsection 4, apply to bonds or notes issued and powers granted to the authority under this section except to the extent they are inconsistent with this section.

6. All bonds or notes issued by the authority in connection with the program are exempt from taxation by this state and the interest on the bonds or notes is exempt from state income tax.

88 Acts, ch 1217, §20
C89, §220.131
C93, §16.131
97 Acts, ch 4, §1; 2002 Acts, 2nd Ex, ch 1003, §234, 262
Subsection 1 amended

16.132 Security — reserve funds — pledges — nonliability — irrevocable contracts.

1. The authority may provide in the resolution, trust agreement, or other instrument authorizing the issuance of its bonds or notes pursuant to section 16.131 that the principal of, premium, and interest on the bonds or notes are payable from any of the following and may pledge the same to its bonds and notes:

a. The income and receipts or other money derived from the projects financed with the proceeds of the bonds or notes.

b. The income and receipts or other money derived from designated projects whether or not the projects are financed in whole or in part with the proceeds of the bonds or notes.

c. The amounts on deposit in the revolving loan funds.

d. The amounts payable to the department by eligible entities pursuant to loan agreements with eligible entities.

e. Any other funds or accounts established by the authority in connection with the program or the sale and issuance of its bonds or notes.

2. The authority may establish reserve funds, to secure one or more issues of its bonds or notes.

The authority may deposit in a reserve fund established under this subsection the proceeds of the sale of its bonds or notes and other money which is made available from any other source.

3. It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority whether or not the parties have notice of the lien. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code to be valid, binding, or effective against the parties.

4. Neither the members of the authority nor persons executing the bonds or notes are liable personally on the bonds or notes or are subject to personal liability or accountability by reason of the issuance of the bonds or notes.

5. The bonds or notes issued by the authority are not an indebtedness or other liability of the state or of a political subdivision of the state within the meaning of any constitutional or statutory debt limitations but are special obligations of the authority, and are payable solely from the income and receipts or other funds or property of the department, and the amounts on deposit in the revolving loan funds, and the amounts payable to the department under its loan agreements with the municipalities and water systems to the extent that the amounts are designated in the resolution, trust agreement, or other instrument of the authority authorizing the issuance of the bonds or notes as being available as security for such bonds or notes. The authority shall not pledge the faith or credit of the state or of a political subdivision of the state to the payment of any bonds or notes. The issuance of any bonds or notes by the authority does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply money from, or levy or pledge any form of taxation whatever to the payment of the bonds or notes.

6. The state pledges to and agrees with the holders of bonds or notes issued under the Iowa sewage treatment and drinking water facilities financing program, that the state will not limit or alter the rights and powers vested in the authority to fulfill the terms of a contract made by the authority with respect to the bonds or notes, or in any way impair the rights and remedies of the holders until the bonds or notes, together with the interest on them including interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, as it refers to holders of bonds or notes of the authority, in a contract with the holders.

88 Acts, ch 1217, §21
C89, §220.132
C93, §16.132
97 Acts, ch 4, §2 – 4; 2002 Acts, 2nd Ex, ch 1003, §235, 262
Subsection 1, paragraph d amended

16.133 Adoption of rules.

The authority shall adopt rules pursuant to chapter 17A to implement sections 16.131 and 16.132.

88 Acts, ch 1217, §22
C89, §220.133
C93, §16.133

16.134 through 16.140 Reserved.

RURAL COMMUNITY 2000 PROGRAM

16.141 through 16.143 Repealed by 2001 Acts, ch 61, § 19.

16.144 through 16.150 Reserved.

IOWA TANK ASSISTANCE BONDS

16.151 Authority to issue Iowa tank assistance bonds.

The authority shall assist the Iowa comprehensive petroleum underground storage tank fund as provided in chapter 455G and the authority shall have all of the powers that the Iowa comprehensive petroleum underground storage tank fund board possesses and which that board delegates to the authority in a chapter 28E agreement or a contract between the authority and the Iowa comprehensive petroleum underground storage tank fund board with respect to the issuance and securing of bonds and carrying out the purposes of chapter 455G.

89 Acts, ch 131, §12
CS89, §220.151
C93, §16.151

16.152 through 16.154 Reserved.

RESIDENTIAL TREATMENT FACILITIES

16.155 Residential treatment facilities.

1. The authority may issue its bonds and notes and loan the proceeds of the bonds or notes to a nonprofit corporation for the purpose of financing the acquisition or construction of residential housing or treatment facilities serving juveniles or persons with disabilities.

2. The authority may enter into a loan agreement with a nonprofit corporation for the purpose of financing the acquisition or construction of residential housing or treatment facilities serving juveniles or persons with disabilities and shall provide for payment of the loan and security for the loan as the authority deems advisable.

3. In the resolution authorizing the issuance of the bonds or notes pursuant to this section, the authority may provide that the related principal and interest are limited obligations payable solely out of the revenues derived from the debt obligation, collateral, or other security furnished by or on behalf of the nonprofit corporation, and the principal or interest does not constitute an indebtedness of the authority or a charge against the authority's general credit or general fund.

4. The powers granted the authority under this section are in addition to the authority's other powers under this chapter. All other provisions of this chapter, except section 16.28, subsection 4, apply to bonds or notes issued pursuant to, and powers granted to the authority under this section, except to the extent the provisions are inconsistent with this section.

90 Acts, ch 1239, §6
C91, §220.155
C93, §16.155
96 Acts, ch 1129, §113

16.156 through 16.160 Reserved.

E911 PROGRAM

16.161 Authority to issue E911 program bonds and notes.

The authority shall assist the administrator, appointed pursuant to section 34A.2A, as provided in chapter 34A, subchapter II, and the authority shall have all of the powers delegated to it by a joint E911 service board or the department of public defense in a chapter 28E agreement with respect to the issuance and securing of bonds or notes and the carrying out of the purposes of chapter 34A.

The authority shall provide a mechanism for the pooling of funds of two or more joint E911 service boards to be used for the joint purchasing of necessary equipment and reimbursement of land-line and wireless service providers' costs for upgrades necessary to provide E911 service. When two or more joint E911 service boards have agreed to pool funds for the purpose of purchasing necessary equipment to be used in providing E911 service, the authority shall issue bonds and notes as provided in sections 34A.20 through 34A.22.

90 Acts, ch 1144, §5
C91, §220.161
C93, §16.161
98 Acts, ch 1101, §1, 2, 16; 99 Acts, ch 96, §3

COMMUNITY COLLEGE DORMITORIES

16.162 Authority to issue community college dormitory bonds and notes.

The authority shall assist a community college or the state board for community colleges as provided in chapter 260C, and the authority shall have all of the powers delegated to it in a chapter 28E agreement by a community college board of directors, the state board for community colleges, or a private developer contracting with a community college to develop a housing facility, such as a dormitory, for the community college, with respect to the issuance or securing of bonds or notes as provided in sections 260C.71 and 260C.72.

90 Acts, ch 1253, §75; 90 Acts, ch 1254, §5
C91, §220.162
C93, §16.162

16.163 through 16.170 Reserved.

MUNICIPAL INVESTMENT RECOVERY PROGRAM

16.171 through 16.176 Repealed by 92 Acts, ch 1001, § 7.

PRISON INFRASTRUCTURE REVENUE BONDS

16.177 Prison infrastructure revenue bonds.

1. The authority is authorized to issue its bonds to provide prison infrastructure financing as provided in this section. The bonds may only be issued to finance projects which have been approved for financing by the general assembly. Bonds may be issued in order to fund the construction and equipping of a project or projects, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds and other expenditures incident to or necessary or convenient to carry out the bond issue. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of the uniform commercial code.

2. The department of corrections is authorized to pledge amounts in the Iowa prison infrastructure fund established under section 602.8108A as security for the payment of the principal of, premium, if any, and interest on the bonds. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents, and are not an indebtedness of this state or the authority, or a charge against the general credit or general fund of the state or the authority, and the state shall not be liable for the bonds except from amounts on deposit in the fund. Bonds issued under this section shall contain a state-

ment that the bonds do not constitute an indebtedness of the state or the authority.

3. The proceeds of bonds issued by the authority and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested in any investment approved by the authority and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

4. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the authority. Chapters 73A, 74, 74A, and 75 do not apply to the sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

5. The bonds are securities in which public officers and bodies of this state, political subdivisions of this state, insurance companies and associations and other persons carrying on an insurance business, banks, trust companies, savings associations, savings and loan associations, and investment companies, administrators, guardians, executors, trustees, and other fiduciaries, and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

6. Bonds must be authorized by a trust indenture, resolution, or other instrument of the authority. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

7. Neither the resolution or trust agreement, nor any other instrument by which a pledge is created is required to be recorded or filed under the uniform commercial code to be valid, binding, or effective.

8. Bonds issued under this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

9. The authority shall cooperate with the department of corrections in the implementation of this section.

94 Acts, ch 1196, §20; 95 Acts, ch 202, §11

16.178 through 16.180 Reserved.

1993 LOCAL GOVERNMENT
FLOOD DAMAGE PROGRAM

16.181 through 16.186 Repealed effective August 1, 1996, by 94 Acts, ch 1155, § 7.

CHAPTER 16A

ECONOMIC PROTECTIVE AND INVESTMENT AUTHORITY

This chapter not enacted as a part of this
title; transferred from chapter 175A in Code 1993

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16A.1 Legislative findings — purpose.

The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious problem in this state regarding the ability of farmers and small businesses to obtain adequate affordable operating loans and to service the debt on existing operating, machinery, and land loans.

4. Farming and the operation of small regionally owned businesses are principal pursuits of the inhabitants of this state. Many other industries and pursuits are wholly dependent upon farming and small business.

5. The inability of farmers and small businesses to obtain adequate affordable operating loans and to service the debt on existing operating, machinery, and land loans is conducive to economic decline and poverty and impairs the economic value of vast areas of the state, which are characterized by depreciated property values, impaired investments, and reduced capacity to pay taxes.

6. These conditions result in a loss of population and further economic deterioration, accompanied by added costs to communities for creation of new public facilities and services.

7. A major cause of the unavailability of adequate affordable operating loans and the inability to service the debt on existing operating, machinery, and land loans is the unstable economic condition of the state, due in part to unanticipated high interest rates.

8. A stable economic condition is necessary to encourage and facilitate the availability of adequate affordable operating loans and to enable farmers and small businesses to service the debt on existing operating, machinery, and land loans, and it is necessary to create a state economic protective and investment authority to administer programs to stabilize the economic condition.

9. The public purpose of this chapter is to maximize the economic potential of the state and to thereby stabilize the economic condition of the state.

85 Acts, ch 252, §2
CS85, §175A.1
C93, §16A.1

16A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Authority"* means the Iowa economic protective and investment authority established in section 16A.3.

2. *"Farmer"* means a person engaged in farming.

3. *"Farming"* means as defined in section 9H.1.

4. *"Lending institution"* means a bank, trust company, mortgage company, national banking association, savings and loan association, savings bank, or another state financial institution or entity authorized to make farm or small business operating loans or loans to farmers or small businesses to acquire real or personal property.

5. *"Operating loan"* means a loan made by a lending institution to a borrower in an amount sufficient to enable the borrower to pay the reasonably necessary expenses and cash flow requirements of farming or of operating a small business.

6. *"Cash flow requirements"* includes but is not limited to the availability of money adequate to provide for obligations which become due during the term of the operating loan for operating expenses, family living expenses, principal and interest installments on loans for real or personal property, and rent.

7. *"Small business"* means as defined in section 16.1, except as further defined by the authority by rule.

85 Acts, ch 252, §3
CS85, §175A.2
C93, §16A.2

16A.3 Establishment of authority.

1. The Iowa economic protective and investment authority is established and constituted a public instrumentality and agency of the state exercising public and essential governmental functions. The authority is established to undertake programs which provide assistance for farming and for small businesses, and other programs the authority deems necessary to carry out the purpose identified in section 16A.1. The powers of the authority are vested in and exercised by a board of five members appointed by a committee composed of the majority and minority floor leaders of the senate, the speaker of the house of representatives, and the minority floor leader of the house of representatives. No more than three members appointed pursuant to this subsection shall belong to the same political party. As far as possible the board shall include within the membership persons who represent lending institutions experienced in agricultural or small business lending, agricultural suppliers, farmers, operators of small businesses, average citizens, and other persons specially interested in the availability of funds for farm operating loans.

2. The members of the authority appointed pursuant to subsection 1 shall serve terms of three years, except that, of first appointments, one member shall be appointed for a term of one year and two members shall be appointed for terms of

two years. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority appointed pursuant to subsection 1 may be removed from office by the committee for misfeasance, malfeasance, willful neglect of duty, or other just cause after notice and hearing, unless the notice and hearing is expressly waived in writing. A member of the authority appointed pursuant to subsection 1 may also serve as a member of the Iowa family farm development authority.

3. Three members of the authority constitute a quorum and the affirmative vote of a majority of the members of the authority is necessary for substantive action to be taken by the authority. The majority shall not include a member who has a conflict of interest and a statement by a member of a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. The members of the authority appointed pursuant to subsection 1 are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The members of the authority appointed pursuant to subsection 1 and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or when two members so request.

7. The members appointed pursuant to subsection 1 shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director, appointed pursuant to section 16A.5, is a nonvoting ex officio member of the board and shall serve as secretary to the authority.

8. The net earnings of the authority, beyond those necessary for retirement of its notes, bonds or other obligations, or to implement the authorized public purposes and programs, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state.

85 Acts, ch 252, §4
CS85, §175A.3
90 Acts, ch 1256, §35
C93, §16A.3

16A.4 Advisory panel.

The director of the department of management or the director's designee, the treasurer of state or the treasurer's designee, the secretary of agriculture or the secretary's designee, the director of the Iowa department of economic development or the director's designee, the executive director of the agricultural development authority or the director's designee, and the superintendent of banking or the superintendent's designee are constituted as an advisory panel to the authority. The panel shall provide advice and assistance to the authority in the performance of the authority's functions, but shall not vote in board decisions.

85 Acts, ch 252, §5
CS85, §175A.4
C93, §16A.4

16A.5 Executive director — staff.

1. The governor, subject to confirmation by the senate, shall appoint an executive director of the authority, who shall serve a four-year term at the pleasure of the governor. The term shall begin and end as provided in section 69.19. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation. The executive director shall not, directly or indirectly, exert influence to induce other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

2. The executive director is a nonvoting ex officio member of the board, and shall advise the authority on matters relating to finance, carry out all directives from the authority, and hire and supervise the authority's staff pursuant to its directions and under the merit system provisions of chapter 19A, except that principal administrative assistants with responsibilities in operating loan programs, accounting, and processing of applications for interest reduction are exempt from the merit system.

3. The executive director, as secretary of the authority, shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. The executive director may cause copies to be made of all minutes and other records and documents of the authority and give certificates under the seal of the authority to the effect that the copies are true copies and all persons dealing with the authority may rely upon the certificates.

85 Acts, ch 252, §6
CS85, §175A.5
88 Acts, ch 1158, §47
C93, §16A.5
Confirmation, see §2.32

16A.6 General powers.

The authority has all of the general powers needed to carry out its purposes and duties, and to exercise its specific powers, including but not limited to the power to:

1. Sue and be sued in its own name.
2. Have and alter a corporate seal.
3. Make and alter bylaws for its management

consistent with this chapter.

4. Make and execute agreements, contracts and other instruments, with any public or private entity, including but not limited to, any federal governmental agency or instrumentality. The authority may make and execute contracts with a firm of independent certified public accountants to prepare an annual report on behalf of the authority. All political subdivisions, other public agencies and state agencies may enter into contracts and otherwise cooperate with the authority.

5. Procure insurance against any loss in connection with its operations.

6. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.

7. Provide to public and private entities technical assistance and counseling related to the authority's purposes.

8. In cooperation with other local, state or federal governmental agencies or instrumentalities, conduct studies of farm and small business operational expense needs, and gather and compile data useful to facilitate decision making.

9. Facilitate and encourage the maximized use of available federal farm and small business aid.

10. Contract with attorneys, accountants, finance experts, and other advisors or enter into contracts or agreements for these services with local, state or federal governmental agencies.

11. Issue its negotiable bonds, notes, debentures, capital stock, or other obligations as provided in sections 16A.9 to 16A.13 in order to directly or indirectly finance its programs.

12. Fix and collect fees and charges for its services.

13. Subject to agreements with holders of its obligations, invest or deposit moneys of the authority in a manner determined by the authority by rule, notwithstanding chapter 12B or 12C.

14. Organize, administer, and participate in real or personal property investment trusts with farmers and small businesses for the purpose of reducing the debt service requirements of farm and small business machinery and land loans, subject to rules provided by the authority.

15. Make, alter and repeal rules consistent with this chapter and subject to chapter 17A.

85 Acts, ch 252, §7
CS85, §175A.6
C93, §16A.6

16A.7 Annual report.

1. The authority shall submit to the governor and to the members of the general assembly who request it, not later than January 15 of each year, a complete and economically designed and reproduced report setting forth:

a. Its operations and accomplishments.

b. Its receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of its fiscal year and the status of reserve, special and other funds.

d. A statement of its proposed and projected activities.

e. Recommendations to the general assembly, as it deems necessary.

f. An analysis of operating loan needs for farms and small businesses in the state.

g. A schedule of its obligations outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and issued during its fiscal year.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period, in attaining the goals. Where possible, results shall be expressed in terms of number of farm units and small business units assisted. The report shall state the median, mean, range, and total of the dollar amount of the individual grants, the debt-to-asset ratio of borrowers assisted, and the resulting interest rates on farm and small business operating loans. The report shall also state the median, mean, and range of the size of farm units assisted, expressed in acres, and the median, mean, and range of the size of small businesses assisted, expressed in the amount of annual gross income.

85 Acts, ch 252, §8
CS85, §175A.7
C93, §16A.7

16A.8 Operating assistance program.

1. The authority shall establish and develop an operating assistance program to facilitate the availability of affordable operating capital to as many farmers and small businesses as possible by providing grants to lending institutions as provided in this section.

2. Lending institutions shall make available to borrowers a lender-borrower eligibility application form prepared by the authority for the operating assistance program. Application to the authority for assistance under this section shall be executed jointly by the lending institution and the borrower upon an approved form.

3. The authority shall provide in the operating assistance program that the grant will be provided in conjunction with a borrower's operating loan only if the following criteria are satisfied as evidenced on a lender-borrower eligibility application:

a. The borrower is a resident of the state.

b. The farming operation or small business for which the borrower seeks the operating assistance is located in the state.

c. The operating loan, if a new loan, will be used, and if an existing loan, was used by the bor-

rower for the reasonably necessary expenses and cash flow requirements of farming or of the operation of a small business.

d. The borrower has made full disclosure of the borrower's finances to the lending institution.

e. Requirements prescribed by the authority by rule, which may include but are not limited to participation in federal crop insurance programs, where available, a consideration of the borrower's agreement to maintain farm management techniques and standards established by the authority, participation in federal farm programs, where applicable, and the maximized use of available loan guarantees including small business administration programs, where applicable.

4. The authority shall provide in the operating assistance program that the authority may, upon approval by the board of an application, enter into an agreement with the lending institution in which the lending institution shall agree to reduce for one year the interest rate on the borrower's operating loan, whether the loan is a new loan or is an existing and unpaid loan, to a rate at least five percent below the base rate, which is the maximum lawful rate of interest as determined by the superintendent of banking pursuant to section 535.2 for the calendar month in which the application was approved by the authority. However, the authority may lower the base rate if necessary to accommodate regional financial conditions. The authority shall agree to give to each lending institution which has agreed with the authority to the interest reduction a grant in the amount, as determined by the authority, necessary to reimburse the lending institution for the reduction of the interest rate on the borrower's operating loan by two percent for the term of the loan or for one year, whichever is less. The grant shall be paid to the lending institution within sixty days after the date the application is approved.

5. The authority shall require each lending institution to which the authority has approved an application for a grant on an operating loan to submit to the authority evidence satisfactory to the authority of a reduction in the interest rate as required by an agreement pursuant to subsection 4, and in that connection, the board members, employees or agents of the authority may inspect the books and records of a lending institution.

6. Compliance by a lending institution with the terms of an agreement with the authority pursuant to subsection 4 may be enforced by decree of a district court of this state. The authority may require, as a condition of a payment to a national banking association or a federally chartered savings and loan association or savings bank on an operating loan, the consent of the association to the jurisdiction of courts of this state over an enforcement proceeding. The authority may also require, as a condition for approval of an application for a grant to a lending institution on an operating loan, that the lending institution agree to the payment of penalties to the authority for violation by the lending institution of its agreement with the authority pursuant to subsection 4, and the penalties are recoverable at the suit of the authority.

7. If a lending institution refuses a borrower's request to apply for an operating assistance grant under this section, the borrower may provide the authority with a written statement regarding the lending institution's refusal. A borrower who has provided the authority with a written statement may be provided with an opportunity for a hearing on the refusal before the board or persons designated by the authority. The procedure established in this subsection is not a contested case under chapter 17A.

8. Funds allocated by the authority for the operating assistance program which have not been committed for grants for interest rate reduction on operating loans by the end of the fiscal year, may be used for other economic assistance programs, as provided by the authority by rule, for farming or small businesses. However, applications for grants for interest rate reduction on operating loans made after the close of the fiscal year are given first priority in the use of the uncommitted funds.

85 Acts, ch 252, §9
CS85, §175A.8
C93, §16A.8

16A.9 Obligations issued by the authority.

1. The authority may issue its negotiable obligations in principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its obligations, the establishment of reserves to secure its obligations, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The obligations shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of chapter 554, the uniform commercial code.

2. Obligations issued by the authority are payable solely and only out of the moneys, assets, or revenues of the authority, and as provided in agreements with holders of its obligations pledging any particular moneys, assets or revenues. Taxes or appropriations shall not be pledged for the payment of the obligations. Obligations are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority shall not pledge the general credit or taxing power of this state or any political subdivision of this state other than the authority, or make its debts payable out of any moneys except those of the au-

thority.

3. Obligations must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of obligations may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Obligations shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be registered, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted on the obligations the seal of the authority or a facsimile of it, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed thirty years from the date of issuance, at places, and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest and other terms, conditions, covenants and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the obligations as to:

(1) Pledging or creating a lien, to the extent provided by the resolution, on moneys or property of the authority or moneys held in trust or otherwise by others to secure the payment of the obligations.

(2) Providing for the custody, collection, securing, investment and payment of any moneys of or due to the authority.

(3) The setting aside of reserves or sinking funds and the regulation or disposition of them.

(4) Limitations on the purpose to which the proceeds of sale of an issue of obligations then or thereafter to be issued may be applied.

(5) Limitations on the issuance of additional obligations and on the refunding of outstanding or other obligations.

(6) The procedure by which the terms of a contract with the holders of obligations may be amended or abrogated, the amount of obligations the holders of which must consent to the contract, and the manner in which consent may be given.

(7) The creation of special funds into which moneys of the authority may be deposited.

(8) Vesting in a trustee properties, rights, powers and duties in trust as the authority determines, which may include the rights, powers and duties of the trustee appointed for the holders of any issue of obligations pursuant to section 16A.10, in which event the provisions of that section authorizing appointment of a trustee by the holders of obligations shall not apply, or limiting or abrogating the right of the holders of obligations to appoint a trustee under that section, or limiting the rights, duties and powers of the trustee.

(9) Defining the acts or omissions which constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of obligations in the event of a default. However, rights and remedies shall be consistent with the laws of this state.

(10) Any other matters which affect the security and protection of the obligations and the rights of the holders or which the authority deems necessary and advisable in furtherance of its purposes.

c. Include other information and be subject to other terms and conditions as the authority deems necessary and provides by rule.

5. The authority may issue its obligations for the purpose of refunding any obligations of the authority then outstanding, including the payment of any redemption premiums on the obligations and any interest accrued or to accrue to the date of redemption of the outstanding obligations. Until the proceeds of obligations issued for the purpose of refunding outstanding obligations are applied to the purchase or retirement of outstanding obligations or the redemption of outstanding obligations, the proceeds may be placed in escrow and be invested and reinvested in accordance with this chapter. The interest, income and profits earned or realized on an investment may also be applied to the payment of the outstanding obligations to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding obligations shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other obligations issued pursuant to this chapter.

6. The authority may issue negotiable obligation anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged, or from the proceeds of the sale of obligations of the authority

in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as other obligations, and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, which the obligation or a resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in this chapter for holders of its obligations. Notes shall be as fully negotiable as other obligations of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each obligation resolution, indenture of trust or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under chapter 554, article 9 of the uniform commercial code, or any other law of the state shall be required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Neither the members of the authority nor any person executing its obligations are liable personally on the obligations or are subject to any personal liability or accountability by reason of the issuance of the authority's obligations.

9. The authority may create and establish one or more special funds, to be known as *"reserve funds"*, and shall pay into each reserve fund any proceeds of sale of obligations to the extent provided in the resolutions of the authority authorizing their issuance, and any other moneys which may be available to the authority for the purpose of the fund from any other sources. All moneys held in a reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of obligations secured in whole or in part by the fund or of the sinking fund payments with respect to the obligations, the purchase or redemption of the obligations, the payment of interest on the obligations or the payments of any redemption premium required to be paid when the obligations are redeemed prior to maturity.

85 Acts, ch 252, §10
CS85, §175A.9
C93, §16A.9
2000 Acts, ch 1149, §162, 187

16A.10 Remedies of holders of obligations.

1. If the authority defaults in the payment of principal or interest on an issue of obligations after they become due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the authority fails or refuses to comply with this chapter, or defaults in an agreement made with the holders of an issue of obligations, the holders of twenty-five percent in aggregate principal amount of obligations of the issue then outstanding may appoint a trustee to represent the holders of the obligations for the purposes provided in this section by filing an instrument in the office of the clerk of the county in which the principal office of the authority is located. The instrument shall be proved or acknowledged in the same manner as a deed to be recorded.

2. The authority or any trustee appointed under the indenture under which the obligations are issued may, and upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of obligations then outstanding shall:

a. Enforce all rights of the holders of the obligations, including the right to require the authority to carry out its agreements with the holders and to perform its duties under this chapter.

b. Bring suit upon the obligations.

c. By action require the authority to account as if it were the trustee of an express trust for the holders.

d. By action enjoin any acts or things which are unlawful or in violation of the rights of the holders.

e. Declare all the obligations due and payable and if all defaults are made good then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of obligations then outstanding, annul the declaration and its consequences.

The holders of obligations, to the extent provided in the resolution by which the obligations were issued or in their agreement with the authority, may enforce any of the remedies in paragraphs *"a"* to *"e"* or the remedies provided in those agreements for and on their own behalf.

3. The trustee shall also have all powers necessary or appropriate for the exercise of functions specifically set forth or incident to the general representation of the holders of obligations in the enforcement and protection of their rights.

4. Before declaring the principal of obligations due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority and to the attorney general of the state.

5. The district court has jurisdiction of any action by the trustee on behalf of the holders of obligations. The venue of the action shall be in the county in which the principal office of the authority is located.

85 Acts, ch 252, §11
CS85, §175A.10
C93, §16A.10

16A.11 Obligations as legal investments.

Obligations of the authority are securities in

which public officers, state departments and agencies, political subdivisions, insurance companies, and other persons carrying on an insurance business, banks, trust companies, savings and loan associations, savings banks, investment companies and other persons carrying on a banking business, administrators, executors, guardians, conservators, trustees and other fiduciaries, and other persons authorized to invest in bonds or other obligations of this state, may properly and legally invest funds including capital in their control or belonging to them. The obligations are also securities which may be deposited with and may be received by public officers, state departments and agencies, and political subdivisions, for any purpose for which the deposit of bonds or other obligations of this state is authorized.

85 Acts, ch 252, §12
CS85, §175A.11
C93, §16A.11

16A.12 Notice — limitation of action.

The authority may publish a notice of its intention to issue obligations in a newspaper published in and with general circulation in the state. The notice shall include a statement of the maximum amount of obligations proposed to be issued, and in general, what funds or revenues will be pledged to pay the obligations and interest on the obligations. An action which questions the legality of obligations or the power of the authority to issue the obligations or the effectiveness of any proceedings adopted for the authorization or issuance of the obligations shall not be brought after sixty days from the date of publication of the notice.

85 Acts, ch 252, §13
CS85, §175A.12
C93, §16A.12

16A.13 Moneys of the authority.

1. Moneys of the authority shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall be secured in the manner determined by the authority. The auditor of state or the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, investments and other records and papers relating to its financial standing, and the authority shall not be required to pay a fee for the examination.

2. The authority shall submit to the governor, the auditor of state, the department of management, and the department of revenue and finance, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

85 Acts, ch 252, §14
CS85, §175A.13
88 Acts, ch 1158, §48
C93, §16A.13

16A.14 Limitation of liability — no pledge of state credit.

1. Members of the authority and persons acting in its behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties given in this chapter.

2. The obligations of the authority are not obligations of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are obligations of the authority payable solely and only from the authority's funds, and the authority shall not pledge the credit or taxing power of this state or any political subdivision of this state other than the authority or make its debts payable out of any moneys except for those of the authority.

85 Acts, ch 252, §15
CS85, §175A.14
C93, §16A.14

16A.15 Assistance by state officers, agencies and departments.

State officers and state departments and agencies may render services to the authority within their respective functions as requested by the authority.

85 Acts, ch 252, §16
CS85, §175A.15
C93, §16A.15

16A.16 Conflicts of interest.

1. If a member or employee other than the executive director of the authority has an interest, either direct or indirect, in a contract to which the authority is or is to be a party or in a lending institution which is seeking a payment for a reduction in the interest rate on a borrower's farm operating loan, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member or employee having the interest shall not participate in action by the authority with respect to that contract or lending institution.

2. This section does not limit the right of a member, officer or employee of the authority other than the executive director to have an interest in a bank or other financial institution in which the funds of the authority are deposited.

3. The executive director shall not have an interest in a bank or other financial institution in which the funds of the authority are deposited.

The executive director shall not receive, in addition to fixed salary or compensation, money or anything valuable, either directly or indirectly, or through a substantial interest in another corporation or business unit, for negotiating, procuring, recommending or aiding in a payment made by the authority under section 16A.8, subsection 4, nor shall the executive director be pecuniarily interested, either as principal, coprincipal, agent or beneficiary, either directly or indirectly or through any substantial interest in another corporation or business unit, in a payment made by the authority under section 16A.8, subsection 4.

85 Acts, ch 252, §17
CS85, §175A.16
C93, §16A.16

16A.17 Exemption from competitive bid laws.

The authority and contracts made by it in carrying out its public and essential governmental functions are exempt from the laws of the state which provide for competitive bids in connection with the contracts.

85 Acts, ch 252, §18
CS85, §175A.17
C93, §16A.17

16A.18 Lending institution obligations.

1. The authority shall collect from each lending institution participating in the operating assistance program and each participating lending institution shall pay an amount equal to eight percent of the equity capital of each participating stock-owned lending institution and five percent of the surplus of each participating mutually owned lending institution.

2. The amount collected by the authority shall become moneys of the authority and shall be deposited in a special trust fund held in the name of and for the benefit of the authority by a state bank or national banking association with trust powers. The amount collected by the authority shall be invested while on deposit in the special trust fund and shall remain invested and on deposit in the special trust fund until the final maturity of the authority's obligations issued to fund the particular operating assistance program in which the lending institutions are participating. At the time of the final maturity the amount on deposit, including a pro rata share of any investment earnings not already used in accordance with subsection 3, shall be returned to the lending institution making the initial deposit.

3. All investment earnings from the amount on deposit in the special trust fund shall be deposited when earned into a separate account of the special trust fund and pledged to the payment of principal of and interest on the authority's obligations issued to fund the operating assistance program in which the lending institutions are participating pursuant to the resolution under which the obligations were issued. All investment earnings not used to pay principal of and interest on the authority's obligations shall be commingled with other moneys on deposit in the special trust fund and reinvested with such moneys.

4. Neither the authority nor the holders of any of the authority's obligations shall have any claim or right to the amount on deposit in the special trust fund other than to the investment earnings held in the separate account of the special trust fund. The authority shall not use the amount on deposit in the special trust fund, other than the earnings in the separate account, to pay principal of and interest on its obligations.

85 Acts, ch 252, §19
CS85, §175A.18
C93, §16A.18

16A.19 Lending institutions incentives.

The superintendent of banking shall certify that a state bank or national banking association which participates in the operating assistance program is meeting its obligations to meet the credit needs of its community as provided in the federal Community Reinvestment Act of 1977, 12 U.S.C. § 2901 – 2905.

A lending institution participating in the operating assistance program may value on its books the amount collected from it by the authority and held by the authority at the full face amount thereof.

85 Acts, ch 252, §20
CS85, §175A.19
C93, §16A.19

16A.20 Lending institution write-off of bought-down interest.

A lending institution participating in the operating assistance program under this chapter may write off the interest bought down under the program over a period not to exceed five years, rather than writing off the entire amount during the year in which the interest is bought down.

85 Acts, ch 252, §21
CS85, §175A.20
C93, §16A.20

16A.21 Agricultural land valuation.

Agricultural land which is valued by a lending institution for the purpose of determining the debt-to-asset ratio of a borrower in conjunction with the borrower's application for an operating loan or a loan for the acquisition of real or personal property shall be valued by determining the per acre average of the valuations for the current year and the four previous years for agricultural land in the county in which the agricultural land is located as published by Iowa state university of science and technology. If an appraisal conducted by an independent real estate appraiser is available for the current year, the five-year county average

shall be adjusted by either adding or subtracting from the five-year average the percentage by which the particular farm's current appraised value exceeds or is less than the current year's county average value. To the extent permitted by federal law, national banks may value agricultural land on the same basis as state banks. The value determined pursuant to this section shall be recomputed using the method provided in this section each year a loan subject to this chapter remains in existence and unpaid.

85 Acts, ch 252, §22
CS85, §175A.21
C93, §16A.21

16A.22 Liberal interpretation.

This chapter, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

85 Acts, ch 252, §23
CS85, §175A.22
C93, §16A.22

SUBTITLE 6

ADMINISTRATIVE PROCEDURE

CHAPTER 17

OFFICIAL REPORTS AND PUBLICATIONS

Transferred to chapter 7A

CHAPTER 17A

IOWA ADMINISTRATIVE PROCEDURE ACT

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17A.1 Citation and statement of purpose.

1. This chapter may be cited as the *"Iowa Administrative Procedure Act"*.

2. This chapter is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public. Nothing in this chapter is meant to discourage agencies from adopting procedures providing greater protections to the public or conferring additional rights upon the public; and save for express provisions of this chapter to the contrary, nothing in this chapter is meant to abrogate in whole or in part any statute prescribing procedural duties for an agency which are greater than or in addition to those provided here. This chapter is meant to apply to all rulemaking and contested case proceedings and all suits for the judicial review of agency action that are not specifically excluded from this chapter or some portion thereof by its express terms or by the express terms of another chapter.

The purposes of the Iowa administrative procedure Act are: To provide legislative oversight of powers and duties delegated to administrative agencies; to increase public accountability of administrative agencies; to simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions; to increase public access to governmental information; to increase public participation in the formulation of administrative rules; to increase the fairness of agencies in their conduct of contested case proceedings; and to simplify the process of judicial review of agency

action as well as increase its ease and availability. In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical and effective government administration. The chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

[C75, 77, 79, 81, §17A.1]

17A.2 Definitions.

As used in this chapter:

1. *"Agency"* means each board, commission, department, officer or other administrative office or unit of the state. *"Agency"* does not mean the general assembly, the judicial branch or any of its components, the office of consumer advocate, the governor, or a political subdivision of the state or its offices and units. Unless provided otherwise by statute, no less than two-thirds of the members eligible to vote of a multimember agency constitute a quorum authorized to act in the name of the agency.

2. *"Agency action"* includes the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

3. *"Agency member"* means an individual who is the statutory or constitutional head of an agency, or an individual who is one of several individuals who constitute the statutory or constitutional head of an agency.

4. *"ARC number"* means the identification number assigned by the governor's administrative rules coordinator to each rulemaking document.

5. *"Contested case"* means a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.

6. *"License"* includes the whole or a part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by statute.

7. *"Licensing"* includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

8. *"Party"* means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

9. *"Person"* means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

10. *"Provision of law"* means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or agency rule.

11. *"Rule"* means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. Notwithstanding any other statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include:

a. A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

b. A declaratory order issued pursuant to section 17A.9, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts.

c. An intergovernmental, interagency, or intra-agency memorandum, directive, manual, or other communication which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

d. A determination, decision, or order in a contested case.

e. An opinion of the attorney general.

f. Those portions of staff manuals, instructions, or other statements issued by an agency which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would: (1) enable law violators to avoid detection; or (2) facilitate disregard of requirements imposed by law; or (3) give a clearly improper advantage to persons who are in an adverse position to the state.

g. A specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, application fee, or other fees.

h. A statement concerning only the physical servicing, maintenance, or care of publicly owned or operated facilities or property.

i. A statement relating to the use of a particular publicly owned or operated facility or property, the substance of which is indicated to the public by means of signs or signals.

j. A decision by an agency not to exercise a discretionary power.

k. A statement concerning only inmates of a penal institution, students enrolled in an educational institution, or patients admitted to a hospital, when issued by such an agency.

12. *"Rulemaking"* means the process for adopting, amending, or repealing a rule.

[C54, 58, 62, 66, 71, 73, §17A.1; C75, 77, 79, 81, §17A.2]

83 Acts, ch 127, §2; 83 Acts, ch 186, §10005, 10201; 86 Acts, ch 1245, §2036; 90 Acts, ch 1266, §31; 98 Acts, ch 1047, §11; 98 Acts, ch 1202, §4 – 6, 46

17A.3 Public information — adoption of rules — availability of rules and orders.

1. In addition to other requirements imposed by Constitution or statute, each agency shall:

a. Adopt as a rule a description of the organization of the agency which states the general course and method of its operations, the administrative subdivisions of the agency and the programs implemented by each of them, a statement of the mission of the agency, and the methods by which and location where the public may obtain information or make submissions or requests.

b. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available to the public, including a description of all forms and instructions that are to be used by the public in dealing with the agency.

c. As soon as feasible and to the extent practicable, adopt rules, in addition to those otherwise required by this chapter, embodying appropriate standards, principles, and procedural safeguards that the agency will apply to the law it administers.

d. Make available for public inspection all rules, and make available for public inspection and index by subject, all other written statements of law or policy, or interpretations formulated, adopted, or used by the agency in the discharge of its functions. Except as otherwise required by Constitution or statute, or in the use of discovery under the Iowa rules of civil procedure or in criminal cases, an agency shall not be required to make available for public inspection those portions of its staff manuals, instructions, or other statements excluded from the definition of *"rule"* by section 17A.2, subsection 11, paragraph *"f"*.

e. Make available for public inspection and index by name and subject all final orders, decisions, and opinions: Provided that to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets, an agency shall delete identifying details when it makes available for public inspection any final order, decision, or opinion; however, in each case the justification for the deletion shall be explained fully in writing.

2. No agency rule or other written statement of law or policy, or interpretation, order, decision, or opinion is valid or effective against any person or party, nor shall it be invoked by the agency for any purpose, until it has been made available for public inspection and indexed as required by subsection 1, paragraphs *"d"* and *"e"*. This provision is not applicable in favor of any person or party who has actual timely knowledge thereof and the burden of proving such knowledge shall be on the agency.

[C75, 77, 79, 81, §17A.3]

86 Acts, ch 1245, §2037; 98 Acts, ch 1202, §7, 46

17A.4 Procedure for adoption of rules.

1. Prior to the adoption, amendment, or repeal of any rule an agency shall:

a. Give notice of its intended action by submitting three copies of the notice to the administrative rules coordinator, who shall assign an ARC number to each rulemaking document and forward two copies to the administrative code editor for publication in the Iowa administrative bulletin created pursuant to section 17A.6. Any notice of intended action shall be published at least thirty-five days in advance of the action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views.

b. Afford all interested persons not less than twenty days to submit data, views, or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation. The opportunity for oral presentation must be held at least twenty days after publication of the notice of its time and place in the Iowa administrative bulletin. The agency shall consider fully all written and oral submissions respecting the proposed rule. Within one hundred eighty days following either the notice published according to the provisions of paragraph *"a"* or within one hundred eighty days after the last date of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rulemaking proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative bulletin.

An agency shall include in a preamble to each rule it adopts a brief explanation of the principal reasons for its action and, if applicable, a brief explanation of the principal reasons for its failure to provide in that rule for the waiver of the rule in specified situations if no such waiver provision is included in the rule. This explanatory requirement does not apply when the agency adopts a rule that only defines the meaning of a provision of law if the agency does not possess delegated authority

to bind the courts to any extent with its definition. In addition, if requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule adopted, incorporating therein the reasons for overruling considerations urged against the rule. This concise statement shall be issued either at the time of the adoption of the rule or within thirty-five days after the agency receives the request.

c. Mail the number of copies of the proposed rule as requested to the state office of a trade or occupational association which has registered its name and address with the agency. The trade or occupational association shall reimburse the agency for the actual cost incurred in providing the copies of the proposed rule under this paragraph. Failure to provide copies as provided in this paragraph shall not be grounds for the invalidation of a rule, unless that failure was deliberate on the part of that agency or the result of gross negligence.

2. When an agency for good cause finds that notice and public participation would be unnecessary, impracticable, or contrary to the public interest, the provisions of subsection 1 shall be inapplicable. The agency shall incorporate in each rule issued in reliance upon this provision either the finding and a brief statement of the reasons for the finding, or a statement that the rule is within a very narrowly tailored category of rules whose issuance has previously been exempted from subsection 1 by a special rule relying on this provision and including such a finding and statement of reasons for the entire category. If the administrative rules review committee by a two-thirds vote, the governor, or the attorney general files with the administrative code editor an objection to the adoption of any rule pursuant to this subsection, that rule shall cease to be effective one hundred eighty days after the date the objection was filed. A copy of the objection, properly dated, shall be forwarded to the agency at the time of filing the objection. In any action contesting a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to show that the procedures of subsection 1 were impracticable, unnecessary, or contrary to the public interest and that, if a category of rules was involved, the category was very narrowly tailored.

3. No rule adopted after July 1, 1975, is valid unless adopted in substantial compliance with the above requirements of this section. However, a rule shall be conclusively presumed to have been made in compliance with all of the above procedural requirements of this section if it has not been invalidated on the grounds of noncompliance in a proceeding commenced within two years after its effective date.

4. *a.* If the administrative rules review committee created by section 17A.8, the governor, or the attorney general finds objection to all or some portion of a proposed or adopted rule because that rule is deemed to be unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency, the committee, governor, or attorney general may, in writing, notify the agency of the objection. In the case of a rule issued under subsection 2, or a rule made effective under section 17A.5, subsection 2, paragraph *"b"*, the committee, governor, or attorney general may notify the agency of such an objection. The committee, governor, or attorney general shall also file a certified copy of such an objection in the office of the administrative code editor and a notice to the effect that an objection has been filed shall be published in the next issue of the Iowa administrative bulletin and in the Iowa administrative code when that rule is printed in it. The burden of proof shall then be on the agency in any proceeding for judicial review or for enforcement of the rule heard subsequent to the filing to establish that the rule or portion of the rule timely objected to according to the above procedure is not unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to it.

b. If the agency fails to meet the burden of proof prescribed for a rule objected to according to the provisions of paragraph *"a"* of this subsection, the court shall declare the rule or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. Such court costs shall include a reasonable attorney fee and shall be payable by the director of revenue and finance from the support appropriations of the agency which issued the rule in question.

5. Upon the vote of two-thirds of its members the administrative rules review committee may delay the effective date of a rule seventy days beyond that permitted in section 17A.5, unless the rule was promulgated under section 17A.5, subsection 2, paragraph *"b"*. This provision shall be utilized by the committee only if further time is necessary to study and examine the rule. Notice of an effective date that was delayed under this provision shall be published in the Iowa administrative code and bulletin.

6. The governor may rescind an adopted rule by executive order within seventy days of the rule becoming effective. The governor shall provide a copy of the executive order to the administrative code editor who shall include it in the next publication of the Iowa administrative bulletin.

[C66, 71, §17A.6, 17A.7; C73, §17A.6, 17A.7, 17A.17; C75, 77, 79, 81, §17A.4]

83 Acts, ch 142, §9; 86 Acts, ch 1245, §2038; 90 Acts, ch 1266, §32; 91 Acts, ch 258, §17, 18; 98 Acts, ch 1202, §8, 9, 46

Rules mandating expenditures by political subdivisions; limitations; fiscal impact statements; §25B.6

Subsection 5; see also §17A.8(9)

17A.4A Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph *"a"*, if, within thirty-two days after the published notice of proposed rule adoption, a written request for the analysis is submitted to the agency by the administrative rules review committee or the administrative rules coordinator. An agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph *"b"*, if the rule would have a substantial impact on small business and if, within thirty-two days after the published notice of proposed rule adoption, a written request for analysis is submitted to the agency by the administrative rules review committee, the administrative rules coordinator, at least twenty-five persons signing that request who each qualify as a small business or by an organization representing at least twenty-five such persons. If a rule has been adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the written request for an analysis that complies with subsection 2, paragraph *"a"* or *"b"*, may be made within seventy days of publication of the rule.

2. *a.* Except to the extent that a written request for a regulatory analysis expressly waives one or more of the following, the regulatory analysis must contain all of the following:

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

(2) A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.

(3) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

(4) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

(5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

(6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

b. In the case of a rule that would have a substantial impact on small business, the regulatory analysis must contain a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

(1) Establish less stringent compliance or reporting requirements in the rule for small business.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

(3) Consolidate or simplify the rule's compliance or reporting requirements for small business.

(4) Establish performance standards to replace design or operational standards in the rule for small business.

(5) Exempt small business from any or all requirements of the rule.

c. The agency shall reduce the impact of a proposed rule that would have a substantial impact on small business by using a method discussed in paragraph *"b"* if the agency finds that the method is legal and feasible in meeting the statutory objectives which are the basis of the proposed rule.

3. Each regulatory analysis must include quantifications of the data to the extent practicable and must take account of both short-term and long-term consequences.

4. Upon receipt by an agency of a timely request for a regulatory analysis, the agency shall extend the period specified in this chapter for each of the following until at least twenty days after publication in the administrative bulletin of a concise summary of the regulatory analysis:

a. The end of the period during which persons may make written submissions on the proposed rule.

b. The end of the period during which an oral proceeding may be requested.

c. The date of any required oral proceeding on the proposed rule.

In the case of a rule adopted without prior notice and an opportunity for public participation in reliance upon section 17A.4, subsection 2, the summary must be published within seventy days of the request.

5. The published summary of the regulatory analysis must also indicate where persons may obtain copies of the full text of the regulatory analysis and where, when, and how persons may present their views on the proposed rule and demand an oral proceeding thereon if one is not already provided. Agencies shall make available to the public, to the maximum extent feasible, the published summary and the full text of the regulatory analysis described in this subsection in an electronic format, including, but not limited to, access to the documents through the internet.

6. If the agency has made a good faith effort to comply with the requirements of subsections 1

through 3, the rule may not be invalidated on the ground that the contents of the regulatory analysis are insufficient or inaccurate.

7. For the purpose of this section, *"small business"* means any entity including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which all of the following apply:

a. It is not an affiliate or subsidiary of an entity dominant in its field of operation.

b. It has either twenty or fewer full-time equivalent positions or less than one million dollars in annual gross revenues in the preceding fiscal year.

For purposes of this definition, *"dominant in its field of operation"* means having more than twenty full-time equivalent positions and more than one million dollars in annual gross revenues, and *"affiliate or subsidiary of an entity dominant in its field of operation"* means an entity which is at least twenty percent owned by an entity dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of an entity dominant in that field of operation.

98 Acts, ch 1202, §10, 46

17A.5 Filing and taking effect of rules.

1. Each agency shall file in the office of the administrative rules coordinator three certified copies of each rule adopted by it. The administrative rules coordinator shall assign an ARC number to each rulemaking document and forward two copies to the administrative code editor. The administrative rules coordinator shall keep a permanent register of the rules open to public inspection.

2. A rule adopted after July 1, 1975, is effective thirty-five days after filing, as required in this section, and indexing and publication in the Iowa administrative bulletin except that:

a. If a later date is required by statute or specified in the rule, the later date is the effective date.

b. Subject to applicable constitutional or statutory provisions, a rule becomes effective immediately upon filing with the administrative rules coordinator, or at a subsequent stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing and publication, if the agency finds:

(1) That a statute so provides;

(2) That the rule confers a benefit or removes a restriction on the public or some segment thereof; or

(3) That this effective date is necessary because of imminent peril to the public health, safety or welfare. In any subsequent action contesting the effective date of a rule promulgated under this paragraph, the burden of proof shall be on the agency to justify its finding. The agency's finding and a brief statement of the reasons therefor shall be filed with and made a part of the rule. Prior to indexing and publication, the agency shall make reasonable efforts to make known to the persons who may be affected by it a rule made effective under the terms of this paragraph.

[C54, 58, 62, §17A.3, 17A.4; C66, 71, 73, §17A.8; C75, 77, 79, 81, §17A.5]

89 Acts, ch 83, §10; 90 Acts, ch 1266, §33; 91 Acts, ch 258, §19

17A.6 Publications.

1. The administrative code editor shall cause the Iowa administrative bulletin to be published in a printed form at least every other week, unless the administrative code editor and the administrative rules review committee determine that an alternative publication schedule is preferable. An electronic version of the Iowa administrative bulletin may also be published as provided in section 2.42. The Iowa administrative bulletin shall contain all of the following:

a. Notices of intended action and adopted rules prepared in such a manner so that the text of a proposed or adopted rule shows the text of any existing rule being changed and the change being made.

b. All proclamations and executive orders of the governor which are general and permanent in nature.

c. Resolutions nullifying administrative rules passed by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

d. Other materials deemed fitting and proper by the administrative rules review committee.

2. Subject to the direction of the administrative rules coordinator, the administrative code editor shall cause the Iowa administrative code to be compiled, indexed, and published in a printed loose-leaf form containing all rules adopted and filed by each agency. The administrative code editor further shall cause loose-leaf supplements to the Iowa administrative code to be published as determined by the administrative rules coordinator and the administrative rules review committee, containing all rules filed for publication in the prior time period. The supplements shall be in such form that they may be inserted in the appropriate places in the permanent compilation. The administrative rules coordinator shall devise a uniform numbering system for rules and may renumber rules before publication to conform with the system. An electronic version of the Iowa administrative code may also be published as provided in section 2.42.

3. The administrative code editor may omit or cause to be omitted from the Iowa administrative code or bulletin any rule the publication of which

would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency at no more than its cost of reproduction, and if the Iowa administrative code or bulletin contains a notice stating the specific subject matter of the omitted rule and stating how a copy of the omitted rule may be obtained.

The administrative code editor shall omit or cause to be omitted from the Iowa administrative code any rule or portion of a rule nullified by the general assembly pursuant to Article III, section 40 of the Constitution of the State of Iowa.

4. An agency which adopts standards by reference to another publication shall purchase and provide a copy of the publication containing the standards to the administrative rules coordinator who shall deposit the copy in the state law library where it shall be made available for inspection and reference.

5. The Iowa administrative code, its supplements, and the Iowa administrative bulletin shall be made available upon request to all persons who subscribe to any of them through the state printing division. Copies of this code so made available shall be kept current by the division.

6. All expenses incurred by the administrative code editor under this section shall be defrayed under section 2B.22.

7. The administrative code editor, with the approval of the administrative rules review committee and the administrative rules coordinator, may delete a rule from the Iowa administrative code if the agency that adopted the rule has ceased to exist, no successor agency has jurisdiction over the rule, and no statutory authority exists supporting the rule.

8. The Iowa administrative code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

9. The Iowa administrative bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

[C54, 58, 62, 66, §14.3, 17A.9; C71, 73, §14.6(5); C75, 77, 79, 81, §17A.6]

88 Acts, ch 1158, §2; 89 Acts, ch 296, §4; 90 Acts, ch 1266, §34; 91 Acts, ch 42, §2, 3; 91 Acts, ch 258, §20; 95 Acts, ch 14, §1; 96 Acts, ch 1099, §9, 10

See also §7.17

17A.7 Petition for adoption of rules and request for review of rules.

1. An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within sixty days after submission of a petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with section 17A.4, or issue a rule if it is not required to be issued according to the procedures of section 17A.4, subsection 1.

2. Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for an agency to conduct a formal review of a specified rule of that agency to determine whether the rule should be repealed or amended or a new rule adopted instead. The administrative rules coordinator shall determine whether the request is reasonable and does not place an unreasonable burden upon the agency.

If the agency has not conducted such a review of the specified rule within a period of five years prior to the filing of the written request, and upon a determination by the administrative rules coordinator that the request is reasonable and does not place an unreasonable burden upon the agency, the agency shall prepare within a reasonable time a written report with respect to the rule summarizing the agency's findings, its supporting reasons, and any proposed course of action. The report must include, for the specified rule, a concise statement of all of the following:

a. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.

b. Written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule tendered to the agency or granted by the agency.

c. Alternative solutions regarding the subject matter of the criticisms and the reasons they were rejected or the changes made in the rule in response to those criticisms and the reasons for the changes.

A copy of the report shall be sent to the administrative rules review committee and the administrative rules coordinator and shall be made available for public inspection.

[C75, 77, 79, 81, §17A.7]

98 Acts, ch 1202, §11, 46

17A.8 Administrative rules review committee.

1. There is created the "Administrative Rules Review Committee." The committee shall be bipartisan and shall be composed of the following members:

a. Five senators appointed by the majority leader of the senate.

b. Five representatives appointed by the speaker of the house.

2. A committee member shall be appointed prior to the adjournment of a regular session convened in an odd-numbered year. The term of office shall be for four years beginning May 1 of the year of appointment. However, a member shall serve until a successor is appointed. A vacancy on the

committee shall be filled by the original appointing authority for the remainder of the term. A vacancy shall exist whenever a committee member ceases to be a member of the house from which the member was appointed.

3. A committee member shall be paid the per diem specified in section 2.10, subsection 5, for each day in attendance and shall be reimbursed for actual and necessary expenses. There is appropriated from money in the general fund not otherwise appropriated an amount sufficient to pay costs incurred under this section.

4. The committee shall choose a chairperson from its membership and prescribe its rules of procedure. The committee may employ a secretary or may appoint the administrative code editor or a designee to act as secretary.

5. A regular committee meeting shall be held at the seat of government on the second Tuesday of each month. Unless impracticable, in advance of each such meeting the subject matter to be considered shall be published in the Iowa administrative bulletin. A special committee meeting may be called by the chairperson at any place in the state and at any time. Unless impracticable, in advance of each special meeting notice of the time and place of such meeting and the subject matter to be considered shall be published in the Iowa administrative bulletin.

6. The committee shall meet for the purpose of selectively reviewing rules, whether proposed or in effect. A regular or special committee meeting shall be open to the public and an interested person may be heard and present evidence. The committee may require a representative of an agency whose rule or proposed rule is under consideration to attend a committee meeting.

7. The committee may refer a rule to the speaker of the house and the president of the senate at the next regular session of the general assembly. The speaker and the president shall refer such a rule to the appropriate standing committee of the general assembly.

8. If the committee finds objection to a rule, it may utilize the procedure provided in section 17A.4, subsection 4. In addition or in the alternative, the committee may include in the referral, under subsection 7, a recommendation that this rule be overcome by statute. If the committee of the general assembly to which a rule is referred finds objection to the referred rule, it may recommend to the general assembly that this rule be overcome by statute. This section shall not be construed to prevent a committee of the general assembly from reviewing a rule on its own motion.

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule until the adjournment of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. A standing committee shall review a rule within twenty-one days after the rule is referred to the committee by the speaker of the house of representatives or the president of the senate and shall take formal committee action by sponsoring a joint resolution to disapprove the rule, by proposing legislation relating to the rule, or by refusing to propose a joint resolution or legislation concerning the rule. The standing committee shall inform the administrative rules review committee of the committee action taken concerning the rule. If the general assembly has not disapproved of the rule by a joint resolution, the rule shall become effective. The speaker of the house of representatives and the president of the senate shall notify the administrative code editor of the final disposition of each rule delayed pursuant to this subsection. If a rule is disapproved, it shall not become effective and the agency shall rescind the rule. This section shall not apply to rules made effective under section 17A.5, subsection 2, paragraph *"b"*.

10. Notwithstanding section 13.7, the committee may employ necessary legal and technical staff.

[C54, 58, 62, §17A.2; C66, 71, 73, §17A.2 – 17A.4, 17A.10; C75, 77, 79, 81, §17A.8]

86 Acts, ch 1245, §2024, 2039; 91 Acts, ch 258, §21 – 23; 95 Acts, ch 49, §1; 98 Acts, ch 1202, §12, 46

17A.9 Declaratory orders.

1. Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule adopted in accordance with subsection 2.

However, an agency shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

2. Each agency shall adopt rules that provide for the form, contents, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions. The rules must describe the classes of circumstances in which the agency will not issue a declaratory order and must be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agency issuance of reliable advice.

3. Within fifteen days after receipt of a petition for a declaratory order, an agency shall give notice of the petition to all persons to whom notice is required by any provision of law and may give notice

to any other persons.

4. Persons who qualify under any applicable provision of law as an intervenor and who file timely petitions for intervention according to agency rules may intervene in proceedings for declaratory orders. The provisions of sections 17A.10 through 17A.18 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

5. Within thirty days after receipt of a petition for a declaratory order, an agency, in writing, shall do one of the following:

a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances.

b. Set the matter for specified proceedings.

c. Agree to issue a declaratory order by a specified time.

d. Decline to issue a declaratory order, stating the reasons for its action.

6. A copy of all orders issued in response to a petition for a declaratory order must be mailed promptly to the petitioner and any other parties.

7. A declaratory order has the same status and binding effect as any final order issued in a contested case proceeding. A declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

8. If an agency has not issued a declaratory order within sixty days after receipt of a petition therefor, or such later time as agreed by the parties, the petition is deemed to have been denied. Once a petition for a declaratory order is deemed denied or if the agency declines to issue a declaratory order pursuant to subsection 5, paragraph *"d"*, a party to that proceeding may either seek judicial review or await further agency action with respect to its petition for a declaratory order.

[C75, 77, 79, 81, §17A.9]
98 Acts, ch 1202, §13, 46

17A.9A Waivers and variances.

1. Any person may petition an agency for a waiver or variance from the requirements of a rule, pursuant to the requirements of this section, if the agency has established by rule an application, evaluation, and issuance procedure permitting waivers and variances. An agency shall not grant a petition for waiver or a variance of a rule unless the agency has jurisdiction over the rule and the waiver or variance is consistent with any applicable statute, constitutional provision, or other provision of law. In addition, this section does not authorize an agency to waive or vary any requirement created or duty imposed by statute.

2. Upon petition of a person, an agency may in its sole discretion issue a waiver or variance from the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would pose an undue hardship on the person for whom the waiver or variance is requested.

b. The waiver or variance from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person.

c. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law.

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

3. The burden of persuasion rests with the person who petitions an agency for the waiver or variance of a rule. Each petition for a waiver or variance shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. A waiver or variance, if granted, shall be drafted by the agency so as to provide the narrowest exception possible to the provisions of the rule. The agency may place any condition on a waiver or a variance that the agency finds desirable to protect the public health, safety, and welfare. A waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the agency, a waiver or variance may be renewed if the agency finds all of the factors set out in subsection 2 remain valid.

4. A grant or denial of a waiver or variance petition shall be indexed, filed, and available for public inspection as provided in section 17A.3. The administrative code editor and the administrative rules coordinator shall devise a mechanism to identify rules for which a petition for a waiver or variance has been granted or denied and make this information available to the public.

5. Semiannually, each agency which permits the granting of petitions for waivers or variances shall prepare a report of these actions identifying the rules for which a waiver or variance has been granted or denied, the number of times a waiver or variance was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the agencies' actions on the waiver or variance request. To the extent practicable, this report shall detail the extent to which the granting of a waiver or variance has established a precedent for additional waivers or variances and the extent to which the granting of a waiver or variance has affected the general applicability of the rule itself. Copies of this report shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

6. For purposes of this section, *"a waiver or variance"* means an agency action which suspends in whole or in part the requirements or provisions

of a rule as applied to an identified person on the basis of the particular circumstances of that person.

2000 Acts, ch 1176, §1

17A.10 Informal settlements — waiver.

1. Unless precluded by statute, informal settlements of controversies that may culminate in contested case proceedings according to the provisions of this chapter are encouraged. Agencies shall prescribe by rule specific procedures for attempting such informal settlements prior to the commencement of contested case proceedings. This subsection shall not be construed to require either party to such a controversy to utilize the informal procedures or to settle the controversy pursuant to those informal procedures.

2. The parties to a contested case proceeding may, by written stipulation representing an informed mutual consent, waive any provision of this chapter relating to such proceedings. In addition to consenting to such a waiver in individual cases, an agency may, by rule, express its consent to such a waiver as to an entire class of cases.

[C75, 77, 79, 81, §17A.10]

17A.10A Contested cases — no factual dispute.

Upon petition by a party in a matter that would be a contested case if there was a dispute over the existence of material facts, all of the provisions of this chapter applicable to contested cases, except those relating to presentation of evidence, shall be applicable even though there is no factual dispute in the particular case.

98 Acts, ch 1202, §14, 46

17A.11 Presiding officer, disqualification, substitution.

1. *a.* If the agency or an officer of the agency under whose authority the contested case is to take place is a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multimember agency, or one or more administrative law judges assigned by the division of administrative hearings in accordance with the provisions of section 10A.801. However, a party may, within a time period specified by rule, request that the presiding officer be an administrative law judge assigned by the division of administrative hearings. Except as otherwise provided by statute, the agency shall grant a request by a party for an administrative law judge unless the agency finds, and states reasons for the finding, that any of the following conditions exist:

(1) There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

(2) A qualified administrative law judge is unavailable to hear the case within a reasonable time.

(3) The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

(4) The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

(5) Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal.

(6) The request was not timely filed.

(7) There is other identified good cause, as specified by rule, for denying the request.

b. If the agency or an officer of the agency under whose authority the contested case is to take place is not a named party to that proceeding or a real party in interest to that proceeding the presiding officer may be, in the discretion of the agency, either the agency, one or more members of a multimember agency, an administrative law judge assigned by the division of administrative hearings in accordance with the provisions of section 10A.801, or any other qualified person designated as a presiding officer by the agency. Any other person designated as a presiding officer by the agency may be employed by and officed in the agency for which that person acts as a presiding officer, but such a person shall not perform duties inconsistent with that person's duties and responsibilities as a presiding officer.

c. For purposes of paragraph *"a"*, the division of administrative hearings established in section 10A.801 shall be treated as a wholly separate agency from the department of inspections and appeals.

2. Any person serving or designated to serve alone or with others as a presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is or may be disqualified.

3. Any party may timely request the disqualification of a person as a presiding officer by filing a motion supported by an affidavit asserting an appropriate ground for disqualification, after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification, whichever is later.

4. A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

5. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute shall be appointed by either of the following:

a. The governor, if the disqualified or unavailable person is an elected official.

b. The appointing authority, if the disqualified or unavailable person is an appointed official.

6. Any action taken by a duly-appointed substitute for a disqualified or unavailable person is

as effective as if taken by the latter.

[C75, 77, 79, 81, §17A.11]

88 Acts, ch 1109, §4; 98 Acts, ch 1202, §15, 46

17A.12 Contested cases — notice — hearing — records.

1. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail return receipt requested. However, an agency may provide by rule for the delivery of such notice by other means. Delivery of the notice referred to in this subsection shall constitute commencement of the contested case proceeding.

2. The notice shall include:

a. A statement of the time, place and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

3. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. The parties shall be duly notified of the decision, together with the presiding officer's reasons for the decision, which is the final decision of the agency, unless within fifteen days, or such period of time as otherwise specified by statute or rule, after the date of notification or mailing of the decision, further appeal is initiated. If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

4. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

5. Unless precluded by statute, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

6. The record in a contested case shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. Any decision, opinion or report by the officer presiding at the hearing.

7. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision.

8. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

9. Unless otherwise provided by statute, a person's request or demand for a contested case proceeding shall be in writing, delivered to the agency by United States postal service or personal service and shall be considered as filed with the agency on the date of the United States postal service postmark or the date personal service is made.

[C75, 77, 79, 81, §17A.12]

87 Acts, ch 71, §1; 98 Acts, ch 1202, §16, 46

Interpreters in legal proceedings; see chapters 622A, 622B

17A.13 Subpoenas — discovery.

1. Agencies have all subpoena powers conferred upon them by their enabling acts or other statutes. In addition, prior to the commencement of a contested case by the notice referred to in section 17A.12, subsection 1, an agency having power to decide contested cases may subpoena books, papers, records and any other real evidence necessary for the agency to determine whether it should institute a contested case proceeding. After the commencement of a contested case, each agency having power to decide contested cases may administer oaths and issue subpoenas in those cases. Discovery procedures applicable to civil actions are available to all parties in contested cases before an agency. Evidence obtained in discovery may be used in the hearing before the agency if that evidence would otherwise be admissible in the agency hearing. Agency subpoenas shall be issued to a party on request. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with the law applicable to the issuance of subpoenas or discovery in civil actions. In pro-

ceedings for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in cases of willful failure to comply.

2. An agency that relies on a witness in a contested case, whether or not an agency employee, who has made prior statements or reports with respect to the subject matter of the witness' testimony, shall, on request, make such statements or reports available to parties for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by Constitution or statute. Identifiable agency records that are relevant to disputed material facts involved in a contested case, shall, upon request, promptly be made available to a party unless the requested records are expressly exempt from disclosure by Constitution or statute.

[C75, 77, 79, 81, §17A.13]

83 Acts, ch 186, §10006, 10201

17A.14 Rules of evidence — official notice.

In contested cases:

1. Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

3. Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

5. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

[C75, 77, 79, 81, §17A.14]

17A.15 Final decisions — proposed decisions — conclusiveness — review by the agency.

1. When the agency presides at the reception of the evidence in a contested case, the decision of the agency is a final decision.

2. When the agency did not preside at the reception of the evidence in a contested case, the presiding officer shall make a proposed decision. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a contested case unless the officer becomes unavailable to the agency. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

3. When the presiding officer makes a proposed decision, that decision then becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency finds to be in error. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the agency, present oral arguments to the agency members who are to render the final decision.

4. This section shall not preclude an agency from instituting a system whereby the proposed decision of a presiding officer in a contested case may be appealed to, or reviewed on motion of, a body consisting of one or more persons that is between the presiding officer and the agency. If an agency institutes such a system of intermediate review, the proposed decision of the presiding officer becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the intermediate reviewing body within the time provided by rule. An intermediate reviewing body may be vested with all or a part of the power which it would have in ini-

tially making the decision. A decision of such an intermediate reviewing body is also a proposed decision and shall become the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. In cases where there is an appeal from a proposed decision rendered by a presiding officer to an intermediate reviewing body, or where such a proposed decision is reviewed on motion of an intermediate reviewing body, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the intermediate reviewing body, present oral arguments to those who are to render the decision.

5. When an appeal from an agency decision in a contested case may be taken to another agency pursuant to statute, or a second agency may according to statute review on its own motion the decision in a contested case by the first agency, the appeal or review shall be deemed a continuous proceeding as though before one agency. A decision of the first agency in such a case is a proposed decision and shall become the final decision without further proceedings unless there is an appeal to, or review on motion of, the second agency within the time provided by statute or rule. In deciding an appeal from or review of a proposed decision of the first agency, the second agency shall have all those powers conferred upon it by statute and shall afford each party an opportunity to file exceptions, present briefs and, with its consent, present oral arguments to agency members who are to render the final decision.

[C75, 77, 79, 81, §17A.15]

98 Acts, ch 1202, §17, 46

17A.16 Decisions and orders — rehearing.

1. A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. Parties shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order in the manner provided by section 17A.12, subsection 1.

2. Except as expressly provided otherwise by another statute referring to this chapter by name, any party may file an application for rehearing, stating the specific grounds for the rehearing and the relief sought, within twenty days after the date of the issuance of any final decision by the agency in a contested case. A copy of the application for rehearing shall be timely mailed by the presiding agency to all parties of record not joining in the application. An application for rehearing shall be deemed to have been denied unless the agency grants the application within twenty days after its filing.

[C75, 77, 79, 81, §17A.16]

86 Acts, ch 1245, §518; 88 Acts, ch 1100, §1; 98 Acts, ch 1202, §18, 46

17A.17 Ex parte communications and separation of functions.

1. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case, shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with any person or party, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

However, without such notice and opportunity for all parties to participate, a presiding officer in a contested case may communicate with members of the agency, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties so long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

2. Unless required for the disposition of ex parte matters specifically authorized by statute, parties or their representatives in a contested case and persons with a direct or indirect interest in such a case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with a presiding officer in that contested case, except upon notice and opportunity for all parties to participate as shall be provided for by agency rules.

3. If, before serving as the presiding officer in a contested case, a person receives an ex parte communication relating directly to the merits of the proceeding over which that person subsequently presides, the person, promptly after starting to serve, shall disclose to all parties any material factual information so received and not otherwise disclosed to those parties pursuant to section 17A.13, subsection 2, or through discovery.

4. A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all such written communications received, all written re-

sponses to the communications, and a memorandum stating the substance of all such oral and other communications received, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice of the communication.

5. If the effect of an ex parte communication received in violation of this section is so prejudicial that it cannot be cured by the procedure in subsection 4, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

6. The agency and any party may report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule shall provide for appropriate sanctions, including default, suspending or revoking a privilege to practice before the agency, and censuring, suspending, or dismissing agency personnel, for any violations of this section.

7. A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this section. The agency shall determine the matter as part of the record in the case. When an agency in these circumstances makes such a determination with respect to an agency member, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

8. An individual who participates in the making of any proposed or final decision in a contested case shall not have personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case, involving the same parties. In addition, such an individual shall not be subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy, involving the same parties. However, this section shall not be construed to preclude a person from serving as a presiding officer solely because that person determined there was probable cause to initiate the proceeding.

[C75, 77, 79, 81, §17A.17]
98 Acts, ch 1202, §19, 46

17A.18 Licenses.

1. When the grant, denial, or renewal of a license is required by Constitution or statute to be preceded by notice and opportunity for an evidentiary hearing, the provisions of this chapter concerning contested cases apply.

2. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking judicial review of the agency order or a later date fixed by order of the agency or the reviewing court.

3. No revocation, suspension, annulment or withdrawal, in whole or in part, of any license is lawful unless, prior to the institution of agency proceedings, the agency gave written, timely notice by personal service as in civil actions or by restricted certified mail to the licensee of facts or conduct and the provision of law which warrants the intended action, and the licensee was given an opportunity to show, in an evidentiary hearing conducted according to the provisions of this chapter for contested cases, compliance with all lawful requirements for the retention of the license.

[C75, 77, 79, 81, §17A.18]
98 Acts, ch 1202, §20, 46

17A.18A Emergency adjudicative proceedings.

1. Notwithstanding any other provision of this chapter and to the extent consistent with the Constitution, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

2. The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

3. The agency shall issue an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

4. The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when issued.

5. After issuing an order pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

6. The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

7. Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adju-

dicative proceedings or for judicial review thereof.

98 Acts, ch 1202, §21, 46

17A.19 Judicial review.

Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action. However, nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the right to seek relief from such action in the courts.

1. A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter. When agency action is pursuant to rate regulatory powers over public utilities or common carriers and the aggrievement or adverse effect is to the rates or charges of a public utility or common carrier, the agency action shall not be final until all agency remedies have been exhausted and a decision prescribing rates which satisfy the requirements of those provisions of the Code has been rendered. A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy. If a declaratory order has not been rendered within sixty days after the filing of a petition therefor under section 17A.9, or by such later time as agreed by the parties, or if the agency declines to issue such a declaratory order after receipt of a petition therefor, any administrative remedy available under section 17A.9 shall be deemed inadequate or exhausted.

2. Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business. When a proceeding for judicial review has been commenced, a court may, in the interest of justice, transfer the proceeding to another county where the venue is proper. Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency. A mailing shall be addressed to the parties or their attorney of record at their last known mailing address. Proof of mailing shall be by affidavit. Any party of record in a contested case before an agency wishing to intervene and participate in the review proceeding must file an appearance within forty-five days from the time the petition is filed.

3. If a party files an application under section 17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application under section 17A.16, subsection 2, for rehearing, the petition must be filed within thirty days after the issuance of the agency's final decision in that contested case. If an application for rehearing is granted, the petition for review must be filed within thirty days after the issuance of the agency's final decision on rehearing. In cases involving a petition for judicial review of agency action other than the decision in a contested case, the petition may be filed at any time petitioner is aggrieved or adversely affected by that action.

4. The petition for review shall name the agency as respondent and shall contain a concise statement of:

a. The nature of the agency action which is the subject of the petition.

b. The particular agency action appealed from.

c. The facts on which venue is based.

d. The grounds on which relief is sought.

e. The relief sought.

5. *a.* The filing of the petition for review does not itself stay execution or enforcement of any agency action. Unless precluded by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

b. A party may file an interlocutory motion in the reviewing court, during the pendency of judicial review, seeking review of the agency's action on an application for stay or other temporary remedies.

c. If the agency refuses to grant an application for stay or other temporary remedies, or application to the agency for a stay or other temporary remedies is an inadequate remedy, the court may grant relief but only after a consideration and balancing of all of the following factors:

(1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

(2) The extent to which the applicant will suffer irreparable injury if relief is not granted.

(3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

(4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

d. If the court determines that relief should be

granted from the agency's action on an application for stay or other temporary remedies, the court may remand the matter to the agency with directions to deny a stay, to grant a stay on appropriate terms, or to grant other temporary remedies, or the court may issue an order denying a stay, granting a stay on appropriate terms, or granting other temporary remedies.

6. Within thirty days after filing of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of any contested case which may be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

7. In proceedings for judicial review of agency action a court may hear and consider such evidence as it deems appropriate. In proceedings for judicial review of agency action in a contested case, however, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by Constitution or statute to the agency in that contested case proceeding. Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

8. Except to the extent that this chapter provides otherwise, in suits for judicial review of agency action all of the following apply:

a. The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity.

b. The validity of agency action must be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time that action was taken.

9. The court shall make a separate and distinct ruling on each material issue on which the court's decision is based.

10. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:

a. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.

b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.

c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.

d. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process.

e. The product of decision making undertaken by persons who were improperly constituted as a decision-making body, were motivated by an improper purpose, or were subject to disqualification.

f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. For purposes of this paragraph, the following terms have the following meanings:

(1) *"Substantial evidence"* means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

(2) *"Record before the court"* means the agency record for judicial review, as defined by this chapter, supplemented by any additional evidence received by the court under the provisions of this chapter.

(3) *"When that record is viewed as a whole"* means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.

g. Action other than a rule that is inconsistent with a rule of the agency.

h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.

i. The product of reasoning that is so illogical

as to render it wholly irrational.

j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.

k. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.

l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

11. In making the determinations required by subsection 10, paragraphs *"a"* through *"n"*, the court shall do all of the following:

a. Shall not give any deference to the view of the agency with respect to whether particular matters have been vested by a provision of law in the discretion of the agency.

b. Should not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency.

c. Shall give appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.

12. A defendant in a suit for civil enforcement of agency action may defend on any of the grounds specified in subsection 10, paragraphs *"a"* through *"n"*, if that defendant, at the time the enforcement suit was filed, would have been entitled to rely upon any of those grounds as a basis for invalidating the agency action in a suit for judicial review of that action brought at the time the enforcement suit was filed. If a suit for civil enforcement of agency action in a contested case is filed within the time period in which the defendant could have filed a petition for judicial review of that agency action, and the agency subsequently dismisses its suit for civil enforcement of that agency action against the defendant, the defendant may, within thirty days of that dismissal, file a petition for judicial review of the original agency action at issue if the defendant relied upon any of the grounds for judicial review in subsection 10, paragraphs *"a"* through *"n"*, in a responsive pleading to the enforcement action, or if the time to file a responsive pleading had not yet expired at the time the enforcement action was dismissed.

[C75, 77, 79, 81, §17A.19; 81 Acts, ch 24, §1, 2]
98 Acts, ch 1202, §22 – 24, 46

17A.20 Appeals.

An aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the district court under this chapter by appeal. The appeal shall be taken as in other civil cases, although the appeal may be taken regardless of the amount involved.

[C75, 77, 79, 81, §17A.20]
83 Acts, ch 186, §10007, 10201

17A.21 Inconsistency with federal law.

If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available to an agency of this state, or would otherwise be inconsistent with requirements of federal law, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds or services or to eliminate the inconsistency with federal requirements. If the attorney general makes such a suspension determination, the attorney general shall report it to the general assembly at its next session. This report shall include any recommendations in regard to corrective legislation needed to conform this chapter with the federal law.

[C75, 77, 79, 81, §17A.21]

17A.22 Agency authority to implement chapter.

Agencies shall have all the authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise.

[C75, 77, 79, 81, §17A.22]

17A.23 Construction.

Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in addition to those created or imposed by every other statute in existence on July 1, 1975, or enacted after that date. If any other statute in existence on July 1, 1975, or enacted after that date diminishes a right conferred upon a person by this chapter or diminishes a requirement imposed upon an agency by this chapter, this chapter shall take precedence unless the other statute expressly provides that it shall take precedence over all or some specified portion of this named chapter.

The Iowa administrative procedure Act shall be construed broadly to effectuate its purposes. This chapter shall also be construed to apply to all agencies not expressly exempted by this chapter or by another statute specifically referring to this chapter by name; and except as to proceedings in

process on July 1, 1975, this chapter shall be construed to apply to all covered agency proceedings and all agency action not expressly exempted by this chapter or by another statute specifically referring to this chapter by name.

An agency shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency.

[C75, 77, 79, 81, §17A.23]

89 Acts, ch 83, §11; 98 Acts, ch 1202, §25, 46

17A.24 to 17A.30 Reserved.

17A.31 Small business regulatory flexibility analysis. Repealed by 98 Acts, ch 1202, § 45, 46.

17A.32 Time limit applicable to emergency rules. Repealed by 98 Acts, ch 1202, § 45, 46.

17A.33 Review by administrative rules review committee.

The administrative rules review committee shall review existing rules, as time permits, to determine if there are adverse or beneficial effects from these rules. The committee shall give a high priority to rules that are referred to it by small business as defined in section 17A.4A. The review of these rules shall be forwarded to the appropriate standing committees of the house and senate.

84 Acts, ch 1007, §3; 98 Acts, ch 1202, §26, 46

17A.34 Competition with private enterprise — notice for proposed rules.

When a rule is proposed, the administrative rules coordinator shall make an initial determination of whether the rule may cause a service or product to be offered for sale to the public by a state agency that competes with private enterprise. If such a service or product may be offered as a result of the proposed rule, that fact shall be included in the notice of intended action of the rule.

2001 Acts, ch 66, §1

SUBTITLE 7

GENERAL SERVICES

CHAPTER 18

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DIVISION I

GENERAL PROVISIONS

18.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Bid specification"* means the standards or qualities which must be met before a contract to purchase will be awarded and any terms which the director has set as a condition precedent to the awarding of a contract.

2. *"Competitive bidding procedure"* means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, accepted, rejected, or awarded. A *"competitive bidding procedure"* may include a transaction accomplished in an electronic format.

3. *"Department"* means the department of general services.

4. *"Director"* means the director of the department of general services or the director's designee.

5. *"Governmental subdivision"* means a county, city, school district, or combination thereof.

6. *"State agency"* means an executive board, commission, bureau, division, office, or department of the state.

7. *"State buildings and grounds"* excludes any building under the custody and control of the Iowa public employees' retirement system.

[C73, §19B.1; C75, 77, 79, 81, §18.1]
83 Acts, ch 126, §1; 98 Acts, ch 1164, §2, 3

18.2 Department established.

There is created a department of general services which is attached to the office of the governor and is under the governor's general direction, supervision, and control. The governor shall appoint the director, subject to confirmation by the senate. The director shall not hold any other office, engage in political activity, accept or solicit, directly or indirectly, political contributions, and shall not use the office to support the candidacy of anyone for elective or appointive office. The director shall hold office at the governor's pleasure and shall receive a salary as fixed by the general assembly. Before entering upon the discharge of the director's duties, the director may be required to give a surety bond in an amount fixed by the governor. The premium on the bond shall be paid out of funds appropriated to the department.

The director must be a qualified administrator.

[C73, §19B.2; C75, 77, 79, 81, §18.2]
83 Acts, ch 101, §2
Confirmation, see §2.32

18.3 Duties of director.

The duties of the director shall include but not necessarily be limited to the following:

1. Establishing and developing, in co-operation with the various state agencies, a system of uniform standards and specifications for purchasing. When the system is developed, all items of general use shall be purchased through the department, except items used by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies exempted by law.

Life cycle cost and energy efficiency shall be included in the criteria used by the department of general services, institutions under the state board of regents, the state department of transportation, the department for the blind and other state agencies in developing standards and specifications for purchasing energy consuming products. As used in this paragraph *"life cycle cost"* means the expected total cost of ownership during the life of a product.

For purposes of this section, the life cycle costs of American motor vehicles shall be reduced by five percent in order to determine if the motor vehicle is comparable to foreign made motor vehicles. *"American motor vehicles"* includes those vehicles manufactured in this state and those vehicles in which at least seventy percent of the value of the motor vehicle was manufactured in the United States or Canada and at least fifty percent of the motor vehicle sales of the manufacturer are in the United States or Canada. In determining the life cycle costs of a motor vehicle, the costs shall be determined on the basis of the bid price, the resale value, and the operating costs based upon a useable life of five years or seventy-five thousand miles, whichever occurs first.

Preference shall be given to purchasing American made products and purchases from American based businesses if the life cycle costs are comparable to those products of foreign businesses and which most adequately fulfill the department's need.

The director may purchase items through the state department of transportation, institutions under the control of the board of regents and any other agency exempted by law from centralized purchasing. These state agencies shall upon request furnish the director with a list of and specifications for all items of office equipment, furniture, fixtures, motor vehicles, heavy equipment and other related items to be purchased during the next quarter and the date by which the director must file with the agency the quantity of items to be purchased by the state agency for the department of general services. The department of general services shall be liable to the state agency for the proportionate costs the items purchased for it bear to the total purchase price. When items purchased have been delivered, the state agency shall notify the director and after receipt of the purchase price shall release the items to the director or upon the director's order.

2. Administering the provisions of sections 18.114 to 18.121.

3. Administering the provisions of sections 18.26 to 18.103.

4. Providing for the proper maintenance of the state capitol, grounds, and equipment and all other state buildings and grounds, and equipment at the seat of government, except those referred to in section 216B.3, subsection 6.

5. Establishing, supervising, and maintaining a central mail unit for the use of all state officials, agencies, and departments located at the seat of government.

6. Installing a records system for the keeping of records which are necessary for a proper audit and effective operation of the department.

7. Providing architectural services, contracting for construction and construction oversight for state agencies except for the board of regents, department of transportation, national guard, natural resource commission, and the Iowa public employees' retirement system. Capital funding appropriated to state agencies, except the board of regents, department of transportation, national guard, natural resource commission, and the Iowa public employees' retirement system for property

management shall be transferred for administration and control to the director of the department of general services.

8. Administering the provisions of section 18.18.

9. Determining which risk exposures shall be self-insured or assumed by the state with respect to loss and loss exposures of state government.

10. Developing and implementing procedures to conduct transactions, including purchasing, authorized by this chapter in an electronic format to the extent determined appropriate by the department. The department shall adopt rules establishing criteria for competitive bidding procedures involving transactions in an electronic format, including criteria for accepting or rejecting bids which are electronically transmitted to the department, and for establishing with reasonable assurance the authenticity of the bid and the bidder's identity.

11. Insuring motor vehicles owned by the state. Insurance coverage may be provided through a self-insurance program administered by the department or purchased from an insurer. If the department utilizes a self-insurance program, the department shall maintain loss and exposure data for vehicles under the jurisdiction of the state fleet administrator. Upon request, state agencies shall provide all loss and exposure information to the department.

12. Organizing the department by divisions or other subunits to promote the effective and efficient administration of the department.

[C51, §45, 60; R60, §61, 81, 2170; C73, §119, 120, 121; C97, §147, 148, 150, 164, 165; S13, §150, 157, 164, 165; SS15, §147; C24, 27, 31, 35, 39, §**273, 282, 296;** C46, 50, 54, 58, 62, 66, 71, §18.2, 19.4, 19.18; C73, §19.4, 19B.3; C75, 77, 79, 81, §18.3; 81 Acts, ch 25, §1]

83 Acts, ch 126, §2; 86 Acts, ch 1132, §1; 86 Acts, ch 1245, §303; 87 Acts, ch 225, §401; 88 Acts, ch 1277, §23; 89 Acts, ch 76, §1; 94 Acts, ch 1184, §2; 98 Acts, ch 1119, §14; 98 Acts, ch 1164, §4, 5

18.4 Rules.

The director shall adopt rules in accordance with the provisions of chapter 17A which are necessary for the exercise of the powers and duties granted by this chapter and the proper administration of the department.

[C73, §19B.4; C75, 77, 79, 81, §18.4]

18.5 Prohibited interests.

The director shall not have any pecuniary interest, directly or indirectly, in any contract for supplies furnished to the state, or in any business enterprise involving any expenditure by the state. A violation of the provisions of this section shall be a serious misdemeanor, and on conviction thereof the director shall be removed from office in addition to any other penalty.

[C97, §153; C24, 27, 31, 35, 39, §**275;** C46, 50, 54, 58, 62, 66, 71, §18.4; C73, §19B.5; C75, 77, 79, 81, §18.5]

18.6 Competitive bidding — preferences — reciprocal application — direct purchasing.

The director shall promulgate rules establishing competitive bidding procedures.

1. All equipment, supplies, or services procured by the department shall be purchased by a competitive bidding procedure. However, the director may exempt by regulation purchases of noncompetitive items and purchases in lots or quantities too small to be effectively purchased by competitive bidding. Preference shall be given to purchasing Iowa products and purchases from Iowa based businesses if the bids submitted therefor are comparable in price to bids submitted by out-of-state businesses and otherwise meet the required specifications. If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids of Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.

2. The director may also exempt the purchase of an item or service from a competitive bidding procedure when the director determines that the best interests of the state will be served by the exemption which shall be based on one of the following:

a. An immediate or emergency need existing for the item or service.

b. A need to protect the health, safety, or welfare of persons occupying or visiting a public improvement or property located adjacent to the public improvement.

3. The director shall have the power to contract for the purchase of items or services by the department. Contracts for the purchase of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.

The director may enter into an agreement with the government of another state or with the federal government to provide for the cooperative purchase of an item or service of general use in this state.

4. The director may refuse all bids on any item or service and institute a new bidding procedure.

5. The director shall establish by regulation the amount of security, if any, to accompany a bid or as a condition precedent to the awarding of any contract and the circumstances under which a security will be returned to the bidder or forfeited to the state.

6. The director shall promulgate rules provid-

ing a method for the various state agencies to file with the department of general services a list of those supplies, equipment, machines, and all items needed to properly perform their governmental duties and functions.

7. The director shall furnish a list of specifications, prices, and discounts of contract items to any governmental subdivision which shall be responsible for payment to the vendor under the terms and conditions outlined in the state contract.

8. The director shall establish rules providing that any state agency may, upon request, purchase directly from a vendor if the direct purchasing is as economical or more economical than purchasing through the department, or upon a showing that direct purchasing by the state agency would be in the best interests of the state due to an immediate or emergency need. The rules shall include a provision permitting a state agency to purchase directly from a vendor, on the agency's own authority, if the purchase will not exceed five thousand dollars and the purchase will contribute to the agency complying with or exceeding the targeted small business procurement goals under sections 73.15 through 73.21.

Any member of the executive council may bring before the council for review a decision of the director granting a state agency request for direct purchasing. The executive council shall hear and review the director's decision in the same manner as an appeal filed by an aggrieved bidder, except that the three-day period for filing for review shall not apply.

9. *a.* When the estimated total cost of construction, erection, demolition, alteration, or repair of a public improvement exceeds twenty-five thousand dollars, the department shall solicit bids on the proposed improvement by publishing an advertisement in a print format. The advertisement shall appear in two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids appearing in a newspaper shall be not less than fifteen days prior to the date set for receiving bids. The department may publish an advertisement in an electronic format as an additional method of soliciting bids under this paragraph.

b. In awarding a contract, the department shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if the department considers the bids received not to be acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied by a certified or cashier's check or bid bond in an amount designated in the advertisement for bids as security that the bidder will enter into a contract for the work requested. The department shall establish the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The certified or cashier's checks or bid bonds of unsuccessful bidders shall be returned as soon as the successful bidder is determined. The certified or cashier's check or bid bond of the successful bidder shall be returned upon execution of the contract. This section does not apply to the construction, erection, demolition, alteration, or repair of a public improvement when the contracting procedure for the work requested is otherwise provided for in law.

10. The state and its political subdivisions shall give preference to purchasing Iowa products and purchasing from Iowa based businesses if the bids submitted are comparable in price to those submitted by other bidders and meet the required specifications.

11. The director shall adopt rules which require that each bid received for the purchase of items purchased by the department includes a product content statement which provides the percentage of the content of the item which is reclaimed material.

12. The director shall review and, where necessary, revise specifications used by state agencies to procure products in order to ensure that all of the following occur:

a. The procurement of products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires. The specifications shall be revised if they restrict the use of alternative materials, exclude recovered materials, or require performance standards which exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will hamper the intended use of the product.

b. The procurement by state agencies of biobased hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with the requirements of section 18.22.

13. A bidder awarded a state construction contract shall disclose the names of all subcontractors, who will work on the project being bid, within forty-eight hours after the award of the contract.

If a subcontractor named by a bidder awarded a state construction contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

14. The state shall purchase those products produced for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation or other developmental disabilities or mental illness if the products meet the required specifications.

15. The state shall make every effort to purchase products produced for sale by employers of persons in supported employment.

16. The department shall not award a contract

to a bidder for a construction, reconstruction, demolition, or repair project or improvement with an estimated cost that exceeds twenty-five thousand dollars in which the bid requires the use of inmate labor supplied by the department of corrections, but not employed by private industry pursuant to section 904.809, to perform the project or improvement.

17. This section does not apply to Iowa technology center contracts in support of activities performed for another governmental entity, either state or federal. The Iowa technology center is an entity created by a chapter 28E agreement entered into by the department of public defense.

[R60, §2169; C73, §121; C97, §166; S13, §166, 167; C24, 27, 31, 35, 39, §**297, 298;** C46, 50, 54, 58, 62, 66, 71, §19.20, 19.21; C73, §19B.6; C75, 77, 79, 81, §18.6]

84 Acts, ch 1301, §12; 86 Acts, ch 1132, §2; 86 Acts, ch 1245, §304, 1974; 89 Acts, ch 272, §19; 90 Acts, ch 1161, §1; 94 Acts, ch 1076, §4; 98 Acts, ch 1082, §1; 98 Acts, ch 1119, §15; 98 Acts, ch 1155, §6; 98 Acts, ch 1164, §6, 7; 99 Acts, ch 121, §1; 2000 Acts, ch 1109, §1; 2000 Acts, ch 1229, §16; 2002 Acts, ch 1117, §57

Preferences; see also chapter 73, §73A.21
NEW subsection 17

18.7 Disputes involving purchasing from Iowa state industries.

Disputes arising between the department of corrections and a purchasing department or agency over the procurement of products from Iowa state industries as described in section 904.808 shall be referred to the director. The decision of the director is final unless a written appeal is filed with the executive council within five days of receipt of the decision of the director, excluding Saturdays, Sundays, and legal holidays. If an appeal is filed, the executive council shall hear and determine the appeal within thirty days. The decision of the executive council is final.

[C73, §19B.7; C75, 77, 79, 81, §18.7]

89 Acts, ch 61, §1; 96 Acts, ch 1176, §1

18.8 Capitol buildings and grounds — services.

The director shall provide necessary lighting, fuel, and water services for the state buildings and grounds located at the seat of government, except the buildings and grounds referred to in section 216B.3, subsection 6.

The director shall establish, supervise, and maintain a central mail unit for the use of all state officials and agencies located at the seat of government. All state officials and agencies located at the seat of government shall be required to dispatch first and second class mail and parcel post mail, at the mail unit for the purpose of having the mail sealed, metered, and posted.

The director shall allow a department to seal, meter or stamp, and post mail directly from such department if it would be more efficient and economical.

Postage shall not be furnished to the general assembly, its members, officers, employees, or committees.

Except for buildings and grounds described in section 216B.3, subsection 6; section 2.43, unnumbered paragraph 1; and any buildings under the custody and control of the Iowa public employees' retirement system, the director shall assign office space at the capitol, other state buildings and elsewhere in the city of Des Moines, for all executive and judicial state agencies. Assignments may be changed at any time. The various officers to whom rooms have been so assigned may control the same while the assignment to them is in force. Official apartments shall be used only for the purpose of conducting the business of the state. The term *"capitol"* or *"capitol building"* as used in the Code shall be descriptive of all buildings upon the capitol grounds. The capitol building itself is reserved for the operations of the general assembly, the governor and the courts and the assignment and use of physical facilities for the general assembly shall be pursuant to section 2.43.

The director shall appoint a superintendent of buildings and grounds, who shall serve at the pleasure of the director and is not governed by the merit system provisions of chapter 19A.

[C51, §45, 60; R60, §61, 81, 2170; C73, §120, 121; C97, §145, 152, 164, 165, 168; S13, §152, 164, 165, 168; SS15, §147; C24, 27, 31, §272, 295, 296, 303; C35, §295, 296, 296-e1, 303; C39, §**295, 296, 296.1, 303;** C46, 50, 54, 58, 62, 66, 71, §18.1, 19.15, 19.18, 19.19, 19.26; C73, §19B.8; C75, 77, 79, 81, §18.8]

86 Acts, ch 1245, §305; 88 Acts, ch 1158, §3; 88 Acts, ch 1277, §24; 96 Acts, ch 1085, §1; 97 Acts, ch 210, §18; 98 Acts, ch 1164, §8, 9; 99 Acts, ch 207, §9

18.8A Terrace Hill commission.

1. The Terrace Hill commission is created consisting of nine persons, appointed by the governor, who are knowledgeable in business management and historic preservation and renovation. The governor shall appoint the chairperson. The terms of the commission members are for three years beginning on July 1 and ending on June 30.

2. The Terrace Hill commission may consult with the Terrace Hill society, Terrace Hill foundation, the executive and legislative branches of this state, and other persons interested in the property.

3. The Terrace Hill commission may enter into contracts, subject to this chapter, to execute its purposes.

4. The commission may adopt rules to administer and implement the programs of the commission. The decision of the commission is final agency action under chapter 17A.

93 Acts, ch 48, §4

18.9 Revolving fund.

The director shall keep an accurate itemized account for each state agency purchasing through the department, state agency using services provided for by the department, and postage supplied by the department.

1. At the end of each month the director shall render a statement to each state agency for the actual cost of items purchased through the department, the actual cost of services and postage used by the agency. The monthly statement shall also include a fair proportion of the cost of administration of the department of general services during the month. The portion of administrative costs shall be determined by the director subject to review by the executive council upon complaint from any state agency adversely affected.

2. Statements rendered to the various state agencies shall be paid by the state agencies in the manner determined by the department of revenue and finance. When the statements are paid the sums shall be credited to the general service revolving fund. If any funds accrued to the revolving fund in excess of two hundred twenty-five thousand dollars and there is no anticipated need or use for such funds, the governor shall order the excess funds credited to the general fund of the state.

[C97, §169; C24, 27, 31, 35, 39, §**305;** C46, 50, 54, 58, 62, 66, 71, §19.28; C73, §19B.9; C75, 77, 79, 81, §18.9]

92 Acts, ch 1163, §8

18.10 Capitol buildings and grounds — rules.

The director shall establish, publish, and enforce rules regulating and restricting the use by the public of the capitol buildings and grounds. The rules when established shall be posted in conspicuous places about the buildings and grounds. Any person violating any rule, except a parking regulation, shall be guilty of a simple misdemeanor.

[C27, 31, 35, §275-b1; C39, §**275.1;** C46, 50, 54, 58, 62, 66, 71, §18.5; C73, §19B.10; C75, 77, 79, 81, §18.10]

18.11 Parking regulations.

The director shall establish, publish, and enforce rules regulating, restricting, or prohibiting the use by state officials, state employees, and the public, of motor vehicle parking facilities at the state capitol complex. The assignment of legislative parking spaces shall be under the control of the legislative council. The rules established by the director may establish fines for violations and a procedure for payment of the fines. The director may order payment of a fine and enforce the order in the district court.

Motor vehicles parked in violation of the rules may be removed without the owner's or operator's consent and at the owner's or operator's expense. Motor vehicles removed and not claimed within thirty days of their removal or vehicles abandoned within the capitol grounds, may be disposed of in accordance with the provisions of sections 321.85 through 321.91.

The parking rules established shall be posted in conspicuous places at the capitol complex. Copies of the rules shall be made available to all state officials and employees and any other person who requests a copy of the rules.

All fines collected by the department shall be forwarded to the treasurer of state and deposited in the general fund.

[C73, §19B.11; C75, 77, 79, 81, §18.11]

86 Acts, ch 1245, §306

18.12 Duties — state property — employees — reports — lease-purchase — appropriation.

In addition to other duties the director shall:

1. See that all visitors, at proper hours, are properly escorted over capitol grounds and capitol buildings, free of expense.

2. Have at all times, charge of and supervision over the janitors, and other employees of the department in and about the capitol and other state buildings, except the buildings and grounds referred to in section 216B.3, subsection 6, at the seat of government.

3. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property, including but not limited to intangible and intellectual property, under the person's control.

4. Keep in the director's office a complete record containing an itemized account of all state property, including furniture and equipment, under the director's care and control, and plans and surveys of the public grounds, buildings, and underground constructions at the seat of government.

5. Under the direction of the governor, provide, furnish, and pay for public utilities service, heat, maintenance, minor repairs, and equipment in operating and maintaining the official residence of the governor of Iowa.

6. At the time provided by law, make a verified report which shall cover all transactions for the preceding annual, fiscal or calendar period and show in detail:

a. All expenditures made on account of the department for public buildings and property.

b. The condition of all real and personal property of the state under the director's care and control, together with a report of any loss or destruction, or injury to any such property, with the causes thereof.

c. The measures necessary for the care and preservation of the property under the director's control.

d. Any recommendations as to methods which would tend to render the public service more efficient and economical.

e. Any other matter ordered by the governor.

7. Contract, with the approval of the executive council, for the repair, remodeling or, if the condition warrants, demolition of all buildings and grounds of the state at the seat of government and the institutions of the department of human services and the department of corrections for which no specific appropriation has been made, if the cost of repair, remodeling or demolition will not exceed one hundred thousand dollars when completed. The cost of repair projects for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

8. Dispose of all personal property of the state under the director's control when it becomes unnecessary or unfit for further use by the state. If the director concludes that the personal property is contaminated, contains hazardous waste, or is hazardous waste, the director may charge the state agency responsible for the property for removal and disposal of the personal property.

The director may dispose of personal property by any of the following means:

a. The director may dispose of unfit or unnecessary personal property by sale. Proceeds from the sale of personal property shall be deposited in the general fund of the state. However, in lieu of depositing in the general fund of the state, the director may deposit the receipts from the sale of personal property located on the state capitol complex, except receipts from the sale of motor vehicles or printing equipment, in the art restoration and preservation revolving fund created in section 18.16B.

b. If the director concludes that the personal property has little or no value, the director may enter into an agreement with a not-for-profit organization or governmental agency to dispose of the personal property. The not-for-profit organization or governmental agency may charge the state agency in control of the property with the cost of removing and transporting the property. Title to the personal property shall transfer when the personal property is in the possession of the not-for-profit organization or governmental agency. If a governmental agency adds value to the property transferred to it and sells it, the proceeds from the sale shall be deposited with the governmental agency and not in the general fund of the state.

c. The director may dispose of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation, as provided in section 18.59.

The director shall adopt rules establishing the procedures for inspecting, selecting, and removing personal property from state agencies or from state storage.

9. *a.* Lease all buildings and office space necessary to carry out the provisions of this chapter or necessary for the proper functioning of any state agency at the seat of government. For state agencies at the seat of government, the director may lease buildings and office space in Polk county or in a county contiguous to Polk county. If no specific appropriation has been made, the proposed lease shall be submitted to the executive council for approval. The cost of any lease for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

b. When the general assembly is not in session, the director may request moneys from the executive council for moving state agencies located at the seat of government from one location to another. The request may include moving costs, telecommunications costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 7D.29 if it determines the agency or department has no available funds for these expenses.

c. Coordinate the leasing of buildings and office space by state agencies throughout the state and develop cooperative relationships with the state board of regents in order to promote the colocation of state agencies.

10. Unless otherwise provided by law, the director shall coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property to be purchased by a state agency for whose benefit and use the property is being obtained. If the purchase of real or personal property is to be financed pursuant to section 12.28, the department shall cooperate with the treasurer of state in providing the information necessary to complete the financing of the property. Upon awarding the contract for construction of a building or for site development, the director shall have sole authority to administer the contract.

A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease-purchased by the treasurer of state pursuant to section 12.28 is exempt from section 18.6, subsections 1 and 9, unless the lease-purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the treasurer of state under a lease-purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.

Unless the context otherwise requires, for purposes of this subsection and subsection 12, *"state agency"* means a board, commission, bureau, division, office, department, or branch of state government.

11. Establish rental fees for space owned by the state and provided by the department to a state agency to which the general assembly has specifically appropriated funds to pay the rental fees.

The director shall notify each state agency provided space by the department to which an appropriation for the rental of that space has been made of the rental fee for the space. The fee shall be based on the cost of the space, services provided to the agency by the division of buildings and grounds, maintenance, utilities, administration, and other property management costs. The state agency shall pay the fee to the department in the same manner as other expenses of the state agency are paid. Fees collected shall be deposited in the general fund of the state.

12. With the authorization of a constitutional majority of each house of the general assembly and approval by the governor, dispose of real property belonging to the state and its state agencies upon terms, conditions, and consideration as the director may recommend. If real estate subject to sale under this subsection has been purchased or acquired from appropriated funds, the proceeds of the sale shall be deposited with the treasurer of state and credited to the general fund of the state or other fund from which appropriated. There is appropriated from that same fund, with the prior approval of the executive council and in cooperation with the director, a sum equal to the proceeds so deposited and credited to the state agency to which the disposed property belonged or by which it was used, for purposes of the state agency.

13. Subject to the selection procedures of section 12.30, employ financial consultants, banks, insurers, underwriters, accountants, attorneys, and other advisors or consultants necessary to implement the provisions of subsection 10.

14. Prepare annual status reports for all ongoing capital projects of all state agencies, as defined in section 8.3A, and submit the status reports to the legislative capital projects committee.

15. Call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under subsection 14 regarding capital project status reports. All state agencies, upon the request of the director and with the approval of the director of the department of management, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

16. In carrying out the requirements of section 64.6, the state may purchase an individual or a blanket surety bond insuring the fidelity of state officers. The department may self-assume or self-insure fidelity exposures for state officials and employees. A state official is deemed to have furnished surety if the official has been covered by a program of insurance or self-insurance established by the department. To the extent possible, all bonded state employees shall be covered under one or more blanket bonds or position schedule bonds.

17. The management of state property loss exposures and state liability risk exposures shall be reviewed by the director for the capitol complex. Insurance coverage may include self-insurance or any type of insurance protection sold by insurers, including but not limited to, full coverage, partial coverage, coinsurance, reinsurance, and deductible insurance coverage.

18. Establish a monument maintenance account in the state treasury under the control of the department. Funds for the maintenance of a state monument, whether received by gift, devise, bequest, or otherwise, shall be deposited in the account. Funds in the account shall be deposited in an interest-bearing account. Notwithstanding section 12C.7, interest earned on the account shall be deposited in the account and shall be used to maintain the designated monument. Any maintenance funds for a state monument held by the state as of July 1, 1996, shall immediately be transferred to the account and the funds and interest earned on the funds shall be used to maintain the designated monument. Notwithstanding section 8.33, unencumbered or unobligated receipts in the monument maintenance account at the end of a fiscal year shall not revert to the general fund of the state.

19. Perform all other duties required by law.

[C73, §120; C97, §147, 148, 150, 151, 164; S13, §150, 151, 164, 165; SS15, §147; C24, 27, 31, 35, 39, §**273, 274, 296, 300;** C46, §18.2, 18.3, 19.18, 19.23; C50, 54, 58, 62, 66, 71, §18.2, 18.3, 18.6, 19.18, 19.23; C73, §19B.12; C75, 77, 79, 81, §18.12; 81 Acts, ch 5, §8, ch 6, §10, ch 10, §8]

86 Acts, ch 1245, §307; 87 Acts, ch 233, §130; 88 Acts, ch 1180, §1 – 3; 88 Acts, ch 1277, §25; 89 Acts, ch 76, §2, 3; 89 Acts, ch 298, §28; 90 Acts, ch 1168, §8; 91 Acts, ch 268, §607, 608; 94 Acts, ch 1188, §32; 95 Acts, ch 214, §3; 96 Acts, ch 1085, §2 – 4; 96 Acts, ch 1177, §3; 98 Acts, ch 1055, §1; 98 Acts, ch 1119, §16, 17; 98 Acts, ch 1164, §10 – 12; 99 Acts, ch 121, §2

18.13 Federal funds.

Neither the provisions of this chapter nor rules adopted pursuant thereto shall apply in any situation where such provision or rule is in conflict with governing federal regulation or where the provision or rule would jeopardize the receipt of federal funds.

If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds or services.

[C73, §19B.13; C75, 77, 79, 81, §18.13]

18.14 Control of warehouses.

The governor may by executive order transfer the control and management of any warehouse, except warehouses under the control of the alcoholic beverages division of the department of commerce, under the control of any state agency which is in all instances included within centralized purchasing under section 18.3, to the director of the department of general services.

[C75, 77, 79, 81, §18.14]

18.15 Services and commodities accepted.

The director of the department of general services is also authorized to accept services, commodities and surplus property and make provision for warehousing and distribution to various departments and subdivisions of the state, and such other agencies, institutions and authorized recipients within the state as may be from time to time designated in federal statutes and rules.

[C39, §**4283.03;** C46, 50, 54, 58, 62, 66, 71, 73, §283.2; C75, 77, 79, 81, §18.15]

18.16 Rent revolving fund created — purpose.

1. There is created a permanent rent revolving fund which shall be used by the department to pay the lease or rental costs of all buildings and office space necessary for the proper functioning of any state agency at the seat of state government as provided in section 18.12, subsection 9, except that this fund shall not be used to pay the rental or lease costs of a state agency which has not received funds budgeted for rental or lease purposes.

2. The director shall pay the lease or rental fees to the renter or lessor and submit a monthly statement to each state agency for which building and office space is rented or leased. If the director pays the lease or rental fees on behalf of a state agency, the state agency's payment to the department shall be credited to the rent revolving fund established by this section. With the approval of the director, a state agency may pay the lease or rental cost directly to the person who is due the payment under the lease or rental agreement.

[C77, 79, 81, §18.16]

98 Acts, ch 1119, §18; 98 Acts, ch 1164, §13

18.16A Telecommunications and electric cabling revolving fund.

A telecommunications and electric cabling revolving fund is created in the state treasury. The revolving fund shall be administered by the department and shall consist of moneys appropriated by the general assembly and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund shall be used by the department for purposes as may be necessary to provide for appropriate telecommunications and electric cabling, planning cabling layouts, and locating, relocating, installing, or removing telecommunications and electric cable including peripheral equipment on the state capitol complex. The department shall submit an annual report not later than January 31, to the members of the general assembly and the legislative fiscal bureau, of the activities and expenditures funded from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

98 Acts, ch 1055, §2

18.16B Art restoration and preservation revolving fund.

An art restoration and preservation revolving fund is created in the state treasury. The revolving fund shall be administered by the department and shall consist of any moneys appropriated by the general assembly, the receipts from the sale of certain personal property located on the state capitol complex, and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund shall be used as determined by the department for the restoration, preservation, rehabilitation, or enhancement of art and artifacts of historical or cultural significance or artistic value located in public areas of the state capitol building. The department shall submit an annual report not later than January 31, to the members of the general assembly and the legislative fiscal bureau, of the activities and expenditures funded from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

98 Acts, ch 1055, §3

18.17 Iowa world trade center.

This chapter does not apply to the management, operation, and ownership of the Iowa world trade center.

85 Acts, ch 33, §505

18.18 State purchases — recycled products — soybean-based inks.

1. When purchasing paper products other than printing and writing paper, the department shall, when the price is reasonably competitive and the quality as intended, purchase the recycled product. The department shall also purchase, when the price is reasonably competitive and the quality as intended, and in keeping with the schedule established in this subsection, soybean-

based inks and plastic products with recycled content including but not limited to plastic garbage can liners.

a. One hundred percent of the purchases of inks which are used for newsprint printing services performed internally or contracted for by the department shall be soybean-based.

b. One hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the department, shall be soybean-based to the extent formulations for such inks are available.

c. A minimum of ten percent of the purchases of garbage can liners made by the department shall be plastic garbage can liners with recycled content. The percentage shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

d. The department shall report to the general assembly on February 1 of each year the following:

(1) A listing of plastic products which are regularly purchased by the department and other state agencies for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the department and other state agencies, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

e. For purposes of this subsection *"recycled content"* means that the content of the product contains a minimum of thirty percent postconsumer material.

2. *a.* Except as otherwise provided in this section, the department shall purchase and use recycled printing and writing paper so that ninety percent by January 1, 2000, of the volume of printing and writing paper purchased is recycled paper. The recycled printing and writing paper shall meet the requirements for procuring recycled printing and writing paper set forth in 40 C.F.R., pt. 247, and in related recovered materials advisory notices issued by the United States environmental protection agency.

b. The department shall establish a prioritization procedure for the purchase of recycled paper which provides for a five percent differential in the cost of the purchase of paper which has been recycled through the use of a nonchlorinated process.

c. If a provision under this subsection results in the limitation of sources for the purchase of printing and writing paper to three or fewer sources, the department may waive the requirement in order to purchase necessary amounts of printing and writing paper.

d. Notwithstanding the requirements of this subsection regarding the purchase of recycled printing and writing paper, the department shall purchase acid-free permanent paper in the amount necessary for the production or reproduction of documents, papers, or similar materials produced or reproduced for permanent preservation pursuant to law.

3. The department of general services, in conjunction with the department of natural resources, shall review the procurement specifications currently used by the state to eliminate, wherever possible, discrimination against the procurement of products manufactured with recovered materials and soybean-based inks.

4. The department of natural resources shall assist the department of general services in locating suppliers of recycled products and soybean-based inks and collecting data on recycled content and soybean-based ink purchases.

5. Information on recycled content shall be requested on all bids for paper products other than printing and writing paper issued by the state and on other bids for products which could have recycled content such as oil, plastic products, including but not limited to compost materials, aggregate, solvents, soybean-based inks, and rubber products. Except for purchases of printing and writing paper made pursuant to subsection 2, paragraphs *"c"* and *"d"*, the department of general services shall require persons submitting bids for printing and writing paper to certify that the printing and writing paper proposed complies with the requirements referred to in subsection 2, paragraph *"a"*.

6. The department of general services, in conjunction with the department of natural resources, shall adopt rules to administer this section.

7. All state agencies shall fully cooperate with the departments of general services and natural resources in all phases of implementing this section.

8. The department, whenever technically feasible, shall purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, *"packing material"* means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

87 Acts, ch 225, §421; 88 Acts, ch 1185, §1; 89 Acts, ch 272, §20; 90 Acts, ch 1237, §1; 91 Acts, ch 97, §4; 92 Acts, ch 1074, §1 – 5; 93 Acts, ch 176, §26; 95 Acts, ch 62, §1; 98 Acts, ch 1119, §19, 20; 98 Acts, ch 1164, §14 – 16; 99 Acts, ch 121, §3

18.19 Recycling revolving fund.

A recycling revolving fund is created within the state treasury under the control of the department. The fund shall consist of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The assets of the fund shall be used by the department only for supporting recycling operations. Moneys in the fund, which may be subject to warrants written by the director of revenue and finance, shall be drawn upon the written requisition of the director or an authorized representative of the director. The fund is subject to an annual audit by the auditor of state. Section 8.33 does not apply to any moneys in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

98 Acts, ch 1164, §17

18.20 Wastepaper recycling program.

The department in accordance with recommendations made by the department of natural resources shall require all state agencies to establish an agency wastepaper recycling program. The director shall adopt rules which require a state agency to develop a program to ensure the recycling of the wastepaper generated by the agency. All state employees shall practice conservation of paper materials.

For the purposes of this section, *"agency wastepaper"* means wastepaper or wastepaper products generated by the agency.

The rules adopted by the director shall provide for the continuation of existing state agency contracts which provide for alternative waste management not including incineration or land burial of agency wastepaper.

89 Acts, ch 272, §21; 98 Acts, ch 1119, §21; 98 Acts, ch 1164, §18

18.21 Certain polystyrene products — recycling — prohibition. Repealed by 95 Acts, ch 44, § 5.

18.22 Lubricants and oils — preferences.

The department shall do all of the following:

1. Revise its procedures and specifications for the purchase of lubricating oil and industrial oil to eliminate exclusion of recycled oils and any requirement that oils be manufactured from virgin materials.

2. Require that purchases of lubricating oil and industrial oil be made from the seller whose oil product contains the greatest percentage of recycled oil, unless one of the following circumstances regarding a specific oil product containing recycled oil exists:

a. The product is not available within a reasonable period of time or in quantities necessary or in container sizes appropriate to meet a state agency's needs.

b. The product does not meet the performance requirements or standards recommended by the equipment or vehicle manufacturer, including any warranty requirements.

c. The product is available only at a cost greater than one hundred five percent of the cost of comparable virgin oil products.

3. Establish and maintain a preference program for procuring oils containing the maximum content of recycled oil. The preference program shall include but is not limited to all of the following:

a. The inclusion of the preferences for recycled oil products in publications used to solicit bids from suppliers.

b. The provision of a description of the recycled oil procurement program at bidders' conferences.

c. Discussion of the preference program in lubricating oil and industrial oil procurement solicitations or invitations to bid.

d. Efforts to inform industry trade associations about the preference program.

4. *a.* Provide that when purchasing hydraulic fluids, greases, and other industrial lubricants the department or a state agency authorized by the department to directly purchase hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans.

b. The department shall provide for the implementation of requirements necessary in order to carry out this subsection by the department or state agency making the purchase, which shall include all of the following:

(1) Including the preference requirements in publications used to solicit bids for hydraulic fluids, greases, and other industrial lubricants.

(2) Describing the preference requirements at bidders' conferences in which bids for the sale of hydraulic fluids, greases, and other industrial lubricants are sought by the department or authorized state agency.

(3) Discussing the preference requirements in procurement solicitations or invitations to bid for hydraulic fluids, greases, and other industrial lubricants.

(4) Informing industry trade associations about the preference requirements.

c. As used in this section, unless the context otherwise requires:

(1) *"Bio-based hydraulic fluids, greases, and other industrial lubricants"* means the same as defined by the United States department of agriculture, if the department has adopted such a definition. If the United States department of agriculture has not adopted a definition, *"bio-based hy-*

draulic fluids, greases, and other industrial lubricants" means hydraulic fluids, greases, and other lubricants containing a minimum of fifty-one percent soybean oil.

(2) *"Other industrial lubricants"* means lubricants used or applied to machinery.

92 Acts, ch 1095, §1; 98 Acts, ch 1082, §2; 2000 Acts, ch 1109, §2; 2001 Acts, ch 24, §16

18.23 Capitol complex renovation program — lease-purchase authorization. Repealed by 96 Acts, ch 1177, § 4.

18.24 and 18.25 Reserved.

DIVISION II

STATE PRINTING

18.26 Director.

The director of the department of general services or the director's designee shall administer the provisions of this division.

[C24, 27, 31, 35, 39, §**178;** C46, 50, 54, 58, 62, 66, 71, 73, §15.1; C75, 77, 79, 81, §18.26]

18.27 Duties.

The director of the department of general services shall:

1. Let contracts, except as provided in section 18.49, for all printing for all state offices, departments, boards, and commissions when the cost of the printing is payable out of any taxes, fees, licenses, or funds collected for state purposes.

2. Direct the manner, form, style, and quantity of all public printing when not otherwise expressly prescribed by law.*

3. Employ and discharge all assistants necessary to enable the director to perform the director's duties and determine the compensation of the assistants when not otherwise determined by law.

4. Prescribe rules, not inconsistent with law.

5. Perform all other duties required by law.

[C24, 27, 31, 35, 39, §**183;** C46, 50, 54, 58, 62, 66, 71, 73, §15.6; C75, 77, 79, 81, §18.27]

99 Acts, ch 121, §4

*Style of Code, session laws, and administrative code and bulletin, §2B.10, 2B.12, 17A.6

18.28 "Printing" defined.

As used in chapter 7A and sections 18.26 to 18.103, *"printing"* means the reproduction of an image from a printing surface made generally by a contact impression that causes a transfer of ink, the reproduction of an impression by a photographic process, or the reproduction of an image by electronic means and shall include binding and may include material, processes, or operations necessary to produce a finished printed product, but shall not include binding, rebinding or repairs of books, journals, pamphlets, magazines and literary articles by any library of the state or any of its offices, departments, boards and commissions held as a part of their library collection.

[C24, 27, 31, 35, 39, §**184;** C46, 50, 54, 58, 62, 66, 71, 73, §15.7; C75, 77, 79, 81, §18.28]

98 Acts, ch 1119, §22; 98 Acts, ch 1164, §19; 99 Acts, ch 121, §5

18.29 Printing for state institutions.

The power of the director to let contracts shall not embrace printing for any state penal, correctional or board of regents institution, or community colleges, or school corporations under the jurisdiction of the department of education when the institution is able and desires to do its own printing.

[C24, 27, 31, 35, 39, §**185;** C46, 50, 54, 58, 62, 66, 71, 73, §15.8; C75, 77, 79, 81, §18.29]

90 Acts, ch 1253, §1

18.30 Contracts with state institutions.

The director may, without advertising for bids, enter into contracts or make provision for doing any of the work coming under the provisions of chapter 7A and sections 18.26 to 18.103 at any school or institution under the ownership or control of the state. The work shall be done under conditions substantially the same as those provided for in the case of contracts with individuals and the same standard of quality or product shall be required.

[C24, 27, 31, 35, 39, §**186;** C46, 50, 54, 58, 62, 66, 71, 73, §15.9; C75, 77, 79, 81, §18.30]

18.31 Specifications and rules.

The director shall, from time to time, adopt and print specifications and rules covering all matters relating to printing that are the subject of contracts. The specifications and rules shall contain, among other things, the following:

1. Provisions for the grouping of the work to be done or material furnished, so far as the same can be made the subject of general contracts, into classes according to the character or use thereof, or with relation to the department for which intended, or in any manner most convenient for securing bids and entering into contracts. All or any part of the printing needed for any department, board, or commission may be placed in a class by itself.

2. Estimates of the probable amount of work to be done, or material to be purchased, under each class or item, during the period of the proposed contracts.

3. Provisions for furnishing and keeping on file samples of work or stock, and other things necessary to assure compliance with the contracts.

4. Fixed standards for books and booklets, and for other printing so far as practicable, and for

stock and material.

5. A schedule of maximum rates or prices, so far as the same can be made applicable, with provision that bids not within the maximum (each class being computed as a unit), may be rejected.

6. Details as to the delivery of stock to the state and placing the same in possession of contractors, and for delivery of the finished product and for a complete accounting for stock and reasonable allowance for waste where it is unavoidable.

7. A rule as to part payment for work in process of completion, or material in process of delivery, in proportion to the part completed or delivered.

8. General regulations necessary to assure prompt and satisfactory compliance with the proposed contracts, the submission of samples, the delivery of the product (which may be at the expense of the state), the preparation and filing of bills, and such general matters as will assure to the state the utmost economy and efficiency.

[C24, 27, 31, 35, 39, §**187;** C46, 50, 54, 58, 62, 66, 71, 73, §15.10; C75, 77, 79, 81, §18.31]

18.32 Advertisements for bids.

The director shall advertise for bids for public printing.

[C24, 27, 31, 35, 39, §**188;** C46, 50, 54, 58, 62, 66, 71, 73, §15.11; C75, 77, 79, 81, §18.32]

98 Acts, ch 1164, §20

18.33 Requirements.

Advertisements shall state where and how specifications and other necessary information may be obtained, the time during which the director will receive bids, and the day, hour, and place when bids will be publicly opened or accessed and the manner by which the contracts will be awarded.

[C24, 27, 31, 35, 39, §**189;** C46, 50, 54, 58, 62, 66, 71, 73, §15.12; C75, 77, 79, 81, §18.33]

98 Acts, ch 1164, §21

18.34 Information furnished.

The director shall supply prospective bidders and others on request with the specifications and rules, blank forms for bids, samples of printing so far as possible, and all other information pertaining to the subject.

[C24, 27, 31, 35, 39, §**190;** C46, 50, 54, 58, 62, 66, 71, 73, §15.13; C75, 77, 79, 81, §18.34]

18.35 Specifications public.

The specifications shall be kept on file in the office of the director, open to public inspection, together with samples so far as possible, of the work to be done or the material to be furnished.

[C24, 27, 31, 35, 39, §**191;** C46, 50, 54, 58, 62, 66, 71, 73, §15.14; C75, 77, 79, 81, §18.35]

18.36 Form of bids.

Bids must be:

1. Secured in writing, by telephone, by facsimile, or in a format prescribed by the director as indicated in the bid specifications.

2. Signed by the bidder, or if a telephone or electronic bid, confirmed by the bidder in a manner prescribed by the director.

3. Submitted in a format prescribed by the director which reasonably assures the authenticity of the bid and the bidder's identity.

4. Submitted to the department as specified by the date and time established in the advertisements for bids.

[C24, 27, 31, 35, 39, §**192;** C46, 50, 54, 58, 62, 66, 71, 73, §15.15; C75, 77, 79, 81, §18.36]

95 Acts, ch 27, §1; 98 Acts, ch 1164, §22

18.37 Deposit with bid or yearly bond.

When a bidder submits a bid to the department, the director may require the bidder to file a bid bond or a certified or cashier's check payable to the state treasurer in an amount to be fixed in the bid specifications, either covering all classes or items or services, or separate certified or cashier's checks for each bid in case the bidder makes more than one bid. In lieu of a certified or cashier's check, the bidder may furnish a yearly bond in an amount to be established by the director. Certified or cashier's checks deposited by unsuccessful bidders, and by successful bidders when they have entered into the contract, shall be returned to them.

[C24, 27, 31, 35, 39, §**193;** C46, 50, 54, 58, 62, 66, 71, 73, §15.16; C75, 77, 79, 81, §18.37]

84 Acts, ch 1055, §1; 98 Acts, ch 1164, §23; 99 Acts, ch 121, §6

18.38 Opening and accessing of bids — award.

All bids shall be publicly opened or accessed and read and the contracts awarded in the manner designated in the bid specifications. In the award of a contract, due consideration shall be given to the price bid, mechanical and other equipment proposed to be used by the bidder, the financial responsibility of the bidder, the bidder's ability and experience in the performance of similar contracts, and any other factors that the department determines are relevant and that are included in the bid specifications.

[C24, 27, 31, 35, 39, §**194;** C46, 50, 54, 58, 62, 66, 71, 73, §15.17; C75, 77, 79, 81, §18.38]

98 Acts, ch 1164, §24

18.39 Rejection of bids — procedure.

The director shall have the right to reject any or all bids, and in case of rejection or because of failure of a bidder to enter into a contract, the director may advertise for and secure new bids.

[C24, 27, 31, 35, 39, §**195;** C46, 50, 54, 58, 62, 66, 71, 73, §15.18; C75, 77, 79, 81, §18.39]

18.40 Combination of bidders.
When the director is satisfied that bidders have presented bids pursuant to an agreement, understanding, or combination to prevent free competition, the director shall reject all of them and readvertise for bids as in the first instance.
[C24, 27, 31, 35, 39, §**196;** C46, 50, 54, 58, 62, 66, 71, 73, §15.19; C75, 77, 79, 81, §18.40]

18.41 Acceptance of bid. Repealed by 98 Acts, ch 1119, § 26; 98 Acts, ch 1164, § 41.

18.42 Duration of contract.
Contracts for printing and for work and material relating thereto shall be for a period not exceeding three years.
[C24, 27, 31, 35, 39, §**198;** C46, 50, 54, 58, 62, 66, 71, 73, §15.21; C75, 77, 79, 81, §18.42]

18.43 Duty to enter into contract — forfeiture.
If the department requires a bid bond or certified or cashier's check as provided in section 18.37, a successful bidder shall, within ten days after the award, enter into a contract in accordance with the bid. Unless this is done, or the delay is for reasons satisfactory to the director, the bid bond or certified or cashier's check submitted with the bid shall be forfeited to the state. The bid specifications on which the bid is made constitute a part of the contract.
[C24, 27, 31, 35, 39, §**199;** C46, 50, 54, 58, 62, 66, 71, 73, §15.22; C75, 77, 79, 81, §18.43]
84 Acts, ch 1055, §2; 98 Acts, ch 1164, §25; 99 Acts, ch 121, §7

18.44 Contract provisions.
The department shall enter into contracts which the department determines are reasonable. The department may ensure that the contracts provide for the following:
1. The contractor shall complete all unfinished portions of jobs or orders in hand at the expiration of the contract.
2. The contract may be canceled, or other agreed penalty imposed, for failure to perform the terms thereof in a manner satisfactory to the director.
3. The contractor may be released on such conditions as may be agreed on, in case of injury to the contractor's plant by fire, or other providential contingency.
4. In order to avoid delay and inconvenience in the departments, and unnecessary transportation charges to the state, deliveries of printing for the various state officials, departments, boards, and commissions shall be made in the manner the director, after consultation with the various departments, orders.
[C24, 27, 31, 35, 39, §**200;** C46, 50, 54, 58, 62, 66, 71, 73, §15.23; C75, 77, 79, 81, §18.44]
98 Acts, ch 1164, §26

18.45 Bond.
The department may require that a bidder provide a bond for the faithful performance of a contract. The amount of the bond shall be established by the director. The bond shall be filed with the department as specified and approved by the director.
[C24, 27, 31, 35, 39, §**201;** C46, 50, 54, 58, 62, 66, 71, 73, §15.24; C75, 77, 79, 81, §18.45]
98 Acts, ch 1164, §27

18.46 Authorization of orders.
Printing shall not be performed under any contract except as authorized by the director. Each order shall designate the contract under which the order is given and the class, quantity, and kind of the required printing.
[C24, 27, 31, 35, 39, §**202;** C46, 50, 54, 58, 62, 66, 71, 73, §15.25; C75, 77, 79, 81, §18.46]
98 Acts, ch 1119, §23; 98 Acts, ch 1164, §28

18.47 Assistants outside Des Moines.
The director may, at the various points in the state, outside the city of Des Moines, at which state institutions or departments are located, appoint assistants and empower the assistants to issue in the name of the director, orders for printing. Assistants shall be furnished with a copy of the contract under which the orders are to be given, necessary blank order books and proper instructions as to their procedure. Assistants on issuing an order shall immediately forward the original thereof to the director.
[C24, 27, 31, 35, 39, §**203;** C46, 50, 54, 58, 62, 66, 71, 73, §15.26; C75, 77, 79, 81, §18.47]

18.48 Defective printing — penalty.
The director may reject or refuse delivery on printing which is not of the quality for which the contract was awarded. If immediate necessity or lack of time to procure printing elsewhere compels the use of defective printing furnished by a contractor, the defective printing shall be accepted without approval, and one-half of the contract price shall be deducted as liquidated damages for breach of contract. The amount of the liquidated damages may be deducted from any payment to the contractor under any state contract.
[C24, 27, 31, 35, 39, §**204;** C46, 50, 54, 58, 62, 66, 71, 73, §15.27; C75, 77, 79, 81, §18.48]
98 Acts, ch 1164, §29

18.49 Contracts by institutional heads.
The director may authorize the managing board, or head, or chief executive officer of any institution or department of the state located outside Polk county to secure, under the specifications of the director, competitive bids for printing

needed by the institution or department, and submit the bids to the director. If the director approves any of the bids, the authorized board, head, or officer may contract for the printing, but the contract shall not be valid until the director approves the contract. The director shall prescribe the manner by which the director is notified of and approves the contract.

[C24, 27, 31, 35, 39, §**205;** C46, 50, 54, 58, 62, 66, 71, 73, §15.28; C75, 77, 79, 81, §18.49]

98 Acts, ch 1164, §30

18.50 Emergency contracts.

The director may at any time award a separate printing contract or may authorize an assistant to award a separate printing contract for any work and materials or printing supplies within the provisions of chapter 7A and sections 18.26 to 18.103 which are not included in current printing contracts or which cannot properly be made the subject of a general contract. A separate printing contract must have been duly solicited by the director from vendors engaged in the kind of work under consideration who have indicated a desire to bid on the class of work to be performed.

[C24, 27, 31, 35, 39, §**206;** C46, 50, 54, 58, 62, 66, 71, 73, §15.29; C75, 77, 79, 81, §18.50]

95 Acts, ch 27, §2; 98 Acts, ch 1164, §31

18.51 Paper, printing supplies, and accounting.

1. The director may contract for paper and other printing supplies as part of a printing contract. The director may purchase paper and other printing supplies and furnish them to a contractor.

2. The director shall keep an accurate account with any person doing printing for the state. The director shall charge the person the value of all paper drawn, credit the person with all paper used on behalf of the state, and compel an accounting for all paper which is not used.

[R60, §2170; C73, §121; C97, §165; S13, §165; C24, 27, 31, 35, 39, §**207;** C46, 50, 54, 58, 62, 66, 71, 73, §15.30; C75, 77, 79, 81, §18.51]

98 Acts, ch 1164, §32

18.52 Paper account. Repealed by 98 Acts, ch 1164, § 41. See § 18.51.

18.53 Account with each department.

The director shall keep an account with each separate officer, board, department, and commission of the state to which printing is furnished by the state, in a manner to show in detail at all times what printing has been furnished, and the cost thereof.

[C24, 27, 31, 35, 39, §**209;** C46, 50, 54, 58, 62, 66, 71, 73, §15.32; C75, 77, 79, 81, §18.53]

18.54 Budget estimates.

Each official, board, department, commission or agency of the state shall file as part of its budget its estimate of expenditures for printing and these expenditures shall be paid from its official, board, department, commission or agency appropriation.

[C24, 27, 31, 35, 39, §**210;** C46, 50, 54, 58, 62, 66, 71, 73, §15.33; C75, 77, 79, 81, §18.54]

18.55 Director to separate items. Repealed by 98 Acts, ch 1119, § 26; 98 Acts, ch 1164, § 41.

18.56 Vouchers — form — audit. Repealed by 98 Acts, ch 1119, § 26; 98 Acts, ch 1164, § 41.

18.57 Centralized printing department.

A centralized printing department is hereby established under the jurisdiction of the director.

A permanent revolving fund is established and may be used in making payments for supplying paper stock, offset printing, copy preparation, binding, distribution costs, and original payment of printing and binding claims for any of the state departments, bureaus, commissions or institutions. All salaries and expenses properly chargeable thereto shall be paid from this fund. The director may also use the fund for the purchase of replacement or additional equipment, if a sufficient balance will remain in the fund to enable the continued operation of the centralized printing department.

The director shall periodically render a statement to each state department, bureau, commission or institution for the cost of paper stock, offset printing, copy preparation, distribution or binding supplied thereto. The expense shall be paid by the state departments, bureaus, commissions or institutions in the same manner as other expenses of the departments are paid, and the sum shall be credited to the centralized printing revolving fund. If a surplus accrues to the fund for which there is no anticipated need or use, the governor shall order the surplus turned over to the general fund of the state.

[C54, 58, 62, 66, 71, 73, §15.36; C75, 77, 79, 81, §18.57]

18.58 Printing machinery centralized — exception.

All printing presses, except such presses owned by the auditor of state and purchased pursuant to the provisions of section 11.4, and other printing equipment owned by the state and in the possession of any department, commission, agency, or board located in the city of Des Moines shall be centralized in a state building in the city of Des Moines under the control of the director.

All office copiers and other duplicating equipment owned by or in the possession of executive

and judicial departments, commissions, agencies, or boards located in the city of Des Moines shall be under the jurisdiction of the director. The director may lease or purchase the duplicating machines as are necessary for each of the departments with funds from the revolving fund and assess the costs of operating the duplicating machines to the appropriate department.

[C54, 58, 62, 66, 71, 73, §15.37; C75, 77, 79, 81, §18.58]

18.59 Powers and duties.

The director is hereby authorized and directed:

1. To possess all presses and other printing equipment, inventory all of the described equipment, and dispose of the machinery and equipment that is no longer necessary or is unfit for use. Receipts from the sale of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation shall be deposited in the centralized printing revolving fund established in section 18.57.

2. To maintain the machinery and equipment and in the director's discretion, when the equipment is outmoded and becomes obsolescent, to purchase machinery and equipment for replacement purposes.

3. To make the printing department, its machinery and equipment available for the state printing services when in the director's discretion it is to the best interests of the state that it, rather than the contract procedure provided by section 18.27 shall be used; and to effectuate this power and direction, the director shall adopt suitable rules for the administration and fulfillment of the power and direction hereby imposed.

4. To install and maintain an accurate accounting system appropriate and fitted to the purposes and the operations of this department. Each official, board, department, commission or agency shall requisition the director for its printing needs, accompanying such requisition with a statement of costs of compilation and editorial work upon the material to be published.

5. To avoid duplication, overlapping and redundancy of pamphlets and publications, other than official documents and books and publications authorized by chapters 2B and 7A, to examine the contents of proposed pamphlets or publications and to approve or disapprove such pamphlets or publications only for such reason; and to effectuate this power, the director shall adopt rules for its administration.

[C54, 58, 62, 66, 71, 73, §15.38; C75, 77, 79, 81, §18.59]

98 Acts, ch 1164, §33

18.60 Cost systems maintained by departments.

Each official, board, department, commission, or agency located outside Polk county, who maintains printing equipment or does any printing for the state or its departments shall likewise keep an accurate cost system and report each June 30 to the director of the amounts. These reports shall be included in the annual, fiscal, or calendar report of the director.

[C54, 58, 62, 66, 71, 73, §15.39; C75, 77, 79, 81, §18.60]

98 Acts, ch 1164, §34

18.61 Departmental pamphlets — costs.

Each official, board, department, commission and agency, who as part of its membership fee provides pamphlets and books, shall furnish all the costs of such publications. These costs shall be included in their printing budget.

[C54, 58, 62, 66, 71, 73, §15.40; C75, 77, 79, 81, §18.61]

18.62 Paper stock drawn.

All paper, envelopes, and other paper stock to be used in their Des Moines offices shall be drawn by the several state departments and agencies from the department of general services with its approval and charged to the several officials, boards, departments, commissions, or agencies and paid from the printing appropriation of each board, official, department, commission, or agency.

[C54, 58, 62, 66, 71, 73, §15.41; C75, 77, 79, 81, §18.62]

95 Acts, ch 27, §3

18.63 Approval required for printing.

A department or commission of state located in Polk county shall not expend moneys for the publication or distribution of books, pamphlets, or reports unless the publication is expressly required by law or approved by the director. The state printing administrator may exempt minimal single printing projects from the requirements of this section in order to permit a state agency to timely procure printing, if a state contract is not currently available. The department shall adopt rules establishing criteria for exemption of minimal printing projects under this section.

The director may establish a central sales and distribution center from which shall be distributed all books, pamphlets, documents, reports and publications not required by law to be otherwise distributed. The director shall from time to time establish the cost of printing and distribution or mailing each book, pamphlet, report, document and publication. The director shall, thereafter, cause to be delivered, sent, or mailed to anyone requesting a book, pamphlet, report, document, or publication upon receipt of the cost thereof plus distribution or mailing charges. Anyone may examine a copy of any book, pamphlet, document, report or publication at the central sales and distribution center.

[C62, 66, 71, 73, §15.43; C75, 77, 79, 81, §18.63]

98 Acts, ch 1164, §35

18.64 to 18.73 Reserved.

DIVISION III

STATE PRINTING ADMINISTRATOR

18.74 Appointment.

The director of the department of general services shall appoint the state printing administrator to administer this division. The administrator shall serve at the pleasure of the director and is not subject to the merit system provisions of chapter 19A.

[SS15, §144-e; C24, 27, 31, 35, 39, §**213;** C46, 50, 54, 58, 62, 66, 71, 73, §16.1; C75, 77, 79, 81, §18.74]

88 Acts, ch 1158, §4; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

18.75 Duties.

The state printing administrator shall:

1. Have an office at the seat of government and devote full time to the duties of the position.

2. Have charge of office equipment and supplies and of the stock, if any, required in connection with printing contracts.

3. Have general supervision of all matters pertaining to the enforcement of contracts for printing.

4. Prepare the specifications and advertisements for printing.

5. Have control and direction of the document department.

6. Have legal custody of all Codes, session laws, books of annotations, tables of corresponding sections, publications, except premium lists published by the Iowa state fair board, containing reprints of statutes or administrative rules, or both, reports of state departments, and reports of the supreme court, and sell, account for, and distribute the same as provided by law. However, the legislative service bureau shall solicit and process orders for the distribution of all printed Codes, session laws, administrative codes and bulletins, court rules, and the state roster.

7. Be responsible on an official bond for the public property coming into the administrator's possession.

8. By November 1 of each year supply a report which contains the name, gender, county, or city of residence when possible, official title, salary received during the previous fiscal year, base salary as computed on July 1 of the current fiscal year, and traveling and subsistence expense of the personnel of each of the departments, boards, and commissions of the state government except personnel who receive an annual salary of less than one thousand dollars. The number of the personnel and the total amount received by them shall be shown for each department in the report. All employees who have drawn salaries, fees, or expense allowances from more than one department or subdivision shall be listed separately under the proper departmental heading. On the request of the administrator, the head of each department, board, or commission shall furnish the data covering that agency. The report shall be distributed upon request without charge to each caucus of the general assembly, the legislative service bureau, the legislative fiscal bureau, the chief clerk of the house of representatives, and the secretary of the senate. Copies of the report shall be made available to other persons in both print or electronic medium upon payment of a fee, which shall not exceed the cost of providing the copy of the report. Sections 22.2 through 22.6 apply to the report. All funds from the sale of the report shall be deposited in the general fund. Requests for publications shall be handled only upon receipt of postage by the administrator.

9. Perform such other duties as are necessary, or incident to the position, or which may be ordered by the director, or required by law.

[C97, §70, 218 – 223; S13, §70; SS15, §144-h, -i, -j, 224-d; C24, 27, 31, 35, 39, §**215;** C46, 50, 54, 58, 62, 66, 71, 73, §16.2; C75, 77, 79, 81, §18.75; 81 Acts, ch 10, §9]

83 Acts, ch 200, §11; 88 Acts, ch 1275, §28; 90 Acts, ch 1068, §1; 91 Acts, ch 97, §5; 92 Acts, ch 1227, §10; 95 Acts, ch 27, §4; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2002 Acts, ch 1175, §23

Pricing and related policies for legal publications; see §7A.22

Subsection 6 amended

18.76 Manuscript — editing — general directions. Repealed by 98 Acts, ch 1119, § 26; 98 Acts, ch 1164, § 41.

18.77 Co-operation. Repealed by 98 Acts, ch 1164, § 41.

18.78 Appeals. Repealed by 98 Acts, ch 1119, § 26; 98 Acts, ch 1164, § 41.

18.79 Record relative to documents. Repealed by 98 Acts, ch 1119, § 26; 98 Acts, ch 1164, § 41.

18.80 Reserve supply.

The superintendent shall designate, subject to the approval of the director, the number of copies of reports and publications to be held in reserve, and copies thus held in reserve shall be distributed only upon the written request of the head of the department, approved by the superintendent, and ordered by the director.

[SS15, §144-j; C24, 27, 31, 35, 39, §**220;** C46, 50, 54, 58, 62, 66, 71, 73, §16.7; C75, 77, 79, 81, §18.80]

18.81 Unused documents.

The superintendent shall from time to time report to the director any documents in the superintendent's custody deemed not needed and which have been printed five years or more, and if the report has the written approval of the head of the department from which the documents were issued, the director may condemn and order the documents sold, and the proceeds turned into the unappropriated funds of the state. If a department no longer exists, approval by the head of the department shall not be required. If the condemned documents cannot be sold the director may order them destroyed.

[SS15, §144-l; C24, 27, 31, 35, 39, §**221;** C46, 50, 54, 58, 62, 66, 71, 73, §16.8; C75, 77, 79, 81, §18.81]

18.82 Custody of documents and storage rooms.

The state printing administrator shall receive and have the custody of all printed matter, including all documents and reports, for which the state printing administrator is responsible under this chapter. The state printing administrator shall make and supervise the distribution of the printed matter in such manner as will be most economical and useful to the public. The state printing administrator shall have charge of the state storage building or rooms, in which the state printing administrator shall keep the printed matter.

[SS15, §144-m, -n; C24, 27, 31, 35, 39, §**222;** C46, 50, 54, 58, 62, 66, 71, 73, §16.9; C75, 77, 79, 81, §18.82]

98 Acts, ch 1164, §36

Geological reports, §18.93

18.83 Information as to documents.

The superintendent shall advise the public of the publication of reports and documents and of the nature of the material therein, and give information as to the publications that are available for distribution and how to obtain them.

[SS15, §144-j, -n; C24, 27, 31, 35, 39, §**223;** C46, 50, 54, 58, 62, 66, 71, 73, §16.10; C75, 77, 79, 81, §18.83]

95 Acts, ch 27, §5

18.84 Mailing lists.

The superintendent shall require from officials or heads of departments mailing lists, or addressed labels or envelopes, for use in distribution of reports and documents. The superintendent shall revise such lists, eliminating duplications and adding to the lists libraries, institutions, public officials, and persons having actual use for the material. The superintendent shall arrange the lists so as to reduce to the minimum the postage or other cost for delivery. Requests for publications shall be handled only upon receipt of postage by the superintendent from the requesting agency or department.

[SS15, §144-n; C24, 27, 31, 35, 39, §**224;** C46, 50, 54, 58, 62, 66, 71, 73, §16.11; C75, 77, 79, 81, §18.84]

95 Acts, ch 27, §6

18.85 Copies to departments.

The superintendent shall furnish the various officials and departments with copies of their reports needed for office use or to be distributed to persons requesting the reports. Requests for publications shall be handled only upon receipt of postage by the superintendent.

[SS15, §144-n; C24, 27, 31, 35, 39, §**225;** C46, 50, 54, 58, 62, 66, 71, 73, §16.12; C75, 77, 79, 81, §18.85]

95 Acts, ch 27, §7

18.86 Assembly members.

The official reports, the miscellaneous documents and other publications upon request, and the completed journals of the general assembly and ten copies of the official register, shall be sent to each member of the general assembly, and, so far as they are available, additional copies upon their request. Requests for publications shall be handled only upon receipt of postage by the superintendent.

[SS15, §144-n; C24, 27, 31, 35, 39, §**226;** C46, 50, 54, 58, 62, 66, 71, 73, §16.13; C75, 77, 79, 81, §18.86]

95 Acts, ch 27, §8

18.87 Libraries.

The completed journals of the general assembly, and the official register shall be sent to each free public library in Iowa, the division of libraries and information services of the department of education, the commission of libraries, libraries at state institutions, and college libraries.

[SS15, §144-m, -n; C24, 27, 31, 35, 39, §**227;** C46, 50, 54, 58, 62, 66, 71, 73, §16.14; C75, 77, 79, 81, §18.87]

93 Acts, ch 48, §5

18.88 Newspapers.

The journals of the general assembly and the official register shall be sent to each newspaper of general circulation in Iowa, and editors of newspapers in Iowa shall be entitled to other publications on request when they are available. Requests for publications shall be handled only upon receipt of postage by the superintendent.

[SS15, §144-m, -n; C24, 27, 31, 35, 39, §**228;** C46, 50, 54, 58, 62, 66, 71, 73, §16.15; C75, 77, 79, 81, §18.88]

95 Acts, ch 27, §9

18.89 Congressional library.
Two copies of each publication shall be sent to the library of Congress.
[C97, §126; S13, §126; SS15, §144-m, -n; C24, 27, 31, 35, 39, §**229;** C46, 50, 54, 58, 62, 66, 71, 73, §16.16; C75, 77, 79, 81, §18.89]

18.90 County auditors.
The completed journals of the general assembly, and the official register shall be sent to each county auditor, who shall be required to keep the same at all times available for the inspection of the public.
[C97, §126; S13, §126; SS15, §144-m, -n; C24, 27, 31, 35, 39, §**230;** C46, 50, 54, 58, 62, 66, 71, 73, §16.17; C75, 77, 79, 81, §18.90]

18.91 School libraries.
The official register shall be distributed, in addition to the foregoing provisions, to the school libraries.
[C97, §71; S13, §71; C24, 27, 31, 35, 39, §**231;** C46, 50, 54, 58, 62, 66, 71, 73, §16.18; C75, 77, 79, 81, §18.91]

18.92 General distribution.
The superintendent may send additional copies of publications to other state officials, individuals, institutions, libraries, or societies that may request them. Requests for publications shall be handled only upon receipt of postage by the superintendent.
[C24, 27, 31, 35, 39, §**233;** C46, 50, 54, 58, 62, 66, 71, 73, §16.19; C75, 77, 79, 81, §18.92]
95 Acts, ch 27, §10

18.93 Geological reports.
The reports and bulletins of the geological survey shall be placed at the disposal of the state geologist.
[C97, §126; S13, §126; C24, 27, 31, 35, 39, §**234;** C46, 50, 54, 58, 62, 66, 71, 73, §16.20; C75, 77, 79, 81, §18.93]
Sale and distribution of reports, §456.10

18.94 Repealed by 81 Acts, ch 117, § 1097.

18.95 Old Codes.
The state printing administrator may distribute to law enforcement officers and other persons in the administrator's discretion all Codes and Code Supplements which have been supplanted by a newly issued Code, and all session laws which antedate the publication of the last issued Code by at least four years. However, the administrator shall maintain in reserve a number of copies of each publication as may be fixed by the director. The reserve, when fixed, shall not be distributed except on the order of the executive council. Requests for publications shall be handled upon receipt of postage by the administrator. However, county officials requesting publications under this section shall not be required to pay postage.
[S13, §46-a; C24, 27, 31, 35, 39, §**237;** C46, 50, 54, 58, 62, 66, 71, 73, §16.22; C75, 77, 79, 81, §18.95]
95 Acts, ch 27, §11; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

18.96 Distribution to colleges.
Upon application, in writing, from the librarian or chief executive officer of any incorporated college in this state, the state printing administrator shall, upon the approval of the director, forward to the applicant, without charge, bound volumes of the laws enacted. Requests for publications shall be handled only upon receipt of postage by the administrator.
[S13, p. 3; C24, 27, 31, 35, 39, §**238;** C46, 50, 54, 58, 62, 66, 71, 73, §16.23; C75, 77, 79, 81, §18.96]
95 Acts, ch 27, §12; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

18.97 Special distribution of legal publications.
The state printing administrator shall make free distribution of the printed versions of the Code, supplements to the Code, rules of civil procedure, rules of appellate procedure, rules of criminal procedure, supreme court rules, the Acts of each general assembly, and, upon request, the Iowa administrative code, its supplements, the Iowa administrative bulletin and the state roster pamphlet as follows:
1. To state law library for exchange purposes . . . . . 65 copies
2. To law library of state university of Iowa for exchange purposes . . . . . 60 copies
3. To historical division of the department of cultural affairs . . . . . 2 copies
4. To state historical society . . . . . 2 copies
5. To each judge of the supreme court, the court of appeals and the district court, two copies; and to each district associate judge and each judicial magistrate . . . . . 1 copy
6. To each judge of the federal courts in Iowa . . . . . 1 copy
7. To the clerk of the supreme court of Iowa . . . . . 1 copy
8. To the clerk of each federal court in Iowa . . . . . 1 copy
9. To each state institution under the control of the department of corrections, the state board of regents or the state department of human services . . . . . 1 copy
10. To each elective state officer . . . . . 2 copies
11. To the separate departments of principal state offices and each major subdivision thereof . . . . . 1 copy
12. To each member of the present and subse-

quent general assemblies ..... 1 copy

13. To the chief clerk of the house and secretary of the senate such number as may be required by the house and senate.

14. To the following offices such number of copies as will enable them to perform the duties of their respective offices:

a. Iowa Code editor and administrative code editor.

b. Attorney general.

c. Legislative service bureau.

d. Legislative fiscal bureau.

e. State court administrator.

f. Each district court administrator.

15. To the clerk of the district court and each separate office of the clerk, the county attorney, the county auditor, the county recorder, county and city assessor, the county treasurer, the sheriff and each separate office of a sheriff, the public defender's office, and the administrator of each area education agency in the state and also for use in each courtroom of the district court ... 1 copy

16. To the library of the United States supreme court ..... 1 copy

17. To the division of libraries and information services of the department of education .... 1 copy for each depository library

18. To each member of the Iowa congressional delegation ..... 1 copy

19. To each board of supervisors for each county ..... 1 copy

20. To each juvenile referee ..... 1 copy

In the case of copies of the free documents provided in this section to libraries, the state printing administrator may provide microfiche copies in lieu of bound copies and may provide more copies than indicated in this section if the additional copies are microfiche copies.

Each office, agency, or person receiving a free copy of a document under this section shall receive only the number of copies indicated free at the time of initial distribution and if a replacement document is necessary, it shall be provided only after payment of the normal subscription charge for such document.

If a version of a publication provided under this section is available in an electronic format, the state printing administrator and the legislative council may establish policies providing for the substitution of an electronic version for the printed version of the publication, and for the amount of payment, if any, required for the electronic publication. The payment amount shall not be more than established pursuant to section 7A.22 for the same publication. For the Iowa administrative code and its supplements, the state printing administrator and the legislative council may provide that the distribution requirement of this section is met by distributing relevant portions of the Iowa administrative code or its supplements in either a printed or electronic format, according to policies established by the state printing administrator and the legislative council.

[C73, §39; C97, p. 4, §42; S13, p. 1, §42; C24, 27, 31, 35, §235; C39, §**238.1;** C46, 50, 54, 58, 62, 66, 71, 73, §16.24; C75, 77, 79, 81, §18.97; 80 Acts, ch 1012, §5, ch 1015, §1]

83 Acts, ch 186, §10008, 10009, 10201; 84 Acts, ch 1301, §13; 85 Acts, ch 218, §13; 86 Acts, ch 1237, §1; 91 Acts, ch 258, §24; 93 Acts, ch 48, §6; 96 Acts, ch 1099, §11, 12; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

18.97A Restrictions on free distributions.

Notwithstanding any section of this chapter to the contrary, the state printing administrator and the legislative council may review the publication costs and offsetting sales revenues relating to legal publications in printed and electronic formats, as prepared by the legislative service bureau. In order to distribute these legal publications in the most efficient manner possible to persons entitled to receive these publications pursuant to section 18.97, the state printing administrator and the legislative council may establish policies requiring payment from such persons. The payment amount shall not be more than established pursuant to section 7A.22 for the same publication.

The office of the governor, the supreme court, and the legislative council shall control the number of copies of the printed publications enumerated in section 18.97 distributed to recipients in their respective branches.

96 Acts, ch 1099, §13; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2002 Acts, ch 1175, §24

NEW unnumbered paragraph 2

18.98 Book of annotations and tables of corresponding sections. Repealed by 92 Acts, ch 1163, § 123.

18.99 Appellate court reports.

The supreme court shall cause to be furnished without charge copies of any publication containing official reports of the supreme court and the court of appeals to the chambers of each judge of the district court in each county and to such other governmental agencies as the supreme court shall direct.

[R60, §119; C73, §159; C97, §215; SS15, §224-e; C24, 27, 31, 35, 39, §**239;** C46, 50, 54, 58, 62, 66, 71, 73, §16.28; C75, 77, 79, 81, §18.99]

18.100 Exchange.

The volumes delivered to the state law library shall be used for the purpose of effecting exchange with other states, foreign countries, and provinces, for similar reports. All books received in such exchange shall become a part of the division of libraries and information services of the department of education.

[R60, §119; C73, §159; C97, §215; SS15, §224-e; C24, 27, 31, 35, 39, §**240;** C46, 50, 54, 58, 62, 66, 71, 73, §16.29; C75, 77, 79, 81, §18.100]

86 Acts, ch 1237, §2; 93 Acts, ch 48, §7

18.101 Legislative journals and bills.

The daily journals of the general assembly and the printed bills shall be sent by the state printing administrator by mail to subscribers. The journals and bills for both houses for any one session may be purchased for the sum fixed by the administrator. The administrator shall cause to be printed a sufficient number of copies to fill orders received and reported to the administrator.

[C97, §127, 130; SS15, §132-b, -c, -d; C24, 27, 31, 35, 39, §**241;** C46, 50, 54, 58, 62, 66, 71, 73, §16.30; C75, 77, 79, 81, §18.101]

87 Acts, ch 115, §6; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

18.102 Index to bills.

The secretary of the senate and the chief clerk of the house shall throughout each legislative session compile and cause to be printed a cumulative bulletin of bills and joint resolutions which bulletin shall contain a brief history of each bill, and detailed information as to the status of legislation and shall be conveniently indexed. The bulletin shall be printed and delivered one day before the mid-term recess of each legislature and thereafter twenty-five days after the end of said recess except as may otherwise be provided by the joint rules of the general assembly. The last issue of each bulletin shall be brought down to the time of final adjournment and shall be promptly furnished to all members of the general assembly and to such others as the superintendent may determine.

[C24, 27, 31, 35, 39, §**242;** C46, 50, 54, 58, 62, 66, 71, 73, §16.31; C75, 77, 79, 81, §18.102]

18.103 Enrolling clerks to keep records.

The enrolling clerks of the senate and house shall, under the directions of the secretary of the senate and house, respectively, keep a daily cumulative record of the information required in section 18.102 and in such manner that the same may be promptly furnished to the superintendent at the close of each week.

[C24, 27, 31, 35, 39, §**243;** C46, 50, 54, 58, 62, 66, 71, 73, §16.32; C75, 77, 79, 81, §18.103]

18.104 to 18.113 Reserved.

DIVISION IV

FLEET ADMINISTRATOR
OF STATE AUTOMOBILES

18.114 Authority in department of general services.

The authority to assign all state-owned motor vehicles to state officers and employees, or to state offices, departments, bureaus, and commissions, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other agencies exempted by law shall be vested in the department of general services.

[C39, §**308.1;** C46, 50, 54, 58, 62, 66, 71, 73, §21.1; C75, 77, 79, 81, §18.114]

18.115 State fleet administrator — employees — powers and duties — fuel economy requirements.

The director of the department of general services shall appoint a state fleet administrator and other employees as necessary to administer this division. The state fleet administrator shall serve at the pleasure of the director and is not governed by the merit system provisions of chapter 19A. Subject to the approval of the director, the state fleet administrator has the following duties:

1. The state fleet administrator shall assign to a state officer or employee or to a state agency, one or more motor vehicles which may be required by the state officer or employee or state agency, after the state officer or employee or state agency has shown the necessity for such transportation. The state fleet administrator may assign a motor vehicle either for part time or full time. The state fleet administrator may revoke the assignment at any time.

2. The state fleet administrator may cause all state-owned motor vehicles to be inspected periodically. Whenever the inspection reveals that repairs have been improperly made on the motor vehicle or that the operator is not giving it the proper care, the state fleet administrator shall report this fact to the head of the state agency to which the motor vehicle has been assigned, together with recommendation for improvement.

3. The state fleet administrator shall install a record system for the keeping of records of the total number of miles state-owned motor vehicles are driven and the per-mile cost of operation of each motor vehicle. Every state officer or employee shall keep a record book to be furnished by the state fleet administrator in which the officer or employee shall enter all purchases of gasoline, lubricating oil, grease, and other incidental expense in the operation of the motor vehicle assigned to the officer or employee, giving the quantity and price of each purchase, including the cost and nature of all repairs on the motor vehicle. Each operator of a state-owned motor vehicle shall promptly prepare a report at the end of each month on forms furnished by the state fleet administrator and forwarded to the state fleet administrator, giving the information the state fleet administrator may request in the report. Each month the state fleet administrator shall compile the costs and mileage of state-owned motor vehicles from the reports and keep a cost history for each motor vehicle and the costs shall be reduced to a cost-per-mile basis for each motor vehicle. The state fleet administrator shall call to the attention of an elected official or

the head of any state agency to which a motor vehicle has been assigned any evidence of the mishandling or misuse of a state-owned motor vehicle which is called to the state fleet administrator's attention.

A motor vehicle operated under this subsection shall not operate on gasoline other than gasoline blended with at least ten percent ethanol, unless under emergency circumstances. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

4. The state fleet administrator shall purchase all motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted by law. The state fleet administrator shall purchase new vehicles in accordance with competitive bidding procedures for items or services as provided in this chapter. The state fleet administrator may purchase used or preowned vehicles at governmental or dealer auctions if the purchase is determined to be in the best interests of the state.

The state fleet administrator, and any other state agency, which for purposes of this subsection includes but is not limited to community colleges and institutions under the control of the state board of regents, or local governmental political subdivision purchasing new motor vehicles shall purchase new passenger vehicles and light trucks so that the average fuel efficiency for the fleet of new passenger vehicles and light trucks purchased in that year equals or exceeds the average fuel economy standard for the vehicles' model year as established by the United States secretary of transportation under 15 U.S.C. § 2002. This paragraph does not apply to vehicles purchased for law enforcement purposes or used for off-road maintenance work, or work vehicles used to pull loaded trailers.

Not later than February 15 of each year, the state fleet administrator shall report compliance with the corporate average fuel economy standards published by the United States secretary of transportation for new motor vehicles, other than motor vehicles purchased by the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted from the requirements of this subsection. The report of compliance shall classify the vehicles purchased for the current vehicle model year using the following categories: passenger automobiles, enforcement automobiles, vans, and light trucks. The state fleet administrator shall deliver a copy of the report to the department of natural resources. As used in this paragraph, *"corporate average fuel economy"* means the corporate average fuel economy as defined in 49 C.F.R. § 533.5.

a. The state fleet administrator shall assign motor vehicles available for use to maximize the average passenger miles per gallon of motor vehicle fuel consumed. In assigning motor vehicles, the state fleet administrator shall consider standards established by the state fleet administrator, which may include but are not limited to the number of passengers traveling to a destination, the fuel economy of and passenger capacity of vehicles available for assignment, and any other relevant information, to assure assignment of the most energy efficient vehicle or combination of vehicles for a trip from those vehicles available for assignment. The standards shall not apply to special work vehicles and law enforcement vehicles. The standards shall apply to the following agencies:

(1) State fleet administrator.

(2) State department of transportation.

(3) Institutions under the control of the state board of regents.

(4) The department for the blind.

(5) Any other state agency exempted from obtaining vehicles for use through the state fleet administrator.

b. As used in paragraph *"a"*, *"fuel economy"* means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. § 4064(c).

5. Of all new passenger vehicles and light pickup trucks purchased by the state fleet administrator, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion including but not limited to any of the following:

a. A flexible fuel, which is any of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.2.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or purchased and used for off-road maintenance work or to pull loaded trailers.

6. All used motor vehicles turned in to the state fleet administrator shall be disposed of by public auction, and the sales shall be advertised in a newspaper of general circulation one week in advance of sale, and the receipts from the sale shall be deposited in the depreciation fund to the credit of that state agency turning in the vehicle; except that, in the case of a used motor vehicle of special design, the state fleet administrator may, with the approval of the director, instead of selling it at public auction, authorize the motor vehicle to be traded for another vehicle of similar design. If a vehicle sustains damage and the cost to repair exceeds the wholesale value of the vehicle, the state fleet administrator may dispose of the motor vehicle by obtaining two or more written salvage bids and the vehicle shall be sold to the highest responsible bidder.

7. The state fleet administrator may authorize the establishment of motor pools consisting of a number of state-owned motor vehicles under the state fleet administrator's supervision. The state fleet administrator may store the motor vehicles in a public or private garage. If the state fleet administrator establishes a motor pool, any state officer or employee desiring the use of a state-owned motor vehicle on state business shall notify the state fleet administrator of the need for a vehicle within a reasonable time prior to actual use of the motor vehicle. The state fleet administrator may assign a motor vehicle from the motor pool to the state officer or employee. If two or more state officers or employees desire the use of a state-owned motor vehicle for a trip to the same destination for the same length of time, the state fleet administrator may assign one vehicle to make the trip.

8. The state fleet administrator shall require that a sign be placed on each state-owned motor vehicle in a conspicuous place which indicates its ownership by the state. This requirement shall not apply to motor vehicles requested to be exempt by the commissioner of public safety or the director of the department of general services. All state-owned motor vehicles shall display registration plates bearing the word "official" except motor vehicles requested to be furnished with ordinary plates by the commissioner of public safety or the director of the department of general services pursuant to section 321.19. The state fleet administrator shall keep an accurate record of the registration plates used on all state-owned motor vehicles.

9. The state fleet administrator may adopt other rules regarding the operation of state-owned motor vehicles, with the approval of the director of the department of general services, as may be necessary to carry out the purpose of this chapter. All rules adopted by the state fleet administrator shall be approved by the director before becoming effective.

10. All fuel used in state-owned automobiles shall be purchased at cost from the various installations or garages of the state department of transportation, state board of regents, department of human services, or state motor pools throughout the state, unless the state-owned sources for the purchase of fuel are not reasonably accessible. If the state fleet administrator determines that state-owned sources for the purchase of fuel are not reasonably accessible, the state fleet administrator shall authorize the purchase of fuel from other sources. The state fleet administrator may prescribe a manner, other than the use of the revolving fund, in which the purchase of fuel from state-owned sources is charged to the state agency responsible for the use of the motor vehicle. The state fleet administrator shall prescribe the manner in which oil and other normal motor vehicle maintenance for state-owned motor vehicles may be purchased from private sources, if they cannot be reasonably obtained from a state motor pool. The state fleet administrator may advertise for bids and award contracts in accordance with competitive bidding procedures for items and services as provided in this chapter for furnishing fuel, oil, grease, and vehicle replacement parts for all state-owned motor vehicles. The state fleet administrator and other state agencies, when advertising for bids for gasoline, shall also seek bids for ethanol-blended gasoline.

[C39, §**308.3;** C46, 50, 54, 58, 62, 66, 71, 73, §21.2; C75, 77, 79, 81, §18.115]

83 Acts, ch 200, §12; 85 Acts, ch 115, §1; 86 Acts, ch 1245, §1975; 87 Acts, ch 145, §1; 88 Acts, ch 1158, §5; 89 Acts, ch 76, §4; 89 Acts, ch 297, §1; 90 Acts, ch 1252, §3, 4; 91 Acts, ch 253, §1; 91 Acts, ch 254, §1; 93 Acts, ch 26, §1; 94 Acts, ch 1119, §7; 94 Acts, ch 1188, §33, 34; 96 Acts, ch 1085, §5; 98 Acts, ch 1119, §24; 98 Acts, ch 1164, §37

Marking vehicles generally, §721.8
"Official" plates, §321.19, 321.170

18.116 Violations — withdrawing use of vehicle.

If any state officer or employee violates any of the provisions of this division, the state fleet administrator shall have the authority to withdraw the assignment of any state-owned motor vehicle to any such state officer or employee.

[C39, §**308.4;** C46, 50, 54, 58, 62, 66, 71, 73, §21.3; C75, 77, 79, 81, §18.116]

86 Acts, ch 1245, §1976; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

18.117 Private use prohibited — rate for state business.

1. A state officer or employee shall not use a state-owned motor vehicle for personal private use. A state officer or employee shall not be compensated for driving a privately owned motor vehicle unless it is done on state business with the approval of the state fleet administrator. In that case the state officer or employee shall receive an amount to be determined by the director in con-

sultation with the director of the department of personnel and the director of revenue and finance. The amount shall not exceed the maximum allowable under the federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. However, the director may authorize private motor vehicle rates in excess of the rate allowed under the federal internal revenue service rules for state business use of substantially modified or specially equipped privately owned vehicles required by persons with disabilities. A statutory provision establishing reimbursement for necessary mileage, travel, or actual expenses to a state officer falls under the private motor vehicle mileage rate limitation provided in this section unless specifically provided otherwise. Any peace officer employed by the state as defined in section 801.4 who is required to use a private motor vehicle in the performance of official duties shall receive the private vehicle mileage rate at the rate provided in this section. However, the state fleet administrator may delegate authority to officials of the state, and department heads, for the use of private vehicles on state business up to a yearly mileage figure established by the director. If a state motor vehicle has been assigned to a state officer or employee, the officer or employee shall not collect mileage for the use of a privately owned motor vehicle unless the state motor vehicle assigned is not usable.

2. Subsection 1 does not apply to any of the following:

a. Officials and employees of the state whose mileage is paid other than by a state agency.

b. Elected officers of the state.

c. Judicial officers or court employees.

d. Members and employees of the general assembly who shall be governed by policies relating to motor vehicle travel, including but not limited to reimbursement for expenses, as established by the general assembly.

[C39, §**308.5;** C46, 50, 54, 58, 62, 66, 71, 73, §21.4; C75, 77, 79, 81, §18.117; 81 Acts, ch 9, §22]

83 Acts, ch 186, §10010, 10201; 86 Acts, ch 1245, §1977; 86 Acts, ch 1246, §772; 91 Acts, ch 267, §602; 94 Acts, ch 1188, §35; 98 Acts, ch 1164, §38

See also §70A.9, 602.1509

18.118 Penalty for private use. Repealed by 98 Acts, ch 1164, § 41.

18.119 Revolving fund — replenishment.

There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of twenty-five thousand dollars, which shall be known as the state fleet administrator revolving fund. From this fund shall be paid all purchases of gasoline, oil, tires, repairs, and all other general expenses incurred in the operation of state-owned motor vehicles, and all salaries and expenses of the state fleet administrator's office shall be paid from said fund.

At the end of each month the state fleet administrator shall render a statement to each state department or agency thereof for the actual cost of operation of all motor vehicles assigned to such department or agency, together with a fair proportion of the cost of administration of the state fleet administrator's office during such month, as shall be determined by the administrator, all subject to review by the executive council upon complaint of any state department or agency adversely affected. Such expense shall be paid by the state departments or agencies in the same manner as other expenses of such department are paid, and when such cost of operation and administration is paid by the department, such sum shall be credited to the state fleet administrator revolving fund. If any surplus accrues to said revolving fund in excess of twenty-five thousand dollars for which there is no anticipated need or use, the governor may order such surplus turned over to the general fund of the state.

[C46, 50, 54, 58, 62, 66, 71, 73, §21.6; C75, 77, 79, 81, §18.119]

98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

18.120 Replacement fund.

1. The state fleet administrator shall maintain a depreciation fund for the purchase of replacement motor vehicles and additions to the fleet. The state fleet administrator's records shall show the total funds deposited by and credited to each department or agency thereof. At the end of each month, the state fleet administrator shall render a statement to each state department or agency thereof for additions to the fleet and total depreciation credited to that department or agency. Such depreciation expense shall be paid by the state departments or agencies in the same manner as other expenses of such department are paid, and shall be deposited in the depreciation fund to the credit of the department or agency thereof. The funds credited to each department or agency thereof shall remain the property of the department or agency. However, at the end of each biennium, the state fleet administrator shall cause to revert to the fund from which it accumulated any unassigned depreciation.

2. The department of corrections is not obligated to pay the depreciation expense otherwise required by this section.

[C71, 73, §21.7; C75, 77, 79, 81, §18.120]

83 Acts, ch 200, §13; 98 Acts, ch 1119, §25; 2001 Acts, ch 186, §16

18.121 Assistants.

The director of the department of general services may at various points in the state, outside the city of Des Moines, where state institutions or departments are located, appoint and empower assistants to administer in the name of the state fleet administrator.

[C73, §21.8; C75, 77, 79, 81, §18.121]
98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

18.122 to 18.131 Reserved.

DIVISION V

STATE COMMUNICATIONS

18.132 Purpose. Transferred to § 8D.1.

18.133 Definitions. Transferred to § 8D.2.

18.134 Powers — facilities — leases. Transferred to § 8D.11.

18.135 Rules. Repealed by 94 Acts, ch 1184, § 31. See § 8D.3.

18.136 State communications network. Transferred to § 8D.13.

18.137 State communications network fund. Transferred to § 8D.14.

DIVISION VI

GOVERNMENTAL SERVICES CARD

18.138 Governmental services card.

1. A governmental services card advisory committee is established consisting of the telecommunication and information management council, as reconstituted by executive order number 33, dated August 21, 1987, representatives of the principal central departments of the executive branch as enumerated in section 7E.5 and representatives of private industry, including, but not limited to, financial institutions. The governmental services card advisory committee shall formulate a plan for the development and implementation of a statewide governmental services card system which shall be submitted to the general assembly by January 1, 1995, and shall include all of the following:

a. A governmental services card mission statement which shall be consistent with the stated purposes of the governmental services card.

b. A stated definition of the goals and objectives of the committee.

c. A reasonable estimation of the costs and benefits which would be incurred or realized through implementation of a governmental services card system.

d. Recommendations for the process of coordinating the receipt and disbursement of funds through the treasurer of state's office and the appropriate state agencies.

e. A proposed list of pilot projects where the governmental services card may be implemented.

f. A schedule for implementation in which reasonable attempts shall be made to comply with the intent of the general assembly that the first pilot project begin no later than January 1, 1996.

2. The governmental services card shall be used for any governmental purpose requiring identification, including, but not limited to, a driver's license, nonoperator's identification card, library card, hunting and fishing license, and university identification card. In addition, the governmental services card shall be used for the electronic transfer of funds and shall allow the user to receive state benefits and entitlements and to pay indebtedness to the state, including tax payments and refunds, and shall serve as a source of access to governmental information. The holder of a governmental services card shall have a personal identification number which shall allow the holder to gain access to the system.

3. The governmental services card standards shall be compatible with the standards established for the electronic transfer of funds under chapter 527. Any funds necessary for issuance of the governmental services card shall be transferred from funds appropriated to the various state agencies for costs associated with their respective identification card, information systems, and disbursement and receipt of funds.

4. The governmental services card advisory committee shall review and evaluate procedures for the implementation of a statewide network for the electronic processing and payment of claims for health care services. The committee shall seek input from health care providers and other persons with expertise in electronic health care claims processing in conducting its review and evaluation.

5. Local governments may participate in this program to allow access to local governmental information services and financial transactions through use of the governmental services card.

6. The governmental services card advisory committee shall consider procedures to ensure the full protection of privacy of personal information and the security of a holder's personal identification number.

7. For purposes of this section:

a. *"Financial institution"* means financial institution as defined in section 527.2.

b. *"Governmental services card"* means a card containing identifying information in written and machine readable form, which can be used as an access device by the holder for any of the purposes as stated in this section.

92 Acts, ch 1193, §1; 98 Acts, ch 1073, §9

18.139 through 18.140 Repealed by 83 Acts, ch 126, § 27. See § 256.80 et seq.

18.141 through 18.143 Repealed by 86 Acts, ch 1245, § 123, 2053.

18.144 through 18.155 Repealed by 83 Acts, ch 126, § 27. See § 19A.30, 256.80 et seq.

18.156 through 18.159 Reserved.

18.160 through 18.163 Repealed by 89 Acts, ch 76, § 10.

18.164 Duties of division. Repealed by 89 Acts, ch 76, § 10. See § 18.3(10).

18.165 Guidelines. Repealed by 89 Acts, ch 76, § 10. See § 18.12(17, 18) and 18.115(10).

18.166 through 18.169 Repealed by 89 Acts, ch 76, § 10.

18.170 through 18.174 Reserved.

18.175 through 18.180 Repealed by 86 Acts, ch 1245, § 852. See § 73.15 – 73.21.

18.181 through 18.182 Reserved.

18.183 Powers and responsibilities vested in individual government agencies. Transferred to § 14B.202; 2000 Acts, ch 1226, § 28, 30.

18.184 Financial transactions. Transferred to § 14B.203; 2000 Acts, ch 1226, § 28, 30.

18.185 Audits required. Transferred to § 14B.204; 2000 Acts, ch 1226, § 28, 30.

18.186 Credit cards accepted. Transferred to § 14B.205; 2000 Acts, ch 1226, § 28, 30.

18.187 IowAccess revolving fund. Transferred to § 14B.206; 2000 Acts, ch 1226, § 28, 30.

CHAPTER 18A

CAPITOL PLANNING

18A.1 Commission created.
18A.2 Terms of office.
18A.3 Duties — report to legislature.
18A.4 Organization.
18A.5 Compensation and expenses.
18A.6 Capitol complex projects.
18A.6A Capitol — preservation of architectural and historic integrity.
18A.7 State capitol view preservation.
18A.8 through 18A.10 Reserved.
18A.11 Friends of capitol hill — authorized corporation.

18A.1 Commission created.

The capitol planning commission is created, composed of eleven members as follows:

1. Four members of the general assembly serving as ex officio nonvoting members, two to be appointed by the speaker of the house from the membership of the house, and two to be appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, from the membership of the senate.
2. Six residents of the state of Iowa to be appointed by the governor.
3. The director of the department of general services or the director's designee.

[C62, 66, 71, 73, 75, 77, 79, 81, §18A.1]
86 Acts, ch 1245, §2025; 90 Acts, ch 1223, §10

18A.2 Terms of office.

1. The members of the commission who are appointed by the governor shall be appointed to four-year terms of office and until their successors are appointed, three terms of which shall expire every two years. Vacancies shall be filled by appointment of the governor for the unexpired term of the original appointee.
2. The legislative members of the commission shall be appointed to four-year terms of office, two of which shall expire every two years unless sooner terminated by a commission member ceasing to be a member of the general assembly. Vacancies shall be filled by appointment of the speaker of the house or the president of the senate, after consultation with the majority leader and the minority leader of the senate, as the case may be, for the unexpired term of their predecessors.
3. The term of office of each appointive member of the commission shall begin on the first of May of the odd-numbered year in which the member is appointed.

[C62, 66, 71, 73, 75, 77, 79, 81, §18A.2]
86 Acts, ch 1245, §2026; 90 Acts, ch 1223, §11

18A.3 Duties — report to legislature.

It shall be the duty of the commission to advise upon the location of statues, fountains and monuments and the placing of any additional buildings on the capitol grounds, the type of architecture and the type of construction of any new buildings to be erected on the state capitol grounds as now encompassed or as subsequently enlarged, and repairs and restoration thereof, and it shall be the duty of the officers, commissions, and councils charged by law with the duty of determining such questions to call upon the commission for such advice.

The commission shall, in cooperation with the director of the department of general services, develop and implement within the limits of its appropriation, a five-year modernization program for the capitol complex.

The commission shall annually report to the general assembly its recommendations relating to its duties under this section. The report shall be submitted to the chief clerk of the house and the secretary of the senate during the month of January.

[C62, 66, 71, 73, 75, 77, 79, 81, §18A.3]

18A.4 Organization.

The commission shall organize biennially by election of a chairperson from its membership. The director of the department of general services or the designee of the director shall serve as secretary to the commission.

[C62, 66, 71, 73, 75, 77, 79, 81, §18A.4]

18A.5 Compensation and expenses.

The members of the commission shall be reimbursed for their actual and necessary expenses while in attendance at any meeting of the commission held at the seat of government and shall be reimbursed for their expenses for going to and from the seat of government to attend a meeting. Members may also be eligible for compensation as provided in section 7E.6. All expense moneys paid to the nonlegislative commissioners shall be paid from funds appropriated to the commission. Service of the director of the department of general services upon this commission is an additional duty conferred by statute. Legislative members of the commission shall receive payment pursuant to section 2.10 and section 2.12.

[C62, 66, 71, 73, 75, 77, 79, 81, §18A.5]
86 Acts, ch 1244, §8

18A.6 Capitol complex projects.

All capital projects on the capitol complex shall be planned, approved, and funded only after considering the guiding principles enunciated in any capitol complex master plan adopted by the commission on or after January 1, 2000. At a minimum, the extent to which the proposed capital project does all of the following shall be considered:

1. Preserves and enhances the dignity, beauty, and architectural integrity of the capitol building, other state office buildings, and the capitol grounds.
2. Protects and enhances the public open spaces on the capitol complex when deemed necessary for public use and enjoyment.
3. Protects the most scenic public views to and from the capitol building.
4. Recognizes the diversity of adjacent neighborhoods and reinforces the connection of the capitol complex to its neighbors and the city of Des Moines.
5. Accommodates pedestrian and motorized traffic that achieves appropriate public accessibility.

This section applies only to projects for which a construction site was not determined prior to May 11, 2000.

2000 Acts, ch 1225, §34, 39

18A.6A Capitol — preservation of architectural and historic integrity.

1. A state agency, branch of government, or any other entity responsible for a construction, remodeling, restoration, maintenance, or other project in, on, or on the grounds surrounding the capitol shall ensure that the project preserves and enhances the dignity, beauty, and architectural and historic integrity of the capitol.
2. A project described in subsection 1 may vary from the architectural or historic integrity of the capitol if such variance is necessary to comply with state or federal laws relating to building accessibility or occupational safety or health, to address life safety issues, or for other compelling reasons. However, the state agency, branch of government, or other entity responsible for a project involving a variance from the architectural or historic integrity shall submit the plans for such project to the capitol planning commission and the capital projects committee of the legislative council for review.

2002 Acts, ch 1030, §1
NEW section

18A.7 State capitol view preservation.

The department of general services shall develop a state capitol view preservation plan. The purpose of the plan shall be to ensure that the most scenic views of the state capitol remain unobstructed by the erection of structures, including but not limited to buildings, towers, and monuments.

The plan shall include proposals for height and setback limitations of structures erected within the state capitol view, and shall include appropriate drawings, schematics, and aerial photographs necessary to establish the plan with sufficient clarity and definition.

The department shall negotiate implementa-

tion of the plan with the city of Des Moines with the goal of entering into a memorandum of understanding in relation to the plan. The department shall provide the governor and the capitol planning commission with quarterly reports regarding progress made on the capitol view preservation plan and execution of the memorandum of understanding.

96 Acts, ch 1218, §28

18A.8 through 18A.10 Reserved.

18A.11 Friends of capitol hill — authorized corporation.

1. The friends of capitol hill corporation shall be incorporated under chapter 504A. The corporation shall be organized and operated for the preservation, restoration, and public use of the Iowa state capitol building, and for related charitable, cultural, and educational purposes.

The corporation shall not be regarded as a state agency and a state official or employee, acting in the official's or employee's official capacity, shall not be an incorporator of the corporation.

2. The membership of the board of directors of the corporation shall be determined in accordance with the articles of incorporation of the corporation and shall include at least one member from each of the legislative, executive, and judicial branches of government, in addition to public members. Members of the board shall not be entitled in the performance of their duties to either a per diem or expenses.

3. In addition to the powers conferred on the board under chapter 504A, the board may accept contributions, including but not limited to appropriations, gifts, grants, loans, services, or other aid or assistance from public or private entities.

93 Acts, ch 77, §1

CHAPTER 18B

INTERNATIONAL NETWORK ON TRADE

Transferred to chapter 15B; repealed effective July 1, 1994, by 93 Acts, ch 167, §13

CHAPTER 18C

IOWA WORLD TRADE CENTER

Transferred to chapter 15C

SUBTITLE 8

PERSONNEL

CHAPTER 19

EXECUTIVE COUNCIL

Transferred to chapter 7D

CHAPTER 19A

DEPARTMENT OF PERSONNEL

Sick leave and vacation incentive and other early termination programs; productivity initiatives; reports to governor and general assembly; 2001 Acts, 2nd Ex, ch 5, §3, 4, 6, 8; 2002 Acts, 2nd Ex, ch 1001, §50 – 52

19A.1 Creation of department of personnel — responsibilities.
19A.1A Director of department.
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19A.3A Employees of statewide elected officials.
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19A.5 Director — appointment and removal. Repealed by 86 Acts, ch 1245, §264.
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19A.19 Prohibited actions.
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FEDERAL PROGRAMS EXEMPT

19A.24 Temporary emergency employment.
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ANNUITIES

19A.30 Annuity contracts.
19A.31 Reserved.

WORKERS' COMPENSATION

19A.32 Workers' compensation claims.
19A.33 and 19A.34 Reserved.

HEALTH FLEXIBLE SPENDING ACCOUNT PLAN

19A.35 State employee health flexible spending account trust fund.

19A.1 Creation of department of personnel — responsibilities.

1. A department of personnel is created.

2. The department is the central agency responsible for state personnel management, including the following:

a. Policy and program development, workforce planning, and research.

b. Employment activities and transactions, including recruitment, examination, and certification of personnel seeking employment or promotion.

c. Compensation and benefits, including position classification, wages and salaries, and employee benefits. Employee benefits include, but are not limited to, group medical, dental, life, and long-term disability insurance, workers' compensation, unemployment benefits, sick leave, deferred compensation, holidays and vacations, tuition reimbursement, and educational leaves. Employee benefits also include the Iowa department of public safety peace officers' retirement, accident, and disability system and the Iowa public employees' retirement system, which are maintained as distinct and independent systems within the department.

d. Equal employment opportunity, affirmative action, and workforce diversity programs.

e. Education, training, and workforce development programs.

f. Personnel records and administration, including the audit of all personnel-related documents.

g. Employment relations, including the negotiation and administration of collective bargaining agreements on behalf of the executive branch of the state and its departments and agencies as provided in chapter 20. However, the state board of regents, for the purposes of implementing and administering collective bargaining pursuant to chapter 20, shall act as the exclusive representative of the state with respect to its faculty, scientific, and other professional staff.

h. The coordination and management of the state's human resource information system, except as otherwise required for those employees governed by chapter 262.

3. The following part-time boards and commissions are within the department:

a. The board of trustees of the public safety peace officers' retirement, accident, and disability system, created by section 97A.5.

b. The investment board of the Iowa public employees' retirement system created by section 97B.8A.

c. The equal opportunity in employment task force created pursuant to executive order, or its successor.

4. Specific powers and duties of the department, its director, and the boards and commissions within the department are set forth in this chapter, chapters 70A, 97A, 97B, and other provisions of law. Section 8.23 applies to the department.

5. The personnel management powers and duties of the department do not extend to the legislative branch or the judicial branch of state government, except for functions related to administering compensation and benefit programs.

[C71, 73, 75, 77, 79, 81, §19A.1]

86 Acts, ch 1245, §201; 91 Acts, ch 33, §1; 97 Acts, ch 28, §1; 2000 Acts, ch 1171, §1, 2; 2001 Acts, ch 68, §5, 24

Sick leave and vacation incentive and other early termination programs; productivity initiatives; reports to governor and general assembly; 2001 Acts, 2nd Ex, ch 5, §3, 4, 6, 8; 2002 Acts, 2nd Ex, ch 1001, §50 – 52

2001 amendment to subsection 3, paragraph b, takes effect July 1, 2002; 2001 Acts, ch 68, §24

Subsection 3, paragraph b amended

19A.1A Director of department.

1. The chief administrative officer of the department is the director. The director shall be appointed by the governor, subject to confirmation by the senate. The director serves at the pleasure of the governor and is subject to reconfirmation after four years in office. The person appointed shall be professionally qualified by education and experience in the field of public personnel administration, including the application of merit principles in public employment, and the appointment shall be made without regard for political affiliation. The director shall not be a member of any local, state, or national committee of a political party, an officer or member of a committee in any partisan political club or organization, or hold or be a candidate for a paid elective public office. The director is subject to the restrictions on political activity provided in section 19A.18. The governor shall set the salary of the director within a range established by the general assembly.

2. The director shall plan, direct, coordinate, and execute the powers, duties, and functions of the department. The director's powers and duties include those specifically set forth in this chapter and other provisions of law.

3. The director may establish by rule divisions and other subunits as necessary for the organization of the department. The director may also establish regional field offices staffed by employees of the department or the executive departments in which they are located. The functions and staffs of the regional offices are subject to policies set by the director.

4. Reduction in force appeals shall be subject to review by the director.

86 Acts, ch 1245, §202; 98 Acts, ch 1202, §27, 46; 2000 Acts, ch 1171, §3, 4

Confirmation, see §2.32

19A.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Appointing authority"* means the chairperson or person in charge of any agency of the state government including, but not limited to, boards, bureaus, commissions, and departments, or an employee designated to act for an appointing authority.

2. *"Department"* means the department of per-

sonnel.

3. *"Director"* means the director of the department of personnel.

4. *"Merit system"* means the merit system established under this chapter.

[C71, 73, 75, 77, 79, 81, §19A.2]

86 Acts, ch 1245, §203; 97 Acts, ch 28, §2

19A.2A Purpose and applicability of chapter.

The general purpose of this chapter is to establish for the state of Iowa a system of personnel administration based on merit principles and scientific methods to govern the appointment, compensation, promotion, welfare, development, transfer, layoff, removal, and discipline of its civil employees, and other incidents of state employment. It is also the purpose of this chapter to promote the coordination of personnel rules and policies with collective bargaining agreements negotiated under chapter 20.

All appointments and promotions to positions covered by the state merit system shall be made solely on the basis of merit and fitness, to be ascertained by examinations or other appropriate screening methods, except as otherwise specified in this chapter.

Provisions of this chapter pertaining to qualifications, examination, certification, probation, and just cause apply only to employees covered by the merit system.

86 Acts, ch 1245, §204; 2000 Acts, ch 1171, §5

19A.3 Applicability — exceptions.

The merit system shall apply to all employees of the state and to all positions in state government now existing or hereafter established except the following:

1. The general assembly, employees of the general assembly, other officers elected by popular vote, and persons appointed to fill vacancies in elective offices.

2. All judicial officers and court employees.

3. The staff of the governor.

4. All board members and commissioners whose appointments are provided for by the Code.

5. All presidents, deans, directors, teachers, professional and scientific personnel, and student employees under the jurisdiction of the state board of regents. The state board of regents shall adopt rules not inconsistent with the objectives of this chapter for all of its employees not cited specifically in this subsection. The rules are subject to approval by the director. If at any time the director determines that the board of regents merit system rules do not comply with the intent of this chapter, the director may direct the board to correct the rules. The rules of the board are not in compliance until the corrections are made.

6. All appointments which are by law made by the governor.

7. All personnel of the armed services under state jurisdiction.

8. Persons who are paid a fee on a contract-for-services basis.

9. Seasonal employees appointed during a department's designated six-month seasonal employment period during the same annual twelve-month period, as approved by the director.

10. Residents, patients, or inmates working in state institutions, or persons on parole working in work experience programs.

11. Professional employees under the supervision of the attorney general, the state public defender, the auditor of state, the treasurer of state, and the public employment relations board. However, employees of the consumer advocate division of the department of justice, other than the consumer advocate, are subject to the merit system.

12. Production and engineering personnel under the jurisdiction of the Iowa public broadcasting board.

13. Members of the Iowa state patrol and other peace officers employed by the department of public safety. The commissioner of public safety shall adopt rules not inconsistent with the objectives of this chapter for the persons described in this subsection.

14. Professional employees of the arts division of the department of cultural affairs.

15. The chief deputy administrative officer and each division administrator of each executive department not otherwise specifically provided for in this section, and physicians not otherwise specifically provided for in this section. As used in this subsection, *"division administrator"* means a principal administrative or policymaking position designated by a chief administrative officer and approved by the director or as specified by law.

16. All confidential employees.

17. Other employees specifically exempted by law.

18. The administrator and the deputy administrator of the credit union division of the department of commerce, all members of the credit union review board, and all employees of the credit union division.

19. The superintendent and the deputy superintendent of the banking division of the department of commerce, all members of the state banking board, and all employees of the banking division.

20. Chief deputy industrial commissioners.

21. The appointee serving as the coordinator of the office of renewable fuels and coproducts, as provided in section 159A.3.

22. All employees of the Iowa state fair authority.

23. Up to six nonprofessional employees designated at the discretion of each statewide elected official.

The director shall negotiate an agreement with the director of the department for the blind con-

cerning the applicability of the merit system to the professional employees of the department for the blind.

[C71, 73, 75, 77, 79, 81, §19A.3; 81 Acts, ch 23, §7, ch 27, §1]

83 Acts, ch 96, §55, 157, 159; 83 Acts, ch 126, §23, 24; 83 Acts, ch 169, §1; 83 Acts, ch 186, §10011, 10201; 84 Acts, ch 1266, §1; 85 Acts, ch 90, §1; 85 Acts, ch 212, §21; 86 Acts, ch 1245, §205; 86 Acts, ch 1246, §611; 87 Acts, ch 115, §7; 88 Acts, ch 1161, §11; 88 Acts, ch 1274, §27; 89 Acts, ch 60, §1; 91 Acts, ch 254, §2; 94 Acts, ch 1119, §8; 95 Acts, ch 13, §1; 95 Acts, ch 162, §1, 2; 97 Acts, ch 212, §20; 98 Acts, ch 1074, §1; 2000 Acts, ch 1171, §6, 7

Equal opportunity and special appointments; §19B.2

19A.3A Employees of statewide elected officials.

The exempt position classifications of employees of statewide elected officials as of June 30, 1994, shall remain exempt and any employees subsequently hired to fill any exempt position vacancies shall be classified as exempt employees.

95 Acts, ch 162, §3

19A.4 Personnel commission created. Repealed by 97 Acts, ch 28, § 10.

19A.5 Director — appointment and removal. Repealed by 86 Acts, ch 1245, § 264. See § 19A.1A.

19A.6 Qualifications of commissioners — appointment. Repealed by 97 Acts, ch 28, § 10.

19A.7 Commission duties. Repealed by 97 Acts, ch 28, § 10.

19A.8 Director's duties.

The director, as executive head of the department, shall direct and supervise all of the administrative and technical activities of the department. In addition to the duties imposed by the director elsewhere in this chapter, it shall be the director's duty:

1. To apply and carry out this law and the rules adopted thereunder.

2. To establish and maintain a list of all employees in the executive branch of state government in which there shall be set forth, as to each employee, the class title, pay, status, and other pertinent data. For employees governed by chapter 262, the director shall work collaboratively with the state board of regents to collect such information.

3. To appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this chapter. Staff employees shall be appointed in accordance with the provisions of this chapter.

4. To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling, and welfare.

5. To encourage and exercise leadership in the development of effective personnel administration within the several departments of state government, and to make available the facilities of the department of personnel to this end.

6. To investigate the operation and effect of this chapter and of the rules made under it and to report annually the director's findings and recommendations to the governor.

7. To make an annual report to the governor regarding the work of the department and special reports as the director considers desirable.

8. To perform any other lawful acts which the director may consider necessary or desirable to carry out the purposes and provisions of this chapter.

The director shall designate an employee of the department to act for the director in the director's absence or inability from any cause to discharge the powers and duties of this office.

The director may delegate any or all aspects of the recruitment, examination, and selection processes to an agency in the executive branch upon request by that agency. The director shall oversee all activities delegated to that agency.

The director shall utilize appropriate persons, including officers and employees in the executive branch of state government, to assist in the recruitment and examination of applicants for employment. These officers and employees are not entitled to extra pay for their services, but shall be paid their necessary traveling and other expenses.

The director shall quarterly render a statement to each department or agency which operates in whole or in part from other than general fund appropriations for a pro rata share of the cost of administration of the department of personnel. The expense shall be paid by the state department or agency in the same manner as other expenses of that department or agency are paid and all moneys received shall be deposited in the general fund of the state.

The director shall render monthly a statement to each state department or agency for a pro rata share of the cost of administration of the state employee flexible spending accounts. The expense shall be paid by the state department or agency in the same manner as other expenses of that state department or agency are paid and all moneys received for administration costs shall be deposited in the appropriate fund.

[C71, 73, 75, 77, 79, 81, §19A.8]

86 Acts, ch 1244, §9; 86 Acts, ch 1245, §209, 210; 99 Acts, ch 200, §17; 2000 Acts, ch 1171, §8 – 11

Monthly fee for administration of health insurance plans remitted to health insurance administration fund; 2001 Acts, ch 190, §17

19A.8A Experimental research projects.

The director may conduct experimental or research personnel-related projects of limited duration designed to improve the quality of the employment system. The provisions of section 19A.9 or administrative rules adopted pursuant to that section are waived for the purposes of such projects. Projects adopted under this authority shall not violate existing collective bargaining agreements. Any projects that relate to issues covered by such agreements or issues that are mandatory subjects of collective bargaining are subject to negotiations as applicable. The director shall notify the chairpersons of the standing committees on appropriations of the senate and the house of representatives and the chairpersons of the appropriate subcommittees of those committees of the proposed projects. The notice from the director shall include the purpose of the project, a description of the project, and how the project will be evaluated. Chairpersons notified shall be given at least two weeks to review and comment on the proposal before the project is implemented. The director shall report the results of the experimental research projects conducted in the preceding fiscal year to the legislative council by September 30 of each year.

95 Acts, ch 162, §4

19A.9 Rules adopted.

The director shall adopt and may amend rules for the administration and implementation of this chapter in accordance with chapter 17A. Rulemaking shall be carried out with due regard to the terms of collective bargaining agreements. A rule shall not supersede a provision of a collective bargaining agreement negotiated under chapter 20. The rules shall provide:

1. For the preparation, maintenance, and revision of a job classification plan that encompasses each job in the executive branch, excluding job classifications under the state board of regents, based upon assigned duties and responsibilities, so that the same general qualifications may reasonably be required for and the same pay plan may be equitably applied to all jobs in the same job classification. The director shall classify the position of every employee in the executive branch, excluding employees of the state board of regents, into one of the classes in the plan. An appointing authority or employee adversely affected by a classification or reclassification decision may file an appeal with the director. Appeals of a classification or reclassification decision shall be exempt from the provisions of section 17A.11 and shall be heard by a committee appointed by the director. The classification or reclassification of a position that would cause the expenditure of additional salary funds shall not become effective if the expenditure of funds would be in excess of the total amount budgeted for the department of the appointing authority until budgetary approval has been obtained from the director of the department of management.

When the public interest requires a decrease or increase of employees in any position or type of employment not otherwise provided by law, or the creation or abolishment of any position or type of employment, the director, acting in good faith, shall so notify the governor. Thereafter, the position or type of employment shall stand abolished or created and the number of employees therein reduced or increased.

2. For pay plans covering all employees in the executive branch of state government, excluding employees of the state board of regents, after consultation with the governor and appointing authorities, and consistent with the terms of collective bargaining agreements negotiated under chapter 20.

3. For examinations to determine the relative fitness of applicants for employment. Such examinations shall be practical in character and shall relate to such matters as will fairly assess the ability of the applicant to discharge the duties of the position to which appointment is sought.

Where the Code of Iowa establishes certification, registration, or licensing provisions, such documents shall be considered prima facie evidence of basic skills accomplishment and such persons shall be exempt from further basic skills examination.

Vacancies shall be announced publicly at least ten days in advance of the date fixed for the filing of applications therefore, and shall be advertised through the communications media. The director may, however, in the director's discretion, continue to receive applications and examine candidates for a period adequate to assure a sufficient number of eligibles to meet the needs of the system, and may add the names of successful candidates to existing eligible lists.

4. For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, and conduct. A promotion means a change in the status of an employee from a position in one class to a position in another class having a higher pay grade.

5. For the establishment of lists for appointment and promotion, upon which lists shall be placed the names of successful candidates.

6. For the rejection of applicants who fail to meet reasonable requirements.

7. For the appointment by the appointing authority of a person on the appropriate list to fill a vacancy.

8. For a probation period of six months, excluding educational or training leave, before appointment may be made complete, and during which period a probationer may be discharged or reduced in class or pay. If the employee's services are unsatisfactory, the employee shall be dropped from the payroll on or before the expiration of the

probation period. If satisfactory, the appointment shall be deemed permanent. The determination of the appointing authority shall be final and conclusive.

9. For temporary employment for not more than seven hundred eighty hours in a fiscal year.

10. For provisional employment when there is no appropriate list available. Such provisional employment shall not continue longer than one hundred eighty calendar days.

11. For transfer from a position in one department to a similar position in the same department or another department involving similar qualifications, duties, responsibilities, and salary ranges. Whenever an employee transfers or is transferred from one state department or agency to another state department or agency, the employee's seniority rights, any accumulated sick leave, and accumulated vacation time, as provided in the law, shall be transferred to the new place of employment and credited to the employee. Employees who are subject to contracts negotiated under chapter 20 which include transfer provisions shall be governed by the contract provisions.

12. For reinstatement of persons who have attained permanent status and who resign in good standing or who are laid off from their positions without fault or delinquency on their part.

13. For establishing in cooperation with the appointing authorities a performance management system for all employees in the executive branch of state government, excluding employees of the state board of regents, which shall be considered in determining salary increases; as a factor in promotions; as a factor in determining the order of layoffs and in reinstatement; as a factor in demotions, discharges, and transfers; and for the regular evaluation, at least annually, of the qualifications and performance of those employees.

14. For layoffs by reason of lack of funds or work, or reorganization, and for the recall of employees so laid off, giving consideration in layoffs to the employee's performance record and length of service. An employee who has been laid off may be on a recall list for one year, which list shall be exhausted by the organizational unit enforcing the layoff before selection of an employee may be made from the promotional or nonpromotional list in the employee's classification. Employees who are subject to contracts negotiated under chapter 20 which include layoff and recall provisions shall be governed by the contract provisions.

15. For imposition, as a disciplinary measure, of a suspension from the service without pay for not longer than thirty days.

16. For discharge, suspension, or reduction in job classification or pay grade for any of the following causes: failure to perform assigned duties; inadequacy in performing assigned duties; negligence; inefficiency; incompetence; insubordination; unrehabilitated alcoholism or narcotics addiction; dishonesty; unlawful discrimination; failure to maintain a license, certificate, or qualification necessary for a job classification or position; any act or conduct which adversely affects the employee's performance or the employing agency; or any other good cause for discharge, suspension, or reduction. The person discharged, suspended, or reduced shall be given a written statement of the reasons for the discharge, suspension, or reduction within twenty-four hours after the discharge, suspension, or reduction. All persons concerned with the administration of this chapter shall use their best efforts to insure that this chapter and the rules adopted hereunder shall not be a means of protecting or retaining unqualified or unsatisfactory employees, and shall discharge, suspend, or reduce in job classification or pay grade all employees who should be discharged, suspended, or reduced for any of the causes stated in this subsection.

17. For establishment of a uniform plan for resolving employee grievances and complaints. Employees who are subject to contracts negotiated under chapter 20 which include grievance and complaint provisions shall be governed by the contract provisions.

18. For attendance regulations, and special leaves of absence, with or without pay, or reduced pay, in the various classes of positions in the executive branch, excluding positions under the state board of regents. Employees who are subject to contracts negotiated under chapter 20 which include leave of absence provisions shall be governed by the contract provisions. Annual sick leave and vacation time shall be granted in accordance with section 70A.1.

19. For the development and operation of programs to improve the work effectiveness and morale of employees in the executive branch, excluding employees of the state board of regents, including training, safety, health, welfare, counseling, recreation, and employee relations.

20. Notwithstanding any provisions to the contrary, no rule or regulation shall be adopted by the department which would deprive the state of Iowa, or any of its agencies or institutions of federal grants or other forms of financial assistance.

21. For veterans preference through a provision that veterans as defined in section 35.1 shall have five points added to the grade or score attained in qualifying examinations for appointment to jobs.

Veterans who have a service-connected disability or are receiving compensation, disability benefits or pension under laws administered by the veterans administration shall have ten points added to the grades attained in qualifying examinations. A veteran who has been awarded the purple heart for disabilities incurred in action shall be considered to have a service-connected disability.

22. For acceptance of the qualifications, requirements, regulations, and general provisions established under other sections of the Code per-

taining to professional registration, certification, and licensing.

[C71, 73, 75, 77, 79, 81, §19A.9]

84 Acts, ch 1067, §6; 85 Acts, ch 212, §21; 86 Acts, ch 1245, §211, 212; 97 Acts, ch 28, §3, 4; 98 Acts, ch 1119, §27; 99 Acts, ch 180, §1; 2000 Acts, ch 1171, §12, 27; 2001 Acts, ch 147, §1

2000 amendment to subsection 12 takes effect May 8, 2000, and applies retroactively to January 1, 2000; 2000 Acts, ch 1171, §27

19A.10 Use of public buildings.

All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the department the reasonable use of public buildings under their control, and furnish heat, light, and furniture for any examination, hearing, or investigation authorized by this chapter. The department shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished.

[C71, 73, 75, 77, 79, 81, §19A.10]

19A.11 Aid by state employees — records and information.

All officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of this chapter and the rules and orders under it. All officers and employees shall furnish any records or information which the director requires for any purpose of this chapter. The director may institute and maintain any action or proceeding at law or in equity that the director considers necessary or appropriate to secure compliance with this chapter and the rules and orders under it.

The director may delegate to a person in any department, agency, board, commission, or installation thereof, located away from the seat of government, any of the duties imposed by this chapter upon the director.

[C71, 73, 75, 77, 79, 81, §19A.11]

86 Acts, ch 1245, §213

19A.12 Iowa management training system — training revolving fund.

1. The department shall establish and administer an Iowa management training system for the state.

2. A training revolving fund is created in the state treasury. The moneys credited to the fund shall be used for the purpose of paying actual and necessary expenses incurred by the department in administering the training system. All fees, grants, or specific appropriations for this purpose shall be credited to the fund. The fees for the training system courses shall be set by the director to cover the costs of course development, training materials, facilities and equipment, professional instructors, and administration, except for costs associated with the salary of employees of the department. The fees shall be paid to the department by the state agency sending the employees for training and the payment shall be credited to the training revolving fund. Notwithstanding section 8.33, the department shall not revert any unencumbered or unobligated balance in the fund.

86 Acts, ch 1159, §1; 88 Acts, ch 1275, §31; 90 Acts, ch 1082, §1; 95 Acts, ch 162, §5

19A.12A Combined charitable campaign program, fees, revolving fund.

1. The department shall establish and administer a combined charitable campaign program for state employees.

2. A combined charitable campaign revolving fund is created in the state treasury. The moneys credited to the fund shall be used for the purpose of paying actual and necessary expenses incurred by the department in administering the program. Administrative expenses shall not exceed five percent of the contributions pledged the previous year. All fees, grants, or specific appropriations for this purpose shall be credited to the fund. The fees for the program shall be set by the director to cover only the cost of administration and materials and shall not cover salaries of state employees involved in the administration of the program. The fees shall be paid to the department from the voluntary employee contributions and the payment shall be credited to the revolving fund. Notwithstanding section 8.33, any unencumbered or unobligated balance in the fund shall not revert.

91 Acts, ch 33, §2

See also §70A.14 and 70A.15

19A.12B Deferred compensation plan.

The department shall make available to eligible state employees by September 1, 1997, the option of utilizing mutual funds as an investment alternative to the state's deferred compensation plan established under section 509A.12. Participating employees shall, to the extent permitted by law, be allowed to transfer moneys deferred under the plan to a mutual fund offered pursuant to section 509A.12.

97 Acts, ch 185, §6

19A.12C Iowa state employee deferred compensation trust fund.

1. There is hereby created in the office of the treasurer of state a special fund, separate and apart from all other public moneys or funds of this state, to be known as the *"Iowa State Employee Deferred Compensation Trust Fund"*, hereafter called the *"fund"*. The fund shall consist of all moneys deposited in the fund pursuant to this section, any other assets that must be held in trust for the exclusive benefit of participants in the state's deferred compensation program as required by section 457 of the federal Internal Revenue Code, and interest and earnings thereon, and shall be used for the exclusive benefit of participants in a deferred compensation program established by

the state under section 509A.12.

2. The director is the trustee of the fund and shall administer the fund. Any loss to the fund shall be charged against the fund and the director shall not be personally liable for such loss. In addition, the director is the trustee of any trusts referenced in section 457(g) of the federal Internal Revenue Code. Any loss to the trusts shall be charged against the trusts and the director shall not be personally liable for such loss.

3. By January 1, 1999, any compensation or portion of compensation reduced by a participant in conjunction with a deferred compensation program established by the state under section 509A.12 and any earnings or income thereon shall be held in trust and used for the exclusive benefit of the participant or the participant's beneficiary as provided by section 457 of the federal Internal Revenue Code.

4. For purposes of this section, custodial accounts, annuity contracts, and any other contracts referenced in section 457(g) of the federal Internal Revenue Code shall be treated as trusts for purposes of section 457 of the federal Internal Revenue Code.

5. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

98 Acts, ch 1039, §1

19A.12D State employee deferred compensation match trust fund.

1. There is created in the office of the treasurer of state a special fund, separate and apart from all other public moneys or funds of this state, to be known as the Iowa state employee deferred compensation match trust fund, hereafter called the *"fund"*. The fund shall consist of all moneys deposited in the fund, and other assets that must be held in trust for the exclusive benefit of participants in the state's deferred compensation match program as required by section 401(a) of the federal Internal Revenue Code, and interest and earnings thereon, and shall be used for the exclusive benefit of participants and their beneficiaries in a deferred compensation match program established by the state under section 509A.12.

2. The director is the trustee of the fund and shall administer the fund. Any loss to the fund shall be charged against the trust and the director shall not be personally liable for such loss.

3. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

2000 Acts, ch 1171, §13

19A.12E State employee dependent care spending account trust fund.

1. There is created in the state treasury a special trust fund known as the Iowa state employee dependent care spending account trust fund. The trust fund consists of all moneys, including monthly administrative charges paid by a state department or agency as authorized by section 19A.8, held in trust for the exclusive benefit of participants in the state's dependent care spending account plan. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest and earnings from moneys in the trust fund shall be credited to the trust fund and shall be used exclusively for the benefit of plan participants.

2. The director shall serve as trustee of the trust fund and shall administer the fund as required by sections 125 and 129 of the federal Internal Revenue Code. Any loss to the fund shall be charged against the fund and the director shall not be personally liable for such loss. The director has the authority to direct expenditures as deemed appropriate to the exclusive benefit of the plan participants.

2000 Acts, ch 1171, §14, 27

Section takes effect May 8, 2000, and applies retroactively to January 1, 2000; 2000 Acts, ch 1171, §27

19A.12F Health insurance administration fund.

1. A special fund is created in the office of the treasurer of state, separate and apart from all other public moneys or funds of this state, to be known as the Iowa state health insurance administration fund, hereafter referred to as the fund. The fund shall consist of all moneys deposited in the fund from proceeds of a monthly per contract administrative charge assessed by the department of personnel and collected by the department of revenue and finance. Moneys deposited in the fund shall be expended by the department of personnel for health insurance program administration costs.

2. A monthly per contract administrative charge shall be assessed by the department of personnel on all health insurance plans administered by the department in which the contract holder has a state employer to pay the charge. The amount of the administrative charge shall be established by the general assembly. The department of revenue and finance shall collect the administrative charge from each department utilizing the centralized payroll system and shall deposit the proceeds in the fund. In addition, the state board of regents, all library service areas, the state fair board, the state department of transportation, and each judicial district department of correctional services shall remit the administrative charge on a monthly basis to the department of revenue and finance and shall submit a report to the department of revenue and finance containing the number and type of health insurance contracts held by each of its employees whose health insurance is administered by the department of personnel.

3. The expenditure of moneys from the fund in any fiscal year shall not exceed the amount of the monthly charge established by the general assembly multiplied by the number of health insurance contracts in effect at the beginning of the same fiscal year in which the expenditures shall be made. Any unencumbered or unobligated moneys in the fund at the end of the fiscal year shall not revert but shall be transferred to the health insurance premium reserve fund established pursuant to section 509A.5.

4. This section is repealed July 1, 2007.

2002 Acts, ch 1033, §1

Monthly per contract administrative charge for fiscal year beginning July 1, 2002; 2002 Acts, ch 1033, §2

NEW section

19A.13 Certification of payrolls — actions.

A state disbursing or auditing officer shall not make or approve or take part in making or approving a payment for personnel services to any person unless the payroll voucher or account of the pay bears the certification of the director, or of the director's authorized agent, that the persons named have been appointed and employed in accordance with this chapter and the rules and orders under it, and that funds are available for the payment of the persons.

The director may, for proper cause, withhold certification from an entire payroll or from any specific item or items thereon. The director may, however, provide that certification of payrolls may be made once every year, and such certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of the officer's or employee's payroll. In the latter case no voucher for payment of salary to such employee shall be issued or payment of salary made without further certification by the director.

Any citizen may maintain an action in accordance with the terms of the Iowa administrative procedure Act to restrain a disbursing officer from making any payment in contravention of any provision of this chapter, rule or order thereunder. Any sum paid contrary to any provision of this chapter or any rule or order thereunder may be recovered in an action in accordance with the terms of the Iowa administrative procedure Act maintained by any citizen, from any officer who made, approved, or authorized such payment or who signed or countersigned a voucher, payroll, check, or warrant for such payment, or from the sureties on the official bond of any such officer. All moneys recovered in any such action shall be paid into the state treasury.

Any person appointed or employed in contravention of any provision of this chapter or of any rule or order thereunder who performs service for which the person is not paid, may maintain an action in accordance with the terms of the Iowa administrative procedure Act against the officer or officers who purported so to appoint or employ the person to recover the agreed pay for such services or the reasonable value thereof if no pay was agreed upon. No officer shall be reimbursed by the state at any time for any sum paid to such person on account of such services.

If the director wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain a proceeding in accordance with the terms of the Iowa administrative procedure Act in the courts to compel the director to certify such a payroll voucher or account.

[C71, 73, 75, 77, 79, 81, §19A.13]

86 Acts, ch 1245, §214; 2000 Acts, ch 1171, §15

19A.14 Grievances and discipline resolution.

1. *Grievances.* An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department of personnel rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty calendar days following receipt of the third step grievance.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act. Decisions rendered shall be based upon a standard of substantial compliance with this chapter and the rules of the department of personnel. Decisions by the public employment relations board constitute final agency action.

For purposes of this subsection, *"uniform grievance procedure"* does not include procedures for discipline and discharge.

2. *Discipline resolution.* A merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise reduced in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The employee has the right to a hearing closed to the public, unless a public hearing is requested by the employee. The hearing shall

otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act. If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

[C71, 73, 75, 77, 79, 81, §19A.14]

86 Acts, ch 1238, §38; 86 Acts, ch 1245, §215; 87 Acts, ch 19, §2; 88 Acts, ch 1235, §1

19A.15 Records public.

The records of the department, except personal information in an employee's file if the publication of such information would serve no proper public purpose, shall be public records and shall be open to public inspection, subject to reasonable rules as to the time and manner of inspection which may be prescribed by the director. Personal information includes the home address and home telephone number of an employee. Each employee shall have access to the employee's personal file.

Any applicant for a position subject to the provisions of this chapter shall be permitted to review, in accordance with such rules as the director may prescribe, any evaluation resulting from the application for employment.

[C71, 73, 75, 77, 79, 81, §19A.15]

95 Acts, ch 162, §6; 2000 Acts, ch 1171, §16

See also §91B.1

Release of Iowa public employees' retirement system records for purposes of administering and monitoring an early termination program; confidentiality maintained by records recipients; 2001 Acts, 2nd Ex, ch 5, §4, 8; 2002 Acts, 2nd Ex, ch 1001, §50 – 52

19A.16 Services to political subdivisions.

The director may enter into agreements with any municipality or political subdivision of the state to furnish services and facilities of the agency to the municipality or political subdivision. The agreement shall provide for the reimbursement to the department of the reasonable cost of the services and facilities furnished. All municipalities and political subdivisions of the state are authorized to enter into such agreements.

Nothing in this chapter shall affect any municipal civil service programs presently established under and pursuant to chapter 400.

[C71, 73, 75, 77, 79, 81, §19A.16]

97 Acts, ch 28, §5; 2000 Acts, ch 1171, §17

19A.17 Oaths and subpoenas.

The director may administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. A person who fails to appear in response to a subpoena or produce books or papers pertinent to the investigation or hearing or who knowingly gives false testimony is guilty of a simple misdemeanor.

[C71, 73, 75, 77, 79, 81, §19A.17]

86 Acts, ch 1245, §216

19A.18 Discrimination, political activity, use of official influence prohibited.

No person shall be appointed or promoted to, or demoted or discharged from, any position in the merit system, or in any way favored or discriminated against with respect to employment in the merit system because of the person's political or religious opinions or affiliations or race or national origin or sex, or age.

No person holding a position in the classified service shall, during the person's working hours or when performing the person's duties or when using state equipment or at any time on state property, take part in any way in soliciting any contribution for any political party or any person seeking political office, nor shall such employee engage in any political activity that will impair the employee's efficiency during working hours or cause the employee to be tardy or absent from work. The provisions of this section do not preclude any employee from holding any office for which no pay is received or any office for which only token pay is received.

No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the merit system.

No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the merit system, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

No employee shall use the employee's official authority or influence for the purpose of interfering with an election or affecting the results thereof.

Any officer or employee who violates any of the provisions of this section shall be subject to suspension, dismissal, or demotion subject to the right of appeal herein.

The director shall adopt any rules necessary for further restricting political activities of employees in the executive branch, but only to the extent necessary to comply with federal standards. Employees retain the right to vote as they please and to express their opinions on all subjects.

[C71, 73, 75, 77, 79, 81, §19A.18]

86 Acts, ch 1021, §1; 86 Acts, ch 1245, §217; 97 Acts, ch 28, §6

Leave of absence for candidacy and public service; see chapter 55

19A.19 Prohibited actions.

A person shall not make any false statement,

certificate, mark, rating, or report with regard to any examination or appointment made under this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules adopted pursuant to this chapter.

No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the merit system.

An employee of the department or any other person shall not defeat, deceive, or obstruct any person in the person's right to examination or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the merit system.

A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a merit system administered by, or subject to approval of, the director as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of information permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, or for a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer. This paragraph does not apply if the disclosure of the information is prohibited by statute.

[C71, 73, 75, 77, 79, 81, §19A.19]

84 Acts, ch 1015, §1; 86 Acts, ch 1245, §218; 87 Acts, ch 27, §1; 89 Acts, ch 124, §1; 96 Acts, ch 1100, §1; 2000 Acts, ch 1171, §18, 19

See also §70A.28, 70A.29

19A.20 Penalty.

Any person who willfully violates any provision of this chapter or any rules adopted in accordance with this chapter, where no other penalty is prescribed, shall be guilty of a simple misdemeanor.

[C71, 73, 75, 77, 79, 81, §19A.20]

19A.21 Acceptance of grants.

The department is authorized and directed to accept on behalf of the state any grant or contribution, federal or otherwise, made to assist in meeting the cost of carrying out the purpose of this chapter.

All federal grants to and the federal receipts of this department are hereby appropriated for the purpose set forth in such federal grants or receipts.

[C71, 73, 75, 77, 79, 81, §19A.21]

19A.22 Repealed by 79 Acts, ch 2, § 49.

19A.23 Longevity pay prohibited — exception.

No state employee subject to the provisions of this chapter shall be entitled to longevity pay except those employees granted longevity pay pursuant to section 307.48.

[C73, 75, 77, 79, 81, §19A.23]

FEDERAL PROGRAMS EXEMPT

19A.24 Temporary emergency employment.

Notwithstanding the provisions of sections 19A.1 to 19A.23, a person employed under a temporary, emergency employment utilization program funded by the federal government which program does not exceed one year and which program is not subject to merit system standards by federal law, shall be exempt from this chapter except as provided by this division.

[C77, 79, 81, §19A.24]

19A.25 Political activity prohibited.

The provisions of section 19A.18 relating to political activity and the civil penalties contained in such section shall apply to this division. Section 19A.19 relating to prohibited actions shall, where consistent with the provisions of section 19A.24, apply to this division.

[C77, 79, 81, §19A.25]

19A.26 Penalty applicable.

Any person violating the provisions of this division shall be subject to the penalty provided for in section 19A.20.

[C77, 79, 81, §19A.26]

19A.27 through 19A.29 Reserved.

ANNUITIES

19A.30 Annuity contracts.

At the request of an employee of a state agency through contractual agreement, the director may arrange for the purchase of group or individual annuity contracts for any of the employees of that agency, which annuity contracts are issued by a nonprofit corporation issuing retirement annui-

ties exclusively for educational institutions and their employees or are purchased from any company the employee chooses that is authorized to do business in this state or through an Iowa-licensed salesperson that the employee selects, on a group or individual basis, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. As used in this section, unless the context otherwise requires, *"annuity contract"* includes any custodial account which meets the requirements of section 403(b)(7) of the Internal Revenue Code, as defined in section 422.3.

Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall send a letter of intent by registered mail at least thirty days prior to any action to the company being replaced, to the insurance commissioner of the state of Iowa, to the agent's own company and to the director. The letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract.

86 Acts, ch 1245, §219; 94 Acts, ch 1183, §1

19A.31 Reserved.

WORKERS' COMPENSATION

19A.32 Workers' compensation claims.

The director shall employ appropriate staff to handle and adjust claims of state employees for workers' compensation benefits pursuant to chapters 85, 85A, 85B, and 86, or with the approval of the executive council contract for the services or purchase workers' compensation insurance coverage for state employees or selected groups of state employees. A state employee workers' compensation fund is established to pay state employee workers' compensation claims and administrative costs. The department shall establish a rating formula and assess premiums to all agencies, departments, and divisions of the state including those which have not received an appropriation for the payment of workers' compensation insurance and which operate from moneys other than from the general fund of the state. The department shall collect the premiums and deposit them into the state employee workers' compensation fund. Notwithstanding section 8.33, moneys deposited in the state employee workers' compensation fund shall not revert to the general fund of the state at the end of any fiscal year, but shall remain in the state employee workers' compensation fund and be continuously available to pay state employee workers' compensation claims. The director may, to the extent practicable, contract with a private organization to handle the processing and payment of claims and services rendered under the provisions of this section.

86 Acts, ch 1244, §10; 92 Acts, ch 1243, §28; 95 Acts, ch 162, §7; 2001 Acts, ch 147, §2

19A.33 and 19A.34 Reserved.

HEALTH FLEXIBLE SPENDING ACCOUNT PLAN

19A.35 State employee health flexible spending account trust fund.

1. The director shall establish for state employees a health flexible spending account plan which offers multiple benefits to state employees. The state's health flexible spending account plan shall be established to meet the conditions of section 125 of the Internal Revenue Code of 1986.

2. There is created in the state treasury a special trust fund known as the Iowa state employee health flexible spending account trust fund. The trust fund consists of all moneys appropriated to the fund, all monthly administrative charges paid by a state department or agency as authorized by section 19A.8, and any other assets directed to be held in trust for the exclusive benefit of participants in the state's health flexible spending account plan. Notwithstanding section 12C.7, interest and earnings from moneys in the trust fund shall be credited to the trust fund and shall be used exclusively for the benefit of plan participants.

3. The director shall serve as trustee of the trust fund and has the authority to direct expenditures as deemed appropriate to the exclusive benefit of the plan participants.

99 Acts, ch 200, §18; 2000 Acts, ch 1171, §20

Cost of administration, see §19A.8

Authority of governing body, see §509A.1

CHAPTER 19B

EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

19B.1 Definitions.
19B.2 Equal opportunity in state employment — affirmative action.
19B.3 Administrative responsibilities of department of personnel and board of regents.
19B.4 State agency affirmative action plans — programs.
19B.5 Annual reports.
19B.6 Responsibilities of department of personnel and department of management — affirmative action.
19B.7 State contracts and services — state-assisted programs — responsibilities of department of management — regents.
19B.8 Sanctions.
19B.9 and 19B.10 Reserved.
19B.11 School districts, area education agencies, and community colleges — duties of director of department of education.
19B.12 Sexual harassment prohibited.

19B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Affirmative action"* means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

2. *"State agency"* means an office, bureau, division, department, board, or commission in the executive branch of state government.

86 Acts, ch 1245, §220

19B.2 Equal opportunity in state employment — affirmative action.

It is the policy of this state to provide equal opportunity in state employment to all persons. An individual shall not be denied equal access to state employment opportunities because of race, creed, color, religion, national origin, sex, age, or physical or mental disability. It also is the policy of this state to apply affirmative action measures to correct deficiencies in the state employment system where those remedies are appropriate. This policy shall be construed broadly to effectuate its purposes.

It is the policy of this state to permit special appointments by bypassing the usual testing procedures for any applicant for whom the division of vocational rehabilitation services of the department of education or the department for the blind has certified the applicant's disability and competence to perform the job. The department of personnel, in cooperation with the department for the blind and the division of vocational rehabilitation services, shall develop appropriate certification procedures. This paragraph should not be interpreted to bar promotional opportunities for persons who are blind or persons with physical or mental disabilities. If this paragraph conflicts with any other provisions of this chapter, the provisions of this paragraph govern.

86 Acts, ch 1245, §221; 94 Acts, ch 1109, §1; 96 Acts, ch 1129, §12

19B.3 Administrative responsibilities of department of personnel and board of regents.

1. The department of personnel is responsible for the administration and promotion of equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel by all state agencies except the state board of regents and the institutions under its jurisdiction. In carrying out this responsibility the department shall do all of the following with respect to state agencies other than the state board of regents and its institutions:

a. Designate a position as the state affirmative action administrator.

b. Propose affirmative action standards applicable to each state agency based on the population of the community in which the agency functions, the population served by the agency, or the persons that can be reasonably recruited.

c. Gather data necessary to maintain an ongoing assessment of affirmative action efforts in state agencies.

d. Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans of state agencies.

e. Conduct studies of preemployment and postemployment processes in order to evaluate employment practices and develop improved methods of dealing with all employment issues related to equal employment opportunity and affirmative action.

f. Establish a state recruitment coordinating committee to assist in addressing affirmative action recruitment needs, with members appointed by the director of the department of personnel.

g. Address equal opportunity and affirmative action training needs of all state agencies by:

(1) Providing appropriate training for managers and supervisors.

(2) Insuring that all state agencies make training available for all staff members whose duties relate to personnel administration.

(3) Investigating means for training in the area of career development.

h. Coordinate and develop equal employment opportunity reports, including the initiation of the processes necessary for the completion of the annual EEO-4 report required by the federal equal employment opportunity commission.

i. Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.

j. Adopt equal employment opportunity and affirmative action rules in accordance with chapter 17A.

2. The state board of regents is responsible for the administration and promotion of equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel by the board and the institutions under its jurisdiction. In carrying out this responsibility the board shall do all of the following with respect to the board and its institutions:

a. Designate a position as the regents' affirmative action coordinator.

b. Propose affirmative action standards applicable to the board and each institution under its jurisdiction.

c. Gather data necessary to maintain an ongoing assessment of affirmative action efforts.

d. Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans.

e. Conduct studies of preemployment and postemployment processes in order to evaluate employment practices and develop improved methods of dealing with all employment issues related to equal employment opportunity and affirmative action.

f. Establish an equal employment committee to assist in addressing affirmative action needs, including recruitment.

g. Address equal opportunity and affirmative action training needs by:

(1) Providing appropriate training for managers and supervisors.

(2) Insuring that the board and its institutions make training available for all staff members whose duties relate to personnel administration.

(3) Investigating means for training in the area of career development.

h. Require development of equal employment opportunity reports, including the initiation of the processes necessary for the completion of reports required by the federal equal employment opportunity commission.

i. Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.

j. Adopt equal employment opportunity and affirmative action rules in accordance with chapter 17A.

86 Acts, ch 1245, §222; 2000 Acts, ch 1095, §1

19B.4 State agency affirmative action plans — programs.

1. Each state agency, including the state board of regents and its institutions, shall annually prepare an affirmative action plan. State agencies other than the state board of regents and its institutions shall submit their plans to the department of personnel by July 31 each year. Institutions under the jurisdiction of the state board of regents shall submit their plans to that board between December 15 and December 31 each year. Each plan shall contain a clear and unambiguous written program containing goals and time specifications related to personnel administration.

2. Each state agency, including the state board of regents and its institutions, shall conduct programs of job orientation and provide organizational structure and training for upward mobility of employees. Emphasis shall be placed upon fair practices in employment.

86 Acts, ch 1245, §223; 90 Acts, ch 1075, §1

19B.5 Annual reports.

1. The head of each state agency other than the state board of regents and its institutions is personally responsible for submitting by July 31 an annual report of the affirmative action accomplishments of that agency to the department of personnel.

2. The department of personnel shall submit a report on the condition of affirmative action, diversity, and multicultural programs in state agencies covered by subsection 1 by September 30 of each year to the governor and the general assembly. The report shall include information identifying funding sources and itemized costs, including administrative costs, for these programs.

3. The state board of regents shall submit an annual report of the affirmative action, diversity, and multicultural accomplishments of the board and its institutions by January 31 of each year to the general assembly. The report shall include information identifying funding sources and itemized costs, including administrative costs, for these programs.

86 Acts, ch 1245, §224; 90 Acts, ch 1075, §2; 95 Acts, ch 162, §8; 2001 Acts, ch 147, §3

19B.6 Responsibilities of department of personnel and department of management — affirmative action.

The department of personnel shall oversee the implementation of sections 19B.1 through 19B.5 and shall work with the governor to ensure compliance with those sections, including the attainment of affirmative action goals and timetables, by all state agencies, excluding the state board of

regents and its institutions. The department of management shall oversee the implementation of sections 19B.1 through 19B.5 and shall work with the governor to ensure compliance with those sections, including the attainment of affirmative action goals and timetables, by the state board of regents and its institutions.

86 Acts, ch 1245, §225; 2001 Acts, ch 147, §4

19B.7 State contracts and services — state-assisted programs — responsibilities of department of management — regents.

1. Except as otherwise provided in subsection 2, the department of management is responsible for the administration and promotion of equal opportunity in all state contracts and services and the prohibition of discriminatory and unfair practices within any program receiving or benefiting from state financial assistance in whole or in part. In carrying out these responsibilities the department of management shall:

a. Establish for all state agencies a contract compliance policy, applicable to state contracts and services and to programs receiving or benefiting from state financial assistance, to assure:

(1) The equitable provision of services within state programs.

(2) The utilization of minority, women's, and disadvantaged business enterprises as sources of supplies, equipment, construction, and services.

(3) Nondiscrimination in employment by state contractors and subcontractors.

b. Adopt administrative rules in accordance with chapter 17A to implement the contract compliance policy.

c. Monitor the actions of state agencies to ensure compliance.

d. Report results under the contract compliance policy to the governor and the general assembly on an annual basis. The report shall detail specific efforts to promote equal opportunity through state contracts and services and efforts to promote, develop, and stimulate the utilization of minority, women's, and disadvantaged business enterprises in programs receiving or benefiting from state financial assistance.

e. Do other acts necessary to carry out the contract compliance policy described in this section.

2. The state board of regents is responsible for administering the provisions of this section for the institutions under its jurisdiction.

86 Acts, ch 1245, §226

19B.8 Sanctions.

The department of management may impose appropriate sanctions on individual state agencies, including the state board of regents and its institutions, and upon a community college, area education agency, or school district, in order to ensure compliance with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and requirements for procurement goals for targeted small businesses.

86 Acts, ch 1245, §227; 92 Acts, ch 1212, §1

19B.9 and 19B.10 Reserved.

19B.11 School districts, area education agencies, and community colleges — duties of director of department of education.

1. It is the policy of this state to provide equal opportunity in school district, area education agency, and community college employment to all persons. An individual shall not be denied equal access to school district, area education agency, or community college employment opportunities because of race, creed, color, religion, national origin, sex, age, or physical or mental disability. It also is the policy of this state to apply affirmative action measures to correct deficiencies in school district, area education agency, and community college employment systems where those remedies are appropriate. This policy shall be construed broadly to effectuate its purposes.

2. The director of the department of education shall actively promote fair employment practices for all school district, area education agency, and community college employees and the state board of education shall adopt rules requiring specific steps by school districts, area education agencies, and community colleges to accomplish the goals of equal employment opportunity and affirmative action in the recruitment, appointment, assignment, and advancement of personnel. Each school district, area education agency, and community college shall be required to develop affirmative action standards which are based on the population of the community in which it functions, the student population served, or the persons who can be reasonably recruited. The director of education shall consult with the department of personnel in the performance of duties under this section.

3. Each school district, area education agency, and community college in the state shall submit to the director of the department of education an annual report of the accomplishments and programs of the district, agency, or community college in carrying out its duties under this section. The report shall be submitted between December 15 and December 31 each year. The director shall prescribe the form and content of the report.

4. The director of the department of education shall prepare a compilation of the reports required by subsection 3 and shall submit this compilation, together with a report of the director's accomplishments and programs pursuant to this section, to the department of management by January 31 of each year.

86 Acts, ch 1245, §228; 88 Acts, ch 1284, §42; 90 Acts, ch 1253, §121

19B.12 Sexual harassment prohibited.

A state employee shall not sexually harass another state employee, a person in the care or custody of the state employee or a state institution, or a person attending a state educational institution. This section applies to full-time, part-time, or temporary employees, to inpatients and outpatients, and to full-time or part-time students.

1. An employee in a supervisory position shall not threaten or insinuate, explicitly or implicitly, that another employee's refusal to submit to sexual advances will adversely affect the employee's employment, evaluation, salary advancement, job assignments, or other terms, conditions, or privileges of employment.

2. An employee shall not discriminate against another state employee, a person in the care or custody of the employee or a state institution, or a person attending a state educational institution based on sex or create an intimidating, hostile, or offensive working environment in a state work, educational, or correctional situation.

3. As used in this section, *"sexual harassment"* means persistent, repetitive, or highly egregious conduct directed at a specific individual or group of individuals that a reasonable person would interpret as intentional harassment of a sexual nature, taking into consideration the full context in which the conduct occurs, which conduct threatens to impair the ability of a person to perform the duties of employment, or otherwise function normally within an institution responsible for the person's care, rehabilitation, education, or training.

"Sexual harassment" may include, but is not limited to, the following:

a. Unsolicited sexual advances by a person toward another person who has clearly communicated the other person's desire not to be the subject of those advances.

b. Sexual advances or propositions made by a person having superior authority toward another person within the workplace or institution.

c. Instances of offensive sexual remarks or speech or graphic sexual displays directed at a person in the workplace or institution, who has clearly communicated the person's objection to that conduct, and where the person is not free to avoid that conduct due to the requirements of the employment or the confines or operations of the institution.

d. Dress requirements that bear no relation to the person's employment responsibilities or institutional status.

4. The department of personnel for all state agencies, and the state board of regents for its institutions, shall adopt rules and appropriate internal, confidential grievance procedures to implement this section, and shall adopt procedures for determining violations of this section and for ordering appropriate dispositions that may include, but are not limited to, discharge, suspension, or reduction in rank or grade as defined in section 19A.9, subsection 16.

5. The department of personnel shall develop for all state agencies, and all state agencies shall distribute at the time of hiring or orientation, a guide for employees that describes the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures.

6. The state board of regents shall develop, and direct the institutions under its control to distribute at the time of hiring, registration, admission, or orientation, a guide for employees, students, and patients that describes the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures.

7. This section does not supersede a provision of a collective bargaining agreement negotiated under chapter 20, or the grievance procedures provisions of chapter 20.

8. This section does not supersede the remedies provided under chapter 216.

92 Acts, ch 1086, §3

CHAPTER 20

PUBLIC EMPLOYMENT RELATIONS (COLLECTIVE BARGAINING)

20.1 Public policy.
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20.25 Internal conduct of employee organizations.
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20.30 Supervisory member — no reduction before retirement.
20.31 Mediator privilege.

20.1 Public policy.

The general assembly declares that it is the public policy of the state to promote harmonious and co-operative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect the citizens of this state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations.

The general assembly declares that the purposes of the public employment relations board established by this chapter are to implement the provisions of this chapter and adjudicate and conciliate employment-related cases involving the state of Iowa and other public employers and employee organizations. For these purposes the powers and duties of the board include but are not limited to the following:

1. Determining appropriate bargaining units and conducting representation elections.

2. Adjudicating prohibited practice complaints including the exercise of exclusive original jurisdiction over all claims alleging the breach of the duty of fair representation imposed by section 20.17.

3. Fashioning appropriate remedial relief for violations of this chapter, including but not limited to the reinstatement of employees with or without back pay and benefits.

4. Adjudicating and serving as arbitrators regarding state merit system grievances and, upon joint request, grievances arising under collective bargaining agreements between public employers and certified employee organizations.

5. Providing mediators, fact finders, and arbitrators to resolve impasses in negotiations.

6. Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.

7. Assisting the attorney general in the preparation of legal briefs and the presentation of oral arguments in the district court and the supreme court in cases affecting the board.

[C75, 77, 79, 81, §20.1]

86 Acts, ch 1238, §39, 58; 86 Acts, ch 1245, §229; 87 Acts, ch 19, §3; 90 Acts, ch 1037, §1, 2

20.2 Title.

This chapter shall be known as the *"Public Employment Relations Act"*.

[C75, 77, 79, 81, §20.2]

20.3 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Arbitration"* means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in this chapter.

2. *"Board"* means the public employment relations board established under section 20.5.

3. *"Confidential employee"* means any public employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer.

"Confidential employee" also includes the personal secretary of any of the following: Any elected official or person appointed to fill a vacancy in an elective office, member of any board or commission, the administrative officer, director, or chief executive officer of a public employer or major division thereof, or the deputy or first assistant of any of the foregoing.

4. *"Employee organization"* means an organization of any kind in which public employees participate and which exists for the primary purpose of representing public employees in their employment relations.

5. *"Fact-finding"* means the procedure by which a qualified person shall make written findings of fact and recommendations for resolution of an impasse.

6. *"Governing body"* means the board, council, or commission, whether elected or appointed, of a political subdivision of this state, including school districts and other special purpose districts, which determines the policies for the operation of the political subdivision.

7. *"Impasse"* means the failure of a public employer and the employee organization to reach agreement in the course of negotiations.

8. *"Mediation"* means assistance by an impartial third party to reconcile an impasse between

the public employer and the employee organization through interpretation, suggestion, and advice.

9. *"Professional employee"* means any one of the following:

a. Any employee engaged in work:

(1) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

(2) Involving the consistent exercise of discretion and judgment in its performance;

(3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(4) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

b. Any employee who:

(1) Has completed the courses of specialized intellectual instruction and study described in paragraph *"a"*, subparagraph 4, of this subsection, and

(2) Is performing related work under the supervision of a professional person to qualify the employee to become a professional employee as defined in paragraph *"a"* of this subsection.

10. *"Public employee"* means any individual employed by a public employer, except individuals exempted under the provisions of section 20.4.

11. *"Public employer"* means the state of Iowa, its boards, commissions, agencies, departments, and its political subdivisions including school districts and other special purpose districts.

12. *"Strike"* means a public employee's refusal, in concerted action with others, to report to duty, or a willful absence from the employee's position, or a stoppage of work by the employee, or the employee's abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment.

[C75, 77, 79, 81, §20.3]

20.4 Exclusions.

The following public employees shall be excluded from the provisions of this chapter:

1. Elected officials and persons appointed to fill vacancies in elective offices, and members of any board or commission.

2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer's or director's deputy, first assistant, and any supervisory employees.

"Supervisory employee" means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.

3. Confidential employees.

4. Students working as part-time public employees twenty hours per week or less, except graduate or other postgraduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant.

5. Temporary public employees employed for a period of four months or less.

6. Commissioned and enlisted personnel of the Iowa national guard.

7. Judicial officers, and confidential, professional, or supervisory employees of the judicial branch.

8. Patients and inmates employed, sentenced or committed to any state or local institution.

9. Persons employed by the state department of justice, except nonsupervisory employees of the consumer advocate division who are employed primarily for the purpose of performing technical analysis of nonlegal issues.

10. Persons employed by the credit union division of the department of commerce.

11. Persons employed by the banking division of the department of commerce.

12. Persons employed by the savings and loan division of the department of commerce.

13. The appointee serving as the coordinator of the office of renewable fuels and coproducts, as provided in section 159A.3.

[C75, 77, 79, 81, §20.4]

83 Acts, ch 186, §10012, 10201; 86 Acts, ch 1245, §230; 86 Acts, ch 1246, §612; 89 Acts, ch 158, §3; 89 Acts, ch 296, §5; 91 Acts, ch 254, §3; 94 Acts, ch 1119, §9; 98 Acts, ch 1047, §12

20.5 Public employment relations board.

1. There is established a board to be known as the *"Public Employment Relations Board"*. The board shall consist of three members appointed by the governor, subject to confirmation by the senate. No more than two members shall be of the same political affiliation, no member shall engage in any political activity while holding office and the members shall devote full time to their duties.

The members shall be appointed for staggered terms of four years beginning and ending as provided in section 69.19.

The member first appointed for a term of four years shall serve as chairperson and each of the member's successors shall also serve as chairperson.

2. Any vacancy occurring shall be filled in the same manner as regular appointments are made.

3. In selecting the members of the board, consideration shall be given to their knowledge, ability, and experience in the field of labor-management relations. The chairperson and the remaining two members shall each receive an annual salary as set by the general assembly.

4. The board may employ such persons as are necessary for the performance of its functions. Personnel of the board shall be employed pursuant to the provisions of chapter 19A.

5. Members of the board and other employees of the board shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the board shall be subject to the budget requirements of chapter 8.

[C75, 77, 79, 81, §20.5]

Confirmation, see §2.32

20.6 General powers and duties of the board.

The board shall:

1. Administer the provisions of this chapter.

2. Collect, for public employers other than the state and its boards, commissions, departments, and agencies, data and conduct studies relating to wages, hours, benefits and other terms and conditions of public employment and make the same available to any interested person or organization.

3. Establish minimum qualifications for arbitrators and mediators, establish procedures for appointing, maintaining, and removing from a list persons representative of the public to be available to serve as arbitrators and mediators, and establish compensation rates for arbitrators and mediators.

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, persons appointed or employed by the board, including administrative law judges, or administrative law judges employed by the division of administrative hearings created by section 10A.801, for the performance of its functions. The board may petition the district court at the seat of government or of the county where a hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

5. Adopt rules in accordance with the provisions of chapter 17A as it may deem necessary to carry out the purposes of this chapter.

[C75, 77, 79, 81, §20.6]

88 Acts, ch 1109, §5; 91 Acts, ch 174, §1; 98 Acts, ch 1202, §28, 46

Personnel department appeals; see §19A.14

20.7 Public employer rights.

Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:

1. Direct the work of its public employees.

2. Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency.

3. Suspend or discharge public employees for proper cause.

4. Maintain the efficiency of governmental operations.

5. Relieve public employees from duties because of lack of work or for other legitimate reasons.

6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.

7. Take such actions as may be necessary to carry out the mission of the public employer.

8. Initiate, prepare, certify and administer its budget.

9. Exercise all powers and duties granted to the public employer by law.

[C75, 77, 79, 81, §20.7]

20.8 Public employee rights.

Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.

2. Negotiate collectively through representatives of their own choosing.

3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.

4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type.

[C75, 77, 79, 81, §20.8]

20.9 Scope of negotiations.

The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee orga-

nization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. If an agreement provides for dues checkoff, a member's dues may be checked off only upon the member's written request and the member may terminate the dues checkoff at any time by giving thirty days' written notice. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

Nothing in this section shall diminish the authority and power of the department of personnel, board of regents' merit system, Iowa public broadcasting board's merit system, or any civil service commission established by constitutional provision, statute, charter or special act to recruit employees, prepare, conduct and grade examinations, rate candidates in order of their relative scores for certification for appointment or promotion or for other matters of classification, reclassification or appeal rights in the classified service of the public employer served.

All retirement systems shall be excluded from the scope of negotiations.

[C75, 77, 79, 81, §20.9]

Dues checkoff; see §70A.19

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.

2. It shall be a prohibited practice for a public employer or the employer's designated representative willfully to:

a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.

b. Dominate or interfere in the administration of any employee organization.

c. Encourage or discourage membership in any employee organization, committee or association by discrimination in hiring, tenure, or other terms or conditions of employment.

d. Discharge or discriminate against a public employee because the employee has filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because the employee has formed, joined or chosen to be represented by any employee organization.

e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.

f. Deny the rights accompanying certification or exclusive recognition granted in this chapter.

g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.

h. Engage in a lockout.

3. It shall be a prohibited practice for public employees or an employee organization or for any person, union or organization or their agents willfully to:

a. Interfere with, restrain, coerce or harass any public employee with respect to any of the employee's rights under this chapter or in order to prevent or discourage the employee's exercise of any such right, including, without limitation, all rights under section 20.8.

b. Interfere, restrain, or coerce a public employer with respect to rights granted in this chapter or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances.

c. Refuse to bargain collectively with a public employer as required in this chapter.

d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.

e. Violate section 20.12.

f. Violate the provisions of sections 732.1 to 732.3, which are hereby made applicable to public employers, public employees and public employee organizations.

g. Picket in a manner which interferes with ingress and egress to the facilities of the public employer.

h. Engage in, initiate, sponsor or support any picketing that is performed in support of a strike, work stoppage, boycott or slowdown against a public employer.

i. Picket for any unlawful purpose.

4. The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

[C75, 77, 79, 81, §20.10]

20.11 Prohibited practice violations.

1. Proceedings against a party alleging a violation of section 20.10, shall be commenced by filing a complaint with the board within ninety days of the alleged violation causing a copy of the complaint to be served upon the accused party in the manner of an original notice as provided in this chapter. The accused party shall have ten days within which to file a written answer to the complaint. However, the board may conduct a preliminary investigation of the alleged violation, and if the board determines that the complaint has no basis in fact, the board may dismiss the complaint. The board shall promptly thereafter set a time and place for hearing in the county where the alleged violation occurred. The parties shall be permitted to be represented by counsel, summon witnesses, and request the board to subpoena witnesses on the requester's behalf. Compliance with the tech-

nical rules of pleading and evidence shall not be required.

2. The board may designate an administrative law judge to conduct the hearing. The administrative law judge has the powers as may be exercised by the board for conducting the hearing and shall follow the procedures adopted by the board for conducting the hearing. The decision of the administrative law judge may be appealed to the board and the board may hear the case de novo or upon the record as submitted before the administrative law judge, utilizing procedures governing appeals to the district court in this section so far as applicable.

3. The board shall appoint a certified shorthand reporter to report the proceedings and the board shall fix the reasonable amount of compensation for such service, which amount shall be taxed as other costs.

4. The board shall file its findings of fact and conclusions of law within sixty days of the close of any hearing, receipt of the transcript, or submission of any briefs. If the board finds that the party accused has committed a prohibited practice, the board may, within thirty days of its decision, enter into a consent order with the party to discontinue the practice, or after the thirty days following the decision may petition the district court for injunctive relief pursuant to rules of civil procedure 1.1501 to 1.1511.

5. The board's review of proposed decisions and the rehearing or judicial review of final decisions is governed by the provisions of chapter 17A.

[C75, 77, 79, 81, §20.11]

88 Acts, ch 1109, §6; 89 Acts, ch 296, §6, 7; 91 Acts, ch 174, §2

20.12 Strikes prohibited.

1. It shall be unlawful for any public employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify or participate in a strike against any public employer.

2. It shall be unlawful for any public employer to authorize, consent to, or condone a strike; or to pay or agree to pay any public employee for any day in which the employee participates in a strike; or to pay or agree to pay any increase in compensation or benefits to any public employee in response to or as a result of any strike or any act which violates subsection 1. It shall be unlawful for any official, director, or representative of any public employer to authorize, ratify or participate in any violation of this subsection. Nothing in this subsection shall prevent new or renewed bargaining and agreement within the scope of negotiations as defined by this chapter, at any time after such violation of subsection 1 has ceased; but it shall be unlawful for any public employer or employee organization to bargain at any time regarding suspension or modification of any penalty provided in this section or regarding any request by the public employer to a court for such suspension or modification.

3. In the event of any violation or imminently threatened violation of subsection 1 or 2, any citizen domiciled within the jurisdictional boundaries of the public employer may petition the district court for the county in which the violation occurs or the district court for Polk county for an injunction restraining such violation or imminently threatened violation. Rules of civil procedure 1.1501 to 1.1511 regarding injunctions shall apply. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened; the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure the plaintiff; and no bond shall be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted pursuant to this section shall constitute a contempt punishable pursuant to chapter 665. The punishment shall not exceed five hundred dollars for an individual, or ten thousand dollars for an employee organization or public employer, for each day during which the failure to comply continues, or imprisonment in a county jail not exceeding six months, or both such fine and imprisonment. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

4. If a public employee is held to be in contempt of court for failure to comply with an injunction pursuant to this section, or is convicted of violating this section, the employee shall be ineligible for any employment by the same public employer for a period of twelve months. The employee's public employer shall immediately discharge the employee, but upon the employee's request the court shall stay the discharge to permit further judicial proceedings.

5. If an employee organization or any of its officers is held to be in contempt of court for failure to comply with an injunction pursuant to this section, or is convicted of violating this section, the employee organization shall be immediately decertified, shall cease to represent the bargaining unit, shall cease to receive any dues by checkoff, and may again be certified only after twelve months have elapsed from the effective date of decertification and only after a new compliance with section 20.14. The penalties provided in this section may be suspended or modified by the court, but only upon request of the public employer and only if the court determines the suspension or modification is in the public interest.

6. Each of the remedies and penalties provided by this section is separate and several, and is in

addition to any other legal or equitable remedy or penalty.

[C75, 77, 79, 81, §20.12]

20.13 Bargaining unit determination.

1. Board determination of an appropriate bargaining unit shall be upon petition filed by a public employer, public employee, or employee organization.

2. Within thirty days of receipt of a petition or notice to all interested parties if on its own initiative, the board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file an order defining the appropriate bargaining unit. In defining the unit, the board shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location, and the recommendations of the parties involved.

3. Appeals from such order shall be governed by appeal provisions provided in section 20.11.

4. Professional and nonprofessional employees shall not be included in the same bargaining unit unless a majority of both agree.

[C75, 77, 79, 81, §20.13]

20.14 Bargaining representative determination.

1. Board certification of an employee organization as the exclusive bargaining representative of a bargaining unit shall be upon a petition filed with the board by a public employer, public employee, or an employee organization and an election conducted pursuant to section 20.15.

2. The petition of an employee organization shall allege that:

a. The employee organization has submitted a request to a public employer to bargain collectively with a designated group of public employees.

b. The petition is accompanied by written evidence that thirty percent of such public employees are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining.

3. The petition of a public employee shall allege that an employee organization which has been certified as the bargaining representative does not represent a majority of such public employees and that the petitioners do not want to be represented by an employee organization or seek certification of an employee organization.

4. The petition of a public employer shall allege that it has received a request to bargain from an employee organization which has not been certified as the bargaining representative of the public employees in an appropriate bargaining unit.

5. The board shall investigate the allegations of any petition and shall give reasonable notice of the receipt of such a petition to all public employees, employee organizations and public employers named or described in such petitions or interested in the representation questioned. The board shall thereafter call an election under section 20.15, unless:

a. It finds that less than thirty percent of the public employees in the unit appropriate for collective bargaining support the petition for decertification or for certification.

b. The appropriate bargaining unit has not been determined pursuant to section 20.13.

6. The hearing and appeal procedures shall be the same as provided in section 20.11.

[C75, 77, 79, 81, §20.14]

20.15 Elections.

1. Upon the filing of a petition for certification of an employee organization, the board shall submit a question to the public employees at an election in an appropriate bargaining unit. The question on the ballot shall permit the public employees to vote for no bargaining representation or for any employee organization which has petitioned for certification or which has presented proof satisfactory to the board of support of ten percent or more of the public employees in the appropriate unit.

2. If a majority of the votes cast on the question is for no bargaining representation, the public employees shall not be represented by an employee organization. If a majority of the votes cast on the question is for a listed employee organization, then the employee organization shall represent the public employees in an appropriate bargaining unit.

3. If none of the choices on the ballot receive the vote of a majority of the public employees voting, the board shall conduct a runoff election among the two choices receiving the greatest number of votes.

4. Upon written objections filed by any party to the election within ten days after notice of the results of the election, if the board finds that misconduct or other circumstances prevented the public employees eligible to vote from freely expressing their preferences, the board may invalidate the election and hold a second election for the public employees.

5. Upon completion of a valid election in which the majority choice of the employees voting is determined, the board shall certify the results of the election and shall give reasonable notice of the order to all employee organizations listed on the ballot, the public employers, and the public employees in the appropriate bargaining unit.

6. A petition for certification as an exclusive bargaining representative shall not be considered by the board for a period of one year from the date of the certification or noncertification of an exclusive bargaining representative or during the duration of a collective bargaining agreement which

shall not exceed two years. A collective bargaining agreement with the state, its boards, commissions, departments, and agencies shall be for two years and the provisions of a collective bargaining agreement except agreements agreed to or tentatively agreed to prior to July 1, 1977, or arbitrators' award affecting state employees shall not provide for renegotiations which would require the refinancing of salary and fringe benefits for the second year of the term of the agreement, except as provided in section 20.17, subsection 6, and the effective date of any such agreement shall be July 1 of odd-numbered years, provided that if an exclusive bargaining representative is certified on a date which will prevent the negotiation of a collective bargaining agreement prior to July 1 of odd-numbered years for a period of two years, the certified collective bargaining representative may negotiate a one-year contract with a public employer which shall be effective from July 1 of the even-numbered year to July 1 of the succeeding odd-numbered year when new contracts shall become effective. However, if a petition for decertification is filed during the duration of a collective bargaining agreement, the board shall award an election under this section not more than one hundred eighty days nor less than one hundred fifty days prior to the expiration of the collective bargaining agreement. If an employee organization is decertified, the board may receive petitions under section 20.14, provided that no such petition and no election conducted pursuant to such petition within one year from decertification shall include as a party the decertified employee organization.

[C75, 77, 79, 81, §20.15]

20.16 Duty to bargain.

Upon the receipt by a public employer of a request from an employee organization to bargain on behalf of public employees, the duty to engage in collective bargaining shall arise if the employee organization has been certified by the board as the exclusive bargaining representative for the public employees in that bargaining unit.

[C75, 77, 79, 81, §20.16]

20.17 Procedures.

1. The employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly. However, any public employee may meet and adjust individual complaints with a public employer. To sustain a claim that a certified employee organization has committed a prohibited practice by breaching its duty of fair representation, a public employee must establish by a preponderance of the evidence action or inaction by the organization which was arbitrary, discriminatory, or in bad faith.

2. The employee organization and the public employer may designate any individual as its representative to engage in collective bargaining negotiations.

3. Negotiating sessions, strategy meetings of public employers or employee organizations, mediation and the deliberative process of arbitrators shall be exempt from the provisions of chapter 21. However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter 21. Hearings conducted by arbitrators shall be open to the public.

4. The terms of a proposed collective bargaining agreement shall be made available to the public by the public employer and reasonable notice shall be given to the public employees by the employee organization prior to a ratification election. The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot.

5. Terms of any collective bargaining agreement may be enforced by a civil action in the district court of the county in which the agreement was made upon the initiative of either party.

6. No collective bargaining agreement or arbitrators' decision shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending or budget or would substantially impair or limit the performance of any statutory duty by the public employer. A collective bargaining agreement or arbitrators' award may provide for benefits conditional upon specified funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtained or if a lesser amount is obtained.

7. If agreed to by the parties nothing in this chapter shall be construed to prohibit supplementary bargaining on behalf of public employees in a part of the bargaining unit concerning matters uniquely affecting those public employees or cooperation and co-ordination of bargaining between two or more bargaining units.

8. The salaries of all public employees of the state under a merit system and all other fringe benefits which are granted to all public employees of the state shall be negotiated with the governor or the governor's designee on a state-wide basis, except those benefits which are not subject to negotiations pursuant to the provisions of section 20.9.

9. A public employee or any employee organization shall not negotiate or attempt to negoti-

ate directly with a member of the governing board of a public employer if the public employer has appointed or authorized a bargaining representative for the purpose of bargaining with the public employees or their representative, unless the member of the governing board is the designated bargaining representative of the public employer.

10. The negotiation of a proposed collective bargaining agreement by representatives of a state public employer and a state employee organization shall be complete not later than March 15 of the year when the agreement is to become effective. The board shall provide, by rule, a date on which any impasse item must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed state collective bargaining agreements not later than March 15. The date selected for the mandatory submission of impasse items to binding arbitration shall be sufficiently in advance of March 15 to insure that the arbitrators' decision can be reasonably made before March 15.

11. *a.* In the absence of an impasse agreement negotiated pursuant to section 20.19 which provides for a different completion date, public employees represented by a certified employee organization who are teachers licensed under chapter 272 and who are employed by a public employer which is a school district or area education agency shall complete the negotiation of a proposed collective bargaining agreement not later than May 31 of the year when the agreement is to become effective. The board shall provide, by rule, a date on which impasse items in such cases must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed collective bargaining agreements not later than May 31. The date selected for the mandatory submission of impasse items to binding arbitration in such cases shall be sufficiently in advance of May 31 to ensure that the arbitrators' decision can be reasonably made before May 31.

b. If the public employer is a community college, the following apply:

(1) The negotiation of a proposed collective bargaining agreement shall be complete not later than May 31 of the year when the agreement is to become effective, absent the existence of an impasse agreement negotiated pursuant to section 20.19 which provides for a different completion date. The board shall adopt rules providing for a date on which impasse items in such cases must be submitted to binding arbitration and for procedures for the completion of negotiations of proposed collective bargaining agreements not later than May 31. The date selected for the mandatory submission of impasse items to binding arbitration in such cases shall be sufficiently in advance of May 31 to ensure that the arbitrators' decision can be reasonably made by May 31.

(2) Notwithstanding the provisions of subparagraph (1), the May 31 deadline may be waived by mutual agreement of the parties to the collective bargaining agreement negotiations.

[C75, 77, 79, 81, §20.17]

89 Acts, ch 296, §8; 90 Acts, ch 1037, §3; 91 Acts, ch 174, §3; 92 Acts, ch 1011, §1; 92 Acts, ch 1212, §2; 92 Acts, ch 1227, §11

20.18 Grievance procedures.

An agreement with an employee organization which is the exclusive representative of public employees in an appropriate unit may provide procedures for the consideration of public employee grievances and of disputes over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of public employee grievances and of disputes over the interpretation and application of existing agreements. An arbitrator's decision on a grievance may not change or amend the terms, conditions or applications of the collective bargaining agreement. Such procedures shall provide for the invoking of arbitration only with the approval of the employee organization, and in the case of an employee grievance, only with the approval of the public employee. The costs of arbitration shall be shared equally by the parties.

Public employees of the state or public employees covered by civil service shall follow either the grievance procedures provided in a collective bargaining agreement, or in the event that grievance procedures are not provided, shall follow grievance procedures established pursuant to chapter 19A or chapter 400, as applicable.

[C75, 77, 79, 81, §20.18]

86 Acts, ch 1118, §1

20.19 Impasse procedures — agreement of parties.

As the first step in the performance of their duty to bargain, the public employer and the employee organization shall endeavor to agree upon impasse procedures. Such agreement shall provide for implementation of these impasse procedures not later than one hundred twenty days prior to the certified budget submission date of the public employer. However, if public employees represented by the employee organization are teachers licensed under chapter 272, and the public employer is a school district or area education agency, the agreement shall provide for implementation of impasse procedures not later than one hundred twenty days prior to May 31 of the year when the collective bargaining agreement is to become effective. If the public employer is a community college, the agreement shall provide for implementation of impasse procedures not later than one hundred twenty days prior to May 31 of the year when the collective bargaining agreement is to become effective. If the parties fail to agree upon impasse procedures under the provisions of this section,

the impasse procedures provided in sections 20.20 to 20.22 shall apply.

[C75, 77, 79, 81, §20.19]

91 Acts, ch 174, §4; 92 Acts, ch 1011, §2; 92 Acts, ch 1227, §12

20.20 Mediation.

In the absence of an impasse agreement negotiated pursuant to section 20.19 or the failure of either party to utilize its procedures, one hundred twenty days prior to the certified budget submission date, or one hundred twenty days prior to May 31 of the year when the collective bargaining agreement is to become effective if public employees represented by the employee organization are teachers licensed under chapter 272 and the public employer is a school district or area education agency, the board shall, upon the request of either party, appoint an impartial and disinterested person to act as mediator. If the public employer is a community college, and in the absence of an impasse agreement negotiated pursuant to section 20.19 or the failure of either party to utilize its procedures, one hundred twenty days prior to May 31 of the year when the collective bargaining agreement is to become effective, the board, upon the request of either party, shall appoint an impartial and disinterested person to act as mediator. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree.

[C75, 77, 79, 81, §20.20]

91 Acts, ch 174, §5; 92 Acts, ch 1011, §3; 92 Acts, ch 1227, §13

20.21 Fact-finding.

If the impasse persists ten days after the mediator has been appointed, the board shall appoint a fact-finder representative of the public, from a list of qualified persons maintained by the board. The fact-finder shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas. The fact-finder shall make written findings of facts and recommendations for resolution of the dispute and, not later than fifteen days from the day of appointment, shall serve such findings on the public employer and the certified employee organization.

The public employer and the certified employee organization shall immediately accept the fact-finder's recommendation or shall within five days submit the fact-finder's recommendations to the governing body and members of the certified employee organization for acceptance or rejection. If the dispute continues ten days after the report is submitted, the report shall be made public by the board.

However, the board shall not appoint a fact-finder representative of the public if the public employees represented by a certified employee organization are teachers licensed under chapter 272 and the public employer is a school district, community college, or area education agency. The board shall adopt rules regarding the time period after mediation when binding arbitration procedures must begin for teachers exempt from this section.

[C75, 77, 79, 81, §20.21]

91 Acts, ch 174, §6

For future amendments to this section effective July 1, 2003, see 2002 Acts, ch 1047, §1, 20

20.22 Binding arbitration.

1. If an impasse persists after the findings of fact and recommendations are made public by the fact-finder, the parties may continue to negotiate or, the board shall have the power, upon request of either party, to arrange for arbitration, which shall be binding. The request for arbitration shall be in writing and a copy of the request shall be served upon the other party.

2. Each party shall submit to the board within four days of request a final offer on the impasse items with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached and the name of its selected arbitrator. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by the panel of arbitrators.

As an alternative procedure, the two parties may agree to submit the dispute to a single arbitrator. If the parties cannot agree on the arbitrator within four days, the selection shall be made pursuant to subsection 5. The full costs of arbitration under this provision shall be shared equally by the parties to the dispute.

3. The submission of the impasse items to the arbitrators shall be limited to those issues that had been considered by the fact-finder and upon which the parties have not reached agreement. With respect to each such item, the arbitration board award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board or to the recommendation of the fact-finder on each impasse item.

4. The panel of arbitrators shall consist of three members appointed in the following manner:

a. One member shall be appointed by the public employer.

b. One member shall be appointed by the employee organization.

c. One member shall be appointed mutually by the members appointed by the public employer and the employee organization. The last member appointed shall be the chairperson of the panel of arbitrators. No member appointed shall be an employee of the parties.

d. The public employer and employee organization shall each pay the fees and expenses in-

curred by the arbitrator each selected. The fee and expenses of the chairperson of the panel and all other costs of arbitration shall be shared equally.

5. If the third member has not been selected within four days of notification as provided in subsection 2, a list of three arbitrators shall be submitted to the parties by the board. The two arbitrators selected by the public employer and the employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the board. The arbitrator having the right to remove the first name shall do so within two days and the second arbitrator shall have one additional day to remove one of the two remaining names. The person whose name remains shall become the chairperson of the panel of arbitrators and shall call a meeting within ten days at a location designated by the chairperson.

6. If a vacancy should occur on the panel of arbitrators, the selection for replacement of such member shall be in the same manner and within the same time limits as the original member was chosen. No final selection under subsection 9 shall be made by the board until the vacancy has been filled.

7. The panel of arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

8. From the time of appointment until such time as the panel of arbitrators makes its final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the panel of arbitrators with parties other than those who are direct parties to the dispute. The panel of arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

10. The chairperson of the panel of arbitrators may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such powers to other members of the panel of arbitrators. The chairperson of the panel of arbitrators may petition the district court at the seat of government or of the county in which any hearing is held to enforce the order of the chairperson compelling the attendance of witnesses and the production of records.

11. A majority of the panel of arbitrators shall select within fifteen days after its first meeting the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties, or the recommendations of the fact-finder on each impasse item.

12. The selections by the panel of arbitrators and items agreed upon by the public employer and the employee organization, shall be deemed to be the collective bargaining agreement between the parties.

13. The determination of the panel of arbitrators shall be by majority vote and shall be final and binding subject to the provisions of section 20.17, subsection 6. The panel of arbitrators shall give written explanation for its selection and inform the parties of its decision.

[C75, 77, 79, 81, §20.22]

20.23 Legal actions.

Any employee organization and public employer may sue or be sued as an entity under the provisions of this chapter. Service upon the public employer shall be in accordance with law or the rules of civil procedure. Nothing in this chapter shall be construed to make any individual or the individual's assets liable for any judgment against a public employer or an employee organization.

[C75, 77, 79, 81, §20.23]

20.24 Notice and service.

Any notice required under the provisions of this chapter shall be in writing, but service thereof shall be sufficient if mailed by restricted certified mail, return receipt requested addressed to the last known address of the parties, unless otherwise provided in this chapter. Refusal of restricted certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice.

[C75, 77, 79, 81, §20.24]

20.25 Internal conduct of employee organizations.

1. Every employee organization which is certified as a representative of public employees under the provisions of this chapter shall file with the board a registration report, signed by its president or other appropriate officer. The report shall be in a form prescribed by the board and shall be accompanied by two copies of the employee organization's constitution and bylaws. A filing by a national or international employee organization of its constitution and bylaws shall be accepted in

lieu of a filing of such documents by each subordinate organization. All changes or amendments to such constitutions and bylaws shall be promptly reported to the board.

2. Every employee organization shall file with the board an annual report and an amended report whenever changes are made. The reports shall be in a form prescribed by the board, and shall provide the following information:

a. The names and addresses of the organization, any parent organization or organizations with which it is affiliated, the principal officers, and all representatives.

b. The name and address of its local agent for service of process.

c. A general description of the public employees the organization represents or seeks to represent.

d. The amounts of the initiation fee and monthly dues members must pay.

e. A pledge, in a form prescribed by the board, that the organization will comply with the laws of the state and that it will accept members without regard to age, race, sex, religion, national origin or physical disability as provided by law.

f. A financial report and audit.

3. The constitution or bylaws of every employee organization shall provide that:

a. Accurate accounts of all income and expenses shall be kept, and annual financial report and audit shall be prepared, such accounts shall be open for inspection by any member of the organization, and loans to officers and agents shall be made only on terms and conditions available to all members.

b. Business or financial interests of its officers and agents, their spouses, minor children, parents or otherwise, that conflict with the fiduciary obligation of such persons to the organization shall be prohibited.

c. Every official or employee of an employee organization who handles funds or other property of the organization, or trust in which an organization is interested, or a subsidiary organization, shall be bonded. The amount, scope, and form of the bond shall be determined by the board.

4. The governing rules of every employee organization shall provide for periodic elections by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in such elections, the right of individual members to participate in the affairs of the organization, and fair and equitable procedures in disciplinary actions.

5. The board shall prescribe rules necessary to govern the establishment and reporting of trusteeships over employee organizations. Establishment of such trusteeships shall be permitted only if the constitution or bylaws of the organization set forth reasonable procedures.

6. An employee organization that has not registered or filed an annual report, or that has failed to comply with other provisions of this chapter, shall not be certified. Certified employee organizations failing to comply with this chapter may have such certification revoked by the board. Prohibitions may be enforced by injunction upon the petition of the board to the district court of the county in which the violation occurs. Complaints of violation of this section shall be filed with the board.

7. Upon the written request of any member of a certified employee organization, the auditor of state may audit the financial records of the certified employee organization.

[C75, 77, 79, 81, §20.25]

20.26 Employee organizations — political contributions.

An employee organization shall not make any direct or indirect contribution out of the funds of the employee organization to any political party or organization or in support of any candidate for elective public office.

Any employee organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall, upon conviction, be subject to a fine of not more than two thousand dollars.

Any person who willfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall, upon conviction, be subject to a fine of not more than one thousand dollars or imprisoned for not more than thirty days or shall be subject to both such fine and imprisonment. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein the individual knows to be false.

Nothing in this section shall be construed to prohibit voluntary contributions by individuals to political parties or candidates.

Nothing in this section shall be construed to limit or deny any civil remedy which may exist as a result of action which may violate this section.

[C75, 77, 79, 81, §20.26]

20.27 Conflict with federal aid.

If any provision of this chapter jeopardizes the receipt by the state or any of its political subdivisions of any federal grant-in-aid funds or other federal allotment of money, the provisions of this chapter shall, insofar as the fund is jeopardized, be deemed to be inoperative.

[C75, 77, 79, 81, §20.27]

20.28 Inconsistent statutes — effect.

A provision of the Code which is inconsistent with any term or condition of a collective bargaining agreement which is made final under this chapter shall supersede the term or condition of the collective bargaining agreement unless otherwise provided by the general assembly. A provi-

sion of a proposed collective bargaining agreement negotiated according to this chapter which conflicts with the Code shall not become a provision of the final collective bargaining agreement until the general assembly has amended the Code to remove the conflict.

[C79, 81, §20.28]

20.29 Filing agreement — public access.

Copies of collective bargaining agreements entered into between the state and the state employees' bargaining representatives and made final under this chapter shall be filed with the secretary of state and be made available to the public at cost.

[C79, 81, §20.29]

20.30 Supervisory member — no reduction before retirement.

A supervisory member of any department or agency employed by the state of Iowa shall not be granted a voluntary reduction to a nonsupervisory rank or grade during the six months preceding retirement of the member. A member of any department or agency employed by the state of Iowa who retires in less than six months after voluntarily requesting and receiving a reduction in rank or grade from a supervisory to a nonsupervisory position shall be ineligible for a benefit to which the member is entitled as a nonsupervisory member but is not entitled as a supervisory member.

The provisions of this section shall be effective during the collective bargaining agreement in effect from July 1, 1979 to June 30, 1981.

[C81, §20.30]

20.31 Mediator privilege.

1. As used in this section, unless the context otherwise requires:

a. *"Mediation"* means a process in which an impartial person attempts to facilitate the resolution of a dispute by promoting voluntary agreement of the parties to the dispute. Mediation shall be deemed to commence upon the mediator's receipt of notice of assignment and shall be deemed to conclude when the dispute is resolved.

b. *"Mediator"* means a member or employee of the board or any other person appointed or requested by the board to assist parties in resolving disputes involving collective bargaining impasses, contested cases, other agency cases, or contract grievances.

2. A mediator shall not be required to testify in any judicial, administrative, or grievance proceeding regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of mediation. A mediator shall not be required to produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation, other than documents relating exclusively to the timing or scheduling of mediation. This subsection shall not apply in any of the following circumstances:

a. The testimony, production, or disclosure is required by statute.

b. The testimony, production, or disclosure provides evidence of an ongoing or future criminal activity.

c. The testimony, production, or disclosure provides evidence of child abuse as defined in section 232.68, subsection 2.

98 Acts, ch 1062, §7

SUBTITLE 9

RESTRAINTS ON GOVERNMENT

CHAPTER 21

OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS)

21.1 Intent — declaration of policy.
21.2 Definitions.
21.3 Meetings of governmental bodies.
21.4 Public notice.
21.5 Closed session.
21.6 Enforcement.
21.7 Rules of conduct at meetings.
21.8 Electronic meetings.
21.9 Employment conditions discussed.
21.10 Information to be provided.
21.11 Applicability to nonprofit corporations.

21.1 Intent — declaration of policy.

This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness.

[C79, 81, §28A.1]
C85, §21.1

21.2 Definitions.

As used in this chapter:

1. *"Governmental body"* means:

a. A board, council, commission or other governing body expressly created by the statutes of this state or by executive order.

b. A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.

c. A multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies subject to paragraphs *"a"* and *"b"* of this subsection.

d. Those multimembered bodies to which the state board of regents or a president of a university has delegated the responsibility for the management and control of the intercollegiate athletic programs at the state universities.

e. An advisory board, advisory commission, or task force created by the governor or the general assembly to develop and make recommendations on public policy issues.

f. A nonprofit corporation other than a county or district fair or agricultural society, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D or a nonprofit corporation which is a successor to the nonprofit corporation which built the facility.

g. A nonprofit corporation licensed to conduct gambling games pursuant to chapter 99F.

h. An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.

2. *"Meeting"* means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

3. *"Open session"* means a meeting to which all members of the public have access.

[C71, 73, 75, 77, §28A.1; C79, 81, §28A.2]
C85, §21.2
89 Acts, ch 73, §1; 90 Acts, ch 1175, §1; 90 Acts, ch 1271, §701; 91 Acts, ch 258, §26; 93 Acts, ch 25, §1

21.3 Meetings of governmental bodies.

Meetings of governmental bodies shall be preceded by public notice as provided in section 21.4 and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session.

Each governmental body shall keep minutes of all its meetings showing the date, time and place,

the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

[C71, 73, 75, 77, §28A.1, 28A.5; C79, 81, §28A.3]
C85, §21.3
93 Acts, ch 25, §2

21.4 Public notice.

1. A governmental body, except township trustees, shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to persons with disabilities.

When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

3. A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by this section during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

[C71, 73, 75, 77, 79, 81, §28A.4]
C85, §21.4
96 Acts, ch 1129, §113

21.5 Closed session.

1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

a. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.

b. To discuss application for letters patent.

c. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

d. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.

e. To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.

f. To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.

g. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.

h. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

i. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

j. To discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.

k. To discuss information contained in records in the custody of a public airport, municipal corporation, municipal utility, jointly owned municipal

utility, or rural water district organized under chapter 357A, that are confidential records pursuant to section 22.7, subsection 45. This paragraph is repealed effective June 30, 2007.

2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

3. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.

4. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also tape record all of the closed session. The detailed minutes and tape recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and tape recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and tape recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and tape recording of any closed session for a period of at least one year from the date of that meeting.

5. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.

[C71, 73, 75, 77, §28A.3; C79, 81, §28A.5]
C85, §21.5
2002 Acts, ch 1076, §1
Subsection 1, NEW paragraph k

21.6 Enforcement.

1. The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:

(1) Voted against the closed session.

(2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.

(3) Reasonably relied upon a decision of a court or a formal opinion of the attorney general or the attorney for the governmental body.

b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph *"a"*. If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

d. Shall issue an order removing a member of a governmental body from office if that member has engaged in two prior violations of this chapter for which damages were assessed against the member during the member's term.

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the

offending governmental body to refrain for one year from any future violations of this chapter.

4. Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

[C71, 73, 75, 77, §28A.7, 28A.8; C79, 81, §28A.6]
C85, §21.6
99 Acts, ch 9, §1

21.7 Rules of conduct at meetings.

The public may use cameras or recording devices at any open session. Nothing in this chapter shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.

[C79, 81, §28A.7]
C85, §21.7

21.8 Electronic meetings.

1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:

a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.

b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.

c. Minutes are kept of the meeting.

The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter.

3. A meeting by electronic means may be conducted without complying with paragraph *"a"* of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

[C79, 81, §28A.8]
C85, §21.8

21.9 Employment conditions discussed.

A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from this chapter. For the purpose of this section, *"employment conditions"* mean areas included in the scope of negotiations listed in section 20.9.

[81 Acts, ch 30, §1]
C83, §28A.9
C85, §21.9

21.10 Information to be provided.

The authority which appoints members of governmental bodies shall provide the members with information about this chapter and chapter 22. The appropriate commissioner of elections shall provide that information to members of elected governmental bodies.

89 Acts, ch 73, §2

21.11 Applicability to nonprofit corporations.

This chapter applies to nonprofit corporations which are defined as governmental bodies subject to section 21.2, subsection 1, paragraph *"f"*, only when the meetings conducted by the nonprofit corporations relate to the conduct of pari-mutuel racing and wagering pursuant to chapter 99D.

90 Acts, ch 1175, §2

CHAPTER 22

EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS)

22.1 Definitions.
22.2 Right to examine public records — exceptions.
22.3 Supervision.
22.3A Access to data processing software.
22.4 Hours when available.
22.5 Enforcement of rights.
22.6 Penalty.
22.7 Confidential records.
22.8 Injunction to restrain examination.
22.9 Denial of federal funds — rules.
22.10 Civil enforcement.
22.11 Fair information practices.
22.12 Political subdivisions.
22.13 Settlements — governmental bodies.
22.14 Public funds investment records in custody of third parties.

22.1 Definitions.

1. The term *"government body"* means this state, or any county, city, township, school corporation, political subdivision, tax-supported district, nonprofit corporation other than a county or district fair or agricultural society, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D, or other entity of this state, or any branch, department, board, bureau, commission, council, committee, official or officer, of any of the foregoing or any employee delegated the responsibility for implementing the requirements of this chapter.

2. The term *"lawful custodian"* means the government body currently in physical possession of the public record. The custodian of a public record in the physical possession of persons outside a government body is the government body owning that record. The records relating to the investment of public funds are the property of the public body responsible for the public funds. Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated. *"Lawful custodian"* does not mean an automated data processing unit of a public body if the data processing unit holds the records solely as the agent of another public body, nor does it mean a unit which holds the records of other public bodies solely for storage.

3. As used in this chapter, *"public records"* includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision, nonprofit corporation other than a county or district fair or agricultural society, whose facilities or indebtedness are supported in whole or in part with property tax revenue and which is licensed to conduct pari-mutuel wagering pursuant to chapter 99D, or tax-supported district in this state, or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.

"Public records" also includes all records relating to the investment of public funds including but not limited to investment policies, instructions, trading orders, or contracts, whether in the custody of the public body responsible for the public funds or a fiduciary or other third party.

[C71, 73, 75, 77, 79, 81, §68A.1]
84 Acts, ch 1145, §1; 84 Acts, ch 1185, §1
C85, §22.1
90 Acts, ch 1271, §702; 91 Acts, ch 258, §27; 92 Acts, ch 1156, §6, 7

22.2 Right to examine public records — exceptions.

1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. All rights under this section are in addition to the right to obtain a certified copy of a public record under section 622.46.

2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.

3. However, notwithstanding subsections 1 and 2, a government body is not required to permit access to or use of the following:

a. A geographic computer data base by any person except upon terms and conditions acceptable to the governing body. The governing body shall establish reasonable rates and procedures for the retrieval of specified records, which are not confidential records, stored in the data base upon the request of any person.

b. Data processing software developed by the government body, as provided in section 22.3A.

[C71, 73, 75, 77, 79, 81, §68A.2]
84 Acts, ch 1185, §2
C85, §22.2
89 Acts, ch 189, §1; 96 Acts, ch 1099, §14; 98 Acts, ch 1224, §17

22.3 Supervision.

Such examination and copying shall be done under the supervision of the lawful custodian of the records or the custodian's authorized designee. The lawful custodian may adopt and enforce reasonable rules regarding the work and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for the work, but if it is impracticable to do the work in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for the work. All expenses of the work shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or the custodian's authorized designee in supervising the records during the work. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a

reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the cost of providing the service.

[C71, 73, 75, 77, 79, 81, §68A.3]
C85, §22.3
2001 Acts, ch 44, §2

22.3A Access to data processing software.

1. As used in this section:

a. "Access" means the instruction of, communication with, storage of data in, or retrieval of data from a computer.

b. "Computer" means an electronic device which performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer including a computer network. As used in this paragraph, *"computer"* includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. "Computer network" means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities.

d. "Data" means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer. Data may be stored in any form, including but not limited to a printout, magnetic storage media, disk, compact disc, punched card, or as memory of a computer.

e. "Data processing software" means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in this paragraph *"data processing software"* includes but is not limited to an operating system, compiler, assembler, utility, library resource, maintenance routine, application, or computer networking program.

2. A government body may provide, restrict, or prohibit access to data processing software developed by the government body, regardless of whether the data processing software is separated or combined with a public record. A government body shall establish policies and procedures to provide access to public records which are combined with its data processing software. A public record shall not be withheld from the public because it is combined with data processing software. A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body's ability to permit the examination of a public record and the copying of a public record in either written or electronic form. If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the government body shall bear the cost of separation of the public record from the data processing software. The electronic public record shall be made available in a format useable with commonly available data processing or data base management software. The cost chargeable to a person receiving a public record separated from data processing software under this subsection shall not be in excess of the charge under this chapter unless the person receiving the public record requests that the public record be specially processed. A government body may establish payment rates and procedures required to provide access to data processing software, regardless of whether the data processing software is separated from or combined with a public record. Proceeds from payments may be considered repayment receipts, as defined in section 8.2. The payment amount shall be calculated as follows:

a. The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software, and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person accesses a public record stored in an electronic format that does not require formatting, editing, or compiling to access the public record, the charge for providing the accessed public record shall not exceed the reasonable cost of accessing that public record. The government body shall, if requested, provide documentation which explains and justifies the amount charged. This paragraph shall not apply to any publication for which a price has been established pursuant to another section, including section 7A.22.

b. If access to the data processing software is provided to a person for a purpose other than provided in paragraph *"a"*, the amount may be established according to the discretion of the government body, and may be based upon competitive market considerations as determined by the government body.

3. A government body is granted and may apply for and receive any legal protection necessary to secure a right to or an interest in data processing software developed by the government body,

including but not limited to federal copyright, patent, and trademark protections, and any trade secret protection available under chapter 550. The government body may enter into agreements for the sale or distribution of its data processing software, including marketing and licensing agreements. The government body may impose conditions upon the use of the data processing software that is otherwise consistent with state and federal law.

96 Acts, ch 1099, §15; 98 Acts, ch 1224, §18; 99 Acts, ch 207, §12

22.4 Hours when available.

The rights of persons under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the person exercising such right and the lawful custodian agree on a different time.

[C71, 73, 75, 77, 79, 81, §68A.4]
84 Acts, ch 1185, §3
C85, §22.4

22.5 Enforcement of rights.

The provisions of this chapter and all rights of persons under this chapter may be enforced by mandamus or injunction, whether or not any other remedy is also available. In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act, if the records involved are records of an *"agency"* as defined in that Act.

[C71, 73, 75, 77, 79, 81, §68A.5]
84 Acts, ch 1185, §4
C85, §22.5

22.6 Penalty.

It shall be unlawful for any person to deny or refuse any citizen of Iowa any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter where no other penalty is provided shall be guilty of a simple misdemeanor.

[C71, 73, 75, 77, 79, 81, §68A.6]
C85, §22.6
Penalty applicable to violations under §455K.4

22.7 Confidential records.

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records. This subsection shall not be construed to prohibit a postsecondary education institution from disclosing to a parent or guardian information regarding a violation of a federal, state, or local law, or institutional rule or policy governing the use or possession of alcohol or a controlled substance if the child is under the age of twenty-one years and the institution determines that the student committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the student's education records.

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual's confidentiality.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers' investigative reports, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.

8. Iowa department of economic development information on an industrial prospect with which the department is currently negotiating.

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests and criminal history data shall be public records.

10. Personal information in confidential personnel records of the military division of the department of public defense of the state.

11. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts.

12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 203 or chapter 203C, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.

15. Information concerning the procedures to be used to control disturbances at adult correctional institutions. Such information shall also be exempt from public inspection under section 17A.3. As used in this subsection disturbance means a riot or a condition that can reasonably be expected to cause a riot.

16. Information in a report to the Iowa department of public health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

17. Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.

18. Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, *"persons outside of government"* does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:

a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

19. Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a governmental body, to the extent that their disclosure could reasonably be believed by the custodian to interfere with the accomplishment of the objectives for which they are administered.

20. Information concerning the nature and location of any archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the state historic preservation officer pertaining to access, disclosure, and use of archaeological site records.

21. Information concerning the nature and location of any ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the director of the department of natural resources and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records.

22. Reports or recommendations of the Iowa insurance guaranty association filed or made pursuant to section 515B.10, subsection 1, paragraph *"a"*, subparagraph (2).

23. Information or reports collected or submitted pursuant to section 508C.12, subsections 3 and 5, and section 508C.13, subsection 2, except to the extent that release is permitted under those sections.

24. Records of purchases of alcoholic liquor from the alcoholic beverages division of the department of commerce which would reveal purchases made by an individual class "E" liquor control licensee. However, the records may be revealed for law enforcement purposes or for the collection of payments due the division pursuant to section 123.24.

25. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

26. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25.

27. Marketing and advertising budget and strategy of a nonprofit corporation which is subject to this chapter. However, this exemption does not apply to salaries or benefits of employees who are employed by the nonprofit corporation to handle the marketing and advertising responsibilities.

28. The information contained in records of the centralized employee registry created in chapter 252G, except to the extent that disclosure is authorized pursuant to chapter 252G.

29. Records and information obtained or held by independent special counsel during the course of an investigation conducted pursuant to section 68B.34. Information that is disclosed to a legislative ethics committee subsequent to a determination of probable cause by independent special counsel and made pursuant to section 68B.31 is not a confidential record unless otherwise provided by law.

30. Information contained in a declaration of paternity completed and filed with the state registrar of vital statistics pursuant to section 144.12A, except to the extent that the information may be provided to persons in accordance with section 144.12A.

31. Memoranda, work products, and case files of a mediator and all other confidential communications in the possession of a mediator, as provided in chapters 86 and 216. Information in these confidential communications is subject to disclosure only as provided in sections 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter.

32. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 25.2, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained by the department of revenue and finance for the purpose of documenting and tracking outdated warrants pursuant to section 25.2.

33. Data processing software, as defined in section 22.3A, which is developed by a government body.

34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.

35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.

36. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver's license under section 321.189A.

37. Mediation documents as defined in section 679C.1, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation documents resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

38. *a.* Records containing information that would disclose, or might lead to the disclosure of, private keys used in a digital signature or other similar technologies as provided in chapter 554D.

b. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D.

39. Information revealing the identity of a packer or a person who sells livestock to a packer as reported to the department of agriculture and land stewardship pursuant to section 202A.2.

40. The portion of a record request that contains an internet protocol number which identifies the computer from which a person requests a record, whether the person using such computer makes the request through the IowAccess network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record.

41. Medical examiner records and reports, including preliminary reports, investigative reports, and autopsy reports. However, medical examiner records and reports shall be released to a law enforcement agency that is investigating the death, upon the request of the law enforcement agency, and autopsy reports shall be released to the decedent's immediate next of kin upon the request of the decedent's immediate next of kin unless disclosure to the decedent's immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the

safety of an individual. Information regarding the cause and manner of death shall not be kept confidential under this subsection unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 502.603, 523B.8, or 523C.23.

43. Information concerning security procedures or emergency preparedness information regarding a school corporation if disclosure could reasonably be expected to jeopardize student, staff, or visitor safety. This subsection is repealed effective June 30, 2007.

44. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 6; or section 815.10, subsection 5.

45. Records of a public airport, municipal corporation, municipal utility, jointly owned municipal utility, or rural water district organized under chapter 357A, where disclosure could reasonably be expected to jeopardize the security or the public health and safety of the citizens served by a public airport, municipal corporation, municipal utility, jointly owned municipal utility, or rural water district organized under chapter 357A. Such records include but are not limited to vulnerability assessments and information included within such vulnerability assessments; architectural, engineering, or construction diagrams; drawings, plans, or records pertaining to security measures such as security and response plans, security codes and combinations, passwords, passes, keys, or security or response procedures; emergency response protocols; and records disclosing the configuration of critical systems or infrastructures of a public airport, municipal corporation, municipal utility, jointly owned municipal utility, or rural water district organized under chapter 357A. This subsection is repealed effective June 30, 2007.

46. The critical asset protection plan or any part of the plan prepared pursuant to section 29C.8 and any information held by the emergency management division that was supplied to the division by a public or private agency or organization and used in the development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the administrator shall make the list of assets available for examination by any person. A person wishing to examine the list of assets shall make a written request to the administrator on a form approved by the administrator. The list of assets may be viewed at the division's offices during normal working hours. The list of assets shall not be copied in any manner. Communications and asset information not required by law, rule, or procedure that are provided to the administrator by persons outside of government and for which the administrator has signed a nondisclosure agreement are exempt from public disclosures. The emergency management division may provide all or part of the critical asset plan to federal, state, or local governmental agencies which have emergency planning or response functions if the administrator is satisfied that the need to know and intended use are reasonable. An agency receiving critical asset protection plan information from the division shall not redisseminate the information without prior approval of the administrator.

[C71, 73, 75, 77, 79, 81, §68A.7; 81 Acts, ch 36, §1, ch 37, §1, ch 38, §1, ch 62, §4]

83 Acts, ch 90, §9; 84 Acts, ch 1014, §1; 84 Acts, ch 1185, §5, 6

C85, §22.7

85 Acts, ch 134, §16; 85 Acts, ch 175, §1; 85 Acts, ch 208, §1; 86 Acts, ch 1184, §1; 86 Acts, ch 1228, §1; 87 Acts, ch 223, §20; 88 Acts, ch 1010, §1; 88 Acts, ch 1256, §1; 89 Acts, ch 194, §1; 89 Acts, ch 304, §102; 89 Acts, ch 311, §22; 90 Acts, ch 1017, §1; 90 Acts, ch 1271, §703; 92 Acts, ch 1212, §3; 93 Acts, ch 79, §2; 93 Acts, ch 163, §27; 94 Acts, ch 1023, §76; 94 Acts, ch 1064, §1; 94 Acts, ch 1092, §1; 94 Acts, ch 1174, §1; 95 Acts, ch 100, §1; 95 Acts, ch 129, §1; 95 Acts, ch 191, §1; 96 Acts, ch 1037, §1; 96 Acts, ch 1099, §16; 96 Acts, ch 1133, §38; 96 Acts, ch 1150, §1; 96 Acts, ch 1212, §10; 97 Acts, ch 92, §1; 97 Acts, ch 159, §1; 98 Acts, ch 1062, §8, 9; 98 Acts, ch 1073, §9; 98 Acts, ch 1090, §59, 84; 99 Acts, ch 88, §1, 11, 13; 99 Acts, ch 146, §43; 2000 Acts, ch 1014, §1; 2000 Acts, ch 1140, §1; 2000 Acts, ch 1147, §27; 2000 Acts, ch 1161, §1; 2000 Acts, ch 1189, §25; 2001 Acts, ch 24, §17; 2001 Acts, ch 108, §1; 2002 Acts, ch 1038, §1; 2002 Acts, ch 1067, §13; 2002 Acts, ch 1076, §2; 2002 Acts, ch 1098, §1; 2002 Acts, ch 1117, §53, 56

Future repeal of subsection 39 if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; 99 Acts, ch 88, §11

Release of Iowa public employees' retirement system records for purposes of administering and monitoring an early termination program; confidentiality maintained by records recipients; 2001 Acts, 2nd Ex, ch 5, §4, 8; 2002 Acts, 2nd Ex, ch 1001, 50 – 52

Subsection 41 stricken and rewritten

NEW subsections 43 – 46

22.8 Injunction to restrain examination.

1. The district court may grant an injunction restraining the examination, including copying, of a specific public record or a narrowly drawn class of public records. A hearing shall be held on a request for injunction upon reasonable notice as determined by the court to persons requesting access to the record which is the subject of the request for injunction. It shall be the duty of the lawful custodian and any other person seeking an injunction to ensure compliance with the notice requirement. Such an injunction may be issued only if the petition supported by affidavit shows and if the court finds both of the following:

a. That the examination would clearly not be in the public interest.

b. That the examination would substantially and irreparably injure any person or persons.

2. An injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond.

3. In actions brought under this section the district court shall take into account the policy of this chapter that free and open examination of public records is generally in the public interest even though such examination may cause inconvenience or embarrassment to public officials or others. A court may issue an injunction restraining examination of a public record or a narrowly drawn class of such records, only if the person seeking the injunction demonstrates by clear and convincing evidence that this section authorizes its issuance. An injunction restraining the examination of a narrowly drawn class of public records may be issued only if such an injunction would be justified under this section for every member within the class of records involved if each of those members were considered separately.

4. Good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation of this chapter if the purpose of the delay is any of the following:

a. To seek an injunction under this section.

b. To determine whether the lawful custodian is entitled to seek such an injunction or should seek such an injunction.

c. To determine whether the government record in question is a public record, or confidential record.

d. To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days.

e. Actions for injunctions under this section may be brought by the lawful custodian of a government record, or by another government body or person who would be aggrieved or adversely affected by the examination or copying of such a record.

f. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19.

[C71, 73, 75, 77, 79, 81, §68A.8]
84 Acts, ch 1185, §7
C85, §22.8

22.9 Denial of federal funds — rules.

If it is determined that any provision of this chapter would cause the denial of funds, services or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

An agency within the meaning of section 17A.2, subsection 1 shall adopt as a rule, in each situation where this section is believed applicable, its determination identifying those particular provisions of this chapter that must be waived in the circumstances to prevent the denial of federal funds, services, or information.

[C71, 73, 75, 77, 79, 81, §68A.9]
84 Acts, ch 1185, §8
C85, §22.9

22.10 Civil enforcement.

1. The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business.

2. Once a party seeking judicial enforcement of this chapter demonstrates to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of this chapter.

3. Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of this chapter, a court:

a. Shall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of this chapter in the case before it and, if appropriate, may order the lawful custodian and other appropriate persons to refrain for one year from any future violations of this chapter.

b. Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing them to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person either voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter; had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the re-

quirements of this chapter; or reasonably relied upon a decision of a court or an opinion of the attorney general or the attorney for the government body.

c. Shall order the payment of all costs and reasonable attorneys fees, including appellate attorneys fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph *"b"* of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.

d. Shall issue an order removing a person from office if that person has engaged in two prior violations of this chapter for which damages were assessed against the person during the person's term.

4. Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding brought under this section. A lawful custodian or its designee in doubt about the legality of allowing the examination or copying or refusing to allow the examination or copying of a government record is authorized to bring suit at the expense of that government body in the district court of the county of the lawful custodian's principal place of business, or to seek an opinion of the attorney general or the attorney for the lawful custodian, to ascertain the legality of any such action.

5. Judicial enforcement under this section does not preclude a criminal prosecution under section 22.6 or any other applicable criminal provision.

84 Acts, ch 1185, §9

22.11 Fair information practices.

This section may be cited as the *"Iowa Fair Information Practices Act"*. It is the intent of this section to require that the information policies of state agencies are clearly defined and subject to public review and comment.

1. Each state agency as defined in chapter 17A shall adopt rules which provide the following:

a. The nature and extent of the personally identifiable information collected by the agency, the legal authority for the collection of that information, and a description of the means of storage.

b. A description of which of its records are public records, which are confidential records, and which are partially public and partially confidential records and the legal authority for the confidentiality of the records. The description shall indicate whether the records contain personally identifiable information.

c. The procedure for providing the public with access to public records.

d. The procedures for allowing a person to review a government record about that person and have additions, dissents, or objections entered in that record unless the review is prohibited by statute.

e. The procedures by which the subject of a confidential record may have a copy of that record released to a named third party.

f. The procedures by which the agency shall notify persons supplying information requested by the agency of the use that will be made of the information, which persons outside of the agency might routinely be provided this information, which parts of the information requested are required and which are optional and the consequences of failing to provide the information requested.

g. Whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

2. A state agency shall not use any personally identifiable information after July 1, 1988, unless it is in a record system described by the rules required by this section.

84 Acts, ch 1185, §10

22.12 Political subdivisions.

A political subdivision or public body which is not a state agency as defined in chapter 17A is not required to adopt policies to implement section 22.11. However, if a public body chooses to adopt policies to implement section 22.11 the policies must be adopted by the elected governing body of the political subdivision of which the public body is a part. The elected governing body must give reasonable notice, make the proposed policy available for public inspection and allow full opportunity for the public to comment before adopting the policy. If the public body is established pursuant to an agreement under chapter 28E, the policy must be adopted by a majority of the public agencies party to the agreement. These policies shall be kept in the office of the county auditor if adopted by the board of supervisors, the city clerk if adopted by a city, and the chief administrative officer of the public body if adopted by some other elected governing body.

84 Acts, ch 1185, §11

22.13 Settlements — governmental bodies.

A written summary of the terms of settlement, including amounts of payments made to or through a claimant, or other disposition of any claim for damages made against a governmental body or against an employee, officer, or agent of a governmental body, by an insurer pursuant to a contract of liability insurance issued to the governmental body, shall be filed with the governmental body and shall be a public record.

91 Acts, ch 96, §1

22.14 Public funds investment records in custody of third parties.

1. The records of investment transactions made by or on behalf of a public body are public records and are the property of the public body whether in the custody of the public body or in the custody of a fiduciary or other third party.

2. If such records of public investment transactions are in the custody of a fiduciary or other third party, the public body shall obtain from the fiduciary or other third party records requested pursuant to section 22.2.

3. If a fiduciary or other third party with custody of public investment transactions records fails to produce public records within a reasonable period of time as requested by the public body, the public body shall make no new investments with or through the fiduciary or other third party and shall not renew existing investments upon their maturity with or through the fiduciary or other third party. The fiduciary or other third party shall be liable for the penalties imposed under section 22.6 due to the acts or omissions of the fiduciary or other third party and any other remedies available under statute, common law, or contract.

92 Acts, ch 1156, §8

CHAPTER 23

PUBLIC CONTRACTS AND BONDS

Transferred to chapter 73A

CHAPTER 23A

NONCOMPETITION BY GOVERNMENT

23A.1 Definitions.
23A.2 State agencies and political subdivisions not to compete with private enterprise.
23A.2A Competition with private industry — notation in legislation.
23A.3 Local purchases.
23A.4 Relief for aggrieved persons.

23A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Political subdivision"* means a city, county, or school corporation.

2. *"Private enterprise"* means an individual, firm, partnership, joint venture, corporation, association, or other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit.

3. *"State agency"* includes a state department, board, commission, or other unit of state government regardless of whether moneys are appropriated to the agency.

88 Acts, ch 1230, §1

23A.2 State agencies and political subdivisions not to compete with private enterprise.

1. A state agency or political subdivision shall not, unless specifically authorized by statute, rule, ordinance, or regulation:

a. Engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless such goods or services are for use or consumption exclusively by the state agency or political subdivision.

b. Offer or provide goods or services to the public for or through another state agency or political subdivision, by intergovernmental agreement or otherwise, in violation of this chapter.

2. The state board of regents or a school corporation may, by rule, provide for exemption from the application of this chapter for the following activities:

a. Goods and services that are directly and reasonably related to the educational mission of an institution or school.

b. Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.

c. Use of vehicles owned by the institution or school for charter trips offered to the public, full or part-time, or temporary students.

d. Durable medical equipment or devices sold

or leased for use off premises of an institution, school, or university of Iowa hospitals or clinics.

e. Goods or services which are not otherwise available in the quantity or quality required by the institution or school.

f. Telecommunications other than radio or television stations.

g. Sponsoring or providing facilities for fitness and recreation.

h. Food service and sales.

i. Sale of books, records, tapes, software, educational equipment, and supplies.

3. After July 1, 1988, before a state agency is permitted to continue to engage in an existing practice specified in subsection 1, that state agency must prepare for public examination documentation showing that the state agency can provide the goods or services at a competitive price. The documentation required by this subsection shall be in accordance with that required by generally accepted accounting principles.

4. If a state agency is authorized by statute to compete with private enterprise, or seeks to gain authorization to compete, the state agency shall prepare for public inspection documentation of all actual costs of the project as required by generally accepted accounting principles.

5. Subsections 1 and 3 do not apply to activities of community action agencies under community action programs, as both are defined in section 216A.91.

6. The director of the department of corrections, with the advice of the state prison industries advisory board, may, by rule, provide for exemptions from this chapter.

7. However, this chapter shall not be construed to impair cooperative agreements between Iowa state industries and private enterprise.

8. The director of the department of corrections, with the advice of the board of corrections, may by rule, provide for exemption from this chapter for vocational-educational programs and farm operations of the department.

9. The state department of transportation may, in accordance with chapter 17A, provide for exemption from the application of subsection 1 for the activities related to highway maintenance, highway design and construction, publication and distribution of transportation maps, state aircraft pool operations, inventory sales to other state agencies and political subdivisions, equipment management and disposal, vehicle maintenance and repair services for other state agencies, and other similar essential operations.

10. This chapter does not apply to any of the following:

a. The operation of a city enterprise, as defined in section 384.24, subsection 2.

b. The performance of an activity that is an essential corporate purpose of a city, as defined in section 384.24, subsection 3, or which carries out the essential corporate purpose, or which is a general corporate purpose of a city as defined in section 384.24, subsection 4, or which carries out the general corporate purposes.

c. The operation of a city utility, as defined by section 390.1, subsection 3.

d. The performance of an activity by a city that is intended to assist in economic development or tourism.

e. The operation of a county enterprise, as defined in section 331.461, subsection 1, or 331.461, subsection 2.

f. The performance of an activity that is an essential county purpose, as defined in section 331.441, subsection 2, or which carries out the essential county purpose, or which is a general county purpose as defined in section 331.441, subsection 2, or which carries out the general county purpose.

g. The performance of an activity listed as a duty relating to a county service in section 331.381.

h. The performance of an activity listed in section 331.424, as a service for which a supplemental levy may be certified.

i. The performance of an activity by a county that is intended to assist in economic development or tourism.

j. The operation of a public transit system, as defined in chapter 324A, except that charter services, outside of a public transit system's normal service area, shall be conducted in Iowa intrastate commerce under the same conditions, restrictions, and obligations as those contained in 49 C.F.R., Part 604. For purposes of this chapter, the definition and conduct of charter services shall be the same as those contained in 49 C.F.R., Part 604.

k. The following on-campus activities of an institution or school under the control of the state board of regents or a school corporation:

(1) Residence halls.

(2) Student transportation, except as specifically listed in subsection 2, paragraph *"c"*.

(3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.

(4) Sponsoring or providing facilities for cultural and athletic events.

(5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise promote the identity of the institution or school and its programs.

(6) Souvenirs and programs relating to events sponsored by or at the institution or school.

(7) Radio and television stations.

(8) Services to patients and visitors at the university of Iowa hospitals and clinics, except as specifically listed in subsection 2, paragraph *"d"*.

(9) Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions.

(10) Services to the public at the Iowa state university college of veterinary medicine.

l. The offering of goods and services to the public as part of a client training program operated by a state resource center under the control of the department of human services provided that all of the following conditions are met:

(1) Any off-campus vocational or employment training program developed or operated by the department of human services for clients of a state resource center is a supported vocational training program or a supported employment program offered by a community-based provider of services or other employer in the community.

(2) (a) If a resident of a state resource center is to participate in an employment or training program which pays a wage in compliance with the federal Fair Labor Standards Act, the state resource center shall develop a community placement plan for the resident. The community placement plan shall identify the services and supports the resident would need in order to be discharged from the state resource center and to live and work in the community. The state resource center shall make reasonable efforts to implement the community placement plan including referring the resident to community-based providers of services.

(b) If a community-based provider of services is unable to accept a resident who is referred by the state resource center, the state resource center shall request and the provider shall indicate in writing to the state resource center the provider's reasons for its inability to accept the resident and describe what is needed to accept the resident.

(c) A resident who cannot be placed in a community placement plan with a community-based provider of services may be placed by the state resource center in an on-campus or off-campus vocational or employment training program. However, prior to placing a resident in an on-campus vocational or employment training program, the state resource center shall seek an off-campus vocational or employment training program offered by a community-based provider who serves the county in which the state resource center is based or the counties contiguous to the county, provided that the resident will not be required to travel for more than thirty minutes one way to obtain services.

If off-campus services cannot be provided by a community-based provider, the state resource center shall offer the resident an on-campus vocational or employment training program. The on-campus program shall be operated in compliance with the federal Fair Labor Standards Act. At least semiannually, the state resource center shall seek an off-campus community-based vocational or employment training option for each resident placed in an on-campus program. The state resource center shall not place a resident in an off-campus program in which the cost to the state resource center would be in excess of the provider's actual cost as determined by purchase of service rules or if the service would not be reimbursed under the medical assistance program.

(3) The price of any goods and services offered to anyone other than a state agency or a political subdivision shall be at a minimum sufficient to cover the cost of any materials and supplies used in the program and to cover client wages as established in accordance with the federal Fair Labor Standards Act.

(4) Nothing in this paragraph shall be construed to prohibit a state resource center from providing a service a resident needs for compliance with accreditation standards for intermediate care facilities for persons with mental retardation.

m. The repair, calibration, or maintenance of radiological detection equipment by the emergency management division of the department of public defense.

n. The performance of an activity authorized pursuant to section 8D.11A.

o. The performance of an activity authorized pursuant to section 14B.102, subsection 2, paragraph *"l"*.

p. The provision of goods or services by the Iowa technology center as a part of an intergovernmental solution involving the federal government or a state agency. The Iowa technology center is an entity created by a chapter 28E agreement entered into by the department of public defense.

88 Acts, ch 1230, §2; 90 Acts, ch 1129, §1; 96 Acts, ch 1129, §113; 99 Acts, ch 86, §1; 2000 Acts, ch 1112, §51; 2001 Acts, ch 22, §2; 2001 Acts, ch 70, §4; 2002 Acts, ch 1117, §58

Subsection 10, NEW paragraph p

23A.2A Competition with private industry — notation in legislation.

When a bill or joint resolution is requested, the legislative service bureau shall make an initial determination of whether the bill or joint resolution may cause a service or product to be offered for sale to the public by a state agency or political subdivision that competes with private enterprise. If such a service or product may be offered as a result of the bill or resolution, that fact shall be included in the explanation of the bill or joint resolution.

2001 Acts, ch 66, §2

23A.3 Local purchases.

A city, county, area education agency, or school district shall adopt a policy for purchasing goods or services from private enterprise which requires consideration of purchasing these goods or services from a locally owned business located within the city, county, area education agency, or school district which offers these goods or services if the cost and other considerations are relatively equal. Nothing in this section shall be construed to prevent or prohibit the giving of a preference to businesses owned or operated by minorities or females

as may be provided in any other provision of law.
88 Acts, ch 1230, §3

23A.4 Relief for aggrieved persons.
Any aggrieved person may, after pursuing remedies offered by chapter 17A, seek injunctive relief for violations of this chapter by filing an action in the district court for the county in which the aggrieved business is located.

A state agency or political subdivision found to be in violation of this chapter shall be assessed and shall pay to the aggrieved person fees and other expenses, as defined in section 625.28.

Chapter 17A and this section are the exclusive remedy for violations of this chapter. However, the office of the citizens' aide may review violations of this chapter and make recommendations as provided in chapter 2C.
88 Acts, ch 1230, §4

CHAPTER 24

LOCAL BUDGETS

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24.48 Appeal to state board for suspension of limitations.

24.1 Short title.
This chapter shall be known as the *"Local Budget Law"*.
[C24, 27, 31, 35, 39, §**368;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.1]

24.2 Definition of terms.
As used in this chapter and unless otherwise required by the context:

1. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. The words *"certifying board"* shall mean any public body which has the power or duty to certify any tax to be levied or sum of money to be collected by taxation.

3. The words *"fiscal year"* shall mean the period of twelve months beginning on July 1 and ending on the thirtieth day of June.

The fiscal year of cities, counties, and other political subdivisions* of the state shall begin July 1 and end the following June 30.

4. The words *"levying board"* shall mean board of supervisors of the county and any other public body or corporation that has the power to levy a tax.

5. *"Municipality"* means a public body or corporation that has power to levy or certify a tax or sum of money to be collected by taxation, except a county, city, drainage district, township, or road district.

6. The words *"state board"* shall mean the state appeal board as created by section 24.26.

7. The word *"tax"* shall mean any general or special tax levied against persons, property, or

business, for public purposes as provided by law, but shall not include any special assessment nor any tax certified or levied by township trustees.

[C24, 27, 31, 35, 39, §**369;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.2]

83 Acts, ch 123, §30, 209; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

*Includes school districts, see §8.51

24.3 Requirements of local budget.

No municipality shall certify or levy in any fiscal year any tax on property subject to taxation unless and until the following estimates have been made, filed, and considered, as hereinafter provided:

1. The amount of income thereof for the several funds from sources other than taxation.
2. The amount proposed to be raised by taxation.
3. The amount proposed to be expended in each and every fund and for each and every general purpose during the fiscal year next ensuing, which in the case of municipalities shall be the period of twelve months beginning on the first day of July of the current calendar year.
4. A comparison of such amounts so proposed to be expended with the amounts expended for like purposes for the two preceding years.

[C24, 27, 31, 35, 39, §**370;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.3]

24.4 Time of filing estimates.

All such estimates and any other estimates required by law shall be made and filed a sufficient length of time in advance of any regular or special meeting of the certifying board or levying board, as the case may be, at which tax levies are authorized to be made to permit publication, discussion, and consideration thereof and action thereon as hereinafter provided.

[C24, 27, 31, 35, 39, §**371;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.4]

24.5 Estimates itemized.

The estimates herein required shall be fully itemized and classified so as to show each particular class of proposed expenditure, showing under separate heads the amount required in such manner and form as shall be prescribed by the state board.

[C24, 27, 31, 35, 39, §**372;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.5]

24.6 Emergency fund — levy.

A municipality may include in the estimate required, an estimate for an emergency fund. A municipality may assess and levy a tax for the emergency fund at a rate not to exceed twenty-seven cents per thousand dollars of assessed value of taxable property of the municipality, provided that an emergency tax levy shall not be made until the municipality has first petitioned the state board and received its approval. Transfers of moneys may be made from the emergency fund to any other fund of the municipality for the purpose of meeting deficiencies in a fund arising from any cause, provided that a transfer shall not be made except upon the written approval of the state board, and then only when that approval is requested by a two-thirds vote of the governing body of the municipality.

[C24, 27, 31, 35, 39, §**373;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.6]

83 Acts, ch 123, §31, 209

24.7 Supplemental estimates.

Supplemental estimates for particular funds may be made for levies of taxes for future years when the same are authorized by law. Such estimates may be considered, and levies made therefor at any time by filing the same, and upon giving notice in the manner required in section 24.9. Such estimates and levies shall not be considered as within the provisions of section 24.8.

[C27, 31, 35, §373-a1; C39, §**373.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.7]

24.8 Estimated tax collections.

The amount of the difference between the receipts estimated from all sources other than taxation and the estimated expenditures for all purposes, including the estimates for emergency expenditures, shall be the estimated amount to be raised by taxation upon the assessable property within the municipality for the next ensuing fiscal year. The estimate shall show the number of dollars of taxation for each thousand dollars of the assessed value of all property that is assessed.

[C24, 27, 31, 35, 39, §**374;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.8]

24.9 Filing estimates — notice of hearing — amendments.

Each municipality shall file with the secretary or clerk thereof the estimates required to be made in sections 24.3 to 24.8, at least twenty days before the date fixed by law for certifying the same to the levying board and shall forthwith fix a date for a hearing thereon, and shall publish such estimates and any annual levies previously authorized as provided in section 76.2, with a notice of the time when and the place where such hearing shall be held not less than ten nor more than twenty days before the hearing. Provided that in municipalities of less than two hundred population such estimates and the notice of hearing thereon shall be posted in three public places in the district in lieu of publication.

For any other municipality such publication shall be in a newspaper published therein, if any, if not, then in a newspaper of general circulation therein.

The department of management shall prescribe the form for public hearing notices for use by mu-

nicipalities.

Budget estimates adopted and certified in accordance with this chapter may be amended and increased as the need arises to permit appropriation and expenditure during the fiscal year covered by the budget of unexpended cash balances on hand at the close of the preceding fiscal year and which cash balances had not been estimated and appropriated for expenditure during the fiscal year of the budget sought to be amended, and also to permit appropriation and expenditure during the fiscal year covered by the budget of amounts of cash anticipated to be available during the year from sources other than taxation and which had not been estimated and appropriated for expenditure during the fiscal year of the budget sought to be amended. Such amendments to budget estimates may be considered and adopted at any time during the fiscal year covered by the budget sought to be amended, by filing the amendments and upon publishing them and giving notice of the public hearing in the manner required in this section. Within ten days of the decision or order of the certifying or levying board, the proposed amendment of the budget is subject to protest, hearing on the protest, appeal to the state appeal board and review by that body, all in accordance with sections 24.27 to 24.32, so far as applicable. A local budget shall be amended by May 31 of the current fiscal year to allow time for a protest hearing to be held and a decision rendered before June 30. An amendment of a budget after May 31 which is properly appealed but without adequate time for hearing and decision before June 30 is void. Amendments to budget estimates accepted or issued under this section are not within section 24.14.

[C24, 27, 31, 35, 39, §**375;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.9; 82 Acts, ch 1079, §1]

83 Acts, ch 123, §32, 209; 97 Acts, ch 206, §11, 12, 24

24.10 Levies void.

The verified proof of the publication of such notice shall be filed in the office of the county auditor and preserved by the auditor. No levy shall be valid unless and until such notice is published and filed.

[C24, 27, 31, 35, 39, §**376;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.10]

24.11 Meeting for review.

The certifying board or the levying board, as the case may be, shall meet at the time and place designated in said notice, at which meeting any person who would be subject to such tax levy, shall be heard in favor of or against the same or any part thereof.

[C24, 27, 31, 35, 39, §**377;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.11]

24.12 Record by certifying board.

After the hearing has been concluded, the certifying board shall enter of record its decision in the manner and form prescribed by the state board and shall certify the same to the levying board, which board shall enter upon the current assessment and tax roll the amount of taxes which it finds shall be levied for the ensuing fiscal year in each municipality for which it makes the tax levy.

[C24, 27, 31, 35, 39, §**378;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.12]

24.13 Procedure by levying board.

Any board which has the power to levy a tax without the same first being certified to it, shall follow the same procedure for hearings as is hereinbefore required of certifying boards.

[C24, 27, 31, 35, 39, §**379;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.13]

24.14 Tax limited.

A greater tax than that so entered upon the record shall not be levied or collected for the municipality proposing the tax for the purposes indicated and a greater expenditure of public money shall not be made for any specific purpose than the amount estimated and appropriated for that purpose, except as provided in sections 24.6 and 24.15. All budgets set up in accordance with the statutes shall take such funds, and allocations made by sections 123.53, 452A.79 and chapter 405A, into account, and all such funds, regardless of their source, shall be considered in preparing the budget.

[C24, 27, 31, 35, 39, §**380;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §24.14; 81 Acts, ch 117, §1200]

83 Acts, ch 123, §33, 209; 89 Acts, ch 83, §12

24.15 Further tax limitation.

No tax shall be levied by any municipality in excess of the estimates published, except such taxes as are approved by a vote of the people, but in no case shall any tax levy be in excess of any limitation imposed thereon now or hereafter by the Constitution and laws of the state.

[C24, 27, 31, 35, 39, §**381;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.15]

Tax limit, Constitution, Art. XI, §3

24.16 Expenses — how paid.

The cost of publishing the notices and estimates required by this chapter, and the actual and necessary expenses of preparing the budget shall be paid out of the general funds of each municipality respectively.

[C24, 27, 31, 35, 39, §**382;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.16]

24.17 Budgets certified.

The local budgets of the various political subdi-

visions shall be certified by the chairperson of the certifying board or levying board, as the case may be, in duplicate to the county auditor not later than March 15 of each year on forms, and pursuant to instructions, prescribed by the department of management. However, if the political subdivision is a school district, as defined in section 257.2, its budget shall be certified not later than April 15 of each year.

One copy of the budget shall be retained on file in the office by the county auditor and the other shall be certified by the county auditor to the state board. The department of management shall certify the taxes back to the county auditor by June 15.

[C24, 27, 31, 35, 39, §**383;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.17]

92 Acts, ch 1227, §14; 97 Acts, ch 206, §13, 24

24.18 Summary of budget.

Before forwarding copies of local budgets to the state board, the county auditor shall prepare a summary of each budget, showing the condition of the various funds for the fiscal year, including the budgets adopted as herein provided. Said summary shall be printed as a part of the annual financial report of the county auditor, and one copy shall be certified by the county auditor to the state board.

[C24, 27, 31, 35, 39, §**384;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.18]

24.19 Levying board to spread tax.

At the time required by law the levying board shall spread the tax rates necessary to produce the amount required for the various funds of the municipality as certified by the certifying board, for the next succeeding fiscal year, as shown in the approved budget in the manner provided by law. One copy of said rates shall be certified to the state board.

[C24, 27, 31, 35, 39, §**385;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.19]

24.20 Tax rates final.

The several tax rates and levies of the municipalities thus determined and certified in the manner provided in the preceding sections, except such as are authorized by a vote of the people, shall stand as the tax rates and levies of said municipality for the ensuing fiscal year for the purposes set out in the budget.

[C24, 27, 31, 35, 39, §**386;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.20]

24.21 Transfer of inactive funds.

Subject to the provisions of any law relating to municipalities, when the necessity for maintaining any fund of the municipality has ceased to exist, and a balance remains in said fund, the certifying board or levying board, as the case may be, shall so declare by resolution, and upon such declaration, such balance shall forthwith be transferred to the fund or funds of the municipality designated by such board, unless other provisions have been made in creating such fund in which such balance remains.

[C24, 27, 31, 35, 39, §**387;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.21]

24.22 Transfer of funds.

Upon the approval of the state board, it is lawful to make temporary or permanent transfers of money from one fund to another fund of the municipality. The certifying board or levying board shall provide that money temporarily transferred shall be returned to the fund from which it was transferred within the time and upon the conditions the state board determines. However, it is not necessary to return to the emergency fund, or to any other fund no longer required, any money transferred to any other fund.

[C24, 27, 31, 35, 39, §**388;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §24.22; 81 Acts, ch 117, §1002]

83 Acts, ch 123, §34, 209

24.23 Supervisory power of state board.

The state board shall exercise general supervision over the certifying boards and levying boards of all municipalities with respect to budgets and shall prescribe for them all necessary rules, instructions, forms, and schedules. The best methods of accountancy and statistical statements shall be used in compiling and tabulating all data required by this chapter.

[C24, 27, 31, 35, 39, §**389;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.23]

24.24 Violations.

Failure on the part of a public official to perform any of the duties prescribed in chapter 73A, and this chapter, and sections 8.39 and 11.1 to 11.5, constitutes a simple misdemeanor, and is sufficient ground for removal from office.

[C24, 27, 31, 35, 39, §**390;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §24.24]

24.25 Estimates submitted by departments. Repealed by 83 Acts, ch 123, § 206, 209. See § 331.433.

24.26 State appeal board.

The state appeal board in the department of management consists of the following:

1. The director of the department of management.
2. The auditor of state.
3. The treasurer of state.

At each annual meeting the state board shall organize by the election from its members of a chairperson and a vice chairperson; and by appointing

a secretary. Two members of the state board constitute a quorum for the transaction of any business. The state board may appoint one or more competent and specially qualified persons as deputies, to appear and act for it at initial hearings. The annual meeting of the state board shall be held on the second Tuesday of January in each year. Each deputy appointed by the state board is entitled to receive the amount of the deputy's necessary expenses actually incurred while engaged in the performance of the deputy's official duties. The expenses shall be audited and approved by the state board and proper receipts filed for them. The expenses of the state board shall be paid from the funds appropriated to the department of management.

[C39, §**390.1;** C46, 50, 54, §24.25; C58, 62, 66, 71, 73, 75, 77, 79, 81, §24.26]

86 Acts, ch 1245, §107

24.27 Protest to budget.

Not later than March 25 or April 25 if the municipality is a school district, a number of persons in any municipality equal to one-fourth of one percent of those voting for the office of governor, at the last general election in the municipality, but the number shall not be less than ten, and the number need not be more than one hundred persons, who are affected by any proposed budget, expenditure or tax levy, or by any item thereof, may appeal from any decision of the certifying board or the levying board by filing with the county auditor of the county in which the municipal corporation is located, a written protest setting forth their objections to the budget, expenditure or tax levy, or to one or more items thereof, and the grounds for their objections. If a budget is certified after March 15 or April 15 in the case of a school district, all appeal time limits shall be extended to correspond to allowances for a timely filing. Upon the filing of a protest, the county auditor shall immediately prepare a true and complete copy of the written protest, together with the budget, proposed tax levy or expenditure to which objections are made, and shall transmit them forthwith to the state board, and shall also send a copy of the protest to the certifying board or to the levying board, as the case may be.

[C39, §**390.2;** C46, 50, 54, §24.26; C58, 62, 66, 71, 73, 75, 77, 79, 81, §24.27; 82 Acts, ch 1079, §2]

93 Acts, ch 1, §1

24.28 Hearing on protest.

The state board, within a reasonable time, shall fix a date for an initial hearing on the protest and may designate a deputy to hold the hearing, which shall be held in the county or in one of the counties in which the municipality is located. Notice of the time and place of the hearing shall be given by certified mail to the appropriate officials of the local government and to the first ten property owners whose names appear upon the protest, at least five days before the date fixed for the hearing. At all hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the budget of the previous year and which the objectors propose should be reduced or excluded; but the burden shall be upon the certifying board or the levying board, as the case may be, to show that any new item in the budget, or any increase in any item in the budget, is necessary, reasonable, and in the interest of the public welfare.

[C39, §**390.3;** C46, 50, 54, §24.27; C58, 62, 66, 71, 73, 75, 77, 79, 81, §24.28; 82 Acts, ch 1079, §3]

24.29 Appeal.

The state board may conduct the hearing or may appoint a deputy. A deputy designated to hear an appeal shall attend in person and conduct the hearing in accordance with section 24.28, and shall promptly report the proceedings at the hearing, which report shall become a part of the permanent record of the state board.

[C39, §**390.4;** C46, 50, 54, §24.28; C58, 62, 66, 71, 73, 75, 77, 79, 81, §24.29; 82 Acts, ch 1079, §4]

24.30 Review by and powers of board.

It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted to it upon appeal, as herein provided; but in no event may it increase such budget, expenditure, tax levies or assessments or any item contained therein. Said state board shall have authority to adopt rules not inconsistent with the provisions of this chapter, to employ necessary assistants, authorize such expenditures, require such reports, make such investigations, and take such other action as it deems necessary to promptly hear and determine all such appeals; provided, however, that all persons so employed shall be selected from persons then regularly employed in some one of the offices of the members of said state board.

[C39, §**390.5;** C46, 50, 54, §24.29; C58, 62, 66, 71, 73, 75, 77, 79, 81, §24.30]

24.31 Rules of procedure — record.

The manner in which objections shall be presented, and the conduct of hearings and appeals, shall be simple and informal and in accordance with the rules prescribed by the state board for promptly determining the merits of all objections so filed, whether or not such rules conform to technical rules of procedure. Such record shall be kept of all proceedings, as the rules of the state board shall require.

[C39, §**390.6;** C46, 50, 54, §24.30; C58, 62, 66, 71, 73, 75, 77, 79, 81, §24.31]

24.32 Decision certified.

After a hearing upon the appeal, the state board shall certify its decision to the county auditor and to the parties to the appeal as provided by rule, and the decision shall be final. The county auditor shall make up the records in accordance with the decision and the levying board shall make its levy in accordance with the decision. Upon receipt of the decision, the certifying board shall correct its records accordingly, if necessary. Final disposition of all appeals shall be made by the state board on or before April 30 of each year.

[C39, §**390.7;** C46, 50, 54, §24.31; C58, 62, 66, 71, 73, 75, 77, 79, 81, §24.32; 82 Acts, ch 1079, §5]

24.33 Repealed by 77 Acts, ch 44, § 1.

24.34 Unliquidated obligations.

A city, county, or other political subdivision may establish an encumbrance system for any obligation not liquidated at the close of the fiscal year in which the obligation has been encumbered. The encumbered obligations may be retained upon the books of the city, county, or other political subdivision until liquidated, all in accordance with generally accepted governmental accounting practices.

[C75, 77, 79, 81, §24.34]

24.35 Definitions. Repealed by 85 Acts, ch 67, § 63.

24.36 City levy limitation. Repealed by 85 Acts, ch 67, § 63.

24.37 and 24.38 Repealed by 81 Acts, ch 117, § 1097.

24.39 through 24.47 Repealed by 84 Acts, ch 1067, § 51.

24.48 Appeal to state board for suspension of limitations.

If the property tax valuations effective January 1, 1979 and January 1 of any subsequent year, are reduced or there is an unusually low growth rate in the property tax base of a political subdivision, the political subdivision may appeal to the state appeal board to request suspension of the statutory property tax levy limitations to continue to fund the present services provided. A political subdivision may also appeal to the state appeal board where the property tax base of the political subdivision has been reduced or there is an unusually low growth rate for any of the following reasons:

1. Any unusual increase in population as determined by the preceding certified federal census.
2. Natural disasters or other emergencies.
3. Unusual problems relating to major new functions required by state law.
4. Unusual staffing problems.
5. Unusual need for additional funds to permit continuance of a program which provides substantial benefit to its residents.
6. Unusual need for a new program which will provide substantial benefit to residents, if the political subdivision establishes the need and the amount of the necessary increased cost.

The state appeal board may approve or modify the request of the political subdivision for suspension of the statutory property tax levy limitations.

Upon decision of the state appeal board, the department of management shall make the necessary changes in the total budget of the political subdivision and certify the total budget to the governing body of the political subdivision and the appropriate county auditors.

The city finance committee shall have officially notified any city of its approval, modification or rejection of the city's appeal of the decision of the director of the department of management regarding a city's request for a suspension of the statutory property tax levy limitation prior to thirty-five days before March 15.

The state appeals board shall have officially notified any county of its approval, modification or rejection of the county's request for a suspension of the statutory property tax levy limitation prior to thirty-five days before March 15.

For purposes of this section only, *"political subdivision"* means a city, school district, or any other special purpose district which certifies its budget to the county auditor and derives funds from a property tax levied against taxable property situated within the political subdivision.

For the purpose of this section, when the political subdivision is a city, the director of the department of management, and the city finance committee on appeal of the director's decision, shall be the state appeal board.

[C79, 81, §24.48]

83 Acts, ch 123, §35, 209; 86 Acts, ch 1245, §108; 94 Acts, ch 1023, §5

CHAPTER 25

CLAIMS AGAINST THE STATE AND BY THE STATE

Tort claims; see chapter 669

25.1 Receipt, investigation, and report.
25.2 Examination of report — approval or rejection — payment.
25.3 Filing with general assembly — testimony.
25.4 Assistant attorney general — salary.
25.5 Testimony — filing with board.
25.6 Claims by state against municipalities.
25.7 Claims refused — effect.
25.8 Limitation on claims to be considered.

25.1 Receipt, investigation, and report.

1. When a claim is filed or made against the state, on which in the judgment of the director of the department of management the state would be liable except for the fact of its sovereignty or that it has no appropriation available for its payment, the director of the department of management shall deliver that claim to the state appeal board.

2. The state appeal board shall make a record of the receipt of claims received from the director of the department of management, notify the special assistant attorney general for claims, and deliver a copy to the state official or agency against whom the claim is made, if any.

a. The official or agency shall report its recommendations concerning the claim to the special assistant attorney general for claims who, with a view to determining the merits and legality of the claim, shall investigate the claim and report the findings and conclusions of the investigation to the state appeal board.

b. To help defray the initial costs of processing a claim and the costs of investigating a claim, the department of management may assess a processing fee and a fee to reimburse the office of the attorney general for the costs of the claim investigation against the state agency which incurred the liability of the claim.

3. Notwithstanding subsections 1 and 2 and section 25.2, the following claims shall be submitted by the person filing the claim directly to the agency against whom the claim is made for resolution according to section 25.2, subsection 2:

a. Outdated invoices, outdated bills for merchandise, or claims for services furnished to the state, for goods or services provided in the same fiscal year that the claim is filed.

b. Outdated invoices, outdated bills for merchandise, or claims for services furnished to the state, for goods or services provided in any prior fiscal year, for which funding would have been available to pay the claim if it had been filed before the close of the fiscal year.

Claims submitted under this section may be approved by the agency in accordance with section 25.2, subsection 2, except that payment for claims for which the appropriation has reverted to the general fund of the state must be paid in accordance with section 25.2, subsection 3.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §25.1]

93 Acts, ch 180, §72; 96 Acts, ch 1075, §1

25.2 Examination of report — approval or rejection — payment.

1. The state appeal board with the recommendation of the special assistant attorney general for claims may approve or reject claims against the state of less than ten years involving the following:

a. Outdated warrants.
b. Outdated sales and use tax refunds.
c. License refunds.
d. Additional agricultural land tax credits.
e. Outdated invoices.
f. Fuel and gas tax refunds.
g. Outdated homestead and veterans' exemptions.
h. Outdated funeral service claims.
i. Tractor fees.
j. Registration permits.
k. Outdated bills for merchandise.
l. Services furnished to the state.
m. Claims by any county or county official relating to the personal property tax credit.
n. Refunds of fees collected by the state.

2. Notwithstanding subsection 1, an agency that receives a claim based on an outdated invoice, outdated bill for merchandise, or for services furnished to the state pursuant to section 25.1, subsection 3, may on its own approve or deny the claim. The agency shall provide the state appeal board with notification of receipt of the claim and action taken on the claim by the agency. The state appeal board shall adopt rules setting forth the procedures and standards for resolution of claims by state agencies. Claims denied by an agency shall be forwarded to the state appeal board by the agency for further consideration, in accordance with this chapter.

3. Payments authorized by the state appeal board shall be paid from the appropriation or fund of original certification of the claim. However, if

that appropriation or fund has since reverted under section 8.33, then such payment authorized by the state appeal board shall be out of any money in the state treasury not otherwise appropriated.

4. Notwithstanding the provisions of this section, the director of revenue and finance may reissue outdated warrants.

5. On or before November 1 of each year, the director of revenue and finance shall provide the treasurer of state with a report of all unpaid warrants which have been outdated for two years or more. The treasurer shall include information regarding outdated warrants in the notice published pursuant to section 556.12. An agreement to pay compensation to recover or assist in the recovery of an outdated warrant made within twenty-four months after the date the warrant becomes outdated is unenforceable. However, an agreement made after twenty-four months from the date the warrant becomes outdated is valid if the fee or compensation agreed upon is not more than fifteen percent of the recoverable property, the agreement is in writing and signed by the payee, and the writing discloses the nature and value of the property and the name and address of the person in possession. This section does not apply to a payee who has a bona fide fee contract with a practicing attorney regulated under chapter 602, article 10.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §25.2]

93 Acts, ch 180, §73; 95 Acts, ch 219, §37; 96 Acts, ch 1038, §1; 96 Acts, ch 1075, §2

25.3 Filing with general assembly — testimony.

On the second day after the convening of each regular session of the general assembly, the state appeal board shall file with the clerk of the house of representatives and the secretary of the senate a list of all claims rejected by the state appeal board together with a copy of the report made to it by the special assistant attorney general for claims and its recommendation thereon for each claim, which report and recommendation shall be delivered to the claims committee of the house and senate. Any testimony taken by the special assistant attorney general for claims shall be preserved by the state appeal board and made available to the claims committee of the general assembly.

[C24, 27, 31, §405; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §25.3]

25.4 Assistant attorney general — salary.

The attorney general shall appoint a special assistant attorney general for claims who shall, under the direction of the attorney general, investigate and report on all claims between the state and other parties, which may be referred to the state appeal board, and on any other claims or matters which the state appeal board or the attorney general may direct.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §25.4]

25.5 Testimony — filing with board.

The special assistant attorney general for claims shall fully investigate each claim and the facts upon which same is based and may take testimony in the form of affidavits or otherwise, and in connection therewith shall ex officio be empowered to administer oaths, to compel the attendance of witnesses and certify to any district court for contempt. All testimony, affidavits, and other papers in connection with a claim, obtained by the special assistant attorney general for claims in making an investigation shall be filed with the report to the state appeal board.

[C24, 27, 31, §403; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §25.5]

25.6 Claims by state against municipalities.

The state appeal board may investigate and collect claims which the state has against municipal or political corporations in the state including counties, cities, townships, and school corporations. The board shall refer any such claim to the special assistant attorney general for claims, when the claim has not been promptly paid, and if the special assistant attorney general for claims is not able to collect the full amount of the claim, the special assistant attorney general shall fully investigate and report to the state appeal board findings of fact and conclusions of law, together with any recommendation as to the claim. Thereafter the state appeal board may effect a compromise settlement with the debtor in an amount and under terms as the board deems just and equitable in view of the findings and conclusions reported to it. If the state appeal board is unable to collect a claim in full or effect what it has determined to be a fair compromise, it shall deliver the claim to the attorney general for action as the attorney general shall determine and the special assistant attorney general for claims is specifically charged with carrying out the directions of the attorney general with reference to the claim. When a claim is compromised by the state appeal board, the board shall file with the department of management and the department of revenue and finance a statement as to the settlement, together with a true copy of the agreement of settlement, and if in settlement an amount less than the face amount is accepted in full, the proper entries shall be made in the books of the department of management, the department of revenue and finance, and the auditor of state showing the amount of the claim, the amount of the settlement, and the amount charged off.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §25.6]

88 Acts, ch 1134, §15

25.7 Claims refused — effect.

When any claim against the state has been presented to the general assembly through the state appeal board, and the general assembly has failed or refused to make an appropriation therefor, such failure or refusal to appropriate shall constitute an adjudication against said claim, which shall bar any further proceedings before the general assembly for the payment of same.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §25.7]

25.8 Limitation on claims to be considered.

No claim against the state shall be considered or allowed by the general assembly except it be presented before the state appeal board as provided in this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §25.8]

CHAPTER 25A

STATE TORT CLAIMS ACT

Transferred to chapter 669

CHAPTER 25B

STATE MANDATES — FUNDING REQUIREMENTS

Implementation of new or revised federal block grants affecting political subdivisions; see §8.41

25B.1 Title.
25B.2 Findings and purpose — effect of unfunded state mandate.
25B.3 Definitions.
25B.4 State mandate information.
25B.5 Cost estimates — notation in Acts.
25B.6 State rules.
25B.7 Funding property tax credits and exemptions.

25B.1 Title.

This chapter may be cited as the *"State Mandates Act"*.

83 Acts, ch 142, §1

25B.2 Findings and purpose — effect of unfunded state mandate.

1. The general assembly finds that preceding actions of state government in specifying the manner, standards, and conditions under which public services are rendered to citizens by the political subdivisions of this state in some cases have not resulted in equitable relationships between the state government and its political subdivisions. Some state actions have dealt in detail with the internal management of the political subdivisions; some have specified the establishment of new services and facilities without providing new revenue sources or financial participation by the state to meet the additional costs; and other actions have specified the adoption of higher service standards without a complete assessment of the impact on the expenditures and tax rates of the political subdivisions.

2. It is the purpose of this chapter to enunciate policies, criteria, and procedures to govern future state-initiated specification of local government services, standards, employment conditions, and retirement benefits that necessitates increased expenditures by political subdivisions or agencies and entities which contract with a political subdivision to provide services.

3. If, on or after July 1, 1994, a state mandate is enacted by the general assembly, or otherwise imposed, on a political subdivision and the state mandate requires a political subdivision to engage in any new activity, to provide any new service, or to provide any service beyond that required by any law enacted prior to July 1, 1994, and the state does not appropriate moneys to fully fund the cost of the state mandate, the political subdivision is not required to perform the activity or provide the service and the political subdivision shall not be subject to the imposition of any fines or penalties for the failure to comply with the state mandate unless the legislation specifies the amount or proportion of the cost of the state mandate which the state shall pay annually. However, this subsection does not apply to any requirement imposed on a

political subdivision relating to public employee retirement systems under chapters 97B, 410, and 411.

For the purposes of this subsection, any requirement originating from the federal government and administered, implemented, or enacted by the state, or any allocation of federal moneys conditioned upon enactment of a state law or rule, is not a state mandate.

For the purposes of this subsection, *"political subdivision"* includes community colleges and area education agencies.

83 Acts, ch 142, §2; 94 Acts, ch 1173, §2

25B.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Political subdivision"* means a city, county, township, or school district.

2. *"State mandate"* means a statutory requirement or appropriation which requires a political subdivision of the state to establish, expand, or modify its activities in a manner which necessitates additional combined annual expenditures of local revenue by all affected political subdivisions of at least one hundred thousand dollars, or additional combined expenditures of local revenue by all affected political subdivisions within five years of enactment of five hundred thousand dollars or more, excluding an order issued by a court of this state.

83 Acts, ch 142, §3; 92 Acts, ch 1123, §1; 94 Acts, ch 1173, §3

25B.4 State mandate information.

The director of the department of management shall report at least biennially to the governor and the general assembly regarding the administration of this chapter including any proposed changes.

83 Acts, ch 142, §4

25B.5 Cost estimates — notation in Acts.

1. When a bill or joint resolution is requested, the legislative service bureau shall make an initial determination of whether the bill or joint resolution may impose a state mandate. If a state mandate may be included, that fact shall be included in the explanation of the bill or joint resolution.

2. If a bill or joint resolution may include a state mandate, a copy of the prepared draft shall be sent to the legislative fiscal bureau which shall determine if the bill or joint resolution contains a state mandate. If the bill or joint resolution contains a state mandate and is still eligible for consideration during the legislative session for which the bill or joint resolution was drafted, the legislative fiscal bureau shall prepare an estimate of the amount of costs imposed.

3. If a bill or joint resolution containing a state mandate is enacted, unless the estimate already on file with the house of origin is sufficient, the legislative fiscal bureau shall prepare a final estimate of additional local revenue expenditures required by the state mandate and file the estimate with the secretary of state for inclusion with the official copy of the bill or resolution to which it applies. A notation of the filing of the estimate shall be made in the Acts of the general assembly published pursuant to chapter 2B.

83 Acts, ch 142, §5; 92 Acts, ch 1123, §2

25B.6 State rules.

A state agency or department shall not propose or adopt an administrative rule which exceeds its statutory authority by mandating expenditures by political subdivisions, or agencies and entities which contract with political subdivisions to provide services. A state administrative rule, proposed pursuant to chapter 17A, which necessitates additional combined annual expenditures exceeding one hundred thousand dollars by all affected political subdivisions or agencies and entities which contract with the affected political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs. An affected political subdivision, or an entity representing an affected political subdivision, shall cooperate in the preparation of the fiscal impact statement. The fiscal impact statement shall be submitted to the administrative rules coordinator for publication in the Iowa administrative bulletin along with the notice of intended action.

The fiscal note shall also be submitted to the legislative fiscal committee of the legislative council. Beginning in the first full fiscal year after adoption of the state administrative rule, the fiscal committee shall annually prepare a report for each fiscal note submitted detailing the fiscal impact of the administrative rule on the affected political subdivision, or agencies and entities which contract with the political subdivision to provide services. The report shall be transmitted to the governor and the general assembly.

83 Acts, ch 142, §6; 91 Acts, ch 179, §1; 94 Acts, ch 1173, §4

25B.7 Funding property tax credits and exemptions.

1. Beginning with property taxes due and payable in the fiscal year beginning July 1, 1998, the cost of providing a property tax credit or property tax exemption which is enacted by the general assembly on or after January 1, 1997, shall be fully funded by the state. If a state appropriation made to fund a credit or exemption which is enacted on or after January 1, 1997, is not sufficient to fully fund the credit or exemption, the political subdivision shall be required to extend to the taxpayer only that portion of the credit or exemption estimated by the department of revenue and finance to be funded by the state appropriation. The department of revenue and finance shall determine

by June 15 the estimated portion of the credit or exemption which will be funded by the state appropriation.

2. The requirement for fully funding and the consequences of not fully funding credits and exemptions under subsection 1 also apply to all of the following:

a. Homestead tax credit pursuant to sections 425.1 through 425.15.

b. Low-income property tax credit and elderly and disabled property tax credit pursuant to sections 425.16 through 425.40.

c. Military service property tax credit and exemption pursuant to chapter 426A, to the extent of six dollars and ninety-two cents per thousand dollars of assessed value of the exempt property.

3. *a.* For purposes of this subsection, *"base reimbursement amount"* means the amount in dollars received for the fiscal year beginning July 1, 1996, by a city, county, or school district from the state as a reimbursement for the homestead tax credit, military service property tax credit, low-income property tax credit, or the elderly and disabled property tax credit, as appropriate. The county treasurer shall determine the base reimbursement amount for the cities, county, and school districts for each credit. The treasurer shall notify the department of management of the base reimbursement amounts for each credit of each school district.

b. The amount of state reimbursement received for a fiscal year beginning on or after July 1, 1997, and ending on or before June 30, 2002, by a city, county, or school district for the homestead tax credit, military service property tax credit, low-income property tax credit, or elderly and disabled property tax credit in excess of the base reimbursement amount for that credit shall be used as follows:

(1) In the case of a city, at least fifty percent shall be used for property tax relief with the remaining amount used for infrastructure. The county treasurer shall provide to each city located in the county the total amount of excess tax credit reimbursement received by the city.

(2) In the case of a county, at least fifty percent shall be used for property tax relief with the remaining amount used for infrastructure or for paying the expenses incurred in providing the statement and receipt required under section 445.5. The county treasurer shall provide the county auditor with the total amount of excess tax credit reimbursement received by the county.

(3) In the case of a school district, one hundred percent shall be used for property tax relief through the reduction in the additional levy under section 257.4. Each county treasurer shall provide the department of management with the total amount of excess tax credit reimbursement received by each school district in the county.

c. The requirements of paragraph *"b"* do not constitute a state mandate under this chapter.

d. This subsection is repealed June 30, 2002, for fiscal years beginning after that date.

97 Acts, ch 206, §4; 99 Acts, ch 180, §22, 24

1999 amendment to subsection 2, paragraph c, applies to the military service property tax exemption claims allowed on or after January 1, 2000; 99 Acts, ch 180, §24

CHAPTER 26

CENSUS

Transferred to chapter 9F

CHAPTER 27

DEPUTIES OF STATE OFFICERS

Transferred to chapter 14A

CHAPTER 27A

UPPER MISSISSIPPI RIVERWAY COMPACT

Transferred to ch 463A;
ch 463A repealed by 2000 Acts, ch 1031, §1

SUBTITLE 10

JOINT GOVERNMENTAL ACTIVITY

CHAPTER 28

COMMUNITY EMPOWERMENT ACT

Purposes of Act; 98 Acts, ch 1206, §1
Legislative findings and intent; 98 Acts, ch 1206, §12
Chapter transferred from chapter 7I pursuant to Code editor directive; 99 Acts, ch 190, §19, 20

28.1 Definitions.
28.2 Purpose and scope.
28.3 Iowa empowerment board created.
28.4 Iowa empowerment board duties.
28.5 Community empowerment areas.
28.6 Community empowerment area boards created.
28.7 Community empowerment area board responsibilities and authority.
28.8 School ready children grant program — establishment and administration.
28.9 Iowa empowerment fund.

28.1 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. *"Community empowerment area"* means a geographic area designated in accordance with this chapter.

2. *"Community empowerment area board"* or *"community board"* means the board for a community empowerment area created in accordance with this chapter.

3. *"Decategorization project"* means a decategorization of child welfare and juvenile justice funding project operated under section 232.188.

4. *"Innovation zone"* means a local jurisdiction implementing an innovation zone plan in accordance with section 8A.2, Code 1997.

5. *"Iowa empowerment board"* or *"Iowa board"* means the Iowa empowerment board created in section 28.3.

98 Acts, ch 1206, §2, 20
C99, §7I.1
99 Acts, ch 190, §1, 19, 20
CS99, §28.1

28.2 Purpose and scope.

1. The purpose of creating the community empowerment initiative is to empower individuals and their communities to achieve desired results for improving the quality of life in the communities in this state. It is expected that the empowerment of individuals will strengthen the individuals' sense of responsibility for their neighbors and promote partnerships in order for all to succeed. It is believed that the desired results identified by individuals and their communities, with the support of the state, will be achieved as individuals, governments, and agencies work collaboratively within communities. It is believed that local individuals in local communities working together will identify and implement the best means for attaining the desired results for themselves and their neighbors. The role of the Iowa empowerment board, the state, and local governments is to support and facilitate growth of individual and community responsibility in place of the directive role that the public has come to expect of government.

2. It is intended that through the community empowerment initiative, by June 30, 2005, every community in Iowa will have developed the capacity and commitment for using local decision making to achieve the following initial set of desired results:

a. Healthy children.
b. Children ready to succeed in school.
c. Safe and supportive communities.
d. Secure and nurturing families.
e. Secure and nurturing child care environments.

3. To achieve the initial set of desired results, the initiative's primary focus shall first be on the efforts of the state and communities to work together to improve the efficiency and effectiveness of education, health, and human services provided to families with children from birth through age five years.

4. It is anticipated that the scope of the initiative will expand as additional desired results are identified and agreed upon by communities and the state. It is the intent of the general assembly to identify from time to time the additional desired

results in statute.

99 Acts, ch 190, §2, 19, 20

28.3 Iowa empowerment board created.

1. An Iowa empowerment board is created to facilitate state and community efforts involving community empowerment areas, including strategic planning, funding identification, and guidance, and to promote collaboration among state and local education, health, and human services programs.

2. The Iowa board shall consist of seventeen voting members with thirteen citizen members and four state agency members. The four state agency members shall be the directors of the following departments: education, human rights, human services, and public health. The thirteen citizen members shall be appointed by the governor, subject to confirmation by the senate. The governor's appointments of citizen members shall be made in a manner so that each of the state's congressional districts is represented by two citizen members and so that all the appointments as a whole reflect the ethnic, cultural, social, and economic diversity of the state. The governor's appointees shall be selected from individuals nominated by community empowerment area boards. The nominations shall reflect the range of interests represented on the community boards so that the governor is able to appoint one or more members each for education, health, human services, business, faith, and public interests. At least one of the citizen members shall be a service consumer or the parent of a service consumer. Terms of office of all citizen members are three years. A vacancy on the board shall be filled in the same manner as the original appointment for the balance of the unexpired term.

3. Citizen members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Members shall be paid a per diem as specified in section 7E.6.

4. In addition to the voting members, the Iowa board shall include six members of the general assembly with not more than two members from each chamber being from the same political party. The three senators shall be appointed by the majority leader of the senate after consultation with the president of the senate and the minority leader of the senate. The three representatives shall be appointed by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

5. A community empowerment assistance team or teams of state agency representatives shall be designated to provide technical assistance and other support to community empowerment areas. A technical assistance system shall be developed using local representatives of the state agencies represented on the Iowa board and other state agencies and individuals involved with local community empowerment areas. The technical assistance shall be available in at least three levels of support as follows:

a. Support to areas experienced in operating an innovation zone or decategorization project with an extensive record of success in collaboration between education, health, or human services interests.

b. Support to areas experienced in operating an innovation zone or decategorization project.

c. Support to areas forming an initial community empowerment area with no previous experience operating an innovation zone or decategorization project.

6. *a.* Staffing services to the Iowa board shall be provided by the state agencies which are represented on the Iowa board and by other state agencies making staffing available to the Iowa board.

b. In addition, a community empowerment office is established as a division of the department of management to provide a center for facilitation, communication, and coordination for community empowerment activities and funding. Staffing for the community empowerment office shall be provided by a facilitator appointed by the governor, subject to confirmation by the senate, and who serves at the pleasure of the governor. A deputy and support staff may be designated, subject to appropriation made for this purpose. The facilitator shall submit reports to the governor, the Iowa board, and the general assembly. The facilitator shall provide primary staffing to the board, coordinate state technical assistance activities and implementation of the technical assistance system, and other communication and coordination functions to move authority and decision-making responsibility from the state to communities and individuals.

7. The Iowa board may designate an advisory council consisting of representatives from community empowerment area boards.

8. The Iowa board shall elect a chairperson from among the citizen board members and may select other officers from among the citizen board members as determined to be necessary by the board. The board shall meet regularly as determined by the board, upon the call of the board's chairperson, or upon the call of a majority of voting members.

98 Acts, ch 1206, §3, 20
C99, §7I.2
99 Acts, ch 190, §3 – 6, 19, 20
CS99, §28.3
2000 Acts, ch 1223, §17
Confirmation; §2.32

28.4 Iowa empowerment board duties.

The Iowa board shall perform the following duties:

1. Perform duties relating to community empowerment areas.

2. Manage and coordinate the provision of grant funding and other moneys made available to community empowerment areas by combining all or portions of appropriations or other revenues as authorized by law.

3. Develop advanced community empowerment area arrangements for those community empowerment areas which were formed in transition from an innovation zone or from a decategorization governance board or which otherwise provide evidence of extensive successful experience in managing services and funding with high levels of community support and input.

4. Identify boards, commissions, committees, and other bodies in state government with overlapping and similar purposes which contribute to redundancy and fragmentation in education, health, and human services programs provided to the public. The board shall also make recommendations to the governor and general assembly as appropriate for increasing coordination between these bodies, for eliminating bureaucratic duplication, for consolidation where appropriate, and for integration of functions to achieve improved results.

5. Assist with the linkage of child welfare and juvenile justice decategorization projects with community empowerment areas.

6. Integrate the duties relating to innovation zones in the place of the innovation zone board created in section 8A.2, Code 1997, until the Iowa board determines the innovation zones have been replaced with community empowerment areas.

7. Coordinate and respond to any requests from a community board relating to any of the following:

a. Waiver of existing rules, federal regulation, or amendment of state law, or removal of other barriers.

b. Pooling and redirecting of existing federal, state, or other public or private funds.

c. Seeking of federal waivers.

d. Consolidating community-level committees, planning groups, and other bodies with common memberships formed in response to state requirements.

In coordinating and responding to the requests, the Iowa board shall work with state agencies and submit proposals to the governor and general assembly as necessary to fulfill requests deemed appropriate by the Iowa board.

8. Provide for maximum flexibility and creativity in the designation and administration of the responsibilities and authority of community empowerment areas.

9. Adopt rules pursuant to chapter 17A as necessary for the designation, governance, and oversight of community empowerment areas and the administration of this chapter. The Iowa board shall provide for community board input in the rules adoption process. The rules shall include but are not limited to the following:

a. Performance indicators for community empowerment areas, community boards, and the services provided under the auspices of the community boards. The performance indicators shall be developed with input from community boards and shall build upon the core indicators of performance for the school ready grant program, as described in section 28.8.

b. Minimum standards to further the provision of equal access to services subject to the authority of community boards.

c. Core functions for home visitation, parent support, and preschool services provided under a school ready children grant.

10. Implement a process for community empowerment areas to identify desired results for improving the quality of life in this state. The process shall allow for consideration of updates, additions, and deletions on a regular basis. The identified desired results shall be submitted to the governor and general assembly.

11. Develop guidelines for recommended coverage and take other actions to assist community empowerment area boards in acquiring necessary insurance or other liability coverage at a reasonable cost. Moneys expended by a community empowerment area board to acquire necessary insurance or other liability coverage shall be considered an administrative cost and implementation expense.

12. *a.* With extensive community involvement, develop and annually update a five-year plan for consolidating, blending, and redistributing state-administered funding streams for children from birth through age five made available to community empowerment area boards.

b. With extensive community involvement, develop and annually update a ten-year plan for consolidating, blending, and redistributing state-administered funding streams for other age groups made available to community empowerment area boards. The focus for the early years of the initial ten-year plan shall be on the efforts of the Iowa board and affected state agencies to facilitate implementation of individual community empowerment area board requests for pooling, consolidating, blending, and redistributing state-administered funding streams for other age groups.

c. Submit plans and plan updates developed under paragraphs *"a"* and *"b"* to the community empowerment areas, the governor, and the general assembly annually in December.

d. The Iowa empowerment board shall regularly make information available identifying com-

munity empowerment funding and funding distributed through the funding streams listed under this paragraph *"d"* to communities. It is the intent of the general assembly that the community empowerment area boards and the administrators of the programs located within the community empowerment areas that are supported by the listed funding streams shall fully cooperate with one another on or before the indicated fiscal years, in order to avoid duplication, enhance efforts, combine planning, and take other steps to best utilize the funding to meet the needs of the families in the areas. The community empowerment area boards and the administrators shall annually submit a report concerning such efforts to the community empowerment office. If a community empowerment area is receiving a school ready children grant, this report shall be an addendum to the annual report required under section 28.8. The state community empowerment facilitator shall compile and summarize the reports which shall be submitted to the governor, general assembly, and Iowa board. The funding streams shall include all of the following:

(1) Moneys for the healthy families Iowa program under section 135.106 by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

(2) Moneys for parent education appropriated in section 279.51 and distributed through the child development coordinating council, by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

(3) Moneys for the preschool children at-risk program appropriated in section 279.51 and distributed through the child development coordinating council, by the fiscal year beginning July 1, 2001, and ending June 30, 2002.

(4) Moneys for home visitation and parent support annually appropriated to the department of human services and distributed or expended through child abuse prevention grants and the family preservation program, by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

e. It is the intent of the general assembly to convene a summit meeting under the auspices of the legislative council during the 2001 legislative interim to consider the issues described in this paragraph. In addition to members of the general assembly, those invited to participate in the meeting may include members of the Iowa empowerment board and community empowerment area boards, representatives of the governor, persons participating in community empowerment initiative services, representatives of programs offered through the funding streams enumerated in paragraph *"d"*, and other persons involved in efforts to achieve the desired results identified for the community empowerment initiative. It is anticipated that those participating in the summit meeting will produce a report with findings and recommendations for consideration during the 2002 legislative session. The issues for consideration at the summit meeting may include but are not limited to the following:

(1) Assessing the status of the efforts to achieve full cooperation between the programs offered through the funding streams identified in paragraph *"d"* and community empowerment area boards in order to avoid duplication, enhance efforts, combine planning, and take other steps to best utilize public funding to meet the needs of the families in the areas. In addition, the summit participants shall make recommendations as to removing barriers or other steps that may be taken so that the programs and community empowerment area board efforts may be more fully integrated.

(2) Implementing an approach to move toward a statewide equalization of the public funding provided for community empowerment initiative programs and other state funding streams directed to similar purposes.

(3) Identifying other age groups or result areas that may be incorporated within or supported by the community empowerment initiative. In addition, consideration may be given to opportunities identified by the governor for expanding the role of the community empowerment initiative as part of the governor's efforts to reorganize and redirect state government.

(4) Considering other issues, concerns, and opportunities for the community empowerment initiative identified at the local and state levels.

98 Acts, ch 1206, §4, 20
C99, §7I.3
99 Acts, ch 190, §7 – 9, 19, 20
CS99, §28.4
2001 Acts, ch 106, §1, 4

28.5 Community empowerment areas.

1. The purpose of a community empowerment area is to enable local citizens to lead collaborative efforts involving education, health, and human services programs on behalf of the children, families, and other citizens residing in the area. Leadership functions may include but are not limited to strategic planning for and oversight and managing of such programs and the funding made available to the community empowerment area for such programs from federal, state, local, and private sources. The initial focus of the purpose is to improve results for families with young children.

2. Each county and school district in the state shall have the option of participating in a community empowerment area. A community empowerment area shall be designated by using existing school district and county boundaries to the extent possible.

3. The designation of a community empowerment area and the creation of a community empowerment area board are subject to the approval of the Iowa empowerment board. Criteria used by the Iowa empowerment board in approving the designation of a community empowerment area

shall include but are not limited to the existence of a large enough geographic area and population to efficiently and effectively administer the responsibilities and authority of the community empowerment area. The Iowa empowerment board shall adopt rules pursuant to chapter 17A providing procedures for the initial designation of community empowerment areas and for later changing the initially designated areas.

98 Acts, ch 1206, §5, 20
C99, §7I.4
99 Acts, ch 190, §19, 20
CS99, §28.5

28.6 Community empowerment area boards created.

1. *a.* Community empowerment area functions shall be performed under the authority of a community empowerment area board. A majority of the members of a community board shall be elected officials and members of the public who are not employed by a provider of services to or for the community board. At least one member shall be a service consumer or the parent of a service consumer. Terms of office of community board members shall be not more than three years and the terms shall be staggered. The membership of a community empowerment area board shall include members with education, health, human services, business, faith, and public interests.

b. If a disagreement arises within a community empowerment area regarding the interests represented on the community board, board decisions, or other disputes that cannot be locally resolved, upon request, state or regional technical assistance may be provided to assist the area in resolving the disagreement.

2. A community board may designate representatives of service providers or public agency staff to provide technical assistance to the community board.

3. A community board may designate a professional advisory council consisting of persons employed by or otherwise paid to represent an entity listed in subsection 1 or other provider of service.

4. The community board shall elect a chairperson from among the members who are citizens, elected officials, or volunteers.

5. A community empowerment area board is a unit of local government for purposes of chapter 670, relating to tort liability of governmental subdivisions. For purposes of implementing a formal organizational structure, a community empowerment board may utilize recommended guidelines and bylaws established for this purpose by the Iowa board. All meetings of a community empowerment area board or any committee or other body established by a community board at which public business is discussed or formal action taken shall comply with the requirements of chapter 21. A community board shall maintain its records in accordance with chapter 22.

98 Acts, ch 1206, §6, 20
C99, §7I.5
99 Acts, ch 190, §10, 11, 19, 20; 99 Acts, ch 192, §33
CS99, §28.6

28.7 Community empowerment area board responsibilities and authority.

1. A community empowerment area board shall do the following:

a. Designate a public agency of this state, as defined in section 28E.2, a community action agency as defined in section 216A.91, an area education agency established under section 273.2, or a nonprofit corporation, to be the fiscal agent for grant moneys and for other moneys administered by the community board.

b. Administer community empowerment grant moneys available from the state to the community board as provided by law and other federal, state, local, and private moneys made available to the community board. Eligibility for receipt of community empowerment grant moneys shall be limited to those community boards that have developed an approved school ready children grant plan in accordance with this chapter. A community board may apply to the Iowa empowerment board to receive as a community empowerment grant those moneys which would otherwise only be available within the geographic area through categorical funding sources or programs.

c. If a community empowerment area includes a decategorization project, coordinate planning and budgeting with the decategorization governing board. By mutual agreement between the community board and the decategorization governance board, the community board may assume the duties of the decategorization governance board or the decategorization governance board may continue as a committee of the community board.

d. Assume other responsibilities established by law or administrative rule.

2. A community board may do any of the following:

a. Designate one or more committees for oversight of grant moneys awarded to the community empowerment area.

b. Function as a coordinating body for services offered by different entities directed to similar purposes within the community empowerment area.

c. Develop neighborhood bodies for community-level input to the community board and implementation of services.

98 Acts, ch 1206, §7, 20
C99, §7I.6
99 Acts, ch 190, §12, 19, 20
CS99, §28.7
2001 Acts, ch 106, §2, 4

28.8 School ready children grant program — establishment and administration.

1. The departments of education, human services, and public health shall jointly develop and promote a school ready children grant program which shall provide for all of the following components:

a. Identify the core indicators of performance that will be used to assess the effectiveness of the school ready children grants, including encouraging early intellectual stimulation of very young children, increasing the basic skill levels of students entering school, increasing the health status of children, reducing the incidence of child abuse and neglect, increasing the access of children to an adult mentor, increasing parental involvement with their children, and increasing the quality and accessibility of child care.

b. Identify guidelines and a process to be used for determining the readiness of a community empowerment area for administering school ready children grants.

c. Provide for technical assistance concerning funding sources, program design, and other pertinent areas.

2. The program developed and components identified under subsection 1 are subject to approval by the Iowa empowerment board. The Iowa empowerment board shall provide maximum flexibility to grantees for the use of the grant moneys included in a school ready children grant.

3. A school ready children grant shall, at a minimum, be used to provide the following:

a. Preschool services provided on a voluntary basis to children deemed at risk of not succeeding in elementary school as determined by the community board and specified in the grant plan developed in accordance with this section.

b. Parent support and education programs promoted to parents of children from birth through five years of age. Parent support and education programs shall be offered in a flexible manner to accommodate the varying schedules, meeting place requirements, and other needs of working parents.

c. A comprehensive school ready children grant plan developed by a community board for providing services for children from birth through five years of age including but not limited to child development services, child care services, training child care providers to encourage early intellectual stimulation of very young children, children's health and safety services, assessment services to identify chemically exposed infants and children, and parent support and education services. At a minimum, the plan shall do all of the following:

(1) Describe community needs for children from birth through five years of age as identified through ongoing assessments.

(2) Describe the current and desired levels of community coordination of services for children from birth through five years of age, including the involvement and specific responsibilities of all related organizations and entities.

(3) Identify all federal, state, local, and private funding sources available in the community empowerment area that will be used to provide services to children from birth through five years of age.

(4) Describe how funding sources will be used collaboratively and the degree to which the moneys can be combined to provide necessary services to children.

(5) Identify the results the community board expects to achieve through implementation of the school ready children grant program, and identify community-specific quantifiable performance indicators to be reported in the annual report.

4. The community board shall submit an annual report on the effectiveness of the grant program in addressing school readiness and children's health and safety needs to the Iowa empowerment board and to the local governing bodies. The annual report shall indicate the effectiveness of the community board in achieving state and locally determined goals.

5. *a.* A school ready children grant shall be awarded to a community board for a three-year period, with annual payments made to the community board. The Iowa empowerment board may grant an extension from the award date and any application deadlines based upon the award date, to allow for a later implementation date in the initial year in which a community board submits a comprehensive school ready grant plan to the Iowa empowerment board. However, receipt of continued funding is subject to submission of the required annual report and the Iowa board's determination that the community board is measuring, through the use of performance indicators developed by the Iowa board with input from community boards, progress toward and is achieving the desired results identified in the grant plan. If progress is not measured through the use of performance indicators toward achieving the identified results, the Iowa board may request a plan of corrective action or may withdraw grant funding.

b. The Iowa board shall distribute school ready children grant moneys to community boards with approved comprehensive school ready children grant plans based upon a determination of readiness of the community empowerment area to effectively utilize the moneys, with the grant moneys being adjusted for other federal and state grant moneys to be received by the area for services to children from birth through five years of age.

c. A community board's readiness shall be ascertained by evidence of successful collaboration among public or private education, human services, or health interests or a documented program design evincing a strong likelihood of lead-

ing to a successful collaboration between these interests. Other criteria which may be used by the Iowa board to ascertain readiness and to determine funding amounts include one or more of the following:

(1) Experience or other evidence of capacity to successfully implement the services in the plan.

(2) Local public and private funding and other resources committed to implementation of the plan.

(3) Adequacy of plans for commitment of local funding and other resources for implementation of the plan.

d. The Iowa board's provisions for distribution of school ready grant moneys shall take into account contingencies for possible increases and decreases in the provision of state and local funding in future fiscal years which may be used for purposes of school ready children grants and for early childhood programs grants and for differences in local capacity for program implementation and provision of local funding. In developing these provisions, the Iowa board shall consider equity concerns; options for making capacity adjustments by restricting grant amounts based on service population size groupings to accommodate small, medium, and large population groupings; and options for making adjustments to accommodate varying amounts of time and assistance needed for implementation, such as extending the grant period to more than one year.

6. The priorities for school ready children grant funds shall include providing preschool services on a voluntary basis to children deemed at risk of not succeeding in elementary school, training child care providers and others to encourage early intellectual stimulation of very young children, and offering parent support and education programs on a voluntary basis to parents of children from birth through five years of age. The grant funds also may be used to provide other services to children from birth through five years of age as specified in the comprehensive school ready children grant plan.

98 Acts, ch 1206, §8, 20
C99, §7I.7
99 Acts, ch 190, §13, 18 – 20; 99 Acts, ch 192, §33
CS99, §28.8

28.9 Iowa empowerment fund.

1. An Iowa empowerment fund is created in the state treasury. The moneys in the Iowa empowerment fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided by law. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the Iowa empowerment fund shall be credited to the fund.

2. A school ready children grants account is created in the Iowa empowerment fund under the authority of the director of the department of education. Moneys credited to the account shall be distributed by the department of education in the form of grants to community empowerment areas pursuant to criteria established by the Iowa board in accordance with law.

3. An early childhood programs grant account is created in the Iowa empowerment fund under the authority of the director of human services. Moneys credited to the account shall be distributed by the department of human services in the form of grants to community empowerment areas pursuant to criteria established by the Iowa board in accordance with law. The criteria shall include but are not limited to a requirement that a community empowerment area must be designated by the Iowa board in accordance with section 28.5, in order to be eligible to receive an early childhood programs grant.

4. Beginning July 1, 1999, unless a different amount is authorized by law, up to three percent, not to exceed sixty thousand dollars, of the school ready children grant moneys distributed under the auspices of the Iowa board to a community empowerment area board may be used by the community board for administrative costs and other implementation expenses.

98 Acts, ch 1206, §9, 20
C99, §7I.8
99 Acts, ch 190, §14, 15, 19, 20
CS99, §28.9

CHAPTER 28A

QUAD CITIES INTERSTATE METROPOLITAN AUTHORITY COMPACT

This chapter not enacted as a part of this title; transferred from chapter 330B in Code 1993

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INTERSTATE COMPACT

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DIVISION I

INTERSTATE COMPACT

28A.1 Quad cities interstate metropolitan authority compact.

The quad cities interstate metropolitan authority compact is entered into and enacted into law with the state of Illinois if the state of Illinois joins the compact, in the form substantially as follows:

ARTICLE 1 — SHORT TITLE

This compact may be cited as the *"Quad Cities Interstate Metropolitan Authority Compact"*.

ARTICLE 2 — AUTHORIZATION

The states of Illinois and Iowa authorize the creation of the quad cities interstate authority to include the territories of Scott county in the state of Iowa and Rock Island county in the state of Illinois.

ARTICLE 3 — PURPOSES

The purposes of the authority are to provide facilities and to foster cooperative efforts, all for the development and public benefit of its territory. This compact shall be liberally interpreted to carry out these purposes.

ARTICLE 4 — CREATION

The authority is created when the secretary of state of Iowa certifies to the secretary of state of Illinois that a majority of the electors of Scott county voting on the proposition voted to approve creation of the authority and the secretary of state of Illinois certifies to the secretary of state of Iowa that a majority of the electors of Rock Island county voting on the proposition voted to approve creation of the authority. A referendum approving creation of the authority must be held before January 1, 1993.

ARTICLE 5 — BOARD MEMBERS

The authority shall be governed by a board of not more than sixteen members, one-half of whom are residents of Rock Island county, Illinois, and one-half of whom are residents of Scott county, Iowa. Iowa members shall be chosen in the manner and for the terms fixed by the law of Iowa. Illinois members shall be chosen in the manner and for the terms fixed by the law of Illinois.

ARTICLE 6 — BOARD OFFICERS

The board shall elect annually from its members a chairperson, a vice chairperson, a secretary, and other officers it determines necessary.

ARTICLE 7 — BOARD OPERATIONS

The board shall adopt bylaws governing its meetings, fiscal year, election of officers, and other matters of procedure and operation.

ARTICLE 8 — BOARD EXPENSES AND COMPENSATION

(a) Members shall be reimbursed for reasonable expenses incurred while carrying out official duties.

(b) Members shall be compensated as authorized by substantially identical laws of the states of Illinois and Iowa.

ARTICLE 9 — EMPLOYEES

(a) The board shall hire an executive director, a treasurer, and other employees it determines necessary and shall fix their qualifications, duties, compensation, and terms of employment.

(b) The executive director, treasurer, and other employees shall have no pension benefits or rights of collective bargaining other than those authorized by substantially identical laws of the states of Iowa and Illinois.

ARTICLE 10 — GENERAL POWERS

The authority has the following general powers:

(1) To sue and be sued.

(2) To own, operate, manage, or lease facilities within the territory of the authority. *"Facility"* means an airport, port, wharf, dock, harbor, bridge, tunnel, terminal, industrial park, waste disposal system, mass transit system, parking area, road, recreational area, conservation area, or other project beneficial to the territory of the authority as authorized by substantially identical laws of the states of Iowa and Illinois, together with related or incidental fixtures, equipment, improvements, and real or personal property.

(3) To fix and collect reasonable fees and charges for the use of its facilities.

(4) To own or lease interests in real or personal property.

(5) To accept and receive money, services, property, and other things of value.

(6) To disburse funds for its lawful activities.

(7) To enter into agreements with political subdivisions of the state of Illinois or Iowa or with the United States.

(8) To pledge or mortgage its property.

(9) To perform other functions necessary or incidental to its purposes and powers.

(10) To exercise other powers conferred by substantially identical laws of the states of Iowa and Illinois.

ARTICLE 11 — EMINENT DOMAIN

(a) The authority has the power to acquire real property by eminent domain.

(b) Property in the state of Iowa shall be acquired under the laws of the state of Iowa. Property in the state of Illinois shall be acquired under the laws of the state of Illinois.

ARTICLE 12 — INDEBTEDNESS

(a) The authority may incur indebtedness subject to debt limits imposed by substantially identical laws of the states of Illinois and Iowa.

(b) Indebtedness of the authority shall not be secured by the full faith and credit or the tax revenues of the state of Iowa or Illinois, or a political subdivision of the state of Iowa or Illinois other than the authority or as otherwise authorized by substantially identical laws of the states of Iowa and Illinois.

(c) Bonds shall be issued only under terms authorized by substantially identical laws of the states of Illinois and Iowa.

ARTICLE 13 — TAXES

(a) The authority shall have no independent power to tax.

(b) A political subdivision of the state of Iowa or Illinois shall not impose taxes to fund the authority or any of the authority's projects except as specifically authorized by substantially identical laws of the states of Illinois and Iowa.

ARTICLE 14 — REPORTS

The authority shall report annually to the governors and legislatures of the states of Iowa and Illinois concerning its facilities, activities, and finances and may make recommendations for state legislation.

ARTICLE 15 — PENALTIES

The states of Illinois and Iowa may provide by substantially identical laws for the enforcement of the ordinances of the authority and for penalties for the violation of those ordinances.

ARTICLE 16 — SUBSTANTIALLY IDENTICAL LAWS

Substantially identical laws of the states of Iowa and Illinois which are in effect before the authority is created shall apply unless the laws are contrary to or inconsistent with the provisions of this compact. A question of whether the laws of the states of Iowa and Illinois are substantially identical may be determined and enforced by a federal district court.

ARTICLE 17 — DISSOLUTION

The authority may be dissolved by independent action of a political subdivision of the state of Iowa or the state of Iowa as authorized by law of the state of Iowa or by independent action of a political subdivision of the state of Illinois or the state of Illinois as authorized by law of the state of Illinois.

ARTICLE 18 — SUBJECT TO LAWS AND CONSTITUTIONS

This compact, the enabling laws of the states of Iowa and Illinois, and the authority are subject to the laws and Constitution of the United States and the Constitutions of the states of Illinois and Iowa.

ARTICLE 19 — CONSENT OF CONGRESS

The attorneys general of the states of Iowa and Illinois shall jointly seek the consent of the Congress of the United States to enter into or implement this compact if either of them believes the consent of the Congress of the United States is necessary.

ARTICLE 20 — BINDING EFFECT

This compact and substantially identical enabling laws are binding on the states of Illinois and Iowa to the full extent allowed without the consent of Congress. If the consent of Congress is necessary, this compact and substantially identical enabling laws are binding on the states of Iowa and Illinois to the full extent when consent is obtained.

ARTICLE 21 — SIGNING

This compact shall be signed in duplicate by the speakers of the houses of representatives of the states of Illinois and Iowa. One signed copy shall be filed with the secretary of state of Iowa and the other with the secretary of state of Illinois.

89 Acts, ch 213, §1
CS89, §330B.1
C93, §28A.1

DIVISION II

QUAD CITIES INTERSTATE METROPOLITAN AUTHORITY

28A.2 Citation.

This division may be cited as the *"Quad Cities Interstate Metropolitan Authority Act"*.

91 Acts, ch 198, §1
CS91, §330B.2
C93, §28A.2

28A.3 Purposes.

1. This division is enabling legislation for the quad cities interstate metropolitan authority compact, a compact entered into by the states of Illinois and Iowa as provided in section 28A.1.

2. The authority shall engage in operations and services that can best be conducted on an area basis benefiting the entire greater metropolitan area, and at the same time improving the quality of life for the greater metropolitan area. The authority may include the following areas of operation and service:

a. Intermodal water port operations.
b. Waste disposal systems.
c. Mass transit.
d. Airports.
e. Bridges.
f. Parks and recreation.
g. Related facilities, fixtures, equipment, and property necessary, appurtenant, or incidental to the operations and services specified in paragraphs *"a"* through *"f"*. The authority shall be supportive of, and refrain from unnecessary and unreasonable competition with, private sector operations when possible.

3. The establishment, maintenance, and operation of safe, adequate, and necessary metropolitan facilities, and the creation of the authority having powers necessary or desirable for the establishment, maintenance, and operation of the metropolitan facilities beneficial to the territory of the authority, and the powers and the corporate purposes and functions of the authority are public and governmental in nature and essential to the public interest in the territory of the authority.

91 Acts, ch 198, §2
CS91, §330B.3
C93, §28A.3

28A.4 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Authority"* means the quad cities interstate metropolitan authority created as provided in this division.

2. *"Board"* means the board of commissioners of the authority.

3. *"Cost"* of any project for a metropolitan facility includes construction contract costs and the costs of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, if any, and provisions for contingencies.

4. *"Greater metropolitan area"* means the combined area of Rock Island county, Illinois, and Scott county, Iowa.

5. *"Metropolitan area"* means Rock Island county, Illinois, as a separate and distinct area, or Scott county, Iowa, as a separate and distinct area, or each as a part of the greater metropolitan area.

6. *"Metropolitan facility"* means a structure, fixture, equipment, or property of any kind or nature related to or connected with an intermodal water port, waste disposal system, mass transit system, airport, park, recreation, or bridge, which the authority may construct, acquire, own, lease, or operate, including all related facilities necessary, appurtenant, or incidental to the facilities.

7. *"Person"* means an individual, firm, partnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative of any of the entities.

8. *"Waste disposal system"* means a facility or service for collection, transportation, processing, storage, or disposal of solid waste including a facility or service established pursuant to chapter 28G.

91 Acts, ch 198, §3
CS91, §330B.4
C93, §28A.4

28A.5 Petition and public hearing.

1. Upon petition of eligible electors of a metropolitan area equal in number to at least ten percent of the persons who voted in the last general election held in the metropolitan area for the office of president of the United States or governor, the governing body of the county shall adopt a resolution signifying its intention to initiate the question of participating in the creation of an authority and shall publish the resolution at least once in a newspaper of general circulation in the metropolitan area giving notice of a hearing to be held on the question of the metropolitan area's entry into the authority. The resolution shall be published at least fourteen days prior to the date of hearing, and shall contain all of the following information:

a. Intention to join in the creation of the authority pursuant to this division.

b. That the greater metropolitan area will include Rock Island county, Illinois, and Scott county, Iowa, which have expressed their interest in the creation of the authority.

c. Name of the authority.

d. Place, date, and time of hearing.

2. After the hearing, if the governing body of a metropolitan area wishes to proceed in the creation of or to join the authority, the governing body shall direct the proper election authority to submit the proposition to the electorate of the metropolitan area as provided in section 28A.6.

91 Acts, ch 198, §4
CS91, §330B.5
C93, §28A.5

28A.6 Election.

1. Upon receipt of the resolution, the county commissioner of elections shall place the proposition on the ballot of a special election but not at a general election, called by the governing body of the metropolitan area. At the election, the proposition shall be submitted in substantially the following form:

Shall the Quad Cities Interstate Metropolitan Authority be established effective on the . . . . . day of . . . . . (month), ... (year)?

YES . . . . NO . . . .

2. Notice of the election shall be given by publication as required in section 49.53 in a newspaper of general circulation in the metropolitan area. At the election, the ballot used for submission of the proposition shall be substantially the form for submitting special questions at general elections.

3. The proposition is approved if the vote in favor of the proposition is a simple majority of the total votes cast on the proposition in the metropolitan area.

4. If the proposition is approved, the governing body of the county shall enact an ordinance authorizing the joining of the authority.

91 Acts, ch 198, §5
CS91, §330B.6
C93, §28A.6
2000 Acts, ch 1058, §56

28A.7 Board of commissioners — appointment.

1. The authority established under this division shall be governed by a board of commissioners appointed as provided in subsection 2. The appointment of the commissioners shall be made in writing and shall indicate the legal residence of the appointee.

2. The board of commissioners of an authority shall consist of sixteen members, eight members of which shall be residents of the metropolitan area of each state which is a party to the authority. At least four but not more than five members appointed from each metropolitan area shall be elected city or county officers. The mayor of each city having a population of at least eighty thousand within the metropolitan area shall appoint, with the consent of the city council, four members to the board of commissioners. The mayor of each city having a population of at least forty thousand, but less than eighty thousand, within the metropolitan area shall appoint, with the consent of the city council, two members to the board of commissioners. The mayor of each city having a population of at least nineteen thousand, but less than forty thousand, within the metropolitan area shall appoint, with the consent of the city council, one member to the board of commissioners. The remaining members appointed from each state shall be appointed by the chairperson of the governing body of the county within the metropolitan area, with consent of the governing body, from cities having less than nineteen thousand population and areas outside the corporate limits of cities.

3. If a city increases to a population that would

enable an additional appointment to be made, a member appointed by the chairperson of the governing body of the county and having the least tenure shall be removed from the board of commissioners. If a city decreases to a population warranting fewer members, the appointee having the least tenure of that city shall be removed from the board of commissioners and the chairperson of the governing body of the county in which that city is located shall make a new appointment as provided in subsection 2. If more members than are required to be removed have the same tenure, the removal shall be determined by lot.

4. The membership of the board of commissioners shall be gender balanced if possible. The appointing authorities shall comply with the requirements of section 69.16A or similar laws of the state of Illinois as determined by the appointing authorities. The appointing authorities shall also provide representation for racial groups residing in the metropolitan area based on the ratio of the racial population to the population as a whole.

91 Acts, ch 198, §6
CS91, §330B.7
92 Acts, ch 1163, §81
C93, §28A.7

28A.8 Commissioners — terms of office.

1. All initial appointments of commissioners shall be made within thirty days after the establishment of the authority. The authority is considered established when the proposition is approved by the voters under section 28A.6. Each appointment shall be in writing and a certificate of appointment signed by the appointing officer shall be filed and made a matter of record in the office of the county recorder. A commissioner shall be appointed for a term of two years and shall qualify within ten days after appointment by acceptance and the taking of an oath or affirmation to faithfully perform the duties of office. Members initially appointed to the board of commissioners shall serve from date of appointment until June 30 of one or two years after the date of appointment and shall draw lots to determine the terms for which each shall be appointed. Lots shall be drawn so that four commissioners from the metropolitan area shall serve in each of two classes. Thereafter, commissioners shall be appointed for two-year terms beginning on July 1 of the year of appointment. However, a commissioner who is also an elected officer shall have a term of office that runs concurrent and consistent with the elective office.

2. Within forty-five days after any vacancy occurs on the board by death, resignation, change of residence to outside of the metropolitan area, or for any other cause, a successor shall be appointed in the same manner as the commissioner's predecessor was appointed for the unexpired term of office. Commissioners and board officers of the board shall serve until a successor is appointed and qualifies. A vacancy exists when a commissioner who is also an elected officer leaves elective office and a former city or county elective officer is ineligible to serve as a commissioner for two years after leaving elective office.

91 Acts, ch 198, §7
CS91, §330B.8
C93, §28A.8

28A.9 Organization — officers — meetings — compensation.

1. The board of commissioners may exercise all of its legislative and executive powers granted under this division. Within thirty days after the appointment of the initial commissioners, the board shall meet and elect a chairperson from among its members for a term of one year. The chairperson's position shall alternate annually between a commissioner from one state to a commissioner from the other state. The board shall also select a secretary, treasurer, and other officers or employees as necessary for the accomplishment of its corporate objectives, none of whom need be a commissioner. The board, at its first meeting, shall define by ordinance the first and subsequent fiscal years of the authority, and shall adopt a corporate seal and bylaws, which shall determine the times for the annual election of officers and for other regular and special meetings of the board. The bylaws shall contain the rules for the transaction of other business of the authority and for amending the bylaws.

2. Each commissioner of the authority shall devote the amount of time to the duties of office as the faithful discharge of the duties may require. The board shall reimburse a commissioner for actual and necessary expenses incurred in the performance of official duties as approved by the board. A commissioner shall not receive a salary or per diem for the performance of official duties.

3. Each commissioner shall comply with restrictions relating to conflicts of interests or acceptance of gifts as provided in chapter 68B or similar laws of the state of Illinois as determined by the board.

4. The commissioners shall conduct the meetings as public meetings with appropriate notice pursuant to chapter 21 or to similar laws of the state of Illinois as determined by the board.

5. The board shall keep and maintain its records as public records pursuant to chapter 22 or to similar laws of the state of Illinois as determined by the board.

91 Acts, ch 198, §8
CS91, §330B.9
92 Acts, ch 1163, §82
C93, §28A.9

28A.10 Rights and powers.

The authority constitutes a municipal corporation and body politic separate from any other municipality, state, or other public or governmental

agency. The authority has the following express powers, subject to any restrictions or limitations contained in this division, and all other powers incidental, necessary, convenient, or desirable to carry out and effectuate the express powers to:

1. Sue and be sued.

2. Locate, acquire, own, establish, operate, and maintain one or more metropolitan facilities upon any land or body of water within its corporate limits, and to construct, develop, expand, extend, and improve any metropolitan facility. A new metropolitan facility, such as a sanitary landfill or infectious waste disposal facility shall not be established without site approval of the city council or board of supervisors which governs the city or county in which the proposed site is to be located.

3. Acquire, within the corporate limits of the authority, and in fee simple, rights in and over land or water, and easements upon, over, or across land or water, and leasehold interests in land or water, and tangible and intangible personal property, used or useful for the location, establishment, maintenance, development, expansion, extension, or improvement of one or more metropolitan facilities. The acquisition may be by dedication, purchase, gift, agreement, lease, or by condemnation if within corporate limits of the authority. The authority may acquire land in fee simple subject to a mortgage and as part of the purchase price may assume the payment of the indebtedness secured by the mortgage. Land may be acquired, possessed, and used for its purposes by the authority, under a written contract for a deed conveying merchantable title and providing that the deed shall be placed in escrow and be delivered upon payment of the purchase price and containing other terms as are reasonably incident to the contract. Personal property may be purchased on an installment contract basis or lease-purchase contract.

4. Operate, maintain, manage, lease with or without a lease-purchase option, sublease, and make and enter into contracts for the use, operation, or management of, and enact regulations for the operation, management, or use of, a metropolitan facility.

5. Fix, charge, and collect reasonable rentals, tolls, fees, and charges for the use of a metropolitan facility or any part of a metropolitan facility. Rentals, tolls, fees, or charges fixed and collected for the use of a metropolitan facility shall be used for the construction, reconstruction, repair, maintenance, or operation of that metropolitan facility or the construction, reconstruction, repair, maintenance, or operation of similar metropolitan facilities.

6. Establish and maintain streets and approaches on property of the authority.

7. Remove and relocate hazards or structures on property of the authority.

8. Restrict and reduce the height of objects or buildings on property of the authority.

9. Accept grants, contributions, or loans from, and enter into contracts, leases, or other transactions with, a city, county, state, or federal government.

10. Borrow money and issue bonds, notes, certificates, or other evidences of indebtedness for the purpose of accomplishing any of the corporate purposes, which obligations may be payable from other sources as provided in this division, and refund or advance refund any of the evidences of indebtedness with bonds, notes, certificates, or other evidences of indebtedness, which refunding or advanced refunding obligations may be payable from taxes or from any other source, subject to compliance with any condition or limitation set forth in this division.

11. Employ or enter into contracts for the employment of any person for professional services, necessary or desirable for the accomplishment of the corporate objectives of the authority or the proper administration, management, protection, or control of its property.

12. Regulate traffic, speed, movement, and mooring of vessels on property of the authority.

13. Regulate traffic, speed, movement, and parking of motor vehicles upon property of the authority and employ parking meters, signs, and other devices in the regulation of the motor vehicles.

14. Contract for police and fire protection.

15. Establish, by ordinance of the board, all regulations for the execution of the powers specified in this division, for the government of the authority, and for the protection of any metropolitan facility within the jurisdiction of the authority, or deemed necessary or desirable to effect its corporate objectives. An ordinance may provide for the revocation, cancellation, or suspension of an existing privilege or franchise as a penalty for a second or subsequent violation by the holder or franchisee of a regulation pertaining to the enjoyment, use, or exercise of the privilege or franchise. The use of a metropolitan facility of the authority shall be subject to the reasonable regulation and control of the authority and upon the reasonable terms and conditions as established by the board.

16. Establish a general operating fund and other funds as necessary.

17. Do all acts and things necessary or convenient for the promotion of its business and the general welfare of the authority, in order to carry out the powers granted to it by this chapter or any other laws. The authority has no power to pledge the taxing power of this state or any political subdivision or agency of this state.

Bonds and notes issued by the authority are payable solely and only out of the moneys, assets, or revenues of the authority, and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets, or revenues. Bonds or notes are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any con-

stitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this division, and the authority shall not pledge the credit or taxing power of this state or any political subdivision of this state other than the authority, or make its debts payable out of any moneys except those of the authority.

91 Acts, ch 198, §9
CS91, §330B.10
C93, §28A.10

28A.11 Regulations — ordinances.

Regulations adopted pursuant to section 28A.10 shall be contained in an ordinance which shall be placed on file in the office of the authority in typewritten or printed form for public inspection not less than fifteen days before adoption. The ordinance may impose fines as the board deems appropriate of not more than one hundred dollars upon conviction or guilty plea for each violation, and may provide that, in case of continuing violation, each day during which a violation occurs or continues constitutes a separate offense.

91 Acts, ch 198, §10
CS91, §330B.11
C93, §28A.11

28A.12 Eminent domain procedures.

If land in fee simple, rights in land, air, or water, easements or other interests in land, air, water, property, or property rights are acquired or sought to be acquired by the authority by condemnation, the condemnation procedure shall be in accordance with the eminent domain statutes of the state in which the affected property is located.

91 Acts, ch 198, §11
CS91, §330B.12
C93, §28A.12

28A.13 Authority procedures.

Action of the board of a legislative character, including the adoption of regulations, shall be in the form of an ordinance, and after adoption shall be filed with the secretary and shall be made a matter of public record in the office of the authority. Other action of the board shall be by resolution, motion, or in other appropriate form. Executive or ministerial duties may be delegated to one or more commissioners or to an authorized officer, employee, agent, or other representative of the authority. Ten commissioners, five members from each state within the greater metropolitan area, constitute a quorum to conduct business and an affirmative vote of a majority of the commissioners from each metropolitan area is required to adopt or approve an action of the board. The enacting clause of any ordinance shall be substantially as follows: *"Be it ordained by the Board of Commissioners of the Quad Cities Interstate Metropolitan Authority"*.

91 Acts, ch 198, §12
CS91, §330B.13
C93, §28A.13

28A.14 Official records and officer bonds.

The board shall provide for the safekeeping of its permanent records and for the recording of the corporate action of the authority. The board shall keep a true and accurate account of its receipts and an annual audit shall be made of its books, records, and accounts by state or private auditors. All officers and employees authorized to receive or retain the custody of moneys or to sign vouchers, checks, warrants, or evidences of indebtedness binding upon the authority shall furnish surety bond for the faithful performance of their duties and the faithful accounting for all moneys that may come into their custody in an amount to be fixed and in a form to be approved by the board.

91 Acts, ch 198, §13
CS91, §330B.14
C93, §28A.14

28A.15 Change of name.

The board may change the name of the authority by ordinance. A certified copy of the ordinance shall be filed with the appropriate state office and the county recorder or equivalent county officer of each county in which the authority or part of the authority is located. The name change shall be effective on the date of the filing.

91 Acts, ch 198, §14
CS91, §330B.15
C93, §28A.15

28A.16 Budget and appropriation.

Annually, the board shall prepare and adopt a budget and provide appropriations as follows:

1. The budget shall show the amount required for each class of proposed expenditures, a comparison of the amounts proposed to be expended with the amounts expended for like purposes for the two preceding years, if available, and the sources of revenue.

2. Not less than twenty days before the date that a budget must be certified as determined by the board and not less than ten days before the date set for the hearing under subsection 3, the board shall file the budget with the treasurer of the authority. The treasurer shall post a copy of the budget in the authority offices for public inspection and comment.

3. The board shall set a time and place for a public hearing on the budget before the final certification date and shall publish notice of the hearing not less than ten nor more than twenty days prior to the hearing in one or more newspapers serving the greater metropolitan area. Proof of publication shall be filed with and preserved by the treasurer.

4. At the hearing, any resident or taxpayer of

the greater metropolitan area may present to the board objections to or arguments in favor of any part of the budget.

5. After the hearing, the board shall adopt by resolution a budget and shall direct the treasurer to properly certify and file the budget.

6. The board shall appropriate, by resolution, the amounts deemed necessary for the ensuing fiscal year. All revenue from taxes, fees, tolls, rental, charges, bonds, or any other source shall be appropriated and used for the specific metropolitan facility project for which it was collected or similar metropolitan facility projects. Increases or decreases in these appropriations do not require a budget amendment, but may be provided by resolution at a regular meeting of the board.

91 Acts, ch 198, §15
CS91, §330B.16
C93, §28A.16

28A.17 Local sales and services tax.

If an authority is established as provided in section 28A.6 and after approval of a referendum by a simple majority of votes cast in each metropolitan area in favor of the sales and services tax, the governing board of a county in this state within a metropolitan area which is part of the authority shall impose, at the request of the authority, a local sales and services tax at the rate of one-fourth of one percent on gross receipts taxed by this state under chapter 422, division IV, within the metropolitan area located in this state. The referendum shall be called by resolution of the board and shall be held as provided in section 28A.6 to the extent applicable. The ballot proposition shall contain a statement as to the specific purpose or purposes for which the revenues shall be expended and the date of expiration of the tax. The local sales and services tax shall be imposed on the same basis, with the same exceptions, and following the same administrative procedures as provided for a county under sections 422B.8 and 422B.9. The amount of the sale, for the purposes of determining the amount of the local sales and services tax under this section, does not include the amount of any local sales and services tax imposed under sections 422B.8 and 422B.9.

The treasurer of state shall credit the local sales and services tax receipts and interest and penalties to the authority's account. Moneys in this account shall be remitted quarterly to the authority. The proceeds of the tax imposed under this section shall be used only for the construction, reconstruction, or repair of metropolitan facilities as specified in the referendum. The local sales and services tax imposed under this section may be suspended for not less than a fiscal quarter or more than one year by action of the board. The suspension may be renewed or continued by the board, but the board shall act on the suspension at least annually. The local sales and services tax may also be repealed by a petition and favorable referendum following the procedures and requirements of sections 28A.5 and 28A.6 as applicable. The board shall give the department of revenue and finance at least forty days' notice of the repeal, suspension, or reinstatement of the tax and the effective dates for imposition, suspension, or repeal of the tax shall be as provided in section 422B.9.

91 Acts, ch 198, §16
CS91, §330B.17
C93, §28A.17

28A.18 Bonds and notes payable from revenue.

1. The bonds issued by the board pursuant to this division shall be authorized by resolution of the board and shall be either term or serial bonds, shall bear the date, mature at the time, not exceeding forty years from their respective dates, bear interest at the rate, not exceeding the rate permitted under chapter 74A or the rate authorized by another state within the greater metropolitan area, whichever rate is lower, payable monthly or semiannually, be in the denominations, be in the form, either coupon or fully registered, shall carry the registration, exchangeability and interchangeability privileges, be payable in the medium of payment and at the place, within or without the state, be subject to the terms of redemption and be entitled to the priorities on the revenues, rates, fees, rentals, or other charges or receipts of the authority as the resolution may provide. The bonds shall be executed either by manual or facsimile signature by the officers as the authority shall determine, provided that the bonds shall bear at least one signature which is manually executed on the bond, and the coupons attached to the bonds shall bear the facsimile signature of the officer as designated by the authority and the bonds shall have the seal of the authority, affixed, imprinted, reproduced, or lithographed on the bond, all as may be prescribed in a resolution.

The bonds shall be sold at public sale or private sale at the price as the authority shall determine to be in the best interests of the authority provided that the bonds shall not be sold at less than ninety-eight percent of the par value of the bond, plus accrued interest and provided that the net interest cost shall not exceed that permitted by applicable state law. Pending the preparation of definitive bonds, interim certificates or temporary bonds may be issued to the purchaser of the bonds, and may contain the terms and conditions as the board may determine.

2. The board, after the issuance of bonds, may borrow moneys for the purposes for which the bonds are to be issued in anticipation of the receipt of the proceeds of the sale of the bonds and within the authorized maximum amount of the bond issue. Any loan shall be paid within three years after the date of the initial loan. Bond anticipation notes shall be issued for all moneys so borrowed

under this section, and the notes may be renewed, but all the renewal notes shall mature within the time above limited for the payment of the initial loan. The notes shall be authorized by resolution of the board and shall be in the denominations, shall bear interest at the rate not exceeding the maximum rate permitted by the resolution authorizing the issuance of the bonds, shall be in the form and shall be executed in the manner, all as the authority prescribes.

The notes shall be sold at public or private sale or, if the notes are renewal notes, they may be exchanged for notes outstanding on the terms as the board determines. The board may retire any notes from the revenues derived from its metropolitan facilities or from other moneys of the authority which are lawfully available or from a combination of revenues and other available moneys, in lieu of retiring them by means of bond proceeds. However, before the retirement of the notes by any means other than the issuance of bonds, the board shall amend or repeal the resolution authorizing the issuance of the bonds, in anticipation of the proceeds of the sale of the notes, so as to reduce the authorized amount of the bond issue by the amount of the notes so retired. The amendatory or repealing resolution shall take effect upon its passage.

3. Any resolution authorizing the issuance of any bonds may contain provisions which shall be part of the contract with the holders of the bonds, as to:

a. The pledging of all or any part of the revenues, rates, fees, rentals, or other charges or receipts of the authority derived by the authority from all or any of its metropolitan facilities.

b. The construction, improvement, operations, extensions, enlargement, maintenance, repair, or lease of metropolitan facilities and the duties of the authority with reference to the facilities.

c. Limitations on the purposes to which the proceeds of the bonds, or of any loan or grant by the federal government or the state government or the county or any city in the county, may be applied.

d. The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the metropolitan facilities of an authority, or any part of the facilities.

e. The setting aside of reserves or sinking funds or repair and replacement funds or other funds and the regulation and disposition of the funds.

f. Limitations on the issuance of additional bonds.

g. The terms and provisions of any deed of trust, mortgage, or indenture securing the bonds or under which the bonds may be issued.

h. Any other or additional agreements with the holders of the bonds as are customary and proper and which in the judgment of the authority will make the bonds more marketable.

4. The board of the authority may enter into any deeds of trust, mortgages, indentures, or other agreements, with any bank or trust company or any other lender within or without the state as security for the bonds, and may assign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of the authority. The deeds of trust, mortgages, indentures, or other agreements may contain the provisions as may be customary in the instruments, or, as the board may authorize, including, but without limitation, provisions as to:

a. The construction, improvement, operation, leasing, maintenance, and repair of the metropolitan facilities and duties of the board with reference to the facilities.

b. The application of funds and the safeguarding and investment of funds on hand or on deposit.

c. The appointment of consulting engineers or architects and approval by the holders of the bonds.

d. The rights and remedies of the trustee and the holders of the bonds.

e. The terms and provisions of the bonds or the resolution authorizing the issuance of the bonds.

Any of the bonds issued pursuant to this section are negotiable instruments, and have all the qualities and incidents of negotiable instruments and are exempt from state taxation.

91 Acts, ch 198, §17
CS91, §330B.18
C93, §28A.18

28A.19 Existing jurisdictions.

Existing jurisdictions, including those involving airports, mass transit, river bridges, waste disposal systems, and intermodal water ports within their jurisdictional boundaries, are protected from incorporation by the authority and shall not be incorporated in the authority except by their respective governing bodies. However, an existing jurisdiction may negotiate with the authority to take over its entire powers, incomes, and debts. The authority may assume the powers, income, and debts for any type of facility authorized by this division.

91 Acts, ch 198, §18
CS91, §330B.19
C93, §28A.19

28A.20 Cooperation with other governments.

The authority may apply for and receive a grant or loan of moneys or other financial aid from the state or federal government or from any state or federal agency, department, bureau, or board, necessary or useful for the undertaking, performance, or execution of any of its corporate objectives or purposes, and the authority may undertake the acquisition, establishment, construction, development, expansion, extension, or improvement of metropolitan facilities within its corporate limits or within or upon any body of water within the cor-

porate limits aided by, in cooperation with, or as a joint enterprise with the state or federal governments or with the aid of, or in cooperation with, or as a joint project with the state and federal governments. The authority shall assure, in compliance with any state or federal requirements or directives, that the proceeds of a state or federal grant, loan, or other financial assistance for the provision of facilities or services are used for the express purpose of the financial assistance and to the specific benefit of service areas or persons as designated by the local, state, or federal funding provider.

91 Acts, ch 198, §19
CS91, §330B.20
C93, §28A.20

28A.21 Transfer of existing facilities.

1. Any county, city, commission, authority, or person may sell, lease, lend, grant, or convey to the authority, a facility or any part of a facility, or any interest in real or personal property which may be used by an authority in the construction, improvement, maintenance, leasing, or operation of any metropolitan facilities. Any county, city, commission, authority, or person may transfer and assign over to the authority a contract which may have been awarded by the county, city, commission, authority, or person for the construction of facilities not begun or, if begun, not completed.

2. A proposed action of the board, and a proposed agreement to acquire, shall be approved by the governing body of the owner of the facilities. If the governing body of a county, city, commission, or authority desires to sell, lease, lend, grant, or convey to the authority a facility or any part of a facility, the governing body shall adopt a resolution signifying its intention to do so and shall publish the resolution at least one time in a newspaper of general circulation in the county and in a newspaper or newspapers, if necessary, of general circulation in the area served by the county, city, commission, or authority giving notice of a hearing to be held on the question of the sale, lease, loan, grant, or conveyance. The resolution shall be published at least fourteen days prior to the date of hearing. After the hearing and if in the public interest, the county, city, commission, or authority shall enact an ordinance authorizing the sale, lease, loan, grant, or conveyance.

3. An owner transferring an existing facility to the authority under this section shall notify the board of and make provision in the transfer documents for, where necessary, existing rights, liens, securities, and rights of reentry belonging to the state or federal government.

4. This section, without reference to any other law, shall be deemed complete authority for the acquisition by agreement, of a facility as provided in subsection 1, and no proceedings or other action shall be required except as prescribed in this division.

91 Acts, ch 198, §20
CS91, §330B.21
C93, §28A.21

28A.22 Funds of the authority.

Moneys of an authority shall be paid to the treasurer of the authority who shall not commingle the moneys with any other moneys, but shall deposit them in a separate account or accounts. Moneys in the accounts shall be paid out on check of the treasurer on requisition of the chairperson of the authority, or of another person as the authority may authorize to make the requisition. An authority may deposit any of its rates, fees, rentals, or other charges, receipts, or income with any bank or trust company that is federally insured and may deposit the proceeds of any bonds issued with any bank or trust company that is federally insured, all as may be provided in any agreement with the holders of bonds issued under this division.

91 Acts, ch 198, §21
CS91, §330B.22
C93, §28A.22

28A.23 Award of contracts.

All contracts entered into by an authority for the construction, reconstruction, and improvement of metropolitan facilities shall be entered into pursuant to and shall comply with applicable state laws. However, if an authority determines an emergency exists, it may enter into contracts obligating the authority for not in excess of one hundred thousand dollars per emergency without regard to the requirements of applicable state laws and the authority may proceed with the necessary action as expeditiously as possible to the extent necessary to resolve the emergency.

91 Acts, ch 198, §22
CS91, §330B.23
C93, §28A.23

28A.24 Exemption from taxation.

Since an authority is performing essential governmental functions, an authority is not required to pay any taxes or assessments of any kind or nature upon any property required or used by it for its purposes, or any rates, fees, rentals, receipts, or incomes at any time received by it, and the bonds issued by an authority, their transfer, and the income, including any profits made on the sale of the bonds, is deductible in determining net income for the purposes of the state individual and corporate income tax under divisions II and III of chapter 422, and shall not be taxed by any political subdivision of this state.

91 Acts, ch 198, §23
CS91, §330B.24
C93, §28A.24

28A.25 Dissolution — referendum.

1. The authority shall be dissolved only by a majority vote in a referendum undertaken in a manner similar to the referendum provided for in section 28A.6. The board shall call, upon its own motion, by petition of the eligible electors as provided in section 28A.5, or by action of the governing body of either metropolitan area, for an election to approve or disapprove the dissolution of the authority.

2. The proposition is approved if the vote in favor of the proposition is a simple majority of the total votes cast on the proposition in either one of the metropolitan areas.

3. The authority shall provide by ordinance for the disposal of any remaining property, the proceeds of which shall first be applied against any outstanding obligation of the authority. The remaining balance shall be divided between the counties included in the authority and credited to the general fund of the respective counties.

91 Acts, ch 198, §24
CS91, §330B.25
C93, §28A.25

28A.26 Supremacy of compact.

The provisions of this division II are subject to all of the provisions of the quad cities interstate metropolitan authority compact provided for in section 28A.1.

91 Acts, ch 198, §25
CS91, §330B.26
C93, §28A.26

CHAPTER 28B

INTERSTATE COOPERATION COMMISSION

28B.1 Membership of commission.
28B.2 Purpose.
28B.3 Committees.
28B.4 Report.

28B.1 Membership of commission.

The Iowa commission on interstate cooperation is hereby established. It shall consist of thirteen members to be appointed as follows:

1. Five members of the senate to be appointed by the majority leader of the senate.

2. Five members of the house of representatives to be appointed by the speaker of the house.

3. Three administrative officers to be appointed by the governor.

Appointments shall be made prior to the fourth Monday in January of the first regular session of the general assembly. Members shall take office on February 1 following their appointment and serve for two-year terms or until their successors are appointed and take office.

The governor, the majority leader of the senate, and the speaker of the house of representatives are ex officio honorary nonvoting members of the commission.

The director of the legislative service bureau shall serve as secretary of the commission.

[C62, 66, 71, 73, 75, 77, 79, 81, §28B.1]
86 Acts, ch 1245, §2027

28B.2 Purpose.

It shall be the function of this commission:

1. To carry forward the participation of this state as a member of the council of state governments.

2. To encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.

3. To encourage cooperation between this state and other units of government in the adoption of compacts and uniform laws and in working relationships with officials of other states.

[C62, 66, 71, 73, 75, 77, 79, 81, §28B.2]

28B.3 Committees.

The commission shall establish such committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the commission in obedience to its decision. Subject to the approval of the commission, the member or members of each such committee shall be appointed by the chairperson of the commission. State officials or employees who are not members of the commission on interstate cooperation may be appointed as members of any such committee. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such committee.

[C62, 66, 71, 73, 75, 77, 79, 81, §28B.3]

28B.4 Report.

The commission shall report to the governor and to the legislature within fifteen days after the convening of each general assembly, and at other times as it deems appropriate. Its members and the members of all committees which it establishes shall be reimbursed for their travel and other necessary expenses in carrying out their obligations under this chapter and legislative members shall be paid a per diem as specified in section 7E.6 for each day in which engaged in the performance of their duties, the per diem and legislators' expenses to be paid from funds appropriated by sections 2.10 and 2.12. Expenses of administrative officers, state officials, or state employees who are members of the Iowa commission on interstate cooperation or a committee appointed by the commission shall be paid from funds appropriated to the agencies or departments which persons represent except as may otherwise be provided by the general assembly. Expenses of citizen members who may be appointed to committees of the commission may be paid from funds as authorized by the general assembly. Expenses of the secretary or employees of the secretary and support services in connection with the administration of the commission shall be paid from funds appropriated to the legislative service bureau unless otherwise provided by the general assembly. Expenses of commission members shall be paid upon approval of the chairperson or the secretary of the commission.

[C62, 66, 71, 73, 75, 77, 79, 81, §28B.4]
90 Acts, ch 1256, §22

CHAPTER 28C

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Repealed effective July 1, 1995, by 91 Acts, ch 21, §8

CHAPTER 28D

INTERCHANGE OF FEDERAL, STATE AND LOCAL GOVERNMENT EMPLOYEES

28D.1 Declaration of policy.
28D.2 Definitions.
28D.3 Authority to interchange employees.
28D.4 Status of employees.
28D.5 Travel expenses paid by sending agency.
28D.6 Status of certain employees.
28D.7 Travel expenses paid by receiving agency.
28D.8 Administration.

28D.1 Declaration of policy.

The state of Iowa recognizes that intergovernmental co-operation is an essential factor in resolving problems affecting this state and that the interchange of personnel between and among governmental agencies at the same or different levels of government is a significant factor in achieving such co-operation.

[C66, 71, 73, 75, 77, 79, 81, §28D.1]

28D.2 Definitions.

For the purposes of this chapter:

1. *"Receiving agency"* means any department or agency of the federal government or a state or local government which receives an employee of another government under this chapter.

2. *"Sending agency"* means any department or agency of the federal government or a state or local government which sends any employee thereof to another government agency under this chapter.

[C66, 71, 73, 75, 77, 79, 81, §28D.2]

28D.3 Authority to interchange employees.

1. Any department, agency, or instrumentality of the state, county, city, municipality, land-grant college, or college or university operated by the state or any local government is authorized to participate in a program of interchange of employees with departments, agencies, or instrumentalities of the federal government, another state or locality, or other agencies, municipalities, or instrumentalities of this state as a sending or receiving agency.

2. The period of individual assignment or detail under an interchange program shall not exceed twenty-four months, except that an employee may be assigned for an additional twenty-four-month period upon the agreement of the employee and both the sending and receiving agencies. No employee shall be assigned or detailed without the employee's expressed consent or by using undue coercion to obtain said consent. Details relating to any matter covered in this chapter may be the sub-

ject of an agreement between the sending and receiving agencies. Elected officials shall not be assigned from a sending agency nor detailed to a receiving agency.

3. The period of individual assignment or detail may be terminated if the receiving agency offers a permanent appointment to the employee and both the sending and receiving agencies agree.

4. Persons employed by the department of natural resources under this chapter are not subject to the twenty-four-month time limitation specified in subsection 2.

[C66, 71, 73, 75, 77, 79, 81, §28D.3]

88 Acts, ch 1134, §16; 92 Acts, ch 1096, §1; 2002 Acts, ch 1162, §30

Subsection 4 amended

28D.4 Status of employees.

1. Employees of a sending agency participating in an exchange of personnel as authorized in section 28D.3 may be considered during such participation to be:

a. On detail to regular work assignments of the sending agency, or

b. In a status of leave of absence from their positions in the sending agency.

2. Employees who are on detail shall be entitled to the same salary and benefits to which they would otherwise be entitled and shall remain employees of the sending agency for all other purposes except that the supervision of their duties during the period of detail may be governed by agreement between the sending agency and the receiving agency.

3. Employees who are in a leave of absence status as provided herein shall be carried on leave without pay; except they may be granted annual leave or other time off with pay to the extent authorized by law and may be granted authorized sick leave in circumstances considered by the sending agency to justify such leave. Except as otherwise provided in this chapter, employees who are in a leave of absence status shall have the same rights, benefits, and obligations as employees generally who are in such leave status but notwithstanding any other provision of law such employees may be entitled to credit the period of such assignment toward benefits as employees of the sending agency.

4. Any employee who participates in an exchange under the terms of this section who suffers disability or death as a result of personal injury arising out of and in the course of an exchange, or sustained in performance of duties in connection therewith, shall be treated, for the purposes of the sending agency's employee compensation program, as an employee, as defined in such Act, who has sustained such injury in the performance of such duty, but shall not receive benefits under that Act for any period for which the employee is entitled to and elects to receive similar benefits under the receiving agency's employee compensation program.

[C66, 71, 73, 75, 77, 79, 81, §28D.4]

28D.5 Travel expenses paid by sending agency.

A sending agency in this state may, in accordance with the travel regulations of such agency, pay the travel expenses of employees assigned to a receiving agency on either a detail or leave basis, but shall not pay the travel expenses of such employees incurred in connection with their work assignments at the receiving agency. If the assignment or detail will be for a period of time exceeding eight months, travel expenses may include expenses of transportation of immediate family, household goods, and personal effects to and from the location of the receiving agency. If the period of assignment is less than eight months, the sending agency may pay a per diem allowance to the employee on assignment or detail.

[C66, 71, 73, 75, 77, 79, 81, §28D.5]

28D.6 Status of certain employees.

1. When any unit of government of this state acts as a receiving agency, employees of the sending agency who are assigned under authority of this chapter may be given appointments in the receiving agency covering the periods of such assignments, with compensation to be paid from receiving agency funds or without compensation, or be considered to be on detail to the receiving agency.

2. Appointments of persons so assigned may be made without regard to the laws or regulations governing the selection of employees of the receiving agency. However, if a permanent appointment made by a receiving agency pursuant to section 28D.3, subsection 3, is subject to chapter 400, section 400.7 shall govern the appointment.

3. Employees who are detailed to the receiving agency shall not by virtue of such detail be considered to be employees thereof, except as provided in subsection 4. The supervision of the duties of such employees, as well as the contribution of each agency to the salary or wage of such employees during the period of detail, may be governed by agreement between the sending agency and the receiving agency. The agreement shall be subject to the approval of the executive council for state participation and the local governing body in the case of an agreement involving a political subdivision of the state.

4. Any employee of a sending agency assigned in this state who suffers disability or death as a result of personal injury arising out of and in the course of such assignment, or sustained in the performance of duties in connection therewith, shall be treated for the purpose of receiving agency's employee compensation program, as an employee, as defined in such Act, who has sustained such injury in the performance of such duty, but shall not receive benefits under that Act for any period for

which the employee elects to receive similar benefits as an employee under the sending agency's employee compensation program.

[C66, 71, 73, 75, 77, 79, 81, §28D.6]

92 Acts, ch 1096, §2

28D.7 Travel expenses paid by receiving agency.

A receiving agency in this state may, in accordance with the travel regulations of such agency, pay travel expenses of persons assigned thereto under this chapter during the period of such assignments on the same basis as if they were regular employees of the receiving agency.

[C66, 71, 73, 75, 77, 79, 81, §28D.7]

28D.8 Administration.

The department of personnel is hereby directed to explore means of implementing this chapter and to assist departments, agencies, and instrumentalities of the state and its political subdivisions in participating in employee interchange programs.

[C66, 71, 73, 75, 77, 79, 81, §28D.8]

CHAPTER 28E

JOINT EXERCISE OF GOVERNMENTAL POWERS

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28E.1 Purpose.

The purpose of this chapter is to permit state and local governments in Iowa to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies and to co-operate in other ways of mutual advantage. This chapter shall be liberally construed to that end.

[C66, 71, 73, 75, 77, 79, 81, §28E.1]

28E.2 Definitions.

For the purposes of this chapter, the term *"pub-*

lic agency" shall mean any political subdivision of this state; any agency of the state government or of the United States; and any political subdivision of another state. The term *"state"* shall mean a state of the United States and the District of Columbia. The term *"private agency"* shall mean an individual and any form of business organization authorized under the laws of this or any other state.

[C66, 71, 73, 75, 77, 79, 81, §28E.2]

See also §28F.2

28E.3 Joint exercise of powers.

Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having such power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

[C66, 71, 73, 75, 77, 79, 81, §28E.3]

28E.4 Agreement with other agencies.

Any public agency of this state may enter into an agreement with one or more public or private agencies for joint or co-operative action pursuant to the provisions of this chapter, including the creation of a separate entity to carry out the purpose of the agreement. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies involved shall be necessary before any such agreement may enter into force.

[C66, 71, 73, 75, 77, 79, 81, §28E.4]

28E.5 Specifications.

Any such agreement shall specify the following:

1. Its duration.
2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. However, if the agreement establishes a separate legal or administrative entity, the entity shall, when investing funds, comply with the provisions of sections 12B.10 and 12B.10A through 12B.10C and other applicable law.
3. Its purpose or purposes.
4. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.
5. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
6. Any other necessary and proper matters.

[C66, 71, 73, 75, 77, 79, 81, §28E.5]

92 Acts, ch 1156, §9

28E.6 Additional provisions.

If the agreement does not establish a separate legal entity to conduct the joint or co-operative undertaking, the agreement shall also include:

1. Provision for an administrator or a joint board responsible for administering the joint or co-operative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.
2. The manner of acquiring, holding and disposing of real and personal property used in the joint or co-operative undertaking.

[C66, 71, 73, 75, 77, 79, 81, §28E.6]

28E.7 Obligations not excused.

No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility.

[C66, 71, 73, 75, 77, 79, 81, §28E.7]

28E.8 Filing and recording.

Before entry into force, an agreement made pursuant to this chapter shall be filed with the secretary of state and recorded with the county recorder. In counties in which the office of county recorder is abolished, the agreement shall be recorded with the county auditor.

[C66, 71, 73, 75, 77, 79, 81, §28E.8]

95 Acts, ch 110, §1

28E.9 Status of interstate agreement.

If an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States said agreement shall have the status of an interstate compact. Such agreements shall, before entry into force, be approved by the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state.

In any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest, and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

[C66, 71, 73, 75, 77, 79, 81, §28E.9]

28E.10 Approval of statutory officer.

If an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved as to all matters within the state officer's or agency's jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §28E.10]

28E.11 Agency to furnish aid.

Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

[C66, 71, 73, 75, 77, 79, 81, §28E.11]

28E.12 Contract with other agencies.

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

[C66, 71, 73, 75, 77, 79, 81, §28E.12]

28E.13 Powers are additional to others.

The powers granted by this chapter shall be in addition to any specific grant for intergovernmental agreements and contracts.

[C66, 71, 73, 75, 77, 79, 81, §28E.13]

28E.14 No limitation on contract.

Any contract or agreement authorized by this chapter shall not be limited as to period of existence, except as may be limited by the agreement or contract itself.

[C66, 71, 73, 75, 77, 79, 81, §28E.14]

28E.15 District agency.

A planning commission, council of governments or similar organization formed under the provisions of this chapter shall, upon designation as such by the governor, serve as a district, regional or metropolitan agency for comprehensive planning for its area for the purpose of carrying out the functions as defined for such agency by federal, state and local laws and regulations.

[C73, 75, 77, 79, 81, §28E.15]

28E.16 Election for bonds.

When bonds which require a vote of the people are to be issued for financing joint facilities of a county and one or more cities within the county, pursuant to an agreement made under the authority of this chapter, or pursuant to other provisions of law, the board of supervisors and the council of each city shall arrange for a single election on the question of issuing the bonds, but if the county and the cities are proposing to make separate bond issues, the ballot shall contain separate questions, one to be voted upon by all voters of the county, and one or more to be voted upon only by the voters of the city which is to make a separate bond issue.

[C75, 77, 79, 81, §28E.16]

28E.17 Transit policy — joint agreement — city debt.

1. It is the public policy of this state to encourage the establishment or acquisition of urban mass transit systems and the equipment, maintenance and operation thereof by public agencies in cooperation with, and with the assistance of the urban mass transportation administration of the United States department of transportation, pursuant to the provisions of the Urban Mass Transportation Act of 1964, as amended, Title 49, sections 1601 et seq., United States Code, which requires unification or official coordination of local mass transportation services on an area-wide basis as a condition of such assistance.

2. An agreement between one or more cities and other public agencies for this purpose may be made and carried out without an election and the agency created thereby may jointly exercise through a board of trustees as provided by the agreement all the rights, powers, privileges and immunities of cities related to the provision of mass transportation services, except the authority to incur bonded indebtedness.

3. A city which is a party to a joint transit agency may issue general corporate purpose bonds for the support of a capital program for the joint agency in the following manner:

a. The council shall give notice and conduct a hearing on the proposal in the manner set forth in section 384.25. However, the notice must be published at least ten days prior to the hearing, and if a petition valid under section 362.4 is filed with the clerk of the city prior to the hearing, asking that the question of issuing the bonds be submitted to the registered voters of the city, the council shall either by resolution declare the proposal abandoned or shall direct the county commissioner of elections to call a special election to vote upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in section 384.26.

b. If no petition is filed, or if a petition is filed and the proposition of issuing bonds is approved at the election, the council may proceed with the au-

thorization and issuance of the bonds.

An agreement may provide for full or partial payment from transit revenues to the cities for meeting debt service on such bonds.

This subsection shall be construed as granting additional power without limiting the power already existing in cities, and as providing an alternative independent method for the carrying out of any project for the issuance and sale of bonds for the financing of a city's share of a capital expenditures project of a joint transit agency, and no further proceedings with respect to the authorization of the bonds shall be required.

[C75, §28G.1 – 28G.4; C77, 79, 81, §28E.17]

95 Acts, ch 67, §53

28E.18 Shared use of facilities.

Before proceeding to construct or purchase a facility as otherwise provided by law, a public agency shall inquire of other public agencies having facilities within the same general geographic area concerning the availability of all or part of those facilities for rent or sharing by agreement with the inquiring public agency. If there are no suitable facilities available for rent or sharing, the governing body of the public agency shall record its findings in its meeting minutes.

83 Acts, ch 26, §1

28E.19 Joint county indigent defense fund.

Two or more counties may execute an agreement under this chapter to create a joint county indigent defense fund to be used to compensate attorneys appointed to represent indigents. In addition to other requirements of an agreement under this chapter, the agreement shall provide for the amount to be paid by each county based on its population to establish and maintain an appropriate balance in the joint fund, and for a method of repayment if a county withdraws more funds than it has contributed.

83 Acts, ch 123, §36, 209; 84 Acts, ch 1067, §10; 99 Acts, ch 135, §12

28E.20 Joint purchases of equipment. Repealed by 96 Acts, ch 1194, § 1.

UNIFIED LAW ENFORCEMENT

28E.21 Definition.

For the purpose of this division, the term *"district"* means a unified law enforcement district established by an agreement under the provisions of this chapter by a county, or portions thereof, or cities to provide law enforcement within the boundaries of the member political subdivisions.

[C77, 79, 81, §28E.21]

28E.22 Referendum for tax.

The board of supervisors, or the city councils of a district composed only of cities, may, and upon receipt of a petition signed by eligible electors residing in the district equal in number to at least five percent of the registered voters in the district shall, submit a proposition to the electorate residing in the district at any general election or at a special election held throughout the district. The proposition shall provide for the establishment of a public safety fund and the levy of a tax on taxable property located in the district at rates not exceeding the rates specified in this section for the purpose of providing additional moneys for the operation of the district.

The ballot for the election shall be prepared in substantially the form for submitting special questions at general elections and the form of the proposition shall be substantially as follows:

Shall an annual levy, the amount of which will not exceed a rate of one dollar and fifty cents per thousand dollars of assessed value of the taxable property in the unified law enforcement district be authorized for providing additional moneys needed for unified law enforcement services in the district?

Yes ☐ No ☐

If a majority of the registered voters in each city and the unincorporated area of the county voting on the proposition approve the proposition, the county board of supervisors for unincorporated area and city councils for cities are authorized to levy the tax as provided in section 28E.23.

Such moneys collected pursuant to the tax levy shall be expended only for providing additional moneys needed for unified law enforcement services in the district and shall be in addition to the revenues raised in the county and cities in the district from their general funds which are based upon an average of revenues raised for law enforcement purposes by the county or city for the three previous years. The amount of revenues raised for law enforcement purposes by the county for the three previous years shall be computed separately for the unincorporated portion of the district and for each city in the district.

[C77, 79, 81, §28E.22]

83 Acts, ch 79, §1; 95 Acts, ch 67, §53; 2001 Acts, ch 56, §1

28E.23 Budget.

The public safety commission, on or before January 10 of each year, shall make an estimate of the total amount of revenue deemed necessary for operation of the district and, in conjunction with the county board of supervisors and city councils in the district, determine the amounts which will be contributed by the county and by each city in the

district from its general fund which are based upon an average of revenues raised for law enforcement purposes in the county or city for the three previous years.

One of the following methods shall be used by the public safety commission for computing the amount of revenue deemed necessary for the operation of the district:

1. The per capita cost shall be computed by dividing the amount of revenue deemed necessary for the operation of the district by the total population of the district and by computing separate amounts for the public safety fund as follows:

a. The funds to be contributed by each city in the district shall be computed by multiplying the per capita cost by the population residing in each city of the district.

b. The funds to be contributed by the unincorporated area of the district shall be computed by multiplying the per capita cost by the population residing in the unincorporated area of the district.

2. The percent of service received by the unincorporated area and by each city in the district shall be computed and the percent of service received by each shall be multiplied by the amount of revenue deemed necessary for the operation of the district.

[C77, 79, 81, §28E.23]
83 Acts, ch 123, §37, 209

28E.24 Revenue and tax levies.

The county board of supervisors shall certify to the public safety commission the amount of revenue from the county general fund credited to the unincorporated area in the district based upon an average of revenues raised for law enforcement purposes in the unincorporated area for the three previous years. The public safety commission shall subtract this amount from the amount of revenue to be contributed by the unincorporated area. The difference is the amount of additional revenue needed for unified law enforcement purposes.

In addition, the county board of supervisors and the city council of each city in the district shall certify to the public safety commission the amounts of revenue from the county and from the city general fund credited to each city in the district based upon an average of revenues raised for law enforcement purposes in each city for the three previous years. The public safety commission shall subtract the total of these amounts from the amount of revenue to be contributed by each city respectively. The difference for each city is the amount of additional revenue needed for unified law enforcement purposes.

The county board of supervisors and the council of each city located within the district shall review the proposed budget and upon the approval of the budget by the board of supervisors and all city councils in the district, each governing body shall determine the source of the additional revenue needed for unified law enforcement purposes. If the tax levy is approved as the source of revenue, the governing body shall certify to the county auditor the amount of revenue to be raised from the tax levy in either the unincorporated area of the district or a city in the district.

If the tax rate in any of the cities or the unincorporated area exceeds the limitations prescribed in section 28E.22, the public safety commission shall revise the budget to conform with the tax limitations.

The county board of supervisors and the city council of each city in the district shall deposit in the public safety fund the amounts of revenue certified to the public safety commission in this section based upon an average of revenues raised for law enforcement purposes for the three previous years.

If the average of revenues raised for law enforcement purposes in the unincorporated area or a city for the previous three years exceeds the amount of revenue needed for unified law enforcement purposes, the unincorporated area or city is only required to contribute the amount of revenue needed.

Taxes collected pursuant to the tax levies and other moneys received from the county and cities in the district shall be placed in a public safety fund and used only for the operation of the district. Any unencumbered funds remaining in the fund at the end of a fiscal year shall carry over to the next fiscal year and may be used for the operation of the district.

[C77, §28E.23; C79, 81, §28E.24]
83 Acts, ch 123, §38, 39, 209

28E.25 Expansion of district.

Cities and unincorporated areas may join an established district upon the affirmative vote of the city council or county board of supervisors, whichever is applicable, and a tax may be levied for providing additional moneys for unified law enforcement services only upon the affirmative vote of registered voters of the city or unincorporated area voting in the manner provided in this division. A city or unincorporated area joining a district shall contract with the district for services until the beginning of a fiscal year when the city or unincorporated area may become a member.

[C77, §28E.24; C79, 81, §28E.25]
95 Acts, ch 67, §53

28E.26 City civil service and retirement.

The inclusion of a city in a unified law enforcement district shall not affect the prior establishment of a civil service system under chapter 400 or a pension or retirement system under either chapter 410 or 411.

[C77, §28E.25; C79, 81, §28E.26]

28E.27 Duration of agreements for law enforcement purposes.

An agreement under this chapter to provide joint or co-operative services or facilities for unified law enforcement purposes shall not be executed for less than a five-year period.

[C77, §28E.26; C79, 81, §28E.27]

28E.28 Public safety commission.

If the levy of a tax has been approved under section 28E.22, a public safety commission shall be established under section 28E.6. The public safety commission shall be responsible for administering the unified law enforcement agreement. The public safety commission shall be composed of elected officials from public agencies party to the agreement. The composition of the commission shall be determined by the terms of the agreement. A vacancy shall exist when a member of the commission ceases to hold the elected office which qualifies the member for commission membership.

[C79, 81, §28E.28]

28E.28A Referendum on tax levy — dissolution of district.

1. After five years from the date that a district is established, the public safety commission, upon receipt of a petition signed by eligible electors residing within the district equal in number to at least fifteen percent of the registered voters in the district, shall submit a proposition to the electorate of the district at the next general election to discontinue the annual levy for unified law enforcement services in the district. If a majority of the registered voters in each city and the unincorporated area of the county, as applicable, approve the proposition, the tax levy shall be discontinued.

2. If the discontinuation of the tax levy necessitates the dissolution of the district, the public safety commission shall dispose of any remaining property, the proceeds of which shall be applied first against any outstanding obligations of the district and any balance shall be remitted to the county and each city in the district in the same proportion that each jurisdiction contributed to the district's budget in its final fiscal year. The board of supervisors, on behalf of the unincorporated area of the county and the city councils of the cities included in the dissolved district shall continue to levy taxes and appropriate funds to the public safety fund as provided in section 28E.24 until all outstanding obligations of the dissolved district are paid.

83 Acts, ch 79, §2; 95 Acts, ch 67, §53; 2001 Acts, ch 56, §2

28E.28B Legalization of tax levies.

Each unified law enforcement district tax levy authorized pursuant to section 28E.22 prior to July 1, 1983, which continued to be collected for a period subsequent to July 1, 1983, or continues to be collected notwithstanding the expiration of the five-year period specified by the referendum which authorized the levy, is hereby legalized and deemed valid as if the levy had been authorized subsequent to July 1, 1983.

97 Acts, ch 7, §1

28E.29 Amana — additional law enforcement.

If a tract of land is owned by a corporation organized under chapter 491 with assets of the value of one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land, all of the territory within the plats of the villages with their additions or subdivisions, for the purposes of this section, is deemed to be one incorporated city. The corporation may assess and collect funds from its property owners for the purpose of obtaining additional law enforcement services from the county sheriff. The corporation may contract under this chapter with the county sheriff for additional law enforcement services.

[C81, §337.22; S81, §28E.29; 81 Acts, ch 117, §1201]

28E.30 Agreement for law enforcement administrative services.

A county and a city within the county may enter into an agreement to provide administrative services through the county sheriff to the city for its police department. In addition to other provisions required by this chapter, the agreement shall specify the administrative services to be provided by the sheriff and the administrative or supervisory relationship between the sheriff and the mayor and city council. The agreement is subject to the approval of the county sheriff. The sheriff may accept compensation for the administrative services provided to the city, which compensation is in addition to the sheriff's compensation authorized under section 331.907. The additional compensation shall not be included in computing the total annual compensation of the sheriff pursuant to section 331.904, subsection 2.

88 Acts, ch 1057, §1

EMERGENCY SERVICES

28E.31 Emergency services — contracts for mutual aid.

1. A municipality's fire department that agrees to provide for mutual aid regarding emergency services shall do so in writing. The contracts that are agreed upon may provide for compensation from the parties and other terms that are agreeable to the parties and may be for an indefinite period as long as they include a sixty-day cancellation notice by any party. The contracts agreed upon shall not be entered into for the purpose of re-

ducing the number of employees of any party.

2. A municipal fire department may provide assistance to any other such department or district in the state at the time of a significant emergency such as a fire, earthquake, flood, tornado, hazardous material incident, or other such disaster. The chief or highest ranking fire officer of an assisting department or district may render aid to a requesting department or district as long as the chief or officer is acting in accordance with the policies and procedures set forth by the governing board of the assisting department or district.

3. The chief or highest ranking officer of the municipal fire department of the district within which the incident occurs shall maintain control of the incident in accordance with the provisions of chapter 102. The chief or highest ranking officer of the department or district giving mutual aid shall be in charge of the assisting departmental or district personnel.

4. For purposes of this section, *"municipality"* means a city, county, township, benefited fire district, or agency formed under this chapter and authorized by law to provide emergency services.

96 Acts, ch 1219, §62; 2000 Acts, ch 1117, §1

28E.32 Emergency services agreements.

1. A municipality that agrees to provide fire protection service or emergency medical service for another municipality shall do so in writing.

2. The written agreement shall state the purposes of the agreement and the services to be provided. The agreement shall state the duration of the agreement and provide for renewal or cancellation of the agreement.

3. The agreement may establish an advisory board comprised of one member of the governing body of each municipality that is a party to the agreement. The board shall prepare an annual budget for services provided pursuant to the agreement and shall allocate among the parties to the agreement, responsibility to provide revenue for the amount of the budget. The budget prepared pursuant to the written agreement shall be a part of the budget of the city providing the services.

4. For purposes of this section, *"municipality"* means a city, county, township, benefited fire district, or agency formed under this chapter and authorized by law to provide emergency services.

2000 Acts, ch 1117, §2

28E.33 and 28E.34 Reserved.

COMMUNITY CLUSTERS — REVENUE SHARING

28E.35 Definitions.

As used in this division unless the context otherwise requires:

1. *"Community cluster"* means a cooperative community unit established pursuant to this chapter for the joint exercise of powers by two or more governmental units.

2. *"Governmental unit"* means a city, county, or special taxing district.

90 Acts, ch 1200, §1

28E.36 Establishment of community cluster.

Two or more governmental units located in the state may establish a community cluster by entering into an agreement for the joint exercise of powers pursuant to this chapter to make more efficient use of their resources by providing for joint functions, services, facilities, development of infrastructure and for revenue sharing, and to foster economic development.

90 Acts, ch 1200, §2

28E.37 Designation of townships.

A county entering into an agreement to establish a community cluster may limit the area of the county included in the community cluster to designated townships.

90 Acts, ch 1200, §3

28E.38 Revenue sharing.

The agreement establishing a community cluster may provide for the sharing of revenues by the governmental units forming the community cluster.

90 Acts, ch 1200, §4

28E.39 Referendum for ad valorem tax sharing.

An agreement establishing a community cluster shall require the approval of the registered voters residing within the area of the cluster if the agreement provides for the sharing of revenues from ad valorem property taxes. The proposition shall be submitted to the electorate by each governmental unit forming the community cluster to the electors residing within the area of the governmental unit at a general election or at a special election. However, if a county has designated only certain townships as being included within the community cluster, the proposition shall be submitted to the electorate of the county residing only in the townships included in the community cluster.

The ballot for the election shall be prepared in substantially the form for submitting special questions at general elections.

If a majority of the registered voters in the area of each governmental unit within the proposed community cluster voting on the proposition vote in favor of the proposition then the agreement establishing the community cluster shall take effect and the sharing of revenues from ad valorem property taxes is authorized. If the proposition fails in the area of one or more governmental units within the proposed community cluster voting on the proposition then the governmental units in which

the proposition passed may establish the community cluster in those areas in which the proposition passed and the sharing of revenues from ad valorem property taxes is authorized.

90 Acts, ch 1200, §5; 95 Acts, ch 67, §53

REGIONAL METROPOLITAN SERVICE AREA

28E.40 Regional metropolitan service area.

Two or more contiguous counties, cities, or cities and counties may establish a regional metropolitan service area to provide for the joint delivery of services by an agreement under this chapter, subject to the limitations and requirements of sections 331.232, 331.260, 331.261, and 331.262, subsection 2.

91 Acts, ch 256, §1

LOCAL GOVERNMENT BOND FINANCING

28E.41 Joint county, city, fire district, and school district buildings.

1. A county, city, fire district, or school district, which has areas within its boundaries which overlap areas within the boundaries of another county, city, fire district, or school district, or whose boundaries are contiguous with another county, city, fire district, or school district, may execute an agreement pursuant to this section for the joint construction or acquisition, furnishing, operation, and maintenance of a public building or buildings for their common use. Noncontiguous cities located within the same county, or cities located in contiguous counties, may also execute an agreement for the joint construction or acquisition, furnishing, operation, and maintenance of a joint public building or buildings for their common use. Such an agreement regarding a joint public building may allow for, but is not limited to, any of the following:

a. Acquisition of a construction site and construction of a public building for common use.

b. Purchase of an existing building for joint public use, or conversion of a building previously owned and maintained by a county, city, fire district, or school district for joint public use.

c. Equipping or furnishing a new or existing building for joint public use.

d. Operation, maintenance, or improvement of a joint public building.

e. Any other aspect of joint public building construction, acquisition, furnishing, operation, or maintenance mutually agreed upon by the county, city, fire district, or school district and not otherwise prohibited by law.

2. An agreement pursuant to subsection 1 shall be approved by resolution of the governing bodies of each of the participating counties, cities, fire districts, or school districts and shall specify the purposes for which the joint public building shall be used, the estimated cost thereof, the estimated amount of the cost to be allocated to each of the participating counties, cities, fire districts, or school districts, the proportion and method of allocating the expenses of the operation and maintenance of the building or improvement, and the disposition to be made of any revenues to be derived therefrom, in addition to the provisions of sections 28E.5 and 28E.6, and any other applicable provision of this chapter.

3. *a.* A county, city, fire district, or school district may expend funds or issue general obligation bonds for the payment of its share of the cost of constructing, acquiring, furnishing, operating, or maintaining a joint public building pursuant to subsection 1. Section 28E.16 shall apply regarding a single election to be authorized by the board of supervisors, city council, governing body of a fire district, and board of directors of a school district, in the event that a single bond issue throughout the overlapping or contiguous areas, or noncontiguous cities located in the same county or cities located in contiguous counties, is contemplated. If separate bond issues are authorized by the governing body of a county, city, fire district, or school district for its respective share of the cost of the joint public building, the applicable bonding provisions of chapters 74, 75, 296, 298, 331, 357B, 359, and 384 shall apply. With regard to any issuance of bonds pursuant to this section, a proposition to authorize an issuance of bonds by a county, city, fire district, or school district shall be deemed carried or adopted if the vote in favor of the proposition is equal to at least sixty percent of the vote cast for and against the proposition in each participating county, city, fire district, or school district.

b. Bonds shall not be issued by a county, city, fire district, or school district until provision has been made by each of the other participating counties, cities, fire districts, or school districts to the agreement for the payment of their shares of the cost of the joint public building. In the event that the cost of the construction or acquisition, furnishing, operation, and maintenance of the joint public building exceeds that which was originally estimated and agreed to, the governing body of a county, city, fire district, or school district shall have the authority, jointly or individually, as appropriate, to expend additional moneys or issue additional bonds to pay their respective portions of the increased costs.

c. The governing body of a county, city, fire district, or school district is authorized to enter into an agreement under this section to construct, acquire, furnish, operate, or maintain the public building which is the subject of the agreement for its own purposes to the same extent and in the same manner as if the public building were wholly owned by and devoted to the uses of the county, city, fire district, or school district.

d. The authority granted to a county, city, fire district, or school district pursuant to this section shall be in addition to, and not in derogation of, any other powers conferred by law upon a county, city, fire district, or school district to make agreements, appropriate and expend moneys, and to issue bonds for the same or similar purposes.

4. For purposes of this section, *"fire district"* means any governmental entity which provides fire protection services.

99 Acts, ch 145, §1

28E.42 Joint issuance of school district or fire district bonds.

It is the intent of the general assembly to encourage school districts or fire districts to jointly issue general obligation bonds to fund separate projects proposed in each district and, by pooling their debt obligations, to realize a savings for taxpayers in each of the participating districts.

1. Two or more school districts may enter an agreement pursuant to this chapter for the purpose of financing projects for which debt obligations may be or have been incurred pursuant to chapter 296 or 298. For purposes of this section, *"school district"* means a public school district described in chapter 274.

2. Two or more fire districts may enter an agreement pursuant to this chapter for the purpose of financing projects for which debt obligations may be or have been incurred pursuant to chapter 74, 75, 331, 357B, 359, or 384. For purposes of this section, *"fire district"* means any governmental entity which provides fire protection services.

99 Acts, ch 145, §2

CHAPTER 28F

JOINT FINANCING OF PUBLIC WORKS AND FACILITIES

28F.1 Scope of chapter — limitations.
28F.2 Definitions.
28F.3 Revenue bonds.
28F.4 Use of proceeds — negotiability.
28F.5 Source of payment — rates and charges, pledge of revenues.
28F.6 Bonds not debts of the public agencies.
28F.7 Construction and operation of project.
28F.8 Details of revenue bonds.
28F.9 Issuance of interim notes.
28F.10 Refunding bonds.
28F.11 Eminent domain.
28F.12 Additional powers of the entity.
28F.13 Laws applicable.
28F.14 Hydroelectric utilities — eminent domain — contracts.

28F.1 Scope of chapter — limitations.

This chapter provides a means for the joint financing by public agencies of works or facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, and industrial waste, facilities used for the conversion of solid waste to energy, and also electric power facilities constructed within the state of Iowa, except that hydroelectric power facilities may also be located in the waters and on the dams of or on land adjacent to either side of the Mississippi or Missouri river bordering the state of Iowa, water supply systems, swimming pools or golf courses. This chapter applies to the acquisition, construction, reconstruction, ownership, operation, repair, extension, or improvement of such works or facilities, by a separate administrative or legal entity created pursuant to chapter 28E or chapter 389. When the legal entity created under this chapter is comprised solely of cities, counties, and sanitary districts established under chapter 358, or any combination thereof or any combination of the foregoing with other public agencies, the entity shall be both a corporation and a political subdivision with the name under which it was organized. The legal entity may sue and be sued, contract, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the seal at pleasure, and execute all the powers conferred in this chapter.

A city shall not join an entity created under this chapter for the purpose of financing electric power facilities unless that city had established a municipal electric utility as of July 1, 1984. Power supplied by a municipal power agency shall not be furnished to a municipal utility not existing as of July 1, 1984.

After July 1, 1981, a city shall not join an entity created under this chapter or any separate administrative or legal entity created pursuant to chapter 28E for the purpose of utilizing the provisions of this chapter for financing electric power facilities until the proposal for the city to join such an entity has been submitted to and approved by the voters of the city.

The proposal shall be submitted at any city election by the council on its own motion. If a majority

of those voting in the city does not approve the proposal, the same or a similar proposal may be submitted to the voters no sooner than one year from the date of the election at which the proposal was defeated.

[C71, 73, 75, 77, 79, 81, S81, §28F.1; 81 Acts, ch 31, §1]

83 Acts, ch 127, §4; 85 Acts, ch 78, §2; 87 Acts, ch 225, §402; 91 Acts, ch 168, §1

28F.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Electric power agency"* means an entity financing or acquiring electric power facilities pursuant to this chapter or chapter 28E or 476A.

2. *"Project"* or *"projects"* means any works or facilities referred to in section 28F.1 and shall include all property real and personal, pertinent thereto or connected with such project or projects, and the existing works or facilities, if any, to which such project or projects are an extension, addition, betterment, or improvement.

3. *"Public agency"*, *"state"*, and *"private agency"* shall have the meanings prescribed by section 28E.2.

[C71, 73, 75, 77, 79, 81, S81, §28F.2; 81 Acts, ch 31, §7]

2001 Acts, 1st Ex, ch 4, §3, 36

28F.3 Revenue bonds.

An entity created to carry out an agreement authorizing the joint exercise of those governmental powers enumerated in section 28F.1 shall have power to construct, acquire, own, repair, improve, expand, operate and maintain a project or projects necessary to carry out the purposes of such agreement, and to issue from time to time revenue bonds payable from the revenues derived from such project or projects, or any combination of such projects, to finance the cost or part of the cost of the acquisition, construction, reconstruction, repair, extension or improvement of such project or projects, including the acquisition for the purposes of such agreement, of any property, real or personal or mixed therefor. The power of the entity to issue revenue bonds shall not be exercised until authorized by resolution duly adopted by each of the public agencies participating in such agreement. Public agencies participating in such an agreement may not withdraw or in any way terminate, amend, or modify in any manner to the detriment of the bondholders said agreement if revenue bonds or obligations issued in anticipation of the issuance of said revenue bonds have been issued and are then outstanding and unpaid as provided for herein. Any revenue bonds for the payment and discharge of which, upon maturity or upon redemption prior to maturity, provision has been made through the setting apart in a reserve fund or special trust account created pursuant to this chapter to insure the payment thereof, of moneys sufficient for that purpose or through the irrevocable segregation for that purpose in a sinking fund or other fund or trust account of moneys sufficient therefor, shall be deemed to be no longer outstanding and unpaid within the meaning of any provision of this chapter.

[C71, 73, 75, 77, 79, 81, §28F.3]

28F.4 Use of proceeds — negotiability.

Revenue bonds may be issued, as provided in section 28F.3, to provide all or any part of the funds required to finance the cost of the acquisition, construction, reconstruction, repair, extension or improvement of any project or projects or other purposes authorized under this chapter and such cost shall include, but shall not be limited to, administrative expenses, acquisition and construction costs, engineering, fiscal or financial and legal expenses, surveys, plans and specifications, interest during such construction, reconstruction, repair, extension or improvement or acquisition and for one year after completion of such construction, reconstruction, repair, extension or improvement or after acquisition of the project or projects, initial reserve funds, acquisition of real or personal property, including franchises, and such other costs as are necessary and incidental to the construction, reconstruction, repair, extension or improvement, or acquisition of such project or projects and the financing thereof. Such an entity shall have the power to retain and enter into agreements with engineers, fiscal agents, financial advisers, attorneys, architects or other consultants or advisers for planning, supervision and financing of such project or projects upon such terms and conditions as shall be deemed advisable and in the best interest of the entity. Bonds issued under the provisions of this chapter are declared to be investment securities under the laws of the state of Iowa.

[C71, 73, 75, 77, 79, 81, §28F.4]

28F.5 Source of payment — rates and charges, pledge of revenues.

Such an entity shall have the power to pledge all or part of the net revenues of a project or projects to the payment of the principal of and interest on the bonds issued pursuant to this chapter and shall provide by resolution authorizing the issuance of said bonds that such net revenues of the project or projects shall be set apart in a sinking fund for that purpose and kept separate and distinct from all other revenues of the entity. The principal of and interest on the bonds so issued shall be secured by a pledge of such net revenues of the project or projects in the manner and to the extent provided in the resolution authorizing the issuance of said bonds.

Such an entity shall have the power to fix, establish and maintain such rates, tolls, fees, rentals or other charges and collect the same from the public agencies participating in the agreement or from

private agencies or persons for the payment of the services and facilities provided by said project or projects. Such rates, tolls, fees, rentals or other charges shall be so fixed, established and maintained and revised from time to time whenever necessary as will always provide revenues sufficient to pay the cost of maintaining, repairing and operating the project or projects, to pay the principal of and interest on the bonds then outstanding which are payable therefrom as the same become due and payable, to provide adequate and sufficient reserves therefor, to provide for replacements, depreciations and necessary extensions and enlargements and to provide a margin of safety for the making of such payments and providing such reserves. Notwithstanding the foregoing such an entity shall have the further right to pledge to the payment of the bonds issued pursuant to this chapter, in addition to the net revenues of the project or projects pledged therefor, such other moneys that it may have and which are lawfully available therefor.

In order to pay the rates, tolls, fees, rentals or other charges levied against a public agency by an entity for the payment of the services and facilities provided by a project or projects authorized by this chapter, public agencies participating in such an agreement shall have the power by ordinance to fix, establish and maintain, rates or other charges for the use of and the services and facilities rendered by said project or projects. Such rates or charges may be so fixed, established and maintained and revised from time to time whenever necessary as will always provide such public agencies with sufficient revenue to pay the rates, tolls, fees, rentals or other charges levied against it by the entity for the payments of the services and facilities provided by said project or projects. All such rates or charges to be paid by the owners of real property, if not paid as by the ordinance provided, when due, shall constitute a lien upon such real property served by such project or projects, and shall be collected in the same manner as general taxes.

[C71, 73, 75, 77, 79, 81, §28F.5]

28F.6 Bonds not debts of the public agencies.

The principal of and interest on the bonds issued by an entity under the provisions of this chapter shall be payable solely from and secured by the net revenues of the project or projects and from other funds of the entity lawfully available therefor as provided in section 28F.5 and said bonds shall not in any respect be a general obligation of any public agency participating in said entity nor shall the entity or any public agency participating in said entity be in any manner liable by reason of such net revenues or other funds being insufficient to pay said bonds. All bonds issued by the entity shall contain a recital on their face that neither the payment of the principal nor any part thereof nor any interest thereon constitutes a debt, liability or obligation of any of the public agencies participating in the agreement creating such entity or of the entity itself, except that the entity shall be liable for the payment of such bonds from the net revenues derived from the project or projects and from the other moneys lawfully available therefor and pledged thereto pursuant to the provisions of the resolution which authorized their issuance. Said bonds issued by the entity shall be authorized by resolution which may be adopted at the same meeting at which it was introduced by a majority of the members of the governing body of the entity. The terms, conditions and provisions for the authorization, issuance, sale, and security of said bonds and of the holders thereof shall be set forth in said resolution.

[C71, 73, 75, 77, 79, 81, §28F.6]

28F.7 Construction and operation of project.

An entity shall operate, maintain and preserve a project in good repair and working order, and shall construct and operate the project in an efficient and economical manner, provided that the entity may lease or rent a project or any part of a project, or otherwise provide for the construction and operation of a project or any part of a project in the manner and upon the terms as the governing body of the entity directs.

The electric light and power plant and system of any public agency participating in and receiving wholesale power from electric power facilities owned, operated, or financed pursuant to this chapter shall meet the standards of the national electric safety code of 1968, as amended to and including January 1, 1981, of the national fire protection association.

[C71, 73, 75, 77, 79, 81, S81, §28F.7; 81 Acts, ch 31, §2]

28F.8 Details of revenue bonds.

Revenue bonds issued pursuant to this chapter shall bear interest at rates not exceeding those permitted by chapter 74A for revenue bonds issued by a city, may be in one or more series, may bear dates, may mature at times not exceeding forty years from their respective dates, may be payable in a medium of payment, at places within the state, may carry registration privileges, may be subject to terms of prior redemption, with or without premium, may be executed in the manner, may contain terms, covenants and conditions, may be sold at public or private sale in the manner and on terms provided by the entity or may be exchanged for outstanding interim notes, and may be in a form otherwise, as the resolution or subsequent resolutions provide.

[C71, 73, 75, 77, 79, 81, S81, §28F.8; 81 Acts, ch 31, §3]

28F.9 Issuance of interim notes.

The entity may borrow money for the purposes for which bonds may be issued, in anticipation of the receipt of the proceeds of the sale of bonds. Notes shall be issued for moneys borrowed under this section, and the notes may be renewed. The notes shall be authorized by resolution of the governing body of the entity and may be issued in denominations, bear interest at rates not exceeding the maximum rate of interest permitted by chapter 74A for pledge orders issued by a city, shall be in a form and shall be executed in a manner, all as the entity prescribes. If the notes are renewal notes, they may be exchanged for notes then outstanding on terms the governing body of the entity determines. Notes may be sold at public or private sale or may be issued to persons furnishing materials and services constituting a part of the cost of the acquisition, construction, reconstruction, repair, extension or improvement of a project. The governing body of the entity may retire any notes from the revenues derived from the project or from other moneys of the entity which are lawfully available for that purpose or from a combination of each, in lieu of retiring them by means of bond proceeds.

[C71, 73, 75, 77, 79, 81, S81, §28F.9; 81 Acts, ch 31, §4]

28F.10 Refunding bonds.

Refunding bonds may be issued by an entity in a principal amount sufficient to provide funds for the payment (including premium, if any) of bonds issued by said entity pursuant to the provisions of this chapter to be refunded thereby and the interest thereon and in addition for the payment of all expenses incident to the calling, retiring, or paying of such outstanding bonds to be refunded, such refunding bonds may also finance the construction of a project or projects authorized by this chapter or the improvement, addition, betterment or extension of an existing project or projects so authorized. Said refunding bonds shall not be issued to refund the principal of and interest on any bonds to be refunded unless such bonds mature or are redeemable under their terms within ten years from the date of delivery of the refunding bonds. The proceeds of said refunding bonds to be used for the payment of the principal of, interest on and redemption premiums, if any, on said bonds to be refunded which will not be due and payable immediately shall be deposited in trust for the sole purpose of making such payments in a bank or trust company within the state. Any moneys in such trust fund, prior to the date such funds will be needed for the payment of such principal of, interest on and redemption premiums, if any, of such outstanding bonds to be refunded, may be invested or reinvested as provided in the resolution authorizing said refunding bonds. Refunding bonds shall be issued in the same manner and detail as revenue bonds herein authorized.

[C71, 73, 75, 77, 79, 81, §28F.10]

28F.11 Eminent domain.

Any public agency participating in an agreement authorizing the joint exercise of governmental powers pursuant to this chapter may exercise its power of eminent domain to acquire interests in property, under provisions of law then in effect and applicable to the public agency, for the use of the entity created to carry out the agreement, provided that the power of eminent domain is not used to acquire interests in property which is part of a system of facilities in existence, under construction, or planned, for the generation, transmission or sale of electric power. Any interests in property acquired are acquired for a public purpose of the condemning public agency, and the payment of the costs of the acquisition may be made pursuant to the agreement or to any separate agreement between the public agency and the entity or the other public agencies participating in the entity or any of them. Upon payment of costs, any property acquired is the property of the entity.

[C71, 73, 75, 77, 79, 81, S81, §28F.11; 81 Acts, ch 31, §5]

28F.12 Additional powers of the entity.

If the entity is comprised solely of cities, counties, and sanitary districts established under chapter 358 or any combination thereof, the entity shall have in addition to all the powers enumerated in this chapter, the powers which a county has with respect to solid waste disposal projects.

[C77, 79, 81, S81, §28F.12; 81 Acts, ch 117, §1003]

See §331.381, 331.441, 331.461

28F.13 Laws applicable.

An entity created to carry out an agreement authorizing the joint exercise of the powers enumerated in section 28F.1 with regard to electric power facilities shall be subject to the provisions of chapter 21, relating to open meetings, chapter 22, relating to the examination of public records, chapter 97B, relating to the Iowa public employees' retirement system and chapter 476A, relating to electric power generators.

[S81, §28F.13; 81 Acts, ch 31, §6]

28F.14 Hydroelectric utilities — eminent domain — contracts.

As used in this section, *"hydroelectric utility"* means an entity comprised of any number of public agencies or entities created to carry out an agreement authorizing the joint exercise of any of the governmental powers enumerated in section 28F.1, which owns or operates or proposes to own or operate all or part of a hydroelectric power facility or the capacity or use of a hydroelectric power facility.

In addition to other powers, a hydroelectric utility having complied with chapter 469A shall have the power of eminent domain for the purposes of constructing a hydroelectric utility but before exercising the power it shall first exhaust all efforts to secure the necessary voluntary easements. The hydroelectric utility shall comply with provisions of law then in effect, including section 28F.11, and applicable to those public agencies comprising the hydroelectric utility in connection with the construction of hydroelectric power facilities.

In addition to other powers, the governing body of a hydroelectric utility may purchase all or part of any power plant and may purchase all or part of the capacity, power or energy associated with any power plant owned by, or contract to sell all or part of the hydroelectric utility's power and energy including any surplus to, a public agency or private agency or an entity created to carry out an agreement authorizing the joint exercise of any of the governmental powers enumerated in section 28F.1. Any such entity, public agency, or hydroelectric utility may enter into contracts for the purchase or supply, from any source, of all or a portion of the capacity, power and energy requirements of the entity, public agency or hydroelectric utility on terms and conditions as the governing body of the entity, public agency or hydroelectric utility deems fit, subject to section 476.43. The terms may include provisions for the payment for capacity or output of a facility whether the facility is completed or operating, and for establishing the rights and obligations of all parties to the contract in the event of default. Payments made by an entity, public agency or hydroelectric utility under contracts constitute operating expenses of the entity, public agency or hydroelectric utility payable from the revenues derived from the electric power plant and systems of the entity, public agency or hydroelectric utility.

85 Acts, ch 78, §1

CHAPTER 28G

INTERGOVERNMENTAL SOLID WASTE SERVICES

28G.1 Purpose.
28G.2 Definitions.
28G.3 Creation of public service monopoly.
28G.4 Powers of entity.
28G.5 Revenue bonds.
28G.6 Annual report.
28G.7 Obligations not excused.
28G.8 Limitation on powers.
28G.9 Nonapplicability.

28G.1 Purpose.

The purpose of this chapter is to allow two or more local governments to form a public service monopoly when they find that a public service monopoly is an effective means to protect the public health and welfare, and the environment through any of the following:

1. Adequate solid waste collection, transportation, storage and disposal practices which are the only effective means of allowing the construction and utilization of a resource recovery facility for the recycling of solid waste for use as an energy source.

2. The implementation of other solid waste management projects, such as source reduction and recycling, which are part of an approved comprehensive plan required under section 455B.306, and if the formation of a public service monopoly is the only effective means of accomplishing solid waste reduction and recycling. The public service monopoly shall utilize private recycling industries in the service area when possible.

84 Acts, ch 1039, §1; 92 Acts, ch 1215, §1

28G.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Private agency"* means a private agency as defined in section 28E.2.

2. *"Recyclable materials"* means those materials separated by a person from solid waste incidental to the collection of the solid waste for utilization as raw materials to be manufactured into a new product.

3. *"Solid waste management project"* means a project which is part of the comprehensive plan, approved by the director of the department of natural resources pursuant to section 455B.306, to establish and implement the comprehensive solid waste reduction program of a city or county.

84 Acts, ch 1039, §2; 92 Acts, ch 1215, §2

28G.3 Creation of public service monopoly.

If two or more local governments find that the only effective means of allowing the construction and utilization of a resource recovery facility for

the recycling of solid waste for use as an energy source or to implement solid waste management projects as defined in section 28G.2 is to create a public service monopoly, a legal entity shall be created pursuant to chapter 28E by agreement of two or more local governments to displace competition with regulation and monopoly of a public service for the collection, transportation, storage, and disposal, or diversion of solid waste to the extent reasonably necessary to carry out these functions. The agreement is subject to approval of the environmental protection commission before it becomes effective.

84 Acts, ch 1039, §3; 89 Acts, ch 83, §14; 92 Acts, ch 1215, §3

28G.4 Powers of entity.

A legal entity created pursuant to chapter 28E and operating under this chapter has all the rights, powers, privileges, and immunities of local governments relating to the purpose for which it is created. A legal entity operating under this chapter may:

1. Engage in, manage, own, operate, and regulate the collection, transportation, storage, and disposal or diversion of solid waste including, but not limited to, the designation of a specific facility which must be used for the collection, transportation, storage, and disposal or diversion of solid waste within its jurisdiction or geographic area.

2. Grant permits, licenses, or franchises, exclusive or nonexclusive, or a combination of exclusive or nonexclusive franchises, to solid waste management services.

3. Enter into contracts for construction and may contract, license, or permit the construction of resource recovery facilities for recycling of solid waste for an energy source or of facilities necessary to implement solid waste management projects as defined in section 28G.2.

4. Require the use of the resource recovery facilities or of facilities necessary to implement solid waste management projects as defined in section 28G.2, by any person who can be effectively served by the facilities. However, this subsection does not prohibit a private agency from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining, or commercial activities on land owned or leased by it if the action does not violate any statute of this state or rules adopted by the environmental protection commission or local boards of health or local ordinances.

84 Acts, ch 1039, §4; 92 Acts, ch 1215, §4

28G.5 Revenue bonds.

A legal entity operating under this chapter may issue bonds as provided under chapter 28F for the planning, design, acquisition, construction, reconstruction, improvement, equipping, and furnishing of a solid waste management project as authorized under this chapter.

84 Acts, ch 1039, §5

28G.6 Annual report.

A legal entity created pursuant to chapter 28E and operating under this chapter shall report annually to the department of natural resources. The report shall include information on permits, licenses or franchises granted by the legal entity, contracts entered into, and other information requested by the environmental protection commission.

84 Acts, ch 1039, §6; 88 Acts, ch 1134, §17

28G.7 Obligations not excused.

This chapter does not exempt a legal entity from obtaining any approval, permit or license otherwise required by ordinance or state law.

84 Acts, ch 1039, §7

28G.8 Limitation on powers.

A legal entity operating under this chapter shall not require the incineration of recyclable materials.

84 Acts, ch 1039, §8

28G.9 Nonapplicability.

Chapter 553 does not apply to a legal entity operating under this chapter.

84 Acts, ch 1039, §9

CHAPTER 28H

COUNCILS OF GOVERNMENTS

28H.1 Councils of governments established.
28H.2 Work program — coordination.
28H.3 Duties.
28H.4 Membership — liability of members.
28H.5 Agreements with other agencies.

28H.1 Councils of governments established.

For purposes of this chapter, a council of governments includes the following areas established by executive order number 11,1969 or a chapter 28E agreement:

1. Upper explorerland regional planning commission serving Allamakee, Clayton, Fayette, Howard, and Winneshiek counties.
2. North Iowa area council of governments serving Cerro Gordo, Floyd, Franklin, Hancock, Kossuth, Mitchell, Winnebago, and Worth counties.
3. Northwest Iowa planning and development commission serving Buena Vista, Clay, Dickinson, Emmet, Lyon, O'Brien, Osceola, Palo Alto, and Sioux counties.
4. Siouxland interstate metropolitan planning council serving Ida, Monona, Plymouth, Woodbury, and Cherokee counties.
5. MIDAS council of governments serving Calhoun, Hamilton, Humboldt, Pocahontas, Webster, and Wright counties.
6. Region six planning commission serving Hardin, Poweshiek, Tama, and Marshall counties.
7. Iowa northland regional council of governments serving Black Hawk, Bremer, Buchanan, Butler, Chickasaw, and Grundy counties.
8. East central intergovernmental association serving Cedar, Clinton, Delaware, Dubuque, and Jackson counties.
9. Bi-state metropolitan planning commission serving Scott and Muscatine counties.
10. East central Iowa council of governments serving Benton, Iowa, Johnson, Jones, Linn, and Washington counties.
11. Region twelve council of governments serving Audubon, Carroll, Crawford, Greene, Guthrie, and Sac counties.
12. Southwest Iowa planning council serving Cass, Fremont, Harrison, Montgomery, Page, and Shelby counties.
13. Southern Iowa council of governments serving Adair, Adams, Clarke, Decatur, Madison, Ringgold, Taylor, and Union counties.
14. Area fifteen regional planning commission serving Appanoose, Davis, Jefferson, Keokuk, Lucas, Mahaska, Monroe, Van Buren, Wapello, and Wayne counties.
15. Southeast Iowa regional planning commission serving Des Moines, Henry, Lee, and Louisa counties.
16. Metropolitan area planning agency serving Mills and Pottawattamie counties.

90 Acts, ch 1157, §1; 90 Acts, ch 1262, §40

Boone, Dallas, Jasper, Marion, Polk, Story, and Warren counties, or combinations of these, may form councils of governments or associate with any existing councils of governments; 90 Acts, ch 1157, §6; 90 Acts, ch 1262, §41

28H.2 Work program — coordination.

1. Each council of governments shall adopt each year a work program to establish guidelines for delivery of services and activities to communities in the area. The work program shall include but is not limited to the following:

a. Cooperation in delivery of community development programs and services to units of local government.

b. Cooperation with the regional coordinating council in the development of plans and programs for community development.

2. The councils of governments shall elect annually a representative to serve on the advisory council established by the department of economic development to provide input on the review and update of the state's economic development strategic plan.

3. The councils of governments shall receive information and recommendations on issues of regional economic importance from the regional coordinating council for possible use in the regional community development plan.

90 Acts, ch 1157, §2

28H.3 Duties.

A council of governments shall perform, but is not limited to, the following duties:

1. Provide planning services or technical assistance to the region defined in section 28H.1.
2. Coordinate regional community development planning to assist community development and planning.
3. Coordinate delivery of community development programs and services with local, state, and federal programs and activities.
4. Prepare a regional community development plan which shall be updated annually. The plan shall include but is not limited to the following:

a. Inventory and needs assessment of regional infrastructure.

b. Labor supply.

c. Cultural and fine arts resources.

d. Housing.

e. Primary health care services.

f. Natural resources, conservation, and recreational facilities.

g. Region-wide development opportunities.

90 Acts, ch 1157, §3

28H.4 Membership — liability of members.

1. Membership, appointments, and terms of office shall be governed by bylaws adopted by each council of governments.

2. A director, officer, employee, member, trustee, or volunteer of a council of governments is not liable for the debts or obligations of the council of governments. A director, officer, employee, member, trustee, or volunteer is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the

law, or for a transaction for which the person derives an improper personal benefit.

90 Acts, ch 1157, §4

28H.5 Agreements with other agencies.

A council of governments shall be considered a public agency for the purpose of chapter 28E. A council of governments may enter into an agreement under chapter 28E with another council of governments, community college, or other public agency for the purpose of community development and planning.

90 Acts, ch 1157, §5

CHAPTER 28I

METROPOLITAN OR REGIONAL PLANNING COMMISSIONS

28I.1 Authority of governing bodies — joint commission.
28I.2 Membership.
28I.3 Organization.
28I.4 Powers and duties.
28I.5 Plans distributed.
28I.6 Filing documents with commission.
28I.7 Construction of provisions.
28I.8 Contracts for planning.

28I.1 Authority of governing bodies — joint commission.

The governing bodies of two or more adjoining cities, independently or together with the governing body or bodies of the county or counties within which such cities are located, or the governing bodies of two or more adjoining counties, or a county and its major city or cities, or the governing bodies of one or more counties together with the governing bodies of one or more cities adjoining such county or counties, or any of the above together with a school district, benefited water district, benefited fire district, sanitary district or any other similar district which may be formed under an Act of the legislature may co-operate in the creation of a joint planning commission which may be designated to be a regional or metropolitan planning commission, as agreed among the governing bodies. The governing bodies of cities, counties, school districts or other governmental units may co-operate with the governing bodies of the cities and counties or other authorized governing bodies of any adjoining state or states in the creation of such a joint planning commission where such co-operation has been authorized by law by the adjoining state or states.

The joint planning commission shall be separate and apart from the governmental units creating it, may sue and be sued, contract for the purchase and sale of real and personal property necessary for its purposes, and shall be a juristic entity as the term is used in section 97C.2, subsection 6.

[C66, 71, 73, 75, 77, 79, 81, §473A.1]

C91, §28I.1

28I.2 Membership.

The commission shall have not less than five members, appointed by the governing bodies of the area served by the commission. A majority of the members of the commission may be citizens who hold no other public office or position except appointive membership on a city plan commission or other planning commission, board or agency. Citizen members shall be appointed for overlapping terms of not less than three nor more than five years or thereafter until their successors are appointed. The appointing governing bodies shall determine the amount of compensation, if any, to be paid to the members of a commission. Any vacancy in the membership of a commission shall be filled for the unexpired term in the same manner as the initial appointment. The governing bodies shall have authority to remove any member for cause stated in writing and after a public hearing.

[C66, 71, 73, 75, 77, 79, 81, §473A.2]

C91, §28I.2

28I.3 Organization.

The joint planning commission shall elect one of its members as chairperson who shall serve for one year or until the chairperson is re-elected or the chairperson's successor is elected. The commission shall appoint a secretary who may be an officer or an employee of a governing body or of the commission. The members of the commission shall meet not less than four times a year at the call of the chairperson and at such other times as the chairperson or the members of the commission shall determine, shall adopt rules for the transaction of business, and shall keep a record of their resolutions, transactions, findings and determinations, which record shall be a public record. The commission may employ such employees and staff as it may deem necessary for its work, including a director of planning and consultants. In the

performance of its duties, the commission may co-operate with, contract with, and accept and expend funds from federal, state, or local agencies, public or semipublic agencies, or private individuals or corporations, and may carry out such co-operative undertakings and contract. It may enter into other contracts and make expenditures for the purchase of required equipment and supplies, and exercise all other powers necessary to carry out the purposes of this chapter. The expenditures of the commission, exclusive of gifts or grants to the commission or its contract receipts, shall be within the amounts appropriated or provided to the commission by the governing bodies of the area served by the commission, who are empowered to determine, agree upon, and appropriate funds for the payment of the expenses of the commission of their respective shares thereof. The governing bodies of the area served by the commission shall co-operate with the commission and may aid the commission by furnishing staff, services and property.

[C66, 71, 73, 75, 77, 79, 81, §473A.3]
C91, §28I.3

28I.4 Powers and duties.

The commission shall have the power and duty to make comprehensive studies and plans for the development of the area it serves which will guide the unified development of the area and which will eliminate planning duplication and promote economy and efficiency in the co-ordinated development of the area and the general welfare, convenience, safety, and prosperity of its people. The plan or plans collectively shall be known as the regional or metropolitan development plan. The plans for the development of the area may include, but shall not be limited to, recommendations with respect to existing and proposed highways, bridges, airports, streets, parks and recreational areas, schools and public institutions and public utilities, public open spaces, and sites for public buildings and structures; districts for residence, business, industry, recreation, agriculture, and forestry; water supply, sanitation, drainage, protection against floods and other disasters; areas for housing developments, slum clearance and urban renewal and redevelopment; location of private and public utilities, including but not limited to sewerage and water supply systems; and such other recommendations concerning current and impending problems as may affect the area served by the commission. Time and priority schedules and cost estimates for the accomplishment of the recommendations may also be included in the plans. The plans shall be based upon and include appropriate studies of the location and extent of present and anticipated populations; social, physical, and economic resources, problems and trends; and governmental conditions and trends. The commission is also authorized to make surveys, land-use studies, and urban renewal plans, provide technical services and other planning work for the area it serves and for cities, counties, and other political subdivisions in the area. A plan or plans of the commission may be adopted, added to, and changed from time to time by a majority vote of the planning commission. The plan or plans may in whole or in part be adopted by the governing bodies of the co-operating cities and counties as the general plans of such cities and counties. The commission may also assist the governing bodies and other public authorities or agencies within the area it serves in carrying out any regional plan or plans, and assist any planning commission, board or agency of the cities and counties and political subdivisions in the preparation or effectuation of local plans and planning consistent with the program of the commission. The commission may co-operate and confer, as far as possible, with planning agencies of other states or of regional groups of states adjoining its area.

A planning commission formed under the provisions of this chapter shall, upon designation as such by the governor, serve as a district, regional or metropolitan agency for comprehensive planning for its area for the purpose of carrying out the functions as defined for such an agency by federal, state and local laws and regulations.

[C66, 71, 73, 75, 77, 79, 81, §473A.4]
C91, §28I.4

28I.5 Plans distributed.

Copies of the plan or plans and amendments or revisions of a plan or plans prepared by a commission may be transmitted by the commission to the chief administrative officers, the legislative bodies, the planning commissions, boards or agencies of the counties and cities, within its area, and to regional or metropolitan planning commissions established for adjoining areas. A commission may make copies of its plan or plans or parts of plans available for general distribution or sale, and may advise and supply information, as far as available, to persons and organizations who may request such advice and information and who are concerned with the area's development problems. It may also provide information to state and local agencies and to the public at large, in order to foster public awareness and understanding of the objectives of regional or metropolitan planning, and in order to stimulate public interest and participation in the orderly, integrated development of the area served by the commission.

[C66, 71, 73, 75, 77, 79, 81, §473A.5]
C91, §28I.5

28I.6 Filing documents with commission.

To facilitate effective and harmonious planning of the region or metropolitan area, all governing bodies in the area served by a commission, and all county and city planning commissions, boards or agencies in the area may file with the commission,

for its information, all county or city plans, zoning ordinances, official maps, building codes, subdivision regulations, or amendments or revisions of them, as well as copies of their regular and special reports dealing in whole or in part with planning matters. County or city governing bodies, or county or city local planning commissions, boards or agencies may also submit proposals to a commission for such plans, ordinances, maps, codes, regulations, amendments or revisions prior to their adoption, in order to afford an opportunity to the commission to study such proposals and to render advice thereon.

[C66, 71, 73, 75, 77, 79, 81, §473A.6]
C91, §28I.6

28I.7 Construction of provisions.

Nothing in this chapter shall be construed to remove or limit the powers of the co-operating cities, counties, school districts, benefited water districts, benefited fire districts, sanitary districts, or similar districts as provided by state law. All legislative power with respect to zoning and other planning legislation shall remain with the governing body of the co-operative cities and counties. Each participating city or county may continue to have its own planning commission or board but may under the joint agreement and in the interest of economy and efficiency and in the interest of uniform standards and procedures, request the metropolitan or regional planning commission to assume duties and functions of local planning agencies in whole or in part. The metropolitan or regional planning commission shall have the duty and function of promoting public interest and understanding of the economic and social necessity for long-term co-ordinated planning for the metropolitan or regional area, but its official recommendations shall be made to the governing bodies of the co-operating cities, counties, school districts, benefited water districts, benefited fire districts, sanitary districts, or similar districts.

[C66, 71, 73, 75, 77, 79, 81, §473A.7]
C91, §28I.7

28I.8 Contracts for planning.

A metropolitan planning commission may contract with professional consultants, the Iowa department of economic development or the federal government, for local planning assistance.

[C62, 66, 71, 73, §373.21; C75, 77, 79, 81, §473A.8]
C91, §28I.8

CHAPTER 28J

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Repealed by its own terms effective July 1, 2002;
96 Acts, ch 1142, §8

CHAPTER 28K

MID-AMERICA PORT COMMISSION

SUBCHAPTER I

MID-AMERICA PORT COMMISSION AGREEMENT

28K.1 Mid-America port commission agreement.

SUBCHAPTER II

MID-AMERICA PORT COMMISSION ACT

28K.2 Citation.
28K.3 Jurisdiction.
28K.4 Authority.
28K.5 County election of port commission members.

SUBCHAPTER I

MID-AMERICA PORT COMMISSION AGREEMENT

28K.1 Mid-America port commission agreement.

The mid-America port commission agreement is entered into and enacted into law with the state of Illinois and the state of Missouri if those states legally join the agreement, in the form substantially as follows:

AGREEMENT

This agreement shall be known as and may be cited as the *"Mid-America Port Commission Agreement"*. This agreement allows for the states

of Missouri and Illinois to join the effort of the state of Iowa for developing the mid-America port commission.

PORT COMMISSION

There is created a mid-America port commission to be governed by a nine-member port commission. The governors of Iowa, Illinois, and Missouri shall appoint one member to the port commission in accordance with the laws of the respective state. Each state shall also be represented by two members elected through the county governance in the geographical jurisdiction of the port commission. The port commission members shall hold office for a period of six years. The port commission members shall elect a chairperson of the port commission after all the members are selected. The position of chairperson shall rotate among the Iowa, Illinois, and Missouri members for two-year periods. A member of the port commission shall not serve more than two terms.

POWERS OF COMMISSION

The port commission shall have the power to acquire, purchase, install, lease, construct, own, hold, maintain, equip, use, control, or operate ports, harbors, waterways, channels, wharves, piers, docks, quays, elevators, tipples, compresses, bulk loading and unloading facilities, warehouses, dry docks, marine support railways, tugboats, ships, vessels, shipyards, shipbuilding facilities, machinery and equipment, dredges, or any other facilities required or incidental to the construction, outfitting, dry docking, or repair of ships or vessels, or water, air, or rail terminals, or roadways or approaches thereto, or other structures or facilities necessary for the convenient use of the same in the aid of commerce, including the dredging, deepening, extending, widening, or enlarging of any ports, harbors, rivers, channels, or waterways, the damming of inland waterways, the establishment of a water basin, the acquisition and development of industrial sites, or the reclaiming of submerged lands.

98 Acts, ch 1092, §1

SUBCHAPTER II

MID-AMERICA PORT COMMISSION ACT

28K.2 Citation.

This subchapter shall be known and may be cited as the *"Mid-America Port Commission Act"*.

98 Acts, ch 1092, §2

28K.3 Jurisdiction.

The Iowa counties which shall be included in the jurisdiction of the mid-America port commission agreement are Jefferson, Van Buren, Wapello, Lee, Henry, and Des Moines counties.

98 Acts, ch 1092, §3; 99 Acts, ch 27, §1

28K.4 Authority.

Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with the mid-America port commission according to the powers delegated to the commission under this chapter.

A public agency of this state may enter into a chapter 28E agreement with the commission to advance the purposes of the commission.

98 Acts, ch 1092, §4

28K.5 County election of port commission members.

The chairpersons of the Jefferson, Van Buren, Wapello, Lee, Henry, and Des Moines county boards of supervisors shall jointly elect two members to serve on the port commission.

98 Acts, ch 1092, §5; 99 Acts, ch 27, §2

CHAPTER 28L

STATE INTERAGENCY MISSOURI RIVER AUTHORITY

28L.1 State interagency Missouri river authority created — duties.

28L.1 State interagency Missouri river authority created — duties.

1. A state interagency Missouri river authority is created. The members of the authority shall include the governor or the governor's designee, the secretary of agriculture or the secretary's designee, the chairperson of the utilities board or the chairperson's designee, and the directors of the department of natural resources, the state department of transportation, and the department of eco-

nomic development or the directors' designees. The governor shall serve as chairperson. The director of the department of natural resources shall serve as the coordinator of the authority's activities and shall serve as chairperson in the absence of the governor.

2. The authority shall be responsible for representing the interests of this state with regard to its membership in the Missouri river basin association and to promote the management of the Missouri river in a manner that does not negatively impact landowners along the river or negatively impact the state's economy. The Missouri river basin association is an interstate association of government representatives formed to seek consensus solutions to issues impacting the Missouri river basin.

3. The state interagency Missouri river authority shall not vote to approve or disapprove a substantive proposal or action being considered by the Missouri river basin association without the agreement of the directors of all four state departments and the chairperson of the utilities board who are members of the authority. If a substantive proposal or action considered by the association is not approved or disapproved by all four directors and the chairperson of the utilities board, the state shall abstain from voting on the proposal or action.

4. The state interagency Missouri river authority shall meet regularly with stakeholder groups in this state to receive their recommendations before substantive proposals or actions are voted upon or to receive policy positions to submit to the Missouri river basin association.

2002 Acts, ch 1009, §1
NEW section

SUBTITLE 11

DEFENSE

CHAPTER 29

DEPARTMENT OF PUBLIC DEFENSE

29.1 Department of public defense.
29.2 Military division.
29.2A Airport fire fighters — maximum age.
29.3 Emergency management division.
29.4 Veterans affairs division. Repealed by 92 Acts, ch 1140, §38.

29.1 Department of public defense.
The department of public defense is composed of the military division and the emergency management division. The adjutant general is the director of the department of public defense and the budget and personnel of all of the divisions are subject to the approval of the adjutant general. The Iowa emergency response commission established by section 30.2 is attached to the department of public defense for organizational purposes.
[C66, 71, 73, 75, 77, 79, 81, §29.1]
86 Acts, ch 1245, §1701; 89 Acts, ch 204, §1; 92 Acts, ch 1139, §20; 92 Acts, ch 1140, §3
Appointment, §29A.11

29.2 Military division.
There shall be within the department of public defense, as a division thereof, a state military agency which shall be styled and known as the *"military division, department of public defense"*, with the adjutant general as the administrator thereof. The term military division shall include the office of the adjutant general and all functions, responsibilities, powers and duties of the adjutant general of the state of Iowa and the military forces of the state of Iowa as provided in the laws of the state.
[C66, 71, 73, 75, 77, 79, 81, §29.2]

29.2A Airport fire fighters — maximum age.
The maximum age for a person to be employed as an airport fire fighter by the military division of the department of public defense is sixty-five years of age.
98 Acts, ch 1183, §106

29.3 Emergency management division.
There shall be within the department of public defense of the state government, as a division of the department, an office of emergency management which shall be known as the *"emergency management division, department of public defense"*, with an administrator of the division who shall be the head of the division. The adjutant general, as the director of the department of public defense, shall exercise supervisory authority over the division.
[C66, 71, 73, 75, 77, 79, 81, §29.3]
92 Acts, ch 1139, §21
See chapter 29C

29.4 Veterans affairs division. Repealed by 92 Acts, ch 1140, § 38. See chapter 35A.

CHAPTER 29A

MILITARY CODE

SUBCHAPTER I

GENERAL PROVISIONS

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29A.5 Government, discipline and uniforming.
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29A.7 Commander in chief.
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29A.9 Training. Repealed by 2002 Acts, ch 1117, §22, 23.
29A.10 Inspections.
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29A.33 Per capita allowance to unit.
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29A.55 Insurance.
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29A.57 Armory board.
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SUBCHAPTER I

GENERAL PROVISIONS

29A.1 Definitions.

The following words, terms, and phrases when used in this chapter shall have the respective meanings herein set forth:

1. *"Active state service"* means training or operational duty or other service authorized and performed under the provisions of 32 U.S.C. or other federal law or regulation as part of the Iowa army national guard or Iowa air national guard and paid for with federal funds.

2. *"Facility"* means the land, and the buildings and other improvements on the land which are the responsibility and property of the Iowa national guard.

3. *"Federal service"* means duty authorized and performed under the provisions of 10 U.S.C. as part of the active military forces of the United States or the army national guard of the United States or the air national guard of the United States.

4. *"Homeland defense"* means the protection of state territory, population, and critical infrastructure and assets against attacks from within or without the state.

5. *"Law and regulations"* means and includes state and federal law and regulations.

6. *"Militia"* shall mean the forces provided for in the Constitution of Iowa.

7. *"National guard"* means the Iowa units, detachments and organizations of the army national guard of the United States, the air national guard of the United States, the army national guard, and the air national guard as those forces are defined in 10 U.S.C. § 101.

8. *"Officer"* shall mean and include commissioned officers and warrant officers.

9. *"On duty"* means training, including unit training assemblies, and other training, operational duty, and other service which may be required under state or federal law, regulations, or orders, and the necessary travel of an officer or enlisted person to the place of performance and return home after performance of that duty, but does not include federal service. A member of the national guard shall be considered to be on duty when called to testify about an incident which the member observed or was involved in while that member was on duty.

10. *"Organization"* means a command composed of two or more subordinate units and includes the state headquarters for both the army and the air national guard, one or more divisions, wings, brigades, groups, battalions, squadrons or flights as defined by an appropriate table of organization, a table of distribution or unit personnel document.

11. *"State active duty"* means duty authorized and performed under section 29A.8 and paid for with state funds. *"State active duty"* also includes serving as the adjutant general, a deputy adjutant general, or the state quartermaster.

12. *"Unit"* means a military element of an organization whose structure is prescribed by competent authority such as a table of organization, table of distribution, or unit personnel document. For the purposes of this chapter, a unit shall include one or more companies, flights, troops, batteries or detachments and the state officer candidate school.

13. Except when otherwise expressly defined herein military words, terms and phrases shall have the meaning commonly ascribed to them in the military profession.

[C97, §2168; S13, §2215-f2; C24, 27, 31, §433; C35, §467-f2; C39, §**467.02;** C46, 50, §29.2; C54, 58, 62, §29.1; C66, 71, 73, 75, 77, 79, 81, §29A.1; 81 Acts, ch 14, §18]

2000 Acts, ch 1020, §1, 6; 2001 Acts, 2nd Ex, ch 1, §1 – 6, 28; 2002 Acts, ch 1117, §2, 3, 23

Subsections 9 and 11 amended

29A.2 Army national guard and air national guard created.

There is hereby created the Iowa national guard to consist of the Iowa army national guard and the Iowa air national guard. The Iowa army national guard shall be composed of such organized land forces, individual officers, state headquarters, and detachments, as may be prescribed from time to time by proper authority. The Iowa air national guard shall be composed of such organized air forces, individual officers, state headquarters, and detachments, as may be prescribed from time to time by proper authority.

[C51, §621; R60, §1002; C73, §1039; C97, §2167; S13, §2215-f1; C24, 27, 31, §432; C35, §467-f1; C39, §**467.01;** C46, 50, §29.1; C54, 58, 62, §29.2; C66, 71, 73, 75, 77, 79, 81, §29A.2]

29A.3 Units of guard.

The Iowa units, detachments, and organizations of the national guard of the United States and the air national guard of the United States shall consist of such units, detachments, and organizations, as may be specified by the secretary of defense with the approval of the governor, in accordance with law and regulations.

[C73, §1045; C97, §2168; SS15, §2215-f4; C24, 27, 31, §435; C35, §467-f7; C39, §**467.07;** C46, 50, §29.7; C54, 58, 62, §29.3; C66, 71, 73, 75, 77, 79, 81, §29A.3]

29A.4 Organization — armament — equipment and discipline.

The organization, armament, equipment and discipline of the national guard, and the militia when called into state active duty, except as hereinafter specifically provided, shall be the same as

that which is now or may be hereafter prescribed under the provisions of federal law and regulations as to those requirements which are mandatory therein, but as to those things which are optional therein they shall become effective when an order or regulation to that effect shall have been promulgated by the governor.

[C51, §623 – 631; R60, §1004 – 1015; C73, §1038 – 1057; C97, §2182, 2186; S13, §2215-f3, -f8, -f9; C24, 27, 31, §434, 439, 440; C35, §467-f6, -f9, -f10; C39, §**467.06, 467.09, 467.10;** C46, 50, §29.6, 29.9, 29.10; C54, 58, 62, §29.4; C66, 71, 73, 75, 77, 79, 81, §29A.4]

2001 Acts, 2nd Ex, ch 1, §7, 28

29A.5 Government, discipline and uniforming.

The national guard shall be subject to the provisions of federal law and regulations relating to the government, discipline and uniforming thereof; and to the provisions of this chapter and to regulations published pursuant hereto.

[C51, §631; R60, §1012; C73, §1044; C97, §2205; S13, §2215-f6, -f7; C24, 27, 31, §437, 438; C35, §467-f8; C39, §**467.08;** C46, 50, §29.8; C54, 58, 62, §29.5; C66, 71, 73, 75, 77, 79, 81, §29A.5]

29A.6 Military forces of state.

The military forces of the state of Iowa shall consist of the army national guard, the air national guard, and the militia.

[C51, §621; R60, §1002; C73, §1039; C97, §2167; S13, §2215-f1; C24, 27, 31, §432; C35, §467-f1; C39, §**467.01;** C46, 50, §29.1; C54, 58, 62, §29.6; C66, 71, 73, 75, 77, 79, 81, §29A.6]

2001 Acts, 2nd Ex, ch 1, §8, 28

29A.7 Commander in chief.

1. The governor is the commander in chief of the military forces, except when they are in federal service. The governor may employ the military forces of the state for the defense of the state, to provide assistance to civil authorities in emergencies resulting from disasters or public disorders as defined in section 29C.2, including homeland security and defense duties, and for parades and ceremonies of a civic nature.

2. The governor shall provide for the participation of the national guard in training at the times and places as necessary to ensure readiness for public defense or federal service.

3. If circumstances necessitate the establishment of a military district under martial law and the general assembly is not convened, the district shall be established only after the governor has issued a proclamation convening an extraordinary session of the general assembly.

[C51, §623; R60, §1004; C73, §1051; C97, §2169, 2170; S13, §2215-f19; C24, 27, 31, §449; C35, §467-f26, -f28; C39, §**467.26, 467.28;** C46, 50, §29.26, 29.28; C54, 58, 62, §29.7; C66, 71, 73, 75, 77, 79, 81, §29A.7]

2001 Acts, 2nd Ex, ch 1, §9, 28; 2002 Acts, ch 1117, §4, 23

Constitutional provisions, Art. IV, §7
Section amended

29A.8 State active duty.

1. The governor may order into state active duty the military forces of the state, including retired members of the national guard, as the governor deems proper, under one or more of the following circumstances:

a. In case of insurrection or invasion, or imminent danger of insurrection or invasion.

b. For the purpose of assisting the civil authorities of any political subdivision of the state in maintaining law and order in the subdivision in cases of breaches of the peace or imminent danger of breaches of the peace, if the law enforcement officers of the subdivision are unable to maintain law and order, and the civil authorities of the subdivision request the assistance.

c. For the purposes of providing support to civil authorities during emergencies resulting from disasters or public disorders and for performing homeland defense or homeland security duties.

d. For training, recruiting, escort duty, and duty at schools of instruction, as a student or instructor, including at the Iowa military academy.

e. To participate in parades and ceremonies of a civic nature.

f. For other purposes as the governor may deem necessary.

2. The governor may prescribe regulations and requirements for duties performed under this section.

[C51, §623; R60, §1004; C73, §1051; C97, §2169, 2170; S13, §2215-f19; C24, 27, 31, §449; C35, §467-f28, -f29; C39, §**467.28, 467.29;** C46, 50, §29.28, 29.29; C54, 58, 62, §29.7, 29.8; C66, 71, 73, 75, §29A.7, 29A.8; C77, 79, 81, §29A.8]

2001 Acts, 2nd Ex, ch 1, §10, 28; 2002 Acts, ch 1117, §5 – 8, 23

Subsection 1, unnumbered paragraph 1 amended
Subsection 1, paragraphs b and c amended
Subsection 1, NEW paragraphs d – f
Subsection 2 stricken and rewritten

29A.8A Active state service.

If federal funding and authorization exist for this purpose, the governor may order to active state service the military forces of the Iowa army national guard or Iowa air national guard as the governor may deem appropriate for the purposes of homeland security, homeland defense, or other duty. A state employee shall take either a full day's leave or eight hours of compensatory time on a day in which the state employee receives a full

day's pay from federal funds for national guard duty.

2001 Acts, 2nd Ex, ch 1, §11, 28; 2002 Acts, ch 1117, §9, 23

Section amended

29A.9 Training. Repealed by 2002 Acts, ch 1117, § 22, 23.

29A.10 Inspections.

The governor may order such inspections of the different organizations, units, and personnel of the national guard as the governor may deem proper and necessary.

The form and mode of inspection shall be prescribed by the adjutant general.

The governor may appoint an officer of the national guard to serve as special investigator for a period determined by the governor. Service as special investigator shall be state active duty. The special investigator shall report to and serve at the pleasure of the governor. The duty of special investigator shall be assigned as additional duty. The special investigator shall not be the person designated as inspector general pursuant to federal national guard bureau regulation.

[C73, §1049; C97, §2191; S13, §2215-f22; C24, 27, 31, §451; C35, §467-f52; C39, §**467.54;** C46, 50, §29.54; C54, 58, 62, §29.10; C66, 71, 73, 75, 77, 79, 81, §29A.10]

2001 Acts, 2nd Ex, ch 1, §13, 28

29A.11 Adjutant general — appointment and term.

There shall be an adjutant general of the state who shall be appointed and commissioned by the governor subject to confirmation by the senate and who shall serve at the pleasure of the governor. The rank of the adjutant general shall be at least that of brigadier general and the adjutant general shall hold office for a term of four years beginning and ending as provided in section 69.19. At the time of appointment the adjutant general shall be a federally recognized commissioned officer in the United States army or air force, the army or air national guard, the army or air national guard of the United States, or the United States army or air force reserve who has reached at least the grade of colonel and who is or is eligible to be federally recognized at the next higher rank.

[C73, §1054; C97, §2174; SS15, §2215-f14; C24, 27, 31, §445; C35, §467-f40; C39, §**467.42;** C46, 50, §29.42; C54, 58, 62, §29.11; C66, 71, 73, 75, 77, 79, 81, §29A.11]

2000 Acts, ch 1020, §2, 6; 2001 Acts, 2nd Ex, ch 1, §14, 28

Confirmation, see §2.32

29A.12 Powers and duties.

The adjutant general shall have command and control of the military division, and perform such duties as pertain to the office of the adjutant general under law and regulations, pursuant to the authority vested in the adjutant general by the governor. The adjutant general shall superintend the preparation of all letters and reports required by the United States from the state, and perform all the duties prescribed by law. The adjutant general shall have charge of the state military reservations, and all other property of the state kept or used for military purposes. The adjutant general shall cause an inventory to be taken at least once each year of all military stores, property and funds under the adjutant general's jurisdiction. In each year preceding a regular session of the general assembly the adjutant general shall prepare a detailed report of the transactions of that office, its expenses, and other matters required by the governor for the period since the last preceding report, and the governor may at any time require a similar report.

The adjutant general may enter into an agreement with the secretary of defense to operate the water plant at Camp Dodge for the use and benefit of the United States, and the state of Iowa upon terms and conditions as approved by the governor.

[C73, §1054, 1055; C97, §2175; SS15, §2215-f15; C24, 27, 31, §446, 446-c1, 447; C35, §467-f42; C39, §**467.44;** C46, 50, §29.44; C54, 58, 62, §29.12; C66, 71, 73, 75, 77, 79, 81, §29A.12]

29A.13 Appropriated funds.

Operating expenses for the national guard including the purchase of land, maintenance of facilities, improvement of state military reservations, installations, and weapons firing ranges owned or leased by the state of Iowa or the United States shall be paid from funds appropriated for the support and maintenance of the national guard. Claims for payment of such expenses shall be subject to the approval of the adjutant general. Upon approval of the adjutant general the claim shall be submitted to the director of revenue and finance in accordance with the procedures established by the director of revenue and finance under chapter 421.

Payment for personnel compensation and authorized benefits shall be approved by the adjutant general prior to submission to the director of revenue and finance for payment.

[S13, §2215-f41; C24, 27, 31, §466; C35, §467-f43; C39, §**467.45;** C46, 50, §29.45; C54, 58, 62, §29.13; C66, 71, 73, 75, 77, 79, 81, §29A.13]

29A.14 Leasing facilities.

1. The adjutant general may operate or lease any of the national guard facilities at Camp Dodge. Any income or revenue derived from the operation or leasing shall be deposited with the treasurer of state and credited to the national guard facilities improvement fund. The balance in the national guard facilities improvement fund is limited to a maximum of two million dollars. Any

amount exceeding the limit shall be credited to the general fund of the state.

2. A national guard facilities improvement fund is created in the state treasury. The proceeds of the fund are appropriated, and shall be used only for the construction, improvement, modification, maintenance or repair of national guard facilities. However, proceeds of the fund shall not be used for the construction of a new facility without the approval of the general assembly.

[C35, §467-f44; C39, §**467.46;** C46, 50, §29.46; C54, 58, 62, §29.14; C66, 71, 73, 75, 77, 79, 81, §29A.14; 81 Acts, ch 14, §19]

86 Acts, ch 1244, §12

29A.15 State awards and decorations.

The adjutant general, from the funds appropriated for the support and maintenance of the national guard, shall procure and issue to the members of the national guard merit or service badges or other appropriate awards for service under regulations and according to the design and pattern determined by the adjutant general. Members of the national guard who, by order of the president, serve in federal forces during national emergency, may count the period of that federal service toward the procurement of a service badge.

[S13, §2215-f34; C24, 27, 31, §462; C35, §467-f53; C39, §**467.55;** C46, 50, §29.55; C54, 58, 62, §29.15; C66, 71, 73, 75, 77, 79, 81, §29A.15]

29A.16 Deputy adjutants general.

1. The governor shall appoint a deputy adjutant general for the army national guard and a deputy adjutant general for the air national guard upon recommendation of the adjutant general. At the time of appointment, the deputy adjutants general shall be federally recognized officers in the national guard who have attained at least the rank of colonel and who are eligible for federal recognition at the next higher rank.

2. The deputy adjutants general shall have the rank as is consistent with federal law and regulations to and including the rank of brigadier general. The deputy adjutants general shall serve at the pleasure of the governor.

3. The deputy adjutants general shall serve in the office of the adjutant general and aid by performing such duties as the adjutant general may assign. In the absence or disability of the adjutant general, the senior deputy present for duty, based upon date of appointment under this section, shall perform the duties of that office as acting adjutant general.

4. The adjutant general may appoint a full-time staff within prescribed personnel authorization. Members of the staff who are not in state active duty status are authorized salaries with allowances as provided by law.

[C73, §1054; C97, §2174; SS15, §2215-f14; C24, 27, 31, §445; C35, §467-f41; C39, §**467.43;** C46, 50, §29.43; C54, 58, 62, §29.16; C66, 71, 73, 75, 77, 79, 81, §29A.16]

2000 Acts, ch 1020, §3, 6

29A.17 Governor's staff.

The military staff of the governor shall consist of the adjutant general, who shall be the chief of staff; the deputy adjutants general, who shall be the assistant chiefs of staff; and any aides, who shall be residents of the state, as the governor may appoint or detail from the armed forces of the state.

The aides appointed shall be commissioned at a rank not higher than the military rank of colonel, except that if a person holds or has held a higher rank in the armed forces of the state or nation the commission may issue for such higher rank.

[C73, §1054; C97, §2174; SS15, §2215-f14; C24, 27, 31, §445; C35, §467-f27; C39, §**467.27;** C46, 50, §29.27; C54, 58, 62, §29.17; C66, 71, 73, 75, 77, 79, 81, §29A.17]

2000 Acts, ch 1020, §4, 6; 2002 Acts, ch 1119, §121

Unnumbered paragraph 1 amended

29A.18 United States property and fiscal officer.

Subject to the approval of the secretary of the army and secretary of the air force, the governor shall detail through the national guard bureau a qualified commissioned officer of the national guard who is also a commissioned officer of the army or the air force of the United States to be the United States property and fiscal officer for Iowa. Subject to the approval of the governor, the adjutant general shall nominate a qualified commissioned officer for the detail to this position.

The United States property and fiscal officer for Iowa shall perform the duties provided by 32 U.S.C. § 708.

The governor may request the removal for cause of the United States property and fiscal officer for Iowa through the chief of the national guard bureau to the secretary of the army or air force.

[R60, §1013; C73, §1050; C97, §2190; S13, §2215-f12; C24, 27, 31, §443; C35, §467-f45; C39, §**467.47;** C46, 50, §29.47; C54, 58, 62, §29.18; C66, 71, 73, 75, 77, 79, 81, §29A.18]

29A.19 Quartermaster.

A present or retired commissioned officer of the national guard who has ten years' service in the Iowa army national guard or the Iowa air national guard and has attained the grade of a field officer shall be detailed to be the quartermaster and property officer of the state, who shall have charge of and be accountable for, under the adjutant general, all state military property. The quartermaster shall keep property returns and reports and give bond to the state of Iowa as the governor may direct.

[S13, §2215-f28; C24, 27, 31, §456; C35, §467-f18, -f46; C39, §**467.18, 467.48;** C46, 50, §29.18, 29.48; C54, 58, 62, §29.19; C66, 71, 73, 75, 77, 79, 81, §29A.19]

2002 Acts, ch 1117, §10, 23
Section amended

29A.20 Officers.

Officers of the national guard shall be selected from the classes of persons having the qualifications prescribed by federal law and regulations. They shall be appointed by the governor upon the recommendation of their superiors in the chain of command, provided that they shall have successfully passed such tests as to physical, moral, and professional fitness, as shall be prescribed by law and regulations. Each officer shall take an oath of office and shall hold office until the officer shall have attained the maximum age of retirement that is prescribed by federal law or regulations pertaining to officers of the armed forces of the United States, unless the officer's commission or warrant is sooner vacated by resignation, death or as hereinafter provided. In case the officer has no immediate superiors, within the state, in the chain of command, the officer shall be appointed, as above provided, upon the recommendation of the adjutant general. A commission shall designate the arm or branch of service in which the officer is commissioned. Provided, however, that no person shall be appointed a commissioned or warrant officer who has not reached the person's eighteenth birthday at or prior to the time of such appointment.

[C51, §624, 626 – 628; R60, §1005, 1007 – 1009; C73, §1047, 1048; C97, §2176 – 2180; S13, §2215-f10; C24, 27, 31, §441; C35, §467-f11; C39, §**467.11;** C46, 50, §29.11; C54, 58, 62, §29.20; C66, 71, 73, 75, 77, 79, 81, §29A.20]

29A.21 Powers and duties.

In addition to the powers and duties prescribed in this chapter all officers of the national guard shall have the same powers and perform like military duties as officers of similar rank and position in the armed forces of the United States insofar as may be authorized by law. Officers are authorized to administer oaths in all matters connected with the service.

[C35, §467-f16; C39, §**467.16;** C46, 50, §29.16; C54, 58, 62, §29.21; C66, 71, 73, 75, 77, 79, 81, §29A.21]

29A.22 Fitness determined — vacation of commissions.

The moral character, capacity and general fitness for the service of any national guard officer may be determined at any time by an efficiency board as provided by federal law and regulations. Commissions or warrants of officers of the national guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Any officer permanently removing from the state shall resign the officer's commission or warrant upon request of the adjutant general or make application to be placed upon the inactive list, and upon failure to do so, the officer's commission or warrant shall be revoked by the governor. Officers rendered surplus by the disbandment of their organization shall be disposed of as provided by law and regulations. Subject to the approval of their superior commanders and the adjutant general, officers may, upon their own application, be placed on the inactive list, as such list may be authorized by law and regulations.

[C97, §2183, 2199; S13, §2215-f11; C24, 27, 31, §442; C35, §467-f12; C39, §**467.12;** C46, 50, §29.12; C54, 58, 62, §29.22; C66, 71, 73, 75, 77, 79, 81, §29A.22]

29A.23 Roll of retired officers and enlisted personnel.

An officer or enlisted person of the Iowa national guard who has completed twenty years of military service under 10 U.S.C. § 1331(d), as evidenced by a letter of notification of retired pay at age sixty, shall upon retirement and written request to the adjutant general be placed by order of the commander in chief on a roll in the office of the adjutant general to be known as the "roll of retired military personnel." A member registered on the roll is entitled to wear the uniform of the rank last held on state or other occasions of ceremony, when the wearing of such uniform is not in conflict with federal law.

[C35, §467-f15; C39, §**467.15;** C46, 50, §29.15; C54, 58, 62, §29.23; C66, 71, 73, 75, 77, 79, 81, §29A.23]

29A.24 Unassigned list.

There shall be maintained in the office of the adjutant general a list to be known as the unassigned list, to which officers may be transferred, pending their resignation or removal from the service. Any officer may be transferred by the adjutant general to such unassigned list upon the recommendation of the officer's commanding officer, either immediate or remote. Before such transfer is made the adjutant general shall notify the officer, either in person or by certified mail mailed to the officer's last known address of the intended transfer. The officer shall have ten days from the date of mailing of said notice in which to apply to the adjutant general for an efficiency board. Should the officer fail to apply for an efficiency board, the transfer shall be made upon the expiration of the ten-day period. If the officer requests an efficiency board, the adjutant general will be governed by the finding of such board. All officers transferred to such unassigned list shall remain subject to military disci-

pline and to courts-martial for military offenses to the same extent and in like manner as if upon the active list.

[C35, §467-f13; C39, §**467.13;** C46, 50, §29.13; C54, 58, 62, §29.24; C66, 71, 73, 75, 77, 79, 81, §29A.24]

29A.25 Enlistments and discharges.

All enlistments and discharges in the national guard shall be as prescribed by federal law and regulations.

[C97, §2173; S13, §2215-f13; C24, 27, 31, §444; C39, §**467.22;** C46, 50, §29.22; C54, 58, 62, §29.25; C66, 71, 73, 75, 77, 79, 81, §29A.25]

2002 Acts, ch 1117, §11, 23

Section amended

29A.26 State headquarters and detachment.

The number and grade of officers and enlisted personnel in the state headquarters and headquarters detachment shall be as prescribed by federal law and regulations. However, in case of war, invasion, insurrection, emergency, or imminent danger thereof, the governor may temporarily increase the force to meet the circumstance.

[C51, §624, 626 – 628; R60, §1005, 1007 – 1009; C73, §1047, 1048; C97, §2176 – 2180; S13, §2215-f10; C24, 27, 31, §441; C35, §467-f23; C39, §**467.23;** C46, 50, §29.23; C54, 58, 62, §29.26; C66, 71, 73, 75, 77, 79, 81, §29A.26]

2002 Acts, ch 1117, §12, 13, 23

Section amended

29A.27 Pay and allowances — injury or death benefit boards — judicial review — damages.

Officers and enlisted persons while in state active duty shall receive the same pay, per diem, and allowances as are paid for the same rank or grade for federal service. However, a person shall not be paid at a base rate of pay of less than one hundred dollars per calendar day of state active duty.

In the event any officer or enlisted person shall be killed while on duty or in state active duty, in line of duty, or shall die as the result of injuries received or as a result of illness or disease contracted while on duty or in state active duty, in line of duty, dependents, as defined by the workers' compensation law of the state, shall receive the maximum compensation provided by such law.

Any officer or enlisted person who suffers injuries or contracts a disease causing disability, in line of duty, while on duty or in state active duty, shall receive hospitalization and medical treatment, and during the period that the officer or enlisted person is totally disabled from returning to military duty the officer or enlisted person shall also receive the pay and allowances of the officer's or enlisted person's grade. In the event of partial disability, the officer or enlisted person shall be allowed partial pay and allowances as determined by an evaluation board of three officers to be appointed by the adjutant general. At least one member of the board shall be a medical officer.

Any claim for death, illness, or disease contracted in line of duty while on duty or in state active duty, shall be filed with the adjutant general within six months from the date of death or contraction of the illness or disease.

Where the provisions of this section may be applicable or at other times as considered necessary, but at least once a year, the adjutant general shall appoint a state review board consisting of three officers, one of whom shall be a medical officer, for the purpose of determining the continuation of benefits for individuals who have established their eligibility under this section. Once established, benefits shall be paid until terminated by the review board and shall continue for the duration of the disability even though the individual may no longer be medically qualified for military service and may have been discharged from the national guard.

Judicial review of any decision of the evaluation or state review board may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review must be filed within a period of thirty days from date of mailing by the adjutant general by certified mail of notice of the board's decision. Within thirty days after the filing of a petition for judicial review, the adjutant general shall make, certify, and file in the office of the clerk of the district court in which the judicial review is sought a full and complete transcript of all documents in the proceeding. The transcript shall include any depositions and a transcript or certification of the evidence, if reported. The attorney general of Iowa, upon the request of the adjutant general, shall represent the board appointed by the adjutant general against whom any such appeal has been instituted.

The provisions herein provided shall apply to all individuals receiving benefits under this section or who subsequently may become entitled to such benefits.

All payments herein provided for shall be paid on the approval of the adjutant general from the contingent fund of the executive council.

In the event benefits for death, injuries or illness are paid in part by the federal government, the state shall pay only the balance necessary to constitute the above designated amounts.

No payment received by any officer or enlisted person under the provisions of this section shall bar the right of such officer or enlisted person, or their heirs or representatives, to recover damages from any partnership, corporation, firm or persons whomsoever who otherwise would be liable, nor shall any such sums received under the provisions

of this section reduce the amount of damages recoverable by such officer, enlisted person, or their heirs or representatives, against any partnership, corporation, firm or persons whomsoever who otherwise would be liable.

[C51, §625; R60, §1006; C73, §1051; C97, §2189, 2212, 2213; S13, §2215-f23; C24, 27, 31, §452; C35, §467-f21, -f31; C39, §**467.21, 467.31;** C46, 50, §29.21, 29.31; C54, 58, 62, §29.27; C66, 71, 73, 75, 77, 79, 81, §29A.27]

84 Acts, ch 1170, §1; 92 Acts, ch 1238, §15; 99 Acts, ch 99, §1; 2001 Acts, 2nd Ex, ch 1, §15, 28

Workers' compensation, see chapter 85

29A.28 Leave of absence of civil employees.

All officers and employees of the state, or a subdivision thereof, or a municipality other than employees employed temporarily for six months or less, who are members of the national guard, organized reserves or any component part of the military, naval, or air forces or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, shall, when ordered by proper authority to state active duty, active state service or federal service, be entitled to a leave of absence from such civil employment for the period of state active duty, active state service, or federal service, without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence. The proper appointing authority may make a temporary appointment to fill any vacancy created by such leave of absence.

[C35, §467-f25; C39, §**467.25;** C46, 50, §29.25; C54, 58, 62, §29.28; C66, 71, 73, 75, 77, 79, 81, §29A.28]

2001 Acts, 2nd Ex, ch 1, §16, 28

See also §29A.43

29A.29 Payment from treasury — exception.

When in state active duty, the compensation of officers and enlisted persons and expenses of the national guard and claims for death, injury, and illness of the members thereof, incurred in line of duty, shall be paid out of any funds in the state treasury not otherwise appropriated. However, if funds for compensation and expenses have been appropriated for compensation and expenses of persons on full-time state active duty pursuant to a specific Act of the general assembly, such persons shall be paid from funds appropriated pursuant to such Act.

[C51, §625; R60, §1006; C73, §1051; C97, §2189, 2212, 2213; S13, §2215-f23; C24, 27, 31, §452; C35, §467-f31; C39, §**467.31;** C46, 50, §2931; C54, 58, 62, §29.29; C66, 71, 73, 75, 77, 79, 81, §29A.29]

2001 Acts, 2nd Ex, ch 1, §17, 28

29A.30 Inactive guard.

An inactive national guard may be organized and maintained in such manner as may be prescribed or authorized by law and regulations.

[C35, §467-f14; C39, §**467.13;** C46, 50, §29.14; C54, 58, 62, §29.30; C66, 71, 73, 75, 77, 79, 81, §29A.30]

29A.31 Unlawful organizations.

It shall be unlawful for any person to form a military organization within the limits of this state without the written permission of the governor, which the governor may at any time revoke, but this provision shall not prevent civic, social, or benevolent organizations from wearing uniforms and equipment not in conflict with the other provisions of this chapter.

[C97, §2200; S13, §2215-f5; C24, 27, 31, §436; C35, §467-f3; C39, §**467.03;** C46, 50, §29.3; C54, 58, 62, §29.31; C66, 71, 73, 75, 77, 79, 81, §29A.31]

2002 Acts, ch 1117, §14, 23

Section amended

29A.32 Repealed by 59 Acts, ch 85, § 6.

29A.33 Per capita allowance to unit.

Each unit of the national guard showing attendance and actual drill of those present for such drills as are prescribed in compliance with the National Defense Act or its amendments and such regulations as prescribed by the secretary of defense, shall receive an annual allowance for military purposes, in the sum of five dollars per capita, to be paid in semiannual installments on the basis of two dollars and fifty cents per capita. For the purpose of computing each semiannual installment the per capita strength shall be the average enlisted strength of the unit, for that semiannual period, however, if the average attendance of any unit during any semiannual period falls below fifty percent of the average enlisted strength of such unit in that period, the allowance shall not be paid for that period. The semiannual periods shall begin January 1 and July 1. The allowance shall be paid from the funds appropriated for the support and maintenance of the national guard, and the adjutant general shall prescribe regulations requiring an itemized statement of the allowance and governing its expenditure. The allowance shall be used for morale purposes and for the welfare of the troops. The allowance shall not be used to purchase an alcoholic beverage or beer.

[SS15, §2215-f27; C24, 27, 31, §455; C35, §467-f50; C39, §**467.52;** C46, 50, §29.52; C54, 58, 62, §29.33; C66, 71, 73, 75, 77, 79, 81, §29A.33]

90 Acts, ch 1267, §24

29A.34 Clothing and equipment.

The commanding officer of a unit or organization receiving clothing or equipment for the use of that command shall distribute it to the members of that command, taking receipts and requiring the return of each article at such time and place as that officer directs.

Upon the direction of any unit or organization commander the county attorney shall bring action in the name of the state of Iowa against any person for the recovery of any property issued by a unit or organization commander, or for its value as set forth in the price list promulgated by the federal government.

All sums so collected shall be paid to the treasurer of the United States and forwarded to the United States property and fiscal officer for Iowa.

[C51, §629; R60, §1010; C73, §1050; C97, §2190; SS15, §2215-f31; C24, 27, 31, §459; C35, §467-f55, -f56; C39, §**467.57, 467.58;** C46, 50, §29.57, 29.58; C54, 58, 62, §29.34; C66, 71, 73, 75, 77, 79, 81, §29A.34]

29A.35 Use for military only.

All arms, clothing, equipment, and other military property furnished or issued by the federal government or the state or for which an allowance has been made, shall be used for military purposes only, and each officer and enlisted person upon being separated from the military forces of the state, or upon demand of the commanding officer, shall forthwith surrender such military property in the officer's or enlisted person's possession to said commanding officer. Any member of the national guard who shall neglect to return to the armory of the unit, or place in charge of the commanding officer of the organization to which the member belongs, any arms, clothing, equipment, or other military property or portion thereof, belonging to the federal government or the state, upon being notified by said commanding officer to do so, shall be guilty of a serious misdemeanor.

[S13, §2215-f35; C24, 27, 31, §463; C35, §467-f4; C39, §**467.04;** C46, 50, §29.4; C54, 58, 62, §29.35; C66, 71, 73, 75, 77, 79, 81, §29A.35]

29A.36 Injury or destruction of property.

Every person who shall willfully or wantonly injure or destroy any articles of arms, clothing, equipment, or other military property furnished or issued by the federal government or the state, and refuses to make good such injury or loss; or who shall sell, dispose of, secrete or remove the same with intent to sell or dispose of it, shall be guilty of a simple misdemeanor.

[R60, §1014; C73, §1050; C97, §2194; S13, §2215-f32; C24, 27, 31, §460; C35, §467-f57; C39, §**467.59;** C46, 50, §29.59; C54, 58, 62, §29.36; C66, 71, 73, 75, 77, 79, 81, §29A.36]

29A.37 Bond of officers.

Each officer responsible or accountable for property for military use, or funds of the state or of the United States, shall execute and deliver to the adjutant general a bond, with sureties to be approved by the adjutant general, and payable to the state, in such amount as fixed by the adjutant general, conditioned for the proper care, use, and return in good order, wear, use and unavoidable loss and damage excepted, of all such state and United States property, and the proper care and faithful disbursement and accounting of all those funds coming into the hands of that officer. However, the adjutant general, with the approval of the governor, may obtain an adequate indemnity bond covering all or part of those officers accountable or responsible and the officers covered shall not be required to furnish individual bonds.

Upon the violation of any of the conditions of any bond executed and delivered under the provisions of this section, action thereon shall be brought by the adjutant general on behalf of the state. It shall be the duty of the attorney general of the state to prosecute all actions upon such bonds. No further payments shall be made under any provision of this chapter to the accountable officer of any organization or unit who does not fully and satisfactorily account to the adjutant general for all moneys theretofore paid to the officer under any provision of this chapter.

[R60, §1013; C73, §1050; C97, §2190; S13, §2215-f12; C24, 27, 31, §443; C35, §467-f17; C39, §**467.17;** C46, 50, §29.17; C54, 58, 62, §29.37; C66, 71, 73, 75, 77, 79, 81, §29A.37]

29A.38 Serious misdemeanors.

Any officer or enlisted person of the national guard who knowingly makes any false certificate of muster or false return of federal or state property or funds in the officer's or enlisted person's possession shall be guilty of a serious misdemeanor.

[C97, §2192; S13, §2215-f30; C24, 27, 31, §458; C35, §467-f19; C39, §**467.19;** C46, 50, §29.19; C54, 58, 62, §29.38; C66, 71, 73, 75, 77, 79, 81, §29A.38]

29A.39 Theft.

Any officer or enlisted person of the national guard who willfully neglects or refuses to apply all money, in the officer's or enlisted person's possession drawn from the state treasury, to the purpose for which such money was appropriated or who fails or refuses to account for or return any state or federal property or funds in the officer's or enlisted person's possession shall be guilty of the crime of theft.

[C97, §2192; S13, §2215-f30; C24, 27, 31, §458; C35, §467-f20; C39, §**467.20;** C46, 50, §29.20; C54, 58, 62, §29.39; C66, 71, 73, 75, 77, 79, 81, §29A.39]

See §714.2

29A.40 False wearing of uniform.

A member of the national guard shall not wear the uniform of the national guard while not on duty, except in accordance with state or federal regulations. A person, firm, or corporation, other than a civic, social, or benevolent military organization or the members of such organizations organizing for the benefit of all its members, shall not incorporate under the name of, or adopt any trade name which embodies the name or designation, officially or generally recognized as the name of a military organization now or formerly in existence, or any distinctive part of such name.

Any person who, without authority under the laws of the United States or of one of the states, wears the uniform of, or a distinctive part of the uniform of the armed forces of the United States, shall be guilty of a simple misdemeanor.

[S13, §2215-f35; C24, 27, 31, §463; C35, §467-f4; C39, §**467.04;** C46, 50, §29.4; C54, 58, 62, §29.40; C66, 71, 73, 75, 77, 79, 81, §29A.40]

2002 Acts, ch 1117, §15, 23

Unnumbered paragraph 1 amended

29A.41 Exemptions.

A member of the national guard shall not be arrested, or served with a summons, order, warrant or other civil process after having been ordered to any duty, or while going to, attending, or returning from, any place to which the national guard member is required to go for military duty. This section does not prevent the national guard member's arrest by order of a military officer or for a felony or breach of the peace committed while not in the actual performance of the national guard member's duty. The articles of equipment personally owned by such members are exempt from seizure or sale for debt.

[C97, §2209; S13, §2215-f33; C24, 27, 31, §461; C35, §467-f24; C39, §**467.24;** C46, 50, §29.24; C54, 58, 62, §29.41; C66, 71, 73, 75, 77, 79, 81, §29A.41]

84 Acts, ch 1181, §1; 2002 Acts, ch 1117, §16, 23

Section amended

29A.42 Trespass or interference with official acts.

Any person who shall trespass upon any military reservation, camp, or armory, in violation of the orders of the commander thereof, or officer charged with the responsibility therefor shall be guilty of trespass and shall be punished as provided in section 716.8.

Any person who shall molest, or interfere with any member of the national guard, in the discharge of the member's duty shall be guilty of interference with official acts which is section 719.1. The commanding officer of such force may order the arrest of such person and cause the person to be delivered to a peace officer or magistrate.

[C97, §2188; S13, §2215-f29; C24, 27, 31, §457; C35, §467-f54; C39, §**467.56;** C46, 50, §29.56; C54, 58, 62, §29.42; C66, 71, 73, 75, 77, 79, 81, §29A.42]

29A.43 Discrimination prohibited — leave of absence.

A person shall not discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States because of that membership. An employer, or agent of an employer, shall not discharge a person from employment because of being an officer or enlisted person of the military forces of the state, or hinder or prevent the officer or enlisted person from performing any military service the person is called upon to perform by proper authority. A member of the national guard or organized reserves of the armed forces of the United States ordered to temporary duty, as defined in section 29A.1, subsection 1, 3, or 11, for any purpose is entitled to a leave of absence during the period of the duty or service, from the member's private employment, other than employment of a temporary nature, and upon completion of the duty or service the employer shall restore the person to the position held prior to the leave of absence, or employ the person in a similar position. However, the person shall give evidence to the employer of satisfactory completion of the training or duty, and that the person is still qualified to perform the duties of the position. The period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment. A person violating a provision of this section is guilty of a simple misdemeanor.

[C35, §467-f5; C39, §**467.05;** C46, 50, §29.5; C54, 58, 62, §29.43; C66, 71, 73, 75, 77, 79, 81, §29A.43]

87 Acts, ch 115, §8; 2001 Acts, 2nd Ex, ch 1, §18, 28; 2002 Acts, ch 1117, §17, 23

Leave for civil employees; §29A.28

Section amended

29A.44 Assault prohibited.

Whenever the national guard is called into service under proclamation of the governor for the performance of any duties contemplated in this chapter any person who willfully assaults, or fires at, or throws any dangerous missiles at, against, or upon any member or body of the national guard so engaged, or civil officer or other persons lawfully aiding or assisting them in the discharge of their duties, shall be guilty of an aggravated misdemeanor.

[C35, §467-f30; C39, §**467.30;** C46, 50, §29.30; C54, 58, 62, §29.44; C66, 71, 73, 75, 77, 79, 81, §29A.44]

29A.45 Martial law.

When a military district is established under martial law, the chief justice or an associate justice of the supreme court may, upon written agreement of the parties or their attorneys, on good cause be-

ing shown, order any civil or criminal case on file in the office of the clerk of any court of record within the military district transferred to any court of record outside of the military district. The said cause shall be docketed without fee and proceed in all respects with the same force and effect as though transferred on a change of venue. When the said military district is dissolved, the cause and all proceedings in connection therewith may be retransferred by the supreme court to the original court, where it shall be redocketed without fee.

[C39, §**467.32;** C46, 50, §29.32; C54, 58, 62, §29.45; C66, 71, 73, 75, 77, 79, 81, §29A.45]

29A.46 Military court or commission.

The governor may establish within such military district a military court or commission to take jurisdiction and cognizance of all public offenses against the peace and dignity of the state, and the violation of ordinances and military rules which are now, or may hereafter be, promulgated or enacted for the preservation of law and order and the public safety.

The military court or commission may make such orders, judgments, and decrees in civil cases as may be agreed upon by the litigants or their attorneys, or as may be necessary because of an emergency or to prevent waste, with the same force and effect as though made and entered by a judge of the district court. The said court or commission shall have full power and authority to issue all necessary process for the conduct of its proceedings, and like power to compel the attendance of witnesses therein as are exercised by civil courts of the state.

[C39, §**467.33;** C46, 50, §29.33; C54, 58, 62, §29.46; C66, 71, 73, 75, 77, 79, 81, §29A.46]

29A.47 Arrests and subpoenas.

Troops occupying a military district established under martial law, may, if necessary, pursue, arrest and subpoena persons wanted in said military district, anywhere within the state of Iowa.

All peace officers of the state shall serve process and execute the orders of a military court in the same way and to the same extent as corresponding instruments of civil courts.

[C35, §467-f34; C39, §**467.32, 467.36;** C46, 50, §29.32, 29.36; C54, 58, 62, §29.47; C66, 71, 73, 75, 77, 79, 81, §29A.47]

29A.48 Commitment and fines.

In default of payment of any fine imposed by any military court acting under martial law, the offender may be committed to any county jail designated by any court of this state for a period equal to one day for each three dollars of fine imposed and unpaid.

[C35, §467-f35; C39, §**467.37;** C46, 50, §29.37; C54, 58, 62, §29.48; C66, 71, 73, 75, 77, 79, 81, §29A.48]

29A.49 Military jails.

The keepers and wardens of all county jails or state institutions are required to receive and confine all military offenders or other persons when delivered to them, under a certificate of commitment of a military court or commanding officer, for and during the term of sentence or confinement as set forth in said commitment.

[C35, §467-f36; C39, §**467.38;** C46, 50, §29.38; C54, 58, 62, §29.49; C66, 71, 73, 75, 77, 79, 81, §29A.49]

29A.50 Immunity.

The commanding officer and members of any of the military forces engaged in the suppression of an insurrection, assistance to civil authorities in emergencies, homeland defense, or security duties, or the enforcement of the laws, shall have the same immunity as peace officers.

[C35, §467-f37; C39, §**467.39;** C46, 50, §29.39; C54, 58, 62, §29.50; C66, 71, 73, 75, 77, 79, 81, §29A.50]

2002 Acts, ch 1117, §18, 23
Section amended

29A.51 Suit or proceeding — defense.

If a suit or proceeding is commenced in any court by any person against a member of the military forces of the state for an act done by the member in the member's official capacity in the discharge of a duty under this chapter or chapter 29B, the attorney general or staff judge advocate, upon the request of the adjutant general, shall defend the member against whom the suit or proceeding has been instituted. The costs of the defense shall be paid out of any funds in the state treasury not otherwise appropriated. Before the suit or proceeding is filed or maintained against the member, the plaintiff must give security, to be approved by the court in a sum not less than one hundred dollars to secure the costs. If the plaintiff fails to recover judgment, the costs shall be taxed and judgment rendered against the plaintiff and the plaintiff's sureties. When members of the military forces of the state are called into state active duty by the governor under martial law or to assist civil authorities, in addition to the judge advocate's other duties, any judge advocate on duty with those troops may be appointed by the attorney general as an assistant attorney general, without pay for the judge advocate's services for acting in that capacity.

[C35, §467-f38; C39, §**467.40;** C46, 50, §29.40; C54, 58, 62, §29.51; C66, 71, 73, 75, 77, 79, 81, §29A.51]

2002 Acts, ch 1117, §19, 23
Section amended

29A.52 Malice must be proved.

No action or proceeding shall be maintained against any officer appointing a military court or against any member of a military court or commis-

sion, officer or agent acting under its authority, or reviewing its proceedings, on account of the imposition of a fine or penalty or for the execution of a sentence of any person, unless it be shown that such officer, member or agent has acted from motives of malice.

[C35, §467-f39; C39, §**467.41;** C46, 50, §29.41; C54, 58, 62, §29.52; C66, 71, 73, 75, 77, 79, 81, §29A.52]

29A.53 Call by president of U. S.

Whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the government of the United States, or the president is unable, with the regular forces at the president's command, to execute the laws of the union, it shall be lawful for the president to call forth such number of the national guard as the president may deem necessary to assist in repelling such invasion, suppressing such rebellion, or to assist in enabling the president to execute such laws, and to issue orders for that purpose, through the governor to such officers of the national guard as the president may think proper; and the president may specify, in the call, the period for which such service is required, and the guard so called forth shall continue to serve during the term so specified, either within or without the territory of the United States, unless sooner relieved by order of the president.

Whenever the president shall require, in any of the designated instances, more troops than can be supplied by the national guard, the governor shall, in the governor's discretion, organize forthwith such other national guard forces as the governor may deem necessary, or order into the service of the United States so many of the unorganized militia of the state as is required, designating the same by draft if a sufficient number do not volunteer, and shall commission officers therefor.

Officers and enlisted personnel called into federal service through the national guard shall upon completion of such service continue to serve the balance of their enlistment period the same as though it had not been interrupted by such service.

[C97, §2169; S13, §2215-f18; C24, 27, 31, §448; C35, §467-f58; C39, §**467.60;** C46, 50, §29.60; C54, 58, 62, §29.53; C66, 71, 73, 75, 77, 79, 81, §29A.53]

29A.54 Senior commander allowances.

A fund shall be established from an annual appropriation of funds to be used by senior commanders as an expense allowance to defer expenses incurred in conducting command functions or escorting military guests while acting in their official capacity as commander. Appropriations to the fund shall be made at the beginning of each fiscal year in the amount of seven hundred fifty dollars for each federally recognized general officer of the army national guard and the air national guard. The adjutant general of Iowa shall have custodial and administrative responsibility for the fund and shall prescribe regulations requiring an itemized statement of expenditures from the fund. The fund shall not be used to purchase an alcoholic beverage or beer.

[C54, 58, 62, §29.54; C66, 71, 73, 75, 77, 79, 81, §29A.54]

2002 Acts, ch 1117, §20, 23
Section amended

29A.55 Insurance.

The adjutant general is hereby authorized to procure insurance against the liability of officers and enlisted personnel of the national guard, and employees of the adjutant general by reason of claims for bodily injuries, death, or property damage, made upon such officers, enlisted personnel and employees resulting from their operation of a motor vehicle while in the performance of their duties.

[C54, 58, 62, §29.55; C66, 71, 73, 75, 77, 79, 81, §29A.55]

29A.56 Special police.

The adjutant general may by order entered of record commission one or more of the employees of the military division as special police. Such special police shall on the premises of any state military reservation or other state military property have and exercise the powers of regular peace officers.

[C66, 71, 73, 75, 77, 79, §29A.12; C81, §29A.56]

29A.57 Armory board.

1. The governor shall appoint an armory board which consists of the adjutant general serving as chairperson, at least two officers from the active commissioned personnel of the national guard, and at least one other person, who is a citizen of the state of Iowa. One member of the board shall have at least five years' experience in the building construction trade. The board shall meet at times and places as ordered by the governor. The members shall serve at the pleasure of the governor. Members of the board shall receive actual expenses for each day in which they are actually employed under this chapter. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

2. The board may acquire land or real estate by purchase, contract for purchase, gift, or bequest and acquire, own, contract for the construction of, erect, purchase, maintain, alter, operate, and repair installations and facilities of the Iowa national guard and the Iowa air national guard when funds for the installations and facilities are made available by the federal government, the state of Iowa, municipalities, corporations or individuals. The title to the property so acquired shall be taken in the name of the state of Iowa and the real estate

may be sold or exchanged by the executive council, upon recommendation of the board, when it is no longer needed for the purpose for which it was acquired. Income or revenue derived from the sale of the real estate shall be credited to the national guard facilities improvement fund and used for the purposes specified in section 29A.14, subsection 2.

3. In carrying out this section, the armory board may:

a. Borrow money.

b. Mortgage any real estate acquired and the improvements erected on the real estate when purchasing or improving the property, in order to secure necessary loans.

c. Pledge the sales, rents, profits and income received from the property for the discharge of obligations executed.

d. Grant a temporary or permanent easement with or without monetary consideration for utility or public highway purposes if granting the easement will not adversely affect use of the real estate for military purposes.

4. An obligation created under this section shall not be a charge against the state of Iowa, but all the obligations, including principal and interest, are payable solely from any of the following:

a. The sales, net rents, profits and income arising from the property so pledged or mortgaged.

b. The sales, net rents, profits and income which have not been pledged for other purposes arising from any other installation and facility or like improvement under the control and management of said board.

c. The income derived from gifts and bequests for installations and facilities under the control of the armory board.

5. All property, real or personal, acquired by, and all bonds, debentures or other written evidences of indebtedness, given as security by the board, are exempt from taxation.

6. When property acquired by the armory board, under this chapter, is free and clear of all indebtedness, the title of the property shall pass to the state of Iowa.

7. There is no liability to the state of Iowa under this section. Members of the armory board and of the state executive council shall not be held to any personal or individual liability for any action taken by them under this chapter.

8. The board shall fix the amount to be paid to commanding officers of each organization and unit of the national guard for headquarters expenses and shall provide by regulation how the amount shall be disbursed by the commanding officers. The governor may disapprove the actions of the armory board.

9. The allowances made by the armory board shall be paid from the funds appropriated for the support and maintenance of the national guard.

[C24, 27, 31, §453; C35, §467-f47; C39, §**467.49;** C46, 50, §29.49; C54, 58, 62, §29.57; C66, 71, 73, 75, 77, 79, 81, §29A.57; 81 Acts, ch 14, §20]

86 Acts, ch 1245, §1703; 92 Acts, ch 1238, §16

29A.58 Armories leased.

The armory board as lessee, may lease property to be used for armory purposes and other training of the national guard. Leases may be made for any term not to exceed twenty years. Rents under such leases shall be paid from funds appropriated for the support and maintenance of the national guard.

The armory board as lessor or sublessor may, for a term not to exceed twenty years, lease property under the control of the board for purposes other than armory or military use when the leasing does not interfere with the use of the property for military purposes. A military operations fund is created in the state treasury. The rental proceeds of property leased by the board shall be paid to the adjutant general for deposit with the treasurer of state and credited to a separate account of the military operations fund. The finance officer of the office of adjutant general shall credit the appropriate account with the rental revenue which each armory produces. The revenue credited to each account is appropriated for maintaining, improving and repairing the armory facility and utility payments.

Where the armory board is lessee, leases made under the provisions of this section may provide for an option to purchase the leased property and may make provision for the application upon the purchase price of rental payments made under the lease. Payments of special tax assessments arising under such leases may be paid from funds appropriated for the support and maintenance of the national guard.

[C24, 27, 31, §453; C35, §467-f47; C39, §**467.49;** C46, 50, §29.49; C54, 58, 62, §29.58; C66, 71, 73, 75, 77, 79, 81, §29A.58; 81 Acts, ch 14, §21]

29A.59 Approval of executive council. Repealed by 86 Acts, ch 1238, § 57; 86 Acts, ch 1245, § 1992.

29A.60 Property exempt from taxation.

All personal and real property held and used for armory or military purposes shall be exempt from taxation; and it shall be lawful for any county or city which owns public utilities to grant to any organization or unit of the national guard, which is stationed in such place, the free use of such public utilities.

[S13, §2215-f40; C24, 27, 31, §465; C39, §**467.50;** C46, 50, §29.50; C54, 58, 62, §29.60; C66, 71, 73, 75, 77, 79, 81, §29A.60]

29A.61 Fines.

Fines may be paid to a court or to an officer executing its process. The amount of any fine imposed may be noted upon any state roll or account for pay

of the delinquent and deducted from any pay or allowance due or thereafter to become due to the delinquent, until said fine is liquidated. Any sum so deducted from any state pay or allowance shall be turned in to the court which imposed the fine and shall be paid over by the officer receiving the same in like manner as provided for other fines and moneys collected.

The proceeds of all fines imposed by a military court or a commander administering nonjudicial punishment shall be transmitted to the adjutant general. The adjutant general shall deposit all fines and penalties received with the state treasurer for credit to the general fund of the state.

[C35, §467-f60; C39, §**467.62;** C46, 50, §29.62; C54, 58, 62, §29.78; C66, 71, 73, 75, 77, 79, 81, §29A.61]

29A.62 Immunity from prosecution.

No action or proceeding shall be prosecuted or maintained against a member of a military court or officer or person acting under its authority or reviewing its proceeding on account of the approval or imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, execution, or process, of a military court.

[C35, §467-f37; C39, §**467.39;** C46, 50, §29.39; C54, 58, 62, §29.80; C66, 71, 73, 75, 77, 79, 81, §29A.62]

29A.63 Jurisdiction presumed.

The jurisdiction of the courts and boards established by this chapter shall be presumed.

[C39, §**467.33;** C46, 50, §29.33; C54, 58, 62, §29.81; C66, 71, 73, 75, 77, 79, 81, §29A.63]

29A.64 Custom and usage.

All matters relating to the organization, discipline, and government of the military forces not otherwise provided for in this chapter, shall be decided by the custom, regulations, and usage of the armed forces of the United States.

[C35, §467-f61; C39, §**467.63;** C46, 50, §29.63; C54, 58, 62, §29.82; C66, 71, 73, 75, 77, 79, 81, §29A.64]

SUBCHAPTER II

IOWA STATE GUARD

29A.65 Activation.

Whenever any part of the national guard is in federal service the governor may activate such part of the unorganized militia, to be designated the *"Iowa State Guard"*, as the governor may deem necessary, subject to provisions of federal law and regulations relating to such military organizations.

[C46, 50, §29.64; C54, 58, 62, §29.83; C66, 71, 73, 75, 77, 79, 81, §29A.65]

29A.66 Applicable powers and duties.

The powers and duties of the governor, the adjutant general, and the deputy adjutants general, with relation to the Iowa state guard, shall be the same as those powers and duties prescribed in this chapter for those officers with relation to the national guard.

[C46, 50, §29.65; C54, 58, 62, §29.84; C66, 71, 73, 75, 77, 79, 81, §29A.66]

2000 Acts, ch 1020, §5, 6; 2002 Acts, ch 1119, §122

Section amended

29A.67 Chief of staff.

In the event the state headquarters of the national guard is inducted into federal service, the governor shall appoint a chief of staff for the Iowa state guard.

[C46, 50, §29.64; C54, 58, 62, §29.85; C66, 71, 73, 75, 77, 79, 81, §29A.67]

29A.68 Applicable provisions.

The provisions of this chapter pertaining to the administration and employment of the national guard shall be applicable to the Iowa state guard. The rules relating to, appointment of officers, enlistments, term and conditions of service in, and discharge from, the Iowa state guard shall be such as are directed by the governor.

[C46, 50, §29.65; C54, 58, 62, §29.86; C66, 71, 73, 75, 77, 79, 81, §29A.68]

29A.69 Officers and duties.

The powers and duties of officers and enlisted personnel of the Iowa state guard shall be the same as those prescribed in this chapter for officers and enlisted personnel of the national guard and the punitive and disciplinary provisions of this chapter relating to the national guard shall be applicable to the Iowa state guard.

[C46, 50, §29.16, 29.33; C54, 58, 62, §29.87; C66, 71, 73, 75, 77, 79, 81, §29A.69]

29A.70 Immunity and exemption.

The provisions of this chapter relating to immunity from suit and exemption from personal liability of members of the national guard shall apply to members of the Iowa state guard.

[C46, 50, §29.39; C54, 58, 62, §29.88; C66, 71, 73, 75, 77, 79, 81, §29A.70]

29A.71 Pay and allowances.

Officers and enlisted personnel of the Iowa state guard while in state active duty shall receive the same pay, allowances, and compensation as provided by law for members of the Iowa national guard.

[C46, 50, §29.31, 29.67; C54, 58, 62, §29.89; C66, 71, 73, 75, 77, 79, 81, §29A.71]

2001 Acts, 2nd Ex, ch 1, §19, 28

29A.72 Expense.

Any expense necessary for organizing, equip-

ping, and maintaining the Iowa state guard shall be paid on approval of the governor by warrant drawn on any state funds not otherwise appropriated, or funds now or hereafter appropriated for the maintenance of the national guard.

[C46, 50, §29.68; C54, 58, 62, §29.90; C66, 71, 73, 75, 77, 79, 81, §29A.72]

29A.73 Immunity from national service.

The Iowa state guard shall not be called, ordered or in any manner drafted as such into the military service of the United States. However, no person shall by reason of membership in the Iowa state guard be exempt from federal military service under federal law.

[C46, 50, §29.66; C54, 58, 62, §29.91; C66, 71, 73, 75, 77, 79, 81, §29A.73]

SUBCHAPTER III

POWERS OF ATTORNEY EXECUTED BY SERVICE PERSONNEL

29A.74 Death of principal — effect.

Except as otherwise provided in this chapter, an agency created by a power of attorney in writing given by a principal who is at the time of execution, or who after executing such power of attorney becomes a member of the national guard or the armed forces of the United States, a person serving as a merchant seaman outside the limits of the United States included within the fifty states and the District of Columbia, or a person outside those limits by permission, assignment, or direction of any department, shall not be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal.

Except as otherwise provided in this chapter no report or listing either official or otherwise, of "missing" or "missing in action" shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency.

[C46, 50, §29.69, 29.71; C54, 58, 62, §29.92; C66, 71, 73, 75, 77, 79, 81, §29A.74]

2002 Acts, ch 1117, §21, 23

Unnumbered paragraph 1 amended

29A.75 Affidavit.

An affidavit, executed by an attorney in fact or agent, setting forth that the attorney or agent has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this state, such affidavit (when authenticated for record in the manner prescribed by law) shall likewise be recordable.

[C46, 50, §29.70; C54, 58, 62, §29.93; C66, 71, 73, 75, 77, 79, 81, §29A.75]

29A.76 Express revocation or termination.

Sections 29A.74 and 29A.75 of this chapter shall not operate to alter, invalidate, or in any manner affect any express provision for revocation or termination contained in any power of attorney.

[C46, 50, §29.72; C54, 58, 62, §29.94; C66, 71, 73, 75, 77, 79, 81, §29A.76]

SUBCHAPTER IV

NATIONAL GUARD AWARDS

29A.77 Posthumous grants.

A member of the Iowa national guard, who was not retired, and was otherwise qualified for any state service award or for state appointment or promotion to a higher grade or rank as provided in this chapter, and who was unable to receive such award or appointment or promotion by reason of death, is eligible for posthumous grant of the award of state appointment or promotion to a higher grade or rank. The adjutant general shall present the award or evidence of the state appointment or promotion to the next of kin of the deceased member.

[C71, 73, 75, 77, 79, 81, §29A.77]

29A.78 Brevet rank.

The commander in chief, on the recommendation of the adjutant general, may commission by brevet general and field grade officers of the national guard whose names appear on the roll of retired military personnel as defined in section 29A.23 in the next higher grade than that held at retirement or resignation. Brevet rank is only honorary and does not confer any privilege, precedence or command or pay any emoluments. Brevet officers may wear the uniform of their brevet rank on occasions of ceremonies related to state functions only.

[C81, §29A.78]

SUBCHAPTER V

AMBULANCE SERVICE

29A.79 Emergency helicopter ambulance.

The adjutant general shall develop a plan within the Iowa national guard for an emergency helicopter ambulance service to transport persons who require emergency medical treatment or require emergency transfer between hospitals and to transport emergency medical supplies, equipment or personnel.

The Iowa national guard shall be requested to provide the emergency helicopter ambulance service from its available staffed helicopters when the plan is implemented on order of the governor at the request of the Iowa state patrol, or the administrative heads of the hospitals located in Iowa, unless the Iowa national guard does not have a staffed helicopter available or is in active service under the armed forces of the United States.

The adjutant general shall establish policies and procedures to carry out the provisions of this section. The policies and procedures shall provide that the emergency helicopter ambulance service shall be co-ordinated and supplemental to, and not competitive with conventional ambulance services. In determining whether an emergency exists the policies and procedures shall give reasonable consideration to the risk of death or permanent injury due to delayed treatment resulting from remoteness of an area from any hospital, the absence or unavailability of conventional ambulance services, and the distance to be traveled in a transfer between hospitals.

[C73, 75, 77, 79, 81, §29A.79]

98 Acts, ch 1074, §2

29A.80 through 29A.89 Reserved.

SUBCHAPTER VI

IOWA NATIONAL GUARD CIVIL RELIEF

29A.90 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Dependent"* means the spouse and children of a service member or any other person dependent upon the service member for support.

2. *"Interest"* includes service charges, renewal charges, fees, or any other charges in respect to any obligation or liability.

3. *"Military service"* means full-time active state service or state active duty, as defined in section 29A.1, for a period of at least ninety consecutive days, commencing on or after the effective date of this division of this Act*.

4. *"Service member"* means a member of the military forces of the state performing military service.

2002 Acts, ch 1117, §24, 40; 2002 Acts, ch 1175, §78, 102

*"April 22, 2002" probably intended; corrective legislation is pending

NEW section

29A.91 Applicability.

1. This subchapter shall apply to all service members on military orders who are unable to perform, continue, or complete civil obligations due to military service.

2. This subchapter does not apply to military duty performed under orders issued pursuant to 10 U.S.C.

3. Proper application of this subchapter shall suspend or postpone actions upon those obligations until thirty days after discharge from military service.

2002 Acts, ch 1117, §25, 40

NEW section

29A.92 Reopening default judgments.

1. A default judgment rendered in any civil action against a service member during a period of military service or within thirty days after termination of military service may be set aside under the following circumstances:

a. It appears that the service member was prejudiced by reason of military service in making a defense to the action.

b. Application by the service member or the service member's legal representative is made to the court rendering the judgment not later than thirty days after the termination of military service.

c. The application provides enough facts that it appears that the service member has a meritorious or legal defense to the action or some part of the action.

2. Vacating, setting aside, or reversing a judgment because of any of the provisions of this chapter shall not impair any right or title acquired by a bona fide purchaser for value under the judgment.

2002 Acts, ch 1117, §26, 40

NEW section

29A.93 Stay of proceedings.

1. If at any point during an action or proceeding it appears that a plaintiff or defendant is a service member and may be adversely affected by military service in the conduct of the proceedings, the court may, on its own motion, stay the proceedings.

2. The court shall stay the proceedings if the service member or another person on the service member's behalf makes a request in writing to the court, unless the court determines on the record that the ability of the plaintiff to pursue the action or the defendant to conduct a defense, is not mate-

rially affected by reason of military service.

2002 Acts, ch 1117, §27, 40
NEW section

29A.94 Fines and penalties on contracts.

1. If compliance with the terms of a contract is stayed pursuant to this subchapter, a fine or penalty shall not accrue by reason of failure to comply with the terms of the contract during the period of the stay.

2. If a service member has not obtained a stay, and a fine or penalty is imposed for nonperformance of an obligation, a court may relieve enforcement if the service member was in military service when the penalty was incurred and the service member's ability to pay or perform was materially impaired.

2002 Acts, ch 1117, §28, 40
NEW section

29A.95 Exercise of rights not to affect future financial transactions.

An application by a service member in military service for, or receipt of, a stay, postponement, or suspension under the provisions of this subchapter in the payment of any fine, penalty, insurance premium, or other civil obligation or liability shall not be used as the basis for any of the following:

1. A determination by any lender or other person that the service member is unable to pay any civil obligation or liability in accordance with its terms.

2. With respect to a credit transaction between a creditor and a service member:

a. A denial or revocation of credit by the creditor.

b. A change by the creditor in the terms of an existing credit arrangement.

c. A refusal by the creditor to grant credit to the service member in substantially the amount or on substantially the terms requested.

d. An adverse report relating to the creditworthiness of the service member by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information.

2002 Acts, ch 1117, §29, 40
NEW section

29A.96 Stay of execution of judgment.

Unless the court determines on the record that the ability of a service member to comply with a judgment or order entered or sought is not materially affected by reason of military service, the court shall, on its own motion, or upon application to it by the service member or another person on the service member's behalf, do the following:

1. Stay the execution of a judgment or order entered against the service member, as provided in this chapter.

2. Vacate or stay an attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this chapter.

2002 Acts, ch 1117, §30, 40
NEW section

29A.97 Duration of stays.

1. A stay of an action, proceeding, attachment, or execution, ordered by a court under the provisions of this subchapter, may be ordered for the period of military service plus thirty days after its termination or any part of that time period.

2. Where the service member in military service is a codefendant with others, the plaintiff may, with the permission of the court, proceed against the others.

2002 Acts, ch 1117, §31, 40
NEW section

29A.98 Statutes of limitations affected by military service.

The period of military service shall not be included in computing any period limited by law, rule, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any service member or by or against the service member's heirs, executors, administrators, or assigns, whether the cause of action or the right or privilege to institute the action or proceeding has accrued prior to or during the period of military service.

2002 Acts, ch 1117, §32, 40
Limitations of civil actions, see chapter 614
Limitations of criminal actions, see chapter 802
NEW section

29A.99 Maximum rate of interest.

An obligation or liability bearing interest at a rate in excess of six percent per year incurred before entry into military service by a service member shall not, during any part of the period of military service, bear interest at a rate in excess of six percent per year unless, in the opinion of the court and upon application to the court by the obligee, the ability of the service member to pay interest upon the obligation or liability at a rate in excess of six percent per year is not materially affected by reason of the member's service. The court may make any order in the action that, in its opinion, is just.

2002 Acts, ch 1117, §33, 40
NEW section

29A.100 Dependent benefits.

Dependents of a service member are entitled to the benefits accorded to service members under the provisions of sections 29A.101 through 29A.105. Dependents may obtain the benefits upon application to a court, unless, in the opinion of the court, the ability of the dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the ser-

vice member of the dependents.

2002 Acts, ch 1117, §34, 40

NEW section

29A.101 Termination of lease or rental agreement — exceptions.

1. A landlord shall not terminate the lease or rental agreement of a service member or the service member's dependents for nonpayment of rent from any premises used as a dwelling by the service member or dependents during the period of military service if the rent on the premises occupied by the service member or dependents is less than one thousand two hundred dollars per month. However, a court may allow an eviction or the recovery of property pursuant to chapter 646 or 648.

2. In any action affecting the right of possession, the court may, on its own motion, stay the proceedings for not longer than three months, or make any order the court determines to be reasonable and just under the circumstances, unless the court finds that the ability of the service member to pay the agreed rent is not materially affected by reason of military service.

3. When a stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application, to relief with respect to the premises similar to that granted service members in military service in sections 29A.102 through 29A.104 to the extent and for any period as the court determines to be just and reasonable under the circumstances.

4. A person who knowingly takes part in any eviction or distress otherwise than as provided in subsection 1, or attempts to do so, commits a simple misdemeanor.

5. The governor may order an allotment of the pay of a service member in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by any dependents of the service member.

2002 Acts, ch 1117, §35, 40

Uniform residential landlord and tenant law, see chapter 562A

Mobile home parks residential landlord and tenant law, see chapter 562B

NEW section

29A.102 Installment contracts.

1. The creditor of a service member who, prior to entry into military service, has entered into an installment contract for the purchase of real or personal property shall not terminate the contract or repossess the property for nonpayment or for any breach occurring during military service without an order from a court of competent jurisdiction.

2. The court, upon application to it under this section, shall, unless the court finds on the record that the ability of the service member to comply with the terms of the contract is not materially affected by reason of military service, do one or more of the following:

a. Order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property.

b. Order a stay of the proceedings on its own motion, or on motion by the service member or another person on behalf of the service member.

c. Make any other disposition of the case it considers to be equitable to conserve the interests of all parties.

3. A person who knowingly repossesses property which is the subject of this section, other than as provided in subsection 1, commits a simple misdemeanor.

2002 Acts, ch 1117, §36, 40

NEW section

29A.103 Mortgage foreclosures.

1. The creditor of a service member who, prior to entry into military service, has entered into a mortgage contract with the service member for the purchase of real or personal property shall not foreclose on the mortgage or repossess the property for nonpayment or for any breach occurring during military service without an order from a court of competent jurisdiction.

2. The court, upon application to it under this section, shall, unless the court finds on the record that the ability of the service member to comply with the terms of the mortgage is not materially affected by reason of military service, do one or more of the following:

a. Order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property.

b. Order a stay of the proceedings on its own motion, or on motion by the service member or another person on behalf of the service member.

c. Make any other disposition of the case as it considers to be equitable to conserve the interests of all parties.

3. In order to come within the provisions of this section, the service member must establish all of the following:

a. That relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property.

b. That the obligation originated prior to the service member's entry into military service.

c. That the property was owned by the service member prior to the commencement of military service.

d. That the property is owned by the service member at the time relief is sought.

4. A person who knowingly forecloses on property that is the subject of this section, other than as provided in subsection 1, commits a simple misdemeanor.

2002 Acts, ch 1117, §37, 40
NEW section

29A.104 Application for relief.

1. A service member may, at any time during military service or within thirty days after discharge or termination of military service, apply to a court for relief in respect of any obligation or liability incurred by the service member prior to military service.

2. The court, after appropriate notice and hearing, unless in its opinion the ability of the service member to comply with the terms of the obligation or liability has not been materially affected by reason of military service, shall grant the following relief:

a. In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after termination of military service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of the combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, in equal installments during the combined period at the rate of interest on the unpaid balance as is prescribed in the contract, or other instrument evidencing the obligation, for installments paid when due, and subject to any other terms as the court may consider just.

b. In the case of any other obligation or liability, a stay of the enforcement during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after termination of the period of military service, for a period of time equal to the period of military service of the applicant or any part of that period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, in equal periodic installments during the extended period at the rate of interest prescribed for the obligation or liability, if paid when due, and subject to other terms the court considers to be reasonable and just.

3. When any court has granted a stay as provided in this section, a fine or penalty shall not accrue for failure to comply with the terms or conditions of the obligation or liability for which the stay was granted during the period the terms and conditions of the stay are complied with.

2002 Acts, ch 1117, §38, 40
NEW section

29A.105 Applicability — contrary law.

Sections 29A.90 through 29A.104 apply notwithstanding any contrary provision of state law, which may include but is not limited to Titles XIII, XIV, and XV.

2002 Acts, ch 1117, §39, 40
NEW section

CHAPTER 29B

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GENERAL JURISDICTION

29B.1 Persons subject to code.

This chapter applies to all members of the state military forces, while not in federal service. As used in this chapter, unless the context otherwise requires, *"state military forces"* has the same meaning as in section 29A.6, and *"code"* means this chapter, which may be cited as the *"Iowa Code of Military Justice"*.

[C66, 71, 73, 75, 77, 79, 81, §29B.1; 82 Acts, ch 1042, §1]

2002 Acts, ch 1117, §41, 52
Section amended

29B.2 Jurisdiction to try personnel.

Each person discharged from the state military forces who is later charged with having fraudulently obtained a discharge is, subject to section 29B.44, subject to trial by court-martial on that charge and is after apprehension subject to this code while in the custody of the military for that trial. Upon conviction of that charge the person is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

A member of the state military forces who is charged with having committed an offense against this code may be called or ordered to duty for the purpose of investigation under section 29B.33, trial by court-martial, and nonjudicial punishment under section 29B.14. A member shall be called or ordered to duty within one hundred eighty days of the discovery of the charged offense, and in no event shall a member be called or ordered to duty after the expiration of three years from the termination of a period of duty.

A member of the state military forces who is subject to this code at the time of commission of an offense made punishable by this code is not relieved from amenability to the jurisdiction of this code by virtue of the termination of a period of duty.

[C66, 71, 73, 75, 77, 79, 81, §29B.2]

89 Acts, ch 82, §1

29B.3 Territorial applicability of code.

This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state and offenses committed outside the state may be tried and punished either inside or outside the state.

[C66, 71, 73, 75, 77, 79, 81, §29B.3]

APPREHENSION AND RESTRAINT

29B.4 Apprehension.

Apprehension is the taking of a person into custody. Any person authorized by this code, or by regulations issued under it, to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer authorized to do so by law, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

Commissioned officers, warrant officers, noncommissioned officers, and military police may quell quarrels, frays, and disorders among persons subject to this code and may apprehend persons subject to this code who take part therein.

[C54, 58, 62, §29.65; C66, 71, 73, 75, 77, 79, 81, §29B.4; 82 Acts, ch 1042, §2]

29B.5 Apprehension of deserters.

Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the state military forces and deliver the deserter into the custody of the state military forces. If an offender is apprehended outside the state the offender's return to the area must be in accordance with normal extradition procedures or reciprocal agreement.

[C66, 71, 73, 75, 77, 79, 81, §29B.5]

29B.6 Imposition of restraint.

Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing the person to remain within certain speci-

fied limits. Confinement is the physical restraint of a person.

An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons.

A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of the officer's command or subject to the officer's authority into arrest or confinement.

A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority the commissioned or warrant officer is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until the proper authority is notified.

[C54, 58, 62, §29.66; C66, 71, 73, 75, 77, 79, 81, §29B.6, 29B.7; 82 Acts, ch 1042, §3]

29B.7 Probable cause.

A person shall not be ordered apprehended or into arrest or confinement except for probable cause.

[C54, 58, 62, §29.66; C66, 71, 73, 75, 77, 79, 81, §29B.7; 82 Acts, ch 1042, §4]

29B.8 Restraint of persons charged with offenses.

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, after charges are placed against the person, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and to try the person within sixty days of informing the accused or to dismiss the charges and release the person.

[C35, §467-f35; C39, §**467.37;** C46, 50, §29.37; C54, 58, 62, §29.67; C66, 71, 73, 75, 77, 79, 81, §29B.8]

29B.9 Posting of bond.

The accused may post bond in the amount ordered by the convening authority but not to exceed twice the authorized fine for such offense, however, no bond is permitted for capital offenses.

[C66, 71, 73, 75, 77, 79, 81, §29B.9]

29B.10 Confinement in jails.

Persons confined other than in a guardhouse, whether before, during or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons.

[C66, 71, 73, 75, 77, 79, 81, §29B.10]

29B.11 Reports and receiving of prisoners.

Every commander of a guard, master-at-arms, warden, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison, to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.

[C54, 58, 62, §29.68; C66, 71, 73, 75, 77, 79, 81, §29B.11]

29B.12 Punishment prohibited before trial.

Subject to section 29B.58, no person, while being held for trial or the result of a trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest or confinement imposed upon the person be any more rigorous than the circumstances require to insure the person's presence, but the person may be subjected to minor punishment during that period for infractions of discipline.

[C66, 71, 73, 75, 77, 79, 81, §29B.12]

29B.13 Delivery of offenders to civil authorities.

Under regulations as may be prescribed under this code a person subject to this code who is on active state service or state active duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to military custody for the completion of the sentence.

[C35, §467-f61; C39, §**467.63;** C46, 50, §29.63; C54, 58, 62, §29.61; C66, 71, 73, 75, 77, 79, 81, §29B.13]

2002 Acts, ch 1117, §42, 52

Unnumbered paragraph 1 amended

NONJUDICIAL PUNISHMENT

29B.14 Commanding officer's nonjudicial punishment.

1. Under regulations as the adjutant general may prescribe limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, punishment shall not be imposed upon any member of the state military forces under this section if the member demands trial by court-martial in lieu of punishment before imposition of the punishment. The adjutant general may adopt rules relating to the suspension and mitigation of punishments authorized under this code. The adjutant general, or an officer of a general rank in command may delegate powers under this section to a principal assistant who is a member of the state military forces according to rules adopted by the adjutant general.

2. Subject to rules of the adjutant general, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose disciplinary punishments for minor offenses without the intervention of a court-martial as follows:

a. Upon officers under the officer's command any one or a combination of the following:

(1) Withholding of privileges for not more than two consecutive weeks.

(2) Restriction to certain specified limits with or without suspension from duty, for not more than two consecutive weeks.

(3) If imposed by a commanding officer of the state military forces of field grade or above, a fine of any amount up to a maximum of the equivalent of ten days' pay or the forfeiture of not more than ten days' pay.

b. Upon other military personnel under the officer's command any one or a combination of the following:

(1) Withholding of privileges for not more than two consecutive weeks.

(2) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks.

(3) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included.

(4) Reduction to the next inferior pay grade if the current grade from which demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the one imposing the reduction.

(5) A fine of any amount up to a maximum of the equivalent of four days' pay or the forfeiture of not more than four days' pay.

c. If the commanding officer is of field grade or above, any one or a combination of the following:

(1) Any of the punishments stated in paragraph *"b"*, subparagraph (1), (2), or (3).

(2) A fine of any amount up to the maximum of the equivalent of ten days' pay or the forfeiture of not more than ten days' pay.

(3) Reduction to the lowest or any intermediate pay grade, if the current grade from which demoted is within the promotion authority of the officer imposing the reduction or an officer subordinate to the one imposing the reduction, but enlisted members in pay grades above E-4 shall not be reduced more than two pay grades.

d. Maximum allowable punishments of withholding of privileges, restrictions, and extra duties shall not be combined to run consecutively.

3. A person punished under this section who considers the punishment unjust or disproportionate to the offense may appeal to the next superior authority through the proper channel. The authority considering the appeal may refer a case that has been appealed to a staff judge advocate or legal officer for consideration and advice and shall do so before deciding on the appeal when the punishment is restriction, withholding of privileges, extra duties, forfeiture of pay, or reduction from the fourth or higher pay grade. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, the officer's successor in command, or superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and property affected. In addition the officer or authority may at any time place the offender on probation and suspend a reduction in grade or forfeiture whether or not executed.

4. The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

5. When a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after that punishment is imposed and to pay and allowances accrued before that date.

[C54, 58, 62, §29.62; C66, 71, 73, 75, 77, 79, 81, §29B.14; 82 Acts, ch 1042, §5]

89 Acts, ch 82, §2 – 4

COURTS-MARTIAL

29B.15 Courts-martial classified.

In the state military forces there are general, special, and summary courts-martial constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

The three kinds of courts-martial are:

1. General courts-martial, consisting of either of the following:

a. A military judge and not less than five members.

b. Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge, and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves.

2. Special courts-martial, consisting of any of the following:

a. Not less than three members.

b. A military judge and not less than three members.

c. Only a military judge, if one has been detailed to the court, and the accused requests only a military judge under the same conditions as prescribed in subsection 1, paragraph *"b"*.

3. Summary courts-martial, consisting of one commissioned officer.

[C35, §467-f33, -f61; C39, §**467.35, 467.63;** C46, 50, §29.35, 29.63; C54, 58, 62, §29.69; C66, 71, 73, 75, 77, 79, 81, §29B.15; 82 Acts, ch 1042, §6]

29B.16 Jurisdiction of courts-martial in general.

Each force of the state military forces has court-martial jurisdiction over all persons subject to this code.

[C35, §467-f33, -f61; C39, §**467.35, 467.63;** C46, 50, §29.35, 29.63; C54, 58, 62, §29.69; C66, 71, 73, 75, 77, 79, 81, §29B.16]

29B.17 Jurisdiction of general courts-martial.

Subject to section 29B.16, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the adjutant general may prescribe, adjudge any of the following punishments:

1. A fine of not more than two hundred dollars;
2. Forfeiture of pay and allowances not to exceed one thousand dollars;
3. A reprimand;
4. Dismissal or dishonorable discharge;
5. Reduction of a noncommissioned officer to the ranks; or
6. Any combination of these punishments.

[C39, §**467.33;** C46, 50, §29.33; C54, 58, 62, §29.71; C66, 71, 73, 75, 77, 79, 81, §29B.17]

29B.18 Jurisdiction of special or summary courts-martial.

1. Subject to section 29B.16, special courts-martial have jurisdiction to try persons subject to this code for any offense for which they may have been punished under this code and may, under such limitations as the adjutant general may impose by rule, adjudge any one or a combination of the following punishments:

a. A fine not exceeding one hundred dollars.

b. Forfeiture of pay and allowances not exceeding one thousand dollars.

c. A reprimand.

d. Dismissal or dishonorable discharge.

e. Reduction of a noncommissioned officer to the ranks.

A special courts-martial shall not try a commissioned officer.

2. *a.* Subject to section 29B.16, summary courts-martial have jurisdiction to try persons subject to this code, for any offense made punishable by this code.

b. A person with respect to whom summary courts-martial have jurisdiction shall not be brought to trial before a summary court-martial if the person objects, unless under section 29B.14 the person has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under section 29B.14, trial shall be ordered by special or general court-martial, as appropriate.

c. A summary court-martial may, under limitations the adjutant general imposes by rule, adjudge any of the following punishments:

(1) A fine of not more than fifty dollars for a single offense.

(2) Forfeiture of not more than twenty days' pay and allowances.

(3) Reduction of a noncommissioned officer to the ranks.

[C54, 58, 62, §29.72, 29.73; C66, 71, 73, 75, 77, 79, 81, §29B.18, 29B.24; 82 Acts, ch 1042, §7]

89 Acts, ch 82, §5

29B.19 Sentences of dismissal or dishonorable discharge to be approved by the governor.

In the state military forces a sentence of dismissal or dishonorable discharge shall not be executed until it is approved by the governor.

[C54, 58, 62, §29.75; C66, 71, 73, 75, 77, 79, 81, §29B.19; 82 Acts, ch 1042, §8]

29B.20 Complete record.

A sentence imposing a dishonorable discharge, discharge under other than honorable conditions, dismissal, or confinement shall not be adjudged

unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under this code was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. If a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason a military judge could not be detailed.

[C66, 71, 73, 75, 77, 79, 81, §29B.20; 82 Acts, ch 1042, §9]

2000 Acts, ch 1154, §5

29B.21 Confinement instead of fine.

In the state military forces, not in federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each three dollars of the authorized fine.

[C35, §467-f35; C39, §**467.37;** C46, 50, §29.37; C54, 58, 62, §29.74; C66, 71, 73, 75, 77, 79, 81, §29B.21]

29B.22 Judge advocates and legal officers.

A judge advocate in the state military forces shall be a commissioned officer who is a member of the bar of the state. However, a judge advocate serving in the military forces of the state on April 22, 2002, who is not a member of the bar of the state shall not be required to become a member of the bar of the state to maintain military membership as a judge advocate. A judge advocate shall be either a federally recognized judge advocate or appointed as a judge advocate in the state military forces by the adjutant general.

The adjutant general shall designate a staff judge advocate for the army national guard and the air national guard. The adjutant general may appoint the number of judge advocates of the state military forces as the adjutant general considers necessary to perform state active duty to supplement or replace national guard judge advocates in emergencies or when the national guard judge advocates are in federal service.

Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command may communicate directly with the staff judge advocate of a superior or subordinate command, or with the state judge advocate.

No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

[C66, 71, 73, 75, 77, 79, 81, §29B.22]

2002 Acts, ch 1117, §43, 52

Unnumbered paragraphs 1 and 2 stricken and rewritten

APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

29B.23 Who may convene general courts-martial.

In the state military forces general courts-martial may be convened by the governor, or by the adjutant general of the state of Iowa.

[C39, §**467.33;** C46, 50, §29.33; C54, 58, 62, §29.71; C66, 71, 73, 75, 77, 79, 81, §29B.23; 82 Acts, ch 1042, §10]

29B.24 Who may convene special courts-martial.

In the state military forces, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the state military forces are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. When any such officer is an accuser, the court shall be convened by superior competent authority.

[C54, 58, 62, §29.72; C66, 71, 73, 75, 77, 79, 81, §29B.24; 82 Acts, ch 1042, §11]

29B.25 Summary courts-martial — who may convene.

In the state military forces, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the state military forces are on duty, or of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

When only one commissioned officer is present with a command or detachment the officer shall be the summary court officer of that command or detachment and shall hear and determine all summary court-martial cases.

[C54, 58, 62, §29.73; C66, 71, 73, 75, 77, 79, 81, §29B.25; 82 Acts, ch 1042, §12]

29B.26 Who may serve on courts-martial.

Any commissioned officer of or on duty with the state military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before the courts for trial.

Any warrant officer of or on duty with the state military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before the courts for trial.

Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before the courts for trial, but the enlisted member shall serve as a member of a court only if, before the end of any pretrial session that is held or if none is held before the convening of the court, the accused personally has requested in writing, that enlisted members serve on it. After such a request, the accused shall not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

In this section, the word *"unit"* means any regularly organized body of the state military forces.

When it can be avoided, a person subject to this code shall not be tried by a court-martial any member of which is junior to the person in rank or grade.

When convening a court-martial, the convening authority shall detail as members of the courts-martial persons who in the convening authority's opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. A person is not eligible to serve as a member of a general or special court-martial when the person is the accuser or a witness for the prosecution or has acted as investigating officer, staff judge advocate, or as counsel in the same case. If a military judge is not appointed for a special court-martial and if a commissioned officer who is a member of the bar of the highest court of the state and of appropriate rank and grade is present and not otherwise disqualified and within the command of the convening authority, the convening authority shall appoint the commissioned officer as president of a special court-martial. Failure to meet this requirement does not divest a military court of jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §29B.26; 82 Acts, ch 1042, §13]

29B.27 Military judge of a general court-martial.

The authority convening a general court-martial shall detail a military judge to the court-martial. Subject to rules of the adjutant general, the authority convening a special court-martial may detail a military judge to the court-martial. A military judge shall preside over each open session of the court-martial to which the military judge has been detailed.

A military judge must be a commissioned officer of the state armed forces or a retired officer of the reserve components of the armed forces of the United States, a member of the bar of a federal court or a member of the bar of the highest court of the state, and certified to be qualified for the duty by the appropriate staff judge advocate of the state force concerned. The judge advocate responsible for certifying the military judge may recommend to the adjutant general that the adjutant general order to active duty retired personnel of the national guard or the United States armed forces who are qualified to act as military judges.

Unless the court-martial was convened by the governor neither the convening authority nor any member of the convening authority's staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed to perform the duties of a military judge. A person is not eligible to act as a military judge in a case if the person is the accuser or a witness for the prosecution or has acted as investigating officer or as a counsel in the same case. The military judge of a court-martial shall not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor shall the military judge vote with members of the court.

[C35, §467-f38; C39, §**467.40;** C46, 50, §29.40; C54, 58, 62, §29.79; C66, 71, 73, 75, 77, 79, 81, §29B.27; 82 Acts, ch 1042, §14]

2002 Acts, ch 1117, §44, 52

Unnumbered paragraph 2 amended

29B.28 Detail of trial counsel and defense counsel.

For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel and assistants the authority considers appropriate. A person who has acted as investigating officer, military judge, or court member in a case shall not act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. A person who has acted for the prosecution shall not act later in the same case for the defense, nor shall a person who has acted for the defense act later in the same case for the prosecution.

Trial counsel or defense counsel detailed for a general court-martial must be a person who is a member of the bar of the highest court of the state and certified as competent for the duty by the staff judge advocate.

In the case of a special court-martial:

1. The accused has the right to be represented at the trial by counsel having the qualifications stated in this section unless counsel having such qualifications cannot be provided because of physical conditions or military exigencies. If such counsel cannot be provided, the court may be convened and the trial held, but the convening au-

thority shall append a detailed written statement to the record stating why such counsel was not provided.

2. If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified.

3. If the trial counsel is a member of the bar of the highest court of the state, the defense counsel detailed by the convening authority must also be a member of the bar of the highest court of the state.

[C66, 71, 73, 75, 77, 79, 81, §29B.28; 82 Acts, ch 1042, §15]

2002 Acts, ch 1117, §45, 52
Unnumbered paragraph 2 amended

29B.29 Detail or employment of reporters and interpreters.

Under such regulations as the adjutant general may prescribe, the convening authority of a general or special court-martial or court of inquiry shall detail or employ certified court reporters, who shall record the proceedings of and testimony taken before that court. Under like regulations, the convening authority of a military court may detail or employ interpreters who shall interpret for the court.

[C66, 71, 73, 75, 77, 79, 81, §29B.29]

29B.30 Absent and additional members.

1. A member of a general or special court-martial shall not be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

2. If a general court-martial, except a general court-martial composed of a military judge only, is reduced below five members, the trial shall not proceed until the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the new members of the court in the presence of the military judge, the accused, and counsel for both sides.

3. If a special court-martial, except a special court-martial composed of a military judge only, is reduced below three members, the trial shall not proceed until the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court is read to the new members of the court in the presence of the military judge, if any, the accused, and counsel for both sides.

4. If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed after the detail of a new military judge as if no evidence had previously been introduced unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

[C66, 71, 73, 75, 77, 79, 81, §29B.30; 82 Acts, ch 1042, §16]

PRETRIAL PROCEDURES

29B.31 Charges and specifications.

Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this code to administer oaths and shall state:

1. That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

2. That they are true in fact to the best of the signer's knowledge and belief.

Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against the person as soon as practicable.

[C54, 58, 62, §29.64; C66, 71, 73, 75, 77, 79, 81, §29B.31]

29B.32 Compulsory self-incrimination prohibited.

No person subject to this code may compel any person to make a self-incriminating statement or to answer any question the answer to which may tend to incriminate the person.

No person subject to this code may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing the accused or suspect of the nature of the accusation and advising the accused or suspect that the accused or suspect does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the accused or suspect may be used as evidence against the accused or suspect in a trial by court-martial.

No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade the person.

No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a

trial by court-martial.

[C66, 71, 73, 75, 77, 79, 81, §29B.32]

29B.33 Investigation.

A charge or specification shall not be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth in the charge or specification is made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

The accused shall be advised of the charges and of the right to be represented at the investigation by counsel. Upon the accused's own request the accused shall be represented by civilian counsel at the expense of the accused, or military counsel of the accused's own selection if such counsel is reasonably available, or by counsel detailed by the convening authority. At that investigation full opportunity shall be given to the accused to cross-examine prosecution witnesses if they are available and to present anything the accused may desire in the accused's own behalf, either in defense or mitigation, and the investigating officer shall examine witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed above, no further investigation of that charge is necessary under this section unless it is demanded by the accused after the accused is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in the accused's own behalf.

The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §29B.33; 82 Acts, ch 1042, §17]

29B.34 Forwarding of charges.

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges directly to the person exercising general court-martial jurisdiction, together with the investigation and allied papers. If that is not practicable, the commanding officer shall report in writing to the adjutant general the reasons for delay.

[C66, 71, 73, 75, 77, 79, 81, §29B.34; 82 Acts, ch 1042, §18]

29B.35 Advice of staff judge advocate and reference for trial.

Before directing the trial of any charge by general court-martial, the convening authority shall refer the charge to the appropriate staff judge advocate of the state force concerned for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless the authority has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

[C66, 71, 73, 75, 77, 79, 81, §29B.35]

2002 Acts, ch 1117, §46, 52

Unnumbered paragraph 1 amended

29B.36 Service of charges.

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. The accused shall not be brought to trial before a general court-martial or be required to participate in a session before a military judge under section 29B.40 within a period of five days after the service of the charges upon the accused, or before a special court-martial within a period of three days after the service of the charges upon the accused, unless the accused consents otherwise.

[C66, 71, 73, 75, 77, 79, 81, §29B.36; 82 Acts, ch 1042, §19]

TRIAL PROCEDURE

29B.37 Adjutant general may prescribe rules.

The procedures, including modes of proof, in cases before military courts and other military tribunals shall be prescribed by the adjutant general by rule, but shall not be contrary to or inconsistent with this code. This code shall be construed as to effectuate the general purpose of uniformity so far as practical with the uniform code of military justice, 10 U.S.C. ch. 47. All courts and other proceedings shall be conducted under the procedural rules established under 10 U.S.C. ch. 47 unless otherwise provided in this code.

[C66, 71, 73, 75, 77, 79, 81, §29B.37; 82 Acts, ch 1042, §20]

29B.38 Unlawfully influencing action of court.

1. The authority convening a general, special, or summary court-martial or any other commanding officer, or officer serving on the staff of the authority, shall not censure, reprimand, or admonish the court or any member, military judge, or counsel of the court, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or the court or military judge or counsel's functions in the conduct of the proceeding. A person subject to this code shall not attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to the authority's judicial acts. Any violation of this section shall be punished as a court-martial may direct.

2. In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used to determine whether a member of the state military force is qualified to be advanced in grade, reassigned, transferred, or retained on active duty, a person shall not do either of the following:

a. Consider or evaluate the performance of duty of the member as a member of a court-martial or military judge.

b. Give a less favorable rating or evaluation of a member of the state military forces because of the zeal with which the member, as counsel, represented an accused before a court-martial.

[C66, 71, 73, 75, 77, 79, 81, §29B.38; 82 Acts, ch 1042, §21]

29B.39 Duties of trial counsel and defense counsel.

The trial counsel of a general or special court-martial shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

The accused has the right to be represented in the accused's defense before a general or special court-martial by civilian counsel if provided at the expense of the accused, or by military counsel selected by the accused if reasonably available, or by the defense counsel detailed under section 29B.28. If the accused selects defense counsel, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as associate counsel for the accused; otherwise they shall be excused by the military judge or by the president of the court-martial if there is no military judge.

In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters the defense counsel feels should be considered in behalf of the accused on review, including any objection to the contents of the record which the defense counsel considers appropriate.

An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when the assistant is qualified to be a trial counsel as required by section 29B.28, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when the assistant is qualified to be the defense counsel as required by section 29B.28, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

[C66, 71, 73, 75, 77, 79, 81, §29B.39; 82 Acts, ch 1042, §22]

29B.40 Sessions.

At any time after the service of charges referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to this chapter, call the court into session without the presence of the members for the purpose of any of the following:

1. Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty.

2. Hearing and ruling upon any matter which may be ruled upon by the military judge under this code, whether or not the matter is appropriate for later consideration or decision by the members of the court.

3. If permitted by rules of the adjutant general holding the arraignment and receiving the pleas of the accused.

4. Performing any other procedural function which may be performed by the military judge under this code or under rules adopted pursuant to this code and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge.

[C66, 71, 73, 75, 77, 79, 81, §29B.40; 82 Acts, ch 1042, §23]

29B.41 Continuances.

A military judge or court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

[C66, 71, 73, 75, 77, 79, 81, §29B.41; 82 Acts, ch 1042, §24]

29B.42 Challenges.

The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or the court in the absence of a military judge shall determine the relevancy and validity of challenges for cause, and shall not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge shall not be challenged except for cause.

[C66, 71, 73, 75, 77, 79, 81, §29B.42; 82 Acts, ch 1042, §25]

29B.43 Oaths.

Before performing their official duties, military judges, members of a general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters and interpreters shall take an oath to perform their duties faithfully. The adjutant general shall adopt rules prescribing the form of the oath, the time and place of the taking of the oath, the manner of recording, and whether the oath must be taken for all cases in which official duties must be performed or for a particular case. The rules may provide that an oath to perform duties faithfully as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate or legal officer, or other person certified to be qualified or competent for the duty, and that once taken the oath need not be taken again each time the person is detailed to that duty.

[C66, 71, 73, 75, 77, 79, 81, §29B.43; 82 Acts, ch 1042, §26]

29B.44 Statute of limitations.

A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offense punishable under section 29B.112 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under section 29B.14 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 29B.14.

Periods in which the accused was absent from territory in which the state has the authority to apprehend the accused, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

[C66, 71, 73, 75, 77, 79, 81, §29B.44]

29B.45 Former jeopardy.

No person may, without the person's consent, be tried a second time in any military court of the state for the same offense.

No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this section.

[C66, 71, 73, 75, 77, 79, 81, §29B.45]

29B.46 Pleas of the accused.

1. If the accused after arraignment makes an irregular pleading, or after a plea of guilty sets up defenses inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

2. With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by rules of the adjutant general be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which case the proceedings shall continue as though the accused had pleaded not guilty.

[C66, 71, 73, 75, 77, 79, 81, §29B.46; 82 Acts, ch 1042, §27]

29B.47 Opportunity to obtain witnesses and other evidence.

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the adjutant general may prescribe.

The military judge or the president of a court-martial without a military judge may:

1. Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

2. Issue subpoenas duces tecum and other subpoenas;

3. Enforce by attachment the attendance of witnesses and the production of books and papers; and

4. Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers as prescribed by laws of the state.

[C35, §467-f37; C39, §**467.39;** C46, 50, §29.39; C54, 58, 62, §29.76; C66, 71, 73, 75, 77, 79, 81, §29B.47; 82 Acts, ch 1042, §28]

29B.48 Refusal to appear or testify.

Any person not subject to this code who:

1. Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer and designated to take a deposition to be read in evidence before such a court;

2. Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the state; and

3. Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person has been legally subpoenaed to produce;

is guilty of a simple misdemeanor.

Upon certification of the facts in a case under this section by the military judge, president of courts-martial without a military judge, or summary courts-martial officer, the county attorney of the county where the offense occurred shall prosecute the offense as if it were included in the Iowa criminal code.

[C66, 71, 73, 75, 77, 79, 81, §29B.48; 82 Acts, ch 1042, §29]

29B.49 Contempts.

1. A military court may punish for contempt any person subject to this code who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment shall not exceed confinement for thirty days or a fine of one hundred dollars, or both.

2. A person who is not subject to this code who engages in conduct described in subsection 1 is guilty of a simple misdemeanor. The facts shall be certified to the county attorney of the county in which the offense occurred who shall prosecute the case as if the offense were included in the Iowa criminal code.

[C66, 71, 73, 75, 77, 79, 81, §29B.49; 82 Acts, ch 1042, §30]

29B.50 Depositions.

At any time after charges have been signed, as provided in section 29B.31 any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case, or if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, the authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

Depositions may be taken before and authenticated by any military or civil officer authorized to administer oaths by the laws of the United States or by the laws of the place where the deposition is taken.

A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any court-martial or in any proceeding before a court of inquiry, if any of the following are apparent:

1. That the witness resides or is out of the state of Iowa and the witness' appearance cannot be obtained, unless it appears that the absence of the witness was procured by the party offering the deposition.

2. That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing.

3. That the party offering the deposition has been unable to procure the attendance of the witness by subpoena or other process and the present whereabouts of the witness is unknown.

[C66, 71, 73, 75, 77, 79, 81, §29B.50; 82 Acts, ch 1042, §31]

29B.51 Admissibility of records of courts of inquiry.

In any case not extending to the dismissal of a commissioned officer, the sworn testimony, con-

tained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry, and if the same issue was involved or if the accused consents to the introduction of such evidence.

Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

Such testimony may also be read in evidence before a court of inquiry or a military board.

[C66, 71, 73, 75, 77, 79, 81, §29B.51]

29B.52 Voting and rulings.

1. Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall immediately announce the result of the ballot to the members of the court.

2. The military judge and, except for questions of challenge, the president of a court-martial without a military judge, shall rule upon all questions of law and all interlocutory questions arising during the proceedings. A ruling made by the military judge upon a question of law or an interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon a question of law other than a motion for a finding of not guilty is final and constitutes the ruling of the court. However, the military judge may change a ruling at any time during the trial. Unless the ruling is final, if a member objects to the ruling, the court shall be cleared and closed and the question decided by a voice vote as provided in this code beginning with the junior in rank.

3. Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them as follows:

a. That the accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond reasonable doubt.

b. That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted.

c. That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt.

d. That the burden of proof for establishing the guilt of the accused beyond reasonable doubt is upon the state.

4. Subsection 3 does not apply to a court-martial composed of a military judge only. The military judge of a court-martial composed only of a military judge shall determine all questions of law and fact arising during the proceedings, and, if the accused is convicted, adjudge an appropriate sentence. The military judge shall make a general finding and shall find the facts specifically on request. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear in the opinion or memorandum of decision.

[C66, 71, 73, 75, 77, 79, 81, §29B.52; 82 Acts, ch 1042, §32]

29B.53 Number of votes required.

A person shall not be convicted of an offense, except as provided in this code by the concurrence of two-thirds of the members present at the time the vote is taken.

All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused but a determination to reconsider a finding of guilty or to reconsider a sentence for the purpose of possible reduction may be made by any lesser vote if the determination to reconsider is not opposed by two-thirds of the members present.

[C66, 71, 73, 75, 77, 79, 81, §29B.53; 82 Acts, ch 1042, §33]

29B.54 Court to announce action.

A court-martial shall announce its findings and sentence to the parties as soon as determined.

[C66, 71, 73, 75, 77, 79, 81, §29B.54]

29B.55 Record of trial.

Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence of the military judge, it shall be authenticated by the signature of the trial counsel or by the signature of a member if the trial counsel is unable to authenticate it by reason of death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general officer, in a sentence not including

discharge, dismissal, or confinement and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain matters prescribed by rules of the adjutant general.

Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by rules of the adjutant general.

A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as the record is authenticated. If a verbatim record of trial by general court-martial is not required, but is made, the accused may buy the record as prescribed in rules of the adjutant general.

[C66, 71, 73, 75, 77, 79, 81, §29B.55; 82 Acts, ch 1042, §34]

SENTENCES

29B.56 Cruel and unusual punishments prohibited.

Punishment by cruel or unusual punishment may not be adjudged by any court-martial or inflicted upon any person subject to this code.

[C66, 71, 73, 75, 77, 79, 81, §29B.56]

29B.57 Maximum fines.

The punishment which a court-martial may direct for an offense may not exceed limits prescribed by this code.

[C66, 71, 73, 75, 77, 79, 81, §29B.57]

29B.58 Effective date of sentences.

1. When a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture shall apply only to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. A forfeiture shall not extend to any pay or allowances accrued before that date.

2. A period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement, provided that credit be given for confinement served prior to trial. Rules prescribed by the adjutant general may provide that sentences of confinement shall not be executed until approved by designated officers.

3. All other sentences of courts-martial are effective on the date ordered executed.

4. On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority, or if the accused is no longer under the jurisdiction of the convening authority, the person exercising general court-martial jurisdiction, may in the person's discretion defer service of the sentence to confinement. The deferral terminates when the sentence is ordered executed. The deferral may be rescinded at any time by the officer who granted it, or, if the accused is no longer under jurisdiction of that officer, by the person exercising general court-martial jurisdiction.

5. Unless otherwise provided in rules of the adjutant general, a court-martial sentence of an enlisted member in pay grade above E-1, that includes a discharge under other than honorable conditions or confinement and that is approved by the convening authority reduces the member to pay-grade E-1, effective on the date of the approval.

6. If the sentence of a member who is reduced in pay grade under subsection 5 is set aside or disapproved, or, as finally approved, does not include a punishment named in subsection 5, the rights and privileges of which the member was deprived because of the reduction shall be restored and the member is entitled to the pay and allowances lost during the period the reduction was in effect.

[C66, 71, 73, 75, 77, 79, 81, §29B.58; 82 Acts, ch 1042, §35]

29B.59 Execution of confinement.

A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary or prison by the courts of the state or of any political subdivision thereof.

The omission of the words *"hard labor"* from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

The keepers, officer, and wardens of city or county jails and of other jails, penitentiaries, or prisons shall receive persons ordered into confinement before trial and persons committed to such confinement by a military court and shall confine them according to law. No such keeper, officer or warden may require payment of any fee or charge for so receiving or confining a person.

[C66, 71, 73, 75, 77, 79, 81, §29B.59]

REVIEW BY COURT-MARTIAL

29B.60 Execution of sentence — suspension of sentence.

Except as provided in sections 29B.20 and 29B.65, a court-martial sentence, unless suspended or deferred, may be ordered executed by the convening authority when approved by the convening authority. The convening authority shall approve the sentence or the part, amount, or commuted form of the sentence as the convening authority sees fit, and may suspend or defer the execution of the sentence.

[C66, 71, 73, 75, 77, 79, 81, §29B.60; 82 Acts, ch 1042, §36]

29B.61 Initial action of record.

After a trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the adjutant general.

In acting on the findings and sentence of a court-martial, the convening authority may approve only such findings of guilty, and the sentence or part or amount of the sentence as the convening authority finds correct in law and fact and as in the convening authority's discretion should be approved. Unless the convening authority indicates otherwise, approval of the sentence includes approval of the findings.

[C66, 71, 73, 75, 77, 79, 81, §29B.61; 82 Acts, ch 1042, §37]

29B.62 General court-martial records.

The convening authority shall refer the record of each general court-martial to the appropriate staff judge advocate of the state force concerned, who shall submit a written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §29B.62]
2002 Acts, ch 1117, §47, 52
Section amended

29B.63 Reconsideration and revision.

If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

1. For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;
2. For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or
3. For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

[C66, 71, 73, 75, 77, 79, 81, §29B.63]

29B.64 Rehearings.

If the convening authority disapproves the findings and sentence of a court-martial the convening authority may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such case the convening authority shall state the reasons for disapproval. If the convening authority disapproves the findings and sentence and does not order a rehearing, the convening authority shall dismiss the charges.

Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which the accused was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

[C66, 71, 73, 75, 77, 79, 81, §29B.64]

29B.65 Review of records — disposition.

1. If the convening authority is the governor or adjutant general, the convening authority's action on the review of any record of trial is final.
2. In all other cases not covered by subsection 1, if the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, dishonorable discharge, dismissal, or confinement, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial.
3. All other special and summary court-martial records shall be sent to the appropriate staff judge advocate of the state force concerned and shall be acted upon, transmitted, and disposed of as prescribed by rules of the adjutant general.
4. The staff judge advocate of the state force

concerned shall review the record of trial in each case sent for review as provided under this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the staff judge advocate is limited to questions of jurisdiction.

The staff judge advocate shall take final action in any case reviewable by the staff judge advocate.

5. In a case reviewable by the appropriate staff judge advocate under this section, the staff judge advocate may act only with respect to the findings and sentence as approved by the convening authority. The staff judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the staff judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In consideration of the record, the staff judge advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the staff judge advocate sets aside the findings and sentence, the staff judge advocate may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the staff judge advocate sets aside the findings and sentence and does not order a rehearing, the staff judge advocate shall order that the charges be dismissed.

6. In a case reviewable by the staff judge advocate under this section, the staff judge advocate shall instruct the convening authority to act in accordance with the decision on the review. If the staff judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, the staff judge advocate may dismiss the charges.

7. The staff judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the state military forces, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by court-martial including a sentence to a dishonorable discharge, dismissal or confinement, referred to it by the staff judge advocate. Boards of review have the same authority on review as the staff judge advocate has under this section.

[C66, 71, 73, 75, 77, 79, 81, §29B.65; 82 Acts, ch 1042, §38]

2002 Acts, ch 1117, §48, 52

Subsections 2 and 4 – 7 amended

29B.66 Error of law — lesser included offenses.

A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding as includes a lesser included offense.

[C66, 71, 73, 75, 77, 79, 81, §29B.66]

29B.67 Review counsel.

Upon the final review of a sentence of a general court-martial or of a sentence to a dishonorable discharge, dismissal, or confinement, the accused has the right to be represented by counsel before the reviewing authority and before the appropriate staff judge advocate.

Upon the request of an accused entitled to be so represented, the appropriate staff judge advocate shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in section 29B.28, if available, to represent the accused before the reviewing authority and before the appropriate staff judge advocate, in the review of cases specified in this section.

If provided by the accused, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority and before the appropriate staff judge advocate.

[C66, 71, 73, 75, 77, 79, 81, §29B.67; 82 Acts, ch 1042, §39]

2002 Acts, ch 1117, §49, 52

Section amended

29B.68 Vacation of suspension.

Before the vacation of the suspension of a special court-martial sentence which as approved includes a discharge under other than honorable conditions, a dismissal, or a confinement, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if the probationer so desires.

The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the adjutant general in cases involving a general court-martial sentence and to the commanding officer of the force of state military forces of which the probationer is a member in all other cases covered by this section. If the adjutant general or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

[C66, 71, 73, 75, 77, 79, 81, §29B.68; 82 Acts, ch 1042, §40]

29B.69 Petition for a new trial.

At any time within two years after approval by the convening authority of a court-martial sen-

tence which extends to dismissal, dishonorable or bad-conduct discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence or fraud on the court-martial.

[C66, 71, 73, 75, 77, 79, 81, §29B.69; 82 Acts, ch 1042, §41]

29B.70 Remission or suspension.

A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

[C66, 71, 73, 75, 77, 79, 81, §29B.70]

29B.71 Restoration.

Under such regulations as the adjutant general may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the adjutant general shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

If a previously executed sentence of dismissal is not imposed on a new trial, the adjutant general shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had the former officer not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All times between the dismissal and reappointment shall be considered as service for all purposes.

[C66, 71, 73, 75, 77, 79, 81, §29B.71]

29B.72 Finality of proceedings — findings and sentences.

The proceedings, findings, and sentences of court-martial as reviewed and approved, as required by this code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval, as required by this code, are final and conclusive. Orders publishing the proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in section 29B.69.

[C66, 71, 73, 75, 77, 79, 81, §29B.72]

PUNITIVE ARTICLES

29B.73 Persons to be tried or punished.

A person shall not be tried or punished for any offense provided for in this code unless it was committed while the person was in a duty status or during a time when the person was under lawful orders to be in a duty status.

[C66, 71, 73, 75, 77, 79, 81, §29B.73; 82 Acts, ch 1042, §42]

29B.74 Principals.

Any person subject to this code who:

1. Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

2. Causes an act to be done which if directly performed by the person would be punishable by this code;

is a principal.

[C66, 71, 73, 75, 77, 79, 81, §29B.74]

29B.75 Accessory after the fact.

Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent the offender's apprehension, trial or punishment shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.75]

29B.76 Conviction of lesser included offenses.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

[C66, 71, 73, 75, 77, 79, 81, §29B.76]

29B.77 Attempts.

An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

[C66, 71, 73, 75, 77, 79, 81, §29B.77]

29B.78 Conspiracy.

Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators

does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.78]

29B.79 Solicitation.

Any person subject to this code who solicits or advises another or others to desert in violation of section 29B.82 or mutiny in violation of section 29B.91 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 29B.96 or sedition in violation of section 29B.91 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.79]

29B.80 Fraudulent enlistment — appointment or separation.

Any person who:

1. Procures the person's own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to the person's qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

2. Procures the person's own separation from the state military forces by knowingly false representation or deliberate concealment as to the person's eligibility for that separation;

shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(1); C66, 71, 73, 75, 77, 79, 81, §29B.80]

29B.81 Unlawful enlistment — appointment or separation.

Any person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to the person subject to this code to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.81]

29B.82 Desertion.

Any member of the state military forces who:

1. Without authority goes or remains absent from the member's unit, organization, or place of duty with intent to remain away therefrom permanently;

2. Quits the member's unit, organization or place of duty with intent to avoid hazardous duty or to shirk important services; or

3. Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without duly disclosing the fact that the member has not been regularly separated;

is guilty of desertion.

Any commissioned officer of the state military forces who, after tender of the officer's resignation and before notice of its acceptance, quits a post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.82]

29B.83 Absence without leave.

Any person subject to this code who, without authority:

1. Fails to go to the person's appointed place of duty at the time prescribed;

2. Goes from that place; or

3. Leaves or remains absent from the unit, organization, or place of duty at which the person is required to be at the time prescribed;

shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(3); C66, 71, 73, 75, 77, 79, 81, §29B.83]

29B.84 Missing movement.

Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which the person is required in the course of duty to move shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.84]

29B.85 Contempt toward officials.

Any person subject to this code who uses contemptuous words against the president, the governor, or the governor of any other state, territory, commonwealth, or possession in which that person may be serving, shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(4); C66, 71, 73, 75, 77, 79, 81, §29B.85]

29B.86 Disrespect toward superior commissioned officer.

Any person subject to this code who behaves with disrespect toward the person's superior commissioned officer shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(5); C66, 71, 73, 75, 77, 79, 81, §29B.86]

29B.87 Assaulting or willfully disobeying superior commissioned officer.

Any person subject to this code who:

1. Strikes the person's superior commissioned officer or draws or lifts up any weapon or offers any violence against the superior commissioned officer while the superior commissioned officer is in the execution of the officer's office; or

2. Willfully disobeys a lawful command of the person's superior commissioned officer;

shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(6); C66, 71, 73, 75, 77, 79, 81, §29B.87]

29B.88 Insubordinate conduct toward warrant officer, noncommissioned officer or petty officer.

Any warrant officer or enlisted member who:

1. Strikes or assaults a warrant officer, noncommissioned officer or petty officer, while that officer is in the execution of the officer's office;

2. Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

3. Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of the officer's office;

shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(7); C66, 71, 73, 75, 77, 79, 81, §29B.88]

29B.89 Failure to obey order or regulation.

Any person subject to this code who:

1. Violates or fails to obey any lawful general order or regulation;

2. Having knowledge of any other lawful order issued by a member of the state military forces which it is the person's duty to obey, fails to obey the order; or

3. Is derelict in the performance of the person's duties;

shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.89]

29B.90 Cruelty and maltreatment.

Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to orders of the person subject to this code shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.90]

29B.91 Mutiny or sedition.

Any person subject to this code who:

1. With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do the person's duty or creates any violence or disturbance against that authority is guilty of mutiny;

2. With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

3. Fails to do the person's utmost to prevent and suppress a mutiny or sedition being committed in the person's presence, or fails to take all reasonable means to inform the person's superior commissioned officer or commanding officer of a mutiny or sedition which the person knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(8); C66, 71, 73, 75, 77, 79, 81, §29B.91]

29B.92 Resistance, breach of arrest and escape.

Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.92]

29B.93 Releasing prisoner without proper authority.

Any person subject to this code who, without proper authority, releases any prisoner committed to the person's charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(9); C66, 71, 73, 75, 77, 79, 81, §29B.93]

29B.94 Unlawful detention of another.

Any person subject to this code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.94]

29B.95 Noncompliance with procedural rules.

Any person subject to this code who:

1. Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

2. Knowingly and intentionally fails to enforce or comply with any provisions of this code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.95]

29B.96 Misbehavior before the enemy.

Any person subject to this code who before or in the presence of the enemy:

1. Runs away;

2. Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is the person's duty to defend;

3. Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

4. Casts away the person's arms or ammunition;

5. Is guilty of cowardly conduct;

6. Quits the person's place of duty to plunder or pillage;

7. Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the state military forces;

8. Willfully fails to do the person's utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is the person's duty so to encounter, engage, capture or destroy; or

9. Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle;

shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.96]

29B.97 Subordinate compelling surrender.

A person subject to this code who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property or any body of the state military forces, or of any other state, to surrender the place, property, or forces to an enemy or to abandon the place, property, or forces, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.97; 82 Acts, ch 1042, §43]

29B.98 Improper use of countersign.

Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to the person's knowledge, the person was authorized and required to give, shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.98]

29B.99 Forcing a safeguard.

Any person subject to this code who forces a safeguard shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.99]

29B.100 Captured or abandoned property.

All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

Any person subject to this code who:

1. Fails to carry out the duties prescribed herein;

2. Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby the person receives or expects any profit, benefit or advantage to the person or another directly or indirectly connected with the person; and

3. Engages in looting or pillaging;

shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.100]

29B.101 Aiding the enemy.

Any person subject to this code who:

1. Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

2. Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.101]

29B.102 Misconduct of a prisoner.

Any person subject to this code who, while in the hands of the enemy in time of war:

1. For the purpose of securing favorable treatment by the captors acts without proper authority in a manner contrary to law, custom, or regulation,

to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

2. While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.102]

29B.103 False official statements — forgery.

1. A person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

2. A person subject to this code who with intent to defraud does either or both of the following is guilty of forgery and shall be punished as a court-martial may direct:

a. Falsely makes or alters a signature to, or a part of, a writing which would if genuine apparently impose a legal liability on another or change the person's legal right or prejudice the person's liability.

b. Utters, offers, issues, or transfers written material the person knows is falsely made or altered.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(2); C66, 71, 73, 75, 77, 79, 81, §29B.103; 82 Acts, ch 1042, §44]

29B.104 Property crimes.

1. A person subject to this code who, while in a duty status, willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages property other than military property of the United States or of the state shall be punished as a court-martial may direct.

2. A person subject to this code who without proper authority sells or otherwise disposes of or who willfully or through neglect damages, destroys, or loses or who causes willfully or through neglect the damage, destruction, sale, or wrongful disposition of military property of the United States or the state shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.104; 82 Acts, ch 1042, §45]

29B.105 Improper hazarding of vessel.

Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.105]

29B.106 Drunken or reckless driving.

Any person subject to this code who operates any vehicle while under the influence of an alcoholic beverage, a narcotic, hypnotic or other drug, or any combination of such substances, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.106]

For operating while intoxicated provisions, see chapter 321J

29B.107 Drunk on duty — sleeping on post — leaving post before relief.

Any person subject to this code who is found drunk on duty or sleeping upon the person's post, or who leaves the person's post before the person is regularly relieved, shall be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(10); C66, 71, 73, 75, 77, 79, 81, §29B.107]

29B.108 Dueling.

Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.108]

29B.109 Malingering.

Any person subject to this code who for the purpose of avoiding work, duty or service in the state military forces:

1. Feigns illness, physical disablement, mental lapse or derangement; or

2. Intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.109]

29B.110 Riot or breach of peace.

Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.110]

29B.111 Provoking speeches or gestures.

Any person subject to this code who uses provoking or reproachful words or gestures toward any other person subject to this code shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.111]

29B.112 Perjury.

Any person subject to this code who in a judicial proceeding or in a court of justice conducted under this code willfully and corruptly gives, upon a law-

ful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.112]

29B.113 Frauds against the government.

Any person subject to this code:

1. Who, knowing it to be false or fraudulent:

a. Makes any claim against the United States, the state, or any officer thereof; or

b. Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the state, or any officer thereof;

2. Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof:

a. Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

b. Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

c. Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

3. Who, having charge, possession, custody, or control of any money, or other property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which the person receives a certificate or receipt; or

4. Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state;

shall, upon conviction, be punished as a court-martial may direct.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(13); C66, 71, 73, 75, 77, 79, 81, §29B.113]

29B.114 Larceny and wrongful appropriation.

Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind:

1. With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to the person's own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

2. With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to the person's own use or the use of any person other than the owner, is guilty of wrongful appropriation.

Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

[C66, 71, 73, 75, 77, 79, 81, §29B.114]

29B.115 Conduct unbecoming an officer.

A commissioned officer who is convicted of conduct unbecoming an officer shall be punished as a court-martial directs.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(11); C66, 71, 73, 75, 77, 79, 81, §29B.115]

85 Acts, ch 67, §7

29B.116 General article.

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance shall not be taken of, and jurisdiction shall not be extended to, the crimes of murder, manslaughter, sexual abuse, robbery, maiming, arson, extortion, assault, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

[C97, §2196 – 2198; SS15, §2215-f63; C24, 27, 31, §464; C35, §467-f59; C39, §**467.61;** C46, 50, §29.61; C54, 58, 62, §29.63(12); C66, 71, 73, 75, 77, 79, 81, §29B.116; 82 Acts, ch 1042, §46]

2000 Acts, ch 1154, §45; 2002 Acts, ch 1117, §50, 52

Section amended

MISCELLANEOUS PROVISIONS

29B.117 Courts of inquiry.

Courts of inquiry to investigate any matter may be convened by the adjutant general, the governor, or by any other person designated by the adjutant general or authorized to convene a general court-martial for that purpose, whether or not the persons involved have requested the inquiry.

A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code who has a direct interest in the subject of inquiry has the right to be

designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

[C97, §2196 – 2198; SS15, §2215-f36; C24, 27, 31, §464; C35, §467-f32; C39, §**467.34;** C46, 50, §29.34; C54, 58, 62, §29.70; C66, 71, 73, 75, 77, 79, 81, §29B.117; 82 Acts, ch 1042, §47]

29B.118 Complaints or wrongs.

Any member of the state military forces who feels wronged by the member's commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor or adjutant general.

[C66, 71, 73, 75, 77, 79, 81, §29B.118]

29B.119 Redress of injuries to property.

Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the state military forces, the person may, subject to such regulations as the adjutant general may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided herein, on any disbursement officer for the payment by the officer to the injured parties of the damages so assessed and approved.

Any person subject to this code who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in the person's behalf, and to cross-examine those appearing against the person. The person has the right of appeal to the next higher commander.

[C66, 71, 73, 75, 77, 79, 81, §29B.119]

29B.120 Process of military courts.

Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

Process and mandates may be issued by summary courts-martial, provost courts, a military judge, or the president of other military courts and may be directed to and executed by the marshals of the military court or any peace officer. Process and mandates shall be in a form prescribed by rules issued under this code.

All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

[C35, §467-f34; C39, §**467.36;** C46, 50, §29.36; C54, 58, 62, §29.77; C66, 71, 73, 75, 77, 79, 81, §29B.120; 82 Acts, ch 1042, §48]

29B.121 to 29B.124 Reserved.

29B.125 Immunity for action of military courts.

An accused shall not bring an action or proceeding against the convening authority or a member of a military court or board convened under this code or a person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court or board convened under this code.

[82 Acts, ch 1042, §50]

29B.126 Payment and disposition of fines.

Fines imposed by a military court may be paid to the court or to an officer executing its process. The amount of the fine may be noted upon any

state payroll or pay account and fines may be deducted from any pay or allowance due or thereafter to become due to the offender, until the fine is collected. Any sum so deducted shall be turned into the military court that imposed the fine. An officer collecting a fine or penalty imposed by a military court upon an officer or enlisted person shall pay the fine within thirty days to the judge advocate, who shall transmit the fine to the adjutant general. The adjutant general shall monthly, deposit all fines and penalties so received with the state treasurer, to be credited to the general fund of the state. Forfeited bonds shall be processed in the same manner.

[82 Acts, ch 1042, §51]

29B.127 Presumption of jurisdiction.

The jurisdiction of the military courts and boards established by this code shall be presumed and the burden of proof rests on any person seeking to deny those courts or boards jurisdiction in any action or proceeding.

[82 Acts, ch 1042, §52]

29B.128 Delegation of authority by the governor.

The governor may delegate any authority vested in the governor under this code, and may provide for the subdelegation of any such authority, except the power given to the governor by sections 29B.19 and 29B.23.

[82 Acts, ch 1042, §53]

29B.129 Authority to administer oaths.

The following members of the state military forces may administer oaths for the purposes of military administration including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

1. All summary courts-martial.
2. Adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
3. Commanding officers.
4. Staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.
5. The president, military judge, trial counsel, and assistant trial counsel for general and special courts-martial.
6. The president and the counsel for the court of any court of inquiry.
7. Officers designated to take a deposition.
8. Persons detailed to conduct an investigation.
9. Other persons designated by state law or by rules of the governor.

[82 Acts, ch 1042, §54]

2002 Acts, ch 1117, §51, 52

Subsection 1 stricken and former subsections 2 – 10 renumbered as 1 – 9

SUBTITLE 12

EMERGENCY CONTROL

CHAPTER 29C

EMERGENCY MANAGEMENT

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29C.1 Statement of policy.

Because of existing and increasing possibility of the occurrence of disasters, and in order to insure that preparations of this state will be adequate to deal with such disasters, and to provide for the common defense and to protect the public peace, health and safety, and to preserve the lives and property of the people of the state, it is the policy of this state:

1. To establish an emergency management division of the department of public defense and to authorize the establishment of local organizations for emergency management in the political subdivisions of the state.

2. To confer upon the governor and upon the executive heads or governing bodies of the political subdivisions of the state the emergency powers provided in this chapter.

3. To provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to co-operate with the federal government with respect to the carrying out of emergency management functions.

[C62, §28A.3; C66, 71, 73, 75, §29C.3; C77, 79, 81, §29C.1]

92 Acts, ch 1139, §1

29C.2 Definitions.

1. *"Disaster"* means man-made and natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threaten the public peace, health, and safety of the people or which damage and destroy public or private property. The term includes attack, sabotage, or other hostile action from within or without the state.

2. *"Homeland security"* means the detection, prevention, preemption, deterrence of, and protection from attacks targeted at state territory, population, and infrastructure.

3. *"Local emergency management agency"* means a countywide joint county-municipal public agency organized to administer this chapter under the authority of the local emergency management commission.

4. *"Public disorder"* means such substantial interference with the public peace as to constitute a significant threat to the health and safety of the people or a significant threat to public or private property. The term includes insurrection, rioting, looting, and persistent violent civil disobedience.

[C77, 79, 81, §29C.2; 81 Acts, ch 32, §1]

92 Acts, ch 1139, §2; 2001 Acts, 2nd Ex, ch 1, §20, 21, 28

29C.3 Proclamation of state of public disorder by governor.

1. The governor may, after finding a state of public disorder exists, proclaim a state of public disorder emergency. This proclamation shall be in writing, indicate the area affected and the facts upon which it is based, be signed by the governor, and be filed with the secretary of state.

2. Notice of a proclamation of a state of public disorder emergency shall be given by the secretary

of state by publication in a newspaper of general circulation in the area affected, by broadcast through radio and television serving the area affected, and by posting signs at conspicuous places within this area. The exercise of the special powers by the governor under this section shall not be precluded by the lack of giving notice if the giving of notice has been diligently attempted. All orders and rules promulgated under the proclamation shall be given public notice by the governor in the area affected.

3. A state of public disorder emergency shall continue for ten days, unless sooner terminated by the governor. The general assembly may, by concurrent resolution, rescind a proclamation of a state of public disorder emergency. If the general assembly is not in session, the legislative council may, by a majority vote, rescind this proclamation. Rescission shall be effective upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state.

4. The governor may, during the existence of a state of public disorder emergency, prohibit:

a. Any person being in a public place during the hours declared by the governor to be a period of curfew if this period does not exceed twelve hours in any one day and if its area of its application is specifically designated.

b. Public gatherings of a designated number of persons within a designated area.

c. The manufacture, use, possession, or transportation of any device or object designed to explode or produce uncontained combustion.

d. The possession of any flammable or explosive liquids or materials in a glass or uncapped container, except in connection with normal operation of motor vehicles or normal home and commercial use.

e. The possession of firearms or any other deadly weapon by a person other than at that person's place of residence or business, except by law enforcement officers.

f. The sale, purchase, or dispensing of alcoholic beverages.

g. The sale, purchase, or dispensing of such other commodities as are designated by the governor.

h. The use of certain streets or highways by the public.

i. Such other activities as the governor reasonably believes should be prohibited to help maintain life, health, property, or the public peace.

[C77, 79, 81, §29C.3]

29C.4 Judicial protections.

The supreme court shall promulgate rules for emergency proceedings to be effective upon the declaration of a state of public disorder emergency in order that the constitutional rights of all persons taken into custody shall be adequately protected.

[C77, 79, 81, §29C.4]

29C.5 Emergency management division.

An emergency management division is created within the department of public defense. The emergency management division shall be responsible for the administration of emergency planning matters, including emergency resource planning in this state, cooperation with and support of the civil air patrol, homeland security activities, and coordination of available services in the event of a disaster.

[C62, §28A.1; C66, 71, 73, 75, §29C.1; C77, 79, 81, §29C.5]

92 Acts, ch 1139, §3; 2001 Acts, 2nd Ex, ch 1, §22, 28

See §29.3

29C.6 Proclamation of disaster emergency by governor.

In exercising the governor's powers and duties under this chapter and to effect the policy and purpose, the governor may:

1. After finding a disaster exists or is threatened, proclaim a state of disaster emergency. This proclamation shall be in writing, indicate the area affected and the facts upon which it is based, be signed by the governor, and be filed with the secretary of state. A state of disaster emergency shall continue for thirty days, unless sooner terminated or extended in writing by the governor. The general assembly may, by concurrent resolution, rescind this proclamation. If the general assembly is not in session, the legislative council may, by majority vote, rescind this proclamation. Recision shall be effective upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state. A proclamation of disaster emergency shall activate the disaster response and recovery aspect of the state, local and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan applies, and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available.

2. When, at the request of the governor, the president of the United States has declared a major disaster to exist in this state, enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and to make such units available to any political subdivision of the state, to assist any political subdivision of this state which is the locus of temporary housing for disaster victims, to acquire sites necessary for such temporary housing and to do all things required to prepare such sites to receive and utilize temporary housing units, by advancing or lending funds available to the governor from any appropri-

ation made by the legislature or from any other source, allocating funds made available by any agency, public or private, or becoming a copartner with the political subdivision for the execution and performance of any temporary housing for disaster victims project. Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements are necessary to prepare or equip such sites to utilize the housing units. The governor may temporarily suspend or modify, for not to exceed sixty days, any public health, safety, zoning, transportation, or other requirement of law or regulation within this state when by proclamation, the governor deems such suspension or modification essential to provide temporary housing for disaster victims.

3. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government for a loan, receive and disburse the proceeds of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, and certify the same to the federal government; however, no application amount shall exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs. The governor may recommend to the federal government, based upon the governor's review, the cancellation of all or any part or repayment when, in the first three full fiscal year period following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

4. When a disaster emergency is proclaimed, notwithstanding any other provision of law, through the use of state agencies or the use of any of the political subdivisions of the state, clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety or public or private property. The governor may accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water. Authority shall not be exercised by the governor unless the affected local government, corporation, organization or individual shall first present an additional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, such corporation, organization or individual shall first agree to hold harmless the state or local government against any claim arising from such removal. When the governor provides for clearance of debris or wreckage, employees of the designated state agencies or individuals appointed by the state may enter upon private land or waters and perform any tasks necessary to the removal or clearance operation. Any state employee or agent complying with orders of the governor and performing duties pursuant to such orders under this chapter shall be considered to be acting within the scope of employment within the meaning specified in chapter 669.

5. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund such financial assistance, subject to such terms and conditions as may be imposed upon the grant and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized in an amount not to exceed twenty-five percent thereof, and, if state funds are not otherwise available to the governor, accept an advance of the state share from the federal government to be repaid when the state is able to do so.

6. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules, of any state agency, if strict compliance with the provisions of any statute, order or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency by stating in a proclamation such reasons. Upon the request of a local governing body, the governor may also suspend statutes limiting local governments in their ability to provide services to aid disaster victims.

7. On behalf of this state, enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state.

8. Delegate any administrative authority vested in the governor under this chapter and provide for the subdelegation of any such authority.

9. Cooperate with the president of the United States and the heads of the armed forces, the emergency management agencies of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to emergency management of the state and nation.

10. Utilize all available resources of the state government as reasonably necessary to cope with the disaster emergency and of each political subdivision of the state.

11. Transfer the direction, personnel, or func-

tions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management.

12. Subject to any applicable requirements for compensation, commandeer or utilize any private property if the governor finds this necessary to cope with the disaster emergency.

13. Direct the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery.

14. Prescribe routes, modes of transportation, and destinations in connection with evacuation.

15. Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in such area.

16. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

17. *a.* When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of local and state government adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund the financial assistance, subject to terms and conditions imposed upon the grant, and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized to local government and eligible private nonprofit agencies in an amount not to exceed ten percent of the total eligible expenses, with the applicant providing the balance of any participation amount. If financial assistance is granted by the federal government for state disaster-related expenses or serious needs, the state shall participate in the funding of the financial assistance authorized in an amount not to exceed twenty-five percent of the total eligible expenses. If financial assistance is granted by the federal government for hazard mitigation, the state may participate in the funding of the financial assistance authorized to a local government in an amount not to exceed ten percent of the eligible expenses, with the applicant providing the balance of any participation amount. If financial assistance is granted by the federal government for state-related hazard mitigation, the state may participate in the funding of the financial assistance authorized, not to exceed fifty percent of the total eligible expenses. If state funds are not otherwise available to the governor, an advance of the state share may be accepted from the federal government to be repaid when the state is able to do so.

b. State participation in funding financial assistance under paragraph *"a"* is contingent upon the local government having on file a state-approved, comprehensive, countywide emergency operations plan which meets the standards adopted pursuant to section 29C.9, subsection 8.

[C62, §28A.3; C66, 71, 73, 75, §29C.3; C77, 79, 81, §29C.6; 81 Acts, ch 32, §2]

85 Acts, ch 53, §1; 92 Acts, ch 1139, §4; 99 Acts, ch 86, §3, 4

29C.7 Powers and duties of adjutant general.

The adjutant general, as the director of the department of public defense and under the direction and control of the governor, shall have supervisory direction and control of the emergency management division and shall be responsible to the governor for the carrying out of the provisions of this chapter. In the event of disaster beyond local control, the adjutant general may assume direct operational control over all or any part of the emergency management functions within this state.

[C66, 71, 73, 75, §29C.3; C77, 79, 81, §29C.7]

92 Acts, ch 1139, §5

29C.8 Powers and duties of administrator.

1. The emergency management division shall be under the management of an administrator appointed by the governor.

2. The administrator shall be vested with the authority to administer emergency management and homeland security affairs in this state and shall be responsible for preparing and executing the emergency management and homeland security programs of this state subject to the direction of the adjutant general.

3. The administrator, upon the direction of the governor and supervisory control of the director of the department of public defense, shall:

a. Prepare a comprehensive plan and emergency management program for homeland security, disaster preparedness, response, recovery, mitigation, emergency operation, and emergency resource management of this state. The plan and program shall be integrated into and coordinated with the homeland security and emergency plans of the federal government and of other states to the fullest possible extent and coordinate the preparation of plans and programs for emergency management of the political subdivisions and various state departments of this state. The plans shall be integrated into and coordinated with a comprehensive state homeland security and emergency program for this state as coordinated by the administrator of the emergency management division to the fullest possible extent.

b. Make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the vulnerabilities of critical state infrastructure and assets to attack and the capabilities of the state for disaster recovery, disaster planning and operations, and emer-

gency resource management, and to plan for the most efficient emergency use thereof.

c. Provide technical assistance to any local emergency commission or joint commission requiring the assistance in the development of an emergency management or homeland security program.

d. Implement planning and training for emergency response teams as mandated by the federal government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

e. Prepare a critical asset protection plan that contains an inventory of infrastructure, facilities, systems, other critical assets, and symbolic landmarks; an assessment of the criticality, vulnerability, and level of threat to the assets; and information pertaining to the mobilization, deployment, and tactical operations involved in responding to or protecting the assets.

4. The administrator, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy administrator and such technical, clerical, stenographic, and other personnel and make such expenditures within the appropriation or from other funds made available to the department of public defense for purposes of emergency management, as may be necessary to administer this chapter.

5. The emergency management division may charge fees for the repair, calibration, or maintenance of radiological detection equipment and may expend funds in addition to funds budgeted for the servicing of the radiological detection equipment. The division shall adopt rules pursuant to chapter 17A providing for the establishment and collection of fees for radiological detection equipment repair, calibration, or maintenance services and for entering into agreements with other public and private entities to provide the services. Fees collected for repair, calibration, or maintenance services shall be treated as repayment receipts as defined in section 8.2 and shall be used for the operation of the division's radiological maintenance facility or radiation incident response training.

[C62, §28A.4, 28A.5; C66, 71, 73, 75, §29C.4, 29C.5; C77, 79, 81, §29C.8]

88 Acts, ch 1190, §1; 92 Acts, ch 1139, §6 – 8; 99 Acts, ch 86, §2; 2001 Acts, 2nd Ex, ch 1, §23, 24, 28; 2002 Acts, ch 1117, §54, 56

Subsection 3, NEW paragraph e

29C.8A Emergency response fund created.

1. An emergency response fund is created in the state treasury. The first one hundred thousand dollars received annually by the treasurer of state for the civil penalties and fines imposed by the court pursuant to sections 455B.146, 455B.191, 455B.386, 455B.417, 455B.454, 455B.466, and 455B.477 shall be deposited in the waste volume reduction and recycling fund created in section 455D.15. The next hundred thousand dollars shall be deposited in the emergency response fund and any additional moneys shall be deposited in the household hazardous waste account. All moneys received annually by the treasurer of the state for the fines imposed by sections 716B.2, 716B.3, and 716B.4 shall also be deposited in the emergency response fund.

2. The emergency response fund shall be administered by the emergency management division to carry out planning and training for the emergency response teams.

88 Acts, ch 1190, §2; 90 Acts, ch 1260, §21; 92 Acts, ch 1139, §9

29C.9 Local emergency management commissions.

1. The county boards of supervisors, city councils, and school district boards of directors in each county shall cooperate with the emergency management division of the department of public defense to establish a local emergency management commission to carry out the provisions of this chapter.

2. The commission shall be composed of a member of the board of supervisors or its appointed representative, the sheriff or the sheriff's representative, and the mayor or the mayor's representative from each city within the county. The commission members shall be the operations liaison officers between their jurisdiction and the commission.

3. The name used by the commission shall be (county name) county emergency management commission. The name used by the office of the commission shall be (county name) county emergency management agency.

4. For the purposes of this chapter, the commission or joint commission is a municipality as defined in section 670.1.

5. The commission shall model its bylaws and conduct its business according to the guidelines provided in the state division's administrative rules.

6. The commission shall determine the mission of its agency and program and provide direction for the delivery of the emergency management services of planning, administration, coordination, training, and support for local governments and their departments. The commission shall coordinate its services in the event of a disaster.

7. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission duties as described in the division's administrative rules. Each commission shall appoint a county emergency management

coordinator who shall meet the qualifications specified in the administrative rules by the administrator of the emergency management division. Additional emergency management personnel may be appointed at the discretion of the commission.

8. The commission shall develop, adopt, and submit for approval by local governments within the county, a comprehensive countywide emergency operations plan which meets standards adopted by the division in accordance with chapter 17A. If an approved comprehensive countywide emergency operations plan has not been prepared according to established standards and the administrator of the emergency management division finds that satisfactory progress is not being made toward the completion of the plan, or if the administrator finds that a local emergency management commission has failed to appoint a qualified emergency management coordinator as provided in this chapter, the administrator shall notify the governing bodies of the counties and cities affected by the failure and the governing bodies shall not appropriate any moneys to the local emergency management fund until the disaster plan is prepared and approved or a qualified emergency management coordinator is appointed. If the administrator finds that a city or a county has appointed an unqualified emergency management coordinator, the administrator shall notify the governing body of the city or county citing the qualifications which are not met and the governing body shall not approve the payment of the salary or expenses of the unqualified emergency management coordinator.

9. The commission shall encourage local officials to support and participate in exercise programs which test proposed or established jurisdictional emergency plans and capabilities. During emergencies when lives are threatened and extensive damage has occurred to property, the county and all cities involved shall fully cooperate with the emergency management agency to provide assistance in order to coordinate emergency management activities including gathering of damage assessment data required by state and federal authorities for the purposes of emergency declarations and disaster assistance.

10. Two or more commissions may, upon review by the state administrator and with the approval of their respective boards of supervisors and cities, enter into agreements pursuant to chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

[C62, §28A.7; C66, 71, 73, 75, §29C.7; C77, 79, 81, §29C.9]

83 Acts, ch 123, §40, 209; 92 Acts, ch 1139, §10

29C.10 Emergency management coordinator.

1. The commission or joint commission shall appoint an emergency management coordinator who shall serve at the pleasure of the commission and shall be responsible for the development of the countywide emergency operations plan, coordination of emergency planning activities and provide technical assistance to political subdivisions throughout the county.

2. When an emergency or disaster occurs, the emergency management coordinator shall provide coordination and assistance to the governing officials of the municipalities and the county.

3. The mayors and the board of supervisors shall cooperate with the president of the United States and the heads of the armed forces and other appropriate federal, state, and local officers and agencies and with the officers and agencies of adjoining states in matters pertaining to comprehensive emergency management for a city or county.

[C66, 71, 73, 75, §29C.7; C77, 79, 81, §29C.10]

92 Acts, ch 1139, §11

29C.11 Local mutual aid arrangements.

1. The emergency management coordinator for each emergency management agency shall, in collaboration with other public and private agencies within this state, develop mutual aid arrangements for reciprocal disaster services and recovery aid and assistance in case of disaster too great to be dealt with unassisted. The arrangements shall be consistent with the emergency management division plan and program, and in time of emergency each local emergency management agency shall render assistance in accordance with the provisions of the mutual aid arrangements.

2. The emergency management coordinator of each local emergency management agency may, subject to the approval of the governor, enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency services and recovery aid and assistance in case of disaster too great to be dealt with unassisted.

[C77, 79, 81, §29C.11]

92 Acts, ch 1139, §12

29C.12 Use of existing facilities.

In carrying out the provisions of this chapter, the governor and the director of the department of public defense, and the executive officers or governing boards of political subdivisions of the state shall utilize, to the maximum extent practicable, the services, equipment, supplies and facilities of existing departments, officers, and agencies of the state and of political subdivisions at their respective levels of responsibility.

[C62, §28A.8; C66, 71, 73, 75, §29C.8; C77, 79, 81, §29C.12]

29C.12A Participation in funding disaster recovery facility.

All state government departments and agencies may participate in sharing the cost of the design,

construction, and operation of a disaster recovery facility located in the STARC armory at Camp Dodge. State departments and agencies may use funds from any source, including but not limited to user fees and appropriations for operational or capital purposes, to participate in the facility.

91 Acts, ch 263, §36

29C.13 Funds by grants or gifts.

1. If the federal government or any agency or officer of the federal government offers to the state or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management, the governor or the political subdivision, acting with the consent of the governor and through its executive officer or governing body, may authorize any officer of the state or of the political subdivision to receive the services, equipment, supplies, materials, or funds on behalf of the state or the political subdivision, and subject to the terms of the offer and rules of the agency making the offer.

2. If any person offers to the state or to any political subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management, the governor or executive officer of the political subdivision may accept the offer and, upon acceptance, the governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision to receive such services, equipment, supplies, materials, or funds on behalf of the state or the political subdivision, and subject to the terms of the offer.

[C66, 71, 73, 75, §29C.9; C77, 79, 81, §29C.13]

92 Acts, ch 1139, §13

29C.14 Director of revenue and finance to issue warrants.

The director of revenue and finance shall draw warrants on the treasurer of state for the purposes specified in this chapter, upon duly itemized and verified vouchers that have been approved by the administrator of the emergency management division.

[C62, §28A.9; C66, 71, 73, 75, §29C.10; C77, 79, 81, §29C.14]

92 Acts, ch 1139, §14

29C.15 Tax-exempt purchases.

All purchases under the provisions of this chapter shall be exempt from the taxes imposed by sections 422.43 and 423.2.

[C62, §28A.10; C66, 71, 73, 75, §29C.11; C77, 79, 81, §29C.15]

29C.16 Political activity prohibited.

1. A person employed by any organization for emergency management established under this chapter shall not:

a. During working hours or when performing official duties or when using public equipment or at any time on public property, take part in any way in soliciting any contribution for any political party or any person seeking political office. The provisions of this section do not preclude any employee from holding any nonpartisan elective office for which no pay is received or any office for which only token pay is received.

b. Seek or attempt to use any political endorsement in connection with any appointment to a position created under this chapter.

c. Use any official authority or influence for the purpose of interfering with an election or affecting the results thereof.

2. Any employee of an organization for emergency management shall not become a candidate for any partisan elective office.

[C62, §28A.11; C66, 71, 73, 75, §29C.12; C77, 79, 81, §29C.16]

92 Acts, ch 1139, §15

29C.17 Local emergency management fund.

1. A local emergency management fund is created in the office of the county treasurer. Revenues provided and collected shall be deposited in the fund. An unencumbered balance in the fund shall not revert to county general revenues. Any reimbursement, matching funds, moneys received from sale of property, or moneys obtained from any source in connection with the county emergency management program shall be deposited in the local emergency management fund. The commission shall be the fiscal authority and the chairperson or vice-chairperson of the commission is the certifying official.

2. For the purposes consistent with this chapter, the county emergency management agency's approved budget may be funded by one or any combination of the following options:

a. A countywide special levy approved by the board of supervisors.

b. Per capita allocation funded from city and county general funds or by a combination of city and county special levies which may be apportioned among the member jurisdictions.

c. An allocation computed as each jurisdiction's relative share of the total assessed valuation within the county.

d. A voluntary share allocation.

3. A political subdivision may appropriate additional funds for the purpose of supporting commission expenses relating to special or unique matters extending beyond the resources of the agency.

4. Expenditures from the local emergency management fund shall be made on warrants drawn by the county auditor, supported by claims and vouchers signed by the emergency manage-

ment coordinator or chairperson of the commission.

5. Subject to chapter 24, the commission shall adopt, certify, and submit a budget, on or before February 28 of each year, to the county board of supervisors and the cities for the ensuing fiscal year which will include an itemized list of the number of emergency management personnel, their salaries and cost of personnel benefits, travel and transportation costs, fixed costs of operation, and all other anticipated emergency management expenses. The salaries and compensation of agency personnel coming under the merit system as determined by the commission will include salary schedules for classes in which the salary of a class is based on merit qualifications for the positions.

[C62, §28A.12; C66, 71, 73, 75, §29C.13; C77, 79, 81, §29C.17]

92 Acts, ch 1139, §16

29C.18 Enforcement duties.

1. Every organization for emergency management established pursuant to this chapter and its officers shall execute and enforce the orders or rules made by the governor, or under the governor's authority and the orders or rules made by subordinate organizations and not contrary or inconsistent with the orders or rules of the governor.

2. A peace officer, when in full and distinctive uniform or displaying a badge or other insignia of authority, may arrest without a warrant any person violating or attempting to violate in such officer's presence any order or rule, made pursuant to this chapter. This authority shall be limited to those rules which affect the public generally.

[C66, 71, 73, 75, §29C.15; C77, 79, 81, §29C.18]

92 Acts, ch 1139, §17

29C.19 Rules and order exempted.

Any order issued or rule promulgated by a state agency during a declared disaster emergency and pursuant to the provisions of this chapter shall be exempt from being issued or promulgated as provided in chapter 17A.

[C77, 79, 81, §29C.19]

29C.20 Contingent fund — disaster aid.

1. A contingent fund is created in the state treasury for the use of the executive council which may be expended for the purpose of paying the expenses of suppressing an insurrection or riot, actual or threatened, when state aid has been rendered by order of the governor, and for repairing, rebuilding, or restoring state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, and for repairing, rebuilding, or restoring state property which is fiberoptic cable and which is injured or destroyed by a wild animal, and for aid to any governmental subdivision in an area declared by the governor to be a disaster area due to natural disasters or to expenditures necessitated by the governmental subdivision toward averting or lessening the impact of the potential disaster, where the effect of the disaster or action on the governmental subdivision is the immediate financial inability to meet the continuing requirements of local government. Upon application by a governmental subdivision in such an area, accompanied by a showing of obligations and expenditures necessitated by an actual or potential disaster in a form and with further information the executive council requires, the aid may be made in the discretion of the executive council and, if made, shall be in the nature of a loan up to a limit of seventy-five percent of the showing of obligations and expenditures. The loan, without interest, shall be repaid by the maximum annual emergency levy authorized by section 24.6, or by the appropriate levy authorized for a governmental subdivision not covered by section 24.6. The aggregate total of loans shall not exceed one million dollars during a fiscal year. A loan shall not be for an obligation or expenditure occurring more than two years previous to the application.

When a state department or agency requests that moneys from the contingent fund be expended to repair, rebuild, or restore state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, or to repair, rebuild, or restore state property which is fiberoptic cable and which is injured or destroyed by a wild animal, the executive council shall consider the original source of the funds for acquisition of the property before authorizing the expenditure. If the original source was other than the general fund of the state, the department or agency shall be directed to utilize moneys from the original source if possible. The executive council shall not authorize the repairing, rebuilding, or restoring of the property from the disaster aid contingent fund if it determines that moneys from the original source are available to finance the project.

2. The proceeds of such loan shall be applied toward the payment of costs and obligations necessitated by such actual or potential disaster and the reimbursement of local funds from which such expenditures have been made. Any such project for repair, rebuilding or restoration of state property for which no specific appropriation has been made, shall, before work is begun, be subject to approval or rejection by the executive council.

3. If the president of the United States, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses, serious needs, or hazard mitigation projects of local governments and eligible private nonprofit agencies adversely affected by the major disaster if those expenses or needs cannot otherwise be met from other means of assistance. The amount of the grant shall not exceed ten percent of the total eligible expenses and is conditional upon the federal government

providing at least seventy-five percent for public assistance grants and at least fifty percent for hazard mitigation grants of the eligible expenses.

4. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance. The amount of a financial grant shall not exceed the maximum federal authorization in the aggregate to an individual or family in any single major disaster declared by the president. All grants authorized to individuals and families will be subject to the federal government providing no less than seventy-five percent of each grant and the declaration of a major disaster in the state by the president of the United States.

5. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may lease or purchase sites and develop such sites to accommodate temporary housing units for disaster victims.

6. For the purposes of this section, *"governmental subdivision"* means any political subdivision of this state.

[C73, §120; C97, §170; C24, 27, 31, 35, 39, §**286;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §19.7; C77, 79, 81, §29C.20]

85 Acts, ch 53, §2; 85 Acts, ch 195, §6; 89 Acts, ch 315, §27; 92 Acts, ch 1139, §18; 97 Acts, ch 210, §19

29C.21 Emergency management assistance compact.

The interstate emergency management assistance compact is entered into with all other states which enter into the compact in substantially the following form:

ARTICLE I — PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term *"states"* is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the national guard mutual assistance compact or by mutual agreement between states.

ARTICLE II — GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III — PARTY STATE RESPONSIBILITIES

1. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

a. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

b. Review party states' individual emergency plans and develop a plan which will determine the

mechanism for the interstate management and provision of assistance concerning any potential emergency.

c. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

d. Assist in warning communities adjacent to or crossing the state boundaries.

e. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

f. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

g. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

2. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide all of the following:

a. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

b. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

c. The specific place and time for staging of the assisting party's response and a point of contact at that location.

3. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV — LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof, provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

ARTICLE V — LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI — LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII — SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the

states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII — COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX — REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X — EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI — IMPLEMENTATION

1. This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

2. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

3. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

ARTICLE XII — VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII — ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under section 1385 of

Title 18, United States Code.

[C62, §28A.3, C66, 71, 73, 75, §29C.3; C77, 79, 81, §29C.21]

97 Acts, ch 129, §1

29C.22 Statewide mutual aid compact.

This statewide mutual aid compact is entered into with all other counties, cities, and other political subdivisions that enter into this compact in substantially the following form:

ARTICLE I
PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating counties, cities, and political subdivisions which enact this compact. For the purposes of this agreement, the term *"participating governments"* means counties, cities, townships, and other political subdivisions of the state which have, through ordinance or resolution of the governing body, acted to adopt this compact.

The purpose of this compact is to provide for mutual assistance between the participating governments entering into this compact in managing any emergency or disaster that is declared in accordance with a countywide comprehensive emergency operations plan or by the governor, whether arising from natural disaster, technological hazard, man-made disaster, community disorder, insurgency, terrorism, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by participating governments during emergencies, such actions occurring outside actual declared emergency periods.

ARTICLE II
GENERAL IMPLEMENTATION

Each participating government entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each participating government further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to the emergency. This is because few, if any, individual governments have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective use of resources of the participating governments, including any resources on hand or available from any source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by the governor or any participating government, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the participating government in the compact, the legally designated official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate intrastate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III
PARTICIPATING GOVERNMENT RESPONSIBILITIES

1. It shall be the responsibility of each participating government to formulate procedural plans and programs for intrastate cooperation in the performance of the responsibilities listed in this article. In formulating the plans, and in carrying them out, the participating governments, insofar as practical, shall:

a. Review individual hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the participating governments might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, civil disorders, insurgency, terrorism, or enemy attack.

b. Review the participating governments' individual emergency plans and develop a plan that will determine the mechanism for the intrastate management and provision of assistance concerning any potential emergency.

c. Develop intrastate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

d. Assist in warning communities adjacent to or crossing the participating governments' boundaries.

e. Protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

f. Inventory and set procedures for the intrastate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

g. Provide, to the extent authorized by law, for temporary suspension of any ordinances that restrict the implementation of the above responsibilities.

2. The authorized representative of a participating government may request assistance of another participating government by contacting the authorized representative of that participating government. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be

confirmed in writing within thirty days of the verbal request. Requests shall provide all of the following:

a. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

b. The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time that the personnel, equipment, materials, and supplies will be needed.

c. The specific place and time for staging of the assisting participating government's response and a point of contact at that location.

3. The authorized representative of a participating government may initiate a request by contacting the emergency management division of the state department of public defense. When a request is received by the division, the division shall directly contact other participating governments to coordinate the provision of mutual aid.

4. Frequent consultation shall occur between officials who have been assigned emergency management responsibilities and other appropriate representatives of the participating governments with affected jurisdictions and state government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV
LIMITATIONS

Any participating government requested to render mutual aid or conduct exercises and training for mutual aid shall take the necessary action to provide and make available the resources covered by this compact in accordance with the terms of the compact. However, it is understood that the participating government rendering aid may withhold resources to the extent necessary to provide reasonable protection for the participating government. Each participating government shall afford to the emergency forces of any other participating government, while operating within its jurisdictional limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving participating government, duties, rights, and privileges as are afforded forces of the participating government in which the emergency forces are performing emergency services. Emergency forces shall continue under the command and control of their regular leaders, but the organizational units shall come under the operational control of the emergency services authorities of the participating government receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor or by competent authority of the participating government that is to receive assistance, or commencement of exercises or training for mutual aid, and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving jurisdiction, whichever is longer.

ARTICLE V
LICENSES AND PERMITS

If a person holds a license, certificate, or other permit issued by any participating government to this compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when the assistance is requested by another participating government, the person shall be deemed licensed, certified, or permitted by the participating government requesting assistance to render aid involving the skill to meet a declared emergency or disaster, subject to the limitations and conditions as the governor may prescribe by executive order or otherwise.

ARTICLE VI
LIABILITY

Officers or employees of a participating government rendering aid in another participating government jurisdiction pursuant to this compact shall be considered agents of the requesting participating government for tort liability and immunity purposes and a participating government or its officers or employees rendering aid in another jurisdiction pursuant to this compact shall not be liable on account of any act or omission in good faith on the part of the forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection with the aid. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII
SUPPLEMENTARY AGREEMENTS

Because it is probable that the pattern and detail of the machinery for mutual aid among two or more participating governments may differ from that among other participating governments, this compact contains elements of a broad base common to all political subdivisions, and this compact shall not preclude any political subdivision from entering into supplementary agreements with another political subdivision or affect any other agreements already in force between political subdivisions. Supplementary agreements may include, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation

and communications personnel, and equipment and supplies.

ARTICLE VIII
WORKERS' COMPENSATION

Each participating government shall provide for the payment of workers' compensation and death benefits to injured members of the emergency forces of that participating government and representatives of deceased members of the emergency forces in case the members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

ARTICLE IX
REIMBURSEMENT

Any participating government rendering aid in another jurisdiction pursuant to this compact shall be reimbursed by the participating government receiving the emergency aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with the requests. However, an aiding political subdivision may assume in whole or in part the loss, damage, expense, or other cost, or may loan the equipment or donate the services to the receiving participating government without charge or cost, and any two or more participating governments may enter into supplementary agreements establishing a different allocation of costs among the participating governments. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X
EVACUATION AND SHELTERING

Plans for the orderly evacuation and reception of portions of the civilian population as the result of any emergency or disaster shall be worked out and maintained between the participating governments and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur. The plans shall be put into effect by request of the participating government from which evacuees come and shall include the manner of transporting the evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of the evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans shall provide that the participating government receiving evacuees and the participating government from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. The expenditures shall be reimbursed as agreed by the participating government from which the evacuees come. After the termination of the emergency or disaster, the participating government from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI
IMPLEMENTATION

1. This compact shall become operative immediately upon its adoption by ordinance or resolution by the governing bodies of any two political subdivisions. Thereafter, this compact shall become effective as to any other political subdivision upon its adoption by ordinance or resolution of the governing body of the political subdivision.

2. Any participating government may withdraw from this compact by adopting an ordinance or resolution repealing the same, but a withdrawal shall not take effect until thirty days after the governing body of the withdrawing participating government has given notice in writing of the withdrawal to the administrator of the emergency management division who shall notify all other participating governments. The action shall not relieve the withdrawing political subdivision from obligations assumed under this compact prior to the effective date of withdrawal.

3. Duly authenticated copies of this compact and any supplementary agreements as may be entered into shall be deposited, at the time of their approval, with the administrator of the emergency management division who shall notify all participating governments and other appropriate agencies of state government.

ARTICLE XII
VALIDITY

This compact shall be construed to effectuate the purposes stated in article I. If any provision of this compact is declared unconstitutional, or the applicability of the compact to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability of this compact to other persons and circumstances shall not be affected.

2002 Acts, ch 1117, §55, 56
NEW section

CHAPTER 30

CHEMICAL EMERGENCIES — EMERGENCY RESPONSE COMMISSION

30.1 Definitions.
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30.11 Liability of committee members.
30.12 Civil action.

30.1 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. *"Commission"* means the Iowa emergency response commission.

2. *"Committee"* means a local emergency planning committee appointed by the commission.

3. *"Emergency Planning and Community Right-to-know Act"* means Pub. L. No. 99-499, Title III, 42 U.S.C. § 11001 et seq., as amended to January 1, 1989.

89 Acts, ch 204, §2

30.2 Iowa emergency response commission established.

1. The Iowa emergency response commission is established. The commission is responsible directly to the governor. The commission is attached to the department of public defense for routine administrative and support services only.

2. *a.* The commission is composed of fifteen members appointed by the governor. One member shall be appointed to represent the department of agriculture and land stewardship, one to represent the department of workforce development, one to represent the department of justice, one to represent the department of natural resources, one to represent the department of public defense, one to represent the Iowa department of public health, one to represent the department of public safety, one to represent the state department of transportation, one to represent the state fire service and emergency response council, one to represent a local emergency planning committee, one to represent the Iowa hazardous materials task force, and one to represent the office of the governor. Three representatives from private industry shall also be appointed by the governor, subject to confirmation by the senate.

b. The commission members representing the departments of workforce development, natural resources, public defense, public safety, and transportation and one private industry representative designated by the commission shall be voting members of the commission. The remaining members of the commission shall serve as nonvoting, advisory members.

3. The commission members shall be appointed for staggered terms of three years each, beginning and ending as provided in section 69.19. Vacancies shall be filled in the same manner as the original appointments were made.

89 Acts, ch 204, §3; 96 Acts, ch 1186, §23; 2000 Acts, ch 1020, §7; 2000 Acts, ch 1232, §45

Confirmation, see §2.32

30.3 Officers and meetings.

The members of the commission shall select a chairperson and a vice chairperson from their membership. The commission shall meet at least twice per year but may meet as often as necessary. Meetings shall be set by a majority of the commission or upon the call of the chairperson, or in the chairperson's absence, upon the call of the vice chairperson.

89 Acts, ch 204, §4

30.4 Expenses.

The members of the commission are entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

89 Acts, ch 204, §5

30.5 Commission powers and duties.

1. The commission has the powers necessary to carry out the functions and duties specified in state law and the Emergency Planning and Community Right-to-know Act, including the powers to solicit and accept gifts and grants, and to adopt rules pursuant to chapter 17A. All federal funds, grants, and gifts shall be deposited with the treasurer of state and used only for the purposes agreed upon as conditions for receipt of the funds, grants, or gifts.

2. The commission may enter into agreements

pursuant to chapter 28E to accomplish any duty imposed upon the commission by the Emergency Planning and Community Right-to-know Act, but the commission shall not compensate any governmental unit for the performance of duties pursuant to such an agreement. Funding for administering the duties of the commission under sections 30.7, 30.8, and 30.9 shall be included in the budgets of the department of workforce development, the department of natural resources, and the department of public defense, respectively.

3. The commission may request from any state agency or official the information and assistance necessary to perform the duties of the commission. All state departments, divisions, agencies, and offices shall make available upon request information which is requested and which is not by law confidential.

89 Acts, ch 204, §6; 96 Acts, ch 1186, §23

30.6 Commission duties.

1. The commission shall designate local emergency planning districts and appoint persons to serve on local emergency planning committees. The commission may, upon request, revise its designations of districts and appointments of committee members.

2. The commission shall supervise and coordinate the activities of the committees.

3. Upon request by a state or local official or any person, the commission shall obtain from a facility owner or operator the emergency and hazardous chemical inventory information which the owner or operator is required to prepare and submit pursuant to section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022, and provide the information to the requesting party.

4. The commission shall make available to the public upon request during normal working hours material safety data sheets, lists of hazardous chemicals, inventory forms, toxic chemical release forms, and follow-up emergency notices in its possession pursuant to section 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11044.

5. The commission shall perform all other functions and duties as specified in the Emergency Planning and Community Right-to-know Act.

89 Acts, ch 204, §7

30.7 Duties to be allocated to department of workforce development.

Agreements negotiated by the commission and the department of workforce development shall provide for the allocation of duties to the department of workforce development as follows:

1. Material safety data sheets or a list for chemicals required to be submitted to the commission under section 311 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11021, shall be submitted to the department of workforce development. Submission to that department constitutes compliance with the requirement for notification to the commission.

2. Emergency and hazardous chemical inventory forms required to be submitted to the commission under section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022, shall be submitted to the department of workforce development. Submission to that department constitutes compliance with the requirement for notification to the commission.

3. The department of workforce development shall advise the commission of the failure of any facility owner or operator to submit information as required under sections 311 and 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11021 and 11022.

4. The department of workforce development shall make available to the public upon request during normal working hours the information forms in its possession pursuant to sections 312 and 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022 and 11044.

5. The department of workforce development shall compile data or information from the emergency and hazardous chemical inventory forms required to be submitted to the commission under section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022.

89 Acts, ch 204, §8; 91 Acts, ch 255, §6; 96 Acts, ch 1186, §23; 97 Acts, ch 40, §1

30.8 Duties to be allocated to department of natural resources.

Agreements negotiated by the commission and the department of natural resources shall provide for the allocation of duties to the department of natural resources as follows:

1. Emergency notifications of releases required to be submitted to the commission under section 304 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11004, shall be submitted to the department of natural resources. Submission to that department constitutes compliance with the requirement for notification to the commission.

2. The department of natural resources shall advise the commission of the failure of any facility owner or operator to submit a notification as required under section 304 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11004.

3. The department of natural resources shall make available to the public upon request during normal working hours the information in its possession pursuant to section 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11044.

4. The department of natural resources shall compile the data collected pursuant to section 313

of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11023, and shall make the compiled data available to the public upon request.

89 Acts, ch 204, §9; 91 Acts, ch 255, §7

30.9 Duties to be allocated to department of public defense.

Agreements negotiated by the commission and the department of public defense shall provide for the allocation of duties to the department of public defense as follows:

1. Comprehensive emergency response plans required to be developed under section 303 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11003, shall be submitted to the department of public defense. Committee submission to that department constitutes compliance with the requirement for reporting to the commission. After initial submission, a plan need not be resubmitted unless revisions are requested by the commission. The department of public defense shall review the plan on behalf of the commission and shall incorporate the provisions of the plan into its responsibilities under chapter 29C.

2. The department of public defense shall advise the commission of the failure of any committee to submit an initial comprehensive emergency response plan or a revised plan requested by the commission.

3. The department of public defense shall make available to the public upon request during normal working hours the information in its possession pursuant to section 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11044.

89 Acts, ch 204, §10

30.10 Powers of local emergency planning committees.

The local emergency planning committee appointed by the commission for each local emergency planning district has the powers necessary to carry out the functions and duties specified in state law and the Emergency Planning and Community Right-to-know Act.

89 Acts, ch 204, §11

30.11 Liability of committee members.

A person appointed as a member of a local emergency planning committee is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the functions and duties specified in the state law and the Emergency Planning and Community Right-to-know Act, except for acts and omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

89 Acts, ch 204, §12

30.12 Civil action.

1. The commission may commence a civil action against an owner or operator of a facility who has violated federal requirements to do any of the following:

a. Provide notification under section 302(c) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11002(c).

b. Submit a material safety data sheet or a list under section 311(a) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11021(a).

c. Make available information requested under section 311(c) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11021(c).

d. Complete and submit an inventory form under section 312(a) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022(a), containing tier I information unless tier II information is submitted for the same period of time.

e. Provide information under section 303(d) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11003(d).

f. Submit tier II information under section 312(e)(1) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022(e)(1).

2. The Iowa district court shall have jurisdiction over actions brought under this section and may grant any appropriate relief.

89 Acts, ch 204, §13

CHAPTER 31

STATE BANNER — DISPLAY OF FLAG — RECOGNITION DAYS

Sections 31.1 – 31.3 transferred to chapter 1B, and
§31.4 – 31.10 transferred to §1C.3 – 1C.9

CHAPTER 32

DESECRATION OF FLAG OR OTHER INSIGNIA

Transferred to chapter 718A

CHAPTER 33

PUBLIC HOLIDAYS

Transferred to §1C.1 and 1C.2

CHAPTER 34

EMERGENCY TELEPHONE NUMBER (911)

This chapter not enacted as a part of this
title; transferred from chapter 477A in Code 1993

34.1 Definitions.
34.2 911 service.

34.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"911 service"* means a service which provides the user of a public telephone system the ability to reach a public safety answering point by dialing the digits 9-1-1.

2. *"Private safety entity"* means a private entity which provides emergency fire, ambulance, or medical services whether by full or part-time employees or on a volunteer basis.

3. *"Public agency"* means the state government and any unit of local government or special purpose district located in whole or in part within the state that provides or has authority to provide fire fighting, law enforcement, ambulance, medical, or other emergency services.

4. *"Public safety agency"* means a functional unit of a public agency that provides fire fighting, law enforcement, ambulance, medical, or other emergency services.

5. *"Public safety answering point"* means a communications facility operated on a twenty-four hour basis and serving participating jurisdictions, that initially receives 911 calls and either directly dispatches emergency response services, or relays the calls to the appropriate public safety agency.

86 Acts, ch 1246, §763
C87, §477A.1
C93, §34.1
94 Acts, ch 1023, §6

34.2 911 service.

1. After July 1, 1986, when 911 service is established in a service area each public agency, public safety agency, and private safety entity serving territory within the service area shall participate in providing the 911 service. The 911 service shall be established according to a written plan which has the written approval of the governing bodies of each public agency, public safety agency, and private safety entity serving territory within the 911 service area.

2. This chapter does not prohibit or discourage participation in or the provision of 911 service covering the territory of more than one public agency, public safety agency, or private safety entity. A system established pursuant to this section may serve the territory of more than one public agency, public safety agency, or private safety entity or may include a part of their respective territories. Public agencies, public safety agencies, and private safety entities may enter into agreements under chapter 28E to provide 911 service.

3. The digits "911" shall be the primary emergency telephone number within the 911 service areas established under this section. A public safety agency or a private safety entity whose services are available through a 911 system may maintain a separate secondary backup number for emergencies, and shall maintain a separate number for nonemergency telephone calls.

4. A 911 system shall be capable of transmitting requests for law enforcement, fire fighting,

and emergency medical and ambulance services to a public safety agency or agencies that provide the requested service at the place where the call originates. A 911 system may also provide for transmitting requests for emergency management, poison control, suicide prevention, and other emergency services. The public safety answering point shall be capable of receiving calls from deaf and hard-of-hearing persons through a telecommunications device for the deaf. Conferencing capability with counseling, aid to persons with disabilities, and other services as deemed necessary for identifying appropriate emergency response services may be provided by the 911 service.

A public safety answering point may transmit emergency response requests to private safety entities.

86 Acts, ch 1246, §764
C87, §477A.2
92 Acts, ch 1139, §32
C93, §34.2
93 Acts, ch 75, §2; 96 Acts, ch 1129, §13

CHAPTER 34A

ENHANCED 911 EMERGENCY TELEPHONE SYSTEMS

This chapter not enacted as a part of this title; transferred from chapter 477B in Code 1993

SUBCHAPTER I

LOCAL OPTION E911 SERVICE SURCHARGE AND E911 SERVICE

34A.1 Purpose.
34A.2 Definitions.
34A.2A Administrator — appointment — duties.
34A.3 Joint 911 service board — 911 service plan — implementation — waivers.
34A.4 Required conversion of pay telephones to allow 911 calls without depositing coins or other charge.
34A.5 Private listing subscribers and 911 service.
34A.6 Referendum on E911 in proposed service area.
34A.6A Alternative surcharge.
34A.7 Funding — E911 service surcharge.
34A.7A Wireless communications surcharge — fund established — distribution and permissible expenditures.
34A.8 Local exchange service information — penalty.
34A.9 Telecommunications devices for the deaf.
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34A.15 E911 communications council established — duties.
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SUBCHAPTER II

E911 PROGRAM FINANCING

34A.20 E911 financing program — definitions — funding — bonds and notes.
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34A.22 Rules.

SUBCHAPTER I

LOCAL OPTION E911 SERVICE SURCHARGE AND E911 SERVICE

34A.1 Purpose.

The legislature finds that enhanced 911 emergency telephone communication systems further the public interest and protect the health, safety, and welfare of the people of Iowa. The purpose of this chapter is to enable the orderly development, installation, and operation of enhanced 911 emergency telephone communication systems statewide. These systems are to be operated under governmental management and control for the public benefit.

88 Acts, ch 1177, §1
C89, §477B.1
C93, §34A.1

34A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Access line"* means a local exchange access line that has the ability to access local dial tone and reach a local public safety agency.

2. *"Administrator"* means the E911 administrator appointed pursuant to section 34A.2A.

3. *"Enhanced 911"* or *"E911"* means a service which provides the user of a public telephone system the ability to reach a public safety answering point by dialing the digits 911, and which has the following additional features:

a. Routes an incoming 911 call to the appropriate public safety answering point selected from the public safety answering points operating in a 911 service area.

b. Automatically displays the name, address, and telephone number of an incoming 911 call and public safety agency servicing the address on a video monitor at the appropriate public safety answering point.

4. *"Enhanced 911 service area"* means the geographic area to be serviced, or currently serviced under an enhanced 911 service plan, provided that an enhanced 911 service area must at minimum encompass one entire county. The enhanced 911 service area may encompass more than one county, and need not be restricted to county boundaries.

5. *"Enhanced 911 service plan"* means a plan that includes the following information:

a. A description of the enhanced 911 service area.

b. A list of all public and private safety agencies within the enhanced 911 service area.

c. The number of public safety answering points within the enhanced 911 service area.

d. Identification of the agency responsible for management and supervision of the enhanced 911 emergency telephone communication system.

e. A statement of estimated costs to be incurred by the joint E911 service board, including separate estimates of the following:

(1) Nonrecurring costs, including, but not limited to, public safety answering points, network equipment, software, database, addressing, initial training, and other capital and start-up expenditures, including the purchase or lease of subscriber names, addresses, and telephone information from the local exchange service provider.

(2) Recurring costs, including, but not limited to, network access fees and other telephone charges, software, equipment, and database management, and maintenance, including the purchase or lease of subscriber names, addresses, and telephone information from the local exchange service provider. Recurring costs shall not include personnel costs for a public safety answering point.

Funds deposited in an E911 service fund shall be appropriated and used for the payment of costs which are limited to nonrecurring and recurring costs directly attributable to the provision of 911 emergency telephone communication service and may include costs for portable and vehicle radios, communication towers and associated equipment, and other radios and equipment permanently located at the public safety answering point. Costs do not include expenditures for any other purpose, and specifically exclude costs attributable to other emergency services or expenditures for buildings or personnel, except for the costs of personnel for database management and personnel directly associated with addressing.

f. Current equipment operated by affected providers, and central office equipment and technology upgrades necessary for the provider to implement enhanced 911 service within the enhanced 911 service area on or before July 1, 1992.

g. A schedule for implementation of the plan throughout the E911 service area. The schedule may provide for phased implementation. However, a joint 911 service board may decide not to implement E911 service.

h. The number of telephone access lines in the enhanced 911 service area.

i. The total property valuation in the enhanced 911 service area.

6. *"Enhanced 911 service surcharge"* is a charge set by the E911 service area operating authority and assessed on each access line which physically terminates within the E911 service area.

7. *"Local exchange service provider"* means a person engaged in providing telecommunications service between points within an exchange.

8. *"Provider"* means a person who provides, or offers to provide, E911 equipment, installation, maintenance, or exchange access services within the enhanced 911 service area.

9. *"Public or private safety agency"* means a unit of state or local government, a special purpose district, or a private firm which provides or has the authority to provide fire fighting, police, ambulance, or emergency medical services.

10. *"Public safety answering point"* means a twenty-four hour local jurisdiction communications facility which receives enhanced 911 service calls and directly dispatches emergency response services or relays calls to the appropriate public or private safety agency.

88 Acts, ch 1177, §2
C89, §477B.2
92 Acts, ch 1139, §34
C93, §34A.2
93 Acts, ch 125, §1; 94 Acts, ch 1199, §45; 98 Acts, ch 1101, §3, 4, 16

34A.2A Administrator — appointment — duties.

The administrator of the division of emergency management of the department of public defense shall appoint an E911 administrator to administer this chapter. The E911 administrator shall act under the supervisory control of the administrator of the division of emergency management of the department of public defense, and in consultation with the E911 communications council, and perform the duties specifically set forth in this chapter.

98 Acts, ch 1101, §5, 16

34A.3 Joint 911 service board — 911 service plan — implementation — waivers.

1. *Joint 911 service boards to submit plans.* The board of supervisors of each county shall establish a joint 911 service board not later than January 1, 1989. Each political subdivision of the state having a public safety agency serving territory within the county is entitled to voting membership on the joint 911 service board. Each private safety agency operating within the area is entitled to nonvoting membership on the board. A township which does not operate its own public safety agency, but contracts for the provision of public safety services, is not entitled to membership on the joint 911 service board, but its contractor is entitled to membership according to the contractor's status as a public or private safety agency. The joint 911 service board shall develop an enhanced 911 service plan encompassing at minimum the entire county, unless an exemption is granted by the administrator permitting a smaller E911 service area. The administrator may grant a discretionary exemption from the single county minimum service area requirement based upon an E911 joint service board's or other E911 service plan operating authority's presentation of evidence which supports the requested exemption if the administrator finds that local conditions make adherence to the minimum standard unreasonable or technically infeasible, and that the purposes of this chapter would be furthered by granting an exemption. The minimum size requirement is intended to prevent unnecessary duplication of public safety answering points and minimize other administrative, personnel, and equipment expenses. An E911 service area must encompass a geographically contiguous area. No exemption shall be granted from the contiguous area requirement. The administrator may order the inclusion of a specific territory in an adjoining E911 service plan area to avoid the creation by exclusion of a territory smaller than a single county not serviced by surrounding E911 service plan areas upon request of the joint 911 service board representing the territory. The E911 service plan operating authority shall submit the plan on or before January 1, 1994, to all of the following:

a. The administrator.

b. Public and private safety agencies in the enhanced 911 service area.

c. Providers affected by the enhanced 911 service plan.

An E911 joint service board that has a state-approved service plan in place prior to July 1, 1993, is exempt from the provisions of this section. The administrator shall establish, by July 1, 1994, E911 service plans for those E911 joint service boards which do not have a state-approved service plan in place on or before January 1, 1994.

The administrator shall prepare a summary of the plans submitted and present the summary to the legislature on or before August 1, 1994.

2. *Compliance waivers available in limited circumstances.* The administrator may extend, in whole or in part, the time for implementation of an enhanced 911 service plan beyond the scheduled plan of implementation, by issuance of a compliance waiver. The waiver shall be based upon a joint 911 service board's presentation of evidence which supports an extension if the administrator finds that local conditions make implementation financially unreasonable or technically infeasible by the originally scheduled plan of implementation. The compliance waiver shall be for a set period of time, and subject to review and renewal or denial of renewal upon its expiration. The waiver may cover all or a portion of a 911 service plan's enhanced 911 service area to facilitate phased implementation when possible. The granting of a compliance waiver does not create a presumption that the identical or similar waiver will be extended in the future. Consideration of compliance waivers shall be on a case-by-case basis.

3. *Chapter 28E agreement — alternative to joint 911 service board.* A legal entity created pursuant to chapter 28E by a county or counties, other political divisions, and public or private agencies to jointly plan, implement, and operate a countywide, or larger, enhanced 911 service system may be substituted for the joint 911 service board required under subsection 1.

An alternative legal entity created pursuant to chapter 28E as a substitute for a joint 911 service board, as permitted by this subsection, may be created by either:

a. Agreement of the parties entitled to voting membership on a joint 911 service board.

b. Agreement of the members of a joint 911 service board.

An alternative chapter 28E entity has all of the powers of a joint 911 service board and any additional powers granted by the agreement. As used in this chapter, *"joint 911 service board"* includes an alternative chapter 28E entity created for that purpose, except as specifically limited by the chapter 28E agreement or unless clearly provided otherwise in this chapter. A chapter 28E agreement related to E911 service shall permit the participation of a private safety agency or other persons allowed to participate in a joint 911 service board, but the terms, scope, and conditions of participation are subject to the chapter 28E agreement.

4. *Participation in joint E911 service board required.* A political subdivision or state agency having a public safety agency within its territory or jurisdiction shall participate in a joint E911 service board and cooperate in preparing the E911

service plan.
88 Acts, ch 1177, §3
C89, §477B.3
89 Acts, ch 168, §1, 2
C93, §34A.3
93 Acts, ch 125, §2; 98 Acts, ch 1101, §6, 16

34A.4 Required conversion of pay telephones to allow 911 calls without depositing coins or other charge.

1. *Conversion and notice required.* When an enhanced 911 service system becomes operational or as soon as feasible thereafter, each provider or other owner or lessee of a pay station telephone to be operated within the enhanced 911 service area shall do the following:

a. Convert each telephone to permit a caller to dial 911 without first inserting a coin or paying any other charge.

b. Prominently display on each pay telephone a notice advising callers to dial 911 in an emergency and that deposit of a coin is not required.

2. *Certain pay phones prohibited within service area.* After commencement of enhanced 911 service in an enhanced 911 service area, a person shall not install or offer for use within the 911 service area a pay station telephone unless the telephone is capable of accepting a 911 call without prior insertion of a coin or payment of any other charge, and unless the telephone displays notice of free 911 service.

88 Acts, ch 1177, §4
C89, §477B.4
C93, §34A.4

34A.5 Private listing subscribers and 911 service.

Private listing subscribers in an enhanced 911 service area waive the privacy afforded by nonlisted or nonpublished numbers to the extent that the name and address associated with the telephone number may be furnished to the enhanced 911 service system, for all routing, for automatic retrieval of location information, and for associated emergency services.

88 Acts, ch 1177, §5
C89, §477B.5
C93, §34A.5

34A.6 Referendum on E911 in proposed service area.

1. Before a joint E911 service board may request imposition of the surcharge by the administrator, the board shall submit the following question to voters, as provided in subsection 2, in the proposed E911 service area, and the question shall receive a favorable vote from a simple majority of persons submitting valid ballots on the following question within the proposed E911 service area:

Shall the following public measure be adopted?	YES	☐
	NO	☐

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within (description of the proposed E911 service area).

2. The referendum required as a condition of the surcharge imposition in subsection 1 shall be conducted using the following electoral mechanism:

At the request of the joint E911 service board a county commissioner of elections shall include the question on the next eligible general election ballot in each electoral precinct to be served, in whole or in part, by the proposed E911 service area, provided the request is timely submitted to permit inclusion. The question may be included in the next election in which all of the voters in the proposed E911 service area will be eligible to vote on the same day. The county commissioner of elections shall report the results to the joint E911 service board. The joint E911 service board shall compile the results if subscribers from more than one county are included within the proposed service area. The joint E911 service board shall announce whether a simple majority of the compiled votes reported by the commissioner approved the referendum question.

3. The secretary of state, in consultation with the administrator, shall adopt rules for the conduct of joint E911 service referendums as required by and consistent with subsections 1 and 2.

88 Acts, ch 1177, §6
C89, §477B.6
89 Acts, ch 168, §3; 90 Acts, ch 1144, §1; 91 Acts, ch 129, §27, 28; 92 Acts, ch 1139, §35
C93, §34A.6
98 Acts, ch 1101, §7, 16

34A.6A Alternative surcharge.

Notwithstanding section 34A.6, the board may request imposition of a surcharge in an amount up to two dollars and fifty cents per month on each telephone access line. The board shall submit the question of the surcharge to voters in the same manner as provided in section 34A.6. If approved, the surcharge may be collected for a period of twenty-four months. At the end of the twenty-four-month period, the rate of the surcharge shall revert to one dollar per month, per access line.

93 Acts, ch 125, §3

34A.7 Funding — E911 service surcharge.

When an E911 service plan is implemented, the costs of providing E911 service within an E911 service area are the responsibility of the joint E911

service board and the member political subdivisions. Costs in excess of the amount raised by imposition of the E911 service surcharge provided for under subsection 1, shall be paid by the joint E911 service board from such revenue sources allocated among the member political subdivisions as determined by the joint E911 service board. Funding is not limited to the surcharge, and surcharge revenues may be supplemented by other permissible local and state revenue sources. A joint 911 service board shall not commit a political subdivision to appropriate property tax revenues to fund an E911 service plan without the consent of the political subdivision. A joint 911 service board may approve a 911 service plan, including a funding formula requiring appropriations by participating political subdivisions, subject to the approval of the funding formula by each political subdivision. However, a political subdivision may agree in advance to appropriate property tax revenues or other moneys according to a formula or plan developed by an alternative chapter 28E entity.

1. *Local E911 service surcharge imposition.*

a. To encourage local implementation of E911 service, one source of funding for E911 emergency telephone communication systems shall come from a surcharge per month, per access line on each access line subscriber, except as provided in subsection 5, equal to the lowest amount of the following:

(1) One dollar.

(2) An amount less than one dollar, which would fully pay both recurring and nonrecurring costs of the E911 service system within five years from the date the maximum surcharge is imposed.

(3) The maximum monetary limitation approved by referendum.

b. The surcharge shall be imposed by order of the administrator as follows:

(1) The administrator shall notify a provider scheduled to provide exchange access line service to an E911 service area, that implementation of an E911 service plan has been approved by the joint 911 service board and by the service area referendum, and that collection of the surcharge is to begin within one hundred days.

(2) The notice shall be provided at least one hundred days before the surcharge must be billed for the first time.

c. The surcharge shall terminate at the end of twenty-four months, unless either, or both, of the following conditions is met:

(1) E911 service is initiated for all or a part of the E911 service area.

(2) An extension is granted by the administrator for good cause.

d. The surcharge shall terminate at the end of twenty-four months if the joint E911 service plan has not been approved by the administrator within eighteen months of the original notice to the provider to impose the surcharge, and shall not be reimposed until a service plan is approved by the administrator and the administrator gives providers notice as required by paragraph *"a"*, subparagraphs (1) and (2).

2. *Surcharge collected by providers.* The surcharge shall be collected as part of the access line service provider's periodic billing to a subscriber. In compensation for the costs of billing and collection, the provider may retain one percent of the gross surcharges collected. If the compensation is insufficient to fully recover a provider's costs for billing and collection of the surcharge, the deficiency shall be included in the provider's costs for ratemaking purposes to the extent it is reasonable and just under section 476.6. The surcharge shall be remitted to the E911 service operating authority for deposit into the E911 service fund quarterly by the provider. A provider is not liable for an uncollected surcharge for which the provider has billed a subscriber but not been paid. The surcharge shall appear as a single line item on a subscriber's periodic billing entitled, "E911 emergency telephone service surcharge". The E911 service surcharge is not subject to sales or use tax.

3. *Maximum limit per subscriber billing for surcharge.* An individual subscriber shall not be required to pay on a single periodic billing the surcharge on more than one hundred access lines, or their equivalent, in an E911 service area. A subscriber shall pay the surcharge in each E911 service area in which the subscriber receives access line service.

4. *E911 service fund.* Each joint E911 service board shall establish and maintain as a separate account an E911 service fund. Any funds remaining in the account at the end of each fiscal year shall not revert to the general funds of the member political subdivisions, except as provided in subsection 5, but shall remain in the E911 service fund. Moneys in an E911 service fund may only be used for nonrecurring and recurring costs of the E911 service plan as approved by the administrator, as those terms are defined by section 34A.2.

5. *Use of moneys in fund — priority and limitations on expenditure.*

a. Moneys deposited in the E911 service fund shall be used for the repayment of any bonds issued for the benefit of or loan made to the joint E911 service board pursuant to sections 34A.20 through 34A.22, and as long as any such bond or loan remains unpaid the surcharge shall not be reduced or eliminated. Moneys deposited in the fund shall be subject to such terms and conditions as may be contained in the relevant bond documents, trust indenture, resolution, loan agreement, or other instrument pursuant to which bonds are issued or a loan is made, without regard to any limitation otherwise provided by law. The surcharge may be increased, but shall not exceed the maximum allowed in subsection 1, upon approval of the authority upon such terms and conditions as may be contained in the relevant bond documents, trust indenture, resolution, loan agree-

ment, or other instrument pursuant to which bonds are issued or a loan is made, as deemed necessary or prudent by the authority to secure repayment and assure marketability or a reasonable interest rate.

b. Moneys deposited in the E911 service fund shall be used for the following, in order of priority if paragraph *"a"* does not apply:

(1) Money shall first be spent for actual recurring costs of operating the E911 service plan.

(2) If money remains in the fund after fully paying for recurring costs incurred in the preceding year, the remainder may be spent to pay for nonrecurring costs, not to exceed actual nonrecurring costs as approved by the administrator.

(3) If money remains in the fund after fully paying obligations under subparagraphs (1) and (2), the remainder may be accumulated in the fund as a carryover operating surplus. If the surplus is greater than twenty-five percent of the approved annual operating budget for the next year, the administrator shall reduce the surcharge by an amount calculated to result in a surplus of no more than twenty-five percent of the planned annual operating budget. After nonrecurring costs have been paid, if the surcharge is less than the maximum allowed and the fund surplus is less than twenty-five percent of the approved annual operating budget, the administrator shall, upon application of the joint E911 service board, increase the surcharge in an amount calculated to result in a surplus of twenty-five percent of the approved annual operating budget. The surcharge may only be adjusted once in a single year, upon one hundred days' prior notice to the provider.

6. *Limitation of actions — provider not liable on cause of action related to provision of 911 services.* A claim or cause of action does not exist based upon or arising out of an act or omission in connection with a land-line or wireless provider's participation in an E911 service plan or provision of 911 or local exchange access service, unless the act or omission is determined to be willful and wanton negligence.

7. *Referendum on adjusting maximum of approved surcharge.* If a local option E911 service surcharge was approved by referendum prior to April 4, 1990, the maximum E911 service surcharge monetary limitation may be amended up to a total of one dollar, per month, per access line, by another referendum as provided in section 34A.6. A joint E911 service board may adjust its E911 service surcharge within the monetary limitation approved by referendum as provided under this subsection by a simple majority vote of the voting members. As a result of the adjustment, the E911 service surcharge, per month, per access line, on each access line subscriber, except as provided in subsection 5, shall not exceed the lowest amount of the following:

a. One dollar.

b. An amount less than one dollar, which would fully pay both recurring and nonrecurring costs of the E911 service system within five years from the date of the adjustment.

c. The maximum monetary limitation approved by referendum.

88 Acts, ch 1177, §7
C89, §477B.7
89 Acts, ch 168, §4 – 6; 90 Acts, ch 1144, §2 – 4
C93, §34A.7
98 Acts, ch 1101, §8, 16

34A.7A Wireless communications surcharge — fund established — distribution and permissible expenditures.

1. *a.* Notwithstanding section 34A.6, the administrator shall adopt by rule a monthly surcharge of up to fifty cents to be imposed on each wireless communications service number provided in this state. The surcharge shall be imposed uniformly on a statewide basis and simultaneously on all wireless communications service numbers as provided by rule of the administrator.

b. The administrator shall provide no less than one hundred days' notice of the surcharge to be imposed to each wireless communications service provider. The administrator, subject to the fifty cent limit in paragraph *"a"*, may adjust the amount of the surcharge as necessary, but no more than once in any calendar year.

c. The surcharge shall be collected as part of the wireless communications service provider's periodic billing to a subscriber. In compensation for the costs of billing and collection, the provider may retain one percent of the gross surcharges collected. The surcharges shall be remitted quarterly by the provider to the administrator for deposit into the fund established in subsection 2. A provider is not liable for an uncollected surcharge for which the provider has billed a subscriber but which has not been paid. The surcharge shall appear as a single line item on a subscriber's periodic billing indicating that the surcharge is for E911 emergency telephone service. The E911 service surcharge is not subject to sales or use tax.

2. Moneys collected pursuant to subsection 1 shall be deposited in a separate wireless E911 emergency communications fund within the state treasury under the control of the administrator. Section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section. Moneys in the fund shall be expended and distributed annually as follows:

a. An amount as appropriated by the general assembly to the administrator for implementation, support, and maintenance of the functions of the administrator.

b. (1) The administrator shall retain funds necessary to reimburse wireless carriers for their costs to deliver E911 services. The administrator shall assure that wireless carriers recover all eligi-

ble costs associated with the implementation and operation of E911 services, including but not limited to hardware, software, and transport costs. The administrator shall adopt rules defining eligible costs which are consistent with federal law, regulations, and any order of a federal agency.

(2) The administrator shall provide for the reimbursement of wireless carriers on a quarterly basis. If the total amount of moneys available in the fund for the reimbursement of wireless carriers pursuant to subparagraph (1) is insufficient to reimburse all wireless carriers for such carriers' eligible expenses, the administrator shall remit an amount to each wireless carrier equal to the percentage of such carrier's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which such expenses were submitted.

c. (1) The remainder of the surcharge collected shall be remitted to the administrator for distribution to the joint E911 service boards and the department of public safety pursuant to subparagraph (2) to be used for the implementation of enhanced wireless communications capabilities.

(2) The administrator, in consultation with the E911 communications council, shall adopt rules pursuant to chapter 17A governing the distribution of the surcharge collected and distributed pursuant to this lettered paragraph. The rules shall include provisions that all joint E911 service boards and the department of public safety which answer or service wireless E911 calls are eligible to receive an equitable portion of the receipts.

A joint E911 service board or the department of public safety, to receive funds from the wireless E911 emergency communications fund, must submit a written request for such funds to the administrator in a form as approved by the administrator. A request shall be for funding under an approved E911 service plan for equipment which is directly related to the reception and disposition of incoming wireless E911 calls. The administrator may approve the distribution of funds pursuant to such request if the administrator finds that the requested funding is for equipment necessary for the reception and disposition of such calls and that sufficient funds are available for such distribution.

If insufficient funds are available to fund all requests, the administrator shall fund requests in an order deemed appropriate by the administrator after considering factors including, but not limited to, all of the following:

(a) Documented volume of wireless E911 calls received by each public safety answering point.

(b) The population served by each public safety answering point.

(c) The number of wireless telephones in the public safety answering point jurisdiction.

(d) The public safety of the citizens of this state.

(e) Any other factor deemed appropriate by the administrator, in consultation with the E911 communications council, and adopted by rule.

(3) The administrator shall submit an annual report by January 15 of each year advising the general assembly of the status of E911 implementation and operations, including both landline and wireless services, and the distribution of surcharge receipts.

3. The amount collected from a wireless service provider and deposited in the fund, pursuant to section 22.7, subsection 6, information provided by a wireless service provider to the administrator consisting of trade secrets, pursuant to section 22.7, subsection 3, and other financial or commercial operations information provided by a wireless service provider to the administrator, shall be kept confidential as provided under section 22.7. This subsection does not prohibit the inclusion of information in any report providing aggregate amounts and information which does not identify numbers of accounts or customers, revenues, or expenses attributable to an individual wireless communications service provider.

4. For purposes of this section, *"wireless communications service"* means commercial mobile radio service, as defined under sections 3(27) and 332(d) of the federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq.; federal communications commission rules; and the Omnibus Budget Reconciliation Act of 1993. *"Wireless communications service"* includes any wireless two-way communications used in cellular telephone service, personal communications service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network access line. *"Wireless communications service"* does not include services whose customers do not have access to 911 or a 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

98 Acts, ch 1101, §9, 16; 99 Acts, ch 96, §5

34A.8 Local exchange service information — penalty.

1. A local exchange service provider shall furnish to the E911 service provider, designated by the joint E911 service board, all names, addresses, and telephone number information concerning its subscribers which will be served by the E911 system and shall periodically update the local exchange service information. The local exchange service provider shall receive as compensation for the provision of local exchange service information charges according to its tariffs on file with and approved by the Iowa utilities board. The tariff charges shall be the same whether or not the local exchange service provider is designated as the E911 service provider by the joint E911 service board.

2. Subscriber information remains the property of the local exchange service provider.

The joint E911 service board, the designated E911 provider, and the public safety answering point, their agents, employees, and assigns shall use local exchange service information provided by the local exchange service provider solely for the purposes of providing E911 emergency telephone service, and it shall otherwise be kept confidential. A person who violates this section is guilty of a simple misdemeanor.

This chapter does not require a local exchange service provider to sell or provide its subscriber names, addresses, or telephone number information to any person other than the E911 service provider designated by the joint E911 service board.

88 Acts, ch 1177, §8
C89, §477B.8
C93, §34A.8

34A.9 Telecommunications devices for the deaf.

By January 1, 1990, each county shall provide for the installation and use of at least one telecommunications device for the deaf at a public safety answering point.

89 Acts, ch 157, §1
CS89, §477B.9
C93, §34A.9

34A.10 through 34A.14 Reserved.

34A.15 E911 communications council established — duties.

1. An E911 communications council is established. The council consists of the following thirteen members:

a. One person appointed by the commissioner of public safety.

b. One person appointed by the Iowa state sheriffs' and deputies' association.

c. One person appointed by the Iowa association of chiefs of police and peace officers.

d. One person appointed by the Iowa emergency medical services association.

e. One person appointed by the Iowa association of professional firefighters.

f. One person appointed by the Iowa firemen's association.

g. One person appointed by the Iowa chapter of the national emergency number association.

h. One person appointed by the Iowa chapter of the association of public safety communications officials-international, inc.

i. One person appointed by the Iowa emergency management directors association.

j. Two persons appointed by the Iowa telephone association, with one person appointed to represent telephone companies having fifteen thousand or more customers and one person appointed to represent telephone companies having less than fifteen thousand customers.

k. Two persons appointed by the Iowa wireless industry. One appointee shall represent cellular companies and the other appointee shall represent personal communications services companies.

2. The council shall advise and make recommendations to the administrator regarding the implementation of this chapter. Such advice and recommendations shall be provided on issues at the request of the administrator or as deemed necessary by the council.

3. A member of the council shall be reimbursed for actual and necessary expenses incurred in the performance of the member's duties, if such member is not otherwise reimbursed for such expenses.

4. The authority of the council is limited to the issues specifically identified in this section and does not preempt the authority of the utilities board, created in section 474.1, to act on issues within the jurisdiction of the utilities board.

96 Acts, ch 1219, §64; 98 Acts, ch 1101, §10 – 13, 16

34A.16 through 34A.19 Reserved.

SUBCHAPTER II

E911 PROGRAM FINANCING

34A.20 E911 financing program — definitions — funding — bonds and notes.

1. As used in this subchapter, unless the context otherwise requires, *"authority"* means the Iowa finance authority.

2. The authority shall cooperate with the administrator in the creation, administration, and funding of the E911 program established in subchapter I.

3. The authority may issue its bonds and notes for the purpose of funding E911 nonrecurring and recurring costs of one or more E911 service areas.

4. The authority may issue its bonds and notes for the purposes of this chapter and may enter into one or more lending agreements or purchase agreements with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders or a trustee agent designated by the authority may enter into agreements to provide for any of the following:

a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the authority or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority may collect, invest, and apply the amount payable under the loan agreements or any other instruments securing the debt obligations under the loan agreements.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreements or other instruments on their own behalf without the appointment or designation of a trustee. If there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained in the loan agreements or other instruments, the payment or performance may be enforced in accordance with the loan agreement or other instrument.

d. Other terms and conditions as deemed necessary or appropriate by the authority.

5. The powers granted the authority under this section are in addition to other powers contained in chapter 16. All other provisions of chapter 16, except section 16.28, subsection 4, apply to bonds or notes issued and powers granted to the authority under this section, except to the extent they are inconsistent with this section.

6. All bonds or notes issued by the authority in connection with the program are exempt from taxation by this state and the interest on the bonds or notes is exempt from state income tax, both personal and corporate.

90 Acts, ch 1144, §6
C91, §477B.20
C93, §34A.20
98 Acts, ch 1101, §14, 16

34A.21 Security — reserve funds — pledges — nonliability — irrevocable contracts.

1. The authority may provide in the resolution, trust agreement, or other instrument authorizing the issuance of its bonds or notes pursuant to section 34A.20 that the principal of, premium, and interest on the bonds or notes are payable from any of the following and may pledge the same to its bonds and notes:

a. The income and receipts or other moneys derived from the projects financed with the proceeds of the bonds or notes.

b. The income and receipts or other money derived from designated projects whether or not the projects are financed in whole or in part with the proceeds of the bonds or notes.

c. The amounts on deposit in the E911 service fund of a joint E911 service board, including, but not limited to revenues from a local option E911 service surcharge.

d. The amounts payable to the authority by jurisdictions within service areas pursuant to loan agreements with service areas.

e. Any other funds or accounts established by the authority in connection with the program or the sale and issuance of its bonds or notes.

2. The authority may establish reserve funds to secure one or more issues of its bonds or notes. The authority may deposit in a reserve fund established under this subsection, the proceeds of the sale of its bonds or notes and other money which is made available from any other source.

3. A pledge made in respect of bonds or notes is valid and binding from the time the pledge is made. The money or property so pledged and received after the pledge by the authority is immediately subject to the lien of the pledge without physical delivery or further act. The lien of the pledge is valid and binding as against all persons having claims of any kind in tort, contract, or otherwise against the authority whether or not the parties have notice of the lien. Neither the resolution, trust agreement, or any other instrument by which a pledge is created needs to be recorded, filed, or perfected under chapter 554, to be valid, binding, or effective against all persons.

4. The members of the authority or persons executing the bonds or notes are not personally liable on the bonds or notes and are not subject to personal liability or accountability by reason of the issuance of the bonds or notes.

5. The state pledges to and agrees with the holders of bonds or notes issued under this subchapter that the state will not limit or alter the rights and powers vested in the authority to fulfill the terms of a contract made by the authority with respect to the bonds or notes, or in any way impair the rights and remedies of the holders until the bonds or notes, together with the interest on them including interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, as it refers to holders of bonds or notes of the authority, in a contract with the holders.

90 Acts, ch 1144, §7
C91, §477B.21
C93, §34A.21

34A.22 Rules.

The authority shall adopt rules pursuant to chapter 17A to implement this subchapter.

90 Acts, ch 1144, §8
C91, §477B.22
C93, §34A.22

SUBTITLE 13

VETERANS

CHAPTER 35

VETERANS AFFAIRS

35.1 Definitions.
35.2 through 35.5 Repealed by 80 Acts, ch 1020, §3.
35.6 Contract with veterans administration.
35.7 Orphans educational fund. Repealed by 99 Acts, ch 180, §21.
35.8 War orphans educational aid fund.
35.9 Expenditure by commission.
35.10 Eligibility and payment of aid.
35.11 Expenses chargeable to fund.
35.12 Repealed by 81 Acts, ch 33, §12.

35.1 Definitions.

As used in this chapter and chapters 35A through 35D:

1. *"Commission"* means the commission of veterans affairs created in section 35A.2.

2. *a. "Veteran"* means a resident of this state who served in the armed forces of the United States at any time during the following dates and who was discharged under honorable conditions:

(1) World War I from April 6, 1917, through November 11, 1918.

(2) Occupation of Germany from November 12, 1918, through July 11, 1923.

(3) American expeditionary forces in Siberia from November 12, 1918, through April 30, 1920.

(4) Second Haitian suppression of insurrections from 1919 through 1920.

(5) Second Nicaragua campaign with marines or navy in Nicaragua or on combatant ships from 1926 through 1933.

(6) Yangtze service with navy and marines in Shanghai or in the Yangtze valley from 1926 through 1927 and 1930 through 1932.

(7) China service with navy and marines from 1937 through 1939.

(8) World War II from December 7, 1941, through December 31, 1946.

(9) Korean conflict from June 25, 1950, through January 31, 1955.

(10) Vietnam conflict from February 28, 1961, through May 7, 1975.

(11) Lebanon or Grenada service from August 24, 1982, through July 31, 1984.

(12) Panama service from December 20, 1989, through January 31, 1990.

(13) Persian Gulf conflict from August 2, 1990, through the date the president or the Congress of the United States declares a cessation of hostilities. However, if the United States Congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf conflict for purposes of determining whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf conflict, that date shall be substituted for August 2, 1990.

b. "Veteran" includes the following persons:

(1) Former members of the reserve forces of the United States who served at least twenty years in the reserve forces after January 28, 1973, and who were discharged under honorable conditions. However, a member of the reserve forces of the United States who completed a minimum aggregate of ninety days of active federal service, other than training, and was discharged under honorable conditions, or was retired under Title X of the United States Code shall be included as a veteran.

(2) Former members of the Iowa national guard who served at least twenty years in the Iowa national guard after January 28, 1973, and who were discharged under honorable conditions. However, a member of the Iowa national guard who was activated for federal duty, other than training, for a minimum aggregate of ninety days, and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.

(3) Former members of the active, oceangoing merchant marines who served during World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, who were discharged under honorable conditions.

(4) Former members of the women's air force service pilots and other persons who have been conferred veterans status based on their civilian duties during World War II in accordance with federal Pub. L. No. 95-202, 38 U.S.C. § 106.

99 Acts, ch 180, §2

35.2 through 35.5 Repealed by 80 Acts, ch 1020, § 3.

35.6 Contract with veterans administration.

A state agency or a political subdivision of this state operating a hospital or medical facility may contract with the United States veterans administration to receive and to provide medical services to patients who are the responsibility of a United States veterans administration hospital or medical facility in the same jurisdiction or medical service area.

88 Acts, ch 1011, §1

35.7 Orphans educational fund. Repealed by 99 Acts, ch 180, § 21.

35.8 War orphans educational aid fund.

A war orphans educational aid fund is created as a separate fund in the state treasury under the control of the commission of veterans affairs. Any money appropriated for the purpose of aiding in the education of orphaned children of veterans, as defined in section 35.1, shall be deposited in the war orphans educational aid fund.

[C39, §**482.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §35.8]

99 Acts, ch 180, §3

35.9 Expenditure by commission.

The commission of veterans affairs may expend not more than six hundred dollars per year for any one child who has lived in the state of Iowa for two years preceding application for aid, and who is the child of a person who died during active federal military service while serving in the armed forces or during active federal military service in the Iowa national guard or other military component of the United States, to defray the expenses of tuition, matriculation, laboratory and similar fees, books and supplies, board, lodging, and any other reasonably necessary expense for the child or children incident to attendance in this state at an educational or training institution of college grade, or in a business or vocational training school with standards approved by the commission of veterans affairs.

A child eligible to receive funds under this section shall not receive more than three thousand dollars under this section during the child's lifetime.

[C39, §**482.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §35.9]

92 Acts, ch 1140, §5; 94 Acts, ch 1200, §9; 99 Acts, ch 180, §4

35.10 Eligibility and payment of aid.

Eligibility for aid shall be determined upon application to the commission of veterans affairs, whose decision is final. The eligibility of eligible applicants shall be certified by the commission of veterans affairs to the director of revenue and finance, and all amounts that are or become due to an individual or a training institution under this chapter shall be paid to the individual or institution by the director of revenue and finance upon receipt by the director of certification by the president or governing board of the educational or training institution as to accuracy of charges made, and as to the attendance of the individual at the educational or training institution. The commission of veterans affairs may pay over the annual sum of four hundred dollars to the educational or training institution in a lump sum, or in installments as the circumstances warrant, upon receiving from the institution such written undertaking as the commission may require to assure the use of funds for the child for the authorized purposes and for no other purpose. A person is not eligible for the benefits of this chapter until the person has graduated from a high school or educational institution offering a course of training equivalent to high school training.

[C39, §**482.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §35.10]

92 Acts, ch 1140, §6

35.11 Expenses chargeable to fund.

Any expense incurred in carrying out the provisions of this chapter shall be chargeable to this fund.

[C39, §**482.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §35.11]

35.12 Repealed by 81 Acts, ch 33, § 12.

CHAPTER 35A

VETERANS AFFAIRS COMMISSION

35A.1 Definitions.
35A.2 Commission of veterans affairs.
35A.3 Duties of the commission.
35A.4 through 35A.7 Repealed by 92 Acts, ch 1140, §38.
35A.8 Executive director — term — duties.
35A.9 Expenses and compensation.
35A.10 Multiyear construction program — construction, repair, and improvement projects.
35A.11 Veterans license fee fund.
35A.12 Military honor guard services.

35A.1 Definitions.

1. *"Commandant"* means the commandant of the Iowa veterans home appointed in section 35D.13.

2. *"Commission"* means the commission of veterans affairs established in section 35A.2.

3. *"Commissioner"* means a member of the commission of veterans affairs.

4. *"Director"* means the executive director appointed pursuant to section 35A.8.

[C79, 81, §35A.1]

86 Acts, ch 1245, §1704; 92 Acts, ch 1140, §7; 2000 Acts, ch 1058, §7

35A.2 Commission of veterans affairs.

1. A commission of veterans affairs is created consisting of seven persons who shall be appointed by the governor, subject to confirmation by the senate. Members shall be appointed to staggered terms of four years beginning and ending as provided in section 69.19. The governor shall fill a vacancy for the unexpired portion of the term.

2. Six commissioners shall be honorably discharged members of the armed forces of the United States. The American legion of Iowa, disabled American veterans department of Iowa, veterans of foreign wars department of Iowa, American veterans of World War II, Korea, and Vietnam, the Vietnam veterans of America, and the military order of the purple heart, through their department commanders, shall submit two names respectively from their organizations to the governor. The governor shall appoint from each of the organizations one representative to serve as a member of the commission, unless the appointments would conflict with the bipartisan and gender balance provisions of sections 69.16 and 69.16A. In addition, the governor shall appoint one member of the public, knowledgeable in the general field of veterans affairs, to serve on the commission.

[C31, §446-c1; C35, §467-f42; C39, §**467.44;** C46, 50, §29.44; C54, 58, 62, §29.12; C66, 71, 73, 75, 77, §29A.12; C79, 81, §35A.2; 81 Acts, ch 33, §1]

86 Acts, ch 1245, §1705, 1706; 92 Acts, ch 1140, §8; 95 Acts, ch 67, §6; 95 Acts, ch 161, §1, 2

Confirmation, see §2.32

35A.3 Duties of the commission.

The commission shall do all of the following:

1. Organize and annually select a chairperson.

2. Adopt rules pursuant to chapter 17A and establish policy for the management and operation of the commission.

3. Prescribe the duties of an executive director and other employees as the commission shall deem necessary to carry out the duties of the commission.

4. Supervise the commandant's administration of commission policy for the operations and conduct of the Iowa veterans home.

5. Maintain information and data concerning the military service records of Iowa veterans.

6. Assist county veterans affairs commissions established pursuant to chapter 35B. The commission shall provide to county commissions suggested uniform benefits and administrative procedures for carrying out the functions and duties of the county commissions.

7. Permanently maintain the records including certified records of bonus applications for awards paid from the war orphans educational fund under chapter 35.

8. Collect and maintain information concerning veterans affairs.

9. Conduct two service schools each year for the Iowa association of county commissioners and executive directors.

10. Assist the United States veterans administration, the Iowa veterans home, funeral directors, and federally chartered veterans service organizations in providing information concerning veterans service records and veterans affairs data.

11. Maintain alphabetically a permanent registry of the graves of all persons who served in the military or naval forces of the United States in time of war and whose mortal remains rest in Iowa.

12. Provide training to executive directors of county commissions of veteran affairs pursuant to section 35B.6. The commission may adopt rules in accordance with chapter 17A to provide for training of county veteran affairs executive directors.

13. Conduct an equal number of meetings at Camp Dodge and the Iowa veterans home. The

agenda for each meeting shall include a reasonable time period for public comment.

[C39, §**482.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §35.1; C79, 81, §35A.3]

86 Acts, ch 1245, §1707; 92 Acts, ch 1140, §9; 94 Acts, ch 1107, §3; 95 Acts, ch 161, §3

35A.4 through 35A.7 Repealed by 92 Acts, ch 1140, § 38.

35A.8 Executive director — term — duties.

1. The governor shall appoint an executive director, subject to confirmation by the senate, who shall serve at the pleasure of the governor. The executive director is responsible for administering the duties of the commission other than those related to the Iowa veterans home.

2. The executive director shall be a resident of the state of Iowa and an honorably discharged veteran who served in the armed forces of the United States during a conflict or war. As used in this section, the dates of service in a conflict or war shall coincide with the dates of service established by the Congress of the United States.

3. Except for the employment duties and responsibilities assigned to the commandant for the Iowa veterans home, the executive director shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the commission. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 19A.

4. *a.* The executive director shall provide for the administration of the bonus authorized in this subsection. The commission shall adopt rules, pursuant to chapter 17A, as necessary to administer this subsection including, but not limited to, application procedures, investigation, approval or disapproval, and payment of claims.

b. (1) Each person who served on active duty in the active, oceangoing merchant marine service of the United States, at any time between December 7, 1941, and December 31, 1946, both dates inclusive, and who served for a period of not less than one hundred twenty days on or before December 31, 1946, and who at the time of entering into the merchant marine service was a legal resident of the state of Iowa, and who had maintained the person's residence in this state for a period of at least six months immediately before entering the merchant marine service, and was honorably discharged or separated from the merchant marine service, is entitled to receive from moneys appropriated for that purpose the sum of twelve dollars and fifty cents for each month that the person was on active duty in the merchant marine service, all before December 31, 1946, not to exceed a total sum of five hundred dollars. Compensation for a fraction of a month shall not be considered unless the fraction is sixteen days or more, in which case the fraction shall be computed as a full month.

(2) A person is not entitled to compensation pursuant to this subsection if the person received a bonus or compensation similar to that provided in this subsection from another state.

(3) A person is not entitled to compensation pursuant to this subsection if the person was on active duty in the merchant marine service after December 7, 1941, and the person refused on conscientious, political, religious, or other grounds, to be subject to military discipline.

(4) The surviving unremarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid the compensation that the deceased person would be entitled to pursuant to this subsection, if living, but if any person has died or shall die, or is disabled, from service-connected causes incurred during the period and in the area from which the person is entitled to receive compensation pursuant to this subsection, the person or the first survivor as designated by this subsection, and in the order named, shall be paid five hundred dollars, regardless of the length of service.

c. A person who knowingly makes a false statement relating to a material fact in supporting an application under this subsection is guilty of a serious misdemeanor. A person convicted pursuant to this subsection shall forfeit all benefits to which the person may have been entitled under this subsection.

d. All payments and allowances made under this subsection shall be exempt from taxation and from levy and sale on execution.

e. The bonus compensation authorized under this subsection shall be paid from moneys appropriated for that purpose.

f. A merchant marine bonus fund is created in the state treasury. The merchant marine bonus fund shall consist of all moneys appropriated to the fund to pay the bonus compensation authorized in this subsection. Notwithstanding section 12C.7, interest or earnings on investments or time deposits of the moneys in the merchant marine bonus fund shall be credited to the merchant marine bonus fund. Section 8.33 does not apply to moneys appropriated to the merchant marine bonus fund.

[C79, 81, §35A.8]

86 Acts, ch 1245, §1710; 92 Acts, ch 1140, §10; 92 Acts, ch 1247, §28; 99 Acts, ch 180, §5; 2000 Acts, ch 1218, §1

Confirmation, see §2.32

35A.9 Expenses and compensation.

The commissioners are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties. Each member of the commission may also be eligible to

receive compensation as provided in section 7E.6.

1. The executive director, commandant, and employees of the commission and the Iowa veterans home are entitled to receive, in addition to salary, reimbursement for actual expenses incurred while engaged in the performance of official duties.

2. All out-of-state travel by commissioners, the executive director, the commandant, or employees of the commission or the Iowa veterans home shall be approved by the chairperson of the commission.

[C79, 81, §35A.9]

86 Acts, ch 1245, §1711; 92 Acts, ch 1140, §11

35A.10 Multiyear construction program — construction, repair, and improvement projects.

1. The commission shall work with the department of general services to prepare and submit to the director of the department of management, as provided in section 8.23, a multiyear construction program including estimates of the expenditure requirements for the construction, repair, or improvement of buildings, grounds, or equipment at the commission of veterans affairs building at Camp Dodge and the Iowa veterans home in Marshalltown.

2. The commandant and the commission shall have plans and specifications prepared by the department of general services for authorized construction, repair, or improvement projects in excess of twenty-five thousand dollars. An appropriation for a project shall not be expended until the department of general services has adopted plans and specifications and has completed a detailed estimate of the cost of the project, prepared under the supervision of a registered architect or registered professional engineer.

3. The director of the department of general services shall, in writing, let all contracts for authorized improvements in excess of twenty-five thousand dollars in accordance with chapter 18. The director of the department of general services shall not authorize payment for construction purposes until satisfactory proof has been furnished by the proper officer or supervising architect that the parties have complied with the contract.

96 Acts, ch 1218, §29

35A.11 Veterans license fee fund.

A veterans license fee fund is created in the state treasury under the control of the commission. The fund shall include the fees credited by the treasurer of state from the sale of special veteran license plates pursuant to section 321.34, subsection 13, paragraph *"d"*. Notwithstanding section 12C.7, interest or earnings on moneys in the veterans license fee fund shall be credited to the veterans license fee fund. Moneys in the fund are appropriated to the commission to be used to fulfill the responsibilities of the commission.

99 Acts, ch 201, §8

35A.12 Military honor guard services.

An honor guard unit made up of members of a recognized military veterans organization as listed in section 35A.2 or 37.2, the Iowa national guard, the reserve forces of the United States, or a reserve officers training corps shall be allowed to perform any honor guard service on public property.

2001 Acts, ch 96, §1; 2002 Acts, ch 1037, §1

Section amended

CHAPTER 35B

COUNTY COMMISSIONS OF VETERAN AFFAIRS

This chapter not enacted as a part of this title; transferred from chapter 250 in Code 1993
See §218.95 for provisions pertaining to construction of synonymous terms

35B.1 Definitions.
35B.2 Reserved.
35B.3 County commission of veteran affairs.
35B.4 Appointment — vacancies.
35B.5 Compensation.
35B.6 Qualification — training — offices.
35B.7 Meetings — report — budget.
35B.8 Accounting system.
35B.9 Names certified — benefits changed.
35B.10 Disbursements — inspection of records.
35B.11 Data furnished state commission.
35B.12 Benefit information confidential.
35B.13 Burial — expenses.
35B.14 County appropriation.
35B.15 Expenses and audit.
35B.16 Markers for graves.
35B.17 Maintenance of graves.
35B.18 Payment — how made.
35B.19 Burial records.

35B.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

35B.2 Reserved.

35B.3 County commission of veteran affairs.

The county commission of veteran affairs shall consist of either three or five persons, as determined by the board of supervisors, all of whom shall be veterans as defined in section 35.1. If possible, each member of the commission shall be a veteran of a different military action. However, this qualification does not preclude membership to a veteran who served in more than one of the military actions.

[C97, §431; C24, 27, 31, 35, §5387; C39, §**3828.053;** C46, 50, 54, §250.3; C58, 62, 66, 71, 73, 75, 77, 79, 81, §250.3, 250.21; S81, §250.3; 81 Acts, ch 33, §3]

85 Acts, ch 67, §26; 88 Acts, ch 1082, §1; 91 Acts, ch 199, §1

C93, §35B.3

94 Acts, ch 1007, §1; 99 Acts, ch 180, §6

35B.4 Appointment — vacancies.

Members of the commission of veteran affairs shall be appointed by the board of supervisors to staggered three-year terms at the regular meeting in June. However, a member shall serve until a successor has been appointed and qualifies. The board may remove an appointee at any time for neglect of duty or maladministration. A vacancy on the commission shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

If the board of supervisors increases the commission of veteran affairs membership to five members, the initial terms of the two new members shall be two and three years respectively. However, the new members shall serve until their successors are appointed and qualify.

[C97, §431; C24, 27, 31, 35, §5388; C39, §**3828.054;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §250.4]

C93, §35B.4

94 Acts, ch 1007, §2

35B.5 Compensation.

A member of the commission shall receive twenty-five dollars for each month during which the member attends one or more commission meetings and shall be reimbursed for mileage the same as a member of the board of supervisors. Compensation and mileage shall be paid out of the appropriation authorized in section 35B.14.

[C27, 31, 35, §5388-b1; C39, §**3828.055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §250.5; 81 Acts, ch 33, §4, ch 117, §1034]

83 Acts, ch 123, §97, 209

C93, §35B.5

Mileage, §331.215

35B.6 Qualification — training — offices.

1. *a.* The members of the commission shall qualify by taking the usual oath of office, and give bond in the sum of five hundred dollars each, conditioned for the faithful discharge of their duties with sureties to be approved by the county auditor. The commission shall organize by the selection of one of their members as chairperson, and one as secretary. The commission, subject to the approval of the board of supervisors, shall have power to employ an executive director and other necessary administrative or clerical assistants when needed, the compensation of such employees to be fixed by the board of supervisors, but no member of the commission shall be so employed. The executive director must possess the same qualifications as provided in section 35B.3 for commission members. However, this qualification requirement shall not apply to a person employed as an executive director prior to July 1, 1989.

b. Upon the employment of an executive director, the executive director shall complete a course of initial training provided by the commission of veterans affairs pursuant to section 35A.3. If an executive director is not appointed, a commissioner or a clerical assistant shall complete the course of training. The commission shall issue the executive director, commissioner, or clerical assistant a certificate of training after completion of the initial training course. To maintain annual certification, the executive director, commissioner, or clerical assistant shall attend one commission training course each year. Failure to maintain certification may be cause for removal from office. The expenses of training shall be paid from the appropriation authorized in section 35B.14.

2. Two or more boards of supervisors may agree, pursuant to chapter 28E, to share the services of an executive director. The agreement shall provide for the establishment of a commission of veteran affairs' office in each of the counties participating in the agreement.

3. The commission with the approval of the board of supervisors shall appoint one of the deputies of the county auditor to serve as administrative assistant to the commission, to serve without additional compensation, unless for good reasons shown, this arrangement is not feasible.

4. In counties where a commission has established an office, the office shall be open a minimum of four hours each work day. The hours that the office is open shall be posted in a prominent position outside the office. In lieu of an office being open a

minimum of four hours each work day, the names, home addresses, telephone numbers, and duties of commission members shall be posted.

[C97, §431; C24, 27, 31, 35, §5389; C39, §**3828.056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §250.6; 81 Acts, ch 33, §5]

89 Acts, ch 248, §1; 92 Acts, ch 1075, §2

C93, §35B.6

94 Acts, ch 1107, §4

Oath, §63.10

35B.7 Meetings — report — budget.

The commission shall meet monthly and at other times as necessary. At the monthly meeting it shall determine who are entitled to benefits and the probable amount required to be expended. The commission shall meet annually to prepare an estimated budget for all expenditures to be made in the next fiscal year and certify the budget to the board of supervisors. The board may approve or reduce the budget for valid reasons shown and entered of record and the board's decision is final.

[C97, §432; S13, §432; C24, 27, 31, 35, §5390; C39, §**3828.057;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §250.7; 81 Acts, ch 33, §6]

C93, §35B.7

35B.8 Accounting system.

The state auditor shall prepare sample copies of a system of accounting and case records for the use of all county commissions of veteran affairs and this uniform system of accounting and case records shall be used by the several counties.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §250.8]

C93, §35B.8

35B.9 Names certified — benefits changed.

At each regular meeting the commission shall submit to the board of supervisors a certified list of those persons to whom benefits have been authorized and the amounts so awarded. The amount awarded to any person may be increased, decreased, or discontinued by the commission at any meeting. New names may be added and certified thereat.

[C97, §432; S13, §432; C24, 27, 31, 35, §5391; C39, §**3828.058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §250.9]

C93, §35B.9

35B.10 Disbursements — inspection of records.

All claims certified by the commission shall be reviewed by the board of supervisors and the county auditor shall issue warrants in payment of the claims. All applications, investigation reports, and case records are privileged communications and shall be held confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and the administration of this chapter. However, the county commission of veteran affairs shall prepare and file in the office of the county auditor on or before the thirtieth day of each January, April, July, and October a report showing the case numbers of all recipients receiving assistance under this chapter, together with the amount paid to each during the preceding quarter. Each report so filed shall be securely fixed in a record book to be used only for such reports made under this chapter.

The record book shall be and the same is hereby declared to be a public record, open to public inspection at all times during the regular office hours of the county auditor. Each person who desires to examine said records, other than in pursuance of official duties as hereinbefore provided, shall sign a written request to examine the same, which shall contain an agreement on the part of the signer that the signer will not utilize any information gained therefrom for commercial or political purposes.

It shall be unlawful for any person, body, association, firm, corporation or any other agency to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in or acquiesce in the use of any lists, names or other information obtained from the reports above provided for, for commercial or political purposes, and a violation of this provision shall constitute a serious misdemeanor.

[C97, §432; S13, §432; C24, 27, 31, 35, §5392; C39, §**3828.059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §250.10; 81 Acts, ch 33, §7]

83 Acts, ch 123, §98, 209

C93, §35B.10

99 Acts, ch 180, §7

35B.11 Data furnished state commission.

The commission of veteran affairs of each county shall provide information to the state commission of veterans affairs as the state commission may request.

[C27, 31, 35, §5392-b1; C39, §**3828.060;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §250.11; 81 Acts, ch 33, §8]

92 Acts, ch 1140, §35

C93, §35B.11

35B.12 Benefit information confidential.

It shall be unlawful for any county board of supervisors or any county commission of veteran affairs to place the administration of the duties of the county commission of veteran affairs under any other agency of any county, or to publish the

names of the veterans or their families who receive benefits under the provisions of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §250.12]

C93, §35B.12

35B.13 Burial — expenses.

The commission is responsible for the interment in a suitable cemetery of the body of any veteran, as defined in section 35.1, or the spouse, surviving spouse, or child of the person, if the person has died without leaving sufficient means to defray the funeral expenses. The commission may pay the expenses in a sum not exceeding an amount established by the board of supervisors.

[C97, §433; S13, §433; C24, 27, 31, 35, §5393; C39, §**3828.061;** C46, 50, 54, §250.13; C58, 62, 66, 71, 73, 75, 77, 79, 81, §250.13, 250.21; S81, §250.13; 81 Acts, ch 33, §9]

85 Acts, ch 67, §27; 88 Acts, ch 1082, §2; 91 Acts, ch 199, §2

C93, §35B.13

99 Acts, ch 180, §8

35B.14 County appropriation.

The board of supervisors of each county may appropriate moneys for the food, clothing, shelter, utilities, medical benefits, and funeral expenses of indigent veterans, as defined in section 35.1, and their indigent spouses, surviving spouses, and minor children not over eighteen years of age, having a legal residence in the county.

The appropriation shall be expended by the joint action and control of the board of supervisors and the county commission of veteran affairs.

83 Acts, ch 123, §99, 209

CS83, §250.14

85 Acts, ch 67, §28; 88 Acts, ch 1082, §3; 91 Acts, ch 1, §1; 91 Acts, ch 199, §3

C93, §35B.14

99 Acts, ch 180, §9

35B.15 Expenses and audit.

Burial expenses shall be paid by the county in which the person died. If the person is a resident of a different county at the time of death, the latter county shall reimburse the county where the person died for the cost of burial. In either case, the board of supervisors of the respective counties shall audit and pay the account from the funds provided for in this chapter in the manner as other claims are audited and paid.

[C97, §434; C24, 27, 31, 35, §5395; C39, §**3828.063;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §250.15; 81 Acts, ch 33, §10]

C93, §35B.15

35B.16 Markers for graves.

The county commission of veteran affairs may furnish a suitable and appropriate metal marker for the grave of each veteran, as defined in section 35.1, who is buried within the limits of the county. The marker shall be placed at the individual's grave to permanently mark and designate the grave for memorial purposes. The expenses shall be paid from any funds raised as provided in this chapter.

[SS15, §434-a; C24, 27, 31, 35, §5396; C39, §**3828.064;** C46, 50, 54, §250.16; C58, 62, 66, 71, 73, 75, 79, 81, §250.16, 250.21; S81, §250.16; 81 Acts, ch 33, §11]

85 Acts, ch 67, §29; 86 Acts, ch 1237, §13; 88 Acts, ch 1082, §4; 91 Acts, ch 199, §4

C93, §35B.16

99 Acts, ch 180, §10

35B.17 Maintenance of graves.

The county boards of supervisors shall each year appropriate and pay to the owners of, or to the public board or officers having control of cemeteries within the state in which any such deceased service person is buried, a sum sufficient to pay for the care and maintenance of the lots on which they are buried in all cases in which provision for such care is not otherwise made, or may conclude their responsibility by paying a mutually agreed to fee for perpetual care when the cemetery authority has established a perpetual care fund for the cemetery, to be paid either as a lump sum, or in not to exceed five installments in a manner agreed to by the parties.

[C27, 31, 35, §5396-a1; C39, §**3828.065;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §250.17]

83 Acts, ch 123, §100, 209; 85 Acts, ch 67, §30; 91 Acts, ch 188, §1

C93, §35B.17

35B.18 Payment — how made.

Such payment shall be made at the rate charged for like care and maintenance of other lots of similar size in the same cemetery, upon the affidavit of the superintendent or other person in charge of such cemetery, that the same has not been otherwise paid or provided for.

[C27, 31, 35, §5396-a2; C39, §**3828.066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §250.18]

C93, §35B.18

35B.19 Burial records.

The county commission of veteran affairs shall be charged with securing the information requested by the commission of veterans affairs of every person having a military service record and buried in that county. Such information shall be secured from the undertaker in charge of the burial and shall be transmitted by the undertaker to the commission of veteran affairs of the county where burial is made. This information shall be recorded alphabetically and by description of location in the cemetery where the veteran is buried.

This recording shall conform to the directives of the state commission of veterans affairs and shall be kept in a book by the county commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §250.19]

92 Acts, ch 1140, §36

C93, §35B.19

CHAPTER 35C

VETERANS PREFERENCE

This chapter not enacted as a part of this title; transferred from chapter 70 in Code 1993

35C.1 Appointments and employment — applications.
35C.2 Physical disability.
35C.3 Duty to investigate and appoint.
35C.4 Mandamus — judicial review.
35C.5 Appeals.
35C.5A Arbitration.
35C.6 Removal — certiorari — judicial review.
35C.7 Burden of proof.
35C.8 Exceptions.

35C.1 Appointments and employment — applications.

1. In every public department and upon all public works in the state, and of the counties, cities, and school corporations of the state, veterans as defined in section 35.1 who are citizens and residents of this state are entitled to preference in appointment and employment over other applicants of no greater qualifications. The preference in appointment and employment for employees of cities under a municipal civil service is the same as provided in section 400.10.

2. In all jobs of the state and its political subdivisions, an application form shall be completed. The application form shall contain an inquiry into the applicant's military service during the wars or armed conflicts as specified in subsection 1.

The department of personnel shall inform the agency to which the person is seeking employment of the person's military service as specified in subsection 1.

3. In all jobs of political subdivisions of the state which are to be filled by competitive examination or by appointment, public notice of the application deadline to fill a job shall be posted at least ten days before the deadline in the same manner as notices of meetings are posted under section 21.4.

4. For jobs in political subdivisions of the state that are filled through a point-rated qualifying examination, the preference afforded to veterans shall be equivalent to that provided for municipal civil service systems in section 400.10.

[S13, §1056-a15; C24, 27, 31, 35, 39, §**1159;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §70.1]

85 Acts, ch 50, §1; 92 Acts, ch 1238, §17

C93, §35C.1

94 Acts, ch 1189, §16; 2000 Acts, ch 1154, §6

35C.2 Physical disability.

The persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of age or by reason of any physical disability, provided such age or disability does not render such person incompetent to perform properly the duties of the position applied for.

[S13, §1056-a15; C24, 27, 31, 35, 39, §**1160;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §70.2]

C93, §35C.2

35C.3 Duty to investigate and appoint.

When any preferred person applies for appointment or employment under this chapter, the officer, board, or person whose duty it is or may be to appoint or employ a person to fill the position or place shall, before appointing or employing a person to fill the position or place, make an investigation as to the qualifications of the applicant for the place or position, and if the applicant is of good moral character and can perform the duties of the position applied for, the officer, board, or person shall appoint the applicant to the position, place, or employment. The appointing officer, board, or person shall set forth in writing and file for public inspection the specific grounds upon which it appointed or refused to appoint the person. At the time of application or at an interview for the position, an applicant may request notification of refusal only or notification of refusal and the specific grounds for refusal. The notification shall be sent within ten days after the successful applicant is selected.

[S13, §1056-a15; C24, 27, 31, 35, 39, §**1161;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §70.3]

C93, §35C.3

99 Acts, ch 180, §11; 2000 Acts, ch 1106, §1

35C.4 Mandamus — judicial review.

A refusal to allow said preference, or a reduction of the salary for said position with intent to bring about the resignation or discharge of the incumbent, shall entitle the applicant or incumbent, as the case may be, to maintain an action of mandamus to right the wrong. At their election such parties may, in the alternative, maintain an action for judicial review in accordance with the terms of the Iowa administrative procedure Act if that is otherwise applicable to their case.

[S13, §1056-a15, -a16; C24, 27, 31, 35, 39, §**1162;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §70.4]

C93, §35C.4

35C.5 Appeals.

In addition to the remedy provided in section 35C.4, an appeal may be taken by any person belonging to any of the classes of persons to whom a preference is hereby granted, from any refusal to allow said preference, as provided in this chapter, to the district court of the county in which such refusal occurs. The appeal shall be made by serving upon the appointing board within twenty days after the date of the refusal of said appointing officer, board, or persons to allow said preference, a written notice of such appeal stating the grounds of the appeal; a demand in writing for a certified transcript of the record, and all papers on file in the office affecting or relating to said appointment. Thereupon, said appointing officer, board, or person shall, within ten days, make, certify, and deliver to appellant such a transcript; and the appellant shall, within five days thereafter, file the same and a copy of the notice of appeal with the clerk of said court, and said notice of appeal shall stand as appellant's complaint and thereupon said cause shall be accorded such preference in its assignment for trial as to assure its prompt disposition. The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning said appointment from which the appeal is taken, and if the court shall find that the said applicant is qualified as defined in section 35C.1, to hold the position for which the applicant has applied, said court shall, by its mandate, specifically direct the said appointing officer, board or persons as to their further action in the matter. An appeal may be taken from judgment of the said district court on any such appeal on the same terms as an appeal is taken in civil actions. At their election parties entitled to appeal under this section may, in the alternative, maintain an action for judicial review in accordance with the terms of the Iowa administrative procedure Act if that is otherwise applicable to their case.

[C35, §1162-g1; C39, §**1162.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §70.5]

C93, §35C.5

Appeals, R.App.P. 6.5, 6.6, 6.31

35C.5A Arbitration.

In addition to the remedies provided in sections 35C.4 and 35C.5, a person belonging to a class of persons qualifying for a preference may submit any refusal to allow a preference, or any reduction of the person's salary as described in section 35C.4, to arbitration within sixty days after written notification of the refusal or reduction. Within ten days after any submission, an arbitrator shall be selected by a committee that includes one member chosen by the person refused preference, one member chosen by the appointing officer, board, or person, and one member who shall be a disinterested party selected by the other two members of the committee. A list of qualified arbitrators may be obtained from the American arbitration association or other recognized arbitration organization or association. The decision of the arbitrator shall be final and binding on the parties.

99 Acts, ch 180, §12

35C.6 Removal — certiorari — judicial review.

No person holding a public position by appointment or employment, and belonging to any of the classes of persons to whom a preference is herein granted, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employee or appointee to a review by a writ of certiorari or at such person's election, to judicial review in accordance with the terms of the Iowa administrative procedure Act if that is otherwise applicable to their case.

[S13, §1056-a16; C24, 27, 31, 35, 39, §**1163;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §70.6]

C93, §35C.6

35C.7 Burden of proof.

The burden of proving incompetency or misconduct shall rest upon the party alleging the same.

[S13, §1056-a16; C24, 27, 31, 35, 39, §**1164;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §70.7]

C93, §35C.7

35C.8 Exceptions.

Nothing in this chapter shall be construed to apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing officer.

[S13, §1056-a16; C24, 27, 31, 35, 39, §**1165;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §70.8]

C93, §35C.8

CHAPTER 35D

VETERANS HOME

35D.1 Purpose of home — for whom maintained.
35D.2 Right to admission.
35D.3 Rules — general management.
35D.4 Married couples — quarters — cottages.
35D.5 Surviving spouses of veterans.
35D.6 Certificate of eligibility.
35D.7 Contributing to own support.
35D.8 Conditional admittance.
35D.9 County of settlement upon discharge.
35D.10 Payment to dependents.
35D.11 Handling of pension money and other funds.
35D.12 Bank account for members' deposits.
35D.13 Commandant.
35D.14 Personnel — expenses — compensation.
35D.15 Rules enforced — power to suspend and expel members.
35D.16 Dispositions of active duty members charged with offense.
35D.17 Report by commandant.

35D.1 Purpose of home — for whom maintained.

1. The Iowa veterans home, located in Marshalltown, shall be maintained as a long-term health care facility providing multiple levels of care, with attendant health care services, for honorably discharged veterans and their dependent spouses and for surviving spouses of honorably discharged veterans. Eligibility requirements for admission to the Iowa veterans home shall coincide with the eligibility requirements for hospitalization in a United States veterans administration facility pursuant to title 38, United States Code, section 610, and regulations promulgated under that section as amended to January 1, 1984.

2. As used in this chapter:

a. "Commandant" means the commandant of the Iowa veterans home appointed pursuant to section 35D.13.

b. "Commission" means the commission of veterans affairs established in section 35A.2.

c. "Member" means a patient or resident of the home.

[C97, §2601, 2602, 2606; S13, §2601, 2602, 2606; SS15, §2606; C24, 27, 31, 35, §3366, 3367; C39, §**3384.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.1]

84 Acts, ch 1277, §1; 92 Acts, ch 1140, §22
C93, §35D.1

35D.2 Right to admission.

1. Persons described in section 35D.1 who do not have sufficient means for their own support, or are disabled by disease, wounds, old age, or otherwise, and are unable to earn a livelihood, and who are residents of the state of Iowa on the date of the application and immediately preceding the date the application is accepted, may be admitted to the home as members under rules adopted by the commission. Eligibility determinations are subject to approval by the commandant.

2. A person shall not be received or retained in the home who has been diagnosed by a qualified mental health professional as acutely mentally ill and considered dangerous to self or others, is an acute inebriate, or is addicted to the use of drugs, and whose documented behavior is continuously disruptive to the operation of the facility.

1. [C97, §2602; S13, §2602, 2606; SS15, §2606; C24, 27, 31, 35, §3366; C39, §**3384.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.2]

2. [C97, §2605; C24, 27, 31, 35, §3370; C39, §**3384.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.13]

84 Acts, ch 1277, §2
C85, §219.2
92 Acts, ch 1140, §23
C93, §35D.2

35D.3 Rules — general management.

The commission shall adopt all the necessary rules, pursuant to chapter 17A, for the preservation of order and enforcement of discipline, the promotion of health and well-being of all the members and the management and control of the home and its grounds.

[C97, §2602; C24, 27, 31, 35, §3367; C39, §**3384.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.3]

84 Acts, ch 1277, §3; 92 Acts, ch 1140, §24
C93, §35D.3

35D.4 Married couples — quarters — cottages.

1. When a married person is or becomes a member of the home, the spouse, if married to the person for at least one year and otherwise eligible under this chapter, may be admitted as a member of the home subject to the rules of the home. Veteran and spouse members may be permitted to occupy, together, cottages or other quarters on the grounds of the home.

2. The cottages may be made available to persons on the staff of the home at a rental rate determined by the commission.

[C97, §2606; S13, §2606; SS15, §2606; C24, 27, 31, 35, §3366, 3368; C39, §**3384.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.4]
84 Acts, ch 1277, §4; 92 Acts, ch 1140, §25
C93, §35D.4

35D.5 Surviving spouses of veterans.
If a deceased veteran, who would be entitled to admission to the home if the deceased veteran were living, has left a surviving spouse, the spouse is entitled to admission to the home with the same rights, privileges and benefits as if the veteran were living and a member of the home, if the spouse was married to the veteran for at least one year immediately prior to the veteran's death, is found by the commandant to be disabled, does not have sufficient means for support and maintenance, and is a resident of the state of Iowa on the date of the application and immediately preceding the date the application is accepted.
[C97, §2606; S13, §2606; C24, 27, 31, 35, §3366; C39, §**3384.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.5]
84 Acts, ch 1277, §5
C93, §35D.5

35D.6 Certificate of eligibility.
Before admission, each applicant shall file with the commandant an affidavit signed by two members of the commission of veteran affairs of the county in which the person resides, stating that the person to the best of their knowledge and belief is a resident of that county and that the person is unable to earn a livelihood and the person's income, exclusive of pension, compensation, war risk insurance payments, or pensions or annuities under the Social Security Act and the Railroad Retirement Acts, is less than is sufficient to provide the type of health care necessary for the person's welfare. The affidavit is conclusive evidence of the residence of the person but is prima facie only in all other matters affecting the eligibility of the applicant and the liability of the county with respect to the expense of the person for which the county may be liable. All records of admission shall show the residence of the applicant.
[C97, §2602; S13, §2602; C24, 27, 31, 35, §3369; C39, §**3384.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.6]
84 Acts, ch 1277, §6
C93, §35D.6

35D.7 Contributing to own support.
1. Except as otherwise provided in chapter 249A and other provisions of this chapter, a member of the home who receives a pension, compensation or gratuity from the United States government, or income from any source of more than twenty-five dollars per month, shall contribute to the member's own maintenance or support while a member of the home. The amount of the contribution and the method of collection shall be determined by the director, but the amount shall in no case exceed the actual cost of keeping and maintaining the person in the home.
2. Sums paid to and received by the commandant for the support of members of the home shall be paid monthly by the commandant to the treasurer of state and credited to the general fund of the state.
3. The commandant may require any member of the home to render assistance in the care of the home and its grounds as the member's psychosocial and physical condition permit, as a phase of that member's rehabilitation program. The commandant shall compensate each member who furnishes assistance at rates established by the commission.
1,3. [S13, §2602-a, 2606-a; C24, 27, 31, 35, §3377; C39, §**3384.14**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.14]
2. [S13, §2602-a; C24, 27, 31, 35, §3372; C39, §**3384.17**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.17]
84 Acts, ch 1277, §7
C85, §219.7
92 Acts, ch 1140, §26
C93, §35D.7

35D.8 Conditional admittance.
The commission may, if there is room for all dependent members and applicants, admit and allow to remain in the home persons who have sufficient means for their own support but are otherwise eligible to become members of the home, on payment of the cost of their support. The cost and method of collection shall be determined by the commission.
[S13, §2606-a; C24, 27, 31, 35, §3371; C39, §**3384.16**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.16]
84 Acts, ch 1277, §8
C85, §219.8
92 Acts, ch 1140, §27
C93, §35D.8

35D.9 County of settlement upon discharge.
A member of the home does not acquire legal settlement in the county in which the home is located unless the member is voluntarily or involuntarily discharged from the home, continuously resides in the county for a period of one year subsequent to the discharge, and during that year is not readmitted to the home or does not receive any services from the home.
[C97, §2605; C24, 27, 31, 35, §3370; C39, §**3384.13**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.13]
84 Acts, ch 1277, §9
C85, §219.9
C93, §35D.9

35D.10 Payment to dependents.

Except as otherwise provided in chapter 249A and other provisions of this chapter, a member of the home who receives a pension or compensation and who has a child, as defined in section 234.1, or a spouse who is dependent upon employment or others for support shall deposit with the commandant on receipt of the member's pension or compensation check one-half of its amount, which shall be sent at once to the spouse or, if there is no spouse, to the guardian of the child. The commandant, if satisfied that the spouse has deserted the member of the home, may pay the money deposited to the guardian of the child.

[S13, §2606-c; C24, 27, 31, 35, §3379, 3384; C39, §**3384.15**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.15]

84 Acts, ch 1277, §10
C85, §219.10
C93, §35D.10

35D.11 Handling of pension money and other funds.

1. Pension money deposited with the commandant is not assignable for any purpose except as provided in sections 35D.10 and 35D.16, or in accordance with subsection 2 of this section.

2. The commandant, if authorized by a member of the home, and pursuant to policies adopted by the commission, may act on behalf of that member in receiving, disbursing, and accounting for personal funds of the member received from any source. The authorization may be given by the member at any time and shall not be a condition of admission to the home.

[S13, §2606-b; C24, 27, 31, 35, §3383; C39, §**3384.20**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.20]

84 Acts, ch 1277, §11
C85, §219.11
92 Acts, ch 1140, §28
C93, §35D.11

35D.12 Bank account for members' deposits.

1. The Iowa veterans home, for the convenience of its members, may maintain a commercial account with a federally insured bank for the individual personal deposits of its members. The account shall be known as the Iowa veterans home membership account. The commandant shall record each member's personal deposits individually and shall deposit the funds in the membership account, where the members' deposits shall be held in the aggregate.

2. The commandant, if authorized by a member of the home, and pursuant to policies adopted by the commission, may make withdrawals against that member's personal account to pay regular bills and other expenses incurred by the member. The authorization may be given by the member at any time and shall not be a condition of admission to the home.

84 Acts, ch 1277, §12
C85, §219.12
92 Acts, ch 1140, §29
C93, §35D.12

35D.13 Commandant.

1. The governor shall appoint a commandant, subject to senate confirmation, who shall serve at the pleasure of the governor as the chief executive of the home. The commandant shall report directly to the commission and shall have the immediate custody and control, subject to the orders of the commission, of all property used in connection with the home.

2. The commandant must be a resident of the state of Iowa, an honorably discharged veteran who served in the armed forces of the United States during a conflict or war, and a licensed nursing home administrator. As used in this section, the dates of service in a conflict or war shall coincide with the dates of service established by the Congress of the United States.

3. The salary of the commandant shall be fixed by the governor within salary guidelines or a range established by the general assembly. In addition to salary, the commission shall furnish the commandant with a dwelling house or with appropriate quarters and additional allowances, as provided in section 218.14 for executive heads of state institutions.

1. [C97, §2604; S13, §2604; SS15, §2604; C39, §**3384.07**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.7; 81 Acts, ch 27, §4]

2. [C97, §2604; S13, §2604; SS15, §2604; C24, 27, 31, 35, §3374; C39, §**3384.08**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.8]

3. [C97, §2604; S13, §2604; SS15, §2604; C24, 27, 31, 35, §3373; C39, §**3384.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.9]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1277, §13
C85, §219.13
92 Acts, ch 1140, §30
C93, §35D.13
Confirmation, see §2.32

35D.14 Personnel — expenses — compensation.

The commandant or the commandant's designee shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the commandant. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 19A.

The commandant and employees of the Iowa veterans home are entitled to receive, in addition to salary, reimbursement for actual expenses incurred while engaged in the performance of official

duties pursuant to section 35A.9.
92 Acts, ch 1140, §31; 92 Acts, ch 1247, §29

35D.15 Rules enforced — power to suspend and expel members.
The commandant shall administer and enforce all rules adopted by the commission, including rules of discipline and, subject to these rules, may immediately suspend the membership of and expel any person from the home for infraction of the rules when the commandant determines that the health, safety, or welfare of the residents of the home is in immediate danger and other reasonable alternatives have been exhausted. The suspension and expulsion are temporary pending action by the commission. Judicial review of the action of the commission may be sought in accordance with chapter 17A.
[C39, §**3384.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.18]
84 Acts, ch 1277, §14; 92 Acts, ch 1140, §32
C93, §35D.15

35D.16 Dispositions of active duty members charged with offense.
A person on active duty in the state military forces subject to the provisions of chapter 29B, or on active duty in the federal military forces subject to 10 U.S.C. chapter 47, charged with an offense under either code, may be summarily delivered to the appropriate state or federal branch of the military for disciplinary action or trial.
[S13, §2606-b; C24, 27, 31, 35, §3378, 3380, 3381, 3382; C39, §**3384.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.19]
84 Acts, ch 1277, §15; 92 Acts, ch 1140, §33
C93, §35D.16

35D.17 Report by commandant.
The commandant shall, biennially, make a full and detailed report to the governor, the commission, and the general assembly, showing the condition of the home, the number of members in the Iowa veterans home, the order and discipline enforced, and the needs of the home financially and otherwise, together with an itemized statement of all receipts and disbursements and any other matters of importance in the management and control of the Iowa veterans home.
[C39, §**3384.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §219.21]
84 Acts, ch 1277, §16; 92 Acts, ch 1140, §34
C93, §35D.17

CHAPTER 36

EXPOSURE TO CHEMICALS — VETERANS

36.1 Definitions.
36.2 Chemical exposure report to commission.
36.3 Duties of the commission.
36.4 Confidentiality and liability.
36.5 Attorney general powers.
36.6 Medical cooperative program.
36.7 Federal program.
36.8 Rules.
36.9 Appropriations.
36.10 Veterans' litigation awards.

36.1 Definitions.
As used in this chapter unless the context otherwise provides:
1. *"Agent Orange"* means the herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid.
2. *"Chemicals"* means chemical defoliants, herbicides, or other causative agents, including but not limited to Agent Orange.
3. *"Commission"* means the commission of veterans affairs.
4. *"Veteran"* means a person who was a resident of this state at the time of the person's induction into the armed forces of the United States or who is a resident of this state July 1, 1983 and served in Vietnam, Cambodia, or Laos during the Vietnam Conflict.
83 Acts, ch 141, §1
CS83, §139A.1
86 Acts, ch 1245, §1712; 92 Acts, ch 1140, §13
C93, §36.1

36.2 Chemical exposure report to commission.
A licensed physician, as defined in section 135.1, subsection 4, who treats a veteran the physician believes may have been exposed to chemicals while serving in the armed forces of the United States shall submit a report indicating that information to the commission at the request of the vet-

eran pursuant to section 36.3.
83 Acts, ch 141, §2
CS83, §139A.2
86 Acts, ch 1245, §1713; 92 Acts, ch 1140, §14
C93, §36.2

36.3 Duties of the commission.
The commission shall:
1. Provide the forms for the reports required in section 36.2. The report form shall require the doctor to provide all of the following:
a. Symptoms of the veteran which may be related to exposure to chemicals.
b. Diagnosis of the veteran.
c. Methods of treatment prescribed.
2. Annually compile and evaluate the information submitted in the reports pursuant to subsection 1, in consultation and cooperation with a certified medical toxicologist selected by the commission. The commission shall submit the report to the governor, the general assembly, and the United States veterans' administration. The report shall include current research data on the effects of exposure to chemicals, statistical information received from individual physicians' reports, and statistical information from the epidemiological investigations pursuant to subsection 3.
3. Conduct epidemiological investigations of veterans who have cancer or other medical problems or who have children born with birth defects associated with exposure to chemicals, in consultation and cooperation with a certified medical toxicologist selected by the commission. The commission shall obtain consent from a veteran before conducting the investigations.
The commission shall cooperate with local and state agencies during the course of an investigation.
83 Acts, ch 141, §3
CS83, §139A.3
86 Acts, ch 1245, §1714; 92 Acts, ch 1140, §15
C93, §36.3

36.4 Confidentiality and liability.
The commission shall not identify a veteran consenting to the epidemiological investigations pursuant to section 36.3, subsection 3, unless the veteran consents to the release of identity. The statistical information compiled by the commission pursuant to section 36.3 is a public record.
A licensed physician complying with this chapter is not civilly or criminally liable for release of the required information.
83 Acts, ch 141, §4
CS83, §139A.4
86 Acts, ch 1245, §1715; 92 Acts, ch 1140, §16
C93, §36.4

36.5 Attorney general powers.
The attorney general may represent veterans who may have been injured because of contact with chemicals, in an action for release of information relating to exposure to such causative agents during military service and release of the veterans' medical records.
83 Acts, ch 141, §5
CS83, §139A.5
C93, §36.5

36.6 Medical cooperative program.
The commission and appropriate medical facilities at the state university of Iowa under the control of the state board of regents shall institute a cooperative program to:
1. Refer veterans to appropriate state and federal agencies to file claims to remedy medical and financial problems caused by the veterans' exposure to chemicals.
2. Provide veterans with fat tissue biopsies, genetic counseling, and genetic screening upon request of the licensed physician pursuant to section 36.2, to determine if the veterans have suffered physical damage as a result of substantial exposure to chemicals.
83 Acts, ch 141, §6
CS83, §139A.6
86 Acts, ch 1245, §1716; 92 Acts, ch 1140, §17
C93, §36.6

36.7 Federal program.
If the commission or the general assembly determines that an agency of the federal government or the state of Iowa is providing the referral and genetic services pursuant to section 36.6, the commission or the general assembly by specific action may discontinue all or part of the services and requirements in this chapter.
83 Acts, ch 141, §7
CS83, §139A.7
86 Acts, ch 1245, §1717; 92 Acts, ch 1140, §18
C93, §36.7

36.8 Rules.
The commission shall adopt rules pursuant to chapter 17A to implement this chapter.
83 Acts, ch 141, §8
CS83, §139A.8
86 Acts, ch 1245, §1718; 92 Acts, ch 1140, §19
C93, §36.8

36.9 Appropriations.
This chapter shall be implemented by the commission each fiscal year that appropriations are made to the commission for the implementation.
83 Acts, ch 141, §9
CS83, §139A.9
86 Acts, ch 1245, §1719; 92 Acts, ch 1140, §20
C93, §36.9

36.10 Veterans' litigation awards.
1. For purposes of this section, *"Vietnam herbicide"* means a herbicide, defoliant, or other caus-

ative agent containing dioxin, including, but not limited to, Agent Orange, used in the Vietnam conflict at any time between December 22, 1961, and May 7, 1975, inclusive.

2. *a.* Notwithstanding any other law of this state, proceeds received pursuant to a judgment in, or settlement of, a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide shall not be considered as income or an asset for determining the eligibility for state or local government benefit or entitlement programs. The proceeds are not subject to recoupment for the receipt of governmental benefits or entitlements and liens, except liens for child support, are not enforceable against these sums for any reason.

b. This exclusion of litigation proceeds from benefit or entitlement program calculations are available only to disabled veterans or their beneficiaries, whether payment is received in a lump sum or payable in installments over a period of years.

89 Acts, ch 249, §1
CS89, §139A.11
C93, §36.10

CHAPTER 37

MEMORIAL HALLS AND MONUMENTS

37.1 Memorial buildings and monuments.
37.2 Petition.
37.3 Election.
37.4 Notice.
37.5 Repealed by 81 Acts, ch 117, §1097.
37.6 Bonds.
37.7 Repealed by 81 Acts, ch 117, §1097.
37.8 Levy for maintenance.
37.9 Commissioners appointed — vacancies — request for appropriation.
37.10 Qualification — appointment.
37.11 through 37.14 Repealed by 89 Acts, ch 296, §96.
37.15 Ex officio voting member.
37.16 Disbursement of funds — purchasing regulations — reports.
37.17 Gifts and bequests.
37.18 Name — uses.
37.19 Record — monuments — how inscribed. Repealed by 89 Acts, ch 296, §96.
37.20 Funds, monuments, and memorials previously initiated.
37.21 Joint memorials.
37.22 Unexpended funds.
37.23 Contract to repay.
37.24 Investment of funds.
37.25 Accumulations.
37.26 General powers.
37.27 Nursing homes with memorial hospitals.
37.28 Anticipatory warrants.
37.29 Contents of warrants.
37.30 Registration — call.

37.1 Memorial buildings and monuments.

Memorial buildings and monuments designed to commemorate the service rendered by soldiers, sailors, and marines of the United States may be erected and equipped at public expense in the manner provided by this chapter by:

1. Any county which has not heretofore made an appropriation for such purpose under any prior law.

2. Any city operating under any form of government.

[C97, §435, 436; C24, 27, 31, 35, 39, §**483;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.1]

37.2 Petition.

The petition for the erection and equipment of any such hall or monument shall request the submission of the proposition to a vote of the people and shall:

1. When it is proposed to erect the same at the expense of the county, be signed by ten percent of the registered voters thereof as shown by the election register used in the last preceding general election, or by a majority of the members of the Grand Army of the Republic, the Spanish-American War Veterans Association, Veterans of World War I, the American Legion, Disabled American Veterans of the World War, Veterans of Foreign Wars of the United States, Marine Corps League and American Veterans of World War II (AMVETS) of the county.

2. When it is proposed to erect the same at the expense of a city be subject to the provisions of section 362.4.

3. Set forth therein the purpose of the memorial proposed, as outlined in section 37.18.

[C97, §435; C24, 27, 31, 35, 39, §**484;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.2]

95 Acts, ch 67, §53

Not applicable to "Veterans of World War I" in cities over 150,000 population, 63 Acts, ch 76, §3

37.3 Election.

Upon the filing of the requisite petition, the city council shall cause the proposition to be submitted at a regular election, or at a special election to be called if requested in the petition, in substantially the following form:

Shall the city of . . . . . erect and equip (or purchase and equip) a memorial building (or erect a monument) as provided in chapter 37 of the Code for the purpose of . . . . . (set forth purpose of memorial as outlined in section 37.18) and issue bonds in the sum of . . . . . dollars to cover the expense of the building or monument (or levy a tax of . . . . . per thousand dollars of assessed value for a period of . . . . . years to defray the expense of the building or monument)?

[C24, 27, 31, 35, 39, §**485;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.3]

83 Acts, ch 123, §41, 209

37.4 Notice.

Notice of the election shall be given by publication in one newspaper published or having general circulation in the city as provided in section 362.3. The notice shall state the purpose of the memorial proposed as outlined in section 37.18.

[C97, §435; C24, 27, 31, 35, 39, §**486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.4]

83 Acts, ch 123, §42, 209

37.5 Repealed by 81 Acts, ch 117, § 1097. See § 331.361(5a).

37.6 Bonds.

Bonds issued by a county for the purposes of this chapter shall be issued under sections 331.441 to 331.449 relating to general county purpose bonds. Bonds issued by a city shall be issued in accordance with provisions of law relating to general corporate purpose bonds of a city.

[C24, 27, 31, 35, 39, §**488;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §37.6; 81 Acts, ch 117, §1004]

City bonds, chapter 384, div. III

37.7 Repealed by 81 Acts, ch 117, § 1097.

37.8 Levy for maintenance.

For the development, operation, and maintenance of a building or monument constructed, purchased, or donated under this chapter, a city may levy a tax not to exceed eighty-one cents per thousand dollars of assessed value on all the taxable property within the city, as provided in section 384.12, subsection 2.

[C24, 27, 31, 35, 39, §**490;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §37.8; 81 Acts, ch 117, §1005]

83 Acts, ch 123, §43, 209

37.9 Commissioners appointed — vacancies — request for appropriation.

When the proposition to erect any such building or monument has been carried by a majority vote, the board of supervisors or the city council, as the case may be, shall appoint a commission consisting of five or seven members, in the manner and with the qualifications provided in this chapter, which shall have charge and supervision of the erection of the building or monument, and when erected, the management and control of the building or monument.

In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of commission members at not less than five.

On or before January 15 of each year, a commission which manages and controls a county memorial hospital shall prepare and submit to the county auditor a request for an appropriation for the next fiscal year from the general fund for the operation and maintenance of the county memorial hospital. On or before January 20, the county auditor shall submit the request to the county board of supervisors. The board of supervisors may adjust the commission's request and may make an appropriation for the county memorial hospital as provided in section 331.427, subsection 2, paragraph *"b"*. For the purposes of public notice, the commission is a certifying board and is subject to the requirements of sections 24.3 through 24.5, sections 24.9 through 24.12, and section 24.16.

The term of office of each member shall be three years, and any vacancies occurring in the membership shall be filled in the same manner as the original appointment.

Commencing with the commissioners appointed to take office after January 1, 1952, the terms of office of the commissioners shall be staggered so that all commissioners' terms will not end in the same year. Thereafter, the successors in each instance shall hold office for a term of three years or until a successor is appointed and qualified.

The commissioners having the management and control of a memorial hospital shall, within ten days after their appointment, qualify by taking the usual oath of office, but no bonds shall be

required of them except as hereinafter provided. The commissioners shall organize by electing a chairperson, secretary, and treasurer. The secretary and treasurer shall each file with the chairperson of the commission a surety bond in such sum as the commission may require, with sureties approved by the commission, for the use and benefit of the memorial hospital. The reasonable costs of such bonds shall be paid from operating funds of the hospital. The secretary shall immediately report to the county auditor and county treasurer the names of the chairperson, secretary, and treasurer of the commission. The commission shall meet at least once each month. Three members of a five-member commission and five members of a seven-member commission shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings.

Memorial hospital funds shall be received, disbursed, and accounted for in the same manner and by the same procedure as provided by section 347.12.

[C97, §436; C24, 27, 31, 35, 39, §**491;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.9]

86 Acts, ch 1200, §1; 89 Acts, ch 296, §9; 95 Acts, ch 114, §1; 99 Acts, ch 36, §1; 2000 Acts, ch 1154, §7

37.10 Qualification — appointment.

Each commissioner, except for a memorial hospital commissioner, shall be a veteran, as defined in section 35.1, and be a resident of the county in which the memorial hall or monument is located. Each commissioner for a memorial hospital shall be a resident of the county in which the memorial hospital is located.

Each commission member shall be appointed by the mayor with approval of the council or by the chairperson of the county board of supervisors in the case of a county or joint memorial building or monument.

[C97, §436; C24, 27, 32, 35, 39, §**492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.10]

89 Acts, ch 296, §10; 96 Acts, ch 1216, §28; 99 Acts, ch 36, §2; 99 Acts, ch 180, §13; 99 Acts, ch 208, §47

37.11 through 37.14 Repealed by 89 Acts, ch 296, § 96.

37.15 Ex officio voting member.

If a memorial hall or building is a city hall, coliseum, or auditorium, the mayor of the city may be an ex officio voting member of the commission created in section 37.9.

[C24, 27, 31, 35, 39, §**497;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.15]

95 Acts, ch 114, §2

37.16 Disbursement of funds — purchasing regulations — reports.

All funds voted under the provisions of this chapter shall be disbursed by the county or city officers, only with the approval of the commission. However, the commission may adopt purchasing regulations to govern the purchase of specified goods and services without the prior approval of the commission. The purchasing regulations shall conform to generally accepted practices followed by public purchasing officers. The commission shall report to and make settlement with the board of supervisors or the city council, as the case may be, at the time and in the manner required of county and city officers.

[C97, §436; C24, 27, 31, 35, 39, §**498;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.16]

92 Acts, ch 1024, §1

37.17 Gifts and bequests.

Gifts and bequests to any county or city, or to the commission, for any of the purposes provided in this chapter, may be accepted and the property shall be used in accordance with the provisions of this chapter, and as may be expressly designated by the donor.

[C24, 27, 31, 35, 39, §**499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.17]

37.18 Name — uses.

Any such memorial hall or building shall be given an appropriate name and shall be available so far as practical for the following purposes:

1. The special accommodations of soldiers, sailors, marines, nurses, and other persons who have been in the military or naval service of the United States.
2. For military headquarters, memorial rooms, library, assembly hall, gymnasium, natatorium, club room, and rest room.
3. County or city hall offices for any county or municipal purpose, community house, recreation center, memorial hospital, and municipal coliseum or auditorium.
4. Similar and appropriate purposes in general community and neighborhood uses, under the control and regulation of the custodians thereof.
5. Athletic contests, sport and entertainment spectaculars, expositions, meetings, conventions and all food and beverage services incident thereto.

The term *"memorial hall"* or *"memorial building"* as in this chapter provided shall also mean and include such parking grounds, ramps, buildings or facilities as the commission may build, acquire by purchase or lease or gift to be used for purposes not inconsistent with the uses as set out in this section.

[C24, 27, 31, 35, 39, §**500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.18]

37.19 Record — monuments — how inscribed. Repealed by 89 Acts, ch 296, § 96.

37.20 Funds, monuments, and memorials previously initiated.

In any case of funds heretofore raised or in the process of being raised, by tax levy or other provision of law heretofore existing, for any of the purposes provided by this chapter, the board of supervisors or the city council, as the case may be, shall cause such funds to be used and applied to all intents and purposes for the acquisition of necessary ground and the purchase, erection, construction or reconstruction and equipment of such monument or memorial building in the same manner and to the same extent as if such funds had been raised for said purpose by a bond issue, as provided in this chapter, and all the provisions of this chapter shall apply to said funds.

All other provisions of this chapter shall apply to any monument or memorial heretofore constructed or hereafter constructed from funds raised under any provision of law heretofore existing.

In all cases covered by this section, the taking effect of this chapter shall fix the time for the selection and appointment of the commissioners to all intents and purposes the same as an election on the proposition to erect a memorial building or monument, as provided in this chapter.

[C24, 27, 31, 35, 39, §**502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.20]

37.21 Joint memorials.

Any city may join with the county or township in which such city is located in the joint erection or purchase of memorial buildings or monuments and suitable ground and equipment therefor, and the maintenance thereof, providing the council of such city and the board of supervisors of such county or the township trustees can so agree, but in cases where commissioners have already been appointed under section 37.9, such agreement shall be between such commissioners, but if only one of such parties has appointed commissioners, then such agreement shall be between the commissioners already appointed and the council of such city or the board of supervisors of such county or the township trustees, as the case may be.

[C27, 31, 35, §502-b1; C39, §**502.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.21]

37.22 Unexpended funds.

Whenever in any county, funds have been raised by taxation for the purpose of erecting and maintaining memorial buildings or monuments, and said funds are under control of a commission as provided in this chapter, and said funds have remained unexpended for a period of five years or more, and when no unpaid obligation exists against said funds, the said commission, or a majority of the members thereof, may disburse said funds for the erection, purchase or improvement of one or more memorial buildings, monuments, parks, playgrounds, swimming pools, homes or club rooms for duly incorporated and acting posts or chapters of veterans' organizations operating under a United States Congressional charter, in the county.

[C31, 35, §502-c1; C39, §**502.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.22]

37.23 Contract to repay.

When such erection, purchase or improvement has been made, the commission shall take from the posts or chapters which are beneficiaries of such erection, purchase or improvement, the promissory obligation of such posts or chapters to repay the amount expended by the commission with or without annual interest, together with such security as the commission may require.

[C31, 35, §502-c2; C39, §**502.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.23]

37.24 Investment of funds.

Funds not disbursed as provided in section 37.22 may be invested by said commission in such securities as are authorized by section 636.23.

[C31, 35, §502-c3; C39, §**502.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.24]

37.25 Accumulations.

All interest accumulations shall become part of the principal fund and all uninvested funds shall be kept on deposit with the county treasurer.

[C31, 35, §502-c4; C39, §**502.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.25]

37.26 General powers.

For the purpose of carrying out the provisions of sections 37.22 to 37.25, the commission shall have authority to receive and to convey title to real estate, to take mortgage or other security and to release or transfer the same.

[C31, 35, §502-c5; C39, §**502.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.26]

37.27 Nursing homes with memorial hospitals.

If a memorial building has been constructed for the purpose of a hospital pursuant to this chapter, additions for hospital purposes, and nursing homes to be operated in conjunction with the hospital may be erected or acquired by following the procedure outlined in chapter 347 and by issuing general county purpose bonds in accordance with sections 331.441 to 331.449, with the commissioners acting in the same manner and fashion as the

hospital trustees under chapter 347, and with the procedure in all other respects to be identical.

[C62, 66, 71, 73, 75, 77, 79, 81, S81, §37.27; 81 Acts, ch 117, §1006]

37.28 Anticipatory warrants.

If the funds raised under this chapter are insufficient for any fiscal year to pay the principal and interest due in that year on bonds issued for hospital purposes under section 37.6 and to pay the expenses of the operation and maintenance of the hospital and any other hospital expenses authorized by this chapter for the fiscal year, the commission may issue anticipatory warrants drawn on the funds to be raised. The warrants shall be in denominations of one hundred, five hundred and one thousand dollars and shall draw interest at a rate not exceeding that permitted by chapter 74A. These warrants are not a general obligation of any political subdivision which owns the hospital.

[C79, 81, S81, §37.28; 81 Acts, ch 117, §1007; 82 Acts, ch 1104, §2]

83 Acts, ch 123, §44, 209

37.29 Contents of warrants.

All tax anticipatory warrants shall be signed by the chairperson of the commission and attested by the auditor of a political subdivision which owns the hospital with the auditor's official seal attached thereto, and dated as of the date of sale, and shall not be sold for less than par value. The warrants may be drawn and sold from time to time as the need for funds to carry out the purpose of this chapter arises.

[C79, 81, §37.29]

37.30 Registration — call.

All anticipatory warrants drawn under this chapter shall be numbered consecutively, be registered in the office of the treasurer of a political subdivision which owns the hospital and be subject to call in numerical order at any time when sufficient money derived from the tax levied is in the hands of the treasurer to retire any of the warrants together with accrued interest.

[C79, 81, S81, §37.30; 81 Acts, ch 117, §1008; 82 Acts, ch 1104, §3]

83 Acts, ch 123, §45, 209

SUBTITLE 14

PEACE

CHAPTER 38

PEACE INSTITUTE

Repealed by 95 Acts, ch 204, §19

CHAPTER 38A

EMERGENCY EXECUTIVE AND JUDICIAL SUCCESSION

Repealed by 71 Acts, ch 92, §1

CHAPTER 38B

EMERGENCY LEGISLATIVE SUCCESSION

Repealed by 70 Acts, ch 1033, §1

CHAPTER 38C

EMERGENCY LOCATION OF STATE GOVERNMENT

Repealed by 71 Acts, ch 92, §1

CHAPTER 38D

EMERGENCY LOCATION OF LOCAL GOVERNMENTS

Repealed by 71 Acts, ch 92, §1

TITLE II

ELECTIONS AND OFFICIAL DUTIES

SUBTITLE 1

ELECTIONS

CHAPTER 39

ELECTIONS, ELECTORS, APPOINTMENTS, TERMS AND OFFICERS

Chapter applicable to primary elections, §43.5

39.1 General election.
39.2 Special elections.
39.3 Definitions.
39.4 Proclamation concerning revision of Constitution.
39.5 Elections authorized. Repealed by 98 Acts, ch 1123, §17, 18.
39.6 Notice of special election.
39.7 Time of choosing officer.
39.8 Term of office.
39.9 State officers — term.
39.10 United States senators.
39.11 More than one office prohibited.
39.12 Failure to vacate.
39.13 Repealed by 59 Acts, ch 319, §1.
39.14 Repealed by 61 Acts, ch 296, §2.
39.15 State senators.
39.16 Representatives.
39.17 County officers.
39.18 Board of supervisors.
39.19 Repealed by 69 Acts, ch 218, §11.
39.20 City officers.
39.21 Nonpartisan offices.
39.22 Township officers.
39.23 Township clerk. Repealed by 87 Acts, ch 68, §3.
39.24 School officers.
39.25 Sex no disqualification.
39.26 Candidate qualifications.
39.27 Qualifications for public office.

39.1 General election.

The general election shall be held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year.

[C51, §239; R60, §459; C73, §573; C97, §1057; S13, §1057-a; C24, 27, 31, 35, 39, §**504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.1]

Constitution (codified), Art. II, §7

39.2 Special elections.

1. All special elections which are authorized or required by law, unless the applicable law otherwise requires, shall be held on Tuesday. A special election shall not be held on the first, second, and third Tuesdays preceding and following the primary and the general elections.

A special election shall not be held in conjunction with the primary election. A special election shall not be held in conjunction with a school election unless the special election is for a school district or community college. A special election shall not be held in conjunction with a regularly scheduled or special city primary or city runoff election.

2. Except as otherwise provided in subsection 1, a special election may be held on the same day as a regularly scheduled election if the two elections are not in conflict within the meaning of section 47.6, subsection 2. A special election may be held on the same day as a regularly scheduled election with which it does so conflict if the commissioner who is responsible for conducting the elections concludes that to do so will cause no undue difficulties.

3. When voting is to occur on the same day in any one precinct for two or more elections, they shall be considered one election for purposes of administration including but not limited to publishing notice of the election, preparation of the precinct election register and completion of tally sheets after the polling place has closed.

If a special election to fill a vacancy is held in conjunction with a regularly scheduled election, the filing deadlines for the special election shall coincide with the filing deadlines for the regularly scheduled election. An election to fill a vacancy in a city office cannot be held in conjunction with a general election if the city election procedures provide for a primary election.

[C51, §237; R60, §460; C73, §574; C97, §1058;

C24, 27, 31, 35, 39, §**505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.2]

90 Acts, ch 1238, §1; 93 Acts, ch 143, §2; 98 Acts, ch 1123, §1; 2002 Acts, ch 1134, §1, 115

2002 amendment to subsection 1, unnumbered paragraph 2, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1, unnumbered paragraph 2 amended

39.3 Definitions.

The definitions established by this section shall apply wherever the terms so defined appear in this chapter and in chapters 39A, 43, 44, 45, 47, 48A through 53, and 56 unless the context in which any such term is used clearly requires otherwise.

1. *"Absentee ballot"* means any ballot authorized by chapter 53.

2. *"City"* means a municipal corporation not including a county, township, school district, or any special purpose district or authority. When used in relation to land area, *"city"* includes only the land area within the city limits.

3. *"City election"* means any election held in a city for nomination or election of the officers thereof including a city primary or runoff election.

4. *"Commissioner"* means the county commissioner of elections as defined in section 47.2.

5. *"Election"* means a general election, primary election, city election, school election or special election.

6. *"Eligible elector"* means a person who possesses all of the qualifications necessary to entitle the person to be registered to vote, whether or not the person is in fact so registered.

7. *"General election"* means the biennial election for national or state officers, members of Congress and of the general assembly, county and township officers, and for the choice of other officers or the decision of questions as provided by law.

8. *"Infamous crime"* means a felony as defined in section 701.7, or an offense classified as a felony under federal law.

9. *"Primary election"* means that election by the members of various political parties for the purpose of placing in nomination candidates for public office held as required by chapter 43.

10. *"Public measure"* means any question authorized or required by law to be submitted to the voters at an election.

11. *"Registered voter"* means a person who is registered to vote pursuant to chapter 48A.

12. *"Registrar"* means the state registrar of voters designated by section 47.7.

13. *"Registration commission"* means the state voter registration commission established by section 47.8.

14. *"School election"* means that election held pursuant to section 277.1.

15. *"Special election"* means any other election held for any purpose authorized or required by law.

16. *"State commissioner"* means the state commissioner of elections as defined in section 47.1.

17. *"Written"* and *"in writing"* may include any mode of representing words or letters in general use. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. If a person is unable due to a physical disability to make a written signature or mark, that person may substitute either of the following in lieu of a signature required by law:

a. The name of the person with a disability written by another upon the request and in the presence of the person with a disability.

b. A rubber stamp reproduction of the name or facsimile of the actual signature of the person with a disability when adopted by that person for all purposes requiring a signature and then only when affixed by that person or another upon the request and in the presence of the person with a disability.

[C97, §1089; C24, 27, 31, 35, 39, §**720;** C46, 50, 54, 58, 62, 66, 71, 73, §49.2; C75, 77, 79, 81, §39.3]

93 Acts, ch 143, §3; 94 Acts, ch 1169, §43, 65; 94 Acts, ch 1180, §1; 2002 Acts, ch 1071, §7; 2002 Acts, ch 1134, §2, 115

Subsection 17 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 amended

NEW subsection 17

39.4 Proclamation concerning revision of Constitution.

In the years in which the Constitution requires, or at other times when the general assembly by law provides for, a vote on the question of calling a convention and revising the Constitution, the governor shall at least sixty days before the general election issue a proclamation directing that at the general election there be proposed to the people the following question:

Shall there be a convention to revise the Constitution, and propose amendment or amendments to same?

[C97, §1061; SS15, §1061; C24, 27, 31, 35, 39, §**507;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.4]

Constitutional requirement, (codified) Art. X, §3

39.5 Elections authorized. Repealed by 98 Acts, ch 1123, § 17, 18.

39.6 Notice of special election.

A proclamation shall be issued before any election ordered by the governor, designating the office to be filled or the public question to be submitted at the election and designating the time at which such election shall be held; and the commissioner of each county in which such election is to be held shall give notice thereof, as provided in section 49.53.

[R60, §462, 464; C73, §577, 579; C97, §1061, 1063; SS15, §1061; C24, 27, 31, 35, 39, §**506, 509;**

C46, 50, 54, 58, 62, 66, 71, 73, §39.3, 39.6; C75, 77, 79, 81, §39.6]
Additional provision, §49A.7

39.7 Time of choosing officer.
At the general election next preceding the expiration of the term of any officer, a successor shall be elected.
[R60, §461; C73, §575; C97, §1059; C24, 27, 31, 35, 39, §**510;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.7]

39.8 Term of office.
The term of office of all officers chosen at a general election for a full term shall commence on the first day of January following the election which is not a Sunday or legal holiday, except when otherwise provided by the Constitution or by statute; that of an officer chosen to fill a vacancy shall commence as soon as the officer has qualified therefor.
[R60, §462; C73, §576; C97, §1060; S13, §1060; C24, 27, 31, 35, 39, §**511;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.8]
Governor and lieutenant governor, Constitution (codified), Art. IV, §15
Judges of supreme and district courts, Constitution (codified), Art. V, §17

39.9 State officers — term.
The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general shall be elected for a term of four years at the general election held in the year 1974 and every four years thereafter.
[C51, §239; R60, §465, 466; C73, §580, 581; C97, §1064, 1065; S13, §1065; C24, 27, 31, 35, 39, §**512;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.9]

39.10 United States senators.
Senators in the Congress of the United States shall be elected in the same manner in which state officers are elected.
[R60, §674; C73, §26; C97, §30; S13, §1087-c; C24, 27, 31, 35, 39, §**513;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.10]
Term of office, Constitution (U. S.), Amendment 17
Vacancy in U. S. senate, see §69.13

39.11 More than one office prohibited.
Statewide elected officials and members of the general assembly shall not hold more than one elective office at a time. All other elected officials shall not hold more than one elective office at the same level of government at a time. This section does not apply to the following offices: county agricultural extension council or soil and water conservation district commission.
93 Acts, ch 143, §4; 2001 Acts, ch 158, §5
See also §441.17(1)

39.12 Failure to vacate.
An elected official who has been elected to another elective office to which section 39.11 applies shall choose only one office in which to serve. The official shall resign from all but one of the offices to which section 39.11 applies before the beginning of the term of the office to which the person was most recently elected. Failure to submit the required resignation will result in a vacancy in all elective offices to which the person was elected.
93 Acts, ch 143, §5

39.13 Repealed by 59 Acts, ch 319, § 1.

39.14 Repealed by 61 Acts, ch 296, § 2.

39.15 State senators.
Senators in the general assembly shall be elected at the general election in the respective senatorial districts and shall hold office for the term of four years.
[C51, §239; R60, §471; C73, §588; C97, §1071; S13, §1071; C24, 27, 31, 35, 39, §**518;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.15]

39.16 Representatives.
Members of the house of representatives shall be elected at the general election in the respective representative districts and hold office for the term of two years.
[C51, §239; R60, §470; C73, §587; C97, §1070; S13, §1070; C24, 27, 31, 35, 39, §**519;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.16]

39.17 County officers.
There shall be elected in each county at the general election to be held in the year 1976 and every four years thereafter, an auditor and a sheriff, each to hold office for a term of four years.
There shall be elected in each county at the general election to be held in 1974 and each four years thereafter, a treasurer, a recorder and a county attorney who shall hold office for a term of four years.
[C51, §96, 239; R60, §224, 472, 473; C73, §589; C97, §1072; S13, §1072; C24, 27, 31, 35, 39, §**520;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.17]
83 Acts, ch 186, §10015, 10201
Combining duties of county officers; §331.323

39.18 Board of supervisors.
There shall be elected biennially in counties, members of the board of supervisors to succeed those whose terms of office will expire on the first day of January following the election which is not a Sunday or legal holiday. The term of office of each supervisor shall be four years, except as otherwise provided by section 331.208 or 331.209.
[C51, §239; R60, §475; C73, §295, 591; C97, §411, 1074; S13, §1074; SS15, §411; C24, 27, 31, 35, 39, §**521;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §39.18; 81 Acts, ch 117, §1202]
87 Acts, ch 68, §1

39.19 Repealed by 69 Acts, ch 218, § 11.

39.20 City officers.

The times at which officers of cities shall be elected and their terms of office shall be as provided by or established pursuant to sections 376.1 and 376.2.

[C75, 77, 79, 81, §39.20]

39.21 Nonpartisan offices.

There shall be elected at each general election, on a nonpartisan basis, the following officers:

1. County public hospital trustees as required by section 347.25.

2. Soil and water conservation district commissioners as required by section 161A.5.

3. County agricultural extension council members as provided in section 176A.6.

[C77, 79, 81, §39.21]

87 Acts, ch 23, §2; 90 Acts, ch 1149, §8; 93 Acts, ch 48, §10; 2001 Acts, ch 158, §6

39.22 Township officers.

The offices of township trustee and township clerk shall be filled by appointment or election as follows:

1. *By appointment.* The county board of supervisors may pass a resolution in favor of filling the offices of trustee and clerk within a township by appointment by the board, and may direct the county commissioner of elections to submit the question to the registered voters of the township at the next general election. In a township which does not include a city, the voters of the entire township are eligible to vote on the question. In a township which includes a city, only those voters who reside outside the corporate limits of a city are eligible to vote on the question. The resolution shall apply to all townships which have not approved a proposition to fill township offices by appointment. If the proposition to fill the township offices by appointment is approved by a majority of those voting on the question, the board shall fill the offices by appointment as the terms of office of the incumbent township officers expire.

The election of the trustees and clerk of a township may be restored after approval of the appointment process under this subsection by a resolution of the board of supervisors submitting the question to the registered voters who are eligible to vote for township officers of the township at the next general election. If the proposition to restore the election process is approved by a majority of those voting on the question, the election of the township officers shall commence with the next primary and general elections. A resolution submitting the question of restoring the election of township officers at the next general election shall be adopted by the board of supervisors upon receipt of a petition signed by eligible electors residing in the township equal in number to at least ten percent of the registered voters of a township. The initial terms of the trustees shall be determined by lot, one for two years, and two for four years. However, if a proposition to change the method of selecting township officers is adopted by the electorate, a resolution to change the method shall not be submitted to the electorate for four years.

2. *By election.* If the county board of supervisors does not have the power provided under subsection 1 to fill the offices of trustee and clerk within a township by appointment, then the offices of township trustee and township clerk shall be filled by election. Township trustees and the township clerk, in townships which do not include a city, shall be elected by the voters of the entire township. In townships which include a city, the officers shall be elected by the voters of the township who reside outside the corporate limits of the city, but a township officer may be a resident of the city.

a. Township trustees. Township trustees shall be elected biennially to succeed those whose terms of office expire on the first day of January following the election which is not a Sunday or legal holiday. The term of office of each elected township trustee is four years, except as provided in subsection 1 for initial terms following restoration of the election process.

b. Township clerk. At the general election held in the year 1990 and every four years thereafter, in each civil township one township clerk shall be elected who shall hold office for the term of four years.

[C27, 31, 35, §523-b1; C39, §**523.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.22]

85 Acts, ch 30, §1; 86 Acts, ch 1117, §1; 87 Acts, ch 68, §2; 88 Acts, ch 1119, §1; 88 Acts, ch 1134, §18, 19; 95 Acts, ch 67, §53; 2001 Acts, ch 56, §3

39.23 Township clerk. Repealed by 87 Acts, ch 68, § 3. See § 39.22.

39.24 School officers.

Members of boards of directors of community and independent school districts, and boards of directors of merged areas shall be elected at the school election. Their terms of office shall be three years, except as otherwise provided by section 260C.11 or 275.23A.

[C75, 77, 79, 81, §39.24]

83 Acts, ch 77, §1

Directors, §274.7

39.25 Sex no disqualification.

No person shall be disqualified on account of sex from holding any office created by the statutes of this state.

[C24, 27, 31, 35, 39, §**526;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.25]

39.26 Candidate qualifications.

Any person seeking election to an elective office under the laws of this state shall be an eligible elector at the time of any election at which the person's name appears on the ballot.

2002 Acts, ch 1134, §3, 115

Section takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW section

39.27 Qualifications for public office.

Any person elected to an office under the laws of this state shall be an eligible elector. At the time an elected official takes office the official shall be a resident of the state, district, county, township, city, or ward by or for which the person was elected, or in which the duties of the office are to be exercised. An elected official shall continue to be a resident of the state, district, county, township, city, or ward by or for which the person was elected, or in which the duties of the office are to be exercised for the duration of the term of office. This section shall not apply to United States senators or representatives in Congress or to members of the general assembly.

2002 Acts, ch 1134, §4, 115

Section takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW section

CHAPTER 39A

ELECTION MISCONDUCT

39A.1 Title and purpose — election officials defined.
39A.2 Election misconduct in the first degree.
39A.3 Election misconduct in the second degree.
39A.4 Election misconduct in the third degree.
39A.5 Election misconduct in the fourth degree.
39A.6 Technical infractions — notice.

39A.1 Title and purpose — election officials defined.

1. This chapter may be cited and referred to as the *"Election Misconduct and Penalties Act"*.

2. The purpose of this chapter is to identify actions which threaten the integrity of the election process and to impose significant sanctions upon persons who intentionally commit those acts. It is the intent of the general assembly that offenses with the greatest potential to affect the election process be vigorously prosecuted and strong punishment meted out through the imposition of felony sanctions which, as a consequence, remove the voting rights of the offenders. Other offenses are still considered serious, but based on the factual context in which they arise, they may not rise to the level of offenses to which felony penalties attach. The general assembly also recognizes that instances may arise in which technical infractions of chapters 39 through 53 may occur which do not merit any level of criminal sanction. In such instances, administrative notice from the state or county commissioner of elections is sufficient. Mandates or proscriptions in chapters 39 through 53 which are not specifically included in this chapter shall be considered to be directive only, without criminal sanction.

3. For the purposes of this chapter, *"election officials"* include the state commissioner, the county commissioner, employees of the state commissioner and county commissioner who are responsible for carrying out functions or duties under chapters 39 through 53, and precinct election officials appointed pursuant to sections 49.12, 49.14, 49.18, and 53.23.

2002 Acts, ch 1071, §1

NEW section

39A.2 Election misconduct in the first degree.

1. A person commits the crime of election misconduct in the first degree if the person willfully commits any of the following acts:

a. Registration fraud. Produces, procures, submits, or accepts a voter registration application that is known by the person to be materially false, fictitious, forged, or fraudulent.

b. Vote fraud.

(1) Destroys, delivers, or handles an application for a ballot or an absentee ballot with the intent of interfering with the voter's right to vote.

(2) Produces, procures, submits, or accepts a ballot or an absentee ballot, or produces, procures, casts, accepts, or tabulates a ballot that is known by the person to be materially false, fictitious, forged, or fraudulent.

(3) Votes or attempts to vote more than once at the same election, or votes or attempts to vote at an election knowing oneself not to be qualified.

(4) Makes a false or untrue statement in an application for an absentee ballot or makes or signs a false certification or affidavit in connection with an absentee ballot.

(5) Otherwise deprives, defrauds, or attempts

to deprive or defraud the citizens of this state of a fair and impartially conducted election process.

c. Duress. Intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, a person to do any of the following:

(1) To register to vote, to vote, or to attempt to register to vote.

(2) To urge or aid a person to register to vote, to vote, or to attempt to register to vote.

(3) To exercise a right under chapters 39 through 53.

d. Bribery.

(1) Pays, offers to pay, or causes to be paid money or any other thing of value to a person to influence the person's vote.

(2) Pays, offers to pay, or causes to be paid money or any other thing of value to an election official conditioned on some act done or omitted to be done contrary to the person's official duty in relation to an election.

(3) Receives money or any other thing of value knowing that it was given in violation of subparagraph (1) or (2).

e. Conspiracy. Conspires with or acts as an accessory with another to commit an act in violation of paragraphs *"a"* through *"d"*.

2. Election misconduct in the first degree is a class "D" felony.

2002 Acts, ch 1071, §2
NEW section

39A.3 Election misconduct in the second degree.

1. A person commits the crime of election misconduct in the second degree if the person willfully commits any of the following acts:

a. Interference with validity of election.

(1) Possesses an official ballot outside of the voting room unless the person is an election official or other person authorized by law to possess such a ballot.

(2) Makes or possesses a counterfeit of an official election ballot.

(3) Solicits or encourages a person to vote in an election knowing that person is not qualified to vote in the election.

b. Actions by election official. As an election official:

(1) Refuses to register a person who is entitled to register to vote under chapter 48A.

(2) Accepts a fee from an applicant applying for registration.

(3) While the polls are open, opens a ballot received from a voter, except as permitted by law.

(4) Marks a ballot by folding or otherwise so as to be able to recognize it.

(5) Attempts to learn how a voter marked a ballot.

(6) Causes a voter to cast a vote contrary to the voter's intention.

(7) Changes a ballot, or in any way causes a vote to be recorded contrary to the intention of the person casting that vote.

(8) Allows a person to do any of the acts proscribed by subparagraphs (1) through (7).

2. Election misconduct in the second degree is an aggravated misdemeanor.

2002 Acts, ch 1071, §3
NEW section

39A.4 Election misconduct in the third degree.

1. A person commits the crime of election misconduct in the third degree if the person willfully commits any of the following acts:

a. Election day acts. Any of the following on election day:

(1) Loitering, congregating, electioneering, posting signs, treating voters, or soliciting votes, during the receiving of the ballots, either on the premises of a polling place or within three hundred feet of an outside door of a building affording access to a room where the polls are held, or of an outside door of a building affording access to a hallway, corridor, stairway, or other means of reaching the room where the polls are held. This subparagraph does not apply to the posting of signs on private property not a polling place, except that the placement of a sign that is more than ninety square inches in size on a motor vehicle, trailer, or semitrailer, or its attachment to a motor vehicle, trailer, or semitrailer parked on public property within three hundred feet of a polling place is prohibited.

(2) Interrupting, hindering, or opposing a voter while in or approaching the polling place for the purpose of voting.

(3) As a voter, submitting a false statement as to the voter's ability to mark a ballot.

(4) Interfering or attempting to interfere with a voter when the voter is inside the enclosed voting space, or when the voter is marking a ballot.

(5) Endeavoring to induce a voter to show how the voter marks or has marked a ballot.

(6) Marking, or causing in any manner to be marked, on a ballot, any character for the purpose of identifying such ballot.

b. Actions by election official. As an election official:

(1) Serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6, while serving as a precinct election official at the polls.

(2) Failing to perform duties prescribed by chapters 39 through 53, or performing those duties in such a way as to hinder the object of the law.

(3) Disclosing the manner in which a person's ballot has been voted to anyone except as ordered by a court.

(4) Failing to carry out a duty with regard to access under chapter 22 to a public record that relates to an election or voter registration.

(5) Furnishing a voter with a ballot other than the proper ballot to be used at an election.

(6) Making or consenting to a false entry on the list of voters or poll books.

(7) Placing or permitting another election official to place anything other than a ballot into a ballot box as provided in section 49.85, or permitting a person other than an election official to place anything into a ballot box.

(8) Taking or permitting to be taken out of a ballot box a ballot deposited in the ballot box, except in the manner prescribed by law.

(9) Destroying or altering a ballot that has been given to a voter.

(10) Permitting a person to vote in a manner prohibited by law.

(11) Refusing or rejecting the vote of a voter qualified to vote.

(12) Wrongfully acting or refusing to act for the purpose of avoiding an election, or of rendering invalid a ballot cast from a precinct or other voting district.

(13) Having been deputized to carry the poll books of an election to the place where they are to be canvassed, failing to deliver them to such place, safe, with seals unbroken, and within the time specified by law.

c. Miscellaneous offenses.

(1) As a party committee member or a primary election officer or public officer upon whom a duty is imposed by chapter 43 or by a statute applicable to chapter 43, neglecting to perform any such duty, or performing any such duty in such a way as to hinder the object of the statute, or by disclosing to anyone, except as may be ordered by a court, the manner in which a ballot may have been voted.

(2) As a person who is designated pursuant to section 43.4 to report the results of a precinct caucus as it relates to the selection and reporting of delegates selected as part of the presidential nominating process or who is designated pursuant to section 43.4 to tabulate and report the number of persons attending the caucus favoring each presidential candidate, failing to perform those duties, falsifying the information, or omitting information required to be reported under section 43.4.

(3) Making a false answer under chapter 43 relative to a person's qualifications and party affiliations.

(4) Paying, offering to pay, or receiving compensation for voter registration assistance in violation of section 48A.25.

(5) Using voter registration information in violation of section 48A.39.

(6) As a candidate, making a promise to name or appoint another person to a position or to secure a position for another person in violation of section 49.120.

(7) Soliciting the use of influence from a candidate in violation of section 49.121.

(8) As a public official or employee, or a person acting under color of a public official or employee, knowingly requiring a public employee to act in connection with an absentee ballot in violation of section 53.7.

(9) As a person designated by the county commissioner of elections or by the voter casting an absentee ballot, failing to return an absentee ballot in violation of section 53.35A.

(10) As an incumbent officeholder of, or a candidate for, an office being voted for at the election in progress, serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6.

2. Election misconduct in the third degree is a serious misdemeanor.

2002 Acts, ch 1071, §4
NEW section

39A.5 Election misconduct in the fourth degree.

1. A person commits the crime of election misconduct in the fourth degree if the person willfully commits any of the following acts:

a. Election day acts.

(1) As an employer, denying an employee the privilege conferred by section 49.109, or subjecting an employee to a penalty or reduction of wages because of the exercise of that privilege.

(2) Failing or refusing to comply with an order or command of an election official made pursuant to chapter 49 for which another penalty is not provided.

(3) Circulating, communicating, or attempting to circulate or communicate information with reference to the result of the counted ballots or making a compilation of vote subtotals before the polls are closed in violation of section 51.11, 52.40, or 53.23.

(4) Destroying, defacing, tearing down, or removing a list of candidates, card of instruction, or sample ballot posted as provided by law prior to the closing of the polls.

(5) Removing or destroying the supplies or articles furnished for the purpose of enabling voters to prepare their ballots.

(6) Violating or attempting to violate any of the provisions or requirements of chapter 49 to which another penalty does not apply.

b. Miscellaneous offenses.

(1) As a public employee, acting in connection with an absentee ballot in violation of section 53.7.

(2) Neglecting or refusing to return an absentee ballot in violation of section 53.35, or violating any other provision of chapter 53 for which another penalty is not provided.

(3) Filing a challenge containing false information under section 48A.14.

2. Election misconduct in the fourth degree is a simple misdemeanor.

2002 Acts, ch 1071, §5
NEW section

39A.6 Technical infractions — notice.

If the state commissioner or county commissioner becomes aware of an apparent technical viola-

tion of a provision of chapters 39 through 53, the state commissioner or county commissioner may administratively provide a written notice and letter of instruction to the responsible person regarding proper compliance procedures. This notice is not a final determination of facts or law in the matter, and does not entitle a person to a proceeding under chapter 17A.

2002 Acts, ch 1071, §6
NEW section

CHAPTER 40

CONGRESSIONAL DISTRICTS

40.1 Congressional districts.

40.1 Congressional districts.

The state of Iowa is hereby organized and divided into five congressional districts, which shall be composed, respectively, of the following counties:

1. The first district shall consist of the counties of Butler, Bremer, Fayette, Clayton, Black Hawk, Buchanan, Delaware, Dubuque, Jones, Jackson, Clinton, and Scott.

2. The second district shall consist of the counties of Linn, Johnson, Cedar, Washington, Louisa, Muscatine, Wapello, Jefferson, Henry, Des Moines, Wayne, Appanoose, Davis, Van Buren, and Lee.

3. The third district shall consist of the counties of Grundy, Tama, Benton, Polk, Jasper, Poweshiek, Iowa, Marion, Mahaska, Keokuk, Lucas, and Monroe.

4. The fourth district shall consist of the counties of Emmet, Kossuth, Winnebago, Worth, Mitchell, Howard, Winneshiek, Allamakee, Palo Alto, Hancock, Cerro Gordo, Floyd, Chickasaw, Pocahontas, Humboldt, Wright, Franklin, Calhoun, Webster, Hamilton, Hardin, Greene, Boone, Story, Marshall, Dallas, Madison, and Warren.

5. The fifth district shall consist of the counties of Lyon, Osceola, Dickinson, Sioux, O'Brien, Clay, Plymouth, Cherokee, Buena Vista, Woodbury, Ida, Sac, Monona, Crawford, Carroll, Harrison, Shelby, Audubon, Guthrie, Pottawattamie, Cass, Adair, Mills, Montgomery, Adams, Union, Clarke, Fremont, Page, Taylor, Ringgold, and Decatur.

[C27, 31, 35, §526-a1; C39, §**526.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §40.1; 81 Acts 2d Ex, ch 1, §1]

91 Acts, ch 223, §1; 2001 Acts, 1st Ex, ch 1, §1, 6
Constitutional provision, (codified) Art. III, §37

CHAPTER 41

STATE SENATORIAL AND REPRESENTATIVE DISTRICTS

41.1 Representative districts.
41.2 Senate districts.

41.1 Representative districts.

The state of Iowa is hereby divided into one hundred representative districts as follows:

1. The first representative district in Woodbury county shall consist of that portion of the city of Sioux City bounded by a line commencing at the point the boundary of the state of Iowa intersects the north boundary of Woodbury county, then proceeding east along the boundary of Woodbury county until it intersects Hamilton boulevard, then proceeding southwesterly along Hamilton boulevard until it intersects Buckwalter drive, then proceeding easterly, then southerly, along Buckwalter drive until it intersects Outer Drive North, then proceeding west along Outer Drive North until it intersects Cheyenne boulevard, then proceeding south along Cheyenne boulevard until it intersects Thirty-seventh street, then proceeding west and then north along Thirty-seventh street until it intersects Thirty-eighth street, then proceeding west along Thirty-eighth street until it intersects Jones street, then proceeding south

along Jones street until it intersects Twenty-ninth street, then proceeding east along Twenty-ninth street until it intersects Court street, then proceeding south along Court street until it intersects Twenty-eighth street, then proceeding east along Twenty-eighth street until it intersects Court street, then proceeding south along Court street until it intersects Twenty-sixth street, then proceeding west along Twenty-sixth street until it intersects Jones street, then proceeding south along Jones street until it intersects Twenty-fourth street, then proceeding west along Twenty-fourth street until it intersects Pierce street, then proceeding south along Pierce street until it intersects Twenty-third street, then proceeding east along Twenty-third street until it intersects Nebraska street, then proceeding south along Nebraska street until it intersects Twenty-second street, then proceeding west along Twenty-second street until it intersects Pierce street, then proceeding south along Pierce street until it intersects Sixteenth street, then proceeding west along Sixteenth street until it intersects Summit street, then proceeding southerly along Summit street until it intersects Bluff street, then proceeding southwesterly along Bluff street until it intersects West Eighth street, then proceeding southeast along West Eighth street until it intersects Perry street, then proceeding southwest along Perry street until it intersects West Sixth street, then proceeding northwest along West Sixth street until it intersects Hamilton boulevard, then proceeding southwest along Hamilton boulevard until it intersects the Dakota and Iowa Railroad tracks, then proceeding westerly along the Dakota and Iowa Railroad tracks until it intersects the South Leonard street extension to the Missouri river, then proceeding south along the South Leonard street extension to the boundary of the state of Iowa, then proceeding first west, then in a clockwise manner along the boundary of the state of Iowa to the point of origin.

2. The second representative district in Woodbury county shall consist of that portion of the city of Sioux City bounded by a line commencing at the point the north boundary of Woodbury county intersects Hamilton boulevard, then proceeding east along the boundary of Woodbury county until it intersects the east corporate limit of the city of Sioux City, then proceeding southerly along the corporate limits of the city of Sioux City until it intersects Correctionville road, then proceeding west along Correctionville road until it intersects South Westcott street, then proceeding south along South Westcott street until it intersects Gordon drive, then proceeding west along Gordon drive until it intersects South Court street, then proceeding south along South Court street and its extension to the Missouri river until it intersects the boundary of the state of Iowa, then proceeding westerly along the boundary of the state of Iowa until it intersects the South Leonard street extension to the Missouri river, then proceeding north along the South Leonard street extension until it intersects the Dakota and Iowa Railroad tracks, then proceeding easterly along the Dakota and Iowa Railroad tracks until it intersects Hamilton boulevard, then proceeding northeast along Hamilton boulevard until it intersects West Sixth street, then proceeding southeast along West Sixth street until it intersects Perry street, then proceeding northeast along Perry street until it intersects West Eighth street, then proceeding northwest along West Eighth street until it intersects Bluff street, then proceeding northeasterly along Bluff street until it intersects Summit street, then proceeding northerly along Summit street until it intersects Sixteenth street, then proceeding east along Sixteenth street until it intersects Pierce street, then proceeding north along Pierce street until it intersects Twenty-second street, then proceeding east along Twenty-second street until it intersects Nebraska street, then proceeding north along Nebraska street until it intersects Twenty-third street, then proceeding west along Twenty-third street until it intersects Pierce street, then proceeding north along Pierce street until it intersects Twenty-fourth street, then proceeding east along Twenty-fourth street until it intersects Jones street, then proceeding north along Jones street until it intersects Twenty-sixth street, then proceeding east along Twenty-sixth street until it intersects Court street, then proceeding north along Court street until it intersects Twenty-eighth street, then proceeding west along Twenty-eighth street until it intersects Court street, then proceeding north along Court street until it intersects Twenty-ninth street, then proceeding west along Twenty-ninth street until it intersects Jones street, then proceeding north along Jones street until it intersects Thirty-eighth street, then proceeding east along Thirty-eighth street until it intersects Thirty-seventh street, then proceeding south, and then east, along Thirty-seventh street until it intersects Cheyenne boulevard, then proceeding north along Cheyenne boulevard until it intersects Outer Drive North, then proceeding east along Outer Drive North until it intersects Buckwalter drive, then proceeding northerly, then westerly, along Buckwalter drive until it intersects Hamilton boulevard, then proceeding northeasterly along Hamilton boulevard to the point of origin.

3. The third representative district shall consist of:

a. In Sioux county:

(1) The city of Orange City.

(2) Buncombe, Logan, Nassau, Reading, Sherman, and Washington townships.

b. In Plymouth county, Elgin, Grant, Hancock, Johnson, Liberty, Perry, Plymouth, Portland, Preston, Sioux, Stanton, Washington, Westfield, and America townships.

4. The fourth representative district shall con-

sist of:

a. Lyon county.

b. In Sioux county, Capel, Eagle, Garfield, Lincoln, Settlers, Sheridan, Sioux, Welcome, West Branch, Center, Plato, and Rock townships, and that portion of Holland township lying outside the corporate limits of the city of Orange City.

5. The fifth representative district shall consist of:

a. Osceola county.

b. O'Brien county.

c. In Sioux county, East Orange, Floyd, Grant, and Lynn townships.

d. In Clay county, Clay, Douglas, Garfield, Herdland, Lincoln, Logan, Lone Tree, Peterson, Riverton, Summit, Waterford, and Gillett Grove townships.

6. The sixth representative district shall consist of:

a. Dickinson county.

b. In Clay county:

(1) The city of Spencer.

(2) Freeman, Lake, Meadow, and Sioux townships.

7. The seventh representative district shall consist of:

a. Emmet county.

b. Palo Alto county.

c. In Kossuth county:

(1) The cities of Wesley and West Bend.

(2) Buffalo, Burt, Eagle, German, Grant, Greenwood, Harrison, Hebron, Lincoln, Lotts Creek, Portland, Ramsey, Seneca, Springfield, Swea, Wesley, Fenton, Ledyard, and Plum Creek townships.

(3) That portion of Union township bounded by a line commencing at the point the east boundary of Union township intersects the north corporate limit of the city of Algona, then proceeding first north, and then in a counterclockwise manner along the boundary of Union township until it intersects the west corporate limit of the city of Algona and the east boundary of Cresco township, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Algona to the point of origin.

8. The eighth representative district shall consist of:

a. Humboldt county.

b. Pocahontas county.

c. In Kossuth county:

(1) The city of Algona.

(2) Irvington, Luverne, Riverdale, Sherman, Whittemore, and Cresco townships, that portion of Garfield township lying outside the corporate limits of the city of West Bend, that portion of Prairie township lying outside the corporate limits of the city of Wesley, and that portion of Union township not contained in the seventh representative district.

d. In Webster county, Deer Creek, Jackson, and Johnson townships.

9. The ninth representative district shall consist of:

a. The city of Dows.

b. Wright county.

c. In Hamilton county:

(1) The city of Webster City.

(2) Blairsburg, Cass, Clear Lake, Freedom, Fremont, Hamilton, Independence, Marion, Webster, and Williams townships.

d. In Webster county, Hardin, Pleasant Valley, Sumner, Webster, and Yell townships, and that portion of Washington township lying outside the corporate limits of the city of Duncombe.

10. The tenth representative district shall consist of:

a. In Story county:

(1) The city of Kelley.

(2) Collins, Howard, Indian Creek, Lafayette, Lincoln, Milford, Nevada, New Albany, Palestine, Richland, Sherman, Union, and Warren townships, and that portion of Grant township not contained in the forty-fifth representative district.

b. In Hamilton county, Ellsworth, Lincoln, Lyon, Rose Grove, Scott, and Liberty townships.

11. The eleventh representative district shall consist of:

a. Winnebago county.

b. Worth county.

c. In Hancock county:

(1) The city of Garner.

(2) Bingham, Boone, Britt, Concord, Crystal, Ellington, Erin, Garfield, Madison, Magor, and Orthel townships.

12. The twelfth representative district shall consist of:

a. In Cerro Gordo county:

(1) The city of Clear Lake.

(2) Bath, Clear Lake, Dougherty, Falls, Geneseo, Grant, Grimes, Lake, Lime Creek, Lincoln, Mount Vernon, Pleasant Valley, and Union townships.

b. In Franklin county:

(1) The cities of Hampton and Sheffield.

(2) Geneva, Grant, Hamilton, Ingham, Lee, Marion, Mott, Oakland, Reeve, Richland, Ross, Scott, West Fork, and Wisner townships, that portion of Morgan township lying outside the corporate limits of the city of Dows, and that portion of Osceola township not contained in the forty-fourth representative district.

c. In Hancock county, Amsterdam, Avery, Liberty, and Twin Lake townships, and that portion of Ell township lying outside the corporate limits of the city of Garner.

13. The thirteenth representative district in Cerro Gordo county shall consist of:

a. The city of Mason City.

b. That portion of Mason township lying north of the corporate limits of the city of Mason City.

14. The fourteenth representative district shall consist of:

a. The city of Riceville.

b. Floyd county.

c. Mitchell county.

d. In Cerro Gordo county, Owen and Portland townships, and that portion of Mason township not contained in the thirteenth representative district.

15. The fifteenth representative district shall consist of:

a. Chickasaw county.

b. That portion of Howard county lying outside the corporate limits of the city of Riceville.

c. In Winneshiek county, Calmar, Fremont, Jackson, Lincoln, Madison, Military, Orleans, Sumner, and Washington townships.

16. The sixteenth representative district shall consist of:

a. Allamakee county.

b. In Winneshiek county, Bloomfield, Bluffton, Burr Oak, Canoe, Decorah, Frankville, Glenwood, Hesper, Highland, Pleasant, and Springfield townships.

17. The seventeenth representative district shall consist of:

a. Butler county.

b. In Bremer county:

(1) The city of Waverly.

(2) Douglas, Lafayette, Polk, Warren, and Washington townships, that portion of Jackson township lying outside the corporate limits of the city of Janesville, and that portion of Jefferson township lying outside the corporate limits of the city of Denver.

18. The eighteenth representative district shall consist of:

a. The cities of Sumner and Janesville.

b. In Black Hawk county, Bennington, Mt. Vernon, and Washington townships, and that portion of Lester township lying outside the corporate limits of the city of Dunkerton.

c. In Bremer county:

(1) The city of Denver.

(2) Franklin, Frederika, Fremont, Le Roy, Maxfield, Dayton, and Sumner townships.

d. In Fayette county:

(1) The city of West Union.

(2) Auburn, Banks, Bethel, Center, Clermont, Dover, Eden, Fremont, Harlan, Jefferson, Windsor, and Union townships, and that portion of Oran township lying outside the corporate limits of the city of Fairbank.

19. The nineteenth representative district in Black Hawk county shall consist of:

a. Union township and that portion of Cedar Falls township lying outside the corporate limits of the city of Cedar Falls.

b. That portion of the city of Cedar Falls bounded by a line commencing at the point the east corporate limit of the city of Cedar Falls intersects Greenhill drive and its extension to the corporate limits, then proceeding west along Greenhill drive and its extension until it intersects Hillside drive, then proceeding north along Hillside drive until it intersects Valley High drive, then proceeding west along Valley High drive until it intersects Clearview drive, then proceeding north along Clearview drive until it intersects Primrose drive, then proceeding west along Primrose drive until it intersects Rownd street, then proceeding north along Rownd street until it intersects Orchard drive, then proceeding west along Orchard drive until it intersects McClain drive, then proceeding north along McClain drive until it intersects Maplewood drive, then proceeding westerly along Maplewood drive until it intersects Boulder drive, then proceeding north along Boulder drive until it intersects University avenue, then proceeding west along University avenue until it intersects Grove street, then proceeding north along Grove street until it intersects East Seerley boulevard, then proceeding west along East Seerley boulevard until it intersects West Seerley boulevard, then proceeding west along West Seerley boulevard until it intersects College street, then proceeding south along College street until it intersects University avenue, then proceeding southwest along University avenue until it intersects the corporate limits of the city of Cedar Falls, then proceeding first west, and then in a clockwise manner along the corporate limits of the city of Cedar Falls to the point of origin.

20. The twentieth representative district in Black Hawk county shall consist of:

a. Lincoln and Black Hawk townships.

b. That portion of the city of Waterloo bounded by a line commencing at the point Hawkeye road intersects the south corporate limit of the city of Waterloo, then proceeding north along Hawkeye road until it intersects East San Marnan drive, then proceeding west along East San Marnan drive until it intersects Kimball avenue, then proceeding north along Kimball avenue until it intersects West Ridgeway avenue, then proceeding west along West Ridgeway avenue until it intersects Sheridan road, then proceeding north along Sheridan road until it intersects Berkshire road, then proceeding first west, and then northwest, along Berkshire road until it intersects Hampshire road, then proceeding north along Hampshire road until it intersects West Fourth street, then proceeding northeast along West Fourth street until it intersects Campbell avenue, then proceeding west along Campbell avenue until it intersects Fletcher avenue, then proceeding north along Fletcher avenue until it intersects Black Hawk creek, then proceeding northeasterly along Black Hawk creek until it intersects Westfield avenue, then proceeding northwesterly along Westfield avenue until it intersects Ansborough avenue, then proceeding southwesterly along Ansborough avenue until it intersects Maynard avenue, then proceeding west along Maynard avenue until it intersects Rainbow drive, then proceeding northwest along Rainbow drive until it intersects the corporate limits of the city of Water-

loo, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Waterloo to the point of origin.

c. That portion of the city of Cedar Falls bounded by a line commencing at the point the east corporate limit of the city of Cedar Falls intersects Greenhill drive and its extension to the corporate limits, then proceeding west along Greenhill drive and its extension until it intersects Hillside drive, then proceeding north along Hillside drive until it intersects Valley High drive, then proceeding west along Valley High drive until it intersects Clearview drive, then proceeding north along Clearview drive until it intersects Primrose drive, then proceeding west along Primrose drive until it intersects Rownd street, then proceeding north along Rownd street until it intersects Orchard drive, then proceeding west along Orchard drive until it intersects McClain drive, then proceeding north along McClain drive until it intersects Maplewood drive, then proceeding westerly along Maplewood drive until it intersects Boulder drive, then proceeding north along Boulder drive until it intersects University avenue, then proceeding west along University avenue until it intersects Grove street, then proceeding north along Grove street until it intersects East Seerley boulevard, then proceeding west along East Seerley boulevard until it intersects West Seerley boulevard, then proceeding west along West Seerley boulevard until it intersects College street, then proceeding south along College street until it intersects University avenue, then proceeding southwest along University avenue until it intersects the corporate limits of the city of Cedar Falls, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Cedar Falls to the point of origin.

21. The twenty-first representative district in Black Hawk county shall consist of:

a. Orange and Eagle townships.

b. That portion of the city of Waterloo bounded by a line commencing at the point Hawkeye road intersects the south corporate limit of the city of Waterloo, then proceeding north along Hawkeye road until it intersects East San Marnan drive, then proceeding west along East San Marnan drive until it intersects Kimball avenue, then proceeding north along Kimball avenue until it intersects West Ridgeway avenue, then proceeding west along West Ridgeway avenue until it intersects Sheridan road, then proceeding north along Sheridan road until it intersects Berkshire road, then proceeding first west, and then northwest, along Berkshire road until it intersects Hampshire road, then proceeding north along Hampshire road until it intersects West Fourth street, then proceeding northeast along West Fourth street until it intersects Campbell avenue, then proceeding west along Campbell avenue until it intersects Fletcher avenue, then proceeding north along Fletcher avenue until it intersects Black Hawk creek, then proceeding northeasterly along Black Hawk creek until it intersects Westfield avenue, then proceeding northwesterly along Westfield avenue until it intersects West Conger street, then proceeding northeast along West Conger street until it intersects the middle channel of the Cedar river, then proceeding southeasterly along the Cedar river until it intersects the corporate limits of the city of Waterloo, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Waterloo to the point of origin.

22. The twenty-second representative district in Black Hawk county shall consist of:

a. The cities of Elk Run Heights and Evansdale.

b. East Waterloo township and that portion of Poyner township not contained in the twenty-third representative district.

c. That portion of the city of Waterloo bounded by a line commencing at the point Leversee road intersects the north corporate limit of the city of Waterloo, then proceeding first east, and then in a clockwise manner along the corporate limits of the city of Waterloo until it intersects the Cedar river, then proceeding northwesterly along the Cedar river until it intersects West Conger street, then proceeding southwesterly along West Conger street until it intersects Ansborough avenue, then proceeding southwesterly along Ansborough avenue until it intersects Maynard avenue, then proceeding west along Maynard avenue until it intersects Rainbow drive, then proceeding northwest along Rainbow drive until it intersects the corporate limits of the city of Waterloo, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Waterloo to the point of origin.

23. The twenty-third representative district shall consist of:

a. The city of Fairbank.

b. Buchanan county.

c. In Black Hawk county:

(1) The city of Dunkerton.

(2) Barclay, Big Creek, Cedar, Fox, and Spring Creek townships.

(3) That portion of Poyner township bounded by a line commencing at the point Indian Creek road intersects the east boundary of Poyner township, then proceeding first south, and then in a clockwise manner along the boundary of Poyner township until it intersects Gilbertville road, then proceeding southeasterly along Gilbertville road until it intersects Indian Creek road, then proceeding southeasterly, then east, along Indian Creek road to the point of origin.

24. The twenty-fourth representative district shall consist of:

a. Clayton county.

b. In Delaware county:

(1) The city of Delaware.

(2) Coffins Grove, Elk, Honey Creek, Oneida,

and Richland townships, and that portion of Delaware township lying outside the corporate limits of the city of Manchester.

c. In Fayette county:

(1) The city of Fayette.

(2) Fairfield, Illyria, Pleasant Valley, Putnam, Scott, Smithfield, and Westfield townships.

25. The twenty-fifth representative district shall consist of:

a. Jackson county.

b. In Dubuque county:

(1) Mosalem and Washington townships.

(2) That portion of Table Mound township bounded by a line commencing at the point the boundary of Table Mound township intersects the boundaries of Vernon, Prairie Creek, and Washington townships, then proceeding northerly, then easterly, along the boundary of Table Mound township until it intersects the west boundary of Mosalem township, then proceeding southerly, then westerly, along the boundary of Table Mound township to the point of origin.

c. In Clinton county, Bloomfield, Brookfield, Deep Creek, Elk River, and Waterford townships.

26. The twenty-sixth representative district in Clinton county shall consist of:

a. The city of Clinton.

b. Center and Hampshire townships, and that portion of Camanche township not contained in the eighty-third representative district.

27. The twenty-seventh representative district in Dubuque county shall consist of those portions of Dubuque township and the city of Dubuque bounded by a line commencing at the point the western boundary of Dubuque township intersects Derby Grange road, then proceeding easterly along Derby Grange road until it intersects John F. Kennedy road, then proceeding southeasterly along John F. Kennedy road until it intersects the corporate limits of the city of Dubuque, then proceeding first southeast, and then in a clockwise manner along the corporate limits of the city of Dubuque until it intersects the south boundary of Peru township, then proceeding first northeast, and then in a counterclockwise manner along the boundary of Peru township until it intersects the boundary of the state of Iowa, then proceeding southerly along the boundary of the state of Iowa until it intersects the Peosta channel of the Mississippi river, then proceeding southwesterly along the Peosta channel until it intersects East Sixteenth street, then proceeding southwesterly along East Sixteenth street until it intersects Kerper boulevard, then proceeding northerly along Kerper boulevard until it intersects Fengler street, then proceeding northwest along Fengler street until it intersects the I & M Rail Link tracks, then proceeding southwest along the I & M Rail Link tracks until it intersects the extension of Stafford street, then proceeding westerly along the extension of Stafford street until it intersects Garfield avenue, then proceeding southwest along Garfield avenue until it intersects East Twentieth street, then proceeding southwesterly along East Twentieth street until it intersects Central avenue, then proceeding northwest along Central avenue until it intersects West Twenty-third street, then proceeding southwesterly along West Twenty-third street until it intersects Valeria street, then proceeding northwesterly along Valeria street until it intersects Kaufmann avenue, then proceeding southeast along Kaufmann avenue until it intersects Hempstead street, then proceeding southwest along Hempstead street until it intersects Montcrest street, then proceeding westerly along Montcrest street until it intersects Portland street, then proceeding southwest along Portland street until it intersects Abbott street, then proceeding south along Abbott street until it intersects Lowell street, then proceeding east along Lowell street until it intersects Harold street, then proceeding south along Harold street until it intersects Clarke drive, then proceeding easterly along Clarke drive until it intersects Foye street, then proceeding southerly along Foye street until it intersects West Locust street, then proceeding west along West Locust street until it intersects Kirkwood street, then proceeding southwest along Kirkwood street until it intersects Cox street, then proceeding southeast along Cox street until it intersects Loras boulevard, then proceeding southwest along Loras boulevard until it intersects Wood street, then proceeding southeast along Wood street until it intersects University avenue, then proceeding east along University avenue until it intersects Delhi street, then proceeding southwest along Delhi street until it intersects West Fifth street, then proceeding southeast along West Fifth street until it intersects College street, then proceeding southerly along College street until it intersects West Third street, then proceeding southwest along West Third street until it intersects North Grandview avenue, then proceeding south along North Grandview avenue until it intersects Hale street, then proceeding west along Hale street until it intersects North Algona street, then proceeding north along North Algona street until it intersects Bennett street, then proceeding west along Bennett street until it intersects McCormick street, then proceeding northerly along McCormick street until it intersects Mineral street, then proceeding west along Mineral street until it intersects O'Hagen street, then proceeding north along O'Hagen street until it intersects Pearl street, then proceeding west along Pearl street until it intersects Finley street, then proceeding northwest along Finley street until it intersects University avenue, then proceeding northeast along University avenue until it intersects Asbury road, then proceeding northwesterly along Asbury road until it intersects Wilbricht lane, then proceeding west along Wilbricht lane until it intersects Flora Park road, then proceeding southwesterly along Flora

Park road until it intersects Pennsylvania avenue, then proceeding west along Pennsylvania avenue until it intersects Churchill drive, then proceeding north along Churchill drive until it intersects St. Anne drive, then proceeding west along St. Anne drive until it intersects Carter road, then proceeding north along Carter road until it intersects Hillcrest road, then proceeding west along Hillcrest road until it intersects John F. Kennedy road, then proceeding north along John F. Kennedy road until it intersects Hillcrest road, then proceeding west along Hillcrest road until it intersects Key Largo drive, then proceeding south along Key Largo drive until it intersects Keymeer drive, then proceeding east along Keymeer drive until it intersects Key Way drive, then proceeding south along Key Way drive until it intersects the north fork of Catfish creek, then proceeding west along the north fork of Catfish creek until it intersects the extension of Winne court, then proceeding north along Winne court and its extension until it intersects Hillcrest road, then proceeding east along Hillcrest road until it intersects the north branch of the north fork of Catfish creek, then proceeding northwesterly along the north branch of the north fork of Catfish creek until it intersects the northwest branch of the north fork of Catfish creek, then proceeding northwest along the northwest branch of the north fork of Catfish creek until it intersects Asbury road, then proceeding west along Asbury road until it intersects the corporate limits of the city of Asbury, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Asbury until it intersects the west boundary of Dubuque township, then proceeding north along the boundary of Dubuque township to the point of origin.

28. The twenty-eighth representative district in Dubuque county shall consist of those portions of Dubuque and Table Mound townships and the city of Dubuque bounded by a line commencing at the point Asbury road intersects the east corporate limit of the city of Asbury, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Asbury until it intersects the east boundary of Center township, then proceeding first south, and then in a clockwise manner along the boundary of Center township until it intersects the east boundary of Vernon township and the corporate limits of the city of Dubuque, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Dubuque until it intersects the south boundary of Dubuque township, then proceeding east along the south boundary of Dubuque township until it intersects the corporate limits of the city of Dubuque, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Dubuque until it intersects the east boundary of Table Mound township, then proceeding north along the boundary of Table Mound township until it intersects the corporate limits of the city of Dubuque, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Dubuque until it intersects the Peosta channel of the Mississippi river, then proceeding southwesterly along the Peosta channel until it intersects East Sixteenth street, then proceeding southwesterly along East Sixteenth street until it intersects Kerper boulevard, then proceeding northerly along Kerper boulevard until it intersects Fengler street, then proceeding northwest along Fengler street until it intersects the I & M Rail Link tracks, then proceeding southwest along the I & M Rail Link tracks until it intersects the extension of Stafford street, then proceeding westerly along the extension of Stafford street until it intersects Garfield avenue, then proceeding southwest along Garfield avenue until it intersects East Twentieth street, then proceeding southwesterly along East Twentieth street until it intersects Central avenue, then proceeding northwest along Central avenue until it intersects West Twenty-third street, then proceeding southwesterly along West Twenty-third street until it intersects Valeria street, then proceeding northwesterly along Valeria street until it intersects Kaufmann avenue, then proceeding southeast along Kaufmann avenue until it intersects Hempstead street, then proceeding southwest along Hempstead street until it intersects Montcrest street, then proceeding westerly along Montcrest street until it intersects Portland street, then proceeding southwest along Portland street until it intersects Abbott street, then proceeding south along Abbott street until it intersects Lowell street, then proceeding east along Lowell street until it intersects Harold street, then proceeding south along Harold street until it intersects Clarke drive, then proceeding easterly along Clarke drive until it intersects Foye street, then proceeding southerly along Foye street until it intersects West Locust street, then proceeding west along West Locust street until it intersects Kirkwood street, then proceeding southwest along Kirkwood street until it intersects Cox street, then proceeding southeast along Cox street until it intersects Loras boulevard, then proceeding southwest along Loras boulevard until it intersects Wood street, then proceeding southeast along Wood street until it intersects University avenue, then proceeding east along University avenue until it intersects Delhi street, then proceeding southwest along Delhi street until it intersects West Fifth street, then proceeding southeast along West Fifth street until it intersects College street, then proceeding southerly along College street until it intersects West Third street, then proceeding southwest along West Third street until it intersects North Grandview avenue, then proceeding south along North Grandview avenue until it intersects Hale street, then proceeding west along Hale street until it intersects North Algona street, then proceeding

north along North Algona street until it intersects Bennett street, then proceeding west along Bennett street until it intersects McCormick street, then proceeding northerly along McCormick street until it intersects Mineral street, then proceeding west along Mineral street until it intersects O'Hagen street, then proceeding north along O'Hagen street until it intersects Pearl street, then proceeding west along Pearl street until it intersects Finley street, then proceeding northwest along Finley street until it intersects University avenue, then proceeding northeast along University avenue until it intersects Asbury road, then proceeding northwesterly along Asbury road until it intersects Wilbricht lane, then proceeding west along Wilbricht lane until it intersects Flora Park road, then proceeding southwesterly along Flora Park road until it intersects Pennsylvania avenue, then proceeding west along Pennsylvania avenue until it intersects Churchill drive, then proceeding north along Churchill drive until it intersects St. Anne drive, then proceeding west along St. Anne drive until it intersects Carter road, then proceeding north along Carter road until it intersects Hillcrest road, then proceeding west along Hillcrest road until it intersects John F. Kennedy road, then proceeding north along John F. Kennedy road until it intersects Hillcrest road, then proceeding west along Hillcrest road until it intersects Key Largo drive, then proceeding south along Key Largo drive until it intersects Keymeer drive, then proceeding east along Keymeer drive until it intersects Key Way drive, then proceeding south along Key Way drive until it intersects the north fork of Catfish creek, then proceeding west along the north fork of Catfish creek until it intersects the extension of Winne court, then proceeding north along Winne court and its extension until it intersects Hillcrest road, then proceeding east along Hillcrest road until it intersects the north branch of the north fork of Catfish creek, then proceeding northwesterly along the north branch of the north fork of Catfish creek until it intersects the northwest branch of the north fork of Catfish creek, then proceeding northwest along the northwest branch of the north fork of Catfish creek until it intersects Asbury road, then proceeding west along Asbury road to the point of origin.

29. The twenty-ninth representative district shall consist of:

a. In Johnson county, Big Grove, Cedar, Graham, Hardin, Jefferson, Monroe, Newport, and Oxford townships, that portion of Madison township lying outside the corporate limits of the city of North Liberty, and that portion of Clear Creek township not contained in the thirtieth representative district.

b. In Linn county:

(1) Brown, Buffalo, Franklin, Linn, and Putnam townships.

(2) That portion of College township bounded by a line commencing at the point where the boundary between Fairfax and College townships intersects the boundary of Linn county, then proceeding northerly along the boundary of College township until the point at which it intersects the corporate limits of the city of Cedar Rapids, then proceeding easterly along the corporate limits of the city of Cedar Rapids until it intersects the boundary between College township and Putnam township, then proceeding southerly along the boundary of College township until it intersects the boundary of Linn county, then westerly along the boundary of Linn county to the point of origin.

(3) That portion of Bertram township bounded by a line commencing at the point where the boundary of Bertram township intersects the boundary of Franklin and Putnam townships, then proceeding northerly, then westerly, along the boundary of Bertram township until it intersects the corporate limits of the city of Cedar Rapids, then proceeding southerly along the corporate limits of the city of Cedar Rapids until it intersects the boundary of Bertram township, then proceeding southeasterly along the boundary of Bertram township to the point of origin.

(4) That portion of Marion and Clinton townships bounded by a line commencing at the point the south boundary of Marion township intersects the corporate limits of the city of Cedar Rapids, then proceeding first northeast, and then in a clockwise manner along the boundary of Marion township until it intersects the boundary of Clinton township at the corporate limits of the city of Cedar Rapids, then proceeding first west, and then in clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the corporate limits of the city of Marion, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Marion until it intersects U.S. highway 151, then proceeding south along U.S. highway 151 until it intersects the south boundary of Marion township, then proceeding west along the south boundary of Marion township to the point of origin.

30. The thirtieth representative district in Johnson county shall consist of:

a. The cities of Coralville, North Liberty, and Tiffin.

b. Penn township, and that portion of Clear Creek township bounded by a line commencing at the point Kansas avenue northeast intersects the north boundary of Clear Creek township, then proceeding east along the boundary of Clear Creek township until it intersects the corporate limits of the city of North Liberty, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of North Liberty to the point of origin.

c. That portion of the city of Iowa City bounded by a line commencing at the point Clear Creek township intersects the corporate limits of the city of Coralville and the west corporate limit of the city of Iowa City, then proceeding first south, and

then in a counterclockwise manner along the corporate limits of the city of Iowa City until it intersects state highway 1, then proceeding northeast along state highway 1 until it intersects Mormon Trek boulevard, then proceeding northwesterly, then northerly, along Mormon Trek boulevard until it intersects the corporate limits of the city of Coralville, then proceeding first northwest, and then in a clockwise manner along the corporate limits of the city of Coralville to the point of origin.

31. The thirty-first representative district shall consist of:

a. Jones county.

b. In Dubuque county, Cascade, Prairie Creek, Taylor, and Whitewater townships, that portion of Dodge township lying outside the corporate limits of the city of Dyersville, and that portion of Vernon township lying outside the corporate limits of the city of Centralia.

32. The thirty-second representative district shall consist of:

a. The city of Dyersville.

b. In Delaware county:

(1) The city of Manchester.

(2) Adams, Bremen, Colony, Hazel Green, Milo, North Fork, Prairie, South Fork, and Union townships, and that portion of Delhi township lying outside the corporate limits of the city of Delaware.

c. In Dubuque county:

(1) The city of Centralia.

(2) Center, Concord, Iowa, Jefferson, Liberty, New Wine, and Peru townships.

(3) That portion of Dubuque township bounded by a line commencing at the point the north corporate limit of the city of Asbury intersects the boundary between Center and Dubuque townships, then proceeding in a clockwise manner along the corporate limits of the city of Asbury until it intersects the boundary between Center and Dubuque townships along Seippel road, then proceeding northerly along the boundary of Dubuque township to the point of origin.

(4) That portion of Dubuque township bounded by a line commencing at the point the western boundary of Dubuque township intersects Derby Grange road, then proceeding easterly along Derby Grange road until it intersects John F. Kennedy road, then proceeding southeasterly along John F. Kennedy road until it intersects the corporate limits of the city of Dubuque, then proceeding in a clockwise manner along the corporate limits of the city of Dubuque until it intersects the north boundary of Dubuque township, then proceeding westerly, then southerly, along the boundary of Dubuque township to the point of origin.

33. The thirty-third representative district in Linn county shall consist of those portions of College, Clinton, and Fairfax townships and the city of Cedar Rapids bounded by a line commencing at the point Sixteenth avenue southwest intersects the west corporate limit of the city of Cedar Rapids, then first proceeding south, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the north boundary of Fairfax township, then proceeding west along the north boundary of Fairfax township until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects Dean road southwest, then proceeding west along Dean road southwest until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the south boundary of Clinton township, then proceeding east along the south boundary of Clinton township until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the middle channel of the Red Cedar river, then proceeding westerly along the middle channel of the Red Cedar river until it intersects the Nineteenth street extension to the Red Cedar river, then proceeding north along the Nineteenth street extension until it intersects Fifteenth avenue southeast, then proceeding west along Fifteenth avenue southeast until it intersects Twelfth avenue southeast, then proceeding southwest along Twelfth avenue southeast until it intersects the Iowa Northern Railway tracks, then proceeding northwest along the Iowa Northern Railway tracks until it intersects Ninth avenue southeast, then proceeding northeast along Ninth avenue southeast until it intersects Fourteenth street southeast, then proceeding north along Fourteenth street southeast until it intersects Fifth avenue southeast, then proceeding west along Fifth avenue southeast until it intersects Fourteenth street southeast, then proceeding north along Fourteenth street southeast and its extension until it intersects Third avenue southeast, then proceeding northeast along Third avenue southeast until it intersects Fourteenth street southeast, then proceeding northwest along Fourteenth street southeast until it intersects Fourteenth street northeast, then proceeding northwest along Fourteenth street northeast until it intersects C avenue northeast, then proceeding southwest along C avenue northeast until it intersects Center Point road northeast, then proceeding northwest along Center Point road northeast until it intersects Oakland road northeast, then proceeding northerly along Oakland road northeast until it intersects F avenue northeast, then proceeding southwest along F avenue northeast until it intersects Interstate 380, then proceeding southerly along Interstate 380 until it intersects the Union Pacific Railroad tracks, then proceeding northwesterly along the Union Pacific Railroad tracks until it intersects the Chicago Central

and Pacific Railroad tracks, then proceeding westerly along the Chicago Central and Pacific Railroad tracks until it intersects the Union Pacific Railroad tracks, then proceeding southerly along the Union Pacific Railroad tracks until it intersects Second avenue southwest, then proceeding northeasterly along Second avenue southwest until it intersects Eighth street southwest, then proceeding southeasterly along Eighth street southwest until it intersects Third avenue southwest, then proceeding northeast along Third avenue southwest until it intersects Seventh street southwest, then proceeding southeasterly along Seventh street southwest until it intersects Fifth avenue southwest, then proceeding west along Fifth avenue southwest until it intersects Eighth street southwest, then proceeding south along Eighth street southwest until it intersects Seventh avenue southwest, then proceeding east along Seventh avenue southwest until it intersects Seventh street southwest, then proceeding south along Seventh street southwest until it intersects Eighth avenue southwest, then proceeding east along Eighth avenue southwest until it intersects Sixth street southwest, then proceeding south along Sixth street southwest until it intersects Tenth avenue southwest, then proceeding west along Tenth avenue southwest until it intersects Sixth street southwest, then proceeding south along Sixth street southwest until it intersects Nineteenth avenue southwest, then proceeding west along Nineteenth avenue southwest until it intersects Fourteenth street southwest and its extension, then proceeding north along the extension of Fourteenth street southwest until it intersects the Union Pacific Railroad tracks, then proceeding southwest along the Union Pacific Railroad tracks until it intersects the Cedar Rapids and Iowa City Railway tracks, then proceeding northeasterly along the Cedar Rapids and Iowa City Railway tracks until it intersects Sixteenth avenue southwest, then proceeding west along Sixteenth avenue southwest until it intersects Eighteenth street southwest, then proceeding north along Eighteenth street southwest until it intersects Eighteenth street northwest, then proceeding north along Eighteenth street northwest until it intersects Johnson avenue northwest, then proceeding west along Johnson avenue northwest until it intersects Edgewood road northwest, then proceeding south along Edgewood road northwest until it intersects Edgewood road southwest, then proceeding south along Edgewood road southwest until it intersects Sixteenth avenue southwest, then proceeding west along Sixteenth avenue southwest to the point of origin.

34. The thirty-fourth representative district in Linn county shall consist of those portions of the city of Cedar Rapids and Clinton township bounded by a line commencing at the point Sixteenth avenue southwest intersects the west corporate limit of the city of Cedar Rapids, then first proceeding west, and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the middle channel of the Red Cedar river, then proceeding easterly along the middle channel of the Red Cedar river until it intersects J avenue and its extension to the middle channel of the Red Cedar river, then proceeding first northerly, then easterly, along J avenue and its extension until it intersects J avenue northeast, then proceeding southwesterly along the extension of J avenue northeast until it intersects the Union Pacific Railroad tracks, then proceeding southeasterly along the Union Pacific Railroad tracks until it intersects the Iowa Northern Railway tracks, then proceeding southerly along the Iowa Northern Railway tracks until it intersects the Chicago Central and Pacific Railroad tracks, then proceeding westerly along the Chicago Central and Pacific Railroad tracks until it intersects the Union Pacific Railroad tracks, then proceeding southerly along the Union Pacific Railroad tracks until it intersects Second avenue southwest, then proceeding northeasterly along Second avenue southwest until it intersects Eighth street southwest, then proceeding southeasterly along Eighth street southwest until it intersects Third avenue southwest, then proceeding northeast along Third avenue southwest until it intersects Seventh street southwest, then proceeding southeasterly along Seventh street southwest until it intersects Fifth avenue southwest, then proceeding west along Fifth avenue southwest until it intersects Eighth street southwest, then proceeding south along Eighth street southwest until it intersects Seventh avenue southwest, then proceeding east along Seventh avenue southwest until it intersects Seventh street southwest, then proceeding south along Seventh street southwest until it intersects Eighth avenue southwest, then proceeding east along Eighth avenue southwest until it intersects Sixth street southwest, then proceeding south along Sixth street southwest until it intersects Tenth avenue southwest, then proceeding west along Tenth avenue southwest until it intersects Sixth street southwest, then proceeding south along Sixth street southwest until it intersects Nineteenth avenue southwest, then proceeding west along Nineteenth avenue southwest until it intersects Fourteenth street southwest and its extension, then proceeding north along the extension of Fourteenth street southwest until it intersects the Union Pacific Railroad tracks, then proceeding southwest along the Union Pacific Railroad tracks until it intersects the Cedar Rapids and Iowa City Railway tracks, then proceeding northeasterly along the Cedar Rapids and Iowa City Railway tracks until it intersects Sixteenth avenue southwest, then proceeding west along Sixteenth avenue southwest until it intersects Eighteenth street southwest, then proceeding north along Eighteenth street southwest until it

intersects Eighteenth street northwest, then proceeding north along Eighteenth street northwest until it intersects Johnson avenue northwest, then proceeding west along Johnson avenue northwest until it intersects Edgewood road northwest, then proceeding south along Edgewood road northwest until it intersects Edgewood road southwest, then proceeding south along Edgewood road southwest until it intersects Sixteenth avenue southwest, then proceeding west along Sixteenth avenue southwest to the point of origin.

35. The thirty-fifth representative district in Linn county shall consist of:

a. The city of Robins.

b. That portion of Marion township bounded by a line commencing at the point Shannon drive and South Mentzer road intersect the boundary of the corporate limits of the city of Robins, then proceeding northerly, then easterly, along the boundary of the corporate limits of the city of Robins until it intersects the corporate limits of the city of Cedar Rapids, then proceeding westerly, then southerly, then westerly, along the corporate limits of the city of Cedar Rapids until it intersects the boundary between Marion and Monroe townships, then proceeding northerly along the boundary of Marion township until it intersects the corporate limits of the city of Robins, then proceeding northerly along the corporate limits of the city of Robins to the point of origin.

c. That portion of the city of Cedar Rapids bounded by a line commencing at the point the south corporate limit of the city of Hiawatha and the corporate limits of the city of Cedar Rapids intersect Interstate 380, then proceeding southeast along Interstate 380 until it intersects Collins road, then proceeding west along Collins road until it intersects Wenig road northeast and its extension, then proceeding south along Wenig road northeast and its extension until it intersects Forty-second street northeast, then proceeding west along Forty-second street northeast until it intersects the west boundary of Monroe township and the corporate limits of the city of Cedar Rapids, then proceeding first west, and then in a clockwise manner along the corporate limits of the city of Cedar Rapids to the point of origin.

d. Boulder, Fayette, Grant, Jackson, Otter Creek, Spring Grove, and Washington townships, that portion of Clinton township not contained in the thirty-third, thirty-fourth, or thirty-eighth representative district, that portion of Fairfax township not contained in the thirty-third representative district, and that portion of Monroe township not contained in the thirty-seventh representative district.

e. That portion of the city of Central City and Maine township bounded by a line commencing at the point the east corporate limit of the city of Central City intersects the boundary of Maine township, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Central City to the point of origin.

36. The thirty-sixth representative district in Linn county shall consist of:

a. The city of Marion.

b. That portion of Maine township not contained in the thirty-fifth representative district.

c. That portion of Marion township not contained in the twenty-ninth or thirty-fifth representative district.

37. The thirty-seventh representative district in Linn county shall consist of those portions of Monroe, Marion, and Bertram townships, and the city of Cedar Rapids bounded by a line commencing at the point Thirty-fifth street drive southeast intersects the east corporate limit of the city of Cedar Rapids, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects Interstate 380, then proceeding southeast along Interstate 380 until it intersects Collins road, then proceeding west along Collins road until it intersects Wenig road northeast and its extension, then proceeding south along Wenig road northeast and its extension until it intersects Forty-second street northeast, then proceeding west along Forty-second street northeast until it intersects the west corporate limit of the city of Cedar Rapids, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the east boundary of Clinton township and the middle channel of the Red Cedar river, then proceeding easterly along the middle channel of the Red Cedar river until it intersects J avenue and its extension to the middle channel of the Red Cedar river, then proceeding first northerly, then easterly, along J avenue and its extension until it intersects J avenue northeast, then proceeding southeasterly along J avenue northeast until it intersects Sierra drive northeast, then proceeding northwest along Sierra drive northeast until it intersects Linmar drive northeast, then proceeding northerly along Linmar drive northeast until it intersects Coldstream avenue northeast, then proceeding east along Coldstream avenue northeast until it intersects Twenty-ninth street northeast, then proceeding east along Twenty-ninth street northeast until it intersects Oakland road northeast, then proceeding south along Oakland road northeast until it intersects Elmhurst drive northeast, then proceeding east along Elmhurst drive northeast until it intersects Robinwood lane northeast, then proceeding easterly along Robinwood lane northeast until it intersects Prairie drive northeast, then proceeding south along Prairie drive northeast until it intersects Twenty-seventh street northeast, then proceeding easterly along Twenty-seventh street northeast until it intersects First avenue east, then proceeding north along First avenue east until it intersects Thirty-fifth street drive southeast, then proceeding east

along Thirty-fifth street drive southeast to the point of origin.

38. The thirty-eighth representative district in Linn county shall consist of those portions of Bertram, Clinton, and Marion townships, and the city of Cedar Rapids bounded by a line commencing at the point Interstate 380 intersects the Union Pacific Railroad tracks, then proceeding northwesterly along the Union Pacific Railroad tracks until it intersects the Iowa Northern Railway tracks, then proceeding northerly along the Iowa Northern Railway tracks until it intersects the Union Pacific Railroad tracks, then proceeding northwesterly along the Union Pacific Railroad tracks until it intersects J avenue northeast and its extension to the railroad tracks, then proceeding first northeast, then southeast, along J avenue northeast and its extension until it intersects Sierra drive northeast, then proceeding northwest along Sierra drive northeast until it intersects Linmar drive northeast, then proceeding northerly along Linmar drive northeast until it intersects Coldstream avenue northeast, then proceeding east along Coldstream avenue northeast until it intersects Twenty-ninth street northeast, then proceeding east along Twenty-ninth street northeast until it intersects Oakland road northeast, then proceeding south along Oakland road northeast until it intersects Elmhurst drive northeast, then proceeding east along Elmhurst drive northeast until it intersects Robinwood lane northeast, then proceeding easterly along Robinwood lane northeast until it intersects Prairie drive northeast, then proceeding south along Prairie drive northeast until it intersects Twenty-seventh street northeast, then proceeding easterly along Twenty-seventh street northeast until it intersects First avenue east, then proceeding north along First avenue east until it intersects Thirty-fifth street drive southeast, then proceeding east along Thirty-fifth street drive southeast until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the south boundary of Bertram township and the north boundary of Marion township north of Ellwinn lane southeast, then proceeding west along the south boundary of Bertram township until it intersects the corporate limits of the city of Cedar Rapids, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Cedar Rapids until it intersects the middle channel of the Red Cedar river and the west boundary of Putnam township, then proceeding westerly along the middle channel of the Red Cedar river until it intersects the Nineteenth street extension to the Red Cedar river, then proceeding north along the Nineteenth street extension until it intersects Fifteenth avenue southeast, then proceeding west along Fifteenth avenue southeast until it intersects Twelfth avenue southeast, then proceeding southwest along Twelfth avenue southeast until it intersects the Iowa Northern Railway tracks, then proceeding northwest along the Iowa Northern Railway tracks until it intersects Ninth avenue southeast, then proceeding northeast along Ninth avenue southeast until it intersects Fourteenth street southeast, then proceeding north along Fourteenth street southeast until it intersects Fifth avenue southeast, then proceeding west along Fifth avenue southeast until it intersects Fourteenth street southeast, then proceeding north along Fourteenth street southeast and its extension until it intersects Third avenue southeast, then proceeding northeast along Third avenue southeast until it intersects Fourteenth street southeast, then proceeding northwest along Fourteenth street southeast until it intersects Fourteenth street northeast, then proceeding northwest along Fourteenth street northeast until it intersects C avenue northeast, then proceeding southwest along C avenue northeast until it intersects Center Point road northeast, then proceeding northwest along Center Point road northeast until it intersects Oakland road northeast, then proceeding northerly along Oakland road northeast until it intersects F avenue northeast, then proceeding southwest along F avenue northeast until it intersects Interstate 380, then proceeding southerly along Interstate 380 to the point of origin.

39. The thirty-ninth representative district shall consist of:

a. Benton county.

b. In Iowa county, Honey Creek, Marengo, and Washington townships.

40. The fortieth representative district shall consist of:

a. Grundy county.

b. In Tama county, Buckingham, Carlton, Carroll, Clark, Crystal, Geneseo, Grant, Highland, Howard, Indian Village, Lincoln, Oneida, Otter Creek, Perry, Spring Creek, Tama, Toledo, and York townships.

41. The forty-first representative district in Jasper county shall consist of Buena Vista, Clear Creek, Elk Creek, Hickory Grove, Independence, Kellogg, Lynn Grove, Malaka, Mariposa, Newton, Palo Alto, Poweshiek, Richland, Rock Creek, and Sherman townships.

42. The forty-second representative district shall consist of:

a. In Jasper county, Des Moines, Mound Prairie, and Washington townships.

b. In Polk county:

(1) The city of Bondurant.

(2) Beaver and Camp townships, that portion of Clay township lying outside the corporate limits of the city of Pleasant Hill, and that portion of Delaware township lying outside the corporate limits of the city of Ankeny and the city of Des Moines and not contained in the sixty-seventh representative district.

(3) That portion of Four Mile township bounded by a line commencing at the point the east corporate limit of the city of Pleasant Hill intersects the north boundary of Four Mile township, then proceeding first east, and then in a clockwise manner along the boundary of Four Mile township until it intersects the corporate limits of the city of Pleasant Hill, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Pleasant Hill to the point of origin.

43. The forty-third representative district in Marshall county shall consist of:

a. The city of Marshalltown.

b. Iowa, Liscomb, Marion, Taylor, and Vienna townships.

44. The forty-fourth representative district shall consist of:

a. Hardin county.

b. In Franklin county, that portion of the city of Ackley and Osceola township bounded by a line commencing at the point the north corporate limit of the city of Ackley intersects the east boundary of Franklin county, then proceeding first south, and then west along the boundary of Franklin county until it intersects the west corporate limit of the city of Ackley, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Ackley to the point of origin.

c. In Marshall county, Bangor, Eden, Greencastle, Jefferson, Liberty, Logan, Minerva, State Center, and Washington townships, and those portions of Le Grand, Marietta, and Timber Creek townships lying outside the corporate limits of the city of Marshalltown.

45. The forty-fifth representative district in Story county shall consist of:

a. That portion of Washington township lying outside the corporate limits of the city of Kelley.

b. Those portions of the city of Ames and Grant township bounded by a line commencing at the point the north corporate limit of the city of Ames intersects East Thirteenth street, then proceeding west along East Thirteenth street until it intersects Glendale avenue, then proceeding north along Glendale avenue until it intersects East Sixteenth street, then proceeding west along East Sixteenth street until it intersects Duff avenue, then proceeding south along Duff avenue until it intersects Seventh street, then proceeding west along Seventh street until it intersects Grand avenue, then proceeding south along Grand avenue until it intersects the Union Pacific Railroad tracks, then proceeding westerly, then northerly, along the Union Pacific Railroad tracks until it intersects Thirteenth street, then proceeding west along Thirteenth street until it intersects Squaw creek, then proceeding westerly along Squaw creek until it intersects Clear creek, then proceeding southwesterly along Clear creek until it intersects North Hyland avenue, then proceeding south along North Hyland avenue until it intersects Oakland street, then proceeding west along Oakland street until it intersects North Franklin avenue, then proceeding south along North Franklin avenue until it intersects West street, then proceeding east along West street until it intersects Colorado avenue, then proceeding south along Colorado avenue until it intersects Lincoln way, then proceeding west along Lincoln way until it intersects the corporate limits of the city of Ames, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Ames until it intersects the west boundary of Grant township, then proceeding north along the west boundary of Grant township until it intersects the corporate limits of the city of Ames south of Southeast Sixteenth street, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Ames until it intersects the north boundary of Grant township, then proceeding west along the north boundary of Grant township until it intersects the corporate limits of the city of Ames, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Ames to the point of origin.

46. The forty-sixth representative district shall consist of:

a. In Boone county:

(1) The cities of Luther and Madrid.

(2) Colfax, Garden, and Jackson townships.

b. In Story county:

(1) Franklin township.

(2) That portion of the city of Ames bounded by a line commencing at the point the north corporate limit of the city of Ames intersects East Thirteenth street, then proceeding west along East Thirteenth street until it intersects Glendale avenue, then proceeding north along Glendale avenue until it intersects East Sixteenth street, then proceeding west along East Sixteenth street until it intersects Duff avenue, then proceeding south along Duff avenue until it intersects Seventh street, then proceeding west along Seventh street until it intersects Grand avenue, then proceeding south along Grand avenue until it intersects the Union Pacific Railroad tracks, then proceeding westerly, then northerly, along the Union Pacific Railroad tracks until it intersects Thirteenth street, then proceeding west along Thirteenth street until it intersects Squaw creek, then proceeding westerly along Squaw creek until it intersects Clear creek, then proceeding southwesterly along Clear creek until it intersects North Hyland avenue, then proceeding south along North Hyland avenue until it intersects Oakland street, then proceeding west along Oakland street until it intersects North Franklin avenue, then proceeding south along North Franklin avenue until it intersects West street, then proceeding east along West street until it intersects Colorado avenue, then proceeding south along Colorado avenue un-

til it intersects Lincoln way, then proceeding west along Lincoln way until it intersects the corporate limits of the city of Ames, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Ames to the point of origin.

47. The forty-seventh representative district shall consist of:

a. In Dallas county, Adel, Boone, Colfax, Dallas, Des Moines, Grant, Lincoln, Linn, Sugar Grove, Walnut, and Washington townships, and that portion of Van Meter township lying outside the corporate limits of the city of De Soto.

b. In Boone county, Cass township and that portion of Douglas township lying outside the corporate limits of the city of Madrid.

48. The forty-eighth representative district shall consist of:

a. In Dallas county, Beaver and Spring Valley townships.

b. In Boone county, Amaqua, Beaver, Des Moines, Dodge, Grant, Harrison, Marcy, Peoples, Pilot Mound, Union, and Yell townships, and that portion of Worth township lying outside the corporate limits of the city of Luther.

49. The forty-ninth representative district in Webster county shall consist of:

a. The cities of Duncombe and Fort Dodge.

b. Badger, Colfax, Cooper, Douglas, and Newark townships.

50. The fiftieth representative district shall consist of:

a. Calhoun county.

b. Greene county.

c. In Webster county, Burnside, Clay, Dayton, Elkhorn, Fulton, Gowrie, Lost Grove, Otho, and Roland townships.

51. The fifty-first representative district shall consist of:

a. Carroll county.

b. In Crawford county, Goodrich, Iowa, Milford, Nishnabotny, Stockholm, Hayes, Jackson, and West Side townships, that portion of East Boyer township lying outside the corporate limits of the city of Denison, and that portion of Otter Creek township lying outside the corporate limits of the city of Schleswig.

c. In Sac county, Sac, Wall Lake, and Coon Valley townships, and that portion of Viola township lying outside the corporate limits of the city of Wall Lake.

52. The fifty-second representative district shall consist of:

a. Buena Vista county.

b. In Sac county:

(1) The city of Wall Lake.

(2) Boyer Valley, Cedar, Clinton, Cook, Delaware, Douglas, Eden, Eureka, Jackson, Levey, Richland, and Wheeler townships.

53. The fifty-third representative district shall consist of:

a. Cherokee county.

b. In Plymouth county, Elkhorn, Fredonia, Garfield, Henry, Hungerford, Lincoln, Marion, Meadow, Remsen, and Union townships.

c. In Woodbury county:

(1) The city of Correctionville.

(2) Arlington, Banner, Concord, Floyd, Moville, Rutland, Union, and Wolf Creek townships, and that portion of Woodbury township not contained in the fifty-fourth representative district.

54. The fifty-fourth representative district in Woodbury county shall consist of:

a. Those portions of the city of Sioux City and Woodbury township bounded by a line commencing at the point Correctionville road intersects the east corporate limit of the city of Sioux City, then proceeding first south, and then in a clockwise manner, along the corporate limits of the city of Sioux City until it intersects the corporate limits of the city of Sergeant Bluff, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Sergeant Bluff until it intersects the north boundary of Liberty township, then proceeding westerly along the north boundary of Liberty township until it intersects the boundary of the state of Iowa, then proceeding northerly along the boundary of the state of Iowa until it intersects South Court street and its extension to the Missouri river, then proceeding north along South Court street and its extension until it intersects Gordon drive, then proceeding east along Gordon drive until it intersects South Westcott street, then proceeding north on South Westcott street until it intersects Correctionville road, then proceeding east along Correctionville road to the point of origin.

b. The city of Sergeant Bluff.

55. The fifty-fifth representative district shall consist of:

a. Ida county.

b. In Crawford county:

(1) The cities of Denison and Schleswig.

(2) Boyer, Charter Oak, Denison, Hanover, Morgan, Paradise, Soldier, Washington, Willow, and Union townships.

c. In Woodbury county, Grange, Grant, Lakeport, Liston, Little Sioux, Miller, Morgan, Oto, Sloan, West Fork, and Willow townships, those portions of Rock and Kedron townships lying outside the corporate limits of the city of Correctionville, and that portion of Liberty township lying outside the corporate limits of the city of Sergeant Bluff.

d. In Monona county, Cooper, Maple, and St. Clair townships.

56. The fifty-sixth representative district shall consist of:

a. Harrison county.

b. In Monona county:

(1) The city of Onawa.

(2) Ashton, Belvidere, Center, Fairview, Franklin, Grant, Jordan, Kennebec, Lake, Sherman, Sioux, Soldier, Spring Valley, West Fork, Wil-

low, and Lincoln townships.

c. In Pottawattamie county:

(1) The city of Neola.

(2) Boomer, Crescent, Hazel Dell, Neola, Norwalk, and Rockford townships.

57. The fifty-seventh representative district shall consist of:

a. The city of Shelby.

b. Shelby county.

c. In Pottawattamie county, Knox, Layton, Lincoln, Valley, Waveland, and Wright townships, and that portion of Center township lying outside the corporate limits of the city of Oakland.

d. In Cass county, Bear Grove, Brighton, Cass, Edna, Grove, Noble, Pleasant, Pymosa, Union, and Washington townships.

58. The fifty-eighth representative district shall consist of:

a. Adair county.

b. Audubon county.

c. Guthrie county.

d. In Cass county, Benton, Franklin, Grant, Lincoln, Massena, and Victoria townships.

59. The fifty-ninth representative district in Polk county shall consist of that portion of Polk county bounded by a line commencing at the point the north corporate limit of the city of Clive intersects the west boundary of Polk county, then proceeding east along the corporate limits of the city of Clive until the east corporate limit of the city of Clive intersects Hickman road, then proceeding east along Hickman road until it intersects Sixty-third street, then proceeding south along Sixty-third street until it intersects the south corporate limit of the city of Windsor Heights, then proceeding west along the corporate limits of the city of Windsor Heights until it intersects Interstate 235 and the east corporate limit of the city of West Des Moines, then proceeding west along Interstate 235 until it intersects Seventeenth street, then proceeding south along Seventeenth street until it intersects Pleasant street, then proceeding east along Pleasant street until it intersects Sixteenth street, then proceeding southerly along Sixteenth street until it intersects Ashworth road, then proceeding east along Ashworth road until it intersects Sixteenth street, then proceeding south along Sixteenth street until it intersects Grand avenue, then proceeding southwest along Grand avenue until it intersects Vine street, then proceeding west, then northwest, along Vine street until it intersects Thirty-second street, then proceeding southwest along Thirty-second street until it intersects Meadow lane, then proceeding easterly along Meadow lane until it intersects Twenty-eighth street, then proceeding south along Twenty-eighth street until it intersects Giles street, then proceeding west along Giles street until it intersects Thirty-third street, then proceeding southerly along Thirty-third street until it intersects Maple street, then proceeding west along Maple street until it intersects Thirty-fifth court, then proceeding south along Thirty-fifth court and its extension until it intersects the Union Pacific Railroad tracks, then proceeding westerly along the Union Pacific Railroad tracks until it intersects Thirty-ninth street, then proceeding north along Thirty-ninth street until it intersects Western Hills drive, then proceeding westerly along Western Hills drive until it intersects Cody drive, then proceeding west along Cody drive until it intersects Fiftieth street, then proceeding south along Fiftieth street until it intersects E.P. True parkway, then proceeding northwesterly along E.P. True parkway until it intersects Interstate 35, then proceeding north along Interstate 35 until it intersects the corporate limits of the city of Clive, then proceeding west along the corporate limits of the city of Clive until it intersects the west boundary of Polk county at One Hundred Forty-second street, then proceeding north along the boundary of Polk county to the point of origin.

60. The sixtieth representative district in Polk county shall consist of that portion of Polk county bounded by a line commencing at the point the east corporate limit of the city of West Des Moines intersects Interstate 235, then proceeding west along Interstate 235 until it intersects Seventeenth street, then proceeding south along Seventeenth street until it intersects Pleasant street, then proceeding east along Pleasant street until it intersects Sixteenth street, then proceeding southerly along Sixteenth street until it intersects Ashworth road, then proceeding east along Ashworth road until it intersects Sixteenth street, then proceeding south along Sixteenth street until it intersects Grand avenue, then proceeding southwest along Grand avenue until it intersects Vine street, then proceeding west, then northwest, along Vine street until it intersects Thirty-second street, then proceeding southwest along Thirty-second street until it intersects Meadow lane, then proceeding easterly along Meadow lane until it intersects Twenty-eighth street, then proceeding south along Twenty-eighth street until it intersects Giles street, then proceeding west along Giles street until it intersects Thirty-third street, then proceeding southerly along Thirty-third street until it intersects Maple street, then proceeding west along Maple street until it intersects Thirty-fifth court, then proceeding south along Thirty-fifth court and its extension until it intersects the Union Pacific Railroad tracks, then proceeding westerly along the Union Pacific Railroad tracks until it intersects Thirty-ninth street, then proceeding north along Thirty-ninth street until it intersects Western Hills drive, then proceeding westerly along Western Hills drive until it intersects Cody drive, then proceeding west along Cody drive until it intersects Fiftieth street, then proceeding south along Fiftieth street until it intersects E.P. True parkway, then proceeding northwesterly along E.P. True parkway until it inter-

sects Interstate 35, then proceeding north along Interstate 35 until it intersects the corporate limits of the city of Clive, then proceeding west along the corporate limits of the city of Clive until it intersects the west boundary of Polk county at Fifty-ninth street, then proceeding first south, and then in a counterclockwise manner along the boundary of Polk county until it intersects the east corporate limit of the city of West Des Moines, then proceeding northerly along the corporate limits of the city of West Des Moines to the point of origin.

61. The sixty-first representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point the west corporate limit of the city of Des Moines intersects the south boundary of Polk county, then proceeding northerly along the corporate limits of the city of Des Moines until it intersects University avenue, then proceeding east along University avenue until it intersects Forty-second street, then proceeding south along Forty-second street until it intersects Cottage Grove avenue, then proceeding east along Cottage Grove avenue until it intersects Thirty-first street, then proceeding north along Thirty-first street until it intersects University avenue, then proceeding east along University avenue until it intersects Twenty-fifth street, then proceeding south along Twenty-fifth street until it intersects School street, then proceeding west along School street until it intersects Twenty-eighth street, then proceeding south along Twenty-eighth street until it intersects Rollins avenue, then proceeding east along Rollins avenue until it intersects Twenty-sixth street, then proceeding north along Twenty-sixth street until it intersects Rollins avenue, then proceeding east along Rollins avenue until it intersects Twenty-fourth street, then proceeding south along Twenty-fourth street until it intersects Ingersoll avenue, then proceeding east along Ingersoll avenue until it intersects Seventeenth street, then proceeding southeast along Seventeenth street until it intersects Grand avenue, then proceeding west along Grand avenue until it intersects Eighteenth street, then proceeding southerly along Eighteenth street until it intersects Fleur drive, then proceeding southerly along Fleur drive until it intersects Leland avenue, then proceeding east along Leland avenue until it intersects Southwest Eighteenth street, then proceeding south along Southwest Eighteenth street until it intersects Army Post road, then proceeding east along Army Post road until it intersects Southwest Seventeenth street, then proceeding south along Southwest Seventeenth street until it intersects Amos avenue, then proceeding east along Amos avenue until it intersects Southwest Ninth street, then proceeding south along Southwest Ninth street until it intersects the Polk county boundary, then proceeding west along the Polk county boundary to the point of origin.

62. The sixty-second representative district in Polk county shall consist of those portions of the city of Des Moines and Bloomfield township bounded by a line commencing at the point the south boundary of Polk county intersects U.S. highway 69, then proceeding northwesterly along U.S. highway 69 until it intersects Southeast Fourteenth street, then proceeding northerly along Southeast Fourteenth street until it intersects East Bell avenue, then proceeding west along East Bell avenue until it intersects Southeast Fifth street, then proceeding south along Southeast Fifth street until it intersects East Broad street, then proceeding west along East Broad street until it intersects South Union street, then proceeding north along South Union street until it intersects Olinda avenue, then proceeding west along Olinda avenue until it intersects Southwest Ninth street, then proceeding southerly along Southwest Ninth street until it intersects Park avenue, then proceeding west along Park avenue until it intersects Fleur drive, then proceeding south along Fleur drive until it intersects Leland avenue, then proceeding east along Leland avenue until it intersects Southwest Eighteenth street, then proceeding south along Southwest Eighteenth street until it intersects Army Post road, then proceeding east along Army Post road until it intersects Southwest Seventeenth street, then proceeding south along Southwest Seventeenth street until it intersects Amos avenue, then proceeding east along Amos avenue until it intersects Southwest Ninth street, then proceeding south along Southwest Ninth street until it intersects the Polk county boundary, then proceeding east along the Polk county boundary to the point of origin.

63. The sixty-third representative district shall consist of:

a. That portion of the city of Urbandale in Polk county.

b. That portion of Polk county bounded by a line commencing at the point the east corporate limit of the city of Urbandale intersects the north corporate limit of the city of Des Moines, then proceeding first east, and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects the middle channel of the Des Moines river, then proceeding northwesterly along the middle channel of the Des Moines river until it intersects the corporate limits of the city of Johnston, then proceeding westerly along the corporate limits of the city of Johnston until it intersects the corporate limits of the city of Urbandale, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Urbandale to the point of origin.

64. The sixty-fourth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point the west corporate limit of the city of Des Moines intersects University avenue, then proceeding east along University avenue until it in-

tersects Forty-first street, then proceeding north along Forty-first street until it intersects Beaver avenue, then proceeding north along Beaver avenue until it intersects Franklin avenue, then proceeding east along Franklin avenue until it intersects Thirty-sixth street, then proceeding south along Thirty-sixth street until it intersects Jefferson avenue, then proceeding east along Jefferson avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Euclid avenue, then proceeding northwest along Euclid avenue until it intersects Douglas avenue, then proceeding east along Douglas avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Fleming avenue, then proceeding west along Fleming avenue until it intersects Lawnwoods drive, then proceeding north along Lawnwoods drive until it intersects Madison avenue, then proceeding west along Madison avenue until it intersects Lower Beaver road, then proceeding northwest along Lower Beaver road until it intersects the south boundary of Webster township, then proceeding east along the boundary of Webster township until it intersects the north corporate limit of the city of Des Moines, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Des Moines to the point of origin.

65. The sixty-fifth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point Lower Beaver road intersects the south boundary of Webster township, then proceeding east along the boundary of Webster township until it intersects the north corporate limit of the city of Des Moines, then proceeding easterly along the corporate limits of the city of Des Moines until it intersects North Union street, then proceeding south along North Union street until it intersects East Euclid avenue, then proceeding east along East Euclid avenue until it intersects East Fourteenth street, then proceeding south along East Fourteenth street until it intersects Arthur avenue, then proceeding west along Arthur avenue until it intersects York street, then proceeding south along York street until it intersects Thompson avenue, then proceeding west along Thompson avenue until it intersects East Ninth street, then proceeding south along East Ninth street until it intersects East Jefferson avenue, then proceeding east along East Jefferson avenue until it intersects East Twelfth street, then proceeding south along East Twelfth street until it intersects East Washington avenue, then proceeding west along East Washington avenue until it intersects Pennsylvania avenue, then proceeding south along Pennsylvania avenue until it intersects East Washington avenue, then proceeding west along East Washington avenue and its extension until it intersects the Des Moines river, then northwesterly along the Des Moines river until it intersects Sixth avenue, then proceeding southerly along Sixth avenue until it intersects Jefferson avenue, then proceeding west along Jefferson avenue until it intersects Thirteenth street, then proceeding north along Thirteenth street until it intersects Jefferson avenue, then proceeding west along Jefferson avenue until it intersects Martin Luther King Jr. parkway, then proceeding southerly along Martin Luther King Jr. parkway until it intersects Forest avenue, then proceeding west along Forest avenue until it intersects Twenty-fifth street, then proceeding south along Twenty-fifth street until it intersects University avenue, then proceeding west along University avenue until it intersects Thirty-first street, then proceeding south along Thirty-first street until it intersects Cottage Grove avenue, then proceeding west along Cottage Grove avenue until it intersects Forty-second street, then proceeding north along Forty-second street until it intersects University avenue, then proceeding east along University avenue until it intersects Forty-first street, then proceeding north along Forty-first street until it intersects Beaver avenue, then proceeding north along Beaver avenue until it intersects Franklin avenue, then proceeding east along Franklin avenue until it intersects Thirty-sixth street, then proceeding south along Thirty-sixth street until it intersects Jefferson avenue, then proceeding east along Jefferson avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Euclid avenue, then proceeding northwest along Euclid avenue until it intersects Douglas avenue, then proceeding east along Douglas avenue until it intersects Thirtieth street, then proceeding north along Thirtieth street until it intersects Fleming avenue, then proceeding west along Fleming avenue until it intersects Lawnwoods drive, then proceeding north along Lawnwoods drive until it intersects Madison avenue, then proceeding west along Madison avenue until it intersects Lower Beaver road, then proceeding northwest along Lower Beaver road to the point of origin.

66. The sixty-sixth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point Forest avenue intersects Twenty-fifth street, then proceeding south along Twenty-fifth street until it intersects School street, then proceeding west along School street until it intersects Twenty-eighth street, then proceeding south along Twenty-eighth street until it intersects Rollins avenue, then proceeding east along Rollins avenue until it intersects Twenty-sixth street, then proceeding north along Twenty-sixth street until it intersects Rollins avenue, then proceeding east along Rollins avenue until it intersects Twenty-fourth street, then proceeding south along Twenty-fourth street until it intersects Ingersoll avenue, then proceeding east along Ingersoll avenue until it intersects Seventeenth street, then

proceeding southeast along Seventeenth street until it intersects Grand avenue, then proceeding west along Grand avenue until it intersects Eighteenth street, then proceeding southerly along Eighteenth street until it intersects Fleur drive, then proceeding southerly along Fleur drive until it intersects Park avenue, then proceeding east along Park avenue until it intersects Southwest Ninth street, then proceeding northerly along Southwest Ninth street until it intersects Olinda avenue, then proceeding east along Olinda avenue until it intersects South Union street, then proceeding south along South Union street until it intersects East Broad street, then proceeding east along East Broad street until it intersects Southeast Fifth street, then proceeding north along Southeast Fifth street until it intersects East Bell avenue, then proceeding east along East Bell avenue until it intersects Southeast Fourteenth street, then proceeding northerly along Southeast Fourteenth street until it intersects the Des Moines river, then proceeding northwesterly along the Des Moines river until it intersects Court avenue, then proceeding easterly along Court avenue until it intersects East Court avenue, then proceeding easterly along East Court avenue until it intersects the Union Pacific Railroad tracks, then proceeding southeast along the Union Pacific Railroad tracks until it intersects the Iowa Interstate Railroad tracks, then proceeding east along the Iowa Interstate Railroad tracks until it intersects Southeast Fourteenth street, then proceeding south along Southeast Fourteenth street until it intersects the Union Pacific Railroad tracks, then proceeding east along the Union Pacific Railroad tracks until it intersects the Iowa Interstate Railroad tracks, then proceeding northeast along the Iowa Interstate Railroad tracks until it intersects Southeast Eighteenth street, then proceeding north along Southeast Eighteenth street until it intersects East Eighteenth street, then proceeding north along East Eighteenth street until it intersects Dean avenue, then proceeding west along Dean avenue until it intersects East Seventeenth street, then proceeding northerly along East Seventeenth street until it intersects Lyon street, then proceeding westerly along Lyon street until it intersects East Fifteenth street, then proceeding northwest along East Fifteenth street until it intersects Maple street, then proceeding easterly along Maple street until it intersects East Sixteenth street, then proceeding northwest along East Sixteenth street until it intersects East University avenue, then proceeding west along East University avenue until it intersects East Sixteenth street, then proceeding north along East Sixteenth street until it intersects Cleveland avenue, then proceeding west along Cleveland avenue until it intersects East Twelfth street, then proceeding north along East Twelfth street until it intersects East Washington avenue, then proceeding west along East Washington avenue until it intersects Pennsylvania avenue, then proceeding south along Pennsylvania avenue until it intersects East Washington avenue, then proceeding west along East Washington avenue and its extension until it intersects the Des Moines river, then proceeding northwesterly along the Des Moines river until it intersects Sixth avenue, then proceeding southerly along Sixth avenue until it intersects Jefferson avenue, then proceeding west along Jefferson avenue until it intersects Thirteenth street, then proceeding north along Thirteenth street until it intersects Jefferson avenue, then proceeding west along Jefferson avenue until it intersects Martin Luther King Jr. parkway, then proceeding southerly along Martin Luther King Jr. parkway until it intersects Forest avenue, then proceeding west along Forest avenue to the point of origin.

67. The sixty-seventh representative district in Polk county shall consist of:

a. Allen township.

b. That portion of Polk county bounded by a line commencing at the point Easton boulevard intersects the east corporate limit of the city of Des Moines, then proceeding southerly along the corporate limits of the city of Des Moines until it intersects the north corporate limit of the city of Pleasant Hill, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Pleasant Hill until it intersects the west boundary of Clay township, then proceeding south along the boundary of Clay township until it intersects the north corporate limit of the city of Pleasant Hill, then proceeding first northeast, then in a clockwise manner along the corporate limits of the city of Pleasant Hill until it intersects Northeast Twelfth avenue, then proceeding east along Northeast Twelfth avenue until it intersects the north corporate limit of the city of Pleasant Hill, then proceeding first east, then in a clockwise manner along the corporate limits of the city of Pleasant Hill until it intersects the east corporate limit of the city of Des Moines, then proceeding first south, and then in a clockwise manner along the corporate limits of the city of Des Moines until it intersects U.S. highway 69, then proceeding northwesterly along U.S. highway 69 until it intersects Southeast Fourteenth street, then proceeding northerly along Southeast Fourteenth street until it intersects the Des Moines river, then proceeding northwesterly along the Des Moines river until it intersects Court avenue, then proceeding easterly along Court avenue until it intersects East Court avenue, then proceeding easterly along East Court avenue until it intersects the Union Pacific Railroad tracks, then proceeding southeast along the Union Pacific Railroad tracks until it intersects the Iowa Interstate Railroad tracks, then proceeding east along the Iowa Interstate Railroad tracks until it intersects Southeast Fourteenth street, then proceeding south along Southeast Fourteenth street until it intersects the

Union Pacific Railroad tracks, then proceeding east along the Union Pacific Railroad tracks until it intersects the Iowa Interstate Railroad tracks, then proceeding northeast along the Iowa Interstate Railroad tracks until it intersects Southeast Eighteenth street, then proceeding north along Southeast Eighteenth street until it intersects East Eighteenth street, then proceeding north along East Eighteenth street until it intersects Dean avenue, then proceeding west along Dean avenue until it intersects East Seventeenth street, then proceeding northerly along East Seventeenth street until it intersects Lyon street, then proceeding westerly along Lyon street until it intersects East Fifteenth street, then proceeding northerly along East Fifteenth street until it intersects Interstate 235, then proceeding northeasterly along the eastbound lanes of Interstate 235 until it intersects East University avenue, then proceeding east along East University avenue until it intersects East Thirty-fourth street, then proceeding north along East Thirty-fourth street until it intersects Dubuque avenue, then proceeding west along Dubuque avenue until it intersects East Thirty-third street, then proceeding north along East Thirty-third street until it intersects Easton boulevard, then proceeding easterly along Easton boulevard to the point of origin.

68. The sixty-eighth representative district in Polk county shall consist of that portion of the city of Des Moines bounded by a line commencing at the point Easton boulevard intersects the east corporate limit of the city of Des Moines, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Des Moines until it intersects North Union street, then proceeding south along North Union street until it intersects East Euclid avenue, then proceeding east along East Euclid avenue until it intersects East Fourteenth street, then proceeding south along East Fourteenth street until it intersects Arthur avenue, then proceeding west along Arthur avenue until it intersects York street, then proceeding south along York street until it intersects Thompson avenue, then proceeding west along Thompson avenue until it intersects East Ninth street, then proceeding south along East Ninth street until it intersects East Jefferson avenue, then proceeding east along East Jefferson avenue until it intersects East Twelfth street, then proceeding south along East Twelfth street until it intersects Cleveland avenue, then proceeding east along Cleveland avenue until it intersects East Sixteenth street, then proceeding south along East Sixteenth street until it intersects East University avenue, then proceeding east along East University avenue until it intersects East Sixteenth street, then proceeding southeast along East Sixteenth street until it intersects Maple street, then proceeding westerly along Maple street until it intersects East Fifteenth street, then proceeding southeast along East Fifteenth street until it intersects Interstate 235, then proceeding northeasterly along the eastbound lanes of Interstate 235 until it intersects East University avenue, then proceeding east along East University avenue until it intersects East Thirty-fourth street, then proceeding north along East Thirty-fourth street until it intersects Dubuque avenue, then proceeding west along Dubuque avenue until it intersects East Thirty-third street, then proceeding north along East Thirty-third street until it intersects Easton boulevard, then proceeding easterly along Easton boulevard to the point of origin.

69. The sixty-ninth representative district in Polk county shall consist of:

a. Elkhart, Lincoln, and Washington townships, that portion of Franklin township lying outside the corporate limits of the city of Bondurant, and that portion of Douglas township lying outside the corporate limits of the city of Bondurant and not contained in the seventieth representative district.

b. That portion of Polk county bounded by a line commencing at the point the north corporate limit of the city of Urbandale intersects the west boundary of Polk county, then proceeding first north, and then east, along the boundary of Polk county until it intersects the west boundary of Lincoln township, then proceeding first south, and then east, along the boundary of Lincoln township until it intersects the west boundary of Douglas township, then proceeding south along the west boundary of Douglas township until it intersects the corporate limits of the city of Ankeny at Northeast One Hundred Tenth avenue, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects the north boundary of Saylor township at Northeast Seventieth avenue, then proceeding west along the north boundary of Saylor township until it intersects Northwest Second street, then proceeding south along Northwest Second street until it intersects Interstate 35/80, then proceeding east along Interstate 35/80 until it intersects the west boundary of Delaware township, then proceeding south along the boundary of Delaware township until it intersects the north corporate limit of the city of Des Moines, then proceeding westerly along the corporate limits of the city of Des Moines until it intersects the middle channel of the Des Moines river, then proceeding northwesterly along the middle channel of the Des Moines river until it intersects the corporate limits of the city of Johnston, then proceeding westerly along the corporate limits of the city of Johnston until it intersects the corporate limits of the city of Urbandale, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Urbandale to the point of origin.

70. The seventieth representative district in Polk county shall consist of those portions of

Crocker, Douglas, and Saylor townships, and the city of Ankeny, bounded by a line commencing at the point the corporate limits of the city of Ankeny intersect the boundary of Douglas township at Northeast One Hundred Tenth avenue, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects the north boundary of Saylor township at Northeast Seventieth avenue, then proceeding west along the north boundary of Saylor township until it intersects Northwest Second street, then proceeding south along Northwest Second street until it intersects Interstate 35/80, then proceeding east along Interstate 35/80 until it intersects the west boundary of Delaware township, then proceeding north, and then east, along the boundary of Delaware township until it intersects the corporate limits of the city of Ankeny, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects the west boundary of Douglas township, then proceeding north along the boundary of Douglas township until it intersects the corporate limits of the city of Ankeny, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Ankeny until it intersects the west boundary of Douglas township, then proceeding north along the boundary of Douglas township until it intersects the corporate limits of the city of Ankeny, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Ankeny to the point of origin.

71. The seventy-first representative district shall consist of:

a. In Jasper county, Fairview township.

b. In Marion county, Franklin, Pleasant Grove, Red Rock, Summit, Union, Knoxville, and Lake Prairie townships.

72. The seventy-second representative district shall consist of:

a. Lucas county.

b. Monroe county.

c. In Marion county, Dallas, Indiana, Liberty, Washington, and Clay townships.

d. In Mahaska county:

(1) Black Oak, East Des Moines, Garfield, Harrison, Jefferson, Madison, Prairie, Richland, Scott, and West Des Moines townships.

(2) That portion of Lincoln township bounded by a line commencing at the point the west corporate limit of the city of Oskaloosa intersects the boundary of Garfield township and Lincoln township, then proceeding first north, and then in a clockwise manner along the boundary of Lincoln township until it intersects the north corporate limit of the city of Oskaloosa, then proceeding first west, and then in a counterclockwise manner along the corporate limits of the city of Oskaloosa to the point of origin.

73. The seventy-third representative district shall consist of:

a. Madison county.

b. In Dallas county:

(1) The city of De Soto.

(2) Adams and Union townships.

c. In Warren county, Belmont, Jackson, Jefferson, Liberty, Otter, Palmyra, Richland, Squaw, Union, Virginia, White Breast, and White Oak townships, and that portion of Linn township lying outside the corporate limits of the city of Norwalk.

74. The seventy-fourth representative district in Warren county shall consist of:

a. The cities of Indianola and Norwalk.

b. Allen, Greenfield, and Lincoln townships.

75. The seventy-fifth representative district shall consist of:

a. In Mahaska county:

(1) The city of Oskaloosa.

(2) Adams, Cedar, Monroe, Pleasant Grove, Spring Creek, Union, and White Oak townships, and that portion of Lincoln township not contained in the seventy-second representative district.

b. In Poweshiek county:

(1) The city of Grinnell.

(2) Chester, Pleasant, Scott, Sugar Creek, Union, Washington, Grant, and Jackson townships.

76. The seventy-sixth representative district shall consist of:

a. Keokuk county.

b. In Iowa county, Dayton, Fillmore, Greene, Hilton, Iowa, Lenox, Lincoln, Pilot, Sumner, Troy, York, English, and Hartford townships.

c. In Poweshiek county, Bear Creek, Deep River, Jefferson, Lincoln, Madison, Malcom, Sheridan, and Warren townships.

d. In Tama county, Columbia, Richland, and Salt Creek townships.

77. The seventy-seventh representative district in Johnson county shall consist of:

a. The city of University Heights.

b. That portion of the city of Iowa City bounded by a line commencing at the point the corporate limits of the city of Iowa City intersect state highway 1, then proceeding northeast along state highway 1 until it intersects Mormon Trek boulevard, then proceeding northwesterly, then northerly, along Mormon Trek boulevard until it intersects the corporate limits of the city of Iowa City, then proceeding first northeast, and then in a clockwise manner along the corporate limits of the city of Iowa City until it intersects County Road W66, then proceeding southeast along County Road W66 until it intersects North Dubuque street, then proceeding southerly along North Dubuque street until it intersects Kimball road, then proceeding southeast along Kimball road until it intersects North Gilbert street, then proceeding southerly along North Gilbert street until it intersects Brown street, then proceeding east along Brown street until it intersects Pleasant street,

then proceeding south along Pleasant street until it intersects North Governor street, then proceeding south along North Governor street until it intersects South Governor street, then proceeding south along South Governor street until it intersects Bowery street, then proceeding west along Bowery street until it intersects South Lucas street, then proceeding south along South Lucas street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding east along the Iowa Interstate Railroad tracks until it intersects South Riverside drive, then proceeding south along South Riverside drive until it intersects West Benton street, then proceeding west along West Benton street until it intersects Miller avenue, then proceeding south along Miller avenue until it intersects Highway 1 west, then proceeding east along Highway 1 west until it intersects U.S. highway 6, then proceeding east along U.S. highway 6 until it intersects the Iowa river, then proceeding southerly along the Iowa river until it intersects the corporate limits of the city of Iowa City, then proceeding first southwest, and then in a clockwise manner along the corporate limits of the city of Iowa City to the point of origin.

78. The seventy-eighth representative district in Johnson county shall consist of:

a. East Lucas township.

b. That portion of the city of Iowa City bounded by a line commencing at the point the corporate limits of the city of Iowa City intersect County Road W66, then proceeding southeast along County Road W66 until it intersects North Dubuque street, then proceeding southerly along North Dubuque street until it intersects Kimball road, then proceeding southeast along Kimball road until it intersects North Gilbert street, then proceeding southerly along North Gilbert street until it intersects Brown street, then proceeding east along Brown street until it intersects Pleasant street, then proceeding south along Pleasant street until it intersects North Governor street, then proceeding south along North Governor street until it intersects South Governor street, then proceeding south along South Governor street until it intersects Bowery street, then proceeding west along Bowery street until it intersects South Lucas street, then proceeding south along South Lucas street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding east along the Iowa Interstate Railroad tracks until it intersects South Riverside drive, then proceeding south along South Riverside drive until it intersects West Benton street, then proceeding west along West Benton street until it intersects Miller avenue, then proceeding south along Miller avenue until it intersects Highway 1 west, then proceeding east along Highway 1 west until it intersects U.S. highway 6, then proceeding east along U.S. highway 6 until it intersects the Iowa river, then proceeding southerly along the Iowa river until it intersects the corporate limits of the city of Iowa City, then proceeding first east, and then in a counterclockwise manner along the corporate limits of the city of Iowa City to the point of origin.

79. The seventy-ninth representative district shall consist of:

a. Cedar county.

b. In Johnson county, Lincoln and Scott townships.

c. In Muscatine county, Goshen, Moscow, Wapsinonoc, and Wilton townships.

80. The eightieth representative district in Muscatine county shall consist of:

a. The city of Muscatine.

b. Bloomington, Fulton, Lake, Sweetland, and Montpelier townships.

81. The eighty-first representative district in Scott county shall consist of:

a. That portion of the city of Bettendorf bounded by a line commencing at the point the corporate limits of the city of Bettendorf intersect Spruce Hills drive, then proceeding easterly along Spruce Hills drive until it intersects Eighteenth street, then proceeding southwest along Eighteenth street until it intersects Middle road, then proceeding southwesterly along Middle road until it intersects the corporate limits of the city of Bettendorf, then proceeding first north, and then in a clockwise manner along the corporate limits of the city of Bettendorf to the point of origin.

b. That portion of the city of Davenport bounded by a line commencing at the point the boundary of the state of Iowa and the corporate limits of the city of Davenport intersect the extension of Carey street to the Mississippi river, then proceeding northwest along Carey street and its extension until it intersects East River drive, then proceeding easterly along East River drive until it intersects Carey avenue, then proceeding north along Carey avenue until it intersects East Sixth street, then proceeding westerly along East Sixth street until it intersects Grand avenue, then proceeding north along Grand avenue until it intersects East Seventh street, then proceeding west along East Seventh street until it intersects Farnam street, then proceeding north along Farnam street until it intersects East Eighth street, then proceeding west along East Eighth street until it intersects Iowa street, then proceeding south along Iowa street until it intersects East Seventh street, then proceeding west along East Seventh street until it intersects North Perry street, then proceeding north along North Perry street until it intersects East Twelfth street, then proceeding east along East Twelfth street until it intersects Iowa street, then proceeding north on Iowa street until it intersects East Locust street, then proceeding east along East Locust street until it intersects Carey avenue, then proceeding north along Carey avenue until it intersects East Rusholme street, then proceeding west along East Rusholme street until it intersects Tremont avenue, then

proceeding north along Tremont avenue until it intersects East Central Park avenue, then proceeding west along East Central Park avenue until it intersects Farnam street, then proceeding north along Farnam street until it intersects East Central Park avenue, then proceeding west along East Central Park avenue until it intersects West Central Park avenue, then proceeding west along West Central Park avenue until it intersects North Main street, then proceeding north along North Main street until it intersects West Columbia avenue, then proceeding east along West Columbia avenue until it intersects Sheridan street, then proceeding north on Sheridan street until it intersects West Thirtieth street, then proceeding east along West Thirtieth street until it intersects East Thirtieth street, then proceeding east along East Thirtieth street until it intersects Dubuque street, then proceeding north along Dubuque street until it intersects East Thirtieth street, then proceeding east along East Thirtieth street until it intersects Brady street, then proceeding northerly along Brady street until it intersects North Brady street, then proceeding northerly along North Brady street until it intersects East Thirty-seventh street, then proceeding west along East Thirty-seventh street until it intersects Fair avenue, then proceeding north along Fair avenue until it intersects East Kimberly road, then proceeding east along East Kimberly road until it intersects North Brady street, then proceeding north along North Brady street until it intersects East Fifty-third street, then proceeding west along East Fifty-third street until it intersects Welcome way, then proceeding north along Welcome way until it intersects East Sixty-first street, then proceeding west along East Sixty-first street until it intersects West Sixty-first street, then proceeding west along West Sixty-first street until it intersects North Ripley street, then proceeding north along North Ripley street until it intersects West Sixty-fifth street, then proceeding east along West Sixty-fifth street until it intersects East Sixty-fifth street, then proceeding east along East Sixty-fifth street until it intersects North Brady street, then proceeding north along North Brady street until it intersects U.S. highway 61, then proceeding north along U.S. highway 61 until it intersects the corporate limits of the city of Davenport, then proceeding first southeast, and then in a clockwise manner along the corporate limits of the city of Davenport to the point of origin.

82. The eighty-second representative district in Scott county shall consist of:

a. The cities of Panorama Park and Riverdale.

b. That portion of the city of Bettendorf bounded by a line commencing at the point the east corporate limit of the city of Bettendorf intersects the boundary of the state of Iowa, then proceeding first north, and then in a counterclockwise manner along the corporate limits of the city of Bettendorf until it intersects Spruce Hills drive, then proceeding easterly along Spruce Hills drive until it intersects Eighteenth street, then proceeding southwest along Eighteenth street until it intersects Middle road, then proceeding southwesterly along Middle road until it intersects the corporate limits of the city of Bettendorf, then proceeding first south, and then in a counterclockwise manner along the corporate limits of the city of Bettendorf to the point of origin.

83. The eighty-third representative district shall consist of:

a. In Clinton county:

(1) The city of Camanche.

(2) Eden, Grant, Liberty, Olive, Orange, Sharon, Spring Rock, Washington, Welton, and De Witt townships.

(3) That portion of Camanche township commencing at the point Scott county, Clinton county, and the boundary of the state of Iowa intersect, then proceeding northerly along the boundary of Camanche township until it intersects the corporate limits of the city of Camanche, then proceeding westerly along the corporate limits of the city of Camanche until it intersects the corporate limits of the city of Clinton, then proceeding westerly, then southerly, then easterly, along the boundary of Camanche township to the point of origin.

b. In Scott county, Butler, Princeton, and Le Claire townships, that portion of Winfield township lying outside the corporate limits of the city of Long Grove, that portion of Allens Grove township lying outside the corporate limits of the city of Dixon, and that portion of Pleasant Valley township not contained in the eighty-first or eighty-second representative district.

84. The eighty-fourth representative district in Scott county shall consist of:

a. That portion of the city of Davenport bounded by a line commencing at the point the north corporate limit of the city of Davenport intersects North Division street, then proceeding south along North Division street until it intersects Ridgeview drive, then proceeding southwesterly along Ridgeview drive until it intersects Northwest boulevard, then proceeding northwest along Northwest boulevard until it intersects West Seventy-sixth street, then proceeding westerly along West Seventy-sixth street and its extension until it intersects Silver creek, then proceeding southeasterly along Silver creek until it intersects West Sixtieth street, then proceeding east along West Sixtieth street until it intersects Hillandale road, then proceeding south along Hillandale road until it intersects West Fifty-ninth street, then proceeding east along West Fifty-ninth street until it intersects North Linwood avenue, then proceeding south along North Linwood avenue until it intersects West Fifty-eighth street, then proceeding east along West Fifty-eighth street until it intersects North Pine street, then proceeding south along North Pine street until it intersects West Forty-ninth street, then proceed-

ing west along West Forty-ninth street until it intersects North Fairmount street, then proceeding south along North Fairmount street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding southeast along the Iowa Interstate Railroad tracks until it intersects Duck creek, then proceeding westerly along Duck creek until it intersects the extension of North Fairmount street, then proceeding south along North Fairmount street and its extension until it intersects West Central Park avenue, then proceeding east along West Central Park avenue until it intersects North Michigan avenue, then proceeding south along North Michigan avenue until it intersects West Lombard street, then proceeding east along West Lombard street until it intersects North Clark street, then proceeding southerly along North Clark street until it intersects Waverly road, then proceeding southeasterly along Waverly road until it intersects Telegraph road, then proceeding southwest along Telegraph road until it intersects South Clark street, then proceeding south along South Clark street until it intersects Indian road, then proceeding southwest along Indian road until it intersects Diehn avenue, then proceeding south along Diehn avenue until it intersects Blackhawk creek, then proceeding southerly along Blackhawk creek until it intersects South Concord street, then proceeding southeasterly along South Concord street until it intersects the I & M Rail Link tracks, then proceeding northeast along the I & M Rail Link tracks until it intersects West River drive, then proceeding easterly along West River drive until it intersects Blackhawk creek and its extension, then proceeding southeasterly along Blackhawk creek and its extension to the center line of the main channel of Davenport harbor, then proceeding southwest along the main channel of Davenport harbor to the boundary of the state of Iowa and the corporate limits of the city of Davenport, then proceeding first southwesterly, and then in a clockwise manner along the corporate limits of the city of Davenport to the point of origin.

b. Blue Grass, Buffalo, Cleona, Hickory Grove, Liberty, Lincoln, and Sheridan townships.

c. The cities of Dixon and Long Grove.

85. The eighty-fifth representative district in Scott county shall consist of that portion of the city of Davenport bounded by a line commencing at the point the north corporate limit of the city of Davenport intersects North Division street, then proceeding south along North Division street until it intersects Ridgeview drive, then proceeding southwesterly along Ridgeview drive until it intersects Northwest boulevard, then proceeding northwest along Northwest boulevard until it intersects West Seventy-sixth street, then proceeding westerly along West Seventy-sixth street and its extension until it intersects Silver creek, then proceeding southeasterly along Silver creek until it intersects West Sixtieth street, then proceeding east along West Sixtieth street until it intersects Hillandale road, then proceeding south along Hillandale road until it intersects West Fifty-ninth street, then proceeding east along West Fifty-ninth street until it intersects North Linwood avenue, then proceeding south along North Linwood avenue until it intersects West Fifty-eighth street, then proceeding east along West Fifty-eighth street until it intersects North Pine street, then proceeding south along North Pine street until it intersects West Forty-ninth street, then proceeding west along West Forty-ninth street until it intersects North Fairmount street, then proceeding south along North Fairmount street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding southeast along the Iowa Interstate Railroad tracks until it intersects Duck creek, then proceeding westerly along Duck creek until it intersects the extension of North Fairmount street, then proceeding south along North Fairmount street and its extension until it intersects West Central Park avenue, then proceeding east along West Central Park avenue until it intersects North Michigan avenue, then proceeding south along North Michigan avenue until it intersects West Lombard street, then proceeding east along West Lombard street until it intersects North Clark street, then proceeding southerly along North Clark street until it intersects West Thirteenth street, then proceeding east along West Thirteenth street until it intersects North Lincoln avenue, then proceeding south along North Lincoln avenue until it intersects West Eleventh street, then proceeding east along West Eleventh street until it intersects North Pine street, then proceeding south along North Pine street until it intersects Glaspell street, then proceeding northeasterly along Glaspell street until it intersects Belmont avenue, then proceeding southeasterly along Belmont avenue until it intersects Telegraph road, then proceeding northeasterly along Telegraph road until it intersects the Iowa Interstate Railroad tracks, then proceeding northerly along the Iowa Interstate Railroad tracks until it intersects the extension of West Pleasant street, then proceeding east along West Pleasant street and its extension until it intersects Frisco drive, then proceeding northerly along Frisco drive until it intersects Hickory Grove road, then proceeding northwest along Hickory Grove road until it intersects West Lombard street, then proceeding easterly along West Lombard street until it intersects North Marquette street, then proceeding north along North Marquette street until it intersects Duck creek, then proceeding westerly along Duck creek until it intersects North Division street, then proceeding north along North Division street until it intersects West Thirty-seventh street, then proceeding east along West Thirty-seventh street until it intersects North Marquette street, then proceeding north along North Marquette street until it inter-

sects West Kimberly road, then proceeding east along West Kimberly road until it intersects Northwest boulevard, then proceeding south along Northwest boulevard until it intersects North Harrison street, then proceeding south along North Harrison street until it intersects West Thirty-fifth street, then proceeding east along West Thirty-fifth street until it intersects Fair avenue, then proceeding north along Fair avenue until it intersects East Thirty-seventh street, then proceeding east along East Thirty-seventh street until it intersects Fair avenue, then proceeding north along Fair avenue until it intersects East Kimberly road, then proceeding east along East Kimberly road until it intersects North Brady street, then proceeding north along North Brady street until it intersects East Fifty-third street, then proceeding west along East Fifty-third street until it intersects Welcome way, then proceeding north along Welcome way until it intersects East Sixty-first street, then proceeding west along East Sixty-first street until it intersects West Sixty-first street, then proceeding west along West Sixty-first street until it intersects North Ripley street, then proceeding north along North Ripley street until it intersects West Sixty-fifth street, then proceeding east along West Sixty-fifth street until it intersects East Sixty-fifth street, then proceeding east along East Sixty-fifth street until it intersects North Brady street, then proceeding north along North Brady street until it intersects U.S. highway 61, then proceeding north along U.S. highway 61 until it intersects the corporate limits of the city of Davenport, then proceeding first northwest, and then in a counterclockwise manner along the corporate limits of the city of Davenport to the point of origin.

86. The eighty-sixth representative district in Scott county shall consist of that portion of the city of Davenport bounded by a line commencing at the point the boundary of the state of Iowa intersects the extension of Carey street to the Mississippi river, then proceeding northwest along Carey street and its extension until it intersects East River drive, then proceeding easterly along East River drive until it intersects Carey avenue, then proceeding north along Carey avenue until it intersects East Sixth street, then proceeding westerly along East Sixth street until it intersects Grand avenue, then proceeding north along Grand avenue until it intersects East Seventh street, then proceeding west along East Seventh street until it intersects Farnam street, then proceeding north along Farnam street until it intersects East Eighth street, then proceeding west along East Eighth street until it intersects Iowa street, then proceeding south along Iowa street until it intersects East Seventh street, then proceeding west along East Seventh street until it intersects North Perry street, then proceeding north along North Perry street until it intersects East Twelfth street, then proceeding east along East Twelfth street until it intersects Iowa street, then proceeding north on Iowa street until it intersects East Locust street, then proceeding east along East Locust street until it intersects Carey avenue, then proceeding north along Carey avenue until it intersects East Rusholme street, then proceeding west along East Rusholme street until it intersects Tremont avenue, then proceeding north along Tremont avenue until it intersects East Central Park avenue, then proceeding west along East Central Park avenue until it intersects Farnam street, then proceeding north along Farnam street until it intersects East Central Park avenue, then proceeding west along East Central Park avenue until it intersects West Central Park avenue, then proceeding west along West Central Park avenue until it intersects North Main street, then proceeding north along North Main street until it intersects West Columbia avenue, then proceeding east along West Columbia avenue until it intersects Sheridan street, then proceeding north on Sheridan street until it intersects West Thirtieth street, then proceeding east along West Thirtieth street until it intersects East Thirtieth street, then proceeding east along East Thirtieth street until it intersects Dubuque street, then proceeding north along Dubuque street until it intersects East Thirtieth street, then proceeding east along East Thirtieth street until it intersects Brady street, then proceeding northerly along Brady street until it intersects North Brady street, then proceeding northerly along North Brady street until it intersects East Thirty-seventh street, then proceeding west along East Thirty-seventh street until it intersects Fair avenue, then proceeding south along Fair avenue until it intersects West Thirty-fifth street, then proceeding west along West Thirty-fifth street until it intersects North Harrison street, then proceeding north along North Harrison street until it intersects Northwest boulevard, then proceeding north along Northwest boulevard until it intersects West Kimberly road, then proceeding west along West Kimberly road until it intersects North Marquette street, then proceeding south along North Marquette street until it intersects West Thirty-seventh street, then proceeding west along West Thirty-seventh street until it intersects North Division street, then proceeding south along North Division street until it intersects Duck creek, then proceeding easterly along Duck creek until it intersects North Marquette street, then proceeding south along North Marquette street until it intersects West Lombard street, then proceeding west along West Lombard street until it intersects Hickory Grove road, then proceeding southeast along Hickory Grove road until it intersects Frisco drive, then proceeding southerly along Frisco drive until it intersects West Pleasant street, then proceeding west along West Pleasant street and its extension until it intersects the Iowa Interstate Railroad tracks, then proceeding southerly along

the Iowa Interstate Railroad tracks until it intersects Telegraph road, then proceeding southwesterly along Telegraph road until it intersects Belmont avenue, then proceeding northwesterly along Belmont avenue until it intersects Glaspell street, then proceeding southwesterly along Glaspell street until it intersects North Pine street, then proceeding north along North Pine street until it intersects West Eleventh street, then proceeding west along West Eleventh street until it intersects North Lincoln avenue, then proceeding north along North Lincoln avenue until it intersects West Thirteenth street, then proceeding west along West Thirteenth street until it intersects North Clark street, then proceeding southwesterly along North Clark street until it intersects Waverly road, then proceeding southeasterly along Waverly road until it intersects Telegraph road, then proceeding southwest along Telegraph road until it intersects South Clark street, then proceeding south along South Clark street until it intersects Indian road, then proceeding southwest along Indian road until it intersects Diehn avenue, then proceeding south along Diehn avenue until it intersects Blackhawk creek, then proceeding southerly along Blackhawk creek until it intersects South Concord street, then proceeding southeasterly along South Concord street until it intersects the I & M Rail Link tracks, then proceeding northeast along the I & M Rail Link tracks until it intersects West River drive, then proceeding easterly along West River drive until it intersects Blackhawk creek and its extension, then proceeding southeasterly along Blackhawk creek and its extension to the center line of the main channel of Davenport harbor, then proceeding southwest along the main channel of Davenport harbor to the boundary of the state of Iowa, then proceeding northeasterly along the boundary of the state of Iowa to the point of origin.

87. The eighty-seventh representative district shall consist of:

a. In Muscatine county, Cedar, Orono, and Pike townships, and those portions of Seventy-Six and Fruitland townships lying outside the corporate limits of the city of Muscatine.

b. Louisa county.

c. In Des Moines county:

(1) Concordia, Danville, Flint River, Franklin, Pleasant Grove, Union, Washington, and Yellow Springs townships.

(2) The cities of Danville, Mediapolis, Middletown, and West Burlington.

88. The eighty-eighth representative district in Des Moines county shall consist of:

a. The city of Burlington.

b. Benton, Huron, Jackson, and Tama townships.

89. The eighty-ninth representative district shall consist of:

a. Washington county.

b. In Johnson county, Fremont, Liberty, Pleasant Valley, Sharon, Union, and Washington townships, and that portion of West Lucas township lying outside the corporate limits of the cities of Coralville and University Heights.

c. In Jefferson county, Buchanan, Penn, and Walnut townships.

90. The ninetieth representative district shall consist of:

a. Van Buren county.

b. In Jefferson county:

(1) The city of Fairfield.

(2) Black Hawk, Cedar, Center, Des Moines, Liberty, Lockridge, Locust Grove, Polk, and Round Prairie townships.

c. In Wapello county, Agency, Columbia, Competine, Highland, Keokuk, Pleasant, and Washington townships, and those portions of Dahlonega and Richland townships lying outside the corporate limits of the city of Ottumwa.

91. The ninety-first representative district shall consist of:

a. Henry county.

b. In Lee county:

(1) The city of Donnellson.

(2) Cedar, Denmark, Franklin, Green Bay, Harrison, Marion, Pleasant Ridge, and West Point townships, and that portion of Washington township not contained in the ninety-second representative district.

92. The ninety-second representative district in Lee county shall consist of:

a. Des Moines, Jefferson, Madison, Montrose, Van Buren, and Jackson townships, and that portion of Charleston township lying outside the corporate limits of the city of Donnellson.

b. Those portions of the city of Fort Madison and Washington township bounded by a line commencing at the point the boundary of the state of Iowa intersects the north corporate limit of the city of Fort Madison, then proceeding first southwest, and then in a clockwise manner along the corporate limits of the city of Fort Madison to the point of origin.

93. The ninety-third representative district in Wapello county shall consist of:

a. The city of Ottumwa.

b. Adams, Cass, Center, Green, and Polk townships.

94. The ninety-fourth representative district shall consist of:

a. Wayne county.

b. Appanoose county.

c. Davis county.

95. The ninety-fifth representative district shall consist of:

a. Clarke county.

b. Decatur county.

c. In Union county:

(1) The city of Creston.

(2) Dodge, Douglas, Highland, Jones, Lincoln, New Hope, Pleasant, Spaulding, and Union townships.

96. The ninety-sixth representative district shall consist of:

a. Montgomery county.

b. Adams county.

c. Taylor county.

d. Ringgold county.

e. In Union county, Grant, Platte, and Sand Creek townships.

97. The ninety-seventh representative district shall consist of:

a. Fremont county.

b. Page county.

c. In Mills county:

(1) The city of Malvern.

(2) Anderson, Deer Creek, Rawles, Silver Creek, White Cloud, and Indian Creek townships, and that portion of Center township lying outside the corporate limits of the city of Glenwood.

98. The ninety-eighth representative district shall consist of:

a. In Mills county:

(1) The city of Glenwood.

(2) Glenwood, Ingraham, Lyons, Plattville, Saint Marys, and Oak townships.

b. In Pottawattamie county:

(1) The city of Oakland.

(2) Belknap, Carson, Garner, Grove, Hardin, James, Keg Creek, Macedonia, Silver Creek, Washington, and York townships, that portion of Minden township lying outside the corporate limits of the city of Neola, that portion of Pleasant township lying outside the corporate limits of the city of Shelby, and those portions of Garner, Lake, and Lewis townships lying outside the corporate limits of the city of Council Bluffs.

(3) That portion of the city of Council Bluffs bounded by a line commencing at the point McPherson avenue intersects the east corporate limit of the city of Council Bluffs, then proceeding first east, and then in a clockwise manner along the corporate limits of the city of Council Bluffs until it intersects Valley View drive, then proceeding northerly along Valley View drive until it intersects Madison avenue, then proceeding westerly along Madison avenue until it intersects Bennett avenue, then proceeding northeasterly along Bennett avenue until it intersects Franklin avenue, then proceeding northwesterly along Franklin avenue until it intersects Lincoln avenue, then proceeding northwesterly along Lincoln avenue until it intersects Park lane, then proceeding east along Park lane until it intersects Morningside avenue, then proceeding south along Morningside avenue until it intersects Gleason avenue, then proceeding easterly along Gleason avenue until it intersects McPherson avenue, then proceeding easterly along McPherson avenue to the point of origin.

99. The ninety-ninth representative district in Pottawattamie county shall consist of that portion of the city of Council Bluffs bounded by a line commencing at the point the corporate limits of the city of Council Bluffs intersect the boundary of the state of Iowa and the south boundary of Lake township, then proceeding first east, and then in a clockwise manner along the corporate limits of the city of Council Bluffs until it intersects McPherson avenue, then proceeding westerly along McPherson avenue until it intersects Gleason avenue, then proceeding westerly along Gleason avenue until it intersects Morningside avenue, then proceeding north along Morningside avenue until it intersects Park lane, then proceeding west along Park lane until it intersects Lincoln avenue, then proceeding southeasterly along Lincoln avenue until it intersects Franklin avenue, then proceeding westerly along Franklin avenue until it intersects Hazel street, then proceeding south along Hazel street until it intersects East Palmer avenue, then proceeding west along East Palmer avenue until it intersects West Palmer avenue, then proceeding west along West Palmer avenue until it intersects Madison avenue, then proceeding northwesterly along Madison avenue until it intersects Graham avenue east, then proceeding southerly along Graham avenue east until it intersects Graham avenue west, then proceeding southwesterly along Graham avenue west until it intersects Tostevin street, then proceeding south along Tostevin street until it intersects Highway 375, then proceeding northwest along Highway 375 until it intersects Sixteenth avenue, then proceeding west along Sixteenth avenue until it intersects South Seventh street, then proceeding south along South Seventh street until it intersects Twentieth avenue, then proceeding west along Twentieth avenue until it intersects South Eleventh street, then proceeding south along South Eleventh street until it intersects Twenty-first avenue, then proceeding west along Twenty-first avenue until it intersects South Thirteenth street, then proceeding south along South Thirteenth street until it intersects Twenty-third avenue, then proceeding west along Twenty-third avenue until it intersects Indian creek, then proceeding north along Indian creek until it intersects Sixteenth avenue, then proceeding west along Sixteenth avenue until it intersects South Seventeenth street, then proceeding north along South Seventeenth street until it intersects Ninth avenue, then proceeding west along Ninth avenue until it intersects South Twenty-first street, then proceeding north along South Twenty-first street until it intersects Third avenue, then proceeding west along Third avenue until it intersects South Twenty-third street, then proceeding north along South Twenty-third street until it intersects West Broadway, then proceeding west along West Broadway until it intersects North Twenty-fifth street, then proceeding north along North Twenty-fifth street until it intersects Avenue I, then proceeding west along Avenue I until it intersects North Twenty-sixth street, then proceeding north along North Twenty-sixth street until it intersects

Avenue N, then proceeding east along Avenue N until it intersects North Twenty-fifth street, then proceeding north along North Twenty-fifth street until it intersects the Chicago Central and Pacific Railroad tracks, then proceeding northwesterly along the Chicago Central and Pacific Railroad tracks until it intersects the boundary of the state of Iowa, then proceeding northeasterly along the boundary of the state of Iowa to the point of origin.

100. The one hundredth representative district in Pottawattamie county shall consist of:

a. That portion of the city of Council Bluffs bounded by a line commencing at the point the Chicago Central and Pacific Railroad track intersects the boundary of the state of Iowa, then proceeding first southwesterly, and then in a counterclockwise manner along the corporate limits of the city of Council Bluffs until it intersects Fawn Park drive and Valley View drive, then proceeding northerly along Valley View drive until it intersects Madison avenue, then proceeding westerly along Madison avenue until it intersects Bennett avenue, then proceeding northeasterly along Bennett avenue until it intersects Franklin avenue, then proceeding northwesterly along Franklin avenue until it intersects Hazel street, then proceeding south along Hazel street until it intersects East Palmer avenue, then proceeding west along East Palmer avenue until it intersects West Palmer avenue, then proceeding west along West Palmer avenue until it intersects Madison avenue, then proceeding northwesterly along Madison avenue until it intersects Graham avenue east, then proceeding southerly along Graham avenue east until it intersects Graham avenue west, then proceeding southwesterly along Graham avenue west until it intersects Tostevin street, then proceeding south along Tostevin street until it intersects Highway 375, then proceeding northwest along Highway 375 until it intersects Sixteenth avenue, then proceeding west along Sixteenth avenue until it intersects South Seventh street, then proceeding south along South Seventh street until it intersects Twentieth avenue, then proceeding west along Twentieth avenue until it intersects South Eleventh street, then proceeding south along South Eleventh street until it intersects Twenty-first avenue, then proceeding west along Twenty-first avenue until it intersects South Thirteenth street, then proceeding south along South Thirteenth street until it intersects Twenty-third avenue, then proceeding west along Twenty-third avenue until it intersects Indian creek, then proceeding north along Indian creek until it intersects Sixteenth avenue, then proceeding west along Sixteenth avenue until it intersects South Seventeenth street, then proceeding north along South Seventeenth street until it intersects Ninth avenue, then proceeding west along Ninth avenue until it intersects South Twenty-first street, then proceeding north along South Twenty-first street until it intersects Third avenue, then proceeding west along Third avenue until it intersects South Twenty-third street, then proceeding north along South Twenty-third street until it intersects West Broadway, then proceeding west along West Broadway until it intersects North Twenty-fifth street, then proceeding north along North Twenty-fifth street until it intersects Avenue I, then proceeding west along Avenue I until it intersects North Twenty-sixth street, then proceeding north along North Twenty-sixth street until it intersects Avenue N, then proceeding east along Avenue N until it intersects North Twenty-fifth street, then proceeding north along North Twenty-fifth street until it intersects the Chicago Central and Pacific Railroad tracks, then proceeding northwesterly along the Chicago Central and Pacific Railroad tracks to the point of origin.

b. The city of Carter Lake.

[C27, 31, 35, §526-b1, -b2; C39, §**526.3, 526.4;** C46, 50, 54, 58, 62, §42.1, 42.2; C66, §41.3; C71, §41.4; C73, 75, 77, 79, 81, §41.1; 81 Acts 2d Ex, ch 1, §2]

86 Acts, ch 1238, §3; 91 Acts, ch 223, §2; 92 Acts, ch 1163, §10, 11; 2001 Acts, 1st Ex, ch 1, §2, 6; 2002 Acts, ch 1175, §79

References based on January 1, 2000, boundaries and official census maps and Redistricting Census 2000 TIGER/Line files; 2001 Acts, 1st Ex, ch 1, §5

Membership beginning in 2003; see 2001 Acts, 1st Ex, ch 1, §3

Text of §41.1, subsection 28, Code 2001, as amended by 2001 Iowa Acts, 1st Ex, ch 1, §2, appeared in 2001 Code Supplement at §41.1, subsection 28

Subsection 28 amended

41.2 Senate districts.

The state of Iowa is hereby divided into fifty senatorial districts, each composed of two of the representative districts established by section 41.1, as follows:

1. The first senatorial district shall consist of the first and second representative districts.

2. The second senatorial district shall consist of the third and fourth representative districts.

3. The third senatorial district shall consist of the fifth and sixth representative districts.

4. The fourth senatorial district shall consist of the seventh and eighth representative districts.

5. The fifth senatorial district shall consist of the ninth and tenth representative districts.

6. The sixth senatorial district shall consist of the eleventh and twelfth representative districts.

7. The seventh senatorial district shall consist of the thirteenth and fourteenth representative districts.

8. The eighth senatorial district shall consist of the fifteenth and sixteenth representative districts.

9. The ninth senatorial district shall consist of the seventeenth and eighteenth representative districts.

10. The tenth senatorial district shall consist of the nineteenth and twentieth representative districts.

11. The eleventh senatorial district shall consist of the twenty-first and twenty-second repre-

sentative districts.

12. The twelfth senatorial district shall consist of the twenty-third and twenty-fourth representative districts.

13. The thirteenth senatorial district shall consist of the twenty-fifth and twenty-sixth representative districts.

14. The fourteenth senatorial district shall consist of the twenty-seventh and twenty-eighth representative districts.

15. The fifteenth senatorial district shall consist of the twenty-ninth and thirtieth representative districts.

16. The sixteenth senatorial district shall consist of the thirty-first and thirty-second representative districts.

17. The seventeenth senatorial district shall consist of the thirty-third and thirty-fourth representative districts.

18. The eighteenth senatorial district shall consist of the thirty-fifth and thirty-sixth representative districts.

19. The nineteenth senatorial district shall consist of the thirty-seventh and thirty-eighth representative districts.

20. The twentieth senatorial district shall consist of the thirty-ninth and fortieth representative districts.

21. The twenty-first senatorial district shall consist of the forty-first and forty-second representative districts.

22. The twenty-second senatorial district shall consist of the forty-third and forty-fourth representative districts.

23. The twenty-third senatorial district shall consist of the forty-fifth and forty-sixth representative districts.

24. The twenty-fourth senatorial district shall consist of the forty-seventh and forty-eighth representative districts.

25. The twenty-fifth senatorial district shall consist of the forty-ninth and fiftieth representative districts.

26. The twenty-sixth senatorial district shall consist of the fifty-first and fifty-second representative districts.

27. The twenty-seventh senatorial district shall consist of the fifty-third and fifty-fourth representative districts.

28. The twenty-eighth senatorial district shall consist of the fifty-fifth and fifty-sixth representative districts.

29. The twenty-ninth senatorial district shall consist of the fifty-seventh and fifty-eighth representative districts.

30. The thirtieth senatorial district shall consist of the fifty-ninth and sixtieth representative districts.

31. The thirty-first senatorial district shall consist of the sixty-first and sixty-second representative districts.

32. The thirty-second senatorial district shall consist of the sixty-third and sixty-fourth representative districts.

33. The thirty-third senatorial district shall consist of the sixty-fifth and sixty-sixth representative districts.

34. The thirty-fourth senatorial district shall consist of the sixty-seventh and sixty-eighth representative districts.

35. The thirty-fifth senatorial district shall consist of the sixty-ninth and seventieth representative districts.

36. The thirty-sixth senatorial district shall consist of the seventy-first and seventy-second representative districts.

37. The thirty-seventh senatorial district shall consist of the seventy-third and seventy-fourth representative districts.

38. The thirty-eighth senatorial district shall consist of the seventy-fifth and seventy-sixth representative districts.

39. The thirty-ninth senatorial district shall consist of the seventy-seventh and seventy-eighth representative districts.

40. The fortieth senatorial district shall consist of the seventy-ninth and eightieth representative districts.

41. The forty-first senatorial district shall consist of the eighty-first and eighty-second representative districts.

42. The forty-second senatorial district shall consist of the eighty-third and eighty-fourth representative districts.

43. The forty-third senatorial district shall consist of the eighty-fifth and eighty-sixth representative districts.

44. The forty-fourth senatorial district shall consist of the eighty-seventh and eighty-eighth representative districts.

45. The forty-fifth senatorial district shall consist of the eighty-ninth and ninetieth representative districts.

46. The forty-sixth senatorial district shall consist of the ninety-first and ninety-second representative districts.

47. The forty-seventh senatorial district shall consist of the ninety-third and ninety-fourth representative districts.

48. The forty-eighth senatorial district shall consist of the ninety-fifth and ninety-sixth representative districts.

49. The forty-ninth senatorial district shall consist of the ninety-seventh and ninety-eighth representative districts.

50. The fiftieth senatorial district shall consist of the ninety-ninth and one hundredth representative districts.

[C27, 31, 35, §526-a2; C39, §**526.2;** C46, 50, 54, 58, 62, §41.1; C66, §41.2; C71, §41.5; C73, 75, 77, 79, 81, §41.2]

Membership beginning in 2003 and effect on incumbent senators; see 2001 Acts, 1st Ex, ch 1, §3

CHAPTER 42

REDISTRICTING GENERAL ASSEMBLY AND CONGRESSIONAL DISTRICTS

42.1 Definitions.
42.2 Preparations for redistricting.
42.3 Timetable for preparation of plan.
42.4 Redistricting standards.
42.5 Temporary redistricting advisory commission.
42.6 Duties of commission.
42.7 Special arrangements for 1980 – 1981. Repealed by 80 Acts, ch 1021, §7.

42.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Chief election officer"* means the state commissioner of elections as defined by section 47.1.

2. *"Commission"* means the temporary redistricting advisory commission established pursuant to this chapter.

3. *"Federal census"* means the decennial census required by federal law to be conducted by the United States bureau of the census in every year ending in zero.

4. *"Four selecting authorities"* means:

a. The majority floor leader of the state senate.

b. The minority floor leader of the state senate.

c. The majority floor leader of the state house of representatives.

d. The minority floor leader of the state house of representatives.

5. *"Partisan public office"* means:

a. An elective or appointive office in the executive or legislative branch or in an independent establishment of the federal government.

b. An elective office in the executive or legislative branch of the government of this state, or an office which is filled by appointment and is exempt from the merit system under section 19A.3.

c. An office of a county, city or other political subdivision of this state which is filled by an election process involving nomination and election of candidates on a partisan basis.

6. *"Plan"* means a plan for legislative and congressional reapportionment drawn up pursuant to the requirements of this chapter.

7. *"Political party office"* means an elective office in the national or state organization of a political party, as defined by section 43.2.

8. *"Relative"* means an individual who is related to the person in question as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

[C81, §42.1]

42.2 Preparations for redistricting.

1. The legislative service bureau shall acquire appropriate information, review and evaluate available facilities, and develop programs and procedures in preparation for drawing congressional and legislative redistricting plans on the basis of each federal census. Funds shall be expended for the purchase or lease of equipment and materials only with prior approval of the legislative council.

2. By December 31 of each year ending in zero, the legislative service bureau shall obtain from the United States bureau of the census information regarding geographic and political units in this state for which federal census population data has been gathered and will be tabulated. The legislative service bureau shall use the data so obtained to:

a. Prepare necessary descriptions of geographic and political units for which census data will be reported, and which are suitable for use as components of legislative districts.

b. Prepare maps of counties, cities and other geographic units within the state, which may be used to illustrate the locations of legislative district boundaries proposed in plans drawn in accordance with section 42.4.

3. As soon as possible after January 1 of each year ending in one, the legislative service bureau shall obtain from the United States bureau of the census the population data needed for legislative districting which the census bureau is required to provide this state under United States Pub. L. 94-171, and shall use that data to assign a population figure based upon certified federal census data to each geographic or political unit described pursuant to subsection 2, paragraph *"a"*. Upon completing that task, the legislative service bureau shall begin the preparation of congressional and legislative districting plans as required by section 42.3.

[C81, §42.2]

42.3 Timetable for preparation of plan.

1. Not later than April 1 of each year ending in one, the legislative service bureau shall deliver to the secretary of the senate and the chief clerk of the house of representatives identical bills em-

bodying a plan of legislative and congressional districting prepared in accordance with section 42.4. It is the intent of this chapter that the general assembly shall bring the bill to a vote in either the senate or the house of representatives expeditiously, but not less than seven days after the report of the commission required by section 42.6 is received and made available to the members of the general assembly, under a procedure or rule permitting no amendments except those of a purely corrective nature. It is further the intent of this chapter that if the bill is approved by the first house in which it is considered, it shall expeditiously be brought to a vote in the second house under a similar procedure or rule.

2. If the bill embodying the plan submitted by the legislative service bureau under subsection 1 fails to be approved by a constitutional majority in either the senate or the house of representatives, the secretary of the senate or the chief clerk of the house, as the case may be, shall at once transmit to the legislative service bureau information which the senate or house may direct regarding reasons why the plan was not approved. The legislative service bureau shall prepare a bill embodying a second plan of legislative and congressional districting prepared in accordance with section 42.4, and taking into account the reasons cited by the senate or house of representatives for its failure to approve the plan insofar as it is possible to do so within the requirements of section 42.4. If a second plan is required under this subsection, the bill embodying it shall be delivered to the secretary of the senate and the chief clerk of the house of representatives not later than May 1 of the year ending in one, or twenty-one days after the date of the vote by which the senate or the house of representatives fails to approve the bill submitted under subsection 1, whichever date is later. It is the intent of this chapter that, if it is necessary to submit a bill under this subsection, the bill be brought to a vote not less than seven days after the bill is printed and made available to the members of the general assembly, in the same manner as prescribed for the bill required under subsection 1.

3. If the bill embodying the plan submitted by the legislative service bureau under subsection 2 fails to be approved by a constitutional majority in either the senate or the house of representatives, the same procedure as prescribed by subsection 2 shall be followed. If a third plan is required under this subsection, the bill embodying it shall be delivered to the secretary of the senate and the chief clerk of the house of representatives not later than June 1 of the year ending in one, or twenty-one days after the date of the vote by which the senate or the house of representatives fails to approve the bill submitted under subsection 2, whichever date is later. It is the intent of this chapter that, if it is necessary to submit a bill under this subsection, the bill be brought to a vote within the same time period after its delivery to the secretary of the senate and the chief clerk of the house of representatives as is prescribed for the bill submitted under subsection 2, but shall be subject to amendment in the same manner as other bills.

4. Notwithstanding subsections 1, 2 and 3 of this section:

a. If population data from the federal census which is sufficient to permit preparation of a congressional districting plan complying with article III, section 37 of the Constitution of the State of Iowa becomes available at an earlier time than the population data needed to permit preparation of a legislative districting plan in accordance with section 42.4, the legislative service bureau shall so inform the presiding officers of the senate and house of representatives. If the presiding officers so direct, the legislative service bureau shall prepare a separate bill establishing congressional districts and submit it separately from the bill establishing legislative districts. It is the intent of this chapter that the general assembly shall proceed to consider the congressional districting bill in substantially the manner prescribed by subsections 1, 2 and 3 of this section.

b. If the population data for legislative districting which the United States census bureau is required to provide this state under United States Pub. L. 94-171 and, if used by the legislative service bureau, the corresponding topologically integrated geographic encoding and referencing data file for that population data, is not available to the legislative service bureau on or before February 1 of the year ending in one, the dates set forth in this section shall be extended by a number of days equal to the number of days after February 1 of the year ending in one that the federal census population data and the topologically integrated geographic encoding and referencing data file for legislative districting becomes available.

[C81, §42.3]

94 Acts, ch 1179, §1, 2

42.4 Redistricting standards.

1. Legislative and congressional districts shall be established on the basis of population.

a. Senatorial and representative districts, respectively, shall each have a population as nearly equal as practicable to the ideal population for such districts, determined by dividing the number of districts to be established into the population of the state reported in the federal decennial census. Senatorial districts and representative districts shall not vary in population from the respective ideal district populations except as necessary to comply with one of the other standards enumerated in this section. In no case shall the quotient, obtained by dividing the total of the absolute values of the deviations of all district populations from the applicable ideal district population by the number of districts established, exceed one percent of the applicable ideal district population. No senatorial district shall have a population which

exceeds that of any other senatorial district by more than five percent, and no representative district shall have a population which exceeds that of any other representative district by more than five percent.

b. Congressional districts shall each have a population as nearly equal as practicable to the ideal district population, derived as prescribed in paragraph *"a"* of this subsection. No congressional district shall have a population which varies by more than one percent from the applicable ideal district population, except as necessary to comply with article III, section 37 of the Constitution of the State of Iowa.

c. If a challenge is filed with the supreme court alleging excessive population variance among districts established in a plan adopted by the general assembly, the general assembly has the burden of justifying any variance in excess of one percent between the population of a district and the applicable ideal district population.

2. To the extent consistent with subsection 1, district boundaries shall coincide with the boundaries of political subdivisions of the state. The number of counties and cities divided among more than one district shall be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions shall be divided before the less populous, but this statement does not apply to a legislative district boundary drawn along a county line which passes through a city that lies in more than one county.

3. Districts shall be composed of convenient contiguous territory. Areas which meet only at the points of adjoining corners are not contiguous.

4. It is preferable that districts be compact in form, but the standards established by subsections 1, 2 and 3 take precedence over compactness where a conflict arises between compactness and these standards. In general, compact districts are those which are square, rectangular or hexagonal in shape to the extent permitted by natural or political boundaries. When it is necessary to compare the relative compactness of two or more districts, or of two or more alternative districting plans, the tests prescribed by paragraphs *"b"* and *"c"* of this subsection shall be used. Should the results of these two tests be contradictory, the standard referred to in paragraph *"b"* of this subsection shall be given greater weight than the standard referred to in paragraph *"c"* of this subsection.

a. As used in this subsection:

(1) *"Population data unit"* means a civil township, election precinct, census enumeration district, census city block group, or other unit of territory having clearly identified geographic boundaries and for which a total population figure is included in or can be derived directly from certified federal census data.

(2) The *"geographic unit center"* of a population data unit is that point approximately equidistant from the northern and southern extremities, and also approximately equidistant from the eastern and western extremities, of a population data unit. This point shall be determined by visual observation of a map of the population data unit, unless it is otherwise determined within the context of an appropriate coordinate system developed by the federal government or another qualified and objective source and obtained for use in this state with prior approval of the legislative council.

(3) The *"x"* co-ordinate of a point in this state refers to the relative location of that point along the east-west axis of the state. Unless otherwise measured within the context of an appropriate co-ordinate system obtained for use as permitted by subparagraph 2 of this paragraph, the "x" co-ordinate shall be measured along a line drawn due east from a due north and south line running through the point which is the northwestern extremity of the state of Iowa, to the point to be located.

(4) The *"y"* co-ordinate of a point in this state refers to the relative location of that point along the north-south axis of the state. Unless otherwise measured within the context of an appropriate co-ordinate system obtained for use as permitted by subparagraph (2) of this paragraph, the "y" co-ordinate shall be measured along a line drawn due south from the northern boundary of the state or the eastward extension of that boundary, to the point to be located.

b. The compactness of a district is greatest when the length of the district and the width of the district are equal. The measure of a district's compactness is the absolute value of the difference between the length and the width of the district.

(1) In measuring the length and the width of a district by means of electronic data processing, the difference between the "x" co-ordinates of the easternmost and the westernmost geographic unit centers included in the district shall be compared to the difference between the "y" co-ordinates of the northernmost and southernmost geographic unit centers included in the district.

(2) To determine the length and width of a district by manual measurement, the distance from the northernmost point or portion of the boundary of a district to the southernmost point or portion of the boundary of the same district and the distance from the westernmost point or portion of the boundary of the district to the easternmost point or portion of the boundary of the same district shall each be measured. If the northernmost or southernmost portion of the boundary, or each of these points, is a part of the boundary running due east and west, the line used to make the measurement required by this paragraph shall either be drawn due north and south or as nearly so as the configuration of the district permits. If the easternmost or westernmost portion of the boundary, or each of these points, is a part of the boundary running due north and south, a similar procedure

shall be followed. The lines to be measured for the purpose of this paragraph shall each be drawn as required by this paragraph, even if some part of either or both lines lies outside the boundaries of the district which is being tested for compactness.

(3) The absolute values computed for individual districts under this paragraph may be cumulated for all districts in a plan in order to compare the overall compactness of two or more alternative districting plans for the state, or for a portion of the state. However, it is not valid to cumulate or compare absolute values computed under subparagraph (1) with those computed under subparagraph (2) of this paragraph.

c. The compactness of a district is greatest when the ratio of the dispersion of population about the population center of the district to the dispersion of population about the geographic center of the district is one to one, the nature of this ratio being such that it is always greater than zero and can never be greater than one to one.

(1) The population dispersion about the population center of a district, and about the geographic center of a district, is computed as the sum of the products of the population of each population data unit included in the district multiplied by the square of the distance from that geographic unit center to the population center or the geographic center of the district, as the case may be. The geographic center of the district is defined by averaging the locations of all geographic unit centers which are included in the district. The population center of the district is defined by computing the population-weighted average of the "x" co-ordinates and "y" co-ordinates of each geographic unit center assigned to the district, it being assumed for the purpose of this calculation that each population data unit possesses uniform density of population.

(2) The ratios computed for individual districts under this paragraph may be averaged for all districts in a plan in order to compare the overall compactness of two or more alternative districting plans for the state, or for a portion of the state.

5. No district shall be drawn for the purpose of favoring a political party, incumbent legislator or member of Congress, or other person or group, or for the purpose of augmenting or diluting the voting strength of a language or racial minority group. In establishing districts, no use shall be made of any of the following data:

a. Addresses of incumbent legislators or members of Congress.

b. Political affiliations of registered voters.

c. Previous election results.

d. Demographic information, other than population head counts, except as required by the Constitution and the laws of the United States.

6. In order to minimize electoral confusion and to facilitate communication within state legislative districts, each plan drawn under this section shall provide that each representative district is wholly included within a single senatorial district and that, so far as possible, each representative and each senatorial district shall be included within a single congressional district. However, the standards established by subsections 1 through 5 shall take precedence where a conflict arises between these standards and the requirement, so far as possible, of including a senatorial or representative district within a single congressional district.

7. Each bill embodying a plan drawn under this section shall provide that any vacancy in the general assembly which takes office in the year ending in one, occurring at a time which makes it necessary to fill the vacancy at a special election held pursuant to section 69.14, shall be filled from the same district which elected the senator or representative whose seat is vacant.

8. Each bill embodying a plan drawn under this section shall include provisions for election of senators to the general assemblies which take office in the years ending in three and five, which shall be in conformity with article III, section 6 of the Constitution of the State of Iowa. With respect to any plan drawn for consideration in the year 2001, those provisions shall be substantially as follows:

a. Each odd-numbered senatorial district shall elect a senator in 2002 for a four-year term commencing in January 2003. If an incumbent senator who was elected to a four-year term which commenced in January 2001, or was subsequently elected to fill a vacancy in such a term, is residing in an odd-numbered senatorial district on February 1, 2002, that senator's term of office shall be terminated on January 1, 2003.

b. Each even-numbered senatorial district shall elect a senator in 2004 for a four-year term commencing in January 2005.

(1) If one and only one incumbent state senator is residing in an even-numbered senatorial district on February 1, 2002, and that senator meets all of the following requirements, the senator shall represent the district in the senate for the Eightieth General Assembly:

(a) The senator was elected to a four-year term which commenced in January 2001 or was subsequently elected to fill a vacancy in such a term.

(b) The senatorial district in the plan which includes the place of residence of the state senator on the date of the senator's last election to the senate is the same as the even-numbered senatorial district in which the senator resides on February 1, 2002, or is contiguous to such even-numbered senatorial district and the senator's declared residence as of February 1, 2002, was within the district from which the senator was last elected. Areas which meet only at the points of adjoining corners are not contiguous.

The secretary of state shall prescribe a form to be completed by all senators to declare their resi-

dences as of February 1, 2002. The form shall be filed with the secretary of state no later than five p.m. on February 1, 2002.

(2) Each even-numbered senatorial district to which subparagraph (1) of this paragraph is not applicable shall elect a senator in 2002 for a two-year term commencing in January 2003. However, if more than one incumbent state senator is residing in an even-numbered senatorial district on February 1, 2002, and, on or before February 15, 2002, all but one of the incumbent senators resigns from office effective no later than January 1, 2003, the remaining incumbent senator shall represent the district in the senate for the Eightieth General Assembly. A copy of the resignation must be filed in the office of the secretary of state no later than five p.m. on February 15, 2002.

[C81, §42.4]

90 Acts, ch 1244, §1; 94 Acts, ch 1042, §1; 94 Acts, ch 1179, §3

42.5 Temporary redistricting advisory commission.

1. Not later than February 15 of each year ending in one, a five member temporary redistricting advisory commission shall be established as provided by this section. The commission's only functions shall be those prescribed by section 42.6.

a. Each of the four selecting authorities shall certify to the chief election officer the authority's appointment of a person to serve on the commission. The certifications may be made at any time after the majority and minority floor leaders have been selected for the general assembly which takes office in the year ending in one, even though that general assembly's term of office has not actually begun.

b. Within thirty days after the four selecting authorities have certified their respective appointments to the commission, but in no event later than February 15 of the year ending in one, the four commission members so appointed shall select, by a vote of at least three members, and certify to the chief election officer the fifth commission member, who shall serve as chairperson.

c. A vacancy on the commission shall be filled by the initial selecting authority within fifteen days after the vacancy occurs.

d. Members of the commission shall receive a per diem as specified in section 7E.6, travel expenses at the rate provided by section 70A.9, and reimbursement for other necessary expenses incurred in performing their duties under this section and section 42.6. The per diem and expenses shall be paid from funds appropriated by section 2.12.

2. No person shall be appointed to the commission who:

a. Is not an eligible elector of the state at the time of selection.

b. Holds partisan public office or political party office.

c. Is a relative of or is employed by a member of the general assembly or of the United States Congress, or is employed directly by the general assembly or by the United States Congress.

[C81, §42.5]

90 Acts, ch 1256, §23

42.6 Duties of commission.

The functions of the commission shall be as follows:

1. If, in preparation of plans as required by this chapter, the legislative service bureau is confronted with the necessity to make any decision for which no clearly applicable guideline is provided by section 42.4, the bureau may submit a written request for direction to the commission.

2. Prior to delivering any plan and the bill embodying that plan to the secretary of the senate and the chief clerk of the house of representatives in accordance with section 42.3, the legislative service bureau shall provide to persons outside the bureau staff only such information regarding the plan as may be required by policies agreed upon by the commission. This subsection does not apply to population data furnished to the legislative service bureau by the United States bureau of the census.

3. Upon each delivery by the legislative service bureau to the general assembly of a bill embodying a plan, pursuant to section 42.3, the commission shall at the earliest feasible time make available to the public the following information:

a. Copies of the bill delivered by the legislative service bureau to the general assembly.

b. Maps illustrating the plan.

c. A summary of the standards prescribed by section 42.4 for development of the plan.

d. A statement of the population of each district included in the plan, and the relative deviation of each district population from the ideal district population.

4. Upon the delivery by the legislative service bureau to the general assembly of a bill embodying an initial plan, as required by section 42.3, subsection 1, the commission shall:

a. As expeditiously as reasonably possible, schedule and conduct at least three public hearings, in different geographic regions of the state, on the plan embodied in the bill delivered by the legislative service bureau to the general assembly.

b. Following the hearings, promptly prepare and submit to the secretary of the senate and the chief clerk of the house a report summarizing information and testimony received by the commission in the course of the hearings. The commission's report shall include any comments and conclusions which its members deem appropriate on

the information and testimony received at the hearings, or otherwise presented to the commission.

[C81, §42.6]

42.7 Special arrangements for 1980 – 1981. Repealed by 80 Acts, ch 1021, § 7.

CHAPTER 43

PARTISAN NOMINATIONS — PRIMARY ELECTION

See also definitions in §39.3

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43.1 Primary election construed.

The primary election required by this chapter shall be construed to be an election by the members of various political parties for the purpose of placing in nomination candidates for public office.

[S13, §1087-a2; C24, 27, 31, 35, 39, §**527;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.1]

43.2 Definitions.

The term *"political party"* shall mean a party which, at the last preceding general election, cast for its candidate for president of the United States or for governor, as the case may be, at least two percent of the total vote cast for all candidates for that office at that election. It shall be the responsibility of the state commissioner to determine whether any organization claiming to be a political party qualifies as such under the foregoing definition.

A political organization which is not a "political party" within the meaning of this section may nominate candidates and have the names of such candidates placed upon the official ballot by proceeding under chapters 44 and 45.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

[S13, §1087-a3; C24, 27, 31, 35, 39, §**528;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.2]

2000 Acts, ch 1148, §1

Nominations by petition or nonparty organizations, §43.121

43.3 Offices affected by primary.

Candidates of all political parties for all offices which are filled at a regular biennial election by direct vote of the people shall be nominated at a primary election at the time and in the manner hereinafter directed.

[S13, §1087-a1; C24, 27, 31, 35, 39, §**529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.3]

Nomination and election of judges, chapter 46

43.4 Political party precinct caucuses.

Delegates to county conventions of political parties and party committee members shall be elected at precinct caucuses held not later than the fourth Monday in February of each even-numbered year. The date shall be at least eight days earlier than the scheduled date for any meeting, caucus or primary which constitutes the first determining stage of the presidential nominating process in any other state, territory or any other group which has the authority to select delegates in the presidential nomination. The state central committees of the political parties shall set the date for their caucuses. The county chairperson of each political party shall issue the call for the caucuses. The county chairperson shall file with the commissioner the meeting place of each precinct caucus at least seven days prior to the date of holding the caucus.

There shall be selected among those present at a precinct caucus a chairperson and a secretary who shall within seven days certify to the county central committee the names of those elected as party committee members and delegates to the county convention.

When the rules of a political party require the selection and reporting of delegates selected as part of the presidential nominating process, or the rules of a political party require the tabulation and reporting of the number of persons attending the caucus favoring each presidential candidate, it is the duty of a person designated as provided by the rules of that political party to report the results of the precinct caucus as directed by the state central committee of that political party. When the person designated to report the results of the precinct caucus reports the results, representatives of each candidate, if they so choose, may accompany the person as the results are being reported to assure that an accurate report of the proceedings is reported. If ballots are used at the precinct caucus, representatives of each candidate or other persons attending the precinct caucus may observe the tabulation of the results of the balloting.

Within fourteen days after the date of the caucus the county central committee shall certify to

the county commissioner the names of those elected as party committee members and delegates to the county convention.

The central committee of each political party shall notify the delegates and committee members so elected and certified of their election and of the time and place of holding the county convention. Such conventions shall be held either preceding or following the primary election but no later than ten days following the primary election and shall be held on the same day throughout the state.

[S13, §1087-a1; C24, 27, 31, 35, 39, §**530;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.4]

83 Acts, ch 138, §1; 88 Acts, ch 1001, §1; 89 Acts, ch 136, §2

Failure to report, criminal penalty, §39A.4

43.5 Applicable statutes.

The provisions of chapters 39, 47, 48A, 49, 50, 51, 52, 53, 56, 57, 58, 59, 61, 62 and 722 shall apply, so far as applicable, to all primary elections, except as hereinafter provided.

[S13, §1087-a1; C24, 27, 31, 35, 39, §**531;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.5]

94 Acts, ch 1169, §44

Criminal offenses, §39A.2 – 39A.5

43.6 Nomination of U. S. senators, state and county officers.

Candidates for the office of senator in the Congress of the United States, the offices listed in section 39.9, county supervisor, and the offices listed in section 39.17 shall be nominated in the year preceding the expiration of the term of office of the incumbent.

1. When a vacancy occurs in the office of senator in the Congress of the United States, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general and section 69.13 requires that the vacancy be filled for the balance of the unexpired term at a general election, candidates for the office shall be nominated in the preceding primary election if the vacancy occurs eighty-nine or more days before the date of that primary election. If the vacancy occurs less than one hundred four days before the date of that primary election, the state commissioner shall accept nomination papers for that office only until five o'clock p.m. on the seventy-fourth day before the primary election, the provisions of section 43.11 notwithstanding. If the vacancy occurs later than eighty-nine days before the date of that primary election, but not less than eighty-nine days before the date of the general election, the nominations shall be made in the manner prescribed by this chapter for filling vacancies in nominations for offices to be voted for at the general election.

2. When a vacancy occurs in the office of county supervisor or any of the offices listed in section 39.17 and more than seventy days remain in the term of office following the next general election, the office shall be filled for the balance of the unexpired term at that general election unless the vacancy has been filled by a special election called more than seventy-three days before the primary election. If an appointment to fill the vacancy in office is made eighty-eight or more days before the primary election and a petition requesting a special election has not been received within fourteen days after the appointment is made, candidates for the office shall be nominated at the primary election.

[R60, §674; C73, §26; C97, §30; S13, §1087-c; C24, 27, 31, 35, 39, §**532;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.6]

89 Acts, ch 136, §3; 94 Acts, ch 1180, §2; 97 Acts, ch 170, §2

Vacancies filled by governor, §69.8(1, 2)

43.7 Time of holding.

The primary election by all political parties shall be held at the usual voting places of the several precincts on the first Tuesday after the first Monday in June in each even-numbered year.

[S13, §1087-a4; C24, 27, 31, 35, 39, §**533;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.7]

43.8 State commissioner to furnish blanks.

The state commissioner shall, at state expense, furnish blank nomination papers, in the form provided in this chapter, to any eligible elector who desires to petition for the nomination of any candidate, or to any person who intends to be a candidate, for any office for which nomination papers are required to be filed in the state commissioner's office.

[S13, §1087-a11; C24, 27, 31, 35, 39, §**534;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.8; 81 Acts, ch 34, §1]

43.9 Commissioner to furnish blanks.

The commissioner shall, at county expense, perform the duty specified in section 43.8, as to all offices for which nomination papers are required to be filed in the commissioner's office.

[S13, §1087-a11; C24, 27, 31, 35, 39, §**535;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.9]

43.10 Blanks furnished by others.

Blank nomination papers which are in form substantially as provided by this chapter may be used even though not furnished by the state commissioner or commissioner.

[C24, 27, 31, 35, 39, §**536;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.10]

43.11 Filing of nomination papers.

Nomination papers in behalf of a candidate shall be filed:

1. For an elective county office, in the office of the county commissioner not earlier than ninety-

two days nor later than five o'clock p.m. on the sixty-ninth day before the day fixed for holding the primary election.

2. For United States senator, for an elective state office, for representative in Congress, and for member of the general assembly, in the office of the state commissioner not earlier than ninety-nine days nor later than five o'clock p.m. on the eighty-first day before the day fixed for holding the primary election.

[S13, §1087-a10; C24, 27, 31, 35, 39, §**537;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.11]

88 Acts, ch 1119, §2; 89 Acts, ch 136, §4

43.12 Noting time of filing.

The officer receiving nomination papers for filing shall endorse thereon the day, and time of day, of filing.

[C24, 27, 31, 35, 39, §**538;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.12]

43.13 Failure to file nomination papers.

The name of a candidate for any office named in section 43.11 shall not be printed on the official primary ballot of the candidate's party unless nomination papers are filed as therein provided except as otherwise permitted by section 43.23.

[S13, §1087-a10; C24, 27, 31, 35, 39, §**539;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.13]

43.14 Form of nomination papers.

1. Nomination papers shall include a petition and an affidavit of candidacy. All nomination petitions shall be eight and one-half by eleven inches in size and in substantially the form prescribed by the state commissioner of elections. They shall include or provide spaces for the following information:

a. A statement identifying the signers of the petition as eligible electors of the appropriate county or legislative district and of the state.

b. The name of the candidate nominated by the petition.

c. For nomination petitions for candidates for the general assembly, a statement that the residence of the candidate is within the appropriate legislative district, or if that is not true, that the candidate will reside there within sixty days before the election. For other offices, a statement of the name of the county where the candidate resides.

d. The political party with which the candidate is a registered voter.

e. The office sought by the candidate, including the district number, if any.

f. The date of the primary election for which the candidate is nominated.

Signatures on a petition page shall be counted only if the required information is written or printed at the top of the page. Nomination papers on behalf of candidates for seats in the general assembly need only designate the number of the senatorial or representative district, as appropriate, and not the county or counties, in which the candidate and the petitioners reside. A signature line shall not be counted if the line lacks the signature of the eligible elector and the signer's address and city. The person examining the petition shall mark any deficiencies on the petition and affidavit.

2. Signed nomination petitions and the signed and notarized affidavit of candidacy shall not be altered to correct deficiencies noted during examination. If the nomination petition lacks a sufficient number of acceptable signatures, the nomination petition shall be rejected and shall be returned to the candidate.

The nomination papers shall be rejected if the affidavit lacks any of the following:

a. The candidate's name.

b. The name of the office sought, including the district, if any.

c. The political party name.

d. The signature of the candidate.

e. The signature of a notary public or other officer empowered to witness oaths.

The candidate may replace a deficient affidavit with a corrected affidavit only if the replacement affidavit is filed before the filing deadline. The candidate may resubmit a nomination petition that has been rejected by adding a sufficient number of pages or signatures to correct the deficiency. A nomination petition and affidavit filed to replace rejected nomination papers shall be filed together before the deadline for filing.

[S13, §1087-a10; C24, 27, 31, 35, 39, §**540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.14]

91 Acts, ch 129, §1; 94 Acts, ch 1180, §3; 2002 Acts, ch 1134, §5, 115

Oaths; see chapter 63A

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section stricken and rewritten

43.15 Requirements in signing.

The following requirements shall be observed in the signing and preparation of nomination blanks:

1. A signer may sign nomination papers for more than one candidate for the same office, and the signature is not invalid solely because the signer signed nomination papers for one or more other candidates for the office.

2. Each signer shall add the signer's residence, with street and number, if any, and the date of signing.

3. All signers, for all nominations, of each separate part of a nomination paper, shall reside in the same county, representative or senatorial district for members of the general assembly. In counties where the supervisors are elected from districts, signers of nomination petitions for supervisor candidates shall reside in the supervisor district the candidate seeks to represent.

4. When more than one sheet is used, the

sheets shall be neatly arranged and securely fastened together before filing, and shall be considered one nomination petition.

5. Only one candidate shall be petitioned for or nominated in the same nomination paper.

[S13, §1087-a10; C24, 27, 31, 35, 39, §**541;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.15]

89 Acts, ch 136, §5, 6; 2002 Acts, ch 1134, §6, 115

2002 amendment to subsection 4 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 4 amended

43.16 Return of papers, additions not allowed.

After a nomination paper has been filed, it shall not be returned to the person who has filed the paper, nor shall any signature or other information be added to the nomination paper.

A person who has filed nomination petitions with the state commissioner may withdraw as a candidate not later than the seventy-sixth day before the primary election by notifying the state commissioner in writing.

A person who has filed nomination papers with the commissioner may withdraw as a candidate not later than the sixty-seventh day before the primary election by notifying the commissioner in writing.

The name of a candidate who has withdrawn or died at a time in accordance with this section shall be omitted from the certificate furnished by the state commissioner under section 43.22 and omitted from the primary election ballot.

[S13, §1087-a10; C24, 27, 31, 35, 39, §**542;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.16]

86 Acts, ch 1224, §1; 89 Acts, ch 136, §7

Withdrawal of candidacy, §43.76, 44.9

43.17 Affidavit to nomination papers. Repealed by 86 Acts, ch 1224, § 39.

43.18 Affidavit of candidacy.

Each candidate shall complete and file a signed, notarized affidavit of candidacy. The affidavit shall be in the form prescribed by the secretary of state and shall include the following information:

1. The candidate's name in the form the candidate wants it to appear on the ballot.

2. The candidate's home address.

3. The name of the county in which the candidate resides.

4. The political party with which the candidate is registered to vote.

5. The office sought by the candidate, and the district the candidate seeks to represent, if any.

6. A declaration that if the candidate is nominated and elected the candidate will qualify by taking the oath of office.

7. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 56.2, subsection 5. This subsection shall not apply to candidates for federal office.

8. A statement that the candidate is aware of the prohibition in section 43.20 against being a candidate for more than one office appearing on the primary election ballot.

9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

[S13, §1087-a10; C24, 27, 31, 35, 39, §**544;** C46, 50, 54, 58, 62, 66, 71, 73, §43.18; C75, §43.18, 56.5(4); C77, 79, 81, §43.18; 81 Acts, ch 35, §16]

90 Acts, ch 1238, §2; 91 Acts, ch 129, §2, 3; 94 Acts, ch 1023, §77; 94 Acts, ch 1180, §4; 98 Acts, ch 1052, §1

43.19 Manner of filing affidavit.

The affidavit provided in section 43.18 shall be filed with the nomination papers when such papers are required; otherwise alone.

[S13, §1087-a10; C24, 27, 31, 35, 39, §**545;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.19]

43.20 Signatures required — more than one office prohibited.

1. Nomination papers shall be signed by eligible electors as follows:

a. If for governor, or United States senator, by at least one percent of the voters of the candidate's party, in each of at least ten counties of the state, and in the aggregate not less than one-half of one percent of the total vote of the candidate's party in the state, as shown by the last general election.

b. If for any other state office, by at least fifty signatures in each of at least ten counties of the state, and in the aggregate not less than one thousand signatures.

c. If for a representative in Congress, in districts composed of more than one county, by at least two percent of the voters of the candidate's party, as shown by the last general election, in each of at least one-half of the counties of the district, and in the aggregate not less than one percent of the total vote of the candidate's party in such district, as shown by the last general election. If for a representative in the general assembly, not less than fifty voters of the representative district; and if for a senator in the general assembly, not less than one hundred voters of the senatorial district.

d. If for an office to be filled by the voters of the county or for the office of county supervisor elected from a district within the county, by at least two percent of the party vote in the county or supervisor district, as shown by the last general election,

or by at least one hundred persons, whichever is less.

2. In each of the above cases, the vote to be taken for the purpose of computing the percentage shall be the vote cast for president of the United States or for governor, as the case may be.

3. No candidate for public office shall cause nomination papers to remain filed in the office of the state commissioner or the commissioner on the last day for filing nomination papers, for more than one office to be filled at the primary election.

4. Any candidate for public office, to be voted for at a primary election, who has filed nomination papers for more than one office shall, not later than the final date for filing, notify the state commissioner or the commissioner by affidavit, for which office the person elects to be a candidate, which in no case shall be more than one. In the event no such election is made by such date by the candidate, the state commissioner shall not certify the person's name to be placed on the ballot for any office nor shall the commissioner place the person's name on the ballot in any county.

[S13, §1087-a10; C24, 27, 31, 35, 39, §**546;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.20]

88 Acts, ch 1119, §3, 4

43.21 Township office.

The name of a candidate for a township office shall be printed on the official primary ballot of the candidate's party if the candidate files the candidate's personal affidavit, in the form prescribed by section 43.18, with the commissioner not earlier than ninety-two days nor later than five o'clock p.m. of the sixty-ninth day before the primary election. If before that time there is presented to the commissioner a nomination paper signed by at least ten eligible electors of the township requesting that the name of any person be placed on the primary ballot as a candidate for a township office, and the nomination paper is not accompanied by the candidate's personal affidavit, the commissioner shall advise the candidate that such an affidavit is required before the candidate's name may be placed on the ballot.

[S13, §1087-a10; C24, 27, 31, 35, 39, §**547;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.21]

89 Acts, ch 136, §8

43.22 Nominations certified.

The state commissioner shall, at least sixty-nine days before a primary election, furnish to the commissioner of each county a certificate under the state commissioner's hand and seal, which certificate shall show:

1. The name and post-office address of each person for whom a nomination paper has been filed in the state commissioner's office, and for whom the voters of said county have the right to vote at said election.

2. The office for which such person is a candidate.

3. The political party from which such person seeks a nomination.

[S13, §1087-a12; C24, 27, 31, 35, 39, §**548;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.22]

89 Acts, ch 136, §9

43.23 Death or withdrawal of primary candidate.

1. If a person who has filed nomination papers with the state commissioner as a candidate in a primary election dies or withdraws up to the seventy-sixth day before the primary election, the appropriate convention or central committee of that person's political party may designate one additional primary election candidate for the nomination that person was seeking, if the designation is submitted to the state commissioner in writing by five o'clock p.m. on the seventy-first day before the date of the primary election. The name of any candidate so submitted shall be included in the appropriate certificate or certificates furnished by the state commissioner under section 43.22.

2. If a person who has filed nomination papers with the commissioner as a candidate in a primary election dies or withdraws up to the sixty-seventh day before the primary election, the appropriate convention or central committee of that person's political party may designate one additional primary election candidate for the nomination that person was seeking, if the designation is submitted to the commissioner in writing by five o'clock p.m. on the sixty-third day before the primary election. The name of any candidate so submitted shall be placed on the appropriate ballot or ballots by the commissioner.

[C66, 71, 73, 75, §43.59(1); C77, 79, 81, §43.23]

86 Acts, ch 1224, §2; 89 Acts, ch 136, §10

43.24 Objections to nomination petitions or certificates of nomination.

1. *Written objections required.* Nomination petitions or certificates of nomination filed under this chapter which are apparently in conformity with the law are valid unless objection is made in writing.

Objections to the legal sufficiency of a nomination petition or certificate of nomination filed or issued under this chapter or to the eligibility of a candidate may be filed in writing by any person who would have the right to vote for the candidate for the office in question.

Objections shall be filed with the officer with whom the nomination petition or certificate of nomination was filed, and within the following time:

a. Those filed with the state commissioner, not less than seventy-four days before the date of the election.

b. Those filed with the commissioner, not less than sixty-four days before the date of the election.

c. Objections to nominations to fill vacancies at a special election held under section 69.14, un-

der which the forty-day notice of election provision applies, shall be filed with the state commissioner not less than fifteen days prior to the date set for the special election. If the forty-day notice provision does not apply, objections to nominations to fill vacancies at a special election held under section 69.14 may be filed any time prior to the date set for the special election.

d. Those filed with the city clerk under this chapter, at least thirty-six days before the city primary election.

2. *Notice of objections.*

a. When objections have been filed, notice shall be mailed within seventy-two hours by certified mail to the candidate affected, addressed to the candidate's place of residence as stated in the candidate's affidavit of candidacy or in the certificate of nomination, stating that objections have been made, the nature of the objections, and the time and place the objections will be considered.

b. If an objection is filed to a nomination to fill a vacancy at a special election held under section 69.14, under which the forty-day notice of election provision of section 69.14 does not apply, notice of the objection shall be made to the candidate by the state commissioner as soon as practicable. Under this paragraph, failure to notify a candidate of an objection to the candidate's nomination prior to the date set for the special election does not invalidate the hearing conducted under subsection 3. The hearing to an objection shall proceed as quickly as possible to expedite the special election.

3. *Hearing.* Objections filed with the state commissioner shall be considered by the secretary of state, auditor of state, and attorney general. However, if the objection is to the nomination petition, certificate of nomination, or eligibility of one or more of those officers, those officers shall be replaced, respectively, by the treasurer of state, secretary of agriculture, and lieutenant governor for the hearing.

Objections filed with the commissioner shall be considered by three elected county officers whose eligibility is not in question. The chairperson of the board of supervisors shall appoint the three elected officers unless the chairperson is ineligible, in which case, the appointments shall be made by the county auditor. In either case, a majority vote shall decide the issue.

Objections filed with the city clerk shall be considered by the mayor and clerk and one member of the council chosen by the council by ballot, and a majority decision shall be final; but if the objection is to the certificate of nomination of either of those city officials, that official shall not pass upon said objection, but that official's place shall be filled by a member of the council against whom no objection exists, chosen as above.

84 Acts, ch 1291, §1; 86 Acts, ch 1155, §1; 89 Acts, ch 136, §11; 2002 Acts, ch 1134, §7, 115

2002 amendment to subsection 1, paragraph d, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1, paragraph d amended

43.25 Correction of errors.

The commissioner shall correct any errors or omissions in the names of candidates and any other errors brought to the commissioner's knowledge before the printing of the ballots.

[S13, §1087-a12; C24, 27, 31, 35, 39, §**552;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.25]

43.26 Ballot — form.

The official primary election ballot shall be prepared, arranged, and printed substantially in the following form:

PRIMARY ELECTION BALLOT
(Name of Party) of
County of . . . . . , State of Iowa,
. . . . . Rotation (if any).
Primary election held on
the . . . . . day of June, ... (year)

FOR UNITED STATES SENATOR
(Vote for no more than one.)
☐ CANDIDATE'S NAME
☐ CANDIDATE'S NAME
☐ . . . . . .

FOR UNITED STATES
REPRESENTATIVE
(Vote for no more than one.)
☐ CANDIDATE'S NAME
☐ CANDIDATE'S NAME
☐ . . . . . .

FOR GOVERNOR
(Vote for no more than one.)
☐ CANDIDATE'S NAME
☐ CANDIDATE'S NAME
☐ . . . . . .

(Followed by other elective state officers in the order in which they appear in section 39.9 and district officers in the order in which they appear in sections 39.15 and 39.16.)

FOR BOARD OF SUPERVISORS
(Vote for no more than two.)
☐ CANDIDATE'S NAME
☐ CANDIDATE'S NAME
☐ . . . . . .
☐ . . . . . .

FOR COUNTY AUDITOR
(Vote for no more than one.)
☐ CANDIDATE'S NAME
☐ CANDIDATE'S NAME
☐ . . . . . .

(Followed by other elective county officers in the order in which they appear in section 39.17.)

FOR TOWNSHIP CLERK
(Vote for no more than one.)
☐ CANDIDATE'S NAME
☐ CANDIDATE'S NAME
☐ . . . . . .

FOR TOWNSHIP TRUSTEES
(Vote for no more than two.)
☐ CANDIDATE'S NAME
☐ CANDIDATE'S NAME
☐ CANDIDATE'S NAME
☐ . . . . . .
☐ . . . . . .

[S13, §1087-a14; C24, 27, 31, 35, 39, §**553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.26]
87 Acts, ch 221, §1; 88 Acts, ch 1119, §5; 94 Acts, ch 1180, §5; 2000 Acts, ch 1058, §57

43.27 Printing of ballots.
The ballots of each political party shall be printed in black ink, on separate sheets of paper, uniform in quality, texture, and size, with the name of the political party printed at the head of said ballots, which ballots shall be prepared by the commissioner in the same manner as for the general election, except as in this chapter provided. The commissioner may print the ballots for each political party using a different color for each party. If colored paper is used, all of the ballots for each separate party shall be uniform in color.
[S13, §1087-a13; C24, 27, 31, 35, 39, §**554;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.27]
2002 Acts, ch 1134, §8, 115
2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115
Section amended

43.28 Names of candidates — arrangement.
The names of all candidates for offices shall be arranged and printed upon the primary election ballots under the direction of the commissioner. If there are more candidates for nomination by a political party to an office than the number of persons to be elected to that office at the general election, the names of the candidates of that party for that nomination shall be rotated on the primary election ballot by the commissioner in the manner prescribed by section 49.31.
[S13, §1087-a13; C24, 27, 31, 35, 39, §**556, 557;** C46, 50, §43.28, 43.29; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.28]

43.29 Form of name on ballot.
The name of a candidate printed on the ballot shall not include parentheses, quotation marks, or any personal or professional title.
89 Acts, ch 136, §12

43.30 Sample ballots.
The commissioner shall take from the official printed ballots of each precinct a suitable number of ballots of each political party, and shall write or stamp, in red ink, near the top of each ballot, the words "sample ballot" and shall sign or stamp the commissioner's official signature thereunder. Said ballots shall be delivered to the precinct election officials, but shall not be voted, received, or counted. Said precinct election officials shall, before the opening of the polls, cause said sample ballots to be posted in and about the polling places.
The commissioner may make sample ballots available to the public. The sample ballots shall be stamped with the words "sample ballot" and a facsimile of the commissioner's signature. A reasonable fee may be charged for printing costs if a person requests multiple copies of sample ballots.
[S13, §1087-a15; C24, 27, 31, 35, 39, §**558;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.30]
89 Acts, ch 136, §13

43.31 to 43.35 Repealed by 73 Acts, ch 136, § 401.

43.36 Australian ballot.
The Australian ballot system as now used in this state, except as herein modified, shall be used at said primary election. The endorsement of the precinct election officials and the facsimile of the commissioner's signature shall appear upon the ballots as provided for general elections.
[S13, §1087-a6; C24, 27, 31, 35, 39, §**564;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.36]
Australian ballot system, chapter 49
Endorsement by precinct election officials, §49.82
Signature of commissioner, §49.57

43.37 Number of votes permitted per office.
The elector shall be permitted to vote for no more candidates for any office than there are persons to be elected to the office. If an elector votes for more persons for any office than the number permitted, the elector's ballot shall not be counted for that office.
88 Acts, ch 1119, §6

43.38 Voter confined to party ticket.
The elector shall be allowed to vote for candidates for nomination on the ballot of the party with which the elector is registered as affiliated, and shall receive no other ballot. The voter shall return the ballot, folded, to one of the precinct election officials who shall deposit it in the ballot box.

[S13, §1087-a6; C24, 27, 31, 35, 39, §**566;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.38]

43.39 Ballot for another party's candidate.

If any primary elector write upon the elector's ticket the name of any person who is a candidate for the same office upon some other party ticket than that upon which the candidate's name shall be so written, such ballot shall be so counted for such person only as a candidate of the party upon whose ballot the candidate's name is written, and shall in no case be counted for such person as a candidate upon any other ticket.

[S13, §1087-a6; C24, 27, 31, 35, 39, §**567;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.39]

43.40 Repealed by 73 Acts, ch 136, § 401.

43.41 Change or declaration of party affiliation before primary.

Any registered voter who desires to change or declare a political party affiliation may, before the close of registration for the primary election, file a written declaration stating the change of party affiliation with the county commissioner of registration who shall enter a notation of such change on the registration records.

[S13, §1087-a8; C24, 27, 31, 35, 39, §**569;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.41]

94 Acts, ch 1169, §64

43.42 Change or declaration of party affiliation at polls.

Any registered voter may change or declare a party affiliation at the polls on election day and shall be entitled to vote at any primary election. Each voter doing so shall indicate the voter's change or declaration of party affiliation on the voter's declaration of eligibility affidavit.

Each change or declaration of a registered voter's party affiliation so received shall be reported by the precinct election officials to the county commissioner of registration who shall enter a notation of the change on the registration records.

[S13, §1087-a8, -a9; C24, 27, 31, 35, 39, §**570, 572;** C46, 50, 54, 58, 62, 66, 71, 73, §43.42; C75, §43.42, 43.44; C77, 79, 81, §43.42]

91 Acts, ch 129, §4; 92 Acts, ch 1163, §12; 94 Acts, ch 1169, §64

43.43 Voter's declaration of eligibility.

Each person voting at a primary election shall sign a declaration of eligibility which shall be in substantially the following form:

I do solemnly swear or affirm that I am a resident of the ..... precinct, ... ward or township, city of ....., county of ....., Iowa.

I am a registered voter. I have not voted and will not vote in any other precinct in this election.

I am affiliated with the ..... party. If my current voter registration record indicates another party affiliation or no party affiliation, I swear or affirm that I have in good faith changed my previously declared party affiliation, or declared my party affiliation, and now desire to be a member of the party indicated above.

.....
Signature of voter

.....
Address

(. . . .) .....
Telephone

Approved:

....
Election board member Date

91 Acts, ch 129, §5; 94 Acts, ch 1169, §64

43.44 Repealed by 75 Acts, ch 81, § 154.

43.45 Canvass of votes.

1. Upon the closing of the polls the precinct election officials shall immediately publicly canvass the vote. The canvass shall be conducted using the procedures established in subsection 2 or 3, whichever is appropriate for the voting system used in the precinct.

2. In precincts where paper ballots are used, precinct election officials shall do all of the following:

a. Place the ballots of the several political parties in separate piles.

b. Separately count the ballots of each party, and make the correct entries thereof on the tally sheets.

c. Certify to the number of votes cast upon the ticket of each political party for each candidate for each office.

d. Place the ballots cast on behalf of each of the parties in separate envelopes. Seal each envelope and place the signature of all board members of the precinct across the seal of the envelope so that it cannot be opened without breaking the seal.

e. On the outside of each envelope enter the number of ballots cast by each party in the precinct and contained in the envelope.

f. Seal the tally sheets and certificates of the precinct election officials in an envelope on the

outside of which are written or printed the names of the several political parties with the names of the candidates for the different offices under their party name, and opposite each candidate's name enter the number of votes cast for such candidate in the precinct.

g. Enter on the envelope the total number of voters of each party who cast ballots in the precinct.

h. Communicate the results in the manner required by section 50.11, to the commissioner of the county in which the polls are located, who shall remain on duty until the results are communicated to the commissioner from each polling place in the county.

3. In precincts where voting machines are used, precinct election officials shall do all of the following:

a. Close the machines to prevent additional voting, and print the results for the precinct.

b. Tabulate all write-in votes. If necessary, add the votes, including write-in votes, from all machines to obtain the total number of votes cast in the precinct by the members of each political party for each office on the ballot.

c. Put any forms used by voters to cast write-in votes in an envelope with one copy of the printed results from each voting machine. Seal the envelope and place the signature of all board members of the precinct across the seal of the envelope so that it cannot be opened without breaking the seal.

d. On the outside of the envelope enter the number of voters from each party in the precinct. Report the number of votes cast for each office by the voters of each political party. A copy of the printed tape from the voting machine may be used to report vote totals.

e. Communicate the results to the commissioner in the manner required by section 50.11. The commissioner shall remain on duty until the results are communicated to the commissioner from each polling place in the county.

4. In precincts where electronic voting systems are used and ballots are counted in the precinct, precinct election officials shall do all of the following:

a. Close and secure the ballot reader to prevent the insertion of additional ballots.

b. Print the results for the precinct.

c. Open the ballot container. Secure all ballots counted by the vote-tabulating device. Sort the remaining ballots by party. Tally all write-in votes and any other ballots not yet counted. Record the results in the tally list.

d. Put all ballots in an envelope or other package and seal it. All members of the board shall sign their names across the seal of the envelope. The seal shall be placed so that the envelope or package cannot be opened without breaking the seal.

5. In precincts where electronic voting systems are used and ballots are counted at a central location, precinct election officials shall follow the procedures in section 52.32.

[S13, §1087-a17; C24, 27, 31, 35, 39, §**573;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.45]

87 Acts, ch 221, §2; 89 Acts, ch 136, §14; 2002 Acts, ch 1134, §9, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section stricken and rewritten

43.46 Delivering returns.

The precinct election officials shall deliver all election supplies, by noon of the day after the close of the polls, to the commissioner who shall carefully preserve them and deliver the returns and envelopes containing ballots, in the condition in which received except as is otherwise required by sections 50.20 to 50.22, to the county board of supervisors.

[S13, §1087-a17; C24, 27, 31, 35, 39, §**574;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.46]

43.47 Messenger sent for returns.

If the returns from any precinct are not delivered as provided in section 43.46, the commissioner shall forthwith send a messenger for the missing returns, and the messenger shall be paid as provided by section 50.47 for such services.

[S13, §1087-a17; C24, 27, 31, 35, 39, §**575;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.47]

43.48 Elector may ascertain vote cast.

Any elector of the county shall have the right, before the day fixed for canvassing the returns, to ascertain the vote cast for any candidate in any precinct in the county, as shown on the outside of the envelope containing the tally list or on printed reports from voting machines or electronic voting systems.

[S13, §1087-a17; C24, 27, 31, 35, 39, §**576;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.48]

89 Acts, ch 136, §15; 2002 Acts, ch 1134, §10, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

43.49 Canvass by county board.

On the Monday or Tuesday following the primary election, the board of supervisors shall meet, open and canvass the returns from each voting precinct in the county, and make abstracts thereof, stating in words written at length:

1. The number of ballots cast in the county in each precinct by each political party, separately, for each office.

2. The name of each person voted for and the number of votes given to each person for each different office.

3. The votes of all write-in candidates who each received less than two percent of the votes cast for an office reported collectively under the

heading "scattering".

If the day designated by this section for the canvass is a public holiday, the provisions of section 4.1, subsection 34, shall apply.

[S13, §1087-a19; C24, 27, 31, 35, 39, §**577;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.49]

90 Acts, ch 1238, §3; 95 Acts, ch 189, §1

43.50 Signing and filing of abstract.

The members of the board shall sign said abstracts and certify to the correctness thereof, and file the same with the commissioner.

[S13, §1087-a19; C24, 27, 31, 35, 39, §**578;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.50]

43.51 Finality of canvass.

Such canvass and certificate shall be final as to all candidates for nomination to any elective county office or office of a subdivision of a county.

[S13, §1087-a19; C24, 27, 31, 35, 39, §**579;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.51]

43.52 Nominees for county office.

The nominee of each political party for any office to be filled by the voters of the entire county, or for the office of county supervisor elected from a district within the county, shall be the person receiving the highest number of votes cast in the primary election by the voters of that party for the office, and that person shall appear as the party's candidate for the office on the general election ballot.

If no candidate receives thirty-five percent or more of the votes cast by voters of the candidate's party for the office sought, the primary is inconclusive and the nomination shall be made as provided by section 43.78, subsection 1, paragraphs *"d"* and *"e"*.

When two or more nominees are required, as in the case of at-large elections, the nominees shall likewise be the required number of persons who receive the greatest number of votes cast in the primary election by the voters of the nominating party, but no candidate is nominated who fails to receive thirty-five percent of the number of votes found by dividing the number of votes cast by voters of the candidate's party for the office in question by the number of persons to be elected to that office. If the primary is inconclusive under this paragraph, the necessary number of nominations shall be made as provided by section 43.78, subsection 1, paragraphs *"d"* and *"e"*.

[S13, §1087-a19; C24, 27, 31, 35, 39, §**580;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.52]

Nomination by convention, §43.97

43.53 Nominees for subdivision office — write-in candidates.

The nominee of each political party for any office to be filled by the voters of any township or other political subdivision within the county shall be the person receiving the highest number of votes cast in the primary election by the voters of that party for the office. That person shall appear as the party's candidate for the office on the general election ballot. A person whose name is not printed on the official primary ballot shall not be declared nominated as a candidate for such office in the general election unless that person receives at least five votes. Nomination of a candidate for the office of county supervisor elected from a district within the county shall be governed by section 43.52 and not by this section.

[S13, §1087-a19; C24, 27, 31, 35, 39, §**581;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.53]

95 Acts, ch 189, §2

43.54 Right to place on ballot.

Each candidate nominated pursuant to section 43.53 is entitled to have the candidate's name printed on the official ballot to be voted for at the general election if the candidate files an affidavit in the form required by section 43.67 not later than five o'clock p.m. on the seventh day following the completion of the canvass.

[S13, §1087-a19; C24, 27, 31, 35, 39, §**582;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.54]

89 Acts, ch 136, §16

43.55 Nominee certified.

The board of supervisors shall separately prepare and certify a list of the candidates of each party so nominated. It shall deliver to the chairperson of each party central committee for the county a copy of the list of candidates nominated by that party; and shall also certify and deliver to the chairperson a list of the offices to be filled by the voters of the county for which no candidate of that party was nominated, together with the names of all of the candidates for each of these offices who were voted for at the primary election and the number of votes received by each of such candidates.

[S13, §1087-a19; C24, 27, 31, 35, 39, §**583;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.55]

43.56 Primary election recount provisions.

Recounts of votes for primary elections shall be conducted following the procedure outlined in section 50.48. However, if a recount is requested for an office for which no candidate has received the required thirty-five percent to be nominated, the recount board shall consist of the following persons:

1. One person chosen by the candidate requesting the recount, who shall be named in the request.

2. One person chosen by the candidate who received the highest number of votes for the nomination being recounted. However, if the candidate who requested the recount received more votes than anyone else for the nomination, the candidate who received the second highest number of

votes shall designate this person to serve on the recount board.

3. A third person mutually agreeable to the board members designated by the candidates.

A bond is not necessary for a primary election recount under these circumstances if the difference between the number of votes needed to be nominated and the number of votes received by the candidate requesting the recount is less than fifty votes or one percent of the total number of votes cast for the nomination in question, whichever is greater. If a bond is required, the bond shall be in the amount specified in section 50.48, subsection 2.

89 Acts, ch 136, §17

43.57 and 43.58 Repealed by 81 Acts, ch 34, § 48. See § 50.48.

43.59 Number of voters certified.

The commissioner shall certify to the state commissioner the total number of people who voted in the primary election in each political party.

93 Acts, ch 143, §6

43.60 Abstracts to state commissioner.

The county board of supervisors shall also make a separate abstract of the canvass as to the following offices and certify to the same and forthwith forward it to the state commissioner, viz.:

1. United States senator.
2. All state offices.
3. United States representative.
4. Senators and representatives in the general assembly.

[S13, §1087-a20; C24, 27, 31, 35, 39, §**588;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.60]

43.61 Returns filed and abstracts recorded.

When the canvass is concluded, the board shall deliver the original returns to the commissioner, who shall file the same and record each of the abstracts mentioned in section 43.60, in the election book.

[SS15, §1087-a21; C24, 27, 31, 35, 39, §**589;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.61]

43.62 Publication of proceedings.

The published proceedings of the board of supervisors relative to the canvass shall be confined to a brief statement of:

1. The names of the candidates nominated by the electors of the county or subdivision thereof and the offices for which they are so nominated.

2. The offices for which no nomination was made by a political party participating in the primary, because of the failure of the candidate to receive the legally required number of votes cast by the party for such office.

[SS15, §1087-a21; C24, 27, 31, 35, 39, §**590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.62]

43.63 Canvass by state board.

Upon receipt of the abstracts of votes from the counties, the secretary of state shall immediately open the envelopes and canvass the results for all offices. The secretary of state shall invite to attend the canvass one representative from each political party which, at the last preceding general election, cast for its candidate for president of the United States or for governor, as the case may be, at least two percent of the total vote cast for all candidates for that office at that election, as determined by the secretary of state. The secretary of state shall notify the chairperson of each political party of the time of the canvass. However, the presence of a representative from a political party is not necessary for the canvass to proceed.

Not later than the twenty-seventh day after the primary election, the secretary of state shall present to the state board of canvassers abstracts showing the number of ballots cast by each political party for each office and a summary of the results for each office, showing the votes cast in each county. The state board of canvassers shall review the results compiled by the secretary of state and, if the results are accurately tabulated, the state board shall approve the canvass.

[S13, §1087-a22; C24, 27, 31, 35, 39, §**591;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.63]

95 Acts, ch 189, §3

43.64 State canvass conclusive.

The canvass and certificates by the state board of canvassers shall be final as to all candidates named therein.

[S13, §1087-a22; C24, 27, 31, 35, 39, §**592;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.64]

43.65 Who nominated.

The candidate of each political party for nomination for each office to be filled by the voters of the entire state, and for each seat in the United States house of representatives, the Iowa house of representatives and each seat in the Iowa senate which is to be filled, who receives the highest number of votes cast by the voters of that party for that nomination shall be the candidate of that party for that office in the general election. However, if there are more than two candidates for any nomination and none of the candidates receives thirty-five percent or more of the votes cast by voters of that party for that nomination, the primary is inconclusive and the nomination shall be made as provided by section 43.78, subsection 1, paragraph *"a", "b"* or *"c"*, whichever is appropriate.

[S13, §1087-a22; C24, 27, 31, 35, 39, §**593;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.65]

Nomination by convention, §43.102, 43.109

43.66 Write-in candidates.

The fact that the candidate who receives the highest number of votes cast for any party's nomination for an office to which section 43.52 or 43.65 is applicable is a person whose name was not printed on the official primary election ballot shall not affect the validity of the person's nomination as a candidate for that office in the general election. However, if there is no candidate on the official primary ballot of a political party for nomination to a particular office, a write-in candidate may obtain the party's nomination to that office in the primary if the candidate receives a number of votes equal to at least thirty-five percent of the total vote cast for all of that party's candidates for that office in the last preceding primary election for which the party had candidates on the ballot for that office. If there have been no candidates from a political party for a seat in the general assembly since the most recent redistricting of the general assembly, a write-in candidate shall be considered nominated who receives a number of votes equal to at least thirty-five percent of the total votes cast, at the last preceding primary election in the precincts which currently constitute the general assembly district, for all of that party's candidates for representative in the Congress of the United States or who receives at least one hundred votes, whichever number is greater. When two or more nominees are required, the division procedure prescribed in section 43.52 shall be applied to establish the minimum number of write-in votes necessary for nomination. If the primary is inconclusive, the necessary nominations shall be made in accordance with section 43.78, subsection 1.

[S13, §1087-a25, -a26; C24, 27, 31, 35, 39, §**594, 625, 643;** C46, 50, 54, 58, 62, 66, 71, 73, §43.66, 43.98, 43.106; C75, 77, 79, 81, §43.66; 81 Acts, ch 34, §2]

43.67 Nominee's right to place on ballot.

Each candidate nominated pursuant to section 43.52 or 43.65 is entitled to have the candidate's name printed on the official ballot to be voted at the general election without other certificate unless the candidate was nominated by write-in votes. Immediately after the completion of the canvass held under section 43.49, the county auditor shall notify each person who was nominated by write-in votes for a county or township office that the person is required to file an affidavit of candidacy if the person wishes to be a candidate for that office at the general election. Immediately after the completion of the canvass held under section 43.63, the secretary of state shall notify each person who was nominated by write-in votes for a state or federal office that the person is required to file an affidavit of candidacy if the person wishes to be a candidate for that office at the general election. If the affidavit is not filed by five p.m. on the seventh day after the completion of the canvass, that person's name shall not be placed upon the official general election ballot. The affidavit shall be signed by the candidate, notarized, and filed with the county auditor or the secretary of state, whichever is applicable.

The affidavit shall be in the form prescribed by the secretary of state. The affidavit shall include the following information:

1. The candidate's name in the form the candidate wants it to appear on the ballot.
2. The candidate's home address.
3. The name of the county in which the candidate resides.
4. The political party by which the candidate was nominated.
5. The office sought by the candidate, and the district the candidate seeks to represent, if any.
6. A declaration that if the candidate is elected the candidate will qualify by taking the oath of office.
7. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 56.2, subsection 5. This subsection shall not apply to candidates for federal office.
8. A statement that the candidate is aware of the prohibition in section 49.41 against being a candidate for more than one office to be filled at the same election, except county agricultural extension council and soil and water conservation district commission.
9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

[S13, §1087-a22; C24, 27, 31, 35, 39, §**595;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.67]

86 Acts, ch 1224, §3; 89 Acts, ch 136, §18; 90 Acts, ch 1238, §4; 91 Acts, ch 129, §6; 94 Acts, ch 1180, §6; 96 Acts, ch 1034, §2; 98 Acts, ch 1052, §2; 2001 Acts, ch 158, §7

43.68 Certified list of nominees.

The state board of canvassers shall prepare and certify separate lists of the candidates nominated by each party, as shown by the state canvass, and deliver to the chairperson of each party central committee for the state a copy of the list of candidates nominated by the party which said chairperson represents.

[S13, §1087-a22; C24, 27, 31, 35, 39, §**596;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.68]

43.69 Certificates in case of failure to nominate.

Said state board shall, at once after completing its canvass, prepare separate certificates for each political party as to each office for which no candidate was nominated by such party. Such certificates shall show the names of the several candidates for each of these offices who were voted for at the primary election and the number of votes received by each of said candidates. These certificates shall be sent to the respective chairpersons of the state central committee of each political party.

[S13, §1087-a22; C24, 27, 31, 35, 39, §**597, 598;** C46, 50, 54, 58, 62, 66, 71, 73, §43.69; C75, §43.69, 43.70; C77, 79, 81, §43.69]

43.70 Repealed by 75 Acts, ch 81, § 154.

43.71 Messenger sent for abstracts.

If returns of abstracts have not been received by the state canvassing board from all the counties by the time fixed for the state canvass, the state commissioner shall immediately send a messenger after the missing abstracts, and the board may adjourn from time to time until the abstracts are received.

[S13, §1087-a22; C24, 27, 31, 35, 39, §**599;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.71]

43.72 State returns filed and recorded.

When the canvass is concluded, the board shall deliver the original abstract returns to the state commissioner, who shall file the same in the state commissioner's office and record the abstracts of the canvass of the state board and certificates attached thereto in the book kept by the state commissioner known as the election book.

[S13, §1087-a23; C24, 27, 31, 35, 39, §**600;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.72]

43.73 State commissioner to certify nominees.

Not less than sixty-nine days before the general election the state commissioner shall certify to each commissioner, under separate party headings, the name of each person nominated as shown by the official canvass made by the executive council, or as certified to the state commissioner by the proper persons when any person has been nominated by a convention or by a party committee, or by petition, the office to which the person is nominated, and the order in which federal and state offices, judges, constitutional amendments, and state public measures shall appear on the official ballot.

The state commissioner shall similarly certify to the appropriate commissioner or commissioners at the earliest practicable time the names of nominees for a special election, called under section 69.14, submitted to the state commissioner pursuant to section 43.78, subsection 4.

[C97, §1105; S13, §1087-a23; SS15, §1105; C24, 27, 31, 35, 39, §**601, 602;** C46, 50, 54, 58, 62, 66, 71, 73, §43.73; C75, §43.73, 43.74; C77, 79, 81, §43.73]
89 Acts, ch 136, §19; 97 Acts, ch 170, §3

43.74 Repealed by 75 Acts, ch 81, § 154.

43.75 Tie vote.

In case of a tie vote resulting in no nomination for any office, the tie shall forthwith be determined by lot by the board of canvassers.

[S13, §1087-a24; C24, 27, 31, 35, 39, §**603;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.75]

43.76 Withdrawal of nominated candidates.

1. A candidate nominated in a primary election for any office for which nomination papers are required to be filed with the state commissioner may withdraw as a nominee for that office on or before, but not later than, the eighty-ninth day before the date of the general election by so notifying the state commissioner in writing.

2. A candidate nominated in a primary election for any office for which nomination papers are required to be filed with the commissioner may withdraw as a nominee for that office on or before, but not later than, the seventy-fourth day before the date of the general election by so notifying the commissioner in writing.

[C66, 71, 73, 75, §43.59(2); C77, 79, 81, §43.76]
89 Acts, ch 136, §20
See also §44.9

43.77 What constitutes a ballot vacancy.

A vacancy on the general election ballot exists when any political party lacks a candidate for an office to be filled at the general election because:

1. No person filed under section 43.11 as a candidate for the party's nomination for that office in the primary election, or all persons who filed under section 43.11 as candidates for the party's nomination for that office in the primary election subsequently withdrew as candidates, were found to lack the requisite qualifications for the office or died before the date of the primary election, and no candidate received a sufficient number of write-in votes to be nominated.

2. The primary election was inconclusive as to that office because no candidate for the party's nomination for that office received the number of votes required by section 43.52, 43.53 or 43.65, whichever is applicable.

3. The person nominated in the primary election as the party's candidate for that office subsequently withdrew as permitted by section 43.76, was found to lack the requisite qualifications for the office, or died, at a time not later than the eighty-ninth day before the date of the general

election in the case of an office for which nomination papers must be filed with the state commissioner and not later than the seventy-fourth day before the date of the general election in the case of an office for which nomination papers must be filed with the county commissioner.

4. A vacancy has occurred in the office of senator in the Congress of the United States, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general, under the circumstances described in section 69.13, less than eighty-nine days before the primary election and not less than eighty-nine days before the general election.

5. A vacancy has occurred in the office of county supervisor or in any of the offices listed in section 39.17 and the term of office has more than seventy days remaining after the date of the next general election and one of the following circumstances applies:

a. The vacancy occurred during the period beginning seventy-three days before the primary election and ending on the date of the primary election and no special election was called to fill the vacancy.

b. The vacancy occurred after the date of the primary election and more than seventy-three days before the general election.

[S13, §1087-a24 – 1087-a27; C24, 27, 31, 35, 39, §**611, 624, 628, 633, 636, 637;** C46, 50, 54, 58, 62, 66, 71, 73, §43.84, 43.97, 43.101, 43.106, 43.109, 43.110; C75, §43.84, 43.97, 43.101, 43.109, 43.110; C77, 79, 81, §43.77]

89 Acts, ch 136, §21; 94 Acts, ch 1180, §7, 8

43.78 Filling ballot vacancies.

1. A vacancy on the general election ballot may be filled by the political party in whose ticket the vacancy exists, as follows:

a. For senator in the Congress of the United States or any office listed in section 39.9, by the party's state convention, which may be reconvened by the state party chairperson if the vacancy occurs after the convention has been held or too late to be filled at the time it is held. However, a vacancy so occurring with respect to the offices of secretary of state, auditor of state, treasurer of state or secretary of agriculture may be filled by the party's state central committee in lieu of reconvening the state convention.

b. For representative in the Congress of the United States, by the party's congressional district convention, which may be convened or reconvened as appropriate by the state party chairperson.

c. For senator or representative in the general assembly, by the party precinct committee members whose precincts lie within the senatorial or representative district involved, who shall be convened or reconvened as appropriate by the state party chairperson. The party's state constitution or bylaws may allow the voting strength of each precinct represented at such a convention to be made proportionate to the vote cast for the party's candidate for the office in question in the respective precincts at the last general election for that office.

d. For any office to be filled by the voters of an entire county, by the party's county convention, which may be reconvened by the county party chairperson if the vacancy occurs after the convention has been held or too late to be filled at the time it is held.

e. For the office of county supervisor elected by the voters of a district within the county, by the delegates to the party's county convention who represent the precincts lying within that district, who shall be convened or reconvened as appropriate by the county party chairperson.

f. For any other partisan office filled by the voters of a subdivision of a county, by those members of the party's county central committee who represent the precincts lying within that district, who shall be convened or reconvened as appropriate by the county party chairperson. However, this paragraph shall not apply to partisan city offices in special charter cities for which candidates are nominated under this chapter, but such ballot vacancies shall be filled as provided by section 43.116.

2. The name of any candidate designated to fill a vacancy on the general election ballot in accordance with subsection 1, paragraph *"a"*, *"b"*, or *"c"* shall be submitted in writing to the state commissioner not later than five o'clock p.m. on the eighty-first day before the date of the general election.

3. The name of any candidate designated to fill a vacancy on the general election ballot in accordance with subsection 1, paragraph *"d"*, *"e"*, or *"f"* shall be submitted in writing to the commissioner not later than five o'clock p.m. on the sixty-ninth day before the date of the general election.

4. Political party candidates for a vacant seat in the United States house of representatives, the board of supervisors, the elected county offices, or the general assembly which is to be filled at a special election called pursuant to section 69.14 or 69.14A shall be nominated in the manner provided by subsection 1 of this section for filling a vacancy on the general election ballot for the same office. The name of a candidate so nominated shall be submitted in writing to the appropriate commissioner, as required by section 43.88, at the earliest practicable time.

[S13, §1087-a24 – 1087-a27; C24, 27, 31, 35, 39, §**604 – 607, 608, 609, 611, 614, 624, 633, 636, 637;** C46, 50, 54, 58, 62, 66, 71, 73, §43.76 – 43.79, 43.81, 43.82, 43.84, 43.87, 43.97, 43.101, 43.106, 43.109, 43.110; C75, §43.76 – 43.79, 43.81, 43.82, 43.84,

43.87, 43.97, 43.101, 43.109, 43.110; C77, 79, 81, §43.78]

89 Acts, ch 136, §22; 89 Acts, ch 215, §1; 90 Acts, ch 1238, §5

See chapter 69 for filling vacancies in office

43.79 Death of candidate after time for withdrawal.

The death of a candidate nominated as provided by law for any office to be filled at a general election, during the period beginning on the eighty-eighth day before the general election, in the case of any candidate whose nomination papers were filed with the state commissioner, or beginning on the seventy-third day before the general election, in the case of any candidate whose nomination papers were filed with the commissioner, and ending on the last day before the general election shall not operate to remove the deceased candidate's name from the general election ballot. If the deceased candidate was seeking the office of senator or representative in the Congress of the United States, governor, attorney general, senator or representative in the general assembly or county supervisor, section 49.58 shall control. If the deceased candidate was seeking any other office, and as a result of the candidate's death a vacancy is subsequently found to exist, the vacancy shall be filled as provided by chapter 69.

[S13, §1087-a24a; C24, 27, 31, 35, 39, §**607;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.79]

89 Acts, ch 136, §23; 97 Acts, ch 170, §4

43.80 Vacancies in nominations of presidential electors.

Vacancies in nominations of presidential electors shall be filled by the party central committee for the state. The party central committee may at any time nominate alternate presidential electors to serve if the nominated or elected presidential electors are for any reason unable to perform their duties.

[C31, 35, §607-c1; C39, §**607.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.80]

43.81 and 43.82 Repealed by 75 Acts, ch 81, § 154.

43.83 Vacancies in office of U. S. representative.

A candidate to be voted on at a special election occasioned by a vacancy in the office of United States representative, shall be nominated by a convention duly called by the district central committee not less than twenty-five days prior to the date set for the special election.

[S13, §1087-a24; C24, 27, 31, 35, 39, §**610;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.83]

43.84 Repealed by 75 Acts, ch 81, § 154.

43.85 County convention reconvened.

When a nomination is directed to be made by a district convention composed of more than one county, and the county convention in any county of the district has adjourned without selecting delegates to such convention, the county convention shall be reconvened for the purpose of making such selection.

[C24, 27, 31, 35, 39, §**612;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.85]

43.86 and 43.87 Repealed by 75 Acts, ch 81, § 154.

43.88 Certification of nominations.

Nominations made by state, district, and county conventions, shall, under the name, place of residence, and post-office address of the nominee, and the office to which nominated, and the name of the political party making the nomination, be forthwith certified to the proper officer by the chairperson and secretary of the convention, or by the committee, as the case may be, and if such certificate is received in time, the names of such nominees shall be printed on the official ballot the same as if the nomination had been made in the primary election.

Nominations made to fill vacancies at a special election shall be certified to the proper official not less than twenty-five days prior to the date set for the special election. In the event the special election is to fill a vacancy in the general assembly while it is in session or within forty-five days of the convening of any session, the nomination shall be certified not less than fourteen days before the date of the special election.

Nominations certified to the proper official under this section shall be accompanied by an affidavit executed by the nominee in substantially the form required by section 43.67.

[S13, §1087-a24; C24, 27, 31, 35, 39, §**615;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.88; 81 Acts, ch 34, §3]

95 Acts, ch 189, §4; 97 Acts, ch 170, §5

43.89 Repealed by 65 Acts, ch 89, § 15.

43.90 Delegates.

The county convention shall be composed of delegates elected at the last preceding precinct caucus. Delegates shall be persons who are or will by the date of the next general election become eligible electors and who are residents of the precinct. The number of delegates from each voting precinct shall be determined by a ratio adopted by the respective party county central committees, and a statement designating the number from each voting precinct in the county shall be filed by such committee not later than the time the list of precinct caucus meeting places required by section 43.4 is filed in the office of the commissioner. If the

required statement is not filed, the commissioner shall fix the number of delegates from each voting precinct.

[S13, §1087-a25; C24, 27, 31, 35, 39, §**617;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.90]

43.91 Voter at caucus must be precinct resident.

Any person voting at a precinct caucus must be a person who is or will by the date of the next general election become an eligible elector and who is a resident of the precinct. A list of the names and addresses of each person to whom a ballot was delivered or who was allowed to vote in each precinct caucus shall be prepared by the caucus chairperson and secretary who shall certify such list to the commissioner at the same time as the names of those elected as delegates and party committee members are so certified.

[C66, 71, 73, 75, 77, 79, 81, §43.91]

43.92 Date of caucus published.

The date, time, and place of each precinct caucus of a political party shall be published at least twice in at least one newspaper of general circulation in the precinct. The first publication shall be made not more than fifteen days nor less than seven days before the date of the caucus and the second shall be made not more than seven days before and not later than the date of the caucus. Such publication shall also state in substance that each voter affiliated with the specified political party may attend the precinct caucus. Publication in a news item or advertisement in such newspaper shall constitute publication for the purposes of this section. The cost of such publication, if any, shall be paid by the political party.

[C66, 71, 73, 75, 77, 79, 81, §43.92; 81 Acts, ch 34, §4]

43.93 Place of holding caucus.

Each precinct caucus shall be held in a building which is publicly owned or is suitable for and from time to time made available for holding public meetings wherever it is possible to do so. Upon the application of the county chairperson, the person having control of a building supported by taxation under the laws of this state shall make available the space necessary to conduct the caucus without charge during presidential election years and at a charge not greater than that made for its use by other groups during other years. When using public buildings, the county chairpersons shall cooperate to attempt the collocation of the caucuses.

[C77, 79, 81, §43.93]

86 Acts, ch 1224, §4

43.94 Term of office of delegates.

The term of office of delegates to the county convention shall begin on the day following their election at the precinct caucus, and shall continue for two years and until their successors are elected.

[S13, §1087-a25; C24, 27, 31, 35, 39, §**621;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.94]

43.95 Calling convention to order.

When the delegates, or a majority thereof, or when delegates representing a majority of the precincts, thus elected, shall have assembled in the county convention, the convention shall be called to order by the chairperson of the county central committee, who shall present the certified list of delegates and members of the county central committee. If the convention is being held after the primary election, the chairperson shall also present a list of the offices for which no nomination was made at the primary election by reason of the failure of any candidate for any such office to receive the legally required number of votes cast by such party therefor.

[S13, §1087-a25; C24, 27, 31, 35, 39, §**622;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.95]

43.96 Proxies prohibited.

If any precinct shall not be fully represented the delegates present from such precinct shall cast the full vote thereof, if the rules of the convention, party bylaws or constitution so permit, and there shall be no proxies.

[S13, §1087-a25; C24, 27, 31, 35, 39, §**623;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.96]

43.97 Duties performable by county convention.

The said county convention shall:

1. Make nominations to fill vacancies on the general election ballot as provided by law.
2. Transact such other business as required or permitted by the political party's state constitution or bylaws, or the rules of the convention.
3. Elect delegates to the next ensuing regular state convention and to all district conventions of that year upon such ratio of representation as may be determined by the party organization for the state, district or districts of the state, as the case may be. Delegates to district conventions need not be selected in the absence of any apparent reason therefor. Delegates shall be persons who are or will by the date of the next general election become eligible electors and who are residents of the county.

[S13, §1087-a25; C24, 27, 31, 35, 39, §**624;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.97]

Legally required vote, §43.52, 43.53

43.98 Repealed by 73 Acts, ch 136, § 401.

43.99 Party committee persons.

Two members of the county central committee for each political party shall, at the precinct caucuses, be elected from each precinct. The term of

office of a member shall begin at the time specified by the party's state constitution or bylaws and shall continue for two years and until a successor is elected and qualified, unless sooner removed by the county central committee for inattention to duty or incompetency. The party's state constitution or bylaws may permit the election of additional central committee members from each precinct in a number proportionate to the vote cast for the party's candidates for office in the respective precincts at preceding general elections.

[S13, §1087-a25; C24, 27, 31, 35, 39, §**626;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.99]

43.100 Central committee — duties.

The county central committee shall elect the officers of the committee. Each member shall be given written notice at least five days in advance of the time and place of any meeting scheduled for the election of officers.

Every county central committee shall adopt a constitution and bylaws which shall govern the committee's operation. A copy of the constitution and bylaws so adopted shall be kept on file at the office of the commissioner for the county in which the central committee exists and at the office of the state commissioner. Amendments to a county central committee's constitution or bylaws shall upon adoption be filed in the same manner as the original documents.

Vacancies in such committee may be filled by majority vote of the committee, or at a precinct caucus called pursuant to the party's state constitution or bylaws.

[S13, §1087-a25; C24, 27, 31, 35, 39, §**627;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.100]

86 Acts, ch 1224, §5

43.101 County central committee officers.

The county central committee shall elect a chair, cochair, secretary, treasurer, and other officers as it may determine. The term of office of an officer begins at the time specified by the party's state constitution or bylaws and continues for two years and until the officer's successor is elected and qualified, unless the officer dies, resigns or is sooner removed by the county central committee for inattention to duty or incompetency.

86 Acts, ch 1224, §6

43.102 District conventions.

Each political party may hold a congressional district convention upon the call of the state party chairperson to:

1. Elect or nominate members of the party's state central committee.
2. Make nominations to fill vacancies on the general election ballot as provided by law.
3. Transact such other business as required or permitted by the party's state constitution or bylaws, or the rules of the convention.

[S13, §1087-a26; C24, 27, 31, 35, 39, §**628, 633;** C46, 50, 54, 58, 62, 66, 71, 73, §43.101, 43.106; C75, 77, 79, 81, §43.101]

C87, §43.102

Legally required vote, §43.65

43.103 Duty of county commissioner.

The commissioner, in case the district delegates for the commissioner's county have not been selected, shall deliver a copy of said call to the chairperson of the convention which selects said delegates.

[S13, §1087-a26; C24, 27, 31, 35, 39, §**630;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.103]

43.104 Organization.

The organization of a district convention and the procedure therein shall be substantially the same as in the state convention.

[S13, §1087-a26; C24, 27, 31, 35, 39, §**631;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.104]

Organization of state convention, §43.108

43.105 Repealed by 75 Acts, ch 81, § 154.

43.106 Repealed by 74 Acts, ch 1101, § 105.

43.107 State convention.

Each political party shall hold a state convention either preceding or following the primary election. The state central committee of each political party shall designate the time and place of the state convention, which shall transact such business as is required or permitted by the party's state constitution or bylaws or by the rules of the convention.

[S13, §1087-a27; C24, 27, 31, 35, 39, §**634;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.107]

43.108 Organization — proxies prohibited.

The convention shall be called to order by the chairperson of the state central committee, or that individual's designee who shall thereupon present a list of delegates, as certified by the various county conventions, and effect a temporary organization. If any county shall not be fully represented, the delegates present from such county shall cast the full vote thereof if the rules of the convention, party bylaws or constitution so allow, and there shall be no proxies.

[S13, §1087-a27; C24, 27, 31, 35, 39, §**635;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.108]

Organization of district convention, §43.104

43.109 Nominations authorized.

The state convention may make nominations to fill vacancies on the general election ballot as provided by law.

[S13, §1087-a27; C24, 27, 31, 35, 39, §**636;** C46, 50, 54, 58, 62, 66, 71, 73, §43.109; C75, §43.109, 43.110; C77, 79, 81, §43.109]
Legally required vote, §43.65

43.110 Repealed by 75 Acts, ch 81, § 154.

43.111 State party platform, constitution, bylaws and central committee.

The state convention held by each political party pursuant to section 43.107 shall adopt a state platform, adopt or amend a state party constitution, and bylaws if desired, and transact other business which may properly be brought before it. A copy of the constitution and any bylaws so adopted or amended shall be kept on file in the office of the state commissioner.

There shall be selected at or prior to each political party's state convention a state party central committee consisting of an equal number of members from each congressional district, which number shall be determined by the party constitution or bylaws, who shall be elected or nominated by the district convention or caucus.

The state central committee so selected may organize at pleasure for political work as is usual and customary with such committees, adopt bylaws, provide for the governing of party auxiliary bodies, and shall continue to act until succeeded by another central committee selected as required by this section. The receipts and disbursements of each political party's state party central committee shall be audited annually by a certified public accountant selected by the state party central committee and the audit report shall be filed with the state commissioner.

[S13, §1087-a27; C24, 27, 31, 35, 39, §**638;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.111]

43.112 Nominations in certain cities.

This chapter shall, so far as applicable, govern the nominations of candidates by political parties for all offices to be filled by a direct vote of the people in cities acting under a special charter in 1973 and having a population of over fifty thousand, except all such cities as choose by special election to conduct nonpartisan city elections under the provisions of chapter 44, 45, or 376. An election on the question of conducting city elections in such a special charter city on a nonpartisan basis may be called by the city council on its own initiative, and shall be called by the council upon receipt of a petition of the voters which so requests and is presented in conformity with section 362.4, but a special election on that question shall be held concurrently with any election being held on the first Tuesday after the first Monday in November of any odd-numbered year.

Sections 43.114 to 43.118 shall apply only to cities to which this chapter is made applicable by this section.

[S13, §1087-a34; C24, 27, 31, 35, 39, §**639;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.112; 82 Acts, ch 1097, §1]
See chapter 376

43.113 Repealed by 75 Acts, ch 81, § 154.

43.114 Time of holding special charter city primary.

In special charter cities holding a city primary election under the provisions of section 43.112 such primary shall be held on the first Tuesday in October of the year in which regular city elections are held.

[S13, §1087-a34; C24, 27, 31, 35, 39, §**641;** C46, 50, §43.114, 420.2; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.114]
2002 Acts, ch 1134, §11, 115
2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115
Section amended

43.115 Nomination papers — number of signers.

All candidates for nominations to be made in primary elections held pursuant to section 43.112 shall file nomination papers with the city clerk no later than five p.m. forty days before the date of the election as established by section 43.114, except that candidates for precinct committee member shall file affidavits of candidacy as required by section 420.130. The number of eligible electors signing petitions required for printing the name of a candidate upon the official primary ballot shall be one hundred for an office to be filled by the voters of the entire city and twenty-five for an office to be filled by the voters of a subdivision of the city.

A candidate for precinct committee member may also file as a candidate for one additional office, any statute to the contrary notwithstanding.

Objections to nomination petitions and certificates of nominations shall be filed and decided as provided in section 43.24.

[S13, §1087-a34; C24, 27, 31, 35, 39, §**642;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.115]
84 Acts, ch 1291, §2; 88 Acts, ch 1119, §7; 90 Acts, ch 1238, §6

43.116 Ballot vacancies in special charter city elections.

1. A vacancy on the ballot for an election at which city officers are to be chosen, and for which candidates have been nominated under this chapter, exists when any political party lacks a candidate for an office to be filled at that election because:

a. No person filed at the time required by section 43.115 as a candidate for the party's nomination for that office in the city primary election held under section 43.112, or all persons who did so subsequently withdrew as candidates, were found to lack the requisite requirements for the office or

died before the date of the city primary election, and no candidate received a number of write-in votes sufficient for nomination under section 43.53; or

b. The person nominated in the city primary election as the party's candidate for that office withdrew by giving written notice to that effect to the city clerk not later than five o'clock p.m. on the day of the canvass of that city primary election.

2. A ballot vacancy as defined by this section may be filled by the city central committee of the party on whose ticket the vacancy exists or, in the case of an officer elected by the voters of a district within the city, by those members of the committee who represent the precincts lying within that district. The name of a candidate so designated to fill such a ballot vacancy shall be submitted in writing to the city clerk not later than five o'clock p.m. on the seventh day following the city primary election.

3. If a special election is held to fill a vacancy in an elective city office, nominations by political parties shall be made following the provisions of subsection 2.

[C77, 79, 81, §43.116]
97 Acts, ch 170, §6

43.117 Plurality vote nominates and elects.

A plurality shall nominate the party candidate for all offices filled by elections authorized by section 43.112, and a plurality shall elect the precinct committee members.

[S13, §1087-a34; C24, 27, 31, 35, 39, §**644;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.117]

43.118 Expense.

The entire expense of conducting the city primary election and preparation of election registers shall be audited by the city council and paid by the city.

[S13, §1087-a34; C24, 27, 31, 35, 39, §**645;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.118]
2002 Acts, ch 1134, §12, 115
2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115
Section amended

43.119 Criminal misconduct. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.4.

43.120 Bribery — illegal voting. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.2 through 39A.4.

43.121 Nominations by petition or nonparty organizations.

This chapter shall not be construed to prohibit nomination of candidates for office by petition, or by nonparty organizations, as provided in chapters 44 and 45, but no person so nominated shall be permitted to use the name, or any part thereof, of any political party authorized or entitled under this chapter to nominate a ticket by primary vote, or that has nominated a ticket by primary vote under this chapter.

[S13, §1087-a29; C24, 27, 31, 35, 39, §**648;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.121]

43.122 Repealed by 73 Acts, ch 136, § 401.

43.123 Nomination of lieutenant governor.

Notwithstanding this chapter and any other statute relating to the nomination of a person for the office of lieutenant governor, the nomination of a person for the office of lieutenant governor for the general election in the year 1990 and each four years thereafter shall be held at the state convention of the political party. The nomination of a person for the office of lieutenant governor by a nonparty political organization shall be the procedure specified in chapter 44.

88 Acts, ch 1121, §1; 89 Acts, ch 83, §15

CHAPTER 44

NOMINATIONS BY NONPARTY POLITICAL ORGANIZATIONS

See also definitions in §39.3

44.1 Political nonparty organizations.
44.2 Nominations certified.
44.3 Certificate.
44.4 Nominations and objections — time and place of filing.
44.5 Notice of objections.
44.6 Hearing before state commissioner.
44.7 Hearing before commissioner.
44.8 Hearing before mayor.
44.9 Withdrawals.
44.10 Effect of withdrawal.
44.11 Vacancies filled.
44.12 Insufficient time for convention.
44.13 Certificates in matter of vacancies.
44.14 Filing of certificates.
44.15 Presumption of validity.
44.16 Return of papers — additions not allowed.
44.17 Nominations by petition.

44.1 Political nonparty organizations.

Any convention or caucus of eligible electors representing a political organization which is not a political party as defined by law, may, for the state, or for any division or municipality thereof, or for any county, or for any subdivision thereof, for which such convention or caucus is held, make one nomination of a candidate for each office to be filled therein at the general election. However, in order to qualify for any nomination made for a statewide elective office by such a political organization there shall be in attendance at the convention or caucus where the nomination is made a minimum of two hundred fifty eligible electors including at least one eligible elector from each of twenty-five counties. In order to qualify for any nomination to the office of United States representative there shall be in attendance at the convention or caucus where the nomination is made a minimum of fifty eligible electors who are residents of the congressional district including at least one eligible elector from each of at least one-half of the counties of the congressional district. In order to qualify for any nomination to an office to be filled by the voters of a county or of a city there shall be in attendance at the convention or caucus where the nomination is made a minimum of ten eligible electors who are residents of the county or city, as the case may be, including at least one eligible elector from at least one-half of the voting precincts in that county or city. In order to qualify for any nomination made for the general assembly there shall be in attendance at the convention or caucus where the nomination is made a minimum of ten eligible electors who are residents of the representative district or twenty eligible electors who are residents of the senatorial district, as the case may be, with at least one eligible elector from one-half of the voting precincts in the district in each case. The names of all delegates in attendance at such convention or caucus and such fact shall be certified to the state commissioner together with the other certification requirements of this chapter.

[C97, §1098; C24, §649; C27, 31, 35, §655-a1; C39, §**655.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.1]

Political party defined, §43.2

44.2 Nominations certified.

Nominations made under section 44.1 shall be certified by the chairperson and secretary of the convention or caucus, who shall enter their place of residence opposite their signatures, and attach to said certificate their affidavit to the effect that the certificate is true.

[C97, §1099; C24, §650; C27, 31, 35, §655-a2; C39, §**655.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.2]

44.3 Certificate.

1. The certificate required by section 44.2 shall state the following information:

a. The name of each candidate nominated.

b. The office to which each candidate is nominated.

c. The name of the political organization making such nomination, expressed in not more than five words.

d. The place of residence of each nominee, with the street or number thereof, if any.

e. In case of presidential candidates, the names and addresses of presidential electors shall be stated, and the names of the candidates for president and vice president shall be added to the name of the organization.

f. The name and address of each member of the organization's executive or central committee.

g. The provisions, if any, made for filling vacancies in nominations.

h. The name and address of each delegate or voter in attendance at a convention or caucus where a nomination is made.

2. Each candidate nominated by the convention or caucus shall complete and file a signed, notarized affidavit of candidacy. The affidavit shall be in the form prescribed by the secretary of state. The affidavit shall include the following information:

a. The candidate's name in the form the candidate wants it to appear on the ballot.

b. The candidate's home address.

c. The name of the county in which the candidate resides.

d. The name of the political organization by which the candidate was nominated.

e. The office sought by the candidate, and the district the candidate seeks to represent, if any.

f. A declaration that if the candidate is elected the candidate will qualify by taking the oath of office.

g. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 56.2, subsection 5. This subsection shall not apply to candidates for federal office.

h. A statement that the candidate is aware of the prohibition in section 49.41 against being a candidate for more than one office to be filled at the same election, except county agricultural extension council and soil and water conservation district commission.

i. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the presi-

dent of the United States.

[C97, §1099; C24, §650; C27, 31, 35, §655-a3; C39, §**655.03;** C46, 50, 54, 58, 62, 66, 71, 73, §44.3; C75, §44.3, 56.5(4); C77, 79, 81, §44.3; 81 Acts, ch 34, §5, ch 35, §17]

90 Acts, ch 1238, §7; 91 Acts, ch 129, §7; 94 Acts, ch 1023, §78; 94 Acts, ch 1180, §9; 98 Acts, ch 1052, §3; 2001 Acts, ch 158, §8

Additional certification, §44.13

44.4 Nominations and objections — time and place of filing.

Nominations made pursuant to this chapter and chapter 45 which are required to be filed in the office of the state commissioner shall be filed in that office not more than ninety-nine days nor later than five p.m. on the eighty-first day before the date of the general election to be held in November. Nominations made for a special election called pursuant to section 69.14 shall be filed by five p.m. not less than twenty-five days before the date of an election called upon at least forty days' notice and not less than fourteen days before the date of an election called upon at least eighteen days' notice. Nominations made for a special election called pursuant to section 69.14A shall be filed by five p.m. not less than twenty-five days before the date of the election. Nominations made pursuant to this chapter and chapter 45 which are required to be filed in the office of the commissioner shall be filed in that office not more than ninety-two days nor later than five p.m. on the sixty-ninth day before the date of the general election. Nominations made pursuant to this chapter or chapter 45 for city office shall be filed not more than seventy-two days nor later than five p.m. on the forty-seventh day before the city election with the city clerk, who shall process them as provided by law.

Objections to the legal sufficiency of a certificate of nomination or nomination petition or to the eligibility of a candidate may be filed by any person who would have the right to vote for a candidate for the office in question. The objections must be filed with the officer with whom the certificate or petition is filed and within the following time:

1. Those filed with the state commissioner, not less than seventy-four days before the date of the election.

2. Those filed with the commissioner, not less than sixty-four days before the date of the election.

3. Those filed with the city clerk, at least forty-two days before the regularly scheduled or special city election. However, for those cities that may be required to hold a primary election, at least sixty-three days before the regularly scheduled or special city election.

4. In the case of nominations to fill vacancies occurring after the time when an original nomination for an office is required to be filed, objections shall be filed within three days after the filing of the certificate.

Objections shall be filed no later than five p.m. on the final date for filing.

[C97, §1103; C24, §654; C27, 31, 35, §655-a4; C39, §**655.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.4]

87 Acts, ch 221, §3; 88 Acts, ch 1119, §8; 88 Acts, ch 1246, §1; 89 Acts, ch 136, §24; 90 Acts, ch 1238, §8; 95 Acts, ch 189, §5; 97 Acts, ch 170, §7; 98 Acts, ch 1123, §2; 2002 Acts, ch 1134, §13, 115

See §45.4

2002 amendment to unnumbered paragraph 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 amended

44.5 Notice of objections.

When objections are filed notice shall forthwith be given to the candidate affected thereby, addressed to the candidate's place of residence as given in the certificate of nomination, stating that objections have been made to said certificate, also stating the time and place such objections will be considered.

[C97, §1103; C24, §654; C27, 31, 35, §655-a5; C39, §**655.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.5]

44.6 Hearing before state commissioner.

Objections filed with the state commissioner shall be considered by the secretary of state and auditor of state and attorney general, and a majority decision shall be final; but if the objection is to the certificate of nomination of one or more of the above named officers, said officer or officers so objected to shall not pass upon the same, but their places shall be filled, respectively, by the treasurer of state, the governor, and the secretary of agriculture.

[C97, §1103; C24, §654; C27, 31, 35, §655-a6; C39, §**655.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.6]

44.7 Hearing before commissioner.

Objections filed with the commissioner shall be considered by the county auditor, county treasurer, and county attorney, and a majority decision shall be final; but if the objection is to the certificate of nomination of one or more of the above named county officers, the officer or officers objected to shall not pass upon the objection, but their places shall be filled, respectively, by the chairperson of the board of supervisors, the sheriff, and the county recorder.

[C97, §1103; C24, §654; C27, 31, 35, §655-a7; C39, §**655.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.7]

83 Acts, ch 186, §10016, 10201

44.8 Hearing before mayor.

Objections filed with the city clerk shall be considered by the mayor and clerk and one member of the council chosen by the council by ballot, and a majority decision shall be final; but if the objection is to the certificate of nomination of either of those

city officials, that official shall not pass upon said objection, but the official's place shall be filled by a member of the council against whom no such objection exists, chosen as above provided.

The hearing shall be held within twenty-four hours of the receipt of the objection if a primary election must be held for the office sought by the candidate against whom the objection has been filed.

[C97, §1103; C24, §654; C27, 31, 35, §655-a8; C39, §**655.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.8]

88 Acts, ch 1119, §9

44.9 Withdrawals.

Any candidate named under this chapter may withdraw the candidate's nomination by a written request filed as follows:

1. In the office of the state commissioner, at least seventy-four days before the date of the election.

2. In the office of the proper commissioner, at least sixty-four days before the date of the election.

3. In the office of the proper school board secretary, at least thirty-five days before the day of a regularly scheduled school election.

4. In the office of the state commissioner, in case of a special election to fill vacancies in Congress or the general assembly, not more than:

a. Twenty days after the date on which the governor issues the call for a special election to be held on at least forty days' notice.

b. Five days after the date on which the governor issues the call for a special election to be held on at least ten but less than forty days' notice.

5. In the office of the proper commissioner or school board secretary in case of a special election to fill vacancies, at least twenty-five days before the day of election.

6. In the office of the proper city clerk, at least forty-two days before the regularly scheduled or special city election. However, for those cities that may be required to hold a primary election, at least sixty-three days before a regularly scheduled or special city election.

[C97, §1101; SS15, §1101; C24, §652; C27, 31, 35, §655-a9; C39, §**655.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.9]

87 Acts, ch 221, §4, 5; 89 Acts, ch 136, §25; 91 Acts, ch 129, §8; 98 Acts, ch 1123, §3

See §43.76, 45.4, 376.4

44.10 Effect of withdrawal.

No name so withdrawn shall be printed on the official ballot under such nomination.

[C97, §1101; SS15, §1101; C24, §652; C27, 31, 35, §655-a10; C39, §**655.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.10]

See §45.4

44.11 Vacancies filled.

If a candidate named under this chapter withdraws before the deadline established in section 44.9, declines a nomination, or dies before election day, or if a certificate of nomination is held insufficient or inoperative by the officer with whom it is required to be filed, or in case any objection made to a certificate of nomination, or to the eligibility of any candidate named in the certificate, is sustained by the board appointed to determine such questions, the vacancy or vacancies may be filled by the convention, or caucus, or in such manner as such convention or caucus has previously provided. The vacancy or vacancies shall be filled not less than seventy-four days before the election in the case of nominations required to be filed with the state commissioner, not less than sixty-four days before the election in the case of nominations required to be filed with the commissioner, not less than thirty-five days before the election in the case of nominations required to be filed in the office of the school board secretary, and not less than forty-two days before the election in the case of nominations required to be filed with the city clerk.

[C97, §1102; C24, §653; C27, 31, 35, §655-a11; C39, §**655.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.11]

89 Acts, ch 136, §26; 97 Acts, ch 170, §8

44.12 Insufficient time for convention.

If the time is insufficient for again holding such convention or caucus, or in case no such previous provisions have been made, such vacancy shall be filled by the regularly elected or appointed executive or central committee of the particular division or district representing the political organization holding such convention, or caucus.

[C97, §1102; C24, §653; C27, 31, 35, §655-a12; C39, §**655.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.12]

44.13 Certificates in matter of vacancies.

The certificates of nominations made to supply such vacancies shall state, in addition to the facts and candidate's affidavit required in an original certificate, the name of the original nominee, the date of death or declination of nomination, or the fact that the former nomination has been held insufficient or inoperative, and the measures taken in accordance with the above requirements for filling a vacancy, and shall be signed and sworn to by the presiding officer and secretary of the convention, or caucus, or by the chairperson and secretary of the committee, as the case may be.

[C97, §1102; C24, §653; C27, 31, 35, §655-a13; C39, §**655.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.13; 81 Acts, ch 34, §6]

Original certificates, §44.3

44.14 Filing of certificates.

Certificates of nominations made to fill vacancies, as required by section 44.13, shall be filed with the officer designated and at the time required by section 44.11.

[C97, §1104; SS15, §1104; C24, §655; C27, 31, 35, §655-a14; C39, §**655.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.14]

44.15 Presumption of validity.

Certificates thus filed, and being apparently in conformity with law, shall be regarded as valid, unless objection in writing thereto shall be made, and, under proper regulations, shall be open to public inspection, and preserved by the receiving officer for not less than six months after the election is held.

[C97, §1104; SS15, §1104; C24, §655; C27, 31, 35, §655-a15; C39, §**655.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.15]

See §45.4

44.16 Return of papers — additions not allowed.

After a nomination petition or certificate has been filed, it shall not be returned to the candidate or person who has filed the document, and no signature or other information shall be added to the nomination petition or certificate.

[C97, §1104; SS15, §1104; C24, §655; C27, 31, 35, §655-a16; C39, §**655.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §44.16]

93 Acts, ch 143, §7

44.17 Nominations by petition.

In lieu of holding a caucus or convention, a nonparty political organization may nominate by petition pursuant to chapter 45 not more than one candidate for any partisan office to be filled at the general election.

The nonparty political organization may also file with the appropriate commissioner a list of the names and addresses of the organization's central committee members, and the chairperson and secretary of the organization. The organization may also place on file a description of the method that the organization will follow to fill any vacancies resulting from the death, withdrawal, or disqualification of any of its candidates that were nominated by petition. If this information is filed before the close of the filing period for the general election, substitutions may be made pursuant to section 44.11.

97 Acts, ch 170, §9

CHAPTER 45

NOMINATIONS BY PETITION

See also definitions in §39.3

45.1 Nominations by petition.
45.2 Adding name by petition.
45.3 Affidavit of candidacy.
45.4 Filing — presumption — withdrawals — objections.
45.5 Form of nomination papers.
45.6 Requirements in signing.

45.1 Nominations by petition.

1. Nominations for candidates for president and vice president, governor and lieutenant governor, and for other statewide elected offices may be made by nomination petitions signed by not less than one thousand five hundred eligible electors residing in not less than ten counties of the state.

2. Nominations for candidates for a representative in the United States house of representatives may be made by nomination petitions signed by not less than the number of eligible electors equal to the number of signatures required in subsection 1 divided by the number of congressional districts.

3. Nominations for candidates for the state senate may be made by nomination petitions signed by not less than one hundred eligible electors of the senate district.

4. Nominations for candidates for the state house of representatives may be made by nomination petitions signed by not less than fifty eligible electors of the representative district.

5. Nominations for candidates for offices filled by the voters of a whole county may be made by nomination petitions signed by eligible electors of the county equal in number to at least one percent of the number of registered voters in the county on July 1 in the year preceding the year in which the office will appear on the ballot, or by at least two hundred fifty eligible electors of the county, whichever is less.

6. Nominations for candidates for the office of

county supervisor elected by the voters of a supervisor district may be made by nomination petitions signed by eligible electors of the supervisor district equal in number to at least one percent of the number of registered voters in the supervisor district on July 1 in the year preceding the year in which the office will appear on the ballot, or by at least one hundred fifty eligible electors of the supervisor district, whichever is less.

7. Nomination papers for the offices of president and vice president shall include the names of the candidates for both offices on each page of the petition. A certificate listing the names of the candidates for presidential electors, one from each congressional district and two from the state at large, shall be filed in the state commissioner's office at the same time the nomination papers are filed.

Nomination papers for the offices of governor and lieutenant governor shall include the names of candidates for both offices on each page of the petition. Nomination papers for other statewide elected offices and all other offices shall include the name of the candidate on each page of the petition.

8. Nominations for candidates for elective offices in cities where the council has adopted nominations under this chapter may be submitted as follows:

a. Except as otherwise provided in subsection 9, in cities having a population of three thousand five hundred or greater according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than twenty-five eligible electors who are residents of the city or ward.

b. In cities having a population of one hundred or greater, but less than three thousand five hundred, according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than ten eligible electors who are residents of the city or ward.

c. In cities having a population less than one hundred according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than five eligible electors who are residents of the city.

9. Nominations for candidates, other than partisan candidates, for elective offices in special charter cities subject to section 43.112 may be submitted as follows:

a. For the office of mayor and alderman at large, nominations may be made by nomination papers signed by eligible electors residing in the city equal in number to at least two percent of the total vote received by all candidates for mayor at the last preceding city election.

b. For the office of ward alderman, nominations may be made by nomination papers signed by eligible electors residing in the ward equal in number to at least two percent of the total vote received by all candidates for ward alderman in that ward at the last preceding city election.

10. Nominations for township officers may be made by nomination petitions signed by not less than ten eligible electors of the township.

[C97, §1100; C24, §651; C27, 31, 35, §655-a17; C39, §**655.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §45.1; 81 Acts, ch 34, §7]

86 Acts, ch 1224, §7; 88 Acts, ch 1119, §10, 11; 89 Acts, ch 136, §27; 93 Acts, ch 143, §8; 94 Acts, ch 1180, §10

45.2 Adding name by petition.

The name of a candidate placed upon the ballot by any other method than by petition shall not be added by petition for the same office in the same election.

[C97, §1100; C24, §651; C27, 31, 35, §655-a18; C39, §**655.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §45.2]

Other methods, chapters 43, 44

45.3 Affidavit of candidacy.

Each candidate shall complete and file a signed, notarized affidavit of candidacy. The affidavit shall be filed at the same time as the nomination petition. The affidavit shall be in the form prescribed by the secretary of state and shall include the following information:

1. The candidate's name in the form the candidate wants it to appear on the ballot.
2. The candidate's home address.
3. The name of the county in which the candidate resides.
4. The name of the political organization by which the candidate was nominated, if any.
5. The office sought by the candidate, and the district the candidate seeks to represent, if any.
6. A declaration that if the candidate is elected the candidate will qualify by taking the oath of office.
7. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 56.2, subsection 5. This subsection shall not apply to candidates for federal office.
8. A statement that the candidate is aware of the prohibition in section 49.41 against being a candidate for more than one office to be filled at the same election, except county agricultural extension council and soil and water conservation district commission.
9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the

president of the United States.

[C97, §1100; C24, §651; C27, 31, 35, §655-a19; C39, §**655.19;** C46, 50, 54, 58, 62, 66, 71, 73, §45.3; C75, §45.3, 56.5(4); C77, 79, 81, §45.3; 81 Acts, ch 35, §18]

87 Acts, ch 221, §6; 89 Acts, ch 136, §28; 90 Acts, ch 1238, §9; 91 Acts, ch 129, §9; 94 Acts, ch 1023, §79; 94 Acts, ch 1180, §11; 98 Acts, ch 1052, §4; 2001 Acts, ch 158, §9; 2002 Acts, ch 1134, §14, 115

2002 amendment striking unnumbered paragraph 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 stricken

45.4 Filing — presumption — withdrawals — objections.

The time and place of filing nomination petitions, the presumption of validity thereof, the right of a candidate so nominated to withdraw and the effect of such withdrawal, and the right to object to the legal sufficiency of such petitions, or to the eligibility of the candidate, shall be governed by the law relating to nominations by political organizations which are not political parties.

[C97, §1104; SS15, §1104; C24, §652, 654, 655; C27, 31, 35, §655-a20; C39, §**655.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §45.4]

Statutes applicable, chapter 44

45.5 Form of nomination papers.

1. Nomination papers shall include a petition and an affidavit of candidacy. All nomination petitions shall be eight and one-half by eleven inches in size and shall be in substantially the form prescribed by the state commissioner of elections. They shall provide spaces for the following information:

a. A statement identifying the signers of the petition as eligible electors of the appropriate county or legislative district and of the state of Iowa.

b. The name of the candidate nominated by the petition.

c. A statement that the candidate is a resident of the appropriate ward, city, county, school district, or legislative or other district as required by section 45.1.

d. The office sought by the candidate, including the district number, if any.

e. The name and date of the election for which the candidate is nominated.

Signatures on a petition page shall be counted only if the required information is written or printed at the top of the page. Nomination papers on behalf of candidates for seats in the general assembly need only designate the number of the senatorial or representative district, as appropriate, and not the county or counties, in which the candidate and the petitioners reside. Signature lines on the nomination petitions shall not be counted if the line lacks the signature of the eligible elector and the signer's address and city. The person examining the petition shall mark any deficiencies on the petition.

2. The pages of the petition shall be securely fastened together to form a single bundle. Nomination petitions that are not bound shall be returned without further examination. The state commissioner shall prescribe by rule the acceptable methods for binding nomination petitions.

3. Signed nomination petitions and the signed and notarized affidavit of candidacy shall not be altered to correct deficiencies noted during the examination. If the nomination petition lacks a sufficient number of acceptable signatures, the nomination papers shall be rejected and returned to the candidate.

The nomination papers shall be rejected if the affidavit lacks any of the following:

a. The candidate's name.

b. The name of the office sought, including the district, if any.

c. The signature of the candidate.

d. The signature of a notary public or other officer empowered to witness oaths.

The candidate may replace a deficient affidavit with a corrected one only if the replacement is filed before the filing deadline. The candidate may resubmit a nomination petition that has been rejected by adding a sufficient number of pages or signatures to correct the deficiency. A nomination petition and affidavit filed to replace rejected nomination papers shall be filed together before the deadline for filing.

2002 Acts, ch 1134, §15, 115

Oaths; see chapter 63A

Section takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW section

45.6 Requirements in signing.

The following requirements shall be observed in the signing and preparation of nomination petitions:

1. A signer may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the signer signed nomination petitions for one or more other candidates for the office.

2. Each signer shall add the signer's residence, with street and number.

3. All signers, for all nominations, of each separate part of a nomination petition, shall reside in the appropriate ward, city, county, school district, or legislative or other district as required by section 45.1.

4. When more than one sheet is used, the sheets shall be neatly arranged and securely fastened together before filing, and shall be considered one nomination petition. Nomination petitions which are not securely fastened together shall be returned to the candidate or the candidate's designee without examination. The state commissioner shall prescribe by rule the accept-

able methods for binding nomination petitions.

5. Only one candidate shall be petitioned for or nominated in the same nomination petition, except for the offices of governor and lieutenant governor, and president and vice president.

2002 Acts, ch 1134, §16, 115

Section takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW section

CHAPTER 46

NOMINATION AND ELECTION OF JUDGES

46.1 Appointment of state judicial nominating commissioners.
46.2 Election of state judicial nominating commissioners.
46.3 Appointment of district judicial nominating commissioners.
46.4 Election of district judicial nominating commissioners.
46.5 Vacancies.
46.5A Judicial nominating commission expenses.
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46.9 Conduct of elections.
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46.14 Nomination.
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46.16 Terms of judges.
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46.20 Declaration of candidacy.
46.21 Conduct of elections.
46.22 Voting.
46.23 General election and absent voter laws.
46.24 Results of election.
46.25 Eligible elector defined.

46.1 Appointment of state judicial nominating commissioners.

The governor shall appoint, subject to confirmation by the senate, one eligible elector of each congressional district to the state judicial nominating commission for a six-year term beginning and ending as provided in section 69.19. The terms of no more than three nor less than two of the members shall expire within the same two-year period. No more than a simple majority of the members appointed shall be of the same gender.

[C66, 71, 73, 75, 77, 79, 81, §46.1]

87 Acts, ch 218, §1

Confirmation, see §2.32

46.2 Election of state judicial nominating commissioners.

The resident members of the bar of each congressional district shall elect one eligible elector of the district to the state judicial nominating commission for a six-year term beginning July 1. The terms of no more than three nor less than two of the members shall expire within the same two-year period, the expiration dates being governed by the expiration dates of the terms of the original appointive members. The members of the bar of the respective congressional districts shall in January, immediately preceding the expiration of the term of a member of the commission, elect a successor for a like term. For the first elective term open on or after July 1, 1987, in the odd-numbered districts the elected member shall be a woman and in the even-numbered districts the elected member shall be a man. Thereafter, the districts shall alternate between women and men elected members.

[C66, 71, 73, 75, 77, 79, 81, §46.2]

87 Acts, ch 218, §2

46.3 Appointment of district judicial nominating commissioners.

The governor shall appoint five eligible electors of each judicial election district to the district judicial nominating commission. Appointments shall be to staggered terms of six years each and shall be made in the month of January for terms commencing February 1 of even-numbered years. No more than a simple majority of the commissioners appointed shall be of the same gender.

[C66, 71, 73, 75, 77, 79, 81, §46.3]

87 Acts, ch 218, §3

46.4 Election of district judicial nominating commissioners.

The resident members of the bar of each judicial election district shall elect five eligible electors of the district to the district judicial nominating com-

mission. Commissioners shall be elected to staggered terms of six years each. The elections shall be held in the month of January for terms commencing February 1 of even-numbered years.

For terms commencing February 1, 1988, and every six years thereafter, one elected commissioner in each district shall be a woman and one shall be a man. For terms commencing February 1, 1990, and every six years thereafter, one elected commissioner in each district shall be a woman and one shall be a man. For the term commencing February 1, 1992, in the odd-numbered districts the elected commissioner shall be a woman and in the even-numbered districts the elected commissioner shall be a man. For the terms commencing every six years thereafter, the districts shall alternate between women and men elected commissioners.

[C66, 71, 73, 75, 77, 79, 81, §46.4]
87 Acts, ch 218, §4

46.5 Vacancies.

When a vacancy occurs in the office of appointive judicial nominating commissioner, the chairperson of the particular commission shall promptly notify the governor in writing of such fact. Vacancies in the office of appointive judicial nominating commissioner shall be filled by appointment by the governor, consistent with eligibility requirements. The term of state judicial nominating commissioners so appointed shall commence upon their appointment pending confirmation by the senate at the then session of the general assembly or at its next session if it is not then in session. The term of district judicial nominating commissioners so appointed shall commence upon their appointment.

Except where the term has less than ninety days remaining, vacancies in the office of elective member of the state judicial nominating commission shall be filled consistent with eligibility requirements by a special election within the congressional district where the vacancy occurs, such election to be conducted as provided in sections 46.9 and 46.10.

Vacancies in the office of elective judicial nominating commissioner of district judicial nominating commissions shall be filled consistent with eligibility requirements and by majority vote of the authorized number of elective members of the particular commission, at a meeting of such members called in the manner provided in section 46.13. The term of judicial nominating commissioners so chosen shall commence upon their selection.

If a vacancy occurs in the office of chairperson of a judicial nominating commission, or in the absence of the chairperson, the members of the particular commission shall elect a temporary chairperson from their own number.

When a vacancy in an office of an elective judicial nominating commissioner occurs, the clerk of the supreme court shall cause to be mailed to each member of the bar whose name appears on the certified list prepared pursuant to section 46.8 for the district or districts affected, a notice stating the existence of the vacancy, the requirements for eligibility, and the manner in which the vacancy will be filled. Other items may be included in the same mailing if they are on sheets separate from the notice. The election of a district judicial nominating commissioner or the close of nominations for a state judicial nominating commissioner shall not occur until thirty days after the mailing of the notice.

[C66, 71, 73, 75, 77, 79, 81, §46.5]
83 Acts, ch 186, §10017, 10201; 87 Acts, ch 218, §5

46.5A Judicial nominating commission expenses.

Members of the state judicial nominating commission and the district judicial nominating commissions are entitled to be reimbursed for actual and necessary expenses incurred in the performance of their duties as commissioners for each day spent attending commission meetings or training sessions called by the chairperson. Expenses shall be paid from funds appropriated to the judicial branch for this purpose.

88 Acts, ch 1094, §1; 98 Acts, ch 1047, §13

46.6 Equal seniority.

If the judges of longest service (other than the chief justice) of the supreme court or of the district court in a district are of equal service, the eldest of such judges shall be chairperson of the particular judicial nominating commission.

[C66, 71, 73, 75, 77, 79, 81, §46.6]

46.7 Eligibility to vote.

To be eligible to vote in elections of judicial nominating commissioners, a member of the bar must be eligible to practice and must be a resident of the state of Iowa and of the appropriate congressional district or judicial election district as shown by the member's most recent filing with the supreme court for the purposes of showing compliance with the court's continuing legal education requirements, or for members of the bar eligible to practice who are not required to file such compliance, any paper on file by July 1 with the clerk of the supreme court, for the purpose of establishing eligibility to vote under this section, which the court determines to show the requisite residency requirements. A judge who has been admitted to the bar of the state of Iowa shall be considered a member of the bar.

[C66, 71, 73, 75, 77, 79, 81, §46.7]
83 Acts, ch 186, §10018, 10201; 86 Acts, ch 1119, §1; 92 Acts, ch 1116, §1

46.8 Certified list.

On July 15 of each year the clerk of the supreme court shall certify a list of the names, addresses, and years of admission of members of the bar who are eligible to vote for state and district judicial nominating commissioners. The clerk of the supreme court shall provide a copy of the list of the members for a county to the clerk of the district court for that county.

[C66, 71, 73, 75, 77, 79, 81, §46.8]

83 Acts, ch 186, §10019, 10201; 86 Acts, ch 1119, §2

46.9 Conduct of elections.

When an election of judicial nominating commissioners is to be held, the clerk of the supreme court shall cause ballots to be mailed in accordance with the current certified list of resident members of the bar to such members of the proper districts, substantially as follows:

Iowa State (or Iowa . . . . . Judicial District)
Judicial Nominating Commission

BALLOT

To be cast by the resident members of the bar of the . . . . . Congressional (or Judicial) District of Iowa.

Vote for (state number) for Iowa State (or Iowa . . . . . Judicial District) judicial nominating commissioner(s) for term commencing . . . . . .

☐ CANDIDATE'S NAME
☐ CANDIDATE'S NAME
☐ . . . . . .
☐ . . . . . .

To be counted, this ballot must be completed and mailed or delivered to Clerk of the Supreme Court of Iowa, Des Moines, Iowa, not later than January 31, ... (year) (or the appropriate date under section 46.5 in case of an election to fill a vacancy).

DESTROY BALLOT IF NOT USED

The elector receiving the most votes shall be elected. When more than one commissioner is to be elected, the electors receiving the most votes shall be elected, in the same number as the offices to be filled.

The ballot must be completed and mailed or delivered to the clerk of the supreme court prior to expiration of the period within which the election must be held.

The ballots shall be counted under the direction of the clerk of the supreme court.

[C66, 71, 73, 75, 77, 79, 81, §46.9]

83 Acts, ch 186, §10020, 10201; 2000 Acts, ch 1058, §58

46.9A Notice preceding nomination of elective nominating commissioners.

At least sixty days prior to the expiration of the term of an elective state or district judicial nominating commissioner, the clerk of the supreme court shall cause to be mailed to each member of the bar whose name appears on the certified list prepared pursuant to section 46.8 for the district or districts affected, a notice stating the date the term of office will expire, the requirements for eligibility to the office for the succeeding term, and the procedure for filing nominating petitions, including the last date for filing. Other items may be included in the same mailing if they are on sheets separate from the notice.

87 Acts, ch 218, §6

46.10 Nomination of elective nominating commissioners.

In order to have an eligible elector's name printed on the ballot for state or district judicial nominating commissioner, the eligible elector must file in the office of the clerk of the supreme court at least thirty days prior to expiration of the period within which the election must be held a nominating petition signed by at least fifty resident members of the bar of the congressional district in case of a candidate for state judicial nominating commissioner, or at least ten resident members of the bar of the judicial district in case of a candidate for district judicial nominating commissioner. No member of the bar may sign more nominating petitions for state or district judicial nominating commissioner than there are such commissioners to be elected.

Ballots for state and district judicial nominating commissioners shall contain blank lines equal to the number of such commissioners to be elected, where names may be written in.

[C66, 71, 73, 75, 77, 79, 81, §46.10]

46.11 Certification of commissioners.

The governor and the clerk of the supreme court respectively shall promptly certify the names and addresses of appointive and elective judicial nominating commissioners to the state commissioner of elections and the chairperson of the respective nominating commissions.

[C66, 71, 73, 75, 77, 79, 81, §46.11]

46.12 Notification of vacancy and resignation.

When a vacancy occurs or will occur within one hundred twenty days in the supreme court, the court of appeals, or district court, the state commissioner of elections shall forthwith so notify the chairperson of the proper judicial nominating commission. The chairperson shall call a meeting of the commission within ten days after such notice; if the chairperson fails to do so, the chief justice shall call such meeting.

When a judge of the supreme court, court of appeals, or district court resigns, the judge shall submit a copy of the resignation to the state commissioner of elections at the time the judge submits the resignation to the governor; and when a judge of the supreme court, court of appeals, or district court dies, the clerk of district court of the county of the judge's residence shall in writing forthwith notify the state commissioner of elections of such fact.

[C66, 71, 73, 75, 77, 79, 81, §46.12]
89 Acts, ch 18, §1

46.13 Notice of meetings.

The chairperson of each judicial nominating commission shall give the members of the commission at least five days' written notice by mail of the time and place of every meeting, except as to members who execute written waivers of notice at or before the meeting or unless the commission at its next previous meeting designated the time and place of the meeting.

[C66, 71, 73, 75, 77, 79, 81, §46.13]

46.14 Nomination.

Each judicial nominating commission shall carefully consider the individuals available for judge, and within sixty days after receiving notice of a vacancy shall certify to the governor and the chief justice the proper number of nominees, in alphabetical order. Such nominees shall be chosen by the affirmative vote of a majority of the full statutory number of commissioners upon the basis of their qualifications and without regard to political affiliation. Nominees shall be members of the bar of Iowa, shall be residents of the state or district of the court to which they are nominated, and shall be of such age that they will be able to serve an initial and one regular term of office to which they are nominated before reaching the age of seventy-two years. Nominees for district judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the district judicial nominating commission. No person shall be eligible for nomination by a commission as judge during the term for which the person was elected or appointed to that commission. Absence of a commissioner or vacancy upon the commission shall not invalidate a nomination. The chairperson of the commission shall promptly certify the names of the nominees, in alphabetical order, to the governor and the chief justice.

[C66, 71, 73, 75, 77, 79, 81, §46.14]
89 Acts, ch 212, §1

46.15 Appointments to be from nominees.

All appointments to the supreme court and court of appeals shall be made from the nominees of the state judicial nominating commission, and all appointments to the district court shall be made from the nominees of the district judicial nominating commission. Nominees to the court of appeals shall have the qualifications prescribed for nominees to the supreme court.

Vacancies in the court of appeals shall be filled by appointment by the governor from a list of nominees submitted by the state judicial nominating commission. Five nominees shall be submitted for each vacancy. If the governor fails to make an appointment within thirty days after a list of nominees has been submitted, the appointment shall be made from the list of nominees by the chief justice of the supreme court.

[C66, 71, 73, 75, 77, 79, 81, §46.15]
83 Acts, ch 186, §10021, 10201

46.16 Terms of judges.

1. Subject to sections 602.1610 and 602.1612 and to removal for cause:

a. The initial term of office of judges of the supreme court, court of appeals and district court shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year; and

b. The regular term of office of judges of the supreme court retained at a judicial election shall be eight years, and of judges of the court of appeals and district court so retained shall be six years, from the expiration of their initial or previous regular term as the case may be.

For the purpose of initial appointments to the court of appeals, two of the judges appointed shall serve an irregular term ending December 31 of the fourth year after expiration of the initial term prescribed in subsection 1 and two of the judges appointed shall serve an irregular term ending December 31 of the fifth year after expiration of the initial term prescribed in subsection 1. Expiration of irregular terms shall be deemed expiration of regular terms for all purposes.

2. Subject to removal for cause, the initial term of office of a district associate judge shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year, and the regular term of office of a district associate judge retained at a judicial election shall be four years from the expiration of the initial or previous regular term, as the case may be.

3. Subject to removal for cause, the initial term of office of a full-time associate juvenile judge or a full-time associate probate judge shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year, and the regular term of office of a full-time associate juvenile judge or a full-time associate probate judge retained at a judicial election shall be four years from the expiration of the initial or previous regular term, as the case may be.

[C66, 71, §46.16; C73, 75, 77, 79, §46.16, 602.29;

C81, §46.16]
83 Acts, ch 186, §10022, 10201; 99 Acts, ch 93, §1, 15

46.17 Time of judicial election.
Judicial elections shall be held at the time of the general election.
[C66, 71, 73, 75, 77, 79, 81, §46.17]

46.18 Eligibility of voters.
Electors entitled to vote at the general election shall be entitled to vote at the judicial election. All voting procedures provided by chapter 53 for absent voting by armed forces in general elections shall be applicable to judicial elections.
[C66, 71, 73, 75, 77, 79, 81, §46.18]

46.19 Election registers.
The election registers used for the general election shall also constitute the election registers for the judicial election.
[C66, 71, 73, 75, 77, 79, 81, §46.19]

46.20 Declaration of candidacy.
At least one hundred four days before the judicial election preceding expiration of the initial or regular term of office, a judge of the supreme court, court of appeals, or district court including district associate judges, full-time associate juvenile judges, or full-time associate probate judges, or a clerk of the district court who is required to stand for retention under section 602.1216 may file a declaration of candidacy with the state commissioner of elections to stand for retention or rejection at that election. If a judge or clerk fails to file the declaration, the office shall be vacant at the end of the term. District associate judges, full-time associate juvenile judges, and full-time associate probate judges filing the declaration shall stand for retention in the judicial election district of their residence.
[C66, 71, 73, 75, 77, 79, 81, §46.20]
83 Acts, ch 186, §10023, 10201; 89 Acts, ch 136, §29; 99 Acts, ch 93, §2

46.21 Conduct of elections.
At least sixty-nine days before each judicial election, the state commissioner of elections shall certify to the county commissioner of elections of each county a list of the judges of the supreme court, court of appeals, and district court including district associate judges, full-time associate juvenile judges, and full-time associate probate judges, and clerks of the district court to be voted on in each county at that election. The county commissioner of elections shall place the names upon the ballot in the order in which they appear in the certificate, unless only one county is voting thereon. The state commissioner of elections shall rotate the names in the certificate by county, or the county commissioner of elections shall rotate them upon the ballot by precinct if only one county is voting thereon. The names of all judges and clerks to be voted on shall be placed upon one ballot, which shall be in substantially the following form:

STATE OF IOWA
JUDICIAL BALLOT
(Date)

VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX AFTER EACH NAME.

SUPREME COURT
Shall the following judges of the Supreme Court be retained in office?

CANDIDATE'S NAME YES ☐ NO ☐
CANDIDATE'S NAME YES ☐ NO ☐

COURT OF APPEALS
Shall the following judges of the Court of Appeals be retained in office?

CANDIDATE'S NAME YES ☐ NO ☐
CANDIDATE'S NAME YES ☐ NO ☐

DISTRICT COURT
Shall the following judge, associate judge, associate juvenile judge, or associate probate judge of the District Court be retained in office?

CANDIDATE'S NAME YES ☐ NO ☐

Shall the following clerk of the District Court be retained in office?

CANDIDATE'S NAME YES ☐ NO ☐

[C66, 71, 73, 75, 77, 79, 81, §46.21]
83 Acts, ch 186, §10024, 10201; 89 Acts, ch 136, §30; 99 Acts, ch 93, §3
Voting mark generally, see §49.92

46.22 Voting.
Voting at judicial elections shall be by separate paper ballot, special paper ballot, ballot cards, or by voting machine in the space provided for public measures. If paper ballots are used the election judges shall offer a ballot to each voter. If special paper ballots or ballot cards are used, either a separate ballot or a distinct heading may be used to distinguish the judicial ballot. Separate ballot boxes for the general election ballots and the judicial election ballots are not required. The general election ballot and the judicial election ballot may be voted in the same voting booth.
[C66, 71, 73, 75, 77, 79, 81, §46.22]
90 Acts, ch 1238, §10

46.23 General election and absent voter laws.

So far as applicable, general election and absent voter laws shall apply to judicial elections. An application for an absent voter ballot for a general election shall also constitute an application for an absent voter ballot for a judicial election to be held at the same time, and the ballots shall be mailed or delivered to the voter together. The sealed envelope transmitted by the absent voter to the county commissioner of elections containing the absent voter general election ballot may also contain the judicial election ballot.

[C66, 71, 73, 75, 77, 79, 81, §46.23]

46.24 Results of election.

A judge of the supreme court, court of appeals, or district court including a district associate judge, full-time associate juvenile judge, or full-time associate probate judge, or a clerk of the district court must receive more affirmative than negative votes to be retained in office. When the poll is closed, the election judges shall publicly canvass the vote forthwith. The board of supervisors shall canvass the returns on the Monday or Tuesday after the election, and shall promptly certify the number of affirmative and negative votes on each judge or clerk to the state commissioner of elections.

The state board of canvassers shall, at the time of canvassing the vote cast at a general election, open and canvass all of the returns for the judicial election. Each judge of the supreme court, court of appeals, or district court including a district associate judge, full-time associate juvenile judge, or full-time associate probate judge, or a clerk of the district court who has received more affirmative than negative votes shall receive from the state board of canvassers an appropriate certificate so stating.

[C66, 71, 73, 75, 77, 79, 81, §46.24]

83 Acts, ch 186, §10025, 10201; 90 Acts, ch 1238, §11; 99 Acts, ch 93, §4; 2000 Acts, ch 1154, §8

46.25 Eligible elector defined.

As used in this chapter, the term *"eligible elector"* has the meaning assigned that term by section 39.3.

[C75, 77, 79, 81, §46.25]

CHAPTER 47

ELECTION COMMISSIONERS

Chapter applicable to primary elections, §43.5
See also definitions in §39.3

47.1 State commissioner of elections.
47.2 County commissioner of elections.
47.3 Election expenses.
47.4 Election filing deadlines.
47.5 Purchasing by competitive bidding.
47.6 Election dates — conflicts — public measures.
47.7 State registrar of voters.
47.8 Voter registration commission — composition — duties.

47.1 State commissioner of elections.

The secretary of state is designated as the state commissioner of elections and shall supervise the activities of the county commissioners of elections. There is established within the office of the secretary of state a division of elections which shall be under the direction of the state commissioner of elections. The state commissioner of elections may appoint a person to be in charge of the division of elections who shall perform the duties assigned by the state commissioner of elections. The state commissioner of elections shall prescribe uniform election practices and procedures, shall prescribe the necessary forms required for the conduct of elections, shall assign a number to each proposed constitutional amendment and statewide public measure for identification purposes, and shall adopt rules, pursuant to chapter 17A, to carry out this section.

The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural or other disaster or extremely inclement weather has occurred. The state commissioner of elections may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces, or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

The secretary of state is designated the chief state election official and is responsible for coordination of state responsibilities under the federal National Voter Registration Act of 1993.

The state commissioner shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

[C71, §49A.6; C73, 75, 77, 79, 81, §47.1; 81 Acts, ch 34, §8]

91 Acts, ch 129, §10; 93 Acts, ch 143, §9; 94 Acts, ch 1169, §45

See also §56.5(4)

47.2 County commissioner of elections.

1. The county auditor of each county is designated as the county commissioner of elections in each county. The county commissioner of elections shall conduct voter registration pursuant to chapter 48A and conduct all elections within the county.

2. When an election is to be held as required by law or is called by a political subdivision of the state and the political subdivision is located in more than one county, the county commissioner of elections of the county having the greatest taxable base within the political subdivision shall conduct that election. The county commissioners of elections of the other counties in which the political subdivision is located shall cooperate with the county commissioner of elections who is conducting the election.

3. The commissioner may designate as a deputy county commissioner of elections any officer of a political subdivision who is required by law to accept nomination papers filed by candidates for office in that political subdivision, and when so designated that person shall assist the commissioner in administering elections conducted by the commissioner for that subdivision. The designation of a person as a deputy commissioner of elections pursuant to this section, once made, shall continue in effect until the designation is withdrawn by the commissioner.

4. The commissioner shall assign each local public measure a letter for identification purposes. The public measure on the ballot shall be identified by the letter.

The county commissioner who is responsible under subsection 2 for conducting the elections held for a political subdivision which lies in more than one county shall assign the letter to the public measure. The county commissioners of elections of the other counties in which the political subdivision is located shall not assign the same letter to a local public measure on the ballot in their counties during the same election.

5. The office of county auditor or county commissioner of elections in each county shall be open for at least eight hours on the Saturday preceding a general election, primary election, or special election called by the governor for the purpose of receiving absentee ballots and conducting other official business relating to the election.

6. On the final date for filing nomination papers in the commissioner's office the office shall be open until the time for receiving nomination papers has passed.

[C73, 75, 77, 79, 81, §47.2; 81 Acts, ch 34, §9]

84 Acts, ch 1291, §3; 89 Acts, ch 136, §31; 94 Acts, ch 1169, §46

47.3 Election expenses.

The costs of conducting a special election called by the governor, general election, and the primary election held prior to the general election shall be paid by the county.

The cost of conducting other elections shall be paid by the political subdivision for which the election is held. The costs shall include, but not be limited to, the printing of the ballots and the election register, publication of notices, printing of declaration of eligibility affidavits, compensation for precinct election boards, canvass materials, and the preparation and installation of voting machines. The county commissioner of elections shall certify to the county board of supervisors a statement of cost for an election. The cost shall be assessed by the county board of supervisors against the political subdivision for which the election was held.

Costs of registration and administrative and clerical costs shall not be charged as a part of the election costs.

If voting machines are used in any election, the county commissioner of elections shall not charge any political subdivision of the state a rental fee for the use of any voting machines.

The cost of maintenance of voter registration records and of preparation of election registers and any other voter registration lists required by the commissioner in the discharge of the duties of that office shall be paid by the county. Administrative and clerical costs, incurred by the registrar in discharging the duties of that office shall be paid by the state.

[C97, §1129; S13, §1129, 2754; SS15, §1087-a5; C24, §560, 835, 4203; C27, §560, 718-b18, 4203; C31, 35, §560, 718-b18, 4216-c15; C39, §**560, 718.18, 4216.15;** C46, 50, 54, 58, 62, 66, 71, §43.32, 48.18, 49.118, 277.15; C73, §43.32, 47.3, 277.15; C75, 77, 79, 81, §47.3]

For compensation of precinct election officials, see §49.20

47.4 Election filing deadlines.

If the deadline for a filing pertaining to an election falls on a day that the state or county commissioner's office is closed for business, the deadline shall be extended to the next day that the office of state commissioner or county commissioner is open for business to receive the filing. This section does not apply to the deadline for voter registration under section 48A.9, subsection 2.

97 Acts, ch 170, §10

47.5 Purchasing by competitive bidding.

1. Except for legal services and printing of ballots, the commissioner shall take bids for goods and services which are needed in connection with registration of voters or preparation for or admin-

istration of elections and which will be performed or provided by persons who are not employees of the commissioner under the following circumstances:

a. In any case where it is proposed to purchase data processing services. The commissioner shall give the registrar written notice in advance on each occasion when it is proposed to have data processing services, necessary in connection with the administration of elections, performed by any person other than the registrar or an employee of the county. Such notice shall be made at least thirty days prior to publication of the specifications.

b. In all other cases, where the cost of the goods or services to be purchased will exceed one thousand dollars.

2. When it is proposed to purchase any goods or services, other than data processing services, in connection with administration of elections, the commissioner shall publish notice to bidders, including specifications regarding the goods or services to be purchased or a description of the nature and object of the services to be retained, in a newspaper of general circulation in the county not less than fifteen days before the final date for submission of bids. When competitive bidding procedures are used, the purchase of goods or services shall be made from the lowest responsible bidder which meets the specifications or description of the services needed or the commissioner may reject all bids and readvertise. In determining the lowest responsible bidder, various factors may be considered, including but not limited to the past performance of the bidder relative to quality of product or service, the past experience of the purchaser in relation to the product or service, the relative quality of products or services, the proposed terms of delivery and the best interest of the county.

3. The procedure for purchasing data processing services in connection with administration of elections is the same as prescribed in subsection 2, except that the required copy of the bid specifications shall be filed with the registrar rather than the state commissioner. The specifications for data processing contracts relative to voter registration records shall be specified by the registration commission. The registrar shall, not later than the final date for submission of bids, inform the commissioner in writing whether the department of general services data processing facilities are currently capable of furnishing the services the county proposes to purchase, and if so the cost to the county of so obtaining the services as determined in accordance with the standard charges adopted by the registration commission. The commissioner, with approval of the board of supervisors, may reject all bids and enter into an arrangement with the registrar for the services to be furnished by the state. The commissioner may recommend and the board of supervisors may approve purchasing the needed services from the lowest responsible bidder; however, if the needed services could be obtained through the registrar at a lower cost, the board shall publish notice twice in a newspaper of general circulation in the county of its intent to accept such bid and of the difference in the amount of the bid and the cost of purchasing the needed services from the department of general services data processing facilities through the registrar. Each contract for the furnishing of data processing services necessary in connection with the administration of elections, by any person other than the registrar or an employee of the county, shall be executed with the contractor by the board of supervisors of the county purchasing the services, but only after the contract has been reviewed and approved by the registration commission. The contract shall be of not more than one year's duration. Each county exercising the option to purchase such data processing services from a provider other than the registrar shall provide the registrar, at the county's expense, original and updated voter registration lists in a form and at times prescribed by rules adopted by the registration commission.

4. Any election or registration data or records which may be in the possession of a contractor shall remain the property of the commissioner. Contracts with a private person relating to the maintenance and use of voter registration data, which were properly entered into in compliance with this section and with all other laws relating to bidding on such contracts, shall remain in force only until the most recently negotiated termination date of that contract. A new contract with the same provider may be entered into in accordance with subsection 3.

[C75, 77, 79, 81, §47.5]

86 Acts, ch 1245, §312; 95 Acts, ch 103, §1, 2; 97 Acts, ch 170, §11, 12

47.6 Election dates — conflicts — public measures.

1. The governing body of any political subdivision which has authorized a special election to which section 39.2 is applicable shall by written notice inform the commissioner who will be responsible for conducting the election of the proposed date of the special election. If a public measure will appear on the ballot at the special election the governing body shall submit the complete text of the public measure to the commissioner with the notice of the proposed date of the special election.

If the proposed date of the special election coincides with the date of a regularly scheduled election or previously scheduled special election, the notice shall be given no later than five p.m. on the last day on which nomination papers may be filed with the commissioner for the regularly scheduled election or previously scheduled special election, but in no case shall notice be less than thirty-two days before the election. Otherwise, the notice shall be given at least thirty-two days in advance

of the date of the proposed special election. Upon receiving the notice, the commissioner shall promptly give written approval of the proposed date unless it appears that the special election, if held on that date, would conflict with a regular election or with another special election previously scheduled for that date.

A public measure shall not be withdrawn from the ballot at any election if the public measure was placed on the ballot by a petition, or if the election is a special election called specifically for the purpose of deciding one or more public measures for a single political subdivision. However, a public measure which was submitted to the county commissioner of elections by the governing body of a political subdivision may be withdrawn by the governing body which submitted the public measure if the public measure was to be placed on the ballot of a regularly scheduled election. The notice of withdrawal must be made by resolution of the governing body and must be filed with the commissioner no later than the last day upon which a candidate may withdraw from the ballot.

2. For the purpose of this section, a conflict between two elections exists only when one of the elections would require use of precinct boundaries which differ from those to be used for the other election, or when some but not all of the registered voters of any precinct would be entitled to vote in one of the elections and all of the registered voters of the same precinct would be entitled to vote in the other election. Nothing in this subsection shall deny a commissioner discretionary authority to approve holding a special election on the same date as another election, even though the two elections may be defined as being in conflict, if the commissioner concludes that to do so will cause no undue difficulties.

[C77, 79, 81, §47.6]

89 Acts, ch 136, §32; 90 Acts, ch 1238, §12; 93 Acts, ch 143, §10; 95 Acts, ch 67, §53; 97 Acts, ch 170, §13

47.7 State registrar of voters.

1. The state commissioner of elections is designated the state registrar of voters, and shall regulate the preparation, preservation, and maintenance of voter registration records, the preparation of precinct election registers for all elections administered by the commissioner of any county, and the preparation of other data on voter registration and participation in elections which is requested and purchased at actual cost of preparation and production by a political party or any resident of this state. The registrar shall maintain a log, which is a public record, showing all lists and reports which have been requested or generated or which are capable of being generated by existing programs of the data processing services of the registrar. In the execution of the duties provided by this chapter, the state registrar of voters shall provide the maximum public access to the electoral process permitted by law.

2. The registrar shall offer to each county in the state the opportunity to arrange for performance of all functions referred to in subsection 1 by the data processing facilities of the registrar, commencing at the earliest practicable time, at a cost to the county determined in accordance with the standard charges for those services adopted annually by the registration commission. A county may accept this offer without taking bids under section 47.5.

3. Any county may use its own data processing facilities for voter registration recordkeeping and utilization functions, if the system design and the form in which the registration records are kept conform to specifications established by rules promulgated by the registration commission. Each county exercising the option to maintain its own voter registration records under this subsection shall provide the registrar, at the county's expense, original and updated voter registration lists in a form and at times prescribed by the registrar.

4. Not later than July 1, 1984, information listed in section 48A.11 contained in a county's manual records but not on the county's computer readable records shall be provided to the registrar in a form specified by the registrar. The registrar shall require that any information supplied under section 48A.11, except the signature and attestation of the registrant, be provided to the registrar in a form specified by the registrar.

[C77, 79, 81, §47.7; 81 Acts, ch 34, §10]

83 Acts, ch 176, §1, 10; 86 Acts, ch 1245, §313; 94 Acts, ch 1169, §47; 98 Acts, ch 1217, §34

Legislative intent that state data processing services to support voter registration file maintenance and storage be provided without charge; 2002 Acts, 2nd Ex, ch 1003, §23, 35

47.8 Voter registration commission — composition — duties.

1. A state voter registration commission is established which shall meet at least quarterly to make and review policy, adopt rules, and establish procedures to be followed by the registrar in discharging the duties of that office, and to promote interagency cooperation and planning. The commission shall consist of the state commissioner of elections or the state commissioner's designee, the state chairpersons of the two political parties whose candidates for president of the United States or governor, as the case may be, received the greatest and next greatest number of votes in the most recent general election, or their respective designees, and a county commissioner of registration appointed by the president of the Iowa state association of county auditors, or an employee of the commissioner. The commission membership shall be balanced by political party affiliation pursuant to section 69.16. Members shall serve without additional salary or reimbursement.

The state commissioner of elections, or the state

commissioner's designee, shall serve as chairperson of the state voter registration commission.

2. The registration commission shall prescribe the forms required for voter registration by rules promulgated pursuant to chapter 17A.

3. The registrar shall provide staff services to the commission and shall make available to it all information relative to the activities of the registrar's office in connection with voter registration policy which may be requested by any commission member. The registrar shall also provide to the commission at no charge statistical reports for planning and analyzing voter registration services in the state.

The commission may authorize the registrar to employ such additional staff personnel as it deems necessary to permit the duties of the registrar's office to be adequately and promptly discharged. Such personnel shall be employed pursuant to chapter 19A.

4. The registration commission shall annually adopt a set of standard charges to be made for the services the registrar is required to offer to the several commissioners, and for furnishing of voter registration records which are requested by persons other than the registrar, the state commissioner or any commissioner pursuant to section 48A.38. These charges shall be sufficient to reimburse the state for the actual cost of furnishing such services or information, and shall be specified by unit wherever possible. The standard charges shall be adopted by the commission by January 15 of each calendar year.

[C77, 79, 81, §47.8]

93 Acts, ch 143, §11; 94 Acts, ch 1169, §48; 95 Acts, ch 189, §6, 7

CHAPTER 48

PERMANENT REGISTRATION

Repealed effective January 1, 1995, by 94 Acts, ch 1169, §66 – 68;
see chapter 48A

CHAPTER 48A

VOTER REGISTRATION

Chapter applicable to primary elections, §43.5
See also definitions in §39.3

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SUBCHAPTER I

GENERAL PROVISIONS

48A.1 Statement of intent.

It is the intent of the general assembly to facilitate the registration of eligible residents of this state through the widespread availability of voter registration services. This chapter and other statutes relating to voter registration are to be liberally construed toward this end.

94 Acts, ch 1169, §1

48A.2 Definitions.

The definitions established by this section and section 39.3 shall apply wherever the terms so defined appear in this chapter, unless the context in which any such term is used clearly requires otherwise.

1. *"Commissioner of registration"* means the county commissioner of elections as defined in section 47.2.

2. *"Homeless person"* means a person who lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is one of the following:

a. A supervised publicly or privately operated shelter designed to provide temporary living accommodations.

b. An institution that provides a temporary residence for persons intended to be institutionalized.

c. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

3. *"Person who is incompetent to vote"* means a person described in section 222.2, subsection 4, who has been found to lack the mental capacity to vote in a proceeding held pursuant to section 222.31 or 633.556.

4. *"Voter registration agency"* means an agency designated to conduct voter registration under section 48A.19. Offices of the office of driver services of the state department of transportation are not voter registration agencies.

5. *"Voter registration form"* means an application to register to vote which must be completed by any person registering to vote.

94 Acts, ch 1169, §2; 96 Acts, ch 1129, §14; 98 Acts, ch 1185, §1; 2002 Acts, ch 1134, §17, 115

2002 amendment to subsection 3 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 3 amended

48A.3 Commissioner of registration.

The county commissioner of elections is designated the commissioner of registration for the county, and may appoint deputies and assistants, subject to the approval of the county board of supervisors, necessary to carry out the commissioner's responsibilities under this chapter and under rules of the state voter registration commission and the state registrar of voters.

94 Acts, ch 1169, §3

48A.4 Qualification of officers.

Before undertaking any voter registration duties, each voter registration officer, deputy, or assistant in whatever capacity, or clerk in the office of commissioner shall take an oath in the form prescribed by the state commissioner of elections.

94 Acts, ch 1169, §4

SUBCHAPTER II

QUALIFICATIONS TO REGISTER TO VOTE

48A.5 Voter qualifications.

1. An eligible elector wishing to vote in elections in Iowa shall register to vote as required by this chapter.

2. To be qualified to register to vote an eligible elector shall:

a. Be a citizen of the United States.

b. Be an Iowa resident. A person's residence, for voting purposes only, is the place which the per-

son declares is the person's home with the intent to remain there permanently or for a definite, or indefinite or indeterminable length of time. A person who is homeless or has no established residence may declare residence in a precinct by describing on the voter registration form a place to which the person often returns.

c. Be at least eighteen years of age. Completed registration forms shall be accepted from registrants who are at least seventeen and a half years of age; however, the registration shall not be effective until the registrant reaches the age of eighteen.

d. Not claim the right to vote in more than one place. A registrant shall be presumed to revoke any earlier claim of residence for voter registration purposes.

3. If a person who meets the requirements set forth in subsection 2 moves to a new residence, either in Iowa or outside Iowa, and does not meet the voter requirements at the person's new residence, the person may vote at the person's former precinct in Iowa until the person meets the voter requirements of the person's new residence. However, a person who has moved to a new residence and fails to register to vote at the person's new residence after becoming eligible to do so shall not be entitled to vote at the person's former precinct in Iowa.

4. A citizen of the United States who lives outside of the United States has the right to register and vote as if the person were a resident of a precinct in Iowa if the citizen was an eligible elector of Iowa immediately before leaving the United States. A citizen who was not old enough to register to vote before leaving the United States but who met all of the other requirements for voter registration at that time also has the right to register and vote as if the person were a resident of a precinct in Iowa. This right applies even though while living outside the United States the citizen does not have a residence or other address in the precinct, and the citizen has not determined whether to return to Iowa. To qualify to vote in Iowa a United States citizen living outside the United States shall:

a. Comply with all applicable requirements of sections 53.37 to 53.53 relating to absentee ballots for members of the armed forces and other citizens living outside the United States.

b. Not maintain a residence, shall not be registered to vote, and shall not vote in any other state, territory, or possession of the United States.

c. Possess a valid passport or identity card and registration issued under authority of the United States secretary of state, or, if the citizen does not possess a valid passport or card of identity or registration, an alternative form of identification consistent with the provisions of applicable federal and state requirements.

5. If a United States citizen living outside the United States meets the requirements for voting, except for residence, has never lived in the United States, and has a parent who meets the definition of a member of the armed forces of the United States under section 53.37, the citizen is eligible to register to vote and vote at the same voting residence claimed by the citizen's parent.

6. The deadlines for voter registration shall not apply to a person who has been discharged from military service within thirty days preceding the date of an election. The person shall present to the precinct election official a copy of the person's discharge papers. The person shall complete a voter registration form and give it to the official before being permitted to vote.

94 Acts, ch 1169, §5

48A.5A Determination of residence.

Residence shall be determined in accordance with the following principles:

1. The residence of a person is in the precinct where the person's home or dwelling is located.

2. A residence for purposes of this chapter cannot be established in a commercial or industrial building that is not normally used for residential purposes unless the building is used as a primary nighttime residence.

3. A person does not lose residence if the person leaves the person's home to reside temporarily in another state or precinct.

4. If a person goes to another state or precinct and files an affidavit of residence in that state or precinct for election purposes, the person loses residence in the former state or precinct, unless the person moved to the other state after that state's deadline for registering to vote in a particular election.

5. A student who resides at or near the school the student attends, but who is also able to claim a residence at another location under the provisions of this section, may choose either location as the student's residence for voter registration and voting purposes.

6. If an active member of the United States armed forces, as defined by section 53.37, has previously resided at a location that meets the requirements of this section, that person may claim either that previous residence or the person's current residence as the person's residence for voter registration and voting purposes.

7. Notwithstanding subsections 1 through 6, the residence of a homeless person is in the precinct where the homeless person usually sleeps. Residence requirements shall be construed liberally to provide homeless persons with the opportunity to register to vote and to vote.

8. A person's declaration of residency for voter registration and voting purposes is presumed to be valid unless a preponderance of evidence indicates that another location should be considered the person's voting residence under the provisions of

this chapter.

94 Acts, ch 1169, §6

48A.6 Disqualified electors.

The following persons are disqualified from registering to vote and from voting:

1. A person who has been convicted of a felony as defined in section 701.7, or convicted of an offense classified as a felony under federal law. If the person's rights are later restored by the governor, or by the president of the United States, the person may register to vote.

2. A person who is incompetent to vote. Certification by the clerk of the district court that any such person has been found no longer incompetent by a court shall qualify such person to again be an elector, subject to the other provisions of this chapter.

94 Acts, ch 1169, §7; 98 Acts, ch 1185, §2; 2002 Acts, ch 1134, §18, 115

2002 amendment to subsection 2 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2 amended

48A.7 Registration in person.

An eligible elector may register to vote by appearing personally and completing a voter registration form at the office of the commissioner in the county in which the person resides, at a motor vehicle driver's license station, including any county treasurer's office that is participating in county issuance of driver's licenses under chapter 321M, or at any voter registration agency. A separate registration form shall be signed by each individual registrant.

94 Acts, ch 1169, §8; 98 Acts, ch 1073, §12; 98 Acts, ch 1143, §12, 26

48A.8 Registration by mail.

An eligible elector may register to vote by completing a mail registration form. The form may be mailed or delivered by the registrant or the registrant's designee to the commissioner in the county where the person resides. A separate registration form shall be signed by each individual registrant.

94 Acts, ch 1169, §9

48A.9 Voter registration deadlines.

1. Registration closes at five p.m. eleven days before each election except primary and general elections. For primary and general elections, registration closes at five p.m. ten days before the election. An eligible elector may register during the time registration is closed in the elector's precinct but the registration shall not become effective until registration opens again in the elector's precinct.

2. The commissioner's office shall be open from eight a.m. until at least five p.m. on the day registration closes before each regularly scheduled election. However, if the last day to register to vote for a regularly scheduled election falls on the day after Thanksgiving, the deadline shall be the following Monday.

3. A registration form submitted by mail shall be considered on time if it is postmarked no later than the fifteenth day before the election, even if it is received by the commissioner after the deadline, or if the registration form is received by the commissioner no later than five p.m. on the last day to register to vote for an election, even if it is postmarked after the fifteenth day before the election.

4. Registration forms submitted to voter registration agencies, to motor vehicle driver's license stations, and to county treasurer's offices participating in county issuance of driver's licenses under chapter 321M shall be considered on time if they are received no later than five p.m. on the day registration closes for that election. Offices or agencies other than the county commissioner's office are not required to be open for voter registration purposes at times other than their usual office hours.

94 Acts, ch 1169, §10; 98 Acts, ch 1073, §12; 98 Acts, ch 1143, §13, 26; 2002 Acts, ch 1134, §19, 115

2002 amendment to subsection 2 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2 amended

48A.10 Registration required.

If a registered voter moves to a different county, the person shall submit a completed voter registration form to the commissioner in order to be qualified to vote in that county. An otherwise eligible elector whose right to vote has been restored pursuant to chapter 914 or who has been found not to be a person who is incompetent to vote may register to vote.

94 Acts, ch 1169, §11; 98 Acts, ch 1185, §3; 2002 Acts, ch 1134, §20, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

SUBCHAPTER III

FORMS AND PROCEDURES FOR VOTER REGISTRATION

48A.11 Voter registration form.

1. Each voter registration form shall provide space for the registrant to provide the following information:

a. The county where the registrant resides.

b. The registrant's name.

c. The address at which the registrant resides and claims as the registrant's residence for voting purposes.

d. The registrant's mailing address if it is different from the residence address.

e. Social security number of the registrant (optional to provide).

f. Date of birth.

g. Sex.

h. Residential telephone number (optional to provide).

i. Political party registration.

j. The name and address appearing on the registrant's previous voter registration.

k. A space for a rural resident to provide township and section number, and such additional information as may be necessary to describe the location of the rural resident's home.

l. A space for a registrant who is homeless or who has no established residence to provide such information as may be necessary to describe a place to which the person often returns.

m. A statement that lists each eligibility requirement, contains an attestation that the registrant meets all of the requirements, and requires the signature of the registrant under penalty of perjury.

n. A space for the registrant's signature and the date signed.

2. The voter registration form shall include, in print that is identical to the attestation portion of the form, the following:

a. Each voter eligibility requirement.

b. The penalty provided by law for submission of a false voter registration form, which shall be the penalty for perjury as provided by section 902.9, subsection 5.

3. Voter registration forms used by voter registration agencies under section 48A.19 shall include the following statements:

a. If a person declines to register to vote, the fact that the person has declined to register will remain confidential and will be used only for voter registration purposes.

b. If a person does register to vote, the office at which the registrant submits a voter registration form will remain confidential and the information will be used only for voter registration purposes.

4. Voter registration forms may be on paper or electronic media.

5. All forms for voter registration shall be prescribed by rule adopted by the state voter registration commission.

6. A person who has been designated to have power of attorney by a registrant does not have authority to sign a voter registration form, except as otherwise provided in section 39.3, subsection 17.

94 Acts, ch 1169, §12; 2002 Acts, ch 1134, §21, 115

Subsection 6 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW subsection 6

48A.12 Federal mail voter registration form.

The mail voter registration form prescribed by the federal election commission shall be accepted for voter registration in Iowa if all required information is provided, if it is signed by the registrant, and if the form is timely received.

The state commissioner of elections shall make the federal mail voter registration forms available for distribution to governmental and private entities, with particular emphasis on making them available to organized voter registration entities and programs.

94 Acts, ch 1169, §13

48A.13 Electronic signatures on voter registration records.

Electronic signatures shall be accepted. However, before the use of electronic signatures is accepted on voter registration forms, the state voter registration commission shall prescribe by rule the technological requirements for guaranteeing the security and integrity of electronic signatures.

94 Acts, ch 1169, §14

48A.14 Challenges of voter registrations.

1. The registration of a registered voter may be challenged by another registered voter of the same county subject to the conditions and limitations of this section. A challenge shall be a statement in writing to the commissioner alleging one or more of the following reasons the challenged registrant's registration should not have been accepted or should be canceled:

a. The challenged registrant is not a citizen of the United States.

b. The challenged registrant is less than seventeen and one-half years of age.

c. The challenged registrant is not a resident at the address where the registrant is registered.

d. The challenged registrant has falsified information on the registrant's registration form.

e. The challenged registrant has been convicted of a felony, and the registrant's voting rights have not been restored.

f. The challenged registrant has been adjudged by a court of law to be a person who is incompetent to vote and no subsequent proceeding has reversed that finding.

2. A challenge shall not contain allegations against more than one registered voter.

3. A challenge shall contain a statement signed by the challenger in substantially the following form: "I swear or affirm that information contained on this challenge is true. I understand that knowingly filing a challenge containing false information is an aggravated misdemeanor."

4. A challenge may be filed at any time. A challenge filed less than seventy days before a regularly scheduled election shall not be processed until after the pending election unless the challenge is filed within twenty days of the commissioner's receipt of the challenged registrant's registration form or notice of change to an existing registration.

5. A challenger may withdraw a challenge at any time before the hearing held pursuant to section 48A.16 by notifying the commissioner in writ-

ing of the withdrawal.

94 Acts, ch 1169, §15; 95 Acts, ch 67, §7; 98 Acts, ch 1185, §4; 2002 Acts, ch 1134, §22, 115

2002 amendment to subsection 1, paragraph f, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1, paragraph f amended

48A.15 Commissioner's action upon receipt of challenge or withdrawal.

1. A challenge is valid if it meets the criteria in section 48A.14, subsections 1, 2, and 3.

2. Upon receipt of a challenge which is not valid, the commissioner shall notify the challenger of the reason the challenge is not valid, and shall take no further action regarding the challenge.

3. Upon receipt of a valid challenge, the commissioner shall, within five working days, notify the challenged registrant and the challenger of the date, time, and place of a hearing on the matter of the challenge, to be held not less than twenty nor more than thirty days from the commissioner's receipt of the challenge. The notice of a hearing shall include a copy of the challenge, and shall advise the challenged registrant that the registrant may personally appear at the hearing, or may submit to the commissioner before the hearing evidence, documentation, or statements refuting the challenge.

4. The notice prescribed by subsection 3 shall be sent by first class forwardable mail to the challenged registrant at the registrant's most recent mailing address according to the registration records.

5. If the challenge is withdrawn, the commissioner shall immediately notify the challenged registrant of the withdrawal, and shall cancel the scheduled hearing.

6. If the challenged registrant notifies the commissioner that the challenged registrant wishes to appear in person but is unable to do so on the date scheduled, the commissioner may reschedule the hearing.

94 Acts, ch 1169, §16

48A.16 Hearing on challenge — appeal.

1. At the time and place fixed for the hearing, the commissioner shall accept evidence on the challenge from the challenger and the challenged registrant, or from any person appearing on behalf of either, and review any documents or statements pertaining to the challenge received before the hearing. On the basis of the evidence submitted, the commissioner shall either reject the challenge or cancel the registration of the challenged registrant. Either the challenged registrant or the challenger may appeal the commissioner's decision to the district court in the commissioner's county, and the decision of the court shall be final.

2. If a challenged registrant does not personally appear at the hearing and the challenged registrant's registration is canceled, the commissioner shall immediately notify the challenged registrant of the cancellation by first class forwardable mail sent to the challenged registrant's most recent mailing address according to the registration records.

94 Acts, ch 1169, §17

SUBCHAPTER IV

PLACES TO REGISTER

48A.17 Registration at commissioner's office.

A person who meets the qualifications to vote may appear in person at the office of the county commissioner of registration and apply to register to vote.

94 Acts, ch 1169, §18

48A.18 Voter registration at motor vehicle driver's license stations.

1. Each state motor vehicle driver's license application, including any renewal application or application for a nonoperator's identification card, submitted to the office of driver services of the state department of transportation shall serve as an application for voter registration unless the applicant declines to register to vote. A completed voter registration form submitted to the office of driver services of the state department of transportation shall be considered to update any previous voter registration by the registrant.

2. A change of address form submitted to the office of driver services of the state department of transportation shall serve as a change of address for voter registration purposes unless the registrant states on the form that the change of address is not for voter registration purposes.

3. Information relating to the refusal of an applicant for a driver's license to apply to register to vote shall not be used for any purpose other than voter registration.

4. Forms and procedures used by the office of driver services for voter registration and a schedule for transmission of voter registration forms from the office to the county commissioner of registration shall be prescribed by the state voter registration commission by rule.

5. A county treasurer's office participating in county issuance of driver's licenses pursuant to chapter 321M shall participate in voter registration under this section to the same extent as a license facility of the state department of transportation.

94 Acts, ch 1169, §19; 98 Acts, ch 1073, §12; 98 Acts, ch 1143, §14, 26

48A.19 Voter registration agencies.

1. The following state agencies are responsible for voter registration:

a. All state offices that have direct client con-

tact and provide applications for public assistance, including but not limited to offices administering the following programs:

(1) Food stamps.

(2) Medical assistance under chapter 249A.

(3) Iowa family investment program.

(4) Special supplemental food program for women, infants, and children.

b. All offices that provide state-funded programs primarily engaged in providing services to persons with disabilities, including but not limited to all of the following:

(1) Department for the blind.

(2) Division of vocational rehabilitation services of the department of education.

(3) Deaf services division of the department of human rights or its successor agency.

(4) Division of persons with disabilities of the department of human rights or its successor agency.

An agency designated a voter registration agency under this paragraph which provides services to persons with disabilities in their homes shall provide voter registration services at the clients' homes.

c. Other federal and state agencies designated to provide voter registration services include, but are not limited to, the United States armed forces recruiting offices.

2. Agencies designated to provide voter registration services shall provide the following services:

a. Distribution of a voter registration form either on paper or electronic medium.

b. Assistance to registrants in completing voter registration forms, unless the registrant refuses assistance.

c. Acceptance of completed voter registration forms for transmittal as required in section 48A.21.

3. The voter registration agency shall provide voter registration services with each application for services or assistance and with each recertification, renewal, or change of address form completed relating to the agency's services. The secretary of state shall adopt administrative rules in cooperation with voter registration agencies to carry out the requirements of this section.

4. The voter registration agency shall provide a form to applicants that includes all of the following:

a. The question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?"

b. If the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."

c. Boxes for the applicant to check and choices in substantially the following form:

☐ I want to register to vote.
☐ I do not want to register to vote.

The following statement shall be printed near the choices and shall be printed in large, readable type:

"If you do not check either box, you will be considered to have decided not to register to vote at this time."

d. The statement, "If you would like help in filling out the voter registration form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."

However, in those voter registration agencies where electronic forms are used, the following statement shall be used: "If you want to fill out the form in private, a separate paper form for voter registration will be provided."

e. The statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the state voter registration commission." The name, address, and telephone number of the voter registration commission shall complete the statement.

The voter registration agency may distribute the voter registration form either on paper or by electronic medium.

5. The voter registration agency shall provide each applicant who chooses to register to vote the same degree of assistance in completing the registration form as is provided by the office for the completion of its own forms unless the applicant refuses such assistance.

6. Completed voter registration forms shall be transmitted as provided in section 48A.21.

94 Acts, ch 1169, §20

48A.20 Prohibited acts by voter registration agency employees.

A person who provides voter registration services as required by this subchapter shall not:

1. Seek to influence an applicant's political preference or party registration.

2. Display a political preference or party affiliation.

3. Make any statement to an applicant or take any action which has the purpose or effect of discouraging the applicant from registering to vote.

4. Make any statement to an applicant or take any action which has the purpose or effect of leading the applicant to believe that a decision to register or not to register to vote has any bearing on the availability of services or benefits.

94 Acts, ch 1169, §21

48A.21 Transmission of forms from agencies and driver's license stations.

The state registrar of voters shall adopt administrative rules regulating the transmission of completed voter registration forms from voter registration agencies and from driver's license stations, including county treasurer's offices participating in county issuance of driver's licenses under chapter 321M. All completed voter registration applications in the possession of a voter registration agency, a driver's license station, or a county treasurer's office that is participating in county issuance of driver's licenses at five p.m. on the last work day of each week shall be transmitted to the location designated by the state registrar of voters by rule. Procedures or requirements for more frequent transmissions may be specified by rule.

94 Acts, ch 1169, §22; 98 Acts, ch 1073, §12; 98 Acts, ch 1143, §15, 26

48A.22 Voter registration by volunteer organizations.

The secretary of state shall encourage volunteer organizations to undertake voter registration drives by providing registration forms.

94 Acts, ch 1169, §23; 97 Acts, ch 170, §14

48A.23 Registration at educational institutions.

1. At least twice during each school year, the board of directors of each school district operating a high school and the authorities in charge of each accredited nonpublic school shall offer the opportunity to register to vote to each student who is at least seventeen and one-half years of age.

2. All postsecondary schools, including but not limited to colleges, universities, and trade and technical schools which receive state funding, shall offer the opportunity to register to vote to each student at least once each year. Students shall be provided with the federal voter registration form or the Iowa voter registration form, as applicable.

94 Acts, ch 1169, §24

48A.24 Voter registration forms in income tax returns and booklets.

For odd-numbered tax years, the director of revenue and finance shall insert securely in each individual income tax return form or instruction booklet two voter registration forms, designed according to rules adopted by the state voter registration commission.

94 Acts, ch 1169, §25

48A.25 Compensation for assistance in completing registration forms.

A person may pay, offer to pay, or accept compensation for assisting others in completing voter registration forms only if the compensation is based solely on the time spent providing the assistance.

Paying, offering to pay, or receiving compensation based on the number of registration forms completed, or the party affiliations shown on completed registration forms, or on any other performance criteria, is unlawful.

This section shall not apply to state statutory political committees, as defined in section 43.111.

This section shall not apply to state and political subdivision employees who are required to offer assistance to clients as a part of their regular job duties, and who shall not be granted additional compensation for voter registration activities. A person assisting another in completing a voter registration form shall not complete any portion of the form without the knowledge or consent of the registrant.

94 Acts, ch 1169, §26; 2002 Acts, ch 1071, §8

Unnumbered paragraph 1 amended and editorially divided into unnumbered paragraphs 1 and 2

SUBCHAPTER V

PROCESSING VOTER REGISTRATION RECORDS

48A.26 Acknowledgment of registration form.

1. Within seven working days of receipt of a voter registration form or change of information in a voter registration record the commissioner shall send an acknowledgment to the registrant at the mailing address shown on the registration form. The acknowledgment shall be sent by nonforwardable mail.

2. If the registration form appears on its face to be complete and proper, the acknowledgment shall state that the registrant is now a registered voter of the county. The acknowledgment shall also specify the name of the precinct and the usual polling place for the precinct in which the person is now registered. The acknowledgment may include the political party affiliation most recently recorded by the registrant.

3. If the registration form is missing required information, the acknowledgment shall advise the applicant what additional information is required. The commissioner shall enclose a new registration by mail form for the applicant to use. If the registration form has no address, the commissioner shall make a reasonable effort to determine where the acknowledgment should be sent.

4. If the acknowledgment is returned as undeliverable by the United States postal service, the commissioner shall follow the procedure described in section 48A.29, subsection 1.

5. If a registrant has not supplied enough information on a registration form for the commissioner to determine the correct precinct and other districts, the commissioner shall obtain the information as quickly as possible either from the registrant or other sources available to the commissioner.

6. An improperly addressed or delivered registration form shall be forwarded to the appropriate county commissioner of registration within two working days after it is received by any other official. The date of registration shall be the date the registration form was received by the first official. If the registration form was postmarked fifteen or more days before an election and the registration form was received by the first official after the close of registration, the registration form shall be considered on time for the election.

7. When a person who is at least seventeen and one-half years of age but less than eighteen years of age registers to vote, the commissioner shall maintain a record of the registration so as to clearly indicate that it will not take effect until the registrant's eighteenth birthday and that the person is registered and qualifies to vote at any election held on or after that date.

94 Acts, ch 1169, §27; 97 Acts, ch 170, §15

48A.27 Changes to voter registration records.

1. Any voter registration form received by any voter registration agency, driver's license station, including county treasurer's offices participating in county issuance of driver's licenses under chapter 321M, or the commissioner shall be considered as updating the registrant's previous registration.

2. *a.* A person who is registered to vote may request changes in the voter's registration record at any time by submitting one of the following, as applicable:

(1) A written notice to the county commissioner.

(2) A completed Iowa or federal mail registration form to the county commissioner.

(3) On election day, a registration form to the precinct election officials at the precinct of the voter's current residence.

(4) A change of address form to the office of driver services of the state department of transportation, or to a county treasurer's office that is participating in county issuance of driver's licenses under chapter 321M.

(5) A change of address notice for voter registration submitted to any voter registration agency.

b. If a change of name, telephone number, or address is submitted under this subsection, the commissioner shall not change the party affiliation in the elector's prior registration other than that indicated by the elector.

3. The commissioner shall make the necessary changes in the registration records without any action by the registrant when any of the following events occur:

a. Annexation of territory by a city. When an existing city annexes territory, the city clerk shall furnish the commissioner a detailed map of the annexed territory. If a city is divided into wards for voting purposes, the detailed map shall show the ward designations for the annexed territory. The commissioner shall change the registration of persons residing in that territory to reflect the annexation and the city precinct to which each of those persons is assigned. If the commissioner cannot determine the names and addresses of the persons affected by the annexation, the commissioner shall send each person who may be involved a letter informing the person that the person's registration may be in error, and requesting that each person provide the commissioner with the information necessary to correct the registration records.

b. Change of official street name or house or building number by a city or county. When the city or county changes the name of a street or the number of a house or other building in which a person resides, the city clerk or county board of supervisors shall inform the commissioner of the change, and the commissioner shall change the registration of each person affected.

c. Incorporation or discontinuance of a city. When a new city is incorporated or an existing city is discontinued, the city clerk shall notify the commissioner. The commissioner shall change the registration of each person affected.

d. Change of rural route designation of the residence of the registered voter. The commissioner shall request each postmaster in the county to inform the commissioner of each change in rural route designation and the names of the persons affected, and the commissioner shall change the registration of each person as appropriate.

4. *a.* A commissioner, either independently or in cooperation with the state registrar of voters, and in accordance with rules of the state voter registration commission, may enter into an agreement with a licensed vendor of the United States postal service participating in the national change of address program to identify registered voters of the county who may have moved either within or outside the county.

b. If the information provided by the vendor indicates that a registered voter has moved to another address within the county, the commissioner shall change the registration records to show the new residence address, and shall also mail a notice of that action to both the former and new addresses. The notice shall be sent by forwardable mail, and shall include a postage prepaid preaddressed return form by which the registered voter may verify or correct the address information.

c. If the information provided by the vendor indicates that a registered voter has moved to an address outside the county, the commissioner shall make the registration record inactive, and shall mail a notice to the registered voter at both the former and new addresses.

The notice shall be sent by forwardable mail, and shall include a postage paid preaddressed return card on which the registered voter may state the registered voter's current address. The notice

shall contain a statement in substantially the following form: "Information received from the United States postal service indicates that you are no longer a resident of, and therefore not eligible to vote in (name of county) County, Iowa. If this information is not correct, and you still live in (name of county) County, please complete and mail the attached postage paid card at least ten days before the primary or general election and at least eleven days before any other election at which you wish to vote. If the information is correct and you have moved, please contact a local official in your new area for assistance in registering there. If you do not mail in the card, you may be required to show identification before being allowed to vote in (name of county) County. If you do not return the card, and you do not vote in an election in (name of county) County, Iowa, on or before (date of second general election following the date of the notice) your name will be removed from the list of voters in that county. To ensure you receive this notice, it is being sent to both your most recent registration address and to your new address as reported by the postal service."

d. If the information provided by the vendor indicates the registered voter has moved to another county within the state, the notice required by paragraph *"c"* shall include a statement that registration in the county of the person's current residence is required.

e. If a registered voter returns a card sent pursuant to this subsection and confirms that the registered voter has moved to a new residence outside the county, the commissioner shall cancel the registration of the voter.

f. If a registered voter returns a card sent pursuant to this subsection and states that the registered voter's residence address has not changed for the purpose of voter registration, the commissioner shall reinstate the record to active status, making any other changes directed by the registrant in the notice.

5. The commissioner shall keep a record of the names and addresses of the registered voters to whom notices under this section are sent and the date of the notice. When the return card from a notice is received by the commissioner, the commissioner shall record the date it was received and whether the registrant had moved within the county, moved to an address outside the county, or had not changed residence.

94 Acts, ch 1169, §28; 97 Acts, ch 170, §16 – 18; 98 Acts, ch 1073, §12; 98 Acts, ch 1143, §16, 17, 26; 2002 Acts, ch 1134, §23, 24, 115

2002 amendments to subsection 3, paragraph a, and subsection 4, paragraph c, unnumbered paragraph 2, take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 3, paragraph a amended

Subsection 4, paragraph c, unnumbered paragraph 2 amended

48A.28 Systematic confirmation program.

1. Each commissioner shall conduct a systematic program that makes a reasonable effort to remove from the official list of registered voters the names of registered voters who have changed residence from their registration addresses. Either or both of the methods described in this section may be used.

2. A commissioner may participate in the United States postal service national change of address program, as provided in section 48A.27. The state voter registration commission shall adopt rules establishing specific requirements for participation and use of the national change of address program.

A commissioner participating in the national change of address program, in the first quarter of each calendar year, shall send a notice and preaddressed, postage paid return card by forwardable mail to each registered voter whose name was not reported by the national change of address program and who has not voted, registered again, or reported a change to an existing registration during the preceding four calendar years. The form and language of the notice and return card shall be specified by the state voter registration commission by rule. A registered voter shall not be sent a notice and return card under this subsection more frequently than once in a four-year period.

3. For a commissioner who is not participating in the national change of address program, in February of each year the commissioner shall mail a confirmation notice to each registered voter in the county. The notice shall be sent by forwardable mail. The notice shall include a preaddressed, postage paid return card for the use of the registered voter or the recipient of the notice. The card shall contain boxes for the recipient to check to indicate one of the following:

a. That the recipient is the registered voter named on the card, and is still a resident at the address listed.

b. That the recipient is the registered voter named on the card, but is no longer a resident of the address listed.

c. That the recipient is not the registered voter named on the card, and the registered voter named on the card is not a resident of the address listed.

The form and language of the confirmation notice and return card shall be specified by the state voter registration commission by rule.

94 Acts, ch 1169, §29; 97 Acts, ch 170, §19, 20; 2002 Acts, ch 1134, §25, 115

2002 amendment to subsection 3, unnumbered paragraph 2, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 3, unnumbered paragraph 2 amended

48A.29 Procedure upon return of confirmation card.

1. If a confirmation notice and return card sent pursuant to section 48A.28 is returned as undeliverable by the United States postal service, the commissioner shall make the registration record

inactive and shall mail a notice to the registered voter at the registered voter's most recent mailing address, as shown by the registration records.

The notice shall be sent by forwardable mail, and shall include a postage paid preaddressed return card on which the registered voter may state the registered voter's current address. The notice shall contain a statement in substantially the following form: "Information received from the United States postal service indicates that you are no longer a resident of (residence address) in (name of county) County, Iowa. If this information is not correct, and you still live in (name of county) County, please complete and mail the attached postage paid card at least ten days before the primary or general election and at least eleven days before any other election at which you wish to vote. If the information is correct, and you have moved, please contact a local official in your new area for assistance in registering there. If you do not mail in the card, you may be required to show identification proving your residence in (name of county) County before being allowed to vote in (name of county) County. If you do not return the card, and you do not vote in some election in (name of county) County, Iowa, on or before (date of second general election following the date of the notice) your name will be removed from the list of voters in that county."

2. When a detachable return card originally attached to a confirmation notice is returned indicating that the registered voter is still a resident of the address shown on the registration records, the commissioner shall make a record of the date the card was received.

3. When a detachable return card originally attached to a confirmation notice is returned by anyone other than the registered voter indicating that the registered voter is no longer a resident of the registration address, the commissioner shall make the registration record inactive, and shall mail a notice to the registered voter at the registered voter's most recent mailing address, as shown by the registration records.

The notice shall be sent by forwardable mail, and shall include a postage paid preaddressed return card on which the registered voter may state the registered voter's current address. The notice shall contain a statement in substantially the following form: "Information received by this office indicates that you are no longer a resident of (residence address) in (name of county) County, Iowa. If the information is not correct, and you still live at that address, please complete and mail the attached postage paid card at least ten days before the primary or general election and at least eleven days before any other election at which you wish to vote. If the information is correct, and you have moved within the county, you may update your registration by listing your new address on the card and mailing it back. If you have moved outside the county, please contact a local official in your new area for assistance in registering there. If you do not mail in the card, you may be required to show identification before being allowed to vote in (name of county) County. If you do not return the card, and you do not vote in some election in (name of county) County, Iowa, on or before (date of second general election following the date of the notice) your name will be removed from the list of registered voters in that county."

94 Acts, ch 1169, §30; 97 Acts, ch 170, §21, 22; 2002 Acts, ch 1134, §26, 115

2002 amendment to subsection 3, unnumbered paragraph 2, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 3, unnumbered paragraph 2 amended

48A.30 Cancellation of voter registration.

1. The voter registration of a registered voter shall be canceled if any of the following occurs:

a. The registered voter dies. For the purposes of this subsection, the commissioner may accept as evidence of death a notice from the state registrar of vital statistics forwarded by the state registrar of voters, a written statement from a member of the registered voter's household, an obituary in a newspaper, a written statement from an election official, or a notice from the county recorder of the county where the registered voter died.

b. The registered voter registers to vote in another jurisdiction, and the commissioner receives notice of the registration from the registration official in the other jurisdiction.

c. The registered voter requests the cancellation in writing.

For the purposes of this subsection, a confirmation by the registered voter that the registered voter is no longer a resident of the county constitutes a request for cancellation.

d. The clerk of the district court, or the United States attorney, or the state registrar sends notice of the registered voter's conviction of a felony as defined in section 701.7, or conviction of an offense classified as a felony under federal law. The clerk of the district court shall send notice of a felony conviction to the state registrar of voters. The registrar shall determine in which county the felon is registered to vote, if any, and shall notify the county commissioner of registration for that county of the felony conviction.

e. The clerk of the district court or the state registrar sends notice that the registered voter has been declared a person who is incompetent to vote under state law.

f. The registered voter's registration record has been inactive pursuant to section 48A.29 for two successive general elections.

2. When a registration is canceled pursuant to subsection 1, paragraph *"d"*, *"e"*, or *"f"*, the commissioner shall send a notice of the cancellation to the

registered voter.

94 Acts, ch 1169, §31; 98 Acts, ch 1185, §5; 2002 Acts, ch 1134, §27, 28, 115

2002 amendments to subsection 1, paragraphs a and e, take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1, paragraphs a and e amended

48A.31 Deceased persons record.

The state registrar of vital statistics shall transmit or cause to be transmitted to the state registrar of voters, once each calendar quarter, a certified list of all persons seventeen and one-half years of age and older in the state whose deaths have been reported to the bureau of vital records of the Iowa department of public health since the previous list of decedents was certified to the state registrar of voters. The list shall be submitted according to the specifications of the state registrar of voters, who shall determine whether each listed decedent was registered to vote in this state. If the decedent was registered in a county which uses its own data processing facilities for voter registration recordkeeping, the registrar shall notify the commissioner in that county who shall cancel the decedent's registration. If the decedent was registered in a county for which voter registration recordkeeping is performed under contract by the registrar, the registrar shall immediately cancel the registration and notify the commissioner of the county in which the decedent was registered to vote of the cancellation.

94 Acts, ch 1169, §32; 2002 Acts, ch 1119, §123

Section amended

48A.32 Destruction or removal of canceled voter registration records.

Twenty-two months after the next general election following the cancellation of a person's voter registration, the commissioner may destroy all records of that person's registration. At the discretion of the commissioner, canceled records may be donated to a historical society if all confidential information has been removed from the records.

94 Acts, ch 1169, §33

48A.33 Declination of registration opportunity.

When a client or applicant of a voter registration agency declines to register to vote, the record of the declination shall be kept by the voter registration agency for twenty-two months after the next general election after which time the agency may destroy the records.

94 Acts, ch 1169, §34

SUBCHAPTER VI

RETENTION AND STORAGE OF VOTER REGISTRATION RECORDS

48A.34 Confidentiality of certain records.

Voter registration records are available for public inspection at reasonable times at the office of the county commissioner. The commissioner and any voter registration agency which has custody of voter registration records shall take the necessary steps to ensure that the name of the agency at which the voter registration form was submitted remains confidential.

94 Acts, ch 1169, §35

48A.35 Voter registration records under control of the commissioner.

The county commissioner of elections shall be responsible for the maintenance and storage of all paper and electronic voter registration records in the commissioner's custody. Original registration records shall not be removed from the commissioner's office or from any other designated permanent storage location except upon request of a county commissioner or a court order, or as provided by section 48A.32. The state registrar of voters and the state voter registration commission shall adopt administrative rules to implement this section.

94 Acts, ch 1169, §36

48A.36 Electronic registration record retention in voter registration agencies.

1. Voter registration agencies and the office of driver services of the state department of transportation may electronically transmit registration data to the state registrar of voters, who shall distribute the information, electronically or otherwise, to the appropriate commissioner in accordance with rules of the state voter registration commission and the state registrar of voters. The state agency originating the registration data shall permanently retain an electronic copy of the form completed by the registrant, including the registrant's signature, and shall develop procedures for the retrieval and printing of that electronic document. A printed copy of an electronic registration document shall be made only upon the agency's receipt of a court order.

2. Upon receipt of electronic registration data under subsection 1, the state registrar of voters may cause the updating of registration records for registrants in counties which have arranged for data processing services under section 47.7, subsection 2. The registrar shall notify the commissioner of the actions taken.

94 Acts, ch 1169, §37

48A.37 Electronic registration records.

1. Voter registration records shall be maintained in an electronic medium. A history of local election participation shall be maintained as part of the electronic record for at least two general, primary, school, and city elections. Absentee voting shall be recorded for the previous two general and primary elections. After each election, the county commissioner shall update telephone numbers provided by registered voters pursuant to section 49.77.

2. Electronic records shall include a status code designating whether the records are active or inactive. Inactive records are records of registered voters to whom notices have been sent pursuant to section 48A.28, subsection 3, and who have not returned the card or otherwise responded to the notice, and those records have been designated inactive pursuant to section 48A.29. All other records are active records. An inactive record shall be made active when the registered voter votes at an election, registers again, or reports a change of name, address, telephone number, or political party affiliation.

94 Acts, ch 1169, §38

48A.38 Lists of voters.

1. Any person may request of the registrar and shall receive, upon payment of the cost of preparation, a list of registered voters and other data on registration and participation in elections, in accordance with the following requirements and limitations:

a. The registrar shall prepare each list requested within fourteen days of receipt of the request, except that the registrar shall not be required to prepare any list within seven days of the close of registration for any regularly scheduled election if the preparation of the list would impede the preparation of election registers for that election.

b. Each list shall be as current as possible, but shall in all cases reflect voter activity reported to any commissioner twenty-eight or more days before preparation of the list.

c. Each list shall be in the order and form specified by the list purchaser, and shall contain the registration data specified by the list purchaser, provided compliance with the request is within the capability of the record maintenance system used by the registrar.

d. Lists prepared shall not include inactive records unless specifically requested by the requester.

e. The registrar shall prepare updates to lists at least biweekly, and after the close of registration for a regularly scheduled election, but before the election, if requested to do so at the time a list is purchased. All updates shall be made available to all requesters at the same time, and shall be in the order and form specified by each requester.

f. The county commissioner of registration and the state registrar of voters shall remove a voter's social security number from a voter registration list prepared pursuant to this section.

2. The registrar shall maintain a log of the name, address, and telephone number of every person who receives a list under this section, and of every person who reviews registration records in the office of the registrar. Commissioners of registration shall maintain a similar log in their offices of those who receive a list from the commissioner or who review registration records in the commissioner's office. Logs maintained under this subsection are public records, and shall be available for public inspection at reasonable times.

94 Acts, ch 1169, §39; 2002 Acts, ch 1134, §29, 115

Subsection 1, paragraph f, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1, NEW paragraph f

48A.39 Use of registration information.

Information about individual registrants obtained from voter registration records shall be used only to request the registrant's vote at an election, or for another genuine political purpose, or for a bona fide official purpose by an elected official, or for bona fide political research, but shall not be used for any commercial purposes.

94 Acts, ch 1169, §40; 2002 Acts, ch 1071, §9

Section amended

48A.40 Reports.

At least once each month and at other times deemed appropriate, the county commissioner of registration shall report to the state registrar the number of persons registered in each county. The report shall include the registration totals for each political party and the number of persons not registered with a political party.

94 Acts, ch 1169, §41

SUBCHAPTER VII

CRIMINAL PENALTIES

48A.41 Criminal penalties. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.2 and 39A.3.

CHAPTER 49

METHOD OF CONDUCTING ELECTIONS

See also definitions in §39.3
Chapter applicable to primary elections, §43.5
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49.112 Penalty. Repealed by 84 Acts, ch 1067, §51.
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49.114 Repealed by 73 Acts, ch 136, §401.
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49.1 Elections included.

The provisions of this chapter shall apply to all elections except those special elections which by the terms of the statutes authorizing them are exempt from the provisions of this chapter.

[C97, §1088; C24, 27, 31, 35, 39, §**719;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.1]

49.2 Repealed by 73 Acts, ch 136, § 401.

49.3 Election precincts.

Election precincts shall be drawn by the county board of supervisors or the temporary county redistricting commission in all unincorporated portions of each county, and by the city council of each city in which it is necessary or deemed advisable to establish more than one precinct. Precincts established as provided by this chapter shall be used for all elections, except where temporary merger of established precincts is specifically permitted by law for certain elections, and no political subdivision shall concurrently maintain different sets of precincts for use in different types of elections. Election precincts shall be drawn so that:

1. No precinct shall have a total population in excess of three thousand five hundred, as shown by the most recent federal decennial census.

2. Each precinct is contained wholly within an existing legislative district, except:

a. When adherence to this requirement would force creation of a precinct which includes the places of residence of fewer than fifty registered voters.

b. When the general assembly by resolution designates a period after the federal decennial census is taken and before the next succeeding reapportionment of legislative districts required by Article III, section 35, Constitution of the state of Iowa as amended in 1968, during which precincts may be drawn without regard to the boundaries of existing legislative districts.

3. Except as provided in section 49.4, subsection 3, precincts established after July 1, 1994, shall be composed of contiguous territory within a single county. The boundaries of all precincts shall follow the boundaries of areas for which official population figures are available from the most recent federal decennial census.

4. All election districts, including city wards and county supervisor districts, shall be drawn according to the following standards:

a. All boundaries, except for supervisor districts for counties using supervisor representation plan "two" pursuant to section 331.209, shall follow precinct boundaries.

b. All districts shall be as nearly equal as practicable to the ideal population for the districts as determined by dividing the number of districts to be established into the population of the city or county.

c. All districts shall be composed of contiguous territory as compact as practicable.

d. Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

e. Cities shall not be divided into two or more county supervisor districts unless the population of the city is greater than the ideal size of a district. Cities shall be divided into the smallest number of county supervisor districts possible.

[C51, §245; R60, §480; C73, §501, 605; C97,

§1090; S13, §1090; C24, 27, 31, 35, 39, §**721, 722, 723;** C46, 50, 54, 58, 62, 66, 71, 73, §49.3, 49.4, 49.5; C75, 77, 79, 81, §49.3]

94 Acts, ch 1179, §4, 5; 95 Acts, ch 67, §53; 99 Acts, ch 17, §1

49.4 Precincts drawn by county board.

Where action by the board of supervisors is necessary or deemed advisable by the board of supervisors or the temporary county redistricting commission, the boundaries of precincts shall be definitely fixed by ordinance. A public hearing shall be held before final action is taken to adopt changes in the precinct boundaries. Notice of the date, time, and place of the hearing shall be given as provided in chapter 21. In the absence of contrary action by the board of supervisors or the temporary county redistricting commission, each civil township which does not include any part of a city of over two thousand population, and the portion of each civil township containing any such city which lies outside the corporate limits of that city or those cities, shall constitute an election precinct. If no action is necessary to change the county election precincts, the board of supervisors shall certify the retained boundaries to the state commissioner, as required by section 49.7.

1. Where a civil township, or the portion of a civil township outside the corporate limits of any city of over two thousand population contained therein, is divided into two or more election precincts, the precincts shall be so drawn that their total populations shall be reasonably equal on the basis of data available from the most recent federal decennial census.

2. Counties using alternative supervisor representation plans "two" or "three", as described in section 331.206, shall be apportioned into single-member supervisor districts on the basis of population. In counties using representation plan "three", the boundaries of supervisor districts shall follow the boundaries of election precincts.

3. Notwithstanding any other provision of this chapter, Indian settlement land held in trust by the secretary of the interior of the United States for the Sac and Fox tribe of the Mississippi in Iowa and its trust land contiguous to the Indian settlement lying in Tama, Toledo and Indian Village townships of Tama county shall be an election precinct. The polling place of that precinct shall be located on the Indian settlement in a structure designated by the election commissioner of Tama county.

The Indian settlement precinct shall be redrawn to include land contiguous to the Indian settlement when such land is purchased by the settlement and added to the Indian settlement land held in trust by the secretary of the interior of the United States. Upon recording of the deed transferring the land to the United States in trust, the county recorder shall notify the county commissioner of that fact. If the commissioner is notified more than seventy days before the next scheduled election, the commissioner shall redraw the precinct for that election. The commissioner shall notify the board of supervisors of the redrawn precinct boundaries and shall certify the redrawn boundaries to the state commissioner. Land completely surrounded by the boundaries of the Indian settlement precinct, but not included in the settlement precinct, shall be included in the precinct in which such land was located prior to redrawing of the Indian settlement precinct. The commissioner shall notify registered voters in each of the redrawn precincts of the change in the precincts and the proper polling place for those affected voters.

[C73, §603; C97, §1090; S13, §1090; C24, 27, 31, 35, 39, §**722, 725;** C46, 50, 54, 58, 62, 66, 71, 73, §49.4, 49.7; C75, 77, 79, 81, S81, §49.4; 81 Acts, ch 117, §1203]

94 Acts, ch 1179, §6; 99 Acts, ch 17, §2

49.5 City precincts.

The council of a city where establishment of more than one precinct is necessary or deemed advisable shall, at the time required by law, divide the city into the number of election precincts as will best serve the convenience of the voters while promoting electoral efficiency. As used in this section, the term *"the convenience of the voters"* refers to, but is not necessarily limited to, the use of precinct boundaries which can be readily described to and identified by voters and for which there is ease of access by voters to their respective precinct polling places by reasonably direct routes of travel. As used in this section, the term *"promoting electoral efficiency"* means reducing the cost of staffing election precincts by requiring cities to avoid creating more precincts than is reasonably necessary to provide voters access to voting.

The precinct boundaries shall conform to section 49.3 and shall be described in an ordinance adopted by the council within the time required by section 49.7. Before final adoption of any change in election precinct boundaries pursuant to this section or section 49.6, the council shall permit the commissioner not less than seven and not more than ten days' time to offer written comments to the council on the proposed reprecincting. If the commissioner recommends changes in the proposed reprecincting which the commissioner concludes could better serve the convenience of the voters or could promote electoral efficiency, including lowering election costs, the council shall, if no changes to the reprecincting are made, include reasons in the ordinance for not adopting the proposed changes of the commissioner. A public hearing shall be held before final adoption of the ordinance. Notice of the date, time, and place of the hearing shall be given as provided in chapter 21.

[C97, §1090; S13, §1090; C24, 27, 31, 35, 39,

§**723;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.5]

93 Acts, ch 143, §14; 94 Acts, ch 1179, §7, 8; 2001 Acts, ch 50, §1, 2

49.6 Power to combine township and city precincts.

Election precincts composed partially of unincorporated territory and partially of all or any part of a city may be established within a single county in any manner which is not contrary to section 49.3. An agreement mutually satisfactory to the board of supervisors or the temporary county redistricting commission and the city council of the city involved shall be adopted and a copy of the agreement shall be submitted to the state commissioner as part of the certification of precinct boundaries required by section 49.7.

[C97, §1090; S13, §1090; C24, 27, 31, 35, 39, §**724;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.6]

94 Acts, ch 1179, §9

49.7 Reprecincting schedule and filing requirements.

Where reprecincting is necessary, city councils and county boards of supervisors or the temporary county redistricting commission shall make any necessary changes in precincts as soon as possible after the redistricting of congressional and legislative districts becomes law.

City councils shall complete any changes in precinct and ward boundaries necessary to comply with sections 49.3 and 49.5 not later than sixty days after the redistricting of congressional and legislative districts becomes law, or September 1 of the year immediately following each year in which the federal decennial census is taken, whichever is later. Different compliance dates may be set by the general assembly by joint resolution.

County boards of supervisors or the temporary county redistricting commission shall complete any changes in precinct and supervisor district boundaries necessary to comply with sections 49.3, 49.4, and 331.209 not later than ninety days after the redistricting of congressional and legislative districts becomes law, or October 15 of the year immediately following each year in which the federal decennial census is taken, whichever is later. Different compliance dates may be set by the general assembly by joint resolution.

Each county board of supervisors or the temporary county redistricting commission and city council shall immediately notify the state commissioner and the commissioner when the boundaries of election precincts are changed, and shall provide a map showing the new boundary lines. Each county board or the temporary county redistricting commission and city council shall certify to the state commissioner the populations of the new election precincts or retained election precincts as determined by the latest federal decennial census. Materials filed with the state commissioner shall be postmarked no later than the deadline specified in this section.

If the state commissioner determines that a county board or the temporary county redistricting commission or city council has failed to make the required changes by the dates specified by this section, the state commissioner shall make or cause to be made the necessary changes as soon as possible. The state commissioner shall assess to the county or city, as the case may be, the expenses incurred in making the necessary changes. The state commissioner may request the services of personnel and materials available to the legislative service bureau to assist the state commissioner in making required changes in election precincts which become the state commissioner's responsibility.

Precinct boundaries shall become effective on January 15 of the second year following the year in which the census was taken and shall be used for all subsequent elections. Precinct boundaries drawn by the state commissioner shall be incorporated into the ordinances of the city or county.

Changes made to precincts in years other than the year following the year in which the federal decennial census is taken shall be filed with the state commissioner as soon as possible.

[C73, §603; C97, §1090; S13, §1090; C24, 27, 31, 35, 39, §**722, 723;** C46, 50, 54, 58, 62, 66, 71, 73, §49.4, 49.5; C75, 77, 79, 81, §49.7; 82 Acts, ch 1091, §1]

89 Acts, ch 296, §11; 90 Acts, ch 1233, §1; 94 Acts, ch 1179, §10

49.8 Changes in precincts.

After any required changes in precinct boundaries have been made following each federal decennial census, at the time established by or pursuant to section 49.7, the county board or city council shall make no further changes in precinct boundaries until after the next federal decennial census, except in the following circumstances:

1. When deemed necessary by the board of supervisors of any county because of a change in the location of the boundaries, dissolution or establishment of any civil township, the boundaries of precincts actually affected may be changed as necessary to conform to the new township boundaries.

2. When territory is annexed to a city the city council may attach all or any part of the annexed territory to any established precinct or precincts which are contiguous to the annexed territory, however this subsection shall not prohibit establishment of one or more new precincts in the annexed territory.

3. A city may have one special federal census taken each decade and the population figures obtained may be used to revise precinct boundaries in accordance with the requirements of sections 49.3 and 49.5.

4. When the boundaries of a county supervisor, city council, or school director district, or any other district from which one or more members of any public representative body other than the general assembly are elected by the voters thereof, are changed by annexation or other means other than reprecincting, the change shall not result in the term of any officer elected from the former district being terminated before or extended beyond the expiration of the term to which the officer was last elected, except as provided under section 275.23A and section 331.209, subsection 1. If more than one incumbent officeholder resides in a district redrawn during reprecincting, their terms of office shall expire after the next election in the political subdivision.

When a vacancy occurs in the office of county supervisor, city council, or school director following the effective date of new district boundaries, the vacancy shall be filled using the new boundaries.

5. When a city is changing its form of government from one which has council members elected at large to one which has council members elected from wards, or is changing its number of council members elected from wards, the city council may redraw the precinct boundaries in accordance with sections 49.3 and 49.5 to coincide with the new ward boundaries.

6. Precinct boundaries established by or pursuant to section 49.4, and not changed under subsection 1 since the most recent federal decennial census, may be changed once during the period beginning January 1 of the second year following a year in which a federal decennial census is taken and ending June 30 of the year immediately following the year in which the next succeeding federal decennial census is taken, if the commissioner recommends and the board of supervisors finds that the change will effect a substantial savings in election costs. Changes made under this subsection shall be made not later than ninety-nine days before a primary election, unless the changes will not take effect until January 1 of the next even-numbered year.

7. When territory contiguous to the Indian settlement is added to the Indian settlement land held in trust by the secretary of the interior of the United States.

[C73, §603; C97, §1090; S13, §1090; C24, 27, 31, 35, 39, §**722, 723;** C46, 50, 54, 58, 62, 66, 71, 73, §49.4, 49.5; C75, 77, 79, 81, §49.8]

83 Acts, ch 77, §2; 84 Acts, ch 1052, §1; 89 Acts, ch 136, §34; 94 Acts, ch 1179, §11, 12; 99 Acts, ch 17, §3

49.9 Proper place of voting.

No person shall vote in any precinct but that of the person's residence.

[C73, §605; C97, §1090; S13, §1090; C24, 27, 31, 35, 39, §**727;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.9]

49.10 Polling places for certain precincts.

1. Polling places for precincts outside the limits of a city, but within the township, or originally within and set off as a separate township from the township in which the city is in whole or in part situated, and a polling place for a township which entirely surrounds another township containing a city, may be fixed at some room or rooms in the courthouse or in some other building within the limits of the city as the commissioner may provide.

2. If the commissioner determines, or if a petition be filed with the commissioner ninety days before any primary, general or special election stating that there is no suitable or adequate polling place within a township constituting a voting precinct and that it is desirable and to the interest of the voters of that township voting precinct that a voting place be designated for it outside its territorial limits, the commissioner shall fix a polling place for that precinct, outside its territorial limits, which the commissioner deems convenient to the electors of the township precinct. A petition submitted under this subsection must be signed by eligible electors of the precinct exceeding in number one-half the total number of votes cast in the township precinct for the office of president of the United States or governor, as the case may be, at the last preceding general election. When the commissioner has fixed such a polling place it shall remain the polling place at all subsequent primary, general and special elections, until such time as the commissioner shall fix a different polling place for the precinct.

3. In any city in which precinct lines have been changed to comply with section 49.5, the commissioner may fix the polling place for any precinct outside the boundaries of the precinct if there is no building or facility within the precinct suitable and available for use as a polling place. In so doing, the commissioner shall fix the polling place at the point nearest the precinct which is suitable and available for use as a polling place and is reasonably accessible to voters of the precinct.

4. No single room or area of any building or facility shall be fixed as the polling place for more than one precinct unless there are separate entrances each clearly marked on the days on which elections are held as the entrance to the polling place of a particular precinct, and suitable arrangements are made within the room or area to prevent direct access from the polling place of any precinct to the polling place of any other precinct. When the commissioner has fixed such a polling place for any precinct it shall remain the polling place at all subsequent elections, except elections for which the precinct is merged with another precinct as permitted by section 49.11, until the boundaries of the precinct are changed or the commissioner fixes a new polling place, except that the polling place shall be changed to a point within

the boundaries of the precinct at any time not less than sixty days before the next succeeding election that a building or facility suitable for such use becomes available within the precinct.

5. If two or more contiguous townships have been combined into one election precinct by the board of supervisors, the commissioner shall provide a polling place which is convenient to all of the electors in the precinct.

[C97, §1091; S13, §1091; C24, 27, 31, 35, 39, §**728;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.10]

93 Acts, ch 143, §15

49.11 Notice of boundaries of precincts — merger or division.

The board of supervisors or the temporary county redistricting commission or city council shall number or name the precincts established by the supervisors or council pursuant to sections 49.3, 49.4, and 49.5. The boundaries of the precincts shall be recorded in the records of the board of supervisors, temporary county redistricting commission, or city council, as the case may be.

The board of supervisors or city council shall publish notice of changes in the county or city precinct boundaries in a newspaper of general circulation published in the county or city once each week for three consecutive weeks. The series of publications shall be made after the changes in the precincts have been approved by the state commissioner of elections. The last of the three publications shall be made no later than thirty days before the next general election. A map showing the new boundaries may be used. No publication is necessary if no changes were made.

The precincts established pursuant to section 49.7 shall not be changed except in the manner provided by law. However, for any election other than the primary or general election or any special election held under section 69.14, the county commissioner of elections may:

1. Consolidate two or more precincts into one. However, the commissioner shall not do so if there is filed with the commissioner at least twenty days before the election a petition signed by twenty-five or more eligible electors of any precinct requesting that it not be merged with any other precinct. There shall be attached to the petition the affidavit of an eligible elector of the precinct that the signatures on the petition are genuine and that all of the signers are to the best of the affiant's knowledge and belief eligible electors of the precinct.

If a special election is to be held in which only those registered voters residing in a specified portion of any established precinct are entitled to vote, that portion of the precinct may be merged by the commissioner with one or more other established precincts or portions of established precincts for the special election, and the right to petition against merger of a precinct shall not apply.

2. Divide any precinct permanently established under this section which contains all or any parts of two or more mutually exclusive political subdivisions, either or both of which is independently electing one or more officers or voting on one or more questions on the same date, into two or more temporary precincts and designate a polling place for each.

3. Notwithstanding the provisions of the first unnumbered paragraph of this section the commissioner may consolidate precincts for any election including a primary and general election under any of the following circumstances:

a. One of the precincts involved consists entirely of dormitories that are closed at the time the election is held.

b. The consolidated precincts, if established as a permanent precinct, would meet all requirements of section 49.3, and a combined total of no more than three hundred fifty voters voted in the consolidated precincts at the last preceding similar election.

c. The city council of a special charter city with a population of three thousand five hundred or less which is divided into council wards requests the commissioner to consolidate two or more precincts for any election.

[C73, §604; C97, §1092, 2755; S13, §2755; C24, §729, 4205; C27, §729, 4205, 4216-b2; C31, 35, §729, 4216-c5; C39, §**729, 4216.05;** C46, 50, 54, 58, 62, 66, 71, 73, §49.11, 277.5; C75, 77, 79, 81, §49.11; 81 Acts, ch 34, §24]

93 Acts, ch 143, §16; 94 Acts, ch 1169, §64; 94 Acts, ch 1179, §13; 94 Acts, ch 1180, §12

49.12 Election boards.

There shall be appointed in each election precinct an election board which shall ordinarily consist of three or five precinct election officials. At the commissioner's discretion, additional precinct election officials may be appointed to work at any election. Double election boards may be appointed for any precinct as provided by chapter 51. Not more than a simple majority of the members of the election board in any precinct, or of the two combined boards in any precinct for which a double election board is appointed, shall be members of the same political party or organization if one or more registered voters of another party or organization are qualified and willing to serve on the board.

[C51, §246, 248, 1111; R60, §481, 483, 2027, 2030, 2031; C73, §606, 1717, 1719; C97, §1093, 2746, 2751, 2756; S13, §2756; SS15, §1087-a5, 1093; C24, §559, 730, 731, 735, 4165, 4195, 4209, 4211; C27, §559, 730, 731, 735, 4165, 4195, 4209, 4211-b2; C31, 35, §559, 730, 731, 735, 4165, 4216-c10; C39, §**559, 730, 731, 735, 4165, 4216.10;** C46, 50, §43.31, 49.12, 49.13, 49.17, 49.19, 276.12, 277.10; C54, 58, 62, 66, 71, 73, §43.31, 49.12, 49.13, 49.17, 275.19, 277.10; C75,

77, 79, 81, §49.12]

87 Acts, ch 221, §12; 88 Acts, ch 1119, §15; 95 Acts, ch 67, §53; 98 Acts, ch 1123, §4

49.13 Commissioner to appoint members, chairperson.

1. The membership of each precinct election board shall be appointed by the commissioner, not less than fifteen days before each election held in the precinct, from the election board panel drawn up as provided in section 49.15. Precinct election officials shall be registered voters of the county, or other political subdivision within which precincts have been merged across county lines pursuant to section 49.11, subsection 1, in which they are appointed. Preference shall be given to appointment of residents of a precinct to serve as precinct election officials for that precinct, but the commissioner may appoint other residents of the county where necessary.

2. Each election board member shall be a member of one of the two political parties whose candidates for president of the United States or for governor, as the case may be, received the largest and next largest number of votes in the precinct at the last general election, except that persons not members of either of these parties may be appointed to serve for any election in which no candidates appear on the ballot under the heading of either of these political parties.

3. In appointing the election board to serve for any election in which candidates' names do appear under the heading of these political parties, the commissioner shall give preference to the persons designated by the respective county chairpersons of these political parties for placement on the election board panel, as provided by section 49.15, in the order that they were so designated. However, the commissioner may for good cause decline to appoint a designee of a county chairperson if that chairperson is notified and allowed two working days to designate a replacement.

4. The commissioner shall designate one member of each precinct election board as chairperson of that board. If a counting board authorized by chapter 51 is appointed, the chairperson shall have authority over the mechanics of the work of both boards. At the discretion of the commissioner, two people who are members of different political parties may be appointed as cochairpersons. The cochairpersons shall have joint authority over the work of the precinct election board.

[C97, §1093; SS15, §1093; C24, 27, 31, 35, 39, §**733;** C46, 50, 54, 58, 62, 66, 71, 73, §49.15; C75, 77, 79, 81, §49.13]

95 Acts, ch 67, §53; 97 Acts, ch 170, §23

49.14 Substitute precinct election officials.

1. The commissioner may appoint substitute precinct election officials as alternates for election board members. A majority of the original election board members shall be present at the precinct polling place at all times; at partisan elections such majority shall include at least one precinct election official from each political party. If the chairperson leaves the polling place, the chairperson shall designate another member of the board to serve as chairperson until the chairperson returns. The responsibilities and duties of a precinct election official present at the time the polling place was opened on the day of an election may be assumed at any later time that day by a substitute appointed as an alternate. The substitute shall serve either for the balance of that election day or for any shorter period of time the commissioner may designate.

2. Substitute precinct election officials shall be appointed and shall serve in accordance with sections 49.12, 49.13, 49.15, and 49.16, and shall receive compensation as provided by sections 49.19, 49.20, and 49.125. Upon arriving at the polling place and prior to performing any official duty, a substitute precinct election official shall take the oath required by section 49.75.

3. The commissioner shall not employ substitute precinct election officials in a partisan election unless:

a. The election board panel drawn up pursuant to section 49.15 contains the names of a sufficient number of political party designees to permit appointment of both the regular precinct election officials and any substitute precinct election officials from that panel; or

b. The commissioner has informed the county chairpersons of the political parties referred to in section 49.13, subsection 2, thirty days prior to the date of the election, of intent to appoint substitute precinct election officials and has allowed ten days thereafter for the respective county chairpersons to provide additional names of persons from whom the substitute precinct election officials shall be appointed. If a county chairperson fails to provide additional names after being so notified, the commissioner may appoint persons known to be members of the appropriate political party or parties.

[S81, §49.14; 81 Acts, ch 34, §25]

49.15 Commissioner to draw up election board panel.

Not less than twenty days before each primary election, the commissioner shall draw up for each precinct an election board panel from which members of the precinct election board shall be appointed for each election held in the precinct during the ensuing two years. Each panel shall include members of each of the political parties referred to in section 49.13, whose names may be designated by the county chairpersons of each of these political parties not less than thirty days prior to each primary election. The commissioner may place on the election board panel names of

persons known by the commissioner to be members of these political parties, if the respective county chairpersons fail to designate a sufficient number of names, and may also add names of persons, whether or not they are members of either of these political parties, who have advised the commissioner they are willing to serve on the election board for elections in which no candidates appear on the ballot under the heading of either of these political parties, or whom either the city council of a city of three thousand five hundred or less population or a school board has advised the commissioner at least thirty days before each primary election are willing to serve without pay at elections conducted for that school district or city, as the case may be, during the tenure of the election board panel on which these names are included.

[C97, §1093; SS15, §1093; C24, 27, 31, 35, 39, §**733;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.15]

49.16 Tenure of election board panel.

Each person whose name is placed on the election board panel as provided in section 49.15, shall remain available for appointment to the election board of the precinct, subject to the provisions of section 49.12, until a new panel is drawn up unless the person's name is sooner deleted from the panel by the commissioner. The election board for each election held in the precinct shall be drawn from the panel, however:

1. No person shall serve on the election board at any election in which the person or any person related to the person within the third degree of consanguinity or affinity is a candidate to be voted upon in that precinct, and it shall be the responsibility of each person whose name is listed on the election board panel to notify the commissioner not less than fifteen days before any election at which the person is ineligible to serve by reason of this subsection. However, this subsection shall not apply in the case of any candidate or relative of a candidate seeking an office or nomination which no opposing candidate is seeking. Any candidate for an office or for nomination to an office to which two or more persons are to be elected at large is unopposed, for the purpose of this subsection, if the number of candidates for the office or nomination does not exceed the number of persons to be elected or nominated.

2. When all or portions of two or more precincts are merged for any election as permitted by section 49.11, subsection 1, the commissioner may appoint the election board for the merged precinct from the election board panels of any of the precincts so merged. When any permanent precinct is divided as permitted by section 49.11, subsection 2, the commissioner shall so far as possible appoint the election board for each of the temporary precincts so created from the election board panel of the permanent precinct.

3. Persons whose names are listed on the election board panel shall not be required to serve on the election board for any election which by the terms of the statute authorizing it is exempt from the provisions of this chapter. The necessary officers for such elections shall be designated as provided by law or, if there is no applicable statute, by the commissioner.

4. In appointing the election board for any election conducted for a city of three thousand five hundred or less population, or any school district, the commissioner may give preference to any persons who are willing to serve without pay at those elections.

5. A person shall not serve on the precinct election board as a representative of a political party if the person has changed political party affiliation from that of the political party which selected the person to serve as a precinct election official. If a precinct election official records a change of political party, the official's name shall be removed from the list of precinct election officials for that political party. The chairperson of the political party shall be notified of the vacancy and may designate a replacement. If the chairperson of another political party later designates the person as a precinct election official, the person may serve, if qualified.

[C75, 77, 79, 81, §49.16]

97 Acts, ch 170, §24

49.17 Repealed by 73 Acts, ch 136, § 401.

49.18 Vacancies occurring on election day.

If, at the opening of the polls in any precinct, there shall be a vacancy in the office of the precinct election official, the vacancy shall be filled by the commissioner or, with the commissioner's approval and for that election only by the members of the board present, consideration being given to the political party affiliation of the person appointed if necessary in order to comply with the requirements of sections 49.12 and 49.13.

[C51, §247, 1111; R60, §482, 2027, 2030, 2031; C73, §607, 1717, 1719; C97, §1093, 2746, 2751, 2756; S13, §2756; SS15, §1087-a5, 1093; C24, §559, 736, 737, 4195, 4209, 4211; C27, §559, 736, 737, 4195, 4209, 4211-b2; C31, 35, §559, 736, 737, 4216-c10; C39, §**559, 736, 737, 4216.10;** C46, 50, 54, 58, 62, 66, 71, 73, §43.31, 49.18, 49.19, 277.10; C75, 77, 79, 81, §49.18]

49.19 Unpaid officials, paper ballots optional for certain city elections.

The commissioner may appoint unpaid election precinct officials to election boards, as provided by sections 49.15, 49.16 and 49.20, or elect not to use voting machines even though they are available, as permitted by section 49.26, or both, for any election held for a city, even if the city has a population of more than three thousand five hundred, if there is no contest for any office on the ballot and no pub-

lic question is being submitted to the voters at that election.

[C75, 77, 79, 81, §49.19]

49.20 Compensation of members.

The members of election boards shall be deemed temporary state employees who are compensated by the county in which they serve, and shall receive compensation at a rate established by the board of supervisors, which shall be not less than three dollars and fifty cents per hour, while engaged in the discharge of their duties and shall be reimbursed for actual and necessary travel expense at a rate determined by the board of supervisors, except that persons who have advised the commissioner prior to their appointment to the election board that they are willing to serve without pay at elections conducted for any school district or a city of three thousand five hundred or less population, shall receive no compensation for service at those elections. Compensation shall be paid to members of election boards only after the vote has been canvassed and it has been determined in the course of the canvass that the election record certificate has been properly executed by the election board.

[SS15, §1087-a5, 1093; C24, 27, 31, 35, 39, §**560, 738;** C46, 50, 54, 58, 62, 66, 71, 73, §43.32, 49.20; C75, 77, 79, 81, §49.20]

89 Acts, ch 121, §1; 97 Acts, ch 170, §25

Use of automobile, see §70A.9

49.21 Polling places — accessibility — signs.

It is the responsibility of the commissioner to designate a polling place for each precinct in the county.

Upon the application of the commissioner, the authority which has control of any buildings or grounds supported by taxation under the laws of this state shall make available the necessary space therein for the purpose of holding elections, without charge for the use thereof.

Except as otherwise provided by law, the polling place in each precinct in the state shall be located in a central location if a building is available. However, first consideration shall be given to the use of public buildings supported by taxation.

In the selection of polling places, preference shall also be given to the use of buildings accessible to persons who are elderly and persons with disabilities.

On the day of an election, the commissioner shall post a sign stating "vote here" at the entrance to each driveway leading to the building where a polling place is located. The sign must be visible from the street or highway fronting the driveway, but shall not encroach upon the right-of-way of such street or highway.

The commissioner shall post a sign at the entrance to the polling place indicating the election precinct number or name, and displaying a street map showing the boundaries of the precinct.

[C51, §222, 245; R60, §444, 480; C73, §391, 603; C97, §566, 1113, 2755; S13, §2755; C24, 27, §739, 4205; C31, 35, §739, 4216-c7; C39, §**739, 4216.07;** C46, 50, 54, 58, 62, 66, 71, 73, §49.21, 277.7; C75, 77, 79, 81, S81, §49.21; 81 Acts, ch 34, §26]

96 Acts, ch 1129, §15; 2000 Acts, ch 1039, §1; 2002 Acts, ch 1134, §30, 115

Unnumbered paragraph 6 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW unnumbered paragraph 6

49.22 Repealed by 73 Acts, ch 136, § 401.

49.23 Notice of change.

When a change is made from the usual polling place for the precinct or when the precinct polling place for any primary or general election is different from that used for the precinct at the last preceding primary or general election, notice of such change shall be given by publication in a newspaper of general circulation in the precinct not more than twenty nor less than four days before the day on which the election is to be held. In addition a notice of the present polling place for the precinct shall be posted, not later than the hour at which the polls open on the day of the election, on each door to the usual or former polling place in the precinct and shall remain there until the polls have closed.

[C51, §222; R60, §444; C73, §391; C97, §566; C24, 27, 31, 35, 39, §**741;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.23]

89 Acts, ch 136, §35

49.24 Schoolhouses as polling places.

In precincts outside of cities the election shall, if practicable, be held in a public school building. Any damage to the building or furniture resulting from the election shall be paid by the county.

[C97, §1113; C24, 27, 31, 35, 39, §**742;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.24]

Schoolhouses as polling places, §297.9

49.25 Equipment required at polling places.

1. In any county or portion of a county for which voting machines have been acquired under section 52.2 the commissioner shall determine pursuant to section 49.26, in advance of each election conducted for a city of three thousand five hundred or less population, or any school district, and individually for each precinct, whether voting in that election shall be by machine or by paper ballot.

2. The commissioner shall furnish to each precinct, in advance of each election, voting machines meeting the requirements of chapter 52 or voting booths, as the case may be, in the following number:

a. At each regularly scheduled election, at

least one for every three hundred fifty voters who voted in the last preceding similar election held in the precinct.

b. At any special election at which the ballot contains only a single public measure or only candidates for a single office or position, the number determined by the commissioner.

3. The commissioner shall furnish to each precinct where voting is to be by paper ballot, special paper ballot, or ballot card, rather than by voting machine, the necessary ballot boxes, suitably equipped with seals or locks and keys, and voting booths. The voting booths shall be approved by the board of examiners for voting machines and electronic voting systems and shall provide for voting in secrecy. At least one voting booth in each precinct shall be accessible to persons with disabilities. If the lighting in the polling place is inadequate, the voting booths used in that precinct shall include lights. Ballot boxes shall be locked or sealed before the polls open and shall remain locked or sealed until the polls are closed, except as provided in sections 51.7 and 52.40, or to provide necessary service to a malfunctioning portable vote tallying device. If a ballot box is opened prior to the closing of the polls, two precinct election officials not of the same party shall be present and observe the ballot box being opened.

4. Secrecy folders or sleeves shall be provided for use at any precinct where ballots are used which cannot be folded to obscure the marks made by the voters.

[C51, §254; R60, §489; C73, §614; C97, §1113, 1130, 2756; S13, §1130, 2756; C24, 27, §743, 744, 4209; C31, 35, §743, 744, 4216-c14; C39, §**743, 744, 4216.14;** C46, 50, 54, 58, 62, 66, 71, 73, §49.25, 49.26, 277.14; C75, 77, 79, 81, §49.25]

90 Acts, ch 1007, §1; 96 Acts, ch 1129, §113; 97 Acts, ch 170, §26, 27

49.26 Commissioner to decide method of voting — counting of ballots.

1. In all elections regulated by this chapter, the voting shall be by ballots printed and distributed as provided by law, or by voting machines meeting the requirements of chapter 52.

2. When voting machines are available for an election precinct, the commissioner shall determine in advance of each election conducted for a city of three thousand five hundred or less population or any school district in which voting occurs in that precinct whether voting there shall be by machine or paper ballot. If the commissioner concludes, on the basis of voter turnout for recent similar elections and factors considered likely to affect voter turnout for the forthcoming election, that voting will probably be so light as to make preparation and use of paper ballots less expensive than preparation and use of a voting machine, paper ballots shall be used.

3. In counties in which automatic tabulating equipment is available, the commissioner shall determine in advance of each election whether the ballots will be counted by the automatic tabulating equipment or by the precinct election officials. The commissioner may use ballots and instructions similar to those used when the ballots are counted by automatic tabulating equipment.

[S13, §2754; C24, 27, §4203; C31, 35, §4216-c15; C39, §**4216.15;** C46, 50, 54, 58, 62, 66, 71, 73, §277.15; C75, 77, 79, 81, §49.26]

97 Acts, ch 170, §28

49.27 Precincts where some voters may not vote for all candidates or questions. Repealed by 97 Acts, ch 170, § 93. See § 49.30.

49.28 Commissioner to furnish registers and supplies.

The commissioner shall prepare and furnish to each precinct an election register and all other books, forms, materials, equipment, and supplies necessary to conduct the election.

After the registration deadline and before election day the commissioner shall prepare an election register for each precinct in which voting will occur on the day of the election. The precinct election register shall be a list of the names and addresses of all registered voters of the precinct. Inactive records listed in the election register shall be clearly identified with a special mark or symbol.

When a precinct is divided by a district boundary, and some, but not all, registered voters of the precinct may vote on an issue or office from that district, the election register shall clearly indicate which of the registered voters are entitled to vote in the district.

[C51, §255; R60, §490; C73, §615; C97, §1113, 1132, 2756; S13, §1087-a16, 2756; C24, 27, §561, 746, 4209; C31, 35, §561, 746, 4216-c14; C39, §**561, 746, 4216.14;** C46, 50, 54, 58, 62, 66, 71, 73, §43.33, 49.28, 277.14; C75, 77, 79, 81, §49.28]

94 Acts, ch 1169, §49

49.29 Voting by ballot or machine. Repealed by 97 Acts, ch 170, § 93. See § 49.26.

49.30 All candidates and issues on one ballot — exceptions.

All constitutional amendments, all public measures, and the names of all candidates, other than presidential electors, to be voted for in each election precinct, shall be printed on one ballot, except that separate ballots are authorized under the following circumstances:

1. Where special paper ballots are used, if it is not possible to include all offices and public measures on a single ballot, separate ballots may be provided for township offices, nonpartisan offices, judges, or public measures.

2. At an election where voting machines are used, the following exceptions apply:

a. If it is impossible to place the names of all candidates on the machine ballot, the commissioner may provide a separate paper ballot for the candidates for judge of the district court, the township offices, and the nonpartisan offices listed in section 39.21. One of the paper ballots shall be furnished to each registered voter.

b. When a precinct has one or more offices or questions on the ballot in any election that may not be legally voted upon by all registered voters of the precinct, the commissioner shall use lockout devices operated by the precinct election officials to restrict each voter to the appropriate parts of the ballot. However, if the voting machine does not have a lockout device, the commissioner may use one or more separate voting machines for each group of voters in the precinct. If neither of the foregoing procedures is feasible, the commissioner shall prepare separate ballots for the candidates or questions which may not be legally voted upon by all registered voters of the precinct, and shall furnish a separate ballot box into which only those ballots shall be deposited.

3. Where paper ballots are used, separate paper ballots shall be used:

a. For the election of township officers in precincts including both incorporated and unincorporated areas or more than one township.

b. For public measures.

c. For judges.

[C51, §256; R60, §491; C73, §616; C97, §1106; S13, §1106; C24, 27, 31, 35, 39, §**748;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.30]

90 Acts, ch 1238, §17; 94 Acts, ch 1169, §64; 97 Acts, ch 170, §29; 98 Acts, ch 1100, §6; 2002 Acts, ch 1134, §31, 115

2002 amendment to subsection 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1 amended

49.31 Arrangement of names on ballot — restrictions.

1. All ballots shall be arranged with the names of candidates for each office listed below the office title. For partisan elections the name of the political party or organization which nominated each candidate shall be listed after or below each candidate's name.

The commissioner shall determine the order of political parties and nonparty political organizations on the ballot. The sequence shall be the same for each office on the ballot and for each precinct in the county voting in the election.

2. The commissioner shall prepare a list of the election precincts of the county, by arranging the various townships and cities in the county in alphabetical order, and the wards or precincts in each city or township in numerical order under the name of such city or township. The commissioner shall then arrange the surnames of each political party's candidates for each office to which two or more persons are to be elected at large alphabetically for the respective offices for the first precinct on the list; thereafter, for each political party and for each succeeding precinct, the names appearing first for the respective offices in the last preceding precinct shall be placed last, so that the names that were second before the change shall be first after the change. The commissioner may also rotate the names of candidates of a political party in the reverse order of that provided in this subsection or alternate the rotation so that the candidates of different parties shall not be paired as they proceed through the rotation. The procedure for arrangement of names on ballots provided in this section shall likewise be substantially followed in elections in political subdivisions of less than a county.

On the general election ballot the names of candidates for the nonpartisan offices listed in section 39.21 shall be arranged by drawing lots for position. The board of supervisors shall hold the drawing at its first meeting following the deadline for receipt of objections and withdrawals by candidates for the general election.

3. The ballots for any city elections, school elections, special election, or any other election at which any office is to be filled on a nonpartisan basis and the statutes governing the office to be filled are silent as to the arrangement of names on the ballot, shall contain the names of all nominees or candidates arranged in alphabetical order by surname under the heading of the office to be filled. When a city election, school election, special election, or any other election at which an office is to be filled on a nonpartisan basis, is held in more than one precinct, the candidates' names shall be rotated on the ballot from precinct to precinct in the manner prescribed by subsection 2 unless there are no more candidates for an office than the number of persons to be elected to that office.

4. The heading for each office on the ballot shall be immediately followed by a notation stating, "Vote for no more than . . . . . ", and indicating the maximum number of nominees or candidates for that office for whom each elector may vote.

5. At the end of the list of candidates for each office listed on the ballot one or more blank lines and voting positions shall be printed to allow the elector to write in the name of any person for whom the elector desires to vote for any office or nomination on the ballot. The number of write-in lines shall equal the number of votes that can be cast for that office.

6. The name of a candidate printed on the ballot shall not include parentheses, quotation marks, or any personal or professional title.

7. For the purpose of ballot rotation the absentee ballot and special voters precinct may be considered a separate precinct.

[C97, §1106; S13, §1106, 2754; C24, 27, §749, 4203; C31, 35, §749, 4216-c8; C39, §**749, 4216.08;**

C46, 50, 54, 58, 62, 66, 71, 73, §49.31, 277.8; C75, 77, 79, 81, §49.31]

86 Acts, ch 1224, §11, 12; 87 Acts, ch 221, §13, 14; 89 Acts, ch 136, §36; 90 Acts, ch 1238, §18; 91 Acts, ch 129, §12; 97 Acts, ch 170, §30 – 32; 2002 Acts, ch 1134, §32, 115

Subsection 2, unnumbered paragraph 2, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2, NEW unnumbered paragraph 2

49.32 Candidates for president in place of electors.

The candidates for electors of president and vice president of any political party or group of petitioners shall not be placed on the ballot, but in the years in which they are to be elected the names of candidates for president and vice president, respectively, of such parties or group of petitioners shall be placed on the ballot, as the names of candidates for United States senators are placed thereon, under their respective party, petition, or adopted titles for each political party, or group of petitioners, nominating a set of candidates for electors.

[C97, §1106; S13, §1106; C24, 27, 31, 35, 39, §**750;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.32]

49.33 Single voting target for certain paired offices.

Immediately opposite the names of each pair of candidates for president and vice president, a single voting target shall be printed next to the bracket enclosing the names of the candidates for president and vice president. A single voting target shall be printed next to the bracket enclosing the names of the candidates for governor and lieutenant governor. The votes for a team of candidates shall be counted and certified by the election board as a team. Write-in votes shall also be tabulated as a single vote for a pair of candidates.

[C24, 27, 31, 35, 39, §**751;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.33]

90 Acts, ch 1238, §19; 97 Acts, ch 170, §33

Canvass of votes, chapter 50

49.34 Repealed by 75 Acts, ch 81, § 154.

49.35 Order of arranging tickets on lever voting machine ballot.

Each list of candidates nominated by a political party or a group of petitioners shall be termed a ticket. Where lever voting machines are used, each ticket shall be placed in a separate vertical column or horizontal row on the ballot, in the order determined pursuant to section 49.37 by the authorities charged with the printing of the ballots. However, if a total of more than seven tickets are to be placed on the ballot the state commissioner may authorize a method of placement in which the groups of petitioners are not all placed in separate individual columns or rows.

[C97, §1106; S13, §1106; C24, 27, 31, 35, 39, §**753;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.35]

97 Acts, ch 170, §34

Order of names in primaries, §43.28

49.36 Candidates of nonparty organization.

The term *"group of petitioners"* as used in the foregoing sections shall embrace an organization which is not a political party as defined by law.

[C24, 27, 31, 35, 39, §**754;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.36]

Nonparty organizations, see chapter 44

Political party defined, §43.2

See also chapter 45

49.37 Arrangement of ballot.

1. For general elections, and for other elections in which more than one partisan office will be filled, the first section of the ballot shall be for straight party voting. Each political party or organization which has nominated candidates for more than one office shall be listed. Instructions to the voter for straight party or organization voting shall be in substantially the following form: "To vote for all candidates from a single party or organization, mark the voting target next to the party or organization name. Not all parties or organizations have nominated candidates for all offices. Marking a straight party or organization vote does not include votes for nonpartisan offices, judges, or questions." Political parties and nonparty political organizations which have nominated candidates for only one office shall be listed below the other political organizations under the heading "Other Political Organizations. The following organizations have nominated candidates for only one office:".

Offices shall be arranged in groups. Partisan offices, nonpartisan offices, judges, and public measures shall be separated by a distinct line appearing on the ballot.

2. The commissioner shall arrange the ballot in conformity with the certificate issued by the state commissioner under section 43.73, in that the names of the respective candidates for each political party shall appear in the order they appeared on the certificate, above or to the left of the nonparty political organization candidates.

3. The commissioner shall arrange the partisan county offices on the ballot with the board of supervisors first, followed by the other county offices and township offices in the same sequence in which they appear in sections 39.17 and 39.22. Nonpartisan offices shall be listed after partisan offices.

[C97, §1106; S13, §1106; C24, 27, 31, 35, 39, §**755;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.37]

89 Acts, ch 136, §37; 97 Acts, ch 170, §35, 36

49.38 Candidate's name to appear but once.

The name of a candidate shall not appear upon the ballot in more than one place for the same office, whether nominated by convention, primary, caucus, or petition, except as hereinafter provided.

[C97, §1106; S13, §1106; C24, 27, 31, 35, 39, §**756;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.38]

49.39 Dual nomination.

When two or more political parties, or when two or more political organizations which are not political parties, or when a political party and a political organization which is not a political party, nominate the same candidate for the same office, such nominee shall forthwith designate, in writing, the political party name, or the political organization name, under which the nominee desires to have the nominee's name printed on the official ballot for the ensuing general election; such written designation shall be filed with the officer with whom the nomination paper, or certificate of nomination by a convention or caucus, is filed and the name of such nominee shall appear on the ballot in accordance therewith.

[C97, §1106; S13, §1087-a6, 1106; C24, 27, 31, 35, 39, §**757;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.39]

49.40 Failure to designate.

If the designation referred to in section 49.39 be not filed, the following rules shall govern:

1. If the nomination be by two or more political parties, the name of such nominee shall be printed under the party designation under which nomination papers were first filed in the nominee's behalf.
2. If the nomination be by a political party and also by a political organization which is not a political party, the name of such nominee shall be printed under the name of the political party or political organization first filing nomination papers, or certificate of nomination, as the case may be.
3. If the nomination be by two or more political organizations which are not political parties, the name of such nominee shall be printed under the name of the political organization first filing a certificate of nomination of such candidate.

[C97, §1106; S13, §1087-a6, 1106; C24, 27, 31, 35, 39, §**758;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.40]

49.41 More than one office prohibited.

A person shall not be a candidate for more than one office to be filled at the same election. A person who has been nominated for more than one office shall file a written notice declaring the office for which the person wishes to appear on the ballot.

If the nomination papers for all offices for which the candidate has been nominated are required to be filed with the same commissioner of elections, the candidate shall file a written notice with that commissioner no later than five p.m. on the final date upon which nomination papers may be filed for the election. The notice shall state the office for which the person wishes to appear on the ballot. If the required notice is not filed, the candidate's name shall not be certified by the state commissioner for any office for which nomination papers are filed with the state commissioner and the county commissioner of elections shall not include the candidate's name on the ballot for any office in any county.

If a person is a candidate for one or more offices for which nomination papers are required to be filed with the state commissioner and one or more offices for which nomination papers are required to be filed with the county commissioner, the candidate shall notify the state commissioner and the county commissioner in writing. The notice shall state the office for which the person chooses to remain a candidate. The notice shall be filed no later than the last day to file nomination papers with the commissioner. If the required notice is not filed, the candidate's name shall not appear on the ballot for any office in any county.

If necessary, the county commissioner shall certify to the state commissioner the name of any person who is a candidate for more than one office which will appear on the ballot for the election. The certification of dual candidacy shall be made no later than five p.m. on the day following the final day to file nomination papers in the office of the commissioner.

When the state commissioner receives notice from the county commissioner that a candidate for a state or federal office has also been nominated for a county or township office, the state commissioner shall amend the certificate issued pursuant to section 43.73 and notify the commissioners of any other counties to whom the candidate's name was originally certified and instruct them to remove the candidate's name from the ballot in those counties.

This section does not apply to the county agricultural extension council or the soil and water conservation district commission.

88 Acts, ch 1119, §16; 91 Acts, ch 129, §13; 2001 Acts, ch 158, §10

49.42 Form of official ballot. Repealed by 97 Acts, ch 170, § 93. See § 49.42A.

49.42A Form of official ballot.

The ballot for the general election shall be arranged in substantially the following form:

PARTISAN OFFICES
STRAIGHT PARTY VOTING

To vote for all candidates from a single party mark the voting target next to the party name. Not all parties have nominated candidates for all offices. Marking a straight party vote does not include votes for nonpartisan offices, judges, or questions.

○ POLITICAL PARTY NAME
○ POLITICAL PARTY NAME
○ POLITICAL ORGANIZATION NAME
○ POLITICAL ORGANIZATION NAME

OTHER POLITICAL ORGANIZATIONS

The following political organizations have nominated candidates for only one office:

POLITICAL ORGANIZATION NAME
POLITICAL ORGANIZATION NAME

FEDERAL OFFICES
For President and Vice President
Vote for no more than one team.

○ CANDIDATE NAME, of State
CANDIDATE NAME, of State
Political Party
○ CANDIDATE NAME, of State
CANDIDATE NAME, of State
Political Party
○ CANDIDATE NAME, of State
CANDIDATE NAME, of State
Political Organization Name
○ CANDIDATE NAME, of State
CANDIDATE NAME, of State
Political Organization Name
○ CANDIDATE NAME, of State
CANDIDATE NAME, of State
Nominated by Petition
○ . . . . . .
Write-in for President, if any.
. . . . . .
Write-in for Vice President, if any.

For U. S. Senator
Vote for no more than one.

○ CANDIDATE NAME
Political Party
○ CANDIDATE NAME
Political Party
○ CANDIDATE NAME
Political Organization
○ CANDIDATE NAME
Political Organization
○ CANDIDATE NAME
Nominated by Petition
○ . . . . . .
Write-in vote, if any.

For U. S. Representative
First District
Vote for no more than one.

○ CANDIDATE NAME
Political Party
○ CANDIDATE NAME
Political Party
○ CANDIDATE NAME
Political Organization
○ CANDIDATE NAME
Political Organization
○ CANDIDATE NAME
Nominated by Petition
○ . . . . . .
Write-in vote, if any.

STATE OFFICES
For State Senator, District 2
Vote for no more than one.

○ CANDIDATE NAME
Political Party
○ CANDIDATE NAME
Political Party
○ CANDIDATE NAME
Political Organization
○ CANDIDATE NAME
Political Organization
○ CANDIDATE NAME
Nominated by Petition
○ . . . . . .
Write-in vote, if any.

97 Acts, ch 170, §37

49.43 Constitutional amendment or other public measure.

If possible, all public measures and constitutional amendments to be voted upon by an elector shall be included on a single special paper ballot which shall also include all offices to be voted upon. However, if it is necessary, a separate ballot may be used as provided in section 49.30, subsection 1.

In precincts using paper ballots all public measures to be voted upon by a voter at a given election shall be printed upon one ballot of some color other than white. In precincts using voting machines all public measures shall be placed in the question row on the machine; however, if it is impossible to place all the public measures on the machine ballot, or if only a portion of the registered voters of the precinct are entitled to vote upon any measure presented, the commissioner may provide a separate paper ballot for the public measure or measures.

Constitutional amendments and other public measures may be summarized by the commissioner as provided in sections 49.44 and 52.25.

[C97, §1106; S13, §1106; C24, 27, 31, 35, 39, §**761, 762, 767;** C46, 50, 54, 58, 62, 66, 71, 73, §49.43, 49.44; C75, §49.43, 49.49; C77, 79, 81, §49.43]

88 Acts, ch 1119, §17; 94 Acts, ch 1169, §64; 97 Acts, ch 170, §38, 39

Constitution, Art. X, §1

See also §52.24

49.44 Summary.

When a proposed constitutional amendment or other public measure to be decided by the voters of the entire state is to be voted upon, the state commissioner shall prepare a written summary of the amendment or measure including the number of the amendment or statewide public measure assigned by the state commissioner. The summary shall be printed immediately preceding the text of the proposed amendment or measure on the paper ballot or special paper ballot referred to in section 49.43. If the complete text of the public measure will not fit on the special paper ballot it shall be posted inside the voting booth. A copy of the full text shall be included with any absentee ballots.

In precincts where the amendment or measure will be voted on by machine, the summary shall be placed in the voting machine inserts as required by section 52.25.

The commissioner may prepare a summary for public measures if the commissioner finds that a summary is needed to clarify the question to the voters.

[C73, §49.43; C75, 77, 79, 81, §49.44; 81 Acts, ch 34, §27]

89 Acts, ch 136, §38; 97 Acts, ch 170, §40

Constitution, Art. X, §1

49.45 General form of ballot.

Ballots referred to in section 49.43 shall be substantially in the following form:

Shall the following amendment to the Constitution (or public measure) be adopted?

☐ Yes
☐ No

(Here insert the summary, if it is for a constitutional amendment or statewide public measure, and in full the proposed constitutional amendment or public measure. The number assigned by the state commissioner or the letter assigned by the county commissioner shall be included on the ballot centered above the question, "Shall the following amendment to the Constitution [or public measure] be adopted?".)

[C97, §1106; S13, §1106; C24, 27, 31, 35, 39, §**763;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §49.45; 81 Acts, ch 34, §28]

97 Acts, ch 170, §41

Constitution, Art. X, §1

49.46 Marking ballots on public measures.

The elector shall designate a vote by making the appropriate mark in the voting target. On paper ballots an "X", or a check mark, thus, "✓", may be placed in the proper target.

[C97, §1106; S13, §1106; C24, 27, 31, 35, 39, §**764;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.46]

97 Acts, ch 170, §42

Constitution, Art. X, §1

49.47 Notice on ballots.

At the top of paper ballots for public measures shall be printed the following:

[Notice to voters. To vote to approve any question on this ballot, make a cross mark or check in the target before the word "Yes". To vote against a question make a similar mark in the target preceding the word "No".]

This notice shall be adapted to describe the proper mark where it is appropriate.

[S13, §1106; C24, 27, 31, 35, 39, §**765;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.47]

97 Acts, ch 170, §43; 98 Acts, ch 1100, §7

Constitution, Art. X, §1

49.48 Notice for judicial officers and constitutional amendments.

The state commissioner of elections shall prescribe a notice to inform voters of the location on the ballot of the form for retaining or removing judicial officers and for ratifying or defeating proposed constitutional amendments. The notice shall be conspicuously attached to the voting machine or to the ballot.

83 Acts, ch 186, §10026, 10201; 89 Acts, ch 136, §39

Constitution, Art. X, §1

49.49 Repealed by 75 Acts, ch 81, § 154.

49.50 Endorsement and delivery of ballots.

Ballots on such public measures shall be endorsed and given to each voter by the precinct election officials, as in case of ballots generally, and shall be subject to all other laws governing ballots for candidates, so far as the same shall be applicable.

[S13, §1106; C24, 27, 31, 35, 39, §**768;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.50]

Constitution, Art. X, §1

49.51 Commissioner to control printing.

The commissioner shall have charge of the printing of the ballots to be used for any election held in the county, unless the commissioner delegates that authority as permitted by this section.

The commissioner may delegate this authority only to another commissioner who is responsible under section 47.2 for conducting the elections held for a political subdivision which lies in more than one county, and only with respect to printing of ballots containing only public questions or the names of candidates to be voted upon by the registered voters of that political subdivision. Only one facsimile signature, that of the commissioner under whose direction the ballot is printed, shall appear on the ballot. It is the duty of the commissioner to insure that the arrangement of any ballots printed under the commissioner's direction conforms to all applicable requirements of this chapter.

[C97, §1107; S13, §1106, 2754; SS15, §1107; C24, 27, §767, 769, 771, 4203; C31, 35, §767, 769, 771, 4216-c8; C39, §**767, 769, 771, 4216.08;** C46, 50, 54, 58, 62, 66, 71, 73, §49.51, 49.53, 277.8; C75, §49.49, 49.51; C77, 79, 81, §49.51]

83 Acts, ch 139, §1, 14; 93 Acts, ch 163, §38; 95 Acts, ch 67, §53; 98 Acts, ch 1119, §1

49.52 Repealed by 73 Acts, ch 136, § 401.

49.53 Publication of ballot and notice.

The commissioner shall not less than four nor more than twenty days before the day of each election, except those for which different publication requirements are prescribed by law, publish notice of the election. The notice shall contain a facsimile of the portion of the ballot containing the first rotation as prescribed by section 49.31, subsection 2, and shall show the names of all candidates or nominees and the office each seeks, and all public questions, to be voted upon at the election. The sample ballot published as a part of the notice may at the discretion of the commissioner be reduced in size relative to the actual ballot but such reduction shall not cause upper case letters appearing in candidates' names or in summaries of public measures on the published sample ballot to be less than ninety percent of the size of such upper case letters appearing on the actual ballot. The notice shall also state the date of the election, the hours the polls will be open, the location of each polling place at which voting is to occur in the election, the location of the polling places designated as early ballot pick-up sites, and the names of the precincts voting at each polling place, but the statement need not set forth any fact which is apparent from the portion of the ballot appearing as a part of the same notice. The notice shall include the full text of all public measures to be voted upon at the election. The notice shall also include notice of testing required pursuant to sections 52.9, 52.35, and 52.38.

The notice shall be published in at least one newspaper, as defined in section 618.3, which is published in the county or other political subdivision in which the election is to occur or, if no newspaper is published there, in at least one newspaper of substantial circulation in the county or political subdivision. For the general election or the primary election the foregoing notice shall be published in at least two newspapers published in the county. However, if there is only one newspaper published in the county, publication in one newspaper shall be sufficient.

[C51, §1110; R60, §463, 2027, 2030; C73, §578, 1718, 1719; C97, §1062, 1112, 2746, 2750, 2751, 2755; S13, §1087-a12, 2750, 2755; C24, §508, 550, 551, 790, 4195, 4197, 4208; C27, §508, 550, 551, 790, 4195, 4197, 4208, 4211-b1, 4216-b3; C31, 35, §508, 550, 551, 590, 4216-c3; C39, §**508, 550, 551, 790, 4216.03;** C46, 50, 54, §39.5, 43.23, 43.24, 49.72, 277.3; C58, 62, 66, 71, 73, §39.5, 43.23, 43.24, 43.29, 49.72, 277.3; C75, 77, 79, 81, §49.53]

87 Acts, ch 221, §15; 89 Acts, ch 136, §40; 93 Acts, ch 143, §17; 98 Acts, ch 1123, §5; 2002 Acts, ch 1134, §33, 115

Publication of ballot, city elections, §376.5

2002 amendment to unnumbered paragraph 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 amended

49.54 Cost of publication.

The cost of the publication required by section 49.53, shall not exceed an amount determined by the director of the state department of general services or the director's designee.

[C73, §3832; C97, §1112, 1293; S13, §1293; C24, 27, 31, 35, 39, §**772, 796;** C46, 50, 54, 58, 62, 66, 71, 73, §49.54, 49.72; C75, 77, 79, 81, §49.54]

49.55 Delivery of supplies to officials.

In all cases the necessary election supplies, including paper ballots for precincts where they are to be used, shall be furnished the precinct election officials not less than one hour before the opening of the polls on the morning of the election.

[C97, §1107; SS15, §1107; C24, 27, 31, 35, 39, §**773;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.55]

49.56 Maximum cost of printing.

The cost of printing the official election ballots and printed supplies for voting machines shall not exceed the usual and customary rates that the printer charges its regular customers.

[SS15, §1107; C24, 27, 31, 35, 39, §**774;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.56]

88 Acts, ch 1119, §18

49.57 Method and style of printing ballots.

Ballots shall be prepared as follows:

1. They shall be on paper uniform in color, through which the printing or writing cannot be read.

2. In the area of the general election ballot for straight party voting, the party names shall be

printed in capital letters of uniform size, in not less than twelve point type. After the name of each candidate for a partisan office the name of the candidate's political party shall be printed in at least six point type.

3. The names of candidates shall be printed in capital letters, of uniform size throughout the ballot, in not less than ten point type.

4. On ballots that will be counted by electronic tabulating equipment, ballots shall include a voting target next to the name of each candidate. The position, shape, and size of the targets shall be appropriate for the equipment to be used in counting the votes. Where paper ballots are used, a square may be printed at the beginning of each line in which the name of a candidate is printed, except as otherwise provided.

5. A portion of the ballot, which can be shown to the precinct officials without revealing any of the marks made by the voter, shall include the words "Official ballot", a designation of the ballot rotation, if any, the date of the election, and a facsimile of the signature of the commissioner who has caused the ballot to be printed pursuant to section 49.51.

6. The office title of any office which appears on the ballot to fill a vacancy before the end of the usual term of the office shall include the words "To Fill Vacancy".

[C97, §1109; S13, §1109; C24, 27, 31, 35, 39, §**775;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.57]

97 Acts, ch 170, §44; 2002 Acts, ch 1134, §34, 115

Single voting target for certain paired offices, §49.33

Signature in primary elections, §43.36

2002 amendment to subsection 4 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 4 amended

49.58 Effect of death of certain candidates.

If any candidate nominated by a political party, as defined in section 43.2, for the office of senator or representative in the Congress of the United States, governor, attorney general, or senator or representative in the general assembly dies during the period beginning on the eighty-eighth day and ending on the last day before the general election, or if any candidate so nominated for the office of county supervisor dies during the period beginning on the seventy-third day and ending on the last day before the general election, the vote cast at the general election for that office shall not be canvassed as would otherwise be required by chapter 50. Instead, a special election shall be held on the first Tuesday after the second Monday in December, for the purpose of electing a person to fill that office.

Each candidate for that office whose name appeared on the general election ballot shall also be a candidate for the office in the special election, except that the deceased candidate's political party may designate another candidate in substantially the manner provided by section 43.78 for filling vacancies on the general election ballot. However, a political party which did not have a candidate on the general election ballot for the office in question may similarly designate a candidate for that office in the special election. The name of any replacement or additional candidate so designated shall be submitted in writing to the state commissioner, or the commissioner in the case of a candidate for county supervisor, not later than five o'clock p.m. on the first Tuesday after the date of the general election. No other candidate whose name did not appear on the general election ballot as a candidate for the office in question shall be placed on the ballot for the special election, in any manner. The special election shall be held and canvassed in the manner prescribed by law for the general election.

[C97, §1108; C24, 27, 31, 35, 39, §**776;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.58]

89 Acts, ch 136, §41; 97 Acts, ch 170, §45

49.59 to 49.62 Repealed by 75 Acts, ch 81, § 154.

49.63 Time of printing — inspection and correction.

Ballots shall be printed and in the possession of the commissioner in time to enable the commissioner to furnish ballots to absent voters as provided by sections 53.8 and 53.11. The printed ballots shall be subject to the inspection of candidates and their agents. If mistakes are discovered, they shall be corrected without delay, in the manner provided in this chapter.

[C97, §1110; C24, 27, 31, 35, 39, §**781;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.63]

Ballot to absent voter, §53.2

Correction of primary ballots, §43.25

49.64 Number of ballots delivered.

The commissioner shall cause ballots of the kind to be voted in each precinct to be delivered to the precinct election officials as follows: in general elections which are presidential elections at least fifty-five ballots for every fifty votes, or fraction of fifty votes, cast in the precinct at the last preceding general election which was also a presidential election; and in general elections which are not presidential elections, at least fifty-five ballots for every fifty votes, or fraction of fifty votes, cast at the last preceding general election which was not a presidential election.

[C97, §1110; C24, 27, 31, 35, 39, §**782;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.64]

2002 Acts, ch 1134, §35, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

49.65 Packing ballots — delivery — receipts — records.

The required number of ballots for each precinct

shall be wrapped and sealed, and each package shall be clearly marked on the outside to indicate the number of ballots contained in the package and the name or number of the precinct and the location of the polling place for which they are intended. The ballots shall be delivered to the precinct election officials together with other necessary election supplies, as provided by section 49.55, and one of the officials shall sign a receipt for the ballots which receipt shall be preserved by the commissioner. The commissioner shall keep a record of the number of ballots delivered for each polling place, the person who signed the receipt for them, and the time they were delivered, on a form which also provides space for the entries required by section 50.10.

[C97, §1110; C24, 27, 31, 35, 39, §**783;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.65]

49.66 Reserve supply of ballots.

The commissioner shall provide and retain at the commissioner's office an ample supply of ballots, in addition to those distributed to the several voting precincts. If at any time the ballots furnished to any precinct shall be lost, destroyed, or if the chairperson of the precinct election officials determines that the supply of ballots will be exhausted before the polls are closed, the chairperson of the precinct election officials of the precinct shall immediately contact the commissioner by telephone. If no telephone is available, a messenger shall be sent to the commissioner with a written application for additional ballots. The application shall be signed by a majority of the precinct election officials. The commissioner shall keep written records of all requests for additional ballots and shall immediately cause to be delivered to the officials, at the polling place, such additional supply of ballots as may be required, and sufficient to comply with the provisions of this chapter.

[C97, §1110; C24, 27, 31, 35, 39, §**784;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.66]

95 Acts, ch 189, §8

49.67 Form of reserve supply.

The number of reserve ballots for each precinct shall be determined by the commissioner.

If necessary, the commissioner or the commissioner's designee may make photocopies of official ballots to replace or replenish ballot supplies. The commissioner shall keep a record of the number of photocopied ballots made for each precinct, the name of the person who made the photocopies, and the date, time, and location at which the photocopies were made. These records shall be made on forms and following procedures prescribed by the secretary of state by administrative rule.

In any precinct where photocopied ballots are used, each photocopied ballot shall be initialed as required by section 49.82 by two precinct officials immediately before being issued to the voter. In partisan elections the two precinct officials shall be of different political parties.

[C97, §1110; C24, 27, 31, 35, 39, §**785;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.67]

95 Acts, ch 189, §9

49.68 State commissioner to furnish instructions.

The state commissioner with the approval of the attorney general shall prepare, and from time to time revise, written instructions to the voters relative to voting, and shall furnish each commissioner with copies of the instructions. Such instructions shall cover the following matters:

1. The manner of obtaining ballots.
2. The manner of marking ballots.
3. That unmarked or improperly marked ballots will not be counted.
4. The method of gaining assistance in marking ballots.
5. That any erasures or identification marks, or otherwise spoiling or defacing a ballot, will render it invalid.
6. Not to vote a spoiled or defaced ballot.
7. How to obtain a new ballot in place of a spoiled or defaced one.
8. Any other matters thought necessary.

[C97, §1111; C24, 27, 31, 35, 39, §**786, 787;** C46, 50, 54, 58, 62, 66, 71, 73, §49.68, 49.69; C75, 77, 79, 81, §49.68; 81 Acts, ch 34, §29]

49.69 Repealed by 73 Acts, ch 136, § 401.

49.70 Precinct election officials furnished instructions.

The commissioner shall cause copies of the foregoing instructions to be printed in large, clear type, under the heading of "Instructions for Voters", and shall furnish the precinct election officials with a sufficient number of such instructions as will enable them to comply with section 49.71.

[C97, §1111; C24, 27, 31, 35, 39, §**788;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.70]

2002 Acts, ch 1134, §36, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

49.71 Posting instruction cards and sample ballots.

The precinct election officials, before the opening of the polls, shall cause said cards of instructions to be securely posted as follows:

1. One copy in each voting booth.
2. Not less than four copies, with an equal number of sample ballots, in and about the polling place.

[C97, §1112; C24, 27, 31, 35, 39, §**789;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.71]

Sample primary ballots, §43.30

Sample voting machine ballots, §52.13

49.72 Absentee voters designated before polling place opened.

The commissioner shall deliver to each precinct election board not less than one hour before the time at which the polls are to open for any election the list of all registered voters of that precinct who have been given or sent an absentee ballot for that election, and the election board shall immediately designate those registered voters who are so listed and therefore not entitled to vote in person at the polls, as required by section 53.19.

[C75, 77, 79, 81, §49.72]

95 Acts, ch 67, §53

49.73 Time of opening and closing polls.

1. At all elections, except as otherwise permitted by this section, the polls shall be opened at seven o'clock a.m., or as soon thereafter as vacancies on the precinct election board have been filled. On the basis of voter turnout for recent similar elections and factors considered likely to so affect voter turnout for the forthcoming election as to justify shortened voting hours for that election, the commissioner may direct that the polls be opened at twelve o'clock noon for:

a. Any school district election.

b. Any election conducted for a city of three thousand five hundred or less population, including a local option sales and services tax election conducted pursuant to section 422B.1. At elections conducted pursuant to chapter 422B, all polling places shall have the same voting hours.

c. Any election conducted for a city of more than three thousand five hundred population if there is no contest for any office on the ballot and no public question is being submitted to the voters at that election.

d. Any election conducted for a benefited district.

e. The unincorporated area of any county voting on a local option sales and services tax pursuant to section 422B.1.

2. The commissioner shall not shorten voting hours for any election if there is filed in the commissioner's office, at least twenty-five days before the election, a petition signed by at least fifty eligible electors of the school district or city, as the case may be, requesting that the polls be opened not later than seven o'clock a.m. All polling places where the candidates of or any public question submitted by any one political subdivision are being voted upon shall be opened at the same hour, except that this requirement shall not apply to merged areas established under chapter 260C. The hours at which the respective precinct polling places are to open shall not be changed after publication of the notice required by section 49.53. The polling places shall be closed at nine o'clock p.m. for state primary and general elections and other partisan elections, and for any other election held concurrently therewith, and at eight o'clock p.m. for all other elections.

[C51, §251; R60, §486; C73, §611; C97, §1096, 2751, 2754, 2756; S13, §1087-a6, 1096, 2754, 2756; C24, 27, §565, 791, 4202, 4211; C31, 35, §565, 791, 4216-c9; C39, §**565, 791, 4216.09;** C46, 50, 54, 58, 62, 66, 71, 73, §43.37, 49.73, 277.9; C75, 77, 79, 81, §49.73]

94 Acts, ch 1180, §13; 2002 Acts, ch 1134, §37, 38, 115

2002 amendments to subsection 1, paragraph b, and adding paragraph e take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1, paragraph b amended and NEW paragraph e

49.74 Registered voters entitled to vote after closing time.

Every registered voter who is on the premises of the voter's precinct polling place at the time the polling place is to be closed for any election shall be permitted to vote in that election. Wherever possible, when there are persons on the premises of a polling place awaiting an opportunity to claim their vote at the time the polling place is to be closed, the election board shall cause those persons to move inside the structure in which the polling place is located and shall then shut the doors of the structure and shall not admit any additional persons to the polling place for the purpose of voting. If it is not feasible to cause persons on the premises of a polling place awaiting an opportunity to claim their vote at the time the polling place is to be closed to move inside the structure in which the polling place is located, the election board shall cause those persons to be designated in some reasonable manner and shall not receive votes after that time from any persons except those registered voters so designated.

[C27, 31, 35, §791-a1; C39, §**791.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.74]

94 Acts, ch 1169, §64

49.75 Oath.

Before opening the polls, each of the board members shall take the following oath: "I, A. B., do solemnly swear or affirm that I will impartially, and to the best of my knowledge and ability, perform the duties of precinct election official of this election, and will studiously endeavor to prevent fraud, deceit, and abuse in conducting the election."

[C51, §249; R60, §484; C73, §609; C97, §1094, 2756; S13, §2756; C24, 27, §792, 4209; C31, 35, §792, 4216-c11; C39, §**792, 4216.11;** C46, 50, 54, 58, 62, 66, 71, 73, §49.75, 277.11; C75, 77, 79, 81, §49.75]

89 Acts, ch 136, §42

Counting board oath, §51.5

49.76 How administered.

Any one of the precinct election officials present may administer the oath to the others, and it shall be entered in the election records, subscribed by the person taking it, and certified by the officer ad-

ministering it.

[C51, §250; R60, §485; C73, §610; C97, §1095; SS15, §1087-a5; C24, 27, 31, 35, 39, §**559, 793;** C46, 50, 54, 58, 62, 66, 71, 73, §43.31, 49.76; C75, 77, 79, 81, §49.76]

49.77 Ballot furnished to voter.

1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form:

VOTER'S DECLARATION
OF ELIGIBILITY

I do solemnly swear or affirm that I am a resident of the . . . . . precinct, ... ward or township, city of . . . . . , county of . . . . . , Iowa.

I am a registered voter. I have not voted and will not vote in any other precinct in said election.

I understand that any false statement in this declaration is a criminal offense punishable as provided by law.

. . . . . .
Signature of Voter
. . . . . .
Address
. . . . . .
Telephone

Approved:

. . . . . .
Board Member

2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials.

3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner.

A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.

4. A person whose name does not appear on the election register of the precinct in which that person claims the right to vote shall not be permitted to vote, unless the person affirms that the person is currently registered in the county and presents proof of identity, or the commissioner informs the precinct election officials that an error has occurred and that the person is a registered voter of that precinct. If the commissioner finds no record of the person's registration but the person insists that the person is a registered voter of that precinct, the precinct election officials shall allow the person to cast a ballot in the manner prescribed by section 49.81.

A person who has been sent an absentee ballot by mail but for any reason has not received it shall be permitted to cast a ballot in person pursuant to section 53.19 and in the manner prescribed by section 49.81.

5. The request for the telephone number in the declaration of eligibility in subsection 1 is not mandatory and the failure by the voter to provide the telephone number does not affect the declaration's validity.

[C97, §1114; C24, §794, 795; C27, 31, 35, §718-b20, 794, 795; C39, §**718.21, 794, 795;** C46, 50, 54, 58, 62, 66, 71, §48.21, 49.77, 49.78; C73, 75, 77, 79, 81, §49.77]

83 Acts, ch 176, §5; 87 Acts, ch 221, §16, 17; 88 Acts, ch 1119, §19; 94 Acts, ch 1169, §50; 94 Acts, ch 1180, §14; 98 Acts, ch 1123, §6

49.78 Repealed by 72 Acts, ch 1025, § 35.

49.79 Challenges.

Any person offering to vote may be challenged as unqualified by any precinct election official or registered voter. It is the duty of each official to challenge any person offering to vote whom the official knows or suspects is not duly qualified. A ballot shall be received from a voter who is challenged, but only in accordance with section 49.81.

[C51, §258; R60, §493; C73, §619; C97, §1115; S13, §1087-a9; C24, 27, 31, 35, 39, §**571, 796;** C46, 50, 54, 58, 62, 66, 71, 73, §43.43, 49.79; C75, 77, 79, 81, §49.79]

2002 Acts, ch 1134, §39, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

49.80 Examination on challenge.

1. When the status of any person as a registered voter is so challenged, the precinct election officials shall explain to the person the qualifications of an elector, and may examine the person under oath touching the person's qualifications as a voter.

2. In case of any challenges of an elector at the time the person is offering to vote in a precinct, a precinct election official may place such person under oath and question the person as, *(a)* where the person maintains the person's home; *(b)* how long the person has maintained the person's home at such place; *(c)* if the person maintains a home at any other location; *(d)* the person's age. The precinct election official may permit the challenger to

participate in such questions. The challenged elector shall be allowed to present to the official such evidence and facts as the elector feels sustains the fact that the person is qualified to vote. Upon completion thereof, if the challenge is withdrawn, the elector may cast the vote in the usual manner. If the challenge is not withdrawn, section 49.81 shall apply.

[C51, §259; R60, §494; C73, §620; C97, §1115; C24, 27, 31, 35, 39, §**797;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.80]

90 Acts, ch 1238, §21; 94 Acts, ch 1169, §64

49.81 Procedure for challenged voter to cast ballot.

1. A prospective voter who is prohibited under section 49.77, subsection 4, or section 49.80 from voting except under this section shall be permitted to cast a paper ballot. If a booth meeting the requirement of section 49.25 is not available at that polling place, the precinct election officials shall make alternative arrangements to insure the challenged voter the opportunity to vote in secret. The marked ballot, folded as required by section 49.84, shall be delivered to a precinct election official who shall immediately seal it in an envelope of the type prescribed by subsection 4. The sealed envelope shall be deposited in a special envelope marked "ballots for special precinct" and shall be considered as having been cast in the special precinct established by section 53.20 for purposes of the postelection canvass.

2. Each person who casts a special ballot under this section shall receive a printed statement in substantially the following form:

Your qualifications as a registered voter have been challenged for the following reasons:

I. . . . . .
II. . . . . .
III. . . . . .

Your right to vote will be reviewed by the special precinct counting board on . . . . . You have the right and are encouraged to make a written statement and submit additional written evidence to this board supporting your qualifications as a registered voter. This written statement and evidence may be given to an election official of this precinct on election day or mailed or delivered to the county commissioner of elections, but must be received before . . . . . a.m./p.m. on . . . . . at . . . . . If your ballot is not counted you will receive notification of this fact.

3. Any elector may present written statements or documents, supporting or opposing the counting of any special ballot, to the precinct election officials on election day, until the hour for closing the polls. Any statements or documents so presented shall be delivered to the commissioner when the election supplies are returned.

4. The individual envelopes used for each paper ballot cast pursuant to subsection 1 shall have printed on them the format of the face of the registration form under section 48A.8 and the following:

I believe I am a registered voter of this precinct. I registered to vote in . . . . . county on or about . . . . . at . . . . . My name at that time was . . . . . I have not moved to a different county since that time. I am a United States citizen, at least eighteen years of age.

. . . . . .
(signature of voter) (date)

The following information is to be provided by the precinct election official:

Reason for challenge:
. . . . . .
. . . . . .

. . . . . .
(signature of precinct election official)

[C77, 79, 81, §49.81]

87 Acts, ch 221, §19, 20; 94 Acts, ch 1169, §51, 64; 2002 Acts, ch 1134, §40, 115

2002 amendment to subsection 2, unnumbered paragraph 2, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2, unnumbered paragraph 2 amended

49.82 Voter to receive one ballot — endorsement.

When an empty voting booth is available, one of the precinct election officials shall endorse the official's initials on each ballot the voter will receive. The initials shall be placed so that they may be seen when the ballot is properly folded or enclosed in a secrecy folder. The official shall give the voter one and only one of each of the ballots to be voted at that election in that precinct, except as provided by section 49.100. No ballot without the required official endorsement shall be placed in the ballot box.

[C97, §1116, 1117; C24, 27, 31, 35, 39, §**799;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.82]

94 Acts, ch 1180, §15

Endorsement in primary elections, §43.36

49.83 Names to be marked on election register.

The name of each voter shall be marked on the election register by a precinct election official when the voter's declaration of eligibility has been approved by the officials.

[C51, §260; R60, §495; C73, §621; C97, §1116; C24, 27, 31, 35, 39, §**800;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.83]

49.84 Marking and return of ballot.

After receiving the ballot, the voter shall immediately go alone to one of the voting booths, and without delay mark the ballot. All voters shall vote in booths. No special lines shall be used to separate voters who state that they wish to vote only a portion of the ballot.

Before leaving the voting booth, the voter shall fold the ballot or enclose it in a secrecy folder to conceal the marks on the ballot. The voter shall deliver the ballot to one of the precinct election officials. No identifying mark or symbol shall be endorsed on the back of the voter's ballot. If the precinct has a portable vote tallying system which will not permit more than one ballot to be inserted at a time, the voter may insert the ballot into the tabulating device; otherwise, the election official shall place the ballot in the ballot box.

This section does not prohibit a voter from taking minor children into the voting booth with the voter.

[C51, §257; R60, §492; C73, §617; C97, §1117, 1119; S13, §1119; C24, 27, 31, 35, 39, §**801;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.84]

94 Acts, ch 1180, §16; 2002 Acts, ch 1134, §41, 115

Unnumbered paragraph 3 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW unnumbered paragraph 3

49.85 Depositing ballots.

One of the precinct election officials shall at once, after receiving the ballot, in the presence of the voter, deposit it in the ballot box.

[C51, §257; R60, §492; C73, §617; C97, §1117; C24, 27, 31, 35, 39, §**802;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.85]

49.86 Failure to vote — surrender of ballot.

Any voter who, after receiving an official ballot, decides not to vote, shall, before entering the voting booth, surrender to the election officers the official ballot which has been given to the voter, and such fact shall be noted on the election records. A refusal to surrender such ballot shall subject the person so offending to immediate arrest and the penalties provided for violation of this chapter.

[C97, §1117; C24, 27, 31, 35, 39, §**803;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.86]

Penalty, §39A.3

49.87 Prohibited ballot — taking ballot from polling place.

No voter shall vote or offer to vote any ballot except such as the voter has received from the precinct election officials, nor take or remove any ballot from the polling place before the close of the poll.

[C97, §1117; C24, 27, 31, 35, 39, §**804;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.87]

49.88 Limitation on persons in booth and time for voting.

No more than one person shall be allowed to occupy any voting booth at any time. No person shall occupy such booth for more than three minutes to cast a vote. Nothing in this section shall prohibit assistance to voters under section 49.90.

This section does not prohibit a voter from taking minor children into the voting booth with the voter.

[C97, §1117; C24, 27, 31, 35, 39, §**805;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.88]

2002 Acts, ch 1134, §42, 115

Unnumbered paragraph 2 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW unnumbered paragraph 2

49.89 Selection of officials to assist voters.

At, or before, the opening of the polls, the election board of each precinct shall select two members of the board, of different political parties in the case of any election in which candidates appear on the ballot under the heading of either of the political parties referred to in section 49.13, to assist voters who may be unable to cast their votes without assistance as described in section 49.90.

[C97, §1118; C24, 27, 31, 35, 39, §**806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §49.89; 81 Acts, ch 34, §30]

84 Acts, ch 1291, §8

49.90 Assisting voter.

Any voter who may declare upon oath that the voter is blind, cannot read the English language, or is, by reason of any physical disability other than intoxication, unable to cast a vote without assistance, shall, upon request, be assisted by the two officers as provided in section 49.89, or alternatively by any other person the voter may select in casting the vote. The officers, or the person selected by the voter, shall cast the vote of the voter requiring assistance, and shall thereafter give no information regarding the vote cast. If any elector because of a disability cannot enter the building where the polling place for the elector's precinct of residence is located, the two officers shall take a paper ballot to the vehicle occupied by the elector with a disability and allow the elector to cast the ballot in the vehicle. If an elector with a disability cannot cast a ballot on a voting machine the elector shall be allowed to cast a paper ballot, which shall be opened immediately after the closing of the polling place by the two precinct election officials designated under section 49.89, who shall register the votes cast thereon on a voting machine in the polling place before the votes cast there are tallied pursuant to section 52.21. To preserve so far as possible the confidentiality of each ballot of an elector with a disability, the two officers shall proceed substantially in the same manner as provided in section 53.24. In precincts

where all voters use paper ballots, those cast by voters with disabilities shall be deposited in the regular ballot box and counted in the usual manner.

[C97, §1118; C24, 27, 31, 35, 39, §**807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §49.90; 81 Acts, ch 34, §31]

84 Acts, ch 1291, §9; 96 Acts, ch 1129, §16

49.91 Assistance indicated on register.

The precinct election officials shall mark upon the election register the name of any elector who received such assistance in casting the elector's vote.

[C97, §1118; C24, 27, 31, 35, 39, §**808;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.91]

49.92 Voting mark.

The instructions appearing on the ballot shall describe the appropriate mark to be used by the voter. The mark shall be consistent with the requirements of the voting system in use in the precinct. The voting mark used on paper ballots may be a cross or check which shall be placed in the voting targets opposite the names of candidates. The fact that the voting mark is made by an instrument other than a black lead pencil shall not affect the validity of the ballot unless it appears that the color or nature of the mark is intended to identify the ballot contrary to the intent of section 39A.4, subsection 1.

[C97, §1119, 1121; S13, §1119, 1121; C24, 27, 31, 35, 39, §**809;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.92]

97 Acts, ch 170, §46

49.93 Number of votes for each office.

For an office to which one person is to be elected, a voter shall not vote for more than one candidate. If two or more persons are to be elected to an office, the voter shall vote for no more than the number of persons to be elected. If a person votes for more than the permitted number of candidates, the vote for that office shall not count. Valid votes cast on the rest of the ballot shall be counted.

[C97, §1120; S13, §1120; C24, 27, 31, 35, 39, §**810;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.93]

97 Acts, ch 170, §47

49.94 How to mark a straight ticket.

If all the candidates for whom a voter desires to vote in any election other than the primary election were nominated by the same political party or nonparty political organization, and the voter desires to vote for all candidates nominated by that political party or organization, the voter may do so in any one of the following ways:

1. The voter may mark the voting target next to the name of the political party or nonparty political organization in the straight party or organization section of the ballot without marking any voting target next to the name of a candidate nominated by the party or organization.

2. The voter may mark the voting target next to the name of the political party or nonparty political organization in the straight party or organization section of the ballot and also mark any or all of the voting targets next to the names of candidates nominated by that party or organization.

[C97, §1119, 1120; S13, §1119, 1120; C24, 27, 31, 35, 39, §**811;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.94]

97 Acts, ch 170, §48; 98 Acts, ch 1100, §8

49.95 Voting part of ticket only.

If all the candidates for whom the voter desires to vote were nominated by the same political party or nonparty political organization but the voter does not desire to vote for all of the candidates nominated by the party or organization, the voter shall mark the voting target next to the name of each candidate for whom the voter desires to vote without marking the target next to the name of the party or organization in the straight party or organization section of the ballot.

[C97, §1119, 1120; S13, §1119, 1120; C24, 27, 31, 35, 39, §**812;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.95]

97 Acts, ch 170, §49; 98 Acts, ch 1100, §9

49.96 Offices with more than one person to be elected.

Where more than one person is to be elected to the same office at the same election, and all of the candidates for that office for whom the voter desires to vote were nominated by the political party or nonparty political organization for which the voter has marked a straight party or organization vote, the voter need not otherwise indicate the vote for that office. However, if a voter who has marked a straight party or organization ticket also marks the voting targets next to the names of one or more candidates for any office, only the votes cast separately for individual candidates for that office shall be counted. If the voter wishes to vote for candidates who were nominated by different political parties or nonparty political organizations, the voter must mark the voting target for each candidate the voter has chosen, whether or not the voter has also marked a straight party or organization vote.

[C97, §1119, 1120; S13, §1119, 1120; C24, 27, 31, 35, 39, §**813;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.96]

97 Acts, ch 170, §50; 2002 Acts, ch 1134, §43, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

49.97 How to mark a mixed ticket.

If all candidates for whom a voter desires to vote

were not nominated by the same political party or nonparty political organization, the voter may indicate the candidates of the voter's choice by marking the ballot in any one of the following ways:

1. The voter may mark a straight party or organization vote for the party or nonparty political organization which nominated some of the candidates for whom the voter desires to vote and vote for candidates of other parties or nonparty political organizations by marking the voting targets next to their names.

2. The voter may vote for each candidate separately without marking any straight party or organization vote.

[C97, §1119, 1120; S13, §1119, 1120; C24, 27, 31, 35, 39, §**814;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.97]

97 Acts, ch 170, §51; 98 Acts, ch 1100, §10

49.98 Counting ballots.

The ballots shall be counted according to the voters' marks on them as provided in sections 49.92 to 49.97, and not otherwise. If, for any reason, it is impossible to determine from a ballot, as marked, the choice of the voter for any office, the vote for that office shall not be counted. When there is a conflict between a straight party or organization vote for one political party or nonparty political organization and the vote cast by marking the voting target next to the name of a candidate for another political party or nonparty political organization on the ballot, the mark next to the name of the candidate shall be held to control, and the straight party or organization vote in that case shall not apply as to that office. Any ballot shall be rejected if it is marked in any other manner than authorized in sections 49.92 to 49.97. A ballot shall be rejected if the voter used a mark to identify the voter's ballot.

[C97, §1120; S13, §1120; C24, 27, 31, 35, 39, §**815;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.98]

97 Acts, ch 170, §52

49.99 Writing name on ballot.

The voter may also write on the line provided for write-in votes the name of any person for whom the voter desires to vote and mark the voting target opposite the name. If the voter is using a voting system other than an electronic voting system, as defined in section 52.1, the writing of the name shall constitute a valid vote for the person whose name has been written on the ballot without regard to whether the voter has made a mark opposite the name. However, when a write-in vote is cast using an electronic voting system, the ballot must also be marked in the corresponding space in order to be counted. Marking the voting target opposite a write-in line without writing a name on the line shall not affect the validity of the remainder of the ballot.

If a voter writes the name of a person more than once in the proper places on a ballot or on a voting machine for an office to which more than one person is to be elected, all but one of those votes for that person for that office are void and shall not be counted.

[C97, §1119; S13, §1119; C24, 27, 31, 35, 39, §**816;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.99]

86 Acts, ch 1224, §13; 90 Acts, ch 1238, §22; 97 Acts, ch 170, §53

49.100 Spoiled ballots.

A voter who spoils a ballot may return the spoiled ballot to the precinct election officials and receive another ballot. However, a voter shall not receive more than three ballots, including the one first delivered. Only ballots provided in accordance with the provisions of this chapter shall be counted.

[C97, §1121; S13, §1121; C24, 27, 31, 35, 39, §**817;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.100]

97 Acts, ch 170, §54

49.101 Defective ballot does not nullify vote.

No ballot properly marked by the voter shall be rejected:

1. Because of any discrepancy between the printed ballot and the nomination paper, or certificate of nomination, or certified abstract of the canvassing board.

2. Because of any error in stamping or writing the endorsement thereon by the officials charged with such duties.

3. Because of any error on the part of the officer charged with such duty in delivering the wrong ballots at any polling place.

[C97, §1122; C24, 27, 31, 35, 39, §**818;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.101]

49.102 Defective ballots.

Said defective ballots shall be counted for the candidate or candidates for such offices named in the nomination papers, certificate of nomination, or certified abstract.

[C97, §1122; C24, 27, 31, 35, 39, §**819;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.102]

49.103 Wrong ballots.

Said wrong ballots shall be counted as cast for all candidates for whom the voter had the right to vote, and for whom the voter did vote.

[C97, §1122; C24, 27, 31, 35, 39, §**820;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.103]

49.104 Persons permitted at polling places.

The following persons shall be permitted to be present at and in the immediate vicinity of the

polling places, provided they do not solicit votes:

1. Any person who is by law authorized to perform or is charged with the performance of official duties at the election.

2. Any number of persons, not exceeding three at a time from each political party having candidates to be voted for at such election, to act as challenging committees, who are appointed and accredited by the executive or central committee of such political party or organization.

3. Any number of persons not exceeding three at a time from each of such political parties, appointed and accredited in the same manner as above prescribed for challenging committees, to witness the counting of ballots. Subject to the restrictions of section 51.11, the witnesses may observe the counting of ballots by a counting board during the hours the polls are open in any precinct for which double election boards have been appointed.

4. Any peace officer assigned or called upon to keep order or maintain compliance with the provisions of this chapter, upon request of the commissioner or of the chairperson of the precinct election board.

5. One observer at a time representing any nonparty political organization, any candidate nominated by petition pursuant to chapter 45, or any other nonpartisan candidate in a city or school election, appearing on the ballot of the election in progress. Candidates who send observers to the polls shall provide each observer with a letter of appointment in the form prescribed by the state commissioner.

6. Any persons expressing an interest in a ballot issue to be voted upon at an election except a general or primary election. Any such person shall file a notice of intent to serve as an observer with the commissioner before election day. If more than three persons file a notice of intent to serve at the same time with respect to ballot issues at an election, the commissioner shall appoint from those submitting a notice of intent the three persons who may serve at that time as observers, and shall provide a schedule to all persons who filed notices of intent. The appointees, whenever possible, shall include both opponents and proponents of the ballot issues.

7. Any person authorized by the commissioner, in consultation with the secretary of state, for the purposes of conducting and attending educational voting programs for youth.

[C97, §1124; S13, §1087-a9; C24, 27, 31, 35, 39, §**571, 821;** C46, 50, 54, 58, 62, 66, 71, 73, §43.43, 49.104; C75, 77, 79, 81, S81, §49.104; 81 Acts, ch 34, §32]

90 Acts, ch 1238, §23; 94 Acts, ch 1180, §17; 97 Acts, ch 170, §55

49.105 Ordering arrest.

Any precinct election official shall order the arrest of any person who behaves in a noisy, riotous, tumultuous or disorderly manner at or about the polls, so as to disturb the election, or insults or abuses the officials, or commits a breach of the peace, or violates any of the provisions of this chapter. If the person so arrested is a registered voter of the precinct which that polling place serves, and has not yet voted, the person shall be permitted to do so before being removed from the polling place.

[C51, §253; R60, §488; C73, §613; C97, §1128; C24, 27, 31, 35, 39, §**822, 823;** C46, 50, 54, 58, 62, 66, 71, 73, §49.105, 49.106; C75, 77, 79, 81, §49.105]

94 Acts, ch 1169, §64

49.106 Repealed by 73 Acts, ch 136, § 401.

49.107 Prohibited acts on election day. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.4.

49.108 Penalty. Repealed by 84 Acts, ch 1067, § 51.

49.109 Employees entitled to time to vote.

Any person entitled to vote at an election in this state who does not have three consecutive hours in the period between the time of the opening and the time of the closing of the polls during which the person is not required to be present at work for an employer, is entitled to such time off from work time to vote as will in addition to the person's nonworking time total three consecutive hours during the time the polls are open. Application by any employee for such absence shall be made individually and in writing prior to the date of the election, and the employer shall designate the period of time to be taken. The employee is not liable to any penalty nor shall any deduction be made from the person's regular salary or wages on account of such absence.

[C97, §1123; C24, 27, 31, 35, 39, §**826;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §49.109; 81 Acts, ch 34, §33]

49.110 Intimidation of employees by employer. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.2 and 39A.5.

49.111 Unlawful acts. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.5.

49.112 Penalty. Repealed by 84 Acts, ch 1067, § 51.

49.113 Official neglect or misconduct. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.4.

49.114 Repealed by 73 Acts, ch 136, § 401.

49.115 Repealed by 72 Acts, ch 1124, § 282.

49.116 and 49.117 Repealed by 73 Acts, ch 136, § 401.

49.118 Repealed by 72 Acts, ch 1025, § 35.

49.119 Penalty. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.2 through 39A.5.

49.120 Promise of position.

It shall be unlawful for any candidate for any office to be voted for at any election, prior to nomination or election, to promise, either directly or indirectly, to support or use the candidate's influence in behalf of any person or persons for any position, place, or office, or to promise directly or indirectly to name or appoint any person or persons to any place, position, or office in consideration of any person or persons supporting the candidate or using the person's influence in securing the candidate's nomination, election, or appointment.

[S13, §1134-a; C24, 27, 31, 35, 39, §**837;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.120]

49.121 Promise of influence.

It shall be unlawful for any person to solicit from any candidate for any office to be voted for at any election, or any candidate for appointment to any public office, prior to nomination, election, or appointment, a promise, directly or indirectly, to support or use the candidate's influence in behalf of any person or persons for any position, place, or office, or a promise either directly or indirectly to name or appoint any person or persons to any place, position, or office in consideration of any person or persons supporting the candidate, or using the person's influence in securing the candidate's nomination, election or appointment.

[S13, §1134-b; C24, 27, 31, 35, 39, §**838;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §49.121]

49.122 Penalty. Repealed by 84 Acts, ch 1067, § 51.

49.123 Courthouse open on election day.

The courthouse of each county shall remain open on election day.

[C71, 73, 75, 77, 79, 81, §49.123]

49.124 Training course by commissioner.

The commissioner shall conduct, not later than the day before each primary and general election, a training course for all election personnel, and the commissioner may do so before any other election the commissioner administers. The personnel shall include all precinct election officials and any other persons who will be employed in or around the polling places on election day. At least two precinct election officials who will serve on each precinct election board at the forthcoming election shall attend the training course. If the entire board does not attend, those members who do attend shall so far as possible be persons who have not previously attended a similar training course.

[C71, 73, 75, 77, 79, 81, §49.124]

94 Acts, ch 1180, §18; 2002 Acts, ch 1134, §44, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

49.125 Compensation of trainees.

All election personnel attending such training course shall be paid for attending such course for a period not to exceed two hours, and shall be reimbursed for travel to and from the place where the training is given at the rate determined by the board of supervisors if the distance involved is more than five miles. The wages shall be computed at the hourly rate established pursuant to section 49.20 and payment of wages and mileage for attendance shall be made at the time that payment is made for duties performed on election day.

[C71, 73, 75, 77, 79, 81, §49.125]

97 Acts, ch 170, §56

49.126 Manual by state commissioner.

It shall be the duty of the state commissioner to provide a training manual and such additional materials as may be necessary to all commissioners for conducting the required training course and to revise the manual from time to time as may be necessary.

[C71, 73, 75, 77, 79, 81, §49.126]

49.127 Commissioner to examine machines.

It shall be the duty of each commissioner to determine that all voting machines are operational and functioning properly and that all materials necessary for the conduct of the election are in the commissioner's possession and are correct.

[C71, 73, 75, 77, 79, 81, §49.127]

49.128 to 49.130 Reserved.

49.131 Political advertisements. Repealed by 86 Acts, ch 1023, § 12. See § 56.14.

CHAPTER 49A

CONSTITUTIONAL AMENDMENTS AND PUBLIC MEASURES

This chapter not enacted as a part of this
title; transferred from chapter 6 in Code 1993
See also definitions in §39.3

49A.1 Publication of proposed amendment.
49A.2 Publication of proposed public measure.
49A.3 Proof of publication — record — report to legislature.
49A.4 Submission at general election.
49A.5 Submission at special election.
49A.6 Certification — sample ballot.
49A.7 Proclamation.
49A.8 Canvass — declaration of result — record.
49A.9 Expenses.
49A.10 Action to test legality.
49A.11 Parties.

49A.1 Publication of proposed amendment.

Whenever any proposition to amend the Constitution has passed the general assembly and been referred to the next succeeding legislature, the state commissioner of elections shall cause the same to be published, once each month, in two newspapers of general circulation in each congressional district in the state, for the time required by the Constitution.

[C97, §55; S13, §55; C24, 27, 31, 35, 39, §**69;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.1]

C93, §49A.1

Time of publication, Constitution, Art. X, §1
Voting on public measures, see §49.43 – 49.50

49A.2 Publication of proposed public measure.

Whenever any public measure has passed the general assembly which under the Constitution must be published and submitted to a vote of the entire people of the state, the state commissioner of elections shall cause the same to be published, once each month, in at least one newspaper of general circulation in each county in the state, for the time required by the Constitution.

[C24, 27, 31, 35, 39, §**70;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.2]

C93, §49A.2

Time of publication, Constitution, Art. VII, §5
Voting on public measures, see §49.43 – 49.50

49A.3 Proof of publication — record — report to legislature.

Proof of the publication specified in sections 49A.1 and 49A.2 shall be made by the affidavits of the publishers of the newspapers designated by the state commissioner of elections and such affidavits, with the certificate of the state commissioner of the selection of such newspapers, shall be filed in the commissioner's office, recorded in a book kept for that purpose, and preserved by the commissioner, and in the case of constitutional amendments the commissioner shall report to the following legislature the action in the premises.

[C97, §55; S13, §55; C24, 27, 31, 35, 39, §**71;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.3]

C93, §49A.3

Constitution, Art. X, §1

49A.4 Submission at general election.

Whenever a public measure has passed the general assembly which under the Constitution must be submitted to a vote of the entire people of the state and no time is fixed by the Constitution or legislature for such submission, or whenever a proposition to amend the Constitution has been adopted by two succeeding general assemblies and no time is fixed by the last general assembly adopting the same for its submission to the people, said measure or amendment shall be submitted to the people at the ensuing general election, in the manner required by law.

[C97, §56; C24, 27, 31, 35, 39, §**72;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.4]

C93, §49A.4

Submission, §49.43 – 49.50, 49A.1, 49A.2, 49A.5; Constitution (codified), Arts. VII, §5, and X

49A.5 Submission at special election.

The general assembly may provide for the submission of a constitutional amendment to the people at a special election for that purpose, at such time as it may prescribe, proclamation for which election shall be made by the governor, and the same shall in all respects be governed and conducted as prescribed by law for the submission of a constitutional amendment at a general election.

[C97, §58; C24, 27, 31, 35, 39, §**73;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.5]

C93, §49A.5

Constitution (codified), Art. X
Submission, §49.43 – 49.50, 49A.1, 49A.2, 49A.4

49A.6 Certification — sample ballot.

The state commissioner of elections shall, not less than sixty-nine days preceding any election at which a constitutional amendment or public mea-

sure is to be submitted to a vote of the entire people of the state, transmit to the county commissioner of elections of each county a certified copy of the amendment or measure and a sample of the ballot to be used in such cases, prepared in accordance with law.

[C24, 27, 31, 35, 39, §**74;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.6]

89 Acts, ch 136, §1

C93, §49A.6

Constitution (codified), Arts. VII, §5, and X

49A.7 Proclamation.

Whenever a proposition to amend the Constitution is to be submitted to a vote of the electors, the governor shall issue a proclamation of that fact, and of the date when the proposition is to be voted on, at least sixty days before that date.

[C97, §57; C24, 27, 31, 35, 39, §**75;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.7]

C93, §49A.7

Additional provisions, §39.4 et seq.

Constitution (codified), Art. X

49A.8 Canvass — declaration of result — record.

The judges of election, county boards of canvassers, and other election officials shall canvass the vote on any constitutional amendment or public measure, and make return thereof, in the same manner as required by law for the canvass and return of the vote for public officers. The board of state canvassers shall canvass such returns, declare the result, and enter the same of record, immediately following and in connection with the proofs of publication of such amendment or measure, in the book kept for that purpose by the secretary of state.

Upon completion of the canvass, the secretary of state shall certify to the Iowa Code editor the results of the election.

[C97, §56; C24, 27, 31, 35, 39, §**76;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.8]

C93, §49A.8

93 Acts, ch 143, §19

Canvass of votes, chapter 50

49A.9 Expenses.

Expenses incurred under the provisions of this chapter shall be audited and allowed by the director of revenue and finance and paid out of any money in the state treasury not otherwise appropriated.

[C97, §59; C24, 27, 31, 35, 39, §**77;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.9]

C93, §49A.9

49A.10 Action to test legality.

Whenever an amendment to the Constitution of the state of Iowa shall have been proposed and agreed to by the general assembly and shall have been agreed to by the succeeding general assembly, any taxpayer may file suit in equity in the district court at the seat of government of the state, challenging the validity, legality or constitutionality of such amendment, or the procedure connected therewith, and in such suit the district court shall have jurisdiction to determine the validity, legality or constitutionality of said amendment or the procedure connected therewith, and enter its decree accordingly, and may grant a writ of injunction enjoining the governor and state commissioner of elections from submitting such constitutional amendment, if it, or the procedure connected therewith, shall have been found to be invalid, illegal or unconstitutional.

[C31, 35, §77-d1; C39, §**77.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.10]

C93, §49A.10

General procedure, §619.2, 619.3, 624.7, 625A.3, 625A.6, 625A.13

49A.11 Parties.

In such suit the taxpayer shall be plaintiff and the governor and state commissioner of elections shall be defendants. Any taxpayer may intervene, either as party plaintiff or defendant.

[C31, 35, §77-d2; C39, §**77.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §6.11]

C93, §49A.11

CHAPTER 50

CANVASS OF VOTES

Chapter applicable to primary elections, §43.5
Criminal offenses, §39A.2 – 39A.5
Definitions in §39.3 applicable to this chapter

50.1 Definitions.
50.1A Canvass by officials.
50.2 One tally list in certain machine precincts.
50.3 Double or defective ballots.
50.4 Ballots objected to.
50.5 Disputed ballots returned separately.
50.6 Votes in excess of voter declarations.
50.7 Error on county office — township office.
50.8 Error on state or district office — tie vote.
50.9 Return of ballots not voted.
50.10 Record of ballots returned.
50.11 Proclamation of result.
50.12 Return and preservation of ballots.
50.13 Destruction of ballots.

50.14 Destruction of primary election ballots. Repealed by 89 Acts, ch 136, §75.
50.15 Destruction in abeyance pending contest.
50.16 Tally list of board.
50.17 Return of election register.
50.18 Repealed by 73 Acts, ch 136, §401.
50.19 Preservation and destruction of books.
50.20 Notice of number of special ballots.
50.21 Special precinct board reconvened.
50.22 Special precinct board to determine challenges and canvass absentee ballots.
50.23 Messengers for missing tally lists.
50.24 Canvass by board of supervisors.
50.25 Abstract of votes in the general election.
50.26 Duplicate abstracts.
50.27 Declaration of election.
50.28 Tally lists filed.
50.29 Certificate of election.
50.30 Abstracts forwarded to state commissioner.
50.31 Abstracts for governor and lieutenant governor.
50.32 Endorsement on other envelope.
50.33 Forwarding of envelopes.
50.34 Missing abstracts.
50.35 Delivery of abstracts.
50.36 Envelopes containing other abstracts — canvass.
50.37 State canvassing board.
50.38 Time of state canvass.
50.39 Abstract.
50.40 Record of canvass.
50.41 Certificate of election.
50.42 Certificates mailed.
50.43 Senator or representative.
50.44 Tie vote.
50.45 Canvass public — result determined.
50.46 Special elections — canvass and certificate.
50.47 Messengers for election tally lists.
50.48 General recount provisions.
50.49 Recounts for public measures.
50.50 Administrative recounts.

50.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §50.1 transferred to §50.1A

50.1A Canvass by officials.

At every election conducted under chapter 49, except the primary election provided for by chapter 43, and at every other election unless the law authorizing the election otherwise requires, the vote shall be canvassed at each polling place by the election board in the manner prescribed by this chapter. When the poll is closed, the precinct election officials shall forthwith, and without adjournment:

1. Publicly canvass the vote, and credit each candidate with the number of votes counted for the candidate.
2. Ascertain the result of the vote.
3. Prepare in writing a list of any apparently or possibly erroneous information appearing in the precinct election register.
4. Designate two election board members, not members of the same political party, who shall each separately keep a tally list of the count.

[C51, §261, 266; R60, §496, 501; C73, §622, 626; C97, §1138; C24, 27, 31, 35, 39, §**840;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.1]

C2001, §50.1A

50.2 One tally list in certain machine precincts.

In any precinct where an election is held by means of voting machines which deliver, immediately upon conclusion of the voting, multiple copies of a printed record of the votes cast and the totals for each candidate or question appearing on the face of the machine, the requirement of section 50.1A, subsection 4, that two election board members keep separate tally lists of the vote count shall not apply.

[C77, 79, 81, §50.2]

50.3 Double or defective ballots.

If two or more marked ballots are so folded together as to appear to be cast as one, the precinct election officials shall endorse thereon "Rejected as double". Such ballots shall not be counted, but shall be folded together and kept as hereinafter directed. Every ballot not counted shall be endorsed "Defective" on the back thereof.

[C51, §262; R60, §497; C73, §623; C97, §1139; C24, 27, 31, 35, 39, §**842;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.3]

50.4 Ballots objected to.

Every ballot objected to by a precinct election official or challenger, but counted, shall be endorsed on the back thereof, "Objected to", and there shall also be endorsed thereon, and signed by the officials, a statement as to how it was counted.

[C97, §1139; C24, 27, 31, 35, 39, §**843;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.4]

50.5 Disputed ballots returned separately.

All ballots endorsed as required by sections 50.3 and 50.4 shall be enclosed and securely sealed in an envelope, on which the precinct election officials shall endorse "Disputed ballots", with a signed statement of the precinct in which, and date of the election at which, they were cast.

[C97, §1139; C24, 27, 31, 35, 39, §**844;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.5]

50.6 Votes in excess of voter declarations.

If the number of votes cast for any office or on any question exceeds the number of voters' declarations of eligibility signed as required by section 49.77, such fact shall be certified, with the number of the excess, in the return.

[C51, §263; R60, §498; C73, §627; C97, §1140; C24, 27, 31, 35, 39, §**845;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.6]

50.7 Error on county office — township office.

If, in case of such excess, the vote of the precinct where the error occurred would change the result as to a county office if the person appearing to be elected were deprived of so many votes, then the election shall be set aside as to that person in that precinct, and a new election ordered therein; but no person who was not a registered voter in that precinct at the time of the general election shall be allowed to vote at such special election. If the error occurs in relation to an office of a city, school district, township, or of any special district whose elections may be conducted under this chapter, the governing body of the political subdivision involved may order a new election or not, in their discretion.

[C51, §263; R60, §498; C73, §627; C97, §1140; C24, 27, 31, 35, 39, §**846;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.7]

94 Acts, ch 1169, §64

50.8 Error on state or district office — tie vote.

If the error be in relation to a district or state office, it shall be certified with the number of the excess to the state commissioner. If the error affects the result of the election, the canvass shall be suspended and a new vote ordered in the precinct where the error occurred. When there is a tie vote due to such an excess, there shall be a new election. No person who was not a registered voter in that precinct at the time of the general election shall be allowed to vote at such special election. When the new vote is taken and returned, the canvass shall be completed.

[C51, §263; R60, §498; C73, §627; C97, §1140; C24, 27, 31, 35, 39, §**847;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.8]

94 Acts, ch 1169, §64

50.9 Return of ballots not voted.

Ballots not voted, or spoiled by voters while attempting to vote, shall be returned by the precinct election officials to the commissioner, and a receipt taken for the ballots. The ballots shall be preserved for twenty-two months following elections for federal offices and for six months following elections for all other offices.

[C51, §269; R60, §504; C73, §630; C97, §1141; C24, 27, 31, 35, 39, §**848;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.9]

93 Acts, ch 143, §20

50.10 Record of ballots returned.

The commissioner shall enter on the record maintained as required by section 49.65 a notation of the number and character of the ballots returned from each precinct, and the time when and the person by whom they are returned.

[C97, §1141; C24, 27, 31, 35, 39, §**849;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.10]

50.11 Proclamation of result.

When the canvass is completed one of the precinct election officials shall publicly announce the total number of votes received by each of the persons voted for, the office for which the person is designated, as announced by the designated tally keepers, and the number of votes for, and the number of votes against, any proposition which shall have been submitted to a vote of the people. A precinct election official shall communicate the election results by telephone or in person to the commissioner who is conducting the election immediately upon completion of the canvass.

Election results may be transmitted electronically from voting equipment to the commissioner's office only after the precinct election officials have produced a written report of the election results. The devices used for the electronic transmission of election results shall be approved for use by the board of examiners pursuant to section 52.41. The state commissioner of elections shall adopt rules establishing procedures for the electronic transmission of election results.

The commissioner shall remain on duty until such information is communicated to the commissioner from each polling place in the commissioner's county.

[C97, §1142; C24, 27, 31, 35, 39, §**850;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.11]

2002 Acts, ch 1134, §45, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

50.12 Return and preservation of ballots.

Immediately after making the proclamation, and before separating, the board members of each

precinct in which votes have been received by paper ballot shall enclose in an envelope or other container all ballots which have been counted by them, except those endorsed "Rejected as double", "Defective", or "Objected to", and securely seal the envelope. The signatures of all board members of the precinct shall be placed across the seal or the opening of the container so that it cannot be opened without breaking the seal. The precinct election officials shall return all the ballots to the commissioner, who shall carefully preserve them for six months. Ballots from elections for federal offices shall be preserved for twenty-two months. The sealed packages containing voted ballots shall be opened only for an official recount authorized by section 50.48, 50.49, or 50.50, for an election contest held pursuant to chapters 57 through 62, or to destroy the ballots pursuant to section 50.19.

[C51, §269; R60, §504; C73, §630; C97, §1142; C24, 27, 31, 35, 39, §**851;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.12]

87 Acts, ch 221, §21; 89 Acts, ch 136, §44; 2002 Acts, ch 1134, §46, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

50.13 Destruction of ballots.

If, at the expiration of the length of time specified in section 50.12, a contest is not pending, the commissioner, without opening the package in which they have been enclosed, shall destroy the ballots.

If the ballots are to be shredded, the package may be opened, if necessary, but the ballots shall not be examined before shredding. Shredded ballots may be recycled. The commissioner shall invite the chairperson of each of the political parties to designate a person to witness the destruction of the ballots.

[C97, §1143; S13, §1143; C24, 27, 31, 35, 39, §**852;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.13]

89 Acts, ch 136, §45; 91 Acts, ch 129, §14; 97 Acts, ch 170, §57

50.14 Destruction of primary election ballots. Repealed by 89 Acts, ch 136, § 75. See § 50.12, 50.19.

50.15 Destruction in abeyance pending contest.

If a contest is pending, the ballots shall be kept until the contest is finally determined, and then so destroyed.

[C97, §1143; S13, §1143; C24, 27, 31, 35, 39, §**854;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.15]

50.16 Tally list of board.

The tally list shall be prepared in writing by the election board giving, in legibly printed numerals, the total number of people who cast ballots in the precinct, the total number of ballots cast for each officer, except those rejected, the name of each person voted for, and the number of votes given to each person for each different office. The tally list shall be signed by the precinct election officials, and be substantially as follows:

At an election at . . . . . in . . . . . township, or in . . . . . precinct of . . . . . city or township, in . . . . . county, state of Iowa, on the . . . . . day of . . . . . A.D. . . . . , there were . . . . . ballots cast for the office of . . . . . of which
(Candidate's name) . . . . . had . . . . votes.
(Candidate's name) . . . . . had . . . . votes.
(and in the same manner for any other officer).

A true tally list:
(Name) . . . . . Election Board
(Name) . . . . . Members.
(Name) . . . . . .
Attest:
(Name) . . . . . Designated
(Name) . . . . . Tally Keepers.

[C51, §267, 303; R60, §502, 537; C73, §628, 661; C97, §1144; C24, 27, 31, 35, 39, §**855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.16]

93 Acts, ch 143, §21; 2000 Acts, ch 1058, §8; 2001 Acts, ch 24, §18

50.17 Return of election register.

The precinct election register prepared for each election, together with the ballots to be returned pursuant to section 50.12, if any, and the signed and attested tally list, shall be delivered to the commissioner by one of the precinct election officials by noon of the day following the election.

[C51, §268; R60, §333, 503, 1131; C73, §503, 629; C97, §1145; C24, 27, 31, 35, 39, §**856;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.17]

50.18 Repealed by 73 Acts, ch 136, § 401.

50.19 Preservation and destruction of books.

The commissioner may destroy precinct election registers, the declarations of eligibility signed by voters, and other material pertaining to any election in which federal offices are not on the ballot, except the tally lists which have not been electronically recorded, six months after the election if a contest is not pending. If a contest is pending all election materials shall be preserved until final determination of the contest. Before destroying the election registers and declarations of eligibility, the commissioner shall prepare records as nec-

essary to permit compliance with chapter 48A, subchapter V. Nomination papers for primary election candidates for state and county offices shall be destroyed ten days before the general election, if a contest is not pending.

Material pertaining to elections for federal offices, including ballots, precinct election registers, declarations of eligibility signed by voters, documents relating to absentee ballots, and challenges of voters, shall be preserved for twenty-two months after the election. If a contest is not pending the materials may be destroyed at the end of the retention period.

[C51, §268; R60, §333, 503, 1131; C73, §503, 629; C97, §1145; C24, 27, 31, 35, 39, §**858;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.19]

89 Acts, ch 136, §46; 94 Acts, ch 1169, §52; 98 Acts, ch 1119, §29

50.20 Notice of number of special ballots.

The commissioner shall compile a list of the number of special ballots cast under section 49.81 in each precinct. The list shall be made available to the public as soon as possible, but in no case later than nine o'clock a.m. on the second day following the election. Any elector may examine the list during normal office hours, and may also examine the affidavit envelopes bearing the ballots of challenged electors until the reconvening of the special precinct board as required by this chapter. Only those persons so permitted by section 53.23, subsection 4, shall have access to the affidavits while that board is in session. Any elector may present written statements or documents, supporting or opposing the counting of any special ballot, at the commissioner's office until the reconvening of the special precinct board.

[C77, 79, 81, §50.20]

87 Acts, ch 221, §22

50.21 Special precinct board reconvened.

The commissioner shall reconvene the election board of the special precinct established by section 53.20 not earlier than noon on the second day following each election which is required by law to be canvassed on the Monday or Tuesday following the election. If the second day following such an election is a legal holiday the special precinct election board may be convened at noon on the day following the election, and if the canvass of the election is scheduled at any time earlier than the Monday following the election, the special precinct election board shall be reconvened at noon on the day following the election.

If no special ballots were cast in the county pursuant to section 49.81 at any election, the special precinct election board need not be so reconvened. If the number of special ballots so cast at any election is not sufficient to require reconvening of the entire election board of the special precinct, the commissioner may reconvene only the number of members required. If the number of special ballots cast at any election exceeds the number of absentee ballots cast, the size of the special precinct election board may be increased at the commissioner's discretion. The commissioner shall observe the requirements of sections 49.12 and 49.13 in making adjustments to the size of the special precinct election board.

[C77, 79, 81, §50.21; 81 Acts, ch 34, §35]

87 Acts, ch 221, §23; 90 Acts, ch 1238, §25

50.22 Special precinct board to determine challenges and canvass absentee ballots.

Upon being reconvened, the special precinct election board shall review the information upon the envelopes bearing the special ballots, and all evidence submitted in support of or opposition to the right of each challenged person to vote in the election. The board may divide itself into panels of not less than three members each in order to hear and determine two or more challenges simultaneously, but each panel shall meet the requirements of section 49.12 as regards political party affiliation of the members of each panel.

The decision to count or reject each ballot shall be made upon the basis of the information given on the envelope containing the special ballot, the evidence concerning the challenge, the registration and the returned receipts of registration.

If a special ballot is rejected, the person casting the ballot shall be notified by the commissioner within ten days of the reason for the rejection, on the form prescribed by the state commissioner pursuant to section 53.25, and the envelope containing the special ballot shall be preserved unopened and disposed of in the same manner as spoiled ballots. The special ballots which are accepted shall be counted in the manner prescribed by section 53.24. The commissioner shall make public the number of special ballots rejected and not counted, at the time of the canvass of the election.

The special precinct board shall also canvass any absentee ballots which were received after the polls closed in accordance with section 53.17. If necessary, they shall reconvene again on the day of the canvass by the board of supervisors to canvass any absentee ballots which were timely received. The special precinct board shall submit their tally list to the supervisors before the conclusion of the canvass by the board.

[C77, 79, 81, §50.22]

87 Acts, ch 221, §24; 88 Acts, ch 1119, §20; 89 Acts, ch 136, §47, 48; 94 Acts, ch 1169, §53

50.23 Messengers for missing tally lists.

The commissioner shall send messengers for all tally lists not received in the commissioner's office by noon of the day following the election. The expense of securing such tally lists shall be paid by the county.

[C51, §270; R60, §505; C73, §634; C97, §1148; C24, 27, 31, 35, 39, §**862;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.23]

Mileage paid messengers, §50.47

50.24 Canvass by board of supervisors.

The county board of supervisors shall meet to canvass the vote on the first Monday or Tuesday after the day of each election to which this chapter is applicable, unless the law authorizing the election specifies another date for the canvass. If that Monday or Tuesday is a public holiday, section 4.1, subsection 34, controls. Upon convening, the board shall open and canvass the tally lists and shall prepare abstracts stating, in words written at length, the number of votes cast in the county, or in that portion of the county in which the election was held, for each office and on each question on the ballot for the election. The board shall contact the chairperson of the special precinct board before adjourning and include in the canvass any absentee ballots which were received after the polls closed in accordance with section 53.17 and which were canvassed by the special precinct board after election day. The abstract shall further indicate the name of each person who received votes for each office on the ballot, and the number of votes each person named received for that office, and the number of votes for and against each question submitted to the voters at the election. The votes of all write-in candidates who each received less than two percent of the votes cast for an office shall be reported collectively under the heading "scattering".

The board shall also prepare a certificate showing the total number of people who cast ballots in the election. For general elections and elections held pursuant to section 69.14, a copy of the certificate shall be forwarded to the state commissioner.

Any obvious clerical errors in the tally lists from the precincts shall be corrected by the supervisors. Complete records of any changes shall be recorded in the minutes of the canvass.

[C51, §271, 304, 305; R60, §335, 506, 538, 539, 1131; C73, §502, 503, 631, 635, 662; C97, §1146, 1149; C24, 27, 31, 35, 39, §**859, 860, 863;** C46, 50, 54, 58, 62, 66, 71, 73, §50.20, 50.21, 50.24; C75, 77, 79, 81, §50.24]

84 Acts, ch 1291, §10; 89 Acts, ch 136, §49; 90 Acts, ch 1238, §26; 93 Acts, ch 143, §22; 95 Acts, ch 189, §10

50.25 Abstract of votes in the general election.

At the canvass of the general election, the abstract of the votes for each of the following classes shall be made on a different sheet:

1. President and vice president of the United States.
2. Senator in the Congress of the United States.
3. Representative in the Congress of the United States.
4. Governor and lieutenant governor.
5. A state officer not otherwise provided for.
6. Senator or representative in the general assembly by districts.
7. A county officer.

[C51, §272, 304, 305; R60, §507, 538, 539; C73, §636, 662; C97, §1150; S13, §1150; C24, 27, 31, 35, 39, §**864;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.25]

50.26 Duplicate abstracts.

All abstracts of votes cast in the general election, except the abstracts of votes for county officers, shall be made in duplicate, and signed by the board of county canvassers. One of said abstracts shall be forwarded to the state commissioner, and the other filed by the commissioner.

[C51, §272, 304, 305; R60, §507, 538, 539; C73, §637, 662; C97, §1151; S13, §1151; C24, 27, 31, 35, 39, §**865;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.26]

50.27 Declaration of election.

Each abstract of the votes for such officers as the county alone elects at the general election, except district judges and senators and representatives in the general assembly, or of the votes for officers of political subdivisions whose elections are conducted by the commissioner, shall contain a declaration of whom the canvassers determine to be elected. Each abstract of votes for and against each public question submitted to and decided by the voters of the county alone, or of a single political subdivision whose elections the county board canvasses, shall contain a declaration of the result as determined by the canvassers. When a public question has been submitted to the voters of a political subdivision whose elections the county board canvasses, the commissioner shall certify a duplicate of the abstract and declaration to the governing body of the political subdivision.

[C51, §275; R60, §509; C73, §639; C97, §1152; C24, 27, 31, 35, 39, §**866;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.27]

50.28 Tally lists filed.

When the canvass is concluded, the board shall deliver the original tally lists to the commissioner, who shall file the same, and record each of the abstracts above mentioned in the election book.

[C51, §276; R60, §335, 510; C73, §640; C97, §1154; C24, 27, 31, 35, 39, §**867;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.28]

50.29 Certificate of election.

When any person is thus declared elected, there shall be delivered to that person a certificate of election, under the official seal of the county, in substance as follows:

STATE OF IOWA)
. . . . . County.)

At an election held in said county on the . . . . . day of . . . . . , A.D. . . . . , ... (candidate's name) was elected to the office of . . . . . for the term of . . . . . years from the . . . . . day of . . . . . , A.D. . . . . (or if elected to fill a vacancy, for the residue of the term ending on the . . . . . day of . . . . . , A.D. . . . .), and until a successor is elected and qualified.

. . . . . ,
President of Board of Canvassers.
Witness, ... ,
County Commissioner of Elections (clerk).

Such certificate is presumptive evidence of the person's election and qualification.

[C51, §277; R60, §511, 514; C73, §641; C97, §1155; C24, 27, 31, 35, 39, §**868;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.29]

87 Acts, ch 115, §9; 2000 Acts, ch 1058, §9

50.30 Abstracts forwarded to state commissioner.

The commissioner shall, within ten days after the election, forward to the state commissioner one of the duplicate abstracts of votes for each of the following offices:

1. President and vice president of the United States.
2. Senator in Congress.
3. Representative in Congress.
4. Governor and lieutenant governor.
5. Senator or representative in the general assembly by districts.
6. A state officer not otherwise specified above.

The abstracts for all offices except governor and lieutenant governor shall be enclosed in a securely sealed envelope.

[C51, §283, 284, 305; R60, §517, 518, 539; C73, §645, 662; C97, §1157; S13, §1157; C24, 27, 31, 35, 39, §**869;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.30]

91 Acts, ch 129, §15

50.31 Abstracts for governor and lieutenant governor.

The envelope containing the abstracts of votes for governor and lieutenant governor shall be endorsed substantially as follows: "Abstract of votes for governor and lieutenant governor from . . . . . county". After being so endorsed said envelope shall be addressed, "To the Speaker of the House of Representatives".

[C51, §283; R60, §517; C73, §645; C97, §1157; S13, §1157; C24, 27, 31, 35, 39, §**870;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.31]

50.32 Endorsement on other envelope.

The envelope for offices other than governor and lieutenant governor shall be endorsed substantially in the manner provided in section 50.31, with changes necessary to indicate the particular offices, and shall be addressed, "To the State Commissioner of Elections".

[C51, §283, 305; R60, §517, 539; C73, §645, 662; C97, §1157; S13, §1157; C24, 27, 31, 35, 39, §**871;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.32]

91 Acts, ch 129, §16

50.33 Forwarding of envelopes.

The envelopes, including the one addressed to the speaker, after being prepared, sealed, and endorsed as required by this chapter, shall be placed in one package and forwarded to the state commissioner.

[C51, §284, 305; R60, §518, 539; C73, §645, 662; C97, §1157; S13, §1157; C24, 27, 31, 35, 39, §**872;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.33]

93 Acts, ch 143, §23

50.34 Missing abstracts.

If the abstracts from any county are not received at the office of the state commissioner within fifteen days after the day of election, the state commissioner shall send a messenger to the commissioner of such county, who shall furnish the messenger with them, or, if they have been sent, with a copy thereof, and the messenger shall return them to the state commissioner without delay.

[C51, §285; R60, §519; C73, §649; C97, §1158; C24, 27, 31, 35, 39, §**873;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.34]

50.35 Delivery of abstracts.

The envelopes containing the abstracts of votes for governor and lieutenant governor shall not be opened by the state commissioner, but the state commissioner shall securely preserve the same and deliver them to the speaker of the house of representatives at the time said abstracts are canvassed as provided by law.

[C24, 27, 31, 35, 39, §**874;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.35]

Canvass for governor, §2.27 et seq.; also Constitution (codified), Art. IV, §3

50.36 Envelopes containing other abstracts — canvass.

The secretary of state, upon receipt of the envelopes containing the abstracts of votes, shall open and canvass the abstracts for all offices except governor and lieutenant governor.

The secretary of state shall invite to attend the canvass one representative from each political party which, at the last preceding general election, cast for its candidate for president of the United States or for governor, as the case may be, at least two percent of the total vote cast for all candidates

for that office at that election, as determined by the secretary of state. The secretary of state shall notify the chairperson of each political party of the time of the canvass. However, the presence of a representative from a political party is not necessary for the canvass to proceed.

[C51, §286; R60, §520; C73, §650; C97, §1159; C24, 27, 31, 35, 39, §**875;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.36]

95 Acts, ch 189, §11

50.37 State canvassing board.

The executive council shall constitute a board of canvassers of all abstracts of votes required to be filed with the state commissioner, except for the offices of governor and lieutenant governor. Any clerical error found by the secretary of state or state board of canvassers shall be corrected by the county commissioner in a letter addressed to the state board of canvassers.

[C51, §287; R60, §521; C73, §647, 651; C97, §1160, 1162; S13, §1162; C24, 27, 31, 35, 39, §**876;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.37]

95 Acts, ch 189, §12

Additional provisions, §49A.8

50.38 Time of state canvass.

Not later than twenty-seven days after the day of the election, the secretary of state shall present to the board of state canvassers abstracts of votes cast at the election showing the number of ballots cast for each office and a summary of the results for each office, showing the votes cast in each county. The state board of canvassers shall review the results compiled by the secretary of state and, if the results are accurately tabulated, the state board shall approve the canvass.

[C51, §288, 306; R60, §522, 540; C73, §647, 652, 663; C97, §1161, 1162; S13, §1162; C24, 27, 31, 35, 39, §**877;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.38]

95 Acts, ch 189, §13

Canvass under special election, §50.46

50.39 Abstract.

It shall make an abstract stating, in words written at length, the number of ballots cast for each office, the names of all the persons voted for, for what office, the number of votes each received, and whom it declares to be elected, and if a public question has been submitted to the voters of the state, the number of ballots cast for and against the question and a declaration of the result as determined by the canvassers; which abstract shall be signed by the canvassers in their official capacity and as state canvassers, and have the seal of the state affixed.

[C51, §289, 306; R60, §523, 540; C73, §653, 663; C97, §1163; C24, 27, 31, 35, 39, §**878;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.39]

50.40 Record of canvass.

The state commissioner shall file the abstracts when received and shall have the same bound in book form to be kept by the state commissioner as a record of the result of said state election, to be known as the state election book.

[C51, §290; R60, §524; C73, §654; C97, §1164; S13, §1164; C24, 27, 31, 35, 39, §**879;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.40]

50.41 Certificate of election.

Each person declared elected by the state board of canvassers shall receive a certificate, signed by the governor or, in the governor's absence, by the secretary of state, with the seal of state affixed, attested by the other canvassers, to be in substance as follows:

STATE OF IOWA:

To . . . . . (candidate's name): It is hereby certified that, at an election held on the . . . . . day of . . . . . you were elected to the office of . . . . . of Iowa, for the term of . . . . . years, from the . . . . . day of . . . . . (or if to fill a vacancy, for the residue of the term, ending on the . . . . . day of . . . . .).

Given at the seat of government this . . . . . day of . . . . . .

If the governor is absent, the certificate of the election of the secretary of state shall be signed by the auditor. The certificate to members of the legislature shall describe, by the number, the district from which the member is elected.

[C51, §288, 306; R60, §522, 540; C73, §652, 657, 663; C97, §1165; C24, 27, 31, 35, 39, §**880;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.41]

87 Acts, ch 115, §10; 2000 Acts, ch 1058, §10

50.42 Certificates mailed.

The state commissioner shall prepare and deliver or mail certificates of election to the persons declared elected.

[C51, §292, 294; R60, §526, 528; C73, §648, 656, 658; C97, §1167; C24, 27, 31, 35, 39, §**881;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.42]

50.43 Senator or representative.

The certificate of the election of a senator or representative in Congress shall be signed by the governor, with the seal of the state affixed, and be countersigned by the secretary of state.

[C51, §294; R60, §528; C73, §658; C97, §1166; C24, 27, 31, 35, 39, §**882;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.43]

50.44 Tie vote.

If more than the requisite number of persons, including presidential electors, are found to have an equal and the highest number of votes, the elec-

tion of one of them shall be determined by lot. The name of each of such candidates shall be written on separate pieces of paper, as nearly uniform in size and material as possible, and placed in a receptacle so that the names cannot be seen. In the presence of the board of canvassers, one of them shall publicly draw one of such names, and such person shall be declared elected. The result of such drawing shall be entered upon the abstract of votes and duly recorded, and a certificate of election issued to such person, as provided in this chapter.

[C51, §281, 282, 307, 316; R60, §515, 516, 541, 547; C73, §632, 643, 644, 664; C97, §1169, 2754; S13, §2754; C24, §883, 4204; C27, §883, 4204, 4211-b8; C31, 35, §883, 4216-c21; C39, §**883, 4216.21;** C46, 50, 54, 58, 62, 66, 71, 73, §50.44, 277.21; C75, 77, 79, 81, §50.44]

50.45 Canvass public — result determined.

All canvasses of tally lists shall be public, and the persons having the greatest number of votes shall be declared elected. When a public measure has been submitted to the electors, the proposition shall be declared to have been adopted if the vote cast in favor of the question is greater than fifty percent of the total vote cast in favor and against the question, unless laws pertaining specifically to the public measure election establish a higher percentage of a favorable vote. All ballots cast and not counted as a vote in favor or against the proposition shall not be used in computing the total vote cast in favor and against the proposition.

[C51, §262, 273, 307; R60, §497, 508, 541; C73, §623, 638, 664; C97, §1170; C24, 27, 31, 35, 39, §**884;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.45]

88 Acts, ch 1119, §21

50.46 Special elections — canvass and certificate.

When a special election has been held to fill a vacancy, pursuant to section 69.14, the board of county canvassers shall meet at one o'clock in the afternoon of the second day after the election, and canvass the votes cast at the election. The commissioner, as soon as the canvass is completed, shall transmit to the state commissioner an abstract of the votes so canvassed, and the state board, within five days after receiving such abstracts, shall canvass the tally lists. A certificate of election shall be issued by the county or state board of canvassers, as in other cases. All the provisions regulating elections, obtaining tally lists, and canvass of votes at general elections, except as to time, shall apply to special elections.

[R60, §673; C73, §791-793; C97, §1171; C24, 27, 31, 35, 39, §**885;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.46]

90 Acts, ch 1238, §27

50.47 Messengers for election tally lists.

Messengers sent for the tally lists of elections shall be paid from the state or county treasury for necessary travel expense.

[C51, §295; R60, §529; C73, §3827; C97, §1172; C24, 27, 31, 35, 39, §**886;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §50.47]

50.48 General recount provisions.

1. The county board of canvassers shall order a recount of the votes cast for a particular office or nomination in one or more specified election precincts in that county if a written request therefor is made not later than five o'clock p.m. on the third day following the county board's canvass of the election in question. The request shall be filed with the commissioner of that county, or with the commissioner responsible for conducting the election if section 47.2, subsection 2 is applicable, and shall be signed by either of the following:

a. A candidate for that office or nomination whose name was printed on the ballot of the precinct or precincts where the recount is requested.

b. Any other person who receives votes for that particular office or nomination in the precinct or precincts where the recount is requested and who is legally qualified to seek and to hold the office in question.

Immediately upon receipt of a request for a recount, the commissioner shall send a copy of the request to the apparent winner by certified mail. The commissioner shall also attempt to contact the apparent winner by telephone. If the apparent winner cannot be reached within four days, the chairperson of the political party or organization which nominated the apparent winner shall be contacted and shall act on behalf of the apparent winner, if necessary. For candidates for state or federal offices, the chairperson of the state party shall be contacted. For candidates for county offices, the county chairperson of the party shall be contacted.

2. The candidate requesting a recount under this section shall post a bond, unless the abstracts prepared pursuant to section 50.24, or section 43.49 in the case of a primary election, indicate that the difference between the total number of votes cast for the apparent winner and the total number of votes cast for the candidate requesting the recount is less than the greater of fifty votes or one percent of the total number of votes cast for the office or nomination in question. If a recount is requested for an office to which more than one person was elected, the vote difference calculations shall be made using the difference between the number of votes received by the person requesting the recount and the number of votes received by the apparent winner who received the fewest votes. Where votes cast for that office or nomination were canvassed in more than one county, the abstracts prepared by the county boards in all of those counties shall be totaled for purposes of this

subsection. If a bond is required, it shall be filed with the state commissioner for recounts involving a state office, including a seat in the general assembly, or a seat in the United States Congress, and with the commissioner responsible for conducting the election in all other cases, and shall be in the following amount:

a. For an office filled by the electors of the entire state, one thousand dollars.

b. For United States representative, five hundred dollars.

c. For senator in the general assembly, three hundred dollars.

d. For representative in the general assembly, one hundred fifty dollars.

e. For an office filled by the electors of an entire county having a population of fifty thousand or more, two hundred dollars.

f. For any elective office to which paragraphs *"a"* to *"e"* of this subsection are not applicable, one hundred dollars.

After all recount proceedings for a particular office are completed and the official canvass of votes cast for that office is corrected or completed pursuant to subsections 5 and 6, if necessary, any bond posted under this subsection shall be returned to the candidate who requested the recount if the apparent winner before the recount is not the winner as shown by the corrected or completed canvass. In all other cases, the bond shall be deposited in the general fund of the state if filed with the state commissioner or in the election fund of the county with whose commissioner it was filed.

3. The recount shall be conducted by a board which shall consist of:

a. A designee of the candidate requesting the recount, who shall be named in the written request when it is filed.

b. A designee of the apparent winning candidate, who shall be named by that candidate at or before the time the board is required to convene.

c. A person chosen jointly by the members designated under paragraphs *"a"* and *"b"* of this subsection.

The commissioner shall convene the persons designated under paragraphs *"a"* and *"b"* of this subsection not later than nine o'clock a.m. on the seventh day following the county board's canvass of the election in question. If those two members cannot agree on the third member by eight o'clock a.m. on the ninth day following the canvass, they shall immediately so notify the chief judge of the judicial district in which the canvass is occurring, who shall appoint the third member not later than five o'clock p.m. on the eleventh day following the canvass.

4. When all members of the recount board have been selected, the board shall undertake and complete the required recount as expeditiously as reasonably possible. The commissioner or the commissioner's designee shall supervise the handling of ballots or voting machine documents to ensure that the ballots and other documents are protected from alteration or damage. The board shall open only the sealed ballot containers from the precincts specified to be recounted in the request or by the recount board. The board shall recount only the ballots which were voted and counted for the office in question, including any disputed ballots returned as required in section 50.5. If an electronic tabulating system was used to count the ballots, the recount board may request the commissioner to retabulate the ballots using the electronic tabulating system. The same program used for tabulating the votes on election day shall be used at the recount unless the program is believed or known to be flawed.

Any member of the recount board may at any time during the recount proceedings extend the recount of votes cast for the office or nomination in question to any other precinct or precincts in the same county, or from which the returns were reported to the commissioner responsible for conducting the election, without the necessity of posting additional bond.

The ballots or voting machine documents shall be resealed by the recount board before adjournment and shall be preserved as required by section 50.12. At the conclusion of the recount, the recount board shall make and file with the commissioner a written report of its findings, which shall be signed by at least two members of the recount board. The recount board shall complete the recount and file its report not later than the eighteenth day following the county board's canvass of the election in question.

5. If the recount board's report is that the abstracts prepared pursuant to the county board's canvass were incorrect as to the number of votes cast for the candidates for the office or nomination in question, in that county or district, the commissioner shall at once so notify the county board. The county board shall reconvene within three days after being so notified, and shall correct its previous proceedings.

6. The commissioner shall promptly notify the state commissioner of any recount of votes for an office to which section 50.30 or section 43.60 in the case of a primary election, is applicable. If necessary, the state canvass required by section 50.38, or by section 43.63, as the case may be, shall be delayed with respect to the office or the nomination to which the recount pertains. The commissioner shall subsequently inform the state commissioner at the earliest possible time whether any change in the outcome of the election in that county or district resulted from the recount.

7. If the election is an election held by a city which is not the final election for the office in question, the recount shall progress according to the times provided by this subsection. If this subsection applies the canvass shall be held by the second day after the election, the request for a recount must be made by the third day after the elec-

tion, the board shall convene to conduct the recount by the sixth day after the election, and the report shall be filed by the eleventh day after the election.

[S13, §1087-a18; C24, 27, 31, 35, 39, §**584 – 586;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §43.56 – 43.58; S81, §50.48; 81 Acts, ch 34, §34]

86 Acts, ch 1224, §15, 16; 93 Acts, ch 143, §24, 25; 94 Acts, ch 1180, §19; 97 Acts, ch 170, §58; 2002 Acts, ch 1134, §47, 115

2002 amendment to subsection 2, unnumbered paragraph 1, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2, unnumbered paragraph 1 amended

50.49 Recounts for public measures.

A recount for any public measure shall be ordered by the board of canvassers if a petition requesting a recount is filed with the county commissioner not later than three days after the completion of the canvass of votes for the election at which the question appeared on the ballot. The petition shall be signed by the greater of not less than ten eligible electors or a number of eligible electors equaling one percent of the total number of votes cast upon the public measure. Each petitioner must be a person who was entitled to vote on the public measure in question or would have been so entitled if registered to vote.

The recount shall be conducted by a board which shall consist of:

1. A designee named in the petition requesting the recount.

2. A designee named by the commissioner at or before the time the board is required to convene.

3. A person chosen jointly by the members designated under subsections 1 and 2.

The commissioner shall convene the persons designated under subsections 1 and 2 not later than nine a.m. on the seventh day following the canvass of the election in question. If those two members cannot agree on the third member by eight a.m. on the ninth day following the canvass, they shall immediately notify the chief judge of the judicial district in which the canvass is occurring, who shall appoint the third member not later than five p.m. on the eleventh day following the canvass.

The petitioners requesting the recount shall post a bond as required by section 50.48, subsection 2. The amount of the bond shall be one thousand dollars for a public measure appearing on the ballot statewide or one hundred dollars for any other public measure. If the difference between the affirmative and negative votes cast on the public measure is less than the greater of fifty votes or one percent of the total number of votes cast for and against the question, a bond is not required. If approval by sixty percent of the votes cast is required for adoption of the public measure, no bond is required if the difference between sixty percent of the total votes cast for and against the question and the number of votes cast for the losing side is less than the greater of fifty votes or one percent of the total number of votes cast.

The procedure for the recount shall follow the provisions of section 50.48, subsections 4 through 7, as far as possible.

95 Acts, ch 189, §14; 2002 Acts, ch 1134, §48, 115

2002 amendment to unnumbered paragraph 4 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 4 amended

50.50 Administrative recounts.

The commissioner who was responsible for conducting an election may request an administrative recount when the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, or if the precinct election officials report counting errors to the commissioner after the conclusion of the canvass of votes in the precinct. An administrative recount shall be conducted by the board of the special precinct established by section 53.23. Bond shall not be required for an administrative recount. The state commissioner may adopt rules for administrative recounts.

If the recount board finds that there is an error in the programming of any voting equipment which may have affected the outcome of the election for any office or public measure on the ballot, the recount board shall describe the errors in its report to the commissioner. The commissioner shall notify the board of supervisors. The supervisors shall determine whether to order an administrative recount for any or all of the offices and public measures on the ballot.

97 Acts, ch 170, §59; 2002 Acts, ch 1134, §49, 115

2002 amendment to unnumbered paragraph 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 amended

CHAPTER 51

DOUBLE ELECTION BOARDS

Chapter applicable to primary elections, §43.5
Definitions in §39.3 applicable to this chapter

51.1 Election counting board.
51.2 Appointment.
51.3 "Receiving" and "counting" boards defined.
51.4 Duties of receiving board.
51.5 Oath.
51.6 Administration of oath.

51.7 Duties of double boards.
51.8 Ballot boxes.
51.9 Manner of counting.
51.10 Secrecy of ballot.
51.11 Presence of persons.
51.12 Counting quarters — guarding ballots.
51.13 Certification of count — returns.
51.14 Compensation of board.
51.15 Applicability of law.
51.16 Violations. Repealed by 2002 Acts, ch 1071, §15.
51.17 Circulation of information. Repealed by 2002 Acts, ch 1071, §15.

51.1 Election counting board.

In all election precincts the board of supervisors may authorize the commissioner to appoint for each election in which a high voter turnout is anticipated five additional precinct election officials to be known as the election counting board.

[C24, 27, 31, 35, 39, §**887;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.1]

88 Acts, ch 1119, §22

Election boards, §49.12

51.2 Appointment.

The members of the election counting board shall be appointed by the commissioner from the election board panel drawn up as provided by section 49.15. The requirements of section 49.13, relative to political party affiliation of members of the election board appointed to serve for partisan elections shall apply to the membership of the election counting board.

[C24, 27, 31, 35, 39, §**888, 890;** C46, 50, 54, 58, 62, 66, 71, 73, §51.2, 51.4; C75, 77, 79, 81, §51.2]

51.3 "Receiving" and "counting" boards defined.

The precinct election officials as provided in chapter 49 shall be known as the *"receiving board"* and it shall be their duty to supervise the casting of ballots at said election, and the precinct election officials provided for in sections 51.1 and 51.2 shall be known as the *"counting board"*.

[C24, 27, 31, 35, 39, §**889;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.3]

Regular election boards, §49.12

51.4 Duties of receiving board.

The receiving board shall perform all the functions of precinct election officials as provided by law except as to counting and certifying the vote as by this chapter provided.

[C24, 27, 31, 35, 39, §**890;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.4]

51.5 Oath.

All board members shall take an oath as provided in section 49.75, for precinct election officials and in addition to such oath the counting board shall take the following oath:

I . . . . . do swear (or affirm) that I will duly attend to the ensuing election during the continuance thereof as a member of the counting board; that I will not, prior to the closing of the polls, communicate in any manner, directly or indirectly, by word or sign, the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto; that I will make and return a perfect return of the said election, and will in all things truly, impartially, and faithfully perform my duty respecting the same to the best of my judgment and ability; that I am not directly or indirectly interested in any bet or wager on the result of this election.

[C24, 27, 31, 35, 39, §**891;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.5]

51.6 Administration of oath.

This oath shall be administered at the time the board enters upon its duties by a precinct election official of the receiving board who is hereby empowered to administer such oath.

[C24, 27, 31, 35, 39, §**892;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.6]

51.7 Duties of double boards.

The counting boards shall proceed to the respective voting places to which they have been appointed at such time as the commissioner may direct, and shall take charge of the ballot box containing the ballots already cast in that precinct. The counting board shall retire to a partitioned space or room provided for that purpose and there proceed to count and tabulate the ballots as it shall find them deposited in the ballot box. The receiving board shall continue to receive the votes of electors in the other box provided, until such time as the counting board shall have finished counting and tabulating the ballots cast in the first ballot box. The two boards shall then exchange the first box for the second box and so continue until they have counted and tabulated all the votes cast on that election day. When the hour arrives for closing the polls, the receiving board shall certify to all matters pertaining to casting of ballots and shall then unite with the counting board in the counting of ballots. The precinct election officials shall then divide the ballots not counted and each group of officials shall proceed to canvass their portion of the same. When the canvass has been completed the officials shall report the result of their canvass in

the manner provided by section 50.11.

[C24, 27, 31, 35, 39, §**893;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.7]

88 Acts, ch 1119, §23

Tally list, §50.16

51.8 Ballot boxes.

It shall be the duty of the commissioner to provide the precinct election officials with such ballot boxes and other election supplies as may be required to be furnished in duplicate to accomplish the purpose of this chapter.

[C24, 27, 31, 35, 39, §**894;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.8]

51.9 Manner of counting.

Whenever the counting board receives from the receiving board the ballot box, they shall also be furnished a statement from the receiving board giving the number of voters' declarations of eligibility signed up to that time, which shall equal the number of votes in the ballot box. The counting board shall on opening the ballot box first count the ballots therein. If the number of ballots found in the ballot box exceeds the number as shown by the statement received from the receiving board the counting board members shall proceed to examine the official endorsement of said ballots, and, if any ballots are found that do not bear proper official endorsement, said ballots shall be kept separate and a record of such ballots shall be made and returned under the head of excess ballots. The counting board shall then proceed to count the ballots as now provided by law.

[C24, 27, 31, 35, 39, §**895;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.9]

Counting general election ballots, chapter 50

Counting primary ballots, §43.45

51.10 Secrecy of ballot.

The space or room occupied by the counting board shall be policed in such manner as to prevent any person, or persons, from gaining information regarding the progress of the count before the polls are closed.

[C24, 27, 31, 35, 39, §**896;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.10]

51.11 Presence of persons.

No person shall be admitted into the space or room where such ballots are being counted until the polls are closed, except the counting board and the witnesses appointed and accredited under section 49.104, subsection 3. It shall be unlawful for any witness to communicate or attempt to communicate, directly or indirectly, information regarding the progress of the count at any time before the polls are closed.

[C24, 27, 31, 35, 39, §**897;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.11]

51.12 Counting quarters — guarding ballots.

The commissioner shall provide suitable places for the counting of ballots, but when it becomes necessary to remove the ballot box from one room to another, or from one building to another, and at all times when they are in possession of the counting board, they shall be under constant observation of at least one counting board member from each political party.

[C24, 27, 31, 35, 39, §**898;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.12]

51.13 Certification of count — returns.

Both boards shall certify to all matters pertaining to counting and canvassing of votes and shall return all materials and ballots to the commissioner as provided by law.

[C24, 27, 31, 35, 39, §**899;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.13]

Return of election register and ballots, §50.5, 50.9, 50.12, 50.17

51.14 Compensation of board.

Compensation for counting board members shall be the same as provided by law for precinct election officials.

[C24, 27, 31, 35, 39, §**900;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.14]

Compensation, §49.20

51.15 Applicability of law.

This chapter shall apply to all general and primary elections, but shall not apply where voting machines are used.

[C24, 27, 31, 35, 39, §**901;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §51.15]

51.16 Violations. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.4 and 39A.5.

51.17 Circulation of information. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.5.

CHAPTER 52

ALTERNATIVE VOTING SYSTEMS

Chapter applicable to primary elections, §43.5
Definitions in §39.3 applicable to this chapter

52.1 Alternative voting systems — definitions.
52.2 Purchase.
52.3 Terms of purchase — tax levy.
52.4 Examiners — term — removal.
52.5 Testing and examination of voting equipment.
52.6 Compensation.

52.7 Construction of machine approved.
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52.10 Ballots — form.
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ELECTRONIC VOTING SYSTEMS

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52.31 Procedure where votes cast on special paper ballots.
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52.33 Absentee voting by electronic voting system.
52.34 Counting center established.
52.35 Equipment tested.
52.36 Commissioner in charge of counting center — appointment of resolution board.
52.37 Counting center tabulation procedure.
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52.39 Reserved.
52.40 Early pick-up sites established — procedure.
52.41 Electronic transmission of election results.

52.1 Alternative voting systems — definitions.

1. At all elections conducted under chapter 49, and at any other election unless specifically prohibited by the statute authorizing the election, votes may be cast, registered, recorded and counted by means of either voting machines or electronic voting systems, in accordance with this chapter.

2. As used in this chapter, unless the context otherwise requires:

a. "Automatic tabulating equipment" means apparatus, including but not limited to electronic data processing machines, which may be utilized to ascertain the manner in which special paper ballots have been marked by voters, and count the votes marked thereon.

b. "Ballot" includes a special paper ballot. In appropriate contexts, *"ballot"* also includes conventional paper ballots.

c. "Counting center" means any place selected by the commissioner where automatic tabulating equipment is available, or is placed, for the purpose of counting votes marked on ballots cast in two or more precincts.

d. "Electronic voting system" means a system employing special paper ballots under which votes are:

(1) Cast by voters by marking special paper ballots with a vote marking device; and

(2) Thereafter counted by use of automatic tabulating equipment.

e. "Program" means the written record of the set of instructions defining the operations to be performed by a computer in examining, counting, tabulating, and printing votes.

f. "Special paper ballot" means a printed ballot designed to be marked by a voter with a vote marking device.

g. "Vote marking device" means a pen, pencil or similar writing tool for use in marking a special paper ballot, so designed or fabricated that the mark it leaves may be detected and the vote so cast counted by automatic tabulating equipment.

h. "Voting machine" means a mechanical or electronic device, meeting the requirements of section 52.7, designated for use in casting, registering, recording, and counting votes at an election.

[S13, §1137-a7; C24, 27, 31, 35, 39, §**904;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.1]

86 Acts, ch 1224, §17, 18; 2002 Acts, ch 1134, §50, 51, 115

2002 amendments to subsection 2 take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2, paragraphs a and b amended

Subsection 2, paragraphs c, d, and k stricken and former paragraphs e – j renumbered as c – h

Subsection 2, paragraph d amended

52.2 Purchase.

The board of supervisors of any county may, by a majority vote, authorize, purchase, and order the use of either voting machines or an electronic voting system in any one or more voting precincts within said county until otherwise ordered by said board of supervisors. Voting machines and an electronic voting system may be used concurrently at different precincts within any county, but not at the same precinct.

[S13, §1137-a8; C24, 27, 31, 35, 39, §**905;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.2]

52.3 Terms of purchase — tax levy.

The county board of supervisors, on the adoption and purchase of a voting machine or an electronic voting system, may issue bonds under section 331.441, subsection 2, paragraph *"b"*, subparagraph (1).

[S13, §1137-a14; C24, 27, 31, 35, 39, §**906;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §52.3; 81 Acts, ch 117, §1009]

83 Acts, ch 123, §46, 209

52.4 Examiners — term — removal.

The state commissioner of elections shall appoint three members to a board of examiners for voting machines and electronic voting systems, not more than two of whom shall be from the same political party. The examiners shall hold office for staggered terms of six years, subject to removal at the pleasure of the state commissioner of elections.

At least one of the examiners shall have been trained in computer programming and operations. The other two members shall be directly involved in the administration of elections and shall have experience in the use of electronic voting systems.

[S13, §1137-a9; C24, 27, 31, 35, 39, §**907;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.4]

94 Acts, ch 1180, §20

52.5 Testing and examination of voting equipment.

A person or corporation owning or being interested in a voting machine or electronic voting system may request that the state commissioner call upon the board of examiners to examine and test the machine or system. Within seven days of receiving a request for examination and test, the state commissioner shall notify the board of examiners of the request in writing and set a time and place for the examination and test.

The state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the testing and examination of any voting machine or electronic voting system by the board of examiners. The rules shall prescribe the method to be used in determining whether the machine or system is suitable for use within the state and performance standards for voting equipment in use within the state. The rules shall include standards for determining when recertification is necessary following modifications to the equipment or to the programs used in tabulating votes, and a procedure for rescinding certification if a system or machine is found not to comply with performance standards adopted by the state commissioner.

The state commissioner may employ a competent person or persons to assist the examiners in their evaluation of the equipment and to advise the examiners as to the sufficiency of the equipment. Consultant fees shall be paid by the person who requested the certification. Following the examination and testing of the voting machine or system the examiners shall report to the state commissioner describing the testing and examination of the machine or system and upon the capacity of the machine or system to register the will of voters, its accuracy and efficiency, and with respect to its mechanical perfections and imperfections. Their report shall be filed in the office of the state commissioner and shall state whether in their opinion the kind of machine or system so examined can be safely used by voters at elections under the conditions prescribed in this chapter. If the report states that the machine or system can be so used, it shall be deemed approved by the examiners, and machines or systems of its kind may be adopted for use at elections as provided in this section. Any form of voting machine or system not so approved cannot be used at any election. Before actual use by a county of a particular electronic voting system which has been approved for use in this state, the state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the development of vote counting programs and all procedures used in actual counting of votes by means of that system.

[S13, §1137-a10; C24, 27, 31, 35, 39, §**908;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.5]

86 Acts, ch 1224, §19; 89 Acts, ch 136, §50

52.6 Compensation.

Each examiner is entitled to one hundred fifty dollars for compensation and expenses in making such examination and report, to be paid by the person or corporation applying for such examination. No examiner shall have any interest whatever in any machine or system reported upon. Provided that each examiner shall receive not to exceed fifteen hundred dollars and reasonable expenses in any one year; and all sums collected for such examinations over and above said maximum salaries and expenses shall be turned in to the state treasury.

[S13, §1137-a10; C24, 27, 31, 35, 39, §**909;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.6]

52.7 Construction of machine approved.

A voting machine approved by the state board of examiners for voting machines and electronic voting systems must be so constructed as to provide facilities for voting for the candidates of at least seven different parties or organizations, must permit a voter to vote for any person for any office although not nominated as a candidate by any party or organization, and must permit voting in absolute secrecy.

It must also be so constructed as to prevent voting for more than one person for the same office, except where the voter is lawfully entitled to vote for more than one person for that office; and it must afford the voter an opportunity to vote for any or all persons for that office as the voter is by

law entitled to vote for and no more, at the same time preventing the voter from voting for the same person twice.

It may also be provided with one ballot in each party column or row containing only the words "presidential electors", preceded by the party name, and a vote for such ballot shall operate as a vote for all the candidates of such party for presidential electors.

Such machine shall be so constructed as to accurately account for every vote cast upon it.

[S13, §1137-a11; C24, 27, 31, 35, 39, §**910;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.7]

52.8 Experimental use.

The board of supervisors of any county may provide for the experimental use at an election in one or more districts, of a voting machine or electronic voting system which it might lawfully adopt, without a formal adoption thereof; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted.

[S13, §1137-a12; C24, 27, 31, 35, 39, §**911;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.8]

52.9 Duties of local authorities — certificate of test.

The commissioner having jurisdiction of any precinct for which the board of supervisors has adopted voting by machine shall, as soon as practicable thereafter, provide for the precinct polling place one or more voting machines in complete working order, and shall thereafter keep them in repair, and shall have the custody thereof and of the furniture and equipment of the polling place when not in use at an election. The machines shall be used for voting at all elections unless the commissioner directs otherwise pursuant to section 49.26. If it shall be impracticable to supply each and every election precinct for which machine voting has been adopted with a voting machine or voting machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election precincts as the commissioner may direct.

It shall be the duty of the commissioner or the commissioner's duly authorized agents to examine and test the voting machines to be used at any election, after the machines have been prepared for the election and not less than twelve hours before the opening of the polls on the morning of the election. For any election to fill a partisan office, the county chairperson of each political party referred to in section 49.13 shall be notified in writing of the time said machines shall be examined and tested so that they may be present, or have a representative present. For every election, the commissioner shall include the notice in the notice of the election published as required by section 49.53. Those present for the examination and testing shall sign a certificate which shall read substantially as follows:

The Undersigned Hereby Certify that, having duly qualified, we were present and witnessed the testing and preparation of the following voting machines; that we believe the same to be in proper condition for use in the election of . . . . . (date); that each registering counter of the machine is set at 000; that the public counter is set at 000; that the seal numbers and the protective counter numbers are as indicated below.

Signed:

. . . . . .

Republican (if applicable)

. . . . . .

Democrat (if applicable)

. . . . . .

. . . . . .

Voting machine custodian

Dated . . . . . .

Machine Number	Protective Counter Number	Seal Number
. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .

On those voting machines presently equipped with an after-election latch and on all machines placed in use after January 1, 1961, in this state, the after-election latch shall be fully used by the election officials.

[S13, §1137-a13; C24, 27, 31, 35, 39, §**912;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.9]

98 Acts, ch 1123, §7, 8; 2000 Acts, ch 1058, §59, 60

52.10 Ballots — form.

All ballots shall be printed in black ink on clear, white material, of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The party name for each political party represented on the machine shall be prefixed to the list of candidates of such party. The order of the list of candidates of the several parties or organizations shall be arranged as provided in sections 49.30 to 49.42A, except that the lists may be arranged in horizontal rows or vertical columns to meet the physical requirements of the voting machine used.

[S13, §1137-a15; C24, 27, 31, 35, 39, §**913;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.10]

97 Acts, ch 170, §60; 98 Acts, ch 1100, §11

52.11 Locking of unused party row.

At all general elections the commissioner in preparing the ballot upon every voting machine shall cause the party row next underneath the names of the Republican candidates, and also the party row underneath the names of the Democratic candidates, to be locked and left blank except when

more than five political parties have nominated candidates whose names are entitled to be placed on the official ballot.

[C27, 31, 35, §913-a1; C39, §**913.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.11]

52.12 Exception — straight party voting.

Voting machines shall have a single lever or switch which casts a vote for each candidate of a political party or nonparty political organization which has nominated candidates for more than one partisan office on the ballot. Straight party voting shall be provided for all general elections.

[C24, 27, 31, 35, 39, §**914;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.12]

97 Acts, ch 170, §61

52.13 Sample ballots.

The commissioner shall provide for each precinct polling place at which votes are to be cast by machine two sample ballots, which shall be arranged in the form of a diagram showing the entire front of the voting machine as it will appear after the official ballots are arranged for voting on election day. Such sample ballots shall be open to public inspection at such polling place during the day of election.

[S13, §1137-a16; C24, 27, 31, 35, 39, §**915;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.13]

52.14 Two sets of ballots.

Two sets of ballots shall be provided for each polling place for each election for use in the voting machine.

[S13, §1137-a17; C24, 27, 31, 35, 39, §**916;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.14]

52.15 Delivery of ballots and supplies.

The voting machine ballots and other necessary supplies shall be delivered to the board members of each precinct in which votes are to be cast by machine at the time required by section 49.55.

[S13, §1137-a18; C24, 27, 31, 35, 39, §**917;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.15]

52.16 Duties of election officers — independent ballots.

The election board of each precinct in which votes are to be cast by machine shall meet at the precinct polling place, at least one hour before the time set for the opening of the polls at each election, and shall proceed to arrange the furniture, stationery, and voting machine for the conduct of the election. The board shall cause at least two instruction cards to be posted conspicuously within the polling place. If not previously done, they shall arrange, in their proper place on the voting machine, the ballots containing the names of the offices to be filled at the election, and the names of the candidates nominated. If not previously done, the machine shall be so arranged as to show that no vote has been cast, and shall not be thereafter operated, except by electors in voting.

Before the polls are open for election, the board shall carefully examine every machine and see that no vote has been cast, and the machines are subject to inspection of the election officers. If the voting machine is equipped to produce a printed record showing the status of the counters, this record shall be produced by the precinct election officials immediately before the polls are open. The inspection sheets from each machine used in the election shall be available for examination throughout election day.

Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office, are referred to in this section as independent ballots. When two or more persons are to be elected to the same office, and the machine requires that all independent ballots voted for that office be deposited in a single receptacle or device, an elector may vote in or by the receptacle or device for one or more persons whose names do not appear upon the machine with or without the names of one or more persons whose names do so appear. With that exception, and except for presidential electors, no independent ballot shall be voted for any person for any office whose name appears on the machine as a nominated candidate for that office; any independent ballot so voted shall not be counted. An independent ballot must be cast in its appropriate place on the machine, or it shall be void and not counted.

[S13, §1137-a19; C24, 27, 31, 35, 39, §**918;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.16]

86 Acts, ch 1224, §20

52.17 Voting machine in plain view.

The exterior of the voting machine and every part of the polling place shall be in plain view of the election officers. The voting machine shall be placed at least three feet from every wall and partition of the polling place, and at least four feet from the precinct election officials' table.

[S13, §1137-a20; C24, 27, 31, 35, 39, §**919;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.17]

52.18 Method of voting.

After the opening of the polls, the precinct election officials shall not allow any voter to enter the voting machine booth until they ascertain that the voter is duly entitled to vote. Only one voter at a time shall be permitted to enter the voting machine booth to vote. The operating of the voting machine by the elector while voting shall be secret and obscured from all other persons, except as provided by sections 49.89, 49.90 and 49.91 in cases of voting by assisted electors. No voter shall remain within the voting machine booth longer than three minutes, and if the voter shall refuse to leave it after the lapse of three minutes, the voter shall be removed by the officials.

[S13, §1137-a21; C24, 27, 31, 35, 39, §**920;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.18]

52.19 Instructions.

In case any elector after entering the voting machine booth shall ask for further instructions concerning the manner of voting, two precinct election officials of opposite political parties shall give such instructions to the elector; but no precinct election official or other election officer or person assisting an elector shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instructions, such elector shall vote as in the case of an unassisted voter.

[S13, §1137-a22; C24, 27, 31, 35, 39, §**921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.19]

52.20 Injury to machine.

No voter, or other person, shall deface or injure the voting machine or the ballot thereon. It shall be the duty of the precinct election officials to enforce the provisions of this section. During the entire period of an election, at least one of their number, designated by them from time to time, shall be stationed beside the entrance to the booth and shall see that it is properly closed after a voter has entered it to vote. The official shall also, at such intervals as the official may deem proper or necessary, examine the face of the machine to ascertain whether it has been defaced or injured, to detect the wrongdoer, and to repair any injury.

[S13, §1137-a23; C24, 27, 31, 35, 39, §**922;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.20]

52.21 Canvass of vote — tally sheet.

As soon as the polls of the election are closed, the precinct election officials thereat shall immediately lock the voting machine against voting and open the counting compartments in the presence of all persons who may be lawfully within the polling place, and proceed to canvass the vote. Said officials shall use a voting machine return and tally sheet in substantially the following form:

VOTING MACHINE RETURN AND TALLY SHEET
. . . . . ELECTION . . . . . (DATE) , COUNTY OF . . . . . .

	President and Vice President	United States Senator	United States Representative	Governor and Lt. Governor	Etc.
Republican Party	1A (name of candidate)	2A	3A	4A	5A
Machine No.					
Machine No.					
Machine No.					
Machine No.					
Machine No.					
Return Sheet Total					
Democratic Party	1B (name of candidate)	2B	3B	4B	5B
Machine No.					
Machine No.					
Machine No.					
Machine No.					
Machine No.					
Return Sheet Total					
Independents	1C (name of candidate)	2C	3C	4C	5C
Machine No.					
Machine No.					
Machine No.					
Machine No.					
Machine No.					
ETC.					
Public Measures	1F For	2F Against	3F	4F	5F
Machine No.					
Machine No.					
Machine No.					
Machine No.					
Machine No.					
Return Sheet Total					

The reverse side of said return shall carry a certificate in substantially the following form:

CERTIFICATE OF ELECTION OFFICIALS AND CANVASS

STATE OF IOWA)
COUNTY OF . . . . .) ss.

We, the undersigned Precinct Election Officials for . . . . . , Precinct No. . . . . of the county of . . . . . and state of Iowa, do hereby certify that . . . . . voting machine . . . . . (was or were) used in the above-mentioned precinct at the . . . . . election held on the . . . . . day of . . . . . (month), ... (year).

1. That before opening of the polls we compared the ballot labels on . . . . . (the or each) machine with the sample ballots furnished, and found the names, numbers and letters thereon agreed.

2. That we compared the number on the seal which sealed the curtain lever and the number on the protective counter and we found the same as follows:

Machine	Curtain Lever Seal	Protective Counter
No.	No.	No. . . . .
No.	No.	No. . . . .
No.	No.	No. . . . .
No.	No.	No. . . . .

3. That the public counter was set at 000 and that we opened the rear of . . . . . (the or each) machine and examined every registering counter and that each registered 000, or, if the machines used have a capability to produce a printed record, that an inspection sheet from each machine used at this election was produced immediately prior to any vote being cast upon it showing that all counters were set at 000.

4. That the following statement shows the number of the seal with which the curtain lever was sealed, the number on the public counter and the number on the protective counter after the poll was closed and the vote thereon canvassed and the machine locked:

Machine	Curtain Lever Seal	Protective Counter	Public Counter
No.	No.	No.	No. . . . .
No.	No.	No.	No. . . . .
No.	No.	No.	No. . . . .
No.	No.	No.	No. . . . .

5. That we are Precinct Election Officials of the . . . . . Election in and for . . . . . , Precinct No. . . . . in the county of . . . . . and state of Iowa, on the . . . . . day of . . . . . (month), ... (year), and that we have canvassed all the votes registered on the voting machines for each candidate, and all irregular ballots written on the paper roll of each machine used in said precinct, and do hereby severally certify that the canvass thereof was duly and legally made, and the result of said canvass is correctly set forth in the within return-sheet statement, and that the said statement is true in all respects.

Dated this . . . . . day of . . . . . (month), ... (year)

. . . . . .
. . . . . .
. . . . . .
. . . . . .
. . . . . .
. . . . . .
Precinct Election Officials

After the canvass has been completed the officials shall immediately report the result of the canvass in the manner provided by section 50.11.

In a precinct in which only one voting machine is used and that machine can deliver, immediately upon the conclusion of voting, multiple copies of a printed record of the votes cast and the totals for each candidate or question appearing on the face of the machine, one of the copies may be used in lieu of the tally sheet specified in this section for the canvasses provided under sections 50.1A and 50.24. The state commissioner of elections may adopt rules regarding the certification of the printed record to allow its use in lieu of the tally sheet.

[S13, §1137-a24; C24, 27, 31, 35, 39, §**923;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.21]

86 Acts, ch 1224, §21, 22; 91 Acts, ch 97, §63; 2000 Acts, ch 1058, §56, 61

52.22 Locking machine.

The precinct election officials shall, as soon as the count is completed and fully ascertained as in this chapter required, lock the machine against voting, and it shall so remain until thirty days after the proclamation of the results of the election, except that it shall remain locked only ten days after a primary or school election, and only two days after a city primary election, if such election is not contested.

In cities in which the council has chosen a runoff election in lieu of a primary pursuant to section 376.9, the machine shall remain locked only two days after the regular city election if the canvass shows that a runoff election is required, and the election is not contested. However, if the machines in any precinct are so constructed as to deliver, im-

mediately upon conclusion of the voting at any election, multiple copies of a printed record of the votes cast and the totals for each candidate or question appearing on the face of the machine, the machines may be unlocked immediately following the canvass of votes by the county board of supervisors unless the precinct election board informs the commissioner that the printed record produced by the machine is smeared, torn or otherwise unreadable. In the latter case, the machines shall be kept locked for the period of time prescribed for machines which do not print such a record.

Whenever independent ballots have been voted, the officials shall return all of such ballots properly secured in a sealed package as prescribed by section 50.12.

[S13, §1137-a25; C24, 27, 31, 35, 39, §**924;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.22]

88 Acts, ch 1119, §24

Independent ballots, §52.16

Locking unused party row, §52.11

52.23 Written statements of election — other papers.

After the total vote for each candidate has been ascertained, and before leaving the room or voting place, the precinct election officials shall make and sign the canvass forms referred to in section 52.21, which canvass shall serve as a written statement of election. Said canvass statement shall be in lieu of the tally list required in section 50.16.

The inspection sheets from each machine used in the election and one copy of the printed results from each machine shall be signed by all precinct election officials and, with any paper or papers upon which write-in votes were recorded by voters, shall be securely sealed in an envelope marked with the name and date of the election, the precinct, and the serial numbers of the machines from which the enclosed results were removed. This envelope shall be preserved, unopened, for twenty-two months following elections for federal offices and for six months following elections for all other offices unless a recount is requested pursuant to section 50.48 or an election contest is pending. The envelope shall be destroyed in the same manner as ballots pursuant to section 50.13. Additional copies of the results, if any, shall be delivered to the commissioner with the other supplies from the election pursuant to section 50.17.

[S13, §1137-a26; C24, 27, 31, 35, 39, §**925;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.23]

86 Acts, ch 1224, §23; 93 Acts, ch 143, §26

52.24 What statutes apply — separate ballots.

All of the provisions of the election law not inconsistent with the provisions of this chapter shall apply with full force to all counties adopting the use of voting machines. Nothing in this chapter shall be construed as prohibiting the use of a separate ballot for public measures.

[S13, §1137-a27; C24, 27, 31, 35, 39, §**926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.24]

See also §49.43, 49.44

52.25 Summary of amendment or public measure.

The question of a constitutional convention, amendments, and public measures including bond issues may be voted on voting machines and on special paper ballots in the following manner:

The entire convention question, amendment or public measure shall be printed and displayed prominently in at least four places within the voting precinct, and inside each voting booth, or on the left-hand side inside the curtain of each voting machine, the printing to be in conformity with the provisions of chapter 49. The public measure shall be summarized by the commissioner and in the largest type possible printed on the special paper ballots or inserts used in the voting machines, except that:

1. In the case of the question of a constitutional convention, or of an amendment or measure to be voted on in the entire state, the summary shall be worded by the state commissioner of elections as required by section 49.44.

2. In the case of a public question to be voted on in a political subdivision lying in more than one county, the summary shall be worded by the commissioner responsible under section 47.2 for conducting that election.

[C62, 66, 71, 73, 75, 77, 79, 81, §52.25]

88 Acts, ch 1119, §25; 2002 Acts, ch 1134, §52, 115

2002 amendments to unnumbered paragraphs 1 and 2 take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraphs 1 and 2 amended

ELECTRONIC VOTING SYSTEMS

52.26 Authorized electronic voting system.

1. Every electronic voting system approved by the state board of examiners for voting machines and electronic voting systems shall:

a. Provide for voting in secrecy, except as to persons entitled by sections 49.90 and 49.91 to assistance. The state board of examiners for voting machines and electronic voting systems shall determine whether the systems' voting booths provide for voting in secrecy.

b. Permit each voter to vote at any election for any candidate for each office and upon each public question with respect to which the voter is entitled by law to vote, while preventing the voter from voting more than once upon any public question or casting more votes for any office than there are persons to be elected to that office.

c. Permit a voter to vote for any person for any office on the ballot at that election, whether or not the person's name is printed on the ballot.

d. Be so constructed or designed that, when voting in a primary election in which candidates are nominated by political parties, a voter is limited to the candidates for the nominations of the political party with which that voter is affiliated.

e. Be so constructed or designed that in presidential elections the voter casts a vote for the presidential electors of any party or political organization by a single mark made opposite the name of the candidates of that party or organization for the offices of both president and vice president of the United States, and so that the voter is also provided the opportunity to write in the name of any person for whom the voter desires to vote for president or vice president of the United States.

f. Be so constructed or designed as to permit voting for candidates for nomination or election of at least seven different political parties or organizations, and to permit voting for all of the candidates of any one political party or organization by a single mark, at any one election.

2. A punch card voting system shall not be approved for use.

[C77, 79, 81, §52.26]

90 Acts, ch 1007, §2; 2002 Acts, ch 1134, §53, 115

2002 amendments to subsection 1, paragraphs e and f, and subsection 2 take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 editorially renumbered as subsection 1, unnumbered paragraph 1

Subsections 1 – 6 editorially renumbered as subsection 1, paragraphs a – f

Subsection 1, paragraphs e and f amended

Subsection 7 amended and editorially renumbered as 2

52.27 Commissioner to provide electronic voting equipment.

The commissioner having jurisdiction of any precinct for which the board of supervisors has adopted voting by means of an electronic voting system shall, as soon as practicable thereafter, provide for use at each election held in the precinct special paper ballots and vote marking devices in appropriate numbers. The commissioner shall have custody of all equipment required for use of the electronic voting system, and shall be responsible for maintaining it in good condition and for storing it between elections. All provisions of chapter 49 relative to times and circumstances under which voting machines are to be used in any election and the number of voting machines to be provided shall also govern the use of electronic voting systems, when applicable.

[C77, 79, 81, §52.27]

2002 Acts, ch 1134, §54, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

52.28 Electronic voting system ballot forms.

The commissioner of each county in which the use of an electronic voting system in one or more precincts has been authorized shall determine the arrangement of candidates' names and public questions upon the ballot or ballots used with the system. The ballot information shall be arranged as required by chapters 43 and 49, and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the electronic voting system in use in that county. The state commissioner may adopt rules requiring a reasonable degree of uniformity among counties in arrangement of electronic voting system ballots.

[C77, 79, 81, §52.28]

2002 Acts, ch 1134, §55, 56, 115

2002 amendments take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1 amended and redesignated as an unnumbered paragraph

Subsection 2 stricken

52.29 Electronic voting system sample ballots.

The commissioner shall provide for each precinct where an electronic voting system is in use at least four sample special paper ballots which shall be exact copies of the official ballots as printed for that precinct. The sample ballots shall be arranged in the form of a diagram showing the special paper ballot as it will appear to the voter in that precinct on election day. The sample ballots shall be posted prominently within the polling place, and shall be open to public inspection during the hours the polls are open on election day.

[C77, 79, 81, §52.29]

2002 Acts, ch 1134, §57, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

52.30 Procedure where votes cast on ballot cards. Repealed by 2002 Acts, ch 1134, § 114, 115.

Repeal takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

52.31 Procedure where votes cast on special paper ballots.

Preparations for voting and voting at any election in a precinct where votes are to be received on

special paper ballots shall be in accordance with the provisions of chapter 49 governing voting upon conventional paper ballots with the following exceptions:

1. Before entering the voting booth each voter shall be cautioned to mark the ballot only with a vote marking device provided in the booth or by the precinct election officials.

2. In each precinct where a portable vote tallying system is used and the ballots are tabulated by a device located in the precinct which is equipped with a mechanism which will not permit more than one ballot to be inserted at a time, the voter may personally insert the ballot into the tabulating device.

[C77, 79, 81, §52.31]

86 Acts, ch 1224, §24

52.32 Procedure upon closing polls.

The provisions of this section apply, in lieu of sections 50.1A to 50.12, to any precinct for those elections at which voting is conducted by means of an electronic voting system and the ballots are to be counted at a counting center.

1. At the time for closing the polls, or as soon thereafter as all persons entitled under section 49.74 to do so have cast their votes, the precinct election officials in each precinct where an electronic voting system or an electronic tabulating system is in use shall secure the system against further voting. The precinct election officials shall certify the number of declarations of eligibility signed as required by section 49.77, and record that number on the tally sheet with the number of special, unused, spoiled, and unvoted ballots cast, with each number recorded separately. The numbers shall be used to determine whether the number of ballots cast as recorded in the electronic precinct reports varies from the number of declarations of eligibility. If so, that fact shall be reported in writing to the commissioner by the counting center officials, together with the number of ballots varying from the number of declarations of eligibility and the reason for the variance, if known.

2. The precinct election officials shall affix a seal upon the ballot container. The precinct election officials shall then each affix their signatures to a statement attesting that the requirements of this section have been met and the time the ballot container is removed from the precinct polling location for delivery to the counting center pursuant to section 52.37. The statement shall be returned to the commissioner at the counting center with the ballot container and shall accompany the ballots through the counting process.

[C77, 79, 81, §52.32]

88 Acts, ch 1119, §26, 27; 89 Acts, ch 136, §51; 92 Acts, ch 1034, §1; 93 Acts, ch 143, §27

52.33 Absentee voting by electronic voting system.

In any county in which the board of supervisors has adopted voting by means of an electronic voting system, the commissioner may elect to also conduct absentee voting by use of such a system if the system so used is compatible with the counting center serving the precinct polling places in the county where voting is by means of an electronic voting system. In any other county, the commissioner may with approval of the board of supervisors conduct absentee voting by use of an electronic voting system. All provisions of chapter 53 shall apply to such absentee voting, so far as applicable. In counties where absentee voting is conducted by use of an electronic voting system, the special precinct counting board shall, at the time required by chapter 53, prepare absentee ballots for delivery to the counting center in the manner prescribed by this chapter.

The absentee and special precinct board shall follow the process prescribed in section 52.37, subsection 2, in handling damaged or defective ballots and in counting write-in votes on special paper ballots.

[C77, 79, 81, §52.33]

97 Acts, ch 170, §62; 2002 Acts, ch 1134, §58, 115

2002 amendment to unnumbered paragraph 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 amended

52.34 Counting center established.

Before authorizing the purchase and ordering the use of an electronic voting system under section 52.2, the county board of supervisors shall, with advice of the commissioner, determine whether counting center equipment is to be purchased as a part of the system and operated by the county, or the county will enter into an arrangement to have its ballots tabulated at a counting center maintained by another county, or whether ballots will be tabulated by devices located in each of the precincts in which the board of supervisors has ordered its use. The arrangement may be reviewed and revised, with approval of the board of supervisors, at any time. If a county acquires and operates a counting center at which ballots cast in one or more other counties are tabulated, the commissioner of the county acquiring and operating the center, or that commissioner's designee, shall be responsible for and in control of the operation of that counting center at all times, regardless of the origin of the ballots being tabulated at any particular time.

[C77, 79, 81, §52.34]

86 Acts, ch 1224, §25

52.35 Equipment tested.

Within five days before the date of any election at which votes are to be cast by means of an elec-

tronic voting system and tabulated at a counting center established under section 52.34, the commissioner in charge of the counting center where votes so cast are to be tabulated shall have the automatic tabulating equipment tested to ascertain that it will correctly count the votes cast for all offices and on all public questions. The procedure for conducting the test shall be as follows:

1. For any election to fill a partisan office, the county chairperson of each political party shall be notified in writing of the time the test will be conducted, so that they may be present or have a representative present. For every election, the commissioner shall include such notice in the notice of the election published as required by section 49.53. The test shall be open to the public.

2. The test shall be conducted by processing a preaudited group of ballots marked so as to record a predetermined number of valid votes for each candidate, and on each public question, on the ballot. The test group shall include for each office and each question one or more ballots having votes in excess of the number allowed by law for that office or question, in order to test the ability of the automatic tabulating equipment to reject such votes. Any observer may submit an additional test group of ballots which, if so submitted, shall also be tested. The state commissioner shall promulgate administrative rules establishing procedures for any additional test group of ballots submitted by an observer. If any error is detected, its cause shall be ascertained and corrected and an errorless count obtained before the automatic tabulating equipment is approved. When so approved, a statement attesting to the fact shall be signed by the commissioner and kept with the records of the election.

3. The test group of ballots used for the test shall be clearly labeled as such, and retained in the counting center. The test prescribed in subsection 2 shall be repeated immediately before the start of the official tabulation of ballots cast in the election, and again immediately after the tabulation is completed. The test group of ballots and the programs used for the counting procedure shall be sealed, retained for the time required for and disposed of in the same manner as ballots cast in the election.

[C77, 79, 81, §52.35]

86 Acts, ch 1224, §26; 97 Acts, ch 170, §63; 98 Acts, ch 1123, §9; 2002 Acts, ch 1134, §59, 115

2002 amendment to subsection 2 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2 amended

52.36 Commissioner in charge of counting center — appointment of resolution board.

All proceedings at the counting center shall be under the direction of the commissioner and open to the public. The proceedings shall be under the observation of at least one member of each of the political parties referred to in section 49.13, designated by the county chairperson or, if the chairperson fails to make a designation, by the commissioner. No person except those employed and authorized by the commissioner for the purpose shall touch any ballot or ballot container.

The commissioner shall appoint from the lists provided by the county political party chairpersons a resolution board to tabulate write-in votes and to decide questions regarding damaged, defective, or other ballots which cannot be tabulated by machine. The commissioner shall appoint as many people to the resolution board as the commissioner believes are necessary. The resolution board shall be divided into two-person teams. Each team shall consist of people who are not members of the same political party. If a team is unable to decide how to count one or more ballots, a third person shall be available to consult with the team and to resolve disputes. Ballots which were objected to shall be endorsed and separated as required by section 50.4.

[C77, 79, 81, §52.36]

93 Acts, ch 143, §28; 97 Acts, ch 170, §64

52.37 Counting center tabulation procedure.

The tabulation of ballots cast by means of an electronic voting system, at a counting center established pursuant to this chapter, shall be conducted as follows:

1. The sealed ballot container from each precinct shall be delivered to the counting center by two election officials, not members of the same political party if the ballot contains partisan offices, who shall travel together in the same vehicle and shall have the container under their immediate joint control until they surrender it to the commissioner or the commissioner's designee in charge of the counting center. The commissioner may designate two precinct election officials, of different political parties if the ballot contains partisan offices, to collect the sealed ballot containers from more than one precinct to deliver to the counting center. The commissioner or designee shall, in the presence of the two precinct election officials who delivered the container, enter on a record kept for the purpose that the container was received, the time the container was received, and the condition of the seal upon receipt.

In nonpartisan elections the election officials delivering the ballots are not required to be members of any political party, or to be members of different political parties.

2. After the record required by subsection 1 has been made, the ballot container shall be opened. If any ballot is found damaged or defective, so that it cannot be counted properly by the automatic tabulating equipment, a true duplicate shall be made by the resolution board team and substituted for the damaged or defective ballot, or, as an alternative, the valid votes on a defective ballot may be manually counted at the counting center by the resolution board, whichever method is best suited to the system being used. All duplicate ballots shall be clearly labeled as such, and shall bear a serial number which shall also be recorded on the damaged or defective ballot.

The resolution board shall also tabulate any write-in votes which were cast. Write-in votes cast for a candidate whose name appears on the ballot for the same office shall be counted as a vote for the candidate indicated, if the vote is otherwise properly cast.

Ballots which are rejected by the tabulating equipment as blank because they have been marked with an unreadable marker shall be duplicated or tabulated as required by this subsection for damaged or defective ballots. The commissioner may instruct the resolution board to mark over voters' unreadable marks using a marker compatible with the tabulating equipment. The resolution board shall take care to leave part of the original mark made by the voter. If it is impossible to mark over the original marks made by the voter without completely obliterating them, the ballot shall be duplicated.

3. The record printed by the automatic tabulating equipment, with the addition of a record of any write-in or other votes manually counted pursuant to this chapter, shall constitute the official return of the precinct. Upon completion of the tabulation of the votes from each individual precinct, the result shall be announced and reported in substantially the manner required by section 50.11.

4. If for any reason it becomes impracticable to count all or any part of the ballots with the automatic tabulation equipment, the commissioner may direct that they be counted manually, in accordance with chapter 50 so far as applicable.

[C77, 79, 81, §52.37]

92 Acts, ch 1034, §2; 93 Acts, ch 143, §29; 97 Acts, ch 170, §65; 2002 Acts, ch 1134, §60, 115

2002 amendment to subsection 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1 amended

52.38 Testing portable tabulating devices.

All portable tabulating devices shall be tested before any election in which they are to be used following the procedure in section 52.35, subsection 2. Testing shall be completed not later than twelve hours before the opening of the polls on the morning of the election. For any election to fill a partisan office, the chairperson of each political party shall be notified in writing of the time the devices will be tested so that the chairperson or a representative may be present. For every election, the commissioner shall include the notice in the notice of the election published as required by section 49.53. Those present for the test shall sign a certificate which shall read substantially as follows:

The undersigned certify that we were present and witnessed the testing of the portable tabulating devices in the following precincts, that we believe the devices are in proper condition for use in the election of ..... (date); that following the test the vote totals were erased from the memory of each portable tabulating device and a report was produced showing that all vote totals in the memory were set at 0000; that the devices were securely locked or sealed; and that the serial numbers and locations of the devices which were tested are listed below.

Signed .....
(name and political party affiliation, if applicable)
.....
(name and political party affiliation, if applicable)
.....
Voting equipment custodian
Dated .....

Precinct	Location	Serial Number
.....	.....	.....
.....	.....	.....
.....	.....	.....

86 Acts, ch 1224, §27; 97 Acts, ch 170, §66; 98 Acts, ch 1123, §10; 2000 Acts, ch 1058, §59, 60

52.39 Reserved.

52.40 Early pick-up sites established — procedure.

1. In counties where counting centers have been established under section 52.34, the commissioner may designate certain polling places as early ballot pick-up sites. At these sites, between the hours of one p.m. and four p.m. on the day of the election, two precinct election officials of different political parties shall seal the ballot container to

prevent the addition or removal of ballots and replace it with an empty, locked ballot container. The sealed ballot container shall be kept in a safe place in view of the precinct election officials. The early pick-up officers shall receive the sealed ballot container containing the ballots which have been voted along with a signed statement of the precinct officials attesting to the number of declarations of eligibility signed up to that time, excluding those declarations signed by voters who had not yet placed their ballots in the ballot container when it was sealed.

2. Early pick-up officers shall be appointed in two-person teams, one from each of the political parties referred to in section 49.13, who shall be appointed by the commissioner from the election board panel drawn up as provided by section 49.15. The early pick-up officers shall be sworn in the manner provided by section 49.75 for election board members, and shall receive compensation as provided in section 49.20.

3. Each two-person team of early pick-up officers shall travel together in the same vehicle and shall have the container under their immediate joint control until they surrender it to the commissioner or the commissioner's designee. If persons designated as early pick-up officers fail to appear at the time the duties set forth in this section are to be performed, the commissioner shall at once appoint some other person or persons, giving preference to persons designated by the respective county chairpersons of the political parties described in section 49.13, to carry out the requirements of this section.

4. The tabulation of ballots received from early pick-up sites shall be conducted at the counting center during the hours the polls are open, in the manner provided in sections 52.36 and 52.37, except that the room in which the ballots are being counted shall not be open to the public during the hours in which the polls are open and the room shall be policed so as to prevent any person other than those whose presence is authorized by this section and sections 52.36 and 52.37 from obtaining information about the progress of the count. The only persons who may be admitted to that room, as long as admission does not impede the progress of the count, are the members of the board, one challenger representing each political party, one observer representing any nonparty political organization or any candidate nominated by petition pursuant to chapter 45, and the commissioner or the commissioner's designee. No compilation of vote subtotals shall be made while the polls are open. It shall be unlawful for any person to communicate or attempt to communicate, directly or indirectly, information regarding the progress of the count at any time before the polls are closed.

93 Acts, ch 143, §30; 94 Acts, ch 1180, §21; 97 Acts, ch 170, §67; 2002 Acts, ch 1071, §10
Subsection 4 amended

52.41 Electronic transmission of election results.

With the advice of the board of examiners for voting machines and electronic voting systems, the state commissioner shall adopt by rule standards for the examination and testing of devices for the electronic transmission of election results. All voting systems which contain devices for the electronic transmission of election results submitted to the examiners for examination and testing after July 1, 2003, shall comply with these standards.

2002 Acts, ch 1134, §61, 115
Section takes effect January 1, 2003; 2002 Acts, ch 1134, §115
NEW section

CHAPTER 53

ABSENT VOTERS

Chapter applicable to primary elections, §43.5
Definitions in §39.3 applicable to this chapter

53.1 Right to vote — conditions.
53.2 Application for ballot.
53.3 Special absentee ballot. Repealed by 87 Acts, ch 221, §36.
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ABSENT VOTING BY ARMED FORCES

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53.1 Right to vote — conditions.

Any registered voter may, subject to the provisions of this chapter, vote at any election:

1. When the voter expects to be absent on election day during the time the polls are open from the precinct in which the voter is a registered voter.

2. When, through illness or physical disability, the voter expects to be prevented from going to the polls and voting on election day.

3. When the voter expects to be unable to go to the polls and vote on election day.

A person who has been designated to have power of attorney by a registered voter does not have authority to request or to cast an absentee ballot on behalf of the registered voter.

[SS15, §1137-b; C24, 27, 31, 35, 39, §**927;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.1]

90 Acts, ch 1238, §28; 93 Acts, ch 143, §31; 94 Acts, ch 1169, §65

53.2 Application for ballot.

Any registered voter, under the circumstances specified in section 53.1, may on any day, except election day, and not more than seventy days prior to the date of the election, apply in person for an absentee ballot at the commissioner's office or at any location designated by the commissioner, or make written application to the commissioner for an absentee ballot. The state commissioner shall prescribe a form for absentee ballot applications. However, if a registered voter submits an application that includes all of the information required in this section, the prescribed form is not required. Absentee ballot applications may include instructions to send the application directly to the county commissioner of elections. However, no absentee ballot application shall be preaddressed or printed with instructions to send the applications to anyone other than the appropriate commissioner.

No absentee ballot application shall be preaddressed or printed with instructions to send the ballot to anyone other than the voter.

This section does not require that a written communication mailed to the commissioner's office to request an absentee ballot, or any other document be notarized as a prerequisite to receiving or marking an absentee ballot or returning to the commissioner an absentee ballot which has been voted.

Each application shall contain the name and signature of the registered voter, the address at which the voter is registered to vote, and the name or date of the election for which the absentee ballot is requested, and such other information as may be necessary to determine the correct absentee ballot for the registered voter. If insufficient information has been provided, the commissioner shall, by the best means available, obtain the additional necessary information.

An application for a primary election ballot which specifies a party different from that recorded on the registered voter's voter registration record shall be accepted as a change or declaration of party affiliation. The commissioner shall approve the change or declaration and enter a notation of the change on the registration records. A notice shall be sent with the ballot requested informing the voter that the voter's registration record will be changed to show that the voter is now affiliated with the party whose ballot the voter requested.

If an application for an absentee ballot is received from an eligible elector who is not a registered voter the commissioner shall send a registration form under section 48A.8 and an absentee ballot to the eligible elector. If the application is received so late that it is unlikely that the registration form can be returned in time to be effective on election day, the commissioner shall enclose with the absentee ballot a notice to that effect, inform-

ing the voter of the registration time limits in section 48A.9. The commissioner shall record on the elector's application that the elector is not currently registered to vote. If the registration form is properly returned by the time provided by section 48A.9, the commissioner shall record on the elector's application the date of receipt of the registration form and enter a notation of the registration on the registration records.

A registered voter who has not moved from the county in which the elector is registered to vote may submit a change of name, telephone number, or address on the form prescribed in section 48A.8 when casting an absentee ballot. Upon receipt of a properly completed form, the commissioner shall enter a notation of the change on the registration records.

[SS15, §1137-c, -d; C24, 27, 31, 35, 39, §**928, 930;** C46, 50, 54, 58, 62, 66, 71, §53.2, 53.4; C73, 75, 77, 79, 81, §53.2]

83 Acts, ch 176, §6; 84 Acts, ch 1291, §11; 86 Acts, ch 1224, §28; 87 Acts, ch 221, §25; 91 Acts, ch 129, §17; 94 Acts, ch 1169, §54; 95 Acts, ch 189, §15; 97 Acts, ch 170, §68

53.3 Special absentee ballot. Repealed by 87 Acts, ch 221, § 36. See § 53.45.

53.4 through 53.6 Reserved.

53.7 Solicitation by public employees.

1. It shall be unlawful for any employee of the state or any employee of a political subdivision to solicit any application or request for application for an absentee ballot, or to take an affidavit in connection with any absentee ballot while the employee is on the employer's premises or otherwise in the course of employment. However, any such employee may take such affidavit in connection with an absentee ballot which is cast by the registered voter in person in the office where such employee is employed in accordance with section 53.11. This subsection shall not apply to any elected official.

2. It is unlawful for any public officer or employee, or any person acting under color of a public officer or employee, to knowingly require a public employee to solicit an application or request an application for an absentee ballot, or to knowingly require an employee to take an affidavit or request for an affidavit in connection with an absentee ballot application.

[SS15, §1137-d; C24, 27, 31, 35, 39, §**933;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.7]

91 Acts, ch 129, §18; 94 Acts, ch 1169, §64; 2002 Acts, ch 1071, §11; 2002 Acts, ch 1175, §80

Subsection 2 amended

53.8 Ballot mailed.

1. Upon receipt of an application for an absentee ballot and immediately after the absentee ballots are printed, the commissioner shall mail an absentee ballot to the applicant within twenty-four hours, except as otherwise provided in subsection 3. The absentee ballot shall be enclosed in an unsealed envelope bearing a serial number and affidavit. The absentee ballot and unsealed envelope shall be enclosed in or with a carrier envelope which bears the same serial number as the unsealed envelope. The absentee ballot, unsealed envelope, and carrier envelope shall be enclosed in a third envelope to be sent to the registered voter. If the ballot cannot be folded so that all of the votes cast on the ballot will be hidden, the commissioner shall also enclose a secrecy envelope with the absentee ballot.

2. If an application is received so late that it is unlikely that the absentee ballot can be returned in time to be counted on election day, the commissioner shall enclose with the absentee ballot a statement to that effect. The statement shall also point out that it is possible for the applicant or the applicant's designee to personally deliver the completed absentee ballot to the office of the commissioner at any time before the closing of the polls on election day.

3. When an application for an absentee ballot is received by the commissioner of any county from a registered voter who is a patient in a hospital in that county or a resident of any facility in that county shown to be a health care facility by the list of licenses provided the commissioner under section 135C.29, the absentee ballot shall be delivered to the voter and returned to the commissioner in the manner prescribed by section 53.22. However, if the application is received more than ten calendar days before the election and the commissioner has not elected to mail absentee ballots to the applicant as provided under section 53.22, subsection 3, the commissioner shall mail to the applicant within twenty-four hours a letter in substantially the following form:

Your application for an absentee ballot for the election to be held on . . . . . has been received. This ballot will be personally delivered to you by a bipartisan team sometime during the ten days preceding the election. If you will not be at the address from which your application was sent during any or all of the ten-day period immediately preceding the election, contact this office and arrangements will be made to have your absentee ballot delivered at a time when you will be present at that address.

Nothing in this subsection nor in section 53.22 shall be construed to prohibit a registered voter who is a hospital patient or resident of a health care facility, or who anticipates entering a hospital or health care facility before the date of a forthcoming election, from casting an absentee ballot in the manner prescribed by section 53.11.

[SS15, §1137-c, -d; C24, 27, 31, 35, 39, §**928, 930;**

C46, 50, 54, 58, 62, 66, 71, §53.2, 53.4; C73, §53.2; C75, 77, 79, 81, §53.8]

83 Acts, ch 176, §7; 84 Acts, ch 1291, §12; 86 Acts, ch 1224, §30; 94 Acts, ch 1169, §64; 2002 Acts, ch 1134, §62, 115

2002 amendment to subsection 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1 amended

53.9 Prohibited persons.

No person required to file reports under chapter 56, and no person acting as an actual or implied agent for a person required to file reports under chapter 56, shall receive absentee ballots on behalf of voters. This prohibition does not apply to section 53.17.

97 Acts, ch 170, §69

53.10 Absentee voting at the commissioner's office.

Not more than forty days before the date of the primary election or the general election, the commissioner shall provide facilities for absentee voting in person at the commissioner's office. This service shall also be provided for other elections as soon as the ballots are ready, but in no case shall absentee ballots be available more than forty days before an election.

Each person who wishes to vote by absentee ballot at the commissioner's office shall first sign an application for a ballot including the following information: name, current address, and the election for which the ballot is requested. The person may report a change of address or other information on the person's voter registration record at that time. The registered voter shall immediately mark the ballot; enclose the ballot in a secrecy envelope, if necessary, and seal it in a ballot envelope; subscribe to the affidavit on the reverse side of the envelope; and return the absentee ballot to the commissioner. The commissioner shall record the numbers appearing on the application and ballot envelope along with the name of the registered voter.

During the hours when absentee ballots are available in the office of the commissioner, the posting of political signs is prohibited within thirty feet of the absentee voting site. No electioneering shall be allowed within the sight or hearing of voters at the absentee voting site.

2002 Acts, ch 1134, §63, 115

Section takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW section

53.11 Satellite absentee voting stations.

1. Satellite absentee voting stations may be established throughout the cities and county at the direction of the commissioner and shall be established upon receipt of a petition signed by not less than one hundred eligible electors requesting that a satellite absentee voting station be established at a location to be described on the petition. A satellite absentee voting station established by petition must be open at least one day for a minimum of six hours. A satellite absentee voting station established at the direction of the commissioner or by petition may remain open until five p.m. on the day before the election.

2. A petition requesting a satellite absentee voting station must be filed by the following deadlines:

a. For a primary or general election, no later than five p.m. on the forty-seventh day before the election.

b. For the regular city election, no later than five p.m. on the thirtieth day before the election.

c. For the regular school election, no later than five p.m. on the thirtieth day before the election.

d. For a special election, no later than thirty-two days before the special election.

3. Procedures for absentee voting at satellite absentee voting stations shall be the same as specified in section 53.10 for voting at the commissioner's office. Additional procedures shall be prescribed by rule by the state commissioner.

4. During the hours when absentee ballots are available at a satellite absentee voting station, the posting of political signs is prohibited within thirty feet of the satellite absentee voting station. Electioneering shall not be allowed within the sight or hearing of voters at the satellite absentee voting station.

[SS15, §1137-e; C24, 27, 31, 35, 39, §**937;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.11]

84 Acts, ch 1291, §13; 91 Acts, ch 129, §19; 93 Acts, ch 143, §32; 94 Acts, ch 1169, §65; 97 Acts, ch 170, §70, 71; 2002 Acts, ch 1134, §64 – 66, 115

2002 amendments striking unnumbered paragraph 1, amending subsection 1, and adding subsections 3 and 4 take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 stricken

Unnumbered paragraph 2 amended and editorially renumbered as subsection 1

Unnumbered paragraph 3 and subsections 1 – 4 editorially renumbered as subsection 2 and paragraphs a – d respectively

NEW subsections 3 and 4

53.12 Duty of commissioner.

The commissioner shall enclose the absentee ballot in an unsealed envelope, to be furnished by the commissioner, which envelope shall bear upon its face the words *"county commissioner of elections"*, the address of the commissioner's office, and the same serial number appearing on the unsealed envelope shall be affixed to the application.

[SS15, §1137-f; C24, 27, 31, 35, 39, §**938;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.12]

84 Acts, ch 1291, §14

53.13 Voter's affidavit on envelope.

On the unsealed envelope shall be printed an affidavit form prescribed by the state commissioner of elections.

[SS15, §1137-f; C24, 27, 31, 35, 39, §**939;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.13]

53.14 Party affiliation.

Said affidavit shall designate the voter's party affiliation only in case the ballot enclosed is a primary election ballot.

[SS15, §1137-f; C24, 27, 31, 35, 39, §**940;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.14]

53.15 Marking ballot.

The registered voter, on receipt of an absentee ballot, shall mark the ballot in such a manner that no other person will know how the ballot is marked.

Registered voters who are blind, cannot read, or because of any other physical disability, are unable to mark their own absentee ballot, may have the assistance of any person the registered voter may select.

[SS15, §1137-g; C24, 27, 31, 35, 39, §**941;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.15]

84 Acts, ch 1291, §15; 94 Acts, ch 1169, §64

53.16 Subscribing to affidavit.

After marking the ballot, the voter shall make and subscribe to the affidavit on the reverse side of the envelope, and fold the ballot or ballots, separately, so as to conceal the markings on them, and deposit them in the envelope, and securely seal the envelope.

[SS15, §1137-g; C24, 27, 31, 35, 39, §**942;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.16]

84 Acts, ch 1291, §16

53.17 Mailing or delivering ballot.

The sealed envelope containing the absentee ballot shall be enclosed in a carrier envelope which shall be securely sealed. The sealed carrier envelope shall be returned to the commissioner by one of the following methods:

1. The sealed carrier envelope may be delivered by the registered voter or the voter's designee to the commissioner's office no later than the time the polls are closed on election day.

2. The sealed carrier envelope may be mailed to the commissioner. The carrier envelope shall indicate that greater postage than ordinary first class mail may be required. The commissioner shall pay any insufficient postage due on a carrier envelope bearing ordinary first class postage and accept the ballot.

In order for the ballot to be counted, the carrier envelope must be received in the commissioner's office before the polls close on election day or be clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner not later than noon on the Monday following the election.

If the law authorizing the election specifies that the supervisors canvass the votes earlier than the Monday following the election, absentee ballots returned through the mail must be received not later than the time established for the canvass by the board of supervisors for that election. The commissioner shall contact the post office serving the commissioner's office at the latest practicable hour before the canvass by the board of supervisors for that election, and shall arrange for absentee ballots received in that post office but not yet delivered to the commissioner's office to be brought to the commissioner's office before the canvass for that election by the board of supervisors.

[SS15, §1137-g; C24, 27, 31, 35, 39, §**943;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.17; 81 Acts, ch 34, §36]

84 Acts, ch 1291, §17; 87 Acts, ch 221, §26; 90 Acts, ch 1238, §29; 94 Acts, ch 1169, §64; 94 Acts, ch 1180, §22

53.18 Manner of preserving ballot and application.

Upon receipt of the absentee ballot, the commissioner shall at once record the number appearing on the application and return carrier envelope and time of receipt of such ballot and attach the elector's application to the unopened envelope. Absentee ballots shall be stored in a secure place until they are delivered to the absentee and special voters precinct board.

[SS15, §1137-h, -i; C24, 27, 31, 35, 39, §**944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.18]

89 Acts, ch 136, §52; 91 Acts, ch 129, §20; 2002 Acts, ch 1134, §67, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

53.19 Listing absentee ballots.

The commissioner shall maintain a list of the absentee ballots provided to registered voters, the serial number appearing on the unsealed envelope, the date the application for the absentee ballot was received, and the date the absentee ballot was sent to the registered voter requesting the absentee ballot.

The commissioner shall provide each precinct election board with a list of all registered voters from that precinct who have received an absentee ballot. The precinct officials shall immediately designate on the election register those registered voters who have received an absentee ballot and are not entitled to vote in person at the polls.

However, any registered voter who has received an absentee ballot and not returned it may surrender the absentee ballot to the precinct officials and vote in person at the polls. The precinct officials shall mark the uncast absentee ballot "void" and return it to the commissioner. Any registered voter who has been sent an absentee ballot by mail but for any reason has not received it or who has not brought the ballot to the polls may appear at the voter's precinct polling place on election day and shall cast a ballot in accordance with section 49.81.

[C71, §53.4; C73, §53.2; C75, 77, 79, 81, §53.19]
94 Acts, ch 1169, §64; 97 Acts, ch 170, §72; 98 Acts, ch 1123, §11; 2002 Acts, ch 1134, §68, 115
2002 amendment to unnumbered paragraph 3 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115
Unnumbered paragraph 3 amended

53.20 Special precinct established.

There is established in each county a special precinct to be known as the absentee ballot and special voters precinct. Its jurisdiction shall be conterminous with the borders of the county, for the purposes specified by sections 53.22 and 53.23, and the requirement that precincts not cross the boundaries of legislative districts shall not be applicable to it. The commissioner shall draw up an election board panel for the special precinct in the manner prescribed by section 49.15, having due regard for the nature and extent of the duties required of members of the election board and the election officers to be appointed from the panel.

[C77, 79, 81, §53.20]

53.21 Replacement of lost or spoiled absentee ballots.

A voter who has requested an absentee ballot may obtain a replacement ballot if the voter declares that the original ballot was lost or did not arrive. The commissioner upon receipt of a written or oral request for a replacement ballot shall provide a duplicate ballot. The same serial number that was assigned to the records of the original absentee ballot request shall be used on the envelopes and records of the replacement ballot.

The commissioner shall include with the replacement ballot two copies of a statement in substantially the following form:

The absentee ballot which I requested on ..... (date) has been lost or was never received. If I find this absentee ballot I will return it, unvoted, to the Commissioner.

.....
(Signature of voter)
.....
(Date)

The voter shall enclose one copy of the above statement in the return carrier envelope with the ballot envelope and retain a copy for the voter's records.

A voter who spoils an absentee ballot may return it to the commissioner. The outside of the return envelope shall be marked "SPOILED BALLOT". The commissioner shall replace the ballot in the manner provided in this section for lost ballots.

An absentee ballot returned to the commissioner without a designation that the ballot was spoiled shall not be replaced.

89 Acts, ch 136, §53; 93 Acts, ch 143, §33

53.22 Balloting by confined persons.

1. *a.* A registered voter who has applied for an absentee ballot, in a manner other than that prescribed by section 53.11, and who is a resident or patient in a health care facility or hospital located in the county to which the application has been submitted shall be delivered the appropriate absentee ballot by two special precinct election officers, one of whom shall be a member of each of the political parties referred to in section 49.13, who shall be appointed by the commissioner from the election board panel for the special precinct established by section 53.20. The special precinct election officers shall be sworn in the manner provided by section 49.75 for election board members, shall receive compensation as provided in section 49.20 and shall perform their duties during the ten calendar days preceding the election and on election day if all ballots requested under section 53.8, subsection 3 have not previously been delivered and returned.

If materials are prepared for the two special precinct election officials, a list shall be made of all voters to whom ballots are to be delivered. The list shall be sent with the officials who deliver the ballots and shall include spaces to indicate whether the person was present at the hospital or health care facility when the officials arrived, whether the person requested assistance from the officials, whether the person was assisted by another person of the voter's choice, the time that the ballot was returned to the officials, and any other notes the officials deem necessary.

The officials shall also be issued a supply of extra ballots to replace spoiled ballots. Receipts shall be issued in substantially the same form as receipts issued to precinct election officials pursuant to section 49.65. All ballots shall be accounted for and shall be returned to the commissioner. Separate envelopes shall be provided for the return of spoiled ballots and unused ballots.

b. If an applicant under this subsection notifies the commissioner that the applicant will not be available at the health care facility or hospital address at any time during the ten-day period immediately prior to the election, but will be available there at some earlier time, the commissioner shall direct the two special precinct election officers to deliver the applicant's ballot at an appropriate time prior to the ten-day period immediately preceding the election. If a person who so requested an absentee ballot has been dismissed from the health care facility or hospital, the special precinct election officers may take the ballot to the voter if the voter is currently residing in the county.

c. The special precinct election officers shall travel together in the same vehicle and both shall be present when an applicant casts an absentee ballot. If either or both of the special precinct election officers fail to appear at the time the duties set

forth in this section are to be performed, the commissioner shall at once appoint some other person, giving preference to persons designated by the respective county chairpersons of the political parties described in section 49.13, to carry out the requirements of this section. The persons authorized by this subsection to deliver an absentee ballot to an applicant, if requested, may assist the applicant in filling out the ballot as permitted by section 49.90. After the voter has securely sealed the marked ballot in the envelope provided and has subscribed to the oath, the voted absentee ballots shall be deposited in a sealed container which shall be returned to the commissioner on the same day the ballots are voted. On election day the officers shall return the sealed container by the time the polls are closed.

2. Any registered voter who becomes a patient or resident of a hospital or health care facility in the county where the voter is registered to vote within three days prior to the date of any election or on election day may request an absentee ballot during that period or on election day. As an alternative to the application procedure prescribed by section 53.2, the registered voter may make the request directly to the officers who are delivering and returning absentee ballots under this section. Alternatively, the request may be made by telephone to the office of the commissioner not later than four hours before the close of the polls. If the requester is found to be a registered voter of that county, these officers shall deliver the appropriate absentee ballot to the registered voter in the manner prescribed by this section.

3. For any election except a primary or general election or a special election to fill a vacancy under section 69.14, the commissioner may, as an alternative to subsection 1, mail an absentee ballot to an applicant under this section to be voted and returned to the commissioner in accordance with this chapter. This subsection only applies to applications for absentee ballots from a single health care facility or hospital if there are no more than two applications from that facility or hospital.

4. The commissioner shall mail an absentee ballot to a registered voter who has applied for an absentee ballot and who is a patient or resident of a hospital or health care facility outside the county in which the voter is registered to vote.

5. If the registered voter becomes a patient or resident of a hospital or health care facility outside the county where the voter is registered to vote within three days before the date of any election or on election day, the voter may designate a person to deliver and return the absentee ballot. The designee may be any person the voter chooses except that no candidate for any office to be voted upon for the election for which the ballot is requested may deliver a ballot under this subsection. The request for an absentee ballot may be made by telephone to the office of the commissioner not later than four hours before the close of the polls. If the requester is found to be a registered voter of that county, the ballot shall be delivered by mail or by the person designated by the voter. An application form shall be included with the absentee ballot and shall be signed by the voter and returned with the ballot.

Absentee ballots voted under this subsection shall be delivered to the commissioner no later than the time the polls are closed on election day. If the ballot is returned by mail the carrier envelope must be received by the time the polls close, or clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner no later than the time established for the canvass by the board of supervisors for that election.

[C71, 73, 75, §53.17; C77, 79, 81, §53.22; 81 Acts, ch 34, §37]

84 Acts, ch 1291, §18, 19; 85 Acts, ch 67, §8; 87 Acts, ch 221, §27, 28; 88 Acts, ch 1119, §28; 93 Acts, ch 143, §34; 94 Acts, ch 1169, §65; 94 Acts, ch 1180, §23, 24

53.23 Special precinct election board.

1. The election board of the absentee ballot and special voters precinct shall be appointed by the commissioner in the manner prescribed by sections 49.12 and 49.13, except that the number of precinct election officials appointed to the board shall be sufficient to complete the counting of absentee ballots by ten p.m. on election day.

2. The board's powers and duties shall be the same as those provided in chapter 50 for precinct election officials in regular precinct polling places. However, the election board of the special precinct shall receive from the commissioner and count all absentee ballots for all precincts in the county; when two or more political subdivisions in the county hold elections simultaneously the special precinct election board shall count absentee ballots cast in all of the elections so held. The tally list shall be recorded on forms prescribed by the state commissioner.

3. The commissioner shall set the convening time for the board, allowing a reasonable amount of time to complete counting all absentee ballots by ten p.m. on election day. The commissioner may direct the board to meet on the day before the election solely for the purpose of reviewing the absentee voters' affidavits appearing on the sealed ballot envelopes. If in the commissioner's judgment this procedure is necessary due to the number of absentee ballots received, the members of the board may open the sealed ballot envelopes and remove the secrecy envelope containing the ballot, but under no circumstances shall a secrecy envelope be opened before the board convenes on election day. If the ballot envelopes are opened before election day, two observers, one appointed by each of the two political parties referred to in section 49.13, subsection 2, shall witness the proceedings.

If the board finds any ballot not enclosed in a se-

crecy envelope, the two special precinct election officials, one from each of the two political parties referred to in section 49.13, subsection 2, shall place the ballot in a secrecy envelope. No one shall examine the ballot. Each of the special precinct election officials shall sign the secrecy envelope.

4. The room where members of the special precinct election board are engaged in counting absentee ballots during the hours the polls are open shall be policed so as to prevent any person other than those whose presence is authorized by this subsection from obtaining information about the progress of the count. The only persons who may be admitted to that room are the members of the board, one challenger representing each political party, one observer representing any nonparty political organization or any candidate nominated by petition pursuant to chapter 45 or any other nonpartisan candidate in a city or school election appearing on the ballot of the election in progress, one observer representing persons supporting a public measure appearing on the ballot and one observer representing persons opposed to such measure, and the commissioner or the commissioner's designee. It shall be unlawful for any of these persons to communicate or attempt to communicate, directly or indirectly, information regarding the progress of the count at any time before the polls are closed.

5. The special precinct election board shall preserve the secrecy of all absentee and special ballots. After the affidavits on the envelopes have been reviewed and the qualifications of the persons casting the ballots have been determined, those that have been accepted for counting shall be opened. The ballots shall be removed from the affidavit envelopes without being unfolded or examined, and then shall be thoroughly intermingled, after which they shall be unfolded and tabulated. If secrecy folders or envelopes are used with special paper ballots, the ballots shall be removed from the secrecy folders after the ballots have been intermingled.

6. The special precinct election board shall not release the results of its tabulation on election day until all of the ballots it is required to count on that day have been counted, nor release the tabulation of challenged ballots accepted and counted under chapter 50 until that count has been completed.

[SS15, §1137-j; C24, 27, 31, 35, 39, §**949;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.23]

90 Acts, ch 1238, §30; 92 Acts, ch 1163, §13; 95 Acts, ch 189, §16; 97 Acts, ch 170, §73

53.24 Counties using voting machines.

In counties which provide the special precinct election board with voting machines, the absentee ballot envelopes shall be opened by the board and the ballots shall, without being unfolded, be thoroughly intermingled, after which they shall be unfolded and, under the personal supervision of precinct election officials of each of the political parties, be registered on voting machines the same as if the absent voter had been present and voted in person, except that a tally of the write-in votes may be kept in the tally list rather than on the machine. When two or more political subdivisions in the county are holding separate elections simultaneously, the commissioner may arrange the machine so that the absentee and special ballots for more than one election may be recorded on the same machine.

[C24, 27, 31, 35, 39, §**950;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.24]

90 Acts, ch 1238, §31

53.25 Rejecting ballot.

In case the absentee voter's affidavit is found to be insufficient, or that the applicant is not a duly registered voter in such precinct, or that the ballot envelope is open, or has been opened and resealed, or that the ballot envelope contains more than one ballot of any one kind, or that said voter has voted in person, such vote shall not be accepted or counted.

If the absentee ballot is rejected prior to the opening of the ballot envelope, the voter casting the ballot shall be notified by a precinct election official by the time the canvass is completed of the reason for the rejection on a form prescribed by the state commissioner of elections.

[SS15, §1137-j; C24, 27, 31, 35, 39, §**951;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.25]

94 Acts, ch 1169, §64

53.26 Rejected ballots — how handled.

Every ballot not counted shall be endorsed on the back thereof "Rejected because (giving reason therefor)." All rejected ballots shall be enclosed and securely sealed in an envelope on which the precinct election officials shall endorse "Defective ballots", with a statement of the precinct in which and the date of the election at which they were cast, signed by the precinct election officials and returned to the same officer and in the same manner as by law provided for the return and preservation of official ballots voted at such election.

[SS15, §1137-j; C24, 27, 31, 35, 39, §**952;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.26]

Return of rejected ballots, §50.5

53.27 Rejection of ballot — return of envelope.

If the ballot is rejected, said ballot envelope, with the affidavit of the voter endorsed thereon, shall be returned with said rejected ballot in the envelope endorsed *"Defective ballots"*.

[C24, 27, 31, 35, 39, §**953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.27]

53.28 and 53.29 Repealed by 73 Acts, ch 136, § 401.

53.30 Ballots, ballot envelopes, and other information preserved.

At the conclusion of each meeting of the absentee and special voter's precinct board, the board shall securely seal all ballots counted by them in the manner prescribed in section 50.12. The ballot envelopes, including the envelope having the registered voter's affidavit on it, the return carrier envelope, and secrecy envelope bearing the signatures of precinct election officials, as required by section 53.23, shall be preserved. All applications for absentee ballots, ballots rejected without being opened, absentee ballot logs, and any other documents pertaining to the absentee ballot process shall be preserved until such time as the documents may be destroyed pursuant to section 50.19.

[C24, 27, 31, 35, 39, §**956;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.30]

95 Acts, ch 67, §53; 2002 Acts, ch 1134, §69, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

53.31 Challenges.

Any person qualified to vote at the election in progress may challenge the qualifications of a person casting an absentee ballot by submitting a written challenge to the commissioner no later than five p.m. on the day before the election. It is the duty of the special precinct officials to challenge the absentee ballot of any person whom the official knows or suspects is not duly qualified. Challenges by members of the special precinct election board or observers present pursuant to section 53.23 may be made at any time before the close of the polls on election day. The challenge shall state the reasons for which the challenge is being submitted and shall be signed by the challenger. When a challenge is received the absentee ballot shall be set aside for consideration by the special precinct election board when it meets as required by section 50.22.

The commissioner shall immediately send a written notice to the elector whose qualifications have been challenged. The notice shall be sent to the address at which the challenged elector is registered to vote. If the ballot was mailed to the challenged elector, the notice shall also be sent to the address to which the ballot was mailed if it is different from the elector's registration address. The notice shall advise the elector of the reason for the challenge, the date and time that the special precinct election board will reconvene to determine challenges, and that the elector has the right to submit written evidence of the elector's qualifications. The notice shall include the telephone number of the commissioner's office. If the commissioner has access to a facsimile machine, the notice shall include the telephone number of the facsimile machine. As far as possible, other procedures for considering special ballots shall be followed.

[SS15, §1137-k; C24, 27, 31, 35, 39, §**957;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.31]

93 Acts, ch 143, §35

Challenges, §49.79 – 49.81

53.32 Ballot of deceased voter.

When it shall be made to appear by due proof to the precinct election officials that any elector, who has so marked and forwarded a ballot, has died before the ballot envelope is opened, then the ballot of such deceased voter shall be endorsed, *"Rejected because voter is dead"*, and be returned to the commissioner; but the casting of the ballot of a deceased voter shall not invalidate the election.

[SS15, §1137-l; C24, 27, 31, 35, 39, §**958;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.32]

53.33 Repealed by 73 Acts, ch 136, § 401.

53.34 False affidavit.

Any person who shall willfully swear falsely to any of such affidavits shall be guilty of a fraudulent practice.

[SS15, §1137-n; C24, 27, 31, 35, 39, §**960;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.34]

53.35 Refusal to return ballot.

It is unlawful for any person, having procured an official ballot or ballots, to willfully neglect or refuse to cast or return the same in the manner provided. Any person who applies for a ballot and willfully neglects or refuses to return the same shall be deemed to have committed an offense in the county to which such ballot was returnable.

[SS15, §1137-n; C24, 27, 31, 35, 39, §**961;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.35]

2002 Acts, ch 1071, §12

Section amended

53.35A Failure to return ballot.

It is unlawful for any person designated by the commissioner, or by the elector casting the absentee ballot, to deliver the sealed envelope containing the absentee ballot, to willfully fail to return the ballot to the commissioner or the commissioner's designee.

93 Acts, ch 143, §36; 2002 Acts, ch 1071, §13

Section amended

53.36 Offenses by officers. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.2 through 39A.5.

ABSENT VOTING BY ARMED FORCES

53.37 Definitions.

This division is intended to implement the federal Uniform and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff et seq.

The term *"armed forces of the United States"*, as

used in this division, shall mean the army, navy, marine corps, coast guard, and air force of the United States.

For the purpose of absentee voting only, there shall be included in the term *"armed forces of the United States"* the following:

1. Spouses and dependents of members of the armed forces while in active service.

2. Members of the merchant marine of the United States and their spouses and dependents.

3. Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

4. Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents.

5. Citizens of the United States who do not fall under any of the categories described in subsections 1 to 4, but who are entitled to register and vote pursuant to section 48A.5, subsection 4.

For the purposes of this division, *"qualified voter"* means a person who is included within the term *"armed forces of the United States"* as described in this section, who would be qualified to register to vote under section 48A.5, subsection 2, except for residency, and who is not disqualified from registering to vote and voting under section 48A.6.

[C54, 58, 62, 66, §53.37; C71, 73, 75, 77, 79, §53.37, 53.49; C81, §53.37]

94 Acts, ch 1180, §25; 95 Acts, ch 67, §8; 2001 Acts, ch 56, §4

53.38 What constitutes registration.

Whenever a ballot is requested pursuant to section 53.39 or 53.45 on behalf of a voter in the armed forces of the United States, the affidavit upon the ballot envelope of such voter, if the voter is found to be an eligible elector of the county to which the ballot is submitted, shall constitute a sufficient registration under chapter 48A. A completed federal postcard registration and federal absentee ballot request form submitted by such eligible elector shall also constitute a sufficient registration under chapter 48A. The commissioner shall place the voter's name on the registration record as a registered voter if it does not already appear there.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.38]

88 Acts, ch 1119, §29; 94 Acts, ch 1169, §55; 2002 Acts, ch 1134, §70, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

53.39 Request for ballot — when available.

Section 53.2 does not apply in the case of a qualified voter of the state of Iowa serving in the armed forces of the United States. In any such case an application for ballot as provided for in that section is not required and an absent voter's ballot shall be sent or made available to any such qualified voter upon a request as provided in this division.

All official ballots to be voted by qualified absent voters in the armed forces of the United States at the primary election and the general election shall be printed prior to forty days before the respective elections and shall be available for transmittal to such qualified voters in the armed forces of the United States at least forty days before the respective elections. The provisions of this chapter apply to absent voting by qualified voters in the armed forces of the United States except as modified by the provisions of this division.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.39]

89 Acts, ch 136, §54; 94 Acts, ch 1169, §64; 94 Acts, ch 1180, §26; 95 Acts, ch 67, §9

53.40 Request requirements — transmission of ballot.

A request in writing for a ballot may be made by any member of the armed forces of the United States who is or will be a qualified voter on the day of the election at which the ballot is to be cast, at any time before the election. Any member of the armed forces of the United States may request ballots for all elections to be held within a calendar year. The request may be made by using the federal postcard application form and indicating that the applicant wishes to receive ballots for all elections as permitted by state law. The county commissioner shall send the applicant a ballot for each election held during the calendar year in which the application is received. The commissioner shall forward a copy of the absentee ballot request to other commissioners who are responsible under section 47.2, subsection 2, for conducting elections in which the applicant is eligible to vote.

Unless the request specifies otherwise, a request for the primary election shall also be considered a request for the general election. In the case of the general election, request may be made not more than seventy days before the election, for and on behalf of a voter in the armed forces of the United States by a spouse, parent, parent-in-law, adult brother, adult sister, or adult child of the voter, residing in the county of the voter's residence. However, a request made by other than the voter may be required to be made on forms prescribed by the state commissioner.

A request shall show the residence (including street address, if any) of the voter, the age of the voter, and length of residence in the city or township, county and state, and shall designate the address to which the ballot is to be sent, and in the case of the primary election, the party affiliation

of such voter. Such request shall be made to the commissioner of the county of the voter's residence, provided that if the request is made by the voter to any elective state, city or county official, the said official shall forward it to the commissioner of the county of the voter's residence, and such request so forwarded shall have the same force and effect as if made direct to the commissioner by the voter.

The commissioner shall immediately on the fortieth day prior to the particular election transmit ballots to the voter by mail or otherwise, postage prepaid, as directed by the state commissioner, requests for which are in the commissioner's hands at that time, and thereafter so transmit ballots immediately upon receipt of requests. A request for ballot for the primary election which does not state the party affiliation of the voter making the request is void and of no effect. A request which does not show that the person for whom a ballot is requested will be a qualified voter in the precinct in which the ballot is to be cast on the day of the election for which the ballot is requested, shall not be honored. However, a request which states the age and the city, including street address, if any, or township, and county where the voter resides, and which shows a sufficient period of residence, is sufficient to show that the person is a qualified voter. A request by the voter containing substantially the information required is sufficient.

If the affidavit on the ballot envelope shows that the affiant is not a qualified voter on the day of the election at which the ballot is offered for voting, the envelope shall not be opened, but the envelope and ballot contained in the envelope shall be preserved and returned by the precinct election officials to the commissioner, who shall preserve them for the period of time and under the conditions provided for in sections 50.12 through 50.15 and section 50.19.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.40]

84 Acts, ch 1219, §3; 87 Acts, ch 221, §18; 89 Acts, ch 136, §55; 94 Acts, ch 1180, §27; 2002 Acts, ch 1134, §71, 115

2002 amendment to unnumbered paragraph 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 amended

53.41 Records by commissioner — excess requests or ballots.

The commissioner of each county shall establish and maintain a record of all requests for ballots which are made, and of all ballots transmitted, and the manner of transmittal, from and received in the commissioner's office under the provisions of this division. If more than one request for absent voter's ballot for a particular election is made to the commissioner by or on behalf of a voter in the armed forces of the United States, the request first received shall be honored, except that if one of the requests is made by the voter, and a request on the voter's behalf has not been previously honored, the request of the voter shall be honored in preference to a request made on the voter's behalf by another. Not more than one ballot shall be transmitted by the commissioner to any voter for a particular election. If the commissioner receives more than one absent voter's ballot, provided for by this division, from or purporting to be from any one voter for a particular election, all of the ballots so received from or purporting to be from such voter are void, and the commissioner shall not deliver any of the ballots to the precinct election officials, but shall retain them in the commissioner's office, and preserve them for the period and under the conditions provided for in sections 50.12 through 50.15 and section 50.19.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.41]

89 Acts, ch 136, §56

53.42 Voting in person in commissioner's office.

Notwithstanding the provision as to time found in section 53.10, any qualified voter in the armed forces of the United States may personally appear in the office of the commissioner of the county of the voter's residence and there vote an absent voter's ballot at any time not earlier than forty days before the primary or general election, as the case may be.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.42]

53.43 Identification on envelope.

The envelopes used in connection with voting by absent voter's ballot by voters who are members of the armed forces of the United States, shall have stamped or printed on them the words *"Armed Forces or Overseas Ballot"* and a designation of the election at which the ballot is to be cast.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.43]

86 Acts, ch 1224, §31, 40; 94 Acts, ch 1180, §28

53.44 Affidavit to be signed and returned.

The affidavit on the envelope used in connection with voting by absentee ballot under this division by members of the armed forces of the United States need not be notarized or witnessed, but the affidavit on the ballot envelope shall be completed and signed by the voter.

Absentee ballots issued under this division shall be returned in the same manner and within the same time limits specified in section 53.17.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.44]

84 Acts, ch 1291, §20; 89 Acts, ch 136, §57

53.45 Special absentee ballot.

1. As provided in this section, the commissioner shall provide special absentee ballots to be used for state general elections. A special absentee ballot shall only be provided to an eligible elector who completes an application stating both of the following to the best of the eligible elector's belief:

a. The eligible elector will be residing or stationed or working outside the continental United States.

b. The eligible elector will be unable to vote and return a regular absentee ballot by normal mail delivery within the period provided for regular absentee ballots.

The application for a special absentee ballot shall not be filed earlier than ninety days prior to the general election. The special absentee ballot shall list the offices and measures, if known, scheduled to appear on the general election ballot. The eligible elector may use the special absentee ballot to write in the name of any eligible candidate for each office and may vote on any measure.

2. With any special absentee ballot issued under this section, the commissioner shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that general election and a list of any measures that have been referred to the ballot before the time of the application.

3. Write-in votes on special absentee ballots shall be counted in the same manner provided by law for the counting of other write-in votes. The commissioner shall process and canvass the special absentee ballots provided under this section in the same manner as other absentee ballots.

4. Notwithstanding the provisions of section 53.49, an eligible elector who requests a special absentee ballot under this section may also make application for an absentee ballot under section 53.2 or an armed forces absentee ballot under section 53.40. If the regular absentee or armed forces absentee ballot is properly voted and returned, the special absentee ballot is void and the commissioner shall reject it in whole when special absentee ballots are canvassed.

87 Acts, ch 221, §29; 88 Acts, ch 1119, §30

53.46 Powers and duties of state commissioner.

The state commissioner is authorized and empowered:

1. To make rules for the purpose of carrying out the provisions and intent of this division;

2. To prescribe and direct the preparation of specially printed ballots, envelopes and other papers of different size and weight to be used in connection with absent voting by voters in the armed forces of the United States, if, in the discretion of the state commissioner, the state commissioner shall determine that such a special ballot and other papers will facilitate voting by such voters; provided that the content of any such specially printed matter shall be the same as that used for absent voters generally in the particular precinct in which said armed forces ballot is to be cast, and provided further that such ballots, envelopes and other papers shall be substantially uniform in size and weight throughout the state; and provided further that the provisions of section 49.56, establishing the maximum cost of printing ballots, shall apply to the cost of printing any such specially printed ballots by the several counties;

3. To prescribe any forms that are not otherwise prescribed by law, and which in the judgment of the state commissioner are necessary to facilitate the carrying out of the purposes and intent of this division;

4. To arrange for special transportation of ballots in co-operation with the government of the United States through any authorized instrumentality thereof and to that end the state commissioner is empowered to direct the commissioners of the several counties of the state to send ballots to voters in the armed forces of the United States other than in the usual course of mail;

5. To employ such clerical assistance as the state commissioner may require in carrying out the state commissioner's functions, to purchase and requisition any office supplies the state commissioner may require, and certify for payment the expenses of carrying out the state commissioner's functions under this division;

6. To call upon any department or division of the state government for information and assistance in connection with carrying out the provisions of this division;

7. To co-operate with any authorized departments, agencies and instrumentalities of the government of the United States in effecting the intent and purposes of this division.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.46]

53.47 Materials furnished by department of general services.

In order to establish uniformity in size, weight and other characteristics of the ballot and facilitate its distribution and return, the department of general services shall upon direction of the state commissioner purchase any material needed for any special ballots, envelopes and other printed matter, and sell any such materials to the several counties of the state at cost plus handling and transportation costs.

There is hereby appropriated to the department of general services from the general fund of the state such sums as may be necessary to purchase any materials provided for herein. The proceeds from sale of such materials to counties shall be turned into the general fund of the state upon receipt of same by the department of general services.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.47]

53.48 Postage on ballots.

In the event the government of the United States or any branch, department, agency or other instrumentality thereof shall make provision for sending of any voting matter provided for in this division through the mails postage free, or otherwise, the election officials of the state of Iowa and

of the several counties of the state are authorized to make use thereof under the direction of the state commissioner.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.48]

53.49 Applicable to armed forces and other citizens.

The provisions of this division as to absent voting shall apply only to absent voters in the armed forces of the United States as defined for the purpose of absentee voting in section 53.37. The provisions of sections 53.1 through 53.35 shall apply to all other voters not members of the armed forces of the United States.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.49]

86 Acts, ch 1224, §32; 87 Acts, ch 221, §30; 2002 Acts, ch 1071, §14

Section amended

53.50 Appropriation.

There is hereby appropriated to the state commissioner from the general fund of the state such sums as are necessary to pay the state commissioner's expenses and perform the state commissioner's functions under this division. Warrants shall be drawn by the director of revenue and finance upon certification by the state commissioner or the state commissioner's deputy.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.50]

Appropriation limited for fiscal years beginning July 1, 1993; see §8.59

53.51 Rule of construction.

This division shall be liberally construed in order to provide means and opportunity for qualified voters of the state of Iowa serving in the armed forces of the United States to vote.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.51]

94 Acts, ch 1180, §29

53.52 Inconsistent provisions — rule.

The provision or provisions of this division which are inconsistent with any provision or provisions of any other existing statute or any part of any such other existing statute, shall prevail. Likewise, the provision or provisions of any other existing statute or any part of any other existing statute which is not inconsistent with this division, shall prevail.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §53.52]

53.53 Federal write-in ballots.

Upon receipt of an official federal write-in ballot, the commissioner shall examine the voter's written declarations on the envelope. If it appears that the voter is eligible to vote under the provisions of this division, has applied in a timely fashion for an absentee ballot, and has complied with all requirements for the federal write-in ballot, then the federal write-in ballot is valid unless the Iowa absentee ballot is received in time to be counted.

The voter's declaration or affirmation on the federal write-in ballot constitutes a sufficient registration under the provisions of chapter 48A and the commissioner shall place the voter's name on the registration record as a registered voter, if the voter's name does not already appear on the registration record. No witness to the oath is necessary.

Federal write-in absentee ballots may be used in primary and general elections, and in special elections held pursuant to section 69.14. The federal write-in absentee ballot transmission envelope may also serve as an application for voter registration if the information submitted is sufficient to register the person to vote and the applicant is otherwise eligible to vote under the provisions of this division.

The federal write-in ballot shall not be counted if any of the following apply:

1. The ballot was submitted from within the United States.
2. The voter's application for a regular absentee ballot was received by the commissioner less than thirty days prior to the election.
3. The voter's completed regular or special Iowa absentee ballot was received by the deadline for return of absentee ballots established in section 53.17.
4. The voter's federal write-in ballot was received after the deadline for return of absentee ballots established in section 53.17.

88 Acts, ch 1119, §31; 94 Acts, ch 1169, §56; 94 Acts, ch 1180, §30

CHAPTER 54

PRESIDENTIAL ELECTORS

54.1 Time of election — qualifications.
54.2 How elected.
54.3 Canvass.
54.4 Nonparty organizations.
54.5 Presidential nominees.
54.6 Certificate.
54.7 Meeting — certificate.
54.8 Certificate of governor.
54.9 Compensation.

54.1 Time of election — qualifications.

At the general election in the years of the presidential election, or at such other times as the Congress of the United States may direct, there shall be elected by the voters of the state one person from each congressional district into which the state is divided, and two from the state at large, as electors of president and vice president, no one of whom shall be a person holding the office of senator or representative in Congress, or any office of trust or profit under the United States.

[C51, §301; R60, §535; C73, §659; C97, §1173; S13, §1173; C24, 27, 31, 35, 39, §**963;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §54.1]

54.2 How elected.

A vote for the candidates of any political party, or group of petitioners, for president and vice president of the United States, shall be conclusively deemed to be a vote for each candidate nominated in each district and in the state at large by said party, or group of petitioners, for presidential electors and shall be so counted and recorded for such electors.

[C24, 27, 31, 35, 39, §**964;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §54.2]

54.3 Canvass.

The canvass of the votes for candidates for president and vice president of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party or group of petitioners, respectively, and the certificate of such election made by the governor shall be in accord with such return.

[C24, 27, 31, 35, 39, §**965;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §54.3]

54.4 Nonparty organizations.

The term *"group of petitioners"* as used in this chapter shall embrace an organization which is not a political party as defined by law.

[C24, 27, 31, 35, 39, §**966;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §54.4]

Nonparty organizations, see chapter 44
Political party defined, §43.2
See also chapter 45

54.5 Presidential nominees.

The names of the candidates for president and vice president of a political party as defined in the law relating to primary elections, shall, by five o'clock p.m. on the eighty-first day before the election, be certified to the state commissioner by the chairperson and secretary of the state central committee of the party.

However, if the national nominating convention of a political party adjourns later than eighty-nine days before the general election the certificate showing the names of that party's candidates for president and vice president shall be filed within five days after adjournment.

As an alternative to the certificate by the state central committee, the certificate of nomination issued by the political party's national nominating convention may be used to certify the names of the party's candidates for president and vice president. If certificates of nomination are received from both the state central committee and the national nominating convention of a political party, and there are differences between the two certificates, the certificate filed by the state central committee shall prevail.

The state central committee shall also file a list of the names and addresses of the party's presidential electors, one from each congressional district and two from the state at large, not later than five o'clock p.m. on the eighty-first day before the general election.

If a candidate for the office of president or vice president of the United States withdraws, dies, or is otherwise removed from the ballot before the general election, another candidate may be substituted. The substitution shall be made by the state central committee of the political party or by the governing committee of the national party. If there are differences, the substitution made by the state central committee shall prevail. A nonparty political organization which has filed the names of party officers and central committee members with the secretary of state before the close of the filing period for the general election pursuant to section 44.17 may also make substitutions. A substitution must be filed no later than seventy-four days before the election.

[C24, 27, 31, 35, 39, §**967;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §54.5; 81 Acts, ch 34, §38]
89 Acts, ch 136, §58; 97 Acts, ch 170, §74
"Political party" defined, §43.2

54.6 Certificate.

At the expiration of ten days from the completed canvass, the governor, under the governor's hand and the seal of state, shall issue to each presidential elector declared elected a certificate of election, the same in substance as required in other cases, and shall notify the elector to attend at the seat of government on the first Monday after the second Wednesday in December next following election, reporting the elector's attendance to the governor. If there be a contest of the election, no certificate shall issue until it is determined.

[C51, §308; R60, §542; C73, §665; C97, §1168; C24, 27, 31, 35, 39, §**968;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §54.6]
Certificate of election, §50.41

54.7 Meeting — certificate.

The presidential electors shall meet in the capitol, at the seat of government, on the first Monday after the second Wednesday in December next following their election. If, at the time of such meeting, any elector for any cause is absent, those pre-

sent shall at once proceed to elect, from the citizens of the state, a substitute elector or electors, and certify the choice so made to the governor, and the governor shall immediately cause the person or persons so selected to be notified thereof.

[C51, §308 – 310; R60, §542 – 544; C73, §665 – 667; C97, §1174; C24, 27, 31, 35, 39, §**969;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §54.7]

54.8 Certificate of governor.

When so met, the said electors shall proceed, in the manner pointed out by law, with the election, and the governor shall duly certify the result thereof, under the seal of the state, to the United States secretary of state, and as required by Act of Congress relating to such elections.

[C51, §311; R60, §545; C73, §668; C97, §1175; C24, 27, 31, 35, 39, §**970;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §54.8]

54.9 Compensation.

The electors shall each receive a compensation of five dollars for every day's attendance, and the same mileage as members of the general assembly which shall be paid from funds not otherwise appropriated from the general fund of the state.

[C51, §312; R60, §546; C73, §669; C97, §1176; C24, 27, 31, 35, 39, §**971;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §54.9]

CHAPTER 55

LEAVE OF ABSENCE FOR CANDIDACY AND PUBLIC SERVICE

55.1 Leave of absence for service in elective office.
55.2 Leave of absence for volunteer emergency service.
55.3 Service on boards, commissions, task forces, and committees.
55.4 Leave of absence for public employee candidacy.
55.5 Penalties.

55.1 Leave of absence for service in elective office.

A person who is elected to a municipal, county, state, or federal office shall, upon written application to the employer of that person, be granted a leave of absence from regular employment to serve in that office except where prohibited by the federal law. The leave of absence may be granted without pay and shall be granted without loss of net credited service and benefits earned. This section shall not be construed to require an employer to pay pension, health or other benefits during the leave of absence to an employee taking a leave of absence under this section.

A leave of absence for a person regularly employed pursuant to chapter 19A is subject to section 19A.18.

An employee shall not be prohibited from returning to regular employment before the period expires for which the leave of absence was granted. This section applies only to employers which employ twenty or more full-time persons. The leave of absence granted by this section need not exceed six years. The leave of absence granted by this section does not apply to an elective office held by the employee prior to the election.

Temporary substitute teachers and teachers hired on a temporary basis to replace teachers who have been granted leaves of absence pursuant to this section are not subject to the provisions of chapter 279 relating to the termination of continuing contracts.

84 Acts, ch 1233, §1

55.2 Leave of absence for volunteer emergency service.

All officers and employees of the state, other than employees employed temporarily for six months or less or those employees considered essential personnel, who are volunteer fire fighters or emergency medical service personnel shall be entitled to a leave of absence from such civil employment for the period of an emergency response without loss of status or efficiency rating, and without loss of pay during such leave of absence. Such leave of absence shall in no way affect the employee's rights to action, sick leave, bonus, or other employment benefits relating to the employee's particular employment.

2000 Acts, ch 1117, §3

55.3 Service on boards, commissions, task forces, and committees.

For the purpose of this section, *"state board"* includes any board, commission, committee, council, or task force of the state government created by the constitution, or by statute, resolution of the general assembly, motion of the legislative coun-

cil, executive order of the governor, or supreme court order, but does not include any such state board, commission, committee, council, or task force for which an annual salary is provided for its members. A person who is appointed to serve on a state board, upon written application to the person's employer, shall be granted leaves of absence from regular employment to attend the meetings of the state board, except if leaves of absence are prohibited by federal law. The leaves of absence may be granted without pay and shall be granted without loss of net credited service and benefits earned. This section does not apply if the employer employs less than twenty full-time employees.

86 Acts, ch 1245, §2061

55.4 Leave of absence for public employee candidacy.

Any public employee who becomes a candidate for any elective public office shall, upon request of the employee and commencing any time within thirty days prior to a contested primary, special, or general election and continuing until after the day following that election, automatically be given a period of leave. If the employee is under chapter 19A, the employee may choose to use accrued vacation leave, accrued compensatory leave or leave without pay to cover these periods. The appointing authority may authorize other employees to use accrued vacation leave or accrued compensatory leave instead of leave without pay to cover these periods. An employee who is a candidate for any elective public office shall not campaign while on duty as an employee.

This section does not apply to employees of the federal government or to a public employee whose position is financed by federal funds if the application of this section would be contrary to federal law or result in the loss of the federal funds.

86 Acts, ch 1021, §2

55.5 Penalties.

A person violating this chapter is guilty of a simple misdemeanor. Each day in which the violation continues is a separate offense.

84 Acts, ch 1233, §2
C85, §55.2
C87, §55.5

CHAPTER 56

CAMPAIGN FINANCE

Chapter applicable to primary elections, §43.5
Definitions in §39.3 applicable to this chapter
See also §68B.32 et seq. for establishment and duties of ethics and campaign disclosure board

56.1 Citation.

CAMPAIGN FINANCE DISCLOSURE

56.2 Definitions.
56.3 Committee treasurer and chairperson — duties.
56.3A Funds from unknown source — escheat.
56.4 Reports filed with board.
56.5 Organization statement.
56.5A Candidate's committee.
56.6 Disclosure reports.
56.7 Reports signed.
56.8 Commission — duties. Transferred to §56.10, subsections 6 – 8.
56.9 Campaign finance disclosure commission — created. Repealed by 93 Acts, ch 163, §36.
56.10 Duties of commission. Repealed by 93 Acts, ch 163, §36.
56.10A Reporting of honoraria. Repealed by 92 Acts, ch 1228, §39; 92 Acts, 1st Ex, ch 1002, §2.
56.11 Complaints — procedure. Repealed by 93 Acts, ch 142, §13 and 93 Acts, ch 163, §36.
56.12 Contribution in name of another — prohibited.
56.12A Use of public moneys for political purposes.
56.13 Independent expenditures.
56.14 Political material — yard signs.
56.15 Financial institution, insurance company, and corporation restrictions.
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INCOME TAX CHECKOFF

56.18 Checkoff — income tax.
56.19 Fund created.
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56.27 Funds from unknown source — escheat. Transferred to §56.3A.
56.28 Candidate's committee. Transferred to §56.5A.
56.29 Insurance, savings and loan, bank, and corporation restrictions. Transferred to §56.15.

56.30 Forms mailed. Transferred to §56.10, subsection 9.
56.31 through 56.39 Reserved.

CAMPAIGN FUNDS AND PROPERTY

56.40 Campaign funds.
56.41 Uses of campaign funds.
56.42 Transfer of campaign funds.
56.43 Campaign property.
56.44 and 56.45 Reserved.

OFFICEHOLDERS' ACCOUNTS

56.46 Certain accounts by officeholders prohibited.

56.1 Citation.

This chapter may be cited as the *"Campaign Disclosure – Income Tax Checkoff Act"*.

[C75, 77, 79, 81, §56.1]

CAMPAIGN FINANCE DISCLOSURE

56.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Ballot issue"* means a question, other than the nomination or election of a candidate to a public office, which has been approved by a political subdivision or the general assembly or is required by law to be placed before the voters of the political subdivision by a commissioner of elections, or to be placed before the voters by the state commissioner of elections.

2. *"Board"* means the Iowa ethics and campaign disclosure board established under section 68B.32.

3. *"Campaign function"* means any meeting related to a candidate's campaign for election.

4. *"Candidate"* means any individual who has taken affirmative action to seek nomination or election to a public office and shall also include any judge standing for retention in a judicial election.

5. *"Candidate's committee"* means the committee designated by the candidate for a state, county, city, or school office to receive contributions in excess of seven hundred fifty dollars in the aggregate, expend funds in excess of seven hundred fifty dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of seven hundred fifty dollars in the aggregate in any calendar year.

6. *"Clearly identified"* means that a communication contains an unambiguous reference to a particular candidate or ballot issue, including but not limited to one or more of the following:

a. Use of the name of the candidate or ballot issue.

b. Use of a photograph or drawing of the candidate, or the use of a particular symbol associated with a specific ballot issue.

c. Use of a candidate's initials, nickname, office, or status as a candidate, or use of acronym, popular name, or characterization of a ballot issue.

7. *"Commissioner"* means the county auditor of each county, who is designated as the county commissioner of elections pursuant to section 47.2.

8. *"Committee"* includes a political committee and a candidate's committee.

9. *"Consultant"* means a person who provides or procures services for or on behalf of a candidate including but not limited to consulting, public relations, advertising, fundraising, polling, managing or organizing services.

10. *"Contribution"* means:

a. A gift, loan, advance, deposit, rebate, refund, or transfer of money or a gift in kind.

b. The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee for any such purpose.

"Contribution" shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate's committee or political committee or a state or county statutory political committee except when organized or provided on a collective basis by a business, trade association, labor union, or any other organized group or association. *"Contribution"* shall not include refreshments served at a campaign function so long as such refreshments do not exceed fifty dollars in value or transportation provided to a candidate so long as its value computed at a rate of twenty cents per mile does not exceed one hundred dollars in value in any one reporting period. *"Contribution"* shall not include something provided to a candidate for the candidate's personal consumption or use and not intended for or on behalf of the candidate's committee.

11. *"County office"* includes the office of drainage district trustee.

12. *"County statutory political committee"* means a committee as defined in section 43.100.

13. *"Disclosure report"* means a statement of contributions received, expenditures made, and indebtedness incurred on forms prescribed by rules adopted by the board in accordance with chapter 17A.

14. *"Express advocacy"* or to *"expressly advocate"* means communication that can be characterized according to at least one of the following de-

scriptions:

a. The communication is political speech made in the form of a contribution.

b. In advocating the election or defeat of one or more clearly identified candidates or the passage or defeat of one or more clearly identified ballot issues, the communication includes explicit words that unambiguously indicate that the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue.

15. *"Fundraising event"* means any campaign function to which admission is charged or at which goods or services are sold.

16. *"National political party"* means a party which meets the definition of a political party established for this state by section 43.2, and which also meets the statutory definition of the term "political party" or a term of like import in at least twenty-five other states of the United States.

17. *"Person"* means, without limitation, any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

18. *"Political committee"* means either of the following:

a. A committee, but not a candidate's committee, that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

b. An association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

19. *"Political purpose"* or *"political purposes"* means the express advocacy of a candidate or ballot issue.

20. *"Public office"* means any state, county, city, or school office filled by election.

21. *"State income tax liability"* means the state individual income tax imposed under section 422.5 reduced by the sum of the deductions from the computed tax as provided under section 422.12.

22. *"State statutory political committee"* means a committee as defined in section 43.111.

[C75, 77, 79, 81, §56.2; 81 Acts, ch 35, §1, 2]

83 Acts, ch 139, §2, 14; 86 Acts, ch 1023, §1; 87 Acts, ch 112, §1, 2; 91 Acts, ch 226, §1; 92 Acts, ch 1228, §22 – 24; 93 Acts, ch 142, §1 – 3; 93 Acts, ch 163, §28 – 30, 38; 94 Acts, ch 1023, §80; 94 Acts, ch 1180, §31, 32; 95 Acts, ch 198, §1, 2; 99 Acts, ch 136, §1, 2, 17; 2002 Acts, ch 1073, §1, 2, 11; 2002 Acts, ch 1119, §124

"State commissioner" defined, §39.3
Subsection 5 amended
Subsection 14, paragraph c stricken
Subsection 18 amended

56.3 Committee treasurer and chairperson — duties.

1. Every candidate's committee shall appoint a treasurer who shall be an Iowa resident who has reached the age of majority. Every political committee shall appoint both a treasurer and a chairperson, each of whom shall have reached the age of majority. Every candidate's committee shall maintain all of the committee's funds in bank accounts in a financial institution located in Iowa. Every political committee shall either have an Iowa resident as treasurer or maintain all of the committee's funds in bank accounts in a financial institution located in Iowa. An expenditure shall not be made by the treasurer or treasurer's designee for or on behalf of a committee without the approval of the chairperson of the committee, or the candidate. Expenditures shall be remitted to the designated recipient within fifteen days of the date of the issuance of the payment.

2. An individual who receives contributions for a committee without the prior authorization of the chairperson of the committee or the candidate shall be responsible for either rendering the contributions to the treasurer within fifteen days of the date of receipt of the contributions, or depositing the contributions in the account maintained by the committee within seven days of the date of receipt of the contributions. A person who receives contributions for a committee shall, not later than fifteen days from the date of receipt of the contributions or on demand of the treasurer, render to the treasurer the contributions and an account of the total of all contributions, including the name and address of each person making a contribution in excess of ten dollars, the amount of the contributions, and the date on which the contributions were received. The treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee. All funds of a committee shall be segregated from any other funds held by officers, members, or associates of the committee or the committee's candidate. However, if a candidate's committee receives contributions only from the candidate, or if a permanent organization temporarily engages in activity which qualifies it as a political committee and all expenditures of the organization are made

from existing general operating funds and funds are not solicited or received for this purpose from sources other than operating funds, then that committee is not required to maintain a separate account in a financial institution. The funds of a committee are not attachable for the personal debt of the committee's candidate or an officer, member, or associate of the committee.

3. The treasurer of a committee shall keep a detailed and exact account of:

a. All contributions made to or for the committee.

b. The name and mailing address of every person making contributions in excess of ten dollars, and the date and amount of the contribution.

c. All disbursements made from contributions by or on behalf of the committee.

d. The name and mailing address of every person to whom any expenditure is made, the purpose of the expenditure, the date and amount of the expenditure and the name and address of, and office sought by each candidate, if any, on whose behalf the expenditure was made. Notwithstanding this paragraph, the treasurer may keep a miscellaneous account for disbursements of less than five dollars which need only show the amount of the disbursement so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars.

e. Notwithstanding the provisions of subsection 3, paragraph *"d",* of this section, when an expenditure is made by a committee in support of the entire state or local political party ticket, only the name of the party shall be given.

4. The treasurer and candidate in the case of a candidate's committee, and the treasurer and chairperson in the case of a political committee, shall preserve all records required to be kept by this section for a period of five years. However, a committee is not required to preserve any records for more than three years from the certified date of dissolution of the committee. For purposes of this section, the five-year period shall commence with the due date of the disclosure report covering the activity documented in the records.

[C75, 77, 79, 81, §56.3; 81 Acts, ch 35, §3]

83 Acts, ch 139, §3, 14; 86 Acts, ch 1023, §2; 87 Acts, ch 112, §3; 88 Acts, ch 1158, §8; 91 Acts, ch 226, §2; 93 Acts, ch 142, §4; 95 Acts, ch 198, §3

56.3A Funds from unknown source — escheat.

The expenditure of funds from an unknown or unidentifiable source received by a candidate or committee is prohibited. Such funds received by a candidate or committee shall escheat to the state. Any candidate or committee receiving such contributions shall remit such contributions to the director of revenue and finance for deposit in the general fund of the state. Persons requested to make a contribution at a fundraising event shall be advised that it is illegal to make a contribution in excess of ten dollars unless the person making the contribution also provides the person's name and address.

[C77, 79, 81, §56.27]

C91, §56.3A

56.4 Reports filed with board.

1. All statements and reports required to be filed under this chapter shall be filed with the board. The board shall provide copies of all statements and reports filed under this chapter for a county, city, school, or other political subdivision with the commissioner responsible under section 47.2.

2. The board shall retain filed statements and reports for at least five years from the date of the election in which the committee is involved, or at least five years from the certified date of dissolution of the committee, whichever date is later.

3. The commissioner shall retain statements and reports provided by the board for a county, city, school, or other political subdivision for at least three years from the date of the election in which the committee is involved. However, statements and reports provided by the board for county statutory political committees shall be retained for five years from the date of the election in which the committee is involved.

4. Political committees expressly advocating the nomination, election, or defeat of candidates for both federal office and any elected office created by law or the Constitution of the State of Iowa shall file statements and reports with the board in addition to any federal reports required to be filed with the board. However, a political committee that is registered and filing full disclosure reports of all financial activities with the federal election commission may file verified statements as provided in section 56.5.

[S13, §1137-a1, -a3; C24, 27, 31, 35, 39, §**974, 975;** C46, 50, 54, 58, 62, 66, 71, 73, §56.3, 56.4; C75, 77, 79, 81, §56.4; 81 Acts, ch 35, §4]

87 Acts, ch 112, §4; 93 Acts, ch 163, §33; 95 Acts, ch 198, §4; 99 Acts, ch 136, §3, 17; 2002 Acts, ch 1073, §3, 11

2002 amendments are effective January 1, 2003; 2002 Acts, ch 1073, §11

Section stricken and rewritten

56.5 Organization statement.

1. Every committee, as defined in this chapter, shall file a statement of organization within ten days from the date of its organization. Unless formal organization has previously occurred, a committee is deemed to have organized as of the date that committee transactions exceed the financial activity threshold established in section 56.2, subsection 5 or 18.

2. The statement of organization shall include:

a. The name, purpose, mailing address, and telephone number of the committee. The committee name shall not duplicate the name of another

committee organized under this section. For candidate's committees filing initial statements of organization on or after July 1, 1995, the candidate's name shall be contained within the committee name.

b. The name, mailing address, and position of the committee officers.

c. The name, address, office sought, and the party affiliation of all candidates whom the committee is supporting and, if the committee is supporting the entire ticket of any party, the name of the party. If, however, the committee is supporting several candidates who are not identified by name or are not of the same political affiliation, the committee may provide a statement of purpose in lieu of candidate names or political party affiliation.

d. The disposition of funds which will be made in the event of dissolution if the committee is not a statutory committee.

e. Such other information as may be required by this chapter or rules adopted pursuant to this chapter.

f. A signed statement by the treasurer of the committee and the candidate, in the case of a candidate's committee, which shall verify that they are aware of the requirement to file disclosure reports if the committee, the committee officers, the candidate, or both the committee officers and the candidate receive contributions in excess of seven hundred fifty dollars in the aggregate, make expenditures in excess of seven hundred fifty dollars in the aggregate, or incur indebtedness in excess of seven hundred fifty dollars in the aggregate in a calendar year to expressly advocate the nomination, election, or defeat of any candidate for public office. In the case of political committees, statements shall be made by the treasurer of the committee and the chairperson.

g. The identification of any parent entity or other affiliates or sponsors.

h. The name of the financial institution in which the committee receipts will be deposited.

3. Any change in information previously submitted in a statement of organization or notice in case of dissolution of the committee shall be reported to the board or commissioner not more than thirty days from the date of the change or dissolution.

4. A list, by office and district, of all candidates who have filed an affidavit of candidacy in the office of the secretary of state shall be prepared by the secretary of state and delivered to the board not more than ten days after the last day for filing nomination papers.

5. A committee or organization not organized as a committee under this section which makes a contribution to a candidate's committee or political committee organized in Iowa shall disclose each contribution to the board. A committee or organization not organized as a committee under this section which is not registered and filing full disclosure reports of all financial activities with the federal election commission or another state's disclosure commission shall register and file full disclosure reports with the board pursuant to this chapter, and shall either appoint an eligible Iowa elector as committee or organization treasurer, or shall maintain all committee funds in an account in a financial institution located in Iowa. A committee which is currently filing a disclosure report in another jurisdiction shall either file a statement of organization under subsections 1 and 2 and file disclosure reports, the same as those required of committees organized only in Iowa, under section 56.6, or shall file one copy of a verified statement with the board and a second copy with the treasurer of the committee receiving the contribution. The form shall be completed and filed at the time the contribution is made. The verified statement shall be on forms prescribed by the board and shall attest that the committee is filing reports with the federal election commission or in a jurisdiction with reporting requirements which are substantially similar to those of this chapter, and that the contribution is made from an account which does not accept contributions which would be in violation of section 56.15. The form shall include the complete name, address, and telephone number of the contributing committee, the state or federal jurisdiction under which it is registered or operates, the identification of any parent entity or other affiliates or sponsors, its purpose, the name and address of an Iowa resident authorized to receive service of original notice and the name and address of the receiving committee, the amount of the cash or in-kind contribution, and the date the contribution was made.

[S13, §1137-a1; C24, 27, 31, 35, 39, §**973;** C46, 50, 54, 58, 62, 66, 71, 73, §56.2; C75, 77, 79, 81, §56.5; 81 Acts, ch 35, §5]

86 Acts, ch 1023, §3, 4; 87 Acts, ch 112, §5; 91 Acts, ch 226, §3; 93 Acts, ch 142, §5; 93 Acts, ch 163, §31, 38; 94 Acts, ch 1180, §33; 95 Acts, ch 198, §5 – 7; 99 Acts, ch 136, §4, 17; 2002 Acts, ch 1073, §4, 5, 11

Subsection 2, paragraph f amended
Subsection 5 amended

56.5A Candidate's committee.

1. Each candidate for state, county, city, or school office shall organize one, and only one, candidate's committee for a specific office sought when the candidate receives contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in a calendar year.

2. A political committee shall not be established to expressly advocate the nomination, election, or defeat of only one candidate for office, except that a political committee may be established to expressly advocate the passage or defeat of approval of a single judge standing for retention.

[C77, 79, 81, §56.28; 81 Acts, ch 35, §13]
83 Acts, ch 139, §12, 14
C91, §56.5A
91 Acts, ch 226, §4; 93 Acts, ch 142, §6; 94 Acts, ch 1023, §81; 94 Acts, ch 1180, §34; 95 Acts, ch 198, §8; 99 Acts, ch 136, §5, 17; 2002 Acts, ch 1073, §6, 11
Subsection 1 amended

56.6 Disclosure reports.

1. *a.* Each treasurer of a committee shall file with the board disclosure reports of contributions received and disbursed on forms prescribed by rules as provided by chapter 17A. The reports from all committees, except those committees for municipal and school elective offices and for local ballot issues, shall be filed on the nineteenth day or mailed bearing a United States postal service postmark dated on or before the nineteenth day of January, May, July, and October of each year. The May, July, and October reports shall be current as of five days prior to the filing deadline. The January report shall be the annual report covering activity through December 31. However, a state, county, or city statutory political committee is not required to file the May and July reports for a year in which no primary or general election is held at the respective state, county, or city level. A candidate's committee, other than for municipal and school elective offices, for a year in which the candidate is not standing for election, is not required to file the May, July, and October reports. Reports for committees for a ballot issue placed before the voters of the entire state shall be filed at the January, May, July, and October deadlines.

b. A candidate's committee of a candidate for statewide office or the general assembly shall file a supplementary report in a year in which a primary, general or special election for that office is held if the committee of a candidate for governor receives ten thousand dollars or more, a committee of a candidate for any other statewide office receives five thousand dollars or more, or the committee of a candidate for the general assembly receives one thousand dollars or more after the close of the period covered by the last report filed prior to that primary, general or special election. The amounts of contributions causing a supplementary report under this paragraph shall include the estimated fair market value of in-kind contributions. The report shall be filed by the Friday immediately preceding the election and be current through the Tuesday immediately preceding the election.

c. A candidate's committee for a candidate for the general assembly at a special election shall file a report by the fourteenth day prior to the special election which is current through the nineteenth day prior to the special election.

d. Committees for municipal and school elective offices and local ballot issues shall file their first reports five days prior to any election in which the name of the candidate or the local ballot issue which they expressly advocate appears on the printed ballot and shall file their next report on the first day of the month following the final election in a calendar year in which the candidate's name or the ballot issue appears on the ballot. A committee expressly advocating the nomination, election, or defeat of a candidate for a municipal or school elective office or the passage or defeat of a local ballot issue shall also file disclosure reports on the nineteenth day of January and October of each year in which the candidate or ballot issue does not appear on the ballot and on the nineteenth day of January, May, and July of each year in which the candidate or ballot issue appears on the ballot, until the committee dissolves. These reports shall be current to five days prior to the filing deadline and are considered timely filed if mailed bearing a United States postal service postmark on or before the due date.

e. A state statutory political committee and congressional district committees as authorized by the constitution of the state statutory political committee are not subject to this subsection if the state statutory political committee and congressional district political committees file copies of campaign disclosure reports as required by federal law with the board at the times the reports are required to be filed under federal law, provided that the federal reports contain all information required by this chapter. A committee of a national political party is not required to file a disclosure report with the board if it is required by federal law to file a campaign disclosure report with a federal agency.

2. If any committee, after having filed a statement of organization or one or more disclosure reports, dissolves or determines that it shall no longer receive contributions or make disbursements, the treasurer of the committee shall notify the board within thirty days following such dissolution by filing a dissolution report on forms prescribed by the board. Moneys refunded in accordance with a dissolution statement shall be considered a disbursement or expense but the names of persons receiving refunds need not be released or reported unless the contributors' names were required to be reported when the contribution was received.

3. Each report under this section shall disclose:

a. The amount of cash on hand at the beginning of the reporting period.

b. The name and mailing address of each person who has made one or more contributions of money to the committee including the proceeds from any fund-raising events except those reportable under paragraph *"f"* of this subsection, when the aggregate amount in a calendar year exceeds the amount specified in the following schedule:

(1) For any candidate for school or township office . . . . . $ 25
(2) For any candidate for city office . . $ 25
(3) For any candidate for county office $ 25
(4) For any candidate for the general assembly . . . . . $ 25
(5) For any candidate for the Congress of the United States $100
(6) For any candidate for statewide office . . . . . $ 25
(7) For any committee of a national political party $200
(8) For any state statutory political committee $200
(9) For any county statutory political committee . . . . . $ 50
(10) For any other political committee $ 25
(11) For any ballot issue . . . . . $ 25

c. The total amount of contributions made to the political committee during the reporting period and not reported under paragraph *"b"* of this subsection.

d. The name and mailing address of each person who has made one or more in-kind contributions to the committee when the aggregate market value of the in-kind contribution in a calendar year exceeds the amount specified in subsection 3, paragraph *"b"*, of this section. In-kind contributions shall be designated on a separate schedule from schedules showing contributions of money and shall identify the nature of the contribution and provide its estimated fair market value.

e. Each loan to any person or committee within the calendar year in an aggregate amount in excess of those amounts enumerated in the schedule in paragraph *"b"* of this subsection, together with the name and mailing address of the lender and endorsers, the date and amount of each loan received, and the date and amount of each loan repayment. Loans received and loan repayments shall be reported on a separate schedule.

f. The total amount of proceeds from any fundraising event. Contributions and sales at fundraising events which involve the sale of a product acquired at less than market value and sold for an amount of money in excess of the amount specified in paragraph *"b"* of this subsection shall be designated separately from in-kind and monetary contributions and the report shall include the name and address of the donor, a description of the product, the market value of the product, the sales price of the product, and the name and address of the purchaser.

g. The name and mailing address of each person to whom disbursements or loan repayments have been made by the committee from contributions during the reporting period and the amount, purpose, and date of each disbursement except that disbursements of less than five dollars may be shown as miscellaneous disbursements so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars. If disbursements are made to a consultant, the consultant shall provide the committee with a statement of disbursements made by the consultant during the reporting period showing the name and address of the recipient, amount, purpose, and date to the same extent as if made by the candidate, which shall be included in the report by the committee.

h. The amount and nature of debts and obligations owed in excess of those amounts stated in the schedule in paragraph *"b"* of this subsection by the committee. Loans made to a committee and reported under paragraph *"b"* of this subsection shall not be considered a debt or obligation under this paragraph. A loan made by a committee to any person shall be considered a disbursement.

i. If a person listed under paragraph *"b"*, *"d"*, *"e"*, or *"f"* as making a contribution or loan to or purchase from a candidate's committee is related to the candidate within the third degree of consanguinity or affinity, the existence of that person's family relationship shall be indicated on the report.

j. The name and mailing address of each person with whom a candidate's committee has entered into a contract during the reporting period for future or continuing performance and the nature of the performance, period of performance and total, anticipated compensation for performance. For a report filed under subsection 1, paragraph *"b"*, this paragraph also requires the reporting of estimates of performance which the candidate's committee reasonably expects to contract for during the balance of the period running until thirty days after the election.

k. Other pertinent information required by this chapter, by rules adopted pursuant to this chapter, or forms approved by the board.

4. If the report is the first report filed by the committee, the report shall include all information required under subsection 3 covering the period from the beginning of the committee's financial activity, even if from a different calendar year, through the end of the current reporting period. If no contributions have been accepted nor any disbursements made or indebtedness incurred during that reporting period, the treasurer of the committee shall file a disclosure statement which shows only the amount of cash on hand at the beginning of the reporting period.

5. A committee shall not dissolve until all loans, debts and obligations are paid, forgiven, or transferred and the remaining money in the account is distributed according to the organization statement. If a loan is transferred or forgiven, the amount of the transferred or forgiven loan must be reported as an in-kind contribution and deducted from the loans payable balance on the disclosure form. If, upon review of a committee's statement of dissolution and final report, the board determines that the requirements for dissolution have been satisfied, the dissolution shall be certified

and the committee relieved of further filing requirements.

A statutory political committee is prohibited from dissolving, but may be placed in an inactive status upon the approval of the board. Inactive status may be requested for a statutory political committee when no officers exist and the statutory political committee has ceased to function. The request shall be made by the previous treasurer or chairperson of the committee and by the appropriate state statutory political committee. A statutory political committee granted inactive status shall not solicit or expend funds in its name until the committee reorganizes and fulfills the requirements of a political committee under this chapter.

6. A permanent organization temporarily engaging in activity which would qualify it as a political committee shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports in accordance with this chapter. When the permanent organization ceases to be involved in the political activity, it shall dissolve the political committee.

A communication regarding any subject by a permanent organization, which is a nonprofit organization, to its dues-paying members is not political activity requiring the organization of a political committee, reporting, or disclosure pursuant to this chapter.

As used in this subsection, *"permanent organization"* means an organization which is continuing, stable, and enduring, and which was originally organized for purposes other than engaging in election activities.

[S13, §1137-a1, -a3; C24, 27, 31, 35, 39, §**972, 973, 975, 976;** C46, 50, 54, 58, 62, 66, 71, 73, §56.1, 56.2, 56.4, 56.5; C75, 77, 79, 81, §56.6; 81 Acts, ch 35, §6 – 8]

83 Acts, ch 139, §4 – 9, 14; 86 Acts, ch 1023, §5 – 9; 86 Acts, ch 1224, §38; 87 Acts, ch 112, §6, 7; 89 Acts, ch 107, §1; 90 Acts, ch 1233, §2; 91 Acts, ch 165, §1; 91 Acts, ch 226, §5; 92 Acts, ch 1228, §25; 93 Acts, ch 163, §33; 95 Acts, ch 198, §9, 10; 99 Acts, ch 136, §6, 17; 2002 Acts, ch 1073, §7, 8, 11

Subsection 1, paragraph a amended
Subsection 2 amended

56.7 Reports signed.

1. A report or statement required to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be signed by the person filing the report.

2. A copy of every report or statement shall be preserved by the person filing it or the person's successor for at least three years following the filing of the report or statement.

[C75, 77, 79, 81, §56.7]

94 Acts, ch 1180, §35

56.8 Commission — duties. Transferred to § 56.10, subsections 6 – 8.

56.9 Campaign finance disclosure commission — created. Repealed by 93 Acts, ch 163, § 36. See § 68B.32.

56.10 Duties of commission. Repealed by 93 Acts, ch 163, § 36. See § 68B.32A.

56.10A Reporting of honoraria. Repealed by 92 Acts, ch 1228, § 39; 92 Acts, 1st Ex, ch 1002, § 2.

56.11 Complaints — procedure. Repealed by 93 Acts, ch 142, § 13 and 93 Acts, ch 163, § 36. See § 68B.32B through 68B.32D.

56.12 Contribution in name of another — prohibited.

A person shall not make a contribution or expenditure in the name of another person, and a person shall not knowingly accept a contribution or expenditure made by one person in the name of another. For the purpose of this section, a contribution or expenditure made by one person which is ultimately reimbursed by another person who has not been identified as the ultimate source or recipient of the funds is considered to be an illegal contribution or expenditure in the name of another.

Any candidate or committee receiving funds, the original source of which was a loan, shall be required to list the lender as a contributor. No candidate or committee shall knowingly receive funds from a contributor who has borrowed the money without listing the original source of said money.

[C75, 77, 79, 81, §56.12]

95 Acts, ch 198, §11

56.12A Use of public moneys for political purposes.

The state and the governing body of a county, city, or other political subdivision of the state shall not expend or permit the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue.

This section shall not be construed to limit the freedom of speech of officials or employees of the state or of officials or employees of a governing body of a county, city, or other political subdivision of the state. This section also shall not be construed to prohibit the state or a governing body of a political subdivision of the state from expressing an opinion on a ballot issue through the passage of a resolution or proclamation.

91 Acts, ch 226, §7; 93 Acts, ch 142, §8; 99 Acts, ch 136, §7, 17

56.13 Independent expenditures.

1. Action involving a contribution or expenditure that must be reported under this chapter and that is taken by any person, candidate's committee, or political committee on behalf of a candidate, if known and approved by the candidate, shall be

deemed action by the candidate and reported by the candidate's committee. It shall be presumed that a candidate approves the action if the candidate had knowledge of it and failed to file a statement of disavowal with the board and take corrective action within seventy-two hours of the action. A person, candidate's committee, or political committee taking such action independently of that candidate's committee shall notify that candidate's committee in writing within twenty-four hours of taking the action. The notification shall provide that candidate's committee with the cost of the promotion at fair market value. A copy of the notification shall be sent to the board.

Any person who makes expenditures or incurs indebtedness, other than incidental expenses incurred in performing volunteer work, to expressly advocate the nomination, election, or defeat of a candidate for public office shall notify the appropriate committee and provide necessary information for disclosure reports.

2. If a person, other than a political committee, makes one or more expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate, in any one calendar year to expressly advocate the passage or defeat of a ballot issue, the person shall file a statement of activity within ten days of taking the action exceeding the threshold. The statement shall contain information identifying the person filing the statement, identifying the ballot issue, and indicating the position urged by the person with regard to the ballot issue. The person shall file reports indicating the dates on which the expenditures or incurrence of indebtedness took place; a description of the nature of the action taken which resulted in the expenditures or debt; and the cost of the promotion at fair market value. For a local ballot issue, the reports shall be filed five days prior to any election in which the ballot issue appears and on the first day of the month following the election, as well as on the nineteenth day of January, May, and July of each year in which the ballot issue appears on the ballot and on the nineteenth day of January and October of each year in which the ballot issue does not appear on the ballot. For a statewide ballot issue, reports shall be filed on the nineteenth day of January, May, and July of each year. The reports shall be current to five days prior to the filing deadline, and are considered timely filed if mailed bearing a United States postal service postmark on or before the due date. Filing obligations shall cease when the person files a statement of discontinuation indicating that the person's financial activity to expressly advocate the passage or defeat of the ballot issue has ceased. Statements and reports shall be filed with the board.

3. A person taking action involving the making of an expenditure or incurrence of indebtedness to expressly advocate the passage or defeat of a ballot issue independently of a political committee shall, within seventy-two hours of taking the action, notify in writing any political committee that advocates the same position with regard to the ballot issue as the person taking the action. The notification shall provide the political committee with the cost of the promotion at fair market value. A copy of the notification shall be sent to the board. It shall be presumed that a benefited committee approves the action if the committee fails to file a statement of disavowal with the board and takes corrective action within ten days of the action. Action approved by a committee shall be reported as a contribution by the committee.

4. This section shall not be construed to require duplicate reporting of anything reported under this chapter by a political committee except that actions that constitute contributions in kind shall be reported by the benefited committee. This section shall not be construed to require reporting of action by any person that does not constitute a contribution.

[C75, 77, 79, 81, §56.13; 81 Acts, ch 35, §11]

86 Acts, ch 1023, §10; 93 Acts, ch 163, §33; 94 Acts, ch 1180, §36; 95 Acts, ch 198, §12; 99 Acts, ch 136, §8, 17; 2002 Acts, ch 1073, §9, 11

Section amended

56.14 Political material — yard signs.

1. *a.* A person who causes the publication or distribution of published material designed to expressly advocate the nomination, election, or defeat of a candidate for public office or the passage or defeat of a constitutional amendment or public measure shall include conspicuously on the published material the identity and address of the person responsible for the material. If the person responsible is an organization, the name of one officer of the organization shall appear on the material. However, if the organization is a committee which has filed a statement of organization under this chapter, only the name of the committee is required to be included on the published material. Published material designed to expressly advocate the nomination, election, or defeat of a candidate for public office or the passage or defeat of a constitutional amendment or public measure which contains language or depictions which a reasonable person would understand as asserting that an entity which is incorporated or is a registered committee had authored the material shall, if the entity is not incorporated or a registered committee, include conspicuously on the published material a statement that the apparent organization or committee is not incorporated or a registered committee in addition to the attribution statement required by this section. For purposes of this section, *"registered committee"* means a committee which has an active statement of organization filed under section 56.5.

b. This subsection does not apply to the editorials or news articles of a newspaper or magazine

which are not political advertisements. For the purpose of this subsection, *"published material"* means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, or any other form of printed general public political advertising; however, the identification need not be conspicuous on posters. This subsection does not apply to yard signs, bumper stickers, pins, buttons, pens, matchbooks, and similar small items upon which the inclusion of the attribution statement would be impracticable or to published material which is subject to federal regulations regarding an attribution requirement.

c. This subsection shall not be construed to require the inclusion on published material of information which discloses the identity or address of any individual who is acting independently and using the individual's own modest resources to publish or distribute the material.

2. *a.* The placement or erection of yard signs shall be exempt from the requirements of chapter 480.

b. This subsection does not prohibit the placement of yard signs on agricultural land owned by individuals or by a family farm operation as defined in section 9H.1, subsections 15, 16, 17, and 18; does not prohibit the placement of yard signs on property owned by private individuals who have rented or leased the property to a corporation, if the prior written permission of the property owner is obtained; and does not prohibit the placement of yard signs on residential property owned by a corporation but rented or leased to a private individual if the prior permission of the renter or lessee is obtained. For the purposes of this chapter, *"agricultural land"* means agricultural land as defined in section 9H.1.

86 Acts, ch 1023, §11; 86 Acts, ch 1246, §620; 87 Acts, ch 112, §8; 94 Acts, ch 1178, §1; 95 Acts, ch 198, §13; 96 Acts, ch 1079, §2; 99 Acts, ch 136, §9, 17; 2002 Acts, ch 1119, §125

Placement of political signs; see §306C.22
Subsection 2, paragraph a amended

56.15 Financial institution, insurance company, and corporation restrictions.

1. Except as provided in subsections 3 and 4, it is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or an officer, agent, or representative acting for such insurance company, savings and loan association, bank, credit union, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office, except that such resources may be so expended in connection with a utility franchise election held pursuant to section 364.2, subsection 4, or a ballot issue. All such expenditures are subject to the disclosure requirements of this chapter.

2. Except as provided in subsection 3, it is unlawful for a member of a committee, or its employee or representative, except a ballot issue committee, or for a candidate for office or the representative of the candidate, to solicit, request, or knowingly receive from an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or its officer, agent, or representative, any money, property, or thing of value belonging to the insurance company, savings and loan association, bank, or corporation for campaign expenses, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office. This section does not restrain or abridge the freedom of the press or prohibit the consideration and discussion in the press of candidacies, nominations, public officers, or public questions.

3. It is lawful for an insurance company, savings and loan association, bank, credit union, and corporation organized pursuant to the laws of this state, the United States, or any other state or territory, whether or not for profit, and for their officers, agents, and representatives, to use the money, property, labor, or any other thing of value of the entity for the purposes of soliciting its stockholders, administrative officers, and members for contributions to a committee sponsored by that entity and of financing the administration of a committee sponsored by that entity. The entity's employees to whom the foregoing authority does not extend may voluntarily contribute to such a committee but shall not be solicited for contributions. All contributions made under this subsection are subject to the disclosure requirements of this chapter. A committee member, committee employee, committee representative, candidate, or representative referred to in subsection 2 lawfully may solicit, request, and receive money, property and other things of value from a committee sponsored by an insurance company, savings and loan association, bank, credit union, or corporation as permitted by this subsection.

4. The restrictions imposed by this section relative to making, soliciting or receiving contributions shall not apply to a nonprofit corporation or organization which uses those contributions to encourage registration of voters and participation in the political process, or to publicize public issues, or both, but does not use any part of those contributions to expressly advocate the nomination, election, or defeat of any candidate for public office. A nonprofit corporation or organization may use contributions solicited or received to expressly advocate the passage or defeat of ballot issues but the expenditures shall be disclosed by the nonprofit corporation or organization in the manner pro-

vided for a permanent organization temporarily engaged in a political activity under section 56.6.

This section does not prohibit a family farm corporation, as defined in section 9H.1, from placing a yard sign on agricultural land, and does not prohibit the placement of yard signs, with the prior written permission of the individual property owner, on property rented or leased by a corporation from private individuals, subject to the requirements of section 56.14. This section also does not prohibit the placement of a yard sign on residential property that is owned by a corporation, but rented or leased to a private individual, if the prior permission of the renter or lessee is obtained.

5. For purposes of this section, *"committee"* shall include statutory political committees organized under chapter 43, and nonparty political organizations organized under chapter 44.

6. Any person convicted of a violation of any of the provisions of this section shall be guilty of a serious misdemeanor.

[S13, §1641-h, -i, -k; C24, 27, 31, 35, 39, §**8405 – 8407;** C46, 50, 54, 58, §491.69 – 491.71; C62, 66, 71, 73, 75, §491.69 – 491.71, 496A.145; C77, 79, 81, §56.29; 81 Acts, ch 35, §14]

83 Acts, ch 139, §13, 14

C91, §56.15

93 Acts, ch 142, §9; 94 Acts, ch 1178, §2; 95 Acts, ch 198, §14; 99 Acts, ch 136, §10, 11, 17

56.15A Prohibiting contributions during the legislative session.

A lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, shall not contribute to, act as an agent or intermediary for contributions to, or arrange for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session and, in the case of the governor or a gubernatorial candidate, during the thirty days following the adjournment of a regular legislative session allowed for the signing of bills. This section shall not apply to the receipt of contributions by an elected state official, member of the general assembly, or other state official who has taken affirmative action to seek nomination or election to a federal elective office.

This section shall not apply to a candidate for state office who filed nomination papers for an office for which a special election is called or held during the regular legislative session, if the candidate receives the contribution at any time during the period commencing on the date on which at least two candidates have been nominated for the office and ending on the date on which the election is held. A person who is an elected state official shall not, however, solicit contributions during a legislative session from any lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, for another candidate for a state office for which a special election is held.

92 Acts, ch 1228, §26; 93 Acts, ch 129, §1

56.16 Penalty.

Any person who willfully violates any provisions of this chapter shall upon conviction, be guilty of a serious misdemeanor.

[S13, §1137-a6; C24, 27, 31, 35, 39, §**980;** C46, 50, 54, 58, 62, 66, 71, 73, §56.9; C75, 77, 79, 81, §56.16]

56.17 Applicability to federal candidates.

1. The requirements of this chapter relative to disclosure of contributions shall apply to candidates and political committees for federal office only in the event such candidates are not subject to a federal law requiring the disclosure of campaign financing. Any such federal law shall supersede the provisions of this chapter.

2. The provisions of this chapter under which money from the Iowa election campaign fund may be made available to or used for the benefit of candidates and candidates' committees shall apply to candidates for federal office and their candidates' committees only if matching funds to pay a portion of their campaign expenses are not available to such candidates or their committees from the federal government.

[C75, 77, 79, 81, §56.17]

INCOME TAX CHECKOFF

56.18 Checkoff — income tax.

A person whose state income tax liability for any taxable year is one dollar and fifty cents or more may direct that one dollar and fifty cents of that liability be paid over to the Iowa election campaign fund when submitting the person's state income tax return to the department of revenue and finance. In the case of a joint return of husband and wife having a state income tax liability of three dollars or more, each spouse may direct that one dollar and fifty cents be paid to the fund. The director of revenue and finance shall draft the income tax form to provide spaces on the tax return which the taxpayer may use to designate that contributions made under this section be credited to a specified political party as defined by section 43.2, or to the Iowa election campaign fund as a contribution to be shared by all such political parties in the manner prescribed by section 56.19. The form shall inform the taxpayer of the consequences of the choices provided under this section, but this information may be contained in a footnote or other suitable form if the director of revenue and finance finds it is not feasible to place the information immediately above the signature line. The action taken by a person for the checkoff is ir-

revocable.

[C75, 77, 79, 81, §56.18]

83 Acts, ch 176, §8, 11; 84 Acts, ch 1263, §1; 85 Acts, ch 230, §1; 86 Acts, ch 1236, §1, 2

56.19 Fund created.

The *"Iowa election campaign fund"* is created within the office of the treasurer of state. The fund shall consist of funds paid by persons as provided in section 56.18. The treasurer of state shall maintain within the fund a separate account for each political party as defined in section 43.2. The director of revenue and finance shall remit funds collected as provided in section 56.18 to the treasurer of state who shall deposit such funds in the appropriate account within the Iowa election campaign fund. All contributions directed to the Iowa election campaign fund by taxpayers who do not designate any one political party to receive their contributions shall be divided by the director of revenue and finance equally among each account currently maintained in the fund. However, at any time when more than two accounts are being maintained within the fund contributions to the fund by taxpayers who do not designate any one political party to receive their contributions shall be divided among the accounts in the same proportion as the number of registered voters declaring affiliation with each political party for which an account is maintained bears to the total number of registered voters who have declared an affiliation with a political party. Any interest income received by the treasurer of state from investment of moneys deposited in the fund shall be deposited in the Iowa election campaign fund. Such funds shall be subject to payment to the chairperson of the specified political party by the director of revenue and finance in the manner provided by section 56.22.

[C75, 77, 79, 81, §56.19]

83 Acts, ch 176, §9; 95 Acts, ch 67, §53

56.20 Rules promulgated.

The director of revenue and finance, in co-operation with the director of the department of management and the ethics and campaign disclosure board, shall administer the provisions of sections 56.18 to 56.26 and they shall promulgate all necessary rules in accordance with chapter 17A.

[C75, 77, 79, 81, §56.20]

93 Acts, ch 163, §33

56.21 Funds.

Any candidate for a partisan public office, except as otherwise provided by section 56.17, subsection 2, may receive campaign funds from the Iowa election campaign fund through the state central committee of the candidate's political party. However, the state central committee of each political party shall have discretion which of the party's candidates for public office shall be allocated campaign funds out of money received by that party from the Iowa election campaign fund.

[C75, 77, 79, 81, §56.21]

56.22 Distribution of campaign fund — restrictions on use.

1. The money accumulated in the Iowa election campaign fund to the account of each political party in the state shall be remitted to the party on the first business day of each month by warrant of the director of revenue and finance drawn upon the fund in favor of the state chairperson of that party. The money received by each political party under this section shall be used as directed by the party's state statutory political committee.

2. Funds distributed to statutory political committees pursuant to this chapter shall not be used to expressly advocate the nomination, election, or defeat of any candidate. Nothing in this subsection shall be construed to prohibit a statutory political committee from using such funds to pay expenses incurred in arranging and holding a nominating convention.

[C75, 77, 79, 81, §56.22]

99 Acts, ch 136, §12, 17

56.23 Funds — campaign expenses only.

The chairperson of the state statutory political committee shall produce evidence to the director of revenue and finance and the ethics and campaign disclosure board not later than the twenty-fifth day of January each year, that all income tax checkoff funds expended for campaign expenses have been utilized exclusively for campaign expenses.

The ethics and campaign disclosure board shall issue, prior to the payment of any money, guidelines which explain which expenses and evidence thereof qualify as acceptable campaign expenses.

Should the ethics and campaign disclosure board and the director of revenue and finance determine that any part of the funds have been used for noncampaign or improper expenses, they may order the political party or the candidate to return all or any part of the total funds paid to that political party for that election. When such funds are returned, they shall be deposited in the general fund of the state.

[C75, 77, 79, 81, §56.23; 81 Acts, ch 35, §12]

93 Acts, ch 163, §33

56.24 Reversion of funds.

All funds on account for the campaign expenses of any designated political party which are not utilized by that political party by January 1 of the year following a general election, shall revert to the general fund of the state.

[C75, 77, 79, 81, §56.24]

56.25 Income tax form — checkoff space.
The director of revenue and finance shall provide space for this campaign finance income tax checkoff on the most frequently used Iowa income tax form. An explanation shall be included which clearly states that this checkoff does not constitute an additional tax liability. The form shall provide for the taxpayer to designate that the checkoff shall go either to the political party of the taxpayer's choice or be divided among all political parties as prescribed by section 56.19.
[C75, 77, 79, 81, §56.25]

56.26 Appropriation.
There is appropriated from the Iowa election campaign fund within the office of the treasurer of state such funds as are legally payable from such fund in accordance with the provisions of this chapter.
[C75, 77, 79, 81, §56.26]

56.27 Funds from unknown source — escheat. Transferred to § 56.3A.

56.28 Candidate's committee. Transferred to § 56.5A.

56.29 Insurance, savings and loan, bank, and corporation restrictions. Transferred to § 56.15.

56.30 Forms mailed. Transferred to § 56.10, subsection 9.

56.31 through 56.39 Reserved.

CAMPAIGN FUNDS AND PROPERTY

56.40 Campaign funds.
As used in this division, *"campaign funds"* means contributions to a candidate or candidate's committee which are required by this chapter to be deposited in a separate campaign account. A candidate's committee shall not accept contributions from any other candidate's committee including candidate's committees from other states or for federal office, unless the candidate for whom each committee is established is the same person. For purposes of this section, *"contributions"* does not mean travel costs incurred by a candidate in attending a campaign event of another candidate. This section shall not be construed to prohibit a candidate or candidate's committee from using campaign funds or accepting contributions for tickets to meals if the candidate attends solely for the purpose of enhancing the person's candidacy or the candidacy of another person.
91 Acts, ch 226, §9; 93 Acts, ch 142, §10

56.41 Uses of campaign funds.
1. A candidate and the candidate's committee shall use campaign funds only for campaign purposes, educational and other expenses associated with the duties of office, or constituency services, and shall not use campaign funds for personal expenses or personal benefit. The purchase of subscriptions to newspapers from or which circulate within the area represented by the office which a candidate is seeking or holds is presumed to be an expense that is associated with the duties of the campaign for and duties of office.
2. Campaign funds shall not be used for any of the following purposes:
a. Payment of civil or criminal penalties. However, payment of civil penalties relating to campaign finance and disclosure requirements is permitted.
b. Satisfaction of personal debts, other than campaign loans.
c. Personal services, including the services of attorneys, accountants, physicians, and other professional persons. However, payment for personal services directly related to campaign activities is permitted.
d. Clothing or laundry expense of a candidate or members of the candidate's family.
e. Purchase of or installment payments for a motor vehicle. However, a candidate may lease a motor vehicle during the duration of the campaign if the vehicle will be used for campaign purposes. If a vehicle is leased, detailed records shall be kept on the use of the vehicle and the cost of noncampaign usage shall not be paid from campaign funds. Candidates and campaign workers may be reimbursed for actual mileage for campaign related travel at a rate not to exceed the current rate of reimbursement allowed under the standard mileage rate method for computation of business expenses pursuant to the Internal Revenue Code.
f. Mortgage payments, rental payments, furnishings, or renovation or improvement expenses for a permanent residence of a candidate or family member, including a residence in the state capital during a term of office or legislative session.
g. Membership in professional organizations.
h. Membership in service organizations, except those organizations which the candidate joins solely for the purpose of enhancing the candidacy.
i. Meals, groceries, or other food expense, except for tickets to meals that the candidate attends solely for the purpose of enhancing the candidacy or the candidacy of another person. However, payment for food and drink purchased for campaign related purposes and for entertainment of campaign volunteers is permitted.
j. Payments clearly in excess of the fair market value of the item or service purchased.
3. The board shall adopt rules which list items that represent proper campaign expenses.
91 Acts, ch 226, §10; 92 Acts, ch 1228, §27, 28; 93

Acts, ch 142, §11; 93 Acts, ch 163, §38; 95 Acts, ch 198, §15

56.42 Transfer of campaign funds.

1. In addition to the uses permitted under section 56.41, a candidate's committee may only transfer campaign funds in one or more of the following ways:

a. Contributions to charitable organizations.

b. Contributions to national, state, or local political party central committees, or to partisan political committees organized to represent persons within the boundaries of a congressional district.

c. Transfers to the treasurer of state for deposit in the general fund of the state, or to the appropriate treasurer for deposit in the general fund of a political subdivision of the state.

d. Return of contributions to contributors on a pro rata basis, except that any contributor who contributed five dollars or less may be excluded from the distribution.

e. Contributions to another candidate's committee when the candidate for whom both committees are formed is the same person.

2. If an unexpended balance of campaign funds remains when a candidate's committee dissolves, the unexpended balance shall be transferred pursuant to subsection 1.

3. A candidate or candidate's committee making a transfer of campaign funds pursuant to subsection 1 or 2 shall not place any requirements or conditions on the use of the campaign funds transferred.

4. A candidate or candidate's committee shall not transfer campaign funds except as provided in this section.

5. A candidate, candidate's committee, or any other person shall not directly or indirectly receive or transfer campaign funds with the intent of circumventing the requirements of this section. A candidate for statewide or legislative office shall not establish, direct, or maintain a political committee.

6. An individual or a political committee shall not knowingly make transfers or contributions to a candidate or candidate's committee for the purpose of transferring the funds to another candidate or candidate's committee to avoid the disclosure of the source of the funds pursuant to this chapter. A candidate or candidate's committee shall not knowingly accept transfers or contributions from an individual or political committee for the purpose of transferring funds to another candidate or candidate's committee as prohibited by this subsection. A candidate or candidate's committee shall not accept transfers or contributions which have been transferred to another candidate or candidate's committee as prohibited by this subsection. The board shall notify candidates of the prohibition of such transfers and contributions under this subsection.

91 Acts, ch 226, §11; 92 Acts, ch 1228, §29; 93 Acts, ch 163, §34, 38; 95 Acts, ch 198, §16

56.43 Campaign property.

1. Equipment, supplies, or other materials purchased with campaign funds or received in-kind are campaign property. Campaign property belongs to the candidate's committee and not to the candidate. Campaign property which has a value of five hundred dollars or more at the time it is acquired by the committee shall be separately disclosed as committee inventory on reports filed pursuant to section 56.6, including a declaration of the approximate current value of the property. Such property shall continue to be reported as committee inventory until it is disposed of by the committee or until the property has a residual value of less than one hundred dollars. However, consumable campaign property is not required to be reported as committee inventory, regardless of the initial value of the consumable campaign property. *"Consumable campaign property"* means stationery, yard signs, and other campaign materials which have been permanently imprinted to be specific to a candidate or election.

2. Upon dissolution of the candidate's committee, a report accounting for the disposition of all items of campaign property, excluding consumable campaign property, having a residual value of one hundred dollars or more shall be filed with the board. Campaign property, excluding consumable campaign property, having a residual value of one hundred dollars or more shall be disposed of by one of the following methods:

a. Sale of the property at fair market value, in which case the proceeds shall be treated the same as other campaign funds.

b. Donation of the property under one of the options for transferring campaign funds set forth in section 56.42.

91 Acts, ch 226, §12; 93 Acts, ch 163, §38; 95 Acts, ch 198, §17

56.44 and 56.45 Reserved.

OFFICEHOLDERS' ACCOUNTS

56.46 Certain accounts by officeholders prohibited.

A holder of public office shall not maintain an account, other than a campaign account, to receive contributions for the purpose of publishing and distributing newsletters or performing other constituent services related to the official duties of public office. This section applies whether or not the officeholder is a candidate.

91 Acts, ch 226, §14

CHAPTER 57

CONTESTING ELECTIONS — GENERAL PROVISIONS

Chapter applicable to primary elections, §43.5

57.1 Standing to bring contest — grounds for contest.
57.2 Certificate withheld.
57.3 Terms defined.
57.4 Change of result.
57.5 Recanvass in case of contest.
57.6 Other contests.
57.7 Contest court for contest of public measure.

57.1 Standing to bring contest — grounds for contest.

1. Elections may be contested under this chapter as follows:

a. The election of any person to any county office, to a seat in either branch of the general assembly, to a state office, to the office of senator or representative in Congress, or to the office of presidential elector may be contested by any eligible person who received votes for the office in question.

b. The outcome of the election on a public measure may be contested by petition of the greater of ten eligible electors or a number of eligible electors equalling one percent of the total number of votes cast upon the public measure; each petitioner must be a person who was entitled to vote on the public measure in question or would have been so entitled if registered to vote.

2. Grounds for contesting an election under this chapter are:

a. Misconduct, fraud or corruption on the part of any election official or of any board of canvassers of sufficient magnitude to change the result of the election.

b. That the incumbent was not eligible to the office in question at the time of election.

c. That prior to the election the incumbent had been duly convicted of a felony, as defined in section 701.7, and that the judgment had not been reversed, annulled, or set aside, nor the incumbent pardoned or restored to the rights of citizenship by the governor under chapter 914, at the time of the election.

d. That the incumbent has given or offered to any elector, or any precinct election official or canvasser of the election, any bribe or reward in money, property, or thing of value, for the purpose of procuring the incumbent's election.

e. That illegal votes have been received or legal votes rejected at the polls, sufficient to change the result of the election.

f. Any error in any board of canvassers in counting the votes, or in declaring the result of the election, if the error would affect the result.

g. That the public measure or office was not authorized or required by state law to appear on the ballot at the election being contested.

h. Any other cause or allegation which, if sustained, would show that a person other than the incumbent was the person duly elected to the office in question, or would show the outcome of the election on the public measure in question was contrary to the result declared by the board of canvassers.

[C51, §339, 341, 368, 380, 387; R60, §569, 571, 598, 610, 617; C73, §692, 718, 730, 737; C97, §1198; C24, 27, 31, 35, 39, §**981;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §57.1; 81 Acts, ch 34, §39]

86 Acts, ch 1112, §3; 2002 Acts, ch 1134, §72, 115

Subsection 2, paragraph g, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2, NEW paragraph g and former paragraph g redesignated as h

57.2 Certificate withheld.

If notice of a contest of the election of an officer is filed before the certificate of election is delivered to the incumbent, or notice of a contest of the declared result of an election on a public measure is filed before a duplicate of the abstract of votes upon the measure and of the county board's declaration is certified pursuant to section 50.27, the certificate or duplicate abstract and declaration shall be withheld until the determination of the contest. If the certificate of election or duplicate abstract and declaration have been issued, the commissioner shall send the persons or political subdivisions affected by the notice of contest a statement advising them that the election is being contested and that the certificate or duplicate abstract and declaration are not valid until the election contest is resolved.

[C51, §367; R60, §597; C73, §713; C97, §1219; C24, 27, 31, 35, 39, §**982;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §57.2]

57.3 Terms defined.

The term *"incumbent"* in this chapter means the person whom the canvassers declare elected. The term *"election"* in this chapter means the voting for a particular office, or the voting for or against a particular public measure, including the notice

and other preparations for voting required by law and the tallying and canvass of the votes cast, section 39.2 notwithstanding.

[C51, §340; R60, §570; C73, §693; C97, §1199; C24, 27, 31, 35, 39, §**983;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §57.3]

57.4 Change of result.

When the misconduct, fraud, or corruption complained of is on the part of the precinct election officials in a precinct, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that precinct would change the result as to that office.

[C51, §342; R60, §572; C73, §694; C97, §1200; C24, 27, 31, 35, 39, §**984;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §57.4]

57.5 Recanvass in case of contest.

The parties to any contested election shall have the right, in open session of the court or tribunal trying the contest, and in the presence of the officer having them in custody, to have the ballots opened, and all errors of the precinct election officials in counting or refusing to count ballots corrected by such court or tribunal.

[C97, §1143; S13, §1143; C24, 27, 31, 35, 39, §**985;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §57.5]

57.6 Other contests.

All the provisions of the chapter in relation to contested elections of county officers shall be applicable, as near as may be, to contested elections for other offices, and for public measures except as herein otherwise provided, and in all cases process and papers may be issued to and served in the manner provided by the rules of civil procedure for service of an original notice by the sheriff of any county.

[C51, §379, 396; R60, §609, 626; C73, §729, 745; C97, §1250; C24, 27, 31, 35, 39, §**986;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §57.6; 81 Acts, ch 34, §40]

Contesting election of county officers, chapter 62

57.7 Contest court for contest of public measure.

The court for the trial of a contested election on a public measure shall consist of one person designated by the petitioners who are contesting the election, who shall be designated in writing by the petitioners at the time the contest is filed, one person designated by the county commissioner of elections to represent the interests adverse to those of the petitioners, and a third person who shall be chosen jointly by the designees of the petitioners and of the commissioner. If the persons selected by the petitioners and the county commissioner of elections cannot agree on a third person, the chief judge of the judicial district in which the contest is filed shall appoint a third person to serve.

[C77, 79, 81, §57.7]

CHAPTER 58

CONTESTING ELECTIONS OF GOVERNOR AND LIEUTENANT GOVERNOR

Chapter applicable to primary elections, §43.5
Constitution (codified), Art. IV, §5

58.1 Notice — grounds.
58.2 Notice to incumbent.
58.3 Houses notified.
58.4 Contest court.
58.5 Powers and proceedings.
58.6 Testimony.
58.7 Judgment.

58.1 Notice — grounds.

The contestant for the office of governor or lieutenant governor shall, within thirty days after the proclamation of the result of the election, deliver to the presiding officer of each house of the general assembly a notice of intent to contest, and a specification of the grounds of such contest, as provided in chapter 62.

[C51, §388; R60, §618; C73, §738; C97, §1239; C24, 27, 31, 35, 39, §**987;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §58.1]

58.2 Notice to incumbent.

As soon as the presiding officers have received the notice and specifications, they shall make out a notice, directed to the incumbent, including a copy of the specifications, which shall be served in the manner provided by the rules of civil procedure for service of an original notice by the sergeant at arms.

[C51, §389; R60, §619; C73, §739; C97, §1240; C24, 27, 31, 35, 39, §**988;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §58.2; 81 Acts, ch 34, §41]

58.3 Houses notified.

The presiding officers shall also immediately make known to their respective houses that such notice and specifications have been received.

[C51, §390; R60, §620; C73, §740; C97, §1241; C24, 27, 31, 35, 39, §**989;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §58.3]

58.4 Contest court.

Each house shall forthwith proceed, separately, to choose seven members of its own body in the following manner:

1. The names of members of each house, except the presiding officer, written on similar paper tickets, shall be placed in a box, the names of the senators in their presence by their secretary, and the names of the representatives in their presence by their clerk.

2. The secretary of the senate in the presence of the senate, and the clerk of the house of representatives in the presence of the house, shall draw from their respective boxes the names of seven members each.

3. As soon as the names are thus drawn, the names of the members drawn by each house shall be communicated to the other, and entered on the journal of each house.

[C51, §391; R60, §621; C73, §741; C97, §1242; C24, 27, 31, 35, 39, §**990;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §58.4]

58.5 Powers and proceedings.

The members thus drawn shall constitute a committee to try and determine the contested election, and for that purpose shall hold their meetings publicly at the place where the general assembly is sitting, at such times as they may designate; and may adjourn from day to day or to a day certain, not more than four days distant, until such trial is determined; shall have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to the contestant and the incumbent; and shall report their judgment to both branches of the general assembly, which report shall be entered on the journals of both houses.

[C51, §392; R60, §622; C73, §742; C97, §1243; C24, 27, 31, 35, 39, §**991;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §58.5]

58.6 Testimony.

The testimony shall be confined to the matters contained in the specifications.

[C51, §393; R60, §623; C73, §743; C97, §1244; C24, 27, 31, 35, 39, §**992;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §58.6]

58.7 Judgment.

The judgment of the committee pronounced in the final decision on the election shall be conclusive.

[C51, §394; R60, §624; C73, §744; C97, §1245; C24, 27, 31, 35, 39, §**993;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §58.7]

CHAPTER 59

CONTESTING ELECTIONS FOR SEATS IN THE GENERAL ASSEMBLY

Chapter applicable to primary elections, §43.5

59.1 Statement served.
59.2 Subpoenas.
59.3 Depositions.
59.4 Return of depositions.
59.5 Statement and depositions — notice.
59.6 Power of general assembly.
59.7 Notice of result.

59.1 Statement served.

The contestant for a seat in either branch of the general assembly shall, prior to twenty days before the first day of the next session, serve on the incumbent in the manner provided by the rules of civil procedure for service of an original notice a statement of notice of contest which shall allege a fact or facts, believed true by the contestant which, if true, would alter the outcome of the election.

A copy of the statement of notice of contest shall be filed with the secretary of state within five days of service of the notice upon the incumbent. The secretary of state shall notify the presiding officer of the house in which the contest will be tried.

A special election for a seat in either house of the general assembly may be contested. The contestant shall serve notice on the incumbent in the manner described in this section not later than twenty days after the state canvass of votes for the election. A copy of the notice shall also be filed with the presiding officer of the house in which the contest is to be tried, if the general assembly is in session. If the general assembly is not in session, a copy of the notice shall be filed with the secretary

of state. The secretary of state shall notify the presiding officer of the house in which the contest will be tried.

[C51, §381; R60, §611; C73, §731; C97, §1233; C24, 27, 31, 35, 39, §**994;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §59.1; 81 Acts, ch 34, §42]

93 Acts, ch 143, §37; 97 Acts, ch 170, §75

59.2 Subpoenas.

Any judge or clerk of a court of record may issue subpoenas in the above cases, as in those provided in chapters 61 and 62, and compel the attendance of witnesses thereunder.

[C51, §382; R60, §612; C73, §732; C97, §1234; C24, 27, 31, 35, 39, §**995;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §59.2]

59.3 Depositions.

Depositions may be taken in such cases in the same manner and under the same rules as in an action at law in the district court, but no cause for taking the same need be shown.

[C51, §383; R60, §613; C73, §733; C97, §1235; C24, 27, 31, 35, 39, §**996;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §59.3]

Depositions in general, R.C.P. 1.701 et seq.

59.4 Return of depositions.

A copy of the statement, and of the notice for taking depositions, with the service endorsed, and verified by affidavit if not served by an officer, shall be returned to the officer taking the depositions, and then, with the depositions, shall be sealed up and transmitted to the secretary of state, with an endorsement thereon showing the nature of the papers, the names of the contesting parties, and the branch of the general assembly before whom the contest is to be tried.

[C51, §384; R60, §614; C73, §734; C97, §1236; C24, 27, 31, 35, 39, §**997;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §59.4]

59.5 Statement and depositions — notice.

The secretary shall deliver the same unopened to the presiding officer of the house in which the contest is to be tried, on or before the second day of the session, regular or special, of the general assembly next after taking the depositions, and the presiding officer shall immediately give notice to that officer's house that such papers are in the officer's possession.

[C51, §385; R60, §615; C73, §735; C97, §1237; C24, 27, 31, 35, 39, §**998;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §59.5]

59.6 Power of general assembly.

Nothing herein contained shall be construed to abridge the right of either branch of the general assembly to grant commissions to take depositions, or to send for and examine any witness it may desire to hear on such trial.

[C51, §386; R60, §616; C73, §736; C97, §1238; C24, 27, 31, 35, 39, §**999;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §59.6]

59.7 Notice of result.

The presiding officer of the house in which the contest was tried shall certify to the secretary of state the results of the contest.

93 Acts, ch 143, §38

CHAPTER 60

CONTESTING ELECTIONS OF PRESIDENTIAL ELECTORS AND CONGRESSPERSONS

60.1 Court of contest.
60.2 Clerk.
60.3 Oath.
60.4 Statement.
60.5 Organization and trial.
60.6 Judgment.
60.7 Contestant to file bond.

60.1 Court of contest.

The court for the trial of contested elections for presidential electors or for the office of senator or representative in Congress shall consist of the chief justice of the supreme court, who shall be presiding judge of the court, and four judges of the district court to be selected by the supreme court, two of whom, with the chief justice, shall constitute a quorum for the transaction of the business of the court. If the chief justice should for any cause be unable to attend at the trial, the judge longest on the supreme court bench shall preside in place of the chief justice; and any question arising as to the membership of the court shall be determined by the members of the court not interested in the question.

[C97, §1246; C24, 27, 31, 35, 39, §**1000;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §60.1]

60.2 Clerk.

The secretary of state shall be the clerk of the court, or, in the secretary of state's absence or inability to act, the clerk of the supreme court.

[C97, §1246; C24, 27, 31, 35, 39, §**1001;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §60.2]

60.3 Oath.

Each member of the court, before entering upon the discharge of the member's duties, shall take an oath before the secretary of state, or some officer qualified to administer oaths, that the member will support the Constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, the member will, to the best of the member's knowledge and ability, administer justice according to law and the facts in the case.

[C97, §1246; C24, 27, 31, 35, 39, §**1002;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §60.3]

60.4 Statement.

The contestant shall file the statement provided for in chapter 62 in the office of the secretary of state within two days from the day on which the returns are canvassed by the state board of canvassers and, within the same time, serve a copy of the same, with a notice of the contest, on the incumbent in the manner provided by the rules of civil procedure for service of an original notice.

[C97, §1247; C24, 27, 31, 35, 39, §**1003;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §60.4; 81 Acts, ch 34, §43]

2002 Acts, ch 1134, §73, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

60.5 Organization and trial.

The clerk of the court shall, immediately after the filing of the statement, notify the judges herein named, and fix a day for the organization of the court within two days thereafter, and also notify the parties to the contest. The judges shall meet on the day fixed, and organize the court, and make and announce such rules for the trial of the case as they shall think necessary for the protection of the rights of each party and a just and speedy trial of the case, and commence the trial of the case as early as practicable thereafter, and so arrange for and conduct the trial that a final determination of the same and judgment shall be rendered at least six days before the first Monday after the second Wednesday in December next following.

[C97, §1248; C24, 27, 31, 35, 39, §**1004;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §60.5]

2002 Acts, ch 1134, §74, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

60.6 Judgment.

The judgment of the court shall determine which of the parties to the action is entitled to hold the office and shall be authenticated by the presiding judge and clerk of the court and filed with the secretary of state; and the judgment so rendered shall constitute a final determination of the title to the office, and a certificate of appointment shall be issued to the successful party.

[C97, §1249; C24, 27, 31, 35, 39, §**1005;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §60.6]

60.7 Contestant to file bond.

The contestant shall file in the office of the clerk of the supreme court a bond, with security to be approved by the clerk of the supreme court, in such amount as shall be set by the presiding judge of the court, conditional to pay all costs in case the election be confirmed or the contest dismissed. The presiding judge shall further set the date upon which the required bond shall be filed. If the required bond is not filed by the date set, the contest shall stand dismissed by operation of law.

[C71, 73, 75, 77, 79, 81, §60.7]

CHAPTER 61

CONTESTING ELECTIONS OF STATE OFFICERS

Chapter applicable to primary elections, §43.5

61.1 Contest court.
61.2 Clerk.
61.3 Statement filed.
61.4 Selection of court.
61.5 Notice of selection.
61.6 Organization.
61.7 Repealed by 65 Acts, ch 97, §3.
61.8 Delivery of papers.
61.9 Time of trial.
61.10 Notice to incumbent — trial.
61.11 Subpoenas — depositions.
61.12 Judgment filed — execution.
61.13 Power of judge.
61.14 Compensation of judges.

61.1 Contest court.

The court for the trial of contested state offices, except that of governor and lieutenant governor, shall consist of three district judges, not interested, who shall be selected by the chief justice of the supreme court.

[C51, §369; R60, §599; C73, §719; C97, §1224; C24, 27, 31, 35, 39, §**1006;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.1]

61.2 Clerk.

The secretary of state shall be the clerk of this court; but if the person holding that office is a party to the contest, the clerk of the supreme court, or, in case of that person's absence or inability, the auditor of state shall be clerk.

[C51, §370; R60, §600; C73, §720; C97, §1225; C24, 27, 31, 35, 39, §**1007;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.2]

61.3 Statement filed.

The statement, as provided in chapter 62 must be filed with such clerk within thirty days from the day when incumbent was declared elected.

[C51, §371; R60, §601; C73, §721; C97, §1226; C24, 27, 31, 35, 39, §**1008;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.3]

61.4 Selection of court.

Upon the filing of such statement, the chief justice of the supreme court shall select the membership of the court to try such contest, and immediately certify such selection to the clerk of the supreme court. Vacancies shall also be filled by the chief justice.

[C24, 27, 31, 35, 39, §**1009;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.4]

61.5 Notice of selection.

The clerk of the supreme court, on receipt of such certificate, shall forthwith in writing notify the members of such court of contest of their selection.

[C51, §372; R60, §602; C73, §722; C97, §1227; C24, 27, 31, 35, 39, §**1010;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.5]

61.6 Organization.

The members so selected for said contest court shall meet at the seat of government within ten days after said notification and qualify by taking the oath required in case of contest over the office of presidential elector, and proceed, at said place, with the discharge of their duties.

[C51, §375; R60, §605; C73, §725; C97, §1229; C24, 27, 31, 35, 39, §**1011;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.6]

Oath, §60.3

61.7 Repealed by 65 Acts, ch 97, § 3.

61.8 Delivery of papers.

Upon the organization of said court of contest, all papers in the possession of the clerk of the supreme court shall be forthwith delivered to said court of contest.

[C24, 27, 31, 35, 39, §**1013;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.8]

61.9 Time of trial.

The time for the trial of any contest relative to a state office shall not be set beyond the last Monday in January following the election.

[C51, §372; R60, §602; C73, §722; C97, §1227; C24, 27, 31, 35, 39, §**1014;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.9]

61.10 Notice to incumbent — trial.

Upon the organization of said court of contest, the court shall cause a notice of said contest to be served on the incumbent, together with a copy of the statement of contest filed by the contestant in the manner provided by the rules of civil procedure for service of an original notice. No trial shall be held sooner than twenty days following said notice, except by consent of all parties.

[C51, §372; R60, §602; C73, §722; C97, §1227; C24, 27, 31, 35, 39, §**1015;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.10; 81 Acts, ch 34, §44]

61.11 Subpoenas — depositions.

The secretary of state, the several clerks of the supreme and district courts, under their respective seals of office, and either of the judges of the supreme or district courts, under their hands, may issue subpoenas for witnesses to attend this court; and disobedience to such process may be treated as a contempt. Depositions may also be taken as in the case of contested county elections.

[C51, §373; R60, §603; C73, §723; C97, §1228; C24, 27, 31, 35, 39, §**1016;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.11]

Contempts, chapter 665
Depositions in county contest, §62.16

61.12 Judgment filed — execution.

A transcript of the judgment rendered by such court, filed in the office of the clerk of the supreme court, shall have the force and effect of a judgment of the supreme court, and execution may issue therefrom in the first instance against the party's property generally.

[C51, §377; R60, §607; C73, §727; C97, §1231; C24, 27, 31, 35, 39, §**1017;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.12]

61.13 Power of judge.

The presiding judge of this court shall have authority to carry into effect any order of the court, after the adjournment thereof, by attachment or otherwise.

[C51, §378; R60, §608; C73, §728; C97, §1232;

C24, 27, 31, 35, 39, §**1018;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.13]

61.14 Compensation of judges.

The judges shall be entitled to receive for their travel and attendance the sum of twelve dollars each per day, with such mileage as is allowed to members of the general assembly, to be paid from the state treasury.

[C51, §376; R60, §606; C73, §726; C97, §1230; C24, 27, 31, 35, 39, §**1019;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §61.14]

CHAPTER 62

CONTESTING ELECTIONS OF COUNTY OFFICERS

Chapter applicable to primary elections, §43.5

62.1 Definitions.
62.1A Contest court.
62.2 Judges.
62.3 Clerk.
62.4 Sheriff to attend.
62.5 Statement of intent to contest.
62.6 Bond.
62.7 When auditor is party.
62.8 Names of voters specified. Repealed by 2002 Acts, ch 1134, §114, 115.
62.9 Trial — notice.
62.10 Place of trial.
62.11 Subpoenas.
62.12 Postponement.
62.13 Procedure — powers of court.
62.14 Sufficiency of statement.
62.15 Amendment — continuance.
62.16 Testimony.
62.17 Voters required to testify.
62.18 Judgment.
62.19 How enforced.
62.20 Appeal.
62.21 Judgment.
62.22 Process — fees.
62.23 Compensation.
62.24 Costs.
62.25 How collected.

62.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §62.1 transferred to §62.1A

62.1A Contest court.

The court for the trial of contested county elections shall consist of one person named by the contestant and one person named by the incumbent. If the incumbent fails to name a judge, the chief judge of the judicial district shall be notified of the failure to appoint. The chief judge shall designate the second judge within one week after the chief judge is notified. These two judges shall meet within three days and select a third person to serve as the presiding officer of the court. If they cannot agree on the third member of the court within three days after their initial meeting, the chief judge of the judicial district shall be notified of the failure to agree. The chief judge shall designate the presiding judge within one week after the chief judge is notified.

[C51, §343; R60, §573; C73, §695; C97, §1201; C24, 27, 31, 35, 39, §**1020;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.1]

97 Acts, ch 170, §76

C2001, §62.1A

62.2 Judges.

Judges shall be sworn in the same manner and form as trial jurors are sworn in trials of civil actions. When a judge fails to appear on the day of trial, that judge's place may be filled by another appointment under the same rule.

[C51, §347, 348; R60, §577, 578; C73, §700; C97, §1206; C24, 27, 31, 35, 39, §**1021;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.2]

97 Acts, ch 170, §77

62.3 Clerk.

The county auditor shall be clerk of this court, and keep all papers, and record the proceedings in the election book, in manner similar to the record of the proceedings of the district court, but when the county auditor is a party, the court shall appoint a suitable person as clerk, whose appointment shall be recorded.

[C51, §344; R60, §574; C73, §696; C97, §1202; C24, 27, 31, 35, 39, §**1022;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.3]

62.4 Sheriff to attend.

The court or presiding judge may direct the at-

tendance of the sheriff or a deputy when necessary.

[C51, §359; R60, §589; C73, §708; C97, §1214; C24, 27, 31, 35, 39, §**1023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.4]

62.5 Statement of intent to contest.

1. Within twenty days after the board of supervisors declares a winner from the canvass of an election, the contestant shall file with the commissioner a written statement of intention to contest the election. If a recount is held for the office in question, and the recount board finds that the winner was someone other than the person declared at the original canvass of votes, a contest may be filed within twenty days after the board of supervisors declares a winner from the recount of votes.

2. The contestant's statement shall include the following:

a. The name of the contestant and that the contestant is qualified to hold such office.

b. The name of the incumbent.

c. The office contested.

d. The date of the election.

e. The particular causes of the contest pursuant to section 57.1, subsection 2. If a cause of the contest is an allegation that illegal votes were received or that legal votes were rejected, a statement shall be included setting forth the names of the persons who are alleged to have voted illegally or whose votes were rejected and the precinct where they voted or offered to vote.

f. The affidavit of the contestant, or some elector of the county, affirming the causes set forth are true.

[C51, §345; R60, §575; C73, §697; C97, §1203; C24, 27, 31, 35, 39, §**1024;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.5]

2002 Acts, ch 1134, §75, 114, 115

Section history from prior version of section 62.5 retained and included with section history for new section 62.5, due to content of section text; see 2002 Acts, ch 1134, §75, 114, 115

Repeal of former section 62.5 and enactment of new section text take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Former section 62.5 repealed

NEW section

62.6 Bond.

The contestant must also file with the county auditor a bond, with security to be approved by said auditor, conditioned to pay all costs in case the election be confirmed, or the statement be dismissed, or the prosecution fail.

[C51, §345; R60, §575; C73, §697; C97, §1203; C24, 27, 31, 35, 39, §**1025;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.6]

62.7 When auditor is party.

When the auditor is a party, the county treasurer shall receive such statement and approve such bond.

[C73, §697; C97, §1203; C24, 27, 31, 35, 39, §**1026;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.7]

93 Acts, ch 70, §1

62.8 Names of voters specified. Repealed by 2002 Acts, ch 1134, § 114, 115. See § 62.5.

Repeal takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

62.9 Trial — notice.

The presiding judge shall fix a day for the trial, not more than thirty days thereafter, and shall cause a notice of such trial to be served on the incumbent, with a copy of the contestant's statement, at least ten days before the day set for trial. If the trial date is set for less than twenty days from the day notice is given and either party is not ready, the presiding judge shall delay the trial.

[C51, §347, 349, 350; R60, §577, 579, 580; C73, §699; C97, §1205; C24, 27, 31, 35, 39, §**1028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.9]

97 Acts, ch 170, §78

62.10 Place of trial.

The trial of contested county elections shall take place at the county seat, unless some other place within the county is substituted by the consent of the court and parties.

[C51, §357; R60, §587; C73, §707; C97, §1213; C24, 27, 31, 35, 39, §**1029;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.10]

62.11 Subpoenas.

Subpoenas for witnesses may be issued at any time after the notice of trial is served, either by the county treasurer or by the county auditor, and shall command the witnesses to appear at . . . . . , on . . . . . , to testify in relation to a contested election, wherein . . . . . (Insert contestant's name) is contestant and . . . . . (Insert incumbent's name) is incumbent.

[C51, §352, 356; R60, §582, 586; C73, §704, 706; C97, §1210; C24, 27, 31, 35, 39, §**1030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.11]

93 Acts, ch 70, §2; 2000 Acts, ch 1058, §11

62.12 Postponement.

The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement shall be in the discretion of the court.

[C51, §353; R60, §583; C73, §701; C97, §1207; C24, 27, 31, 35, 39, §**1031;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.12]

62.13 Procedure — powers of court.

The proceedings shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers of the district court necessary

to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination, to punish for contempt in its presence or by disobedience to its lawful mandate, to adjourn from day to day, to make any order concerning intermediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case.

[C51, §354, 358, 361; R60, §584, 588, 591; C73, §702; C97, §1208; C24, 27, 31, 35, 39, §**1032;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.13]

62.14 Sufficiency of statement.

The statement shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest.

[C51, §355; R60, §585; C73, §705; C97, §1211; C24, 27, 31, 35, 39, §**1033;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.14]

62.15 Amendment — continuance.

If any part of the causes are held insufficient, they may be amended, but the incumbent will be entitled to an adjournment, if the incumbent states on oath that the incumbent has matter of answer to the amended causes, for the preparation of which the incumbent needs further time. Such adjournment shall be upon such terms as the court thinks reasonable; but if all the causes are held insufficient and an amendment is asked, the adjournment shall be at the cost of contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed.

[C51, §355, 361; R60, §585, 591; C73, §705; C97, §1211; C24, 27, 31, 35, 39, §**1034;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.15]

62.16 Testimony.

The testimony may be oral or by deposition, taken as in an action at law in the district court.

[C51, §351; R60, §581; C73, §703; C97, §1209; C24, 27, 31, 35, 39, §**1035;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.16]

Depositions in general, R.C.P. 1.701 et seq.

62.17 Voters required to testify.

The court may require any person called as a witness, who voted at such election, to answer touching the person's qualifications as a voter, and, if the person was not a registered voter in the county where the person voted, then to answer for whom the person voted.

[C51, §360; R60, §590; C73, §709; C97, §1215; C24, 27, 31, 35, 39, §**1036;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.17]

2001 Acts, ch 56, §5

62.18 Judgment.

The court shall adjudge whether the incumbent or any other person was duly elected, and that the person elected is entitled to the certificate. If the court finds that the election resulted in a tie vote for any office, the tie shall be resolved pursuant to section 50.44. If the judgment is against the incumbent, and the incumbent has already received the certificate, the judgment shall annul the certificate. If the court finds that no person was elected, the judgment shall be that the election be set aside.

[C51, §362; R60, §592; C73, §714; C97, §1220; C24, 27, 31, 35, 39, §**1037;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.18]

90 Acts, ch 1238, §32

62.19 How enforced.

When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the presiding judge shall, if the judgment be against the party so in possession of the office and in favor of the party's antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the county, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to the successful party all books and papers belonging to the same; and the sheriff shall execute such order as other writs.

[C73, §715; C97, §1221; C24, 27, 31, 35, 39, §**1038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.19]

62.20 Appeal.

The party against whom judgment is rendered may appeal within twenty days to the district court, but, if the party be in possession of the office, such appeal will not supersede the execution of the judgment of the court as provided in section 62.19, unless the party gives a bond, with security to be approved by the district judge in a sum to be fixed by the judge, and which shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that the party will prosecute the appeal without delay, and that, if the judgment appealed from be affirmed, the party will pay over to the successful party all compensation received by the party while in possession of said office after the judgment appealed from was rendered. The court shall hear the appeal in equity and determine anew all questions arising in the case.

[C73, §716; C97, §1222; S13, §1222; C24, 27, 31, 35, 39, §**1039;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.20]

Presumption of approval of bond, §636.10

62.21 Judgment.

If, upon appeal, the judgment is affirmed, the district court may render judgment upon the bond

for the amount of damages, against the appellant and the sureties thereon.

[C73, §717; C97, §1223; C24, 27, 31, 35, 39, §**1040;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.21]

62.22 Process — fees.

The style, form, and manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court, so far as the nature of the case admits.

[C51, §356, 374; R60, §586, 604; C73, §706, 724; C97, §1212; C24, 27, 31, 35, 39, §**1041;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.22]

62.23 Compensation.

The judges shall be entitled to receive one hundred dollars a day for the time occupied by the trial.

[C51, §363; R60, §593; C73, §710; C97, §1216; C24, 27, 31, 35, 39, §**1042;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.23]

93 Acts, ch 143, §39

62.24 Costs.

The contestant and the incumbent are responsible for the expenses of the witnesses called by them, respectively. If the results of the election are upheld by the contest, if the statement is dismissed, or if the prosecution fails, the costs of the contest shall be paid by the contestant. If the court or tribunal trying the contest determines that the contestant won the election, or if the election is set aside, the costs of the contest shall be paid by the county.

[C51, §364; R60, §594; C73, §711; C97, §1217; C24, 27, 31, 35, 39, §**1043;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.24]

93 Acts, ch 143, §40

62.25 How collected.

A transcript of the judgment may be filed and recorded in the office of the clerk of the district court and shall have the effect of a judgment of that court and execution may issue thereon.

[C51, §365; R60, §595; C73, §712; C97, §1218; C24, 27, 31, 35, 39, §**1044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §62.25]

CHAPTER 63

TIME AND MANNER OF QUALIFYING

63.1 Time.
63.2 Repealed by 55 Acts, ch 71, §1.
63.3 Unavoidable casualty.
63.4 Contest.
63.5 Governor and lieutenant governor.
63.6 Judges.
63.7 Officer holding over.
63.8 Vacancies — time to qualify.
63.9 Temporary officer.
63.10 Other officers.
63.11 Oath on bond.
63.12 Re-elected incumbent.
63.13 Approval conditioned.

63.1 Time.

Each officer, elective or appointive, before entering upon the officer's duties, shall qualify by taking the prescribed oath and by giving, when required, a bond, which qualification shall be perfected, unless otherwise specified, after being certified as elected but not later than noon of the first day which is not a Sunday or a legal holiday in January of the first year of the term for which the officer was elected. *"Legal holiday"* means those days provided in section 1C.1.

[C51, §319, 334, 335; R60, §549, 564, 565; C73, §670, 685 – 687; C97, §1177; S13, §1177; C24, 27, 31, 35, 39, §**1045;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.1]

85 Acts, ch 81, §1

Prescribed oath, §63.5, 63.6, 63.10; bonds, chapter 64

Unavoidable casualty, §63.3

63.2 Repealed by 55 Acts, ch 71, § 1.

63.3 Unavoidable casualty.

When on account of sickness, the inclement state of the weather, unavoidable absence, or casualty, an officer has been prevented from qualifying within the prescribed time, the officer may do so within ten days after the time herein fixed.

[C97, §1177; S13, §1177; C24, 27, 31, 35, 39, §**1047;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.3]

General time to qualify, §63.1, 63.4 – 63.8

63.4 Contest.

In case the election of an officer is contested, the successful party shall qualify within ten days after the decision is rendered.

[C51, §335; R60, §565; C73, §687; C97, §1177; S13, §1177; C24, 27, 31, 35, 39, §**1048;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.4]

63.5 Governor and lieutenant governor.

The governor and lieutenant governor shall each qualify within ten days after the result of the election shall be declared by the general assembly, by taking an oath in its presence, in joint convention assembled, administered by a judge of the supreme court, to the effect that each will support the Constitution of the United States and the Constitution of the state of Iowa, and will faithfully and impartially, and to the best of the officer's knowledge and ability, discharge the duties incumbent upon the officer as governor, or lieutenant governor, of this state.

[C51, §320, 334; R60, §550, 564; C73, §671, 685; C97, §1178; C24, 27, 31, 35, 39, §**1049;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.5]

63.6 Judges.

All judges of courts of record shall qualify before taking office following appointment by taking and subscribing an oath to the effect that they will support the Constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, they will, to the best of their knowledge and ability, administer justice according to the law, equally to the rich and the poor.

[C51, §322, 334; R60, §552, 564; C73, §673, 685; C97, §1179; C24, 27, 31, 35, 39, §**1050;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.6]

63.7 Officer holding over.

When it is ascertained that the incumbent is entitled to hold over by reason of the nonelection of a successor, or for the neglect or refusal of the successor to qualify, the incumbent shall qualify anew, within the time provided by section 63.8.

[C51, §338; R60, §568; C73, §690; C97, §1195; S13, §1195; C24, 27, 31, 35, 39, §**1051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.7]

63.8 Vacancies — time to qualify.

Persons elected or appointed to fill vacancies, and officers entitled to hold over to fill vacancies occurring through a failure to elect, appoint, or qualify, as provided in chapter 69, shall qualify within ten days from the county board's canvass of such election, or within ten days from such appointment or failure to elect, appoint, or qualify, in the same manner as those originally elected or appointed to such offices.

[C51, §440; R60, §668; C73, §786; C97, §1275; C24, 27, 31, 35, 39, §**1052;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.8]

2002 Acts, ch 1134, §76, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

63.9 Temporary officer.

Any person temporarily appointed to fill an office during the incapacity or suspension of the regular incumbent shall qualify, in the manner required by this chapter, for the office so to be filled.

[C73, §691; C97, §1194; C24, 27, 31, 35, 39, §**1053;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.9]

Similar provisions, §67.8, 68.5

63.10 Other officers.

All other civil officers, elected by the people or appointed to any civil office, unless otherwise provided, shall take and subscribe an oath substantially as follows:

I, ... , do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of . . . . . (naming it) in (naming the township, city, county, district, or state, as the case may be), as now or hereafter required by law.

[C51, §331, 332; R60, §561, 562, 1084, 1132; C73, §504, 514, 675, 676; C97, §1180; C24, 27, 31, 35, 39, §**1054;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.10]

Exceptions as to oath, §63.5, 63.6

63.11 Oath on bond.

Every civil officer who is required to give bond shall take and subscribe the oath provided for in section 63.10, on the back of the bond, or on a paper attached thereto, to be certified by the officer administering it.

[C51, §331; R60, §561; C73, §675; C97, §1181; C24, 27, 31, 35, 39, §**1055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.11]

Officers required to give bonds, chapter 64

63.12 Re-elected incumbent.

When the incumbent of an office is re-elected, the incumbent shall qualify as above directed, but a judge retained at a judicial election need not requalify.

[C51, §338; R60, §568; C73, §690; C97, §1193; C24, 27, 31, 35, 39, §**1056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.12]

63.13 Approval conditioned.

When the re-elected officer has had public funds or property in the officer's control, under color of the officer's office, the officer's bond shall not be approved until the officer has produced and fully accounted for such funds and property to the proper person to whom the officer should account therefor; and the officer or board approving the

bond shall endorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under the officer's control as such officer.

[C73, §690; C97, §1193; C24, 27, 31, 35, 39, §**1057;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §63.13]

CHAPTER 63A

ADMINISTRATION OF OATHS

63A.1 General authority.
63A.2 Limited authority.
63A.3 Jurat by deputy.

63A.1 General authority.

The following officers are empowered to administer oaths and to take affirmations:

1. Justices of the supreme court and judges of the court of appeals and district courts, including district associate judges and judicial magistrates.
2. Official court reporters of district courts in taking depositions under appointment or by agreement of counsel.
3. The clerk and deputy clerks of the supreme court and the clerks of the district court and their designees.
4. Notaries public.
5. Certified shorthand reporters.

[C51, §227, 979, 980, 1594; R60, §201, 449, 1843, 1844, 2684; C73, §277, 278, 396; C97, §393; C24, 27, 31, 35, 39, §**1215;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §78.1]

89 Acts, ch 296, §12; 91 Acts, ch 116, §1

C93, §63A.1

63A.2 Limited authority.

The following officers and persons are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective office, position, or appointment:

1. Governor, secretary of state, secretary of agriculture, auditor of state, treasurer of state, attorney general.
2. Members of all boards, commissions, or bodies created by law.
3. All county officers other than those named in section 63A.1.
4. Mayors and clerks of cities, precinct election officials, township clerks, assessors, and surveyors.
5. All duly appointed referees or appraisers.
6. All investigators for supplemental assistance as provided for under chapter 249.
7. The director and employees of the department of revenue and finance, as authorized by the director, and as set forth in chapters 421 and 422.

[C51, §980, 1865; R60, §1844, 3201; C73, §277, 278; C97, §393; C24, 27, 31, 35, 39, §**1216;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §78.2]

89 Acts, ch 296, §13

C93, §63A.2

Members of general assembly, §2.8
Veterinary assistants, §163.5

63A.3 Jurat by deputy.

In preparing a jurat to an oath or affirmation administered by a deputy, it shall be sufficient for the deputy to affix the deputy's own name, together with the designation of the deputy's official position, and the seal of principal, if any.

[C24, 27, 31, 35, 39, §**1217;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §78.3]

C93, §63A.3

SUBTITLE 2

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 64

OFFICIAL AND PRIVATE BONDS

See also chapter 666

64.1 Definitions.
64.1A Bond not required.
64.2 Conditions of bond of public officers.
64.3 Liability of surety. Repealed by 88 Acts, ch 1108, §4.
64.4 Conditions of other bonds.
64.5 Want of compliance — effect.
64.6 State officers — blanket bonds.
64.7 Amount of bond, when not fixed by law. Repealed by 86 Acts, ch 1211, §46.
64.8 Bonds of county officers.
64.9 Repealed by 80 Acts, ch 1012, §75.
64.10 Bond of county treasurer.
64.11 Expense of bonds paid by county.
64.12 Township clerk — expense of bond.
64.13 Municipal officers.
64.14 Repealed by 72 Acts, ch 1088, §227.
64.15 Bonds of deputy officers and clerks.
64.15A Exemptions applicable.
64.16 Minimum number of sureties — qualifications. Repealed by 88 Acts, ch 1108, §4.
64.17 Surety company bonds. Repealed by 88 Acts, ch 1108, §4.
64.18 Beneficiary of bond.
64.19 Approval of bonds.
64.20 Time for approval.
64.21 Approval by auditor.
64.22 Failure of board to approve — application to judge.
64.23 Custody of bond.
64.24 Recording.
64.25 Failure to give bond.

64.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §64.1 transferred to §64.1A

64.1A Bond not required.

Bonds shall not be required of the following public officers:

1. Governor.
2. Lieutenant governor.
3. Members of the general assembly.
4. Judges of the supreme and district courts and district associate judges.
5. Township trustees.
6. City council members, including city commissioners and aldermen, other than mayors.

[C51, §323; R60, §553; C73, §674; C97, §1182; S13, §1182; SS15, §694-c11; C24, 27, 31, 35, 39, §**1058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.1]

C2001, §64.1A

64.2 Conditions of bond of public officers.

All other public officers, except as otherwise specially provided, shall give bond with the conditions, in substance, as follows:

That as . . . . . (naming the office), in . . . . . (city, township, county, or state of Iowa), the officer will render a true account of the office and of the officer's doings therein to the proper authority, when required thereby or by law; that the officer will promptly pay over to the officer or person entitled thereto all moneys which may come into the officer's hands by virtue of the office; that the officer will promptly account for all balances of money remaining in the officer's hands at the termination of the office; that the officer will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to that office, and deliver them to the officer's successor, or to any other person authorized to receive the same; and that the officer will faithfully and impartially, without fear, favor, fraud, or oppression, discharge all duties now or hereafter required of the office by law.

The attachment of a renewal certificate to an existing bond shall not constitute compliance with this section.

[C51, §324; R60, §554, 1084, 1132; C73, §504, 514, 674; C97, §1183; C24, 27, 31, 35, 39, §**1059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.2]

Construction of public bonds, §666.1

64.3 Liability of surety. Repealed by 88 Acts, ch 1108, § 4.

64.4 Conditions of other bonds.
All other bonds required by law, when not otherwise specially provided, shall be conditioned as the bonds of public officers.
[S13, §1177-a, -d; C24, 27, 31, 35, 39, §**1061;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.4]

64.5 Want of compliance — effect.
All bonds required by law shall be construed as impliedly containing the conditions required by statute, anything in the terms of said bonds to the contrary notwithstanding.
[C51, §337; R60, §567; C73, §689; C97, §1192; S13, §1177-c; C24, 27, 31, 35, 39, §**1062;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.5]

64.6 State officers — blanket bonds.
State officials are not required to obtain bonds, but may be covered under a blanket bond for state employees. The blanket bond purchases shall be made in an amount and with the level of assumption of risk by the state that is determined by the department of general services. The state shall pay the reasonable cost of bonds under this section.
83 Acts, ch 14, §2; 83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10027, 10201; 85 Acts, ch 212, §21; 86 Acts, ch 1211, §10; 86 Acts, ch 1245, §1901; 89 Acts, ch 76, §5

64.7 Amount of bond, when not fixed by law. Repealed by 86 Acts, ch 1211, § 46. See § 64.6.

64.8 Bonds of county officers.
The bonds of members of the boards of supervisors, county attorneys, recorders, auditors, sheriffs, and assessors shall each be in a penal sum of not less than twenty thousand dollars. The amount of each bond shall be determined by the board of supervisors.
[C51, §326, 327; R60, §556, 557; C73, §678; C97, §1185; S13, §1182-a, 1185; C24, 27, 31, 35, 39, §**1065, 1066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §64.8, 64.9; C81, §64.8]
83 Acts, ch 186, §10028, 10201; 88 Acts, ch 1108, §1

64.9 Repealed by 80 Acts, ch 1012, § 75. See § 64.8.

64.10 Bond of county treasurer.
The bond of the county treasurer shall be in the sum of not less than fifty thousand dollars. The amount of the treasurer's bond shall be determined by the board of supervisors.
[C24, §1066; C27, 31, 35, §1066-a1; C39, §**1066.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.10]
88 Acts, ch 1108, §2

64.11 Expense of bonds paid by county.
If a county treasurer, county attorney, recorder, auditor, sheriff, medical examiner, member of the veterans affairs commission, member of the board of supervisors, engineer, steward, or matron elects to furnish a bond with an association or incorporation as surety as provided in this chapter, the reasonable cost of the bond shall be paid by the county where the bond is filed.
[S13, §1185; C24, 27, 31, 35, 39, §**1067;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.11]
83 Acts, ch 186, §10029, 10201; 89 Acts, ch 83, §16

64.12 Township clerk — expense of bond.
All bonds required of the township clerk shall be furnished and paid for by the township.
[C27, 31, 35, §1067-b1; C39, §**1067.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.12]

64.13 Municipal officers.
The bonds of all municipal officers who are required to give bonds shall each be in such penal sum as may be provided by law or as the council shall from time to time prescribe by ordinance; but the council may provide for a surety bond running to the city and covering all city officers and employees not otherwise covered and conditioned as specified for bonds in section 64.2.
[R60, §1084, 1132; C73, §504, 514; C97, §1185; S13, §1185; C24, 27, 31, 35, 39, §**1068;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.13]
Bonds not required, §64.1A

64.14 Repealed by 72 Acts, ch 1088, § 227.

64.15 Bonds of deputy officers and clerks.
Bonds required by law of deputy state, county, and city officers shall, unless otherwise provided, be in such amounts as may be fixed by the governor, board of supervisors, or the council, as the case may be, with sureties as required for the bonds of the principal, and filed with the same officer. Any loss of moneys caused by a deputy shall be paid by the deputy or the surety on the deputy's bond and the deputy's principal is not liable for the loss. The reasonable cost of the bonds required of deputy county officers, clerks, and cashiers employed by county officers shall be paid by the county where the bond is filed.
The exemptions provided in section 561.16 and chapter 627 are applicable to any claim made against a deputy state, county, or city officer and each bond shall so provide.
[C51, §411; R60, §642; C73, §766; C97, §1186; C24, 27, 31, 35, 39, §**1069;** C46, 50, 54, 58, 62, 66,

71, 73, 75, 77, 79, 81, §64.15]
89 Acts, ch 153, §1
Bonds of deputies, §14A.1, 331.903(3)
See also §63.11, 64.19

64.15A Exemptions applicable.
The exemptions provided in section 561.16 and chapter 627 are applicable to any claim made against a state, county, or city officer and each bond shall so provide.
89 Acts, ch 153, §2

64.16 Minimum number of sureties — qualifications. Repealed by 88 Acts, ch 1108, § 4.

64.17 Surety company bonds. Repealed by 88 Acts, ch 1108, § 4.

64.18 Beneficiary of bond.
All bonds of public officers shall run to the state, and be for the use and benefit of any corporation, public or private, or person injured or sustaining loss, with a right of action in the name of the state for its or the corporation's or person's use.
[C51, §325; R60, §555; C73, §677; C97, §1188; S13, §1188; C24, 27, 31, 35, 39, §**1072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.18]

64.19 Approval of bonds.
Bonds shall be approved:
1. By the governor, in case of state and district officers, elective or appointive.
2. By the board of supervisors, in case of county officers, township clerks, and assessors.
3. By a judge of the district court for the county in question, in case of members of the board of supervisors.
4. By the township clerk, in case of other township officers.
5. By the council, or as provided by ordinance in case of city officers.
6. By the state court administrator in case of district court clerks and first deputy clerks.
[C51, §330; R60, §560; C73, §680; C97, §1188; S13, §1182-a, 1188; C24, 27, 31, 35, 39, §**1073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.19]
83 Acts, ch 186, §10030, 10201; 93 Acts, ch 70, §3
See §63.11, 64.15

64.20 Time for approval.
All bonds shall be approved or disapproved within five days after their presentation for that purpose, and endorsed, in case of approval, to that effect and filed.
[C51, §330; R60, §560; C73, §680; C97, §1188; S13, §1188; C24, 27, 31, 35, 39, §**1074;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.20]

64.21 Approval by auditor.
When a bond, approvable by the board of supervisors, of any public officer is presented after the final adjournment of the January session of said board, except those of the county auditor and treasurer, the auditor may approve such bond, in which case the auditor shall report that action to the board at its next session. The action of the auditor in approving the bond shall stand as the action of the board unless the board enters its disapproval. If such disapproval be entered, the new bond must be given within five days from the date of such decision, but the old bond shall stand good for all acts done up to the time of the approval of the new bond.
[C51, §330; R60, §560; C73, §680; C97, §1189; C24, 27, 31, 35, 39, §**1075;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.21]

64.22 Failure of board to approve — application to judge.
If the board of supervisors refuses or neglects to approve the bond of any county officer, the officer may within five days thereafter, or after the expiration of the time allowed for such approval, present the same for approval to a judge of the district court of the proper district, who shall fix a day for the hearing. Notice of such hearing shall be given the board and return made in the same manner as in a civil action, and the court or judge at the time fixed shall, unless good cause for postponement be shown, proceed to hear the matter and approve the bond, if found sufficient, and such approval shall have the same force and effect as an approval by the board.
[C73, §681; C97, §1190; C24, 27, 31, 35, 39, §**1076;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.22]
Notice and return, chapter 617

64.23 Custody of bond.
The bonds and official oaths of public officers shall, after approval and proper record, be filed:
1. For all state officers, elective or appointive, except those of the secretary of state and judicial magistrates, with the secretary of state. Bonds and official oaths of judicial magistrates and court personnel shall be filed in the office of the state court administrator.
2. For the secretary of state, with the state auditor.
3. For county and township officers, except those of the county auditor, with the county auditor.
4. For county auditor, with the county treasurer.
5. For members of the board of supervisors, with the county auditor.
6. For officers of cities, and officers not otherwise provided for, in the office of the officer or clerk of the body approving the bond, or in cities, as otherwise provided by ordinance.

[C51, §333; R60, §563; C73, §682; C97, §1188, 1191; S13, §1182-a, 1188; C24, 27, 31, 35, 39, §**1077;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.23]

83 Acts, ch 186, §10031, 10201; 93 Acts, ch 70, §4

64.24 Recording.

The secretary of state, each county auditor, district court clerk, and each auditor or clerk of a city shall keep a book, to be known as the *"Record of Official Bonds"*, and all official bonds shall be recorded therein in full as follows:

1. In the record kept by the secretary of state, the official bonds of all state officers, elective or appointive, except the bonds of notaries public.

2. In the record kept by the county auditor, the official bonds of all county officers, elective or appointive, and township clerks.

3. In the record kept by the city auditor or clerk, the official bonds of all city officers, elective or appointive.

4. In the record kept by the district court clerk, the official bonds of judicial magistrates.

The records shall have an index which, under the title of each office, shall show the name of each principal and the date of the filing of the bond.

A bond when recorded shall be returned to the officer charged with the custody thereof.

[C73, §683; C97, §1196; S13, §1196; C24, 27, 31, 35, 39, §**1078;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.24]

88 Acts, ch 1108, §3

64.25 Failure to give bond.

Action by any officer in an official capacity without giving bond when such bond is required shall constitute grounds for removal from office.

[C73, §684; C97, §1197; C24, 27, 31, 35, 39, §**1079;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §64.25]

CHAPTER 65

ADDITIONAL SECURITY AND DISCHARGE OF SURETIES

65.1 Definitions.
65.1A Additional security.
65.2 New bond.
65.3 Effect.
65.4 Sureties on bonds of public officers.
65.5 Notice.
65.6 Subpoenas.
65.7 Hearing — order — effect.
65.8 Failure to comply.
65.9 Repealed by 72 Acts, ch 1124, §282.
65.10 Sureties on other bonds.
65.11 Return of premium by surety.

65.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §65.1 transferred to §65.1A

65.1A Additional security.

Whenever the governor shall deem it advisable that the bonds of any state officer shall be increased and the security enlarged, or a new bond given, the governor shall notify said officer of the fact, the amount of new or additional security to be given, and the time when the same shall be executed; which said new security shall be approved and filed as provided by law.

[R60, §660; C73, §772; C97, §1280; C24, 27, 31, 35, 39, §**1080;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.1]

C2001, §65.1A

Approval and filing of bonds, §64.19, 64.23

65.2 New bond.

Any officer or board who has the approval of another officer's bond, when of the opinion that the public security requires it, upon giving ten days' notice to show cause to the contrary, may require the officer to give additional security by a new bond, within a reasonable time to be prescribed.

[C51, §418, 419; R60, §649, 650; C73, §773; C97, §1281; C24, 27, 31, 35, 39, §**1081;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.2]

Approval, §64.19

65.3 Effect.

If a requisition made under either section 65.1A or section 65.2 be complied with, both the old and the new security shall be in force; if not, the office shall become and be declared vacant, and the fact be certified to the proper officer, to be recorded in the election book or township record.

[C51, §420; R60, §651, 661; C73, §774; C97, §1282; C24, 27, 31, 35, 39, §**1082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.3]

65.4 Sureties on bonds of public officers.
When any surety on the bond of a public officer desires to be relieved of obligation, the surety may petition the approving officer or board for relief, stating the grounds therefor.
[C51, §421; R60, §652; C73, §775; C97, §1283; C24, 27, 31, 35, 39, §**1083;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.4]
Approving officers, §64.19

65.5 Notice.
The surety shall give the principal at least twenty-four hours' notice of the presenting and filing of the petition, with a copy thereof. At the expiration of this notice the approving officer may hear the matter, or may postpone it, as justice requires.
[C51, §422; R60, §653; C73, §776; C97, §1284; C24, 27, 31, 35, 39, §**1084;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.5]

65.6 Subpoenas.
The approving officer may issue subpoenas in the officer's official name for witnesses, compel them to attend and testify, in the same way an officer authorized to take depositions may.
[C51, §427; R60, §658; C73, §780; C97, §1288; C24, 27, 31, 35, 39, §**1085;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.6]
Enforcing attendance, §622.84, 622.102

65.7 Hearing — order — effect.
If, upon the hearing, there appears substantial ground for apprehension, the approving officer or board may order the principal to give a new bond and to supply the place of the petitioning surety within a reasonable time to be prescribed, and, upon such new bond being given, the petitioning surety upon the former bond shall be declared discharged from liability on the same for future acts, which order of discharge shall be entered in the proper election book, but the bond will continue binding upon those who do not petition for relief.
[C51, §424; R60, §655; C73, §777; C97, §1285; C24, 27, 31, 35, 39, §**1086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.7]

65.8 Failure to comply.
If the new bond is not given as required, the office shall be declared vacant, and the order to that effect entered in the proper election book.
[C51, §425; R60, §656; C73, §778; C97, §1286; C24, 27, 31, 35, 39, §**1087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.8]

65.9 Repealed by 72 Acts, ch 1124, § 282.

65.10 Sureties on other bonds.
When the principal on the bond has been appointed by a judge or court or is under the jurisdiction of a court, the petition for release must be presented to said court and the release shall be made subject to the orders of said court.
Such petition for release may be presented either by the principal or the surety on the bond.
Sureties on other bonds required by law who desire to be released of their obligation may proceed in the manner required for release in case of bonds of public officers.
The provisions of this section shall not apply to sureties on bonds given to secure the performance of contracts for public works, nor to sureties on appearance bonds in criminal cases.
[C51, §421; R60, §652; C73, §775; C97, §1283; S13, §1177-b; C24, 27, 31, 35, 39, §**1089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.10]
Release of obligation, §65.4

65.11 Return of premium by surety.
When a surety is released as heretofore provided, the surety shall refund to the party entitled thereto the premium paid, if any, less a pro rata part thereof for the time said bond has been in force.
[S13, §1177-b; C24, 27, 31, 35, 39, §**1090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §65.11]

CHAPTER 66

REMOVAL FROM OFFICE

See also chapter 69

66.1 Definitions.
66.1A Removal by court.
66.2 Jurisdiction.
66.3 Who may file petition.
66.4 Bond for costs.
66.5 Petition — other pleading.
66.6 Notice.
66.7 Suspension from office.
66.8 Effect of suspension.
66.9 Salary pending charge.
66.10 Governor to direct filing.
66.11 Duty of county attorney.
66.12 Special prosecutor.
66.13 Application for outside judge.
66.14 Appointment of judge.
66.15 Order by appointed judge.
66.16 Filing order — effect.
66.17 Notice to accused.
66.18 Nature of action — when triable.
66.19 Temporary officer.
66.20 Judgment of removal.
66.21 Hearing on appeal.

66.22 Effect of appeal.
66.23 Effect of dismissal.
66.24 Want of probable cause.
66.25 Expense of judge and reporter. Repealed by 83 Acts, ch 186, §10201, 10203.
66.26 Appointive state officers.
66.27 Subpoenas — contempt.
66.28 Witness fees.
66.29 City elective officers.
66.30 Ordinance.

66.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §66.1 transferred to §66.1A

66.1A Removal by court.

Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:

1. For willful or habitual neglect or refusal to perform the duties of the office.
2. For willful misconduct or maladministration in office.
3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication, or upon conviction of being intoxicated.
7. Upon conviction of violating the provisions of chapter 56.

[S13, §1258-c; C24, 27, 31, 35, 39, §**1091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.1]

C2001, §66.1A

Impeachable officers, Constitution, Art. III, §20

66.2 Jurisdiction.

The jurisdiction of the proceeding provided for in this chapter shall be as follows:

1. As to state officers whose offices are located at the seat of government, the district court of Polk county.
2. As to state officers whose duties are confined to a district within the state, the district court of any county within such district.
3. As to county, municipal, or other officers, the district court of the county in which such officers' duties are to be performed.

[C24, 27, 31, 35, 39, §**1092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.2]

66.3 Who may file petition.

The petition for removal may be filed:

1. By the attorney general in all cases.
2. As to state officers, by not fewer than twenty-five electors of the state.
3. As to any other officer, by five registered voters of the district, county, or municipality where the duties of the office are to be performed.
4. As to district officers, by the county attorney of any county in the district.
5. As to all county and municipal officers, by the county attorney of the county where the duties of the office are to be performed.

[S13, §1258-d; C24, 27, 31, 35, 39, §**1093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.3]

2001 Acts, ch 56, §6

66.4 Bond for costs.

If the petition for removal is filed by anyone other than the attorney general or the county attorney, the court shall require the petitioners to file a bond in such amount and with such surety or sureties as the court may require, said bond to be approved by the clerk, to cover the costs of such removal suit, including attorney fees, if final judgment is not entered removing the officer charged.

[C35, §1093-e1; C39, §**1093.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.4]

Presumption of approval of bond, §636.10

66.5 Petition — other pleading.

The petition shall be filed in the name of the state of Iowa. The accused shall be named as defendant, and the petition, unless filed by the attorney general, shall be verified. The petition shall state the charges against the accused and may be amended as in ordinary actions, and shall be filed in the office of the clerk of the district court of the county having jurisdiction. The petition shall be deemed denied but the accused may plead thereto.

[S13, §1258-d, -e; C24, 27, 31, 35, 39, §**1094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.5]

Amendments, R.C.P. 1.402(4), (5)

66.6 Notice.

Upon the filing of a petition, notice of such filing and of the time and place of hearing shall be served upon the accused in the manner required for the service of notice of the commencement of an ordinary action. Said time shall not be less than ten days nor more than twenty days after completed service of said notice.

[S13, §1258-f; C24, 27, 31, 35, 39, §**1095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.6]

Service of notice, chapter 617

66.7 Suspension from office.

Upon presentation of the petition to the court, the court may suspend the accused from office, if in its judgment sufficient cause appear from the petition and affidavits which may be presented in support of the charges contained therein.

[S13, §1258-g; C24, 27, 31, 35, 39, §**1096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.7]

66.8 Effect of suspension.

In case of suspension, the order shall be served upon the officer in question and it shall be unlawful for the officer to exercise or attempt to exercise any of the functions of that office until such suspension is revoked.

[C24, 27, 31, 35, 39, §**1097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.8]

66.9 Salary pending charge.

An order of the district court suspending a public officer from the exercise of the office, after the filing of a petition for the removal from office of such officer, shall, from the date of such order, automatically suspend the further payment to said officer of all official salary or compensation until said petition has been dismissed, or until said officer has been acquitted on any pending indictments charging misconduct in office.

[C35, §1097-e1; C39, §**1097.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.9]

66.10 Governor to direct filing.

The governor shall direct the attorney general to file such petition against any of said officers whenever the governor has reasonable grounds for such direction. The attorney general shall comply with such direction and prosecute such action.

[S13, §1258-d, -e; C24, 27, 31, 35, 39, §**1098;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.10]

66.11 Duty of county attorney.

The county attorney of any county in which an action is instituted under section 66.10 shall, at the request of the attorney general, appear and assist in the prosecution of such action. In all other cases instituted in that county, the county attorney shall appear and prosecute when the officer sought to be removed is other than that county attorney.

[S13, §1258-d; C24, 27, 31, 35, 39, §**1099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.11]

66.12 Special prosecutor.

When the proceeding is brought to remove the county attorney, the court may appoint an attorney to appear in behalf of the state and prosecute such proceedings.

[S13, §1258-d; C24, 27, 31, 35, 39, §**1100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.12]

66.13 Application for outside judge.

At any time not less than five days prior to the time the accused is required to appear, a copy of the petition may be filed by either party in the office of the clerk of the supreme court, together with an application to the supreme court for the appointment of a judge outside the judicial district in which the trial is to be had to hear said petition.

[S13, §1258-f; C24, 27, 31, 35, 39, §**1101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.13]

66.14 Appointment of judge.

It shall be the duty of the chief justice of the supreme court, upon the filing of said copy and application, or in the chief justice's absence or inability to act, any justice thereof, to forthwith issue a written commission directing a district judge outside of such district to proceed to the county in which the complaint was filed, and hear the same. The clerk of the supreme court shall transmit a certified copy of said order to the clerk of the district court where the cause is pending.

[S13, §1258-f; C24, 27, 31, 35, 39, §**1102;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.14]

66.15 Order by appointed judge.

Upon the receipt of such commission, said judge shall immediately make an order fixing a time and place of hearing in the county in which the petition is filed. Said time shall not be less than ten days nor more than twenty days from the date of the order.

[S13, §1258-f; C24, 27, 31, 35, 39, §**1103;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.15]

66.16 Filing order — effect.

Said order shall be forwarded to the clerk of the district court of the county in which the hearing is to be had. Said order shall supersede the time and place specified in any notice already served.

[S13, §1258-f; C24, 27, 31, 35, 39, §**1104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.16]

66.17 Notice to accused.

The clerk shall file said order, and forthwith give the defendant, by mail, notice of the time and place of hearing.

[S13, §1258-f; C24, 27, 31, 35, 39, §**1105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.17]

66.18 Nature of action — when triable.

The proceeding shall be summary in its nature and shall be triable as an equitable action.

[S13, §1258-g; C24, 27, 31, 35, 39, §**1106;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.18]

Trial of equitable action, chapter 624

66.19 Temporary officer.

Upon a suspension, the board or person authorized to fill a vacancy in the office shall temporarily fill the office by appointment. In case of a sus-

pension of a sheriff, the district court may designate an acting sheriff until a temporary sheriff is appointed. Orders of suspension and temporary appointment of county and township officers shall be certified to the county auditor for entry in the election book; those of city officers, certified to the clerk and entered upon the records; in case of other officers, to the person or body making the original appointment.

[C51, §404, 407, 410; R60, §635, 638, 641; C73, §752, 753, 758; C97, §1257; S13, §1258-g; C24, 27, 31, 35, 39, §**1107;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.19]

83 Acts, ch 186, §10032

66.20 Judgment of removal.

Judgment of removal, if rendered, shall be entered of record, and the vacancy forthwith filled as provided by law.

[S13, §1258-h; C24, 27, 31, 35, 39, §**1108;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.20]

Vacancies in office, chapter 69

66.21 Hearing on appeal.

In case of appeal, the supreme court shall fix the time of hearing and the filing of abstracts and arguments, and said cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken, provided the abstract and arguments are filed in said court in time for said action to be heard.

[S13, §1258-i; C24, 27, 31, 35, 39, §**1109;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.21]

66.22 Effect of appeal.

The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court, or restore said defendant to office pending such appeal.

[S13, §1258-i; C24, 27, 31, 35, 39, §**1110;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.22]

66.23 Effect of dismissal.

If the petition for removal is dismissed, the defendant shall be reimbursed for the reasonable and necessary expenses incurred by the defendant in making a defense, including reasonable attorney's fees, as determined by the court. If the petition for removal is filed by the attorney general, the state shall pay the expenses. If the petition for removal is filed by the county attorney or special prosecutor, the expenses shall be paid by the political subdivision of the state represented by the county attorney or special prosecutor. The payment shall be made out of any funds in the state treasury not otherwise appropriated, or out of the county treasury, or the general fund of the city or other subdivision of the state, as the case may be.

[S13, §1258-i; C24, 27, 31, 35, 39, §**1111;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.23]

83 Acts, ch 123, §47, 209

66.24 Want of probable cause.

If the action is instituted upon complaint of citizens, and it appears to the court that there was no reasonable cause for filing the complaint, such expense may be taxed as costs against the complaining parties.

[S13, §1258-i; C24, 27, 31, 35, 39, §**1112;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.24]

66.25 Expense of judge and reporter. Repealed by 83 Acts, ch 186, § 10201, 10203.

66.26 Appointive state officers.

Any appointive state officer may also be removed from office by a majority vote of the executive council for any of the following causes:

1. Habitual or willful neglect of duty.
2. Any disability preventing a proper discharge of the duties of the office.
3. Gross partiality.
4. Oppression.
5. Extortion.
6. Corruption.
7. Willful misconduct or maladministration in office.
8. Conviction of felony.
9. A failure to produce and fully account for all public funds and property in the officer's hands at any inspection or settlement.
10. Becoming ineligible to hold the office.

[S13, §1258-b; C24, 27, 31, 35, 39, §**1114;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.26]

66.27 Subpoenas — contempt.

The executive council, in any investigation held by it, may issue subpoenas for witnesses and for the production of records, books, papers, and other evidence. If a witness, duly subpoenaed, refuses to appear, or refuses to testify, or otherwise refuses to comply with said subpoena, such fact shall be certified by such council to the district court or judge of the county where the hearing is being held and said court or judge shall proceed with said refusal as though the same had occurred in a legal proceeding before said court or judge.

[C24, 27, 31, 35, 39, §**1115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.27]

Contempts, chapter 665

66.28 Witness fees.

Said witnesses, if in the employ of the state, shall not be entitled to any witness fees, but shall receive the mileage allowed witnesses in the district court. Other witnesses shall receive the fees and mileage allowed witnesses in district court. A sum sufficient to pay said fees and mileage is hereby appropriated out of any unappropriated funds in the state treasury.

[C24, 27, 31, 35, 39, §**1116;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.28]
Witness fees, §622.69 – 622.75

66.29 City elective officers.
Any city officer elected by the people may be removed from office, after hearing on written charges filed with the council of such city for any cause which would be ground for an equitable action for removal in the district court, but such removal can only be made by a two-thirds vote of the entire council.
[R60, §1087; C73, §516; C97, §1258; SS15, §1258; C24, 27, 31, 35, 39, §**1117;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.29]
Removal of municipal officers, §66.1A, 372.15

66.30 Ordinance.
The council may, by ordinance, provide as to the manner of preferring and hearing such charges. No person shall be twice removed by the council from the same office for the same offense. Proceedings before the council shall not be a bar to proceedings in the district court as in this chapter provided.
[R60, §1087; C73, §516; C97, §1258; S13, §1258-a; SS15, §1258; C24, 27, 31, 35, 39, §**1118;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §66.30]

CHAPTER 67

SUSPENSION OF STATE OFFICERS

67.1 Commission to examine accounts.
67.2 Power of commission.
67.3 Refusal to obey subpoena — fees.
67.4 Nature of report.
67.5 Duty of governor.
67.6 Effect of order — penalty.
67.7 Salary pending charge.
67.8 Temporary appointment.
67.9 Governor to protect state.
67.10 Governor to report to general assembly.
67.11 Failure to impeach or convict.
67.12 Compensation and expenses of commissioners.
67.13 Reports revealing grounds of removal.

67.1 Commission to examine accounts.
The governor shall, when of the opinion that the public service requires such action, appoint, in writing, a commission of three competent accountants and direct them to examine the books, papers, vouchers, moneys, securities, and documents in the possession or under the control of any state officer, board, commission, or of any person expending or directing the expenditure of funds belonging to or in the possession of the state.
[R60, §46, 47, 55, 56; C73, §759; C97, §1259; C24, 27, 31, 35, 39, §**1119;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.1]

67.2 Power of commission.
Said commissioners while in session shall have power to issue subpoenas, to call any person to testify in reference to any fact connected with their investigation, and to require such persons to produce any paper or book which the district court might require to be produced. Each commissioner shall have power to administer oaths.
[R60, §54; C73, §765; C97, §1260; C24, 27, 31, 35, 39, §**1120;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.2]

67.3 Refusal to obey subpoena — fees.
If any witness, duly subpoenaed, refuses to obey said subpoena, or refuses to testify, said commission shall certify said fact to the district court of the county where the investigation is being had and said court shall proceed with said witness in the same manner as though said refusal had occurred in a legal proceeding before said court or judge.
Witnesses shall be paid in the manner provided for witnesses before the executive council and from the same appropriation.
[C24, 27, 31, 35, 39, §**1121;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.3]
Contempts, chapter 665
Payment of witnesses before council, §66.28
Witness fees, §622.69 et seq.

67.4 Nature of report.
Such accountants shall make out a full, complete, and specific statement of the transactions of said officer with, for, or on behalf of the state, showing the true balances in each case, and report the same to the governor, with such suggestions as they may think proper.
[R60, §46, 47, 55, 56; C73, §759; C97, §1259; C24, 27, 31, 35, 39, §**1122;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.4]

67.5 Duty of governor.
The governor, if the governor finds from said report that matters exist which would be grounds for

removing said officer from office, shall proceed as follows:

1. If the officer is an elective state officer, not removable under impeachment proceedings, or if said officer is an appointive state officer, the governor shall lay a copy of said report before the attorney general.

2. If the officer is an appointive state officer, the governor shall also lay a copy of said report before the executive council.

3. If the officer is one who is removable only under impeachment proceedings the governor shall, by written order, forthwith suspend such officer from the exercise of the office, and require the officer to deliver all the moneys, books, papers, and other property of the state to the governor, to be disposed of as hereinafter provided.

[R60, §48; C73, §760; C97, §1261; C24, 27, 31, 35, 39, §**1123;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.5]

Failure to keep proper accounts, §11.5
Impeachable officers, Constitution, Art. III, §20; also §68.1
Removal by executive council, §66.26
Suspension of member of state board of regents, §262.5

67.6 Effect of order — penalty.

It shall be unlawful for such officer, after the making of such order of suspension, to exercise or attempt to exercise any of the functions of the office until such suspension shall be revoked; and any attempt by the suspended officer to exercise such office shall constitute a serious misdemeanor.

[R60, §49; C73, §761; C97, §1261; C24, 27, 31, 35, 39, §**1124;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.6]

67.7 Salary pending charge.

An order of the governor suspending an impeachable state officer from the exercise of the office shall, from the date of said order, automatically suspend the further payment to said officer of all official salary or compensation, except as herein provided. If articles of impeachment are duly voted against said officer during the general assembly first convening after said order, and the accused is convicted thereon, all right to said suspended salary or compensation shall be deemed forfeited by said officer. If said articles are not so voted, or if the said officer be acquitted on duly voted articles, the said suspended salary or compensation shall be forthwith paid to said officer, unless an indictment or its equivalent, growing out of the officer's misconduct while in office, is then pending against the said officer, in which case said salary or compensation shall be paid to said officer only on the officer's acquittal or the dismissal of the charges.

[C35, §1124-e1; C39, §**1124.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.7]

67.8 Temporary appointment.

On the making of such order, the governor shall appoint a temporary incumbent of said office. Such appointee, after qualifying, shall perform all the duties and enjoy all the rights belonging to the said office, until the removal of the suspension of the appointee's predecessor, or the appointment or election of a successor.

[R60, §51; C73, §762; C97, §1262; C24, 27, 31, 35, 39, §**1125;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.8]

Qualification by temporary officer, §63.9, 68.5

67.9 Governor to protect state.

When the governor shall suspend any public officer, the governor shall direct the proper legal steps to be taken to indemnify the state from loss.

[R60, §52; C73, §763; C97, §1263; C24, 27, 31, 35, 39, §**1126;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.9]

67.10 Governor to report to general assembly.

Forthwith after the organization of the general assembly first convening after the making of said order of suspension, the governor shall lay before it the order and all information and evidence relating thereto in the governor's possession.

[C24, 27, 31, 35, 39, §**1127;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.10]

67.11 Failure to impeach or convict.

The adjournment of such assembly without voting articles of impeachment against such officer or a verdict of "not guilty" on such articles duly preferred, shall work a revocation of such order of suspension.

[C24, 27, 31, 35, 39, §**1128;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.11]

67.12 Compensation and expenses of commissioners.

These commissioners shall be paid a per diem as specified in section 7E.6 and be reimbursed for actual and necessary expenses, which sum shall be paid out of any unappropriated funds in the state treasury.

[R60, §53; C73, §764; C97, §1264; C24, 27, 31, 35, 39, §**1129;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.12]

90 Acts, ch 1256, §25

67.13 Reports revealing grounds of removal.

When any report as to the condition of a state office, other than the report of said commission, is made and filed under authority of law, and said report reveals grounds for the removal from office of a public officer, the person filing said report shall also file a copy thereof with the governor and with the attorney general.

[C24, 27, 31, 35, 39, §**1130;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §67.13]

CHAPTER 68

IMPEACHMENT

68.1 Impeachment defined.
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68.3 Board of managers — articles.
68.4 Notice to governor.
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68.11 Record of proceedings — administering oaths.
68.12 Process for witnesses.
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68.1 Impeachment defined.

An impeachment is a written accusation against the governor, or a judicial officer, or other state officer, by the house of representatives before the senate, of a misdemeanor or malfeasance in office.

[R60, §4937; C73, §4546; C97, §5469; C24, 27, 31, 35, 39, §**1131;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.1]

83 Acts, ch 186, §10033, 10201

68.2 Specification of charges — majority must concur.

An impeachment must specify the offenses charged as in an indictment. If more than one misdemeanor or malfeasance is charged, each shall be stated separately and distinctly. A majority of all the members of the house of representatives elected must concur in the impeachment.

[C51, §3157, 3158; R60, §4938 – 4940; C73, §4547 – 4549; C97, §5470; C24, 27, 31, 35, 39, §**1132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.2]

68.3 Board of managers — articles.

When an impeachment is concurred in, the house of representatives shall elect from its own body seven members whose duty it shall be to prosecute the same, and, as a board of managers, they shall be authorized to exhibit and present articles of impeachment in accordance with the resolutions of the house previously adopted.

[C97, §5471; C24, 27, 31, 35, 39, §**1133;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.3]

68.4 Notice to governor.

When an impeachment is concurred in, the clerk of the house of representatives must forthwith in writing notify the governor thereof.

[C97, §5472; C24, 27, 31, 35, 39, §**1134;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.4]

68.5 Officer suspended — temporary appointment.

Every officer impeached shall be suspended by the governor from the exercise of the officer's official duties until the officer's acquittal, and the governor shall forthwith appoint some suitable person to temporarily fill the office, and that person, having qualified as required by law, shall perform all the duties and enjoy all the rights pertaining to the office until the removal of the suspension of the person's predecessor or the election of a successor.

[C51, §3165; R60, §4948; C73, §4554; C97, §5473; C24, 27, 31, 35, 39, §**1135;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.5]

Qualification by temporary officer, §63.9, 67.8

68.6 President of senate — notice to senate.

If the president of the senate is impeached, notice thereof must be immediately given to the senate, which shall thereupon choose another president, to hold office until the result of the trial is determined.

[C51, §3167; R60, §4949; C73, §4555; C97, §5474; C24, 27, 31, 35, 39, §**1136;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.6]

68.7 Warrant of arrest.

When presented with an impeachment, the senate must forthwith cause the person accused to be arrested and brought before it. The warrant of arrest or other process shall be issued by the secretary of the senate, signed by the secretary, and may be served by any person authorized by the senate or president.

[C51, §3159, 3160; R60, §4941, 4942; C73, §4550, 4551; C97, §5475; C24, 27, 31, 35, 39, §**1137;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.7]

Approval of warrant and expenses, §70A.12, 70A.13

68.8 Appearance — answer — counsel.

Upon the appearance of the person impeached, the person is entitled to a copy of the impeachment, and to a reasonable time in which to answer

the same, and shall be allowed counsel as in an ordinary criminal prosecution.

[C51, §3161; R60, §4943; C73, §4552; C97, §5476; C24, 27, 31, 35, 39, §**1138;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.8]

Right to counsel, R.Cr.P. 2.8

68.9 Organization of court.

When an impeachment is presented, the senate shall, after the hour of final adjournment of the legislature, be forthwith organized as a court of impeachment for the trial thereof, at the capitol.

An oath or affirmation shall be administered by the secretary of the senate to its president, and by the president to each member of that body, to the effect that the member will truly and impartially try and determine the charges of impeachment according to the law and evidence.

No member shall sit on the trial or give evidence thereon until the member has taken such oath or affirmation.

The organization of such court shall be perfected when such presiding officer and the members present, but not less than a majority of the whole number, have taken and subscribed the oath or affirmation.

[C51, §3162; R60, §4944; C73, §4553; C97, §5477; C24, 27, 31, 35, 39, §**1139;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.9]

68.10 Powers of court.

The court of impeachment shall sit in the senate chamber, and have power:

1. To compel the attendance of its members as the senate may do when engaged in the ordinary business of legislation.

2. To establish rules necessary for the trial of the accused.

3. To appoint from time to time such subordinate officers, clerks, and reporters as are necessary for the convenient transaction of its business, and at any time to remove any of them.

4. To issue subpoenas, process, and orders, which shall run into any part of the state, and may be served by any adult person authorized so to do by the president of the senate, or by the sheriff of any county, or the sheriff's deputy, in the name of the state, and with the same force and effect as in an ordinary criminal prosecution, and to compel obedience thereto.

5. To exercise the powers and privileges conferred upon the senate for punishment as for contempts in chapter 2.

6. To adjourn from time to time, and to dissolve when its work is completed.

[C97, §5478; C24, 27, 31, 35, 39, §**1140;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.10]

99 Acts, ch 96, §6

Contempts, §2.18 – 2.22, chapter 665

68.11 Record of proceedings — administering oaths.

The secretary of the senate, in all cases of impeachment, shall keep a full and accurate record of the proceedings, which shall be a public record; and shall have power to administer all requisite oaths or affirmations, and issue subpoenas for witnesses.

[R60, §4959; C73, §4570; C97, §5479; C24, 27, 31, 35, 39, §**1141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.11]

68.12 Process for witnesses.

The board of managers and counsel for the person impeached shall each be entitled to process for compelling the attendance of persons or the production of papers and records required in the trial of the impeachment.

[C97, §5480; C24, 27, 31, 35, 39, §**1142;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.12]

68.13 Punishment.

When any person impeached is found guilty, judgment shall be rendered for removal from office and disqualification to hold any office of honor, trust, or profit under the state.

[C97, §5481; C24, 27, 31, 35, 39, §**1143;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.13]

68.14 Compensation — fees — payment.

The presiding officer and members of the senate, while sitting as a court of impeachment, and the managers elected by the house of representatives, shall receive the sum of six dollars each per day, and shall be reimbursed for mileage expense in going from and returning to their places of residence by the ordinary traveled routes; the secretary, sergeant at arms, and all subordinate officers, clerks, and reporters, shall receive such amount as shall be determined upon by a majority vote of the members of such court. The same fees shall be allowed to witnesses, to officers, and to other persons serving process or orders, as are allowed for like services in criminal cases, but no fees can be demanded in advance. The state treasurer shall, upon the presentation of certificates signed by the presiding officer and secretary of the senate, pay all of the foregoing compensations and the expenses of the senate incurred under the provisions of this chapter.

[C97, §5482; C24, 27, 31, 35, 39, §**1144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §68.14]

Payment for use of automobile, see §70A.9
Sheriff's fees, §331.655(1)
Witness fees, §622.69 et seq.
Witnesses in criminal cases, R.Cr.P. 2.20

CHAPTER 68A

EXAMINATION OF PUBLIC RECORDS

Transferred to chapter 22

CHAPTER 68B

GOVERNMENT ETHICS AND LOBBYING

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DIVISION I

68B.1 Title of Act.

This chapter shall be known as the *"Iowa Public Officials Act"*.

[C71, 73, 75, 77, 79, 81, §68B.1]

68B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agency"* means a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, or any department, division, board, commission, bureau, or office of a political subdivision of the state, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.

2. *"Agency of state government"* or *"state agency"* means a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.

3. *"Board"* means the Iowa ethics and campaign disclosure board.

4. *"Candidate"* means a candidate under chapter 56 but does not include any judge standing for retention in a judicial election.

5. *"Candidate's committee"* means the committee designated by a candidate for a state, county, city, or school office, as provided under chapter 56, to receive contributions in excess of seven hundred

fifty dollars in the aggregate, expend funds in excess of seven hundred fifty dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of seven hundred fifty dollars in the aggregate in any calendar year.

6. *"Client"* means a private person or a state, federal, or local government entity that pays compensation to or designates an individual to be a lobbyist.

7. *"Compensation"* means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered.

8. *"Contribution"* means a loan, advance, deposit, rebate, refund, transfer of money, an in-kind transfer, or the payment of compensation for the personal services of another person.

9. *"Gift"* means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

10. *"Honorarium"* means anything of value that is accepted or given as consideration for an appearance, speech, or article.

11. *"Immediate family members"* means the spouse and dependent children of a public official or public employee.

12. *"Legislative employee"* means a permanent full-time employee of the general assembly but does not include members of the general assembly.

13. *a. "Lobbyist"* means an individual who, by acting directly, does any of the following:

(1) Receives compensation to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by the members of the general assembly, a state agency, or any statewide elected official.

(2) Is a designated representative of an organization which has as one of its purposes the encouragement of the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order before the general assembly, a state agency, or any statewide elected official.

(3) Represents the position of a federal, state, or local government agency, in which the person serves or is employed as the designated representative, for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by members of the general assembly, a state agency, or any statewide elected official.

(4) Makes expenditures of more than one thousand dollars in a calendar year, other than to pay compensation to an individual who provides the services specified under subparagraph (1) or to communicate with only the members of the general assembly who represent the district in which the individual resides, to communicate in person with members of the general assembly, a state agency, or any statewide elected official for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order.

b. "Lobbyist" does not mean:

(1) Officials and employees of a political party organized in the state of Iowa representing more than two percent of the total votes cast for governor in the last preceding general election, but only when representing the political party in an official capacity.

(2) Representatives of the news media only when engaged in the reporting and dissemination of news and editorials.

(3) All federal, state, and local elected officials, while performing the duties and responsibilities of office.

(4) Persons whose activities are limited to appearances to give testimony or provide information or assistance at sessions of committees of the general assembly or at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees.

(5) Members of the staff of the United States Congress or the Iowa general assembly.

(6) Agency officials and employees while they are engaged in activities within the agency in which they serve or are employed or with another agency with which the official's or employee's agency is involved in a collaborative project.

(7) An individual who is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, education, or charitable association, foundation, or organization who either is not paid compensation or is not specifically designated as provided in paragraph *"a"*, subparagraph (1) or (2).

(8) Persons whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presentation under section 17A.4, subsection 1.

14. *"Local employee"* means a person employed by a political subdivision of this state and does not include an independent contractor.

15. *"Local official"* means an officeholder of a political subdivision of this state.

16. *"Member of the general assembly"* means an individual duly elected to the senate or the house of representatives of the state of Iowa.

17. *"Official"* means all statewide elected officials, the executive or administrative head or heads of an agency of state government, the deputy executive or administrative head or heads of an agency of state government, members of boards or commissions as defined under section 7E.4, and heads of the major subunits of departments or independent state agencies whose positions involve a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules of the board adopted in consultation with the department or agency and pursuant to chapter 17A. *"Official"* does not include officers or employees of political subdivisions of the state, members of the general assembly, legislative employees, officers or employees of the judicial branch of government who are not members or

employees of the office of attorney general, members of state government entities which are or exercise the same type of authority that is exercised by councils or committees as defined under section 7E.4, or members of any agricultural commodity promotional board, if the board is subject to a producer referendum.

18. *"Person"* means, without limitation, any individual, corporation, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

19. *"Public disclosure"* means a written report filed by a person as required by this chapter or required by rules adopted and issued pursuant to this chapter.

20. *"Public employee"* means state employees, legislative employees, and local employees.

21. *"Public office"* means any state, county, city, or school office or any other office of a political subdivision of the state that is filled by election.

22. *"Public official"* means officials, local officials, and members of the general assembly.

23. *"Regulatory agency"* means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue and finance, department of inspections and appeals, department of personnel, public employment relations board, state department of transportation, civil rights commission, department of public defense, and department of natural resources.

24. *"Restricted donor"* means a person who is in any of the following categories:

a. Is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.

b. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

c. Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency subunit.

d. Is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

25. *"State employee"* means a person who is not an official and is a paid employee of the state of Iowa and does not include an independent contractor, an employee of the judicial branch who is not an employee of the office of attorney general, an employee of the general assembly, an employee of a political subdivision of the state, or an employee of any agricultural commodity promotional board, if the board is subject to a producer referendum.

26. *"Statewide elected official"* means the governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general of the state of Iowa.

[C71, 73, 75, 77, 79, 81, §68B.2; 82 Acts, ch 1199, §35, 96]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1067, §13; 87 Acts, ch 213, §1; 92 Acts, ch 1228, §1; 93 Acts, ch 163, §1; 94 Acts, ch 1092, §2 – 4; 96 Acts, ch 1186, §23; 98 Acts, ch 1047, §14; 2002 Acts, ch 1073, §10, 11

Subsection 5 amended

68B.2A Conflicts of interest.

1. Any person who serves or is employed by the state or a political subdivision of the state shall not engage in any outside employment or activity which is in conflict with the person's official duties and responsibilities. In determining whether particular outside employment or activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

a. The outside employment or activity involves the use of the state's or the political subdivision's time, facilities, equipment, and supplies or the use of the state or political subdivision badge, uniform, business card, or other evidences of office or employment to give the person or member of the person's immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public. This paragraph does not apply to off-duty peace officers who provide private duty security or fire fighters or emergency medical care providers certified under chapter 147A who provide private duty fire safety or emergency medical services while carrying their badge or wearing their official uniform, provided that the person has secured the prior approval of the agency or political subdivision in which the person is regularly employed to engage in the activity. For purposes of this subsection, a person is not *"similarly situated"* merely by being or being related to a person who serves or is employed by the state or a political subdivision of the state.

b. The outside employment or activity involves the receipt of, promise of, or acceptance of money or other consideration by the person, or a member of the person's immediate family, from anyone other than the state or the political subdivision for the performance of any act that the person would be required or expected to perform as a part of the person's regular duties or during the hours during which the person performs service or work for the state or political subdivision of the state.

c. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the person, during the performance of the person's duties of office or employment.

2. If the outside employment or activity is employment or activity described in subsection 1, paragraph *"a"* or *"b"*, the person shall immediately cease the employment or activity. If the outside employment or activity is employment or activity described in subsection 1, paragraph *"c"*, or constitutes any other unacceptable conflict of interest, unless otherwise provided by law, the person shall take one of the following courses of action:

a. Cease the outside employment or activity.

b. Publicly disclose the existence of the conflict and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit for the outside employment or activity. For purposes of this paragraph, *"official action"* or *"official duty"* includes, but is not limited to, participating in any vote, taking affirmative action to influence any vote, granting any license or permit, determining the facts or law in a contested case or rulemaking proceeding, conducting any inspection, or providing any other official service or thing that is not available generally to members of the public in order to further the interests of the outside employment or activity.

3. Unless otherwise specifically provided the requirements of this section shall be in addition to, and shall not supersede, any other rights or remedies provided by law.

93 Acts, ch 163, §2; 95 Acts, ch 41, §1

68B.3 When public bids required — disclosure of income from other sales.

1. An official, a state employee, a member of the general assembly, or a legislative employee shall not sell, in any one occurrence, any goods or services having a value in excess of two thousand dollars to any state agency unless the sale is made pursuant to an award or contract let after public notice and competitive bidding. This subsection shall not apply to the publication of resolutions, advertisements, or other legal propositions or notices in newspapers designated pursuant to law for the publication of legal propositions or notices and for which rates are fixed pursuant to law. This subsection shall also not apply to sales of services by persons subject to the requirements of this section to state executive branch agencies or subunits of departments or independent agencies as defined under section 7E.4 that are not the subunit of the department or independent agency in which the person serves or is employed or are not a subunit of a department or independent agency with which the person has substantial and regular contact as part of the person's duties.

For purposes of this section, *"services"* does not include instruction at an accredited education institution if the person providing the instruction meets the minimum education and licensing requirements established for instructors at the education institution.

2. An official or member of the general assembly who sells goods or services to a political subdivision of the state shall disclose whether income has been received from commissions from the sales in the manner provided under section 68B.35.

[C71, 73, 75, 77, 79, 81, §68B.3]

92 Acts, ch 1228, §2; 93 Acts, ch 163, §3

68B.4 Sales by regulatory agency employees.

An official or employee of any regulatory agency shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the agency of which the person is an official or employee, except when the official or employee has met all of the following conditions:

1. The consent of the regulatory agency for which the person is an official or employee is obtained and the person is not the official or employee with the authority to determine whether agency consent is to be given under this section.

2. The duties or functions performed by the official or employee for the regulatory agency are not related to the regulatory authority of the agency over the individual, association, or corporation, or the selling of goods or services by the official or employee to the individuals, associations, or corporations does not affect the official's or employee's duties or functions at the regulatory agency.

3. The selling of any goods or services by the official or employee to an individual, association, or corporation does not include advocacy on behalf of the individual, association, or corporation to the regulatory agency in which the person is an official or employee.

4. The selling of any goods or services by the official or employee to an individual, association, or corporation does not cause the official or employee to sell goods or services to the regulatory agency on behalf of the individual, association, or corporation.

The department of personnel shall adopt rules specifying the method by which employees may obtain agency consent under this section. Each regulatory agency shall adopt rules specifying the method by which officials may obtain agency consent under this section.

[C71, 73, 75, 77, 79, 81, §68B.4]

90 Acts, ch 1209, §1; 91 Acts, ch 79, §1

68B.4A Sales by legislative employees.

A permanent legislative employee shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations which employ persons who are registered lobbyists before the general assembly, except when the legisla-

tive employee has met all of the following conditions:

1. The consent of the person or persons responsible for hiring or approving the hiring of the legislative employee is obtained.

2. The duties and functions performed by the legislative employee for the general assembly are not related to the legislative authority of the general assembly over the individual, association, or corporation, or the selling of goods or services by the legislative employee to the individuals, associations, or corporations does not affect the employee's duties or functions at the general assembly.

3. The selling of any goods or services by the legislative employee to an individual, association, or corporation does not include lobbying of the general assembly.

4. The selling of any goods or services by the legislative employee does not cause the official or employee to sell goods or services to the general assembly on behalf of the individual, association, or corporation.

92 Acts, ch 1228, §3

68B.4B Sales by members of the office of the governor.

A permanent full-time member of the office of the governor shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations which employ persons who are registered lobbyists before the general assembly, except when the member of the office of the governor has met all of the following conditions:

1. The consent of the person or persons responsible for hiring or approving the hiring of the member of the office of the governor is obtained.

2. The duties and functions performed by the member for the office of the governor are not related to the authority of the office of the governor over the individual, association, or corporation, or the selling of goods or services by the member of the office of the governor to the individuals, associations, or corporations does not affect the member's duties or functions at the office of the governor.

3. The selling of any goods or services by the member of the office of the governor to an individual, association, or corporation does not include lobbying of the office of the governor.

4. The selling of any goods or services by the member of the office of the governor does not cause the member to sell goods or services to the office of the governor on behalf of the individual, association, or corporation.

92 Acts, ch 1228, §4

68B.5 Gifts solicited or accepted. Repealed by 92 Acts, 1st Ex, ch 1002, § 2. See § 68B.22.

68B.5A Ban on certain lobbying activities.

1. A person who serves as a statewide elected official, the executive or administrative head of an agency of state government, the deputy executive or administrative head of an agency of state government, or a member of the general assembly shall not act as a lobbyist during the time in which the person serves or is employed by the state unless the person is designated, by the agency in which the person serves or is employed, to represent the official position of the agency.

2. The head of a major subunit of a department or independent state agency, full-time employee of an office of a statewide elected official, or a legislative employee whose position involves a substantial exercise of administrative discretion or the expenditure of public funds, shall not, during the time in which the person serves or is employed by the state, act as a lobbyist before the agency in which the person is employed or before state agencies, officials, or employees with whom the person has substantial or regular contact as part of the person's duties, unless the person is designated, by the agency in which the person serves or is employed, to represent the official position of the agency.

3. A state or legislative employee who is not subject to the requirements of subsection 2 shall not act as a lobbyist in relation to any particular case, proceeding, or application with respect to which the person is directly concerned and personally participates as part of the person's employment, unless the person is designated, by the agency in which the person is employed, to represent the official position of the agency.

4. A person who is subject to the requirements of subsection 1 shall not within two years after the termination of service or employment become a lobbyist.

5. The head of a major subunit of a department or independent state agency, full-time employee of an office of a statewide elected official, or a legislative employee whose position involves a substantial exercise of administrative discretion or the expenditure of public funds, shall not, within two years after termination of employment, become a lobbyist before the agency in which the person was employed or before state agencies or officials or employees with whom the person had substantial and regular contact as part of the person's former duties.

6. A state or legislative employee who is not subject to the requirements of subsection 2 shall not, within two years after termination of employment, act as a lobbyist in relation to any particular case, proceeding, or application with respect to which the person was directly concerned and personally participated as part of the person's employment.

7. This section shall not apply to a person who, within two years of leaving service or employment

with the state, is elected to, appointed to, or employed by another office of the state, an office of a political subdivision of the state, or the federal government and appears or communicates on behalf or as part of the duties of that office or employment.

92 Acts, ch 1228, §5; 92 Acts, 1st Ex, ch 1002, §1; 93 Acts, ch 163, §4

68B.6 Services against state prohibited.

1. All statewide elected officials, the executive or administrative head or heads of an agency of state government, the deputy executive or administrative head or heads of an agency of state government, the heads of the major subunits of departments or independent state agencies whose positions involve a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules of the board, in consultation with the department or agency, under chapter 17A, state employees, or legislative employees shall not receive, directly or indirectly, or enter into any express or implied agreement for, any compensation, in whatever form, for the appearance or rendition of services by that person or another against the interest of the state in relation to any case, proceeding, application, or other matter before any state agency, any court of the state of Iowa, any federal court, or any federal bureau, agency, commission or department.

2. A person who is an official, but who is not subject to the requirements of subsection 1, shall not receive, directly or indirectly, or enter into any agreement, express or implied, for any compensation, in whatever form, for the appearance or rendition of services by that person or another against the interest of the state in relation to any case, proceeding, application, or other matter before the subunit of a department or independent agency in which the person serves, is employed, or with which the person has substantial and regular contact as part of the person's duties.

[C71, 73, 75, 77, 79, 81, §68B.6]

92 Acts, ch 1228, §6; 93 Acts, ch 163, §5

68B.7 Other activities — two-year ban.

A person who has served as an official, state employee of a state agency, member of the general assembly, or legislative employee shall not within a period of two years after the termination of such service or employment appear before the agency or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and personally participated during the period of service or employment.

A person who has served as the head of or on a commission or board of a regulatory agency or as a deputy thereof, shall not, within a period of two years after the termination of such service accept employment with that commission, board, or agency or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in any case, proceedings, or application before the department with which the person so served wherein the person's compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit, or in promoting or opposing, directly or indirectly, the passage of bills or resolutions before either house of the general assembly.

[C71, 73, 75, 77, 79, 81, §68B.7]

89 Acts, ch 321, §24; 92 Acts, ch 1228, §7

68B.8 Additional penalty. Transferred to § 68B.25.

68B.9 Actions commenced. Transferred to § 68B.26.

68B.10 Legislative ethics committee. Transferred to § 68B.31.

68B.11 Transferred to § 68B.39.

68B.12 through 68B.20 Reserved.

DIVISION II

68B.21 Legislative intent.

It is the goal of the general assembly that public officials and public employees of the state be extremely cautious and circumspect about accepting a gratuity or favor, especially from persons that have a substantial interest in the legislative, administrative, or political actions of the official or employee. Even where there is a genuine personal friendship, the acceptance of personal benefits from those who could gain advantage by influencing official actions raises suspicions that tend to undermine the public trust. It is therefore the intent of the general assembly that the provisions of this division be construed to discourage all gratuities, but to prohibit only those that create unacceptable conflicts of interest or appearances of impropriety.

92 Acts, ch 1228, §8

68B.22 Gifts accepted or received.

1. Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor. A public official, public employee, candidate, or the person's immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time.

2. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, offer or make a gift or a series of gifts to a public official, public employee, or candidate. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, join with one or more other restricted donors to offer or make a gift or a series of gifts to a public official, public employee, or candidate.

3. A restricted donor may give, and a public official, public employee, or candidate, or the person's immediate family member, may accept an otherwise prohibited nonmonetary gift or a series of otherwise prohibited nonmonetary gifts and not be in violation of this section if the nonmonetary gift or series of nonmonetary gifts is donated within thirty days to a public body, the department of general services, or a bona fide educational or charitable organization, if no part of the net earnings of the educational or charitable organization inures to the benefit of any private stockholder or other individual. All such items donated to the department of general services shall be disposed of by assignment to state agencies for official use or by public sale.

4. Notwithstanding subsections 1 and 2, the following gifts may be received by public officials, public employees, candidates, or members of the immediate family of public officials, public employees, or candidates:

a. Contributions to a candidate or a candidate's committee.

b. Informational material relevant to a public official's or public employee's official functions, such as books, pamphlets, reports, documents, periodicals, or other information that is recorded in a written, audio, or visual format.

c. Anything received from anyone related within the fourth degree by kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

d. An inheritance.

e. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient.

f. Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs as a dues-paying member, if the items are given to all members of the organization without regard to individual members' status or positions held outside of the organization and if the dues paid are not inconsequential when compared to the items received.

g. Actual expenses of a donee for food, beverages, registration, travel, and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.

h. Plaques or items of negligible resale value which are given as recognition for the public services of the recipient.

i. Nonmonetary items with a value of three dollars or less that are received from any one donor during one calendar day.

j. Items or services solicited by or given to a state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member for purposes of a business or educational conference, seminar, or other meeting; or solicited by or given to state, national, or regional government organizations, whose memberships and officers are primarily composed of state or local government officials or employees, for purposes of a business or educational conference, seminar, or other meeting.

k. Items or services received by members or representatives of members at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member, or received at such an event by members or representatives of members of state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees.

l. Funeral flowers or memorials to a church or nonprofit organization.

m. Gifts which are given to a public official or public employee for the public official's or public employee's wedding or twenty-fifth or fiftieth wedding anniversary.

n. Payment of salary or expenses by a person's employer or the firm in which the person is a member for the cost of attending a meeting of a subunit of an agency when the person whose expenses are being paid serves on a board, commission, committee, council, or other subunit of the agency and the person is not entitled to receive compensation or reimbursement of expenses from the state or a political subdivision of the state for attending the meeting.

o. Gifts of food, beverages, travel, or lodging received by a public official or public employee if all of the following apply:

(1) The public official or public employee is officially representing an agency in a delegation whose sole purpose is to attract a specific new business to locate in the state, encourage expansion or retention of an existing business already established in the state, or to develop markets for Iowa businesses or products.

(2) The donor of the gift is not the business or businesses being contacted. However, food or beverages provided by the business or businesses being contacted which are consumed during the meeting are not a gift under section 68B.2, subsection 9, or this section.

(3) The public official or public employee plays a significant role in the presentation to the business or businesses on behalf of the public official's

or public employee's agency.

p. Gifts other than food, beverages, travel, and lodging received by a public official or public employee which are received from a person who is a citizen of a country other than the United States and are given during a ceremonial presentation or as a result of a custom of the other country and are of personal value only to the donee.

q. Actual registration costs for informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions. The costs of food, drink, lodging and travel are not "registration costs" under this paragraph. Meetings or sessions which a public official or public employee attends for personal or professional licensing purposes are not "informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions" under this paragraph.

5. For purposes of determining the value of an item given or received, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value of an item received shall be the value actually received by the donee.

6. A gift shall not be considered to be received by a public official or public employee if the state is the donee of the gift and the public official or public employee is required to receive the gift on behalf of the state as part of the performance of the person's duties of office or employment.

7. A person shall not request, and a member of the general assembly shall not agree, that a member of the general assembly sell tickets for a community-related social event that is to be held for members of the general assembly in Polk county during the legislative session. This section shall not apply to Polk county or city of Des Moines events that are open to the public generally or are held only for Polk county or city of Des Moines legislators.

8. Except as otherwise provided in subsection 4, an organization or association which has as one of its purposes the encouragement of the passage, defeat, introduction, or modification of legislation shall not give and a member of the general assembly shall not receive food, beverages, registration, or scheduled entertainment with a per person value in excess of three dollars.

92 Acts, ch 1228, §9; 93 Acts, ch 163, §6; 94 Acts, ch 1092, §5 – 7; 2001 Acts, ch 24, §19

68B.23 Honoraria — banned.

1. Except as provided in subsection 2, a public official or public employee shall not seek or accept an honorarium from a restricted donor.

2. A public official or public employee may accept an honorarium from any person under the following circumstances:

a. The honorarium consists of payment of actual expenses of a donee for registration, food, beverages, travel, and lodging paid in return for participation in a panel or speaking engagement at a meeting when the expenses relate directly to the day or days on which the recipient has participation or presentation responsibilities.

b. The honorarium consists of a nonmonetary item or series of nonmonetary items that the public official or public employee donates within thirty days to a public body, a bona fide educational or charitable organization, or the department of general services as provided in section 68B.22, subsection 3.

c. The honorarium consists of a payment made to a public official or public employee for services rendered as part of a bona fide private business, trade, or profession in which the public official or public employee is engaged if the payment is commensurate with the actual services rendered and is not being made because of the person's status as a public official or public employee, but, rather, because of some special expertise or other qualification.

92 Acts, ch 1228, §10; 93 Acts, ch 163, §7

68B.24 Loans — receipt from lobbyists prohibited.

1. An official, member of the general assembly, state employee, legislative employee, or candidate for state office shall not, directly or indirectly, seek or accept a loan or series of loans from a person who is a lobbyist.

2. A lobbyist shall not, directly or indirectly, offer or make a loan or series of loans to an official, member of the general assembly, state employee, legislative employee, or candidate for state office. A lobbyist shall also not, directly or indirectly, join with one or more persons to offer or make a loan or series of loans to an official, member of the general assembly, state employee, legislative employee, or candidate for state office.

3. This section shall not apply to loans made in the ordinary course of business. For purposes of this section, a loan is *"made in the ordinary course of business"* when it is made by a person who is regularly engaged in a business that makes loans to members of the general public and the finance charges and other terms of the loan are the same or substantially similar to the finance charges and loan terms that are available to members of the general public.

92 Acts, ch 1228, §11; 93 Acts, ch 163, §8

68B.25 Additional penalty.

In addition to any penalty contained in any other provision of law, a person who knowingly and intentionally violates a provision of sections 68B.2A through 68B.7, sections 68B.22 through 68B.24, or sections 68B.35 through 68B.38 is guilty of a serious misdemeanor and may be reprimanded, suspended, or dismissed from the person's position or

otherwise sanctioned.
[C71, 73, 75, 77, 79, 81, §68B.8]
87 Acts, ch 213, §3; 92 Acts, ch 1228, §12
C93, §68B.25
93 Acts, ch 163, §9

68B.26 Actions commenced.
Complaints regarding conduct of local officials or local employees which violates this chapter shall be filed with the county attorney in the county where the accused resides. However, if the county attorney is the person against whom the complaint is filed, or if the county attorney otherwise has a personal or legal conflict of interest, the complaint shall be referred to another county attorney.
[C71, 73, 75, 77, 79, 81, §68B.9]
C93, §68B.26
93 Acts, ch 163, §10; 2000 Acts, ch 1042, §1

68B.27 through 68B.30 Reserved.

DIVISION III

68B.31 Legislative ethics committee.
1. There shall be an ethics committee in the senate and an ethics committee in the house, each to consist of six members; three members to be appointed by the majority leader in each house, and three members by the minority leader in each house. A member of the ethics committee may disqualify himself or herself from participating in any proceeding upon submission of a written statement that the member cannot render an impartial and unbiased decision in a case. A member is ineligible to participate in committee meetings, as a member of the committee, in any proceeding relating to the member's own conduct. A member may be disqualified by a unanimous vote of the remaining eligible members of the committee. If a member of the ethics committee is disqualified from or is ineligible to participate in any committee proceedings, the authority responsible for the original appointment of the disqualified or ineligible member shall appoint a replacement member who shall serve during the period of the original member's disqualification or ineligibility.
2. Members shall receive a per diem and travel expenses at the same rate as paid members of interim committees for attending meetings held when the general assembly is not in session. The per diem and expenses shall be paid from funds appropriated by section 2.12.
3. The majority leader of each house shall designate the chairperson and vice chairperson, and the minority leader of each house shall designate the ranking member, of each committee. The chairperson of each committee shall have the following powers, duties and functions:
a. Preside over meetings of the committee.
b. Call meetings of the committee upon receipt of findings from the independent special counsel that there is probable cause to believe that a member of the general assembly or a lobbyist has committed a violation of a provision of this chapter or of the rules relating to ethical conduct that are adopted pursuant to this chapter.
4. The ethics committee of each house shall have the following powers, duties, and functions:
a. Prepare a code of ethics within thirty days after the commencement of each general assembly.
b. Prepare rules relating to lobbyists and lobbying activities in the general assembly.
c. Issue advisory opinions interpreting the intent of constitutional and statutory provisions relating to legislators and lobbyists as well as interpreting the code of ethics and rules issued pursuant to this section. Opinions shall be issued when approved by a majority of the six members and may be issued upon the written request of a member of the general assembly or upon the committee's initiation. Opinions are not binding on the legislator or lobbyist.
d. Receive and hear complaints and charges against members of its house alleging a violation of the code of ethics, rules governing lobbyists, this chapter, or other matters referred to it by its house or the independent special counsel. The committee shall recommend rules for the receipt and processing of findings of probable cause relating to ethical violations of members of the general assembly or lobbyists during the legislative session and those received after the general assembly adjourns.
e. Recommend legislation relating to legislative ethics and lobbying activities.
The ethics committee may employ independent legal counsel to assist the committee in carrying out the committee's duties under this chapter. Payment of costs for the independent legal counsel shall be made from funds appropriated pursuant to section 2.12.
5. Any person may file a complaint with the ethics committee of either house alleging that a member of the general assembly or a lobbyist before the general assembly has committed a violation of this chapter. The ethics committee shall prescribe and provide forms for this purpose. The complaint shall include the name and address of the complainant and a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged and a certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge.
6. The ethics committee shall promptly notify any party alleged to have committed a violation of the code of ethics, rules governing lobbyists, or this chapter of the filing of a complaint by causing a copy of the complaint to be served or personally

delivered to the party charged, unless service is waived by the party charged, and shall review the complaint to determine if the complaint meets the requirements for formal sufficiency. If the complaint is deficient as to form, the complaint shall be returned to the complainant with a statement of the nature of the deficiency and the party charged in the complaint shall be notified that the complaint has been returned. If a complaint, previously found to be deficient as to form, is refiled in different form, the party charged in the complaint shall be provided with a copy of the new document in the same manner as provided for service of the initial complaint. Any amendments to a complaint that are filed with the committee shall also be served or personally delivered, unless service is waived, to the party charged in the complaint. If the complaint is sufficient as to form, the ethics committee shall review the complaint to determine whether the complaint states a valid charge which may be investigated. A valid complaint must allege all of the following:

a. Facts, that if true, establish a violation of a provision of this chapter, the rules governing lobbyists, or the code of ethics for which penalties or other remedies are provided.

b. That the conduct providing the basis for the complaint occurred within three years of the filing of the complaint.

c. That the party charged with a violation is a party subject to the jurisdiction of the ethics committee.

7. If the ethics committee determines that a complaint is not valid, the complaint shall be dismissed and returned to the complainant with a notice of dismissal stating the reason or reasons for the dismissal. If the ethics committee determines that a complaint is valid, the ethics committee shall request that the chief justice of the supreme court appoint an independent special counsel to investigate the allegations contained in the complaint to determine whether there is probable cause to believe that a violation of this chapter has occurred and whether an evidentiary hearing on the complaint should be held. Payment of costs for the independent special counsel shall be made from section 2.12.

8. If a hearing on the complaint is ordered the ethics committee shall receive all admissible evidence, determine any factual or legal issues presented during the hearing, and make findings of fact based upon evidence received. Hearings shall be conducted in the manner prescribed in section 17A.12. The rules of evidence applicable under section 17A.14 shall also apply in hearings before the ethics committee. Clear and convincing evidence shall be required to support a finding that the member of the general assembly or lobbyist before the general assembly has committed a violation of this chapter. Parties to a complaint may, subject to the approval of the ethics committee, negotiate for settlement of disputes that are before the ethics committee. Terms of any negotiated settlements shall be publicly recorded. If a complaint is filed or initiated less than ninety days before the election for a state office, for which the person named in the complaint is the incumbent officeholder, the ethics committee shall, if possible, set the hearing at the earliest available date so as to allow the issue to be resolved before the election. An extension of time for a hearing may be granted when both parties mutually agree on an alternate date for the hearing. The ethics committee shall make every effort to hear all ethics complaints within three months of the date that the complaints are filed. However, after three months from the date of the filing of the complaint, extensions of time for purposes of preparing for hearing may only be granted by the ethics committee when the party charged in the complaint with the ethics violation consents to an extension. If the party charged does not consent to an extension, the ethics committee shall not grant any extensions of time for preparation prior to hearing. All complaints alleging a violation of this chapter or the code of ethics shall be heard within nine months of the filing of the complaint. Final dispositions of violations, which the ethics committee has found to have been established by clear and convincing evidence, shall be made within thirty days of the conclusion of the hearing on the complaint.

9. The ethics committee of each house shall recommend rules for adoption by the respective house relating to the confidentiality of a complaint or information which has been filed or provided to the committee. Rules adopted shall provide for initial confidentiality of a complaint, unless the complaint has been publicly disclosed, and shall permit the ethics committee to treat some or all of the contents of a complaint or other information as confidential if the committee finds that the criteria established under section 22.7, subsection 18, for keeping certain information confidential, are met. If the existence of a complaint or a preliminary investigation is made public, the ethics committee shall publicly confirm the existence of the complaint or preliminary inquiry and, in the ethics committee's discretion, make public the complaint or investigation and any documents which were issued to any party to the complaint or investigation. However, this subsection shall not prevent the committee from furnishing the complaint or other information to the appropriate law enforcement authorities at any time. Upon commencement of a hearing on a complaint, all investigative material shall be made available to the subject of the hearing and any material that is introduced at the hearing shall be public information.

10. The code of ethics and rules relating to lobbyists and lobbying activities shall not become effective until approved by the members of the house to which the proposed code and rules apply. The

code or rules may be amended either upon the recommendation of the ethics committee or by members of the general assembly.

11. Violation of a provision of this chapter or rules adopted relating to ethical conduct may result in censure, reprimand, or other sanctions as determined by a majority of the member's house. However, a member may be suspended or expelled and the member's salary forfeited only if directed by a two-thirds vote of the member's house. A suspension, expulsion, or forfeiture of salary shall be for the duration specified in the directing resolution. Violation of a rule relating to lobbyists and lobbying activities may result in censure, reprimand, or other sanctions as determined by a majority of the members of the house in which the violation occurred. However, a lobbyist may be suspended from lobbying activities for the duration provided in the directing resolution only if directed by a two-thirds vote of the house in which the violation occurred.

[C71, 73, 75, 77, 79, 81, §68B.10]

87 Acts, ch 213, §4 – 7; 90 Acts, ch 1223, §14; 90 Acts, ch 1256, §26; 92 Acts, ch 1228, §13

C93, §68B.31

93 Acts, ch 163, §11 – 13

68B.32 Independent ethics and campaign disclosure board — established.

1. An Iowa ethics and campaign disclosure board is established as an independent agency. Effective January 1, 1994, the board shall administer this chapter and set standards for, investigate complaints relating to, and monitor the ethics of officials, employees, lobbyists, and candidates for office in the executive branch of state government. The board shall also administer and set standards for, investigate complaints relating to, and monitor the campaign finance practices of candidates for public office. The board shall consist of six members and shall be balanced as to political affiliation as provided in section 69.16. The members shall be appointed by the governor, subject to confirmation by the senate.

2. Members shall serve staggered six-year terms beginning and ending as provided in section 69.19. Any vacancy on the board shall be filled by appointment for the unexpired portion of the term, within ninety days of the vacancy and in accordance with the procedures for regular appointments. A member of the board may be reappointed to serve additional terms on the board. Members may be removed in the manner provided in chapter 69.

3. The board shall annually elect one member to serve as the chairperson of the board and one member to serve as vice chairperson. The vice chairperson shall act as the chairperson in the absence or disability of the chairperson or in the event of a vacancy in that office.

4. Members of the board shall receive a per diem as specified in section 7E.6 while conducting business of the board, and payment of actual and necessary expenses incurred in the performance of their duties. Members of the board shall file statements of financial interest under section 68B.35.

5. The board shall employ a full-time executive director who shall be the board's chief administrative officer. The board shall employ or contract for the employment of legal counsel notwithstanding section 13.7, and any other personnel as may be necessary to carry out the duties of the board. The board's legal counsel shall be the chief legal officer of the board, and shall advise the board on all legal matters relating to the administration of this chapter and chapter 56. The state may be represented by the board's legal counsel in any civil action regarding the enforcement of this chapter or chapter 56, or, at the board's request, the state may be represented by the office of the attorney general. Notwithstanding section 19A.3, all of the board's employees, except for the executive director and legal counsel, shall be employed subject to the merit system provisions of chapter 19A. The salary of the executive director shall be fixed by the board, within the range established by the general assembly. The salary of the legal counsel shall be fixed by the board, within a salary range established by the department of personnel for a position requiring similar qualifications and experience.

92 Acts, ch 1228, §14; 93 Acts, ch 163, §14; 95 Acts, ch 198, §18

Confirmation, see §2.32

68B.32A Duties of the board.

The duties of the board shall include, but are not limited to, all of the following:

1. Adopt rules pursuant to chapter 17A and conduct hearings under sections 68B.32B and 68B.32C and chapter 17A, as necessary to carry out the purposes of this chapter and chapter 56.

2. Develop, prescribe, furnish, and distribute any forms necessary for the implementation of the procedures contained in this chapter and chapter 56 for the filing of reports and statements by persons required to file the reports and statements under this chapter and chapter 56.

The board may establish a process to assign signature codes to a person or committee for purposes of facilitating an electronic filing procedure. The assignment of signature codes shall be kept confidential, notwithstanding section 22.2.

3. Review the contents of all campaign finance disclosure reports and statements filed with the board and promptly advise each person or committee of errors found. The board may verify information contained in the reports with other parties to assure accurate disclosure. The board may also verify information by requesting that a candidate or committee produce copies of receipts, bills, logbooks, or other memoranda of reimbursements of

expenses to a candidate for expenses incurred during a campaign. The board, upon its own motion, may initiate action and conduct a hearing relating to requirements under chapter 56. The board may require a county commissioner of elections to periodically file summary reports with the board.

4. Receive and file registration and reporting from lobbyists of the executive branch of state government, client disclosure from clients of lobbyists of the executive branch of state government, and personal financial disclosure information from officials and employees in the executive branch of state government who are required to file personal financial disclosure information under this chapter. The board, upon its own motion, may initiate action and conduct a hearing relating to reporting requirements under this chapter.

5. Prepare and publish a manual setting forth examples of approved uniform systems of accounts and approved methods of disclosure for use by persons required to file statements and reports under this chapter and chapter 56. The board shall also prepare and publish other educational materials, and any other reports or materials deemed appropriate by the board. The board shall annually provide all officials and state employees with notification of the contents of this chapter and chapter 56 by distributing copies of educational materials to associations that represent the interests of the various governmental entities for dissemination to their membership.

6. Assure that the statements and reports which have been filed in accordance with this chapter and chapter 56 are available for public inspection and copying during the regular office hours of the office in which they are filed and not later than by the end of the day during which a report or statement was received. Rules adopted relating to public inspection and copying of statements and reports may include a charge for any copying and mailing of the reports and statements, shall provide for the mailing of copies upon the request of any person and upon prior receipt of payment of the costs by the board, and shall prohibit the use of the information copied from reports and statements for soliciting contributions or for any commercial purpose by any person other than statutory political committees.

7. Require that the candidate of a candidate's committee, or the chairperson of a political committee, is responsible for filing disclosure reports under chapter 56, and shall receive notice from the board if the committee has failed to file a disclosure report at the time required under chapter 56. A candidate of a candidate's committee, or the chairperson of a political committee, may be subject to a civil penalty for failure to file a disclosure report required under section 56.6, subsection 1.

8. Establish and impose penalties, and recommendations for punishment of persons who are subject to penalties of or punishment by the board or by other bodies, for the failure to comply with the requirements of this chapter or chapter 56.

9. Determine, in case of dispute, at what time a person has become a candidate.

10. Preserve copies of reports and statements filed with the board for a period of five years from the date of receipt.

11. Establish a procedure for requesting and issuing formal and informal board opinions to local officials and employees and to persons subject to the authority of the board under this chapter or chapter 56. Advice contained in formal board opinions shall, if followed, constitute a defense to a complaint filed with the board alleging a violation of this chapter, chapter 56, or rules of the board that is based on the same facts and circumstances.

12. Establish rules relating to ethical conduct for persons holding a state office in the executive branch of state government, including candidates, and for employees of the executive branch of state government and regulations governing the conduct of lobbyists of the executive branch of state government, including but not limited to conflicts of interest, abuse of office, misuse of public property, use of confidential information, participation in matters in which an official or state employee has a financial interest, and rejection of improper offers.

13. Impose penalties upon, or refer matters relating to, persons who discharge any employee, or who otherwise discriminate in employment against any employee, for the filing of a complaint with, or the disclosure of information to, the board if the employee has filed the complaint or made the disclosure in good faith.

14. Establish fees, where necessary, to cover the costs associated with preparing, printing, and distributing materials to persons subject to the authority of the board.

93 Acts, ch 163, §15; 95 Acts, ch 198, §19

68B.32B Complaint procedures.

1. Any person may file a complaint alleging that a candidate, committee, person holding a state office in the executive branch of state government, employee of the executive branch of state government, or other person has committed a violation of chapter 56 or rules adopted by the board. Any person may file a complaint alleging that a person holding a state office in the executive branch of state government, an employee of the executive branch of state government, or a lobbyist or a client of a lobbyist of the executive branch of state government has committed a violation of this chapter or rules adopted by the board. The board shall prescribe and provide forms for this purpose. A complaint must include the name and address of the complainant, a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged, and a certification by the complainant under penalty of

perjury that the facts stated to be true are true to the best of the complainant's knowledge.

2. The board staff shall review the complaint to determine if the complaint is sufficient as to form. If the complaint is deficient as to form, the complaint shall be returned to the complainant with a statement of the deficiency and an explanation describing how the deficiency may be cured. If the complaint is sufficient as to form, the complaint shall be referred for legal review.

3. Unless the chairperson of the board concludes that immediate notification would prejudice a preliminary investigation or subject the complainant to an unreasonable risk, the board shall mail a copy of the complaint to the subject of the complaint within three working days of the acceptance of the complaint. If a determination is made by the chairperson not to mail a copy of the complaint to the subject of the complaint within the three working days time period, the board shall approve and establish the time and conditions under which the subject will be informed of the filing and contents of the complaint.

4. Upon completion of legal review, the chairperson of the board shall be advised whether, in the opinion of the legal advisor, the complaint states an allegation which is legally sufficient. A legally sufficient allegation must allege all of the following:

a. Facts that would establish a violation of a provision of this chapter, chapter 56, or rules adopted by the board.

b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.

c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

5. After receiving an evaluation of the legal sufficiency of the complaint, the chairperson shall refer the complaint to the board for a formal determination by the board of the legal sufficiency of the allegations contained in the complaint.

6. If the board determines that none of the allegations contained in the complaint are legally sufficient, the complaint shall be dismissed. The complainant shall be sent a notice of dismissal stating the reason or reasons for the dismissal. If a copy of the complaint was sent to the subject of the complaint, a copy of the notice shall be sent to the subject of the complaint. If the board determines that any allegation contained in the complaint is legally sufficient, the complaint shall be referred to the board staff for investigation of any legally sufficient allegations.

7. Notwithstanding subsections 1 through 6, the board may, on its own motion and without the filing of a complaint by another person, initiate investigations into matters that the board believes may be subject to the board's jurisdiction. This section does not preclude persons from providing information to the board for possible board-initiated investigation instead of filing a complaint.

8. The purpose of an investigation by the board's staff is to determine whether there is probable cause to believe that there has been a violation of this chapter or of rules adopted by the board. To facilitate the conduct of investigations, the board may issue and seek enforcement of subpoenas requiring the attendance and testimony of witnesses and subpoenas requiring the production of books, papers, records, and other real evidence relating to the matter under investigation. Upon the request of the board, an appropriate county attorney or the attorney general shall assist the staff of the board in its investigation.

9. If the board determines on the basis of an investigation by board staff that there is probable cause to believe the existence of facts that would establish a violation of this chapter, or of rules adopted by the board, the board may issue a statement of charges and notice of a contested case proceeding to the complainant and to the person who is the subject of the complaint, in the manner provided for the issuance of statements of charges under chapter 17A. If the board determines on the basis of an investigation by staff that there is no probable cause to believe that a violation has occurred, the board shall close the investigation, dismiss any related complaint, and the subject of the complaint shall be notified of the dismissal. If the investigation originated from a complaint filed by a person other than the board, the person making the complaint shall also be notified of the dismissal.

10. At any stage during the investigation or after the initiation of a contested case proceeding, the board may approve a settlement regarding an alleged violation. Terms of a settlement shall be reduced to writing and be available for public inspection. An informal settlement may provide for any remedy specified in section 68B.32D. However, the board shall not approve a settlement unless the board determines that the terms of the settlement are in the public interest and are consistent with the purposes of this chapter and rules of the board. In addition, the board may authorize board staff to seek informal voluntary compliance in routine matters brought to the attention of the board or its staff.

11. A complaint shall be a public record, but some or all of the contents may be treated as confidential under section 22.7, subsection 18, to the extent necessary under subsection 3 of this section. Information informally reported to the board and board staff which results in a board-initiated investigation shall be a public record but may be treated as confidential information consistent with the provisions of section 22.7, subsection 18. If the complainant, the person who provides information to the board, or the person who is the subject of an investigation publicly discloses the existence of an investigation, the board may publicly confirm the existence of the disclosed formal com-

plaint or investigation and, in the board's discretion, make the complaint or the informal referral public, as well as any other documents that were issued by the board to any party to the investigation. However, investigative materials may be furnished to the appropriate law enforcement authorities by the board at any time. Upon the commencement of a contested case proceeding by the board, all investigative material relating to that proceeding shall be made available to the subject of the proceeding. The entire record of any contested case proceeding initiated under this section shall be a public record.

12. Board records used to achieve voluntary compliance to resolve discrepancies and deficiencies shall not be confidential unless otherwise required by law.

93 Acts, ch 163, §16; 94 Acts, ch 1092, §8

68B.32C Contested case proceedings.

1. Contested case proceedings initiated as a result of the issuance of a statement of charges pursuant to section 68B.32B, subsection 9, shall be conducted in accordance with the requirements of chapter 17A. Clear and convincing evidence shall be required to support a finding that a person has violated this chapter or any rules adopted by the board pursuant to this chapter. A preponderance of the evidence shall be required to support a finding that a person has violated chapter 56 or any rules adopted by the board pursuant to chapter 56. The case in support of the statement of charges shall be presented at the hearing by one of the board's attorneys or staff unless, upon the request of the board, the charges are prosecuted by another legal counsel designated by the attorney general. A person making a complaint under section 68B.32B, subsection 1, is not a party to contested case proceedings conducted relating to allegations contained in the complaint.

2. Hearings held pursuant to this chapter shall be heard by a quorum of the board, unless the board designates a board member or an administrative law judge to preside at the hearing. If a quorum of the board does not preside at the hearing, the board member or administrative law judge shall make a proposed decision. The board or presiding board member may be assisted by an administrative law judge in the conduct of the hearing and the preparation of a decision.

3. Upon a finding by the board that the party charged has violated this chapter or rules adopted by the board, the board may impose any penalty provided for by section 68B.32D. Upon a final decision of the board finding that the party charged has not violated this chapter or the rules of the board, the complaint shall be dismissed and the party charged and the original complainant, if any, shall be notified.

4. The right of an appropriate county attorney or the attorney general to commence and maintain a district court prosecution for criminal violations of the law is unaffected by any proceedings under this section.

5. The board shall adopt rules, pursuant to chapter 17A, establishing procedures to implement this section.

93 Acts, ch 163, §17

68B.32D Penalties — recommended actions.

1. The board, after a hearing and upon a finding that a violation of this chapter, chapter 56, or rules adopted by the board has occurred, may do one or more of the following:

a. Issue an order requiring the violator to cease and desist from the violation found.

b. Issue an order requiring the violator to take any remedial action deemed appropriate by the board.

c. Issue an order requiring the violator to file any report, statement, or other information as required by this chapter, chapter 56, or rules adopted by the board.

d. Publicly reprimand the violator for violations of this chapter, chapter 56, or rules adopted by the board in writing and provide a copy of the reprimand to the violator's appointing authority.

e. Make a written recommendation to the violator's appointing authority that the violator be removed or suspended from office, and include in the recommendation the length of the suspension.

f. If the violation is a violation of this chapter or rules adopted by the board pursuant to this chapter and the violator is an elected official of the executive branch of state government, other than an official who can only be removed by impeachment, make a written recommendation to the attorney general or the appropriate county attorney that an action for removal from office be initiated pursuant to chapter 66.

g. If the violation is a violation of this chapter or rules adopted by the board pursuant to this chapter and the violator is a lobbyist of the executive branch of state government, censure, reprimand, or impose other sanctions deemed appropriate by the board. A lobbyist may also be suspended from lobbying activities if the board finds that suspension is an appropriate sanction for the violation committed.

h. Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars for each violation of this chapter, chapter 56, or rules adopted by the board.

i. Refer the complaint and supporting information to the attorney general or appropriate county attorney with a recommendation for prosecution or enforcement of criminal penalties.

2. At any stage during an investigation or during the board's review of routine compliance matters, the board may resolve the matter by admonishment to the alleged violator or by any other means not specified in subsection 1 as a posthear-

ing remedy.

3. If a person fails to comply with an action of the board under subsection 1, the board may petition the Polk county district court for an order for enforcement of the action of the board. The enforcement proceeding shall be conducted as provided in section 68B.33.

93 Acts, ch 163, §18; 2000 Acts, ch 1042, §2

68B.33 Judicial review — enforcement.

Judicial review of the actions of the board may be sought in accordance with chapter 17A. Judicial enforcement of orders of the board may be sought in accordance with chapter 17A.

92 Acts, ch 1228, §15; 93 Acts, ch 163, §19

68B.34 Investigation by independent special counsel — probable cause.

The purpose of an investigation by the independent special counsel is to determine whether there is probable cause to proceed with an adjudicatory hearing on the matter. In conducting investigations and holding hearings, the independent special counsel may require by subpoena the attendance and testimony of witnesses and may subpoena books, papers, records, and any other real evidence relating to the matter before the independent special counsel. The independent special counsel shall have the additional authority provided in section 17A.13. If the independent special counsel determines at any stage in the proceedings that take place prior to hearing that the complaint is without merit, the independent special counsel shall report that determination to the appropriate ethics committee and the complaint shall be dismissed and the complainant and the party charged shall be notified. If, after investigation, the independent special counsel determines evidence exists which, if proven, would support a finding of a violation of this chapter, a finding of probable cause shall be made and reported to the ethics committee, and a hearing shall be ordered by the ethics committee as provided in section 68B.31. Independent special counsel investigations are not meetings of a governmental body within the meaning of chapter 21, and records and information obtained by independent special counsel during investigations are confidential until disclosed to a legislative ethics committee under section 68B.31.

92 Acts, ch 1228, §16; 93 Acts, ch 163, §20

68B.35 Personal financial disclosure — certain officials, members of the general assembly, and candidates.

1. The persons specified in subsection 2 shall file a financial statement at times and in the manner provided in this section that contains all of the following:

a. A list of each business, occupation, or profession in which the person is engaged and the nature of that business, occupation, or profession, unless already apparent.

b. A list of any other sources of income if the source produces more than one thousand dollars annually in gross income. Such sources of income listed pursuant to this paragraph may be listed under any of the following categories, or under any other categories as may be established by rule:

(1) Securities.

(2) Instruments of financial institutions.

(3) Trusts.

(4) Real estate.

(5) Retirement systems.

(6) Other income categories specified in state and federal income tax regulations.

2. The financial statement required by this section shall be filed by the following persons:

a. Any statewide elected official.

b. The executive or administrative head or heads of any agency of state government.

c. The deputy executive or administrative head or heads of an agency of state government.

d. The head of a major subunit of a department or independent state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules adopted by the board, pursuant to chapter 17A, in consultation with the department or agency.

e. Members of the banking board, the ethics and campaign disclosure board, the credit union review board, the economic development board, the employment appeal board, the environmental protection commission, the health facilities council, the Iowa finance authority, the Iowa public employees' retirement system investment board, the lottery board, the natural resource commission, the board of parole, the petroleum underground storage tank fund board, the public employment relations board, the state racing and gaming commission, the state board of regents, the tax review board, the transportation commission, the office of consumer advocate, the utilities board, the Iowa telecommunications and technology commission, and any full-time members of other boards and commissions as defined under section 7E.4 who receive an annual salary for their service on the board or commission.

f. Members of the general assembly.

g. Candidates for state office.

h. Legislative employees who are the head or deputy head of a legislative agency or whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

3. The board, in consultation with each executive department or independent agency, shall adopt rules pursuant to chapter 17A to implement the requirements of this section that provide for the time and manner for the filing of financial statements by persons in the department or independent agency.

4. The ethics committee of each house of the

general assembly shall recommend rules for adoption by each house for the time and manner for the filing of financial statements by members or employees of the particular house. The legislative council shall adopt rules for the time and manner for the filing of financial statements by legislative employees of the central legislative staff agencies. The rules shall provide for the filing of the financial statements with either the chief clerk of the house, the secretary of the senate, or other appropriate person or body.

5. A candidate for statewide office shall file a financial statement with the ethics and campaign disclosure board, a candidate for the office of state representative shall file a financial statement with the chief clerk of the house of representatives, and a candidate for the office of state senator shall file a financial statement with the secretary of the senate. Statements shall contain information concerning the year preceding the year in which the election is to be held. The statement shall be filed no later than thirty days after the date on which a person is required to file nomination papers for state office under section 43.11, or, if the person is a candidate in a special election, as soon as practicable after the certification of the name of the nominee under section 43.88, but the statement shall be postmarked no later than seven days after certification. The ethics and campaign disclosure board shall adopt rules pursuant to chapter 17A providing for the filing of the financial statements with the board and for the deposit, retention, and availability of the financial statements. The ethics committees of the house of representatives and the senate shall recommend rules for adoption by the respective houses providing for the filing of the financial statements with the chief clerk of the house or the secretary of the senate and for the deposit, retention, and availability of the financial statements. Rules adopted shall also include a procedure for notification of candidates of the duty to file disclosure statements under this section.

92 Acts, ch 1228, §17; 93 Acts, ch 163, §21; 94 Acts, ch 1092, §9; 96 Acts, ch 1200, §2; 2001 Acts, ch 61, §12

68B.35A Personal financial disclosure statements of state officials and employees — public access.

Personal financial disclosure statements filed with the board and the chief clerk of the house, secretary of the senate, or other appropriate person or body shall be forwarded to the secretary of state for the recording of the information through electronic means. The board and the general assembly shall execute agreements with the secretary of state which provide for public access to and copying of the information, and include a site in the board offices for public viewing and copying of information, contained in personal financial disclosure statements filed with the board and the chief clerk of the house, secretary of the senate, or other appropriate person or body.

93 Acts, ch 163, §22; 94 Acts, ch 1023, §82

68B.36 Applicability — lobbyist registration required.

1. All lobbyists shall, on or before the day their lobbying activity begins, register by filing a lobbyist's registration statement at times and in the manner provided in this section. Lobbyists engaged in lobbying activities before the general assembly shall file the statement with the chief clerk of the house of representatives or the secretary of the senate. Lobbyists engaged in lobbying activities before the office of the governor or any state agency shall file the statement with the board. The chief clerk of the house and the secretary of the senate shall provide appropriate registration forms to lobbyists before the general assembly. The board shall prescribe appropriate registration forms for lobbyists before the office of the governor and state agencies.

2. Registration shall be valid from the date of registration until the expiration of the registration period for the type of lobbying in which the person will be engaging. Any change in or addition to the information shall be registered within ten days after the change or addition is known to the lobbyist. Changes or additions for executive branch lobbyists shall be filed with the board. Changes or additions for registrations of lobbyists of the general assembly shall be filed with either the chief clerk of the house or the secretary of the senate.

3. For persons registered to lobby before the general assembly, registration expires upon the commencement of the next regular session of the general assembly, except that the chief clerk of the house and the secretary of the senate may adopt and implement a reasonable preregistration procedure in advance of each regular session during which persons may register for that session and the following legislative interim. For persons registered to lobby before the office of the governor or a state agency, registration expires upon the commencement of a new calendar year. The board may adopt and implement a reasonable preregistration procedure in advance of each new calendar year during which persons may register for that year.

4. If a lobbyist's service on behalf of all clients, employers, or causes is concluded prior to the end of the calendar year, the lobbyist may cancel the registration on appropriate forms supplied by the board, the chief clerk of the house, or the secretary of the senate. The cancellation forms shall be filed by the lobbyist in the place where the lobbyist filed the original registration. Upon cancellation of registration, a lobbyist is prohibited from engaging in any lobbying activity on behalf of any employer, client, or cause until reregistering and

complying with the rules of the board or the general assembly.

5. All federal, state, and local officials or employees representing the official positions of their departments, commissions, boards, or agencies shall, when lobbying the general assembly, present to the chief clerk of the house or the secretary of the senate a letter of authorization from their department or agency heads prior to the commencement of their lobbying. When lobbying a state agency or the office of the governor, the letter shall be presented to the board. The lobbyist registration statement of these officials and employees shall not be deemed complete until the letter of authorization is attached. Federal, state, and local officials who wish to lobby in opposition to the official position of their departments, commissions, boards, or agencies must indicate this on their lobbyist registration statements.

92 Acts, ch 1228, §18; 93 Acts, ch 163, §23; 94 Acts, ch 1023, §83; 94 Acts, ch 1092, §10

68B.37 Lobbyist reporting.

1. A lobbyist before the general assembly shall file with the general assembly, on forms prescribed by each house of the general assembly, a report disclosing all of the following:

a. The lobbyist's clients.

b. Contributions made to candidates for state office by the lobbyist during calendar months during the reporting period when the general assembly is not in session.

c. The recipient of the campaign contributions.

d. Expenditures made by the lobbyist for the purposes of providing the services enumerated under section 68B.2, subsection 13, paragraph *"a"*.

For purposes of this subsection, *"expenditures"* does not include expenditures made by any organization for publishing a newsletter or other informational release for its members.

2. A lobbyist before a state agency or the office of the governor shall file with the board, on forms prescribed by the board, a report disclosing the same items described in subsection 1.

3. The reports by lobbyists before the general assembly shall be filed not later than twenty-five days following any month in which the general assembly is in session and thereafter on or before July 31, October 31, and January 31. The reports filed by a lobbyist before the general assembly shall contain information for the preceding calendar month or quarter or parts thereof during which the person was engaged in lobbying. Reports filed by lobbyists before a state agency shall be filed on or before April 30, July 31, October 31, and January 31, for the preceding calendar quarter or parts thereof during which the person was engaged in lobbying.

If a person cancels the person's lobbyist registration at any time during the calendar year, the reports required by this section are due on the dates required by this section or fifteen days after cancellation, whichever is earlier. The report due January 31 shall include all reportable items for the preceding calendar year in addition to containing the quarterly reportable items. A lobbyist who cancels the person's lobbyist registration before January 1 of a year shall file a report listing all reportable items for the year in which the cancellation was filed. A lobbyist who cancels the person's lobbyist registration between January 1 and January 15 of a year shall file a report listing all reportable items for the preceding year and so much of the month of January as has expired at the time of cancellation. However, if a lobbyist is a person who is designated to represent the interest of an organization as defined in section 68B.2, subsection 13, paragraph *"a"*, subparagraph (2), but is not paid compensation for that representation and does not expend more than one thousand dollars as provided in section 68B.2, subsection 13, paragraph *"a"*, subparagraph (4), the lobbyist shall only be required to file the report specified in this section once annually, which shall be performed at the time of filing the person's lobbyist registration form or forms.

92 Acts, ch 1228, §19; 93 Acts, ch 163, §24; 94 Acts, ch 1092, §11, 12

68B.38 Lobbyist's client reporting.

1. On or before January 31 and July 31 of each year, a lobbyist's client shall file with the general assembly or board a report that contains information on all salaries, fees, and retainers paid by the lobbyist's client to the lobbyist for lobbying purposes during the preceding six calendar months. Reports by a lobbyist's clients shall be filed with the same entity with which the lobbyist filed the lobbyist's registration.

2. The report due January 31 shall include a cumulative total of all salaries, fees, retainers, and reimbursements of expenses paid to the lobbyist for lobbying activities during the preceding calendar year. The secretary of the senate, chief clerk of the house, and the board shall develop forms to implement this section.

92 Acts, ch 1228, §20; 93 Acts, ch 163, §25; 2000 Acts, ch 1042, §3; 2001 Acts, ch 24, §20

68B.39 Supreme court rules.

The supreme court of this state shall prescribe rules by January 1, 1993, establishing a code of ethics for officials and employees of the judicial branch of this state, and the immediate family members of the officials and employees. Rules prescribed under this paragraph shall include provisions relating to the receipt or acceptance of gifts and honoraria, interests in public contracts, services against the state, and financial disclosure which are substantially similar to the requirements of this chapter.

The supreme court of this state shall also prescribe rules which relate to activities by officials and employees of the judicial branch which constitute conflicts of interest.

[C81, §68B.11]
87 Acts, ch 213, §8; 92 Acts, ch 1228, §21
C93, §68B.39
93 Acts, ch 163, §26; 98 Acts, ch 1047, §15

CHAPTER 69

VACANCIES — REMOVAL — TERMS

69.1 Definitions.
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69.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1
Former §69.1 transferred to §69.1A

69.1A Holding over.

Except when otherwise provided, every officer elected or appointed for a fixed term shall hold office until a successor is elected and qualified, unless the officer resigns, or is removed or suspended, as provided by law.

[C51, §241; C73, §784; C97, §1265; C24, 27, 31, 35, 39, §**1145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.1]
C2001, §69.1A

69.2 What constitutes vacancy — hearing — appeal.

1. Every civil office shall be vacant if any of the following events occur:

a. A failure to elect at the proper election, or to appoint within the time fixed by law, unless the incumbent holds over.

b. A failure of the incumbent or holdover officer to qualify within the time prescribed by law.

c. The incumbent ceasing to be a resident of the state, district, county, township, city, or ward by or for which the incumbent was elected or appointed, or in which the duties of the office are to be exercised. This subsection shall not apply to appointed city officers.

d. The resignation or death of the incumbent, or of the officer-elect before qualifying.

e. The removal of the incumbent from, or forfeiture of, the office, or the decision of a competent tribunal declaring the office vacant.

f. The conviction of the incumbent of a felony, an aggravated misdemeanor, or of any public offense involving the violation of the incumbent's oath of office.

g. The board of supervisors declares a vacancy in an elected county office upon finding that the county officer has been physically absent from the county for sixty consecutive days except in the case of a medical emergency; temporary active military duty; or temporary service with another government service, agency, or department.

h. The incumbent simultaneously holding more than one elective office at the same level of government. This subsection does not apply to the county agricultural extension council or the soil and water conservation district commission.

i. An incumbent statewide elected official or member of the general assembly simultaneously holding more than one elective office.

2. If the status of an officeholder is in question, the entity or officer responsible for making an appointment to fill the vacancy shall decide whether a vacancy exists. The appointing entity or officer may act upon its own motion. If a petition signed by twenty-five registered voters of the jurisdiction

is received, the appointing entity or officer shall convene within thirty days to consider whether a vacancy exists. The appointing entity or officer shall publish notice that a public hearing will be held to determine whether a vacancy exists. The notice shall include the time and place of the hearing and the name of the office and the officeholder whose status is in question. The public hearing shall be held not less than four nor more than fourteen days after publication of the notice. The officer whose status is in question shall be notified of the time and place of the hearing. Notice shall be sent by certified mail and must be postmarked at least fourteen days before the hearing. No later than seven days after the public hearing, the appointing entity or officer shall publish its decision. If the appointing entity or officer decides that the office is vacant, the publication shall state the date the vacancy occurred and what action will be taken to fill the vacancy.

3. The officer against whom the judgment was rendered may appeal to the district court no later than twenty days after official publication of the decision. However, the appeal will not supersede the execution of the judgment of the appointing entity or officer, unless the party gives a bond, with security to be approved by the district judge in a sum to be fixed by the judge. The amount of the bond shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that the officer will prosecute the appeal without delay and that, if the judgment appealed from is affirmed, the party will pay over to the successful party all compensation received by the party while in possession of the office after the judgment appealed from was rendered. The court shall hear the appeal in equity and determine anew all questions arising in the case.

4. If, upon appeal, the judgment is affirmed, the district court may render judgment upon the bond for the amount of damages awarded against the appellant and the sureties on the bond.

[C51, §334, 429; R60, §564, 662, 1132; C73, §504, 686, 781; C97, §1266; C24, 27, 31, 35, 39, §**1146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.2]

91 Acts, ch 12, §1 – 3; 93 Acts, ch 143, §41; 98 Acts, ch 1223, §18, 38; 2001 Acts, ch 158, §11; 2002 Acts, ch 1134, §77, 115

Duty of holdover officer to requalify, §63.7

Vacancy on board of supervisors, §331.214

Vacancy on school board, §277.29

Removal from office; see also chapter 66

Prohibitions concerning holding more than one office, §39.11, 39.12, and 441.17(1)

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

69.3 Possession of office.

When a vacancy occurs in a public office, possession shall be taken of the office room, books, papers, and all things pertaining to the office, to be held until the qualification of a successor, as follows:

1. Of the office of the county auditor, by the county treasurer.

2. Of the county treasurer, by the county auditor.

3. Of any of the state officers, by the governor, or, in the absence or inability of the governor at the time of the occurrence, as follows:

a. Of the secretary of state, by the treasurer of state.

b. Of the auditor of state, by the secretary of state.

c. Of the treasurer of state, by the secretary of state and auditor of state, who shall make an inventory of the money and warrants in the office, sign the inventory, and transmit it to the governor, and the secretary of state shall take the keys of the safe and desks, after depositing the books, papers, money and warrants in them, and the auditor of state shall take the key to the office room.

[C51, §444; R60, §671; C73, §788; C97, §1267; C24, 27, 31, 35, 39, §**1147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.3]

83 Acts, ch 186, §10034; 86 Acts, ch 1237, §3

69.4 Resignations.

Resignations in writing by civil officers may be made as follows, except as otherwise provided:

1. By the governor, to the general assembly, if in session, if not, to the secretary of state.

2. By state senators and representatives, and all officers appointed by the senate or house, or by the presiding officers thereof, to the respective presiding officers of the senate and house, when the general assembly is in session, and such presiding officers shall immediately transmit to the governor information of the resignation of any member thereof; when the general assembly is not in session, all such resignations shall be made to the governor.

3. By senators and representatives in Congress, all officers elected by the registered voters in the state or any district or division thereof larger than a county, or chosen by the general assembly, all judges of courts of record, all officers, trustees, inspectors, and members of all boards and commissions now or hereafter created under the laws of the state, and all persons filling any position of trust or profit in the state, for which no other provision is made, to the governor.

4. By all county and township officers, to the county auditor, except that of the auditor, which shall be to the board of supervisors.

5. By all council members and officers of cities, to the clerk or mayor.

[C51, §430; R60, §663; C73, §782; C97, §1268; C24, 27, 31, 35, 39, §**1148;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.4]

2001 Acts, ch 56, §7

69.5 Vacancy in general assembly.

When a vacancy shall occur in the office of senator or representative in the general assembly, except by resignation, the auditor of the county of the senator's or representative's residence shall notify the governor of such fact and the cause.

[C51, §443; R60, §672; C73, §789, 790; C97, §1269; C24, 27, 31, 35, 39, §**1149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.5]

69.6 Vacancy in state boards.

In case of a vacancy from any cause, other than resignation or expiration of term, occurring in any of the governing boards of the state institutions, the secretary thereof shall immediately notify the governor.

[C97, §1270; C24, 27, 31, 35, 39, §**1150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.6]

69.7 Duty of officer receiving resignation.

An officer receiving any resignation, or notice of any vacancy, shall forthwith notify the board, tribunal, or officer, if any, empowered to fill the same by appointment.

[C97, §1271; C24, 27, 31, 35, 39, §**1151;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.7]

69.8 Vacancies — how filled.

Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

1. *United States senator*. In the office of United States senator, when the vacancy occurs when the senate of the United States is in session, or when such senate will convene prior to the next general election, by the governor. An appointment made under this subsection shall be for the period until the vacancy is filled by election pursuant to law.

2. *State offices*. In all state offices, judges of courts of record, officers, trustees, inspectors, and members of all boards or commissions, and all persons filling any position of trust or profit in the state, by the governor, except when some other method is specially provided. An appointment made under this subsection to a state office subject to section 69.13 shall be for the period until the vacancy is filled by election pursuant to law.

3. *County offices*. In county offices, by the board of supervisors, unless an election is called as provided in section 69.14A.

4. *Board of supervisors*. In the membership of the board of supervisors, by the treasurer, auditor, and recorder, or as provided in section 69.14A. If any of these offices have been abolished through consolidation, the county attorney shall serve on this committee.

5. *Elected township offices*. When a vacancy occurs in the office of township clerk or township trustee, the vacancy shall be filled by appointment by the trustees. All appointments to fill vacancies in township offices shall be until a successor is elected at the next general election and qualifies by taking the oath of office. If the term of office in which the vacancy exists will expire within seventy days after the next general election, the person elected to the office for the succeeding term shall qualify by taking the oath of office within ten days after the election and shall serve for the remainder of the unexpired term, as well as for the next four-year term.

However, if the offices of two trustees are vacant the county board of supervisors shall fill the vacancies by appointment. If the offices of three trustees are vacant the board may fill the vacancies by appointment, or the board may adopt a resolution stating that the board will exercise all powers and duties assigned by law to the trustees of the township in which the vacancies exist until the vacancies are filled at the next general election. If a township office vacancy is not filled by the trustees within thirty days after the vacancy occurs, the board of supervisors may appoint a successor to fill the vacancy until the vacancy can be filled at the next general election.

[C51, §436; R60, §664; C73, §513, 783, 794; C97, §1272; S13, §1272; C24, 27, 31, 35, 39, §**1152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §69.8; 81 Acts, ch 117, §1204]

83 Acts, ch 186, §10035 – 10037; 86 Acts, ch 1155, §2; 87 Acts, ch 68, §4; 89 Acts, ch 215, §2, 3; 94 Acts, ch 1180, §37

Auditor to act temporarily for other officers, §331.502(7)
General power of governor, Constitution, Art. IV, §10
Vacancies in municipal offices, see §372.13(2)

69.9 Person removed not eligible.

No person can be appointed to fill a vacancy who has been removed from office within one year next preceding.

[C51, §441; R60, §669; C73, §787; C97, §1273; C24, 27, 31, 35, 39, §**1153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.9]

69.10 Appointments.

Appointments under the provisions of this chapter shall be in writing, and filed in the office where the oath of office is required to be filed.

[C51, §439; R60, §667; C73, §785; C97, §1274; C24, 27, 31, 35, 39, §**1154;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.10]

Place of filing oath, §64.23

69.11 Tenure of vacancy appointee.

An officer filling a vacancy in an office which is filled by election of the people shall continue to hold until the next election at which such vacancy can be filled, as provided in section 69.12, and until a successor is elected and qualified. Appointments to all other offices, made under this chapter, shall continue for the remainder of the term of each of-

fice, and until a successor is appointed and qualified.

[C51, §429, 439; R60, §662, 667, 1101; C73, §530, 781, 785; C97, §1276; C24, 27, 31, 35, 39, §**1155;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.11]

69.12 Officers elected to fill vacancies — tenure.

When a vacancy occurs in any nonpartisan elective office of a political subdivision of this state, and the statutes governing the office in which the vacancy occurs require that it be filled by election or are silent as to the method of filling the vacancy, it shall be filled pursuant to this section. As used in this section, *"pending election"* means any election at which there will be on the ballot either the office in which the vacancy exists, or any other office to be filled or any public question to be decided by the voters of the same political subdivision in which the vacancy exists.

1. If the unexpired term in which the vacancy occurs has more than seventy days to run after the date of the next pending election, the vacancy shall be filled in accordance with this subsection. The fact that absentee ballots were distributed or voted before the vacancy occurred or was declared shall not invalidate the election.

a. A vacancy shall be filled at the next pending election if it occurs:

(1) Seventy-four or more days before the election, if it is a general election.

(2) Fifty-two or more days before the election, if it is a regularly scheduled or special city election. However, for those cities which may be required to hold a primary election, the vacancy shall be filled at the next pending election if it occurs seventy-three or more days before a regularly scheduled or special city election.

(3) Forty-five or more days before the election, if it is a regularly scheduled school election.

(4) Forty or more days before the election, if it is a special election.

b. Nomination papers on behalf of candidates for a vacant office to be filled pursuant to paragraph *"a"* of this subsection shall be filed, in the form and manner prescribed by applicable law, by five p.m. on:

(1) The final filing date for candidates filing with the state commissioner or commissioner, as the case may be, for a general election.

(2) The candidate filing deadline specified in section 376.4 for a regularly scheduled or special city election.

(3) The fortieth day before a regularly scheduled school election.

(4) The twenty-fifth day before a special election.

c. A vacancy which occurs at a time when paragraph *"a"* of this subsection does not permit it to be filled at the next pending election shall be filled by appointment as provided by law until the succeeding pending election.

2. When the unexpired term of office in which the vacancy occurs will expire within seventy days after the date of the next pending election, or after the date of a preceding election in which that office was on the ballot, the person elected to the office for the succeeding term shall also be deemed elected to fill the remainder of the unexpired term. If the vacancy is on a multimember body to which more than one nonincumbent is elected for the succeeding term, the nonincumbent who received the most votes shall be deemed elected to fill the remainder of the unexpired term. A person so elected to fill an unexpired term shall qualify within the time required by sections 63.3 and 63.8. Unless other requirements are imposed by law, qualification for the unexpired term shall also constitute qualification for the full term to which the person was elected.

[C51, §431 – 435; R60, §672, 1083, 1101; C73, §513, 530, 789, 794, 795; C97, §1277, 1278; C24, 27, 31, 35, 39, §**1156, 1157;** C46, 50, 54, 58, 62, 66, 71, §69.12, 69.13; C73, 75, 77, 79, 81, S81, §69.12; 81 Acts, ch 34, §45]

87 Acts, ch 221, §31; 89 Acts, ch 136, §59 – 61; 2002 Acts, ch 1134, §78, 79, 115

2002 amendments to subsection 1, paragraphs a and b, take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1, paragraphs a and b amended

69.13 Vacancies — senator in Congress and elective state officers.

If a vacancy occurs in the office of senator in the Congress of the United States, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general eighty-nine or more days before a general election, and the unexpired term in which the vacancy exists has more than seventy days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person has qualified.

If the unexpired term of office in which the vacancy occurs will expire within seventy days after the date of the next pending election, section 69.11 applies.

[C77, 79, 81, §69.13]

89 Acts, ch 136, §62; 91 Acts, ch 129, §21; 92 Acts, ch 1067, §1; 97 Acts, ch 170, §79

69.14 Special election to fill vacancies.

A special election to fill a vacancy shall be held for a representative in Congress, or senator or representative in the general assembly, when the body in which such vacancy exists is in session, or will convene prior to the next general election, and the governor shall order, not later than five days from the date the vacancy exists, a special election, giving not less than forty days' notice of such election. In the event the special election is to fill

a vacancy in the general assembly while it is in session or within forty-five days of the convening of any session, the time limit provided in this section shall not apply and the governor shall order such special election at the earliest practical time, giving at least eighteen days' notice of the special election. Any special election called under this section must be held on a Tuesday and shall not be held on the same day as a school election within the district.

[C51, §443; R60, §672; C73, §789; C97, §1279; C24, 27, 31, 35, 39, §**1158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.14]

86 Acts, ch 1224, §33; 95 Acts, ch 189, §17

See §43.78, subsection 4

69.14A Filling vacancy of elected county officer.

1. A vacancy on the board of supervisors shall be filled by one of the two following procedures:

a. By appointment by the committee of county officers designated to fill the vacancy in section 69.8. The appointment shall be for the period until the next pending election as defined in section 69.12, and shall be made within forty days after the vacancy occurs. If the committee of county officers designated to fill the vacancy chooses to proceed under this paragraph, the committee shall publish notice in the manner prescribed by section 331.305 stating that the committee intends to fill the vacancy by appointment but that the electors of the district or county, as the case may be, have the right to file a petition requiring that the vacancy be filled by special election. The committee may publish notice in advance if an elected official submits a resignation to take effect at a future date. The committee may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. A person appointed to an office under this subsection shall have actually resided in the county which the appointee represents sixty days prior to appointment.

However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, a petition is filed with the county auditor requesting a special election to fill the vacancy, the appointment is temporary and a special election shall be called as provided in paragraph *"b"*. The petition shall meet the requirements of section 331.306, except that in counties where supervisors are elected under plan "three", the number of signatures calculated according to the formula in section 331.306 shall be divided by the number of supervisor districts in the county.

b. By special election held to fill the office for the remaining balance of the unexpired term. The committee of county officers designated to fill the vacancy in section 69.8 may, on its own motion, or shall, upon receipt of a petition as provided in paragraph *"a"*, call for a special election to fill the vacancy in lieu of appointment. The committee shall order the special election at the earliest practicable date, but giving at least thirty-two days' notice of the election. A special election called under this section shall be held on a Tuesday and shall not be held on the same day as a school election within the county.

However, if a vacancy on the board of supervisors occurs after the date of the primary election and more than seventy-three days before the general election, a special election to fill the vacancy shall not be called by the committee or by petition. If the term of office in which the vacancy exists will expire more than seventy days after the general election, the office shall be listed on the ballot, as "For Board of Supervisors, To Fill Vacancy". The person elected at the general election shall assume office as soon as a certificate of election is issued and the person has qualified by taking the oath of office. The person shall serve the balance of the unexpired term.

If the term of office in which the vacancy exists will expire within seventy days after the general election, the person elected to the succeeding term shall also serve the balance of the unexpired term. The person elected at the general election shall assume office as soon as a certificate of election is issued and the person has qualified by taking the oath of office.

2. A vacancy in any of the offices listed in section 39.17 shall be filled by one of the two following procedures:

a. By appointment by the board of supervisors. The appointment shall be for the period until the next pending election as defined in section 69.12, and shall be made within forty days after the vacancy occurs. If the board of supervisors chooses to proceed under this paragraph, the board shall publish notice in the manner prescribed by section 331.305 stating that the board intends to fill the vacancy by appointment but that the electors of the county have the right to file a petition requiring that the vacancy be filled by special election. The board may publish notice in advance if an elected official submits a resignation to take effect at a future date. The board may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. A person appointed to an office under this subsection shall have actually resided in the county which the appointee represents sixty days prior to appointment.

However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, a petition is filed with the county auditor requesting a special election to fill the vacancy, the appointment is temporary and a special election shall be called as provided in paragraph *"b"*. The petition shall meet the requirements of section 331.306.

b. By special election held to fill the office for the remaining balance of the unexpired term. The board of supervisors may, on its own motion, or

shall, upon receipt of a petition as provided in paragraph *"a"*, call for a special election to fill the vacancy in lieu of appointment. The supervisors shall order the special election at the earliest practicable date, but giving at least thirty-two days' notice of the election. A special election called under this section shall be held on a Tuesday and shall not be held on the same day as a school election within the county.

If a vacancy in an elective county office occurs after the date of the primary election and more than seventy-three days before the general election, a special election to fill the vacancy shall not be called by the board of supervisors or by petition. If the term of office in which the vacancy exists will expire more than seventy days after the general election, the office shall be listed on the ballot with the name of the office and the additional description, "To Fill Vacancy". The person elected at the general election shall assume office as soon as a certificate of election is issued and the person has qualified by taking the oath of office. The person shall serve the balance of the unexpired term.

If the term of office in which the vacancy exists will expire within seventy days after the general election, the person elected to the succeeding term shall also serve the balance of the unexpired term. The person elected at the general election shall assume office as soon as a certificate of election is issued and the person has qualified by taking the oath of office.

3. Notwithstanding subsection 2, in the event of a vacancy for which no eligible candidate residing in the county comes forward for appointment, a county board of supervisors may employ a person to perform the duties of the office for at least sixty days but no more than ninety days. After ninety days, the board shall proceed under subsection 2.

4. Notwithstanding subsections 1 and 2, if a nomination has been made at the primary election for an office in which a vacancy has been filled by appointment, the office shall be filled at the next general election, and not at any special election in the same political subdivision.

89 Acts, ch 215, §4; 90 Acts, ch 1238, §33; 92 Acts, ch 1067, §2; 94 Acts, ch 1180, §38 – 40; 97 Acts, ch 170, §80 – 83; 2002 Acts, ch 1134, §80, 115

See §43.78, subsection 4

Subsection 4 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW subsection 4

69.15 Board members — nonattendance — vacancy.

Any person who has been appointed by the governor to any board under the laws of this state shall be deemed to have submitted a resignation from such office if either of the following events occurs:

1. The person does not attend three or more consecutive regular meetings of such board. This paragraph does not apply unless the first and last of the consecutive meetings counted for this purpose are at least thirty days apart.

2. The person attends less than one-half of the regular meetings of such board within any period of twelve calendar months beginning on July 1 or January 1. This paragraph does not apply unless such board holds at least four regular meetings during such period. This paragraph applies only to such a period beginning on or after the date when the person takes office as a member of such board.

If such person received no notice and had no knowledge of a regular meeting and gives the governor a sworn statement to that effect within ten days after the person learns of the meeting, such meeting shall not be counted for the purposes of this section.

The governor in the governor's discretion may accept or reject such resignation. If the governor accepts it, the governor shall notify such person, in writing, that the resignation is accepted pursuant to this section. The governor shall then make another appointment to such office. Such appointment shall be made in the same manner and for the same term as in the case of other vacancies caused by resignation from such office.

As used in this section, *"board"* includes any commission, committee, agency, or governmental body which has three or more members.

[C71, 73, 75, 77, 79, 81, §69.15]

69.16 Appointive boards — political affiliation.

All appointive boards, commissions, and councils of the state established by the Code if not otherwise provided by law shall be bipartisan in their composition. No person shall be appointed or reappointed to any board, commission, or council established by the Code if the effect of that appointment or reappointment would cause the number of members of the board, commission, or council belonging to one political party to be greater than one-half the membership of the board, commission, or council plus one.

In the case where the appointment of members of the general assembly is allowed, and the law does not otherwise provide, if an even number of legislators are appointed they shall be equally divided by political party affiliation; if an odd number of members of the general assembly are appointed, the number representing a certain political party shall not exceed by more than one the legislative members of the other political party who may be appointed. If there are multiple appointing authorities for a board, commission or council, the appointing authorities shall consult to avoid a violation of this section. This section shall not apply to any board, commission, or council established by the Code for which other restrictions regarding the political affiliations of members are provided by law.

[C77, 79, 81, §69.16]

86 Acts, ch 1245, §2040; 87 Acts, ch 218, §7

69.16A Gender balance.

All appointive boards, commissions, committees and councils of the state established by the Code if not otherwise provided by law shall be gender balanced. No person shall be appointed or reappointed to any board, commission, committee, or council established by the Code if that appointment or reappointment would cause the number of members of the board, commission, committee, or council of one gender to be greater than one-half the membership of the board, commission, committee, or council plus one if the board, commission, committee, or council is composed of an odd number of members. If the board, commission, committee, or council is composed of an even number of members, not more than one-half of the membership shall be of one gender. If there are multiple appointing authorities for a board, commission, committee, or council, they shall consult each other to avoid a violation of this section. This section shall not prohibit an individual from completing a term being served on June 30, 1987.

86 Acts, ch 1245, §2041; 87 Acts, ch 218, §8; 88 Acts, ch 1150, §1

69.17 Employees as members — voting.

If an employee of an appointive board, commission, or council is a member of the board, commission, or council, that employee shall not be a voting member. Payment of per diem and expenses shall not cause a member to be considered an employee of that board, commission or council.

[C77, 79, 81, §69.17]

69.18 Salary of acting appointees.

If a vacancy occurs in a position which is appointed by the governor subject to confirmation by the senate and the governor designates a person to serve in that position in an acting capacity, that person shall not receive compensation in excess of that authorized by law for a person holding that position.

[C81, §69.18]

69.19 Terms of appointments confirmed by the senate.

All terms of office of positions which are appointed by the governor, have a fixed term and are subject to confirmation by the senate shall begin at 12:01 a.m. on May 1 in the year of appointment and expire at 12:00 midnight on April 30 in the year of expiration.

[C81, §69.19]

Senate confirmation, see §2.32

CHAPTER 70

VETERANS PREFERENCE LAW

Transferred to chapter 35C

CHAPTER 70A

FINANCIAL AND OTHER PROVISIONS FOR PUBLIC OFFICERS AND EMPLOYEES

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70A.1 Salaries — payment — vacations — sick leave — educational leave.

Salaries specifically provided for in an appropriation Act of the general assembly shall be in lieu of existing statutory salaries, for the positions provided for in the Act, and all salaries, including longevity where applicable by express provision in the Code, shall be paid according to the provisions of chapter 91A and shall be in full compensation of all services, including any service on committees, boards, commissions or similar duty for Iowa government, except for members of the general assembly. A state employee on an annual salary shall not be paid for a pay period an amount which exceeds the employee's annual salary transposed into a rate applicable to the pay period by dividing the annual salary by the number of pay periods in the fiscal year. Salaries for state employees covered by the overtime payment provisions of the federal Fair Labor Standards Act shall be established on an hourly basis.

All employees of the state earn two weeks' vacation per year during the first year of employment and through the fourth year of employment, and three weeks' vacation per year during the fifth and through the eleventh year of employment, and four weeks' vacation per year during the twelfth year through the nineteenth year of employment, and four and four-tenths weeks' vacation per year during the twentieth year through the twenty-fourth year of employment, and five weeks' vacation per year during the twenty-fifth year and all subsequent years of employment, with pay. One week of vacation is equal to the number of hours in the employee's normal work week. Vacation allowances accrue according to chapter 91A as provided by the rules of the department of personnel. The vacations shall be granted at the discretion and convenience of the head of the department, agency, or commission, except that an employee shall not be granted vacation in excess of the amount earned by the employee. Vacation leave earned under this paragraph shall not be cumulated to an amount in excess of twice the employee's annual rate of accrual. The head of the department, agency, or commission shall make every reasonable effort to schedule vacation leave sufficient to prevent any loss of entitlements. If the employment of an employee of the state is terminated the provisions of chapter 91A relating to the termination apply.

If said termination of employment shall be by reason of the death of the employee, such vacation allowance shall be paid to the estate of the deceased employee if such estate shall be opened for probate. If no estate be opened, the allowance shall be paid to the surviving spouse, if any, or to the legal heirs if no spouse survives.

Payments authorized by this section shall be approved by the department subject to rules of the department of personnel and paid from the appropriation or fund of original certification of the claim.

Commencing July 1, 1979, permanent full-time and permanent part-time employees of state departments, boards, agencies, and commissions, excluding employees covered under a collective bargaining agreement which provides otherwise, shall accrue sick leave at the rate of one and one-half days for each complete month of full-time employment. The accrual rate for part-time employees shall be prorated to the accrual rate for full-time employees. Sick leave shall not accrue during any period of absence without pay. Employees may use accrued sick leave for physical or mental personal illness, bodily injury, medically related disabilities, including disabilities resulting from pregnancy and childbirth, or contagious disease:

1. Which require the employee's confinement,
2. Which render the employee unable to perform assigned duties, or
3. When performance of assigned duties would jeopardize the employee's health or recovery.

Separation from state employment shall cancel all unused accrued sick leave. However, if an employee is laid off and the employee is re-employed by any state department, board, agency, or commission within one year of the date of the layoff, accrued sick leave of the employee shall be restored.

State employees, excluding state board of regents' faculty members with nine-month appointments, and employees covered under a collective bargaining agreement negotiated with the public safety bargaining unit who are eligible for accrued vacation benefits and accrued sick leave benefits, who have accumulated thirty days of sick leave, and who do not use sick leave during a full month of employment may elect to accrue up to one-half day of additional vacation. The accrual of additional vacation time by an employee for not using sick leave during a month is in lieu of the accrual of up to one and one-half days of sick leave for that month. The director of the department of personnel may adopt the necessary rules and procedures for the implementation of this program for all state employees except employees of the state board of regents. The state board of regents may adopt necessary rules for the implementation of this program for its employees.

The head of any department, agency, or commission, subject to rules of the department of personnel, may grant an educational leave to employees for whom the head of the department, agency, or commission is responsible pursuant to section 70A.25 and funds appropriated by the general assembly may be used for this purpose. The head of the department, agency, or commission shall notify the legislative council and the director of the department of personnel of all educational leaves granted within fifteen days of the granting of the

educational leave. If the head of a department, agency or commission fails to notify the legislative council and the director of the department of personnel of an educational leave, the expenditure of funds appropriated by the general assembly for the educational leave shall not be allowed.

A specific annual salary rate or annual salary adjustment commencing with a fiscal year shall commence on July 1 except that if a pay period overlaps two fiscal years, a specific annual salary rate or annual salary adjustment shall commence with the first day of a pay period as specified by the general assembly.

[C73, §3780; C97, §1289; C24, 27, 31, 35, 39, §**1218;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.1; 81 Acts, ch 20, §2]

85 Acts, ch 215, §1; 86 Acts, ch 1244, §13; 86 Acts, ch 1245, §231, 232; 87 Acts, ch 227, §16; 89 Acts, ch 303, §17

C93, §70A.1

97 Acts, ch 28, §7

Paid holidays; §1C.2

70A.2 Promotion, discharge, demotion or suspension — absence for medically related disability not considered.

When supported by the verification of the attending physician that an absence is necessary in the best interest of the health and well-being of the employee, an absence for medically related disability shall not be considered in actions for promotion, discharge, demotion or suspension of the employee.

[C77, 79, 81, §79.2]

C93, §70A.2

70A.3 Appraisers of property.

The appraisers appointed by authority of law to appraise property for any purpose shall be paid a reasonable amount determined by the sheriff of the county in which the property appraised is located. Unless otherwise provided, the amount paid shall be paid out of the property appraised or by the owner thereof.

[C51, §2550; R60, §4158; C73, §3813; C97, §1290; SS15, §1290-a; C24, 27, 31, 35, 39, §**1219;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §79.2; C77, 79, 81, §79.3]

87 Acts, ch 17, §4

C93, §70A.3

70A.4 When fees payable.

When no other provision is made on the subject, the party requiring any service shall pay the fees therefor upon the same being rendered, and a bill of particulars being presented, if required.

[C51, §2557; R60, §4164; C73, §3837; C97, §1295; C24, 27, 31, 35, 39, §**1221;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.4]

C93, §70A.4

70A.5 Fees payable in advance.

All fees, unless otherwise specifically provided, are payable in advance, if demanded, except in the following cases:

1. When the fees grow out of a criminal prosecution.
2. When the fees are payable by the state or county.
3. When the orders, judgments, or decrees of a court are to be entered, or performed in divorce-related matters including child support, temporary custody, restraining orders, and writs of habeas corpus.

[C73, §3842; C97, §1298; C24, 27, 31, 35, 39, §**1222;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.5]

88 Acts, ch 1133, §1

C93, §70A.5

70A.6 Receipt for fees paid.

Every person charging fees shall, if required by the person paying them, give that person a receipt therefor, setting forth the items, and the date of each.

[C51, §2549; R60, §4157; C73, §3836; C97, §1294; C24, 27, 31, 35, 39, §**1223;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.6]

C93, §70A.6

70A.7 Report of fees.

All officers required by the provisions of this Code to collect and pay over fines and fees shall, except as otherwise provided, on the first Monday in July in each year, make report thereof under oath to the board of supervisors of the proper county, showing the amount of fines assessed, and the amount of fines and fees collected, together with vouchers for the payment of all sums collected to the proper officer.

[R60, §4314; C73, §3973; C97, §1301; C24, 27, 31, 35, 39, §**1224;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.7]

C93, §70A.7

70A.8 State accounts — inspection.

The books, accounts, vouchers, and funds belonging to, or kept in, any state office or institution, or in the charge or under the control of any state officer or person having charge of any state funds or property, shall, at all times, be open or subject to the inspection of the governor or any committee appointed by the governor, or by the general assembly or either house thereof; and the governor shall see that such inspection of the office of state treasurer is made at least four times in every twelve months.

[C57, §59, 69; R60, §80, 90; C73, §132; C97, §184; C24, 27, 31, 35, 39, §**1225;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.8]

C93, §70A.8

Constitution, Art. IV, §8

70A.9 Charge for use of automobile by other than state officer or employee.

When a public officer or employee, other than a state officer or employee, is entitled to be paid for expenses in performing a public duty, a charge shall be made, allowed and paid for the use of an automobile, as determined by the local governing body, in an amount which may be the maximum allowable under federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. A statutory provision stipulating necessary mileage, travel, or actual reimbursement to a local public officer or employee falls within the mileage reimbursement limitation specified in this section unless specifically provided otherwise. A political subdivision may authorize the use of private vehicles for the conduct of official business of the political subdivision at an annual amount in lieu of actual and necessary travel expense reimbursement provided in this section. A peace officer, other than a state officer or employee as defined in section 801.4, who is required to use a private vehicle in the performance of official duties shall receive reimbursement for mileage expense at the rate specified in this section.

[C31, 35, §1225-d1; C39, §**1225.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.9; 81 Acts, ch 9, §23]

86 Acts, ch 1246, §773; 91 Acts, ch 267, §604

C93, §70A.9

State officers and employees mileage allowance, §18.117; see also §602.1509, expenses for judicial officers, court employees and others

70A.10 Mileage and expenses — prohibition.

No law shall be construed to give to a public officer or employee both mileage and expenses for the same transaction.

[C31, 35, §1225-d2; C39, §**1225.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.10]

C93, §70A.10

70A.11 Mileage and expenses — when unallowable.

No public officer or employee shall be allowed either mileage or transportation expense when gratuitously transported by another, nor when transported by another public officer or employee who is entitled to mileage or transportation expense.

[C31, 35, §1225-d3; C39, §**1225.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.11]

C93, §70A.11

70A.12 Out-of-state warrants limited.

A warrant requiring a peace officer to go beyond the boundaries of the state at public expense shall not be issued except with the approval of a district judge.

[C35, §1225-e1; C39, §**1225.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.12]

83 Acts, ch 186, §10038, 10201

C93, §70A.12

70A.13 Particulars required by county board.

The board of supervisors shall not approve any claim for mileage or other traveling expenses presented by any peace officer including the sheriff and the sheriff's deputies unless the destinations, and number of miles covered in each trip are given, or, in the case of extended trips, unless railroad, hotel, and other traveling expenses, excepting meals, are verified by receipts.

[C35, §1225-e2; C39, §**1225.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §79.13]

C93, §70A.13

70A.14 Definitions.

As used in this section and section 70A.15, unless the context otherwise requires:

1. *"Charitable organization"* means an organization that is eligible to receive contributions which may be deducted on the contributor's Iowa individual tax return and that has been designated, at the request of one hundred or more eligible state officers and employees, or the number of employees required by subsection 3 of this section, by a responsible official of the payroll system under which the officers or employees are compensated, to receive contributions pursuant to section 70A.15.

2. *"Enrollment period"* means the time during which the charitable organization conducts an annual consolidated effort to secure funds.

3. *"Number of persons required"* means:

a. In the case of employees at the Iowa State University of science and technology and the state University of Iowa, one hundred or more participants.

b. In the case of employees at the University of Northern Iowa, fifty or more participants.

c. In the case of employees at the Iowa school for the deaf and the Iowa braille and sight saving school, twenty-five or more participants.

[C66, 71, 73, 75, 77, 79, 81, §79.14]

C93, §70A.14

70A.15 Payroll deduction.

The responsible official in charge of the payroll system may deduct from the salary or wages of a state officer or employee an amount specified by the officer or employee for payment to a charitable organization if:

1. The request for the payroll deduction is made in writing during the enrollment period for the charitable organization.

2. The deduction shall not continue in effect for a period of time exceeding one year unless a new written request is filed according to the requirements of this section.

3. The pay period during which the deduction is made, the frequency, and the amount of the deduction are compatible with the payroll system.

Moneys deducted pursuant to this section shall be paid over promptly to the appropriate charitable organization. The deduction may be made notwithstanding that the compensation actually paid to the officer or employee is reduced to an amount below the minimum prescribed by law. Payment to an officer or employee of compensation less the deduction shall constitute a full and complete discharge of claims and demands for services rendered by the employee during the period covered by the payment. The request for the deduction may be withdrawn at any time by filing a written notification of withdrawal with the responsible official in charge of the payroll system.

[C66, 71, 73, 75, 77, 79, 81, §79.15]
C93, §70A.15
Combined charitable campaign program administered by department of personnel; §19A.12A

70A.16 Interview and moving expenses.

1. If approved by the appointing authority, a person who interviews for employment by the state shall be reimbursed for expenses incurred in the interview.

2. A state employee who is reassigned shall be reimbursed for moving expenses incurred in accordance with rules and policies adopted by the director of the department of personnel when all of the following circumstances exist:

a. The employee is reassigned at the direction of the appointing authority.

b. The reassignment constitutes a permanent change of duty station.

c. The reassignment requires the employee to change the place of personal residence beyond a reasonable commuting distance.

d. The reassignment is not primarily for the benefit or convenience of the employee.

3. If approved by the appointing authority, a person newly hired for a state position shall receive reimbursement for moving expenses incurred after the person is hired at the same rate provided for a state employee.

4. Reimbursement for moving expenses authorized under this section does not include reimbursement for the expense of moving animals.

[C77, 79, 81, §79.16; 81 Acts, ch 9, §25]
86 Acts, ch 1245, §233
C93, §70A.16
97 Acts, ch 28, §8; 2000 Acts, ch 1171, §21

70A.17 Additional payroll deductions. Repealed by 2002 Acts, ch 1151, § 31.

70A.17A Payroll deduction for dues.

1. The state officer in charge of the payroll system shall deduct from the salary or wages of a state officer or employee an amount specified by the officer or employee for payment to a professional or trade organization for dues or membership fees if:

a. The professional or trade organization consents to payment of dues in this manner.

b. The employee requests in writing that payment of dues or membership fees be made in this manner.

c. The pay period during which the deduction is made, the frequency, and the amount of the deduction are compatible with the payroll system.

d. The following number of state officers or employees request the deduction for the same professional or trade organization:

(1) One hundred or more state officers or employees employed outside the jurisdiction of the state board of regents, or employed at Iowa state university of science and technology or the state university of Iowa.

(2) Fifty or more state officers or employees employed at the university of northern Iowa.

(3) Twenty-five or more state officers or employees employed at the Iowa school for the deaf or at the Iowa braille and sight saving school.

2. The deduction may be made even though the compensation paid to an officer or employee is reduced to an amount below the minimum prescribed by law. Payment to an officer or employee of compensation less the deduction shall constitute a full discharge of claims and demands for services rendered by the officer or employee during the period covered by the payment. The request for the deduction may be withdrawn at any time by filing a written notification of withdrawal with the state officer in charge of the payroll system.

3. This section shall not affect a payroll deduction elected by a state employee pursuant to section 70A.19.

94 Acts, ch 1188, §36

70A.18 Compensation based on comparable worth.

It is the policy of this state that a state department, board, commission, or agency shall not discriminate in compensation for work of comparable worth between jobs held predominantly by women and jobs held predominantly by men. *"Comparable worth"* means the value of work as measured by the composite of the skill, effort, responsibility, and working conditions normally required in the performance of work.

83 Acts, ch 170, §1 – 4
CS83, §79.18
C93, §70A.18

70A.19 Duration of state payroll deduction for dues of employee organization member.

A state employee who elects a payroll deduction for membership dues to an employee organization pursuant to the provisions of a collective bargaining agreement negotiated under the provisions of

chapter 20 shall maintain the deduction for a period of one year or until the expiration of the collective bargaining agreement, whichever occurs first. A state employee who transfers employment to a position covered by a different collective bargaining agreement or who becomes a management employee is not subject to this requirement. With respect to state employees, this section supersedes the provisions of section 20.9 allowing termination of a dues checkoff at any time but does not supersede the requirement for thirty days' written notice of termination.

86 Acts, ch 1245, §234
C87, §79.19
C93, §70A.19

70A.20 Employees disability program.

A state employees disability insurance program is created, which shall be administered by the director of the department of personnel and which shall provide disability benefits in an amount and for the employees as provided in this section. The monthly disability benefits shall provide twenty percent of monthly earnings if employed less than one year, forty percent of monthly earnings if employed one year or more but less than two years, and sixty percent of monthly earnings thereafter, reduced by primary and family social security determined at the time social security disability payments commence, railroad retirement disability income, workers' compensation if applicable, and any other state-sponsored sickness or disability benefits payable. However, the amount of benefits payable under the Iowa public employees' retirement system pursuant to chapter 97B shall not reduce the benefits payable pursuant to this section. Subsequent social security or railroad retirement increases shall not be used to further reduce the insurance benefits payable. As used in this section, *"primary and family social security"* shall not include social security benefits awarded to an adult child with a disability of the state employee with a disability who does not reside with the state employee with a disability if the social security benefits were awarded to the adult child with a disability prior to the approval of the state employee's benefits under this section, regardless of whether the United States social security administration records the benefits to the social security number of the adult child with a disability, the state employee with a disability, or any other family member, and such social security benefits shall not reduce the benefits payable pursuant to this section. As used in this section, unless the context otherwise requires, *"adult"* means a person who is eighteen years of age or older. State employees shall receive credit for the time they were continuously employed prior to and on July 1, 1974. The following provisions apply to the employees disability insurance program:

1. Waiting period, ninety working days of continuous sickness or accident disability or the expiration of accrued sick leave, whichever is greater.

2. Maximum period benefits paid for both accident or sickness disability:

a. If the disability occurs prior to the time the employee attains the age of sixty-one years, the maximum benefit period shall end sixty months after continuous benefit payments begin or on the date on which the employee attains the age of sixty-five years, whichever is later.

b. If the disability occurs on or after the time the employee attains the age of sixty-one years but prior to the age of sixty-nine years, the maximum benefit period shall end sixty months after continuous benefit payments begin or on the date on which the employee attains the age of seventy years, whichever is earlier.

c. If the disability occurs on or after the time the employee attains the age of sixty-nine years, the maximum benefit period shall end twelve months after continuous benefit payments begin.

3. *a.* Minimum and maximum benefits, not less than fifty dollars per month and not exceeding two thousand dollars per month.

b. In no event shall benefits exceed one hundred percent of the claimant's predisability covered monthly compensation.

4. All permanent full-time state employees shall be covered under the employees disability insurance program, except board members and members of commissions who are not full-time state employees, and state employees who on July 1, 1974, are under another disability program financed in whole or in part by the state, and state employees who have agreed to participation in another disability program through a collective bargaining agreement. For purposes of this section, members of the general assembly serving on or after January 1, 1989, are eligible for the plan during their tenure in office, on the basis of enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20.

[C75, 77, 79, 81, §79.20]
84 Acts, ch 1146, §2; 86 Acts, ch 1245, §235; 88 Acts, ch 1267, §15, 16
C93, §70A.20
93 Acts, ch 7, §1; 94 Acts, ch 1022, §1; 95 Acts, ch 162, §9; 96 Acts, ch 1129, §17

70A.21 and 70A.22 Reserved.

70A.23 Credit for accrued sick leave.

When a state employee, excluding an employee covered under a collective bargaining agreement which provides otherwise, retires under a retirement system in the state maintained in whole or in part by public contributions or payments, the number of accrued days of active and banked sick leave of the employee shall be credited to the employee. When an employee retires, is eligible, and has applied for benefits under a retirement system

authorized under chapter 97A or 97B, including the teachers insurance and annuity association (TIAA) and the college retirement equities fund (CREF), or an employee dies on or after July 1, 1984, while the employee is in active employment but is eligible for retirement benefits under one of the listed chapters, the employee shall receive a cash payment for the employee's accumulated, unused sick leave in both the active and banked sick leave accounts, except when, in lieu of cash payment, payment is made for monthly premiums for health or life insurance or both as provided in a collective bargaining agreement negotiated under chapter 20. An employee of the department of public safety or the department of natural resources who has earned benefits of payment of premiums under a collective bargaining agreement and who becomes a manager or supervisor and is no longer covered by the agreement shall not lose the benefits of payment of premium earned while covered by the agreement. The payment shall be calculated by multiplying the number of hours of accumulated, unused sick leave by the employee's hourly rate of pay at the time of retirement. However, the total cash payments for accumulated, unused sick leave shall not exceed two thousand dollars per employee and are payable upon retirement or death. Banked sick leave is defined as accrued sick leave in excess of ninety days.

[C79, 81, §79.23; 82 Acts, ch 1184, §1]
84 Acts, ch 1146, §1; 88 Acts, ch 1158, §9
C93, §70A.23

Sick leave and vacation incentive and other early termination programs; reports to general assembly; 2001 Acts, 2nd Ex, ch 5, §3, 4, 8; 2002 Acts, 2nd Ex, ch 1001, §50 – 52

70A.24 Olympic competition leave of absence. Repealed by 94 Acts, ch 1173, § 42.

70A.25 Educational leave — educational assistance.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Educational assistance" means reimbursement for tuition, fees, books or other expenses incurred by a state employee in taking coursework at an educational institution or attending a workshop, seminar, or conference without a reduction in ordinary job responsibilities and that the appointing authority determines contributes to the growth and development of the employee in the employee's present position or in a position to which the employee may reasonably be assigned.

b. "Educational leave" means full or partial absence from an employee's ordinary job responsibilities either with full or partial pay or without pay, to attend a course of study at an educational institution or a course of study conducted by a reputable sponsor on behalf of an educational institution. Educational leave may include reimbursement for all or a portion of educational expenses incurred.

c. "Educational leave and educational assistance" do not apply to job training, employee development programs, or departmental seminars that are conducted or sponsored by a state agency.

2. *General applicability.* The purpose of educational leave with full or partial pay and educational assistance is to assist state employees to develop skills that will improve their ability to perform state job responsibilities or in the case of educational leave to also provide training and educational opportunities for employees of a state agency that will enable the agency director to better meet the staffing needs of the state agency.

The director of the department of personnel shall not allow the payment of expenses for courses unless the department, agency, or commission can demonstrate a relationship between the employee's job responsibilities and the courses to be taken or that the employee is required to learn new skills for which the department, agency, or commission has a need.

3. *Reporting and review.*

a. The director of the department of personnel shall periodically and at least annually review the implementation of educational leave and educational assistance programs by state agencies.

b. The head of each state agency, department, or commission shall report to the director of the department of personnel and the legislative council not later than October 1 of each year the direct and indirect costs to the agency of educational leave and educational assistance granted to agency employees during the preceding fiscal year. The report shall include an estimate of costs saved by the state agency, department, or commission through the use of educational leave and educational assistance. As used in this subsection, *"indirect costs"* includes but is not limited to adjustments in employee work assignments and agency operations necessitated by educational leave or assistance.

c. The report to the director of the department of personnel and legislative council shall identify the relationship of each course to the employee who is granted educational leave and how the course may improve the employee's job performance or the task to be accomplished within the agency.

d. The report to the director of the department of personnel and the legislative council shall also include:

(1) The number of employees who were granted educational leave and the amount of tuition reimbursement allowed by the department, agency or commission.

(2) The number of employees who were granted a leave from work to attend the classes and who continued to receive their salary and the number of hours of work which those employees were excused.

(3) The number of employees who were granted a temporary leave of absence from work to attend the classes without pay and the amount of

time missed.

85 Acts, ch 215, §2
CS85, §79.25
86 Acts, ch 1245, §237 – 239
C93, §70A.25
2000 Acts, ch 1171, §22 – 24

70A.26 Disaster service volunteer leave.

An employee of an appointing authority who is a certified disaster service volunteer of the American red cross may be granted leave with pay from work for not more than fifteen working days in any twelve-month period to participate in disaster relief services for the American red cross at the request of the American red cross for the services of that employee and upon the approval of the employee's appointing authority without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The appointing authority shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under this section shall not be deemed to be an employee of the state for purposes of workers' compensation. An employee deemed to be on leave under this section shall not be deemed to be an employee of the state for purposes of the Iowa tort claims Act. Leave under this section shall be granted only for services relating to a disaster in the state of Iowa.

95 Acts, ch 132, §1

70A.27 Reserved.

70A.28 Prohibitions relating to certain actions by state employees — penalty — civil remedies.

1. A person who serves as the head of a state department or agency or otherwise serves in a supervisory capacity within the executive or legislative branch of state government shall not require an employee of the state to inform the person that the employee made a disclosure of information permitted by this section and shall not prohibit an employee of the state from disclosing any information to a member or employee of the general assembly or from disclosing information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer.

2. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of information permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, or a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer.

3. Subsections 1 and 2 do not apply if the disclosure of the information is prohibited by statute.

4. A person who violates subsection 1 or 2 commits a simple misdemeanor.

5. Subsection 2 may be enforced through a civil action.

a. A person who violates subsection 2 is liable to an aggrieved employee for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorney fees and costs.

b. When a person commits, is committing, or proposes to commit an act in violation of subsection 2, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or the attorney general.

6. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for the employee's declining to participate in contributions or donations to charities or community organizations.

7. The director of the department of personnel or, for employees of the general assembly or of the state board of regents, the legislative council or the state board of regents, respectively, shall provide procedures for notifying new state employees of the provisions of this section and shall periodically conduct promotional campaigns to provide similar information to state employees. The information shall include the toll-free telephone number of the citizens' aide.

8. For purposes of this section, *"state employee"* and *"employee"* include, but are not limited to, persons employed by the general assembly and

persons employed by the state board of regents.
84 Acts, ch 1219, §4
C85, §79.28
85 Acts, ch 20, §1; 87 Acts, ch 19, §4; 87 Acts, ch 27, §2; 89 Acts, ch 124, §2
C93, §70A.28
96 Acts, ch 1100, §2 – 5
See also §19A.19, 70A.29

70A.29 Reprisals prohibited — political subdivisions — penalty — civil remedies.

1. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in employment by a political subdivision of this state as a reprisal for a disclosure of any information by that employee to a member or employee of the general assembly, or an official of that political subdivision or a state official or for a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. This section does not apply if the disclosure of the information is prohibited by statute.

2. A person who violates subsection 1 commits a simple misdemeanor.

3. Subsection 1 may be enforced through a civil action.

a. A person who violates subsection 1 is liable to an aggrieved employee for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorney fees and costs.

b. When a person commits, is committing, or proposes to commit an act in violation of subsection 1, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or the county attorney.

85 Acts, ch 60, §1
CS85, §79.29
89 Acts, ch 124, §3
C93, §70A.29
See also §19A.19, 70A.28

70A.30 Establishment of phased retirement program.

There is established a voluntary employee phased retirement incentive program for full-time state employees who are at least sixty years of age and have completed at least twenty years as full-time state employees.

The phased retirement incentive program is a retirement system for purposes of section 20.9, but is not retirement for purposes of chapter 97A, 97B, or 602 or for the employees who are members of the teachers insurance annuity association-college retirement equity fund.
84 Acts, ch 1180, §1
C85, §79.30
C93, §70A.30

70A.31 Eligibility.

The phased retirement incentive program requires that participants agree to work a maximum of thirty-two hours per week and a minimum of twenty hours per week for the first four years after entering the program. After the fourth year of participation in the program, participants shall agree to work a maximum of twenty hours per week. Participants shall agree to retire from state government employment effective no later than the last day of their fifth year of participation in the program.
84 Acts, ch 1180, §2
C85, §79.31
C93, §70A.31
97 Acts, ch 185, §7; 2000 Acts, ch 1171, §25

70A.32 Phased retirement program.

The phased retirement incentive program is a voluntary program that provides that an employee may participate in the program for not more than five years and provides for the following:

1. Payment of a salary based upon the participant's salary on a full-time basis reduced proportionally by the number of hours of employment plus ten percent of the budgeted full-time salary. A participant is eligible for cost of living increases granted to all state employees.

2. Continuation of eligibility by the participant for membership in the state life insurance program with continuation of state payments at the rate paid for full-time employees.

3. Continuation of eligibility by the participant for membership in the state health or medical insurance program and continuation of state payments at the rate paid for full-time employees.

4. Continuation of membership in the state employees disability insurance program. During the five-year period, monthly earnings of the employee for purposes of the disability insurance program shall equal the monthly earnings as if the participant were a full-time employee.

5. Accrual of vacation and sick leave based upon section 70A.1 as it applies to part-time employees.

84 Acts, ch 1180, §3
C85, §79.32
C93, §70A.32
97 Acts, ch 185, §8

70A.33 Participation plan.

A state employee meeting the requirements of section 70A.31 may file a request to participate in the program with the head of the employee's state department, agency, or commission. The employee shall specify the number of hours per week the employee intends to work for each of the five years

of participation, subject to the requirements of section 70A.31. Participation in the program is dependent upon the approval of the head of the department, agency, or commission. The cost to the state department, agency, or commission shall be paid from the funds appropriated to the department, agency, or commission for salaries, support, maintenance, and miscellaneous purposes.

An employee who participates in the program is not eligible to return to state employment as a permanent full-time employee. Once an employee reduces the employee's hours of participation, that employee shall not subsequently increase the hours of participation.

84 Acts, ch 1180, §4
C85, §79.33
C93, §70A.33
97 Acts, ch 185, §9

70A.34 Appropriation.

Annually after June 30 of each fiscal year, the department of personnel shall determine the cost during the preceding fiscal year to the Iowa public employees' retirement fund of participation of state employees in the phased retirement program. Annually, there is appropriated from the general fund of the state to the Iowa public employees' retirement fund an amount sufficient to reimburse the retirement fund for the costs of the phased retirement program.

84 Acts, ch 1180, §5
C85, §79.34
C93, §70A.34

70A.35 and 70A.36 Reserved.

70A.37 Collective bargaining agreements.

Administrative rules adopted by the director of the department of personnel pursuant to this chapter shall not supersede provisions of collective bargaining agreements negotiated under chapter 20.

86 Acts, ch 1245, §240
C87, §79.37
C93, §70A.37

70A.38 Years of service incentive program.

1. As used in this section, unless the context provides otherwise:

a. "Credited service" means service under the Iowa public employees' retirement system, as service is defined in section 97B.1A, and membership service under the public safety peace officers' retirement, accident, and disability system, as defined in section 97A.1.

b. "Eligible employee" means an employee with ten or more years of credited service as of the date of termination from employment.

c. "Employee" means an employee of the executive branch of the state, including an employee of a judicial district department of correctional services or the department of justice. However, *"employee"* does not mean an employee of the state board of regents, or an elected official.

d. "Employer" means a department, agency, board, or commission within the executive branch of the state that employs employees.

e. "Participant" means an eligible employee who has been selected for participation in the years of service incentive program, who agrees to such participation, who is approved for participation, and who receives a termination incentive as provided by this section.

f. "Program" means the years of service incentive program established pursuant to this section.

g. "Regular annual salary" means an amount equal to the eligible employee's regular biweekly rate of pay as of the date of separation from employment multiplied by twenty-six.

h. "Termination incentive" means an amount equal to the lesser of two hundred fifty dollars for every quarter year of credited service of the eligible employee or the regular annual salary of the eligible employee.

2. An employer may offer a termination incentive to an eligible employee or eligible employees if the employer demonstrates that such an offer will assist the employer in effectively managing its resources. Prior to making the offer, the employer shall obtain approval to offer the program from the department of personnel. As part of the approval process, the employer shall submit a business plan to the department of personnel which shall be reviewed and approved by the department of management. The business plan shall show the savings that will accrue to the state as a result of the employee's or employees' participation in the program.

3. Upon obtaining approval from the department of personnel to offer the program, the employer shall inform each eligible employee in writing of the employee's opportunity to participate in the program. The written notice to the eligible employee shall provide a time deadline for acceptance of an offer, a proposed date by which the eligible employee who wishes to accept an offer would have to agree to terminate employment with the state, and other relevant information concerning the employee's rights relating to an offer, including the voluntary nature of an offer to the eligible employee as well as the consequences to the employee of accepting an offer.

4. To become a participant in the program, an eligible employee who receives an offer to participate in the program shall do all of the following:

a. Acknowledge in writing the employee's agreement to voluntarily terminate employment in exchange for payment of a termination incentive as provided in this section.

b. Agree to waive all rights to file suit against

the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

c. Acknowledge, in writing, that participation in the program waives any right to accept permanent part-time or permanent full-time employment with the state other than as an elected official or as an employee of the state board of regents.

d. Agree to separate from employment with the state by the date agreed upon by the eligible employee and the employer which date is consistent with the business plan submitted by the employer.

5. Upon acceptance to participate in the program and separation from employment with the state by the date agreed upon, the participant shall be paid a termination incentive. The state shall pay to the participant, in a lump sum, the termination incentive and any other payments due the participant, if any, for accrued sick leave and vacation leave balances.

6. The department of personnel shall administer the program and shall adopt administrative rules to administer the program.

7. The legislative council shall provide a years of service incentive program for employees of the legislative branch consistent with the program provided in this section for executive branch employees. The benefit provided for employees under this subsection shall be no greater than that provided for executive branch employees.

8. This section is repealed June 30, 2003.

2001 Acts, 2nd Ex, ch 5, §1, 8

Section is effective July 1, 2002; 2001 Acts, 2nd Ex, ch 5, §8

NEW section

CHAPTER 71

NEPOTISM

71.1 Employments prohibited.

71.2 Payment prohibited.

71.1 Employments prohibited.

It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of the state or by virtue of the ordinance of any city in the state, to appoint as deputy, clerk, or helper in said office or position to be paid from the public funds, any person related by consanguinity or affinity, within the third degree, to the person elected, appointed, or making said appointment, unless such appointment shall first be approved by the officer, board, council, or commission whose duty it is to approve the bond of the principal; provided this provision shall not apply in cases where such person appointed receives compensation at the rate of six hundred dollars per year or less, nor shall it apply to persons teaching in public schools, nor shall it apply to the employment of clerks of members of the general assembly.

[C24, 27, 31, 35, 39, §**1166;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §71.1]

Approving officers and boards, §64.19

Computation of degrees, §4.1(4)

71.2 Payment prohibited.

No person so unlawfully appointed or employed shall be paid or receive any compensation from the public money and such appointment shall be null and void and any person or persons so paying the same or any part thereof, together with their surety, shall be liable for any and all moneys so paid.

[C24, 27, 31, 35, 39, §**1167;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §71.2]

SUBTITLE 3

PUBLIC CONTRACTS AND BONDS

CHAPTER 72

DUTIES RELATING TO PUBLIC CONTRACTS

72.1 Contracts for excess expenditures — exception for coal.
72.2 Executive council may authorize indebtedness.
72.3 Divulging contents of sealed bids.
72.4 Penalty.
72.5 Life cycle cost.

72.1 Contracts for excess expenditures — exception for coal.

Officers empowered to expend, or direct the expenditure of, public money of the state shall not make any contract for any purpose which contemplates an expenditure of such money in excess of that authorized by law. However, the state or an agency of the state may enter into a contract of not exceeding ten years in duration for the purchase of coal to be used in facilities under the jurisdiction of the state or the state agency. The execution of the contract shall be contingent upon appropriations by the general assembly in sufficient amounts to meet the terms of the contract.

[R60, §2181; C73, §127; C97, §185, 186; C24, 27, 31, 35, 39, §**1168;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §72.1]

72.2 Executive council may authorize indebtedness.

Nothing herein contained shall prevent the incurring of an indebtedness on account of support funds for state institutions, upon the prior written direction of the executive council, specifying the items and amount of such indebtedness to be increased, and the necessity therefor.

[C97, §186; C24, 27, 31, 35, 39, §**1169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §72.2]

72.3 Divulging contents of sealed bids.

No public officer or deputy thereof, if any, shall directly or indirectly or in any manner whatsoever, at any other time or in any other manner than as provided by law, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid, on any proposed contract concerning which a sealed bid is required or permitted by law.

[S13, §1279-a; C24, 27, 31, 35, 39, §**1170;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §72.3]

72.4 Penalty.

A violation of the provisions of section 72.3 shall, in addition to criminal liability, render the violator liable, personally and on the violator's bond, if any, to liquidated damages in the sum of one thousand dollars for each violation, to inure to and be collected by the state, county, city, school corporation or other municipal corporation of which the violator is an officer or deputy.

[S13, §1279-a; C24, 27, 31, 35, 39, §**1171;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §72.4]

72.5 Life cycle cost.

1. A contract for a public improvement or construction of a public building, including new construction or renovation of an existing public building, by the state, or an agency of the state, shall not be let without satisfying the following requirements:

a. A design professional submitting a design development proposal for consideration of the public body shall at minimum prepare one proposal meeting the design program's space and use requirements which reflects the lowest life cycle cost possible in light of existing commercially available technology.

b. Submission of a cost benefit analysis of any deviations from the lowest life cycle cost proposal contained in other design proposals requested by or prepared for submission to the public body.

The public body may request additional design proposals in light of funds available for construction, aesthetic considerations, or any other reason.

This subsection applies for all design development proposals requested on or after January 1, 1991.

2. In connection with development of a statewide building energy efficiency rating system, pursuant to section 473.40, the director of the department of natural resources in consultation with the department of management, state building code director, and state fire marshal, shall de-

velop standards and methods to evaluate design development documents and construction documents based upon the energy efficiency rating system for public buildings, and other life cycle cost factors, to facilitate fair and uniform comparisons between design proposals and informed decision making by public bodies.

3. The department of management shall develop a proposal for submission to the general assembly on or before January 10, 1991, to create a division within the department of management to evaluate life cycle costs on design proposals submitted on public improvement and construction contracts for agencies of the state, to assure uniform comparisons and professional evaluations of design proposals by an independent agency. The report shall also address potential redundancy and conflicts within existing state law regarding life cycle cost analysis and recommend the resolution of any problems which are identified.

4. It is the intent of the general assembly to discourage construction of public buildings based upon lowest acquisition cost, and instead to require that such decisions be based upon life cycle costs to reduce energy consumption, maintenance requirements, and continuing burdens upon taxpayers.

90 Acts, ch 1252, §5; 94 Acts, ch 1173, §5

CHAPTER 73

PREFERENCES

See also §18.6, §73A.21

IOWA PRODUCTS AND LABOR

73.1 Preference — conditions.
73.2 Advertisements for bids — form.
73.3 Iowa labor.
73.4 Domestic laborer — definition.
73.5 Violations — criminal penalty.
73.6 Iowa coal.
73.7 Bids and contracts for coal. Repealed by 95 Acts, ch 71, §3.
73.8 Name of producer and mine. Repealed by 95 Acts, ch 71, §3.
73.9 Violations — remedy.
73.10 Exceptions.
73.11 Inconsistency with federal law.
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TARGETED SMALL BUSINESS PROCUREMENT

73.15 Title and definitions.
73.16 Procurements from small businesses and targeted small businesses — goals.
73.17 Targeted small business procurement goals — preliminary procedures.
73.18 Notice of solicitation for bids — identification of targeted small businesses.
73.19 Negotiated price or bid contract.
73.20 Determination of ability to perform.
73.21 Other procurement procedures.

IOWA PRODUCTS AND LABOR

73.1 Preference — conditions.

Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district or city, and every person acting as contracting or purchasing agent for any such commission, board, committee, officer or other governing body shall use only those products and provisions grown and coal produced within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states. This section shall apply to horticultural products grown in this state even if the products are not in the stage of processing that the agency usually purchases the product. However, this section does not apply to a school district purchasing food while the school district is participating in the federal school lunch program.

[C27, 31, 35, §1171-b1; C39, §**1171.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.1]

86 Acts, ch 1096, §10

73.2 Advertisements for bids — form.

1. All requests hereafter made for bids and proposals for materials, products, supplies, provisions, and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand, trade name, or other individual mark. All such requests and bids shall contain a paragraph in easily legible print, reading as follows:

By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa.

2. In addition to any method of advertisement required by law, any executive branch agency, the general assembly, and the judicial branch shall ad-

vertise any request for bids and proposals on the official state internet site operated by the information technology department. An electronic link to an internet site maintained by an executive branch agency, the general assembly, or the judicial branch on which requests for bids and proposals for that agency or for the general assembly or judicial branch are posted satisfies the requirements of this subsection.

[C27, 31, 35, §1171-b2; C39, §**1171.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.2]

2002 Acts, ch 1072, §1
Section amended

73.3 Iowa labor.

Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district or city, and every person acting as contracting agent for any such commission, board, committee, officer or other governing body of the state, or of any county, township, school district or city, shall give preference to Iowa labor in the constructing or building of any public improvement or works, and every contract entered into by any such commission, board, committee, officer or other governing body of the state for the construction or building of any public improvement or works shall contain a provision requiring that preference shall be given to Iowa domestic labor in the constructing or building of such public improvement or works.

[C31, 35, §1171-d1; C39, §**1171.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.3]

73.4 Domestic laborer — definition.

A person shall be deemed to be a domestic laborer of this state if the person is a citizen and has resided in this state for more than six months.

[C31, 35, §1171-d2; C39, §**1171.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.4]

73.5 Violations — criminal penalty.

An officer or person who is connected with, or is a member or agent or representative of a commission, board, committee, officer or other governing body of this state, or of any county, township, school district, city, or contractor, who fails to give preference as required in this chapter is guilty of a simple misdemeanor. Each separate case of failure to give preference is a separate offense.

[C31, 35, §1171-d3; C39, §**1171.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.5]

86 Acts, ch 1096, §11

73.6 Iowa coal.

It shall be unlawful for any commission, board, county officer or other governing body of the state, or of any county, township, school district or city, to purchase or use any coal, except that mined or produced within the state by producers who are, at the time such coal is purchased and produced, complying with all the workers' compensation and mining laws of the state. The provisions of this section shall not be applicable if coal produced within the state cannot be procured of a quantity or quality reasonably suited to the needs of such purchaser, nor if the equipment now installed is not reasonably adapted to the use of coal produced within the state, nor if the use of coal produced within the state would materially lessen the efficiency or increase the cost of operating such purchaser's heating or power plant, nor to mines employing miners not now under the provisions of the workers' compensation Act or who permit the miners to work in individual units in their own rooms.

[C39, §**1171.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.6]

73.7 Bids and contracts for coal. Repealed by 95 Acts, ch 71, § 3.

73.8 Name of producer and mine. Repealed by 95 Acts, ch 71, § 3.

73.9 Violations — remedy.

Any contract entered into or carried out in whole or in part, in violation of the provisions of section 73.6, shall be void and the contract or any claim growing out of the sale, delivery, or use of the coal specified in the contract, shall be unenforceable in any court. In addition to any other proper party or parties, any unsuccessful bidder at a letting provided for in section 73.6 shall have the right to maintain an action in equity to prevent the violation of the terms of section 73.6.

[C39, §**1171.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.9]

95 Acts, ch 71, §1

73.10 Exceptions.

The provisions of sections 73.6 and 73.9 shall not apply to municipally owned and operated public utilities.

[C39, §**1171.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.10]

2002 Acts, ch 1050, §8
Section amended

73.11 Inconsistency with federal law.

If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, such provision shall be suspended, but only to the extent necessary to prevent denial of such funds or services or to eliminate the inconsistency with federal requirements.

[C75, 77, 79, 81, §73.11]

73.12 through 73.14 Reserved.

TARGETED SMALL BUSINESS PROCUREMENT

73.15 Title and definitions.

1. This division may be cited as the *"Iowa Targeted Small Business Procurement Act"*.

2. As used in this division, unless the context requires otherwise, *"small business"* and *"targeted small business"* mean as defined in section 15.102.

86 Acts, ch 1245, §831

73.16 Procurements from small businesses and targeted small businesses — goals.

Notwithstanding any provision of law or rule relating to competitive bidding procedures:

1. Every agency, department, commission, board, committee, officer or other governing body of the state shall purchase goods and services supplied by small businesses and targeted small businesses in Iowa. In addition to the other provisions of this section relating to procurement contracts for targeted small businesses, all purchasing authorities shall assure that a proportionate share of small businesses and targeted small businesses identified under the uniform small business vendor application program of the department of economic development are given the opportunity to bid on all solicitations issued by agencies and departments of state government.

2. The director of each agency or department of state government having purchasing authority shall establish a procurement goal from certified targeted small businesses identified pursuant to section 10A.104, subsection 8, of at least ten percent of the value of anticipated procurements of goods and services, including construction, but not including utility services, each fiscal year. The director of each department and agency of state government shall cooperate with the director of the department of inspections and appeals, the director of the department of economic development, and the director of the department of management and do all acts necessary to carry out the provisions of this division.

The director of each agency or department of state government having purchasing authority shall issue electronic bid notices for distribution to the targeted small business web page located at the department of economic development if the director releases a solicitation for bids for procurement of equipment, supplies, or services. The notices shall be provided to the targeted small business marketing manager forty-eight hours prior to the issuance of all bid notices. The notices shall contain a description of the subject of the bid, a point of contact for the bid, and any subcontract goals included in the bid.

A community college, area education agency, or school district shall establish a procurement goal from certified targeted small businesses, identified pursuant to section 10A.104, subsection 8, of at least ten percent of the value of anticipated procurements of goods and services including construction, but not including utility services, each fiscal year.

Of the total value of anticipated procurements of goods and services under this subsection, an additional goal shall be established to procure at least forty percent from minority-owned businesses, and forty percent from female-owned businesses.

86 Acts, ch 1245, §832; 88 Acts, ch 1273, §11; 90 Acts, ch 1156, §6; 94 Acts, ch 1076, §5; 2000 Acts, ch 1231, §35

73.17 Targeted small business procurement goals — preliminary procedures.

Quarterly the director of each agency and department of state government shall review the agency's or department's anticipated purchasing requirements. The directors shall notify the director of the department of economic development of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter. The directors may divide the procurements so designated into contract award units of economically feasible production runs to facilitate offers or bids from targeted small businesses. In designating procurements intended to satisfy the targeted small business procurement goal, the directors may vary the included procurements so that a variety of goods and services produced by different targeted small businesses may be procured each year. The director of the department of economic development, in conjunction with the director of the department of management, shall review the information submitted and may require modifications from the agencies and departments.

A community college or area education agency shall, on a quarterly basis, and a school district shall, on an annual basis, review the community college's, area education agency's, or school district's anticipated purchasing requirements. A community college, area education agency, or school district shall notify the department of education, which shall report to the department of economic development, of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter, except that school districts shall report annually.

86 Acts, ch 1245, §833; 90 Acts, ch 1156, §7; 91 Acts, ch 267, §223

73.18 Notice of solicitation for bids — identification of targeted small businesses.

The director of each agency or department, the administrator of each area education agency, the president of each community college, and the superintendent of each school district releasing a solicitation for bids or request for proposal under the targeted small business procurement goal program shall consult a directory of certified targeted small businesses produced by the department of economic development that lists all certified targeted small businesses by category of goods or services provided prior to or upon release of the solicitation and shall send a copy of the request for proposal or solicitation to any appropriate targeted small business listed in the directory. The Iowa department of economic development may charge the department, agency, area education agency, community college, or school district a reasonable fee to cover the cost of producing, distributing, and updating the directory.

86 Acts, ch 1245, §834; 88 Acts, ch 1273, §12; 90 Acts, ch 1156, §8; 91 Acts, ch 267, §224; 92 Acts, ch 1244, §36

73.19 Negotiated price or bid contract.

In awarding a contract under the targeted small business procurement goal program, a director of an agency or department, or community college, area education agency, or school district, having purchasing authority may use either a negotiated price or bid contract procedure. A director of an agency or department, or community college, area education agency, or school district, using a negotiated contract shall consider any targeted small business engaged in that business. The director of the department of economic development or the director of the department of management may assist in the negotiation of a contract price under this section. Surety bonds guaranteed by the United States small business administration are acceptable security for a construction award under this section.

86 Acts, ch 1245, §835; 90 Acts, ch 1156, §9; 91 Acts, ch 267, §225

73.20 Determination of ability to perform.

Before announcing a contract award pursuant to the targeted small business procurement goal program, the purchasing authority shall evaluate whether the targeted small business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence. If the purchasing authority determines that the targeted small business may be unable to perform, the director of the department of economic development shall be notified and shall assist the targeted small business pursuant to section 15.108, subsection 7, paragraph *"c"*, subparagraph (3).

86 Acts, ch 1245, §836; 90 Acts, ch 1156, §10

73.21 Other procurement procedures.

All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement contracts for targeted small businesses to the extent there is no conflict. If this division conflicts with other laws or rules, then this division governs.

86 Acts, ch 1245, §837; 90 Acts, ch 1156, §11

CHAPTER 73A

PUBLIC CONTRACTS AND BONDS

This chapter not enacted as a part of this title; transferred from chapter 23 in Code 1993

73A.1 Definitions.
73A.2 Notice of hearing.
73A.3 Objections — hearing — decision.
73A.4 Appeal.
73A.5 Information certified to appeal board.
73A.6 Notice of hearing on appeal.
73A.7 Hearing and decision.
73A.8 Enforcement of performance.
73A.9 Nonapproved contracts void.
73A.10 Witness fees — costs.
73A.11 Report on completion.
73A.12 Issuance of bonds — notice.
73A.13 Objections.
73A.14 Notice of hearing.
73A.15 Decision.
73A.16 Bonds and taxes void.
73A.17 Unpaid revenue bonds — effect.
73A.18 When bids required — advertisement — deposit.
73A.19 Sale of municipal bonds without hearing or contract.
73A.20 Bid bonds.
73A.21 Reciprocal resident bidder preference by state, its agencies, and political subdivisions.

73A.1 Definitions.

1. *"Appeal board"* as used in this chapter means the state appeal board, composed of the auditor of state, treasurer of state, and the director of the department of management.

2. *"Municipality"* as used in this chapter means township, school corporation, state fair board, and state board of regents.

3. *"Public improvement"* as used in this chapter means a building or other construction work to be paid for in whole or in part by the use of funds of any municipality.

[C24, 27, 31, 35, 39, §**351;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §23.1; 81 Acts, ch 117, §1001]

83 Acts, ch 96, §157, 159; 85 Acts, ch 195, §5; 86 Acts, ch 1245, §311

C93, §73A.1

73A.2 Notice of hearing.

Before any municipality shall enter into any contract for any public improvement to cost twenty-five thousand dollars or more, the governing body proposing to make the contract shall adopt proposed plans and specifications and proposed form of contract, fix a time and place for hearing at the municipality affected or other nearby convenient place, and give notice by publication in at least one newspaper of general circulation in the municipality at least ten days before the hearing.

[C24, 27, 31, 35, 39, §**352;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §23.2; 81 Acts, ch 28, §1]

C93, §73A.2

73A.3 Objections — hearing — decision.

At such hearing, any person interested may appear and file objections to the proposed plans, specifications or contract for, or cost of such improvement. The governing body of the municipality proposing to enter into such contract shall hear said objections and any evidence for or against the same, and forthwith enter of record its decision thereon.

[C24, 27, 31, 35, 39, §**353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.3]

C93, §73A.3

73A.4 Appeal.

Interested objectors in any municipality equal in number to one percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but in no event less than twenty-five, may appeal from the decision to the appeal board by serving notice thereof on the clerk or secretary of such municipality within ten days after such decision is entered of record.

The notice shall be in writing and shall set forth the objections to such decision and the grounds for such objections; provided that at least three of the persons signing said notice shall have appeared at the hearing and made objection, either general or specific, to the adoption of the proposed plans, specifications or contract for, or cost of such improvement.

[C24, 27, 31, 35, 39, §**354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.4]

C93, §73A.4

73A.5 Information certified to appeal board.

In case an appeal is taken, such body shall forthwith certify and submit to the appeal board for examination and review the following:

1. A copy of the plans and specifications for such improvement.
2. A copy of the proposed contract.
3. An estimate of the cost of such improvement.
4. A report of the kind and amount of security proposed to be given for the faithful performance of the contract and the cost of such security.
5. A copy of the objections, if any, which have been urged by any taxpayer against the proposed plans, specifications or contract, or the cost of such improvement.
6. A separate estimate of the architect's or engineer's fees and cost of supervision.
7. A statement of the taxable value of the property within the municipality proposing to make such improvement.
8. A statement of the several rates of levy of taxes in such municipality for each fund.
9. A detailed statement of the bonded and other indebtedness of such municipality.
10. In case of state institutions and state fair board, the last three requirements may be omitted.

[C24, 27, 31, 35, 39, §**355;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.5]

C93, §73A.5

73A.6 Notice of hearing on appeal.

The appeal board shall forthwith fix a time and place in the municipality or nearby convenient place for hearing said appeal, and notice of such hearing shall be given by certified mail to the executive officer of the municipality, and to the first five persons whose names appear upon the notice of appeal, at least ten days before the date fixed for such hearing.

The hearing on contracts for the state institutions and state fair board shall be at the seat of government.

[C24, 27, 31, 35, 39, §**356;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.6]

C93, §73A.6

73A.7 Hearing and decision.

At such hearing, the appellants and any other

interested person may appear and be heard. The appeal board shall examine, with the aid of competent assistants, the entire record, and if it shall find that the form of contract is suitable for the improvement proposed, that the improvement and the method of providing for payment therefor is for the best interests of the municipality and the taxpayers therein, and that such improvements can be made within the estimates therefor, it shall approve the same. Otherwise, it may reject the same as a whole or, it shall recommend such modifications of the plans, specifications, or contract, as in its judgment shall be for the public benefit, and if such modifications are so made, it shall approve the same.

The appeal board shall certify its decision to the body proposing to enter into such contract unless it shall have rejected the same as a whole, whereupon the municipality shall advertise for bids and let the contract subject to the approval of the appeal board which shall at once render its final decision thereon and transmit the same to the municipality.

[C24, 27, 31, 35, 39, §**357;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.7]

C93, §73A.7

73A.8 Enforcement of performance.

After any contract for any public improvement has been completed and any five persons interested request it, the appeal board shall examine into the matter as to whether or not the contract has been performed in accordance with its terms, and if on such investigation it finds that said contract has not been so performed, and so reports to the body letting such contract, it shall at once institute proceedings on the contractor's bond for the purpose of compelling compliance with the contract in all of its provisions.

[C24, 27, 31, 35, 39, §**358;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.8]

C93, §73A.8

73A.9 Nonapproved contracts void.

If an appeal is taken, no contract for public improvements shall be valid unless the same is finally approved by the appeal board. In no case shall any municipality expend for any public improvement any sum in excess of five percent more than the contract price without the approval of the appeal board.

[C24, 27, 31, 35, 39, §**359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.9]

C93, §73A.9

73A.10 Witness fees — costs.

Witness fees and mileage for witnesses on hearing appeals shall be the same as in the district court; but objectors or appellants shall not be allowed witness fees or mileage. Costs of hearings and appeals shall be paid by the municipality.

[C24, 27, 31, 35, 39, §**361;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.10]

C93, §73A.10

Witness fees, §622.69

73A.11 Report on completion.

Upon the completion of the improvement the executive officer or governing board of the municipality shall file with the appeal board a verified report showing:

1. The location and character of the improvement.
2. The total contract price for the completed improvement.
3. The total actual cost of the completed improvement.
4. By whom, if anyone, the construction was supervised.
5. By whom final inspection was made.
6. Whether or not the improvement complies with its contract, plans, and specifications.
7. Any failure of the contractor to comply with the plans and specifications.

[C24, 27, 31, 35, 39, §**362;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.11]

C93, §73A.11

73A.12 Issuance of bonds — notice.

Before any municipality shall institute proceedings for the issuance of any bonds or other evidence of indebtedness payable from taxation, excepting such bonds or other evidence of indebtedness as have been authorized by a vote of the people of such municipality, and except such bonds or obligations as it may be by law compelled to issue, a notice of such action, including a statement of the amount and purpose of said bonds or other evidence of indebtedness shall be published at least once in a newspaper of general circulation within such municipality at least ten days before the meeting at which it is proposed to issue such bonds.

[C24, 27, 31, 35, 39, §**363;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.12]

C93, §73A.12

Sixty percent vote required, §75.1

73A.13 Objections.

At any time before the date fixed for the issuance of such bonds or other evidence of indebtedness, interested objectors in any municipality equal in number to one percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but in no event less than twenty-five, may file a petition in the office of the clerk or secretary of the municipality setting forth their objections thereto.

[C24, 27, 31, 35, 39, §**364;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.13]

C93, §73A.13

73A.14 Notice of hearing.

Upon the filing of any such petition, the clerk or secretary of such municipality shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved, to the appeal board, and upon receipt of such certificate, petition, and information, it shall fix a time and place for the hearing of such matter, which shall be not less than ten nor more than thirty days thereafter. Said hearing shall be held in the municipality in which it is proposed to issue such bonds or other evidence of indebtedness, or in some other nearby convenient place fixed by the appeal board. Notice of such hearing shall be given by certified mail to the executive officer of the municipality and to the five persons whose names first appear on the petition at least ten days before the date of such hearing.

[C24, 27, 31, 35, 39, §**365;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.14]

C93, §73A.14

73A.15 Decision.

The appeal board shall determine the matters involved in such appeal. Its decision shall be certified to the executive officer of the municipality affected. Judicial review of the action of the appeal board may be sought in accordance with the terms of the Iowa administrative procedure Act.

In case there is no appeal, the board of the municipality affected may issue such bonds or other evidence of indebtedness, if legally authorized so to do, in accordance with the proposition published, but in no greater amount.

In case of an appeal, the municipality may issue such bonds or other evidence of indebtedness in accordance with the decision of the appeal board.

[C24, 27, 31, 35, 39, §**366;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.15]

C93, §73A.15

73A.16 Bonds and taxes void.

Any bonds or other evidence of indebtedness issued contrary to the provisions of this chapter, and any tax levied or attempted to be levied for the payment of any such bonds or interest thereon, shall be null and void.

[C24, 27, 31, 35, 39, §**367;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.16]

C93, §73A.16

73A.17 Unpaid revenue bonds — effect.

It shall be lawful for any municipality to issue revenue bonds, the principal and interest of which are to be paid solely from revenue derived from the operations of the project for which such bonds are issued, notwithstanding that there are other revenue bonds remaining unpaid which have not matured, provided payment of principal and interest of such other revenue bonds is not impaired thereby.

[C62, 66, 71, 73, 75, 77, 79, 81, §23.17]

C93, §73A.17

73A.18 When bids required — advertisement — deposit.

When the estimated total cost of construction, erection, demolition, alteration or repair of a public improvement exceeds twenty-five thousand dollars, the municipality shall advertise for bids on the proposed improvement by two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids shall be not less than fifteen days prior to the date set for receiving bids. The municipality shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if in the judgment of the municipality bids received are not acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied, in a separate envelope, by a deposit of money or a certified check or credit union certified share draft in an amount to be named in the advertisement for bids as security that the bidder will enter into a contract for the doing of the work. The municipality shall fix the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The checks, share drafts or deposits of money of the unsuccessful bidders shall be returned as soon as the successful bidder is determined, and the check, share draft or deposit of money of the successful bidder shall be returned upon execution of the contract documents. This section does not apply to the construction, erection, demolition, alteration or repair of a public improvement when the contracting procedure for the doing of the work is provided for in another provision of law.

[C62, 66, 71, 73, 75, 77, 79, 81, S81, §23.18; 81 Acts, ch 28, §2]

84 Acts, ch 1055, §3

C93, §73A.18

73A.19 Sale of municipal bonds without hearing or contract.

Any other law to the contrary notwithstanding, any municipality may authorize, sell, issue and deliver its bonds without regard to whether or not notice and hearing on the plans, specifications and form of contract for the public improvement to be paid for in whole or in part from the proceeds of said bonds has theretofore been given, and without regard to whether or not any contract has theretofore been awarded for the construction of said improvement. The foregoing provision shall not apply to bonds which are payable solely from special assessment levied against benefited property.

[C66, 71, 73, 75, 77, 79, 81, §23.19]

C93, §73A.19

73A.20 Bid bonds.

Notwithstanding any other provisions of the Code, any contracting authority may authorize the use of bid bonds executed by corporations authorized to contract as surety in Iowa and on a form prescribed by the contracting authority, in lieu of certified or cashiers checks or any other form of security otherwise required of a bidder to accompany a bid on a public improvement project. The full amount of the bid bond shall be forfeited to the contracting authority in liquidation of damages sustained in the event that the bidder fails to execute the contract as provided in the specifications or by law in the same manner and amount as other forms of authorized security.

[C73, 75, 77, 79, 81, §23.20]
C93, §73A.20

73A.21 Reciprocal resident bidder preference by state, its agencies, and political subdivisions.

Notwithstanding this chapter, chapter 73, chapter 309, chapter 310, chapter 331, or chapter 384, when a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference is equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. *"Resident bidder"* means a person authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least six months prior to the first advertisement for the public improvement and in the case of a corporation, having at least fifty percent of its common stock owned by residents of this state. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

For purposes of this section, *"public improvement"* means public improvements as defined in section 73A.1 and includes road construction, reconstruction, and maintenance projects.

This section applies to the state, its agencies, and any political subdivisions of the state.

If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

84 Acts, ch 1045, §1; 85 Acts, ch 67, §5
C85, §23.21
C93, §73A.21
See also §18.6, chapter 73

CHAPTER 74

PUBLIC OBLIGATIONS NOT PAID FOR WANT OF FUNDS

74.1 Applicability.
74.2 Endorsement and interest.
74.3 Record of obligations.
74.4 Assignment of obligation.
74.5 Call for payment.
74.6 Notice of call — termination of interest.
74.7 Endorsement of interest.
74.8 Designation of tax-exempt public warrants.
74.9 Payment in case of default by school.

74.1 Applicability.

1. This chapter applies to all warrants which are legally drawn on a public treasury, including the treasury of a city or county, and which, when presented for payment, are not paid for want of funds.

2. This chapter also applies when a municipality as defined in section 24.2, or a city or county determines that there are not or will not be sufficient funds on hand to pay the legal obligations of a fund. A municipality, city, or county may provide for the payment of such an obligation by drawing an anticipatory warrant payable to a bank or other business entity authorized by law to loan money in an amount legally available and believed to be sufficient to cover the anticipated deficiency. The duties imposed on the treasurer by this chapter may be assigned by a city council to another city officer.

3. The procedures of this chapter also apply to the issuance of anticipatory warrants by the state under section 7D.8.

4. This chapter also applies to anticipatory warrants, improvement certificates, anticipatory certificates or similar obligations payable from special assessments against benefited properties, or payable from charges, fees or other operating income from a publicly owned enterprise or utility.

5. The procedures of this chapter also apply to

the issuance of warrants or the issuance of anticipatory warrants of an area education agency established under chapter 273.

[C35, §1171-f1; C39, §**1171.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §74.1]

83 Acts, ch 90, §10; 83 Acts, ch 123, §48, 209; 84 Acts, ch 1010, §1

74.2 Endorsement and interest.

If a warrant other than an anticipatory warrant is presented for payment, and is not paid for want of funds, or is only partially paid, the treasurer shall endorse the fact thereon, with the date of presentation, and sign the endorsement, and thereafter the warrant or the balance due thereon, shall bear interest at the rate specified in section 74A.2.

An anticipatory warrant issued under the authority of section 74.1, subsection 1 shall bear interest at a rate determined by the issuing governmental body, but not exceeding that permitted by chapter 74A.

[C51, §65, 153; R60, §86, 361; C73, §78, 328, 1748; C97, §104, 483, 660, 2768; S13, §104, 483; C24, 27, 31, §135, 4318, 5160, 5645, 7496; C35, §1171-f2; C39, §**1171.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §74.2]

74.3 Record of obligations.

The treasurer shall keep a record of each interest-bearing obligation which shall show the number and amount, the date interest commences, the rate of interest, and the name and post-office address of the holder of the obligation.

[C51, §66, 153; R60, §87, 361; C73, §79, 328; C97, §105, 483, 660; S13, §483; C24, 27, 31, §136, 5160, 5646, 7496; C35, §1171-f3; C39, §**1171.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §74.3]

74.4 Assignment of obligation.

When a nonnegotiable interest-bearing obligation is assigned or transferred, the assignee or transferee shall notify the treasurer in writing of the assignment or transfer and of the post-office address of the assignee or transferee. Upon receiving notification, the treasurer accordingly shall correct the record maintained under section 74.3 or 331.554, subsection 5, paragraph *"b"* as applicable.

[C24, 27, 31, §7497; C35, §1171-f4; C39, §**1171.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §74.4; 82 Acts, ch 1048, §2]

74.5 Call for payment.

When a fund contains sufficient money to pay one or more interest-bearing obligations which are outstanding against the fund, the treasurer shall call those obligations for payment. Obligations may be paid in the order of presentation. This section does not authorize a fixed-term obligation to be called at a date earlier than is provided by the conditions and terms upon which it was issued.

[C51, §66, 153; R60, §87, 361; C73, §79, 328; C97, §105, 484, 660; C24, 27, 31, §136, 5161, 5647, 7496; C35, §1171-f5; C39, §**1171.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §74.5]

74.6 Notice of call — termination of interest.

1. The treasurer shall make a call for payment under section 74.5 by mailing to the holder of the obligation, as shown in the records maintained under section 74.3 or 331.554, subsection 5, paragraph *"b"* as applicable, a notice of call which describes the obligation by number and amount, and which specifies a date not more than ten days thereafter when interest ceases to accrue on the obligation. The treasurer shall enter the date of mailing of the notice in the records maintained under section 74.3 or 331.554, subsection 5, paragraph *"b"* as applicable.

2. Interest on an interest-bearing obligation shall cease to accrue as of the date specified in the notice of call issued under subsection 1.

3. This section does not apply if the parties have otherwise agreed in writing.

[C51, §66, 153; R60, §87, 361; C73, §79, 328; C97, §105, 484, 660; C24, 27, 31, §136, 5161, 5647, 7496, 7498; C35, §1171-f6; C39, §**1171.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §74.6; 82 Acts, ch 1048, §3]

74.7 Endorsement of interest.

When an obligation which legally draws interest is paid, the treasurer shall endorse upon it the date of payment, and the amount of interest paid. The treasurer shall enter into the records maintained under section 74.3 or 331.554, subsection 5, paragraph *"b"* as applicable, the date of payment and the amount of interest paid.

[C51, §153; R60, §361; C73, §328; C97, §484, 660; C24, 27, 31, §5161, 5646, 5648, 7496; C35, §1171-f7; C39, §**1171.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §74.7; 82 Acts, ch 1048, §4]

74.8 Designation of tax-exempt public warrants.

Each public issuer of warrants may designate the warrants as tax-exempt public warrants if the issuer complies with the tax-exempt reporting requirements of the federal Internal Revenue Code.

87 Acts, ch 104, §1

74.9 Payment in case of default by school.

In the event a school corporation which has issued anticipatory warrants fails to pay principal or interest of its anticipatory warrants when due, upon certification by the trustee or the paying agent designated pursuant to section 76.10 to the director of the department of revenue and finance, the director of the department of revenue and fi-

nance shall withhold and directly apply, from any state appropriation to which the school corporation is entitled, so much as is certified to the trustee or the paying agent to the payment of the principal and interest on the anticipatory warrants of the school corporation then due. The obligation of the director of revenue and finance to withhold and directly apply moneys from any state appropriation to which the school corporation is entitled does not create any moral or legal obligations of the state to pay, when due, the principal and interest on the anticipatory warrants of a school corporation. All appropriations for school corporations shall be subject to the provisions of this section.

89 Acts, ch 319, §37

CHAPTER 74A

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.1 Applicability.
74A.2 Unpaid warrants.
74A.3 Interest rates for public obligations.
74A.4 Maximum rates on special assessments.
74A.5 Relative rate on assessment bonds. Repealed by 87 Acts, ch 104, §6.
74A.6 Rates established.
74A.7 School district warrants.
74A.8 Interest rate on issue date.

74A.1 Applicability.

1. Except as otherwise provided by law, this chapter establishes the interest rates which are applicable to all bonds, warrants, anticipatory warrants, pledge orders, improvement certificates, and anticipation certificates issued by a governmental body or agency under the laws of this state, and the interest rates which are applicable to assessments levied by a governmental body or agency under the laws of this state against benefited properties for the retirement of public debt.

2. This chapter does not authorize the issuance of a public obligation or the levying of an assessment, and does not create an obligation to pay interest, and does not determine when interest commences or ceases to accrue.

3. This chapter does not impose an interest rate or interest rate limitation where by law the rate of interest payable on an obligation is within the discretion of the governmental body or agency, unless that discretion is expressly made subject to the limitations contained in this chapter.

[C81, §74A.1]

74A.2 Unpaid warrants.

A warrant not paid upon presentation for want of funds bears interest on unpaid balances at the rate in effect at the time the warrant is first presented for payment, as established by rule pursuant to section 74A.6, subsection 2. This section does not apply to an obligation which by law bears interest from the time it is issued.

[C51, §65, 153; R60, §86, 361; C73, §78, 328, 1748, 1824; C97, §104, 483, 660, 2768; S13, §104, 483; C24, 27, 31, §135, 4318, 5160, 5645, 7496; C35, §1171-f2; C39, §**1171.12;** C46, 50, 54, 58, 62, 66, §74.2; C71, 73, 75, 77, 79, §74.2, 455.198; C81, §74A.2]

74A.3 Interest rates for public obligations.

Except as otherwise provided by law, the rates of interest on obligations issued by this state, or by a county, school district, city, special improvement district, or any other governmental body or agency are as follows:

1. General obligation bonds, warrants, or other evidences of indebtedness which are payable from general taxation or from the state's sinking fund for public deposits may bear interest at a rate to be set by the issuing governmental body or agency.

2. Revenue bonds, warrants, pledge orders or other obligations, the principal and interest of which are to be paid solely from the revenue derived from the operations of the publicly owned enterprise or utility for which the bonds or obligations are issued, may bear interest at a rate to be set by the issuing governmental body or agency.

3. Special assessment bonds, certificates, warrants or other obligations, the principal and interest of which are payable from special assessments levied against benefited property may bear interest at a rate to be set by the issuing governmental body or agency.

The interest rates authorized by this section to be set by the issuing governmental body or agency shall be set in each instance by the governing body

which, in accordance with applicable provisions of law then in effect, authorizes the issuance of the bonds, warrants, pledge orders, certificates, obligations, or other evidences of indebtedness.

[C73, §289, 1821, 1822, 1843]

[C97, §403, 827, 843, 982, 987, 1953, 2812, 2847]

[S13, §170-a, 403, 409-f, 825, 1989-a26, -a27, 2812-e, 2820-d4]

[SS15, §1989-a12, 2812-e]

[C24, §287, 488, 4407, 4480, 4717, 5277, 5351, 6113, 6261, 6923, 7484, 7501, 7505, 7644, 7664]

[C27, §287, 488, 1090-b4, 4407, 4480, 4753-a9, 5277, 5351, 6113, 6261, 6923, 7484, 7501, 7505, 7644, 7664, 7714-b10]

[C31, §287, 488, 4407, 4480, 4644-c49, 4753-a9, 5277, 5351, 6113, 6249, 6261, 6610-c65, 6923, 7420-b4, 7484, 7501, 7505, 7590-c4, 7644, 7664, 7714-b10]

[C35, §287, 488, 4407, 4480, 4644-c49, 4753-a9, 5277, 5351, 6113, 6249, 6261, 6610-c65, 6923, 7420-b4, 7484, 7501, 7505, 7590-c4, 7644, 7664, 7714-b10, 7714-f10]

[C39, §**287, 488, 3142.14, 4407, 4480, 4644.47, 4753.09, 5277, 5351, 5570.4, 6113, 6249, 6261, 6610.71, 6923, 7420.28, 7484, 7501, 7505, 7590.4, 7644, 7664, 7714.10, 7714.37**]

[C46, §19.8, 37.6, 202.6, 298.22, 302.12, 309.47, 311.19, 346.3, 347.5, 357.20, 359.45, 396.10, 408.10, 417.68, 420.276, 454.20, 455.64, 455.79, 455.83, 455.175, 460.7, 461.14, 463.10, 464.9]

[C50, §19.8, 37.6, 202.6, 298.22, 302.12, 309.47, 311.28, 346.3, 347.5, 347A.2, 357.20, 359.45, 368.59, 391A.19, 391A.30, 396.10, 408.10, 417.68, 420.276, 454.20, 455.64, 455.175, 455.212, 460.7, 461.14, 463.10, 464.9]

[C54, §19.8, 37.6, 202.6, 298.22, 302.12, 309.47, 311.28, 330.7, 330.16, 346.3, 347.5, 347A.2, 357.20, 358.21, 359.45, 368.21, 391A.22, 391A.33, 396.10, 417.68, 420.276, 454.20, 455.64, 455.79, 455.83, 455.175, 455.212, 460.7, 461.14, 463.10, 464.9]

[C58, §19.8, 37.6, 202.6, 298.22, 302.12, 309.47, 311.28, 330.7, 330.16, 346.3, 347.5, 347A.2, 357.20, 357A.12, 358.21, 359.45, 368.21, 386B.10, 391A.22, 391A.33, 396.10, 403.9, 417.68, 420.276, 454.20, 455.64, 455.79, 455.83, 455.175, 455.212, 460.7, 461.14, 463.10, 464.9]

[C62, §19.8, 37.6, 111A.6, 202.6, 298.22, 302.12, 309.47, 311.28, 330.7, 330.16, 346.3, 347.5, 347A.7, 357.20, 357A.12, 358.21, 359.45, 368.21, 386B.10, 391A.22, 391A.33, 396.10, 403.9, 403A.13, 417.68, 420.276, 454.20, 455.64, 455.79, 455.83, 455.175, 455.212, 460.7, 461.14, 463.10, 464.9, 467A.33, 467A.35]

[C66, §19.8, 37.6, 111A.6, 202.6, 296.1, 298.22, 302.12, 309.47, 309.73, 311.28, 330.7, 330.16, 346.3, 347.5, 347A.2, 347A.7, 357.20, 357A.12, 358.21, 359.45, 368.21, 368.66, 386B.10, 391A.22, 391A.33, 396.10, 403.9, 403A.13, 417.68, 420.276, 454.20, 455.64, 455.79, 455.83, 455.175, 455.212, 460.7, 461.14, 463.10, 464.9, 467A.33, 467A.35]

[C71, §19.8, 28F.8, 37.6, 111A.6, 145A.17, 202.6, 296.1, 298.22, 302.12, 309.47, 309.73, 311.28, 330.7, 330.14, 330.16, 330A.9, 345.16, 346.3, 346.23, 346A.3, 347.5, 347A.2, 347A.7, 357.20, 357A.11, 357B.12, 357C.10, 358.21, 359.45, 368.21, 368.66, 386B.10, 391A.22, 391A.33, 394.13, 396.10, 403.9, 403A.13, 417.68, 420.276, 454.20, 455.64, 455.77, 455.79, 455.83, 455.175, 455.213, 460.7, 461.14, 463.10, 464.9, 467A.33, 467A.35]

[C73, §19.8, 28F.8, 37.6, 111A.6, 145A.17, 202.6, 280A.22, 296.1, 298.22, 302.12, 309.47, 309.73, 311.28, 330.7, 330.14, 330.16, 330A.9, 345.16, 346.3, 346.23, 346A.3, 347.5, 347.27, 347A.2, 347A.7, 357.20, 357A.11, 357B.12, 357C.10, 358.21, 359.45, 368.21, 368.66, 386B.10, 391A.22, 391A.33, 394.13, 396.10, 403.9, 403A.13, 417.68, 420.276, 454.20, 455.64, 455.77, 455.79, 455.83, 455.175, 455.213, 460.7, 461.14, 463.10, 464.9, 467A.33, 467A.35]

[C75, §19.8, 28F.8, 37.6, 111A.6, 145A.17, 202.6, 280A.22, 296.1, 298.22, 302.12, 309.47, 309.73, 311.28, 330.7, 330.14, 330.16, 330A.9, 332.44, 345.16, 346.3, 346.23, 346.26, 346.27, 346A.3, 347.5, 347.27, 347A.2, 347A.7, 357.20, 357A.11, 357B.12, 357C.10, 358.21, 359.45, 384.57, 384.60, 384.68, 384.83, 394.1, 403.9, 403A.13, 454.20, 455.64, 455.77, 455.79, 455.83, 455.175, 455.213, 460.7, 461.14, 463.10, 464.9, 467A.33, 467A.35]

[C77, §19.8, 28F.8, 37.6, 75.12, 111A.6, 145A.17, 202.6, 280A.22, 296.1, 298.22, 302.12, 309.47, 309.73, 311.28, 330.7, 330.14, 330.16, 330A.9, 332.44, 345.16, 346.3, 346.23, 346.26, 346.27, 346A.3, 347.5, 347.27, 347A.2, 347A.7, 357.20, 357A.11, 357B.4, 357C.10, 358.21, 359.45, 384.57, 384.60, 384.68, 384.83, 386.12, 394.1, 403.9, 403A.13, 454.20, 455.64, 455.77, 455.79, 455.83, 455.175, 455.213, 460.7, 461.14, 463.10, 464.9, 467A.33, 467A.35]

[C79, §19.8, 28F.8, 37.6, 37.28, 75.12, 111A.6, 145A.17, 202.6, 280A.22, 296.1, 298.22, 302.12, 309.47, 309.73, 311.28, 330.7, 330.14, 330.16, 330A.9, 332.44, 345.16, 346.3, 346.23, 346.26, 346.27, 346A.3, 347.5, 347.27, 347A.2, 347A.7, 357.20, 357A.11, 357B.4, 357C.10, 358.21, 359.45, 384.57, 384.60, 384.68, 384.83, 386.12, 394.1, 403.9, 403A.13, 454.20, 455.64, 455.77, 455.79, 455.83, 455.175, 455.213, 460.7, 461.14, 463.10, 464.9, 467A.33, 467A.35]

[C81, §74A.3]

83 Acts, ch 90, §11

See construction by 80 Acts, ch 1025, §77

See 80 Acts, ch 1025, §78 for bonds sold on or after June 11, 1980 to finance an improvement

74A.4 Maximum rates on special assessments.

Except as otherwise provided by law, the rate of interest payable on unpaid balances of special assessments levied against benefited properties shall not exceed the maximum rate in effect at the time of adoption of the final assessment schedule, as established by rule pursuant to section 74A.6,

subsection 2.

[C24, §47.10; C27, 31, 35, §4753-a3; C39, §**3142.13, 4753.03;** C46, §202.5, 311.13; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §202.5, 311.16, 311.17; C81, §74A.4]

74A.5 Relative rate on assessment bonds. Repealed by 87 Acts, ch 104, § 6.

74A.6 Rates established.

1. The authority contained in this section shall be exercised by a committee composed of the treasurer of state, the superintendent of banking, the superintendent of credit unions, and the auditor of state or a designee.

2. The committee shall establish the maximum interest rate to be applicable to obligations referred to in section 74A.2, and this rate shall apply unless the parties agree to a lesser interest rate. The committee shall establish the maximum interest rate to be applicable to obligations referred to in section 74A.4.

3. The committee shall establish recommended interest rates, or formulae for determining recommended interest rates, to be applicable to obligations referred to in sections 74A.3 and 74A.7.

4. The committee from time to time shall establish one or more of the interest rates referred to in subsections 2 and 3 as may be necessary in the opinion of the committee to permit the orderly financing of governmental activities, and to minimize interest costs to governmental bodies while permitting a fair return to persons whose funds are used to finance governmental activities. The committee shall consider relevant indices of actual interest rates in the economy when establishing rates under this section, including but not necessarily limited to maximum lawful interest rates payable by depository financial institutions on customer deposits, interest rates payable on obligations issued by the United States government, and interest rates payable on obligations issued by governmental bodies other than those of this state.

5. An interest rate established by the committee under this section shall be in effect commencing on the eighth calendar day following the day the rate is established and until a new rate is established and takes effect. The committee shall give advisory notice of an interest rate established under this section. This notice may be given by publication in one or more newspapers, by publication in the Iowa administrative bulletin, by ordinary mail to persons directly affected by any other method determined by the committee, or by a combination of these. Actions of the committee under this section are exempt from chapter 17A.

6. The committee shall not establish interest rates for types or categories of obligations other than as specified in this section.

[C81, §74A.6; 81 Acts, ch 39, §1]

97 Acts, ch 33, §1

See §12C.6 for interest rates on public deposits

74A.7 School district warrants.

1. The treasurer of a school district shall sell anticipatory warrants authorized by section 74.1, subsection 2 at a rate of interest to be determined by the board of the school district.

2. The treasurer may offer the warrants for public sale at par, by publishing notice of the sale for two consecutive weeks in a newspaper of general circulation in the jurisdiction of the school district issuing the warrants, giving not less than ten days' notice of the time and place of the sale. The notice shall include a statement of the amount of the warrants offered for sale.

3. Sealed bids may be received at any time up to the time all bids are opened. The treasurer shall sell the warrants to the bidder offering the lowest interest rate, provided that the treasurer may reject all bids and readvertise the sale of the warrants pursuant to the provisions of this section.

4. This section applies only to school districts whose anticipated receipts allocable to the current budget are at least equal to their legally approved budget for the current year.

[C71, 73, 75, 77, 79, §74.8; C81, §74A.7]

See construction by 80 Acts, ch 1025, §77

74A.8 Interest rate on issue date.

An interest rate limit, provision that no interest rate limit exists, or authorization to set interest rates, as provided by this chapter or any other law, applies to all bonds, warrants, pledge orders, certificates, obligations, or other evidences of indebtedness issued and delivered after the effective date of the provision, regardless of whether the bonds, warrants, pledge orders, certificates, obligations, or other evidences of indebtedness were authorized to be issued pursuant to election, public hearing, or otherwise before the effective date of the provision. This section operates both retroactively and prospectively.

83 Acts, ch 90, §12

CHAPTER 75

AUTHORIZATION AND SALE OF PUBLIC BONDS

75.1 Bonds — election — vote required.
75.2 Notice of sale.
75.3 Sealed and open bids.
75.4 Rejection of bids.
75.5 Selling price.
75.6 Commission and expense.
75.7 Penalty.
75.8 Sale of state bonds.
75.9 Exchange of bonds.
75.10 Denominations of bonds.
75.11 Repealed by 80 Acts, ch 1025, §77.
75.12 Repealed by 80 Acts, ch 1025, §77.
75.13 Sale of bonds at private sale.
75.14 Electronic bidding.

75.1 Bonds — election — vote required.

When a proposition to authorize an issuance of bonds by a county, township, school corporation, city, or by any local board or commission, is submitted to the electors, such proposition shall not be deemed carried or adopted, anything in the statutes to the contrary notwithstanding, unless the vote in favor of such authorization is equal to at least sixty percent of the total vote cast for and against said proposition at said election.

All ballots cast and not counted as a vote for or against the proposition shall not be used in computing the total vote cast for and against said proposition.

When a proposition to authorize an issuance of bonds has been submitted to the electors under this section and the proposal fails to gain approval by the required percentage of votes, such proposal, or any proposal which incorporates any portion of the defeated proposal, shall not be submitted to the electors for a period of six months from the date of such regular or special election.

[C31, 35, §1171-d4; C39, §**1171.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §75.1]

75.2 Notice of sale.

When public bonds are offered for sale, the official in charge of the bond issue shall, by advertisement published at least once, the last one of which shall be not less than four nor more than twenty days before the sale in a newspaper located in the county or a county contiguous to the place of sale, give notice of the time and place of sale of the bonds, the amount to be offered for sale, and any further information which the official deems pertinent.

[C24, 27, 31, 35, 39, §**1172;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §75.2]

83 Acts, ch 90, §13; 87 Acts, ch 43, §1

75.3 Sealed and open bids.

Sealed bids may be received at any time prior to the calling for open bids, if open bids are provided for in the notice of sale. After the sealed bids are all filed, the official or officials shall call for open bids, if open bids are provided for in the notice of sale. After all of the open bids have been received the substance of the best open bid shall be noted in the minutes. If open bids are not permitted in the notice of sale, sealed bids may be received until it is announced that all sealed bids shall be opened. The official or officials shall then open any sealed bids that have been filed and they shall note in the minutes the substance of the best sealed bid.

[C24, 27, 31, 35, 39, §**1173;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §75.3]

83 Acts, ch 90, §14

75.4 Rejection of bids.

Any or all bids may be rejected, and the sale may be advertised anew, in the same manner, or the bonds or any portion thereof may thereafter be sold at private sale to any one or more of such bidders, or other persons, by popular subscription or otherwise. In case of private sales, the said bonds shall be sold upon terms not less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale.

[C24, 27, 31, 35, 39, §**1174;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §75.4]

75.5 Selling price.

All public bonds issued under this chapter may be sold at a price not less than ninety-eight percent of par, plus accrued interest from the date of the bonds to the date of delivery of the bonds.

[C24, 27, 31, 35, 39, §**1175;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §75.5]

83 Acts, ch 90, §15

75.6 Commission and expense.

No commission shall be paid, directly or indirectly, in connection with the sale of a public bond. No expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such bonds for sale.

[C24, 27, 31, 35, 39, §**1176;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §75.6]

75.7 Penalty.

Any public officer who fails to perform any duty required by this chapter or who does any act prohibited by this chapter, where no other penalty is provided, shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §**1177;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §75.7]

75.8 Sale of state bonds.

All contracts for the sale of bonds issued by the state shall be subject to the approval of the executive council.

[C24, 27, 31, 35, 39, §**1178;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §75.8]

75.9 Exchange of bonds.

This chapter does not prevent the exchange of bonds for legal indebtedness evidenced by bonds, warrants, judgments, or otherwise as provided by law. Bonds shall not be exchanged for notes issued pursuant to section 76.13 in anticipation of the issuance of bonds.

[C24, 27, 31, 35, 39, §**1179;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §75.9]

83 Acts, ch 90, §16

75.10 Denominations of bonds.

Notwithstanding any contrary provision in the Code, public bonds may be in one or more denominations as provided by the proceedings of the governing body authorizing their issuance.

[C66, 71, 73, 75, 77, 79, 81, §75.10]

83 Acts, ch 90, §17

75.11 Repealed by 80 Acts, ch 1025, § 77. See § 74A.5.

75.12 Repealed by 80 Acts, ch 1025, § 77. See § 74A.3.

75.13 Sale of bonds at private sale.

Any other provisions of this chapter or any other law to the contrary notwithstanding, if the principal amount of an issue of public revenue bonds is fifteen million dollars or greater, the official or governing body in charge of the bond sale may, if the official or governing body deems it advisable and in the best interests of the public, sell the bonds at private sale without the necessity of public advertisement or the taking of competitive bids and at a price above, at, or below par, plus accrued interest, as the official or governing body deems advisable and in the best interests of the public.

[81 Acts, ch 40, §1]

75.14 Electronic bidding.

Notwithstanding contrary provisions of this chapter, a public body authorized to issue bonds, notes, or other obligations may elect to receive bids to purchase such bonds, notes, or other obligations by means of electronic, internet or wireless communication; a proprietary bidding procedure or system; or by facsimile transmission to a location deemed appropriate by the governing body, in each instance as may be approved by the governing body and provided for in the notice of sale. An electronic bid shall be submitted in substantial conformity with the requirements of chapter 554D and any rules adopted pursuant to that chapter with respect to the acceptance of electronic records by a governmental agency. Additionally, before approving the use of an electronic bidding procedure, the public body shall find and determine that the specific procedure to be used will provide reasonable security and maintain the integrity of the competitive bidding process, and facilitate the delivery of bids by interested parties under the circumstances of the particular sale.

2000 Acts, ch 1189, §26

CHAPTER 76

PROVISIONS RELATED TO PUBLIC BONDS AND DEBT OBLIGATIONS

76.1 Mandatory retirement.
76.2 Mandatory levy — obligations in anticipation of levy.
76.3 Tax limitations.
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76.16A Debtor status permitted — circumstances.
76.17 Powers of public issuers.
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76.1 Mandatory retirement.

Hereafter issues of bonds of every kind and character by counties, cities, and school corporations shall be consecutively numbered. The annual levy shall be sufficient to pay the interest and approximately such portion of the principal of the bonds as will retire them in a period not exceeding twenty years from date of issue. Each issue of bonds shall be scheduled to mature serially in the same order as numbered.

[C27, 31, 35, §1179-b1; C39, §**1179.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.1]

76.2 Mandatory levy — obligations in anticipation of levy.

The governing authority of these political subdivisions before issuing bonds shall, by resolution, provide for the assessment of an annual levy upon all the taxable property in the political subdivision sufficient to pay the interest and principal of the bonds within a period named not exceeding twenty years. A certified copy of this resolution shall be filed with the county auditor or the auditors of the counties in which the political subdivision is located; and the filing shall make it a duty of the auditors to enter annually this levy for collection from the taxable property within the boundaries of the political subdivision until funds are realized to pay the bonds in full. The levy shall continue to be made against property that is severed from the political subdivision after the filing of the resolution until funds are realized to pay the bonds in full.

If the resolution is filed prior to April 1 or May 1, if the political subdivision is a school district, the annual levy shall begin with the tax levy for collection commencing July 1 of that year. If the resolution is filed after April 1 or May 1, in the case of a school district, the annual levy shall begin with the tax levy for collection in the next succeeding fiscal year. However, the governing authority of a political subdivision may adjust a levy of taxes made under this section for the purpose of adjusting the annual levies and collections for property severed from the political subdivision, subject to the approval of the director of the department of management.

If funds, including reserves and amounts available for temporary transfer, are found to be insufficient to pay in full any installment of principal or interest, a public issuer of bonds may anticipate the next levy of taxes pursuant to this section in the manner provided in chapter 74, whether the taxes so anticipated are to be collected in the same or a future fiscal year.

[C27, 31, 35, §1179-b2; C39, §**1179.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.2]

83 Acts, ch 188, §1; 85 Acts, ch 195, §7; 85 Acts, ch 240, §1; 88 Acts, ch 1134, §20; 93 Acts, ch 1, §2

76.3 Tax limitations.

Tax limitations in any law or proposition for the issuance of bonds or obligations, including any law or proposition for the issuance of bonds or obligations in anticipation of levies or collections of taxes or both, shall be based on the latest equalized actual valuation then existing and shall only restrict the amount of bonds or obligations which may be issued. For the sole purpose of computing the amount of bonds which may be issued as a result of the application of a tax limitation, all interest on the bonds or obligations in excess of that accruing in the first twelve months may be excluded from the first annual levy of taxes, so that the need for including more than one year's interest in the first annual levy of taxes to pay the bonds or obligations and interest does not operate to further restrict the amount of bonds or obligations which may be issued, and in certifying the annual levies to the county auditor or auditors the first annual levy of taxes shall be sufficient to pay all principal of and interest on the bonds or obligations becoming due prior to the next succeeding annual levy and the full amount of the first annual levy shall be entered for collection by the auditor or auditors, as provided in this chapter.

[C31, 35, §1179-c1; C39, §**1179.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.3]

83 Acts, ch 90, §7

76.4 Permissive application of funds.

Whenever the governing authority of such political subdivision shall have on hand funds derived from any other source than taxation which may be appropriated to the payment either of interest or principal, or both principal and interest of such bonds, such funds may be so appropriated and used and the levy for the payment of the bonds correspondingly reduced. This section shall not restrict the authority of a political subdivision to apply sales and services tax receipts collected pursuant to chapter 422B for such purpose. Notwithstanding section 422E.1, subsection 3, a school district may apply local sales and services tax receipts collected pursuant to chapter 422E for the purposes of this section.

[C27, 31, 35, §1179-b3; C39, §**1179.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.4]

2001 Acts, ch 151, §1

76.5 Application.

Sections 76.1 through 76.4 apply only to bonds or other obligations payable from taxation, other than bonds which are payable out of the primary road fund.

[C27, 31, 35, §1179-b4; C39, §**1179.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.5]

84 Acts, ch 1021, §1

76.6 Place of payment.

The principal and interest of all public bonds or

obligations of a public corporation in this state are payable at the office of the treasurer or public official charged with the duty of making payment, unless the proceedings of the governing body authorizing the issuance of the public bonds or obligations provide that the public bonds or obligations and interest on the public bonds or obligations are payable at one or more banks or trust companies within or without the state of Iowa, or as otherwise provided by chapter 419, or by mail, wire transfer, or similar means.

[C35, §1179-f1; C39, §**1179.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.6]

83 Acts, ch 90, §8

76.7 Particular bonds affected — payment.

Counties, cities and school corporations may at any time or times extend or renew any legal indebtedness or any part thereof they may have represented by bonds or certificates where such indebtedness is payable from a limited annual tax or from a voted annual tax, and may by resolution fund or refund the same and issue bonds therefor running not more than twenty years to be known as funding or refunding bonds, and make provision for the payment of the principal and interest thereof from the proceeds of an annual tax for the period covered by such bonds similar to the tax authorized by law or by the electors for the payment of the indebtedness so extended or renewed.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.7]

76.8 Laws applicable.

All laws relating to the issuance of funding or refunding bonds by counties, cities and school corporations, as the case may be, not inconsistent with the provisions herein contained and to the extent the same may be applicable, shall govern the issuance of the funding and refunding bonds for the purpose herein authorized.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.8]

76.9 No limit of former power.

Sections 76.7 and 76.8 shall be construed as granting additional power without limiting the power already existing in counties, cities and school corporations.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.9]

76.10 Registration — immobilization — standards — tax — records.

Notwithstanding any other provision in the Code:

1. All public bonds or obligations issued before or after July 1, 1983 may be in registered form. An issuer of public bonds or obligations may designate for a term as agreed upon, one or more persons, corporations, partnerships, or other associations located within or without the state to serve as trustee, transfer agent, registrar, depository, or paying or other agent in connection with the public bonds or obligations and to carry out services and functions which are customary in such capacities or convenient or necessary to comply with the intent and provisions of this chapter.

2. An issuer of public bonds or obligations may provide for the immobilization of the bonds through the designation of a bond depository or through a book-entry system of registration.

3. Any designated trustee, transfer agent, registrar, depository, or paying or other agent may serve in multiple capacities with respect to an issue of public bonds or obligations.

4. Public bonds or obligations or certificates of ownership of the public bonds or obligations may be issued in any form or pursuant to any system necessary to be in compliance with standards issued from time to time by the municipal securities rulemaking board of the United States, the American national standards institute, any other securities industry standard, or the requirements of section 103 of the Internal Revenue Code.

5. Registration or immobilization of a public bond or obligation does not disqualify it as a lawful investment for depository institutions, trustees, public bodies, or other investors regulated by law.

6. An issuer of public bonds or obligations may provide for the payment of the costs of registration of its public bonds or obligations by the levy of additional taxes for the payment from the fund for the payment of the principal and interest of general obligation bonds or from any revenue source from which the principal and interest of the public bonds or obligations are payable.

7. *a.* Records and documents pertaining to cancellation, transfer, redemption, or replacement of public bonds or obligations shall be preserved by the issuer or its agent for a period of not less than eleven years. Thereafter, the records and documents may be destroyed by the issuer or its agent, preserving confidentiality as necessary.

b. An action with respect to the cancellation, transfer, redemption, or replacement of public bonds or obligations shall not be brought against an issuer, trustee, transfer agent, registrar, depository, paying agent, or other agent unless it is commenced within eleven years of the cancellation, transfer, redemption, or replacement of the bonds or obligations.

83 Acts, ch 90, §2; 84 Acts, ch 1021, §2; 93 Acts, ch 89, §1

76.11 Confidentiality of bond holders — exceptions.

Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the bonds are confidential records entitled to protection under section 22.7,

subsection 17. However, the issuer of the bonds or a state or federal agency may obtain information as necessary.

83 Acts, ch 90, §3

76.12 Reproduction and validity of signatures.

1. A provision requiring that public bonds or obligations or certificates of ownership of public bonds or obligations issued by a public entity be executed or signed by particular public officers permits the signatures to be affixed by printing or other mechanical means. However, each instrument shall bear at least one original and manual signature, which may be the signature of any officer designated by law to execute the instrument or the signature of a registrar or trustee authenticating the instrument.

2. Public bonds and obligations are valid and binding if they bear the signature of the officials in office on the date of execution of the bonds, notwithstanding that any or all of the persons whose signatures appear on the public bonds or obligations have ceased to hold the office before the delivery of the public bonds or obligations. Reprinted or reissued bonds are valid and binding if they bear facsimiles of the signatures of either the public officials who executed the original issue of the bonds or the officials in office at the time of execution of the reprinted or reissued bonds.

83 Acts, ch 90, §4

76.13 Interim financing.

1. A public body authorized to issue bonds may issue project notes in anticipation of the receipt of any of the following:

a. Proceeds from the issuance of public bonds or obligations previously authorized.

b. Proceeds to be received pursuant to law or agreement from any state or federal agency.

c. Income or revenues from sources to be received and expended for the project during the project construction or acquisition period.

d. Any combination of paragraphs *"a"* through *"c"*.

2. Notes shall be issued in the form and manner provided in a resolution of the governing body of the issuer. The resolution may set forth and appropriate the moneys anticipated by the notes.

3. The resolution may provide that to the extent issued in anticipation of public bonds or obligations, notes shall be paid from the proceeds of the issuance of public bonds or obligations. To the extent issued in anticipation of bonds, note proceeds shall be expended only for the purposes for which the bond proceeds may be expended.

4. Notes shall not be issued in anticipation of public bonds or obligations in an amount greater than the authorized amount of the public bonds or obligations and moneys appropriated for the same purposes.

5. *a.* Notes may be sold at public or private sale and bear interest at rates set by the governing body of the issuer at the time of their issuance notwithstanding chapter 74A.

b. The authority of a public body to issue project notes under this section is in addition to any other authority of the public body to issue other obligations as otherwise provided by law.

83 Acts, ch 90, §5

76.14 Definition.

As used in this chapter, unless the context otherwise requires, *"public bond or obligation"* means any obligation issued by or on behalf of the state, an agency of the state, or a political subdivision of the state.

83 Acts, ch 90, §6

76.15 Underwriters doing business in Iowa.

An underwriter employed to assist in the issuance of obligations by an authority, as defined in section 12.30, state board of regents, or other political subdivision, instrumentality, or agency of the state, shall meet the requirements for doing business in Iowa sufficient to be subject to tax under rules of the department of revenue and finance.

86 Acts, ch 1245, §851

76.16 Debtor status prohibited.

A city, county, or other political subdivision of this state shall not be a debtor under chapter 9 of the federal Bankruptcy Code, 11 U.S.C. § 901 et seq., except as otherwise specifically provided in this chapter.

87 Acts, ch 104, §2; 92 Acts, ch 1002, §1, 3

76.16A Debtor status permitted — circumstances.

A city, county, or other political subdivision may become a debtor under chapter 9 of the federal Bankruptcy Code, 11 U.S.C. § 901 et seq., if it is rendered insolvent, as defined in 11 U.S.C. § 101(32)(c), as a result of a debt involuntarily incurred. As used herein, *"debt"* means an obligation to pay money, other than pursuant to a valid and binding collective bargaining agreement or previously authorized bond issue, as to which the governing body of the city, county, or other political subdivision has made a specific finding set forth in a duly adopted resolution of each of the following:

1. That all or a portion of such obligation will not be paid from available insurance proceeds and must be paid from an increase in general tax levy.

2. That such increase in the general tax levy will result in a severe, adverse impact on the ability of the city, county, or political subdivision to exercise the powers granted to it under applicable law, including without limitation providing necessary services and promoting economic development.

3. That as a result of such obligation, the city, county, or other political subdivision is unable to pay its debts as they become due.

4. That the debt is not an obligation to pay money to a city, county, entity organized pursuant to chapter 28E, or other political subdivision.

92 Acts, ch 1185, §1

76.17 Powers of public issuers.

1. A public body authorized to issue bonds may elect to issue bonds bearing a variable or fluctuating rate of interest which is determined on one or more intervals by reference to an index or standard, or as fixed by an interest rate indexing or remarketing agent retained by the issuer of the bonds. A public issuer of public bonds may provide for additional security or liquidity, enter into agreements for, and expend funds for policies of insurance, letters of credit, lines of credit, or other forms of security issued by financial institutions for the payment of principal, premium, if any, and interest on the bonds. A public issuer of public bonds may also enter into contracts and pay for the services of underwriters, interest rate indexing agents, remarketing agents, trustees, financial consultants, depositories, and other services as determined by the governing body. In the case of general obligation bonds, fees for the services and costs of additional security and liquidity shall be considered incurred in lieu of interest and may be levied through the fund for payment of debt service on the bonds. Bonds issued under this section may be sold at public or private sale as determined by the governing body.

2. This section provides alternative and additional power for the issuance of bonds and is not an amendment to any other statute or a limitation upon powers under any other law.

3. A public issuer of public bonds may provide for the purchase of bonds before their maturity and the remarketing of purchased bonds without causing the redemption of the purchased bonds.

87 Acts, ch 104, §3

76.18 Covenants authorized — tax exemption.

A public issuer of bonds or other debt obligations may covenant that the issuer will comply with requirements or limitations imposed by the Internal Revenue Code to preserve the tax exemption of interest payable on the bonds or obligations and may carry out and perform other covenants, including but not limited to, the payment of any amounts required to be paid by the issuer to the United States government.

87 Acts, ch 104, §4

CHAPTER 77

NOTARIES PUBLIC

Repealed by 89 Acts, ch 50, §14; see chapter 9E

CHAPTER 77A

NOTARIAL ACTS

Transferred to chapter 9E

CHAPTER 78

ADMINISTRATION OF OATHS

Transferred to chapter 63A

CHAPTER 79

PUBLIC OFFICERS AND EMPLOYEES, FINANCIAL PROVISIONS

Transferred to chapter 70A

TITLE III

PUBLIC SERVICES AND REGULATION

SUBTITLE 1

PUBLIC SAFETY

CHAPTER 80

DEPARTMENT OF PUBLIC SAFETY

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80.39 Disposition of personal property.
80.40 Reserved.
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80.1 Department created.

There is hereby created a department of the state government which shall be known and designated as the department of public safety, which shall consist of a commissioner of public safety and of such officers and employees as may be required, one of whom shall be an attorney admitted to practice law in this state. Such attorney shall be an assistant attorney general appointed by the attorney general who shall fix the assistant's salary. The department shall reimburse the attorney general for the salary and expense of such assistant attorney general and furnish the assistant a suitable office if requested by the attorney general.

[C39, §**1225.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.1]

80.2 Commissioner — appointment.

The chief executive officer of the department of public safety is the commissioner of public safety. The governor shall appoint, subject to confirmation by the senate, a commissioner of public safety, who shall be a person of high moral character, of good standing in the community in which the commissioner lives, of recognized executive and administrative capacity, and who shall not be selected on the basis of political affiliation. The commissioner of public safety shall devote full time to

the duties of this office; the commissioner shall not engage in any other trade, business, or profession, nor engage in any partisan or political activity. The commissioner shall serve at the pleasure of the governor, at an annual salary as fixed by the general assembly.

[C39, §**1225.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.2]

88 Acts, ch 1278, §22

Confirmation, see §2.32

80.3 Vacancy.

A commissioner of public safety appointed when the general assembly is not in session shall serve at the pleasure of the governor, but the term shall expire thirty days after the general assembly next convenes in regular session, unless during such thirty days the commissioner be approved by two-thirds of the members of the senate.

[C39, §**1225.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.3]

80.4 Iowa state patrol.

The Iowa state patrol is established in the department of public safety. The patrol shall be under the direction of the commissioner of public safety.

[C27, 31, §5017-a1; C35, §5018-g1, -g2; C39, §**1225.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.4]

87 Acts, ch 232, §17; 98 Acts, ch 1074, §3

80.5 Officers of patrol.

The commissioner of public safety is authorized to appoint a chief, a first and second assistant and all other supervisory officers of said patrol. All appointments and promotions shall be made on the basis of seniority and merit examination. There shall not be more than twenty supervisory officers in the said patrol unless the membership thereof is increased to such a number as to require the appointment of additional supervisory officers.

[C39, §**1225.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.5]

80.6 Impersonating officer — uniform.

Any person who impersonates a member of the Iowa state patrol or other officer or employee of the department, or wears a uniform likely to be confused with the official uniform of any such officer, with intent to deceive anyone, shall be guilty of a simple misdemeanor.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.6]

98 Acts, ch 1074, §4

80.7 Railway special agents.

The commissioner of public safety may appoint as special agent any person who is regularly employed by a common carrier by rail to protect the property of said common carrier, its patrons, and employees. Such special agents shall not receive any compensation from the state.

[C39, §**1225.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.7]

80.8 Employees and peace officer members — salaries and compensation.

The commissioner of public safety, with the approval of the governor, shall appoint such deputies, inspectors, officers, clerical workers and other employees as may be required to properly discharge the duties of this department.

The commissioner may delegate to the peace officers of the department such additional duties in the enforcement of this chapter as the commissioner may deem proper and incidental to the duties now imposed upon them by law.

The salaries of all members and employees of the department and the expenses of the department shall be provided for by the legislative appropriation therefor. The compensation of peace officers of the department shall be fixed according to grades as to rank and length of service by the commissioner with the approval of the governor. The peace officers shall be paid additional compensation in accordance with the following formula: When peace officers have served for a period of five years, their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described five-year period; when peace officers have served for a period of ten years, their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described ten-year period, such sums being in addition to the increase provided herein to be paid after five years of service; when peace officers have served for a period of fifteen years, their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described fifteen-year period, such sums being in addition to the increases previously provided for herein; when peace officers have served for a period of twenty years, their compensation then being paid shall be increased by the sum of twenty-five dollars per month beginning with the month succeeding the foregoing described twenty-year period, such sums being in addition to the increases previously provided for herein. While on active duty, each peace officer shall also receive a flat daily sum as fixed by the commissioner with the approval of the governor for meals.

A collective bargaining agreement entered into between the state and a state employee organization under chapter 20 made final after July 1, 1977, shall not include any pay adjustment to longevity pay authorized under this section.

Peace officer members of the department ex-

cluded from the provisions of chapter 20 who are injured in the line of duty shall receive paid time off in the same manner as provided to peace officer members of the department covered by a collective bargaining agreement entered into between the state and the employee organization representing such covered peace officer members under chapter 20.

[C27, 31, §5017-a1; C35, §5018-g9; C39, §**1225.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.8]

98 Acts, ch 1074, §5; 2001 Acts, ch 10, §1; 2001 Acts, ch 190, §18

80.9 Duties of department.

It shall be the duty of the department of public safety to prevent crime, to detect and apprehend criminals and to enforce such other laws as are hereinafter specified. The members of the department of public safety, except clerical workers therein, when authorized by the commissioner of public safety shall have and exercise all the powers of any peace officer of the state.

1. They shall not exercise their general powers within the limits of any city, except:

a. When so ordered by the direction of the governor;

b. When request is made by the mayor of any city, with the approval of the commissioner of public safety;

c. When request is made by the sheriff or county attorney of any county with the approval of the commissioner;

d. While in the pursuit of law violators or in investigating law violations;

e. While making any inspection provided by this chapter, or any additional inspection ordered by the commissioner;

f. When engaged in the investigating and enforcing of fire and arson laws;

g. When engaged in the investigation and enforcement of laws relating to narcotic, counterfeit, stimulant, and depressant drugs.

When any member of the department shall be acting in cooperation with any other local peace officer, or county attorney in general criminal investigation work, or when acting on a special assignment by the commissioner, the member's jurisdiction shall be statewide.

However, the above limitations shall in no way be construed as a limitation as to their power as officers when a public offense is being committed in their presence.

2. In more particular, their duties shall be as follows:

a. To enforce all state laws.

b. To enforce all laws relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses; to see that proper safety rules are observed and to give first aid to the injured.

c. To investigate all fires; to apprehend persons suspected of arson; to enforce all safety measures in connection with the prevention of fires; to disseminate fire-prevention education; to develop training standards and provide training to fire fighters around the state; and to address other issues related to fire service and emergency response as requested by the state fire service and emergency response council.

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

the Iowa department of public health, training programs and program criteria for persons receiving human immunodeficiency virus-related information through the Iowa criminal justice information system or the national crime information center system.

e. To operate such radio broadcasting stations as may be necessary in order to disseminate information which will make possible the speedy apprehension of lawbreakers, as well as such other information as may be necessary in connection with the duties of this office.

f. Provide protection and security for persons and property on the grounds of the state capitol complex.

g. To assist persons who are responsible for the care of private and public land in identifying growing marijuana plants when the plants are reported to the department. The department shall also provide education to the persons regarding methods of eradicating the plants. The department shall adopt rules necessary to carry out this paragraph.

h. To maintain a vehicle theft unit in the Iowa state patrol to investigate and assist in the examination and identification of stolen, altered, or forfeited vehicles.

i. Receive and review the budget submitted by the state fire marshal and the state fire service and emergency response council.

j. To administer section 100B.11 relating to volunteer emergency services provider death benefits.

3. They may administer oaths, acknowledge signatures, and take voluntary testimony pursuant to their duties as provided by law.

4. It is the intent of the general assembly that the commissioner of public safety shall reassign the arson investigators from the division of criminal investigation and bureau of identification of the department of public safety to the state fire marshal's office effective July 1, 1978, and the arson investigators shall be under the direct supervision of the state fire marshal.

[C73, §120; C97, §147, 148; SS15, §65-b, 147; C24, §273, 13410; C27, 31, §273, 5017-a1, 13410; C35, §273, 5018-g6, 13410; C39, §**273, 1225.13;** C46, 50, 54, 58, 62, 66, 71, §18.2(1, 4), 80.9; C73, §19A.3(4), 80.9; C75, §18.3(4), 80.9; C77, 79, 81, §80.9]

90 Acts, ch 1179, §1; 91 Acts, ch 34, §1; 92 Acts, ch 1238, §18; 94 Acts, ch 1154, §1; 95 Acts, ch 191, §2; 98 Acts, ch 1074, §6; 99 Acts, ch 181, §1; 2000 Acts, ch 1117, §4, 5; 2000 Acts, ch 1232, §96

Department designated as state highway safety agency to receive federal funds; Executive Order No. 23; June 9, 1986

80.10 Peace officers short course.

For the instruction of law enforcement officers of this state, including members and prospective members of the department of public safety and peace officers of the several counties, townships and cities, the commissioner of public safety is hereby authorized and directed to utilize the existing peace officers short course and the laboratories and facilities in connection therewith in the college of law of the state University of Iowa.

[C39, §**1225.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.10]

80.11 Course of instruction.

The course or courses of instruction for peace officers shall include instruction in the following subjects and such others as shall be deemed advisable by the college of law and the commissioner of public safety:

1. Criminal law.
2. Identification of criminals and fingerprinting.
3. Methods of criminal investigation.
4. Rules of criminal evidence.
5. Presentation of cases in court.
6. Making of complaints and securing of criminal warrants.
7. Securing and use of search warrants.
8. How to secure extradition and return.
9. Small arms instruction.
10. Regulation of traffic.
11. First aid.

[C39, §**1225.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.11]

80.12 Attendance at short course.

The commissioner of public safety is authorized to send members of the department of public safety to any course of instruction for peace officers, not exceeding a total of six weeks' length in any one year, given by the college of law of the state University of Iowa, or the course of instruction in public safety education given at Iowa State University of science and technology, and the members shall be considered on duty while in attendance. The legislative body in a county may authorize the attendance at such a course of any law enforcing officer under the jurisdiction of the county and may provide for the payment of the actual and necessary expenses of that person while in attendance.

[C39, §**1225.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.12]

83 Acts, ch 123, §49, 209

80.13 Training schools.

The commissioner of public safety is authorized to hold a training school for candidates for or members of the department of public safety, and may send to recognized training schools such members as the commissioner may deem advisable. The expenses of such school of training shall be paid in the same manner as other expenses of the patrol.

[C27, 31, §5017-a1; C35, §5018-g10; C39, §**1225.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.13]

80.14 Diplomas.

To each person satisfactorily completing the course of study prescribed, an appropriate certificate or diploma shall be issued.

[C39, §**1225.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.14]

80.15 Examination — oath — probation — discipline — dismissal.

An applicant for membership in the department of public safety, except clerical workers and special agents appointed under section 80.7, shall not be appointed as a member until the applicant has passed a satisfactory physical and mental examination. In addition, the applicant must be a citizen of the United States and be not less than twenty-two years of age. The mental examination shall be conducted under the direction or supervision of the commissioner of public safety and may be oral or written or both. Each applicant shall take an oath on becoming a member of the force, to uphold the laws and Constitution of the United States and of the state of Iowa. During the period of twelve months after appointment, any member of the department of public safety, except members of the present Iowa state patrol who have served more than six months, is subject to dismissal at the will of the commissioner. After the twelve months' service, a member of the department, who was appointed after having passed the examinations, is not subject to dismissal, suspension, disciplinary demotion, or other disciplinary action resulting in the loss of pay unless charges have been filed with the department of inspections and appeals and a hearing held by the employment appeal board created by section 10A.601, if requested by the member, at which the member has an opportunity to present a defense to the charges. The decision of the appeal board is final, subject to the right of judicial review in accordance with the terms of the Iowa administrative procedure Act. However, these procedures as to dismissal, suspension, demotion, or other discipline do not apply to a member who is covered by a collective bargaining agreement which provides otherwise nor to the demotion of a division head to the rank which the division head held at the time of appointment as division head, if any. A division head who is demoted has the right to return to the rank which the division head held at the time of appointment as division head, if any. All rules, except employment provisions negotiated pursuant to chapter 20, regarding the enlistment, appointment, and employment affecting the personnel of the department shall be established by the commissioner in consultation with the director of the department of personnel, subject to approval by the governor.

[C27, 31, §5017-a1; C35, §5018-g3, -g5; C39, §**1225.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.15]

86 Acts, ch 1245, §241; 88 Acts, ch 1234, §2; 98 Acts, ch 1074, §7

80.16 Bonds.

All special agents appointed by the commissioner of public safety pursuant to section 80.7 shall furnish bond as required by the commissioner in the amount of five thousand dollars. All members of the state department of public safety excepting the members of the clerical force shall be bonded for the faithful performance of their duties, in such an amount as the commissioner of public safety may deem necessary, but not less than five thousand dollars for any one position, and clerical employees may be so bonded. The commissioner is authorized to purchase bond coverage with departmental funds, either in blanket bond form or in individual bond form or in any combination thereof.

[C24, §13409; C27, 31, §5017-a1, 13409; C35, §5018-g8, 13409; C39, §**1225.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.16]

97 Acts, ch 23, §7

80.17 General allocation of duties.

In general, the allocation of duties of the department of public safety shall be as follows:

1. Commissioner's office.
2. Division of statistics and records.
3. Division of criminal investigation and bureau of identification.
4. Division of the Iowa state patrol.
5. Division of fire protection.
6. Division of inspection.
7. Division of capitol police.

Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in interdepartmental operations or to forbid other divisional allocations of duties in the discretion of the commissioner of public safety.

[SS15, §147; C24, 27, 31, 35, 39, §**273(4), 1225.21;** C46, 50, 54, 58, 62, 66, 71, §18.2(4), 80.17; C73, §19B.12(2), 80.17; C75, §18.12(2), 80.17; C77, 79, 81, §80.17]

98 Acts, ch 1074, §8; 2000 Acts, ch 1154, §9

Bureau of criminal identification, chapter 690

80.18 Expenses and supplies — reimbursement.

It shall be the duty of the commissioner of public safety to provide for the members of the department when on duty, suitable uniforms, subsistence, arms, equipment, quarters, and other necessary supplies, and also the expense and means of travel and boarding the members of the department, according to rules made by the commissioner, as may be provided by appropriation.

The department may expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The department shall establish rules in accordance with chapter 17A to carry out the purpose of this paragraph.

[SS15, §65-c; C24, §13408; C27, 31, §5017-a1, 13408; C35, §5018-g7, 13408; C39, §**1225.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.18]

89 Acts, ch 317, §23

80.19 Public safety education.

The commissioner of public safety may co-operate with any recognized agency in the education of the public in highway safety.

Any recognized agency receiving appropriations of state money for public safety shall annually file with the auditor of state an itemized statement of all its receipts and expenditures.

[C39, §**1225.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.19]

80.20 Divisional headquarters.

The commissioner of public safety may, subject to the approval of the governor, establish divisional headquarters at various places in the state. Supervisory officers may be at all times on duty in each district headquarters.

[C39, §**1225.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.20]

80.21 Fees and rewards.

No fees or rewards shall be retained personally by members of the department in addition to their salaries, and any such fees or rewards earned by any members of said department shall be credited to the fund as herein provided to pay the expenses of this department. All salaries herein provided for and all expenses incurred under the provisions of this chapter shall be allowed and audited in the same manner as in other state offices, and shall be payable out of moneys hereafter appropriated.

[C27, 31, §5017-a1; C35, §5018-g11; C39, §**1225.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.21]

80.22 Prohibition on other departments.

All other departments and bureaus of the state are hereby prohibited from employing special peace officers or conferring upon regular employees any police powers to enforce provisions of the statutes, which are specifically reserved by this Act* to this department. But the commissioner of public safety shall, upon the requisition of the attorney general, from time to time assign for service in the department of justice such of its officers, not to exceed six in number, as may be requisitioned by the attorney general for special service in the department of justice, and when so assigned such officers shall be under the exclusive direction and control of the attorney general.

[C24, 27, 31, 35, §1340.7; C39, §**1225.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.22]

*See 39 Acts, ch 120

80.23 Special state agents — meaning.

Whenever mention is made, in the Code, of *"special state agents"* in connection with law enforcement, the same shall be construed to mean members of the state department of public safety.

[C39, §**1225.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.23]

80.24 Industrial disputes.

The police employees of the department shall not be used or called upon for service within any municipality in any industrial dispute unless actual violence has occurred therein, and then only either by order of the governor or on the request of the chief executive officer of the municipality or the sheriff of the county wherein the dispute has occurred if such request is approved by the governor.

[C39, §**1225.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §80.24]

80.25 Division of beer and liquor enforcement.

The commissioner of public safety shall establish a division of beer and liquor law enforcement and appoint a chief enforcement officer to head the division. The commissioner of public safety shall appoint other agents needed in the division as are necessary to enforce the provisions of chapter 123. All enforcement officers, assistants, and agents of the division, excluding clerical workers, shall be subject to the provisions of section 80.15.

[C73, 75, 77, 79, 81, §80.25]

94 Acts, ch 1023, §7

80.25A Pari-mutuel and excursion boat gambling investigation and enforcement.

The commissioner of public safety shall direct the chief of the division of criminal investigation and bureau of identification to establish a subdivision to be the primary criminal investigative and enforcement agency for the purpose of enforce-

ment of chapters 99D and 99F. The commissioner of public safety shall appoint or assign other agents to the division as necessary to enforce chapters 99D and 99F. All enforcement officers, assistants, and agents of the division are subject to section 80.15 except clerical workers.

83 Acts, ch 187, §30; 89 Acts, ch 67, §19

80.26 Governor's traffic safety bureau — funds related to mandatory helmet law. Repealed by 94 Acts, ch 1080, § 1.

80.27 Drug law enforcement by department.

The state department of public safety shall be primarily responsible for the enforcement of all laws and rules relating to any controlled substance or counterfeit substance, except for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, and health care facilities as defined in section 135C.1, subsection 6, as well as in the possession of any and all other individuals or institutions authorized to have possession of any controlled substances.

As used in this chapter, the terms *"controlled substances"* and *"counterfeit substances"* shall be the same as defined in section 124.101, subsections 5 and 6, respectively.

[C71, 73, 75, 77, 79, 81, §80.27]

80.28 Agents transferred from pharmacy board. Repealed by 88 Acts, ch 1134, § 116.

80.29 Agents transferred from pharmacy board — conditions — retirement. Repealed by 89 Acts, ch 83, § 87.

80.30 Individual qualifications.

If an individual is not able to meet the qualifications established by section 80.15 or chapter 97A and that individual otherwise possesses experience and training which qualifies that individual as a person capable of enforcing laws relating to controlled or counterfeit substances, that individual may be hired by the commissioner of public safety.

[C71, 73, 75, 77, 79, 81, §80.30]

89 Acts, ch 83, §18

80.31 Voluntary submission to conditions. Repealed by 89 Acts, ch 83, § 87.

80.32 Repealed by 73 Acts, ch 11, § 8.

80.33 Access to drug records by agents.

Every person required by law to keep records, and any carrier maintaining records with respect to any shipment containing any controlled or counterfeit substances shall, upon request of an authorized agent of the department of public safety, designated by the commissioner of public safety, permit such agent at reasonable times to have access to and copy such records. For the purpose of examining and verifying such records authorized agents of the department of public safety, designated by the commissioner of public safety, may enter at reasonable times any place or vehicle in which any controlled or counterfeit substance is held, manufactured, dispensed, compounded, processed, sold, delivered, or otherwise disposed of and inspect such place or vehicle, and the contents thereof. For the purpose of enforcing laws relating to controlled or counterfeit substances, and upon good cause shown, personnel of the division of drug law enforcement in the department of public safety shall be allowed to inspect audits and records in the possession of the state board of pharmacy examiners.

[C71, 73, 75, 77, 79, 81, §80.33]

80.34 Powers of peace officers.

Any authorized agent of the department of public safety designated to conduct examinations, investigations, or inspections and enforce the laws relating to controlled or counterfeit substances shall have all the powers of other peace officers and may arrest without warrant for offenses under this chapter committed in the agent's presence or, in the case of a felony, if the agent has probable cause to believe that the person arrested has committed or is committing such offense. Such officers shall have the same powers as other peace officers to seize controlled substances or articles used in the manufacture or sale of controlled substances which they have reasonable grounds to believe are in violation of law. Such controlled substances or articles shall be subject to condemnation.

[C71, 73, 75, 77, 79, 81, §80.34]

80.35 Transition.

Persons employed by the department of general services as capitol security force officers shall be transferred to the division of capitol security of the department of public safety on July 1, 1976. Persons transferred pursuant to this section shall retain their positions as capitol police officers, shall not be subject to the requirements and conditions of section 80.15, and shall remain under the Iowa public employees' retirement system. Persons employed after July 1, 1976, by the department of public safety as capitol police officers within the division of capitol police shall be subject to the requirements and conditions of section 80.15, except those requirements relating to age, and shall be subject to the Iowa public employees' retirement system. The minimum age for persons employed by the division of capitol police shall be eighteen.

[C77, 79, 81, §80.35]

2000 Acts, ch 1154, §10

80.36 Maximum age.

A person shall not be employed as a peace officer in the department of public safety after attaining sixty-five years of age.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §97A.6(1, b); C81, §80.36]

92 Acts, ch 1232, §503; 98 Acts, ch 1183, §107; 2002 Acts, ch 1135, §1

Section amended

80.37 Reimbursement of defense costs.

If a peace officer employed in any division of the department is charged with the alleged commission of public offense, based on acts or omissions within the scope of the officer's lawful duty or authority, and the charge is dismissed or the officer is acquitted of the charge, the presiding magistrate or judge shall enter judgment awarding reimbursement to the officer for any costs incurred in defending against the charge, including but not limited to a reasonable attorney fee, if the court finds the existence of any of the following grounds:

1. The charge was without probable cause.
2. The charge was filed for malicious purposes.
3. The charge was unwarranted in consideration of all of the circumstances and matters of law attending the alleged offense.

The officer may apply for review of a failure or refusal to rule or an adverse ruling as to the existence of any of the above grounds. The application shall be to a district judge if the officer is seeking review of the act of a magistrate or district associate judge and it shall be to a different district judge if review is sought of an act of a district judge.

84 Acts, ch 1259, §5

80.38 Reserved.

80.39 Disposition of personal property.

1. Personal property, except for motor vehicles subject to sale pursuant to section 321.89, and seizable property subject to disposition pursuant to chapter 809 or 809A, which personal property is found or seized by, turned in to, or otherwise lawfully comes into the possession of the department of public safety or a local law enforcement agency and which the department or agency does not own, shall be disposed of pursuant to this section. If by examining the property the owner or lawful custodian of the property is known or can be readily ascertained, the department or agency shall notify the owner or custodian by certified mail directed to the owner's or custodian's last known address, as to the location of the property. If the identity or address of the owner cannot be determined, notice by one publication in a newspaper of general circulation in the area where the property was found is sufficient notice. A published notice may contain multiple items.

2. The department or agency may return the property to a person if that person or the person's representative does all of the following:

a. Appears at the location where the property is located.

b. Provides proper identification.

c. Demonstrates ownership or lawful possession of the property to the satisfaction of the department or agency.

3. After ninety days following the mailing or publication of the notice required by this section, or if the owner or lawful custodian of the property is unknown or cannot be readily determined, or the department or agency has not turned the property over to the owner, the lawful custodian, or the owner's or custodian's representative, the department or agency may dispose of the property in any lawful way, including but not limited to the following:

a. Selling the property at public auction with the proceeds, less department or agency expenses, going to the general fund of the state if sold by the department, the rural services fund if sold by a county agency, and the general fund of a city if sold by a city agency; however, the department or agency shall be reimbursed from the proceeds for the reasonable expenses incurred in selling the property at the auction.

b. Retaining the property for the department's or agency's own use.

c. Giving the property to another agency of government.

d. Giving the property to an appropriate charitable organization.

e. Destroying the property.

4. Except when a person appears in person or through a representative within the time periods set by this section, and satisfies the department or agency that the person is the owner or lawful custodian of the property, disposition of the property shall be at the discretion of the department or agency. The department or agency shall maintain the receipt and disposition records for all property processed under this section. Good faith compliance with this section is a defense to any claim or action at law or in equity regarding the disposition of the property.

84 Acts, ch 1154, §1; 85 Acts, ch 201, §1; 86 Acts, ch 1140, §1; 86 Acts, ch 1237, §4; 96 Acts, ch 1133, §39; 2000 Acts, ch 1203, §1

80.40 Reserved.

For future text of this section effective upon appropriation or receipt of funds, see 2002 Acts, ch 1080, §1, 6

80.41 Highway safety patrol fund — future repeal. Repealed by 99 Acts, ch 202, § 27.

80.42 Sick leave benefits fund.

1. A sick leave benefits fund is established in the office of the treasurer of state under the control of the department of public safety. The moneys annually credited to the fund are appropriated

to the department to pay health and life insurance monthly premium costs for retired departmental employees and beneficiaries who are eligible to receive benefits for accrued sick leave under the collective bargaining agreement with the state police officers council or pursuant to section 70A.23.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys credited to the sick leave benefits fund shall be credited to the sick leave benefits fund. Notwithstanding section 8.33, moneys credited to the sick leave benefits fund at the end of a fiscal year shall not revert to any other fund but shall remain in the fund for purposes of the fund.

3. Notwithstanding section 8.39, if funds are needed to pay monthly premium costs as provided for in subsection 1, sufficient funds may be transferred and credited to the sick leave benefits fund from any moneys appropriated to the department.

2001 Acts, ch 186, §17

CHAPTER 80A

PRIVATE INVESTIGATIVE AGENCIES AND SECURITY AGENTS

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80A.16A Civil liability of bail enforcement agents.
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80A.18 Reciprocity — fee.

80A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Bail enforcement agent"* means a person engaged in the bail enforcement business, including licensees and persons engaged in the bail enforcement business whose principal place of business is in a state other than Iowa.

2. *"Bail enforcement business"* means the business of taking or attempting to take into custody the principal on a bail bond issued or a deposit filed in relation to a criminal proceeding to assure the presence of the defendant at trial, but does not include such actions that are undertaken by a peace officer or a law enforcement officer in the course of the officer's official duties.

3. *"Chief law enforcement officer"* means the county sheriff, chief of police, or other chief law enforcement officer in the local governmental unit where a defendant is located.

4. *"Commissioner"* means the commissioner of public safety.

5. *"Defendant"* means the principal on a bail bond issued or deposit filed in relation to a criminal proceeding in order to assure the presence of the defendant at trial.

6. *"Department"* means the department of public safety.

7. *"Licensee"* means a person licensed under this chapter.

8. *"Person"* means an individual, partnership, corporation, or other business entity.

9. *"Private investigative agency"* means a person engaged in a private investigation business.

10. *"Private investigation business"* means the business of making, for hire or reward, an investigation for the purpose of obtaining information on any of the following matters:

a. Crime or wrongs done or threatened.

b. The habits, conduct, movements, whereabouts, associations, transactions, reputations, or character of a person.

c. The credibility of witnesses or other persons.

d. The location or recovery of lost or stolen property.

e. The cause, origin, or responsibility for fires, accidents, or injuries to property.

f. The truth or falsity of a statement or representation.

g. Detection of deception.

h. The business of securing evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases.

11. *"Private security agency"* means a person engaged in a private security business.

12. *"Private security business"* means a busi-

ness of furnishing, for hire or reward, guards, watch personnel, armored car personnel, patrol personnel, or other persons to protect persons or property, to prevent the unlawful taking of goods and merchandise, or to prevent the misappropriation or concealment of goods, merchandise, money, securities, or other valuable documents or papers, and includes an individual who for hire patrols, watches, or guards a residential, industrial, or business property or district.

13. *"Uniform"* means a manner of dress of a particular style and distinctive appearance as distinguished from ordinary clothing customarily used and worn by the general public.

84 Acts, ch 1235, §1; 98 Acts, ch 1149, §1

80A.2 Persons exempt.

This chapter does not apply to the following:

1. An officer or employee of the United States, of a state, or a political subdivision of the United States or of a state while the officer or employee is engaged in the performance of official duties.

2. A peace officer engaged in the private security business or the private investigation business with the knowledge and consent of the chief executive officer of the peace officer's law enforcement agency.

3. A person employed full or part-time by one employer in connection with the affairs of the employer.

4. An attorney licensed to practice in Iowa, while performing duties as an attorney.

5. A person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of persons.

6. A person exclusively employed in making investigations and adjustments for insurance companies.

7. A person who is the legal owner of personal property which has been sold under a security agreement or a conditional sales agreement, or a secured party under the terms of a security interest while the person is performing acts relating to the repossession of the property.

8. A person engaged in the process of verifying the credentials of physicians and allied health professionals applying for hospital staff privileges.

9. A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

84 Acts, ch 1135, §1; 84 Acts, ch 1235, §2; 92 Acts, ch 1183, §1; 98 Acts, ch 1131, §1

80A.3 License required.

1. A person shall not operate a bail enforcement business, private investigation business, or private security business, or otherwise employ persons in the operation of such a business located within this state unless the person is licensed by the commissioner in accordance with this chapter.

2. A license issued under this chapter expires two years from the date issued.

84 Acts, ch 1235, §3; 98 Acts, ch 1149, §2

80A.3A Notification of and registration with local law enforcement.

1. A bail enforcement agent employed by a licensee shall not take or attempt to take into custody the principal on a bail bond without notifying the chief law enforcement officer of the local governmental subdivision where the defendant is believed to be present. The bail enforcement agent shall disclose the location where the defendant is believed to be and the bail enforcement agent's intended actions.

2. A person or employee of a person who operates a bail enforcement business in a state other than Iowa and who enters Iowa in pursuit of a defendant who has violated the conditions of a bail bond issued in a state other than Iowa or has otherwise violated conditions of bail imposed by a court in a state other than Iowa shall not take or attempt to take the defendant into custody without first registering with the chief law enforcement officer of the local governmental subdivision where the defendant is believed to be present.

a. Registration shall require presentation of the following documents:

(1) A license to operate a bail enforcement business in the state of origin, if the state licenses such businesses. Otherwise, the person or employee shall present other documentation relating to the location of the principal place of business of the bail enforcement business.

(2) The bail bond, order from the local prosecuting authority in the state of origin, or other documents relating to the authority of the person under the laws of the state of origin to pursue the defendant.

(3) A copy of any bond for liability for actions of the person or employee.

b. A bail enforcement agent who registers with the chief law enforcement officer of the local governmental subdivision in accordance with this section and complies with requirements, other than licensure, for acts by a bail enforcement agent within this state, including the limitations imposed by sections 811.8 and 811.12, shall not be subject to civil liability in this state other than as prescribed in this chapter, notwithstanding any other provision under the Code or common law.

98 Acts, ch 1149, §3

80A.4 License requirements.

1. Applications for a license or license renewal shall be submitted to the commissioner in the form the commissioner prescribes. A license or license renewal shall not be issued unless the applicant:

a. Is eighteen years of age or older.

b. Is not a peace officer.

c. Has never been convicted of a felony or aggravated misdemeanor.

d. Is not addicted to the use of alcohol or a controlled substance.

e. Does not have a history of repeated acts of violence.

f. Is of good moral character and has not been judged guilty of a crime involving moral turpitude.

g. Has not been convicted of a crime described in section 708.3, 708.4, 708.5, 708.6, 708.8, or 708.9.

h. Has not been convicted of illegally using, carrying or possessing a dangerous weapon.

i. Has not been convicted of fraud.

j. Provides fingerprints to the department.

k. Complies with other qualifications and requirements the commissioner adopts by rule.

2. If the applicant is a corporation, the requirements of subsection 1 apply to the president and to each officer, commissioner or employee who is actively involved in the licensed business in Iowa. If the applicant is a partnership or association, the requirements of subsection 1 apply to each partner or association member.

3. Each employee of an applicant or licensee shall possess the same qualifications required by subsection 1 for a licensee.

4. The fingerprints required by subsection 1 may be submitted by the department to the federal bureau of investigation through the state central criminal history repository for the purpose of a national criminal history check.

84 Acts, ch 1235, §4; 85 Acts, ch 56, §1; 2002 Acts, ch 1044, §1, 11

Section amended

80A.5 Licensee fee.

1. An applicant for a license or license renewal shall deposit with each application the fee for the license and if necessary the fees associated with processing the fingerprints.

2. If the application is approved, the deposited amount shall be applied on the license fee. If the application is disapproved, the deposited amount excluding the fees associated with the processing of the fingerprints shall be refunded to the applicant.

3. The fee for a two-year license for a bail enforcement business, a private investigative agency, or a private security agency is one hundred dollars.

84 Acts, ch 1235, §5; 98 Acts, ch 1149, §4; 2002 Acts, ch 1044, §2, 11

Subsections 1 and 2 amended

80A.6 Display of license.

A licensee shall conspicuously display the license in the principal place of business of the agency or business.

84 Acts, ch 1235, §6; 98 Acts, ch 1149, §5

80A.7 Identification cards.

1. The department shall issue to each licensee and to each employee of the licensee an identification card in a form approved by the commissioner. The application for a permanent identification card shall include a temporary identification card valid for fourteen days from the date of receipt of the application by the applicant.

2. The fee for each application for an identification card is ten dollars.

3. It is unlawful for an agency licensed under this chapter to employ a person to act in the bail enforcement business, private investigation business, or private security business unless the person has in the person's immediate possession an identification card issued under this section.

4. The licensee is responsible for the use of identification cards by the licensee's employees and shall return an employee's card to the department upon termination of the employee's service. Identification cards remain the property of the department.

5. An application for an identification card shall include the submission of fingerprints of the person seeking the identification card, which fingerprints may be submitted to the federal bureau of investigation through the state central criminal history repository for the purpose of a national criminal history background check. Fees associated with the processing of fingerprints shall be assessed to the employing licensee.

84 Acts, ch 1235, §7; 85 Acts, ch 56, §2; 89 Acts, ch 112, §1; 98 Acts, ch 1149, §6; 2002 Acts, ch 1044, §3, 4, 11

Subsection 2 amended
NEW subsection 5

80A.8 Duplicate license.

A duplicate license shall be issued by the commissioner upon the payment of a fee in the amount of five dollars and upon receiving for filing, in the form prescribed, a statement under oath that the original license has been lost or destroyed and that, if the original license is recovered, the original or the duplicate will be returned immediately to the director for cancellation.

84 Acts, ch 1235, §8

80A.9 Badges — uniforms.

1. A licensee or an employee of a licensee shall not use a badge in connection with the activities of the licensee's business unless the badge has been prescribed or approved by the commissioner.

2. A licensee or an employee of a licensee shall not use an identification card other than the card issued by the department or make a statement with the intent to give the impression that the licensee or employee is a peace officer.

3. A uniform worn by a licensee or employee of a licensee shall conform with rules adopted by the commissioner.

4. A bail enforcement agent other than a li-

censee shall not do any of the following:

a. Use a badge or identification card other than one which is in accordance with the laws of the state of origin.

b. Wear a uniform or make a statement that gives the impression that the agent is a peace officer.

84 Acts, ch 1235, §9; 98 Acts, ch 1149, §7

80A.10 Licensee's bond.

1. A license shall not be issued unless the applicant files with the department a surety bond, in a minimum amount as follows:

a. Five thousand dollars in the case of an agency licensed to conduct only a bail enforcement business, private security business, or a private investigation business.

b. Ten thousand dollars in the case of an agency licensed to conduct more than one type of business licensed under this chapter.

2. The bond shall be issued by a surety company authorized to do business in this state and shall be conditioned on the faithful, lawful, and honest conduct of the applicant and those employed by the applicant in carrying on the business licensed.

3. The bond shall provide that a person injured by a breach of the conditions of the bond may bring an action on the bond to recover legal damages suffered by reason of the breach. However, the aggregate liability of the surety for all damages shall not exceed the amount of the bond.

4. Bonds issued and filed with the department shall remain in force and effect until the surety has terminated future liability by a written thirty days' notice to the department.

84 Acts, ch 1235, §10; 85 Acts, ch 56, §3; 98 Acts, ch 1149, §8

80A.10A Licensee's proof of financial responsibility.

Notwithstanding the minimum bond amount that must be filed in accordance with section 80A.10, a license shall not be issued unless the applicant furnishes proof acceptable to the commissioner of the applicant's ability to respond in damages for liability on account of accidents or wrongdoings occurring subsequent to the effective date of the proof, arising out of the ownership and operation of a private security business, private investigation business, or bail enforcement business.

85 Acts, ch 56, §5; 98 Acts, ch 1149, §9

80A.11 Written report.

The licensee shall furnish, upon the client's request, a written report describing all the work performed by the licensee for that client.

84 Acts, ch 1235, §11

80A.12 Refusal, suspension or revocation.

The commissioner may refuse to issue, or may suspend or revoke a license issued, for any of the following reasons:

1. Fraud in applying for or obtaining a license.

2. Violation of any of the provisions of this chapter.

3. If a licensee or employee of a licensee has been adjudged guilty of a crime involving moral turpitude, a felony, or an aggravated misdemeanor.

4. If a licensee willfully divulges to an unauthorized person information obtained by the licensee in the course of the licensed business.

5. Upon the disqualification or insolvency of the surety on the licensee's bond, unless the licensee files a new bond with sufficient surety within fifteen days of the receipt of notice from the commissioner.

6. If the applicant for a license or licensee or employee of a licensee fails to meet or retain any of the other qualifications provided in section 80A.4.

7. If the applicant for a license or licensee knowingly makes a false statement or knowingly conceals a material fact or otherwise commits perjury in an original application or a renewal application.

8. Willful failure or refusal to render to a client services contracted for and for which compensation has been paid or tendered in accordance with the contract.

84 Acts, ch 1235, §12; 85 Acts, ch 56, §4; 85 Acts, ch 67, §9

80A.13 Campus weapon requirements.

An individual employed by a college or university, or by a private security business holding a contract with a college or university, who performs private security duties on a college or university campus and who carries a weapon while performing these duties shall meet all of the following requirements:

1. File with the sheriff of the county in which the campus is located evidence that the individual has successfully completed an approved firearms training program under section 724.9. This requirement does not apply to armored car personnel.

2. Possess a permit to carry weapons issued by the sheriff of the county in which the campus is located under sections 724.6 through 724.11. This requirement does not apply to armored car personnel.

3. File with the sheriff of the county in which the campus is located a sworn affidavit from the employer outlining the nature of the duties to be performed and justification of the need to go armed.

84 Acts, ch 1235, §13; 85 Acts, ch 56, §7

80A.14 Deposit of fees.

Fees received by the commissioner shall be paid to the treasurer of state and deposited in the operating account of the department to offset the cost of administering this chapter. Any unspent balance as of June 30 of each year shall revert to the general fund as provided by section 8.33.

84 Acts, ch 1235, §14

80A.15 Rules.

The commissioner may adopt administrative rules pursuant to chapter 17A to carry out this chapter.

84 Acts, ch 1235, §15

80A.16 Penalties.

1. A person who violates any of the provisions of this chapter where no other penalty is provided is guilty of a simple misdemeanor.

2. A person who does any of the following is guilty of a fraudulent practice:

a. Makes a false statement or representation in an application or statement filed with the commissioner, as required by this chapter.

b. Falsely states, represents, or fails to disclose as required by this chapter, that the person has been or is a private investigator, private security agent, or bail enforcement agent.

c. Falsely advertises that the person is a licensed private investigator, private security agent, or bail enforcement agent.

3. A person who is subject to the licensing requirements of this chapter and who engages in a private investigation or private security business as defined in this chapter, without possessing a current valid license as provided by this chapter, is guilty of a serious misdemeanor.

4. A person who is subject to the licensing requirements of this chapter for a bail enforcement business or bail enforcement agent, and who operates a bail enforcement business or who acts as a bail enforcement agent for a bail enforcement business, without possessing a current valid license, is guilty of a class "D" felony.

84 Acts, ch 1235, §16; 98 Acts, ch 1149, §10

80A.16A Civil liability of bail enforcement agents.

1. A person other than a defendant who is injured in person or property by the actions of a bail enforcement agent in taking or attempting to take a defendant into custody may bring a civil action for damages against such agent and the bail enforcement business for breach of any applicable standard of care.

2. Notwithstanding the limitation of liability of any surety for the actions of a bail enforcement agent or bail enforcement business, the court shall enter a judgment against a bail enforcement agent or bail enforcement business determined to have breached the applicable standard of care. The judgment shall include an award of treble damages, and recovery of costs and reasonable attorney fees.

98 Acts, ch 1149, §11

80A.17 Confidential records.

1. All complaint files, investigation files, other investigation reports, and other investigative information in the possession of the department or its employees or agents which relate to licensee discipline are privileged and confidential except that they are subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee, and are admissible in evidence in a judicial or administrative proceeding other than a proceeding involving licensee discipline. In addition, investigative information in the possession of the department's employees or agents which relates to licensee discipline may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of the department indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. A final written decision and finding of fact of the department in a disciplinary proceeding is a public record.

Pursuant to section 17A.19, subsection 6, the department, upon an appeal by the licensee of the decision by the department shall transmit the entire record of the contested case to the reviewing court.

Notwithstanding section 17A.19, subsection 6, if a waiver of privilege has been involuntary and evidence has been received at a disciplinary hearing, the court shall order withheld the identity of the individual whose privilege was waived.

2. Lists of employees of a licensed agency and their personal histories shall be held as confidential. However, the lists of the names of the licensed agencies, their owners, corporate officers and directors shall be held as public records. The commissioner may confirm that a specific individual is an employee of a licensed agency upon request and may make lists of licensed agencies' employees available to law enforcement agencies.

85 Acts, ch 56, §6

80A.18 Reciprocity — fee.

A person who holds a valid license to act as a private investigator or as a private security officer issued by a proper authority of another state, based on requirements and qualifications similar to the requirements of this chapter, may be issued a temporary permit to so act in this state, if the person's licensing jurisdiction extends by reciprocity similar privileges to a person licensed to act as a private investigator or private security officer licensed by this state. Any reciprocal agreement ap-

proved by the commissioner shall provide that any misconduct in the state issuing the temporary permit will be dealt with in the licensing jurisdiction as though the violation occurred in that jurisdiction.

The commissioner shall adopt by rule a fee for the issuance of a temporary permit under this section. The fee shall be based on the cost of administering this section but shall not exceed one hundred dollars per year.

88 Acts, ch 1056, §1

CHAPTER 80B

LAW ENFORCEMENT ACADEMY

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80B.1 Citation.

This chapter shall be known as the *"Iowa law enforcement academy and council Act"*.

[C71, 73, 75, 77, 79, 81, §80B.1]

80B.2 Intent.

It is the intent of the legislature in creating the academy and the council to maximize training opportunities for law enforcement officers, to coordinate training and to set standards for the law enforcement service, all of which are imperative to upgrading law enforcement to professional status.

[C71, 73, 75, 77, 79, 81, §80B.2]

80B.3 Definitions.

When used in this chapter:

1. *"Academy"* means the Iowa law enforcement academy.
2. *"Council"* means the Iowa law enforcement academy council.
3. *"Law enforcement officer"* means an officer appointed by the director of the department of natural resources, a member of a police force or other agency or department of the state, county or city regularly employed as such and who is responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state and all individuals, as determined by the council, who by the nature of their duties may be required to perform the duties of a peace officer.

[C71, 73, 75, 77, 79, 81, §80B.3]

80B.4 Academy created.

There is hereby created the Iowa law enforcement academy as a central law enforcement training facility, in order to serve the best interests of the state in carrying out the intent and purpose of this chapter. The academy shall be situated at Camp Dodge and the council shall enter into an agreement with the adjutant general which agreement shall provide for the use of certain of the facilities at Camp Dodge, for the remodeling and conversion of existing structures to classrooms and dormitory space, and for the use of land for the site of an administration building. The agreement shall be on such terms and conditions as are necessary to carry out the purpose of this chapter.

[C71, 73, 75, 77, 79, 81, §80B.4]

80B.5 Administration.

The administration of the Iowa law enforcement academy and council Act shall be vested in the office of the governor. A director of the academy and such staff as may be necessary for it to function shall be employed pursuant to the Iowa merit system.

[C71, 73, 75, 77, 79, 81, §80B.5]

80B.6 Council created — membership.

There is created the Iowa law enforcement academy council which shall consist of the following seven members appointed by the governor subject to confirmation by the senate to terms of four years commencing as provided in section 69.19:

1. Three residents of the state.
2. A sheriff of a county.
3. A police officer who is a member of a police

department of a city with a population larger than fifty thousand persons.

4. A police officer who is a member of a police department of a city with a population of less than fifty thousand persons.

5. A member of the department of public safety.

One senator appointed by the president of the senate after consultation with the majority leader and the minority leader of the senate and one representative appointed by the speaker of the house are also ex officio, nonvoting members of the council.

In the event a member appointed pursuant to this section is unable to complete a term, the vacancy shall be filled for the unexpired term in the same manner as the original appointment.

[C71, 73, 75, 77, 79, 81, §80B.6]

86 Acts, ch 1245, §2029; 90 Acts, ch 1223, §15

Confirmation, see §2.32

80B.7 Officers of council.

The council shall elect from its membership a chairperson and a vice chairperson each of whom shall serve for a term of one year and who may be re-elected. Membership on the council shall not constitute holding a public office and members of the council shall not be required to take and file oaths of office before serving on the council. No member of the council shall be disqualified from holding any public office or employment by reason of appointment or membership on the council, nor shall any member forfeit any such office or employment by reason of appointment to the council, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

[C71, 73, 75, 77, 79, 81, §80B.7]

80B.8 Compensation and expenses.

The members of the council, who are not employees of the state or a political subdivision, shall be paid a per diem as specified in section 7E.6. All members of the council shall be reimbursed for necessary and actual expenses incurred in attending meetings and in the performance of their duties. All per diem and expense moneys paid to nonlegislative members shall be paid from funds appropriated to the Iowa law enforcement academy. Legislative members of the council shall receive payment pursuant to section 2.10 and section 2.12.

[C71, 73, 75, 77, 79, 81, §80B.8]

90 Acts, ch 1256, §27

80B.9 Meetings.

The council shall meet at least four times each year and shall hold special meetings when called by the chairperson or, in the absence of the chairperson, by the vice chairperson, or by the chairperson upon written request of five members of the council. The council shall establish procedures and requirements with respect to quorum, place, and conduct of meetings.

[C71, 73, 75, 77, 79, 81, §80B.9]

80B.10 Annual report.

The council shall make an annual report to the governor, the attorney general, and the commissioner of public safety which shall include pertinent data regarding the standards established and the degree of participation of agencies in the training program.

[C71, 73, 75, 77, 79, 81, §80B.10]

80B.11 Rules.

The director of the academy, subject to the approval of the council, shall promulgate rules in accordance with the provisions of this chapter and chapter 17A, giving due consideration to varying factors and special requirements of law enforcement agencies relative to the following:

1. Minimum entrance requirements, course of study, attendance requirements, and equipment and facilities required at approved law enforcement training schools. Minimum age requirements for entrance to approved law enforcement training schools shall be eighteen years of age. Minimum course of study requirements shall include a separate domestic abuse curriculum, which may include, but is not limited to, outside speakers from domestic abuse shelters and crime victim assistance organizations.

2. Minimum basic training requirements law enforcement officers employed after July 1, 1968, must complete in order to remain eligible for continued employment and the time within which such basic training must be completed. Minimum requirements shall mandate training devoted to the topic of domestic abuse. The council shall submit an annual report to the general assembly by January 15 of each year relating to the continuing education requirements devoted to the topic of domestic abuse, including the number of hours required, the substance of the classes offered, and other related matters.

3. Categories or classifications of advanced in-service training program and minimum courses of study and attendance requirements for such categories or classifications.

In-service training under this subsection shall include the requirement that by December 31, 1994, all law enforcement officers complete a course on investigation, identification, and reporting of public offenses based on the race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability of the victim. The director shall consult with the civil rights commission, the department of public safety, and the prosecuting attorneys training coordinator in developing the requirements for this course and may contract with outside providers for this course.

4. Within the existing curriculum, expanded training regarding racial and cultural awareness and dealing with gang-affected youth.

5. Minimum standards of physical, educational and moral fitness which shall govern the recruitment, selection and appointment of law enforcement officers.

6. Minimum standards of mental fitness which shall govern the initial recruitment, selection and appointment of law enforcement officers. The rules shall include, but are not limited to, providing a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of an applicant for a law enforcement career. However, this battery of tests need only be given to applicants being considered in the final selection process for a law enforcement position. Notwithstanding any provision of chapter 400, an applicant shall not be hired if the employer determines from the tests that the applicant does not possess sufficient cognitive skills, personality characteristics, or suitability for a law enforcement career. The director of the academy shall provide for the cognitive and psychological examinations and their administration to the law enforcement agencies or applicants, and shall identify and procure persons who can be hired to interpret the examinations.

7. Grounds for revocation or suspension of a law enforcement officer's certification.

8. Exemptions from particular provisions of this chapter in case of any state, county or city, if, in the opinion of the council, the standards of law enforcement training established and maintained by the governmental agency are as high or higher than those established pursuant to this chapter; or revocation in whole or in part of such exemption, if in its opinion the standards of law enforcement training established and maintained by the governmental agency are lower than those established pursuant to this chapter.

9. Minimum qualifications for instructors in telecommunicator training schools.

10. Minimum qualifications for instructors in law enforcement and jailer training schools.

11. Certification through examination for individuals who have successfully completed the federal bureau of investigation national academy, have corrected Snellen vision in both eyes of 20/20 or better, and were employed on or before January 1, 1996, as chief of police of a city in this state with a population of twenty thousand or more.

A certified course of instruction provided for under this section which occurs at a location other than at the central training facility of the Iowa law enforcement academy shall not be eliminated by the Iowa law enforcement academy.

[C71, 73, 75, 77, 79, 81, §80B.11]

84 Acts, ch 1245, §1, 2, 3; 84 Acts, ch 1246, §1; 85 Acts, ch 208, §2; 89 Acts, ch 62, §1, 2; 91 Acts, ch 218, §2; 91 Acts, ch 219, §1; 92 Acts, ch 1157, §1; 92 Acts, ch 1238, §20; 93 Acts, ch 169, §15; 94 Acts, ch 1172, §1; 96 Acts, ch 1061, §1; 96 Acts, ch 1201, §1; 99 Acts, ch 70, §1

80B.11A Jailer training standards.

The director of the academy, subject to the approval of the council, and in consultation with the Iowa department of corrections, Iowa state sheriffs' and deputies' association, and the Iowa association of chiefs of police and peace officers, shall adopt rules in accordance with this chapter and chapter 17A establishing minimum standards for training of jailers.

89 Acts, ch 62, §3

80B.11B Examination and attendance fees — training cost — appropriation.

1. The full cost of providing cognitive and psychological examinations of law enforcement officer candidates may be charged by the Iowa law enforcement academy.

2. The Iowa law enforcement academy may also charge not more than one-half of the cost of providing the basic training course which is designed to meet the minimum basic training requirements for a law enforcement officer.

3. The Iowa law enforcement academy may also charge an attendance fee as determined by the director of the academy and approved by the council for courses, schools, and seminars, other than the basic training course specified in subsection 2. Funds generated from attendance fees are appropriated to and shall be used at the direction of the academy to fulfill its responsibilities under this chapter.

90 Acts, ch 1267, §25; 92 Acts, ch 1238, §21; 94 Acts, ch 1189, §17

80B.11C Telecommunicator training standards.

The director of the academy, subject to the approval of the council, in consultation with the Iowa state sheriffs' and deputies' association, the Iowa police executive forum, the Iowa association of chiefs of police and peace officers, the Iowa state police association, the Iowa association of professional fire fighters, the Iowa emergency medical services association, the joint council of Iowa fire service organizations, the Iowa department of public safety, the Iowa chapter of the association of public safety communications officials-international, inc., the Iowa chapter of the national emergency number association, the emergency management division of the Iowa department of public defense, and the Iowa department of public health, shall adopt rules pursuant to chapter 17A establishing minimum standards for training of telecommunicators. For purposes of this section, *"telecommunicator"* means a person who receives requests for, or dispatches requests to, emergency response agencies which include, but are not limited to, law enforcement, fire, rescue, and emergen-

cy medical services agencies.
96 Acts, ch 1061, §2

80B.12 Agreements with other agencies.
The director with the approval of the council may enter into agreements with other public and private agencies, colleges and universities to carry out the intent of this chapter.
[C71, 73, 75, 77, 79, 81, §80B.12]

80B.13 Authority of council.
The council may:
1. Designate members to visit and inspect any law enforcement or jailer training schools, or examine the curriculum or training procedures, for which application for approval has been made.
2. Issue certificates to law enforcement training schools qualifying under the regulations of the council.
3. Issue certificates to law enforcement officers and jailers who have met the requirements of this chapter and rules adopted under chapter 17A relative to hiring and training standards.
4. Make recommendations to the governor, the attorney general, the commissioner of public safety and the legislature on matters pertaining to qualification and training of law enforcement officers and jailers and other matters considered necessary to improve law enforcement services and jailer training.
5. Cooperate with federal, state, and local enforcement agencies in establishing and conducting local or area schools, or regional training centers for instruction and training of law enforcement officers and jailers.
6. Direct research in the field of law enforcement and jailer training and accept grants for such purposes.
7. Accept applications for attendance of the academy from persons other than those required to attend.
8. Revoke a law enforcement officer's certification for the conviction of a felony or revoke or suspend a law enforcement officer's certification for a violation of rules adopted pursuant to section 80B.11, subsection 7. In addition the council may consider revocation or suspension proceedings when an employing agency recommends to the council that revocation or suspension would be appropriate with regard to a current or former employee. If a law enforcement officer resigns, the employing agency shall notify the council that an officer has resigned and state the reason for the resignation if a substantial likelihood exists that the reason would result in the revocation or suspension of an officer's certification for a violation of the rules.

A recommendation by an employing agency must be in writing and set forth the reasons why the action is being recommended, the findings of the employing agency concerning the matter, the action taken by the employing agency, and that the action by the agency is final. *"Final"*, as used in this section, means that all appeals through a grievance procedure available to the officer or civil service have been exhausted. The written recommendations shall be unavailable for inspection by anyone except personnel of the employing agency, the council and the affected law enforcement officer, or as ordered by a reviewing court.

The council shall establish a process for the protest and appeal of a revocation or suspension made pursuant to this subsection.

9. In accordance with chapter 17A, conduct investigations, hold hearings, appoint hearing examiners, administer oaths and issue subpoenas enforceable in district court on matters relating to the revocation or suspension of a law enforcement officer's certification.
10. Secure the assistance of the state division of criminal investigation in the investigation of alleged violations, as provided under section 80.9, subsection 1, paragraphs *"c"* and *"g"*, of the provisions adopted under section 80B.11.
[C71, 73, 75, 77, 79, 81, §80B.13]
84 Acts, ch 1246, §2, 3; 85 Acts, ch 67, §10; 89 Acts, ch 62, §4; 99 Acts, ch 70, §2 – 4

80B.14 Budget submitted to department of management.
The Iowa law enforcement academy council shall submit to the department of management, annually and in such form as required by chapter 8 estimates of its expenditure requirements. Such estimates shall include the costs of administration, maintenance, and operation, and the cost of any proposed capital improvements or additional programs.
[C71, 73, 75, 77, 79, 81, §80B.14]

80B.15 Library and media resource center.
The academy shall be the principal law enforcement library and media resource center and shall co-ordinate the use of law enforcement media resources with training centers and educational institutions offering a two-year program in law enforcement to insure for the efficient use of state law enforcement media resources.

The academy shall offer state media resource assistance to any law enforcement training center certified by the Iowa law enforcement academy council.

The director of the academy shall assess a fee for use of law enforcement media resources supplied or loaned by the academy. The fees shall be established by rules adopted pursuant to chapter 17A. The fees shall be considered as repayment receipts.
[C77, 79, 81, §80B.15; 81 Acts, ch 14, §22]

80B.16 Audiovisual fees established.

The academy may charge state departments, independent agencies, or other governmental offices a fee not to exceed the actual costs, including the cost of equipment, production, and duplication, for audiovisual services provided by the academy. Fees shall be deposited in a separate fund in the state treasury to be known as the audiovisual equipment fund. Funds generated from the audiovisual fees are appropriated and shall be used at the direction of the academy only to maintain and upgrade academy audiovisual equipment. Notwithstanding section 8.33, unencumbered or unobligated moneys in the separate fund at the end of a fiscal year shall not revert to the general fund of the state.

92 Acts, ch 1238, §22

80B.17 Certification required.

The council shall extend the one-year time period in which an officer candidate must become certified for up to one hundred eighty days if the officer candidate is enrolled in training within twelve months of initial appointment.

98 Acts, ch 1124, §1

CHAPTER 80C

CRIMINAL AND JUVENILE JUSTICE PLANNING

Repealed by 88 Acts, ch 1277, §30; see §216A.131 et seq.

CHAPTER 80D

RESERVE PEACE OFFICERS

80D.1 Establishment of a force of reserve peace officers.
80D.1A Definitions.
80D.2 Personal standards.
80D.3 Training standards.
80D.4 Training.
80D.5 No exemptions.
80D.6 Status of reserve peace officers.
80D.7 Carrying weapons.
80D.8 Supplementary capacity.
80D.9 Supervision of reserve peace officers.
80D.10 No reduction of regular force.
80D.11 Employee — pay.
80D.12 Benefits when injured.
80D.13 Insurance.
80D.14 No participation in a pension fund or retirement system.
80D.15 Civil defense auxiliary police exempt.

80D.1 Establishment of a force of reserve peace officers.

The governing body of a city, a county, the state of Iowa, or a judicial district department of correctional services may provide, either separately or collectively through a chapter 28E agreement, for the establishment of a force of reserve peace officers, and may limit the size of the reserve force. In the case of the state, the department of public safety shall act as the governing body.

This chapter constitutes the only procedure for appointing reserve peace officers.

[C81, §80D.1]

90 Acts, ch 1092, §1; 2001 Acts, ch 104, §1

80D.1A Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Minimum training course"* means a curriculum of one hundred fifty hours of training and instruction required for certification as a reserve peace officer, excluding weapons training.

2. *"Reserve force"* means an organization of reserve peace officers established as provided in this chapter.

3. *"Reserve peace officer"* means a volunteer, nonregular, sworn member of a law enforcement agency who serves with or without compensation, has regular police powers while functioning as a law enforcement agency's representative, and participates on a regular basis in the law enforcement agency's activities including crime prevention and control, preservation of the peace, and enforcement of law.

90 Acts, ch 1092, §2

80D.2 Personal standards.

The director of the law enforcement academy with the approval of the law enforcement academy council may establish minimum standards of physical, educational, mental, and moral fitness

for members of the reserve force.

[C81, §80D.2]

80D.3 Training standards.

1. Each person appointed to serve as a reserve peace officer shall satisfactorily complete a minimum training course as provided in this section. In addition, if a reserve peace officer is authorized to carry weapons, the officer shall satisfactorily complete the same training course in the use of weapons as is required for basic training of regular peace officers by the Iowa law enforcement academy. The minimum training course for reserve peace officers must be satisfactorily completed within four years from the date of appointment. If reserve officer training received before July 1, 1990, meets the requirements of this section, the training may be applied to meet the minimum training course requirements of this section.

2. A reserve peace officer who does not carry a weapon shall not be required to complete a weapons training course, but the officer shall comply with all other training requirements.

3. A person appointed to serve as a reserve peace officer, who has received basic training as a peace officer and has been certified by the Iowa law enforcement academy pursuant to chapter 80B and rules adopted pursuant to chapter 80B, may be exempted from completing the minimum training course at the discretion of the appointing authority if the officer meets one of the following qualifications:

a. The appointee is serving as a regular peace officer with a bona fide law enforcement agency when the application for a reserve peace officer appointment is made.

b. The appointee has served as a regular peace officer with a bona fide law enforcement agency within three years of the date of application for appointment as a reserve peace officer.

4. The minimum training course required for a reserve peace officer shall be conducted pursuant to sections 80D.4 and 80D.7, and the following training schedule:

a. During the first year, thirty hours of general law enforcement training is required as provided in section 80D.4 and as prescribed by the Iowa law enforcement academy council. If weapons are to be carried, a reserve peace officer shall complete a weapons training course having the same number of hours of training as is required of regular peace officers in basic training pursuant to section 80D.7.

b. During the second through the fourth year, forty hours of training shall be provided each year. Ten hours annually shall be obtained by each reserve peace officer working with a regular peace officer. The remaining thirty hours annually shall be selected by the appointing authority from the approved basic training curriculum established by the Iowa law enforcement academy for use in training regular peace officers.

c. Notwithstanding the time schedule provided in this subsection, a person is eligible for certification as a reserve peace officer upon satisfactory completion of the one hundred fifty hours of training required for certification.

[C81, §80D.3]

90 Acts, ch 1092, §3

80D.4 Training.

Training for individuals appointed as reserve peace officers shall be provided by that law enforcement agency, but may be obtained in a community college or other facility selected by the individual and approved by the law enforcement agency. Upon satisfactory completion of training required by the Iowa law enforcement academy, the chief of police, sheriff, commissioner of public safety, or director of the judicial district department of correctional services shall certify the individual as a reserve peace officer.

[C81, §80D.4]

90 Acts, ch 1092, §4; 90 Acts, ch 1253, §121; 2001 Acts, ch 104, §2

80D.5 No exemptions.

There shall be no exemptions from the personal and training standards provided for in this chapter except as provided in sections 80D.7 and 80D.15.

[C81, §80D.5]

80D.6 Status of reserve peace officers.

Reserve peace officers shall serve as peace officers on the orders and at the discretion of the chief of police, sheriff, commissioner of public safety or the commissioner's designee, or director of the judicial district department of correctional services or the director's designee, as the case may be.

While in the actual performance of official duties, reserve peace officers shall be vested with the same rights, privileges, obligations, and duties as any other peace officers.

[C81, §80D.6]

2001 Acts, ch 104, §3

80D.7 Carrying weapons.

A member of a reserve force shall not carry a weapon in the line of duty until the member has been approved by the governing body and certified by the Iowa law enforcement academy council to carry weapons. After approval and certification, a reserve peace officer may carry a weapon in the line of duty only when authorized by the chief of police, sheriff, commissioner of public safety or the commissioner's designee, or director of the judicial district department of correctional services or the director's designee, as the case may be.

[C81, §80D.7]

90 Acts, ch 1092, §5; 2001 Acts, ch 104, §4

80D.8 Supplementary capacity.

Reserve peace officers shall act only in a supplementary capacity to the regular force and shall not assume full-time duties of regular peace officers without first complying with all requirements for regular peace officers.

[C81, §80D.8]

80D.9 Supervision of reserve peace officers.

Reserve peace officers shall be subordinate to regular peace officers, shall not serve as peace officers unless under the direction of regular peace officers, and shall wear a uniform prescribed by the chief of police, sheriff, commissioner of public safety, or director of the judicial district department of correctional services unless that superior officer designates alternate apparel for use when engaged in assignments involving special investigation, civil process, court duties, jail duties, and the handling of mental patients. The reserve peace officer shall not wear an insignia of rank. Each department for which a reserve force is established shall appoint a certified peace officer as the reserve force coordinating and supervising officer. A reserve peace officer force established in a judicial district department of correctional services must be directly supervised by a certified peace officer who is on duty. That certified peace officer shall report directly to the chief of police, sheriff, commissioner of public safety or the commissioner's designee, or director of the judicial district department of correctional services or the director's designee, as the case may be.

[C81, §80D.9]

2001 Acts, ch 104, §5

80D.10 No reduction of regular force.

The governing body shall not reduce the authorized size of a regular law enforcement department or office because of the establishment or utilization of reserve peace officers.

[C81, §80D.10]

80D.11 Employee — pay.

While performing official duties, each reserve peace officer shall be considered an employee of the governing body which the officer represents and shall be paid a minimum of one dollar per year. The governing body of a city, a county, the state, or a judicial district department of correctional services may provide additional monetary assistance for the purchase and maintenance of uniforms and equipment used by reserve peace officers.

[C81, §80D.11]

83 Acts, ch 101, §3; 2001 Acts, ch 104, §6

80D.12 Benefits when injured.

Hospital and medical assistance and benefits as provided in chapter 85 shall be provided by the governing body to members of the reserve force who sustain injury in the course of performing official duties.

[C81, §80D.12]

80D.13 Insurance.

Liability and false arrest insurance shall be provided by the governing body to members of the reserve force while performing official duties in the same manner as for a regular peace officer.

[C81, §80D.13]

80D.14 No participation in a pension fund or retirement system.

This chapter shall not be construed to authorize or permit a reserve peace officer to become eligible for participation in a pension fund or retirement system created by the laws of this state of which regular peace officers may become members.

[C81, §80D.14]

80D.15 Civil defense auxiliary police exempt.

This chapter does not apply to local civil defense auxiliary police forces organized by local civil defense officials and trained according to standards established by the United States office of civil defense and contained in the code of federal regulations.

[C81, §80D.15]

CHAPTER 80E

DRUG ENFORCEMENT AND ABUSE PREVENTION

80E.1 Drug policy coordinator.
80E.2 Drug policy advisory council — membership — duties.
80E.3 Narcotics enforcement advisory council. Repealed by 2000 Acts, ch 1126, §8.

80E.1 Drug policy coordinator.

1. A drug policy coordinator shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The governor shall fill a vacancy in the office in the same manner as the original appointment was made. The coordinator shall be selected primarily for administrative ability. The coordinator shall not be selected on the basis of political affiliation and shall not engage in political activity while holding the office. The salary of the coordinator shall be fixed by the governor.

2. The coordinator shall:

a. Direct the governor's office of drug control policy, and coordinate and monitor all statewide narcotics enforcement efforts, coordinate and monitor all state and federal substance abuse treatment grants and programs, coordinate and monitor all statewide substance abuse prevention and education programs in communities and schools, and engage in such other related activities as required by law. The coordinator shall work in coordinating the efforts of the department of corrections, the department of education, the Iowa department of public health, the department of public safety, and the department of human services. The coordinator shall assist in the development and implementation of local and community strategies to fight substance abuse, including local law enforcement, education, and treatment activities.

b. Submit an annual report to the governor and general assembly by November 1 of each year concerning the activities and programs of the coordinator and other departments related to drug enforcement, substance abuse treatment programs, and substance abuse prevention and education programs. The report shall include an assessment of needs with respect to programs related to substance abuse treatment and narcotics enforcement.

c. Submit an advisory budget recommendation to the governor and general assembly concerning enforcement programs, treatment programs, and education programs related to drugs within the various departments. The coordinator shall work with these departments in developing the departmental budget requests to be submitted to the legislative fiscal bureau and the general assembly.

89 Acts, ch 225, §1; 2000 Acts, ch 1126, §1, 2
Confirmation, see §2.32

80E.2 Drug policy advisory council — membership — duties.

1. An Iowa drug policy advisory council is established which shall consist of the following fifteen members:

a. The drug policy coordinator, who shall serve as chairperson of the council.

b. The director of the department of corrections, or the director's designee.

c. The director of the department of education, or the director's designee.

d. The director of the Iowa department of public health, or the director's designee.

e. The commissioner of public safety, or the commissioner's designee.

f. The director of the department of human services, or the director's designee.

g. The director of the division of criminal and juvenile justice planning in the department of human rights, or the division director's designee.

h. A prosecuting attorney.

i. A licensed substance abuse treatment specialist.

j. A certified substance abuse prevention specialist.

k. A substance abuse treatment program director.

l. A justice of the Iowa supreme court, or judge, as designated by the chief justice of the supreme court.

m. A member representing the Iowa association of chiefs of police and peace officers.

n. A member representing the Iowa state police association.

o. A member representing the Iowa state sheriffs' and deputies' association.

The prosecuting attorney, licensed substance abuse treatment specialist, certified substance abuse prevention specialist, substance abuse treatment program director, member representing the Iowa association of chiefs of police and peace officers, member representing the Iowa state police association, and the member representing the Iowa state sheriffs' and deputies' association shall be appointed by the governor, subject to senate confirmation, for four-year terms beginning and ending as provided in section 69.19. A vacancy on the council shall be filled for the unexpired term in the same manner as the original appointment was made.

2. The council shall make policy recommendations to the appropriate departments concerning the administration, development, and coordination of programs related to substance abuse education, prevention, treatment, and enforcement.

3. The members of the council shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

4. The council shall meet at least quarterly throughout the year.

5. A majority of the members of the council constitutes a quorum, and a majority of the total membership of the council is necessary to act in any matter within the jurisdiction of the council.

89 Acts, ch 225, §2; 2000 Acts, ch 1126, §3, 4

80E.3 Narcotics enforcement advisory council. Repealed by 2000 Acts, ch 1126, § 8.

CHAPTER 81

ITINERANT MERCHANTS

Repealed by 80 Acts, ch 1094, §50; see chapters 9C and 555A

CHAPTER 81A

TRANSIENT MERCHANTS

Transferred to chapter 9C

CHAPTER 82

DOOR-TO-DOOR SALES

Transferred to chapter 555A

CHAPTER 83

COAL MINING

Transferred to chapter 207

CHAPTER 83A

MINES

Transferred to chapter 208

SUBTITLE 2

EMPLOYMENT SERVICES

CHAPTER 84

OIL, GAS, AND OTHER MINERALS

Transferred to chapter 458A

CHAPTER 84A

DEPARTMENT OF WORKFORCE DEVELOPMENT

84A.1 Department of workforce development — director — divisions.
84A.1A Workforce development board.
84A.1B Duties of the workforce development board.
84A.1C Workforce development corporation.
84A.2 Department and division responsibilities. Transferred to §84A.5.
84A.3 Job placement and training programs. Transferred to §84A.6.
84A.4 Regional advisory boards.
84A.5 Department of workforce development — primary responsibilities.
84A.6 Job placement and training programs.
84A.7 Iowa conservation corps.
84A.8 Workforce investment program.
84A.9 Statewide mentoring program.
84A.10 New employment opportunity program.

84A.1 Department of workforce development — director — divisions.

1. The department of workforce development is created to administer the laws of this state relating to unemployment compensation insurance, job placement and training, employment safety, labor standards, and workers' compensation.

2. The chief executive officer of the department of workforce development is the director who shall be appointed by the governor, subject to confirmation by the senate under the confirmation procedures of section 2.32. The director of the department of workforce development shall serve at the pleasure of the governor. The governor shall set the salary of the director within the applicable salary range established by the general assembly. The director shall be selected solely on the ability to administer the duties and functions granted to the director and the department and shall devote full time to the duties of the director. If the office of director becomes vacant, the vacancy shall be filled in the same manner as the original appointment was made.

The director of the department of workforce development shall, subject to the requirements of section 84A.1B, prepare, administer, and control the budget of the department and its divisions and shall approve the employment of all personnel of the department and its divisions.

The director of the department of workforce development shall direct the administrative and compliance functions and control the docket of the division of workers' compensation.

3. The department of workforce development shall include the division of labor services, the division of workers' compensation, and other divisions as appropriate.

86 Acts, ch 1245, §901; 87 Acts, ch 234, §424; 90 Acts, ch 1261, §25; 96 Acts, ch 1186, §8; 98 Acts, ch 1061, §1; 2002 Acts, ch 1050, §9

Subsections 2 and 3 amended

84A.1A Workforce development board.

1. An Iowa workforce development board is created, consisting of nine voting members appointed by the governor and eight ex officio nonvoting members. The ex officio nonvoting members are four legislative members; one president or the president's designee of the university of northern Iowa, the university of Iowa, or Iowa state university of science and technology, designated by the state board of regents on a rotating basis; one representative from the largest statewide public employees' organization representing state employees; one president or the president's designee of an independent Iowa college, appointed by the Iowa association of independent colleges and universities; and one superintendent

or the superintendent's designee of a community college, appointed by the Iowa association of community college presidents. The legislative members are two state senators, one appointed by the president of the senate, after consultation with the majority leader of the senate, and one appointed by the minority leader of the senate, after consultation with the president of the senate, from their respective parties; and two state representatives, appointed by the speaker after consultation with the majority and minority leaders of the house of representatives from their respective parties. Not more than five of the voting members shall be from the same political party. Of the nine voting members, one member shall represent a nonprofit organization involved in workforce development services, four members shall represent employers, and four members shall represent nonsupervisory employees. Of the members appointed by the governor to represent nonsupervisory employees, two members shall be from statewide labor organizations, one member shall be an employee representative of a labor management council, and one member shall be a person with experience in worker training programs. The governor shall consider recommendations from statewide labor organizations for the members representing nonsupervisory employees. The governor shall appoint the nine voting members of the workforce development board for a term of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate, and the governor's appointments shall include persons knowledgeable in the area of workforce development.

2. A vacancy on the workforce development board shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

3. The workforce development board shall meet in May of each year for the purpose of electing one of its voting members as chairperson and one of its voting members as vice chairperson. However, the chairperson and the vice chairperson shall not be from the same political party. The workforce development board shall meet at the call of the chairperson or when any five members of the workforce development board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the workforce development board. A majority of the voting members constitutes a quorum.

4. Members of the workforce development board, the director of the department of workforce development, and other employees of the department of workforce development shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations for those purposes and the department of workforce development is subject to the budget requirements of chapter 8. Each member of the workforce development board may also be eligible to receive compensation as provided in section 7E.6.

5. If a member of the workforce development board has an interest, either direct or indirect, in a contract to which the department of workforce development is or is to be a party, the interest shall be disclosed to the workforce development board in writing and shall be set forth in the minutes of a meeting of the workforce development board. The member having the interest shall not participate in action by the workforce development board with respect to the contract. This subsection does not limit the right of a member of the workforce development board to acquire an interest in bonds, or limit the right of a member to have an interest in a bank or other financial institution in which the funds of the department of workforce development are deposited or which is acting as trustee or paying agent under a trust indenture to which the department of workforce development is a party.

96 Acts, ch 1186, §9; 97 Acts, ch 110, §1; 2001 Acts, ch 24, §21; 2002 Acts, ch 1050, §10

Confirmation, see §2.32
Section amended

84A.1B Duties of the workforce development board.

The workforce development board shall do all of the following:

1. Develop and coordinate the implementation of a twenty-year comprehensive workforce development plan of specific goals, objectives, and policies for the state. This plan shall be updated annually and revised as necessary. All other state agencies involved in workforce development activities and the regional advisory boards for workforce development shall annually submit to the board for its review and potential inclusion in the plan their goals, objectives, and policies.

2. Prepare a five-year strategic plan for state workforce development to implement the specific comprehensive goals, objectives, and policies of the state. All other state agencies involved in workforce development activities and the regional advisory boards for workforce development shall annually submit to the board for its review and potential inclusion in the strategic plan their specific strategic plans and programs. The five-year strategic plan for state workforce development shall be updated annually.

3. Develop a method of evaluation of the attainment of goals and objectives from pursuing the policies of the five-year and twenty-year plans.

4. Implement the requirements of chapter 73.

5. Approve the budget of the department of workforce development related to workforce development as prepared by the director.

6. Establish guidelines, procedures, and policies for the awarding of grants for workforce development services by the department of workforce development.

7. Review grants or contracts awarded by the department of workforce development, with respect to the department's adherence to the guidelines and procedures and the impact on the five-year strategic plan for workforce development.

8. Make recommendations concerning the use of federal funds received by the department of workforce development with respect to the five-year and twenty-year workforce development plans.

9. Adopt all necessary rules related to workforce development recommended by the director prior to their adoption pursuant to chapter 17A.

96 Acts, ch 1186, §10; 2001 Acts, ch 24, §22

84A.1C Workforce development corporation.

1. *Nonprofit corporation for receiving and disbursing funds.* The Iowa workforce development board may organize a corporation under the provisions of chapter 504A for the purpose of receiving and disbursing funds from public or private sources to be used to further workforce development in this state and to accomplish the mission of the board.

2. *Incorporators.* The incorporators of the corporation organized pursuant to this section shall be the chairperson of the Iowa workforce development board, the director of the department of workforce development, and a member of the Iowa workforce development board selected by the chairperson.

3. *Board of directors.* The board of directors of the corporation organized pursuant to this section shall be the members of the Iowa workforce development board or their successors in office.

4. *Accepting grants in aid.* The corporation organized pursuant to this section may accept grants of money or property from the federal government or any other source and may upon its own order use its money, property, or other resources for any of the purposes identified in section 84A.1B.

99 Acts, ch 21, §1

84A.2 Department and division responsibilities. Transferred to § 84A.5.

84A.3 Job placement and training programs. Transferred to § 84A.6.

84A.4 Regional advisory boards.

1. A regional advisory board shall be established in each service delivery area as defined in section 84B.2. The members of the board shall be appointed by the governor, consistent with the requirements of federal law and in consultation with chief elected officials within the region. Chief elected officials responsible for recommendations for board membership shall include, but are not limited to, county elected officials, municipal elected officials, and community college directors. The membership of each board shall provide for equal representation of business and labor and shall include a county elected official, a city official, a representative of a school district, and a representative of a community college.

2. Each regional advisory board shall identify workforce development needs in its region, assist the workforce development board and the department of workforce development in the awarding of grants or contracts administered by the department of workforce development in that region and in monitoring the performance of the grants and contracts awarded, make annual reports as required by section 84A.1B, and make recommendations to the workforce development board and department of workforce development concerning workforce development.

3. Section 84A.1A, subsections 2, 3, and 5, apply to the members of a regional advisory board except that the board shall meet if a majority of the members of the board file a written request with the chairperson for a meeting. Members of a regional advisory board shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations for those purposes and the department of workforce development is subject to the budget requirements of chapter 8.

96 Acts, ch 1186, §11; 99 Acts, ch 21, §2; 2001 Acts, ch 24, §23; 2002 Acts, ch 1119, §8

Subsection 3 amended

84A.5 Department of workforce development — primary responsibilities.

The department of workforce development, in consultation with the workforce development board and the regional advisory boards, has the primary responsibilities set out in this section.

1. The department of workforce development shall develop and implement a workforce development system which increases the skills of the Iowa workforce, fosters economic growth and the creation of new high skill and high wage jobs through job placement and training services, increases the competitiveness of Iowa businesses by promoting high performance workplaces, and encourages investment in workers.

The workforce development system shall strive to provide high quality services to its customers including workers, families, and businesses. The department of workforce development shall maintain a common intake, assessment, and customer tracking system and to the extent practical provide one-stop services to customers at workforce development centers and other service access points.

The system shall include an accountability system to measure program performance, identify accomplishments, and evaluate programs to ensure goals and standards are met. The accountability

system shall use information obtained from the customer tracking system, the department of economic development, the department of education, and training providers to evaluate the effectiveness of programs. The department of economic development, the department of education, and training providers shall report information concerning the use of any state or federal training or retraining funds to the department of workforce development in a form as required by the department of workforce development. The accountability system shall evaluate all of the following:

a. The impact of services on wages earned by individuals.

b. The effectiveness of training services providers in raising the skills of the Iowa workforce.

c. The impact of placement and training services on Iowa's families, communities, and economy.

The department of workforce development shall make information from the customer tracking and accountability system available to the department of economic development, the department of education, and other appropriate public agencies for the purpose of assisting with the evaluation of programs administered by those departments and agencies and for planning and researching public policies relating to education and economic development.

2. The department of workforce development is responsible for administration of unemployment compensation benefits and collection of employer contributions under chapter 96, providing for the delivery of free public employment services established pursuant to chapter 96, other job placement and training programs established pursuant to section 84A.6, and the delivery of services located throughout the state.

3. The division of labor services is responsible for the administration of the laws of this state under chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, and 94A, and sections 30.7 and 85.68. The executive head of the division is the labor commissioner, appointed pursuant to section 91.2.

4. The division of workers' compensation is responsible for the administration of the laws of this state relating to workers' compensation under chapters 85, 85A, 85B, 86, and 87. The executive head of the division is the workers' compensation commissioner, appointed pursuant to section 86.1.

5. The director of the department of workforce development shall form a coordinating committee composed of the director of the department of workforce development, the labor commissioner, the workers' compensation commissioner, and other administrators. The committee shall monitor federal compliance issues relating to coordination of functions among the divisions.

6. The department of workforce development shall administer the following programs:

a. The Iowa conservation corps established under section 84A.7.

b. The workforce investment program established under section 84A.8.

c. The statewide mentoring program established under section 84A.9.

d. The workforce development centers established under chapter 84B.

7. The department of workforce development shall work with the department of economic development to incorporate workforce development as a component of community-based economic development.

8. The department of workforce development, in consultation with the applicable regional advisory board, shall select service providers, subject to approval by the workforce development board for each service delivery area. A service provider in each service delivery area shall be identified to coordinate the services throughout the service delivery area. The department of workforce development shall select service providers that, to the extent possible, meet or have the ability to meet the following criteria:

a. The capacity to deliver services uniformly throughout the service delivery area.

b. The experience to provide workforce development services.

c. The capacity to cooperate with other public and private agencies and entities in the delivery of education, workforce training, retraining, and workforce development services throughout the service delivery area.

d. The demonstrated capacity to understand and comply with all applicable state and federal laws, rules, ordinances, regulations, and orders, including fiscal requirements.

9. The department of workforce development shall provide access to information and documents necessary for employers and payors of income, as defined in sections 252D.16 and 252G.1, to comply with child support reporting and payment requirements. Access to the information and documents shall be provided at the central location of the department of workforce development and at each workforce development center.

10. The director of the department of workforce development may adopt rules pursuant to chapter 17A to charge and collect fees for enhanced or value-added services provided by the department of workforce development which are not required by law to be provided by the department and are not generally available from the department of workforce development. Fees shall not be charged to provide a free public labor exchange. Fees established by the director of the department of workforce development shall be based upon the costs of administering the service, with due regard to the anticipated time spent, and travel costs incurred, by personnel performing the service. The collection of fees authorized by this subsection shall be treated as repayment receipts as defined in section 8.2.

86 Acts, ch 1245, §902
C87, §84A.2
93 Acts, ch 180, §53; 96 Acts, ch 1186, §12
C97, §84A.5
98 Acts, ch 1061, §2, 11; 98 Acts, ch 1170, §19; 99 Acts, ch 21, §3; 99 Acts, ch 68, §1; 99 Acts, ch 130, §7; 2001 Acts, ch 61, §13; 2002 Acts, ch 1050, §11
Immigration service centers, pilot program continuation; 2002 Acts, 2nd Ex, ch 1003, §64, 79
Section amended

84A.6 Job placement and training programs.

1. The department of workforce development, in consultation with the workforce development board and the regional advisory boards, the department of education, and the department of economic development shall work together to develop policies encouraging coordination between skill development, labor exchange, and economic development activities.

2. The director of the department of workforce development, in cooperation with the department of human services, shall provide job placement and training to persons referred by the department of human services under the promoting independence and self-sufficiency through employment job opportunities and basic skills program established pursuant to chapter 239B and the food stamp employment and training program.

3. The director of the department of workforce development, in cooperation with the department of human rights and the vocational rehabilitation services division of the department of education, shall establish a program to provide job placement and training to persons with disabilities.

86 Acts, ch 1245, §903
C87, §84A.3
96 Acts, ch 1186, §13
C97, §84A.6
97 Acts, ch 41, §32; 2002 Acts, ch 1050, §12
Subsections 2 and 3 amended

84A.7 Iowa conservation corps.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Account" means the Iowa conservation corps account.

b. "Corps" means the Iowa conservation corps.

2. *Iowa conservation corps established.* The Iowa conservation corps is established in this state to provide meaningful and productive public service jobs for youth, unemployed persons, persons with disabilities, disadvantaged persons, and elderly persons, and to provide participants with an opportunity to explore careers, gain work experience, and contribute to the general welfare of their communities and the state. The corps shall provide opportunities in the areas of natural resource and wildlife conservation, park maintenance and restoration, land management, energy savings, community improvement projects, tourism, economic development, and work benefiting human services programs. The department of workforce development shall administer the corps and shall adopt rules governing its operation, eligibility for participation, cash contributions, and implementation of an incentive program.

3. *Funding.* Corps projects shall be funded by appropriations to the Iowa conservation corps account and by cash, services, and material contributions made by other state agencies or local public and private agencies. Public and private entities who benefit from a corps project shall contribute at least thirty-five percent of the total project budget. The contributions may be in the form of cash, materials, or services. Materials and services shall be intended for the project and acceptable to the department of workforce development. Minimum levels of contributions shall be prescribed in rules adopted by the department of workforce development.

4. *Account created.* The Iowa conservation corps account is established within and administered by the department of workforce development. The account shall include all appropriations made to programs administered by the corps, and may also include moneys contributed by a private individual or organization, or a public entity for the purpose of implementing corps programs and projects. The department of workforce development may establish an escrow account within the department and obligate moneys within that escrow account for tuition payments to be made beyond the term of any fiscal year. Interest earned on moneys in the Iowa conservation corps account shall be credited to the account.

5. *Participant eligibility.* Notwithstanding any contrary provision of chapters 19A and 96, a person employed through an Iowa conservation corps program shall be exempt from merit system requirements and shall not be eligible to receive unemployment compensation benefits.

96 Acts, ch 1186, §14; 97 Acts, ch 23, §8; 99 Acts, ch 21, §4; 2002 Acts, ch 1050, §13
Subsections 3 and 4 amended

84A.8 Workforce investment program.

A workforce investment program is established to enable more Iowans to enter or reenter the workforce. The workforce investment program shall provide training and support services to population groups that have historically faced barriers to employment. The department of workforce development shall administer the workforce investment program and shall adopt rules governing its operation and eligibility guidelines for participation.

96 Acts, ch 1186, §15

84A.9 Statewide mentoring program.

A statewide mentoring program is established to recruit, screen, train, and match individuals in a mentoring relationship. The department of workforce development shall administer the program in collaboration with the departments of human services, education, and human rights. The availability of the program is subject to the funding appropriated for the purposes of the program.

96 Acts, ch 1186, §16

84A.10 New employment opportunity program.

The department of workforce development shall implement and administer a new employment opportunity program to assist individuals in underutilized segments of Iowa's workforce, including but not limited to the persons with physical or mental disabilities, persons convicted of a crime, or minority persons between the ages of twelve and twenty-five, to gain and retain employment. The program shall be designed to complement existing employment and training programs by providing additional flexibility and services that are often needed by individuals in underutilized segments of the workforce to gain and retain employment. Services provided under the program may include, but are not limited to, transportation costs, child care, health care, health care insurance, on-the-job training, career interest inventory assessments, employability skills assessment, short-term basic education, internships, mentoring, assisting businesses with compliance issues related to the federal Americans with Disabilities Act of 1990, and reducing perceived risks that cause these populations to be underutilized. The department shall adopt rules pursuant to chapter 17A to administer the program, including rules relating to eligibility criteria, eligible populations, and services to implement the intent of this section.

2000 Acts, ch 1230, §20

CHAPTER 84B

WORKFORCE DEVELOPMENT CENTERS

84B.1 Workforce development centers.
84B.2 Workforce development centers — location.

84B.1 Workforce development centers.

The department of workforce development, in consultation with the departments of economic development, education, elder affairs, human services, and human rights, and the department for the blind, shall establish guidelines for colocating state and federal employment and training programs in centers providing services at the local level. The centers shall be known as workforce development centers. The departments shall also jointly establish an integrated management information system for linking the programs within a local center to the same programs within other local centers and to the state. The guidelines shall provide for local design and operation within the guidelines. The core services available at a center shall include but are not limited to all of the following:

1. *Information.* Provision of information shall include labor exchange and labor market information as well as career guidance and occupational information. Training and education institutions which receive state or federal funding shall provide to the centers consumer-related information on their programs, graduation rates, wage scales for graduates, and training program prerequisites. Information from local employers, unions, training programs, and educators shall be collected in order to identify demand industries and occupations. Industry and occupation demand information should be published as frequently as possible and be made available through centers.

2. *Assessment.* Individuals shall receive basic assessment regarding their own skills, interests, and related opportunities for employment and training. Assessments are intended to provide individuals with realistic information in order to guide them into training or employment situations. The basic assessment may be provided by the center or by existing service providers such as community colleges or by a combination of the two.

3. *Training accounts.* Training accounts may be established for both basic skill development and vocational or technical training. There shall be no training assistance or limited training assistance in those training areas a center has determined are oversupplied or are for general life improvement.

4. *Referral to training programs or jobs.* Based upon individual assessments, a center shall provide individuals with referrals to other community resources, training programs, and employment opportunities.

5. *Job development and job placement.* A center shall be responsible for job development activities and job placement services. A center shall seek to create a strong tie to the local job market by working with both business and union representatives.

93 Acts, ch 97, §12; 96 Acts, ch 1186, §17

84B.2 Workforce development centers — location.

A workforce development center, as provided in section 84B.1, shall be located in each service delivery area. Each workforce development center shall also maintain a presence, through satellite offices or electronic means, in each county located within that service delivery area. For purposes of this section, *"service delivery area"* means the area included within a merged area, as defined in section 260C.2, realigned to the closest county border as determined by the department of workforce development. However, if the state workforce development board determines that an area of the state would be adversely affected by the designation of the service delivery areas by the department, the department may, after consultation with the applicable regional advisory boards and with the approval of the state workforce development board, make accommodations in determining the service delivery areas, including, but not limited to, the creation of a new service delivery area. In no event shall the department create more than sixteen service delivery areas.

96 Acts, ch 1186, §18

CHAPTER 85

WORKERS' COMPENSATION

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85.1 Inapplicability of chapter.

Except as provided in subsection 6 of this section, this chapter does not apply to:

1. Any employee engaged in any type of service in or about a private dwelling except that after July 1, 1997, this chapter shall apply to such persons who earn one thousand five hundred dollars or more from such employer for whom employed at the time of the injury during the twelve consecutive months prior to the injury, provided the employee is not a regular member of the household. For purposes of this subsection, *"member of the household"* is defined to be the spouse of the employer or relatives of either the employer or spouse residing on the premises of the employer.

2. Persons whose employment is purely casual and not for the purpose of the employer's trade or business, except that after July 1, 1997, this chapter shall apply to such employees who earn one thousand five hundred dollars or more from such employer for whom employed at the time of the injury during the twelve consecutive months prior to the injury.

3. Persons engaged in agriculture, insofar as injuries incurred by employees while engaged in agricultural pursuits or any operations immediately connected therewith whether on or off the premises of the employer, except:

a. This chapter applies to persons not specifically exempted by paragraph *"b"* of this subsection if at the time of injury the person is employed by an employer whose total cash payroll to one or more persons other than those exempted by paragraph *"b"* of this subsection amounted to two thousand five hundred dollars or more during the preceding calendar year.

b. The following persons or employees or groups of employees are specifically included within the exemption from coverage of this chapter provided by this subsection:

(1) The spouse of the employer, parents, brothers, sisters, children, and stepchildren of either the employer or the spouse of the employer, and the spouses of the brothers, sisters, children, and stepchildren of either the employer or the spouse of the employer.

(2) The spouse of a partner of a partnership, the parents, brothers, sisters, children, and stepchildren of either a partner or the spouse of a partner, and the spouses of the brothers, sisters, children, and stepchildren of either a partner or the spouse of a partner, who are employed by the partnership and actually engaged in agricultural pursuits or operations immediately connected with the agricultural pursuits either on or off the premises of the partnership. For the purpose of this section, *"partnership"* includes partnerships, limited partnerships, and joint ventures.

(3) Officers of a family farm corporation or members of a limited liability company, spouses of the officers or members, the parents, brothers, sisters, children, and stepchildren of either the officers or members, or the spouses of the officers or members, and the spouses of the brothers, sisters, children, and stepchildren of either the officers or members, or the spouses of the officers or members who are employed by the corporation or limited liability company, the primary purpose of which, although not necessarily the stated purpose, is farming or ownership of agricultural land, and who are actually engaged in agricultural pursuits or operations immediately connected with the agricultural pursuits either on or off the premises of the corporation or limited liability company.

(4) A person engaged in agriculture as an owner of agricultural land, as a farm operator, or as a person engaged in agriculture who is exempt from coverage under this chapter by subsection 3, paragraph *"b"*, subparagraph (1), (2), or (3), while exchanging labor with another owner of agricultural land, farm operator, or person engaged in agriculture who is exempt from coverage under this chapter by subsection 3, paragraph *"b"*, subparagraph (1), (2), or (3), for the mutual benefit of all such persons.

4. Persons entitled to benefits pursuant to chapters 410 and 411.

5. The president, vice president, secretary, and treasurer of a corporation other than a family farm corporation, not to exceed four officers per

corporation, if such an officer knowingly and voluntarily rejects workers' compensation coverage pursuant to section 87.22.

6. Employers may with respect to an employee or a classification of employees exempt from coverage provided by this chapter pursuant to subsection 1, 2, 3, 4, or 5, other than the employee or classification of employees with respect to whom a rule of liability or a method of compensation is established by the Congress of the United States, assume a liability for compensation imposed upon employers by this chapter, for the benefit of employees within the coverage of this chapter, by the purchase of valid workers' compensation insurance specifically including the employee or classification of employees. The purchase of and acceptance by an employer of valid workers' compensation insurance applicable to the employee or classification of employees constitutes an assumption by the employer of liability without any further act on the part of the employer, but only with respect to the employee or classification of employees as are within the coverage of the workers' compensation insurance contract and only for the time period in which the insurance contract is in force. Upon an election of such coverage, the employee or classification of employees shall accept compensation in the manner provided by this chapter and the employer shall be relieved from any other liability for recovery of damage, or other compensation for injury.

[S13, §2477-m; C24, 27, 31, 35, 39, §**1361;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.1; 82 Acts, ch 1161, §1, 2, ch 1221, §1]

83 Acts, ch 36, §1, 2, 8; 84 Acts, ch 1067, §14; 96 Acts, ch 1059, §1; 97 Acts, ch 43, §1, 2

85.1A Proprietors, limited liability company members, limited liability partners, and partners.

A proprietor, limited liability company member, limited liability partner, or partner who is actively engaged in the proprietor's, limited liability company member's, limited liability partner's, or partner's business on a substantially full-time basis may elect to be covered by the workers' compensation law of this state by purchasing valid workers' compensation insurance specifically including the proprietor, limited liability company member, limited liability partner, or partner. The election constitutes an assumption by the employer of workers' compensation liability for the proprietor, limited liability company member, limited liability partner, or partner for the time period in which the insurance contract is in force. The proprietor, limited liability company member, limited liability partner, or partner shall accept compensation in the manner provided by the workers' compensation law and the employer is relieved from any other liability for recovery of damages, or other compensation for injury.

86 Acts, ch 1074, §1; 96 Acts, ch 1059, §2; 2001 Acts, ch 87, §1

85.2 Compulsory when.

Where the state, county, municipal corporation, school corporation, area education agency, or city under any form of government is the employer, the provisions of this chapter for the payment of compensation and amount thereof for an injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee, except as otherwise provided in section 85.1. For the purposes of this chapter elected and appointed officials shall be employees.

[S13, §2477-m; C24, 27, 31, 35, 39, §**1362;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.2]

85.3 Acceptance presumed — notice to nonresident employers.

1. Every employer, not specifically excepted by the provisions of this chapter, shall provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury.

2. Any employer who is a nonresident of this state, for whom services are performed within this state by any employee, is deemed to be doing business in this state by virtue of having such services performed and the employer and employee shall be subject to the jurisdiction of the workers' compensation commissioner and to all of the provisions of this chapter, chapters 85A, 85B, 86, and 87, as to any and all personal injuries sustained by the employee arising out of and in the course of such employment within this state. In addition, every corporation, individual, personal representative, partnership, or association that has the necessary minimum contact with this state shall be subject to the jurisdiction of the workers' compensation commissioner, and the workers' compensation commissioner shall hold such corporation, individual, personal representative, partnership, or association amenable to suit in this state in every case not contrary to the provisions of the Constitution of the United States.

3. Service of process or original notice upon a nonresident employer may be performed as provided in section 617.3 or as provided in the Iowa rules of civil procedure. In addition, service may be made on any corporation, individual, personal representative, partnership, or association that has the necessary minimum contact with this state as provided in rule of civil procedure 1.305 within or without this state or, if such service cannot be made, in any manner consistent with due process of law prescribed by the workers' compen-

sation commissioner.

In addition to those persons authorized to receive personal service as in civil actions as permitted by chapter 17A and this chapter, such employer shall be deemed to have appointed the secretary of state of this state as its lawful attorney upon whom may be served or delivered any and all notices authorized or required by the provisions of this chapter, chapters 85A, 85B, 86, 87, and 17A, and to agree that any and all such services or deliveries of notice on the secretary of state shall be of the same legal force and validity as if personally served upon or delivered to such nonresident employer in this state.

This section does not limit or affect the right to serve an original notice upon any corporation, individual, personal representative, partnership, or association within or without this state in any manner otherwise permitted by statute or rule.

4. For purposes of this section, a nonresident employer is any employer that is not a resident of Iowa as defined in section 617.3.

[S13, §2477-m; C24, 27, 31, 35, 39, §**1363;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.3]

98 Acts, ch 1061, §11; 2000 Acts, ch 1007, §1; 2000 Acts, ch 1232, §46

85.4 to 85.15 Repealed by 70 Acts, ch 1051, § 3.

85.16 Willful injury — intoxication.

No compensation under this chapter shall be allowed for an injury caused:

1. By the employee's willful intent to injure the employee's self or to willfully injure another.

2. By the employee's intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, if the intoxication was a substantial factor in causing the injury.

3. By the willful act of a third party directed against the employee for reasons personal to such employee.

[S13, §2477-m, -m1; C24, 27, 31, 35, 39, §**1376;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.16]

83 Acts, ch 105, §1

85.17 Repealed by 70 Acts, ch 1051, § 5.

85.18 Contract to relieve not operative.

No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided.

[S13, §2477-m7; C24, 27, 31, 35, 39, §**1378;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.18]

85.19 Repealed by 70 Acts, ch 1051, § 5.

85.20 Rights of employee exclusive.

The rights and remedies provided in this chapter, chapter 85A or chapter 85B for an employee, or a student participating in a school-to-work program as provided in section 85.61, on account of injury, occupational disease or occupational hearing loss for which benefits under this chapter, chapter 85A or chapter 85B are recoverable, shall be the exclusive and only rights and remedies of the employee or student, the employee's or student's personal or legal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury, occupational disease, or occupational hearing loss against any of the following:

1. Against the employee's employer.

2. Against any other employee of such employer, provided that such injury, occupational disease, or occupational hearing loss arises out of and in the course of such employment and is not caused by the other employee's gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another.

3. For a student participating in a school-to-work program, against the student's school district of residence, receiving school district if the student is participating in open enrollment under section 282.18, accredited nonpublic school, community college, and directors, officers, authorities, and employees of the applicable school corporation.

[S13, §2477-m2; C24, 27, 31, 35, 39, §**1380;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.20]

97 Acts, ch 37, §1

85.21 Payments concerning liability disputes.

1. The workers' compensation commissioner may order any number or combination of alleged workers' compensation insurance carriers and alleged employers, which are parties to a contested case or to a dispute which could culminate in a contested case, to pay all or part of the benefits due to an employee or an employee's dependent or legal representative if any of the carriers or employers agree, or the commissioner determines after an evidentiary hearing, that one or more of the carriers or employers is liable to the employee or to the employee's dependent or legal representative for benefits under this chapter or under chapter 85A or 85B, but the carriers or employers cannot agree, or the commissioner has not determined which carriers or employers are liable.

2. Unless waived by the carriers or employers ordered to pay benefits, the workers' compensation commissioner shall order an employer, which is not ordered to pay benefits and which does not have in force a policy of workers' compensation insurance issued by any carrier which is a party to the case or dispute and covering the claim made by the employee or the employee's dependent or legal representative, to post a bond or to deposit cash with the commissioner equal to the benefits paid

or to be paid by the carriers or employers ordered to pay benefits. If any employer is ordered by the commissioner to post bond or to deposit cash, the employers or carriers ordered to pay benefits are not obligated to pay benefits until the bond is posted or the cash is deposited. The commissioner may order the bond or cash deposit to be increased.

3. When liability is finally determined by the workers' compensation commissioner, the commissioner shall order the carriers or employers liable to the employee or to the employee's dependent or legal representative to reimburse the carriers or employers which are not liable but were required to pay benefits. Benefits paid or reimbursed pursuant to an order authorized by this section do not require the filing of a memorandum of agreement. However, a contested case for benefits under this chapter or under chapter 85A or 85B shall not be maintained against a party to a case or dispute resulting in an order authorized by this section unless the contested case is commenced within three years from the date of the last benefit payment under the order. The commissioner may determine liability for the payment of workers' compensation benefits under this section.

[C77, 79, 81, §86.20; 82 Acts, ch 1161, §22]
98 Acts, ch 1061, §11

85.22 Liability of others — subrogation.

When an employee receives an injury or incurs an occupational disease or an occupational hearing loss for which compensation is payable under this chapter, chapter 85A or chapter 85B, and which injury or occupational disease or occupational hearing loss is caused under circumstances creating a legal liability against some person, other than the employee's employer or any employee of such employer as provided in section 85.20 to pay damages, the employee, or the employee's dependent, or the trustee of such dependent, may take proceedings against the employer for compensation, and the employee or, in case of death, the employee's legal representative may also maintain an action against such third party for damages. When an injured employee or the employee's legal representative brings an action against such third party, a copy of the original notice shall be served upon the employer by the plaintiff, not less than ten days before the trial of the case, but a failure to give such notice shall not prejudice the rights of the employer, and the following rights and duties shall ensue:

1. If compensation is paid the employee or dependent or the trustee of such dependent under this chapter, the employer by whom the same was paid, or the employer's insurer which paid it, shall be indemnified out of the recovery of damages to the extent of the payment so made, with legal interest, except for such attorney fees as may be allowed, by the district court, to the injured employee's attorney or the attorney of the employee's personal representative, and shall have a lien on the claim for such recovery and the judgment thereon for the compensation for which the employer or insurer is liable. In order to continue and preserve the lien, the employer or insurer shall, within thirty days after receiving notice of such suit from the employee, file, in the office of the clerk of the court where the action is brought, notice of the lien.

2. In case the employee fails to bring such action within ninety days, or where a city or a city under special charter is such third party, within thirty days after written notice so to do given by the employer or the employer's insurer, as the case may be, then the employer or the insurer shall be subrogated to the rights of the employee to maintain the action against such third party, and may recover damages for the injury to the same extent that the employee might. In case of recovery, the court shall enter judgment for distribution of the proceeds thereof as follows:

a. A sum sufficient to repay the employer for the amount of compensation actually paid by the employer to that time.

b. A sum sufficient to pay the employer the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of compensation for which the employer is liable, but the sum is not a final adjudication of the future payments which the employee is entitled to receive and if the sum received by the employer is in excess of the amount required to pay the compensation, the excess shall be paid to the employee.

c. The balance, if any, shall be paid over to the employee.

3. Before a settlement shall become effective between an employee or an employer and such third party who is liable for the injury, it must be with the written consent of the employee, in case the settlement is between the employer or insurer and such third person; and the consent of the employer or insurer, in case the settlement is between the employee and such third party; or on refusal of consent, in either case, then upon the written approval of the workers' compensation commissioner.

4. A written memorandum of any settlement, if made, shall be filed by the employer or insurance carrier in the office of the workers' compensation commissioner.

5. For subrogation purposes hereunder, any payment made unto an injured employee, the employee's guardian, parent, next friend, or legal representative, by or on behalf of any third party, or the third party's principal or agent liable for, connected with, or involved in causing an injury to such employee shall be considered as having been so paid as damages resulting from and because said injury was caused under circumstances creating a legal liability against said third party, wheth-

er such payment be made under a covenant not to sue, compromise settlement, denial of liability or otherwise.

6. When the state of Iowa has paid any compensation or benefits under the provisions of this chapter, the word *"employer"* as used in this section shall mean and include the state of Iowa.

[S13, §2477-m6; C24, 27, 31, 35, 39, §**1382;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.22]

83 Acts, ch 105, §2; 98 Acts, ch 1061, §11

85.23 Notice of injury — failure to give.

Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed.

[S13, §2477-m8; C24, 27, 31, 35, 39, §**1383;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.23]

85.24 Form of notice.

No particular form of notice shall be required, but may be substantially as follows:

To . . . . . .

You are hereby notified that on or about the . . . . . day of . . . . . (month), ... (year), personal injury was sustained by . . . . . , while in your employ at . . . . . (Give name and place employed and point where located when injury occurred.) and that compensation will be claimed therefor.

Signed . . . . . .

No variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of employment on or about a specified time, at or near a certain place.

[S13, §2477-m8; C24, 27, 31, 35, 39, §**1384;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.24]

2000 Acts, ch 1058, §56

85.25 Service of notice.

The notice may be served on anyone upon whom an original notice may be served in civil cases. Service may be made by any person, who shall make return verified by affidavit upon a copy of the notice, showing the date and place of service and upon whom served; but no special form of the return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time.

[S13, §2477-m8; C24, 27, 31, 35, 39, §**1385;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.25]

Service of notice, R.C.P. 1.305, 1.306

85.26 Limitation of actions — who may maintain action.

1. An original proceeding for benefits under this chapter or chapter 85A, 85B, or 86, shall not be maintained in any contested case unless the proceeding is commenced within two years from the date of the occurrence of the injury for which benefits are claimed or, if weekly compensation benefits are paid under section 86.13, within three years from the date of the last payment of weekly compensation benefits.

2. An award for payments or an agreement for settlement provided by section 86.13 for benefits under this chapter or chapter 85A or 85B, where the amount has not been commuted, may be reviewed upon commencement of reopening proceedings by the employer or the employee within three years from the date of the last payment of weekly benefits made under the award or agreement. If an award for payments or agreement for settlement as provided by section 86.13 for benefits under this chapter or chapter 85A or 85B has been made and the amount has not been commuted, or if a denial of liability is not filed with the workers' compensation commissioner and notice of the denial is not mailed to the employee, in the form and manner required by the commissioner, within six months of the commencement of weekly compensation benefits, the commissioner may at any time upon proper application make a determination and appropriate order concerning the entitlement of an employee to benefits provided for in section 85.27. The failure to file a denial of liability does not constitute an admission of liability under this chapter or chapter 85A, 85B, or 86.

3. Notwithstanding chapter 17A, the filing with the workers' compensation commissioner of the original notice or petition for an original proceeding or an original notice or petition to reopen an award or agreement of settlement provided by section 86.13, for benefits under this chapter or chapter 85A or 85B is the only act constituting "commencement" for purposes of this section.

4. No claim or proceedings for benefits shall be maintained by any person other than the injured employee, or the employee's dependent or legal representative if entitled to benefits.

[S13, §2477-m34; C24, 27, 31, 35, 39, §**1386, 1457;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §85.26, 86.34; C79, 81, §85.26; 82 Acts, ch 1161, §3]

83 Acts, ch 105, §3; 84 Acts, ch 1067, §15; 98 Acts, ch 1061, §3, 11

85.27 Services — release of information — charges — payment — debt collection prohibited.

1. The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish

reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

2. Any employee, employer or insurance carrier making or defending a claim for benefits agrees to the release of all information to which the employee, employer, or carrier has access concerning the employee's physical or mental condition relative to the claim and further waives any privilege for the release of the information. The information shall be made available to any party or the party's representative upon request. Any institution or person releasing the information to a party or the party's representative shall not be liable criminally or for civil damages by reason of the release of the information. If release of information is refused the party requesting the information may apply to the workers' compensation commissioner for relief. The information requested shall be submitted to the workers' compensation commissioner who shall determine the relevance and materiality of the information to the claim and enter an order accordingly.

3. Notwithstanding section 85.26, subsection 4, charges believed to be excessive or unnecessary may be referred by the employer, insurance carrier, or health service provider to the workers' compensation commissioner for determination, and the commissioner may utilize the procedures provided in sections 86.38 and 86.39, or set by rule, and conduct such inquiry as the commissioner deems necessary. Any health service provider charges not in dispute shall be paid directly to the health service provider prior to utilization of procedures provided in sections 86.38 and 86.39 or set by rule. A health service provider rendering treatment to an employee whose injury is compensable under this section agrees to be bound by such charges as allowed by the workers' compensation commissioner and shall not recover in law or equity any amount in excess of charges set by the commissioner. When a dispute under chapter 85, 85A, or 85B regarding reasonableness of a fee for medical services arises between a health service provider and an employer or insurance carrier, the health service provider, employer, or insurance carrier shall not seek payment from the injured employee.

4. For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care. In an emergency, the employee may choose the employee's care at the employer's expense, provided the employer or the employer's agent cannot be reached immediately. An application made under this subsection shall be considered an original proceeding for purposes of commencement and contested case proceedings under section 85.26. The hearing shall be conducted pursuant to chapter 17A. Before a hearing is scheduled, the parties may choose a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The workers' compensation commissioner shall issue a decision within ten working days of receipt of an application for alternate care made pursuant to a telephone hearing or within fourteen working days of receipt of an application for alternate care made pursuant to an in-person hearing. The employer shall notify an injured employee of the employee's ability to contest the employer's choice of care pursuant to this subsection.

5. When an artificial member or orthopedic appliance, whether or not previously furnished by the employer, is damaged or made unusable by circumstances arising out of and in the course of employment other than through ordinary wear and tear, the employer shall repair or replace it. When any crutch, artificial member or appliance, whether or not previously furnished by the employer, either is damaged or made unusable in conjunction with a personal injury entitling the employee to disability benefits, or services as provided by this section or is damaged in connection with employee actions taken which avoid such personal injury, the employer shall repair or replace it.

6. While a contested case proceeding for determination of liability for workers' compensation benefits is pending before the workers' compensation commissioner relating to an injury alleged to have given rise to treatment, no debt collection, as defined by section 537.7102, shall be undertaken against an employee or the employee's dependents for the collection of charges for that treatment rendered an employee by any health service provider. However, the health service provider may send one itemized written bill to the employee setting forth the amount of the charges in connection with the treatment after notification of the contested case proceeding.

7. If, after the third day of incapacity to work following the date of sustaining a compensable in-

jury which does not result in permanent partial disability, or if, at any time after sustaining a compensable injury which results in permanent partial disability, an employee, who is not receiving weekly benefits under section 85.33 or section 85.34, subsection 1, returns to work and is required to leave work for one full day or less to receive services pursuant to this section, the employee shall be paid an amount equivalent to the wages lost at the employee's regular rate of pay for the time the employee is required to leave work. The employer shall make the payments under this subsection as wages to the employee after making such deductions from the amount as legally required or customarily made by the employer from wages. Payments made under this subsection shall be required to be reimbursed pursuant to any insurance policy covering workers' compensation. Payments under this subsection shall not be construed to be payment of weekly benefits.

[S13, §2477-m9; C24, 27, 31, 35, 39, §**1387;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.27; 82 Acts, ch 1161, §4]

92 Acts, ch 1120, §1; 92 Acts, ch 1181, §1; 94 Acts, ch 1065, §1, 2; 98 Acts, ch 1061, §11; 2001 Acts, ch 87, §2

85.28 Burial expense.

When death ensues from the injury, the employer shall pay the reasonable expenses of burial of such employee, not to exceed five thousand dollars, which shall be in addition to other compensation or any other benefit provided for in this chapter.

[S13, §2477-m9; C24, 27, 31, 35, 39, §**1388;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.28]

92 Acts, ch 1031, §1

85.29 Liability in case of no dependents.

When the injury causes death of an employee who leaves no dependents, then the employer shall pay the reasonable expense of the employee's sickness, if any, and the expense of burial, as provided in sections 85.27 and 85.28, and this shall be the only compensation; provided that if, from the date of the injury until the date of the death, any weekly compensation shall have become due and unpaid up to the time of the death, the same shall be payable to the estate of the deceased employee.

[S13, §2477-m9; C24, 27, 31, 35, 39, §**1389;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.29]

85.30 Maturity date and interest.

Compensation payments shall be made each week beginning on the eleventh day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to the weekly compensation payments, interest at the rate provided in section 535.3 for court judgments and decrees.

[C24, 27, 31, 35, 39, §**1391;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.30; 82 Acts, ch 1161, §5]

85.31 Death cases — dependents.

1. When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of the injury, during their lifetime, compensation upon the basis of eighty percent per week of the employee's average weekly spendable earnings, commencing from the date of death as follows:

a. To the surviving spouse for life or until remarriage, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum, if there are no children entitled to benefits.

b. To any child of the deceased until the child shall reach the age of eighteen, provided that a child beyond eighteen years of age shall receive benefits to the age of twenty-five if actually dependent, and the fact that a child is under twenty-five years of age and is enrolled as a full-time student in any accredited educational institution shall be a prima facie showing of actual dependency.

c. To any child who was physically or mentally incapacitated from earning at the time of the injury causing death for the duration of the incapacity from earning.

d. To all other dependents as defined in section 85.44 for the duration of the incapacity from earning.

The weekly benefit amount shall not exceed a weekly benefit amount, rounded to the nearest dollar, equal to two hundred percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28.

2. When the injury causes the death of a minor employee whose earnings were received by the parent and such parent was wholly dependent upon the earnings of the minor employee for support at the time of the injury, the compensation to be paid such parent shall be the weekly compensation for an adult with like earnings. For the purposes of this section a stepparent shall be regarded as a parent only when the stepparent has actually received the stepparent's principal support from the stepchild who died as a result of compensable injuries.

3. If the employee leaves dependents only partially dependent upon the employee's earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall be equal to the same proportion of the weekly payments for

the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury.

4. Where an employee is entitled to compensation under this chapter for an injury received, and death ensues from any cause not resulting from the injury for which the employee was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

5. Except as otherwise provided by treaty, whenever, under the provisions of this and chapters 86 and 87, compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay fifty percent of the compensation herein otherwise provided to such dependent, and the other fifty percent shall be paid into the second injury fund in the custody of the treasurer of state. But if the nonresident alien dependent is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefits of such law in as favorable degree as herein extended to the nonresident alien, then said compensation which would otherwise be payable to such dependent shall be paid into the second injury fund in the custody of the treasurer of state.

[S13, §2477-m9, -m10; C24, 27, 31, 35, 39, §**1392;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.31; 82 Acts, ch 1161, §6]

87 Acts, ch 111, §1; 94 Acts, ch 1065, §3; 96 Acts, ch 1186, §23

85.32 When compensation begins.

Except as to injuries resulting in permanent partial disability, compensation shall begin on the fourth day of disability after the injury.

If the period of incapacity extends beyond the fourteenth day following the date of injury, then the compensation due during the third week shall be increased by adding thereto an amount equal to three days of compensation.

[S13, §2477-m9; C24, 27, 31, 35, 39, §**1393;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.32]

85.33 Temporary total and temporary partial disability.

1. Except as provided in subsection 2 of this section, the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

2. *"Temporary partial disability"* or *"temporarily, partially disabled"* means the condition of an employee for whom it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, but is able to perform other work consistent with the employee's disability. "Temporary partial benefits" means benefits payable, in lieu of temporary total disability and healing period benefits, to an employee because of the employee's temporary partial reduction in earning ability as a result of the employee's temporary partial disability. Temporary partial benefits shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of injury.

3. If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

4. If an employee is entitled to temporary partial benefits under subsection 3 of this section, the employer for whom the employee was working at the time of injury shall pay to the employee weekly compensation benefits, as provided in section 85.32, for and during the period of temporary partial disability. The temporary partial benefit shall be sixty-six and two-thirds percent of the difference between the employee's weekly earnings at the time of injury, computed in compliance with section 85.36, and the employee's actual gross weekly income from employment during the period of temporary partial disability. If at the time of injury an employee is paid on the basis of the output of the employee, with a minimum guarantee pursuant to a written employment agreement, the minimum guarantee shall be used as the employee's weekly earnings at the time of injury. However, the weekly compensation benefits shall not exceed the payments to which the employee would be entitled under section 85.36 or section 85.37, or under subsection 1 of this section.

5. If an employee sustains an injury arising out of and in the course of employment while receiving temporary partial disability benefits, the rate of weekly compensation benefits shall be based on the employee's weekly earnings at the

time of the injury producing temporary partial disability.

6. For purposes of this section and section 85.34, subsection 1, *"employment substantially similar to the employment in which the employee was engaged at the time of injury"* includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed.

[S13, §2477-m9; C24, 27, 31, 35, 39, §**1394;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.33; 82 Acts, ch 1161, §7]

94 Acts, ch 1065, §4; 97 Acts, ch 48, §1

85.34 Permanent disabilities.

Compensation for permanent disabilities and during a healing period for permanent partial disabilities shall be payable to an employee as provided in this section. In the event weekly compensation under section 85.33 had been paid to any person for the same injury producing a permanent partial disability, any such amounts so paid shall be deducted from the amount of compensation payable for the healing period.

1. *Healing period.* If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

2. *Permanent partial disabilities.* Compensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1. The compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. The compensation shall be based upon the extent of the disability and upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to one hundred eighty-four percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. For all cases of permanent partial disability compensation shall be paid as follows:

a. For the loss of a thumb, weekly compensation during sixty weeks.

b. For the loss of a first finger, commonly called the index finger, weekly compensation during thirty-five weeks.

c. For the loss of a second finger, weekly compensation during thirty weeks.

d. For the loss of a third finger, weekly compensation during twenty-five weeks.

e. For the loss of a fourth finger, commonly called the little finger, weekly compensation during twenty weeks.

f. The loss of the first or distal phalange of the thumb or of any finger shall equal the loss of one-half of such thumb or finger and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount for the loss of such thumb or finger.

g. The loss of more than one phalange shall equal the loss of the entire finger or thumb.

h. For the loss of a great toe, weekly compensation during forty weeks.

i. For the loss of one of the toes other than the great toe, weekly compensation during fifteen weeks.

j. The loss of the first phalange of any toe shall equal the loss of one-half of such toe and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount provided for the loss of such toe.

k. The loss of more than one phalange shall equal the loss of the entire toe.

l. For the loss of a hand, weekly compensation during one hundred ninety weeks.

m. The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm and the compensation therefor shall be weekly compensation during two hundred fifty weeks.

n. For the loss of a foot, weekly compensation during one hundred fifty weeks.

o. The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefor shall be weekly compensation during two hundred twenty weeks.

p. For the loss of an eye, weekly compensation during one hundred forty weeks.

q. For the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during two hundred weeks.

r. (1) For the loss of hearing, other than occupational hearing loss as defined in section 85B.4, weekly compensation during fifty weeks, and for the loss of hearing in both ears, weekly compensation during one hundred seventy-five weeks.

(2) For occupational hearing loss, weekly compensation as provided in chapter 85B.

s. The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five hundred weeks and shall be compensated as such; however, if said employee is permanently and to-

tally disabled the employee may be entitled to benefits under subsection 3.

t. For permanent disfigurement of the face or head which shall impair the future usefulness and earnings of the employee in the employee's occupation at the time of receiving the injury, weekly compensation, for such period as may be determined by the workers' compensation commissioner according to the severity of the disfigurement, but not to exceed one hundred fifty weeks.

u. In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs *"a"* through *"t"* hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the disability bears to the body of the injured employee as a whole.

If it is determined that an injury has produced a disability less than that specifically described in said schedule, compensation shall be paid during the lesser number of weeks of disability determined, as will not exceed a total amount equal to the same percentage proportion of said scheduled maximum compensation.

3. *Permanent total disability.* Compensation for an injury causing permanent total disability shall be upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to two hundred percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount is equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. The weekly compensation is payable during the period of the employee's disability.

Such compensation shall be in addition to the benefits provided in sections 85.27 and 85.28. No compensation shall be payable under this subsection for any injury for which compensation is payable under subsection 2 of this section. In the event compensation has been paid to any person under any provision of this chapter, chapter 85A or chapter 85B for the same injury producing a total permanent disability, any such amounts so paid shall be deducted from the total amount of compensation payable for such permanent total disability.

4. *Credits for excess payments.* If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess shall be credited against the liability of the employer for permanent partial disability under section 85.34, subsection 2, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

5. *Recovery of employee overpayment.* If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a subsequent injury to the same employee. An overpayment can be established only when the overpayment is recognized in a settlement agreement approved under section 86.13, pursuant to final agency action in a contested case which was commenced within three years from the date that weekly benefits were last paid for the claim for which the benefits were overpaid, or pursuant to final agency action in a contested case for a prior injury to the same employee. The credit shall remain available for eight years after the date the overpayment was established. If an overpayment is established pursuant to this subsection, the employee and employer may enter into a written settlement agreement providing for the repayment by the employee of the overpayment. The agreement is subject to the approval of the workers' compensation commissioner. The employer shall not take any adverse action against the employee for failing to agree to such a written settlement agreement.

6. *Professional athlete.* For purposes of subsection 2, paragraph *"u"*, a determination of the degree of permanent disability of an individual who was injured in the course of performing as a professional athlete shall not be determined based upon employment as a professional athlete but shall be determined based upon other occupations the individual has previously performed or was reasonably suited to perform at the time of the injury.

[S13, §2477-m9; C24, 27, 31, 35, 39, §**1394 – 1396;** C46, 50, 54, 58, §85.33 – 85.35; C62, 66, 71, 73, 75, 77, 79, 81, §85.34; 82 Acts, ch 1161, §8 – 11]

87 Acts, ch 111, §2, 3; 94 Acts, ch 1065, §5 – 7; 96 Acts, ch 1186, §23; 97 Acts, ch 48, §2; 98 Acts, ch 1061, §4, 11; 98 Acts, ch 1160, §1

85.35 Settlement in contested case.

The parties to a contested case or persons who are involved in a dispute which could culminate in a contested case may enter into a settlement of any claim arising under this chapter or chapter 85A, 85B, or 86, providing for final disposition of the claim, provided that no final disposition affecting rights to future benefits may be had when the only dispute is the degree of disability resulting from an injury for which an award for payments or agreement for settlement under section 86.13 has been made. The settlement shall be in writing and submitted to the workers' compensation commis-

sioner for approval.

The parties may agree that settlement proceeds, which are paid in a lump sum, are intended to compensate the injured worker at a given monthly or weekly rate over the life expectancy of the injured worker. If such an agreement is reached, neither the weekly compensation rate which either has been paid, or should have been paid, throughout the case, nor the maximum statutory weekly rate applicable to the injury shall apply. Instead, the rate set forth in the settlement agreement shall be the rate for the case.

The settlement shall not be approved unless evidence of a bona fide dispute exists concerning any of the following:

1. The claimed injury arose out of or in the course of the employment.

2. The injured employee gave notice under section 85.23.

3. Whether or not the statutes of limitations as provided in section 85.26 have run. When the issue involved is whether or not the statute of limitations of section 85.26, subsection 2, has run, the final disposition shall pertain to the right to weekly compensation unless otherwise provided for in subsection 7 of this section.

4. The injury was caused by the employee's willful intent to injure the employee's self or to willfully injure another.

5. Intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, was a substantial factor in causing the employee's injury.

6. The injury was caused by the willful act of a third party directed against the employee for reasons personal to such employee.

7. This chapter or chapter 85A, 85B, 86 or 87 applies to the party making the claim.

8. A substantial portion of the claimed disability is related to physical or mental conditions other than those caused by the injury.

Approval by the workers' compensation commissioner shall be binding on the parties and shall not be construed as an original proceeding. Notwithstanding any provisions of this chapter and chapters 85A, 85B, 86 and 87, an approved settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 85B, 86 and 87. Such payment shall not be construed as the payment of weekly compensation.

[C75, 77, 79, 81, §85.35]

83 Acts, ch 105, §4; 89 Acts, ch 60, §2; 98 Acts, ch 1061, §11; 2001 Acts, ch 87, §3

85.36 Basis of computation.

The basis of compensation shall be the weekly earnings of the injured employee at the time of the injury. Weekly earnings means gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed, computed or determined as follows and then rounded to the nearest dollar:

1. In the case of an employee who is paid on a weekly pay period basis, the weekly gross earnings.

2. In the case of an employee who is paid on a biweekly pay period basis, one-half of the biweekly gross earnings.

3. In the case of an employee who is paid on a semimonthly pay period basis, the semimonthly gross earnings multiplied by twenty-four and subsequently divided by fifty-two.

4. In the case of an employee who is paid on a monthly pay period basis, the monthly gross earnings multiplied by twelve and subsequently divided by fifty-two.

5. In the case of an employee who is paid on a yearly pay period basis, the weekly earnings shall be the yearly earnings divided by fifty-two.

6. In the case of an employee who is paid on a daily or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

7. In the case of an employee who has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, the employee's weekly earnings shall be computed under subsection 6, taking the earnings, not including overtime or premium pay, for such purpose to be the amount the employee would have earned had the employee been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation. If the earnings of other employees cannot be determined, the employee's weekly earnings shall be the average computed for the number of weeks the employee has been in the employ of the employer.

8. If at the time of the injury the hourly earn-

ings have not been fixed or cannot be ascertained, the earnings for the purpose of calculating compensation shall be taken to be the usual earnings for similar services where such services are rendered by paid employees.

9. If an employee earns either no wages or less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality, the weekly earnings shall be one-fiftieth of the total earnings which the employee has earned from all employment during the twelve calendar months immediately preceding the injury.

a. In computing the compensation to be allowed a volunteer fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician as defined in section 147A.1, or emergency medical technician trainee, the earnings as a fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician, or emergency medical technician trainee shall be disregarded and the volunteer fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician, or emergency medical technician trainee shall be paid an amount equal to the compensation the volunteer fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician, or emergency medical technician trainee would be paid if injured in the normal course of the volunteer fire fighter's, emergency medical care provider's, reserve peace officer's, volunteer ambulance driver's, volunteer emergency rescue technician's, or emergency medical technician trainee's regular employment or an amount equal to one hundred and forty percent of the statewide average weekly wage, whichever is greater.

b. If the employee was an apprentice or trainee when injured, and it is established under normal conditions the employee's earnings should be expected to increase during the period of disability, that fact may be considered in computing the employee's weekly earnings.

c. In computing the compensation to be paid to any employee who, before the accident for which the employee claims compensation, was disabled and drawing compensation under the provisions of this chapter, the compensation for each subsequent injury shall be apportioned according to the proportion of disability caused by the respective injuries which the employee shall have suffered.

Paragraph *"c"* of this subsection shall not apply to compensable injuries arising under the second injury compensation Act.

d. If the employee was an inmate as defined in section 85.59, the inmate's actual earnings shall be disregarded, and the weekly compensation rate shall be as set forth in section 85.59.

10. If a wage, or method of calculating a wage, is used for the basis of the payment of a workers' compensation insurance premium for a proprietor, partner, limited liability company member, limited liability partner, or officer of a corporation, the wage or the method of calculating the wage is determinative for purposes of computing the proprietor's, partner's, limited liability company member's, limited liability partner's, or officer's weekly workers' compensation benefit rate.

11. In computing the compensation to be allowed an elected or appointed official, the official may choose either of the following payment options:

a. The official shall be paid an amount of compensation based on the official's weekly earnings as an elected or appointed official.

b. The earnings of the official as an elected or appointed official shall be disregarded and the official shall be paid an amount equal to one hundred forty percent of the statewide average weekly wage.

12. In the case of an employee injured in the course of performing as a professional athlete, the basis of compensation for weekly earnings shall be one-fiftieth of total earnings which the employee has earned from all employment for the previous twelve months prior to the injury.

[S13, §2477-m15; C24, 27, 31, 35, 39, §**1397;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.36; 82 Acts, ch 1161, §12, 13]

86 Acts, ch 1074, §2; 87 Acts, ch 91, §1; 90 Acts, ch 1046, §1; 95 Acts, ch 41, §2; 95 Acts, ch 140, §1, 2; 96 Acts, ch 1059, §3; 96 Acts, ch 1079, §3; 97 Acts, ch 48, §3; 2000 Acts, ch 1007, §2, 3; 2001 Acts, ch 87, §4

85.37 Compensation schedule.

If an employee receives a personal injury causing temporary total disability, or causing a permanent partial disability for which compensation is payable during a healing period, compensation for the temporary total disability or for the healing period shall be upon the basis provided in this section. The weekly benefit amount payable to any employee for any one week shall be upon the basis of eighty percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. However, as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it equals one hundred percent, one hundred thirty-three and one-third percent, one hundred sixty-six and two-thirds percent, and two hundred percent, respectively, of the statewide average weekly wage as determined above. Total weekly compensation for any employee shall not exceed eighty percent per week of the

employee's weekly spendable earnings. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage, or to the spendable weekly earnings of the employee, whichever are less.

Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28.

[S13, §2477-m9; C24, 27, 31, 35, 39, §**1390;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.37; 82 Acts, ch 1161, §14]

87 Acts, ch 111, §4; 96 Acts, ch 1186, §23

85.38 Reduction of obligations of employer.

1. *Contributions or donations.* The compensation herein provided shall be the measure of liability which the employer has assumed for injuries or death that may occur to employees in the employer's employment subject to the provisions of this chapter, and it shall not be in anywise reduced by contribution from employees or donations from any source.

2. *Credit for benefits paid under group plans.* In the event the employee with a disability shall receive any benefits, including medical, surgical, or hospital benefits, under any group plan covering nonoccupational disabilities contributed to wholly or partially by the employer, which benefits should not have been paid or payable if any rights of recovery existed under this chapter, chapter 85A, or chapter 85B, then the amounts so paid to the employee from the group plan shall be credited to or against any compensation payments, including medical, surgical, or hospital, made or to be made under this chapter, chapter 85A, or chapter 85B. The amounts so credited shall be deducted from the payments made under these chapters. Any nonoccupational plan shall be reimbursed in the amount deducted. This section shall not apply to payments made under any group plan which would have been payable even though there was an injury under this chapter or an occupational disease under chapter 85A or an occupational hearing loss under chapter 85B. Any employer receiving such credit shall keep the employee safe and harmless from any and all claims or liabilities that may be made against them by reason of having received the payments only to the extent of the credit.

If an employer denies liability under this chapter, chapter 85A, or chapter 85B, for payment for any medical services received by an employee with a disability, and the employee is a beneficiary under either an individual or group plan for nonoccupational illness, injury, or disability, the nonoccupational plan shall not deny payment for the medical services received on the basis that the employer's liability for the medical services under this chapter, chapter 85A, or chapter 85B is unresolved.

3. *Supplementation of workers' compensation benefits.* A public employer shall not supplement an employee's workers' compensation benefits by reducing the employee's sick leave, vacation leave, or earned compensatory time entitlements, unless the employer first notifies the employee of the employee's option to supplement and the employee elects to so supplement.

4. *Lien for hospital and medical services under chapter 249A.* In the event any hospital or medical services as provided in section 85.27 are paid by the state department of human services on behalf of an employee who is entitled to such benefits under the provisions of this chapter or chapter 85A or 85B, a lien shall exist as respects the right of such employee to benefits as described in section 85.27.

[S13, §2477-m12; C24, 27, 31, 35, 39, §**1398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.38]

83 Acts, ch 96, §160; 83 Acts, ch 153, §1; 84 Acts, ch 1086, §1; 96 Acts, ch 1129, §18; 97 Acts, ch 36, §1; 2002 Acts, ch 1050, §14

Subsection 4 amended

85.39 Examination of injured employees.

After an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. The refusal of the employee to submit to the examination shall suspend the employee's right to any compensation for the period of the refusal. Compensation shall not be payable for the period of suspension.

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history

of the injury to make a proper examination.

[S13, §2477-m11; C24, 27, 31, 35, 39, §**1399;** C46, 50, 54, 58, 62, §85.39; C66, 71, 73, 75, §85.34(2), 85.39; C77, 79, 81, §85.39; 82 Acts, ch 1161, §15]

85.40 Statement of earnings.

The employer shall furnish, upon request of an injured employee or dependent or any legal representative acting for such person, a statement of the earnings, wages, or salary and other matters relating thereto during the year or part of the year that such employee was in the employment of such employer for the year preceding the injury; but not more than one report shall be required on account of any one injury.

[C24, 27, 31, 35, 39, §**1400;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.40]

85.41 Refusal to furnish statement.

On failure of the employer to furnish such statement of earnings for thirty days after receiving written request therefor from an injured employee, the employee's agent, attorney, dependent, or legal representative, such employer shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §**1401;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.41]

85.42 Conclusively presumed dependent.

The following shall be conclusively presumed to be wholly dependent upon the deceased employee:

1. The surviving spouse, with the following exceptions:

a. When it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree.

b. When the surviving spouse was not married to the deceased at the time of the injury.

2. A child or children under eighteen years of age, and over said age if physically or mentally incapacitated from earning, whether actually dependent for support or not upon the parent at the time of the parent's death. An adopted child or children shall be regarded the same as issue of the body. A child or children, as used herein, shall also include any child or children conceived but not born at the time of the employee's injury, and any compensation payable on account of any such child or children shall be paid from the date of their birth. A stepchild or stepchildren shall be regarded the same as issue of the body only when the stepparent has actually provided the principal support for such child or children.

[S13, §2477-m16; C24, 27, 31, 35, 39, §**1402;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.42]

85.43 Payment to spouse.

If the deceased employee leaves a surviving spouse qualified under the provisions of section 85.42, the full compensation shall be paid to the surviving spouse, as provided in section 85.31; provided that where a deceased employee leave a surviving spouse and a dependent child or children the workers' compensation commissioner may make an order of record for an equitable apportionment of the compensation payments.

If the spouse dies, the benefits shall be paid to the person or persons wholly dependent on deceased, if any, share and share alike. If there are none wholly dependent, then such benefits shall be paid to partial dependents, if any, in proportion to their dependency for the periods provided in section 85.31.

If the deceased leaves dependent child or children who was or were such at the time of the injury, and the surviving spouse remarries, then and in such case, the payments shall be paid to the proper compensation trustee for the use and benefit of such dependent child or children for the period provided in section 85.31.

[S13, §2477-m16; C24, 27, 31, 35, 39, §**1403;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.43]

98 Acts, ch 1061, §11

85.44 Payment to actual dependents.

In all other cases, a dependent shall be one actually dependent or mentally or physically incapacitated from earning. Such status shall be determined in accordance with the facts as of the date of the injury. In such cases if there is more than one person, the compensation benefit shall be equally divided among them. If there is no one wholly dependent and more than one person partially dependent, the compensation benefit shall be divided among them in the proportion each dependency bears to their aggregate dependency.

[S13, §2477-m16; C24, 27, 31, 35, 39, §**1404;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.44]

85.45 Commutation.

Future payments of compensation may be commuted to a present worth lump sum payment on the following conditions:

1. When the period during which compensation is payable can be definitely determined.

2. When it shall be shown to the satisfaction of the workers' compensation commissioner that such commutation will be for the best interest of the person or persons entitled to the compensation, or that periodical payments as compared with a lump sum payment will entail undue expense, hardship, or inconvenience upon the employer liable therefor.

3. When the recipient of commuted benefits is a minor employee, the workers' compensation commissioner may order that such benefits be paid to a trustee as provided in section 85.49.

4. When a person seeking a commutation is a

surviving spouse, an employee with a permanent and total disability, or a dependent who is entitled to benefits as provided in section 85.31, subsection 1, paragraphs *"c"* and *"d"*, the future payments which may be commuted shall not exceed the number of weeks which shall be indicated by probability tables designated by the workers' compensation commissioner for death and remarriage, subject to the provisions of chapter 17A.

Future payments of compensation shall not be commuted to a present worth lump sum payment when the employee is an inmate as set forth in section 85.59.

[S13, §2477-m14; C24, 27, 31, 35, 39, §**1405;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.45]

96 Acts, ch 1129, §19; 98 Acts, ch 1061, §11

Intent; commutation of future payments to a present lump-sum payment; 86 Acts, ch 1246, §604

See also §87.11

85.46 Repealed by 77 Acts, ch 51, § 21.

85.47 Basis of commutation.

When the commutation is ordered, the workers' compensation commissioner shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. Upon the payment of such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which the liability of the employer under any agreement, award, finding, or judgment shall be discharged of record.

[S13, §2477-m14; C24, 27, 31, 35, 39, §**1407;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.47; 82 Acts, ch 1161, §16]

98 Acts, ch 1061, §11

Intent; commutation of future payments to a present lump-sum payment; 86 Acts, ch 1246, §604

85.48 Partial commutation.

When partial commutation is ordered, the workers' compensation commissioner shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees, with provisions for the payment of weekly compensation not included in the commutation, subject to the law applicable to such unpaid weekly payments; all remaining payments, if any, to be paid at the same time as though the commutation had not been made.

[S13, §2477-m15; C24, 27, 31, 35, 39, §**1408;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.48; 82 Acts, ch 1161, §17]

98 Acts, ch 1061, §11

85.49 Trustees for minors and dependents.

When a minor or a dependent who is mentally incompetent is entitled to weekly benefits under this chapter, or chapter 85A or 85B, payment shall be made to the parent, guardian, or conservator, who shall act as trustee, and the money coming into the trustee's hands shall be expended for the use and benefit of the person entitled to it under the direction and orders of a district judge. The trustee shall qualify and give bond in an amount as the district judge directs, which may be increased or diminished from time to time.

If the domicile or residence of the minor or dependent who is mentally incompetent is outside the state of Iowa, the workers' compensation commissioner may order and direct that benefits to the minors or dependents be paid to a guardian, conservator, or legal representative duly qualified under the laws of the jurisdiction wherein the minors or dependents shall be domiciled or reside. Proof of the identity and qualification of the guardian, conservator, or other legal representative shall be furnished to the workers' compensation commissioner.

[S13, §2477-m13; C24, 27, 31, 35, 39, §**1409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.49]

83 Acts, ch 186, §10039, 10201; 93 Acts, ch 70, §5; 96 Acts, ch 1129, §20; 98 Acts, ch 1061, §11

85.50 Report of trustee.

The trustee shall, on or before September 30 of each year, make reports, at such times as designated by the court, to the court of all money or property received or expended for the person for whom the parent, guardian, or conservator is acting as trustee.

[S13, §2477-m13; C24, 27, 31, 35, 39, §**1410;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.50]

83 Acts, ch 186, §10040, 10201; 93 Acts, ch 70, §6

85.51 Alien dependents in foreign country.

In case a deceased employee for whose injury or death compensation is payable leaves surviving an alien dependent or dependents residing outside the United States, the consul general, consul, vice consul, or consular agent of the nation of which the said dependent or dependents are citizens, or the duly appointed representative of such consular official resident in the state of Iowa, shall be regarded as the exclusive representative of such dependent or dependents, and said consular officials or their representatives shall have the same rights and powers in all matters of compensation which said nonresident aliens would have if resident in the state of Iowa.

[C24, 27, 31, 35, 39, §**1411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.51]

85.52 Consular officer as trustee.

Such consular officer or the officer's duly ap-

pointed representative resident in the state of Iowa shall file in the district court of the county in which the accident occurred resulting in the death of said employee evidence of the officer's or representative's authority, and thereupon the court shall appoint the officer or representative a trustee for such nonresident alien dependents, and thereafter the officer or representative shall be subject to the jurisdiction of said court until the final report of distribution and payment has been filed and approved. Such consular official or said representative shall qualify as such trustee by giving bond with approved sureties in a sum to be fixed by said court, and the amount of said bond may be increased or decreased from time to time as said court may direct.

[C24, 27, 31, 35, 39, §**1412;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.52]

85.53 Notice to consular officer.

If such consular officer, or the officer's duly appointed representative, shall file with the workers' compensation commissioner evidence of the officer's or representative's authority, the workers' compensation commissioner shall notify such consular officer or representative of the death of all employees leaving alien dependent, or dependents, residing in the country of said consular officer so far as same shall come to the commissioner's knowledge.

[C24, 27, 31, 35, 39, §**1413;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.53]

98 Acts, ch 1061, §11

85.54 Contracts to avoid compensation.

Any contract of employment, relief benefit, or insurance, or other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this chapter, shall be null and void; and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a simple misdemeanor.

[S13, §2477-m17; C24, 27, 31, 35, 39, §**1414;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.54]

85.55 Waivers prohibited — physical defects.

No employee or dependent to whom this chapter applies, shall have power to waive any of the provisions of this chapter in regard to the amount of compensation which may be payable to such employee or dependent hereunder. However, any person who has some physical defect which increases the risk of injury, may, subject to the approval of the workers' compensation commissioner, enter into a written agreement with the employee's employer waiving compensation for injuries which may occur directly or indirectly because of such physical defect, provided, however, that such waiver shall not affect the employee's benefits to be paid from the second injury fund under the provisions of section 85.64.

[S13, §2477-m17; C24, 27, 31, 35, 39, §**1415;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.55]

98 Acts, ch 1061, §11

85.56 Employees in interstate commerce.

So far as permitted, or not forbidden, by any Act of Congress, employers engaged in interstate or foreign commerce and their employees working only in this state shall be bound by the provisions of this chapter in like manner and with the same force and effect in every respect as by this chapter provided for other employers and employees.

[S13, §2477-m21; C24, 27, 31, 35, 39, §**1417;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §85.57; C79, 81, §85.56]

85.57 Employees of state. Repealed by 92 Acts, ch 1243, § 29.

85.58 Payment of state employees. Repealed by 92 Acts, ch 1243, § 29.

85.59 Benefits for inmates and offenders.

For the purposes of this section, the term *"inmate"* includes a person confined in a reformatory, state penitentiary, release center, or other state penal or correctional institution while that person works in connection with the maintenance of the institution, in an industry maintained in the institution, or in an industry referred to in section 904.809, or while on detail to perform services on a public works project.

For purposes of this section, *"inmate"* includes a person who is performing unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232. For purposes of this section, *"unpaid community service under the direction of the district court"* includes but is not limited to community service ordered and performed pursuant to section 598.23A.

For purposes of this section, an inmate on a work assignment under section 904.703 working in construction or maintenance at a public or charitable facility, or under assignment to another agency of state, county, or local government, shall be considered an employee of the state.

If an inmate is permanently incapacitated by injury in the performance of the inmate's work in connection with the maintenance of the institution, in an industry maintained in the institution, or in an industry referred to in section 904.809, while on detail to perform services on a public works project, or while performing services authorized pursuant to section 904.809, or is perma-

nently or temporarily incapacitated in connection with the performance of unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232, that inmate shall be awarded only the benefits provided in section 85.27 and section 85.34, subsections 2 and 3. The weekly rate for such permanent disability is equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury.

Weekly compensation benefits under this section may be determined prior to the inmate's release from the institution, but payment of benefits to an inmate shall commence as of the time of the inmate's release from the institution either upon parole or final discharge. However, if the inmate is awarded benefits for an injury incurred in connection with the performance of unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232, weekly compensation benefits under this section shall be determined and paid as in other workers' compensation cases.

If an inmate is receiving benefits under the provisions of this section and is recommitted to an institution covered by this section, the benefits shall immediately cease. If benefits cease because of the inmate's recommitment, the benefits shall resume upon subsequent release from the institution.

If death results from the injury, death benefits shall be awarded and paid to the dependents of the inmate as in other workers' compensation cases except that the weekly rate shall be equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury.

Payment under this section shall be made promptly out of appropriations which have been made for that purpose, if any. An amount or part thereof which cannot be paid promptly from the appropriation shall be paid promptly out of money in the state treasury not otherwise appropriated.

The time limit for commencing an original proceeding to determine entitlement to benefits under this section is the same as set forth in section 85.26. If an injury occurs to an inmate so as to qualify the inmate for benefits under this section, notwithstanding the fact that payments of weekly benefits are not commenced, an acknowledgment of compensability shall be filed with the workers' compensation commissioner within thirty days of the time the responsible authority receives notice or knowledge of the injury as required by section 85.23.

If a dispute arises as to the extent of disability when an acknowledgment of compensability is on file or when an award determining liability has been made, an action to determine the extent of disability must be commenced within one year of the time of the release of the inmate from the institution. This does not bar the right to reopen the claim as provided by section 85.26, subsection 2.

Responsibility for the filings required by chapter 86 for injuries resulting in permanent disability or death and as modified by this section shall be made in the same manner as for other employees of the institution.

[C79, 81, §85.59]

83 Acts, ch 101, §4; 84 Acts, ch 1280, §1; 85 Acts, ch 67, §11; 85 Acts, ch 177, §1; 87 Acts, ch 111, §5, 6; 88 Acts, ch 1165, §1; 90 Acts, ch 1251, §3; 93 Acts, ch 46, §1; 94 Acts, ch 1171, §1; 96 Acts, ch 1186, §23; 98 Acts, ch 1061, §11

See also §232.13

85.60 Injuries while in employment training or evaluation.

A person participating in a school-to-work program referred to in section 85.61, or receiving earnings while engaged in employment training or while undergoing an employment evaluation under the direction of a rehabilitation facility approved for purchase-of-service contracts or for referrals by the department of human services or the department of education, who sustains an injury arising out of and in the course of the school-to-work program participation, employment training, or employment evaluation is entitled to benefits as provided in this chapter, chapter 85A, chapter 85B, and chapter 86. Notwithstanding the minimum benefit provisions of this chapter, a person referred to in this section and entitled to benefits under this chapter is entitled to receive a minimum weekly benefit amount for a permanent partial disability under section 85.34, subsection 2, or for a permanent total disability under section 85.34, subsection 3, equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage computed pursuant to section 96.3 and in effect at the time of the injury.

86 Acts, ch 1104, §1; 97 Acts, ch 37, §2

85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. The word *"court"* wherever used in this and

chapters 86 and 87, unless the context shows otherwise, shall be taken to mean the district court.

2. *"Employer"* includes and applies to a person, firm, association, or corporation, state, county, municipal corporation, school corporation, area education agency, township as an employer of volunteer fire fighters, volunteer emergency rescue technicians, and emergency medical care providers only, benefited fire district, and the legal representatives of a deceased employer. *"Employer"* includes and applies to a rehabilitation facility approved for purchase-of-service contracts or for referrals by the department of human services or the department of education.

"Employer" also includes and applies to an eligible postsecondary institution as defined in section 261C.3, subsection 1, a school corporation, or an accredited nonpublic school if a student enrolled in the eligible postsecondary institution, school corporation, or accredited nonpublic school is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs *"a"* through *"f"*. However, if a student participating in a school-to-work program is participating in open enrollment under section 282.18, *"employer"* means the receiving district. *"Employer"* also includes and applies to a community college as defined in section 260C.2, if a student enrolled in the community college is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs *"a"* through *"f"*, and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program. If a student participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs *"a"* through *"f"*, is paid for services provided under the program, *"employer"* means any entity otherwise defined as an employer under this subsection which pays the student for providing services under the program.

3. *"Gross earnings"* means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits.

4. The words *"injury"* or *"personal injury"* shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.

5. *"Pay period"* means that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered.

6. *"Payroll taxes"* means an amount, determined by tables adopted by the workers' compensation commissioner pursuant to chapter 17A, equal to the sum of the following:

a. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

b. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under chapter 422, and any rules pursuant thereto, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

c. An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended, to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which the employee was injured.

7. The words *"personal injury arising out of and in the course of the employment"* shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

Personal injuries sustained by a volunteer fire fighter arise in the course of employment if the injuries are sustained at any time from the time the volunteer fire fighter is summoned to duty as a volunteer fire fighter until the time the volunteer fire fighter is discharged from duty by the chief of the volunteer fire department or the chief's designee.

Personal injuries sustained by volunteer emergency rescue technicians or emergency medical care providers as defined in section 147A.1 arise in the course of employment if the injuries are sustained at any time from the time the volunteer emergency rescue technicians or emergency medical care providers are summoned to duty until the time those duties have been fully discharged.

8. The words *"reserve peace officer"* shall mean a person defined as such by section 80D.1 who is not a full-time member of a paid law enforcement agency. A person performing such services shall not be classified as a casual employee.

9. *"Spendable weekly earnings"* is that amount remaining after payroll taxes are deducted from gross weekly earnings.

10. *"Volunteer fire fighter"* means any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fire fighter for a municipality, township or benefited fire district at the request of the chief or other person in command of the fire department of the municipality, township or benefited fire district, or of any other officer of the municipality, township or benefited fire district having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee.

11. *"Worker"* or *"employee"* means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer; an executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer; an official elected or appointed by the state, or a county, school district, area education agency, municipal corporation, or city under any form of government; a member of the Iowa state patrol; a conservation officer; and a proprietor, limited liability company member, limited liability partner, or partner who elects to be covered pursuant to section 85.1A, except as specified in this chapter.

"Worker" or *"employee"* includes an inmate as defined in section 85.59 and a person described in section 85.60.

"Worker" or *"employee"* includes an emergency medical care provider as defined in section 147A.1, a volunteer emergency rescue technician as defined in section 147A.1, a volunteer ambulance driver, or an emergency medical technician trainee, only if an agreement is reached between such worker or employee and the employer for whom the volunteer services are provided that workers' compensation coverage under chapters 85, 85A, and 85B is to be provided by the employer. An emergency medical care provider or volunteer emergency rescue technician who is a worker or employee under this paragraph is not a casual employee. *"Volunteer ambulance driver"* means a person performing services as a volunteer ambulance driver at the request of the person in charge of a fire department or ambulance service of a municipality. *"Emergency medical technician trainee"* means a person enrolled in and training for emergency medical technician certification.

"Worker" or *"employee"* includes a real estate agent who does not provide the services of an independent contractor. For the purposes of this paragraph a real estate agent is an independent contractor if the real estate agent is licensed by the Iowa real estate commission as a salesperson and both of the following apply:

a. Seventy-five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate salesperson is derived from one company and is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

b. The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to the services for state tax purposes.

"Worker" or *"employee"* includes a student enrolled in a public school corporation or accredited nonpublic school who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs *"a"* through *"f"*. *"Worker"* or *"employee"* also includes a student enrolled in a community college as defined in section 260C.2, who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs *"a"* through *"f"*, and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program.

12. The term *"worker"* or *"employee"* shall include the singular and plural. Any reference to a worker or employee who has been injured shall, when such worker or employee is dead, include the worker's or employee's dependents as herein defined or the worker's or employee's legal representatives; and where the worker or employee is a minor or incompetent, it shall include the minor's or incompetent's guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors all minor employees shall be entitled to the benefits of this chapter and chapters 86 and 87 regardless of the age of such minor employee.

13. The following persons shall not be deemed *"workers"* or *"employees"*:

a. A person whose employment is purely casual and not for the purpose of the employer's trade or business except as otherwise provided in section 85.1.

b. An independent contractor.

c. An owner-operator who, as an individual or partner, or shareholder of a corporate owner-operator, owns a vehicle licensed and registered as a truck, road tractor, or truck tractor by a governmental agency, is an independent contractor while performing services in the operation of the owner-operator's vehicle if all of the following conditions are substantially present:

(1) The owner-operator is responsible for the maintenance of the vehicle.

(2) The owner-operator bears the principal

burden of the vehicle's operating costs, including fuel, repairs, supplies, collision insurance, and personal expenses for the operator while on the road.

(3) The owner-operator is responsible for supplying the necessary personnel to operate the vehicle, and the personnel are considered the owner-operator's employees.

(4) The owner-operator's compensation is based on factors related to the work performed, including a percentage of any schedule of rates or lawfully published tariff, and not on the basis of the hours or time expended.

(5) The owner-operator determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper.

(6) The owner-operator enters into a contract which specifies the relationship to be that of an independent contractor and not that of an employee.

d. Directors of a corporation who are not at the same time employees of the corporation; or directors, trustees, officers, or other managing officials of a nonprofit corporation or association who are not at the same time full-time employees of the nonprofit corporation or association.

e. Proprietors, limited liability company members, limited liability partners, and partners who have not elected to be covered by the workers' compensation law of this state pursuant to section 85.1A.

[S13, §2477-m16; C24, 27, 31, 35, 39, §**1421;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.61; 82 Acts, ch 1161, §18, 19, ch 1221, §2]

83 Acts, ch 36, §3, 7, 8; 85 Acts, ch 46, §1; 85 Acts, ch 195, §9; 86 Acts, ch 1074, §3, 4; 86 Acts, ch 1104, §2, 3; 87 Acts, ch 91, §2 – 5; 89 Acts, ch 89, §1 – 3; 89 Acts, ch 218, §1; 91 Acts, ch 209, §1; 93 Acts, ch 88, §1; 95 Acts, ch 41, §3 – 5; 96 Acts, ch 1059, §4, 5; 96 Acts, ch 1079, §4 – 6; 97 Acts, ch 37, §3, 4; 98 Acts, ch 1060, §1, 2; 98 Acts, ch 1061, §11; 98 Acts, ch 1074, §9; 2001 Acts, ch 87, §5, 6

85.62 Inmates of county jail.

The county board of supervisors of any county may elect to include as an employee for purposes of this chapter any person confined as an inmate in a county jail or confined in any other facility in lieu of confinement in a county jail. If such election is made, the provisions of section 85.1, subsection 6, shall apply to such county. If an inmate in the performance of the inmate's work in connection with the maintenance of a county jail or other local facility, or in connection with any industry maintained therein, or with any highway or public works activity outside a county jail or other local facility sustains an injury arising out of and in the course thereof, the inmate shall be awarded and paid compensation at the minimum rate as provided in this chapter. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. If any such person is awarded weekly compensation under the provisions of this section and is still committed to the county jail or other facility, the inmate's compensation benefits under section 85.33 or section 85.34, subsection 1, shall be paid to the county for so long as the inmate shall remain so committed. Weekly compensation benefits awarded pursuant to section 85.34, subsection 2, shall be held in trust and paid to such person as provided in this chapter upon final discharge or parole, whichever occurs first. In the event such person is recommitted to the county jail or other facility prior to receiving in full, the inmate's weekly benefits pursuant to section 85.33 or section 85.34, subsection 1, such benefits shall again be paid to the county for so long as the inmate shall remain so recommitted. Also, weekly benefits under section 85.34, subsection 2, shall be suspended and again held in trust until such person is again released by final discharge or parole, whichever first occurs. However, the workers' compensation commissioner may, if the commissioner finds that dependents of the person awarded weekly compensation pursuant to section 85.33 or section 85.34, subsections 1 and 2, would require welfare aid as a result of terminating the compensation, order such weekly compensation to be paid to a responsible person for the use of the inmate's dependents.

[C73, 75, 77, 79, 81, §85.62]

98 Acts, ch 1061, §11

SECOND INJURY COMPENSATION ACT

85.63 Title of Act.

This division shall be known and referred to as the *"Second Injury Compensation Act"*.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.63]

85.64 Limitation of benefits.

If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no pre-existing disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the *"Second Injury Fund"* created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.

Any benefits received by any such employee, or to which the employee may be entitled, by reason

of such increased disability from any state or federal fund or agency, to which said employee has not directly contributed, shall be regarded as a credit to any award made against said second injury fund as aforesaid.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.64]

85.65 Payments to second injury fund.

The employer, or, if insured, the insurance carrier in each case of compensable injury causing death, shall pay to the treasurer of state for the second injury fund the sum of twelve thousand dollars in a case where there are dependents and forty-five thousand dollars in a case where there are no dependents. The payment shall be made at the time compensation payments are begun, or at the time the burial expenses are paid in a case where there are no dependents. However, the payments shall be required only in cases of injury resulting in death coming within the purview of this chapter and occurring after July 1, 1978. These payments shall be in addition to any payments of compensation to injured employees or their dependents, or of burial expenses as provided in this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.65; 82 Acts, ch 1161, §20]

89 Acts, ch 33, §1; 98 Acts, ch 1113, §1, 7

85.65A Payments to second injury fund — surcharge on employers.

1. For purposes of this section, unless the context otherwise requires:

a. "Insured employers" means employers who are commercially insured for purposes of workers' compensation coverage or who have been self-insured for less than twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

b. "Self-insured employers" means employers who have been self-insured for purposes of workers' compensation coverage for at least twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

2. Prior to each fiscal year commencing on or after July 1, 1999, the commissioner of insurance shall conduct an examination of the outstanding liabilities of the second injury fund and shall make a determination as to whether sufficient funds will be available in the second injury fund to pay the liabilities of the fund for each of the next two fiscal years. If the commissioner of insurance determines sufficient funds will be available, the commissioner shall not impose a surcharge on employers during the next succeeding fiscal year. If the commissioner determines sufficient funds will not be available, the commissioner shall impose by rule, pursuant to chapter 17A, a surcharge on employers during the next succeeding fiscal year for payment to the treasurer of state for the second injury fund pursuant to the requirements of this section.

3. If the commissioner of insurance determines that a surcharge on employers shall be imposed during any applicable fiscal year, the surcharge imposed shall comply with and be subject to all of the following requirements:

a. The surcharge shall apply to all workers' compensation insurance policies and self-insurance coverages of employers approved for self-insurance by the commissioner of insurance pursuant to section 87.4 or 87.11, and to the state of Iowa, its departments, divisions, agencies, commissions, and boards, or any political subdivision coverages whether insured or self-insured. The surcharge shall not apply to any reinsurance or retrocessional transaction under section 520.4 or 520.9.

b. In determining the surcharge for any applicable fiscal year, the commissioner of insurance shall provide that all insured and self-insured employers be assessed, in total, an amount the commissioner determines is sufficient, together with the moneys in the second injury fund, to meet the outstanding liabilities of the second injury fund.

c. The total assessment amount used in calculating the surcharge shall be allocated between self-insured employers and insured employers based on paid losses for the preceding calendar year. The portion of the total aggregate assessment that shall be collected from self-insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments of all self-insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. The portion of the total aggregate assessment that is not to be collected from self-insured employers shall be collected from insured employers.

d. The method of assessing self-insured employers a surcharge shall be based on paid losses. The method of assessing insured employers a surcharge shall be by insurers collecting assessments from insured employers through a surcharge based on premium.

e. Assessments collected through imposition of a surcharge pursuant to this section shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but shall for the purpose of collection be treated as separate costs by insurers. The surcharge is collectible by an insurer and nonpayment of the surcharge shall be treated as nonpayment of premium and the insurer shall retain all cancellation rights inuring to it for nonpayment of premium. An insurance carrier, its agent, or a third-party administrator shall not be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject

to any taxes, licenses, or fees. The surcharge is not deemed to be an assessment or tax, but shall be deemed an additional benefit paid for injuries compensable under this division.

4. The commissioner of insurance shall adopt rules, pursuant to chapter 17A, concerning the requirements of this section.

5. This section is repealed July 1, 2003.

98 Acts, ch 1113, §2, 7

85.66 Second injury fund — creation — custodian.

The *"Second Injury Fund"* is hereby established under the custody of the treasurer of state and shall consist of payments to the fund as provided by this division and any accumulated interest and earnings on moneys in the second injury fund. The treasurer of state is charged with the conservation of the assets of the second injury fund. Moneys collected in the *"Second Injury Fund"* shall be disbursed only for the purposes stated in this division, and shall not at any time be appropriated or diverted to any other use or purpose. The treasurer of state shall invest any surplus moneys of the fund in securities which constitute legal investments for state funds under the laws of this state, and may sell any of the securities in which the fund is invested, if necessary, for the proper administration or in the best interests of the fund. Disbursements from the fund shall be paid by the treasurer of state only upon the written order of the workers' compensation commissioner. The treasurer of state shall quarterly prepare a statement of the fund, setting forth the balance of moneys in the fund, the income of the fund, specifying the source of all income, the payments out of the fund, specifying the various items of payments, and setting forth the balance of the fund remaining to its credit. The statement shall be open to public inspection in the office of the treasurer of state.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.66; 82 Acts, ch 1161, §21]

83 Acts, ch 105, §5; 90 Acts, ch 1071, §1; 98 Acts, ch 1061, §11; 98 Acts, ch 1113, §3, 7

85.67 Administration of fund — special counsel — payment of award.

The attorney general shall appoint a staff member to represent the treasurer of state and the fund in all proceedings and matters arising under this division. In making an award under this division, the workers' compensation commissioner shall specifically find the amount the injured employee shall be paid weekly, the number of weeks of compensation which shall be paid by the employer, the date upon which payments out of the fund shall begin, and, if possible, the length of time the payments shall continue.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.67]

83 Acts, ch 105, §6; 98 Acts, ch 1061, §11; 98 Acts, ch 1113, §4, 7

85.68 Actions — collection of payments — subrogation.

The labor commissioner shall be charged with the collection of contributions and payments to the second injury fund required to be made pursuant to section 85.65. In addition, the labor commissioner, on behalf of the second injury fund created under this division, shall have a cause of action under section 85.22 to the same extent as an employer against any person not in the same employment by reason of whose negligence or wrong the subsequent injury of the person with the previous disability was caused. The action shall be brought by the labor commissioner on behalf of the fund, and any recovery, less the necessary and reasonable expenses incurred by the labor commissioner, shall be paid to the treasurer of state and credited to the second injury fund.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.68]

83 Acts, ch 105, §7; 96 Acts, ch 1129, §21; 98 Acts, ch 1113, §5, 7

85.69 Federal contributions.

The treasurer of state is hereby authorized to receive and credit to the second injury fund any sum or sums that may at any time be contributed to the state by the United States or any agency thereof, under any Act of Congress or otherwise, to which the state may be or become entitled by reason of any payments made to any person with a previous disability out of the fund.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85.69]

96 Acts, ch 1129, §22

VOCATIONAL REHABILITATION PROGRAM

85.70 Additional payment for attendance.

An employee who has sustained an injury resulting in permanent partial or permanent total disability, for which compensation is payable under this chapter, and who cannot return to gainful employment because of such disability, shall upon application to and approval by the workers' compensation commissioner be entitled to a twenty-dollar weekly payment from the employer in addition to any other benefit payments, during each full week in which the employee is actively participating in a vocational rehabilitation program recognized by the vocational rehabilitation services division of the department of education. The workers' compensation commissioner's approval of such application for payment may be given only after a careful evaluation of available facts, and after consultation with the employer or the employ-

er's representative. Judicial review of the decision of the workers' compensation commissioner may be obtained in accordance with the terms of the Iowa administrative procedure Act and in section 86.26. Such additional benefit payment shall be paid for a period not to exceed thirteen consecutive weeks except that the workers' compensation commissioner may extend the period of payment not to exceed an additional thirteen weeks if the circumstances indicate that a continuation of training will in fact accomplish rehabilitation.

[C71, 73, 75, 77, 79, 81, §85.70]
96 Acts, ch 1127, §1; 98 Acts, ch 1061, §11

EXTRATERRITORIAL INJURIES AND BENEFIT CLAIMS

85.71 Injury outside of state.

If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of death, the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee, or in the event of death resulting from such injury, the employee's dependents, shall be entitled to the benefits provided by this chapter, if at the time of such injury any of the following is applicable:

1. The employment is principally localized in this state, that is, the employee's employer has a place of business in this or some other state and the employee regularly works in this state, or if the employee's employer has a place of business in this state and the employee is domiciled in this state.

2. The employee is working under a contract of hire made in this state in employment not principally localized in any state and the employee spends a substantial part of the employee's working time working for the employer in this state.

3. The employee is working under a contract of hire made in this state in employment principally localized in another state, whose workers' compensation law is not applicable to the employee's employer.

4. The employee is working under a contract of hire made in this state for employment outside the United States.

[C75, 77, 79, 81, §85.71]
97 Acts, ch 106, §1

85.72 Claims for benefits made outside of state — restrictions — credit.

1. An employee, or an employee's dependents, shall not be entitled to benefits under this chapter if the employee or the employee's dependents have initiated a judicial proceeding or a contested case or other similar proceeding for the same injury, disability, or death pursuant to the laws of another state or country concerning workers' compensation, and the employee or the employee's dependents receive benefits following resolution of the proceeding pursuant to a settlement, judgment, or award.

2. If an employee, or an employee's dependents, initiate a judicial proceeding or a contested case or other similar proceeding for benefits pursuant to the laws of another state or country concerning workers' compensation, any proceeding initiated by an employee, or an employee's dependents, for workers' compensation benefits under this chapter for the same injury, disability, or death shall be stayed, without prejudice, pending resolution of the out-of-state claim for benefits.

3. If benefits are paid under this chapter and were payable, at any time, for the same injury, disability, or death pursuant to the laws of another state or country concerning workers' compensation, the employer shall have a credit toward the benefits payable under this chapter for any benefits paid in another state or country.

97 Acts, ch 106, §2

CHAPTER 85A

OCCUPATIONAL DISEASE COMPENSATION

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85A.1 Short title.

This chapter shall be known and referred to as the *"Iowa Occupational Disease Law"*.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.1]

85A.2 Employers included.

All employers as defined by the workers' compensation law of Iowa and who are engaged in any business or industrial process hereinafter designated and described are employers within the provisions of this chapter and shall be subject thereto.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.2]

85A.3 Employees covered.

All employees as defined by the workers' compensation law of Iowa employed in any business or industrial process hereinafter designated and described and who in the course of their employment are exposed to an occupational disease as herein defined are subject to the provisions of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.3]

85A.4 Disablement defined.

Disablement as that term is used in this chapter is the event or condition where an employee becomes actually incapacitated from performing the employee's work or from earning equal wages in other suitable employment because of an occupational disease as defined in this chapter in the last occupation in which such employee is injuriously exposed to the hazards of such disease.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.4]

85A.5 Compensation payable.

All employees subject to the provisions of this chapter who shall become disabled from injurious exposure to an occupational disease herein designated and defined within the conditions, limitations and requirements provided herein, shall receive compensation, reasonable surgical, medical, osteopathic, chiropractic, physical rehabilitation, nursing and hospital services and supplies therefor, and burial expenses as provided in the workers' compensation law of Iowa except as otherwise provided in this chapter.

If, however, an employee incurs an occupational disease for which the employee would be entitled to receive compensation if the employee were disabled as provided herein, but is able to continue in employment and requires medical treatment for said disease, then the employee shall receive reasonable medical services therefor.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.5]

85A.6 Dependents — defined.

Dependents of a deceased employee whose death has been caused by an occupational disease as herein defined and under the provisions, conditions and limitations of this chapter shall be those persons defined as dependents under the workers' compensation law of Iowa and such dependents shall receive compensation benefits as provided by said law.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.6]

85A.7 Limitations and exceptions.

The provisions of this chapter providing payment of workers' compensation on account of occupational disease as defined and set out in this chapter, shall be subject to the following limitations and exceptions:

1. No compensation shall be payable if the employee, at the time of entering the employment of the employer in writing falsely represented to said employer that the employee had not been previously disabled, laid off or compensated, or lost time by reason of an occupational disease.

2. No compensation for death because of an occupational disease shall be payable to any person whose relationship to the deceased employee arose subsequent to the beginning of the first compensable disability, except only after-born children of a marriage existing at the beginning of such disability.

3. When such occupational disease causes the death of an employee and there are no dependents entitled to compensation, then the employer shall pay the medical, hospital and burial expenses as is provided by the workers' compensation law, and shall also pay to the treasurer of the state for the use and benefit of the second injury compensation fund such amount as is required by the second injury compensation law.

4. Where such occupational disease is aggravated by any other disease or infirmity not of itself compensable, or where disability or death results from any other cause not of itself compensable but is aggravated, prolonged or accelerated by such an occupational disease, and disability results such as to be compensable under the provisions of this chapter, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease was the sole cause of the disability or death, as such occupational disease bears to all the causes of such disability or death. Such reduction or limitation in compensation shall be effected by reducing either the number of weekly payments or the amount of such payments as the workers' compensation commissioner may determine is for the best interests of the claimant or claimants.

5. No compensation shall be allowed or payable for any disease or death intentionally self-inflicted by the employee or due to the employee's intoxication, or due to the employee being a narcotic drug addict, or the employee's commission of a misdemeanor or felony, refusal to use a safety appliance or health protective, refusal to obey a reasonable written or printed rule of the employer

which has been posted in a conspicuous position in the place of work, or failure or refusal to perform or obey any statutory duty. The burden of establishing any such ground shall rest upon the employer.

6. No compensation shall be payable or allowed in any case where the last injurious exposure to the hazards of such occupational disease occurred prior to the effective date of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.7]

98 Acts, ch 1061, §11

85A.8 Occupational disease defined.

Occupational diseases shall be only those diseases which arise out of and in the course of the employee's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation or process in which the employee was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which an employee has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.8]

85A.9 Repealed by 73 Acts, ch 144, § 30.

85A.10 Last exposure — employer liable.

If compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of the disease, is liable for the compensation. The notice of injury and claim for compensation shall be given and made to the employer as required under this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.10]

86 Acts, ch 1101, §1

85A.11 Diagnosis for brucellosis.

When any employee is clinically diagnosed as having brucellosis (undulant fever), it shall not be considered that the employee has the disease unless the clinical diagnosis is confirmed by:

1. A positive blood culture for brucella organisms, or

2. A positive agglutination test which must be verified by not less than two successive positive agglutination tests, each of which tests shall be positive in a titer of one to one hundred sixty or higher. Said subsequent agglutination tests must be made of specimens taken not less than seven nor more than ten days after each preceding test.

The specimens for the tests required herein must be taken by a licensed practicing physician or osteopathic physician, and immediately delivered to the university hygienic laboratory of the Iowa department of public health at Iowa City, and each such specimen shall be in a container upon which is plainly printed the name and address of the subject, the date when the specimen was taken, the name and address of the subject's employer and a certificate by the physician or osteopathic physician that the physician took the specimen from the named subject on the date stated over the physician's signature and address.

The state hygienic laboratory shall immediately make the test and upon completion thereof it shall send a report of the result of such test to the physician or osteopathic physician from whom the specimen was received and also to the employer.

In the event of a dispute as to whether the employee has brucellosis, the matter shall be determined as any other disputed case.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.11]

85A.12 Disablement or death following exposure — limitations.

An employer shall not be liable for any compensation for an occupational disease unless such disease shall be due to the nature of an employment in which the hazards of such disease actually exist, and which hazards are characteristic thereof and peculiar to the trade, occupation, process, or employment, and such disease actually arises out of the employment, and unless disablement or death results within three years in case of pneumoconiosis, or within one year in case of any other occupational disease, after the last injurious exposure to such disease in such employment, or in case of death, unless death follows continuous disability from such disease commencing within the period above limited for which compensation has been paid or awarded or timely claim made as provided by this chapter and results within seven years after such exposure.

In any case where disablement or death was caused by latent or delayed pathological conditions, blood, or other tissue changes or malignancies due to occupational exposure to X rays, radium, radioactive substances or machines, or ionizing radiation, the employer shall not be liable for any compensation unless claim is filed within ninety days after disablement or death or after the employee had knowledge or in the exercise of reasonable diligence should have known the disablement was caused by overexposure to ionizing radiation or radioactive substances, and its relation to employment.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.12]

85A.13 Provisions relating to pneumoconiosis.

1. *Pneumoconiosis defined.* Whenever used in this chapter, "pneumoconiosis" shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of dust particles.

2. *Presumptions.* In the absence of conclusive evidence in favor of the claim, disability or death from pneumoconiosis shall be presumed not to be due to the nature of any occupation within the provisions of this chapter unless during the ten years immediately preceding the disablement of the employee who has been exposed to the inhalation of dust particles over a period of not less than five years, two years of which shall have been in employment in this state.

3. *Pneumoconiosis complicated with other diseases.* In case of disability or death from pneumoconiosis complicated with tuberculosis of the lungs, compensation shall be payable as for uncomplicated pneumoconiosis, provided, however, that the pneumoconiosis was an essential factor in causing such disability or death. In case of disability or death from pneumoconiosis complicated with any other disease, or from any other disease complicated with pneumoconiosis, the compensation shall be reduced as herein provided.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.13]

84 Acts, ch 1053, §1

85A.14 Restriction on liability.

No compensation shall be payable under this chapter for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of injury under the workers' compensation law.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.14]

85A.15 Employers limit of liability.

Payments of compensation and compliance with other provisions herein by the employer or the employer's insurance carrier in accordance with the findings and orders of the workers' compensation commissioner or the court in judicial review proceedings, shall discharge such employer from any and all further obligation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.15]

98 Acts, ch 1061, §11

85A.16 Reference to compensation law.

The provisions of the workers' compensation law, so far as applicable, and not inconsistent herewith, shall apply in cases of compensable occupational diseases as specified and defined herein.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.16]

85A.17 Disability.

Compensation payable under this chapter for temporary disability, permanent total disability or permanent partial disability, shall be such amounts as are provided under the workers' compensation law.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.17]

85A.18 Notice of disability or death — filing of claims.

Except as herein otherwise provided, procedure with respect to notice of disability or death, as to the filing of claims and determination of claims shall be the same as in cases of injury or death arising out of and in the course of employment under the workers' compensation law. Written notice shall be given to the employer of an occupational disease by the employee within ninety days after the first distinct manifestation thereof, and in the case of death from such an occupational disease, written notice of such claim shall also be given to the employer within ninety days thereafter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.18]

85A.19 Autopsy.

Upon the filing of a claim for compensation for death from an occupational disease where an autopsy is necessary in order to accurately and scientifically ascertain and determine the cause of death, such autopsy shall be ordered by the workers' compensation commissioner and shall be made under the supervision of the medical examiner of the county in which death occurs or in any county where the body of such employee may be taken.

The workers' compensation commissioner may designate a duly licensed physician to perform or attend such autopsy and to certify the findings thereon. Such findings shall be filed in the office of the workers' compensation commissioner. The workers' compensation commissioner may also exercise such authority on the commissioner's own motion or on application made to the commissioner at any time, upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any occupational disease. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit such autopsy when so ordered and no compensation shall be payable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.19]

98 Acts, ch 1061, §11

85A.20 Investigation.

The workers' compensation commissioner may designate the industrial hygiene physician of the Iowa department of public health and two physicians selected by the dean of the university of Iowa

college of medicine, from the staff of the college, who shall be qualified to diagnose and report on occupational diseases. For the purpose of investigating occupational diseases, the physicians shall have the use, without charge, of all necessary laboratory and other facilities of the university of Iowa college of medicine and of the university hospital at the state university of Iowa, and of the Iowa department of public health in performing the physicians' duties.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.20]

86 Acts, ch 1245, §905; 98 Acts, ch 1061, §11; 2001 Acts, ch 74, §1; 2002 Acts, ch 1119, §9

Section amended

85A.21 Controversial medical questions.

Controversial medical questions may be referred by the workers' compensation commissioner to the physicians designated in section 85A.20 for investigation and report to the workers' compensation commissioner when agreed to by the parties or on the commissioner's own motion. No award shall be made in any case where controversial medical questions have been referred to the physicians until the physicians have duly investigated the case and made a report with respect to all such medical questions. The date of disablement, if in dispute, shall be deemed a medical question.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.21]

86 Acts, ch 1245, §906; 98 Acts, ch 1061, §11

85A.22 Examination of employee by physicians.

The physicians designated in section 85A.20, upon reference to them by the workers' compensation commissioner of a claim for occupational disease, shall notify the claimant or claimants and the employer or the employer's insurance carrier to appear before the physicians at a time and place stated in the notice. If the employee is alive, the employee shall appear before the physicians at the time and place specified to submit to such clinical and X-ray examinations as the physicians may require. The claimant and the employer shall each be entitled, at the claimant's or employer's own expense, to have present at all examinations conducted by the physicians, a physician admitted to practice in the state, who shall be given every reasonable opportunity for participating in all examinations. If a physician admitted to practice in the state certifies that the employee is physically unable to appear at the time and place specified, the physicians shall, on notice to the parties, change the time and place of examination to another time and place as may reasonably facilitate the examination of the employee. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee refuses to submit to such examination.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.22]

86 Acts, ch 1245, §907; 98 Acts, ch 1061, §11

85A.23 Report — date of disablement.

The physicians designated in section 85A.20 shall, as soon as practicable after the physicians have completed consideration of the case, report in writing the findings and conclusions on every medical question in controversy. If the date of disablement is controverted and cannot be fixed exactly, the physicians shall fix the most probable date in light of all the circumstances of the case. The physicians shall also include in the report the name and address of the physician or physicians, if any, who appeared before the physicians and the medical reports and X rays, if any, which were considered by the physicians.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.23]

86 Acts, ch 1245, §908

85A.24 Findings and report.

The physicians designated in section 85A.20 shall file the report in triplicate with the workers' compensation commissioner who shall mail or deliver a certified copy of the report to the claimant and to the employer. The report shall become a part of the record of the case. The workers' compensation commissioner shall make the decision or award in the case based upon the entire record. The report of the physicians in any case may be returned by the commissioner to the physicians for reconsideration and further report. The physicians shall not be prohibited from testifying before the workers' compensation commissioner, board of arbitration, or any other person, commission, or court as to the results of the examination or the condition of any employee examined.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.24]

86 Acts, ch 1245, §909; 98 Acts, ch 1061, §11

85A.25 Existing diseases barred.

There shall be no liability for the payment of compensation under the provisions of this chapter to any person who on October 1, 1947, is suffering with an occupational disease. An employer may at the employer's own expense require the employer's employees to submit to a physical examination prior to October 1, 1947, and in the case of new employees employed after July 4, 1947, within ninety days of the commencement of the employment of such new employees, for the purpose of determining whether any such person is affected with or has an occupational disease. In the event it is determined by such examination that any employee is suffering from or is affected with an occupational disease, the employer may require the employee to waive in writing any claim for com-

pensation under the provisions of this chapter on account thereof as a condition to continuing in the employment of the employer.

In cases of dispute as to the existence of the disease the controversy may be referred to the workers' compensation commissioner who shall decide the matter and who may, upon the commissioner's own motion or by agreement of the parties, submit the controverted question to the physicians designated in section 85A.20 for investigation and report, and the physicians shall immediately proceed with the investigation and with the examination of the employee and forthwith make the report to the workers' compensation commissioner. The examination shall be made and the investigation conducted in the same manner as is provided in this chapter as to other controverted medical questions. The workers' compensation commissioner shall then make the decision on the matter, and the decision shall have the same force and effect and be subject to all the other provisions of law applicable the same as any other decision of the workers' compensation commissioner.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.25]

86 Acts, ch 1245, §910; 98 Acts, ch 1061, §11

85A.26 Insurance contracts.

No policy of insurance in effect at the time of the enactment of this chapter covering the liability of an employer under the workers' compensation law, shall be construed to cover the liability of such employer under this chapter for any occupational disease unless such liability is expressly accepted by the insurance carrier issuing such policy and is endorsed thereon. The insurance or security in force to cover compensation liability under this chapter shall be separate and distinct from the insurance or security under the workers' compensation law and any insurance contract covering liability under either this chapter or the workers' compensation law need not cover any liability under the other.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.26]

85A.27 Administration.

The workers' compensation commissioner shall have jurisdiction over the operation and administration of the compensation provisions of this chapter and said commissioner shall perform all of the duties imposed upon the commissioner by this chapter and such further duties as may hereafter be imposed by law.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §85A.27]

98 Acts, ch 1061, §11

CHAPTER 85B

OCCUPATIONAL HEARING LOSS

85B.1 Citation.
85B.2 Workers' compensation — employers subject.
85B.3 Loss in course of employment.
85B.4 Definitions.
85B.5 Excessive noise exposure.
85B.6 Maximum compensation.
85B.7 Periodic examination.
85B.8 Date of occurrence.
85B.9 Measuring hearing loss.
85B.9A Apportionment of occupational hearing loss.
85B.10 Employer's notice of results of test.
85B.11 Previous hearing loss excluded.
85B.12 Hearing aid provided.
85B.13 Payment of compensation discharges employer.
85B.14 Applicable chapters.
85B.15 Workers' compensation commissioner to enforce.

85B.1 Citation.

This chapter shall be known as the *"Iowa occupational hearing loss Act"*.

[C81, §85B.1]

85B.2 Workers' compensation — employers subject.

All employers as defined in chapter 85 are subject to this chapter.

[C81, §85B.2]

85B.3 Loss in course of employment.

All employees as defined in chapter 85 who incur an occupational hearing loss arising out of and in the course of employment, are subject to this chapter.

[C81, §85B.3]

85B.4 Definitions.

As used in this chapter, unless the context otherwise provides:

1. *"Excessive noise exposure"* means exposure to sound capable of producing occupational hear-

ing loss.

2. *"Hearing level"* means the measured threshold of hearing sensitivity using audiometric instruments properly calibrated to the American national standards institute audiometric zero reference level.

3. *"Occupational hearing loss"* means that portion of a permanent sensorineural loss of hearing in one or both ears that exceeds an average hearing level of twenty-five decibels for the frequencies five hundred, one thousand, two thousand, and three thousand Hertz, arising out of and in the course of employment caused by excessive noise exposure. *"Occupational hearing loss"* does not include loss of hearing attributable to age or any other condition or exposure not arising out of and in the course of employment.

[C81, §85B.4]

98 Acts, ch 1160, §2

85B.5 Excessive noise exposure.

An excessive noise exposure is sound which exceeds the times and intensities listed in the following table:

Duration per day hours	Sound level, dBA slow response	Duration per day minutes	Sound level, dBA slow response
8	90	52	106
7	91	45	107
6	92	37	108
5	93	33	109
4 1/2	94	30	110
4	95	26	111
3 1/2	96	22	112
3	97	18	113
2 1/2	98	16	114
2 1/4	99	15	115
2	100	No exposure greater than 115 permitted	
1 3/4	101		
1 1/2	102		
1 1/4	103		
1 1/8	104		
1	105		

The workers' compensation commissioner may promulgate rules pursuant to chapter 17A to amend this table based upon changes recommended in nationally recognized consensus standards.

An employer shall immediately inform an employee if the employer learns that the employee is being subjected to sound levels and duration in excess of those indicated in the above table. In instances of occupational hearing loss alleged to have occurred, either in whole or in part prior to January 1, 1981, an employer shall provide upon request by an affected employee whatever evidence is available to the employer of the date, duration, and intensities of noise to which the employee was subjected in employment.

[C81, §85B.5]

98 Acts, ch 1061, §11; 98 Acts, ch 1160, §3

85B.6 Maximum compensation.

Compensation is payable for a maximum of one hundred seventy-five weeks for total occupational hearing loss. For partial occupational hearing loss compensation is payable for a period proportionate to the relation which the calculated binaural, both ears, hearing loss bears to one hundred percent, or total loss of hearing.

[C81, §85B.6]

85B.7 Periodic examination.

Compensation is not payable to an employee who willfully fails to submit for reasonable periodic physical and audiometric examinations. Reasonable written notice of the dates and times of examinations required by the employer shall be given the employee. Examinations shall be scheduled during times the employee, examining personnel, and examination facilities are reasonably available. Physical and audiometric examinations shall be at the expense of the employer. The employee shall be compensated for any time lost from work occasioned by employer examinations. Compensation is not payable to an employee if the employee fails or refuses to use employer-provided hearing protective devices required by the employer and communicated in writing to the employee at the time the employee is employed or at the time the protective devices are provided by the employer.

[C81, §85B.7]

85B.8 Date of occurrence.

A claim for occupational hearing loss due to excessive noise exposure may be filed beginning one month after separation from the employment in which the employee was subjected to excessive noise exposure. The date of the injury shall be the date of occurrence of any one of the following events:

1. Transfer from excessive noise exposure employment by an employer.
2. Retirement.
3. Termination of the employer-employee relationship.

The date of injury for a layoff which continues for a period longer than one year shall be six months after the date of the layoff. However, the date of the injury for any loss of hearing incurred prior to January 1, 1981 shall not be earlier than the occurrence of any one of the above events.

[C81, §85B.8]

98 Acts, ch 1160, §4, 5

85B.9 Measuring hearing loss.

1. Audiometric instruments, properly calibrated to the American national standards insti-

tute specifications, shall be used for measuring hearing levels and in such tests necessary to establish total hearing loss, if any. The hearing tests and examinations shall be conducted in environments which comply with accepted national standards.

2. Audiometric examinations shall be administered by persons who are certified by the council for accreditation in occupational hearing conservation or by persons licensed as audiologists under chapter 147, as physicians under chapter 148, as osteopathic physicians under chapter 150, or as osteopathic physicians and surgeons under chapter 150A, provided the licensed persons are trained in audiometry.

3. In calculating the total amount of hearing loss, the hearing levels at each of the four frequencies, five hundred, one thousand, two thousand, and three thousand Hertz, shall be added together and divided by four to determine the average decibel hearing level for each ear. If the resulting average decibel hearing level in either ear is twenty-five decibels or less, the percentage hearing loss for that ear shall be zero. For each resulting average decibel hearing level exceeding twenty-five decibels, an allowance of one and one-half percent shall be made up to the maximum of one hundred percent which is reached at an average decibel hearing level of ninety-two decibels. In determining the total binaural percentage hearing loss, the percentage hearing loss for the ear with better hearing shall be multiplied by five and added to the percentage hearing loss for the ear with worse hearing and the sum of the two divided by six.

4. The assessment of the proportion of the total binaural percentage hearing loss that is due to occupational noise exposure shall be made by the employer's regular or consulting physician or licensed audiologist who is trained and has had experience with such assessment. If several audiometric examinations are available for assessment, the physician or audiologist shall determine which examinations shall be used in the final assessment of occupational hearing loss.

If the employee disputes the assessment, the employee may select a physician or licensed audiologist similarly trained and experienced to give an assessment of the audiometric examinations.

5. This section is applicable in the event of partial permanent or total permanent occupational hearing loss in one or both ears.

[C81, §85B.9; 81 Acts, ch 42, §1]
98 Acts, ch 1160, §6

85B.9A Apportionment of occupational hearing loss.

Apportionment of the total hearing loss between occupational and nonoccupational loss, for purposes of determining occupational hearing loss, may be made by an audiologist or physician with qualifications set forth in section 85B.9. In determining occupational hearing loss, consideration shall be given to all probable employment and nonemployment sources of loss. The apportionment of age-related loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to section 85B.9, subsection 3, by the same percentage as the decibels of age-related loss occurring during the period of employment bears to the total decibel hearing level in each ear. The decibels of age-related loss shall be calculated according to tables adopted by the workers' compensation commissioner consistent with tables of the national institute for occupational safety and health existing on July 1, 1998, and consistent with section 85B.9, subsection 3.

98 Acts, ch 1160, §7

85B.10 Employer's notice of results of test.

The employer shall communicate to the employee, in writing, the results of an audiometric examination or physical examination of an employee which reflects an average hearing level in one or both ears in excess of twenty-five decibels for the test frequencies of five hundred, one thousand, two thousand, and three thousand Hertz, as soon as practicable after the examination. The communication shall include the name and qualifications of the person conducting the audiometric examination or physical examination, the site of the examination, the kind or type of test or examinations given, the results of each and the average decibel hearing level, for the four frequencies, in each ear, and, if known to the employer, whether the hearing loss is sensorineural and, if the hearing loss resulted from another cause, the cause.

[C81, §85B.10]
98 Acts, ch 1160, §8

85B.11 Previous hearing loss excluded.

An employer is liable, as provided in this chapter and subject to the provisions of chapter 85, for an occupational hearing loss to which the employment has contributed, but if previous hearing loss, whether occupational or not, is established by an audiometric examination or other competent evidence, whether or not the employee was subjected to excessive noise exposure within six months preceding the test, the employer is not liable for the previous loss, nor is the employer liable for a loss for which compensation has previously been paid or awarded. The employer is liable only for the difference between the percent of occupational hearing loss determined as of the date of the audiometric examination used to determine occupational hearing loss and the percentage of loss established by the pre-employment audiometric examination. An amount paid to an employee for occupational hearing loss by any other employer shall be credited against compensation payable by an employer for the hearing loss. An employee shall not receive in the aggregate greater compensation from all

employers for occupational hearing loss than that provided in this section for total occupational hearing loss. A payment shall not be made to an employee unless the employee has worked in excessive noise exposure employment for a total period of at least ninety days for the employer from whom compensation is claimed.

[C81, §85B.11]

98 Acts, ch 1160, §9; 99 Acts, ch 96, §7

85B.12 Hearing aid provided.

A reduction of the compensation payable to an employee for occupational hearing loss shall not be made because the employee's ability to communicate may be improved by the use of a hearing aid. An employer who is liable for occupational hearing loss of an employee is required to provide the employee with a hearing aid for each affected ear unless it will not materially improve the employee's ability to communicate.

[C81, §85B.12]

98 Acts, ch 1160, §10

85B.13 Payment of compensation discharges employer.

Payments of compensation and compliance with other provisions of this chapter by the employer or the employer's insurance carrier in accordance with the findings and orders of the workers' compensation commissioner or a court making a final adjudication in appealed cases, discharges the employer from further obligation.

[C81, §85B.13]

98 Acts, ch 1061, §11

85B.14 Applicable chapters.

Chapters 17A, 85, and 86, so far as applicable, and not inconsistent with this chapter, apply in cases of compensable occupational hearing loss.

[C81, §85B.14]

85B.15 Workers' compensation commissioner to enforce.

The workers' compensation commissioner has jurisdiction over the operation and administration of the compensation provisions of this chapter.

[C81, §85B.15]

98 Acts, ch 1061, §11

CHAPTER 86

DIVISION OF WORKERS' COMPENSATION

86.1 Workers' compensation commissioner — term.
86.2 Appointment of deputies and assistants.
86.3 Duties of deputies.
86.4 Political activity and contributions.
86.5 Political promises.
86.6 Recommendations of commissioner.
86.7 Interest in affected business.
86.8 Duties.
86.9 Reports.
86.10 Records of employer — right to inspect.
86.11 Reports of injuries.
86.12 Failure to report.
86.13 Compensation payments.
86.14 Contested cases.
86.15 and 86.16 Repealed by 76 Acts, ch 1084, §26.
86.17 Hearings — presiding officer — venue.
86.18 Hearings — evidence.
86.19 Reporting of proceedings.
86.20 Repealed by 82 Acts, ch 1161, §28.
86.21 to 86.23 Repealed by 77 Acts, ch 51, §21.
86.24 Appeals within the agency.
86.25 Repealed by 77 Acts, ch 51, §21.
86.26 Judicial review.
86.27 Settlement of controversy.
86.28 Repealed by 77 Acts, ch 51, §21.
86.29 The judicial review petition.
86.30 and 86.31 Repealed by 74 Acts, ch 1090, §211.
86.32 Costs of judicial review.
86.33 Repealed by 74 Acts, ch 1090, §211.
86.34 and 86.35 Repealed by 77 Acts, ch 51, §21.
86.36 Notice and service — resident and nonresident employers. Repealed by 2000 Acts, ch 1007, §6.
86.37 Repealed by 77 Acts, ch 51, §21.
86.38 Examination by physician — fee.
86.39 Fees — approval.
86.40 Costs.
86.41 Witness fees.
86.42 Judgment by district court on award.
86.43 Judgment — modification of.
86.44 Confidentiality.

86.1 Workers' compensation commissioner — term.

The governor shall appoint, subject to confirmation by the senate, a workers' compensation commissioner whose term of office shall be six years beginning and ending as provided in section 69.19.

The workers' compensation commissioner shall maintain an office at the seat of government. The workers' compensation commissioner must be a lawyer admitted to practice in this state.

[S13, §2477-m22; C24, 27, 31, 35, 39, §**1423;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.1]

98 Acts, ch 1061, §11

Confirmation, see §2.32

86.2 Appointment of deputies and assistants.

The commissioner may appoint:

1. Chief deputy workers' compensation commissioners for whose acts the commissioner is responsible, who are exempt from the merit system provisions of chapter 19A, and who shall serve at the pleasure of the commissioner.

2. Deputy workers' compensation commissioners for whose acts the commissioner is responsible and who shall serve at the pleasure of the commissioner.

All chief deputies and deputies must be lawyers admitted to practice in this state.

The commissioner may appoint one or more chief deputy workers' compensation commissioners and one or more assistant workers' compensation commissioners. A chief deputy workers' compensation commissioner or an assistant workers' compensation commissioner shall perform such additional administrative responsibilities as are deemed reasonably necessary and assigned by the commissioner.

[C24, 27, 31, 35, 39, §**1424;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.2]

89 Acts, ch 60, §3; 90 Acts, ch 1261, §26; 98 Acts, ch 1061, §11

86.3 Duties of deputies.

Notwithstanding the provisions of chapter 17A, in the absence or disability of the workers' compensation commissioner, or when written delegation of authority to perform specified functions is made by the commissioner, the deputies shall have any necessary specified powers to perform any necessary or specified duties of the workers' compensation commissioner pertaining to the commissioner's office. Notwithstanding the definitions and terms of chapter 17A, pertaining to the issuance of final decisions, when the above circumstances exist a deputy commissioner shall have the power to issue a final decision as if issued by the agency.

[C24, 27, 31, 35, 39, §**1425;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.3]

98 Acts, ch 1061, §11

86.4 Political activity and contributions.

It shall be unlawful for the commissioner, or a chief deputy workers' compensation commissioner while in office, to espouse the election or appointment of any candidate to any political office, and any person violating the provisions of this section shall be guilty of a simple misdemeanor.

[S13, §2477-m23, -m37; C24, 27, 31, 35, 39, §**1427;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.4]

90 Acts, ch 1261, §27; 98 Acts, ch 1061, §11

86.5 Political promises.

Any person who is a candidate for appointment as commissioner who makes any promise to another, express or implied, in consideration of any assistance or influence given or recommendation made that the candidate will, if appointed as a commissioner, appoint such person or one whom the person may recommend to any office within the power of the commissioner to appoint, shall be guilty of a simple misdemeanor.

[S13, §2477-m38; C24, 27, 31, 35, 39, §**1428;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.5]

86.6 Recommendations of commissioner.

All recommendations to the governor of any person asking the appointment of another as commissioner shall be reduced to writing, signed by the person presenting the same, which shall be filed by the governor in the governor's office and open at all reasonable times for public inspection, and all recommendations made by any person to the commissioner for the appointment of another within the power of the commissioner to appoint, shall be reduced to writing, signed by the person presenting the same, and filed by the commissioner and open for public inspection at all reasonable times. If any person recommending the appointment of another within the contemplation of this section refuses to reduce the same to writing, it shall be the duty of the person to whom the recommendation is made, to make a memorandum thereof, stating the name of the person recommended and the name of the person who made the same, which shall be filed in the office of the governor or the commissioner as the case may be.

[S13, §2477-m39; C24, 27, 31, 35, 39, §**1429;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.6]

86.7 Interest in affected business.

It shall be unlawful for the commissioner to be financially interested in any business enterprise coming under or affected by this chapter during the commissioner's term of office, and if the commissioner violates this statute, it shall be sufficient grounds for removal from office, and in such case the governor shall at once declare the office vacant and appoint another to fill the vacancy.

[S13, §2477-m39; C24, 27, 31, 35, 39, §**1430;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.7]

86.8 Duties.

The commissioner shall:

1. Adopt and enforce rules necessary to implement this chapter and chapters 85, 85A, 85B, and 87.

2. Prepare and distribute the necessary blanks relating to computation, adjustment, and settlement of compensation.

3. Prepare and publish statistical reports and analyses regarding the cost, occurrence, and sources of employment injuries.

4. Administer oaths and examine books and records of parties subject to the workers' compensation laws.

5. Provide a seal for the authentication of orders and records and for other purposes as required.

Subject to the approval of the director of the department of workforce development, the commissioner may enter into contracts with any state agency, with or without reimbursement, for the purpose of obtaining the services, facilities, and personnel of the agency and with the consent of any state agency or political subdivision of the state, accept and use the services, facilities, and personnel of the agency or political subdivision, and employ experts and consultants or organizations in order to expeditiously, efficiently, and economically effectuate the purposes of this chapter. The agreements under this paragraph are subject to approval by the executive council if approval is required by law.

[S13, §2477-m24; C24, 27, 31, 35, 39, §**1431;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.8]

86 Acts, ch 1245, §911; 96 Acts, ch 1186, §23

86.9 Reports.

The director of the department of workforce development, in consultation with the commissioner, shall, at the time provided by law, make an annual report to the governor setting forth in appropriate form the business and expense of the division of workers' compensation for the preceding year, the number of claims processed by the division and the disposition of the claims, and other matters pertaining to the division which are of public interest, together with recommendations for change or amendment of the laws in this chapter and chapters 85, 85A, 85B, and 87, and the recommendations, if any, shall be transmitted by the governor to the first general assembly in session after the report is filed.

The commissioner, after consultation with the director of the department of workforce development, may compile an annual report setting forth the final decisions, rulings, and orders of the division for the preceding year and setting forth other matters or information which the commissioner considers desirable for publication. These annual reports may be distributed by the state on request to public officials as set forth in chapter 7A. Members of the public may obtain the annual report upon payment of its cost as set by the commissioner.

[S13, §2477-m24; C24, 27, 31, 35, 39, §**1432;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.9; 81 Acts, ch 6, §13]

84 Acts, ch 1067, §16; 86 Acts, ch 1245, §912; 96 Acts, ch 1186, §23; 98 Acts, ch 1061, §5

86.10 Records of employer — right to inspect.

All books, records, and payrolls of the employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the workers' compensation commissioner or any of the commissioner's representatives presenting a certificate of authority from said commissioner for the purpose of ascertaining the correctness of the wage expenditure, the number of persons employed, and such other information as may be necessary for the uses and purposes of the commissioner in the administration of the law.

Information so obtained shall be used for no other purpose than to advise the commissioner or insurance association with reference to such matters.

Upon a refusal on the part of the employer to submit the employer's books, records, or payrolls for the inspection of the commissioner or the commissioner's authorized representatives presenting written authority from the commissioner, the commissioner may enter an order requiring the employer to do so.

[S13, §2477-m36; C24, 27, 31, 35, 39, §**1433;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.10]

98 Acts, ch 1061, §11

86.11 Reports of injuries.

Every employer shall hereafter keep a record of all injuries, fatal or otherwise, alleged by an employee to have been sustained in the course of the employee's employment and resulting in incapacity for a longer period than one day. If the injury results only in temporary disability, causing incapacity for a longer period than three days, then within four days thereafter, not counting Sundays and legal holidays, the employer or insurance carrier having had notice or knowledge of the occurrence of such injury and resulting disability shall file a report with the workers' compensation commissioner in the form and manner required by the commissioner. If such injury to the employee results in permanent total disability, permanent partial disability, or death, then the employer or insurance carrier, upon notice or knowledge of the occurrence of the employment injury, shall file a report with the workers' compensation commissioner within four days after having notice or knowledge of the permanent injury to the employee or the employee's death. The report to the workers' compensation commissioner of injury shall be

without prejudice to the employer or insurance carrier and shall not be admitted in evidence or used in any trial or hearing before any court, the workers' compensation commissioner, or a deputy workers' compensation commissioner except as to the notice under section 85.23.

[S13, §2477-m36; C24, 27, 31, 35, 39, §**1434;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.11]

98 Acts, ch 1061, §6, 11; 2000 Acts, ch 1007, §4

86.12 Failure to report.

The workers' compensation commissioner may require any employer to supply the information required by section 86.10 or to file a report required by section 86.11, by written demand sent to the employer's last known address. Upon failure to supply such information or file such report within twenty days, the employer may be ordered to appear and show cause why the employer should not be subject to civil penalty of one hundred dollars for each occurrence. Upon such hearing, the workers' compensation commissioner shall enter a finding of fact and may enter an order requiring such penalty to be paid into the second injury fund created by sections 85.63 to 85.69. In the event the civil penalty assessed is not voluntarily paid the workers' compensation commissioner may file a certified copy of such finding and order with the clerk of the court for the district in which the employer maintains a place of business. If the employer maintains no place of business in this state service shall be made as provided in chapter 85 for nonresident employers. In such case the finding and order may be filed in any court of competent jurisdiction within this state.

The workers' compensation commissioner may thereafter petition the court for entry of judgment upon such order, serving notice of such petition on the employer and any other person in default. If the court finds the order valid, the court shall enter judgment against the person or persons in default for the amount due under the order. No fees shall be required for the filing of the order or for the petition for judgment, or for the entry of judgment or for any enforcement procedure thereupon. No supersedeas shall be granted by any court to a judgment entered under this section.

When a report is required under section 86.11 and that report has been submitted to the employer's insurance carrier and no report of injury has been filed with the workers' compensation commissioner, the insurance carrier shall be responsible for filing the report of injury in the same manner and to the same extent as an employer under this section.

[S13, §2477-m36; C24, 27, 31, 35, 39, §**1435;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.12]

98 Acts, ch 1061, §11

86.13 Compensation payments.

If an employer or insurance carrier pays weekly compensation benefits to an employee, the employer or insurance carrier shall file with the workers' compensation commissioner in the form and manner required by the workers' compensation commissioner a notice of the commencement of the payments. The payments establish conclusively that the employer and insurance carrier have notice of the injury for which benefits are claimed but the payments do not constitute an admission of liability under this chapter or chapter 85, 85A, or 85B.

If an employer or insurance carrier fails to file the notice required by this section, the failure stops the running of the time periods in section 85.26 as of the date of the first payment. If commenced, the payments shall be terminated only when the employee has returned to work, or upon thirty days' notice stating the reason for the termination and advising the employee of the right to file a claim with the workers' compensation commissioner.

This section does not prevent the parties from reaching an agreement for settlement regarding compensation. However, the agreement is valid only if signed by all parties and approved by the workers' compensation commissioner.

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

[S13, §2477-m25; C24, 27, 31, 35, 39, §**1436;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.13; 82 Acts, ch 1161, §23]

98 Acts, ch 1061, §7, 11

86.14 Contested cases.

1. In an original proceeding, all matters relevant to a dispute are subject to inquiry.

2. In a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon.

[S13, §2477-m26, -m28; C24, 27, 31, 35, 39, §**1437, 1438;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.14]

86.15 and 86.16 Repealed by 76 Acts, ch 1084, § 26.

86.17 Hearings — presiding officer — venue.

1. Notwithstanding the provisions of section 17A.11, the workers' compensation commissioner or a deputy workers' compensation commissioner shall preside over any contested case proceeding brought under this chapter, chapter 85, 85A, or

85B in the manner provided by chapter 17A. The deputy commissioner or the commissioner may make such inquiries in contested case proceedings as shall be deemed necessary, so long as such inquiries do not violate any of the provisions of section 17A.17.

2. Hearings in contested case proceedings under chapters 85, 85A and this chapter shall be held in the judicial district where the injury occurred. By written stipulation of the parties or by the order of a deputy workers' compensation commissioner or the commissioner, a hearing may be held elsewhere. If the injury occurred outside this state, or if the proceeding is not one for benefits resulting from an injury, hearings shall be held in Polk county or as otherwise stipulated by the parties or by order of a deputy workers' compensation commissioner or the workers' compensation commissioner.

[S13, §2477-m29; C24, 27, 31, 35, 39, §**1437, 1440, 1460;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §86.15, 86.17; C77, §86.17, 86.37; C79, 81, §86.17]

98 Acts, ch 1061, §11; 98 Acts, ch 1202, §29, 46; 2000 Acts, ch 1058, §12

86.18 Hearings — evidence.

1. Evidence, process and procedure in contested case proceedings or appeal proceedings within the agency under this chapter, chapters 85 and 85A shall be as summary as practicable consistent with the requirements of chapter 17A.

2. The deposition of any witness may be taken and used as evidence in any pending proceeding or appeal within the agency.

[C24, 27, 31, 35, 39, §**1441, 1444;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §86.18, 86.21; C79, 81, §86.18]

86.19 Reporting of proceedings.

1. The workers' compensation commissioner, or a deputy commissioner, may appoint or may direct a party to furnish at the party's initial expense a certified shorthand reporter to be present and report, or to furnish mechanical means to record, and if necessary, transcribe proceedings of any contested case under this chapter, chapters 85 and 85A and fix the reasonable amount of compensation for such service. The charges shall be taxed as costs and the party initially paying the expense of the presence or transcription shall be reimbursed. The reporter shall faithfully and accurately report the proceedings.

2. Notwithstanding the requirements of section 17A.12, subsection 7, a certified shorthand reporter, appointed by the presiding officer in a contested case proceeding or by the workers' compensation commissioner in an appeal proceeding, may maintain and thus have the responsibility for the recording or stenographic notes for the period required by section 17A.12, subsection 7.

[C24, 27, 31, 35, 39, §**1442;** C46, 50, 54, 58, 62, 66, 71, 73, §86.19; C75, 77, §86.19, 86.28; C79, 81, §86.19]

98 Acts, ch 1061, §11

Taxation of costs, §86.40

86.20 Repealed by 82 Acts, ch 1161, § 28. See § 85.21.

86.21 to 86.23 Repealed by 77 Acts, ch 51, § 21.

86.24 Appeals within the agency.

1. Any party aggrieved by a decision, order, ruling, finding or other act of a deputy commissioner in a contested case proceeding arising under this chapter or chapter 85 or 85A may appeal to the workers' compensation commissioner in the time and manner provided by rule. The hearing on an appeal shall be in Polk county unless the workers' compensation commissioner shall direct the hearing be held elsewhere.

2. In addition to the provisions of section 17A.15, the workers' compensation commissioner may affirm, modify, or reverse the decision of a deputy commissioner or the commissioner may remand the decision to the deputy commissioner for further proceedings.

3. In addition to the provisions of section 17A.15, the workers' compensation commissioner, on appeal, may limit the presentation of evidence as provided by rule.

4. A transcript of a contested case proceeding shall be provided by an appealing party at the party's cost and an affidavit shall be filed by the appealing party or the party's attorney with the workers' compensation commissioner within ten days after the filing of the appeal to the workers' compensation commissioner stating that the transcript has been ordered and identifying the name and address of the reporter or reporting firm from which the transcript has been ordered.

5. The decision of the workers' compensation commissioner is final agency action.

[S13, §2477-m29, -m32; C24, 27, 31, 35, 39, §**1447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.24; 82 Acts, ch 1161, §24]

86 Acts, ch 1238, §46; 86 Acts, ch 1245, §913; 88 Acts, ch 1158, §10; 98 Acts, ch 1061, §11

86.25 Repealed by 77 Acts, ch 51, § 21.

86.26 Judicial review.

Judicial review of decisions or orders of the workers' compensation commissioner may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hearing under section 86.17 was held, the workers' compensation commissioner shall transmit to the reviewing court the original or a certified copy

of the entire record of the contested case which is the subject of the petition within thirty days after receiving written notice from the party filing the petition that a petition for judicial review has been filed, and an application for stay of agency action during the pendency of judicial review shall not be filed in the division of workers' compensation of the department of workforce development but shall be filed with the district court. Such a review proceeding shall be accorded priority over other matters pending before the district court.

[S13, §2477-m33; C24, 27, 31, 35, 39, §**1449, 1451;** C46, 50, 54, 58, 62, 66, 71, 73, §86.26, 86.28; C75, 77, 79, 81, §86.26]

86 Acts, ch 1238, §47; 88 Acts, ch 1158, §11; 95 Acts, ch 140, §3; 98 Acts, ch 1061, §11; 2001 Acts, ch 87, §7

86.27 Settlement of controversy.

Notwithstanding the terms of the Iowa administrative procedure Act, no party to a contested case under any provision of the *"Workers' Compensation Act"* may settle a controversy without the approval of the workers' compensation commissioner.

[C75, 77, 79, 81, §86.27]

98 Acts, ch 1061, §11

86.28 Repealed by 77 Acts, ch 51, § 21.

86.29 The judicial review petition.

Notwithstanding chapter 17A, the Iowa administrative procedure Act, in a petition for judicial review of a decision of the workers' compensation commissioner in a contested case under this chapter or chapter 85, 85A, 85B, or 87, the opposing party shall be named the respondent, and the agency shall not be named as a respondent.

[C75, 77, 79, 81, §86.29]

83 Acts, ch 105, §8; 86 Acts, ch 1238, §48; 88 Acts, ch 1158, §12; 98 Acts, ch 1061, §11

86.30 and 86.31 Repealed by 74 Acts, ch 1090, § 211.

86.32 Costs of judicial review.

In proceedings for judicial review of compensation cases the clerk shall charge no fee for any service rendered except the filing fee and transcript fees when the transcript of a judgment is required. The taxation of costs on judicial review shall be in the discretion of the court.

[C24, 27, 31, 35, 39, §**1455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.32]

86 Acts, ch 1238, §49; 88 Acts, ch 1158, §13

86.33 Repealed by 74 Acts, ch 1090, § 211.

86.34 and 86.35 Repealed by 77 Acts, ch 51, § 21.

86.36 Notice and service — resident and nonresident employers. Repealed by 2000 Acts, ch 1007, § 6. See § 85.3.

86.37 Repealed by 77 Acts, ch 51, § 21.

86.38 Examination by physician — fee.

The workers' compensation commissioner may appoint a duly qualified, impartial physician to examine the injured employee and make report. The fee for this service shall be five dollars, to be paid by the workers' compensation commissioner, together with traveling expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. Any physician so examining any injured employee shall not be prohibited from testifying before the workers' compensation commissioner, or any other person, commission, or court, as to the results of the examination or the condition of the injured employee.

[S13, §2477-m30; C24, 27, 31, 35, 39, §**1461;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.38]

98 Acts, ch 1061, §11

86.39 Fees — approval.

All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 85, 85A, 85B, and 87 are subject to the approval of the workers' compensation commissioner. For services rendered in the district court and appellate courts, the attorney's fee is subject to the approval of a judge of the district court.

[S13, §2477-m20, -m35; C24, 27, 31, 35, 39, §**1462;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.39]

86 Acts, ch 1238, §50; 88 Acts, ch 1158, §14; 98 Acts, ch 1061, §11; 2000 Acts, ch 1007, §5

86.40 Costs.

All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

[S13, §2477-m31; C24, 27, 31, 35, 39, §**1463;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.40]

86.41 Witness fees.

Witness fees and mileage on hearings before the workers' compensation commissioner shall be the same as in the district court.

[S13, §2477-m24; C24, 27, 31, 35, 39, §**1464;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.41]

98 Acts, ch 1061, §11

Witness fees and mileage, §622.69 et seq.

86.42 Judgment by district court on award.

Any party in interest may present a certified

copy of an order or decision of the commissioner, from which a timely petition for judicial review has not been filed or if judicial review has been filed, which has not had execution or enforcement stayed as provided in section 17A.19, subsection 5, or an order or decision of a deputy commissioner from which a timely appeal has not been taken within the agency and which has become final by the passage of time as provided by rule and section 17A.15, or an agreement for settlement approved by the commissioner, and all papers in connection therewith, to the district court where judicial review of the agency action may be commenced. The court shall render a decree or judgment and cause the clerk to notify the parties. The decree or judgment, in the absence of a petition for judicial review or if judicial review has been commenced, in the absence of a stay of execution or enforcement of the decision or order of the workers' compensation commissioner, or in the absence of an act of any party which prevents a decision of a deputy workers' compensation commissioner from becoming final, has the same effect and in all proceedings in relation thereto is the same as though rendered in a suit duly heard and determined by the court.

[S13, §2477-m33; C24, 27, 31, 35, 39, §**1465;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.42; 82 Acts, ch 1161, §25]

86 Acts, ch 1238, §51; 88 Acts, ch 1158, §15; 98 Acts, ch 1061, §11

86.43 Judgment — modification of.

Upon the presentation to the court of a certified copy of a decision of the workers' compensation commissioner, ending, diminishing, or increasing the compensation under the provisions of this chapter, the court shall revoke or modify the decree or judgment to conform to such decision.

[S13, §2477-m33; C24, 27, 31, 35, 39, §**1466;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §86.43]

98 Acts, ch 1061, §11

86.44 Confidentiality.

All verbal or written information relating to the subject matter of an agreement and transmitted between any party to a dispute and a mediator to resolve a dispute pursuant to this chapter or chapter 85, 85A, or 85B, during any stage of a mediation or a dispute resolution process conducted by a mediator as provided in this section, whether reflected in notes, memoranda, or other work products in the case files, is a confidential communication except as otherwise expressly provided in this chapter. Mediators involved in a mediation or a dispute resolution process shall not be examined in any judicial or administrative proceeding regarding confidential communications and are not subject to judicial or administrative process requiring the disclosure of confidential communications.

For purposes of this section, *"mediator"* means a chief deputy workers' compensation commissioner or deputy workers' compensation commissioner acting in the capacity to resolve a dispute pursuant to this chapter or chapter 85, 85A, or 85B, or an employee of the division of workers' compensation involved during any stage of a process to resolve a dispute.

94 Acts, ch 1064, §2; 98 Acts, ch 1061, §8, 11

CHAPTER 87

COMPENSATION LIABILITY INSURANCE

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87.25 to 87.27 Repealed by 82 Acts, ch 1161, §28.

87.1 Insurance of liability required.

Every employer subject to the provisions of this and chapters 85, 85A, 85B, and 86, unless relieved therefrom as hereinafter provided, shall insure the employer's liability thereunder in some corporation, association, or organization approved by the commissioner of insurance.

A motor carrier who contracts with an owner-operator who is acting as an independent contractor pursuant to section 85.61, subsection 13, shall not be required to insure the motor carrier's liability for the owner-operator. A motor carrier may procure compensation liability insurance coverage for these owner-operators, and may charge the owner-operator for the costs of the premiums. A motor carrier shall require the owner-operator to provide and maintain a certificate of workers' compensation insurance covering the owner-operator's employees. An owner-operator shall remain responsible for providing compensation liability insurance for the owner-operator's employees.

Every such employer shall exhibit, on demand of the workers' compensation commissioner, evidence of the employer's compliance with this section; and if such employer refuses, or neglects to comply with this section, the employer shall be liable in case of injury to any worker in the employer's employ under the common law as modified by statute.

[S13, §2477-m41; C24, 27, 31, 35, 39, §**1467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.1]

91 Acts, ch 209, §2; 94 Acts, ch 1066, §1; 98 Acts, ch 1061, §11

87.2 Notice of failure to insure.

An employer who fails to insure the employer's liability as required by this chapter shall keep posted a sign of sufficient size and so placed as to be easily seen by the employer's employees in the immediate vicinity where working, which sign shall read as follows:

NOTICE TO EMPLOYEES

You are hereby notified that the undersigned employer has failed to insure the employer's liability to pay compensation as required by law, and that because of such failure the employer is liable to the employer's employees in damages for personal injuries sustained by the employer's employees.

(Signed) . . . . . .

An employer coming under the provisions of this and chapters 85, 85A, 85B, and 86 who fails to comply with this section or to post and keep the above notice in the manner and form required, shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §**1468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.2]

94 Acts, ch 1066, §2

87.3 Maximum commission for renewal.

No insurer of any obligation under this chapter shall either by itself or through another, either directly or indirectly, charge or accept as a commission or compensation for placing or renewing any insurance under this chapter, more than fifteen percent of the premium charged.

[S13, §2477-m46; C24, 27, 31, 35, 39, §**1469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.3]

87.4 Group and self-insured plans — tax exemption — plan approval.

For the purpose of complying with this chapter, groups of employers by themselves or in an association with any or all of their workers, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the insurance commissioner; and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with this chapter.

A self-insurance association formed under this section and an association comprised of cities or counties, or both, or community colleges as defined in section 260C.2 or school corporations, or both, or other political subdivisions, which have entered into an agreement under chapter 28E for the purpose of establishing a self-insured program for the payment of workers' compensation benefits are exempt from taxation under section 432.1.

A plan shall be submitted to the commissioner of insurance for review and approval prior to its implementation. The commissioner shall adopt rules for the review and approval of a self-insured group plan provided under this section. The rules shall include, but are not limited to, the following:

1. Procedures for submitting a plan for approval including the establishment of a fee schedule to cover the costs of conducting the review.

2. Establishment of minimum financial standards to ensure the ability of the plan to adequately cover the reasonably anticipated expenses.

A self-insured program for the payment of workers' compensation benefits established by an association comprised of cities or counties, or both, or community colleges, as defined in section 260C.2, or other political subdivisions, which have entered into an agreement under chapter 28E, is not insurance, and is not subject to regulation under chapters 505 through 523C. Membership in such an association together with payment of premiums due relieves the member from obtaining insurance as required in section 87.1. Such an association is not required to submit its plan or program to the commissioner of insurance for review and approval prior to its implementation and is not subject to rules or rates adopted by the commissioner relating to workers' compensation group self-insurance

programs. Such a program is deemed to be in compliance with this chapter.

The workers' compensation premium written on a municipality which is a member of an insurance pool which provides workers' compensation insurance coverage to a statewide group of municipalities, as defined in section 670.1, shall not be considered in the determination of any assessments levied pursuant to an agreement established under section 515A.15.

[S13, §2477-m42; C24, 27, 31, 35, 39, §**1470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.4]

85 Acts, ch 251, §1; 88 Acts, ch 1112, §201, 202; 89 Acts, ch 83, §19; 90 Acts, ch 1067, §1, 2; 95 Acts, ch 185, §1; 97 Acts, ch 37, §5; 2000 Acts, ch 1023, §1, 2

87.5 Benefit insurance.

Subject to the approval of the workers' compensation commissioner, any employer or group of employers may enter into or continue an agreement with the workers of the employer or group of employers to provide a scheme of compensation, benefit, or insurance in lieu of compensation and insurance; but such scheme shall in no instance provide less than the benefits provided and secured, nor vary the period of compensation provided for disability or for death, or the provisions of law with respect to periodic payments, or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased; and the approval of the workers' compensation commissioner shall be granted, if the scheme provides for contribution by workers, only when it confers benefits, in addition to those required by law, commensurate with such contributions.

[S13, §2477-m43; C24, 27, 31, 35, 39, §**1471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.5]

98 Acts, ch 1061, §11

87.6 Certificate of approval.

When such scheme or plan is approved by the workers' compensation commissioner, the commissioner shall issue a certificate to that effect, whereupon it shall be legal for such employer, or group of employers, to contract with any or all of the workers of the employer or group of employers to substitute such scheme or plan for the provisions relating to compensation and insurance during a period of time fixed by said department.

[S13, §2477-m44; C24, 27, 31, 35, 39, §**1472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.6]

98 Acts, ch 1061, §11

87.7 Termination of plan — appeal.

Such scheme or plan may be terminated by the workers' compensation commissioner on reasonable notice to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter; but from any such order of said workers' compensation commissioner judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act, upon the giving of proper bond to protect the interests involved.

[S13, §2477-m45; C24, 27, 31, 35, 39, §**1473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.7]

98 Acts, ch 1061, §11

87.8 Insolvency clause prohibited.

No policy of insurance issued under this chapter shall contain any provision relieving the insurer from payment if the insured becomes insolvent or discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is unpaid.

[S13, §2477-m48; C24, 27, 31, 35, 39, §**1474;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.8]

87.9 Policy clauses required.

Every policy shall provide that the worker shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability, or disability of the insured to receive the amount due and pay it over to the insured worker, or the worker's dependents, said insurer shall pay the same directly to such worker, the worker's agent, or to a trustee for the worker or the worker's dependents, to the extent of any obligation of the insured to said worker or the worker's dependents.

[S13, §2477-m48; C24, 27, 31, 35, 39, §**1475;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.9]

87.10 Other policy requirements.

Every policy issued by an insurance corporation, association, or organization to insure the payment of compensation shall contain a clause providing that between any employer and the insurer, notice to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured shall be jurisdiction of the insurer, and the insurer shall be bound by every agreement, adjudication, award or judgment rendered against the insured.

[S13, §2477-m47; C24, 27, 31, 35, 39, §**1476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.10]

87.11 Relief from insurance — procedures upon employer's insolvency.

When an employer coming under this chapter furnishes satisfactory proofs to the insurance commissioner of such employer's solvency and financial ability to pay the compensation and benefits as by law provided and to make such payments to the parties when entitled thereto, or when such employer deposits with the insurance commis-

sioner security satisfactory to the insurance commissioner and the workers' compensation commissioner as guaranty for the payment of such compensation, such employer shall be relieved of the provisions of this chapter requiring insurance; but such employer shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by such insurance commissioner or workers' compensation commissioner. A political subdivision, including a city, county, community college, or school corporation, that is self-insured for workers' compensation is not required to submit a plan or program to the insurance commissioner for review and approval.

An employer seeking relief from the insurance requirements of this chapter shall pay to the insurance division of the department of commerce the following fees:

1. A fee of one hundred dollars, to be submitted annually along with an application for relief.

2. A fee of one hundred dollars for issuance of the certificate relieving the employer from the insurance requirements of this chapter.

3. A fee of fifty dollars, to be submitted with each filing required by the commissioner of insurance, including but not limited to the annual and quarterly financial statements, and material change statements.

If an employer becomes insolvent and a debtor under 11 U.S.C., on or after January 1, 1990, this paragraph applies. The commissioner of insurance may request of the workers' compensation commissioner that all future payments of workers' compensation weekly benefits, medical expenses, or other payments pursuant to chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum. The workers' compensation commissioner shall fix the lump sum of probable future medical expenses and weekly compensation benefits, or other benefits payable pursuant to chapter 85, 85A, 85B, 86, or 87, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. The commissioner of insurance shall be discharged from all further liability for the commuted workers' compensation claim upon payment of the present lump sum to either the claimant, or a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant.

The commissioner of insurance shall not be required to pay more for all claims of an insolvent self-insured employer than is available for payment of such claims from the security given under this section.

Notwithstanding contrary provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payments by the commissioner of insurance from the security given under this section, pursuant to chapter 85, 85A, 85B, 86, or 87, shall be deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2.

Financial statements provided to the commissioner of insurance pursuant to this section may be held as confidential, proprietary trade secrets, pursuant to section 22.7, subsection 3, upon the request of the employer, subject to rules adopted by the commissioner of insurance, and are not subject to disclosure or examination under chapter 22.

[S13, §2477-m49; C24, 27, 31, 35, 39, §**1477;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.11; 82 Acts, ch 1003, §1]

91 Acts, ch 160, §3, 4; 98 Acts, ch 1061, §11; 99 Acts, ch 114, §4; 2001 Acts, ch 69, §1

87.11A Examination required.

The commissioner of insurance may at any time examine or inquire into the affairs of any self-insured employer. A domestic self-insured employer, or a self-insured employer not subject to periodic examination in its state of origin, shall be examined at least once during each three-year period.

91 Acts, ch 160, §5; 92 Acts, ch 1163, §18

87.11B Obligation to assist an examination — oaths.

If a self-insured employer is being examined, the officers, employees, or agents of the employer shall produce for inspection all books, documents, papers, and other information concerning the affairs of the employer and shall otherwise assist in the examination to the extent possible. The commissioner of insurance, or the commissioner's legally authorized representative in charge of the examination, may administer oaths and take testimony bearing upon the affairs of an employer under examination.

91 Acts, ch 160, §6; 92 Acts, ch 1163, §19

87.11C Self-insurance examiners.

The commissioner of insurance shall appoint one or more self-insurance examiners. An examiner while conducting an examination, possesses all the powers conferred upon the commissioner for such purposes. A self-insurance examiner is subject to the same powers and conditions as imposed under sections 507.4 through 507.7.

91 Acts, ch 160, §7

87.11D Payment of examination expenses by the self-insured employer.

The commissioner of insurance, upon the completion of an examination, or at such regular intervals prior to completion as the commissioner determines, shall prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the self-insured employer examined, and

upon failure or refusal of any self-insured employer to pay such a charge, the amount of the charge may be recovered in an action brought in the name of the state, and the commissioner may also revoke the employer's exemption under section 87.11. All fees collected in connection with an examination shall be paid into the general fund.

91 Acts, ch 160, §8; 94 Acts, ch 1107, §5

87.11E Penalties for filing false financial statements.

1. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner of insurance under this chapter, any statement of material fact which is, at the time and in the light of circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2. The following persons shall not commit any of the acts or omissions prohibited by subsection 3:

a. An employer.

b. A person administering a self-insurance program, in whole or in part, on behalf of an employer.

c. A partner of the employer or administrator.

d. An officer of the employer or administrator.

e. A director of the employer or administrator.

f. A person occupying a similar status or performing similar functions as persons described in paragraphs *"a"* through *"e"*.

g. A person directly or indirectly controlling the employer or administrator.

3. A person listed under subsection 2 shall not do any of the following:

a. File an application for relief under section 87.11 which as of its effective date, or as of any date after filing in the case of an order denying relief, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Willfully violate or willfully fail to comply with any provision of sections 87.11, 87.11A, and 87.11B, or any rule or order adopted or issued pursuant to such sections.

4. The commissioner of insurance may deny, suspend or revoke a certificate of relief issued pursuant to section 87.11, or may impose a civil penalty for a violation of this section.

5. A civil penalty levied under subsection 4 shall not exceed one thousand dollars per violation per person, and shall not exceed ten thousand dollars in a single proceeding against any one person. All civil penalties shall be deposited in the general fund of the state pursuant to section 505.7.

6. A person who willfully and knowingly violates this section, or a rule or order adopted or issued pursuant to this section, is guilty of a class "D" felony. The commissioner of insurance may refer such evidence as is available concerning violations of this section to the attorney general or the proper county attorney who may, with or without such reference, institute appropriate criminal proceedings under this section. This section does not limit the power of the state to punish a person for conduct which constitutes a crime under any other statute.

91 Acts, ch 160, §9

87.12 Mines — conclusive presumption. Repealed by 94 Acts, ch 1066, § 8.

87.13 Interpretative clause.

All provisions in chapters 85, 85A, 85B, 86, and this chapter relating to compensation for injuries sustained arising out of and in the course of employment in the operation of coal mines or production of coal under any system of removing coal for sale are exclusive, compulsory and obligatory upon the employer and employee in such employment.

[C35, §1477-g2; C39, §**1477.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.13]

83 Acts, ch 101, §5

87.14 Mines — insurance required. Repealed by 94 Acts, ch 1066, § 8.

87.14A Insurance or bond required.

An employer subject to this chapter and chapters 85, 85A, 85B, and 86 shall not engage in business without first obtaining insurance covering compensation benefits or obtaining relief from insurance as provided in this chapter or furnishing a bond pursuant to section 87.16. A person who willfully and knowingly violates this section is guilty of a class "D" felony.

94 Acts, ch 1066, §3

87.15 Injunctions.

If a violation of section 87.14A has been committed or there is reason to believe a violation of section 87.14A is about to be committed, the attorney general or the county attorney from the county in which a violation has occurred or is about to occur shall, or any person may, bring an action to enjoin such person from committing the violation and the court or judge before whom the action is brought shall, if the facts warrant, issue a temporary or permanent writ of injunction without bond.

[C35, §1477-g4; C39, §**1477.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.15]

94 Acts, ch 1066, §4

87.16 Bond in lieu of insurance.

An employer subject to this chapter and chapters 85, 85A, 85B, and 86 who has failed to secure the payment of compensation by carrying insur-

ance or is not relieved from carrying insurance as provided in this chapter, shall furnish a bond approved by the workers' compensation commissioner as to form and security, conditioned to secure and pay workers' compensation or damages in accordance with the law. The bond shall be in an amount as may be fixed by the workers' compensation commissioner having due regard for the number of employees and considering the industrial experience in the industry as a class.

[C31, 35, §1477-c1; C39, §**1477.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.16]

94 Acts, ch 1066, §5; 98 Acts, ch 1061, §11

87.17 Notice to be posted.

Such employer shall post and keep posted in some conspicuous place upon the premises where the business is conducted, a notice in form approved by the workers' compensation commissioner, stating the nature of the security furnished by such employer to secure the compensation payments contemplated by the law.

[C31, 35, §1477-c2; C39, §**1477.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.17]

98 Acts, ch 1061, §11

87.18 Repealed by 73 Acts, ch 139, § 31.

87.19 Failure to comply — proceedings.

Upon the receipt of information by the workers' compensation commissioner of any employer failing to comply with sections 87.16 and 87.17, the commissioner shall at once notify such employer by certified mail that unless such employer comply with the requirements of law, legal proceedings will be instituted to enforce such compliance.

Unless such employer comply with the provisions of the law within fifteen days after the giving of such notice, the workers' compensation commissioner shall report such failure to the attorney general, whose duty it shall be to bring an action in a court of equity to enjoin the further violation. Upon decree being entered for a temporary or permanent injunction, a violation shall be a contempt of court and punished as provided for contempt of court in other cases.

[C31, 35, §1477-c4; C39, §**1477.8;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.19]

98 Acts, ch 1061, §11

Contempts, generally, chapter 665

87.20 Revocation of release from insurance.

The insurance commissioner with the concurrence of the workers' compensation commissioner may, at any time, upon reasonable notice to such employer and upon hearing, revoke for cause any order theretofore made relieving any employer from carrying insurance as provided by this chapter.

[S13, §2477-m49; C24, 27, 31, 35, 39, §**1478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.20]

98 Acts, ch 1061, §11

87.21 Employer failing to insure.

Any employer, except an employer with respect to an exempt employee under section 85.1, who has failed to insure the employer's liability in one of the ways provided in this chapter, unless relieved from carrying such insurance as provided in section 87.11, is liable to an employee for a personal injury in the course of and arising out of the employment, and the employee may enforce the liability by an action at law for damages, or may collect compensation as provided in chapters 85, 85A, 85B, and 86. In actions by the employee for damages under this section, the following rules apply:

1. It shall be presumed:

a. That the injury to the employee was the direct result and growing out of the negligence of the employer.

b. That such negligence was the proximate cause of the injury.

2. The burden of proof shall rest upon the employer to rebut the presumption of negligence, and the employer shall not be permitted to plead or rely upon any defense of the common law, including the defenses of contributory negligence, assumption of risk and the fellow servant rule.

3. In an action at law for damages the parties have a right to trial by jury.

[C24, 27, 31, §1479; C35, §1479, 1481-e1; C39, §**1479, 1481.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §87.21, 87.24; 82 Acts, ch 1161, §26, ch 1221, §3]

83 Acts, ch 36, §4, 8

87.22 Corporate officer exclusion from workers' compensation or employers' liability coverage.

The president, vice president, secretary, and treasurer of a corporation other than a family farm corporation, but not to exceed four officers per corporation, may exclude themselves from workers' compensation coverage under chapters 85, 85A, and 85B by knowingly and voluntarily rejecting workers' compensation coverage by signing, and attaching to the workers' compensation or employers' liability policy a written rejection, or if such a policy is not issued, by signing a written rejection which is witnessed by two disinterested individuals who are not, formally or informally, affiliated with the corporation and which is filed by the corporation with the workers' compensation commissioner, in substantially the following form:

REJECTION OF WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY COVERAGE

I understand that by signing this statement I reject the coverage of chapters 85, 85A, and 85B of the Code of Iowa relating to workers' compensation.

I understand that my rejection of the coverage of chapters 85, 85A, and 85B is not a waiver of any rights or remedies available to me or to others on my behalf in a civil action related to personal injuries sustained by me arising out of and in the course of my employment with the corporation.

I also understand that by signing this statement and checking alternative (1) below I reject employers' liability coverage for bodily injuries or death sustained by me arising out of and in the course of my employment with the corporation. (Check either alternative (1) or (2):)

(1) I reject the employers' liability coverage.

(2) I decline to reject the employers' liability coverage.

Signed .....
Corporate Office .....
Date .....
City, County, State
of Residence .....

Witness .....
Witness .....

I also understand that the signing of this statement and checking of alternative (1) below by an authorized agent of the corporation rejects for the corporation employers' liability coverage for bodily injuries or death sustained by me arising out of and in the course of my employment with the corporation. (Check either alternative (1) or (2):)

(1) The corporation rejects the employers' liability coverage.

(2) The corporation declines to reject the employers' liability coverage.

Signed .....
Relationship to Corporation .....
Date .....
City, County, State
of Residence .....

Witness .....
Witness .....

The rejection of workers' compensation coverage is not enforceable if it is required as a condition of employment. A corporate officer who signs a written rejection filed with the workers' compensation commissioner may terminate the rejection by signing a written notice of termination which is witnessed by two disinterested individuals, who are not, formally or informally, affiliated with the corporation and which is filed by the corporation with the workers' compensation commissioner.

83 Acts, ch 36, §5, 7, 8; 97 Acts, ch 186, §1; 98 Acts, ch 1061, §11

87.23 Compensation liability insurance not required.

A corporation, association, or organization approved by the commissioner of insurance to provide compensation liability insurance shall not require a motor carrier that contracts with an owner-operator who is acting as an independent contractor pursuant to section 85.61, subsection 13, to purchase compensation liability insurance for the employer's liability for the owner-operator or its employees.

91 Acts, ch 209, §3

87.24 Insurance trade practices covered.

A workers' compensation coverage plan regulated under this chapter shall be considered a person for purposes of chapter 507B.

93 Acts, ch 88, §2

87.25 to 87.27 Repealed by 82 Acts, ch 1161, § 28.

CHAPTER 88

OCCUPATIONAL SAFETY AND HEALTH

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88.1 Public policy.

It is the policy of this state to assure so far as possible every working person in the state safe and healthful working conditions and to preserve human resources by:

1. Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and perfect existing programs for providing safe and healthful working conditions.

2. Providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions.

3. Authorizing the labor commissioner to set mandatory occupational safety and health standards applicable to businesses, and by creating an employment appeal board within the department of inspections and appeals for carrying out adjudicatory functions under the chapter.

4. Building upon advances already made through employer and employee initiative for providing safe and healthful working conditions.

5. Providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

6. Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety.

7. Providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity or life expectancy as a result of the employee's work experience.

8. Providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health.

9. Providing for the development and promulgation of occupational safety and health standards.

10. Providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for an individual violating this prohibition.

11. Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem.

12. Encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

13. Devoting adequate funds to the administration and enforcement of occupational safety and health standards and rules promulgated by the labor commissioner.

[C66, 71, §88A.1; C73, 75, 77, 79, 81, §88.1]
86 Acts, ch 1245, §519

88.2 Administration — personnel — contracts — grants.

1. The labor commissioner, appointed pursuant to section 91.2, and the division of labor services of the department of workforce development created in section 84A.1 shall administer this chapter.

2. The necessary legal authority and qualified personnel shall be provided for the administration and enforcement of this chapter and such standards adopted pursuant to this chapter.

3. Personnel administering the chapter shall be employed pursuant to chapter 19A.

4. Subject to the approval of the director of the department of workforce development, the labor commissioner may enter into contracts with any state agency, with or without reimbursement, for the purpose of obtaining the services, facilities, and personnel of the agency, and with the consent of any state agency or any political subdivision of the state, accept and use the services, facilities, and personnel of the agency or political subdivision, and employ experts and consultants or organizations, in order to expeditiously, efficiently, and economically effectuate the purposes of this chapter. The agreements under this subsection are subject to approval of the executive council if approval is required by law.

5. The commissioner, the governor, and the director of management may obtain and accept fed-

eral grants to the state to be used in connection with the funds appropriated for the administration of this chapter and federal funds available to the division.

[SS15, §4999-a5; C24, 27, 31, 35, 39, §**1482;** C46, 50, 54, 58, 62, 66, 71, §88.1; C73, 75, 77, 79, 81, §88.2]

86 Acts, ch 1244, §14; 86 Acts, ch 1245, §914; 96 Acts, ch 1186, §23

88.3 Definitions.

Wherever used in this chapter, unless the context clearly requires a different meaning:

1. *"Appeal board"* means the employment appeal board created under section 10A.601.

2. *"Commissioner"* means the labor commissioner appointed pursuant to section 91.2, or the commissioner's designee.

3. *"Emergency temporary standards"* means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the commissioner that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, and was formulated in a manner which afforded an opportunity for diverse views to be considered or is an emergency temporary standard provided by the secretary pursuant to and in conformance with the provisions of the federal law.

4. *"Employee"* means an employee of an employer who is employed in a business of the employer. *"Employee"* also means an inmate as defined in section 85.59, when the inmate works in connection with the maintenance of the institution, in an industry maintained in the institution, or while otherwise on detail to perform services for pay. *"Employee"* also means a volunteer involved in responses to hazardous waste incidences. The employer of a volunteer is that entity which provides or which is required to provide workers' compensation coverage for the volunteer.

5. *"Employer"* means a person engaged in a business who has one or more employees and also includes the state of Iowa, its various departments and agencies, and any political subdivision of the state.

6. *"Federal law"* means the Act of Congress approved December 29, 1970, 84 Stat. 1590, officially cited as the "Occupational Safety and Health Act of 1970 (29 U.S.C. 651 – 678)."

7. *"Imminent danger"* means a condition or practice in any place of employment which is such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures of this chapter, exclusive of the procedures set forth in section 88.11.

8. *"Occupational safety and health standard"* means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

9. *"Person"* means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

10. *"Secretary"* means the secretary of labor of the United States.

[C66, 71, §88A.2; C73, 75, 77, 79, 81, §88.3]

86 Acts, ch 1245, §520; 90 Acts, ch 1136, §1; 99 Acts, ch 68, §2; 2001 Acts, ch 24, §24

88.4 Duties.

Each employer shall furnish to each of the employer's employees employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employer's employees and comply with occupational safety and health standards promulgated under this chapter.

Each employee shall comply with occupational safety and health standards and all rules and orders issued pursuant to this chapter which are applicable to the employee's own actions and conduct.

[C66, 71, §88A.1; C73, 75, 77, 79, 81, §88.4]

88.5 Occupational safety and health standards.

1. *Promulgation of rules.*

a. As soon as practicable following July 1, 1972, the commissioner shall by rule, adopt and promulgate those occupational safety and health standards, which would result in improved safety or health for employees; provided, that the commissioner shall adopt no such standard unless the same has been adopted and promulgated as a permanent standard by the secretary in accordance with the procedures set forth in the federal law. In the event that any such federal standard is subsequently amended, modified, repealed, or substituted by a new standard, the commissioner shall, within ninety days, review such amendment, modification, repeal or substitution, and take such action with respect to the state standards, including the repeal or substitution of the same, as will conform the state standards to those federal standards then in effect.

b. Before adopting, modifying, or revoking any standard by rule pursuant to this section, the commissioner shall hold a public hearing on the subject matter of the proposed adoption, modification, or revocation. An interested person may appear and be heard at the hearing, in person or by agent or counsel. The provisions of this section are in addition to the requirements of chapter 17A.

c. Notwithstanding other provisions of this section, upon or following July 1, 1972, the com-

missioner may adopt as interim standards those standards adopted by the secretary in conformance with section 6(a) of the federal law, provided that any such standard so adopted shall cease to be effective on April 28, 1973, unless the commissioner shall have initiated the procedures for adopting a permanent standard in conformance with and following the procedures set forth in this section, in which case the interim standard shall remain in effect pending the adoption of the permanent standard. In the event that any such federal interim standard is subsequently amended, modified, repealed, or substituted by a new interim standard, the commissioner shall, within thirty days, review such amendment, modification, repeal or substitution, and take such action with respect to the state interim standards, including the repeal or substitution of the same, as will conform the state interim standards to those federal interim standards then in effect.

2. *Toxic materials and other harmful physical agents.* The commissioner, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of the employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate, but in any event shall conform with the provisions of subsection 1 of this section. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, a standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

3. *Temporary variances.*

a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph *"b"* of this subsection and establishes that the employer is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or operation of the facilities cannot be completed by the effective date, that the employer is taking all available steps to safeguard the employer's employees against the hazards that are covered by the standard, and that the employer has an effective program for coming into compliance with this standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter except that such an order may be renewed not more than twice so long as the requirements of this paragraph are met and an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred and eighty days.

b. An application for a temporary order under this subsection shall contain:

(1) A specification of the standard or portion thereof from which the employer seeks a variance.

(2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the fact represented, that the employer is unable to comply with the standard or portion thereof and a detailed statement of those reasons therefor.

(3) A statement of the steps the employer has taken and will take (with specific dates) to protect employees against the hazard covered by the standard.

(4) A statement of when the employer expects to be able to comply with the standard and what steps the employer has taken and what steps the employer will take (with dates specified) to come into compliance with the standard.

(5) A certification that the employer has informed the employer's employees of any application by giving a copy thereof to their authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other reasonably appropriate means as may be directed by the commissioner.

(6) A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing.

4. *Labels, warnings, protective equipment.* Any standard promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper

conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at the employer's cost, to employees exposed to such hazard in order to most effectively determine whether the health of such employee is adversely affected by such exposure. The results of such examinations or tests shall be furnished to the commissioner, and if released by the employee, shall be furnished to the employee's physician and the employer's physician.

5. *Emergency temporary standards.* The commissioner shall provide for an emergency temporary standard to take immediate effect if the commissioner determines that employees are exposed to grave danger from exposure from substances or agents determined to be toxic or physically harmful or from new hazards and if such emergency temporary standard is necessary to protect the employees from such danger. Such emergency standard shall cease to be effective and shall no longer be applicable after the lapse of six months following the effective date thereof unless the commissioner has initiated the procedures provided for under this chapter, for the purpose of promulgating a permanent standard as provided in subsection 1 of this section in which case the emergency temporary standard will remain in effect until the permanent standard is adopted and becomes effective. Abandonment of the procedure for such promulgation by the commissioner shall terminate the effectiveness and applicability of the emergency temporary standard.

6. *Permanent variance.* Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if the commissioner determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to the employer's employees which are as safe and healthful as those which would prevail if the employer complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which the employer must adopt and utilize to the extent that they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the commissioner on the commissioner's own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

7. *Special variance.* Where there are conflicts with standards, rules, or regulations promulgated by any federal agency other than the United States department of labor, special variances from standards, rules, or regulations promulgated under this chapter may be granted to avoid such regulatory conflicts. Such variances shall take into consideration the safety of the employees involved. Notwithstanding any other provision of this chapter, and with respect to this subsection, any employer seeking relief under this provision must file an application with the commissioner and the commissioner shall forthwith hold a hearing at which employees or other interested persons, including representatives of the federal regulatory agencies involved, may appear and, upon the showing that such a conflict indeed exists, the commissioner may issue a special variance until the conflict is resolved.

8. *Priority for setting standards.* In determining the priorities for establishing standards under this section, the commissioner shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

9. *Product safety.* Standards promulgated under this chapter shall not be different from federal standards applying to products distributed or used in interstate commerce unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision does not apply to customized products or parts not normally available on the open market, or to optional parts or additions to products which are ordinarily available with such optional parts or additions.

10. *Judicial review before enforcement.* The provisions of the Iowa administrative procedure Act shall apply to judicial review of standards issued under this section. Notwithstanding any provision of the Iowa administrative procedure Act to the contrary, a person who is aggrieved or adversely affected by a standard issued under this section must seek judicial review of such standard prior to the sixtieth day after such standard becomes effective. All determinations of the commissioner shall be conclusive if supported by substantial evidence in the record as a whole.

11. *Fire fighters clothing and equipment.* The commissioner shall establish standards and promulgate rules for protective helmets, boots, fire coats, trousers, gloves, work uni-

forms and may set standards for any other protective clothing or equipment which shall be worn or used by fire fighters within the state. In establishing these standards, the commissioner shall consider the standards of or proposed by the national fire protection association, the international association of fire fighters and any federal agency which may have such standards. The commissioner shall provide a copy of the standards, rules and any changes thereto to each fire department operating in this state. The standards established and the rules promulgated hereunder shall apply to protective clothing and equipment worn or used by every fire fighter in the state, provided that the standards and rules shall be advisory rather than mandatory for volunteer fire departments.

The standards promulgated by the commissioner under the provisions of this subsection shall be effective for all equipment purchased after January 1, 1979. All equipment for which standards are established under the provisions of this subsection shall meet the standards promulgated under the provisions of this subsection prior to January 1, 1981.

12. *Railway sanitation and shelter.* A railway corporation within the state shall provide adequate sanitation and shelter for all railway employees. The commissioner shall adopt rules requiring railway corporations within the state to provide a safe and healthy workplace. The commissioner shall enforce the requirements of this section upon the receipt of a written complaint.

[C66, 71, §88A.11 – 88A.13; C73, 75, 77, 79, 81, §88.5]

86 Acts, ch 1245, §521; 88 Acts, ch 1042, §1; 93 Acts, ch 180, §54; 94 Acts, ch 1023, §84; 2001 Acts, ch 24, §25; 2002 Acts, ch 1119, §10

Subsection 7 amended

88.6 Inspections, investigations, and recordkeeping.

1. *Entrance and inspections.* In order to carry out the purposes of this chapter, the commissioner or the commissioner's representative, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized:

a. To enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer.

b. To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and within a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

2. *Subpoena of witness and evidence.* In making inspections and investigations under this chapter, the commissioner may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the district courts of this state. In case of contumacy, failure, or refusal of any person to obey such an order, any appropriate district court within the jurisdiction of which such person is found, or resides, or transacts business, upon the application by the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear, to produce evidence, if, as, and when so ordered and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

3. *Accident and illness records.*

a. Each employer shall make, keep and preserve, and make available to the commissioner such records regarding the employer's activities relating to this chapter as the commissioner may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protection and obligations under this chapter, including the provisions of applicable standards.

b. The commissioner shall prescribe regulations requiring an employer to maintain accurate records of, and to make periodic reports on, work related deaths, injuries, and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

c. The commissioner shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 88.5, subsection 2. Such regulations shall provide employees or their authorized employee representative with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records that will indicate the employee's own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 88.5, subsection 2, and shall

inform any employee who is being thus exposed of the corrective action being taken.

d. All employers in the state of Iowa are required to make all reports to the secretary required by federal law as if this chapter were not in effect.

e. The commissioner will make such reports to the secretary in such form and containing such information, as the secretary shall from time to time require pursuant to federal law.

f. The regulations referred to in this subsection shall not prescribe requirements different from those provided by the federal law and regulations.

4. *Representatives of employers and employees.* Subject to regulations issued by the commissioner, a representative of the employer and an authorized employee representative shall be given an opportunity to accompany the commissioner or the commissioner's authorized representative during the physical inspection of any workplace under subsection 1 of this section, for the purpose of aiding such inspection. Where there is no authorized employee representative, the commissioner or the commissioner's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

5. *Special inspections.* Any employees or authorized employee representative who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the commissioner or the commissioner's authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or authorized employee representative, and a copy shall be provided the employer or the employer's agent no later than at the time of inspection, except that upon the request of the person giving such notice the person's identifying information and the identifying information of individual employees referred to in the notice shall not appear in such copy or on any record published, released, or made available. If, upon receipt of such notification, the commissioner determines that there are reasonable grounds to believe that such violation or danger exists, the commissioner shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the commissioner determines that there are no reasonable grounds to believe that a violation or danger exists, the commissioner shall notify the employees or authorized employee representative in writing of such determination. For purposes of this subsection, *"identifying information"* means specific personal information including, but not limited to, the person's name, home address, telephone number, social security number, and handwriting and language idiosyncrasies. In circumstances when the release of any fact may be used to identify the person, that fact shall not be released.

6. *Notice of violations.* During any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the commissioner or any representative of the commissioner responsible for conducting the inspection, in writing, of any violation of this chapter which they have reason to believe exists in such workplace. The commissioner shall, by regulation, establish procedures for an informal review of any refusal by a representative of the commissioner to issue a citation with respect to any such alleged violation and shall furnish the employees or authorized employee representative requesting such review a written statement of the reason for the commissioner's final disposition of the case.

7. *General.* Any information obtained by the commissioner under this chapter shall be obtained with a minimum burden upon employers. Except for the purpose of administration of this chapter, no information received by the commissioner or the commissioner's representative from an employer, in compliance with and pursuant to this chapter, shall be admissible in any action brought by or for the benefit of any person. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

8. *Confidentiality.* Notwithstanding chapter 22, records prepared or obtained by the commissioner relating to an enforcement action conducted pursuant to this chapter shall be kept confidential until the enforcement action is complete. For purposes of this subsection, an enforcement action is complete when any of the following occurs:

a. An inspection file is closed without the issuance of a citation.

b. A citation or noncompliance notice resulting from an inspection becomes a final order of the employment appeal board and all applicable courts pursuant to sections 88.8 and 88.9, and abatement is verified.

c. A determination and any subsequent action is final in an occupational safety and health discrimination case.

A citation or noncompliance notice shall remain a confidential record until received by the appropriate employer. This subsection shall not affect the discovery rights of any party to a contested case.

9. *Reports — fire fighters.* Reports of inspections and investigations involving the occupational safety and health for fire fighters shall be presented to the state fire service and emergency response council.

[C66, 71, §88.11, 88.12, 88A.10, 88A.14; C73, 75, 77, 79, 81, §88.6]

98 Acts, ch 1105, §1, 2; 2000 Acts, ch 1117, §6; 2000 Acts, ch 1232, §47

88.7 Citations.

1. *Issuance by commissioner.*

a. If, upon inspection or investigation, the commissioner or the commissioner's authorized representative believes that an employer has violated the requirements of section 88.4, of any standard, rule or rules promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, the commissioner shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rules or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The commissioner shall prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety and health.

b. If, upon inspection or investigation, the commissioner or the commissioner's authorized representative believes that an employee, under the employee's own volition, has violated the requirements of section 88.4 of any standard, rule or rules promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, the commissioner shall with reasonable promptness issue a citation to the employee. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rules, regulations or order alleged to have been violated. The commissioner shall prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety and health.

2. *Posting of citation.* Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the commissioner, at or near each place a violation referred to in the citation occurred.

3. *Statute of limitations.* No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

[C66, 71, §88A.15; C73, 75, 77, 79, 81, §88.7]

88.8 Procedure for enforcement.

1. *Postinspection penalty notice.* If, after an inspection or an investigation, the commissioner issues a citation under section 88.7, the commissioner shall, within a reasonable time after the termination of the inspection or investigation, notify the employer by service in the same manner as an original notice or by certified mail of the penalty, if any, proposed to be assessed under section 88.14 and that the employer has fifteen working days within which to notify the commissioner that the employer wishes to contest the citation or proposed assessment of penalties. If, within fifteen working days from the receipt of the notice issued by the commissioner, the employer fails to notify the commissioner that the employer intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employees or authorized employee representative under subsection 3 of this section within the time specified, the citation and the assessment, as proposed, shall be deemed a final order of the appeal board and not subject to review by any court or agency.

2. *Noncompliance notice.* If the commissioner has reason to believe that an employer has failed to correct the violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the appeal board in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the commissioner shall notify the employer by service in the same manner as an original notice or by certified mail of the failure and of the penalty proposed to be assessed under section 88.14 by reason of the failure, and that the employer has fifteen working days within which to notify the commissioner that the employer wishes to contest the commissioner's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the commissioner, the employer fails to notify the commissioner that the employer intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed the final order of the appeal board and not subject to review by any court or agency.

3. *Contested notice.* If an employer notifies the commissioner that the employer intends to contest a citation issued under section 88.7, or notification issued under subsection 1 or 2 of this section or if, within fifteen working days of the issuance of a citation under section 88.7, any employee or authorized employee representative files a notice with the commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the commissioner shall immediately advise the appeal board of such notification, and the appeal board shall afford an opportunity for a hearing. At the hearing, the appeal board shall act as an adjudicatory body. The appeal board shall thereafter issue an order, based on findings of fact, affirming, modifying, or

vacating the commissioner's citation or proposed penalty or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond the employer's reasonable control, the commissioner, after an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the appeal board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection, and shall conform to rules of procedure adopted under the federal law by federal authorities insofar as the federal rules of procedure do not conflict with state law.

The commissioner has unreviewable discretion to withdraw a citation charging an employer with violating this chapter. If the parties enter into a settlement agreement prior to a hearing, the employment appeal board shall enter an order affirming the agreement.

[C66, 71, §88A.15, 88A.16; C73, 75, 77, 79, 81, §88.8]

88 Acts, ch 1025, §2; 89 Acts, ch 321, §25; 93 Acts, ch 180, §55; 99 Acts, ch 68, §3

88.9 Judicial review.

1. *Aggrieved persons.* Judicial review of any order of the appeal board issued under section 88.8, subsection 3, may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the violation is alleged to have occurred or where the employer has its principal office and may be filed within sixty days following the issuance of such order. The appeal board's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the appeal board's orders.

The commissioner may obtain judicial review or enforcement of any final order or decision of the appeal board by filing a petition in the district court of the county in which the alleged violation occurred or in which the employer has its principal office. The judicial review provisions of chapter 17A shall govern such proceedings to the extent applicable.

Notwithstanding section 10A.601, subsection 7, and chapter 17A, the commissioner has the exclusive right to represent the appeal board in any judicial review of an appeal board decision under this chapter in which the commissioner does not appeal the appeal board decision, except as provided by section 88.17.

2. *Uncontested appeal board orders.* If no petition for judicial review is filed within sixty days after service of the appeal board's order, the appeal board's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the commissioner which has become a final order of the appeal board under section 88.8, subsection 1 or 2, the clerk of the district court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the appeal board and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a district court entered pursuant to this subsection or subsection 1, the district court may assess the penalties provided in section 88.14 in addition to invoking any other available remedies.

3. *Discrimination and discharge.* A person shall not discharge or in any manner discriminate against an employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of the employee or others of a right afforded by this chapter. A person shall not discharge or in any manner discriminate against an employee because the employee, who with no reasonable alternative, refuses in good faith to expose the employee's self to a dangerous condition of a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury; provided the employee, where possible, has first sought through resort to regular statutory enforcement channels, unless there has been insufficient time due to the urgency of the situation, or the employee has sought and been unable to obtain from the person, a correction of the dangerous condition.

An employee who believes that the employee has been discharged or otherwise discriminated against by a person in violation of this subsection may, within thirty days after the violation occurs, file a complaint with the commissioner alleging discrimination. Upon receipt of the complaint, the commissioner shall conduct an investigation as the commissioner deems appropriate. If, upon investigation, the commissioner determines that the provisions of this subsection have been violated, the commissioner shall bring an action in the appropriate district court against the person. In any such action, the district court has jurisdiction to restrain violations of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to the employee's former position with back pay. Within ninety days of the receipt of a complaint filed under this subsection, the commissioner shall notify the com-

plainant of the commissioner's determination under this subsection.

[C66, 71, §88A.16; C73, 75, 77, 79, 81, §88.9]
88 Acts, ch 1107, §1; 93 Acts, ch 180, §56, 57

88.10 Occupational safety and health review commission. Repealed by 86 Acts, ch 1245, § 550.

88.11 Procedures to counteract imminent dangers.

1. *Imminent danger orders.* The district court of the county in which the imminent danger is alleged to exist shall have jurisdiction, upon petition of the commissioner, to restrain any conditions or practices in any place of employment which are such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. In the event the appropriate trial judge is not available, any judge of the judicial district in which such county is located shall have authority to issue orders under this section. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

2. *Imminent danger proceedings.* Upon the filing of any such petition the said district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceedings shall be as provided by the Iowa rules of civil procedure. No temporary restraining order issued without notice shall be effective for a period longer than five days.

3. *Notification.* Whenever and as soon as an inspector concludes that the conditions or practices described in subsection 1 of this section exist in any place of employment, the inspector shall inform the affected employees and employers of the danger and that the inspector is recommending to the commissioner that relief be sought. The commissioner shall adopt rules prescribing the procedures in enforcing imminent danger orders which procedures shall reasonably conform to those promulgated under the federal law insofar as the same do not conflict with state law.

4. *Employee's rights.* If the commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the authorized employee representative, may bring an action against the said commissioner in the district court of the county in which the imminent danger is alleged to exist or in which the employer's principal office is located, for a writ of mandamus to compel the commissioner to seek such an order and for such further relief as may be appropriate.

[C66, 71, §88A.17; C73, 75, 77, 79, 81, §88.11]

88.12 Confidentiality of trade secrets.

Notwithstanding any provisions of this chapter, all information reported to or otherwise obtained by the commissioner or the commissioner's representative in connection with any inspection or proceeding under this chapter which contains or might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant to any proceeding under this chapter. In any such proceeding the commissioner, the appeal board, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

[C73, 75, 77, 79, 81, §88.12]

88.13 Variations, tolerances, and exemptions.

When the secretary grants variations, tolerances, and exemptions to avoid serious impairment of the national defense as provided under authority of section 16 of the federal law, the commissioner shall grant the same variations, tolerances, and exemptions in the Iowa law, rules and standards to be effective immediately.

[C73, 75, 77, 79, 81, §88.13]

88.14 Penalties.

1. *Willful violations.* Any employer who willfully or repeatedly violates the requirements of section 88.4, any standard, rule, or order adopted or issued pursuant to section 88.5, or rules adopted pursuant to this chapter, may be assessed a civil penalty of not more than seventy thousand dollars for each violation, but not less than five thousand dollars for each willful violation.

2. *Serious violations.* Any employer who has received a citation for a serious violation of the requirements of section 88.4, of any standard, rule, or order adopted or issued pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, shall be assessed a civil penalty of up to seven thousand dollars for each such violation.

3. *Nonserious violations.* Any employer who has received a citation for a violation of the requirements of section 88.4, of any standard, rule, or order adopted or issued pursuant to section 88.5, or of rules prescribed pursuant to this chapter and the violation is specifically determined not to be of a serious nature, may be assessed a civil

penalty of up to seven thousand dollars for each violation.

4. *Failure to correct.* Any employer who fails to correct a violation for which a citation has been issued under section 88.7, subsection 1, within the period permitted for its correction, may be assessed a civil penalty of not more than seven thousand dollars for each day during which the failure or violation continues. The period for correction shall not begin until the date of the final order of the appeal board of any review proceeding under section 88.8 initiated by the employer in good faith and not solely for delay or avoidance of penalties.

5. *Willful violations causing death.* Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 88.5, or of any regulations prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be guilty of a serious misdemeanor; except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of an aggravated misdemeanor.

6. *Advance notice of inspections.* Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the commissioner or the commissioner's designees, shall, upon conviction, be guilty of a serious misdemeanor.

7. *Filing false documents.* Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be guilty of a serious misdemeanor.

8. *Disclosure of confidential information.* Whoever violates the provisions of section 88.12 shall be guilty of a serious misdemeanor; and shall be removed from office or employment.

9. *Violation of posting requirements.* Any employer who violates any of the posting, reporting, or recordkeeping requirements under this chapter, shall be assessed a civil penalty of up to seven thousand dollars for each violation.

10. *Assessment of penalties.* The appeal board shall have the authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

11. *Definition of serious violation.* For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

12. *Collection of penalties.* Civil penalties owed under this chapter shall be paid to the commissioner for deposit with the treasurer of state and shall accrue to the state and may be recovered in a civil action in the name of the state brought in the district court of the county where the violation is alleged to have occurred or where the employer has its principal office.

[C73, §4064; C97, §4999, 5025, 5026; S13, §2477-1a, 4999-a1, -a2; SS15, §4999-a5; C24, 27, 31, 35, 39, §**1494;** C46, 50, 54, 58, 62, §88.13; C66, 71, §88.13, 88A.15, 88A.17; C73, 75, 77, 79, 81, §88.14]

91 Acts, ch 136, §1; 92 Acts, ch 1098, §1

88.15 Appeal procedures for employees.

In the event an employee is issued a citation as provided in section 88.7, the procedures for appeal as provided for employers in this chapter shall apply.

[C73, 75, 77, 79, 81, §88.15]

88.16 Training and employee and employer education.

1. The commissioner shall conduct directly or by contract, educational programs to provide an adequate supply of qualified personnel to administer this chapter and informational programs on the importance of and proper use of adequate safety and health equipment.

2. The commissioner is authorized to conduct directly or by grants or contracts, short term training of personnel engaged in work related to the commissioner's responsibilities under this chapter.

3. The commissioner shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this chapter, and consult with and advise employers, employees, and organizations representing employers and employees, as to effective means of preventing occupational injuries and illnesses.

4. Notwithstanding chapter 22, consultation records prepared or obtained by the commissioner pursuant to this section and which relate to specific employers or specific workplaces shall be kept confidential. For purposes of this subsection, *"consultation record"* means a record created when an employer requests and receives from the labor commissioner direct assistance in the recognition and correction of workplace hazards.

[C73, 75, 77, 79, 81, §88.16]

98 Acts, ch 1105, §3

88.17 Representation in civil litigation.
The attorney general of the state shall upon request by the commissioner represent the commissioner in any civil litigation brought under this chapter.
[C73, 75, 77, 79, 81, §88.17]

88.18 Statistics.
In order to further the purposes of this chapter, the commissioner shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this chapter. The commissioner shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.
[C73, 75, 77, 79, 81, §88.18]

88.19 Annual report.
Within one hundred twenty days following the convening of each session of each general assembly, the commissioner shall prepare and submit to the governor for transmittal to the general assembly a report upon the subject matter of this chapter, the progress toward achievement of the purpose of this chapter, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports may include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this chapter, defining areas of emphasis for new criteria and standards; and evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of co-operative efforts undertaken between government agencies and other interested parties in the implementation of this chapter during the preceding year; a progress report on the development of an adequate supply of trained personnel in the field of occupational safety and health, including estimates of future needs and the efforts being made by government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this chapter.
[C73, 75, 77, 79, 81, §88.19]

88.20 Effect of chapter.
Nothing in this chapter shall be construed to supersede or in any manner affect any workers' compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.
[C73, 75, 77, 79, 81, §88.20]

88.21 Conflicts resolved.
The provisions of this chapter will prevail wherever the same conflicts with any other chapter of the Code.
[C73, 75, 77, 79, 81, §88.21]

CHAPTER 88A

SAFETY INSPECTION OF AMUSEMENT RIDES

88A.1 Definitions.
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88A.5 Fees to general fund.
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88A.15 Rider safety.
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88A.17 Construction.

88A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Amusement device"* means any equipment or piece of equipment, appliance or combination thereof designed or intended to entertain or amuse a person.

2. *"Amusement ride"* means any mechanized device or combination of devices which carries passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. *"Amusement ride"* does not include a device or structure that is devoted principally to exhibitions related to agriculture, the arts, education, industry, religion, or science.

3. *"Carnival"* means an enterprise offering amusement or entertainment to the public in, upon, or by means of amusement devices or rides or concession booths.

4. *"Commissioner"* means the labor commissioner or the labor commissioner's designee.

5. *"Concession booth"* means a structure, or enclosure, used at more than one fair or carnival, or at one fair or carnival for more than seven consecutive days, from which amusements are offered to the public.

6. *"Division"* means the division of labor services of the department of workforce development created under section 84A.1.

7. *"Fair"* means an enterprise principally devoted to the exhibition of products of agriculture or industry in connection with the operation of amusement rides or devices or concession booths.

8. *"Operator"* means a person, or the agent of a person, who owns or controls or has the duty to control the operation of an amusement device or ride, a concession booth, or related electrical equipment at a carnival or fair. *"Operator"* includes an agency of the state or any of its political subdivisions.

9. *"Parent or guardian"* means a parent, custodian, or guardian or person responsible for the control, safety, training, or education of a rider who is a minor or person with a disability.

10. *"Related electrical equipment"* means any electrical apparatus or wiring used at a carnival or fair.

11. *"Rider"* means a person waiting in the immediate vicinity of an amusement ride to get on the amusement ride, getting on an amusement ride, using an amusement ride, getting off an amusement ride, or leaving an amusement ride and still in the immediate vicinity of the amusement ride. *"Rider"* does not include an employee, agent, or servant of the amusement ride owner while engaged in the duties of their employment.

12. *"Sign"* means any symbol or language reasonably calculated to communicate information to a rider or the rider's parent or guardian, including placards, prerecorded messages, live public address, stickers, pictures, pictograms, video, verbal information, and visual signals.

[C73, 75, 77, 79, 81, §88A.1]

86 Acts, ch 1245, §915; 90 Acts, ch 1136, §2; 96 Acts, ch 1186, §23; 98 Acts, ch 1135, §1, 2, 7; 99 Acts, ch 96, §8

88A.2 Permit required.

No amusement device or ride, concession booth, or any related electrical equipment shall be operated at a carnival or fair in this state without a permit having been issued by the commissioner to an operator of such equipment. On or before the first of May of each year, any person required to obtain a permit by this chapter shall apply to the division for a permit on a form furnished by the commissioner which form shall contain such information as the commissioner may require. The commissioner may waive the requirement that an application for a permit must be filed on or before the first of May of each year if the applicant gives satisfactory proof to the commissioner that the applicant could not reasonably comply with the date requirement and if the applicant immediately applies for a permit after the need for a permit is first determined. For the purpose of determining if an amusement ride, amusement device, concession booth, or any related electrical equipment is in safe operating condition and will provide protection to the public using such ride, device, booth, or related electrical equipment, each amusement ride, amusement device, concession booth, or related electrical equipment shall be inspected by the commissioner before it is initially placed in operation in this state, and shall thereafter be inspected at least once each year.

If, after inspection, an amusement device or ride, concession booth, or related electrical equipment is found to comply with the rules adopted under this chapter, the commissioner shall, upon payment of the permit fee and the inspection fee, permit the operation of the amusement device or ride or concession booth or to use any related electrical equipment.

If, after inspection, additions or alterations are contemplated which change a structure, mechanism, classification or capacity, the operator shall notify the commissioner of the operator's intentions in writing and provide any plans or diagrams requested by the commissioner.

[C73, 75, 77, 79, 81, §88A.2]

88A.3 Rules.

The commissioner shall adopt and issue rules for the safe installation, repair, maintenance, use, operation, and inspection of amusement devices, amusement rides, concession booths, and related electrical equipment at carnivals and fairs to the extent necessary for the protection of the public. The rules shall be based upon generally accepted engineering standards and shall be concerned

with, but not necessarily limited to, engineering force stresses, safety devices, and preventive maintenance. Whenever such standards are available in suitable form they may be incorporated by reference. The rules shall provide for the reporting of accidents and injuries incurred from the operation of amusement devices or rides, concession booths, or related electrical equipment.

The commissioner may modify or repeal any rule adopted under the provisions of this chapter.

[C73, 75, 77, 79, 81, §88A.3]

88 Acts, ch 1042, §2

88A.4 Permit and inspection fees — nonliability.

Annual inspection fees under this chapter shall be as follows:

1. Permit fees.

a. One through ten rides, or devices or concessions, twenty dollars.

b. Eleven or more rides, or devices or concessions, thirty dollars.

2. Mechanical and electrical inspection fees for amusement rides and devices.

a. For rides which are designed for seventy-five pounds or less per passenger unit, sixty dollars for each inspection.

b. For rides which are designed for seventy-five pounds or more and for which the manufacturer's recommended assembly time is less than forty work hours, ninety dollars for each inspection.

c. For rides for which the manufacturer's recommended assembly time is forty work hours or more, one hundred twenty dollars for each inspection.

3. Electrical inspection of concession booths, and amusement devices fees, thirty-five dollars each.

4. Special inspectors authorization fee, twenty-five dollars each. The special inspectors authorization shall allow a person to perform inspections only on rides, devices, and concession booths of an operator who makes the request for the special inspectors authorization. The failure of a special inspector to inform the commissioner of violations shall not subject the commissioner to liability for any damages incurred.

[C73, 75, 77, 79, 81, §88A.4]

92 Acts, ch 1098, §2

88A.5 Fees to general fund.

All fees collected by the division under the provisions of this chapter shall be transmitted to the treasurer of state and credited by the treasurer to the general fund of the state.

[C73, 75, 77, 79, 81, §88A.5]

88A.6 Personnel.

The commissioner may employ inspectors and any other personnel deemed necessary to carry out the provisions of this chapter, subject to the provisions of chapter 19A.

[C73, 75, 77, 79, 81, §88A.6]

88A.7 Cessation order.

The commissioner may order, in writing, a temporary cessation of operation of any amusement device or ride, concession booth, or related electrical equipment if it has been determined after inspection to be hazardous or unsafe. Operation of the amusement device or ride, concession booth or related electrical equipment shall not resume until the unsafe or hazardous condition is corrected to the satisfaction of the commissioner.

[C73, 75, 77, 79, 81, §88A.7]

88A.8 Judicial review.

Judicial review of action of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C73, 75, 77, 79, 81, §88A.8]

88A.9 Insurance.

No person shall be issued a permit under this chapter unless the person first obtains an insurance policy in an amount of not less than one hundred thousand dollars for bodily injury to or death of one person in any one accident, and, subject to the limit for one person, in an amount of not less than three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than five thousand dollars for injury to or destruction of property of others in any one accident, insuring the operator against liability for injury or death suffered by a person attending a fair or carnival.

[C73, 75, 77, 79, 81, §88A.9]

88A.10 Penalties.

1. Any person who operates an amusement device or ride, concession booth or related electrical equipment at a carnival or fair without having obtained a permit from the commissioner or who violates any order or rule issued by the commissioner under this chapter is guilty of a serious misdemeanor.

2. A person who interferes with, impedes, or obstructs in any manner the commissioner in the performance of the commissioner's duties under this chapter is guilty of a simple misdemeanor. A person who bribes or attempts to bribe the commissioner is subject to section 722.1.

3. A person who fails to obey a safety related requirement listed on a sign displayed at an amusement ride pursuant to section 88A.16, subsection 2, is subject to a civil penalty of one hundred dollars.

[C73, 75, 77, 79, 81, §88A.10]

87 Acts, ch 111, §7; 98 Acts, ch 1135, §3, 7

88A.11 Exemptions.

The following amusement devices or rides or concession booths are exempt from the provisions of this chapter:

1. Nonmechanized playground equipment including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, swinging gates and physical fitness devices except where an admission fee is charged for usage or an admission fee is charged to areas where such equipment is located.

2. A concession booth, amusement device or ride which is owned and operated by a nonprofit religious, educational or charitable institution or association if such booth, device or ride is located within a building subject to inspection by the state fire marshal or by any political subdivisions of the state under its building, fire, electrical, and related public safety ordinances.

3. The commissioner may exempt amusement devices from the provisions of this chapter that have self-contained wiring installed by the manufacturer, that are operated manually by the use of hands or feet, that operate on less than one hundred twenty volts of electrical power, and that are fixtures or appliances within or part of a structure subject to the building code of this state or any political subdivision of this state.

4. The commissioner may exempt playground equipment owned, maintained, and operated by any political subdivision of this state.

5. Vessels inspected by officers appointed by the director of the department of natural resources under chapter 462A.

[C73, 75, 77, 79, 81, §88A.11; 82 Acts, ch 1028, §1]

97 Acts, ch 40, §2

88A.12 Local regulation.

Nothing contained in this chapter shall prevent any political subdivision of this state from licensing or regulating any amusement ride or device, concession booth, electrical equipment, carnival, or circus as otherwise provided by law.

[C73, 75, 77, 79, 81, §88A.12]

88A.13 Waiver of inspection.

The commissioner may waive the requirement that an amusement device or ride or any part thereof be inspected before being operated in this state if an operator gives satisfactory proof to the commissioner that the amusement device or ride or any part thereof has passed an inspection conducted by a public or private agency whose inspection standards and requirements are at least equal to those requirements and standards established by the commissioner under the provisions of this chapter. The annual permit and inspection fees shall be paid before the commissioner may waive this requirement.

[C73, 75, 77, 79, 81, §88A.13]

88A.14 Injunction.

In addition to any and all other remedies, if an owner, operator, or person in charge of any amusement device or ride, concession booth, or related electrical equipment covered by this chapter, continues to operate any amusement device or ride, concession booth, or related electrical equipment covered by this chapter, after receiving a notice of defect as provided by this chapter, without first correcting the defects or making replacements, the commissioner may petition the district court in equity, in an action brought in the name of the state, for a writ of injunction to restrain the use of the alleged defective amusement device or ride, concession booth, or related electrical equipment.

88 Acts, ch 1042, §3

88A.15 Rider safety.

1. A rider or the rider's parent or guardian shall report in writing to the operator or the operator's designee, on forms provided by the operator or the operator's designee, any injury sustained on an amusement ride before leaving the operator's premises. The report shall include all of the following information:

a. The name, address, and phone number of the injured person.

b. A brief description of the incident, the injury claimed, and the location, date, and time of the injury.

c. The cause of the injury, if known.

d. The name, address, and phone number of any witness to the incident.

2. If the rider or the rider's parent or guardian is unable to file a report because of the severity of the rider's injuries, the rider or the rider's parent or guardian shall file the report as soon as reasonably possible. The failure of a rider or the rider's parent or guardian to report an injury under this section does not affect the rider's right to commence a civil action related to the incident.

3. A rider shall, at a minimum, do all of the following:

a. Obey the reasonable safety rules posted in accordance with this chapter and oral instructions for an amusement ride issued by the operator or the operator's employee or agent, unless the safety rules or oral instructions are contrary to the safety rules of this chapter.

b. Refrain from acting in any manner that may cause or contribute to injuring the rider or others, including all of the following:

(1) Exceeding the limits of the rider's ability.

(2) Interfering with safety devices that are provided.

(3) Failing to engage safety devices that are provided.

(4) Disconnecting or disabling a safety device

except at the express instruction of the operator.

(5) Altering or enhancing the intended speed, course, or direction of an amusement ride.

(6) Using the controls of an amusement ride designed solely to be operated by the operator.

(7) Extending arms and legs beyond the carrier or seating area except at the express direction of the operator.

(8) Throwing, dropping, or expelling an object from or toward an amusement ride except as permitted by the operator.

(9) Getting on or off an amusement ride except at the designated time and area, if any, at the direction of the operator or in an emergency.

(10) Not reasonably controlling the speed or direction of the rider's person or an amusement ride that requires the rider to control or direct the rider's person or a device.

4. A rider shall not get on or attempt to get on an amusement ride unless the rider or the rider's parent or guardian reasonably determines that, at a minimum, the rider meets all of the following criteria:

a. Has sufficient knowledge to use, get on, and get off the amusement ride safely without instruction or has requested and received sufficient information to get on, use, and get off the amusement ride safely prior to getting on the amusement ride.

b. Has located, read, and understood any signs in the vicinity of the amusement ride and meets any posted height, medical, or other requirements.

c. Knows the range and limits of the rider's ability and knows the requirements of the amusement ride will not exceed those limits.

d. Is not under the influence of alcohol or any drug that affects the rider's ability to safely use the amusement ride or obey the posted rules or oral instructions.

e. Is authorized by the operator or the operator's employee, agent, or servant to get on the amusement ride.

98 Acts, ch 1135, §4, 7

88A.16 Notice to riders.

1. An operator shall display signs indicating the applicable rider safety responsibilities provided in section 88A.15 and the location of stations to report injuries. The signs must be located in all of the following locations:

a. Each station for reporting an injury.

b. Each first aid station.

c. Any of the following locations:

(1) At least two other locations on the premises, including any premises entrance or exit most commonly used by riders, if there are no more than four entrances or exits for riders.

(2) At least four other locations on the premises, including the four premises entrances and exits most commonly used by riders, if there are more than four entrances and exits for riders.

(3) Every amusement ride.

2. An operator shall post a sign at each amusement ride. Any sign required by this subsection must be prominently displayed at a conspicuous location, clearly visible to the public, and bold and legible in design. The sign must include all of the following that apply:

a. Operational instructions.

b. Safety guidelines for riders.

c. Restrictions on the use of the amusement ride.

d. Behavior or activities that are prohibited.

e. A legend providing that, "State law requires riders to obey all warnings and directions for this amusement ride and behave in a manner that will not cause or contribute to the injury of themselves or others. Riders must report injuries prior to leaving the premises. Failure to comply is punishable by fine."

98 Acts, ch 1135, §5, 7

88A.17 Construction.

Sections 88A.15 and 88A.16 shall not be construed to preclude a criminal prosecution or civil action available under any other provision of law.

98 Acts, ch 1135, §6, 7

CHAPTER 88B

ASBESTOS REMOVAL AND ENCAPSULATION

88B.1 Definitions.
88B.2 Permit required — exceptions. Transferred to §88B.3A.
88B.3 Administration — rules — fees — inspections.
88B.3A Permit required — application, qualifications, and exceptions.
88B.4 Permit — term, renewal, and records required.
88B.5 Waivers and alternative procedures.
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88B.9 Waivers and alternative procedures. Repealed by 96 Acts, ch 1074, §8.
88B.10 Licensing of asbestos workers. Repealed by 96 Acts, ch 1074, §8.
88B.11 Bids for governmental projects.
88B.12 Penalties.
88B.13 Approval of training courses. Repealed by 96 Acts, ch 1074, §8.

88B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Asbestos project"* means an activity involving the removal or encapsulation of asbestos.

2. *"Business entity"* means a partnership, firm, association, corporation, sole proprietorship, or other business concern.

3. *"Commissioner"* means the labor commissioner or the commissioner's designee.

4. *"Division"* means the division of labor services of the department of workforce development created under section 84A.1.

5. *"License"* means an authorization issued by the division permitting an individual person, including a supervisor or contractor, to work on an asbestos project, to inspect buildings for asbestos-containing building materials, to develop management plans, and to act as an asbestos project designer.

6. *"Permit"* means an authorization issued by the division permitting a business entity to remove or encapsulate asbestos.

7. *"Public or commercial building"* means a building that is not a residential apartment building of fewer than ten units or a school building.

84 Acts, ch 1062, §1; 86 Acts, ch 1245, §916; 89 Acts, ch 38, §1; 96 Acts, ch 1074, §1; 96 Acts, ch 1186, §23

88B.2 Permit required — exceptions. Transferred to § 88B.3A.

88B.3 Administration — rules — fees — inspections.

1. The commissioner shall administer this chapter.

2. The commissioner shall adopt, in accordance with chapter 17A, rules necessary to carry out the provisions of this chapter.

3. The commissioner shall prescribe fees for the issuance and renewal of licenses and permits. The fees shall be based on the costs of licensing, permitting, and administering this chapter, including time spent by personnel of the division in performing duties and any travel expenses incurred. All fees provided for in this chapter shall be collected by the commissioner and remitted to the treasurer of state for deposit in the general fund of the state.

4. At least once a year, during an actual asbestos project, the division shall conduct an on-site inspection of each permittee's procedures for removing and encapsulating asbestos.

84 Acts, ch 1062, §3; 86 Acts, ch 1245, §917; 92 Acts, ch 1163, §20; 94 Acts, ch 1057, §1; 96 Acts, ch 1074, §3

88B.3A Permit required — application, qualifications, and exceptions.

1. To qualify for a permit, a business entity shall submit an application to the division in the form required by the division and pay the prescribed fee.

2. A business entity engaging in the removal or encapsulation of asbestos shall hold a permit for that purpose unless the business entity is removing or encapsulating asbestos at its own facilities.

84 Acts, ch 1062, §2

C85, §88B.2

89 Acts, ch 38, §2; 90 Acts, ch 1136, §3; 96 Acts, ch 1074, §2, 9

C97, §88B.3A

88B.4 Permit — term, renewal, and records required.

1. A permit expires on the first anniversary of its effective date, unless it is renewed for a one-year term as provided in this section.

2. At least one month before the permit expires, the division shall send to the permittee, at the last known address of the permittee, a renewal notice that states all of the following:

a. The date on which the current permit expires.

b. The date by which the renewal application must be received by the division for the renewal to be issued and mailed before the permit expires.

c. The amount of the renewal fee.

3. Before the permit expires, the permittee may renew it for an additional one-year term, if the business entity meets the following conditions:

a. Is otherwise entitled to a permit.

b. Submits a renewal application to the division in the form required by the division.

c. Pays the renewal fee prescribed by the division.

4. The permittee shall keep a record of each asbestos project it performs and shall make the record available to the division at any reasonable time. Records shall contain information and be kept for a time prescribed in rules adopted by the division.

84 Acts, ch 1062, §4; 89 Acts, ch 38, §3; 96 Acts, ch 1074, §4; 96 Acts, ch 1219, §19

88B.5 Waivers and alternative procedures.

1. In an emergency that results from a sudden, unexpected event that is not a planned renovation or demolition, the commissioner may waive the requirement for a permit.

2. If the business entity is not primarily engaged in the removal or encapsulation of asbestos, the commissioner may waive the requirement for a permit if worker protection requirements are met.

3. The division shall not approve any waivers on work conducted at a school, public, or commer-

cial building unless the request is accompanied by a recommendation from an asbestos project designer.

84 Acts, ch 1062, §5; 89 Acts, ch 38, §4; 94 Acts, ch 1057, §2; 96 Acts, ch 1074, §5

88B.6 Licensing of asbestos workers.

1. *Application.*

a. To apply for a license, an individual shall submit an application to the division in the form required by the division and shall pay the prescribed fee.

b. The application shall include information prescribed by rules adopted by the commissioner.

c. A license is valid for one year from the completion date of the required training and may be renewed by providing information as required in subsection 2, paragraphs *"b"* and *"c"*.

2. *Qualifications.*

a. An individual is not eligible to be or do any of the following unless the person obtains a license from the division:

(1) A contractor or supervisor, or to work on an asbestos project.

(2) An inspector for asbestos-containing building material in a school or a public or commercial building.

(3) An asbestos management planner for a school building.

(4) An asbestos project designer for a school or a public or commercial building.

b. To qualify for a license, the applicant must have successfully completed training as established by the United States environmental protection agency, paid a fee, and met other requirements as specified by the division by rule.

c. To qualify for a license as an asbestos abatement worker, supervisor, or contractor, the applicant must have been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator.

3. *Exception.* A license is not required of an employee employed by an employer exempted from the permit requirement of section 88B.3A, subsection 2, if the employee is trained on appropriate removal or encapsulation procedures, safety, and health issues regarding asbestos removal or encapsulation, and federal and state standards applicable to the asbestos project.

84 Acts, ch 1062, §6; 89 Acts, ch 38, §5; 96 Acts, ch 1074, §6; 97 Acts, ch 40, §3

88B.7 Records required. Repealed by 96 Acts, ch 1074, § 8. See § 88B.4.

88B.8 Denials, suspensions, and revocations.

The division may deny, suspend, or revoke a permit or license, in accordance with chapter 17A, if the permittee or licensee does any of the following:

1. Fraudulently or deceptively obtains or attempts to obtain a permit or license.

2. Fails at any time to meet the qualifications for a permit or license or to comply with a rule adopted by the commissioner under this chapter.

3. Fails to meet any applicable federal or state standard for removal or encapsulation of asbestos.

4. Employs or permits an unlicensed or untrained person to work on an asbestos project.

84 Acts, ch 1062, §8; 89 Acts, ch 38, §7; 96 Acts, ch 1074, §7

88B.9 Waivers and alternative procedures. Repealed by 96 Acts, ch 1074, § 8. See § 88B.5.

88B.10 Licensing of asbestos workers. Repealed by 96 Acts, ch 1074, § 8. See § 88B.6.

88B.11 Bids for governmental projects.

A state agency or political subdivision shall not accept a bid in connection with any asbestos project from a business entity that does not hold a permit from the division at the time the bid is submitted.

84 Acts, ch 1062, §11; 94 Acts, ch 1057, §4

88B.12 Penalties.

1. A person or business entity who willfully violates a provision of this chapter or a rule adopted pursuant to this chapter shall be assessed a civil penalty of not more than five thousand dollars for each violation.

2. A person or business entity who previously has been assessed a civil penalty under this section, and who willfully violates a provision of this chapter or a rule adopted pursuant to this chapter:

a. For a first offense, is guilty of a simple misdemeanor and shall be fined not to exceed twenty thousand dollars.

b. For a second or subsequent offense, is guilty of an aggravated misdemeanor and shall be fined not to exceed twenty-five thousand dollars or imprisoned for not to exceed two years, or both.

84 Acts, ch 1062, §12

88B.13 Approval of training courses. Repealed by 96 Acts, ch 1074, § 8.

CHAPTER 89

BOILERS AND UNFIRED STEAM PRESSURE VESSELS

89.1 Authority.
89.2 Definitions.
89.3 Inspection made — certificate.
89.4 Exemptions.
89.5 Rules — records.
89.6 New boilers — notice to commissioner.
89.7 Insured equipment — certificate.
89.8 Fees for inspection.
89.9 Disposal of fees.
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89.11 Injunction.
89.12 Hearing — notice — decree.
89.13 Civil penalty allowed.

89.1 Authority.

The labor commissioner shall enforce the provisions of this chapter and may employ qualified personnel under the provisions of chapter 19A to administer the provisions of this chapter.

The provisions of this chapter shall apply to all boilers and unfired steam pressure vessels in this state, except as otherwise provided in this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §89.1]

89.2 Definitions.

For the purpose of this chapter unless the context otherwise requires:

1. *"Boiler"* means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat.

2. *"Commissioner"* means the labor commissioner or the labor commissioner's designee.

3. *"Exhibition boiler"* means a boiler which is operated in the state for nonprofit purposes including, but not limited to, exhibitions, fairs, parades, farm machinery shows, or any other event of an historical or educational nature. An *"exhibition boiler"* includes steam locomotives, traction and portable steam engines, and stationary boilers of the firetube, watertube, and returntube class, model or miniature, and may be riveted, riveted and welded, or all welded construction, if used within the state solely for nonprofit purposes.

4. *"Power boiler"* means a boiler in which steam or other vapor is generated at a pressure of more than fifteen pounds per square inch or a water boiler intended for operation at pressures in excess of one hundred sixty pounds per square inch or temperatures in excess of 250 degrees F.

5. *"Public assembly"* means the assembly of people in any of the following:

a. A building or structure primarily used as a theater, motion picture theater, museum, arena, exhibition hall, school, college, dormitory, bowling alley, physical fitness center, family entertainment center, lodge hall, union hall, pool hall, casino, place of worship, funeral home, institution of health and custodial care, hospital, or child care or adult day services facility.

b. A building or structure, a portion of which is primarily used for amusement, entertainment, or instruction.

c. A building or structure owned by or leased to the state or any of its agencies or political subdivisions.

However, for purposes of this chapter, *"public assembly"* does not include the assembly of people in buildings or structures containing only eating and drinking establishments or in any building used exclusively by an employer for training or instruction of its own employees.

6. *"Special inspector"* means an inspector who holds a commission from the commissioner and who is not a state employee.

7. *"Steam heating boiler"* means a boiler operating at not more than fifteen pounds per square inch; or a hot water heating boiler operating at not more than one hundred sixty pounds per square inch and not more than 250 degrees F. at the boiler outlet.

8. *"Unfired steam pressure vessel"* means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source.

[C62, 66, 71, 73, 75, 77, §89.12; C79, 81, §89.2]

89 Acts, ch 321, §26; 92 Acts, ch 1098, §3; 2000 Acts, ch 1097, §1; 2001 Acts, ch 24, §26; 2001 Acts, ch 64, §1

89.3 Inspection made — certificate.

1. It shall be the duty of the commissioner, to inspect or cause to be inspected internally and externally, at least once every twelve months, except as otherwise provided in this section, in order to determine whether all such equipment is in a safe and satisfactory condition, and properly constructed and maintained for the purpose for which it is used, all boilers and unfired steam pressure vessels operating in excess of fifteen pounds per

square inch, all low pressure heating boilers and unfired steam pressure vessels located in places of public assembly and other appurtenances used in this state for generating or transmitting steam for power, or for using steam under pressure for heating or steaming purposes.

2. The commissioner may enter any building or structure, public or private, for the purpose of inspecting any equipment covered by this chapter or gathering information with reference thereto.

3. Upon making an inspection of any equipment covered by this chapter, the commissioner shall issue to the owner or user thereof a certificate of inspection which certificate shall be posted at a place near the location of the equipment.

4. The owner or user of any equipment covered in this chapter, or persons in charge of same, shall not allow or permit a greater pressure in any unit than is stated in the certificate of inspection issued by the commissioner.

5. The commissioner may inspect boilers and tanks and other equipment stamped with the American Society of Mechanical Engineers code symbol for other than steam pressure, manufactured in Iowa, when requested by the manufacturer.

6. Each boiler of one hundred thousand pounds per hour or more capacity, unfired steam pressure vessel or regulated appurtenance used or proposed to be used within this state, which contains only water subject to internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which vessel the commissioner has determined that the owner or user has complied with the record-keeping requirements prescribed in this chapter, shall be inspected at least once every two years internally and externally while not under pressure, and at least once every two years externally while under pressure. At any time a hydrostatic test is deemed necessary to determine the safety of a vessel, the tests shall be conducted by the owner or user of the equipment under the supervision of the commissioner.

7. The owner or user of a boiler of one hundred thousand pounds per hour or more capacity, unfired steam pressure vessel or regulated appurtenance desiring to qualify for biennial inspection shall keep available for examination by the commissioner accurate records showing the date and actual time the vessel is out of service and the reason it is out of service, and the chemical physical laboratory analyses of samples of the vessel water taken at regular intervals of not more than forty-eight hours of operation as will adequately show the condition of the water and any elements or characteristics of the water which are capable of producing corrosion or other deterioration of the vessel or its parts.

8. Internal inspections of sectional cast iron steam and cast iron hot water heating boilers shall be conducted only as deemed necessary by the commissioner. External operating inspections shall be conducted annually.

9. Internal inspections of steel hot water boilers shall be conducted once every six years. The initial inspection of all affected boilers shall be apportioned by the commissioner over the six-year period after July 1, 1978. External operating inspections shall be conducted annually.

10. Internal inspections of unfired steam pressure vessels operating in excess of fifteen pounds per square inch shall be conducted once every two years. External inspections shall be conducted annually. An internal inspection of an unfired steam pressure vessel may be required at any time by the commissioner upon the observation by an inspector of conditions, enumerated by the commissioner through rules, warranting an internal inspection.

11. All power boilers that are converted to low pressure boilers shall have a fifteen pound safety valve installed and be approved by the commissioner no later than thirty days after the expiration date of the certificate for the boiler.

12. An exhibition boiler does not require an annual inspection certificate but special inspections may be requested by the owner or an event's management to be performed by the commissioner. Upon the completion of an exhibition boiler inspection a written condition report shall be prepared by the commissioner regarding the condition of the exhibition boiler's boiler or pressure vessel. This report will be issued to the owner and the management of all events at which the exhibition boiler is to be operated. The event's management is responsible for the decision on whether the exhibition boiler should be operated and shall inform the division of labor of the event's management's decision. The event's management is responsible for any injuries which result from the operation of any exhibition boiler approved for use at the event by the event's management. A repair symbol, known as the "R" stamp, is not required for repairs made to exhibition boilers pursuant to the rules regarding inspections and repair of exhibition boilers as adopted by the commissioner, pursuant to chapter 17A.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.2; C79, 81, §89.3]

85 Acts, ch 105, §1; 89 Acts, ch 321, §27; 97 Acts, ch 27, §1

89.4 Exemptions.

1. The provisions of this chapter shall not apply to the following boilers:

a. Boilers of railway locomotives subject to federal inspection.

b. Boilers operated and regularly inspected by railway companies operating in interstate commerce.

c. Boilers under the jurisdiction and subject to inspection by the United States government.

d. Steam heating boilers and unfired steam pressure vessels associated therewith and mobile power boilers used exclusively for agricultural purposes.

e. Heating boilers in residences.

f. Fire engine boilers brought into the state for temporary use in times of emergency.

g. Low pressure heating boilers used in buildings other than those for public assembly.

h. Hot water heating boilers used for heating pools or spas where burner input is no greater than eighteen thousand seven hundred seventy-two British thermal units per hour.

2. Unfired steam pressure vessels not exceeding the following limitations are not required to be reported to the commissioner and shall be exempt from regular inspection under provisions of this chapter:

a. A vessel not greater than five cubic feet in volume and not having a pressure greater than two hundred fifty pounds per square inch.

b. A vessel not greater than one and one-half cubic feet in volume with no limit on pressure.

3. Internal inspections shall not be required on unfired steam pressure vessels where they have been manufactured without inspection plate and where it would be necessary for them to be drilled in order to be inspected. The existence of such unfired pressure vessels shall be reported to the commissioner, and certified by the commissioner that the unfired pressure vessel is in a satisfactory condition for the purpose for which it is used.

4. Jacketed direct or indirect fired vessels built and installed in accordance with the American society of mechanical engineers code, section VIII, division 1, appendix 19, shall not be considered boilers or power boilers for purposes of this chapter and shall not be required to meet the American society of mechanical engineers standard for controls and safety devices for automatically fired boilers. However, jacketed direct or indirect fired vessels as described in this subsection shall be subject to inspection under section 89.3 as pressure vessels.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.3; C79, 81, §89.4]

92 Acts, ch 1098, §4; 98 Acts, ch 1222, §21, 28

89.5 Rules — records.

1. The commissioner may prescribe rules under the provisions of chapter 17A, for the purpose of carrying out the provisions of this chapter, including rules for the methods of testing equipment and construction and installation of new equipment covered by this chapter, and the rules shall, as nearly as possible, conform to the rules formulated by the boiler code committee of the American society of mechanical engineers.

2. The commissioner shall investigate and record the cause of any boiler explosion that may occur in the state, the loss of life, injuries sustained, and estimated loss of property, if any; and such other data as may be of benefit in preventing a recurrence of similar explosions.

3. The commissioner shall keep a complete and accurate record of the name of the owner or user of each steam boiler or other equipment subject to this chapter, giving a full description of the equipment, including the type, dimensions, age, condition, the amount of pressure allowed, and the date when last inspected.

4. A rule adopted pursuant to this section which adopts standards by reference to another publication shall be exempt from the requirements of section 17A.6, subsection 4, if the following conditions exist:

a. The cost of the publication is an unreasonable expense when compared to the anticipated usage of the publication.

b. A copy of the publication is available from an entity located within the state capitol complex.

c. The rule identifies the location where the publication is available.

d. The administrative rules coordinator approves the exemption.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.4; C79, 81, §89.5]

96 Acts, ch 1149, §1

89.6 New boilers — notice to commissioner.

Before any equipment included under the provisions of this chapter is installed by any owner, user or lessee thereof, a ten days' written notice of intention to install the equipment shall be given to the commissioner. The notice shall designate the proposed place of installation, the type and capacity of the equipment, the use to be made thereof, the name of company which manufactured the equipment, and whether the equipment is new or used.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.5; C79, 81, §89.6]

89.7 Insured equipment — certificate.

1. The inspection required by this chapter shall not be made by the commissioner if an owner or user of equipment specified by this chapter obtains an inspection by a representative of a reputable insurance company and obtains a policy of insurance upon the equipment from that insurance company. The representative conducting the inspection shall be commissioned by the commissioner as a special inspector for the year during which the inspection occurs and shall meet such other requirements as the commissioner may by rule establish. The commission shall be valid for

one year and the special inspector shall pay a fee for the issuance of the commission. The commissioner shall establish the amount of the fee by rule. The commissioner shall establish rules for the issuance and revocation of special inspector commissions. The rules are subject to the requirements of chapter 17A.

2. The insurance company shall file a certificate of inspection on forms approved by the commissioner stating that the equipment is insured and that inspection shall be made in accordance with section 89.3.

3. Upon such showing and the payment of a fee, the commissioner shall issue a certificate of inspection by the division of labor services, which shall be valid only for the period specified in section 89.3. The commissioner shall establish the amount of the fee by rule.

4. The special inspector shall notify the user and the commissioner of any equipment or appurtenance found to be unsafe or unfit for operation in writing, setting forth the nature and extent of such defects and condition. The commissioner shall indicate to the user whether or not the equipment may be used without making repair or replacement of defective parts, or whether or how the equipment may be used in a limited capacity before repairs or replacements are made, and the commissioner may permit the user a reasonable time to make such repairs or replacements. The failure of a special inspector to inform the commissioner of violations shall not subject the commissioner to liability for any damages incurred.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.6; C79, 81, §89.7]

85 Acts, ch 102, §1; 87 Acts, ch 15, §1; 90 Acts, ch 1136, §4, 5; 91 Acts, ch 136, §2

89.8 Fees for inspection.

The commissioner shall adopt rules to charge and collect fees for inspection of boilers and pressure units by the boiler inspector. Fees may be set by rule not more than once each year. Fees established by the commissioner shall be based upon the costs of administering the provisions of this chapter, and shall give due regard to the time spent by personnel of the division of labor services in performing duties, and to any travel expenses incurred.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.7; C79, 81, §89.8]

85 Acts, ch 102, §2

89.9 Disposal of fees.

All fees provided for in this chapter shall be collected by the commissioner and remitted to the treasurer of state, together with an itemized statement showing the source of collection.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.8; C79, 81, §89.9]

89.10 Penalty.

Any person or persons, corporations and directors, managers and superintendents, and officers thereof, violating any of the provisions of this chapter, shall be guilty of a simple misdemeanor.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.9; C79, 81, §89.10]

89.11 Injunction.

In addition to any and all other remedies, if any owner, user, or person in charge of any equipment covered by this chapter, shall continue to use any equipment covered by this chapter, after receiving a notice of defect as provided by this chapter, without first correcting said defects or making replacements, the commissioner of labor may apply to the district court or any judge thereof by petition in equity, in an action brought in the name of the state, for a writ of injunction to restrain the use of said alleged defective equipment.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.10; C79, 81, §89.11]

89.12 Hearing — notice — decree.

The commissioner shall notify in writing the owner or user of the equipment of the time and place of hearing of the petition as fixed by the court or judge, and shall serve the notice on the defendant at least five days prior to the hearing in the same manner as original notices are served. The general provisions relating to civil practice and procedure as may be applicable, shall govern the proceedings, except as herein modified. In the event the defendant does not appear or plead to the action, default shall be entered against the defendant. The action shall be tried in equity, and the court or judge shall make such order or decree as the evidence warrants.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §89.11; C79, 81, §89.12]

89.13 Civil penalty allowed.

If upon notice and hearing the commissioner determines that an owner has operated a facility in violation of a safety order, the commissioner may assess a civil penalty against the owner in an amount not exceeding five hundred dollars, as determined by the commissioner. An order assessing a civil penalty is subject to appeal to the employment appeal board and to judicial review. The commissioner may commence an action in the district court to enforce payment of a civil penalty. Revenue from the penalty provided in this section shall be remitted to the treasurer of state for deposit in the general fund of the state.

90 Acts, ch 1136, §6

CHAPTER 89A

ELEVATORS

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89A.1 Definitions.

As used in this chapter, except as otherwise expressly provided:

1. *"Alteration"* means any change made to an existing facility, other than the repair or replacement of damaged, worn, or broken parts necessary for normal maintenance.

2. *"Appeal board"* means the employment appeal board created under section 10A.601.

3. *"Commissioner"* means the labor commissioner, appointed pursuant to section 91.2, or the labor commissioner's designee.

4. *"Division"* means the division of labor services of the department of workforce development created under section 84A.1.

5. *"Dormant facility"* means a facility whose power feed lines have been disconnected from the mainline disconnect switch and is one of the following:

a. An electric elevator, material lift, or dumbwaiter whose suspension ropes have been removed, whose car and counterweight rest at the bottom of the hoistway, and whose hoistway doors have been permanently barricaded or sealed in the closed position on the hoistway side.

b. A hydraulic elevator, material lift, or dumbwaiter whose car rests at the bottom of the hoistway, whose pressure piping has been disassembled and a section removed from the premises; whose hoistway doors have been permanently barricaded or sealed in the closed position on the hoistway side; and, if provided, whose suspension ropes have been removed and the counterweights landed at the bottom of the hoistway.

c. An escalator or moving walk whose entrances have been permanently barricaded.

d. A rack and pinion or screw column facility, whose motor has been removed, platform lowered to the bottom, and entrances barricaded.

6. *"Dumbwaiter"* means a hoisting and lowering mechanism equipped with a car which moves in guides in a substantially vertical direction, when the floor area does not exceed nine square feet, the total compartment height does not exceed four feet, the capacity does not exceed five hundred pounds, and which is used exclusively for carrying materials.

7. *"Elevator"* means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction, and which serves two or more floors of a building or structure. The term elevator does not include a dumbwaiter, endless belt, conveyor, chain or bucket hoist, construction hoist, or other device used for the primary purpose of elevating or lowering building or other materials and not used as a means of conveyance for individuals, nor shall it include tiering, piling, feeding, or other machines or devices giving service within only one story.

8. *"Escalator"* means a power-driven, inclined, continuous stairway used for raising or lowering passengers.

9. *"Facility"* means an elevator, dumbwaiter, escalator, moving walk, lift, or inclined or vertical wheelchair lift subject to regulation under this chapter, and includes hoistways, rails, guides, and all other related mechanical and electrical equipment.

10. *"Freight elevator"* means an elevator used for carrying freight and on which only the operator and persons necessary for unloading and loading the freight are permitted to ride.

11. *"Inclined or vertical wheelchair lift"* means a lift used as part of an accessible route in or at a public building as specified in the American society of mechanical engineers safety codes for elevators and escalators, A17.1.

12. *"Inspector"* means an inspector employed by the division for the purpose of administering this chapter.

13. *"Lift"* means a device consisting of a power-driven endless belt, provided with steps or platforms and handholds attached to it for the trans-

portation of persons from floor to floor.

14. *"Material lift elevator"* means an elevator existing at the location prior to January 1, 1975, which is limited to the movement of materials.

15. *"Moving walk"* means a type of passenger-carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction in motion and is uninterrupted.

16. *"New installation"* means a facility the construction or relocation of which is begun, or for which an application for a new installation permit is filed, on or after the effective date of rules relating to those permits adopted by the commissioner under authority of this chapter. All other installations are existing installations.

17. *"Owner"* means the owner of a facility, unless the facility is a new installation or is undergoing major alterations, in which case the owner shall be considered the person responsible for the installation or alteration of the facility until the facility has passed final inspection by the division.

18. *"Passenger elevator"* means an elevator that is used to carry persons other than the operator and person necessary for loading and unloading.

19. *"Provisions of this chapter"* includes rules adopted by the labor commissioner pursuant to this chapter.

20. *"Special inspector"* means an inspector licensed by the labor commissioner, and not employed by the division.

[C75, 77, 79, 81, §104.1]

84 Acts, ch 1094, §1; 86 Acts, ch 1157, §1, 2; 86 Acts, ch 1245, §937

C87, §89A.1

88 Acts, ch 1025, §3; 96 Acts, ch 1186, §23; 99 Acts, ch 68, §4; 2000 Acts, ch 1097, §2

89A.2 Scope of chapter.

The provisions of this chapter shall not apply to any facility installed in any single private dwelling residence, to facilities subject to regulation under Iowa Administrative Code, chapter 26 of the rules of the division of labor services (regulation 29 C.F.R. 1926.552), to lifts subject to regulation under chapter 88 or to facilities over which an agency of the federal government is asserting similar enforcement jurisdiction. Provisions of this chapter supersede similar provisions contained in building codes of this state or any subdivision thereof.

[C75, 77, 79, 81, §104.2]

C87, §89A.2

89A.3 Rules.

1. The commissioner may adopt rules governing maintenance, construction, alteration, and installation of facilities, and the inspection and testing of new and existing installations as necessary to provide for the public safety, and to protect the public welfare.

The commissioner shall adopt, amend, or repeal rules pursuant to chapter 17A as the commissioner deems necessary for the execution of the commissioner's duties under this chapter, which shall include, but not be limited to, rules providing for:

a. Classifications of types of facilities.

b. Maintenance, inspection, testing, and operation of the various classes of facilities.

c. Construction of new facilities.

d. Alteration of existing facilities.

e. Minimum safety requirements for all existing facilities.

f. Control or prevention of access to facilities or dormant facilities.

g. The reporting of accidents and injuries arising from the use of facilities.

h. The specification of hearing and appeal procedures used by the commissioner.

i. Qualifications for obtaining an inspector's license.

j. The adoption of procedures for the issuance of variances.

k. The amount of fees charged and collected for inspection, permits, and licenses. Fees shall be set at an amount sufficient to cover costs as determined from consideration of the reasonable time required to conduct an inspection, reasonable hourly wages paid to inspectors, and reasonable transportation and similar expenses.

2. The commissioner shall adopt rules for facilities according to the applicable provisions of the American society of mechanical engineers safety codes for elevators and escalators, A17.1 and A17.3, as the commissioner deems necessary. In adopting rules the commissioner may adopt the American society of mechanical engineers safety codes, or any part of the codes, by reference.

The commissioner may adopt rules permitting existing passenger and freight elevators to be modified into material lift elevators.

3. A rule adopted pursuant to this section which adopts standards by reference to another publication shall be exempt from the requirements of section 17A.6, subsection 4, if the following conditions exist:

a. The cost of the publication is an unreasonable expense when compared to the anticipated usage of the publication.

b. A copy of the publication is available from an entity located within the state capitol complex.

c. The rule identifies the location where the publication is available.

d. The administrative rules coordinator approves the exemption.

4. The commissioner shall furnish copies of the rules adopted by the commissioner to any person who requests them, without charge, or upon payment of a charge not to exceed the actual cost of printing of the rules.

5. The commissioner may adopt rules permitting inclined or vertical wheelchair lifts in

churches and houses of worship to service more than one floor.

[C24, 27, 31, 35, 39, §**1678;** C46, 50, 54, 58, 62, 66, 71, 73, §104.1; C75, 77, 79, 81, §104.3]

84 Acts, ch 1094, §2; 86 Acts, ch 1157, §3

C87, §89A.3

88 Acts, ch 1042, §4; 99 Acts, ch 68, §5, 6

89A.4 Commissioner's duties and personnel.

The commissioner shall enforce the provisions of this chapter. The commissioner shall employ personnel for the administration of this chapter pursuant to chapter 19A.

[C75, 77, 79, 81, §104.4]

C87, §89A.4

89A.5 Registration of facilities.

The owner of every existing facility, whether or not dormant, shall register the facility with the commissioner, giving type, contract load and speed, name of manufacturer, its location and the purpose for which it is used, and other information the commissioner may require. Registration shall be made in a format required by the division.

[C75, 77, 79, 81, §104.5]

C87, §89A.5

99 Acts, ch 68, §7

89A.6 Inspections — reports — nonliability.

All new and existing facilities, except dormant facilities, shall be tested and inspected in accordance with the following schedule:

1. Every new or altered facility shall be inspected and tested before the operating permit is issued.

2. Every existing facility registered with the commissioner shall be inspected within one year after the effective date of the registration, except that the commissioner may, at the commissioner's discretion, extend by rule the time specified for making inspections.

3. Every facility shall be inspected not less frequently than annually, except that the commissioner may adopt rules providing for inspections of facilities at intervals other than annually.

4. The inspections required by subsections 1 to 3 shall be made only by inspectors or special inspectors. An inspection by a special inspector may be accepted by the commissioner in lieu of a required inspection by an inspector.

5. A report of every inspection shall be filed with the commissioner by the inspector or special inspector, in a format required by the commissioner, after the inspection has been completed and within the time provided by rule, but not to exceed thirty days. The report shall include all information required by the commissioner to determine whether the facility is in compliance with applicable rules. For the inspection required by subsection 1, the report shall indicate whether the facility has been installed in accordance with the detailed plans and specifications approved by the commissioner, and meets the requirements of the applicable rules. The failure of a special inspector to inform the commissioner of violations shall not subject the commissioner to liability for any damages incurred.

6. In addition to the inspections required by subsections 1 to 3, the commissioner may provide by rule for additional inspections as the commissioner deems necessary to enforce the provisions of this chapter.

[C75, 77, 79, 81, §104.6; 82 Acts, ch 1077, §1]

C87, §89A.6

92 Acts, ch 1098, §5; 99 Acts, ch 68, §8

89A.7 Alteration permits.

The owner shall submit to the commissioner detailed plans, specifications, and other information the commissioner may require for each facility to be altered, together with an application for an alteration permit, in a format required by the commissioner. Repairs or replacements necessary for normal maintenance are not alterations, and may be made on existing installations with parts equivalent in material, strength and design to those replaced and no plans or specifications or application need be filed for the repairs or replacements. However, this section does not authorize the use of any facility contrary to an order issued pursuant to section 89A.10, subsections 2 and 3.

[C75, 77, 79, 81, §104.7]

C87, §89A.7

99 Acts, ch 68, §9

89A.8 New installation permits.

A permit shall be issued by the commissioner before construction on a new installation is begun. The division shall issue a permit for relocation or installation, as applicable, if the plans and specifications indicate compliance with applicable rules.

If such plans and specifications indicate a failure of compliance with applicable rules, the division shall give notice of necessary changes to the person filing the application. After such changes have been made and approved, the division shall issue a permit.

The owner shall submit plans in triplicate, together with an application for the permit, in a format required by the commissioner. The plans shall include:

1. Sectional plan of car and hoistway.

2. Sectional plan of machine room.

3. Sectional elevation of hoistway and machine room, including the pit, bottom and top clearance of car, and counterweight.

4. Size and weight of guide rails, and guide rail bracket spacing.

5. Other information which the division may require.

[C75, 77, 79, 81, §104.8]
C87, §89A.8
99 Acts, ch 68, §10

89A.9 Operating permits.

Operating permits shall be issued by the commissioner to the owner of every facility when the inspection report indicates compliance with the applicable provisions of this chapter. However, no permits shall be issued if the fees required by section 89A.13 have not been paid. Permits shall be issued within thirty days after filing of the inspection report required by section 89A.6, unless the time is extended for cause by the division. No facility shall be operated after the thirty days or after an extension granted by the commissioner has expired, unless an operating permit has been issued.

The operating permit shall indicate the type of equipment for which it is issued, and in the case of elevators shall state whether passenger or freight, and also shall state the contract load and speed for each facility. The permit shall be posted conspicuously in the car of an elevator, or on or near a dumbwaiter, escalator, moving walk or lift.

[C75, 77, 79, 81, §104.9]
84 Acts, ch 1067, §20
C87, §89A.9

89A.10 Enforcement orders by commissioner — injunction.

1. If an inspection report indicates a failure to comply with applicable rules, or with the detailed plans and specifications approved by the commissioner, the commissioner may, upon giving notice, order the owner thereof to make the changes necessary for compliance.

2. If the owner does not make the changes necessary for compliance as required in subsection 1 within the period specified by the commissioner, the commissioner, upon notice, may suspend or revoke the operating permit, or may refuse to issue the operating permit for the facility. The commissioner shall notify the owner of any action to suspend, revoke, or refuse to issue an operating permit and the reason for the action by service in the same manner as an original notice or by certified mail. An owner may appeal the commissioner's initial decision. The appeal shall be heard by an administrative law judge of the department of inspections and appeals. An owner who, after a hearing before an administrative law judge, is aggrieved by a suspension, revocation, or refusal to issue an operating permit may appeal to the employment appeal board created under section 10A.601. Notice of appeal shall be filed with the appeal board within thirty calendar days from receipt of the notice of the commissioner's action.

A party adversely affected or aggrieved by an order of the appeal board issued under this subsection may obtain a review of the order in the district court of the county in which the facility is located by filing in the court within sixty days following the issuance of the order a written petition that the order be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the district court to the appeal board and to all other parties, and the appeal board shall promptly file in the court the transcript of record in the proceedings. Upon filing of the petition, the court has jurisdiction of the proceedings and of the questions to be determined, and may grant temporary relief or a restraining order, and may make and enter upon the pleadings, testimony, and proceedings set forth in the record a decree affirming, modifying, or setting aside in whole or in part, the order of the appeal board and enforcing the order to the extent that the order is affirmed, modified, or denied.

No proceedings before the commissioner or the commissioner's agents, an administrative law judge, the appeal board, or any district court of this state shall be deemed to deny an owner an operating permit until there is a final adjudication of the matter. An objection which has not been urged before the appeal board shall not be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the appeal board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, are conclusive. The appeal board's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the appeal board's orders. Upon the filing of the record with it, the jurisdiction of the court is exclusive and its judgment and decree is final, except that it is subject to review by the Iowa supreme court.

3. If the commissioner has reason to believe that the continued operation of a facility constitutes an imminent danger which could reasonably be expected to seriously injure or cause death to members of the public, the commissioner may apply to the district court in the county in which such imminently dangerous condition exists for a temporary order for the purpose of enjoining such imminently dangerous facility. Upon hearing, if deemed appropriate by the court, a permanent injunction may be issued to insure that such imminently dangerous facility be prevented or controlled. Upon the elimination or rectification of such imminently dangerous condition the temporary or permanent injunction shall be vacated.

[C75, 77, 79, 81, §104.10]
86 Acts, ch 1245, §526
C87, §89A.10
88 Acts, ch 1109, §7, 8; 99 Acts, ch 68, §11

89A.11 Nonconforming facilities.

The commissioner, pursuant to rule, may grant exceptions and variances from the requirements

of rules adopted for any facility. Exceptions or variations shall be reasonably related to the age of the facility, and may be conditioned upon a repair or modification of the facility deemed necessary by the commissioner to assure reasonable safety. However, no exception or variance may be granted except to prevent undue hardship. Such facilities shall be subject to orders issued pursuant to section 89A.10.

[C75, 77, 79, 81, §104.11; 81 Acts, ch 50, §1]
C87, §89A.11

89A.12 Access to facilities.

Every owner of a facility subject to regulation by this chapter shall grant access to that facility to the commissioner and personnel of the division. Inspections shall be permitted at reasonable times, with or without prior notice.

[C75, 77, 79, 81, §104.12]
C87, §89A.12
99 Acts, ch 68, §12

89A.13 Fees.

The commissioner, pursuant to chapter 17A, shall adopt rules to charge and collect fees for inspection, permits, and licenses. Fees may be set by rule not more than once each year, and shall be effective from the first day of January next following the date of adoption of the rule. Fees established by the commissioner shall be based upon the costs of administering this chapter, and shall give due regard to the time spent by personnel of the division in performing duties, and to any travel expenses incurred. Before adopting any rule to establish or increase any fees for inspection, permits, or licenses, the commissioner shall hold a public hearing on the proposed rule or amendment.

[C75, 77, 79, 81, §104.13]
C87, §89A.13
88 Acts, ch 1042, §5

89A.14 Continuing duty of owner.

Every facility shall be maintained by the owner in a safe operating condition and in conformity with the rules adopted by the commissioner.

[C75, 77, 79, 81, §104.14]
C87, §89A.14

89A.15 Inspections by local authorities.

No city or other governmental subdivision shall make or maintain any ordinance, bylaw or resolution providing for the licensing of special inspectors. An ordinance or resolution relating to the inspection, construction, installation, alteration, maintenance or operation of facilities within the limits of the city or governmental subdivision, which conflicts with this chapter or with rules adopted by the commissioner is void. The commissioner, in the commissioner's discretion, may accept inspections by local authorities in lieu of inspections required by section 89A.6, but only upon a showing by the local authority that applicable laws and rules will be consistently and literally enforced, and that inspections will be performed by special inspectors.

[C75, 77, 79, 81, §104.15]
C87, §89A.15

89A.16 Prosecution of offenses.

The division shall cause prosecution for the violation of the provisions of this chapter to be instituted by the attorney general in the county in which the violation occurred.

[C75, 77, 79, 81, §104.16]
C87, §89A.16

89A.17 Penalties.

1. Any owner who violates any of the provisions of this chapter shall be guilty of a simple misdemeanor, unless otherwise specifically provided in this chapter.

2. Any person who bribes or attempts to bribe an inspector shall be subject to criminal proceedings under section 722.1.

[C75, 77, 79, 81, §104.17]
C87, §89A.17

89A.18 Civil penalty.

If upon notice and hearing the commissioner determines that an owner has operated a facility after an order of the commissioner that suspends, revokes, or refuses to issue an operating permit for the facility has become final under section 89A.10, subsection 2, the commissioner may assess a civil penalty against the owner in an amount not exceeding five hundred dollars, as determined by the commissioner. An order assessing a civil penalty is subject to appeal and judicial review under section 89A.10, subsection 2, in the same manner and to the same extent as decisions referred to in that subsection. The commissioner may commence an action in the district court to enforce payment of the civil penalty. No record of assessment against or payment of a civil penalty by any person for a violation of this section shall be admissible as evidence in any court in any civil action. Revenue from the penalty provided in this section shall be remitted to the treasurer of state for deposit in the state general fund.

[82 Acts, ch 1077, §2]
C87, §89A.18

89A.19 to 89A.24 Reserved.

89A.25 Short title.

This chapter shall be known as the *"Iowa State Elevator Code"*.

[C75, 77, 79, 81, §104.18]
C83, §104.25
C87, §89A.25

CHAPTER 89B

HAZARDOUS CHEMICALS RISKS — RIGHT TO KNOW

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DIVISION I

GENERAL PROVISIONS

89B.1 Short title.

This chapter may be cited as the *"Hazardous Chemicals Risks Right to Know Act"*.

84 Acts, ch 1085, §1
C85, §455D.1
C87, §89B.1

89B.2 Legislative findings.

The general assembly finds as follows:

1. The proliferation of hazardous chemicals in the environment poses a growing threat to the public health, safety, and welfare.

2. The constantly increasing number and variety of hazardous chemicals and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to the hazardous chemicals.

3. Individuals are often able to detect and thus minimize effects of exposure to hazardous chemicals if they are aware of the identity of the chemicals and the early symptoms of unsafe exposure.

4. Individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed action concerning their employment and their living conditions.

5. Local fire and other government emergency response departments require detailed information about the identity, characteristics, and quantities of hazardous chemicals used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies, and enforce compliance with applicable laws and regulations concerning these chemicals.

6. The extent of the toxic contamination of the air, water, and land has caused a high degree of concern and much of this concern is needlessly aggravated by the unfamiliarity of the chemicals.

7. There is a need to coordinate the existing regulatory and reporting responsibilities on hazardous chemical users and producers and to provide uniform access to information.

84 Acts, ch 1085, §2
C85, §455D.2
C87, §89B.2

89B.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Division"* means the division of labor services of the department of workforce development created under section 84A.1.

2. *"Emergency response department"* means

any governmental department which might be reasonably expected to be required to respond to an emergency involving a hazardous chemical, including, but not limited to, local fire, police, medical rescue, emergency management, and public health departments.

84 Acts, ch 1085, §3
C85, §455D.3
86 Acts, ch 1245, §939, 1899E
C87, §89B.3
92 Acts, ch 1139, §22; 96 Acts, ch 1186, §23

89B.4 Applicability to agricultural activities. Repealed by 88 Acts, ch 1042, § 8.

89B.5 Transportation of hazardous chemicals. Repealed by 88 Acts, ch 1042, § 8.

89B.6 Liability of state or political subdivision.

The state or any of its political subdivisions is not liable for damages in any claim pursuant to chapter 669 or chapter 670 based upon an act or omission of an employee of the state or political subdivision when the employee exercised due care in the execution of this chapter or a rule adopted under this chapter. Any duty created in this chapter is a duty to the public generally and not to any person or group of persons.

84 Acts, ch 1085, §6
C85, §455D.6
C87, §89B.6

89B.7 Implementation. Repealed by 88 Acts, ch 1042, § 8.

DIVISION II

WORKER RIGHT TO KNOW

89B.8 Information required.

1. An employee in this state has the right to be informed about the hazardous chemicals to which the employee may be exposed in the workplace, the potential health hazards of the hazardous chemicals, and the proper handling techniques for the hazardous chemicals. An employer shall provide or make available to an employee information as required by this chapter. Except as explicitly exempted, this chapter applies to all employers in the state.

2. The division of labor services shall administer this division of the chapter. The division may exercise the enforcement powers set out in chapter 88 and the rules adopted pursuant to chapter 88 to enforce this division of the chapter.

3. The commissioner shall adopt rules based upon the occupational safety and health standards which have been adopted as permanent standards by the United States secretary of labor in accordance with federal law. If the hazardous communication regulation, 29 C.F.R. § 1910.1200, is amended or repealed, the commissioner shall review the amendment or repeal and take action with respect to the state standards, including the amendment or repeal of the state standards, which will conform the state standards to the new federal standards.

4. In addition to the chemical information required to be reported under the federal hazard communication standard, 29 C.F.R. § 1910.1200, the labor commissioner may adopt by rule additional hazardous chemical information to be regulated.

84 Acts, ch 1085, §8
C85, §455D.8
86 Acts, ch 1135, §2; 86 Acts, ch 1245, §940, 1899F
C87, §89B.8
88 Acts, ch 1042, §6; 89 Acts, ch 100, §1

89B.9 Employee rights.

An employer shall not discharge or in any other manner discriminate against an employee because the employee has filed a complaint or brought an action under this section or has cooperated in bringing an action against an employer. An employee may file a complaint with the labor commissioner alleging discharge or discrimination within thirty days after an alleged violation occurs. Upon receipt of the complaint, the commissioner shall cause an investigation to be made to the extent the commissioner deems appropriate. If the commissioner determines from the investigation that this section has been violated, the commissioner shall bring an action in the appropriate district court against the person. The district court has jurisdiction, for cause shown, to restrain violations of this section and order appropriate relief including rehiring or reinstatement of the employee to the former position with back pay. This section applies to an employee of a person otherwise exempt from this chapter.

84 Acts, ch 1085, §9
C85, §455D.9
C87, §89B.9
88 Acts, ch 1042, §7

89B.10 Special training. Repealed by 88 Acts, ch 1042, § 8.

89B.11 Educational research laboratory. Repealed by 88 Acts, ch 1042, § 8.

DIVISION III

COMMUNITY RIGHT TO KNOW

89B.12 Community information and complaints on hazardous chemicals.

1. The public has a right to be informed about the presence of hazardous chemicals in the community and the potential health and environmental hazards that the chemicals pose.

2. The division of labor services shall receive and handle requests for information and complaints under this division of this chapter which involve employer information covered under division II of this chapter. The labor commissioner shall adopt rules pursuant to chapter 17A regarding requests for information and the investigation and adjudication of complaints.

3. Requests for information under this division of this chapter are confidential.

84 Acts, ch 1085, §12
C85, §455D.12
86 Acts, ch 1245, §941
C87, §89B.12

89B.13 Accessibility of records.

1. Except as provided in subsection 2, records that are required to be kept by employers under this chapter shall be accessible to the public. As used in this section *"accessible to the public"* means either of the following:

a. The records are filed with the division.

b. The records are available for inspection at the principal place of employment of the employer during normal working hours.

2. Records do not need to be accessible to the public if any of the following apply:

a. The information is trade secret information under this chapter and any rules regarding the release of the information.

b. Under recommendation pursuant to section 89B.17, the labor commissioner has adopted rules specifying that certain classes or categories of records required to be kept by employers are confidential information.

c. The employer has notified the division in writing that certain information should not be accessible to the public for the reasons that the information is not relevant to public health and safety or that release of the information is proven to cause damage to the employer. After giving the employer notice and an opportunity to be heard, the division may release the information if it determines that the impact on public health and safety outweighs the damage that release of the information would cause the employer. The division may limit its release of information to areas relevant to public health and safety and may restrict the release of information which will cause damage to the employer.

84 Acts, ch 1085, §13
C85, §455D.13
86 Acts, ch 1245, §1899G
C87, §89B.13

DIVISION IV

PUBLIC SAFETY — EMERGENCY RESPONSE RIGHT TO KNOW

89B.14 Signs identifying hazardous chemicals.

If a building or structure has a floor space of five thousand square feet or less, an employer shall post signs on the outside of the building or structure identifying the type of each hazardous chemical contained in the building or structure. If the building has more than five thousand square feet, the employer shall post a sign at the place within the building where each hazardous chemical is permanently stored to identify the type of hazardous chemical. If the hazardous chemical or a portion of the hazardous chemical is moved within the building, the employer shall also move the sign or post an additional sign at the location where the hazardous chemical is moved. All letters and figures on signs required by this section shall be at least three inches in height. However, upon the written application of an employer, the division may permit less stringent sign posting requirements. The signs shall comply with the national fire protection association's standard system for the identification of fire hazards of materials, based upon NFPA 704-1980. The division shall adopt rules exempting employers from the requirements of this section when a building or structure or a portion of a building or structure does not contain significant amounts of a hazardous chemical.

84 Acts, ch 1085, §14
C85, §455D.14
C87, §89B.14

89B.15 Information for emergency response departments.

1. At the same time that an employer provides the information to employees required under division II, the employer shall submit to the local fire department a list of hazardous chemicals which are consistently generated by, used by, stored at, or transported from the employer's facility. The information shall be provided in sufficient specificity that the local fire department is informed of the nature of the hazardous chemicals, the hazards presented by the chemicals, and the appropriate response in dealing with an emergency involving the hazardous chemicals. The information shall conform to guidelines adopted by the labor commissioner. The employer shall send the information by certified mail. The labor commissioner shall adopt rules exempting employers from this

requirement when buildings or structures do not contain significant amounts of a hazardous chemical.

2. A local fire department receiving information pursuant to subsection 1 shall make the information available only to other emergency response departments.

84 Acts, ch 1085, §15
C85, §455D.15
86 Acts, ch 1245, §942, 1899H
C87, §89B.15

89B.16 Reserved.

DIVISION V

RECOMMENDATIONS

89B.17 Recommendations.

The director of public health, the labor commissioner, and the director of the department of natural resources or the director's designee under written signatures of all these parties may recommend any of the following actions:

1. Expansion of the federal occupational safety and health administration's list of hazardous chemicals or reporting required under this chapter. The division shall adopt rules pursuant to chapter 17A to expand the list of information required if the division decides to follow the recommendation.

2. Expansion of the list of hazardous wastes reported to the department of natural resources under 42 U.S.C. § § 6921-6934 as amended to January 1, 1981, or information required concerning the wastes. The department of natural resources shall adopt rules pursuant to chapter 17A to expand the list or information if the department decides to follow the recommendation.

However, the recommendations shall be made only upon scientific evidence that there may be a significant threat to public health and safety without the action.

84 Acts, ch 1085, §17
C85, §455D.17
86 Acts, ch 1245, §1899I, 1899J
C87, §89B.17
2002 Acts, ch 1162, §31
Unnumbered paragraph 1 amended

CHAPTER 90

BOARDS OF ARBITRATION

Transferred to chapter 679B

CHAPTER 90A

BOXING AND WRESTLING

90A.1 Definitions.
90A.2 License.
90A.3 Professional boxer registration.
90A.4 Match promoter responsibility.
90A.5 Emergency suspensions.
90A.6 Suspensions, denials, and revocations.
90A.7 Rules.
90A.8 Required conditions for boxing matches.
90A.9 Written report filed — tax due — penalty.
90A.10 Grants.
90A.11 License penalty.
90A.12 Age requirement for amateur boxing contestants.

90A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Boxer registry"* means an entity certified by the association of boxing commissions for the purpose of maintaining records and identification of boxers.

2. *"Commissioner"* means the state commissioner of athletics, who is also the labor commissioner appointed pursuant to section 91.2, or the labor commissioner's designee.

3. *"Official"* means a person who is employed as a referee, judge, timekeeper, or match physician for a boxing or wrestling match event.

4. *"Participant"* means a person involved in the boxing or wrestling match event and includes contestants, seconds, managers, and similar event personnel.

5. *"Professional boxing or wrestling match"* means a boxing or wrestling contest or exhibition open to the public in this state for which the contestants are paid or awarded a prize for their par-

ticipation.

6. *"Promoter"* means a person or business that does at least one of the following:

a. Organizes, holds, advertises, or otherwise conducts a professional boxing or wrestling match.

b. Charges admission for the viewing of a professional boxing or wrestling match received through a closed-circuit, pay-per-view, or similarly distributed signal.

[C71, 73, 75, 77, §727A.1; C79, 81, §99C.1]
86 Acts, ch 1245, §944
C87, §90A.1
91 Acts, ch 137, §1; 97 Acts, ch 29, §1; 99 Acts, ch 68, §13

90A.2 License.

1. A person shall not act as a promoter of a professional boxing or wrestling match without first obtaining a license from the commissioner. This subsection shall not apply to a person distributing a closed-circuit, pay-per-view, or similarly distributed signal to a person acting as a promoter or to a person viewing the signal in a private residence.

2. The license application shall be in the form prescribed by the commissioner and shall contain information that is substantially complete and accurate. Any change in the information provided in the application shall be reported promptly to the commissioner. The application shall be submitted no later than seven days prior to the intended date of the match.

3. Each application for a license shall be accompanied by a surety or cash bond in the sum of five thousand dollars, payable to the state of Iowa, which shall be conditioned upon the payment of the tax and any penalties imposed pursuant to this chapter.

[C71, 73, 75, 77, §727A.2; C79, 81, §99C.2]
86 Acts, ch 1245, §936, 944
C87, §90A.2
97 Acts, ch 29, §2

90A.3 Professional boxer registration.

1. Each professional boxer residing in Iowa shall register with the commissioner. The registration application shall be in the form prescribed by the commissioner and shall be accompanied by the fee established by rule by the commissioner. The information required by the commissioner shall include, but is not limited to, the following:

a. The boxer's name and address.

b. The boxer's gender.

c. The boxer's date of birth.

d. The boxer's social security number or, if a foreign boxer, any similar citizen identification number or professional boxer number from the country of residence of the boxer.

e. The boxer's personal identification number assigned to the boxer by a professional boxing registry certified by the association of boxing commissions if the boxer is registered with a registry.

f. Two copies of a recent photograph of the boxer.

g. An official government-issued photo identification containing the boxer's photograph and social security number or similar foreign identification number.

2. The commissioner shall issue an identification card to a boxer registered pursuant to this chapter. The identification card shall contain a recent photograph, the boxer's social security number or similar foreign identification number, and a personal identification number assigned to the boxer by a boxing registry.

3. A registration issued pursuant to this section shall be valid for two years from the date of issue.

4. This section does not apply to professional wrestlers or contestants in boxing elimination tournaments.

[C71, 73, 75, 77, §727A.3; C79, 81, §99C.3]
86 Acts, ch 1245, §944
C87, §90A.3
97 Acts, ch 29, §3; 97 Acts, ch 40, §5

90A.4 Match promoter responsibility.

The promoter, as defined in section 90A.1, subsection 6, paragraph *"a"*, shall be responsible for the conduct of all officials and participants at a professional boxing or wrestling match. The commissioner may reprimand, suspend, deny, or revoke the participation of any promoter, official, or participant for violations of rules adopted by the commissioner. Rulings or decisions of a promoter or an official are not decisions of the commissioner and are not subject to procedures under chapter 17A. The commissioner may take action based upon the rulings or decisions of a promoter or an official. This section shall not apply to a promoter as defined in section 90A.1, subsection 6, paragraph *"b"*.

[C71, 73, 75, 77, §727A.4; C79, 81, §99C.4]
86 Acts, ch 1245, §944
C87, §90A.4
91 Acts, ch 137, §2; 97 Acts, ch 29, §4

90A.5 Emergency suspensions.

1. Notwithstanding the procedural requirements of chapter 17A, the commissioner may orally suspend a license, registration, or participation immediately if the commissioner determines that any of the following have occurred:

a. A license or registration was fraudulently or deceptively obtained.

b. The holder of a license or registration fails at any time to meet the qualifications for issuance.

c. A boxer fails to pass a prefight physical examination.

d. A match promoter permits a nonregistered boxer to participate in a professional boxing match.

e. A match promoter permits a person whose

license, registration, or authority, issued pursuant to this chapter, is under suspension to participate in a boxing event.

f. A match promoter or professional boxer is under suspension by any other state boxing regulatory organization.

g. A match promoter or professional boxer is under suspension in any state.

h. A match promoter, professional boxer, or participant is in violation of rules adopted pursuant to section 90A.7.

2. A written notice of a suspension issued pursuant to this section shall be given to the person suspended within seven days of the emergency suspension. The provisions of chapter 17A shall apply once the written notice is given.

[C71, 73, 75, 77, §727A.5; C79, 81, §99C.5]
86 Acts, ch 1245, §944
C87, §90A.5
97 Acts, ch 29, §5

90A.6 Suspensions, denials, and revocations.

1. The commissioner may suspend, deny, revoke, annul, or withdraw a license, registration, or authority to participate in a professional boxing or wrestling match if any of the following occur:

a. Any of the reasons enumerated in section 90A.5.

b. Failure to pay fees or penalties due pursuant to section 90A.2, 90A.3, or 90A.9.

2. The provisions of chapter 17A shall apply to actions under this section.

[C71, 73, 75, 77, §727A.6; C79, 81, §99C.6]
86 Acts, ch 1245, §944
C87, §90A.6
91 Acts, ch 137, §3; 97 Acts, ch 29, §6

90A.7 Rules.

The commissioner shall adopt rules, pursuant to chapter 17A, that the commissioner determines are reasonably necessary to administer and enforce this chapter.

The commissioner may adopt the rules of a recognized national or world boxing organization that sanctions a boxing match in this state to regulate the match if the organization's rules provide protection to the boxers participating in the match which is equal to or greater than the protections provided by this chapter or by rules adopted pursuant to this chapter. As used in this paragraph, *"recognized national or world boxing organization"* includes, but is not limited to, the international boxing federation, the world boxing association, and the world boxing council.

[C71, 73, 75, 77, §727A.7; C79, 81, §99C.7]
86 Acts, ch 1245, §944
C87, §90A.7
90 Acts, ch 1266, §38; 91 Acts, ch 137, §4; 92 Acts, ch 1032, §1; 97 Acts, ch 29, §7

90A.8 Required conditions for boxing matches.

A boxing match shall be not more than fifteen rounds in length and the contestants shall wear gloves weighing at least eight ounces during such contests. The commissioner may adopt rules requiring more stringent procedures for specific types of boxing.

A contestant shall not take part in a boxing match unless the contestant has presented a valid registration identification card issued pursuant to section 90A.3 to the commissioner prior to the weigh-in for the boxing match. The contestant shall pass a rigorous physical examination to determine the contestant's fitness to engage in any such match within twenty-four hours of the start of the match. The examination shall be conducted by a licensed practicing physician designated or authorized by the commissioner.

[C71, 73, 75, 77, §727A.8; C79, 81, §99C.8]
86 Acts, ch 1245, §944
C87, §90A.8
91 Acts, ch 137, §5; 97 Acts, ch 29, §8

90A.9 Written report filed — tax due — penalty.

1. The promoter of a professional boxing or wrestling match or event shall, within twenty days after the match or event, furnish to the commissioner a written report stating the number of tickets sold, the gross amount of admission proceeds of the professional boxing or wrestling match, and other matters the commissioner may prescribe by rule. The value of complimentary tickets in excess of five percent of the number of tickets sold shall be included in the gross admission receipts. Within twenty days of the match or event, the promoter shall pay to the treasurer of state a tax of five percent of its total gross admission receipts, after deducting state sales tax, from the sale of tickets of admission to the professional boxing or wrestling match or event.

2. If the promoter fails to make a timely report within the time prescribed, or if the report is unsatisfactory to the commissioner, the commissioner may examine or cause to be examined the books and records of the promoter, and subpoena and examine under oath witnesses, for the purpose of determining the total amount of the gross admission receipts for any match and the amount of tax due pursuant to the provisions of this chapter. The commissioner may, as the result of such examination, fix and determine the tax, and may also assess the promoter the reasonable cost of conducting the examination. If a promoter defaults in the payment of any tax due or the costs incurred in making such examination, the promoter shall forfeit to the state the sum of five thousand dollars, which may be recovered by the attorney general pursuant to the bond required under section

90A.2, subsection 3.
[C71, 73, 75, 77, §727A.9; C79, 81, §99C.9]
86 Acts, ch 1245, §944
C87, §90A.9
97 Acts, ch 29, §9

90A.10 Grants.
1. Moneys collected pursuant to sections 90A.3 and 90A.9 in excess of the amount of moneys needed to administer this chapter are appropriated and shall be used by the commissioner to award grants to organizations that promote amateur boxing matches in this state.
2. The commissioner shall adopt rules pursuant to chapter 17A to establish application procedures and criteria for the review and approval of grants awarded pursuant to this section.
3. An advisory committee composed of three members of the golden gloves association of America, incorporated — Iowa branch, who shall be appointed by the association, and three members of the United States of America amateur boxing federation — Iowa branch, who shall be appointed by the federation, shall advise the commissioner regarding the awarding of grants pursuant to this section.
84 Acts, ch 1106, §1
C85, §99C.10
86 Acts, ch 1245, §944
C87, §90A.10
87 Acts, ch 26, §1; 90 Acts, ch 1004, §1; 93 Acts, ch 15, §1; 97 Acts, ch 29, §10

90A.11 License penalty.
A person who acts as a professional boxing or wrestling match promoter, as defined in section 90A.1, without first obtaining a license commits a serious misdemeanor. In addition to criminal penalties, the promoter shall be liable to the state for the taxes and penalties pursuant to section 90A.9.
97 Acts, ch 29, §11

90A.12 Age requirement for amateur boxing contestants.
1. A person shall not participate as a contestant in an organized amateur boxing contest unless each contestant participating in the contest meets the age requirements of USA boxing incorporated, or its successor organization. A birth certificate, or similar document validating the contestant's date of birth, must be submitted at the time of the prefight physical examination in order to determine eligibility.
2. Subsection 1 does not apply to contestants in regional, national, or international organized amateur boxing contests or to organized amateur boxing contests involving contestants who are serving in the military service.
97 Acts, ch 29, §12; 2001 Acts, ch 188, §23

CHAPTER 91

LABOR SERVICES DIVISION

91.1 Labor commissioner.
91.2 Appointment.
91.3 Repealed by 80 Acts, ch 1010, §86.
91.4 Duties and powers.
91.5 Other duties — jurisdiction in general.
91.6 Rules.
91.7 Repealed by 71 Acts, ch 84, §99.
91.8 Traveling expenses.
91.9 Right to enter premises.
91.10 Power to secure evidence.
91.11 Prosecutions for violations.
91.12 Reports and records to division of labor services.
91.13 Repealed by 67 Acts, ch 106, §9.
91.14 Reports and records preserved — when destroyed. Repealed by 90 Acts, ch 1136, §16.
91.15 Definition of terms.
91.16 Violations — penalties.
91.17 Acceptance of federal Act. Repealed by 85 Acts, ch 195, §67.
91.18 State agency. Repealed by 85 Acts, ch 195, §67.

91.1 Labor commissioner.
The division of labor services of the department of workforce development, created under section 84A.1, is under the control of a labor commissioner, who shall have an office at the seat of government and shall devote the commissioner's entire time to the duties of the office.
[C97, §2469; S13, §2469; C24, 27, 31, 35, 39, §**1510;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.1]
86 Acts, ch 1245, §918; 96 Acts, ch 1186, §23

91.2 Appointment.

The governor shall appoint, subject to confirmation by the senate, a labor commissioner who shall serve for a period of six years beginning and ending as provided in section 69.19.

[C97, §2469; S13, §2470; C24, 27, 31, 35, 39, §**1511;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 82, §91.2]

85 Acts, ch 51, §1, 2; 86 Acts, ch 1245, §919

Confirmation, see §2.32

91.3 Repealed by 80 Acts, ch 1010, § 86. See § 2.32.

91.4 Duties and powers.

The duties of said commissioner shall be:

1. To safely keep all records, papers, documents, correspondence, and other property pertaining to or coming into the commissioner's hands by virtue of the office, and deliver the same to the commissioner's successor, except as otherwise provided.

2. To collect, assort, and systematize statistical details relating to programs of the division of labor services.

3. To issue from time to time bulletins containing information of importance to the industries of the state and to the safety of wage earners.

4. To conduct and to cooperate with other interested persons and organizations in conducting educational programs and projects on employment safety.

5. The director of the department of workforce development, in consultation with the labor commissioner, shall, at the time provided by law, make an annual report to the governor setting forth in appropriate form the business and expense of the division of labor services for the preceding year, the number of disputes or violations processed by the division and the disposition of the disputes or violations, and other matters pertaining to the division which are of public interest, together with recommendations for change or amendment of the laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 92, and 94A, and sections 30.7 and 85.68, and the recommendations, if any, shall be transmitted by the governor to the first general assembly in session after the report is filed.

6. The commissioner, with the assistance of the office of the attorney general if requested by the commissioner, may commence a civil action in any court of competent jurisdiction to enforce the statutes under the commissioner's jurisdiction.

7. The division of labor services may sell documents printed by the division at cost according to rules established by the labor commissioner pursuant to chapter 17A. Receipts from the sale shall be deposited to the credit of the division and may be used by the division for administrative expenses.

8. Except as provided in chapter 91A, the commissioner may recover interest, court costs, and any attorney fees incurred in recovering any amounts due. The recovery shall only take place after final agency action is taken under chapter 17A, or upon judicial review, after final disposition of the case by the court. Attorney fees recovered in an action brought under the jurisdiction of the commissioner shall be deposited in the general fund of the state. The commissioner is exempt from the payment of any filing fee or other court costs including but not limited to fees paid to county sheriffs.

9. The commissioner may establish rules pursuant to chapter 17A to assess and collect interest on fees, penalties, and other amounts due the division.

10. Serve as an ex officio member of the state fire service and emergency response council, or appoint a designee to serve as an ex officio member of such council, to assist the council in the development of rules relating to fire fighting training standards and any other issues relating to occupational safety and health standards for fire fighters.

[C97, §2469, 2470; S13, §2469, 2470; C24, 27, 31, 35, 39, §**1513;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.4]

86 Acts, ch 1244, §15; 86 Acts, ch 1245, §920; 91 Acts, ch 136, §3; 92 Acts, ch 1098, §6; 93 Acts, ch 180, §58; 96 Acts, ch 1186, §23; 99 Acts, ch 68, §14, 15; 99 Acts, ch 130, §8; 2000 Acts, ch 1117, §7

91.5 Other duties — jurisdiction in general.

The commissioner shall have jurisdiction and it shall be the commissioner's duty to supervise the enforcement of:

1. All laws relating to safety appliances and inspection thereof and health conditions in manufacturing and mercantile establishments, workshops, machine shops, other industrial concerns within the commissioner's jurisdiction and sanitation and shelter for railway employees.

2. All laws of the state relating to child labor.

3. All laws relating to employment agencies.

4. Such other provisions of law as are now or shall hereafter be within the commissioner's jurisdiction.

[S13, §2477-f; SS15, §2477-g1, 4999-a5, -a10; C24, 27, 31, 35, 39, §**1514;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.5]

86 Acts, ch 1245, §921

91.6 Rules.

The commissioner shall adopt rules pursuant to chapter 17A for the purpose of administering this chapter and all other chapters under the commissioner's jurisdiction.

89 Acts, ch 26, §1

91.7 Repealed by 71 Acts, ch 84, § 99.

91.8 Traveling expenses.

The commissioner, inspectors and other employees of the office shall be allowed their necessary traveling expenses while in the discharge of their duties.

[C97, §2477; S13, §2477; C24, 27, 31, 35, 39, §**1517;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.8; 81 Acts, ch 10, §10]

91.9 Right to enter premises.

The labor commissioner and the inspectors shall have the power to enter any factory or mill, workshop, mine, store, railway facility, including locomotive or caboose, business house, public or private work, when the same is open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter, and to examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places, and make a record thereof.

[C97, §2472; S13, §2472; C24, 27, 31, 35, 39, §**1518;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.9]

91.10 Power to secure evidence.

The labor commissioner, or the commissioner's designee, may issue subpoenas, administer oaths, and take testimony in all matters relating to the duties required of them. Witnesses subpoenaed and testifying before the commissioner or the commissioner's designee shall be paid the same fees as witnesses under section 622.69, payment to be made out of the funds appropriated to the division of labor services.

[C97, §2471; S13, §2471; C24, 27, 31, 35, 39, §**1519;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.10]

83 Acts, ch 186, §10041, 10201; 99 Acts, ch 68, §16

91.11 Prosecutions for violations.

If the commissioner learns of any violation of any law administered by the division, the commissioner may give the county attorney of the county in which the violation occurred written notice of the facts, whereupon that officer shall institute the proper proceedings against the person charged with the offense.

If the commissioner is of the opinion that the violation is not willful, or is an oversight or of a trivial nature, the commissioner may at the commissioner's discretion fix a time within which the violation shall be corrected and notify the owner, operator, superintendent, or person in charge, and if corrected within the time fixed, then the commissioner shall not cause prosecution to be begun.

[C97, §2472; S13, §2472; C24, 27, 31, 35, 39, §**1520;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.11]

99 Acts, ch 68, §17

91.12 Reports and records to division of labor services.

1. An owner, operator, or manager of every factory, mill, workshop, mine, store, railway, business house, public or private work, or any other establishment where labor is employed, shall submit to the division of labor services reports in the form and manner prescribed by the commissioner, for the purpose of compiling labor statistics. The owner, operator, or business manager shall submit the reports within sixty days from receipt of notice, and shall certify under oath the accuracy of the reports.

2. Notwithstanding chapter 22, records containing identifiable financial institution or credit card account numbers obtained by the commissioner shall be kept confidential.

[C97, §2474; S13, §2474; C24, 27, 31, 35, 39, §**1521;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.12]

98 Acts, ch 1105, §4

91.13 Repealed by 67 Acts, ch 106, § 9.

91.14 Reports and records preserved — when destroyed. Repealed by 90 Acts, ch 1136, § 16. See chapter 304.

91.15 Definition of terms.

The expressions *"factory"*, *"mill"*, *"workshop"*, *"mine"*, *"store"*, *"railway"*, *"business house"*, and *"public or private work"*, as used in this chapter, shall be construed to mean any factory, mill, workshop, mine, store, railway, business house, public or private work, where wage earners are employed for a compensation.

[C97, §2473; SS15, §2473; C24, 27, 31, 35, 39, §**1524;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.15]

91.16 Violations — penalties.

Persons violating any of the provisions of this chapter shall be punished as in this section provided, respectively:

1. Any owner, superintendent, manager, or person in charge of any factory, mill, workshop, store, mine, hotel, restaurant, cafe, railway, business house, public or private work, who shall refuse to allow the commissioner of labor or any inspector or employee of the division of labor services to enter the same, or who shall hinder or deter the commissioner, inspector, or employee in collecting information which it is that person's duty to collect shall be guilty of a simple misdemeanor.

2. Any officer or employee of the division of labor services, or any person making unlawful use of

names or information obtained by virtue of the person's office, shall be guilty of a serious misdemeanor.

3. Any owner, operator, or manager of a factory, mill, workshop, mine, store, railway, business house, public or private work, who shall neglect or refuse for thirty days after receipt of notice from the commissioner to furnish any reports or returns the commissioner may require to enable the commissioner to discharge the commissioner's duties shall be guilty of a simple misdemeanor.

[C97, §2471, 2472, 2474, 2475; S13, §2471, 2472, 2474; C24, 27, 31, 35, 39, §**1525;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §91.16]

91.17 Acceptance of federal Act. Repealed by 85 Acts, ch 195, § 67.

91.18 State agency. Repealed by 85 Acts, ch 195, § 67.

CHAPTER 91A

WAGE PAYMENT COLLECTION

91A.1 Short title.
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91A.1 Short title.

This chapter shall be known and may be referred to as the *"Iowa Wage Payment Collection Law"*.

[C77, 79, 81, §91A.1]

91A.2 Definitions.

As used in this chapter:

1. *"Commissioner"* means the labor commissioner or a designee.

2. *"Days"* means calendar days.

3. *"Employee"* means a natural person who is employed in this state for wages by an employer. Employee also includes a commission salesperson who takes orders or performs services on behalf of a principal and who is paid on the basis of commissions but does not include persons who purchase for their own account for resale. For the purposes of this chapter, the following persons engaged in agriculture are not employees:

a. The spouse of the employer and relatives of either the employer or spouse residing on the premises of the employer.

b. A person engaged in agriculture as an owner-operator or tenant-operator and the spouse or relatives of either who reside on the premises while exchanging labor with the operator or for other mutual benefit of any and all such persons.

c. Neighboring persons engaged in agriculture who are exchanging labor or other services.

4. *"Employer"* means a person, as defined in chapter 4, who in this state employs for wages a natural person. An employer does not include a client, patient, customer, or other person who obtains professional services from a licensed person who provides the services on a fee service basis or as an independent contractor.

5. *"Health benefit plan"* means a plan or agreement provided by an employer for employees for the provision of or payment for care and treatment of sickness or injury.

6. *"Liquidated damages"* means the sum of five percent multiplied by the amount of any wages that were not paid or of any authorized expenses that were not reimbursed on a regular payday or on another day pursuant to section 91A.3 multiplied by the total number of days, excluding Sundays, legal holidays, and the first seven days after the regular payday on which wages were not paid or expenses were not reimbursed. However, such sum shall not exceed the amount of the unpaid wages and shall not accumulate when an employer is subject to a petition filed in bankruptcy.

7. *"Wages"* means compensation owed by an employer for:

a. Labor or services rendered by an employee, whether determined on a time, task, piece, commission, or other basis of calculation.

b. Vacation, holiday, sick leave, and severance payments which are due an employee under an

agreement with the employer or under a policy of the employer.

c. Any payments to the employee or to a fund for the benefit of the employee, including but not limited to payments for medical, health, hospital, welfare, pension, or profit-sharing, which are due an employee under an agreement with the employer or under a policy of the employer. The assets of an employee in a fund for the benefit of the employee, whether such assets were originally paid into the fund by an employer or employee, are not wages.

d. Expenses incurred and recoverable under a health benefit plan.

[C77, 79, 81, §91A.2]

84 Acts, ch 1129, §2; 84 Acts, ch 1270, §1; 85 Acts, ch 119, §1; 86 Acts, ch 1124, §6, 7

91A.3 Mode of payment.

1. An employer shall pay all wages due its employees, less any lawful deductions specified in section 91A.5, at least in monthly, semimonthly, or biweekly installments on regular paydays which are at consistent intervals from each other and which are designated in advance by the employer. However, if any of these wages due its employees are determined on a commission basis, the employer may, upon agreement with the employee, pay only a credit against such wages. If such credit is paid, the employer shall, at regular intervals, pay any difference between a credit paid against wages determined on a commission basis and such wages actually earned on a commission basis. These regular intervals shall not be separated by more than twelve months. A regular payday shall not be more than twelve days, excluding Sundays and legal holidays, after the end of the period in which the wages were earned. An employer and employee may, upon written agreement which shall be maintained as a record, vary the provisions of this subsection.

2. The wages paid under subsection 1 shall be paid in United States currency or by written instrument issued by the employer and negotiable on demand at full face value for such currency, unless the employee has agreed in writing to receive a part of or all wages in kind or in other form.

3. The wages paid under subsection 1 shall be sent to the employee by mail or be paid at the employee's normal place of employment during normal employment hours or at a place and hour mutually agreed upon by the employer and employee.

4. The wages paid under subsection 1 may be delivered to a designee of the employee who is so designated in writing or may be sent to the employee by any reasonable means requested by the employee in writing. A designee under this subsection shall not also be an assignee or buyer of wages under section 539.4 nor a garnisher of the employee under chapter 642, unless the designee complies with the provisions of section 539.4 and chapter 642.

5. If an employee is absent from the normal place of employment on the regular payday, the employer shall, upon demand of the employee made within the first seven days following the regular payday, pay the wages, less any lawful deductions specified in section 91A.5, which were due on that regular payday. However, if demand is not made within this seven-day period, the employer shall, upon demand of the employee, pay the wages which were due on a regular payday within the first seven days following the day on which demand is made.

6. Expenses by the employee which are authorized by the employer and incurred by the employee shall either be reimbursed in advance of expenditure or be reimbursed not later than thirty days after the employee's submission of an expense claim. If the employer refuses to pay all or part of each claim, the employer shall submit to the employee a written justification of such refusal within the same time period in which expense claims are paid under this subsection.

7. If a farm labor contractor contracts with a person engaged in the production of seed or feed grains to remove unwanted or genetically deviant plants or corn tassels or to hand pollinate plants, and fails to pay all wages due the employees of the farm labor contractor, the person engaged in the production of seed or feed grains shall also be liable to the employees for wages not paid by the farm labor contractor.

[C77, 79, 81, §91A.3]

84 Acts, ch 1270, §2; 99 Acts, ch 68, §18

91A.4 Employment suspension or termination — how wages are paid.

When the employment of an employee is suspended or terminated, the employer shall pay all wages earned, less any lawful deductions specified in section 91A.5 by the employee up to the time of the suspension or termination not later than the next regular payday for the pay period in which the wages were earned as provided in section 91A.3. However, if any of these wages are the difference between a credit paid against wages determined on a commission basis and the wages actually earned on a commission basis, the employer shall pay the difference not more than thirty days after the date of suspension or termination. If vacations are due an employee under an agreement with the employer or a policy of the employer establishing pro rata vacation accrued, the increment shall be in proportion to the fraction of the year which the employee was actually employed.

[C77, 79, 81, §91A.4]

95 Acts, ch 37, §1

91A.5 Deductions from wages.

1. An employer shall not withhold or divert any portion of an employee's wages unless:

a. The employer is required or permitted to do so by state or federal law or by order of a court of competent jurisdiction; or

b. The employer has written authorization from the employee to so deduct for any lawful purpose accruing to the benefit of the employee.

2. The following shall not be deducted from an employee's wages:

a. Cash shortage in a common money till, cash box, or register operated by two or more employees or by an employee and an employer. However, the employer and a full-time employee who is the manager of an establishment may agree in writing signed by both parties that the employee will be responsible for a cash shortage that occurs within forty-five days prior to the most recent regular payday. Not more than one such agreement shall be in effect per establishment.

b. Losses due to acceptance by an employee on behalf of the employer of checks which are subsequently dishonored if the employee has been given the discretion to accept or reject such checks and the employee does not abuse the discretion given.

c. Losses due to breakage, damage to property, default of customer credit, or nonpayment for goods or services rendered so long as such losses are not attributable to the employee's willful or intentional disregard of the employer's interests.

d. Lost or stolen property, unless the property is equipment specifically assigned to, and receipt acknowledged in writing by, the employee from whom the deduction is made.

e. Gratuities received by an employee from customers of the employer.

f. Costs of personal protective equipment, other than items of clothing or footwear which may be used by an employee during nonworking hours, needed to protect an employee from employment-related hazards, unless provided otherwise in a collective bargaining agreement.

g. Costs of more than twenty dollars for an employee's relocation to the place of employment. This paragraph shall apply only to an employer as defined in section 91E.1.

[C77, 79, 81, §91A.5]

90 Acts, ch 1134, §1; 90 Acts, ch 1136, §7, 8

91A.6 Notice and recordkeeping requirements.

1. An employer shall after being notified by the commissioner pursuant to subsection 2:

a. Notify its employees in writing at the time of hiring what wages and regular paydays are designated by the employer.

b. Notify, at least one pay period prior to the initiation of any changes, its employees of any changes in the arrangements specified in subsection 1 that reduce wages or alter the regular paydays. The notice shall either be in writing or posted at a place where employee notices are routinely posted.

c. Make available to its employees upon written request, a written statement enumerating employment agreements and policies with regard to vacation pay, sick leave, reimbursement for expenses, retirement benefits, severance pay, or other comparable matters with respect to wages. Notice of such availability shall be given to each employee in writing or by a notice posted at a place where employee notices are routinely posted.

d. Establish, maintain, and preserve for three calendar years the payroll records showing the hours worked, wages earned, and deductions made for each employee and any employment agreements entered into between an employer and employee.

2. The commissioner shall notify an employer to comply with subsection 1 if the employer has paid a claim for unpaid wages or nonreimbursed authorized expenses and liquidated damages under section 91A.10 or if the employer has been assessed a civil money penalty under section 91A.12. However, a court may, when rendering a judgment for wages or nonreimbursed authorized expenses and liquidated damages or upholding a civil money penalty assessment, order that an employer shall not be required to comply with the provisions of subsection 1 or that an employer shall be required to comply with the provisions of subsection 1 for a particular period of time.

3. Within ten working days of a request by an employee, an employer shall furnish to the employee a written, itemized statement listing the earnings and deductions made from the wages for each pay period in which the deductions were made together with an explanation of how the wages and deductions were computed. An employer need honor only one such request in any calendar year unless the rate of earnings, hours or deductions are changed during the calendar year. Each change shall entitle an employee to a further request for an itemized statement.

[C77, 79, 81, §91A.6]

91A.7 Wage disputes.

If there is a dispute between an employer and employee concerning the amount of wages or expense reimbursement due, the employer shall, without condition and pursuant to section 91A.3, pay all wages conceded to be due and reimburse all expenses conceded to be due, less any lawful deductions specified in section 91A.5. Payment of wages or reimbursement of expenses under this section shall not relieve the employer of any liability for the balance of wages or expenses claimed by the employee.

[C77, 79, 81, §91A.7]

91A.8 Damages recoverable by an employee.

When it has been shown that an employer has intentionally failed to pay an employee wages or reimburse expenses pursuant to section 91A.3,

whether as the result of a wage dispute or otherwise, the employer shall be liable to the employee for any wages or expenses that are so intentionally failed to be paid or reimbursed, plus liquidated damages, court costs and any attorney's fees incurred in recovering the unpaid wages and determined to have been usual and necessary. In other instances the employer shall be liable only for unpaid wages or expenses, court costs and usual and necessary attorney's fees incurred in recovering the unpaid wages or expenses.

[C77, 79, 81, §91A.8]

91A.9 General powers and duties of the commissioner.

1. The commissioner shall administer and enforce the provisions of this chapter. The commissioner may hold hearings and investigate charges of violations of this chapter.

2. The commissioner may, consistent with due process of law, enter any place of employment to inspect records concerning wages and payrolls, to question the employer and employees, and to investigate such facts, conditions or matters as are deemed appropriate in determining whether any person has violated the provisions of this chapter. However, such entry by the commissioner shall only be in response to a written complaint.

3. The commissioner may employ such qualified personnel as are necessary for the enforcement of this chapter. Such personnel shall be employed pursuant to chapter 19A.

4. The commissioner shall promulgate, pursuant to chapter 17A, any rules necessary to carry out the provisions of this chapter.

[C77, 79, 81, §91A.9]

91A.10 Settlement of claims and suits for wages — prohibition against discharge of employee.

1. Upon the written complaint of the employee involved, the commissioner may determine whether wages have not been paid and may constitute an enforceable claim. If for any reason the commissioner decides not to make such determination, the commissioner shall so notify the complaining employee within fourteen days of receipt of the complaint. The commissioner shall otherwise notify the employee of such determination within a reasonable time and if it is determined that there is an enforceable claim, the commissioner shall, with the consent of the complaining employee, take an assignment in trust for the wages and for any claim for liquidated damages without being bound by any of the technical rules respecting the validity of the assignment. However, the commissioner shall not accept any complaint for unpaid wages and liquidated damages after one year from the date the wages became due and payable.

2. The commissioner, with the assistance of the office of the attorney general if the commissioner requests such assistance, shall, unless a settlement is reached under this subsection, commence a civil action in any court of competent jurisdiction to recover for the benefit of any employee any wage, expenses, and liquidated damages' claims that have been assigned to the commissioner for recovery. The commissioner may also request reasonable and necessary attorneys' fees. With the consent of the assigning employee, the commissioner may also settle a claim on behalf of the assigning employee. Proceedings under this subsection and subsection 1 that precede commencement of a civil action shall be conducted informally without any party having a right to be heard before the commissioner. The commissioner may join various assignments in one claim for the purpose of settling or litigating their claims.

3. The provisions of subsections 1 and 2 shall not be construed to prevent an employee from settling or bringing an action for damages under section 91A.8 if the employee has not assigned the claim under subsection 1.

4. Any recovery of attorney's fees, in the case of actions brought under this section by the commissioner, shall be remitted by the commissioner to the treasurer of state for deposit in the general fund of the state. Also, the commissioner shall not be required to pay any filing fee or other court costs.

5. An employer shall not discharge or in any other manner discriminate against any employee because the employee has filed a complaint, assigned a claim, or brought an action under this section or has cooperated in bringing any action against an employer. Any employee may file a complaint with the commissioner alleging discharge or discrimination within thirty days after such violation occurs. Upon receipt of the complaint, the commissioner shall cause an investigation to be made to the extent deemed appropriate. If the commissioner determines from the investigation that the provisions of this subsection have been violated, the commissioner shall bring an action in the appropriate district court against such person. The district court shall have jurisdiction, for cause shown, to restrain violations of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to the former position with back pay.

[C77, 79, 81, §91A.10]

84 Acts, ch 1270, §3; 90 Acts, ch 1136, §9

91A.11 Wage claims brought under reciprocity.

1. The commissioner may enter into reciprocal agreements with the labor department or corresponding agency of any other state or its representatives for the collection in such other states of claims or judgments for wages and other demands based upon claims assigned to the commissioner.

2. The commissioner may, to the extent pro-

vided for by any reciprocal agreement entered into by law or with an agency of another state as provided in this section, maintain actions in the courts of such other state to the extent permitted by the laws of that state for the collection of claims for wages, judgments and other demands and may assign such claims, judgments and demands to the labor department or agency of such other state for collection to the extent that such an assignment may be permitted or provided for by the laws of such state or by reciprocal agreement.

3. The commissioner may, upon the written consent of the labor department or other corresponding agency of any other state or its representatives, maintain actions in the courts of this state upon assigned claims for wages, judgments and demands arising in such other state in the same manner and to the same extent that such actions by the commissioner are authorized when arising in this state. However, such actions may be maintained only in cases in which such other state by law or reciprocal agreement extends a like comity to cases arising in this state.

[C77, 79, 81, §91A.11]

91A.12 Civil penalties.

1. Any employer who violates the provisions of this chapter or the rules promulgated under it shall be subject to a civil money penalty of not more than one hundred dollars for each violation. The commissioner may recover such civil money penalty according to the provisions of subsections 2 to 5. Any civil money penalty recovered shall be deposited in the general fund of the state.

2. The commissioner may propose that an employer be assessed a civil money penalty by serving the employer with notice of such proposal in the same manner as an original notice is served under the rules of civil procedure. Upon service of such notice, the proposed assessment shall be treated as a contested case under chapter 17A. However, an employer must request a hearing within thirty days of being served.

3. If an employer does not request a hearing pursuant to subsection 2 or if the commissioner determines, after an appropriate hearing, that an employer is in violation of this chapter, the commissioner shall assess a civil money penalty which is consistent with the provisions of subsection 1 and which is rendered with due consideration for the penalty amount in terms of the size of the employer's business, the gravity of the violation, the good faith of the employer, and the history of previous violations.

4. An employer may seek judicial review of any assessment rendered under subsection 3 by instituting proceedings for judicial review pursuant to chapter 17A. However, such proceedings must be instituted in the district court of the county in which the violation or one of the violations occurred and within thirty days of the day on which the employer was notified that an assessment has been rendered. Also, an employer may be required, at the discretion of the district court and upon instituting such proceedings, to deposit the amount assessed with the clerk of the district court. Any moneys so deposited shall either be returned to the employer or be forwarded to the commissioner for deposit in the general fund of the state, depending on the outcome of the judicial review, including any appeal to the supreme court.

5. After the time for seeking judicial review has expired or after all judicial review has been exhausted and the commissioner's assessment has been upheld, the commissioner shall request the attorney general to recover the assessed penalties in a civil action.

[C77, 79, 81, §91A.12]

91A.13 Travel time to worksite — when compensable.

Unless a collective bargaining agreement provides otherwise, an employee is not entitled to compensation for the time that an employee spends traveling to and from the worksite on transportation provided by the employer, when during that time, the employee performs no work, the transportation is provided by the employer as a convenience for the employee, and the employee is not required by the employer to use that means of transportation to the worksite. An employee is entitled to compensation for the time that an employee spends traveling between worksites if the travel is done during working hours.

2001 Acts, ch 121, §1

91A.14 Former employees.

The rights and obligations outlined in this chapter continue until they are fulfilled, even though the employer-employee relationship has been severed.

2000 Acts, ch 1097, §3

CHAPTER 91B

PERSONNEL INFORMATION

91B.1 Files — access by employees.
91B.2 Information provided by employers about current or former employees — immunity.

91B.1 Files — access by employees.

An employee, as defined in section 91A.2, shall have access to and shall be permitted to obtain a copy of the employee's personnel file maintained by the employee's employer, as defined in section 91A.2, including but not limited to performance evaluations, disciplinary records, and other information concerning employer-employee relations.

However, an employee's access to a personnel file is subject to all of the following:

1. The employer and employee shall agree on the time the employee may have access to the employee's personnel file, and a representative of the employer may be present.

2. An employee shall not have access to employment references written for the employee.

3. An employer may charge a reasonable fee for each page of a copy made by the employer for an employee of an item in the employee's personnel file. For purposes of this subsection, *"reasonable fee"* means an amount equivalent to an amount charged per page for copies made by a commercial copying business.

90 Acts, ch 1033, §1; 98 Acts, ch 1022, §1

91B.2 Information provided by employers about current or former employees — immunity.

1. An employer or an employer's representative who, upon request by or authorization of a current or former employee or upon request made by a person who in good faith is believed to be a representative of a prospective employer of a current or former employee, provides work-related information about a current or former employee, is immune from civil liability unless the employer or the employer's representative acted unreasonably in providing the work-related information.

2. For purposes of this section, an employer acts unreasonably if any of the following are present:

a. The work-related information violates a civil right of the current or former employee.

b. The work-related information knowingly is provided to a person who has no legitimate and common interest in receiving the work-related information.

c. The work-related information is not relevant to the inquiry being made, is provided with malice, or is provided with no good faith belief that it is true.

3. For purposes of this section, *"employer"* and *"employee"* are defined as provided in section 91A.2.

97 Acts, ch 179, §1

CHAPTER 91C

CONSTRUCTION CONTRACTORS

91C.1 Definition — exemption.
91C.2 Registration required — conditions.
91C.3 Application — information to be provided.
91C.4 Fees.
91C.5 Public registration number — records.
91C.6 Rules.
91C.7 Contracts — contractor's bond.
91C.8 Investigations — enforcement — administrative penalties.

91C.1 Definition — exemption.

1. As used in this chapter, unless the context otherwise requires, *"contractor"* means a person who engages in the business of construction, as the term *"construction"* is defined in the Iowa administrative code for purposes of the Iowa employ-

ment security law. However, a person who earns less than one thousand dollars annually or who performs work or has work performed on the person's own property is not a contractor for purposes of this chapter. The state, its boards, commissions, agencies, departments, and its political subdivisions including school districts and other special purpose districts, are not contractors for purposes of this chapter.

2. If a contractor's registration application shows that the contractor is self-employed, does not pay more than one thousand dollars annually to employ other persons in the business, and does not work with or for other contractors in the same phases of construction, the contractor is exempt from the fee requirements under this chapter.

88 Acts, ch 1162, §2; 91 Acts, ch 136, §4; 97 Acts, ch 26, §1

91C.2 Registration required — conditions.

A contractor doing business in this state shall register with the labor commissioner and shall meet both of the following requirements as a condition of registration:

1. The contractor shall be in compliance with the laws of this state relating to workers' compensation insurance and shall provide evidence of workers' compensation insurance coverage annually, of relief from the insurance requirement pursuant to section 87.11, or a statement that the contractor is not required to carry workers' compensation coverage. Notice of a policy's cancellation shall be provided to the labor commissioner by the insurance company.

2. The contractor shall possess an employer account number or a special contractor number issued by the department of workforce development pursuant to the Iowa employment security law.

88 Acts, ch 1162, §3; 90 Acts, ch 1136, §10; 96 Acts, ch 1186, §23

91C.3 Application — information to be provided.

The registration application shall be in the form prescribed by the labor commissioner, shall be accompanied by the registration fee prescribed pursuant to section 91C.4, and shall contain information which is substantially complete and accurate. In addition to the information determined by the labor commissioner to be necessary for purposes of section 91C.2, the application shall include information as to each of the following:

1. The name, principal place of business, address, and telephone number of the contractor.

2. The name, address, telephone number, and position of each officer of the contractor, if the contractor is a corporation, or each owner if the contractor is not a corporation.

3. A description of the business, including the principal products and services provided.

Any change in the information provided shall be reported promptly to the labor commissioner.

88 Acts, ch 1162, §4; 90 Acts, ch 1136, §11

91C.4 Fees.

The labor commissioner shall prescribe the fee for registration, which fee shall not exceed twenty-five dollars every two years. All fees collected shall be deposited in the general fund of the state.

88 Acts, ch 1162, §5; 90 Acts, ch 1136, §12

91C.5 Public registration number — records.

The labor commissioner shall issue to each registered contractor an identifying public registration number and shall compile records showing the names and public registration numbers of all contractors registered in the state. These records and the complete registration information provided by each contractor are public records and the labor commissioner shall take steps as necessary to facilitate access to the information by governmental agencies and the general public.

The labor commissioner shall revoke a registration number when the contractor fails to maintain compliance with the conditions necessary to obtain a registration. The labor commissioner shall provide a fact-finding interview to assure that the contractor is not in compliance before revoking any registration. Hearings on revocation of registrations shall be held in accordance with section 91C.8.

88 Acts, ch 1162, §6; 90 Acts, ch 1136, §13

91C.6 Rules.

The labor commissioner shall adopt rules, pursuant to chapter 17A, determined to be reasonably necessary for phasing in, administering, and enforcing the system of contractor registration established by this chapter.

88 Acts, ch 1162, §7; 90 Acts, ch 1136, §14

91C.7 Contracts — contractor's bond.

1. A contractor who is not registered with the labor commissioner as required by this chapter shall not be awarded a contract to perform work for the state or an agency of the state.

2. An out-of-state contractor, before commencing a contract in excess of five thousand dollars in value in Iowa, shall file a bond with the division of labor services of the department of workforce development. The surety bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than thirty days' written notice to the contractor and to the division of labor services of the department of workforce development indicating the surety's desire to cancel the bond. The surety company shall not be liable under the bond for any contract commenced after the cancellation of the bond. The

bond shall be in the sum of the greater of the following:

a. One thousand dollars.

b. Five percent of the contract price.

An out-of-state contractor may file a blanket bond in an amount at least equal to fifty thousand dollars for the registration period established under section 91C.4 in lieu of filing an individual bond for each contract. The division of labor services of the department of workforce development may increase the bond amount after a hearing.

3. Release of the bond shall be conditioned upon the payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and related fees, which may accrue to the state of Iowa. If at any time during the term of the bond, the department of revenue and finance or the department of workforce development determines that the amount of the bond is not sufficient to cover the tax liabilities accruing to the state of Iowa, the labor commissioner shall require the bond to be increased by an amount the labor commissioner deems sufficient to cover the tax liabilities accrued and accruing.

4. The department of revenue and finance and the department of workforce development shall adopt rules for the collection of the forfeiture. Notice shall be provided to the surety and to the contractor. Notice to the contractor shall be mailed to the contractor's last known address and to the contractor's registered agent for service of process, if any, within the state. The contractor or surety shall have the opportunity to apply to the director of revenue and finance for a hearing within thirty days after the giving of such notice. Upon the failure to timely request a hearing, the bond shall be forfeited. If, after the hearing upon timely request, the department of revenue and finance or the department of workforce development finds that the contractor has failed to pay the total of all taxes payable, the department of revenue and finance or the department of workforce development shall order the bond forfeited. The amount of the forfeiture shall be the amount of taxes payable or the amount of the bond, whichever is less. For purposes of this section *"taxes payable"* means all tax, penalties, interest, and fees that the department of revenue and finance has previously determined to be due to the state by assessment or in an appeal of an assessment, including contributions to the unemployment compensation insurance system.

5. If it is determined that this section may cause denial of federal funds which would otherwise be available, or is otherwise inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

6. The bond required by this section may be attached by the commissioner for collection of fees and penalties due to the division.

88 Acts, ch 1162, §8; 89 Acts, ch 254, §1; 91 Acts, ch 136, §5; 96 Acts, ch 1186, §23; 97 Acts, ch 26, §2

91C.8 Investigations — enforcement — administrative penalties.

1. The labor commissioner and inspectors of the division of labor services of the department of workforce development have jurisdiction for investigation and enforcement in cases where contractors may be in violation of the requirements of this chapter or rules adopted pursuant to this chapter.

2. If, upon investigation, the labor commissioner or the commissioner's authorized representative believes that a contractor has violated any of the following, the commissioner shall with reasonable promptness issue a citation to the contractor:

a. The requirement that a contractor be registered.

b. The requirement that the contractor's registration information be substantially complete and accurate.

c. The requirement that an out-of-state contractor file a bond with the division of labor services.

3. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the statute alleged to have been violated.

4. If a citation is issued, the commissioner shall, within seven days, notify the contractor by service in the same manner as an original notice or by certified mail of the administrative penalty, if any, proposed to be assessed and that the contractor has fifteen working days within which to notify the commissioner that the contractor wishes to contest the citation or proposed assessment of penalty.

5. The administrative penalties which may be imposed under this section shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars for each violation in the case of a second or subsequent violation. All administrative penalties collected pursuant to this chapter shall be deposited in the general fund of the state.

6. If, within fifteen working days from the receipt of the notice, the contractor fails to notify the commissioner that the contractor intends to contest the citation or proposed assessment of penalty, the citation and the assessment, as proposed, shall be deemed a final order of the employment appeal board and not subject to review by any court or agency.

7. If the contractor notifies the commissioner that the contractor intends to contest the citation or proposed assessment of penalty, the commissioner shall immediately advise the employment appeal board established by section 10A.601. The employment appeal board shall review the action

of the commissioner and shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the commissioner's citation or proposed penalty or directing other appropriate relief, and the order shall become final sixty days after its issuance.

8. The labor commissioner shall notify the department of revenue and finance upon final agency action regarding the citation and assessment of penalty against a registered contractor.

9. Judicial review of any order of the employment appeal board issued pursuant to this section may be sought in accordance with the terms of chapter 17A. If no petition for judicial review is filed within sixty days after service of the order of the employment appeal board, the appeal board's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of the sixty-day period. In any such case, the clerk of court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of the decree to the employment appeal board and the contractor named in the petition.

88 Acts, ch 1162, §9; 89 Acts, ch 254, §2, 3; 96 Acts, ch 1186, §23; 99 Acts, ch 68, §19; 2000 Acts, ch 1154, §11

CHAPTER 91D

MINIMUM WAGE

91D.1 Minimum wage requirements — exceptions.

91D.1 Minimum wage requirements — exceptions.

1. *a.* The hourly wage stated in the federal minimum wage law, pursuant to 29 U.S.C. § 206, shall be increased to $3.85 on January 1 of 1990, $4.25 on January 1 of 1991, and $4.65 on January 1 of 1992.

b. Every employer, as defined in the federal Fair Labor Standards Act, shall pay to each of the employer's employees, as defined in the federal Fair Labor Standards Act, wages of not less than the current federal minimum wage, pursuant to 29 U.S.C. § 206, or the wage rate stated in paragraph *"a"*, whichever is greater.

c. For purposes of determining whether an employee of a restaurant, hotel, motel, inn, or cabin, who customarily and regularly receives more than thirty dollars a month in tips is receiving the minimum hourly wage rate prescribed by this section, the amount paid the employee by the employer shall be deemed to be increased on account of the tips by an amount determined by the employer, not to exceed forty percent of the applicable minimum wage. An employee may file a written appeal with the labor commissioner if the amount of tips received by the employee is less than the amount determined by the employer under this subsection.

d. An employer is not required to pay an employee the applicable minimum wage provided in paragraph *"a"* until the employee has completed ninety calendar days of employment with the employer. An employee who has completed ninety calendar days of employment with the employer prior to January 1 of 1990, 1991, or 1992, shall earn the applicable hourly minimum wage. An employer shall pay an employee who has not completed ninety calendar days of employment with the employer an hourly wage of at least $3.35 as of January 1 of 1990, $3.85 as of January 1 of 1991, and $4.25 as of January 1 of 1992.

2. The exemptions from the minimum wage requirements stated in 29 U.S.C. § 213 shall apply, except that the exemption in 29 U.S.C. § 213(a)(2) shall only apply to an enterprise which is comprised of one or more retail or service establishments whose annual gross volume of sales made or business done is less than sixty percent of the amount stated in 29 U.S.C. § 203(s)(2), exclusive of excise taxes at the retail level that are separately stated.

3. The labor commissioner shall adopt rules to implement and administer this section.

4. This section shall be enforced pursuant to chapter 91A.

89 Acts, ch 14, §1

CHAPTER 91E

NON-ENGLISH SPEAKING EMPLOYEES

91E.1 Definitions.
91E.2 Non-English speaking employees — employer obligations.
91E.3 Employer recruiting practices.
91E.4 Penalties for violation of recruitment practice requirements.
91E.5 Duties and authority of the commissioner.
91E.6 Collective bargaining agreements.

91E.1 Definitions.

As used in this chapter:

1. *"Commissioner"* means the commissioner of the division of labor services of the department of workforce development.

2. *"Employee"* means a natural person who is employed in this state for wages paid on an hourly basis by an employer. An employee does not include a person engaged in agriculture as defined in section 91A.2 or a person engaged in agriculture on a seasonal basis. However, this exemption shall not apply to farm owners who hire workers to work on cropland other than their own.

3. *"Employer"* means a person, as defined in chapter 4, who in this state employs for wages, paid on an hourly basis, one hundred or more natural persons. An employer does not include a client, patient, customer, or other person who obtains professional services from a licensed person who provides the services on a fee service basis or as an independent contractor, or the state, or an agency or governmental subdivision of the state.

4. *"Non-English speaking employee"* means an employee who does not speak, read, write, or understand English to the degree necessary for comprehension of the terms, conditions, and daily responsibilities of employment.

5. *"Farm owner"* does not include a person who uses cropland for research or experimental purposes, testing, developing, or producing seeds or plants for sale or resale.

90 Acts, ch 1134, §2; 96 Acts, ch 1186, §23

91E.2 Non-English speaking employees — employer obligations.

If more than ten percent of an employer's employees are non-English speaking and speak the same non-English language, the employer shall provide all of the following:

1. An interpreter available at the work site for each shift during which non-English speaking employees are employed.

If a Spanish-speaking interpreter is needed, the employer shall select an interpreter from a list of interpreters developed by the department of workforce development, drawn from the commission of Latino affairs' statewide list of interpreters qualified to serve Iowa courts and administrative agencies.

2. A person employed by the employer whose primary responsibility is to serve as a referral agent to community services.

90 Acts, ch 1134, §3; 96 Acts, ch 1186, §23

91E.3 Employer recruiting practices.

1. An employer or a representative of an employer who actively recruits non-English speaking residents of other states more than five hundred miles from the place of employment, for employment as employees for wages paid on an hourly basis in this state, must have on file, a copy of which must be provided to the employee, a written statement signed by the employer and the employee which provides relevant information regarding the position of employment, including but not limited to the following information:

a. The minimum number of hours the employee can expect to work on a weekly basis.

b. The hourly wages of the position of employment including the starting hourly wage.

c. A description of the responsibilities and tasks of the position of employment.

d. The health risks, known to the employer, to the employee involved in the position of employment.

e. That possession of forged documentation authorizing the person to stay or be employed in the United States is a class "D" felony.

2. If an employee who resigns from employment with an employer within four weeks of the employee's initial date of employment requests, within three business days of termination, transportation to return to the location from which the employee was recruited and the location from which the employee was recruited is five hundred or more miles from the place of employment, the employer shall provide the employee with transportation at no cost to the employee.

90 Acts, ch 1134, §4; 96 Acts, ch 1181, §1

91E.4 Penalties for violation of recruitment practice requirements.

1. An employer who violates section 91E.3 is subject to a civil penalty of up to one thousand dollars.

2. A corporate officer of an employer who, through repeated violation of section 91E.3, demonstrates a pattern of abusive recruitment practices commits a serious misdemeanor.

3. An employer who, through repeated violation of section 91E.3, demonstrates a pattern of abusive recruitment practices may be ordered to pay punitive damages.

90 Acts, ch 1134, §5

91E.5 Duties and authority of the commissioner.

1. The commissioner shall adopt rules to implement and enforce this chapter and shall provide further exemptions from the provisions of this chapter where reasonable.

2. In order to carry out the purposes of this chapter, the commissioner or the commissioner's representative, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

a. Inspect employment records relating to the total number of employees and non-English speaking employees, and the services provided to non-English speaking employees.

b. Interview an employer, owner, operator, agent, or employee, during working hours or at other reasonable times.

90 Acts, ch 1134, §6

91E.6 Collective bargaining agreements.

Compliance with the minimum standards required in this chapter shall not be subject to or considered in collective bargaining.

90 Acts, ch 1134, §7

CHAPTER 92

CHILD LABOR

92.1 Street occupations — migratory labor.
92.2 Over ten and under sixteen years of age.
92.3 Under fourteen — permitted occupations.
92.4 Under sixteen — permitted occupations.
92.5 Fourteen and fifteen — permitted occupations.
92.6 Fourteen and fifteen — occupations not permitted.
92.7 Under sixteen — hours permitted.
92.8 Under eighteen — prohibited occupations.
92.9 Instruction and training permitted.
92.10 Permit on file.
92.11 Issuance of work permits.
92.12 Migrant labor permits.
92.13 Optional refusal of permit.
92.14 Contents of work permit.
92.15 Duplicate to labor commissioner.
92.16 Forms for permits furnished.
92.17 Exceptions.
92.18 Migratory labor — defined.
92.19 Violations by parent or guardian.
92.20 Penalty.
92.21 Rules and orders of labor commissioner.
92.22 Labor commissioner to enforce.
92.23 Group insurance.

92.1 Street occupations — migratory labor.

1. No person under ten years of age shall be employed or permitted to work with or without compensation at any time within this state in street occupations of peddling, shoe polishing, the distribution or sale of newspapers, magazines, periodicals or circulars, nor in any other occupations in any street or public place. The labor commissioner shall, when ordered by a judge of the juvenile court, issue a work permit as provided in this chapter to a person under ten years of age.

2. No person under twelve years of age shall be employed or permitted to work with or without compensation at any time within this state in connection with migratory labor, except that the labor commissioner may upon sufficient showing by a judge of the juvenile court, issue a work permit as provided in this chapter to a person under twelve years of age.

[SS15, §2477-a1; C24, 27, 31, 35, 39, §**1537;** C46, 50, 54, 58, 62, 66, §92.12; C71, 73, 75, 77, 79, 81, §92.1]

2001 Acts, ch 24, §27

92.2 Over ten and under sixteen years of age.

A person over ten and under sixteen years of age cannot be employed, with or without compensation, in street occupations or migratory labor as defined in section 92.1, unless the person holds a work permit issued pursuant to this chapter and the school the person attends has certified that the person is regularly attending school and the potential employment will not interfere with the person's progress in school. A written agreement, as defined in section 92.11, subsection 1, shall not be required for the issuance of a work permit under

this section.

1. Notwithstanding section 92.7, a person with a permit to engage in migratory labor shall only work between five a.m. and seven-thirty p.m. from Labor Day through June 1, and between five a.m. and nine p.m. for the remainder of the year.

2. Notwithstanding section 92.7, a person with a permit to engage in street occupations shall only work between four a.m. and seven-thirty p.m. when local public schools are in session and between four a.m. and eight-thirty p.m. for the remainder of the year.

The requirements of section 92.10 shall not apply to a person, firm, or corporation employing a person engaged in street occupations pursuant to this section.

[SS15, §2477-a1, -c, -d; C24, 27, 31, 35, 39, §**1527, 1530, 1537, 1538;** C46, 50, 54, 58, 62, 66, §92.2, 92.5, 92.12, 92.13; C71, 73, 75, 77, 79, 81, §92.2]

91 Acts, ch 136, §6

92.3 Under fourteen — permitted occupations.

No person under fourteen years of age shall be employed or permitted to work with or without compensation in any occupation, except in the street trade occupations or migratory labor occupations specified in section 92.1. Any migratory laborer twelve to fourteen years of age may not work prior to or during the regular school hours of any day of any private or public school which teaches general education subjects and which is available to such child.

[SS15, §2477-a; C24, 27, 31, 35, 39, §**1526;** C46, 50, 54, 58, 62, 66, §92.1; C71, 73, 75, 77, 79, 81, §92.3]

92.4 Under sixteen — permitted occupations.

No person under sixteen years of age shall be employed or permitted to work with or without compensation in any occupation during regular school hours, except:

1. Those persons legally out of school, and such status is verified by the submission of written proof to the labor commissioner.

2. Those persons working in a supervised school-work program.

3. Those persons between the ages of fourteen and sixteen enrolled in school on a part-time basis and who are required to work as a part of their school training.

4. Fourteen- and fifteen-year-old migrant laborers during any hours when summer school is in session.

[C71, 73, 75, 77, 79, 81, §92.4]

92.5 Fourteen and fifteen — permitted occupations.

Persons fourteen and fifteen years of age may be employed or permitted to work in the following occupations:

1. Retail, food service, and gasoline service establishments.

2. Office and clerical work, including operation of office machines.

3. Cashiering, selling, modeling, art work, work in advertising departments, window trimming and comparative shopping.

4. Price marking and tagging by hand or by machine, assembling orders, packing and shelving.

5. Bagging and carrying out customers' orders.

6. Errand and delivery work by foot, bicycle, and public transportation.

7. Clean-up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds.

8. Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, including but not limited to, dishwashers, toasters, dumb-waiters, popcorn poppers, milk shake blenders, and coffee grinders.

9. Work in connection with motor vehicles and trucks if confined to the following:

a. Dispensing gasoline and oil.

b. Courtesy service.

c. Car cleaning, washing and polishing. Nothing in this subsection shall be construed to include work involving the use of pits, racks or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.

10. Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from areas where meat is prepared, for sale and outside freezers or meat coolers.

11. Other work approved by the rules adopted pursuant to chapter 17A by the labor commissioner.

[SS15, §2477-a; C24, 27, 31, 35, 39, §**1529;** C46, 50, 54, 58, 62, 66, §92.4; C71, 73, 75, 77, 79, 81, §92.5]

86 Acts, ch 1245, §922

92.6 Fourteen and fifteen — occupations not permitted.

Persons fourteen and fifteen years of age may not be employed in:

1. Any manufacturing occupation.

2. Any mining occupation.

3. Processing occupations, except in a retail, food service, or gasoline service establishment in those specific occupations expressly permitted under the provisions of section 92.5.

4. Occupations requiring the performance of any duties in workrooms or work places where goods are manufactured, mined, or otherwise pro-

cessed, except to the extent expressly permitted in retail, food service, or gasoline service establishments under the provisions of section 92.5.

5. Public messenger service.

6. Operation or tending of hoisting apparatus or of any power-driven machinery, other than office machines and machines in retail, food service, and gasoline service establishments which are specified in section 92.5 as machines which such minors may operate in such establishments.

7. Occupations prohibited by rules adopted pursuant to chapter 17A by the labor commissioner.

8. Occupations in connection with the following, except office or sales work in connection with these occupations, not performed on transportation media or at the actual construction site:

a. Transportation of persons or property by rail, highway, air, on water, pipeline, or other means.

b. Warehousing and storage.

c. Communications and public utilities.

d. Construction, including repair.

9. Any of the following occupations in a retail, food service, or gasoline service establishment:

a. Work performed in or about boiler or engine rooms.

b. Work in connection with maintenance or repair of the establishment, machines or equipment.

c. Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds or their substitutes.

d. Cooking except at soda fountains, lunch counters, snack bars, or cafeteria serving counters, and baking.

e. Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, and bakery-type mixers.

f. Work in freezers and meat coolers and all work in preparation of meats for sale, except wrapping, sealing, labeling, weighing, pricing and stocking when performed in other areas.

g. Loading and unloading goods to and from trucks, railroad cars or conveyors.

h. All occupations in warehouses except office and clerical work.

Nothing in this section shall be construed as prohibiting office, errand or packaging work when done away from moving machinery.

[SS15, §2477-a, -b, -c; C24, 27, 31, 35, 39, §**1526, 1529, 1536, 1539;** C46, 50, 54, 58, 62, 66, §92.1, 92.4, 92.11, 92.14; C71, 73, 75, 77, 79, 81, §92.6]

86 Acts, ch 1245, §923

92.7 Under sixteen — hours permitted.

A person under sixteen years of age shall not be employed with or without compensation, except as provided in sections 92.2 and 92.3, before the hour of seven a.m. or after seven p.m., except during the period from June 1 through Labor Day when the hours may be extended to nine p.m. If such person is employed for a period of five hours or more each day, an intermission of not less than thirty minutes shall be given. Such a person shall not be employed for more than eight hours in one day, exclusive of intermission, and shall not be employed for more than forty hours in one week. The hours of work of persons under sixteen years of age employed outside school hours shall not exceed four in one day or twenty-eight in one week while school is in session.

[SS15, §2477 -a1, -c; C24, 27, 31, 35, 39, §**1527, 1528, 1538;** C46, 50, 54, 58, 62, 66, §92.2, 92.3, 92.13; C71, 73, 75, 77, 79, 81, §92.7]

91 Acts, ch 136, §7

92.8 Under eighteen — prohibited occupations.

No person under eighteen years of age shall be employed or permitted to work with or without compensation at any of the following occupations or business establishments:

1. Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components.

2. Occupations of motor vehicle driver and helper.

3. Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill.

4. Occupations involved in the operation of power-driven woodworking machines.

5. Occupations involving exposure to radioactive substances and to ionizing radiations.

6. Occupations involved in the operation of elevators and other power-driven hoisting apparatus.

7. Occupations involved in the operation of power-driven metal forming, punching, and shearing machines.

8. Occupations in connection with mining.

9. Occupations in or about slaughtering and meat packing establishments and rendering plants.

10. Occupations involved in the operation of certain power-driven bakery machines.

11. Occupations involved in the operation of certain power-driven paper products machines.

12. Occupations involved in the manufacture of brick, tile and related products.

13. Occupations involved in the operation of circular saws, band saws and guillotine shears.

14. Occupations involved in wrecking, demolition and shipbreaking operations.

15. Occupations involved in roofing operations.

16. Excavation occupations.

17. In or about foundries; provided that office, shipping, and assembly area employment shall not be prohibited by this chapter.

18. Occupations involving the operation of laundry, dry cleaning, or dyeing machinery.

19. Occupations involving exposure to lead fumes or its compounds, or to dangerous or poisonous dyes or chemicals.

20. Occupations involving the transmission, distribution, or delivery of goods or messages between the hours of ten o'clock p.m. and five o'clock a.m.

21. Occupations prohibited by rules adopted pursuant to chapter 17A by the labor commissioner.

[SS15, §2744-a, -b, -c; C24, 27, 31, 35, 39, §**1526, 1529, 1536, 1539;** C46, 50, 54, 58, 62, 66, §92.1, 92.4, 92.11, 92.14; C71, 73, 75, 77, 79, 81, §92.8]

86 Acts, ch 1245, §924

92.9 Instruction and training permitted.

The provisions of sections 92.8 and 92.10 shall not apply to pupils working under an instructor in an industrial arts department in the public schools of the state or under an instructor in a school shop, or industrial plant, or in a course of vocational education approved by the board for vocational education, or to apprentices provided they are employed under all of the following conditions:

1. The apprentice is employed in a craft recognized as an apprenticeable trade.

2. The work of the apprentice in the occupations declared particularly hazardous is incidental to the apprentice's training.

3. The work is intermittent and for short periods of time and is under the direct and close supervision of a journeyperson as a necessary part of apprentice training.

4. The apprentice is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that department.

[C71, 73, 75, 77, 79, 81, §92.9]

97 Acts, ch 26, §3, 4

92.10 Permit on file.

Except as provided in section 92.2, a person under sixteen years of age shall not be employed or permitted to work with or without compensation unless the person, firm, or corporation employing such person receives and keeps on file accessible to any officer charged with the enforcement of this chapter, a work permit issued as provided in this chapter, and keeps a complete list of the names and ages of all such persons under sixteen years of age employed.

Certificates of age shall be issued for persons sixteen and seventeen years of age and for all other persons eighteen and over upon request of the person's prospective employer.

[SS15, §2477-d; C24, 27, 31, 35, 39, §**1530;** C46, 50, 54, 58, 62, 66, §92.5; C71, 73, 75, 77, 79, 81, §92.10]

91 Acts, ch 136, §8

92.11 Issuance of work permits.

A work permit, except for migrant laborers, shall be issued only by the superintendent of schools or department of workforce development, or by a person authorized by said superintendent in writing, or, where there is no superintendent of schools, by a person authorized in writing by the local school board where such child resides, upon the application of the parent, guardian, or custodian of the child desiring such permit. The person authorized to issue work permits shall not issue any such permit unless the person has received, examined, approved, and filed:

1. A written agreement from the person, firm, or corporation into whose service the child under sixteen years of age is about to enter, promising to give such child employment, describing the industry and the work to be performed.

2. Evidence of age showing that the child is fourteen years old, or more, which shall consist of one of the following proofs required in the order herein designated:

a. A certified copy of the birth certificate filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births.

b. A passport or a certified copy of a certificate of baptism showing the date and place of birth and the place of baptism of such child.

c. In cases where none of the above-named proofs are obtainable, a certificate, signed by the local medical inspector of schools, or if there be no such inspector, then by a physician appointed by the local board of education, certifying that in the inspector's or physician's opinion the applicant for the work permit is fourteen years of age or more.

[SS15, §2477-d; C24, 27, 31, 35, 39, §**1531;** C46, 50, 54, 58, 62, 66, §92.6; C71, 73, 75, 77, 79, 81, §92.11]

86 Acts, ch 1016, §2; 96 Acts, ch 1186, §23

92.12 Migrant labor permits.

Every person, firm, or corporation employing migrant laborers shall obtain and keep on file, accessible to any officer charged with the enforcement of this chapter, a special work permit, prior to the employment of such migratory laborer. Special work permits for migrant workers shall be issued by the superintendent of schools, or the superintendent's designee, nearest the temporary living quarters of the family, or by the county director of social welfare or by the department of workforce development, upon application of the parent or head of the migrant family. The person authorized to issue such permits for migratory workers shall not issue such permit until the person has received, examined, and approved one of the following as evidence of age: a birth certificate, passport, baptism certificate, or school record. Applicants under fourteen years of age must obtain a certificate from a registered nurse or physician stating that the applicant for the work per-

mit has reached the normal development of a child of the applicant's age and is in sufficiently sound health and physically able to perform the work for which the permit is sought. One copy of the permit issued shall be given to the employer to be kept on file for the length of employment and upon termination of employment shall be returned to the labor commissioner. One copy of the permit shall be kept by the issuing officer, and one copy forwarded to the commissioner, along with the certificate of fitness of the persons under fourteen years of age. The blank forms for the work permit for migratory workers shall be formulated by the commissioner and furnished by the commissioner to the issuing officer.

[SS15, §2477-d; C24, 27, 31, 35, 39, §**1530, 1531;** C46, 50, 54, 58, 62, 66, §92.5, 92.6; C71, 73, 75, 77, 79, 81, §92.12]

96 Acts, ch 1186, §23

92.13 Optional refusal of permit.

The labor commissioner or the issuing officer may refuse to grant a permit if, in the commissioner's or officer's judgment, the best interests of the minor would be served by such refusal and the commissioner or officer shall keep a record of such refusals, and the reasons therefor.

[C71, 73, 75, 77, 79, 81, §92.13]

92.14 Contents of work permit.

Every work permit shall state the date of issuance, name, sex, the date and place of birth, the residence of the child in whose name it is issued, the color of hair and eyes, the height and weight, the proof of age, the school grade completed, the name and location of the establishment where the child is to be employed, the industry, specified occupation, a brief description of duties for which the permit is issued, that the papers required for its issuance have been duly examined, approved, and filed, and that the person named therein has personally appeared before the officer issuing the permit and has been examined.

[SS15, §2477-d; C24, 27, 31, 35, 39, §**1532;** C46, 50, 54, 58, 62, 66, §92.7; C71, 73, 75, 77, 79, 81, §92.14]

92.15 Duplicate to labor commissioner.

A duplicate of every such work permit issued shall be filled out and forwarded to the office of the labor commissioner within one week after it is issued.

[SS15, §2477-d; C24, 27, 31, 35, 39, §**1533;** C46, 50, 54, 58, 62, 66, §92.8; C71, 73, 75, 77, 79, 81, §92.15]

92.16 Forms for permits furnished.

The proper forms for the work permit, the employer's agreement, the school record, the certificate of age, and the physician's certificate shall be formulated by the labor commissioner and furnished to the issuing authorities.

[SS15, §2477-d; C24, 27, 31, 35, 39, §**1534;** C46, 50, 54, 58, 62, 66, §92.9; C71, 73, 75, 77, 79, 81, §92.16]

86 Acts, ch 1245, §925

92.17 Exceptions.

Nothing in this chapter shall be construed to prohibit:

1. Any part-time, occasional, or volunteer work for nonprofit organizations generally recognized as educational, charitable, religious, or community service in nature.

2. A child from working in or around any home before or after school hours or during vacation periods, provided such work is not related to or part of the business, trade, or profession of the employer.

3. Work in the production of seed, limited to removal of off-type plants, corn tassels and hand-pollinating during the months of June, July and August by persons fourteen years of age or over, and part-time work in agriculture, not including migratory labor.

4. A child from working in any occupation or business operated by the child's parents. For the purposes of this subsection, *"child"* and *"parents"* include a foster child and the child's foster parents who are licensed by the department of human services.

5. A child under sixteen years of age from being employed or permitted to work, with or without compensation, as a model, for a period of up to three hours in any day between the hours of 7 a.m. and 10 p.m., not exceeding twelve hours in any month, if the written permission of the parent, guardian or custodian of the child is obtained prior to the commencement of the modeling. However, if the child is of school age this exception allows modeling work only outside of school hours during the regular school year and does not allow modeling work during the summer term if the child is enrolled in summer school. This subsection does not allow modeling for an unlawful purpose or modeling that would violate any other law.

6. A juvenile court from ordering a child at least twelve years old to complete a work assignment of value to the state or to the public or to the victim of a crime committed by the child, in accordance with section 232.52, subsection 2, paragraph *"a"*.

[SS15, §2477-a; C24, 27, 31, 35, 39, §**1526;** C46, 50, 54, 58, 62, 66, §92.1; C71, 73, 75, 77, 79, 81, §92.17]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1111, §1; 85 Acts, ch 59, §1

92.18 Migratory labor — defined.

As used in this chapter, the term *"migratory labor"* shall include any person who customarily and repeatedly travels from state to state for the pur-

pose of obtaining seasonable employment.
[C71, 73, 75, 77, 79, 81, §92.18]

92.19 Violations by parent or guardian.
No parent, guardian, or other person, having under the parent's, guardian's, or other person's control any person under eighteen years of age, shall willfully permit said person to work or be employed in violation of the provisions of this chapter.

No person shall willfully make, certify to, or cause to be made or certified any statement, certificate, or other paper for the purpose of procuring the employment of any person in violation of this chapter.

No person shall make, file, execute, or deliver any statement, certificate, or other paper containing false statements for the purpose of procuring employment of any person in violation of this chapter.

No person, firm, or corporation, or any agent thereof shall willfully conceal or permit a person to be employed in violation of this chapter.

No person, firm, or corporation shall refuse to allow any authorized persons to inspect the place of business or provide information necessary to the enforcement of this chapter.
[S13, §2477-e; SS15, §2477-a1; C24, 27, 31, 35, 39, §**1540;** C46, 50, 54, 58, 62, 66, §92.15; C71, 73, 75, 77, 79, 81, §92.19]

92.20 Penalty.
The parent, guardian, or person in charge of any migratory worker or of any child who shall engage in any street occupation in violation of any of the provisions of this chapter shall be guilty of a simple misdemeanor.

Any person who furnishes or sells to any minor child any article of any description when the person knows or should have known that said minor intends to sell in violation of the provisions of this chapter, shall be guilty of a simple misdemeanor.

Any other violation of this chapter for which a penalty is not specifically provided, shall be guilty of a simple misdemeanor. Every day during which any violation of this chapter continues shall constitute a separate and distinct offense, and the employment of any person in violation of this chapter shall, with respect to each person so employed, constitute a separate and distinct offense.
[S13, §2477-e; SS15, §2477-a1; C24, 27, 31, 35, 39, §**1540;** C46, 50, 54, 58, 62, 66, §92.15; C71, 73, 75, 77, 79, 81, §92.20]

92.21 Rules and orders of labor commissioner.
The labor commissioner may adopt rules to more specifically define the occupations and equipment permitted or prohibited in this chapter, to determine occupations for which work permits are required, and to issue general and special orders prohibiting or allowing the employment of persons under eighteen years of age in any place of employment defined in this chapter as hazardous to the health, safety, and welfare of the persons.
[C71, 73, 75, 77, 79, 81, §92.21]
85 Acts, ch 212, §21; 86 Acts, ch 1245, §926

92.22 Labor commissioner to enforce.
The labor commissioner shall enforce this chapter. Mayors and police officers, sheriffs, school superintendents, and school truant and attendance officers, within their several jurisdictions, shall co-operate in the enforcement of this chapter and furnish the commissioner and the commissioner's designees with all information coming to their knowledge regarding violations of this chapter. All such officers and any person authorized in writing by a court of record shall have the authority to enter, for the purpose of investigation, any of the establishments and places mentioned in this chapter and to freely question any person therein as to any violations of this chapter.

County attorneys shall investigate all complaints made to them of violations of this chapter, and prosecute all such cases of violation within their respective counties.
[S13, §2477-f; SS15, §2477-a1, -d; C24, 27, 31, 35, 39, §**1535, 1541;** C46, 50, 54, 58, 62, 66, §92.10, 92.16; C71, 73, 75, 77, 79, 81, §92.22]
87 Acts, ch 111, §8

92.23 Group insurance.
Anyone under the age of eighteen and subject to this chapter employed in the street trades who sells or delivers the product or service of another and who is designated in such capacity as an independent contractor shall be provided participation, if the person under the age of eighteen desires it at group rate cost, in group insurance for medical, hospital, nursing and doctor expenses incurred as a result of injuries sustained arising out of and in the course of selling or delivering such product or service by the person, firm or corporation whose product or service is so delivered.
[C71, 73, 75, 77, 79, 81, §92.23]

CHAPTER 93

ENERGY DEVELOPMENT AND CONSERVATION

Transferred to chapter 473
Former section 93.11 repealed effective July 1, 1992; 86 Acts, ch 1249, §7;
see §473.11

CHAPTER 93A

MIDWEST ENERGY COMPACT

Transferred to chapter 473A

CHAPTER 93B

RIGHTS OF BLIND, PARTIALLY BLIND AND PHYSICALLY DISABLED

This chapter transferred to chapter 216C

CHAPTER 93C

OPERATION OF FOOD SERVICE IN PUBLIC BUILDINGS

This chapter transferred to chapter 216D

CHAPTER 94

STATE FREE EMPLOYMENT SERVICE — EMPLOYMENT AGENCIES

Repealed by 99 Acts, ch 130, §9; see chapter 94A

CHAPTER 94A

EMPLOYMENT AGENCIES

94A.1 Definitions.
94A.2 Licensing.
94A.3 General requirements.
94A.4 Prohibitions.
94A.5 Powers and duties of the commissioner.
94A.6 Violations.

94A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Applicant"* means a person applying for a private employment agency license.

2. *"Commissioner"* means the labor commissioner, appointed pursuant to section 91.2, or the labor commissioner's designee.

3. *"Employee"* means a person who seeks employment or who obtains employment through an employment agency.

4. *"Employer"* means a person who seeks one or more employees or who obtains one or more employees.

5. *"Employment agency"* means a person who brings together those desiring to employ and those desiring employment and who receives a fee, privilege, or other consideration directly or indirectly from an employee for the service. *"Employment agency"* does not include furnishing or procuring theatrical, stage, or platform attractions or amusement enterprises.

99 Acts, ch 130, §1

94A.2 Licensing.

1. An employment agency shall obtain a license from the commissioner prior to transacting any business. Licenses expire on June 30 of each year.

2. A license application shall be in the form prescribed by the commissioner and shall be accompanied by all of the following:

a. A surety company bond in the sum of thirty thousand dollars, to be approved by the commissioner and conditioned to pay any damages that may accrue to any person due to a wrongful act or violation of law on the part of the applicant in the conduct of business.

b. The schedule of fees to be charged by the employment agency.

c. All contract forms to be signed by an employee.

d. An application fee of seventy-five dollars.

3. The commissioner shall grant or deny a license within thirty days from the filing date of a completed application.

4. The commissioner may revoke, suspend, or annul a license in accordance with chapter 17A upon good cause.

99 Acts, ch 130, §2

94A.3 General requirements.

Each employment agency shall do all of the following:

1. Keep an employee record, which shall include the name of each employee signing a contract or agreement, the name and address of the employer, if employment is found, and the fee charged, paid, or refunded. Each record shall be maintained for at least two years.

2. Prior to referral to an employer, provide an employee with a copy of the contract or agreement, which specifies the fee or consideration to be paid by the employee.

99 Acts, ch 130, §3

94A.4 Prohibitions.

1. A person shall not require an employee to pay a fee as a condition of application with an employer or an employment agency.

2. An employee shall not be required to pay a fee to an employer as a condition of hire.

3. An employer shall not require an employee to reimburse the employer for a fee the employer paid to an employment agency or other person or entity when the employee was hired.

4. An employment agency shall not do any of the following:

a. Send an employee or an application of an employee to an employer who has not applied to the employment agency for help or labor.

b. Through false notice, advertisement, or other means, fraudulently promise or deceive a person seeking help or employment with regard to the service to be rendered by the employment agency.

c. Divide a fee received from an employee with an employer or any member of an employer's staff. The division of fees between one or more employment agencies that provided services is not prohibited.

d. Charge an employee any fee greater than the fee schedule on file with the commissioner without prior consent of the commissioner.

e. Charge a fee greater than fifteen percent of the employee's annual gross earnings.

f. Require an employee to pay a fee in advance of earnings. If an employee wishes to pay a fee in advance of earnings, the contract between the employee and employment agency shall state that any advance payment by the employee is voluntary. If an employee works less than one year at the referred employment, the employment agency shall refund any amount in excess of fifteen percent of the employee's gross earnings from the referred employment.

99 Acts, ch 130, §4

94A.5 Powers and duties of the commissioner.

1. At any time, the commissioner may examine the records, books, and any papers relating to the conduct and operation of an employment agency.

2. The commissioner shall adopt rules pursuant to chapter 17A to administer this chapter.

99 Acts, ch 130, §5

94A.6 Violations.

1. A person who violates a provision of this chapter or who refuses the commissioner access to records, books, and papers pursuant to an examination under section 94A.5 shall be guilty of a simple misdemeanor.

2. If a person violates a provision of this chapter or refuses the commissioner access to records, books, and papers pursuant to an examination under section 94A.5, the commissioner shall assess a civil penalty against the person in an amount not greater than two thousand dollars.

99 Acts, ch 130, §6

CHAPTER 95

LICENSES FOR EMPLOYMENT AGENCIES

Repealed by 99 Acts, ch 130, §9; see chapter 94A

CHAPTER 96

EMPLOYMENT SECURITY — UNEMPLOYMENT COMPENSATION

TITLE — POLICY

96.1 Name.
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96.35 Status report.
96.36 through 96.39 Reserved.
96.40 Voluntary shared work program.

TITLE — POLICY

96.1 Name.

This chapter shall be known and may be cited as the *"Iowa Employment Security Law"*.

[C39, §**1551.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.1]

96.1A Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

96.2 Guide for interpretation.

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of un-

employment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

[C39, §**1551.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.2]

BENEFITS

96.3 Payment — determination — duration — child support intercept.

1. *Payment.* Twenty-four months after the date when contributions first accrue under this chapter, benefits shall become payable from the fund; provided, that wages earned for services defined in section 96.19, subsection 18, paragraph *"g"* (3), irrespective of when performed, shall not be included for purposes of determining eligibility, under section 96.4 or full-time weekly wages, under subsection 4 of this section, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under subsection 5 of this section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such regulations as the department of workforce development may prescribe.

2. *Total unemployment.* Each eligible individual who is totally unemployed in any week shall be paid with respect to such week benefits in an amount which shall be equal to the individual's weekly benefit amount.

3. *Partial unemployment.* An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph *"b"*, and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

4. *Determination of benefits.* With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage:
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section *"dependent"* means dependent as defined in section 422.12, subsection 1, paragraph *"c"*, as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. *"Nonworking spouse"* means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

5. *Duration of benefits.* The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the director shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off indicator" is in effect and if the

individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

6. *Part-time workers.*

a. As used in this subsection the term *"part-time worker"* means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

b. The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

7. *Recovery of overpayment of benefits.* If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

8. *Back pay.* If an individual receives benefits for a period of unemployment and subsequently receives a payment for the same period from the individual's employer in the form of or in lieu of back pay, the benefits shall be recovered. The department, in its discretion, may reach an agreement with the individual and the employer to allow the employer to deduct the amount of the benefits from the back pay and remit a sum equal to that amount to the unemployment compensation fund and the balance to the individual, or may recover the amount of the benefits either by having a sum equal to that amount deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to that amount. If an agreement is reached to allow the employer to deduct the amount of benefits from the back pay and remit that amount to the fund, the department shall not charge that amount to the employer's account under section 96.7.

9. *Child support intercept.*

a. An individual filing a claim for benefits under section 96.6, subsection 1 shall, at the time of filing, disclose whether the individual owes a child support obligation which is being enforced by the child support recovery unit established in section 252B.2. If an individual discloses that such a child support obligation is owed and the individual is determined to be eligible for benefits under this chapter, the department shall notify the child support recovery unit of the individual's disclosure and deduct and withhold from benefits payable to the individual the amount specified by the individual.

b. However, if the child support recovery unit and an individual owing a child support obligation reach an agreement to have specified amounts deducted and withheld from the individual's benefits and the child support recovery unit submits a copy of the agreement to the department, the department shall deduct and withhold the specified amounts.

c. However, if the department is notified of income withholding by the child support recovery unit under chapter 252D or section 598.22 or 598.23 or if income is garnisheed by the child support recovery unit under chapter 642 and an individual's benefits are condemned to the satisfaction of the child support obligation being enforced by the child support recovery unit, the department shall deduct and withhold from the individual's benefits that amount required through legal process.

Notwithstanding section 642.2, subsections 2, 3, 6, and 7, which restrict garnishments under chapter 642 to wages of public employees, the department may be garnisheed under chapter 642 by the child support recovery unit established in section 252B.2, pursuant to a judgment for child support against an individual eligible for benefits under this chapter.

Notwithstanding section 96.15, benefits under this chapter are not exempt from income withholding, garnishment, attachment, or execution if withheld for or garnisheed by the child support recovery unit, established in section 252B.2, or if an income withholding order or notice of the income withholding order under section 598.22 or 598.23 is being enforced by the child support recovery unit to satisfy the child support obligation of an individual who is eligible for benefits under this chapter.

d. An amount deducted and withheld under paragraph *"a", "b",* or *"c"* shall be paid by the department to the child support recovery unit, and shall be treated as if it were paid to the individual as benefits under this chapter and as if it were paid by the individual to the child support recovery unit in satisfaction of the individual's child

support obligations.

e. If an agreement for reimbursement has been made, the department shall be reimbursed by the child support recovery unit for the administrative costs incurred by the department under this section which are attributable to the enforcement of child support obligations by the child support recovery unit.

10. *Voluntary income tax withholding.* All payments of benefits made after December 31, 1996, are subject to the following:

a. An individual filing a new application for benefits shall, at the time of filing the application, be advised of the following:

(1) Benefits paid under this chapter are subject to federal and state income tax.

(2) Legal requirements exist pertaining to estimated tax payments.

(3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified in the Internal Revenue Code as defined in section 422.3.

(4) The individual may elect to have Iowa state income tax deducted and withheld from the individual's payment of benefits at the rate of five percent.

(5) The individual shall be permitted to change the individual's previously elected withholding status.

b. Amounts deducted and withheld from benefits shall remain in the unemployment compensation fund until transferred to the appropriate taxing authority as a payment of income tax.

c. The director shall follow all procedures specified by the United States department of labor, the federal internal revenue service, and the department of revenue and finance pertaining to the deducting and withholding of income tax.

d. Amounts shall be deducted and withheld under this subsection only after amounts are deducted and withheld for any overpayment of benefits, child support obligations, and any other amounts authorized to be deducted and withheld under federal or state law.

11. *Overissuance of food stamp benefits.* The department shall collect any overissuance of food stamp benefits by offsetting the amount of the overissuance from the benefits payable under this chapter to the individual. This subsection shall only apply if the department is reimbursed under an agreement with the department of human services for administrative costs incurred in recouping the overissuance. The provisions of section 96.15 do not apply to this subsection.

[C39, §**1551.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.3; 82 Acts, ch 1030, §1]

83 Acts, ch 190, §1 – 4, 27; 84 Acts, ch 1067, §17; 86 Acts, ch 1034, §1; 87 Acts, ch 111, §9; 87 Acts, ch 222, §1, 2; 89 Acts, ch 11, §1, 2; 93 Acts, ch 158, §1; 95 Acts, ch 23, §1; 95 Acts, ch 109, §1; 96 Acts, ch 1121, §1, 12; 96 Acts, ch 1186, §23; 97 Acts, ch 38, §1; 97 Acts, ch 175, §222

96.4 Required findings.

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

1. The individual has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the department may prescribe. The provisions of this subsection shall be waived if the individual is deemed temporarily unemployed as defined in section 96.19, subsection 38, paragraph *"c"*.

2. The individual has made a claim for benefits in accordance with the provisions of section 96.6, subsection 1.

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph *"b"*, unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph *"c"*. The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph *"h"*.

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph *"a"* or *"b"*, benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, *"educational service agency"* means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

6. *a.* An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, *"suitable employment"* means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

7. The individual participates in reemployment services as directed by the department pursuant to a profiling system, established by the department, which identifies individuals who are likely to exhaust benefits and be in need of reemployment services.

[C39, §**1551.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.4; 82 Acts, ch 1030, §2]

83 Acts, ch 190, §5 – 8, 26, 27; 84 Acts, ch 1255, §1, 2; 87 Acts, ch 222, §3; 91 Acts, ch 45, §1, 2; 94 Acts, ch 1066, §6; 96 Acts, ch 1186, §23

96.5 Causes for disqualification.

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new

employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

b. Reserved.

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph *"a"* of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

h. The individual has left employment in lieu of exercising a right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job.

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph *"b"*. Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For purposes of this paragraph:

(1) *"Temporary employee"* means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) *"Temporary employment firm"* means a

person engaged in the business of employing temporary employees.

2. *Discharge for misconduct.* If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

3. *Failure to accept work.* If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

4. *Labor disputes.* For any week with respect to which the department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

a. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

5. *Other compensation.* For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph *"a"*, *"b"*, or *"c"*, were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

6. *Benefits from other state.* For any week with respect to which or a part of which an individual has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

7. *Vacation pay.*

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed *"wages"* as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph *"c"* hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed *"wages"* as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph *"c"* of this subsection 7.

c. Of the wages described in paragraph *"a"* (whether or not the employer has designated the period therein described), or of the wages described in paragraph *"b"*, if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs *"a"*, *"b"*, and *"c"*, if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph *"b"*, then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph *"b"*, the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered

wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

8. *Administrative penalty.* If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

9. *Athletes — disqualified.* Services performed by an individual, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or similar periods, if such individual performs such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such season or similar periods.

10. *Aliens — disqualified.* For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

[C39, §**1551.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.5; 81 Acts, ch 19, §2]

83 Acts, ch 190, §9, 10, 27; 85 Acts, ch 99, §2; 86 Acts, ch 1166, §1; 87 Acts, ch 78, §1; 90 Acts, ch 1261, §28; 91 Acts, ch 45, §3, 4; 92 Acts, ch 1045, §1, 2; 95 Acts, ch 109, §2; 96 Acts, ch 1121, §2; 96 Acts, ch 1186, §23; 97 Acts, ch 132, §1; 2001 Acts, ch 111, §1, 6

96.6 Filing — determination — appeal.

1. *Filing.* Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs *"a"* through *"h"*. Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

3. *Appeals.* Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be

conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

4. *Effect of determination.* A finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States.

[C39, §**1551.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.6]

83 Acts, ch 190, §11, 12, 27; 84 Acts, ch 1255, §3; 86 Acts, ch 1245, §522, 523; 88 Acts, ch 1109, §9; 91 Acts, ch 43, §1; 95 Acts, ch 109, §3; 96 Acts, ch 1186, §23; 98 Acts, ch 1061, §9; 98 Acts, ch 1158, §1

96.7 Employer contributions and reimbursements.

1. *Payment.* Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. *Contribution rates based on benefit experience.*

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The account of an employer shall not be charged with benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act of 1974, if the individual would have been eligible for federal disaster unemployment assistance benefits with respect to that unemployment but for the individual's receipt of regular benefits.

(3) The amount of regular benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based on employment with the employer during that quarter. The amount of extended benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed an additional fifty percent of the amount of the individual's wage credits based on employment with the employer during that quarter. However, the amount of extended benefits charged against the

account of a governmental entity which is either a reimbursable or contributory employer, for a calendar quarter of the base period shall not exceed an additional one hundred percent of the amount of the individual's wage credits based on employment with the governmental entity during that quarter.

(4) The department shall adopt rules prescribing the manner in which benefits shall be charged against the accounts of several employers for which an individual performed employment during the same calendar quarter.

(5) This chapter shall not be construed to grant an employer or an individual in the employer's service, prior claim or right to the amount paid by the employer into the unemployment compensation fund either on the employer's own behalf or on behalf of the individual.

(6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

b. If an enterprise or business, or a clearly segregable and identifiable part of an enterprise or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 16, paragraph *"b"*, continues to operate the enterprise or business, the successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the enterprise or business. However, the successor employer shall not assume the position of the predecessor employer or employers with respect to the predecessor employer's or employers' payrolls, contributions, accounts, and contribution rates which are attributable to that part of the enterprise or business transferred, unless the successor employer applies to the department within ninety days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the department.

The predecessor employer, prior to entering into a contract with a successor employer relating to the sale or transfer of the enterprise or business, or a clearly segregable and identifiable part of the enterprise or business, shall disclose to the successor employer the predecessor employer's record of charges of benefits payments and any layoffs or incidences since the last record that would affect the experience record. A predecessor employer who fails to disclose or willfully discloses incorrect information to a successor employer regarding the predecessor employer's record of charges of benefits payments is liable to the successor employer for any actual damages and attorney fees incurred by the successor employer as a result of the predecessor employer's failure to disclose or disclosure of incorrect information. The department shall include notice of the requirement of disclosure in the department's quarterly notification given to each employer pursuant to paragraph *"a"*, subparagraph (6).

The contribution rate to be assigned to the successor employer for the period beginning not earlier than the date of the succession and ending not later than the beginning of the next following rate year, shall be the contribution rate of the predecessor employer with respect to the period immediately preceding the date of the succession, provided the successor employer was not, prior to the succession, a subject employer, and only one predecessor employer, or only predecessor employers with identical rates, are involved. If the predecessor employers' rates are not identical and the successor employer is not a subject employer prior to the succession, the department shall assign the successor employer a rate for the remainder of the rate year by combining the experience of the predecessor employers. If the successor employer is a subject employer prior to the succession, the successor employer may elect to retain the employer's own rate for the remainder of the rate year, or the successor employer may apply to the department to have the employer's rate redetermined by combining the employer's experience with the experience of the predecessor employer or employers. However, if the successor employer is a subject employer prior to the succession and has had a partial transfer of the experience of the predecessor employer or employers approved, then the department shall recompute the successor employer's rate for the remainder of the rate year.

c. (1) A nonconstruction contributory employer newly subject to this chapter shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than one percent until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters immediately preceding the computation date.

(2) A construction contributory employer, as defined under rules adopted by the department, which is newly subject to this chapter shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters.

(3) Thereafter, the employer's contribution rate shall be determined in accordance with paragraph *"d"*, except that the employer's average annual taxable payroll and benefit ratio may be computed, as determined by the department, for less than five periods of four consecutive calendar quarters immediately preceding the computation date.

d. The department shall determine the contribution rate table to be in effect for the rate year following the computation date, by determining the ratio of the current reserve fund ratio to the highest benefit cost ratio on the computation date. On or before the fifth day of September the department shall make available to employers the contribution rate table to be in effect for the next rate year.

(1) The current reserve fund ratio is computed by dividing the total funds available for payment of benefits, on the computation date, by the total wages paid in covered employment excluding reimbursable employment wages during the first four calendar quarters of the five calendar quarters immediately preceding the computation date.

(2) The highest benefit cost ratio is the highest of the resulting ratios computed by dividing the total benefits paid, excluding reimbursable benefits paid, during each consecutive twelve-month period, during the ten-year period ending on the computation date, by the total wages, excluding reimbursable employment wages, paid in the four calendar quarters ending nearest and prior to the last day of such twelve-month period; however, the highest benefit cost ratio shall not be less than .02.

If the current reserve fund ratio, divided by the highest benefit cost ratio:

Equals or exceeds	But is less than	The contribution rate table in effect shall be
—	0.3	1
0.3	0.5	2
0.5	0.7	3
0.7	0.85	4
0.85	1.0	5
1.0	1.15	6
1.15	1.30	7
1.30	—	8

"Benefit ratio" means a number computed to six decimal places on July 1 of each year obtained by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's average annual taxable payroll.

Each employer qualified for an experience rating shall be assigned a contribution rate for each rate year that corresponds to the employer's benefit ratio rank in the contribution rate table effective for the rate year from the following contribution rate tables. Each employer's benefit ratio rank shall be computed by listing all the employers by increasing benefit ratios, from the lowest benefit ratio to the highest benefit ratio and grouping the employers so listed into twenty-one separate ranks containing as nearly as possible four and seventy-six hundredths percent of the total taxable wages, excluding reimbursable employment wages, paid in covered employment during the four completed calendar quarters immediately preceding the computation date. If an employer's taxable wages qualify the employer for two separate benefit ratio ranks the employer shall be afforded the benefit ratio rank assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same benefit ratio rank.

Benefit Ratio Rank	Approximate Cumulative Taxable Payroll Limit	Contribution Rate Tables 1	2	3	4	5	6	7	8
1	4.8%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	9.5%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3	14.3%	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
4	19.0%	0.4	0.3	0.3	0.2	0.1	0.1	0.1	0.1
5	23.8%	0.6	0.5	0.4	0.3	0.3	0.2	0.1	0.1
6	28.6%	0.9	0.8	0.6	0.5	0.4	0.3	0.2	0.1
7	33.3%	1.2	1.0	0.8	0.6	0.5	0.4	0.3	0.2
8	38.1%	1.5	1.3	1.0	0.8	0.6	0.5	0.3	0.2
9	42.8%	1.9	1.5	1.2	0.9	0.7	0.6	0.4	0.3
10	47.6%	2.1	1.8	1.4	1.1	0.8	0.6	0.5	0.3
11	52.4%	2.5	2.0	1.6	1.3	1.0	0.7	0.5	0.3
12	57.1%	3.0	2.4	1.9	1.5	1.1	0.9	0.6	0.4
13	61.9%	3.6	2.9	2.4	1.8	1.4	1.1	0.8	0.5
14	66.6%	4.4	3.6	2.9	2.2	1.7	1.3	1.0	0.6
15	71.4%	5.3	4.3	3.5	2.7	2.0	1.6	1.1	0.7
16	76.2%	6.3	5.2	4.1	3.2	2.4	1.9	1.4	0.9
17	80.9%	7.0	6.4	5.2	4.0	3.0	2.3	1.7	1.1
18	85.7%	7.5	7.5	7.0	5.4	4.1	3.1	2.3	1.5
19	90.4%	8.0	8.0	8.0	7.3	5.6	4.2	3.1	2.0
20	95.2%	8.5	8.5	8.5	8.0	7.6	5.8	4.3	2.8
21	100.0%	9.0	9.0	9.0	9.0	8.5	8.0	7.5	7.0

e. The department shall fix the contribution rate for each employer and notify the employer of the rate by regular mail to the last known address of the employer. An employer may appeal to the department for a revision of the contribution rate within thirty days from the date of the notice to the employer. After providing an opportunity for a hearing, the department may affirm, set aside, or modify its former determination and may grant the employer a new contribution rate. The department shall notify the employer of its decision by regular mail. Judicial review of action of the department may be sought pursuant to chapter 17A.

If an employer's account has been charged with benefits as the result of a decision allowing benefits and the decision is reversed, the employer may appeal, within thirty days from the date of the next contribution rate notice, for a recomputation of the rate. If contributions become due at a disputed contribution rate prior to the employer receiving a decision reversing benefits, the employer shall pay the contributions at the disputed rate but shall be eligible for a refund pursuant to section 96.14, subsection 5. If a base period employer's account has been charged with benefits paid to an employee at a time when the employee was employed by the base period employer in the same employment as in the base period, the employer may appeal, within thirty days from the date of the first notice of the employer's contribution rate which is based on the charges, for a recomputation of the rate.

f. If an employer has not filed a contribution and payroll quarterly report, as required pursuant to section 96.11, subsection 6, for a calendar quarter which precedes the computation date and upon which the employer's rate of contribution is computed, the employer's average annual taxable payroll shall be computed by considering the delinquent quarterly reports as containing zero taxable wages.

If a delinquent quarterly report is received by September 30 following the computation date the contribution rate shall be recomputed by using the taxable wages in all the appropriate quarterly reports on file to determine the average annual taxable payroll.

If a delinquent quarterly report is received after September 30 following the computation date the contribution rate shall not be recomputed, unless the rate is appealed in writing to the department under paragraph *"e"* and the delinquent quarterly report is also submitted not later than thirty days after the department notifies the employer of the rate under paragraph *"e"*.

3. *Determination and assessment of contributions.*

a. As soon as practicable and in any event within two years after an employer has filed reports, as required pursuant to section 96.11, subsection 6, the department shall examine the reports and determine the correct amount of contributions due, and the amount so determined by the department shall be the contributions payable. If the contributions found due are greater than the amount paid, the department shall send

a notice by certified mail to the employer with respect to the additional contributions and interest assessed. A lien shall attach as provided in section 96.14, subsection 3, if the assessment is not paid or appealed within thirty days of the date of the notice of assessment.

b. If the department discovers from the examination of the reports required pursuant to section 96.11, subsection 6, or in some other manner that wages, or any portion of wages, payable for employment, have not been listed in the reports, or that reports were not filed when due, or that reports have been filed showing contributions due but contributions in fact have not been paid, the department shall at any time within five years after the time the reports were due, determine the correct amount of contributions payable, together with interest and any applicable penalty as provided in this chapter. The department shall send a notice by certified mail to the employer of the amount assessed and a lien shall attach as provided in paragraph *"a"*.

c. The certificate of the department to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished as required under the provisions of this chapter, is prima facie evidence of the failure to pay contributions, file reports, or furnish information.

4. *Employer liability determination.* The department shall initially determine all questions relating to the liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship. A copy of the initial determination shall be sent by regular mail to the last address, according to the records of the department, of each affected employing unit or employer.

The affected employing unit or employer may appeal in writing to the department from the initial determination. An appeal shall not be entertained for any reason by the department unless the appeal is filed with the department within thirty days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall with the expiration of the appeal period become final and conclusive in all respects and for all purposes.

A hearing on an appeal shall be conducted according to rules adopted by the department. A copy of the decision of the administrative law judge shall be sent by regular mail to the last address, according to the records of the department, of each affected employing unit or employer.

The department's decision on the appeal shall be final and conclusive as to the liability of the employing unit or employer unless the employing unit or employer files an appeal for judicial review within thirty days after the date of mailing of the decision as provided in subsection 5.

5. *Judicial review.* Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of the county in which the employer resides, or in which the employer's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in a county in which the wages payable for employment were earned or paid or in Polk county, within thirty days after the date of the notice to the employer of the department's final determination as provided for in subsection 2, 3, or 4.

The petitioner shall file with the clerk of the district court a bond for the use of the respondent, with sureties approved by the clerk, with any penalty to be fixed and approved by the clerk. The bond shall not be less than fifty dollars and shall be conditioned on the petitioner's performance of the orders of the court. In all other respects, the judicial review shall be in accordance with chapter 17A.

6. *Jeopardy assessments.* If the department believes that the collection of contributions payable or benefits reimbursable will be jeopardized by delay, the department may immediately make an assessment of the estimated amount of contributions due or benefits reimbursable, together with interest and applicable penalty, and demand payment from the employer. If the payment is not made, the department may immediately file a lien against the employer which may be followed by the issuance of a distress warrant.

The department shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions due is determined. The bond shall be in an amount deemed necessary, but not more than double the amount of the contributions involved, with securities satisfactory to the department.

7. *Financing benefits paid to employees of governmental entities.*

a. A governmental entity which is an employer under this chapter shall pay benefits in a manner provided for a reimbursable employer unless the governmental entity elects to make contributions as a contributory employer. The election shall be effective for a minimum of one calendar year and may be changed if an election is made to become a reimbursable employer prior to December 1 for a minimum of the following calendar year.

However, if on the effective date of the election the governmental entity has a negative balance in its contributory account, the governmental entity shall pay to the fund within a time period determined by the department the amount of the negative balance and shall immediately become liable to reimburse the unemployment compensation fund for benefits paid in lieu of contributions. Regular or extended benefits paid after the effective date of the election, including those based on wages paid while the governmental entity was a contributory employer, shall be billed to the governmental entity as a reimbursable employer.

b. A governmental entity electing to make con-

tributions as a contributory employer, with at least eight consecutive calendar quarters immediately preceding the computation date throughout which the employer's account has been chargeable with benefits, shall be assigned a contribution rate under this paragraph. Contribution rates shall be assigned by listing all governmental contributory employers by decreasing percentages of excess from the highest positive percentage of excess to the highest negative percentage of excess. The employers so listed shall be grouped into seven separate percentage of excess ranks each containing as nearly as possible one-seventh of the total taxable wages of governmental entities eligible to be assigned a rate under this paragraph.

As used in this subsection, *"percentage of excess"* means a number computed to six decimal places on July 1 of each year obtained by dividing the excess of all contributions attributable to an employer over the sum of all benefits charged to an employer by the employer's average annual payroll. An employer's percentage of excess is a positive number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date exceeds the total benefits charged to such account for the same period. An employer's percentage of excess is a negative number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date is less than the total benefits charged to such account for the same period.

As used in this subsection, *"average annual taxable payroll"* means the average of the total amount of taxable wages paid by an employer for insured work during the three periods of four consecutive calendar quarters immediately preceding the computation date. However, for an employer which qualifies on any computation date for a computed rate on the basis of less than twelve consecutive calendar quarters of chargeability immediately preceding the computation date, *"average annual taxable payroll"* means the average of the employer's total amount of taxable wages for the two periods of four consecutive calendar quarters immediately preceding the computation date.

The department shall annually calculate a base rate for each calendar year. The base rate is equal to the sum of the benefits charged to governmental contributory employers in the calendar year immediately preceding the computation date plus or minus the difference between the total benefits and contributions paid by governmental contributory employers since January 1, 1980, which sum is divided by the total taxable wages reported by governmental contributory employers during the calendar year immediately preceding the computation date, rounded to the next highest one-tenth of one percent. Excess contributions from the years 1978 and 1979 shall be used to offset benefits paid in any calendar year where total benefits exceed total contributions of governmental contributory employers. The contribution rate as a percentage of taxable wages of the employer shall be assigned as follows:

If the percentage of excess rank is:	The contribution rate shall be:	Approximate cumulative taxable payroll:
1	Base Rate – 0.9	14.3
2	Base Rate – 0.6	28.6
3	Base Rate – 0.3	42.9
4	Base Rate	57.2
5	Base Rate + 0.3	71.5
6	Base Rate + 0.6	85.8
7	Base Rate + 0.9	100.0

If a governmental contributory employer is grouped into two separate percentage of excess ranks, the employer shall be assigned the lower contribution rate of the two percentage of excess ranks. Notwithstanding the provisions of this paragraph, a governmental contributory employer shall not be assigned a contribution rate less than one-tenth of one percent of taxable wages unless the employer has a positive percentage of excess greater than five percent.

Governmental entities electing to be contributory employers which are not eligible to be assigned a contribution rate under this paragraph shall be assigned the base rate as a contribution rate for the calendar year.

c. For the purposes of this subsection, *"governmental reimbursable employer"* means an employer which makes payments to the department for the unemployment compensation fund in an amount equal to the regular and extended benefits paid, which are based on wages paid for service in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the department shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph *"b"*, subparagraphs (2) through (5).

d. A state agency, board, commission, or department, except a state board of regents institution, shall, after approval of the billing for a governmental reimbursable employer as provided in subsection 8, paragraph *"b"*, submit the billing to the director of revenue and finance. The director

of revenue and finance shall pay the approved billing out of any funds in the state treasury not otherwise appropriated. A state agency, board, commission, or department shall reimburse the director of revenue and finance out of any revolving, special, trust, or federal fund from which all or a portion of the billing can be paid, for payments made by the director of revenue and finance on behalf of the agency, board, commission, or department.

e. If the entire enterprise or business of a reimbursable governmental entity is sold or otherwise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable governmental entity with respect to the reimbursable governmental entity's liability to pay the department for reimbursable benefits based on the governmental entity's payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit's own payroll prior to or after the acquisition of the governmental entity's enterprise or business.

f. If a reimbursable instrumentality of the state or of a political subdivision is discontinued other than by sale or transfer to a subsequent employing unit as described in paragraph *"e"*, the state or the political subdivision, respectively, shall reimburse the department for benefits paid to former employees of the instrumentality after the instrumentality is discontinued.

8. *Financing benefits paid to employees of nonprofit organizations.*

a. A nonprofit organization which is, or becomes, subject to this chapter, shall pay contributions under subsections 1 and 2, unless the nonprofit organization elects, in accordance with this paragraph, to reimburse the unemployment compensation fund for benefits paid in an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, which are based on wages paid for service in the employ of the nonprofit organization during the effective period of the election.

(1) A nonprofit organization may elect to become a reimbursable employer for a period of not less than two calendar years by filing with the department a written notice of its election not later than thirty days prior to the beginning of the calendar year for which the election is to be effective.

(2) A nonprofit organization which makes an election in accordance with subparagraph (1) shall continue to be a reimbursable employer until the nonprofit organization files with the department a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which the termination is to be effective.

(3) The department may for good cause extend the period within which a notice of election or termination of election must be filed and may permit an election or termination of election to be retroactive.

(4) The department, in accordance with rules, shall notify each nonprofit organization of any determination made by the department of the status of the nonprofit organization as an employer and of the effective date of any election or termination of election. A determination is subject to appeal and review in accordance with subsections 4 and 5.

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

(1) At the end of each calendar quarter, the department shall bill each nonprofit organization which has elected to reimburse the unemployment compensation fund for benefits paid in an amount equal to the full amount of regular benefits and one-half of the amount of extended benefits paid during the quarter which are based on wages paid for service in the employ of the organization. Benefits paid to an individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter.

(2) The nonprofit organization shall pay the bill not later than thirty days after the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, unless the nonprofit organization has filed an application for redetermination in accordance with subparagraph (4).

(3) Reimbursements made by a nonprofit organization shall not be deducted, in whole or in part, from the wages of individuals in the employ of the nonprofit organization.

(4) The amount due specified in a bill from the department is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the department setting forth the grounds for the application. The department shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

(5) The provisions for collection of contributions under section 96.14 are applicable to reim-

bursements for benefits paid in lieu of contributions.

(6) If the entire enterprise or business of a reimbursable nonprofit organization is sold or otherwise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable nonprofit organization with respect to the nonprofit organization's liability to pay the department for reimbursable benefits based on the nonprofit organization's payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit's own payroll prior to or after the acquisition of the nonprofit organization's enterprise or business.

9. *Indian tribes.*

a. For purposes of this chapter, employment by an Indian tribe shall be covered in the same manner and terms as provided for governmental entities and the same exclusions that are applicable for governmental entities shall also apply.

b. In financing benefits paid to employees of an Indian tribe under this chapter, a contribution rate shall be determined and contributions shall be assessed and collected from an Indian tribe in the same manner provided in this chapter for contributory employers, except that an Indian tribe shall have the option of electing to become a governmental reimbursable employer. An Indian tribe shall have the option to make a separate election as provided in this paragraph for itself and for each subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe. The reimbursable status of an Indian tribe shall be in the same manner, to the same extent, and on the same terms as are applicable to all governmental reimbursable employers under this chapter.

c. If the department determines that an Indian tribe has failed to make any payment required pursuant to this chapter after providing the Indian tribe with ninety days' notice of this failure, the department may issue a determination that ceases coverage of all employment by that Indian tribe until such time as all payments are received by the department.

10. *Group accounts.* Two or more nonprofit organizations or two or more governmental entities which have become reimbursable employers in accordance with subsection 7 or subsection 8, paragraph *"a"*, may file a joint application to the department for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of the employers. The application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon approval of the application, the department shall establish a group account for the employers effective as of the beginning of the calendar quarter in which the department receives the application and shall notify the group's agent of the effective date of the account. The account shall remain in effect for not less than one year until terminated at the discretion of the department or upon application by the group. Upon establishment of the account, each employer member of the group shall be liable for benefit reimbursements in lieu of contributions with respect to each calendar quarter in an amount which bears the same ratio to the total benefits paid in the quarter which are attributable to service performed in the employ of all members of the group, as the total wages paid for service performed in the employ of the member in the quarter bear to the total wages paid for service performed in the employ of all members of the group in the quarter. The department shall adopt rules with respect to applications for establishment, maintenance, and termination of group accounts, for addition of new members to, and withdrawal of active members from group accounts, and for the determination of the amounts which are payable by members of the group and the time and manner of the payments.

11. *Temporary emergency surcharge.* If on the first day of the third month in any calendar quarter, the department has an outstanding balance of interest accrued on advance moneys received from the federal government for the payment of unemployment compensation benefits, or is projected to have an outstanding balance of accruing federal interest for that calendar quarter, the department shall collect a uniform temporary emergency surcharge for that calendar quarter, retroactive to the beginning of that calendar quarter. The surcharge shall be a percentage of employer contribution rates and shall be set at a uniform percentage, for all employers subject to the surcharge, necessary to pay the interest accrued on the moneys advanced to the department by the federal government, and to pay any additional federal interest which will accrue for the remainder of that calendar quarter. The surcharge shall apply to all employers except governmental entities, nonprofit organizations, and employers assigned a zero contribution rate. The department shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. The surcharge shall not affect the computation of regular contributions under this chapter.

A special fund to be known as the temporary emergency surcharge fund is created in the state treasury. The special fund is separate and distinct from the unemployment compensation fund. All contributions collected from the temporary emergency surcharge shall be deposited in the special fund. The special fund shall be used only to pay in-

terest accruing on advance moneys received from the federal government for the payment of unemployment compensation benefits. Interest earned upon moneys in the special fund shall be deposited in and credited to the special fund.

If the department determines on June 1 that no outstanding balance of interest due has accrued on advanced moneys received from the federal government for the payment of unemployment compensation benefits, and that no outstanding balance is projected to accrue for the remainder of the calendar year, the department shall notify the treasurer of state of its determination. The treasurer of state shall immediately transfer all moneys, including accrued interest, in the temporary emergency surcharge fund to the unemployment compensation fund for the payment of benefits.

12. *Administrative contribution surcharge — fund.*

a. An employer other than a governmental entity or a nonprofit organization, subject to this chapter, shall pay an administrative contribution surcharge equal in amount to one-tenth of one percent of federal taxable wages, as defined in section 96.19, subsection 37, paragraph *"b"*, subject to the surcharge formula to be developed by the department under this paragraph. The department shall develop a surcharge formula that provides a target revenue level of no greater than six million five hundred twenty-five thousand dollars annually. The department shall reduce the administrative contribution surcharge established for any calendar year proportionate to any federal government funding that provides an increased allocation of moneys for workforce development offices, under the federal employment services financing reform legislation. Any administrative contribution surcharge revenue that is collected in calendar year 2002 in excess of six million five hundred twenty-five thousand dollars shall be deducted from the amount to be collected in calendar year 2003 before the department establishes the administrative contribution surcharge. The department shall recompute the amount as a percentage of taxable wages, as defined in section 96.19, subsection 37, and shall add the percentage surcharge to the employer's contribution rate determined under this section. The percentage surcharge shall be capped at a maximum of seven dollars per employee. The department shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. Interest accrued and collected under this paragraph and interest earned and credited to the fund under paragraph *"b"* shall be used by the department only for the purposes set forth in paragraph *"c"*.

b. A special fund to be known as the administrative contribution surcharge fund is created in the state treasury. The fund is separate and distinct from the unemployment compensation fund. All contributions collected from the administrative contribution surcharge shall be deposited in the fund. Interest earned upon moneys in the fund shall be deposited in and credited to the fund.

c. Moneys in the fund shall be used by the department only upon appropriation by the general assembly and only for personnel and nonpersonnel costs of rural and satellite departmental offices in population centers of less than twenty thousand. To the extent possible, the department shall colocate the rural and satellite departmental offices funded by the surcharge provided for in this subsection at available community college facilities throughout the state. If colocation at community college facilities is not feasible, the department shall attempt, to the extent possible, to colocate offices in the facilities of other government entities. Moneys in the fund shall not be used for purposes other than those identified in this paragraph or identified in the appropriation of the moneys in the fund by the general assembly.

(1) Moneys in the fund may be used to provide any of the following services to businesses:

(a) Use of a business representative to build one-on-one relationships with businesses. A business representative may provide any of the following:

(i) Workforce consulting in the form of customized strategies to attract, retain, and upgrade the skills of an employer's workforce.

(ii) General and customized recruitment.

(iii) Workplace skill testing and analysis in the form of skill level, aptitude, and ability assessment.

(iv) Employer specific job descriptions, employee handbooks, applications, and other relevant personnel forms.

(b) Labor market surveys and analyses which may include the compilation and dissemination of occupational and wage information.

(c) Contact information and referral services related to any of the following issues:

(i) Workers' compensation.

(ii) Wage and worker rights.

(iii) Registration.

(iv) The federal Occupational Safety and Health Act of 1970 and occupational safety and health standards.

(v) Boiler and elevator regulations.

(vi) Contractor registration.

(vii) Immigration services.

(viii) Unemployment contributions.

(d) A statewide computer networking process for employers and individuals regarding available positions and qualified applicants.

(e) Crosstraining services for workforce development staff.

(2) Moneys in the fund may be used to provide any of the following services to individuals:

(a) Outreach, intake, and orientation services related to any of the following:

(i) Job search and interviewing assistance.

(ii) Initial assessment of skill levels, aptitudes, abilities, and support service needs.

(iii) Proficiency testing.

(iv) Resume development and preparation.

(v) Referral to training and customized skill upgrading.

(vi) Career counseling including assessment and analysis.

(b) Contact information and referral for supportive services including but not limited to transportation, housing, and child care.

(c) Labor market surveys and analyses.

(d) Job development and placement services.

(e) Resource centers that provide individuals with computer access for electronic job search, resume development, career exploration, and keyboard and software training. A resource center may also be equipped with employment, training, and career information including but not limited to employment opportunities available with local employers.

(f) Information and assistance with filing for unemployment compensation benefits.

(3) Moneys in the fund shall not be used for any of the following purposes:

(a) Services that are not included in subparagraphs (1) and (2).

(b) Unemployment tax system renovation and computer upgrades.

(c) Specific consultation services relating to the federal Occupational Safety and Health Act of 1970 and occupational safety and health standards.

(d) Services which are currently provided by other state agencies.

(e) Workforce development regional advisory board member expenses.

(f) Supportive services including but not limited to transportation, housing, and child care.

d. This subsection is repealed July 1, 2003, and the repeal is applicable to contribution rates for calendar year 2004 and subsequent calendar years.

[C39, §**1551.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §96.7; C79, 81, §96.7, 96.19(21); 81 Acts, ch 19, §3 – 7; 82 Acts, ch 1126, §1]

83 Acts, ch 190, §13 – 20, 27; 84 Acts, ch 1255, §4 – 7; 86 Acts, ch 1066, §1; 86 Acts, ch 1166, §2; 86 Acts, ch 1209, §1; 87 Acts, ch 111, §10, 11; 87 Acts, ch 222, §4; 88 Acts, ch 1014, §1 – 3; 88 Acts, ch 1109, §10, 11; 88 Acts, ch 1274, §28; 89 Acts, ch 296, §14; 90 Acts, ch 1227, §1; 90 Acts, ch 1261, §29; 91 Acts, ch 45, §5; 91 Acts, ch 268, §426; 93 Acts, ch 23, §1 – 3; 95 Acts, ch 109, §4, 5; 96 Acts, ch 1121, §3 – 5; 96 Acts, ch 1186, §23; 98 Acts, ch 1051, §1, 2; 99 Acts, ch 5, §1; 2001 Acts, ch 111, §2, 6; 2001 Acts, ch 163, §1, 2; 2001 Acts, 1st Ex, ch 2, §1, 4

2001 amendment to subsection 2, paragraph a, subparagraph (2) is effective May 25, 2001, and applies retroactively to January 1, 2001; 2001 Acts, ch 163, §2

Annual review of rural and satellite workforce development offices; development of performance measures; fee-based employer services pilot projects; reports to governor and general assembly; 2001 Acts, 1st Ex, ch 2, §2, 3

Appropriation of administrative contribution surcharge fund moneys to department of workforce development for fiscal year beginning July 1, 2002, and ending June 30, 2003; 2002 Acts, 2nd Ex, ch 1003, §63, 79

96.7A Expanding employment incentive. Repealed by 86 Acts, ch 1166, § 4.

96.7B Expanding employment incentive. Repealed by 87 Acts, ch 222, § 8.

96.8 Conditions and requirements.

1. *Period of coverage.* Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

2. *Voluntary termination.* Except as otherwise provided in subsection 3 of this section, an employing unit ceases to be an employer subject to this chapter, as of the first day of January of any year, if it files with the department, prior to the fifteenth day of February of that year, a written application for termination of coverage, and the department finds that the employing unit did not meet any of the qualifying liability requirements as provided under section 96.19, subsection 16, in the preceding calendar year.

3. *Election by employer.*

a. An employing unit, not otherwise subject to this chapter, which files with the department its written election to become an employer subject hereto for not less than two calendar years, shall with the written approval of such election by the department, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year, it has filed with the department a written notice to that effect.

b. Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year such employing unit has filed with the department a written notice to that effect.

4. *Transfer or discontinuance of business.*

a. In any case in which the enterprise or business of a subject employer has been sold or otherwise transferred to a subsequent employing unit or reorganized or merged into a single employing unit under the provisions of section 96.7, subsection 2, paragraph *"b"*, the account of the transferring employer shall terminate as of the date on which such transfer, reorganization or merger was completed.

b. In any case in which the enterprise or business of a subject employer has been discontinued otherwise than by sale or transfer to a subsequent employing unit and such employer has had no employment for a period of one year, the department may, on its own motion, terminate said account.

5. *Liability of certain employers.* Employers who by election or determination of the department are liable for payments in lieu of contributions shall not be relieved of any regular benefit charges or extended benefit charges, except for those charges which are determined to be incorrect because of an error by the department.

[C39, §**1551.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.8]

84 Acts, ch 1067, §18; 89 Acts, ch 296, §15; 91 Acts, ch 45, §6; 96 Acts, ch 1186, §23

96.9 Unemployment compensation fund.

1. *Establishment and control.* There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the department exclusively for the purposes of this chapter. This fund shall consist of:

a. All contributions collected under this chapter,

b. Interest earned upon any moneys in the fund,

c. Any property or securities acquired through the use of moneys belonging to the fund,

d. All earnings of such property or securities, and

e. All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act [42 U.S.C. § 501 to 503, 1103 to 1105, 1321 to 1324]. All moneys in the unemployment compensation fund shall be mingled and undivided.

2. *Accounts and deposits.* The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the department. The director of revenue and finance shall issue warrants upon the fund pursuant to the order of the department and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

a. A clearing account.

b. An unemployment trust fund account.

c. A benefit account.

All moneys payable to the unemployment compensation fund and all interest and penalties on delinquent contributions and reports shall, upon receipt thereof by the department, be forwarded to the treasurer who shall immediately deposit them in the clearing account, but the interest and penalties on delinquent contributions and reports shall not be deemed to be a part of the fund. Refunds of contributions payable pursuant to section 96.14 shall be paid by the treasurer from the clearing account upon warrants issued by the director of revenue and finance under the direction of the department. After clearance thereof, all other moneys in the clearing account, except interest and penalties on delinquent contributions and reports, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Interest and penalties on delinquent contributions and reports collected from employers shall be transferred from the clearing account to the special employment security contingency fund. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund for the payment of benefits. Except as herein otherwise provided, moneys in the clearing and benefit account may be deposited by the treasurer, under the direction of the department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of the treasurer's duties as custodian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the moneys deposited with the secretary of the treasury of the United States shall be credited to the unemployment compensation fund.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act may, subject to the conditions prescribed in subsection 4 of this section, be used for the payment of expenses incurred for the administration of this chapter. The department shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state

therein, as the department deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and shall disburse such moneys upon warrants drawn by the director of revenue and finance pursuant to the order of the department for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the director of revenue and finance for the payment of benefits and refunds shall bear the signature of the director of revenue and finance. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the department, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

4. *Money credited under section 903 of the Social Security Act.*

a. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection 3 of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which (1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (2) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this chapter and charged against the amounts transferred to the account of this state during the same twelve-month period. For purposes of this subsection, amounts used by this state for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into. The use of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States secretary of labor.

b. Money requisitioned as provided herein for the payment of expenses of administration shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

5. *Administration expenses excluded.* Any amount credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which has been appropriated for expenses of administration pursuant to subsection 4 of this section, whether or not withdrawn from such account, shall not be deemed assets of the unemployment compensation fund for the purpose of computing contribution rates under section 96.7, subsection 3, of this chapter.

6. *Management of funds in the event of discontinuance of unemployment trust fund.* The provisions of subsections 1, 2, and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the director, treasurer of state, and governor, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direc-

tion of the director, treasurer of state, and governor.

7. *Cancellation of warrants.* The director of revenue and finance, as of January 1, April 1, July 1, and October 1 of each year, shall stop payment on all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the director of revenue and finance at the discretion of and certification by the department.

[C39, §**1551.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.9]

86 Acts, ch 1246, §622; 87 Acts, ch 222, §5; 91 Acts, ch 45, §7, 8; 92 Acts, ch 1045, §3; 96 Acts, ch 1186, §23

96.10 Division of job service. Repealed by 96 Acts, ch 1186, § 26.

96.11 Duties, powers, rules — privilege.

1. *Duties and powers of director.* It shall be the duty of the director to administer this chapter; and the director shall have power and authority to adopt, amend, or rescind pursuant to chapter 17A such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the director deems necessary or suitable to that end. Not later than the fifteenth day of December of each year, the director shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the director deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the director believes that a change in contribution or benefits rates will become necessary to protect the solvency of the fund, the director shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *General and special rules.* Each employer shall post and maintain printed statements of all rules of the department in places readily accessible to individuals in the employer's service, and shall make available to each such individual at the time the individual becomes unemployed a printed statement of such rules relating to the filing of claims for benefits. Such printed statements shall be supplied by the department to each employer without cost to the employer.

3. *Publications.* The director shall cause to be printed for distribution to the public the text of this chapter, the department's general rules, its annual reports to the governor, and any other material the director deems relevant and suitable and shall furnish the same to any person upon application therefor.

The department shall prepare and distribute to the public as labor force data, only that data adjusted according to the current population survey and other nonlabor force statistics which the department determines are of interest to the public.

4. *Bonds.* The director may bond any employee handling moneys or signing checks.

5. *Employment stabilization.* The director, with the advice and aid of the appropriate bureaus of the department, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

6. *Records, reports, and confidentiality.*

a. An employing unit shall keep true and accurate work records, containing information required by the department. The records shall be open to inspection and copying by an authorized representative of the department at any reasonable time and as often as necessary. An authorized representative of the department may require from an employing unit a sworn or unsworn report, with respect to individuals employed by the employing unit, which the department deems necessary for the effective administration of this chapter.

b. (1) The department shall hold confidential the information obtained from an employing unit or individual in the course of administering this chapter and the initial determination made by a representative of the department under section 96.6, subsection 2, as to the benefit rights of an individual. The department shall not disclose or open this information for public inspection in a manner that reveals the identity of the employing unit or the individual, except as provided in subparagraph (3) or paragraph *"c"*.

(2) A report or statement, whether written or verbal, made by a person to a representative of the department or to another person administering this law is a privileged communication. A person is not liable for slander or libel on account of the report or statement unless the report or statement is made with malice.

(3) Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual shall not be used in any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A. However, the department shall make information, which is ob-

tained from an employing unit or individual in the course of administering this chapter and which relates to the employment and wage history of the individual, available to a county attorney for the county attorney's use in the performance of duties under section 331.756, subsection 5. Information in the department's possession which may affect a claim for benefits or a change in an employer's rating account shall be made available to the interested parties. The information may be used by the interested parties in a proceeding under this chapter to the extent necessary for the proper presentation or defense of a claim.

c. Subject to conditions as the department by rule prescribes, information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual may be made available for purposes consistent with the purposes of this chapter to any of the following:

(1) An agency of this or any other state or a federal agency responsible for the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

(2) The internal revenue service of the United States department of the treasury.

(3) The Iowa department of revenue and finance.

(4) The social security administration of the United States department of health and human services.

(5) An agency of this or any other state or a federal agency responsible for the administration of public works or the administration of public assistance to unemployed individuals.

(6) Colleges, universities, and public agencies of this state for use in connection with research of a public nature, provided the department does not reveal the identity of an employing unit or individual.

(7) An employee of the department, a member of the general assembly, or a member of the United States Congress in connection with the employee's or member's official duties.

(8) The United States department of housing and urban development and representatives of a public housing agency.

d. Upon request of an agency of this or another state or of the federal government which administers or operates a program of public assistance or child support enforcement under either the law of this or another state or federal law, or which is charged with a duty or responsibility under the program, and if the agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this subsection, then the department shall provide to the requesting agency, with respect to any named individual without regard to paragraph *"g"*, any of the following information:

(1) Whether the individual is receiving or has received benefits, or has made an application for benefits under this chapter.

(2) The period, if any, for which benefits were payable and the weekly benefit amount.

(3) The individual's most recent address.

(4) Whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and the rate of pay.

(5) The individual's wage information.

e. The department may require an agency which is provided information under this subsection to reimburse the department for the costs of furnishing the information.

f. An employee of the department, an administrative law judge, or a member of the appeal board who violates this subsection is guilty, upon conviction, of a serious misdemeanor.

g. Information subject to the confidentiality of this subsection shall not be directly released to any authorized agency unless an attempt is made to provide written notification to the individual involved. Information released in accordance with criminal investigations by a law enforcement agency of this state, another state, or the federal government is exempt from this requirement.

h. The department and its employees shall not be liable for any acts or omissions resulting from the release of information to any person pursuant to this subsection.

7. *Oaths and witnesses.* In the discharge of the duties imposed by this chapter, the chairperson of the appeal board and any duly authorized representative of the department shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

8. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the department or any member or duly authorized representative thereof to produce evidence if so ordered or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof.

9. *Protection against self-incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspon-

dence, memoranda, and other records before the department, or the appeal board, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty for forfeiture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

10. *State-federal cooperation.* In the administration of this chapter, the department shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions of section 96.29 which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take such action as may be necessary to insure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal Act.

The department shall make such reports, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States department of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in administration of this chapter.

The department may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the department shall pay the department such compensation therefor as the department determines to be fair and reasonable.

11. *Destruction of records.* The department may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the department and are deemed by the director and the state records commission to be no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of, if approved by the state records commission, two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the director in consultation with the state records commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund, subject to rules promulgated by the department.

12. *Unemployment benefits contested case hearing records.* Notwithstanding the provisions of section 17A.12 to the contrary, the recording of oral proceedings of a hearing conducted before an administrative law judge pursuant to section 96.6, subsection 3, in which the decision of the administrative law judge is not appealed to the employment appeal board, shall be filed with and maintained by the department for at least two years from the date of decision.

13. *Purging uncollectible overpayments.* Notwithstanding any other provision of this chapter, the department shall review all outstanding overpayments of benefit payments annually. The department may determine as uncollectible and purge from its records any remaining unpaid balances of outstanding overpayments which are ten years or older from the date of the overpayment decision.

14. *Access to available jobs list.* The department shall make available for consultation by the public, at each of the department's offices, a list of current job openings listed with the department, provided that the list shall comply with the confidentiality requirements of subsection 6, or those mandated by the federal government.

15. *Special contractor numbers.* For purposes of contractor registration under chapter 91C, the department shall provide for the issuance of special contractor numbers to contractors for whom employer accounts are not required under this chapter. A contractor who is not in compliance with the requirements of this chapter shall not be issued a special contractor number.

16. *Reimbursement of setoff costs.* The department shall include in the amount set off in ac-

cordance with section 421.17, subsection 29, for the collection of an overpayment created pursuant to section 96.3, subsection 7, or section 96.16, subsection 4, an additional amount for the reimbursement of setoff costs incurred by the department of revenue and finance.

[C39, §**1551.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.11; 81 Acts, ch 19, §8]

83 Acts, ch 190, §21, 27; 84 Acts, ch 1163, §1; 85 Acts, ch 244, §1; 86 Acts, ch 1245, §524, 934; 87 Acts, ch 66, §1; 87 Acts, ch 111, §12; 88 Acts, ch 1014, §4; 88 Acts, ch 1054, §1; 88 Acts, ch 1109, §12; 88 Acts, ch 1162, §1; 88 Acts, ch 1274, §29; 89 Acts, ch 117, §1; 91 Acts, ch 45, §9; 96 Acts, ch 1121, §6, 7; 96 Acts, ch 1186, §23; 97 Acts, ch 38, §2; 2001 Acts, ch 61, §14; 2002 Acts, ch 1090, §1

NEW subsection 12 and former subsections 12 – 15 renumbered as 13 – 16

96.12 State employment service.

1. *Duties of department.* The department shall establish and maintain free public employment services accessible to all Iowans for the purposes of this chapter, and for the purpose of performing the duties required by federal and state laws relating to employment and training including the Wagner-Peyser Act, 48 Stat. L. 113, 29 U.S.C. § 49. All duties and powers conferred upon any other department, agency, or officer of this state relating to the establishment, maintenance, and operation of free employment services shall be vested in the department. This state accepts and shall comply with the provisions of the Wagner-Peyser Act, as amended. The department is designated and constituted the agency of this state for the purpose of the Wagner-Peyser Act. The department may cooperate with the railroad retirement board with respect to the establishment, maintenance, and use of department facilities. The railroad retirement board shall compensate the department for the services or facilities in the amount determined by the department to be fair and reasonable.

2. *Financing.* For the purpose of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an employment security law, with any political subdivision of this state, or with any private, nonprofit organization, and as a part of any such agreement the department may accept moneys, services, or quarters as a contribution to the employment security administration fund.

[C39, §**1551.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.12]

96 Acts, ch 1186, §19, 23

96.13 Funds.

1. *Special fund.* There is hereby created in the state treasury a special fund to be known as the *"Employment Security Administration Fund"*. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the department. All moneys in this fund, except money received pursuant to section 96.9, subsection 4, which are received from the federal government or any agency thereof or which are appropriated by the state for the purposes described in section 96.12 shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter. This fund shall consist of all moneys appropriated by this state, and all moneys received from the United States, or any agency thereof, including the department of labor, the railroad retirement board, the United States employment service, established under the Wagner-Peyser Act, or from any other source for such purpose. Moneys received from the railroad retirement board, or any other agency, as compensation for services or facilities supplied to said board or agency shall be paid to the department, and the department shall allocate said moneys to the employment security administration fund. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the department for expenditure consistent with this chapter. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the employment security administration fund in an amount and with such sureties as shall be fixed and approved by the governor. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 96.9, shall be paid from the moneys in the employment security administration fund. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 96.9, subsection 4, paragraph *"b"*, shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in section 96.9, subsection 4.

2. *Replenishment of lost funds.* If any moneys received after June 30, 1941, from the social security board under Title III of the Social Security Act, or any unencumbered balances in the unemployment compensation administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the social security board, because of any action or contingency, to have been lost or been expended for purposes other than or in amounts in

excess of, those found necessary by the social security board for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in subsection 1 of this section. Upon receipt of notice of such a finding by the social security board, the department shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

3. *Special employment security contingency fund.*

a. There is created in the state treasury a special fund to be known as the special employment security contingency fund. All interest, fines, and penalties, regardless of when they become payable, collected from employers under section 96.14 shall be paid into the fund. The moneys shall not be expended or available for expenditure in any manner which would permit their substitution for federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the department. However, the moneys may be used as a revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to the charging of the expenditures against the funds when received. The moneys may be used for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds, received for the department. The moneys in the fund are specifically made available to replace, within a reasonable time, any moneys received by this state in the form of grants from the federal government for administrative expenses which because of any action or contingency have been expended for purposes other than, or in excess of, those necessary for the proper administration of the department. All moneys in the fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the state treasury. Interest earned upon moneys in the fund shall be deposited in and credited to the fund.

The treasurer of state shall be the custodian of the fund and shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the fund in an amount and with sureties as shall be fixed and approved by the governor. The premium for the bond shall be paid from the moneys in the fund. All sums recovered on the bond for losses sustained by the fund shall be deposited in the fund. Refunds of interest and penalties shall be paid only from the fund.

Balances to the credit of the fund shall not lapse at any time but shall continuously be available to the department for expenditures consistent with this subsection. Moneys remaining in the fund at the end of each fiscal year shall not revert to any fund and shall remain in the fund.

b. The department shall annually report to the joint economic development appropriations subcommittee on its plans for expenditures during the next state fiscal year from the special employment security contingency fund. The report shall describe the specific expenditures and explain why the expenditures are to be made from the fund and not from federal administrative funds.

c. The department may appear before the executive council and request funds to meet unanticipated emergencies.

[C39, §**1551.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.13; 82 Acts, ch 1126, §2]

84 Acts, ch 1204, §1 – 3; 86 Acts, ch 1209, §2; 91 Acts, ch 45, §10; 92 Acts, ch 1242, §19; 96 Acts, ch 1186, §23; 98 Acts, ch 1074, §10

96.14 Priority — refunds.

1. *Interest.* Any employer who shall fail to pay any contribution and at the time required by this chapter and the rules of the department shall pay to the department in addition to such contribution, interest thereon at the rate of one percent per month and one-thirtieth of one percent for each day or fraction thereof computed from the date upon which said contribution should have been paid.

2. *Penalties.* Any employer who shall fail to file a report of wages paid to each of the employer's employees for any period in the manner and within the time required by this chapter and the rules of the department or any employer who the department finds has filed an insufficient report and fails to file a sufficient report within thirty days after a written request from the department to do so shall pay a penalty to the department.

The penalty shall become effective with the first day the report is delinquent or, where a report is insufficient, with the thirty-first day following the written request for a sufficient report.

Penalty for failing to file a sufficient report shall be in addition to any penalty incurred for a delinquent report where the delinquent report is also insufficient.

The amount of the penalty for delinquent and insufficient reports shall be computed based on total wages in the period for which the report was due and shall be computed as follows:

Days Delinquent or Insufficient	Penalty Rate
1 – 60	0.1%
61 – 120	0.2%
121 – 180	0.3%
181 – 240	0.4%
241 or over	0.5%

A penalty shall not be less than ten dollars for the first delinquent report or the first insufficient report not made sufficient within thirty days after a request to do so. The penalty shall not be less than twenty-five dollars for the second delinquent or insufficient report, and not less than fifty dollars for each delinquent or insufficient report thereafter, until four consecutive calendar quarters of reports are timely and sufficiently filed. Interest, penalties, and cost shall be collected by the department in the same manner as provided by this chapter for contributions.

If the department finds that any employer has willfully failed to pay any contribution or part thereof when required by this chapter and the rules of the department, with intent to defraud the department, then such employer shall in addition to such contribution or part thereof, pay a contribution equal to fifty percent of the amount of such contribution or part thereof, as the case may be.

The department may cancel any interest or penalties if it is shown to the satisfaction of the department that the failure to pay a required contribution or to file a required report was not the result of negligence, fraud, or intentional disregard of the law or the rules of the department.

3. *Lien of contributions — collection.* Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said employer. An assessment of the unpaid contributions, interest and penalty shall be applied as provided in section 96.7, subsection 3, paragraphs *"a"* and *"b"*, and the lien shall attach as of the date the assessment is mailed or personally served upon the employer and shall continue for ten years, or until the liability for the amount is satisfied, unless sooner released or otherwise discharged. The lien may, within ten years from the date the lien attaches, be extended for up to an additional ten years by filing a notice during the ninth year with the appropriate county official of any county. However, the department may release any lien, when after diligent investigation and effort it determines that the amount due is not collectible.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the department shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in the recorder's office an index to show the following data, under the names of employers, arranged alphabetically:

a. The name of the employer.
b. The name *"State of Iowa"* as claimant.
c. Time notice of lien was received.
d. Date of notice.
e. Amount of lien then due.
f. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and shall index the notice in the index and shall record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of the indexing of the lien.

The department shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of contributions as to which the department has filed notice with a county recorder, the department shall forthwith file with said recorder a satisfaction of said contributions and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate said fact on the index aforesaid.

The department shall, substantially as provided in this chapter and chapter 626, proceed to collect all contributions as soon as practicable after they become delinquent, except that no property of the employer is exempt from payment of the contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the department and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the department shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

The courts of this state shall recognize and enforce liabilities for unemployment contributions, penalties, interest and benefit overpayments imposed by other states which extend a like comity to this state. The department may sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions, penalties, interest and benefit overpayments due this state. The officials of other states

which, by statute or otherwise, extend a like comity to this state may sue in the district court to collect for such contributions, penalties, interest and benefit overpayments. In any such case the director, as agent for and on behalf of any other state, may institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, interest and benefit overpayments due under this chapter. A certificate by the secretary of any such state attesting the authority of such official to collect the contributions, penalties, interest and benefit overpayments, is conclusive evidence of such authority. The requesting state shall pay the court costs.

If a political subdivision or a political subdivision instrumentality becomes delinquent in the payment of contributions, any payments owed as a government employer, penalty, interest and costs for more than two calendar quarters, the amount of such delinquency shall be deducted from any further moneys due the employer by the state. Such deduction shall be made by the director of revenue and finance upon certification of the amount due. A copy of the certification will be mailed to the employer.

If an amount due from a governmental entity of this state remains due and unpaid for a period of one hundred twenty days after the due date, the director shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of revenue and finance, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the director from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the director for the fund. However, the director shall notify the delinquent entity of the director's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

4. *Priorities under legal dissolutions or distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 *"a"* of that Act [11 U.S.C. § 104 *"b"*, as amended].

5. *Refunds, compromises and settlements.* If the department finds that an employer has paid contributions, interest on contributions, or penalties, which have been erroneously paid or if the employer has overpaid contributions because the employer's contribution rate was subsequently reduced pursuant to section 96.7, subsection 2, paragraph *"e"*, solely due to benefits initially charged against but later removed from an employer's account, and the employer has filed an application for refund, the department shall refund the erroneous payment or overpayment. Refunds so made shall be charged to the fund to which the collections have been credited, and shall be paid to the employer without interest. A claim for refund shall be made within three years from the date of payment. For like cause, refunds, compromises, and settlements may be made by the department on its own initiative within three years of the date of the payment or assessment. If the department finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the department may institute a proceeding in the district court in the county in which the employer against which the tax is levied is located, requesting authority to compromise the contribution. Notice of the filing of an application shall be given to the interested parties as the court may prescribe. The court upon hearing may authorize the department to compromise and settle its claim for the contribution and shall fix the amount to be received by the department in full settlement of the claim and shall authorize the release of the department's lien for the contribution.

6. *Nonresident employing units.* Any employing unit which is a nonresident of the state of Iowa and for which services are performed in insured work within the state of Iowa and any resident employer for which such services are performed and who thereafter leaves the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident employing unit shall be of the same legal force and validity as if personally served on it in this state.

7. *Original notice — form.* The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that the part of the notice pertaining to the return day

shall be in substantially the following form:

And unless you appear and defend in the district court of Iowa in and for . . . . . county at the courthouse in . . . . . , Iowa, before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, you will be adjudged in default, your default entered of record, and judgment rendered against you for the relief sought in plaintiff's petition.

8. *Manner of service.* Plaintiff in any such action shall cause the original notice of suit to be served as follows:

a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of four dollars, and

b. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at the defendant's last known residence or place of abode, a notification of the said filing with the secretary of state.

9. *Notification to nonresident — form.* The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

To . . . . . (Here insert the name of each defendant and the defendant's residence or last known place of abode as definitely as known.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the . . . . . day of . . . . . (month), ... (year), with the secretary of state of the state of Iowa.

Dated at . . . . . , Iowa, this . . . . . day of . . . . . (month), ... (year).

. . . . . .
Plaintiff.
By . . . . . .
Attorney for Plaintiff.

10. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

11. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

12. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

13. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

14. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the defendant reasonable opportunity to defend said action.

15. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with the secretary, shall not permit said filed notices to be taken from the secretary's office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which the person is a defendant.

16. *Injunction upon nonpayment.* Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalty under the provisions of this chapter, after ten days' written notice sent by the department to the employer's or employing unit's last known address by certified mail, may be enjoined from operating any business in the state while in violation of this chapter upon the complaint of the department in the district court of a county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice and without a bond being required from the department. Such injunction may enjoin any employer or employing unit from operating a business unit until the delinquent contributions, interest or penalties shall have been made and filed or paid; or the employer shall have furnished a good and sufficient bond conditioned upon the payment of such delinquencies in such an amount and containing such terms as may be determined by the court; or the employer has entered into a plan for the liquidation of such delinquencies as the court may approve, provided that such injunction may be reinstated upon the employer's failure to comply with the terms of said plan.

[C39, §**1551.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §96.14; 81 Acts, ch 21, §3, ch 117, §1205]

84 Acts, ch 1255, §8; 87 Acts, ch 115, §12; 90 Acts, ch 1168, §11; 91 Acts, ch 45, §11; 91 Acts, ch 191, §1; 94 Acts, ch 1116, §1; 96 Acts, ch 1121, §8; 96 Acts, ch 1186, §23; 2000 Acts, ch 1058, §56; 2001 Acts, ch 44, §3

96.15 Waiver — fees — assignments — penalties.

1. *Waiver of rights void.* Any agreement by an individual to waive, release, or commute the individual's rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from the employer, or require or accept any waiver of any right hereunder by any individual in the employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be guilty of a serious misdemeanor.

2. *Prohibition against fees.* An individual claiming benefits shall not be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by a court or an officer of the court. An individual claiming benefits in a proceeding before the department, an appeal tribunal, or a court may be represented by counsel or other duly authorized agent. A person who violates a provision of this subsection is guilty of a serious misdemeanor for each violation.

3. *No assignment of benefits — exemptions.* Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts. Any waiver of any exemption provided for in this subsection shall be void.

[C39, §**1551.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.15]

85 Acts, ch 54, §1; 96 Acts, ch 1186, §23

96.16 Offenses.

1. *Penalties.* An individual who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for the individual or for any other individual, is guilty of a fraudulent practice as defined in sections 714.8 to 714.14. The total amount of benefits or payments involved in the completion of or in the attempt to complete a fraudulent practice shall be used in determining the value involved under section 714.14.

2. *False statement.* Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, is guilty of a fraudulent practice as defined in sections 714.8 to 714.14. The total amount of benefits, contributions or payments involved in the completion of or in the attempt to complete a fraudulent practice shall be used in determining the value involved under section 714.14.

3. *Unlawful acts.* Any person who shall willfully violate any provisions of this chapter or any rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be guilty of a simple misdemeanor, and each day such violation continues shall be deemed to be a separate offense.

4. *Misrepresentation.* An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

[C39, §**1551.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.16]

96 Acts, ch 1186, §23

96.17 Counsel.

1. *Legal services.* In any civil action to enforce the provisions of this chapter, the department and the state may be represented by any qualified attorney who is a regular salaried employee of the department and is designated by it for this purpose or, at the department's request, by the attorney general. In case the governor designates special counsel to defend on behalf of the

state, the validity of this chapter, the expenses and compensation of such special counsel employed by the department in connection with such proceeding may be charged to the unemployment compensation administration fund.

2. *County attorney.* All criminal actions for violations of any provision of this chapter, or of any rules issued by the department pursuant thereto, shall be prosecuted by the prosecuting attorney of any county in which the employer has a place of business or the violator resides, or, at the request of the department, shall be prosecuted by the attorney general.

3. *Indemnification.* Any member of the department or any employee of the department shall be indemnified for any damages and legal expenses incurred as a result of the good faith performance of their official duties, for any claim for civil damages not specifically covered by the Iowa Tort Claims Act.* Any payment described herein shall be paid from the special employment security contingency fund in section 96.13, subsection 3.

[C39, §**1551.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.17]

96 Acts, ch 1186, §23

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96.18 Nonliability of state.

Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

[C39, §**1551.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.18]

96 Acts, ch 1186, §23

DEFINITIONS

96.19 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. *"Appeal board"* means the employment appeal board created under section 10A.601.

2. *"Average annual taxable payroll"* means the average of the total amount of taxable wages paid by an employer for insured work during the five periods of four consecutive calendar quarters immediately preceding the computation date.

3. *"Base period"* means the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim.

4. *"Benefit year".* The term *"benefit year"* means a period of one year beginning with the day with respect to which an individual filed a valid claim for benefits. Any claim for benefits made in accordance with section 96.6, subsection 1, shall be deemed to be a valid claim for the purposes of this subsection if the individual has been paid wages for insured work required under the provisions of this chapter.

5. *"Benefits"* means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

6. *"Calendar quarter"* means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the department may by regulation prescribe.

7. Reserved.

8. *"Computation date".* The computation date for contribution rates shall be July 1 of that calendar year preceding the calendar year with respect to which such rates are to be effective.

9. *"Contributions"* means the money payments to the state unemployment compensation fund required by this chapter.

10. Reserved.

11. *"Department"* means the department of workforce development created in section 84A.1.

12. *"Director"* means the director of the department of workforce development created in section 84A.1.

13. *"Domestic service"* includes service for an employing unit in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

14. *"Educational institution"* means one in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

15. *"Eligibility period"* of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

16. *"Employer"* means:

a. For purposes of this chapter with respect to any calendar year after December 31, 1971, any employing unit which in any calendar quarter in either the current or preceding calendar year paid

for service in employment wages of one thousand five hundred dollars or more excluding wages paid for domestic service or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual irrespective of whether the same individual was in employment in each such day. An employing unit treated as a domestic service employer shall not be treated as an employer with respect to wages paid for service other than domestic service unless such employing unit is treated as an employer under this paragraph or as an agricultural labor employer.

b. Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this chapter. Provided, that such other employing unit would have been an employer under paragraph *"a"* of this subsection, if such part had constituted its entire organization, trade, or business.

c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph *"a"* of this subsection.

d. Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph *"a"* of this subsection.

e. Any employing unit which, having become an employer under paragraph *"a", "b", "c", "d", "f", "g", "h"* or *"i"* has not, under section 96.8, ceased to be an employer subject to this chapter.

f. For the effective period of its election pursuant to section 96.8, subsection 3, any other employing unit which has elected to become fully subject to this chapter.

g. Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. 3301-3308), is required, pursuant to such Act, to be an *"employer"* under this chapter. Provided, however, that if an employer subject to contributions solely because of the terms of this subsection shall establish proper proof to the satisfaction of the department that the employer's employees have been and will be duly covered and insured under the unemployment compensation law of another jurisdiction such employer shall not be deemed an employer and such services shall not be deemed employment under this chapter.

h. After December 31, 1971, this state or a state instrumentality and after December 31, 1977, a government entity unless specifically excluded from the definition of employment.

i. Any employing unit for which service in employment, as defined in subsection 18, paragraph *"a",* subparagraph (5), is performed after December 31, 1971.

j. For purposes of paragraphs *"a"* and *"i",* employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with subsection 18, paragraph *"d",* by the department and an agency charged with the administration of any other state or federal unemployment compensation law.

k. For purposes of paragraphs *"a"* and *"i",* if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

l. An employing unit employing agricultural labor after December 31, 1977, if the employing unit:

(1) Paid during any calendar quarter in the calendar year or the preceding calendar year wages of twenty thousand dollars or more for agricultural labor, or

(2) Employed on each of some twenty days during the calendar year or during the preceding calendar year, each day being in a different calendar week, at least ten individuals in employment in agricultural labor for some portion of the day.

m. An employing unit employing after December 31, 1977, domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, and with respect to any calendar year, any employing unit who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of one thousand dollars or more for such service.

n. An Indian tribe, subject to the requirements of section 96.7, subsection 9.

17. *"Employing unit"* means any individual or type of organization, including this state and its political subdivisions, state agencies, boards, commissions, and instrumentalities thereof, any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the le-

gal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection 16 or section 96.8, subsection 3, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of subsection 16 or section 96.8, subsection 3, shall alone be liable for the contributions measured by wages payable to individuals in the contractor's or subcontractor's employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection 16 or section 96.8, subsection 3, may recover the same from such contractor or subcontractor, except as any contractor or subcontractor who would in the absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general rules of the department. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work, and provided, further, that such employment was for a total of not less than eight hours in any one calendar week.

18. *"Employment"*.

a. Except as otherwise provided in this subsection *"employment"* means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by:

(1) Any officer of a corporation. Provided that the term *"employment"* shall not include such officer if the officer is a majority stockholder and the officer shall not be considered an employee of the corporation unless such services are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or such services are required to be covered under this chapter of the Code, as a condition to receipt of a full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. § 3301-3309), or

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, or

(3) Any individual other than an individual who is an employee under subparagraphs (1) or (2) who performs services for remuneration for any person as an agent driver or commission driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for the individual's principal; as a traveling or city salesperson, other than as an agent driver or commission driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, the individual's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

Provided, that for purposes of paragraph *"a"*, subparagraph (3), the term *"employment"* shall include services performed after December 31, 1971, only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(c) The services are not in the nature of single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(4) Service performed after December 31, 1971, by an individual in the employ of this state or any of its wholly owned instrumentalities and after December 31, 1977, service performed by an individual in the employ of a government entity unless specifically excluded from the definition of employment for a government entity.

(5) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization, but only if the service is excluded from *"employment"* as defined in the federal Unemployment Tax Act (26 U.S.C. § 3301-3309) solely by reason of section 3306(c)(8) of that Act.

(6) For the purposes of subparagraphs (4) and

(5), the term *"employment"* does not apply to service performed:

(a) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of that ministry or by a member of a religious order in the exercise of duties required by such order.

(c) In the employ of a nonpublic school which is not an institution of higher education prior to January 1, 1978.

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.

(e) As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(f) In the employ of a governmental entity, if such service is performed by an individual in the exercise of the individual's duties as an elected official; as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; as a member of the state national guard or air national guard; as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or in a position which, pursuant to the state law, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position which ordinarily does not require duties of more than eight hours per week.

(7) (a) A person in agricultural labor when such labor is performed for an employing unit which during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor excluding labor performed before January 1, 1980, by an alien referred to in this subparagraph; or on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day ten or more individuals, excluding labor performed before January 1, 1980, by an alien referred to in this subparagraph; and such labor is not agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1184(c), 1101(a)(15)(H) (1976).

(b) For purposes of this subparagraph, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other employing unit shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and if such individual is not otherwise in employment as defined in this subsection.

For purposes of this subparagraph, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other employing unit and who is not treated as an employee of such crew leader as described above, such other employing unit and not the crew leader shall be treated as the employer of such individual; and such other employing unit shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader either on the crew leader's behalf or on behalf of such other employing unit for the agricultural labor performed for such other employing unit.

For purposes of this subsection, the term *"crew leader"* means an employing unit which furnishes individuals to perform agricultural labor for any other employing unit; pays, either on the crew leader's behalf or on behalf of such other employing unit, the individuals so furnished by the crew leader for the agricultural labor performed by them; and has not entered into a written agreement with such other employing unit under which such individual is designated as an employee of such other employing unit.

(8) A person performing after December 31, 1977, domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for an employing unit who paid cash remuneration of one thousand dollars or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year.

(9) A member of a limited liability company. For such a member, the term *"employment"* shall not include any portion of such service that is performed in lieu of making a contribution of cash or property to acquire a membership interest in the limited liability company.

b. The term *"employment"* shall include an individual's entire service, performed within or both within and without this state if:

(1) The service is localized in this state, or

(2) The service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of

operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state, or

(3) The service is performed outside the United States, except in Canada, after December 31, 1971, by a citizen of the United States in the employ of an American employer, other than service which is deemed *"employment"* under the provisions of subparagraphs (1) and (2) or the parallel provisions of another state law, or service performed after December 31 of the year in which the United States secretary of labor approved the first time the unemployment compensation law submitted by the Virgin Islands, if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States but the employer is an individual who is a resident of this state, or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subdivisions (a) and (b) of this subparagraph is met, but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(d) An *"American employer"*, for purposes of this subparagraph, means a person who is an individual who is a resident of the United States or a partnership if two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States or of any state.

(4) Notwithstanding the provisions of subparagraphs (1), (2), and (3), all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within and without the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state, and

(5) Notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which, as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. § 3301-3308), is required to be covered under this chapter.

c. Services performed within this state but not covered under paragraph *"b"* of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

d. Services not covered under paragraph *"b"* of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

e. Service shall be deemed to be localized within a state if:

(1) The service is performed entirely within such state, or

(2) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

f. (1) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of service and in fact.

(2) Services performed by an individual for two or more employing units shall be deemed to be employment to each employing unit for which the services are performed. However, an individual who concurrently performs services as a corporate officer for two or more related corporations and who is paid through a common paymaster that is one of the related corporations may, at the discretion of such related corporations, be considered to be in the employment of only the common paymaster.

g. The term *"employment"* shall not include:

(1) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States; provided, however, that the general language just used shall not include any such instrumentality of the United States after Congress has, by appropriate legal action, expressly permitted the several states to require such instrumentalities to make payments into an employment fund under a state unemployment compensation law; and all such instrumentalities so released from the constitutional immu-

nity to make the contributions, imposed by this chapter shall, thereafter, become subject to all the provisions of said chapter, and such provisions shall then be applicable to such instrumentalities and to all services performed for such instrumentalities in the same manner, to the same extent and on the same terms as are applicable to all other employers, employing units, individuals and services. Should the social security board, acting under section 1603 of the federal Internal Revenue Code, fail to certify the state of Iowa for any particular calendar year, then the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided for in section 96.14, subsection 5, which section provides for the refunding of contributions erroneously collected.

(2) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; provided, that the department is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 96.11, subsection 2, for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter.

(3) *Agricultural labor.* For purposes of this chapter, the term *"agricultural labor"* means any service performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, provided that after December 31, 1977, this subparagraph shall not exclude from employment agricultural labor specifically included as agricultural labor under the definition of employment in this subsection, but shall otherwise include remunerated service performed after December 31, 1971:

(a) On a farm in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended [46 Stat. 1550, § 3, 12 U.S.C. 1141j], or in connection with ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(ii) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in (i) of subdivision (d) of this subparagraph, but only if such operators produced more than one-half of the commodity with respect to which such service is performed;

(iii) The provisions of (i) and (ii) of subdivision (d) of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(f) The term *"farm"* includes livestock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(4) Domestic service in a private home prior to January 1, 1978, and after December 31, 1977, domestic service in a private home not covered as domestic service under the definition of employment.

(5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of eighteen in the employ of the child's father or mother.

(6) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university or by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers.

Service performed in the employ of a hospital if such service is performed by a patient of the hospital.

(7) Services performed by an individual, who is not treated as an employee, for a person who is not treated as an employer, under either of the following conditions:

(a) The services are performed by the individual as a salesperson and as a licensed real estate agent; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

(b) The services are performed by an individual engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis, for resale by the buyer or another person in the home or in a place other than a permanent retail establishment, or engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in a place other than a permanent retail establishment; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

(8) Services performed by an inmate of a correctional institution.

h. Except as otherwise provided in this subsection, *"employment"* shall include service performed in the employ of an Indian tribe, subject to the requirements of section 96.7, subsection 9.

19. *"Employment office"* means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

20. *"Exhaustee"* means an individual who, with respect to any week of unemployment in the individual's eligibility period has received, prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and former armed forces personnel under 5 U.S.C., chapter 85) in the individual's current benefit year that includes such weeks. Provided that for the purposes of this subsection an individual shall be deemed to have received all of the regular benefits that were available to the individual, although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year the individual may subsequently be determined to be entitled to add regular benefits, or:

a. The individual's benefit year having expired prior to such week, has no, or insufficient, wages and on the basis of which the individual could establish a new benefit year that would include such week, and

b. The individual has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States secretary of labor, and the individual has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.

21. *"Extended benefit period"* means a period which begins with the third week after a week for which there is a state *"on"* indicator, and ends with either of the following weeks, whichever occurs later:

a. The third week after the first week for which there is a state *"off"* indicator.

b. The thirteenth consecutive week of such period.

However, an extended benefit period shall not begin by reason of a state *"on"* indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

22. *"Extended benefits"* means benefits (including benefits payable to federal civilian employees and to former armed forces personnel pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period.

23. *"Fund"* means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

24. *"Governmental entity"* means a state, a

state instrumentality, a political subdivision or an instrumentality of a political subdivision, or a combination of one or more of the preceding.

25. *"Hospital"* means an institution which has been licensed, certified, or approved by the department of inspections and appeals as a hospital.

25A. *"Indian tribe"* shall have the meaning given to the term pursuant to section 4(e) of the federal Indian Self-Determination and Education Assistance Act, and shall include any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

26. *"Institution of higher education"* means an educational institution which admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate; is legally authorized in this state primarily to provide a program of education beyond high school; provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and is a public or other nonprofit institution.

27. *"Insured work"* means employment for employers.

28. *"Nonprofit organization"* means an organization described in the federal Internal Revenue Code, 26 U.S.C. § 501(c)(3), which is exempt from income taxation under 26 U.S.C. § 501(a).

29. There is a state *"off"* indicator for a week if, for the period consisting of the week and the immediately preceding twelve weeks, the rate of insured unemployment under the state law was less than five percent, or less than one hundred twenty percent of the average of the rates for thirteen weeks ending in each of the two preceding calendar years, except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a state *"on"* indicator shall continue to be such a week and shall not be determined to be a week for which there is a state *"off"* indicator.

30. There is a state *"on"* indicator for a week if the rate of insured unemployment under the state law for the period consisting of the week and the immediately preceding twelve weeks equaled or exceeded five percent and equaled or exceeded one hundred twenty percent of the average of the rates for the corresponding thirteen-week period ending in each of the two preceding calendar years.

31. *"Public housing agency"* means any agency described in section 3(b)(6) of the United States Housing Act of 1937, as amended through January 1, 1989.

32. *"Rate of insured unemployment",* for purposes of determining state *"on"* indicator and state *"off"* indicator, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in Iowa for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the department on the basis of its reports to the United States secretary of labor, by the average monthly insured employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

33. *"Regular benefits"* means benefits payable to an individual under this or under any other state law (including benefits payable to federal civilian employees and to former armed forces personnel pursuant to 5 U.S.C., chapter 85) other than extended benefits.

34. *"State"* includes, in addition to the states of the United States, the District of Columbia, Canada, Puerto Rico, and the Virgin Islands.

35. *"State law"* means the unemployment insurance law of any state, approved by the United States secretary of labor under 26 U.S.C. § 3304.

36. *"Statewide average weekly wage"* means the amount computed by the department at least once a year on the basis of the aggregate amount of wages reported by employers in the preceding twelve-month period ending on December 31 and divided by the product of fifty-two times the average mid-month employment reported by employers for the same twelve-month period. In determining the aggregate amount of wages paid statewide, the department shall disregard any limitation on the amount of wages subject to contributions under this chapter.

37. *"Taxable wages"* means an amount of wages upon which an employer is required to contribute based upon wages which have been paid during a calendar year to an individual by an employer or the employer's predecessor, in this state or another state which extends a like comity to this state, with respect to employment, upon which the employer is required to contribute, which equals the greater of the following:

a. Sixty-six and two-thirds percent of the statewide average weekly wage which was used during the previous calendar year to determine maximum weekly benefit amounts, multiplied by fifty-two and rounded to the next highest multiple of one hundred dollars.

b. That portion of wages subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

38. *"Total and partial unemployment".*

a. An individual shall be deemed *"totally unemployed"* in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

39. *"Unemployment compensation administration fund"* means the unemployment compensation administration fund established by this chapter, from which administration expenses under this chapter shall be paid.

40. *"United States"* for the purposes of this section includes the states, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

41. *"Wages"* means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the department. Wages payable to an individual for insured work performed prior to January 1, 1941, shall, for the purposes of sections 96.3, 96.4, and this section, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable.

The term wages shall not include:

a. The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to or on behalf of an employee or any of the employee's dependents under a plan or system established by an employer which makes provisions for the employer's employees generally, or for the employer's employees generally and their dependents, or for a class, or classes of the employer's employees, or for a class or classes of the employer's employees and their dependents, on account of retirement, sickness, accident disability, medical or hospitalization expense in connection with sickness or accident disability, or death.

b. Any payment paid to an employee, including any amount paid by any employer for insurance or annuities or into a fund to provide for any such payment, on account of retirement.

c. Any payment on account of sickness or accident disability, or medical or hospitalization expense in connection with sickness or accident disability made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

d. Remuneration for agricultural labor paid in any medium other than cash.

e. Any portion of the remuneration to a member of a limited liability company based on a membership interest in the company provided that the remuneration is allocated among members, and among classes of members, in proportion to their respective investments in the company. If the amount of remuneration attributable to a membership interest cannot be determined, the entire amount of remuneration shall be deemed to be based on services performed.

42. *"Week"* means such period or periods of seven consecutive calendar days ending at midnight, or as the department may by regulations prescribe.

43. *"Weekly benefit amount".* An individual's *"weekly benefit amount"* means the amount of benefits the individual would be entitled to receive for one week of total unemployment. An individual's weekly benefit amount, as determined for the first week of the individual's benefit year, shall constitute the individual's weekly benefit amount throughout such benefit year.

[C39, §**1551.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.19; 81 Acts, ch 19, §9; 82 Acts, ch 1030, §3 – 7, 9, ch 1126, §3]

83 Acts, ch 101, §9; 83 Acts, ch 190, §22 – 24, 26, 27; 86 Acts, ch 1245, §525, 935; 87 Acts, ch 222, §6, 7; 89 Acts, ch 117, §2; 92 Acts, ch 1045, §4; 95 Acts, ch 43, §3; 96 Acts, ch 1121, §9 – 11; 96 Acts, ch 1186, §20 – 23; 97 Acts, ch 38, §3, 4; 2001 Acts, ch 111, §3 – 6

96.20 Reciprocal benefit arrangements.

1. The department is hereby authorized to enter into arrangements with the appropriate agencies of other states, or a contiguous country with which the United States has an agreement with respect to unemployment compensation or the federal government whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

2. The department may enter into arrangements with the appropriate agencies of other states, or a contiguous country with which the United States has an agreement with respect to unemployment compensation or of the federal government *(a)* whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for the purposes of section 96.3 and section 96.4, subsection 5; provided such

other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests, and *(b)* whereby the department will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the department finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of section 96.3, subsection 5, and section 96.9, but no reimbursement so payable shall be charged against any employer's account for the purposes of section 96.7, unless wages so transferred are sufficient to establish a valid claim in Iowa, and that such charges shall not exceed the amount that would have been charged on the basis of a valid claim. The department is hereby authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section. The department shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this Act with the individual's wages and employment covered under the unemployment compensation laws of other states which are approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for: Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and avoiding the duplication use of wages and employment by reason of such combining.

3. The department is hereby authorized to enter into agreements with the appropriate agencies of other states, or a contiguous country with which the United States has an agreement with respect to unemployment compensation or the federal government administering unemployment compensation laws to provide that contributions on wages for services performed by an individual in more than one state for the same employer may be paid to the appropriate agency of one state.

[C39, §**1551.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.20]

96 Acts, ch 1186, §23

96.21 Termination.

If at any time Title IX of the Social Security Act, as amended, shall be amended or repealed by Congress or held unconstitutional by the supreme court of the United States, with the result that no portion of the contributions required under this chapter may be credited against the tax imposed by said Title IX, in any such event the operation of the provisions of this chapter requiring the payment of contributions and benefits shall immediately cease, the department shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit, and such moneys, together with any other moneys in the unemployment compensation fund shall be refunded, without interest and under regulations prescribed by the department, to each employer by whom contributions have been paid, proportionately to the employer's pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the department to pay for the costs of making such refunds. When the department shall have executed the duties prescribed in this section and performed such other acts as are incidental to the termination of its duties under this chapter, the provisions of this chapter, in their entirety, shall cease to be operative.

[C39, §**1551.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.21]

96 Acts, ch 1186, §23

96.22 Persons leaving to join armed forces not disqualified. Repealed by 92 Acts, ch 1045, § 5.

96.23 Base period exclusion.

The department shall exclude three or more calendar quarters from an individual's base period, as defined in section 96.19, subsection 3, if the individual received workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17 or indemnity insurance benefits during those three or more calendar quarters, if one of the following conditions applies to the individual's base period:

1. The individual did not receive wages from insured work for three calendar quarters.

2. The individual did not receive wages from insured work for two calendar quarters and did not receive wages from insured work for another calendar quarter equal to or greater than the amount required for a calendar quarter, other than the calendar quarter in which the individual's wages were highest, under section 96.4, subsection 4.

The department shall substitute, in lieu of the three or more calendar quarters excluded from the base period, those three or more consecutive calendar quarters, immediately preceding the base period, in which the individual did not receive such workers' compensation benefits or indemnity insurance benefits.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.23]
83 Acts, ch 190, §25, 27; 86 Acts, ch 1034, §2, 3; 96 Acts, ch 1186, §23

96.24 Employer to be notified.
Whenever an employee is separated from employment for the purpose of joining the armed forces of the United States, the employee shall notify the employer in writing of the employee's acceptance and date of reporting for service and the employer shall, within fifteen days after said notice from the employee, notify the department of such separation and date of termination of wages on a form furnished by the department.
[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §96.24]
96 Acts, ch 1186, §23

96.25 Office building.
The department may acquire for and in the name of the state of Iowa by purchase, or by rental purchase agreement, such lands and buildings upon such terms and conditions as may entitle this state to grants or credits of funds under the Social Security Act or the Wagner-Peyser Act to be applied against the cost of such property, for the purpose of providing office space for the department at such places as the department finds necessary and suitable.
[C62, 66, 71, 73, 75, 77, 79, 81, §96.25]
86 Acts, ch 1245, §1979; 96 Acts, ch 1186, §23

96.26 Moneys received.
The department is authorized to accept, receive, and receipt for all moneys received from the United States for the payments authorized by sections 96.25 to 96.28 for lands and buildings and to comply with any rules made under the Social Security Act or the Wagner-Peyser Act.
[C62, 66, 71, 73, 75, 77, 79, 81, §96.26]
96 Acts, ch 1186, §23

96.27 Approval of attorney general.
An agreement made for the purchase or other acquisition of the premises mentioned in section 96.25 of this section with funds granted or credited to this state for such purpose under the Social Security Act or the Wagner-Peyser Act shall be subject to the approval of the attorney general of the state of Iowa as to form and as to title thereto.
[C62, 66, 71, 73, 75, 77, 79, 81, §96.27]

96.28 Deposit of funds.
All moneys received from the United States for the payments authorized by sections 96.25 to 96.27 for lands and buildings shall be deposited in the employment security administration fund in the state treasury and are appropriated therefrom for the purposes of this chapter.
[C62, 66, 71, 73, 75, 77, 79, 81, §96.28]

96.29 Extended benefits.
Except when the result would be inconsistent with the other provisions of this chapter, as provided in rules of the department, the provisions of the law which apply to claims for or the payment of regular benefits shall apply to claims for, and the payment of, extended benefits.

1. *Eligibility requirements for extended benefits.* An individual is eligible to receive extended benefits with respect to a week of unemployment in the individual's eligibility period only if the department finds that all of the following conditions are met:

a. The individual is an "exhaustee" as defined in this chapter.

b. The individual has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

c. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-half times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest.

2. *Disqualification for extended benefits.* If an individual claiming extended benefits furnishes satisfactory evidence to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, section 96.5, subsection 3 applies. If the department determines that an individual is claiming extended benefits and the individual's prospects for obtaining work in the individual's customary occupation are poor, the following paragraphs apply:

a. An individual shall be disqualified for extended benefits if the individual fails to apply for or refuses to accept an offer of suitable work to which the individual was referred by the department or the individual fails to actively seek work, unless the individual has been employed during at least four weeks, which need not be consecutive, subsequent to the disqualification and has earned at least four times the individual's weekly extended benefit amount. In order to be considered suitable work under this subsection, the gross weekly wage for the suitable work shall be in excess of the individual's weekly extended benefit amount plus any weekly supplemental unemployment compensation benefits which the individual is receiving.

b. An individual shall not be disqualified for extended benefits for failing to apply for or refusing to accept an offer of suitable work, unless the suitable work was offered to the individual in writing or was listed with the department.

c. This subsection shall not apply to claims for extended benefits for weeks of unemployment beginning March 6, 1993, and ending before January 1, 1995, or if otherwise prohibited by federal law.

3. *Weekly extended benefit amount.* The weekly extended benefit amount payable to an in-

dividual for a week of total unemployment in the individual's eligibility period is an amount equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year.

4. *Total extended benefit amount.* The total extended benefit amount payable to an eligible individual with respect to the individual's applicable benefit year is the least of the following amounts:

a. Fifty percent of the total amount of regular benefits which were payable to the individual under this chapter in the individual's applicable benefit year.

b. Thirteen times the individual's weekly benefit amount which was payable to the individual under this chapter for a week of total unemployment in the applicable benefit year.

Except for the first two weeks of an interstate claim for extended benefits filed in any state under the interstate benefit payment plan and payable from an individual's extended benefit account, the individual is not eligible for extended benefits payable under the interstate claim if an extended benefit period is not in effect in that state.

5. *Beginning and termination of extended benefit period.* If an extended benefit period is to become effective in Iowa as a result of the state "on" indicator, or an extended benefit period is to be terminated in Iowa as a result of the state "off" indicator, the department shall make an appropriate public announcement. Computations required by this subsection shall be made by the department in accordance with regulations prescribed by the United States secretary of labor.

6. Notwithstanding any other provisions of this section, if the benefit year of an individual ends within an eligibility period for extended benefits, the remaining extended benefits which the individual would, but for this section, be entitled to receive in that portion of the eligibility period which extends beyond the end of the individual's benefit year, shall be reduced, but not below zero, by the number of weeks for which the individual received federal trade readjustment allowances, under 19 U.S.C. § 2101 et seq., as amended by the Omnibus Budget Reconciliation Act of 1981, within the individual's benefit year multiplied by the individual's weekly extended benefit amount.

[C73, 75, 77, 79, 81, §96.29; 81 Acts, ch 19, §10, 11; 82 Acts, ch 1030, §8, 9]

93 Acts, ch 10, §1; 96 Acts, ch 1186, §23

96.30 Inclusion of wages paid prior to January 1, 1978, for newly covered employers. Repealed by 92 Acts, ch 1045, § 5.

96.31 Tax for benefits.

Political subdivisions may levy a tax outside their general fund levy limits to pay the cost of unemployment benefits. For school districts the cost of unemployment benefits shall be included in the district management levy pursuant to section 298.4.

[C79, 81, §96.31]

83 Acts, ch 123, §50, 209; 89 Acts, ch 135, §51

96.32 Fraud and overpayment personnel.

It is the declared intent of the general assembly of the state of Iowa that the department shall employ employees as full-time claims specialists in the fraud and overpayment section of the job insurance bureau of the department to the extent that federal funds are available to the department for the employment of such full-time personnel.

[C79, 81, §96.32]

96 Acts, ch 1186, §23

96.33 Evaluation of unemployment experience. Repealed by 92 Acts, ch 1045, § 5.

96.34 Government employers reclassified. Repealed by 92 Acts, ch 1045, § 5.

96.35 Status report.

The department shall annually submit a status report on the unemployment compensation trust fund to the general assembly.

[C79, 81, §96.35]

96 Acts, ch 1186, §23

96.36 through 96.39 Reserved.

96.40 Voluntary shared work program.

1. An employer who wishes to participate in the shared work unemployment compensation program established under this section shall submit a written shared work plan in a form acceptable to the department for approval.

As a condition for approval by the department, a participating employer shall agree to furnish the department with reports relating to the operation of the shared work plan as requested by the department. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the department and shall report the findings to the department.

2. The department may approve a shared work plan if all of the following conditions are met:

a. The employer has filed all reports required to be filed under this chapter for all past and current periods and has paid all contributions due for all past and current periods.

b. The plan certifies that the aggregate reduction in work hours is in lieu of temporary layoffs which would have affected at least ten percent of the employees in the affected unit or units to which the plan applies and which would have resulted in an equivalent reduction in work hours. *"Affected unit"* means a specified plant, department, shift, or other definable unit.

c. The employees in the affected unit are identified by name and social security number and consist of at least five individuals.

d. The shared work plan reduces the normal

weekly hours of work for an employee in the affected unit by not less than twenty percent and not more than fifty percent with a corresponding reduction in wages. Only full-time employees who normally work between thirty-five and forty hours per week are eligible to participate.

e. The reduction in hours and corresponding reduction in wages must be applied equally to all of the full-time employees in the affected unit.

f. The plan provides that fringe benefits will continue to be provided to employees in affected units as though their workweeks had not been reduced.

g. The plan will not serve as a subsidy of seasonal employment during the off season, nor as a subsidy of temporary part-time or intermittent employment.

h. The employer certifies that the employer will not hire additional part-time or full-time employees for the affected work force while the program is in operation.

i. The duration of the shared work plan will not exceed twenty-six weeks. An employing unit is eligible for approval of only one plan during a twenty-four-month period.

j. The plan is approved in writing by the collective bargaining representative for each employee organization or union which has members in the affected unit.

3. The employer shall submit a shared work plan to the department for approval at least thirty days prior to the proposed implementation date.

4. The department may revoke approval of a shared work plan and terminate the plan if the department determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program, or if it is determined by the department that the approval of the shared work plan was based, in whole or in part, upon information contained in the plan which was either false or substantially misleading.

5. An individual who is otherwise entitled to receive regular unemployment compensation benefits under this chapter shall be eligible to receive shared work benefits with respect to any week in which the department finds all of the following:

a. The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week.

b. The individual is able to work, available for work, and works all available hours with the participating employer.

c. The individual's normal weekly hours of work have been reduced by at least twenty percent but not more than fifty percent, with a corresponding reduction in wages.

6. The department shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of this chapter which relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the participating employer under the plan.

7. The department shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment, less any deductible amounts under this chapter except wages received from any employer, multiplied by the full percentage of reduction in the individual's hours as set forth in the employer's shared work plan. If the shared work benefit amount calculated under this subsection is not a multiple of one dollar, the department shall round the amount so calculated to the next lowest multiple of one dollar. An individual shall be ineligible for shared work benefits for any week in which the individual performs paid work for the participating employer in excess of the reduced hours established under the shared work plan.

8. An individual shall not be entitled to receive shared work benefits and regular unemployment compensation benefits in an aggregate amount which exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided under section 96.3, subsection 5. Notwithstanding any other provisions of this chapter, an individual shall not be eligible to receive shared work benefits for more than twenty-six calendar weeks during the individual's benefit year.

9. Notwithstanding any other provisions of this chapter, all benefits paid under a shared work plan, which are chargeable to the participating employer or any other base period employer of a participating employee, shall be charged to the account of the participating employer under the plan.

An employer may provide as part of the plan a training program the employees may attend during the hours that have been reduced. If the employer is able to show that the training program will provide a substantive increase in the workplace and employability skills of the employee so as to reduce the potential for future periods of unemployment, the department shall relieve the employer of charges for benefits paid to the individual attending training under the plan. The employee may attend the training at the work site utilizing internal resources, provided the training is outside of the normal course of employment, or in conjunction with an educational institution.

10. An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year shall be considered an exhaustee, as defined in section 96.19, subsection 20, for purposes of the extended benefit program administered pursuant to section 96.29.

91 Acts, ch 197, §1; 94 Acts, ch 1066, §7; 96 Acts, ch 1186, §23; 97 Acts, ch 38, §5

SUBTITLE 3

RETIREMENT SYSTEMS

CHAPTER 97

OLD-AGE AND SURVIVORS' INSURANCE SYSTEM

97.1 to 97.49 Repealed by 53 Acts, ch 71, §1, except as indicated herein.
97.50 Repeal of prior law — rights preserved.
97.51 Special fund created — refunds.
97.52 Administration agreements.
97.53 Rule of construction.

97.1 to 97.49 Repealed by 53 Acts, ch 71, § 1, except as indicated herein.

97.50 Repeal of prior law — rights preserved.

Chapter 97, Code 1950, as amended by the Fifty-fourth General Assembly, is hereby repealed, subject to the provisions which follow:

1. Any person being paid any benefits under the provisions of sections 97.13 to 97.18, Code 1950, as amended, as of June 30, 1953, shall continue to receive such benefits as though that chapter had not been repealed.

2. Any person who became entitled to any benefits under the provisions of sections 97.13 to 97.19, Code 1950, as amended, through the retirement or death of any person prior to June 30, 1953, shall be paid the same benefits upon proper application, subsequent to June 30, 1953, as though that chapter had not been repealed.

3. Any individual who was, as of June 30, 1953, a fully insured individual as defined in section 97.45, subsection 6, Code 1950, as amended, and who would be a fully insured individual at age sixty-five, on the basis of service prior to June 30, 1953 (but who is not under public employment as of such date), shall be entitled to receive, in the event of the individual's reaching sixty-five years of age after June 30, 1953, not less than the same individual primary benefit the individual would have received under the provisions of section 97.13, Code 1950, as amended, had the individual been eligible for retirement as of that date as though chapter 97, Code 1950, as amended, had not been repealed. Any individual who was as of June 30, 1953, a fully insured individual as defined in section 97.45, subsection 6, Code 1950, as amended, and who would be fully insured at age of sixty-five, on the basis of service prior to June 30, 1953, and who is as of June 30, 1953, under public employment, and also under coverage of a federal civil service retirement plan, shall be entitled to receive after reaching sixty-five years of age, provided the individual is no longer in public employment, not less than the same individual primary benefit the individual would have received under the provisions of section 97.13, Code 1950, as amended, had the individual been eligible for retirement as of that date, as though chapter 97, Code 1950, as amended, had not been repealed; and any wife, widow, child or other dependent of such individual would become entitled to any benefits as provided by chapter 97, Code 1950, as amended, after June 30, 1953, shall be entitled to receive benefits as provided by chapter 97, Code 1950, as though that chapter had not been repealed.

4. Any wife, widow, child, or other dependent of any fully insured individual who left employment or died prior to June 30, 1953, who would become entitled to any benefit as provided by chapter 97, Code 1950, as amended, after June 30, 1953, shall be entitled to receive benefits as provided by chapter 97, Code 1950, as amended, as though that chapter had not been repealed.

5. Any currently insured individual under the terms of subsection 7 of section 97.45, Code 1950, as amended, who is not in Iowa public employment as of June 30, 1953, shall continue to be a currently insured individual against death for the period designated in said subsection and the provisions of coverage for benefit purposes under said subsection shall apply to such individuals as they would have applied as though chapter 97, Code 1950, as amended, had not been repealed.

[C46, 50, §97.13 – 97.19; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97.50]

97.51 Special fund created — refunds.

There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the *"Iowa Old-Age and Survivors' Insurance Liquidation Fund"*, this fund to consist of all unexpended moneys collected under the provisions of chapter 97, Code 1950, as amended, together with all interest thereon, and

also to include all securities and other assets acquired by and through the use of the moneys belonging to the Iowa old-age and survivors' insurance trust fund, and any other moneys that may be paid into this fund. There is hereby transferred to the Iowa old-age and survivors' insurance liquidation fund all funds and assets of the old-age and survivors' insurance trust fund created by the provisions of section 97.5, Code 1950. There shall also be deposited in the Iowa old-age and survivors' insurance liquidation fund all receipts after June 30, 1953, as a result of the collection of taxes or other moneys, as provided by section 97.8, Code 1950.

1. The treasurer of state is the custodian and trustee of this fund and shall administer the fund in accordance with the directions of the department of personnel. It is the duty of the trustee:

a. To hold said trust funds.

b. Under the direction of the department and as designated by the department, invest such portion of said trust funds as are not needed for current payment of benefits, in interest-bearing securities issued by the United States, or interest-bearing bonds issued by the state of Iowa, or bonds issued by counties, school districts or general obligations or limited levy bonds issued by municipal corporations in this state as authorized by law; also to sell and dispose of same when needed for the payment of benefits.

c. To disburse the trust funds upon warrants drawn by the director of revenue and finance pursuant to the order of the department of personnel.

2. All moneys which are paid or deposited into this fund are hereby appropriated and made available to the department to be used only for the purposes herein provided:

a. To be used by the department for the payment of claims for benefits.

b. To be used by the department for the payment in accordance with any agreement with the federal social security administration of amounts required to obtain retroactive federal social security coverage of Iowa public employees, dating from January 1, 1951, and for the payment of refunds which were authorized by the provisions of section 97.7, Code 1950, and for the payment of such other refunds to employees as may be authorized by the general assembly, and such other purposes as may be authorized by the general assembly.

3. The department of personnel shall administer the Iowa old-age and survivors' insurance liquidation fund and shall also administer all other provisions of this chapter.

4. Any public employee subject to coverage under the provisions of chapter 97, Code 1950, as amended, in public service as of June 30, 1953, and who has not applied for and qualified for benefit payments under the provisions of chapter 97, Code 1950, as amended, who had contributed to the Iowa old-age and survivors' insurance fund prior to the repeal of said chapter 97, as amended, shall be entitled to a refund of contributions paid into the Iowa old-age and survivors' insurance fund by such employee without interest, but there shall be deducted from the amount of any such refund any amount which has been or will be paid in the employee's behalf as the employee's contribution as an employee to obtain retroactive federal social security coverage. Any former public employee not in public service as of June 30, 1953, who has contributed to the Iowa old-age and survivors' insurance fund, the employee's beneficiaries or estate, when no benefit has been paid under chapter 97, Code 1950, based upon such employee's prior record, shall be entitled to a refund of seventy-five percent of all contributions paid by the employee into said fund, without interest. The department shall prescribe rules in regard to the granting of such refunds. In the event of such refund any individual receiving the same shall be deemed to have waived any and all rights in behalf of the individual or any beneficiary or the individual's estate to further benefits under the provisions of chapter 97, Code 1950, as amended.

5. Any employee in public service as of June 30, 1953, may, in lieu of receiving the cash refund of the employee's contributions, elect to come under the coverage of any new retirement system which may be created by the general assembly, to which the employee is eligible, with credits toward future benefits in consideration of the employee's prior contributions and length of service, and may direct the transfer of the amount payable to the employee to the assets of such new retirement system.

6. In the payment of any benefits in the future, as a result of the provisions of chapter 97, Code 1950, as amended, the department shall follow the same procedure as provided by said chapter 97, as amended, as though said chapter had not been repealed, except the requirements of section 97.21, subsection 4, paragraph *"a"*, and 97.21, subsection 5, shall not be applicable, but no primary benefit, based upon employment prior to June 30, 1953, shall be paid to any individual for any month during which the individual receives compensation for work in any position which would have been subject to coverage under the provisions of said chapter 97, as amended, if the individual's earnings for such month exceed one hundred dollars, nor shall any benefit be paid to a wife or dependent of such employee for such months, except that after a retired member reaches the age of seventy-two years, the member, the member's wife and dependents shall be entitled to the benefits of this chapter regardless of the amount earned.

7. Beginning July 1, 1975 any person receiving benefits under the provisions of chapter 97, Code 1950, as amended, shall receive a monthly increase in benefits equal to one hundred percent of the monthly benefits received for June, 1975 or for which the person was eligible to receive for June, 1975. Any person who becomes eligible for bene-

fits under chapter 97, Code 1950, on or after July 1, 1975 shall receive the same percentage increase.

8. Effective July 1, 1980, a person receiving benefits, or who becomes eligible to receive benefits, on or after July 1, 1980, under this chapter, shall receive the monthly increase in benefits provided in section 97B.49G, subsection 3, paragraph *"a"*.

There is appropriated from the general fund of the state to the Iowa old-age and survivors' insurance liquidation fund from funds not otherwise appropriated an amount sufficient to finance the provisions of this subsection.

9. Effective July 1, 1984, a person receiving benefits, on or after July 1, 1984, under this chapter, shall receive a monthly increase in benefits equal to ten percent of the monthly benefits received for June 1984 or which the person was eligible to receive for June 1984, except as otherwise provided in this subsection. A person who becomes eligible for benefits under chapter 97, Code 1950, on or after July 1, 1984 shall receive the ten percent increase.

A person eligible to receive benefits under this chapter on June 30, 1984, may elect in writing to the Iowa department of job service* not to receive the monthly benefit increase granted in this subsection.

There is appropriated annually from the general fund of the state to the Iowa old-age and survivors' insurance liquidation fund from funds not otherwise appropriated an amount sufficient to pay the benefit increases provided in this subsection.

10. Effective July 1, 1992, a person receiving benefits, on or after July 1, 1992, under this chapter, shall receive a monthly increase in benefits of ten dollars per month. A person who becomes eligible for benefits under chapter 97, Code 1950, on or after July 1, 1992, shall receive the ten dollar increase.

There is appropriated annually from the general fund of the state to the Iowa old-age and survivors' insurance liquidation fund from funds not otherwise appropriated an amount sufficient to pay the benefit increases provided in this subsection.

[C46, 50, §97.5, 97.7 – 97.9, 97.12, 97.23, 97.35; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97.51]

84 Acts, ch 1285, §1; 86 Acts, ch 1245, §242; 92 Acts, ch 1201, §1; 98 Acts, ch 1183, §8

*Department of workforce development, chapter 84A, is the successor agency

97.52 Administration agreements.

The department of personnel may enter into agreements whereby services performed by the department and its employees under chapters 97, 97B, and 97C shall be equitably apportioned among the funds provided for the administration of those chapters. The money spent for personnel, rentals, supplies, and equipment used by the department in administering the chapters shall be equitably apportioned and charged against the funds.

[C46, 50, §97.3 – 97.5, 97.23, 97.48; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97.52]

86 Acts, ch 1244, §19

97.53 Rule of construction.

As used in sections 97.50 to 97.52, unless clearly indicated by the context to the contrary, all references to employment or service refer to employment or service in Iowa public employment.

[C46, 50, §97.1, 97.2; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97.53]

CHAPTER 97A

PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

97A.1 Definitions of words and phrases.
97A.2 Creation of system — purpose — name.
97A.3 Membership in system — reemployment.
97A.4 Service creditable.
97A.5 Administration.
97A.6 Benefits.
97A.6A Optional retirement benefits.
97A.6B Rollovers of members' accounts.
97A.7 Management of funds.
97A.8 Method of financing.
97A.9 Military service exceptions.
97A.10 Repealed by 78 Acts, ch 1060, §62.
97A.11 Contributions by the state.
97A.12 Exemption from execution and other process or assignment — exceptions.
97A.13 Protection against fraud.
97A.14 Hospitalization and medical attention.
97A.14A Liability of third parties — subrogation.
97A.15 Vested and retired members before July 1, 1979 — annuity or withdrawal of contributions.
97A.16 Withdrawal of contributions — repayment.
97A.17 Optional transfers with chapter 411.

97A.1 Definitions of words and phrases.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. *"Actuarial equivalent"* shall mean a benefit of equal value, when computed upon the basis of mortality tables adopted by the board of trustees, and interest computed at a rate adopted by the board upon the recommendation of the actuary.

2. *"Amount earned"* shall mean the amount of money actually earned by a beneficiary in some definite period of time.

3. *"Average final compensation"* shall mean the average earnable compensation of the member during the member's highest three years of service as a member of the state department of public safety, or if the member has had less than three years of service, then the average earnable compensation of the member's entire period of service.

4. *"Beneficiary"* shall mean any person receiving a retirement allowance or other benefit as provided by this chapter.

5. *"Board of trustees"* means the board created in section 97A.5 to direct the administration of the Iowa department of public safety peace officers' retirement, accident, and disability system.

6. *"Child"* means only the surviving issue of a deceased active or retired member, or a child legally adopted by a deceased member prior to the member's retirement. *"Child"* includes only an individual who is under the age of eighteen years, an individual who is under the age of twenty-two and is a full-time student, or an individual who is disabled under the definitions used in section 402 of the Social Security Act as amended if the disability occurred to the individual during the time the individual was under the age of eighteen years and the parent of the individual was an active member of the system.

7. *"Commissioner"* means the commissioner of public safety of this state.

8. *"Department"* means the department of public safety of this state.

9. *"Earnable compensation"* or *"compensation earnable"* shall mean the regular compensation which a member would earn during one year on the basis of the stated compensation for the member's rank or position including compensation for longevity and the daily amount received for meals under section 80.8 and excluding any amount received for overtime compensation or other special additional compensation, other payments for meal expenses, uniform cleaning allowances, travel expenses, and uniform allowances and excluding any amount received upon termination or retirement in payment for accumulated sick leave or vacation.

10. *"Medical board"* shall mean the board of physicians provided for in section 97A.5.

11. *"Member"* or *"member of system"* shall mean a member of the Iowa department of public safety peace officers' retirement, accident, and disability system as defined by section 97A.3.

12. *"Membership service"* shall mean service as a peace officer in the division of highway safety, uniformed force, and radio communications, the division of criminal investigation and bureau of identification, or division of drug law enforcement in the department of public safety and arson investigators rendered since last becoming a member, or, where membership is regained as provided in this chapter, all of such service.

13. *"Peace officer"* or *"peace officers"* shall mean all members of the divisions of the Iowa state patrol and criminal investigation and bureau of identification in the department of public safety, except clerical workers, including but not limited to gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities, who have passed a satisfactory physical and mental examination and have been duly appointed as members of the state department of public safety in accordance with section 80.15, and the division of drug law enforcement, and arson investigators and fire prevention inspector peace officers in the department of public safety, except clerical workers, employees of the division of capitol police, except clerical workers, and the division of beer and liquor law enforcement of the department of public safety, except clerical workers.

14. *"Pension reserve"* shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of a pension, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the board of trustees and interest computed at a rate adopted by the board upon the recommendation of the actuary.

15. *"Pensions"* shall mean annual payments for life derived from the appropriations provided by the state of Iowa and from contributions of the members which are deposited in the pension accumulation fund. All pensions shall be paid in equal monthly installments.

16. *"Retirement allowance"* shall mean the pension, or any benefits in lieu thereof, granted to a member upon retirement.

17. *"Surviving spouse"* shall mean the surviving spouse or former spouse of a marriage solemnized prior to retirement of a deceased member from active service. Surviving spouse shall include a former spouse only if the division of assets in the dissolution of marriage decree pursuant to section 598.17 grants the former spouse rights of a spouse under this chapter. If there is no surviving spouse of a marriage solemnized prior to retirement of a deceased member, surviving spouse includes a surviving spouse of a marriage of two years or more duration solemnized subsequent to

retirement of the member.

18. *"System"* shall mean the Iowa department of public safety peace officers' retirement, accident, and disability system as defined in section 97A.2.

[C50, 54, 58, 62, 66, 71, 73, 75, §97A.1; C77, 79, 81, §97A.1, 97A.6(8b); 82 Acts, ch 1261, §1, 2]

86 Acts, ch 1245, §243; 88 Acts, ch 1242, §2; 92 Acts, ch 1232, §504; 94 Acts, ch 1183, §2; 98 Acts, ch 1074, §11

97A.2 Creation of system — purpose — name.

The Iowa department of public safety peace officers' retirement, accident, and disability system is created. It is the purpose of this chapter to provide certain retirement and other benefits for the peace officers of the Iowa department of public safety named in this chapter, or benefits to their dependents, in amounts and under terms and conditions set forth in this chapter. The system shall be administered under the direction of the board of trustees, and shall transact all of its business, invest all of its funds, and hold all of its cash and security and other property in the name of the Iowa department of public safety peace officers' retirement, accident, and disability system.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.2]

86 Acts, ch 1245, §244

97A.3 Membership in system — reemployment.

1. All members of the division of highway safety, uniformed force, and radio communications and the division of criminal investigation and bureau of identification in the department of public safety, excepting the members of the clerical force, who are employed by the state of Iowa on July 4, 1949, and all persons thereafter employed as members of such divisions in the department of public safety or division of drug law enforcement and arson investigators, except the members of the clerical force, shall be members of this system, except as otherwise provided in subsection 3. Effective July 1, 1994, gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities, fire prevention inspector peace officers employed by the department of public safety, and employees of the division of capitol police, except clerical workers, shall be members of this system, except as otherwise provided in subsection 3 or section 97B.42B. Such members shall not be required to make contributions under any other pension or retirement system of the state of Iowa, anything to the contrary notwithstanding.

2. Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, or should a member become a beneficiary or die, the person shall thereupon cease to be a member of this system.

3. *a.* As used in this section, unless the context otherwise requires, *"reemployed"* or *"reemployment"* means the employment of a person in a position which would otherwise be included as a membership position under subsection 1, after the person has commenced receiving a service retirement allowance under section 97A.6.

b. If a person is reemployed, the person shall not become an active member of the system upon reemployment, and the person so reemployed and the state of Iowa shall not make contributions to the system based upon the person's compensation for reemployment. A person who is so reemployed shall continue to receive the service retirement allowance, and the service retirement allowance shall not be recalculated based upon the person's reemployment. Notwithstanding section 97B.1A or any other provision of law to the contrary, a person reemployed as provided in this subsection shall be exempt from chapter 97B.

4. Effective July 1, 1979, a person shall not become a member of the system unless that person has passed the physical and mental examination given under the provisions of section 80.15 and unless that person has received a diploma for satisfactory completion of a training school held pursuant to the provisions of section 80.13.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.3]

92 Acts, ch 1232, §505; 94 Acts, ch 1183, §3; 98 Acts, ch 1100, §12; 98 Acts, ch 1183, §82

97A.4 Service creditable.

Service for fewer than six months of a year is not creditable as service. Service of six months or more of a year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month duration during which the member was absent without pay.

Any member of the system who has been employed continuously prior to the passage of this chapter in the division of the Iowa state patrol or the division of criminal investigation and bureau of identification in the department of public safety, or as a member of the Iowa state patrol, or as a peace officer or a member of the uniformed force in any department or division whose functions were transferred to, merged, or consolidated in the department of public safety at the time such department was created, shall receive credit for such service in determining retirement and disability benefits provided for in this chapter. Arson investigators who have contributed to this system prior to July 1, 1978, shall receive credit for such service in determining retirement and disability benefits.

The board of trustees shall credit as service for a member of the system a previous period of service for which the member had withdrawn the member's accumulated contributions, as defined

in section 97A.15.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.4]

90 Acts, ch 1240, §1; 92 Acts, ch 1232, §506; 98 Acts, ch 1074, §12

97A.5 Administration.

1. *Board of trustees.* A board of trustees of the Iowa department of public safety peace officers' retirement, accident, and disability system is created. The general responsibility for the proper operation of the system is vested in the board of trustees. The board of trustees is constituted as follows: The commissioner of public safety, who is chairperson of the board; the treasurer of state; an actively engaged member of the system, to be chosen by secret ballot by the actively engaged members of the system; a retired member of the system, to be chosen by secret ballot by the retired members of the system; and a person appointed by the governor. The person appointed by the governor shall be an executive of a domestic life insurance company, an executive of a state or national bank operating within the state of Iowa, or an executive in the financial services industry, and shall be subject to confirmation by the senate. The members of the system and the person appointed by the governor shall serve for a term of two years.

2. *Voting.* Each trustee shall be entitled to one vote on said board and three concurring votes shall be necessary for a decision by the trustees on any question at any meeting of said board.

3. *Compensation.* The trustees shall serve as such without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through service on the board.

4. *Rules.* The board of trustees shall, from time to time, establish such rules not inconsistent with this chapter, for the administration of funds created by this chapter and as may be necessary or appropriate for the transaction of its business.

5. *Staff.* The department of personnel shall provide administrative services to the board of trustees. Investments shall be administered through the office of the treasurer of state.

6. *Data — records — reports.*

a. The department of personnel shall keep in convenient form the data necessary for actuarial valuation of the various funds of the system and for checking the expense of the system. The director of the department of personnel shall keep a record of all the acts and proceedings of the board, which records shall be open to public inspection. The board of trustees shall biennially make a report to the general assembly showing the fiscal transactions of the system for the preceding biennium, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the system.

b. The director of the department of personnel shall maintain records, including but not limited to names, addresses, ages, and lengths of service, salaries and wages, contributions, designated beneficiaries, benefit amounts, if applicable, and other information pertaining to members as necessary in the administration of this chapter, as well as the names, addresses, and benefit amounts of beneficiaries. For the purpose of obtaining these facts, the director of personnel shall have access to the records of the various departments of the state and the departments shall provide such information upon request. Member and beneficiary records containing personal information are not public records for the purposes of chapter 22. However, summary information concerning the demographics of the members and general statistical information concerning the system is subject to chapter 22, as well as aggregate information by category.

7. *Legal advisor.* The attorney general of the state of Iowa shall be the legal advisor for the board of trustees.

8. *Medical board.* The board of trustees shall designate a medical board to be composed of three physicians who shall arrange for and pass upon the medical examinations required under the provisions of this chapter and shall report in writing to the board of trustees, its conclusions and recommendations upon all matters duly referred to it. Each report of a medical examination under section 97A.6, subsections 3 and 5, shall include the medical board's findings in accordance with section 97A.6 as to the extent of the member's physical impairment.

9. *Duties of actuary.* The actuary hired by the board of trustees shall be the technical advisor of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

10. *Tables — rates.* The actuary hired by the board of trustees shall make such investigation of anticipated interest earnings and of the mortality, service, and compensation experience of the members of the system as the actuary recommends, and on the basis of the investigation, the board of trustees shall adopt the tables and the rates as are required in subsection 11 of this section. The board of trustees shall adopt the rate of interest and tables, and certify rates of contributions to be used by the system.

11. *Actuarial investigation.* At least once in each two-year period, the actuary hired by the board of trustees shall make an actuarial investigation in the mortality, service, and compensation experience of the members and beneficiaries of the system, and the interest and other earnings on the moneys and other assets of the system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of the investigation and valuation, the

board of trustees shall:

a. Adopt for the system such interest rate, mortality and other tables as shall be deemed necessary;

b. Certify the rates of contribution payable by the state of Iowa in accordance with section 97A.8.

12. *Valuation.* On the basis of the rate of interest and tables adopted by the board of trustees, the actuary hired by the board of trustees shall make an annual valuation of the assets and liabilities of the funds of the system created by this chapter.

13. *Requirements related to the Internal Revenue Code.*

a. As used in this subsection, unless the context otherwise requires, *"Internal Revenue Code"* means the Internal Revenue Code as defined in section 422.3.

b. The funds established in section 97A.8 shall be held in trust for the benefit of the members of the system and the members' beneficiaries. No part of the corpus or income of the funds shall be used for, or diverted to, purposes other than for the exclusive benefit of the members or the members' beneficiaries or for expenses incurred in the operation of the funds. A person shall not have any interest in, or right to, any part of the corpus or income of the funds except as otherwise expressly provided.

c. Notwithstanding any provision of this chapter to the contrary, in the event of a complete discontinuance of contributions, for reasons other than achieving fully funded status upon an actuarially determined basis, or upon termination of the funds established in section 97A.8, a member shall be vested, to the extent then funded, in the benefits which the member has accrued at the date of the discontinuance or termination.

d. Benefits payable from the funds established in section 97A.8 to members and members' beneficiaries shall not be increased due to forfeitures from other members. Forfeitures shall be used as soon as possible to reduce future contributions by the state to the pension accumulation fund, except that the rate shall not be less than the minimum rate established in section 97A.8.

e. Notwithstanding any provision of this chapter to the contrary, a member's service retirement allowance shall commence on or before the later of the following:

(1) April 1 of the calendar year following the calendar year in which the member attains the age of seventy and one-half years.

(2) April 1 of the calendar year following the calendar year in which the member retires.

f. The maximum annual benefit payable to a member by the system shall be subject to the limitations set forth in section 415 of the Internal Revenue Code, and any regulations promulgated pursuant to that section.

g. The annual compensation of a member taken in account for any purpose under this chapter shall not exceed the applicable amount set forth in section 401(a)(17) of the Internal Revenue Code, and any regulations promulgated pursuant to that section.

14. *Investment contracts.* The board of trustees may execute contracts and agreements with investment advisors, consultants, and investment management and benefit consultant firms in the administration of the funds established in section 97A.8.

15. *Liability.* The department, the board of trustees, and the treasurer of state are not personally liable for claims based upon an act or omission of the person performed in the discharge of the person's duties under this chapter, even if those actions or omissions violate the standards established in section 97A.7, except for acts or omissions which involve malicious or wanton misconduct.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.5]

86 Acts, ch 1245, §245 – 247; 90 Acts, ch 1240, §2; 93 Acts, ch 44, §1; 94 Acts, ch 1183, §4, 5; 96 Acts, ch 1187, §80 – 82; 2000 Acts, ch 1077, §1, 2

Confirmation; §2.32

97A.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by the board of trustees as follows:

a. Any member in service may retire upon the member's written application to the board of trustees, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing therefor, the member desires to be retired, provided that the said member at the time so specified for retirement shall have attained the age of fifty-five and shall have completed twenty-two years or more of creditable service, and notwithstanding that, during such period of notification, the member may have separated from the service. However, a member may retire at fifty years of age and receive a reduced retirement allowance pursuant to subsection 2A.

b. Any member in service who has been a member of the retirement system four or more years and whose employment is terminated prior to the member's retirement, other than by death or disability, shall upon attaining retirement age, receive a service retirement allowance of four twenty-seconds of the retirement allowance the member would receive at retirement if the member's employment had not been terminated, and an additional one twenty-second of such retirement allowance for each additional year of service not exceeding twenty-two years of service. The amount of the retirement allowance shall be calculated in the manner provided in this paragraph using the average final compensation at the time of termination of employment.

c. Once a person commences receiving a service retirement allowance pursuant to this section, if the person is reemployed, as defined in sec-

tion 97A.3, the service retirement allowance shall not be recalculated based upon the person's reemployment.

2. *Allowance on service retirement.*

a. Upon retirement from service prior to July 1, 1990, a member shall receive a service retirement allowance which shall consist of a pension which equals fifty percent of the member's average final compensation.

b. Upon retirement from service on or after July 1, 1990, but before July 1, 1992, a member shall receive a service retirement allowance which shall consist of a pension which equals fifty-four percent of the member's average final compensation.

c. Commencing July 1, 1992, but before July 1, 2000, the board of trustees shall increase the percentage multiplier of the member's average final compensation by an additional two percent each July 1 until reaching sixty percent of the member's average final compensation.

d. Upon retirement from service on or after July 1, 2000, a member shall receive a service retirement allowance which shall consist of a pension which equals sixty and one-half percent of the member's average final compensation.

e. Commencing July 1, 1990, if the member has completed more than twenty-two years of creditable service, the service retirement allowance shall consist of a pension which equals the amount provided in paragraph *"b"*, *"c"*, or *"d"*, plus an additional percentage as set forth below:

(1) For a member who terminates service, other than by death or disability, on or after July 1, 1990, but before July 1, 1991, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added three-tenths percent of the member's average final compensation for each year of service over twenty-two years, excluding years of service after the member's fifty-fifth birthday. However, this subparagraph does not apply to more than eight additional years of service.

(2) For a member who terminates service, other than by death or disability, on or after July 1, 1991, but before October 16, 1992, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added six-tenths percent of the member's average final compensation for each year of service over twenty-two years, excluding years of service after the member's fifty-fifth birthday. However, this subparagraph does not apply to more than eight additional years of service.

(3) For a member who terminates service, other than by death or disability, on or after October 16, 1992, but before July 1, 1996, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added six-tenths percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

(4) For a member who terminates service, other than by death or disability, on or after July 1, 1996, but before July 1, 1998, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added one and one-half percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

(5) For a member who terminates service, other than by death or disability, on or after July 1, 1998, but before July 1, 2000, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added one and one-half percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than ten additional years of service.

(6) For a member who terminates service, other than by death or disability, on or after July 1, 2000, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added two and three-fourths percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than ten additional years of service.

2A. *Early retirement benefits.*

a. Notwithstanding the calculation of the service retirement allowance under subsection 2, beginning July 1, 1996, a member who has completed twenty-two years or more of creditable service and is at least fifty years of age, but less than fifty-five years of age, who has otherwise completed the requirements for retirement under subsection 1, may retire and receive a reduced service retirement allowance pursuant to this subsection. The service retirement allowance for a member less than fifty-five years of age shall be calculated in the manner prescribed in subsection 2, except that the percentage multiplier of the member's average final compensation used in the determination of the service retirement allowance shall be reduced by the board of trustees pursuant to paragraph *"b"*.

b. On July 1, 1996, and on each July 1 thereafter, the board of trustees shall determine for the respective fiscal year the percent by which the percentage multiplier under subsection 2 shall be reduced for each month that a member's retirement date precedes the member's fifty-fifth birthday. The board of trustees shall make this determination based upon the most recent actuarial valuation of the system, the calculation of the actuarial cost for each month of retirement of a member

prior to age fifty-five, and the premise that the provision of a service retirement allowance to a member who is less than fifty-five years of age will not result in any increase in cost to the system.

3. *Ordinary disability retirement benefit.* Upon the application of a member in service or of the commissioner of public safety, any member shall be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on an ordinary disability retirement allowance, provided that the medical board after a medical examination of such member shall certify that said member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired. However, if a person's membership in the system first commenced on or after July 1, 1992, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the medical board that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same position held immediately prior to the application for disability benefits.

4. *Allowance on ordinary disability retirement.*

a. Upon retirement for ordinary disability prior to July 1, 1998, a member shall receive an ordinary disability retirement allowance which shall consist of a pension which shall equal fifty percent of the member's average final compensation unless either of the following conditions exist:

(1) If the member has not had five or more years of membership service, the member shall receive a disability pension equal to one-fourth of the member's average final compensation.

(2) If the member has had twenty-two or more years of membership service, the member shall receive a disability retirement allowance that is equal to the greater of the benefit that the member would receive under subsection 2 if the member were fifty-five years of age or the disability pension otherwise calculated under this subsection.

b. Upon retirement for ordinary disability on or after July 1, 1998, a member who has five or more years of membership service shall receive a disability retirement allowance in an amount equal to the greater of fifty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member had attained fifty-five years of age. A member who has less than five years of membership service shall receive a pension equal to one-fourth of the member's average final compensation.

5. *Accidental disability benefit.*

a. Upon application of a member in service or of the commissioner of public safety, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury, disease, or exposure occurring or aggravated while in the actual performance of duty at some definite time and place shall be retired by the board of trustees, provided that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired. However, if a person's membership in the system first commenced on or after July 1, 1992, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the medical board that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same position held immediately prior to the application for disability benefits.

b. Should a member in service become incapacitated for duty as a natural and proximate result of an injury, disease, or exposure incurred or aggravated while in the actual performance of duty at some definite time or place, the member shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled to receive the member's fixed pay and allowances until re-examined by the board and found to be fully recovered or permanently disabled.

c. Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain, exposure, or the inhalation of noxious fumes, poison, or gases. However, if a person's membership in the system first commenced on or after July 1, 1992, and the heart disease or disease of the lungs or respiratory tract would not exist, but for a medical condition that was known to exist on the date that membership commenced, the presumption established in this paragraph shall not apply.

6. *Retirement after accident.*

a. Upon retirement for accidental disability prior to July 1, 1990, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty-six and two-thirds percent of the member's average final compensation.

b. Upon retirement for accidental disability on or after July 1, 1990, but before July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty percent of the member's average final compensation. However, if the member has had twenty-two or more years of membership service, the member shall receive a disability re-

tirement allowance that is equal to the greater of the retirement allowance that the member would receive under subsection 2 if the member were fifty-five years of age or the disability retirement allowance calculated under this paragraph.

c. Upon retirement for accidental disability on or after July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension in an amount equal to the greater of sixty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member had attained fifty-five years of age.

7. *Reexamination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may, and upon the member's application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. Such examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. Should any disability beneficiary who has not attained the age of fifty-five refuse to submit to such medical examination, the beneficiary's allowance may be discontinued until the beneficiary's withdrawal of such refusal, and should the beneficiary's refusal continue for one year all rights in and to the beneficiary's pension may be revoked by the board of trustees.

a. Should any beneficiary for either ordinary or accidental disability, except a beneficiary who is fifty-five years of age or over and would have completed twenty-two years of service if the beneficiary had remained in active service, be engaged in a gainful occupation paying more than the difference between the member's net retirement allowance and one and one-half times the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement, then the amount of the retirement allowance shall be reduced to an amount such that the member's net retirement allowance plus the amount earned by the member shall equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. Should the member's earning capacity be later changed, the amount of the retirement allowance may be further modified, provided that the new retirement allowance shall not exceed the amount of the retirement allowance originally granted adjusted by annual readjustments of pensions pursuant to subsection 14 of this section nor an amount which would cause the member's net retirement allowance, when added to the amount earned by the beneficiary, to equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the member was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have the member's retirement allowance suspended while in active service. If the rank or position held by the retired member is subsequently abolished, adjustments to the allowable limit on the amount of income which can be earned in a gainful occupation shall be computed in the same manner as provided in subsection 14, paragraph *"c"*, of this section for readjustment of pensions when a rank or position has been abolished. If the salary scale associated with a member's rank at retirement is changed after the member retires, earnable compensation for purposes of this section shall be based upon the salary an active member currently would receive at the same rank and with seniority equal to that of the retired member at the time of retirement. For purposes of this paragraph, *"net retirement allowance"* means the amount determined by subtracting the amount paid during the previous calendar year by the beneficiary for health insurance or similar health care coverage for the beneficiary and the beneficiary's dependents from the amount of the member's retirement allowance paid for that year pursuant to this chapter. The beneficiary shall submit sufficient documentation to the board of trustees to permit the system to determine the member's net retirement allowance for the applicable year.

A beneficiary retired under the provisions of this paragraph in order to be eligible for continued receipt of retirement benefits shall no later than May 15 of each year submit to the board of trustees a copy of the beneficiary's state income tax return for the preceding year.

Retroactive to July 1, 1976, the limitations on pay of a member engaged in a gainful occupation who is retired under accidental disability prescribed in this paragraph shall not apply to a member who retired before July 1, 1976.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than the disability beneficiary's average final compensation, the disability beneficiary's retirement allowance shall cease, the disability beneficiary shall again become a member and shall contribute thereafter at the same rate payable by other members of comparable rank, seniority, and age, and former service on the basis of which the disability beneficiary's service was computed at the time of retirement shall be restored to full force and effect. Upon subsequent retirement the disability beneficiary shall be credited with all service as a member, and also with the pe-

riod of disability retirement.

c. The commissioner of public safety may, subject to approval of the medical board, assign any former member of the division of highway safety, uniformed force, and radio communications or the division of criminal investigation and bureau of identification or an arson investigator who is retired and drawing a pension for disability under the provisions of this chapter, to the performance of light duties in such division.

8. *Ordinary death benefit.*

a. Upon the receipt of proof of the death of a member in service, or a member not in service who has completed four or more years of service as provided in subsection 1, paragraph *"b"*, there shall be paid to the person designated by the member to the board of trustees as the member's beneficiary if the member has had one or more years of membership service and no pension is payable under subsection 9, an amount equal to fifty percent of the compensation earned by the member during the year immediately preceding the member's death if the member is in service, or an amount equal to fifty percent of the compensation earned by the member during the member's last year of service if the member is not in service.

b. In lieu of the payment specified in paragraph *"a"*, a beneficiary meeting the qualifications of paragraph *"c"* may elect to receive a monthly pension equal to one-twelfth of forty percent of the average final compensation of the member, but not less than an amount equal to twenty-five percent of the monthly earnable compensation paid to an active member having the rank of senior patrol officer of the Iowa state patrol if the member was in service at the time of death. For a member not in service at the time of death, the pension shall be reduced as provided in subsection 1, paragraph *"b"*.

For a member not in service at the time of death, the pension shall be paid commencing when the member would have attained the age of fifty-five except that if there is a child of the member, the pension shall be paid commencing with the member's death until the children reach the age of eighteen, or twenty-two if applicable. The pension shall resume commencing when the member would have attained the age of fifty-five.

For a member in service at the time of death, the pension shall be paid commencing with the member's death. In addition to the pension, there shall also be paid for each child of a member, a monthly pension equal to six percent of the monthly earnable compensation payable to an active member having the rank of senior patrol officer of the Iowa state patrol.

For the purpose of this chapter, a senior patrol officer is a person who has completed ten years of service in the Iowa state patrol.

Notwithstanding section 97A.6, subsection 8, Code 1985, effective July 1, 1990, for a member's surviving spouse who, prior to July 1, 1986, elected to receive pension benefits under this paragraph, the monthly pension benefit shall be equal to the higher of one-twelfth of forty percent of the average final compensation of the member, or the amount the surviving spouse was receiving on July 1, 1990.

c. The pension under paragraph *"b"* may be selected only by the following beneficiaries:

(1) The spouse.

(2) If there is no spouse, or if the spouse dies and there is a child of a member, then the guardian of the member's child or children, divided as the board of trustees determines, to continue as a joint and survivor pension until every child of the member dies or attains the age of eighteen, or twenty-two if applicable.

(3) If there is no surviving spouse or child, then the member's dependent father or mother, or both, as the board of trustees determines, to continue until remarriage or death.

d. If there is no nomination of beneficiary, the benefits provided in this subsection shall be paid to the member's estate.

9. *Accidental death benefit.* If, upon the receipt of evidence and proof that the death of a member in service was the natural and proximate result of an accident, disease, or exposure occurring or aggravated at some definite time and place while the member was in the actual performance of duty, the board of trustees shall decide that death was so caused in the performance of duty there shall be paid, in lieu of the ordinary death benefit provided in subsection 8 of this section, to the member's estate or to such person having an insurable interest in the member's life as the member shall have nominated by written designation duly executed and filed with the board of trustees:

a. A pension equal to one-half of the average final compensation of such member shall be paid to the surviving spouse, children or dependent parents as provided in paragraphs *"c", "d",* and *"e"* of subsection 8 of this section.

b. If there is no surviving spouse, child, or dependent parent surviving a deceased member, the death shall be treated as an ordinary death case and the benefit payable under subsection 8, paragraph *"a"* of this section, in lieu of the pension provided in paragraph *"a"* of this subsection, shall be paid to the member's estate.

c. In addition to the benefits for the surviving spouse enumerated in this subsection, there shall also be paid for each child of a member a monthly pension equal to six percent of the monthly earnable compensation payable to an active member having the rank of senior patrol officer of the Iowa state patrol.

10. *Optional allowance.* With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, in which event such a beneficiary shall be considered as an active member at the time of

death, until the first payment on account of any benefit becomes normally due, any beneficiary may elect to receive the beneficiary's benefit in a retirement allowance payable throughout life, or may elect to receive the actuarial equivalent at that time of the beneficiary's retirement allowance in a lesser retirement allowance payable throughout life with the provision that an amount in money not exceeding the amount of the beneficiary's accumulated contributions shall be immediately paid in cash to such member or some other benefit or benefits shall be paid either to the member or to such person or persons as the member shall nominate, provided such cash payment or other benefit or benefits, together with the lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to the member's retirement allowance and shall be approved by the board of trustees; provided, that a cash payment to such member or beneficiary at the time of retirement of an amount not exceeding fifty percent of the member's or beneficiary's accumulated contributions shall be made by the board of trustees upon said member's or beneficiary's election.

11. *Pensions offset by compensation benefits.* Any amounts which may be paid or payable by the state under the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the state under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workers' compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the state under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter.

12. *Pension to surviving spouse and children of deceased pensioned members.* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 2A, 4, or 6 of this section there shall be paid a pension:

a. To the member's surviving spouse, equal to one-half the amount received by the deceased beneficiary, but in no instance less than an amount equal to twenty-five percent of the monthly earnable compensation paid to an active member having the rank of senior patrol officer of the Iowa state patrol, and in addition a monthly pension equal to the monthly pension payable under subsection 9, paragraph *"c"*, of this section for each child under eighteen years of age or twenty-two years of age if applicable; or

b. If the spouse dies either prior or subsequent to the death of the member, to the guardian of each surviving child, a monthly pension equal to the monthly pension payable under subsection 9, paragraph *"c"*, of this section for the support of the child.

13. *Judicial review of action of the board of trustees.* Judicial review of any action of the board of trustees may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, the petition for judicial review must be filed within thirty days after the member receives written notice of the trustees' action. The board of trustees shall be represented by the attorney general. An appeal may be taken by the petitioner or the board of trustees to the supreme court of this state irrespective of the amount involved.

14. *Pensions payable.* Pensions payable under this section shall be adjusted as follows:

a. On each July 1 and January 1, the monthly pensions authorized in this section payable to retired members and to beneficiaries, except children of a deceased member, shall be adjusted as provided in this paragraph. The monthly pension of each retired member and each beneficiary shall be adjusted by adding to that monthly pension an amount equal to the amounts determined in subparagraphs (1) and (2). The adjusted monthly pension of a retired member shall not be less than the amount which was paid at the time of the member's retirement.

(1) An amount equal to the difference between the monthly earnable compensation payable to an active member of the department, of the same rank and position on the salary scale as was held by the retired or deceased member at the time of the member's retirement or death, for the month for which the last preceding adjustment was made and the monthly earnable compensation payable to an active member of the department of the same rank and position on the salary scale for the month for which the adjustment is made shall be multiplied by the following applicable percentage:

(a) Forty percent for members receiving a service retirement allowance and for beneficiaries receiving a pension under subsection 9 of this section.

(b) Forty percent for members with five or more years of membership service who are receiving an ordinary disability retirement allowance.

(c) Twenty-four percent for members with less than five years of membership service who are receiving an ordinary disability retirement allowance, and for beneficiaries receiving a pension under subsection 8 of this section.

(d) Forty percent for members receiving an accidental disability allowance.

The amount added to the monthly pension of a surviving spouse receiving a pension under subsection 12, paragraph *"a"*, of this section shall be equal to one-half the amount that would have been added to the monthly pension of the retired member under this subparagraph.

(2) For each adjustment occurring on July 1, the following applicable amount determined as follows:

(a) Fifteen dollars where the member's retirement date was less than five years prior to the effective date of the adjustment.

(b) Twenty dollars where the member's retirement date was at least five years, but less than ten years, prior to the effective date of the adjustment.

(c) Twenty-five dollars where the member's retirement date was at least ten years, but less than fifteen years, prior to the effective date of the adjustment.

(d) Thirty dollars where the member's retirement date was at least fifteen years, but less than twenty years, prior to the effective date of the adjustment.

(e) Thirty-five dollars where the member's retirement date was at least twenty years prior to the effective date of the adjustment.

As of July 1 and January 1 of each year, the monthly pension payable to each surviving child under the provisions of subsections 8, 9, and 12 of this section shall be adjusted to equal six percent of the monthly earnable compensation payable in the month for which the adjustment is made to an active member having the rank of senior patrol officer of the Iowa state patrol.

b. All monthly pensions adjusted as provided in this subsection shall be payable beginning on the first of the month in which the adjustment is made and shall continue in effect until the next following month in which an adjustment is made pursuant to this subsection at which time the monthly pensions shall again be adjusted in accordance with paragraph *"a"* of this subsection.

c. The adjustment of pensions required by this subsection shall recognize the retired or deceased member's position on the salary scale within the member's rank at the time of the member's retirement or death. In the event that the rank or position held by the retired or deceased member at the time of retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department.

d. A retired member eligible for benefits under the provisions of subsection 1 is not eligible for the annual readjustment of pensions provided in this subsection unless the member served at least twenty-two years prior to the member's termination of employment.

15. *Remarriage of surviving spouse.* Effective July 1, 1990, for a member who died prior to July 1, 1988, if the member's surviving spouse remarried prior to July 1, 1988, the remarriage does not make the spouse ineligible under subsection 8, paragraph *"c"*, subparagraphs (1) and (2), to receive benefits under subsections 8, 9, 12, and 14.

16. *Line of duty death benefit.*

a. If, upon the receipt of evidence and proof that the death of a member in service was the direct and proximate result of a traumatic personal injury incurred in the line of duty, the board of trustees decides that death was so caused, there shall be paid, to a person authorized to receive an accidental death benefit as provided in subsection 9, the amount of one hundred thousand dollars, which shall be payable in a lump sum.

b. A line of duty death benefit shall not be payable under this subsection if any of the following applies:

(1) The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the member's death.

(2) The death was caused by the intentional misconduct of the member or by the member's intent to cause the member's own death.

(3) The member was voluntarily intoxicated at the time of death.

(4) The member was performing the member's duties in a grossly negligent manner at the time of death.

(5) An individual who would otherwise be entitled to a benefit under this subsection was, through the individual's actions, a substantial contributing factor to the member's death.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.6; 82 Acts, ch 1261, §3 – 8]

84 Acts, ch 1285, §2; 86 Acts, ch 1243, §1, 2; 88 Acts, ch 1242, §3 – 6; 90 Acts, ch 1240, §3 – 9; 91 Acts, ch 41, §1; 92 Acts, ch 1201, §2 – 5; 92 Acts, ch 1232, §507; 94 Acts, ch 1183, §6 – 8; 96 Acts, ch 1178, §1, 2; 96 Acts, ch 1187, §83 – 91; 98 Acts, ch 1074, §13 – 16; 98 Acts, ch 1183, §1 – 6; 2000 Acts, ch 1077, §3 – 6, 9; 2002 Acts, ch 1135, §2, 3, 6

2000 amendment to subsection 8, paragraph b, is effective April 12, 2000, and is retroactively applicable on and after July 1, 1996; 2000 Acts, ch 1077, §9

2002 amendment to subsection 6, paragraph c, takes effect April 26, 2002, and applies retroactively to July 1, 1998; 2002 Acts, ch 1135, §6

Subsection 6, paragraph c amended

Subsection 14 amended

97A.6A Optional retirement benefits.

In lieu of the retirement benefits otherwise provided upon service retirement for members of the system and the members' beneficiaries, members may elect to receive an optional retirement benefit during the member's lifetime and have the optional retirement benefit, or a designated fraction of the optional retirement benefit, continued and paid to the member's beneficiary after the member's death and during the lifetime of the beneficiary.

The member shall make the election request in writing to the board of trustees at the time of the

member's service retirement. The election is subject to the approval of the board of trustees. If the member is married, the election of an option under this section requires the written acknowledgment of the member's spouse.

A member's optional retirement benefits shall be the actuarial equivalent of the amount of the retirement benefits payable to the member and the member's beneficiaries under the service retirement provisions of this chapter. The actuarial equivalent shall be based on the mortality and interest assumptions set out in section 97A.5.

If the member dies without a beneficiary prior to receipt in benefits of an amount equal to the total amount remaining to the member's credit at the time of separation from service, the election is void.

If the member dies with a beneficiary and the beneficiary subsequently dies prior to receipt in retirement benefits by both the member and the beneficiary of an amount equal to the total amount remaining to the member's credit at the time of separation from service, the election remains valid.

For the purpose of this section, *"beneficiary"* means a spouse, child, or a dependent parent.

90 Acts, ch 1240, §10

97A.6B Rollovers of members' accounts.

1. As used in this section, unless the context otherwise requires:

a. "Direct rollover" means a payment by the system to the eligible retirement plan specified by the member or the member's surviving spouse.

b. "Eligible retirement plan" means either of the following that accepts an eligible rollover distribution from a member or a member's surviving spouse:

(1) An individual retirement account in accordance with section 408(a) of the federal Internal Revenue Code.

(2) An individual retirement annuity in accordance with section 408(b) of the federal Internal Revenue Code.

In addition, an *"eligible retirement plan"* includes an annuity plan in accordance with section 403(a) of the federal Internal Revenue Code, or a qualified trust in accordance with section 401(a) of the federal Internal Revenue Code, that accepts an eligible rollover distribution from a member.

c. "Eligible rollover distribution" means all or any portion of a member's account, except that an eligible rollover distribution does not include any of the following:

(1) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or made for a specified period of ten years or more.

(2) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the federal Internal Revenue Code.

(3) The portion of any distribution that is not includible in the gross income of the distributee, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(4) A distribution of less than two hundred dollars of taxable income.

2. Effective January 1, 1993, a member or a member's surviving spouse may elect, at the time and in the manner prescribed in rules adopted by the board of trustees, to have the system pay all or a portion of an eligible rollover distribution directly to an eligible retirement plan, specified by the member or the member's surviving spouse, in a direct rollover. If a member or a member's surviving spouse elects a partial direct rollover, the amount of funds elected for the partial direct rollover must equal or exceed five hundred dollars.

94 Acts, ch 1183, §9

97A.7 Management of funds.

1. The board of trustees shall be the trustees of the several funds created by this chapter as provided in section 97A.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations and restrictions imposed by subsection 2 of this section, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds. The board of trustees may authorize the treasurer of state to exercise any of the duties of this section. When so authorized the treasurer of state shall report any transactions to the board of trustees at its next monthly meeting.

2. The several funds created by this chapter may be invested in any investments authorized for the Iowa public employees' retirement system in section 97B.7A.

3. The treasurer of the state shall be the custodian of the several funds. All payments from said funds shall be made by the treasurer only upon vouchers signed by two persons designated by the board of trustees. A duly attested copy of the resolution of the board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer of state as the treasurer's authority for making payments on such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the board of trustees.

4. A member of the board of trustees or an employee of the department of personnel shall not have a direct interest in the gains or profits of any investment made by the board of trustees. A trust-

ee shall not receive any pay or emolument for the trustee's services. A trustee or employee of the department of personnel shall not directly or indirectly use the assets of the system except to make current and necessary payments as authorized by the board of trustees, nor shall a trustee or employee of the department of personnel become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board of trustees.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.7]

86 Acts, ch 1245, §248; 96 Acts, ch 1187, §92; 97 Acts, ch 23, §9; 2001 Acts, ch 68, §6, 24

2001 amendment to subsection 2 takes effect July 1, 2002; 2001 Acts, ch 68, §24

Subsection 2 amended

97A.8 Method of financing.

All the assets of the system created and established by this chapter shall be credited according to the purpose for which they are held to one of three funds, namely, the pension accumulation fund, the pension reserve fund, and the expense fund.

1. *Pension accumulation fund.* The pension accumulation fund shall be the fund in which shall be accumulated all moneys for the payment of all pensions and other benefits payable from contributions made by the state and from which shall be paid the lump-sum death benefits for all members payable from the said contributions. Contributions to and payments from the pension accumulation fund shall be as follows:

a. On account of each member there shall be paid annually into the pension accumulation fund by the state of Iowa an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by annual actuarial valuations.

b. On the basis of the rate of interest and of the mortality, interest, and other tables adopted by the board of trustees, the board of trustees, upon the advice of the actuary hired by the board for that purpose, shall make each valuation required by this chapter and shall immediately after making such valuation, determine the "normal contribution rate". The normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the sum of the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of the rate of interest and of mortality and service tables adopted by the board of trustees, all reduced by the employee contribution made pursuant to this subsection. However, the normal rate of contribution shall not be less than seventeen percent. The normal rate of contribution shall be determined by the board of trustees after each valuation. To assist in determining the normal rate of contribution, the board of trustees may adopt a smoothing method for valuing the assets of the system. The smoothing method is designed to reduce changes in the normal contribution rate which could result from fluctuations in the market value of the assets of the system.

c. The total amount payable in each year to the pension accumulation fund shall not be less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year. However, the aggregate payment by the state shall be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the state shall be paid from the pension accumulation fund.

e. Upon the retirement or death of a member an amount equal to the pension reserve on any pension payable to the member or on account of the member's death shall be transferred from the pension accumulation fund to the pension reserve fund.

f. Except as otherwise provided in paragraph *"h"*:

(1) An amount equal to three and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1989.

(2) An amount equal to four and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1990.

(3) An amount equal to five and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1991.

(4) An amount equal to six and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1992.

(5) An amount equal to seven and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1993.

(6) An amount equal to eight and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal period beginning July 1, 1994, through December 31, 1994, and an amount equal to eight and thirty-five hundredths percent of each member's

compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal period beginning January 1, 1995, through June 30, 1995.

(7) An amount equal to nine and thirty-five hundredths percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1995.

(8) Notwithstanding any other provision of this chapter, beginning July 1, 1996, and each fiscal year thereafter, an amount equal to the member's contribution rate times each member's compensation shall be paid to the pension accumulation fund from the earnable compensation of the member. For the purposes of this subparagraph, the member's contribution rate shall be nine and thirty-five hundredths percent. However, the system shall increase the member's contribution rate as necessary to cover any increase in cost to the system resulting from statutory changes which are enacted by any session of the general assembly meeting after January 1, 1995, if the increase cannot be absorbed within the contribution rates otherwise established pursuant to this paragraph, but subject to a maximum employee contribution rate of eleven and three-tenths percent. After the employee contribution reaches eleven and three-tenths percent, sixty percent of the additional cost of such statutory changes shall be paid by the employer under paragraph *"c"* and forty percent of the additional cost shall be paid by employees under this paragraph.

g. The board of trustees shall certify to the director of revenue and finance and the director of revenue and finance shall cause to be deducted from the earnable compensation of each member the contribution required under this subsection and shall forward the contributions to the board of trustees for recording and for deposit in the pension accumulation fund.

The deductions provided for under this subsection shall be made notwithstanding that the minimum compensation provided by law for any member is reduced. Every member is deemed to consent to the deductions made under this section.

h. Notwithstanding the provisions of paragraph *"f"*, the following transition percentages apply to members' contributions as specified:

(1) For members who on July 1, 1990, have attained the age of forty-nine years or more, an amount equal to nine and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal period beginning July 1, 1990, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

(2) For members who on July 1, 1990, have attained the age of forty-eight years but have not attained the age of forty-nine years, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, and an amount equal to nine and one-tenth percent shall be paid for the fiscal period beginning July 1, 1991, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

(3) For members who on July 1, 1990, have attained the age of forty-seven years but have not attained the age of forty-eight years, an amount equal to seven and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, and an amount equal to nine and one-tenth percent shall be paid for the fiscal period beginning July 1, 1992, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

(4) For members who on July 1, 1990, have attained the age of forty-six years but have not attained the age of forty-seven years, an amount equal to six and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to seven and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, an amount equal to eight and one-tenth percent shall be paid for the fiscal period beginning July 1, 1992, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

(5) For members who on July 1, 1990, have attained the age of forty-five years but have not attained the age of forty-six years, an amount equal to five and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to six and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, and an amount equal to seven and one-tenth percent shall be paid for the fiscal period beginning July 1, 1992, through October 15, 1992. Commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

i. (1) Notwithstanding paragraph *"g"* or other provisions of this chapter, beginning January 1, 1995, for federal income tax purposes, and beginning January 1, 1999, for state income tax purposes, member contributions required under paragraph *"f"* or *"h"* which are picked up by the department shall be considered employer contributions for federal and state income tax purposes, and the department shall pick up the member contributions to be made under paragraph *"f"* or *"h"* by its employees. The department shall pick up these contributions by reducing the salary of each of its employees covered by this chapter by the amount

which each employee is required to contribute under paragraph *"f"* or *"h"* and shall certify the amount picked up in lieu of the member contributions to the department of revenue and finance. The department of revenue and finance shall forward the amount of the contributions picked up to the board of trustees for recording and deposit in the pension accumulation fund.

(2) Member contributions picked up by the department under subparagraph (1) shall be treated as employer contributions for federal and state income tax purposes only and for all other purposes of this chapter shall be treated as employee contributions and deemed part of the employee's earnable compensation or salary.

2. *Pension reserve fund.* The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members or to their beneficiaries and from which such pensions and benefits in lieu thereof shall be paid. Should a beneficiary retired on account of disability be restored to active service and again become a member of the system, the member's pension reserve shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of a disability beneficiary be reduced as a result of an increase in the beneficiary's amount earned, the amount of the annual reduction in the beneficiary's pension shall be paid annually into the pension accumulation fund during the period of such reduction.

3. *Expense fund.* The expense fund shall be the fund to which shall be credited all money provided by the state of Iowa to pay the administration expenses of the system and from which shall be paid all the expenses necessary in connection with the administration and operation of the system. Biennially the board of trustees shall estimate the amount of money necessary to be paid into the expense fund during the ensuing biennium to provide for the expense of operation of the system. Investment management expenses shall be charged to the investment income of the system and there is appropriated from the system an amount required for the investment management expenses. The board of trustees shall report the investment management expenses for the fiscal year as a percent of the market value of the system.

For purposes of this subsection, investment management expenses are limited to the following:

a. Fees for investment advisors, consultants, and investment management and benefit consultant firms hired by the board of trustees in administering this chapter.

b. Fees and costs for safekeeping fund assets.

c. Costs for performance and compliance monitoring, and accounting for fund investments.

d. Any other costs necessary to prudently invest or protect the assets of the fund.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.8; 82 Acts, ch 1261, §9]

84 Acts, ch 1180, §8; 90 Acts, ch 1240, §11, 12; 94 Acts, ch 1183, §10 – 12; 96 Acts, ch 1187, §93 – 96; 98 Acts, ch 1174, §1, 6; 2000 Acts, ch 1077, §7, 8

97A.9 Military service exceptions.

A member who is absent from duty as a peace officer while serving in the armed services of the United States or its allies and is discharged or separated from service in the armed forces under honorable conditions shall have the period of absence while serving in the armed services on other than a voluntary basis and one period of absence, not in excess of four years, while serving in the armed forces on a voluntary basis, included as part of the member's period of service in the department. The member is not required to continue the contributions required of the member under section 97A.8, during the period of military service, if the member, within one year after the member has been discharged or separated under honorable conditions from military service returns, and resumes the member's duties in the department, and if the member is declared physically capable to resume those duties upon examination by the medical board.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.9]

88 Acts, ch 1242, §7

97A.10 Repealed by 78 Acts, ch 1060, § 62.

97A.11 Contributions by the state.

On or before the first day of November in each year, the board of trustees shall certify to the director of revenue and finance the amounts which will become due and payable during the year next following to the pension accumulation fund and the expense fund. The amounts so certified shall be paid by the director of revenue and finance out of the funds appropriated for the Iowa department of public safety, to the treasurer of state, the same to be credited to the system for the ensuing year.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.11]

97A.12 Exemption from execution and other process or assignment — exceptions.

The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under this chapter, and the moneys in the various funds created under this chapter, are not subject to execution, garnishment, attachment, or any other process whatsoever, and are unassignable except for the purposes of enforcing child, spousal, or medical support obligations or marital property orders, or as otherwise specifically provided in this chapter. For the purposes of enforcing child, spousal, or medical support obligations, the garnish-

ment or attachment of or the execution against compensation due a person under this chapter shall not exceed the amount specified in 15 U.S.C. § 1673(b).

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.12]

89 Acts, ch 228, §1; 96 Acts, ch 1187, §97

97A.13 Protection against fraud.

Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the system in any attempt to defraud the system as a result of such act, shall be guilty of a fraudulent practice. Should any change or error in records result in any member or beneficiary receiving from the system more or less than the person would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled, shall be paid.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97A.13]

97A.14 Hospitalization and medical attention.

The board of trustees shall provide hospital, nursing, and medical attention for the members in service when injured while in the performance of their duties and shall continue to provide hospital, nursing, and medical attention for injuries or diseases incurred while in the performance of their duties for the members receiving a retirement allowance under section 97A.6, subsection 6. The cost of hospital, nursing, and medical attention shall be paid out of the expense fund. However, any amounts received by the injured person under the workers' compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by the board of trustees provisions of this section.

[C73, 75, 77, 79, 81, §97A.14]

97A.14A Liability of third parties — subrogation.

1. If, on or after July 1, 2002, a member receives an injury or dies for which benefits are payable under section 97A.6, subsection 3, 5, 8, or 9, or section 97A.14, and if the injury or death is caused under circumstances creating a legal liability for damages against a third party other than the system, the system, the member, or the member's dependent or the trustee of the dependent may maintain an action for damages against the third party as provided by this section. If a member, the member's dependent, or the trustee of the dependent commences such an action, the plaintiff member, dependent, or trustee shall serve a copy of the original notice upon the system not less than ten days before the trial of the action, but a failure to serve the notice does not prejudice the rights of the system, and the following rights and duties ensue:

a. The system shall be indemnified out of the recovery of damages to the extent of benefit payments made by the system, with legal interest, except that the attorney fees and expenses of the plaintiff member, dependent, or trustee may be first allowed by the district court.

b. The system has a lien on the damage claim against the third party and on any judgment on the damage claim for benefits for which the system is liable. In order to continue and preserve the lien, the system shall file a notice of the lien within thirty days after receiving a copy of the original notice in the office of the clerk of the district court in which the action is filed.

2. If a member, the member's dependent, or the trustee of the dependent fails to bring an action for damages against a third party within ninety days after the system, through the board of trustees, requests the member, the member's dependent, or the trustee of the dependent in writing to do so, then the system is subrogated to the rights of the member and may, by action of the board of trustees, maintain the action against the third party, and may recover damages for the injury or death to the same extent that the member, the member's dependent, or the trustee of the dependent may recover damages for the injury or death. If the system recovers damages in the action, the court shall enter judgment for distribution of the recovery as follows:

a. A sum sufficient to repay the system for the amount of such benefits actually paid by the system up to the time of the entering of the judgment.

b. A sum sufficient to pay the system the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of such benefits for which the system is liable until the member attains the age of fifty-five, but the sum is not a final adjudication of the future payment which the member is entitled to receive.

c. Any balance of the recovery remaining after distribution of the recovery pursuant to paragraphs *"a"* and *"b"* shall be paid to the member or the member's beneficiary.

3. Before a settlement is effective between the system and a third party who is liable for any injury, the member, the member's dependent, or the trustee of the dependent must consent in writing to the settlement; and if the settlement is between the member, the member's dependent, or the trustee of the dependent and a third party, the system must consent in writing to the settlement; or on refusal to consent, in either case, the workers' compensation commissioner must consent in writing to the settlement.

4. For purposes of subrogation under this section, a payment made to an injured member, the

member's guardian, or the member's legal representative, by or on behalf of a third party or the third party's principal or agent, who is liable for, connected with, or involved in causing the injury or death to the member, shall be considered paid as damages because the injury or death was caused under circumstances creating a legal liability against the third party, whether the payment is made under a covenant not to sue, compromise settlement, denial of liability, or is otherwise made.

5. All funds recovered by the system under this section shall be deposited in the pension accumulation fund created in section 97A.8.

2002 Acts, ch 1135, §4
NEW section

97A.15 Vested and retired members before July 1, 1979 — annuity or withdrawal of contributions.

1. Members who became vested and terminated service prior to July 1, 1979, and members receiving an annuity from accumulated contributions made prior to July 1, 1979, shall continue to receive the benefits the member was entitled to under the provisions of this chapter, as this chapter was effective on the date of the member's retirement or vested termination.

2. For the purposes of this section:

a. "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to the member's individual account in the annuity savings fund together with regular interest thereon as provided in this subsection. Accumulated contributions do not include any amount deducted from the compensation of a member and credited to the pension accumulation fund.

b. "Annuity" means annual payments for life derived from the accumulated contributions of a member. All annuities shall be payable in monthly installments.

c. "Annuity reserve" shall mean the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

d. "Annuity savings fund" means the account maintained by the board of trustees in which the accumulated contributions of the members were deposited prior to July 1, 1979, to provide for their annuities.

e. "Annuity reserve fund" means the account maintained by the board of trustees from which shall be paid all annuities and all benefits in lieu of annuities payable as provided in this chapter as this chapter was effective on June 30, 1978.

f. "Regular interest" means interest at the rate of four percent per annum, compounded annually and credited to the member's account as of the date of the member's retirement or termination from employment.

g. "Member who became vested" and *"vested member"* mean a member who has been a member of the retirement system four or more years and is entitled to benefits under this chapter.

3. Beginning July 1, 1979, the board of trustees shall maintain and invest funds in the annuity reserve fund and the annuity savings fund which had been contributed by members prior to July 1, 1979. Members receiving an annuity as a portion of their retirement or disability benefits on June 30, 1979, shall continue to receive such annuity from the annuity reserve fund maintained by the board of trustees. Members receiving an annuity, if re-employed under service covered by this chapter, shall cease to receive retirement benefits.

4. The accumulated contributions of a member withdrawn by the member or paid to the member's estate or designated beneficiary in the event of the member's death shall be paid from the annuity savings fund account. Upon the retirement of a member, the member's accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

5. A member of the retirement system prior to July 1, 1979, with fifteen or more years of service whose employment was terminated prior to retirement, other than by death or disability, is entitled to receipt of the member's accumulated contributions upon retirement together with other retirement benefits provided in the law on the date of the member's retirement.

6. Any member in service prior to July 1, 1979, may at the time of retirement withdraw the member's accumulated contributions made before July 1, 1979, or receive an annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of the member's retirement.

7. Notwithstanding subsections 1, 3, 4, 5, and 6 of this section, an active or vested member may request in writing and receive from the board of trustees, the member's accumulated contributions from the annuity savings' fund at the discretion of the board of trustees and remain eligible to receive benefits under section 97A.6. However, a member with fifteen or more years of service prior to July 1, 1979, is not eligible for a service retirement allowance under section 97A.6 if the member withdrew the member's accumulated contributions from the annuity savings fund prior to July 1, 1979, except as provided in section 97A.4. However, the board shall not liquidate securities at a loss for the sole purpose of returning the accumulated contributions to the members. All requested accumulated contributions shall be returned prior to July 1, 1984.

8. The actuary shall annually determine the amount required in the annuity reserve fund. If the amount required is less than the amount in the annuity reserve fund, the board of trustees shall transfer the excess funds from the annuity reserve

fund to the pension accumulation fund. If the amount required is more than the amount in the annuity reserve fund, the board of trustees shall transfer the amount prescribed by the actuary to the annuity reserve fund from the pension accumulation fund.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §97A.1(10, 11, 15, 18), 97A.8(1, 2); C79, 81, §97A.15]

90 Acts, ch 1240, §13

97A.16 Withdrawal of contributions — repayment.

1. Commencing July 1, 1990, if an active member, in service on or after that date, terminates service, other than by death or disability, the member may elect to withdraw the member's contributions under section 97A.8, subsection 1, paragraphs *"f"* and *"h"*, together with interest thereon at a rate determined by the board of trustees. If a member withdraws contributions as provided in this section, the member shall be deemed to have waived all claims for other benefits from the system for the period of membership service for which the contributions are withdrawn.

2. A layoff for an indefinite period of time shall be deemed to be a termination of service for the purposes of this section. A member who withdraws the member's contributions as provided in this section following a layoff for an indefinite period of time and who is subsequently recalled to service may repay the contributions. The contributions repaid by the member for such service shall be equal to the amount of contributions withdrawn, plus interest computed based upon the investment interest rate assumption established by the board of trustees as of the time the contributions are repaid. However, the member must make the contributions within two years of the date of the member's return to service. The period of membership service for which contributions are repaid shall be treated as though the contributions were never withdrawn.

90 Acts, ch 1240, §14; 93 Acts, ch 44, §2

97A.17 Optional transfers with chapter 411.

1. For purposes of this section unless the context otherwise requires:

a. "Average accrued benefit" means the average of the amounts representing the present value of the accrued benefit earned by the member determined by the former system and the present value of the accrued benefit earned by the member determined by the current system.

b. "Current system" means the eligible retirement system in which a person has commenced employment covered by the system after having terminated employment covered by the former system.

c. "Eligible retirement system" means the system created under this chapter and the statewide fire and police retirement system established in chapter 411.

d. "Former system" means the eligible retirement system in which a person has terminated employment covered by the system prior to commencing employment covered by the current system.

2. Commencing July 1, 1996, a vested member of an eligible retirement system who terminates employment covered by one eligible retirement system and, within one year, commences employment covered by the other eligible retirement system may elect to transfer the average accrued benefit earned from the former system to the current system. The member shall file an application with the current system for transfer of the average accrued benefit within ninety days of the commencement of employment with the current system.

3. Notwithstanding subsection 2, a vested member whose employment with the current system commenced prior to July 1, 1996, may elect to transfer the average accrued benefit earned under the former system to the current system by filing an application with the current system for transfer of the average accrued benefit on or before July 1, 1997.

4. Upon receipt of an application for transfer of the average accrued benefit, the current system shall calculate the average accrued benefit and the former system shall transfer to the current system assets in an amount equal to the average accrued benefit. Once the transfer of the average accrued benefit is completed, the member's service under the former system shall be treated as membership service under the current system for purposes of this chapter and chapter 411.

96 Acts, ch 1187, §98; 2002 Acts, ch 1135, §5, 6

2002 amendment to subsection 2 takes effect April 26, 2002, and applies retroactively to July 1, 1996; 2002 Acts, ch 1135, §6

Subsection 2 amended

CHAPTER 97B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

Ch 97, Code 1950, repealed by 53 Acts, ch 71, with certain rights preserved; see §97.50 through 97.53
Continuation of rules adopted by department of personnel prior to July 1, 2002; 2001 Acts, ch 68, §22, 24
Study to consider implementation of deferred retirement option program (DROP); report; 2002 Acts, ch 1135, §39
Study to consider option for terminating, vested members to roll over contributions into individual accounts; report; 2002 Acts, ch 1135, §40

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97B.1 System created — organizational definitions.

1. The *"Iowa Public Employees' Retirement System"* is created. The Iowa public employees' retirement system division, a separate and distinct division within the department of personnel, shall administer the system.

2. As used in this chapter unless the context requires otherwise:

a. *"Board"* means the investment board created by section 97B.8A.

b. *"Chief executive officer"* means the chief executive officer of the Iowa public employees' retirement system division, notwithstanding section 7E.2, subsection 3, paragraph *"c"*, subparagraph (1).

c. *"Committee"* means the benefits advisory committee created by section 97B.8B.

d. *"Division"* means the Iowa public employees' retirement system division.

e. *"System"* means the Iowa public employees' retirement system.

[C46, 50, §97.1; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.1]

86 Acts, ch 1245, §249; 92 Acts, ch 1201, §6; 2001 Acts, ch 68, §7, 24

For additional definitions, see §97B.1A
2001 amendments take effect July 1, 2002; 2001 Acts, ch 68, §24
Section amended

97B.1A Definitions.

When used in this chapter:

1. *"Abolished system"* means the Iowa old-age and survivors' insurance system repealed by sections 97.50 to 97.53.

2. *"Accumulated contributions"* means the total obtained as of any date, by accumulating each individual contribution by the member with interest plus interest dividends as provided in section 97B.70, for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70.

2A. *"Accumulated employer contributions"* means an amount equal to the total obtained as of any date, by accumulating each individual contribution by the employer for the member with interest plus interest dividends as provided in section 97B.70, for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70.

3. *"Active member"* during a calendar year means a member who made contributions to the system at any time during the calendar year and who:

a. Had not received or applied for a refund of the member's accumulated contributions for withdrawal or death, and

b. Had not commenced receiving a retirement allowance.

4. *"Actuarial equivalent"* means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the division.

5. *"Beneficiary"* means the person or persons who are entitled to receive any benefits payable under this chapter at the death of a member, if the person or persons have been designated on a form provided by the division and filed with the division. If no such designation is in effect at the time of death of the member or if no person so designated is living at that time, then the beneficiary is the estate of the member.

6. *"Bona fide retirement"* means a retirement by a vested member which meets the requirements of section 97B.52A and in which the mem-

ber is eligible to receive benefits under this chapter.

7. *"Contributions"* means the payments to the fund required herein, by the employer and by the members, to provide the benefits of the system.

8. *"Employee"* means an individual who is employed as defined in this chapter for whom coverage under this chapter is mandatory.

a. *"Employee"* shall also include any of the following individuals who do not elect out of coverage under this chapter pursuant to section 97B.42A:

(1) Elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions. An elective official covered under this section may terminate membership under this chapter by informing the division in writing of the expiration of the member's term of office or by informing the division of the member's intent to terminate membership for employment as an elective official and establishing that the member has a bona fide termination of employment from all employment covered under this chapter other than as an elective official and that the member has filed a completed application for benefits form with the division. A county attorney is an employee for purposes of this chapter whether that county attorney is employed on a full-time or part-time basis.

(2) Members of the general assembly of Iowa and temporary employees of the general assembly of Iowa. A member of the general assembly covered under this chapter may terminate membership under this chapter by informing the division in writing of the member's intent to terminate membership.

Temporary employees of the general assembly covered under this chapter may terminate membership by sending written notification to the division of their separation from service.

(3) Nonvested employees of drainage and levee districts.

(4) Employees of a community action program determined to be an instrumentality of the state or a political subdivision.

(5) Magistrates.

(6) Members of the ministry, rabbinate, or other religious order who have taken the vow of poverty.

(7) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in chapter 372 or chapter 420.

(8) Members of the state transportation commission, the board of parole, and the state health facilities council.

(9) Employees appointed by the state board of regents who do not elect coverage in a retirement system qualified by the state board of regents that meets the criteria of section 97B.2.

(10) Persons employed by the board of trustees for the statewide fire and police retirement system established in section 411.36.

(11) Persons employed by a municipal water utility or waterworks that has established a pension and annuity retirement system for its employees pursuant to chapter 412.

b. *"Employee"* does not mean the following individuals:

(1) Individuals who are enrolled as students and whose primary occupations are as students who are incidentally employed by employers.

(2) Graduate medical students while serving as interns or resident doctors in training at any hospital, or county medical examiners and deputy county medical examiners under chapter 331, division V, part 8, who are not full-time county employees.

(3) Employees hired for temporary employment of less than six consecutive months or one thousand forty hours in a calendar year. An employee who works for an employer for six or more consecutive months or who works for an employer for more than one thousand forty hours in a calendar year is not a temporary employee under this subparagraph. Adjunct instructors are temporary employees for the purposes of this chapter. As used in this section, unless the context otherwise requires, *"adjunct instructors"* means instructors employed by a community college or a university governed by the state board of regents without a continuing contract, whose teaching load does not exceed one-half time for two full semesters or three full quarters per calendar year.

(4) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants, and specialists in their field of specialized knowledge or skill.

(5) Employees of the Iowa dairy industry commission established under chapter 179, the Iowa beef cattle producers association established under chapter 181, the Iowa pork producers council established under chapter 183A, the Iowa turkey marketing council established under chapter 184A, the Iowa soybean promotion board established under chapter 185, the Iowa corn promotion board established under chapter 185C, and the Iowa egg council established under chapter 184.

(6) Judicial hospitalization referees appointed under section 229.21.

(7) Employees of an area agency on aging, if as of July 1, 1994, the agency provides for participation by all of its employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code.

(8) Persons employed through any program described in section 84A.7 and provided by the Iowa conservation corps.

(9) Persons employed by the Iowa student loan liquidity corporation.

9. *"Employer"* means the state of Iowa, the counties, municipalities, agencies, public school districts, all political subdivisions, and all of their

departments and instrumentalities, including area agencies on aging, other than those employing persons as specified in subsection 8, paragraph *"b"*, subparagraph (7), and joint planning commissions created under chapter 28E or 28I.

If an interstate agency is established under chapter 28E and similar enabling legislation in an adjoining state, and an employer had made contributions to the system for employees performing functions which are transferred to the interstate agency, the employees of the interstate agency who perform those functions shall be considered to be employees of the employer for the sole purpose of membership in the system, although the employer contributions for those employees are made by the interstate agency.

10. *"Employment for any calendar quarter"* means any service performed under an employer-employee relationship under this chapter for which wages are reported in the calendar quarter. For the purposes of this chapter, elected officials are deemed to be in employment for all quarters of the elected officials' respective terms of office, even if the elected officials have selected a method of payment of wages which results in the elected officials not being credited with wages every quarter of a year.

11. *"First month of entitlement"* means the first month for which a member is qualified to receive retirement benefits under this chapter. Effective January 1, 1995, a member who meets all of the following requirements is qualified to receive retirement benefits under this chapter:

a. Has attained the minimum age for retirement.

b. If the member has not attained seventy years of age, has terminated all employment covered under the chapter or formerly covered under the chapter pursuant to section 97B.42.

c. Has filed a completed application for benefits.

d. Has survived into the month for which the member's first retirement allowance is payable by the system.

12. *"Inactive member"* with respect to future service means a member who at the end of a year had not made any contributions during the current year and who has not received a refund of the member's accumulated contributions.

13. *"Internal Revenue Code"* means the Internal Revenue Code as defined in section 422.3.

14. *"Member"* means an employee or a former employee who maintains the employee's or former employee's accumulated contributions in the system. The former employee is not a member if the former employee has received a refund of the former employee's accumulated contributions.

14A. *"Member account"* means the account established for each member and includes the member's accumulated contributions and the member's share of the accumulated employer contributions as provided in section 97B.53. *"Member account"* does not mean the supplemental account for active members.

15. *"Membership service"* means service rendered by a member after July 4, 1953. Years of membership service shall be counted to the complete quarter calendar year. However, membership service for a calendar year shall not include more than four quarters. In determining a member's period of membership service, the division shall combine all periods of service for which the member has made contributions.

16. *"Prior service"* means any service by an employee rendered at any time prior to July 4, 1953.

17. *"Regular service"* means service for an employer other than special service.

18. *"Retired member"* means a member who has applied for the member's retirement allowance and has survived into at least the first day of the member's first month of entitlement.

19. *"Retirement"* means that period of time beginning when a member who has filed an approved application for a retirement allowance has survived into at least the first day of the member's first month of entitlement and ending when the member dies.

20. *"Service"* means service under this chapter by an employee, except an elected official, for which the employee is paid covered wages. Service shall also mean the following:

a. Service in the armed forces of the United States, if the employee was employed by a covered employer immediately prior to entry into the armed forces, and if the employee was released from service and returns to covered employment with an employer within twelve months of the date on which the employee has the right of release from service or within a longer period as required by the applicable laws of the United States.

b. Leave of absence authorized by the employer prior to July 1, 1998, for a period not exceeding twelve months and ending no later than July 1, 1999.

c. A leave of absence authorized pursuant to the requirements of the federal Family and Medical Leave Act of 1993, or other similar leave authorized by the employer for a period not to exceed twelve weeks in any calendar year.

d. Temporary or seasonal interruptions in service for employees of a school corporation or educational institution when the temporary suspension of service does not terminate the period of employment of the employee and the employee returns to service at a school corporation or educational institution upon the end of the temporary or seasonal interruption.

21. *"Service"* for an elected official means the period of membership service for which contributions are made beginning on the date an elected official assumes office and ending on the expiration date of the last term the elected official serves, excluding all the intervening periods during which

the elected official is not an elected official.

22. *"Special service"* means service for an employer while employed in a protection occupation as provided in section 97B.49B, and as a county sheriff, deputy sheriff, or airport fire fighter as provided in section 97B.49C.

22A. *"Supplemental account for active members"* or *"supplemental account"* means the account established for each active member under section 97B.49H.

23. *"System"* means the retirement plan as contained herein or as duly amended.

24. *a. "Three-year average covered wage"* means, for a member who retires prior to July 1, 2005, a member's covered wages averaged for the highest three years of the member's service, except as otherwise provided in this subsection. The highest three years of a member's covered wages shall be determined using calendar years. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, the division may determine the wages for the third year by computing the average quarter of all quarters from the member's highest calendar year of covered wages not being used in the selection of the two highest years and using the computed average quarter for each quarter in the third year in which no wages have been reported in combination with the final quarter or quarters of the member's service to create a full year. However, the division shall not use the member's final quarter of wages if using that quarter would reduce the member's three-year average covered wage. If the three-year average covered wage of a member exceeds the highest maximum covered wages in effect for a calendar year during the member's period of service, the three-year average covered wage of the member shall be reduced to the highest maximum covered wages in effect during the member's period of service. Notwithstanding any other provision of this paragraph to the contrary, a member's wages for the third year as computed by this paragraph shall not exceed, by more than three percent, the member's highest actual calendar year of covered wages for a member whose first month of entitlement is January 1999 or later.

b. Notwithstanding any other provisions of this subsection to the contrary, the three-year average covered wage shall be computed as follows for the following members:

(1) For a member who retires during the calendar year beginning January 1, 1997, and whose three-year average covered wage at the time of retirement exceeds forty-eight thousand dollars, the member's covered wages averaged for the highest four years of the member's service or forty-eight thousand dollars, whichever is greater.

(2) For a member who retires during the calendar year beginning January 1, 1998, and whose three-year average covered wage at the time of retirement exceeds fifty-two thousand dollars, the member's covered wages averaged for the highest five years of the member's service or fifty-two thousand dollars, whichever is greater.

(3) For a member who retires during the calendar year beginning January 1, 1999, and whose three-year average covered wage at the time of retirement exceeds fifty-five thousand dollars, the member's covered wages averaged for the highest six years of the member's service or fifty-five thousand dollars, whichever is greater.

(4) For a member who retires on or after January 1, 2000, but before January 1, 2001, and whose three-year average covered wage at the time of retirement exceeds sixty-five thousand dollars, the member's covered wages averaged for the highest six years of the member's service or sixty-five thousand dollars, whichever is greater.

(5) For a member who retires on or after January 1, 2001, but before January 1, 2002, and whose three-year average covered wage at the time of retirement exceeds seventy-five thousand dollars, the member's covered wages averaged for the highest six years of the member's service or seventy-five thousand dollars, whichever is greater.

For purposes of this paragraph, the highest years of the member's service shall be determined using calendar years and may be determined using one computed year calculated in the manner and subject to the restrictions provided in paragraph *"a"*.

c. "Three-year average covered wage" means, for a member who retires on or after July 1, 2005, the greater of the member's covered wages averaged for a member's highest twelve consecutive quarters of service or the member's covered wages averaged for a member's highest three calendar years of service. The division shall adopt rules to implement this paragraph in accordance with the requirements of this chapter and the federal Internal Revenue Code.

25. *a. "Vested member"* means a member who has attained through age or sufficient years of service eligibility to receive monthly retirement benefits upon the member's retirement. A vested member must meet one of the following requirements:

(1) Prior to July 1, 1965, had attained the age of forty-eight and completed at least eight years of service.

(2) Between July 1, 1965, and June 30, 1973, had completed at least eight years of service.

(3) On or after July 1, 1973, has completed at least four years of service.

(4) Has attained the age of fifty-five.

(5) On or after July 1, 1988, an inactive member who had accumulated, as of the date of the member's last termination of employment, years of membership service equal to or exceeding the years of membership service specified in this subsection for qualifying as a vested member on that date of termination.

b. "Active vested member" means an active member who has attained sufficient membership service to achieve vested status.

c. "Inactive vested member" means an inactive member who was a vested member at the time of termination of employment.

26. *a.* (1) *"Wages"* means all remuneration for employment, including, but not limited to, any of the following:

(a) The cash value of wage equivalents not necessitated by the convenience of the employer. The fair market value of such wage equivalents shall be reported to the division by the employer.

(b) The remuneration paid to an employee before employee-paid contributions are made to plans qualified under sections 125, 129, 401, 403, 408, and 457 of the Internal Revenue Code. In addition, *"wages"* includes amounts that can be received in cash in lieu of employer-paid contributions to such plans, if the election is uniformly available and is not limited to highly compensated employees, as defined in section 414(q) of the Internal Revenue Code.

(c) For an elected official, other than a member of the general assembly, the total compensation received by the elected official, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances.

(d) For a member of the general assembly, the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances paid to a member of the general assembly except as otherwise provided in this subparagraph subdivision. Wages includes per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages also includes daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly, but does not include the portion of the daily allowance which exceeds the maximum established by law for members from Polk county.

(e) Payments for compensatory time earned that are received in lieu of taking regular work hours off and when paid as a lump sum. However, *"wages"* does not include payments made in a lump sum for compensatory time earned in excess of two hundred forty hours per year.

(f) Employee contributions required under section 97B.11 and picked up by the employer under section 97B.11A.

(2) *"Wages"* does not include any of the following:

(a) The cash value of wage equivalents necessitated by the convenience of the employer.

(b) Payments made for accrued sick leave or accrued vacation leave that are not being used to replace regular work hours, whether paid in a lump sum or in installments.

(c) Payments made as an incentive for early retirement or as payment made upon dismissal or severance from employment, or a special bonus payment intended as an early retirement incentive, whether paid in a lump sum or in installments.

(d) Employer-paid contributions that cannot be received by the employee in cash and that are made to, and any distributions from, plans, programs, or arrangements qualified under section 117, 120, 125, 129, 401, 403, 408, or 457 of the Internal Revenue Code.

(e) Employer-paid contributions for coverage under, or distributions from, an accident, health, or life insurance plan, program, or arrangement.

(f) Workers' compensation and unemployment compensation payments.

(g) Disability payments.

(h) Reimbursements of employee business expenses except for those expenses included as wages for a member of the general assembly.

(i) Payments for allowances made to an employee that are not included in an employee's federal taxable income except for those allowances included as wages for a member of the general assembly.

(j) Payments of damages, attorney fees, interest, and penalties made to satisfy a grievance or wage claim.

(k) Payments for services as an independent contractor.

(l) Payments made by an entity that is not an employer under this chapter.

(m) Payments made in lieu of any employer-paid group insurance coverage.

(n) Payments made for the difference between the costs of single and family insurance coverage.

b. "Covered wages" means wages of a member during the periods of membership service as follows:

(1) For the period from July 4, 1953, through December 31, 1953, and each calendar year from January 1, 1954, through December 31, 1963, wages not in excess of four thousand dollars.

(2) For each calendar year from January 1, 1964, through December 31, 1967, wages not in excess of four thousand eight hundred dollars.

(3) For each calendar year from January 1, 1968, through December 31, 1970, wages not in excess of seven thousand dollars, for each calendar year from January 1, 1971, through December 31, 1972, wages not in excess of seven thousand eight hundred dollars, and for each calendar year from January 1, 1973, through December 31, 1975, wages not in excess of ten thousand eight hundred dollars.

(4) For each calendar year from January 1, 1976, through December 31, 1983, wages not in excess of twenty thousand dollars.

(5) For each calendar year from January 1, 1984, through December 31, 1985, wages not in excess of twenty-one thousand dollars per year.

(6) For the calendar year from January 1, 1986, through December 31, 1986, wages not in excess of twenty-two thousand dollars.

(7) For the calendar year from January 1,

1987, through December 31, 1987, wages not in excess of twenty-three thousand dollars.

(8) For the calendar year beginning January 1, 1988, and ending December 31, 1988, wages not in excess of twenty-four thousand dollars.

(9) For the calendar year beginning January 1, 1989, and ending December 31, 1989, wages not in excess of twenty-six thousand dollars.

(10) For the calendar year beginning January 1, 1990, and ending December 31, 1990, wages not in excess of twenty-eight thousand dollars.

(11) For the calendar year beginning January 1, 1991, wages not in excess of thirty-one thousand dollars.

(12) For the calendar year beginning January 1, 1992, wages not in excess of thirty-four thousand dollars.

(13) For the calendar year beginning January 1, 1993, wages not in excess of thirty-five thousand dollars.

(14) For the calendar year beginning January 1, 1994, wages not in excess of thirty-eight thousand dollars.

(15) For the calendar year beginning January 1, 1995, wages not in excess of forty-one thousand dollars.

(16) For the calendar year beginning January 1, 1996, wages not in excess of forty-four thousand dollars.

(17) Commencing with the calendar year beginning January 1, 1997, and for each subsequent calendar year, wages not in excess of the amount permitted for that year under section 401(a)(17) of the Internal Revenue Code.

Notwithstanding any other provision of this chapter providing for the payment of the benefits provided in section 97B.49B, 97B.49C, 97B.49D, or 97B.49G, the division shall establish the covered wages limitation which applies to members covered under section 97B.49B, 97B.49C, 97B.49D, or 97B.49G, at the same level as is established under this subparagraph for other members of the system.

Effective July 1, 1992, *"covered wages"* does not include wages to a member on or after the effective date of the member's retirement unless the member is reemployed, as provided under section 97B.48A.

If a member is employed by more than one employer during a calendar year, the total amount of wages paid to the member by the several employers shall be included in determining the limitation on covered wages as provided in this lettered paragraph. If the amount of wages paid to a member by the member's several employers during a calendar year exceeds the covered wage limit, the amount of such excess shall not be subject to the contributions required by section 97B.11.

27. *"Years of prior service"* means the total of all periods of prior service of a member. In computing credit for prior service, service of less than a full quarter shall be rounded up to a full quarter. Where a member had prior service as a teacher, a full year of service shall be granted that member if the member had three quarters of service and a contract for employment for the following school year.

[C46, 50, §97.1 – 97.5, 97.7 – 97.9, 97.12, 97.14, 97.18, 97.23, 97.45, 97.48; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.41; 82 Acts, ch 1261, §13 – 17]

83 Acts, ch 101, §10; 83 Acts, ch 186, §10042, 10201; 84 Acts, ch 1285, §4 – 8; 86 Acts, ch 1243, §4 – 8; 87 Acts, ch 115, §13; 87 Acts, ch 227, §18; 88 Acts, ch 1242, §21 – 30; 90 Acts, ch 1240, §16 – 23; 92 Acts, ch 1201, §24 – 35; 93 Acts, ch 44, §4; 94 Acts, ch 1183, §16 – 22, 97; 95 Acts, ch 102, §1 – 4; 96 Acts, ch 1034, §3; 96 Acts, ch 1187, §11 – 22; 98 Acts, ch 1183, §18 – 24, 77, 82

C99, §97B.1A

2000 Acts, ch 1077, §10 – 20, 76; 2001 Acts, ch 61, §15; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §7 – 11, 38

For additional definitions, see §97B.1

Inclusion in definition of wages of certain allowable employer-paid contributions paid by eligible employers to eligible employees; 2000 Acts, ch 1171, §26

2002 amendment to subsection 8, paragraph b, subparagraph (2) takes effect April 26, 2002, and applies retroactively on and after January 1, 1995; 2002 Acts, ch 1135, §38

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Subsection 8, paragraph a, subparagraph (1) amended

Subsection 8, paragraph b, subparagraph (2) amended

Subsection 8, paragraph b, NEW subparagraph (9)

Subsection 24, paragraphs a and c amended

97B.2 Purpose of chapter.

The purpose of this chapter is to promote economy and efficiency in the public service by providing an orderly means for employees, without hardship or prejudice, to have a retirement system which will provide for the payment of annuities, enabling the employees to care for themselves in retirement, and which will improve public employment within the state, reduce excessive personnel turnover, and offer suitable attraction to high-grade men and women to enter public service in the state.

[C46, 50, §97.2; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.2]

88 Acts, ch 1242, §8

97B.3 Chief executive officer — appointment and qualifications.

1. The administrator of the division is the chief executive officer. The chief executive officer shall be appointed by the governor subject to confirmation by the senate. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The governor may remove the chief executive officer for malfeasance in office, or for any cause that renders the chief executive officer ineligible, incapable, or unfit to discharge the duties of the office.

2. The qualifications for appointment as the

chief executive officer shall include management-level pension fund administration experience. The qualifications for appointment as the chief executive officer shall also include a demonstrated knowledge of all aspects of pension fund administration, including financial management, investment asset management, benefit design and delivery, legal administration, and operations administration. The chief executive officer shall not be selected on the basis of political affiliation, and while employed as the chief executive officer, shall not be a member of a political committee, participate in a political campaign, or be a candidate for a partisan elective office, and shall not contribute to a political campaign fund, except that the chief executive officer may designate on the checkoff portion of the state or federal income tax return, or both, a party or parties to which a contribution is made pursuant to the checkoff. The chief executive officer shall not hold any other office under the laws of the United States or of this or any state and shall devote full time to the duties of office.

2001 Acts, ch 68, §8, 24
Confirmation; §2.32
Section takes effect July 1, 2002; 2001 Acts, ch 68, §24
NEW section

97B.4 Administration of system — powers and duties of division — immunity.

1. *Chief executive officer.* The division, through the chief executive officer, shall administer this chapter. The chief executive officer shall also be the division's statutory designee with respect to the rulemaking power.

2. *General authority.*

a. The division may adopt, amend, waive, or rescind rules, employ persons, execute contracts with outside parties, make expenditures, require reports, make investigations, and take other action it deems necessary for the administration of the system in conformity with the requirements of this chapter, the applicable provisions of the Internal Revenue Code, and all other applicable federal and state laws. The rules shall be effective upon compliance with chapter 17A.

b. The division may delegate to any person such authority as it deems reasonable and proper for the effective administration of this chapter, and may bond any person handling moneys or signing checks under this chapter.

c. In administering this chapter, the division shall enter into a biennial agreement with the department of personnel concerning the sharing of resources between the division and department which are of benefit to each and which are consistent with the mission of the division and the department. The budget program for the division shall be established by the chief executive officer in consultation with the board and other staff of the division and shall be compiled by the department of personnel in collaboration with the division and submitted on behalf of the division by the department pursuant to section 8.23.

3. *Personnel.*

a. Chief investment officer. The chief executive officer, following consultation with the board, shall employ a chief investment officer who shall be appointed pursuant to chapter 19A and shall be responsible for administering the investment program for the retirement fund pursuant to the investment policies of the board.

b. Chief benefits officer. The chief executive officer, following consultation with the benefits advisory committee, shall employ a chief benefits officer who shall be appointed pursuant to chapter 19A and shall be responsible for administering the benefits and other services provided under the system.

c. Actuary. The division shall employ an actuary who shall be selected by the board and shall serve at the pleasure of the board. The actuary shall be the technical advisor for the system on matters regarding the operation of the retirement fund.

d. Division employees. Subject to other provisions of this chapter, the division may employ all other personnel as necessary for the administration of the system. The maximum number of full-time equivalent employees specified by the general assembly for the division for administration of the system for a fiscal year shall not be reduced by any authority other than the general assembly. The personnel of the division shall be appointed pursuant to chapter 19A. The division shall not appoint or employ a person who is an officer or committee member of a political party organization or who holds or is a candidate for a partisan elective public office.

e. Legal advisors. The division may employ attorneys and contract with attorneys and legal firms for the provision of legal counsel and advice in the administration of this chapter and chapter 97C.

f. Outside advisors. The division may execute contracts with persons outside state government, including investment advisors, consultants, and managers, in the administration of this chapter. However, a contract with an investment manager or investment consultant shall not be executed by the division pursuant to this paragraph without the prior approval by the board of the hiring of the investment manager or investment consultant.

4. *Reports.*

a. Annual report to governor. Not later than the fifteenth day of December of each year, the division shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make recommendations for amendments to this chapter. The report shall include a balance sheet of the moneys in the retirement fund. The report shall also include information concerning the in-

vestment management expenses for the retirement fund for each fiscal year expressed as a percent of the market value of the retirement fund investment assets, including the information described in section 97B.7, subsection 3, paragraph *"d"*. The information provided under this paragraph shall also include information on the investment policies and investment performance of the retirement fund. In providing this information, to the extent possible, the division shall include the total investment return for the entire fund, for portions of the fund managed by investment managers, and for internally managed portions of the fund, and the cost of managing the fund per thousand dollars of assets. The performance shall be based upon market value, and shall be contrasted with relevant market indices and with performances of pension funds of similar asset size.

b. Annual statement to members. The division shall prepare and distribute to the members, at the expense of the retirement fund, an annual statement of the member's account and, in such a manner as the division deems appropriate, other information concerning the system.

c. Actuarial investigation. During calendar year 2002, and every four years thereafter, the division shall cause an actuarial investigation to be made of all experience under the retirement system. Pursuant to such an investigation, the division shall, from time to time, determine upon an actuarial basis the condition of the system and shall report to the general assembly its findings and recommendations.

d. Annual valuation of assets. The division shall cause an annual actuarial valuation to be made of the assets and liabilities of the system and shall prepare an annual statement of the amounts to be contributed under this chapter, and shall publish annually such valuation of the assets and liabilities and the statement of receipts and disbursements of the system. Based upon the actuarial methods and assumptions adopted by the board for the annual valuation, the division shall certify to the governor the contribution rates determined thereby as the rates necessary and sufficient for members and employers to fully fund the benefits and retirement allowances being credited.

5. *Investments.* The division, through the chief investment officer, shall invest, in accordance with the investment policy and goal statement established by the board, the portion of the retirement fund which, in the judgment of the division, is not needed for current payment of benefits under this chapter subject to the requirements of section 97B.7A.

6. *Old records.* The division may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the division and are deemed by the chief executive officer to be no longer necessary to the proper administration of this chapter. The destruction or disposition shall be made only by order of the chief executive officer. Records of deceased members of the system may be destroyed ten years after the later of the final payment made to a third party on behalf of the member or the death of the member. Any moneys received from the disposition of these records shall be deposited to the credit of the retirement fund subject to rules adopted by the division.

7. *Immunity.* The division, employees of the division, the board, the members of the board, and the treasurer of state are not personally liable for actions or omissions under this chapter that do not involve malicious or wanton misconduct even if those actions or omissions violate the standards established in section 97B.7A.

[C46, 50, §97.4, 97.23; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.4]

86 Acts, ch 1245, §251; 88 Acts, ch 1242, §9, 10; 92 Acts, ch 1201, §7; 96 Acts, ch 1187, §1; 2001 Acts, ch 68, §9, 24

2001 amendments take effect July 1, 2002; 2001 Acts, ch 68, §24
Section stricken and rewritten

97B.5 and 97B.6 Repealed by 2001 Acts, ch 68, § 23, 24. See § 97B.4.

2001 repeals take effect July 1, 2002; 2001 Acts, ch 68, §24

97B.7 Fund created — exclusive benefit — standing appropriations.

1. There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "Iowa Public Employees' Retirement Fund", hereafter called the *"retirement fund"*. The retirement fund shall consist of all moneys collected under this chapter, together with all interest, dividends, and rents thereon, and shall also include all securities or investment income and other assets acquired by and through the use of the moneys belonging to the retirement fund and any other moneys that have been paid into the retirement fund.

2. The treasurer of the state of Iowa is hereby made the custodian of the retirement fund and shall hold and disburse the retirement fund in accordance with the requirements of this chapter. As custodian, the treasurer shall be authorized to disburse moneys in the retirement fund upon warrants drawn by the director of revenue and finance pursuant to the order of the division. The treasurer shall not select any bank or other third party for the purposes of investment asset safekeeping, other custody, or settlement services without prior consultation with the board.

3. All moneys which are paid or deposited into the fund are appropriated and made available to the division to be used for the exclusive benefit of the members and their beneficiaries or contingent annuitants as provided in this chapter:

a. To be used by the division for the payment of claims for benefits under this chapter.

b. To be used by the division to pay refunds provided for in this chapter.

c. To be used for the costs of administering the system, including up to fifty thousand dollars per fiscal year for actual and necessary expenses of the benefits advisory committee. If as a result of action under section 8.31, the governor has reduced the moneys appropriated from the retirement fund to the division for salaries, support, maintenance, and other operational purposes to pay the costs of the system for a fiscal year, it is the intent of the general assembly that the amount by which the appropriation has been reduced should be transferred from the retirement fund to the division for salaries, support, maintenance, and other operational purposes to pay the costs of the system for that fiscal year.

d. To be used to pay for investment management expenses incurred in the management of the retirement fund. Expenses incurred pursuant to this paragraph shall be charged to the investment income of the retirement fund. However, the amount appropriated for a fiscal year under this paragraph shall not exceed four-tenths of one percent of the market value of the retirement fund.

[C46, 50, §97.5, 97.7; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.7; 82 Acts, ch 1261, §10]

84 Acts, ch 1180, §9; 84 Acts, ch 1285, §3; 85 Acts, ch 190, §1; 85 Acts, ch 227, §7; 86 Acts, ch 1245, §253; 88 Acts, ch 1242, §11 – 13; 89 Acts, ch 83, §20; 92 Acts, ch 1201, §10; 94 Acts, ch 1001, §3; 96 Acts, ch 1187, §2, 3; 2001 Acts, ch 68, §10, 24

2001 amendments take effect July 1, 2002; 2001 Acts, ch 68, §24

Section stricken and rewritten

97B.7A Investment and management of retirement fund — standards — immunity.

1. *Investment and investment policy standards.* In establishing the investment policy of the retirement fund and providing for the investment of the retirement fund, the division and board shall do the following:

a. Exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital.

b. Give appropriate consideration to those facts and circumstances that the division and board know or should know are relevant to the particular investment or investment policy involved, including the role the investment plays in the total value of the retirement fund.

c. For the purposes of this subsection, appropriate consideration includes, but is not limited to, a determination that the particular investment or investment policy is reasonably designed to further the purposes of the system, taking into consideration the risk of loss and the opportunity for gain or income associated with the investment or investment policy and consideration of the following factors as they relate to the retirement fund:

(1) The composition of the retirement fund with regard to diversification.

(2) The liquidity and current return of the investments in the retirement fund relative to the anticipated cash flow requirements of the system.

(3) The projected return of the investments relative to the funding objectives of the retirement system.

2. *Investment acquisitions.* Within the limitations of the investment standards prescribed in this section, the system may acquire and retain every kind of property and every kind of investment which persons of prudence, discretion, and intelligence acquire or retain for their own account. Consistent with this section, investments shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state. Investments of moneys in the retirement fund are not subject to sections 73.15 through 73.21.

3. *Liability — reimbursement.* Except as provided in section 97B.4, subsection 7, if there is loss to the retirement fund, the treasurer of state, the division, the employees of the division, the members of the board severally, and the board are not personally liable, and the loss shall be charged against the retirement fund. There is appropriated from the retirement fund the amount required to cover a loss.

4. *Investment procedures.* In managing the investment of the retirement fund, the division, in accordance with the investment policy established by the board, is authorized to do the following:

a. To sell any securities or other property in the retirement fund and reinvest the proceeds when such action may be deemed advisable by the division for the protection of the retirement fund or the preservation of the value of the investment. Such sale of securities or other property of the retirement fund and reinvestment shall only be made in accordance with policies of the board in the manner and to the extent provided in this chapter.

b. To subscribe for the purchase of securities for future delivery in anticipation of future income. The securities shall be paid for by anticipated income or from funds from the sale of securities or other property held by the retirement fund.

c. To pay for securities directed to be purchased upon the receipt of the purchasing bank's paid statement or paid confirmation of purchase.

5. *Travel.* In the administration of the investment of moneys in the retirement fund, employees of the division and members of the board may travel outside the state for the purpose of meeting with investment firms and consultants and attending conferences and meetings to fulfill their fiduciary responsibilities. This travel is not

subject to section 421.38, subsection 2.

2001 Acts, ch 68, §11, 24

Section takes effect July 1, 2002; 2001 Acts, ch 68, §24

NEW section

97B.8 Investment board. Repealed by 2001 Acts, ch 68, § 23, 24. See § 97B.8A.

2001 repeal takes effect July 1, 2002; 2001 Acts, ch 68, §24

97B.8A Investment board.

1. *Board established.* A board is established to be known as the "Investment Board of the Iowa Public Employees' Retirement System", referred to in this chapter as the *"board"*. The duties of the board are to establish policy, and review its implementation, in matters relating to the investment of the retirement fund. The board shall be the trustee of the retirement fund.

2. *Investment review. a.* At least annually the board shall review the investment policies and procedures used by the board and division, and shall hold a public meeting on the investment policies and investment performance of the retirement fund. Following its review and the public meeting, the board shall, pursuant to the requirements of section 97B.7A, and in consultation with the chief investment officer and other relevant personnel of the division, establish an investment policy and goal statement that shall direct the investment activities concerning the retirement fund.

b. The board shall review and approve, prior to the execution of a contract with the division, the hiring of each investment manager and investment consultant outside of state government.

c. The board shall be involved in the performance evaluation of the chief investment officer.

3. *Actuarial responsibilities.*

a. The board shall select the actuary to be employed by the system as provided in section 97B.4.

b. The board shall, in consultation with the chief executive officer, the actuary, and other relevant personnel of the division, adopt from time to time mortality tables and all other necessary factors for use in actuarial calculations required in connection with the system. The board shall also adopt the actuarial methods and assumptions to be used by the actuary for the annual valuation of assets as required by section 97B.4.

4. *Membership.*

a. The board shall consist of eleven members, including seven voting members and four nonvoting members. The voting members shall be as follows:

(1) Three public members, appointed by the governor, who are not members of the system and who each have substantial institutional investment experience or substantial institutional financial experience.

(2) Three members, appointed by the governor, who are members of the system. Prior to the appointment by the governor of a member of the board under this subparagraph, the benefits advisory committee shall submit a slate of at least two nominees per position to the governor for the governor's consideration. The governor is not required to appoint a member from the slate submitted. Of the three members appointed, one shall be an active member who is an employee of a school district, area education agency, or merged area; one shall be an active member who is not an employee of a school district, area education agency, or merged area; and one shall be a retired member of the system.

(3) The treasurer of state.

The nonvoting members of the board shall be two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.

b. Four voting members of the board shall constitute a quorum.

c. The three members who have substantial institutional investment experience or substantial institutional financial experience, and the member who is a retired member of the system, shall be paid their actual expenses incurred in the performance of their duties and shall receive a per diem as specified in section 7E.6 for each day of service not exceeding forty days per year. Legislative members shall be paid the per diem and expenses specified in section 2.10, for each day of service. The per diem and expenses of the legislative members shall be paid from funds appropriated under section 2.12. The members who are active members of the system and the treasurer of state shall be paid their actual expenses incurred in the performance of their duties as members of the board and the performance of their duties as members of the board shall not affect their salaries, vacations, or leaves of absence for sickness or injury.

d. The appointive terms of the members appointed by the governor are for a period of six years beginning and ending as provided in section 69.19. If there is a vacancy in the membership of the board for one of the members appointed by the governor, the governor has the power of appointment. Gubernatorial appointees to this board are subject to confirmation by the senate.

5. *Closed sessions.* In addition to the reasons provided in section 21.5, subsection 1, the board may hold a closed session pursuant to the requirements of section 21.5 of that portion of a board meeting in which financial or commercial information is provided to or discussed by the board if the board determines that disclosure of such information could result in a loss to the system or to the

provider of the information.

2001 Acts, ch 68, §12, 24

Confirmation; §2.32
For membership transition provisions; see 2001 Acts, ch 68, §19
Section takes effect July 1, 2002; 2001 Acts, ch 68, §24
NEW section

97B.8B Benefits advisory committee.

1. *Committee established.* A benefits advisory committee shall be established whose duty is to consider and make recommendations to the division and the general assembly concerning the provision of benefits and services to members of the system.

2. *Membership.* The benefits advisory committee shall be comprised of representatives of constituent groups concerned with the system, and shall include representatives of employers, active members, and retired members. In addition, the director of the department of personnel and a member of the public selected by the voting members of the committee shall serve as members of the committee. The division shall adopt rules under chapter 17A to provide for the selection of members to the committee and the election of the voting members of the committee.

3. *Voting members.* Of the members who comprise the committee, nine members shall be voting members. Except as otherwise provided by this subsection, the voting members shall be elected by the members of the committee from the membership of the committee. Of the nine voting members of the committee, four shall represent covered employers, and four shall represent the members of the system. Of the four voting members representing employers, one shall be the director of the department of personnel, one shall be a member of a constituent group that represents cities, one shall be a member of a constituent group that represents counties, and one shall be a member of a constituent group that represents local school districts. Of the four voting members who represent members of the system, one shall be a member of a constituent group that represents teachers. The ninth voting member of the committee shall be a citizen who is not a member of the system and who is elected by the other voting members of the committee.

4. *Duties.*

a. At least every two years, the benefits advisory committee shall review the benefits and services provided to members under this chapter, and the voting members of the committee shall make recommendations to the division and the general assembly concerning the services provided to members and the benefits, benefits policy, and benefit goals, provided under this chapter.

b. The benefits advisory committee shall be involved in the performance evaluation of the chief benefits officer.

c. Upon the expiration of the term of office of or a vacancy concerning one of the three members of the investment board described in section 97B.8A, subsection 4, paragraph *"a"*, subparagraph (2), the voting members of the committee shall submit to the governor the names of at least two nominees who meet the requirements specified in that subparagraph. The governor may appoint the member from the list submitted by the committee.

5. *Terms of voting members.* Except for the director of the department of personnel and as otherwise provided in the rules for the initial selection of voting members of the committee, each member selected to be a voting member shall serve as a voting member for three years. Terms for voting members begin on May 1 in the year of selection and expire on April 30 in the year of expiration. Vacancies shall be filled in the same manner as the original selections. A vacancy shall be filled for the unexpired term.

6. *Expenses.* The members who are not active members of the system shall be paid their actual expenses incurred in the performance of their duties and shall receive a per diem as specified in section 7E.6 for each day of service not exceeding forty days per year. The members who are active members of the system and the director of the department of personnel shall be paid their actual expenses incurred in the performance of their duties as members of the committee and the performance of their duties as members of the committee shall not affect their salaries, vacations, or leaves of absence for sickness or injury. However, the benefits advisory committee shall not incur any additional expenses in fulfilling its duties as provided by this section without the express written authority of the chief executive officer.

2001 Acts, ch 68, §13, 24

Section takes effect July 1, 2002; 2001 Acts, ch 68, §24
NEW section

97B.9 Contributions — payment and interest.

1. An employer shall be charged the greater of ten dollars per occurrence or interest at the combined interest and dividend rate required under section 97B.70 for the applicable calendar year for contributions unpaid on the date on which they are due and payable as prescribed by the division. The division may adopt rules prescribing circumstances for which the interest or charge shall not accrue with respect to contributions required. Interest or charges collected pursuant to this section shall be paid into the Iowa public employees' retirement fund.

2. If within thirty days after due notice the employer defaults in payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon shall be heard by the court at the earliest possible date and shall be entitled to preference upon the

calendar of the court over all other civil actions.

3. The employer shall pay its contribution from funds available and is directed to pay same from tax money or from any other income of the political subdivision; provided, however, the contributions shall be paid from the same fund as the employee salary.

4. Every political subdivision is hereby authorized and directed to levy a tax sufficient to meet its obligations under the provisions of this chapter if any tax is needed.

5. Regardless of any potentially applicable statute of limitations, if the division finds that the employer or employee, or both, have erroneously underpaid contributions, the division shall notify the employer and employee in writing of the total amount of the underpayment, including interest, and the employer's and employee's share of the underpayment. The division shall collect from the employer the total amount of the underpayment, including the employer's share, the employee's share, and the interest assessed to both shares of the underpayment, regardless of whether the employee has reimbursed the employer for the employee's share of the underpayment. The employee shall be obligated to pay only the employee's share of the underpaid contributions, without interest, to the employer. The employer may collect the employee's share of underpaid contributions from the employee or the employee's estate. The employer may collect the employee's share through a deduction from the employee's wages, or by maintaining a legal action against the employee or the employee's estate. For purposes of section 1526 of the federal Taxpayer Relief Act of 1997, eligible participants, as defined by section 1526, may make payments of contributions under this section without regard to the limitations of section 415(c)(1) of the federal Internal Revenue Code.

[C46, 50, §97.6, 97.8, 97.9, 97.12; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.9]

88 Acts, ch 1242, §15; 98 Acts, ch 1183, §10; 2000 Acts, ch 1077, §22, 23; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.10 Crediting of erroneous contributions.

1. If the division finds the employee or employer, or both, have erroneously paid contributions, including the payment of contributions prior to an individual's valid decision to elect out of coverage under this chapter on or after January 1, 1999, pursuant to section 97B.42A, the division shall make an adjustment, compromise, or settlement and shall credit such payments to the appropriate party.

2. A claim of an employee or employer for a credit for erroneously paid contributions shall be made within three years of date of payment. However, the division may issue a credit to employees or employers after the expiration of the three-year deadline if the division finds that issuing the credit is just and equitable.

3. Except as provided in this subsection, interest shall not be paid on credits issued pursuant to this section. However, if a credit for contributions paid prior to an individual's decision to elect out of coverage pursuant to section 97B.42A is issued, accumulated interest and interest on dividends as provided in section 97B.70 shall apply. In addition, the division may, at any time, apply accumulated interest and interest dividends as provided in section 97B.70 on any credits issued under this section if the division finds that the crediting of interest is just and equitable.

[C46, 50, §97.7; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.10]

92 Acts, ch 1201, §13; 98 Acts, ch 1183, §11; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.11 Contributions by employer and employee.

Each employer shall deduct from the wages of each member of the system a contribution in the amount of three and seven-tenths percent of the covered wages paid by the employer, until the member's termination from employment. The contributions of the employer shall be in the amount of five and seventy-five hundredths percent of the covered wages of the member.

[C46, 50, §97.8, 97.12; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.11]

88 Acts, ch 1242, §16; 92 Acts, ch 1201, §14; 96 Acts, ch 1187, §4; 98 Acts, ch 1183, §12; 2000 Acts, ch 1077, §24

97B.11A Pickup of employee contributions.

1. Notwithstanding section 97B.11 or other provisions of this chapter, beginning January 1, 1995, for federal income tax purposes, and beginning January 1, 1999, for state income tax purposes, member contributions required under section 97B.11 which are picked up by the employer shall be considered employer contributions for federal and state income tax purposes, and each employer shall pick up the member contributions to be made under section 97B.11 by its employees. Each employer shall pick up these contributions by reducing the salary of each of its employees covered by this chapter by the amount which each employee is required to contribute under section 97B.11 and shall pay the amount picked up in lieu of the member contributions as provided in section 97B.14.

2. Member contributions picked up by each employer under subsection 1 shall be treated as employer contributions for federal and state in-

come tax purposes only and for all other purposes of this chapter shall be treated as employee contributions and deemed part of the employee's wages or salary.

94 Acts, ch 1183, §13; 98 Acts, ch 1174, §2, 6

Payment of applicable contribution amounts by employees subject to employer-mandated reduction in hours between January 1, 2002, and June 30, 2003, to be treated as pick-up contributions; emergency rules authorized; 2002 Acts, ch 1135, §36

97B.12 Statement to employee. Repealed by 98 Acts, ch 1183, § 75.

97B.13 No income tax deduction. Repealed by 2000 Acts, ch 1077, § 73.

97B.14 Contributions forwarded.

Contributions deducted from the wages of the member under section 97B.11 prior to January 1, 1995, member contributions picked up by the employer under section 97B.11A beginning January 1, 1995, and the employer's contribution shall be forwarded to the division for recording and deposited with the treasurer of the state to the credit of the Iowa public employees' retirement fund. Contributions shall be remitted monthly, if total contributions by both employee and employer amount to one hundred dollars or more each month, and shall be otherwise paid in such manner, at such times and under such conditions, either by copies of payrolls or other methods necessary or helpful in securing proper identification of the member, as may be prescribed by the division.

[C46, 50, §97.12; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.14]

94 Acts, ch 1183, §14; 96 Acts, ch 1187, §5; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.14A Wage reporting.

An employer shall report wages of employees covered by this chapter to the division in a manner and form as prescribed by the division. If the wages reported by an employer appear to be a distortion of the normal wage progression pattern for an employee, the division may request that the employer provide documentation indicating that the wages were not misreported for the purposes of causing an increase in the retirement allowance or other payments authorized to be made by this chapter. If the division determines that the wages of an employee were misreported, the employer shall prepare and file wage adjustments allocating the wages to the proper wage reporting period.

2000 Acts, ch 1077, §25; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.15 Rules, policies, and procedures.

The division may adopt rules under chapter 17A and establish procedures, not inconsistent with this chapter, which are necessary or appropriate to implement this chapter and shall adopt reasonable and proper rules to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the proofs and evidence in order to establish the right to benefits under this chapter. The division may adopt rules, and take action based on the rules, to conform the requirements for receipt of retirement benefits under this chapter to the mandates of applicable federal and state statutes and regulations.

Prior to the adoption of rules, the division may establish interim written policies and procedures, and take action based on the policies and procedures, to conform the requirements for receipt of retirement benefits under this chapter to the applicable requirements of federal and state law.

[C46, 50, §97.23; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.15]

88 Acts, ch 1242, §17; 90 Acts, ch 1240, §15; 96 Acts, ch 1187, §6; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §12

Continuation of rules adopted by department of personnel prior to July 1, 2002; 2001 Acts, ch 68, §22, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Section amended

97B.16 Procedure of division.

The division shall make decisions as to the rights of an individual applying for a payment under this chapter. When requested by an individual, or a person who makes a showing in writing that the individual's or person's rights may be prejudiced by a decision the division has made, a hearing shall be scheduled under the Iowa administrative procedures Act, chapter 17A. If a hearing is held, the decision shall, on the basis of evidence adduced at the hearing, be affirmed, modified, or reversed under chapter 17A.

[C46, 50, §97.24; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.16]

88 Acts, ch 1242, §18; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.17 Records maintained.

1. The division shall establish and maintain records of each member, including but not limited to the amount of wages of each member, the contribution of each member with interest, and interest dividends credited. The records may be maintained in paper, magnetic, or electronic form, including optical disk storage. These records are the basis for the compilation of the retirement benefits provided under this chapter.

2. The following records maintained under this chapter are not public records for the purposes of chapter 22:

a. Records containing social security numbers.

b. Records specifying amounts accumulated in

members' accounts and supplemental accounts.

c. Records containing names or addresses of members or their beneficiaries.

d. Records containing amounts of payments to members or their beneficiaries.

e. Records containing financial or commercial information that relates to the investment of system funds if the disclosure of such information could result in a loss to the system or to the provider of the information.

3. Summary information concerning the demographics of the members and general statistical information concerning the system are subject to chapter 22, as well as aggregate information by category.

However, the division's records are evidence for the purpose of proceedings before the division or any court of the amounts of wages and the periods in which they were paid, and the absence of an entry as to a member's wages in the records for any period is evidence that wages were not paid that member in the period.

4. Notwithstanding any provisions of chapter 22 to the contrary, the division's records may be released to any political subdivision, instrumentality, or other agency of the state solely for use in a civil or criminal law enforcement activity pursuant to the requirements of this subsection. To obtain the records, the political subdivision, instrumentality, or agency shall, in writing, certify that the activity is authorized by law, provide a written description of the information desired, and describe the law enforcement activity for which the information is sought. The division shall not be civilly or criminally liable for the release or rerelease of records in accordance with this subsection.

5. Confidential records of the division maintained for the operation of the system may be released to the directors, agents, and employees of the legislative fiscal bureau, the department of revenue and finance, the department of management, the department of personnel, or an employer of employees covered by the system pursuant to rules adopted by the division for the performance of the requestor's duties. To obtain a record under this subsection, the person requesting the records shall provide a written description of the information requested and the reason for requesting the records to the division. A person receiving a record pursuant to this subsection shall maintain the confidentiality of any information otherwise required to be kept confidential and shall be subject to the same penalties as the custodian of the records for the public dissemination of such information.

[C46, 50, §97.25 – 97.27; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.17]

88 Acts, ch 1242, §19; 92 Acts, ch 1201, §15; 96 Acts, ch 1187, §7, 8; 98 Acts, ch 1183, §14; 2000 Acts, ch 1077, §26; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §13

Release of Iowa public employees' retirement system records for purposes of administering and monitoring an early termination program; confidentiality maintained by records recipients; 2001 Acts, 2nd Ex, ch 5, §4, 8; 2002 Acts, 2nd Ex, ch 1001, §50 – 52

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Section amended

97B.18 Statement of accumulated credit.

After the expiration of each calendar year and prior to July 1 of the succeeding year, the division shall furnish each member with a statement of the member's accumulated contributions and benefit credits accrued under this chapter up to the end of that calendar year and additional information the division deems useful to a member. The division may furnish an estimate of the credits as of the projected normal retirement date of the member under section 97B.45. The records of the division as shown by the statement as to the wages of each individual member for a year and the periods of payment shall be conclusive for the purpose of this chapter, except as otherwise provided in this chapter.

[C46, 50, §97.11, 97.25; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.18]

92 Acts, ch 1201, §16; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §14

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Section amended

97B.19 Revision for error.

If following the delivery of the statement provided in section 97B.18, it is brought to the attention of the division that any entry of wages in its records is erroneous, or that any item of wages has been omitted from the records, the division may correct the entry or include the omitted item in its records, as the case may be. Written notice of any revision of any entry which is adverse to the interest of any individual shall be given to the individual in any case where the individual has previously been notified by the division of the amount of wages and of the period of payments shown by the entry. Upon request in writing, the division shall afford any individual, or after the individual's death shall afford the individual's beneficiary or any other person so entitled in the judgment of the division, reasonable notice and opportunity for hearing with respect to any entry or alleged omission of wages of the individual in such record, or any revision of any entry. If a hearing is held, the division shall make findings of fact and a decision based upon the evidence adduced at the hearing and shall revise its records accordingly. Judicial review of action of the division under this section may be sought in accordance with the terms of the Iowa administrative procedure Act and section 97B.29.

[C46, 50, §97.22, 97.26, 97.28; C54, 58, 62, 66,

71, 73, 75, 77, 79, 81, §97B.19]

98 Acts, ch 1183, §15; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.20 Appeal — hearing. Repealed by 98 Acts, ch 1183, § 75.

97B.20A Appeal procedure.

Members and third-party payees may appeal any decision made by the division that affects their rights under this chapter. The appeal shall be filed with the division within thirty days after the notification of the decision was mailed to the party's last known mailing address, or the decision of the division is final. If the party appeals the decision of the division, the division shall conduct an internal review of the decision and the chief executive officer shall notify the individual who has filed the appeal in writing of the division's decision. The individual who has filed the appeal may file an appeal of the division's final decision with the division under chapter 17A by notifying the division of the appeal in writing within thirty days after the notification of its final decision was mailed to the party's last known mailing address. Once notified, the division shall forward the appeal to the department of inspections and appeals.

92 Acts, ch 1201, §17; 2001 Acts, ch 68, §14, 24

2001 amendments are effective July 1, 2002; 2001 Acts, ch 68, §24

Section amended

97B.20B Hearing by administrative law judge.

If an appeal is filed and is not withdrawn, an administrative law judge in the department of inspections and appeals, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify, or reverse the decision of the division. The hearing shall be recorded by mechanical means and a transcript of the hearing shall be made. The transcript shall then be made available for use by the employment appeal board and by the courts at subsequent judicial review proceedings under the Iowa administrative procedure Act, if any. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons. The decision is final unless, within thirty days after the date of notification or mailing of the decision, review by the employment appeal board is initiated pursuant to section 97B.27.

92 Acts, ch 1201, §18; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.21 Repealed by 74 Acts, ch 1090, § 211.

97B.22 Witnesses and evidence.

For the purpose of any hearing, investigation, or other proceeding authorized or directed under this chapter, or relative to any other matter within its jurisdiction under this chapter, the division or administrative law judge may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the division. Attendance of witnesses and production of evidence at the designated place of the hearing, investigation, or other proceedings may be required from any political subdivision in the state. Subpoenas of the division shall be served by anyone authorized by it by delivering a copy of the subpoena to the individual named in it, or by certified mail addressed to the individual at the individual's last known dwelling place or principal place of business. A verified return by the individual serving the subpoena setting forth the manner of service, or in the case of service by certified mail, the return post-office receipt signed by the individual served, shall be proof of service. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the state of Iowa. In the discharge of the duties imposed by this chapter, the division or an administrative law judge and any duly authorized representative or member of the division may administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the administration of this chapter.

[C46, 50, §97.30, 97.32; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.22]

92 Acts, ch 1201, §19; 2001 Acts, ch 68, §21, 24

Witness fees, §622.69

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.23 Penalty for noncompliance.

In case of refusal to obey a subpoena duly served upon any person, any district court of the state of Iowa for the district in which the person charged with refusal to obey is found or resides or transacts business, upon application by the division, may issue an order requiring that person to appear and give testimony, or to appear and produce evidence, or both. Any failure to obey the order of the court may be punished by the court as contempt.

[C46, 50, §97.31, 97.32; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.23]

92 Acts, ch 1201, §20; 2001 Acts, ch 68, §21, 24

Contempts, chapter 665

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.24 Production of books and papers.

No person so subpoenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, docu-

ments, or other evidence on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which the person is compelled, after having claimed the person's privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

[C46, 50, §97.32; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.24]

Perjury, §720.2, 720.3

97B.25 Applications for benefits.

A representative designated by the chief executive officer and referred to in this chapter as a retirement benefits officer shall promptly examine applications for retirement benefits and on the basis of facts found shall determine whether or not the claim is valid. If the claim is valid, the retirement benefits officer shall send a notification to the member stating the option the member has selected pursuant to section 97B.51, the month with respect to which benefits shall commence, and the monthly benefit amount payable. If the claim is invalid, the retirement benefits officer shall promptly notify the applicant and any other interested party of the decision and the reasons. A retirement application shall not be amended or revoked by the member once the first retirement allowance is paid. A member's death during the first month of entitlement shall not invalidate an approved application.

[C46, 50, §97.33, 97.39, 97.41; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.25]

86 Acts, ch 1245, §255; 88 Acts, ch 1109, §13; 92 Acts, ch 1201, §21; 94 Acts, ch 1023, §8; 94 Acts, ch 1183, §15; 96 Acts, ch 1187, §9; 98 Acts, ch 1183, §16; 2000 Acts, ch 1077, §27; 2001 Acts, ch 68, §15, 24

2001 amendment is effective July 1, 2002; 2001 Acts, ch 68, §24

Section amended

97B.26 Administrative law judge. Repealed by 92 Acts, ch 1201, § 77. See § 97B.20B.

97B.27 Review of decision.

Anyone aggrieved by the decision of the administrative law judge may, at any time before the administrative law judge's decision becomes final, petition the department of inspections and appeals for review by the employment appeal board established in section 10A.601. The appeal board shall review the record made before the administrative law judge, but no additional evidence shall be heard. On the basis of the record the appeal board shall affirm, modify, or reverse the decision of the administrative law judge and shall determine the rights of the appellant. It shall promptly notify the appellant and any other interested party by written decision.

[C46, 50, §97.33; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.27]

86 Acts, ch 1245, §257; 88 Acts, ch 1109, §15

97B.28 Division deemed party to action.

The division shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the division or who has been designated by the division for that purpose or, at the division's request, by the attorney general.

[C46, 50, §97.34; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.28]

2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.29 Judicial review.

Judicial review of action of the division may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the claimant was last employed or resides, provided that if the claimant does not reside in the state of Iowa the action shall be brought in the district court of Polk county, Iowa, against the division for the review of this decision, in which action any other parties to the proceeding before the division shall be named in the petition. The division may also, in its discretion, certify to such courts, questions of law involving any decision by it. Such petitions for judicial review and the questions so certified shall be given precedence over all other civil cases except cases arising under the workers' compensation law and the employment security law of this state.

[C46, 50, §97.33; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.29]

2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.30 and 97B.31 Repealed by 74 Acts, ch 1090, § 211.

97B.32 Appeal to supreme court.

No bond shall be required for entering an appeal from any final order, judgment or decree of the district court in a proceeding for judicial review to the supreme court.

[C46, 50, §97.33; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.32]

97B.33 Certification to director.

Upon final decision of the division, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or pay-

ments under this chapter, the division shall certify to the director of revenue and finance the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the division, through the director of revenue and finance, shall make payment in accordance with the certification of the division, provided that where judicial review of the division decision is or may be sought in accordance with the terms of the Iowa administrative procedure Act, certification of payment may be withheld pending such review. The director of revenue and finance shall not be held personally liable for any payment or payments made in accordance with a certification by the division.

[C46, 50, §97.35; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.33]

2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.34 Payment to representatives.

When it appears to the division that the interest of an applicant entitled to a payment would be served, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled to the payment, either for direct payment to the applicant, or for the applicant's use and benefit to a representative of an applicant. The division may adopt rules under chapter 17A for making payments to a representative of an applicant if the division determines that it can sufficiently safeguard the member's rights under this chapter.

[C46, 50, §97.36; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.34]

92 Acts, ch 1201, §22; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.34A Payment to minors.

The division may make payments to a minor, as defined in section 599.1, as follows:

1. If the total sum to be paid to the minor is less than ten thousand dollars, the funds may be paid to an adult as custodian for the minor. The custodian must complete the proper forms as determined by the division.

2. If the total sum to be paid to the minor is equal to or more than ten thousand dollars, the funds must be paid to a court-established conservator. The division shall not make payment until the conservatorship has been established and the division has received the appropriate documentation.

3. Interest shall be paid on the funds, at a rate determined by the division, until disbursement of the funds.

If the division makes payments to a minor pursuant to this section, the division may make payments directly to the person when the person attains the age of eighteen or is declared to be emancipated by a court of competent jurisdiction.

92 Acts, ch 1201, §23; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.35 Finality of such payments.

Any payment made after June 30, 1953, under the conditions set forth in section 97B.34, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

[C46, 50, §97.37; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.35]

97B.36 Representatives of division.

The division is authorized to delegate to any member, officer, or employee of the division designated by it any of the powers conferred upon it by this chapter and is authorized to be represented by its own attorneys in any court in any case or proceeding arising under the provisions of said chapter.

[C46, 50, §97.38; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.36]

2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.37 Recognition of agents.

The division may prescribe rules governing the recognition of agents or other persons representing claimants before the division, and may require of the agents or other persons, before being recognized as representatives of claimants, that they show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render the claimants valuable service, and otherwise competent to advise and assist the claimants in the presentation of their cases. Claimants may be represented by counsel at their own expense.

[C46, 50, §97.38; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.37]

88 Acts, ch 1242, §20; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.38 Fees for services.

The division may, by rule, prescribe the maximum fees which may be charged for services performed in connection with any claim before the division under this chapter, and any agreement in violation of such rules shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this chapter by word, circular, letter or advertisement, or who shall knowingly

charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the division, shall be deemed guilty of a fraudulent practice.

[C46, 50, §97.42; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.38]

2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.39 Rights not transferable or subject to legal process — exceptions.

The right of any person to any future payment under this chapter is not transferable or assignable, at law or in equity, and the moneys paid or payable or rights existing under this chapter are not subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law except for the purposes of enforcing child, spousal, or medical support obligations or marital property orders. For the purposes of enforcing child, spousal, or medical support obligations, the garnishment or attachment of or the execution against compensation due a person under this chapter shall not exceed the amount specified in 15 U.S.C. § 1673(b). The division shall comply with the provisions of a marital property order requiring the selection of a particular benefit option, designated beneficiary, or contingent annuitant if the selection is otherwise authorized by this chapter and the member has not received payment of the member's first retirement allowance. However, a marital property order shall not require the payment of benefits to an alternative payee prior to the member's retirement, prior to the date the member elects to receive a lump sum distribution of accumulated contributions pursuant to section 97B.53, or in an amount that exceeds the benefits the member would otherwise be eligible to receive pursuant to this chapter.

[C46, 50, §97.43; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.39]

89 Acts, ch 228, §2; 92 Acts, ch 1195, §501; 96 Acts, ch 1187, §10; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.40 Fraud.

1. A person shall be guilty of a fraudulent practice if the person makes, or causes to be made, any false statement or representation for the purpose of causing an increase in any payment authorized to be made under this chapter, for the purpose of causing any payment to be made where no payment is authorized under this chapter, for the purpose of obtaining confidential information from the division, or for any other unlawful purpose related to this chapter.

2. For purposes of this section, *"any false statement or representation"* includes the following:

a. Any false statement or representation willfully made or caused to be made as to the amount of any wages paid or received for the period during which earned or unpaid, knowing it to be false.

b. Any false statement of a material fact made or caused to be made knowing it to be false in any application for any payment under this chapter.

c. Any false statement, representation, affidavit, or document willfully made, presented, or caused to be made in connection with an application for any payment under this chapter knowing it to be false.

d. Any unauthorized use of any security devices, such as personal identification codes, utilized for the purpose of accessing information from the division.

[C46, 50, §97.44; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.40]

98 Acts, ch 1183, §17; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.41 Definitions. Transferred to section 97B.1A in Code 99; 98 Acts, ch 1183, § 82.

97B.42 Mandatory membership — membership in other systems.

Each employee whose employment commences after July 4, 1953, or who has not qualified for credit for prior service rendered prior to July 4, 1953, or any publicly elected official of the state or any of its political subdivisions shall become a member upon the first day in which such employee is employed. The employee shall continue to be an active member so long as the employee continues in covered employment. The employee shall cease to be an active member if the employee joins another retirement system in the state which is maintained in whole or in part by public contributions or payments and receives retirement credit for service in that other system for the same position previously covered under this chapter. If an employee joins another publicly maintained retirement system and ceases to be an active member under this chapter, the employee may elect to leave the employee's accumulated contributions in the retirement fund or receive a refund of the employee's accumulated contributions in the manner provided for members who are terminating covered employment pursuant to section 97B.53. However, if an employee joins another publicly maintained retirement system and leaves the employee's accumulated contributions in the retirement fund, the employee shall not be eligible to receive retirement benefits until the employee has a bona fide retirement from employment with a covered employer as provided in section 97B.52A, or until the employee would otherwise be eligible to

receive benefits upon attaining the age of seventy years as provided in section 97B.46.

Employment shall not be covered under this chapter until the employment is covered under the federal Social Security Act and any agreements which are required pursuant to chapter 97C are effective.

Nothing in this chapter shall be deemed to exclude from coverage, under the provisions of this chapter, any public employee who was not on or as of July 4, 1953, a member of another retirement system supported by public funds. All such employees and their employers shall be required to make contributions as specified as to other public employees and employers. Nothing in this chapter shall be deemed to prohibit the re-establishment of a retirement system supported by public funds which had been in operation prior to July 4, 1953, and was subsequently liquidated.

Persons who are members of any other retirement system in the state which is maintained in whole or in part by public contributions other than persons who are covered under the provisions of chapter 97, Code 1950, as amended by the Fifty-fourth General Assembly on the date of the repeal of said chapter, under the provisions of sections 97.50 through 97.53 shall not become members under this chapter while still actively participating in that other retirement system unless the persons do not receive retirement credit for service in that other system for the position to be covered under this chapter.

Nothing herein contained shall be construed to permit any employer to make any public contributions or payments on behalf of an employee in the same position for the same period of time to both the Iowa public employees' retirement system and any other retirement system in the state which is supported in whole or in part by public contributions or payments.

Notwithstanding any other provision of this section, commencing July 1, 1994, a member who is employed by a community college may elect coverage under an eligible alternative retirement benefits system as provided in section 260C.14, subsection 17, in lieu of continuing or commencing contributions to the Iowa public employees' retirement system. However, the employer's annual contribution in dollars to the eligible alternative retirement benefits system shall not exceed the annual contribution in dollars which the employer would contribute if the employee had elected to remain an active member under this chapter, as set forth in section 97B.11. A member employed by a community college who elects coverage under an eligible alternative retirement benefits system may withdraw the member's accumulated contributions effective when coverage under the eligible alternative retirement benefits system commences. A member who is employed by a community college prior to July 1, 1994, must file an election for coverage under the eligible alternative retirement benefits system described in section 260C.14, subsection 17, paragraph *"a"*, with the division and the employing community college within eighteen months of the first day on which coverage commences under the community college's eligible alternative retirement benefits system described in section 260C.14, subsection 17, paragraph *"a"*, or the employee shall remain a member under this chapter and shall not be eligible to elect to participate in that community college's eligible alternative retirement benefits system described in section 260C.14, subsection 17, paragraph *"a"*, at a later date. Employees of a community college hired on or after July 1, 1994, must file an election for coverage under an eligible alternative retirement benefits system with the division and the employing community college within sixty days of commencing employment, or the employee shall remain a member under this chapter and shall not be eligible to elect to participate in an eligible alternative retirement benefits system of the community college at a later date. The division shall cooperate with the boards of directors of the community colleges to facilitate the implementation of this provision.

Notwithstanding any other provision of this section, a person newly entering employment with a community college on or after July 1, 1990, may elect coverage under an eligible alternative retirement benefits system, as defined in section 260C.14, subsection 17, paragraph *"a"*, in lieu of coverage under the Iowa public employees' retirement system, but only if the person is already a member of the alternative retirement benefits system. An election to participate in an eligible alternative retirement benefits system as described in section 260C.14, subsection 17, is irrevocable as to the person's employment with that community college and any other community college in this state.

For purposes of this section, a *"retirement system in the state which is maintained in whole or in part by public contributions or payments"* shall not include a deferred compensation plan established under section 509A.12 or a tax-sheltered annuity qualified under section 403(b) of the Internal Revenue Code.

[C46, 50, §97.2, 97.6, 97.45; C54, 58, 62, 66, §97B.42, 97B.63; C71, 73, 75, 77, 79, 81, §97B.42]

90 Acts, ch 1240, §24; 92 Acts, ch 1201, §36, 37; 94 Acts, ch 1183, §23, 24; 96 Acts, ch 1187, §23–26; 97 Acts, ch 14, §1, 3; 98 Acts, ch 1077, §1; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.42A Optional exclusion from membership.

1. Commencing January 1, 1999, a person who is newly hired in a position as an employee, as de-

fined in section 97B.1A, subsection 8, paragraph *"a"*, shall be covered under this chapter unless the person files an application with appropriate documentation to the division within sixty days of employment in the position to affirmatively elect out of coverage. A decision to elect out of coverage under this chapter is irrevocable upon approval from the system.

2. If a person elects out of coverage pursuant to this section, the period of time from the date on which the person was newly hired until the date the person's election out of coverage is effective shall not constitute service for purposes of coverage under this chapter. In addition, a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10.

3. A person who is employed in a position as an employee as defined in section 97B.1A, subsection 8, paragraph *"a"*, on January 1, 1999, and who has not elected coverage under this chapter prior to that date and is not an active member of another retirement system in the state which is maintained in whole or in part by public contributions or payments, shall begin coverage under the system on January 1, 1999, unless the person files an application with appropriate documentation with the division to elect out of coverage on or before January 1, 2000. If a person elects out of coverage, the period of time from January 1, 1999, until the date the person's election out of coverage is effective shall not constitute service for purposes of coverage under this chapter and a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10. A decision to elect out of coverage under this chapter pursuant to this section is irrevocable upon approval from the division.

4. A person who becomes a member of the system pursuant to subsection 3, or who is a member of the system, and who has one or more years of covered wages, may purchase credit, pursuant to section 97B.73, for one or more quarters of service prior to January 1, 1999, in which the person was employed in a position as described in section 97B.1A, subsection 8, paragraph *"a"*, but was not a member of the system.

5. A person who is employed in a position as an employee as defined in section 97B.1A, subsection 8, paragraph *"a"*, subparagraph (11), on July 1, 2000, and who has not elected out of coverage under this chapter prior to that date, shall begin coverage under the system on July 1, 2000, unless, on or before August 31, 2000, the person files an application with appropriate documentation to elect coverage under an alternative pension and annuity retirement system established pursuant to chapter 412. If a person elects coverage under the alternative pension and annuity retirement system, the period of time from July 1, 2000, until the date the person's election of coverage is effective shall not constitute service for purposes of coverage under this chapter and a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10. A decision to elect coverage under an alternative pension and annuity retirement system established pursuant to chapter 412 under this subsection is irrevocable upon approval from the division.

A person who becomes a member of the Iowa public employees' retirement system pursuant to this subsection, and who has one or more years of covered wages, may purchase credit, pursuant to section 97B.73, for one or more quarters of service prior to August 1, 2000, in which the person was employed in a position as described by section 97B.1A, subsection 8, paragraph *"a"*, subparagraph (11), but was not a member of the system.

94 Acts, ch 1183, §25; 98 Acts, ch 1183, §25; 2000 Acts, ch 1077, §28, 29; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.42B Transfer to chapter 97A — options for certain public safety employees.

1. Commencing July 1, 1994, a person who is newly hired in the following positions in the department of public safety shall be a member of the Iowa department of public safety peace officers' retirement, accident, and disability system established in chapter 97A:

a. Gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities.

b. Fire prevention inspector peace officers.

c. Employees of the division of capitol police, except clerical workers.

2. Commencing July 1, 1994, notwithstanding any other provision of law to the contrary, a member who is employed in a position specified in subsection 1 prior to July 1, 1994, may elect coverage under the Iowa department of public safety peace officers' retirement, accident, and disability system established in chapter 97A, in lieu of continuing contributions to the Iowa public employees' retirement system, or may remain a member of the Iowa public employees' retirement system. A member who is employed in a position specified in subsection 1 prior to July 1, 1994, must file an election for coverage under the Iowa department of public safety peace officers' retirement, accident, and disability system with the board of trustees established in section 97A.5 on or before July 1, 1995, or the employee shall remain a member under this chapter and shall not be eligible to elect to participate in the system established pursuant to chapter 97A at a later date pursuant to this sec-

tion. The board of trustees established in section 97A.5 shall notify the division of elections received pursuant to this section, and the board of trustees and the division shall cooperate to facilitate the implementation of this section. Coverage under chapter 97A shall commence, and coverage as an active member under this chapter shall cease, when the election has been approved by the board of trustees established in section 97A.5.

3. If an employee elects coverage under chapter 97A as provided in subsection 2 and the election is approved by the board of trustees established in section 97A.5, membership in the Iowa public employees' retirement system shall cease, and the employee shall be transferred to membership in the Iowa department of public safety peace officers' retirement, accident, and disability system. The division shall transfer the accumulated contributions of these employees to the treasurer of state for deposit in the pension accumulation fund established in section 97A.8. However, employer contributions which were made with respect to the employees while the employees were members of the Iowa public employees' retirement system shall remain in the fund established in section 97B.7, and any costs pertaining to the payment of employer contributions to the system established in chapter 97A with respect to the period of time during which the employees were members of the Iowa public employees' retirement system, or any other costs related to the transfer, shall be borne by the system established in chapter 97A, notwithstanding any other provision of law to the contrary.

4. Notwithstanding any other provision of law to the contrary, if the board of trustees established in section 97A.5 approves an election pursuant to subsection 2, the employees transferred from coverage under this chapter to coverage under the system established in chapter 97A shall receive credit for years of service under chapter 97A for those years of service during which the employees were members of the Iowa public employees' retirement system and employed in positions specified in subsection 1. In addition, notwithstanding the limitation on covered wages provided in section 97B.1A, subsection 26, compensation which was paid to an employee in a position specified in subsection 1 while the employee was a member pursuant to this chapter shall be included in determining the average final compensation of the employee pursuant to chapter 97A, if applicable. Employees whose membership is transferred pursuant to this section and the employer, the department of public safety, shall not be required to pay the difference in the employee and employer contributions in effect for the period of time in which the employees were members pursuant to this chapter, as compared to the employee and employer contributions then in effect for members of the system established in chapter 97A.

5. It is the intent of the general assembly that in administering the provisions of this section, the board of trustees established in section 97A.5 and the division shall interpret this section in a manner which provides that the employees whose membership is transferred shall not lose benefits which would have otherwise accrued had the employees been members of the system established in chapter 97A during the period of time in which the employees were actually members of the Iowa public employees' retirement system.

94 Acts, ch 1183, §26; 98 Acts, ch 1183, §82; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.42C Retirement system merger — municipal utility retirement system.

A municipal water utility or waterworks that has established a pension and annuity retirement system for its employees pursuant to chapter 412 may adopt a resolution to authorize the merger of its pension and annuity retirement system with and into the Iowa public employees' retirement system. The system is authorized, but is not required, to accept such a proposal. The governing body of the municipal water utility or waterworks and the Iowa public employees' retirement system shall, acting in their fiduciary capacities, mutually determine the terms and conditions of such a merger, including any additional funds necessary to fund the service credits being transferred to the Iowa public employees' retirement system, and either party may decline the merger if they cannot agree on such terms and conditions. The system shall adopt such rules as it deems necessary and prudent to effectuate mergers as provided by this section.

2002 Acts, ch 1135, §15

NEW section

97B.43 Prior service credit.

Each member in service on July 4, 1953, who made contributions under the abolished system, and who has not applied for and qualified for benefit payments under the abolished system, shall receive credit for years of prior service in the determination of retirement allowance payments under this chapter, if the member elects to become a member on or before October 1, 1953, the member has not made application for a refund of the part of the member's contributions under the abolished system which are payable under sections 97.50 to 97.53, and the member gives written authorization prior to October 1, 1953, to the commission to credit to the retirement fund the amount of the member's contribution which would be subject to a claim for refund. The amount so credited shall, after transfer, be considered as a contribution to the system made as of July 4, 1953, by the member and shall be included in the determination of the

amount of moneys payable under this chapter. However, an employee who was under a contract of employment as a teacher in the public schools of the state of Iowa at the end of the school year 1952-1953, or any person covered by section 97B.1A, subsection 20, paragraph *"c"* or *"d"*, shall be considered as in service as of July 4, 1953, if they were members of the abolished system.

Any person with a record of thirty years as a public employee in the state of Iowa prior to July 1, 1947, and who is not eligible for prior service credit under other provisions of this section, is entitled to a credit for years of prior service in the determination of the retirement allowance payment under this chapter, provided the public employee makes application to the division for credit for prior public service, accompanied by verification of the person's claim as the division may require. The person's allowance for prior service credits shall be computed in the same manner as otherwise provided in this section, but shall not exceed the sum of four hundred fifty dollars nor be less than three hundred dollars per annum. Any such person is entitled to receive retirement allowances computed as provided by this chapter, effective from the date of application to the division, provided such application is approved. However, beginning July 1, 1975, the amount of such person's retirement allowance payment received during June 1975, as computed under this section shall be increased by two hundred percent and the allowance for prior service credits shall not exceed one thousand three hundred fifty dollars nor be less than nine hundred dollars per annum. Effective July 1, 1987, there is appropriated for each fiscal year from the Iowa public employees' retirement fund created in section 97B.7 to the division an amount sufficient to fund the retirement allowance increases paid under this paragraph. Effective July 1, 1980, a person with a record of thirty years as a public employee in the state of Iowa prior to July 1, 1947, receiving retirement allowances under this chapter shall receive the monthly increase in benefits provided in section 97B.49G, subsection 3, paragraph *"a"*.

Each individual who on or after July 1, 1978, was an active, vested, or retired member and who (1) made application for and received a refund of contributions made under the abolished system or (2) has on deposit with the retirement fund contributions made under the abolished system shall be entitled to credit for years of prior service in the determination of retirement allowance payments by filing a written election with the division on or after July 1, 1978, and by redepositing any withdrawn contributions under the abolished system together with interest as stated in this paragraph. Any individual who on or after July 1, 1978, is a retired member and who made application for and received a refund of contributions made under the abolished system may, by filing a written election with the division on or after July 1, 1978, have the division retain fifty percent of the monthly increase in retiree benefits that will accrue to the individual because of prior service. If the monthly increase in retirement benefits is less than ten dollars, the division shall retain five dollars of the scheduled increase, and if the monthly increase is less than five dollars, the provisions of this paragraph shall not apply. The division shall continue to retain such funds until the withdrawn contributions, together with interest accrued to the month in which the written election is filed, have been repaid. Due notice of this provision shall be sent to all retired members on or after July 1, 1978. However, this paragraph shall not apply to any person who received a refund of any membership service contributions unless the person repaid the membership service contributions pursuant to section 97B.74; but a refund of contributions remitted for the calendar quarter ending September 30, 1953 which was based entirely upon employment which terminated prior to July 4, 1953 shall not be considered as a refund of membership service contributions. The interest to be paid into the fund shall be compounded at the rates credited to member accounts from the date of payment of the refund of contributions under the abolished system to the date the member redeposits the refunded amount. The provisions of the first paragraph of this section relating to the consideration given to credited amounts shall apply to the redeposited amounts or to amounts left on deposit. Effective July 1, 1978, the provisions of this paragraph shall apply to each individual who on or after July 1, 1978, was an active, vested, or retired member, but who was not in service on July 4, 1953. The period for filing the written election with the division and redepositing any withdrawn contributions together with interest accrued shall commence July 1, 1978. A member who is a retired member on or after July 1, 1978, may file written election with the division on or after July 1, 1978, to have the division retain fifty percent of the monthly increase as provided in this paragraph.

Effective July 1, 1988, a member eligible for an increased retirement allowance because of the repayment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the division.

[C46, 50, §97.13, 97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.43]

88 Acts, ch 1123, §1; 88 Acts, ch 1242, §31; 90 Acts, ch 1240, §25; 92 Acts, ch 1201, §38; 98 Acts, ch 1183, §26, 82; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.44 Beneficiary.

Each member shall designate on a form to be furnished by the division a beneficiary for death benefits payable under this chapter on the death of the member. The designation may be changed from time to time by the member by filing a new designation with the division. A designation or change in designation made by a member on or after July 1, 2000, shall contain the written consent of the member's spouse, if applicable. The designation of a beneficiary is not applicable if the member receives a refund of all contributions of the member. If a member who has received a refund of contributions returns to employment, the member shall file a new designation with the division.

If a member has not designated a beneficiary on a form furnished by the division, or if there are no surviving designated beneficiaries of a member, death benefits payable under this chapter shall be paid to the member's estate.

However, the system may accept a married member's designation or change in designation under this section without the written consent of the member's spouse if the member submits a notarized statement indicating that the member has been unable to locate the member's spouse to obtain the written consent of the spouse after reasonable diligent efforts. The member's designation or change in designation shall become effective upon filing the necessary forms, including the notarized statement, with the division. The division shall not be liable to the member, the member's spouse, or to any other person affected by the member's designation or change of designation, based upon a designation or change of designation accomplished without the written consent of the member's spouse.

[C46, 50, §97.14 – 97.18; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.44]

92 Acts, ch 1201, §39; 2000 Acts, ch 1077, §30; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §16

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

NEW unnumbered paragraph 3

97B.45 Normal retirement date.

A member's normal retirement date is any of the following, whichever is applicable to the member:

1. The first of the month in which a member attains the age of sixty-five years if the member has not completed twenty years of membership service.

2. The first of the month in which the member attains the age of sixty-two years if the member has completed twenty years of membership service.

3. The first of any month in which the member has completed twenty years of membership service if the member has attained the age of sixty-two years but is not yet sixty-five years of age.

4. The first of any month in which the member is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds eighty-eight.

A member retiring on or after the normal retirement date, as provided in section 97B.46, shall submit a written notice to the division setting forth the date the retirement is to become effective. The date shall be after the member's last day of service and not before the first day of the sixth calendar month preceding the month in which the notice is filed.

[C46, 50, §97.13, 97.39; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.45]

86 Acts, ch 1243, §9; 88 Acts, ch 1242, §32; 94 Acts, ch 1183, §27; 98 Acts, ch 1183, §27, 77; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §17

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Section amended

97B.46 Service after age sixty-five.

1. A member who is not an active member of any other retirement system in the state which is maintained in whole or in part by public contributions may remain in service beyond the date the member attains the age of sixty-five. The employer shall not consider age as a factor in determining the continuation of the member's service.

2. A member remaining in service after attaining the age of seventy years is entitled to receive a retirement allowance under sections 97B.49A through 97B.49H, as applicable, commencing with payment for the calendar month within which the written notice is submitted to the division, except that if the member fails to submit the notice on a timely basis, retroactive payments shall be made for no more than six months immediately preceding the month in which the written notice is submitted.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.46]

87 Acts, ch 19, §5; 88 Acts, ch 1242, §33, 34; 94 Acts, ch 1183, §28; 98 Acts, ch 1183, §28, 29; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.47 Early retirement date.

A member's early retirement date shall be the first of the month in which a member attains the age of fifty-five years or the first of any month after attaining the age of fifty-five years prior to the member's normal retirement date, provided such date shall be after the last day of service. A member may retire on the member's early retirement date by submitting written notice to the division setting forth the early retirement date which shall not be before the first day of the sixth calendar month preceding the month in which such notice is filed.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.47]
2001 Acts, ch 68, §21, 24
2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24
Terminology change applied

97B.48 Payment of allowances.

1. Retirement allowances shall be paid monthly, except that an allowance of less than six hundred dollars a year may, at the member's option, be paid as a lump sum in an amount equal to the sum of the member's and employer's accumulated contributions and the retirement dividends standing to the member's credit before December 31, 1966. Receipt of the lump sum payment by a member shall terminate any and all entitlement for the period of service covered of the member under this chapter and the member shall not be eligible to buy back the period of service.

2. The first monthly payment of a normal retirement allowance shall be paid as of the normal retirement effective date, which date shall be the later of the normal retirement date or the first day of the sixth calendar month preceding the month in which written notice of normal retirement is submitted to the division. Written notice under this section may consist of submission of a completed estimate request form, a completed application for retirement form, or a letter from the member requesting information on retirement benefits, whichever is received first by the division. However, a letter requesting information on benefits or submission of a completed estimate request form is only valid for six months following the date of its receipt by the division, unless during that six-month period the division receives a completed application for retirement form from the member. A retirement allowance may only be provided retroactively for a single six-month period. Payment of an early retirement allowance or an allowance for retirement after the normal retirement date shall be paid as of the effective date of retirement subject to section 97B.45, 97B.46, or 97B.47. The payments shall be continued thereafter for the lifetime of the retired member except as provided in section 97B.48A.

3. On or before the first of the month in which a member attains the age of seventy years, the division shall provide written notification to each member for whom the division has an address that the member may commence receiving a retirement allowance regardless of the member's employment status. Prior to receiving a retirement allowance pursuant to this subsection, a member shall acknowledge in writing that the member was informed by the division of the consequences of electing to receive a retirement allowance pursuant to this subsection and that receipt of a retirement allowance under this subsection is optional. Upon termination from employment of a member receiving a retirement allowance pursuant to this subsection, the member is entitled to have the member's monthly retirement allowance recalculated using the applicable formula for determining a retirement allowance pursuant to sections 97B.49A through 97B.49G, as applicable, in place at the time of the member's first month of entitlement.

4. Payment of a member's retirement allowance pursuant to sections 97B.49A through 97B.49H shall commence no later than the required beginning date specified under section 401(a)(9) of the federal Internal Revenue Code regardless of whether the member has submitted the appropriate notice to receive an allowance. If the lump sum actuarial equivalent under subsection 1 could have been selected by the member, payments shall be made in a lump sum rather than as a monthly allowance.

5. In the event that all, or any portion, of the retirement allowance payable to a member pursuant to subsection 4 shall remain unpaid solely by reason of the inability of the division to locate the member, the amounts payable shall be forfeited. If the member is located after the amounts payable are forfeited, the amounts payable shall be restored.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.48; 82 Acts, ch 1261, §18]
88 Acts, ch 1242, §35; 90 Acts, ch 1240, §26, 27; 92 Acts, ch 1201, §40, 41; 94 Acts, ch 1183, §29; 96 Acts, ch 1187, §27; 98 Acts, ch 1183, §30, 31; 2000 Acts, ch 1077, §31, 32; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §18
2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24
Terminology change applied
Subsection 3 amended

97B.48A Reemployment.

1. If a member who has not reached the member's sixty-fifth birthday and who has a bona fide retirement under this chapter is in regular full-time employment during a calendar year, the member's retirement allowance shall be reduced by fifty cents for each dollar the member earns over the limit provided in this subsection. However, employment is not full-time employment until the member receives remuneration in an amount in excess of thirty thousand dollars for a calendar year, or an amount equal to the amount of remuneration permitted for a calendar year for persons under sixty-five years of age before a reduction in federal social security retirement benefits is required, whichever is higher. Effective the first of the month in which a member attains the age of sixty-five years, a retired member may receive a retirement allowance without a reduction after return to covered employment regardless of the amount of remuneration received.

If a member dies and the full amount of the reduction from retirement allowances required under this subsection has not been paid, the remaining amounts shall be deducted from the payments

made, if any, to the member's designated beneficiary or contingent annuitant. If the member has selected an option under which remaining payments are not required or the remaining payments are insufficient to satisfy the full amount of the reduction from retirement allowances required under this subsection, the amount still unpaid shall be a claim against the member's estate.

2. Effective January 1, 1991, a retired member of any age may receive a retirement allowance after return to covered employment, regardless of the amount of remuneration received, if the covered employment consists of holding an elective office.

3. Upon a retirement after reemployment, a retired member may have the retired member's retirement allowance redetermined under this section or section 97B.48, section 97B.50, or section 97B.51, whichever is applicable, based upon the addition of credit for the years of membership service of the employee after reemployment, the covered wage during reemployment, and the age of the employee after reemployment. The member shall receive a single retirement allowance calculated from both periods of membership service, one based on the initial retirement and one based on the second retirement following reemployment. If the total years of membership service and prior service of a member who has been reemployed equals or exceeds thirty, the years of membership service on which the original retirement allowance was based may be reduced by a fraction of the years of service equal to the number of years by which the total years of membership service and prior service exceeds thirty divided by thirty, if this reduction in years of service will increase the total retirement allowance of the member. The additional retirement allowance calculated for the period of reemployment shall be added to the retirement allowance calculated for the initial period of membership service and prior service, adjusted as provided in this subsection. The retirement allowance calculated for the initial period of membership service and prior service shall not be adjusted for any other factor than years of service. The retired member shall not receive a retirement allowance based upon more than a total of thirty years of service. Effective July 1, 1998, a redetermination of a retirement allowance as authorized by this subsection for a retired member whose combined service exceeds the applicable years of service for that member as provided in sections 97B.49A through 97B.49G shall have the determination of the member's reemployment benefit based upon the percentage multiplier as determined for that member as provided in sections 97B.49A through 97B.49G.

4. The division shall pay to the member the accumulated contributions of the member and all of the employer contributions, plus interest plus interest dividends as provided in section 97B.70, for all completed calendar years, compounded as provided in section 97B.70, on the covered wages earned by a retired member that are not used in the recalculation of the retirement allowance of a member. A payment of contributions to a member pursuant to this subsection shall be considered a retirement payment and not a refund and the member shall not be eligible to buy back the period of reemployment service.

92 Acts, ch 1201, §42; 96 Acts, ch 1187, §28, 29; 98 Acts, ch 1183, §32 – 34; 2000 Acts, ch 1077, §33 – 35; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §19

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Subsection 1, unnumbered paragraph 1 amended

97B.49 Monthly payments of allowance. Repealed by 98 Acts, ch 1183, § 76. See § 97B.49A through 97B.49G.

97B.49A Monthly payments of allowance — general calculation.

1. *Definitions.* For the purposes of this section:

a. "Applicable percentage" means sixty percent or, for each active or inactive vested member retiring on or after July 1, 1996, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of membership and prior service beyond thirty years of service, not to exceed a total of five additional percentage points.

b. "Fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

2. *Entitlement to monthly allowance.* Each member, upon retirement on or after the member's normal retirement date, is entitled to receive a monthly retirement allowance determined under this section. For an inactive vested member the monthly retirement allowance shall be determined on the basis of this section and section 97B.50 as they are in effect on the date of the member's retirement.

3. *Calculation of monthly allowance.* For each active or inactive vested member retiring on or after July 1, 1994, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage multiplied by a fraction of years of service. However, if benefits under this section commence on an early retirement date, the amount of the benefit shall be reduced in accordance with section 97B.50.

4. *Alternative calculations.*

a. For each active member employed before January 1, 1976, and retiring on or after January 1, 1976, and for each member who was a vested

member before January 1, 1976, with four or more complete years of service, a formula benefit shall be determined equal to the larger of the benefit determined under this paragraph and paragraph *"b"* of this subsection, as applicable, the benefit determined under subsection 3, or the benefit determined under section 97B.49G, subsection 1. The amount of the monthly formula benefit for each such active or vested member who retired on or after January 1, 1976, shall be equal to one-twelfth of one and fifty-seven hundredths percent per year of membership service multiplied by the member's average annual covered wages. In no case shall the amount of monthly formula benefit accrued for membership service prior to July 1, 1967, be less than the monthly annuity at the normal retirement date determined by applying the sum of the member's accumulated contributions, the member's employer's accumulated contributions on or before June 30, 1967, and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the division with due regard to the benefits payable from such accumulated contributions under sections 97B.52 and 97B.53.

b. For each member employed before January 1, 1976, who has qualified for prior service credit in accordance with the first paragraph of section 97B.43, a formula benefit shall be determined equal to the larger of the benefit determined under this paragraph and paragraph *"a"* of this subsection, as applicable, the benefit determined under subsection 3, or the benefit determined under section 97B.49G, subsection 1. The amount of the monthly formula benefit under this paragraph shall be equal to eight-tenths of one percent per year of prior service credit multiplied by the monthly rate of the member's total remuneration not in excess of three thousand dollars annually during the twelve consecutive months of the member's prior service for which that total remuneration was the highest. An additional three-tenths of one percent of the remuneration not in excess of three thousand dollars annually shall be payable for prior service during each year in which the accrued liability for benefit payments created by the abolished system is funded by appropriation from the Iowa public employees' retirement fund.

c. For each active and vested member retiring with less than four complete years of service and who therefore cannot have a benefit determined under the formula benefit of paragraph *"a"* or *"b"* of this subsection, subsection 3, or section 97B.49G, subsection 1, a monthly annuity for membership service shall be determined by applying the member's accumulated contributions and the employer's matching accumulated contributions as of the effective retirement date and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the division according to the member's age and contingent annuitant's age, if applicable.

98 Acts, ch 1183, §35; 2001 Acts, ch 68, §21, 24

Calculation of allowance for members subject to employer-mandated reduction in hours between January 1, 2002, and June 30, 2003; emergency rules authorized; 2002 Acts, ch 1135, §36

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.49B Protection occupation.

1. *Definitions.* For purposes of this section:

a. *"Applicable percentage"* means the greater of the following percentages:

(1) Sixty percent.

(2) For each active or inactive vested member retiring on or after July 1, 1996, but before July 1, 2000, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-five years of service for the member, not to exceed a total of five additional percentage points.

(3) For each active or inactive vested member retiring on or after July 1, 2000, but before July 1, 2001, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-four years of service for the member, not to exceed a total of six additional percentage points.

(4) For each active or inactive vested member retiring on or after July 1, 2001, but before July 1, 2002, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-three years of service for the member, not to exceed a total of seven additional percentage points.

(5) For each active or inactive vested member retiring on or after July 1, 2002, but before July 1, 2003, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service for the member, not to exceed a total of eight additional percentage points.

(6) For each active or inactive vested member retiring on or after July 1, 2003, sixty percent plus, if applicable, an additional three-eighths of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service for the member, not to exceed a total of twelve additional percentage points.

b. *"Applicable years of service"* means the following:

(1) For each active or inactive vested member retiring on or after July 1, 1996, and before July 1, 2000, twenty-five.

(2) For each active or inactive vested member retiring on or after July 1, 2000, and before July 1, 2001, twenty-four.

(3) For each active or inactive vested member retiring on or after July 1, 2001, and before July 1,

2002, twenty-three.

(4) For each active or inactive vested member retiring on or after July 1, 2002, twenty-two.

c. "Eligible service" means membership and prior service in a protection occupation. In addition, for a member with membership and prior service in a protection occupation described in paragraph *"e"*, subparagraph (2), eligible service includes membership and prior service as a sheriff, deputy sheriff, or airport fire fighter as defined in section 97B.49C.

d. "Fraction of years of service" means a number, not to exceed one, equal to the sum of the years of eligible service in a protection occupation divided by the applicable years of service for the member.

e. "Protection occupation" includes all of the following:

(1) A conservation peace officer employed under section 456A.13 or as designated by a county conservation board pursuant to section 350.5.

(2) A marshal in a city not covered under chapter 400 or a fire fighter or police officer of a city not participating in the retirement systems established in chapter 410 or 411.

(3) A correctional officer or correctional supervisor employed by the Iowa department of corrections, and any other employee of that department whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline, safety, and security within a correctional facility. The Iowa department of corrections and the personnel division of the department of personnel shall jointly determine which job classifications are covered under this subparagraph.

(4) An airport safety officer employed under chapter 400 by an airport commission in a city of one hundred thousand population or more.

(5) An employee of the state department of transportation who is designated as a *"peace officer"* by resolution under section 321.477, but only if the employee retires on or after July 1, 1990. For purposes of this subparagraph, service as a traffic weight officer employed by the highway commission prior to the creation of the state department of transportation or as a peace officer employed by the Iowa state commerce commission prior to the creation of the state department of transportation shall be included in computing the employee's years of membership service.

(6) A fire prevention inspector peace officer employed by the department of public safety prior to July 1, 1994, who does not elect coverage under the Iowa department of public safety peace officers' retirement, accident, and disability system, as provided in section 97B.42B.

(7) An employee covered by the merit system as provided in chapter 19A whose primary duty is providing airport security and who carries or is licensed to carry a firearm while performing those duties.

2. *Calculation of monthly allowance.* Notwithstanding other provisions of this chapter, a member who is or has been employed in a protection occupation who retires on or after July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to section 97B.49A or 97B.49D, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in a protection occupation multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

3. *Additional contributions.*

a. Annually, the division shall actuarially determine the cost of the additional benefits provided for members covered under this section as a percentage of the covered wages of the employees covered by this section. Sixty percent of the cost shall be paid by the employers of employees covered under this section and forty percent of the cost shall be paid by the employees. The employer and employee contributions required under this paragraph are in addition to the contributions paid under sections 97B.11 and 97B.11A.

b. (1) For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, there is appropriated from the state fish and game protection fund to the division the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph *"e"*, subparagraph (1).

(2) Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each applicable city shall pay to the division the amount necessary to pay the employer share of the cost of the additional benefits provided to employees of that city covered under subsection 1, paragraph *"e"*, subparagraphs (2) and (4).

(3) For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, the department of corrections shall pay to the division from funds appropriated to the Iowa department of corrections, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph *"e"*, subparagraph (3).

(4) For the fiscal year commencing July 1, 1990, and each succeeding fiscal year, the state department of transportation shall pay to the division, from funds appropriated to the state department of transportation from the road use tax fund and the primary road fund, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph *"e"*, subparagraph (5).

(5) For the fiscal year commencing July 1, 1992, and each succeeding fiscal year, the department of public safety shall pay to the division from funds appropriated to the department of public safety, the amount necessary to pay the employer share of the cost of the additional benefits pro-

vided to a fire prevention inspector peace officer pursuant to subsection 1, paragraph *"e"*, subparagraph (6).

(6) For the fiscal year commencing July 1, 1994, and each succeeding fiscal year through the fiscal year ending June 30, 1998, each judicial district department of correctional services shall pay to the division from funds appropriated to that judicial district department of correctional services, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees of a judicial district department of correctional services who are employed as a probation officer III or a parole officer III.

4. Notwithstanding any provision of this chapter to the contrary, the three-year average covered wage for a member retiring under this section whose years of eligible service equals or exceeds twenty-two years of eligible service for that member shall be determined by calculating the member's eligible combined wage for each year of eligible service. For purposes of this subsection, *"eligible combined wage"* means the wages earned by the member for each quarter year period from eligible service and from covered employment that is not eligible service if at least seventy-five percent of the wages earned was from eligible service.

98 Acts, ch 1183, §36; 98 Acts, ch 1223, §19; 2000 Acts, ch 1077, §36 – 39; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §20, 21

2001 terminology change from "department of personnel" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Subsection 1, paragraph e, subparagraph (1) amended

NEW subsection 4

97B.49C Sheriffs, deputy sheriffs, and airport fire fighters.

1. *Definitions.* For purposes of this section:

a. "Airport fire fighter" means an airport fire fighter employed by the military division of the department of public defense.

b. "Applicable percentage" means the greater of the following percentages:

(1) Sixty percent.

(2) For each active or inactive vested member retiring on or after July 1, 1996, and before July 1, 1998, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service, not to exceed a total of five additional percentage points.

(3) For each active or inactive vested member retiring on or after July 1, 1998, sixty percent plus, if applicable, an additional three-eighths of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service, not to exceed a total of twelve additional percentage points.

c. "Deputy sheriff" means a deputy sheriff appointed pursuant to section 341.1 prior to July 1, 1981, or section 331.903 on or after July 1, 1981.

d. "Eligible service" means membership and prior service as an airport fire fighter, sheriff, and deputy sheriff under this section. In addition, eligible service includes membership and prior service as a marshal in a city not covered under chapter 400 or a fire fighter or police officer of a city not participating in the retirement systems established in chapter 410 or 411, and as an airport fire fighter prior to July 1, 1994.

e. "Fraction of years of service" means a number, not to exceed one, equal to the sum of the years of eligible service under this section divided by twenty-two years.

f. "Sheriff" means a county sheriff as defined in section 39.17.

2. *Calculation of monthly allowance.* Notwithstanding other provisions of this chapter, a member who retires from employment as a sheriff, deputy sheriff, or airport fire fighter on or after July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to section 97B.49A or 97B.49D, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in eligible service multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

3. *Additional contributions.*

a. Annually, the division shall actuarially determine the cost of the additional benefits provided for members covered under this section as a percentage of the covered wages of the employees covered by this section. Sixty percent of the cost shall be paid by the employers of employees covered under this section and forty percent of the cost shall be paid by the employees. The employer and employee contributions required under this paragraph are in addition to the contributions paid under sections 97B.11 and 97B.11A. However, the cost of including service as an airport fire fighter prior to July 1, 1994, as eligible service under this section shall not affect the contribution rates calculated and paid by the member or the employer under this section.

b. (1) Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each county shall pay to the division the amount necessary to pay the employer share of the cost of the additional benefits provided to sheriffs and deputy sheriffs.

(2) For the fiscal year commencing July 1, 1994, and each succeeding fiscal year, there is appropriated from the general fund of the state to the division, from funds not otherwise appropriated, an amount necessary to pay the employer share of the cost of the additional benefits provided to airport fire fighters under this section.

4. Notwithstanding any provision of this chapter to the contrary, the three-year average covered wage for a member retiring under this section whose years of eligible service equals or exceeds

twenty-two years of eligible service for that member shall be determined by calculating the member's eligible combined wage for each quarter year of eligible service. For purposes of this subsection, *"eligible combined wage"* means the wages earned by the member for each quarter year period from eligible service and from covered employment that is not eligible service if at least seventy-five percent of the wages earned was from eligible service.

98 Acts, ch 1183, §37; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §22

2001 terminology change from "department of personnel" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

NEW subsection 4

97B.49D Hybrid formula.

1. An active or inactive vested member, who is or has been employed in both special service and regular service, who retires on or after July 1, 1996, with four or more completed years of service and at the time of retirement is at least fifty-five years of age, may elect to receive, in lieu of the receipt of a monthly retirement allowance as calculated pursuant to sections 97B.49A through 97B.49C, a combined monthly retirement allowance equal to the sum of the following:

a. One-twelfth of an amount equal to the applicable percentage of the member's three-year average covered wage multiplied by a fraction of years of service. The fraction of years of service for purposes of this paragraph shall be the actual years of service, not to exceed thirty, for which regular service contributions were made, divided by thirty. However, any otherwise applicable age reduction for early retirement shall apply to the calculation under this paragraph.

b. One-twelfth of an amount equal to the applicable percentage of the member's three-year average covered wage multiplied by a fraction of years of service. The fraction of years of service for purposes of this paragraph shall be the actual years of service, not to exceed the applicable years of service for the member as defined in section 97B.49B, earned in a position described in section 97B.49B, for which special service contributions were made, divided by the applicable years of service for the member as defined in section 97B.49B. In calculating the fractions of years of service under the paragraph, a member shall not receive special service credit for years of service for which the member and the member's employer did not make the required special service contributions to the division.

c. One-twelfth of an amount equal to the applicable percentage of the member's three-year average covered wage multiplied by a fraction of years of service. The fraction of years of service for purposes of this paragraph shall be the actual years of service, not to exceed twenty-two, earned in a position described in section 97B.49C, for which special service contributions were made, divided by twenty-two. In calculating the fractions of years of service under this paragraph, a member shall not receive special service credit for years of service for which the member and the member's employer did not make the required special service contributions to the division.

2. In calculating the combined monthly retirement allowance pursuant to subsection 1, the sum of the fraction of years of service provided in subsection 1, paragraphs *"a"*, *"b"*, and *"c"*, shall not exceed one. If the sum of the fractions of years of service would exceed one, the division shall deduct years of service first from the calculation under subsection 1, paragraph *"a"*, and then from the calculation under subsection 1, paragraph *"b"*, if necessary, so that the sum of the fractions of years of service shall equal one.

3. In calculating the combined monthly retirement allowance pursuant to subsection 1, the applicable percentage shall be sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of membership service in service as described in subsection 1, paragraph *"a"*, *"b"*, or *"c"*, beyond thirty years of service, not to exceed a total of five additional percentage points. Any addition in the percentage multiplier shall be included in the calculations required under this section.

98 Acts, ch 1183, §38; 2000 Acts, ch 1077, §40; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.49E Minimum benefits.

1. For each active member retiring on or after June 30, 1973, and who has completed ten or more years of membership service, the total amount of monthly benefit payable at the normal retirement date for prior service and membership service shall not be less than fifty dollars per month. If benefits commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50. If an optional allowance is selected under section 97B.51, the amount payable shall be the actuarial equivalent of the minimum benefit. An employee who is in employment on a school year or academic year basis, will be considered to be an active member as of June 30, 1973, if the employee completed the 1972-1973 school year or academic year.

2. Effective January 1, 1997, for members who retired on or after July 1, 1953, and before July 1, 1990, with at least ten years of prior and membership service, the minimum monthly benefit payable at the normal retirement date for prior and membership service shall be two hundred dollars. The minimum monthly benefit payable shall be increased by ten dollars for each year of prior and membership service beyond ten years, up to a maximum of twenty additional years of prior and membership service. If benefits commenced on an

early retirement date, the amount of the benefit shall be reduced in accordance with section 97B.50. If an optional allowance was selected under section 97B.51, the amount payable shall be the actuarial equivalent of the minimum benefit.

98 Acts, ch 1183, §39

97B.49F Retirement dividends.

1. *Cost-of-living dividend.*

a. Effective July 1, 1997, commencing with dividends payable in November 1997, and for each subsequent year, all members who retired prior to July 1, 1990, and all beneficiaries and contingent annuitants of such members, shall be eligible for annual dividend payments, payable in November of that year, pursuant to the requirements of this subsection. The dividend payable in any given year shall be the sum of the dollar amount of the dividend payable in the previous November and the dividend adjustment. A dividend determined pursuant to this subsection shall not be used to increase the monthly benefit amount payable. In no event shall the dividend payable be less than twenty-five dollars.

b. (1) The dividend adjustment for a given year shall be calculated by multiplying the total of the retiree's, beneficiary's, or contingent annuitant's monthly benefit payments and the dividend payable to the retiree, beneficiary, or contingent annuitant, in the previous calendar year by the applicable percentage as determined by this paragraph.

(2) The applicable percentage shall be the least of the following percentages:

(a) The percentage representing the percentage increase in the consumer price index published in the federal register by the federal department of labor, bureau of labor statistics, that reflects the percentage increase in the consumer price index for the twelve-month period ending June 30 of the year that the dividend is to be paid.

(b) The percentage representing the percentage amount the actuary has certified, in the annual actuarial valuation of the system as of June 30 of the year in which the dividend is to be paid, that the fund can absorb without requiring an increase in the employer and employee contributions to the fund.

(c) Three percent.

c. If a member eligible to receive a cost-of-living dividend dies before November 1 of a year, a cost-of-living dividend shall not be payable in November of that year in the name of the member. If a member dies on or after November 1, but before payment of a dividend is made in that month, the full amount of the retirement dividend for that year shall be paid in the member's name upon notification of the member's death.

2. *Favorable experience dividend.*

a. Commencing January 1, 1999, all qualified recipients who have received a monthly allowance for at least one year as of the date the dividend is payable shall be eligible to receive a favorable experience dividend, payable on the last business day in January of each year pursuant to the requirements of this subsection. If the qualified recipient eligible to receive a favorable experience dividend dies before January 1 of a year, a favorable experience dividend shall not be payable in January of that year in the name of the qualified recipient. However, if the qualified recipient dies on or after January 1 but before the dividend is paid in that month, the full amount of the dividend payable in that month shall be paid in the name of the qualified recipient, upon notification of death. For purposes of this paragraph, *"qualified recipient"* includes all members who retired on or after July 1, 1990, or a beneficiary or contingent annuitant of such a member who receives a monthly benefit, and a beneficiary of an active member who elects a monthly allowance under section 97B.52, subsection 1, paragraph *"c"*.

b. A favorable experience dividend reserve account, hereafter called the *"reserve account"*, is established within the retirement fund. Moneys credited to the reserve account shall be used by the division for the purpose of providing a favorable experience dividend pursuant to this subsection.

c. Moneys shall be credited to the reserve account in the retirement fund as follows:

(1) On or before January 15, 1999, there shall be credited to the reserve account an amount that the system's actuary determines is sufficient to pay the maximum favorable experience dividend for each of the next following five years, based on reasonable actuarial assumptions.

(2) Beginning with the annual actuarial valuation of the system as of June 30, 1999, and for each annual actuarial valuation of the system thereafter, there shall be credited to the reserve account on each applicable January 15 following an actuarial valuation, an amount that represents that portion of the favorable actuarial experience, if any, that the system's actuary determines shall be credited to the reserve account pursuant to rules adopted by the division.

(3) The portion of the favorable actuarial experience, if any, that is not initially credited to the reserve account pursuant to subparagraph (2), but which, if applied to the retirement fund, would result in the actuarial valuation of assets exceeding the actuarial accrued liability of the system based on the most recent annual actuarial valuation of the system, shall be credited to the reserve account.

(4) Notwithstanding the provisions of this paragraph to the contrary, moneys credited to the reserve account in any applicable year shall not exceed an amount which, if credited to the reserve account, would exceed an amount that the system's actuary determines is sufficient to pay the maximum favorable experience dividend for each of the next following ten years, based on reason-

able actuarial assumptions.

(5) As used in this paragraph, *"favorable actuarial experience"* means the difference, if positive, between the anticipated and actual experience of the system's actuarial assets and liabilities as measured by the system's actuary in the most recent annual actuarial valuation of the system pursuant to rules adopted by the division.

d. The favorable experience dividend is calculated by multiplying the monthly retirement allowance payable to the retiree, beneficiary, or contingent annuitant for the previous December, or such other month as determined by the division, by twelve, and then multiplying that amount by the number of complete years the member has been retired or would have been retired if living as of the date the dividend is payable, and by the applicable percentage. For purposes of this paragraph, the applicable percentage is the percentage, not to exceed three percent, that the division determines shall be applied in calculating the favorable experience dividend if the division determines that the reserve account is sufficiently funded to make a distribution. In making its determination, the division shall consider, but not be limited to, the amounts credited to the reserve account, the distributions from the reserve account made in previous years, the likelihood of future credits to and distributions from the reserve account, and the distributions paid under subsection 1.

98 Acts, ch 1183, §40; 2000 Acts, ch 1077, §41 – 45, 77; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §23

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Subsection 2, paragraph a amended

97B.49G Monthly payments of allowance — miscellaneous provisions.

1. *Monthly payments of allowance — percentage multiplier.*

a. For each active or inactive vested member retiring on or after July 1, 1986, and before July 1, 1994, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to the applicable percentage multiplier of the three-year average covered wage multiplied by a fraction of years of service.

b. The applicable percentage multiplier for purposes of this subsection shall be the following:

(1) For active or inactive vested members retiring on or after July 1, 1986, but before July 1, 1990, fifty percent.

(2) For active or inactive vested members retiring on or after July 1, 1990, but before July 1, 1991, fifty-two percent.

(3) For active or inactive vested members retiring on or after July 1, 1991, but before July 1, 1992, fifty-four percent.

(4) For active or inactive vested members retiring on or after July 1, 1992, but before July 1, 1993, fifty-six percent.

(5) For active or inactive vested members retiring on or after July 1, 1993, but before July 1, 1994, fifty-seven and four-tenths percent.

(6) For active or inactive vested members retiring on or after July 1, 1994, sixty percent.

c. For purposes of this subsection, fraction of years of service means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

2. *Extra payments on allowance — pre-1976 retirees.*

a. On January 1, 1976, for each member who retired before January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for December 1975 is increased by ten percent for the first calendar year or portion of a calendar year the member was retired, and by an additional five percent for each calendar year after the first calendar year the member was retired through the calendar year beginning January 1, 1975. The total increase shall not exceed one hundred percent. Effective July 1, 1987, there is appropriated for each fiscal year from the Iowa public employees' retirement fund created in section 97B.7 to the division from funds not otherwise appropriated an amount sufficient to fund the monthly retirement allowance increases paid under this paragraph.

The benefit increases granted to members retired under the system on January 1, 1976, shall be granted only on January 1, 1976, and shall not be further increased for any year in which the member was retired after the calendar year beginning January 1, 1975.

b. Effective July 1, 1978, for each member who retired from the system prior to January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1978 is increased as follows:

(1) For the first ten years of service, fifty cents per month for each complete year of service.

(2) For the eleventh through the twentieth years of service, two dollars per month for each complete year of service.

(3) For the twenty-first through the thirtieth years of service, three dollars per month for each complete year of service.

Effective July 1, 1979, the increases granted to members under this subparagraph shall be paid to contingent annuitants and to beneficiaries.

3. *Extra payments on allowance.*

a. Effective July 1, 1980, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976, under section

97B.49A, subsection 4, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1980 is increased as follows:

(1) For the first ten years of service, fifty cents per month for each complete year of service.

(2) For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

(3) For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

(4) The amount of monthly increase payable to a member under this paragraph is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section or section 97B.49A, as applicable.

However, effective July 1, 1980, the monthly retirement allowance attributable to membership service and prior service of a member, contingent annuitant, and beneficiary shall not be less than five dollars times the number of complete years of service of the member, not to exceed thirty, reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52, compared to the full monthly retirement benefit provided in this section or section 97B.49A, as applicable.

b. Effective beginning July 1, 1982, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976, under section 97B.49A, subsection 4, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1982 is increased as follows:

(1) For the first ten years of service, fifty cents per month for each complete year of service.

(2) For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

(3) For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

(4) The amount of monthly increase payable to a member under this paragraph is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section or section 97B.49A, as applicable.

c. Beginning January 1, 1999, for each member who retired from the system prior to July 1, 1986, the amount of regular monthly retirement allowance attributable to membership and prior service that was payable to the member, or the beneficiary or contingent annuitant of the member, for December 1998 shall be increased by fifteen percent.

d. Beginning January 1, 1999, for each member who retired from the system on or after July 1, 1986, but before July 1, 1990, the amount of regular monthly retirement allowance attributable to membership and prior service that was payable to the member, or the beneficiary or contingent annuitant of the member, for December 1998 shall be increased by seven percent.

4. *Normal retirement dates.* A retired member shall be deemed to have retired on the member's normal retirement date, and retirement benefits calculated shall not be reduced pursuant to section 97B.50, if the member meets any of the following requirements:

a. The member is an active or inactive vested member retiring on or after July 1, 1988, and before July 1, 1990, who is at least fifty-five years of age and has completed at least thirty years of membership service and prior service, and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two.

b. The member is an active or inactive vested member retiring on or after July 1, 1990, and before July 1, 1996, who is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two.

c. The member is an active or inactive vested member retiring on or after July 1, 1996, and before July 1, 1997, who is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety.

d. The member is an active or inactive vested member retiring on or after July 1, 1986, and before January 1, 1999, who is at least sixty-two years of age and who has completed thirty years of membership service.

5. *Dividends — November 1996.*

a. Each member who retired from the system between July 4, 1953, and December 31, 1975, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to two hundred ninety-two percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

b. A member who retired from the system between January 1, 1976, and June 30, 1982, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend

equal to two hundred twenty-three percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

c. A member who retired from the system between July 1, 1982, and June 30, 1986, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to seventy-four percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

d. A member who retired from the system between July 1, 1986, and June 30, 1990, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to twenty-four percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

e. Notwithstanding the determination of the amount of a retirement dividend under this subsection, a retirement dividend shall not be less than twenty-five dollars.

6. *Conservation peace officer — July 1986 – July 1988.*

a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a conservation peace officer under section 456A.13 and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a conservation peace officer, may elect to receive, in lieu of the receipt of any benefits under subsection 1 or section 97B.49A, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer, with benefits payable during the member's lifetime.

b. A conservation peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer, multiplied by a fraction of years of service as a conservation peace officer. For the purpose of this subsection, *"fraction of years of service"* means a number, not to exceed one, equal to the sum of the years of membership service as a conservation peace officer, divided by twenty-five years. On or after July 1, 1986, but before July 1, 1988, if the conservation peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the conservation peace officer's retirement precedes the date on which the conservation peace officer attains sixty years of age.

The annual contribution necessary to pay for the additional benefits provided in this paragraph shall be paid by the employer and employee in the same proportion that employer and employee contributions are made under section 97B.11.

c. There is appropriated from the state fish and game protection fund to the division an actuarially determined amount calculated by the Iowa public employees' retirement system sufficient to pay for the additional benefits to conservation peace officers provided by this subsection, as a percentage, in paragraph *"a"* and for the employer portion of the benefits provided in paragraph *"b"*. The amount is in addition to the contribution paid by the employer under section 97B.11. The cost of the benefits relating to fish and wildlife conservation peace officers within the department of natural resources shall be paid from the state fish and game protection fund and the cost of the benefits relating to the other conservation peace officers of the department shall be paid from the general fund.

7. *Peace officer — July 1986 – July 1988.*

a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a peace officer and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a peace officer, may elect to receive, in lieu of the benefits under subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer, with benefits payable during the member's lifetime.

A peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer multiplied by the fraction of years of service as a peace officer. For the purpose of this subsection, *"fraction of years of service"* means a number, not to exceed one, equal to the sum of the years of membership service as a peace officer, divided by twenty-five years. On or after July 1, 1984, but before July 1, 1988, if the peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the peace officer's retirement precedes the date on which the peace officer attains sixty years of age.

For the purpose of this subsection, membership service as a peace officer means service under this system as any or all of the following:

(1) As a county sheriff as defined in section 39.17.

(2) As a deputy sheriff appointed pursuant to section 341.1, Code 1981, or section 331.903.

(3) As a marshal or police officer in a city not covered under chapter 400.

b. Each county and applicable city and employee eligible for benefits under this subsection shall annually contribute an amount determined by the division, as a percentage of covered wages, to be necessary to pay for the additional benefits provided by this subsection. The annual contribution in excess of the employer and employee contributions required by this chapter shall be paid by the employer and the employee in the same proportion that employer and employee contributions are made under section 97B.11. The additional percentage of covered wages shall be calculated separately by the division for service under paragraph *"a"*, subparagraphs (1) and (2), and for service under paragraph *"a"*, subparagraph (3), and each shall be an actuarially determined amount for that type of service which, if contributed throughout the entire period of active service, would be sufficient to provide the pension benefit provided in this subsection.

8. *Correctional officer — July 1986 – July 1988.*

a. Notwithstanding sections of this chapter relating to eligibility for and determination of retirement benefits, a vested member who is or has been employed as a correctional officer by the Iowa department of corrections and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least thirty years of membership service as a correctional officer, may elect to receive, in lieu of the receipt of benefits under subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a correctional officer, with benefits payable during the member's lifetime.

b. The Iowa department of corrections and the division shall jointly determine the applicable merit system job classifications of correctional officers.

c. The Iowa department of corrections shall pay to the division, from funds appropriated to the Iowa department of corrections, an actuarially determined amount sufficient to pay for the additional benefits provided in this subsection. The amount is in addition to the employer contributions required in section 97B.11.

9. *Airport fire fighter — July 1986 – July 1988.*

a. Notwithstanding other provisions of this chapter, a member who is or has been employed by the office of disaster services as an airport fire fighter who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as an airport fire fighter, may elect to receive, in lieu of the receipt of any benefits under subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport fire fighter, with benefits payable during the member's lifetime.

b. An airport fire fighter who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport fire fighter multiplied by a fraction of years of service as an airport fire fighter. For the purpose of this subsection, *"fraction of years of service"* means a number, not to exceed one, equal to the sum of the years of membership service as an airport fire fighter, divided by twenty-five years. On or after July 1, 1986, but before July 1, 1988, if the airport fire fighter has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the airport fire fighter's retirement precedes the date on which the airport fire fighter attains sixty years of age.

c. The employer and each employee eligible for benefits under this subsection shall annually contribute an actuarially determined amount specified by the division, as a percentage of covered wages, that is necessary to pay for the additional benefits provided by this subsection. The annual contribution in excess of the employer and employee contributions required in section 97B.11 shall be paid by the employer and the employee in the same proportion that the employer and employee contributions are made under section 97B.11.

d. There is appropriated from the general fund of the state to the division from funds not otherwise appropriated an amount sufficient to pay the employer share of the cost of the additional benefits provided in this subsection.

10. *Protection occupation — July 1988 – July 1994.*

a. For purposes of this subsection:

(1) *"Applicable percentage"* means the applicable percentage multiplier defined in subsection 1, paragraph *"b"*, that applies on the date a member retires and becomes eligible to receive a monthly allowance as calculated pursuant to this subsection.

(2) *"Fraction of years of service"* means a number, not to exceed one, equal to the sum of the years of membership service in a protection occupation divided by twenty-five years.

b. Notwithstanding other provisions of this

chapter, a member who is or has been employed in a protection occupation who retires on or after July 1, 1988, and before July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in a protection occupation multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

11. *Sheriffs and deputy sheriffs — July 1988 – July 1994.*

a. For purposes of this subsection:

(1) *"Applicable percentage"* means the applicable percentage multiplier as described in subsection 1, paragraph *"b"*, that applies on the date a member retires and becomes eligible to receive a monthly allowance as calculated pursuant to this subsection.

(2) *"Fraction of years of service"* means a number, not to exceed one, equal to the sum of the years of membership service as a sheriff or deputy sheriff divided by twenty-two years.

b. Notwithstanding other provisions of this chapter, a member who retires from employment as a sheriff or deputy sheriff on or after July 1, 1988, and before July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed as a sheriff or deputy sheriff multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

12. *Probation and parole officers III — July 1994 – July 1998.* The division shall establish and maintain additional contribution accounts for employees of judicial district departments of correctional services who were employed as parole officers III and probation officers III during any portion of the period from July 1, 1994, through June 30, 1998. A probation officer III or parole officer III who made contributions to the retirement fund during the period from July 1, 1994, through June 30, 1998, as a member of a protection occupation shall have credited to an additional contribution account for that probation or parole officer an amount equal to the contributions made to the retirement fund in excess of three and seven-tenths percent of the probation or parole officer's covered wages paid from July 1, 1994, through June 30, 1998, plus interest at the applicable statutory interest rates established in this chapter. Moneys deposited in an additional contribution account established pursuant to this section shall be payable in a lump sum to the probation or parole officer at retirement or upon request for a refund of moneys in the account. If the probation or parole officer dies prior to receipt of moneys in the account, the beneficiary designated by that probation or parole officer shall receive a lump sum payment of moneys in the account. The payment of moneys from the account created in this subsection shall not be annuitized. A probation officer III or parole officer III for which an account is established under this subsection shall not receive credit for eligible service as a member of a protection occupation for that service.

98 Acts, ch 1183, §41; 2000 Acts, ch 1077, §46; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1162, §32

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Subsection 6, paragraph c amended

97B.49H Active member supplemental accounts.

1. There is established, for each active member, a supplemental account consisting of amounts credited to the account as provided in this section which shall be held and used for the exclusive benefit of the member pursuant to the requirements of this section.

2. Amounts shall be credited to a supplemental account of each active member pursuant to the requirements of this section following a determination by the system's actuary during the most recent annual actuarial valuation that the system does not have an unfunded accrued liability. For purposes of this section, the system does not have an unfunded accrued liability if the actuarial accrued liability of the system based on the actuarial cost method used by the actuary does not exceed the actuarial value of assets of the system as of the valuation date.

3. The division shall annually determine the amount to be credited to the supplemental accounts of active members. The amount to be credited shall be calculated by multiplying the member's covered wages for the applicable wage reporting period by the supplemental rate. For purposes of this subsection, the supplemental rate is the difference, if positive, between the combined employee and employer statutory contribution rates in effect under section 97B.11 and the normal cost rate of the system as determined by the system's actuary in the most recent annual actuarial valuation of the system. The credits shall be made at least quarterly during the calendar year following a determination that the system does not have an unfunded accrued liability. The normal cost rate, calculated according to the actuarial cost method used, is the percent of pay allocated to each year of service that is necessary to fund projected benefits over all members' service with the system.

4. Amounts credited to a member's supplemental account shall be credited with interest quarterly pursuant to section 97B.70, subsection 2.

5. Amounts credited to a member's supplemental account shall be distributed as follows:

a. If a member terminates covered employment and files an application for a refund under section 97B.53, the member shall receive in a lump sum payment, in addition to any other payment provided by this chapter, all amounts credited to the member's supplemental account.

b. If a member dies prior to retirement, the member's beneficiary shall receive in a lump sum payment, in addition to any other payment provided by this chapter, all amounts credited to the member's supplemental account.

c. Upon retirement, the member shall elect to receive in a lump sum payment or in an annuity, in addition to any other payment provided by this chapter, all amounts credited to the member's supplemental account. The annuity provided under this section shall be payable in the same form, at the same time, and to the same persons, including beneficiaries and contingent annuitants, that the member elects for the payments under the other provisions of this chapter providing for the monthly payment of allowances. The amount of an annuity provided under this section, including amounts payable to beneficiaries and contingent annuitants, shall be calculated using the amount credited to the member's supplemental account as of the date of retirement, and the assumptions underlying the actuarial tables used to calculate optional allowances under section 97B.51.

98 Acts, ch 1183, §42, 43; 2000 Acts, ch 1077, §47; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.49I Qualified benefits arrangement.

The division, by rule, may establish and maintain a qualified benefits arrangement under section 415(m) of the federal Internal Revenue Code. The amount of any annual benefit that would be payable pursuant to this chapter but for the limitation imposed by section 415 of the federal Internal Revenue Code shall be paid from a qualified benefits arrangement established and maintained pursuant to this section.

98 Acts, ch 1183, §44; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.50 Early retirement.

1. Except as otherwise provided in this section, a vested member who is at least fifty-five years of age, upon retirement prior to the normal retirement date for that member, is entitled to receive a monthly retirement allowance determined in the same manner as provided for normal retirement in sections 97B.49A, 97B.49E, and 97B.49G, reduced as follows:

a. For a member who is less than sixty-two years of age, by twenty-five hundredths of one percent per month for each month that the early retirement date precedes the normal retirement date.

b. For a member who is at least sixty-two years of age and who has not completed twenty years of membership service and prior service, by twenty-five hundredths of one percent per month for each month that the early retirement date precedes the normal retirement date.

2. *a.* A vested member who retires from the system due to disability and commences receiving disability benefits pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq., and who has not reached the normal retirement date, shall receive benefits as selected under section 97B.51, and shall not have benefits reduced upon retirement as required under subsection 1 regardless of whether the member has completed thirty or more years of membership service. However, the benefits shall be suspended during any period in which the member returns to covered employment. This section takes effect July 1, 1990, for a member meeting the requirements of this paragraph who retired from the system at any time after July 4, 1953. Eligible members retiring on or after July 1, 2000, are entitled to the receipt of retroactive adjustment payments for no more than thirty-six months immediately preceding the month in which written notice of retirement due to disability was submitted to the division, notwithstanding the requirements of subsection 4.

b. A vested member who retires from the system due to disability and commences receiving disability benefits pursuant to the federal Railroad Retirement Act, 45 U.S.C. § 231 et seq., and who has not reached the normal retirement date, shall receive benefits as selected under section 97B.51, and shall not have benefits reduced upon retirement as required under subsection 1 regardless of whether the member has completed thirty or more years of membership service. However, the benefits shall be suspended during any period in which the member returns to covered employment. This section takes effect July 1, 1990, for a member meeting the requirements of this paragraph who retired from the system at any time since July 4, 1953. Eligible members retiring on or after July 1, 2000, are entitled to the receipt of retroactive adjustment payments for no more than thirty-six months immediately preceding the month in which written notice of retirement due to disability was submitted to the division, notwithstanding the requirements of subsection 4.

c. A vested member who terminated service due to a disability, who has been issued payment for a refund pursuant to section 97B.53, and who subsequently commences receiving disability benefits as a result of that disability pursuant to

the federal Social Security Act, 42 U.S.C. § 423 et seq. or the federal Railroad Retirement Act, 45 U.S.C. § 231 et seq., may receive credit for membership service for the period covered by the refund payment, upon repayment to the division of the actuarial cost of receiving service credit for the period covered by the refund payment, as determined by the division. For purposes of this paragraph, the actuarial cost of the service purchase shall be determined as provided in section 97B.74. The payment to the division as provided in this paragraph shall be made within ninety days after July 1, 2000, or the date federal disability payments commenced, whichever occurs later. For purposes of this paragraph, the date federal disability payments commence shall be the date that the member actually receives the first such payment, regardless of any retroactive payments included in that payment. A member who repurchases service credit under this paragraph and applies for retirement benefits shall have the member's monthly allowance, including retroactive adjustment payments, determined in the same manner as provided in paragraph *"a"* or *"b"*, as applicable. This paragraph shall not be implemented until the system has received a determination letter from the federal internal revenue service approving the system's plan's qualified status under Internal Revenue Code section 401(a).

3. A member who is at least sixty-two years of age and less than sixty-five years of age, and who has completed twenty or more years of membership service and prior service, shall receive benefits under sections 97B.49A through 97B.49G, as applicable, determined as if the member had attained sixty-five years of age.

4. A vested member eligible for a retirement allowance adjusted under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice of retirement was submitted to the division.

[C46, 50, §97.13, 97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.50]

84 Acts, ch 1285, §11, 12; 86 Acts, ch 1243, §19 – 21; 87 Acts, ch 227, §19, 20; 88 Acts, ch 1242, §45 – 47; 90 Acts, ch 1240, §37; 91 Acts, ch 105, §1; 92 Acts, ch 1201, §48, 49; 94 Acts, ch 1183, §43, 44; 96 Acts, ch 1187, §41; 98 Acts, ch 1183, §45, 77; 2000 Acts, ch 1077, §48 – 50; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.50A Disability benefits for special service members.

1. *Definitions.* For purposes of this section, unless the context otherwise provides:

a. "Member" means a vested member who is classified as a special service member under section 97B.1A, subsection 22, at the time of the alleged disability. *"Member"* does not mean a volunteer fire fighter.

b. "Net disability retirement allowance" means the amount determined by subtracting the amount paid during the previous calendar year by the member for health insurance or similar health care coverage for the member and the member's dependents from the amount of the member's disability retirement allowance, including any dividends and distributions from supplemental accounts, paid for that year pursuant to this section.

c. "Reemployment comparison amount" means an amount equal to the current covered wages of an active special service member at the same position on the salary scale within the rank or position the member held at the time the member received a disability retirement allowance pursuant to this section. If the rank or position held by the member at the time of retirement pursuant to this section is abolished, the amount shall be computed by the division as though the rank or position had not been abolished and salary increases had been granted on the same basis as granted to other ranks or positions by the former employer of the member. The reemployment comparison amount shall not be less than the three-year average covered wage of the member, based on all regular and special service covered under this chapter.

2. *In-service disability retirement allowance.*

a. A member who is injured in the performance of the member's duties, and otherwise meets the requirements of this subsection, shall receive an in-service disability retirement allowance under this subsection, in lieu of a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

b. Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation as the natural and proximate result of an injury, disease, or exposure occurring or aggravated while in the actual performance of duty at some definite place and time shall be eligible to retire under this subsection, provided that the medical board, as established by this section, shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The division shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's special service membership in the system first commenced on or after July 1, 2000, the member shall not be eligible for benefits with respect to a disability which would not exist but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the division that the member is not mentally or physically incapacitated for the further per-

formance of duty, shall be entitled to be restored to active service in the same or comparable special service occupation position held by the member immediately prior to the application for disability benefits.

c. Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain, exposure, or the inhalation of noxious fumes, poison, or gases. However, if a person's special service membership in the system first commenced on or after July 1, 2000, and the heart disease or disease of the lungs or respiratory tract would not exist, but for a medical condition that was known to exist on the date that special service membership commenced, the presumption established in this paragraph shall not apply.

d. Upon retirement for an in-service disability as provided by this subsection, a member shall have the option to receive a monthly in-service disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable, that the member would receive if the member had attained fifty-five years of age. The monthly in-service disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of sixty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

3. *Ordinary disability retirement allowance.*

a. A member who otherwise meets the requirements of this subsection shall receive an ordinary disability retirement allowance under this subsection in lieu of a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

b. Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation shall be eligible to retire under this subsection, provided that the medical board, as established by this section, shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The division shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's special service membership in the system first commenced on or after July 1, 2000, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that special service membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the division that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same or comparable special service occupation position held by the member immediately prior to the application for disability benefits.

c. Upon retirement for an ordinary disability as provided by this subsection, a member shall receive the greater of a monthly ordinary disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable. The monthly ordinary disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

4. *Waiver of allowance.* A member receiving a disability retirement allowance under this section may file an application to receive benefits pursuant to section 97B.50, subsection 2, in lieu of receiving a disability retirement allowance under this section, if the member becomes eligible for benefits under section 97B.50, subsection 2. An application to receive benefits pursuant to section 97B.50, subsection 2, shall be filed with the division within sixty days after the member becomes eligible for benefits pursuant to that section or the member shall be ineligible to elect coverage under that section. On the first of the month following the month in which a member's application is approved by the division, the member's election of coverage under section 97B.50, subsection 2, shall become effective and the member's eligibility to receive a disability retirement allowance pursuant to this section shall cease. Benefits payable pursuant to section 97B.50, subsection 2, shall be calculated using the option choice the member selected for payment of a disability retirement allowance pursuant to this section. An application to elect coverage under section 97B.50, subsection 2, is irrevocable upon approval by the division.

5. *Offset to allowance.* Notwithstanding any provisions to the contrary in state law, or any applicable contract or policy, any amounts which may be paid or payable by the employer under any workers' compensation, unemployment compensation, or other law to a member, and any disability payments the member receives pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq., shall be offset against and payable in lieu of any retirement allowance payable pursuant to this section on account of the same disability.

6. *Reexamination of members retired on account of disability.*

a. Once each year during the first five years following the retirement of a member under this section, and once in every three-year period thereafter, the division may, and upon the member's application shall, require any member receiving an in-service or ordinary disability retirement allowance who has not yet attained the age of fifty-five years to undergo a medical examination as ar-

ranged by the medical board as established by this section. The examination shall be made by the medical board or by an additional physician or physicians designated by the medical board. If any member receiving an in-service or ordinary disability retirement allowance who has not attained the age of fifty-five years refuses to submit to the medical examination, the allowance may be discontinued until the member's withdrawal of the refusal, and should the member's refusal continue for one year, all rights in and to the member's disability retirement allowance shall be revoked by the division.

b. If a member is determined under paragraph *"a"* to be no longer eligible for in-service or ordinary disability benefits, all benefits paid under this section shall cease. The member shall be eligible to receive benefits calculated under section 97B.49B or 97B.49C, as applicable, when the member reaches age fifty-five.

7. *Reemployment.*

a. If a member receiving a disability retirement allowance is returned to covered employment, the member's disability retirement allowance shall cease, the member shall again become an active member, and shall contribute thereafter at the same rate payable by similarly classified members. If a member receiving a disability retirement allowance returns to special service employment, then the period of time the member received a disability retirement allowance shall constitute eligible service as defined in section 97B.49B, subsection 1, or section 97B.49C, subsection 1, as applicable. Upon subsequent retirement, the member's retirement allowance shall be calculated as provided in section 97B.48A.

b. (1) If a member receiving a disability retirement allowance is engaged in a gainful occupation that is not covered employment, the member's disability retirement allowance shall be reduced, if applicable, as provided in this paragraph.

(2) If the member is engaged in a gainful occupation paying more than the difference between the member's net disability retirement allowance and one and one-half times the reemployment comparison amount for that member, then the amount of the member's disability retirement allowance shall be reduced to an amount such that the member's net disability retirement allowance plus the amount earned by the member shall equal one and one-half times the reemployment comparison amount for that member.

(3) The member shall submit sufficient documentation to the system to permit the system to determine the member's net disability retirement allowance and earnings from a gainful occupation that is not covered employment for the applicable year.

(4) This paragraph does not apply to a member who is at least fifty-five years of age and would have completed a sufficient number of years of service if the member had remained in active special service employment. For purposes of this subparagraph, a sufficient number of years of service shall be the applicable years of service for a special service member as described in section 97B.49B or twenty-two for a special service member as described in section 97B.49C.

8. *Death benefits.* A member who is receiving an in-service or ordinary disability retirement allowance under this section shall be treated as having elected a lifetime monthly retirement allowance with death benefits payable under section 97B.52, subsection 3, unless the member elects an optional form of benefit provided under section 97B.51, which shall be actuarially equivalent to the lifetime monthly retirement allowance provided under this section.

9. *Medical board.* The system shall designate a medical board to be composed of three physicians from the university of Iowa hospitals and clinics who shall arrange for and pass upon the medical examinations required under this section and shall report in writing to the division the conclusions and recommendations upon all matters duly referred to the medical board. Each report of a medical examination under this section shall include the medical board's findings as to the extent of the member's physical or mental impairment. Except as required by this section, each report shall be confidential and shall be maintained in accordance with the federal Americans with Disabilities Act, and any other state or federal law containing requirements for confidentiality of medical records.

10. *Liability of third parties — subrogation.*

a. If a member receives an injury for which benefits are payable under this section, and if the injury is caused under circumstances creating a legal liability for damages against a third party other than the system, the member or the member's legal representative may maintain an action for damages against the third party. If a member or a member's legal representative commences such an action, the plaintiff member or representative shall serve a copy of the original notice upon the system not less than ten days before the trial of the action, but a failure to serve the notice does not prejudice the rights of the system, and the following rights and duties ensue:

(1) The system shall be indemnified out of the recovery of damages to the extent of benefit payments made by the system, with legal interest, except that the plaintiff member's attorney fees may be first allowed by the district court.

(2) The system has a lien on the damage claim against the third party and on any judgment on the damage claim for benefits for which the system is liable. In order to continue and preserve the lien, the system shall file a notice of the lien within thirty days after receiving a copy of the original notice in the office of the clerk of the district court in which the action is filed.

b. If a member fails to bring an action for dam-

ages against a third party within thirty days after the system requests the member in writing to do so, the system is subrogated to the rights of the member and may maintain the action against the third party, and may recover damages for the injury to the same extent that the member may recover damages for the injury. If the system recovers damages in the action, the court shall enter judgment for distribution of the recovery as follows:

(1) A sum sufficient to repay the system for the amount of such benefits actually paid by the system up to the time of the entering of the judgment.

(2) A sum sufficient to pay the system the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of such benefits for which the system is liable, but the sum is not a final adjudication of the future payment which the member is entitled to receive.

(3) Any balance shall be paid to the member.

c. Before a settlement is effective between the system and a third party who is liable for any injury, the member must consent in writing to the settlement; and if the settlement is between the member and a third party, the system must consent in writing to the settlement; or on refusal to consent, in either case, the district court in the county in which either the employer of the member or the system is located must consent in writing to the settlement.

d. For purposes of subrogation under this section, a payment made to an injured member or the member's legal representative, by or on behalf of a third party or the third party's principal or agent, who is liable for, connected with, or involved in causing the injury to the member, shall be considered paid as damages because the injury was caused under circumstances creating a legal liability against the third party, whether the payment is made under a covenant not to sue, compromise settlement, denial of liability, or is otherwise made.

11. *Document submissions.* A member retired under this section, in order to be eligible for continued receipt of retirement benefits, shall submit to the division any documentation the division may reasonably request which will provide information needed to determine payments to the member under this section.

12. *Additional contributions.* The expenses incurred in the administration of this section by the system shall be paid through additional contributions as determined pursuant to section 97B.49B, subsection 3, or section 97B.49C, subsection 3, as applicable.

13. *Applicability — retroactivity.*

a. This section applies to a member who becomes disabled on or after July 1, 2000, and also applies to a member who becomes disabled prior to July 1, 2000, if the member has not terminated special service employment as of June 30, 2000.

b. To qualify for benefits under this section, a member must file a completed application with the division within one year of the member's termination of employment. A member eligible for a disability retirement allowance under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the completed application for receipt of a disability retirement allowance under this section is approved.

14. *Rules.* The division shall adopt rules pursuant to chapter 17A specifying the application procedure for members pursuant to this section.

2000 Acts, ch 1077, §51; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1119, §126; 2002 Acts, ch 1135, §24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Subsection 2, paragraph d amended

Subsection 7, paragraph b, subparagraph (4) amended

97B.51 Allowance upon retirement.

1. Each member has the right prior to the member's retirement date to elect to have the member's retirement allowance payable under one of the options set forth in this section. The amount of the optional retirement allowance selected in paragraph *"a"*, *"c"*, *"d"*, *"e"*, or *"f"* shall be the actuarial equivalent of the amount of the retirement allowance otherwise payable to the member as determined by the system in consultation with the system's actuary. The member shall make an election by written request to the division and the election is subject to the approval of the division. If the member is married, election of an option under this section requires the written acknowledgment of the member's spouse. However, the system may accept a married member's election of a benefit option under this section without the written acknowledgement of the member's spouse if the member submits a notarized statement indicating that the member has been unable to locate the member's spouse to obtain the written acknowledgement of the spouse after reasonable diligent efforts. The member's election of a benefit option shall become effective upon filing the necessary forms, including the notarized statement, with the division. The division shall not be liable to the member, the member's spouse, or to any other person affected by the member's election of a benefit option, based upon an election of benefit option accomplished without the written acknowledgement of the member's spouse. The member may, if eligible, select one of the following options:

a. At retirement, a member may designate that upon the member's death, a specified amount of money shall be paid to a named beneficiary, and the member's monthly retirement allowance shall be reduced by an actuarially determined amount to provide for the lump sum payment. The amount designated by the member must be in thousand dollar increments and shall be limited to the

amount of the member's accumulated contributions. The amount designated shall not lower the monthly retirement allowance of the member by more than one-half the amount payable as provided in paragraph *"b"*. A member may designate a different beneficiary at any time, except as limited by an order that has been accepted by the division as complying with the requirements of section 97B.39. The election of a death benefit amount under this paragraph shall be irrevocable upon payment of the first monthly retirement allowance.

b. A member may elect a retirement allowance otherwise payable to the member upon retirement under the retirement system pursuant to this chapter, to include the applicable provisions of sections 97B.49A through 97B.49G, and a death benefit as provided in section 97B.52, subsection 3.

c. A member may elect an increased retirement allowance during the member's lifetime with no death benefit after the member's retirement date.

d. (1) A member may elect to receive a decreased retirement allowance during the member's lifetime and have the decreased retirement allowance, or a designated fraction thereof, continued after the member's death to another person, called a contingent annuitant, during the lifetime of the contingent annuitant. The member cannot change the contingent annuitant after the member's retirement. In case of the election of a contingent annuitant, no death benefits, as might otherwise be provided by this chapter, will be payable upon the death of either the member or the contingent annuitant after the member's retirement.

(2) In lieu of a benefit as calculated under subparagraph (1), a member may elect to receive a decreased retirement allowance during the member's lifetime and have the decreased retirement allowance, or a designated fraction thereof, continued after the member's death to another person, called a contingent annuitant, during the lifetime of the contingent annuitant, as determined by this subparagraph. In addition, if the contingent annuitant dies prior to the death of the member, the member shall receive a retirement allowance beginning with the first month following the death of the contingent annuitant as if the member had selected the option provided by paragraph *"b"* at the time of the member's first retirement. The member cannot change the contingent annuitant after the member's retirement. If a contingent annuitant receives a decreased retirement allowance under this subparagraph following the death of the member, no death benefits, as might otherwise be provided by this chapter, will be payable upon the death of the contingent annuitant.

e. A member may elect to receive a decreased retirement allowance during the member's lifetime with provision that in event of the member's death during the first one hundred twenty months of retirement, monthly payments of the member's decreased retirement allowance shall be made to the member's beneficiary until a combined total of one hundred twenty monthly payments have been made to the member and the member's beneficiary. When the member designates multiple beneficiaries, the present value of the remaining payments shall be paid in a lump sum to each beneficiary, either in equal shares to the beneficiaries, or if the member specifies otherwise in a written request, in the specified proportion. A member may designate a different beneficiary at any time, except as limited by an order that has been accepted by the department as complying with the requirements of section 97B.39.

f. A member retiring under section 97B.49B or 97B.49C may select an allowance upon retirement as provided under paragraph *"a"*, *"b"*, *"c"*, or *"e"*, or paragraph *"d"*, subparagraph (1), and may elect to have the monthly allowance otherwise payable to the member pursuant to the selected paragraph or subparagraph recalculated as provided in this paragraph. A member electing payment of a monthly allowance under this paragraph shall have the member's monthly allowance increased, as determined by the system's actuary, by an amount equal to the monthly federal social security benefit that would be payable to the member on the date the member would be first eligible to receive a reduced social security pension benefit based upon the member's account. Upon reaching the date the member would be first eligible to receive a reduced social security pension benefit, the member's monthly retirement allowance shall be permanently reduced, as determined by the system's actuary. A member electing payment of an allowance under this paragraph shall provide the system with a copy of the estimate provided by the federal social security administration of the member's monthly federal social security benefit that would be payable on the date the member would be first eligible to receive a reduced social security pension benefit at least sixty days prior to the member's first month of entitlement.

2. The election by a member of an option stated under this section shall be null and void if the member dies prior to the member's first month of entitlement.

3. A member who had elected to take an option stated in this section, may, at any time prior to retirement, revoke such an election by written notice to the division. A member shall not change or revoke an election once the first retirement allowance is paid.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.51]

84 Acts, ch 1285, §13; 86 Acts, ch 1243, §22; 92 Acts, ch 1201, §50; 95 Acts, ch 102, §8; 96 Acts, ch 1187, §42 – 44; 98 Acts, ch 1183, §47 – 49; 2000 Acts, ch 1077, §52, 78; 2001 Acts, ch 68, §21, 24;

2002 Acts, ch 1135, §25 – 27
Subsection 1, paragraph d, subparagraph (2) applies on or after July 1, 2001; 2000 Acts, ch 1077, §78
2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24
Terminology change applied
Subsection 1, unnumbered paragraph 1 and paragraph a amended
Subsection 1, NEW paragraph f

97B.52 Payment to beneficiary.

1. If a member dies prior to the member's first month of entitlement, the member's beneficiary shall be entitled to receive a death benefit equal to the greater of the amount provided in paragraph *"a"* or *"b"*.

a. A lump sum payment equal to the accumulated contributions of the member at the date of death plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the applicable denominator. However, a lump sum payment made to a beneficiary under this paragraph due to the death of a member shall not be less than the amount that would have been payable on the death of the member on June 30, 1984, under this paragraph as it appeared in the 1983 Code.

As used in this paragraph, *"applicable denominator"* means the following, based upon the type of membership service in which the member served either on the date of death, or if the member died after terminating service, on the date of the member's last termination of service:

(1) For regular service, the applicable denominator is thirty.

(2) For service in a protection occupation, as defined in section 97B.49B, the applicable denominator is the applicable years of service for the member as defined in section 97B.49B if the member had retired on the date of death.

(3) For service as a sheriff, deputy sheriff, or airport fire fighter, as provided in section 97B.49C, the applicable denominator is twenty-two.

Effective July 1, 1978, a method of payment under this paragraph filed with the division by a member does not apply.

b. For a member who dies on or after January 1, 2001, a lump sum payment equal to the actuarial present value of the member's accrued benefit as of the date of death. The actuarial equivalent present value of the member's accrued benefit as of the date of death shall be calculated using the same interest rate and mortality tables that are used by the system and the system's actuary under section 97B.51, and shall assume that the member would have retired at the member's earliest normal retirement date.

c. The payment of a death benefit to a designated beneficiary as provided by this subsection shall be in a lump sum payment. However, if the designated beneficiary is a sole individual, the beneficiary may elect to receive, in lieu of a lump sum payment under this subsection, a monthly annuity payable for the life of the beneficiary. The monthly annuity shall be calculated by applying the annuity tables used by the division to the lump sum payment under this subsection based on the beneficiary's age. If the designated beneficiary is more than one individual, or if the designated beneficiary is an estate, trust, church, charity, or other similar organization, a death benefit under this subsection shall only be paid in a lump sum.

2. *a.* If the division determines, upon the receipt of evidence and proof, that the death of a member in special service was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a member in special service, a line of duty death benefit in an amount of one hundred thousand dollars shall be paid in a lump sum to the special service member's beneficiary. A line of duty death benefit payable under this subsection shall be in addition to any death benefit payable as provided in subsection 1.

b. A line of duty death benefit shall not be payable under this subsection if any of the following applies:

(1) The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the special service member's death.

(2) The death was caused by the intentional misconduct of the special service member or by the special service member's intent to cause the special service member's own death.

(3) The special service member was voluntarily intoxicated at the time of death.

(4) The special service member was performing the special service member's duties in a grossly negligent manner at the time of death.

(5) A beneficiary who would otherwise be entitled to a benefit under this subsection was, through the beneficiary's actions, a substantial contributing factor to the special service member's death.

3. If a member dies on or after the first day of the member's first month of entitlement, the excess, if any, of the accumulated contributions by the member as of said date over the total gross monthly retirement allowances received by the member under the retirement system will be paid to the member's beneficiary unless the retirement allowance is then being paid in accordance with section 97B.48 or with section 97B.51, subsection 1, paragraph *"a"*, *"c"*, *"d"*, or *"e"*.

4. *a.* Other than as provided in subsections 1, 2, and 3 of this section, or section 97B.51, all rights to any benefits under the retirement system shall cease upon the death of a member.

b. If a death benefit is due and payable on behalf of a member who dies prior to the member's

first month of entitlement, interest shall continue to accumulate through the quarter preceding the quarter in which payment is made to the designated beneficiary, heirs at law, or the estate unless the payment of the death benefit is delayed because of a dispute between alleged heirs, in which case the benefit due and payable shall be placed in a noninterest bearing escrow account until the beneficiary is determined in accordance with this section.

5. In order to receive the death benefit, the beneficiary, heirs at law, or the estate, or any other third-party payee, must apply to the division within five years of the member's death. However, death benefits payable under this section shall not exceed the amount permitted pursuant to Internal Revenue Code section 401(a)(9) and the applicable treasury regulations.

The division shall reinstate a designated beneficiary's right to receive a death benefit beyond the five-year limitation if the designated beneficiary was the member's spouse at the time of the member's death and the distribution is required or permitted pursuant to Internal Revenue Code section 401(a)(9) and the applicable treasury regulations.

In the event that all, or any portion, of the death benefit payable to the member's designated beneficiary, heirs at law, or estate, shall remain unpaid solely by reason of the inability of the system to locate the payee, the amount payable shall be forfeited after the time for making a claim has run. However, if the appropriate payee is located after the death benefit is forfeited, the benefit shall be restored.

6. Following written notification to the division, a beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would otherwise be entitled under section 97B.51, subsection 1, paragraphs *"a"*, *"b"*, and *"e"*. Upon receipt of the waiver, the division shall pay the amount designated to be received by that beneficiary to the member's other surviving beneficiary or beneficiaries or to the estate of the deceased member, as elected by the beneficiary in the waiver. If the payments being waived are payable to the member's estate and an estate is not probated, the payments shall be paid to the deceased member's surviving spouse, or if there is no surviving spouse, to the member's heirs other than the beneficiary who waived the payments.

7. If a member has not filed a designation of beneficiary with the division, the death benefit is payable to the member's estate. If no designation has been filed and an estate is not probated, the death benefit shall be paid to the surviving spouse, if any. If no designation has been filed, no estate has been probated, and there is no surviving spouse, the death benefit shall be paid to the heirs. Otherwise, the death benefit shall remain in the fund.

[C46, 50, §97.14 – 97.18, 97.39; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.52]

84 Acts, ch 1285, §14, 15; 90 Acts, ch 1240, §38; 92 Acts, ch 1201, §51 – 54; 95 Acts, ch 102, §9; 96 Acts, ch 1187, §45 – 47; 98 Acts, ch 1183, §50 – 54; 2000 Acts, ch 1077, §53 – 58; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §28, 37

Subsection 2, establishing a line of duty death benefit for a member in special service, applies retroactively to covered deaths occurring on and after January 1, 1992; 2002 Acts, ch 1135, §37

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Subsection 4, paragraph b amended

97B.52A Eligibility for benefits — bona fide retirement.

1. A member has a bona fide retirement when the member terminates all employment covered under the chapter or formerly covered under the chapter pursuant to section 97B.42, files a completed application for benefits form with the division, survives into the month for which benefits are first payable, and meets the following applicable requirement:

a. For a member whose first month of entitlement is prior to July 1, 1998, the member does not return to covered employment until the member has qualified for no fewer than four calendar months of retirement benefits.

b. For a member whose first month of entitlement is July 1998 or later, but before July 2000, the member does not return to any employment with a covered employer until the member has qualified for no fewer than four calendar months of retirement benefits.

c. For a member whose first month of entitlement is July 2000 or later, the member does not return to any employment with a covered employer until the member has qualified for at least one calendar month of retirement benefits, and the member does not return to covered employment until the member has qualified for no fewer than four calendar months of retirement benefits. For purposes of this paragraph, effective July 1, 2000, any employment with a covered employer does not include employment as an elective official or member of the general assembly if the member is not covered under this chapter for that employment.

2. A member may commence receiving retirement benefits under this chapter upon satisfying eligibility requirements. However, a retired member who commences receiving a retirement allowance but fails to meet the applicable requirements of subsection 1 does not have a bona fide retirement and any retirement allowance received by such a member must be returned to the system together with interest earned on the retirement allowance calculated at a rate determined by the division. Until the member has repaid the retirement allowance and interest, the division may withhold any future retirement allowance for which the member may qualify.

3. A member whose first month of entitlement is before July 1998 and who terminates covered employment but maintains an employment relationship with an employer that made contributions to the system on the member's behalf does not have a bona fide retirement until all employment, including employment which is not covered by this chapter, with such employer is terminated for at least thirty days. In order to receive retirement benefits, the member must file a completed application for benefits form with the division before returning to any employment with the same employer.

4. The requirements of this section shall apply to a lump sum payment as provided by section 97B.48, subsection 1, and the payment of contributions as provided in section 97B.48A, subsection 4.

92 Acts, ch 1201, §55; 95 Acts, ch 102, §10; 96 Acts, ch 1187, §48; 98 Acts, ch 1183, §55, 56; 2000 Acts, ch 1077, §59 – 62; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.53 Termination of employment — refund options.

Membership in the retirement system, and all rights to the benefits under the system, cease upon a member's termination of employment with the employer prior to the member's retirement, other than by death, and upon receipt by the member of a refund of moneys in the member's account as provided in this section.

1. Upon the termination of employment with the employer prior to retirement other than by death of a member, the member's account, consisting of accumulated contributions by the member and, for a member who is vested on the date an application for a refund is filed, the member's share of the accumulated employer contributions for the vested member at the date of the termination, may be paid to the member upon application, except as provided in subsections 2, 4, and 8. For the purpose of this subsection, the *"member's share of the accumulated employer contributions"* is an amount equal to the accumulated employer contributions of the member multiplied by a fraction of years of service for that member as defined in section 97B.49A, 97B.49B, or 97B.49C.

2. If a vested member's employment is terminated prior to the member's retirement, other than by death, the member may receive a monthly retirement allowance commencing on the first day of the month in which the member attains the age of sixty-five years, if the member is then alive, or, if the member so elects in accordance with section 97B.47, commencing on the first day of the month in which the member attains the age of fifty-five or any month thereafter prior to the date the member attains the age of sixty-five years, and continuing on the first day of each month thereafter during the member's lifetime, provided the member does not receive prior to the date the member's retirement allowance is to commence a refund of moneys in the member's account as provided under any of the provisions of this chapter. The amount of each such monthly retirement allowance shall be determined as provided in either sections 97B.49A through 97B.49G, or in section 97B.50, whichever is applicable.

3. A terminated, vested member has the right, prior to the commencement of the member's retirement allowance, to receive a refund of moneys in the member's account, and in the event of the death of the member prior to the commencement of the member's retirement allowance and prior to the receipt of any such refund, the benefits authorized by subsection 1 and subsection 2 of section 97B.52 shall be paid.

4. A member has not terminated employment for purposes of this section if the member accepts other covered employment within thirty days after receiving the last payment of wages for covered employment, or if the member begins covered employment prior to filing a request for a refund with the division.

5. Within sixty days after a member has been issued payment for a refund of moneys in the member's account, the member may repay the moneys refunded, plus interest that would have accrued, as determined by the division, and receive credit for membership service for the period covered by the refund payment.

6. A member who does not withdraw moneys in the member's account upon termination of employment may at any time request the return of the moneys in the member's account, but if the member receives a return of moneys in the member's account the member has waived all claims for any other benefits and membership rights from the fund.

7. If a member is involuntarily terminated from covered employment, has been issued payment for a refund, and is retroactively reinstated in covered employment as a remedy for an employment dispute, the member may receive credit for membership service for the period covered by the refund payment upon repayment to the division within ninety days after the date of the order or agreement requiring reinstatement of the amount of the refund plus interest that would have accrued, as determined by the division.

8. The system is under no obligation to maintain the member account of a member who terminates covered employment prior to December 31, 1998, if the member was not vested at the time of termination. A person who made contributions to the abolished system, who is entitled to a refund in accordance with the provisions of this chapter, and who has not claimed and received such a refund prior to January 1, 1964, shall, if the person makes a claim for refund after January 1, 1964, be required to submit proof satisfactory to the divi-

sion of the person's entitlement to the refund. The division is under no obligation to maintain the member accounts of such persons after January 1, 1964.

9. Any member whose employment is terminated may elect to leave the moneys in the member's member account in the retirement fund.

10. If an employee hired to fill a permanent position terminates the employee's employment within six months from the date of employment, the employer may file a claim with the division for a refund of the funds contributed to the division by the employer for the employee.

[C46, 50, §97.6, 97.13, 97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.53; 82 Acts, ch 1261, §24]

84 Acts, ch 1285, §16; 92 Acts, ch 1201, §56; 94 Acts, ch 1183, §45 – 47, 97; 96 Acts, ch 1187, §49; 98 Acts, ch 1183, §57 – 60, 78; 2000 Acts, ch 1077, §63; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §29

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Subsection 4 amended

97B.53A Duty of division.

Upon a member's termination of covered employment prior to the member's retirement, the division shall send the member by first class mail, to the member's last known mailing address, a notice setting forth the balance and status of the member's account and supplemental account and an explanation of the courses of action available to the member under this chapter.

90 Acts, ch 1240, §39; 2000 Acts, ch 1077, §64; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.53B Rollovers of members' accounts.

1. As used in this section, unless the context otherwise requires, and to the extent permitted by the internal revenue service:

a. "Direct rollover" means a payment by the system to the eligible retirement plan specified by the member or the member's surviving spouse.

b. "Eligible retirement plan" means either of the following that accepts an eligible rollover distribution from a member or a member's surviving spouse:

(1) An individual retirement account in accordance with section 408(a) of the federal Internal Revenue Code.

(2) An individual retirement annuity in accordance with section 408(b) of the federal Internal Revenue Code.

In addition, an *"eligible retirement plan"* includes an annuity plan in accordance with section 403(a) of the federal Internal Revenue Code, or a qualified trust in accordance with section 401(a) of the federal Internal Revenue Code, that accepts an eligible rollover distribution from a member. Effective January 1, 2002, the term *"eligible retirement plan"* also includes an annuity contract described in section 403(b) of the federal Internal Revenue Code, and an eligible plan under section 457(b) of the federal Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that chooses to separately account for amounts transferred into such eligible retirement plan from the system.

c. (1) *"Eligible rollover distribution"* includes any of the following:

(a) All or any portion of a member's account and supplemental account.

(b) Effective January 1, 2002, after-tax employee contributions, if the plan to which such amounts are to be transferred is an individual retirement account described in federal Internal Revenue Code section 408(a) or 408(b), or is a qualified defined contribution plan described in federal Internal Revenue Code section 401(a) or 403(a), and such plan agrees to separately account for the after-tax amount so transferred.

(c) A distribution made on behalf of a surviving spouse and to an alternate payee, who is a spouse or former spouse, under a qualified domestic relations order.

(2) An eligible rollover distribution does not include any of the following:

(a) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or made for a specified period of ten years or more.

(b) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the federal Internal Revenue Code.

(c) The portion of any distribution that is not includible in the gross income of the distributee, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

2. Effective January 1, 1993, a member or a member's surviving spouse may elect, at the time and in the manner prescribed in rules adopted by the division, to have the division pay all or a portion of an eligible rollover distribution directly to an eligible retirement plan, specified by the member or the member's surviving spouse, in a direct rollover.

94 Acts, ch 1183, §48; 96 Acts, ch 1187, §50; 2000 Acts, ch 1077, §65; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §30, 38

2002 amendments take effect April 26, 2002, and apply retroactively on and after January 1, 2002; 2002 Acts, ch 1135, §38

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Section amended

97B.54 Accrued liability contribution. Repealed by 94 Acts, ch 1183, § 88.

97B.55 Employees of Mississippi riverway commission. Repealed by 2000 Acts, ch 1031, § 1.

97B.56 Abolished system — liquidation fund.

The assets of the old-age and survivors' liquidation fund, established by sections 97.50 to 97.53 and any future payments or assets payable to the old-age and survivors' liquidation fund, are hereby transferred to the retirement fund, and all payments hereafter due in accordance with the provisions of said sections shall be paid from the retirement fund.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.56]

86 Acts, ch 1246, §723; 94 Acts, ch 1183, §49

97B.57 Distribution of information. Repealed by 2001 Acts, ch 68, § 23, 24. See § 97B.4, subsection 4.

2001 repeal takes effect July 1, 2002; 2001 Acts, ch 68, §24

97B.58 Information furnished by employer.

To enable the division to perform its functions, the employer shall, upon the request of and in the manner provided by the division, supply full and timely information to the division of all matters relating to the pay of all members, date of birth, their retirement, death, or other cause for termination of employment, and other pertinent facts the division may require in the manner provided by the division.

[C46, 50, §97.23 – 97.25; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.58]

92 Acts, ch 1201, §57; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.59 through 97B.61 Repealed by 2001 Acts, ch 68, § 23, 24. See § 97B.4.

2001 repeals take effect July 1, 2002; 2001 Acts, ch 68, §24

97B.62 Accepting employment deemed consent.

Every employee accepting employment or continuing in employment shall as long as the employee continues to be a member and has not become a member of another retirement system in the state which is maintained in whole or in part by public contributions or payments be deemed to consent and agree to any deductions from the employee's compensation required by this chapter and to all other provisions thereof.

[C46, 50, §97.2, 97.9; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.62]

97B.63 Repealed by 67 Acts, ch 121, § 24.

97B.64 Insurance laws not applicable.

None of the laws of this state regulating insurance or insurance companies shall apply to the division or to the Iowa public employees' retirement system or any of its funds.

[C46, 50, §97.47; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.64]

2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.65 Revision rights reserved — increase of benefits — rates of contribution.

The right is reserved to the general assembly to alter, amend, or repeal any provision of this chapter or any application thereof to any person, provided, however, that to the extent of the funds in the retirement system the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to any member of the system shall not be repudiated, provided further, however, that the amount of benefits accrued on account of prior service shall be adjusted to the extent of any unfunded accrued liability then outstanding. Any increase enacted in benefits or retirement allowance under this chapter shall be accompanied by a change in the employer and employee contribution rates necessary to support such increase, all determined in accordance with sound actuarial principles and methods.

[C46, 50, §97.11, 97.13; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97B.65]

97B.66 Former members.

A vested or retired member who was a member of the teachers insurance and annuity association college retirement equity fund at any time between July 1, 1967, and June 30, 1971, and who became a member of the system on July 1, 1971, upon submitting verification of service and wages earned during the applicable period of service under the teachers insurance and annuity association college retirement equities fund, may make employer and employee contributions to the system based upon the covered wages of the member and the covered wages and the contribution rates in effect for all or a portion of that period of service and receive credit for membership service under this system equivalent to the applicable period of membership service in the teachers insurance and annuity association college retirement equities fund for which the contributions have been made. In addition, a member making employer and employee contributions because of membership in the teachers insurance and annuity association college retirement equities fund under this section who was a member of the system on June 30, 1967, and withdrew the member's accumulated contributions because of membership on July 1, 1967,

in the teachers insurance and annuity association college retirement equities fund, may make employee contributions to the system for all or a portion of the period of service under the system prior to July 1, 1967. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

The contributions paid by the vested or retired member shall be equal to the accumulated contributions as defined in section 97B.1A, subsection 2, by the member for the applicable period of service, and the employer contribution for the applicable period of service under the teachers insurance and annuity association college retirement equities fund, that would have been or had been contributed by the vested or retired member and the employer, if applicable, plus interest on the contributions that would have accrued for the applicable period from the date the previous applicable period of service commenced under this system or from the date the service of the member in the teachers insurance and annuity association college retirement equities fund commenced to the date of payment of the contributions by the member as provided in section 97B.70.

However, the division shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

84 Acts, ch 1285, §17; 92 Acts, ch 1201, §58; 93 Acts, ch 44, §8; 94 Acts, ch 1183, §51, 97; 96 Acts, ch 1187, §51 – 53; 98 Acts, ch 1183, §82; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.67 Intent of the general assembly. Repealed by 88 Acts, ch 1242, § 63.

97B.68 Employees under federal civil service.

1. Effective July 1, 1996, a person who is a member of the federal civil service retirement program or the federal employee's retirement system is not eligible for membership in the Iowa public employees' retirement system for the same position, and this chapter does not apply to that employee. An employee whose membership in the federal civil service retirement program or the federal employee's retirement system is subsequently terminated shall immediately notify the employee's employer and the division of that fact, and the employee shall become subject to this chapter on the date the notification is received by the division.

2. Upon termination of membership in the Iowa public employees' retirement system under the provisions of this section, the employee shall be paid from the Iowa public employees' retirement fund within six months of the termination a lump sum cash amount equal to the sum of:

a. Such member's accumulated contributions as defined in subsection 2 of section 97B.1A, computed as of July 4, 1959, plus

b. The total amount contributed to the Iowa old-age and survivors' insurance fund prior to July 1, 1953, by such member which was transferred to the retirement fund as of July 1, 1953, and would have been refundable to the member had the member not elected to receive prior service credit in accordance with section 97B.43, with interest on such amount at two percent per annum compounded annually from July 1, 1953, to July 4, 1959.

3. Effective July 1, 1996, an employee who participates in the federal civil service retirement program or the federal employee's retirement system may be covered under this chapter if otherwise eligible. The employee shall not be covered under this chapter, however, unless the employee is not credited for service in the federal civil service retirement system or the federal employee's retirement system for the position to be covered under this chapter. This subsection shall not be construed to permit any employer to contribute on behalf of an employee for the same position and the same period of service to both the Iowa public employees' retirement system and either the federal civil service retirement program or the federal employee's retirement system.

[C62, 66, 71, 73, 75, 77, 79, 81, §97B.68]

88 Acts, ch 1242, §48; 96 Acts, ch 1187, §54, 55; 98 Acts, ch 1183, §82; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.69 Judges in judicial retirement system — mandatory termination. Repealed by 84 Acts, ch 1285, § 30.

97B.70 Interest and dividends to members.

1. For calendar years prior to January 1, 1997, interest at two percent per annum and interest dividends declared by the division shall be credited to the member's contributions and the employer's contributions to become part of the accumulated contributions and accumulated employer contributions thereby.

a. The average rate of interest earned shall be determined upon the following basis:

(1) Investment income shall include interest and cash dividends on stock.

(2) Investment income shall be accounted for on an accrual basis.

(3) Capital gains and losses, realized or unre-

alized, shall not be included in investment income.

(4) Mean assets shall include fixed income investments valued at cost or on an amortized basis, and common stocks at market values or cost, whichever is lower.

(5) The average rate of earned interest shall be the quotient of the investment income and the mean assets of the retirement fund.

b. The interest dividend shall be determined within sixty days after the end of each calendar year as follows:

The dividend rate for a calendar year shall be the excess of the average rate of interest earned for the year over the statutory two percent rate plus twenty-five hundredths of one percent. The average rate of interest earned and the interest dividend rate in percent shall be calculated to the nearest one hundredth, that is, to two decimal places. Interest and interest dividends calculated pursuant to this subsection shall be compounded annually.

2. For calendar years beginning January 1, 1997, a per annum interest rate at one percent above the interest rate on one-year certificates of deposit shall be credited to the member's contributions and the employer's contributions to become part of the accumulated contributions and accumulated employer contributions account. For purposes of this subsection, the interest rate on one-year certificates of deposit shall be determined by the division based on the average rate for such certificates of deposit as of the first business day of each year as published in a publication of general acceptance in the business community. The per annum interest rate shall be credited on a quarterly basis by applying one-quarter of the annual interest rate to the sum of the accumulated contributions and the accumulated employer contributions as of the end of the previous calendar quarter.

3. Interest shall be credited to the accumulated contributions and accumulated employer contributions accounts, and supplemental accounts of active members, inactive vested members, and, effective January 1, 1999, to inactive nonvested members, until the quarter prior to the quarter in which the member's first retirement allowance is paid or in which the member is issued a refund under section 97B.53, or in which a death benefit is issued.

4. Prior to January 1, 1999, interest and interest dividends shall be credited to the accumulated contributions and accumulated employer contributions account of a person who leaves the contributions in the retirement fund upon termination from covered employment prior to achieving vested status, but who subsequently returns to covered employment. Upon return to covered employment but prior to January 1, 1999, interest and interest dividends shall be credited to the accumulated contributions and accumulated employer contributions account of the person commencing upon the date on which the person has covered wages.

5. If the division no longer maintains the accumulated contributions and accumulated employer contributions account of the person pursuant to this chapter, but the person submits satisfactory proof to the division that the person, or the person's employer, did make contributions that should be included in the accumulated contributions and accumulated employer contributions account, the division shall credit interest and interest dividends in the manner provided in subsection 4.

[C66, 71, 73, 75, 77, 79, 81, §97B.70]

94 Acts, ch 1183, §52, 97; 96 Acts, ch 1187, §56; 98 Acts, ch 1183, §61, 62; 2000 Acts, ch 1077, §67; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.71 Refund of excess tax. Repealed by 92 Acts, ch 1201, § 77.

97B.72 Members of general assembly — appropriation.

1. Persons who are members of the Seventy-first General Assembly or a succeeding general assembly who submit proof to the division of membership in the general assembly during any period beginning July 4, 1953, may make contributions to the system for all or a portion of the period of service in the general assembly, and receive credit for the applicable period for which contributions are made. The proof of membership in the general assembly and payment of contributions as provided by this section shall be transmitted to the division. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the member shall make contributions in an amount equal to the accumulated contributions as defined in section 97B.1A, subsection 2, which would have been made if the member of the general assembly had been a member of the system during the applicable period of service in the general assembly. There is appropriated from moneys available to the general assembly under section 2.12 an amount sufficient to pay the contributions pursuant to this paragraph of the employer based on the period of service for which the members have paid accumulated contributions, in an amount equal to the contributions which would have been made if the members of the general assembly who made employee contributions had

been members of the system during the applicable period of service in the general assembly, plus interest and interest dividends at the rate provided in section 97B.70 for all completed calendar years, and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. There is also appropriated from moneys available to the general assembly under section 2.12 an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. However, the division shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

[C79, 81, §97B.72]

84 Acts, ch 1285, §18; 91 Acts, ch 267, §508; 93 Acts, ch 44, §9; 94 Acts, ch 1183, §53, 97; 96 Acts, ch 1187, §57, 58; 98 Acts, ch 1183, §63, 82; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.72A Former legislative service — appropriation.

1. A vested or retired member of the system who was a member of the general assembly prior to July 1, 1988, may make contributions to the system for all or a portion of the period of service in the general assembly. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters. The member of the system shall submit proof to the division of membership in the general assembly. The division shall credit the member with the period of membership service for which contributions are made.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions made by the member shall be equal to the accumulated contributions as defined in section 97B.1A, subsection 2, which would have been made if the member of the general assembly had been a member of the system during the applicable period of service in the general assembly. There is appropriated from the general fund of the state to the division an amount sufficient to pay the contributions of the employer based on the period of service of members of the general assembly for which the member paid accumulated contributions pursuant to this paragraph. The amount appropriated is equal to the employer contributions which would have been made if the members of the system who made employee contributions had been members of the system during the period for which they made employee contributions, plus interest at the rate provided in section 97B.70 for each year compounded as provided in section 97B.70.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. There is also appropriated from the general fund of the state to the division an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. However, the division shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

86 Acts, ch 1243, §23; 88 Acts, ch 1242, §49; 93 Acts, ch 44, §10; 94 Acts, ch 1183, §54, 55, 97; 96 Acts, ch 1187, §59, 60; 98 Acts, ch 1183, §64, 82; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.73 Members from other public systems.

1. *a.* A vested or retired member who has one or more full calendar years of covered wages who was in public employment comparable to employment covered under this chapter in another state or in the federal government, or who was a member of another public retirement system in this state, including but not limited to the teachers insurance and annuity association college retirement equities fund, but who was not retired under that system, upon submitting verification of membership and service in the other public system to

the division, including proof that the member has no further claim upon a retirement benefit from that other public system, may make contributions as provided by this section to the system either for the entire period of service in the other public system, or for partial service in the other public system in increments of one or more calendar quarters. If the member wishes to transfer only a portion of the service value of another public system to this system and the other public system allows a partial withdrawal of a member's system credits, the member shall receive credit for membership service in this system equivalent to the period of service transferred from the other public system.

b. A vested or retired member who has five or more full calendar years of covered wages who was in public employment comparable to employment covered under this chapter in a qualified Canadian governmental entity may make contributions as provided by this section to the system and receive service credit, in increments of one or more calendar quarters, for up to the lesser of twenty quarters of service credit for such employment or the entire period of service in the other public system. Prior to receiving service credit, the member shall submit verification of membership and service in the other public system to the division, including proof that the member has no further claim upon a retirement benefit from that other public system. If the member wishes to transfer only a portion of the service value of another public system to this system and the other public system allows a partial withdrawal of a member's system credits, the member shall receive credit for membership service in this system equivalent to the period of service transferred from the other public system. For purposes of this paragraph, *"qualified Canadian governmental entity"* means an elementary school, secondary school, college, or university that is organized, administered, and primarily supported by the provincial, territorial, or federal governments of Canada, or any combination of the same.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contribution payable, representing both employee and employer contributions, shall be based upon the member's covered wages for the most recent full calendar year at the applicable rates in effect for that calendar year under sections 97B.11, 97B.49B, 97B.49C, and 97B.49G and multiplied by the member's years of service in other public employment. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the division by an inflation factor to reflect changes in the economy since the covered wages were earned.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. This section is applicable to a vested or retired member who was a member of a public retirement system established in sections 294.8, 294.9, and 294.10 but was not retired under that system.

4. A member entitled to a benefit from another public system must waive, on a form provided by the Iowa public employees' retirement system, all rights to a retirement benefit under the other public system before receiving credit in this system for the years of service in the other public system. The waiver must be accepted by the other public system.

5. Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the member pays contributions under this section.

6. Effective July 1, 1998, a purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the member. If applied to a member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

7. However, the division shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

[C79, 81, §97B.73]

84 Acts, ch 1285, §19; 88 Acts, ch 1242, §50; 90 Acts, ch 1240, §40; 92 Acts, ch 1201, §59; 93 Acts, ch 44, §11; 94 Acts, ch 1183, §56; 96 Acts, ch 1187, §61, 62; 98 Acts, ch 1183, §65; 2000 Acts, ch 1077, §68; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.73A Part-time county attorneys.

1. A part-time county attorney may elect in writing to the division to make contributions to the system for the county attorney's previous service as a county attorney and receive credit for membership service in the system for the applicable period of service as a part-time county attorney for which contributions are made. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions paid by the member shall be equal to the accumulated contributions, as defined in section 97B.1A, subsection 2, for the applicable period of membership service. A member who elects to make contributions pursuant to this paragraph shall notify the applicable county board of supervisors of the member's election, and the county board of supervisors shall pay to the division the employer contributions that would have been contributed by the employer under section 97B.11, plus interest on the contributions that would have accrued if the county attorney had been a member of the system for the applicable period of service.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. Upon notification of the applicable county board of supervisors of the member's election, the county board of supervisors shall pay to the division an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the division.

4. However, the division shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

87 Acts, ch 227, §21; 88 Acts, ch 1242, §51; 93 Acts, ch 44, §12; 94 Acts, ch 1183, §57, 97; 96 Acts, ch 1187, §63, 64; 98 Acts, ch 1183, §66, 82; 99 Acts, ch 96, §9; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.73B Patient advocates — unpaid contributions — service purchase.

1. Notwithstanding the provisions of section 97B.9 to the contrary, unpaid contributions for a person classified as a patient advocate under section 229.19, for service as a patient advocate prior to July 1, 2000, shall be determined and collected as provided under section 97B.9, subsection 5, but shall be limited to the collection of underpaid contributions for a maximum of one year of service.

2. A patient advocate who becomes covered under this chapter and for whom underpaid contributions for one year of service have been paid shall be eligible to purchase membership service for service as a patient advocate prior to July 1, 2000, in excess of the one year of service provided in this section by paying the division an amount determined as follows:

a. For a purchase of membership service prior to July 1, 2002, the total of the employee and employer contributions, without interest, on the covered wages that would have been reported to the division under the provisions of this chapter in effect for the applicable period of service.

b. For a purchase of membership service on or after July 1, 2002, the actuarial cost of the service purchase in a manner as provided in section 97B.73.

2000 Acts, ch 1077, §69; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.74 Reinstatement as a vested member (buy-back).

1. A vested or retired member who was a member of the system at any time on or after July 4, 1953, and who received a refund of the member's contributions for that period of membership service, may elect in writing to the division to make contributions to the system for all or a portion of the period of membership service for which a refund of contributions was made, and receive credit for the period of membership service for which contributions are made.

A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions to be repaid by the member for such service shall be equal to the accumulated contributions, as defined in section 97B.1A, subsection 2, received by the member for the applicable period of membership service, plus interest on the accumulated contributions for the applicable period, from the date of receipt by the member to the date of repayment, at the interest rate provided in section 97B.70 applicable for each year compounded as provided in section 97B.70.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the division.

[C81, §97B.74]

88 Acts, ch 1242, §52; 90 Acts, ch 1240, §41; 93 Acts, ch 44, §13; 94 Acts, ch 1183, §58, 97; 96 Acts, ch 1187, §65, 66; 98 Acts, ch 1183, §67, 82; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.75 Prior service credit before January 1, 1946.

An active, vested, or retired member who was employed prior to January 1, 1946, by an employer may file written verification of the member's dates of employment with the division and receive credit for years of prior service for the period of employment. However, a member who is eligible for or receiving a retirement allowance based upon employment with an employer prior to January 1, 1946, is not eligible for credit for that period of employment.

Effective July 1, 1988, a member eligible for an increased retirement allowance under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the division.

[C81, §97B.75; 82 Acts, ch 1261, §25]

88 Acts, ch 1242, §53; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.76 Transferred to § 97D.4. See 90 Acts, ch 1240, § 93.

97B.77 through 97B.79 Reserved.

97B.80 Veteran's credit.

1. Effective July 1, 1992, a vested or retired member who has one or more full calendar years of covered wages and who at any time served on active duty in the armed forces of the United States, upon submitting verification of the dates of the active duty service, may make contributions to the system for all or a portion of the period of time of the active duty service, in increments of one or more calendar quarters, and receive credit for membership service and prior service for the period of time for which the contributions are made.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions to be paid, representing both employer and employee contributions, shall be based upon the member's covered wages for the most recent full calendar year in which the member had reportable wages at the applicable rates in effect for that year under sections 97B.11, 97B.49B, 97B.49C, and 97B.49G. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the division by an inflation factor to reflect changes in the economy.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. The division shall adjust benefits for a six-month period prior to the date the member pays contributions under this section if the member is receiving a retirement allowance at the time the contribution payment is made. Verification of active duty service and payment of contributions shall be made to the divison. However, a member is not eligible to make contributions under this section if the member is receiving, is eligible to receive, or may in the future be eligible to receive retirement pay from the United States government

for active duty in the armed forces, except for retirement pay granted by the United States government under retired pay for nonregular service pursuant to 10 U.S.C. § 12731 – 12739. A member receiving retired pay for nonregular service who makes contributions under this section shall provide information required by the division documenting time periods covered under retired pay for nonregular service.

4. Effective July 1, 1998, a purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the member. If applied to the member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

5. However, the division shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

88 Acts, ch 1242, §54; 90 Acts, ch 1240, §42; 92 Acts, ch 1201, §60; 93 Acts, ch 44, §14; 94 Acts, ch 1183, §59; 96 Acts, ch 1187, §67, 68; 97 Acts, ch 23, §11; 98 Acts, ch 1183, §68; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.80A Public employment service credit.

1. A vested or retired member who has five or more full calendar years of covered wages and who at any time was employed in eligible public employment, upon submitting verification of the eligible public employment and the dates of the eligible public employment, may make contributions to the system for up to the lesser of twenty quarters of service credit for such eligible public employment or the entire period of the eligible public employment, in increments of one or more calendar quarters, and receive credit for membership service and prior service for the period of time for which the contributions are made.

2. The contributions required to be made for purposes of this section shall be in an amount equal to the actuarial cost of the service purchase. For purposes of this subsection, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. The verification of the eligible public employment and the dates of such eligible public employment shall be made by the division prior to receiving contributions from the member.

4. A member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the member pays contributions under this section.

5. A purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the member. If applied to a member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

6. The division shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

7. For purposes of this section, *"eligible public employment"* means employment of a person who at the time of the employment was not covered by this chapter and the employment meets any of the following conditions:

a. Employment by a covered employer under this chapter of a person who did not opt out of coverage under this chapter.

b. Employment of a person as an adjunct instructor as defined in section 97B.1A, subsection 8.

2000 Acts, ch 1077, §70; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1135, §31, 32

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

Subsections 1 and 3 amended

NEW subsection 7

97B.80B Volunteer public service credit.

1. A vested or retired member who has five or more full calendar years of covered wages and who at any time was in full-time volunteer public service, upon submitting verification of the full-time volunteer public service and the dates of the service, may make contributions to the system for up to the lesser of twenty quarters of service credit for such volunteer public service or the entire period of the volunteer public service, in increments of one or more calendar quarters, and receive credit for membership service and prior service for the period of time for which the contributions are made. For purposes of this section, *"full-time volunteer public service"* means service in the federal peace corps program.

2. The contributions required to be made for purposes of this section shall be in an amount

equal to the actuarial cost of the service purchase. For purposes of this subsection, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. The verification of the full-time volunteer public service and the dates of such service shall be made by the division prior to receiving contributions from the member.

4. A member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the member pays contributions under this section.

5. A purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the member. If applied to a member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

6. The division shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2000 Acts, ch 1077, §71; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.80C Purchases of permissive service credit.

1. *Definitions.* For purposes of this section:

a. *"Nonqualified service"* means service that is not qualified service.

b. *"Permissive service credit"* means credit that will be recognized by the system for purposes of calculating a member's benefit, for which the member did not previously receive service credit in the system, and for which the member voluntarily contributes to the system the amount required by the system, not in excess of the amount necessary to fund the benefit attributable to such service.

c. (1) *"Qualified service"* means any of the following:

(a) Service with the United States government or any state or local government, including any agency or instrumentality thereof, regardless of whether that government, agency, or instrumentality was a covered employer at the time of the service.

(b) Service with an association representing employees of the United States government or any state or local government, including any agency or instrumentality thereof, regardless of whether that government, agency, or instrumentality was a covered employer at the time of the service.

(c) Service with an educational organization which normally maintains a regular faculty and curriculum, normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, and is a public, private, or sectarian school which provides elementary education or secondary education through grade twelve.

(d) Military service other than military service required to be recognized under Internal Revenue Code section 414(u) or under the federal Uniformed Services Employment and Reemployment Rights Act.

(2) *"Qualified service"* does not include service as described in subparagraph (1) if the receipt of credit for such service would result in the member receiving a retirement benefit under more than one retirement plan for the same period of service.

2. *a.* A vested or retired member may make contributions to the system to purchase up to the maximum amount of permissive service credit for qualified service as determined by the division, pursuant to Internal Revenue Code section 415(n) and the requirements of this section.

b. A vested or retired member of the system who has five or more full calendar years of covered wages may make contributions to the system to purchase up to five years of permissive service credit for nonqualified service as determined by the division, pursuant to Internal Revenue Code section 415(n) and the requirements of this section.

3. A member making contributions for a purchase of permissive service credit under this section shall make contributions in an amount equal to the actuarial cost of the permissive service credit purchase. For purposes of this subsection, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of permissive service credit.

4. The division shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2002 Acts, ch 1135, §33

NEW section

97B.81 Leaves of absence.

1. A vested member on an approved leave of absence which does not constitute service as de-

fined in section 97B.1A, subsection 19, which is granted on or after July 1, 1998, may make contributions to the system for all or a portion of the leave of absence, and shall receive service credit for the period of time for which the contributions are made.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions to be paid, representing both employer and employee contributions, shall be based upon the member's covered wages for the most recent full calendar year in which the member had covered wages at the applicable rates in effect for that calendar year under sections 97B.11, 97B.49B, 97B.49C, and 97B.49G. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the division by an inflation factor to reflect changes in the economy.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the division in accordance with actuarial tables, as reported to the division by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. A member shall not be entitled to purchase the service credit, however, if the member is entitled to receive a retirement benefit from another public retirement system for the same period of time. A member entitled to a benefit from another public system must waive, on a form provided by the Iowa public employees' retirement system, all rights to a retirement benefit under the other public system before receiving credit in this system for any period of service in the other public system. The waiver must be accepted by the other public system.

4. However, the division shall ensure that the member, in exercising an option provided by this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

98 Acts, ch 1183, §69; 2001 Acts, ch 68, §21, 24

2001 terminology change from "department" to "division" takes effect July 1, 2002; 2001 Acts, ch 68, §24

Terminology change applied

97B.82 Purchase of service credit — direct rollovers — direct transfers.

1. Effective July 1, 2002, a member may, to the extent permitted by the internal revenue service, purchase any service credit permitted under this chapter by means of a direct rollover or a direct transfer as provided in this section pursuant to rules adopted by the division and consistent with applicable requirements of the federal Internal Revenue Code. Purchases of service credit by means of a direct rollover or direct transfer under this section shall not exceed the amounts permitted under section 415(n) of the federal Internal Revenue Code and section 97B.80C as determined by the division.

2. *a.* A member may purchase service credit as authorized by this section through a direct rollover to the system of an eligible rollover distribution from an eligible retirement plan as permitted by the internal revenue service under the federal Internal Revenue Code. The amount of the direct rollover into the system cannot exceed the cost of the service purchase by a member under this chapter. Once a direct rollover is made, the member must forfeit the applicable service credit from the eligible retirement plan from which the eligible rollover distribution is received.

b. (1) For purposes of this subsection, *"an eligible rollover distribution from an eligible retirement plan"* includes distributions from any of the following:

(a) Qualified plans described in federal Internal Revenue Code sections 401(a) and 403(a).

(b) Annuity contracts described in federal Internal Revenue Code section 403(b).

(c) Eligible plans described under federal Internal Revenue Code section 457(b) which are maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(d) Individual retirement accounts described in federal Internal Revenue Code section 408(a) or 408(b).

(2) An eligible rollover distribution from an eligible retirement plan does not include any of the following:

(a) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or made for a specified period of ten years or more.

(b) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the federal Internal Revenue Code.

(c) The portion of any distribution that is not includible in the gross income of the distributee, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(d) Any amounts that are not permitted to be treated as eligible rollover distributions by the internal revenue service under the federal Internal Revenue Code.

3. A member may purchase any service credit

as authorized by this section, to the extent permitted by the internal revenue service, by means of a direct transfer, excluding any after-tax contributions, from an annuity contract qualified under federal Internal Revenue Code section 403(b), or an eligible plan described in federal Internal Revenue Code section 457(b), maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. A direct transfer is a trustee-to-trustee transfer to the system of contributions made to annuity contracts qualified under federal Internal Revenue Code section 403(b) and eligible governmental plans qualified under federal Internal Revenue Code section 457(b) for purposes of purchasing service credit in the system.

2000 Acts, ch 1077, §72; 2002 Acts, ch 1135, §34
Section stricken and rewritten

CHAPTER 97C

FEDERAL SOCIAL SECURITY ENABLING ACT

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97C.1 Declaration of policy.

In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors' insurance system embodied in the Social Security Act, Title II of the federal Social Security Act, it is hereby declared to be the policy of the general assembly, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act, Title II.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.1]

97C.2 Definitions.

For the purposes of this chapter:

1. The term *"employee"* includes elective and appointive officials of the state or any political subdivision thereof, except elective officials in positions, the compensation for which is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions. However, a member of a county board of supervisors or a county attorney shall not be deemed to be an elective official in a part-time position, but every member of a county board of supervisors and every county attorney shall be deemed to be an employee under this chapter and is eligible to receive the benefits provided by this chapter to which the member may be entitled as an employee.

2. The term *"employer"* means the state of Iowa and all of its political subdivisions which employ persons eligible to coverage under an agreement entered into by this state and the federal security administrator under the provisions of the Social Security Act, Title II, of the Congress of the United States as amended.

3. The term *"employment"* means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this chapter would constitute *"employment"* as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the state and the federal security administrator entered into under this chapter.

4. The term *"Federal Insurance Contributions Act"* means subchapter "A" of chapter 9 of the federal Internal Revenue Code as such code has been and may from time to time be amended.

5. The term *"Federal Security Administrator"* means the administrator of the federal security agency (or the administrator's successor in function), and includes any individual to whom the federal security administrator has delegated any of the administrator's functions under the Social Se-

curity Act, Title II, with respect to coverage under such Act of employees of states and their political subdivisions.

6. The term *"political subdivision"* includes an instrumentality (a) of the state of Iowa, (b) of one or more of its political subdivisions or (c) of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivisions.

7. The term *"Social Security Act"* means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," Title II, (including regulations and requirements issued pursuant thereto) as such Act has been and may from time to time be amended.

8. The term *"state agency"* means the department of personnel.

9. The term *"wages"* means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for *"employment"* within the meaning of the federal Insurance Contribution Act, would not constitute *"wages"* within the meaning of that Act.

[C46, 50, §97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.2]

86 Acts, ch 1245, §258; 87 Acts, ch 227, §22

97C.3 Federal-state agreement.

The state agency, with the approval of the governor and the attorney general, is hereby authorized to enter on behalf of the state into an agreement with the federal security administrator, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute *"employment"* as defined in section 97C.2 of this chapter. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and federal security administrator shall agree upon, but, except as may be otherwise required by or under the Social Security Act, Title II, as to the services to be covered, such agreement shall provide in effect that:

1. Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of said Social Security Act.

2. The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the Social Security Act, Title II, contributions with respect to wages (as defined in section 97C.2 of this chapter), equal to the sum of taxes which would be imposed by sections 1400 and 1410 of the federal Insurance Contributions Act, if the services covered by the agreement constituted employment within the meaning of that Act.

3. Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, provided that in the case of an agreement or modification made after the effective date of this chapter [May 3, 1953] and prior to January 1, 1954, such agreement or modification of the agreement shall be made effective with respect to any such services performed on or after January 1, 1951.

4. All services which constitute employment as defined in section 97C.2, and are performed in the employ of the state, or any political subdivision, by employees of the state, or of any political subdivision, shall be covered by the agreement.

[C46, 50, §97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.3]

97C.4 Other states — joint agreements.

Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the federal security administrator whereby the benefits of the federal old-age and survivors' insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under section 97C.5 if they were covered by an agreement made pursuant to section 97C.3, and (3) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of section 97C.3 and other provisions of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.4]

97C.5 Tax on employees.

Every employee whose services are covered by an agreement entered into under section 97C.3 shall be required to pay for the period of such coverage into the contribution fund established by section 97C.12, a tax which is hereby imposed with

respect to wages received during the calendar year of 1953, equal to such percentum of the wages received by the employee as imposed by Social Security Act, Title II, as such Act has been and may from time to time be amended. Such payment shall be considered a condition of employment as a public employee. Taxes deducted from the wages of the employee by the employer and taxes imposed upon the employer shall be forwarded to the state agency for recording and shall be deposited with the treasurer of state to the credit of the contribution fund established by section 97C.12 of this chapter.

[C46, 50, §97.9; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.5]

97C.6 Collection of tax.

The tax imposed by sections 97C.5 and 97C.14 shall be collected by each employer from the employee by deducting the amount of the tax from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such taxes.

[C46, 50, §97.7, 97.9, 97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.6]

97C.7 Repealed by 59 Acts, ch 118, § 1.

97C.8 Statement to employees.

The employer shall furnish to all employees a written statement in a form prescribed by the state agency suitable for retention by the employees, showing the wages paid to the employee after January 1, 1953. Each statement shall cover a calendar year, or one, two or three quarters, whether or not within the same calendar year, and shall show the name of the employee, the period covered by the statement, the total amount of wages paid within such period, and the amount of tax imposed by this chapter with respect to such wages. Each statement shall be furnished to the employee not later than thirty days following the period covered by the statement, except that, if the employee leaves the employ of the employer, this final statement shall be furnished within thirty days after the last payment of wages is made to the employee. The employer may, at its option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering such quarter, and, in such case, the statement may show the date of payment of wages in lieu of the period covered by the statement.

[C46, 50, §97.11; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.8]

97C.9 Adjustments or refund.

If more or less than the correct amount of the tax imposed by section 97C.5 is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made in such manner and at such times as the state agency shall prescribe.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.9]

97C.10 Tax on employer.

In addition to all other taxes there is hereby imposed upon each employer as defined in section 97C.2, subsection 2, a tax equal to such percentum of the wages paid by the employer to each employee as imposed by the Social Security Act, Title II, as such Act has been and may from time to time be amended. The employer shall pay its tax or contribution from funds available and is directed to pay same from tax money or from any other income available. The political subdivision is hereby authorized and directed to levy in addition to all other taxes a property tax sufficient to meet its obligations under the provisions of this chapter, if such tax levy is necessary because other funds are not available.

[C46, 50, §97.12; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.10]

97C.11 Payment — adjustment or refund.

Taxes deducted by the employer from the earnings of employees or upon the employers shall be paid in a manner, at times and under conditions prescribed by the state agency. If more or less than the correct amount of the tax imposed upon the employer is paid or deducted, proper adjustments or refund, if adjustment is impracticable, shall be made in a manner and at times as the state agency prescribes.

[C46, 50, §97.7; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.11]

84 Acts, ch 1285, §20

97C.12 Contribution fund.

There is hereby established in the office of the treasurer of state a special fund to be known as the contribution fund. Such fund shall consist of, and there shall be deposited in such fund: (1) all taxes, interest, and penalties collected under sections 97C.5, 97C.10, and 97C.11; (2) all moneys appropriated thereto under this chapter; (3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (4) interest earned upon any moneys in the fund, and (5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. Subject to the provisions of this chapter, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter. All

moneys in this fund shall be mingled and undivided.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.12]

97C.13 Fund kept separate.

The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such fund shall be made for, and solely for, payment of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under section 97C.3, or the payment of refunds provided for in this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.13]

97C.14 Elected officials — retroactive payments.

Any elective official of the state of Iowa, or any of its political subdivisions, who becomes subject to federal social security coverage under the provisions of the agreement referred to in section 97C.3 shall, not later than October 1, 1953, pay into the contribution fund established by section 97C.12 a tax sufficient to pay in the elected official's behalf an amount equal to three percent of the official's compensation received as a public official for each year or portion thereof that the public elected official has served as a public elective official since January 1, 1951, not to exceed thirty-six hundred dollars for any year of service. The state agency shall collect the tax hereby imposed and the proceeds from such tax shall be used for the purpose of obtaining retroactive federal social security coverage for elective officials, for the period beginning January 1, 1951, in the same manner as is provided in the case of other public employees by the provisions in subsection 2 of section 97.51 in order to obtain retroactive federal social security coverage during this period of time, such contribution to be collected and guaranteed by the employer. The state agency will pay any such amount contributed to provide for retroactive federal social security coverage for the individual in question in the same manner as other payments are made for retroactive coverage of public employees. Provided that no member of a county board of supervisors shall be deemed to be an elective official in a part-time position, but every member of a county board of supervisors shall be deemed to be an employee within the purview of this chapter and shall be eligible to receive all of the benefits provided by this chapter to which the member may be entitled as an employee.

[C46, 50, §97.7, 97.45; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.14]

97C.15 Payments to secretary of treasury.

From the contribution fund the custodian of the fund shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 97C.3 and the Social Security Act, Title II.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.15]

97C.16 Custodian of fund.

The treasurer of state shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this chapter and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.16]

97C.17 Standing appropriation.

There is hereby authorized to be appropriated annually from the general fund of the state of Iowa to the contribution fund, in addition to the taxes collected and paid into the contribution fund, such additional sums as are found to be necessary in order to make payments to the secretary of the treasury of the United States which the state is obliged to make pursuant to any agreement entered into under section 97C.3.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.17]

97C.18 Rules.

The state agency shall make and publish such rules, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter, and the state agency shall comply with regulations relating to payments and reports as may be prescribed by the federal security administrator.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.18]

97C.19 Apportionment of expense.

The money spent for personnel, rentals, supplies, and equipment used by the state agency in administering chapters 97, 97B, and 97C shall be equitably apportioned and charged against the funds provided for the administration of those chapters.

[C46, 50, §97.48; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.19]

86 Acts, ch 1245, §259

97C.20 Referenda by governor.

With respect to employees of the state the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision the governor shall authorize a referendum upon request of the governing body of such subdivision; and in either case the referendum shall be conducted, and the governor shall desig-

nate an agency or individual to supervise its conduct, in accordance with the requirements of section 218 "d" (3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by section 218 "d" (3) (C) of the Social Security Act to be given to employees shall contain or shall be accomplished by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

Upon receiving evidence satisfactory to the governor that with respect to any such referendum the conditions specified in section 218 "d" (3) of the Social Security Act have been met, the governor shall so certify to the secretary of health and human services.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §97C.20]
83 Acts, ch 101, §11

97C.21 Voluntary coverage of elected officials.

Notwithstanding any provision of this chapter to the contrary, an employer of elected officials otherwise excluded from the definition of employee as provided in section 97C.2, may, but is not required to, choose to provide benefits to those elected officials as employees as provided by this chapter. This choice shall be reflected in the federal-state agreement described in section 97C.3. An employer who is providing benefits to elected officials otherwise excluded from the definition of employee prior to July 1, 2002, shall not be deemed to be in an erroneous reporting situation, and corrections for prior federal social security withholdings shall not be required. The implementation of this section shall be subject to the approval of the federal social security administration.*

2002 Acts, ch 1135, §35
*Federal approval is pending
NEW section

CHAPTER 97D

PUBLIC RETIREMENT SYSTEMS GENERALLY

97D.1 Guiding goals for future changes in public retirement systems — social security — portability.
97D.2 Analysis of cost of proposed changes.
97D.3 Newly hired peace officers, police officers, and fire fighters — referendum.
97D.4 Public retirement systems committee established.

97D.1 Guiding goals for future changes in public retirement systems — social security — portability.

1. The general assembly declares that legislative proposals for changes in specific public retirement systems should be considered within the context of all public retirement systems within the state, with emphasis on equity and equality among the systems. The following list of guiding goals shall apply to the consideration of proposed changes:

a. Select those benefit enhancement options which most successfully deliver the greatest good to the greatest number of employees.

b. Choose those options which best correct existing inequities between and among the various retirement groups in the state.

c. Determine those options which most ably serve the twin objectives of attracting and retaining quality employees.

d. Avoid enacting further incentives toward earlier retirement with full benefits.

e. Avoid further splintering of benefits by disproportionate enhancement of benefits for one group beyond those available to another.

f. Avoid enacting further benefit enhancements that fail to preserve or enhance intergenerational equity amongst all employees covered by the retirement system.

2. The public retirement systems committee established by section 97D.4 shall periodically weigh the advantages and disadvantages of establishing participation in the federal social security system for the members of public retirement systems operating under chapters 97A and 411 and the impact of such a change on total contributions and benefits.

3. The public retirement systems committee established by section 97D.4 shall consider proposals to achieve greater portability of pension benefits between the various public retirement systems in the state. Special attention should be

given to the actuarial cost of transfers of value from one system to another.

90 Acts, ch 1240, §43; 98 Acts, ch 1183, §108

97D.2 Analysis of cost of proposed changes.

When the public retirement systems committee established by section 97D.4 or a standing committee of the senate or house of representatives recommends a proposal for a change in a public retirement system within this state, the committee shall require the development of actuarial information concerning the costs of the proposed change. If the proposal affects police and fire retirement under chapter 411, the committee shall arrange for the services of an actuarial consultant to assist in developing the information.

90 Acts, ch 1240, §44

97D.3 Newly hired peace officers, police officers, and fire fighters — referendum.

1. As soon as possible after July 1, 1990, the department of personnel, in cooperation with the board of trustees of the public safety peace officers' retirement system and the board of trustees for the statewide fire and police retirement system created in section 411.36, shall submit to the members of retirement systems under chapters 97A and 411 in a referendum the question of requiring federal social security coverage for all persons newly hired as peace officers, as defined in section 97A.1, police officers, and fire fighters. The referendum shall be conducted before January 1, 1991. The referendum procedures shall comply with the requirements of federal law and regulations. If there is a favorable vote of a majority of the persons eligible to vote in the referendum, subsection 2 applies.

2. Upon a favorable vote in the referendum and notwithstanding sections 97A.3 and 411.3, all persons newly hired as peace officers, as defined in section 97A.1, police officers, and fire fighters after July 1, 1991, shall be members of the Iowa public employees' retirement system under chapter 97B, rather than members of retirement systems under chapters 97A and 411. Such members shall have federal social security coverage in addition to coverage under the Iowa public employees' retirement system and shall have the same benefits as county sheriffs and deputy sheriffs under section 97B.49C or 97B.49G, as applicable.

90 Acts, ch 1240, §45; 98 Acts, ch 1183, §70

97D.4 Public retirement systems committee established.

1. A public retirement systems committee is established. The committee consists of five members of the senate appointed by the majority leader of the senate in consultation with the minority leader and five members of the house of representatives appointed by the speaker of the house in consultation with the minority leader. The committee shall elect a chairperson and vice chairperson. Meetings may be called by the chairperson or a majority of the members.

Members shall be appointed prior to January 31 of the first regular session of each general assembly and shall serve for terms ending upon the convening of the following general assembly or when their successors are appointed, whichever is later. A vacancy shall be filled in the same manner as the original appointment and shall be for the remainder of the unexpired term of the vacancy.

2. The members of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of their duties and shall be paid a per diem as specified in section 7E.6 for each day in which they engaged in the performance of their duties. However, per diem compensation and expenses shall not be paid when the general assembly is actually in session at the seat of government. Expenses and per diem shall be paid from funds appropriated pursuant to section 2.12.

3. The committee shall:

a. Develop and recommend retirement standards and a coherent state policy on public retirement systems.

b. Continuously survey pension and retirement developments in other states and in industry and business and periodically review the state's policy and standards in view of these developments and changing economic and social conditions.

c. Review the provisions in the public retirement systems in effect in this state.

d. Review individually sponsored bills relating to the public retirement systems.

e. Review proposals from interested associations and organizations recommending changes in the state's retirement laws.

f. Study the feasibility of adopting a consolidated retirement system for the public employees of this state.

g. Make recommendations to the general assembly.

4. The committee may contract for actuarial assistance deemed necessary, and the costs of actuarial studies are payable from funds appropriated in section 2.12, subject to the approval of the legislative council. The committee may administer oaths, issue subpoenas, and cite for contempt with the approval of the general assembly when the general assembly is in session and with the approval of the legislative council when the general assembly is not in session.

Administrative assistance shall be provided by the legislative service bureau and the legislative fiscal bureau.

86 Acts, ch 1243, §24
C87, §97B.76
90 Acts, ch 1240, §93; 90 Acts, ch 1256, §28
C91, §97D.4

CHAPTER 98

CIGARETTE AND TOBACCO TAXES

Transferred to chapter 453A

CHAPTER 98A

SMOKING PROHIBITIONS

Transferred to chapter 142B

SUBTITLE 4

GAMBLING

CHAPTER 99

HOUSES USED FOR PROSTITUTION OR GAMBLING

99.1 Definitions.
99.1A Houses of prostitution or other nuisances.
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99.3 Notice — temporary writ — without bond.
99.4 "Owners" defined — notice.
99.5 Trial.
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99.10 Notice.
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99.26 Release of property.
99.27 Mulct tax.
99.28 Certification and payment of tax.
99.29 Collection of tax.
99.30 Application of tax.
99.31 Tax assessed.

99.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §99.1 transferred to §99.1A

99.1A Houses of prostitution or other nuisances.

Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of prostitution or gambling, except as authorized under the laws of this state is guilty of a nuisance, and the building, erection, or place, or the ground itself, in or upon which such prostitution or gambling is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided.

The provisions of this section do not apply to games of skill, games of chance, or raffles conducted pursuant to chapter 99B or to devices lawful under section 99B.10.

[SS15, §4944-h1; C24, 27, 31, 35, 39, §**1587;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.1]

C2001, §99.1A

99.2 Injunction — procedure.

When a nuisance is kept, maintained, or exists, as defined in this chapter, the county attorney, or any citizen of the county, or any society, association, or body incorporated under the laws of this state, may maintain an action in equity in the name of the state of Iowa, upon the relation of such county attorney, citizen, or corporation to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same from further conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists, from further permitting such building or ground or both to be so used.

[SS15, §4944-h2; C24, 27, 31, 35, 39, §**1588;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.2]

99.3 Notice — temporary writ — without bond.

The defendants shall be served with notice as in other actions and in such action the court, or judge in vacation, shall upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise as

the complainant may elect, unless the court or judge by previous order, shall have directed the form and manner in which such evidence shall be presented.

[SS15, §4944-h2; C24, 27, 31, 35, 39, §**1589;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.3]

Time and manner of service, R.C.P. 1.302 – 1.315

99.4 "Owners" defined — notice.

The person in whose name the real estate affected by the action stands on the books of the county auditor, for the purposes of taxation, shall be presumed to be the owner thereof, and in case of unknown persons having or claiming any ownership, right, title, or interest in property affected by the action, such may be made parties to the action by designating them in the notice and petition as *"all other persons unknown claiming any ownership, right, title, or interest in the property affected by the action"* and service thereon may be had by publishing such notice in the manner prescribed for the publication of original notices in ordinary actions.

[SS15, §4944-h9; C24, 27, 31, 35, 39, §**1590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.4]

Service by publication, R.C.P. 1.310 et seq.

99.5 Trial.

Any person having or claiming such ownership, right, title, or interest, and any owner or agent in behalf of the agent and such owner may make, serve, and file an answer therein within twenty days after such service, and have trial of the person's rights in the premises by the court; and if said cause has already proceeded to trial or to findings and judgment, the court shall by order fix the time and place of such trial and shall modify, add to, or confirm such findings and judgment as the case may require. Other parties to said action shall not be affected thereby.

[SS15, §4944-h9; C24, 27, 31, 35, 39, §**1591;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.5]

99.6 Temporary restraining order.

If a temporary injunction is petitioned for, the court, on the application of plaintiff, may issue an ex parte restraining order, restraining the defendants and all other persons from removing or in any manner interfering with the furniture, fixtures, musical instruments, and movable property used in conducting the alleged nuisance, until the decision of the court granting or refusing the temporary injunction and until the further order of the court.

[SS15, §4944-h2; C24, 27, 31, 35, 39, §**1592;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.6]

90 Acts, ch 1168, §12

99.7 Writ — how served.

The restraining order may be served by handing to and leaving a copy of said order with any person in charge of said property or residing in the premises or apartment wherein the same is situated, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such premises or apartment where such nuisance is alleged to be maintained, or by both such delivery and posting.

[SS15, §4944-h2; C24, 27, 31, 35, 39, §**1593;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.7]

99.8 Inventory.

The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property situated in and used in conducting or maintaining such nuisance.

[SS15, §4944-h2; C24, 27, 31, 35, 39, §**1594;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.8]

99.9 Mutilation or removal of notice.

Where such order is so posted, mutilation or removal thereof, while the same remains in force, shall be a contempt of court, provided such posted order contains thereon or therein a notice to that effect.

[SS15, §4944-h2; C24, 27, 31, 35, 39, §**1595;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.9]

99.10 Notice.

Three days' notice in writing shall be given the defendants of the hearing of the application for temporary injunction, and if then continued at the instance of defendant, the temporary writ as petitioned for shall be granted as a matter of course.

[SS15, §4944-h2; C24, 27, 31, 35, 39, §**1596;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.10]

90 Acts, ch 1168, §13

99.11 Answer.

Each defendant so notified shall serve upon the complainant or the complainant's attorney a verified answer on or before the date fixed in the notice for a hearing, and the answer shall be filed with the clerk of the district court of the county where the cause is triable, but the court may allow additional time for so answering. However, an extension of time shall not prevent the issuing of the temporary writ as petitioned for. The allegations of the answer shall be deemed to be traversed without further pleading.

[SS15, §4944-h2; C24, 27, 31, 35, 39, §**1597;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.11]

90 Acts, ch 1168, §14

99.12 Scope of injunction.

When an injunction has been granted, it shall be binding on the defendant throughout the judicial district in which it was issued, and any violation of the provisions of the injunction or temporary restraining order herein provided, shall be a contempt and punished as hereinafter provided.

[SS15, §4944-h2; C24, 27, 31, 35, 39, §**1598;** C46,

50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.12]
Punishment, §99.20

99.13 Repealed by 67 Acts, ch 400, § 19.

99.14 Evidence.
In such action evidence of the general reputation of the place shall be competent for the purpose of proving the existence of said nuisance and shall be prima facie evidence of such nuisance and of knowledge thereof and of acquiescence and participation therein on the part of the owners, lessors, lessees, users, and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form of property used in conducting or maintaining said nuisance.
[SS15, §4944-h3; C24, 27, 31, 35, 39, §**1600;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.14]

99.15 Dismissal.
If the complaint is filed by a citizen or a corporation, it shall not be dismissed except upon a sworn statement made by the complainant and the complainant's attorney, setting forth the reasons why the action should be dismissed and the dismissal approved by the county attorney in writing or in open court.
[SS15, §4944-h3; C24, 27, 31, 35, 39, §**1601;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.15]

99.16 Delay in trial.
If the court is of the opinion that the action ought not to be dismissed, the court may direct the county attorney to prosecute said action to judgment at the expense of the county, and if the action is continued beyond the first trial calendar to which assigned, any citizen of the county or the county attorney may be substituted for the complaining party and prosecute said action to judgment.
[SS15, §4944-h3; C24, 27, 31, 35, 39, §**1602;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.16]

99.17 Costs.
If the action is brought by a citizen or a corporation and the court finds there were no reasonable grounds or cause for said action, the costs may be taxed to such citizen or corporation.
[SS15, §4944-h3; C24, 27, 31, 35, 39, §**1603;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.17]

99.18 Violation of injunction.
In case of the violation of any injunction granted under the provisions of this chapter, or of a restraining order or the commission of any contempt of court in proceedings under this chapter, the court may summarily try and punish the offender.
[SS15, §4944-h4; C24, 27, 31, 35, 39, §**1604;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.18]

99.19 Procedure.
The proceedings shall be commenced by filing with the clerk of the court a complaint under oath, setting out and alleging facts constituting such violation, upon which the court shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses.
[SS15, §4944-h4; C24, 27, 31, 35, 39, §**1605;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.19]

99.20 Penalty.
A party found guilty of contempt under the provisions of this chapter shall be punished by a fine of not less than two hundred nor more than one thousand dollars or by imprisonment in the county jail not less than three nor more than six months or by both fine and imprisonment.
[SS15, §4944-h4; C24, 27, 31, 35, 39, §**1606;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.20]

99.21 Abatement — sale of property.
If the existence of the nuisance be admitted or established in an action as provided in this chapter, or in a criminal proceeding in the district court, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale of such in the manner provided for the sale of chattels under execution, and shall direct the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released as hereinafter provided.
[SS15, §4944-h5; C24, 27, 31, 35, 39, §**1607;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.21]
Sale of chattels, §626.74 et seq.

99.22 Fees.
For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as the officer would for levying upon and selling like property, on execution, and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court.
[SS15, §4944-h5; C24, 27, 31, 35, 39, §**1608;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.22]
Fees, §331.655(1)

99.23 Breaking and entering closed building — punishment.
If any person shall break and enter or use a building, erection, or place so directed to be closed, the person shall be punished as for contempt as provided in this chapter.
[SS15, §4944-h5; C24, 27, 31, 35, 39, §**1609;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.23]
Punishment, §99.20

99.24 Duty of county attorney.

In case the existence of such nuisance is established in a criminal proceeding in a court not having equitable jurisdiction, it shall be the duty of the county attorney to proceed promptly under this chapter to enforce the provisions and penalties thereof; and the finding of the defendant guilty in such criminal proceedings, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance.

[SS15, §4944-h6; C24, 27, 31, 35, 39, §**1610;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.24]

99.25 Proceeds.

All moneys collected under this chapter shall be paid to the county treasurer. The proceeds of the sale of the personal property as provided in section 99.21 shall be applied in payment of the costs of the action and abatement or so much of such proceeds as may be necessary, except as hereinafter provided.

[SS15, §4944-h6; C24, 27, 31, 35, 39, §**1611;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.25]

99.26 Release of property.

If the owner of the premises in which said nuisance has been maintained appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the court in the full value of the property, to be ascertained by the court, conditioned that the owner will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, if satisfied of the owner's good faith, may order the premises, closed or sought to be closed under the order of abatement, delivered to said owner, and said order of abatement canceled so far as the same may relate to said real property. The release of the property under the provisions of this section shall not release it from the injunction herein provided against the property nor any of the defendants nor from any judgment, lien, penalty, or liability to which it may be subject by law.

[SS15, §4944-h7; C24, 27, 31, 35, 39, §**1612;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.26]

99.27 Mulct tax.

When a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by this chapter, there shall be imposed upon said building and the ground upon which the same is located and against the person or persons maintaining said nuisance and the owner or agent of said premises, a tax of three hundred dollars. The imposing of said tax shall be made by the court as a part of the proceeding.

[SS15, §4944-h8; C24, 27, 31, 35, 39, §**1613;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.27]

Nuisance defined, §99.1A

99.28 Certification and payment of tax.

The clerk of said court shall make and certify a return of the imposition of said tax forthwith to the county auditor, who shall enter the same as a tax upon the property, and against the persons upon which or whom the lien was imposed, as and when the other taxes are entered, and the same shall be and remain a lien on the land upon which such lien was imposed until fully paid. Any such lien imposed while the tax books are in the hands of the auditor shall be immediately entered therein. The payment of said tax shall not relieve the persons or property from any other penalties provided by law.

[SS15, §4944-h8; C24, 27, 31, 35, 39, §**1614;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.28]

99.29 Collection of tax.

The provisions of the law relating to the collection of taxes in this state, the delinquency thereof, and sale of property for taxes shall govern in the collection of the tax herein prescribed insofar as the same are applicable.

[SS15, §4944-h8; C24, 27, 31, 35, 39, §**1615;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.29]

Collection of taxes, chapter 445 et seq.

99.30 Application of tax.

The tax collected shall be applied toward the deficiency in the payment of costs of the action and abatement which exist after the application of the proceeds of the sale of personal property. The remainder of the tax together with the unexpended portion of the proceeds of the sale of personal property shall be paid to the treasurer of state for deposit in the general fund of the state, except that ten percent of the amount of the whole tax collected and of the whole proceeds of the sale of the personal property, as provided in this chapter, shall be paid by the treasurer to the attorney representing the state in the injunction action, at the time of final judgment.

[SS15, §4944-h8; C24, 27, 31, 35, 39, §**1616;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.30]

83 Acts, ch 185, §2, 62; 83 Acts, ch 186, §10043, 10201, 10204

99.31 Tax assessed.

When such nuisance has been found to exist under any proceeding in the district court or as in this chapter provided, and the owner or agent of such building or ground whereon the same has been found to exist was not a party to such proceeding, nor appeared therein, the said tax of three hundred dollars shall, nevertheless, be imposed against the persons served or appearing and against the property as in this chapter set forth.

[SS15, §4944-h9; C24, 27, 31, 35, 39, §**1617;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99.31]

CHAPTER 99A

POSSESSION OF GAMBLING DEVICES

99A.1 Definitions.
99A.2 Intentional possession.
99A.3 Proceedings to revoke.
99A.4 Duties of peace officers.
99A.5 Order to show cause.
99A.6 Licenses revoked — appeal.
99A.7 Attorney general — duty.
99A.8 Witnesses.
99A.9 Owner of premises — when penalized.
99A.10 Manufacture and distribution of gambling devices permitted.

99A.1 Definitions.

For the purpose of this chapter, the words, terms, and phrases defined in this section shall have the meanings given them.

1. *"Gambling devices"* means gambling devices as defined in section 725.9.

2. *"Issuing authority"* and *"authority issuing the license"* mean and include the officer, board, bureau, department, commission, or agency of the state, or of any of its municipalities, by whom any license is issued and include the councils and governing bodies of all municipalities.

3. *"License"* includes permits of every kind, nature and description issued pursuant to any statute or ordinance for the carrying on, or used in the carrying on, of any business, trade, vocation, commercial enterprise or undertaking.

4. *"Licensed business"* means any business, trade, vocation, commercial enterprise, or undertaking for which any license is issued.

5. *"Licensed premises"* means the place or building, or the room in a building of the licensed business, and all land adjacent thereto and used in connection with and in the operation of a licensed business, and all adjacent or contiguous rooms or buildings operated or used in connection with the buildings of the licensed business.

6. *"Licensee"* means any person to whom a license of any kind is issued.

7. *"Municipality"* means any county, city, village or township.

8. *"Person"* means an individual, a copartnership, an association, corporation, or any other entity or organization.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99A.1]

99A.2 Intentional possession.

The intentional possession or willful keeping of a gambling device upon any licensed premises, except as provided in this chapter, is cause for the revocation of any license upon the premises where the gambling device is found. Possession by an employee of the licensee on the premises of the licensee creates a presumption of intentional possession by the licensee.

All licenses of any licensed business shall be revoked if the intentional possession or willful keeping of any such gambling device upon the licensed premises is established, notwithstanding that it may not be made to appear that such devices have actually been used or operated for the purpose of gambling.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99A.2]
83 Acts, ch 187, §31

99A.3 Proceedings to revoke.

The proceedings for revocation shall be had before the issuing authority, which shall have power to revoke the license or licenses involved, as hereinafter provided.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99A.3]

99A.4 Duties of peace officers.

Every sheriff, deputy sheriff, constable, marshal, policeman, police officer, and peace officer shall immediately report the finding of gambling devices at licensed premises to the authority or authorities issuing the license or licenses applicable to the premises in question.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99A.4]
94 Acts, ch 1173, §6

99A.5 Order to show cause.

Upon the receipt of such information from any of the peace officers referred to in section 99A.4, if any issuing authority is of the opinion that cause exists for the revocation of any such license, then that authority shall issue an order to show cause directed to the licensee of the premises, stating the ground upon which the proceeding is based and requiring the licensee to appear and show cause at a time and place within the county in which the licensed premises are located, not less than ten days

after the date of the order, why the licensee's license should not be revoked. The order to show cause shall be served upon the licensee as an original notice, or by certified mail, not less than eight days before the date fixed for the hearing thereof. A copy of the order shall forthwith be mailed to the owner of the premises, as shown by the records in the office of the county recorder at the owner's last known post-office address. A copy of the order shall at the same time be mailed to any other issuing authority, of which the authority issuing the order to show cause has knowledge, by which other licenses to that licensee may have been issued, and any such other authority may participate in the revocation proceedings after notifying the licensee and the officer or authority holding the hearing of its intention so to do on or before the date of hearing, and after the hearing take such action as it could have taken had it instituted the revocation proceedings in the first instance.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99A.5]

99A.6 Licenses revoked — appeal.

If, upon the hearing of the order to show cause, the issuing authority finds that the licensee intentionally possessed or willfully kept upon the licensee's licensed premises any gambling device, then the license or licenses under which the licensed business is operated, or used in the operation of such business on the licensed premises, shall be revoked.

Judicial review of actions of the issuing authorities may be sought in accordance with the terms of the Iowa administrative procedure Act. Municipalities acting as issuing authorities shall be deemed state agencies solely for the purposes of bringing their actions under this chapter within the terms of section 17A.19. If the licensee has not filed a petition for judicial review in district court, revocation shall date from the thirty-first day following the date of the order of the issuing authority. If the licensee has filed a petition for judicial review, revocation shall date from the thirty-first day following entry of the order of the district court, if action by the district court is adverse to the licensee.

No new license or licenses shall be granted the licensee, nor for the same business if it is established that the owner had actual knowledge of the existence of the gambling devices resulting in the license revocation, upon the same premises, for the period of one year following the date of revocation.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99A.6]

99A.7 Attorney general — duty.

The attorney general shall attend the hearing, interrogate the witnesses, and advise the issuing authority. The attorney general shall also appear for the issuing authority in any certiorari proceeding taken pursuant to section 99A.6.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99A.7]
94 Acts, ch 1173, §7

99A.8 Witnesses.

The issuing authority may issue subpoenas and compel the attendance of witnesses at any hearing. Witnesses duly subpoenaed and attending any such hearing shall be paid fees and mileage by the issuing authority equal to the fees and mileage paid witnesses in the district court.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99A.8]

99A.9 Owner of premises — when penalized.

When the license is revoked under the provisions of this chapter, subject to the provisions of section 99A.6, the owner of the premises upon which any licensed business has been operated shall not be penalized by reason thereof unless it is established that the owner had knowledge of the existence of the gambling devices resulting in the license revocation.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §99A.9]

99A.10 Manufacture and distribution of gambling devices permitted.

A person may manufacture or act as a distributor for gambling devices for sale out of the state in another jurisdiction where possession of the device is legal or for sale in the state or use in the state if the use is permitted pursuant to either chapter 99B or chapter 99E.

85 Acts, ch 32, §117; 86 Acts, ch 1052, §1; 90 Acts, ch 1062, §1

CHAPTER 99B

GAMES OF SKILL OR CHANCE, AND RAFFLES

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DIVISION I

GENERAL PROVISIONS

99B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Amusement concession"* means any place where a single game of skill or game of chance is conducted by a person for profit, and includes the area within which are confined the equipment, playing area and other personal property necessary for the conduct of the game.

2. *"Amusement device"* means an electrical or mechanical device possessed and used in accordance with section 99B.10. When possessed and used in accordance with that section, an amusement device is not a game of skill or game of chance, and is not a gambling device.

3. *"Applicant"* means an individual or an organization.

4. *"Authorized"* means approved as a concession by the Iowa state fair board or a county or district fair or agricultural society holding a fair.

5. *"Bingo"* means a game, whether known as bingo or any other name, in which each participant uses one or more cards each of which is marked off into spaces arranged in horizontal and vertical rows of spaces, with each space being designated by number, letter, or combination of numbers and letters, no two cards being identical, with the players covering spaces as the operator of the game announces the number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the spaces, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of spaces on a card being used by the player or players. Each determination of a winner by the method described in the preceding sentence is a single bingo game at any bingo occasion.

6. *"Bingo occasion"* means a single gathering or session at which successive bingo games are played. A bingo occasion commences when the operator of the game begins to announce the number, letter, or combination of numbers or letters through which the winner of a single bingo game will be determined.

7. *"Bona fide social relationship"* as used herein means a real, genuine, unfeigned social relationship between two or more persons wherein each person has an established knowledge of the other, which has not arisen for the purpose of gambling.

8. *"Bookmaking"* as used herein means the taking or receiving of any bet or wager upon the result of any trial or contest of skill, speed, power or endurance of human, beast, fowl or motor vehicle, which is not a wager or bet pursuant to section 99B.12, subsection 2, paragraph *"c"*, or which is laid off, placed, given, received or taken, by an individual who was not present when the wager or bet was undertaken, or by any publicly or privately owned enterprise where such wagers or bets may be undertaken.

9. A person *"conducts"* a specified activity if that person owns, promotes, sponsors, or operates a game or activity. A natural person does not *"conduct"* a game or activity if the person is merely a participant in a game or activity which complies with section 99B.12.

10. *"Controlling shareholder"* means either of the following:

a. A person who directly or indirectly owns or controls ten percent or more of any class of stock of a license applicant.

b. A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of a license applicant.

11. *"Department"* means the department of inspections and appeals.

12. *"Eligible applicant"* means an applicant who meets all of the following requirements:

a. The applicant's financial standing and good reputation are within the standards established by the department by rule under chapter 17A so as to satisfy the director of the department that the applicant will comply with this chapter and the rules applicable to operations under it.

b. The applicant is a citizen of the United States and a resident of this state, or a corporation licensed to do business in this state, or a business that has an established place of business in this state or that is doing business in this state.

c. The applicant has not been convicted of a felony. However, if the applicant's conviction occurred more than five years before the date of the application for a license, and if the applicant's rights of citizenship have been restored by the governor, the director of the department may determine that the applicant is an eligible applicant.

If the applicant is an organization, then the requirements of paragraphs *"a"*, *"b"*, and *"c"* apply to its officers, directors, partners and controlling shareholders.

13. *"Fair"* means an annual fair and exposition held by the Iowa state fair board and any fair held by a county or district fair or agricultural society under the provisions of chapter 174.

14. *"Game of chance"* means a game whereby the result is determined by chance and the player in order to win aligns objects or balls in a prescribed pattern or order or makes certain color patterns appear and specifically includes but is not limited to the game defined as bingo. Game of chance does not include a slot machine.

15. *"Game of skill"* means a game whereby the result is determined by the player directing or throwing objects to designated areas or targets, or by maneuvering water or an object into a designated area, or by maneuvering a dragline device to pick up particular items, or by shooting a gun or rifle.

16. *"Gross receipts"* means the total revenue received from the sale of rights to participate in a game of skill, game of chance, or raffle and admission fees or charges.

17. *"Merchandise"* includes lottery tickets or shares sold or authorized under chapter 99E. The value of the ticket or share is the price of the ticket or share as established by the lottery division of the department of revenue and finance pursuant to chapter 99E.

18. *"Net receipts"* means gross receipts less amounts awarded as prizes and less state and local sales tax paid upon the gross receipts. Reasonable expenses, charges, fees, taxes other than the state and local sales tax, and deductions allowed by the department shall not exceed twenty-five percent of net receipts.

19. *"Net rent"* means the total rental charge minus reasonable expenses, charges, fees, and deductions allowed by the department.

20. *"Posted"* means that the person conducting a game has caused to be placed near the front or playing area of the game a sign at least thirty inches by thirty inches, with permanent material and lettering, stating at the top in letters at least three inches high: "Rules of the Game". Thereunder there shall be set forth in large, easily readable print, the name of the game, the price to play the game, the complete rules for the game and the name and permanent mailing address of the owner of the game.

21. *"Qualified organization"* means any licensed organization which dedicates the net receipts of a game of skill, game of chance or raffle as provided in section 99B.7 and meets the requirements of section 99B.7, subsection 1, paragraph *"m"*.

22. *"Raffle"* means a lottery in which each participant buys a ticket for a chance at a prize with the winner determined by a random method and the winner is not required to be present to win. *"Raffle"* does not include a slot machine.

23. *"Social games"* means and includes only the activities permitted by section 99B.12, subsection 2.

24. *"Unrelated entity"* means a person that has a separate and distinct state charter and tax identification number from any other person and, if the person is an individual, an individual that is not related by law or by consanguinity.

[C75, 77, 79, 81, §99B.1; 81 Acts, ch 44, §1 – 3]

84 Acts, ch 1220, §3; 86 Acts, ch 1042, §1; 86 Acts, ch 1201, §1; 86 Acts, ch 1245, §711; 87 Acts,

ch 115, §14; 89 Acts, ch 231, §13 – 15; 90 Acts, ch 1233, §4; 94 Acts, ch 1062, §1; 2000 Acts, ch 1130, §1

99B.2 Licensing — records required — bingo accounts — inspections — penalties.

1. The department of inspections and appeals shall issue the licenses required by this chapter. A license shall not be issued, except upon submission to the department of an application on forms furnished by the department, and the required license fee. A license may be issued to an eligible applicant. An authorization number to operate may be issued to an applicant until a license is issued. However, a license or authorization number shall not be issued to an applicant who has been convicted of or pled guilty to a violation of this chapter, or who has been convicted of or pled guilty to a violation of chapter 123 that resulted, at any time, in revocation of a license issued to the applicant under chapter 123 or that resulted, within the twelve months preceding the date of application for a license required by this chapter, in suspension of a license issued under chapter 123. To be eligible for a two-year license under section 99B.7, an organization shall have been in existence at least five years prior to the date of issuance of the license. However, an organization which has been in existence for less than five years prior to the date of issuance of the license may obtain a two-year license if either of the following conditions apply:

a. That prior to July 1, 1984, the organization was licensed under this subsection.

b. If the organization is a local chapter of a national organization and the national organization is a tax-exempt organization under one of the provisions enumerated in section 99B.7, subsection 1, paragraph *"m"*, then the local organization is eligible for a two-year license if the national organization has been in existence at least five years.

A license shall not be issued to an individual whose previous license issued under this chapter or chapter 123 has been revoked until the period of revocation or revocations has elapsed. This prohibition applies even though the individual has created a different legal entity than the one to which the previous license that had been revoked was issued. Except as otherwise provided in this chapter, a license is valid for a period of two years from the date of issue. The license fee is not refundable, but shall be returned to the applicant if an application is not approved. If a bingo license is issued by the department of inspections and appeals, the licensee shall be notified by the department of inspections and appeals of the renewal date for the license ten days prior to that date.

2. A licensee other than one issued a license pursuant to section 99B.3, 99B.6, 99B.7A, or 99B.9 shall maintain proper books of account and records showing in addition to any other information required by the department, gross receipts and the amount of the gross receipts taxes collected or accrued with respect to gambling activities, all expenses, charges, fees and other deductions, and the cash amounts, or the cost to the licensee of goods or other noncash valuables, distributed to participants in the licensed activity. If the licensee is a qualified organization, the amounts dedicated and the date and name and address of each person to whom distributed also shall be kept in the books and records. The books of account and records shall be made available to the department or a law enforcement agency for inspection at reasonable times, with or without notice. A failure to permit inspection is a serious misdemeanor.

3. A qualified organization conducting bingo occasions under a two-year license and expecting to have annual gross receipts of more than ten thousand dollars shall establish and maintain one regular checking account designated the *"bingo account"* and may also maintain one or more interest-bearing savings accounts designated as *"bingo savings account"*.

a. Funds derived from the conduct of bingo, less the amount awarded as cash prizes, shall be deposited in the bingo account. No other funds except limited funds of the organization deposited to pay initial or unexpected emergency expenses shall be deposited in the bingo account. Deposits shall be made no later than the next business day following the day of the bingo occasion on which the receipts were obtained. Accounts shall be maintained in a financial institution in Iowa.

b. Funds from the bingo account shall be withdrawn by preprinted, consecutively numbered checks or share drafts, signed by a duly authorized representative of the licensee and made payable to a person or organization. Checks shall be imprinted with the words "Bingo Account" and shall contain the organization's gambling license number on the face of the check. There shall also be noted on the face of the check or share draft the nature of the payment made. A check or slip shall not be made payable to "cash", "bearer", or a fictitious payee. Checks, including voided checks and drafts, shall be kept and accounted for.

c. Checks shall be drawn on the bingo account for only the following purposes:

(1) The payment of necessary and reasonable bona fide expenses permitted under section 99B.7, subsection 3, paragraph *"b"*, incurred and paid in connection with the conduct of bingo.

(2) The disbursement of net proceeds derived from the conduct of bingo to charitable purposes as required by section 99B.7, subsection 3, paragraphs *"b"* and *"c"*.

(3) The transfer of net proceeds derived from the conduct of bingo to a bingo savings account pending disbursement to a charitable purpose.

(4) To withdraw initial or emergency funds deposited under subsection 3, paragraph *"a"*.

(5) To pay prizes if the qualified organization decides to pay prizes by check rather than cash.

d. The disbursement of net proceeds on deposit in a bingo savings account to a charitable purpose shall be made by transferring the intended disbursement back into the bingo account and then withdrawing the amount by a check drawn on that account as prescribed in this section.

e. Except as permitted by subsection 3, paragraph *"a"*, gross receipts derived from the conduct of bingo shall not be commingled with other funds of the licensed organization. Except as permitted by paragraph *"c"*, subparagraphs (3) and (4), gross receipts shall not be transferred to another account maintained by the licensed organization.

4. A licensee required by subsection 2 to maintain records shall submit quarterly reports to the department on forms furnished by the department. These reports shall be due thirty days following the end of each calendar quarter. The reports shall contain a compilation of the information required to be recorded by subsection 2, and shall include all of the transactions occurring during the three-month period for which the report is submitted. Failure to submit the quarterly reports is grounds for revocation of the license. Willful failure to submit quarterly reports is a serious misdemeanor. However, the time for filing of reports may be extended for thirty days if the licensee makes written request to the department for an extension which request shows good cause for granting the extension. A person who intentionally files a false or fraudulent report or application with the department commits a fraudulent practice.

5. An organization receiving funds reported as being dedicated by a qualified organization shall maintain proper books of account and records showing both the receipt and the use of the funds. These records shall be made available to the department or a law enforcement agency for inspection with or without notice at reasonable times. A failure to permit inspection is a serious misdemeanor.

[C75, 77, 79, 81, §99B.2; 81 Acts, ch 44, §4, 5]

84 Acts, ch 1220, §4; 86 Acts, ch 1201, §2; 86 Acts, ch 1245, §712; 87 Acts, ch 184, §1; 88 Acts, ch 1274, §30; 89 Acts, ch 231, §16; 94 Acts, ch 1062, §2

DIVISION II

GAMES OR LOCATIONS FOR WHICH A LICENSE IS REQUIRED

99B.3 Amusement concessions.

1. A game of skill or game of chance is lawful when conducted by a person at an amusement concession, but only if all of the following are complied with:

a. The location where the game is conducted by the person has been authorized as provided in section 99B.4.

b. The person conducting the game has submitted a license application and a fee of fifty dollars for each game, and has been issued a license for the game, and prominently displays the license at the playing area of the game. A license is valid for a period of one year from the date of issue.

c. Gambling other than the licensed game is not conducted or engaged in at the amusement concession.

d. The game is posted and the cost to play the game does not exceed three dollars.

e. A prize is not displayed which cannot be won.

f. Cash prizes are not awarded and merchandise prizes are not repurchased.

g. The game is not operated on a build-up or pyramid basis.

h. The actual retail value of any prize does not exceed fifty dollars. If a prize consists of more than one item, unit, or part, the aggregate retail value of all items, units, or parts shall not exceed fifty dollars.

i. Concealed numbers or conversion charts are not used to play the game and the game is not designed or adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object target, block or object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.

j. The game is conducted in a fair and honest manner.

2. It is lawful for an individual other than a person conducting the game to participate in a game of skill or game of chance conducted at an amusement concession, whether or not the amusement concession is conducted in compliance with subsection 1.

[C75, §99B.2, 99B.3; C77, 79, 81, §99B.3; 81 Acts, ch 44, §6]

88 Acts, ch 1274, §31; 95 Acts, ch 163, §1

99B.4 Permitted locations of amusement concessions.

A game of skill or game of chance lawfully may be conducted by a person at an amusement concession, but only if the person has been authorized to conduct the game at a specific location as follows:

1. At a fair, by written permission given to the person by the sponsor of the fair.

2. At an amusement park so designated by resolution of the city council of a city or the board of supervisors of a county, by written permission given to the person by the respective city or county.

3. At a carnival, bazaar, centennial, or celebration sponsored by a bona fide civic group, service club, or merchants group when that event has been authorized by resolution of the city council of a city or the board of supervisors of a county, by written permission given to the person by the authorizing city or county. Section 99B.3, subsection

1, paragraph *"b"*, notwithstanding, a license may be issued for an event held pursuant to this paragraph at a fee of twenty-five dollars, which shall enable the sponsor of the event to conduct all games and raffles permitted under section 99B.3 for a specified period of fourteen consecutive calendar days.

[C75, §99B.3, 99B.5, 99B.6; C77, 79, 81, §99B.4]

99B.5 Raffles conducted at a fair.

1. Raffles lawfully may be conducted at a fair, but only if all of the following are complied with:

a. The raffle is conducted by the sponsor of the fair or a qualified organization licensed under section 99B.7 that has received permission from the sponsor of the fair to conduct the raffle.

b. The sponsor of the fair or the qualified organization has submitted a license application and a fee of thirty dollars for each raffle, has been issued a license, and prominently displays the license at the drawing area of the raffle.

c. The raffle is posted.

d. Except with respect to an annual raffle as provided in paragraph *"g"*, the cost of each chance in or ticket to the raffle does not exceed one dollar.

e. Except with respect to an annual raffle as provided in paragraph *"g"*, cash prizes are not awarded and merchandise prizes are not repurchased.

f. The raffle is not operated on a pyramid or build-up basis.

g. The actual retail value of any prize does not exceed one thousand dollars. If a prize consists of more than one item, unit, or part, the aggregate retail value of all items, units, or parts shall not exceed one thousand dollars. However, either a fair sponsor or a qualified organization, but not both, may hold one raffle per calendar year at which prizes having a combined value of more than one thousand dollars may be offered. If the prize is merchandise, its value shall be determined by the purchase price paid by the fair sponsor or qualified organization.

h. The raffle is conducted in a fair and honest manner.

2. It is lawful for an individual other than a person conducting the raffle to participate in a raffle conducted at a fair, whether or not conducted in compliance with subsection 1.

3. A licensee under this section may hold one real property raffle per calendar year at which the value of the real property may exceed one thousand dollars in lieu of the annual raffle authorized in subsection 1, paragraph *"g"*, if all of the following requirements are met:

a. The licensee has submitted the special real property raffle license application and a fee of one hundred dollars to the department, has been issued a license, and prominently displays the license at the drawing area of the raffle.

b. The real property was acquired by gift or donation or has been owned by the licensee for a period of at least five years.

c. All other requirements of this section and section 99B.2 are met, except that the cost to participate in the raffle may exceed one dollar for each participant.

d. Receipts from the raffle are kept in a separate financial account.

e. A cumulative report for the raffle on a form determined by the department and one percent of the gross receipts are submitted to the department within sixty days of the raffle drawing. The one percent of the gross receipts shall be retained by the department to pay for the cost of the special audit.

4. For each real property raffle license issued, the department shall conduct a special audit of the raffle to verify compliance with the appropriate requirements of this chapter.

[C75, §99B.4; C77, 79, 81, §99B.5; 82 Acts, ch 1189, §1]

85 Acts, ch 191, §1; 86 Acts, ch 1201, §3; 87 Acts, ch 184, §2; 96 Acts, ch 1143, §1, 2; 2002 Acts, ch 1068, §1, 2

Subsection 1, paragraph g amended
Subsection 3, unnumbered paragraph 1 amended

99B.6 Games where liquor or beer is sold.

1. Except as provided in subsections 5, 6, 7, 8, and 9, gambling is unlawful on premises for which a class "A", class "B", class "C", or class "D" liquor control license, or class "B" beer permit has been issued pursuant to chapter 123 unless all of the following are complied with:

a. The holder of the liquor control license or beer permit has submitted an application for a license and an application fee of one hundred fifty dollars, and has been issued a license, and prominently displays the license on the premises.

b. The holder of the liquor control license or beer permit or any agent or employee of the license or permit holder does not participate in, sponsor, conduct or promote, or act as cashier or banker for any gambling activities, except as a participant while playing on the same basis as every other participant.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

f. No person receives or has any fixed or contingent right to receive, directly or indirectly, any

amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

g. No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

h. No participant wins or loses more than a total of fifty dollars or more consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

i. No participant is participating as an agent of another person.

j. A representative of the department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

k. A person under the age of twenty-one years shall not participate in the gambling except pursuant to sections 99B.3, 99B.4, 99B.5, and 99B.7. Any licensee knowingly allowing a person under the age of twenty-one to participate in the gambling prohibited by this paragraph or any person knowingly participating in gambling with a person under the age of twenty-one, is guilty of a simple misdemeanor.

2. The holder of a license issued pursuant to this section is strictly accountable for complying with subsection 1. Proof of an act constituting a violation is grounds for revocation of the license issued pursuant to this section if the holder of the license permitted the violation to occur when the licensee knew or had reasonable cause to know of the act constituting the violation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits or engages in acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

5. Lottery tickets or shares authorized pursuant to chapter 99E may be sold on the premises of an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3.

6. A qualified organization may conduct games of skill, games of chance, or raffles pursuant to section 99B.7 in an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the games or raffles are conducted pursuant to this chapter or rules adopted pursuant to this chapter.

7. The holder of a liquor control license or beer permit may conduct a sports betting pool if the game is publicly displayed and the rules of the game, including the cost per participant and the amount of the winning is conspicuously displayed on or near the pool. No participant may wager more than five dollars and the maximum winnings to all participants from the pool shall not exceed five hundred dollars. The provisions of subsection 1, except paragraphs *"c"* and *"h"* and the prohibition of the use of concealed numbers in paragraph *"d"*, are applicable to pools conducted under this subsection. If a pool permitted by this subsection involves the use of concealed numbers, the numbers shall be selected by a random method and no person shall be aware of the numbers at the time wagers are made in the pool. All moneys wagered shall be awarded to participants. For purposes of this subsection, *"pool"* means a game in which the participants select a square on a grid corresponding to numbers on two intersecting sides of the grid and winners are determined by whether the square selected corresponds to numbers relating to an athletic event in the manner prescribed by the rules of the game.

8. Gambling games authorized under chapter 99F may be conducted on an excursion gambling boat which is licensed as an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the gambling games are conducted pursuant to chapter 99F and rules adopted under chapter 99F. Notwithstanding section 123.3, subsection 26, paragraph *"b"*, a person holding a federal gambling permit and licensed to conduct gambling games pursuant to chapter 99F may hold a liquor license.

9. Pari-mutuel wagering authorized under chapter 99D may be conducted within a racetrack enclosure which is licensed as an establishment that serves or sells alcoholic beverages as defined in section 123.3 if the pari-mutuel wagering is conducted pursuant to chapter 99D and rules adopted under chapter 99D.

[C77, 79, 81, §99B.6; 81 Acts, ch 44, §7]

86 Acts, ch 1201, §4 – 6; 86 Acts, ch 1002, §1, 2; 87 Acts, ch 184, §3, 4; 88 Acts, ch 1274, §32; 89 Acts, ch 67, §20, 21; 89 Acts, ch 231, §17; 90 Acts, ch 1175, §3, 4; 94 Acts, ch 1021, §1

99B.7 Games conducted by qualified organizations — penalties.

1. Except as otherwise provided in section 99B.8, games of skill, games of chance and raffles lawfully may be conducted at a specified location meeting the requirements of subsection 2 of this section, but only if all of the following are complied with:

a. The person conducting the game or raffle has been issued a license pursuant to subsection 3 of this section and prominently displays that license in the playing area of the games.

b. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or related to a game of skill, game of chance, or raffle, except any amount which the person may win as a participant on the same basis as the other participants. A person conducting a game or raffle shall not be a participant in the game or raffle.

c. Cash or merchandise prizes may be awarded in the game of bingo and, except as otherwise provided in this paragraph, shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo, but the actual retail value of the prize, or if the prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts, shall not exceed the maximum provided by this paragraph. A jackpot bingo game may be conducted once during any twenty-four hour period in which the prize may begin at not more than three hundred dollars in cash or actual retail value of merchandise prizes and may be increased by not more than one hundred dollars after each bingo occasion. However, the cost of play in a jackpot bingo game shall not be increased and the jackpot shall not amount to more than eight hundred dollars in cash or actual retail value of merchandise prizes. A jackpot bingo game is not prohibited by paragraph *"h"*. A bingo occasion shall not last for longer than four consecutive hours. A qualified organization shall not hold more than fourteen bingo occasions per month. Bingo occasions held under a limited license shall not be counted in determining whether a qualified organization has conducted more than fourteen bingo occasions per month, nor shall bingo occasions held under a limited license be limited to four consecutive hours. With the exception of a limited license bingo, no more than three bingo occasions per week shall be held within a structure or building and only one person licensed to conduct games under this section may hold bingo occasions within a structure or building. A licensed qualified organization shall not conduct free games.

However, a qualified organization, which is a senior citizens' center or a residents' council at a senior citizen housing project or a group home, may hold more than fourteen bingo occasions per month and more than three bingo occasions per week within the same structure or building, and bingo occasions conducted by such a qualified organization may last for longer than four consecutive hours, if the majority of the patrons of the qualified organization's bingo occasions also participate in other activities of the senior citizens' center or are residents of the housing project. At the conclusion of each bingo occasion, the person conducting the game shall announce both the gross receipts received from the bingo occasion and the use permitted under subsection 3, paragraph *"b"*, to which the net receipts of the bingo occasion will be dedicated and distributed.

d. Cash prizes shall not be awarded in games other than bingo and raffles. The value of a prize shall not exceed ten thousand dollars and merchandise prizes shall not be repurchased. If a prize consists of more than one item, unit, or part, the aggregate value of all items, units, or parts shall not exceed ten thousand dollars. However, one raffle may be conducted per calendar year at which real property or one or more merchandise prizes having a combined value of more than ten thousand dollars may be awarded.

If a raffle licensee holds a statewide raffle license, the licensee may hold not more than eight raffles per calendar year at which real property or one or more merchandise prizes having a combined value of more than ten thousand dollars may be awarded. Each such raffle held under a statewide license shall be held in a separate county.

If a prize is merchandise, its value shall be determined by the purchase price paid by the organization or donor. If a prize is real property, the department shall conduct a special audit to verify compliance with the appropriate requirements of this chapter including all of the following requirements:

(1) The licensee has submitted a real property raffle license application and a fee of one hundred dollars to the department, has been issued a license, and prominently displays the license at the drawing area of the raffle.

(2) The real property was acquired by gift or donation or has been owned by the licensee for a period of at least five years.

(3) All other requirements of this section and section 99B.2 are met.

(4) Receipts from the raffle are kept in a separate financial account.

(5) A cumulative report for the raffle on a form determined by the department and one percent of gross receipts are submitted to the department within sixty days of the raffle drawing. The one percent of the gross receipts shall be retained by the department to pay for the cost of the special audit.

e. The ticket price including any discounts for each game or raffle shall be the same for each participant.

f. No prize is displayed which cannot be won.

g. Merchandise prizes are not repurchased.

h. A game or raffle shall not be operated on a build-up or pyramid basis.

i. Concealed numbers or conversion charts shall not be used to play any game and a game or raffle shall not be adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.

j. The game must be conducted in a fair and honest manner.

k. Each game or raffle shall be posted.

l. During the entire time that games permitted by this section are being engaged in, both of the following are observed:

(1) No other gambling is engaged in at the same location, except that lottery tickets or shares issued by the lottery division of the department of revenue and finance may be sold pursuant to chapter 99E.

(2) A ticket, coupon, or card shall not be used as a door prize or given to a participant of a raffle, game of bingo, or game of chance if the use of the ticket, coupon, or card would change the odds of winning for participants of the raffle, game of bingo, or game of chance.

m. The organization conducting the game can show to the satisfaction of the department that all of the following requirements are met:

(1) The organization is exempt from federal income taxes under section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code as defined in section 422.3, the organization is an agency or instrumentality of the United States government, this state, or a political subdivision of this state, or, in lieu of an exemption from federal income taxes, the organization is a parent-teacher organization or booster club that is recognized as a fund-raiser and supporter for a school district organized pursuant to chapter 274 or for a school within the school district, in a notarized letter signed by the president of the board of directors, the superintendent of the school district, or a principal of a school within that school district.

(2) The organization has an active membership of not less than twelve persons.

(3) The organization does not have a self-perpetuating governing body and officers.

This lettered paragraph *"m"* does not apply to a political party, as defined in section 43.2, to a nonparty political organization that has qualified to place a candidate as its nominee for statewide office pursuant to chapter 44, or to a candidate's committee as defined in section 56.2.

n. The person conducting the game does none of the following:

(1) Hold, currently, another license issued under this section.

(2) Own or control, directly or indirectly, any class of stock of another person who has been issued a license to conduct games under this section.

(3) Have, directly or indirectly, an interest in the ownership or profits of another person who has been issued a license to conduct games under this section.

o. Except as provided in subsection 7, paragraph *"a"*,* a person shall not conduct, promote, administer, or assist in the conducting, promoting, or administering of a bingo occasion, unless the person regularly participates in activities of the qualified organization other than conducting bingo occasions or participates in an educational, civic, public, charitable, patriotic, or religious organization to which the net receipts are dedicated by the qualified organization.

p. A licensee shall keep records of all persons who serve as manager or cashier, or who are responsible for carrying out duties with respect to a bingo account. A licensee is subject to license revocation if it knowingly permits a person to serve in one of these capacities if the person was a manager, cashier, or responsible for carrying out duties with respect to a bingo account for another licensee at the time of one or more violations leading to revocation of the other licensee's license, and if the license is still revoked at the time of the subsequent service.

2. Games of skill, games of chance, and raffles may be conducted on premises owned or leased by the licensee, but shall not be conducted on rented premises unless the premises are rented from a person licensed under this section, and unless the net rent received is dedicated to one or more of the uses permitted under subsection 3 for dedication of net receipts. This subsection shall not apply where the rented premises are those upon which a qualified organization usually carries out a lawful business other than operating games of skill, games of chance or raffles. However, a qualified organization may rent premises other than from a licensed qualified organization to be used for the conduct of games of skill, games of chance and raffles, and the person from whom the premises are rented may impose and collect rent for such use of those premises, but only if all of the following are complied with:

a. The rent imposed and collected shall not be a percentage of or otherwise related to the amount of the receipts of the game or raffle.

b. The qualified organization shall have the right to terminate any rental agreement at any time without penalty and without forfeiture of any sum.

c. Except for purposes of bingo, the person from whom the premises are rented shall not be a liquor control licensee or beer permittee with respect to those premises or with respect to adjacent premises.

The board of directors of a school district may authorize that public schools within that district, and the policymaking body of a nonpublic school,

may authorize that games of skill, games of chance, bingo and raffles may be held at bona fide school functions, such as carnivals, fall festivals, bazaars and similar events. Each school shall obtain a license pursuant to this section prior to permitting the games or activities on the premises. However, the board of directors of a public school district may also be issued a license under this section. However, a board of directors of a public school shall not spend or authorize the expenditure of public funds for the purpose of purchasing a license. The department of inspections and appeals shall provide by rule a short form application for a license issued to a board of directors. Upon written approval by the board of directors, the license may be used by any school group or parent support group in the district to conduct activities authorized by this section. The board of directors shall not authorize a school group or parent support group to use the license more than twice in twelve months.

3. *a.* A person wishing to conduct games and raffles pursuant to this section as a qualified organization shall submit an application and a license fee of one hundred fifty dollars. The annual license fee for a statewide raffle license shall be one hundred fifty dollars. However, upon submission of an application accompanied by a license fee of fifteen dollars, a person may be issued a limited license to conduct all games and raffles pursuant to this section at a specified location and during a specified period of fourteen consecutive calendar days. In addition, a qualified organization may be issued a limited license to conduct raffles pursuant to this section for a period of ninety days for a license fee of forty dollars or for a period of one hundred eighty days for a license fee of seventy-five dollars. For the purposes of this paragraph, a limited license is deemed to be issued on the first day of the period for which the license is issued.

b. A person or the agent of a person submitting application to conduct games pursuant to this section as a qualified organization shall certify that the receipts of all games, less reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, either will be distributed as prizes to participants or will be dedicated and distributed to educational, civic, public, charitable, patriotic or religious uses in this state and that the amount dedicated and distributed will equal at least seventy-five percent of the net receipts. *"Educational, civic, public, charitable, patriotic, or religious uses"* means uses benefiting a society for the prevention of cruelty to animals or animal rescue league, or uses benefiting an indefinite number of persons either by bringing them under the influence of education or religion or relieving them from disease, suffering, or constraint, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government, or uses benefiting any bona fide nationally chartered fraternal or military veterans' corporation or organization which operates in Iowa a clubroom, post, dining room, or dance hall, but does not include the erection, acquisition, improvement, maintenance, or repair of real, personal or mixed property unless it is used for one or more of the uses stated. *"Public uses"* specifically includes dedication of net receipts to political parties as defined in section 43.2. *"Charitable uses"* includes uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm when the loss is uncompensated by insurance, and uses benefiting a definite number of persons suffering from a seriously disabling disease or injury, causing severe loss of income or incurring extraordinary medical expense when the loss is uncompensated by insurance.

Proceeds given to another charitable organization to satisfy the seventy-five percent dedication requirement shall not be used by the donee to pay any expenses in connection with the conducting of bingo by the donor organization, or for any cause, deed, or activity that would not constitute a valid dedication under this section.

c. A qualified organization shall distribute amounts awarded as prizes on the day they are won. A qualified organization shall dedicate and distribute the balance of the net receipts received within a quarter and remaining after deduction of reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, before the quarterly report required for that quarter under section 99B.2, subsection 4, is due. The amount dedicated and distributed must equal at least seventy-five percent of the net receipts. A person desiring to hold the net receipts for a period longer than permitted under this paragraph shall apply to the department for special permission and upon good cause shown the department may grant the request.

If permission is granted to hold the net receipts, the person shall, as a part of the quarterly report required by section 99B.2, report the amount of money currently being held and all expenditures of the funds. This report shall be filed even if the person no longer holds a gambling license.

4. If a licensee derives ninety percent or more of its total income from conducting bingo, raffles, or small games of chance, at least seventy-five percent of the licensee's net receipts shall be distributed to an unrelated entity for an educational, civic, public, charitable, patriotic, or religious use.

5. It is lawful for an individual other than a person conducting games or raffles to participate in games or raffles conducted by a qualified organization, whether or not there is compliance with subsections 2 and 3: However, it is unlawful for the individual to participate where the individual has knowledge of or reason to know facts which constitute a failure to comply with subsection 1.

6. A political party or a political party organization is a qualified organization within the

meaning of this chapter. Political parties or party organizations may contract with other qualified organizations to conduct the games of skill, games of chance, and raffles which may lawfully be conducted by the political party or party organization. A licensed qualified organization may promote the games of skill, games of chance, and raffles which it may lawfully conduct.

7. Proceeds coming into the possession of a person under this section are deemed to be held in trust for payment of expenses and dedication to charitable purposes as required by this section.

A licensee or agent who willfully fails to dedicate the required amount of proceeds to charitable purposes as required by this section commits a fraudulent practice.

8. A qualified organization licensed under this section shall purchase bingo equipment and supplies only from a manufacturer or a distributor licensed by the department.

[C75, 77, 79, 81, §99B.7; 81 Acts, ch 44, §8 – 12; 82 Acts, ch 1189, §2]

83 Acts, ch 85, §1; 83 Acts, ch 164, §1, 2; 84 Acts, ch 1220, §5 – 11; 84 Acts, ch 1305, §22; 85 Acts, ch 150, §1 – 3; 86 Acts, ch 1042, §2; 86 Acts, ch 1201, §7 – 9; 87 Acts, ch 184, §5, 6; 88 Acts, ch 1134, §21; 88 Acts, ch 1274, §33; 89 Acts, ch 231, §18 – 21; 91 Acts, ch 175, §1; 94 Acts, ch 1062, §3 – 5; 96 Acts, ch 1143, §3, 4; 98 Acts, ch 1198, §1, 2; 2000 Acts, ch 1130, §2, 3; 2002 Acts, ch 1068, §3 – 10

*Subsection 7, paragraph "a", stricken by 2002 Acts, ch 1068, §10; corrective legislation is pending

Subsection 1, paragraphs d and e stricken and rewritten

Subsection 1, paragraph l, subparagraph (2) stricken and rewritten

Subsection 1, paragraph m, subparagraph (1) amended

Subsection 1, paragraph o amended and paragraphs q and r stricken

Subsection 3, paragraph a amended

Subsection 7, paragraphs a and c stricken and former paragraph b redesignated as an unnumbered paragraph

99B.7A Manufacturers and distributors of bingo equipment and supplies — license.

A person shall not engage in business as a manufacturer or a distributor of bingo equipment and supplies in this state without first obtaining a license from the department. Upon receipt of an application and a fee of one thousand dollars for a manufacturer's license or a fee of five hundred dollars for a distributor's license, the department shall issue an annual license as applicable. The application shall be submitted on forms furnished by the department and contain the information required by rule of the department. A license may be renewed annually upon payment of the annual license fee and compliance with this chapter.

94 Acts, ch 1062, §6

99B.8 Annual game night.

1. Games of skill, games of chance, card games and raffles lawfully may be conducted during a period of twelve consecutive hours once each year by any person. The games or raffles may be conducted at any location except one for which a license is required pursuant to section 99B.3 or section 99B.5, but only if all of the following are complied with:

a. The sponsor of the event has been issued a license pursuant to subsection 3 and prominently displays that license on the premises covered by the license.

b. A bona fide social or employment relationship exists between the sponsor and all of the participants.

c. No participant pays any consideration of any nature, either directly or indirectly, to participate in the games.

d. All money or other items wagered are provided to the participant free by the sponsor.

e. The person conducting the game receives no consideration, either directly or indirectly, other than goodwill.

f. During the entire time activities permitted by this section are being engaged in, no other gambling is engaged in at the same location.

2. The other provisions of this section notwithstanding, if the games are conducted by a qualified organization also licensed under section 99B.7, the sponsor may charge an entrance fee or a fee to participate in the games, and participants may wager their own funds and pay an entrance or other fee for participation, provided that a participant may not expend more than a total of two hundred fifty dollars for all fees and wagers. The provisions of section 99B.7, subsection 3, paragraphs *"b"* and *"c"*, shall apply to games conducted by a qualified organization pursuant to this section.

3. The department of inspections and appeals may issue a license pursuant to this section only once during a calendar year to any one person. The license may be issued only upon submission to the department of an application and a license fee of twenty-five dollars.

4. However, an organization may sponsor one or more game nights using play money for participation by students without the organization obtaining a license otherwise required by this section if the organization obtains prior approval for the game night from the board of directors of the accredited public school or the authorities in charge of the nonpublic school accredited by the state board of education for whose students the game night is to be held.

5. However, notwithstanding subsection 1, paragraphs *"b"* and *"c"*, if the games are conducted by a qualified organization issued a license pursuant to subsection 3, the sponsor may charge an entrance fee to a participant and the sponsor need not have a bona fide social relationship with the participant.

[C77, 79, 81, §99B.8]

86 Acts, ch 1201, §10; 87 Acts, ch 184, §7, 8; 92 Acts, ch 1203, §1; 2002 Acts, ch 1068, §11, 12

Subsection 1, paragraphs c and e amended

Subsections 2 and 5 amended

99B.9 Gambling in public places.

1. Except as otherwise permitted by section 99B.3, 99B.5, 99B.6, 99B.7, 99B.8, or 99B.11, it is unlawful to permit gambling on any premises owned, leased, rented, or otherwise occupied by a person other than a government, governmental agency or subdivision, unless all of the following are complied with:

a. The person occupying the premises as an owner or tenant has submitted an application for a license and an application fee of one hundred dollars, and has been issued a license for those premises, and prominently displays the license on the premises.

b. The holder of the license or any agent or employee of the license holder does not participate in, sponsor, conduct, or promote, or act as cashier or banker for any gambling activities.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

f. No person receives or has any fixed or contingent right to receive, directly or indirectly any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

g. No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

h. No participant wins or loses more than a total of fifty dollars or other consideration equivalent thereto in all games and activities at any one time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph, a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

i. No participant is participating as an agent of another person.

j. A representative of the department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

2. The holder of a license issued pursuant to this section shall be strictly accountable for maintaining compliance with subsection 1, and proof of any violation shall constitute grounds for revocation of the license issued pursuant to this section, whether or not the holder of the license had knowledge of the facts constituting the violation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

5. This section shall not apply to premises or portions of premises constituting the living quarters of the actual residence of an individual if that individual is a participant in the activities permitted by this section.

[C77, 79, 81, §99B.9; 81 Acts, ch 44, §13]
89 Acts, ch 231, §22

99B.9A Exceptions for certain areas.

The department may, at its discretion, allow a qualified organization under section 99B.7 to hold a game of bingo in a building where another qualified organization also holds a game of bingo or where the building is adjacent, but not intraconnected, with an establishment holding a liquor license and the building is located in a municipality of a recorded census of less than two thousand people and the municipality is not located adjacent to another municipality.

84 Acts, ch 1220, §1; 89 Acts, ch 231, §23

DIVISION III

GAMES FOR WHICH A LICENSE IS NOT REQUIRED

99B.10 Electrical and mechanical amusement devices.

It is lawful to own, possess, and offer for use by any person at any location an electrical or mechanical amusement device, but only if all of the following are complied with:

1. A prize of merchandise exceeding five dollars in value or cash shall not be awarded for use of the device. However, a mechanical or amuse-

ment device may be designed or adapted to award a prize or one or more free games or portions of games without payment of additional consideration by the participant.

2. An amusement device shall not be designed or adapted to cause or to enable a person to cause the release of free games or portions of games when designated as a potential award for use of the device, and shall not contain any meter or other measurement device for recording the number of free games or portions of games which are awarded.

3. An amusement device shall not be designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than is ordinarily required to play the game.

It is lawful for an individual other than an owner or promoter of an amusement device to operate an amusement device, whether or not the amusement device is owned, possessed or offered for use in compliance with this section.

The use of an amusement device which complies with this section shall not be deemed gambling.

[C75, 77, 79, 81, §99B.10]

87 Acts, ch 234, §425; 88 Acts, ch 1274, §34; 89 Acts, ch 231, §24

99B.11 Bona fide contests.

1. It is lawful for a person to conduct any of the contests specified in subsection 2, and to offer and pay awards to persons winning in those contests whether or not entry fees, participation fees, or other charges are assessed against or collected from the participants, but only if all of the following are complied with:

a. The contest is not held at an amusement concession.

b. No gambling device is used in conjunction with, or incident to the contest.

c. The contest is not conducted in whole or in part on or in any property subject to chapter 297, relating to schoolhouses and schoolhouse sites, unless the contest and the person conducting the contest has the express written approval of the governing body of that school district.

d. The contest is conducted in a fair and honest manner. A contest shall not be designed or adapted to permit the operator of the contest to prevent a participant from winning or to predetermine who the winner will be, and the object of the contest must be attainable and possible to perform under the rules stated.

2. A contest is not lawful unless it is one of the following contests:

a. Athletic or sporting contests, leagues or tournaments, rodeos, horse shows, golf, bowling, trap or skeet shoots, fly casting, tractor pulling, rifle, pistol, musket, muzzle-loader, pool, darts, archery, and horseshoe contests, leagues, or tournaments.

b. Horse races, harness racing, ski, airplane, snowmobile, raft, boat, bicycle and motor vehicle races.

c. Contests or exhibitions of cooking, horticulture, livestock, poultry, fish or other animals, artwork, hobbywork or craftwork, except those prohibited by section 725.11.

d. Cribbage, bridge, chess, checkers, dominoes, pinochle and similar contests, leagues or tournaments. The provisions of this paragraph are retroactive to August 15, 1975.

e. A video machine golf tournament game which is an interactive bona fide contest. A player operates a video machine golf tournament game with a trackball assembly which acts as the golfer's swing and determines the results of play and tournament scores. A video machine golf tournament game is capable of receiving program and data information from an off-site location. A tournament operator shall prominently display all tournament rules.

[C75, §99B.11, 726.13; C77, 79, 81, §99B.11]

2000 Acts, ch 1231, §36; 2002 Acts, ch 1068, §13

Subsection 2, paragraph a amended

99B.12 Games between individuals.

1. Except in instances where because of the location of the game or the circumstances of the game section 99B.3, section 99B.5, section 99B.6, section 99B.7, section 99B.8, or section 99B.9 is applicable, individuals may participate in gambling specified in subsection 2, but only if all of the following are complied with:

a. The gambling is incidental to a bona fide social relationship between all participants.

b. The gambling is not participated in, either wholly or in part, on or in any property subject to chapter 297, relating to schoolhouses and schoolhouse sites.

c. All participants in the gambling are individuals, and no participant may participate as the agent of another person.

d. The gambling shall be fair and honest, and shall not be designed, devised or adapted to permit predetermination of the winner, or to prevent a participant from winning, and no concealed numbers or conversion charts may be used to determine the winner of any game.

e. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or as a result of the gambling, except any amount which the person may win as a participant on the same basis as the other participants.

f. No person may participate in any wager, bet or pool which relates to an athletic event or contest and which is authorized or sponsored by one or more schools, educational institutions, or interscholastic athletic organizations if the person is a coach, official, player or contestant in the athletic event or contest.

g. No participant wins or loses more than a to-

tal of fifty dollars or other consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

h. No participant pays an entrance fee, cover charge, or other charge for the privilege of participating in gambling, or for the privilege of gaining access to the location in which gambling occurs.

i. In any game requiring a dealer or operator, the participants must have the option to take their turn at dealing or operating the game in a regular order according to the standard rules of the game.

2. Games which are permitted by this section are limited to the following:

a. Card and parlor games, including but not limited to poker, pinochle, pitch, gin rummy, bridge, euchre, hearts, cribbage, dominoes, checkers, chess, backgammon, pool, and darts. However, it shall be unlawful gambling for any person to engage in bookmaking, or to play any punchboard, pushcard, pull-tab, or slot machine, or to play craps, chuck-a-luck, roulette, klondike, blackjack, chemin de fer, baccarat, faro, equality, three-card monte, or any other game, except poker, which is customarily played in gambling casinos and in which the house customarily provides a banker, dealer, or croupier to operate the game, or a specially designed table upon which to play same.

b. Games of skill and games of chance, except those prohibited by paragraph *"a"* of this subsection.

c. Wagers or bets between two or more individuals who are physically in the presence of each other with respect to a contest specified in section 99B.11, subsection 2, except as provided in subsection 1, paragraph *"g"*, or with respect to any other event or outcome which does not depend upon gambling or the use of a gambling device unlawful in this state.

3. An individual may not be convicted of a violation of this section unless the individual had knowledge of or reason to know the facts constituting the violation.

[C75, §726.12; C77, 79, 81, §99B.12]

2002 Acts, ch 1068, §14

Subsection 2, paragraph a amended

DIVISION IV

RULES — LICENSE PROCEEDINGS — PENALTIES

99B.13 Administrative rules.

The department may adopt rules pursuant to chapter 17A to carry out the provisions of this chapter. Rules adopted by the department may include but are not limited to the following:

1. Descriptions of books, records and accounting required.

2. Requirements for qualified organizations.

3. Methods of displaying costs and explanations of games and rules.

4. Defining unfair or dishonest games, acts or practices.

[C77, 79, 81, §99B.13]

89 Acts, ch 231, §25

99B.14 Revocation of license.

The department shall revoke a license issued pursuant to this chapter if the licensee or an agent of the licensee violates or permits a violation of a provision of this chapter, or a departmental rule adopted pursuant to chapter 17A, or if a cause exists for which the director of the department would have been justified in refusing to issue a license, or upon the conviction of a person of a violation of this chapter or a rule adopted under this chapter which occurred on the licensed premises. However, the revocation of one type of gambling license does not require the revocation of a different type of gambling license held by the same licensee.

Revocation proceedings shall be held only after giving notice and an opportunity for hearing to the licensee. Notice shall be given at least ten days in advance of the date set for hearing. If the department finds cause for revocation, the license shall be revoked for a period not to exceed two years.

[C77, 79, 81, §99B.14]

84 Acts, ch 1220, §12; 86 Acts, ch 1201, §11; 89 Acts, ch 231, §26

99B.15 Applicability of chapter — penalty.

It is the intent and purpose of this chapter to authorize gambling in this state only to the extent specifically permitted by a section of this chapter or chapter 99D, 99E, or 99F. Except as otherwise provided in this chapter, the knowing failure of any person to comply with the limitations imposed by this chapter constitutes unlawful gambling, a serious misdemeanor.

[C77, 79, 81, §99B.15]

86 Acts, ch 1002, §3; 89 Acts, ch 67, §22

99B.16 Failure to maintain or submit records.

A licensee who willfully fails to maintain the records when required by section 99B.2, or who willfully fails to submit records when required by that section commits a serious misdemeanor.

[C77, 79, 81, §99B.16]

99B.17 Gambling on credit unlawful.

A person who tenders and a person who receives any promise, agreement, note, bill, bond, contract, mortgage or other security, or any negotiable instrument, as consideration for any wager or bet, whether or not lawfully conducted or engaged in

pursuant to this chapter, commits a misdemeanor. However, a participant in a bingo occasion or in a contest lawful under section 99B.11 may make payment by personal check for any entry or participation fee assessed by the sponsor of the bingo occasion or contest.

[C77, 79, 81, §99B.17]
89 Acts, ch 231, §27

99B.18 Company games.

Games of skill, games of chance, and card games may be conducted on premises either licensed or unlicensed and no license fee shall be required if a bona fide social, employment, trade or professional association relationship exists between the sponsors and the participants and the participants pay no consideration of any nature, either directly or indirectly, to participate in the games, and only play money or other items of no intrinsic value which may be wagered are provided to the participant free, and the sponsor conducting the game receives no consideration, either directly or indirectly, other than goodwill.

A gambling device intended for use or used as provided in this section is exempt from the provisions of section 725.9, subsection 3.

[C75, §99B.8; C77, 79, 81, §99B.18]
2002 Acts, ch 1068, §15
Unnumbered paragraph 1 amended

99B.19 Attorney general and county attorney — prosecution.

Upon request of the department of inspections and appeals or the division of criminal investigation of the department of public safety, the attorney general shall institute in the name of the state the proper proceedings against a person charged by either department with violating this chapter, and a county attorney, at the request of the attorney general, shall appear and prosecute an action when brought in the county attorney's county.

[S81, §99B.19; 81 Acts, ch 44, §14]
84 Acts, ch 1220, §13; 87 Acts, ch 115, §15; 89 Acts, ch 231, §28

99B.20 Division of criminal investigation.

The division of criminal investigation of the department of public safety may investigate to determine licensee compliance with the requirements of this chapter. Investigations may be conducted either on the criminal investigation division's own initiative or at the request of the department of inspections and appeals. The criminal investigation division and the department of inspections and appeals shall cooperate to the maximum extent possible on an investigation.

84 Acts, ch 1220, §2; 87 Acts, ch 115, §16; 89 Acts, ch 231, §29

99B.21 Tax on prizes.

All prizes awarded are Iowa earned income and are subject to state and federal income tax laws. A person conducting a game of skill, game of chance, or a raffle shall deduct state income taxes, pursuant to section 422.16, subsection 1, from a cash prize awarded to an individual. An amount deducted from the prize for payment of a state tax shall be remitted to the state department of revenue and finance on behalf of the prize winner.

86 Acts, ch 1201, §12; 92 Acts, 2nd Ex, ch 1001, §232

CHAPTER 99C

PROFESSIONAL BOXING AND WRESTLING

Transferred to chapter 90A

CHAPTER 99D

PARI-MUTUEL WAGERING

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99D.26 Forfeiture of property.
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99D.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Pari-mutuel Wagering Act"*.

83 Acts, ch 187, §1

99D.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Applicant"* means an individual applying for an occupational license or the officers and members of the board of directors of a nonprofit corporation applying for a license to conduct a race where pari-mutuel wagering would be permitted under this chapter.

2. *"Breakage"* means the odd cents by which the amount payable on each dollar wagered in a pari-mutuel pool exceeds a multiple of ten cents.

3. *"Commission"* means the state racing and gaming commission created under section 99D.5.

4. *"Holder of occupational license"* means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in within the racing industry in Iowa.

5. *"Licensee"* means a nonprofit corporation licensed under section 99D.9.

6. *"Pari-mutuel wagering"* means the system of wagering described in section 99D.11.

7. *"Race", "racing", "race meeting", "track",* and *"racetrack"* refer to dog racing and horse racing, including, but not limited to, quarterhorse, thoroughbred, and harness racing, as approved by the commission.

8. *"Racetrack enclosure"* means the grandstand, clubhouse, turf club or other areas of a licensed racetrack which a person may enter only upon payment of an admission fee, or upon payment by another, at any time, based upon the person's admittance, or upon presentation of authorized credentials. *"Racetrack enclosure"* also means any additional areas designated by the commission.

83 Acts, ch 187, §2; 84 Acts, ch 1265, §1; 84 Acts, ch 1266, §3; 89 Acts, ch 67, §23; 97 Acts, ch 9, §1

99D.3 Scope of provisions.

This chapter does not apply to horse-race or dog-race meetings unless the pari-mutuel system of wagering is used or intended to be used in connection with the horse-race or dog-race meetings. If the pari-mutuel system is used or intended to be used a person shall not conduct a race meeting without a license as provided by section 99D.9.

83 Acts, ch 187, §3

99D.4 Pari-mutuel wagering legalized.

The system of wagering on the results of horse or dog races as provided by this chapter is legal, when conducted within the racetrack enclosure at a licensed horse-race or dog-race meeting.

83 Acts, ch 187, §4

99D.5 Creation of state racing and gaming commission.

1. A state racing and gaming commission is created within the department of inspections and appeals consisting of five members who shall be appointed by the governor subject to confirmation by the senate, and who shall serve not to exceed a three-year term at the pleasure of the governor. The term of each member shall begin and end as provided in section 69.19.

2. A vacancy on the commission shall be filled as provided in section 2.32.

3. Not more than three members of the commission shall belong to the same political party. A member of the commission shall not have a financial interest in a racetrack.

4. Commission members are each entitled to receive an annual salary of six thousand dollars. Members shall also be reimbursed for actual expenses incurred in the performance of their duties to a maximum of thirty thousand dollars per year for the commission. Each member shall post a bond in the amount of ten thousand dollars, with sureties to be approved by the governor, to guarantee the proper handling and accounting of moneys and other properties required in the administration of this chapter. The premiums on the bonds shall be paid as other expenses of the commission.

5. A member or a holder of an official's license

shall not knowingly:

a. Have a pecuniary, equitable, or other interest in or engage in a business or employment which would be a conflict of interest or interfere or conflict with the proper discharge of the duties of the commission including any of the following:

(1) A business which does business with a licensee.

(2) A business issued a concession operator's license.

b. Participate directly or indirectly as an owner, owner-trainer, trainer of a horse or dog, or jockey of a horse in a race meeting conducted in this state.

c. Place a wager on an entry in a race or on a gambling game operated on an excursion gambling boat.

A violation of this subsection is a serious misdemeanor. In addition, the individual may be subject to disciplinary actions pursuant to the commission rules.

6. A member, employee, or appointee of the commission, spouse of a member, employee, or appointee of the commission, or a family member related within the second degree of affinity or consanguinity to a member, employee, or appointee of the commission shall not do either of the following:

a. Hold an occupational license except an official's license.

b. Enter directly or indirectly into any business dealing, venture, or contract with an owner or lessee of a racetrack.

A member who knowingly approves of a violation of this subsection is guilty of a serious misdemeanor.

83 Acts, ch 187, §5, 36; 84 Acts, ch 1266, §4, 5; 86 Acts, ch 1245, §713, 714; 88 Acts, ch 1267, §17; 89 Acts, ch 67, §24, 25; 89 Acts, ch 83, §21; 89 Acts, ch 231, §30; 91 Acts, ch 266, §21; 92 Acts, ch 1203, §2

Confirmation, see §2.32

99D.6 Chairperson — administrator — employees — duties — bond.

The commission shall elect in July of each year one of its members chairperson for the succeeding year. The commission shall appoint an administrator of the commission subject to confirmation by the senate. The administrator shall serve a four-year term. The term shall begin and end in the same manner as set forth in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator may hire other assistants and employees as necessary to carry out the commission's duties. Some or all of the information required of applicants in section 99D.8A, subsections 1 and 2, may also be required of employees of the commission if the commission deems it necessary. The administrator shall keep a record of the proceedings of the commission, and preserve the books, records, and documents entrusted to the administrator's care. The commission shall require the administrator to post a bond in a sum it may fix, conditioned upon the faithful performance of the administrator's duties. Subject to the approval of the governor, the commission shall fix the compensation of the administrator within the salary range as set by the general assembly. The commission shall have its headquarters in the city of Des Moines, and shall meet in July of each year and at other times and places as it finds necessary for the discharge of its duties.

83 Acts, ch 187, §6; 84 Acts, ch 1265, §2; 86 Acts, ch 1245, §715; 87 Acts, ch 115, §17; 89 Acts, ch 231, §31

Confirmation, see §2.32

99D.7 Powers.

The commission shall have full jurisdiction over and shall supervise all race meetings governed by this chapter. The commission shall have the following powers and shall adopt rules pursuant to chapter 17A to implement this chapter:

1. To investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.

2. To identify occupations within the racing industry which require licensing and adopt standards for licensing the occupations including establishing fees for the occupational licenses. The fees shall be paid to the commission and used as required in section 99D.17.

3. To adopt standards under which all race meetings shall be held and standards for the facilities within which the race meetings shall be held.

4. To regulate the purse structure for race meetings including establishing a minimum purse.

5. To cooperate with the department of agriculture and land stewardship to establish and operate, or contract for, a laboratory and related facilities to conduct saliva, urine, and other tests on animals that are to run or that have run in races governed by this chapter.

6. To establish and provide for the disposition of fees for the testing of animals sufficient to cover the costs of the tests and to purchase the necessary equipment for the testing.

7. To enter the office, racetrack, facilities, or other places of business of a licensee to determine compliance with this chapter.

8. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for the violation, or institute appropriate legal action for enforcement, or both. Decisions by the commission are final agency actions pursuant to chapter 17A.

9. To authorize stewards, starters, and other racing officials to impose fines or other sanctions upon a person violating a provision of this chapter

or the commission rules, orders, or final orders, including authorization to expel a tout, bookmaker, or other person deemed to be undesirable from the racetrack facilities.

10. To require the removal of a racing official, an employee of a licensee, or a holder of an occupational license, or employee of a holder of an occupational license for a violation of this chapter or a commission rule or engaging in a fraudulent practice.

11. To prevent an animal from racing if the commission or commission employees with cause believe the animal or its owner, trainer, or an employee of the owner or trainer is in violation of this chapter or commission rules.

12. To withhold payment of a purse if the outcome of a race is disputed or until tests are performed on the animals to determine if they were illegally drugged.

13. To provide for immediate determination of the disposition of a challenge by a racing official or representative of the commission by establishing procedures for informal hearings before a panel of stewards at a racetrack.

14. To require a licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's racing activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the racing activities of each licensee.

15. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the racing and gaming commission, it is necessary to enforce this chapter or the commission rules.

16. To keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

17. To require all licensees to use a computerized totalizator system for calculating odds and payouts from the pari-mutuel wagering pool and to establish standards to insure the security of the totalizator system.

18. To revoke or suspend licenses and impose fines not to exceed one thousand dollars.

19. To require licensees to indicate in their racing programs those horses which are treated with the legal medication lasix or phenylbutazone. The program shall also indicate if it is the first or subsequent time that a horse is racing with lasix, or if the horse has previously raced with lasix and the present race is the first race for the horse without lasix following its use.

20. Notwithstanding any contrary provision in this chapter, to provide for interstate combined wagering pools related to simulcasting horse or dog races and all related interstate pari-mutuel wagering activities.

21. To cooperate with the gambling treatment program administered by the Iowa department of public health to incorporate information regarding the gambling treatment program and its toll-free telephone number in printed materials distributed by the commission. The commission may require licensees to have the information available in a conspicuous place as a condition of licensure.

22. To take any other action as may be reasonable or appropriate to enforce this chapter and the commission rules.

83 Acts, ch 187, §7; 84 Acts, ch 1265, §3; 84 Acts, ch 1266, §6; 88 Acts, ch 1137, §1; 89 Acts, ch 231, §32; 91 Acts, ch 166, §1; 91 Acts, ch 260, §1205; 94 Acts, ch 1100, §1; 95 Acts, ch 205, §34; 96 Acts, ch 1212, §11

99D.8 Horse or dog racing licenses — applications.

A qualifying organization, as defined in section 513(d)(2)(C) of the Internal Revenue Code, as defined in section 422.3, exempt from federal income taxation under sections 501(c)(3), 501(c)(4), or 501(c)(5) of the Internal Revenue Code or a nonprofit corporation organized under the laws of this state, whether or not it is exempt from federal income taxation, which is organized to promote those purposes enumerated in section 99B.7, subsection 3, paragraph *"b"*, or which regularly conducts an agricultural and educational fair or exposition for the promotion of the horse, dog, or other livestock breeding industries of the state, or an agency, instrumentality, or political subdivision of the state, may apply to the commission for a license to conduct horse or dog racing. The application shall be filed with the administrator of the commission at least sixty days before the first day of the horse race or dog race meeting which the organization proposes to conduct, shall specify the day or days when and the exact location where it proposes to conduct racing, and shall be in a form and contain information as the commission prescribes.

If any part of the net income of a licensee is determined to be unrelated business taxable income as defined in sections 511 through 514 of the Internal Revenue Code, or is otherwise taxable, the licensee shall be required to distribute such amount to political subdivisions in the state and organizations described in section 501(c)(3) of the Internal Revenue Code in the county in which the licensee operates.

An organization which meets the requirements of this section, as amended, on or before July 1, 1988, shall be considered to have met the requirements of this section on the date that its initial application was originally filed.

83 Acts, ch 187, §8; 88 Acts, ch 1243, §1; 95 Acts, ch 176, §1

99D.8A Requirements of applicant — penalty — consent to search.

1. A person shall not be issued a license to conduct races under this chapter or an occupational license unless the person has completed and signed an application on the form prescribed and published by the commission. The application shall state the full name, social security number, residence, date of birth and other personal identifying information of the applicant that the commission deems necessary. The application shall state whether the applicant has any of the following:

a. A record of conviction of a felony.

b. An addiction to alcohol or a controlled substance.

c. A history of mental illness or repeated acts of violence.

2. An applicant shall submit pictures, fingerprints, and descriptions of physical characteristics to the commission in the manner prescribed on the application forms. The fingerprints may be submitted to the federal bureau of investigation by the department of public safety through the state central criminal history repository for the purpose of a national criminal history check.

3. The commission shall charge the applicant a fee set by the department of public safety, division of criminal investigation and bureau of identification, to defray the costs associated with the search and classification of fingerprints required in subsection 2. This fee is in addition to any other license fee charged by the commission.

4. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

5. The licensee or a holder of an occupational license shall consent to agents of the division of criminal investigation of the department of public safety or commission employees designated by the administrator of the commission to the search without a warrant of the licensee or holder's person, personal property and effects, and premises which are located within the racetrack enclosure or adjacent facilities under control of the licensee to inspect or investigate for criminal violations of this chapter or violations of rules adopted by the commission.

84 Acts, ch 1265, §4; 84 Acts, ch 1266, §7; 2002 Acts, ch 1044, §5, 11

Subsection 2 amended

99D.9 Licenses — terms and conditions — revocation.

1. If the commission is satisfied that its rules and sections 99D.8 through 99D.25 applicable to licensees have been or will be complied with, it may issue a license for a period of not more than three years. The commission may decide which types of racing it will permit. The commission may permit dog racing, horse racing of various types, or both dog and horse racing. The commission shall decide the number, location, and type of all racetracks licensed under this chapter. The license shall set forth the name of the licensee, the type of license granted, the place where the race meeting is to be held, and the time and number of days during which racing may be conducted by the licensee. The commission shall not approve the licenses for racetracks in Dubuque county and Black Hawk county if the proposed racing schedules of the two tracks conflict. The commission shall not approve a license application if any part of the racetrack is to be constructed on prime farmland outside the city limits of an incorporated city. As used in this subsection, *"prime farmland"* means as defined by the United States department of agriculture in 7 C.F.R. sec. 657.5(a). A license is not transferable or assignable. The commission may revoke any license issued for good cause upon reasonable notice and hearing. The commission shall conduct a neighborhood impact study to determine the impact of granting a license on the quality of life in neighborhoods adjacent to the proposed racetrack facility. The applicant for the license shall reimburse the commission for the costs incurred in making the study. A copy of the study shall be retained on file with the commission and shall be a public record. The study shall be completed before the commission may issue a license for the proposed facility.

2. A license shall only be granted to a nonprofit corporation or association upon the express condition that:

a. The nonprofit corporation or association shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of a race meeting licensed under this section or of the pari-mutuel system of wagering described in section 99D.11. This section does not prohibit a management contract approved by the commission.

b. The nonprofit corporation shall not in any manner permit a person other than the licensee to have a share, percentage, or proportion of the money received for admissions to the race or race meeting.

3. A license shall not be granted to a nonprofit corporation if there is substantial evidence that the applicant for a license:

a. Has been suspended or ruled off a recognized course in another jurisdiction by the racing board or commission of that jurisdiction.

b. Has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed.

c. Is not the true owner of the enterprise proposed.

d. Is not the sole owner, and other persons have ownership in the enterprise which fact has not been disclosed.

e. Is a corporation and ten percent of the stock of the corporation is subject to a contract or option

to purchase at any time during the period for which the license is issued unless the contract or option was disclosed to the commission and the commission approved the sale or transfer during the period of the license.

f. Has knowingly made a false statement of a material fact to the commission.

g. Has failed to meet any monetary obligation in connection with a race meeting held in this state.

4. A license shall not be granted to a nonprofit corporation if there is substantial evidence that stockholders or officers of the nonprofit corporation are not of good repute and moral character.

5. A license shall not be granted to a licensee for racing on more than one racetrack at the same time.

6. A licensee may not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any race.

7. Upon a violation of any of the conditions listed in this section, the commission shall immediately revoke the license.

83 Acts, ch 187, §9; 84 Acts, ch 1266, §8 – 10; 94 Acts, ch 1021, §2

99D.10 Bond of licensee.

A licensee licensed under section 99D.9 shall post a bond to the state of Iowa before the license is issued in a sum as the commission shall fix, with sureties to be approved by the commission. The bond shall be used to guarantee that the licensee faithfully makes the payments, keeps its books and records and makes reports, and conducts its racing in conformity with sections 99D.6 through 99D.23 and the rules adopted by the commission. The bond shall not be canceled by a surety on less than thirty days notice in writing to the commission. If a bond is canceled and the licensee fails to file a new bond with the commission in the required amount on or before the effective date of cancellation, the licensee's license shall be revoked. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

83 Acts, ch 187, §10

99D.11 Pari-mutuel wagering — televising races — age restrictions.

1. Except as permitted in this section, the licensee shall permit no form of wagering on the results of the races.

2. Licensees shall only permit the pari-mutuel or certificate method of wagering as defined in this section.

3. The licensee may receive wagers of money only from a person present in a licensed racing enclosure on a horse or dog in the race selected by the person making the wager to finish first in the race. The person wagering shall acquire an interest in the total money wagered on all horses or dogs in the race as first winners in proportion to the amount of money wagered by the person.

4. The licensee shall issue to each person wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse or dog selected as first winner.

5. As each race is run the licensee shall deduct sixteen percent from the total sum wagered on all horses or dogs as first winners. However, the commission shall authorize at the request of the licensee a deduction of a higher or lower percentage of the total sum wagered not to exceed eighteen percent and the additional deduction shall be retained by the licensee. The balance, after deducting breakage, shall be paid to the holders of certificates on the winning horse or dog in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses or dogs in the race as first winners. The licensee may pay a larger amount if approved by the commission. The licensee shall likewise receive other wagers on horses or dogs in places or combinations the commission may authorize. The method, procedure, and the authority and right of the licensee, as well as the deduction allowed to the licensee, shall be as specified with respect to wagers upon horses or dogs selected to run first. However, the commission shall authorize at the request of the licensee a deduction of a higher or lower percent of the total sum wagered not to exceed twenty-four percent on multiple or exotic wagering involving not more than two horses or dogs. The deduction authorized above twenty percent on the multiple or exotic wagering involving not more than two dogs or horses shall be retained by the licensee. For exotic wagering involving three or more horses or dogs, the commission shall authorize at the request of the licensee a deduction of a higher or lower percent of the total sum wagered not to exceed twenty-five percent on the exotic wagers. The additional deduction authorized above twenty-two percent on the multiple or exotic wagers involving more than two horses or dogs shall be retained by the licensee. One percent of the exotic wagers on three or more horses or dogs shall be distributed as provided in section 99D.12.

6. *a.* All wagering shall be conducted within the racetrack enclosure where the licensed race is held, except as provided in paragraph *"b"*.

b. The commission may authorize the licensee to simultaneously telecast within the racetrack enclosure, for the purpose of pari-mutuel wagering, a horse or dog race licensed by the racing authority of another state. It is the responsibility of each licensee to obtain the consent of appropriate racing officials in other states as required by the federal Interstate Horseracing Act of 1978, 15 U.S.C. § 3001-3007, to televise races for the purpose of conducting pari-mutuel wagering. A licensee may also obtain the permission of a person licensed by the commission to conduct horse or dog

races in this state to televise races conducted by that person for the purpose of conducting pari-mutuel racing. However, arrangements made by a licensee to televise any race for the purpose of conducting pari-mutuel wagering are subject to the approval of the commission, and the commission shall select the races to be televised. The races selected by the commission shall be the same for all licensees approved by the commission to televise races for the purpose of conducting pari-mutuel wagering. The commission shall not authorize the simultaneous telecast or televising of and a licensee shall not simultaneously telecast or televise any horse or dog race for the purpose of conducting pari-mutuel wagering unless the simultaneous telecast or televising is done at the racetrack of a licensee that schedules no less than sixty performances of nine live races each day of the season. For purposes of the taxes imposed under this chapter, races televised by a licensee for purposes of pari-mutuel wagering shall be treated as if the races were held at the racetrack of the licensee. Notwithstanding any contrary provision in this chapter, the commission may allow a licensee to adopt the same deductions as those of the pari-mutuel racetrack from which the races are being simultaneously telecast.

7. A person under the age of twenty-one years shall not make a pari-mutuel wager.

83 Acts, ch 187, §11; 84 Acts, ch 1266, §11 – 13; 89 Acts, ch 216, §1; 90 Acts, ch 1175, §5; 90 Acts, ch 1261, §31; 91 Acts, ch 166, §2, 3; 92 Acts, ch 1163, §23; 92 Acts, ch 1203, §3, 4; 92 Acts, ch 1207, §1; 94 Acts, ch 1021, §3, 4; 96 Acts, ch 1211, §32

99D.12 Breakage.

A licensee shall deduct the breakage from the pari-mutuel pool which shall be distributed to the breeders of Iowa-foaled horses and Iowa-whelped dogs in the manner described in section 99D.22. The remainder of the breakage shall be distributed as follows:

1. In horse races the breakage shall be retained by the licensee to supplement purses for races restricted to Iowa-foaled horses or to supplement purses won by Iowa-foaled horses by finishing first, second, third, or fourth in any other race. The purse supplements will be paid in proportion to the purse structure of the race. Two percent shall be deposited by the commission into a special fund to be known as the horse racing promotion fund. The commission each year shall approve a nonprofit organization to use moneys in the fund for research, education, and marketing of horse racing in the state, including public relations, and other promotional techniques. The nonprofit organization shall not engage in political activity. It shall be a condition of the allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

2. In dog races the breakage shall be distributed as follows:

a. Seventy-three percent shall be retained by the licensee to supplement purses for races won by Iowa-whelped dogs as provided in section 99D.22.

b. Twenty-five percent shall be retained by the licensee and shall be put into a stake race for Iowa-whelped dogs. An amount equal to twelve percent of the winner's share shall be set aside and distributed to the breeder of the winning greyhound in accordance with section 99D.22 and the remainder shall be apportioned as purse moneys for the stake race. All dogs racing in the stake race must have run in at least twelve races during the current racing season at the track sponsoring the stake race to qualify to participate.

c. Two percent shall be deposited by the commission into a special fund to be known as the dog racing promotion fund. The commission each year shall approve a nonprofit organization to use moneys in the fund for research, education, and marketing of dog racing in the state, including public relations, and other promotional techniques. The nonprofit organization shall not engage in political activity. It shall be a condition of the allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

83 Acts, ch 187, §12; 84 Acts, ch 1266, §14; 88 Acts, ch 1137, §2; 89 Acts, ch 216, §2, 3; 91 Acts, ch 166, §4; 92 Acts, ch 1203, §6

99D.13 Unclaimed winnings — appropriation.

1. Winnings provided in section 99D.11 not claimed by the person who placed the wager within sixty days of the close of the racing meet during which the wager was placed shall be forfeited.

2. Winnings from each racetrack forfeited under subsection 1 shall escheat to the state and to the extent appropriated by the general assembly shall be used by the department of agriculture and land stewardship to administer section 99D.22. The remainder shall be paid over to the commission to pay all or part of the cost of drug testing at the tracks. To the extent the remainder paid over to the commission, less the cost of drug testing, is from unclaimed winnings from harness racing meets, the remainder shall be used as provided in subsection 3. To the extent the remainder paid to the commission, less the cost of drug testing, is from unclaimed winnings from licensed dog tracks, the commission shall remit annually five thousand dollars, or an equal portion of that amount, to each licensed dog track to carry out the racing dog adoption program pursuant to section 99D.27. To the extent the remainder paid over to the commission, less the cost of drug testing, is from unclaimed winnings from tracks licensed for dog or horse races, the commission, on an annual basis, shall remit one-third of the amount to the treasurer of the city in which the racetrack is lo-

cated, one-third of the amount to the treasurer of the county in which the racetrack is located, and one-third of the amount to the racetrack from which it was forfeited. If the racetrack is not located in a city, then one-third shall be deposited as provided in chapter 556. The amount received by the racetrack under this subsection shall be used only for retiring the debt of the racetrack facilities and for capital improvements to the racetrack facilities.

3. One hundred twenty thousand dollars of winnings from wagers placed at harness racing meets forfeited under subsection 1 in a calendar year that escheat to the state and are paid over to the commission are appropriated to the racing commission for the fiscal year beginning in that calendar year to be used as follows:

a. Eighty percent of the amount appropriated shall be allocated to qualified harness racing tracks, to be used by the tracks to supplement the purses for those harness races in which only Iowa-bred or owned horses may run. However, beginning with the allocation of the appropriation made for the fiscal year beginning July 1, 1992, the races for which the purses are to be supplemented under this paragraph shall be those in which only Iowa-bred two-year and three-year olds may run. In addition, the races must be held under the control or jurisdiction of the Iowa state fair board, established under section 173.1, or of a society, as defined under section 174.1.

b. Twenty percent of the amount appropriated shall be allocated to qualified harness racing tracks, to be used by the tracks for maintenance of and improvements to the tracks. Races held at the tracks must be under the control or jurisdiction of the Iowa state fair board, established under section 173.1, or of a society, as defined under section 174.1.

c. For purposes of this subsection, *"qualified harness racing track"* means a harness racing track that has either held at least one harness race meet between July 1, 1985, and July 1, 1989, or after July 1, 1989, has applied to and been approved by the racing commission for the allocation of funds under this subsection. The racing commission shall approve an application if the harness racing track has held at least one harness race meet during the year preceding the year for which the track seeks funds under this subsection.

Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for the purposes of this subsection.

83 Acts, ch 187, §13; 86 Acts, ch 1246, §509; 89 Acts, ch 216, §4, 5; 90 Acts, ch 1233, §5; 90 Acts, ch 1261, §32; 91 Acts, ch 166, §5

99D.14 Racing meets — tax — fees — tax exemption.

1. A licensee under section 99D.9 shall pay the tax imposed by section 99D.15.

2. A licensee shall also pay to the commission the sum of fifty cents for each person entering the grounds or enclosure of the licensee upon a ticket of admission.

a. If tickets are issued which are good for more than one day, the sum of fifty cents shall be paid for each person using the ticket on each day that the ticket is used.

b. If free passes or complimentary admission tickets are issued, the licensee shall pay the same tax upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate.

c. However, the licensee may issue tax-free passes to actual and necessary officials and employees of the licensee or other persons actually working at the racetrack.

d. The issuance of tax-free passes is subject to the rules of the commission, and a list of all persons to whom the tax-free passes are issued shall be filed with the commission.

3. The licensee shall also pay to the commission a licensee fee of two hundred dollars for each racing day of each horse-race or dog-race meeting for which a license has been issued.

4. No other license tax, permit tax, occupation tax, or racing fee, shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

5. No other excise tax shall be levied, assessed, or collected from the licensee on horse racing, dog racing, pari-mutuel wagering or admission charges by the state or by a political subdivision, except as provided in this chapter.

6. Real property used in the operation of a racetrack or racetrack enclosure which is exempt from property taxation under another provision of the law, including being exempt because it is owned by a city, county, state, or charitable or nonprofit entity, may be subject to real property taxation by any taxing district in which the real property used in the operation of the racetrack or racetrack enclosure is located. To subject such real property to taxation, the taxing authority of the taxing district shall pass a resolution imposing the tax and, if the resolution is passed prior to September 1, 1997, shall notify the local assessor and the owner of record of the real property by September 1, 1997, preceding the fiscal year in which the real property taxes are due and payable. The assessed value shall be determined and notice of the assessed value shall be provided to the county auditor by the local assessor by October 15, 1997, and the owner may protest the assessed value to the local board of review by December 1, 1997. For reso-

lutions passed on or after September 1, 1997, the taxing authority shall notify the local assessor and owner of record prior to the next assessment year and the valuation and appeal shall be done in the manner and time as for other valuations. Property taxes due as a result of this subsection shall be paid to the county treasurer in the manner and time as other property taxes. The county treasurer shall remit the tax revenue to those taxing authorities imposing the property tax under this subsection. Real property subject to tax as provided in this subsection shall continue to be taxed until such time as the taxing authority of the taxing district repeals the resolution subjecting the property to taxation.

7. A licensee shall pay a fee in an amount representing eighty percent of the salary costs of the division of criminal investigation of the department of public safety for enforcement of this chapter and an additional amount for the division's costs to enforce this chapter which, for all licensees, shall not exceed thirty thousand dollars.

83 Acts, ch 187, §14; 84 Acts, ch 1266, §15, 16; 89 Acts, ch 216, §6; 97 Acts, ch 9, §2; 97 Acts, ch 158, §47; 2000 Acts, ch 1229, §17

99D.14A Payment of the division of criminal investigation costs.

A licensee shall pay a fee in an amount representing twenty percent of the salary costs of the division of criminal investigation of the department of public safety plus any amount over thirty thousand dollars in direct and indirect support costs, in addition to that assessed under section 99D.14, subsection 7, for enforcement of this chapter. The fees assessed in this section shall be deposited in the general fund of the state.

2002 Acts, 2nd Ex, ch 1003, §167, 172
NEW section

99D.15 Pari-mutuel wagering taxes — rate — credit — loan.

1. A tax of six percent is imposed on the gross sum wagered by the pari-mutuel method at each horse race meeting. The tax imposed by this subsection shall be paid by the licensee to the commission within ten days after the close of each horse race meeting and shall be distributed as follows:

a. If the racetrack is located in a city, five percent of the gross sum wagered shall be deposited with the commission. One-half of one percent of the gross sum wagered shall be remitted to the treasurer of the city in which the racetrack is located and shall be deposited in the general fund of the city. The remaining one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county.

b. If the racetrack is located in an unincorporated part of a county, five and one-half percent of the gross sum wagered shall be deposited with the commission. The remaining one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county.

2. A tax credit of up to five percent of the gross sum wagered per year shall be granted to licensees licensed for horse races and paid into a special fund to be used for debt retirement or operating expenses. However, the tax credit is equal to six percent of the gross sum wagered in a year when the gross sum wagered is less than ninety million dollars. Any portion of the credit not used in a particular year shall be retained by the commission. A tax credit shall first be assessed against any share going to a city, then to the share going to a county, and then to the share going to the state.

3. *a.* A tax is imposed on the gross sum wagered by the pari-mutuel method at each track licensed for dog races. The tax imposed by this subsection shall be paid by the licensee to the commission within ten days after the close of the track's racing season. The rate of tax on each track is as follows:

(1) Six percent, if the gross sum wagered in the racing season is fifty-five million dollars or more.

(2) Five percent, if the gross sum wagered in the racing season is thirty million dollars or more but less than fifty-five million dollars.

(3) Four percent, if the gross sum wagered in the racing season is less than thirty million dollars.

b. The tax revenue shall be distributed as follows:

(1) If the racetrack is located in a city, one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the city in which the racetrack is located and shall be deposited in the general fund of the city. One-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county. The remaining amount shall be deposited with the commission.

(2) If the racetrack is located in an unincorporated part of a county, one-half of one percent of the gross sum wagered shall be remitted to the treasurer of the county in which the racetrack is located and shall be deposited in the general fund of the county. The remaining amount shall be deposited with the commission.

c. If the rate of tax imposed under paragraph *"a"* is six percent, five percent, or four percent, a licensee shall set aside for retiring any debt of the licensee, for capital improvement to the facilities of the licensee, for funding of possible future operating losses, or for charitable giving, the following amount:

(1) If the rate of tax paid by the licensee is six percent, one-sixth of the tax liability by the licensee during the racing season shall be set aside.

(2) If the rate of tax paid by the licensee is five percent, one percent of the gross sum wagered in the racing season shall be set aside.

(3) If the rate of tax paid by the licensee is four percent, two percent of the gross sum wagered in the racing season shall be set aside.

d. If the gross sum wagered at a racetrack for the 1991-1992 racing season is less than twenty million dollars, the licensee may retain up to three hundred eighty thousand dollars of its tax liability for the 1991-1992 racing season as a no interest loan. The loan shall be repaid to the treasurer of state in four equal annual installments. The first installment is due and payable at the conclusion of the 1992-1993 racing season and an additional installment is due and payable at the conclusion of each succeeding racing season ending with the 1995-1996 racing season. A lien in favor of the state shall attach to the property of the taxpayer as provided in section 422.26 when the tax payment would otherwise be due and may be enforced by the state upon the delinquency of the loan repayment.

4. A tax of two percent is imposed on the gross sum wagered by the pari-mutuel method on horse races and dog races which are simultaneously telecast. The tax imposed by this subsection is in lieu of the taxes imposed pursuant to subsection 1 or 3, but the tax revenue from simulcast horse races shall be distributed as provided in subsection 1 and the tax revenue from simulcast dog races shall be distributed as provided in subsection 3.

83 Acts, ch 187, §15; 84 Acts, ch 1266, §17; 89 Acts, ch 216, §7 – 9; 90 Acts, ch 1261, §33; 91 Acts, ch 166, §6; 91 Acts, ch 268, §427; 92 Acts, ch 1203, §8 – 10; 92 Acts, ch 1207, §2; 94 Acts, ch 1107, §6

99D.16 Withholding tax on winnings.

All winnings provided in section 99D.11 are Iowa earned income and are subject to state and federal income tax laws. An amount deducted from winnings for payment of the state tax, pursuant to section 422.16, subsection 1, shall be remitted to the department of revenue and finance on behalf of the individual who won the wager.

87 Acts, ch 214, §1; 92 Acts, 2nd Ex, ch 1001, §233

99D.17 Use of funds.

Funds received pursuant to sections 99D.14 and 99D.15 shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. These funds shall first be used to the extent appropriated by the general assembly. The commission is subject to the budget requirements of chapter 8 and the applicable auditing requirements and procedures of chapter 11.

83 Acts, ch 187, §17; 90 Acts, ch 1261, §34; 91 Acts, ch 260, §1206; 92 Acts, ch 1163, §24; 93 Acts, ch 131, §2; 94 Acts, ch 1107, §33

99D.18 Surplus funds — how used. Repealed by 91 Acts, ch 260, § 1250.

99D.19 Horse or dog racing — licensees — records — reports — supervision.

A licensee shall keep its books and records so as to clearly show the following:

1. The total number of admissions to races conducted by it on each racing day, including the number of admissions upon free passes or complimentary tickets.

2. The amount received daily from admission fees.

3. The total amount of money wagered during the race meet.

The licensee shall furnish to the commission reports and information as the commission may require with respect to its activities. The commission may designate a representative to attend a licensed race meeting, who shall have full access to all places within the enclosure of the meeting and who shall supervise and check the admissions. The compensation of the representative shall be fixed by the commission but shall be paid by the licensee.

83 Acts, ch 187, §19

99D.20 Audit of licensee operations.

Within ninety days after the end of each race meet, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's operations conducted under this chapter. Additionally, within ninety days after the end of the licensee's fiscal year, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's total operations. All audits shall be conducted by certified public accountants registered in the state of Iowa under chapter 542.

83 Acts, ch 187, §20; 2001 Acts, ch 55, §21, 38

2001 amendment to this section is effective July 1, 2002; 2001 Acts, ch 55, §38

Section amended

99D.21 Annual report of commission.

The commission shall make an annual report to the governor, for the period ending December 31 of each year. Included in the report shall be an account of the commission's actions, its financial position and results of operation under this chapter, the practical results attained under this chapter, and any recommendations for legislation which the commission deems advisable.

83 Acts, ch 187, §21; 84 Acts, ch 1266, §19

99D.22 Native horses or dogs.

1. A licensee shall hold at least one race on

each racing day limited to Iowa-foaled horses or Iowa-whelped dogs as defined by the department of agriculture and land stewardship using standards consistent with this section. However, if sufficient competition cannot be had among that class of horses or dogs on any day, another race for the day may be substituted. A sum equal to twelve percent of the purse won by an Iowa-foaled horse or Iowa-whelped dog shall be used to promote the horse and dog breeding industries. The twelve percent shall be withheld by the licensee from the breakage and shall be paid at the end of the race meeting to the state department of agriculture and land stewardship which in turn shall deposit it in a special fund to be known as the Iowa horse and dog breeders fund. The department shall pay the amount deposited in the fund that is withheld from the purse won by an Iowa-foaled horse to the breeder of the winning Iowa-foaled horse by December 31 of each calendar year. The department shall pay the amount deposited in the fund that is withheld from the purse won by an Iowa-whelped dog to the breeder of the winning Iowa-whelped dog by March 31 of each calendar year. For the purposes of this section, the breeder of a horse shall be considered to be the owner of the brood mare at the time the foal is dropped.

2. For the purposes of this chapter, the following shall be considered in determining if a horse is an Iowa-foaled thoroughbred horse, quarter horse, or standardbred horse:

a. All thoroughbred horses, quarter horses, or standardbred horses foaled in Iowa prior to January 1, 1985, which are registered by the jockey club, American quarter horse association, or United States trotting association as Iowa foaled shall be considered to be Iowa foaled.

b. After January 1, 1985, eligibility for brood mare residence shall be achieved by meeting at least one of the following rules:

(1) Thirty days residency until the foal is inspected, if in foal to a registered Iowa stallion.

(2) Thirty days residency until the foal is inspected for brood mares which are bred back to registered Iowa stallions.

(3) Continuous residency from December 31 until the foal is inspected if the mare was bred by other than an Iowa registered stallion and is not bred back to an Iowa registered stallion.

c. To be eligible for registration as an Iowa thoroughbred, quarter horse, or standardbred stallion, the following requirements shall be met:

(1) Stallion residency from January 1 through July 31 for the year of registration. However, horses going to stud for the first year shall be eligible upon registration with residency to continue through July 31.

(2) At least fifty-one percent of an Iowa registered stallion shall be owned by bona fide Iowa residents.

d. State residency shall not be required for owners of brood mares.

3. To facilitate the implementation of this section, the department of agriculture and land stewardship shall do all of the following:

a. Adopt standards to qualify thoroughbred, quarter horse, or standardbred stallions for Iowa breeding. A stallion shall stand for service in the state at the time of the foal's conception and shall not stand for service at any place outside the state during the calendar year in which the foal is conceived.

b. Provide for the registration of Iowa-foaled horses and that a horse shall not compete in a race limited to Iowa-foaled horses unless the horse is registered with the department of agriculture and land stewardship. The department may prescribe such forms as necessary to determine the eligibility of a horse.

c. The secretary of agriculture shall appoint investigators to determine the eligibility for registration of Iowa-foaled horses.

d. Adopt a schedule of fees to be charged to breeders of thoroughbreds, quarter horses, or standardbreds to administer this subsection.

4. To qualify for the Iowa horse and dog breeders fund, a dog shall have been whelped in Iowa and raised for the first six months of its life in Iowa. In addition, the owner of the dog shall have been a resident of the state for at least two years prior to the whelping. The department of agriculture and land stewardship shall adopt rules and prescribe forms to bring Iowa breeders into compliance with residency requirements of dogs and breeders in this subsection.

83 Acts, ch 187, §22; 84 Acts, ch 1266, §20, 21; 85 Acts, ch 67, §12; 95 Acts, ch 133, §1 – 7; 2001 Acts, ch 129, §2

99D.23 Commission veterinarian and chemist.

1. The commission shall employ one or more chemists or contract with a qualified chemical laboratory to determine by chemical testing and analysis of saliva, urine, blood, or other excretions or body fluids whether a substance or drug has been introduced which may affect the outcome of a race or whether an action has been taken or a substance or drug has been introduced which may interfere with the testing procedure. The commission shall adopt rules under chapter 17A concerning procedures and actions taken on positive drug reports. The commission may adopt by reference the standards of the national association of state racing commissioners, the association of official racing chemists, and New York jockey club, or the United States trotting association, or may adopt any other procedure or standard. The commission has the authority to retain and preserve by freezing, test samples for future analysis.

2. The commission shall employ or contract with one or more veterinarians to extract or procure the saliva, urine, blood, or other excretions or body fluids of the horses or dogs for the chemical

testing purposes of this section. A commission veterinarian shall be in attendance at every race meeting held in this state.

3. A chemist or veterinarian who willfully or intentionally fails to perform the functions or duties of employment required by this section shall be banned for life from employment at a race meeting held in this state.

4. The commission veterinarian shall keep a continuing record of all horses determined to be sick, unsafe, unsound, or unfit to race by a commission veterinarian at a racetrack.

83 Acts, ch 187, §23; 88 Acts, ch 1137, §3, 4; 94 Acts, ch 1100, §2

99D.24 Prohibited activities — penalty.

1. A person is guilty of an aggravated misdemeanor for doing any of the following:

a. Holding or conducting a race or race meeting where the pari-mutuel system of wagering is used or to be used without a license issued by the commission.

b. Holding or conducting a race or race meeting where wagering is permitted other than in the manner specified by section 99D.11.

c. Committing any other corrupt or fraudulent practice as defined by the commission in relation to racing which affects or may affect the result of a race.

2. A person knowingly permitting a person under the age of twenty-one years to make a pari-mutuel wager is guilty of a simple misdemeanor.

3. A person wagering or accepting a wager at any location outside the betting enclosure is subject to the penalties in section 725.7.

4. A person commits a class "D" felony and, in addition, shall be barred for life from racetracks under the jursidiction of the commission, if the person does any of the following:

a. Offers, promises, or gives anything of value or benefit to a person who is connected with racing including, but not limited to, an officer or employee of a licensee, an owner of a horse, a jockey or driver, a trainer, or handler, pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a race, or to influence official action of a member of the commission.

b. Solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with racing including, but not limited to, an officer or employee of a licensee, an owner of a horse, a jockey or driver, a trainer, or handler, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a race, or to influence official action of a member of the commission.

5. A person commits a class "D" felony and the commission shall suspend or revoke a license held by the person if the person:

a. Uses, possesses, or conspires to use or possess a device other than the ordinary whip or spur for the purpose of stimulating or depressing a horse or dog during a race or workout.

b. Sponges a horse's or dog's nostrils or windpipe or uses any method, injurious or otherwise, for the purpose of stimulating or depressing a horse or dog or affecting its speed in a race or a workout.

6. A person commits a serious misdemeanor if the person has in the person's possession within the confines of a racetrack, stable, shed, building or grounds, or within the confines of a stable, shed, building or grounds where a horse or dog is kept which is eligible to race over a racetrack licensed under this chapter, an appliance other than the ordinary whip or spur which can be used for the purpose of stimulating or depressing a horse or dog or affecting its speed at any time.

83 Acts, ch 187, §24; 84 Acts, ch 1265, §5; 91 Acts, ch 195, §1; 94 Acts, ch 1021, §5

99D.25 Drugging or numbing — exception — tests — reports — penalties.

1. As used in this section, unless the context otherwise requires:

a. *"Drugging"* means administering to a horse or dog any substance foreign to the natural horse or dog prior to the start of a race. However, in counties with a population of two hundred fifty thousand or more, *"drugging"* does not include administering to a horse the drugs lasix and phenylbutazone in accordance with section 99D.25A and rules adopted by the commission.

b. *"Numbing"* means the applying of ice or a freezing device or substance to the limbs of a horse or dog within two hours before the start of a race, or a surgical or other procedure which was, at any time, performed in which the nerves of a horse or dog were severed, destroyed, injected, or removed.

c. *"Entered"* means that a horse or dog has been registered as a participant in a specified race, and not withdrawn prior to presentation of the horse or dog for inspection and testing.

2. The general assembly finds that the practice of drugging or numbing a horse or dog prior to a race:

a. Corrupts the integrity of the sport of racing and promotes criminal fraud in the sport;

b. Misleads the wagering public and those desiring to purchase a horse or dog as to the condition and ability of the horse or dog;

c. Poses an unreasonable risk of serious injury or death to the rider of a horse and to the riders of other horses competing in the same race; and

d. Is cruel and inhumane to the horse or dog so drugged or numbed.

3. The following conduct is prohibited:

a. The entering of a horse or dog in a race by

the trainer or owner of the horse or dog if the trainer or owner knows or if by the exercise of reasonable care the trainer or owner should know that the horse or dog is drugged or numbed;

b. The drugging or numbing of a horse or dog with knowledge or with reason to believe that the horse or dog will compete in a race while so drugged or numbed. However, the commission may by rule establish permissible trace levels of substances foreign to the natural horse or dog that the commission determines to be innocuous;

c. The willful failure by the operator of a racing facility to disqualify a horse or dog from competing in a race if the operator has been notified that the horse or dog is drugged or numbed, or was not properly made available for tests or inspections as required by the commission; and

d. The willful failure by the operator of a racing facility to prohibit a horse or dog from racing if the operator has been notified that the horse or dog has been suspended from racing.

4. The owners of a horse or dog and their agents and employees shall permit a member of the commission or a person employed or appointed by the commission to make tests as the commission deems proper in order to determine whether a horse or dog has been improperly drugged. The fact that purse money has been distributed prior to the issuance of a test report shall not be deemed a finding that no chemical substance has been administered unlawfully to the horse or dog earning the purse money. The findings of the commission that a horse or dog has been improperly drugged by a narcotic or other drug are prima facie evidence of the fact. The results of the tests shall be kept on file by the commission for at least one year following the tests.

5. Every horse which suffers a breakdown on the racetrack, in training, or in competition, and is destroyed, and every other horse which expires while stabled on the racetrack under the jurisdiction of the commission, shall undergo a postmortem examination at a time and place acceptable to the commission veterinarian to determine the injury or sickness which resulted in euthanasia or natural death. The postmortem examination shall be conducted by a veterinarian employed by the owner or the owner's trainer in the presence of and in consultation with the commission veterinarian. Test samples shall be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the commission for testing for foreign substances and natural substances at abnormal levels. When practical, blood and urine test samples should be procured prior to euthanasia. The owner of the deceased horse is responsible for payment of any charges due the veterinarian employed to conduct the postmortem examination. The services of the commission veterinarian and the laboratory testing of postmortem samples shall be made available by the commission without charge to the owner. A record of every postmortem shall be filed with the commission by the owner's veterinarian within seventy-two hours of the death and shall be submitted on a form supplied by the commission. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupational license issued by the commission.

6. Any horse which in the opinion of the commission veterinarian has suffered a traumatic injury or disability such that a controlled program of phenylbutazone administration would not aid in restoring the racing soundness of the horse shall not be allowed to race while medicated with phenylbutazone or with phenylbutazone present in the horse's bodily systems.

7. A person found within or in the immediate vicinity of a security stall who is in possession of unauthorized drugs or hypodermic needles or who is not authorized to possess drugs or hypodermic needles shall, in addition to any other penalties, be barred from entry into any racetrack in Iowa and any occupational license the person holds shall be revoked.

8. Before a horse is allowed to race using phenylbutazone, the veterinarian attending the horse shall certify to the commission the course of treatment followed in administering the phenylbutazone.

9. The commission shall conduct random tests of bodily substances of horses entered to race each day of a race meeting to aid in the detection of any unlawful drugging. The tests shall be conducted both prior to and after a race. The commission shall also test any horse that breaks down during a race and shall perform an autopsy on any horse that is killed or subsequently destroyed as a result of accident during a race.

10. Veterinarians must submit daily to the commission veterinarian on a prescribed form a report of all medications and other substances which the veterinarian prescribed, administered, or dispensed for horses registered at a current race meeting. A logbook detailing other professional services performed while on the grounds of a racetrack shall be kept by veterinarians and shall be made immediately available to the commission veterinarian or the stewards upon request.

A person who violates this section is guilty of a class "D" felony.

83 Acts, ch 187, §25; 88 Acts, ch 1137, §5 – 12; 94 Acts, ch 1100, §3, 4

99D.25A Administration of lasix or phenylbutazone.

1. As used in this section unless the context otherwise requires:

a. "Bleeder" means, according to its context, either:

(1) A horse which, during a race or exercise, is observed by the commission veterinarian or desig-

nee to be shedding blood from one or both nostrils and in which no upper airway injury is noted during an examination by the commission veterinarian immediately following such a race or exercise;

(2) A horse which, within one and one-half hours of such a race or exercise, is observed by the commission veterinarian, through visual or endoscopic examination, to be shedding blood from the lower airway; or

(3) A horse which has been certified as a bleeder in another state.

b. "Bleeder list" means a tabulation of all bleeders maintained by the commission veterinarian.

c. "Detention barn" means a secured structure designated by the commission.

2. Phenylbutazone shall not be administered to a horse in dosages which would result in concentrations of more than two point two micrograms of the substance or its metabolites per milliliter of blood.

3. If a horse is to race with phenylbutazone in its system, the trainer shall be responsible for marking the information on the entry blank for each race in which the horse shall use phenylbutazone. Changes made after the time of entry must be submitted on the prescribed form to the commission veterinarian no later than scratch time.

4. If a test detects concentrations of phenylbutazone in the system of a horse in excess of the level permitted in this section, the commission shall assess a civil penalty against the trainer of two hundred dollars for the first offense and five hundred dollars for a second offense. The penalty for a third or subsequent offense shall be in the discretion of the commission. A penalty assessed under this subsection shall not affect the placing of the horse in the race.

5. Lasix may be administered to certified bleeders. Upon request, any horse placed on the bleeder list shall, in its next race, be permitted the use of lasix. Once a horse has raced with lasix, it must continue to race with lasix in all subsequent races unless a request is made to discontinue the use. If the use of lasix is discontinued, the horse shall be prohibited from again racing with lasix unless it is later observed to be bleeding. Requests for the use of or discontinuance of lasix must be made to the commission veterinarian by the horse's trainer or assistant trainer on a form prescribed by the commission on or before the day of entry into the race for which the request is made.

6. Once a horse has been permitted the use of lasix, the horse must be treated with lasix in the horse's stall, unless the commission provides that a horse must be brought to the detention barn for treatment. After the lasix treatment, the commission, by rule, may authorize the release of the horse from the horse's stall or detention barn before the scheduled post time. If a horse is brought to the detention barn late, the commission shall assess a civil penalty of one hundred dollars against the trainer.

7. A horse entered to race with lasix must be treated at least four hours prior to post time. The lasix shall be administered intravenously by a veterinarian employed by the owner or trainer of the horse. The commission shall adopt rules to ensure that lasix is administered as provided in this section. The commission shall require that the practicing veterinarian deliver an affidavit signed by the veterinarian which certifies information regarding the treatment of the horse. The affidavit must be delivered to a commission veterinarian within twenty minutes following the treatment. The statement must at least include the name of the practicing veterinarian, the tattoo number of the horse, the location of the barn and stall where the treatment occurred, the race number of the horse, the name of the trainer, and the time that the lasix was administered. Lasix shall only be administered in a dose level of two hundred fifty milligrams.

8. A person found within or in the immediate vicinity of the detention barn or horse stall who is in possession of unauthorized drugs or hypodermic needles or who is not authorized to possess drugs or hypodermic needles shall, in addition to any other penalties, be barred from entry into any racetrack in Iowa and any occupational license the person holds shall be revoked.

88 Acts, ch 1137, §13; 92 Acts, ch 1203, §11; 94 Acts, ch 1100, §5; 97 Acts, ch 23, §12; 98 Acts, ch 1006, §1, 2; 98 Acts, ch 1217, §10

99D.26 Forfeiture of property.

1. Anything of value, including all traceable proceeds including but not limited to real and personal property, moneys, negotiable instruments, securities, and conveyances are subject to forfeiture to the state of Iowa if the item was used for any of the following:

a. In exchange for a bribe intended to affect the outcome of a race.

b. In exchange for or to facilitate a violation of this chapter.

2. All moneys, coin, and currency found in close proximity of wagers, or of records of wagers are presumed forfeited. The burden of proof is upon the claimant of the property to rebut this presumption.

3. Subsections 1 and 2 do not apply if the act or omission which would give rise to the forfeiture was committed or omitted without the owner's knowledge or consent.

83 Acts, ch 187, §26

99D.27 Racing dog adoption program.

A track licensed to race dogs under this chapter shall maintain a racing dog adoption program. The track shall advertise the availability of adoptable dogs in the media, including but not limited to racing programs. The track shall compile a list of persons applying to adopt a dog. A dog's owner

or dog's trainer acting with the consent of the owner may participate in the program by placing the dog for adoption. The ownership of the dog shall be transferred from the owner of the dog to the person who is adopting the dog. A dog shall not be transferred to a person for purposes related to racing, breeding, hunting, laboratory research, or scientific experimentation. A dog shall not be transferred unless the dog has been examined by a veterinarian and found to be free of disease requiring extensive medical treatment. A dog shall not be transferred, until a veterinarian has certified that the dog has been sterilized. The track may transfer a dog to a governmental agency or nonprofit organization without examination or certification. However, other requirements relating to the transfer of a dog to a person by a track under this section apply to the transfer of a dog to a person by the agency or organization. A person violating this section is guilty of a simple misdemeanor.

89 Acts, ch 216, §10; 90 Acts, ch 1155, §1

99D.28 Use of industrial revenue bonds prohibited. Repealed by 84 Acts, ch 1266, § 23. See § 419.1.

CHAPTER 99E

IOWA LOTTERY

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99E.1 Title.

This chapter may be cited as the *"Iowa Lottery Act"*.

85 Acts, ch 33, §101

99E.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the Iowa lottery board.
2. *"Commissioner"* means the commissioner of the lottery.
3. *"Director"* means the director of the department of revenue and finance.
4. *"Instant lottery"* means a game that offers preprinted tickets that indicate immediately whether the player has won.
5. *"Licensee"* means the person issued a license by the commissioner to sell lottery tickets or shares. The licensee is responsible for the licensee's employees' conduct which is within the scope of this chapter.
6. *"Lottery"* means the lottery created and operated under this chapter.
7. *"On-line lotto"* means a lottery game hooked up to a central computer via telecommunications lines in which the player selects a specified group of numbers out of a predetermined range of numbers.
8. *"Share"* means any intangible manifestation authorized by the Iowa lottery division to

prove participation in a game conducted by the state lottery division.

9. *"Ticket"* means any tangible evidence issued by the Iowa lottery division to prove participation in a game conducted by the state lottery division.

85 Acts, ch 33, §102; 86 Acts, ch 1245, §403

99E.3 Establishment of lottery — commissioner — employees.

1. A lottery division is established under the department of revenue and finance. Except as provided in section 99E.9, subsection 3, paragraph *"b"*, the lottery division is subject to chapter 17A. The head of the lottery division is the commissioner.

2. The commissioner shall be qualified by training and experience to direct the lottery. The commissioner shall be appointed by the governor within thirty days after May 3, 1985 subject to confirmation by the senate, and shall serve at the pleasure of the governor. A vacancy occurring in the office of the commissioner shall be filled in the same manner as the original appointment. Section 2.32 applies to the appointment of the commissioner. The commissioner shall devote time and attention solely to the duties of the office and shall not be engaged in any other profession or occupation. The commissioner shall receive a salary determined by the governor within salary range five as set by the general assembly.

3. The commissioner may employ, with the approval of the director, clerks, stenographers, inspectors, agents, and other employees pursuant to chapter 19A as necessary to carry out this chapter, except as provided in section 99E.14. The commissioner may require a background investigation to be conducted in connection with the employment of lottery employees. The board shall define, by rule, the employment categories subject to investigation. The background investigation by the division of criminal investigation of the department of public safety may include a national criminal history record check through the federal bureau of investigation. The screening of lottery employees through the federal bureau of investigation shall be conducted by submission of fingerprints through the state criminal history record repository to the federal bureau of investigation.

85 Acts, ch 33, §103; 86 Acts, ch 1245, §404; 2002 Acts, ch 1044, §6, 11

Subsection 3 amended

99E.4 Commissioner's oath — bond — employees — bonding of employees.

1. Before taking office, the commissioner shall take an oath to faithfully execute the duties of the office according to the laws of the state, and shall give bond with sufficient surety to be approved by the governor in the sum of not less than twenty-five thousand dollars, conditioned upon faithful execution and performance of the duties of the office. The bond when fully executed and approved shall be filed in the office of the secretary of state. When in the governor's opinion the bond has become or is likely to become invalid or insufficient, the governor shall require the commissioner to renew the bond in an amount approved by the governor but not less than twenty-five thousand dollars. The cost of a bond given shall be part of the necessary expenses of the lottery.

2. The commissioner, with the approval of the director, shall employ personnel necessary to implement this chapter. The director may require lottery division employees to give bond in an amount the director determines. Each bond when fully executed and approved shall be filed in the office of the secretary of state. The cost of each bond given shall be part of the necessary expenses of the lottery. The director may obtain a blanket bond to cover personnel of the lottery division for which the director requires a bond.

85 Acts, ch 33, §104; 86 Acts, ch 1245, §405

99E.5 Lottery board.

An Iowa lottery board is created to consist of five members, not more than three of whom shall be from the same political party, and who shall be appointed by the governor subject to confirmation by the senate. The governor shall appoint the board members within sixty days of May 3, 1985. The term of each member shall begin and end as provided in section 69.19. A vacancy on the board shall be filled in the same manner as regular appointments are made and the term shall be for the unexpired portion of the regular term.

85 Acts, ch 33, §105

Confirmation, see §2.32

99E.6 Board qualifications.

Board members shall be residents of this state. Except for the initial appointees, at least one member of the board shall be a person who has been a law enforcement officer for not less than five years, one member shall be an attorney admitted to the practice of law in Iowa for not less than five years, and one member shall be a certified public accountant who has practiced accountancy in Iowa for not less than five years.

85 Acts, ch 33, §106; 85 Acts, ch 256, §14

99E.7 Board meetings.

The board shall hold at least one meeting quarterly and as often as necessary. The board shall select a chairperson from its membership at the first regular meeting of the board and shall thereafter select a chairperson at the first regular meeting of each fiscal year. Written notice of the time and place of each meeting shall be given to each member of the board. A majority of the board constitutes a quorum.

85 Acts, ch 33, §107; 86 Acts, ch 1245, §406

99E.8 Expenses — compensation.

Members of the board shall be allowed the actual and necessary expenses incurred in the performance of their duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The expenses incurred by members of the board are part of the necessary expenses of the lottery division.

85 Acts, ch 33, §108; 86 Acts, ch 1245, §407

99E.9 Duties of the board and commissioner — contracts — rules.

1. The board and the commissioner shall supervise the lottery in order to produce the maximum amount of net revenues for the state in a manner which maintains the dignity of the state and the general welfare of the people.

2. Subject to the approval of the board, the commissioner may enter into contracts for the operation and marketing of the lottery, except that the board may by rule designate classes of contracts other than major procurements which do not require prior approval by the board. A major procurement shall be as the result of competitive bidding with the contract being awarded to the responsible vendor submitting the lowest and best proposal. However, before a contract for a major procurement is awarded, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the vendor to whom the contract is to be awarded. The commissioner and board shall consult with the division of criminal investigation and shall provide, by rule, for the scope of the thorough background investigations and due diligence with regard to the background investigations to be conducted in connection with major procurements. The vendor shall submit to the division of criminal investigation appropriate investigation authorizations to facilitate this investigation. The background investigation by the division of criminal investigation may include a national criminal history record check through the federal bureau of investigation. The screening of vendors or their employees through the federal bureau of investigation shall be conducted by submission of fingerprints through the state criminal history record repository to the federal bureau of investigation. As used in this subsection, *"major procurement"* means consulting agreements and the major procurement contract with a business organization for the printing of tickets, or for purchase or lease of equipment or services essential to the operation of a lottery game.

3. Except as provided in paragraph *"b"*, the board shall make rules in accordance with chapter 17A for implementing and enforcing this chapter. The rules shall include but are not limited to the following subject matters:

a. The fees charged for a license to sell lottery tickets or shares. Revenue received by the lottery from license fees shall be transferred to the lottery fund immediately after the cost of processing license applications is deducted.

b. The types of lottery games to be conducted. Rules governing the operation of a class of games are subject to chapter 17A. However, rules governing the particular features of specific games within a class of games are not subject to chapter 17A. Such rules may include, but are not limited to, setting the name and prize structure of the game and shall be made available to the public prior to the time the games go on sale and shall be kept on file at the office of the commissioner. The board shall authorize instant lottery and on-line lotto games and may authorize the use of any type of lottery game that on May 3, 1985, has been conducted by a state lottery of another state in the United States, or any game that the board determines will achieve the revenue objectives of the lottery and is consistent with subsection 1. However, the board shall not authorize a game using an electronic computer terminal or other device if, upon winning a game, the terminal or device immediately dispenses coins or currency or a ticket, credit or token which is redeemable for cash or a prize. In a game utilizing instant tickets other than pull-tab tickets, each ticket in the game shall bear a unique consecutive serial number distinguishing it from every other ticket in the game, and each lottery number or symbol shall be accompanied by a confirming caption consisting of a repetition of a symbol or a description of the symbol in words. In the game other than an instant game which uses tangible evidence of participation, each ticket shall bear a unique serial number distinguishing it from every other ticket in the game.

c. The price of tickets or shares in the lottery, including but not limited to authorization of sales of tickets or shares at a discount for marketing purposes.

d. The number and size of the prizes on the winning tickets or shares, including but not limited to prizes of free tickets or shares in lottery games conducted by the lottery and merchandise prizes. The lottery division shall maintain and make available for public inspection at its offices during regular business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination which were awarded.

e. The method of selecting the winning tickets or shares and the manner of payment of prizes to the holders of winning tickets or shares. The rules may provide for payment by the purchase of annuities in the case of prizes payable in installments. Lottery employees shall examine claims

and shall not pay any prize for altered, stolen, or counterfeit tickets or shares nor tickets or shares which fail to meet validation rules established for a lottery game. A prize shall not be paid more than once. If the commissioner determines that more than one person is entitled to a prize, the sole remedy of the claimants is to receive an equal share in the single prize. The rules may provide for payment of prizes directly by the licensee.

f. The methods of validation of the authenticity of winning tickets or shares.

g. The frequency of selection of winning tickets or shares. Drawings shall be held in public. Drawings shall be witnessed by an independent certified public accountant. Equipment used to select winning tickets or shares or participants for prizes shall be examined by an independent certified public accountant prior to and after each public drawing.

h. Requirements for eligibility for participation in runoff drawings, including but not limited to requirements for submission of evidence of eligibility.

i. The locations at which tickets or shares may be sold. The board may authorize the sale of tickets or shares on the premises of establishments which sell or serve alcoholic beverages, wine, or beer as defined in section 123.3.

j. The method to be used in printing and selling tickets or shares. An elected official's name shall not be printed on the tickets. The overall estimated odds of winning a prize in a given game shall be printed on each ticket if the games have either preprinted winners or fixed odds. Estimated odds of winning a prize are not required to be printed on tickets in lottery games of a pari-mutuel nature. As used in this paragraph, *"games of a pari-mutuel nature"* means a game in which the amount of the winnings and the odds of winning are determined by the number of participants in the game.

k. The issuing of licenses to sell tickets or shares. In addition to any other rules made regarding the qualifications of an applicant for a license, a person shall not be issued a license unless the person meets the criteria established in section 99E.16, subsection 7.

l. The compensation to be paid licensees including but not limited to provision for variable compensation based on sales volume or incentive considerations.

m. The form and type of marketing, informational, and educational material to be permitted.

n. Subject to section 99E.10, the apportionment of the annual revenues accruing from the sale of lottery tickets or shares and from other sources for the payment of prizes to the holders of winning tickets or shares and for the following:

(1) The payment of costs incurred in the operation and administration of the lottery and the lottery division, including the expenses of the lottery and the cost resulting from contracts entered into for consulting or operational services, or for marketing.

(2) Actual and necessary expenses of all audits performed pursuant to section 99E.20, subsection 3.

(3) Incentive programs for lottery licensees and lottery employees.

(4) Payment of compensation to licensees necessary to provide for the adequate availability of tickets, shares, or services to prospective buyers and for the convenience of the public.

(5) The purchase or lease of lottery equipment, tickets, and materials.

4. The board and the commissioner may enter into written agreements or compacts with another state or a territory of the United States, or one or more political subdivisions of another state or territory of the United States, or any lottery operated outside the United States for the operation, marketing, and promotion of a joint lottery or joint lottery games. For the purposes of this subsection, any lottery with which the board and commissioner reach an agreement or compact shall meet the criteria for security, integrity, and finance set by the board.

5. The board may authorize the commissioner to enter into written agreements with business entities for special lottery promotions in which, incident to the special lottery games, additional prizes, including annuities, may be purchased by the business entity and transferred to the lottery division for payment to qualifying holders of lottery tickets or shares.

6. If reasonably practical when the lottery division awards a contract under subsection 2, for the lease or purchase of a machine to be used in the conducting of a lottery game including, but not limited to, a machine used in lotto, the lottery division shall give preference to awarding the contract to a responsible vendor who manufactures the machines in the state, provided the costs and benefits to the lottery division are equal to those available from competing vendors.

If reasonably practical when the lottery division awards a contract under subsection 2, for the servicing of a machine to be used in the conducting of a lottery game including, but not limited to, a machine used in lotto, the lottery division shall give preference to a responsible vendor whose principal place of business is in Iowa, provided the costs and benefits to the lottery division are equal to those available from competing vendors.

7. In making decisions relating to the marketing or advertising of the Iowa lottery and the various games offered, the board shall give consideration to marketing or advertising through Iowa-based advertising agencies and media outlets.

8. The Iowa lottery board shall cooperate with the gambling treatment program administered by the Iowa department of public health to incorporate information regarding the gambling treatment program and its toll-free telephone number

in printed materials distributed by the board.

85 Acts, ch 33, §109; 86 Acts, ch 1002, §4; 86 Acts, ch 1042, §3 – 5; 86 Acts, ch 1052, §2; 86 Acts, ch 1245, §408 – 410; 87 Acts, ch 231, §1; 88 Acts, ch 1268, §1; 92 Acts, ch 1203, §12, 13; 95 Acts, ch 205, §35; 96 Acts, ch 1212, §12; 98 Acts, ch 1134, §1; 2000 Acts, ch 1124, §1; 2002 Acts, ch 1044, §7 – 9, 11

Legislative intent that the lottery investigate, and may develop a plan for, deployment of pull-tab vending machines with video monitors; report to legislative oversight committee; 2002 Acts, 2nd Ex, ch 1003, §21, 35

Subsection 2 amended

Subsection 3, paragraph m amended

Subsection 3, paragraph o stricken

99E.10 Allocation and appropriation of funds generated.

1. Upon receipt of any revenue, the commissioner shall deposit the moneys in the lottery fund created pursuant to section 99E.20. As nearly as is practicable, at least fifty percent of the projected annual revenue, after deduction of the amount of the sales tax, accruing from the sale of tickets or shares is appropriated for payment of prizes to the holders of winning tickets. After the payment of prizes, all of the following shall be deducted from lottery revenue prior to disbursement:

a. An amount equal to three-tenths of one percent of the gross lottery revenue shall be deposited in a gambling treatment fund in the office of the treasurer of state.

b. An amount equal to the product of the state sales tax rate under section 422.43 multiplied by the gross sales price of each ticket or share sold shall be deducted as the sales tax on the sale of that ticket or share, remitted to the treasurer of state and deposited into the state general fund.

c. The expenses of conducting the lottery including the reasonable expenses incurred by the attorney general's office in enforcing this chapter.

d. The contractual expenses required in this paragraph. The division of criminal investigation shall be the primary state agency responsible for investigating criminal violations of the law under this chapter. The commissioner shall contract with the department of public safety for investigative services, including the employment of special agents and support personnel, and procurement of necessary equipment to carry out the responsibilities of the division of criminal investigation under the terms of the agreement and this chapter.

e. For the fiscal year beginning July 1, 1993, after the first thirty-three million dollars is transferred to the general fund of the state, five hundred thousand dollars shall be deposited in the Iowa state fair foundation in the office of the treasurer of state to be used by the foundation fund for capital projects or major maintenance improvements at the Iowa state fairgrounds. For the fiscal period beginning July 1, 1994, and ending June 30, 1996, five hundred thousand dollars shall annually be deposited in the Iowa state fair foundation fund in the office of the treasurer of state to be used by the foundation for capital projects or major maintenance improvements at the Iowa state fairgrounds. Matching funds from other sources shall not be required for expenditure of funds deposited pursuant to this subsection.

Lottery expenses for marketing, educational, and informational material shall not exceed four percent of the lottery revenue.

Lottery revenue remaining after expenses are determined shall be transferred to the general fund of the state on a monthly basis. However, upon the request of the director and subject to approval by the treasurer of state, an amount sufficient to cover the foreseeable administrative expenses of the lottery for a period of twenty-one days may be retained from the lottery revenue. Prior to the monthly transfer to the general fund of the state, the director may direct that lottery revenue shall be deposited in the lottery fund and in interest-bearing accounts designated by the treasurer of state in the financial institutions of this state or invested in the manner provided in section 12B.10. Interest or earnings paid on the deposits or investments is considered lottery revenue and shall be transferred to the general fund of the state in the same manner as other lottery revenue.

2. The director of management shall not include lottery revenues in the director's fiscal year revenue estimates.

3. *a.* Notwithstanding subsection 1, if gaming revenues under sections 99D.17 and 99F.11 are insufficient in a fiscal year to meet the total amount of such revenues directed to be deposited in the vision Iowa fund and the school infrastructure fund during the fiscal year pursuant to section 8.57, subsection 5, paragraph *"e"*, the difference shall be paid from lottery revenues prior to deposit of the lottery revenues in the general fund. If lottery revenues are insufficient during the fiscal year to pay the difference, the remaining difference shall be paid from lottery revenues in subsequent fiscal years as such revenues become available.

b. The treasurer of state shall, each quarter, prepare an estimate of the gaming revenues and lottery revenues that will become available during the remainder of the appropriate fiscal year for the purposes described in paragraph *"a"*. The department of management and the department of revenue and finance shall take appropriate actions to provide that the amount of gaming revenues and lottery revenues that will be available during the remainder of the appropriate fiscal year is sufficient to cover any anticipated deficiencies.

85 Acts, ch 32, §114, 115; 85 Acts, ch 33, §110; 85 Acts, ch 256, §9; 86 Acts, ch 1207, §20; 86 Acts, ch 1068, §1; 86 Acts, ch 1244, §21; 86 Acts, ch 1042, §6; 87 Acts, ch 231, §2; 88 Acts, ch 1268, §2; 90 Acts, ch 1255, §6 – 8; 90 Acts, ch 1270, §41; 91 Acts, ch 267, §138; 92 Acts, 2nd Ex, ch 1001, §201; 93 Acts, ch 131, §3; 93 Acts, ch 180, §31; 94 Acts, ch 1186,

§32; 96 Acts, ch 1212, §13, 14; 97 Acts, ch 203, §11; 98 Acts, ch 1221, §10; 99 Acts, ch 201, §9; 99 Acts, ch 208, §2, 3; 2001 Acts, ch 185, §44, 49

99E.11 Reports.

1. The commissioner shall report quarterly to the director, the governor, the treasurer of state, and the general assembly. The quarterly report shall include the total lottery revenue, prize disbursements, and other expenses for the preceding quarter. The fourth quarter report shall be included in the annual report made pursuant to subsection 2.

2. The commissioner also shall report annually to the director, the governor, the treasurer of state, and the general assembly. The annual report shall include a complete statement of lottery revenues, prize disbursements, and other expenses, and recommendations for changes in the law which the commissioner deems necessary or desirable. The annual report shall be submitted within ninety days after the close of a fiscal year.

3. The commissioner shall report immediately to the director, the governor, the treasurer of state, and the general assembly any matters that require immediate changes in the law in order to prevent abuses or evasions of this chapter or rules adopted or to rectify undesirable conditions in connection with the administration or operation of the lottery.

85 Acts, ch 33, §111; 86 Acts, ch 1245, §411

99E.12 Studies.

1. The commissioner shall make a continuous study of the lottery to ascertain any defects of this chapter or in the rules which could result in abuses in the administration and operation of the lottery or in any evasion of this chapter or the rules of the commissioner and make recommendations for improvement in this chapter.

2. The commissioner shall make a continuous study of the operation and the administration of similar laws in effect in other states, written material on the subject which is published or available, federal laws which may affect the operation of the lottery, and the reaction of citizens to existing and potential features of the lottery in order to recommend changes that will serve the purposes of this chapter.

3. The commissioner shall make a demographic study of lottery players.

4. The commissioner shall contract with the department of human services to conduct a study of the extent to which the lottery creates a compulsive gambling problem among lottery players and the impact of gambling on affected families.

85 Acts, ch 33, §112

99E.13 Conflict of interest — penalty.

1. A member of the board, the director, the commissioner, or an employee of the lottery shall not directly or indirectly, individually, as a member of a partnership or other association, or as a shareholder, director, or officer of a corporation have an interest in a business which contracts for the operation and marketing of the lottery as authorized by section 99E.9, subsection 2.

2. A member of the board, the director, the commissioner, an employee of the lottery, or a member of their immediate family shall not ask for, offer to accept, or receive a gift, gratuity, or other thing of more than fifty dollars in value from a person contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery or from an applicant for a license to sell tickets or shares in the lottery or from a licensee.

3. A person contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery, an applicant for a license to sell tickets or shares in the lottery, or a licensee shall not offer a member of the board, the director, the commissioner, an employee of the lottery, or a member of their immediate family a gift, gratuity, or other thing of more than fifty dollars in value.

4. A board member, director, commissioner, or employee of the lottery who violates a provision of this section, or if a member of their immediate family violates a provision of this section, shall be immediately removed from the office or position.

5. A violation of this section is a serious misdemeanor.

6. As used in this section, *"member of their immediate family"* means a spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent of the board member, the commissioner, or the employee.

7. Enforcement of this section against a board member or the director or commissioner shall be by the attorney general who upon finding a violation shall initiate an action to remove the board member or the director or commissioner.

8. In addition to the prohibitions of this section, the prohibitions of sections 722.1 and 722.2 are applicable.

85 Acts, ch 33, §113; 86 Acts, ch 1245, §412

99E.14 Lottery administrators.

The commissioner shall designate three administrative positions within the division which require specific areas of expertise relating to the operation of the lottery. These three administrative positions are exempt from the merit system provisions of chapter 19A. The commissioner shall designate one of these three administrators to serve as acting commissioner in the commissioner's absence.

Departments, boards, commissions or other agencies of this state shall provide reasonable assistance to the lottery upon the request of the com-

missioner with the approval of the director.

85 Acts, ch 33, §114; 86 Acts, ch 1245, §413; 88 Acts, ch 1158, §16

99E.15 Power to administer oaths and take testimony — subpoena.

The commissioner or the commissioner's designee authorized to conduct an inquiry, investigation, or hearing under this chapter may administer oaths and take testimony under oath relative to the matter of inquiry, investigation, or hearing. At a hearing ordered by the commissioner, the commissioner or the designee may subpoena witnesses and require the production of records, papers, and documents pertinent to the hearing.

85 Acts, ch 33, §115

99E.16 Licensing — bonds.

1. The commissioner shall license persons to sell lottery tickets or shares to best serve public convenience. The lottery division may sell tickets or shares to the public. Except for the lottery division, a licensee shall not engage in business exclusively to sell lottery tickets or shares. However, the board may approve a special license to permit a licensee or the lottery division itself to sell lottery tickets or shares to the public at special events approved by the board. Before issuing a license the commissioner shall consider the financial responsibility and security of the applicant, the applicant's business or activity, the accessibility of the applicant's place of business or activity to the public, the sufficiency of existing licensees to serve the public convenience, and the volume of expected sales. A licensee shall cooperate with the lottery by using point-of-purchase materials, posters, and other educational, informational, and marketing materials when requested to do so by the lottery. Lack of cooperation is sufficient cause for revocation of a person's license.

2. A licensee shall sell tickets or shares only on the premises stated in the license. Except for the lottery division, the licensee shall only sell a ticket or share in person and not over a telephone or through the mail. However, the lottery division may sell lottery tickets or shares over the telephone or through the mail. The licensee may accept payment by cash, check, money order, debit card, or electronic funds transfer. The licensee shall not extend or arrange credit for the purchase of a ticket or share. As used in this subsection *"cash"* means United States currency.

3. A licensee shall display the license or a copy of the license together with the lottery rules wherever tickets or shares are sold. A license is not assignable or transferable. The commissioner may issue a temporary license when deemed necessary.

4. The commissioner may require a bond from a licensee in an amount as provided in the rules graduated according to the volume of expected sales of lottery tickets or shares by the licensee, or may require a licensee to furnish evidence of financial responsibility.

5. A bond shall not be canceled by a surety on less than thirty days' notice in writing to the commissioner. If a bond is canceled and the licensee fails to file a new bond with the commissioner in the required amount on or before the effective date of cancellation, the licensee's license shall be automatically suspended. A suspended license shall be revoked if the requirements of this subsection are not met within thirty days of the license suspension. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

6. Subject to the approval of the board, the commissioner may authorize compensation to licensees in the manner and amounts and subject to the limitations the commissioner determines if the commissioner finds that compensation is necessary to assure adequate availability of lottery tickets or shares.

7. A license shall be granted only after the commissioner finds all of the following:

a. The applicant is at least eighteen years of age.

b. The person has not been convicted of a fraud or a felony.

c. The person has not been convicted or found to have committed a violation of this chapter.

d. The person has not previously had a license issued under this chapter revoked.

e. The person has not had a license to sell lottery tickets or shares in another jurisdiction suspended or revoked by the authority regulating a lottery or by a court of that jurisdiction.

f. The applicant has demonstrated financial responsibility sufficient to adequately meet the requirements of the proposed enterprise.

g. The applicant is the true owner of the proposed lottery business and that all persons holding at least a ten percent ownership interest in the applicant's business have been disclosed.

h. The applicant has not knowingly made a false statement of material fact to the commission.

8. If after a license is granted the commissioner finds that the licensee has violated this section, then the commissioner shall revoke the license.

85 Acts, ch 33, §116; 86 Acts, ch 1042, §7, 8

99E.17 Suspension or revocation of license — hearings — hearing board.

1. The commissioner may suspend or revoke the license of a licensee who violates a provision of this chapter or a rule adopted pursuant to this chapter. If the commissioner suspends or revokes a license, or refuses to grant a license, the aggrieved party is entitled to a hearing by filing a written request with the commissioner. Upon receipt of the request for hearing, the commissioner shall set a hearing date within thirty days of receipt of the request, and shall notify the aggrieved party, in writing, at least seven days in advance of

the hearing date. The commissioner may stay the revocation or suspension of a license pending the outcome of the hearing, when a stay is requested with the request for hearing.

2. A three-member hearing board for the purpose of conducting hearings relating to controversies concerning the issuance, suspension, or revocation of licenses is created. One member shall be a designee of the board, one member shall be the treasurer of state or a designee of the treasurer of state, and one member shall be the commissioner of public safety or a designee of the commissioner of public safety. The lottery board shall adopt rules and procedures for conducting the hearings.

3. A license shall be suspended for a period deemed appropriate by the commissioner. A former licensee whose license is revoked is not eligible to receive another license.

85 Acts, ch 33, §117

99E.18 Prohibited sales of tickets or shares — forgery — penalties.

1. A ticket or share shall not be sold at a price greater than that fixed by the board and the commissioner and a sale shall not be made other than by a licensee or an employee of the licensee who is authorized by the licensee to sell tickets or shares. A person who violates a provision of this subsection is guilty of a simple misdemeanor.

2. A ticket or share shall not be sold to a person who has not reached the age of twenty-one. This does not prohibit the lawful purchase of a ticket or share for the purpose of making a gift to a person who has not reached the age of twenty-one. A licensee or a licensee's employee who knowingly sells or offers to sell a lottery ticket or share to a person who has not reached the age of twenty-one is guilty of a simple misdemeanor. In addition the license of a licensee shall be suspended. A prize won by a person who has not reached the age of twenty-one but who purchases a winning ticket or share in violation of this subsection shall be forfeited.

3. A ticket or share shall not be purchased by and a prize shall not be paid to the commissioner, a board member or employee of the lottery division, or to a spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent residing as a member of the same household in the principal residence of the commissioner, a board member, or an employee. A ticket or share purchased in violation of this subsection is void.

4. A person who, with intent to defraud, falsely makes, alters, forges, utters, passes, redeems, or counterfeits a lottery ticket or share or attempts to falsely make, alter, forge, utter, pass, redeem, or counterfeit a lottery ticket or share, or commits theft or attempts to commit theft of a lottery ticket or share, is guilty of a class "D" felony.

85 Acts, ch 33, §118; 86 Acts, ch 1042, §9; 89 Acts, ch 83, §22; 94 Acts, ch 1021, §6; 98 Acts, ch 1134, §2

99E.19 Distribution of prizes — unclaimed prizes.

1. The commissioner shall award the designated prize to the ticket or share holder upon presentation of the winning ticket or confirmation of a winning share.

All prizes awarded are Iowa earned income and are subject to state and federal income tax laws. An amount deducted from the prize for payment of a state tax, pursuant to section 422.16, subsection 1, shall be transferred by the commissioner to the department of revenue and finance on behalf of the prize winner.

Unclaimed prize money for the prize on a winning ticket or share shall be retained for a period deemed appropriate by the commissioner, subject to approval by the board. If a valid claim is not made for the money within the applicable period, the prize money shall be added to future prize pools and given to holders of winning tickets or shares in addition to amounts already allocated.

2. The prize shall be given to the person who presents a winning ticket. A prize may be given to only one person per winning ticket. However, a prize shall be divided between holders of winning tickets if there is more than one winning ticket. Payment of a prize may be made to the estate of a deceased prize winner or to another person pursuant to an appropriate judicial order. The commissioner is discharged of all further liability upon payment of a prize pursuant to this subsection. This section does not prohibit the making of a gift of a lottery ticket or share to a person.

85 Acts, ch 33, §119; 92 Acts, 2nd Ex, ch 1001, §234

99E.20 Deposit of receipts — lottery fund — audits.

1. The board shall adopt rules for the deposit as soon as possible in the lottery fund of money received by licensees from the sale of tickets or shares less the amount of compensation, if any, authorized under section 99E.16, subsection 6. Subject to approval of the board, the commissioner may require licensees to file with the commissioner reports of receipts and transactions in the sale of tickets or shares. The reports shall be in the form and contain the information the commissioner requires.

2. A lottery fund is created in the office of the treasurer of state. The fund consists of all revenues received from the sale of lottery tickets or shares and all other moneys lawfully credited or transferred to the fund. The commissioner shall certify monthly that portion of the fund that is transferred to the general fund of the state under section 99E.10 and shall cause that portion to be transferred to the general fund of the state. The commissioner shall certify before the twentieth of

each month that portion of the lottery fund resulting from the previous month's sales to be transferred to the general fund of the state.

3. The auditor of state or a certified public accounting firm appointed by the auditor shall conduct quarterly and annual audits of all accounts and transactions of the lottery and other special audits as the auditor of state, the general assembly, or the governor deems necessary. The auditor or a designee conducting an audit under this chapter shall have access and authority to examine any and all records of licensees necessary to determine compliance with this chapter and the rules adopted pursuant to this chapter.

85 Acts, ch 33, §120; 87 Acts, ch 231, §3; 90 Acts, ch 1255, §9; 99 Acts, ch 208, §4

99E.21 Liability and funding.

The board and the commissioner shall operate the lottery so that after the initial state appropriation, it shall be self-sustaining and self-funded. A claim for the payment of an expense of the lottery and the payment of a lottery prize shall not be made unless it is against the lottery fund or money collected from the sale of lottery tickets or shares. Except for the initial appropriation to the lottery, funds of the state shall not be used or obligated to pay the expenses of the lottery or prizes of the lottery.

85 Acts, ch 33, §121

99E.22 through 99E.30 Reserved.

APPROPRIATIONS

99E.31 Appropriations — 1986 fiscal year. Repealed by 94 Acts, ch 1199, § 19.

99E.32 Appropriations — 1987, 1988, 1989, and 1990 fiscal years. Repealed by 94 Acts, ch 1199, § 19.

99E.33 Determination of amount of appropriations — 1987, 1988, 1989, and 1990 fiscal years. Repealed by 94 Acts, ch 1199, § 19.

99E.34 Appropriations — ten fiscal years. Repealed by 99 Acts, ch 208, § 5.

CHAPTER 99F

GAMBLING — EXCURSION BOATS AND RACETRACKS

99F.1 Definitions.
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99F.15 Prohibited activities — penalties.
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99F.17 Distributors and manufacturers — licenses.
99F.17A Inspection of gambling games or implements of gambling.
99F.18 Tax on winnings.

99F.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Adjusted gross receipts"* means the gross receipts less winnings paid to wagerers.

2. *"Applicant"* means any person applying for an occupational license or applying for a license to operate an excursion gambling boat, or the officers and members of the board of directors of a qualified sponsoring organization located in Iowa applying for a license to conduct gambling games on an excursion gambling boat.

3. *"Cheat"* means to alter the selection of criteria which determine the result of a gambling game or the amount or frequency of payment in a gambling game.

4. *"Commission"* means the state racing and gaming commission created under section 99D.5.

5. *"Distributor"* means a person who sells, markets, or otherwise distributes gambling games or implements of gambling which are usable in the lawful conduct of gambling games pursuant to this chapter, to a licensee authorized to conduct gambling games pursuant to this chapter.

6. *"Dock"* means the location where an excursion gambling boat moors for the purpose of embarking passengers for and disembarking passengers from a gambling excursion.

7. *"Excursion gambling boat"* means a self-propelled excursion boat on which lawful gambling is authorized and licensed as provided in this chapter.

8. *"Gambling excursion"* means the time during which gambling games may be operated on an excursion gambling boat whether docked or during a cruise.

9. *"Gambling game"* means any game of chance authorized by the commission. However, for racetrack enclosures, *"gambling game"* does not include table games of chance or video machines. *"Gambling game"* does not include sports betting.

10. *"Gross receipts"* means the total sums wagered under this chapter.

11. *"Holder of occupational license"* means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in excursion boat gambling in Iowa.

12. *"Licensee"* means any person licensed under section 99F.7.

13. *"Manufacturer"* means a person who designs, assembles, fabricates, produces, constructs, or who otherwise prepares a product or a component part of a product of any implement of gambling usable in the lawful conduct of gambling games pursuant to this chapter.

14. *"Qualified sponsoring organization"* means a nonprofit corporation organized under the laws of this state, whether or not it is exempt from federal income taxation, or a person or association that can show to the satisfaction of the commission that the person or association is eligible for exemption from federal income taxation under section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code as defined in section 422.3.

15. *"Racetrack enclosure"* means the grandstand, clubhouse, turf club, or other areas of a licensed racetrack which an individual may enter only upon payment of an admission fee, or upon payment by another, at any time, based upon the individual's admittance, or upon presentation of authorized credentials. *"Racetrack enclosure"* also means any additional areas designated by the commission.

89 Acts, ch 67, §1; 92 Acts, ch 1203, §14; 94 Acts, ch 1021, §7 – 9; 95 Acts, ch 176, §2; 97 Acts, ch 9, §3

99F.2 Scope of provisions.

This chapter does not apply to the pari-mutuel system of wagering used or intended to be used in connection with the horse-race or dog-race meetings as authorized under chapter 99D, lottery or lotto games authorized under chapter 99E, or bingo or games of skill or chance authorized under chapter 99B.

89 Acts, ch 67, §2

99F.3 Excursion boat gambling authorized.

The system of wagering on a gambling game as provided by this chapter is legal, when conducted on an excursion gambling boat at authorized locations by a licensee as provided in this chapter.

89 Acts, ch 67, §3

99F.4 Powers.

The commission shall have full jurisdiction over and shall supervise all gambling operations governed by this chapter. The commission shall have the following powers and shall adopt rules pursuant to chapter 17A to implement this chapter:

1. To investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.

2. To license qualified sponsoring organizations, to license the operators of excursion gambling boats, to identify occupations within the excursion gambling boat operations which require licensing, and to adopt standards for licensing the occupations including establishing fees for the occupational licenses and licenses for qualified sponsoring organizations. The fees shall be paid to the commission and deposited in the general fund of the state. All revenue received by the commission under this chapter from license fees and admission fees shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60.

3. To adopt standards under which all excursion gambling boat operations shall be held and standards for the facilities within which the gambling operations are to be held. The commission may authorize the operation of gambling games on an excursion gambling boat which is also licensed to sell or serve alcoholic beverages, wine, or beer as defined in section 123.3.

4. To license the licensee of a pari-mutuel dog or horse racetrack enclosure subject to the provisions of this chapter and rules adopted pursuant to this chapter relating to gambling except as otherwise provided in section 99F.4A.

5. To enter the office, excursion gambling boat, facilities, or other places of business of a licensee to determine compliance with this chapter.

6. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for a violation, or institute appropriate legal action for enforcement, or both.

7. To require a licensee, an employee of a licensee or holder of an occupational license to remove a person violating a provision of this chapter or the commission rules, orders, or final orders, or other person deemed to be undesirable, from the excursion gambling boat facilities.

8. To require the removal of a licensee, an employee of a licensee, or a holder of an occupational license for a violation of this chapter or a commission rule or engaging in a fraudulent practice.

9. To require a licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's gambling activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the gambling activities of each licensee.

10. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the commission, it is necessary to enforce this chapter or the commission rules.

11. To keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

12. To assess a fine and revoke or suspend licenses.

13. To take any other action as may be reasonable or appropriate to enforce this chapter and the commission rules.

14. To require all licensees of gambling game operations to utilize a cashless wagering system whereby all players' money is converted to tokens, electronic cards, or chips which only can be used for wagering on the excursion gambling boat.

15. To determine the payouts from the gambling games authorized under this chapter. In making the determination of payouts, the commission shall consider factors that provide gambling and entertainment opportunities which are beneficial to the gambling licensees and the general public.

16. To set the payout rate for all slot machines.

17. To define the excursion season and the duration of an excursion. While an excursion gambling boat is docked, passengers may embark or disembark at any time during its business hours.

18. To provide for the continuous videotaping of all gambling activities on an excursion boat. The videotaping shall be performed under guidelines set by rule of the division of criminal investigation and the rules may require that all or part of the original tapes be submitted to the division on a timely schedule.

19. To provide for adequate security aboard each excursion gambling boat.

20. To establish minimum charges for admission to excursion gambling boats and regulate the number of free admissions.

21. Drug testing, as permitted by section 730.5, shall be required periodically, not less than every sixty days, of persons employed as captains, pilots, or physical operators of excursion gambling boats under the provisions of this chapter.

22. To provide that a licensee prominently display at each gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

89 Acts, ch 67, §4; 89 Acts, ch 139, §1; 91 Acts, ch 260, §1207; 93 Acts, ch 131, §4; 94 Acts, ch 1021, §10 – 12; 94 Acts, ch 1107, §35; 2000 Acts, ch 1231, §37

99F.4A Gambling games at pari-mutuel racetracks — fees and taxes.

1. Upon application, the commission shall license the licensee of a pari-mutuel dog or horse racetrack to operate gambling games at a pari-mutuel racetrack enclosure subject to the provisions of this chapter and rules adopted pursuant to this chapter relating to gambling except as otherwise provided in this section.

2. A license to operate gambling games shall be issued only to a licensee holding a valid license to conduct pari-mutuel dog or horse racing pursuant to chapter 99D on January 1, 1994.

3. A person holding a valid license pursuant to chapter 99D to conduct pari-mutuel wagering at a dog or horse racetrack is exempt from further investigation and examination for licensing to operate a gambling game pursuant to this chapter. However, the commission may order future investigations or examinations as the commission finds appropriate.

4. The fee imposed in section 99D.14, subsection 2, shall be collected for admission to a racetrack enclosure where gambling games are licensed to operate in lieu of the admission fee imposed in section 99F.10.

5. In lieu of the annual license fee specified in section 99F.5, the annual license fee for operating gambling games at a pari-mutuel racetrack shall be one thousand dollars.

6. The adjusted gross receipts received from gambling games shall be taxed at the same rates and the proceeds distributed in the same manner as provided in section 99F.11.

7. A licensee shall keep its books and records regarding the operation of gambling games in compliance with section 99F.12, as applicable.

8. A licensee shall pay a fee in an amount representing one hundred percent of the salary and other related costs of the division of criminal investigation of the department of public safety for

enforcement of this chapter.

94 Acts, ch 1021, §13; 2000 Acts, ch 1229, §19; 2002 Acts, 2nd Ex, ch 1003, §168, 172

Subsection 8 amended

99F.4B Rules.

The department of inspections and appeals shall cooperate to the maximum extent possible with the division of criminal investigation in adopting rules relating to the gaming operations in this chapter and chapter 99D.

94 Acts, ch 1199, §46

99F.5 Licenses for conducting gambling games on an excursion boat and for boat operators — applications — fee.

1. A qualified sponsoring organization may apply to the commission for a license to conduct gambling games on an excursion gambling boat as provided in this chapter. A person may apply to the commission for a license to operate an excursion gambling boat. The application shall be filed with the administrator of the commission at least ninety days before the first day of the next excursion season as determined by the commission, shall identify the excursion gambling boat upon which gambling games will be authorized, shall specify the exact location where the excursion gambling boat will be docked, and shall be in a form and contain information as the commission prescribes. The minimum passenger capacity of an excursion gambling boat is two hundred fifty persons.

2. The annual license fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew, for which the excursion gambling boat is registered. The annual fee shall be five dollars per person capacity.

89 Acts, ch 67, §5; 94 Acts, ch 1021, §14

99F.6 Requirements of applicant — fee — penalty.

1. A person shall not be issued a license to conduct gambling games on an excursion gambling boat or a license to operate an excursion gambling boat under this chapter, an occupational license, a distributor license, or a manufacturer license unless the person has completed and signed an application on the form prescribed and published by the commission. The application shall include the full name, residence, date of birth and other personal identifying information of the applicant that the commission deems necessary. The application shall also indicate whether the applicant has any of the following:

a. A record of conviction of a felony.

b. An addiction to alcohol or a controlled substance.

c. A history of mental illness.

2. An applicant shall submit pictures, fingerprints, and descriptions of physical characteristics to the commission in the manner prescribed on the application forms. The fingerprints may be submitted to the federal bureau of investigation by the department of public safety through the state central criminal history repository for the purpose of a national criminal history check.

3. The commission shall charge the applicant a fee set by the department of public safety, division of criminal investigation and bureau of identification, to defray the costs associated with the search and classification of fingerprints required in subsection 2 and background investigations conducted by agents of the division of criminal investigation. This fee is in addition to any other license fee charged by the commission.

4. *a.* Before a license is granted, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the applicant for a license to operate a gambling game operation on an excursion gambling boat. The applicant shall provide information on a form as required by the division of criminal investigation. A qualified sponsoring organization licensed to operate gambling games under this chapter shall distribute the receipts of all gambling games, less reasonable expenses, charges, taxes, fees, and deductions allowed under this chapter, as winnings to players or participants or shall distribute the receipts for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph *"b"*. However, if a licensee who is also licensed to conduct pari-mutuel wagering at a horse racetrack has unpaid debt from the pari-mutuel racetrack operations, the first receipts of the gambling games operated within the racetrack enclosure less reasonable operating expenses, taxes, and fees allowed under this chapter shall be first used to pay the annual indebtedness. The commission shall authorize, subject to the debt payments for horse racetracks and the provisions of paragraph *"b"* for dog racetracks, a licensee who is also licensed to conduct pari-mutuel dog or horse racing to use receipts from gambling games within the racetrack enclosure to supplement purses for races particularly for Iowa-bred horses pursuant to an agreement which shall be negotiated between the licensee and representatives of the dog or horse owners. A qualified sponsoring organization shall not make a contribution to a candidate, political committee, candidate's committee, state statutory political committee, county statutory political committee, national political party, or fund-raising event as these terms are defined in section 56.2. The membership of the board of directors of a qualified sponsoring organization shall represent a broad interest of the communities.

b. The commission shall authorize the licensees of pari-mutuel dog racetracks located in Dubuque county and Black Hawk county to conduct gambling games as provided in section 99F.4A if

the licensees schedule at least one hundred thirty performances of twelve live races each day during a season of twenty-five weeks. For the pari-mutuel dog racetrack located in Pottawattamie county, the commission shall authorize the licensee to conduct gambling games as provided in section 99F.4A if the licensee schedules at least two hundred ninety performances of twelve live races each day during a season of fifty weeks. The commission shall approve an annual contract to be negotiated between the annual recipient of the dog racing promotion fund and each dog racetrack licensee to specify the percentage or amount of gambling game proceeds which shall be dedicated to supplement the purses of live dog races. The parties shall agree to a negotiation timetable to insure no interruption of business activity. If the parties fail to agree, the commission shall impose a timetable. If the two parties cannot reach agreement, each party shall select a representative and the two representatives shall select a third person to assist in negotiating an agreement. The two representatives may select the commission or one of its members to serve as the third party. Alternately, each party shall submit the name of the proposed third person to the commission who shall then select one of the two persons to serve as the third party. All parties to the negotiations, including the commission, shall consider that the dog racetracks were built to facilitate the development and promotion of Iowa greyhound racing dogs in this state and shall negotiate and decide accordingly.

5. Before a license is granted, an operator of an excursion gambling boat shall work with the department of economic development to promote tourism throughout Iowa. Tourism information from local civic and private persons may be submitted for dissemination.

6. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

7. For the purposes of this section, applicant includes each member of the board of directors of a qualified sponsoring organization.

8. *a.* The licensee or a holder of an occupational license shall consent to the search, without a warrant, by agents of the division of criminal investigation of the department of public safety or commission employees designated by the secretary of the commission, of the licensee's or holder's person, personal property, and effects, and premises which are located on the excursion gambling boat or adjacent facilities under control of the licensee, in order to inspect or investigate for violations of this chapter or rules adopted by the commission pursuant to this chapter. The department or commission may also obtain administrative search warrants under section 808.14.

b. However, this subsection shall not be construed to permit a warrantless inspection of living quarters or sleeping rooms on the riverboat if all of the following are true:

(1) The licensee has specifically identified those areas which are to be used as living quarters or sleeping rooms in writing to the commission.

(2) Gaming is not permitted in the living quarters or sleeping rooms, and devices, records, or other items relating to the licensee's gaming operations are not stored, kept, or maintained in the living quarters or sleeping rooms.

(3) Alcoholic beverages are not stored, kept, or maintained in the living quarters or sleeping rooms except those legally possessed by the individual occupying the quarters or room.

c. The commission shall adopt rules to enforce this subsection.

89 Acts, ch 67, §6; 89 Acts, ch 231, §33; 94 Acts, ch 1021, §15; 95 Acts, ch 176, §3; 2002 Acts, ch 1044, §10, 11
Subsection 2 amended

99F.7 Licenses — terms and conditions — revocation.

1. If the commission is satisfied that this chapter and its rules adopted under this chapter applicable to licensees have been or will be complied with, the commission shall issue a license for a period of not more than three years to an applicant to own a gambling game operation and to an applicant to operate an excursion gambling boat. The commission shall decide which of the gambling games authorized under this chapter it will permit. The commission shall decide the number, location, and type of excursion gambling boats licensed under this chapter for operation on the rivers, lakes, and reservoirs of this state. The license shall set forth the name of the licensee, the type of license granted, the place where the excursion gambling boats will operate and dock, and the time and number of days during the excursion season and the off season when gambling may be conducted by the licensee. The commission shall not allow a licensee to conduct gambling games on an excursion gambling boat while docked during the off season if the licensee does not operate gambling excursions for a minimum number of days during the excursion season. The commission may delay the commencement of the excursion season at the request of a licensee.

2. A license shall only be granted to an applicant upon the express conditions that:

a. The applicant shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of an excursion gambling boat licensed under this section or of the system of wagering described in section 99F.9. This section does not prohibit a management contract approved by the commission.

b. The applicant shall not in any manner permit a person other than the licensee to have a

share, percentage, or proportion of the money received for admissions to the excursion gambling boat.

3. The commission shall require, as a condition of granting a license, that an applicant to operate an excursion gambling boat develop, and as nearly as practicable, recreate boats that resemble Iowa's riverboat history.

4. The commission shall require that an applicant utilize Iowa resources, goods and services in the operation of an excursion gambling boat. The commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of an excursion gambling boat come from Iowa and that a substantial amount of all services and entertainment be provided by Iowans.

5. The commission shall, as a condition of granting a license, require an applicant to provide written documentation that, on each excursion gambling boat:

a. An applicant shall make every effort to ensure that a substantial number of the staff and entertainers employed are residents of Iowa.

b. A section is reserved solely for activities and interests of persons under the age of twenty-one and is staffed to provide adequate supervision.

c. A section is reserved for promotion and sale of arts, crafts, and gifts native to and made in Iowa.

6. It is the intent of the general assembly that employees be paid at least twenty-five percent above the federal minimum wage level.

7. A license shall not be granted if there is substantial evidence that any of the following apply:

a. The applicant has been suspended from operating a game of chance or gambling operation in another jurisdiction by a board or commission of that jurisdiction.

b. The applicant has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed.

c. The applicant is not the true owner of the enterprise proposed.

d. The applicant is not the sole owner, and other persons have ownership in the enterprise, which fact has not been disclosed.

e. The applicant is a corporation and ten percent of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is to be issued unless the contract or option was disclosed to the commission and the commission approved the sale or transfer during the period of the license.

f. The applicant has knowingly made a false statement of a material fact to the commission.

g. The applicant has failed to meet a monetary obligation in connection with an excursion gambling boat.

8. A license shall not be granted if there is substantial evidence that the applicant is not of good repute and moral character or if the applicant has pled guilty to, or has been convicted of, a felony.

9. A licensee shall not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any game of chance.

10. *a.* A license to conduct gambling games on an excursion gambling boat in a county shall be issued only if the county electorate approves the conduct of the gambling games as provided in this subsection. The board of supervisors, upon receipt of a valid petition meeting the requirements of section 331.306, shall direct the commissioner of elections to submit to the registered voters of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat in the county. The proposition shall be submitted at a general election or at a special election called for that purpose. To be submitted at a general election, the petition must be received by the board of supervisors at least five working days before the last day for candidates for county offices to file nomination papers for the general election pursuant to section 44.4. If a majority of the county voters voting on the proposition favor the conduct of gambling games, the commission may issue one or more licenses as provided in this chapter. If a majority of the county voters voting on the proposition do not favor the conduct of gambling games, a license to conduct gambling games in the county shall not be issued.

b. If licenses to conduct gambling games and to operate an excursion gambling boat are in effect pursuant to a referendum as set forth in this section and are subsequently disapproved by a referendum of the county electorate, the licenses issued by the commission after a referendum approving gambling games on excursion gambling boats shall remain valid and are subject to renewal for a total of nine years from the date of original issue unless the commission revokes a license at an earlier date as provided in this chapter.

c. If a licensee of a pari-mutuel racetrack who held a valid license issued under chapter 99D as of January 1, 1994, requests a license to operate gambling games as provided in this chapter, the board of supervisors of a county in which the licensee of a pari-mutuel racetrack requests a license to operate gambling games shall submit to the county electorate a proposition to approve or disapprove the operation of gambling games at pari-mutuel racetracks at a special election at the earliest practicable time. If the operation of gambling games at the pari-mutuel racetrack is not approved by a majority of the county electorate voting on the proposition at the election, the commission shall not issue a license to operate gambling games at the racetrack.

d. If the proposition to operate gambling games on an excursion gambling boat or at a racetrack enclosure is approved by a majority of the county electorate voting on the proposition, the board of supervisors shall submit the same propo-

sition to the county electorate at the general election held in 2002 and, unless the operation of gambling games is terminated earlier as provided in this chapter or chapter 99D, at the general election held at each subsequent eight-year interval.

e. After a referendum has been held which defeated a proposal to conduct gambling games on excursion gambling boats or which defeated a proposal to conduct gambling games at a licensed pari-mutuel racetrack enclosure as provided in this section, another referendum on a proposal to conduct gambling games on an excursion gambling boat or at a licensed pari-mutuel racetrack shall not be held for at least two years.

11. If a docking fee is charged by a city or a county, a licensee operating an excursion gambling boat shall pay the docking fee one year in advance.

12. A licensee shall not be delinquent in the payment of property taxes or other taxes or fees or in the payment of any other contractual obligation or debt due or owed to a city or county.

13. An excursion gambling boat operated on inland waters of this state shall meet all of the requirements of chapter 462A and is subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by the department of natural resources or a license is issued under this chapter.

14. If a licensed excursion boat stops at more than one harbor and travels past a county without stopping at any port in that county, the commission shall require the excursion boat operator to develop a schedule for ports of call in which a county referendum has been approved, and the port of call has the necessary facilities to handle the boat. The commission may limit the schedule to only one port of call per county.

15. Upon a violation of any of the conditions listed in this section, the commission shall immediately revoke the license.

16. The commission shall require each licensee operating gambling games to post in conspicuous locations specified by the commission the average percentage payout from the gambling machines.

89 Acts, ch 67, §7; 89 Acts, ch 139, §2 – 5; 92 Acts, ch 1203, §15, 16; 93 Acts, ch 143, §42; 94 Acts, ch 1021, §16 – 18; 95 Acts, ch 49, §2; 95 Acts, ch 176, §4, 5

99F.8 Bond of licensee.

A licensee licensed under section 99F.7 shall post a bond to the state of Iowa before the license is issued in a sum as the commission shall fix, with sureties to be approved by the commission. The bond shall be used to guarantee that the licensee faithfully makes the payments, keeps its books and records and makes reports, and conducts its gambling games in conformity with this chapter and the rules adopted by the commission. The bond shall not be canceled by a surety on less than thirty days' notice in writing to the commission. If a bond is canceled and the licensee fails to file a new bond with the commission in the required amount on or before the effective date of cancellation, the licensee's license shall be revoked. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

89 Acts, ch 67, §8

99F.9 Wagering — age restrictions.

1. Except as permitted in this section, the licensee shall permit no form of wagering on gambling games.

2. Reserved.

3. The licensee may receive wagers only from a person present on a licensed excursion gambling boat or in a licensed racetrack enclosure.

4. The licensee shall exchange the money of each wagerer for tokens, chips, or other forms of credit to be wagered on the gambling games. However, nickels and quarters of legal tender may be used for wagering in lieu of tokens or other forms of credit. The licensee shall exchange the gambling tokens, chips, or other forms of wagering credit for money at the request of the wagerer.

5. A person under the age of twenty-one years shall not make a wager on an excursion gambling boat and shall not be allowed in the area of the excursion boat where gambling is being conducted. However, a person eighteen years of age or older may be employed to work in a gambling area.

6. A licensee shall not accept a credit card as defined in section 537.1301, subsection 16, to purchase coins, tokens, or other forms of credit to be wagered on gambling games.

89 Acts, ch 67, §9; 89 Acts, ch 139, §6; 91 Acts, ch 144, §1; 94 Acts, ch 1021, §19 – 24

99F.10 Admission fee — tax — local fees.

1. A qualified sponsoring organization conducting gambling games on an excursion gambling boat licensed under section 99F.7 shall pay the tax imposed by section 99F.11.

2. An excursion boat licensee shall pay to the commission an admission fee for each person embarking on an excursion gambling boat with a ticket of admission. The admission fee shall be set by the commission.

a. If tickets are issued which are good for more than one excursion, the admission fee shall be paid for each person using the ticket on each excursion that the ticket is used.

b. If free passes or complimentary admission tickets are issued, the licensee shall pay the same fee upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate.

c. However, the excursion boat licensee may issue fee-free passes to actual and necessary officials and employees of the licensee or other per-

sons actually working on the excursion gambling boat.

d. The issuance of fee-free passes is subject to the rules of the commission, and a list of all persons to whom the fee-free passes are issued shall be filed with the commission.

3. In addition to the admission fee charged under subsection 2 and subject to approval of excursion gambling boat docking by the voters, a city may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked within the city or a county may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked outside the boundaries of a city. The admission revenue received by a city or a county shall be credited to the city general fund or county general fund as applicable.

4. In determining the license fees and state admission fees to be charged as provided under section 99F.4 and this section, the commission shall use the amount appropriated to the commission plus the cost of salaries for no more than two special agents and no more than four gaming enforcement officers for each excursion gambling boat for the division of criminal investigation's excursion gambling boat activities and an amount for all licensees, not to exceed one hundred twenty-five thousand dollars, representing other associated costs of the division, as the basis for determining the amount of revenue to be raised from the license fees and admission fees. The division's salary costs shall be limited to eighty percent of the salary costs for special agents and eighty percent of the salary costs for gaming enforcement for personnel assigned to excursion gambling boats who enforce laws and rules adopted by the commission.

5. No other license tax, permit tax, occupation tax, excursion fee, or taxes on fees shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

6. No other excise tax shall be levied, assessed, or collected from the licensee relating to gambling excursions or admission charges by the state or by a political subdivision, except as provided in this chapter.

89 Acts, ch 67, §10; 91 Acts, ch 267, §605; 95 Acts, ch 207, §22; 2000 Acts, ch 1229, §18

99F.10A Payment of the division of criminal investigation costs.

A licensee shall pay twenty percent of the division's salary costs for special agents and twenty percent of the division's salary costs for gaming enforcement plus any amount over one hundred twenty-five thousand dollars in direct and indirect support costs, in addition to that assessed under section 99F.10, subsection 4. The costs assessed in this section shall be deposited in the general fund of the state.

2002 Acts, 2nd Ex, ch 1003, §169, 172
NEW section

99F.11 Wagering tax — rate — allocations.

A tax is imposed on the adjusted gross receipts received annually from gambling games authorized under this chapter at the rate of five percent on the first one million dollars of adjusted gross receipts, at the rate of ten percent on the next two million dollars of adjusted gross receipts, and at the rate of twenty percent on any amount of adjusted gross receipts over three million dollars. However, beginning January 1, 1997, the rate on any amount of adjusted gross receipts over three million dollars from gambling games at racetrack enclosures is twenty-two percent and shall increase by two percent each succeeding calendar year until the rate is thirty-six percent. The taxes imposed by this section shall be paid by the licensee to the treasurer of state within ten days after the close of the day when the wagers were made and shall be distributed as follows:

1. If the gambling excursion originated at a dock located in a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the city in which the dock is located and shall be deposited in the general fund of the city. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county.

2. If the gambling excursion originated at a dock located in a part of the county outside a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the Iowa city nearest to where the dock is located and shall be deposited in the general fund of the city.

3. Three-tenths of one percent of the adjusted gross receipts shall be deposited in the gambling treatment fund specified in section 99E.10, subsection 1, paragraph *"a"*.

4. The remaining amount of the adjusted gross receipts tax shall be credited to the general fund of the state.

89 Acts, ch 67, §11; 89 Acts, ch 139, §7; 94 Acts, ch 1021, §25; 94 Acts, ch 1186, §33; 98 Acts, ch 1221, §11

99F.12 Licensees — records — reports — supervision.

A licensee shall keep its books and records so as to clearly show all of the following:

1. The total number of admissions to gambling excursions conducted by the licensee on each day, including the number of admissions upon free

passes or complimentary tickets.

2. The amount received daily from admission fees.

3. The total amount of money wagered during each excursion day and the adjusted gross receipts for the day.

The licensee shall furnish to the commission reports and information as the commission may require with respect to its activities. The gross receipts and adjusted gross receipts from gambling shall be separately handled and accounted for from all other moneys received from operation of an excursion gambling boat. The commission may designate a representative to board a licensed excursion gambling boat, who shall have full access to all places within the enclosure of the boat, who shall directly supervise the handling and accounting of all gross receipts and adjusted gross receipts from gambling, and who shall supervise and check the admissions. The compensation of a representative shall be fixed by the commission but shall be paid by the licensee.

The books and records kept by a licensee as provided by this section are public records and the examination, publication, and dissemination of the books and records are governed by the provisions of chapter 22.

89 Acts, ch 67, §12; 89 Acts, ch 139, §8

99F.13 Annual audit of licensee operations.

Within ninety days after the end of the licensee's fiscal year, the licensee shall transmit to the commission an audit of the financial transactions and condition of the licensee's total operations. All audits shall be conducted by certified public accountants registered or licensed in the state of Iowa under chapter 542.

89 Acts, ch 67, §13; 91 Acts, ch 166, §7; 2001 Acts, ch 55, §22, 38

2001 amendment to this section is effective July 1, 2002; 2001 Acts, ch 55, §38

Section amended

99F.14 Annual report of commission.

The commission shall make an annual report to the governor, for the period ending December 31 of each year. Included in the report shall be an account of the commission's actions, its financial position and results of operation under this chapter, the practical results attained under this chapter, and any recommendations for legislation which the commission deems advisable.

89 Acts, ch 67, §14

99F.15 Prohibited activities — penalties.

1. A person is guilty of an aggravated misdemeanor for any of the following:

a. Operating a gambling excursion where wagering is used or to be used without a license issued by the commission.

b. Operating a gambling excursion where wagering is permitted other than in the manner specified by section 99F.9.

c. Acting, or employing a person to act, as a shill or decoy to encourage participation in a gambling game.

2. A person knowingly permitting a person under the age of twenty-one years to make a wager is guilty of a simple misdemeanor.

3. A person wagering or accepting a wager at any location outside an excursion gambling boat or a racetrack enclosure is in violation of section 725.7.

4. A person commits a class "D" felony and, in addition, shall be barred for life from excursion gambling boats under the jurisdiction of the commission, if the person does any of the following:

a. Offers, promises, or gives anything of value or benefit to a person who is connected with an excursion gambling boat operator including, but not limited to, an officer or employee of a licensee or holder of an occupational license pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.

b. Solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with an excursion gambling boat including, but not limited to, an officer or employee of a licensee, or holder of an occupational license, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.

c. Uses a device to assist in any of the following:

(1) In projecting the outcome of the game.

(2) In keeping track of the cards played.

(3) In analyzing the probability of the occurrence of an event relating to the gambling game.

(4) In analyzing the strategy for playing or betting to be used in the game except as permitted by the commission.

d. Cheats at a gambling game.

e. Manufactures, sells, or distributes any cards, chips, dice, game or device which is intended to be used to violate any provision of this chapter.

f. Instructs a person in cheating or in the use of a device for that purpose with the knowledge or intent that the information or use conveyed may be employed to violate any provision of the chapter.

g. Alters or misrepresents the outcome of a gambling game on which wagers have been made after the outcome is made sure but before it is revealed to the players.

h. Places a bet after acquiring knowledge, not available to all players, of the outcome of the gambling game which is the subject of the bet or to aid a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome.

i. Claims, collects, or takes, or attempts to claim, collect, or take, money or anything of value in or from the gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an amount of money or thing of value of greater value than the amount won.

j. Knowingly entices or induces a person to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter with the intent that the other person plays or participates in that gambling game.

k. Uses counterfeit chips or tokens in a gambling game.

l. Knowingly uses, other than chips, tokens, coin, or other methods or credit approved by the commission, legal tender of the United States of America, or uses coin not of the denomination as the coin intended to be used in the gambling games.

m. Has in the person's possession any device intended to be used to violate a provision of this chapter.

n. Has in the person's possession, except a gambling licensee or employee of a gambling licensee acting in furtherance of the employee's employment, any key or device designed for the purpose of opening, entering, or affecting the operation of a gambling game, drop box, or an electronic or mechanical device connected with the gambling game or for removing coins, tokens, chips or other contents of a gambling game.

5. The possession of more than one of the devices described in subsection 4, paragraphs *"c"*, *"e"*, *"m"*, or *"n"*, permits a rebuttable inference that the possessor intended to use the devices for cheating.

6. Except for wagers on gambling games or exchanges for money as provided in section 99F.9, subsection 4, a licensee who exchanges tokens, chips, or other forms of credit to be used on gambling games for anything of value commits a simple misdemeanor.

89 Acts, ch 67, §15; 89 Acts, ch 139, §9; 91 Acts, ch 144, §2; 94 Acts, ch 1021, §27, 28

99F.16 Forfeiture of property.

1. Anything of value, including all traceable proceeds including but not limited to real and personal property, moneys, negotiable instruments, securities, and conveyances, is subject to forfeiture to the state of Iowa if the item was used for any of the following:

a. In exchange for a bribe intended to affect the outcome of a gambling game.

b. In exchange for or to facilitate a violation of this chapter.

2. Except for coins authorized in section 99F.9, subsection 4, all moneys, coin, and currency found in close proximity of wagers, or of records of wagers are presumed forfeited. The burden of proof is upon the claimant of the property to rebut this presumption.

3. Subsections 1 and 2 do not apply if the act or omission which would give rise to the forfeiture was committed or omitted without the owner's knowledge or consent.

4. Upon receipt of forfeited property, the county attorney or attorney general shall permit an owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within thirty days the option is terminated, unless the time for exercising the option is extended by the county attorney or attorney general.

5. A person having a valid, recorded lien or property interest in forfeited property, which has not been purchased pursuant to subsection 4, shall either be reimbursed to the extent of the nonforfeitable interest or to the extent that the sale of the item produces sufficient revenue to do so, whichever amount is less. The sale of forfeited property should be conducted in a manner which is commercially reasonable and calculated to provide a sufficient return to cover the costs of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date upon which property becomes forfeitable.

6. This section does not preclude a civil suit by an owner of an interest in forfeited property against the party who, by criminal use, caused the property to become forfeited to the state.

89 Acts, ch 67, §16; 91 Acts, ch 167, §1; 94 Acts, ch 1021, §29

99F.17 Distributors and manufacturers — licenses.

1. A manufacturer or distributor of gambling games or implements of gambling shall annually apply for a license upon a form prescribed by the commission before the first day of April in each year and shall submit the appropriate license fee. An applicant shall provide the necessary information as the commission requires. The license fee for a distributor is one thousand dollars, and the license fee for a manufacturer is two hundred fifty dollars. The license fees shall be credited to the general fund of the state as provided for in section 99F.4, subsection 2.

2. A licensee shall acquire all gambling games or implements of gambling from a distributor licensed pursuant to this chapter. A licensee shall not sell or give gambling games or implements of gambling to another licensee.

3. A licensee shall not be a manufacturer or distributor of gambling games or implements of gambling.

4. The commission may suspend or revoke the license of a distributor or manufacturer for a violation of this chapter or a rule adopted pursuant to this chapter committed by the distributor or manufacturer or an officer, director, employee, or agent of the manufacturer or distributor.

5. The manufacturer or distributor of gambling games or implements of gambling shall provide the commission with a copy of the invoice showing the items shipped to the licensee and a copy of the bill of lading.

6. Subsection 2 does not apply in the following cases, if approved by the commission:

a. Gambling games or implements of gambling previously installed on an excursion gambling boat licensed in another jurisdiction.

b. Gambling games or implements of gambling previously installed on an excursion gambling boat licensed in this state.

89 Acts, ch 67, §17; 92 Acts, ch 1203, §18; 94 Acts, ch 1100, §6, 7; 94 Acts, ch 1107, §37

99F.17A Inspection of gambling games or implements of gambling.

A licensed manufacturer or distributor of gambling games or implements of gambling shall deliver the gambling games or implements of gambling to a location approved by the commission for inspection and approval prior to being placed in operation. Gambling games or implements of gambling acquired pursuant to section 99F.17, subsection 6, shall be inspected and approved by the commission prior to being placed in operation. Gambling games or implements of gambling passing inspection and receiving approval may then be placed in operation on an excursion gambling boat.

92 Acts, ch 1207, §3; 94 Acts, ch 1100, §8

99F.18 Tax on winnings.

All winnings derived from slot machines operated pursuant to this chapter are Iowa earned income and are subject to state and federal income tax laws. An amount deducted from winnings for payment of the state tax, pursuant to section 422.16, subsection 1, shall be remitted to the department of revenue and finance on behalf of the winner.

92 Acts, 2nd Ex, ch 1001, §235

SUBTITLE 5

FIRE CONTROL

CHAPTER 100

STATE FIRE MARSHAL

Arson investigators for division of criminal investigation, §80.9(4)
Enforcement of law relating to flammable liquids and liquefied gases, chapter 101
Rules for hotels, food establishments, and food processing plants, §137C.18, 137F.15
See also §135C.9, for health care facilities

100.1 Fire marshal.
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100.3 Reports of fires and emergency responses.
100.4 Penalty for nonreporting.
100.5 Reports — when public records.
100.6 Testimony under oath.
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100.24 and 100.25 Repealed by 74 Acts, ch 1090, §211.
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100.35 Rules of marshal.
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100.37 Repealed by 76 Acts, ch 1245(4), §525.
100.38 Conflicting statutes.
100.39 Fire extinguishers in high-rise buildings.
100.40 Marshal may prohibit open burning on request.
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ARSON INSPECTION WARRANTS

100.51 Application for warrant.
100.52 Grounds for issuance.
100.53 Warrant requirements.
100.54 Execution of warrant.

100.1 Fire marshal.

The chief officer of the division of fire protection in the department of public safety shall be known as the state fire marshal.

The fire marshal's duties shall be as follows:

1. To enforce all laws of the state relating to the suppression of arson, and to apprehend those persons suspected of arson;

2. To investigate into the cause, origin and circumstances of fires;

3. To promote fire safety and reduction of loss by fire through educational methods;

4. To enforce all laws, and the rules and regulations of the Iowa department of public safety, concerned with:

a. The prevention of fires;

b. The storage, transportation, handling, and use of flammable liquids, combustibles, and explosives;

c. The storage, transportation, handling and use of liquid petroleum gas;

d. The electric wiring and heating, and adequate means of exit in case of fire, from churches, schools, hotels, theaters, amphitheaters, asylums, hospitals, health care facilities as defined in section 135C.1, college buildings, lodge halls, public meeting places, and all other structures in which persons congregate from time to time, whether publicly or privately owned;

5. To promulgate fire safety rules. The state

fire marshal shall have exclusive right to promulgate fire safety rules as they apply to enforcement or inspection requirements by the state fire marshal, but the rules shall be promulgated only after public hearing. Wherever by any statute the fire marshal or the department of public safety is authorized or required to promulgate, proclaim, or amend rules and minimum standards regarding fire hazards or fire safety or protection in any establishment, building or structure, the rules and standards shall promote and enforce fire safety, fire protection and the elimination of fire hazards as the rules may relate to the use, occupancy and construction of the buildings, establishments or structures. The word *"construction"* shall include, but is not limited to, electrical wiring, plumbing, heating, lighting, ventilation, construction materials, entrances and exits, and all other physical conditions of the building which may affect fire hazards, safety or protection. The rules and minimum standards shall be in substantial compliance except as otherwise specifically provided in this chapter, with the standards of the national fire protection association relating to fire safety as published in the national fire codes.

6. To adopt rules designating a fee to be assessed to each building, structure, or facility for which a fire safety inspection by the state fire marshal is required as a condition of licensure. The fee designated by rule shall be set in an amount that is reasonably related to the costs of conducting the applicable inspection. The fees collected by the state fire marshal shall be deposited in the general fund of the state.

[S13, §2468-a, -m; C24, 27, 31, 35, 39, §**1619;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.1; 81 Acts, ch 46, §1]

92 Acts, ch 1163, §25; 2000 Acts, ch 1229, §20

100.2 Duties of fire officials.

The chief of the fire department or the chief's designee of every city or township in which a fire department is established or the chief of the fire department or the chief's designee responding to every township fire where there is a contract for fire protection in effect shall investigate into the cause, origin and circumstances of every fire occurring in the city or township by which property has been destroyed or damaged or which results in bodily injury to a person, and determine whether the fire was the result of natural causes, negligence or design. The state fire marshal may assist in the investigation or may direct the investigation if the fire marshal finds it necessary.

[S13, §2468-d, -e; C24, 27, 31, 35, 39, §**1624;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.2]

84 Acts, ch 1095, §1

100.3 Reports of fires and emergency responses.

When death, serious bodily injury, or property damage in excess of two hundred thousand dollars has occurred as a result of a fire, or if arson is suspected, the fire official required by section 100.2 to make fire investigations, shall notify the state fire marshal's division immediately. For all other fires causing an estimated damage of fifty dollars or more or emergency responses by the fire service, the fire official required by section 100.2 to investigate shall file a report with the fire marshal's division within ten days following the end of the month. The report shall indicate all fire incidents occurring which have an estimated damage of fifty dollars or more and state for each incident the name of the owners and occupants of the property at the time of the fire, the value of the property, the estimated total loss to the property, the origin of the fire as determined by investigation, and other facts, statistics, and circumstances concerning the fire incident. The report on each emergency response shall include the nature of the incident and other facts, statistics and circumstances concerning the emergency response.

[S13, §2468-e; C24, 27, 31, 35, 39, §**1625;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.3]

84 Acts, ch 1095, §2; 86 Acts, ch 1018, §1

100.4 Penalty for nonreporting.

The failure or refusal of a fire official to make an investigation or report required by sections 100.2 and 100.3 is a simple misdemeanor.

[S13, §2468-e; C24, 27, 31, 35, 39, §**1626;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.4]

84 Acts, ch 1095, §3

100.5 Reports — when public records.

Reports required by section 100.3 shall be kept on file for public inspection in the fire marshal's office. In those circumstances where disclosure of particular facts in the reports would plainly and seriously jeopardize an investigation of criminal activity, the portions of the reports pertaining to the facts are classified as peace officers' investigative reports and subject to section 22.7.

Reports and records on investigations made by the state fire marshal's office are the same as peace officers' investigative reports and subject to section 22.7.

[S13, §2468-f; C24, 27, 31, 35, 39, §**1627;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.5; 81 Acts, ch 47, §1]

84 Acts, ch 1095, §4

Arson investigation disclosures; see chapter 100A

100.6 Testimony under oath.

The fire marshal or the fire marshal's designated subordinate shall, when in the fire marshal's or subordinate's opinion further investigation is necessary, take or cause to be taken the testimony under oath of all persons supposed to have knowledge of any facts, or to have means of knowledge in relation to the matter in which an ex-

amination is herein required to be made, and shall cause the same to be reduced to writing.

[S13, §2468-g; C24, 27, 31, 35, 39, §**1628;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.6]

100.7 Oaths — attendance of witnesses.

The fire marshal and the fire marshal's designated subordinates shall each have power in any county in the state to administer an oath and compel the attendance of witnesses before them, or either of them, to testify in relation to any matter which is by the provisions of this chapter a subject of inquiry and investigation, and may require the production of any books, papers, or documents necessary for such investigation.

[S13, §2468-h; C24, 27, 31, 35, 39, §**1629;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.7]

100.8 Refusal to testify or produce books.

Any witness who refuses to be sworn, except as otherwise provided by law, or who disobeys any lawful order of said fire marshal, or the fire marshal's designated subordinates, or who fails to produce any books, papers, or documents touching any matter under examination, shall be guilty of a simple misdemeanor.

[S13, §2468-h; C24, 27, 31, 35, 39, §**1630;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.8]

100.9 Crimes in connection with fires.

If the fire marshal shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, the fire marshal shall cause such person to be arrested and charged with the offense, or either of them, and shall furnish to the proper county attorney all such evidence, together with the names of witnesses and all of the information obtained, including a copy of all matter and testimony taken in the case.

[S13, §2468-g; C24, 27, 31, 35, 39, §**1631;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.9]

100.10 Authority to enter and inspect.

The state fire marshal, and the fire marshal's designated subordinates, in the performance of their duties, shall have authority to enter any building or premises and to examine the same and the contents thereof.

[S13, §2468-i; C24, 27, 31, 35, 39, §**1632;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.10]

100.11 Fire escapes.

It shall be the duty of the fire marshal to enforce all laws relating to fire escapes.

[C39, §**1632.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.11]

100.12 Authority for inspection — orders.

The chief of a fire department or an authorized subordinate who is trained in fire prevention safety standards may enter a building or premises at a reasonable hour to examine the building or premises and its contents. The examining official shall order the correction of a condition which is in violation of this chapter, a rule adopted under this chapter, or a city or county fire safety ordinance. The order shall be in writing or, if the danger is imminent, orally followed by a written order. The examining official shall enforce the order in accordance with the applicable law or ordinance. At the request of the examining official the state fire marshal may assist in an enforcement action.

[C31, 35, §1632-c1; C39, §**1632.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.12; 82 Acts, ch 1157, §1]

84 Acts, ch 1095, §5

100.13 Violations — orders.

1. If a person has violated or is violating a provision of this chapter or a rule adopted pursuant to this chapter, the state fire marshal, the chief of any fire department, or the fire prevention officer of a fire department organized under chapter 400 may issue an order directing the person to desist in the practice which constitutes the violation and to take corrective action as necessary to ensure that the violation will cease. The order shall be in writing and shall specify a reasonable time by which the person shall comply with the order. The person to whom the order is issued may appeal the order as provided in chapter 17A. On appeal, the administrative law judge may affirm, modify, or vacate the order. Judicial review may be sought in accordance with chapter 17A.

2. Notwithstanding any other provision of law to the contrary, if the state fire marshal determines that an emergency exists respecting any matter affecting or likely to affect the public safety, the fire marshal may issue any order necessary to terminate the emergency without notice or hearing. An emergency order is binding and effective immediately, until or unless the order is modified, vacated, or stayed at an administrative hearing or by a district court.

[S13, §2468-j; C24, 27, 31, 35, 39, §**1633;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.13; 82 Acts, ch 1157, §2]

94 Acts, ch 1078, §1

100.14 Legal proceedings — penalties — injunctive relief.

At the request of the state fire marshal, the county attorney shall institute any legal proceedings on behalf of the state necessary to obtain compliance or enforce the penalty provisions of this chapter or rules or orders adopted or issued pursuant to this chapter, including, but not limited to,

a legal action for injunctive relief. The county attorney or any other attorney acting on behalf of the chief of a fire department or a fire prevention officer may institute legal proceedings, including, but not limited to, a legal action for injunctive relief, to obtain compliance or enforce the penalty provisions or orders issued pursuant to section 100.13.

[C24, 27, 31, 35, 39, §**1634;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.14]

94 Acts, ch 1078, §2

100.15 Hearing on review. Repealed by 94 Acts, ch 1078, § 9.

100.16 Judicial review — court costs.

1. Judicial review of actions of the fire marshal may be sought in accordance with the terms of the Iowa administrative procedure Act pursuant to chapter 17A. If legal proceedings have been instituted pursuant to section 100.14, all related issues which could otherwise be raised in a proceeding for judicial review shall be raised in the legal proceedings instituted pursuant to section 100.14.

2. Upon judicial review of the fire marshal's action, if the court affirms the agency action, the court shall tax all court costs of the review proceeding against the appellant. However, if the court reverses, revokes, or annuls the fire marshal's action, the court shall tax all court costs of the review proceeding against the agency. If the fire marshal's action is modified or the matter is remanded to the agency for further proceedings, the court shall apportion the court costs within the discretion of the court.

[S13, §2468-j; C24, 27, 31, 35, 39, §**1636;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.16]

94 Acts, ch 1078, §3

100.17 Bond — suspension of order. Repealed by 94 Acts, ch 1078, § 9.

100.18 Smoke detectors.

1. As used in this section:

a. "Dormitory" means a residential building or portion of a building at an educational institution which houses students in rooms not individually equipped with cooking facilities.

b. "Multiple-unit residential building" means a residential building, an apartment house, or a portion of a building or an apartment house with two or more units, hotel, motel, dormitory, or rooming house.

c. "Smoke detector" means a device which detects visible or invisible particles of combustion and which incorporates control equipment and an alarm-sounding unit operated from a power supply either in the unit or obtained at the point of installation.

2. *a.* Except as provided in subsection 3, multiple-unit residential buildings and single-family dwellings the construction of which is begun on or after July 1, 1991, shall include the installation of smoke detectors in compliance with the rules established by the state fire marshal under subsection 4.

b. The rules shall require the installation of smoke detectors in existing single-family rental units and multiple-unit residential buildings. Existing single-family dwelling units shall be equipped with approved smoke detectors. A person who files for a homestead credit pursuant to chapter 425 shall certify that the single-family dwelling unit for which the credit is filed has a smoke detector installed in compliance with this section, or that one will be installed within thirty days of the date the filing for the credit is made. The state fire marshal shall adopt rules and establish appropriate procedures to administer this subsection.

c. An owner or an owner's agent of a multiple-unit residential building or single-family dwelling shall supply light-emitting smoke detectors, upon request, for a tenant with a hearing impairment.

3. This section does not require the installation of smoke detectors in multiple-unit residential buildings which, on July 1, 1981, are equipped with heat detection devices or a sprinkler system with alarms approved by the state fire marshal.

This section does not require the installation of smoke detectors in hotels, motels, and dormitories equipped with an automatic smoke detection system approved by the state fire marshal.

4. The state fire marshal shall enforce the requirements of subsection 2 and may implement a program of inspections to monitor compliance with the provisions of that subsection. Upon inspection, the state fire marshal shall issue a written notice to the owner or manager of a multiple-unit residential building or single-family dwelling informing the owner or manager of compliance or noncompliance with this section. The state fire marshal may contract with any political subdivision without fee assessed to either the state fire marshal or the political subdivision, for the performance of the inspection and notification responsibilities. The inspections authorized under this section are limited to the placement, repair, and operability of smoke detectors. Any broader inspection authority is not derived from this section. The state fire marshal shall adopt rules under chapter 17A as necessary to enforce this section including rules concerning the placement of smoke detectors and the use of acceptable smoke detectors. The smoke detectors shall display a label or other identification issued by an approved testing agency or another label specifically approved by the state fire marshal.

5. The inspection of a building or notification of compliance or noncompliance under this section is not the basis for a legal cause of action against the political subdivision, state fire marshal, the fire marshal's subordinates, chiefs of local fire de-

partments, building inspectors, or other fire, building, or safety officials due to a failure to discover a latent defect in the course of the inspection.

6. If a smoke detector is found to be inoperable the owner or manager of the multiple-unit residential building or single-family dwelling shall correct the situation within fourteen days after written notification to the owner or manager by the tenant, guest, roomer, state fire marshal, fire marshal's subordinates, chiefs of local fire departments, building inspectors, or other fire, building, or safety officials. If the owner or manager of a multiple-unit residential building fails to correct the situation within the fourteen days the tenant, guest, or roomer may cause the smoke detector to be repaired or purchase and install a smoke detector required under this section and may deduct the repair cost or purchase price from the next rental payment or payments made by the tenant, guest, or roomer. However, a lessor or owner may require a lessee, tenant, guest, or roomer who has a residency of longer than thirty days to provide the battery for a battery operated smoke detector.

7. No person may render inoperable a smoke detector, which is required to be installed by this section, by tampering.

8. A person who violates a provision of this section or a rule adopted pursuant to this section is guilty of a simple misdemeanor.

[81 Acts, ch 45, §1, 2; 82 Acts, ch 1157, §7]

83 Acts, ch 198, §13; 91 Acts, ch 64, §1 – 6; 94 Acts, ch 1078, §4

100.19 Fire hazard analyses. Repealed by 94 Acts, ch 1078, § 9.

100.20 County attorney.

The county attorney shall represent the state and the fire marshal, but not to the exclusion of any other attorney who may be engaged in said cause.

[C24, 27, 31, 35, 39, §**1640;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.20]

100.21 and 100.22 Repealed by 74 Acts, ch 1090, § 211.

100.23 Costs. Repealed by 94 Acts, ch 1078, § 9. See § 100.16.

100.24 and 100.25 Repealed by 74 Acts, ch 1090, § 211.

100.26 Time for compliance with order — penalty.

If a petition of review has not been filed or the court on review has affirmed or modified an order for the removal, destruction, or repair of a building, or the removal of any of its contents, or the change of any of its conditions, the owner, lessee, or occupant shall comply with the order within thirty days after the delivery of the order or a copy of the order to the person, either personally or by certified letter to the last known address, or by service upon the person's appointed agent. Failure of the owner, lessee, or occupant to comply with the order shall subject the owner, lessee, or occupant to a penalty of ten dollars for each day of failure or neglect after the expiration of the period. The penalty shall be recovered in the name of the state and paid into the treasury of the political subdivision which issues the order or the treasurer of state if the order is issued by the state. If the owner, lessee, or occupant cannot reasonably comply with the order within thirty days and a good faith effort at compliance has been made within thirty days, the owner, lessee, or occupant shall not be subject to a penalty under this section. However, the penalty may be imposed on the person upon a failure to continue the good faith compliance with the order.

[S13, §2468-j; C24, 27, 31, 35, 39, §**1646;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.26]

84 Acts, ch 1095, §6; 94 Acts, ch 1078, §5

100.27 Refusal to obey orders. Repealed by 94 Acts, ch 1078, § 9.

100.28 Notice and hearing. Repealed by 94 Acts, ch 1078, § 9.

100.29 Entry of tax. Repealed by 94 Acts, ch 1078, § 9.

100.30 Investigation may be private.

Investigation by or under the direction of the state fire marshal or the fire marshal's designated subordinates may in their discretion be private. They may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not allowed to communicate with each other until they have been examined.

[C24, 27, 31, 35, 39, §**1650;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.30]

100.31 Fire and tornado drills in public schools.

It shall be the duty of the state fire marshal and the fire marshal's designated subordinates to require all private and public school officials and teachers to conduct not less than four fire drills and not less than four tornado drills in all school buildings during each school year when school is in session; and to require the officials and teachers of all schools to keep all doors and exits of their respective rooms and buildings unlocked when occupied during school hours or when such areas are being used by the public at other times. Not less

than two drills of each type shall be conducted between July 1 and December 31 of each year and not less than two drills of each type shall be conducted between January 1 and June 30 of each year.

Every school building with two or more classrooms shall have a warning system for fires of a type approved by the underwriters' laboratories and by the state fire marshal. The warning system shall be used only for fire drills or as a warning for emergency. Schools may modify the fire warning system for use as a tornado warning system or shall install a separate tornado warning system. Every school building shall also be equipped with portable fire extinguishers, with the type, size and number in accordance with national fire protection association standards and approved by the state fire marshal.

The state fire marshal or the fire marshal's deputies shall cause each public or private school, college or university to be inspected at least once every two years to determine whether each school meets the fire safety standards of this Code and is free from other fire hazards. Provided, however, that cities which employ fire department inspectors shall cause such inspections to be made.

[S13, §2468-k; C24, 27, 31, 35, 39, §**1651;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.31]

94 Acts, ch 1078, §6

100.32 Bulletin. Repealed by 98 Acts, ch 1008, § 4.

100.33 Annual report.

The state fire marshal shall file with the governor annually, at the time provided by law, a detailed report of the fire marshal's official acts and of the affairs of the fire marshal's office which report shall be published and distributed as the reports of other state officers.

[S13, §2468-n; C24, 27, 31, 35, 39, §**1653;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §100.33]

100.34 Fee for fires reported. Repealed by 91 Acts, ch 268, § 519.

100.35 Rules of marshal.

The fire marshal shall adopt, and may amend rules under chapter 17A, which include standards relating to exits and exit lights, fire escapes, fire protection, fire safety and the elimination of fire hazards, in and for churches, schools, hotels, theaters, amphitheaters, hospitals, health care facilities as defined in section 135C.1, boarding homes or housing, rest homes, dormitories, college buildings, lodge halls, club rooms, public meeting places, places of amusement, apartment buildings, food establishments as defined in section 137F.1, and all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned. Violation of a rule adopted by the fire marshal is a simple misdemeanor. However, upon proof that the fire marshal gave written notice to the defendant of the violation, and proof that the violation constituted a clear and present danger to life, and proof that the defendant failed to eliminate the condition giving rise to the violation within thirty days after receipt of notice from the fire marshal, the penalty is that provided by law for a serious misdemeanor. Each day of the continuing violation of a rule after conviction of a violation of the rule is a separate offense. A conviction is subject to appeal as in other criminal cases.

Rules by the fire marshal affecting the construction of new buildings, additions to buildings or rehabilitation of existing buildings and related to fire protection, shall be substantially in accord with the provisions of the nationally recognized building and related codes adopted as the state building code or with codes adopted by a local subdivision which are in substantial accord with the codes comprising the state building code.

The rules adopted by the state fire marshal under this section shall provide standards for fire resistance of cellulose insulation sold or used in this state, whether for public or private use. The rules shall provide for approval of the cellulose insulation by at least one nationally recognized independent testing laboratory.

[S13, §2514-j, -k, -l; SS15, §2514-i, -n, -o, 4999-a10; C24, 27, 31, 35, 39, §**1671, 2843 – 2850;** C46, 50, 54, §103.12, 170.38 – 170.45; C58, §100.35, 103.12, 170.38 – 170.45; C62, 66, 71, 73, 75, 77, §100.35, 103.12, 107.38; C79, 81, §100.35, 103.12, 170.38, 170A.9, 170B.13; 81 Acts, ch 46, §2, 4; 82 Acts, ch 1157, §3]

88 Acts, ch 1278, §23; 98 Acts, ch 1162, §2, 30

100.36 Toxic extinguishers prohibited — exception. Repealed by 87 Acts, ch 10, § 1.

100.37 Repealed by 76 Acts, ch 1245(4), § 525.

100.38 Conflicting statutes.

Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C73, 75, 77, 79, 81, §100.38]

100.39 Fire extinguishers in high-rise buildings.

All buildings approved for construction after July 1, 1998, that exceed four stories in height, or seventy-five feet above grade, shall require the installation of an approved automatic fire extinguishing system designed and installed in conformity with rules promulgated by the state fire marshal pursuant to this chapter.

The requirements of this section shall not apply to the following:

1. Any noncombustible elevator storage structure or any noncombustible plant building with noncombustible contents.

2. Any combustible elevator storage structure that is equipped with an approved drypipe, nonautomatic sprinkler and automatic alarm system.

3. Buildings in existence or under construction on August 15, 1975. However, if subsequent to that date any building is enlarged or altered beyond the height limitations applicable to new buildings, such building in its entirety shall be subject to all the provisions of this section.

4. Any open parking garage structure which is in compliance with rules adopted by the state fire marshal.

Plans and installation of systems shall be approved by the state fire marshal, a designee of the state fire marshal, or local authorities having jurisdiction. Except where local fire protection regulations are more stringent, the provisions of this section shall be applicable to all buildings, whether privately or publicly owned. The definition of terms shall be in conformity, insofar as possible, with definitions found in the state building code.

Any person violating the provisions of this section is guilty of a misdemeanor and shall, upon conviction, be subject to a fine not to exceed one hundred dollars or by imprisonment in the county jail for not more than thirty days, or be subject to both such fine and imprisonment.

[C77, 79, 81, §100.39]

90 Acts, ch 1029, §1; 98 Acts, ch 1008, §1

State building code, §103A.7

100.40 Marshal may prohibit open burning on request.

1. The state fire marshal, during periods of extremely dry conditions or under other conditions when the state fire marshal finds open burning constitutes a danger to life or property, may prohibit open burning in an area of the state at the request of the chief of a local fire department, a city council or a board of supervisors and when an investigation supports the need for the prohibition. The state fire marshal shall implement the prohibition by issuing a proclamation to persons in the affected area. The chief of a local fire department, the city council or the board of supervisors that requested the prohibition may rescind the proclamation after notifying the state fire marshal of the intent to do so, when the chief, city council or board of supervisors finds that the conditions responsible for the issuance of the proclamation no longer exist.

2. Violation of a prohibition issued under this section is a simple misdemeanor.

3. A proclamation issued by the state fire marshal pursuant to this section shall not prohibit a supervised, controlled burn for which a permit has been issued by the fire chief of the fire district where the burn will take place, the use of outdoor fireplaces, barbecue grills, properly supervised landfills, or the burning of trash in incinerators or trash burners made of metal, concrete, masonry, or heavy one-inch wire mesh, with no openings greater than one square inch.

[S81, §100.40; 81 Acts, ch 48, §1]

97 Acts, ch 19, §1

100.41 Authority to cite violations.

Fire officials acting under the authority of this chapter may issue citations in accordance with chapter 805, for violations of this chapter or a violation of a local fire safety code.

84 Acts, ch 1095, §8

100.42 to 100.50 Reserved.

ARSON INSPECTION WARRANTS

100.51 Application for warrant.

If consent to inspect property damaged or destroyed by fire to determine the cause, origin and circumstances of the fire or to inspect property subject to rules adopted under section 100.35 has been refused to the official authorized to make the inspection, the state fire marshal, a state arson investigator or official authorized to make such an inspection may apply to the district court for a special inspection warrant for authority to conduct the inspection.

[81 Acts, ch 47, §3]

100.52 Grounds for issuance.

The judicial officer shall review the application and may take sworn testimony or receive affidavits to supplement it.

If the judicial officer is satisfied that there are legal grounds under the circumstances specified in the application and any supplementary testimony taken sufficient to justify the issuance of an inspection warrant, it shall be issued.

[81 Acts, ch 47, §4]

100.53 Warrant requirements.

Each inspection warrant issued under this chapter shall:

1. State the grounds for its issuance.

2. Be directed to the applicant or some other designated person authorized to conduct the inspection.

3. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of property specified.

4. Identify the item or type of property, if any, to be seized.

5. Direct that it be served, if appropriate, during normal business hours and designate the magistrate to whom it shall be returned.

[81 Acts, ch 47, §5]

100.54 Execution of warrant.

A warrant issued under this chapter must be executed and returned within ten days from the date of issuance unless, upon the showing of a need for additional time, the court so instructs otherwise in the warrant. A copy of the warrant shall be delivered to a person in charge of the premises being inspected or, if no one is present, a copy of the warrant shall be posted upon the premises. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom the property is seized, or the person in charge of the premises from which the property is seized, a receipt for the property seized or shall leave the copy and receipt at the place from which the property is seized. The return of the warrant shall be made promptly and accompanied by a written inventory of property seized. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was seized, if they are present, or in the presence of at least one credible person other than the person executing the warrant.

A copy of the return, the inventory and any receipts issued shall be promptly filed with the clerk of the district court for the county in which the inspection is made.

[81 Acts, ch 47, §6]

CHAPTER 100A

ARSON INVESTIGATION

Fire reports public records; see §100.5

100A.1 Definitions.
100A.2 Disclosure of information.
100A.3 Confidentiality — subpoena.
100A.4 Penalty.
100A.5 Concurrent powers.
100A.6 Chapter not severable.

100A.1 Definitions.

1. *"Authorized agencies"* means:

a. The state fire marshal.

b. The commissioner of public safety.

c. The county attorney responsible for prosecutions in the county where a fire occurs.

d. The attorney general.

e. The federal bureau of investigation or other federal agency requesting information on a fire loss.

f. The United States attorney's office when authorized or charged with investigation of a fire or prosecution for arson.

g. The fire chief of the city in which the fire occurs.

h. The police chief of the city in which the fire occurs.

i. The sheriff of the county in which the fire occurs.

j. The fraud bureau within the insurance division of the department of commerce.

2. *"Insurance company"* includes, but is not limited to, the Iowa fair plan and its member insurance companies.

3. *"Relevant information"* means information having any tendency to make the existence of a fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the information.

[C81, §100A.1]

86 Acts, ch 1051, §1; 93 Acts, ch 100, §1; 2000 Acts, ch 1023, §3

100A.2 Disclosure of information.

1. An authorized agency may, in writing, require an insurance company to release to the agency relevant information or evidence requested by the agency which the company has in its possession relating to a fire loss. Relevant information includes but is not limited to:

a. Insurance policy information relating to a fire loss under investigation including information on the policy application.

b. Policy premium payment records.

c. History of previous claims made by the insured.

d. Material relating to the investigation of the loss, including statements of any person, proof of loss, and other evidence relevant to the investigation.

2. When an insurance company has reason to believe that a fire loss insured by the company was caused by something other than an accident, the company shall, in writing, notify any authorized agency and provide it with all material possessed by the company relevant to an investigation of the fire loss or a prosecution for arson.

3. An authorized agency provided with information pursuant to this section may provide the

information to any other authorized agency for purposes of an investigation of a fire loss or a prosecution for arson.

4. An insurance company providing information to an authorized agency pursuant to subsections 1 and 2 may request information relevant to the fire loss investigation from an authorized agency and shall be given the information within a reasonable time not exceeding thirty days.

5. No civil action nor criminal prosecution may arise from any action taken pursuant to this section by an insurance company, a person acting in an insurance company's behalf, or an authorized agency, provided no malice is shown against the insured.

[C81, §100A.2]

100A.3 Confidentiality — subpoena.

1. An authorized agency or insurance company which receives information furnished pursuant to section 100A.2, shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

2. An authorized agency or its personnel, may be subpoenaed to testify in litigation concerning a fire loss in which an insurance company is named as a party.

[C81, §100A.3]

100A.4 Penalty.

1. A person or agency who intentionally or knowingly refuses to release information requested pursuant to this chapter is guilty of a simple misdemeanor.

2. A person who fails to hold in confidence information required to be held in confidence by section 100A.3 is guilty of a simple misdemeanor.

[C81, §100A.4]

100A.5 Concurrent powers.

The provisions of this chapter do not affect or repeal an ordinance of a municipality relating to fire prevention or the control of arson, but the jurisdiction of the state fire marshal and the commissioner of public safety in the municipality is concurrent with that of the municipal and county authorities.

[C81, §100A.5]

100A.6 Chapter not severable.

If any provision of this chapter is declared invalid the whole chapter is void, and to this end the provisions of this chapter are not severable.

[C81, §100A.6]

CHAPTER 100B

STATE FIRE SERVICE AND EMERGENCY RESPONSE COUNCIL

100B.1 State fire service and emergency response council.
100B.2 Duties.
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100B.1 State fire service and emergency response council.

1. The state fire service and emergency response council is established in the division of fire protection of the department of public safety. The council shall consist of eleven voting members. Members of the state fire service and emergency response council shall be appointed by the governor. The governor shall appoint members of the council from a list of nominees submitted by each of the following organizations:

a. Two members from a list submitted by the Iowa firemen's association.

b. Two members from a list submitted by the Iowa fire chiefs' association.

c. One member from a list submitted by the Iowa association of professional fire fighters.

d. Two members from a list submitted by the Iowa association of professional fire chiefs.

e. One member from a list submitted by the Iowa fire fighters group.

f. One member from a list submitted by the Iowa emergency medical services association.

A person nominated for membership on the council is not required to be a member of the organization that nominates the person.

The tenth and eleventh members of the council shall be members of the general public appointed by the governor.

The labor commissioner, or the labor commis-

sioner's designee, shall be a nonvoting, ex officio member of the council. Members of the council shall hold office commencing July 1, 2000, for four years and until their successors are appointed, except that three initial appointees shall be appointed for two years, four initial appointees for three years, and four initial appointees for four years.

The fire marshal or the fire marshal's designee shall attend each meeting of the council.

2. Each voting member of the council shall receive per diem compensation at the rate as specified in section 7E.6 for each day spent in the performance of the member's duties. All members of the council shall receive actual and necessary expenses incurred in the performance of their duties.

3. Six voting members of the council shall constitute a quorum. For the purpose of conducting business, a majority vote of the council shall be required. The council shall elect a chairperson from its members. The council shall meet at the call of the chairperson, or the state fire marshal, or when any six members of the council file a written request with the chairperson for a meeting.

4. If a voting member of the council is absent for fifty or more percent of council meetings during any twelve-month period, the other council members by their unanimous vote may declare the member's position on the council vacant. A vacancy in the membership of the council shall be filled by appointment of the governor for the balance of the unexpired term.

2000 Acts, ch 1117, §8; 2000 Acts, ch 1232, §23

100B.2 Duties.

The state fire service and emergency response council shall:

1. Advise and confer with the state fire marshal in matters relating to fire protection services including, but not limited to, training.

2. Cooperate with and assist agencies concerning fire emergency services matters and may, at the request of the state fire marshal or the chairperson of the council, hold public hearings for the purpose of seeking resolution of, or making recommendations on, fire services issues.

3. Develop, in consultation with the state fire marshal, the policies of the fire service training bureau of the division of fire protection.

4. Develop and submit to the state fire marshal for adoption rules establishing minimum training standards for fire service training that will be applicable statewide, periodically review these standards, and offer rules as deemed appropriate.

5. Provide recommendations to the state fire marshal that will facilitate the delivery of basic level fire fighter training at the local level.

6. Provide recommendations to the state fire marshal for a fee schedule for training and consultation services as necessary for the administration of this chapter.

7. Prepare annual performance reviews of training administrators for submittal to the state fire marshal.

8. Hear testimony from the labor commissioner, or the labor commissioner's designee, on inspections and investigations involving occupational safety and health standards for fire fighters and conducted by the office of the labor commissioner.

2000 Acts, ch 1117, §9

100B.3 Training agreements.

The state fire marshal, subject to the approval of the state fire service and emergency response council, may enter into written agreements with other educational institutions to provide training in conjunction with training provided by the fire service training bureau or to assist in research conducted by the bureau.

2000 Acts, ch 1117, §10

100B.4 Fees — retention — use.

Fees assessed pursuant to this chapter shall be retained by the division of fire protection and such repayments received shall be used exclusively to offset the cost of fire service training.

Notwithstanding section 8.33, repayment receipts collected by the division of fire protection for the fire service training bureau that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

2000 Acts, ch 1117, §11

100B.5 Budget.

The state fire marshal and the state fire service and emergency response council shall prepare an annual budget for the council and the fire service training bureau. The budget shall be transmitted to the commissioner of public safety for inclusion in that department's budget.

2000 Acts, ch 1117, §12

100B.6 Fire service training bureau.

1. The state fire service and emergency response council shall assist in operation of a fire service training bureau for instructing the general public and fire protection personnel throughout the state, providing service to public and private fire departments in the state, conducting research in the methods of maintaining and improving fire education consistent with the needs of Iowa communities, and performing any other functions assigned to the bureau by the state fire marshal in consultation with the state fire service and emergency response council.

2. Enrollment and attendance in fire service training bureau programs may include persons engaged with a unit of government or a public or

private fire department in the state, including volunteer, trainee, or employed fire fighters.

3. Programs conducted by the fire service training bureau shall include at a minimum instruction in the subjects necessary for the certification of persons in accordance with a nationally recognized fire fighter qualification system as approved by the state fire service and emergency response council. At the direction of the state fire marshal in consultation with the state fire service and emergency response council, the fire service training bureau may develop and conduct programs which extend beyond the programs directly related to such system.

2000 Acts, ch 1117, §13

100B.7 Administrator — appointment — duties.

1. The administrator of the fire service training bureau shall be appointed by the commissioner of public safety, subject to the approval of the state fire service and emergency response council.

2. The state fire marshal shall direct the administrator to:

a. Provide direct oversight to the operations of the fire service training bureau.

b. Manage the budget of the fire service training bureau consistent with budgeting methods as may be required by the department of public safety or the state of Iowa.

c. Advise, confer, and consult with the state fire service and emergency response council in developing rules establishing minimum standards for fire service training.

d. Advise, confer, and consult regularly with the state fire service and emergency response council to seek input and recommendations on all facets of fire service training programs in Iowa.

e. Maintain a statewide system to provide basic level fire fighter training at the local level.

f. Distribute instructional and educational materials to support the fire training and education programs offered by the department of public safety.

g. Recruit and train qualified instructors for the training program.

h. Maintain training records as directed by the state fire marshal and necessary to accomplish the purposes of training programs.

i. Establish, with the approval of the state fire service and emergency response council, a fee schedule for training services that will ensure quality training at the most reasonable price.

j. Offer programs of education and instruction approved by the state fire service and emergency response council and conducted by qualified staff and faculty.

k. Plan and coordinate fire schools and other short courses of instruction on a statewide, regional, and local level, utilizing existing educational institutions, programs, and facilities as feasible.

l. Prepare for the state fire marshal and the state fire service and emergency response council an annual report of activities that include a summary of classes taught, budget, and staff activities.

m. Provide supervision and management to the fire service training bureau staff consistent with the methods of the department of public safety and as assigned by the state fire marshal.

n. Consult with the state fire service and emergency response council in preparing an annual legislative and budgetary agenda that will address items necessary to accomplish the provisions of this chapter, and submit this agenda to the state fire marshal in a format and time frame consistent with departmental policy.

o. Develop mechanisms by which fire fighters and others may earn college credits and degrees in fire-related disciplines.

p. Develop instructional and educational materials to support the fire training and education programs offered by the council.

q. Develop and offer other programs and services consistent with the general purposes of the council.

2000 Acts, ch 1117, §14

100B.8 Employees.

Employees of the fire service institute at Iowa state university on July 1, 2000, may elect to transfer to the department of public safety in a position and at a pay range commensurate with their duties as determined by the department of personnel, the department of public safety, and the employee's certified collective bargaining representative.

2000 Acts, ch 1117, §15

100B.9 Facilities and equipment.

The building known as the fire service institute at Iowa state university, the land upon which the building is located, and parking space associated with the building shall, until July 1, 2003, be leased by Iowa state university to the department of public safety at a cost not to exceed the actual cost of heating, lighting, and maintaining the building and parking space. In the event the department of public safety locates suitable facilities prior to that time, the lease may be terminated at the option of the department. All equipment owned by Iowa state university and used exclusively to conduct fire service training, classes, or business shall transfer on July 1, 2000, to the department of public safety unless such transfer is prohibited or restricted by law or agreement. This equipment includes, but is not limited to, breathing apparatus, fire suppression gear, mobile equipment, office furniture, computers, copying machines, library, file cabinets, and training records.

The department of public safety and the state board of regents shall enter into a written agree-

ment pursuant to chapter 28E regarding payment of debt obligations incurred by the state board of regents on behalf of the Iowa cooperative extension service for agriculture and home economics for the lease-purchase of a mobile burn unit which is to be used by the department of public safety for fire fighter training. The written agreement shall also provide for storage of any of the equipment covered in this section at a facility owned by Iowa state university for as long as the lease for the building, land, and associated parking is in effect.

2000 Acts, ch 1117, §16

100B.10 Rules.

The state fire marshal shall adopt rules under chapter 17A for carrying out the responsibilities of this chapter.

2000 Acts, ch 1117, §17

100B.11 Volunteer emergency services provider death benefit — eligibility.

1. There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to pay death benefit claims under this section. The director of revenue and finance shall issue warrants for payment of death benefit claims approved for payment by the department of public safety under subsection 2.

2. *a.* If the department of public safety determines, upon the receipt of evidence and proof from the fire chief or supervising officer, that the death of a volunteer emergency services provider was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a volunteer, a line of duty death benefit in an amount of one hundred thousand dollars shall be paid in a lump sum to the volunteer emergency services provider's beneficiary. A line of duty death benefit payable under this subsection shall be in addition to any other death benefit payable to the volunteer emergency services provider.

b. A line of duty death benefit shall not be payable under this subsection if any of the following applies:

(1) The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the volunteer emergency services provider's death.

(2) The death was caused by the intentional misconduct of the volunteer emergency services provider or by such provider's intent to cause the provider's own death.

(3) The volunteer emergency services provider was voluntarily intoxicated at the time of death.

(4) The volunteer emergency services provider was performing the provider's duties in a grossly negligent manner at the time of death.

(5) A beneficiary who would otherwise be entitled to a benefit under this subsection was, through the beneficiary's actions, a substantial contributing factor to the volunteer emergency services provider's death.

3. For purposes of this section, *"volunteer emergency services provider"* means a volunteer fire fighter as defined in section 85.61, a volunteer emergency medical care provider or volunteer emergency rescue technician defined in section 147A.1 who is not covered as a volunteer emergency services provider under chapter 97A, 97B, or 411, or a reserve peace officer as defined in section 80D.1A.

2000 Acts, ch 1232, §97; 2002 Acts, ch 1079, §1, 3

Subsection 3 amended

CHAPTER 101

FLAMMABLE LIQUIDS AND LIQUEFIED PETROLEUM GASES

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DIVISION I

GENERAL PROVISIONS

101.1 Rules by fire marshal.

1. The state fire marshal is hereby empowered and directed to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in this chapter, reasonable rules for the safe transportation, storage, handling and use of flammable liquids, liquefied petroleum gases and liquefied natural gases.

2. For purposes of this chapter:

a. "Flammable liquid" means a liquid having a flash point below 200 degrees F. and a Reid vapor pressure not exceeding forty p.s.i. absolute.

b. "Liquefied petroleum gas" means material composed predominantly of any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane) and butylenes.

c. "Liquefied natural gas" means a fuel in the liquid state composed predominantly of methane and which may contain minor quantities of ethane, propane, nitrogen, or other components normally found in natural gas.

[C35, §1655-g1, -g2, -g4; C39, §**1655.1, 1655.2, 1655.4;** C46, 50, 54, §101.1, 101.2; C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.1]

101.2 Scope of rules.

Except as otherwise provided in this chapter, the rules shall be in substantial compliance with the standards of the national fire protection association relating to flammable liquids and liquefied petroleum gases.

[C35, §1655-g2; C39, §**1655.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §101.2]

98 Acts, ch 1008, §2

101.3 Separate rules for liquids and gas.

The rules covering flammable liquids and those covering liquefied petroleum gas shall be separately formulated and separately promulgated.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.3]

101.4 Nonconforming use.

The rules shall make reasonable provision under which facilities in service prior to the effective date of the regulations and not in strict conformity therewith may be continued in service unless the nonconformity is such as to constitute a distinct hazard to life or adjoining property; and for guidance in enforcement may delineate these types of nonconformity that should be considered distinctly hazardous, those that should not be considered distinctly hazardous and those the need for elimination of which should be evaluated in the light of local factors. As to any rule the need for compliance with which is conditioned on local factors, the rules shall provide, as a condition precedent to evaluation or issuance of a compliance order, for reasonable notice to the proprietor of the facility affected of intention to evaluate the need and of the time and place at which the proprietor may appear and offer evidence thereon.

[C35, §1655-g3; C39, §**1655.3;** C46, 50, 54, §101.3; C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.4]

101.5 Publication of rules.

The rules shall be promulgated pursuant to chapter 17A, only after a public hearing at least twenty days' notice of the time and place of which is given by publication in a newspaper of general circulation throughout the state and by mail to any person who has filed the person's name and address with the state fire marshal for the purpose of receiving the notice.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.5]

101.5A Shared public petroleum storage facilities.

The state fire marshal shall permit by rule the shared ownership, operation, or cooperative use of a publicly owned petroleum storage or dispensing facility by more than one public agency or political subdivision in order to maximize the opportunity for cooperation, to avoid unnecessary duplication of facilities posing both an environmental and fire hazard, and to minimize the cost of providing public services. Shared or cooperative use is not a violation of chapter 23A, even if one public agency or political subdivision compensates another public agency or political subdivision for the use or for petroleum dispensed. A publicly owned petroleum storage facility subject to this section may use aboveground or underground storage tanks, or a combination of both.

90 Acts, ch 1113, §1

101.6 Ordinances by municipalities.

Rules promulgated pursuant to this chapter shall have uniform force and effect throughout the state and no municipality or political subdivision shall enact or enforce any ordinance or regulation inconsistent or not in keeping with the statewide rules. Provided that nothing in this chapter shall in any way impair the power of any municipality

when authorized by other law to regulate the use of land by comprehensive zoning or to control the construction of buildings and structures under building codes or restricted fire district regulations. Provided, further, that the size, weight and cargo carried by vehicles used in the transportation or delivery of flammable liquids or liquefied petroleum gas shall be governed by the uniform provisions of the motor vehicle and highway traffic laws of this state and local ordinances therein authorized.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.6]

101.7 Penalty.

Any person, firm or corporation violating any of the rules promulgated under this chapter shall be deemed guilty of a simple misdemeanor. Each day of the continuing violation of such rules after conviction shall be considered a separate offense. Appeals may be taken from such convictions as in other criminal cases.

[C35, §1655-g3, -g4; C39, §**1655.3, 1655.4;** C46, 50, 54, §101.2, 101.4; C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.7]

101.8 Assistance by local officials.

The chief fire prevention officer of every city or village having an established fire prevention department, the chief of the fire department of every other city or village in which a fire department is established, the mayor of every city in which no fire department exists, the township clerk of every township outside the limits of any city or village and all other local officials upon whom fire prevention duties are imposed by law shall assist the state fire marshal in the enforcement of the rules.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §101.8]

101.9 Repairs ordered by fire marshal.

If the state fire marshal has reasonable grounds for believing after conducting tests that a leak exists in a flammable or combustible liquid storage tank or in the distribution system of a flammable or combustible liquid storage tank the state fire marshal shall issue a written order to the owner or lessee of the storage tank or distribution system requiring the storage tank and distribution system be emptied and removed or repaired immediately upon receipt of the written order.

[C79, 81, §101.9]

101.10 Assistance of department of natural resources.

If the state fire marshal has reasonable grounds for believing that a leak constitutes a hazardous condition which threatens the public health and safety, the fire marshal may request the assistance of the department of natural resources, and upon such request the department of natural resources is empowered to eliminate the hazardous condition as provided in chapter 455B, division IV, part 4, the provisions of section 455B.390, subsection 3, to the contrary notwithstanding.

[C79, 81, §101.10; 82 Acts, ch 1199, §92, 96]

101.11 Use in vehicle — marking — dispensing prohibition — penalty.

1. A vehicle which carries liquefied petroleum gas fuel or natural gas, as a fuel source for the vehicle, in a concealed area, including but not limited to trunks or compartments located in or under the vehicle, shall display on the left rear and right front bumpers of the vehicle a standard abbreviation or symbol, approved by the department of public safety, which indicates liquefied petroleum gas fuel or natural gas is a fuel source for the vehicle.

2. The owner of the vehicle which is fueled by natural gas or liquefied petroleum gas shall be responsible for the placement of the approved abbreviation or symbol on the vehicle.

3. A person shall not dispense liquefied petroleum gas fuel or natural gas into a tank in a concealed area of a vehicle unless the vehicle complies with subsection 1.

4. A person who violates this section is guilty of a simple misdemeanor.

84 Acts, ch 1095, §9

101.12 Aboveground petroleum tanks authorized.

Rules of the state fire marshal permitting installation of aboveground petroleum storage tanks for retail motor vehicle fuel outlets shall be in substantial compliance with the applicable standards of the national fire protection association, and shall be subject to the approval of the governing body of the local governmental subdivision with jurisdiction over the site of the outlet.

89 Acts, ch 131, §3; 90 Acts, ch 1235, §1; 98 Acts, ch 1008, §3

101.13 Liquefied petroleum gas containers.

1. If a liquefied petroleum gas container designed to hold more than twenty pounds of liquefied petroleum gas has the name, mark, initials, or other identifying device of the owner in plainly legible characters on the surface of the container, a person other than the owner or a person authorized by the owner shall not do any of the following:

a. Fill or refill the container with liquefied petroleum gas or any other gas or compound except when the owner is unable to supply liquefied petroleum gas to a person to whom the owner is leasing or furnishing the container and to whom the owner ordinarily supplies the liquefied petroleum gas in which case, the owner shall authorize the refilling of the container by another person designated by the owner.

b. Buy, sell, offer for sale, give, take, loan, de-

liver or permit to be delivered, or otherwise use the container.

c. Deface, remove, conceal, or change the name, mark, initials, or other identifying device of the owner.

d. Place the name, mark, initials, or other identifying device indicating ownership by any person other than the owner on the container.

2. A person who violates this section is guilty of a simple misdemeanor. Each violation of this section shall constitute a separate offense.

93 Acts, ch 138, §1

101.14 through 101.20 Reserved.

DIVISION II

ABOVEGROUND PETROLEUM STORAGE TANKS

101.21 Definitions.

As used in this part unless the context otherwise requires:

1. *"Aboveground petroleum storage tank"* means one or a combination of tanks, including connecting pipes connected to the tanks which are used to contain an accumulation of petroleum and the volume of which, including the volume of the underground pipes, is more than ninety percent above the surface of the ground. Aboveground petroleum storage tank does not include any of the following:

a. Aboveground tanks of one thousand one hundred gallons or less capacity.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Underground storage tanks as defined by section 455B.471.

d. A flow-through process tank, or a tank containing a regulated substance, other than motor vehicle fuel used for transportation purposes, for use as part of a manufacturing process, system, or facility.

2. *"Nonoperational aboveground petroleum tank"* means an aboveground storage tank in which petroleum is not deposited or from which petroleum is not dispensed on or after July 1, 1989.

3. *"Operator"* means a person in control of, or having responsibility for, the daily operation of an aboveground petroleum storage tank.

4. *"Owner"* means:

a. In the case of an aboveground petroleum storage tank in use on or after July 1, 1989, a person who owns the aboveground petroleum storage tank used for the storage, use, or dispensing of petroleum.

b. In the case of an aboveground petroleum storage tank in use before July 1, 1989, but no longer in use on or after that date, a person who owned the tank immediately before the discontinuation of its use.

5. *"Petroleum"* means petroleum as defined in section 455B.471.

6. *"Release"* means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground petroleum storage tank into groundwater, surface water, or subsurface soils.

7. *"State fire marshal"* means the state fire marshal or the state fire marshal's designee.

8. *"Tank site"* means a tank or grouping of tanks within close proximity of each other located on a facility for the purpose of storing petroleum.

89 Acts, ch 131, §4; 90 Acts, ch 1235, §2

101.22 Report of existing and new tanks — registration fee — tag — penalty.

1. Except as provided in subsection 2, the owner or operator of an aboveground petroleum storage tank existing on or before July 1, 1989, shall notify the state fire marshal in writing by May 1, 1990, of the existence of each tank and specify the age, size, type, location, and uses of the tank.

2. The owner of an aboveground petroleum storage tank taken out of operation between January 1, 1979, and July 1, 1989, shall notify the state fire marshal in writing by July 1, 1990, of the existence of the tank unless the owner knows the tank has been removed from the site. The notice shall specify, to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type, and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator which brings into use an aboveground petroleum storage tank after July 1, 1989, shall notify the state fire marshal in writing within thirty days of the existence of the tank and specify the age, size, type, location, and uses of the tank.

4. The registration notice of the owner or operator to the state fire marshal under subsections 1 through 3 shall be accompanied by an annual fee of ten dollars for each tank included in the notice. All moneys collected shall be retained by the department of public safety and are appropriated for the use of the state fire marshal. The annual renewal fee applies to all owners or operators who filed a registration notice with the state fire marshal pursuant to subsections 1 through 3.

5. A person who deposits petroleum in an aboveground petroleum storage tank shall notify the owner or operator in writing of the notification requirements of this section.

6. A person who sells or constructs a tank intended to be used as an aboveground storage tank shall notify the purchaser of the tank in writing of the notification requirements of this section applicable to the purchaser.

7. It is unlawful to deposit petroleum in an aboveground petroleum storage tank which has not been registered pursuant to subsections 1 through 4.

The state fire marshal shall furnish the owner

or operator of an aboveground petroleum storage tank with a registration tag for each aboveground petroleum storage tank registered with the state fire marshal. The owner or operator shall affix the tag to the fill pipe of each registered aboveground petroleum storage tank. A person who conveys or deposits petroleum shall inspect the aboveground petroleum storage tank to determine the existence or absence of the registration tag. If a registration tag is not affixed to the aboveground petroleum storage tank fill pipe, the person conveying or depositing the petroleum may deposit the petroleum in the unregistered tank. However, the deposit is allowed only in the single instance, that the person provides the owner or operator with another notice as required by subsection 5, and that the person provides the owner or operator with an aboveground petroleum storage tank registration form. It is the owner or operator's duty to comply with registration requirements. A late registration penalty of twenty-five dollars is imposed in addition to the registration fee for a tank registered after the required date.

89 Acts, ch 131, §5; 90 Acts, ch 1235, §3; 2000 Acts, ch 1224, §23; 2002 Acts, ch 1119, §127
Subsection 4 amended

101.22A Exemption.

An aboveground petroleum storage tank which is subject to regulation or registration under either the federal department of transportation or state department of transportation or both, is exempt from the registration requirements of section 101.22.

90 Acts, ch 1235, §4

101.23 State fire marshal reporting rules.

The state fire marshal shall adopt rules pursuant to chapter 17A relating to reporting requirements necessary to enable the state fire marshal to maintain an accurate inventory of aboveground petroleum storage tanks.

89 Acts, ch 131, §6; 90 Acts, ch 1235, §5

101.24 Duties and powers of the state fire marshal.

The state fire marshal shall:

1. Inspect and investigate the facilities and records of owners and operators of aboveground petroleum storage tanks with a capacity of fifteen thousand or more gallons, as necessary to determine compliance with this division and the rules adopted pursuant to this division. An inspection or investigation shall be conducted subject to subsection 4. For purposes of developing a rule, maintaining an accurate inventory, or enforcing this division, the department may:

a. Enter at reasonable times an establishment or other place where an aboveground storage tank is located.

b. Inspect and obtain samples from any person of petroleum or another regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

(1) If the state fire marshal obtains a sample, prior to leaving the premises, the fire marshal shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the state fire marshal by a person that public disclosure of documents or information, or a particular part of the documents or information to which the state fire marshal has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the state fire marshal shall consider the documents or information or the particular portion of the documents or information confidential. However, the documents or information may be disclosed to officers, employees, or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in a proceeding under the federal Solid Waste Disposal Act or this division.

2. Maintain an accurate inventory of aboveground petroleum storage tanks.

3. Take any action allowed by law which, in the state fire marshal's judgment, is necessary to enforce or secure compliance with this division or any rule adopted pursuant to this division.

4. Conduct investigations of complaints received directly, referred by other agencies, or other investigations deemed necessary. While conducting an investigation, the state fire marshal may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this division or the rules or standards adopted under this division. However, the owner or person in charge shall be notified.

a. If the owner or operator of any property refuses admittance, or if prior to such refusal the state fire marshal demonstrates the necessity for a warrant, the state fire marshal may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

b. In the application the state fire marshal shall state that an inspection of the premises is mandated by the laws of this state or that a search

of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules, or ordinances established by the state or a political subdivision of the state. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of the desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, rule, or ordinance pursuant to which inspection is to be made. If an item of property is sought by the state fire marshal it shall be identified in the application.

c. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe in their existence, the court may issue a search warrant.

d. In making inspections and searches pursuant to the authority of this division, the state fire marshal must execute the warrant as follows:

(1) Within ten days after its date.

(2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapters 808 and 809.

(3) Subject to any restrictions imposed by the statute, rule or ordinance pursuant to which inspection is made.

89 Acts, ch 131, §7; 90 Acts, ch 1235, §6; 2000 Acts, ch 1224, §24

101.25 Violations — orders.

1. If substantial evidence exists that a person has violated or is violating a provision of this division or a rule adopted under this division the state fire marshal may issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 101.26. The person to whom the order is issued may appeal the order as provided in chapter 17A. On appeal, the administrative law judge may affirm, modify, or vacate the order of the state fire marshal.

2. However, if it is determined by the state fire marshal that an emergency exists respecting any matter affecting or likely to affect the public health, the fire marshal may issue any order necessary to terminate the emergency without notice and without hearing. The order is binding and effective immediately and until the order is modified or vacated at an administrative hearing or by a district court.

3. The state fire marshal may request the attorney general to institute legal proceedings pursuant to section 101.26.

89 Acts, ch 131, §8

101.26 Penalties — burden of proof.

1. A person who violates this division or a rule or order adoption issued pursuant to this division is subject to a civil penalty not to exceed one hundred dollars for each day during which the violation continues, up to a maximum of one thousand dollars; however, if the tank is registered within thirty days after the state fire marshal issues a cease and desist order pursuant to section 101.25, subsection 1, the civil penalty under this section shall not accrue. The civil penalty is an alternative to a criminal penalty provided under this division.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, or other document filed or required to be maintained under this division, or violates an order issued under this division, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the state fire marshal, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this division or to obtain compliance with the provisions of this division or rules adopted or order pursuant to this division. In any action, previous findings of fact of the state fire marshal after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of this division or a rule adopted or order issued by the state fire marshal pursuant to this division, the burden of proof is upon the state fire marshal.

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 101.27 shall be raised in the legal proceedings instituted in accordance with this section.

89 Acts, ch 131, §9

101.27 Judicial review.

Except as provided in section 101.26, subsection 5, judicial review of an order or other action of the state fire marshal may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the *"Iowa administrative procedure Act"*, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

89 Acts, ch 131, §10

101.28 Fees for certification inspections of underground storage tanks.

The state fire marshal, the state fire marshal's designee, or a local fire marshal, authorized to conduct underground storage tank certification inspections under section 455G.11, subsection 10, shall charge the person requesting a certification inspection a fee to recover the costs of authorized training, inspection, and inspection program administration subject to rules adopted by the state fire marshal. The fees generated by inspections conducted by the state fire marshal or an employee of the state fire marshal's office shall be deposited into the general fund of the state.

89 Acts, ch 131, §11; 91 Acts, ch 268, §509

CHAPTER 101A

EXPLOSIVE MATERIALS

101A.1 Definitions.
101A.2 Commercial license — how issued — violation.
101A.3 User's permit — how issued — violation.
101A.4 Refusal to grant license or permit — appeal.
101A.5 Rules.
101A.6 Notice of storage required.
101A.7 Inspection of storage facility.
101A.8 Report of theft or loss required.
101A.9 Disposal regulated.
101A.10 Persons and agencies exempt.
101A.11 Explosive materials exempt.
101A.12 Deposit and use of fees.
101A.13 Local ordinances.
101A.14 Criminal penalties.

101A.1 Definitions.

As used in this chapter:

1. *"Blasting agent"* means any material or mixture consisting of a fuel and oxidizer, intended for blasting but not otherwise classified as an explosive, in which none of the finished products as mixed and packaged for use or shipment can be detonated by means of a number eight test blasting cap when unconfined.

2. *"Commercial license"* or *"license"* means a license issued by the state fire marshal pursuant to this chapter.

3. *"Explosive"* or *"explosives"* means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the United States department of transportation. The term *"explosives"* includes all material which is classified as class A, class B, and class C explosives by the United States department of transportation, and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonative fuse, instantaneous fuse, igniter cord, igniters, smokeless propellant, cartridges for propellant-actuated power devices and cartridges for industrial guns, but shall not include *"fireworks"* as defined in section 727.2 nor ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.

4. *"Explosive materials"* means explosives or blasting agents.

5. *"Import"* and *"importation"* means transfer into the state of Iowa.

6. *"Licensee"* means a person holding a commercial license issued by the state fire marshal pursuant to this chapter.

7. *"Magazine"* means any building or structure, other than an explosives manufacturing building, approved by the state fire marshal or the fire marshal's designated agent for the storage of explosive materials.

8. *"Permittee"* means a person holding a user's permit issued pursuant to this chapter.

9. *"Person"* means any individual, corporation, partnership, or association.

10. *"User's permit"* or *"permit"* means a permit issued by a county sheriff or chief of police of a city of ten thousand or more population, pursuant to this chapter.

[C73, 75, 77, 79, 81, §101A.1]

101A.2 Commercial license — how issued — violation.

1. The state fire marshal shall issue commercial licenses for the manufacture, importation, distribution, sale, and commercial use of explosives to persons who, in the state fire marshal's discretion are of good character and sound judgment, and have sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety. Licenses shall be issued for a period of one year, but may be issued for

shorter periods, and may be revoked or suspended by the state fire marshal for any of the following reasons:

a. Falsification of information submitted in the application for a license.

b. Proof that the licensee has violated any provisions of this chapter or any rules prescribed by the state fire marshal pursuant to the provisions of this chapter.

2. Licenses shall be issued by the state fire marshal upon payment of a fee of sixty dollars, valid for a period of one calendar year, commencing on January 1 and terminating on December 31; however, an initial license may be issued during any calendar year for the number of months remaining in such calendar year, computed to the first day of the month when the application for the license is approved. The license fee shall be charged on a pro rata basis for the number of months remaining in the year of issue. Applications for renewal of licenses shall be submitted within thirty days prior to the license expiration date and shall be accompanied by payment of the prescribed annual fee.

3. Except as permitted in section 101A.3 and sections 101A.9 to 101A.11, it shall be unlawful for any person to willfully manufacture, import, store, detonate, sell, or otherwise transfer any explosive materials unless such person is the holder of a valid license issued pursuant to this section.

4. Commercial dealers having a federal firearms license shall be exempt from the requirement or the commercial license requirement of this chapter for importation, distribution, sale, transportation, storage and possession of smokeless powder propellants or black sporting powder propellants provided that such dealer must conform and comply to rules, or ordinances of federal, state or city authorities having jurisdiction of such powder.

[C73, 75, 77, 79, 81, §101A.2]
84 Acts, ch 1074, §1

101A.3 User's permit — how issued — violation.

1. User's permits to purchase, possess, transport, store, and detonate explosive materials shall be issued by the sheriff of the county or the chief of police of a city of ten thousand population or more where the possession and detonation will occur. If the possession and detonation are to occur in more than one county or city, then such permits must be issued by the sheriff or chief of police of each of such counties or cities, except in counties and cities in which the explosives are possessed for the sole purpose of transporting them through such counties and cities. A permit shall not be issued unless the sheriff or chief of police having jurisdiction is satisfied that possession and detonation of explosive materials is necessary to the applicant's business or to improve the applicant's property. Permits shall be issued only to persons who, in the discretion of the sheriff or chief of police, are of good character and sound judgment, and have sufficient knowledge of the use and handling of explosive materials to protect the public safety. The state fire marshal shall prescribe, have printed, and distribute permit application forms to all local permit issuing authorities.

2. The user's permit shall state the quantity of explosive materials which the permittee may purchase, the amount the permittee may have in possession at any one time, the amount the permittee may detonate at any one time, and the period of time during which the purchase, possession, and detonation of explosive materials is authorized. The permit shall also specify the place where detonation may occur, the location and description of the place where the explosive materials will be stored, if such be the case, and shall contain such other information as may be required under the rules and regulations of the state fire marshal. The permit shall not authorize purchase, possession, and detonation of a quantity of explosive materials in excess of that which is necessary in the pursuit of the applicant's business or the improvement of the permittee's property, nor shall such purchase, possession, and detonation be authorized for a period longer than is necessary for the specified purpose. In no event shall the permit be valid for more than thirty days from date of issuance but it may be renewed upon proper showing of necessity.

3. The user's permit may be revoked for any of the reasons specified in section 101A.2, subsection 1, for suspension or revocation of a commercial license.

4. It shall be unlawful for a person to willfully purchase, possess, transport, store, or detonate explosive materials unless such person is the holder of a valid permit issued pursuant to this section or a valid license issued pursuant to section 101A.2.

5. The sheriff or the chief of police shall charge a fee of three dollars for each permit issued. The money collected from permit fees shall be deposited in the county treasury or the general fund of the city.

[C73, 75, 77, 79, 81, §101A.3]
83 Acts, ch 123, §53, 209; 84 Acts, ch 1074, §2

101A.4 Refusal to grant license or permit — appeal.

1. Judicial review of the action of the state fire marshal may be sought in accordance with the terms of the *"Iowa administrative procedure Act"*.

2. A person who is refused issuance of a user's permit by a local permit issuing authority may appeal the authority's decision to the county board of supervisors or the city council of the county or city where the permit is sought, and de novo to the district court.

[C73, 75, 77, 79, 81, §101A.4]
84 Acts, ch 1074, §3

101A.5 Rules.

The state fire marshal shall prepare, adopt, and distribute to permit-issuing authorities and other interested persons, without cost, rules in accordance with provisions of chapter 17A, pertaining to the manufacture, transportation, storage, possession, and use of explosive materials. Rules adopted by the state fire marshal shall be compatible with, but not limited to the national fire protection association's pamphlet number 495 and federal rules pertaining to commerce, possession, storage, and use of explosive materials. Such rules shall:

1. Prescribe reasonable standards for the safe transportation and handling of explosive materials so as to prevent accidental fires and explosions and prevent theft and unlawful or unauthorized possession of explosive materials.

2. Prescribe procedures and methods of inventory so as to assure accurate records of all explosive materials manufactured or imported into the state and records of the disposition of such explosive materials, including records of the identity of persons to whom sales and transfers are made, and the time and place of any loss or destruction of explosive materials which might occur.

3. Prescribe reasonable standards for the safe storage of explosive materials as may be necessary to prevent accidental fires and explosions and prevent thefts and unlawful or unauthorized possession of explosive materials.

4. Require such reports from licensees, permittees, sheriffs, and chiefs of police as may be necessary for the state fire marshal to discharge the fire marshal's duties pursuant to this chapter.

5. Prescribe the form and content of license and permit applications.

6. Conduct such inspections of licensees and permittees as may be necessary to enforce the provisions of this chapter.

[C73, 75, 77, 79, 81, §101A.5]

84 Acts, ch 1074, §4

101A.6 Notice of storage required.

A licensee shall notify the sheriff of the county and the local police authority of any city in which explosive materials will be stored, and shall also notify such authorities when the storage is terminated.

[C73, 75, 77, 79, 81, §101A.6]

101A.7 Inspection of storage facility.

The licensee's or permittee's explosive storage facility shall be inspected at least once a year by a representative of the state fire marshal's office, except that the state fire marshal may, at those mining operations licensed and regulated by the United States department of labor, accept an approved inspection report issued by the United States department of labor, mine safety and health administration, for the twelve-month period following the issuance of the report. The state fire marshal shall notify the appropriate city or county governing board of licenses to be issued in their respective jurisdictions pursuant to this chapter. The notification shall contain the name of the applicant to be licensed, the location of the facilities to be used in storing explosives, the types and quantities of explosive materials to be stored, and other information deemed necessary by either the governing boards or the state fire marshal. The facility may be examined at other times by the sheriff of the county where the facility is located or by the local police authority if the facility is located within a city of over ten thousand population and if the sheriff or city council considers it necessary.

If the state fire marshal finds the facility to be improperly secured, the licensee or permittee shall immediately correct the improper security and, if not so corrected, the state fire marshal shall immediately confiscate the stored explosives. Explosives may be confiscated by the county sheriff or local police authority only if a situation that is discovered during an examination by those authorities is deemed to present an immediate danger. If the explosives are confiscated by the county sheriff or local police authority, they shall be delivered to the state fire marshal. The state fire marshal shall hold confiscated explosives for a period of thirty days under proper security unless the period of holding is shortened pursuant to this section.

If the licensee or permittee corrects the improper security within the thirty-day period, the explosives shall be returned to the licensee or permittee after correction and after the licensee or permittee has paid to the state an amount equal to the expense incurred by the state in storing the explosives during the period of confiscation. The amount of expense shall be determined by the state fire marshal.

If the improper security is not corrected during the thirty-day period, the state fire marshal shall dispose of the explosives and the license or permit shall be canceled. A canceled license or permit shall not be reissued for a period of two years from the date of cancellation.

[C73, 75, 77, 79, 81, §101A.7]

83 Acts, ch 123, §54, 55, 209; 84 Acts, ch 1074, §5; 86 Acts, ch 1029, §1

101A.8 Report of theft or loss required.

Any theft or loss of explosive materials, whether from a storage magazine, a vehicle in which they are being transported, or from a site on which they are being used, or from any other location, shall immediately be reported by the person authorized to possess such explosives to the local police or county sheriff. The local police or county sheriff shall immediately transmit a report of such theft or loss of explosive materials to the state fire marshal.

[C73, 75, 77, 79, 81, §101A.8]
84 Acts, ch 1074, §6

101A.9 Disposal regulated.

No person shall abandon or otherwise dispose of any explosives in any manner which might, as the result of such abandonment or disposal, create any danger or threat of danger to life or property. Any person in possession or control of explosives shall, when the need for such explosives no longer exists, dispose of them in accordance with rules prescribed by the state fire marshal.

[C73, 75, 77, 79, 81, §101A.9]
84 Acts, ch 1074, §7

101A.10 Persons and agencies exempt.

This chapter shall not apply to the transportation and use of explosive materials by the regular military or naval forces of the United States, the duly organized militia of this state, representatives of the state fire marshal, the Iowa state patrol, division of criminal investigation and bureau of identification, local police departments, sheriffs departments, and fire departments acting in their official capacity; nor shall this chapter apply to the transportation and use of explosive materials by any peace officer to enforce provisions of this chapter when the peace officer is acting pursuant to such authority, however, other agencies of the state or any of its political subdivisions desiring to purchase, possess, transport, or use explosive materials for construction or other purposes shall be required to obtain user's permits.

[C73, 75, 77, 79, 81, §101A.10]
98 Acts, ch 1074, §17

101A.11 Explosive materials exempt.

This chapter shall not apply to the possession or use of twenty-five pounds or less of smokeless powder, or five pounds or less of black sporting powder, provided that:

1. Smokeless powder is intended for handloading or reloading of ammunition for small arms with bores equivalent to ten gauge or less.

2. Black sporting powder is intended for handloading or reloading ammunition for small arms with bores equivalent to ten gauge or less, loading black ammunition, loading cap and ball revolvers, loading muzzle loading arms, or loading muzzle loading cannon.

3. All such powder is for private use and not for commercial resale, and in the case of black sporting powder or smokeless powder the sharing with or disposition to another person is permitted if otherwise lawful.

4. The storage, use, and handling of smokeless and black powder conforms to rules or ordinances of authorities having jurisdiction for fire prevention and suppression purposes in the area of such storage, use, and handling.

[C73, 75, 77, 79, 81, §101A.11]

101A.12 Deposit and use of fees.

The fees collected by the state fire marshal in issuing licenses shall be deposited in the state general fund.

[C73, 75, 77, 79, 81, §101A.12]

101A.13 Local ordinances.

Nothing in this chapter shall limit the authority of cities to impose additional regulations governing the storage, handling, use, and transportation of explosive materials within their respective corporate limits, however, such regulations shall be at least as stringent as and not inconsistent with the provisions of this chapter and the rules promulgated pursuant to this chapter.

[C73, 75, 77, 79, 81, §101A.13]

101A.14 Criminal penalties.

1. Any person who violates the provisions of section 101A.2, subsection 3, or section 101A.3, subsection 4, commits a public offense and, upon conviction, shall be guilty of a class "C" felony.

2. Any person who violates the provisions of section 101A.6, 101A.8 or 101A.9 or any of the rules adopted by the state fire marshal pursuant to the provisions of this chapter, commits a simple misdemeanor.

[C73, 75, 77, 79, 81, §101A.14]
84 Acts, ch 1074, §8

CHAPTER 102

FIRE SCENES — AUTHORITY

102.1 Definition.
102.2 Authority at fires.
102.3 Authority to barricade.
102.4 Traffic control.
102.5 Penalty.

102.1 Definition.

As used in this chapter, *"fire department"* means the fire department of a city, township, or benefited fire district.

89 Acts, ch 132, §1

102.2 Authority at fires.

A fire chief or other authorized officer of a fire department, in charge of a fire scene which involves the protection of life or property, may direct an operation as necessary to extinguish or control a fire, perform a rescue operation, investigate the existence of a suspected or reported fire, gas leak, or other hazardous condition, or take any other action as deemed necessary in the reasonable performance of the department's duties. In exercising this power, a fire chief may prohibit an individual, vehicle, or vessel from approaching a fire scene and may remove from the scene any object, vehicle, vessel, or individual that may impede or interfere with the operations of the fire department.

89 Acts, ch 132, §2

102.3 Authority to barricade.

The fire chief or other authorized officer of the fire department in charge of a fire scene may place or erect ropes, guards, barricades, or other obstructions across a street, alley, right-of-way, or private property near the location of the fire or emergency so as to prevent accidents or interference with the fire fighting efforts of the fire department, to control the scene until any required investigation is complete, or to preserve evidence related to the fire or other emergency.

89 Acts, ch 132, §3

102.4 Traffic control.

Notwithstanding a contrary provision of this chapter, if a peace officer is on the scene, the peace officer is in charge of traffic control and a peace officer shall not be prohibited from performing the duties of a peace officer at the fire scene.

89 Acts, ch 132, §4

102.5 Penalty.

A person who disobeys an order of a fire chief, other officer of a fire department, or peace officer assisting the fire department which is issued pursuant to section 102.2 or 102.3, is guilty of a simple misdemeanor.

89 Acts, ch 132, §5

SUBTITLE 6

BUILDING CODES

CHAPTER 103

FIRE ESCAPES AND OTHER MEANS OF ESCAPE FROM FIRE

Repealed by 81 Acts, ch 46, §3; see §100.35

CHAPTER 103A

STATE BUILDING CODE

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DIVISION I

STATE BUILDING CODE ACT

103A.1 Establishment.

This chapter shall be known as the *"State Building Code Act"*.

[C73, 75, 77, 79, 81, §103A.1]

103A.2 Statement of policy.

It is found and declared that some governmental subdivisions do not have building codes and that the building codes which do exist in the governmental subdivisions of this state, as enacted and applied, are not uniform and impede the utilization of new and improved technology, techniques, methods, and materials in the manufacture and construction of buildings and structures.

Therefore, it is the policy of the state of Iowa to

insure the health, safety, and welfare of its citizens through the promulgation and enforcement of a state building code.

[C73, 75, 77, 79, 81, §103A.2]

103A.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board of review"* or *"board"* means the state building code board of review created by this chapter.

2. *"Building"* means a combination of any materials, whether portable or fixed, to form a structure affording facilities or shelter for persons, animals or property. The word *"building"* includes any part of a building unless the context clearly requires a different meaning.

3. *"Building regulations"* means any law, bylaw, rule, resolution, regulation, ordinance, or code or compilation enacted or adopted, by the state or any governmental subdivision, including departments, boards, bureaus, commissions or other agencies, relating to the construction, reconstruction, alteration, conversion, repair or use of buildings and installation of equipment therein. The term shall not include zoning ordinances or subdivision regulations.

4. *"Commissioner"* means the state building code commissioner created by this chapter.

5. *"Construction"* means the construction, erection, reconstruction, alteration, conversion, repair, equipping of buildings, structures or facilities, and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

6. *"Council"* means the state building code advisory council created by this chapter.

7. *"Equipment"* means plumbing, heating, electrical, ventilating, conditioning, refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical facilities or installations.

8. *"Factory-built structure"* means any structure which is, wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation, or assembly and installation, on a building site. *"Factory-built structure"* includes the terms *"mobile home"*, *"manufactured home"*, and *"modular home"*.

9. *"Governmental subdivision"* means any city, county, or combination thereof.

10. *"Ground anchoring system"* means any device or combination of devices used to securely anchor a manufactured or mobile home to the ground.

11. *"Ground support system"* means any device or combination of devices placed beneath a manufactured or mobile home and used to provide support.

12. *"Installation"* means the assembly of factory-built structures on site and the process of affixing factory-built structures to land, a foundation, footings, or an existing building.

13. *"Local building department"* means an agency of any governmental subdivision charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

14. *"Local building regulations"* means building regulations adopted by a governmental subdivision.

15. *"Manufacture"* is the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semi-finished materials.

16. *"Manufactured home"*, *"mobile home"*, and *"modular home"* mean the same as defined in section 435.1.

17. *"New construction"* means construction of buildings and factory-built structures which is commenced on or after January 1, 1978. Notwithstanding the definition in subsection 5 of this section, when the term *"new construction"* appears in this chapter, "construction" is limited to the erection, reconstruction or conversion of a building or factory-built structure and additions to buildings or factory-built structures and does not include renovations or repairs.

18. *"Out-of-state contractor"* means a person whose principal place of business is in another state, and which contracts to perform construction, installation, or any other work covered by this chapter, in this state.

19. *"Owner"* means the owner of the premises, a mortgagee or vendee in possession, an assignee of rents, or a receiver, executor, trustee, lessee or other person in control of a building or structure.

20. *"Performance objective"* establishes design and engineering criteria without reference to specific methods of construction.

21. *"Permanent site"* means any lot or parcel of land on which a manufactured or mobile home used as a dwelling or place of business is located for ninety consecutive days, except a construction site when the manufactured or mobile home is used by a commercial contractor as a construction office or storage room.

22. *"State agency"* means a state department, board, bureau, commission, or agency of the state of Iowa.

23. *"State building code"* or *"code"* means the state building code provided for in section 103A.7.

24. *"State historic building code"* means the alternative building regulations and building standards for certain historic buildings provided for in section 103A.41.

25. *"Structure"* means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner

except transmission and distribution structures of public utilities. The word *"structure"* includes any part of a structure unless the context clearly requires a different meaning.

26. *"Tiedown system"* means a ground support system and a ground anchoring system used in concert to provide anchoring and support for a manufactured or mobile home.

[C73, 75, 77, 79, 81, §103A.3]

84 Acts, ch 1113, §1; 87 Acts, ch 60, §3; 2001 Acts, ch 100, §1, 2; 2001 Acts, ch 176, §60, 82

103A.4 Building code commissioner.

The commissioner of public safety, in addition to other duties, shall serve as the state building code commissioner or may designate a building code commissioner.

[C73, 75, 77, 79, 81, §103A.4; 82 Acts, ch 1210, §6]

103A.5 Commissioner — duties.

The commissioner shall:

1. Employ the necessary staff and assistants, within the limit of available funds, to assist in carrying out the provisions of this chapter.

2. Appoint necessary consultants and advisors to assist the commissioner in carrying out the provisions of this chapter.

3. Study the operation of the state building code, local building regulations, and other laws relating to the construction of buildings or structures to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health, safety, and welfare.

4. Do all things necessary or desirable to further and effectuate the general purposes and specific objectives of this chapter.

5. Administer and enforce chapters 104A and 104B.

[C73, 75, 77, 79, 81, §103A.5]

91 Acts, ch 97, §7

103A.6 Merit system.

Employees of the commissioner, if required by federal statutes, are covered by the merit system provisions of chapter 19A.

[C73, 75, 77, 79, 81, §103A.6]

88 Acts, ch 1158, §17

103A.7 State building code.

The state building code commissioner with the approval of the advisory council is hereby empowered and directed to formulate and adopt and from time to time amend or revise and to promulgate, in conformity with and subject to the conditions set forth in this chapter, reasonable rules designed to establish minimum safeguards in the erection and construction of buildings and structures, to protect the human beings who live and work in them from fire and other hazards, and to establish regulations to further protect the health, safety and welfare of the public.

The rules shall include reasonable provisions for the following:

1. The installation of equipment.

2. The standards or requirements for materials to be used in construction.

3. The manufacture and installation of factory-built structures.

4. Protection of the health, safety, and welfare of occupants and users.

5. The accessibility and use by persons with disabilities and elderly persons, of buildings, structures and facilities which are constructed and intended for use by the general public. The rules shall be consistent with federal standards for building accessibility and shall only apply to those buildings, structures, and facilities subject to chapter 104A.

6. The conservation of energy through thermal and lighting efficiency standards for buildings intended for human occupancy or use.

These rules shall comprise and be known as the state building code.

[C73, 75, 77, 79, 81, §103A.7]

93 Acts, ch 95, §1; 99 Acts, ch 49, §1, 3

103A.8 Standards.

The state building code shall as far as practical:

1. Provide uniform standards and requirements for construction, construction materials, and equipment through the adoption by reference of applicable national codes where appropriate and providing exceptions when necessary. The rules adopted shall include provisions imposing requirements reasonably consistent with or identical to recognized and accepted standards contained in performance criteria.

2. Establish such standards and requirements in terms of performance objectives.

3. Establish as the test of acceptability, adequate performance for the intended use.

4. Permit the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction without substantially affecting reasonable requirements for the health, safety, and welfare of the occupants or users of buildings and structures.

5. Encourage the standardization of construction practices, methods, equipment, material, and techniques.

6. Eliminate restrictive, obsolete, conflicting, and unnecessary regulations and requirements which tend to unnecessarily increase construction costs or retard unnecessarily the use of new materials, or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

7. Limit the application of thermal efficiency standards for energy conservation to new construction which will incorporate a heating or cooling system. Air exchange fans designed to provide

ventilation shall not be considered a cooling system. The commissioner shall exempt any new construction from thermal efficiency standards for energy conservation if the commissioner determines that the standards are unreasonable as they apply to a particular building or class of buildings including farm buildings for livestock use. Lighting efficiency standards shall recognize variations in lighting intensities required for the various tasks performed within the building. The commissioner shall consult with the department of natural resources regarding standards for energy conservation prior to the adoption of the standards. However, the standards shall be consistent with section 103A.8A.

8. Facilitate the development and use of solar energy.

[C73, 75, 77, 79, 81, §103A.8; 81 Acts, ch 184, §12]

85 Acts, ch 147, §1; 88 Acts, ch 1134, §22; 90 Acts, ch 1267, §26; 2002 Acts, ch 1162, §33

Subsection 7 amended

103A.8A Minimum energy efficiency standard.

The state building code commissioner shall adopt as a part of the state building code a requirement that new single-family or two-family residential construction shall meet an established minimum energy efficiency standard. The standard shall be stated in terms of the home heating index developed by the physics department at Iowa state university of science and technology. The minimum standard shall be the average energy consumption of new single-family or two-family residential construction as determined by a survey conducted by the department of natural resources of the average actual energy consumption, as expressed in terms of the home heating index. The minimum standard shall only apply to single-family or two-family residential construction commenced after the adoption of the standard. This chapter shall not be construed to prohibit a governmental subdivision from adopting or enacting a minimum energy standard which is substantially in accordance and consistent with model energy codes and standards developed by a nationally recognized organization in effect on or after July 1, 2002. A governmental subdivision that adopts or enacts a minimum energy standard which is substantially in accordance and consistent with model energy codes and standards developed by a nationally recognized organization shall adopt or enact any update or revision to the model energy codes and standards.

85 Acts, ch 147, §2; 88 Acts, ch 1134, §23; 2002 Acts, ch 1082, §1; 2002 Acts, ch 1162, §34

See Code editor's note to §8.55 at the end of Vol IV

Section amended

103A.9 Factory-built structures.

The state building code shall contain provisions relating to the manufacture and installation of factory-built structures.

1. Factory-built structures manufactured in Iowa, after the effective date of the code, shall be manufactured in accordance with the code, unless the commissioner determines the structure is manufactured for installation outside the state.

2. Factory-built structures manufactured outside the state of Iowa, after the effective date of the code, and brought into Iowa for installation must, prior to installation, comply with the code.

3. Factory-built structures manufactured prior to the effective date of the code, which prior to that date have never been installed, must comply with the code prior to installation.

4. All factory-built structures, without regard to manufacture date, shall be installed in accordance with the code in the governmental subdivisions which have adopted the state building code or any other building code. However, a governmental subdivision shall not require that a factory-built structure, that was manufactured in accordance with federally mandated standards, be renovated in accordance with the state building code or any other building code which the governmental subdivision has adopted when the factory-built structure is being moved from one lawful location to another unless such required renovation is in conformity with those specifications for the factory-built structure which existed when it was manufactured or the factory-built structure is being rented for occupancy.

Existing factory-built structures not constructed to be in compliance with federally mandated standards may be moved from one established manufactured home community or mobile home park to another and shall not be required to be renovated to comply with the state building code or any other building code which the governmental subdivision has adopted unless the factory-built structure is being rented for occupancy or has been declared a public nuisance according to standards generally applied to housing.

5. Factory-built structures required to comply with the code provisions on manufacture, shall not be modified in any way prior to or during installation, unless prior approval is obtained from the commissioner.

6. The commissioner shall establish an insignia of approval and provide that factory-built structures required to comply with code provisions on manufacture bear an insignia of approval prior to installation. The insignia may be issued for other factory-built structures which meet code standards and which were manufactured prior to the effective date of the state building code.

7. The commissioner may contract with local government agencies for enforcement of the code relating to manufacture of factory-built structures. Code provisions relating to installation of factory-built structures shall be enforced by the local building departments only in those govern-

mental subdivisions which have adopted the state building code or any other building code.

[C73, 75, 77, 79, 81, §103A.9]

93 Acts, ch 154, §1; 2001 Acts, ch 100, §3; 2001 Acts, ch 153, §16

103A.10 Effect and application.

1. The state building code shall, for the buildings and structures to which it is applicable, constitute a lawful local building code.

2. The state building code shall be applicable:

a. To all buildings and structures owned by the state or an agency of the state.

b. In each governmental subdivision where the governing body has enacted an ordinance accepting the application of the code.

3. Provisions of the state building code relating to the manufacture and installation of factory-built structures shall apply throughout the state. Factory-built structures approved by the commissioner shall be deemed to comply with all building regulations applicable to its manufacture and installation and shall be exempt from any local building regulations.

4. Notwithstanding the provisions of section 103A.22, subsection 1:

a. Provisions of the state building code establishing thermal efficiency energy conservation standards shall be applicable to all new construction owned by the state, an agency of the state or a political subdivision of the state, to all new construction located in a governmental subdivision which has adopted either the state building code or a local building code or compilation of requirements for building construction and to all other new construction in the state which will contain more than one hundred thousand cubic feet of enclosed space that is heated or cooled.

b. Provisions of the state building code establishing lighting efficiency standards shall be applicable to all new construction owned by the state, an agency of the state or a political subdivision of the state and to all new construction, in the state, of buildings which are open to the general public during normal business hours.

5. This chapter shall not be construed to prohibit a governmental subdivision from adopting or enacting a minimum energy standard which is substantially in accordance and consistent with model energy codes and standards developed by a nationally recognized organization in effect on or after July 1, 2002. A governmental subdivision that adopts or enacts a minimum energy standard which is substantially in accordance and consistent with model energy codes and standards developed by a nationally recognized organization shall adopt or enact any update or revision to the model energy codes and standards.

[C73, 75, 77, 79, 81, §103A.10]

89 Acts, ch 39, §1; 2002 Acts, ch 1082, §2

NEW subsection 5

103A.11 Rules.

1. The commissioner shall adopt rules pursuant to chapter 17A which are necessary for the implementation of this chapter.

2. The text of any proposed rule shall be made available for inspection at the office of the commissioner and shall be distributed to the governmental subdivisions which have adopted the state building code, and to any other person who requests a copy.

3. Copies of every rule shall be sent by the commissioner to all governmental subdivisions which have adopted the state building code.

4. The provisions of this section shall not apply to any rule relating solely to the internal operations of the office of the commissioner and council.

[C73, 75, 77, 79, 81, §103A.11]

84 Acts, ch 1067, §19; 94 Acts, ch 1078, §7

103A.12 Adoption and withdrawal — procedure.

The state building code is applicable in each governmental subdivision of the state in which the governing body has enacted an ordinance accepting the applicability of the code and has filed a certified copy of the ordinance in the office of the commissioner. The state building code becomes effective in the governmental subdivision upon the date fixed by the governmental subdivision ordinance, which must not be more than six months after the date of adoption of the ordinance.

A governmental subdivision in which the state building code is applicable may by ordinance, at any time after one year has elapsed since the code became applicable, withdraw from the application of the code. The local governing body shall hold a public hearing, after giving not less than four but not more than twenty days' public notice, together with written notice to the commissioner of the time, place, and purpose of the hearing, before the ordinance to withdraw is voted upon. A certified copy of the vote of the local governing body shall be transmitted within ten days after the vote is taken to the commissioner. The ordinance becomes effective at a time to be specified in the ordinance, which must be not less than one hundred eighty days after the date of adoption. Upon the effective date of the ordinance, the state building code ceases to apply to the governmental subdivision except that construction of a building or structure pursuant to a permit previously issued is not affected by the withdrawal.

A governmental subdivision which has withdrawn from the application of the state building code may, at any time thereafter, restore the application of the code in the same manner as specified in this section.

[C73, 75, 77, 79, 81, §103A.12]
87 Acts, ch 43, §2; 89 Acts, ch 39, §2; 2001 Acts, ch 20, §1

103A.13 Alternate materials and methods of construction.

The provisions of the state building code shall not prevent the use of any material or method of construction not specifically prescribed therein, provided any such alternate has been approved by the building code commissioner.

The commissioner may approve any alternate if the commissioner finds that the proper design is satisfactory and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the state building code in quality, strength, effectiveness, fire resistance, durability, and safety.

The commissioner shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding alternate use.

[C73, 75, 77, 79, 81, §103A.13]

103A.14 Advisory council.

There is hereby established a seven member council to be known as the state building code advisory council. The council shall elect from its membership a chairperson. The members of the council shall be appointed by the governor and shall hold office commencing July 1, 1972, for four years and until their successors are appointed, except that three initial appointees shall be appointed for two-year terms and four initial appointees shall be appointed for four-year terms. The members of the council shall be persons who are qualified by experience or training to provide a broad or specialized expertise on matters pertaining to building construction. At least one of the members shall be a journeyman member of the building trades. Vacancies shall be filled in the same manner as the original appointments.

1. The council shall advise and confer with the commissioner in matters relating to the state building code.

2. The council members shall, at the request of the commissioner, hold public hearings and perform such other functions as the commissioner requests.

3. The council shall approve or disapprove the rules and regulations referred to in section 103A.7 and shall approve or disapprove any alternate materials or methods of construction approved by the commissioner as provided in section 103A.13. A majority vote of the council membership shall be required for these functions.

4. Any member of the council may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

5. Each member of the council shall receive per diem compensation at the rate as specified in section 7E.6 for each day spent in the performance of the member's duties, but not to exceed twenty-five hundred dollars per year. All members of the council shall receive necessary expenses incurred in the performance of their duties.

6. Four members of the council shall constitute a quorum. For the purpose of conducting business a majority vote of the council shall be required.

7. Meetings of the council may be called by the commissioner.

[C73, 75, 77, 79, 81, §103A.14]
90 Acts, ch 1256, §29

103A.15 Board of review.

The commissioner shall establish a state building code board of review.

1. The board shall be composed of three members of the council.

2. Members of the board of review shall serve at the pleasure of the commissioner.

3. No member of the board shall pass upon any question in which the member or any corporation in which the member is a stockholder is interested.

4. The commissioner may appoint alternate board members from the membership of the advisory council.

[C73, 75, 77, 79, 81, §103A.15]

103A.16 Board of review — appeal.

Any aggrieved person may appeal to the board for:

1. A reversal, modification, or annulment of any ruling, direction, determination, or order of any state agency or local building department affecting or relating to the construction of any building or structure, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code.

2. Review of the disapproval or failure to approve within sixty days after submission of:

a. An application for permission to construct pursuant to the code, or

b. Plans or specifications for construction pursuant to the code.

[C73, 75, 77, 79, 81, §103A.16]

103A.17 Board of review — procedure.

The board shall establish procedures pursuant to which an aggrieved person may appeal to the board.

1. The board shall fix a reasonable time and place for a hearing and shall give due notice of a hearing to:

a. The applicant.

b. The state agency or local building department involved.

c. Any other person at the board's discretion.

2. Notice shall be by registered mail and shall:

a. Name the applicant.

b. State the time and place of the hearing.

c. State the general nature of the appeal.

3. The following may appear and be heard at an appeal hearing:

a. The applicant, or the applicant's agent.

b. The state agency or local building department involved.

c. Any other person at the board's discretion.

4. The board, in hearings conducted under this section, shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

5. Applications shall be decided promptly. In every case the board shall state generally the reason for its decision.

6. The decision of the board shall state the date on which it takes effect, which shall be no earlier than five days subsequent to issuance of such decision, and a copy of the decision, duly certified by the chairperson of the board, shall be filed in the office of the commissioner, and a copy shall be sent to the parties and any state agency or local building department affected.

7. The decision of the board of review may be appealed to the advisory council by any party by filing a petition with the advisory council at any time prior to the effective date of such decision. The advisory council shall consider all questions of fact and law involved and issue its decision pertaining to the same not later than ten days after receipt of the appeal.

8. A record of all decisions of the board and advisory council shall be properly indexed and filed in the office of the commissioner, and shall be public records as defined in chapter 22.

9. The board may subpoena all of the papers and documents constituting the record upon which the application for the use of alternate materials or methods of construction, modification, reversal, annulment, or review is based, and the state, county, or municipal officer in charge thereof shall, upon receipt of the subpoena, transmit the papers and documents to the board.

10. All decisions of the board shall require the concurrence of at least two of its members.

[C73, 75, 77, 79, 81, §103A.17]

103A.18 Court proceedings.

Judicial review of action of the commissioner, board of review, or council may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act:

1. Filing of a petition for judicial review shall stay all proceedings on the matter with respect to which review is sought unless there is a showing by the state agency or a local building department that a stay would involve imminent peril to life or property.

2. No court shall entertain an action based on the state building code unless all administrative remedies have been exhausted, except:

a. When the action is instituted by the state or a governmental subdivision; or

b. When there is good cause for the failure to exhaust administrative remedies.

3. Subject to subsection 1 of this section, where the construction of a building or structure or use of a building is in violation of any code provision or lawful order of a local building department, the district court may on petition order removal of the building, abatement as a public nuisance, or enjoin further construction.

4. Petitions for judicial review may be filed in the county where the cause of action or some part thereof arose.

[C73, 75, 77, 79, 81, §103A.18]

103A.19 Administration and enforcement.

The examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings or structures, and the administration and enforcement of building regulations shall be the responsibility of the governmental subdivisions of the state and shall be administered and enforced in the manner prescribed by local law or ordinance. All provisions of law relating to the administration and enforcement of local building regulations in any governmental subdivision shall be applicable to the administration and enforcement of the state building code in the governmental subdivision. An application made to a local building department or to a state agency for permission to construct a building or structure pursuant to the provisions of the state building code shall, in addition to any other requirement, be signed by the owner or the owner's authorized agent, and shall contain the address of the owner, and a statement that the application is made for permission to construct in accordance with the provisions of the code.

In aid of administration and enforcement of the state building code, and in addition to and not in limitation of powers vested in them by law, each governmental subdivision of the state may:

1. Examine and approve or disapprove plans and specifications for the construction of any building or structure, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code, and to direct the inspection of buildings or structures during the course of construction.

2. Require that the construction of any building or structure shall be in accordance with the applicable provisions of the state building code, subject, however, to the powers granted to the board of review in section 103A.16.

3. Order in writing any person to remedy any condition found to exist in, or about any building or structure in violation of the state building code. Orders may be served upon the owner or the own-

er's authorized agent personally or by certified mail at the address set forth in the application for permission to construct a building or structure. Any local building department may grant in writing such time as may be reasonably necessary for achieving compliance with an order.

4. Issue certificates of occupancy or use, permits, licenses, and other documents in connection with the construction of buildings or structures as may be required by ordinance.

A certificate of occupancy or use for a building or structure constructed in accordance with the provisions of the state building code shall certify that the building or structure conforms to the requirements of the code. The certificate shall be in the form the governing body of the governmental subdivision prescribes.

Every certificate of occupancy or use shall, until set aside or vacated by the board of review, director, or a court of competent jurisdiction, be binding and conclusive upon all state and local agencies, as to all matters set forth and no order, direction, or requirement at variance therewith shall be made or issued by any other state or local agency.

5. Make, amend, and repeal rules for the administration and enforcement of the provisions of this section, and for the collection of reasonable fees in connection therewith.

6. Prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state building code.

The specifications for all buildings to be constructed after July 1, 1977, and which exceed a total volume of one hundred thousand cubic feet of enclosed space that is heated or cooled shall be reviewed by a registered architect or registered engineer for compliance with applicable energy efficiency standards. A statement that a review has been accomplished and that the design is in compliance with the energy efficiency standards shall be signed and sealed by the responsible registered architect or registered engineer. This statement shall be filed with the commissioner prior to construction. If the specifications relating to energy efficiency for a specific structure have been approved, additional buildings may be constructed from those same plans and specifications without need of further approval if construction begins within five years of the date of approval. Alterations of a structure which has been previously approved shall not require a review because of these changes, provided the basic structure remains unchanged.

[C73, 75, 77, 79, 81, §103A.19]

Architect's seal required; §544A.28

103A.20 Permits — duty to issue.

1. If the plans and specifications accompanying an application for permission to construct a building or structure fail to comply with the provisions of building regulations applicable to the governmental subdivision where the construction is planned, the state or governmental subdivision official charged with the duty shall nevertheless issue a permit, certificate, authorization, or other required document, as the case may be, for the construction, if the plans and specifications comply with the applicable provisions set forth in the state building code, whenever such code is operative in such governmental subdivision.

However, a permit, certificate, authorization, or other required document for the construction of a building shall not be issued to a contractor who is required and fails to obtain a contractor registration number pursuant to chapter 91C.

2. Any building or structure constructed in conformance with the provisions of the state building code, shall be deemed to comply with all state, county, and municipal building regulations, and the owner, builder, architect, lessee, tenant, or their agents, or other interested person shall be entitled, upon a showing of compliance with the code, to demand and obtain, upon proper payment being made in appropriate cases, any permit, certificate, authorization, or other required document, the issuance of which is authorized pursuant to any state or local buildings or structure regulation, and it shall be the duty of the appropriate state or local officer having jurisdiction over the issuance to issue the permit, certificate, authorization, or other required document, as provided herein, whenever the code is operative in the governmental subdivision.

[C73, 75, 77, 79, 81, §103A.20]

90 Acts, ch 1136, §15

103A.21 Penalty.

1. Any person served with an order pursuant to the provisions of section 103A.19, subsection 3, who fails to comply with the order within thirty days after service or within the time fixed by the local building department for compliance, whichever is longer, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building or structure who shall knowingly violate any of the applicable provisions of the state building code or any lawful order of a local building department made thereunder, shall be guilty of a simple misdemeanor.

2. Violation of this chapter shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person.

Violations of this section shall be simple misdemeanors.

3. As an alternative to filing criminal charges as provided in this section, the commissioner may file a petition in the district court and obtain injunctive relief for any violation of this chapter or

chapter 104A.
[C73, 75, 77, 79, 81, §103A.21; 81 Acts, ch 49, §1]

103A.22 Construction of statute.
1. Nothing in this chapter shall be construed as prohibiting any governmental subdivision from adopting or enacting any building regulations relating to any building or structure within its limits, but a governmental subdivision in which the state building code has been accepted and is applicable shall not have the power to supersede, void, or repeal or make more restrictive any of the provisions of this chapter or of the rules adopted by the commissioner.
2. Nothing in this chapter shall be construed as abrogating or impairing the power of any governmental subdivision or local building department to enforce the provisions of any building regulations, or the applicable provisions of the state building code, or to prevent violations or punish violators except as otherwise expressly provided in this chapter.
3. The powers enumerated in this chapter shall be interpreted liberally to effectuate the purposes thereof and shall not be construed as a limitation of powers.
[C73, 75, 77, 79, 81, §103A.22]

103A.23 Fees.
For the purpose of obtaining revenue to defray the costs of administering the provisions of this chapter, the commissioner shall establish by rule a schedule of fees based upon the costs of administration which fees shall be collected from persons whose manufacture, installation, or construction is subject to the provisions of the state building code. For the performance of building plan reviews by the department of public safety, the commissioner shall establish by rule a fee, chargeable to the owner of the building, which shall be equal to a percentage of the estimated total valuation of the building and which shall be in an amount reasonably related to the cost of conducting the review.
All fees collected by the commissioner shall be deposited in the state treasury to the credit of the general fund of the state.
All federal grants to and federal receipts of the office of state building code commissioner are appropriated for the purpose set forth in the federal grants or receipts.
[C73, 75, 77, 79, 81, §103A.23]
2000 Acts, ch 1229, §21

103A.24 Bond for out-of-state contractors. Repealed by 89 Acts, ch 254, § 4. See § 91C.7.

103A.25 Prior resolutions.
A resolution accepting the state building code, which was adopted before the effective date of this Act, is an ordinance for the purpose of this chapter.
89 Acts, ch 39, §3

103A.26 Manufactured or mobile home installers certification — violation — civil penalty.
1. *a.* A person who installs a manufactured or mobile home for another person shall be certified in accordance with rules adopted by the commissioner pursuant to chapter 17A. The commissioner may assess a fee sufficient to recover the costs of administering the certification of manufactured or mobile home installers. The commissioner may suspend or revoke the certification of a manufactured or mobile home installer for failure to perform installation of a manufactured or mobile home, pursuant to certification standards as provided by rules of the commissioner.
b. Notwithstanding section 103A.23, all fees collected by the commissioner for the administration of the manufactured or mobile home program shall be credited to the general fund of the state and are appropriated to the commissioner for the purpose of administering this certification program including the employment of personnel for the enforcement and administration of this program.
2. If a provision of this chapter or a rule adopted pursuant to this chapter relating to the manufacture or installation of a manufactured or mobile home is violated, the commissioner may assess a civil penalty not to exceed one thousand dollars for each offense. Each violation involving a separate manufactured or mobile home, or a separate failure or refusal to allow an act to be performed or to perform an act as required by this chapter or a rule adopted pursuant to this chapter, constitutes a separate offense. However, the maximum amount of civil penalties which may be assessed for any series of violations occurring within one year from the date of the first violation shall not exceed one million dollars.
2001 Acts, ch 100, §4; 2001 Acts, ch 176, §61, 82

103A.27 through 103A.29 Reserved.

DIVISION II

MANUFACTURED OR MOBILE HOME TIEDOWN SYSTEMS

103A.30 Approved tiedown system — provided at sale — installation.
Any person who sells a new or used manufactured or mobile home shall provide an approved tiedown system.
The purchaser shall install or have installed this system within one hundred fifty days of locating the manufactured or mobile home on a permanent site.

[C79, 81, §103A.30]
2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

103A.31 Installer compliance and certification.

Any person who installs a tiedown system shall comply with the minimum standards for such systems, and shall provide the owner of the manufactured or mobile home on which installation is made and the commissioner with a certification of approved system installation. Such certification shall be in proper form as established by the commissioner.

[C79, 81, §103A.31]
2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

103A.32 Compliance.

When it appears that a person is in noncompliance with the provisions of sections 103A.30 to 103A.33 the commissioner shall prescribe a period of time not to exceed one hundred twenty days within which compliance must be achieved and the commissioner shall so notify the person.

[C79, 81, §103A.32]

103A.33 Listing and form of certification of approved systems provided.

The commissioner shall provide upon request a list of approved tiedown systems and instructions for the completion of proper certification of approved system installation.

[C79, 81, §103A.33]

103A.34 to 103A.40 Reserved.

DIVISION III

STATE HISTORIC BUILDING CODE

103A.41 State historic building code.

The commissioner, with the approval of the state historical society board established by section 303.4, shall adopt, in accordance with chapter 17A, alternative building standards and building regulations for the rehabilitation, preservation, restoration (including related reconstruction) and relocation of buildings or structures designated by state agencies or governmental subdivisions as qualified historic buildings which are included in, or appear to meet criteria for inclusion in, the national register of historic places. The alternative building standards and building regulations comprise and shall be known as the state historic building code. The purpose of the state historic building code is to facilitate the restoration or change of occupancy of qualified historic buildings or structures so as to preserve their original or restored architectural elements and features and, concurrently, to provide reasonable safety from fire and other hazards for the occupants and users, through a cost-effective approach to preservation.

84 Acts, ch 1113, §2

103A.42 Designation of qualified historic buildings and structures.

1. A state agency or governmental subdivision may designate as appropriate for the application of the state historic building code those buildings, structures and collections of structures subject to its jurisdiction for which the state historic preservation officer, in response to an adequately documented request, has issued an opinion affirming that the property is either included in or appears to meet criteria for inclusion in the national register of historic places. A building, structure or collection of structures so designated is a qualified historic building or structure for purposes of sections 103A.41 through 103A.45.

2. As used in this section, *"buildings, structures and collections of structures"* includes their associated sites.

84 Acts, ch 1113, §3

103A.43 Application of state historic building code as alternative.

1. The state historic building code constitutes a lawful alternative building code for application by state agencies and governmental subdivisions as provided in subsections 2 and 3.

2. A state agency may apply the provisions of the state building code or of the state historic building code, or any combination of the two, in providing reasonable safety from fire and other hazards for the occupants and other users while permitting repairs, alterations and additions necessary for the preservation, restoration, rehabilitation, relocation or continued use of qualified historic buildings or structures.

3. A governmental subdivision may apply the provisions of its regular local building standards and building regulations or of the state historic building code, or any combination of the two, in providing reasonable safety from fire and other hazards for the occupants and other users while permitting repairs, alterations and additions necessary for the preservation, restoration, rehabilitation, relocation or continued use of qualified historic buildings or structures.

4. The alternative building standards and building regulations of the state historic building code shall be enforced in the same manner and by the same governmental entities as the regular building standards and building regulations of those governmental entities respectively.

5. When the requirements of the state historic building code are applied to repairs, alterations or additions to qualified historic buildings or structures, the requirements of this chapter and chapter 104A which are in conflict with the state historic building code do not apply to those repairs, alter-

ations or additions.
84 Acts, ch 1113, §4

103A.44 State historic building code advisory board — creation. Repealed by 86 Acts, ch 1245, § 1340.

103A.45 State historical society board — duties.
The state historical society board shall:
1. Recommend to the commissioner alternative building standards and building regulations for inclusion in the state historic building code.
2. Approve or disapprove alternative building standards and building regulations which the commissioner proposes to include in the state historic building code. A majority vote of the membership of the board is required for this function.
3. Advise and confer with the commissioner in matters relating to the state historic building code.
4. Consult with state agencies, including the state fire marshal and the department of cultural affairs, governmental subdivisions, architects, engineers, and others who have knowledge of or interest in the rehabilitation, preservation, restoration, and relocation of historic buildings, with respect to matters relating to the state historic building code.
5. At the request of a state agency, governmental subdivision or other interested party, provide review and advice as to specific applications of the state historic building code.
6. At the request of the commissioner, hold public hearings and perform other functions as the commissioner requests.
84 Acts, ch 1113, §6; 86 Acts, ch 1245, §1339

CHAPTER 104

STATE ELEVATOR CODE

Transferred to chapter 89A

CHAPTER 104A

ACCESSIBILITY FOR PERSONS WITH DISABILITIES

104A.1 Intent of chapter.
104A.2 Applicability — requirements.
104A.3 Requirements. Repealed by 93 Acts, ch 95, §8.
104A.4 Ramps. Repealed by 93 Acts, ch 95, §8.
104A.5 Buildings in process of construction.
104A.6 Conformance with rules of state building code commissioner.
104A.7 Parking spaces — penalty. Repealed by 93 Acts, ch 95, §8.
104A.8 Enforcement.

104A.1 Intent of chapter.
It is the intent of this chapter that standards and specifications are followed in the construction of public and private buildings and facilities which are intended for use by the general public to ensure that these buildings and facilities are accessible to and functional for persons with disabilities.
[C66, 71, 73, 75, 77, 79, 81, §104A.1]
93 Acts, ch 95, §2

104A.2 Applicability — requirements.
The standards and specifications adopted by the state building code commissioner and as set forth in this chapter shall apply to all public and private buildings and facilities, temporary and permanent, used by the general public. The specific occupancies and minimum extent of accessibility shall be in accordance with the conforming standards set forth in section 104A.6. In every covered multiple-dwelling-unit building containing four or more individual dwelling units the requirements of this chapter and those adopted by the state building code commissioner shall be met. However, this chapter shall not apply to a building, or to structures or facilities within the building, if the primary use of the building is to serve as a place of worship.
[C66, 71, 73, 75, 77, 79, 81, §104A.2]
93 Acts, ch 95, §3; 99 Acts, ch 49, §2, 3

104A.3 Requirements. Repealed by 93 Acts, ch 95, § 8. See § 104A.6.

104A.4 Ramps. Repealed by 93 Acts, ch 95, § 8. See § 104A.6.

104A.5 Buildings in process of construction.

The standards and specifications set forth in this chapter shall be adhered to in those buildings and facilities under construction on July 4, 1965, unless the authority responsible for the construction shall determine the construction has reached a state where compliance will result in a substantial increase in cost or delay in construction.

[C66, 71, 73, 75, 77, 79, 81, §104A.5]

104A.6 Conformance with rules of state building code commissioner.

The authority responsible for the construction of any building or facility covered by section 104A.2 shall conform with rules adopted by the state building code commissioner as provided in section 103A.7.

[C66, 71, 73, 75, 77, 79, 81, §104A.6]

93 Acts, ch 95, §4

104A.7 Parking spaces — penalty. Repealed by 93 Acts, ch 95, § 8. See § 104A.6.

104A.8 Enforcement.

This chapter is subject to enforcement as provided in chapter 103A.

93 Acts, ch 95, §5

CHAPTER 104B

MINIMUM PLUMBING FACILITIES

104B.1 Minimum plumbing facilities.

104B.1 Minimum plumbing facilities.

1. Places of assembly for public use including but not limited to theaters, auditoriums, and convention halls, constructed on or after January 1, 1991, shall conform to the standards for minimum plumbing facilities as provided in the uniform plumbing code.

2. Restaurants, pubs, and lounges constructed on or after January 1, 1991, shall conform to the standards for minimum plumbing facilities as provided in the uniform plumbing code.

3. All toilets installed pursuant to this section shall be water efficient toilets which use three gallons or less of water per flush.

4. The state building code commissioner, with the approval of the state building code advisory council established pursuant to section 103A.14, shall adopt rules to enforce this chapter. Any ruling of the building code commissioner made pursuant to this chapter is subject to administrative review and appeal as provided in chapter 17A.

90 Acts, ch 1214, §1

CHAPTER 105

LIABILITY OF HOTEL KEEPERS AND STEAMBOAT OWNERS

Transferred to chapter 671

CHAPTER 105A

CIVIL RIGHTS COMMISSION

This chapter transferred to chapter 216

CHAPTER 106

WATER NAVIGATION REGULATIONS

Transferred to chapter 462A

CHAPTER 106A

USE OF STATE WATERS BY NONRESIDENTS

Transferred to chapter 461B

CHAPTER 107

REGULATION AND FUNDING — DEPARTMENT OF NATURAL RESOURCES

Transferred to chapter 456A

CHAPTER 108

SPECIAL PROVISIONS — DEPARTMENT OF NATURAL RESOURCES

Transferred to chapter 456B

CHAPTER 108A

PROTECTED WATER AREA SYSTEM

Transferred to chapter 462B

CHAPTER 108B

MISSOURI RIVER PRESERVATION AND LAND USE AUTHORITY

Transferred to chapter 463B

CHAPTER 109

WILDLIFE CONSERVATION

Transferred to chapter 481A
Former sections 109.49 and 109.64 repealed;
92 Acts, ch 1216, §13; see §481A.141, 481A.142

CHAPTER 109A

MANAGEMENT AND PROTECTION OF ENDANGERED PLANTS AND WILDLIFE

Transferred to chapter 481B

CHAPTER 109B

COMMERCIAL FISHING

Transferred to chapter 482

CHAPTER 110

FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS

Transferred to chapter 483A

CHAPTER 110A

GAME BREEDING AND SHOOTING PRESERVES

Repealed by 92 Acts, ch 1160, §26; see chapter 484B

CHAPTER 110B

MIGRATORY WATERFOWL

Transferred to chapter 484A

CHAPTER 111

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Transferred to chapter 461A

CHAPTER 111A

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Transferred to chapter 350

CHAPTER 111B

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Transferred to chapter 465C

CHAPTER 111C

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Transferred to chapter 461C

CHAPTER 111D

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Transferred to chapter 464A

CHAPTER 113

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CHAPTER 114

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Transferred to chapter 542B

CHAPTER 114A

STANDARDS FOR LAND SURVEYING

Transferred to chapter 355

CHAPTER 115

CERTIFIED SHORTHAND REPORTERS

Repealed by 83 Acts, ch 186, §10201, 10203; see chapter 602, article 3

CHAPTER 116

RESERVED

CHAPTER 117

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Transferred to chapter 543B

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Transferred to chapter 543C

CHAPTER 117B

REAL ESTATE APPRAISALS AND APPRAISERS

Transferred to chapter 543D

CHAPTER 118

REGISTERED ARCHITECTS

Transferred to chapter 544A

CHAPTER 118A

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Transferred to chapter 544B

CHAPTER 119

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Transferred to chapter 556E

CHAPTER 120

TRAVEL AGENCIES AND AGENTS

Transferred to chapter 9D

CHAPTER 121

SECONDHAND WATCHES

Repealed by 76 Acts, ch 1056, §45

CHAPTER 122

ORGANIZATIONS SOLICITING PUBLIC DONATIONS

Transferred to chapter 13C

CHAPTER 122A

IOWA STANDARD TIME

Transferred to chapter 1D

CHAPTER 122B

DONATIONS OF PERISHABLE FOOD

Transferred to chapter 672

CHAPTER 122C

INSTITUTIONAL FUNDS MANAGEMENT

Transferred to chapter 540A

TITLE IV

PUBLIC HEALTH

SUBTITLE 1

ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES

CHAPTER 123

ALCOHOLIC BEVERAGE CONTROL

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DIVISION I

GENERAL PROVISIONS RELATING TO ALCOHOLIC BEVERAGES

123.1 Public policy declared.

This chapter shall be cited as the "Iowa Alcoholic Beverage Control Act", and shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is declared to be public policy that the traffic in alcoholic liquors is so affected with a public interest that it should be regulated to the extent of prohibiting all traffic in them, except as provided in this chapter.

[C35, §1921-f1; C39, §**1921.001;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.1]

85 Acts, ch 32, §3; 86 Acts, ch 1122, §1

123.2 General prohibition.

It is unlawful to manufacture for sale, sell, offer or keep for sale, possess, or transport alcoholic liquor, wine, or beer except upon the terms, conditions, limitations, and restrictions enumerated in this chapter.

[C35, §1921-f3; C39, §**1921.003;** C46, 50, 54, 58, 62, 66, 71, §123.3; C73, 75, 77, 79, 81, §123.2]

85 Acts, ch 32, §4

123.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division, appointed pursuant to the provisions of this chapter, or the administrator's designee.

2. *"Air common carrier"* means a person engaged in transporting passengers for hire in interstate or foreign commerce by aircraft and operating regularly scheduled flights under a certificate of public convenience issued by the civil aeronautics board.

3. *"Alcohol"* means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.

4. *"Alcoholic beverage"* means any beverage containing more than one-half of one percent of alcohol by volume including alcoholic liquor, wine, and beer.

5. *"Alcoholic liquor"* or *"intoxicating liquor"* means the varieties of liquor defined in subsections 3 and 33 which contain more than five percent of alcohol by weight, beverages made as described in subsection 7 which beverages contain more than five percent of alcohol by weight but which are not wine as defined in subsection 37, and every other liquid or solid, patented or not, containing spirits and every beverage obtained by the process described in subsection 37 containing more than seventeen percent alcohol by weight, and susceptible of being consumed by a human being, for beverage purposes. Alcohol manufactured in this state for use as fuel pursuant to an experimental distilled spirits plant permit or its equivalent issued by the federal bureau of alcohol, tobacco and firearms is not an *"alcoholic liquor"*.

6. *"Application"* means a formal written request for the issuance of a permit or license supported by a verified statement of facts.

7. *"Beer"* means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains or made by the fermentation of or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight but not including mixed drinks or cocktails mixed on the premises.

8. *"Brewer"* means any person who manufactures beer for the purpose of sale, barter, exchange, or transportation.

8A. *"Broker"* means a person who represents or promotes alcoholic liquor within the state on behalf of the holder of a distiller's certificate of compliance through an agreement with the distiller, and whose name is disclosed on a distiller's current certificate of compliance as its representative in the state. An employee of the holder of a distiller's certificate of compliance is not a broker.

9. *"City"* means a municipal corporation but not including a county, township, school district, or any special purpose district or authority.

10. *"Club"* means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.

11. *"Commercial establishment"* means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the standards and

specifications of the division.

12. *"Commission"* means the alcoholic beverages commission established by this chapter.

12A. *"Designated security employee"* means an agent or employee of a licensee or permittee who is primarily employed for security purposes at a commercial establishment licensed or permitted under this chapter.

13. *"Distillery", "winery",* and *"brewery"* mean not only the premises where alcohol or spirits are distilled, wine is fermented, or beer is brewed, but in addition mean a person owning, representing, or in charge of such premises and the operations conducted there, including the blending and bottling or other handling and preparation of alcoholic liquor, wine, or beer in any form.

14. *"Division"* means the alcoholic beverages division of the department of commerce established by this chapter.

15. *"Hotel"* or *"motel"* means premises licensed by the department of inspections and appeals and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms.

16. *"Import"* means the transporting or ordering or arranging the transportation of alcoholic liquor, wine, or beer into this state whether by a resident of this state or not.

17. *"Importer"* means the person who transports or orders, authorizes, or arranges the transportation of alcoholic liquor, wine, or beer into this state whether the person is a resident of this state or not.

18. The terms *"in accordance with the provisions of this chapter"*, *"pursuant to the provisions of this title"*, or similar terms shall include all rules and regulations of the division adopted to aid in the administration or enforcement of those provisions.

19. *"Legal age"* means twenty-one years of age or more.

20. *"Licensed premises"* or *"premises"* means all rooms, enclosures, contiguous areas, or places susceptible of precise description satisfactory to the administrator where alcoholic beverages, wine, or beer is sold or consumed under authority of a liquor control license, wine permit, or beer permit. A single licensed premises may consist of multiple rooms, enclosures, areas or places if they are wholly within the confines of a single building or contiguous grounds.

21. *"Local authority"* means the city council of any incorporated city in this state, or the county board of supervisors of any county in this state, which is empowered by this chapter to approve or deny applications for retail beer or wine permits and liquor control licenses; empowered to recommend that such permits or licenses be granted and issued by the division; and empowered to take other actions reserved to them by this chapter.

22. *"Manufacture"* means to distill, rectify, ferment, brew, make, mix, concoct, or process any substance capable of producing a beverage containing more than one-half of one percent of alcohol by volume and includes blending, bottling, or the preparation for sale.

23. *"Package"* means any container or receptacle used for holding alcoholic liquor.

24. *"Permit"* or *"license"* means an express written authorization issued by the division for the manufacture or sale, or both, of alcoholic liquor, wine, or beer.

25. *"Person"* means any individual, association, partnership, corporation, club, hotel or motel, or municipal corporation owning or operating a bona fide airport, marina, park, coliseum, auditorium, or recreational facility in or at which the sale of alcoholic liquor, wine, or beer is only an incidental part of the ownership or operation.

26. *"Person of good moral character"* means any person who meets all of the following requirements:

a. The person has such financial standing and good reputation as will satisfy the administrator that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person's operations under this chapter. However, the administrator shall not require the person to post a bond to meet the requirements of this paragraph.

b. The person is not prohibited by section 123.40 from obtaining a liquor control license or a wine or beer permit.

c. Notwithstanding paragraph *"e"*, the applicant is a citizen of the United States and a resident of this state, or licensed to do business in this state in the case of a corporation. Notwithstanding paragraph *"e"*, in the case of a partnership, only one general partner need be a resident of this state.

d. The person has not been convicted of a felony. However, if the person's conviction of a felony occurred more than five years before the date of the application for a license or permit, and if the person's rights of citizenship have been restored by the governor, the administrator may determine that the person is of good moral character notwithstanding such conviction.

e. The requirements of this subsection apply to the following:

(1) Each of the officers, directors, and partners of such person.

(2) A person who directly or indirectly owns or controls ten percent or more of any class of stock of such person.

(3) A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of such person.

27. *"Public place"* means any place, building, or conveyance to which the public has or is permitted access.

28. *"Residence"* means the place where a person resides, permanently or temporarily.

29. *"Retail beer permit"* means a class "B" or

class "C" beer permit issued under the provisions of this chapter.

30. *"Retail wine permit"* means a class "B" wine permit issued under this chapter.

31. *"Retailer"* means any person who shall sell, barter, exchange, offer for sale, or have in possession with intent to sell any alcoholic liquor, wine, or beer for consumption either on or off the premises where sold.

32. The prohibited *"sale"* of alcoholic liquor, wine, or beer under this chapter includes soliciting for sales, taking orders for sales, keeping or exposing for sale, delivery or other trafficking for a valuable consideration promised or obtained, and procuring or allowing procurement for any other person.

33. *"Spirits"* means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.

34. *"Unincorporated town"* means a compactly populated area recognized as a distinct place with a distinct place-name which is not itself incorporated or within the corporate limits of a city.

35. *"Warehouse"* means any premises or place primarily constructed or used or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of normal warehousing business.

36. *"Wholesaler"* means any person, other than a vintner, brewer or bottler of beer or wine, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in alcoholic liquor, wine, or beer. A wholesaler shall not sell for consumption upon the premises.

37. *"Wine"* means any beverage containing more than five percent but not more than seventeen percent of alcohol by weight obtained by the fermentation of the natural sugar contents of fruits or other agricultural products but excluding any product containing alcohol derived from malt or by the distillation process from grain, cereal, molasses or cactus.

[C35, §1921-f5, 1921-f97; C39, §**1921.005, 1921.096;** C46, 50, 54, 58, 62, 66, 71, §123.5, 124.2; C73, 75, 77, 79, 81, §123.3; 81 Acts, ch 55, §1]

85 Acts, ch 32, §5 – 8; 86 Acts, ch 1122, §2 – 4; 86 Acts, ch 1246, §724, 725; 88 Acts, ch 1088, §1; 88 Acts, ch 1241, §1; 89 Acts, ch 161, §1; 93 Acts, ch 91, §1; 94 Acts, ch 1017, §1; 97 Acts, ch 126, §1; 2000 Acts, ch 1201, §1

123.4 Alcoholic beverages division created.

An alcoholic beverages division is created within the department of commerce to administer and enforce the laws of this state concerning beer, wine, and alcoholic liquor.

[C35, §1921-f15; C39, §**1921.015;** C46, 50, 54, 58, 62, 66, 71, §123.15; C73, 75, 77, 79, 81, §123.4]

85 Acts, ch 32, §9; 86 Acts, ch 1245, §731

123.5 Alcoholic beverages commission created.

An alcoholic beverages commission is created within the division. The commission is composed of five members, not more than three of whom shall belong to the same political party.

[C35, §1921-f6; C39, §**1921.006;** C46, 50, 54, 58, 62, 66, 71, §123.6; C73, 75, 77, 79, 81, §123.5]

86 Acts, ch 1245, §732

123.6 Appointment — term — expenses — compensation.

Appointments shall be for five-year staggered terms beginning and ending as provided by section 69.19 and shall be made by the governor, subject to confirmation by the senate. Members of the commission shall be chosen on the basis of managerial ability and experience as business executives. One member of the commission may be the holder of or have an interest in a permit or license to manufacture alcoholic liquor, wine, or beer or to sell alcoholic liquor, wine, or beer at wholesale or retail. A member may be reappointed for one additional term. Each member appointed is entitled to receive reimbursement of actual expenses incurred while attending meetings. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

[C35, §1921-f7, 1921-f10; C39, §**1921.007, 1921.010;** C46, 50, 54, 58, 62, 66, 71, §123.7, 123.10; C73, 75, 77, 79, 81, §123.6; 82 Acts, ch 1024, §1]

85 Acts, ch 32, §10; 86 Acts, ch 1245, §733

Confirmation, see §2.32

123.7 Vacancies.

Any vacancy occurring shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

[C35, §1921-f8; C39, §**1921.008;** C46, 50, 54, 58, 62, 66, 71, §123.8; C73, 75, 77, 79, 81, §123.7]

123.8 Surety bonds.

Each commission member shall post a bond, at the expense of the state, in an amount and with sureties as the executive council approves, to guarantee to the state the proper handling and accounting of the moneys, merchandise, and other properties as required in the administration of this chapter. The administrator shall secure from all employees of the division holding positions of trust a bond with sureties as the alcoholic beverages commission approves adequate to guarantee to the state the proper handling and accounting of all moneys, merchandise, and other properties.

[C35, §1921-f9; C39, §**1921.009;** C46, 50, 54, 58, 62, 66, 71, §123.9; C73, 75, 77, 79, 81, §123.8]

86 Acts, ch 1245, §734

123.9 Commission meetings.

The commission shall meet on July 1 of each year for the purpose of selecting one of its members as chairperson, which member shall serve in such capacity for the succeeding year. The commission shall otherwise meet at the call of the chairperson or when any three members file with the chairperson a written request for a meeting. Written notice of the time and place of each meeting shall be given to each member of the commission. All commission meetings shall be held within the state. A majority of the commission members shall constitute a quorum.

[C35, §1921-f10; C39, §**1921.010;** C46, 50, 54, 58, 62, 66, 71, §123.10; C73, 75, 77, 79, 81, §123.9]

123.10 Administrator appointed — duties.

The governor shall appoint the administrator of the alcoholic beverages division, subject to confirmation by the senate, to a four-year term. A vacancy in an unexpired term shall be filled in the same manner as a full-term appointment is made. The administrator shall not be a member of the commission. The administrator's salary shall be fixed by the general assembly. The administrator shall be qualified to perform the administrator's duties by managerial ability and experience as a business executive. The administrator shall post a bond paid from the state general fund in an amount established by the governor to insure proper discharge of the administrator's duties.

The administrator shall devote full time to the discharge of the administrator's duties. The administrator shall not hold any other elective or appointive office under the laws of this state, the United States, or any other state or territory. The administrator shall not accept or solicit, directly or indirectly, contributions or anything of value in behalf of the administrator, any political party, or any person seeking an elective or appointive office nor use the administrator's official position to advance the candidacy of anyone seeking an elective or appointive office. The administrator, the administrator's spouse, and immediate family shall not have any interest in any distillery, winery, brewery, importer, permittee or licensee or any business which is subject to license or regulation pursuant to this chapter.

[C73, 75, 77, 79, 81, §123.10]

86 Acts, ch 1245, §735

Confirmation, see §2.32

123.11 Expenses.

Members of the commission, the administrator, and other employees of the division shall be allowed their actual and necessary expenses while traveling on business of the division outside of their place of residence, however, an itemized account of such expenses shall be verified by the claimant and approved by the administrator. If such account is paid, the same shall be filed with the division and be and remain a part of its permanent records. All expenses and salaries of commission members, the administrator, and other employees shall be paid from appropriations for such purposes and the division shall be subject to the budget requirements of chapter 8.

[C35, §1921-f11; C39, §**1921.011;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.11]

123.12 Removal.

Any commission member shall be removed for any of the causes and in the manner provided by chapter 66 relating to removal from office; such removal shall not be in lieu of any other punishment that may be prescribed by the laws of this state.

[C35, §1921-f12; C39, §**1921.012;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.12]

123.13 Exemption from suit.

No commission member or officer or employee of the division shall be personally liable for damages sustained by any person due to the act of such member, officer, or employee performed in the reasonable discharge of the member's, officer's, or employee's duties as enumerated in this chapter.

[C35, §1921-f13; C39, §**1921.013;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.13]

123.14 Beer, wine, and liquor law enforcement.

1. The division of beer and liquor law enforcement of the department of public safety, created pursuant to section 80.25, is the primary beer, wine, and liquor law enforcement authority for this state.

2. The other law enforcement divisions of the department of public safety, the county attorney, the county sheriff and the sheriff's deputies, and the police department of every city, and the alcoholic beverages division of the department of commerce, shall be supplementary aids to the division of beer and liquor law enforcement. Any neglect, misfeasance, or malfeasance shown by any peace officer included in this section shall be sufficient cause for the peace officer's removal as provided by law. Nothing in this section shall be construed to affect the duties and responsibilities of any county attorney or peace officer with respect to law enforcement.

3. The division of beer and liquor law enforcement shall have full access to all records, reports, audits, tax reports and all other documents and papers in the alcoholic beverages division pertaining to liquor licensees and wine and beer permittees and their business.

[C35, §1921-f94; C39, §**1921.093;** C46, 50, 54, 58, 62, 66, 71, §123.93; C73, 75, 77, 79, 81, §123.14]

85 Acts, ch 32, §11; 88 Acts, ch 1241, §2; 2002 Acts, ch 1119, §11

Subsection 2 amended

123.15 Hearing board created. Repealed by 93 Acts, ch 91, § 22.

123.16 Duties of commission and administrator.

1. The commission, in addition to the duties specifically enumerated in this chapter, shall act as a division policy-making body and serve in an advisory capacity to the administrator. The administrator shall supervise the daily operations of the division and shall execute the policies of the division as determined by the commission.

2. The commission may review and affirm, reverse, or amend all actions of the administrator, including but not limited to the following instances:

a. Purchases of alcoholic liquor for resale by the division.

b. The establishment of wholesale prices of alcoholic liquor.

[C73, 75, 77, 79, 81, §123.16]

85 Acts, ch 32, §13; 86 Acts, ch 1122, §5; 86 Acts, ch 1245, §737; 86 Acts, ch 1246, §726, 727; 93 Acts, ch 91, §2

123.17 Prohibition on commission members and employees.

Commission members, officers, and employees of the division shall not, while holding such office or position, hold any other office or position under the laws of this state, or any other state or territory or of the United States; nor engage in any occupation, business, endeavor, or activity which would or does conflict with their duties under this chapter; nor, directly or indirectly, use their office or employment to influence, persuade, or induce any other officer, employee, or person to adopt their political views or to favor any particular candidate for an elective or appointive public office; nor, directly or indirectly, solicit or accept, in any manner or way, any money or other thing of value for any person seeking an elective or appointive public office, or to any political party or any group of persons seeking to become a political party. Any officer or employee violating this section or any other provisions of this chapter shall, in addition to any other penalties provided by law, be subject to suspension or discharge from employment. Any commission member shall, in addition to any other penalties provided by law, be subject to removal from office as provided by law.

[C35, §1921-f14; C39, §**1921.014;** C46, 50, 54, 58, 62, 66, 71, §123.14; C73, 75, 77, 79, 81, §123.17]

123.18 Favors from licensee or permittee.

A person responsible for the administration or enforcement of this chapter shall not accept or solicit donations, gratuities, political advertising, gifts, or other favors, directly or indirectly, from any liquor control licensee, wine permittee, or beer permittee.

[C35, §1921-f27; C39, §**1921.027;** C46, 50, 54, 58, 62, 66, 71, §123.27; C73, 75, 77, 79, 81, §123.18]

85 Acts, ch 32, §14

123.19 Distiller's certificate of compliance — injunction — penalty.

1. Any manufacturer, distiller or importer of alcoholic beverages shipping, selling, or having alcoholic beverages brought into this state for resale by the state shall, as a condition precedent to the privilege of so trafficking in alcoholic liquors in this state, annually make application for and hold a distiller's certificate of compliance which shall be issued by the administrator for that purpose. No brand of alcoholic liquor shall be sold by the division in this state unless the manufacturer, distiller, importer, and all other persons participating in the distribution of that brand in this state have obtained a certificate. The certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the administrator unless otherwise suspended or revoked for cause. Each application for a certificate of compliance or renewal shall be made in a manner and upon forms prescribed by the administrator and shall be accompanied by a fee of fifty dollars payable to the division. However, this subsection need not apply to a manufacturer, distiller, or importer who ships or sells in this state no more than eleven gallons or its case equivalent during any fiscal year as a result of "special orders" which might be placed, as defined and allowed by divisional rules adopted under this chapter.

2. At the time of applying for a certificate of compliance, each applicant shall file with the division the name and address of its authorized agent for service of process which shall remain effective until changed for another, and a list of names and addresses of all representatives, employees, or attorneys whom the applicant has appointed in the state of Iowa to represent it for any purpose. The listing shall be amended from time to time by the certificate holder as necessary to keep the listing current with the division.

3. The administrator and the attorney general are authorized to require any certificate holder or person listed as the certificate holder's representative, employee, or attorney to disclose such financial and other records and transactions as may be considered relevant in discovering violations of this chapter or of rules and regulations of the division or of any other provision of law by any person.

4. Any violation of the requirements of this section, except subsection 3, shall subject the violator to the general penalties provided in this chapter and in addition to the general penalties, is grounds for suspension or revocation of the certificate of compliance, after notice and hearing before the administrator. Willful failure to comply with

requirements which may be imposed under subsection 3 is grounds for suspension or revocation of the certificate of compliance only.

5. This section shall not require the listing of those persons who are employed on premises where alcoholic beverages are manufactured, processed, bottled or packaged in Iowa or persons who are thereafter engaged in the transporting of such alcoholic beverages to the division.

6. The attorney general may also proceed pursuant to the provisions of section 714.16 in order to gain compliance with subsection 3 of this section and may obtain an injunction prohibiting any further violations of this chapter or other provisions of law. Any violation of that injunction shall be punished as contempt of court pursuant to chapter 665 except that the maximum fine that may be imposed shall not exceed fifty thousand dollars.

[C73, 75, 77, 79, 81, §123.19]

85 Acts, ch 32, §15; 86 Acts, ch 1237, §6; 93 Acts, ch 91, §3

123.20 Powers.

The administrator, in executing divisional functions, shall have the following duties and powers:

1. To receive alcoholic liquors on a bailment system for resale by the division in the manner set forth in this chapter.

2. To rent, lease, or equip any building or any land necessary to carry out the provisions of this chapter.

3. To lease all plants and lease or buy equipment necessary to carry out the provisions of this chapter.

4. To appoint clerks, agents, or other employees required for carrying out the provisions of this chapter; to dismiss employees for cause; to assign employees to bureaus as created by the administrator within the division; and to designate their title, duties, and powers. All employees of the division are subject to chapter 19A unless exempt under section 19A.3.

5. To grant and issue beer permits, special permits, liquor control licenses, and other licenses; and to suspend or revoke all such permits and licenses for cause under this chapter.

6. To license, inspect, and control the manufacture of beer, wine, and alcoholic liquors and regulate the entire beer, wine, and liquor industry in the state.

7. To accept intoxicating liquors ordered delivered to the alcoholic beverages division pursuant to chapter 809A, and offer for sale and deliver the intoxicating liquors to class "E" liquor control licensees, unless the administrator determines that the intoxicating liquors may be adulterated or contaminated. If the administrator determines that the intoxicating liquors may be adulterated or contaminated, the administrator shall order their destruction.

[C35, §1921-f16; C39, §**1921.016;** C46, 50, 54, 58, 62, 66, 71, §123.16; C73, 75, 77, 79, 81, §123.20]

83 Acts, ch 157, §1; 85 Acts, ch 90, §2; 86 Acts, ch 1122, §6; 86 Acts, ch 1245, §738; 86 Acts, ch 1246, §728 – 730; 87 Acts, ch 115, §20; 88 Acts, ch 1241, §3; 96 Acts, ch 1133, §40

123.21 Rules.

The administrator, with the approval of the commission and subject to chapter 17A, may adopt rules as necessary to carry out this chapter. The administrator's authority extends to, but is not limited to, the following:

1. Prescribing the duties of officers, clerks, agents, or other employees of the division and regulating their conduct while in the discharge of their duties.

2. Regulating the management, equipment, and merchandise of state warehouses in and from which alcoholic liquors are transported, kept, or sold and prescribing the books and records to be kept therein.

3. Regulating the purchase of alcoholic liquor generally and the furnishing of the liquor to class "E" liquor control licensees under this chapter, and determining the classes, varieties, and brands of alcoholic liquors to be kept in state warehouses.

4. Prescribing forms or information blanks to be used for the purposes of this chapter. The division shall prepare, print, and furnish all forms and information blanks required under this chapter.

5. Prescribing the nature and character of evidence which shall be required to establish legal age.

6. Providing for the issuance and distribution of price lists which show the price to be paid by class "E" liquor control licensees for each brand, class, or variety of liquor kept for sale by the division, providing for the filing or posting of prices charged in sales between class "A" beer and class "A" wine permit holders and retailers, as provided in this chapter, and establishing or controlling the prices based on minimum standards of fill, quantity, or alcoholic content for each individual sale of intoxicating liquor or beer as deemed necessary for retail or consumer protection. However, the division shall not regulate markups, prices, discounts, allowances, or other terms of sale at which alcoholic liquor may be purchased by the retail public or liquor control licensees from class "E" liquor control licensees or at which wine may be purchased and sold by class "A" and retail wine permittees, or change, nullify, or vary the terms of an agreement between a holder of a vintner certificate of compliance and a class "A" wine permittee.

7. Prescribing the official seals, labels, or other markings which shall be attached to or stamped on packages of alcoholic liquor sold under this chapter.

8. Prescribing, subject to this chapter, the days and hours during which state warehouses shall be kept open for the purpose of the sale and delivery

of alcoholic liquors.

9. Prescribing the place and the manner in which alcoholic liquor may be lawfully kept or stored by the licensed manufacturer under this chapter.

10. Prescribing the time, manner, means, and method by which distillers, vendors, or others authorized under this chapter may deliver or transport alcoholic liquors and prescribing the time, manner, means, and methods by which alcoholic liquor may be lawfully conveyed, carried, or transported.

11. Prescribing, subject to the provisions of this chapter, the conditions and qualifications necessary for the obtaining of licenses and permits and the books and records to be kept and the remittances to be made by those holding licenses and permits and providing for the inspection of the records of all such licensees and permittees.

12. Providing for the issuance of combination licenses and permits with fees consistent with individual license and permit fees as may be necessary for the efficient administration of this chapter.

[C35, §1921-f17; C39, §**1921.017;** C46, 50, 54, 58, 62, 66, 71, §123.17; C73, 75, 77, 79, 81, §123.21]

85 Acts, ch 32, §16, 17; 86 Acts, ch 1122, §7; 86 Acts, ch 1245, §739; 86 Acts, ch 1246, §731, 732

123.22 State monopoly.

The division has the exclusive right of importation into the state of all forms of alcoholic liquor, except as otherwise provided in this chapter, and a person shall not import alcoholic liquor, except that an individual of legal age may import and have in the individual's possession an amount of alcoholic liquor not exceeding one liter or, in the case of alcoholic liquor personally obtained outside the United States, four liters for personal consumption only in a private home or other private accommodation. A distillery shall not sell alcoholic liquor within the state to any person but only to the division, except as otherwise provided in this chapter. This section vests in the division exclusive control within the state as purchaser of all alcoholic liquor sold by distilleries within the state or imported, except beer and wine, and except as otherwise provided in this chapter. The division shall receive alcoholic liquor on a bailment system for resale by the division in the manner set forth in this chapter. The division shall act as the sole wholesaler of alcoholic liquor to class "E" liquor control licensees.

No person, acting individually or through another acting for the person shall directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in consideration of the purchase of any property or of any services or in evasion of this chapter, or keep for sale, or have possession of any intoxicating liquor, except as provided in this chapter; or own, keep, or be in any way concerned, engaged, or employed in owning or keeping, any intoxicating liquor with intent to violate any provision of this chapter, or authorize or permit the same to be done; or manufacture, own, sell, or have possession of any manufactured or compounded article, mixture or substance, not in a liquid form, and containing alcohol which may be converted into a beverage by a process of pressing or straining the alcohol therefrom, or any instrument intended for use and capable of being used in the manufacture of intoxicating liquor; or own or have possession of any material used exclusively in the manufacture of intoxicating liquor; or use or have possession of any material with intent to use it in the manufacture of intoxicating liquors; however, alcohol may be manufactured for industrial and nonbeverage purposes by persons who have qualified for that purpose as provided by the laws of the United States and the laws of this state. Such alcohol, so manufactured, may be denatured, transported, used, possessed, sold, and bartered and dispensed, subject to the limitations, prohibitions and restrictions imposed by the laws of the United States and this state. Any person may manufacture, sell, or transport ingredients and devices other than alcohol for the making of homemade wine.

[C51, §924 – 928; R60, §1559, 1563, 1583, 1587; C73, §1523, 1540 – 1542, 1555; C97, §2382; SS15, §2382; C24, 27, 31, §1924; C35, §1921-f54, 1924; C39, §**1921.054, 1924;** C46, 50, 54, 58, 62, 66, 71, §123.54, 125.3; C73, 75, 77, 79, 81, §123.22]

85 Acts, ch 32, §18; 86 Acts, ch 1246, §733; 88 Acts, ch 1241, §4; 89 Acts, ch 161, §2

123.23 State liquor stores. Repealed by 86 Acts, ch 1246, § 754.

123.24 Alcoholic liquor sales by the division — dishonored checks — liquor prices.

1. The division shall sell alcoholic liquor at wholesale only. The division shall sell alcoholic liquor to class "E" liquor control licensees only. The division shall offer the same price on alcoholic liquor to all class "E" liquor control licensees without regard for the quantity of purchase or the distance for delivery. However, the division may assess a split-case charge when liquor is sold in quantities which require a case to be split.

2. *a.* The division may accept from a class "E" liquor control licensee a cashier's check which shows the licensee is the remitter or a check issued by the licensee in payment of alcoholic liquor. If a check is subsequently dishonored, the division shall cause a notice of nonpayment and penalty to be served upon the class "E" liquor control licensee or upon any person in charge of the licensed premises. The notice shall state that if payment or satisfaction for the dishonored check is not made

within ten days of the service of notice, the licensee's liquor control license may be suspended under section 123.39. The notice of nonpayment and penalty shall be in a form prescribed by the administrator, and shall be sent by certified mail.

b. If upon notice and hearing under section 123.39 and pursuant to the provisions of chapter 17A concerning a contested case hearing, the administrator determines that the class "E" liquor control licensee failed to satisfy the obligation for which the check was issued within ten days after the notice of nonpayment and penalty was served on the licensee as provided in paragraph *"a"* of this subsection, the administrator may suspend the licensee's class "E" liquor control license for a period not to exceed ten days.

3. The administrator may refuse to sell alcoholic liquor to a class "E" liquor control licensee who tenders a check or electronic funds transfer which is subsequently dishonored until the outstanding obligation is satisfied.

4. The price of alcoholic liquor sold by the division shall include a markup of up to fifty percent of the wholesale price paid by the division for the alcoholic liquor. The markup shall apply to all alcoholic liquor sold by the division; however, the division may increase the markup on selected kinds of alcoholic liquor sold by the division if the average return to the division on all sales of alcoholic liquor does not exceed the wholesale price paid by the division and the fifty percent markup.

5. Notwithstanding subsection 4, the division shall assess a bottle surcharge to be included in the price of alcoholic liquor in an amount sufficient, when added to the amount not refunded to class "E" liquor control licensees pursuant to section 455C.2, to pay the costs incurred by the division for collecting and properly disposing of the liquor containers. The amount collected pursuant to this subsection, in addition to any amounts not refunded to class "E" liquor control licensees pursuant to section 455C.2, shall be deposited in the beer and liquor control fund established under section 123.53.

[C35, §1921-f20, 1921-f41; C39, §**1921.020, 1921.041;** C46, 50, 54, 58, 62, 66, 71, §123.20, 123.41; C73, 75, 77, 79, 81, §123.24; 81 Acts, ch 56, §1]

86 Acts, ch 1246, §734; 87 Acts, ch 22, §1, 2; 88 Acts, ch 1158, §29; 88 Acts, ch 1241, §5; 92 Acts, ch 1242, §24; 93 Acts, ch 91, §4, 5

123.25 Consumption on premises.

An officer, clerk, agent, or employee of the division employed in a state-owned warehouse shall not allow any alcoholic liquor to be consumed on the premises, nor shall a person consume any liquor on the premises except for testing or sampling purposes only.

[C35, §1921-f23; C39, §**1921.023;** C46, 50, 54, 58, 62, 66, 71, §123.23; C73, 75, 77, 79, 81, §123.25]

86 Acts, ch 1122, §8; 86 Acts, ch 1246, §735

123.26 Restrictions on sales — seals — labeling.

Alcoholic liquor shall not be sold by a class "E" liquor control licensee except in a sealed container with identifying markers as prescribed by the administrator and affixed in the manner prescribed by the administrator, and no such container shall be opened upon the premises of a state warehouse. The division shall cooperate with the department of natural resources so that only one identifying marker or mark is needed to satisfy the requirements of this section and section 455C.5, subsection 1. Possession of alcoholic liquors which do not carry the prescribed identifying markers is a violation of this chapter except as provided in section 123.22.

[C35, §1921-f24; C39, §**1921.024;** C46, 50, 54, 58, 62, 66, 71, §123.24; C73, 75, 77, 79, 81, §123.26]

86 Acts, ch 1246, §736; 87 Acts, ch 22, §3

123.27 Sales and deliveries prohibited.

It is unlawful to transact the sale or delivery of alcoholic liquor in, on, or from the premises of a state warehouse:

1. After the closing hour as established by the administrator.
2. On any legal holiday except those designated by the administrator.
3. On any Sunday.
4. During other periods or days as designated by the administrator.

[C35, §1921-f25; C39, §**1921.025;** C46, 50, 54, 58, 62, 66, 71, §123.25; C73, 75, 77, 79, 81, §123.27; 81 Acts, ch 6, §11]

85 Acts, ch 32, §20; 86 Acts, ch 1122, §9; 86 Acts, ch 1246, §737; 89 Acts, ch 161, §3

123.28 Restrictions on transportation.

It is lawful to transport, carry, or convey alcoholic liquors from the place of purchase by the division to a state warehouse or depot established by the division or from one such place to another and, when so permitted by this chapter, it is lawful for the division, a common carrier, or other person to transport, carry, or convey alcoholic liquor sold from a state warehouse, depot, or point of purchase by the state to any place to which the liquor may be lawfully delivered under this chapter. The division shall deliver alcoholic liquor purchased by class "E" liquor control licensees. Class "E" liquor control licensees may deliver alcoholic liquor purchased by class "A", "B", or "C" liquor control licensees, and class "A", "B", or "C" liquor control licensees may transport alcoholic liquor purchased from class "E" liquor control licensees. A common carrier or other person shall not break or open or allow to be broken or opened a container or package containing alcoholic liquor or use or drink or allow to be used or drunk any alcoholic liquor

while it is being transported or conveyed, but this section does not prohibit a private person from transporting individual bottles or containers of alcoholic liquor exempted pursuant to section 123.22 and individual bottles or containers bearing the identifying mark prescribed in section 123.26 which have been opened previous to the commencement of the transportation. This section does not affect the right of a special permit or liquor control license holder to purchase, possess, or transport alcoholic liquors subject to this chapter.

[C35, §1921-f26; C39, §**1921.026;** C46, 50, 54, 58, 62, 66, 71, §123.26; C73, 75, 77, 79, 81, §123.28; 81 Acts, ch 6, §12]

84 Acts, ch 1275, §1; 85 Acts, ch 196, §1; 86 Acts, ch 1020, §1; 86 Acts, ch 1246, §738; 87 Acts, ch 170, §1; 95 Acts, ch 48, §1

See also §321.284

123.29 Patent and proprietary products and sacramental wine.

1. This chapter does not prohibit the sale of patent and proprietary medicines, tinctures, food products, extracts, toiletries, perfumes, and similar products, which are not susceptible of use as a beverage, but which contain alcoholic liquor, wine, or beer as one of their ingredients. These products may be sold through ordinary wholesale and retail businesses without a license or permit issued by the division.

2. This chapter does not prohibit a member of the clergy of any religious denomination which uses vinous liquor in its sacramental ceremonies from purchasing, receiving, possessing, and using vinous liquor for sacramental purposes.

[C24, 27, 31, §2171; C35, §1921-f27, 2171; C39, §**1921.027, 2171;** C46, 50, 54, 58, 62, 66, 71, §123.27, 134.1; C73, 75, 77, 79, 81, §123.29]

85 Acts, ch 32, §21; 86 Acts, ch 1246, §739, 740; 89 Acts, ch 161, §4 – 6; 93 Acts, ch 91, §6

123.30 Liquor control licenses — classes.

1. *a.* A liquor control license may be issued to any person who is of good moral character as defined by this chapter.

b. As a condition for issuance of a liquor control license or wine or beer permit, the applicant must give consent to members of the fire, police, and health departments and the building inspector of cities; the county sheriff, deputy sheriff, members of the department of public safety, representatives of the division and of the department of inspections and appeals, certified police officers, and any official county health officer to enter upon areas of the premises where alcoholic beverages are stored, served, or sold, without a warrant during business hours of the licensee or permittee to inspect for violations of this chapter or ordinances and regulations that cities and boards of supervisors may adopt. However, a subpoena issued under section 421.17 or a warrant is required for inspection of private records, a private business office, or attached living quarters. Persons who are not certified peace officers shall limit the scope of their inspections of licensed premises to the regulatory authority under which the inspection is conducted. All persons who enter upon a licensed premises to conduct an inspection shall present appropriate identification to the owner of the establishment or the person who appears to be in charge of the establishment prior to commencing an inspection; however, this provision does not apply to undercover criminal investigations conducted by peace officers.

c. As a further condition for the issuance of a class "E" liquor control license, the applicant shall post a bond in a sum of not less than five thousand nor more than fifteen thousand dollars as determined on a sliding scale established by the division; however, a bond shall not be required if all purchases of alcoholic liquor from the division by the licensee are made by cash payment or by means that ensure that the division will receive full payment in advance of delivery of the alcoholic liquor.

d. A class "E" liquor control license may be issued to a city council for premises located within the limits of the city if there are no class "E" liquor control licensees operating within the limits of the city and no other applications for a class "E" license for premises located within the limits of the city at the time the city council's application is filed. If a class "E" liquor control license is subsequently issued to a private person for premises located within the limits of the city, the city council shall surrender its license to the division within one year of the date that the class "E" liquor control licensee begins operating, liquidate any remaining assets connected with the liquor store, and cease operating the liquor store.

2. No liquor control license shall be issued for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations. Nor shall any licensee have or maintain any interior access to residential or sleeping quarters unless permission is granted by the administrator in the form of a living quarters permit.

3. Liquor control licenses issued under this chapter shall be of the following classes:

a. Class "A". A class "A" liquor control license may be issued to a club and shall authorize the holder to purchase alcoholic liquors from class "E" liquor control licensees only, wine from class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses only, and native wines from native wine manufacturers, and to sell liquors, wine, and beer to bona fide members and their guests by the individual drink for consumption on the premises only.

b. Class "B". A class "B" liquor control license may be issued to a hotel or motel and shall

authorize the holder to purchase alcoholic liquors from class "E" liquor control licensees only, wine from class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses only, and native wines from native wine manufacturers, and to sell liquors, wine, and beer to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises. Each license shall be effective throughout the premises described in the application.

c. Class "C". A class "C" liquor control license may be issued to a commercial establishment but must be issued in the name of the individuals who actually own the entire business and shall authorize the holder to purchase alcoholic liquors from class "E" liquor control licensees only, wine from class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses only, and native wines from native wine manufacturers, and to sell liquors, wine, and beer to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises.

A special class "C" liquor control license may be issued and shall authorize the holder to purchase wine from class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses only, and to sell wine and beer to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises. The license issued to holders of a special class "C" license shall clearly state on its face that the license is limited.

d. Class "D".

(1) A class "D" liquor control license may be issued to a railway corporation, to an air common carrier, and to passenger-carrying boats or ships for hire with a capacity of twenty-five persons or more operating in inland or boundary waters, and shall authorize the holder to sell or furnish alcoholic beverages, wine, and beer to passengers for consumption only on trains, watercraft as described in this section, or aircraft, respectively. Each license is valid throughout the state. Only one license is required for all trains, watercraft, or aircraft operated in the state by the licensee. However, if a watercraft is an excursion gambling boat licensed under chapter 99F, the owner shall obtain a separate class "D" liquor control license for each excursion gambling boat operating in the waters of this state.

(2) A class "D" liquor control licensee who operates a train or a watercraft intrastate only, or an excursion gambling boat licensed under chapter 99F, shall purchase alcoholic liquor from a class "E" liquor control licensee only, wine from a class "A" wine permittee or a class "B" wine permittee who also holds a class "E" liquor control license only, and beer from a class "A" beer permittee only.

e. Class "E". A class "E" liquor control license may be issued and shall authorize the holder to purchase alcoholic liquor from the division only and to sell the alcoholic liquor to patrons for consumption off the licensed premises and to other liquor control licensees. A class "E" license shall not be issued to premises at which gasoline is sold. A holder of a class "E" liquor control license may hold other retail liquor control licenses or retail wine or beer permits, but the premises licensed under a class "E" liquor control license shall be separate from other licensed premises, though the separate premises may have a common entrance. However, the holder of a class "E" liquor control license may also hold a class "B" wine or class "C" beer permit or both for the premises licensed under a class "E" liquor control license.

The division may issue a class "E" liquor control license for premises covered by a liquor control license or wine or beer permit for on-premises consumption, if the premises are in a county having a population under nine thousand five hundred in which no other class "E" liquor control license has been issued by the division, and no other application for a class "E" license has been made within the previous twelve consecutive months.

[C35, §1921-f27; C39, §**1921.027;** C46, 50, 54, 58, 62, 66, 71, §123.27; C73, 75, 77, 79, 81, §123.30]

85 Acts, ch 32, §22; 86 Acts, ch 1246, §741, 742; 87 Acts, ch 22, §4 – 6; 88 Acts, ch 1088, §2, 3; 88 Acts, ch 1241, §6, 7; 90 Acts, ch 1175, §6; 91 Acts, ch 203, §1; 93 Acts, ch 91, §7, 8

123.31 Application contents.

Except as otherwise provided in section 123.35, verified applications for the original issuance or the renewal of liquor control licenses shall be filed at the time and in the number of copies as the administrator shall prescribe, on forms prescribed by the administrator, and shall set forth under oath the following information:

1. The name and address of the applicant.
2. The precise location of the premises for which a license is sought.
3. The names and addresses of all persons, in the case of a corporation, the officers, directors, and persons owning or controlling ten percent or more of the capital stock thereof, having a financial interest, by way of loan, ownership, or otherwise, in the business.
4. When required by the administrator, a sketch or drawing of the premises proposed to be licensed, in such form and containing such information as the administrator may require.
5. A statement whether any person specified in subsection 3 has ever been convicted of any offense against the laws of the United States, or any state or territory thereof, or any political subdivision of any such state or territory.
6. A statement whether the applicant or any person specified in subsection 3 possesses a federal gambling stamp.
7. A statement, if required by the local authority indicating whether all designated security em-

ployees have received training and certification as provided in section 123.32.

8. Such other information as the administrator shall require.

[C35, §1921-f27; C39, §**1921.027;** C46, 50, 54, 58, 62, 66, 71, §123.27; C73, 75, 77, 79, 81, §123.31]

93 Acts, ch 91, §9; 2000 Acts, ch 1201, §2

123.32 Action by local authorities and division on applications for liquor control licenses and wine and beer permits.

1. *Filing of application.* An application for a class "A", class "B", class "C", or class "E" liquor control license, for a retail beer permit as provided in sections 123.128 and 123.129, or for a class "B" retail wine permit as provided in section 123.176, accompanied by the necessary fee and bond, if required, shall be filed with the appropriate city council if the premises for which the license or permit is sought are located within the corporate limits of a city, or with the board of supervisors if the premises for which the license or permit is sought are located outside the corporate limits of a city. An application for a class "D" liquor control license and for a class "A" beer or class "A" wine permit, accompanied by the necessary fee and bond, if required, shall be filed with the division, which shall proceed in the same manner as in the case of an application approved by local authorities.

2. *Action by local authorities.* The local authority shall either approve or disapprove the issuance of a liquor control license, retail wine permit, or retail beer permit, shall endorse its approval or disapproval on the application and shall forward the application with the necessary fee and bond, if required, to the division. There is no limit upon the number of liquor control licenses, retail wine permits, or retail beer permits which may be approved for issuance by local authorities.

3. *Licensed premises for local events.* A local authority may define, by motion of the local authority, licensed premises which shall be used by holders of liquor control licenses, beer permits, and wine permits at festivals, fairs, or celebrations which are sponsored or authorized by the local authority. The licensed premises defined by motion of the local authority shall be used by the holders of five-day or fourteen-day liquor control licenses, or five-day or fourteen-day beer permits only.

4. *Security employee training.* A local authority, as a condition of obtaining a license or permit for on-premises consumption, may require a designated security employee as defined in section 123.3 to be trained and certified in security methods. The training shall include but is not limited to mediation techniques, civil rights or unfair practices awareness as provided in section 216.7, and providing instruction on the proper physical restraint methods used against a person who has become combative.

5. *Action by administrator.*

a. Upon receipt of an application having been disapproved by the local authority, the administrator shall notify the applicant that the applicant may appeal the disapproval of the application to the administrator. The applicant shall be notified by certified mail, and the application, the fee, and any bond shall be returned to the applicant.

b. Upon receipt of an application having been approved by the local authority, the division shall make an investigation as the administrator deems necessary to determine that the applicant complies with all requirements for holding a license or permit, and may require the applicant to appear to be examined under oath to demonstrate that the applicant complies with all of the requirements to hold a license or permit. If the administrator requires the applicant to appear and to testify under oath, a record shall be made of all testimony or evidence and the record shall become a part of the application. The administrator may appoint a member of the division or may request an administrative law judge of the department of inspections and appeals to receive the testimony under oath and evidence, and to issue a proposed decision to approve or disapprove the application for a license or permit. The administrator may affirm, reverse, or modify the proposed decision to approve or disapprove the application for the license or permit. If the application is approved by the administrator, the license or permit shall be issued. If the application is disapproved by the administrator, the applicant and the appropriate local authority shall be so notified by certified mail.

6. *Appeal to administrator.* An applicant for a liquor control license, wine permit, or beer permit may appeal from the local authority's disapproval of an application for a license or permit to the administrator. In the appeal the applicant shall be allowed the opportunity to demonstrate in an evidentiary hearing conducted pursuant to chapter 17A that the applicant complies with all of the requirements for holding the license or permit. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to conduct the evidentiary hearing and to render a proposed decision to approve or disapprove the issuance of the license or permit. The administrator may affirm, reverse, or modify the proposed decision. If the administrator determines that the applicant complies with all of the requirements for holding a license or permit, the administrator shall order the issuance of the license or permit. If the administrator determines that the applicant does not comply with the requirements for holding a license or permit, the administrator shall disapprove the issuance of the license or permit.

7. *Judicial review.* The applicant or the local authority may seek judicial review of the action of the administrator in accordance with the terms of

the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county where the premises covered by the application are situated.

8. *Suspension by local authority.* A liquor control licensee or a wine or beer permittee whose license or permit has been suspended or revoked or a civil penalty imposed by a local authority for a violation of this chapter or suspended by a local authority for violation of a local ordinance may appeal the suspension, revocation, or civil penalty to the administrator. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to hear the appeal which shall be conducted in accordance with chapter 17A and to issue a proposed decision. The administrator may review the proposed decision upon the motion of a party to the appeal or upon the administrator's own motion in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A liquor control licensee, wine or beer permittee, or a local authority aggrieved by a decision of the administrator may seek judicial review of the decision pursuant to chapter 17A.

[C35, §1921-f27; C39, §**1921.027;** C46, 50, 54, 58, 62, 66, 71, §123.27; C73, 75, 77, 79, 81, §123.32]

85 Acts, ch 32, §23; 86 Acts, ch 1246, §743; 88 Acts, ch 1088, §4; 89 Acts, ch 161, §7; 90 Acts, ch 1177, §1; 91 Acts, ch 97, §22; 93 Acts, ch 91, §10 – 12; 2000 Acts, ch 1201, §3

123.33 Records.

Every holder of a liquor control license shall keep a daily record of the gross receipts of the holder's business. The records required and the premises of the licensee shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the licensee.

[C35, §1921-f22; C39, §**1921.022;** C46, 50, 54, 58, 62, 66, 71, §123.22; C73, 75, 77, 79, 81, §123.33]

85 Acts, ch 196, §2; 88 Acts, ch 1241, §8

123.34 Expiration — seasonal, five-day, or fourteen-day license or permit.

1. Liquor control licenses, wine permits, and beer permits, unless sooner suspended or revoked, expire one year from date of issuance. The administrator shall give sixty days' written notice of the expiration to each licensee or permittee. However, the administrator may issue six-month or eight-month seasonal licenses, class "B" wine permits, or class "B" beer permits for a proportionate part of the license or permit fee or may issue fourteen-day liquor licenses or beer permits as provided in subsection 2. No refund shall be made for seasonal licenses or permits or for fourteen-day liquor licenses or beer permits. No seasonal license or permit shall be renewed except after a period of two months.

2. The administrator may issue fourteen-day class "A", class "B", class "C", and class "D" liquor control licenses and fourteen-day class "B" beer permits. A fourteen-day license or permit, if granted, is valid for fourteen consecutive days, but the holder shall not sell on the two Sundays in the fourteen-day period unless the holder qualifies for and obtains the privilege to sell on Sundays contained in sections 123.36, subsection 6 and 123.134, subsection 5.

3. The fee for a fourteen-day liquor license or beer permit is one quarter of the annual fee for that class of liquor license or beer permit. The fee for the privilege to sell on the two Sundays in the fourteen-day period is twenty percent of the price of the fourteen-day liquor license or beer permit.

4. The administrator may issue five-day class "A", class "B", class "C", and class "D" liquor control licenses and five-day class "B" beer permits. A five-day license or permit is valid for five consecutive days, but the holder shall not sell alcoholic beverages on Sunday in the five-day period unless the holder qualifies for and obtains the privilege to sell on Sunday pursuant to sections 123.36 and 123.134.

5. The fee for the five-day liquor control license or beer permit is one-eighth of the annual fee for that class of license or permit. The fee for the privilege to sell on a Sunday in the five-day period is ten percent of the price of the five-day liquor control license or beer permit.

[C35, §1921-f27, 1921-f100; C39, §**1921.027, 1921.100;** C46, 50, 54, 58, 62, 66, 71, §123.27, 124.6; C73, 75, 77, 79, 81, §123.34; 81 Acts, ch 55, §2]

85 Acts, ch 32, §24; 86 Acts, ch 1237, §7; 90 Acts, ch 1177, §2, 3; 91 Acts, ch 97, §23

123.35 Simplified renewal procedure — class "E" procedure.

The administrator shall prescribe simplified application forms for the renewal of liquor control licenses, wine permits, and beer permits which may be filed by licensees and permittees in lieu of a detailed renewal application form when qualifications and qualification information have not changed since the original issuance of the license or permit. The simplified form shall require the licensee or permittee to verify under oath that the information contained in the original application remains current, and that no reason exists for the division's refusal to renew the license or permit as originally issued.

The application, accompanied by the necessary fee and bond, if required, shall be filed in the same manner as is provided for filing the initial application. However, for the renewal of a class "E" license, the simplified application form for renewal, accompanied by the necessary fee and bond if required, shall be filed directly with the administra-

tor without the endorsement of local authorities if all of the following conditions are met: the applicant's license has not been suspended or revoked since the preceding license was issued; a civil penalty has not been imposed against the applicant under this chapter since the preceding license was issued; an administrative proceeding is not pending against the applicant to suspend or revoke the applicant's license or to impose a civil penalty under this chapter; and the applicant has not been convicted of a violation of this chapter since the preceding license was issued.

[C73, 75, 77, 79, 81, §123.35]

85 Acts, ch 32, §25; 88 Acts, ch 1088, §5; 93 Acts, ch 91, §13

123.36 Liquor fees — Sunday sales.

The following fees shall be paid to the division annually for liquor control licenses issued under section 123.30:

1. Reserved.

2. Class "A" liquor control licenses, the sum of six hundred dollars, except that for class "A" licenses in cities of less than two thousand population, and for clubs of less than two hundred fifty members, the license fee shall be four hundred dollars; however, the fee shall be two hundred dollars for any club which is a post, branch, or chapter of a veterans organization chartered by the Congress of the United States, if the club does not sell or permit the consumption of alcoholic beverages, wine, or beer on the premises more than one day in any week or more than a total of fifty-two days in a year, and if the application for a license states that the club does not and will not sell or permit the consumption of alcoholic beverages, wine, or beer on the premises more than one day in any week or more than a total of fifty-two days in a year.

3. Class "B" liquor control licenses, the sum as follows:

a. Hotels or motels located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.

b. Hotels and motels located within the corporate limits of cities of over three thousand and less than ten thousand population, one thousand fifty dollars.

c. Hotels and motels located within the corporate limits of cities of three thousand population and less, eight hundred dollars.

d. Hotels and motels located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail. However, if a hotel or motel is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

4. Class "C" liquor control licenses, the sum as follows:

a. Commercial establishments located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.

b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, nine hundred fifty dollars.

c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, six hundred dollars.

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail. However, if a commercial establishment is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

5. Class "D" liquor control licenses, the following sums:

a. For watercraft, one hundred fifty dollars.

b. For trains, five hundred dollars.

c. For air common carriers, each company shall pay a base annual fee of five hundred dollars and, in addition, shall quarterly remit to the division an amount equal to seven dollars for each gallon of alcoholic liquor sold, given away, or dispensed in or over this state during the preceding calendar quarter. The class "D" license fee and tax for air common carriers is in lieu of any other fee or tax collected from the carriers in this state for the possession and sale of alcoholic liquor, wine, and beer.

6. Any club, hotel, motel, or commercial establishment holding a liquor control license, subject to section 123.49, subsection 2, paragraph *"b"*, may apply for and receive permission to sell and dispense alcoholic liquor and wine to patrons on Sunday for consumption on the premises only, and beer for consumption on or off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday. A class "D" liquor control licensee may apply for and receive permission to sell and dispense alcoholic beverages to patrons for consumption on the premises only between the hours of eight a.m. on Sunday and two a.m. on the following Monday. For the privilege of selling beer, wine, and alcoholic liquor on the premises on Sunday the liquor control license fee of the applicant shall be increased by twenty percent of the regular fee prescribed for the license pursuant to this section, and the privilege shall be noted on the liquor control license.

7. Special class "C" liquor control licenses, a sum as follows:

a. Commercial establishments located within the corporate limits of cities of ten thousand popu-

lation and over, four hundred fifty dollars.

b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, three hundred dollars.

c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, one hundred fifty dollars.

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail. However, if a commercial establishment is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

8. The division shall credit all fees to the beer and liquor control fund. The division shall remit to the appropriate local authority, a sum equal to sixty-five percent of the fees collected for each class "A", class "B", or class "C" license except special class "C" licenses or class "E" licenses, covering premises located within the local authority's jurisdiction. The division shall remit to the appropriate local authority a sum equal to seventy-five percent of the fees collected for each special class "C" license covering premises located within the local authority's jurisdiction. Those fees collected for the privilege authorized under subsection 6 and those fees collected for each class "E" liquor control license shall be credited to the beer and liquor control fund.

9. Class "E" liquor control license, a sum of not less than seven hundred and fifty dollars, and not more than seven thousand five hundred dollars as determined on a sliding scale as established by the division taking into account the factors of square footage of the licensed premises, the location of the licensed premises, and the population of the area of the location of the licensed premises. Notwithstanding subsection 6, the holder of a class "E" liquor control license may sell alcoholic liquor for consumption off the licensed premises on Sunday subject to section 123.49, subsection 2, paragraph *"b"*.

10. There is imposed a surcharge on the fee for each class "A", "B", or "C" liquor control license equal to thirty percent of the scheduled license fee. The surcharges collected under this subsection shall be deposited in the beer and liquor control fund, and notwithstanding subsection 8, no portion of the surcharges collected under this subsection shall be remitted to the local authority.

[C35, §1921-f28; C39, §**1921.028;** C46, 50, 54, 58, 62, 66, 71, §123.38; C73, 75, 77, 79, 81, §123.36]

83 Acts, ch 123, §59, 209; 84 Acts, ch 1275, §2; 84 Acts, ch 1312, §6; 85 Acts, ch 32, §26 – 29; 86 Acts, ch 1246, §744; 87 Acts, ch 22, §7, 8; 88 Acts, ch 1241, §9 – 11; 90 Acts, ch 1089, §1; 90 Acts, ch 1175, §7; 91 Acts, ch 245, §1; 93 Acts, ch 91, §14; 94 Acts, ch 1023, §85

123.37 Exclusive power to license and levy taxes — disputed taxes.

The power to establish licenses and permits and levy taxes as imposed in chapter 123 is vested exclusively with the state. Unless specifically provided, a local authority shall not require the obtaining of a special license or permit for the sale of alcoholic beverages, wine, or beer at any establishment, or require the obtaining of a license by any person as a condition precedent to the person's employment in the sale, serving, or handling of alcoholic beverages, wine, or beer, within an establishment operating under a license or permit.

The administrator may compromise and settle doubtful and disputed claims for taxes imposed under this chapter or for taxes of doubtful collectibility, notwithstanding section 7D.9. The administrator may enter into informal settlements pursuant to section 17A.10 to compromise and settle doubtful and disputed claims for taxes imposed under this chapter. The administrator may make a claim under a licensee's or permittee's penal bond for taxes of doubtful collectibility. Whenever a compromise or settlement is made, the administrator shall make a complete record of the case showing the tax assessed, reports and audits, if any, the licensee's or permittee's grounds for dispute or contest, together with all evidence of the dispute or contest, and the amounts, conditions, and settlement or compromise of the dispute or contest.

A licensee or permittee who disputes the amount of tax imposed must pay all tax and penalty pertaining to the disputed tax liability prior to appealing the disputed tax liability to the administrator.

The administrator shall adopt rules establishing procedures for payment of disputed taxes imposed under this chapter. If it is determined that the tax is not due in whole or in part, the division shall promptly refund the part of the tax payment which is determined not to be due.

[C73, 75, 77, 79, 81, §123.37]

85 Acts, ch 32, §30; 88 Acts, ch 1153, §2; 89 Acts, ch 252, §1; 93 Acts, ch 91, §15; 94 Acts, ch 1023, §9

123.38 Nature of permit or license — surrender — transfer.

A special liquor permit, liquor control license, wine permit, or beer permit is a personal privilege and is revocable for cause. It is not property nor is it subject to attachment and execution nor alienable nor assignable, and it shall cease upon the death of the permittee or licensee. However, the administrator of the division may in the administrator's discretion allow the executor or administrator of a permittee or licensee to operate the business of the decedent for a reasonable time not to exceed the expiration date of the permit or license. Every permit or license shall be issued in

the name of the applicant and no person holding a permit or license shall allow any other person to use it.

Any licensee or permittee, or the licensee's or permittee's executor or administrator, or any person duly appointed by the court to take charge of and administer the property or assets of the licensee or permittee for the benefit of the licensee's or permittee's creditors, may voluntarily surrender a license or permit to the division. When a license or permit is surrendered the division shall notify the local authority, and the division or the local authority shall refund to the person surrendering the license or permit, a proportionate amount of the fee received by the division or the local authority for the license or permit as follows: if a license or permit is surrendered during the first three months of the period for which it was issued, the refund shall be three-fourths of the amount of the fee; if surrendered more than three months but not more than six months after issuance, the refund shall be one-half of the amount of the fee; if surrendered more than six months but not more than nine months after issuance, the refund shall be one-fourth of the amount of the fee. No refund shall be made, however, for any special liquor permit, nor for a liquor control license, wine permit, or beer permit surrendered more than nine months after issuance. For purposes of this paragraph, any portion of license or permit fees used for the purposes authorized in section 331.424, subsection 1, paragraphs *"a"* and *"b"*, and in section 331.424A, shall not be deemed received either by the division or by a local authority. No refund shall be made to any licensee or permittee, upon the surrender of the license or permit, if there is at the time of surrender, a complaint filed with the division or local authority, charging the licensee or permittee with a violation of this chapter. If upon a hearing on a complaint the license or permit is not revoked or suspended, then the licensee or permittee is eligible, upon surrender of the license or permit, to receive a refund as provided in this section; but if the license or permit is revoked or suspended upon hearing the licensee or permittee is not eligible for the refund of any portion of the license or permit fee.

The local authority may in its discretion authorize a licensee or permittee to transfer the license or permit from one location to another within the same incorporated city, or within a county outside the corporate limits of a city, provided that the premises to which the transfer is to be made would have been eligible for a license or permit in the first instance and such transfer will not result in the violation of any law. All transfers authorized, and the particulars of same, shall be reported to the administrator by the local authority. The administrator may by rule establish a uniform transfer fee to be assessed by all local authorities upon licensees or permittees to cover the administrative costs of such transfers, such fee to be retained by the local authority involved.

[C35, §1921-f29, -f100; C39, §**1921.029, 1921.100;** C46, 50, 54, 58, 62, 66, 71, §123.29, 124.6; C73, 75, 77, 79, 81, §123.38]

85 Acts, ch 32, §31; 95 Acts, ch 206, §5, 12

123.39 Suspension or revocation of license or permit — civil penalty.

1. *a.* The administrator or the local authority may suspend a license or permit issued pursuant to this chapter for a period not to exceed one year, revoke the license or permit, or impose a civil penalty not to exceed one thousand dollars per violation. Before suspension, revocation, or imposition of a civil penalty, the license or permit holder shall be given written notice and an opportunity for a hearing. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to conduct the hearing and issue a proposed decision. Upon the motion of a party to the hearing or upon the administrator's own motion, the administrator may review the proposed decision in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A licensee or permittee aggrieved by a decision of the administrator may seek judicial review of the administrator's decision in accordance with chapter 17A.

b. A license or permit issued under this chapter may be suspended or revoked, or a civil penalty may be imposed on the license or permit holder by the local authority or the administrator for any of the following causes:

(1) Misrepresentation of any material fact in the application for the license or permit.

(2) Violation of any of the provisions of this chapter.

(3) Any change in the ownership or interest in the business operated under a class "A", class "B", or class "C" liquor control license, or any wine or beer permit, which change was not previously reported to and approved by the local authority and the division.

(4) An event which would have resulted in disqualification from receiving the license or permit when originally issued.

(5) Any sale, hypothecation, or transfer of the license or permit.

(6) The failure or refusal on the part of any licensee or permittee to render any report or remit any taxes to the division under this chapter when due.

c. A criminal conviction is not a prerequisite to suspension, revocation, or imposition of a civil penalty pursuant to this section. A local authority which acts pursuant to this section or section 123.32 shall notify the division in writing of the action taken, and shall notify the licensee or permit holder of the right to appeal a suspension, revocation, or imposition of a civil penalty to the division.

Civil penalties imposed and collected by the local authority under this section shall be retained by the local authority. Civil penalties imposed and collected by the division under this section shall be retained by the division.

2. Local authorities may suspend any retail wine or beer permit or liquor control license for a violation of any ordinance or regulation adopted by the local authority. Local authorities may adopt ordinances or regulations for the location of the premises of retail wine or beer and liquor control licensed establishments and local authorities may adopt ordinances, not in conflict with this chapter and that do not diminish the hours during which beer, wine, or alcoholic beverages may be sold or consumed at retail, governing any other activities or matters which may affect the retail sale and consumption of beer, wine, and alcoholic liquor and the health, welfare and morals of the community involved.

3. When a liquor license or wine or beer permit is suspended after a hearing as a result of violations of this chapter by the licensee, permittee or the licensee's or permittee's agents or employees, the premises which were licensed by the license or permit shall not be relicensed for a new applicant until the suspension has terminated or time of suspension has elapsed, or ninety days have elapsed since the commencement of the suspension, whichever occurs first. However, this section does not prohibit the premises from being relicensed to a new applicant before the suspension has terminated or before the time of suspension has elapsed or before ninety days have elapsed from the commencement of the suspension, if the premises prior to the time of the suspension had been purchased under contract, and the vendor under that contract had exercised the person's rights under chapter 656 and sold the property to a different person who is not related to the previous licensee or permittee by marriage or within the third degree of consanguinity or affinity and if the previous licensee or permittee does not have a financial interest in the business of the new applicant.

4. If the cause for suspension is a first offense violation of section 123.49, subsection 2, paragraph *"h"*, the administrator or local authority shall impose a civil penalty in the amount of five hundred dollars in lieu of suspension of the license or permit. Local authorities shall retain civil penalties collected under this paragraph if the proceeding to impose the penalty is conducted by the local authority. The division shall retain civil penalties collected under this paragraph if the proceeding to impose the penalty is conducted by the administrator of the division.

[C35, §1921-f32, 1921-f126; C39, §**1921.032, 1921.129;** C46, 50, 54, 58, 62, §123.32, 124.34; C66, 71, §123.32, 123.102, 124.34; C73, 75, 77, 79, 81, §123.39]

85 Acts, ch 32, §32; 88 Acts, ch 1241, §12; 93 Acts, ch 91, §16, 17; 94 Acts, ch 1017, §2; 2000 Acts, ch 1154, §12; 2002 Acts, ch 1119, §128

Subsection 1, paragraph a amended

123.40 Effect of revocation.

Any liquor control licensee, wine permittee, or beer permittee whose license or permit is revoked under this chapter shall not thereafter be permitted to hold a liquor control license, wine permit, or beer permit in the state of Iowa for a period of two years from the date of revocation. A spouse or business associate holding ten percent or more of the capital stock or ownership interest in the business of a person whose license or permit has been revoked shall not be issued a liquor control license, wine permit, or beer permit, and no liquor control license, wine permit, or beer permit shall be issued which covers any business in which such person has a financial interest for a period of two years from the date of revocation. If a license or permit is revoked, the premises which had been covered by the license or permit shall not be relicensed for one year.

[C35, §1921-f32, 1921-f123; C39, §**1921.032, 1921.125;** C46, 50, 54, 58, 62, 66, 71, §123.32, 124.30; C73, 75, 77, 79, 81, §123.40]

85 Acts, ch 32, §33

123.41 Manufacturer's license.

1. Upon application in the prescribed form and accompanied by a fee of three hundred fifty dollars, the administrator may in accordance with this chapter grant and issue a license, valid for a one-year period after date of issuance, to a manufacturer which shall allow the manufacture, storage, and wholesale disposition and sale of alcoholic liquors to the division and to customers outside of the state.

2. A person who holds an experimental distilled spirits plant permit or its equivalent issued by the federal bureau of alcohol, tobacco and firearms may produce alcohol for use as fuel without obtaining a manufacturer's license from the division.

[C35, §1921-f36; C39, §**1921.036;** C46, 50, 54, 58, 62, 66, 71, §123.36; C73, 75, 77, 79, 81, §123.41]

123.42 Broker's permit.

1. Prior to representing or promoting a distiller's alcoholic liquor products in the state, the broker shall make application to the administrator on forms provided by the division for a broker's permit. The administrator may in accordance with this chapter issue a broker's permit which shall be valid for one year from the date of issuance unless it is sooner suspended or revoked for a violation of this chapter. A broker's permit is valid throughout the state, and a broker who represents more than one distiller is required to obtain only one broker's permit.

2. The annual fee for a broker's permit is twenty-five dollars.

3. An employee of a broker is not required to apply for or hold a broker's permit.

4. The holder of a distiller's certificate of compliance is not required to appoint a broker to represent its alcoholic liquor products in the state. If the holder of a distiller's certificate of compliance appoints a broker to represent its alcoholic liquor products in the state, the name and address of the broker shall be disclosed on the distiller's application for a certificate of compliance, and the requirements in this section shall apply to the appointed broker.

[C35, §1921-f37; C39, §**1921.037;** C46, 50, 54, 58, 62, 66, 71, §123.37; C73, 75, 77, 79, 81, §123.42]

94 Acts, ch 1017, §3

123.43 License conditions — bond.

As a condition precedent to the approval and granting of a license to a manufacturer, the applicant for a manufacturer's license shall file a statement under oath with the division that the applicant is a bona fide manufacturer of alcoholic liquors, and that the applicant will faithfully observe and comply with all laws, rules and regulations governing the manufacture and sale of alcoholic liquor. An applicant for a manufacturer's license shall post a bond in the penal sum of five thousand dollars with surety approved by the administrator. The bond may be forfeited to the state for a violation of the chapter.

[C35, §1921-f38; C39, §**1921.038;** C46, 50, 54, 58, 62, 66, 71, §123.38; C73, 75, 77, 79, 81, §123.43]

94 Acts, ch 1017, §4

123.44 Gift of liquors prohibited.

A manufacturer or broker shall not give away alcoholic liquor at any time in connection with the manufacturer's or broker's business except for testing or sampling purposes only. A manufacturer, vintner, broker, wholesaler, or importer, organized as a corporation pursuant to the laws of this state or any other state, who deals in alcoholic liquor, wine, or beer subject to regulation under this chapter shall not offer or give anything of value to a commission member, official or employee of the division, or directly or indirectly contribute in any manner any money or thing of value to a person seeking a public or appointive office or a recognized political party or a group of persons seeking to become a recognized political party.

[C35, §1921-f39; C39, §**1921.039;** C46, 50, 54, 58, 62, 66, 71, §123.39; C73, 75, 77, 79, 81, §123.44]

85 Acts, ch 32, §34; 94 Acts, ch 1017, §5

123.45 Limitations on business interests.

Except as provided in section 123.6, a commission member or division employee shall not, directly or indirectly, individually, or as a member of a partnership or shareholder in a corporation, have any interest in dealing in or in the manufacture of alcoholic liquor, wine, or beer, and shall not receive any kind of profit nor have any interest in the purchase or sale of alcoholic liquor, wine, or beer by persons so authorized under this chapter. However, this provision does not prohibit any member or employee from lawfully purchasing and keeping alcoholic liquor, wine, or beer in the member's or employee's possession for personal use.

A person engaged in the business of manufacturing, bottling, or wholesaling alcoholic beverages, wine, or beer, or any jobber, representative, broker, employee, or agent of such a person, shall not directly or indirectly supply, furnish, give, or pay for any furnishings, fixtures, or equipment used in the storage, handling, serving, or dispensing of alcoholic beverages, wine, beer, or food within the place of business of a licensee or permittee authorized under this chapter to sell at retail; nor shall the person directly or indirectly extend any credit for alcoholic beverages or beer or pay for any such license or permit, nor directly or indirectly be interested in the ownership, conduct, or operation of the business of another licensee or permittee authorized under this chapter to sell at retail, nor hold a retail liquor control license or retail wine or beer permit. However, a person engaged in the wholesaling of beer or wine may sell only disposable glassware, which is constructed of paper, paper laminated, or plastic materials and designed primarily for personal consumption on a one-time usage basis, to retailers for use within the premises of licensed establishments, for an amount which is greater than or equal to an amount which represents the greater of either the amount paid for the disposable glassware by the supplier or the amount paid for the disposable glassware by the wholesaler. Also, a person engaged in the business of manufacturing beer may sell beer at retail for consumption on or off the premises of the manufacturing facility and, notwithstanding any other provision of this chapter or the fact that a person is the holder of a class "A" beer permit, may be granted not more than one class "B" beer permit as defined in section 123.124 for that purpose. A licensee or permittee who permits or assents to or is a party in any way to a violation or infringement of this section is guilty of a violation of this section.

[C35, §1921-f40, 1921-f115; C39, §**1921.040, 1921.117;** C46, 50, 54, 58, 62, 66, 71, §123.40, 124.22; C73, 75, 77, 79, 81, §123.45; 81 Acts, ch 57, §1; 82 Acts, ch 1024, §2]

85 Acts, ch 32, §35; 88 Acts, ch 1241, §13; 91 Acts, ch 24, §1

123.46 Consumption or intoxication in public places — notifications — chemical tests — exoneration.

1. As used in this section unless the context otherwise requires:

a. "Arrest" means the same as defined in section 804.5 and includes taking into custody pursuant to section 232.19.

b. *"Chemical test"* means a test of a person's blood, breath, or urine to determine the percentage of alcohol present by a qualified person using devices and methods approved by the commissioner of public safety.

c. *"Peace officer"* means the same as defined in section 801.4.

d. *"School"* means a public or private school or that portion of a public or private school which provides teaching for any grade from kindergarten through grade twelve.

2. A person shall not use or consume alcoholic liquor, wine, or beer upon the public streets or highways. A person shall not use or consume alcoholic liquor in any public place except premises covered by a liquor control license. A person shall not possess or consume alcoholic liquors, wine, or beer on public school property or while attending a public or private school-related function. A person shall not be intoxicated or simulate intoxication in a public place. A person violating this subsection is guilty of a simple misdemeanor.

3. When a peace officer arrests a person on a charge of public intoxication under this section, the peace officer shall inform the person that the person may have a chemical test administered at the person's own expense. If a device approved by the commissioner of public safety for testing a sample of a person's breath to determine the person's blood alcohol concentration is available, that is the only test that need be offered the person arrested. In a prosecution for public intoxication, evidence of the results of a chemical test performed under this subsection is admissible upon proof of a proper foundation. The percentage of alcohol present in a person's blood, breath, or urine established by the results of a chemical test performed within two hours after the person's arrest on a charge of public intoxication is presumed to be the percentage of alcohol present at the time of arrest.

4. *a.* A peace officer shall make a reasonable effort to identify a person under the age of eighteen who violates this section and, if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of the violation, whether or not the person is taken into custody, unless the officer has reasonable grounds to believe that notification is not in the best interests of the person or will endanger that person.

b. The peace officer shall also make a reasonable effort to identify the elementary or secondary school which the person attends if the person is enrolled in elementary or secondary school and to notify the superintendent or the superintendent's designee of the school which the person attends, or the authorities in charge of the nonpublic school which the person attends, of the violation. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school, of the violation. A reasonable attempt to notify the person includes, but is not limited to, a telephone call or notice by first-class mail.

5. Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to exonerate the person of the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the person shall be deemed exonerated of the offense as a matter of law. The court shall enter an order exonerating the person of the conviction, and ordering that the record of the conviction be expunged by the clerk of the district court.

[C35, §1921-f42, 1921-f127; C39, §**1921.042, 1921.132;** C46, 50, 54, 58, 62, 66, 71, §123.42, 124.37; C73, 75, 77, 79, 81, §123.46]

85 Acts, ch 32, §36; 86 Acts, ch 1067, §1; 89 Acts, ch 225, §10; 92 Acts, ch 1231, §7; 2000 Acts, ch 1138, §1

123.47 Persons under legal age — penalty.

1. A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that person to be under legal age.

2. A person or persons under legal age shall not purchase or attempt to purchase, or individually or jointly have alcoholic liquor, wine, or beer in their possession or control; except in the case of liquor, wine, or beer given or dispensed to a person under legal age within a private home and with the knowledge, presence, and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages, wine, and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee under this chapter.

3. A person who is under legal age, other than a licensee or permittee, who violates this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer, or possessing or having control of alcoholic liquor, wine, or beer, commits a simple misdemeanor punishable by a fine of one hundred dollars for the first offense. A second or subsequent offense shall be a simple misdemeanor punishable by a fine of two hundred dollars and the suspension of the person's motor vehicle operating privileges for a period not to exceed one year. The court may, in its discretion, order the person who is under legal age to perform community service work under section 909.3A, of an equivalent value to the fine imposed under this section. However, if the person who commits the

violation of this section is under the age of eighteen, the matter shall be disposed of in the manner provided in chapter 232.

4. Except as otherwise provided in subsections 5 and 6, a person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section commits a serious misdemeanor punishable by a minimum fine of five hundred dollars.

5. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in serious injury to any person commits an aggravated misdemeanor.

6. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in the death of any person commits a class "D" felony.

[C35, §1921-f43; C39, §**1921.043;** C46, 50, 54, 58, 62, §123.43; C66, 71, §123.43, 125.33; C73, 75, 77, 79, 81, §123.47]

85 Acts, ch 32, §37; 92 Acts, ch 1231, §8; 94 Acts, ch 1105, §1; 94 Acts, ch 1172, §2; 95 Acts, ch 191, §3; 97 Acts, ch 126, §2; 99 Acts, ch 153, §1

123.47A Persons age eighteen, nineteen, and twenty — penalty. Repealed by 97 Acts, ch 126, § 54. See § 123.47.

123.47B Parental and school notification — persons under eighteen years of age.

1. A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of alcoholic liquor, wine, or beer in violation of section 123.47 and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested or a citation is issued pursuant to section 805.16, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person.

2. The peace officer shall also make a reasonable effort to identify the elementary or secondary school which the person attends if the person is enrolled in elementary or secondary school and to notify the superintendent or the superintendent's designee of the school which the person attends, or the authorities in charge of the nonpublic school which the person attends, of the possession. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school, of the taking into custody. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first-class mail.

90 Acts, ch 1251, §4; 95 Acts, ch 191, §4; 97 Acts, ch 126, §3

123.48 Seizure of false or altered driver's license or nonoperator identification card.

1. If a liquor control licensee or wine or beer permittee or an employee of the licensee or permittee has a reasonable belief based on factual evidence that a driver's license as defined in section 321.1, subsection 20A, or nonoperator identification card issued pursuant to section 321.190 offered by a person who wishes to purchase an alcoholic beverage at the licensed premises is altered or falsified or belongs to another person, the licensee, permittee, or employee may retain the driver's license or nonoperator identification card. Within twenty-four hours, the card shall be delivered to the appropriate city or county law enforcement agency of the jurisdiction in which the licensed premises is located. When the card is delivered to the appropriate law enforcement agency, the licensee shall file a written report of the circumstances under which the card was retained. The local law enforcement agency may investigate whether a violation of section 321.216, 321.216A, or 321.216B has occurred. If an investigation is not initiated or a probable cause is not established by the local law enforcement agency, the driver's license or nonoperator identification card shall be delivered to the person to whom it was issued. The local law enforcement agency may forward the card with the report to the department of transportation for investigation, in which case, the department may investigate whether a violation of section 321.216, 321.216A, or 321.216B has occurred. The department of transportation shall return the card to the person to whom it was issued if an investigation is not initiated or a probable cause is not established.

2. Upon taking possession of an identification card as provided in subsection 1, a receipt for the card with the date and hour of seizure noted shall be provided to the person from whom the card was seized.

3. A liquor control licensee or wine or beer permittee or an employee of the licensee or permittee is not subject to criminal prosecution for, or to civil liability for damages alleged to have resulted from, the retention and delivery of a driver's license or a nonoperator identification card which is taken pursuant to subsections 1 and 2. This section shall not be construed to relieve a licensee, permittee, or employee of the licensee or permittee from civil liability for damages resulting from the use of unreasonable force in obtaining the altered or falsified driver's license or identification card or

the driver's license or identification card believed to belong to another person.

94 Acts, ch 1105, §3; 96 Acts, ch 1090, §1; 98 Acts, ch 1073, §9, 12

123.49 Miscellaneous prohibitions.

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.

b. The general assembly declares that this subsection shall be interpreted so that the holding of Clark v. Mincks, 364 N.W.2d. 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club's agents or employees, shall not do any of the following:

a. Knowingly permit any gambling, except in accordance with chapter 99B, 99D, 99E, or 99F, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of eight a.m. on Sunday and two a.m. on the following Monday.

c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members nor to sales by a hotel or motel to bona fide registered guests.

d. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the division, and except mixed drinks or cocktails mixed on the premises for immediate consumption. This prohibition does not apply to common carriers holding a class "D" liquor control license.

e. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.

f. Employ a person under eighteen years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

g. Allow any person other than the licensee, permittee, or employees of the licensee or permittee, to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as permitted in section 123.95. This paragraph does not apply to the lodging quarters of a class "B" liquor control licensee or wine or beer permittee, or to common carriers holding a class "D" liquor control license.

h. Sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, or permit any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage, wine, or beer.

i. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.

j. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of eight a.m. on Sunday and two a.m. on the following Monday.

3. A person under legal age shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to a person under legal age.

4. No privilege of selling alcoholic liquor, wine, or beer on Sunday as provided in sections 123.36, subsection 6, and 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which

places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex.

[C35, §1921-f46, 1921-f114, 1921-g3; C39, §**1921.046, 1921.115, 1921.116;** C46, 50, 54, 58, 62, 66, 71, §123.46, 124.20, 124.21; C73, 75, 77, 79, 81, §123.49]

84 Acts, ch 1275, §3; 85 Acts, ch 32, §38 – 42; 86 Acts, ch 1002, §5; 86 Acts, ch 1211, §11; 89 Acts, ch 67, §26; 90 Acts, ch 1175, §8; 91 Acts, ch 245, §2, 3; 94 Acts, ch 1172, §4; 97 Acts, ch 126, §4

Civil liability for dispensing or sale and service to intoxicated persons; see §123.92

For scheduled fines applicable to violations of subsection 2, paragraph h, see §805.8C, subsection 2

123.50 Criminal and civil penalties.

1. Any person who violates any of the provisions of section 123.49, except subsection 2, paragraph *"h"*, shall be guilty of a simple misdemeanor. A person who violates section 123.49, subsection 2, paragraph *"h"*, commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 2.

2. The conviction of any liquor control licensee, wine permittee, or beer permittee for a violation of any of the provisions of section 123.49, subject to subsection 3 of this section, is grounds for the suspension or revocation of the license or permit by the division or the local authority. However, if any liquor control licensee is convicted of any violation of subsection 2, paragraph *"a"*, *"d"* or *"e"*, of that section, or any wine or beer permittee is convicted of a violation of paragraph *"a"* or *"e"* of that section, the liquor control license, wine permit, or beer permit shall be revoked and shall immediately be surrendered by the holder, and the bond, if any, of the license or permit holder shall be forfeited to the division.

3. If any licensee, wine permittee, beer permittee, or employee of a licensee or permittee is convicted of a violation of section 123.49, subsection 2, paragraph *"h"*, or if a retail wine or beer permittee is convicted of a violation of paragraph *"i"* of that subsection, the administrator or local authority shall, in addition to criminal penalties fixed for violations by this section, assess a civil penalty as follows:

a. Upon a first conviction, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of fourteen days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph *"h"*, the violator's liquor control license or wine or beer permit shall not be suspended, but the violator shall be assessed a civil penalty in the amount of five hundred dollars. Failure to pay the civil penalty as ordered under section 123.39 for a violation of section 123.49, subsection 2, paragraph *"h"*, or this subsection will result in automatic suspension of the license or permit for a period of fourteen days.

b. Upon a second conviction within a period of two years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of thirty days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph *"h"*, the violator shall also be assessed a civil penalty in the amount of one thousand five hundred dollars.

c. Upon a third conviction within a period of three years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of sixty days. However, if the conviction is for a violation of section 123.49, subsection 2, paragraph *"h"*, the violator shall also be assessed a civil penalty in the amount of one thousand five hundred dollars.

d. Upon a fourth conviction within a period of three years, the violator's liquor control license, wine permit, or beer permit shall be revoked.

4. In addition to any other penalties imposed under this chapter, the division shall assess a civil penalty up to the amount of five thousand dollars upon a class "E" liquor control licensee when the class "E" liquor license is revoked for a violation of section 123.59. Failure to pay the civil penalty as required under this subsection shall result in forfeiture of the bond to the division.

[C35, §1921-f46, 1921-f127; C39, §**1921.046, 1921.132;** C46, 50, 54, 58, 62, 66, 71, §123.46, 124.37; C73, 75, 77, 79, 81, §123.50]

84 Acts, ch 1275, §4; 84 Acts, ch 1292, §1; 85 Acts, ch 32, §43; 86 Acts, ch 1246, §745; 88 Acts, ch 1088, §6; 88 Acts, ch 1241, §14; 89 Acts, ch 252, §2; 93 Acts, ch 91, §18; 94 Acts, ch 1172, §5; 97 Acts, ch 126, §5, 6; 98 Acts, ch 1204, §1, 2; 2001 Acts, ch 137, §5

123.51 Advertisements for alcoholic liquor, wine, or beer.

1. No signs or other matter advertising any brand of alcoholic liquor, beer, or wine shall be erected or placed upon the outside of any premises occupied by a licensee or permittee authorized to sell alcoholic liquor, beer, or wine at retail. This subsection does not prohibit the use of signs or other matter inside a fence or similar enclosure which wholly or partially surrounds the licensed premises.

2. Violation of this section is a simple misdemeanor.

[C35, §1921-f47; C39, §**1921.047;** C46, 50, 54, 58, 62, 66, 71, §123.47; C73, 75, 77, 79, 81, §123.51]

85 Acts, ch 32, §44; 86 Acts, ch 1246, §746; 87 Acts, ch 22, §9

123.52 Prohibited sale.

No person not expressly authorized by this chapter to deal in alcoholic liquors shall within the state keep for sale or offer for sale anything which is capable of being mistaken for a package containing alcoholic liquor and is either labeled or branded with the name of any kind of alcoholic liquor, whether the same contains any alcoholic liq-

uor or not.

[C35, §1921-f48; C39, §**1921.048;** C46, 50, 54, 58, 62, 66, 71, §123.48; C73, 75, 77, 79, 81, §123.52]

123.53 Beer and liquor control fund — allocations to substance abuse — use of civil penalties.

1. There shall be established within the office of the treasurer of state a fund to be known as the beer and liquor control fund. The fund shall consist of any moneys appropriated by the general assembly for deposit in the fund and moneys received from the sale of alcoholic liquors by the division, from the issuance of permits and licenses, and of moneys and receipts received by the division from any other source.

2. The director of revenue and finance shall periodically transfer from the beer and liquor control fund to the general fund of the state those revenues of the division which are not necessary for the purchase of liquor for resale by the division, or for remittances to local authorities or other sources as required by this chapter, or for other obligations and expenses of the division which are paid from such fund.

All moneys received by the division from the issuance of vintner's certificates of compliance and wine permits shall be transferred by the director of revenue and finance to the general fund of the state.

3. The treasurer of state shall transfer into a special revenue account in the general fund of the state, a sum of money at least equal to seven percent of the gross amount of sales made by the division from the beer and liquor control fund on a monthly basis but not less than nine million dollars annually, and any amounts so transferred shall be used by the substance abuse division of the Iowa department of public health for substance abuse treatment and prevention programs in an amount determined by the general assembly and any amounts received in excess of the amounts appropriated to the substance abuse division of the Iowa department of public health shall be considered part of the general fund balance.

4. The treasurer of state, after making the transfer provided for in subsection 3, shall transfer to the division from the beer and liquor control fund and before any other transfer to the general fund, an amount sufficient to pay the costs incurred by the division for collecting and properly disposing of the liquor containers.

5. Civil penalties imposed and collected by the division shall be credited to the general fund of the state. The moneys from the civil penalties shall be used by the division, subject to appropriation by the general assembly, for the purposes of providing educational programs, information and publications for alcoholic beverage licensees and permittees, local authorities, and law enforcement agencies regarding the laws and rules which govern the alcoholic beverages industry, and for promoting compliance with alcoholic beverage laws and rules.

[C35, §1921-f50; C39, §**1921.050;** C46, 50, 54, 58, 62, 66, 71, §123.50; C73, 75, 77, 79, 81, §123.53]

85 Acts, ch 32, §45 – 47; 86 Acts, ch 1246, §603, 747; 88 Acts, ch 1151, §1; 88 Acts, ch 1250, §10; 92 Acts, ch 1242, §25; 93 Acts, ch 91, §19; 99 Acts, ch 199, §32

See §24.14

123.54 Drawing appropriation.

Division appropriations shall be paid by the treasurer of state upon the orders of the administrator, in such amounts and at such times as the administrator deems necessary to carry on operations in accordance with the terms of this chapter.

[C35, §1921-f52; C39, §**1921.052;** C46, 50, 54, 58, 62, 66, 71, §123.52; C73, 75, 77, 79, 81, §123.54]

123.55 Annual report.

The commission shall cause to be prepared an annual report to the governor of the state, ending with June 30 of each year, showing fully the results of the operations of the division covering the period since the last previous report. Such report shall show:

1. Amount of profit or loss from division operations.

2. The current balance of the beer and liquor control fund, and the amount transferred from the fund to the treasurer of state during the period covered by the report.

3. All other funds on hand and the source from which derived.

4. The total quantity and particular kind of alcoholic liquor sold.

5. The increase or decrease of liquor sales from the previous reporting period.

6. The number of liquor control licenses, wine permits, and beer permits issued, by class, the number in effect on the last day included in the report, and the number which have been suspended or revoked during the period covered by the report.

7. Amount of fees paid to the division from liquor control licenses, wine permits, and beer permits, in gross, and the amount of liquor control license fees returned to local subdivisions of government as provided under this chapter.

[C35, §1921-f53; C39, §**1921.053;** C46, 50, 54, 58, 62, 66, 71, §123.53; C73, 75, 77, 79, 81, §123.55]

85 Acts, ch 32, §48; 86 Acts, ch 1246, §748

123.56 Native wines.

1. Subject to rules of the division, manufacturers of native wines from grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, holding a class "A" wine permit as required by this chapter, may sell, keep, or offer for sale and deliver the wine. Sales may be

made at retail for off-premises consumption when sold on the premises of the manufacturer, or in a retail establishment operated by the manufacturer which is no closer than five miles from an existing native winery. Sales may also be made to class "A" or retail wine permittees or liquor control licensees as authorized by the class "A" wine permit.

2. A manufacturer of native wines shall not sell the wines other than as permitted in this chapter and shall not allow wine sold to be consumed upon the premises of the manufacturer. However, prior to sale native wines may be sampled on the premises where made, when no charge is made for the sampling. A person may manufacture native wine for consumption on the manufacturer's premises, when the wine or any part of it is not manufactured for sale.

3. A manufacturer of native wines may ship wine in closed containers to individual purchasers inside and outside this state. The manufacturer shall label the package containing the wine with the words "deliver to adults only".

4. Notwithstanding section 123.179, subsection 1, a class "A" wine permit for a native wine manufacturer shall be issued and renewed annually upon payment of a fee of twenty-five dollars which shall be in lieu of any other license fee required by this chapter. The class "A" permit shall only allow the native wine manufacturer to sell, keep, or offer for sale and deliver the manufacturer's native wines as provided under this section.

5. For the purposes of this section, *"manufacturer"* includes only those persons who process in Iowa the fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wines.

[C35, §1921-f56; C39, §**1921.056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.56]

85 Acts, ch 32, §49; 85 Acts, ch 198, §1

123.57 Examination of accounts.

The financial condition and transactions of all offices, departments, warehouses, and depots of the division shall be examined at least once each year by the state auditor and at shorter periods if requested by the administrator, governor, or executive council.

[C35, §1921-f57; C39, §**1921.057;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.57]

86 Acts, ch 1246, §749

123.58 Auditing.

All provisions of sections 11.6, 11.7, 11.10, 11.11, 11.14, 11.21, and 11.23, relating to auditing of financial records of governmental subdivisions which are not inconsistent with this chapter are applicable to the division and its offices, warehouses, and depots.

[C35, §1921-f58; C39, §**1921.058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.58]

86 Acts, ch 1246, §750; 89 Acts, ch 264, §4

123.59 Bootlegging.

Any person who, acting individually, or through another acting for the person, keeps or carries on the person, or in a vehicle, or leaves in a place for another to secure, any alcoholic liquor, wine, or beer, with intent to sell or dispense the liquor, wine, or beer, by gift or otherwise in violation of law, or who, within this state, in any manner, directly or indirectly, solicits, takes, or accepts an order for the purchase, sale, shipment, or delivery of alcoholic liquor, wine, or beer in violation of law, or aids in the delivery and distribution of alcoholic liquor, wine, or beer so ordered or shipped, or who in any manner procures for, sells, or gives alcoholic liquor, wine, or beer to a person under legal age, for any purpose except as authorized and permitted in this chapter, is a bootlegger and subject to the general penalties provided by this chapter.

[C51, §924 – 928; R60, §1559, 1562, 1563, 1583, 1587; C73, §1523, 1540 – 1542, 1555; C97, §2382; SS15, §2382, 2461-a; C24, 27, 31, §1927; C35, §1921-f59, 1927; C39, §**1921.059, 1927;** C46, 50, 54, 58, 62, 66, 71, §123.59, 125.7; C73, 75, 77, 79, 81, §123.59]

85 Acts, ch 32, §50; 85 Acts, ch 67, §16

123.60 Nuisances.

The premises where the unlawful manufacture or sale, or keeping with intent to sell, use or give away, of alcoholic liquors, wine, or beer is carried on, and any vehicle or other means of conveyance used in transporting liquor, wine, or beer in violation of law, and the furniture, fixtures, vessels and contents, kept or used in connection with such activities are nuisances and shall be abated as provided in this chapter.

[C51, §935; R60, §1564; C73, §1543; C97, §2384; C24, 27, 31, §1929; C35, §1921-f60, 1929; C39, §**1921.060, 1929;** C46, 50, 54, 58, 62, 66, 71, §123.60, 125.9; C73, 75, 77, 79, 81, §123.60]

85 Acts, ch 32, §51

123.61 Penalty.

Any person who erects, establishes, or uses any premises for any of the purposes prohibited in section 123.60, is guilty of nuisance and shall be subject to the general penalties provided by this chapter.

[C51, §935; R60, §1564; C73, §1543; C97, §2384; C24, 27, 31, §1930; C35, §1921-f61, 1930; C39, §**1921.061, 1930;** C46, 50, 54, 58, 62, 66, 71, §123.61, 125.10; C73, 75, 77, 79, 81, §123.61]

123.62 Injunction.

Actions to enjoin nuisances shall be brought in equity in the name of the state by the county attorney who shall prosecute the same to judgment.

[R60, §1564; C73, §1543; C97, §2405, 2406; S13,

§2406; SS15, §2405; C24, 27, 31, §2017; C35, §1921-f62, 2017; C39, §**1921.062, 2017;** C46, 50, 54, 58, 62, 66, 71, §123.62, 128.1; C73, 75, 77, 79, 81, §123.62]

123.63 Temporary writ.

In such action, the court shall, upon the presentation of a petition therefor, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the court by evidence in the form of affidavits, depositions, oral testimony or otherwise, that the nuisance complained of exists.

[R60, §1564; C73, §1543; C97, §2405; SS15, §2405; C24, 27, 31, §2018; C35, §1921-f63, 2018; C39, §**1921.063, 2018;** C46, 50, 54, 58, 62, 66, 71, §123.63, 128.2; C73, 75, 77, 79, 81, §123.63]

123.64 Notice.

Three days' notice in writing shall be given the defendant of the hearing of the application, and if then continued at the defendant's instance the writ as petitioned for shall be granted as a matter of course.

[C97, §2405; SS15, §2405; C24, 27, 31, §2019; C35, §1921-f64, 2019; C39, §**1921.064, 2019;** C46, 50, 54, 58, 62, 66, 71, §123.64, 128.3; C73, 75, 77, 79, 81, §123.64]

90 Acts, ch 1168, §26

123.65 Scope of injunction.

When an injunction has been granted, it shall be binding upon the defendant throughout the state and any violation of the provisions of this chapter anywhere within the state shall be punished as a contempt as herein provided.

[C97, §2405; SS15, §2405; C24, 27, 31, §2020; C35, §1921-f65, 2020; C39, §**1921.065, 2020;** C46, 50, 54, 58, 62, 66, 71, §123.65, 128.4; C73, 75, 77, 79, 81, §123.65]

123.66 Trial of action.

Any action brought hereunder shall be accorded priority over other business pending before the district court.

[C97, §2406; S13, §2406; C24, 27, 31, §2021; C35, §1921-f66, 2021; C39, §**1921.066, 2021;** C46, 50, 54, 58, 62, 66, 71, §123.66, 128.5; C73, 75, 77, 79, 81, §123.66]

123.67 General reputation.

In all actions to enjoin a nuisance or to establish a violation of the injunction, evidence of the general reputation of the premises described in the petition or information shall be admissible for the purpose of proving the existence of the nuisance or the violation of the injunction.

[C97, §2406; S13, §2406; C24, 27, 31, §2022; C35, §1921-f67, 2022; C39, §**1921.067, 2022;** C46, 50, 54, 58, 62, 66, 71, §123.67, 128.6; C73, 75, 77, 79, 81, §123.67]

123.68 Contempt.

In the case of a violation of any injunction granted under the provisions of this chapter, the court may summarily try and punish the defendant pursuant to the general penalties provided by this chapter. The proceedings shall be commenced by filing with the clerk of the court an information under oath setting out the alleged facts constituting such violation, upon which the court shall cause a warrant to issue under which the defendant shall be arrested.

[C97, §2407; SS15, §2407; C24, 27, 31, §2027; C35, §1921-f68, 2027; C39, §**1921.068, 2027;** C46, 50, 54, 58, 62, 66, 71, §123.68, 128.13; C73, 75, 77, 79, 81, §123.68]

123.69 Trial of contempt action.

The trial shall be as in equity and may be had upon depositions, or either party may demand the production and oral examination of the witnesses.

[C97, SS15, §2407; C24, 27, 31, §2028; C35, §1921-f69, 2028; C39, §**1921.069, 2028;** C46, 50, 54, 58, 62, 66, 71, §123.69, 128.14; C73, 75, 77, 79, 81, §123.69]

123.70 Injunction against bootlegger.

A bootlegger as defined in this chapter may be restrained by injunction from doing or continuing to do any of the acts prohibited herein, and all the proceedings for injunctions, temporary and permanent, and for punishments for violation of the same as prescribed herein, shall be applicable to such person, and the fact that an offender has no known or permanent place of business, or base of supplies, or quits the business after the commencement of an action, shall not prevent a temporary or permanent injunction, as the case may be, from issuing.

[S13, §2461-b; C24, 27, 31, §2031; C35, §1921-f71, 2031; C39, §**1921.071, 2031;** C46, 50, 54, 58, 62, 66, 71, §123.71, 128.17; C73, 75, 77, 79, 81, §123.70]

123.71 Conditions on injunction proceeding.

A bootlegger injunction proceeding, as provided in this chapter, shall not be maintained unless it is shown to the court that efforts in good faith have been made to discover the base of supplies or place where the defendant charged as a bootlegger conducts an unlawful business or receives or manufactures the alcoholic liquor, wine, or beer, which the defendant is charged with bootlegging.

[C27, 31, §2031-a1; C35, §1921-f72, 2031-a1; C39, §**1921.072, 2031.1;** C46, 50, 54, 58, 62, 66, 71, §123.72, 128.18; C73, 75, 77, 79, 81, §123.71]

85 Acts, ch 32, §52

123.72 Order of abatement of nuisance.

If the existence of a nuisance is established in a civil or criminal action, an order of abatement shall be entered as a part of the judgment in the case. The order shall direct the confiscation of all alcoholic liquor, wine, or beer by the state; the removal from the premises involved of all fixtures, furniture, vessels, or movable property used in any way in conducting the unlawful business; the sale of all removed property as well as any vehicle or other means of conveyance which has been abated, the sale to be conducted in the manner provided for the sale of chattels under execution; and the effective closing of the premises against use for the purpose of manufacture, sale, or consumption of alcoholic liquor, wine, or beer for a period of one year, unless sooner released by the court.

[C51, §935; R60, §1559; C73, §1523, 1543; C97, §2408; C24, 27, 31, §2032; C35, §1921-f73, 2032; C39, §**1921.073, 2032;** C46, 50, 54, 58, 62, 66, 71, §123.73, 128.19; C73, 75, 77, 79, 81, §123.72]

85 Acts, ch 32, §53

123.73 Use of abated premises.

If any person uses a premises closed pursuant to an abatement order in violation of such order the person shall be punished for contempt as provided in this chapter.

[C97, §2408; C24, 27, 31, §2033; C35, §1921-f74, 2033; C39, §**1921.074, 2033;** C46, 50, 54, 58, 62, 66, 71, §123.74, 128.20; C73, 75, 77, 79, 81, §123.73]

123.74 Fees.

For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as the officer would for levying upon and selling like property on execution; and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court.

[C97, §2408; C24, 27, 31, §2034; C35, §1921-f75, 2034; C39, §**1921.075, 2034;** C46, 50, 54, 58, 62, 66, 71, §123.75, 128.21; C73, 75, 77, 79, 81, §123.74]

123.75 Proceeds of sale.

The proceeds of the sale of personal property in abatement proceedings shall be applied first in payment of the costs of the action and abatement, and second to the satisfaction of any fine and costs adjudged against the proprietor of the premises and keeper of said nuisance, and the balance, if any, shall be paid to the defendant.

[C97, §2409; C24, 27, 31, §2035; C35, §1921-f76, 2035; C39, §**1921.076, 2035;** C46, 50, 54, 58, 62, 66, 71, §123.76, 128.22; C73, 75, 77, 79, 81, §123.75]

123.76 Abatement of nuisance.

If the owner of the abated premises appears and pays all costs of the proceeding and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court, conditioned that the owner will immediately abate the nuisance and prevent the same from being established or kept on such premises within a period of one year thereafter, the court may order such premises to be delivered to the owner and cancel the order of abatement so far as it may relate to the property.

[C97, §2410; S13, §2410; C24, 27, 31, §2036; C35, §1921-f77, 2036; C39, §**1921.077, 2036;** C46, 50, 54, 58, 62, 66, 71, §123.77, 128.23; C73, 75, 77, 79, 81, §123.76]

123.77 Abatement before judgment.

If the action is in equity and the owner of the premises pays the costs of the action and files the bond prior to the entry of judgment and the abatement order, such action shall be abated as to the premises only.

[C97, §2410; S13, §2410; C24, 27, 31, §2037; C35, §1921-f78, 2037; C39, §**1921.078, 2037;** C46, 50, 54, 58, 62, 66, 71, §123.78, 128.24; C73, 75, 77, 79, 81, §123.77]

123.78 Existing liens.

The release of the property under the provisions of either section 123.76 or 123.77 shall not release it from any judgment lien, penalty, or liability, to which it may be subject by law.

[C97, §2410; S13, §2410; C24, 27, 31, §2038; C35, §1921-f79, 2038; C39, §**1921.079, 2038;** C46, 50, 54, 58, 62, 66, 71, §123.79, 128.25; C73, 75, 77, 79, 81, §123.78]

123.79 Abatement bond a lien.

Undertakings of bonds for abatement shall immediately after filing by the clerk of the district court be docketed and entered upon the lien index as required for judgments in civil cases, and from the time of such entries shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions.

[C24, 27, 31, §2039; C35, §1921-f80, 2039; C39, §**1921.080, 2039;** C46, 50, 54, 58, 62, 66, 71, §123.80, 128.26; C73, 75, 77, 79, 81, §123.79]

123.80 Attested copies filed.

Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated in the same manner and with like effect as attested copies of judgments, and shall be immediately docketed and indexed in the same manner.

[C24, 27, 31, §2040; C35, §1921-f81, 2040; C39, §**1921.081, 2040;** C46, 50, 54, 58, 62, 66, 71, §123.81, 128.27; C73, 75, 77, 79, 81, §123.80]

123.81 Forfeiture of bond.

If the owner of a property who has filed an abatement bond as provided in this chapter fails to abate the liquor, wine, or beer nuisance on the premises covered by the bond, or fails to prevent the maintenance of any liquor, wine, or beer nuisance on the premises at any time within a period of one year after entry of the abatement order, the court shall, after a hearing in which such fact is established, direct an entry of the violation of the terms of the owner's bond to be made on the record and the undertaking of the owner's bond shall be forfeited.

[C24, 27, 31, §2041; C35, §1921-f82, 2041; C39, §**1921.082, 2041;** C46, 50, 54, 58, 62, 66, 71, §123.82, 128.28; C73, 75, 77, 79, 81, §123.81]

85 Acts, ch 32, §54

123.82 Procedure.

A proceeding to forfeit an abatement bond shall be commenced by filing with the clerk of the court, by the county attorney of the county where the bond is filed, an application under oath to forfeit such bond, setting out the alleged facts constituting the violation of the terms of the bond, upon which the court shall direct by order attached to such application that a notice be issued by the clerk of the district court directed to the principal and sureties on the bond to appear at a certain date fixed to show cause why such bond should not be forfeited and judgment entered for the penalty fixed therein.

[C24, 27, 31, §2042; C35, §1921-f83, 2042; C39, §**1921.083, 2042;** C46, 50, 54, 58, 62, 66, 71, §123.83, 128.29; C73, 75, 77, 79, 81, §123.82]

123.83 Method of trial.

The trial shall be to the court and as in equity, and be governed by the same rules of evidence as contempt proceedings.

[C24, 27, 31, §2043; C35, §1921-f84, 2043; C39, §**1921.084, 2043;** C46, 50, 54, 58, 62, 66, 71, §123.84, 128.30; C73, 75, 77, 79, 81, §123.83]

123.84 Judgment.

If the court after a hearing finds a liquor, wine, or beer nuisance has been maintained on the premises covered by the abatement bond and that liquor, wine, or beer has been sold or kept for sale on the premises contrary to law within one year from the date of the giving of the bond, then the court shall order the forfeiture of the bond and enter judgment for the full amount of the bond against the principal and sureties on the bond, and the lien on the real estate created pursuant to section 123.79 shall be decreed foreclosed and the court shall provide for a special and general execution for the enforcement of the decree and judgment.

[C24, 27, 31, §2044; C35, §1921-f85, 2044; C39, §**1921.085, 2044;** C46, 50, 54, 58, 62, 66, 71, §123.85, 128.31; C73, 75, 77, 79, 81, §123.84]

85 Acts, ch 32, §55

123.85 Appeal.

Appeal may be taken as in equity cases and the cause be triable de novo except that if the state appeals it need not file an appeal or supersedeas bond.

[C24, 27, 31, §2045; C35, §1921-f86, 2045; C39, §**1921.086, 2045;** C46, 50, 54, 58, 62, 66, 71, §123.86, 128.32; C73, 75, 77, 79, 81, §123.85]

123.86 County attorney to prosecute.

It shall be the duty of the county attorney to prosecute in the name of the state all forfeitures of abatement bonds and the foreclosures of same.

[C24, 27, 31, §2047; C35, §1921-f87, 2047; C39, §**1921.087, 2047;** C46, 50, 54, 58, 62, 66, 71, §123.87, 128.34; C73, 75, 77, 79, 81, §123.86]

123.87 Prompt service.

It shall be a simple misdemeanor for any peace officer to delay service of original notices, writs of injunction, writs of abatement, or warrants for contempt in any equity case filed for injunction or abatement by the state.

[C24, 27, 31, §2049; C35, §1921-f88, 2049; C39, §**1921.088, 2049;** C46, 50, 54, 58, 62, 66, 71, §123.88, 128.36; C73, 75, 77, 79, 81, §123.87]

123.88 Evidence.

On the issue whether a party knew or ought to have known of such nuisance, evidence of the general reputation of the place shall be admissible.

[C24, 27, 31, §2053; C35, §1921-f89, 2053; C39, §**1921.089, 2053;** C46, 50, 54, 58, 62, 66, 71, §123.89, 128.40; C73, 75, 77, 79, 81, §123.88]

123.89 Counts.

Informations or indictments under this chapter may allege any number of violations of its provisions by the same party, but the several charges must be set out in separate counts, and the accused may be convicted and punished upon each one as on separate informations or indictments, and a separate judgment shall be rendered on each count under which there is a finding of guilty.

[C51, §931; R60, §1562; C73, §1540; C97, §2425; C24, 27, 31, §1953; C35, §1921-f90, 1953; C39, §**1921.090, 1953;** C46, 50, 54, 58, 62, 66, 71, §123.90, 126.8; C73, 75, 77, 79, 81, §123.89]

123.90 Penalties generally.

Unless other penalties are herein provided, any person, except a person under legal age, who violates any of the provisions of this chapter, or who makes a false statement concerning any material fact in submitting an application for a permit or license, shall be guilty of a serious misdemeanor.

Any person under legal age who violates any of the provisions of this chapter shall upon conviction be guilty of a simple misdemeanor.

[C35, §1921-f91, 1921-f127; C39, §**1921.091, 1921.132;** C46, 50, 54, 58, 62, 66, 71, §123.91, 124.37; C73, 75, 77, 79, 81, §123.90]

123.91 Second and subsequent conviction.

Any person who has been convicted, in a criminal action, in any court of record, of a violation of a provision of this chapter, a provision of the prior laws of this state relating to intoxicating liquors, wine, or beer which was in force prior to the enactment of this chapter, or a provision of the laws of the United States or of any other state relating to intoxicating liquors, wine, or beer, and who is thereafter convicted of a subsequent criminal offense against any provision of this chapter is guilty of the following offenses:

1. For the second conviction, a serious misdemeanor.

2. For the third and each subsequent conviction, an aggravated misdemeanor.

[R60, §1561, 1563, 1577; C73, §1525, 1538, 1540, 1542, 1559; SS15, §2461-m; C24, 27, 31, 35, 39, §**1964;** C46, 50, 54, 58, 62, 66, 71, §126.19; C73, 75, 77, 79, 81, §123.91]

85 Acts, ch 32, §56

123.92 Civil liability for dispensing or sale and service of beer, wine, or intoxicating liquor (Dramshop Act) — liability insurance — underage persons.

Any person who is injured in person or property or means of support by an intoxicated person or resulting from the intoxication of a person, has a right of action for all damages actually sustained, severally or jointly, against any licensee or permittee, whether or not the license or permit was issued by the division or by the licensing authority of any other state, who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when the licensee or permittee knew or should have known the person was intoxicated, or who sold to and served the person to a point where the licensee or permittee knew or should have known the person would become intoxicated. If the injury was caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person. The remedy provided by this section shall apply both prospectively, to actions filed on or after July 1, 1992, and retrospectively, to actions pending in trial or appellate courts prior to July 1, 1992.

Every liquor control licensee and class "B" beer permittee, except a class "E" liquor control licensee, shall furnish proof of financial responsibility by the existence of a liability insurance policy in an amount determined by the division.

Notwithstanding section 123.49, subsection 1, any person who is injured in person or property or means of support by an intoxicated person who is under legal age or resulting from the intoxication of a person who is under legal age, has a right of action for all damages actually sustained, severally or jointly, against a person who is not a licensee or permittee and who dispensed or gave any beer, wine, or intoxicating liquor to the intoxicated underage person when the nonlicensee or nonpermittee who dispensed or gave the beer, wine, or intoxicating liquor to the underage person knew or should have known the underage person was intoxicated, or who dispensed or gave beer, wine, or intoxicating liquor to the underage person to a point where the nonlicensee or nonpermittee knew or should have known that the underage person would become intoxicated. If the injury was caused by an intoxicated person who is under legal age, a person who is not a licensee or permittee and who dispensed or gave beer, wine, or intoxicating liquor to the underage person may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the underage person. For purposes of this paragraph, *"dispensed"* or *"gave"* means the act of physically presenting a receptacle containing beer, wine, or intoxicating liquor to the underage person whose actions or intoxication results in the sustaining of damages by another person. However, a person who dispenses or gives beer, wine, or intoxicating liquor to an underage person shall only be liable for any damages if the person knew or should have known that the underage person was under legal age.

[C73, §1557; C97, §2418; C24, 27, 31, 35, 39, §**2055;** C46, 50, 54, 58, 62, §129.2; C66, 71, §123.95, 129.2; C73, 75, 77, 79, 81, §123.92]

85 Acts, ch 32, §57; 86 Acts, ch 1211, §12; 88 Acts, ch 1158, §30; 92 Acts, ch 1136, §1; 97 Acts, ch 126, §7

123.93 Limitation of action.

Within six months of the occurrence of an injury, the injured person shall give written notice to the licensee or permittee or such licensee's or permittee's insurance carrier of the person's intention to bring an action under this section, indicating the time, place and circumstances causing the injury. Such six months' period shall be extended if the injured party is incapacitated at the expiration thereof or unable, through reasonable diligence, to discover the name of the licensee, permittee, or person causing the injury or until such time as such incapacity is removed or such person has had a reasonable time to discover the name of the licensee, permittee or person causing the injury.

[C73, 75, 77, 79, 81, §123.93]

123.94 Inurement of action prohibited.

No right of action for contribution or indemnity shall accrue to any insurer, guarantor or indemni-

tor of any intoxicated person for any act of such intoxicated person against any licensee or permittee as defined in this chapter.

[C73, 75, 77, 79, 81, §123.94]

123.95 Premises must be licensed — exception as to conventions and social gatherings.

1. A person shall not allow the dispensing or consumption of alcoholic liquor, except wines and beer, in any establishment unless the establishment is licensed under this chapter or except as otherwise provided in this section. The holder of an annual class "B" liquor control license or an annual class "C" liquor control license may act as the agent of a private social host for the purpose of providing and serving alcoholic liquor, wine, and beer as part of a food catering service for a private social gathering in a private place. The holder of an annual special class "C" liquor control license shall not act as the agent of a private social host for the purpose of providing and serving wine and beer as part of a food catering service for a private social gathering in a private place. The private social host or the licensee shall not solicit donations in payment for the food or alcoholic beverages from the guests, and the alcoholic beverages and food shall be served without cost to the guests. Section 123.92 does not apply to a liquor control licensee who acts in accordance with this section when the liquor control licensee is providing and serving food and alcoholic beverages as an agent of a private social host at a private social gathering in a private place which is not on the licensed premises.

2. An applicant for a class "B" liquor control license or class "C" liquor control license shall state on the application for the license that the licensee intends to engage in catering food and alcoholic beverages for private social gatherings and the catering privilege shall be noted on the license or permit. A licensee who engages in catering food and alcoholic beverages for private social gatherings shall maintain a record on the licensed premises which includes the name and address of the host of the private social gathering, and the date for which catering was provided. The record maintained pursuant to this section shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the licensee.

3. However, bona fide conventions or meetings may bring their own legal liquor onto the licensed premises if the liquor is served to delegates or guests without cost. All other provisions of this chapter shall be applicable to such premises. The provisions of this section shall have no application to private social gatherings of friends or relatives in a private home or private place which is not of a commercial nature nor where goods or services may be purchased or sold nor any charge or rent or other thing of value is exchanged for the use of such premises for any purpose other than for sleeping quarters.

[C66, 71, §123.96; C73, 75, 77, 79, 81, §123.95]
85 Acts, ch 32, §58; 93 Acts, ch 91, §20

123.96 Tax on beverages sold for consumption on the premises. Repealed by 86 Acts, ch 1246, § 754.

123.97 Covered into general fund.

All revenues, except the portion of license fees remitted to the local authorities, arising under the operation of the provisions of this chapter shall become part of the state general fund.

[C66, 71, §123.101; C73, 75, 77, 79, 81, §123.97]

123.98 Labeling shipments.

It shall be unlawful for any common carrier or for any person to transport or convey by any means, whether for compensation or not, within this state, any intoxicating liquors, unless the vessel or other package containing such liquors shall be plainly and correctly identified, showing the quantity and kind of liquors contained therein, the name of the party to whom they are to be delivered, and the name of the shipper, or unless such information is shown on a bill of lading or other document accompanying the shipment. No person shall be authorized to receive or keep such liquors unless the same be marked or labeled as required by this section. The violation of any provision of this section by any common carrier, or any agent or employee of any carrier, or by any person, shall be punished under the provisions of this chapter.

Liquors conveyed, carried, transported, or delivered in violation of this section, whether in the hands of the carrier or someone to whom they shall have been delivered, shall be subject to seizure and condemnation, as liquors kept for illegal sale.

[C97, §2421; C24, 27, 31, 35, 39, §**1936, 1938;** C46, 50, 54, 58, 62, 66, 71, §125.16, 125.18; C73, 75, 77, 79, 81, §123.98]

123.99 False statements.

If any person, for the purpose of procuring the shipment, transportation, or conveyance of any intoxicating liquors within this state, shall make to any person, company, corporation, or common carrier, or to any agent thereof, any false statements as to the character or contents of any box, barrel, or other vessel or package containing such liquors; or shall refuse to give correct and truthful information as to the contents of any such box, barrel, or other vessel or package so sought to be transported or conveyed; or shall falsely mark, brand, or label such box, barrel, or other vessel or package in order to conceal the fact that the same contains intoxicating liquors; or shall by any device or concealment procure or attempt to procure the conveyance or transportation of such liquors as herein prohibited, the person shall be guilty of a simple

misdemeanor.

[C97, §2420; C24, 27, 31, 35, 39, §**1934;** C46, 50, 54, 58, 62, 66, 71, §125.14; C73, 75, 77, 79, 81, §123.99]

123.100 Packages in transit.

Any peace officer of the county under process or warrant to the peace officer directed shall have the right to open any box, barrel, or other vessel or package for examination, if the peace officer has reasonable ground for believing that it contains intoxicating liquors, either before or while the same is being so transported or conveyed.

[C97, §2420; C24, 27, 31, 35, 39, §**1935;** C46, 50, 54, 58, 62, 66, 71, §125.15; C73, 75, 77, 79, 81, §123.100]

123.101 Record of shipments.

It shall be the duty of all common carriers, or corporations, or persons who shall for hire carry any intoxicating liquors into the state, or from one point to another within the state, for the purpose of delivery, and who shall deliver such intoxicating liquor to any person, company, or corporation, to keep, at each station or office where it employs an agent or other person to make delivery of freight and keep records relative thereto, a record book, wherein such carrier shall, promptly upon receipt and prior to delivery, enter in ink, in legible writing, in full, the name of the consignor of each shipment of intoxicating liquor to be delivered from or through such station, from where shipped, the date of arrival, the quantity and kind of liquor, so far as disclosed by lettering on the package or by the carrier's records, and to whom and where consigned, and the date delivered.

[SS15, §2421-b; C24, 27, 31, 35, 39, §**1940;** C46, 50, 54, 58, 62, 66, 71, §125.20; C73, 75, 77, 79, 81, §123.101]

123.102 Inspection of shipping records.

The record book required by section 123.101 shall, during business hours, be open to inspection by any peace or law enforcing officer. It shall be a simple misdemeanor to refuse such inspection.

[SS15, §2421-c, -d; C24, 27, 31, 35, 39, §**1941;** C46, 50, 54, 58, 62, 66, 71, §125.21; C73, 75, 77, 79, 81, §123.102]

123.103 Record receipt upon delivery.

No shipment billed in whole or in part as intoxicating liquor shall be delivered to the consignee until such consignee upon such record book enters in ink, in legible writing, the consignee's full name and residence or place of business, giving the name of the city, and the street name and number if any, and certifies that such liquor is for the consignee's own lawful purposes.

[SS15, §2421-b; C24, 27, 31, 35, 39, §**1942;** C46, 50, 54, 58, 62, 66, 71, §125.22; C73, 75, 77, 79, 81, §123.103]

123.104 Unlawful delivery.

It shall be a simple misdemeanor for any corporation, common carrier, person, or any agent or employee thereof:

1. To deliver any intoxicating liquors to any person other than to the consignee.
2. To deliver any intoxicating liquors without having the same receipted for as provided in section 123.103.
3. To deliver any intoxicating liquors where there is reasonable ground to believe that such liquor is intended for unlawful use.

[SS15, §2421-c1; C24, 27, 31, 35, 39, §**1943;** C46, 50, 54, 58, 62, 66, 71, §125.23; C73, 75, 77, 79, 81, §123.104]

123.105 Immunity from damage.

In no case shall any corporation, common carrier, person, or the agent thereof, be liable in damages for complying with any requirements of this chapter.

[SS15, §2421-c; C24, 27, 31, 35, 39, §**1944;** C46, 50, 54, 58, 62, 66, 71, §125.24; C73, 75, 77, 79, 81, §123.105]

123.106 Federal statutes.

The requirements of this chapter relative to the shipment and delivery of intoxicating liquors and the records to be kept thereof shall be construed in harmony with federal statutes relating to interstate commerce in such liquors.

[SS15, §2421-e; C24, 27, 31, 35, 39, §**1945;** C46, 50, 54, 58, 62, 66, 71, §125.25; C73, 75, 77, 79, 81, §123.106]

123.107 Unnecessary allegations.

In any indictment or information under this chapter, it shall not be necessary:

1. To set out exactly the kind or quantity of intoxicating liquors manufactured, sold, given in evasion of the statute, or kept for sale.
2. To set out the exact time of manufacture, sale, gift, or keeping for sale.
3. To negative any exceptions contained in the statute creating or defining the offense, which may be proper ground of defense.

But proof of the violation by the accused of any provision of this chapter, the substance of which violation is briefly set forth, within the time mentioned in said indictment or information, shall be sufficient to convict such person.

[R60, §1569; C73, §1549; C97, §2424; C24, 27, 31, 35, 39, §**1952;** C46, 50, 54, 58, 62, 66, 71, §126.7; C73, 75, 77, 79, 81, §123.107]

123.108 Second conviction defined.

The second or subsequent convictions provided for in this chapter shall be convictions on separate informations or indictments, and, unless shown in

the information or indictment, the charge shall be held to be for a first offense.

[R60, §1562; C73, §1540; C97, §2425; C24, 27, 31, 35, 39, §**1955;** C46, 50, 54, 58, 62, 66, 71, §126.10; C73, 75, 77, 79, 81, §123.108]

123.109 Record of conviction.

On the trial of any cause in which the accused is charged with a second or subsequent offense, a duly authenticated copy of the former judgment in any court in which such conviction was had shall be competent evidence of such former conviction.

[SS15, §2461-n; C24, 27, 31, 35, 39, §**1956;** C46, 50, 54, 58, 62, 66, 71, §126.11; C73, 75, 77, 79, 81, §123.109]

123.110 Proof of sale.

It shall not be necessary in every case to prove payment in order to prove a sale within the meaning and intent of this chapter.

[R60, §1569; C73, §1549; C97, §2424; C24, 27, 31, 35, 39, §**1957;** C46, 50, 54, 58, 62, 66, 71, §126.12; C73, 75, 77, 79, 81, §123.110]

123.111 Purchaser as witness.

The person purchasing any intoxicating liquor sold in violation of this chapter shall in all cases be a competent witness to prove such sale.

[R60, §1569; C73, §1549; C97, §2424; C24, 27, 31, 35, 39, §**1958;** C46, 50, 54, 58, 62, 66, 71, §126.13; C73, 75, 77, 79, 81, §123.111]

123.112 Peace officer as witness.

Every peace officer shall give evidence, when called upon, of any facts within the peace officer's knowledge tending to prove a violation of the provisions of this chapter.

[R60, §1578; C73, §1551; C97, §2428; S13, §2428; C24, 27, 31, 35, 39, §**1959;** C46, 50, 54, 58, 62, 66, 71, §126.14; C73, 75, 77, 79, 81, §123.112]

123.113 Judgment lien.

For all fines and costs assessed or judgments rendered of any kind against any person for a violation of any provision of this chapter, or costs paid by the county on account of such violation, the personal and real property of the violator, whether exempt or not, except the homestead, as well as the premises and property, personal and real, occupied and used for the unlawful purpose, with the knowledge of the owner or the owner's agent, by the violator, shall be liable, and the same shall be a lien on such real estate until paid.

[R60, §1579; C73, §1552, 1558; C97, §2422; C24, 27, 31, 35, 39, §**1960;** C46, 50, 54, 58, 62, 66, 71, §126.15; C73, 75, 77, 79, 81, §123.113]

123.114 Enforcement of lien.

Costs paid by the county for the prosecution of actions or proceedings, civil or criminal, under this chapter, as well as the fines inflicted or judgments rendered, may be enforced against the property upon which the lien attaches by execution, or by action against the owner of the property to subject it to the payment thereof.

[C73, §1558; C97, §2422; C24, 27, 31, 35, 39, §**1961;** C46, 50, 54, 58, 62, 66, 71, §126.16; C73, 75, 77, 79, 81, §123.114]

123.115 Defense.

In any prosecution under this chapter for the unlawful transportation of intoxicating liquors it shall be a defense that the character and contents of the shipment or thing transported were not known to the accused or to the accused's agent or employee.

[C97, §2419; C24, §2059; C27, 31, 35, §1945-a2; C39, §**1945.3;** C46, 50, 54, 58, 62, 66, 71, §125.28; C73, 75, 77, 79, 81, §123.115]

123.116 Right to receive liquors.

The consignee of intoxicating liquors shall, on demand of the carrier transporting such liquors, furnish the carrier, at the place of delivery, with legal proof of the consignee's legal right to receive such liquors at the time of delivery, and until such proof is furnished the carrier shall be under no legal obligation to make delivery nor be liable for failure to deliver.

[C24, §2061; C27, 31, 35, §1945-a4; C39, §**1945.5;** C46, 50, 54, 58, 62, 66, 71, §125.30; C73, 75, 77, 79, 81, §123.116]

123.117 Delivery to sheriff.

If such proof is not furnished the carrier within ten days after demand, the carrier may deliver such liquors to the sheriff of the county embracing the place of delivery, and such delivery shall absolve the carrier from all liability pertaining to such liquors.

[C24, §2062; C27, 31, 35, §1945-a5; C39, §**1945.6;** C46, 50, 54, 58, 62, 66, 71, §125.31; C73, 75, 77, 79, 81, §123.117]

123.118 Destruction.

The sheriff shall, on receipt of such liquors from the carrier, report the receipt to the district court of the sheriff's county, and the court shall proceed to summarily enter an order for the destruction or forfeiture to the state of such liquors.

[C24, §2063; C27, 31, 35, §1945-a6; C39, §**1945.7;** C46, 50, 54, 58, 62, 66, 71, §125.32; C73, 75, 77, 79, 81, §123.118]

123.119 Evidence.

In all actions, civil or criminal, under the provisions of this chapter, the finding of intoxicating liquors or of instruments or utensils used in the manufacture of intoxicating liquors, or materials which are being used, or are intended to be used in the manufacture of intoxicating liquors, in the

possession of or under the control of any person, under and by authority of a search warrant or other process of law, and which shall have been finally adjudicated and declared forfeited by the court, shall be competent evidence of maintaining a nuisance or bootlegging, or of illegal transportation of intoxicating liquors, as the case may be, by such person.

[C27, 31, 35, §1966-a1; C39, §**1966.1;** C46, 50, 54, 58, 62, 66, 71, §126.23; C73, 75, 77, 79, 81, §123.119]

123.120 Attempt to destroy.

The destruction of or attempt to destroy any liquid by any person while in the presence of peace officers or while a property is being searched by a peace officer, shall be competent evidence that such liquid is intoxicating liquor and intended for unlawful purposes.

[C27, 31, 35, §1966-a3; C39, §**1966.3;** C46, 50, 54, 58, 62, 66, 71, §126.25; C73, 75, 77, 79, 81, §123.120]

123.121 Venue.

In any prosecution under this chapter for the unlawful sale of alcoholic liquor, wine, or beer, a sale of alcoholic liquor, wine, or beer which requires a shipment or delivery of the liquor, wine, or beer, shall be deemed to be made in the county in which the delivery is made by the carrier to the consignee, or the consignee's agent or employee.

In any prosecution under this chapter for the unlawful transportation of intoxicating liquor, the offense shall be held to have been committed in any county in which such liquor is received for transportation, through which it is transported, or in which it is delivered.

[C97, §2419; C24, §1928, 2060; C27, 31, 35, §1928, 1945-a3; C39, §**1928, 1945.4;** C46, 50, 54, 58, 62, 66, 71, §125.8, 125.29; C73, 75, 77, 79, 81, §123.121]

85 Acts, ch 32, §60

DIVISION II

BEER PROVISIONS

123.122 Permit or license required.

A person shall not manufacture for sale or sell beer at wholesale or retail unless a permit is first obtained as provided in this division or, a liquor control license authorizing the retail sale of beer is first obtained as provided in division I of this chapter. A liquor control license holder is not required to hold a separate class "B" beer permit.

[C35, §1921-f96; C39, §**1921.095;** C46, 50, 54, 58, 62, 66, 71, §124.1; C73, 75, 77, 79, 81, §123.122]

88 Acts, ch 1088, §7

123.123 Effect on liquor control licensees.

All applicable provisions of this division relating to class "B" beer permits shall apply to liquor control licensees in the purchasing, storage, handling, serving, and sale of beer.

[C73, 75, 77, 79, 81, §123.123]

123.124 Permits — classes.

Permits for the manufacture and sale, or sale of beer shall be divided into four classes, known as class "A", special class "A", class "B", or class "C" permits. A class "A" permit allows the holder to manufacture and sell beer at wholesale. A holder of a special class "A" permit may only manufacture beer to be consumed on the licensed premises for which the person also holds a class "C" liquor control license or class "B" beer permit and to be sold to a class "A" permittee for resale purposes. A class "B" permit allows the holder to sell beer to consumers at retail for consumption on or off the premises. A class "C" permit allows the holder to sell beer to consumers at retail for consumption off the premises.

[C35, §1921-f98; C39, §**1921.097;** C46, 50, 54, 58, 62, 66, 71, §124.3; C73, 75, 77, 79, 81, §123.124]

88 Acts, ch 1241, §15; 89 Acts, ch 221, §1; 92 Acts, ch 1003, §1; 94 Acts, ch 1017, §6

123.125 Issuance of permits.

The administrator shall issue class "A", special class "A", class "B", and class "C" beer permits and may suspend or revoke permits for cause as provided in this chapter.

[C35, §1921-f98; C39, §**1921.097;** C46, 50, 54, 58, 62, 66, 71, §124.3; C73, 75, 77, 79, 81, §123.125]

89 Acts, ch 221, §2

123.126 Repealed by 78 Acts, ch 1068, § 7.

123.127 Class "A" and special class "A" application.

A class "A" permit shall be issued by the administrator to any person who:

1. Submits a written application for such permit, which application shall state under oath:

a. The name and place of residence of the applicant and the length of time the applicant has lived at such place of residence.

b. That the applicant is a citizen of the state of Iowa.

c. The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of such naturalization.

d. The location of the premises where the applicant intends to operate.

e. The name of the owner of the premises and if such owner is not the applicant, that such applicant is the actual lessee of the premises.

2. Establishes:

a. That the applicant is a person of good moral character as defined by this chapter.

b. That the premises where the applicant intends to operate conform to all laws and health and fire regulations applicable thereto.

3. Furnishes a bond in the form prescribed and to be furnished by the division, with good and sufficient sureties to be approved by the administrator conditioned upon the faithful observance of this chapter, in the penal sum of five thousand dollars, payable to the state.

4. Gives consent to a person, pursuant to section 123.30, subsection 1, to enter upon the premises without a warrant during the business hours of the permittee to inspect for violations of the provisions of this chapter or ordinances and regulations that local authorities may adopt.

An applicant for a special class "A" permit shall comply with the requirements for a class "A" permit and shall also state on the application that the applicant holds or has applied for a class "C" liquor control license or class "B" beer permit.

[C35, §1921-f102; C39, §**1921.103;** C46, 50, 54, 58, 62, 66, §124.8; C71, §124.8, 124.41; C73, 75, 77, 79, 81, §123.127]

88 Acts, ch 1241, §16; 89 Acts, ch 221, §3

123.128 Class "B" application.

A class "B" permit shall be issued by the administrator to any person who:

1. Submits a written application for such permit, which application shall state under oath:

a. All the information required of a class "A" applicant by section 123.127, subsection 1.

b. That the premises for which the permit is sought is and will continue to be equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and in areas where such business is permitted by any valid zoning ordinance or will be so permitted on the effective date of the permit.

2. Fulfills the requirements of section 123.127, subsection 2, relating to class "A" applicants.

3. Consents to inspection as required in section 123.30, subsection 1.

[C35, §1921-f103; C39, §**1921.104;** C46, 50, 54, 58, 62, 66, 71, §124.9; C73, 75, 77, 79, 81, §123.128]

88 Acts, ch 1088, §8; 88 Acts, ch 1241, §17

123.129 Class "C" application.

No class "C" permit shall be issued to any person except the owner or proprietor of a grocery store or pharmacy.

"Grocery store" means any retail establishment, the business of which consists of the sale of food, food products or beverages for consumption off the premises.

"Pharmacy" means a drug store in which drugs and medicines are exposed for sale and sold at retail, or in which prescriptions of licensed physicians and surgeons, dentists or veterinarians are compounded and sold by a registered pharmacist.

A class "C" permit shall be issued by the administrator to any person who is the owner or proprietor of a grocery store or pharmacy, who:

1. Submits a written application for such permit, which application shall state under oath all the information required of a class "A" applicant by section 123.127, subsection 1.

2. Establishes that the person is of good moral character as defined by this chapter.

3. Consents to inspection as required in section 123.30, subsection 1.

4. States the number of square feet of interior floor space which comprises the retail sales area of the premises for which the permit is sought.

[C35, §1921-f104; C39, §**1921.105;** C46, 50, 54, 58, 62, 66, 71, §124.10; C73, 75, 77, 79, 81, §123.129]

88 Acts, ch 1088, §9; 88 Acts, ch 1241, §18

123.130 Authority under class "A" and special class "A" permit.

Any person holding a class "A" permit issued by the division shall be authorized to manufacture and sell, or sell at wholesale, beer for consumption off the premises, such sales within the state to be made only to persons holding subsisting class "A", "B" or "C" permits, or liquor control licenses issued in accordance with the provisions of this chapter. The holder of a class "A" permit may manufacture beer of more than five percent alcohol by weight for shipment outside this state only. However, a class "A" permit does not grant authority to manufacture wine as defined in section 123.3, subsection 37.

All class "A" premises shall be located within the state. All beer received by the holder of a class "A" permit from the holder of a certificate of compliance before being resold must first come to rest on the premises licensed by the class "A" permit holder, must be inventoried, and is subject to the barrel tax when resold as provided in section 123.136. A class "A" permittee shall not store beer overnight except on premises licensed under a class "A" permit.

A person who holds a special class "A" permit for the same location at which the person holds a class "C" liquor control license or class "B" beer permit may manufacture and sell beer to be consumed on the premises and may sell beer to a class "A" permittee for resale purposes.

[C35, §1921-f105; C39, §**1921.106;** C46, 50, 54, 58, 62, 66, 71, §124.11; C73, 75, 77, 79, 81, §123.130]

88 Acts, ch 1241, §19; 89 Acts, ch 221, §4; 92 Acts, ch 1003, §2

123.131 Authority under class "B" permit.

Subject to the provisions of this chapter, any person holding a class "B" permit shall be authorized to sell beer for consumption on or off the

premises. However, unless otherwise provided in this chapter, no sale of beer shall be made for consumption on the premises unless the place where such service is made is equipped with tables and seats sufficient to accommodate not less than twenty-five persons at one time.

[C35, §1921-f106; C39, §**1921.107;** C46, 50, 54, 58, 62, 66, 71, §124.12; C73, 75, 77, 79, 81, §123.131]

123.132 Authority under class "C" permit.

The holder of a class "C" permit shall be allowed to sell beer to consumers at retail for consumption off the premises. The sales made pursuant to this section shall be made in original containers only. The holder of a class "C" permit or the permittee's agents or employees shall not sell beer to other retail license or permit holders knowing or having reasonable cause to believe that the beer will be resold in another licensed establishment.

[C35, §1921-f107; C39, §**1921.108;** C46, 50, 54, 58, 62, 66, 71, §124.13; C73, 75, 77, 79, 81, §123.132]

94 Acts, ch 1017, §7

123.133 Sale on trains — bond.

Subject to the provisions of this chapter, any dining car company, sleeping car company, railroad company, or railway company may make application to the administrator for special class "B" permit, and the administrator may issue a permit to any such company which shall authorize the holder to keep for sale and sell beer on any dining car, sleeping car, buffet car, or observation car operated by such applicant in, through, or across the state. The application for such permit shall be in such form and contain such information as may be required by the administrator. Each such permit shall be good throughout the state as a state permit. Only one such permit shall be required for all cars operated in this state by such applicant, but a duplicate of such permit shall be posted in each car in which such beverages are sold; and no further permit shall be required or tax levied for the privilege of selling beer for consumption in such cars. As a condition precedent to the issuing of any such permit, the applicant shall give bond to the division, with good and sufficient sureties thereon to be approved by the administrator, conditioned upon faithful compliance with the provisions of this chapter in the penal sum of one thousand dollars.

[C35, §1921-f108; C39, §**1921.109;** C46, 50, 54, 58, 62, 66, 71, §124.14; C73, 75, 77, 79, 81, §123.133]

123.134 Beer fees — Sunday sales.

1. The annual permit fee for a class "A" or special class "A" permit is two hundred fifty dollars.

2. The annual permit fee for a class "B" permit shall be graduated according to population as follows:

a. For premises located within the corporate limits of cities with a population of ten thousand and over, three hundred dollars.

b. For premises located within the corporate limits of cities with a population of at least fifteen hundred but less than ten thousand, two hundred dollars.

c. For premises located within the corporate limits of cities with a population of under fifteen hundred, one hundred dollars.

d. For premises located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be operated under the permit, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the permit fee which is the largest shall prevail. However, if the premises are located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

3. The annual permit fee for a class "C" permit shall be graduated on the basis of the amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:

a. Up to one thousand five hundred square feet, the sum of seventy-five dollars.

b. Over one thousand five hundred square feet and up to two thousand square feet, the sum of one hundred dollars.

c. Over two thousand and up to five thousand square feet, the sum of two hundred dollars.

d. Over five thousand square feet, the sum of three hundred dollars.

4. The annual permit fee for a special class "B" permit, issued under section 123.133, shall be one hundred dollars, and three dollars for each duplicate permit, which fees shall be paid to the division. The division shall issue duplicates of such permits from time to time as applied for by each such company.

5. Any club, hotel, motel, or commercial establishment holding a class "B" beer permit, subject to the provisions of section 123.49, subsection 2, paragraph *"b"*, may apply for and receive permission to sell and dispense beer to patrons on Sunday for consumption on or off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday. Any class "C" beer permittee may sell beer for consumption off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday. For the privilege of selling beer on Sunday the beer permit fees of the applicant shall be increased by twenty percent of the regular fees prescribed for the permit pursuant to this section and the privilege shall be noted on the beer permit.

[C35, §1921-f117; C39, §**1921.119;** C46, 50, 54, 58, 62, 66, 71, §124.24; C73, 75, 77, 79, 81,

§123.134]

84 Acts, ch 1275, §5; 87 Acts, ch 22, §10; 88 Acts, ch 1241, §20; 89 Acts, ch 221, §5; 91 Acts, ch 245, §4

123.135 Certificate of compliance — civil penalty.

1. A manufacturer, brewer, bottler, importer, or vendor of beer or any agent thereof desiring to ship or sell beer, or have beer brought into this state for resale by a class "A" permittee shall first make application for and be issued a brewer's certificate of compliance by the administrator for that purpose. The certificate of compliance expires at the end of one year from the date of issuance and shall be renewed for a like period upon application to the administrator unless otherwise revoked for cause. Each application for a certificate of compliance or renewal of a certificate shall be accompanied by a fee of one hundred dollars payable to the division. Each holder of a certificate of compliance shall furnish the information in the form the administrator requires. A brewer whose plant is located in Iowa and who otherwise holds a class "A" beer permit to sell beer at wholesale is exempt from the fee, but not from the terms and conditions of the permit. The holder of a special class "A" permit is exempt from the requirements of this section.

2. At the time of applying for a certificate of compliance, each applicant shall file with the division a list of all class "A" permittees with whom it intends to do business and shall designate the geographic area in which its products are to be distributed by such permittee. The listing of class "A" permittees and geographic area as filed with the division may be amended from time to time by the holder of a certificate of compliance.

3. All class "A" permit holders shall sell only those brands of beer which are manufactured, brewed, bottled, shipped, or imported by a person holding a current certificate of compliance. Any employee or agent working for or representing the holder of a certificate of compliance within this state shall register the employee's or agent's name and address with the division, which names and addresses shall be filed with the division's copy of the certificate of compliance issued.

4. It shall be unlawful for any holder of a certificate of compliance or the holder's agent, or any class "A" permit holder or the permit holder's agent, to grant to any retail beer permit holder, directly or indirectly, any rebates, free goods, or quantity discounts on beer which are not uniformly offered to all retail permittees.

5. Notwithstanding any other penalties provided by this chapter, any holder of a certificate of compliance or any class "A" permit holder who violates this chapter or the rules adopted pursuant to this chapter is subject to a civil fine not to exceed one thousand dollars or suspension of the holder's certificate or permit for a period not to exceed one year, or both such civil fine and suspension. Civil fines imposed under this section shall be collected and retained by the division.

[C73, 75, 77, 79, 81, §123.135]

89 Acts, ch 221, §6; 89 Acts, ch 252, §3

123.136 Barrel tax.

In addition to the annual permit fee to be paid by all class "A" permittees under this chapter there shall be levied and collected from the permittees on all beer manufactured for sale or sold in this state at wholesale and on all beer imported into this state for sale at wholesale and sold in this state at wholesale, and from special class "A" permittees on all beer manufactured for consumption on the premises, a tax of five and eighty-nine hundredths dollars for every barrel containing thirty-one gallons, and at a like rate for any other quantity or for the fractional part of a barrel. However, no tax shall be levied or collected on beer shipped outside this state by a class "A" permittee or sold by one class "A" permittee to another class "A" permittee.

All revenue derived from the barrel tax shall accrue to the state general fund.

All of the provisions of this chapter relating to the administration of the barrel tax on beer shall apply to this section.

[C35, §1921-f118; C39, §**1921.120;** C46, 50, 54, 58, 62, 66, 71, §124.25; C73, 75, 77, 79, 81, §123.136]

86 Acts, ch 1246, §751; 89 Acts, ch 221, §7

123.137 Report of barrel sales — penalty.

A person holding a class "A" or special class "A" permit shall on or before the tenth day of each calendar month commencing on the tenth day of the calendar month following the month in which the person is issued a permit, make a report under oath to the division upon forms to be furnished by the division for that purpose showing the exact number of barrels of beer, or fractional parts of barrels, sold by the permit holder during the preceding calendar month. The report shall also state information the administrator requires, and permit holders shall at the time of filing a report pay to the division the amount of tax due at the rate fixed in section 123.136.

A penalty of ten percent of the amount of the tax shall be added thereto if the report is not filed and the tax paid within the time required by this section.

[C35, §1921-f119; C39, §**1921.121;** C46, 50, 54, 58, 62, 66, 71, §124.26; C73, 75, 77, 79, 81, §123.137]

89 Acts, ch 221, §8

123.138 Books of account required.

Each class "A" or special class "A" permittee shall keep proper books of account and records showing the amount of beer sold by the permittee,

and these books of account shall be at all times open to inspection by the administrator and to other persons pursuant to section 123.30, subsection 1. Each class "B" and class "C" permittee shall keep proper books of account and records showing each purchase of beer made by the permittee, and the date and the amount of each purchase and the name of the person from whom each purchase was made, which books of account and records shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the permittee.

[C35, §1921-f120; C39, §**1921.122;** C46, 50, 54, 58, 62, 66, 71, §124.27; C73, 75, 77, 79, 81, §123.138]

88 Acts, ch 1241, §21; 89 Acts, ch 221, §9

123.139 Separate locations — class "A", special class "A".

A class "A" or special class "A" permittee having more than one place of business is required to have a separate permit for each separate place of business maintained by the permittee where beer is stored, warehoused, or sold.

[C35, §1921-f121; C39, §**1921.123;** C46, 50, 54, 58, 62, 66, 71, §124.28; C73, 75, 77, 79, 81, §123.139]

89 Acts, ch 221, §10

123.140 Separate locations — class "B" or "C".

Every person holding a class "B" or class "C" permit having more than one place of business where such beer is sold which places do not constitute a single premises within the meaning of section 123.3, subsection 20 shall be required to have a separate license for each separate place of business, except as otherwise provided by this chapter.

[C35, §1921-f122; C39, §**1921.124;** C46, 50, 54, 58, 62, 66, 71, §124.29; C73, 75, 77, 79, 81, §123.140]

123.141 Keeping liquor where beer is sold.

No alcoholic liquor for beverage purposes shall be used, or kept for any purpose in the place of business of class "B" permittees, or on the premises of such class "B" permittees, at any time. A violation of any provision of this section shall be grounds for suspension or revocation of the permit pursuant to section 123.50, subsection 3. This section shall not apply in any manner or in any way, to any railway car of any dining car company, sleeping car company, railroad company or railway company, having a special class "B" permit; to the premises of any hotel or motel for which a class "B" permit has been issued, other than that part of such premises regularly used by the hotel or motel for the principal purpose of selling beer or food to the general public; or to drug stores regularly and continuously employing a registered pharmacist, from having alcohol in stock for medicinal and compounding purposes.

[C35, §1921-g4; C39, §**1921.126;** C46, 50, 54, 58, 62, 66, 71, §124.31; C73, 75, 77, 79, 81, §123.141]

123.142 Unlawful sale and importation.

It is unlawful for the holder of a class "B" or class "C" permit issued under this chapter to sell beer, except beer brewed on the premises covered by a special class "A" permit or beer purchased from a person holding a class "A" permit issued in accordance with this chapter, and on which the tax provided in section 123.136 has been paid. However, this section does not apply to the holders of special class "B" permits issued under section 123.133 for sales in cars engaged in interstate commerce nor to class "D" liquor control licensees as provided in this chapter.

It shall be unlawful for any person not holding a class "A" permit to import beer into this state for the purpose of sale or resale.

[C35, §1921-f124; C39, §**1921.127;** C46, 50, 54, 58, 62, 66, 71, §124.32; C73, 75, 77, 79, 81, §123.142]

89 Acts, ch 221, §11

123.143 Distribution of funds.

The revenues obtained from permit fees and the barrel tax collected under the provisions of this chapter shall be distributed as follows:

1. All retail beer permit fees collected by any local authority at the time application for the permit is made shall be retained by the local authority. A certified copy of the receipt for the permit fee shall be submitted to the division with the application and the local authority shall be notified at the time the permit is issued. Those amounts collected for the privilege authorized under section 123.134, subsection 5, shall be deposited in the beer and liquor control fund.

2. All permit fees and taxes collected by the division under this division shall accrue to the state general fund, except as otherwise provided.

3. Barrel tax revenues collected on beer manufactured in this state from a class "A" permittee which owns and operates a brewery located in Iowa shall be credited to the barrel tax fund hereby created in the office of the treasurer of state. Moneys deposited in the barrel tax fund shall not revert to the general fund of the state without a specific appropriation by the general assembly.

[C35, §1921-f125; C39, §**1921.128;** C46, 50, 54, 58, 62, 66, 71, §124.33; C73, 75, 77, 79, 81, §123.143]

83 Acts, ch 123, §60, 209; 84 Acts, ch 1312, §7; 85 Acts, ch 198, §2; 87 Acts, ch 95, §1

123.144 Bottling beer.
No person shall bottle beer within the state of Iowa for purposes other than for individual consumption in a private home, except class "A" permittees who have complete equipment for bottling beer and who have received the approval of the local board of health as to sanitation, and it shall be the duty of local boards of health to inspect the premises and equipment of class "A" permittees who desire to bottle beer.
[C35, §1921-g6; C39, §**1921.131;** C46, 50, 54, 58, 62, 66, 71, §124.36; C73, 75, 77, 79, 81, §123.144]

123.145 Labels on bottles, barrels, etc. — conclusive evidence.
The label on any bottle, keg, barrel, or other container in which beer is offered for sale in this state, representing the alcoholic content of such beer as being in excess of five per centum by weight shall be conclusive evidence as to the alcoholic content of the beer contained therein.
[C35, §1921-f128; C39, §**1921.133;** C46, 50, 54, 58, 62, 66, 71, §124.38; C73, 75, 77, 79, 81, §123.145]

123.146 Barrel tax rebate. Repealed by 85 Acts, ch 198, § 3.

123.147 to 123.149 Reserved.

DIVISION III

SPECIAL PROVISIONS

123.150 Sunday sales before New Year's Day.
Notwithstanding section 123.36, subsection 6, section 123.49, subsection 2, paragraph *"b"*, and section 123.134, subsection 5, a holder of any class of liquor control license or the holder of a class "B" beer permit may sell or dispense alcoholic liquor, wine, or beer to patrons for consumption on the premises between the hours of eight a.m. on Sunday and two a.m. on Monday when that Monday is New Year's Day and beer for consumption off the premises between the hours of eight a.m. on Sunday and two a.m. on the following Monday when that Sunday is the day before New Year's Day. The liquor control license fee or beer permit fee of licensees and permittees permitted to sell or dispense liquor, wine, or beer on a Sunday when that Sunday is the day before New Year's Day shall not be increased because of this privilege.
The special privileges granted in this section are in force only during the specified times provided in this section.
[C79, 81, §123.150]
85 Acts, ch 195, §15; 86 Acts, ch 1122, §10; 91 Acts, ch 245, §5

123.151 Posting notice on drunk driving laws required. Repealed by 93 Acts, ch 91, § 22.

123.152 Reserved.

DIVISION IV

WAREHOUSE PROJECT

123.153 Definitions.
As used in this division, unless the context otherwise requires:
1. *"Gross revenue"* means all income or receipts derived from the operation of liquor sale activities.
2. *"Liquor sale activities"* means any activities conducted by the commission and the division with reference to the sale of alcoholic liquor.
3. *"Net revenues"* means gross revenues less operating expense.
4. *"Operating expense"* means salaries, wages, costs of maintenance and operation, materials, supplies, inventories, insurance, and other items in relation to liquor sale activities included under recognized public agency accounting practices, but does not include allowances for depreciation in the value of physical property.
5. *"Project"* means acquisition, construction, reconstruction, improvement, repair and equipment of land, buildings, facilities and property of every kind except inventory, deemed necessary by the commission for use as a warehouse, which shall include office space.
6. *"Revenue bond"* or *"bond"* means a negotiable bond issued by the state and payable from the net revenues of liquor sale activities or of any part or project thereof.
[C81, §123.153]

123.154 Project — revenue bonds.
On behalf of the state, the commission shall carry out a project, issue revenue bonds in an amount not to exceed four million dollars to pay all or part of the cost of the project, or refund at or before maturity a like principal amount of revenue bonds or other obligations issued under this division and sell revenue bonds at public or private sale in the discretion of the commission. The cost of the project may include interest on the bonds during construction and for one year after completion, costs of sale and issuance of bonds, professional services and provision for contingencies.
[C81, §123.154]

123.155 Proceedings.
Revenue bonds shall be issued pursuant to one or more resolutions of the commission adopted at a regular or special meeting by a majority of the

members in attendance. Revenue bonds may bear interest at such rates, be in one or more series, bear such dates, mature at times not exceeding thirty years from their respective dates, be payable at places within or without the state, carry registration privileges, be subject to terms of redemption, with or without premium, be executed and contain terms, limitations, covenants and conditions as the resolution provides.

The bonds shall be executed by the governor and attested by the treasurer of state. The facsimile signature of either the governor or treasurer of state may be printed on the face of each bond in lieu of the manual signature of the officer. Interest coupons, if any, shall be executed by the original or facsimile signature of the treasurer of state. Bonds bearing the original or facsimile signature of an officer in office on the date of the signing are valid for all purposes, notwithstanding that before delivery the signer has ceased to hold the office. Each bond shall state on its face that it is payable solely from the revenues pledged thereto and that it does not constitute a debt or charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision.

The proceedings authorizing the issuance of the bonds may provide for the establishment of reserve funds or sinking funds as deemed necessary for the application of surplus net revenues, and for the continuation of liquor sale activities on a revenue producing basis and the maintenance of net revenues at levels at least sufficient to pay principal of and interest on the revenue bonds as they become due and to maintain reserves or sinking funds therefor.

[C81, §123.155]

123.156 Bonds not debt of state.

Revenue bonds shall not be a debt of or charge upon the state of Iowa within the meaning of any constitutional or statutory limitation. Taxes or appropriations shall not be pledged for the payment of the revenue bonds. The sole remedy for any breach or default of the terms of any revenue bonds or proceedings authorizing the bonds shall be a proceeding in law or equity, to which consent is given, to enforce and compel performance of the duties required by this division and the terms of the resolutions under which the bonds are issued.

[C81, §123.156]

123.157 Anticipatory notes.

The commission may borrow money and issue notes in anticipation of the receipt of proceeds of the sale of revenue bonds. Any such loan shall be paid within three years. Notes issued for moneys so borrowed may be renewed from time to time within the three-year limitation. Notes shall be issued and sold in the same manner as provided for the issuance of bonds.

[C81, §123.157]

123.158 Notice.

The commission may publish a notice of its intention to issue revenue bonds in a newspaper published in and with general circulation in the state. The notice shall include a statement of the maximum amount of bonds proposed to be issued, and in general, what net revenues will be pledged to pay the revenue bonds and interest thereon. An action which questions the legality of revenue bonds or the power of the commission to issue the bonds or the effectiveness of any proceedings adopted for the authorization or issuance of the bonds shall not be brought after sixty days from the date of publication of the notice.

[C81, §123.158]

123.159 Exemption from taxation.

Bonds or notes issued under this division are exempt from taxation by the state of Iowa and the interest thereon is exempt from state income tax.

[C81, §123.159]

123.160 Bonds as investments.

All banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in bonds issued pursuant to this division. However, this section does not relieve any persons from a duty of exercising reasonable care in selecting securities for purchase or investment.

[C81, §123.160]

123.161 Independent authorization.

This division provides an independent method for the carrying out of a project and for the sale and issuance of revenue bonds and notes without reference to any other statute and is not subject to the provisions of any other law relating to the issuance of bonds.

[C81, §123.161]

123.162 Limitation.

The commission shall not carry out more than one project under this division.

[C81, §123.162]

123.163 through 123.170 Reserved.

DIVISION V

WINE PROVISIONS

123.171 Wine certificate, permit, or license required.

A person shall not cause the manufacture, importation, or sale of wine in this state unless a certificate or permit as provided in this division, or a liquor control license as provided in division I of this chapter, is first obtained which authorizes that manufacture, importation, or sale.

85 Acts, ch 32, §62

123.172 Effect on liquor control licensees.

All applicable provisions of this division relating to class "B" wine permits apply to liquor control licensees in the purchasing, storage, handling, serving and sale of wine.

85 Acts, ch 32, §63

123.173 Wine permits — classes — authority.

Permits exclusively for the sale or manufacture and sale of wine shall be divided into two classes, and shall be known as class "A" or "B" wine permits.

A class "A" wine permit allows the holder to manufacture and sell, or sell at wholesale, in this state, wine as defined in section 123.3, subsection 37. The holder of a class "A" wine permit may manufacture in this state wine having an alcoholic content greater than seventeen percent by weight for shipment outside this state. All class "A" premises shall be located within the state. A class "B" wine permit allows the holder to sell wine at retail for consumption off the premises. A class "B" wine permittee who also holds a class "E" liquor control license may sell wine to class "A", class "B", and class "C" liquor control licensees for resale for consumption on the premises. A class "B" wine permittee who also holds a class "E" liquor control license may sell wine to class "A", class "B", and class "C" liquor control licensees in quantities of less than one case of any wine brand but not more than one such sale shall be made to the same liquor control licensee in a twenty-four hour period. A class "B" wine permittee shall not sell wine to other class "B" wine permittees.

A class "A" wine permittee shall be required to deliver wine to a class "B" wine permittee, and a class "B" wine permittee shall be required to accept delivery of wine from a class "A" wine permittee, only at the licensed premises of the class "B" wine permittee. Except as specifically permitted by the division upon good cause shown, delivery or transfer of wine from an unlicensed premises to a licensed "B" wine permittee's premises, or from one licensed "B" wine permittee's premises to another licensed "B" wine permittee's premises, even if there is common ownership of all of the premises by one class "B" wine permittee, is prohibited. A class "B" wine permittee who also holds a class "E" liquor control license shall keep and maintain records for each sale of wine to liquor control licensees showing the name of the establishment to which wine was sold, the date of sale, and the brands and number of bottles sold to the liquor control licensee.

When a class "B" wine permittee who also holds a class "E" liquor control license sells wine to a class "A", class "B", or class "C" liquor control licensee, the liquor control licensee shall sign a report attesting to the purchase. The class "B" wine permittee who also holds a class "E" liquor control license shall submit to the division, on forms supplied by the division, not later than the tenth of each month a report stating each sale of wine to class "A", class "B", and class "C" liquor control licensees during the preceding month, the date of each sale, and the brands and numbers of bottles with each sale. A class "B" permittee who holds a class "E" liquor control license may sell to class "A", class "B", or class "C" liquor control licensees only if the licensed premises of the liquor control licensee is located within the geographic territory of the class "A" wine permittee from which the wine was originally purchased by the class "B" wine permittee.

85 Acts, ch 32, §64; 88 Acts, ch 1241, §22; 91 Acts, ch 203, §2, 3

123.174 Issuance of wine permits.

The administrator shall issue class "A" and "B" wine permits as provided in this chapter, and may suspend or revoke a wine permit for cause as provided in this chapter.

85 Acts, ch 32, §65

123.175 Class "A" application.

Except as otherwise provided in this chapter, a class "A" wine permit shall be issued to a person who complies with all of the following:

1. Submits a written application for the permit and states on the application under oath:

a. The name and place of residence of the applicant and the length of time the applicant has lived at the place of residence.

b. That the applicant is a citizen of the state of Iowa, or if a corporation, that the applicant is authorized to do business in Iowa.

c. The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of naturalization, or if a corporation, the state of incorporation.

d. The location of the premises where the applicant intends to use the permit.

e. The name of the owner of the premises, and if that owner is not the applicant, that the applicant is the actual lessee of the premises.

2. Establishes all of the following:

a. That the applicant meets the test of good

moral character as provided in section 123.3, subsection 26.

b. That the premises where the applicant intends to use the permit conform to all applicable laws, health regulations, and fire regulations, and constitute a safe and proper place or building.

3. Submits a bond in the amount of five thousand dollars in the form prescribed and furnished by the division with good and sufficient sureties to be approved by the division conditioned upon compliance with this chapter.

4. Consents to inspection as required in section 123.30, subsection 1.

85 Acts, ch 32, §66; 88 Acts, ch 1241, §23

123.176 Class "B" application.

Except as otherwise provided in this chapter, a class "B" wine permit shall be issued to a person who complies with all of the following:

1. Submits a written application for the permit and states on the application under oath:

a. The name and place of residence of the applicant, and the length of time the applicant has lived at the place of residence.

b. That the applicant is a citizen of the state of Iowa, or if a corporation, that the applicant is authorized to do business in Iowa.

c. The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of naturalization, or if a corporation, the place of incorporation.

d. The location of the premises where the applicant intends to use the permit.

e. The name of the owner of the premises, and if that owner is not the applicant, that the applicant is the actual lessee of the premises.

2. Establishes all of the following:

a. That the applicant is a person of good moral character as provided in section 123.3, subsection 26.

b. That the premises where the applicant intends to use the permit conform to all applicable laws, health regulations, and fire regulations, and constitute a safe and proper place or building.

3. Consents to inspection as required in section 123.30, subsection 1.

85 Acts, ch 32, §67; 88 Acts, ch 1088, §10; 88 Acts, ch 1241, §24

123.177 Authority under class "A" permit.

1. A person holding a class "A" wine permit may manufacture and sell, or sell at wholesale, wine for consumption off the premises. Sales within the state may be made only to persons holding a class "A" or "B" wine permit and to persons holding a class "A", "B", "C" or "D" liquor control license. A class "A" wine permittee having more than one place of business shall obtain a separate permit for each place of business where wine is to be stored, warehoused, or sold.

2. A class "A" wine permit holder may purchase and resell only those brands of wine which are manufactured, fermented, bottled, shipped, or imported by a person holding a certificate of compliance issued pursuant to section 123.180.

85 Acts, ch 32, §68; 88 Acts, ch 1241, §25; 93 Acts, ch 91, §21

123.178 Authority under class "B" permit.

1. A person holding a class "B" wine permit may sell wine at retail for consumption off the premises. Wine shall be sold for consumption off the premises in original containers only.

2. A class "B" wine permittee having more than one place of business where wine is sold shall obtain a separate permit for each place of business.

3. A person holding a class "B" wine permit may purchase wine for resale only from a person holding a class "A" wine permit.

85 Acts, ch 32, §69; 86 Acts, ch 1246, §752

123.179 Permit fees.

1. The annual permit fee for a class "A" wine permit is seven hundred fifty dollars.

2. The annual permit fee for a class "B" wine permit is five hundred dollars.

85 Acts, ch 32, §70

123.180 Vintner's certificate of compliance — wholesale and retail restrictions — penalty.

1. A manufacturer, vintner, bottler, importer, or vendor of wine or an agent thereof desiring to ship, sell, or have wine brought into this state for resale by the division or for sale at wholesale by a class "A" permittee shall first make application for and shall be issued a vintner's certificate of compliance by the administrator for that purpose. The vintner's certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the administrator unless otherwise revoked for cause. Each application for a vintner's certificate of compliance or renewal of a certificate shall be accompanied by a fee of one hundred dollars payable to the division. Each holder of a vintner's certificate of compliance shall furnish the information required by the administrator in the form the administrator requires. A vintner or wine bottler whose plant is located in Iowa and who otherwise holds a class "A" wine permit to sell wine at wholesale is exempt from the fee, but not the other terms and conditions. The holder of a vintner's certificate of compliance may also hold a class "A" wine permit.

2. At the time of applying for a vintner's certificate of compliance, each applicant shall file with the division a list of all class "A" wine permittees with whom it intends to do business. The listing of class "A" wine permittees as filed with the division may be amended from time to time by the

holder of the certificate of compliance.

3. All class "A" wine permit holders shall sell only those brands of wine which are manufactured, bottled, fermented, shipped, or imported by a person holding a current vintner's certificate of compliance. An employee or agent working for or representing the holder of a vintner's certificate of compliance within this state shall register the employee's or agent's name and address with the division. These names and addresses shall be filed with the division's copy of the certificate of compliance issued except that this provision does not require the listing of those persons who are employed on the premises of a bottling plant, or winery where wine is manufactured, fermented, or bottled in Iowa or the listing of those persons who are thereafter engaged in the transporting of the wine.

4. It is unlawful for a holder of a vintner's certificate of compliance or the holder's agent, or any class "A" wine permittee or the permittee's agent, to discriminate between class "B" wine permittees authorized to sell wine at retail.

5. It is unlawful for a holder of a vintner's certificate of compliance or the vintner's agent who is engaged in the business of selling wine to class "A" wine permittees to discriminate between class "A" wine permittees authorized to sell wine at wholesale.

6. Regardless of any other penalties provided by this chapter, any holder of a certificate of compliance relating to wine or a class "A" permittee who violates this chapter or the rules adopted pursuant to this chapter is subject to a civil fine not to exceed one thousand dollars or subject to suspension of the certificate of compliance or permit for a period not to exceed one year, or to both civil fine and suspension. Civil fines imposed under this section shall be collected and retained by the division.

85 Acts, ch 32, §71; 89 Acts, ch 161, §8; 89 Acts, ch 252, §4

123.181 Prohibited acts.

1. A holder of any class "B" wine permit shall not sell wine except wine which is purchased from a person holding a class "A" wine permit and on which the tax imposed by section 123.183 has been paid or wine purchased from a manufacturer of native wines.

2. A class "A" wine permittee shall not sell wine on credit to a retail liquor licensee or wine permittee for a period exceeding thirty days from date of delivery.

85 Acts, ch 32, §72; 89 Acts, ch 252, §5

123.182 Labels — point of origin — conclusive evidence.

All imported bulk wines to be bottled and distributed in the state shall have the point of origin stated on the label. The print size for the point of origin shall be at least half the print size of the brand name on the label.

The label on a bottle or other container in which wine is offered for sale in this state, which label represents the alcoholic content of the wine as being in excess of seventeen percent by weight, is conclusive evidence of the alcoholic content of that wine.

85 Acts, ch 32, §73

123.183 Wine gallonage tax and related funds.

1. In addition to the annual permit fee to be paid by each class "A" wine permittee, a wine gallonage tax shall be levied and collected from each class "A" wine permittee on all wine manufactured for sale and sold in this state at wholesale and on all wine imported into this state for sale at wholesale and sold in this state at wholesale. The rate of the wine gallonage tax is one dollar and seventy-five cents for each wine gallon. The same rate shall apply for the fractional parts of a wine gallon. The wine gallonage tax shall not be levied or collected on wine sold by one class "A" wine permittee to another class "A" wine permittee.

2. *a.* Revenue collected from the wine gallonage tax on wine manufactured for sale and sold in this state shall be deposited in the wine gallonage tax fund as created in this section.

b. A wine gallonage tax fund is created in the office of the treasurer of state. Moneys deposited in the fund are appropriated to the department of economic development as provided in section 15E.117. Moneys in the fund are not subject to section 8.33.

3. The revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale shall be deposited as follows:

a. The revenue actually collected during each fiscal year from the wine gallonage tax on wine imported into this state at wholesale and sold in this state at wholesale that is in excess of the revenue estimated to be collected from such tax as last agreed to by the state revenue estimating conference during the previous fiscal year as provided in section 8.22A shall be deposited in the grape and wine development fund as created in section 175A.5. However, not more than seventy-five thousand dollars from such tax shall be deposited into the grape and wine development fund during any fiscal year.

b. The remaining revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale shall be deposited in the beer and liquor control fund created in section 123.53.

85 Acts, ch 32, §74; 85 Acts, ch 198, §4, 5; 86 Acts, ch 1246, §753; 87 Acts, ch 95, §2; 2001 Acts, ch 162, §1; 2002 Acts, ch 1050, §15

Subsection 3, paragraph b amended

123.184 Report of gallonage sales — penalty.

Each class "A" wine permit holder on or before the tenth day of each calendar month commencing on the tenth day of the calendar month following the month in which the person is issued a permit, shall make a report under oath to the division upon forms to be furnished by the division showing the exact number of gallons of wine and fractional parts of gallons, sold by that permit holder during the preceding calendar month. The report also shall state whatever reasonable additional information the administrator requires. The permit holder at the time of filing this report shall pay to the division the amount of tax due at the rate fixed in section 123.183. A penalty of ten percent of the amount of the tax shall be assessed and collected if the report is not filed and the tax paid within the time required by this section.

85 Acts, ch 32, §75

123.185 Records required.

Each class "A" wine permittee shall keep books of account and records showing each sale of wine, which shall be at all times open to inspection by the administrator and pursuant to section 123.30, subsection 1. Each class "B" wine permittee shall keep proper books of account and records showing each purchase of wine and the date and the amount of each purchase and the name of the person from whom each purchase was made, which shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the permittee.

85 Acts, ch 32, §76; 88 Acts, ch 1241, §26

123.186 Federal regulations adopted as rules.

The division shall adopt as rules the substance of the federal regulations 27 C.F.R. pt. 6, 27 C.F.R. pt. 8, 27 C.F.R. pt. 10, and 27 C.F.R. pt. 11 as they relate to transactions between wholesalers and retailers.

85 Acts, ch 32, §77

123.187 Reciprocal shipment of wines.

1. *"Equal reciprocal shipping privilege"* means allowing wineries located in this state to ship into another state, wine, not for resale, but for consumption or use by a person twenty-one years of age or older.

2. A winery licensed or permitted pursuant to laws regulating alcoholic beverages in a state which affords this state an equal reciprocal shipping privilege may ship into this state by private common carrier, to a person twenty-one years of age or older, not more than eighteen liters of wine per month, for consumption or use by the person. Such wine shall not be resold. Shipment of wine pursuant to this subsection is not subject to sales tax under section 422.43, use tax under section 423.2, or the wine gallonage tax under section 123.183, and does not require a refund value for beverage container control purposes under chapter 455C.

3. The holder of a class "A" or "B" wine permit in this state may ship out of this state by private common carrier, to a person twenty-one years of age or older, not more than eighteen liters of wine per month, for consumption or use by the person.

96 Acts, ch 1101, §1

CHAPTER 123A

BEER BREWERS AND WHOLESALERS

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123A.1 Purposes and scope.

This chapter is enacted pursuant to the authority of the state under the provisions of the twenty-first amendment to the Constitution of the United States to promote the public's interest in fair, efficient, and competitive distribution of beer products through regulation and encouragement of brewer and wholesaler vendors to conduct their business relations toward these ends by:

1. Assuring that the beer wholesaler is free to manage its business enterprise.

2. Assuring the brewer and the public of service from wholesalers who will devote reasonable efforts and resources to distribution and sales of all of the brewer's products which the wholesaler has been granted the right to sell and distribute and maintain satisfactory sales levels.

3. Promoting and maintaining a sound, stable,

and viable three-tier system of distribution of beer to the public.

95 Acts, ch 101, §1

123A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Affected party"* means a wholesaler, brewer, master distributor, successor brewer, or any person that is a party to an agreement.

2. *"Agreement"* means a contract or arrangement whether expressed or implied, oral or written, for a definite or indefinite period between a brewer and a wholesaler pursuant to which a wholesaler has been granted the right to purchase, resell, and distribute one or more brands of beer offered by a brewer, or a contract or arrangement in which a brewer grants to a wholesaler a license to use a trade name, trademark, service mark, or related characteristic and in which there is a community of interest in the marketing of the products of the brewer. An agreement exists when one or more of the following occur:

a. A brewer has shipped beer to a wholesaler or accepted an order for beer from a wholesaler.

b. A brewer purchases the right to manufacture a beer product, the right to use the trade name for the product, or the right to distribute a product from another brewer with whom the wholesaler has an agreement.

3. *"Beer"* means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops with or without unmalted grains or decorticated and degerminated grains, or made by the fermentation of, or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight, but not including mixed drinks or cocktails mixed on the premises.

4. *"Brand"* means a word, name, group of letters, symbol, or a combination of words, names, letters, or symbols adopted and used by a brewer to identify a specific beer product, and to distinguish that beer product from other beer products brewed or marketed by that brewery or other breweries.

5. *"Brand extension"* means a brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with the preexisting brand. However, a general corporate logo or symbol or an advertising message, whether appearing on the product packaging or elsewhere, is not a brand, brand extension, or part of a brand or brand extension.

6. *"Brewer"* means a person who is engaged in the manufacture of beer for the purpose of sale, barter, exchange, or transportation, a master distributor, or a fermenter, processor, bottler, packager, or importer of beer, or a successor brewer.

7. *"Designated member"* means a deceased wholesaler's spouse, child, grandchild, parent, brother, or sister, who is entitled to inherit the deceased wholesaler's ownership interest under the terms of the deceased wholesaler's will, other testamentary device, or the laws of intestate succession. With respect to an incapacitated individual having an ownership interest in a wholesaler, *"designated member"* also means a person appointed by the court as the conservator of the individual's property. *"Designated member"* also includes the appointed and qualified personal representative and the testamentary trustee of a deceased wholesaler.

8. *"Good cause"* exists if the wholesaler or affected party has failed to comply with reasonable requirements which are imposed upon the wholesaler or affected party through an agreement, which do not discriminate either by their terms or in the methods of their enforcement as compared with requirements imposed on other similarly situated wholesalers by the brewer, and which are not in violation of any law or administrative rule.

9. *"Good faith"* means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade and defined and interpreted under section 554.2103.

10. *"Manager"* means an individual named or designated by agreement between the brewer and wholesaler, who is principally responsible for the daily management of the wholesaler.

11. *"Master distributor"* means a wholesaler who acts in the role of or in a similar capacity as a brewer or outside seller of one or more brands of beer to other wholesalers on a regular basis in the normal course of business.

12. *"Reasonable standards and qualifications"* means those criteria applied by the brewer to similarly situated wholesalers during a period of twenty-four months before a proposed change in a successor manager of the wholesaler's business.

13. *"Similarly situated wholesalers"* means wholesalers of a brewer that are of a generally comparable size, and operate in markets with similar demographic characteristics, including population size, density, distribution, and vital statistics, and reasonably similar economic and geographic conditions.

14. *"Successor brewer"* means a person who succeeds to the role of a brewer or master distributor to manufacture or distribute one or more brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement.

15. *"Successor manager"* means an individual named or designated by agreement between a brewer and wholesaler who succeeds to the role of manager who will be principally responsible for the daily management of the wholesaler.

16. *"Territory"* means the geographic area of primary sales responsibility designated by an agreement between a wholesaler and brewer for one or more brands of beer of the brewer.

17. *"Wholesaler"* means a person, other than a vintner, brewer, or bottler of beer, who sells, barters, exchanges, offers for sale, possesses with intent to sell, deals, or traffics in beer.

95 Acts, ch 101, §2

123A.3 Termination and notice of cancellation.

1. Except as provided in subsection 5, a brewer or wholesaler shall not amend, modify, cancel, fail to renew, or otherwise terminate an agreement unless the brewer or wholesaler furnishes prior notification to the other party in accordance with subsection 2.

2. The notification required under subsection 1 shall be in writing and sent to the affected party by certified mail not less than ninety days before the date on which the agreement will be amended, modified, canceled, not renewed, or otherwise terminated. The notification shall contain all of the following:

a. A statement of intention to amend, modify, cancel, fail to renew, or otherwise terminate the agreement.

b. A statement enumerating the facts and reasons for the action, including documentation necessary to fully inform the wholesaler of the reasons for the action.

c. The date on which the action will take effect.

3. For each cancellation, nonrenewal, or termination, the brewer shall have the burden of showing that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the cancellation, nonrenewal, or termination.

4. Notwithstanding the terms or conditions of any agreement, good cause exists for the purpose of a cancellation, nonrenewal, or termination if all of the following occur:

a. The wholesaler fails to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the brewer.

b. The brewer first acquired knowledge of the failure described in paragraph *"a"* not more than twenty-four months before the date notification was given pursuant to subsection 2.

c. The wholesaler was given notice by the brewer of failure to comply with the agreement.

d. The wholesaler has been given thirty days in which to submit a plan of corrective action to comply with the agreement and an additional ninety days to cure the noncompliance in accordance with the plan, and has failed to correct the failure to comply with the provisions of the agreement.

5. A brewer may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification and without good cause as required in subsection 4 for any of the following reasons:

a. The wholesaler's failure to pay any account when due and upon written demand by the brewer for the payment, in accordance with agreed upon payment terms.

b. The wholesaler's assignment for the benefit of creditors, or similar disposition, of substantially all of the assets of the party's business.

c. The insolvency of the wholesaler, or the institution of proceedings in bankruptcy by or against the wholesaler.

d. The dissolution or liquidation of the wholesaler.

e. The wholesaler's conviction of, or plea of guilty or no contest to, a charge of violating a law or rule in this state which materially and adversely affects the ability of either party to continue to sell beer in this state, or the revocation or suspension of a license or permit to sell beer in this state for a period greater than thirty-one days.

f. Any attempted transfer of business assets of the wholesaler, ten percent or more of the voting stock of the wholesaler or the voting stock of any parent corporation of the wholesaler, or any change in the beneficial ownership or control of any wholesaler without obtaining the prior consent or approval as provided for under section 123A.6.

g. The wholesaler's fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the brewer or its product. However, the brewer shall have the burden of proving fraudulent conduct relating to a material matter on the part of the wholesaler in any legal action challenging the termination.

h. The wholesaler distributes, sells, or delivers beer to a retailer whose premises are situated outside the geographic territory agreed upon by the wholesaler and the brewer as the area in which the wholesaler will sell beer purchased from the brewer, without the consent of the brewer and the distributor who has been assigned the territory by the brewer.

95 Acts, ch 101, §3

123A.4 Cancellation.

A brewer or a wholesaler shall not cancel, fail to renew, or otherwise terminate an agreement unless the party intending that action has good cause for the cancellation, failure to renew, or termination, has made good faith efforts to resolve disagreements, and, in any case in which prior notification is required under section 123A.3, the party intending to act has furnished the prior notification and the other party has not eliminated the reasons specified in the notification for cancellation, failure to renew, or termination, within the periods provided in section 123A.3, subsection 4,

paragraph *"d"*.

95 Acts, ch 101, §4

123A.5 Prohibited conduct.

1. A brewer shall not commit any of the following actions:

a. Induce or coerce, or attempt to induce or coerce, any wholesaler to engage in any illegal act or course of conduct.

b. Require a wholesaler to assent to any unreasonable requirement, condition, understanding, or term of an agreement prohibiting a wholesaler from selling the product of another brewer.

c. Fix, maintain, or establish the price at which a wholesaler may resell beer, or to change, by any means, the price charged to the wholesaler after beer has been ordered by the wholesaler from the brewer.

d. Require any wholesaler to accept delivery of any beer or any other item or commodity which shall not have been ordered by the wholesaler.

e. Require a wholesaler without the wholesaler's approval to participate in an arrangement for the payment or crediting by an electronic fund transfer transaction for any item or commodity other than beer, or to access a wholesaler's account for any item or commodity other than beer.

f. Require or prohibit any change in the manager or successor manager of any wholesaler who has been approved by the brewer as of or subsequent to July 1, 1995, unless the brewer acts in good faith. If a wholesaler changes an approved manager or successor manager, a brewer shall not require or prohibit the change unless the person selected by the wholesaler fails to meet the nondiscriminatory, material, and reasonable standards and qualifications for managers or successor managers consistently applied to similarly situated wholesalers by the brewer. However, the brewer shall have the burden of proving that the person fails to meet the reasonable standards and qualifications.

g. Discriminate among the brewer's wholesalers in any business dealings including, but not limited to, the price of beer sold to the wholesaler or terms of sale offered to wholesalers, unless the difference among its wholesalers is based on reasonable grounds.

h. Fail to provide each wholesaler of the brewer's brand with a written agreement which contains in total the brewer's agreement with each wholesaler, and designates a specific exclusive sales territory. The terms of written agreements executed, amended, or renewed after July 1, 1995, shall be consistent with this chapter, and this chapter may be incorporated by reference in the agreement.

i. Enter into an additional agreement with any other wholesaler for, or to sell to any other wholesaler, the same brand of beer or brand extension in the same territory or any portion of the territory, or to sell directly to any retailer in this state.

j. Require a wholesaler to purchase one or more brands of beer in order for the wholesaler to purchase another brand of beer for any reason.

k. Require a wholesaler, by any means, directly to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a brewer.

l. Require by a provision of an agreement or other instrument in connection with the agreement that any dispute arising out of or in connection with the agreement be determined through the application of any other state's laws, be determined in federal court sitting in a state other than Iowa, or be determined in a state court of a state other than this state. A provision contained in any agreement or other instrument in connection with the agreement which contravenes this section shall be null and void.

2. A wholesaler who, pursuant to an agreement, is granted a sales territory for which the wholesaler is primarily responsible or in which the wholesaler is required to concentrate the wholesaler's efforts, shall not make any sale or delivery of beer to any retail licensee whose place of business is not within the territory granted to the wholesaler unless agreed upon by all affected parties.

95 Acts, ch 101, §5

123A.6 Transfer of business assets or stock.

1. A brewer shall not unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock or other indicia of ownership of a wholesaler or all or any portion of a wholesaler's assets, wholesaler's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling the wholesaler, including the wholesaler's rights and obligations under the terms of an agreement when the person to be substituted meets reasonable standards. Upon the death of one of the partners of a partnership operating the business of a wholesaler, a brewer shall not deny the surviving partner of the partnership the right to become a successor-in-interest to the agreement between the brewer and the partnership, if the survivor has been active in the management of the partnership and is otherwise capable of carrying on the business of the partnership.

2. Notwithstanding subsection 1, upon the death of a wholesaler, a brewer shall not deny approval for any transfer of ownership or management to a designated member, including the rights under the agreement with the brewer. The transfer or assignment shall not be effective until written notice is given to the brewer, but the brewer's consent to the transfer or assignment shall not be required.

95 Acts, ch 101, §6

123A.7 Reasonable compensation.

1. A brewer who cancels, fails to renew, or terminates any agreement, or unlawfully denies approval of, or unreasonably withholds consent to any assignment, transfer, or sale of a wholesaler's business assets or voting stock or other equity securities, except as provided in this chapter, shall pay the wholesaler with which the brewer has an agreement pursuant to this chapter, reasonable compensation for the fair market value of the wholesaler's business with relation to the affected brand of beer. The fair market value of the wholesaler's business shall include, but not be limited to, its goodwill, if any.

2. If a brewer and a wholesaler are unable to mutually agree on the reasonable compensation to be paid for the value of the wholesaler's business, either party may maintain a civil action as provided in section 123A.9, or the matter may, by mutual agreement of the parties, be submitted to a three-member arbitration panel consisting of one representative selected by the brewer but unassociated with the brewer; one representative selected by the wholesaler but unassociated with the wholesaler; and an impartial arbitrator selected by the other two members from a list provided by the American arbitration association, and the claim settled in accordance with the rules provided by the American arbitration association. Arbitration costs shall be paid one-half by the wholesaler and one-half by the brewer. Arbitration shall be conducted in accordance with the commercial arbitration rules of the American arbitration association and the laws of this state, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The award of the arbitrator shall be final and binding on the parties.

95 Acts, ch 101, §7

123A.8 Right of free association.

A brewer or wholesaler shall not restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

95 Acts, ch 101, §8

123A.9 Judicial remedies.

1. If a brewer or a wholesaler who is a party to an agreement pursuant to this chapter fails to comply with this chapter or otherwise engages in conduct prohibited under this chapter, the aggrieved party may maintain a civil action in district court if the cause of action directly relates to or stems from the relationship of the individual parties under the agreement.

2. A brewer or wholesaler may bring an action for declaratory judgment for determination of any controversy arising under this chapter or out of the brewer and wholesaler agreement.

3. Upon proper petition to the district court, a brewer or wholesaler may obtain injunctive relief against a violation of this chapter.

4. In an action under subsection 1, the district court may grant the relief as the court determines is necessary or appropriate considering the purposes of this chapter. The district court may, if it finds that a brewer has acted in bad faith in invoking the amendment, modification, cancellation, nonrenewal, or termination provision of the agreement between the brewer and wholesaler, or has unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's business, award equitable relief, actual damages, court costs, and attorney's fees.

5. The prevailing party in an action under subsection 1 shall be entitled to actual damages, court costs, and attorney's fees at the court's discretion.

6. With respect to a dispute arising under this chapter or out of the agreement between a brewer and wholesaler, the wholesaler and brewer each has the absolute right, before the wholesaler or brewer has agreed to arbitrate a particular dispute, to refuse to arbitrate that particular dispute. A brewer shall not, as a condition of entering into or renewing an agreement, require the wholesaler to agree to arbitration in lieu of judicial remedies.

7. A brewer shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewer with the appropriate state or federal regulatory authority. Retaliatory action shall include, but shall not be limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement, or impede the normal business operations of the wholesaler.

95 Acts, ch 101, §9

123A.10 Waiver — prohibited.

A brewer shall not require a wholesaler to waive compliance with any provision of this chapter. This chapter shall not be construed to limit or prohibit a good faith settlement of a dispute voluntarily entered into between the parties.

95 Acts, ch 101, §10

123A.11 Indemnification.

A brewer shall fully indemnify and hold harmless the brewer's wholesaler against any losses, including, but not limited to, court costs and reasonable attorney's fees or damages arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or express or implied warranty where the complaint, claim, or lawsuit relates to the manufacture or packaging of beer or other functions by the brewer which are beyond the control of the wholesaler.

95 Acts, ch 101, §11

123A.12 Application to existing agreements.

1. The provisions of this chapter apply to a valid agreement in effect immediately before July 1, 1995, when the first of the following dates occurs:

a. On the effective date of the next amendment, modification, or renewal of the existing valid agreement.

b. On the next anniversary date of the execution of the original agreement between the wholesaler and the brewer.

2. If no written agreement exists, the provisions of the chapter apply to the implied or oral unwritten agreement of a brewer and a wholesaler of that brewery on July 1, 1995.

95 Acts, ch 101, §12

CHAPTER 123B

TREATMENT OF ALCOHOLISM

The sections in this chapter either repealed or transferred to chapter 125

CHAPTER 123C

LIQUOR SALES DISCLOSURE

Repealed by 71 Acts, ch 131, §152
See chapter 123

CHAPTER 124

CONTROLLED SUBSTANCES

See §205.11 – 205.13 for additional provisions relating to administration and enforcement
See also chapter 124A, imitation controlled substances
This chapter not enacted as a part of this title; transferred from chapter 204 in Code 1993

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DIVISION I

DEFINITIONS

124.101 Definitions.

As used in this chapter:

1. *"Administer"* means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

a. A practitioner, or in the practitioner's presence, by the practitioner's authorized agent; or

b. The patient or research subject at the direction and in the presence of the practitioner.

Nothing contained in this chapter shall be construed to prevent a physician, dentist, podiatric physician, or veterinarian from delegating the administration of controlled substances under this chapter to a nurse, intern, or other qualified individual or, as to veterinarians, to an orderly or assistant, under the veterinarian's direction and supervision; all pursuant to rules adopted by the board.

2. *"Agent"* means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouser, or employee of the carrier or warehouser.

3. *"Board"* means the state board of pharmacy examiners.

4. *"Bureau"* means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

5. *"Controlled substance"* means a drug, substance, or immediate precursor in schedules I through V of division II of this chapter.

6. *"Counterfeit substance"* means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

7. *"Deliver"* or *"delivery"* means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

8. *"Department"* means the department of public safety of the state of Iowa.

9. *"Dispense"* means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10. *"Dispenser"* means a practitioner who dispenses.

11. *"Distribute"* means to deliver other than by administering or dispensing a controlled sub-

stance.

12. *"Distributor"* means a person who distributes.

13. *"Drug"* means:

a. Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

c. Substances, other than food, intended to affect the structure or any function of the human body or animals; and

d. Substances intended for use as a component of any article specified in paragraph *"a", "b",* or *"c"* of this subsection. It does not include devices or their components, parts, or accessories.

14. *"Immediate precursor"* means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

15. *"Isomer"* means the optical isomer, except as used in section 124.204, subsection 4, section 124.204, subsection 9, paragraph *"b"*, and section 124.206, subsection 2, paragraph *"d"*. As used in section 124.204, subsection 4, and section 124.204, subsection 9, paragraph *"b"*, *"isomer"* means the optical, positional, or geometric isomer. As used in section 124.206, subsection 2, paragraph *"d"*, *"isomer"* means the optical or geometric isomer.

16. *"Manufacture"* means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to administering or dispensing of a controlled substance in the course of the practitioner's professional practice, or

b. By a practitioner, or by an authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

17. *"Marijuana"* means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

18. *"Narcotic drug"* means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

b. Poppy straw and concentrate of poppy straw.

c. Opium poppy.

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs *"a"* through *"c"*.

19. *"Opiate"* means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 124.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

20. *"Opium poppy"* means the plant of the species Papaver somniferum L., except its seeds.

21. *"Person"* means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

22. *"Poppy straw"* means all parts, except the seeds, of the opium poppy, after mowing.

23. *"Practitioner"* means either:

a. A physician, dentist, podiatric physician, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

24. *"Production"* includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

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

26. *"State"*, when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any area subject to the legal authority of the United States of America.

27. *"Ultimate user"* means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593, 2596-a; C24, 27, 31, 35, §3151; C39, §**3169.01, 3169.07;** C46, 50, 54, 58, 62, 66, §204.1, 204.7; C71, §204.1, 204.7, 204A.1; C73, 75, 77, 79, 81, §204.101; 82 Acts, ch 1147, §1]

84 Acts, ch 1013, §1 – 3; 91 Acts, ch 8, §1

C93, §124.101

94 Acts, ch 1009, §1; 95 Acts, ch 108, §1; 99 Acts, ch 89, §1, 2; 2001 Acts, ch 24, §28

DIVISION II

STANDARDS AND SCHEDULES

124.201 Duty to recommend changes in schedules.

1. The board shall administer the regulatory provisions of this chapter. Annually, within thirty days after the convening of each regular session of the general assembly, the board shall recommend to the general assembly any deletions from, or revisions in the schedules of substances, enumerated in section 124.204, 124.206, 124.208, 124.210, or 124.212, which it deems necessary or advisable. In making a recommendation to the general assembly regarding a substance, the board shall consider the following:

a. The actual or relative potential for abuse;

b. The scientific evidence of its pharmacological effect, if known;

c. State of current scientific knowledge regarding the substance;

d. The history and current pattern of abuse;

e. The scope, duration, and significance of abuse;

f. The risk to the public health;

g. The potential of the substance to produce psychic or physiological dependence liability; and

h. Whether the substance is an immediate precursor of a substance already controlled under this division.

2. After considering the above factors, the board shall make a recommendation to the general assembly, specifying the change which should be made in existing schedules, if it finds that the potential for abuse or lack thereof of the substance is not properly reflected by the existing schedules.

3. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor. Such designations shall be made pursuant to the procedures of chapter 17A.

4. If any new substance is designated as a controlled substance under federal law and notice of the designation is given to the board, the board shall similarly designate as controlled the new substance under this chapter after the expiration of thirty days from publication in the Federal Register of a final order designating a new substance as a controlled substance, unless within that thirty-day period the board objects to the new designation. In that case the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing the board shall announce its decision. Upon publication of objection to a new substance being designated as a controlled substance under this chapter by the board, control under this chapter is stayed until the board publishes its decision. If a substance is designated as controlled by the board under this paragraph the control shall be temporary and if within sixty days after the next regular session of the general assembly convenes it has not made the corresponding changes in this chapter, the temporary designation of control of the substance by the board shall be nullified.

[C73, 75, 77, 79, 81, §204.201]

C93, §124.201

124.202 Controlled substances — listed regardless of name.

The controlled substances listed in the schedules in sections 124.204, 124.206, 124.208, 124.210 and 124.212 are included by whatever official name, common or usual name, chemical name, or trade name is designated.

[C73, 75, 77, 79, 81, §204.202]

C93, §124.202

124.203 Substances listed in schedule I — criteria.

The board shall recommend to the general assembly that it place in schedule I any substance not already included therein if the board finds that the substance:

1. Has high potential for abuse; and

2. Has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.

If the board finds that any substance included in

schedule I does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.203]
C93, §124.203

124.204 Schedule I — substances included.

1. Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Opiates.* Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

a. Acetylmethadol.
b. Allylprodine.
c. Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
d. Alphameprodine.
e. Alphamethadol.
f. Alpha-Methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine).
g. Benzethidine.
h. Betacetylmethadol.
i. Betameprodine.
j. Betamethadol.
k. Betaprodine.
l. Clonitazene.
m. Dextromoramide.
n. Difenoxin.
o. Diampromide.
p. Diethylthiambutene.
q. Dimenoxadol.
r. Dimepheptanol.
s. Dimethylthiambutene.
t. Dioxaphetyl butyrate.
u. Dipipanone.
v. Ethylmethylthiambutene.
w. Etonitazene.
x. Etoxeridine.
y. Furethidine.
z. Hydroxypethidine.
aa. Ketobemidone.
ab. Levomoramide.
ac. Levophenacylmorphan.
ad. Morpheridine.
ae. Noracymethadol.
af. Norlevorphanol.
ag. Normethadone.
ah. Norpipanone.
ai. Phenadoxone.
aj. Phenampromide.
ak. Phenomorphan.
al. Phenoperidine.
am. Piritramide.
an. Proheptazine.
ao. Properidine.
ap. Propiram.
aq. Racemoramide.
ar. Tilidine.
as. Trimeperidine.
at. Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
au. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
av. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
aw. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
ax. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
ay. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
az. MPPP (1-methyl-4-phenyl-4-propionoxy-piperidine).
ba. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide).
bb. PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine).
bc. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).

3. *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

a. Acetorphine.
b. Acetyldihydrocodeine.
c. Benzylmorphine.
d. Codeine methylbromide.
e. Codeine-N-Oxide.
f. Cyprenorphine.
g. Desomorphine.
h. Dihydromorphine.
i. Etorphine (except hydrochloride salt).
j. Heroin.
k. Hydromorphinol.
l. Methyldesorphine.
m. Methyldihydromorphine.
n. Morphine methylbromide.
o. Morphine methylsulfonate.
p. Morphine-N-Oxide.
q. Myrophine.
r. Nicocodeine.

s. Nicomorphine.
t. Normorphine.
u. Phoclodine.
v. Thebacon.
w. Drotebanol.

4. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term *"isomer"* includes the optical, position and geometric isomers):

a. 4-bromo-2,5-dimethoxy-amphetamine. Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.

b. 2,5-dimethoxyamphetamine. Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.

c. 4-methoxyamphetamine. Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA.

d. 5-methoxy-3,4-methylenedioxy-amphetamine.

e. 4-methyl-2,5-dimethoxyl-amphetamine. Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP".

f. 3,4-methylenedioxy amphetamine, also known as MDA.

g. 3,4,5-trimethoxy amphetamine.

h. Bufotenine. Some trade or other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.

i. Diethyltryptamine. Some trade and other names: N, N-Diethyltryptamine; DET.

j. Dimethyltryptamine. Some trade or other names: DMT.

k. Ibogaine. Some trade or other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga.

l. Lysergic acid diethylamide.

m. Marijuana, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes.

n. Mescaline.

o. Parahexyl. Some trade or other names: 3-Hexyl-l-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d) pyran; synhexyl.

p. Peyote, except as otherwise provided in subsection 8. Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts.

q. N-ethyl-3-piperidyl benzilate.
r. N-methyl-3-piperidyl benzilate.
s. Psilocybin.
t. Psilocyn.

u. Tetrahydrocannabinols, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis sp., and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(1) 1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States food and drug administration.

(2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.

(3) 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

v. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

w. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

x. Thiophene analog of phencyclidine. Some trade or other names: 1-(1-(2-thienyl)-cyclohexyl)-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.

y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. Some other names: TCPy.

z. 3,4-methylenedioxymethamphetamine (MDMA).

aa. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA).

ab. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA).

ac. 2,5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.

ad. Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl)indole; alpha-ET; and AET.

ae. 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

5. *Depressants.* Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Mecloqualone.

b. Methaqualone.

c. Gamma-hydroxybutyric acid. Some trade or other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.

6. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Fenethylline.

b. N-ethylamphetamine.

c. (+-)cis-4-methylaminorex ((+-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

d. N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine).

e. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

f. Aminorex. Some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine.

g. Methcathinone. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432.

7. *Exclusions.* This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the state board of pharmacy examiners.

8. *Peyote.* Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.

9. *Other materials.* Any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (denzylfentanyl), its optical isomers, salts and salts of isomers.

b. N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

[C73, 75, 77, 79, 81, §204.204; 82 Acts, ch 1044, §1, 2]

84 Acts, ch 1013, §4 – 8; 85 Acts, ch 86, §1, 2; 86 Acts, ch 1037, §1, 2; 87 Acts, ch 122, §1; 88 Acts, ch 1024, §1; 89 Acts, ch 109, §1, 2; 91 Acts, ch 8, §2

C93, §124.204

94 Acts, ch 1009, §2 – 8; 2000 Acts, ch 1140, §2 – 4; 2001 Acts, ch 58, §1

124.205 Substances listed in schedule II — criteria.

The board shall recommend to the general assembly that it place in schedule II any substance not already included therein if the board finds that:

1. The substance has high potential for abuse;

2. The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

3. Abuse of the substance may lead to severe psychic or physical dependence.

If the board finds that any substance included in schedule II does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.205]

C93, §124.205

124.206 Schedule II — substances included.

1. Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Substances, vegetable origin or chemical synthesis.* Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

(1) Raw opium.
(2) Opium extracts.
(3) Opium fluid extracts.
(4) Powdered opium.
(5) Granulated opium.
(6) Tincture of opium.
(7) Codeine.
(8) Ethylmorphine.
(9) Etorphine hydrochloride.
(10) Hydrocodone, also known as dihydrocodeinone.
(11) Hydromorphone, also known as dihydromorphinone.
(12) Metopon.
(13) Morphine.
(14) Oxycodone.
(15) Oxymorphone.
(16) Thebaine.

b. Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph *"a"*, subparagraph (1), except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extractions which do not contain cocaine or ecgonine are excluded from this paragraph. The following substances and their salts, isomers and salts of isomers, if salts, isomers or salts of isomers exist under the specific chemical designation, are included in this paragraph:
(1) Cocaine.
(2) Ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

3. *Opiates.* Unless specifically excepted or unless listed in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

a. Alphaprodine.
b. Alfentanyl.
c. Anileridine.
d. Bezitramide.
e. Bulk dextropropoxyphene (nondosage forms).
f. Carfentanil.
g. Dihydrocodeine.
h. Diphenoxylate.
i. Fentanyl.
j. Isomethadone.
k. Levomethorphan.
l. Levorphanol.
m. Metazocine.
n. Methadone.
o. Methadone – intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
p. Moramide – intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
q. Pethidine (meperidine).
r. Pethidine – intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
s. Pethidine – intermediate-B, ethyl-4-phenylpiperidine-carboxylate.
t. Pethidine – intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
u. Phenazocine.
v. Piminodine.
w. Racemethorphan.
x. Racemorphan.
y. Sufentanil.
z. Levo-alphacetylmethadol. Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM.
aa. Remifentanil.

4. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

a. Amphetamine, its salts, isomers, and salts of its isomers.
b. Methamphetamine, its salts, isomers, and salts of its isomers.
c. Phenmetrazine and its salts.
d. Methylphenidate and its salts.

5. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Amobarbital.
b. Glutethimide.
c. Pentobarbital.
d. Phencyclidine.
e. Secobarbital.

6. *Immediate precursors.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. Immediate precursor to amphetamine and methamphetamine:
(1) Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

b. Immediate precursors to phencyclidine (PCP):

(1) 1-phenylcyclohexylamine.

(2) 1-piperidinocyclohexanecarbonitrile (PCC).

7. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. Marijuana when used for medicinal purposes pursuant to rules of the board of pharmacy examiners.

b. Nabilone [another name for nabilone: (+-) - trans-3-(1,1-di-methylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6,6-dimethyl-9H - dibenzo [b,d] pyran-9-one].

8. The board of pharmacy examiners, by rule, may except any compound, mixture, or preparation containing any stimulant listed in subsection 4 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system, and if the admixtures are included in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

[C73, 75, 77, 79, 81, §204.206; 82 Acts, ch 1044, §3, 4]

84 Acts, ch 1013, §9; 85 Acts, ch 86, §3, 4; 86 Acts, ch 1037, §3 – 5; 87 Acts, ch 122, §2; 90 Acts, ch 1059, §1, 2; 91 Acts, ch 8, §3

C93, §124.206

94 Acts, ch 1009, §9, 10; 2000 Acts, ch 1140, §5 – 7

124.207 Substances listed in schedule III — criteria.

The board shall recommend to the general assembly that it place in schedule III any substance not already included therein if the board finds that:

1. The substance has a potential for abuse less than the substances listed in schedules I and II;

2. The substance has currently accepted medical use in treatment in the United States; and

3. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

If the board finds that any substance included in schedule III does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.207]

C93, §124.207

124.208 Schedule III — substances included.

1. Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Benzphetamine.

b. Chlorphentermine.

c. Clortermine.

d. Phendimetrazine.

3. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

a. Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedules.

b. Any suppository dosage form containing amobarbital, secobarbital, pentobarbital or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

c. Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

d. Chlorhexadol.

e. Lysergic acid.

f. Lysergic acid amide.

g. Methyprylon.

h. Sulfondiethylmethane.

i. Sulfonethylmethane.

j. Sulfonmethane.

k. Tiletamine and zolazepam or any salt thereof, including the following:

(1) Some trade or other names for a tiletamine-zolazepam combination product: Telazol.

(2) Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.

(3) Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyraxolo-[3,4-e] [1,4]-diazepin-7(1H)-one flupyrazapon.

l. Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.

m. Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers,

and salts of isomers, for which an application is approved under section 505 of the federal Food, Drug, and Cosmetic Act.

4. *Nalorphine.*

5. *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

a. Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

b. Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

c. Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

d. Not more than three hundred milligrams of dihydrocodeinone (another name: hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

e. Not more than one point eight grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

f. Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

g. Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

h. Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

6. *Anabolic steroids.* Anabolic steroids, except any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species unless such steroid is prescribed, dispensed, or distributed for human use. Anabolic steroids include any salt, ester, or isomer of the following drugs or substances if that salt, ester, or isomer promotes muscle growth:

a. Boldenone.
b. Chlorotestosterone (4-chlortestosterone).
c. Clostebol.
d. Dehydrochlormethyltestosterone.
e. Dihydrotestosterone (4-dihydrotestosterone).
f. Drostanolone.
g. Ethylestrenol.
h. Fluoxymesterone.
i. Formebulone (formebolone).
j. Mesterolone.
k. Methandienone.
l. Methandranone.
m. Methandriol.
n. Methandrostenolone.
o. Methenolone.
p. Methyltestosterone.
q. Mibolerone.
r. Nandrolone.
s. Norethandrolone.
t. Oxandrolone.
u. Oxymesterone.
v. Oxymetholone.
w. Stanolone.
x. Stanozolol.
y. Testolactone.
z. Testosterone.
aa. Trenbolone.

7. The board by rule may except any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

8. *Hallucinogenic substances.* Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product. Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

[C73, 75, 77, 79, 81, §204.208; 82 Acts, ch 1044, §5]

84 Acts, ch 1013, §10; 88 Acts, ch 1024, §2; 91 Acts, ch 8, §4; 91 Acts, ch 37, §1

C93, §124.208

94 Acts, ch 1009, §11 – 13; 95 Acts, ch 6, §1; 2000 Acts, ch 1140, §8 – 10; 2001 Acts, ch 58, §2

124.209 Substances listed in schedule IV — criteria.

The board shall recommend to the general assembly that it place in schedule IV any substance not already included therein if the board finds that:

1. The substance has a low potential for abuse relative to the substances listed in schedule III;

2. The substance has currently accepted medical use in treatment in the United States; and

3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in schedule III.

If the board finds that any substance included in schedule IV does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.209]

C93, §124.209

124.210 Schedule IV — substances included.

1. Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

a. Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

b. Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

3. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Alprazolam.
b. Barbital.
c. Bromazepam.
d. Camazepam.
e. Chloral betaine.
f. Chloral hydrate.
g. Chlordiazepoxide.
h. Clobazam.
i. Clonazepam.
j. Clorazepate.
k. Clotiazepam.
l. Cloxazolam.
m. Delorazepam.
n. Diazepam.
o. Dichloralphenazone.
p. Estazolam.
q. Ethchlorvynol.
r. Ethinamate.
s. Ethyl Loflazepate.
t. Fludiazepam.
u. Flunitrazepam.
v. Flurazepam.
w. Halazepam.
x. Haloxazolam.
y. Ketazolam.
z. Loprazolam.
aa. Lorazepam.
ab. Lormetazepam.
ac. Mebutamate.
ad. Medazepam.
ae. Meprobamate.
af. Methohexital.
ag. Methylphenobarbital (mephobarbital).
ah. Midazolam.
ai. Nimetazepam.
aj. Nitrazepam.
ak. Nordiazepam.
al. Oxazepam.
am. Oxazolam.
an. Paraldehyde.
ao. Petrichloral.
ap. Phenobarbital.
aq. Pinazepam.
ar. Prazepam.
as. Quazepam.
at. Temazepam.
au. Tetrazepam.
av. Triazolam.
aw. Zaleplon.
ax. Zolpidem.

4. *Fenfluramine.* Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

a. Fenfluramine.

5. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

a. Cathine [(+)-norpseudoephedrine].
b. Diethylpropion.
c. Fencamfamin.
d. Fenproporex.
e. Mazindol.

f. Mefenorex.

g. Pemoline (including organometallic complexes and chelates thereof).

h. Phentermine.

i. Pipradrol.

j. SPA ((-)-1-dimethylamino-1,2-diphenylethane).

k. Modafinil.

l. Sibutramine.

6. *Other substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

a. Pentazocine.

b. Butorphanol (including its optical isomers).

[C73, 75, §204.210; C77, 79, 81, §204.208(6c), 204.210; 82 Acts, ch 1044, §6 – 10]

84 Acts, ch 1013, §11; 85 Acts, ch 86, §5; 87 Acts, ch 122, §3; 89 Acts, ch 109, §3

C93, §124.210

94 Acts, ch 1009, §14, 15; 2000 Acts, ch 1140, §11 – 14; 2002 Acts, ch 1108, §1

Subsection 3, NEW paragraph o and subsequent paragraphs editorially placed in alphabetical order

Subsection 3, former paragraphs o – af redesignated as p – ag

Subsection 3, former paragraphs ag – an redesignated as ai – ap

Subsection 3, former paragraph ao redesignated as ar

Subsection 3, former paragraph ap redesignated as aq

Subsection 3, former paragraphs aq – as redesignated as at – av

Subsection 3, former paragraph at redesignated as ah

Subsection 3, former paragraph au redesignated as as

Subsection 3, former paragraph av redesignated as ax

124.211 Schedule V — criteria.

The board shall recommend to the general assembly that it place in schedule V any substance not already included therein if the board finds that:

1. The substance has a low potential for abuse relative to the substances listed in schedule IV;

2. The substance has currently accepted medical use in treatment in the United States; and

3. The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

If the board finds that any substance included in schedule V does not meet these criteria, it shall recommend that the general assembly place the substance in a different schedule or remove it from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.211]

C93, §124.211

124.212 Schedule V — substances included.

1. Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

a. Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.

b. Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.

c. Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.

d. Not more than two point five milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

e. Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

f. Not more than point five milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

3. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

a. Buprenorphine.

4. *Stimulants.* Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of pyrovalerone, including its salts, isomers, and salts of isomers.

5. *Ephedrine.* Unless specifically excepted in paragraph *"b"* or *"c"*, or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers:

a. Ephedrine.

b. The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers are excepted from this schedule if they may lawfully be sold over the counter without a prescription under the federal Food, Drug and Cosmetic Act; are labeled and marketed in a manner consistent with the pertinent over-the-counter tentative final or final monograph; are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and are not marketed, advertised, or labeled for the indication of stimulation, mental alertness, weight loss, muscle enhancement, appetite control, or energy:

(1) Solid oral dosage forms, including soft gelatin capsules, that combine active ingredients in the following range for each dosage unit of not less than twelve and five-tenths milligrams but not more than twenty-five milligrams of ephedrine

and not less than four hundred milligrams of guaifenesin packaged in blister packs of not more than two tablets per blister.

(2) Anorectal preparations containing less than five percent ephedrine.

c. A dietary supplement is also excepted from this schedule if the dietary supplement is not otherwise prohibited by any other law and is a naturally occurring ephedrine alkaloid or associated salts, isomers, salts of isomers, or a combination of these substances that are contained in a matrix of organic material and do not exceed fifteen percent of the total weight of the natural product.

[C73, 75, 77, 79, 81, §204.212]

84 Acts, ch 1013, §12; 85 Acts, ch 86, §6; 89 Acts, ch 109, §4

C93, §124.212

94 Acts, ch 1009, §16, 17; 97 Acts, ch 77, §1; 2000 Acts, ch 1140, §15, 16

DIVISION III

REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

124.301 Rules.

The board may, subject to chapter 17A, promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

[C73, 75, 77, 79, 81, §204.301]

C93, §124.301

124.302 Registration requirements.

1. Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain and maintain a biennial registration issued by the board in accordance with its rules.

2. Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this division.

3. The following persons need not register and may lawfully possess controlled substances under this chapter:

a. An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment.

b. A common or contract carrier or warehouse operator, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.

c. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in possession of a schedule V substance.

4. A separate registration is required for each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

5. The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rules.

[C24, 27, 31, 35, §3155; C39, §**3169.03, 3169.12;** C46, 50, 54, 58, 62, 66, 71, §204.03, 204.12; C73, 75, 77, 79, 81, §204.302]

91 Acts, ch 233, §5

C93, §124.302

124.303 Registration.

1. The board shall register an applicant to manufacture or distribute controlled substances included in sections 124.204, 124.206, 124.208, 124.210 and 124.212 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider all of the following factors:

a. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.

b. Compliance with applicable state and local law.

c. Any convictions of the applicant under any federal and state laws relating to any controlled substance.

d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion.

e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.

f. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.

g. Any other factors relevant to and consistent with the public health and safety.

2. Registration under subsection 1 of this section does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.

3. Practitioners shall be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this division for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already regis-

tered under this division in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research in schedule I substances within this state upon furnishing the board evidence of the federal registration.

4. Compliance by manufacturers and distributors with the provisions of the federal law respecting registration, excluding fees, entitles them to be registered under this chapter.

[C73, 75, 77, 79, 81, §204.303]
C93, §124.303

124.304 Revocation and suspension of registration.

1. A registration under section 124.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:

a. Has furnished false or fraudulent material information in any application filed under this chapter;

b. Has had the registrant's federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances; or

c. Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this section only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though the entry of the judgment or sentence has been withheld and the individual placed on probation.

d. Has committed such acts as would render the registrant's registration under section 124.303 inconsistent with the public interest as determined under that section.

2. The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

3. If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.

4. The board shall promptly notify the bureau and the department of all orders suspending or revoking registration and all forfeitures of controlled substances.

[C39, §**3169.04;** C46, 50, 54, 58, 62, 66, 71, §204.4; C73, 75, 77, 79, 81, §204.304]
91 Acts, ch 233, §6
C93, §124.304

124.305 Order to show cause.

1. Before denying, suspending or revoking a registration, or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

2. The board, without an order to show cause, may suspend any registration simultaneously with the institution of proceedings under section 124.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, under the provisions of the Iowa administrative procedure Act, unless sooner withdrawn by the board or dissolved by the order of the district court or an appellate court.

[C73, 75, 77, 79, 81, §204.305]
C93, §124.305

124.306 Records of registrants.

Persons registered to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with such additional rules as may be issued by the board. A practitioner who engages in dispensing any controlled substance to the practitioner's patients shall keep records of receipt and disbursements of such drugs, including dispensing or other disposition, and information as to controlled substances stolen, lost, or destroyed. In every such case the records of controlled substance received shall show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances dispensed or otherwise disposed of, shall show the date of dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were dispensed and the kind and quantity of drugs dispensed.

Every such record shall be kept for a period of two years from the date of the transaction recorded. Records of controlled substances lost, destroyed or stolen, shall contain a detailed list of the kind and quantity of such drugs and the date of the discovery of such loss, destruction, or theft.

No person shall distribute complimentary packages of controlled substances, to a practitioner unless that person prepares and leaves with the practitioner a specific written list of the items so distributed. This list shall be prepared on a form prescribed by rules promulgated by the board, and the person who distributes the items listed shall send a copy of the list to the board as soon as practicable after distribution of the complimentary packages to the practitioner.

[C39, §**3169.09;** C46, 50, 54, 58, 62, 66, §204.9; C71, §204.9, 204A.4; C73, 75, 77, 79, 81, §204.306]

C93, §124.306

124.307 Order forms.

Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

[C24, 27, 31, 35, §3154, 3155; C39, §**3169.05;** C46, 50, 54, 58, 62, 66, 71, §204.5; C73, 75, 77, 79, 81, §204.307]

C93, §124.307

124.308 Prescriptions.

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

2. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 124.306. No prescription for a schedule II substance may be refilled.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under chapter 155A, shall not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

4. A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

[C39, §**3169.06;** C46, 50, 54, 58, 62, 66, §204.6; C71, §204.6, 204A.7; C73, 75, 77, 79, 81, §204.308]

87 Acts, ch 215, §44

C93, §124.308

See §147.107, 205.3

DIVISION IV

OFFENSES AND PENALTIES

124.401 Prohibited acts — manufacturers — possessors — counterfeit substances — simulated controlled substances — penalties.

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

a. Violation of this subsection, with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and notwithstanding section 902.9, subsection 2, shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars:

(1) More than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five kilograms of a mixture or substance containing a detectable amount of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Methamphetamine, its salts, isomers, or salts of isomers.

(e) Amphetamine, its salts, isomers, and salts of isomers.

(f) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (e).

(3) More than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than one hundred grams of phencyclidine (PCP) or one kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than ten grams of a mixture or substance containing a detectable amount of lysergic

acid diethylamide (LSD).

(6) More than one thousand kilograms of a mixture or substance containing a detectable amount of marijuana.

b. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and in addition to the provisions of section 902.9, subsection 2, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars:

(1) More than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five hundred grams but not more than five kilograms of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than five grams but not more than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than ten grams but not more than one hundred grams of phencyclidine (PCP) or more than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) Not more than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one hundred kilograms but not more than one thousand kilograms of marijuana.

(7) More than five grams but not more than five kilograms of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.

(8) More than five grams but not more than five kilograms of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity of detectable amount of amphetamine, its salts, isomers, and salts of isomers.

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

(1) One hundred grams or less of a mixture or substance containing a detectable amount of heroin.

(2) Five hundred grams or less of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) Five grams or less of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) Ten grams or less of phencyclidine (PCP) or one hundred grams or less of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than fifty kilograms but not more than one hundred kilograms of marijuana.

(6) Five grams or less of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.

(7) Five grams or less of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, and salts of isomers.

(8) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

d. Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor. However, violation of this subsection involving fifty kilograms or less of marijuana is a class "D" felony.

e. A person in the immediate possession or control of a firearm while participating in a violation of this subsection shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

f. A person in the immediate possession or control of an offensive weapon, as defined in section 724.1, while participating in a violation of this subsection, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

2. If the same person commits two or more acts

which are in violation of subsection 1 and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan, or conspiracy, the acts may be considered a single violation and the weight of the controlled substances, counterfeit substances, or simulated controlled substances involved may be combined for purposes of charging the offender.

3. It is unlawful for any person to sell, distribute, or make available any product containing ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine, if the person knows, or should know, that the product may be used as a precursor to any illegal substance or an intermediary to any controlled substance. A person who violates this subsection commits a serious misdemeanor.

4. A person who possesses any product containing any of the following commits a class "D" felony, if the person possesses with the intent to use the product to manufacture any controlled substance:

a. Ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine.

b. Pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine.

c. Ethyl ether.

d. Anhydrous ammonia.

e. Red phosphorous.

f. Lithium.

g. Iodine.

h. Thionyl chloride.

i. Chloroform.

j. Palladium.

k. Perchloric acid.

l. Tetrahydrofuran.

m. Ammonium chloride.

n. Magnesium sulfate.

5. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this chapter or chapter 124A, 124B, or 453B is guilty of an aggravated misdemeanor. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this chapter or chapter 124A, 124B, or 453B is guilty of a class "D" felony.

If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph *"b"*. If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

All or any part of a sentence imposed pursuant to this subsection may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

If a person commits a violation of this subsection, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. If the person is not sentenced to confinement under the custody of the director of the department of corrections, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

If the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. The court may place the person on intensive probation. However, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593, 5003; S13, §2593, 2596-a; C24, 27, 31, 35, §3152, 3168, 3169; C39, §**3169.02, 3169.21;** C46, 50, 54, 58, 62, §204.2, 204.22; C66, §204.2, 204.20; C71, §204.2, 204.20, 204A.3, 204A.10; C73, 75, 77, 79, 81, §204.401; 82 Acts, ch 1147, §2]

84 Acts, ch 1013, §13, 14; 84 Acts, ch 1105, §2, 3; 89 Acts, ch 225, §11; 90 Acts, ch 1233, §7

C93, §124.401

94 Acts, ch 1107, §7; 96 Acts, ch 1164, §1 – 4; 97 Acts, ch 122, §1 – 3; 98 Acts, ch 1138, §24, 25; 99 Acts, ch 12, §2, 3; 99 Acts, ch 65, §1; 2000 Acts, ch 1144, §1; 2000 Acts, ch 1201, §4

See §124B.9

124.401A Enhanced penalty for manufacture or distribution to persons on certain real property.

In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older who unlawfully manufactures with intent to distribute, distributes, or possesses with intent to distribute a substance or counterfeit substance listed in schedule I, II, or III, or a simulated controlled substance represented to be a controlled substance classified in schedule I, II, or III, to another person who is eighteen years of age or older in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, may be sentenced up to an additional term of confinement of five years.

90 Acts, ch 1251, §5
C91, §204.401A
C93, §124.401A
94 Acts, ch 1172, §6; 96 Acts, ch 1164, §5; 2002 Acts, ch 1175, §25; 2002 Acts, 2nd Ex, ch 1003, §236, 262
Section amended

124.401B Possession of controlled substances on certain real property — additional penalty.

In addition to any other penalties provided in this chapter or another chapter, a person who unlawfully possesses a substance listed in schedule I, II, or III, or a simulated controlled substance represented to be a controlled substance classified in schedule I, II, or III, in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, may be sentenced to one hundred hours of community service work for a public agency or a nonprofit charitable organization. The court shall provide the offender with a written statement of the terms and monitoring provisions of the community service.

94 Acts, ch 1172, §7; 96 Acts, ch 1164, §6

124.401C Manufacturing methamphetamine in presence of minors.

1. In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older and who either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufactures methamphetamine, its salts, isomers, and salts of its isomers in the presence of a minor shall be sentenced up to an additional term of confinement of five years.

2. For purposes of this section, the term *"in the presence of a minor"* shall mean, but is not limited to, any of the following:

a. When a minor is physically present during the activity.

b. When the activity is conducted in the residence of a minor.

c. When the activity is conducted in a building where minors can reasonably be expected to be present.

d. When the activity is conducted in a room offered to the public for overnight accommodation.

e. When the activity is conducted in any multiple-unit residential building.

97 Acts, ch 125, §1

124.401D Conspiracy to manufacture for delivery or delivery or intent or conspiracy to deliver amphetamine or methamphetamine to a minor.

1. It is unlawful for a person eighteen years of age or older to act with, or enter into a common scheme or design with, or conspire with one or more persons to manufacture for delivery to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers.

A violation of this subsection is a felony punishable under section 902.9, subsection 1. A second or subsequent violation of this subsection is a class "A" felony.

2. It is unlawful for a person eighteen years of age or older to deliver, or possess with the intent to deliver to a person under eighteen years of age, a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, or to act with, or enter into a common scheme or design with, or conspire with one or more persons to deliver or possess with the intent to deliver to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers.

A violation of this subsection is a felony punishable under section 902.9, subsection 1. A second or subsequent violation of this subsection is a class "A" felony.

99 Acts, ch 12, §4; 2000 Acts, ch 1144, §2

124.401E Certain penalties for manufacturing or delivery of amphetamine or methamphetamine.

1. If a court sentences a person for the person's first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph *"c"*, and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or metham-

phetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

2. If a court sentences a person for a conviction of manufacturing of a controlled substance under section 124.401, subsection 1, paragraph *"c"*, and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

3. If a court sentences a person for the person's second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by section 124.413.

99 Acts, ch 12, §5; 2000 Acts, ch 1144, §3

Continuation of drug court pilot programs; 2002 Acts, ch 1174, §1; 2002 Acts, 2nd Ex, ch 1003, §157, 171, 172

124.401F Prohibitions on tampering with, possessing, or transporting anhydrous ammonia or anhydrous ammonia equipment.

1. A person shall not intentionally tamper with anhydrous ammonia equipment. Tampering occurs when a person who is not authorized by the owner of anhydrous ammonia equipment uses the equipment in violation of a provision of this section. A person shall not in any manner or for any purpose sell, fill, refill, deliver, permit to be delivered, or use an anhydrous ammonia container or receptacle, including for the storage of any gas or compound, unless the person owns the container or receptacle or is authorized to do so by the owner. A person shall not possess or transport anhydrous ammonia in a container or receptacle which is not authorized by the secretary of agriculture to hold anhydrous ammonia.

2. A person violating this section commits a serious misdemeanor. In addition to the imposition of the serious misdemeanor penalty, a person shall be subject to a civil penalty of not more than one thousand five hundred dollars, if the person does any of the following:

a. Intentionally tampers with anhydrous ammonia equipment.

b. Possesses or transports anhydrous ammonia in a container or receptacle which is not authorized to hold anhydrous ammonia according to rules adopted by the secretary of agriculture.

3. A person tampering with anhydrous ammonia equipment in violation of this section shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering.

99 Acts, ch 12, §6; 99 Acts, ch 208, §48; 2000 Acts, ch 1058, §13

124.402 Prohibited acts — distributors — registrants — proprietors — penalties.

1. It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 124.308;

b. Who is a registrant, to manufacture a controlled substance not authorized by the registration, or to distribute or dispense a controlled substance not authorized by the registration to another registrant or other authorized person;

c. To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;

d. To refuse an entry into any premises during reasonable business hours for any inspection authorized by this chapter; or

e. Knowingly to keep or permit the keeping or to maintain any premises, store, shop, warehouse, dwelling, temporary, or permanent building, vehicle, boat, aircraft, or other temporary or permanent structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping, possessing or selling them in violation of this chapter.

2. Any person who violates subsection 1 of this section, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate subsection 1 of this section, is guilty of a public offense and upon conviction:

a. Of a violation of paragraphs *"a", "b", "d",* or *"e"* shall be an aggravated misdemeanor.

b. Of a violation of paragraph *"c"* shall be a serious misdemeanor.

[C73, 75, 77, 79, 81, §204.402]
C93, §124.402

124.403 Prohibited acts — controlled substances, distribution, use, possession — records and information — penalties.

1. It is unlawful for any person knowingly or intentionally:

a. To distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section 124.307;

b. To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

d. To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

e. To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

2. Any person who violates this section, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate this section, is guilty of a serious misdemeanor.

[C39, §**3169.17;** C46, 50, 54, 58, 62, §204.18; C66, §204.17; C71, §204.17, 204A.3; C73, 75, 77, 79, 81, §204.403]
C93, §124.403

124.404 Penalties under other laws.

Any penalty imposed for violation of this division shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

[C73, 75, 77, 79, 81, §204.404]
C93, §124.404

124.405 Bar to prosecution.

If a violation of this chapter is a violation of a federal law or the law of another state, the conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

[C39, §**3169.22;** C46, 50, 54, 58, 62, §204.23; C66, 71, §204.21; C73, 75, 77, 79, 81, §204.405]
C93, §124.405

124.406 Distribution to person under age eighteen.

1. A person who is eighteen years of age or older who:

a. Unlawfully distributes or possesses with intent to distribute a substance listed in schedule I or II to a person under eighteen years of age commits a class "B" felony and shall serve a minimum term of confinement of five years. However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, the person shall serve a minimum term of confinement of ten years.

b. Unlawfully distributes or possesses with the intent to distribute a controlled substance listed in schedule III to a person under eighteen years of age who is at least three years younger than the violator commits a class "C" felony.

c. Unlawfully distributes a controlled substance listed in schedule IV or V to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

2. A person who is eighteen years of age or older who:

a. Unlawfully distributes or possesses with the intent to distribute a counterfeit substance listed in schedule I or II, or a simulated controlled substance represented to be a substance classified in schedule I or II, to a person under eighteen years of age commits a class "B" felony. However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, the person shall serve a minimum term of confinement of ten years.

b. Unlawfully distributes or possesses with intent to distribute a counterfeit substance listed in schedule III, or a simulated controlled substance represented to be any substance listed in schedule III, to a person under eighteen years of age who is at least three years younger than the violator commits a class "C" felony.

c. Unlawfully distributes a counterfeit substance listed in schedule IV or V, or a simulated controlled substance represented to be a substance listed in schedule IV or V, to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

3. It is unlawful for a person to deliver a controlled substance to another person in order to act with, enter into a common scheme or design with,

conspire with, or recruit the other person for the purpose of delivering a controlled substance to one or more persons under eighteen years of age. A person who violates this subsection with respect to a controlled substance classified in schedule I, II, III, IV, or V is guilty of a class "D" felony.

[C97, §5003; C24, 27, 31, 35, §3168, 3169; C39, §**3169.21;** C46, 50, 54, 58, 62, §204.22; C66, §204.20; C71, §204.20, 204A.11; C73, 75, 77, 79, 81, §204.406; 82 Acts, ch 1147, §3]

84 Acts, ch 1013, §15; 89 Acts, ch 225, §12; 90 Acts, ch 1251, §6, 7

C93, §124.406

94 Acts, ch 1172, §8, 9; 97 Acts, ch 33, §2, 3

124.406A Use of persons under age eighteen in the drug trade.

It is unlawful for a person who is eighteen years of age or older to conspire with or recruit a person under the age of eighteen for the purpose of delivering or manufacturing a controlled substance classified in schedules I through IV. A person violating this section commits a class "C" felony.

94 Acts, ch 1172, §10

124.407 Gatherings where controlled substances unlawfully used — penalties.

It is unlawful for any person to sponsor, promote, or aid, or assist in the sponsoring or promoting of a meeting, gathering, or assemblage with the knowledge or intent that a controlled substance be there distributed, used or possessed, in violation of this chapter.

Any person who violates this section and where the controlled substance is any one other than marijuana is guilty of a class "D" felony.

Any person who violates this section, and where the controlled substance is marijuana only, is guilty of a serious misdemeanor.

The district court shall grant an injunction barring a meeting, gathering, or assemblage if upon hearing the court finds that the sponsors or promoters of the meeting, gathering, or assemblage have not taken reasonable means to prevent the unlawful distribution, use or possession of a controlled substance. Further injunctive relief may be granted against all persons furnishing goods or services to such meeting, gathering, or assemblage.

The district court may, upon application and a showing of one or more of the grounds provided in section 639.3, grant to the state or governmental subdivision thereof a writ of attachment, ex parte, without bond, in an amount necessary to secure the payment of any fine that may be imposed and the payment of costs. The reasonable expense to the state and governmental subdivisions thereof to provide the necessary law enforcement resulting from a meeting, gathering or assemblage held in violation of this section may be taxed as costs in the criminal action.

[C73, 75, 77, 79, 81, §204.407]

C93, §124.407

99 Acts, ch 135, §13

124.408 Joint criminal trials.

Information, indictments, trial, and sentencing for violations of this chapter may allege any number of violations of their provisions against one person and join one or more persons as defendants who it is alleged violated the same provisions in the same transaction or series of transactions and which involve common questions of law and fact. The several charges shall be set out in separate counts and each accused person shall be convicted or acquitted upon each count by separate verdict. Each accused person shall thereafter be sentenced upon each verdict of guilty. The court may consider such separate verdicts of guilty returned at the same time as one offense for the purpose of sentencing as provided in this chapter. The court may grant a severance and separate trial to any accused person jointly charged or indicted if it appears that substantial injustice would result to such accused person unless a separate trial was granted.

[C73, 75, 77, 79, 81, §204.408]

C93, §124.408

124.409 Conditional discharge, commitment for treatment, and probation.

Whenever the court finds that a person who is charged with a violation of section 124.401 and who consents thereto, or who has entered a plea of guilty to or been found guilty of a violation of that section, is addicted to, dependent upon, or a chronic abuser of any controlled substance and that such person will be aided by proper medical treatment and rehabilitative services, it may order that the person be committed as an in-patient or outpatient to a facility licensed by the Iowa department of public health for medical treatment and rehabilitative services. A person committed under this subsection who is not possessed of sufficient income or estate to enable the person to make payment of the costs of such treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. The determination of ability to pay shall be made by the court. The court shall require the patient, or the patient's parent, guardian, or custodian to complete under oath a detailed financial statement. The court may enter appropriate orders requiring the patient or those legally liable for the patient's support to reimburse the state with the costs, or any part thereof. In order to obtain the most effective results from such medical treatment and rehabilitative services, the court may commit the person to the custody of a public or private agency or any other responsible person and impose other conditions upon the commitment as is necessary to insure compliance with the court's order and to insure

that the person will not, during the period of treatment and rehabilitation, again violate a provision of this chapter. If it is established thereafter to the satisfaction of the court that the person has again violated a provision of this chapter, the person may be returned to custody or sentenced upon conviction as provided by law. The public or private agency or responsible person to whom the accused person was committed by the court shall immediately report to the court when the person has received maximum benefit from the program or has recovered from addiction, dependency, or tendency to chronically abuse any controlled substance. The person shall then be returned to the court for disposition of the case. If the person has been charged or indicted, but not convicted, such charge shall proceed to trial or final disposition. If the person has been convicted or is thereafter convicted, the court shall sentence the person as provided by law but may remit all or any part of the sentence and place the person on probation upon terms and conditions as the court may prescribe.

[C73, 75, 77, 79, 81, §204.409]

84 Acts, ch 1013, §16

C93, §124.409

96 Acts, ch 1034, §4; 2002 Acts, ch 1175, §26; 2002 Acts, 2nd Ex, ch 1003, §237, 262

Subsection 1 stricken and former subsection 2 redesignated as unnumbered paragraph 1

124.410 Accommodation offense.

In a prosecution for unlawful delivery or possession with intent to deliver marijuana, if the prosecution proves that the defendant violated the provisions of section 124.401, subsection 1, by proving that the defendant delivered or possessed with intent to deliver one-half ounce or less of marijuana which was not offered for sale, the defendant is guilty of an accommodation offense and rather than being sentenced as if convicted for a violation of section 124.401, subsection 1, paragraph *"d"*, shall be sentenced as if convicted of a violation of section 124.401, subsection 5. An accommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver marijuana in violation of section 124.401, subsection 1. This section does not apply to hashish, hashish oil, or other derivatives of marijuana as defined in section 124.101, subsection 17.

[C73, 75, 77, 79, 81, §204.410]

89 Acts, ch 225, §13

C93, §124.410

99 Acts, ch 67, §1

124.411 Second or subsequent offenses.

1. Any person convicted of a second or subsequent offense under this chapter, may be punished by imprisonment for a period not to exceed three times the term otherwise authorized, or fined not more than three times the amount otherwise authorized, or punished by both such imprisonment and fine.

2. For purposes of this section, an offense is considered a second or subsequent offense, if, prior to the person's having been convicted of the offense, the offender has ever been convicted under this chapter or under any state or federal statute relating to narcotic drugs or cocaine, marijuana, depressant, stimulant, or hallucinogenic drugs.

3. This section does not apply to offenses under section 124.401, subsection 5.

[C97, §5003; C24, 27, 31, 35, §3168, 3169; C39, §**3169.21;** C46, 50, 54, 58, 62, §204.22; C66, 71, §204.20; C73, 75, 77, 79, 81, §204.411]

84 Acts, ch 1013, §17

C93, §124.411

124.412 Notice of conviction.

If a person enters a plea of guilty to, or forfeits bail or collateral deposited to secure the person's appearance in court, and such forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation and to any state board or officer by whom the convicted person has been licensed or registered to practice the person's profession or carry on the person's business. On the conviction of a person, the court may suspend or revoke the license or registration of the convicted defendant to practice the defendant's profession or carry on the defendant's business. On the application of a person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, the board or officer may reinstate the license or registration.

[C39, §**3169.15;** C46, 50, 54, 58, 62, §204.16; C66, 71, §204.15; C73, 75, 77, 79, 81, §204.412]

C93, §124.412

93 Acts, ch 16, §1

124.413 Mandatory minimum sentence.

A person sentenced pursuant to section 124.401, subsection 1, paragraph *"a"*, *"b"*, *"c"*, *"e"*, or *"f"*, shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law.

This section shall not apply if:

1. The offense is found to be an accommodation pursuant to section 124.410; or

2. The controlled substance is marijuana.

[C79, 81, §204.413]

89 Acts, ch 225, §14

C93, §124.413

124.414 Drug paraphernalia.

1. *a.* As used in this section, *"drug paraphernalia"* means all equipment, products, or materials of any kind used or attempted to be used in combination with a controlled substance, except those items used in combination with the lawful use of a controlled substance, to knowingly or intentionally and primarily do any of the following:

(1) Manufacture a controlled substance.

(2) Inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(3) Test the strength, effectiveness, or purity of a controlled substance.

(4) Enhance the effect of a controlled substance.

b. *"Drug paraphernalia"* does not include hypodermic needles or syringes if manufactured, delivered, sold, or possessed for a lawful purpose.

2. It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.

3. A person who violates this section commits a simple misdemeanor.

2000 Acts, ch 1144, §4

124.415 Parental and school notification — persons under eighteen years of age.

A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of a controlled substance, counterfeit substance, or simulated controlled substance in violation of this chapter, and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district, the superintendent's designee, or the authorities in charge of the nonpublic school of the taking into custody. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first-class mail.

90 Acts, ch 1251, §8
C91, §204.415
C93, §124.415
94 Acts, ch 1172, §11; 95 Acts, ch 191, §5

124.416 Exception to restrictions on bail.

Notwithstanding section 811.1, the court, after making the finding required by section 811.1, subsection 3, may admit a person convicted of a violation of section 124.401, subsection 2, or of a violation of section 124.406, to bail if the prosecuting attorney in the action and the defendant's counsel jointly petition the court to admit the person to bail.

90 Acts, ch 1251, §9
C91, §204.416
C93, §124.416
95 Acts, ch 191, §6

DIVISION V

ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

124.501 Responsibility for enforcement.

The department is primarily responsible for the enforcement of this chapter, and all other laws and regulations of this state, relating to controlled or counterfeit substances, or simulated or imitation controlled substances*, except that the board is primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, and health care facilities as defined in section 135C.1, subsection 6, as well as in the possession of any and all other individuals or institutions authorized to have possession of any controlled substances, and is also primarily responsible for any other duties in respect to controlled substances as specifically delegated to the board by law. An officer or employee of the board may, when so directed or authorized by the board:

1. Execute and serve search warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state.

2. Make seizures of property pursuant to the provisions of this chapter.

[C39, §**3169.19;** C46, 50, 54, 58, 62, §204.20, 204.26; C66, 71, §204.19; C73, 75, 77, 79, 81, §204.501; 82 Acts, ch 1147, §10]

C93, §124.501

*Imitation controlled substances, chapter 124A

124.502 Administrative inspections and warrants.

1. Issuance and execution of administrative inspection warrants shall be as follows:

a. A district judge or district associate judge, within the court's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections under this chapter or a related rule or under chapter 124A. The warrant may also permit seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the statute or related rules, sufficient to justify administrative in-

spection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

b. A warrant shall issue only upon sworn testimony of an officer or employee of the board duly designated and having knowledge of the facts alleged, before the judicial officer, establishing the grounds for issuing the warrant. If the judicial officer is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the officer shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any.

The warrant shall:

(1) State the grounds for its issuance and the name of each person whose testimony has been taken in support thereof.

(2) Be directed to a person authorized by section 124.501 to execute it.

(3) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified.

(4) Identify the item or types of property to be seized, if any.

(5) Direct that it be served during normal business hours, if appropriate, and designate the judge to whom it shall be returned.

c. A warrant issued pursuant to this section must be executed and returned within ten days after its date unless, upon a showing of a need for additional time, the court so instructs otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom the property is seized, or the person in charge of the premises from which the property is seized, a copy of the warrant and a receipt for the property seized or shall leave the copy and receipt at the place from which the property is seized. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property seized. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was seized, if they are present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was seized and to the applicant for the warrant.

d. The judicial officer who has issued a warrant under this section shall require that there be attached to the warrant a copy of the return, and of all papers filed in connection with the return, and shall file them with the clerk of the district court for the county in which the inspection was made.

2. The department may make administrative inspections of controlled premises in accordance with the following provisions:

a. For purposes of this section only, *"controlled premises"* means:

(1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(2) Places including factories, warehouse establishments, and conveyances where persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

b. Whenever authorized by an administrative inspection warrant issued pursuant to subsection 1 of this section an officer or employee of the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, has the right to enter controlled premises for the purpose of conducting an administrative inspection.

c. Whenever authorized by an administrative inspection warrant, an officer or employee of the board has the right:

(1) To inspect and copy records required by this chapter to be kept;

(2) To inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph *"e"* of this subsection, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(3) To inventory any stock of any controlled substance therein and obtain samples of any such substance.

d. This section shall not be construed to prevent the inspection without a warrant of books and records pursuant to a subpoena issued in accordance with section 622.65, nor shall this section be construed to prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) With the consent of the owner, operator, or agent in charge of the controlled premises;

(2) In situations presenting imminent danger to health or safety;

(3) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

(5) In all other situations where a warrant is not constitutionally required.

e. Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to financial data; sales data, other than shipment data; or pricing data.

[C73, 75, 77, 79, 81, §204.502; 82 Acts, ch 1147, §11]
83 Acts, ch 186, §10051, 10052, 10201
C93, §124.502
99 Acts, ch 96, §10

124.503 Injunctions.

1. The district court may exercise jurisdiction to enjoin violations of this chapter.

2. In case of an alleged violation of an injunction or restraining order issued under this section, upon demand of the defendant, trial shall be by a jury.

[C73, 75, 77, 79, 81, §204.503]
C93, §124.503

124.504 Co-operative arrangements and confidentiality.

1. The department and board, subject to approval and direction of the governor, shall co-operate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may jointly:

a. Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances.

b. Co-ordinate and co-operate in training programs on controlled substance law enforcement at the local and state levels.

c. Co-operate with the bureau by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state and local law enforcement purposes; except that they shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection 3.

d. Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

2. Results, information, and evidence received from the bureau relating to the regulatory functions of this chapter, including results of inspections conducted by that agency may be relied upon and acted upon by the board or the department in the exercise of their regulatory functions under this chapter.

3. A practitioner engaged in medical practice or research or the Iowa drug abuse authority or any program which is licensed by the authority shall not be required to furnish the name or identity of a patient or research subject to the board or the department, nor shall the practitioner or the authority or any program which is licensed by the authority be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner or the authority or any of its licensed programs is obligated to keep confidential.

[C73, 75, 77, 79, 81, §204.504]
C93, §124.504

124.505 Reserved.

124.506 Controlled substances — disposal.

All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, or excess or undesired controlled substances, which have come into the custody of the board, the department, or any peace officer, shall be disposed of as follows:

1. Except as otherwise provided in this section, the court having jurisdiction shall order such controlled substances forfeited and destroyed. A record of the place where the controlled substances were seized, of the kinds and quantities of controlled substances so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court and to the bureau by the officer who destroys them.

2. Upon written application by the board, the court by whom the forfeiture of controlled substances has been decreed may order the delivery of any of them, except controlled substances listed in schedule I, to the board for distribution or destruction, as provided by this section.

3. Upon application by any hospital within this state, not operated for private gain, the board may in its discretion deliver any controlled substances that have come into its custody by authority of this section to the applicant for medicinal use. The board may from time to time deliver excess stocks of controlled substances to the bureau for disposition, or may destroy the excess controlled substances.

4. The board shall keep a full and complete record of all controlled substances received and disposed of, showing the exact kinds, quantities, and forms of controlled substances, the persons from whom received and to whom delivered, by whose authority received, delivered, and destroyed and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state laws relating to any controlled substance.

[C39, §**3169.14;** C46, 50, 54, 58, 62, §204.15; C66, 71, §204.14; C73, 75, 77, 79, 81, §204.506]
C93, §124.506

124.507 Burden of proof — liabilities.

1. It is not necessary for the state to negate any exemption or exception set forth in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceed-

ing under this chapter. The proof of entitlement to any exemption or exception by the person claiming its benefit shall be a valid defense.

2. The absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter creates a rebuttable presumption that the person is not the holder of such registration or form.

3. No liability shall be imposed by virtue of this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of the officer's duties.

[C24, 27, 31, 35, §3156; C39, §**3169.18;** C46, 50, 54, 58, 62, §204.19; C66, 71, §204.18; C73, 75, 77, 79, 81, §204.507]

C93, §124.507

124.508 Judicial review.

Judicial review of actions of board or department may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C73, 75, 77, 79, 81, §204.508]

C93, §124.508

124.509 Education and research.

1. The board and the department, subject to approval and direction of the governor, shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. They shall consult with each other and co-ordinate their programs so as to avoid duplication of effort. In connection with these programs they may:

a. Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

b. Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

c. Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

d. Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

e. Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and,

f. Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

2. The board and the department, subject to approval and direction of the governor, shall encourage research on misuse and abuse of controlled substances. In connection with such research, and in furtherance of the enforcement of this chapter, they may in such manner as will best insure co-ordination and avoid duplication of effort:

a. Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

b. Make studies and undertake programs of research to:

(1) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(2) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(3) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

c. Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

3. The board or department, subject to approval and direction of the governor, may enter into contracts for educational and research activities without performance bonds.

4. The board and department, subject to approval and direction of the governor, may jointly authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization shall not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

5. The board and department, subject to approval and direction of the governor, may jointly authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

[C73, 75, 77, 79, 81, §204.509]

C93, §124.509

124.510 Reports of arrests and analyses to department.

Any peace officer who arrests for any crime, any known unlawful user of the drugs described in Schedule I, II, III, or IV, or who arrests any person for a violation of this chapter, or charges any person with a violation of this chapter subsequent to the person's arrest, shall within five days after the arrest or the filing of the charge, whichever is later, report the arrest and the charge filed to the department. The peace officer or any other peace officer or law enforcement agency which makes or obtains any quantitative or qualitative analysis of any substance seized in connection with the arrest

of the person charged, shall report to the department the results of the analysis at the time the arrest is reported or at such later time as the results of the analysis become available.

This information is for the exclusive use of the division of narcotic and drug enforcement, in the department of public safety, and shall not be a matter of public record.

[C73, 75, 77, 79, 81, §204.510]
C93, §124.510

DIVISION VI

MISCELLANEOUS

124.601 Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[C24, 27, 31, 35, §3167; C39, §**3169.23;** C46, 50, 54, 58, 62, §204.24; C66, 71, §204.22; C73, 75, 77, 79, 81, §204.601]
C93, §124.601

124.602 Short title.

This chapter may be cited as the *"Uniform Controlled Substances Act"*.

[C39, §**3169.24;** C46, 50, 54, 58, 62, §204.25; C66, 71, §204.23; C73, 75, 77, 79, 81, §204.602]
C93, §124.602

CHAPTER 124A

IMITATION CONTROLLED SUBSTANCES

This chapter not enacted as a part of this title; transferred from chapter 204A in Code 1993

124A.1 Title.
124A.2 Definitions.
124A.3 Factors indicating an imitation controlled substance.
124A.4 Offenses and penalties.
124A.5 Immunity.

124A.1 Title.

This chapter may be cited as the *"Iowa Imitation Controlled Substances Act"*.

[82 Acts, ch 1147, §4]
C83, §204A.1
C93, §124A.1

124A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Controlled substance"* means a controlled substance as defined in section 124.101, subsection 5.

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

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

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

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

[82 Acts, ch 1147, §5]
C83, §204A.2
C93, §124A.2

124A.3 Factors indicating an imitation controlled substance.

When a substance has not been designated as an imitation controlled substance by the state board of pharmacy examiners and when dosage unit appearance alone does not establish that a substance is an imitation controlled substance the following factors may be considered in determining whether the substance is an imitation controlled substance:

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

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

3. The person in control of the substance ei-

ther demands or receives money or other property having a value substantially greater than the actual value of the substance as consideration for delivery of the substance.

[82 Acts, ch 1147, §6]
C83, §204A.3
C93, §124A.3

124A.4 Offenses and penalties.

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

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

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

[82 Acts, ch 1147, §7]
C83, §204A.4
C93, §124A.4

124A.5 Immunity.

It is not unlawful for a person registered under section 124.302, to manufacture, deliver, or possess an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.

[82 Acts, ch 1147, §8]
C83, §204A.5
C93, §124A.5

CHAPTER 124B

PRECURSOR SUBSTANCES

This chapter not enacted as a part of this title; transferred from chapter 204B in Code 1993

124B.1 Definitions.
124B.2 Reporting required.
124B.3 Identification required.
124B.4 Vendor reporting.
124B.5 Receipt of substance from outside the state — penalty.
124B.6 Exceptions.
124B.7 Reporting form.
124B.8 Missing quantity — reporting.
124B.9 Sale, transfer, furnishing, or receipt for unlawful purpose — penalty.
124B.10 False statement — penalty.
124B.11 Permit requirements — penalty.
124B.12 Permit — refusal, suspension, or revocation.

124B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of pharmacy examiners.

2. *"Controlled substance"* means a controlled substance as defined in section 124.101.

3. *"Practitioner"* means a practitioner as defined in section 155A.3.

4. *"Precursor substance"* means a substance which may be used as a precursor in the illegal production of a controlled substance and is specified under section 124B.2.

5. *"Recipient"* means a person in this state who purchases, transfers, or otherwise receives a precursor substance.

6. *"Vendor"* means a person who manufactures, wholesales, retails, or otherwise sells, transfers, or furnishes in this state a precursor substance.

90 Acts, ch 1251, §10
C91, §204B.1
C93, §124B.1

124B.2 Reporting required.

1. Effective July 1, 1990, a report to the board shall be submitted in accordance with this chapter by a manufacturer, retailer, or other person who sells, transfers, or otherwise furnishes to any person in this state any of the following substances:

a. Anthranilic acid, its esters, and its salts.
b. Benzyl cyanide.
c. Ethylamine and its salts.
d. Ergonovine and its salts.
e. Ergotamine and its salts.
f. 3,4 - methylenedioxyphenyl-2-propanone.
g. N-acetylanthranilic acid, its esters, and its salts.

h. Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

i. Phenylacetic acid, its esters, and its salts.

j. Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.

k. Piperidine and its salts.

l. Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.

m. Methylamine and its salts.

n. Propionic anhydride.

o. Isosafrole.

p. Safrole.

q. Piperonal.

r. N-methylephedrine, its salts, optical isomers, and salts of optical isomers.

s. N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

t. Hydriodic acid.

u. Benzaldehyde.

v. Nitroethane.

w. Gamma-Butyrolactone (also known as GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; or gamma-hydroxy-butyric acid lactone).

2. The board shall administer the regulatory provisions of this chapter and may, by rule adopted pursuant to chapter 17A, add a substance to or remove a substance from the list in subsection 1. In determining whether to add or remove a substance from the list, the board shall consider the following:

a. The likelihood that the substance may be used as a precursor in the illegal production of a controlled substance.

b. The availability of the substance.

c. The appropriateness of including the substance under this chapter or under chapter 124.

d. The extent and nature of legitimate uses for the substance.

3. On or before November 1 of each year, the board shall inform the general assembly of any substances added, deleted, or changed in the list contained in this section and shall provide an explanation of any addition, deletion, or change.

90 Acts, ch 1251, §11
C91, §204B.2
C93, §124B.2
2000 Acts, ch 1140, §17, 18; 2002 Acts, ch 1108, §2, 3
Subsection 1, paragraph o amended
Subsection 1, NEW paragraph w

124B.3 Identification required.

1. Before selling, transferring, or otherwise furnishing any substance specified in section 124B.2 to a person in this state, a vendor shall require proper identification from the purchaser.

2. For the purposes of this section, in the case of a face-to-face purchase, *"proper identification"* means all of the following:

a. A driver's license containing the purchaser's photograph and residential or mailing address, other than a post office box number, or any other official state-issued identification containing this information.

b. The motor vehicle license number of the vehicle owned or operated by the purchaser.

c. A letter of authorization from the person who is making the purchase. The letter shall include the person's business license number and business address, a description as to how the substance will be used, and the purchaser's signature. The vendor shall affix the vendor's signature as a witness to the signature and identification of the purchaser.

3. The board shall provide by rule for the form of proper identification required for purchases which are not face to face.

4. A person who violates this section or rules adopted pursuant to this section commits a simple misdemeanor.

90 Acts, ch 1251, §12
C91, §204B.3
92 Acts, ch 1175, §27
C93, §124B.3
98 Acts, ch 1073, §9

124B.4 Vendor reporting.

1. At least twenty-one days prior to the delivery of a precursor substance to a recipient, the vendor shall submit a report of the transaction to the board. The report must contain the identification information specified under section 124B.3. However, if regular, repeated transactions of a particular precursor substance occur between the vendor and the recipient, the board may authorize the vendor to report the transactions monthly if either of the following conditions exists:

a. A pattern of regular supply of the precursor substance exists between the vendor and the recipient.

b. The recipient has established a record of lawfully using the precursor substance.

2. A vendor who does not submit a report pursuant to this section commits a serious misdemeanor.

90 Acts, ch 1251, §13
C91, §204B.4
C93, §124B.4

124B.5 Receipt of substance from outside the state — penalty.

1. A vendor, recipient, or other person required to report pursuant to this chapter who receives a precursor substance from a source outside the state shall submit a report to the board pursuant to rules adopted by the board.

2. A person who does not submit a report required under this section commits a serious mis-

demeanor.
90 Acts, ch 1251, §14
C91, §204B.5
C93, §124B.5

124B.6 Exceptions.
The requirements of sections 124B.2 through 124B.5 do not apply to any of the following:
1. A licensed pharmacist or other person authorized under chapter 155A to sell or furnish a precursor substance upon the prescription of a practitioner.
2. A practitioner who administers or furnishes a precursor substance to a patient.
3. A vendor who holds a permit issued by the board and who sells, transfers, or otherwise furnishes a precursor substance to a practitioner or a pharmacy as defined in section 155A.3.
4. A sale, transfer, furnishing, or receipt of a drug containing ephedrine, phenylpropanolamine, or pseudoephedrine or of a cosmetic containing a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription in accordance with chapter 126.
90 Acts, ch 1251, §15
C91, §204B.6
C93, §124B.6

124B.7 Reporting form.
1. The board shall adopt rules prescribing a common form for the filing of reports required under this chapter. The rules shall provide that the information which must be submitted shall include but is not limited to all of the following:
a. The name of the precursor substance.
b. The quantity of the precursor substance sold, transferred, or furnished.
c. The date the precursor substance was sold, transferred, or furnished.
d. The name and address of the recipient.
e. The name and address of the vendor.
2. Reports authorized under subsection 1 may be computer-generated and submitted monthly in accordance with rules adopted by the board.
90 Acts, ch 1251, §16
C91, §204B.7
C93, §124B.7

124B.8 Missing quantity — reporting.
A person who is required to report to the board pursuant to this chapter or a person listed as an exception under section 124B.6 shall report to the board either of the following occurrences within seven days of knowledge of the loss or occurrence:
1. Loss or theft of a precursor substance.
2. A difference between the amount of a precursor substance shipped and the amount of a precursor substance received. If applicable, the report shall include the name of the person who transported the precursor substance and the date of shipment.
90 Acts, ch 1251, §17
C91, §204B.8
C93, §124B.8

124B.9 Sale, transfer, furnishing, or receipt for unlawful purpose — penalty.
1. A person who sells, transfers, or otherwise furnishes a precursor substance with knowledge or the intent that the recipient will use the precursor substance to unlawfully manufacture a controlled substance commits a class "C" felony.
2. A person who receives a precursor substance with intent to use the substance unlawfully to manufacture a controlled substance commits a class "C" felony.
90 Acts, ch 1251, §18
C91, §204B.9
C93, §124B.9
See §124.401

124B.10 False statement — penalty.
A person who knowingly makes a false statement in connection with any report or record required to be made under this chapter commits an aggravated misdemeanor.
90 Acts, ch 1251, §19
C91, §204B.10
C93, §124B.10

124B.11 Permit requirements — penalty.
1. A vendor or a recipient who receives a precursor substance from a source outside the state shall obtain a permit for the transaction from the board. However, a permit is not required of a vendor of a drug containing ephedrine, phenylpropanolamine, or pseudoephedrine or of a cosmetic that contains a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished either over the counter without a prescription in accordance with chapter 126 or with a prescription pursuant to chapter 155A.
2. An application for a permit shall be filed in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any precursor substance sold, transferred, or otherwise furnished or received.
3. The board may grant a permit on a form adopted by rule. A permit shall be effective for not more than one year from the date of issuance.
4. An applicant shall pay, at the time of filing an application, a permit fee determined by the board.
5. A permit granted under this chapter may be annually renewed on a date to be determined by the board pursuant to rule, upon the filing of a renewal application and the payment of a permit renewal fee.

6. Permit fees charged by the board shall not exceed the costs incurred by the board in administering this chapter.

7. Selling, transferring, or otherwise furnishing, or receiving a precursor substance without a permit obtained pursuant to this section is a serious misdemeanor.

90 Acts, ch 1251, §20
C91, §204B.11
C93, §124B.11

124B.12 Permit — refusal, suspension, or revocation.

The board shall refuse, suspend, or revoke a permit upon finding that any of the following conditions exist:

1. The permit was obtained through fraud, misrepresentation, or deceit.

2. The permittee has violated or has permitted any employee of the permittee to violate any of the laws of this state relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated this chapter, a rule adopted pursuant to this chapter, or any other rule of the board.

90 Acts, ch 1251, §21
C91, §204B.12
C93, §124B.12

CHAPTER 124C

CLEANUP OF CLANDESTINE LABORATORY SITES

124C.1 Definitions.
124C.2 Powers and duties of the commissioner.
124C.3 Liability to the state.
124C.4 Claim of state.
124C.5 Liability of state employees or persons providing cleanup assistance.
124C.6 Legal remedies.
124C.7 Rulemaking authority.

124C.1 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Clandestine laboratory site"* means a location or operation, including but not limited to buildings or vehicles equipped with glassware, heating devices, and precursors or related reagents and solvents needed to unlawfully prepare or manufacture controlled substances defined in chapter 124.

3. *"Cleanup"* means actions necessary to contain, collect, control, identify, analyze, disassemble, treat, remove, or otherwise disperse all substances and materials, including but not limited to those found to be hazardous waste as defined in section 455B.411 and controlled substances defined in chapter 124, including contamination caused by those chemicals or substances.

4. *"Commissioner"* means the commissioner of public safety.

5. *"Department"* means the department of public safety.

6. *"Hazardous substance"* means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, and other substances defined in rules adopted pursuant to section 455B.381 and controlled substances as defined in chapter 124.

7. *"Person having control over a clandestine laboratory site"* means a person who at any time possesses, produces, handles, stores, uses, transports, or disposes of a hazardous substance or controlled substance used or intended for use at a clandestine laboratory site. A person having control over a clandestine laboratory site does not include persons performing duties listed in section 124C.2 at the direction of the commissioner and does not include a person who is the owner of the property or a person holding a security interest in the property in or upon which the clandestine laboratory site is located unless the person knew that a clandestine laboratory existed in or upon the person's property.

93 Acts, ch 141, §1; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §12, 200, 201
Unnumbered paragraph 1 amended

124C.2 Powers and duties of the commissioner.

1. The commissioner or the commissioner's designee may use funds appropriated or otherwise available to the department for the following purposes:

a. Administrative services for the identification, assessment, and cleanup of clandestine laboratory sites.

b. Payments to other government agencies or private contractors for services consistent with

the management and cleanup of a clandestine laboratory site.

c. Emergency response activities involving clandestine laboratory sites, including surveillance, entry, security, cleanup, and disposal.

The commissioner may request the assistance of other state, federal, and local agencies as necessary.

2. The commissioner shall proceed, pursuant to this section, to collect all costs incurred in cleanup of a clandestine laboratory site from the person having control over a clandestine laboratory site.

3. The commissioner shall make all reasonable efforts to recover the full amount of moneys expended, through litigation or otherwise. Moneys recovered shall be deposited with the treasurer of state and credited to the department of public safety.

93 Acts, ch 141, §2

124C.3 Liability to the state.

A person having control over a clandestine laboratory site shall be strictly liable to the state for all of the following:

1. The reasonable costs incurred by the state as a result of cleanup of the site.

2. The reasonable costs incurred by the state to evacuate people from the area threatened by the clandestine laboratory site.

3. The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from the clandestine laboratory site, including the costs of assessing the injury, destruction, or loss.

93 Acts, ch 141, §3

124C.4 Claim of state.

1. An amount for which a person having control over a clandestine laboratory is liable to the state shall constitute a lien in favor of the state upon all property and rights to property, real and personal, belonging to that person. This lien shall attach at the time the charges set out in section 124C.3 become due and payable and shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing a notice with the appropriate county official of the appropriate county and from the time of filing the lien shall be extended as to the property in that county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions.

2. In order to preserve the lien against subsequent mortgagees, purchasers, or judgment creditors for value and without notice of the lien, the commissioner shall file with the recorder of the county in which the property is located a notice of the lien. A laboratory cleanup lien shall be recorded in the index of income tax liens in the county.

3. Each notice of lien shall be endorsed with the day, hour, and minute when the notice was received, and the notice shall be preserved, indexed, and recorded in the manner provided for recording real estate mortgages. The lien shall be effective from the time of its indexing. The department shall pay a recording fee as provided by section 331.604 for the recording of the lien or for its satisfaction.

4. Upon payment of a charge for which the commissioner has filed a notice of lien with a county, the commissioner shall immediately file with the county a satisfaction of the charge and the satisfaction of the charge shall be indicated on the index.

The attorney general, upon the request of the commissioner, shall bring an action at law or in equity, without bond, to enforce payment of any charges or penalties, and in such action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

The remedies available to the state in this chapter shall be cumulative and no action taken by the commissioner or attorney general shall be construed to be an election on the part of the state to pursue any remedy to the exclusion of any other remedy provided by law.

93 Acts, ch 141, §4; 2002 Acts, ch 1113, §2
Subsection 3 amended

124C.5 Liability of state employees or persons providing cleanup assistance.

The state and its officers or employees are not liable for damages or injury caused by a condition at a clandestine laboratory site or resulting from action or inaction taken by any officers or employees when acting in their official capacity pursuant to this chapter, unless the damage or injury resulted from intentional wrongdoing or gross negligence.

93 Acts, ch 141, §5

124C.6 Legal remedies.

This chapter does not deny a person any legal or equitable rights, remedies, or defenses, or affect any legal relationship other than the legal relationship between the state and a person having control over a clandestine laboratory site.

93 Acts, ch 141, §6

124C.7 Rulemaking authority.

The department may adopt rules pursuant to chapter 17A necessary to administer this chapter.

93 Acts, ch 141, §7

CHAPTER 125

CHEMICAL SUBSTANCE ABUSE

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DIVISION I

INTRODUCTORY PROVISIONS

125.1 Declaration of policy.

It is the policy of this state:

1. That substance abusers and persons suffering from chemical dependency be afforded the opportunity to receive quality treatment and directed into rehabilitation services which will help them resume a socially acceptable and productive role in society.

2. To encourage substance abuse education and prevention efforts and to insure that such efforts are coordinated to provide a high quality of services without unnecessary duplication.

3. To insure that substance abuse programs are being operated by individuals who are qualified in their field whether through formal education or through employment or personal experience.

[C71, 73, §123B.2; C75, 77, 79, 81, §125.1]

[A portion of subsection 1 was inadvertently omitted in the 1993 Code]

125.2 Definitions.

For purposes of this chapter, unless the context clearly indicates otherwise:

1. *"Chemical dependency"* means an addiction or dependency, either physical or psychological, on a chemical substance. Persons who take medically prescribed drugs shall not be considered chemically dependent if the drug is medically prescribed and the intake is proportionate to the medical need.

2. *"Chemical substance"* means alcohol, wine, spirits, and beer as defined in chapter 123 and controlled substances as defined in section 124.101.

3. *"Chief medical officer"* means the medical director in charge of a public or private hospital, or the director's physician-designee. This chapter does not negate the authority otherwise reposed by chapter 226 in the respective superintendents of the state mental health institutes to make decisions regarding the appropriateness of admissions or discharges of patients of those institutes, however, it is the intent of this chapter that a superintendent who is not a licensed physician shall be guided in these decisions by the chief medical officer of the institute.

4. *"Chronic substance abuser"* means a person who meets all of the following criteria:

a. Habitually lacks self control as to the use of chemical substances to the extent that the person is likely to seriously endanger the person's health, or to physically injure the person's self or others, if allowed to remain at liberty without treatment.

b. Lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment.

5. *"Clerk"* means the clerk of the district court.

6. *"Commission"* means the commission on substance abuse within the department.

7. *"Department"* means the Iowa department of public health.

8. *"Director"* means the director of the Iowa department of public health.

9. *"Facility"* means an institution, a detoxification center, or an installation providing care, maintenance and treatment for substance abusers licensed by the department under section 125.13, hospitals licensed under chapter 135B, or the state mental health institutes designated by chapter 226.

10. *"Incapacitated by a chemical substance"* means that a person, as a result of the use of a chemical substance, is unconscious or has the person's judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the need for treatment.

11. *"Incompetent person"* means a person who has been adjudged incompetent by a court of law.

12. *"Interested person"* means a person who, in the discretion of the court, is legitimately concerned that a respondent receive substance abuse treatment services.

13. *"Intoxicated person"* means a person whose mental or physical functioning is substantially impaired as a result of the use of a chemical substance.

14. *"Residence"* means the place where a person resides. For the purpose of determining which Iowa county, if any, is liable pursuant to this chapter for payments of costs attributable to its residents, the following rules shall apply:

a. If a person claims an Iowa homestead, then the person's residence shall be in the county where that homestead is claimed, irrespective of any other factors.

b. If paragraph *"a"* does not apply, and the person continuously has been provided or has maintained living quarters within any county of this state for a period of not less than one year, whether or not at the same location within that county, then the person's residence shall be in that county, irrespective of other factors. However, this paragraph shall not apply to unemancipated persons under eighteen years of age who are wards of this state.

c. If paragraphs *"a"* and *"b"* do not apply, or, if the person is under eighteen years of age, is unemancipated, and is a ward of this state, then the person shall be unclassified with respect to county of residence, and payment of all costs shall be made by the department as provided in this chapter.

d. An unemancipated person under eighteen years of age who is not a ward of the state shall be deemed to reside where the parent having legal custody, or the legal guardian, or legal custodian of that person has residence as determined according to this subsection.

e. The provisions of this subsection shall not be used in any case to which section 125.43 is applicable.

15. *"Respondent"* means a person against whom an application is filed under section 125.75.

16. *"Substance abuse"* means the use of chemical substances by persons suffering from chemical dependency, persons who are incapacitated by a chemical substance, substance abusers, or chronic substance abusers.

17. *"Substance abuser"* means a person who habitually lacks self-control as to the use of chemical substances or uses chemical substances to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted.

[C62, 66, §123A.1; C71, 73, §123A.1, 123B.1; C75, 77, §125.2; C79, 81, §125.2, 229.50; 81 Acts, ch 58, §1; 82 Acts, ch 1212, §1]

86 Acts, ch 1245, §1122; 89 Acts, ch 197, §21; 90 Acts, ch 1085, §1, 2

DIVISION II

SUBSTANCE ABUSE PROGRAM

125.3 Substance abuse program and commission established.

The Iowa department of public health shall include a program which shall develop, implement and administer a comprehensive substance abuse program pursuant to sections 125.1 to 125.43. A commission on substance abuse is created to establish certain policies governing the performance of the department in the discharge of duties imposed on it by this chapter and advise the department on other policies. The commission shall consist of nine members appointed by the governor. Appointments shall be made on the basis of interest in and knowledge of substance abuse, however two of the members shall be persons who, in their regular work, have direct contact with substance abuse clients. Only eligible electors of the state of Iowa shall be appointed.

[C62, 66, 71, 73, §123A.2; C75, 77, 79, 81, §125.3; 81 Acts, ch 58, §2]

86 Acts, ch 1245, §1123

125.4 Terms of office.

Commission members shall be appointed to terms of four years, except that initial appointments to the membership of the commission shall be staggered so that four members shall be appointed to terms of two years and five members shall be appointed to terms of four years. Terms of office shall commence on the first day of July of the year of appointment. Vacancies occurring during a term of office shall be filled for the balance of the unexpired term in the manner of original appointment. No member shall be appointed to serve more than two consecutive four-year terms.

[C62, 66, 71, 73, §123A.3; C75, 77, 79, 81, §125.4]

125.5 Organization of commission.

The commission shall organize annually and shall select from its membership a chairperson and a vice chairperson. The commission shall meet at least four times a year. Other meetings shall be called by the chairperson or upon written request of a majority of the members of the commission. The chairperson shall preside at all meetings or in the chairperson's absence the vice chairperson shall preside. Five members of the commission shall constitute a quorum but the concurrence of a majority of the commission shall be required to determine any matter relating to its duties.

[C62, 66, 71, 73, §123A.4; C75, 77, 79, 81, §125.5]

86 Acts, ch 1245, §1124

125.6 Expenses — compensation.

Each member of the commission on substance abuse shall receive actual expenses incurred in the performance of the member's duties. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

[C62, 66, 71, 73, §123A.4; C75, 77, 79, 81, §125.6]

86 Acts, ch 1245, §1125

125.7 Duties of the commission.

The commission shall:

1. Approve the comprehensive substance abuse program, developed by the department pursuant to sections 125.1 to 125.43.

2. Advise the department on policies governing the performance of the department in the discharge of any duties imposed on it by law.

3. Advise or make recommendations to the governor and the general assembly relative to substance abuse treatment, intervention and education and prevention programs in this state.

4. Promulgate rules for subsections 1 and 6 and review other rules necessary to carry out the provisions of this chapter, subject to review in accordance with chapter 17A.

5. Investigate the work of the department relating to substance abuse, and for this purpose it shall have access at any time to all books, papers, documents and records of the department.

6. Consider and approve or disapprove all applications for a license and all cases involving the renewal, denial, suspension or revocation of a license.

7. Act as the appeal board regarding funding decisions made by the department.

[C71, 73, §123B.3; C75, 77, 79, 81, §125.7]

86 Acts, ch 1245, §1126; 89 Acts, ch 243, §1

125.8 Deputy director's duty. Repealed by 89 Acts, ch 243, § 6.

125.9 Powers of director.

The director may:

1. Plan, establish and maintain treatment, intervention and education and prevention programs as necessary or desirable in accordance with the comprehensive substance abuse program.

2. Make contracts necessary or incidental to the performance of the duties and the execution of the powers of the director, including contracts with public and private agencies, organizations and individuals to pay them for services rendered or furnished to substance abusers, chronic substance abusers, or intoxicated persons.

3. Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to co-operate with the federal government or any of its agencies and the department in making an application for any grant.

4. Co-ordinate the activities of the department and co-operate with substance abuse programs in this and other states, and make contracts and other joint or co-operative arrangements with state, local or private agencies in this and other states for the treatment of substance abusers, chronic substance abusers, and intoxicated persons and for the common advancement of substance abuse programs.

5. Require that a written report, in reasonable detail, be submitted to the director at any time by any agency of this state or of any of its political subdivisions in respect to any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse, which is being conducted by the agency.

6. Submit to the governor a written report of the pertinent facts at any time the director concludes that any agency of this state or of any of its political subdivisions is conducting any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse in a manner not consistent with or which impairs achievement of the objectives of the state plan to combat substance abuse, and has failed to effect appropriate changes in the function or program.

7. Keep records and engage in research and the gathering of relevant statistics.

8. Employ a deputy director who shall be exempt from the merit system. The director may employ other staff necessary to carry out the duties assigned to the director.

9. Do other acts and things necessary or convenient to execute the authority expressly granted to the director.

[C62, 66, §123A.5, 123A.7, 123A.8; C71, 73, §123A.7, 123A.8, 123B.17; C75, 77, §125.9, 224B.4, 224B.6; C79, 81, §125.9]

86 Acts, ch 1245, §1128; 87 Acts, ch 8, §1; 90 Acts, ch 1085, §3

125.10 Duties of director.

The director shall:

1. Prepare and submit a state plan subject to approval by the commission and in accordance with the provisions of 42 U.S.C. sec. 4573. The state plan shall designate the department as the sole agency for supervising the administration of the plan.

2. Develop, encourage, and foster statewide, regional and local plans and programs for the prevention of substance abuse and the treatment of substance abusers, chronic substance abusers, and intoxicated persons in co-operation with public and private agencies, organizations and individuals, and provide technical assistance and consultation services for these purposes.

3. Co-ordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in the prevention of substance abuse and the treatment of substance abusers, chronic substance abusers, and intoxicated persons.

4. Co-operate with the department of human services in establishing and conducting programs to provide treatment for substance abusers, chronic substance abusers, and intoxicated persons.

5. Co-operate with the department of education, boards of education, schools, police departments, courts, and other public and private agencies, organizations, and individuals in establishing programs for the prevention of substance abuse and the treatment of substance abusers, chronic substance abusers, and intoxicated persons, and in preparing relevant curriculum materials for use at all levels of school education.

6. Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of chemical substances.

7. Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of substance abusers, chronic substance abusers, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of chemical substances.

8. Organize and implement, in co-operation with local treatment programs, training programs for all persons engaged in treatment of substance abusers, chronic substance abusers, and intoxicated persons.

9. Sponsor and implement research in co-operation with local treatment programs into the causes and nature of substance abuse and treatment of substance abusers, chronic substance abusers, and intoxicated persons, and serve as a clearing house for information relating to sub-

stance abuse.

10. Specify uniform methods for keeping statistical information by public and private agencies, organizations and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

11. Develop and implement, with the counsel and approval of the commission, a comprehensive plan for treatment of substance abusers, chronic substance abusers, and intoxicated persons.

12. Assist in the development of, and co-operate with, substance abuse education and treatment programs for employees of state and local governments and businesses and industries in the state.

13. Utilize the support and assistance of interested persons in the community, particularly recovered substance abusers and chronic substance abusers, to encourage substance abusers and chronic substance abusers to voluntarily undergo treatment.

14. Co-operate with the commissioner of public safety in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

15. Encourage general hospitals and other appropriate health facilities to admit without discrimination substance abusers, chronic substance abusers, and intoxicated persons and to provide them with adequate and appropriate treatment. The director may negotiate and implement contracts with hospitals and other appropriate health facilities with adequate detoxification facilities.

16. Encourage all health and disability insurance programs to include substance abuse as a covered illness.

17. Review all state health, welfare, education and treatment proposals to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to substance abuse, substance abusers, chronic substance abusers, and intoxicated persons.

[C62, 66, §123A.5; C71, 73, §123B.17; C75, 77, §125.10, 224B.5; C79, 81, §125.10; 81 Acts, ch 58, §3]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1085, §4

125.11 Repealed by 81 Acts, ch 58, § 13.

DIVISION III

TREATMENT PROGRAMS AND FACILITIES

125.12 Comprehensive program for treatment — regional facilities.

1. The commission shall review a comprehensive and co-ordinated program for the treatment of substance abusers, chronic substance abusers, intoxicated persons, and concerned family members. Subject to the review of the commission, the director shall divide the state into appropriate regions for the conduct of the program and establish standards for the development of the program on the regional level. In establishing the regions, consideration shall be given to city and county lines, population concentrations, and existing substance abuse treatment services. In determining the regions, the director is not required to follow the regional map as prepared by the former office for planning and programming.

2. The program of the department shall include:

a. Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital.

b. Inpatient treatment.

c. Residential treatment.

d. Outpatient and follow-up treatment and rehabilitation.

e. Prevention and education.

f. Assessment.

g. Halfway house treatment.

3. The director shall provide for adequate and appropriate treatment for substance abusers, chronic substance abusers, intoxicated persons, and concerned family members admitted under sections 125.33 and 125.34, or under section 125.75, 125.81, or 125.91. Treatment shall not be provided at a correctional institution except for inmates.

4. The director shall maintain, supervise and control all facilities operated by the director pursuant to this chapter.

5. All appropriate public and private resources shall be co-ordinated with and utilized in the program if possible.

6. The director shall prepare, publish and distribute annually a list of all facilities.

7. The director may contract for the use of a facility if the director, pursuant to section 125.44, considers this to be an effective and economical course to follow.

[C75, 77, 79, 81, §125.12; 82 Acts, ch 1212, §23]

86 Acts, ch 1001, §3; 86 Acts, ch 1245, §1129; 90 Acts, ch 1085, §5

125.13 Programs licensed — exceptions.

1. Except as provided in subsection 2, a person shall not maintain or conduct any chemical substitutes or antagonists program, residential program, or nonresidential outpatient program, the primary purpose of which is the treatment and rehabilitation of substance abusers or chronic substance abusers without having first obtained a written license for the program from the department.

Four types of licenses may be issued by the department. A renewable license may be issued for one, two, or three years. A treatment program applying for its initial license may be issued a license for two hundred seventy days. A license issued for

two hundred seventy days shall not be renewed or extended.

2. The licensing requirements of this chapter do not apply to any of the following:

a. A hospital providing care or treatment to substance abusers or chronic substance abusers licensed under chapter 135B which is accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the commission. All survey reports from the accrediting or licensing body must be sent to the department.

b. Any practitioner of medicine and surgery or osteopathic medicine and surgery, in the practitioner's private practice. However, a program shall not be exempted from licensing by the commission by virtue of its utilization of the services of a medical practitioner in its operation.

c. Private institutions conducted by and for persons who adhere to the faith of any well recognized church or religious denomination for the purpose of providing care, treatment, counseling, or rehabilitation to substance abusers or chronic substance abusers and who rely solely on prayer or other spiritual means for healing in the practice of religion of such church or denomination.

d. A program that provides only education, prevention, referral or post treatment services.

e. Alcoholics anonymous.

f. Individuals in private practice who are providing substance abuse treatment services independent from a program that is required to be licensed under subsection 1.

g. Intervention and referral programs which are financed and managed by a county or counties, are staffed by county employees, and do not receive state payments pursuant to a contract under section 125.44.

h. Voluntary, nonprofit groups whose funding is provided solely from nontax sources.

i. A substance abuse treatment program not funded by the department which is accredited or licensed by the joint commission on the accreditation of health care organizations, the commission on the accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the commission. All survey reports from the accrediting or licensing body must be sent to the department.

j. A hospital substance abuse treatment program that is accredited or licensed by the joint commission on the accreditation of health care organizations, the commission on the accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the commission. All survey reports for the hospital substance abuse treatment program from the accrediting or licensing body shall be sent to the department.

[C75, 77, §125.14, 224B.12, 224B.13; C79, 81, §125.13; 81 Acts, ch 58, §4 – 7; 82 Acts, ch 1244, §1, 2]

86 Acts, ch 1001, §4; 89 Acts, ch 243, §2; 90 Acts, ch 1085, §6, 7; 94 Acts, ch 1068, §1; 2002 Acts, ch 1108, §4, 5

Subsection 1, unnumbered paragraph 2 amended
Subsection 2, NEW paragraph j

125.14 Licenses — renewal — fees.

The commission shall meet to consider all cases involving initial issuance, and renewal, denial, suspension, or revocation of a license. The department shall issue a license to an applicant whom the commission determines meets the licensing requirements of this chapter. Licenses shall expire no later than three years from the date of issuance and shall be renewed upon timely application made in the same manner as for initial issuance of a license unless notice of nonrenewal is given to the licensee at least thirty days prior to the expiration of the license. The department shall not charge a fee for licensing or renewal of programs contracting with the department for provision of treatment services. A fee may be charged to other licensees.

[C75, 77, §224B.14, 224B.15; C79, 81, §125.14; 81 Acts, ch 58, §8]

89 Acts, ch 243, §3; 2000 Acts, ch 1140, §19; 2002 Acts, ch 1108, §6

Section amended

125.14A Personnel of a licensed program admitting juveniles.

1. If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a program admitting juveniles subject to licensure under this chapter, or if a person will reside in a facility utilized by such a program, and if the person has been convicted of a crime or has a record of founded child abuse, the department of human services and the program, for an employee of the program, shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department of human services shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services.

2. If the department of human services determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a program licensed under this chapter, or resides in a licensed facility the department shall notify the program that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

3. In an evaluation, the department of human services and the program for an employee of the

program shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department of human services may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be licensed, employed, or to reside in a program, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department of human services has final authority in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this subsection.

4. If the department of human services determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter to operate a program admitting juveniles and shall not be employed by a program or reside in a facility admitting juveniles licensed under this chapter.

5. In addition to the record checks required under this section, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of this section, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random check conducted under this subsection.

6. Beginning July 1, 1994, a program or facility shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

7. On or after July 1, 1994, a program or facility shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

90 Acts, ch 1221, §1; 91 Acts, ch 138, §1; 92 Acts, ch 1163, §33; 94 Acts, ch 1130, §11

125.15 Inspections.

The department may inspect the facilities and review the procedures utilized by any chemical substitutes or antagonists program, residential program, or nonresidential outpatient program that has as a primary purpose the treatment and rehabilitation of substance abusers or chronic substance abusers, for the purpose of ensuring compliance with this chapter and the rules adopted pursuant to this chapter. The examination and review may include case record audits and interviews with staff and patients, consistent with the confidentiality safeguards of state and federal law.

[C75, 77, §224B.16; C79, 81, §125.15]

86 Acts, ch 1245, §1130; 2000 Acts, ch 1140, §20

125.15A Licensure — emergencies.

1. The department may place an employee or agent to serve as a monitor in a licensed substance abuse treatment program or may petition the court for appointment of a receiver for a program when any of the following conditions exist:

a. The program is operating without a license.

b. The commission has suspended, revoked, or refused to renew the existing license of the program.

c. The program is closing or has informed the department that it intends to close and adequate arrangements for the location of clients have not been made at least thirty days before the closing.

d. The department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, and because of the unwillingness or inability of the licensee to remedy the emergency, the department determines that a monitor or receiver is necessary. As used in this paragraph, *"emergency"* means a threat to the health, safety, or welfare of a client that the program is unwilling or unable to correct.

2. The monitor shall observe operation of the program, assist the program with advice regarding compliance with state regulations, and report periodically to the department on the operation of the program.

93 Acts, ch 139, §1

125.16 Transfer of license or change of location prohibited.

A license issued under this chapter may not be transferred, and the location of the physical facilities occupied or utilized by any program licensed under this chapter shall not be changed without the prior written consent of the commission.

[C75, 77, §224B.17; C79, 81, §125.16]

125.17 License suspension or revocation.

Violation of any of the requirements or restrictions of this chapter or of any of the rules properly established pursuant to this chapter is cause for suspension, revocation or refusal to renew a license. The director shall at the earliest time feasible notify a licensee whose license the commission is considering suspending or revoking and shall inform the licensee what changes must be made in the licensee's operation to avoid such action. The

licensee shall be given a reasonable time for compliance, as determined by the director, after receiving such notice or a notice that the commission does not intend to renew the license. When the licensee believes compliance has been achieved, or if the licensee considers the proposed suspension, revocation or refusal to renew unjustified, the licensee may submit pertinent information to the commission who shall expeditiously make a decision in the matter and notify the licensee of the decision.

[C75, 77, §224B.18; C79, 81, §125.17]

125.18 Hearing before commission.

If a licensee under this chapter makes a written request for a hearing within thirty days of suspension, revocation or refusal to renew a license, a hearing before the commission shall be expeditiously arranged by the department of inspections and appeals whose decision is subject to review by the commission. If the role of a commission member is inconsistent with the member's job role or function, or if any commission member feels unable for any reason to disinterestedly weigh the merits of the case before the commission, the member shall not participate in the hearing and shall not be entitled to vote on the case. The commission shall issue a written statement of its findings within thirty days after conclusion of the hearing upholding or reversing the proposed suspension, revocation or refusal to renew a license. Action involving suspension, revocation or refusal to renew a license shall not be taken by the commission unless a quorum is present at the meeting. A copy of the decision shall be promptly transmitted to the affected licensee who may, if aggrieved by the decision, seek judicial review of the actions of the commission in accordance with the terms of chapter 17A.

[C75, 77, §224B.19; C79, 81, §125.18]

86 Acts, ch 1245, §1131

125.19 Reissuance or reinstatement.

After suspension, revocation or refusal to renew a license pursuant to this chapter, the affected licensee shall not have the license reissued or reinstated within one year of the effective date of the suspension, revocation or expiration upon refusal to renew, unless by order of the commission. After that time, proof of compliance with the requirements and restrictions of this chapter and the rules established pursuant to this chapter must be presented to the commission prior to reinstatement or reissuance of a license.

[C75, 77, §224B.20; C79, 81, §125.19]

125.20 Rules.

The department shall establish rules pursuant to chapter 17A requiring facilities to use reasonable accounting and reimbursement systems which recognize relevant cost-related factors for substance abuse patients. A facility shall not be licensed nor shall any payment be made under this chapter to a facility which fails to comply with those rules or which does not permit inspection by the department or examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the department deems relevant to the establishment of such a system. However, rules issued pursuant to this paragraph shall not apply to any facility referred to in section 125.13, subsection 2 or section 125.43.

[C77, §125.13(8); C79, 81, §125.20]

86 Acts, ch 1245, §1132

125.21 Chemical substitutes and antagonists programs.

The commission has exclusive power in this state to approve and license chemical substitutes and antagonists programs, and monitor chemical substitutes and antagonists programs to ensure that the programs are operating within the rules established pursuant to this chapter. The commission shall grant approval and license if the requirements of the rules are met and no state funding is requested. This section requires approval of chemical substitutes and antagonists programs conducted by persons exempt from the licensing requirements of this chapter by section 125.13, subsection 2.

The department may:

1. Provide advice, consultation, and technical assistance to chemical substitutes and antagonists programs.

2. In its discretion, approve local agencies or bodies to assist it in carrying out the provisions of this chapter.

[C75, 77, §224B.21; C79, 81, §125.21; 81 Acts, ch 58, §9]

87 Acts, ch 32, §1; 97 Acts, ch 203, §12

125.22 through 125.24 Transferred to § 125.39 through 125.41 respectively.

125.25 Approval of facility budget.

1. Before making any allocation of funds to a local substance abuse program, the department shall require a detailed line item budget clearly indicating the funds received from each revenue source for the fiscal year for which the funds are requested on forms provided by the department for each program.

2. The department shall adopt rules governing the approval of line item budgets for the operation of facilities. The rules shall include provisions for the approval of a facility's budget by the department.

[C79, 81, §125.25]

86 Acts, ch 1001, §5; 86 Acts, ch 1245, §1133

125.26 through 125.31 Transferred to § 125.43 through 125.48 respectively.

125.32 Acceptance for treatment — rules.
The department shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, subject to chapter 17A, considering available treatment resources and facilities, for the purpose of early and effective treatment of substance abusers, chronic substance abusers, intoxicated persons, and concerned family members. In establishing the rules the department shall be guided by the following standards:

1. If possible a patient shall be treated on a voluntary rather than an involuntary basis.
2. A patient shall be initially assigned or transferred to outpatient treatment, unless the patient is found to require inpatient, residential, or halfway house treatment.
3. A person shall not be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment.
4. An individualized treatment plan shall be prepared and maintained on a current basis for each patient after the assessment process.
5. Provision shall be made for a continuum of co-ordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and may utilize other appropriate treatment.

[C75, 77, §125.15; C79, 81, §125.32]
86 Acts, ch 1001, §6; 86 Acts, ch 1245, §1134; 90 Acts, ch 1085, §8

125.32A Discrimination prohibited.
Any substance abuse treatment program receiving state funding under this chapter or any other chapter of the Code shall not discriminate against a person seeking treatment solely because the person is pregnant, unless the program in each instance identifies and refers the person to an alternative and acceptable treatment program for the person.
90 Acts, ch 1264, §33

125.33 Voluntary treatment of substance abusers.
1. A substance abuser or chronic substance abuser may apply for voluntary treatment or rehabilitation services directly to a facility or to a licensed physician and surgeon or osteopathic physician and surgeon. If the proposed patient is a minor or an incompetent person, a parent, a legal guardian or other legal representative may make the application. The licensed physician and surgeon or osteopathic physician and surgeon or any employee or person acting under the direction or supervision of the physician and surgeon or osteopathic physician and surgeon, or the facility shall not report or disclose the name of the person or the fact that treatment was requested or has been undertaken to any law enforcement officer or law enforcement agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. If the person seeking such treatment or rehabilitation is a minor who has personally made application for treatment, the fact that the minor sought treatment or rehabilitation or is receiving treatment or rehabilitation services shall not be reported or disclosed to the parents or legal guardian of such minor without the minor's consent, and the minor may give legal consent to receive such treatment and rehabilitation.
2. Subject to rules adopted by the department, the administrator or the administrator's designee in charge of a facility may determine who shall be admitted for treatment or rehabilitation. If a person is refused admission, the administrator or the administrator's designee, subject to rules adopted by the department, shall refer the person to another facility for treatment if possible and appropriate.
3. A substance abuser or chronic substance abuser seeking treatment or rehabilitation and who is either addicted or dependent on a chemical substance may first be examined and evaluated by a licensed physician and surgeon or osteopathic physician and surgeon who may prescribe a proper course of treatment and medication, if needed. The licensed physician and surgeon or osteopathic physician and surgeon may further prescribe a course of treatment or rehabilitation and authorize another licensed physician and surgeon or osteopathic physician and surgeon or facility to provide the prescribed treatment or rehabilitation services. Treatment or rehabilitation services may be provided to a person individually or in a group. A facility providing or engaging in treatment or rehabilitation shall not report or disclose to a law enforcement officer or law enforcement agency the name of any person receiving or engaged in the treatment or rehabilitation; nor shall a person receiving or participating in treatment or rehabilitation report or disclose the name of any other person engaged in or receiving treatment or rehabilitation or that the program is in existence, to a law enforcement officer or law enforcement agency. Such information shall not be admitted in evidence in any court, grand jury, or administrative proceeding. However, a person engaged in or receiving treatment or rehabilitation may authorize the disclosure of the person's name and individual participation.
4. If a patient receiving inpatient or residential care leaves a facility, the patient shall be encouraged to consent to appropriate outpatient or halfway house treatment. If it appears to the ad-

ministrator in charge of the facility that the patient is a substance abuser or chronic substance abuser who requires help, the director may arrange for assistance in obtaining supportive services.

5. If a patient leaves a facility, with or against the advice of the administrator in charge of the facility, the director may make reasonable provisions for the patient's transportation to another facility or to the patient's home. If the patient has no home the patient shall be assisted in obtaining shelter. If the patient is a minor or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian or other legal representative or by the minor or incompetent if the patient was the original applicant.

6. Any person who reports or discloses the name of a person receiving treatment or rehabilitation services to a law enforcement officer or law enforcement agency or any person receiving treatment or rehabilitation services who discloses the name of any other person receiving treatment or rehabilitation services without the written consent of the person in violation of the provisions of this section shall upon conviction be guilty of a simple misdemeanor.

[C71, 73, §224A.2, 224A.3; C75, 77, §125.16, 224A.2, 224A.3; C79, 81, §125.33]

86 Acts, ch 1001, §7; 86 Acts, ch 1245, §1135; 90 Acts, ch 1085, §9

125.34 Treatment and services for intoxicated persons and persons incapacitated by alcohol.

1. An intoxicated person may come voluntarily to a facility for emergency treatment. A person who appears to be intoxicated or incapacitated by a chemical substance in a public place and in need of help may be taken to a facility by a peace officer under section 125.91. If the person refuses the proffered help, the person may be arrested and charged with intoxication under section 123.46, if applicable.

2. If no facility is readily available the person may be taken to an emergency medical service customarily used for incapacitated persons. The peace officer in detaining the person and in taking the person to a facility shall make every reasonable effort to protect the person's health and safety. In detaining the person the detaining officer may take reasonable steps for self-protection. Detaining a person under section 125.91 is not an arrest and no entry or other record shall be made to indicate that the person who is detained has been arrested or charged with a crime.

3. A person who arrives at a facility and voluntarily submits to examination shall be examined by a licensed physician as soon as possible after the person arrives at the facility. The person may then be admitted as a patient or referred to another health facility. The referring facility shall arrange for transportation.

4. If a person is voluntarily admitted to a facility, the person's family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, the request shall be respected.

5. A peace officer who acts in compliance with this section is acting in the course of the officer's official duty and is not criminally or civilly liable therefor, unless such acts constitute willful malice or abuse.

6. If the physician in charge of the facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

7. A licensed physician and surgeon or osteopathic physician and surgeon, facility administrator, or an employee or a person acting as or on behalf of the facility administrator, is not criminally or civilly liable for acts in conformity with this chapter, unless the acts constitute willful malice or abuse.

[C75, 77, §125.17; C79, 81, §125.34; 82 Acts, ch 1212, §24]

86 Acts, ch 1001, §8

125.35 Repealed by 82 Acts, ch 1212, § 28. See § 125.91.

125.36 Reserved.

125.37 Records confidential.

1. The registration and other records of facilities shall remain confidential and are privileged to the patient.

2. Notwithstanding subsection 1, the director may make available information from patients' records for purposes of research into the causes and treatment of substance abuse. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

3. Notwithstanding the provisions of subsection 1 of this section a patient's records may be disclosed to medical personnel in a medical emergency with or without the patient's consent.

[C75, 77, §125.20, 224B.23; C79, 81, §125.37]

125.38 Rights and privileges of patients.

1. Subject to reasonable rules regarding hours of visitation which the department may adopt, a patient in a facility shall be granted an opportunity for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

2. Neither mail nor other communication to or from a patient in a facility may be intercepted, read or censored, except that the department may adopt reasonable rules regarding the use of telephones by patients in facilities and the delivery of

chemical substances.

3. The patient shall be provided an opportunity to receive prompt evaluation, emergency services and care as indicated by sound medical practice and treatment which, in the judgment of the chief medical officer of a facility, is most likely to result in the individual's recovery or in the mitigation of the individual's condition to an extent sufficient to permit the individual's discharge from the facility.

[C75, 77, §125.21; C79, 81, §125.38]

86 Acts, ch 1245, §1136

125.39 Eligible entities.

A local governmental unit which is providing funds to a facility for treatment of substance abuse may request from the facility a treatment program plan prior to authorizing payment of any claims filed by the facility. The governing body of the local governmental unit may review the plan, but shall not impose on the facility any requirement conflicting with the comprehensive treatment program of the facility.

[C77, §125.22; C79, 81, §125.39]

86 Acts, ch 1001, §9; 88 Acts, ch 1158, §31; 99 Acts, ch 141, §1

DIVISION IV

ADMINISTRATIVE PROVISIONS — FUNDING

125.40 Criminal laws limitations.

1. No county or city may adopt or enforce a local law, ordinance, resolution or rule having the force of law in contravention of the provisions of this chapter.

2. No county or city may interpret or apply any law of general application to circumvent the provision of subsection 1.

3. Nothing in this chapter affects any law, ordinance, resolution or rule against drunken driving, driving under the influence of alcohol or other chemical substance, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery or other equipment, or regarding the sale, purchase, dispensing, possessing or use of alcoholic beverages or beer at stated times and places or by a particular class of persons or regarding the sale, purchase, possession or use of another chemical substance.

[C75, 77, §125.23; C79, 81, §125.40]

125.41 Judicial review.

Judicial review of the orders or actions of the director may be sought in accordance with the provisions of the Iowa administrative procedure Act.

[C75, 77, §125.24; C79, 81, §125.41]

125.42 Appeals.

An aggrieved party may obtain a review of any final judgment of the court by appeal to the supreme court. The appeal shall be taken as in other civil cases.

[C75, 77, §125.25; C79, 81, §125.42]

125.43 Funding at mental health institutes.

Chapter 230 governs the determination of the costs and payment for treatment provided to substance abusers or chronic substance abusers in a mental health institute under the department of human services, except that the charges are not a lien on real estate owned by persons legally liable for support of the substance abuser or chronic substance abuser and the daily per diem shall be billed at twenty-five percent. The superintendent of a state hospital shall total only those expenditures which can be attributed to the cost of providing inpatient treatment to substance abusers or chronic substance abusers for purposes of determining the daily per diem. Section 125.44 governs the determination of who is legally liable for the cost of care, maintenance, and treatment of a substance abuser or chronic substance abuser and of the amount for which the person is liable.

[C75, 77, §125.26; C79, 81, §125.43]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1067, §21; 86 Acts, ch 1001, §10; 90 Acts, ch 1085, §10

125.43A Prescreening — exception.

Except in cases of medical emergency or court ordered admissions, a person shall be admitted to a state mental health institute for substance abuse treatment only after a preliminary intake and assessment by a department-licensed treatment facility or a hospital providing care or treatment for substance abusers licensed under chapter 135B and accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the commission, or by a designee of a department-licensed treatment facility or a hospital other than a state mental health institute, which confirms that the admission is appropriate to the person's substance abuse service needs. A county board of supervisors may seek an admission of a patient to a state mental health institute who has not been confirmed for appropriate admission and the county shall be responsible for one hundred percent of the cost of treatment and services of the patient.

86 Acts, ch 1001, §11; 92 Acts, ch 1097, §1

125.44 Agreements with facilities — liability for costs.

The director may, consistent with the comprehensive substance abuse program, enter into written agreements with a facility as defined in section 125.2 to pay for one hundred percent of the cost of the care, maintenance, and treatment of sub-

stance abusers and chronic substance abusers, except when section 125.43A applies. All payments for state patients shall be made in accordance with the limitations of this section. Such contracts shall be for a period of no more than one year.

The contract may be in the form and contain provisions as agreed upon by the parties. The contract shall provide that the facility shall admit and treat substance abusers and chronic substance abusers regardless of where they have residence. If one payment for care, maintenance, and treatment is not made by the patient or those legally liable for the patient, the payment shall be made by the department directly to the facility. Payments shall be made each month and shall be based upon the rate of payment for services negotiated between the department and the contracting facility. If a facility projects a temporary cash flow deficit, the department may make cash advances at the beginning of each fiscal year to the facility. The repayment schedule for advances shall be part of the contract between the department and the facility. This section does not pertain to patients treated at the mental health institutes.

If the appropriation to the department is insufficient to meet the requirements of this section, the department shall request a transfer of funds and section 8.39 shall apply.

The substance abuser or chronic substance abuser is legally liable to the facility for the total amount of the cost of providing care, maintenance, and treatment for the substance abuser or chronic substance abuser while a voluntary or committed patient in a facility. This section does not prohibit any individual from paying any portion of the cost of treatment.

The department is liable for the cost of care, treatment, and maintenance of substance abusers and chronic substance abusers admitted to the facility voluntarily or pursuant to section 125.75, 125.81, or 125.91 or section 321J.3 or 124.409 only to those facilities that have a contract with the department under this section, only for the amount computed according to and within the limits of liability prescribed by this section, and only when the substance abuser or chronic substance abuser is unable to pay the costs and there is no other person, firm, corporation, or insurance company bound to pay the costs.

The department's maximum liability for the costs of care, treatment, and maintenance of substance abusers and chronic substance abusers in a contracting facility is limited to the total amount agreed upon by the parties and specified in the contract under this section.

[C71, 73, §123B.4, 123B.8; C75, 77, §125.27, 125.31; C79, §125.44, 125.48; C81, §125.44; 82 Acts, ch 1212, §25]

86 Acts, ch 1001, §12, 13; 86 Acts, ch 1220, §25; 86 Acts, ch 1245, §1137; 89 Acts, ch 243, §4, 5; 90 Acts, ch 1085, §11

125.45 Counties to share cost. Repealed by 86 Acts, ch 1001, § 22.

125.46 County of residence determined.

The facility shall, when a substance abuser or chronic substance abuser is admitted, or as soon thereafter as it receives the proper information, determine and enter upon its records the Iowa county of residence of the substance abuser or chronic substance abuser, or that the person resides in some other state or country, or that the person is unclassified with respect to residence.

[C71, 73, §123B.6; C75, 77, §125.29; C79, 81, §125.46]

90 Acts, ch 1085, §12

125.47 Disputes over payment. Repealed by 86 Acts, ch 1001, § 22.

125.48 List of contracting facilities.

The department shall provide a current list of facilities that have a contract with the department to the clerk of each district court in the state. The clerk shall provide the list to all district court judges and judicial magistrates in the district.

[C81, §125.48]

125.49 through 125.53 Repealed by 86 Acts, ch 1001, § 22.

125.54 Use of funds.

The director is not required to distribute or guarantee funds, except as provided in section 125.59:

1. To any program which does not meet licensing standards,
2. To any program providing unnecessary, duplicative or overlapping services within the same geographical area, or
3. To any program which has adequate resources at its disposal.

[C79, 81, §125.54]

86 Acts, ch 1001, §14

125.55 Audits.

All licensed substance abuse programs are subject to annual audit either by the auditor of state or in lieu of the examination by the auditor of state the substance abuse program may contract with or employ certified public accountants to conduct the audit, in accordance with sections 11.6 and 11.19. The audit format shall be as prescribed by the auditor of state. The certified public accountant shall submit a copy of the audit to the director. A licensed substance abuse program is also subject to special audits as the director requests. The licensed substance abuse program or the department shall pay all expenses incurred by the auditor of state in conducting an audit under this section.

[C79, 81, §125.55; 81 Acts, ch 58, §10; 82 Acts, ch 1166, §1]
89 Acts, ch 264, §5

125.56 Repealed by 82 Acts, ch 1244, § 4.

125.57 Liens abolished. Repealed by 86 Acts, ch 1001, § 22.

125.58 Inspection — penalties.

1. If the department has probable cause to believe that an institution, place, building, or agency not licensed as a substance abuse treatment and rehabilitation facility is in fact a substance abuse treatment and rehabilitation facility as defined by this chapter, and is not exempt from licensing by section 125.13, subsection 2, the commission may order an inspection of the institution, place, building, or agency. If the inspector upon presenting proper identification is denied entry for the purpose of making the inspection, the inspector may, with the assistance of the county attorney of the county in which the premises are located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been violations of this chapter. The investigation may include review of records, reports, and documents maintained by the facility and interviews with staff members consistent with the confidentiality safeguards of state and federal law.

2. A person establishing, conducting, managing, or operating a substance abuse treatment and rehabilitation facility without a license is guilty of a serious misdemeanor. Each day of continued violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing or operating a substance abuse treatment and rehabilitation facility without a license may be temporarily or permanently restrained therefrom by a court of competent jurisdiction in an action brought by the state.

3. Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against a person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a substance abuse treatment and rehabilitation facility without a license.

[81 Acts, ch 58, §12; 82 Acts, ch 1244, §3]

125.59 Transfer of certain revenue — county program funding.

The treasurer of state, on each July 1 for that fiscal year, shall transfer the estimated amounts to be received from section 123.36, subsection 8 and section 123.143, subsection 1 to the department.

1. Of these funds, notwithstanding section 125.13, subsection 1, one-half of the transferred amount shall be used for grants to counties operating a substance abuse program involving only education, prevention, referral or posttreatment services, either with the counties' own employees or by contract with a nonprofit corporation. The grants shall not annually exceed ten thousand dollars to any one county, subject to the following conditions:

a. The money shall be paid to the county after expenditure by the county and submission of the requirements in paragraph *"b"* on the basis of one dollar for each three dollars spent by the county. The county may submit a quarterly claim for reimbursement.

b. The county shall submit an accounting of the expenditures and shall submit an annual financial report, a description of the program, and the results obtained within sixty days after the end of the fiscal year in which the money is granted.

If the transferred amount for this subsection exceeds grant requests funded to the ten thousand dollar maximum, the Iowa department of public health may use the remainder to increase grants pursuant to subsection 2.

2. Of these funds, one-half of the transferred amount shall be used for prevention programs in addition to the amount budgeted for prevention programs by the department in the same fiscal year. The department shall use this additional prevention program money for grants to a county, person, or nonprofit agency operating a prevention program. A grant to a county, person, or nonprofit agency is subject to the following conditions:

a. The money shall be paid to the county, person, or nonprofit agency after submission of the requirements in paragraph *"b"* on the basis of two dollars for each dollar designated for prevention by the county, person, or nonprofit agency.

b. The county, person, or nonprofit agency shall submit a description of the program.

c. The county, person, or nonprofit agency shall submit an annual financial report and the results obtained before June 10 of the same fiscal year in which the money is granted.

The department may consider in-kind contributions received by a county, person, or nonprofit agency for matching purposes required in paragraph *"a"*.

86 Acts, ch 1001, §15; 87 Acts, ch 110, §1; 94 Acts, ch 1068, §2

125.60 Grant formula.

The funding distributed by the department for program grants pursuant to the appropriation received by the department shall be distributed to each county or multicounty area by a formula based on population, need, and other criteria as determined by the department.

86 Acts, ch 1001, §16

125.61 to 125.74 Reserved.

DIVISION V

INVOLUNTARY COMMITMENT OR TREATMENT OF CHRONIC SUBSTANCE ABUSERS

125.75 Involuntary commitment or treatment — application.

Proceedings for the involuntary commitment or treatment of a chronic substance abuser to a facility may be commenced by the county attorney or an interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located or which is the respondent's place of residence. The clerk or the clerk's designee shall assist the applicant in completing the application. The application shall:

1. State the applicant's belief that the respondent is a chronic substance abuser.

2. State any other pertinent facts.

3. Be accompanied by one or more of the following:

a. A written statement of a licensed physician in support of the application.

b. One or more supporting affidavits corroborating the application.

c. Corroborative information obtained and reduced to writing by the clerk or the clerk's designee, but only when circumstances make it infeasible to obtain, or when the clerk considers it appropriate to supplement, the information under either paragraph *"a"* or paragraph *"b"*.

[C75, 77, §125.19(1, 2); C79, 81, §229.51; 82 Acts, ch 1212, §3]

90 Acts, ch 1085, §13

Summary of involuntary commitment procedures available from clerk; see §229.45

125.75A Involuntary commitment or treatment of minors — jurisdiction.

The juvenile court has exclusive original jurisdiction in proceedings concerning a minor for whom an application for involuntary commitment or treatment is filed under section 125.75. In proceedings under this division concerning a minor's involuntary commitment or treatment, the term *"court"*, *"judge"*, or *"clerk"* means the juvenile court, judge, or clerk.

89 Acts, ch 283, §1; 92 Acts, ch 1124, §1

125.75B Dual filings.

An application for involuntary commitment or treatment of a respondent under this chapter may be filed contemporaneously with an application for involuntary hospitalization of the respondent under chapter 229.

98 Acts, ch 1181, §21

125.76 Appointment of counsel for applicant.

The applicant, if not the county attorney, may apply for the appointment of counsel if financially unable to employ an attorney to assist the applicant in presenting evidence in support of the application for commitment. If the applicant applies for the appointment of counsel, the application shall include the submission of a financial statement as required under section 815.9.

[C75, 77, §125.19(10); C79, 81, §229.52(6); 82 Acts, ch 1212, §4]

83 Acts, ch 101, §15; 83 Acts, ch 186, §10044, 10201

125.77 Service of notice.

Upon the filing of an application for involuntary commitment, the clerk shall docket the case and immediately notify a district court judge, a district associate judge, or magistrate who is admitted to the practice of law in this state, who shall review the application and accompanying documentation. The clerk shall send copies of the application and supporting documentation, together with the notice informing the respondent of the procedures required by this division, to the sheriff, for immediate service upon the respondent. If the respondent is taken into custody under section 125.81, service of the application, documentation, and notice upon the respondent shall be made at the time the respondent is taken into custody.

[C75, 77, §125.19(2); C79, 81, §229.51(3); 82 Acts, ch 1212, §5]

91 Acts, ch 108, §1

125.78 Procedure after application.

As soon as practical after the filing of an application for involuntary commitment or treatment, the court shall:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the commitment proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting an attorney. In accordance with those determinations, the court shall allow the respondent to select an attorney or shall assign an attorney to the respondent. If the respondent is financially unable to pay an attorney, the county shall compensate the attorney at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

2. If the application includes a request for a court-appointed attorney for the applicant and the court is satisfied that a court-appointed attorney is necessary to assist the applicant in a meaningful presentation of the evidence, and that the applicant is financially unable to employ an attorney, the court shall appoint an attorney to represent the applicant and the county shall compensate the attorney at an hourly rate to be established by the

county board of supervisors in substantially the same manner as provided in section 815.7.

3. Issue a written order:

a. Scheduling a tentative time and place for a hearing, subject to the findings of the report required under section 125.80, subsections 3 and 4, but not less than forty-eight hours after notice to the respondent, unless the respondent waives the forty-eight-hour notice requirement.

b. Requiring an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report of the examination to the court as required by section 125.80.

[C75, 77, §125.19(1, 2); C79, 81, §229.51(2, 3), 229.52(6); 82 Acts, ch 1212, §6]

84 Acts, ch 1219, §5; 99 Acts, ch 135, §14

125.79 Respondent's attorney informed.

The court shall direct the clerk to furnish at once to the respondent's attorney, copies of the application for involuntary commitment of the respondent and the supporting documentation, and of the court's order issued pursuant to section 125.78, subsection 3. If the respondent is taken into custody under section 125.81, the attorney shall also be advised of that fact. The respondent's attorney shall represent the respondent at all stages of the proceedings and shall attend the commitment hearing.

[82 Acts, ch 1212, §7]

125.80 Physician's examination — report — scheduling of hearing.

1. An examination of the respondent shall be conducted within a reasonable time and prior to the commitment hearing by one or more licensed physicians as required by the court's order. If the respondent is taken into custody under section 125.81, the examination shall be conducted within twenty-four hours after the respondent is taken into custody. If the respondent desires, the respondent may have a separate examination by a licensed physician of the respondent's own choice. The court shall notify the respondent of the right to choose a physician for a separate examination. The reasonable cost of the examinations shall be paid from county funds upon order of the court if the respondent lacks sufficient funds to pay the cost.

A licensed physician conducting an examination pursuant to this section may consult with or request the participation in the examination of facility personnel, and may include with or attach to the written report of the examination any findings or observations by facility personnel who have been consulted or have participated in the examination.

If the respondent is not taken into custody under section 125.81, but the court is subsequently informed that the respondent has declined to be examined by a licensed physician pursuant to the court order, the court may order limited detention of the respondent as necessary to facilitate the examination of the respondent by the licensed physician.

2. A written report of the examination by a court-designated physician shall be filed with the clerk prior to the hearing date. A written report of an examination by a physician chosen by the respondent may be similarly filed. The clerk shall immediately:

a. Cause a report to be shown to the judge who issued the order.

b. Cause the respondent's attorney to receive a copy of the report of a court-designated physician.

3. If the report of a court-designated physician is to the effect that the respondent is not a chronic substance abuser, the court, without taking further action, may terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of a court-designated physician is to the effect that the respondent is a chronic substance abuser, the court shall schedule a commitment hearing as soon as possible. The hearing shall be held not more than forty-eight hours after the report is filed, excluding Saturdays, Sundays, and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exist for delaying the hearing.

[C75, 77, §125.19(1 – 4); C79, 81, §229.51, 229.52(1, 2); 82 Acts, ch 1212, §8]

90 Acts, ch 1085, §14

125.81 Immediate custody.

If a person filing an application requests that a respondent be taken into immediate custody, and the court upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is a chronic substance abuser who is likely to injure the person or other persons if allowed to remain at liberty, the court may enter a written order directing that the respondent be taken into immediate custody by the sheriff, and be detained until the commitment hearing, which shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next business day. The court may order the respondent detained for the period of time until the hearing is held, and no longer except as provided in section 125.88, in accordance with subsection 1 if possible, and if not, then in accordance with subsection 2 or, only if neither of these alternatives is available in accordance with subsection 3. Detention may be:

1. In the custody of a relative, friend, or other suitable person who is willing and able to accept responsibility for supervision of the respondent,

with reasonable restrictions as the court may order including but not limited to restrictions on or a prohibition of any expenditure, encumbrance, or disposition of the respondent's funds or property.

2. In a suitable hospital, the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered. The hospital may provide treatment which is necessary to preserve the respondent's life, or to appropriately control the respondent's behavior which is likely to result in physical injury to the person or to others if allowed to continue, and other treatment as deemed appropriate by the chief medical officer.

3. In the nearest facility which is licensed to care for persons with mental illness or substance abuse, provided that detention in a jail or other facility intended for confinement of those accused or convicted of a crime shall not be ordered.

The respondent's attorney may be allowed by the court to present evidence and arguments before the court's determination under this section. If such an opportunity is not provided at that time, respondent's attorney shall be allowed to present evidence and arguments after the issuance of the court's order of confinement and while the respondent is confined.

[82 Acts, ch 1212, §9]

90 Acts, ch 1085, §15; 91 Acts, ch 108, §2; 92 Acts, ch 1072, §1; 92 Acts, ch 1165, §1

125.82 Commitment hearing.

1. At a commitment hearing, evidence in support of the contentions made in the application shall be presented by the applicant, or by an attorney for the applicant, or by the county attorney if the county attorney is the applicant. During the hearing the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of other interested persons. If the respondent is present at the hearing, as provided in subsection 3, and has been medicated within twelve hours, or a longer period of time as the court may designate, prior to the beginning of the hearing or a session of the hearing, the court shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

2. A person not necessary for the conduct of the hearing shall be excluded, except that the court may admit a person having a legitimate interest in the hearing. Upon motion of the applicant, the court may exclude the respondent from the hearing during the testimony of a witness if the court determines that the witness' testimony is likely to cause the respondent severe emotional trauma.

3. The person who filed the application and a physician or professional who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless prior to the hearing the court for good cause finds that their presence is not necessary. The respondent shall be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing that the attorney has conversed with the respondent, and that in the attorney's judgment the respondent cannot make a meaningful contribution to the hearing, or that the respondent has waived the right to be present, and the basis for the attorney's conclusions. A stipulation to the respondent's absence shall be reviewed by the court before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by the respondent's absence.

4. The respondent's welfare is paramount, and the hearing shall be tried as a civil matter and conducted in as informal a manner as is consistent with orderly procedure. Discovery as permitted under the Iowa rules of civil procedure is available to the respondent. The court shall receive all relevant and material evidence, but the court is not bound by the rules of evidence. A presumption in favor of the respondent exists, and the burden of evidence and support of the contentions made in the application shall be upon the person who filed the application. If upon completion of the hearing the court finds that the contention that the respondent is a chronic substance abuser has not been sustained by clear and convincing evidence, the court shall deny the application and terminate the proceeding.

5. If the respondent is not taken into custody under section 125.81, but the court finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order limited detention of the respondent as authorized in section 125.81, as is necessary to ensure that the respondent will not depart from the jurisdiction of the court without the court's approval until the proceeding relative to the respondent has been concluded.

[C75, 77, §125.19(3-7, 10, 13); C79, 81, §229.52(1); 82 Acts, ch 1212, §10]

90 Acts, ch 1085, §16; 91 Acts, ch 108, §3

125.83 Placement for evaluation.

If upon completion of the commitment hearing, the court finds that the contention that the respondent is a chronic substance abuser has been sustained by clear and convincing evidence, the court shall order the respondent placed at a facility or under the care of a suitable facility on an outpatient basis as expeditiously as possible for a complete evaluation and appropriate treatment. The court shall furnish to the facility at the time of admission or outpatient placement, a written statement of facts setting forth the evidence on which the finding is based. The administrator of the facility shall report to the court no more than fifteen days after the individual is admitted to or placed under the care of the facility, which shall include the chief medical officer's recommendation

concerning substance abuse treatment. An extension of time may be granted for a period not to exceed seven days upon a showing of good cause. A copy of the report shall be sent to the respondent's attorney who may contest the need for an extension of time if one is requested. If the request is contested, the court shall make an inquiry as it deems appropriate and may either order the respondent released from the facility or grant extension of time for further evaluation. If the administrator fails to report to the court within fifteen days after the individual is admitted to the facility, and no extension of time has been requested, the administrator is guilty of contempt and shall be punished under chapter 665. The court shall order a rehearing on the application to determine whether the respondent should continue to be held at the facility.

[C75, 77, §125.19(4); C79, 81, §229.52(2); 82 Acts, ch 1212, §11]

90 Acts, ch 1020, §1; 90 Acts, ch 1085, §17

125.83A Placement in certain federal facilities.

1. If upon completion of the commitment hearing, the court finds that the contention that the respondent is a chronic substance abuser has been sustained by clear and convincing evidence, and the court is furnished evidence that the respondent is eligible for care and treatment in a facility operated by the veterans administration or another agency of the United States government and that the facility is willing to receive the respondent, the court may so order. The respondent, when so placed in a facility operated by the veterans administration or another agency of the United States government within or outside of this state, shall be subject to the rules of the veterans administration or other agency, but shall not lose any procedural rights afforded the respondent by this chapter. The chief officer of the facility shall have, with respect to the respondent so placed, the same powers and duties as the chief medical officer of a hospital in this state would have in regard to submission of reports to the court, retention of custody, transfer, convalescent leave, or discharge. Jurisdiction is retained in the court to maintain surveillance of the respondent's treatment and care, and at any time to inquire into the respondent's condition and the need for continued care and custody.

2. Upon receipt of a certificate stating that a respondent placed under this chapter is eligible for care and treatment in a facility operated by the veterans administration or another agency of the United States government which is willing to receive the respondent without charge to the state of Iowa or any county in the state, the chief medical officer may transfer the respondent to that facility. Upon so doing, the chief medical officer shall notify the court which ordered the respondent's placement in the same manner as would be required in the case of a transfer under section 125.86, subsection 2, and the respondent transferred shall be entitled to the same rights as the respondent would have under that subsection. No respondent shall be transferred under this section who is confined pursuant to conviction of a public offense or whose placement was ordered upon contention of incompetence to stand trial by reason of mental illness, without prior approval of the court which ordered that respondent's placement.

3. A judgment or order of commitment by a court of competent jurisdiction of another state or the District of Columbia, under which any person is hospitalized or placed in a facility operated by the veterans administration or another agency of the United States government, shall have the same force and effect with respect to that person while the person is in this state as the judgment or order would have if the person were in the jurisdiction of the court which issued it. That court shall be deemed to have retained jurisdiction of the person so placed for the purpose of inquiring into that person's condition and the need for continued care and custody, as do courts in this state under this section. Consent is given to the application of the law of the state or district in which the court is situated which issued the judgment or order as regards authority of the chief officer of any facility, operated in this state by the veterans administration or another agency of the United States government, to retain custody, transfer, place on convalescent leave, or discharge the person so committed.

97 Acts, ch 159, §2

125.84 Evaluation report.

The facility administrator's report to the court of the chief medical officer's substance abuse evaluation of the respondent shall be made no later than the expiration of the time specified in section 125.83. At least two copies of the report shall be filed with the clerk, who shall distribute the copies in the manner described by section 125.80, subsection 2. The report shall state one of the four following alternative findings:

1. That the respondent does not, as of the date of the report, require further treatment for substance abuse. If the report so states, the court shall order the respondent's immediate release from involuntary commitment and terminate the proceedings.

2. That the respondent is a chronic substance abuser who is in need of full-time custody, care, and treatment in a facility, and is considered likely to benefit from treatment. If the report so states, the court shall enter an order which may require the respondent's continued placement and commitment to a facility for appropriate treatment.

3. That the respondent is a chronic substance abuser who is in need of treatment, but does not require full-time placement in a facility. If the re-

port so states, the report shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis, and the court shall enter an order which may direct the respondent to submit to the recommended treatment. The order shall provide that if the respondent fails or refuses to submit to treatment, as directed by the court's order, the court may order that the respondent be taken into immediate custody as provided by section 125.81 and, following notice and hearing held in accordance with the procedures of sections 125.77 and 125.82, may order the respondent treated as a patient requiring full-time custody, care, and treatment as provided in subsection 2, and may order the respondent involuntarily committed to a facility.

4. That the respondent is a chronic substance abuser who is in need of treatment, but in the opinion of the chief medical officer is not responding to the treatment provided. If the report so states, the report shall include the facility administrator's recommendation for alternative placement, and the court shall enter an order which may direct the respondent's transfer to the recommended placement or to another placement after consultation with respondent's attorney and the facility administrator who made the report under this subsection.

[82 Acts, ch 1212, §12]

90 Acts, ch 1020, §2; 90 Acts, ch 1085, §18

125.85 Custody, discharge, and termination of proceeding.

1. A respondent committed under section 125.84, subsection 2, shall remain in the custody of a facility for treatment for a period of thirty days, unless sooner discharged. The department is not required to pay the cost of any medication or procedure provided to the respondent during that period which is not necessary or appropriate to the specific objectives of detoxification and treatment of substance abuse. At the end of the thirty-day period, the respondent shall be discharged automatically unless the administrator of the facility, before expiration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 125.75, for a further period not to exceed ninety days.

2. A respondent recommitted under subsection 1 who has not been discharged by the facility before the end of the ninety-day period shall be discharged at the expiration of that period unless the administrator of the facility, before expiration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 125.75, for a further period not to exceed ninety days.

3. Upon the filing of an application for recommitment under subsection 1 or 2, the court shall schedule a recommitment hearing for no later than ten days after the date the application is filed. A copy of the application, the notice of hearing, and any reports shall be served or provided in the manner and to the persons as required by sections 125.77 to 125.80, 125.83 and 125.84.

4. Following a respondent's discharge from a facility or from treatment, the administrator of the facility shall immediately report that fact to the court which ordered the respondent's commitment or treatment. The court shall issue an order confirming the respondent's discharge from the facility or from treatment, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by regular mail to the facility and the respondent.

5. A person who is placed for evaluation at a facility under section 125.83 or who is committed to a facility under section 125.84, subsection 2, shall remain at that facility unless discharged or otherwise permitted to leave by the court or administrator of the facility. If a person placed at a facility or committed to a facility leaves the facility without permission or without having been discharged, the administrator may notify the sheriff of the person's absence and the sheriff shall take the person into custody and return the person promptly to the facility.

[C75, 77, §125.19; C79, 81, §229.52(3 – 5), 229.53; 82 Acts, ch 1212, §13]

92 Acts, ch 1072, §2; 99 Acts, ch 144, §1

125.86 Periodic reports required.

1. No more than thirty days after entry of a court order for commitment to a facility under section 125.84, subsection 2, and thereafter at successive intervals not to exceed ninety days for as long as involuntary commitment of the respondent continues, the administrator of the facility shall report to the court which entered the order. The report shall be submitted in the manner required by section 125.84, shall state whether in the opinion of the chief medical officer the respondent's condition has improved, remains unchanged, or has deteriorated, and shall indicate the further length of time the respondent will be required to remain at the facility.

2. No more than sixty days after entry of a court order for treatment of a respondent under section 125.84, subsection 3, and thereafter at successive intervals not to exceed ninety days for as long as involuntary treatment continues, the administrator of the facility shall report to the court which entered the order. The report shall be submitted in the manner required by section 125.84, shall state whether in the opinion of the chief medical officer the respondent's condition has improved, remains unchanged, or has deteriorated, and shall indicate the further length of time the respondent will require treatment by the facility. If the respondent fails or refuses to submit to treatment as ordered by the court, the administra-

tor of the facility shall at once notify the court, which shall order the respondent committed for treatment as provided by section 125.84, subsection 3, unless the court finds that the failure or refusal was with good cause, and that the respondent is willing to receive treatment as provided in the court's order, or in a revised order if the court sees fit to enter one. If the administrator of the facility reports to the court that the respondent requires full-time custody, care, and treatment in a facility, and the respondent is willing to be admitted voluntarily to the facility for these purposes, the court may enter an order approving the placement upon consultation with the administrator of the facility in which the respondent is to be placed. If the respondent is unwilling to be admitted voluntarily to the facility, the procedure for determining involuntary commitment, as provided in section 125.84, subsection 3, shall be followed.

[82 Acts, ch 1212, §14]

125.87 Status during appeal.

If a respondent appeals to the supreme court from a lower court's finding that commitment is warranted, the respondent shall remain committed if already in custody, pursuant to an order of immediate custody under section 125.81 or pursuant to an order for evaluation and treatment under section 125.83, before notice of appeal was filed, unless the supreme court orders otherwise.

[82 Acts, ch 1212, §15]

125.88 Status if commitment delayed.

If a court directs a respondent who was previously ordered taken into immediate custody under section 125.81 to be placed at a facility for evaluation and appropriate treatment under section 125.83, and no suitable facility can immediately admit the respondent, the respondent shall remain in custody as previously ordered by the court, notwithstanding the time limits stated in section 125.81, until a suitable facility can admit the respondent. The court shall take appropriate steps to expedite the admission of the respondent to a suitable facility at the earliest feasible time.

[82 Acts, ch 1212, §16]

125.89 Respondents charged with or convicted of crime.

1. If a court orders a respondent placed at a facility for evaluation and treatment under section 125.83 at a time when the respondent has been convicted of a public offense, or when there is pending against the respondent an unresolved formal charge of a public offense, and the respondent's liberty has therefore been restricted in any manner, the findings of fact required by section 125.83 shall clearly so inform the administrator of the facility where the respondent is placed.

2. The commitment powers of the court under section 124.409 supersede the procedures and requirements of this division.

[82 Acts, ch 1212, §17]

125.90 Judicial hospitalization referee.

Judicial hospitalization referees shall be utilized as provided in section 229.21 for performing the duties of the court prescribed by this division.

[C79, 81, §229.51(3); 82 Acts, ch 1212, §18]

125.91 Emergency detention.

1. The procedure prescribed by this section shall only be used for an intoxicated person who has threatened, attempted, or inflicted physical self-harm or harm on another, and is likely to inflict physical self-harm or harm on another unless immediately detained, or who is incapacitated by a chemical substance, if that person cannot be taken into immediate custody under sections 125.75 and 125.81 because immediate access to the court is not possible.

2. A peace officer who has reasonable grounds to believe that the circumstances described in subsection 1 are applicable, may, without a warrant, take or cause that person to be taken to the nearest available facility referred to in section 125.81, subsection 2 or 3. Such an intoxicated or incapacitated person may also be delivered to a facility by someone other than a peace officer upon a showing of reasonable grounds. Upon delivery of the person to a facility under this section, the chief medical officer may order treatment of the person, but only to the extent necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue. The peace officer or other person who delivered the person to the facility shall describe the circumstances of the matter to the administrator. If the administrator in consultation with the chief medical officer has reasonable grounds to believe that the circumstances in subsection 1 are applicable, the administrator shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. The magistrate shall immediately proceed to the facility where the person is detained, except that if the administrator's communication with the magistrate occurs between the hours of midnight and seven a.m. and the magistrate deems it appropriate under the circumstances described by the administrator, the magistrate may delay going to the facility, and in that case, shall give the administrator verbal instructions either directing that the person be released forthwith, or authorizing the person's continued detention at the facility. In the latter case, the magistrate shall:

a. Arrive at the facility where the person is being detained as soon as possible and no later than twelve o'clock noon of the same day on which the administrator's communication occurred.

b. By the close of business on the next working

day file with the clerk a written report stating the substance of the communication with the administrator on which the person's continued detention was ordered.

3. Upon arrival at the facility, the magistrate shall at once review the validity of the detention. Unless convinced upon initial inquiry that there are no grounds for further detention of the person, the magistrate shall ensure that the person has or is provided legal counsel at the earliest practical time in the manner prescribed by section 125.78, subsection 1, and shall arrange for the counsel to be present, if practical, before proceeding further under this subsection. The magistrate shall immediately notify counsel of the respondent's emergency detention. Counsel shall be afforded an opportunity to visit the respondent and to make appropriate preparations before or after the magistrate's order is issued. If the magistrate finds, upon review of the information presented by the administrator under subsection 2 and of other information or evidence the magistrate deems relevant, that there is probable cause to believe that the circumstances described in subsection 1 are applicable, the magistrate shall enter a written order detaining the person at the facility, or, if the facility where the person is at the time is not an appropriate facility, detaining and transporting the person to an appropriate facility. The magistrate's order shall state the circumstances under which the person was detained or otherwise delivered to a facility, and the grounds supporting the finding of probable cause to believe that person is a chronic substance abuser likely to physically injure the person or others if not detained. The order shall be filed with the clerk in the county where it is anticipated that an application will be filed under section 125.75, and a certified copy of the order shall be delivered to the administrator of the facility where the person is detained, at the earliest practical time.

4. The chief medical officer of the facility shall examine and may detain the person pursuant to the magistrate's order for a period not to exceed forty-eight hours from the time the order is dated, excluding Saturdays, Sundays, and holidays, unless the order is dismissed by a magistrate. The facility may provide treatment which is necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue or is otherwise deemed medically necessary by the chief medical officer, but shall not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility and released from detention no later than the expiration of the forty-eight-hour period, unless an application for involuntary commitment is filed with the clerk pursuant to section 125.75. The detention of a person by the procedure in this section, and not in excess of the period of time prescribed by this section, shall not render the peace officer, physician, or facility detaining the person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, or facility had reasonable grounds to believe that the circumstances described in subsection 1 were applicable.

5. The cost of detention in a facility under the procedure prescribed in this section shall be paid in the same way as if the person had been committed to the facility pursuant to an application filed under section 125.75.

[C75, 77, §125.17, 125.18; C79, 81, §125.34(4), 125.35; 82 Acts, ch 1212, §19]

90 Acts, ch 1085, §19

125.92 Rights and privileges of committed persons.

A person who is detained, taken into immediate custody, or committed under this division has the right to:

1. Prompt evaluation, emergency services, and care and treatment as indicated by sound clinical practice.

2. Render informed consent, except for treatment provided pursuant to sections 125.81 and 125.91. If the person is incompetent treatment may be consented to by the person's next of kin or guardian notwithstanding the person's refusal. If the person refuses treatment which in the opinion of the chief medical officer is necessary or if the person is incompetent and the next of kin or guardian refuses to consent to the treatment or no next of kin or guardian is available the facility may petition a court of appropriate jurisdiction for approval to treat the person.

3. The protection of the person's constitutional rights.

4. Enjoy all legal, medical, religious, social, political, personal, and working rights and privileges, which the person would enjoy if not detained, taken into immediate custody, or committed, consistent with the effective treatment of the person and of the other persons in the facility. If the person's rights are restricted, the physician's direction to that effect shall be noted in the person's record. The person or the person's next of kin or guardian shall be advised of the person's rights and be provided a written copy upon the person's admission to or arrival at the facility.

[82 Acts, ch 1212, §20]

125.93 Commitment records — confidentiality.

Records of the identity, diagnosis, prognosis, or treatment of a person which are maintained in connection with the provision of substance abuse treatment services are confidential, consistent with the requirements of section 125.37, and with the federal confidentiality regulations authorized by the Drug Abuse Office and Treatment Act, 21 U.S.C. sec. 1175 (1976) and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treat-

ment and Rehabilitation Act, 42 U.S.C. sec. 4582 (1976).

[82 Acts, ch 1212, §21]

125.94 Supreme court rules.

The supreme court may prescribe rules of pleading, practice, and procedure and the forms of process, writs, and notices under section 602.4201, for all commitment proceedings in a court of this state under this chapter. The rules shall be drawn for the purpose of simplifying and expediting the proceedings, so far as is consistent with the rights of the parties involved. The rules shall not abridge, enlarge, or modify the substantive rights of a party to a commitment proceeding under this chapter.

[82 Acts, ch 1212, §22]

83 Acts, ch 186, §10045, 10201

CHAPTER 126

DRUGS, DEVICES, AND COSMETICS

See §205.11 – 205.13 for additional provisions relating to administration and enforcement
This chapter not enacted as a part of this title; transferred from chapter 203B in Code 1993

126.1 Title.
126.2 Definitions — applicability.
126.3 Prohibited acts.
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126.8 Minor violations.
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126.10 Drugs and devices — misbranding — labeling.
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126.12 New drugs.
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126.20 Chapter not applicable to commercial feed.
126.21 Chapter not applicable to animal drugs.
126.22 Nitrous oxide.
126.23 Gamma-hydroxybutyrate.
126.24 Anthrax.
126.25 Human immunodeficiency virus home testing kits — prohibition — penalties.
126.26 Notice of conviction under chapter.

126.1 Title.

This chapter may be cited as the *"Iowa Drug, Device, and Cosmetic Act"*.

89 Acts, ch 197, §1
CS89, §203B.1
C93, §126.1

126.2 Definitions — applicability.

As used in this chapter, unless the context otherwise requires:

1. *"Advertising"* means any representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

2. *"Anabolic steroid"* means any anabolic steroid, including, but not limited to oxymetholone, oxandrolone, ethylestrenol, methandrostenolone, stanozolol, nandrolone phenpropionate, nandrolone decanoate, and any other substance designated by the board as an anabolic steroid through the adoption of rules pursuant to chapter 17A.

3. *"Board"* means the board of pharmacy examiners.

4. *"Contaminated with filth"* means not securely protected from dust, dirt, and as far as is necessary by all reasonable means, from all foreign or injurious contaminations.

5. *"Cosmetic"* means any of the following, but does not include soap:

a. An article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of a human body for cleaning, beautifying, promoting attractiveness, or altering the appearance.

b. An article intended for use as a component of an article defined in paragraph *"a"*.

6. *"Counterfeit drug"* means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any such likeness, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed the drug and which falsely purports

or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

7. *"Device"* means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory of any of these, which is any of the following:

a. Recognized as a device in the official United States Pharmacopoeia National Formulary or any supplement to it.

b. Intended for use in the diagnosis of diseases or other conditions, or in the cure, mitigation, treatment, or prevention of diseases or other conditions in a human.

c. Intended to affect the structure or any function of the body of a human, and which does not achieve any of its principal intended purposes through chemical action within or on the body of a human and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

8. *"Drug"* means any of the following, but does not include a device:

a. An article recognized as a drug in the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to either document.

b. An article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in a human.

c. An article, other than food, intended to affect the structure or any function of the body of a human.

d. An article intended for use as a component of any articles specified in paragraphs *"a"*, *"b"*, or *"c"*.

9. *"Federal Act"* means the federal Food, Drug, and Cosmetic Act, which is codified in 21 U.S.C. § 301 et seq.

10. *"Immediate container"* does not include a package liner.

11. *"Label"* means a display of written, printed, or graphic matter upon the immediate container of an article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper of the retail package of the article, or is easily legible through the outside container or wrapper.

12. *"Labeling"* means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying an article.

13. *"New drug"* means either of the following:

a. Any drug, the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling, except that a drug not so recognized is not a new drug if at any time prior to the enactment of this chapter it was subject to the federal Act, and if at that time its labeling contained the same representations concerning the conditions of its use.

b. Any drug, the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, recommended, or suggested in its labeling, has become recognized as safe and effective, but which has not, other than in such investigations, been used to a material extent or for a material time under the conditions prescribed, recommended, or suggested in its labeling.

14. *"Official compendium"* means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to either document.

15. *"Person"* means an individual, partnership, corporation, or association.

16. *"Principal display panel"* means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

17. *"Safe"* as used in this chapter has reference to the health of a human.

18. *"Secretary"* means the secretary of the United States department of health and human services.

The provisions of this chapter regarding the selling of drugs, devices, or cosmetics are applicable to the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such article, in the conduct of any drug, device, or cosmetic establishment.

89 Acts, ch 197, §2
CS89, §203B.2
90 Acts, ch 1078, §1
C93, §126.2

126.3 Prohibited acts.

The following acts and the causing of the acts within this state are unlawful:

1. The introduction or delivery for introduction into commerce of any drug, device, or cosmetic that is adulterated or misbranded.

2. The adulteration or misbranding of any drug, device, or cosmetic in commerce.

3. The receipt in commerce of a drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

4. The introduction or delivery for introduction into commerce of a drug, device, or cosmetic in

violation of section 126.12.

5. The dissemination of any false advertising.

6. The refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by section 126.18; or the failure to establish or maintain any record or make any report required under section 512(j), 512(l), or 512(m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record.

7. The manufacture within this state of a drug, device, or cosmetic that is adulterated or misbranded.

8. The giving of a guaranty or undertaking referred to in section 126.5, subsection 2, if the guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect, signed by, and containing the name and address of, the person residing in this state from whom the person received the drug, device, or cosmetic in good faith.

9. The removal or disposal of a detained or embargoed drug, device, or cosmetic in violation of section 126.6, subsection 1.

10. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a drug, device, or cosmetic, if the act is done while the article is held for sale, whether or not it would be the first sale, after shipment in commerce; and if the action results in the article being adulterated or misbranded.

11. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using a mark, stamp, tag, label, or other identification device authorized or required by rules or regulations adopted under this chapter or the federal Act.

12. Making, selling, disposing of, or keeping in possession, control, or custody, or concealing a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another trademark, trade name, mark, imprint, or device or a likeness of any trademark, trade name, mark, imprint, or device upon a drug or drug container or the labeling thereof so as to render the drug a counterfeit drug.

13. The doing of an act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

14. The use by a person to the person's own advantage, or the revealing, other than to the board or to the person's authorized representative or to the courts when relevant in a judicial proceeding under this chapter, of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection.

15. The use, on the labeling of a drug or device or in advertising relating to a drug or device, of a representation or suggestion that approval of an application with respect to the drug or device is in effect under section 126.12 or section 505, 515, or 520(g) of the federal Act, or that the drug or device complies with the provisions of any of those sections.

16. The use, in labeling, advertising, or other sales promotion of a reference to a report or analysis furnished in compliance with section 126.18 or section 704 of the federal Act.

17. If a prescription drug is distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the prescription drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer the drug who makes written request for information as to the drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. This subsection does not exempt any person from a labeling requirement imposed by or under this chapter.

18. *a.* Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trademark, trade name, or other identifying mark or imprint of another trademark, trade name, mark, or imprint or any likeness of such a trademark, trade name, mark, or imprint.

b. Selling, dispensing, disposing of; causing to be sold, dispensed, or disposed of; or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, a drug, device, or container thereof, with knowledge that the trademark, trade name, or other identifying mark or imprint of another trademark, trade name, mark, or imprint or any likeness of any trademark, trade name, mark, or imprint has been placed thereon in a manner prohibited by paragraph *"a"*.

c. Making, selling, disposing of; causing to be made, sold, or disposed of; keeping in possession, control, or custody; or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another trademark, trade name, mark, or imprint or any likeness of any trademark, trade name, mark, or imprint upon a drug or container or labeling thereof so as to render the drug a counterfeit drug.

19. The failure to register in accordance with section 510 of the federal Act, the failure to provide any information required by section 510(j) or 510(k) of the federal Act, or the failure to provide a notice required by section 510(j)(2) of the federal Act.

20. *a.* The failure or refusal to:

(1) Comply with a requirement prescribed under section 518 or 520(g) of the federal Act.

(2) Furnish any notification or other material

or information required by or under section 519 or 520(g) of the federal Act.

b. With respect to any device, the submission of any report required by or under this chapter that is false or misleading in any material respect.

21. The movement of a device in violation of an order under section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained.

22. The failure to provide the notice required by section 412(b) or 412(c) of the federal Act, the failure to make the reports required by section 412(d)(1)(B) of the federal Act, or the failure to meet the requirements prescribed under section 412(d)(2) of the federal Act.

23. Selling, dispensing, or distributing; causing to be sold, dispensed, or distributed; or possessing with intent to sell, dispense, or distribute, an anabolic steroid to a person under eighteen years of age, with knowledge that the anabolic steroid is not necessary for the legitimate treatment of disease pursuant to an order of a physician.

89 Acts, ch 197, §3
CS89, §203B.3
90 Acts, ch 1078, §2
C93, §126.3

126.4 Injunction proceedings.

The board may apply to the district court for, and the court has jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of section 126.3 whether or not there exists an adequate remedy at law.

89 Acts, ch 197, §4
CS89, §203B.4
C93, §126.4

126.5 Penalties — guaranty — false advertising liability.

1. A person who violates a provision of this chapter, other than a violation of section 126.3, subsection 23, is guilty of a serious misdemeanor; but if the violation is committed after a conviction of the person under this section has become final, the person is guilty of an aggravated misdemeanor.

2. A person is not subject to the penalties of subsection 1 if the person establishes a guaranty or undertaking signed by, and containing the name and address of another person residing in this state from whom the person received the article in good faith, to the effect that the article is not adulterated or misbranded.

3. A publisher, radio-broadcast licensee, or agency or medium which disseminates false advertising, except the manufacturer, packer, distributor, or seller of the article to which false advertising relates, is not liable under this section for the dissemination of the false advertising, unless the person knew or believed that the advertising was deceptive, false, or misleading or the person has refused upon the request of the board to furnish the board the name and address, if known, of the manufacturer, packer, distributor, seller, or advertising agency which caused the person to disseminate the advertisement.

4. A person who violates section 126.3, subsection 23, commits an aggravated misdemeanor.

5. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*.

89 Acts, ch 197, §5
CS89, §203B.5
90 Acts, ch 1078, §3, 4; 92 Acts, ch 1062, §2
C93, §126.5

126.6 Embargo.

1. If a duly authorized agent of the board finds, or has probable cause to believe, that a drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, or is in violation of section 126.12, the agent shall affix to the article a tag or other appropriate marking, giving notice that the article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the court. It is unlawful for a person to remove or dispose of the detained or embargoed article by sale or otherwise without such permission.

2. When an article is adulterated or misbranded or is in violation of section 126.12 and has been detained or embargoed, a petition may be filed with the district court in whose jurisdiction the article is located, detained, or embargoed for an order for condemnation of the article. If a duly authorized agent has found that an article which is embargoed or detained is not adulterated or misbranded, the agent shall remove the tag or other marking.

3. If the court finds that a sampled, detained, or embargoed article is adulterated or misbranded, the article shall be destroyed at the expense of the claimant of the article, under the supervision of the agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of the article or the claimant's agent; but if the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after costs, fees, storage, and other expenses have been paid and a good and sufficient bond, conditioned that the article shall be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant for such labeling or processing under the supervision of a duly authorized agent of the board. The expense of supervision shall be paid by the claimant. The article shall be returned to the

claimant and the bond shall be discharged on the representation to the court by the board that the article is no longer in violation of this chapter, and that the expenses of supervision have been paid.

89 Acts, ch 197, §6
CS89, §203B.6
C93, §126.6

126.7 Prosecutions.

The attorney general, or a county attorney, or a city attorney to whom the board reports a violation of this chapter, shall cause appropriate court proceedings to be instituted without delay and to be prosecuted in the manner required by law. Before a violation of this chapter is reported to any such attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present the person's views before the board or its agent, either orally or in writing, in person or by attorney, with regard to the contemplated proceeding. However, the drug, device, or cosmetic shall be embargoed by the duly authorized agent.

89 Acts, ch 197, §7
CS89, §203B.7
C93, §126.7

126.8 Minor violations.

This chapter does not require the board to report minor violations for prosecution, or for the institution of proceedings under this chapter, if the board believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

89 Acts, ch 197, §8
CS89, §203B.8
C93, §126.8

126.9 Drugs and devices — adulteration.

A drug or device is adulterated under any of the following circumstances:

1. *a.* If it consists in whole or in part of any filthy, putrid, or decomposed substance.

b. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health.

c. If it is a drug and the methods used in, or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that the drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

d. If its container is composed, in whole or part, of any poisonous or deleterious substance which may render the contents injurious to health.

2. If it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in the official compendium. A determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the official compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal Act. A drug defined in an official compendium is not adulterated under this subsection because it differs from the standard of strength, quality, or purity set forth in the official compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. If a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States it is subject to the United States Pharmacopoeia National Formulary unless it is labeled and offered for sale as a homeopathic drug, in which case it is subject to the Homeopathic Pharmacopoeia of the United States and not to the United States Pharmacopoeia National Formulary.

3. If it is not subject to subsection 2 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

4. If it is a drug and any substance has been mixed or packed with it so as to reduce its quality or strength, or any substance has been substituted for it wholly or in part.

5. If it is, or purports to be or is represented as, a device which is subject to a performance standard established under section 514 of the federal Act, unless the device is in all respects in conformity with such standard.

6. If it is a device banned by the board or by the United States food and drug administration.

7. If it is a device and the methods used in, or the facilities or controls used for its manufacture, packing, storage, or installation are not in conformity with applicable requirements under section 520(f)(1) of the federal Act or an applicable condition as prescribed by an order under section 520(f)(2) of the federal Act.

8. If it is a device for which an exemption has been granted under section 520(g) of the federal Act for investigational use and the person who was granted the exemption or any investigator who uses the device under the exemption fails to comply with a requirement prescribed by or under that section.

89 Acts, ch 197, §9
CS89, §203B.9
C93, §126.9

126.10 Drugs and devices — misbranding — labeling.

A drug or device is misbranded under any of the following circumstances:

1. If its labeling is false or misleading in any particular.

2. If in a package form unless it bears a label containing both of the following:

a. The name and place of business of the manufacturer, packer, or distributor.

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

However, under paragraph *"a"* reasonable variations shall be permitted, and exemptions as to small packages shall be allowed, in accordance with rules adopted by the board.

3. If any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. If it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such a substance, which derivative, after investigation, has been designated as habit forming, by rules adopted by the board under this chapter or by regulations adopted by the secretary pursuant to section 502(d) of the federal Act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning — May Be Habit Forming."

5. *a.* If it is a drug, unless both of the following apply:

(1) Its label bears, to the exclusion of any other nonproprietary name except the applicable systematic chemical name or the chemical formula:

(a) The established name of the drug, as specified in paragraph *"c"*, if such exists; and

(b) If the drug is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subparagraph subdivision, applies only to prescription drugs.

(2) For a prescription drug, the established name of the prescription drug or of an ingredient is printed, on the label and on any labeling on which a name for the prescription drug or an ingredient is used, prominently and in type at least half as large as that used thereon for any proprietary name or designation for the prescription drug or ingredient. However, to the extent that compliance with subparagraph (1), subparagraph subdivision (b) or this subparagraph is impracticable, exemptions shall be allowed under rules or regulations adopted by the board or the secretary under the federal Act.

b. If it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name, as defined in paragraph *"d"*, prominently printed in type at least half as large as that used thereon for any proprietary name or designation for the device, except that to the extent compliance with this paragraph is impracticable, exemptions shall be allowed under rules or regulations adopted by the board or the secretary under the federal Act.

c. As used in paragraph *"a"*, the term *"established name"*, with respect to a drug or ingredient thereof, means one of the following:

(1) The applicable official name designated pursuant to section 508 of the federal Act.

(2) If no such official name exists and the drug or ingredient is an article recognized in an official compendium, then its official title in the compendium.

(3) If neither subparagraph (1) nor (2) applies, then the common or usual name, if any, of the drug or ingredient. However, if subparagraph (2) applies to an article recognized in the United States Pharmacopoeia National Formulary and in the Homeopathic Pharmacopoeia of the United States under different official titles, the official title used in the United States Pharmacopoeia National Formulary applies unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia of the United States applies.

d. As used in paragraph *"b"*, the term *"established name"* with respect to a device means one of the following:

(1) The applicable official name of the device pursuant to section 508 of the federal Act.

(2) If no such official name exists and the device is an article recognized in an official compendium, then its official title in the compendium.

(3) If neither subparagraph (1) nor (2) applies, then any common or usual name of the device.

6. Unless its labeling bears both of the following:

a. Adequate directions for use.

b. Adequate warnings against use in those pathological conditions, or by children, where its use may be dangerous to health, or against unsafe dosage or methods or durations of administration or application, in the manner and form necessary for the protection of users.

However, if a requirement of paragraph *"a"*, as applied to a drug or device, is not necessary for the protection of the public health, the board or the secretary shall adopt rules or regulations exempting the drug or device from that requirement.

7. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed in the official compendium. However, the method of packing may be modified with the consent of the board or the secretary. If a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States, it is subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it is subject to the Homeopathic Pharmacopoeia of the United States, and not to the United States Pharmacopoeia National Formulary. However, if an inconsistency exists between this subsection and subsection 5 as to the name by which the drug or its ingredients shall be designated, subsection 5 prevails.

8. If it has been found by the board or the secretary to be a drug liable to deterioration, unless it is packaged in the form and manner, and its label bears a statement of the precautions that the board or the secretary by rule or regulation requires as necessary for the protection of public health. Such a rule or regulation shall not be established for a drug recognized in an official compendium until the board or the secretary has informed the appropriate body charged with the revision of the official compendium of the need for such packaging or labeling requirements and that body has failed within a reasonable time to prescribe such requirements.

9. *a.* If it is a drug and its container is so made, formed, or filled as to be misleading.

b. If it is an imitation of another drug.

c. If it is offered for sale under the name of another drug.

10. If it is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in its labeling.

11. If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless both of the following apply:

a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal Act.

b. The certificate or release is in effect with respect to the drug.

12. If it is, or purports to be, or is represented as a drug, composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless both of the following apply:

a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal Act.

b. The certificate or release is in effect with respect to the drug.

However, this subsection does not apply to any drug or class of drugs exempted by regulations adopted under section 507(c) or 507(d) of the federal Act.

13. If it is a color additive, the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to that color additive, as contained in regulations adopted under section 706 of the federal Act.

14. If it is a prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor includes in all advertising and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to the prescription drug a true statement of all of the following:

a. The established name as defined in subsection 5, printed prominently and in type at least half as large as that used for any trade or brand name thereof.

b. The formula showing quantitatively each ingredient of the prescription drug to the extent required for labels under subsection 5.

c. Other information in brief summary relating to side effects, contraindications, and effectiveness as required in regulations adopted pursuant to section 701(e) of the federal Act.

15. If it was manufactured, prepared, propagated, compounded, or processed in an establishment in this state not duly registered under section 510 of the federal Act, if it was not included on a list required by section 510(j) of the federal Act, if a notice or other information respecting it was not provided as required by that section or section 510(k) of the federal Act, or if it does not bear the symbols from the uniform system for identification of devices prescribed under section 510(e) of the federal Act that are required by regulation.

16. If it is a drug and its packaging or labeling is in violation of an applicable regulation adopted pursuant to section 3 or 4 of the federal Poison Prevention Packaging Act of 1970, 15 U.S.C. § 1471 et seq.

17. If a trademark, trade name, or other identifying mark, imprint, or device of another trademark, trade name, mark, or imprint or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

18. In the case of a restricted device distributed or offered for sale in this state, if either of the following applies:

a. Its advertising is false or misleading in any particular.

b. It is sold, distributed, or used in violation of regulations adopted pursuant to section 520(e) of the federal Act.

19. In the case of a restricted device distributed or offered for sale in this state, unless the manufacturer, packer, or distributor includes in all advertising and other descriptive printed matter issued by the manufacturer, packer, or distributor with respect to the device both of the following:

a. A true statement of the device's established name as defined in subsection 5, printed prominently and in type at least half as large as that used for any trade or brand name thereof.

b. A brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications; and in the case of a specific device made subject to regulations adopted pursuant to the federal Act, a full description of the components of the device or the formula showing quantitatively each ingredient of the device to the extent required in regulations under the federal Act.

20. If it is a device subject to a performance standard established under section 514 of the federal Act, unless it bears labeling as prescribed in that performance standard.

21. If it is a device and there was a failure or refusal to comply with any requirement prescribed under section 518 of the federal Act respecting the device, or to furnish material required by or under section 519 of the federal Act respecting the device.

If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates, under the conditions of use prescribed in the labeling or advertising or under customary or usual conditions of use.

The representation of a drug, in its labeling, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

89 Acts, ch 197, §10
CS89, §203B.10
C93, §126.10

126.11 Exemptions in cases of drugs and devices — dispensing by prescription only.

1. The board shall adopt rules exempting from any labeling or packaging requirement of this chapter drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packaged, on condition that such drugs and devices are not adulterated or misbranded upon removal from the processing, labeling, or repacking establishment.

2. Drug and device labeling or packaging exemptions adopted pursuant to the federal Act shall apply to drugs and devices in this state except insofar as modified or rejected by rules adopted by the board.

3. *a.* This lettered paragraph applies to a drug intended for use by humans which is any of the following:

(1) Is a habit-forming drug to which section 126.10, subsection 4 applies.

(2) Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug.

(3) Is limited by an approved application under section 505 of the federal Act to use under the professional supervision of a practitioner licensed by law to administer the drug.

Such a drug shall be dispensed only upon a written prescription of a practitioner licensed by law to administer the drug, or upon an oral prescription of such a practitioner which is reduced promptly to writing and filed by the pharmacist, or by refilling any such written or oral prescription if the refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to this paragraph while the drug is held for sale results in the drug being misbranded.

b. A drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer the drug is exempt from section 126.10, except subsection 1, subsection 9, paragraphs *"b"* and *"c"*, and subsections 11 and 12, and the packaging requirements of subsections 7, 8, and 16, if the drug bears a label containing the name and address of the dispenser, the date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in the prescription. This exemption does not apply to a drug dispensed in the course of the conduct of the business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of

paragraph *"a"* of this subsection.

c. The board may, by rule, remove a drug subject to section 126.10, subsection 4, and section 505 of the federal Act from the requirements of paragraph *"a"* of this subsection when such requirements are not necessary for the protection of the public health.

d. A drug which is subject to paragraph *"a"* of this subsection is misbranded if, at any time prior to dispensing, its label fails to bear the statement: "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which paragraph *"a"* of this subsection does not apply is misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

e. Prescription drug samples dispensed by a practitioner licensed by law to administer such drugs are exempt from section 126.10.

89 Acts, ch 197, §11
CS89, §203B.11
C93, §126.11

126.12 New drugs.

1. A person shall not sell, deliver, offer for sale, hold for sale, or give away a new drug unless both of the following apply:

a. An application with respect to the new drug has been approved and the approval has not been withdrawn under section 505 of the federal Act.

b. A copy of the letter of approval or approvability issued by the United States food and drug administration is on file with the secretary of the board, if the product is manufactured in this state.

2. A person shall not use in humans a new drug limited to investigational use unless the person has filed with the United States food and drug administration a completed and signed "Notice of Claimed Investigational Exemption for a New Drug" form in accordance with 21 C.F.R. § 312.1 and the exemption has not been terminated. The drug shall be plainly labeled in compliance with section 505(i) or 507(d) of the federal Act.

3. This section does not apply to either of the following:

a. A drug which is not a new drug as defined in the federal Act.

b. A drug which is licensed under the federal Public Health Service Act of July 1, 1944, 42 U.S.C. § 201 et seq. or under the Animal Virus, Serum, Toxin, Antitoxin Act of March 4, 1913, 21 U.S.C. § 151 et seq.

89 Acts, ch 197, §12
CS89, §203B.12
C93, §126.12

126.13 Reserved.

126.14 Cosmetics — adulteration.

A cosmetic is adulterated if any of the following apply:

1. It bears or contains a poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in its labeling or under customary or usual conditions of use. However, this does not apply to coal-tar hair dye if the label of the dye bears the following legend conspicuously displayed: "Caution — This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness"; and the label bears adequate directions for the preliminary testing. For the purposes of this subsection and subsection 5, *"hair dye"* does not include eyelash dyes or eyebrow dyes.

2. It consists in whole or in part of any filthy, putrid, or decomposed substance.

3. It has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

4. Its container is composed, in whole or in part, of a poisonous or deleterious substance which may render the contents injurious to health.

5. It is not a hair dye and it is, or it bears or contains a color additive which is, unsafe within the meaning of section 706(a) of the federal Act.

89 Acts, ch 197, §13
CS89, §203B.14
C93, §126.14

126.15 Cosmetics — misbranding.

A cosmetic is misbranded if any of the following apply:

1. Its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing both of the following:

a. The name and place of business of the manufacturer, packer, or distributor.

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label.

3. A word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed there with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. Its container is so made, formed, or filled as to be misleading.

5. It is a color additive, unless its packaging and labeling are in conformity with the packaging

and labeling requirements applicable to that color additive prescribed under section 706 of the federal Act. This subsection does not apply to packages of color additives which, with respect to their use of cosmetics, are marketed and intended for use only in or on hair dyes, as specified in section 126.14, subsection 1.

6. Its packaging or labeling is in violation of an applicable regulation adopted pursuant to section 3 or 4 of the federal Poison Prevention Packaging Act of 1970, 15 U.S.C. § 1471 et seq.

The board shall adopt rules exempting from any labeling requirement of this chapter, cosmetics which are in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where they are originally processed or packed, on condition that such cosmetics are not adulterated or misbranded upon removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act apply to cosmetics in this state except as modified or rejected by rules adopted by the board.

89 Acts, ch 197, §14
CS89, §203B.15
C93, §126.15

126.16 False advertising.

1. The advertising of a drug, device, or cosmetic is false if it is false or misleading in any particular.

2. For the purpose of this chapter, advertising is false if it represents a drug, device, or cosmetic to have any effect in the diagnosis, prevention, or treatment of arthritis, blood disorders, bone or joint diseases, kidney diseases or disorders, cancer, diabetes, gall bladder disease or disorders, heart and vascular disease, high blood pressure, diseases or disorders of the ear, mental disease or mental retardation, degenerative neurological diseases, paralysis, prostate gland disorders, conditions of the scalp affecting hair loss, baldness, endocrine disorders, sexual impotence, tumors, venereal diseases, varicose ulcers, breast enlargement, purifying blood, metabolic disorders, immune system disorders or conditions affecting the immune system, extension of life expectancy, stress and tension, brain stimulation or performance, the body's natural defense mechanisms, blood flow, and depression. However, advertising not in violation of subsection 1 is not false under this subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices. However, if the board determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named in this subsection, the board shall by rule authorize the advertising of drugs having curative or therapeutic effect for such disease, subject to the conditions and restrictions the board deems necessary in the interests of the public health. However, this subsection does not indicate that self-medication for diseases other than those named in this subsection is safe and efficacious.

89 Acts, ch 197, §15
CS89, §203B.16
C93, §126.16

126.17 Rules — hearings.

1. The board may adopt rules pursuant to chapter 17A for the efficient enforcement of this chapter. The board may make the rules adopted under this chapter conform, insofar as practicable, with those regulations adopted pursuant to the federal Act.

2. Hearings authorized or required by this chapter shall be conducted by the board or by an officer, agent, or employee designated by the board.

89 Acts, ch 197, §16
CS89, §203B.17
C93, §126.17

126.18 Inspections.

1. *a.* For purposes of enforcement of this chapter, the board or any of its authorized agents, upon presenting appropriate credentials to the owner, operator, or agent in charge, may do both of the following:

(1) Enter at reasonable times any factory, warehouse, or other establishment in which drugs, devices, or cosmetics are manufactured, processed, packed, or held, for introduction into commerce or after such introduction; or enter a vehicle being used to transport or hold drugs, devices, or cosmetics in commerce.

(2) Inspect at reasonable times and within reasonable limits and in a reasonable manner such a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, and obtain samples necessary to the enforcement of this chapter. In the case of a factory, warehouse, establishment, or consulting laboratory in which prescription drugs are manufactured, processed, packed, or held, the inspection shall extend to all things therein, including records, files, papers, processes, controls, and facilities, bearing on whether prescription drugs or restricted devices which are adulterated or misbranded or which may not be manufactured, introduced into commerce, or sold or offered for sale by reason of any provision of this chapter, have been or are being manufactured, processed, packed, transported, or held in violation of or bearing on a violation of this chapter. An inspection authorized for prescription drugs by the preceding sentence shall

not extend to financial data, sales data other than shipment data, pricing data, personnel data other than data as to qualifications of technical and professional personnel performing functions subject to this chapter, and research data other than data relating to new drugs, and antibiotic drugs, and devices, and subject to reporting and inspection under regulations lawfully issued pursuant to section 505(i) or 505(j), or section 507(d) or 507(g), section 519, or section 520(g) of the federal Act, and data, relating to other drugs, or devices which in the case of a new drug would be subject to reporting or inspection under lawful regulations issued pursuant to section 505(j) of the federal Act. The inspection shall be commenced and completed with reasonable promptness.

b. Paragraph *"a"* does not apply to any of the following:

(1) Pharmacies which maintain establishments in conformance with laws of this state regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs, or devices, upon prescription of practitioners licensed to administer the drugs or devices to patients under the care of the practitioners in the course of their professional practice, and which do not, either through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail.

(2) Practitioners licensed by law to prescribe or administer drugs or prescribe or use devices, and who manufacture, prepare, propagate, compound, or process drugs, or manufacture or process devices solely for use in the course of their professional practice.

(3) Persons who manufacture, prepare, propagate, compound, or process drugs, or manufacture or process devices solely for use in research, teaching, or chemical analysis and not for sale.

(4) Duly employed sales representatives of pharmaceutical companies acting in the normal and customary performance of their duties.

(5) Other classes of persons the board exempts from the application of this section by rule upon a finding that inspection as applied to such classes of persons in accordance with this section is not necessary for the protection of the public health.

2. Upon completion of an inspection of a factory, warehouse, consulting laboratory, or other establishment and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by the authorized agent which, in the judgment of the authorized agent, indicate that any drug, device, or cosmetic in the establishment meets either of the following:

a. Consists in whole or in part of a filthy, putrid, or decomposed substance.

b. Has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

A copy of the report shall be sent promptly to the board.

3. If the authorized agent making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the authorized agent shall give to the owner, operator, or agent in charge a receipt describing the sample obtained.

4. A person required under this chapter or section 519 or 520(g) of the federal Act to maintain records and a person who is in charge or custody of such records shall, upon request of an authorized agent designated by the board, permit the authorized agent at all reasonable times to have access and to copy and verify such records.

5. For the purposes of enforcing this chapter, carriers engaged in commerce, and persons receiving drugs, devices, or cosmetics in commerce or holding such articles so received, shall, upon the request of a duly authorized agent of the board, permit the agent, at reasonable times, to have access to and to copy all records showing the movement in commerce of a drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof. It is unlawful for any such carrier or person to fail to permit such access to and copying of any such record so requested when the request is accompanied by a statement in writing specifying the nature or kind of drug, device, or cosmetic to which the request relates.

6. Evidence obtained under this section or evidence which is directly or indirectly derived from such evidence obtained under this section, shall not be used in a criminal prosecution of the person from whom the evidence was obtained; and carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of drugs, devices, or cosmetics in the usual course of business as carriers.

89 Acts, ch 197, §17
CS89, §203B.18
C93, §126.18

126.19 Publicity.

1. The board may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charges and their disposition.

2. The board may also cause to be disseminated information regarding drugs, devices, or

cosmetics, in situations involving, in the opinion of the board, imminent danger to health, or gross deception of the consumer. This section does not prohibit the board from collecting, reporting, and illustrating the results of investigations by the board.

89 Acts, ch 197, §18
CS89, §203B.19
C93, §126.19

126.20 Chapter not applicable to commercial feed.

This chapter does not apply to the Iowa Commercial Feed Law of 1974 under chapter 198 or to administrative rules adopted pursuant to chapter 198.

89 Acts, ch 197, §19
CS89, §203B.20
C93, §126.20

126.21 Chapter not applicable to animal drugs.

This chapter does not apply to drugs intended for use for animals and not for humans.

89 Acts, ch 197, §20
CS89, §203B.21
C93, §126.21

126.22 Nitrous oxide.

1. *Unlawful possession.* Any person who possesses nitrous oxide or any substance containing nitrous oxide, with the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or who knowingly and with the intent to do so is under the influence of nitrous oxide or any material containing nitrous oxide, is guilty of a serious misdemeanor. This subsection shall not apply to a person who is under the influence of nitrous oxide or any material containing nitrous oxide for the purpose of medical, surgical, or dental care by a person duly licensed to administer such an agent.

2. *Unlawful distribution.* Any person who distributes nitrous oxide, or possesses nitrous oxide with intent to distribute to any other person, if such distribution is with the intent to induce unlawful inhaling of the substance or is with the knowledge that the other person will unlawfully inhale the substance, is guilty of a serious misdemeanor.

97 Acts, ch 39, §6

126.23 Gamma-hydroxybutyrate.

1. *Unlawful possession.* Any person who possesses gamma-hydroxybutyrate (also known as gamma-hydroxybutyric acid, or GHB), or any substance containing gamma-hydroxybutyrate, commits an aggravated misdemeanor. This subsection shall not apply to any person who obtains or possesses gamma-hydroxybutyrate or any material containing gamma-hydroxybutyrate pursuant to a lawful order of a physician or other authorized prescriber for the legitimate treatment of disease.

2. *Unlawful distribution.* Any person who distributes gamma-hydroxybutyrate, or possesses gamma-hydroxybutyrate with the intent to distribute to any other person, commits an aggravated misdemeanor if the person intends to promote or allow the unlawful use of the substance or if the person knows that the other person will use the substance for unlawful purposes.

97 Acts, ch 95, §1

126.24 Anthrax.

1. *Unlawful possession.* Any person who knowingly possesses bacillus anthracis or any substance containing bacillus anthracis is guilty of a class "C" felony.

2. *Unlawful distribution.* Any person who knowingly distributes bacillus anthracis or any substance containing bacillus anthracis to any other person, which may or may not cause exposure to bacillus anthracis, is guilty of a class "B" felony.

3. *Exceptions.* This section shall not apply to a person who possesses or distributes bacillus anthracis or any substance containing bacillus anthracis which is being used solely for a purpose which is lawfully authorized under federal law.

2002 Acts, ch 1092, §1
NEW section

126.25 Human immunodeficiency virus home testing kits — prohibition — penalties.

1. A person shall not advertise for sale, offer for sale, or sell in this state a home testing kit for human immunodeficiency virus antibody or antigen testing. The Iowa department of public health, in consultation with the board, shall adopt rules to establish what constitutes a home testing kit for the purposes of this section.

2. A person who violates this section is guilty of a class "D" felony.

3. The board may seek relief pursuant to section 126.4 restraining any person from violating the provisions of this section. In addition to granting a temporary or permanent injunction, the court may impose a civil penalty not to exceed forty thousand dollars per violation of this section.

4. In addition to other remedies provided for in this chapter, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section.

5. The board may refer available evidence concerning a possible violation of this section to the attorney general. The attorney general, with or without such a referral, may institute appropriate criminal proceedings or may refer the case to the appropriate county attorney.

6. This section does not apply to a newspaper or other print medium in which the advertisement appears, or to a broadcast station or other electronic medium which disseminates the advertisement unless the medium knowingly violates this section. A person who sells home testing kits for human immunodeficiency virus antibody or antigen testing shall not cause advertising of the kits to appear in this state from a location outside this state where such advertising is not prohibited without prominently indicating in the advertisement that the sale of the kits is void in this state.

88 Acts, ch 1231, §1
C89, §203A.21
89 Acts, ch 197, §26
CS89, §203B.25
C93, §126.25
97 Acts, ch 21, §1

126.26 Notice of conviction under chapter.

If a person enters a plea of guilty, or forfeits bail or collateral deposited to secure the person's appearance in court, and the forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation.

93 Acts, ch 16, §2

CHAPTER 127

SEIZURE AND FORFEITURE OF CONTRABAND AND CONVEYANCES

Repealed by 86 Acts, ch 1140, §19
See chapter 809

CHAPTER 128

INJUNCTION AND ABATEMENT

Repealed by 71 Acts, ch 131, §152

CHAPTER 129

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Repealed by 71 Acts, ch 131, §152

CHAPTER 130

PERMITS TO LICENSED PHARMACISTS

Repealed by 71 Acts, ch 131, §152

CHAPTER 131

PERMITS TO WHOLESALE DRUGGISTS

Repealed by 71 Acts, ch 131, §152

CHAPTER 132

REPORTS BY PERMIT HOLDERS

Repealed by 71 Acts, ch 131, §152

CHAPTER 133

PERMITS TO MANUFACTURERS

Repealed by 71 Acts, ch 131, §152

CHAPTER 134

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Repealed by 71 Acts, ch 131, §152

SUBTITLE 2

HEALTH-RELATED ACTIVITIES

CHAPTER 135

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DIVISION I

GENERAL PROVISIONS

135.1 Definitions.

For the purposes of chapter 155 and Title IV, subtitle 2, excluding chapters 142B, 145B, and 146, unless otherwise defined:

1. *"Director"* shall mean the director of public health.

2. *"Health officer"* shall mean the physician who is the health officer of the local board of health.

3. *"Local board"* shall mean the local board of health.

4. *"Physician"* means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, podiatry, or optometry under the laws of this state; but a person licensed as a physician and surgeon shall be designated as a "physician" or "surgeon", a person licensed as an osteopathic physician and surgeon shall be designated as an "osteopathic physician" or "osteopathic surgeon", a person licensed as an osteopath shall be designated as an "osteopathic physician", a person licensed as a chiropractor shall be designated as a "chiropractor", a person licensed as a podiatrist shall be designated as a "podiatric physician", and a person licensed as an optometrist shall be designated as an "optometrist". A definition or designation contained in this subsection shall not be interpreted to expand the scope of practice of such licensees.

5. *"Rules"* shall include regulations and orders.

6. *"Sanitation officer"* shall mean the police officer who is the permanent sanitation and quarantine officer and who is subject to the direction of the local board of health in the execution of health and quarantine regulations.

7. *"State department"* or *"department"* shall mean the Iowa department of public health.

[S13, §2583-b; C24, 27, 31, 35, 39, §**2181;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.1]

86 Acts, ch 1245, §1101; 88 Acts, ch 1199, §1; 94 Acts, ch 1023, §10; 95 Acts, ch 108, §2; 96 Acts, ch 1036, §1; 96 Acts, ch 1212, §15

135.2 Appointment of director.

The governor shall appoint the director of the department, subject to confirmation by the senate. The director shall serve at the pleasure of the governor. The director is exempt from the merit system provisions of chapter 19A. The governor shall set the salary of the director within the range established by the general assembly.

The director shall possess education and experience in public health.

[C97, S13, §2564; C24, 27, 31, 35, 39, §**2182, 2184, 2185;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §135.2, 135.4, 135.5; C81, §135.2]

86 Acts, ch 1245, §1102; 88 Acts, ch 1158, §32

Confirmation; §2.32

135.3 Disqualifications.

The director shall not hold any other lucrative office of this state, elective or appointive, during the director's term; provided, however, that the director may serve without compensation as an officer or member of the instructional staff of any of the state educational institutions if any such additional duties and responsibilities do not prohibit the director from performing the duties of the office of director.

[C97, S13, §2564; C24, 27, 31, 35, 39, §**2183;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.3]

135.4 and 135.5 Repealed by 80 Acts, ch 1010, § 86. See § 135.2.

135.6 Assistants and employees.

The director shall employ such assistants and employees as may be authorized by law, and the persons appointed shall perform duties as may be assigned to them by the director.

[C97, S13, §2564; C24, 27, 31, 35, 39, §**2186;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.6]

86 Acts, ch 1245, §1103

135.7 Bonds.

The director shall require every employee who collects fees or handles funds belonging to the state to give an official bond, properly conditioned and signed by sufficient sureties, in a sum to be fixed by the director which bond shall be approved by the director and filed in the office of the secretary of state.

[C24, 27, 31, 35, 39, §**2187;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.7]

135.8 Seal.

The department shall have an official seal and every commission, license, order, or other paper executed by the department may be attested with its seal.

[C24, 27, 31, 35, 39, §**2188;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.8]

135.9 Expenses.

The director, field and office assistants, inspectors, and employees shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route and their necessary and incidental expenses when engaged in the performance of official business.

[C97, §2574; S13, §2564, 2574; C24, 27, 31, 35, 39, §**2189;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.9]

135.10 Office.

The department shall be located at the seat of

government.

[C97, §2564; S13, §2564; C24, 27, 31, 35, 39, §**2190;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.10]

135.11 Duties of department.

The director of public health shall be the head of the "Iowa Department of Public Health", which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, prevent substance abuse and unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the state hygienic laboratory at the state university of Iowa.

5. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities and amend the same when deemed necessary.

6. Exercise general supervision over the administration of the housing law and give aid to the local authorities in the enforcement of the same, and it shall institute in the name of the state such legal proceedings as may be necessary in the enforcement of said law.

7. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distributed shall be labeled "Iowa Department of Public Health".

8. Exercise general supervision over the administration and enforcement of the sexually transmitted diseases and infections law, chapter 139A, subchapter II.

9. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation. However, the department may approve a request for an exception to the application of specific embalming and disposition rules adopted pursuant to this subsection if such rules would otherwise conflict with tenets and practices of a recognized religious denomination to which the deceased individual adhered or of which denomination the deceased individual was a member. The department shall inform the board of mortuary science examiners of any such approved exception which may affect services provided by a funeral director licensed pursuant to chapter 156.

10. Establish, publish, and enforce rules which require companies, corporations, and other entities to obtain a permit from the department prior to scattering cremated human remains.

11. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.

12. Enforce the law relative to chapter 146 and "Health-related Professions", Title IV, subtitle 3, excluding chapter 155.

13. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it, including a division of contagious and infectious diseases, a division of venereal diseases, a division of housing, a division of sanitary engineering, and a division of vital statistics, but the various services of the department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the department under the most economical methods.

14. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of chapters 125 and 155, and Title IV, subtitle 2, excluding chapters 142B, 145B, and 146 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

15. Establish standards for, issue permits for, and exercise control over the distribution of venereal disease prophylactics distributed by methods not under the direct supervision of a physician licensed under chapter 148, 150 or 150A, or a pharmacist licensed under chapter 147. Any person selling, offering for sale, or giving away any venereal disease prophylactics in violation of the standards established by the department shall be fined not exceeding five hundred dollars, and the department shall revoke their permit.

16. Administer the statewide public health nursing, homemaker-home health aide, and senior health programs by approving grants of state funds to the local boards of health and the county boards of supervisors and by providing guidelines for the approval of the grants and allocation of the state funds. Program direction, evaluation requirements, and formula allocation procedures for each of the programs shall be established by the department by rule, consistent with 1997 Iowa Acts, chapter 203, section 5.

17. Administer chapters 125, 136A, 136C, 139A, 142, 144, and 147A.

18. Issue an annual report to the governor as provided in section 7E.3, subsection 4.

19. Consult with the office of statewide clinical education programs at the university of Iowa college of medicine and annually submit a report to the general assembly by January 15 verifying the number of physicians in active practice in Iowa by county who are engaged in providing obstetrical care. To the extent data are readily available, the report shall include information concerning the number of deliveries per year by specialty and county, the age of physicians performing deliver-

ies, and the number of current year graduates of the university of Iowa college of medicine and the Des Moines university — osteopathic medical center entering into residency programs in obstetrics, gynecology, and family practice. The report may include additional data relating to access to obstetrical services that may be available.

20. Administer the statewide maternal and child health program and the program for children with disabilities by conducting mobile and regional child health specialty clinics and conducting other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential conditions which may cause disabilities and children with chronic illnesses in accordance with the requirements of Title V of the federal Social Security Act. The department shall provide technical assistance to encourage the coordination and collaboration of state agencies in developing outreach centers which provide publicly supported services for pregnant women, infants, and children. The department shall also, through cooperation and collaborative agreements with the department of human services and the mobile and regional child health specialty clinics, establish common intake proceedings for maternal and child health services. The department shall work in cooperation with the legislative fiscal bureau in monitoring the effectiveness of the maternal and child health centers, including the provision of transportation for patient appointments and the keeping of scheduled appointments.

21. Establish, publish, and enforce rules requiring prompt reporting of methemoglobinemia, pesticide poisoning, and the reportable poisonings and illnesses established pursuant to section 139A.21.

22. Collect and maintain reports of pesticide poisonings and other poisonings, illnesses, or injuries caused by selected chemical or physical agents, including methemoglobinemia and pesticide and fertilizer hypersensitivity; and compile and publish, annually, a statewide and county-by-county profile based on the reports.

23. Adopt rules which require personnel of a licensed hospice, of a homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or of an agency which provides respite care services and receives funds to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions through a program approved by the department. The rules shall require that new employees complete the training within six months of initial employment and existing employees complete the training on or before January 1, 1989.

24. Adopt rules which require all emergency medical services personnel, firefighters, and law enforcement personnel to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions and the prevention of human immunodeficiency virus infection.

25. Adopt rules which provide for the testing of a convicted or alleged offender for the human immunodeficiency virus pursuant to sections 915.40 through 915.43. The rules shall provide for the provision of counseling, health care, and support services to the victim.

26. Establish ad hoc and advisory committees to the director in areas where technical expertise is not otherwise readily available. Members may be compensated for their actual and necessary expenses incurred in the performance of their duties. To encourage health consumer participation, public members may also receive a per diem as specified in section 7E.6 if funds are available and the per diem is determined to be appropriate by the director. Expense moneys paid to the members shall be paid from funds appropriated to the department. A majority of the members of such a committee constitutes a quorum.

27. Establish an abuse education review panel for review and approval of mandatory reporter training curricula for those persons who work in a position classification that under law makes the persons mandatory reporters of child or dependent adult abuse and the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board.

28. Establish and administer a substance abuse treatment facility pursuant to section 135.130.

29. Conduct and maintain a statewide risk assessment of any present or potential danger to the public health from biological agents. For this purpose, an employee or agent of the department may enter into and examine any premises containing potentially dangerous biological agents. However, the owner or person in charge of the premises shall be notified. If the owner or person in charge refuses admittance, the department may obtain administrative search warrants under section 808.14. Based upon findings of the risk assessment and examination of the premises, the director may order safeguards or take any other action necessary to protect the public health pursuant to rules adopted to implement this subsection.

1. [C97, §2565; C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.11(1)]

2, 3. [C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.11(2, 3)]

4. [C97, §2565; C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.11(4)]

5, 6. [C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, 66, 71, §135.11(8, 9); C73, 75, 77, 79, 81, §135.11(7, 8)]

7. [S13, §2572-a, -b, -c; C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, 66, 71, §135.11(11); C73, §135.11(10); C75, 77, 79, 81, §135.11(9)]

8. [C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58,

62, 66, 71, §135.11(12); C73, §135.11(11); C75, 77, 79, 81, §135.11(10)]

9. [S13, §2575-a42; C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, 66, 71, §135.11(13); C73, §135.11(12); C75, 77, 79, 81, §135.11(11)]

10. [C97, §2565; C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, 66, 71, §135.11(14); C73, §135.11(13); C75, 77, 79, 81, §135.11(12)]

11, 12. [C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, 66, 71, §135.11(15, 16); C73, §135.11(14, 15); C75, 77, 79, 81, §135.11(13, 14)]

13. [C97, §2565; C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, 66, 71, §135.11(17); C73, §135.11(16); C75, 77, 79, 81, §135.11(15)]

14. [C75, 77, 79, 81, §135.11(16)]

15. [82 Acts, ch 1260, §55]

83 Acts, ch 27, §7; 86 Acts, ch 1245, §1104; 87 Acts, ch 8, §2; 87 Acts, ch 115, §22; 87 Acts, ch 225, §202; 88 Acts, ch 1224, §12; 89 Acts, ch 304, §103; 90 Acts, ch 1259, §10; 91 Acts, ch 258, §29; 93 Acts, ch 140, §4; 94 Acts, ch 1023, §11; 94 Acts, ch 1132, §9; 96 Acts, ch 1036, §2; 96 Acts, ch 1128, §1; 96 Acts, ch 1129, §23; 97 Acts, ch 23, §13; 97 Acts, ch 197, §1; 98 Acts, ch 1053, §1; 98 Acts, ch 1087, §1; 98 Acts, ch 1090, §60, 84; 98 Acts, ch 1221, §12; 99 Acts, ch 141, §2; 2000 Acts, ch 1058, §14; 2000 Acts, ch 1066, §37; 2000 Acts, ch 1223, §18; 2001 Acts, ch 58, §3; 2001 Acts, ch 122, §1; 2001 Acts, ch 184, §6; 2001 Acts, 2nd Ex, ch 1, §25, 28; 2002 Acts, ch 1108, §7

Laboratory tests, §263.7, 263.8

Oversight and administration of local programs for private rural water wells and cisterns, §455E.11

Establishment and funding of state poison control center; 2000 Acts, ch 1221, §1; 2001 Acts, ch 184, §1; 2002 Acts, ch 1174, §1

NEW subsection 10 and former subsections 10 – 28 renumbered as 11 – 29

135.11A Professional licensure division — other licensing boards — expenses — fees.

There shall be a professional licensure division within the department of public health. Each board of examiners specified under chapter 147 or under the administrative authority of the department, except the state board of nursing, state board of medical examiners, state board of dental examiners, and state board of pharmacy examiners, shall receive administrative and clerical support from the division and may not employ its own support staff for administrative and clerical duties.

The professional licensure division and the licensing boards may expend funds in addition to amounts budgeted, if those additional expenditures are directly the result of actual examination and exceed funds budgeted for examinations. Before the division or a licensing board expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the division or board and the division or board does not have other funds from which examination expenses can be paid. Upon approval of the department of management, the division or licensing board may expend and encumber funds for excess examination expenses. The amounts necessary to fund the excess examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2.

86 Acts, ch 1245, §1105; 91 Acts, ch 268, §306; 92 Acts, ch 1163, §34

135.12 Plumbing code committee. Repealed by 86 Acts, ch 1245, § 1148.

135.13 Office of rural health established — duties. Transferred to § 135.107.

135.14 Compensation and expenses. Repealed by 86 Acts, ch 1245, § 1148.

135.15 Plumbing code fund. Repealed by 97 Acts, ch 159, § 25.

135.16 Special women, infants, and children supplemental food program — methamphetamine education.

As a component of the federal funding received by the department as the administering agency for the special women, infants, and children supplemental food program, from the United States department of agriculture, food and consumer service, the department shall incorporate a methamphetamine education program into its nutrition and health-related education services. The department shall be responsible for the development of the education program to be delivered, and for the selection of qualified contract agencies to deliver the instruction under the program.

99 Acts, ch 195, §8

135.17 Repealed by 78 Acts, ch 1104, § 3.

135.18 Conflicting statutes.

Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C73, 75, 77, 79, 81, §135.18]

135.19 Prophylactics samples gathered. Repealed by 2000 Acts, ch 1140, § 47.

135.20 Repealed by 82 Acts, ch 1199, § 96, 97. See § 455B.172.

135.21 Pay toilets.

No person shall make a charge or require any

special device, key or slug for the use of a toilet located in a room provided for use of the public. Violation of this section is a simple misdemeanor.

[C24, 27, 31, 35, 39, §**2839;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §170.34; C77, §732.25; C79, 81, §135.21]

135.22 Central registry for brain or spinal cord injuries.

1. As used in this section:

a. "Brain injury" means the occurrence of injury to the head not primarily related to a degenerative disease or aging process that is documented in a medical record with one or more of the following conditions attributed to the head injury:

(1) An observed or self-reported decreased level of consciousness.

(2) Amnesia.

(3) A skull fracture.

(4) An objective neurological or neuropsychological abnormality.

(5) A diagnosed intracranial lesion.

b. "Spinal cord injury" means the occurrence of an acute traumatic lesion of neural elements in the spinal cord including the spinal cord and cauda equina, resulting in temporary or permanent sensory deficit, motor deficit, or bladder or bowel dysfunction.

2. The director shall establish and maintain a central registry of persons with brain or spinal cord injuries in order to facilitate prevention strategies and the provision of appropriate rehabilitative services to the persons by the department and other state agencies. Hospitals shall report patients who are admitted with a brain or spinal cord injury and their diagnoses to the director no later than forty-five days after the close of a quarter in which the patient was discharged. The report shall contain the name, age, and residence of the person, the date, type, and cause of the brain or spinal cord injury, and additional information as the director requires, except that where available, hospitals shall report the Glasgow coma scale. The director shall consult with health care providers concerning the availability of additional relevant information. The department shall maintain the confidentiality of all information which would identify any person named in a report. However, the identifying information may be released for bona fide research purposes if the confidentiality of the identifying information is maintained by the researchers, or the identifying information may be released by the person with the brain or spinal cord injury or by the person's guardian or, if the person is a minor, by the person's parent or guardian.

89 Acts, ch 320, §10; 92 Acts, ch 1237, §6; 94 Acts, ch 1068, §3; 99 Acts, ch 141, §3

135.22A Advisory council on brain injuries.

1. For purposes of this section, unless the context otherwise requires:

a. "Brain injury" means a brain injury as defined in section 135.22.

b. "Council" means the advisory council on brain injuries.

2. The advisory council on brain injuries is established. The following persons or their designees shall serve as ex officio, nonvoting members of the council:

a. The director of public health.

b. The director of human services and any division administrators of the department of human services so assigned by the director.

c. The director of the department of education.

d. The chief of the special education bureau of the department of education.

e. The administrator of the division of vocational rehabilitation services of the department of education.

f. The director of the department for the blind.

g. The commissioner of insurance.

3. The council shall be composed of a minimum of nine members appointed by the governor in addition to the ex officio members, and the governor may appoint additional members. Insofar as practicable, the council shall include persons with brain injuries, family members of persons with brain injuries, representatives of industry, labor, business, and agriculture, representatives of federal, state, and local government, and representatives of religious, charitable, fraternal, civic, educational, medical, legal, veteran, welfare, and other professional groups and organizations. Members shall be appointed representing every geographic and employment area of the state and shall include members of both sexes.

4. Members of the council appointed by the governor shall be appointed for terms of two years. Vacancies on the council shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed.

5. The voting members of the council shall appoint a chairperson and a vice chairperson and other officers as the council deems necessary. The officers shall serve until their successors are appointed and qualified. Members of the council shall receive actual expenses for their services. Members may also be eligible to receive compensation as provided in section 7E.6. The council shall adopt rules pursuant to chapter 17A.

6. The council shall do all of the following:

a. Promote meetings and programs for the discussion of methods to reduce the debilitating effects of brain injuries, and disseminate information in cooperation with any other department,

agency, or entity on the prevention, evaluation, care, treatment, and rehabilitation of persons affected by brain injuries.

b. Study and review current prevention, evaluation, care, treatment, and rehabilitation technologies and recommend appropriate preparation, training, retraining, and distribution of personnel and resources in the provision of services to persons with brain injuries through private and public residential facilities, day programs, and other specialized services.

c. Participate in developing and disseminating criteria and standards which may be required for future funding or licensing of facilities, day programs, and other specialized services for persons with brain injuries in this state.

d. Make recommendations to the governor for developing and administering a state plan to provide services for persons with brain injuries.

e. Meet at least quarterly.

7. The council is assigned to the department for administrative purposes. The director shall be responsible for budgeting, program coordination, and related management functions.

8. The council may receive gifts, grants, or donations made for any of the purposes of its programs and disburse and administer them in accordance with their terms and under the direction of the director.

92 Acts, ch 1237, §7; 94 Acts, ch 1068, §4; 94 Acts, ch 1109, §2; 97 Acts, ch 203, §13; 99 Acts, ch 141, §4; 2000 Acts, ch 1058, §15

For definition of "brain injury" for purposes of recognition as a disability, see also §225C.23

135.23 Licensure of blood collection, blood processing, or plasmapheresis centers. Repealed by 90 Acts, ch 1174, § 2.

135.24 Volunteer health care provider program established — immunity from civil liability.

1. The director shall establish within the department a program to provide to eligible hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations, free medical, dental, and chiropractic services given on a voluntary basis by health care providers. A participating health care provider shall register with the department and obtain from the department a list of eligible, participating hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations.

2. The department, in consultation with the department of human services, shall adopt rules to implement the volunteer health care provider program which shall include the following:

a. Procedures for registration of health care providers deemed qualified by the board of medical examiners, the board of physician assistant examiners, the board of dental examiners, the board of nursing, and the board of chiropractic examiners.

b. Criteria for and identification of hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations, eligible to participate in the provision of free medical, dental, or chiropractic services through the volunteer health care provider program. A health care facility, a health care referral program, a charitable organization, or a health care provider participating in the program shall not bill or charge a patient for any health care provider service provided under the volunteer health care provider program.

c. Identification of the services to be provided under the program. The services provided may include, but shall not be limited to, obstetrical and gynecological medical services, psychiatric services provided by a physician licensed under chapter 148, 150, or 150A, or services provided under chapter 151.

3. A health care provider providing free care under this section shall be considered an employee of the state under chapter 669 and shall be afforded protection as an employee of the state under section 669.21, provided that the health care provider has done all of the following:

a. Registered with the department pursuant to subsection 1.

b. Provided medical, dental, or chiropractic services through a hospital, clinic, or other health care facility, health care referral program, or charitable organization listed as eligible and participating by the department pursuant to subsection 1.

4. For the purposes of this section, *"charitable organization"* means a charitable organization within the meaning of section 501(c)(3) of the Internal Revenue Code which has as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness, and availability of chiropractic, dental, or medical services to children and to serve as a funding mechanism for provision of chiropractic, dental, or medical services, including but not limited to immunizations, to children in this state.

5. For the purposes of this section, *"health care provider"* means a physician licensed under chapter 148, 150, 150A, or 151, a physician assistant licensed and practicing under a supervising physician pursuant to chapter 148C, a licensed practical nurse, a registered nurse, or a dentist, dental hygienist, or dental assistant registered or licensed to practice under chapter 153.

93 Acts, ch 65, §1; 95 Acts, ch 121, §1; 98 Acts, ch 1027, §1 – 6; 2001 Acts, ch 176, §31; 2002 Acts, ch 1108, §8

Section amended

135.25 Emergency medical services fund.

An emergency medical services fund is created in the state treasury under the control of the de-

partment. The fund includes, but is not limited to, amounts appropriated by the general assembly, and other moneys available from federal or private sources which are to be used for purposes of this section. Funds remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain in the emergency medical services fund, notwithstanding section 8.33. The fund is established to assist counties by matching, on a dollar-for-dollar basis, moneys spent by a county for the acquisition of equipment for the provision of emergency medical services and by providing grants to counties for education and training in the delivery of emergency medical services, as provided in this section and section 422D.6. A county seeking matching funds under this section shall apply to the emergency medical services division of the department. The department shall adopt rules concerning the application and awarding process for the matching funds and the criteria for the allocation of moneys in the fund if the moneys are insufficient to meet the emergency medical services needs of the counties. Moneys allocated by the department to a county for emergency medical services purposes may be used for equipment or training and education as determined by the board of supervisors pursuant to section 422D.6.

93 Acts, ch 58, §1; 2000 Acts, ch 1043, §1

135.26 and 135.27 Repealed by 65 Acts, ch 375, § 29.

135.28 State substitute medical decision-making board.

A state substitute medical decision-making board is established to formulate policy and guidelines for the operations of local substitute medical decision-making boards, and to act if a local substitute medical decision-making board does not exist. The department, with the approval of the state substitute medical decision-making board, shall adopt rules pursuant to chapter 17A for the appointment and operation of local substitute medical decision-making boards. Notwithstanding any other provision to the contrary regarding confidentiality of medical records, the state substitute medical decision-making board may issue subpoenas relating to the production of medical records of a patient under the board's review. A person participating in good faith in releasing medical record information in response to a board subpoena is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

The state substitute medical decision-making board is comprised of medical professionals and lay persons appointed by the director and the state board of health according to rules adopted by the department. The state substitute medical decision-making board and its members are not liable, jointly or severally, for actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct.

89 Acts, ch 178, §1; 90 Acts, ch 1026, §1; 93 Acts, ch 139, §2

135.29 Local substitute medical decision-making board.

1. Each county in this state may establish and fund a local substitute medical decision-making board. The local substitute medical decision-making board shall be comprised of medical professionals and lay persons appointed pursuant to the rules adopted by the department.

2. Pursuant to rules adopted by the department, the local substitute medical decision-making board may act as a substitute decision maker for patients incapable of making their own medical care decisions if no other substitute decision maker is available to act. The local substitute medical decision-making board may exercise decision-making authority in situations where there is sufficient time to review the patient's condition, and a reasonably prudent person would consider a decision to be medically necessary. Such medically necessary decisions shall constitute good cause for subsequently filing a petition in the district court for appointment of a guardian pursuant to chapter 633, but the local substitute medical decision-making board shall continue to act in the patient's best interests until a guardian is appointed. Notwithstanding any other provision to the contrary regarding confidentiality of medical records, the local substitute decision-making board may issue subpoenas relating to the production of medical records of a patient under the board's review. A person participating in good faith in releasing medical record information in response to a board subpoena is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

3. The local substitute medical decision-making board and its members shall not be held liable, jointly or severally, for any actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct. A physician or other health care provider who acts on a decision or directive of the local substitute medical decision-making board or state substitute medical decision-making board shall not be held liable for any damages resulting from that act, unless such physician's or other health care provider's actions or omissions constitute negligence in the practice of the profession or occupation, or willful or wanton misconduct.

89 Acts, ch 178, §3; 90 Acts, ch 1026, §2; 93 Acts, ch 139, §3

DIVISION II

MISCELLANEOUS PROVISIONS

135.30 Protective eyeglasses — safety provisions.

No person shall fabricate, distribute, sell, exchange or deliver, or have in the person's possession with the intent to distribute, sell, exchange or deliver, any eyeglasses or sunglasses unless they are fitted with plastic lenses or laminated lenses or heat-treated glass lenses, or glass lenses made impact resistant by other methods except in those cases where a duly licensed physician or optometrist, having found that such lenses will not fulfill the visual requirements of a particular patient, directs in writing the use of other lenses, and gives written notification thereof to the patient. Before they are mounted in frames, all plastic and heat-treated glass lenses shall be capable of withstanding an impact test of a five-eighths inch steel ball dropped fifty inches. This test to be conducted at room temperature, with the lens supported by a plastic tube one inch inside diameter, one and one-fourth inch outside diameter, with a one-eighth inch by one-eighth inch neoprene gasket on top edge.

The department shall adopt standards and rules which specify impact resistance for lenses and which provide the method of testing lenses to determine if the lenses comply with such standards and rules.

No person shall fabricate, distribute, sell, exchange or deliver, or have in the person's possession with intent to distribute, sell, exchange or deliver any eyeglass frame or sunglass frame containing any form of cellulose nitrate or other highly flammable materials.

Any person violating either provision of this law shall upon conviction be punished by a fine of not less than five hundred dollars for each violation.

[C73, 75, 77, 79, 81, §135.30]

135.30A Breast-feeding in public places.

Notwithstanding any other provision of law to the contrary, a woman may breast-feed the woman's own child in any public place where the woman's presence is otherwise authorized.

2000 Acts, ch 1140, §21

135.31 Location of boards — rulemaking.

The offices for the state board of medical examiners, the state board of pharmacy examiners, the state board of nursing examiners, and the state board of dental examiners shall be located within the department of public health. The individual boards shall have policymaking and rulemaking authority.

86 Acts, ch 1245, §1107

135.32 Publication and distribution.

The department shall publish from time to time a sufficient number of its rules to supply the needs of the several counties. The county auditor shall annually forward to the department a certified list of the names and addresses of the clerks of all the local boards of health in the auditor's county. Upon receipt of said list the department shall forward to the local boards sufficient copies for distribution in each county; and the clerk of the local board shall upon request furnish a copy of said rules to any resident, physician, or citizen.

[S13, §2571-b; C24, 27, 31, 35, 39, §**2211;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.32]

135.33 Refusal of board to enforce rules.

If any local board shall fail to enforce the rules of the state department or carry out its lawful directions, the department may enforce the same within the territorial jurisdiction of such local board, and for that purpose it may exercise all of the powers given by statute to the local board, and may employ the necessary assistants to carry out its lawful directions.

[C97, §2572; S13, §2569-a, 2572; C24, 27, 31, 35, 39, §**2212;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.33]

Powers of local board, chapter 137

135.34 Expenses for enforcing rules.

All expenses incurred by the state department in determining whether its rules are enforced by a local board, and in enforcing the same when a local board has failed to do so, shall be paid in the same manner as the expenses of enforcing such rules when enforced by the local board.

[S13, §2572; C24, 27, 31, 35, 39, §**2213;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.34]

135.35 Duty of peace officers.

All peace officers of the state when called upon by the department shall enforce its rules and execute the lawful orders of the department within their respective jurisdictions.

[C97, §2572; S13, §2572; C24, 27, 31, 35, 39, §**2214;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.35]

135.36 Interference with health officer — penalties.

Any person resisting or interfering with the department, its employees, or authorized agents, in the discharge of any duty imposed by law shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §**2215;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.36]

135.37 Tattooing — permit requirement — penalty.

1. A person shall not own, control and lease, act as an agent for, conduct, manage, or operate an establishment to practice the art of tattooing or engage in the practice of tattooing without first applying for and receiving a permit from the Iowa department of public health.

2. A minor shall not obtain a tattoo and a person shall not provide a tattoo to a minor. For the purposes of this section, *"minor"* means an unmarried person who is under the age of eighteen years.

3. A person who fails to meet the requirements of subsection 1 or a person providing a tattoo to a minor is guilty of a serious misdemeanor.

4. The Iowa department of public health shall:

a. Adopt rules pursuant to chapter 17A and establish and collect all fees necessary to administer this section. The provisions of chapter 17A, including licensing provisions, judicial review, and appeal, shall apply to this chapter.

b. Establish minimum safety and sanitation criteria for the operation of tattooing establishments.

5. If the Iowa department of public health determines that a provision of this section has been or is being violated, the department may order that a tattooing establishment not be operated until the necessary corrective action has been taken. If the establishment continues to be operated in violation of the order of the department, the department may request that the county attorney or the attorney general make an application in the name of the state to the district court of the county in which the violations have occurred for an order to enjoin the violations. This remedy is in addition to any other legal remedy available to the department.

89 Acts, ch 154, §1

135.38 Penalty.

Any person who knowingly violates any provision of this chapter, or of the rules of the department, or any lawful order, written or oral, of the department or of its officers, or authorized agents, shall be guilty of a simple misdemeanor.

[C73, §419; C97, §2573; S13, §2575-a6; C24, 27, 31, 35, 39, §**2217;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.38]

135.39 Federal aid.

The state department of public health is hereby authorized to accept financial aid from the government of the United States for the purpose of assisting in carrying on public health or substance abuse responsibility in the state of Iowa.

[C31, 35, §2217-c1; C39, §**2217.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.39]

86 Acts, ch 1245, §1108

DIVISION III

MORBIDITY AND MORTALITY STUDY

135.40 Collection and distribution of information.

Any person, hospital, sanatorium, nursing or rest home or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the department, the Iowa medical society or any of its allied medical societies or the Iowa osteopathic medical association or any in-hospital staff committee, to be used in the course of any study for the purpose of reducing morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

[C66, 71, 73, 75, 77, 79, 81, §135.40]

135.41 Publication.

The department, the Iowa medical society or any of its allied medical societies or the Iowa osteopathic medical association or any in-hospital staff committee shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances. A violation of this section shall constitute a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §135.41]

135.42 Unlawful use.

All information, interviews, reports, statements, memoranda, or other data furnished in accordance with this division and any findings or conclusions resulting from such studies shall not be used or offered or received in evidence in any legal proceedings of any kind or character, but nothing contained herein shall be construed as affecting the admissibility as evidence of the primary medical or hospital records pertaining to the patient or of any other writing, record or reproduction thereof not contemplated by this division.

[C66, 71, 73, 75, 77, 79, 81, §135.42]

DIVISION IV

IOWA CHILD DEATH REVIEW TEAM

135.43 Iowa child death review team established — duties.

1. An Iowa child death review team is established as an independent agency of state government. The Iowa department of public health shall provide staffing and administrative support to the team.

2. The membership of the review team is subject to the provisions of sections 69.16 and 69.16A, relating to political affiliation and gender balance. Review team members who are not designated by another appointing authority shall be appointed by the director of public health in consultation with the director of human services. Membership terms shall be for three years. A membership vacancy shall be filled in the same manner as the original appointment. The review team shall elect a chairperson and other officers as deemed necessary by the review team. The review team shall meet upon the call of the chairperson, upon the request of a state agency, or as determined by the review team. The members of the team are eligible for reimbursement of actual and necessary expenses incurred in the performance of their official duties.

The review team shall include the following:

a. The state medical examiner or the state medical examiner's designee.

b. A certified or licensed professional who is knowledgeable concerning sudden infant death syndrome.

c. A pediatrician who is knowledgeable concerning deaths of children.

d. A family practice physician who is knowledgeable concerning deaths of children.

e. One mental health professional who is knowledgeable concerning deaths of children.

f. One social worker who is knowledgeable concerning deaths of children.

g. A certified or licensed professional who is knowledgeable concerning domestic violence.

h. A professional who is knowledgeable concerning substance abuse.

i. A local law enforcement official.

j. A county attorney.

k. An emergency room nurse who is knowledgeable concerning the deaths of children.

l. A perinatal expert.

m. A representative of the health insurance industry.

n. One other appointed at large.

3. The review team shall perform the following duties:

a. Collect, review, and analyze child death certificates and child death data, including patient records or other pertinent confidential information concerning the deaths of children under age eighteen, and other information as the review team deems appropriate for use in preparing an annual report to the governor and the general assembly concerning the causes and manner of child deaths. The report shall include analysis of factual information obtained through review and recommendations regarding prevention of child deaths.

b. Recommend to the governor and the general assembly interventions to prevent deaths of children based on an analysis of the cause and manner of such deaths.

c. Recommend to the agencies represented on the review team changes which may prevent child deaths.

d. Maintain the confidentiality of any patient records or other confidential information reviewed.

4. The review team shall develop protocols for a child fatality review committee, to be appointed by the director on an ad hoc basis, to immediately review the child abuse assessments which involve the fatality of a child under age eighteen. The director shall appoint a medical examiner, a pediatrician, and a person involved with law enforcement to the committee.

a. The purpose of the review shall be to determine whether the department of human services and others involved with the case of child abuse responded appropriately. The protocols shall provide for the committee to consult with any multidisciplinary team, as defined in section 235A.13, that is operating in the area in which the fatality occurred.

b. The committee shall have access to patient records and other pertinent confidential information and, subject to the restrictions in this subsection, may redisseminate the confidential information in the committee's report.

c. Upon completion of the review, the committee shall issue a report which shall include findings concerning the case and recommendations for changes to prevent child fatalities when similar circumstances exist. The report shall include but is not limited to the following information, subject to the restrictions listed in paragraph *"d"*:

(1) The dates, outcomes, and results of any actions taken by the department of human services and others in regard to each report and allegation of child abuse involving the child who died.

(2) The results of any review of the case performed by a multidisciplinary team, or by any other public entity that reviewed the case.

(3) Confirmation of the department of human services receipt of any report of child abuse involving the child, including confirmation as to whether or not any assessment involving the child was performed in accordance with section 232.71B, the results of any assessment, a description of the most recent assessment and the services offered to the

family, the services rendered to the family, and the basis for the department's decisions concerning the case.

d. Prior to issuing the report, the committee shall consult with the county attorney responsible for prosecution of the alleged perpetrator of the child fatality. The committee's report shall include child abuse information associated with the case and the child, but is subject to the restrictions applicable to the department of human services for release of information concerning a child fatality or near fatality in accordance with section 235A.15, subsection 9.

e. Following the completion of the trial of any alleged perpetrator of the child fatality and the appeal period for the granting of a new trial, the committee shall issue a supplemental report containing the information that was withheld, in accordance with paragraph *"d"*, so as not to jeopardize the prosecution or the rights of the alleged perpetrator to a fair trial as described in section 235A.15, subsection 9, paragraphs *"f"* and *"g"*.

f. The report and any supplemental report shall be submitted to the governor and general assembly.

5. The following individuals shall designate a liaison to assist the review team in fulfilling its responsibilities:

a. The director of public health.

b. The director of human services.

c. The commissioner of public safety.

d. The administrator of the bureau of vital records of the Iowa department of public health.

e. The attorney general.

f. The director of transportation.

g. The director of the department of education.

6. The review team may establish subcommittees to which the team may delegate some or all of the team's responsibilities under subsection 3.

7. *a.* The Iowa department of public health and the department of human services shall adopt rules providing for disclosure of information which is confidential under chapter 22 or any other provision of state law, to the review team for purposes of performing its child death and child abuse review responsibilities.

b. A person in possession or control of medical, investigative, assessment, or other information pertaining to a child death and child abuse review shall allow the inspection and reproduction of the information by the department upon the request of the department, to be used only in the administration and for the duties of the Iowa child death review team. Except as provided for a report on a child fatality by an ad hoc child fatality review committee under subsection 4, information and records produced under this section which are confidential under section 22.7 and chapter 235A, and information or records received from the confidential records, remain confidential under this section. A person does not incur legal liability by reason of releasing information to the department as required under and in compliance with this section.

8. Review team members and their agents are immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of any act, omission, proceeding, decision, or determination undertaken or performed, or recommendation made as a review team member or agent provided that the review team members or agents acted in good faith and without malice in carrying out their official duties in their official capacity. The department shall adopt rules pursuant to chapter 17A to administer this subsection. A complainant bears the burden of proof in establishing malice or lack of good faith in an action brought against review team members involving the performance of their duties and powers under this section.

9. A person who releases or discloses confidential data, records, or any other type of information in violation of this section is guilty of a serious misdemeanor.

95 Acts, ch 147, §2; 97 Acts, ch 159, §3, 4; 2000 Acts, ch 1051, §1; 2000 Acts, ch 1137, §1 – 3, 14; 2002 Acts, ch 1119, §129, 130

Legislative findings and purpose; 95 Acts, ch 147, §1

2000 amendments striking subsection 3, paragraph e, adding subsection 4, and amending subsection 7, paragraph b, apply to disclosures of information made on or after April 21, 2000, related to child abuse reported before, on, or after that date; 2000 Acts, ch 1137, §14

Subsection 5, paragraph d amended

Subsection 7, paragraph b amended

135.44 Repealed by 88 Acts, ch 1158, § 102.

DIVISION V

RENAL DISEASES

135.45 Program established — definitions.

1. The director shall establish within the department a program to provide financial assistance to eligible persons with end-stage renal disease who require lifesaving services for the renal disease, but are unable to pay for the service on a continuing basis.

2. As used in this division, unless the context otherwise requires:

a. *"Director"* means the director of public health.

b. *"Committee"* means the renal disease advisory committee.

c. *"Department"* means the Iowa department of public health.

d. *"End-stage renal disease"* means kidney failure which has progressed enough to require dialysis treatment or a kidney transplant to sustain life.

e. *"Patient"* means a person with end-stage renal disease who applies to the department for financial assistance and who is approved to receive the assistance.

f. *"Physician"* means a person who is licensed

under chapter 148, 150, or 150A.

g. "Program" means the chronic renal disease program conducted by the department.

h. "Provider" means a professional or a public or private organization which provides services, directly or indirectly, for the treatment of end-stage renal disease.

[C73, 75, 77, 79, 81, §135.45; 82 Acts, ch 1074, §1]

135.46 Committee established.

There is established in the department a renal disease advisory committee to advise the department on the administration of the program, and to adjudicate appeals concerning the denial, suspension, or revocation of financial assistance.

1. The committee shall consist of thirteen members appointed by the director. Each member shall be appointed for a term of four years or until a successor is appointed and qualifies beginning July 1 of the year of appointment. The director shall fill a vacancy occurring before the expiration of a term by the appointment of a person who represents the same area pursuant to subsection 2, which the person who caused the vacancy represented.

2. The committee shall consist of:

a. Two physicians representing the Iowa medical profession and who are actively involved in renal dialysis or transplantation.

b. One registered nurse representing nephrology nurses.

c. One social worker representing social workers who are actively involved in patient counseling.

d. One member representing the professional staff of the kidney foundation of Iowa.

e. Two members who are hospital administrators representing Iowa hospitals. One of the members shall represent a dialysis or transplant facility and the other member shall represent a facility that does not provide dialysis or transplant services.

f. One social security administrator representing those actively involved in patient or provider reimbursement.

g. One member representing an Iowa medicare intermediary and involved in third-party payments.

h. One member representing the end-stage renal disease network as established by federal law.

i. One member representing the insurance division of the department of commerce of the state.

j. Two members representing the consumers of health care in Iowa.

3. The committee shall meet as frequently as the director deems necessary, but not less than annually. Special meetings may be called by the director or upon written request by four of the members of the committee. The written request shall include the reason for the meeting. The committee shall elect the officers deemed necessary. A majority of the members is a quorum. The concurrence of at least the quorum is necessary for the committee to render a determination or decision. The committee members shall be reimbursed for actual and necessary expenses incurred in attending meetings of the committee or for discharging their official duties at places outside their county of residence.

[C73, 75, 77, 79, 81, §135.46; 82 Acts, ch 1074, §2]

89 Acts, ch 83, §26

135.47 Rulemaking authority.

The department, after consulting with the committee, shall adopt rules relating to financial assistance for the renal disease program. The rules shall include, but are not limited to:

1. The establishment of financial criteria for determining patient eligibility for the program. The eligibility shall be based upon the financial resources of the applicant or patient with due regard to all sources of income.

2. The type and amount of financial assistance that may be provided.

3. The requirements for financial participation by a patient.

4. The establishment of procedures relating to receiving and processing provider fees charged to the department for services rendered on behalf of a patient.

5. The requirements for residency in Iowa for dialysis and transplant patients.

6. Procedures relating to the appeal by an applicant or a patient to the committee because of a denial, suspension, or revocation of financial assistance.

[C73, 75, 77, 79, 81, §135.47; 82 Acts, ch 1074, §3]

135.48 Application for financial assistance.

1. A person diagnosed by a physician as having end-stage renal disease may apply to the department for financial assistance from the program for expenses related directly or indirectly to the illness.

2. The type and amount of financial assistance provided shall be determined by an evaluation of the patient's medical and financial status pursuant to the rules of the department.

3. The department may approve an application for financial assistance if the applicant meets the eligibility requirements for the program and if funds are available.

4. The department may deny an application for financial assistance or may suspend or revoke existing financial assistance for an applicant or patient if the department determines that the applicant or patient is not eligible pursuant to the rules of the department. The denial, suspension, or revocation of financial assistance is not a con-

tested case until the action is appealed to the committee as provided by rule.

[82 Acts, ch 1074, §4]

135.49 to 135.60 Reserved.

DIVISION VI

HEALTH FACILITIES COUNCIL

135.61 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Affected persons"* means, with respect to an application for a certificate of need:

a. The person submitting the application.

b. Consumers who would be served by the new institutional health service proposed in the application.

c. Each institutional health facility or health maintenance organization which is located in the geographic area which would appropriately be served by the new institutional health service proposed in the application. The appropriate geographic service area of each institutional health facility or health maintenance organization shall be determined on a uniform basis in accordance with criteria established in rules adopted by the department.

d. Each institutional health facility or health maintenance organization which, prior to receipt of the application by the department, has formally indicated to the department pursuant to this division an intent to furnish in the future institutional health services similar to the new institutional health service proposed in the application.

e. Any other person designated as an affected person by rules of the department.

f. Any payer or third-party payer for health services.

2. *"Birth center"* means a facility or institution, which is not an ambulatory surgical center or a hospital or in a hospital, in which births are planned to occur following a normal, uncomplicated, low-risk pregnancy.

3. *"Consumer"* means any individual whose occupation is other than health services, who has no fiduciary obligation to an institutional health facility, health maintenance organization or other facility primarily engaged in delivery of services provided by persons in health service occupations, and who has no material financial interest in the providing of any health services.

4. *"Council"* means the state health facilities council established by this division.

5. *"Department"* means the Iowa department of public health.

6. *"Develop"*, when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

7. *"Director"* means the director of public health, or the director's designee.

8. *"Financial reporting"* means reporting by which hospitals and health care facilities shall respectively record their revenues, expenses, other income, other outlays, assets and liabilities, and units of services.

9. *"Health care facility"* means health care facility as defined in section 135C.1.

10. *"Health care provider"* means a person licensed or certified under chapter 147, 148, 148A, 148C, 149, 150, 150A, 151, 152, 153, 154, 154B, or 155A to provide in this state professional health care service to an individual during that individual's medical care, treatment or confinement.

11. *"Health maintenance organization"* means health maintenance organization as defined in section 514B.1, subsection 6.

12. *"Health services"* means clinically related diagnostic, curative, or rehabilitative services, and includes alcoholism, drug abuse, and mental health services.

13. *"Hospital"* means hospital as defined in section 135B.1, subsection 3.

14. *"Institutional health facility"* means any of the following, without regard to whether the facilities referred to are publicly or privately owned or are organized for profit or not or whether the facilities are part of or sponsored by a health maintenance organization:

a. A hospital.

b. A health care facility.

c. An organized outpatient health facility.

d. An outpatient surgical facility.

e. A community mental health facility.

f. A birth center.

15. *"Institutional health service"* means any health service furnished in or through institutional health facilities or health maintenance organizations, including mobile health services.

16. *"Mobile health service"* means equipment used to provide a health service that can be transported from one delivery site to another.

17. *"Modernization"* means the alteration, repair, remodeling, replacement or renovation of existing buildings or of the equipment previously installed therein, or both.

18. *"New institutional health service"* or *"changed institutional health service"* means any of the following:

a. The construction, development or other establishment of a new institutional health facility regardless of ownership.

b. Relocation of an institutional health facility.

c. Any capital expenditure, lease, or donation by or on behalf of an institutional health facility in excess of one million five hundred thousand dollars within a twelve-month period.

d. A permanent change in the bed capacity, as determined by the department, of an institutional

health facility. For purposes of this paragraph, a change is permanent if it is intended to be effective for one year or more.

e. Any expenditure in excess of five hundred thousand dollars by or on behalf of an institutional health facility for health services which are or will be offered in or through an institutional health facility at a specific time but which were not offered on a regular basis in or through that institutional health facility within the twelve-month period prior to that time.

f. The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization or the relocation of one or more health services from one physical facility to another.

g. Any acquisition by or on behalf of a health care provider or a group of health care providers of any piece of replacement equipment with a value in excess of one million five hundred thousand dollars, whether acquired by purchase, lease, or donation.

h. Any acquisition by or on behalf of a health care provider or group of health care providers of any piece of equipment with a value in excess of one million five hundred thousand dollars, whether acquired by purchase, lease, or donation, which results in the offering or development of a health service not previously provided. A mobile service provided on a contract basis is not considered to have been previously provided by a health care provider or group of health care providers.

i. Any acquisition by or on behalf of an institutional health facility or a health maintenance organization of any piece of replacement equipment with a value in excess of one million five hundred thousand dollars, whether acquired by purchase, lease, or donation.

j. Any acquisition by or on behalf of an institutional health facility or health maintenance organization of any piece of equipment with a value in excess of one million five hundred thousand dollars, whether acquired by purchase, lease, or donation, which results in the offering or development of a health service not previously provided. A mobile service provided on a contract basis is not considered to have been previously provided by an institutional health facility.

k. Any air transportation service for transportation of patients or medical personnel offered through an institutional health facility at a specific time but which was not offered on a regular basis in or through that institutional health facility within the twelve-month period prior to the specific time.

l. Any mobile health service with a value in excess of one million five hundred thousand dollars.

m. Any of the following:

(1) Cardiac catheterization service.

(2) Open heart surgical service.

(3) Organ transplantation service.

(4) Radiation therapy service applying ionizing radiation for the treatment of malignant disease using megavoltage external beam equipment.

19. *"Offer"*, when used in connection with health services, means that an institutional health facility, health maintenance organization, health care provider, or group of health care providers holds itself out as capable of providing, or as having the means to provide, specified health services.

20. *"Organized outpatient health facility"* means a facility, not part of a hospital, organized and operated to provide health care to noninstitutionalized and nonhomebound persons on an outpatient basis; it does not include private offices or clinics of individual physicians, dentists or other practitioners, or groups of practitioners, who are health care providers.

21. *"Outpatient surgical facility"* means a facility which as its primary function provides, through an organized medical staff and on an outpatient basis to patients who are generally ambulatory, surgical procedures not ordinarily performed in a private physician's office, but not requiring twenty-four hour hospitalization, and which is neither a part of a hospital nor the private office of a health care provider who there engages in the lawful practice of surgery. *"Outpatient surgical facility"* includes a facility certified or seeking certification as an ambulatory surgical center, under the federal Medicare program or under the medical assistance program established pursuant to chapter 249A.

22. *"Technologically innovative equipment"* means equipment potentially useful for diagnostic or therapeutic purposes which introduces new technology in the diagnosis or treatment of disease, the usefulness of which is not well enough established to permit a specific plan of need to be developed for the state.

[C79, 81, §135.61; 82 Acts, ch 1194, §1, 2]

87 Acts, ch 215, §39; 91 Acts, ch 225, §1; 97 Acts, ch 93, §1, 2; 2002 Acts, ch 1162, §77

Subsection 2 stricken and rewritten

135.62 Department to administer division — health facilities council established — appointments — powers and duties.

1. This division shall be administered by the department. The director shall employ or cause to be employed the necessary persons to discharge the duties imposed on the department by this division.

2. There is established a state health facilities council consisting of five persons appointed by the governor. The council shall be within the department for administrative and budgetary purposes.

a. Qualifications. The members of the council shall be chosen so that the council as a whole is broadly representative of various geographical areas of the state, and no more than three of its members are affiliated with the same political

party. Each council member shall be a person who has demonstrated by prior activities an informed concern for the planning and delivery of health services. No member of the council, nor any spouse of a member, shall during the time that member is serving on the council:

(1) Be a health care provider nor be otherwise directly or indirectly engaged in the delivery of health care services nor have a material financial interest in the providing or delivery of health services; nor

(2) Serve as a member of any board or other policymaking or advisory body of an institutional health facility, a health maintenance organization, or any health or hospital insurer.

b. Appointments. Terms of council members shall be six years, beginning and ending as provided in section 69.19. A member shall be appointed in each odd-numbered year to succeed each member whose term expires in that year. Vacancies shall be filled by the governor for the balance of the unexpired term. Each appointment to the council is subject to confirmation by the senate. A council member is ineligible for appointment to a second consecutive term, unless first appointed to an unexpired term of three years or less.

The governor shall designate one of the council members as chairperson. That designation may be changed not later than July 1 of any odd-numbered year, effective on the date of the organizational meeting held in that year under paragraph *"c"* of this subsection.

c. Meetings. The council shall hold an organizational meeting in July of each odd-numbered year, or as soon thereafter as the new appointee or appointees are confirmed and have qualified. Other meetings shall be held as necessary to enable the council to expeditiously discharge its duties. Meeting dates shall be set upon adjournment or by call of the chairperson upon five days' notice to the other members. Each member of the council shall receive a per diem as specified in section 7E.6 and reimbursement for actual expenses while engaged in official duties.

d. Duties. The council shall:

(1) Make the final decision, as required by section 135.69, with respect to each application for a certificate of need accepted by the department.

(2) Determine and adopt such policies as are authorized by law and are deemed necessary to the efficient discharge of its duties under this division.

(3) Have authority to direct staff personnel of the department assigned to conduct formal or summary reviews of applications for certificates of need.

(4) Advise and counsel with the director concerning the provisions of this division, and the policies and procedures adopted by the department pursuant to this division.

(5) Review and approve, prior to promulgation, all rules adopted by the department under this division.

[C79, 81, §135.62]

86 Acts, ch 1245, §1109; 88 Acts, ch 1277, §26; 90 Acts, ch 1256, §30; 91 Acts, ch 225, §2, 3; 97 Acts, ch 93, §3

Confirmation, see §2.32

135.63 Certificate of need required — exclusions.

1. A new institutional health service or changed institutional health service shall not be offered or developed in this state without prior application to the department for and receipt of a certificate of need, pursuant to this division. The application shall be made upon forms furnished or prescribed by the department and shall contain such information as the department may require under this division. The application shall be accompanied by a fee equivalent to three-tenths of one percent of the anticipated cost of the project with a minimum fee of six hundred dollars and a maximum fee of twenty-one thousand dollars. The fee shall be remitted by the department to the treasurer of state, who shall place it in the general fund of the state. If an application is voluntarily withdrawn within thirty calendar days after submission, seventy-five percent of the application fee shall be refunded; if the application is voluntarily withdrawn more than thirty but within sixty days after submission, fifty percent of the application fee shall be refunded; if the application is withdrawn voluntarily more than sixty days after submission, twenty-five percent of the application fee shall be refunded. Notwithstanding the required payment of an application fee under this subsection, an applicant for a new institutional health service or a changed institutional health service offered or developed by an intermediate care facility for persons with mental retardation or an intermediate care facility for persons with mental illness as defined pursuant to section 135C.1 is exempt from payment of the application fee.

2. This division shall not be construed to augment, limit, contravene, or repeal in any manner any other statute of this state which may authorize or relate to licensure, regulation, supervision, or control of, nor to be applicable to:

a. Private offices and private clinics of an individual physician, dentist, or other practitioner or group of health care providers, except as provided by section 135.61, subsection 18, paragraphs *"g"*, *"h"*, and *"m"*, and subsections 20 and 21.

b. Dispensaries and first aid stations, located within schools, businesses, or industrial establishments, which are maintained solely for the use of students or employees of those establishments and which do not contain inpatient or resident beds that are customarily occupied by the same individual for more than twenty-four consecutive hours.

c. Establishments such as motels, hotels, and boarding houses which provide medical, nursing

personnel, and other health related services as an incident to their primary business or function.

d. The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

e. A health maintenance organization or combination of health maintenance organizations or an institutional health facility controlled directly or indirectly by a health maintenance organization or combination of health maintenance organizations, except when the health maintenance organization or combination of health maintenance organizations does any of the following:

(1) Constructs, develops, renovates, relocates, or otherwise establishes an institutional health facility.

(2) Acquires major medical equipment as provided by section 135.61, subsection 18, paragraphs *"i"* and *"j"*.

f. A residential care facility, as defined in section 135C.1, including a residential care facility for persons with mental retardation, notwithstanding any provision in this division to the contrary.

g. A reduction in bed capacity of an institutional health facility, notwithstanding any provision in this division to the contrary, if all of the following conditions exist:

(1) The institutional health facility reports to the department the number and type of beds reduced on a form prescribed by the department at least thirty days before the reduction. In the case of a health care facility, the new bed total must be consistent with the number of licensed beds at the facility. In the case of a hospital, the number of beds must be consistent with bed totals reported to the department of inspections and appeals for purposes of licensure and certification.

(2) The institutional health facility reports the new bed total on its next annual report to the department.

If these conditions are not met, the institutional health facility is subject to review as a *"new institutional health service"* or *"changed institutional health service"* under section 135.61, subsection 18, paragraph *"d"*, and subject to sanctions under section 135.73. If the institutional health facility reestablishes the deleted beds at a later time, review as a *"new institutional health service"* or *"changed institutional health service"* is required pursuant to section 135.61, subsection 18, paragraph *"d"*.

h. The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization, notwithstanding any provision of this division to the contrary, if all of the following conditions exist:

(1) The institutional health facility or health maintenance organization reports to the department the deletion of the service or services at least thirty days before the deletion on a form prescribed by the department.

(2) The institutional health facility or health maintenance organization reports the deletion of the service or services on its next annual report to the department.

If these conditions are not met, the institutional health facility or health maintenance organization is subject to review as a *"new institutional health service"* or *"changed institutional health service"* under section 135.61, subsection 18, paragraph *"f"*, and subject to sanctions under section 135.73.

If the institutional health facility or health maintenance organization reestablishes the deleted service or services at a later time, review as a *"new institutional health service"* or *"changed institutional health service"* may be required pursuant to section 135.61, subsection 18.

i. A residential program exempt from licensing as a health care facility under chapter 135C in accordance with section 135C.6, subsection 8.

j. The construction, modification, or replacement of nonpatient care services, including parking facilities, heating, ventilation and air conditioning systems, computers, telephone systems, medical office buildings, and other projects of a similar nature, notwithstanding any provision in this division to the contrary.

k. The redistribution of beds by a hospital within the acute care category of bed usage, notwithstanding any provision in this division to the contrary, if all of the following conditions exist:

(1) The hospital reports to the department the number and type of beds to be redistributed on a form prescribed by the department at least thirty days before the redistribution.

(2) The hospital reports the new distribution of beds on its next annual report to the department.

If these conditions are not met, the redistribution of beds by the hospital is subject to review as a new institutional health service or changed institutional health service pursuant to section 135.61, subsection 18, paragraph *"d"*, and is subject to sanctions under section 135.73.

l. The replacement or modernization of any institutional health facility if the replacement or modernization does not add new health services or additional bed capacity for existing health services, notwithstanding any provision in this division to the contrary.

m. Hemodialysis services provided by a hospital or freestanding facility, notwithstanding any provision in this division to the contrary.

n. Hospice services provided by a hospital, notwithstanding any provision in this division to the contrary.

o. The change in ownership, licensure, organizational structure, or designation of the type of in-

stitutional health facility if the health services offered by the successor institutional health facility are unchanged.

p. The conversion of an existing number of beds by an intermediate care facility for persons with mental retardation to a smaller facility environment, including but not limited to a community-based environment which does not result in an increased number of beds, notwithstanding any provision in this division to the contrary, including subsection 4, if all of the following conditions exist:

(1) The intermediate care facility for persons with mental retardation reports the number and type of beds to be converted on a form prescribed by the department at least thirty days before the conversion.

(2) The intermediate care facility for persons with mental retardation reports the conversion of beds on its next annual report to the department.

3. This division shall not be construed to be applicable to a health care facility operated by and for the exclusive use of members of a religious order, which does not admit more than two individuals to the facility from the general public, and which was in operation prior to July 1, 1986. However, this division is applicable to such a facility if the facility is involved in the offering or developing of a new or changed institutional health service on or after July 1, 1986.

4. A copy of the application shall be sent to the department of human services at the time the application is submitted to the Iowa department of public health. The department shall not process applications for and the council shall not consider a new or changed institutional health service for an intermediate care facility for persons with mental retardation unless both of the following conditions are met:

a. The new or changed beds shall not result in an increase in the total number of medical assistance certified intermediate care facility beds for persons with mental retardation in the state, exclusive of those beds at the state resource centers or other state institutions, beyond one thousand six hundred thirty-six beds.

b. A letter of support for the application is provided by the county board of supervisors, or the board's designee, in the county in which the beds would be located.

[C79, 81, §135.63; 82 Acts, ch 1194, §3]

86 Acts, ch 1150, §1; 86 Acts, ch 1245, §1110; 91 Acts, ch 225, §4; 92 Acts, ch 1043, §1; 92 Acts, ch 1206, §1; 95 Acts, ch 120, §1; 96 Acts, ch 1129, §113; 97 Acts, ch 93, §4 – 8; 2002 Acts, ch 1120, §10

Limitation on number of new or changed beds for intermediate care facilities for persons with mental retardation for FY 2002 – 2003; 2002 Acts, ch 1120, §12

Subsection 4 amended

135.64 Criteria for evaluation of applications.

1. In determining whether a certificate of need shall be issued, the department and council shall consider the following:

a. The contribution of the proposed institutional health service in meeting the needs of the medically underserved, including persons in rural areas, low-income persons, racial and ethnic minorities, persons with disabilities, and the elderly, as well as the extent to which medically underserved residents in the applicant's service area are likely to have access to the proposed institutional health service.

b. The relationship of the proposed institutional health services to the long-range development plan, if any, of the person providing or proposing the services.

c. The need of the population served or to be served by the proposed institutional health services for those services.

d. The distance, convenience, cost of transportation, and accessibility to health services for persons who live outside metropolitan areas.

e. The availability of alternative, less costly, or more effective methods of providing the proposed institutional health services.

f. The immediate and long-term financial feasibility of the proposal presented in the application, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

g. The relationship of the proposed institutional health services to the existing health care system of the area in which those services are proposed to be provided.

h. The appropriate and efficient use or prospective use of the proposed institutional health service, and of any existing similar services, including but not limited to a consideration of the capacity of the sponsor's facility to provide the proposed service, and possible sharing or cooperative arrangements among existing facilities and providers.

i. The availability of resources, including, but not limited to, health care providers, management personnel, and funds for capital and operating needs, to provide the proposed institutional health services and the possible alternative uses of those resources to provide other health services.

j. The appropriate and nondiscriminatory utilization of existing and available health care providers. Where both allopathic and osteopathic institutional health services exist, each application shall be considered in light of the availability and

utilization of both allopathic and osteopathic facilities and services in order to protect the freedom of choice of consumers and health care providers.

k. The relationship, including the organizational relationship, of the proposed institutional health services to ancillary or support services.

l. Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the immediate geographic area in which the entities are located, which entities may include but are not limited to medical and other health professional schools, multidisciplinary clinics, and specialty centers.

m. The special needs and circumstances of health maintenance organizations.

n. The special needs and circumstances of biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages.

o. The impact of relocation of an institutional health facility or health maintenance organization on other institutional health facilities or health maintenance organizations and on the needs of the population to be served, or which was previously served, or both.

p. In the case of a construction project, the costs and methods of the proposed construction and the probable impact of the proposed construction project on total health care costs.

q. In the case of a proposal for the addition of beds to a health care facility, the consistency of the proposed addition with the plans of other agencies of this state responsible for provision and financing of long-term care services, including home health services.

r. The recommendations of staff personnel of the department assigned to the area of certificate of need, concerning the application, if requested by the council.

2. In addition to the findings required with respect to any of the criteria listed in subsection 1 of this section, the council shall grant a certificate of need for a new institutional health service or changed institutional health service only if it finds in writing, on the basis of data submitted to it by the department, that:

a. Less costly, more efficient, or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;

b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;

c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;

d. Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service.

3. In the evaluation of applications for certificates of need submitted by university hospital at Iowa City, the unique features of that institution relating to statewide tertiary health care, health science education, and clinical research shall be given due consideration. Further, in administering this division, the unique capacity of university hospitals for the evaluation of technologically innovative equipment and other new health services shall be utilized.

[C79, 81, §135.64]

91 Acts, ch 225, §5; 92 Acts, ch 1043, §2; 96 Acts, ch 1129, §113; 2002 Acts, ch 1120, §11

Subsection 4 stricken

135.65 Letter of intent to precede application — review and comment.

1. Before applying for a certificate of need, the sponsor of a proposed new institutional health service or changed institutional health service shall submit to the department a letter of intent to offer or develop a service requiring a certificate of need. The letter shall be submitted as soon as possible after initiation of the applicant's planning process, and in any case not less than thirty days before applying for a certificate of need and before substantial expenditures to offer or develop the service are made. The letter shall include a brief description of the proposed new or changed service, its location, and its estimated cost.

2. Upon request of the sponsor of the proposed new or changed service, the department shall make a preliminary review of the letter for the purpose of informing the sponsor of the project of any factors which may appear likely to result in denial of a certificate of need, based on the criteria for evaluation of applications in section 135.64. A comment by the department under this section shall not constitute a final decision.

[C79, 81, §135.65]

91 Acts, ch 225, §6; 97 Acts, ch 93, §9

135.66 Procedure upon receipt of application — public notification.

1. Within fifteen business days after receipt of an application for a certificate of need, the department shall examine the application for form and completeness and accept or reject it. An application shall be rejected only if it fails to provide all information required by the department pursuant to section 135.63, subsection 1. The department shall promptly return to the applicant any rejected application, with an explanation of the reasons for its rejection.

2. Upon acceptance of an application for a certificate of need, the department shall promptly undertake to notify all affected persons in writing that formal review of the application has been ini-

tiated. Notification to those affected persons who are consumers or third-party payers or other payers for health services may be provided by distribution of the pertinent information to the news media.

3. Each application accepted by the department shall be formally reviewed for the purpose of furnishing to the council the information necessary to enable it to determine whether or not to grant the certificate of need. A formal review shall consist at a minimum of the following steps:

a. Evaluation of the application against the criteria specified in section 135.64.

b. A public hearing on the application, to be held prior to completion of the evaluation required by paragraph *"a"*, shall be conducted by the council.

4. When a hearing is to be held pursuant to subsection 3, paragraph *"b"*, the department shall give at least ten days' notice of the time and place of the hearing. At the hearing, any affected person or that person's designated representative shall have the opportunity to present testimony.

[C79, 81, §135.66]
91 Acts, ch 225, §7

135.67 Summary review procedure.

The department may waive the letter of intent procedures prescribed by section 135.65 and substitute a summary review procedure, which shall be established by rules of the department, when it accepts an application for a certificate of need for a project which meets any of the criteria in subsections 1 through 5:

1. A project which is limited to repair or replacement of a facility or equipment damaged or destroyed by a disaster, and which will not expand the facility nor increase the services provided beyond the level existing prior to the disaster.

2. A project necessary to enable the facility or service to achieve or maintain compliance with federal, state or other appropriate licensing, certification or safety requirements.

3. A project which will not change the existing bed capacity of the applicant's facility or service, as determined by the department, by more than ten percent or ten beds, whichever is less, over a two-year period.

4. A project the total cost of which will not exceed one hundred fifty thousand dollars.

5. Any other project for which the applicant proposes and the department agrees to summary review.

The department's decision to disallow a summary review shall be binding upon the applicant.

[C79, 81, §135.67]
91 Acts, ch 225, §8 – 10

135.68 Status reports on review in progress.

While formal review of an application for a certificate of need is in progress, the department shall upon request inform any affected person of the status of the review, any findings which have been made in the course of the review, and any other appropriate information concerning the review.

[C79, 81, §135.68]

135.69 Council to make final decision.

The department shall complete its formal review of the application within ninety days after acceptance of the application, except as otherwise provided by section 135.72, subsection 4. Upon completion of the formal review, the council shall approve or deny the application. The council shall issue written findings stating the basis for its decision on the application, and the department shall send copies of the council's decision and the written findings supporting the decision to the applicant and to any other person who so requests.

Failure by the council to issue a written decision on an application for a certificate of need within the time required by this section shall constitute denial of and final administrative action on the application.

[C79, 81, §135.69]
91 Acts, ch 225, §11

135.70 Appeal of certificate of need decisions.

The council's decision on an application for certificate of need, when announced pursuant to section 135.69, is a final decision. Any dissatisfied party who is an affected person with respect to the application, and who participated or sought unsuccessfully to participate in the formal review procedure prescribed by section 135.66, may request a rehearing in accordance with chapter 17A and rules of the department. If a rehearing is not requested or an affected party remains dissatisfied after the request for rehearing, an appeal may be taken in the manner provided by chapter 17A. Notwithstanding the Iowa administrative procedure Act, chapter 17A, a request for rehearing is not required, prior to appeal under section 17A.19.

[C79, 81, §135.70]
91 Acts, ch 225, §12

135.71 Period for which certificate is valid — extension or revocation.

A certificate of need shall be valid for a maximum of one year from the date of issuance. Upon the expiration of the certificate, or at any earlier time while the certificate is valid the holder thereof shall provide the department such information on the development of the project covered by the certificate as the department may request. The council shall determine at the end of the certification period whether sufficient progress is being made on the development of the project. The certificate of need may be extended by the council for additional periods of time as are reasonably necessary to expeditiously complete the project, but

may be revoked by the council at the end of the first or any subsequent certification period for insufficient progress in developing the project.

Upon expiration of certificate of need, and prior to extension thereof, any affected person shall have the right to submit to the department information which may be relevant to the question of granting an extension. The department may call a public hearing for this purpose.

[C79, 81, §135.71]
97 Acts, ch 93, §10

135.72 Authority to adopt rules.

The department shall adopt, with approval of the council, such administrative rules as are necessary to enable it to implement this division. These rules shall include:

1. Additional procedures and criteria for review of applications for certificates of need.

2. Uniform procedures for variations in application of criteria specified by section 135.64 for use in formal review of applications for certificates of need, when such variations are appropriate to the purpose of a particular review or to the type of institutional health service proposed in the application being reviewed.

3. Uniform procedures for summary reviews conducted under section 135.67.

4. Criteria for determining when it is not feasible to complete formal review of an application for a certificate of need within the time limits specified in section 135.69. The rules adopted under this subsection shall include criteria for determining whether an application proposes introduction of technologically innovative equipment, and if so, procedures to be followed in reviewing the application. However, a rule adopted under this subsection shall not permit a deferral of more than sixty days beyond the time when a decision is required under section 135.69, unless both the applicant and the department agree to a longer deferment.

[C79, 81, §135.72]
91 Acts, ch 225, §13

135.73 Sanctions.

1. Any party constructing a new institutional health facility or an addition to or renovation of an existing institutional health facility without first obtaining a certificate of need or, in the case of a mobile health service, ascertaining that the mobile health service has received certificate of need approval, as required by this division, shall be denied licensure or change of licensure by the appropriate responsible licensing agency of this state.

2. A party violating this division shall be subject to penalties in accordance with this section. The department shall adopt rules setting forth the violations by classification, the criteria for the classification of any violation not listed, and procedures for implementing this subsection.

a. A class I violation is one in which a party offers a new institutional health service or changed institutional health service modernization or acquisition without review and approval by the council. A party in violation is subject to a penalty of three hundred dollars for each day of a class I violation. The department may seek injunctive relief which shall include restraining the commission or continuance of an act which would violate the provisions of this paragraph. Notice and opportunity to be heard shall be provided to a party pursuant to rule of civil procedure 1.1507 and contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party showing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section.

b. A class II violation is one in which a party violates the terms or provisions of an approved application. The department may seek injunctive relief which shall include restraining the commission or continuance of or abating or eliminating an act which would violate the provisions of this subsection. Notice and opportunity to be heard shall be provided to a party pursuant to rule of civil procedure 1.1507 and contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party showing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section. A class II violation shall be abated or eliminated within a stated period of time determined by the department and specified by the department in writing. The period of time may be modified by the department for good cause shown. A party in violation may be subject to a penalty of five hundred dollars for each day of a class II violation.

3. Notwithstanding any other sanction imposed pursuant to this section, a party offering or developing any new institutional health service or changed institutional health service without first obtaining a certificate of need as required by this division may be temporarily or permanently restrained from doing so by any court of competent jurisdiction in any action brought by the state, any of its political subdivisions, or any other interested person.

4. The sanctions provided by this section are in addition to, and not in lieu of, any penalty prescribed by law for the acts against which these sanctions are invoked.

[C79, 81, §135.73]
91 Acts, ch 225, §14

135.74 Uniform financial reporting.

1. The department, after study and in consultation with any advisory committees which may be established pursuant to law, shall promulgate by rule pursuant to chapter 17A uniform

methods of financial reporting, including such allocation methods as may be prescribed, by which hospitals and health care facilities shall respectively record their revenues, expenses, other income, other outlays, assets and liabilities, and units of service, according to functional activity center. These uniform methods of financial reporting shall not preclude a hospital or health care facility from using any accounting methods for its own purposes provided these accounting methods can be reconciled to the uniform methods of financial reporting prescribed by the department and can be audited for validity and completeness. Each hospital and each health care facility shall adopt the appropriate system for its fiscal year, effective upon such date as the department shall direct. In determining the effective date for reporting requirements, the department shall consider both the immediate need for uniform reporting of information to effectuate the purposes of this division and the administrative and economic difficulties which hospitals and health care facilities may encounter in complying with the uniform financial reporting requirement, but the effective date shall not be later than January 1, 1980.

2. In establishing uniform methods of financial reporting, the department shall consider:

a. The existing systems of accounting and reporting currently utilized by hospitals and health care facilities;

b. Differences among hospitals and health care facilities, respectively, according to size, financial structure, methods of payment for services, and scope, type and method of providing services; and

c. Other pertinent distinguishing factors.

3. The department shall, where appropriate, provide for modification, consistent with the purposes of this division, of reporting requirements to correctly reflect the differences among hospitals and among health care facilities referred to in subsection 2, and to avoid otherwise unduly burdensome costs in meeting the requirements of uniform methods of financial reporting.

4. The uniform financial reporting methods, where appropriate, shall be structured so as to establish and differentiate costs incurred for patient-related services rendered by hospitals and health care facilities, as distinguished from those incurred in the course of educational, research and other nonpatient-related activities including but not limited to charitable activities of these hospitals and health care facilities.

[C79, 81, §135.74]

135.75 Annual reports by hospitals, health care facilities.

1. Each hospital and each health care facility shall annually, after the close of its fiscal year, file with the department:

a. A balance sheet detailing the assets, liabilities and net worth of the hospital or health care facility;

b. A statement of its income and expenses; and

c. Such other reports of the costs incurred in rendering services as the department may prescribe.

2. Where more than one licensed hospital or health care facility is operated by the reporting organization, the information required by this section shall be reported separately for each licensed hospital or health care facility. The department shall require preparation of specified financial reports by a certified public accountant, and may require attestation of responsible officials of the reporting hospital or health care facility that the reports submitted are to the best of their knowledge and belief prepared in accordance with the prescribed methods of reporting. The department shall have the right to inspect the books, audits and records of any hospital or health care facility as reasonably necessary to verify reports submitted pursuant to this division.

3. In obtaining the reports required by this section, the department and other state agencies shall co-ordinate their reporting requirements.

4. All reports filed under this section, except privileged medical information, shall be open to public inspection.

[C79, 81, §135.75]

135.76 Analyses and studies by department.

1. The department shall from time to time undertake analyses and studies relating to hospital and health care facility costs and to the financial status of hospitals or health care facilities, or both, which are subject to the provisions of this division. It shall further require the filing of information concerning the total financial needs of each individual hospital or health care facility and the resources currently or prospectively available to meet these needs, including the effect of proposals made by health systems agencies. The department shall also prepare and file such summaries and compilations or other supplementary reports based on the information filed with it as will, in its judgment, advance the purposes of this division.

2. The analyses and studies required by this section shall be conducted with the objective of providing a basis for determining whether or not regulation of hospital and health care facility rates and charges by the state of Iowa is necessary to protect the health or welfare of the people of the state.

3. In conducting its analyses and studies, the department should determine whether:

a. The rates charged and costs incurred by hospitals and health care facilities are reasonably related to the services offered by those respective groups of institutions.

b. Aggregate rates of hospitals and of health care facilities are reasonably related to the aggre-

gate costs incurred by those respective groups of institutions.

c. Rates are set equitably among all purchasers or classes of purchasers of hospital and of health care facility services.

d. The rates for particular services, supplies or materials established by hospitals and by health care facilities are reasonable. Determination of reasonableness of rates shall include consideration of a fair rate of return to proprietary hospitals and health care facilities.

4. All data gathered and compiled and all reports prepared under this section, except privileged medical information, shall be open to public inspection.

[C79, 81, §135.76]

135.77 Report to governor and legislature. Repealed by 97 Acts, ch 203, § 18.

135.78 Data to be compiled.

The department shall compile all relevant financial and utilization data in order to have available the statistical information necessary to properly monitor hospital and health care facility charges and costs. Such data shall include necessary operating expenses, appropriate expenses incurred for rendering services to patients who cannot or do not pay, all properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment involved. The department shall also obtain from each hospital and health care facility a current rate schedule as well as any subsequent amendments or modifications of that schedule as it may require. In collection of the data required by sections 135.74 to 135.78, the department and other state agencies shall coordinate their reporting requirements.

[C79, 81, §135.78]

2002 Acts, ch 1119, §14

Section amended

135.79 Civil penalty.

Any hospital or health care facility which fails to file with the department the financial reports required by sections 135.74 to 135.78 is subject to a civil penalty of not to exceed five hundred dollars for each offense.

[C79, 81, §135.79]

135.80 Restriction on application. Repealed by 91 Acts, ch 225, § 15.

135.81 Report to general assembly. Repealed by 83 Acts, ch 101, § 129.

135.82 Review forms. Repealed by 91 Acts, ch 225, § 15.

135.83 Contracts for assistance with analyses, studies, and data.

In furtherance of the department's responsibilities under sections 135.76 and 135.78, the director may contract with the Iowa hospital association and third-party payers, the Iowa health care facilities association and third-party payers, or the Iowa association of homes for the aging and third-party payers for the establishment of pilot programs dealing with prospective rate review in hospitals or health care facilities, or both. Such contract shall be subject to the approval of the executive council and shall provide for an equitable representation of health care providers, third-party payers, and health care consumers in the determination of criteria for rate review. No third-party payer shall be excluded from positive financial incentives based upon volume of gross patient revenues. No state or federal funds appropriated or available to the department shall be used for any such pilot program.

[C79, 81, §135.83]

98 Acts, ch 1100, §13; 2001 Acts, ch 74, §2; 2002 Acts, ch 1050, §16

Section amended

135.84 Organ transplant services. Repealed by 88 Acts, ch 1276, § 46.

135.85 through 135.89 Reserved.

DIVISION VII

LICENSED HOSPICE PROGRAMS

135.90 through 135.96 Transferred to chapter 135J; 90 Acts, ch 1204, § 66.

135.97 through 135.99 Reserved.

DIVISION VIII

LEAD ABATEMENT PROGRAM

135.100 Definitions.

For the purposes of this division, unless the context otherwise requires:

1. *"Department"* means the Iowa department of public health.

2. *"Local board"* means the local board of health.

87 Acts, ch 55, §1

135.101 Childhood lead poisoning prevention program.

There is established a childhood lead poisoning prevention program within the Iowa department of public health. The department shall implement and review programs necessary to eliminate potentially dangerous toxic lead levels in children in

Iowa in a year for which funds are appropriated to the department for this purpose.

87 Acts, ch 55, §2; 99 Acts, ch 141, §5

135.102 Rules.

The department shall adopt rules, pursuant to chapter 17A, regarding the:

1. Implementation of the grant program pursuant to section 135.103.
2. Maintenance of laboratory facilities for the childhood lead poisoning prevention program.
3. Maximum blood lead levels in children living in targeted rental dwelling units.
4. Standards and program requirements of the grant program pursuant to section 135.103.
5. Prioritization of proposed childhood lead poisoning prevention programs, based on the geographic areas known with children identified with elevated blood lead level resulting from surveys completed by the department.
6. Model regulations for lead hazard remediation to be used in instances in which a child is confirmed as lead poisoned. The department shall make the model regulations available to local boards of health and shall promote the adoption of the regulations at the local level, in cities and counties implementing lead hazard remediation programs. Nothing in this subsection shall be construed as requiring the adoption of the model regulations.

87 Acts, ch 55, §3; 99 Acts, ch 141, §6; 2001 Acts, ch 182, §9

135.103 Grant program.

The department shall implement a childhood lead poisoning prevention grant program which provides matching funds to local boards of health or cities for the program after standards and requirements for the local program are developed. The state shall provide funds to approved programs on the basis of three dollars for each one dollar designated by the local board of health or city for the program for the first two years of a program, and funds on the basis of one dollar for each one dollar designated by the local board of health or city for the program for the third and subsequent years of the program if such funding is determined necessary by the department for such subsequent years.

87 Acts, ch 55, §4; 91 Acts, ch 268, §307; 99 Acts, ch 141, §7

135.104 Requirements.

The program by a local board of health or city receiving matching funding for an approved childhood lead poisoning prevention grant program shall include:

1. A public education program about lead poisoning and dangers of lead poisoning to children.
2. An effective outreach effort to ensure availability of services in the predicted geographic area.
3. A screening program for children, with emphasis on children less than six years of age.
4. Access to laboratory services for lead analysis.
5. A program of referral of identified children for assessment and treatment.
6. An environmental assessment of suspect dwelling units.
7. Surveillance to ensure correction of the identified hazardous settings.
8. A plan of intent to continue the program on a maintenance basis after the grant is discontinued.

87 Acts, ch 55, §5; 99 Acts, ch 141, §8, 9; 2002 Acts, ch 1108, §9

Subsection 3 amended

135.105 Department duties.

The department shall:

1. Coordinate the childhood lead poisoning prevention program with the department of natural resources, the university of Iowa poison control program, the mobile and regional child health speciality clinics, and any agency or program known for a direct interest in lead levels in the environment.
2. Survey geographic areas not included in the grant program pursuant to section 135.103 periodically to determine prioritization of such areas for future grant programs.

87 Acts, ch 55, §6; 99 Acts, ch 141, §10

135.105A Lead inspector and lead abater training and certification established — civil penalty.

1. The department shall establish a program for the training and certification of lead inspectors and lead abaters. The department shall maintain a listing, available to the public and to city and county health departments, of lead inspectors and lead abaters who have successfully completed the training program and have been certified by the department. A person may be certified as both a lead inspector and a lead abater. However, a person who is certified as both a lead inspector and a lead abater shall not provide both inspection and abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.
2. The department shall also establish a program for the training of painting, demolition, and remodeling contractors and those who provide mitigation control services. The training shall be completed on a voluntary basis.
3. A person who owns real property which includes a residential dwelling and who performs lead inspection or lead abatement of the residential dwelling is not required to obtain certification to perform these measures, unless the residential

dwelling is occupied by a person other than the owner or a member of the owner's immediate family while the measures are being performed. However, the department shall encourage property owners who are not required to be certified to complete the training course to ensure the use of appropriate and safe mitigation and abatement procedures.

4. Except as otherwise provided in this section, a person shall not perform lead abatement or lead inspections unless the person has completed a training program approved by the department and has obtained certification. A person who violates this section is subject to a civil penalty not to exceed five thousand dollars for each offense.

96 Acts, ch 1161, §1, 4; 97 Acts, ch 159, §5; 98 Acts, ch 1100, §14

Rules, funding, and fee provisions, see 96 Acts, ch 1161, §3, 4

135.105B Voluntary guidelines — health and environmental measures — confirmed cases of lead poisoning.

1. The department may develop voluntary guidelines which may be used to develop and administer local programs to address the health and environmental needs of children who are confirmed as lead poisoned.

2. The voluntary guidelines may be based upon existing local ordinances that address the medical case management of children's health needs and the mitigation of the environmental factors which contributed to the lead poisoning.

3. Following development of the voluntary guidelines, cities or counties may elect to utilize the guidelines in developing and administering local programs through city or county health departments on a city, county, or multicounty basis or may request that the state develop and administer the local program. However, cities and counties are not required to develop and administer local programs based upon the guidelines.

96 Acts, ch 1161, §2, 4

135.105C Renovation, remodeling, and repainting — lead hazard notification process established.

1. A person who performs renovation, remodeling, or repainting services of target housing for compensation shall provide an approved lead hazard information pamphlet to the owner and occupant of the housing prior to commencing the services.

2. For the purpose of this section, *"target housing"* means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing that does not contain a bedroom, unless at least one child, under six years of age, resides or is expected to reside in the housing. The department shall adopt rules to implement the renovation, remodeling, and repainting lead hazard notification process.

3. A person who violates this section is subject to a civil penalty not to exceed five thousand dollars for each offense.

97 Acts, ch 159, §6, 24; 2000 Acts, ch 1140, §22; 2001 Acts, ch 58, §4

DIVISION IX

HEALTHY FAMILIES PROGRAM

135.106 Healthy families Iowa program — established.

1. The Iowa department of public health shall establish a healthy opportunities for parents to experience success (HOPES) – healthy families Iowa (HFI) program to provide services to families and children during the prenatal through preschool years. The program shall be designed to do all of the following:

a. Promote optimal child health and development.

b. Improve family coping skills and functioning.

c. Promote positive parenting skills and intrafamilial interaction.

d. Prevent child abuse and neglect and infant mortality and morbidity.

2. The HOPES program shall be developed by the Iowa department of public health, and may be implemented, in whole or in part, by contracting with a nonprofit child abuse prevention organization, local nonprofit certified home health program or other local nonprofit organizations, and shall include, but is not limited to, all of the following components:

a. Identification of barriers to positive birth outcomes, encouragement of collaboration and cooperation among providers of health care, social and human services, and other services to pregnant women and infants, and encouragement of pregnant women and women of childbearing age to seek health care and other services which promote positive birth outcomes.

b. Provision of community-based home-visiting family support to pregnant women and new parents who are identified through a standardized screening process to be at high risk for problems with successfully parenting their child.

c. Provision by family support workers of individual guidance, information, and access to health care and other services through care coordination and community outreach, including transportation.

d. Provision of systematic screening, prenatally or upon the birth of a child, to identify high-risk families.

e. Interviewing by a HOPES program worker or hospital social worker of families identified as high risk and encouragement of acceptance of family support services.

f. Provision of services including, but not limited to, home visits, support services, and instruc-

tion in child care and development.

g. Individualization of the intensity and scope of services based upon the family's needs, goals, and level of risk.

h. Assistance by a family support worker to participating families in creating a link to a "medical home" in order to promote preventive health care.

i. Evaluation and reporting on the program, including an evaluation of the program's success in reducing participants' risk factors and provision of services and recommendations for changes in or expansion of the program.

j. Provision of continuous follow-up contact with a family served by the program until identified children reach age three or age four in cases of continued high need or until the family attains its individualized goals for health, functioning, and self-sufficiency.

k. Provision or employment of family support workers who have experience as a parent, knowledge of health care services, social and human services, or related community services and have participated in a structured training program.

l. Provision of a training program that meets established standards for the education of family support workers. The structured training program shall include at a minimum the fundamentals of child health and development, dynamics of child abuse and neglect, and principles of effective parenting and parenting education.

m. Provision of crisis child care through utilization of existing child care services to participants in the program.

n. Program criteria shall include a required match of one dollar provided by the organization contracting to deliver services for each two dollars provided by the state grant. This requirement shall not restrict the department from providing unmatched grant funds to communities to plan new or expanded programs for HOPES. The department shall establish a limit on the amount of administrative costs that can be supported with state funds.

o. Involvement with the community assessment and planning process in the community served by HOPES programs to enhance collaboration and integration of family support programs.

p. Collaboration, to the greatest extent possible, with other family support programs funded or operated by the state.

q. Utilization of private party, third party, and medical assistance for reimbursement to defray the costs of services provided by the program to the extent possible.

3. It is the intent of the general assembly to provide communities with the discretion and authority to redesign existing local programs and services targeted at and assisting families expecting babies and families with children who are newborn through five years of age. The Iowa department of public health, department of human services, department of education, and other state agencies and programs, as appropriate, shall provide technical assistance and support to communities desiring to redesign their local programs and shall facilitate the consolidation of existing state funding appropriated and made available to the community for family support services. Funds which are consolidated in accordance with this subsection shall be used to support the redesigned service delivery system. In redesigning services, communities are encouraged to implement a single uniform family risk assessment mechanism and shall demonstrate the potential for improved outcomes for children and families. Requests by local communities for the redesigning of services shall be submitted to the Iowa department of public health, department of human services, and department of education, and are subject to the approval of the Iowa empowerment board in consultation with the departments, based on the innovation zone principles established in section 8A.2, Code 1997.

92 Acts, 2nd Ex, ch 1001, §419; 97 Acts, ch 138, §1; 98 Acts, ch 1206, §10

DIVISION X

RURAL HEALTH AND PRIMARY CARE

135.107 Center for rural health and primary care established — duties.

1. The center for rural health and primary care is established within the department. There is established an advisory committee to the center for rural health and primary care consisting of one representative, approved by the respective agency, of each of the following agencies: the department of agriculture and land stewardship, the Iowa department of public health, the department of inspections and appeals, the national institute for rural health policy, the rural health resource center, the institute of agricultural medicine and occupational health, and the Iowa state association of counties. The governor shall appoint two representatives of consumer groups active in rural health issues and a representative of each of two farm organizations active within the state, a representative of an agricultural business in the state, a practicing rural family physician, a practicing rural physician assistant, a practicing rural advanced registered nurse practitioner, and a rural health practitioner who is not a physician, physician assistant, or advanced registered nurse practitioner, as members of the advisory committee. The advisory committee shall also include as members two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.

The advisory committee shall regularly meet

with the administrative head of the center as well as the director of the center for agricultural health and safety established under section 262.78. The head of the center and the director of the center for agricultural health and safety shall consult with the advisory committee and provide the committee with relevant information regarding their agencies.

2. The center for rural health and primary care shall do all of the following:

a. Provide technical planning assistance to rural communities and counties exploring innovative means of delivering rural health services through community health services assessment, planning, and implementation, including but not limited to hospital conversions, cooperative agreements among hospitals, physician and health practitioner support, recruitment and retention of primary health care providers, public health services, emergency medical services, medical assistance facilities, rural health care clinics, and alternative means which may be included in the long-term community health services assessment and developmental plan. The center for rural health and primary care shall encourage collaborative efforts of the local boards of health, hospital governing boards, and other public and private entities located in rural communities to adopt a long-term community health services assessment and developmental plan pursuant to rules adopted by the department and perform the duties required of the Iowa department of public health in section 135B.33.

b. Provide technical assistance to assist rural communities in improving medicare reimbursements through the establishment of rural health clinics, defined pursuant to 42 U.S.C. § 1395(x), and distinct part skilled nursing facility beds.

c. Coordinate services to provide research for the following items:

(1) Examination of the prevalence of rural occupational health injuries in the state.

(2) Assessment of training and continuing education available through local hospitals and others relating to diagnosis and treatment of diseases associated with rural occupational health hazards.

(3) Determination of continuing education support necessary for rural health practitioners to diagnose and treat illnesses caused by exposure to rural occupational health hazards.

(4) Determination of the types of actions that can help prevent agricultural accidents.

(5) Surveillance and reporting of disabilities suffered by persons engaged in agriculture resulting from diseases or injuries, including identifying the amount and severity of agricultural-related injuries and diseases in the state, identifying causal factors associated with agricultural-related injuries and diseases, and indicating the effectiveness of intervention programs designed to reduce injuries and diseases.

d. Cooperate with the center for agricultural health and safety established under section 262.78, the center for health effects of environmental contamination established under section 263.17, and the department of agriculture and land stewardship. The agencies shall coordinate programs to the extent practicable.

e. Administer grants for farm safety education efforts directed to rural families for the purpose of preventing farm-related injuries to children.

3. The center for rural health and primary care shall establish a primary care provider recruitment and retention endeavor, to be known as PRIMECARRE. The endeavor shall include a community grant program, a primary care provider loan repayment program, and a primary care provider community scholarship program. The endeavor shall be developed and implemented in a manner to promote and accommodate local creativity in efforts to recruit and retain health care professionals to provide services in the locality. The focus of the endeavor shall be to promote and assist local efforts in developing health care provider recruitment and retention programs. Eligibility under any of the programs established under the primary care provider recruitment and retention endeavor shall be based upon a community health services assessment completed under subsection 2, paragraph *"a"*. A community or region, as applicable, shall submit a letter of intent to conduct a community health services assessment and to apply for assistance under this subsection. The letter shall be in a form and contain information as determined by the center. A letter of intent shall be submitted to the center by January 1 preceding the fiscal year for which an application for assistance is to be made. Assistance under this subsection shall not be granted until such time as the community or region making application has completed the community health services assessment and adopted a long-term community health services assessment and developmental plan. In addition to any other requirements, a developmental plan shall include a clear commitment to informing high school students of the health care opportunities which may be available to such students.

The center for rural health and primary care shall seek additional assistance and resources from other state departments and agencies, federal agencies and grant programs, private organizations, and any other person, as appropriate. The center is authorized and directed to accept on behalf of the state any grant or contribution, federal or otherwise, made to assist in meeting the cost of carrying out the purpose of this subsection. All federal grants to and the federal receipts of the center are appropriated for the purpose set forth in such federal grants or receipts. Funds appropriated by the general assembly to the center for implementation of this subsection shall first be used for securing any available federal funds re-

quiring a state match, with remaining funds being used for the community grant program.

The center for rural health and primary care may, to further the purposes of this subsection, provide financial assistance in the form of grants to support the effort of a community which is clearly part of the community's long-term community health services assessment and developmental plan. Efforts for which such grants may be awarded include, but are not limited to, the procurement of clinical equipment, clinical facilities, and telecommunications facilities, and the support of locum tenens arrangements and primary care provider mentor programs.

a. Community grant program. The center for rural health and primary care shall adopt rules establishing an application process to be used by the center to establish a grant assistance program as provided in this paragraph, and establishing the criteria to be used in evaluating the applications. Selection criteria shall include a method for prioritizing grant applications based on illustrated efforts to meet the health care provider needs of the locality and surrounding area. Such assistance may be in the form of a forgivable loan, grant, or other nonfinancial assistance as deemed appropriate by the center. An application submitted shall contain a commitment of at least a dollar-for-dollar match of the grant assistance. Application may be made for assistance by a single community or group of communities.

Grants awarded under the program shall be subject to the following limitations:

(1) Ten thousand dollars for a single community or region with a population of ten thousand or less. An award shall not be made under this program to a community with a population of more than ten thousand.

(2) An amount not to exceed one dollar per capita for a region in which the population exceeds ten thousand. For purposes of determining the amount of a grant for a region, the population of the region shall not include the population of any community with a population of more than ten thousand located in the region.

b. Primary care provider loan repayment program.

(1) A primary care provider loan repayment program is established to increase the number of health professionals practicing primary care in federally designated health professional shortage areas of the state. Under the program, loan repayment may be made to a recipient for educational expenses incurred while completing an accredited health education program directly related to obtaining credentials necessary to practice the recipient's health profession.

(2) The center for rural health and primary care shall adopt rules relating to the establishment and administration of the primary care provider loan repayment program. Rules adopted pursuant to this paragraph shall provide, at a minimum, for all of the following:

(a) Determination of eligibility requirements and qualifications of an applicant to receive loan repayment under the program, including but not limited to years of obligated service, clinical practice requirements, and residency requirements. One year of obligated service shall be provided by the applicant in exchange for each year of loan repayment, unless federal requirements otherwise require. Loan repayment under the program shall not be approved for a health provider whose license or certification is restricted by a medical regulatory authority of any jurisdiction of the United States, other nations, or territories.

(b) Identification of federally designated health professional shortage areas of the state and prioritization of such areas according to need.

(c) Determination of the amount and duration of the loan repayment an applicant may receive, giving consideration to the availability of funds under the program, and the applicant's outstanding educational loans and professional credentials.

(d) Determination of the conditions of loan repayment applicable to an applicant.

(e) Enforcement of the state's rights under a loan repayment program contract, including the commencement of any court action.

(f) Cancellation of a loan repayment program contract for reasonable cause.

(g) Participation in federal programs supporting repayment of loans of health care providers and acceptance of gifts, grants, and other aid or amounts from any person, association, foundation, trust, corporation, governmental agency, or other entity for the purposes of the program.

(h) Upon availability of state funds, determine eligibility criteria and qualifications for participating communities and applicants not located in federally designated shortage areas.

(i) Other rules as necessary.

(3) The center for rural health and primary care may enter into an agreement under chapter 28E with the college student aid commission for the administration of this program.

c. Primary care provider community scholarship program.

(1) A primary care provider community scholarship program is established to recruit and to provide scholarships to train primary health care practitioners in federally designated health professional shortage areas of the state. Under the program, scholarships may be awarded to a recipient for educational expenses incurred while completing an accredited health education program directly related to obtaining the credentials necessary to practice the recipient's health profession.

(2) The department shall adopt rules relating to the establishment and administration of the primary care provider community scholarship program. Rules adopted pursuant to this paragraph shall provide, at a minimum, for all of the

following:

(a) Determination of eligibility requirements and qualifications of an applicant to receive scholarships under the program, including but not limited to years of obligated service, clinical practice requirements, and residency requirements. One year of obligated service shall be provided by the applicant in exchange for each year of scholarship receipt, unless federal requirements otherwise require.

(b) Identification of federally designated health professional shortage areas of the state and prioritization of such areas according to need.

(c) Determination of the amount of the scholarship an applicant may receive.

(d) Determination of the conditions of scholarship to be awarded to an applicant.

(e) Enforcement of the state's rights under a scholarship contract, including the commencement of any court action.

(f) Cancellation of a scholarship contract for reasonable cause.

(g) Participation in federal programs supporting scholarships for health care providers and acceptance of gifts, grants, and other aid or amounts from any person, association, foundation, trust, corporation, governmental agency, or other entity for the purposes of the program.

(h) Upon availability of state funds, determination of eligibility criteria and qualifications for participating communities and applicants not located in federally designated shortage areas.

(i) Other rules as necessary.

(3) The center for rural health and primary care may enter into an agreement under chapter 28E with the college student aid commission for the administration of this program.

89 Acts, ch 304, §702; 90 Acts, ch 1207, §1, 2; 90 Acts, ch 1223, §18

C93, §135.13

94 Acts, ch 1168, §2

C95, §135.107

95 Acts, ch 67, §10; 96 Acts, ch 1128, §2, 3; 97 Acts, ch 23, §14; 97 Acts, ch 203, §14; 98 Acts, ch 1100, §15; 2000 Acts, ch 1058, §16, 17; 2000 Acts, ch 1140, §23 – 25; 2000 Acts, ch 1223, §20, 21

Legislative findings; 94 Acts, ch 1168, §1

DIVISION XI

DOMESTIC ABUSE DEATH REVIEW TEAM

135.108 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Department"* means the Iowa department of public health.

2. *"Director"* means the director of public health.

3. *"Domestic abuse death"* means a homicide or suicide that involves or is a result of an assault as defined in section 708.1 and to which any of the following circumstances apply to the parties involved:

a. The alleged or convicted perpetrator is related to the decedent as spouse, separated spouse, or former spouse.

b. The alleged or convicted perpetrator resided with the decedent at the time of the assault that resulted in the homicide or suicide.

c. The alleged or convicted perpetrator and the decedent resided together in the past but did not reside together at the time of the assault that resulted in the homicide or suicide.

d. The alleged or convicted perpetrator and decedent are parents of the same minor child, whether they were married or lived together at any time.

e. The alleged or convicted perpetrator was in an ongoing personal relationship with the decedent.

f. The alleged or convicted perpetrator was arrested for or convicted of stalking or harassing the decedent, or an order or court-approved agreement was entered against the perpetrator under chapter 232, 236, 598, or 915 to restrict contact by the perpetrator with the decedent.

g. The decedent was related by blood or affinity to an individual who lived in the same household with or was in the workplace or proximity of the decedent, and that individual was threatened with assault by the perpetrator.

4. *"Team"* means the domestic abuse death review team established in section 135.109.

2000 Acts, ch 1136, §1

135.109 Iowa domestic abuse death review team membership.

1. An Iowa domestic abuse death review team is established as an independent agency of state government.

2. The department shall provide staffing and administrative support to the team.

3. The team shall include the following members:

a. The state medical examiner or the state medical examiner's designee.

b. A licensed physician who is knowledgeable concerning domestic abuse injuries and deaths, including suicides.

c. A licensed mental health professional who is knowledgeable concerning domestic abuse.

d. A representative or designee of the Iowa coalition against domestic violence.

e. A certified or licensed professional who is knowledgeable concerning substance abuse.

f. A law enforcement official who is knowledgeable concerning domestic abuse.

g. A law enforcement investigator experienced in domestic abuse investigation.

h. An attorney experienced in prosecuting domestic abuse cases.

i. A judicial officer appointed by the chief justice of the supreme court.

j. A clerk of the district court appointed by the chief justice of the supreme court.

k. An employee or subcontractor of the department of corrections who is a trained batterers' education program facilitator.

l. An attorney licensed in this state who provides criminal defense assistance or child custody representation, and who has experience in dissolution of marriage proceedings.

m. Both a female and a male victim of domestic abuse.

n. A family member of a decedent whose death resulted from domestic abuse.

4. The following individuals shall each designate a liaison to assist the team in fulfilling the team's duties:

a. The attorney general.

b. The director of the Iowa department of corrections.

c. The director of public health.

d. The director of human services.

e. The commissioner of public safety.

f. The administrator of the bureau of vital records of the Iowa department of public health.

g. The director of the department of education.

h. The state court administrator.

i. The director of the department of human rights.

5. *a.* The director of public health, in consultation with the attorney general, shall appoint review team members who are not designated by another appointing authority.

b. A membership vacancy shall be filled in the same manner as the original appointment.

c. The membership of the review team is subject to the provisions of sections 69.16 and 69.16A, relating to political affiliation and gender balance.

d. A member of the team may be reappointed to serve additional terms on the team, subject to the provisions of chapter 69.

6. Membership terms shall be three-year staggered terms.

7. Members of the team are eligible for reimbursement of actual and necessary expenses incurred in the performance of their official duties.

8. Team members and their agents are immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of any act, omission, proceeding, decision, or determination undertaken or performed, or recommendation made as a team member or agent provided that the team members or agents acted reasonably and in good faith and without malice in carrying out their official duties in their official capacity. A complainant bears the burden of proof in establishing malice or unreasonableness or lack of good faith in an action brought against team members involving the performance of their duties and powers.

2000 Acts, ch 1136, §2

Terms of initial team members; 2000 Acts, ch 1136, §6

135.110 Iowa domestic abuse death review team powers and duties.

1. The review team shall perform the following duties:

a. Prepare an annual report for the governor, supreme court, attorney general, and the general assembly concerning the following subjects:

(1) The causes and manner of domestic abuse deaths, including an analysis of factual information obtained through review of domestic abuse death certificates and domestic abuse death data, including patient records and other pertinent confidential and public information concerning domestic abuse deaths.

(2) The contributing factors of domestic abuse deaths.

(3) Recommendations regarding the prevention of future domestic abuse deaths, including actions to be taken by communities, based on an analysis of these contributing factors.

b. Advise and consult the agencies represented on the team and other state agencies regarding program and regulatory changes that may prevent domestic abuse deaths.

c. Develop protocols for domestic abuse death investigations and team review.

2. In performing duties pursuant to subsection 1, the review team shall review the relationship between the decedent victim and the alleged or convicted perpetrator from the point where the abuse allegedly began, until the domestic abuse death occurred, and shall review all relevant documents pertaining to the relationship between the parties, including but not limited to protective orders and dissolution, custody, and support agreements and related court records, in order to ascertain whether a correlation exists between certain events in the relationship and any escalation of abuse, and whether patterns can be established regarding such events in relation to domestic abuse deaths in general. The review team shall consider such conclusions in making recommendations pursuant to subsection 1.

3. The team shall meet upon the call of the chairperson, upon the request of a state agency, or as determined by a majority of the team.

4. The team shall annually elect a chairperson and other officers as deemed necessary by the team.

5. The team may establish committees or panels to whom the team may assign some or all of the team's responsibilities.

6. Members of the team who are currently practicing attorneys or current employees of the judicial branch of state government shall not participate in the following:

a. An investigation by the team that involves a case in which the team member is presently involved in the member's professional capacity.

b. Development of protocols by the team for domestic abuse death investigations and team review.

c. Development of regulatory changes related to domestic abuse deaths.

2000 Acts, ch 1136, §3; 2000 Acts, ch 1232, §48; 2002 Acts, ch 1119, §131

Subsection 2 amended

135.111 Confidentiality of domestic abuse death records.

1. A person in possession or control of medical, investigative, or other information pertaining to a domestic abuse death and related incidents and events preceding the domestic abuse death, shall allow for the inspection and review of written or photographic information related to the death, whether the information is confidential or public in nature, by the department upon the request of the department and the team, to be used only in the administration and for the official duties of the team. Information and records produced under this section that are confidential under the law of this state or under federal law, or because of any legally recognized privilege, and information or records received from the confidential records, remain confidential under this section.

2. A person does not incur legal liability by reason of releasing information to the department as required under and in compliance with this section.

3. A person who releases or discloses confidential data, records, or any other type of information in violation of this section is guilty of a serious misdemeanor.

2000 Acts, ch 1136, §4

135.112 Rulemaking.

The department shall adopt rules pursuant to chapter 17A relating to the administration of the domestic abuse death review team and sections 135.108 through 135.111.

2000 Acts, ch 1136, §5

135.113 through 135.117 Reserved.

DIVISION XII

CHILD PROTECTION CENTER GRANT PROGRAM

135.118 Child protection center grant program.

1. A child protection center grant program is established in the Iowa department of public health in accordance with this section. The director of public health shall establish requirements for the grant program and shall award grants. A grant may be used for establishment of a new center or for support of an existing center.

2. The eligibility requirements for a child protection center grant shall include but are not limited to all of the following:

a. A grantee must meet or be in the process of meeting the standards established by the national children's alliance for children's advocacy centers.

b. A grantee must have in place an interagency memorandum of understanding regarding participation in the operation of the center and for coordinating the activities of the government entities that respond to cases of child abuse in order to facilitate the appropriate disposition of child abuse cases through the juvenile and criminal justice systems. Agencies participating under the memorandum must include the following that are operating in the area served by the grantee:

(1) Department of human services county offices assigned to child protection.

(2) County and municipal law enforcement agencies.

(3) Office of the county attorney.

(4) Other government agencies involved with child abuse assessments or service provision.

c. The interagency memorandum must provide for a cooperative team approach to responding to child abuse, reducing the number of interviews required of a victim of child abuse, and establishing an approach that emphasizes the best interest of the child and that provides investigation, assessment, and rehabilitative services.

d. As necessary to address serious cases of child abuse such as those involving sexual abuse, serious physical abuse, and substance abuse, a grantee must be able to involve or consult with persons from various professional disciplines who have training and expertise in addressing special types of child abuse. These persons may include but are not limited to physicians and other health care professionals, mental health professionals, social workers, child protection workers, attorneys, juvenile court officers, public health workers, child development experts, child educators, and child advocates.

3. The director shall create a committee to consider grant proposals and to make grant recommendations to the director. The committee membership may include but is not limited to representatives of the following: departments of human services, justice, and public health, Iowa medical society, Iowa hospital association, Iowa nurses association, and an association representing social workers.

4. Implementation of the grant program is subject to the availability of funding for the grant program.

2001 Acts, ch 166, §1

135.119 Reserved.

DIVISION XIII

TAXATION OF ORGANIZED DELIVERY SYSTEMS

135.120 Taxation of organized delivery systems.

Payments received by an organized delivery system licensed by the director for health care services, insurance, indemnity, or other benefits to which an enrollee is entitled through an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and payments by an organized delivery system licensed by the director to providers for health care services, to insurers, or corporations authorized under chapter 514 for insurance, indemnity, or other service benefits authorized under 1993 Iowa Acts, chapter 158, are not premiums received and taxable under the provisions of section 432.1 for the first five years of the existence of the organized delivery system, its successors or assigns, or the first five years after July 1, 1996, whichever is the later. After the first five years, the payments received shall be considered premiums received and shall be taxable under the provisions of section 432.1, subsection 1. However, payments made by the United States secretary of health and human services under contracts issued under section 1833 or 1876 of the federal Social Security Act, section 4015 of the federal Omnibus Budget Reconciliation Act of 1987, or chapter 249A for enrolled members shall not be considered premiums received and shall not be taxable under section 432.1.

96 Acts, ch 1146, §1; 2002 Acts, ch 1158, §1
Section amended

135.121 through 135.129 Reserved.

DIVISION XIV

SUBSTANCE ABUSE TREATMENT FACILITY FOR PERSONS ON PROBATION

135.130 Substance abuse treatment facility for persons on probation.

1. The director shall establish and operate a facility for the purpose of providing a structured treatment program for persons with a substance abuse problem who are on probation and under the supervision of a judicial district department of correctional services. The department shall enter into an agreement pursuant to chapter 28E with the department of corrections for assistance in establishing security for the facility. The department, in consultation with the department of corrections, shall adopt rules pursuant to chapter 17A to administer this section. The rules adopted shall include rules related to the treatment requirements of the program.

2. A substance abuse treatment facility advisory council is established within the department to advise and make recommendations to the director regarding the establishment and operation of a facility for persons with a substance abuse problem who are on probation and to assist with the implementation of treatment programs that are proven to be effective for offenders. The substance abuse treatment facility advisory council shall consist of the directors of the eight judicial district departments of correctional services and one representative each from the judicial branch, the Iowa department of public health, the department of corrections, and the governor's office of drug control policy.

3. The department, in consultation with the department of corrections and the advisory council, shall adopt rules pursuant to chapter 17A to establish and operate the facility.

2001 Acts, ch 184, §7

CHAPTER 135A

HOSPITAL AND HEALTH FACILITY SURVEY

Repealed by 90 Acts, ch 1204, §65

CHAPTER 135B

LICENSURE AND REGULATION OF HOSPITALS

Abortion liability exculpation, chapter 146
Psychiatric medical institutions for children, chapter 135H

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135B.34 Single contact repository — record checks.

135B.1 Definitions.

As used in this chapter:

1. *"Department"* means the department of inspections and appeals.

2. *"Governmental unit"* means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

3. *"Hospital"* means a place which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care over a period exceeding twenty-four hours of two or more nonrelated individuals suffering from illness, injury, or deformity, or a place which is devoted primarily to the rendering over a period exceeding twenty-four hours of obstetrical or other medical or nursing care for two or more nonrelated individuals, or any institution, place, building or agency in which any accommodation is primarily maintained, furnished or offered for the care over a period exceeding twenty-four hours of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care; and shall include sanatoriums or other related institutions within the meaning of this chapter. Provided, however, nothing in this chapter shall apply to hotels or other similar places that furnish only food and lodging, or either, to their guests or to a free-standing hospice facility which operates a hospice program in accordance with 42 C.F.R. § 418. *"Hospital"* shall include, in any event, any facilities wholly or partially constructed or to be constructed with federal financial assistance, pursuant to Public Law 725, 79th Congress, approved August 13, 1946.*

4. *"Person"* means any individual, firm, partnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee or other similar representative thereof.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.1]

90 Acts, ch 1107, §1; 90 Acts, ch 1204, §2

*60 Stat. L. 1040

135B.2 Purpose.

The purpose of this chapter is to provide for the development, establishment and enforcement of basic standards (1) for the care and treatment of individuals in hospitals and (2) for the construction, maintenance and operation of such hospitals, which, in the light of existing knowledge, will promote safe and adequate treatment of such individuals in hospitals, in the interest of the health, welfare and safety of the public.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.2]

135B.3 Licensure.

No person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this state without a license.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.3]

135B.4 Application for license.

Licenses shall be obtained from the department. Applications shall be upon forms and shall contain information as the department may reasonably require, which may include affirmative evidence of ability to comply with reasonable standards and rules prescribed under this chapter. Each application for license shall be accompanied by the license fee, which shall be refunded to the applicant if the license is denied and which shall be deposited into

the state treasury and credited to the general fund if the license is issued. Hospitals having fifty beds or less shall pay an initial license fee of fifteen dollars; hospitals of more than fifty beds and not more than one hundred beds shall pay an initial license fee of twenty-five dollars; all other hospitals shall pay an initial license fee of fifty dollars.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.4]

90 Acts, ch 1204, §3

135B.5 Issuance and renewal of license.

Upon receipt of an application for license and the license fee, the department shall issue a license if the applicant and hospital facilities comply with this chapter and the rules of the department. Each licensee shall receive annual reapproval upon payment of ten dollars and upon filing of an application form which is available from the department. Licenses shall be either general or restricted in form. Each license shall be issued only for the premises and persons or governmental units named in the application and is not transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by rule of the department.

Provided, however, that the provisions of this section shall not in any way affect, change, deny or nullify any rights set forth in, or arising from the provisions of this chapter and particularly section 135B.7, arising before or after December 31, 1960.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.5]

90 Acts, ch 1204, §4

135B.6 Denial, suspension, or revocation of license — hearings and review.

The department may deny, suspend, or revoke a license in any case where it finds that there has been a substantial failure to comply with this chapter or the rules or minimum standards adopted pursuant to this chapter.

A denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by certified mail, or by personal service of, a notice setting forth the particular reasons for the action. A denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within the thirty-day period gives written notice to the department requesting a hearing, in which case the notice is suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to hearing, the department may rescind the notice of denial, suspension, or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of a hearing or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified, or set aside by the department. A copy of the decision, setting forth the finding of facts and the particular reasons for the decision shall be sent by certified mail, or served personally upon, the applicant or licensee.

The procedure governing hearings authorized by this section shall be in accordance with rules adopted by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135B.14. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.6]

90 Acts, ch 1204, §5

135B.7 Rules and enforcement.

The department, with the advice and approval of the hospital licensing board and approval of the state board of health, shall adopt rules setting out the standards for the different types of hospitals to be licensed under this chapter. The department shall enforce the rules. Rules or standards shall not be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed, solely by reason of the school or system of practice employed or permitted to be employed by physicians in the hospital, if the school or system of practice is recognized by the laws of this state.

The rules shall state that a hospital shall not deny clinical privileges to physicians and surgeons, podiatric physicians, osteopaths, osteopathic surgeons, dentists, certified health service providers in psychology, physician assistants, or advanced registered nurse practitioners licensed under chapter 148, 148C, 149, 150, 150A, 152, or 153, or section 154B.7, solely by reason of the license held by the practitioner or solely by reason of the school or institution in which the practitioner received medical schooling or postgraduate training if the medical schooling or postgraduate training was accredited by an organization recognized by the council on postsecondary accreditation or an accrediting group recognized by the United States department of education. A hospital may establish procedures for interaction between a patient and a practitioner. The rules shall not prohibit a hospital from limiting, restricting, or revoking clinical privileges of a practitioner for violation of hospital rules, regulations, or procedures established under this paragraph, when applied in good faith and in a nondiscriminatory manner. This paragraph shall not require a hospital to expand the hospital's current scope of service delivery solely to offer the services of a class of providers not currently providing services at the hos-

pital. This section shall not be construed to require a hospital to establish rules which are inconsistent with the scope of practice established for licensure of practitioners to whom this paragraph applies. This section shall not be construed to authorize the denial of clinical privileges to a practitioner or class of practitioners solely because a hospital has as employees of the hospital identically licensed practitioners providing the same or similar services.

The rules shall require that a hospital establish and implement written criteria for the granting of clinical privileges. The written criteria shall include but are not limited to consideration of the ability of an applicant for privileges to provide patient care services independently and appropriately in the hospital; the license held by the applicant to practice; training, experience, and competence of the applicant; and the relationship between the applicant's request for the granting of privileges and the hospital's current scope of patient care services, as well as the hospital's determination of the necessity to grant privileges to a practitioner authorized to provide comprehensive, appropriate, and cost-effective services.

The department shall adopt rules requiring hospitals to establish and implement protocols for responding to the needs of patients who are victims of domestic abuse, as defined in section 236.2.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.7]

83 Acts, ch 101, §16; 85 Acts, ch 169, §1; 90 Acts, ch 1093, §1; 90 Acts, ch 1204, §6; 91 Acts, ch 218, §3; 93 Acts, ch 108, §1; 96 Acts, ch 1034, §68; 99 Acts, ch 42, §1

135B.7A Procedures — orders.

The department shall adopt rules that require hospitals to establish procedures for authentication of medication and standing orders by a practitioner within a period not to exceed thirty days following a patient's discharge.

2001 Acts, ch 93, §1

Section is repealed June 30, 2007; 2001 Acts, ch 93, §2

135B.8 Effective date of rules.

Any hospital which is in operation at the time of promulgation of any applicable rules or minimum standards under this chapter shall be given a reasonable time, not to exceed one year from the date of such promulgation, within which to comply with such rules and minimum standards.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.8]

135B.9 Inspections — protection and advocacy agency investigations.

The department shall make or cause to be made inspections as it deems necessary in order to determine compliance with applicable rules.

In the state resource centers and state mental health institutes operated by the department of human services, the designated protection and advocacy agency as provided in section 135C.2, subsection 4, shall have the authority to investigate all complaints of abuse and neglect of persons with developmental disabilities or mental illnesses if the complaints are reported to the protection and advocacy agency or if there is probable cause to believe that the abuse has occurred. Such authority shall include the examination of all records pertaining to the care provided to the residents and contact or interview with any resident, employee, or any other person who might have knowledge about the operation of the institution.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.9]

88 Acts, ch 1249, §1; 90 Acts, ch 1204, §7; 95 Acts, ch 51, §1; 2000 Acts, ch 1112, §51

135B.10 Hospital licensing board.

The governor shall appoint five individuals who possess recognized ability in the field of hospital administration, to serve as the hospital licensing board within the department.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.10]

86 Acts, ch 1245, §527; 90 Acts, ch 1204, §8

135B.11 Functions of hospital licensing board — compensation.

The hospital licensing board shall have the following responsibilities and duties:

1. To consult with and advise the department in matters of policy affecting administration of this chapter, and in the development of rules and standards provided for under this chapter.

2. To review and approve rules and standards authorized under this chapter prior to their approval by the state board of health and adoption by the department.

Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.11]

86 Acts, ch 1245, §528; 87 Acts, ch 8, §4; 90 Acts, ch 1204, §9

135B.12 Confidentiality.

The department's final findings or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteopathic association with respect to compliance by a hospital with requirements for licensing or accreditation shall be made available to the public in a readily available form and place. Other information relating to a hospital obtained by the department which does not constitute the department's findings from an inspection of the hospital or the final survey findings of the joint commission on the accreditation of health care organizations

or the American osteopathic association shall not be made available to the public, except in proceedings involving the denial, suspension, or revocation of a license under this chapter. The name of a person who files a complaint with the department shall remain confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees or agents involved in the investigation of the complaint.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.12]

88 Acts, ch 1249, §2; 90 Acts, ch 1204, §10; 91 Acts, ch 107, §2

135B.13 Annual report of department.

The department shall prepare and publish an annual report of its activities under this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.13]

90 Acts, ch 1204, §11

135B.14 Judicial review.

Judicial review of the action of the department may be sought in accordance with chapter 17A. Notwithstanding the terms of chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hospital is located or to be located, and the status quo of the petitioner or licensee shall be preserved pending final disposition of the matter in the courts.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.14]

90 Acts, ch 1204, §12

135B.15 Penalties.

Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a serious misdemeanor, and each day of continuing violation after conviction shall be considered a separate offense.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.15]

135B.16 Injunction.

Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.16]

135B.17 Construction.

This chapter is in addition to and not in conflict with chapter 235.

Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.17]

83 Acts, ch 101, §17

135B.18 County care facilities exempted.

The provisions of this chapter shall not apply to county care facilities established pursuant to chapter 347B and managed by the county board of supervisors.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.18]

PATHOLOGY AND RADIOLOGY SERVICES IN HOSPITALS

135B.19 Title of division.

This law may be cited as the *"Pathology and Radiology Services in Hospitals Law"*.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.19]

135B.20 Definitions.

Definitions as used in this division:

1. *"Doctor"* shall mean any person licensed to practice medicine and surgery or osteopathy or osteopathy and surgery in this state.

2. *"Employees"* as used in section 135B.24, and *"employment"* as used in section 135B.25, shall include and pertain to members of the religious order operating the hospital even though the relationship of employer and employee does not exist between such members and the hospital.

3. *"Hospital"* shall mean all hospitals licensed under this chapter.

4. *"Joint conference committee"* shall mean the joint conference committee as required by the joint commission on accreditation of health care organizations or, in a hospital having no such committee, a similar committee, an equal number of which shall be members of the medical staff selected by the staff and an equal number of which shall be selected by the governing board of the hospital.

5. *"Technician"* shall mean technologist as well.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.20]

98 Acts, ch 1100, §16

135B.21 Functions of hospital.

The ownership and maintenance of the laboratory and X-ray facilities and the operation of same under this division are proper functions of a hospital.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.21]

135B.22 Character of services.

Pathology and radiology services performed in hospitals are the product of the joint contribution of hospitals, doctors and technicians but these services constitute medical services which must be

performed by or under the direction and supervision of a doctor, and no hospital shall have the right, directly or indirectly, to direct, control or interfere with the professional medical acts and duties of the doctor in charge of the pathology or radiology facilities or of the technicians under the doctor's supervision. Nothing herein contained shall affect the rights of third parties as a result of negligence in the operation or maintenance of the aforesaid pathology and radiology facilities.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.22]

135B.23 Agreement with doctor.

Each hospital shall arrange for such services and for the direction and supervision of its pathology or radiology department by entering into either an oral or written agreement with a doctor who is a member of or acceptable to the hospital medical staff. Such doctor may or may not be a specialist. The department may be supervised and directed by a qualified member of the staff and specific services may be referred to a specialist, or the specialist may also direct and supervise the department as may be desired. Any contract so entered into shall be in accordance with the provisions of this division.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.23]

135B.24 Employees.

Unless the department is leased or unless the hospital and doctor mutually agree otherwise, technicians and other personnel, not including doctors, shall be employees of the hospital, subject to the rules of the hospital applicable to employees generally, but under the direction and supervision of the doctor in charge of the department as set forth elsewhere in this division.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.24]

135B.25 Hiring and dismissal of technicians.

The doctor and hospital shall mutually agree upon the employment of any technicians necessary for the proper operation of said department and no technicians shall be dismissed from said employment without the mutual consent of the parties, provided, however, that in the event the hospital and doctor are unable mutually to agree upon the hiring or discharge or disciplining of any employee of said department, the matter shall be promptly submitted to the joint conference committee for final determination.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.25]

135B.26 Compensation.

The contract between the hospital and doctor in charge of the laboratory or X-ray facilities may contain any provision for compensation of each upon which they mutually agree. The contract may create the relationship of employer and employee between the hospital and the radiologist or pathologist. A percentage arrangement or a relationship of employer and employee between the hospital and the radiologist or pathologist is not unprofessional conduct on the part of the doctor or in violation of the statutes of this state upon the part of the hospital.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.26]
83 Acts, ch 27, §8

135B.27 Admission agreement.

The hospital admission agreement signed by the patient or the patient's legal representative shall contain the following statement:

"Pathology and radiology services are medical services performed or supervised by doctors, and the personnel and facilities are or may be furnished by the hospital for said services. Charges for such services are or may be collected, however, by the hospital on behalf of said doctors pursuant to an agreement between said doctors and the hospital, and from said charges I consent that an agreed sum will be retained by the hospital in accordance with an existing agreement between the doctor and the hospital."

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.27]

135B.28 Hospital bill.

The hospital bill shall properly include the charges for pathology and radiology services as long as the name of the doctor is stated and it fairly appears that the charge is for medical services. The said hospital bill shall also contain a statement substantially in the following form:

"The pathology and radiology charges are for medical services rendered by or under the direction of the doctor listed above and are collected by the hospital on behalf of the doctor, from which charges an agreed sum will be retained by the hospital in accordance with an existing agreement to which retention you consented at the time of your admission to the hospital."

Upon the effective date of regulations which may be adopted by the United States department of health and human services prohibiting combined billing by hospitals and hospital-based physicians under Title XVIII of the federal Social Security Act, the charges for all pathology and radiology services in a hospital, may upon the mutual agreement of the hospital, physician and third-party payer, be billed separately, the hospital component of the charges being included in the hospital bill and the doctor component being billed by the doctor.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.28]
83 Acts, ch 27, §9

135B.29 Fees.

All fees to be charged by the doctors for pathology and radiology services shall be mutually agreed upon by the hospital and the doctor. In the event dispute shall arise between the parties the matter shall be submitted to the joint conference committee for final determination.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.29]

135B.30 Radiology and pathology fees.

Fees for radiology and pathology services must be paid for as medical and not hospital services. In all cases where payment is to be made by a corporation organized pursuant to chapter 514, payment for radiology and pathology services shall be made by a medical service corporation and not by a hospital service corporation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.30]

135B.31 Exceptions.

Nothing in this division is intended or should affect in any way that obligation of public hospitals under chapter 347 or municipal hospitals, as well as the state hospital at Iowa City, to provide medical or obstetrical and newborn care for indigent persons under chapter 255 or 255A, wherein medical treatment is provided by hospitals of that category to patients of certain entitlement, nor to the operation by the state of mental or other hospitals authorized by law. Nothing herein shall in any way affect or limit the practice of dentistry or the practice of oral surgery by a dentist.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.31]
87 Acts, ch 233, §427

135B.32 Construction.

Nothing herein shall deprive any hospital of its tax exempt or nonprofit status.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.32]

TECHNICAL PLANNING ASSISTANCE

135B.33 Technical assistance — plan — grants.

Subject to availability of funds, the Iowa department of public health shall provide technical planning assistance to local boards of health and hospital governing boards to ensure access to hospital services in rural areas. The department shall encourage the local boards of health and hospital governing boards to adopt a long-term community health services and developmental plan including the following:

1. An analysis of demographic trends in the health facility services area, affecting health facility and health-facility-related health care utilizations.

2. A review of inpatient services currently provided, by type of service and the frequency of provision of that service, and the cost-effectiveness of that service.

3. An analysis of resources available in proximate health facilities and services that might be provided through alternative arrangements with such health facilities.

4. An analysis of cooperative arrangements that could be developed with other health facilities in the area that could assist those health facilities in the provision of services.

5. An analysis of community health needs, including long-term care, nursing facility care, pediatric and maternity services, and the health facilities' potential role in facilitating the provision of services to meet these needs.

6. An analysis of alternative uses for existing health facility space and real property, including use for community health-related and human service-related purposes.

7. An analysis of mechanisms to meet indigent patient care needs and the responsibilities for the care of indigent patients.

8. An analysis of the existing tax levying of the health facilities for patient care, on a per capita basis and per hospital patient basis, and projections on future needs for tax levying to continue for the provision of care.

Providers may cooperatively coordinate to develop one long-term community health services and developmental plan for a geographic area, provided the plan addresses the issues enumerated in this section.

The health facilities may seek technical assistance or apply for matching grant funds for the plan development. The department shall require compliance with subsections 1 through 8 when the facility applies for matching grant funds.

86 Acts, ch 1200, §2; 90 Acts, ch 1039, §1

EMPLOYEE RECORD CHECKS

135B.34 Single contact repository — record checks.

A hospital licensed in this state may access the single contact repository established by the department pursuant to section 135C.33 as necessary for the hospital to perform record checks of persons employed or being considered for employment by the hospital.

2002 Acts, ch 1034, §1
NEW section

CHAPTER 135C

HEALTH CARE FACILITIES

Cost-related systems, §249.12
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135C.1 Definitions.

1. *"Adult day services"* means adult day services as defined in section 231.61 that are provided in a licensed health care facility.

2. *"Department"* means the department of inspections and appeals.

3. *"Direction"* means authoritative policy or procedural guidance for the accomplishment of a function or activity.

4. *"Director"* means the director of the department of inspections and appeals, or the director's designee.

5. *"Governmental unit"* means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

6. *"Health care facility"* or *"facility"* means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with mental retardation.

7. *"House physician"* means a physician who has entered into a two-party contract with a health care facility to provide services in that facility.

8. *"Intermediate care facility for persons with mental illness"* means an institution, place, building, or agency designed to provide accommodation, board, and nursing care for a period exceeding twenty-four consecutive hours to three or more

individuals, who primarily have mental illness and who are not related to the administrator or owner within the third degree of consanguinity.

9. *"Intermediate care facility for persons with mental retardation"* means an institution or distinct part of an institution with a primary purpose to provide health or rehabilitative services to three or more individuals, who primarily have mental retardation or a related condition and who are not related to the administrator or owner within the third degree of consanguinity, and which meets the requirements of this chapter and federal standards for intermediate care facilities for persons with mental retardation established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1936d, which are contained in 42 C.F.R. pt. 483, subpt. D, § 410 – 480.

10. *"Licensee"* means the holder of a license issued for the operation of a facility, pursuant to this chapter.

11. *"Mental illness"* means a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life.

12. *"Nursing care"* means those services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

13. *"Nursing facility"* means an institution or a distinct part of an institution housing three or more individuals not related to the administrator or owner within the third degree of consanguinity, which is primarily engaged in providing health-related care and services, including rehabilitative services, but which is not engaged primarily in providing treatment or care for mental illness or mental retardation, for a period exceeding twenty-four consecutive hours for individuals who, because of a mental or physical condition, require nursing care and other services in addition to room and board.

14. *"Person"* means any individual, firm, partnership, corporation, company, association or joint stock association; and includes trustee, receiver, assignee or other similar representative thereof.

15. *"Physician"* has the meaning assigned that term by section 135.1, subsection 4.

16. *"Rehabilitative services"* means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility.

17. *"Residential care facility"* means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis.

18. *"Resident"* means an individual admitted to a health care facility in the manner prescribed by section 135C.23.

19. *"Respite care services"* means an organized program of temporary supportive care provided for twenty-four hours or more to a person in order to relieve the usual caregiver of the person from providing continual care to the person.

20. *"Social services"* means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility, and minimizing stress arising from that circumstance.

21. *"Supervision"* means direct oversight and inspection of the act of accomplishing a function or activity.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.1]

87 Acts, ch 194, §1; 90 Acts, ch 1039, §2 – 5; 94 Acts, ch 1151, §1; 96 Acts, ch 1129, §24; 2001 Acts, ch 64, §2

135C.2 Purpose — rules — special classifications — protection and advocacy agency.

1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or mentally or physically dependent, by both public and private agencies by providing for the adoption and enforcement of rules and standards:

a. For the housing, care, and treatment of individuals in health care facilities, and

b. For the location, construction, maintenance, renovation, and sanitary operation of such health care facilities which will promote safe and adequate care of individuals in such homes so as to further the health, welfare, and safety of such individuals.

2. Rules and standards prescribed, promulgated, and enforced under this chapter shall not be arbitrary, unreasonable, or confiscatory and the department or agency prescribing, promulgating, or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in health care facilities.

3. *a.* The department shall establish by administrative rule the following special classifications:

(1) Within the residential care facility category, a special license classification for residential facilities intended to serve persons with mental illness.

(2) Within the nursing facility category, a special license classification for nursing facilities which designate and dedicate the facility or a special unit within the facility to provide care for per-

sons who suffer from chronic confusion or a dementing illness. A nursing facility which designates and dedicates the facility or a special unit within the facility for the care of persons who suffer from chronic confusion or a dementing illness shall be specially licensed. For the purposes of this subsection, *"designate"* means to identify by a distinctive title or label and *"dedicate"* means to set apart for a definite use or purpose and to promote that purpose.

b. The department may also establish by administrative rule special classifications within the residential care facility, intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, or nursing facility categories, for facilities intended to serve individuals who have special health care problems or conditions in common. Rules establishing a special classification shall define the problem or condition to which the special classification is relevant and establish requirements for an approved program of care commensurate with the problem or condition. The rules may grant special variances or considerations to facilities licensed within the special classification.

c. The rules adopted for intermediate care facilities for persons with mental retardation shall be consistent with, but no more restrictive than, the federal standards for intermediate care facilities for persons with mental retardation established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1396d, in effect on January 1, 1989. However, in order to be licensed the state fire marshal must certify to the department an intermediate care facility for persons with mental retardation as meeting the applicable provisions of either the health care occupancies chapter or the residential board and care chapter of the life safety code of the national fire protection association, 1985 edition. The department shall adopt additional rules for intermediate care facilities for persons with mental retardation pursuant to section 135C.14, subsection 8.

d. Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for persons with mental retardation, the department shall consider the federal interpretive guidelines issued by the federal centers for Medicare and Medicaid services when interpreting the department's rules for intermediate care facilities for persons with mental retardation. This use of the guidelines is not subject to the rulemaking provisions of sections 17A.4 and 17A.5, but the guidelines shall be published in the Iowa administrative bulletin and the Iowa administrative code.

4. The protection and advocacy agency designated in the state, under Pub. L. No. 98-527, the Developmental Disabilities Act of 1984, Pub. L. No. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and Pub. L. No. 100-146, the federal Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, is recognized as an agency legally authorized and constituted to ensure the implementation of the purposes of this chapter for populations under its authority and in the manner designated by Pub. L. No. 98-527, Pub. L. No. 99-319, and Pub. L. No. 100-146 and in the assurances of the governor of the state.

5. The department shall establish a special classification within the residential care facility category in order to foster the development of residential care facilities which serve persons with mental retardation, chronic mental illness, a developmental disability, or brain injury, as described under section 225C.26, and which contain five or fewer residents. A facility within the special classification established pursuant to this subsection is exempt from the requirements of section 135.63. The department shall adopt rules which are consistent with rules previously developed for the waiver demonstration project pursuant to 1986 Iowa Acts, chapter 1246, section 206, and which include all of the following provisions:

a. A facility provider under the special classification must comply with rules adopted by the department for the special classification. However, a facility provider which has been accredited by the accreditation council for services to persons with mental retardation and other developmental disabilities shall be deemed to be in compliance with the rules adopted by the department.

b. A facility must be located in an area zoned for single or multiple-family housing or in an unincorporated area and must be constructed in compliance with applicable local requirements and the rules adopted for the special classification by the state fire marshal in accordance with the concept of the least restrictive environment for the facility residents. Local requirements shall not be more restrictive than the rules adopted for the special classification by the state fire marshal and the state building code requirements for single or multiple-family housing.

c. Facility provider plans for the facility's accessibility to residents must be in place.

d. A written plan must be in place which documents that a facility meets the needs of the facility's residents pursuant to individual program plans developed according to age appropriate and least restrictive program requirements.

e. A written plan must be in place which documents that a facility's residents have reasonable access to employment or employment-related training, education, generic community resources, and integrated opportunities to promote interaction with the community.

f. The facilities licensed under this subsection shall be eligible for funding utilized by other licensed residential care facilities for persons with mental retardation, or licensed residential care facilities for persons with mental illness, including

but not limited to funding under or from the federal social services block grant, the state supplementary assistance program, state mental health and developmental disabilities services funds, and county funding provisions.

6. *a.* This chapter shall not apply to adult day services provided in a health care facility. However, adult day services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

b. The level of care certification provisions pursuant to sections 135C.3 and 135C.4, the license application and fee provisions pursuant to section 135C.7, and the involuntary discharge provisions pursuant to section 135C.14, subsection 8, shall not apply to respite care services provided in a health care facility. However, respite care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

c. The department shall adopt rules to implement this subsection.

7. The rules adopted by the department regarding nursing facilities shall provide that a nursing facility may choose to be inspected either by the department or by the joint commission on accreditation of health care organizations. The rules regarding acceptance of inspection by the joint commission on accreditation of health care organizations shall include recognition, in lieu of inspection by the department, of comparable inspections and inspection findings of the joint commission on accreditation of health care organizations, if the department is provided with copies of all requested materials relating to the inspection process.

[C50, 54, §135C.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.2]

85 Acts, ch 114, §1; 87 Acts, ch 234, §426; 88 Acts, ch 1249, §3; 89 Acts, ch 115, §1; 89 Acts, ch 269, §1; 90 Acts, ch 1039, §6; 90 Acts, ch 1267, §27; 91 Acts, ch 267, §139; 92 Acts, ch 1241, §48; 94 Acts, ch 1151, §2, 3; 94 Acts, ch 1170, §7, 22; 95 Acts, ch 67, §11; 96 Acts, ch 1053, §1; 96 Acts, ch 1129, §25, 26, 113; 98 Acts, ch 1119, §12; 99 Acts, ch 141, §11; 2001 Acts, ch 64, §3; 2002 Acts, ch 1050, §17

Rules requiring special license classification for facility or unit designated and dedicated to caring for persons with chronic confusion or a dementing illness; applicability; existing facilities; 90 Acts, ch 1016, §1

Subsection 7 is effective contingent upon passage of federal legislation; see 96 Acts, ch 1053, §3

Subsection 3, paragraph d amended

135C.3 Nature of care.

1. A licensed nursing facility shall provide an organized twenty-four-hour program of services commensurate with the needs of its residents and under the immediate direction of a licensed nurse. Medical and nursing services must be provided under the direction of either a house physician or an individually selected physician. Surgery or obstetrical care shall not be provided within the facility. An admission to the nursing facility must be based on a physician's written order certifying that the individual being admitted requires no greater degree of nursing care than the facility to which the admission is made is licensed to provide and is capable of providing.

2. A licensed intermediate care facility for persons with mental illness shall provide an organized twenty-four-hour program of services commensurate with the needs of its residents and under the immediate direction of a licensed registered nurse, who has had at least two years of recent experience in a chronic or acute psychiatric setting. Medical and nursing service must be provided under the direction of either a house physician or an individually selected physician. Surgery or obstetrical care shall not be provided within the facility. An admission to the intermediate care facility for persons with mental illness must be based on a physician's written order certifying that the individual being admitted requires no greater degree of nursing care than the facility to which the admission is made is licensed to provide and is capable of providing.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.3]

90 Acts, ch 1039, §7; 96 Acts, ch 1129, §113

135C.4 Residential care facilities.

Each facility licensed as a residential care facility shall provide an organized continuous twenty-four-hour program of care commensurate with the needs of the residents of the home and under the immediate direction of a person approved and certified by the department whose combined training and supervised experience is such as to ensure adequate and competent care. All admissions to residential care facilities shall be based on an order written by a physician certifying that the individual being admitted does not require nursing services.

[C50, 54, §135C.9; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.4]

135C.5 Limitations on use.

Another business or activity shall not be carried on in a health care facility, or in the same physical structure with a health care facility, unless such business or activity is under the control of and is directly related to and incidental to the operation of the health care facility or unless the business or activity is approved by the department and the state fire marshal. A business or activity which is operated within the limitations of this section shall not interfere in any manner with the use of the facility by the residents or the services provided to the residents, and shall not be disturbing to them. The department and the state fire marshal, in accordance with chapter 17A, shall adopt rules which establish criteria for approval of a

business or activity to be carried on in a health care facility or in the same physical structure with a health care facility.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.5]

91 Acts, ch 241, §1

135C.6 License required — exemptions.

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate a health care facility in this state without a license for the facility. A supported community living service, as defined in section 225C.21, is not required to be licensed under this chapter, but is subject to approval under section 225C.21 in order to receive public funding.

2. A health care facility suitable for separation and operation with distinct parts may, where otherwise qualified in all respects, be issued multiple licenses authorizing various parts of such facilities to be operated as health care facilities of different license categories.

3. No change in a health care facility, its operation, program, or services, of a degree or character affecting continuing licensability shall be made without prior approval thereof by the department. The department may by rule specify the types of changes which shall not be made without its prior approval.

4. No department, agency, or officer of this state or of any of its political subdivisions shall pay or approve for payment from public funds any amount or amounts to a health care facility under any program of state aid in connection with services provided or to be provided an actual or prospective resident in a health care facility, unless the facility has a current license issued by the department and meets such other requirements as may be in effect pursuant to law.

5. No health care facility established and operated in compliance with law prior to January 1, 1976, shall be required to change its corporate or business name by reason of the definitions prescribed in section 135C.1, provided that no health care facility shall at any time represent or hold out to the public or to any individual that it is licensed as, or provides the services of, a health care facility of a type offering a higher grade of care than such health care facility is licensed to provide. Any health care facility which, by virtue of this section, operates under a name not accurately descriptive of the type of license which it holds shall clearly indicate in any printed advertisement, letterhead, or similar material, the type of license or licenses which it has in fact been issued. No health care facility established or renamed after January 1, 1976, shall use any name indicating that it holds a different type of license than it has been issued.

6. A health care facility operated by and for the exclusive use of members of a religious order, which does not admit more than two individuals to the facility from the general public, may be operated without obtaining a license under this chapter and shall not be deemed to be licensed by the state.

7. A freestanding hospice facility which operates a hospice program in accordance with 42 C.F.R. § 418 may be operated without obtaining a license under this chapter and shall not be deemed to be licensed by the state.

8. Residential programs providing care to not more than four individuals and receiving moneys appropriated to the department of human services under provisions of a federally approved home and community-based services waiver for persons with mental retardation or other medical assistance program under chapter 249A shall not be required to be licensed as a health care facility under this chapter. In approving a residential program under this subsection, the department of human services shall consider the geographic location of the program so as to avoid an overconcentration of such programs in an area. In order to be approved under this subsection, a residential program shall not be required to involve the conversion of a licensed residential care facility for persons with mental retardation.

9. Contingent upon the department of human services receiving federal approval, a residential program which serves not more than eight individuals and is licensed as an intermediate care facility for persons with mental retardation may surrender the facility license and continue to operate under a federally approved medical assistance home and community-based services waiver for persons with mental retardation, if the department of human services has approved a plan submitted by the residential program.

10. Notwithstanding section 135C.9, nursing facilities which are accredited by the joint commission on accreditation of health care organizations shall be licensed without inspection by the department, if the nursing facility has chosen to be inspected by the joint commission on accreditation of health care organizations in lieu of inspection by the department.

[C50, 54, §135C.2; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.6]

85 Acts, ch 141, §2; 86 Acts, ch 1245, §1113; 90 Acts, ch 1107, §2; 92 Acts, ch 1043, §3; 96 Acts, ch 1053, §2; 97 Acts, ch 169, §18, 26; 98 Acts, ch 1181, §11, 14; 99 Acts, ch 160, §17; 2002 Acts, ch 1120, §1

Subsection 10 is effective contingent upon passage of federal legislation; see 96 Acts, ch 1053, §3

Subsection 8 amended

135C.7 Application — fees.

Licenses shall be obtained from the department. Applications shall be upon such forms and shall include such information as the department may reasonably require, which may include affirmative evidence of compliance with such other statutes and local ordinances as may be applicable. Each application for license shall be accompanied

by the annual license fee prescribed by this section, subject to refund to the applicant if the license is denied, which fee shall be paid over into the state treasury and credited to the general fund if the license is issued. There shall be an annual license fee based upon the bed capacity of the health care facility, as follows:

1. Ten beds or less, twenty dollars.
2. More than ten and not more than twenty-five beds, forty dollars.
3. More than twenty-five and not more than seventy-five beds, sixty dollars.
4. More than seventy-five and not more than one hundred fifty beds, eighty dollars.
5. More than one hundred fifty beds, one hundred dollars.

[C50, 54, §135C.3, 135C.4; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.7]

135C.8 Scope of license.

Licenses for health care facilities shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the department, obtained prior to the purchase of the facility involved. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the department. Such licenses, unless sooner suspended or revoked, shall expire one year after the date of issuance and shall be renewed annually upon an application by the licensee. Applications for such renewal shall be made in writing to the department, accompanied by the required fee, at least thirty days prior to the expiration of such license in accordance with regulations promulgated by the department. Health care facilities which have allowed their licenses to lapse through failure to make timely application for renewal of their licenses shall pay an additional fee of twenty-five percent of the annual license fee prescribed in section 135C.7.

[C50, 54, §135C.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.8]

135C.9 Inspection before issuance — notice of deficiencies.

1. The department shall not issue a health care facility license to any applicant until:

a. The department has ascertained that the staff and equipment of the facility is adequate to provide the care and services required of a health care facility of the category for which the license is sought. Prior to the review and approval of plans and specifications for any new facility and the initial licensing under a new licensee, a resume of the programs and services to be furnished and of the means available to the applicant for providing the same and for meeting requirements for staffing, equipment, and operation of the health care facility, with particular reference to the professional requirements for services to be rendered, shall be submitted in writing to the department for review and approval. The resume shall be reviewed by the department within ten working days and returned to the applicant. The resume shall, upon the department's request, be revised as appropriate by the facility from time to time after issuance of a license.

b. The facility has been inspected by the state fire marshal or a deputy appointed by the fire marshal for that purpose, who may be a member of a municipal fire department, and the department has received either a certificate of compliance or a provisional certificate of compliance by the facility with the fire hazard and fire safety rules and standards of the department as promulgated by the fire marshal and, where applicable, the fire safety standards required for participation in programs authorized by either Title XVIII or Title XIX of the United States Social Security Act (42 U.S.C. § 1395 to 1395ll and 1396 to 1396g). The certificate or provisional certificate shall be signed by the fire marshal or the fire marshal's deputy who made the inspection. If the state fire marshal or a deputy finds a deficiency upon inspection, the notice to the facility shall be provided in a timely manner and shall specifically describe the nature of the deficiency, identifying the Code section or subsection or the rule or standard violated. The notice shall also specify the time allowed for correction of the deficiency, at the end of which time the fire marshal or a deputy shall perform a follow-up inspection.

2. The rules and standards promulgated by the fire marshal pursuant to subsection 1, paragraph *"b"* of this section shall be substantially in keeping with the latest generally recognized safety criteria for the facilities covered, of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima facie evidence. The rules and standards promulgated by the fire marshal shall be promulgated in consultation with the department and shall, to the greatest extent possible, be consistent with rules adopted by the department under this chapter.

3. The state fire marshal or the fire marshal's deputy may issue successive provisional certificates of compliance for periods of one year each to a facility which is in substantial compliance with the applicable fire hazard and fire safety rules and standards, upon satisfactory evidence of an intent, in good faith, by the owner or operator of the facility to correct the deficiencies noted upon inspection within a reasonable period of time as determined by the state fire marshal or the fire marshal's deputy. Renewal of a provisional certificate shall be based on a showing of substantial progress in eliminating deficiencies noted upon the last previous inspection of the facility without the appearance of additional deficiencies other than those arising from changes in the fire hazard and fire

safety rules, regulations and standards which have occurred since the last previous inspection, except that substantial progress toward achievement of a good faith intent by the owner or operator to replace the entire facility within a reasonable period of time, as determined by the state fire marshal or the fire marshal's deputy, may be accepted as a showing of substantial progress in eliminating deficiencies, for the purposes of this section.

4. If a facility subject to licensure under this chapter, a facility exempt from licensure under this chapter pursuant to section 135C.6, or a family home under section 335.25 or 414.22, has been issued a certificate of compliance or a provisional certificate of compliance under subsection 1 or 3, or has otherwise been approved as complying with a rule or standard by the state or a deputy fire marshal or a local building department as defined in section 103A.3, the state or deputy fire marshal or local building department which issued the certificate, provisional certificate, or approval shall not apply additional requirements for compliance with the rule or standard unless the rule or standard is revised in accordance with chapter 17A or with local regulatory procedure following issuance of the certificate, provisional certificate, or approval.

[C50, 54, §135C.6; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.9]

97 Acts, ch 169, §19; 2001 Acts, ch 30, §1, 2

135C.10 Denial, suspension or revocation.

The department shall have the authority to deny, suspend, or revoke a license in any case where the department finds that there has been repeated failure on the part of the facility to comply with the provisions of this chapter or the rules or minimum standards promulgated hereunder, or for any of the following reasons:

1. Cruelty or indifference to health care facility residents.

2. Appropriation or conversion of the property of a health care facility resident without the resident's written consent or the written consent of the resident's legal guardian.

3. Permitting, aiding, or abetting the commission of any illegal act in the health care facility.

4. Inability or failure to operate and conduct the health care facility in accordance with the requirements of this chapter and the minimum standards and rules issued pursuant thereto.

5. Obtaining or attempting to obtain or retain a license by fraudulent means, misrepresentation, or by submitting false information.

6. Habitual intoxication or addiction to the use of drugs by the applicant, manager or supervisor of the health care facility.

7. Securing the devise or bequest of the property of a resident of a health care facility by undue influence.

8. Willful failure or neglect to maintain a continuing in-service education and training program for all personnel employed in the facility.

9. In the case of an application by an existing licensee for a new or newly acquired facility, continuing or repeated failure of the licensee to operate any previously licensed facility or facilities in compliance with the provisions of this chapter or of the rules adopted pursuant to it.

10. In the case of a license applicant or existing licensee which is an entity other than an individual, the department may deny, suspend, or revoke a license if any individual, who is in a position of control or is an officer of the entity, engages in any act or omission proscribed by this section.

[C50, 54, §135C.6; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.10]

90 Acts, ch 1204, §13

135C.11 Notice — hearings.

1. The denial, suspension, or revocation of a license shall be effected by delivering to the applicant or licensee by certified mail or by personal service of a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period, shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to the hearing the department may rescind the notice of the denial, suspension, or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified, or set aside by the department. A copy of such decision shall be sent by certified mail, or served personally upon the applicant or licensee. The applicant or licensee may seek judicial review pursuant to section 135C.13.

2. The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135C.13. Copies of the transcript may be obtained by an interested party upon payment of the cost of preparing the copies. Witnesses may be subpoenaed by either party and

shall be allowed fees at a rate prescribed by the department's rules. The director may, after advising the resident advocate committee established pursuant to section 135C.25, either proceed in accordance with section 135C.30, or remove all residents and suspend the license or licenses of any health care facility, prior to a hearing, when the director finds that the health or safety of residents of the health care facility requires such action on an emergency basis. The fact that no resident advocate committee has been appointed for a particular facility shall not bar the director from exercising the emergency powers granted by this subsection with respect to that facility.

[C50, 54, §135C.6; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.11]

99 Acts, ch 129, §1

135C.12 Conditional operation.

If the department has the authority under section 135C.10 to deny, suspend or revoke a license, the department or director may, as an alternative to those actions:

1. Apply to the district court of the county in which the licensee's health care facility is located for appointment by the court of a receiver for the facility pursuant to section 135C.30.

2. Conditionally issue or continue a license dependent upon the performance by the licensee of reasonable conditions within a reasonable period of time as set by the department so as to permit the licensee to commence or continue the operation of the health care facility pending full compliance with this chapter or the regulations or minimum standards promulgated under this chapter. If the licensee does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, suspend or revoke the license. No health care facility shall be operated on a conditional license for more than one year.

3. The department, in evaluating corrections of deficiencies in a facility in receivership or operating on a conditional license, may determine what is satisfactory compliance, provided that in so doing it shall employ established criteria which shall be uniformly applied to all facilities of the same license category.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.12]

For legislative intent regarding imposition of a conditional license if failure of full compliance will result in single class I citation that is not an immediate jeopardy; see 99 Acts, ch 199, §10

135C.13 Judicial review.

Judicial review of any action of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where the facility or proposed facility is located, and pending final disposition of the matter the status quo of the applicant or licensee shall be preserved except when the director, with the advice and consent of the resident advocate committee established pursuant to section 135C.25, determines that the health, safety or welfare of the residents of the facility is in immediate danger, in which case the director may order the immediate removal of such residents. The fact that no resident advocate committee has been appointed for a particular facility shall not bar the director from exercising the emergency powers granted by this subsection with respect to that facility.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.13]

99 Acts, ch 129, §2

See §17A.19

135C.14 Rules.

The department shall, in accordance with chapter 17A and with the approval of the state board of health, adopt and enforce rules setting minimum standards for health care facilities. In so doing, the department, with the approval of the state board of health, may adopt by reference, with or without amendment, nationally recognized standards and rules, which shall be specified by title and edition, date of publication, or similar information. The rules and standards required by this section shall be formulated in consultation with the director of human services or the director's designee, with the state fire marshal, and with affected industry, professional, and consumer groups, and shall be designed to further the accomplishment of the purposes of this chapter and shall relate to:

1. Location and construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions, which shall ensure the health, safety and comfort of residents and protection from fire hazards. The rules of the department relating to protection from fire hazards and fire safety shall be promulgated by the state fire marshal in consultation with the department, and shall be in keeping with the latest generally recognized safety criteria for the facilities covered of which the applicable criteria recommended and published from time to time by the national fire protection association are prima facie evidence. To the greatest extent possible, the rules promulgated by the state fire marshal shall be consistent with the rules adopted by the department under this chapter.

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care provided to residents.

3. All sanitary conditions within the facility and its surroundings including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents.

4. Diet related to the needs of each resident and based on good nutritional practice and on recommendations which may be made by the physi-

cian attending the resident.

5. Equipment essential to the health and welfare of the resident.

6. Requirements that a minimum number of registered or licensed practical nurses and nurses' aides, relative to the number of residents admitted, be employed by each licensed facility. Staff-to-resident ratios established under this subsection need not be the same for facilities holding different types of licenses, nor for facilities holding the same type of license if there are significant differences in the needs of residents which the respective facilities are serving or intend to serve.

7. Social services and rehabilitative services provided for the residents.

8. Facility policies and procedures regarding the treatment, care, and rights of residents. The rules shall apply the federal resident's rights contained in the federal Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, and the regulations adopted pursuant to the Act and contained in 42 C.F.R. § 483.10, 483.12, 483.13, and 483.15, as amended to February 2, 1989, to all health care facilities as defined in this chapter and shall include procedures for implementing and enforcing the federal rules. The department shall also adopt rules relating to the following:

a. The transfer of residents to other rooms within a facility.

b. The involuntary discharge or transfer of residents from a facility including provisions for notice and agency hearings and for the development of a patient discharge or transfer plan and for providing counseling services to a patient being discharged or transferred.

c. The required holding of a bed for a resident under designated circumstances upon payment of a prescribed charge for the bed.

d. The notification of resident advocate committees by the department of all complaints relating to health care facilities and the involvement of the resident advocate committees in resolution of the complaints.

e. For the recoupment of funds or property to residents when the resident's personal funds or property have been used without the resident's written consent or the written consent of the resident's guardian.

[C50, 54, §135C.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.14; 81 Acts, ch 60, §1]

83 Acts, ch 96, §157, 159; 83 Acts, ch 101, §18; 89 Acts, ch 241, §1, 2; 90 Acts, ch 1204, §14; 99 Acts, ch 129, §3; 2001 Acts, ch 30, §3, 4

135C.15 Time to comply.

1. Any health care facility which is in operation at the time of adoption or promulgation of any applicable rules or minimum standards under this chapter shall be given reasonable time from the date of such promulgation to comply with such rules and minimum standards as provided for by the department. The director may grant successive thirty-day extensions of the time for compliance where evidence of a good faith attempt to achieve compliance is furnished, if the extensions will not place in undue jeopardy the residents of the facility to which the extensions are granted.

2. Renovation of an existing health care facility, not already in compliance with all applicable standards, shall be permitted only if the fixtures and equipment to be installed and the services to be provided in the renovated portion of the facility will conform substantially to current operational standards. Construction of an addition to an existing health care facility shall be permitted only if the design of the structure, the fixtures and equipment to be installed, and the services to be provided in the addition will conform substantially to current construction and operational standards.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.15]

135C.16 Inspections.

1. In addition to the inspections required by sections 135C.9 and 135C.38, the department shall make or cause to be made such further unannounced inspections as it deems necessary to adequately enforce this chapter. At least one general unannounced inspection shall be conducted for each health care facility within a thirty-month period. The inspector shall show identification to the person in charge of the facility and state that an inspection is to be made before beginning the inspection. An employee of the department who gives unauthorized advance notice of an inspection made or planned to be made under this subsection or section 135C.38 shall be disciplined as determined by the director, except that if the employee is employed pursuant to the merit system provisions of chapter 19A the discipline shall not exceed the discipline authorized pursuant to that chapter.

2. The department shall prescribe by rule that any licensee or applicant for license desiring to make specific types of physical or functional alterations or additions to its facility or to construct new facilities shall, before commencing the alteration or additions or new construction, submit plans and specifications to the department for preliminary inspection and approval or recommendations with respect to compliance with the department's rules and standards. When the plans and specifications have been properly approved by the department or other appropriate state agency, the facility or the portion of the facility constructed or altered in accord with the plans and specifications shall not for a period of at least five years from completion of the construction or alteration be considered deficient or ineligible for licensing by reason of failure to meet any rule or standard established subsequent to approval of the plans and specifications. When construction or alteration of a facility or portion of a facility has been completed

in accord with plans and specifications submitted as required by this subsection and properly approved by the department or other appropriate state agency, and it is discovered that the facility or portion of a facility is not in compliance with a requirement of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, and the deficiency was apparent from the plans and specifications submitted but was not noted or objected to by the department or other appropriate state agency, the department or agency responsible for the oversight shall either waive the requirement or reimburse the licensee or applicant for any costs which are necessary to bring the new or reconstructed facility or portion of a facility into compliance with the requirement and which the licensee or applicant would not have incurred if the facility or portion of the facility had been constructed in compliance with the requirements of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted. If within two years from the completion of the construction or alteration of the facility or portion thereof, a department or agency of the state orders that the new or reconstructed facility or portion thereof be brought into compliance with the requirements of this chapter or the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, the state shall have a claim for damages to the extent of any reimbursement paid to the licensee or applicant against any person who designed the facility or portion thereof for negligence in the preparation of the plans and specifications therefor, subject to all defenses based upon the negligence of the state in reviewing and approving those plans and specifications, but not thereafter.

The provisions of this subsection shall not apply where the deficiency presents a clear and present danger to the safety of the residents of the facility.

3. An inspector of the department may enter any licensed health care facility without a warrant, and may examine all records pertaining to the care provided residents of the facility. An inspector of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. An inspector of the department of human services shall have the same right with respect to any facility where one or more residents are cared for entirely or partially at public expense, and an investigator of the designated protection and advocacy agency shall have the same right with respect to any facility where one or more residents have developmental disabilities or mental illnesses, and the state fire marshal or a deputy appointed pursuant to section 135C.9, subsection 1, paragraph *"b"* shall have the same right of entry into any facility and the right to inspect any records pertinent to fire safety practices and conditions within that facility. If any such inspector has probable cause to believe that any institution, building, or agency not licensed as a health care facility is in fact a health care facility as defined by this chapter, and upon producing identification that the individual is an inspector is denied entry thereto for the purpose of making an inspection, the inspector may, with the assistance of the county attorney of the county in which the purported health care facility is located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been any violations of this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.16; 82 Acts, ch 1065, §1]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1227, §1; 87 Acts, ch 234, §427; 90 Acts, ch 1204, §15; 92 Acts, ch 1242, §26; 2000 Acts, ch 1180, §1

135C.17 Duties of other departments.

It shall be the duty of the department of human services, state fire marshal, and the officers and agents of other state and local governmental units, and the designated protection and advocacy agency to assist the department in carrying out the provisions of this chapter, insofar as the functions of these respective offices and departments are concerned with the health, welfare, and safety of any resident of any health care facility. It shall be the duty of the department to cooperate with the protection and advocacy agency by responding to all reasonable requests for assistance and information as required by federal law and this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.17]

83 Acts, ch 96, §157, 159; 87 Acts, ch 234, §428

135C.18 Employees.

The department may employ, pursuant to chapter 19A, such assistants and inspectors as may be necessary to administer and enforce the provisions of this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.18]

135C.19 Public disclosure of inspection findings — posting of citations.

1. Following an inspection of a health care facility by the department pursuant to this chapter, the department's final findings with respect to compliance by the facility with requirements for licensing shall be made available to the public in a readily available form and place. Other information relating to a health care facility obtained by the department which does not constitute the department's findings from an inspection of the facility shall not be made available to the public except in proceedings involving the citation of a facility for a violation under section 135C.40, or the denial, suspension, or revocation of a license under this chapter. The name of a person who files a complaint with the department shall be confidential.

2. A citation for a class I or class II violation which is issued to a health care facility and which has become final, or a copy of the citation, shall be prominently posted as prescribed in rules, until the violation is corrected to the department's satisfaction. The citation or copy shall be posted in a place in plain view of the residents of the facility cited, persons visiting the residents, and persons inquiring about placement in the facility.

A copy of each citation required to be posted by this subsection shall be sent by the department to the department of human services and to the designated protection and advocacy agency if the facility has one or more residents with developmental disabilities or mental illness.

3. If the facility cited subsequently advises the department of human services that the violation has been corrected to the satisfaction of the department of inspections and appeals, the department of human services shall maintain this advisory in the same file with the copy of the citation. The department of human services shall not disseminate to the public any information regarding citations issued by the department of inspections and appeals, but shall forward or refer inquiries to the department of inspections and appeals.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.19]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1227, §2; 87 Acts, ch 234, §429; 90 Acts, ch 1039, §8; 90 Acts, ch 1204, §16, 17

135C.20 Information distributed.

The department shall prepare, publish and send to licensed health care facilities an annual report of its activities and operations under this chapter and such other bulletins containing fundamental health principles and data as may be deemed essential to assure proper operation of health care facilities, and publish for public distribution copies of the laws, standards and rules pertaining to their operation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.20]

135C.20A Report cards — facility inspections — complaint procedures — availability to public — electronic access.

1. The department shall develop and utilize a report card system for the recording of the findings of any inspection of a health care facility. The report card shall include but is not limited to a summary of the findings of the inspection, any violation found, any enforcement action taken including any citations issued and penalties assessed, any actions taken to correct violations or deficiencies, and the nature and status of any action taken with respect to any uncorrected violation for which a citation was issued.

2. The report card form shall be developed by the department in cooperation with representatives of the department of elder affairs, the state long-term care resident's advocate, representatives of resident advocate committees, representatives of protection and advocacy entities, consumers, and other interested persons.

3. The department shall make any completed report cards electronically accessible to the public, on a monthly basis, and shall compile the report cards on an annual basis and make the compilation electronically accessible to the public. The annual compilation shall also be available at the office of the department at the seat of government and shall be available to the public by mail, upon request and at the department's expense.

4. In addition to the monthly and annual compilations, the department shall provide compilations of the report cards on a cumulative basis. The cumulative compilation shall reflect the report cards of health care facilities during the four-year period prior to the production of the cumulative compilation. The cumulative compilation shall be applicable to a particular health care facility as a four-year report card history of that facility becomes available. The cumulative compilation shall be available to the public in the same manner as the annual compilation.

98 Acts, ch 1141, §1; 99 Acts, ch 129, §4

135C.20B Governor's award — quality care.

1. A governor's award for quality care is established, to be awarded annually by the governor to a health care facility in the state which demonstrates provision of the highest quality care to residents.

2. The department shall adopt rules establishing the criteria to determine quality care. In developing the criteria, the department shall consult with the members of Iowa partners for resident care and shall also consider all of the following:

a. The report cards completed pursuant to section 135C.20A.

b. Any unique services provided by a facility to its residents to improve the quality of care in the facility.

c. Any information submitted by care review committee members or residents with regard to the quality of care of the facility.

d. Whether the facility accepts residents for whom costs of care are paid under chapter 249A.

99 Acts, ch 132, §1

135C.21 Penalties.

1. Any person establishing, conducting, managing, or operating any health care facility without a license shall be guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. Any such person establishing, conducting, managing or operating any health care facility without a license may be by any court of competent jurisdiction temporarily or permanently restrained therefrom in any

action brought by the state.

2. Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department or of any of the agencies referred to in section 135C.17 in the lawful enforcement of this chapter or of the rules adopted pursuant to it is guilty of a simple misdemeanor. As used in this subsection, lawful enforcement includes but is not limited to:

a. Contacting or interviewing any resident of a health care facility in private at any reasonable hour and without advance notice.

b. Examining any relevant books or records of a health care facility.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to it.

[C50, 54, §135C.7; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.21]

135C.22 Applicable to governmental units.

The provisions of this chapter shall be applicable to institutions operated by or under the control of the department of human services, the state board of regents, or any other governmental unit.

[C50, 54, §135C.8; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.22]

83 Acts, ch 96, §157, 159

135C.23 Express requirements for admission or residence.

No individual shall be admitted to or permitted to remain in a health care facility as a resident, except in accordance with the requirements of this section.

1. Each resident shall be covered by a contract executed at the time of admission or prior thereto by the resident, or the resident's legal representative, and the health care facility, except as otherwise provided by subsection 5 with respect to residents admitted at public expense to a county care facility operated under chapter 347B. Each party to the contract shall be entitled to a duplicate original thereof, and the health care facility shall keep on file all contracts which it has with residents and shall not destroy or otherwise dispose of any such contract for at least one year after its expiration. Each such contract shall expressly set forth:

a. The terms of the contract.

b. The services and accommodations to be provided by the health care facility and the rates or charges therefor.

c. Specific descriptions of any duties and obligations of the parties in addition to those required by operation of law.

d. Any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter, nor contain any disclaimer of responsibility for injury to the resident, or to relatives or other persons visiting the resident, which occurs on the premises of the facility or, with respect to injury to the resident, which occurs while the resident is under the supervision of any employee of the facility whether on or off the premises of the facility.

2. A health care facility shall not knowingly admit or retain a resident:

a. Who is dangerous to the resident or other residents.

b. Who is in an acute stage of alcoholism, drug addiction, or mental illness.

c. Whose condition or conduct is such that the resident would be unduly disturbing to other residents.

d. Who is in need of medical procedures, as determined by a physician, or services which cannot be or are not being carried out in the facility.

This section does not prohibit the admission of a patient with a history of dangerous or disturbing behavior to an intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, nursing facility, or county care facility when the intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, nursing facility, or county care facility has a program which has received prior approval from the department to properly care for and manage the patient. An intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, nursing facility, or county care facility is required to transfer or discharge a resident with dangerous or disturbing behavior when the intermediate care facility for persons with mental illness, intermediate care facility for persons with mental retardation, nursing facility, or county care facility cannot control the resident's dangerous or disturbing behavior. The department, in coordination with the state mental health and developmental disabilities commission created in section 225C.5, shall adopt rules pursuant to chapter 17A for programs to be required in intermediate care facilities for persons with mental illness, intermediate care facilities for persons with mental retardation, nursing facilities, and county care facilities that admit patients or have residents with histories of dangerous or disturbing behavior.

The denial of admission of a person to a health care facility shall not be based upon the patient's condition, which is the existence of a specific disease in the patient, but the decision to accept or deny admission of a patient with a specific disease shall be based solely upon the ability of the health care facility to provide the level of care required by the patient.

3. Except in emergencies, a resident who is not essentially capable of managing the resident's own affairs shall not be transferred out of a health care facility or discharged for any reason without

prior notification to the next of kin, legal representative, or agency acting on the resident's behalf. When such next of kin, legal representative, or agency cannot be reached or refuses to cooperate, proper arrangements shall be made by the facility for the welfare of the resident before the resident's transfer or discharge.

4. No owner, administrator, employee, or representative of a health care facility shall pay any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, to any person for residents referred to such facility, nor accept any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, for professional or other services or supplies purchased by the facility or by any resident, or by any third party on behalf of any resident, of the facility.

5. Each county which maintains a county care facility under chapter 347B shall develop a statement in lieu of, and setting forth substantially the same items as, the contracts required of other health care facilities by subsection 1. The statement must be approved by the county board of supervisors and by the department. When so approved, the statement shall be considered in force with respect to each resident of the county care facility.

[C71, 73, 75, 77, 79, 81, §135C.23]

83 Acts, ch 76, §1; 87 Acts, ch 190, §1; 88 Acts, ch 1234, §9; 90 Acts, ch 1039, §9; 94 Acts, ch 1170, §23; 96 Acts, ch 1129, §113

135C.24 Personal property or affairs of patients or residents.

The admission of a resident to a health care facility and the resident's presence therein shall not in and of itself confer on such facility, its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the resident, nor any authority or responsibility for the personal affairs of the resident, except as may be necessary for the safety and orderly management of the facility and as required by this section.

1. No health care facility, and no owner, administrator, employee or representative thereof shall act as guardian, trustee or conservator for any resident of such facility, or any of such resident's property, unless such resident is related to the person acting as guardian within the third degree of consanguinity.

2. A health care facility shall provide for the safekeeping of personal effects, funds and other property of its residents, provided that whenever necessary for the protection of valuables or in order to avoid unreasonable responsibility therefor, the facility may require that they be excluded or removed from the premises of the facility and kept at some place not subject to the control of the facility.

3. A health care facility shall keep complete and accurate records of all funds and other effects and property of its residents received by it for safekeeping.

4. Any funds or other property belonging to or due a resident, or expendable for the resident's account, which are received by a health care facility shall be trust funds, shall be kept separate from the funds and property of the facility and of its other residents, or specifically credited to such resident, and shall be used or otherwise expended only for the account of the resident. Upon request the facility shall furnish the resident, the guardian, trustee or conservator, if any, for any resident, or any governmental unit or private charitable agency contributing funds or other property on account of any resident, a complete and certified statement of all funds or other property to which this subsection applies detailing the amounts and items received, together with their sources and disposition.

5. The provisions of this section notwithstanding, upon the verified petition of the county board of supervisors the district court may appoint the administrator of a county care facility as conservator or guardian, or both, of a resident of such county care facility, in accordance with the provisions of chapter 633. Such administrator shall serve as conservator or guardian, or both, without fee. The county attorney shall serve as attorney for the administrator in such conservatorship or guardianship, or both, without fee. The administrator may establish either separate or common bank accounts for cash funds of such resident wards.

[C71, 73, 75, 77, 79, 81, §135C.24]

135C.25 Resident advocate committee appointments — duties — disclosure — liability.

1. Each health care facility shall have a resident advocate committee whose members shall be appointed by the director of the department of elder affairs or the director's designee. A person shall not be appointed a member of a resident advocate committee for a health care facility unless the person is a resident of the service area where the facility is located. The resident advocate committee for any facility caring primarily for persons with mental illness, mental retardation, or a developmental disability shall only be appointed after consultation with the administrator of the division of mental health and developmental disabilities of the department of human services on the proposed appointments. Recommendations to the director or the director's designee for membership on resident advocate committees are encouraged from any agency, organization, or individual. The administrator of the facility shall not be appointed to the resident advocate committee and shall not be present at committee meetings except upon request of the committee.

2. Each resident advocate committee shall pe-

riodically review the needs of each individual resident of the facility and shall perform the functions pursuant to sections 135C.38 and 231.44.

3. A health care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a resident advocate committee member, unless permission for this disclosure is refused in writing by the family member. The facility shall provide a form on which a family member may indicate a refusal to grant this permission.

4. Neither the state nor any resident advocate committee member is liable for an action by a resident advocate committee member in the performance of duty, if the action is undertaken and carried out in good faith.

[C71, 73, 75, 77, 79, 81, §135C.25]

83 Acts, ch 73, §6; 86 Acts, ch 1245, §1027; 87 Acts, ch 70, §1; 88 Acts, ch 1068, §2; 94 Acts, ch 1170, §24; 99 Acts, ch 129, §5

135C.26 Director notified of casualties.

The director shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing major injury or death, and any fire or natural or other disaster occurring in a health care facility.

[C71, 73, 75, 77, 79, 81, §135C.26]

135C.27 Federal funds to implement program.

If the department's services are necessary in order to assist another governmental unit to implement a federal program, the department may accept in compensation for such services federal funds initially available from the federal government to such other governmental unit for such purpose. Any governmental unit is authorized to transfer to the department for such services any federal funds available to such governmental unit, in accordance with applicable federal laws and regulations.

[C71, 73, 75, 77, 79, 81, §135C.27]

135C.28 Conflicting statutes.

Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C73, 75, 77, 79, 81, §135C.28]

135C.29 License list to county commissioner of elections.

To facilitate the implementation of section 53.8, subsection 3 and section 53.22, the director shall provide to each county commissioner of elections at least annually a list of each licensed health care facility in that county. The list shall include the street address or location, and the mailing address if it is other than the street address or location, of each facility.

[C77, 79, 81, §135C.29]

135C.30 Operation of facility under receivership.

When so authorized by section 135C.11, subsection 2, or section 135C.12, subsection 1, the director may file a verified application in the district court of the county where a health care facility licensed under this chapter is located, requesting that an individual nominated by the director be appointed as receiver for the facility with responsibility to bring the operation and condition of the facility into conformity with this chapter and the rules or minimum standards promulgated under this chapter.

1. The court shall expeditiously hold a hearing on the application, at which the director shall present evidence in support of the application. The licensee against whose facility the petition is filed may also present evidence, and both parties may subpoena witnesses. The court may appoint a receiver for the health care facility in advance of the hearing if the director's verified application states that an emergency exists which presents an imminent danger of resultant death or physical harm to the residents of the facility. If the licensee against whose facility the receivership petition is filed informs the court at or before the time set for the hearing that the licensee does not object to the application, the court shall waive the hearing and at once appoint a receiver for the facility.

2. The court, on the basis of the verified application and evidence presented at the hearing, may order the facility placed under receivership, and if so ordered, the court shall direct either that the receiver assume the duties of administrator of the health care facility or that the receiver supervise the facility's administrator in conducting the day-to-day business of the facility. The receiver shall be empowered to control the facility's financial resources and to apply its revenues as the receiver deems necessary to the operation of the facility in compliance with this chapter and the rules or minimum standards promulgated under this chapter, but shall be accountable to the court for management of the facility's financial resources.

3. A receivership established under this section may be terminated by the district court which established it, after a hearing upon an application for termination. The application may be filed:

a. Jointly by the receiver and the current licensee of the health care facility which is in receivership, stating that the deficiencies in the operation, maintenance or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the facility will be operated in compliance with this chapter and the rules or minimum standards promulgated under this chapter.

b. By the current licensee of the facility, alleg-

ing that termination of the receivership is merited for the reasons set forth in paragraph *"a"* of this subsection, but that the receiver has declined to join in the petition for termination of the receivership.

c. By the receiver, stating that all residents of the facility have been relocated elsewhere and that there are reasonable grounds to believe it will not be feasible to again operate the facility on a sound financial basis and in compliance with this chapter and the rules or minimum standards promulgated under this chapter, and asking that the court approve surrender of the facility's license to the department and subsequent return of control of the facility's premises to the owners of the premises.

4. Payment of the expenses of a receivership established under this section is the responsibility of the facility for which the receiver is appointed, unless the court directs otherwise. The expenses include, but are not limited to:

a. Salary of the receiver.

b. Expenses incurred by the facility for the continuing care of the residents of the facility.

c. Expenses incurred by the facility for the maintenance of buildings and grounds of the facility.

d. Expenses incurred by the facility in the ordinary course of business, such as employees' salaries and accounts payable.

The receiver is not personally liable for the expenses of the facility during the receivership. The receiver is an employee of the state as defined in section 669.2, subsection 4, only for the purpose of defending a claim filed against the receiver. Chapter 669 applies to all suits filed against the receiver.

5. This section does not:

a. Preclude the sale or lease of a health care facility, and the transfer or assignment of the facility's license in the manner prescribed by section 135C.8, while the facility is in receivership, provided these actions are not taken without approval of the receiver.

b. Affect the civil or criminal liability of the licensee of the facility placed in receivership, for any acts or omissions of the licensee which occurred before the receiver was appointed.

[C81, §135C.30]

84 Acts, ch 1136, §1; 91 Acts, ch 107, §3

135C.31 Discharge of medicaid patients.

A resident of a health care facility shall not be discharged solely because the cost of the resident's care is being paid under chapter 249A or because the resident's source of payment is changing from private support to payment under chapter 249A.

[81 Acts, ch 60, §2]

135C.32 Hospice services covered by medicare.

The requirement that the care of a resident of a health care facility must be provided under the immediate direction of either the facility or the resident's personal physician does not apply if all of the following conditions are met:

1. The resident is terminally ill.

2. The resident has elected to receive hospice services under the federal Medicare program from a medicare certified hospice program.

3. The health care facility and the medicare certified hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of the resident's hospice care and the facility agrees to provide room and board to the resident.

88 Acts, ch 1037, §1

135C.33 Child or dependent adult abuse information and criminal records — evaluations — application to other providers.

1. Beginning July 1, 1997, prior to employment of a person in a facility, the facility shall request that the department of public safety perform a criminal history check and the department of human services perform a dependent adult abuse record check of the person in this state. In addition, the facility may request that the department of human services perform a child abuse record check in this state. Beginning July 1, 1997, a facility shall inform all persons prior to employment regarding the performance of the records checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. Additionally, a facility shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" If the person has been convicted of a crime under a law of any state or has a record of founded child or dependent adult abuse, the department of human services shall, upon the facility's request, perform an evaluation to determine whether the crime or founded child or dependent adult abuse warrants prohibition of employment in the facility. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services. If a person owns or operates more than one facility, and an employee of one of such facilities is transferred to another such facility without a lapse in employment, the facility is not required to request additional criminal and dependent adult abuse record checks of that employee.

2. If the department of public safety determines that a person has committed a crime and is to be employed in a facility licensed under this chapter, the department of public safety shall notify the licensee that an evaluation, if requested by the facility, will be conducted by the department of human services to determine whether prohibition of the person's employment is warranted. If a department of human services child or dependent adult abuse record check shows that the person has a record of founded child or dependent adult abuse, the department of human services shall inform the licensee that an evaluation, if requested by the facility, will be conducted to determine whether prohibition of the person's employment is warranted.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. The department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. A person shall not be employed in a facility licensed under this chapter unless an evaluation has been performed by the department of human services. If the department of human services determines from the evaluation that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment, the person shall not be employed in a facility licensed under this chapter.

5. Beginning July 1, 1998, this section shall apply to prospective employees of all of the following, if the provider is regulated by the state or receives any state or federal funding:

a. An employee of a homemaker, home-health aide, home-care aide, adult day services, or other provider of in-home services if the employee provides direct services to consumers.

b. An employee of a hospice, if the employee provides direct services to consumers.

c. An employee who provides direct services to consumers under a federal home and community-based services waiver.

d. An employee of an elder group home certified under chapter 231B, if the employee provides direct services to consumers.

e. An employee of an assisted living facility certified or voluntarily accredited under chapter 231C, if the employee provides direct services to consumers.

In substantial conformance with the provisions of this section, prior to the employment of such an employee, the provider shall request the performance of the criminal and dependent adult abuse record checks and may request the performance of the child abuse record checks. The provider shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded child or dependent adult abuse record and shall make the determination of whether a prospective employee of a provider shall not be employed by the provider.

6. *a.* The department of inspections and appeals, in conjunction with other departments and agencies of state government involved with criminal history and abuse registry information, shall establish a single contact repository for facilities and other providers to have electronic access to data to perform background checks for purposes of employment, as required of the facilities and other providers under this section.

b. The department may access the single contact repository for any of the following purposes:

(1) To verify data transferred from the department's nurse aide registry to the repository.

(2) To conduct record checks of applicants for employment with the department.

94 Acts, ch 1130, §12; 97 Acts, ch 42, §1; 98 Acts, ch 1141, §2; 98 Acts, ch 1223, §20, 21; 99 Acts, ch 96, §11; 99 Acts, ch 114, §5; 2001 Acts, ch 8, §1; 2001 Acts, ch 20, §2, 3; 2001 Acts, ch 64, §4; 2002 Acts, ch 1050, §18

Legislative intent; 98 Acts, ch 1217, §36
Subsection 2 amended

135C.34 Medication aide — certification.

The department of inspections and appeals, in cooperation with other appropriate agencies, shall establish a procedure to allow a person who is certified as a medication aide in another state to become certified in this state upon completion and passage of both the certified nurse aide and certified medication aide challenge examinations, without additional requirements for certification, including but not limited to, required employment in this state prior to certification. The department shall adopt rules pursuant to chapter 17A to administer this section.

94 Acts, ch 1036, §1

135C.35 Reserved.

VIOLATIONS

135C.36 Violations classified — penalties.

Every violation by a health care facility of any provision of this chapter or of the rules adopted pursuant to it shall be classified by the department in accordance with this section. The department shall adopt and may from time to time

modify, in accordance with chapter 17A rules setting forth so far as feasible the specific violations included in each classification and stating criteria for the classification of any violation not so listed.

1. A Class I violation is one which presents an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility in which the violation occurs. A physical condition or one or more practices in a facility may constitute a Class I violation. A Class I violation shall be abated or eliminated immediately unless the department determines that a stated period of time, specified in the citation issued under section 135C.40, is required to correct the violation. A licensee is subject to a penalty of not less than two thousand nor more than ten thousand dollars for each Class I violation for which the licensee's facility is cited.

2. A Class II violation is one which has a direct or immediate relationship to the health, safety or security of residents of a health care facility, but which presents no imminent danger nor substantial probability of death or physical harm to them. A physical condition or one or more practices within a facility, including either physical abuse of any resident or failure to treat any resident with consideration, respect and full recognition of the resident's dignity and individuality, in violation of a specific rule adopted by the department, may constitute a Class II violation. A violation of section 135C.14, subsection 8, or section 135C.31 and rules adopted under those sections shall be at least a Class II violation and may be a Class I violation. A Class II violation shall be corrected within a stated period of time determined by the department and specified in the citation issued under section 135C.40. The stated period of time specified in the citation may subsequently be modified by the department for good cause shown. A licensee is subject to a penalty of not less than one hundred nor more than five hundred dollars for each Class II violation for which the licensee's facility is cited, however the director may waive the penalty if the violation is corrected within the time specified in the citation.

3. A Class III violation is any violation of this chapter or of the rules adopted pursuant to it which violation is not classified in the department's rules nor classifiable under the criteria stated in those rules as a Class I or a Class II violation. A licensee shall not be subject to a penalty for a Class III violation, except as provided by section 135C.40, subsection 1 for failure to correct the violation within a reasonable time specified by the department in the notice of the violation.

[C77, 79, 81, §135C.36; 81 Acts, ch 60, §3]
86 Acts, ch 1168, §1

135C.37 Complaints alleging violations — confidentiality.

A person may request an inspection of a health care facility by filing with the department, resident advocate committee of the facility, or the long-term care resident's advocate as defined in section 231.4, subsection 16, a complaint of an alleged violation of applicable requirements of this chapter or the rules adopted pursuant to this chapter. A person alleging abuse or neglect of a resident with a developmental disability or with mental illness may also file a complaint with the protection and advocacy agency designated pursuant to section 135B.9 or section 135C.2. A copy of a complaint filed with the resident advocate committee or the long-term care resident's advocate shall be forwarded to the department. The complaint shall state in a reasonably specific manner the basis of the complaint, and a statement of the nature of the complaint shall be delivered to the facility involved at the time of the inspection. The name of the person who files a complaint with the department, resident advocate committee, or the long-term care resident's advocate shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

[C77, 79, 81, §135C.37]
84 Acts, ch 1227, §3; 85 Acts, ch 186, §2; 89 Acts, ch 241, §3; 89 Acts, ch 321, §28; 91 Acts, ch 107, §4; 99 Acts, ch 129, §6

135C.38 Inspections upon complaints.

1. *a.* Upon receipt of a complaint made in accordance with section 135C.37, the department or resident advocate committee shall make a preliminary review of the complaint. Unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint.

b. The complaint investigation shall include, at a minimum, an interview with the complainant, the alleged perpetrator, and the victim of the alleged violation, if the victim is able to communicate, if the complainant, alleged perpetrator, or victim is identifiable, and if the complainant, alleged perpetrator, or victim is available. Additionally, witnesses who have knowledge of facts related to the complaint shall be interviewed, if identifiable and available. The names of witnesses may be obtained from the complainant or the victim. The files of the facility may be reviewed to ascertain the names of staff persons on duty at the time relevant to the complaint. The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. For the purposes of this subsection, *"a preponderance of the evidence standard"* means that the evidence, considered and

compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. *"A preponderance of the evidence standard"* does not require that the investigator personally witnessed the alleged violation.

c. The department may refer to the resident advocate committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the committee.

2. *a.* The complainant shall be promptly informed of the result of any action taken by the department or committee in the matter. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness.

b. Upon conclusion of the investigation, the department shall notify the complainant of the results. The notification shall include a statement of the factual findings as determined by the investigator, the statutory or regulatory provisions alleged to have been violated, and a summary of the reasons for which the complaint was or was not substantiated.

c. The department shall mail the notification to the complainant without charge. Upon the request of the complainant, the department shall mail to the complainant, without charge, a copy of the most recent final findings regarding compliance with licensing requirements by the facility against which the complaint was filed.

d. A person who is dissatisfied with any aspect of the department's handling of the complaint may contact the long-term care resident's advocate, established pursuant to section 231.42, or may contact the protection and advocacy agency designated pursuant to section 135C.2 if the complaint relates to a resident with a developmental disability or a mental illness.

3. An inspection made pursuant to a complaint filed under section 135C.37 need not be limited to the matter or matters included in the complaint. However, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection or unless in the course of the complaint investigation a violation is evident to the inspector. Upon arrival at the facility to be inspected, the inspector shall show identification to the person in charge of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department or committee, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The protection and dignity of the resident shall be given first priority by the inspector and others.

4. If upon an inspection of a facility by its resident advocate committee pursuant to this section, the committee advises the department of any circumstance believed to constitute a violation of this chapter or of any rule adopted pursuant to it, the committee shall similarly advise the facility at the same time. If the facility's licensee or administrator disagrees with the conclusion of the committee regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section 135C.42 before a citation is issued. If the department thereafter issues a citation pursuant to the committee's finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section 135C.43 if it so desires.

[C77, 79, 81, §135C.38]

87 Acts, ch 234, §430; 89 Acts, ch 241, §4; 91 Acts, ch 107, §5, 6; 99 Acts, ch 129, §7, 8; 2000 Acts, ch 1180, §2

135C.39 No advance notice of inspection — exception.

No advance notice of an on-site inspection made pursuant to section 135C.38 shall be given the health care facility or the licensee thereof unless previously and specifically authorized in writing by the director or required by federal law. The person in charge of the facility shall be informed of the substance of the complaint at the commencement of the on-site inspection.

[C77, 79, 81, §135C.39]

89 Acts, ch 241, §5; 90 Acts, ch 1039, §10

Administrative penalty; see §135C.45A

135C.40 Citations when violations found — penalties — exception.

1. If the director determines, based on the findings of an inspection or investigation of a health care facility, that the facility is in violation of this chapter or rules adopted under this chapter, the director within five working days after making the determination, may issue a written citation to the facility. The citation shall be served upon the facility personally or by certified mail, except that a citation for a Class III violation may be sent by ordinary mail. Each citation shall specifically describe the nature of the violation, identifying the Code section or subsection or the rule or standard violated, and the classification of the violation under section 135C.36. Where appropriate, the citation shall also state the period of time allowed for correction of the violation, which shall in each case be the shortest period of time the department

deems feasible. Failure to correct a violation within the time specified, unless the licensee shows that the failure was due to circumstances beyond the licensee's control, shall subject the facility to a further penalty of fifty dollars for each day that the violation continues after the time specified for correction.

2. When a citation is served upon or mailed to a health care facility under subsection 1 and the licensee of the facility is not actually involved in the daily operation of the facility, a copy of the citation shall be mailed to the licensee. If the licensee is a corporation, a copy of the citation shall be sent to the corporation's office of record. If the citation was issued pursuant to an inspection resulting from a complaint filed under section 135C.37, a copy of the citation shall be sent to the complainant at the earliest time permitted by section 135C.19, subsection 1.

3. No health care facility shall be cited for any violation caused by any practitioner licensed pursuant to chapter 148, 150 or 150A if that practitioner is not the licensee of and is not otherwise financially interested in the facility, and the licensee or the facility presents evidence that reasonable care and diligence have been exercised in notifying the practitioner of the practitioner's duty to the patients in the facility.

[C77, 79, 81, §135C.40; 81 Acts, ch 61, §1]
84 Acts, ch 1227, §4

135C.41 Licensee's response to citation.

Within twenty business days after service of a citation under section 135C.40, a facility shall either:

1. If it does not desire to contest the citation:

a. Remit to the department the amount specified by the department pursuant to section 135C.36 as a penalty for each Class I violation cited, and for each Class II violation unless the citation specifically waives the penalty, which funds shall be paid by the department into the state treasury and credited to the general fund; or

b. In the case of a Class II violation for which the penalty has been waived in accordance with the standards prescribed in section 135C.36, subsection 2, or a Class III violation, send to the department a written response acknowledging that the citation has been received and stating that the violation will be corrected within the specific period of time allowed by the citation; or

2. Notify the director that the facility desires to contest the citation and, in the case of citations for Class II or Class III violations, request an informal conference with a representative of the department.

[C77, 79, 81, §135C.41]

135C.42 Informal conference on contested citation.

The director shall assign a representative of the department, other than the inspector upon whose inspection the contested citation is based, to hold an informal conference with the facility within ten working days after receipt of a request made under section 135C.41, subsection 2. At the conclusion of the conference the representative may affirm or may modify or dismiss the citation. In the latter case, the representative shall state in writing the specific reasons for the modification or dismissal and immediately transmit copies of the statement to the director, and to the facility. If the facility does not desire to further contest an affirmed or modified citation, it shall within five working days after the informal conference, or after receipt of the written explanation of the representative, as the case may be, comply with section 135C.41, subsection 1.

[C77, 79, 81, §135C.42]

135C.43 Formal contest — judicial review.

1. A facility which desires to contest a citation for a Class I violation, or to further contest an affirmed or modified citation for a Class II or Class III violation, may do so in the manner provided by chapter 17A for contested cases. Notice of intent to formally contest a citation shall be given the department in writing within five days after service of a citation for a Class I violation, or within five days after the informal conference or after receipt of the written explanation of the representative delegated to hold the informal conference, whichever is applicable, in the case of an affirmed or modified citation for a Class II or Class III violation. A facility which has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

2. Hearings on petitions for judicial review brought under this section shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. The times for pleadings and for hearings in such actions shall be set by the judge of the court with the object of securing a decision in the matter at the earliest possible time.

[C77, 79, 81, §135C.43]

135C.44 Treble fines for repeated violations.

The penalties authorized by section 135C.36 shall be trebled for a second or subsequent Class

I or Class II violation occurring within any twelve-month period if a citation was issued for the same Class I or Class II violation occurring within that period and a penalty was assessed therefor.

[C77, 79, 81, §135C.44]

135C.45 Refund of penalty.

If at any time a contest or appeal of any citation issued a health care facility under this chapter results in an order or determination that a penalty previously paid to or collected by the department must be refunded to the facility, the refund shall be made from any money in the state general fund not otherwise appropriated.

[C77, 79, 81, §135C.45]

135C.45A Notification penalty.

A person who notifies, or causes to be notified, a health care facility, of the time and date on which a survey or on-site inspection of the facility is scheduled, is subject to an administrative penalty of not less than one thousand dollars and not more than two thousand dollars.

90 Acts, ch 1039, §11

135C.46 Retaliation by facility prohibited.

1. A facility shall not discriminate or retaliate in any way against a resident or an employee of the facility who has initiated or participated in any proceeding authorized by this chapter. A facility which violates this section is subject to a penalty of not less than two hundred fifty nor more than five thousand dollars, to be assessed and collected by the director in substantially the manner prescribed by sections 135C.40 to 135C.43 and paid into the state treasury to be credited to the general fund, or to immediate revocation of the facility's license.

2. Any attempt to expel from a health care facility a resident by whom or upon whose behalf a complaint has been submitted to the department under section 135C.37, within ninety days after the filing of the complaint or the conclusion of any proceeding resulting from the complaint, shall raise a rebuttable presumption that the action was taken by the licensee in retaliation for the filing of the complaint.

[C77, 79, 81, §135C.46]

135C.47 Report listing licensees and citations. Repealed by 98 Acts, ch 1141, § 3.

135C.48 Information about complaint procedure.

The department shall make a continuing effort to inform the general public of the appropriate procedure to be followed by any person who believes that a complaint against a health care facility is justified and should be made under section 135C.37.

[C77, 79, 81, §135C.48]

CHAPTER 135D

MOBILE HOMES AND PARKS

Transferred to chapter 435

CHAPTER 135E

NURSING HOME ADMINISTRATORS

Transferred to chapter 155

CHAPTER 135F

RESPIRATORY CARE PRACTITIONERS

Transferred to chapter 152B

CHAPTER 135G

BIRTH CENTERS

Repealed by 2002 Acts, ch 1162, §79

CHAPTER 135H

PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

135H.1 Definitions.
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135H.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of inspections and appeals.

2. *"Direction"* means authoritative policy or procedural guidance for the accomplishment of a function or an activity.

3. *"Licensee"* means the holder of a license issued to operate a psychiatric medical institution for children.

4. *"Medical care plan"* means a plan of care and services designed to eliminate the need for inpatient care by improving the condition of a child. Services must be based upon a diagnostic evaluation, which includes an examination of the medical, psychological, social, behavioral, and developmental aspects of the child's situation, reflecting the need for inpatient care.

5. *"Mental health professional"* means an individual who has all of the following qualifications:

a. The individual holds at least a master's degree in a mental health field, including but not limited to, psychology, counseling and guidance, nursing, and social work, or the individual is a physician.

b. The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law.

c. The individual has at least two years of post-degree clinical experience, supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services.

6. *"Nursing care"* means services which are provided under the direction of a physician or registered nurse.

7. *"Physician"* means a person licensed under chapter 148 or 150A.

8. *"Psychiatric medical institution for children"* or *"psychiatric institution"* means an institution providing more than twenty-four hours of continuous care involving long-term psychiatric services to three or more children in residence for expected periods of fourteen or more days for diagnosis and evaluation or for expected periods of ninety days or more for treatment.

9. *"Psychiatric services"* means services provided under the direction of a physician which address mental, emotional, medical, or behavioral problems.

10. *"Rehabilitative services"* means services to encourage and assist restoration of a resident's optimum mental and physical capabilities.

11. *"Resident"* means a person who is less than twenty-one years of age and has been admitted by a physician to a psychiatric medical institution for children.

12. *"Supervision"* means direct oversight and inspection of the act of accomplishing a function or activity.

89 Acts, ch 283, §2; 94 Acts, ch 1120, §14, 15

135H.2 Purpose.

The purpose of this chapter is to provide for the development, establishment, and enforcement of basic standards for the operation, construction, and maintenance of a psychiatric medical institution for children which will ensure the safe and adequate diagnosis and evaluation and treatment of the residents.

89 Acts, ch 283, §3

135H.3 Nature of care.

A psychiatric medical institution for children shall utilize a team of professionals to direct an organized program of diagnostic services, psychiatric services, nursing care, and rehabilitative services to meet the needs of residents in accordance with a medical care plan developed for each resident. Social and rehabilitative services shall be provided under the direction of a qualified mental health professional.

89 Acts, ch 283, §4

135H.4 Licensure.

A person shall not establish, operate, or maintain a psychiatric medical institution for children unless the person obtains a license for the institution under this chapter and either holds a license under section 237.3, subsection 2, paragraph *"a"*, as a comprehensive residential facility for children or holds a license under section 125.13, if the facility provides substance abuse treatment.

89 Acts, ch 283, §5; 93 Acts, ch 53, §6; 93 Acts, ch 172, §29; 93 Acts, ch 180, §79

135H.5 Application for license.

An application for a license under this chapter shall be submitted on a form requesting information required by the department, which may include affirmative evidence of the applicant's ability to comply with the rules for standards adopted pursuant to this chapter. An application for a license shall be accompanied by the required license fee which shall be credited to the general fund of the state. The initial and annual license fee is twenty-five dollars.

89 Acts, ch 283, §6

135H.6 Inspection — conditions for issuance.

The department shall issue a license to an applicant under this chapter if all the following conditions exist:

1. The department has ascertained that the applicant's medical facilities and staff are adequate to provide the care and services required of a psychiatric institution.

2. The proposed psychiatric institution is accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the council on accreditation of services for families and children, or by any other recognized accrediting organization with comparable standards acceptable under federal regulation.

3. The applicant complies with applicable state rules and standards for a psychiatric institution adopted by the department in accordance with federal requirements under 42 C.F.R. § 441.150 – 441.156.

4. The applicant has been awarded a certificate of need pursuant to chapter 135, unless exempt as provided in this section.

5. The department of human services has submitted written approval of the application based on the department of human services' determination of need. The department of human services shall identify the location and number of children in the state who require the services of a psychiatric medical institution for children. Approval of an application shall be based upon the location of the proposed psychiatric institution relative to the need for services identified by the department of human services and an analysis of the applicant's ability to provide services and support consistent with requirements under chapter 232, particularly regarding community-based treatment. If the proposed psychiatric institution is not freestanding from a facility licensed under chapter 135B or 135C, approval under this subsection shall not be given unless the department of human services certifies that the proposed psychiatric institution is capable of providing a resident with a living environment similar to the living environment provided by a licensee which is freestanding from a facility licensed under chapter 135B or 135C.

6. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter for services reimbursed by the medical assistance program under chapter 249A to exceed four hundred thirty beds.

7. In addition to the beds authorized under subsection 6, the department of human services may establish not more than thirty beds licensed under this chapter at the state mental health institute at Independence. The beds shall be exempt from the certificate of need requirement under subsection 4.

8. The department of human services may give approval to conversion of beds approved under subsection 6, to beds which are specialized to provide substance abuse treatment. However, the total number of beds approved under subsection 6 and this subsection shall not exceed four hundred thirty. Conversion of beds under this subsection shall not require a revision of the certificate of need issued for the psychiatric institution making the conversion.

9. The proposed psychiatric institution is under the direction of an agency which has operated a facility licensed under section 237.3, subsection 2, paragraph *"a"*, as a comprehensive residential facility for children for three years or of an agency which has operated a facility for three years providing psychiatric services exclusively to children or adolescents and the facility meets or exceeds requirements for licensure under section 237.3, subsection 2, paragraph *"a"*, as a comprehensive residential facility for children.

10. A psychiatric institution licensed prior to July 1, 1999, may exceed the number of beds authorized under subsection 6 if the excess beds are used to provide services funded from a source other than the medical assistance program under chapter 249A. Notwithstanding subsections 4, 5, and 6, the provision of services using those excess beds does not require a certificate of need or a review by the department of human services.

89 Acts, ch 283, §7; 90 Acts, ch 1239, §1, 2; 93 Acts, ch 53, §7; 93 Acts, ch 172, §30; 93 Acts, ch 180, §80; 96 Acts, ch 1213, §32; 98 Acts, ch 1218, §66; 99 Acts, ch 51, §1, 2; 99 Acts, ch 98, §1; 2001 Acts, ch 191, §35

135H.7 Personnel.

1. A person shall not be allowed to provide services in a psychiatric institution if the person has a disease which is transmissible to other persons through required contact in the workplace, which presents a significant risk of infecting other persons, which presents a substantial possibility of harming other persons, or for which no reasonable accommodation can eliminate the risk of infecting other persons.

2. *a.* If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a licensed psychiatric institution, or if a person will reside in a facility utilized by a licensee, and if the person has been convicted of a crime or has a record of founded child abuse, the department of human services and the licensee, for an employee of the licensee, shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department of human services shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services.

b. If the department of human services determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a psychiatric institution licensed under this chapter, or resides in a licensed facility the department shall notify the program that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

c. In an evaluation, the department of human services and the licensee for an employee of the licensee shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be licensed, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department of human services has final authority in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

3. If the department of human services determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter to operate a psychiatric institution and shall not be employed by a psychiatric institution or reside in a facility licensed under this chapter.

4. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsections 2 and 3, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random dependent adult abuse record check conducted under this subsection.

5. Beginning July 1, 1994, a licensee shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

6. On or after July 1, 1994, a licensee shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

89 Acts, ch 283, §8; 90 Acts, ch 1221, §2; 91 Acts, ch 138, §2; 92 Acts, ch 1163, §35; 94 Acts, ch 1130, §13

135H.8 Denial, suspension, or revocation of license.

The department may deny an application or suspend or revoke a license if the department finds that an applicant or licensee has failed or is unable to comply with this chapter or the rules establishing minimum standards pursuant to this chapter or if any of the following conditions apply:

1. It is shown that a resident is a victim of cruelty or neglect due to the acts or omissions of the licensee.

2. The licensee has permitted, aided, or abetted in the commission of an illegal act in the psychiatric institution.

3. An applicant or licensee acted to obtain or to retain a license by fraudulent means, misrepresentation, or submitting false information.

4. The licensee has willfully failed or neglected to maintain a continuing in-service education and training program for persons employed by the psychiatric institution.

5. The application involves a person who has failed to operate a psychiatric institution in compliance with the provisions of this chapter.

89 Acts, ch 283, §9

135H.8A Provisional license.

The department may issue a provisional license, effective for not more than one year, to a licensee whose psychiatric institution does not meet the requirements of this chapter, if, prior to issuance of the license, written plans to achieve compliance with the applicable requirements are submitted to and approved by the department. The plans shall specify the deadline for achieving compliance.

95 Acts, ch 51, §2

135H.9 Notice and hearings.

The procedure governing notice and hearing to deny an application or suspend or revoke a license shall be in accordance with rules adopted by the department pursuant to chapter 17A. A full and complete record shall be kept of the proceedings and of any testimony. The record need not be transcribed unless judicial review is sought. A copy or copies of a transcript may be obtained by an interested party upon payment of the cost of preparing the transcript or copies.

89 Acts, ch 283, §10

135H.10 Rules.

1. The department of inspections and appeals, in consultation with the department of human services and affected professional groups, shall adopt and enforce rules setting out the standards for a psychiatric medical institution for children and the rights of the residents admitted to a psychiatric institution. The department of inspections and appeals and the department of human services shall coordinate the adoption of rules and the enforcement of the rules in order to prevent duplication of effort by the departments and of requirements of the licensee.

2. This chapter shall not be construed as prohibiting the use of funds appropriated for foster care to provide payment to a psychiatric medical institution for children for the financial participation required of a child whose foster care placement is in a psychiatric medical institution for children. In accordance with established policies and procedures for foster care, the department of human services shall act to recover any such payment for financial participation, apply to be named payee for the child's unearned income, and recommend parental liability for the costs of a court-ordered foster care placement in a psychiatric medical institution.

3. Except for those psychiatric medical institutions for children which are specialized to provide substance abuse treatment, unless expressly authorized in statute, the department of human services shall not include services provided by psychiatric medical institutions for children in any managed care contract.

89 Acts, ch 283, §11; 2001 Acts, ch 135, §30

135H.11 Complaints alleging violations — confidentiality.

A person may request an inspection of a psychiatric medical institution for children by filing with the department a complaint of an alleged violation of an applicable requirement of this chapter or a rule adopted pursuant to this chapter. The complaint shall state in a reasonably specific manner the basis of the complaint. A statement of the nature of the complaint shall be delivered to the psychiatric institution involved at the time of or prior to the inspection. The name of the person who files a complaint with the department shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

89 Acts, ch 283, §12

135H.12 Inspections upon complaints.

1. Upon receipt of a complaint made in accordance with section 135H.11, the department shall make a preliminary review of the complaint. Unless the department concludes that the complaint is intended to harass a psychiatric institution or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the psychiatric institution which is the subject of the complaint. The department of inspections and appeals may refer to the department of human services any complaint received by the department if the complaint applies to rules adopted by the department of human services. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness. In any case, the complainant shall be promptly informed of the result of any action taken by the department in the matter.

2. An inspection made pursuant to a complaint filed under section 135H.11 need not be limited to the matter or matters referred to in the complaint; however, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection. Upon arrival at the psychiatric institution to be inspected, the inspector shall show identification to the person in charge of the psychiatric institution and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of a resident of the psychiatric institu-

tion to be inspected would be violated. The dignity of the resident shall be given first priority by the inspector and others.

89 Acts, ch 283, §13

135H.13 Information confidential.

1. The department's final findings and the survey findings of the joint commission on the accreditation of health care organizations regarding licensure or program accreditation shall be made available to the public in a readily available form and place. Other information relating to the psychiatric institution is confidential and shall not be made available to the public except in proceedings involving licensure, a civil suit involving a resident, or an administrative action involving a resident.

2. The name of a person who files a complaint with the department shall remain confidential and is not subject to discovery, subpoena, or any other means of legal compulsion for release to a person other than an employee of the department or an agent involved in the investigation of the complaint.

3. Information regarding a resident who has received or is receiving care shall not be disclosed directly or indirectly except as authorized under section 217.30, 232.69, or 237.21.

89 Acts, ch 283, §14

135H.14 Judicial review.

Judicial review of the action of the department may be sought pursuant to the Iowa administrative procedure Act, chapter 17A. Notwithstanding the Iowa administrative procedure Act, a petition for judicial review of the department's actions under this chapter may be filed in the district court of the county in which the related psychiatric medical institution for children is located or is proposed to be located. The status of the petitioner or the licensee shall be preserved pending final disposition of the judicial review.

89 Acts, ch 283, §15

135H.15 Penalty.

A person who establishes, operates, or manages a psychiatric medical institution for children without obtaining a license under this chapter commits a serious misdemeanor. Each day of continuing violation following conviction shall be considered a separate offense.

89 Acts, ch 283, §16

135H.16 Injunction.

Notwithstanding the existence or pursuit of another remedy, the department may maintain an action for injunction or other process to restrain or prevent the establishment, operation, or management of a psychiatric medical institution for children without a license.

89 Acts, ch 283, §17

CHAPTER 135I

SWIMMING POOLS AND SPAS

135I.1 Definitions.
135I.2 Applicability.
135I.3 Registration required.
135I.4 Powers and duties.
135I.5 Penalty.
135I.6 Enforcement.

135I.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the Iowa department of public health.

2. *"Local board of health"* means a county, city, or district board of health as defined in section 137.2.

3. *"Spa"* means a bathing facility such as a hot tub or whirlpool designed for recreational or therapeutic use.

4. *"Swimming pool"* means an artificial basin and its appurtenances, either constructed or operated for swimming, wading, or diving, and includes a swimming pool, wading pool, waterslide, or associated bathhouse. *"Swimming pool"* does not include a decorative fountain which does not serve primarily as a wading or swimming pool and the drain of which fountain is not connected to any type of suction device for removing or recirculating the water.

5. *"Swimming pool or spa water heater"* means an appliance designed for heating nonpotable water stored at atmospheric pressure, such as water in a swimming pool, spa, hot tub, or for similar uses.

89 Acts, ch 291, §1; 91 Acts, ch 75, §1; 92 Acts, ch 1194, §1; 2001 Acts, ch 58, §5

135I.2 Applicability.

This chapter applies to all swimming pools and spas owned or operated by local or state government, or commercial interests or private entities including, but not limited to, facilities operated by cities, counties, public or private school corporations, hotels, motels, camps, apartments, condominiums, and health or country clubs. This chapter does not apply to facilities intended for single family use or to a swimming pool or spa operated by a homeowners' association representing seventy-two or fewer dwelling units if the association's bylaws, which also apply to a rental agreement relative to any of the dwelling units, include an exemption from the requirements of this chapter, provide for inspection of the swimming pool or spa by an entity other than the department or local board of health, and assume any liability associated with operation of the swimming pool or spa. This chapter does not apply to a swimming pool or spa used exclusively for therapy under the direct supervision of qualified medical personnel. To avoid duplication and promote coordination of inspection activities, the department may enter into agreements pursuant to chapter 28E with a local board of health to provide for inspection and enforcement in accordance with this chapter.

89 Acts, ch 291, §2; 92 Acts, ch 1194, §2; 92 Acts, ch 1237, §8; 96 Acts, ch 1097, §1; 2001 Acts, ch 58, §6

135I.3 Registration required.

A person shall not operate a swimming pool or spa without first having registered with the department. Registration shall be renewed annually.

89 Acts, ch 291, §3

135I.4 Powers and duties.

The department is responsible for registering and regulating the operation of swimming pools, spas, and, notwithstanding chapter 89, swimming pool or spa water heaters. The department shall conduct seminars and training sessions, and disseminate information regarding health practices, safety measures, and operating procedures required under this chapter. The department may:

1. Inspect, at the time of installation and periodically thereafter, all swimming pools and spas for the purpose of detecting and eliminating health or safety hazards.

2. Establish minimum safety and sanitation criteria for the operation and use of swimming pools and spas.

3. Establish minimum qualifications for swimming pool, spa, and waterslide operators and lifeguards. Swimming pools operated by apartments, condominiums, country clubs, neighborhoods, or manufactured home communities or mobile home parks are exempt from requirements regarding lifeguards.

4. Establish and collect fees to defray the cost of administering this chapter. It is the intent of the general assembly that fees collected under this chapter be used to defray the cost of administering this chapter. However, the portion of fees needed to defray the costs of a local board of health in implementing this chapter shall be established by the local board of health. A fee imposed for the inspection of a swimming pool or spa shall not be collected until the inspection has actually been performed.

5. Adopt rules in accordance with chapter 17A for the implementation and enforcement of this chapter, and the establishment of fees. The department shall appoint an advisory committee composed of owners, operators, local officials, and representatives of the public to advise it in the formulation of appropriate rules.

6. Enter into agreements with a local board of health to implement the inspection and enforcement provisions of this chapter. The agreements shall provide that the fees established by the local board of health for inspection and enforcement shall be retained by the local board. However, inspection fees shall not be charged by the department for facilities which are inspected by third-party authorities. Third-party authorities shall be approved by the department. The department shall monitor and certify the inspection and enforcement programs of local boards of health and approved third-party authorities.

89 Acts, ch 291, §4; 92 Acts, ch 1194, §3; 92 Acts, ch 1237, §9; 2001 Acts, ch 153, §16

135I.5 Penalty.

A person who violates a provision of this chapter commits a simple misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

89 Acts, ch 291, §5

135I.6 Enforcement.

If the department or a local board of health acting pursuant to agreement with the department determines that a provision of this chapter or a rule adopted pursuant to this chapter has been or is being violated, the department or the local board of health may order that a facility or item of equipment not be used until the necessary corrective action has been taken. The department or the local board of health may request the county attorney to bring appropriate legal proceedings to enforce this chapter, including an action to enjoin violations. The attorney general may also institute appropriate legal proceedings at the request of the department. This remedy is in addition to any other legal remedy available to the department or a local board of health.

89 Acts, ch 291, §6; 92 Acts, ch 1194, §4; 92 Acts, ch 1237, §10

CHAPTER 135J

LICENSED HOSPICE PROGRAMS

135J.1 Definitions.
135J.2 Licenses — fees — criteria.
135J.3 Basic requirements.
135J.4 Inspection.
135J.5 Denial, suspension, or revocation of licenses.
135J.6 Limitation, expiration, and renewal of licenses.
135J.7 Rules.

135J.1 Definitions.

For the purposes of this division unless otherwise defined:

1. *"Core services"* means physician services, nursing services, medical social services, counseling services, and volunteer services. These core services, as well as others deemed necessary by the hospice in delivering safe and appropriate care to its case load, can be provided through either direct or indirect arrangement by the hospice.

2. *"Department"* means the department of inspections and appeals.

3. *"Hospice patient"* or *"patient"* means a diagnosed terminally ill person with an anticipated life expectancy of six months or less, as certified by the attending physician, who, alone or in conjunction with a unit of care as defined in subsection 8, has voluntarily requested and received admission into the hospice program. If the patient is unable to request admission, a family member may voluntarily request and receive admission on the patient's behalf.

4. *"Hospice patient's family"* means the immediate kin of the patient, including a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, child, or stepchild. Additional relatives or individuals with significant personal ties to the hospice patient may be included in the hospice patient's family.

5. *"Hospice program"* means a centrally coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration providing palliative care and supportive medical and other health services to terminally ill patients and their families. A licensed hospice program shall utilize a medically directed interdisciplinary team and provide care to meet the physical, emotional, social, spiritual, and other special needs which are experienced during the final stages of illness, dying, and bereavement. Hospice care shall be available twenty-four hours a day, seven days a week.

6. *"Interdisciplinary team"* means the hospice patient and the hospice patient's family, the attending physician, and all of the following individuals trained to serve with a licensed hospice program:

a. A licensed physician pursuant to chapter 148, 150, or 150A.

b. A licensed registered nurse pursuant to chapter 152.

c. An individual with at least a baccalaureate degree in the field of social work providing medical-social services.

d. Trained hospice volunteers.

Providers of special services, including but not limited to, a spiritual counselor, a pharmacist, or professionals in the fields of mental health may be included on the interdisciplinary team as deemed appropriate by the hospice.

7. *"Palliative care"* means care directed at managing symptoms experienced by the hospice patient, as well as addressing related needs of the patient and family as they experience the stress of the dying process. The intent of palliative care is to enhance the quality of life for the hospice patient and family unit, and is not treatment directed at cure of the terminal illness.

8. *"Unit of care"* means the patient and the patient's family within a hospice program.

9. *"Volunteer services"* means the services provided by individuals who have successfully completed a training program developed by a licensed hospice program.

84 Acts, ch 1284, §2
C85, §135.90
90 Acts, ch 1204, §66
C91, §135J.1

135J.2 Licenses — fees — criteria.

A person or governmental unit, acting severally or jointly with any other person may establish, conduct, or maintain a hospice program in this state and receive license from the department after meeting the requirements of this division. The application shall be on a form prescribed by the department and shall require information the department deems necessary. Nothing in this division shall prohibit a person or governmental unit from establishing, conducting, or maintaining a hospice program without a license. Each application for license shall be accompanied by a nonrefundable biennial license fee determined by the department.

The hospice program shall meet the criteria

pursuant to section 135J.3 before a license is issued. The department of inspections and appeals is responsible to provide the necessary personnel to inspect the hospice program, the home care and inpatient care provided and the hospital or facility used by the hospice to determine if the hospice complies with necessary standards before a license is issued. Hospices that are certified as medicare hospice providers by the department of inspections and appeals or are accredited as hospices by the joint commission on the accreditation of health care organizations, shall be licensed without inspection by the department of inspections and appeals.

84 Acts, ch 1284, §3
C85, §135.91
86 Acts, ch 1245, §1111; 90 Acts, ch 1204, §66
C91, §135J.2
98 Acts, ch 1100, §17

135J.3 Basic requirements.

A licensed hospice program shall include:

1. A planned program of hospice care, the medical components of which shall be under the direction of a licensed physician.
2. Centrally administered, coordinated hospice core services provided in home, outpatient, or institutional settings.
3. A mechanism that assures the rights of the patient and family.
4. Palliative care provided to a hospice patient and family under the direction of a licensed physician.
5. An interdisciplinary team which develops, implements, and evaluates the hospice plan of care for the patient and family.
6. Bereavement services.
7. Accessible hospice care twenty-four hours a day, seven days a week in all settings.
8. An ongoing system of quality assurance and utilization review.

84 Acts, ch 1284, §7
C85, §135.95
90 Acts, ch 1204, §66
C91, §135J.3

135J.4 Inspection.

The department of inspections and appeals shall make or be responsible for inspections of the hospice program, the home care and the inpatient care provided in the hospice program, and the hospital or facility before a license is issued. The department of inspections and appeals shall inspect the hospice program periodically after initial inspection.

84 Acts, ch 1284, §6
C85, §135.94
86 Acts, ch 1245, §1112; 90 Acts, ch 1204, §66
C91, §135J.4

135J.5 Denial, suspension, or revocation of licenses.

The department may deny, suspend, or revoke a license if the department determines there is failure of the program to comply with this division or the rules adopted under this division. The suspension or revocation may be appealed under chapter 17A. The department may reissue a license following a suspension or revocation after the hospice corrects the conditions upon which the suspension or revocation was based.

84 Acts, ch 1284, §4
C85, §135.92
90 Acts, ch 1204, §66
C91, §135J.5

135J.6 Limitation, expiration, and renewal of licenses.

Licenses for hospice programs shall be issued only for the premises, person, hospital, or facility named in the application and are not transferable or assignable. A license, unless sooner suspended or revoked, shall expire two years after the date of issuance and shall be renewed biennially upon an application by the licensee. Application for renewal shall be made in writing to the department at least thirty days prior to the expiration of the license. The fee for a license renewal shall be determined by the department. Licensed hospice programs which have allowed their licenses to lapse through failure to make timely application for renewal shall pay an additional fee of twenty-five percent of the biennial license fee.

84 Acts, ch 1284, §5
C85, §135.93
85 Acts, ch 67, §17; 89 Acts, ch 122, §1; 90 Acts, ch 1204, §66
C91, §135J.6

135J.7 Rules.

Except as otherwise provided in this division, the department shall adopt rules pursuant to chapter 17A necessary to implement this division, subject to approval of the state board of health. Formulation of the rules shall include consultation with Iowa hospice organization representatives and other persons affected by the division.

84 Acts, ch 1284, §8
C85, §135.96
87 Acts, ch 8, §3; 90 Acts, ch 1204, §66
C91, §135J.7

CHAPTER 135K

BACKFLOW PREVENTION ASSEMBLY TESTERS

135K.1 Definitions.
135K.2 Applicability.
135K.3 Registration and approval required.
135K.4 Powers and duties.
135K.5 Penalty.
135K.6 Enforcement.

135K.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Approved course"* means a course covering the testing and repair of backflow prevention assemblies which has been approved by the department.

2. *"Backflow prevention assembly"* means a device or means to prevent backflow into the potable water system.

3. *"Department"* means the Iowa department of public health.

4. *"Registered backflow prevention assembly tester"* means a person who has successfully completed an approved course and has registered with the department.

92 Acts, ch 1204, §1

135K.2 Applicability.

This chapter applies to all persons who test or repair backflow prevention assemblies.

92 Acts, ch 1204, §2

135K.3 Registration and approval required.

A person shall not test or repair backflow prevention assemblies without first having registered with and having been approved by the department.

92 Acts, ch 1204, §3

135K.4 Powers and duties.

The department shall adopt rules in accordance with chapter 17A, which provide for all of the following:

1. The establishment of minimum qualifications for registered backflow prevention assembly testers.

2. The establishment of minimum standards for approved courses.

3. The establishment and collection of fees to defray the cost of administering this chapter.

4. The provision of a listing of registered backflow prevention assembly testers to local health officials.

5. The administration and enforcement of this chapter.

92 Acts, ch 1204, §4

135K.5 Penalty.

A person who violates this chapter is guilty of a simple misdemeanor.

92 Acts, ch 1204, §5

135K.6 Enforcement.

1. The department shall investigate complaints regarding backflow prevention assembly testers. If the department determines that a provision of this chapter regarding the requirements for a backflow prevention assembly tester has been violated, the department may order a person not to test or repair backflow prevention assemblies or may revoke the registration of a registered backflow prevention assembly tester until the necessary corrective action has been taken.

2. The department shall investigate complaints regarding courses covering the testing and repair of backflow prevention assemblies. If the department determines that a provision of this chapter regarding approved courses has been violated, the department may revoke the approval of a course until the necessary corrective action has been taken.

92 Acts, ch 1204, §6

CHAPTER 135L

NOTIFICATION REQUIREMENTS REGARDING PREGNANT MINORS

135L.1 Definitions.
135L.2 Prospective minor parents decision-making assistance program established.
135L.3 Notification of parent prior to the performance of abortion on a pregnant minor — requirements — criminal penalty.
135L.4 Prospective minor parents program advisory committee created. Repealed by 97 Acts, ch 203, §19.
135L.5 Medical emergency exception — alternative procedure. Repealed by 97 Acts, ch 173, §17.
135L.6 Fraudulent practice.
135L.7 Immunities.
135L.8 Adoption of rules — implementation and documents.

135L.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Abortion"* means an abortion as defined in chapter 146.

2. *"Adult"* means a person eighteen years of age or older.

3. *"Child-placing agency"* means any agency, public, semipublic, or private, which represents itself as placing children, receiving children for placement, or actually engaging in placement of children and includes the department of human services.

4. *"Court"* means the juvenile court.

5. *"Grandparent"* means the parent of an individual who is the parent of the pregnant minor.

6. *"Medical emergency"* means a condition which, based upon a physician's judgment, necessitates an abortion to avert the pregnant minor's death, or for which a delay will create a risk of serious impairment of a major bodily function.

7. *"Minor"* means a person under eighteen years of age who has not been and is not married.

8. *"Parent"* means one parent or a legal guardian or custodian of a pregnant minor.

9. *"Responsible adult"* means an adult, who is not associated with an abortion provider, chosen by a pregnant minor to assist the minor in the decision-making process established in this chapter.

96 Acts, ch 1011, §1, 14; 97 Acts, ch 173, §1

135L.2 Prospective minor parents decision-making assistance program established.

1. A decision-making assistance program is created to provide assistance to minors in making informed decisions relating to pregnancy. The program shall offer and include all of the following:

a. (1) A video, to be developed by a person selected through a request for proposals process or other contractual agreement, which provides information regarding the various options available to a pregnant minor with regard to the pregnancy, including a decision to continue the pregnancy to term and retain parental rights following the child's birth, a decision to continue the pregnancy to term and place the child for adoption following the child's birth, and a decision to terminate the pregnancy through abortion. The video shall provide the information in a manner and language, including but not limited to the use of closed captioning for the hearing-impaired, which could be understood by a minor.

(2) The video shall explain that public and private agencies are available to assist a pregnant minor with any alternative chosen.

(3) The video shall explain that if the pregnant minor decides to continue the pregnancy to term, and to retain parental rights to the child, the father of the child is liable for the support of the child.

(4) The video shall explain that tendering false documents is a fraudulent practice in the fourth degree pursuant to section 135L.6.

b. Written decision-making materials which include all of the following:

(1) Information regarding the options described in the video including information regarding the agencies and programs available to provide assistance to the pregnant minor in parenting a child; information relating to adoption including but not limited to information regarding child-placing agencies; and information regarding abortion including but not limited to the legal requirements relative to the performance of an abortion on a pregnant minor. The information provided shall include information explaining that if a pregnant minor decides to continue the pregnancy to term and to retain parental rights, the father of the child is liable for the support of the child and that if the pregnant minor seeks public assistance on behalf of the child, the pregnant minor shall, and if the pregnant minor is not otherwise eligible as a public assistance recipient, the pregnant mi-

nor may, seek the assistance of the child support recovery unit in establishing the paternity of the child, and in seeking support payments for a reasonable amount of the costs associated with the pregnancy, medical support, and maintenance from the father of the child, or if the father is a minor, from the parents of the minor father. The information shall include a listing of the agencies and programs and the services available from each.

(2) A workbook which is to be used in viewing the video and which includes a questionnaire and exercises to assist a pregnant minor in viewing the video and in considering the options available regarding the minor's pregnancy.

(3) A detachable certification form to be signed by the pregnant minor certifying that the pregnant minor was offered a viewing of the video and the written decision-making materials.

2. *a.* The video shall be available through the state and local offices of the Iowa department of public health, the department of human services, and the judicial branch and through the office of each licensed physician who performs abortions.

b. The video may be available through the office of any licensed physician who does not perform abortions, upon the request of the physician; through any nonprofit agency serving minors, upon the request of the agency; and through any other person providing services to minors, upon the request of the person.

3. During the initial appointment between a licensed physician from whom a pregnant minor is seeking the performance of an abortion and a pregnant minor, the licensed physician shall offer the viewing of the video and the written decision-making materials to the pregnant minor, and shall obtain the signed and dated certification form from the pregnant minor. A licensed physician shall not perform an abortion on a pregnant minor prior to obtaining the completed certification form from a pregnant minor.

4. A pregnant minor shall be encouraged to select a responsible adult, preferably a parent of the pregnant minor, to accompany the pregnant minor in viewing the video and receiving the decision-making materials.

5. To the extent possible and at the discretion of the pregnant minor, the person responsible for impregnating the pregnant minor shall also be involved in the viewing of the video and in the receipt of written decision-making materials.

6. Following the offering of the viewing of the video and of the written decision-making materials, the pregnant minor shall sign and date the certification form attached to the materials, and shall submit the completed form to the licensed physician. The licensed physician shall also provide a copy of the completed certification form to the pregnant minor.

96 Acts, ch 1011, §2, 14; 96 Acts, ch 1174, §1; 97 Acts, ch 173, §2; 98 Acts, ch 1047, §16

135L.3 Notification of parent prior to the performance of abortion on a pregnant minor — requirements — criminal penalty.

1. A licensed physician shall not perform an abortion on a pregnant minor until at least forty-eight hours' prior notification is provided to a parent of the pregnant minor.

2. The licensed physician who will perform the abortion shall provide notification in person or by mailing the notification by restricted certified mail to a parent of the pregnant minor at the usual place of abode of the parent. For the purpose of delivery by restricted certified mail, the time of delivery is deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place, subsequent to the mailing.

3. If the pregnant minor objects to the notification of a parent prior to the performance of an abortion on the pregnant minor, the pregnant minor may petition the court to authorize waiver of the notification requirement pursuant to this section in accordance with the following procedures:

a. The court shall ensure that the pregnant minor is provided with assistance in preparing and filing the petition for waiver of notification and shall ensure that the pregnant minor's identity remains confidential.

b. The pregnant minor may participate in the court proceedings on the pregnant minor's own behalf. The court may appoint a guardian ad litem for the pregnant minor and the court shall appoint a guardian ad litem for the pregnant minor if the pregnant minor is not accompanied by a responsible adult or if the pregnant minor has not viewed the video as provided pursuant to section 135L.2. In appointing a guardian ad litem for the pregnant minor, the court shall consider a person licensed to practice psychology pursuant to chapter 154B, a licensed social worker pursuant to chapter 154C, a licensed marital and family therapist pursuant to chapter 154D, or a licensed mental health counselor pursuant to chapter 154D to serve in the capacity of guardian ad litem. The court shall advise the pregnant minor of the pregnant minor's right to court-appointed legal counsel, and shall, upon the pregnant minor's request, provide the pregnant minor with court-appointed legal counsel, at no cost to the pregnant minor.

c. The court proceedings shall be conducted in a manner which protects the confidentiality of the pregnant minor and notwithstanding section 232.147 or any other provision to the contrary, all court documents pertaining to the proceedings shall remain confidential and shall be sealed. Only the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's legal counsel, and persons whose presence is specifically requested by the pregnant minor, by the pregnant minor's guardian ad litem, or by the pregnant

minor's legal counsel may attend the hearing on the petition.

d. Notwithstanding any law or rule to the contrary, the court proceedings under this section shall be given precedence over other pending matters to ensure that the court reaches a decision expeditiously.

e. Upon petition and following an appropriate hearing, the court shall waive the notification requirements if the court determines either of the following:

(1) That the pregnant minor is mature and capable of providing informed consent for the performance of an abortion.

(2) That the pregnant minor is not mature, or does not claim to be mature, but that notification is not in the best interest of the pregnant minor.

f. The court shall issue specific factual findings and legal conclusions, in writing, to support the decision.

g. Upon conclusion of the hearing, the court shall immediately issue a written order which shall be provided immediately to the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's legal counsel, or to any other person designated by the pregnant minor to receive the order.

h. An expedited, confidential appeal shall be available to a pregnant minor for whom the court denies a petition for waiver of notification. An order granting the pregnant minor's application for waiver of notification is not subject to appeal. Access to the appellate courts for the purpose of an appeal under this section shall be provided to a pregnant minor twenty-four hours a day, seven days a week.

i. A pregnant minor who chooses to utilize the waiver of notification procedures under this section shall not be required to pay a fee at any level of the proceedings. Fees charged and court costs taxed in connection with a proceeding under this section are waived.

j. If the court denies the petition for waiver of notification and if the decision is not appealed or all appeals are exhausted, the court shall advise the pregnant minor that, upon the request of the pregnant minor, the court will appoint a licensed marital and family therapist to assist the pregnant minor in addressing any intrafamilial problems. All costs of services provided by a court-appointed licensed marital and family therapist shall be paid by the court through the expenditure of funds appropriated to the judicial branch.

k. Venue for proceedings under this section is in any court in the state.

l. The supreme court shall prescribe rules to ensure that the proceedings under this section are performed in an expeditious and confidential manner. The rules shall require that the hearing on the petition shall be held and the court shall rule on the petition within forty-eight hours of the filing of the petition. If the court fails to hold the hearing and rule on the petition within forty-eight hours of the filing of the petition and an extension is not requested, the petition is deemed granted and waiver of the notification requirements is deemed authorized. The court shall immediately provide documentation to the pregnant minor and to the pregnant minor's legal counsel if the pregnant minor is represented by legal counsel, demonstrating that the petition is deemed granted and that waiver of the notification requirements is deemed authorized. Resolution of a petition for authorization of waiver of the notification requirement shall be completed within ten calendar days as calculated from the day after the filing of the petition to the day of issuance of any final decision on appeal.

m. The requirements of this section regarding notification of a parent of a pregnant minor prior to the performance of an abortion on a pregnant minor do not apply if any of the following applies:

(1) The abortion is authorized in writing by a parent entitled to notification.

(2) (a) The pregnant minor declares, in a written statement submitted to the attending physician, a reason for not notifying a parent and a reason for notifying a grandparent of the pregnant minor in lieu of the notification of a parent. Upon receipt of the written statement from the pregnant minor, the attending physician shall provide notification to a grandparent of the pregnant minor, specified by the pregnant minor, in the manner in which notification is provided to a parent.

(b) The notification form shall be in duplicate and shall include both of the following:

(i) A declaration which informs the grandparent of the pregnant minor that the grandparent of the pregnant minor may be subject to civil action if the grandparent accepts notification.

(ii) A provision that the grandparent of the pregnant minor may refuse acceptance of notification.

(3) The pregnant minor's attending physician certifies in writing that a medical emergency exists which necessitates the immediate performance of an abortion, and places the written certification in the medical file of the pregnant minor.

(4) The pregnant minor declares that the pregnant minor is a victim of child abuse pursuant to section 232.68, the person responsible for the care of the child is a parent of the child, and either the abuse has been reported pursuant to the procedures prescribed in chapter 232, division III, part 2, or a parent of the child is named in a report of founded child abuse. The department of human services shall maintain confidentiality under chapter 232 and shall not release any information in response to a request for public records, discovery procedures, subpoena, or any other means, unless the release of information is expressly authorized by the pregnant minor regarding the pregnant minor's pregnancy and abortion, if the abortion is obtained. A person who knowingly violates

the confidentiality provisions of this subparagraph is guilty of a serious misdemeanor.

(5) The pregnant minor declares that the pregnant minor is a victim of sexual abuse as defined in chapter 709 and has reported the sexual abuse to law enforcement.

n. A licensed physician who knowingly performs an abortion in violation of this section is guilty of a serious misdemeanor.

o. All records and files of a court proceeding maintained under this section shall be destroyed by the clerk of court when one year has elapsed from any of the following, as applicable:

(1) The date that the court issues an order waiving the notification requirements.

(2) The date after which the court denies the petition for waiver of notification and the decision is not appealed.

(3) The date after which the court denies the petition for waiver of notification, the decision is appealed, and all appeals are exhausted.

p. A person who knowingly violates the confidentiality requirements of this section relating to court proceedings and documents is guilty of a serious misdemeanor.

96 Acts, ch 1011, §4, 14; 96 Acts, ch 1174, §2; 97 Acts, ch 173, §3 – 11; 98 Acts, ch 1047, §17

135L.4 Prospective minor parents program advisory committee created. Repealed by 97 Acts, ch 203, § 19.

135L.5 Medical emergency exception — alternative procedure. Repealed by 97 Acts, ch 173, § 17. See § 135L.3, subsection 3, paragraph m.

135L.6 Fraudulent practice.

A person who does any of the following is guilty of a fraudulent practice in the fourth degree pursuant to section 714.12:

1. Knowingly tenders a false original or copy of the signed and dated certification form described in section 135L.2, to be retained by the licensed physician.

2. Knowingly tenders a false original or copy of the notification document mailed to a parent or grandparent of the pregnant minor under this chapter, or a false original or copy of the order waiving notification relative to the performance of an abortion on a pregnant minor.

96 Acts, ch 1011, §7, 14; 96 Acts, ch 1174, §5; 97 Acts, ch 173, §12

135L.7 Immunities.

1. With the exception of the civil liability which may apply to a grandparent of a pregnant minor who accepts notification under this chapter, a person is immune from any liability, civil or criminal, for any act, omission, or decision made in connection with a good faith effort to comply with the provisions of this chapter.

2. This section shall not be construed to limit civil liability of a person for any act, omission, or decision made in relation to the performance of a medical procedure on a pregnant minor.

96 Acts, ch 1011, §8, 14; 97 Acts, ch 173, §13

135L.8 Adoption of rules — implementation and documents.

The Iowa department of public health shall adopt rules to implement the notification procedures pursuant to this chapter including but not limited to rules regarding the documents necessary for notification of a parent or grandparent of a pregnant minor who is designated to receive notification under this chapter.

96 Acts, ch 1011, §9, 14; 97 Acts, ch 173, §14

CHAPTER 136

STATE BOARD OF HEALTH

136.1 Composition of board.
136.2 Appointment.
136.3 Duties.
136.4 Questions submitted.
136.5 Meetings.
136.6 Repealed by 71 Acts, ch 84, §99.
136.7 Officer.
136.8 Supplies.
136.9 Compensation and expenses.
136.10 Publication of proceedings.

136.1 Composition of board.

The state board of health shall consist of the following members: Five members learned in health-related disciplines and four members representing the general public.

The director of public health shall serve as secretary of the board.

[S13, §2564-a; C24, 27, 31, 35, 39, §**2218;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.1]

86 Acts, ch 1245, §1119

136.2 Appointment.

All members of the state board of health shall be appointed by the governor to three-year staggered terms which shall expire on June 30.

The governor shall appoint annually successors to the three board members whose terms expire that year. A vacancy occurring on the board shall be filled by the governor for the unexpired term of the vacancy.

[C24, 27, 31, 35, 39, §**2219;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.2]

89 Acts, ch 83, §27

136.3 Duties.

The state board of health shall be the policy making body for the Iowa department of public health and shall have the following powers and duties to:

1. Consider and study the entire field of legislation and administration concerning public health, hygiene and sanitation.

2. Advise the department relative to:

a. The causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health.

b. The sanitary conditions in the educational, charitable, correctional, and penal institutions in the state.

c. Communicable and infectious diseases including zoonotic diseases, quarantine and isolation, venereal diseases, antitoxins and vaccines, housing, and vital statistics.

3. Establish policies governing the performance of the department in the discharge of any duties imposed on it by law.

4. Establish policies for the guidance of the director in the discharge of the director's duties.

5. Investigate the conduct of the work of the department, and for this purpose it shall have access at any time to all books, papers, documents, and records of the department.

6. Advise or make recommendations to the governor and general assembly relative to public health, hygiene, and sanitation.

7. Adopt, promulgate, amend, and repeal rules and regulations consistent with law for the protection of the public health and prevention of substance abuse, and for the guidance of the department. All rules which have been or are hereafter adopted by the department shall be subject to approval by the board. However, rules adopted by the commission on substance abuse for section 125.7, subsections 1 and 7, and rules adopted by the department pursuant to section 135.130 are not subject to approval by the state board of health.

8. Act by committee, or by a majority of the board.

9. Keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the department.

[C97, §2565; C24, 27, 31, 35, 39, §**2220;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.3]

86 Acts, ch 1245, §1120; 2001 Acts, ch 184, §8; 2002 Acts, ch 1050, §19

Subsection 7 amended

136.4 Questions submitted.

The department may lay before the board, or any committee thereof, at any regular or special meeting, any matter upon which it desires the advice or opinion of such body or committee.

[C24, 27, 31, 35, 39, §**2221;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.4]

136.5 Meetings.

The board shall meet on the second Wednesday in July and on the second Wednesday of every second month thereafter and at such other times as may be deemed necessary by the president of the board. The president shall give each board member adequate notice of all special meetings. A majority of the members of the board shall constitute a quorum.

[C97, §2564; S13, §2564; C24, 27, 31, 35, 39, §**2222;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.5]

136.6 Repealed by 71 Acts, ch 84, § 99.

136.7 Officer.

At the meeting held in July of each year a president shall be elected from the board, who shall serve for a period of one year. At the request of the board the department shall furnish an executive clerk from the regular employees of the department to record the minutes of the meetings of the board.

[C97, §2564; S13, §2564; C24, 27, 31, 35, 39, §**2224;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.7]

136.8 Supplies.

The department shall furnish the board of health with all articles and supplies required for the public use and necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and the same shall be considered and accounted for as if obtained for the use of the department.

[S13, §2564; C24, 27, 31, 35, 39, §**2225;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.8]

136.9 Compensation and expenses.

The members of the board shall be reimbursed for actual expenses for each day employed in the discharge of their duties. All expense moneys paid to the members shall be paid from funds appropriated to the state department of public health. Each member of the board may also be eligible to

receive compensation as provided in section 7E.6.

[C97, §2574; S13, §2564, 2574; C24, 27, 31, 35, 39, §**2226;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.9]

86 Acts, ch 1245, §1121

136.10 Publication of proceedings.

Upon request of the board the department shall incorporate the proceedings of the board, or any part of the proceedings, in its annual report to the governor, and those proceedings shall then be published as a part of the official report of the department.

[C24, 27, 31, 35, 39, §**2227;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.10]

91 Acts, ch 258, §30

CHAPTER 136A

BIRTH DEFECTS INSTITUTE

136A.1 Purpose.
136A.2 Establishment of birth defects institute.
136A.3 Activities of the institute.
136A.4 Genetic and metabolic screening defined.
136A.5 Rules, regulations, and standards.
136A.6 Central registry — confidentiality.
136A.7 Cooperation of other agencies.

136A.1 Purpose.

In order to provide for the protection and promotion of the health of the inhabitants of the state, the Iowa department of public health shall develop and administer the state's policy with respect to the conduct of scientific investigations and research concerning the causes, prevention, treatment and cure of birth defects. The department shall initiate, conduct, and supervise screening programs to discover genetic birth defects and related diseases and to prevent or treat the defects or diseases.

[C77, 79, 81, §136A.1]

83 Acts, ch 23, §1

136A.2 Establishment of birth defects institute.

There is established within the Iowa department of public health a birth defects institute to initiate and conduct investigations of the causes, mortality, methods of treatment, prevention and cure of birth defects and related diseases and to develop and administer genetic and metabolic screening programs and other related activities where the programs will aid in the prevention or treatment of a particular genetic or metabolic defect or disease. The birth defects institute shall assume responsibility for development and implementation of screening and educational programs for sickle cell anemia and other genetic blood disorders.

[C77, 79, 81, §136A.2]

83 Acts, ch 23, §2

136A.3 Activities of the institute.

The birth defects institute may:

1. Conduct scientific investigations and surveys of the causes, mortality, methods of treatment, prevention and cure of birth defects.

2. Publish the results of the investigations and surveys for the benefit of the public health and collate the publications for distribution to scientific organizations and qualified scientists and physicians.

3. Develop and administer genetic and metabolic screening programs to detect and prevent or treat birth defects, the programs to be conducted throughout the state.

4. Develop specifications for and designate a central laboratory in which tests required pursuant to the screening programs required in subsection 3 will be performed, taking into account the test costs to the financially responsible private parties and to the state.

5. Implement programs of professional education and training of medical students, physicians, nurses, scientists and technicians in the causes, methods of treatment, prevention and cure of birth defects.

6. Implement public educational programs to inform persons of the importance of genetic screening and of the various opportunities available.

7. Conduct and support clinical counseling services in medical facilities.

[C77, 79, 81, §136A.3]

83 Acts, ch 23, §4

136A.4 Genetic and metabolic screening defined.

Genetic and metabolic screening means the search through testing for persons with genetic and metabolic diseases so that early treatment or counseling can lead to the amelioration or avoid-

ance of the adverse consequences of the diseases.
83 Acts, ch 23, §3

136A.5 Rules, regulations, and standards.
The birth defects institute, with assistance provided by the Iowa department of public health, shall adopt rules pursuant to chapter 17A to implement this chapter.
83 Acts, ch 23, §5

136A.6 Central registry — confidentiality.
The birth defects institute may maintain a central registry to collect and store report data to facilitate the compiling of statistical information on the causes, treatment, prevention, and cure of genetic disorders and birth defects. Identifying information shall remain confidential pursuant to section 22.7, subsection 2.
83 Acts, ch 23, §6

136A.7 Cooperation of other agencies.
All state, district, county, and city health or welfare agencies shall cooperate and participate in the implementation of this chapter.
83 Acts, ch 23, §7

CHAPTER 136B

RADON TESTING

136B.1 Radon testing and abatement program.
136B.2 Radon testing information — disclosure.
136B.3 Testing and reporting of radon level.
136B.4 Fees — rules.
136B.5 Penalty for violation.

136B.1 Radon testing and abatement program.
1. As used in this chapter, unless the context otherwise requires, *"department"* means the Iowa department of public health.
2. The department shall establish programs and adopt rules for the certification of persons who test for the presence of radon gas and radon progeny in buildings and for the credentialing of persons abating the level of radon in buildings.
3. Following the establishment of the certification and credentialing programs by the department, a person who is not certified, as appropriate, shall not test for the presence of radon gas and radon progeny, and a person who is not credentialed, as required, shall not perform abatement measures. This section does not apply to a person performing the testing or abatement on a building which the person owns, or to a person performing testing or abatement without compensation.
4. For the purposes of this section, radon abatement systems shall be classified as mechanical ventilation systems.
88 Acts, ch 1237, §1; 89 Acts, ch 224, §1

136B.2 Radon testing information — disclosure.
1. A person shall not disclose to any other person, except to the department, the address or owner of a nonpublic building that the person tested for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality. Any test results disclosed shall be results of a test performed within the five years prior to the date of the disclosure.
Notwithstanding the requirements of this section, disclosure to any person of the results of a test performed on a nonpublic building for the presence of radon gas and radon progeny is not required if the results do not exceed the currently established United States environmental protection agency action guidelines.
A person who tests a nonpublic building which the person owns is not required to disclose to any person the results of a test for the presence of radon gas or progeny if the test is performed by the person who owns the nonpublic building.
2. A person certified or credentialed pursuant to section 136B.1 shall, within thirty days of the provision of any radon testing services or abatement measures or at the request of the department prior to testing or abatement, disclose to the department the address or location of the building, the name of the owner of the building where the services or measures were or will be provided, and the results of any tests or abatement measures performed.
88 Acts, ch 1237, §2; 89 Acts, ch 224, §2

136B.3 Testing and reporting of radon level.
The department shall from time to time perform inspections and testing of the premises of a property to determine the level at which it is contami-

nated with radon gas or radon progeny as a spot-check of the validity of measurements or the adequacy of abatement measures performed by persons certified or credentialed under section 136B.1. Following testing the department shall provide the owner of the property with a written report of its results including the concentration of radon gas or radon progeny contamination present, an interpretation of the results, and recommendation of appropriate action. A person certified or credentialed under section 136B.1 shall also be advised of the department's results, discrepancies revealed by the spot-check, actions required of the person, and actions the department intends to take with respect to the person's continued certification or credentialing.

88 Acts, ch 1237, §3; 89 Acts, ch 224, §3

136B.4 Fees — rules.

The department shall establish a fee schedule to defray the costs of the certification and credentialing programs established pursuant to section 136B.1 and the testing conducted and the written reports provided pursuant to section 136B.3.

The department shall adopt rules, pursuant to chapter 17A, to implement this chapter.

88 Acts, ch 1237, §4; 89 Acts, ch 224, §4

136B.5 Penalty for violation.

A person who violates a provision of this chapter is guilty of a serious misdemeanor.

88 Acts, ch 1237, §5; 99 Acts, ch 96, §12

CHAPTER 136C

RADIATION MACHINES AND RADIOACTIVE MATERIALS

136C.1 Definitions.
136C.2 Applicability.
136C.3 Duties of department.
136C.4 Penalties.
136C.5 Enforcement.
136C.6 Reserved.
136C.7 Acceptance of funds.
136C.8 Inspections.
136C.9 Registration and license requirements.
136C.10 Fees.
136C.11 Federal-state agreements.
136C.12 Conflicting laws.
136C.13 Emergencies.
136C.14 Qualified operators — display of credentials.
136C.15 Radiation machines used for mammography — registration standards and requirements — application for authority — inspection.

136C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Decommissioning"* means final operational activities at a site to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care.

2. *"Department"* means the Iowa department of public health.

3. *"Director"* means the director of public health or the director's designee.

4. *"Licensed professional"* means a person licensed or otherwise authorized by law to practice medicine, osteopathy, podiatry, chiropractic, dentistry, dental hygiene, or veterinary medicine.

5. *"Radiation"* means energy forms capable of causing ionization including alpha particles, beta particles, gamma rays, X rays, neutrons, high-speed protons, and other atomic particles, but does not include sound or radio waves, or visible light, or infrared or ultraviolet light.

6. *"Radiation machine"* means a device capable of producing radiation except those that produce radiation solely from radioactive material.

7. *"Radioactive material"* means a solid, liquid, or gaseous material that emits radiation spontaneously including accelerator-produced and naturally occurring material, and byproduct, source, and special nuclear material as defined in the Atomic Energy Act of 1954 as amended to July 1, 1984.

[C79, 81, §136C.1]

84 Acts, ch 1286, §10

136C.2 Applicability.

This chapter applies to radiation machines and radioactive material located in this state. The provisions of this chapter do not supersede or duplicate the authority and programs of any other agency of the state or the United States government. To avoid duplication and promote co-ordination of radiation protection activities, the department may enter into agreements pursuant to chapter 28E with other state and federal agencies, or with private organizations or individuals, to administer this chapter.

[C79, 81, §136C.2]
84 Acts, ch 1286, §11

136C.3 Duties of department.

The department is designated the state radiation control agency and is responsible for regulating the installation and use of radiation machines and the use of radioactive materials in this state as provided in this chapter. The department shall:

1. Establish minimum criteria and safety standards for the installation, operation, and use of radiation machines and radioactive materials.

2. Establish minimum training standards including continuing education requirements, and administer examinations and disciplinary procedures for operators of radiation machines and users of radioactive materials. A state of Iowa license to practice medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene, or veterinary medicine, or licensure as a physician assistant pursuant to chapter 148C, or certification by the board of dental examiners in dental radiography, or by the board of podiatry examiners in podiatric radiography, or enrollment in a program or course of study approved by the Iowa department of public health which includes the application of radiation to humans satisfies the minimum training standards for operation of radiation machines only.

The department shall establish a technical advisory committee made up of four technologists, one of whom shall be a limited radiography instructor, one of whom shall represent nuclear medicine technologists, one of whom shall represent radiation therapists, and one of whom shall represent diagnostic radiographers; five physicians, including one radiologist, one chiropractor, one physician representing either radiation therapy or nuclear medicine, one podiatrist, and one private practitioner; and a representative of the department. The advisory committee shall assist the department in developing and establishing criteria for the administration of this subsection.

3. Develop programs for evaluation and control of hazards associated with the use of sources of radiation with due regard for compatibility of a proposed program with federal programs regulating byproduct, source, and special nuclear materials and considering consistency of a proposed program with federal programs for regulation of radiation machines.

4. Adopt, publish, and amend rules in accordance with chapter 17A as necessary for the implementation and enforcement of this chapter. The rules may provide for the licensing and control of radioactive materials with due regard for compatibility with federal regulatory programs.

5. Issue orders as necessary in connection with licensing and registration of radiation machines and radioactive materials.

6. Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation.

7. Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation.

8. Collect and disseminate information relating to control of sources of radiation. The department shall maintain the following information on file:

a. License applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations.

b. A list of persons possessing sources of radiation requiring registration under this chapter and any administrative or judicial action involving each person.

c. Departmental rules relating to regulation of sources of radiation, existing or pending, and related actions.

9. Adopt rules requiring the keeping of such records with respect to activities under licenses and registration certificates issued pursuant to this chapter as the department determines necessary to effect the purposes of this chapter.

10. Adopt rules specifying the minimum training and performance standards for an individual using a radiation machine for mammography, and other rules necessary to implement section 136C.15. The rules shall complement federal requirements applicable to similar radiation machinery and shall not be less stringent than those federal requirements.

[C79, 81, §136C.3]
84 Acts, ch 1286, §1; 86 Acts, ch 1217, §1; 88 Acts, ch 1225, §1; 90 Acts, ch 1233, §6; 92 Acts, ch 1054, §1; 92 Acts, ch 1163, §36; 99 Acts, ch 141, §12

136C.4 Penalties.

1. It is unlawful to operate or use radiation machines or radioactive material in violation of this chapter or of any rule adopted pursuant to this chapter. Persons convicted of violating a provision of this chapter are guilty of a serious misdemeanor.

2. In addition to criminal penalties, the department may impose a civil penalty not to exceed one thousand dollars on a person who violates a provision of this chapter or a rule or order issued under this chapter, or a term, condition, or limitation of a license or registration certificate issued under this chapter, or who commits a violation for which a license or registration certificate may be revoked under rules issued pursuant to this chapter. Each day of continuing violation constitutes a separate offense in computing the civil penalty.

3. The department shall notify a person of the intent to impose a civil penalty against the person. The notice shall be by registered or certified mail to the person's last known address and shall state

the date, facts, the nature of the act or omission leading to the charge, the specific statute, rule, or license or registration provision involved, and the amount of the penalty the department proposes to impose. The notice shall advise the person that upon failure to pay the civil penalty, the penalty may be collected by civil action. The person shall have the opportunity to respond in writing, within a reasonable time as the department shall establish by rule, why the civil penalty should not be imposed.

4. The department may compromise, mitigate, or remit a civil penalty imposed under this section. A person upon whom a civil penalty is imposed may appeal the action pursuant to chapter 17A. The department shall remit moneys collected from civil penalties to the treasurer of state who shall deposit the moneys in the general fund of the state.

[C79, 81, §136C.4]

84 Acts, ch 1286, §12; 2002 Acts, ch 1108, §10

Subsection 1 amended

136C.5 Enforcement.

1. Upon determination by the department that this chapter or any rule adopted pursuant to this chapter has been or is being violated, the department may order that the radiation machine or radioactive material not be used until the necessary corrective action has been taken. If the use of the radiation machine or radioactive material continues in violation of the order of the department, the department may request the county attorney or the attorney general to make an application in the name of the state to the district court of the county in which the violations may have occurred for an order to enjoin the violations or practices.

2. The department may impound or order the impounding of radioactive material in the possession of a person who is not equipped to observe or fails to observe a provision of this chapter or of a rule adopted under this chapter.

3. The department may enter at reasonable times any private or public property to determine whether there is a violation of a provision of this chapter or of a rule issued under this chapter. However, the department must have the consent of the federal government before entering an area under the jurisdiction of the federal government.

4. The department may inspect records required to be kept under section 136C.3, subsection 9. Upon request of the department a person shall submit the records to the department for inspection.

[C79, 81, §136C.5]

84 Acts, ch 1286, §13

136C.6 Reserved.

136C.7 Acceptance of funds.

The department may accept from any source loans, grants, gifts, or other funds to be used for programs authorized by this chapter.

84 Acts, ch 1286, §2

136C.8 Inspections.

The department shall inspect all radiation machines and radioactive materials located in this state, for the purpose of detecting, abating, or eliminating excessive radiation exposure hazards. The inspection shall include but shall not be limited to an evaluation of the radiation machine or radioactive material as well as the immediate environment to ensure that in using the machines or materials all unnecessary hazards for patients, personnel, and other persons who may be exposed to radiation produced by the machine or materials are avoided. The inspection shall also include an evaluation of electrical hazards as well as the adequacy of mechanical supporting and restraining devices. All defects and deficiencies noted by the inspector shall be fully disclosed and discussed with the responsible persons at the time of inspection. The department shall establish rules prescribing operating procedures for radiation machines and radioactive materials which ensure minimum radiation exposure to patients, personnel, and other persons in the immediate environment.

84 Acts, ch 1286, §3

136C.9 Registration and license requirements.

1. The department shall establish by rule a system for the registration of the possession of radiation machines and for the licensing of radioactive materials in the state. The rules may provide for the issuance of the following licenses:

a. General licenses which do not require the filing of an application or the issuance of a document but do permit designated persons to transfer, acquire, own, possess or use quantities of or equipment using radioactive materials.

b. Specific licenses issued upon application to a person named in the license to use, manufacture, produce, transfer, receive, acquire, or possess quantities of or equipment using radioactive material.

2. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements when the department finds that the exemption of the source of radiation, use, or users will not pose a significant risk to the health and safety of the public. The rules may provide for recognition of other state or federal licenses as the department may allow, subject to registration requirements as the department may prescribe.

3. A person shall not use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any radio-

active material without a license from the department as provided in this chapter.

84 Acts, ch 1286, §4

136C.10 Fees.

The department shall establish and collect fees for the licensing and amendment of licenses for radioactive materials, the registration of radiation machines, the periodic inspection of radiation machines and radioactive materials, and the implementation of section 136C.3, subsection 2. Fees shall be in amounts sufficient to defray the cost of administering this chapter. The license fee may include the cost of environmental surveillance activities to assess the radiological impact of activities conducted by licensees. Fees collected shall be remitted to the treasurer of state who shall deposit the funds in the general fund of the state. When a registrant or licensee fails to pay the applicable fee the department may suspend or revoke the registration or license or may issue an appropriate order. Fees for the license, amendment of a license, and inspection of radioactive material shall not exceed the fees prescribed by the United States nuclear regulatory commission.

84 Acts, ch 1286, §5; 86 Acts, ch 1217, §2

136C.11 Federal-state agreements.

1. The governor, on behalf of the state, may enter into an agreement with the United States nuclear regulatory commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended to July 1, 1984, providing for the discontinuation of certain federal licensing and related regulatory authority over byproduct, source, and special nuclear material and the assumption of regulatory authority over these materials by the state.

2. A person who, on the effective date of an agreement made under subsection 1, possesses a license issued by the United States nuclear regulatory commission for radioactive material that comes under the agreement is considered to possess the license required under this chapter. The license shall expire either ninety days after receipt from the department of a notice of expiration of the license, or on the date of expiration specified in the license issued by the nuclear regulatory commission, whichever is earlier.

84 Acts, ch 1286, §6

136C.12 Conflicting laws.

This chapter does not preempt ordinances, resolutions, or rules of a local government or of a state agency relating to radioactive material that are consistent with this chapter. This chapter does not give the department the authority to regulate a facility for the disposal of low-level radioactive waste as defined in article II of section 457B.1.

84 Acts, ch 1286, §7

136C.13 Emergencies.

If the department finds that an emergency exists involving radioactive material or radiation machines that requires immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order stating that an emergency exists and requiring that action be taken as necessary to meet the emergency. An emergency order shall be effective immediately. A person to whom the order is directed shall comply with the order immediately, but on application to the department shall be afforded a hearing within ten days of the date application is made. The emergency order may be continued, modified, or revoked within thirty days after the hearing, based on the evidence presented at the hearing.

84 Acts, ch 1286, §8

136C.14 Qualified operators — display of credentials.

1. A person, other than a licensed professional, shall not operate a radiation machine or use radioactive materials for medical treatment or diagnostic purposes unless that person has completed a course of instruction approved by the department or has otherwise met the minimum training requirement established by the department.

2. A person, other than a licensed professional, who operates a radiation machine or uses radioactive materials for medical treatment or diagnostic purposes shall display the credentials which indicate that person's qualification to operate the machine or use the materials in the immediate vicinity of the machine or where the materials are stored. A person who owns or controls the machine or materials is also responsible for the proper display of credentials of those who operate the machine or use the materials and shall not employ a person to operate the machine or use the materials for medical treatment or diagnostic purposes except as provided in this section.

84 Acts, ch 1286, §9; 85 Acts, ch 195, §17

136C.15 Radiation machines used for mammography — registration standards and requirements — application for authority — inspection.

1. A person shall not use a radiation machine to perform mammography unless the radiation machine is registered with the department pursuant to the department's rules and is specifically authorized for use for mammography as provided in this section.

2. The department shall authorize a radiation machine for use for mammography if the radiation machine meets all of the following:

a. The radiation machine meets the criteria for the American college of radiology mammography accreditation program. The department shall make copies of those criteria available to the public and may by rule adopt modified criteria. The

department may accept an evaluation report issued by the American college of radiology as evidence that a radiation machine meets those criteria. If at any time the department determines that it will not accept any evaluation reports issued by the American college of radiology as evidence that a radiation machine meets those criteria, the department shall promptly notify each person who has registered a radiation machine under this paragraph.

b. The radiation machine, the film or other image receptor used in the radiation machine, and the facility where the radiation machine is used meet the requirements set forth in department rules for radiation machines.

c. The radiation machine is specifically designed to perform mammography.

d. The radiation machine is used in a facility that does all of the following:

(1) At least annually has a qualified radiation physicist provide on-site consultation to the facility, including, but not limited to, a complete evaluation of the entire mammography system to ensure compliance with this section and the rules adopted pursuant to this section.

(2) Maintains for at least seven years, records of the consultation required in subparagraph (1) and the findings of the consultation.

e. The radiation machine is used according to the department rules on patient radiation exposure and radiation dose levels.

f. The radiation machine is operated only by an individual who can demonstrate to the department that the individual is specifically trained in mammography and meets the standards established in this section, or an individual who is a physician or an osteopathic physician.

3. The department may issue a nonrenewable temporary authorization for a radiation machine for use for mammography if additional time is needed to allow submission of evidence satisfactory to the department that the radiation machine meets the standards set forth in subsection 2 for approval for mammography. A temporary authorization granted under this subsection shall be effective for no more than twelve months. The department may withdraw a temporary authorization prior to its expiration if the radiation machine does not meet one or more of the standards set forth in subsection 2.

4. To obtain authorization from the department to use a radiation machine for mammography, the person who owns or leases the radiation machine or an authorized agent of the person shall apply to the department for mammography authorization on an application form provided by the department and shall provide all of the information required by the department as specified on the application form. A person who owns or leases more than one radiation machine used for mammography shall obtain authorization for each radiation machine. The department shall process and respond to an application within thirty days after the date of receipt of the application. Upon determining to grant mammography authorization for a radiation machine, the department shall issue a certificate of registration specifying mammography authorization for each authorized radiation machine. A mammography authorization is effective for three years.

5. No later than sixty days after initial mammography authorization of a radiation machine under this section, the department shall inspect the radiation machine. After that initial inspection, the department shall annually inspect the radiation machine and may inspect the radiation machine more frequently. The department shall make reasonable efforts to coordinate the inspections under this section with the department's other inspections of the facility in which the radiation machine is located.

6. After each satisfactory inspection by the department, the department shall issue a certificate of radiation machine inspection or a similar document identifying the facility and radiation machine inspected and providing a record of the date the radiation machine was inspected. The facility shall post the certificate or other document near the inspected radiation machine.

7. The department may withdraw the mammography authorization for a radiation machine if it does not meet one or more of the standards set forth in subsection 2.

8. The department shall provide an opportunity for a hearing in connection with a denial or withdrawal of mammography authorization.

9. Upon a finding that a deficiency in a radiation machine used for mammography or a violation of this section or the rules adopted pursuant to this section seriously affects the health, safety, and welfare of individuals upon whom the radiation machine is used for mammography, the department may issue an emergency order summarily withdrawing the mammography authorization of the radiation machine. The department shall incorporate its findings in the order and shall provide an opportunity for a hearing within five working days after issuance of the order. The order shall be effective during the proceedings.

10. If the department withdraws the mammography authorization of a radiation machine, the radiation machine shall not be used for mammography. An application for reinstatement of a mammography authorization shall be filed and processed in the same manner as an application for mammography authorization under subsection 4, except that the department shall not issue a reinstated certificate of mammography registration until the department inspects the radiation machine and determines that it meets the standards set forth in subsection 2. The department shall conduct an inspection required under this subsection no later than sixty days after receiving a proper application for reinstatement of a mam-

mography authorization.

11. The department shall establish fees pursuant to section 136C.10 for the application for authorization and the inspection related to a radiation machine used for mammography.

92 Acts, ch 1054, §2; 93 Acts, ch 139, §4

CHAPTER 136D

TANNING FACILITIES

136D.1 Short title.
136D.2 Definitions.
136D.3 Application of chapter.
136D.4 Warning signs — written warning statements.
136D.5 Reserved.
136D.6 Permits.
136D.7 Duties of the department.
136D.8 Inspections — violations — prohibited acts — injunctions.

136D.1 Short title.

This chapter may be cited as the *"Tanning Facility Regulation Act."*

90 Acts, ch 1220, §1

136D.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the Iowa department of public health.

2. *"Director"* means the director of public health, or the director's designee.

3. *"Phototherapy device"* means a piece of equipment that emits ultraviolet radiation and that is used by a health care professional in the treatment of disease.

4. *"Tanning device"* means any equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and that is used for tanning of human skin, such as sunlamps, tanning booths, or tanning beds. The term also includes any accompanying equipment such as protective eyewear, timers, and handrails.

5. *"Tanning facility"* means a place that provides access to tanning devices for compensation.

90 Acts, ch 1220, §2

136D.3 Application of chapter.

This chapter does not apply to a phototherapy device used by or under the supervision of a licensed physician trained in the use of phototherapy devices. A tanning device used by a tanning facility must comply with all applicable federal laws and regulations.

This chapter shall not supersede or duplicate the authority and programs of any other agency of the state or the United States. To avoid duplication and promote coordination of radiation protection activities, the department may enter into agreements pursuant to chapter 28E with other state or federal agencies, or with private organizations or individuals, to administer this chapter.

90 Acts, ch 1220, §3

136D.4 Warning signs — written warning statements.

1. A tanning facility shall post the following warning signs that describe the hazards associated with the use of tanning devices:

a. A warning sign in a conspicuous location readily visible to persons entering the establishment. The signs shall comply with rules adopted by the department.

b. A warning sign for each tanning device, in a conspicuous location readily visible to a person preparing to use the device. The sign shall comply with rules adopted by the department.

2. A tanning facility shall provide each customer with a written warning statement that complies with rules adopted by the department.

90 Acts, ch 1220, §4

136D.5 Reserved.

136D.6 Permits.

1. A person shall not operate a tanning facility without a current and valid permit to operate the facility, issued by the department.

2. The permit shall be displayed in an open public area of the tanning facility.

3. Permits shall be renewed annually upon acceptance of an application provided by the department and upon receipt of a permit fee.

4. The department may revoke, cancel, or suspend a permit to operate a tanning facility based upon criteria adopted by rule of the department.

90 Acts, ch 1220, §5

136D.7 Duties of the department.

The department shall do all of the following:

1. Establish requirements for the operation of

tanning facilities, including but not limited to, proper sanitation of tanning devices, provisions of proper equipment, the presence of knowledgeable operators during operating hours, and the use of accurate timers and temperature controls.

2. Adopt rules, in accordance with chapter 17A, as necessary for the implementation and enforcement of this chapter, including but not limited to rules relating to the operation and use of tanning devices, rules regarding the warning signs required to be posted by a tanning facility, and rules prescribing the criteria for revocation, cancellation, or suspension of a tanning facility permit.

3. Establish and collect fees to defray the costs of administering the program established in this chapter. Fees collected shall be deposited in the general fund of the state.

90 Acts, ch 1220, §6

136D.8 Inspections — violations — prohibited acts — injunctions.

1. The director or an authorized agent shall have access at all reasonable times to any tanning facility to inspect the facility to determine if this chapter is being violated.

2. A person who operates or uses a tanning device or tanning facility in violation of this chapter or of any rule adopted pursuant to this chapter is guilty of a simple misdemeanor.

3. A tanning facility shall not claim, or distribute promotional materials that claim, that using a tanning device is safe or free from risk.

4. *a.* If the director finds that a person has violated, or is violating or threatening to violate this chapter and that the violation creates an immediate threat to the health and safety of the public, the director may petition the district court for a temporary restraining order to restrain the violation or threat of violation.

b. If a person has violated, or is violating or threatening to violate this chapter, the director may petition the district court for an injunction to prohibit the person from continuing the violation or threat of violation.

c. On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter, the district court shall grant any injunctive relief warranted by the facts.

90 Acts, ch 1220, §7

CHAPTER 137

LOCAL BOARDS OF HEALTH

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137.2 Definitions.
137.3 County board.
137.4 Appointment — vacancies.
137.5 Jurisdiction of county and city boards.
137.6 Powers of local boards.
137.7 Additional powers of local boards.
137.8 District health department plan.
137.9 Rules for standards.
137.10 District board of health approval requested.
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137.12 Appointment.
137.13 Disbandment of local boards.
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137.17 Local fund for district.
137.18 Deposit of moneys in fund.
137.19 Emergency request for funds.
137.20 Repealed by 81 Acts, ch 117, §1097.
137.21 Penalties.
137.22 Individual choice of treatment.

137.1 Title.

This chapter may be cited as the *"Local Health Act"*.

[C71, 73, 75, 77, 79, 81, §137.1]

137.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"City board"* means a city board of health.

2. *"County board"* means a county board of health.

3. *"Director"* means the director of public health.

4. *"District board"* means a district board of health formed with approval by the state board of health.

5. *"District health department"* refers to the personnel and property under the jurisdiction of a district board of health.

6. *"Local board of health"* means a county, city, or district board of health.

7. *"State board"* means the state board of health.

8. *"State department"* means the Iowa department of public health.

[C71, 73, 75, 77, 79, 81, §137.2]

137.3 County board.

The county board of health in each county shall consist of five members, at least one of whom shall be licensed in Iowa as a doctor of medicine and surgery or as an osteopathic physician and surgeon, as defined by law.

[C73, §393, 415; C97, §574, 2568; C24, 27, 31, 35, §2246-c2; C39, §**2228, 2246.2;** C46, 50, 54, 58, 62, 66, §137.1, 138.2; C71, 73, 75, 77, 79, 81, §137.3]

137.4 Appointment — vacancies.

All members of the county board shall be appointed by the county board of supervisors and shall serve for a period of three years.

Vacancies due to death, resignation, or other cause shall be filled as soon as possible after the vacancy exists by appointment of the board of supervisors for the unexpired term of the original appointment.

[C62, 66, §137.20; C71, 73, 75, 77, 79, 81, §137.4]

137.5 Jurisdiction of county and city boards.

The county board shall have jurisdiction over public health matters within the county, except as set forth herein and in section 137.13. The council of any city having a population of twenty-five thousand or more, according to the latest federal census, may appoint a city board of health in the manner specified in sections 137.3 and 137.4 or the council may appoint itself to act as the city board of health. The city board shall have jurisdiction within the municipal limits.

[C31, 35, §2246-c1; C39, §**2246.1;** C46, 50, 54, 58, 62, 66, §138.1; C71, 73, 75, 77, 79, 81, §137.5]

137.6 Powers of local boards.

Local boards shall have the following powers:

1. Enforce state health laws and the rules and lawful orders of the state department.

2. Make and enforce such reasonable rules and regulations not inconsistent with law or with the rules of the state board as may be necessary for the protection and improvement of the public health.

a. Rules of a county board shall become effective upon approval by the county board of supervisors and publication in a newspaper having general circulation in the county.

b. Rules of a city board shall become effective upon approval by the city council and publication in a newspaper having general circulation in the city.

c. Rules of a district board shall become effective upon approval by the district board and publication in a newspaper having general circulation in the district.

d. However, before approving any rule or regulation the local board of health shall hold a public hearing on the proposed rule. Any citizen may appear and be heard at the public hearing. A notice of the public hearing, stating the time and place and the general nature of the proposed rule or regulation, shall be published as provided in section 331.305 in the area served by the board.

The board shall also make a reasonable effort to give notice of the hearing to the communications media located within said area.

3. May by agreement with the council of any city within its jurisdiction enforce appropriate ordinances of said city.

4. Employ persons as necessary for the efficient discharge of its duties. Employment practices shall meet the requirements of chapter 19A or any civil service provision adopted under chapter 400.

5. Provide reports of its operations and activities to the state department as may be required by the director.

[C73, §415, 417, 418; C97, §2568, 2571, 2572; S13, §2571-b, 2572; C24, 27, 31, 35, 39, §**2234, 2235;** C46, 50, 54, 58, 62, 66, §137.7, 137.8; C71, 73, 75, 77, 79, 81, §137.6]

83 Acts, ch 101, §20; 87 Acts, ch 43, §4; 97 Acts, ch 28, §9

137.7 Additional powers of local boards.

Local boards shall have the following powers and duties to the extent they do not unreasonably interfere with existing patterns of private professional practice of licensed practitioners of the healing arts. Local boards:

1. May provide such personal and environmental health services as may be deemed necessary for the protection and improvement of the public health.

2. May engage in joint operations and contract with colleges and universities, the state department, other public and private agencies, and individuals for public health activities or projects.

3. May charge reasonable fees for personal health services. No person shall be denied necessary services within the limits of available personnel because of inability to pay the cost of such services.

4. May issue licenses and permits and charge reasonable fees therefor in relation to the collection or disposal of solid waste and the construction or operation of private water supplies or sewage disposal facilities.

[C24, 27, 31, 35, 39, §**2236, 2237;** C46, 50, 54, 58, 62, 66, §137.9, 137.10; C71, 73, 75, 77, 79, 81, §137.7]

137.8 District health department plan.

The state department shall, after consultation with existing county and city boards, develop and may amend from time to time as necessary a district health department plan. The plan shall set forth recommended areas for the development of

district health departments.

[C31, 35, §2246-c3; C39, §**2246.4;** C46, 50, 54, 58, 62, 66, §138.4; C71, 73, 75, 77, 79, 81, §137.8]

137.9 Rules for standards.

The state board shall adopt rules setting minimum standards and procedures for the formation and approval of district health departments.

[C71, 73, 75, 77, 79, 81, §137.9]

137.10 District board of health approval requested.

The county and city boards in any area designated by the district health department plan may at any time submit to the state department a request for approval as a district health department. The request shall include:

1. A plan for appointment of a district board of health, the membership of which shall not exceed eleven members who shall be reasonably representative of all existing health jurisdictions in the area. At least one and not more than three of the members shall be licensed in Iowa as doctors of medicine and surgery or osteopathic physicians and surgeons, as defined by law. The plan shall specify the terms of office of the members, by whom appointments to the board are to be made, and methods for filling vacancies.

2. Evidence that the proposed district health department is consistent with the state district health department plan and will meet the requirements of rules of the state board.

[C31, 35, §2246-c1, -c2, -c3; C39, §**2246.1, 2246.2, 2246.3;** C46, 50, 54, 58, 62, 66, §137.20, 138.1, 138.2, 138.3; C71, 73, 75, 77, 79, 81, §137.10]

137.11 Request reviewed by state department.

The state department shall review requests submitted under section 137.10. The state department, upon finding that all necessary conditions are met, shall approve the formation of a district health department and shall so notify the local boards from whom the request was received.

[C71, 73, 75, 77, 79, 81, §137.11]

137.12 Appointment.

On receipt of notice of approval as a district health department, a district board shall be appointed as specified in the plan. Board members shall serve without compensation, but shall be reimbursed for necessary expenses in accordance with rules established by the state board.

[C62, 66, §137.21; C71, 73, 75, 77, 79, 81, §137.12]

83 Acts, ch 123, §63, 209

137.13 Disbandment of local boards.

On appointment of a district board, the county and city boards involved shall be disbanded and their powers and duties specified in sections 137.6 and 137.7 transferred to the district board.

[C71, 73, 75, 77, 79, 81, §137.13]

137.14 Adding to district.

A city or county may be added to an existing district health department by submission and approval of a request, as specified in sections 137.10 to 137.13, and upon approval of the request by both the district board and the state board.

[C71, 73, 75, 77, 79, 81, §137.14]

137.15 Withdrawal from district.

A city or county may withdraw from an existing district health department upon submission of a request for withdrawal and approval of the request by both the district board and the state board.

[C71, 73, 75, 77, 79, 81, §137.15]

137.16 Appointment of city health officer.

A city which is part of a county or district health department may appoint or designate a city health officer for the city. The city health officer shall enforce the rules and regulations of the county or district health board within the city.

89 Acts, ch 141, §1

137.17 Local fund for district.

On establishment of a district health department, the district board shall designate the treasurer of a city or county within its jurisdiction to establish a health fund for the district.

[C71, 73, 75, 77, 79, 81, §137.17]

83 Acts, ch 123, §64, 209

137.18 Deposit of moneys in fund.

All moneys received by a district for local health purposes from federal appropriations, from local taxation, from licenses, from fees for personal services, or from gifts, grants, bequests, or other sources shall be deposited in the health fund. Expenditures shall be made from the fund on order of the district board for the purpose of carrying out its duties.

[C97, §2568; C24, 27, 31, 35, 39, §**2234;** C46, 50, 54, 58, 62, 66, §137.7(6); C71, 73, 75, 77, 79, 81, §137.18]

83 Acts, ch 123, §65, 209

137.19 Emergency request for funds.

A local board may, in emergency situations, request additional appropriations, which may, upon approval of the director, be allotted from the funds reserved for that purpose to the extent that funds are appropriated and available. On termination of the emergency situation, the local board shall report its expenditures of emergency funds to the director and return any unexpended funds.

[C71, 73, 75, 77, 79, 81, §137.19]
94 Acts, ch 1023, §86; 99 Acts, ch 141, §13

137.20 Repealed by 81 Acts, ch 117, § 1097.

137.21 Penalties.
Any person who violates any provision of this chapter or the rules of a local board or any lawful order of said board, its officers, or authorized agents shall be guilty of a simple misdemeanor. Each additional day of neglect or failure to comply with such provision, rule or lawful order after notice of violation by the local board shall constitute a separate offense.
[C73, §419; C97, §2573; S13, §2575-a6; C24, 27, 31, 35, 39, §**2246;** C46, 50, 54, 58, 62, 66, §137.19; C71, 73, 75, 77, 79, 81, §137.21]

137.22 Individual choice of treatment.
Nothing in this chapter shall be construed to impede, limit, or restrict the right of free choice by an individual to the health care or treatment that the individual may select.
[C71, 73, 75, 77, 79, 81, §137.22]

CHAPTER 137A

FOOD ESTABLISHMENTS

Chapter repealed effective January 1, 1999; validity of licenses issued prior to that date; 98 Acts, ch 1162, §29, 30; see chapter 137F

CHAPTER 137B

FOOD SERVICE SANITATION CODE

Chapter repealed effective January 1, 1999; validity of licenses issued prior to that date; 98 Acts, ch 1162, §29, 30; see chapter 137F

CHAPTER 137C

HOTEL SANITATION CODE

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137C.31 Conflicts with state building code.
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EXEMPTION — APPLICABILITY

137C.35 Bed and breakfast homes and inns.

137C.1 Title.

This chapter shall be known as the Iowa hotel sanitation code.

[C79, 81, §170B.1]

90 Acts, ch 1204, §66

C91, §137C.1

137C.2 Definitions.

For purposes of the Iowa hotel sanitation code, unless a different meaning is clearly indicated by the context:

1. *"Bed and breakfast inn"* means a hotel which has nine or fewer guest rooms.

2. *"Director"* means the director of the department of inspections and appeals or the chief inspector of the inspections division of the department of inspections and appeals.

3. *"Department"* means the department of inspections and appeals.

4. *"Guest room"* shall mean any bedroom or other sleeping quarters for transient guests in a hotel.

5. *"Hotel"* shall mean any building or structure, equipped, used, advertised as, or held out to the public to be an inn, hotel, motel, motor inn, or place where sleeping accommodations are furnished transient guests for hire.

6. *"Local board of health"* means a county, city, or district board of health.

7. *"Municipal corporation"* means a political subdivision of this state.

8. *"Regulatory authority"* means the department or a local board of health that has entered into an agreement with the director pursuant to section 137C.6 for authority to enforce the Iowa hotel sanitation code in its jurisdiction.

[S13, §2514-h; C24, 27, 31, 35, 39, §**2808;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.1; C79, 81, §170B.2]

86 Acts, ch 1245, §541; 87 Acts, ch 202, §2; 90 Acts, ch 1204, §66

C91, §137C.2

137C.3 through 137C.5 Reserved.

LICENSES AND INSPECTIONS

137C.6 Authority to enforce.

The director shall regulate, license, and inspect hotels and enforce the Iowa hotel sanitation code in Iowa. Municipal corporations shall not regulate, license, inspect, or collect license fees from hotels except as provided for in the Iowa hotel sanitation code.

If a municipal corporation wants its local board of health to license, inspect, and otherwise enforce the Iowa hotel sanitation code within its jurisdiction, the municipal corporation may enter into an agreement to do so with the director. The director may enter into the agreement if the director finds that the local board of health has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the Iowa hotel sanitation code if it also agrees to enforce the Iowa food code pursuant to section 137F.3.

A local board of health that is responsible for enforcing the Iowa hotel sanitation code within its jurisdiction pursuant to an agreement, shall make an annual report to the director providing the following information:

1. The total number of hotel licenses granted or renewed during the year.

2. The number of hotel licenses granted or renewed during the year broken down into the following categories:

a. Hotels containing fifteen guest rooms or less.

b. Hotels containing more than fifteen but less than thirty-one guest rooms.

c. Hotels containing more than thirty but less than seventy-six guest rooms.

d. Hotels containing more than seventy-five but less than one hundred fifty guest rooms.

e. Hotels containing one hundred fifty or more guest rooms.

3. The amount of money collected in license fees during the year.

4. Other information the director requests.

The director shall monitor local boards of health to determine if they are enforcing the Iowa hotel sanitation code within their respective jurisdictions. If the director determines that the Iowa hotel sanitation code is enforced by a local board of health, such enforcement shall be accepted in lieu of enforcement by the department in that jurisdiction. If the director determines that the Iowa hotel sanitation code is not enforced by a local board of health, the director may rescind the agreement after reasonable notice and an opportunity for a hearing. If the agreement is rescinded, the director shall assume responsibility for enforcement in the jurisdiction involved.

[C79, 81, §170B.3]

83 Acts, ch 101, §30; 86 Acts, ch 1245, §542, 543; 90 Acts, ch 1204, §66

C91, §137C.6

98 Acts, ch 1162, §3, 30

137C.7 License required.

No person shall open or operate a hotel until a license has been obtained from the regulatory authority and until the hotel has been inspected by the regulatory authority. Each license shall expire one year from date of issue. A license is renewable. All licenses issued under the Iowa hotel sanitation code that are not renewed by the licensee on or before the expiration date shall be subject to a penalty of ten percent of the license fee if the license is renewed at a later date. A license is not transferable.

[S13, §2527-l; C24, 27, 31, 35, 39, §**2809;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.2; C79, 81, §170B.4]
90 Acts, ch 1204, §66
C91, §137C.7
2002 Acts, ch 1119, §132
Section amended

137C.8 Application for license.
Every application for a license under the Iowa hotel sanitation code shall be made upon a blank furnished by the regulatory authority and shall contain the items required by the department as to ownership, management, location, buildings, equipment, rates, and other data concerning the hotel for which a license is desired. An application for a license to operate an existing hotel shall be made at least thirty days before the expiration of the existing license.
[C79, 81, §170B.5]
90 Acts, ch 1204, §66
C91, §137C.8

137C.9 License fees.
Either the department or the municipal corporation shall collect the following annual license fees:
1. For a hotel containing fifteen guest rooms or less, twenty dollars.
2. For a hotel containing more than fifteen but less than thirty-one guest rooms, thirty dollars.
3. For a hotel containing more than thirty but less than seventy-six guest rooms, forty dollars.
4. For a hotel containing more than seventy-five but less than one hundred fifty guest rooms, fifty dollars.
5. For a hotel containing one hundred fifty or more guest rooms, seventy-five dollars.
Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by it and for its use.
[S13, §2527-l; C24, 27, 31, 35, 39, §**2812;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.5; C79, 81, §170B.6]
90 Acts, ch 1204, §66
C91, §137C.9

137C.10 Suspension or revocation of licenses.
A regulatory authority may suspend or revoke a license issued to a person under the Iowa hotel sanitation code if any of the following occurs:
1. The person's hotel does not conform to a provision of the Iowa hotel sanitation code or a rule adopted pursuant to this chapter.
2. The person violates a provision of the Iowa hotel sanitation code or a rule adopted pursuant to this chapter.
3. The person conducts an activity constituting a criminal offense in the hotel and is convicted of a serious misdemeanor or a more serious offense as a result.
[C79, 81, §170B.7]
90 Acts, ch 1204, §36, 66
C91, §137C.10
91 Acts, ch 107, §9

137C.11 Biennial inspections.
The regulatory authority shall inspect each hotel in the state at least once biennially. The inspector may enter the hotel at any reasonable hour to make the inspection. The management shall afford free access to every part of the premises and render all aid and assistance necessary to enable the inspector to make a thorough and complete inspection.
[S13, §2514-q, 2527-m, 2528-d5; C24, 27, 31, 35, 39, §**2851;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.46; C79, 81, §170B.14]
90 Acts, ch 1204, §66
C91, §137C.11
91 Acts, ch 268, §430

137C.12 Inspection upon complaint.
Upon receipt of a verified complaint signed by a guest of a hotel and stating facts indicating the place is in an insanitary condition, the regulatory authority shall conduct an inspection.
[SS15, §2514-s; C24, 27, 31, 35, 39, §**2852;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.47; C79, 81, §170B.15]
90 Acts, ch 1204, §39, 66
C91, §137C.12

137C.13 through 137C.15 Reserved.

HEALTH AND SAFETY REQUIREMENTS

137C.16 Plumbing.
A hotel shall have an adequately designed plumbing system conforming to at least the minimum requirements of the state plumbing code. The plumbing system shall have a connection to a municipal water and sewerage system or to a benefited water district or sanitary sewerage district whenever such facilities become available.
A hotel beyond the reach of a central water or sewerage system shall be served by on-site facilities which meet the technical requirements of the local board of health and the department of natural resources.
[S13, §2514-m, 2527-a; C24, 27, 31, 35, 39, §**2814, 2815;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.9, 170.10; C79, 81, §170B.9; 82 Acts, ch 1199, §92, 96]
90 Acts, ch 1204, §38, 66
C91, §137C.16

137C.17 Toilet and lavatory facilities.
A hotel shall provide toilet and lavatory facili-

ties in accordance with rules adopted pursuant to this chapter.

[S13, §2527-e; C24, 27, 31, 35, 39, §**2821, 2822;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.16, 170.17; C79, 81, §170B.8]

90 Acts, ch 1204, §37, 66

C91, §137C.17

137C.18 Fire safety.

Violation of a fire safety rule adopted pursuant to section 100.35 and applicable to hotels, occurring on the premises of a hotel, is a violation of this chapter.

[S13, §2514-j, -k, -l; SS15, §2514-i, -n, -o; C24, 27, 31, 35, 39, §**2843 – 2850;** C46, 50, 54, 58, §170.38 – 170.45; C62, 66, 71, 73, 75, 77, §170.38; C79, 81, §170B.13; 82 Acts, ch 1157, §6]

90 Acts, ch 1204, §66

C91, §137C.18

137C.19 Employment of persons with communicable diseases prohibited. Repealed by 2000 Acts, ch 1066, § 52.

137C.20 through 137C.22 Reserved.

RATES

137C.23 Posting room rates.

A complete list of rooms by number together with the number of the floor and the rate per day per person for each room shall be kept continuously and conspicuously posted on the wall near the office in the lobby of a hotel in such a way as to be accessible to the public without request to the management. The rate per day per person for each room shall also be posted in the same manner in each room. No amount greater than the one posted shall be charged.

[C24, 27, 31, 35, 39, §**2841;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.36; C79, 81, §170B.11]

90 Acts, ch 1204, §66

C91, §137C.23

137C.24 Rate increases.

The rates posted under section 137C.23 shall not be increased until sixty days' notice of the proposed increase has been given to the regulatory authority.

[C24, 27, 31, 35, 39, §**2842;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.37; C79, 81, §170B.12]

90 Acts, ch 1204, §66

C91, §137C.24

RIGHTS AND OBLIGATIONS

137C.25 Right of hotel operator to deny services.

1. A person operating a hotel has the right to refuse or deny the use of a room, accommodations, facilities, or other privileges of the hotel to any of the following:

a. An individual unwilling or unable to pay for the room, accommodations, facilities, or other privileges of the hotel.

b. An individual who is visibly publicly intoxicated or under the influence of alcohol or some other illegal drug, or who is disorderly so as to create a public nuisance.

c. An individual the hotel operator reasonably believes is seeking to use a room, accommodations, facilities, or other privileges of the hotel for an unlawful purpose.

d. An individual the hotel operator reasonably believes is bringing in anything which may create an unreasonable danger or risk to other persons, including but not limited to firearms or explosives.

e. An individual whose use of the room, accommodations, facilities, or other privileges of the hotel would result in a violation of the maximum capacity of such hotel.

2. A hotel operator who reasonably refuses or denies the use of a room, accommodations, facilities, or other privileges of the hotel pursuant to this section is not subject to any civil or criminal action or any fine or other penalty, unless the refusal or denial is a violation of state or federal law.

94 Acts, ch 1032, §1

137C.25A Right to require financial guarantee.

The hotel operator has the right to require a person seeking the use of a room, accommodations, facilities, or other privileges of the hotel to demonstrate the ability to pay for such use by cash, credit card, or approved check. The hotel operator may require the parent or guardian of a minor to do all of the following:

1. Accept in writing the liability for the cost of the room, accommodations, facilities, or other privileges of the hotel used by the minor, and for the cost of any damages to the room, furnishings in the room, or other facilities of the hotel caused by the minor while the minor is using the room, accommodations, facilities, or other privileges of the hotel.

2. Provide the hotel operator with one of the following:

a. The authority to charge any amount due for the cost of the room, accommodations, facilities, or other privileges of the hotel used by the minor, and for the cost of any damages to the room, furnishings in the room, or other facilities of the hotel caused by the minor while the minor is using the room, accommodations, facilities, or other privileges of the hotel to a credit card as defined in sec-

tion 537.1301, subsection 16.

b. An advance cash payment sufficient to cover the cost of the room, accommodations, facilities, or other privileges of the hotel used by the minor, and a reasonable amount as a deposit toward the cost of any damages to the room, furnishings in the room, or other facilities of the hotel caused by the minor while the minor is using the room, accommodations, facilities, or other privileges of the hotel. A cash deposit for any damages required by the hotel operator shall be refunded to the extent not used to cover the cost of any such damages as determined by the hotel operator following an inspection of the room, accommodations, or facilities of the hotel used by the minor at the end of the minor's stay.

94 Acts, ch 1032, §2

137C.25B Restitution.

In addition to any other applicable penalties, a court may order a person to pay restitution for any damages caused by such person which are suffered by the owner or operator of the hotel. Damages for which restitution may be ordered, in addition to physical damages, may include the loss of revenue resulting from the hotel being unable to rent or lease the room, accommodation, or facility during any time of repair, and restitution to any other individual who is injured or whose property is damaged as a result of the violation. The parent or guardian of a minor shall be liable to the owner or operator for the acts of the minor which result in damage to the room, accommodation, or facility, and for restitution to any other individual who is injured or whose property is damaged as a result of such acts.

94 Acts, ch 1032, §3

137C.25C Right to eject.

An owner or operator of a hotel may eject a person from the hotel for any of the following reasons:

1. Nonpayment of charges incurred by the individual renting or leasing a room, accommodations, or facilities of the hotel when the charges are due and owing.

2. The individual renting or leasing a room, accommodations, or facilities of the hotel is visibly intoxicated, or is disorderly so as to create a public nuisance.

3. The owner or operator reasonably believes that the individual is using the premises for an unlawful purpose including, but not limited to, the unlawful use or possession of controlled substances or the use of the premises for the consumption of alcohol by an individual in violation of section 123.47.

4. The owner or operator reasonably believes that the individual has brought anything into the hotel which may create an unreasonable danger or risk to other persons, including but not limited to firearms or explosives.

5. The individual is in violation of any federal, state, or local laws or regulations relating to the hotel.

6. The individual is in violation of any rule of the hotel which is posted as provided in section 137C.25D.

94 Acts, ch 1032, §4; 97 Acts, ch 126, §8

137C.25D Posting rules by owner or operator.

An owner or operator of a hotel shall post a copy of sections 137C.25 through 137C.25C, in addition to any rules established by the owner or operator of the hotel, in a conspicuous place at or near the guest registration desk and in each room of the hotel.

94 Acts, ch 1032, §5

137C.25E Documentation and registration requirements.

A hotel shall keep and maintain for a period of three years, a guest register which shall show the name, residence, date of arrival, and date of departure of each individual renting or leasing a room, accommodations, or facilities of the hotel.

Each individual renting or leasing a room, accommodations, or facilities of the hotel shall register, and may be required by the owner or operator of the hotel to show proof of identity by producing a valid driver's license, or other identification satisfactory to the owner or operator. The identification shall have a photograph of the individual and include the name and residence of the individual. If the individual is a minor, the owner or operator may also require a parent or guardian of the minor to register.

The guest register may be kept and maintained by recording, copying, or reproducing the register by any photographic, photostatic, microfilm, microcard, miniature photographic, electronic imaging, electronic data processing, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original.

94 Acts, ch 1032, §6

137C.26 and 137C.27 Reserved.

ENFORCEMENT

137C.28 Penalty.

A person who violates a provision of the Iowa hotel sanitation code shall be guilty of a simple misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

[C79, 81, §170B.16]
90 Acts, ch 1204, §66
C91, §137C.28

137C.29 Injunction.

A person conducting a hotel in violation of a provision of the Iowa hotel sanitation code may be restrained by injunction from operating that hotel. If an imminent health hazard exists, the hotel, or as much of the hotel as is necessary, must cease operation. Operation shall not be resumed until authorized by the regulatory authority.

[S13, §2514-x; C24, 27, 31, 35, 39, §**2855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.50; C79, 81, §170B.17]

90 Acts, ch 1204, §66

C91, §137C.29

137C.30 Duty of county attorney.

The county attorney in each county shall assist in the enforcement of the Iowa hotel sanitation code.

[C79, 81, §170B.18]

90 Acts, ch 1204, §66

C91, §137C.30

137C.31 Conflicts with state building code.

Provisions of the Iowa hotel sanitation code in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C79, 81, §170B.19]

90 Acts, ch 1204, §66

C91, §137C.31

137C.32 through 137C.34 Reserved.

EXEMPTION — APPLICABILITY

137C.35 Bed and breakfast homes and inns.

This chapter does not apply to bed and breakfast homes as defined in section 137F.1. However, a bed and breakfast home shall have a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor. A bed and breakfast home which does not receive its drinking water from a public water supply shall have its drinking water tested at least annually by the state hygienic laboratory or the local board of health. A violation of this section is punishable as provided in section 137C.28.

A bed and breakfast inn is subject to regulation, licensing, and inspection under this chapter, but separate toilet and lavatory facilities shall not be required for each guest room. Additionally, a bed and breakfast inn is exempt from fire safety rules adopted pursuant to section 100.35 and applicable to hotels, but is subject to fire safety rules which the state fire marshal shall specifically adopt for bed and breakfast inns.

86 Acts, ch 1041, §3

C87, §170B.20

87 Acts, ch 202, §3

CS87, §170B.21

88 Acts, ch 1060, §1; 90 Acts, ch 1204, §66

C91, §137C.35

98 Acts, ch 1162, §4, 30; 99 Acts, ch 32, §1

CHAPTER 137D

HOME FOOD ESTABLISHMENTS

137D.1 Definitions.
137D.2 Licenses and inspections.
137D.3 Penalty.
137D.4 Injunction.
137D.5 Duty of county attorney.
137D.6 Conflicts with state building code.
137D.7 Reserved.
137D.8 Suspension or revocation of licenses.
137D.9 Exemption. Repealed by 99 Acts, ch 208, §41.

137D.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Food"* means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or sale in whole or in part for human consumption.

2. *"Department"* means the department of inspections and appeals.

3. *"Home food establishment"* means a business on the premises of a residence in which prepared food is created for sale or resale, for consumption off the premises, if the business has gross annual sales of prepared food of less than twenty thousand dollars. However, a home food establishment does not include a residence in which food is prepared to be used or sold by churches, fraternal societies, charitable organizations, or civic organizations.

4. *"Prepared food"* means soft pies, bakery products with a custard or cream filling, or any other potentially hazardous baked goods. *"Prepared food"* does not mean nonhazardous baked goods, including but not limited to breads, fruit

pies, cakes, or other nonhazardous pastries.
88 Acts, ch 1220, §7
C89, §170C.1
C91, §137D.1

137D.2 Licenses and inspections.

1. A person shall not open or operate a home food establishment until a license has been obtained from the department of inspections and appeals. The department shall collect a fee of twenty-five dollars for a license. After collection, the fees shall be deposited in the general fund of the state. A license shall expire one year from date of issue. A license is renewable.

2. A person shall not sell or distribute from a home food establishment if the home food establishment is unlicensed, the license of the home food establishment is suspended, or the food fails to meet standards adopted for such food by the department.

3. An application for a license under this chapter shall be made upon a form furnished by the department and shall contain the items required by it according to rules adopted by the department.

4. The department shall regulate, license, and inspect home food establishments according to standards adopted by rule.

5. The department shall provide for the periodic inspection of a home food establishment. The inspector may enter the home food establishment at any reasonable hour to make the inspection. The department shall inspect only those areas related to preparing food for sale.

6. The department shall regulate and inspect food prepared at a home food establishment according to standards adopted by rule. The inspection may occur at any place where the prepared food is created, transported, or stored for sale or resale.

88 Acts, ch 1220, §8
C89, §170C.2
C91, §137D.2

137D.3 Penalty.

A person who violates a provision of this chapter, including a standard adopted by departmental rule, relating to home food establishments or prepared foods created in a home food establishment, is guilty of a simple misdemeanor. Each day that the violation continues constitutes a separate offense.

88 Acts, ch 1220, §9
C89, §170C.3
C91, §137D.3

137D.4 Injunction.

A person operating a home food establishment or selling prepared foods created at a home food establishment in violation of a provision of this chapter may be restrained by injunction from further operating that home food establishment. If an imminent health hazard exists, the home food establishment must cease operation. Operation shall not be resumed until authorized by the department.

88 Acts, ch 1220, §10
C89, §170C.4
C91, §137D.4

137D.5 Duty of county attorney.

The county attorney in each county shall assist in the enforcement of this chapter.

88 Acts, ch 1220, §11
C89, §170C.5
C91, §137D.5

137D.6 Conflicts with state building code.

Provisions of this chapter, including standards for home food establishments adopted by the department, in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

88 Acts, ch 1220, §12
C89, §170C.6
C91, §137D.6

137D.7 Reserved.

137D.8 Suspension or revocation of licenses.

The department may suspend or revoke a license issued to a person under this chapter if any of the following occurs:

1. The person's home food establishment does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.

2. The person violates a provision of this chapter or a rule adopted pursuant to this chapter.

3. The person conducts an activity constituting a criminal offense in the home food establishment and is convicted of a serious misdemeanor or a more serious offense as a result.

91 Acts, ch 107, §10

137D.9 Exemption. Repealed by 99 Acts, ch 208, § 41.

CHAPTER 137E

FOOD AND BEVERAGE VENDING MACHINES

Chapter repealed effective January 1, 1999; validity of licenses issued prior to that date; 98 Acts, ch 1162, §29, 30; see chapter 137F

CHAPTER 137F

FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS

137F.1 Definitions.
137F.2 Adoption by rule.
137F.3 Authority to enforce.
137F.4 License required.
137F.5 Application for license.
137F.6 License fees.
137F.7 Suspension or revocation of licenses.
137F.8 Farmers markets.
137F.9 Operation without inspection prohibited.
137F.10 Regular inspections.
137F.11 Inspection upon complaint.
137F.12 Plumbing.
137F.13 Water and waste treatment.
137F.14 Toilets and lavatories.
137F.15 Fire safety.
137F.16 Conflicts with state building code.
137F.17 Penalty.
137F.18 Injunction.
137F.19 Duty of county or city attorney.

137F.1 Definitions.

For the purpose of this chapter:

1. *"Bed and breakfast home"* means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests.

2. *"Commissary"* means a food establishment used for preparing, fabricating, packaging, and storage of food or food products for distribution and sale through the food establishment's own food establishment outlets.

3. *"Department"* means the department of inspections and appeals.

4. *"Director"* means the director of the department of inspections and appeals.

5. *"Farmers market"* means a marketplace which seasonally operates principally as a common market for fresh fruits and vegetables on a retail basis for off-the-premises consumption.

6. *"Food"* means a raw, cooked, or processed edible substance, ice, a beverage, an ingredient used or intended for use or sale in whole or in part for human consumption, or chewing gum.

7. *"Food code"* means the 1997 edition of the United States food and drug administration food code.

8. *"Food establishment"* means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school, or the Iowa juvenile home. *"Food establishment"* does not include the following:

a. A food processing plant.

b. An establishment that offers only prepackaged foods that are nonpotentially hazardous.

c. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.

d. Premises which are a home food establishment pursuant to chapter 137D.

e. Premises where a person operates a farmers market, if the person does not sell or distribute potentially hazardous food from the premises.

f. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food.

g. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

h. A private home that receives catered or home-delivered food.

i. Child care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.

j. Supply vehicles, vending machine locations, or boardinghouses for permanent guests.

k. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to section 189A.3.

l. Premises covered by a current class "A" beer permit as provided in chapter 123.

m. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

9. *"Food processing plant"* means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. *"Food processing plant"* does not include any of the following:

a. A premises covered by a class "A" beer permit as provided in chapter 123.

b. A premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

10. *"Mobile food unit"* means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

11. *"Municipal corporation"* means a political subdivision of this state.

12. *"Perishable food"* means potentially hazardous food.

13. *"Potentially hazardous food"* means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. *"Potentially hazardous food"* includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. *"Potentially hazardous food"* does not include the following:

a. An air-cooled hard-boiled egg with shell intact.

b. A food with a water activity value of 0.85 or less.

c. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at twenty-four degrees Centigrade or seventy-five degrees Fahrenheit.

d. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

14. *"Pushcart"* means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

15. *"Regulatory authority"* means the department or a municipal corporation that has entered into an agreement with the director pursuant to section 137F.3 for authority to enforce this chapter in its jurisdiction.

16. *"Temporary food establishment"* means a food establishment that operates for a period of no more than fourteen consecutive days in conjunction with a single event or celebration.

17. *"Vending machine"* means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

18. *"Vending machine location"* means the physical site where a vending machine is installed and operated, including the storage and servicing areas on the premises that are used in conjunction with the vending machine.

98 Acts, ch 1162, §6, 30; 99 Acts, ch 192, §33; 99 Acts, ch 208, §28; 2001 Acts, ch 81, §1, 2; 2002 Acts, ch 1149, §1, 3

Subsection 8, paragraph e amended

137F.2 Adoption by rule.

The director shall adopt the food code with the following exceptions:

1. Places used by a nonprofit organization which engages in the serving of food not more than one day per calendar week and not on two or more consecutive days are exempt from this chapter.

2. A food processing plant shall comply with the *"Current Good Manufacturing Practices in Manufacturing, Processing, Packing, or Holding Human Food"* as found in the latest version of 21 C.F.R. pt. 110, and with rules adopted by the department to enforce the practices.

3. A vending machine commissary shall be inspected at least once each calendar year.

4. A vending machine which only dispenses prepackaged food that is nonpotentially hazardous is exempt from inspection and licensing, except upon receipt of a verified complaint by the regulatory authority.

5. 1-201.10(B)(31) and 3-403.10 shall be deleted.

6. 3-201.11(B) shall be amended to allow all of the following:

a. Food that is prepared by a home food establishment licensed under chapter 137D to be used or offered for sale.

b. Honey that is stored; prepared; packaged, including by placement in a container; or labeled on or distributed from the premises of a residence.

7. 3-301.11(B) shall be amended by deleting the section and replacing it with the following:

a. Except when washing fruits and vegetables, food employees should, to the extent practicable, avoid contact with exposed, ready-to-eat food with their bare hands. Where ready-to-eat food is routinely handled by employees, employers should adopt reasonable sanitary procedures to reduce

the risk of the transmission of pathogenic organisms.

b. In seeking to minimize employees' physical contact with ready-to-eat foods, no single method or device is universally practical or necessarily the most effective method to prevent the transmission of pathogenic organisms in all situations. As such, each public food service establishment shall review its operations to identify procedures where ready-to-eat food must be routinely handled by its employees and adopt one or more of the following sanitary alternatives, to be used either alone or in combination, to prevent the transmission of pathogenic organisms:

(1) The use of suitable food handling materials including, but not limited to, deli tissues, appropriate utensils, or dispensing equipment. Such materials must be used in conjunction with thorough hand washing practices in accord with subparagraph (3).

(2) The use of single-use gloves, for the purpose of preparing or handling ready-to-eat foods, shall be discarded when damaged or soiled or when the process of food preparation or handling is interrupted. Single-use gloves must be used in conjunction with thorough hand washing practices in accord with subparagraph (3).

(3) The use, pursuant to the manufacturer's instructions, of anti-microbial soaps, with the additional optional use of anti-bacterial protective skin lotions or anti-microbial hand sanitizers, rinses, or dips. All such soaps, lotions, sanitizers, rinses, and dips must contain active topical anti-microbial or anti-bacterial ingredients, registered by the United States environmental protection agency, cleared by the United States food and drug administration, and approved by the United States department of agriculture.

(4) The use of such other practices, devices, or products that are found by the division to achieve a comparable level of protection to one or more of the sanitary alternatives in subparagraphs (1) through (3).

c. Regardless of the sanitary alternatives in use, each public food service establishment shall establish:

(1) Systematic focused education and training of all food service employees involved in the identified procedures regarding the potential for transmission of pathogenic organisms from contact with ready-to-eat food. The importance of proper hand washing and hygiene in preventing the transmission of illness, and the effective use of the sanitary alternatives and monitoring systems utilized by the public food service establishment, shall be reinforced. The content and duration of this training shall be determined by the manager of the public food service establishment.

(2) A monitoring system to demonstrate the proper and effective use of the sanitary alternatives utilized by the public food service establishment.

8. 3-501.16 shall be amended by adding the following: "Shell eggs shall be received and held at an ambient temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius."

9. 3-502.12(A) shall be amended by adding the following: "Packaging of raw meat and raw poultry using an oxygen packaging method, with a thirty-day 'sell by' date from the date it was packaged, shall be exempt from having an HACCP Plan that contains the information required in this section and section 8-201.14."

10. 3-603.11 shall be amended by adding the following: "The following standardized language shall be used on the required consumer advisory: 'Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.'"

11. A carbonating device in a food establishment shall have a dual check valve which shall be installed so that it is upstream from the carbonating device and downstream from any copper in the water supply line.

12. 3-201.16(B) shall be amended to exclude wild morel mushrooms.

13. 3-501.17 shall be amended to provide that paragraphs (C) and (D) shall not apply to aged cheese.

14. 3-603.11 shall be amended so that the rule shall not apply to whole muscle red meats.

98 Acts, ch 1162, §7, 30; 99 Acts, ch 208, §29 – 32; 2001 Acts, ch 81, §3

137F.3 Authority to enforce.

The director shall regulate, license, and inspect food establishments and food processing plants and enforce this chapter pursuant to rules adopted by the department in accordance with chapter 17A. Municipal corporations shall not regulate, license, inspect, or collect license fees from food establishments and food processing plants, except as provided in this section.

A municipal corporation may enter into an agreement with the director to provide that the municipal corporation shall license, inspect, and otherwise enforce this chapter within its jurisdiction. The director may enter into the agreement if the director finds that the municipal corporation has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the Iowa food code pursuant to this section if it also agrees to enforce the Iowa hotel sanitation code pursuant to section 137C.6. However, the department shall license and inspect all food processing plants which manufacture, package, or label food products. A municipal corporation may license and inspect, as authorized by this section, food processing plants whose operations are limited to the storage of food

products.

If the director enters into an agreement with a municipal corporation as provided by this section, the director shall provide that the inspection practices of a municipal corporation are spot-checked on a regular basis.

A municipal corporation that is responsible for enforcing this chapter within its jurisdiction pursuant to an agreement shall make an annual report to the director providing the following information:

1. The total number of licenses granted or renewed by the municipal corporation under this chapter during the year.

2. The number of licenses granted or renewed by the municipal corporation under this chapter during the year in each of the following categories:

a. Food establishments.

b. Food processing plants.

c. Mobile food units and pushcarts.

d. Temporary food establishments.

e. Vending machines.

3. The amount of money collected in license fees during the year.

4. Other information the director requests.

The director shall monitor municipal corporations which have entered into an agreement pursuant to this section to determine if they are enforcing this chapter within their respective jurisdictions. If the director determines that this chapter is not enforced by a municipal corporation, the director may rescind the agreement after reasonable notice and an opportunity for a hearing. If the agreement is rescinded, the director shall assume responsibility for enforcement in the jurisdiction involved.

98 Acts, ch 1162, §8, 30

137F.4 License required.

A person shall not operate a food establishment or food processing plant to provide goods or services to the general public, or open a food establishment to the general public, until the appropriate license has been obtained from the regulatory authority. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. A license shall expire one year from the date of issue. A license is renewable. All licenses issued under this chapter that are not renewed by the licensee on or before the expiration date shall be subject to a penalty of ten percent per month of the license fee if the license is renewed at a later date.

98 Acts, ch 1162, §9, 30

137F.5 Application for license.

An application form prescribed by the department for a license under this chapter shall be obtained from the department or from a municipal corporation which is a regulatory authority. A completed application shall be submitted to the appropriate regulatory authority.

The dominant form of business shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and of a food processing plant.

The regulatory authority where the unit is domiciled shall issue a license for a mobile food unit.

An application for renewal of a license shall be made at least thirty days before the expiration of the existing license.

98 Acts, ch 1162, §10, 30

137F.6 License fees.

The regulatory authority shall collect the following annual license fees:

1. For a mobile food unit or pushcart, twenty dollars.

2. For a temporary food establishment per fixed location, twenty-five dollars.

3. For a vending machine, twenty dollars for the first machine and five dollars for each additional machine.

4. For a food establishment which prepares or serves food for individual portion service intended for consumption on-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:

a. Annual gross sales of under fifty thousand dollars, fifty dollars.

b. Annual gross sales of at least fifty thousand dollars but less than one hundred thousand dollars, eighty-five dollars.

c. Annual gross sales of at least one hundred thousand dollars but less than two hundred fifty thousand dollars, one hundred seventy-five dollars.

d. Annual gross sales of two hundred fifty thousand dollars but less than five hundred thousand dollars, two hundred dollars.

e. Annual gross sales of five hundred thousand dollars or more, two hundred twenty-five dollars.

5. For a food establishment which sells food or food products to consumer customers intended for preparation or consumption off-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:

a. Annual gross sales of under ten thousand dollars, thirty dollars.

b. Annual gross sales of at least ten thousand dollars but less than two hundred fifty thousand dollars, seventy-five dollars.

c. Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, one hundred fifteen dollars.

d. Annual gross sales of at least five hundred thousand dollars but less than seven hundred fifty thousand dollars, one hundred fifty dollars.

e. Annual gross sales of seven hundred fifty thousand dollars or more, two hundred twenty-

five dollars.

6. For a food processing plant, the annual license fee shall correspond to the annual gross food and beverage sales of the food processing plant, as follows:

a. Annual gross sales of under fifty thousand dollars, fifty dollars.

b. Annual gross sales of at least fifty thousand dollars but less than two hundred fifty thousand dollars, one hundred dollars.

c. Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, one hundred fifty dollars.

d. Annual gross sales of five hundred thousand dollars or more, two hundred fifty dollars.

7. For a farmers market where potentially hazardous food is sold or distributed, one seasonal license fee of one hundred dollars for each vendor on a countywide basis.

A food establishment covered by subsections 4 and 5 shall be assessed license fees not to exceed seventy-five percent of the total fees applicable under both subsections.

Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by the municipal corporation for regulation of food establishments and food processing plants licensed under this chapter.

Each vending machine licensed under this chapter shall bear a readily visible identification tag or decal provided by the licensee, containing the licensee's business address and phone number, and a company license number assigned by the regulatory authority.

98 Acts, ch 1162, §11, 30; 2002 Acts, ch 1149, §2, 3

NEW subsection 7

137F.7 Suspension or revocation of licenses.

The regulatory authority may suspend or revoke a license issued to a person under this chapter pursuant to rules adopted by the department if any of the following occurs:

1. The person's food establishment or food processing plant does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.

2. The person conducts an activity constituting a criminal offense in the food establishment or food processing plant and is convicted of a serious misdemeanor or a more serious offense as a result.

A licensee may appeal a suspension or revocation in accordance with rules adopted by the department.

98 Acts, ch 1162, §12, 30

137F.8 Farmers markets.

A vendor who offers a product for sale at a farmers market shall have the sole responsibility to obtain and maintain any license required to sell or distribute the product.

98 Acts, ch 1162, §13, 30

137F.9 Operation without inspection prohibited.

A person shall not open or operate a food establishment or food processing plant until an inspection has been made and a license has been issued by the regulatory authority. Inspections shall be conducted according to standards adopted by rule of the department pursuant to chapter 17A.

A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

98 Acts, ch 1162, §14, 30

137F.10 Regular inspections.

The appropriate regulatory authority shall provide for the inspection of each food establishment and food processing plant in this state in accordance with this chapter and with rules adopted pursuant to this chapter in accordance with chapter 17A. A regulatory authority may enter a food establishment or food processing plant at any reasonable hour to conduct an inspection. The manager or person in charge of the food establishment or food processing plant shall afford free access to every part of the premises and render all aid and assistance necessary to enable the regulatory authority to make a thorough and complete inspection.

98 Acts, ch 1162, §15, 30

137F.11 Inspection upon complaint.

Upon receipt of a complaint by a customer of a food establishment or food processing plant stating facts indicating the premises are in an unsanitary condition, the regulatory authority may conduct an inspection.

98 Acts, ch 1162, §16, 30

137F.12 Plumbing.

A food establishment or food processing plant shall have an adequately designed plumbing system conforming to at least the minimum requirements of the state plumbing code, or local plumbing code, whichever is more stringent. The plumbing system shall have a connection to a municipal water and sewer system or to a benefited water district or sanitary district if such facilities are available.

98 Acts, ch 1162, §17, 30

137F.13 Water and waste treatment.

If a food establishment or food processing plant is served by privately owned water or waste treatment facilities, those facilities shall meet the technical requirements of the local board of health and the department of natural resources.

98 Acts, ch 1162, §18, 30

137F.14 Toilets and lavatories.

A food establishment or food processing plant shall provide toilet and lavatory facilities in accordance with rules adopted by the department pursuant to this chapter in accordance with chapter 17A.

98 Acts, ch 1162, §19, 30

137F.15 Fire safety.

A violation of a fire safety rule adopted pursuant to section 100.35 and applicable to food establishments or food processing plants which occurs on the premises of a food establishment or food processing plant is a violation of this chapter.

98 Acts, ch 1162, §20, 30

137F.16 Conflicts with state building code.

Provisions of this chapter in conflict with the state building code shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

98 Acts, ch 1162, §21, 30

137F.17 Penalty.

A person who violates this chapter or rules adopted pursuant to this chapter shall be subject to a civil penalty of one hundred dollars for each violation.

98 Acts, ch 1162, §22, 30

137F.18 Injunction.

A person opening or operating a food establishment or food processing plant in violation of this chapter may be enjoined from further operation of the establishment or plant. If an imminent health hazard exists, the establishment or plant must cease operation. Operation shall not be resumed until authorized by the regulatory authority.

98 Acts, ch 1162, §23, 30

137F.19 Duty of county or city attorney.

The county attorney in each county or city attorney in each city shall assist in the enforcement of this chapter.

98 Acts, ch 1162, §24, 30

CHAPTER 138

MIGRANT LABOR CAMPS

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138.1 Definitions.

When used in this chapter unless the context otherwise requires:

1. *"Camp operator"* means the person who has been granted a permit, in accordance with the provisions of this chapter, to operate a migrant labor camp, or portion thereof.

2. *"Chemical toilet"* means a nonwater carriage toilet facility where human waste is collected in a container charged with a chemical solution for the purpose of disinfecting and deodorizing such waste.

3. *"Communicable disease"* means any of those diseases regulated by state or local communicable disease laws, ordinances, or regulations.

4. *"Department"* means the Iowa department of public health.

5. *"Director"* means the director of public health or the director's designee.

6. *"Garbage"* means all putrescible animal or vegetable wastes resulting from the handling, preparation, cooking, or consumption of food at a migrant labor camp.

7. *"Migrant"* means any individual who customarily and repeatedly travels from state to state for the purpose of obtaining seasonal employment in agriculture, including the spouse and children of such individuals, whether or not authorized by law to engage in such employment.

8. *"Migrant labor camp"* means one or more buildings, structures, shelters, tents, trailers, or vehicles or any other structure or a combination

thereof together with the land appertaining thereto, established, operated, or maintained as living quarters for seven or more migrants or two or more shelters. A camp shall include such land or quarters separate from one another if the migrants housed therein work at any time for the same person and the total number of migrants in all such camps is seven or more. Such separate camps shall constitute a portion of a migrant labor camp.

9. *"Person"* means an individual, group of individuals, firm, association, partnership, or corporation.

10. *"Privy"* means a portable or fixed sanitary facility used for excretion in a shelter separate and apart from any building and without water-borne disposal.

11. *"Refuse"* means all putrescible and nonputrescible solid waste except human body wastes, including garbage, rubbish, and ashes.

12. *"Service building"* means any building provided for the common use, welfare, and comfort of persons occupying or using the migrant labor camp.

13. *"Shelter"* means any conventional or unconventional building of one or more rooms, or any tent, trailer, railroad car, or any other enclosure or structure used for sleeping or living purposes.

14. *"Toilet room"* means an enclosure containing one or more toilet facilities or water closet facilities.

15. *"Urinal"* means a sanitary fixture or structure installed for the purpose of urination.

16. *"Water closet"* means a sanitary fixture, within a toilet room, used for excretion and equipped with a bowl and device for flushing the bowl contents into a disposal system.

[C71, 73, 75, 77, 79, 81, §138.1]

138.2 Permit required.

No person shall establish, maintain, or operate a migrant labor camp, or portion thereof, directly or indirectly, until the person has obtained a permit to operate such camp from the department and unless the permit is in full force and effect and is posted and remains posted in the camp, or portion thereof, to which it applies at all times during the maintenance and operation of such camp.

[C71, 73, 75, 77, 79, 81, §138.2]

138.3 Written application.

Written application to operate a migrant labor camp, or portion thereof, shall be made to the department upon forms approved by the department at least sixty days prior to the first day of the intended operation of such camp. The application shall state the name and address of the person requesting a permit; and name and address of the owner of the camp, or portion thereof; approximate number of persons to be lodged in such camp; approximate period during which the migrant labor camp, or portion thereof, is to be operated; the location of such camp, or portion thereof; and any other information required by the department. A separate application shall be submitted for each camp, or portion thereof, and a separate permit shall be issued annually for each such camp, or portion thereof.

[C71, 73, 75, 77, 79, 81, §138.3]

138.4 Permit not assignable.

If the department finds, after investigation, that the migrant labor camp, or portion thereof, conforms to the minimum standards required by this chapter, it shall issue a permit for operation of such camp, or portion thereof. A permit shall not be assignable or transferable. It shall expire one year after the date of issuance, or upon a change of operator of the camp or upon revocation.

[C71, 73, 75, 77, 79, 81, §138.4]

138.5 Revocation or suspension of permit.

If the holder of any permit under the provisions of this chapter fails to maintain and operate a migrant labor camp in accordance with the provisions of this chapter and the rules of the department relating thereto, the director shall revoke or suspend the permit for the operation and maintenance of such camp.

[C71, 73, 75, 77, 79, 81, §138.5]

138.6 Notice of intention.

The director shall serve written notice upon the holder of the permit, by restricted certified mail, return receipt requested, specifying the manner in which the holder of the permit has failed to comply with the provisions of this chapter or any rules of the department and shall fix a reasonable time within which the objectionable condition or conditions must be removed or corrected. If the holder of the permit fails to remove or correct such objectionable condition or conditions within the time fixed by the director, the director shall revoke or suspend such permit. However, if the objectionable condition or conditions endanger the health, safety, or welfare of any inhabitants of a migrant labor camp, the director shall immediately suspend or revoke such permit.

[C71, 73, 75, 77, 79, 81, §138.6]

138.7 Appeal to director.

When any person applying for a permit to operate a migrant labor camp is denied a permit, or when a permit is suspended or revoked, such person may appeal such denial, suspension, or revocation to the director. The director, after reasonable notice to all interested parties, shall hold a hearing upon such denial, suspension, or revocation. At the hearing all parties involved shall be entitled to be present and represented by counsel and to present such evidence as they desire as to

why a permit should, or should not, be issued, suspended, or revoked. The director shall render a decision within thirty days after the termination of the hearing, and a copy of the decision shall be sent by restricted certified mail, return receipt requested, to all parties given notice of the appeal and hearing. Notice of appeal shall be sent in writing to the department by restricted certified mail, return receipt requested, by the aggrieved party. In the event such appeal is taken from a notice of suspension or revocation, such appeal shall be made prior to the date set for such suspension or revocation.

[C71, 73, 75, 77, 79, 81, §138.7]

138.8 Place — evidence — record.

The hearing shall be conducted at the office of the department or at such other place convenient for the aggrieved party or for the attendance of witnesses and receipt of evidence. The director, when requested in writing by any party to the appeal, shall compel by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents. All testimony and evidence shall be received under oath administered by the director. In the event any party fails to attend who has been properly served with a subpoena, application shall be made to the district court in the county where such hearing is to be held, to enforce the subpoena issued by the director. The director shall cause a record of the proceedings at the hearing to be kept and shall provide any interested party to the hearing a transcript of the evidence presented, upon payment of the cost thereof. The hearing may be continued from time to time at the discretion of the director.

[C71, 73, 75, 77, 79, 81, §138.8]

138.9 Liberal rules to prevail.

Technical errors in the proceeding or failure to observe the technical rules of evidence shall not constitute grounds for reversal of any decision unless it shall appear to the reviewing court that such error or failure materially affects the rights of any party and results in substantial injustice to any interested party.

[C71, 73, 75, 77, 79, 81, §138.9]

138.10 Judicial review.

Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county wherein the license was to be issued or wherein such license is to be revoked or suspended, and such a petition for judicial review shall not operate to stay any order or final determination of the director unless the district court finds upon hearing after reasonable notice to all interested parties, that substantial damage would result to the appealing party unless such order or final determination was stayed and such a stay would not endanger the health, safety, or welfare of any inhabitants of a migrant labor camp.

[C71, 73, 75, 77, 79, 81, §138.10]

138.11 Access to camp for inspection.

The director may enter and inspect migrant labor camps at any reasonable time and may question persons, and investigate facts, conditions, practices, or any other matters as are necessary or appropriate to determine compliance with the provisions of this chapter and any rules made pursuant to this chapter, or in the formulation of any additional rules. The director may, to the extent appropriate, utilize the services of any other state department or agency or any local agency for assistance in inspections and investigations.

[C71, 73, 75, 77, 79, 81, §138.11]

138.12 Variations permitted.

The director may grant written permission to individual camp operators to vary from the provisions of this chapter or the rules of the department when the extent of the variation is clearly specified and it is demonstrated to the director's satisfaction that:

1. Such variation is necessary to obtain a beneficial use of an existing facility.
2. The variation is necessary to prevent a substantial difficulty or unnecessary hardship.
3. Appropriate alternative measures have been taken to protect the health, safety, and welfare of any inhabitants of a migrant labor camp and assure that the purpose of the provisions for which variation is sought will be observed.

Written application for such variations shall be filed with the director and local board of health serving the area in which the migrant labor camp is situated. No such variation shall be effective until granted in writing by the director.

[C71, 73, 75, 77, 79, 81, §138.12]

138.13 Conditions for permit.

To be eligible for a permit, a migrant labor camp, or portion thereof, shall meet each and all of the following requirements:

1. *Site.*

a. Sites for migrant labor camps shall be adequately drained. Such sites shall not be subject to periodic flooding, nor located within two hundred feet of swamps, pools, sinkholes, or other quiescent surface collections of water unless the water surfaces can be subjected to mosquito and pest control measures. Sites shall be located so that drainage from and through the camp will not endanger any domestic or public water supply. Sites shall be graded, ditched, and rendered free from depressions in which water may collect and become a nuisance.

b. Sites shall be adequate in size to prevent overcrowding of necessary structures and to mini-

mize the hazards of fire. Housing shall not be subject to, or in proximity to, conditions that create or are likely to create offensive odors, flies, noise, traffic, or attract rats or other rodents, or any other similar conditions.

c. The grounds and open areas surrounding the shelters, buildings, or structures, shall be maintained in a clean and sanitary condition free from rubbish, debris, wastepaper, garbage, and other refuse.

d. All camps shall provide space for recreation, commensurate with size of the camp and type of occupancy.

e. Whenever a camp is permanently closed or closed for the season, all garbage, manure, and other refuse shall be collected and disposed of to prevent a nuisance. All abandoned privy pits shall be filled with earth and the grounds and buildings left in a clean and sanitary condition. If privy buildings remain, then such buildings shall be locked or otherwise secured to prevent entrance.

2. *Shelter.*

a. Shelters shall be structurally sound and shall provide protection to the occupants.

b. At least one-half of the floor area in each living unit shall have a minimum ceiling height of seven feet. No floor space shall be counted toward minimum requirements where the ceiling height is less than five feet.

c. Sleeping facilities shall be provided for each person. Such facilities shall consist of comfortable beds, cots, or bunks, provided with clean mattresses.

d. Any bedding provided by the camp operator shall be clean and sanitary.

e. Triple deck bunks shall not be allowed.

f. The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk shall be a minimum of twenty-seven inches. The distance from the top of the upper mattress to the ceiling shall be a minimum of thirty-six inches.

g. Beds used for double occupancy may be provided only in family accommodations.

h. Floors of buildings used as living quarters or shelters shall be constructed of wood, asphalt, concrete, or other comparable material. Wooden floors shall be of smooth and tight construction and shall be elevated not less than one foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath. Floors shall be kept in good repair.

i. Nothing in this chapter shall prohibit banking with earth or other suitable material around the outside walls of shelters and other structures in areas subject to extremely low temperatures.

j. Living quarters of shelters shall be provided with windows and doors which shall be in total area not less than one-tenth of the floor area. At least one-half of each window shall be constructed so that it can be opened for purposes of ventilation.

k. Exterior openings shall be effectively screened with sixteen mesh material. Screen doors shall be equipped with self-closing devices.

l. In a room where people cook, live, and sleep, a minimum of sixty square feet per occupant shall be provided. Sanitary facilities shall be provided for storing and preparing food.

m. When a camp is operated during a season requiring artificial heating, living quarters with a minimum of one hundred square feet per occupant shall be provided and such living quarters or shelters shall, also, be provided with properly installed heating equipment of adequate capacity to maintain a room temperature of at least 70 degrees F. A stove or other source of heat shall be installed and vented in a manner to avoid both a fire hazard and a concentration of fumes or gas within such living quarters and shelters. In a room with wooden or combustible flooring, there shall be a concrete slab, metal sheet, or other fire-resistant material, on the floor under each stove, extending at least eighteen inches beyond the perimeter of the base of the stove. Any wall or ceiling not having a fire-resistant surface, within twenty-four inches of a stove or stovepipe, shall be protected by a metal sheet or other fire-resistant material. Heating appliances, other than electrical, shall be provided with a stovepipe or vent connected to the appliance and discharging to the outside air or chimney. The vent or chimney shall extend above the peak of the roof. Stovepipes shall be insulated with fire-resistant material where they pass through walls, ceilings, or floors.

3. *Water supply.*

a. An adequate and convenient water supply, approved by the department, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.

b. Each water supply shall be inspected at the time of occupancy of the camp and as frequently thereafter as is necessary to insure its continued suitability.

c. Distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter or living quarter is more than one hundred feet from a yard hydrant if water is not piped to the shelters.

d. A cold water tap shall be available within one hundred feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities shall be provided for overflow and spillage.

e. Common drinking cups shall not be allowed or permitted.

f. Wells or springs used as sources of water supply shall have tight covers and be constructed and located to preclude pollution by seepage from cesspools, privies, sewers, sewage treatment works, stables or manure piles, or surface drainage. The water from such sources shall be obtained by free gravity flow or by an approved metal

pump securely mounted on a concrete slab covering the well or spring. If the pump is adjacent to the well or spring, it shall be located and connected to prevent any pollution of such water supply.

4. *Toilet facilities.*

a. Approved toilet facilities adequate for the capacity of the camp shall be provided.

b. Each toilet facility shall be located so as to be accessible to the inhabitants of the camp without any individual passing through any sleeping room. Toilet rooms shall have a window not less than six square feet in area opening directly to the outside or shall otherwise be satisfactorily ventilated. All outside openings shall be screened with sixteen mesh material. No water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.

c. A toilet room shall be located within two hundred feet of each sleeping room. No privy existing on May 23, 1969, shall be nearer than fifty feet from any sleeping room, dining room, lunch area, or kitchen. No privy constructed after May 23, 1969, shall be nearer than one hundred feet from any sleeping room, dining room, lunch area, or kitchen.

d. Separate facilities shall be provided for men and women and such facilities shall be clearly marked by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols, when men and women, not members of the same immediate family, are housed in the same camp.

e. Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one unit for each fifteen persons, with a minimum of two units for any shared facility.

f. Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or twenty-four inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

g. Each toilet room or facility shall be lighted naturally, or artificially, by a safe type of lighting at all hours of the day and night.

h. An adequate supply of toilet paper shall be provided in each privy, water closet, or chemical toilet compartment.

i. Toilet seats, privies, and toilet rooms or facilities shall be kept in a sanitary condition and cleaned daily.

j. Each privy shall have a pit initially at least five feet deep.

k. Privy pits shall be constructed and maintained so that flies cannot gain access to the human waste.

l. A privy pit shall not be filled with human waste to a point nearer than one foot from the surface of the ground; the human waste in the pit shall then be covered with earth, ashes, lime, or other similar material.

m. Seat openings in privies shall be covered with tight-fitting, hinged lids.

5. *Sewage disposal facilities.*

a. In camps where public sewers are available, all sewer lines and floor drains from buildings and shelters shall be connected to the sewers.

b. All human waste, sewage, or liquid waste from camps not discharged into public sewers shall be disposed of in accordance with the provisions of this chapter or the rules of the department.

6. *Laundry, handwashing, and bathing facilities.*

a. Laundry, handwashing, and bathing facilities shall be provided as follows:

(1) One handwash basin for each immediate family shelter or dwelling for every fifteen individuals or fraction thereof in shared facilities.

(2) One shower head for every fifteen or fraction thereof individuals. Separate facilities for men and women shall be provided in shared facilities.

(3) One laundry tray or tub for every twenty-five persons or fraction thereof.

(4) One slop sink in each building used for laundry, handwashing, or bathing.

b. Floors shall be of smooth finish but not of slippery materials and they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. Junctions of the curbing and the floor shall be covered. Walls and partitions of shower rooms shall be smooth and impervious to moisture to the height of splash.

c. A supply of hot and cold running water conforming to the provisions of this chapter or the rules and regulations of the department shall be provided for bathing and laundry purposes.

d. Every service building used during periods requiring artificial heating shall be provided with equipment capable of maintaining a room temperature of at least 70 degrees F.

e. Facilities for drying clothes shall be provided.

f. Service buildings shall be kept clean.

g. Waste water shall be disposed of so as not to form pools on the ground nor create a nuisance, nor pollute any drinking water supply. Toilet drainage shall be carried through a covered drain into a covered septic tank that conforms to standards established by the department.

7. *Lighting.*

a. All housing sites, quarters, and shelters shall be provided with electric service.

b. Each habitable room and common use rooms, and areas including, but not limited to, laundry rooms, toilets, privies, hallways, and stairways shall contain adequate ceiling or wall-type light fixtures. At least one wall-type electri-

cal convenience outlet shall be provided in each individual living room.

c. Adequate lighting shall be provided for the yard area and pathways to common use facilities.

d. All wiring and lighting fixtures shall be installed and maintained in a safe condition.

e. Where electric service is not available, gas lighting will be acceptable. Hallways and stairways to upper floors shall be lighted at night. Electric lighting shall be provided in all camps or additions to camps constructed after May 23, 1969.

8. *Refuse disposal.*

a. Durable, fly-tight, clean containers in good condition of a minimum capacity of twenty gallons, shall be provided adjacent to each housing unit or shelter for the storage of garbage and other refuse. Such containers shall be provided in a minimum ratio of one per fifteen persons or fraction thereof.

b. Provisions shall be made for collection of refuse at least twice a week, or more often if necessary.

c. The disposal of refuse shall be in accordance with state and local laws.

9. *Construction and operation of kitchens, dining halls, and feeding facilities.*

a. Every camp shall be provided with adequate gas stoves or electrical stoves for cooking.

b. Utensils in which food is prepared or kept, or from which food is to be eaten, and implements used in the preparation and eating of food shall be kept in a clean, unbroken, and sanitary condition.

c. Adequate refrigeration for perishable foods, cooked or raw, shall be provided in every kitchen or wherever food is prepared. Tables, benches, or chairs shall be provided.

d. Cooking of meals by an immediate family unit within its assigned living quarters may be permitted, provided that safe and adequate areas are available, but a separate kitchen in each shelter is desirable.

e. In camps where cooking facilities are used in common, stoves, in ratio of one stove to ten persons or one stove to two immediate families or fraction thereof, shall be provided in a central kitchen room or building separate and distinct from sleeping quarters and toilet facilities. Floors, walls, ceilings, tables and shelves of kitchens, dining rooms, refrigerators and food storage rooms shall be constructed so that they can always be maintained in a clean and sanitary condition. Exterior wall openings of all rooms shall be screened and rendered fly-tight at all times during the period that the camp is in operation. Screen doors shall be self-closing and installed to open outward from the area to be protected.

f. In camps where meals are furnished by the operator, manager, or concessionaire, the requirements of the department shall be met.

g. No person with any communicable or venereal disease shall be employed or permitted to work at preparation, cooking, serving, or other handling of food, foodstuffs, or other materials, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

10. *Insect and rodent control.*

a. Effective measures shall be taken to control rats, mice, flies, mosquitoes; bedbugs, and all other insects, rodents, and parasites within the camp premises.

b. Pesticides and pest control equipment shall be stored and used in a safe manner.

11. *Safety and fire prevention.*

a. No flammable or volatile liquids or materials shall be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

b. First aid facilities shall be provided and readily accessible for use at all times. Such facilities shall be equivalent to the sixteen unit first aid kit recommended by the American Red Cross, and provided in a ratio of one per fifty persons or fraction thereof.

c. Buildings and structures of a camp shall be maintained and used in accordance with state and local law relative to fire prevention.

d. Units of approved fire-extinguisher equipment shall be located so that a person will not have to travel more than one hundred feet from any point to reach the nearest unit, and at least one unit shall be provided for each one thousand square feet of floor space or fraction thereof.

e. Appliances of the type, number, and size indicated below shall constitute one unit of fire-extinguisher equipment:

(1) *Soda and acid.* One appliance of two and one-half gallon capacity, or two appliances of one and one-half gallon capacity in each appliance.

(2) *Foam.* One appliance of two and one-half gallon capacity, or two appliances of one and one-half gallon capacity in each appliance.

(3) *Water type.* One stored pressure appliance of two and one-half gallon capacity, or two pump-type appliances of five gallon capacity.

f. Fire fighting equipment shall be maintained in good operating condition so that it may be used instantly when the need arises.

g. Adult occupants shall be properly instructed in fire prevention and in the proper use of equipment.

h. Agricultural pesticides and toxic chemicals shall not be stored in the housing area.

[C71, 73, 75, 77, 79, 81, §138.13]

138.14 Communicable diseases reported.

The camp operator shall report immediately to the local board of health the name and address of any individual in the camp known to have or suspected of having a communicable disease. Whenever there shall occur in any camp, or portion thereof, a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a

prominent symptom, the camp operator shall report immediately the existence of the condition to the local board of health and the director.

[C71, 73, 75, 77, 79, 81, §138.14]

138.15 Notice of intent to construct or alter a camp.

Any person who is planning to construct, reconstruct, or enlarge a camp or any portion thereof, or facility of a camp, or to convert a property for use or occupancy as a camp, shall give notice in writing of the person's intent to do so to the director at least fifteen days prior to the date of the commencement of any major construction, reconstruction, enlargement, or conversion. The notice shall give the name of the city, village, and county in which the property is located; the location of the property within that area; a brief description of the proposed major construction, reconstruction, enlargement, or conversion; the name and mailing address of the person giving such notice; and the person's telephone number. The director, upon receipt of such notice, shall promptly send to such person by ordinary mail a copy of this chapter and all rules of the department applicable to migrant labor camps.

[C71, 73, 75, 77, 79, 81, §138.15]

138.16 Cleanliness and repair required.

Every migrant or inhabitant of a migrant labor camp shall use the sanitary and other facilities provided and shall keep that part of the living quarters or shelter which the migrant's or inhabitant's immediate family occupies and controls as well as the premises immediately adjacent thereto in a clean condition comparable to normal domestic standards. Every camp operator or permit holder shall be responsible for the providing of and proper maintenance and repair of the premises, all shelters, structures, facilities, and service buildings of the camp, or portion thereof, for which the camp operator or permit holder was issued a permit as well as proper garbage and refuse collection, privy openings and closings, maintenance of water supply, pest and rodent control, toilet facilities, sewage disposal, laundry, handwashing and bathing facilities, lighting, operation of common kitchens, dining halls, and feeding facilities, and safety and fire prevention.

[C71, 73, 75, 77, 79, 81, §138.16]

138.17 Rental charges or wage deductions.

A rental charge or deduction from any wages due a migrant shall not be made by any camp operator or person for providing any of the facilities required by this chapter unless such migrant is fully informed of all such rental charges or deductions to be made prior to the time the migrant contracts for employment as an agricultural or migrant worker.

[C71, 73, 75, 77, 79, 81, §138.17]

138.18 Rules promulgated.

The director shall make such rules necessary for carrying out the purposes and provisions of this chapter, subject to the requirements of chapter 17A.

[C71, 73, 75, 77, 79, 81, §138.18]

138.19 Penalties.

Any person failing to comply with any provision of this chapter, or with any rule or order issued pursuant to the provisions of this chapter, or interfering with, impeding, or obstructing in any manner, the director, department, or any of its employees in the performance of official duties pursuant to this chapter, shall be guilty of a simple misdemeanor. If any person further fails to comply with any provisions of this chapter, or with any rule or order issued pursuant to the provisions of this chapter, the director shall enforce such provision, rule, or order by filing an action for injunction against such person in the district court in the county wherein such violation or violations occur.

[C71, 73, 75, 77, 79, 81, §138.19]

CHAPTER 139

COMMUNICABLE AND REPORTABLE DISEASES AND POISONINGS

Repealed by 2000 Acts, ch 1066, §51; see chapter 139A

CHAPTER 139A

COMMUNICABLE AND INFECTIOUS DISEASES AND POISONINGS

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SUBCHAPTER I

GENERAL PROVISIONS

139A.1 Title.

This chapter shall be known as the *"Communicable and Infectious Disease Reporting and Control Act"*.

2000 Acts, ch 1066, §1

139A.2 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Business"* means and includes every trade, occupation, or profession.

2. *"Care provider"* means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. *"Care provider"* also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

3. *"Communicable disease"* means any disease spread from person to person or animal to person.

4. *"Contagious or infectious disease"* means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease, with the exception of AIDS or HIV infection as defined in section 141A.1, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

5. *"Department"* means the Iowa department of public health.

6. *"Designated officer"* means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

7. *"Exposure"* means the risk of contracting disease as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

8. *"Exposure-prone procedure"* means a procedure performed by a health care provider which presents a recognized risk of percutaneous injury to the health care provider and if such an injury occurs, the health care provider's blood is likely to contact a patient's body cavity, subcutaneous tis-

sues, or mucous membranes, or an exposure-prone procedure as defined by the centers for disease control and prevention of the United States department of health and human services.

9. *"HBV"* means hepatitis B virus.

10. *"Health care facility"* means a health care facility as defined in section 135C.1, an ambulatory surgical center, or a clinic.

11. *"Health care provider"* means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

12. *"HIV"* means HIV as defined in section 141A.1.

13. *"Hospital"* means hospital as defined in section 135B.1.

14. *"Isolation"* means the separation of persons or animals presumably or actually infected with a communicable disease or who are disease carriers for the usual period of communicability of that disease in such places, marked by placards if necessary, and under such conditions as will prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible persons.

15. *"Local board"* means the local board of health.

16. *"Local department"* means the local health department.

17. *"Placard"* means a warning sign to be erected and displayed on the periphery of a quarantine area, forbidding entry to or exit from the area.

18. *"Quarantinable disease"* means any communicable disease designated by rule adopted by the department as requiring quarantine or isolation to prevent its spread.

19. *"Quarantine"* means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease within specified limits marked by placards for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent the spread of a communicable disease which affects people.

20. *"Reportable disease"* means any disease designated by rule adopted by the department requiring its occurrence to be reported to an appropriate authority.

21. *"Sexually transmitted disease or infection"* means a disease or infection as identified by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

22. *"Terminal cleaning"* means cleaning procedures defined in the isolation guidelines issued by the centers for disease control and prevention of the United States department of health and human services.

2000 Acts, ch 1066, §2; 2001 Acts, ch 24, §29; 2001 Acts, ch 157, §1 – 3

139A.3 Report to department — immunity — confidentiality.

1. The health care provider or public, private, or hospital clinical laboratory attending a person infected with a reportable disease shall immediately report the case to the department. However, when a case occurs within the jurisdiction of a local health department, the report shall be made to the local department and to the department. A health care provider or public, private, or hospital clinical laboratory who files such a report which identifies a person infected with a reportable disease shall assist in the investigation by the department, a local board, or a local department. The department shall publish and distribute instructions concerning the method of reporting. Reports shall be made in accordance with rules adopted by the department and shall require inclusion of all the following information:

a. The patient's name.

b. The patient's address.

c. The patient's date of birth.

d. The sex of the patient.

e. The race and ethnicity of the patient.

f. The patient's marital status.

g. The patient's telephone number.

h. The name and address of the laboratory.

i. The date the test was found to be positive and the collection date.

j. The name of the health care provider who performed the test.

k. If the patient is female, whether the patient is pregnant.

2. *a.* Any person who, acting reasonably and in good faith, files a report under this section is immune from any liability, civil or criminal, which might otherwise be incurred or imposed for making a report.

b. A report to the department, to a local board, or to a local department, which identifies a person infected with a reportable disease, is confidential and shall not be accessible to the public.

c. Notwithstanding paragraph *"b"*, information contained in the report may be reported in public health records in a manner which prevents the identification of any person or business named in the report. If information contained in the report concerns a business, information disclosing the identity of the business may be released to the public when the state epidemiologist or the director of public health determines such a release of information necessary for the protection of the health of the public.

2000 Acts, ch 1066, §3

139A.4 Type and length of isolation or quarantine.

1. The type and length of isolation or quarantine imposed for a specific communicable disease shall be in accordance with rules adopted by the department.

2. The department and the local boards may impose and enforce isolation and quarantine restrictions.

3. The department shall adopt rules governing terminal cleaning.

2000 Acts, ch 1066, §4

139A.5 Isolation or quarantine signs erected.

When isolation or a quarantine is established, appropriate placards prescribed by the department shall be erected to mark the boundaries of the place of isolation or quarantine.

2000 Acts, ch 1066, §5

139A.6 Communicable diseases.

If a person, whether or not a resident, is infected with a communicable disease dangerous to the public health, the local board shall issue orders in regard to the care of the person as necessary to protect the public health. The orders shall be executed by the designated officer as the local board directs or provides by rules.

2000 Acts, ch 1066, §6

139A.7 Diseased persons moving — record forwarded.

If a person known to be suffering from a communicable disease dangerous to the public health moves from the jurisdiction of a local board into the jurisdiction of another local board, the local board from whose jurisdiction the person moves shall notify the local board into whose jurisdiction the person is moving.

2000 Acts, ch 1066, §7

139A.8 Immunization of children.

1. A parent or legal guardian shall assure that the person's minor children residing in the state are adequately immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, and rubella, according to recommendations provided by the department subject to the provisions of subsections 3 and 4.

2. *a.* A person shall not be enrolled in any licensed child care center or elementary or secondary school in Iowa without evidence of adequate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, and rubella.

b. Evidence of adequate immunization against haemophilus influenza B shall be required prior to enrollment in any licensed child care center.

c. Evidence of hepatitis type B immunization shall be required of a child born on or after July 1, 1994, prior to enrollment in school in kindergarten or in a grade.

d. Immunizations shall be provided according to recommendations provided by the department subject to the provisions of subsections 3 and 4.

3. Subject to the provision of subsection 4, the state board of health may modify or delete any of the immunizations in subsection 2.

4. Immunization is not required for a person's enrollment in any elementary or secondary school or licensed child care center if either of the following applies:

a. The applicant, or if the applicant is a minor, the applicant's parent or legal guardian, submits to the admitting official a statement signed by a physician, who is licensed by the state board of medical examiners, that, in the physician's opinion, the immunizations required would be injurious to the health and well-being of the applicant or any member of the applicant's family.

b. The applicant, or if the applicant is a minor, the applicant's parent or legal guardian, submits an affidavit signed by the applicant, or if the applicant is a minor, the applicant's parent or legal guardian, stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the applicant is an adherent or member.

The exemptions under this subsection do not apply in times of emergency or epidemic as determined by the state board of health and as declared by the director of public health.

5. A person may be provisionally enrolled in an elementary or secondary school or licensed child care center if the person has begun the required immunizations and if the person continues to receive the necessary immunizations as rapidly as is medically feasible. The department shall adopt rules relating to the provisional admission of persons to an elementary or secondary school or licensed child care center.

6. The local board shall furnish the department, within sixty days after the first official day of school, evidence that each person enrolled in any elementary or secondary school has been immunized as required in this section subject to subsection 4. The department shall adopt rules pursuant to chapter 17A relating to the reporting of evidence of immunization.

7. Local boards shall provide the required immunizations to children in areas where no local provision of these services exists.

8. The department, in consultation with the director of the department of education, shall adopt rules for the implementation of this section and shall provide those rules to local school boards and local boards.

2000 Acts, ch 1066, §8

139A.9 Forcible removal — isolation — quarantine.

The forcible removal and isolation or quarantine of any infected person shall be accomplished according to the rules and regulations of the local board or the rules of the state board of health.

2000 Acts, ch 1066, §9

139A.10 Fees for removing.

The officers designated shall receive reasonable compensation for their services as determined by the local board. The amount determined shall be certified and paid in the same manner as other expenses incurred under this chapter.

2000 Acts, ch 1066, §10; 2002 Acts, ch 1119, §133
Section amended

139A.11 Services and supplies — isolation — quarantine.

If the person under isolation or quarantine or the person liable for the support of the person, in the opinion of the local board, is financially unable to secure proper care, provisions, or medical attendance, the local board shall furnish supplies and services during the period of isolation or quarantine and may delegate the duty, by rules, to one of its designated officers.

2000 Acts, ch 1066, §11

139A.12 County liability for care, provisions, and medical attendance.

The local board shall provide proper care, provisions, and medical attendance for any person removed and isolated or quarantined in a separate house or hospital for detention and treatment, and the care, provisions, and medical attendance shall be paid for by the county in which the infected person has a legal settlement, if the patient or legal guardian is unable to pay.

2000 Acts, ch 1066, §12

139A.13 Rights of isolated or quarantined persons.

Any person removed and isolated or quarantined in a separate house or hospital may, at the person's own expense, employ the health care provider of the person's choice, and may provide such supplies and commodities as the person may require.

2000 Acts, ch 1066, §13

139A.14 Services or supplies — authorization.

All services or supplies furnished to persons under this chapter must be authorized by the local board or an officer of the local board, and a written order designating the person employed to furnish such services or supplies, issued before the services or supplies are furnished, shall be attached to the bill when presented for audit and payment.

2000 Acts, ch 1066, §14

139A.15 Filing of bills.

All bills incurred under this chapter in establishing, maintaining, and terminating isolation and quarantine, in providing a necessary house or hospital for isolation or quarantine, and in making terminal cleanings, shall be filed with the local board. The local board at its next regular meeting or special meeting called for this purpose shall examine and audit the bills and, if found correct, approve and certify the bills to the county board of supervisors for payment.

2000 Acts, ch 1066, §15

139A.16 Allowing claims.

All bills for supplies furnished and services rendered for persons removed and isolated or quarantined in a separate house or hospital, or for persons financially unable to provide their own sustenance and care during isolation or quarantine, shall be allowed and paid for only on a basis of the local market price for such provisions, services, and supplies in the locality furnished. A bill for the terminal cleaning of premises or effects shall not be allowed, unless the infected person or those liable for the person's support are financially unable to pay.

2000 Acts, ch 1066, §16

139A.17 Approval and payment of claims.

The board of supervisors is not bound by the action of the local board in approving the bills, but shall pay the bills for a reasonable amount and within a reasonable time.

2000 Acts, ch 1066, §17

139A.18 Reimbursement from county.

If any person receives services or supplies under this chapter who does not have a legal settlement in the county in which the bills were incurred and paid, the amount paid shall be certified to the board of supervisors of the county in which the person claims settlement or owns property, and the board of supervisors of that county shall reimburse the county from which the claim is certified, in the full amount originally paid.

2000 Acts, ch 1066, §18
See §252.24

139A.19 Care provider notification.

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains an exposure from an individual while rendering health care services or other services, the individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider of the results of the test, upon submission of

an exposure report by the care provider to the hospital or other person specified in this section to whom the individual is delivered by the care provider. The exposure report form may be incorporated into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first response service or law enforcement agency.

b. The hospital or other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number and shall not otherwise identify the individual tested.

c. A hospital, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

d. Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information in the course of the care provider's duties over the police radio broadcasting system under chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

2. If the individual tested is diagnosed or confirmed as having a contagious or infectious disease, the hospital or other person conducting the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider.

3. The notification to the care provider shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the care provider seek medical attention. The notification shall be provided as soon as is reasonably possible following determination that the individual has a contagious or infectious disease. The notification shall not include the name of the individual tested for the contagious or infectious disease unless the individual consents. If the care provider who sustained an exposure determines the identity of the individual diagnosed or confirmed as having a contagious or infectious disease, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual diagnosed with or confirmed as having a contagious or infectious disease.

4. This section does not require or permit, unless otherwise provided, a hospital, health care provider, or other person to administer a test for the express purpose of determining the presence of a contagious or infectious disease, except that testing may be performed if the individual consents and if the requirements of this section are satisfied.

5. This section does not preclude a hospital or a health care provider from providing notification to a care provider under circumstances in which the hospital's or health care provider's policy provides for notification of the hospital's or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.

6. A hospital, health care provider, or other person participating in good faith in complying with provisions authorized or required under this section is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

7. A hospital's or health care provider's duty of notification under this section is not continuing but is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to which notification under this section applies.

8. A hospital, health care provider, or other person who is authorized to perform a test under this section who performs the test in compliance with this section or who fails to perform the test authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

9. A hospital, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the test authorized.

10. The department shall adopt rules pursuant to chapter 17A to administer this section. The department may determine by rule the contagious or infectious diseases for which testing is reasonable and appropriate and which may be administered under this section.

11. The employer of a care provider who sustained an exposure under this section shall pay the costs of testing for the individual who is the source of the exposure and of the testing of the care

provider, if the exposure was sustained during the course of employment. However, the department shall pay the costs of testing for the individual who is the source of the significant exposure and of the testing of the care provider who renders direct aid without compensation.

2000 Acts, ch 1066, §19; 2001 Acts, ch 157, §4

Care provider notification of HIV infections, see §141A.8

Hepatitis testing and immunization of emergency responders; reimbursement; 2002 Acts, 2nd Ex, ch 1003, §100, 109

139A.20 Exposing to communicable disease.

A person who knowingly exposes another to a communicable disease or who knowingly subjects another to a child or other legally incapacitated person who has contracted a communicable disease, with the intent that another person contract the communicable disease, shall be liable for all resulting damages and shall be punished as provided in this chapter.

2000 Acts, ch 1066, §20

139A.21 Reportable poisonings and illnesses — emergency information system.

1. If the results of an examination by a public, private, or hospital clinical laboratory of a specimen from a person in Iowa yield evidence of or are reactive for a reportable poisoning or a reportable illness from a toxic agent, including methemoglobinemia, the results shall be reported to the department on forms prescribed by the department. If the laboratory is located in Iowa, the person in charge of the laboratory shall report the results. If the laboratory is not in Iowa, the health care provider submitting the specimen shall report the results.

2. The health care provider attending a person infected with a reportable poisoning or a reportable illness from a toxic agent, including methemoglobinemia, shall immediately report the case to the department. The department shall publish and distribute instructions concerning the method of reporting. Reports shall be made in accordance with rules adopted by the department.

3. A person in charge of a poison control information center shall report to the department cases of reportable poisoning, including methemoglobinemia, about which inquiries have been received.

4. The department shall adopt rules designating reportable poisonings, including methemoglobinemia, and illnesses which must be reported under this section.

5. The department shall establish and maintain a central registry to collect and store data reported pursuant to this section.

6. The department shall timely provide copies of all reports of pesticide poisonings or illnesses received pursuant to this section to the secretary of agriculture who shall timely forward these reports and any reports of pesticide poisonings or illnesses received pursuant to section 206.14 to the registrant of a pesticide which is the subject of any reports.

7. The department shall adopt rules specifying the requirements for the operation of an emergency information system operated by a registrant pursuant to section 206.12, subsection 2, paragraph *"c"*, which shall not exceed requirements adopted by a poison control center as defined in section 206.2. The rules shall specify the qualifications of individuals staffing an emergency information system and shall specify the maximum amount of time that a registrant may take to provide the information to a poison control center or an attending physician treating a patient exposed to the registrant's product.

2000 Acts, ch 1066, §21

139A.22 Prevention of transmission of HIV or HBV to patients.

1. A hospital shall adopt procedures requiring the establishment of protocols applicable on a case-by-case basis to a health care provider determined to be infected with HIV or HBV who ordinarily performs exposure-prone procedures as determined by an expert review panel, within the hospital setting. The protocols established shall be in accordance with the recommendations issued by the centers for disease control and prevention of the United States department of health and human services. The expert review panel may be an established committee of the hospital. The procedures may provide for referral of the health care provider to the expert review panel established by the department pursuant to subsection 3 for establishment of the protocols. The procedures shall require reporting noncompliance with the protocols by a health care provider to the examining board with jurisdiction over the relevant health care providers.

2. A health care facility shall adopt procedures in accordance with recommendations issued by the centers for disease control and prevention of the United States department of health and human services, applicable to a health care provider determined to be infected with HIV or HBV who ordinarily performs or assists with exposure-prone procedures within the health care facility. The procedures shall require referral of the health care provider to the expert review panel established by the department pursuant to subsection 3.

3. The department shall establish an expert review panel to determine on a case-by-case basis under what circumstances, if any, a health care provider determined to be infected with HIV or HBV practicing outside the hospital setting or referred to the panel by a hospital or health care facility may perform exposure-prone procedures. If a health care provider determined to be infected with HIV or HBV does not comply with the determination of the expert review panel, the panel shall report the noncompliance to the examining

board with jurisdiction over the health care provider. A determination of an expert review panel pursuant to this section is a final agency action appealable pursuant to section 17A.19.

4. The health care provider determined to be infected with HIV or HBV, who works in a hospital setting, may elect either the expert review panel established by the hospital or the expert review panel established by the department for the purpose of making a determination of the circumstances under which the health care provider may perform exposure-prone procedures.

5. A health care provider determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel established by the department pursuant to subsection 3, or in compliance with the protocol established by the hospital pursuant to subsection 1 or the procedures established by the health care facility pursuant to subsection 2.

6. The board of medical examiners, the board of physician assistant examiners, the board of podiatry examiners, the board of nursing, the board of dental examiners, and the board of optometry examiners shall require that licensees comply with the recommendations issued by the centers for disease control and prevention of the United States department of health and human services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, with the recommendations of the expert review panel established pursuant to subsection 3, with hospital protocols established pursuant to subsection 1, and with health care facility procedures established pursuant to subsection 2, as applicable.

7. Information relating to the HIV status of a health care provider is confidential and subject to the provisions of section 141A.9. A person who intentionally or recklessly makes an unauthorized disclosure of such information is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this section. Proceedings maintained under this section shall provide for the anonymity of the health care provider and all documentation shall be maintained in a confidential manner. Information relating to the HBV status of a health care provider is confidential and shall not be accessible to the public. Information regulated by this section, however, may be disclosed to members of the expert review panel established by the department or a panel established by hospital protocol under this section. The information may also be disclosed to the appropriate examining board by filing a report as required by this section. The examining board shall consider the report a complaint subject to the confidentiality provisions of section 272C.6. A licensee, upon the filing of a formal charge or notice of hearing by the examining board based on such a complaint, may seek a protective order from the board.

8. The expert review panel established by the department and individual members of the panel shall be immune from any liability, civil or criminal, for reasonable actions taken in the good faith performance of functions authorized or required by this section. A hospital, an expert review panel established by the hospital, and individual members of the panel shall be immune from any liability, civil or criminal, for reasonable actions taken in the good faith performance of functions authorized or required by this section. Complaints, investigations, reports, deliberations, and findings of the hospital and its panel with respect to a named health care provider suspected, alleged, or found to be in violation of the protocol required by this section constitute peer review records under section 147.135, and are subject to the specific confidentiality requirements and limitations of that section.

2000 Acts, ch 1066, §22; 2001 Acts, ch 24, §30

See §139A.23

139A.23 Contingent repeal.

If the provisions of Pub. L. No. 102-141 relating to requirements for prevention of transmission of HIV or HBV to patients in the performance of exposure-prone procedures are repealed, section 139A.22 is repealed.

2000 Acts, ch 1066, §23

139A.24 Blood donation or sale — penalty.

A person suffering from a communicable disease dangerous to the public health who knowingly gives false information regarding the person's infected state on a blood plasma sale application to blood plasma-taking personnel commits a serious misdemeanor.

2000 Acts, ch 1066, §24

139A.25 Penalties.

1. Unless otherwise provided in this chapter, a person who knowingly violates any provision of this chapter, or of the rules of the department or a local board, or any lawful order, written or oral, of the department or board, or of their officers or authorized agents, is guilty of a simple misdemeanor.

2. Notwithstanding subsection 1, an individual who repeatedly fails to file any mandatory report specified in this chapter is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time that the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

3. Notwithstanding subsection 1, a public, private, or hospital clinical laboratory that repeated-

ly fails to file a mandatory report specified in this chapter is subject to a civil penalty of not more than one thousand dollars per occurrence. The department shall not impose the penalty under this subsection without prior written notice and opportunity for hearing.

2000 Acts, ch 1066, §25

139A.26 through 139A.29 Reserved.

SUBCHAPTER II

CONTROL OF SEXUALLY TRANSMITTED DISEASES AND INFECTIONS

139A.30 Confidential reports.

Reports to the department which include the identity of persons infected with a sexually transmitted disease or infection, and all such related information, records, and reports concerning the person, shall be confidential and shall not be accessible to the public. However, such reports, information, and records shall be confidential only to the extent necessary to prevent identification of persons named in such reports, information, and records; the other parts of such reports, information, and records shall be public records. The preceding sentence shall prevail over any inconsistent provision of this subchapter.

2000 Acts, ch 1066, §26; 2002 Acts, ch 1119, §134
Section amended

139A.31 Report to department.

Immediately after the first examination or treatment of any person infected with any sexually transmitted disease or infection, the health care provider who performed the examination or treatment shall transmit to the department a report stating the name of the infected person, the address of the infected person, the infected person's date of birth, the sex of the infected person, the race and ethnicity of the infected person, the infected person's marital status, the infected person's telephone number, if the infected person is female, whether the infected person is pregnant, the name and address of the laboratory that performed the test, the date the test was found to be positive and the collection date, and the name of the health care provider who performed the test. However, when a case occurs within the jurisdiction of a local health department, the report shall be made directly to the local health department which shall immediately forward the information to the department. Reports shall be made in accordance with rules adopted by the department. Reports shall be confidential. Any person filing a report of a sexually transmitted disease or infection who is acting reasonably and in good faith is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of such report.

2000 Acts, ch 1066, §27

139A.32 Examination results from laboratory — report.

A person in charge of a public, private, or hospital clinical laboratory shall report to the department, on forms prescribed by the department, results obtained in the examination of all specimens which yield evidence of or are reactive for those diseases defined as sexually transmitted diseases or infections, and listed in the Iowa administrative code. The report shall state the name of the infected person from whom the specimen was obtained, the address of the infected person, the infected person's date of birth, the sex of the infected person, the race and ethnicity of the infected person, the infected person's marital status, the infected person's telephone number, if the infected person is female, whether the infected person is pregnant, the name and address of the laboratory that performed the test, the laboratory results, the test employed, the date the test was found to be positive and the collection date, the name of the health care provider who performed the test, and the name and address of the person submitting the specimen.

2000 Acts, ch 1066, §28

139A.33 Determination of source.

The local board or the department shall use every available means to determine the source and spread of any infectious case of sexually transmitted disease or infection which is reported.

2000 Acts, ch 1066, §29

139A.34 Examination of persons suspected.

The local board shall cause an examination to be made of every person reasonably suspected, on the basis of epidemiological investigation, of having any sexually transmitted disease or infection in the infectious stages to ascertain if such person is infected and, if infected, to cause such person to be treated. A person who is under the care and treatment of a health care provider for the suspected condition shall not be subjected to such examination. If a person suspected of having a sexually transmitted disease or infection refuses to submit to an examination voluntarily, application may be made by the local board to the district court for an order compelling the person to submit to examination and, if infected, to treatment. The person shall be treated until certified as no longer infectious to the local board or to the department. If treatment is ordered by the district court, the attending health care provider shall certify that the person is no longer infectious.

2000 Acts, ch 1066, §30

139A.35 Minors.

A minor who seeks diagnosis or treatment for a sexually transmitted disease or infection shall have the legal capacity to act and give consent to medical care and service for the sexually transmitted disease or infection by a hospital, clinic, or health care provider. Such medical diagnosis and treatment shall be provided by a physician licensed to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

2000 Acts, ch 1066, §31

139A.36 Certificate not to be issued.

A certificate of freedom from sexually transmitted disease or infection shall not be issued to any person by any official health agency.

2000 Acts, ch 1066, §32

139A.37 Pregnant women.

The department shall adopt rules which incorporate the prenatal guidelines established by the centers for disease control and prevention of the United States department of health and human services as the state guidelines for prenatal testing and care relative to infectious disease.

2000 Acts, ch 1066, §33

139A.38 Medical treatment of newly born.

A physician attending the birth of a child shall cause to be instilled into the eyes of the newly born infant a prophylactic solution approved by the department. This section shall not be construed to require treatment of the infant's eyes with a prophylactic solution if the infant's parent or legal guardian states that such treatment conflicts with the tenets and practices of a recognized religious denomination of which the parent or legal guardian is an adherent or member.

2000 Acts, ch 1066, §34

139A.39 Religious exceptions.

A provision of this chapter shall not be construed to require or compel any person to take or follow a course of medical treatment prescribed by law or a health care provider if the person is an adherent or member of a church or religious denomination and in accordance with the tenets or principles of the person's church or religious denomination the person opposes the specific course of medical treatment. However, such person while in an infectious stage of disease shall be subject to isolation and such other measures appropriate for the prevention of the spread of the disease to other persons.

2000 Acts, ch 1066, §35

139A.40 Filing false reports.

A person who knowingly makes a false statement in any of the reports required by this subchapter concerning persons infected with any sexually transmitted disease or infection, or who discloses the identity of such person, except as authorized by this subchapter, shall be punished as provided in section 139A.25.

2000 Acts, ch 1066, §36

CHAPTER 139B

EMERGENCY CARE PROVIDERS — EXPOSURE TO DISEASE

Repealed by 2000 Acts, ch 1066, §51; see chapter 139A

CHAPTER 139C

EXPOSURE-PRONE PROCEDURES

Repealed by 2000 Acts, ch 1066, §51; see chapter 139A

CHAPTER 140

VENEREAL DISEASE CONTROL

Repealed by 2000 Acts, ch 1066, §51; see chapter 139A

CHAPTER 141

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

Chapter repealed by 99 Acts, ch 181, §22; see chapter 141A

CHAPTER 141A

ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

141A.1 Definitions.
141A.2 Lead agency.
141A.3 Duties of the department.
141A.4 Testing and counseling.
141A.5 Partner notification program — HIV.
141A.6 AIDS-related conditions — screening, testing, and reporting.
141A.7 Test results — counseling — application for services.
141A.8 Care provider notification.
141A.9 Confidentiality of information.
141A.10 Immunities.
141A.11 Remedies.

141A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"AIDS"* means acquired immune deficiency syndrome as defined by the centers for disease control and prevention of the United States department of health and human services.

2. *"AIDS-related conditions"* means the human immunodeficiency virus, or any other condition resulting from the human immunodeficiency virus infection.

3. *"Blinded epidemiological studies"* means studies in which specimens which were collected for other purposes are selected according to established criteria, are permanently stripped of personal identifiers, and are then tested.

4. *"Blood bank"* means a facility for the collection, processing, or storage of human blood or blood derivatives, including blood plasma, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

5. *"Care provider"* means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. *"Care provider"* also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

6. *"Department"* means the Iowa department of public health.

7. *"Good faith"* means objectively reasonable and not in violation of clearly established statutory rights or other rights of a person which a reasonable person would know or should have known.

8. *"Health care provider"* means a person licensed or certified under chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care service to a person during the person's medical care, treatment, or confinement.

9. *"Health facility"* means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant center and procurement agency, or other health care institution.

10. *"HIV"* means the human immunodeficiency virus identified as the causative agent of AIDS.

11. *"HIV-related test"* means a diagnostic test conducted by a laboratory approved pursuant to the federal Clinical Laboratory Improvements Act for determining the presence of HIV.

12. *"Infectious bodily fluids"* means bodily fluids capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

13. *"Legal guardian"* means a person appointed by a court pursuant to chapter 633 or an attorney in fact as defined in section 144B.1. In the case of a minor, *"legal guardian"* also means a parent or other person responsible for the care of the minor.

14. *"Nonblinded epidemiological studies"* means studies in which specimens are collected for the express purpose of testing for the HIV infection and persons included in the nonblinded study are selected according to established criteria.

15. *"Release of test results"* means a written authorization for disclosure of HIV-related test results which is signed and dated, and which specifies to whom disclosure is authorized and the time

period during which the release is to be effective.

16. *"Sample"* means a human specimen obtained for the purpose of conducting an HIV-related test.

17. *"Significant exposure"* means the risk of contracting HIV infection by means of exposure to a person's infectious bodily fluids in a manner capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

99 Acts, ch 181, §5; 2001 Acts, ch 157, §5, 6

141A.2 Lead agency.

1. The department is designated as the lead agency in the coordination and implementation of the state comprehensive AIDS-related conditions prevention and intervention plan.

2. The department shall adopt rules pursuant to chapter 17A to implement and enforce this chapter. The rules may include procedures for taking appropriate action with regard to health facilities or health care providers which violate this chapter or the rules adopted pursuant to this chapter.

3. The department shall adopt rules pursuant to chapter 17A which require that if a health care provider attending a person prior to the person's death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition for the information of any person handling the body of the deceased person subsequent to the person's death. For purposes of this subsection, *"contagious or infectious disease"* means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease including AIDS or HIV infection, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

4. The department, in cooperation with the department of public safety, and persons who represent those who attend dead bodies shall establish for all care providers, including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first responders, peace officers, and fire fighters, who provide care services to a person, and for all persons who attend dead bodies, protocol and procedures for the use of universal precautions to prevent the transmission of contagious and infectious diseases.

5. The department shall coordinate efforts with local health officers to investigate sources of HIV infection and use every appropriate means to prevent the spread of the infection.

6. The department, with the approval of the state board of health, may conduct epidemiological blinded and nonblinded studies to determine the incidence and prevalence of the HIV infection. Initiation of any new epidemiological studies shall be contingent upon the receipt of funding sufficient to cover all the costs associated with the studies. The informed consent, reporting, and counseling requirements of this chapter shall not apply to blinded studies.

99 Acts, ch 181, §6

141A.3 Duties of the department.

1. All federal and state moneys appropriated to the department for AIDS-related activities shall be allocated in accordance with a prioritized schedule developed by rule of the department, and grants shall be awarded to the maximum extent feasible to community-based organizations.

2. The department shall do all of the following:

a. Provide consultation to agencies and organizations regarding appropriate policies for testing, education, confidentiality, and infection control.

b. Conduct health information programs for the public relating to HIV infection, including information about how the infection is transmitted and how transmittal can be prevented. The department shall prepare, for free distribution, printed information relating to HIV infection and prevention.

c. Provide educational programs concerning HIV infection in the workplace.

d. Develop and implement HIV education risk-reduction programs for specific populations at high risk for infection.

e. Provide an informational brochure for patients who provide samples for purposes of performing an HIV test which, at a minimum, shall include a summary of the patient's rights and responsibilities under the law.

f. In cooperation with the department of education, develop and update a medically correct AIDS prevention curriculum for use at the discretion of secondary and middle schools.

3. The department shall, in cooperation with the department of education and other agencies, organizations, coalitions, and local health departments, develop and implement a program of public and professional AIDS-related education.

99 Acts, ch 181, §7

141A.4 Testing and counseling.

1. HIV testing and counseling shall be offered to the following:

a. All persons seeking treatment for a sexually transmitted disease.

b. All persons seeking treatment for injecting drug abuse or having a history of injecting drug abuse.

c. All persons who consider themselves at risk for the HIV infection.

d. Male and female prostitutes.

2. Pregnant women shall be provided information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus. Pregnant women who report one or more recognized risk factors for HIV shall be strongly encouraged to undergo HIV-related testing. A pregnant woman who requests testing shall be tested regardless of the absence of risk factors.

99 Acts, ch 181, §8

141A.5 Partner notification program — HIV.

1. The department shall maintain a partner notification program for persons known to have tested positive for the HIV infection.

2. The department shall initiate the program at alternative testing and counseling sites and at sexually transmitted disease clinics.

3. In administering the program, the department shall provide for the following:

a. A person who tests positive for the HIV infection shall receive posttest counseling, during which time the person shall be encouraged to refer for counseling and HIV testing any person with whom the person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment. The department disease prevention staff shall then conduct partner notification in the same manner as that utilized for sexually transmitted diseases consistent with the provisions of this chapter.

c. Devise a procedure, as a part of the partner notification program, to provide for the notification of an identifiable third party who is a sexual partner of or who shares drug injecting equipment with a person who has tested positive for HIV, by the department or a physician, when all of the following situations exist:

(1) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of HIV infection transmission to the third party.

(2) When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

Notwithstanding subsection 4, the department or a physician may reveal the identity of a person who has tested positive for the HIV infection pursuant to this subsection only to the extent necessary to protect a third party from the direct threat of transmission. This subsection shall not be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with a person who tests positive for the HIV infection.

The department shall adopt rules pursuant to chapter 17A to implement this paragraph *"c"*. The rules shall provide a detailed procedure by which the department or a physician may directly notify an endangered third party.

4. In making contact the department shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of persons contacted.

5. The department may delegate its partner notification duties under this section to local health authorities unless the local authority refuses or neglects to conduct the contact tracing program in a manner deemed to be effective by the department.

6. In addition to the provisions for partner notification provided under this section and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to chapter 691, who determines through an investigation that a deceased person was infected with HIV, may notify directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

99 Acts, ch 181, §9

141A.6 AIDS-related conditions — screening, testing, and reporting.

1. Prior to obtaining a sample for the purpose of performing a voluntary HIV-related test, a health care provider shall inform the subject of the test that the test is voluntary. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the physician or other health care provider at whose request the test was performed shall make a report to the department on a form provided by the department.

2. Within seven days of diagnosing a person as having an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

3. Within seven days of the death of a person resulting from an AIDS-related condition, the attending physician shall make a report to the department on a form provided by the department.

4. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the director of a blood bank shall make a report to the department on a form provided by the department.

5. Within seven days of the receipt of a test result indicating HIV infection which has been con-

firmed as positive according to prevailing medical technology, the director of a clinical laboratory shall make a report to the department on a form provided by the department.

6. The forms provided by the department shall require inclusion of all of the following information:

a. The name of the patient.

b. The address of the patient.

c. The patient's date of birth.

d. The gender of the patient.

e. The race and ethnicity of the patient.

f. The patient's marital status.

g. The patient's telephone number.

h. The name and address of the laboratory or blood bank.

i. The date the test was found to be positive and the collection date.

j. The name of the physician or health care provider who performed the test.

k. If the patient is female, whether the patient is pregnant.

7. An individual who repeatedly fails to file the report required under this section is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

8. A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under this section is subject to a civil penalty of not more than one thousand dollars per occurrence. The department shall not impose the penalty under this subsection without prior written notice and opportunity for hearing.

99 Acts, ch 181, §10; 2000 Acts, ch 1066, §39; 2000 Acts, ch 1140, §26

141A.7 Test results — counseling — application for services.

1. Prior to undergoing an HIV-related test, information shall be available to the subject of the test concerning testing and any means of obtaining additional information regarding HIV infection and risk reduction. At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling.

2. Notwithstanding subsection 1, the provisions of this section do not apply to any of the following:

a. The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the uniform anatomical gift Act, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

b. A person engaged in the business of insurance who is subject to section 505.16.

c. The performance by a health care provider or health facility of an HIV-related test when the subject of the test is deceased and a documented significant exposure has occurred.

3. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for HIV infection and other sexually transmitted diseases directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, however, a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is exempt from the notification requirement. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

99 Acts, ch 181, §11

Uniform anatomical gift Act, see chapter 142C

141A.8 Care provider notification.

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains a significant exposure from an individual, the individual to whom the care provider was exposed is deemed to consent to a test to determine the presence of HIV infection in that individual and is deemed to consent to notification of the care provider of the HIV test results of the individual, upon submission of a significant exposure report by the care provider to the hospital or other person specified in this section to whom the individual is delivered by the care provider. The significant exposure report form may be incorporated into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first response service or law enforcement agency.

b. The hospital or other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number and no reports otherwise required by this chapter shall be made which otherwise identify the individual tested.

c. A hospital, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

2. *a.* If the test results are positive, the hospital or other person performing the test shall notify the subject of the test and ensure the performance of counseling and reporting requirements of this chapter in the same manner as for an individual from whom actual consent was obtained.

b. If the HIV test results of the subject of the test are positive, the hospital or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider who sustained the exposure.

c. The notification shall be provided as soon as is reasonably possible following determination that the HIV test results of the subject of the test are positive. The notification shall not include the name of the individual tested for HIV infection unless the individual provides a specific written release. If the care provider who sustained the significant exposure determines the identity of the individual tested, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual tested.

3. This section does not require or permit, unless otherwise provided, a hospital, health care provider, or other person to administer a test for the express purpose of determining the presence of HIV infection, except that testing may be performed if the individual consents and if the requirements of this section are satisfied.

4. This section does not preclude a hospital or health care provider from providing notification to a care provider under circumstances in which the hospital's or health care provider's policy provides for notification of the hospital's or health care provider's own employees of exposure to HIV infection if the notice does not reveal a patient's name, unless the patient consents.

5. A hospital, health care provider, or other person participating in good faith in making a report under the notification provisions of this section, under procedures similar to this section for notification of its own employees upon filing of a significant exposure report, or in failing to make a report under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

6. A hospital's or health care provider's duty to notify under this section is not continuing but is limited to the diagnosis of HIV infection made in the course of admission, care, and treatment following the rendering of health care services or other services to the individual with the infection to which notification under this section applies.

7. Notwithstanding subsection 6, if, following discharge from or completion of care or treatment by a hospital, an individual for whom a significant exposure report was submitted but which report did not result in notification, wishes to provide information regarding the individual's HIV infection status to the care provider who submitted the report, the hospital shall provide a procedure for notifying the care provider.

8. A hospital, health care provider, or other person who is authorized to perform an HIV test under this section, who performs the HIV test in compliance with this section or who fails to perform an HIV test authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

9. A hospital, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the HIV test authorized.

10. The employer of a care provider who sustained a significant exposure under this section shall pay the costs of HIV testing for the individual who is the source of the significant exposure and of the testing and counseling of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall pay the costs of HIV testing for the individual who is the source of the significant exposure and of the testing and counseling of the care provider who renders direct aid without compensation.

99 Acts, ch 181, §12; 2000 Acts, ch 1140, §27 – 29; 2000 Acts, ch 1154, §13; 2001 Acts, ch 157, §7

141A.9 Confidentiality of information.

1. Any information, including reports and records, obtained, submitted, and maintained pursuant to this chapter is strictly confidential medical information. The information shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except as provided in this chapter. A person shall not be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to persons entitled to that information under this chapter. Information shall be made available for release to the following individuals or under the following circumstances:

a. To the subject of the test or the subject's legal guardian subject to the provisions of section 141A.7, subsection 3, when applicable.

b. To any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.

c. To an authorized agent or employee of a health facility or health care provider, if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain the test results, the agent or employee provides patient care or handles or processes samples, and the agent or employee has a medical need to know such information.

d. To a health care provider providing care to the subject of the test when knowledge of the test results is necessary to provide care or treatment.

e. To the department in accordance with reporting requirements for an HIV-related condition.

f. To a health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen provided prior to July 1, 1988, for the purpose of artificial insemination.

g. Release may be made of medical or epidemiological information for statistical purposes in a manner such that no individual person can be identified.

h. Release may be made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related rules concerning the treatment, control, and investigation of HIV infection by public health officials.

i. Release may be made of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of the named party.

j. Release may be made of test results concerning a patient pursuant to procedures established under section 141A.5, subsection 3, paragraph *"c"*.

k. To a person allowed access to a record by a court order which is issued in compliance with the following provisions:

(1) A court has found that the person seeking the test results has demonstrated a compelling need for the test results which need cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure due to its deterrent effect on future testing or due to its effect in leading to discrimination.

(2) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

(3) Before granting an order, the court shall provide the person whose test results are in question with notice and a reasonable opportunity to participate in the proceedings if the person is not already a party.

(4) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(5) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may gain access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

l. To an employer, if the test is authorized to be required under any other provision of law.

m. To a convicted or alleged sexual assault offender; the physician or other health care provider who orders the test of a convicted or alleged offender; the victim; the parent, guardian, or custodian of the victim if the victim is a minor; the physician of the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the victim's spouse; persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault; members of the victim's family within the third degree of consanguinity; and the county attorney who may use the results as evidence in the prosecution of sexual assault under chapter 915, subchapter IV, or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph, *"victim"* means victim as defined in section 915.40.

n. To employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the department of human ser-

vices, and employees of city and county jails, if the employees have direct supervision over inmates of those facilities or institutions in the exercise of the duties prescribed pursuant to section 80.9, subsection 2, paragraph *"d"*.

2. Medical information secured pursuant to subsection 1 may be shared between employees of the department who shall use the information collected only for the purposes of carrying out their official duties in preventing the spread of the disease or the spread of other reportable diseases as defined in section 139A.2.

99 Acts, ch 181, §13; 2000 Acts, ch 1066, §40

141A.10 Immunities.

1. A person making a report in good faith pursuant to this chapter is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

2. A health care provider attending a person who tests positive for the HIV infection has no duty to disclose to or to warn third parties of the dangers of exposure to HIV infection through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

99 Acts, ch 181, §14

141A.11 Remedies.

1. A person aggrieved by a violation of this chapter shall have a right of civil action for damages in district court.

2. A care provider who intentionally or recklessly makes an unauthorized disclosure under this chapter is subject to a civil penalty of one thousand dollars.

3. A person who violates a confidentiality requirement of section 141A.5 is guilty of an aggravated misdemeanor.

4. A civil action under this chapter is barred unless the action is commenced within two years after the cause of action accrues.

5. The attorney general may maintain a civil action to enforce this chapter.

6. This chapter does not limit the rights of the subject of an HIV-related test to recover damages or other relief under any other applicable law.

7. This chapter shall not be construed to impose civil liability or criminal sanctions for disclosure of HIV-related test results in accordance with any reporting requirement for a diagnosed case of AIDS or a related condition by the department or the centers for disease control and prevention of the United States public health service.

99 Acts, ch 181, §15

CHAPTER 142

DEAD BODIES FOR SCIENTIFIC PURPOSES

142.1 Delivery of bodies.
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142.13 Burial in private cemetery lot.

142.1 Delivery of bodies.

The body of every person dying in a public asylum, hospital, county care facility, penitentiary, or reformatory in this state, or found dead within the state, or which is to be buried at public expense in this state, except those buried under the provisions of chapter 249, and which is suitable for scientific purposes, shall be delivered to the medical college of the state university, or some osteopathic or chiropractic college or school located in this state, which has been approved under the law regulating the practice of osteopathy or chiropractic; but no such body shall be delivered to any such college or school if the deceased person expressed a desire during the person's last illness that the person's body should be buried or cremated, nor if such is the desire of the person's relatives. Such bodies shall be equitably distributed among said colleges and schools according to their needs for teaching anatomy in accordance with such rules as may be adopted by the Iowa department of public health. The expense of transporting said bodies to such college or school shall be paid by the college or school receiving the same. In the event the deceased person has not expressed a desire during the person's last illness that the person's body should be buried or cremated and should have no relatives that request the person's body for burial or cremation, if a friend objects to the use of the deceased person's body for scientific purposes, said deceased person's body shall be forthwith delivered to such friend for burial or cremation at no ex-

pense to the state or county. Unless such friend provides for burial and burial expenses within five days, the body shall be used for scientific purposes under this chapter.

[C73, §4018; C97, §4946; S13, §4946-b; C24, 27, 31, 35, 39, §**2351;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.1]

Approval of osteopathic and chiropractic colleges, §150A.4, 151.4

142.2 Furnished to physicians.

When there are more dead bodies available for use under section 142.1 than are desired by said colleges or schools, the same may be delivered to physicians in the state for scientific study under such rules as may be adopted by the Iowa department of public health.

[S13, §4946-b; C24, 27, 31, 35, 39, §**2352;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.2]

142.3 Notification of department.

Every county medical examiner, funeral director or embalmer, and the managing officer of every public asylum, hospital, county care facility, penitentiary, or reformatory, as soon as any dead body shall come into the person's custody which may be used for scientific purposes as provided in sections 142.1 and 142.2, shall at once notify the nearest relative or friend of the deceased, if known, and the Iowa department of public health by telegram, and hold such body unburied for forty-eight hours. Upon receipt of such telegram the department shall telegraph instructions relative to the disposition to be made of said body. Complete jurisdiction over said bodies is vested exclusively in the Iowa department of public health. No autopsy or post mortem, except as are legally ordered by county medical examiners, shall be performed on any of said bodies prior to their delivery to the medical schools.

[S13, §4946-c; C24, 27, 31, 35, 39, §**2353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.3]

142.4 Surrender to relatives.

When any dead body which has been delivered under this chapter for scientific purposes is subsequently claimed by any relative, it shall be at once surrendered to such relative for burial without public expense; and all bodies received under this chapter shall be held for a period of thirty days before being used. Unless such person claiming the body for burial pays the costs that have been incurred in the care and transportation of the body within thirty days after claiming it, all rights thereto shall cease and the body may then be used as if no claim had been made.

This section shall not apply to bodies given under authority of the uniform anatomical gift Act.*

[C73, §4018; C97, §4946; S13, §4946-c, -d; C24, 27, 31, 35, 39, §**2354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.4]

*Chapter 142C

142.5 Disposition after dissection.

The remains of every body received for scientific purposes under this chapter shall be decently buried or cremated after it has been used for said purposes, and a failure to do so shall be a simple misdemeanor.

[C73, §4019; C97, §4947; C24, 27, 31, 35, 39, §**2355;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.5]

142.6 Record of receipt.

Any college, school, or physician receiving the dead body of any human being for scientific purposes shall keep a record showing:

1. The name of the person from whom, and the time and place, such body was received.
2. The description of the receptacle in which the body was received, including the shipping direction attached to the same.
3. The description of the body, including the length, weight, and sex, apparent age at time of death, color of hair and beard, if any, and all marks or scars which might be used to identify the same.
4. The condition of the body and whether mutilated so as to prevent identification.

[C97, §4948; C24, 27, 31, 35, 39, §**2356;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.6]

142.7 Record and bodies.

The record required by section 142.6 and the dead body of every human being received under this chapter shall be subject to inspection by any peace officer, or relative of the deceased.

[C97, §4948, 4949; C24, 27, 31, 35, 39, §**2357;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.7]

142.8 Purpose for which body used.

The dead bodies delivered under this chapter shall be used only within the limits of this state for the purpose of scientific, medical, and surgical study, and no person shall remove the same beyond the limits of this state or in any manner traffic therein. Any person who shall violate this section shall be guilty of a serious misdemeanor.

This section shall not apply to bodies given under authority of the uniform anatomical gift Act.*

[C73, §4020; C97, §4950; C24, 27, 31, 35, 39, §**2358;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.8]

*Chapter 142C

142.9 Failure to deliver dead body.

Any person having the custody of the dead body of any human being which is required to be delivered for scientific purposes by this chapter, who shall fail to notify the Iowa department of public health of the existence of such body, or fail to deliver the same in accordance with the instructions of the department, shall be guilty of a simple misdemeanor.

[S13, §4946-e; C24, 27, 31, 35, 39, §**2359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.9]

142.10 Use without proper record.

Any physician or member of the instructional staff of any college or school who uses, or permits others under the physician's or member's charge to use the dead body of a human being for the purpose of medical or surgical study without the record required in section 142.6 having been made, or who shall refuse to allow any peace officer or relative of the deceased to inspect said record or body, shall be guilty of a serious misdemeanor.

[C97, §4949; C24, 27, 31, 35, 39, §**2360;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.10]

142.11 Penalties.

Any person who shall receive or deliver any dead body of a human being knowing that any of the provisions of this chapter have been violated, shall be guilty of an aggravated misdemeanor.

[S13, §4946-e; C24, 27, 31, 35, 39, §**2361;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.11]

142.12 Repealed by 69 Acts, ch 137, § 11.

142.13 Burial in private cemetery lot.

In the event such deceased person, whose body has been used for scientific purposes as provided herein, shall own or have the right of burial in a private or family cemetery lot in the state of Iowa, that such deceased person's body shall be buried in such lot.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §142.13]

CHAPTER 142A

TOBACCO USE PREVENTION AND CONTROL

Future repeal of chapter; §142A.11

142A.1 Tobacco use prevention and control partnership — purpose and intent.
142A.2 Definitions.
142A.3 Tobacco use prevention and control — division — commission — created.
142A.4 Commission duties.
142A.5 Director and administrator duties.
142A.6 Comprehensive tobacco use prevention and control initiative established — purpose — results.
142A.7 Initiative components.
142A.8 Community partnerships.
142A.9 Youth program.
142A.10 Funding of programs delivered through community partnerships.
142A.11 Repeal.

142A.1 Tobacco use prevention and control partnership — purpose and intent.

1. The purpose of this chapter is to establish a comprehensive partnership among the general assembly, the executive branch, communities, and the people of Iowa in addressing the prevalence of tobacco use in the state.

2. It is the intent of the general assembly that the comprehensive tobacco use prevention and control initiative established in this chapter will specifically address reduction of tobacco use by youth and pregnant women, promotion of compliance by minors and retailers with tobacco sales laws and ordinances, and enhancement of the capacity of youth to make healthy choices. The initiative shall allow extensive involvement of youth in attaining these results.

3. It is also the intent of the general assembly that the comprehensive tobacco use prevention and control initiative will foster a social and legal climate in which tobacco use becomes undesirable and unacceptable, in which role models and those who influence youth promote healthy social norms and demonstrate behavior that counteracts the glamorization of tobacco use, and in which tobacco becomes less accessible to youth. The intent of the general assembly shall be accomplished by engaging all who are affected by the use of tobacco in the state, including smokers and nonsmokers, youth, and adults.

2000 Acts, ch 1192, §1, 17

142A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division of tobacco use prevention and control.

2. *"Commission"* means the commission on tobacco use prevention and control established in this chapter.

3. *"Community partnership"* means a public agency or nonprofit organization implementing the tobacco use prevention and control initiative in a local area in accordance with this chapter.

4. *"Department"* means the Iowa department of public health.

5. *"Director"* means the director of public health.

6. *"Division"* means the division of tobacco use prevention and control of the Iowa department of public health, established pursuant to this chapter.

7. *"Initiative"* means the comprehensive tobacco use prevention and control initiative established in this chapter.

8. *"Manufacturer"* means manufacturer as defined in section 453A.1.

9. *"Pregnant woman"* means a female of any age who is pregnant.

10. *"Retailer"* means retailer as defined in section 453A.1.

11. *"School-age youth"* means a person attending school in kindergarten through grade twelve.

12. *"Tobacco"* means both cigarettes and tobacco products as defined in section 453A.1.

13. *"Youth"* means a person who is five through twenty-four years of age.

2000 Acts, ch 1192, §2, 17

142A.3 Tobacco use prevention and control — division — commission — created.

1. The department shall establish, as a separate and distinct division within the department, a division of tobacco use prevention and control. The division shall develop, implement, and administer the initiative established in this chapter and shall perform other duties as directed by this chapter or as assigned by the director of public health.

2. A commission on tobacco use prevention and control is established to develop policy, provide direction for the initiative, and perform all other duties as directed by this chapter or referred to the commission by the director of public health.

3. The commission shall consist of the following voting members who shall serve three-year, staggered terms:

a. Three members who are active with nonprofit health organizations that emphasize tobacco use prevention or who are active as health services providers, at the local level.

b. One member who is a retailer.

c. Three members who are active with health promotion activities at the local level in youth education, law enforcement, nonprofit services, or other activities relating to tobacco use prevention and control.

The members appointed under this subsection shall be appointed by the governor, subject to confirmation by the senate, pursuant to sections 2.32 and 69.19. At least one member appointed under this subsection shall be a member of a racial minority.

4. In addition to the members described in subsection 3, the membership of the commission shall include three voting members who are selected by the participants in the annual statewide youth summit of the initiative's youth program. The youth membership appointments are not subject to section 69.16 or 69.16A. However, the selection process shall provide for diversity among the members and at least one of the youth members shall be a female. These members shall also serve three-year staggered terms.

5. The commission shall also include the following ex officio, nonvoting members:

a. Four members of the general assembly, with not more than one member from each chamber being from the same political party. The majority leader of the senate and the minority leader of the senate shall each appoint one of the senate members. The majority leader of the house and the minority leader of the house of representatives shall each appoint one of the house members.

b. The presiding officer of the statewide youth executive body, selected by the delegates to the statewide youth summit.

6. In addition to the members of the council, the following agencies, organizations, and persons shall each assign a single liaison to the commission to provide assistance to the commission in the discharge of the commission's duties:

a. The department of education.

b. The drug policy coordinator.

c. The department of justice, office of the attorney general.

d. The department of human services.

e. The alcoholic beverages division of the department of commerce.

7. Citizen members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Citizen members shall be paid a per diem as specified in section 7E.6. Legislative members are eligible for per diem and expenses as provided in section 2.10.

8. A member of the commission who is convicted of a crime relating to tobacco, alcohol, or controlled substances is subject to removal from the commission.

9. The commission may designate an advisory council. The commission shall determine the membership and representation of the advisory council and members of the council shall serve at the pleasure of the commission. The advisory council may include representatives of health care provider groups, parent groups, antitobacco advocacy programs and organizations, tobacco retailers, research and evaluation experts, and youth organizers.

10. A vacancy on the commission other than for the youth members shall be filled in the same manner as the original appointment for the balance of the unexpired term. A youth member vacancy shall be filled by the presiding officer of the statewide executive body as selected by the delegates to the statewide youth summit. The commission shall elect a chairperson from among its

voting members and may select other officers from among its voting members, as determined necessary by the commission. The commission shall meet regularly as determined by the commission, upon the call of the chairperson, or upon the call of a majority of the voting members.

2000 Acts, ch 1192, §3, 17

Initial appointments to the commission on tobacco use prevention and control; 2000 Acts, ch 1192, §13, 17

142A.4 Commission duties.

The commission shall do all of the following:

1. Develop and implement the comprehensive tobacco use prevention and control initiative as provided in this chapter.

2. Provide a forum for the discussion, development, and recommendation of public policy alternatives in the field of tobacco use prevention and control.

3. Develop an educational component of the initiative. Educational efforts provided through the school system shall be developed in conjunction with the department of education.

4. Develop a plan for implementation of the initiative in accordance with the purpose and intent specified in section 142A.1.

5. Provide for technical assistance, training, and other support under the initiative.

6. Take actions to develop and implement a statewide system for the initiative programs that are delivered through community partnerships.

7. Manage and coordinate the provision of funding and other moneys available to the initiative by combining all or portions of appropriations or other revenues as authorized by law.

8. Assist with the linkage of the initiative with child welfare and juvenile justice decategorization projects, education programming, community empowerment areas, and other programs and services directed to youth at the state and community level.

9. Coordinate and respond to any requests from a community partnership relating to any of the following:

a. Removal of barriers to community partnership efforts.

b. Pooling and redirecting of existing federal, state, or other public or private funds available for purposes that are consistent with the initiative.

c. Seeking of federal waivers to assist community partnership efforts.

In coordinating and responding to the requests, the commission shall work with state agencies, the governor, and the general assembly as necessary to address requests deemed appropriate by the commission.

10. Adopt rules pursuant to chapter 17A as necessary for the designation, governance, and oversight of the initiative and the implementation of this chapter. The commission shall provide for community partnership and youth program input in the rules adoption process. The rules shall include but are not limited to all of the following:

a. Performance indicators for initiative programs, community partnerships, and the services provided under the auspices of community partnerships. The performance indicators shall be developed with input from communities.

b. Minimum standards to further the provision of equal access to services.

11. Monitor and evaluate the effectiveness of performance measures utilized under the initiative.

12. Submit a report to the governor and the general assembly on a periodic basis, during the initial year of operation, and on an annual basis thereafter, regarding the initiative, including demonstrated progress based on performance indicators. The commission shall report more frequently if requested by the joint appropriations subcommittee that makes recommendations concerning the commission's budget. Beginning July 1, 2005, the commission shall also perform a comprehensive review of the initiative and shall submit a report of its findings to the governor and the general assembly on or before December 15, 2005.

13. Approve contracts entered into with the alcoholic beverages division of the department of commerce, to provide for enforcement of tobacco laws and regulations.

14. Advise the director in evaluating potential candidates for the position of administrator, consult with the director in the hiring of the administrator, and review and advise the director on the performance of the administrator in the discharge of the administrator's duties.

15. Prioritize funding needs and the allocation of moneys appropriated and other resources available for the programs and activities of the initiative.

16. Ensure that sufficient resources are available to promote and ensure retailer compliance with tobacco laws and ordinances relating to minors and ensure that compliance with 42 U.S.C. § 300X-26 is prioritized when allocating funds under this chapter.

17. Review fiscal needs of the initiative and make recommendations to the director in the development of budget requests.

18. Solicit and accept any gift of money or property, including any grant of money, services, or property from the federal government, the state, a political subdivision, or a private source that is consistent with the goals of the initiative. The commission shall adopt rules prohibiting the acceptance of gifts from a manufacturer of tobacco products.

19. Advise and make recommendations to the governor, the general assembly, the director, and the administrator, relative to tobacco use, treatment, intervention, prevention, control, and education programs in the state.

20. Evaluate the work of the division and the department relating to the initiative. For this pur-

pose, the commission shall have access to any relevant department records and documents, and other information reasonably obtainable by the department.

21. Develop the structure for the statewide youth summit to be held annually.

2000 Acts, ch 1192, §4, 17

142A.5 Director and administrator duties.

1. The director shall do all of the following:

a. Establish and maintain the division of tobacco use prevention and control.

b. Employ a division administrator who shall be responsible for the administration and oversight of the division. The division administrator shall report to and shall serve at the pleasure of the director. The administrator shall be exempt from the merit system provisions of chapter 19A.

c. Coordinate all tobacco use prevention and control programs and activities under the purview of the department.

d. Receive and review budget recommendations from the commission. The director shall consider these recommendations in developing the budget request for the department.

e. Enter into contracts with the alcoholic beverages division of the department of commerce, to provide enforcement of tobacco laws and regulations. Such contracts shall require that enforcement efforts include training of local authorities who issue retailer permits and education of retailers.

2. The administrator shall do all of the following:

a. Implement the initiative, coordinate the activities of the commission and the initiative, and coordinate other tobacco use prevention and control activities as assigned by the director.

b. Monitor and evaluate the effectiveness of performance measures.

c. Provide staff and administrative support to the commission.

d. Administer contracts entered into under this chapter.

e. Coordinate and cooperate with other tobacco use prevention and control programs within and outside of the state.

f. Coordinate the efforts of the division with tobacco law enforcement programs funded through the commission.

2000 Acts, ch 1192, §5, 17

142A.6 Comprehensive tobacco use prevention and control initiative established — purpose — results.

1. A comprehensive tobacco use prevention and control initiative is established. The division shall implement the initiative as provided in this chapter.

2. The purpose of the initiative is to attain the following results:

a. Reduction of tobacco use by youth.

b. Strong, active youth involvement in activities to prevent youth tobacco use and to promote cessation of youth tobacco use.

c. Enhanced capacity of youth to make healthy choices.

d. Reduction of tobacco use by pregnant women.

e. Increased compliance by minors and retailers with tobacco sales laws and ordinances.

3. Success in achieving the initiative's desired results may be demonstrated by a minimum of the following:

a. Data demonstrating consistent progress in reducing the prevalence of tobacco use among youth and adults.

b. Survey results indicating widespread support among youth for the initiative's tobacco use prevention and control activities; for programs that enhance the ability of youth to make healthy choices including those related to use of tobacco, alcohol, and other substances; and for the media, marketing, and communications efforts supporting the initiative's desired results. Any survey conducted may also include an assessment of the effectiveness of tobacco use prevention and control activities in affecting other unhealthy youth behaviors including sexual activity and violent behavior.

c. Data demonstrating increased compliance by minors and retailers with tobacco sales laws and ordinances.

4. The division shall implement the initiative in a manner that ensures that youth are extensively involved in the decision making for the programs implemented under the initiative. The initiative shall also involve parents, schools, and community members in activities to achieve the results desired for the initiative. The division shall encourage collaboration at the state and local levels to maximize available resources and to provide flexibility to support community efforts.

5. Procurement of goods and services necessary to implement the initiative is subject to approval of the commission. Notwithstanding chapter 18 or any other provision of law to the contrary, such procurement may be accomplished by the commission under its own competitive bidding process which shall provide for consideration of such factors as price, bidder competence, and expediency in procurement.

6. In order to promote the tobacco use prevention and control partnership established in section 142A.1, the following persons shall comply with the following, as applicable:

a. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away cigarettes or tobacco products.

b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not provide free articles, products, commodities,

gifts, or concessions in any exchange for the purchase of cigarettes or tobacco products.

c. The prohibitions in this section do not apply to transactions between manufacturers, distributors, wholesalers, or retailers.

d. For the purpose of this subsection, manufacturer, distributor, wholesaler, retailer, and distributing agent mean as defined in section 453A.1.

2000 Acts, ch 1192, §6, 17

142A.7 Initiative components.

1. The initiative shall include but is not limited to all of the following:

a. Youth programs, designed to achieve the initiative's desired results, that are directed by youth participants for youth.

b. A media, marketing, and communications program to achieve the initiative's desired results. Advertising shall not include the name, voice, or likeness of any elected or appointed public official or of any candidate for elective office.

c. Independent evaluation of each component of the statewide initiative.

d. Ongoing statewide assessment of data, review of indicators used in assessing the effectiveness of the initiative, and evaluation of the initiative, its programs, and its marketing strategy. The initial baseline used to measure the effectiveness of the initiative shall be developed using existing, available indicators. Following development of the initial baseline, indicators of the effectiveness of the initiative shall be reviewed on at least an annual basis to ensure that the indicators used most accurately provide for measurement of such effectiveness. Primary emphasis in data assessment shall be on data relating to tobacco usage and may include data demonstrating the prevalence of tobacco use among youth and pregnant women, and the prevalence of the use of alcohol and other substances among youth. Sources of data considered shall include but are not limited to the centers for disease control and prevention of the United States department of health and human services and the Iowa youth tobacco survey, and may include the Iowa youth risk survey conducted by the department or the youth risk behavior survey.

e. A tobacco use prevention and control education program.

f. An enforcement program.

2. Administrative costs associated with each program of the initiative and program provider shall be established at a reasonable level consistent with effective management practices.

3. Requests for information or for proposals shall emphasize that performance measures are required for any contract or allocation of funding under the initiative.

2000 Acts, ch 1192, §7, 17

142A.8 Community partnerships.

1. A community partnership is a public agency or nonprofit organization operating in a local area under contract with the department to implement the initiative in that local area utilizing broad community involvement. The community partnership or its designee shall act as the fiscal agent for moneys administered by the community partnership.

2. A community partnership area shall encompass a county or multicounty area, school district or multischool district area, economic development enterprise zone that meets the requirements of an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, or community empowerment area, in accordance with criteria adopted by the commission for appropriate population levels and size of geographic areas.

3. The commission shall adopt rules pursuant to chapter 17A providing procedures for the initial designation of community partnership areas and for subsequent changes to the initially designated areas.

4. The requirements for contracts entered into by a community partnership and the department shall include but are not limited to all of the following:

a. Administrative functions.

b. Fiscal provisions.

c. Community and youth involvement in program and administrative decisions.

d. Law enforcement involvement.

e. Evaluation of the program.

2000 Acts, ch 1192, §8, 17

142A.9 Youth program.

1. A youth program component shall be implemented in each community partnership area to achieve the purposes of the initiative.

2. The youth program shall include but is not limited to all of the following:

a. A structure for program participants to interact with other participating youth within the community partnership area and in other areas of the state.

b. A structure for formal youth involvement in youth program governance at the community partnership area level and in a statewide youth summit or summits consisting of participation by representatives of the community partnership area level.

c. A structure for participation in a statewide executive body consisting of participants selected by the delegates to the statewide youth summit of the youth program.

d. Youth activities that are character-based and focused on rewarding appropriate values, behavior, and healthy choices by participants.

3. To the greatest extent possible, the youth program shall be directed by youth for youth participants. State and local administrators associated with the initiative shall consult with and utilize the youth program participants in the media, marketing, and communications program; education efforts; and other aspects of the initiative including evaluation, collaboration, and enforcement.

2000 Acts, ch 1192, §9, 17

142A.10 Funding of programs delivered through community partnerships.

1. The commission shall develop and implement a statewide system for the initiative programs that are delivered through community partnerships.

2. The system shall provide for equitable allocation of funding for initiative programs among the state's community partnership areas, based upon school-age population and other criteria established by the commission.

3. The specific programs, distribution provisions, and other provisions approved by the commission for expenditure of the maximum allocation amount established for a community partnership area shall be outlined in the written contract with the community partnership.

4. Any allocation received by a community partnership shall be matched with local funding, in-kind services, office support, or other tangible support or offset of costs.

2000 Acts, ch 1192, §10, 17

142A.11 Repeal.

This chapter is repealed June 30, 2010.

2000 Acts, ch 1192, §11, 17

CHAPTER 142B

SMOKING PROHIBITIONS

This chapter not enacted as a part of this title; transferred from chapter 98A in Code 1993

142B.1 Definitions.
142B.2 Prohibition.
142B.3 Responsibilities of proprietors.
142B.4 Areas posted.
142B.5 Reserved.
142B.6 Civil penalty for violation — uniform application.

142B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Bar"* means an establishment or portion of an establishment where one can purchase and consume alcoholic beverages as defined in section 123.3, subsection 4, but excluding any establishment or portion of the establishment having table and seating facilities for serving of meals to more than fifty people at one time and where, in consideration of payment, meals are served at tables to the public.

2. *"Public meeting"* means a gathering in person of the members of a governmental body, whether an open or a closed session under chapter 21.

3. *"Public place"* means any enclosed indoor area used by the general public or serving as a place of work containing two hundred fifty or more square feet of floor space, including, but not limited to, all restaurants with a seating capacity greater than fifty, all retail stores, lobbies and malls, offices, including waiting rooms, and other commercial establishments; public conveyances with departures, travel, and destination entirely within this state; educational facilities; hospitals, clinics, nursing homes, and other health care and medical facilities; and auditoriums, elevators, theaters, libraries, art museums, concert halls, indoor arenas, and meeting rooms. *"Public place"* does not include a retail store at which fifty percent or more of the sales result from the sale of tobacco or tobacco products, the portion of a retail store where tobacco or tobacco products are sold, a private, enclosed office occupied exclusively by smokers even though the office may be visited by nonsmokers, a room used primarily as the residence of students or other persons at an educational facility, a sleeping room in a motel or hotel, or each resident's room in a health care facility. The person in custody or control of the facility shall provide a sufficient number of rooms in which smoking is not permitted to accommodate all persons who desire such rooms.

4. *"Smoking"* means the carrying of or control over a lighted cigar, cigarette, pipe, or other lighted smoking equipment.

[C79, 81, §98A.1]

87 Acts, ch 219, §1; 90 Acts, ch 1189, §1

C93, §142B.1

142B.2 Prohibition.

1. A person shall not smoke in a public place or in a public meeting except in a designated smoking area. This prohibition does not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place. This prohibition does not apply to factories, warehouses, and similar places of work not usually frequented by the general public, except that an employee cafeteria in such place of work shall have a designated nonsmoking area.

2. Smoking areas may be designated by persons having custody or control of public places, except in places in which smoking is prohibited by the fire marshal or by other law, ordinance, or regulation.

3. Where smoking areas are designated, existing physical barriers and existing ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. In the case of public places consisting of a single room, the provisions of this law shall be considered met if one side of the room is reserved and posted as a nosmoking area. No public place other than a bar shall be designated as a smoking area in its entirety. If a bar has within its premises a nonsmoking area, this designation shall be posted on all entrances normally used by the public.

If the public place is subject to any state inspection process or under contract with the state, the person performing the inspection shall check for compliance with the posting requirement.

A facility inspected by the department of inspections and appeals shall be inspected by the department for compliance with sections 142B.3 and 142B.4.

4. Notwithstanding subsection 1 of this section, smoking is prohibited on elevators.

[C79, 81, §98A.2]
87 Acts, ch 219, §2; 90 Acts, ch 1189, §2
C93, §142B.2

142B.3 Responsibilities of proprietors.

The person having custody or control of a public place or public meeting shall make reasonable efforts to prevent smoking in the public place or public meeting by posting appropriate signs indicating no-smoking or smoking areas and arranging seating accordingly.

[C79, 81, §98A.3]
87 Acts, ch 219, §3
C93, §142B.3

142B.4 Areas posted.

A person having custody or control of a public place or public meeting shall cause signs to be posted within the appropriate areas of the facility advising patrons of smoking and no-smoking areas. In addition the statement *"Smoking prohibited except in designated areas"* shall be conspicuously posted on all major entrances to the public place or public meeting.

[C79, 81, §98A.4]
87 Acts, ch 219, §4
C93, §142B.4

142B.5 Reserved.

142B.6 Civil penalty for violation — uniform application.

A person who smokes in those areas prohibited in section 142B.2, or who violates section 142B.4, shall pay a civil fine pursuant to section 805.8C, subsection 3, paragraph *"a"*, for each violation.

Judicial magistrates shall hear and determine violations of this chapter. The civil penalties paid pursuant to this chapter shall be deposited in the county treasury.

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

[C79, 81, §98A.6]
83 Acts, ch 123, §52, 209; 87 Acts, ch 219, §5; 90 Acts, ch 1189, §3
C93, §142B.6
2001 Acts, ch 137, §5

CHAPTER 142C

UNIFORM ANATOMICAL GIFT ACT

Effective July 1, 1995; for applicability of this chapter and former chapter 142A, see §142C.13

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142C.1 Short title.

This chapter shall be known and may be cited as the *"Uniform Anatomical Gift Act"*.

95 Acts, ch 39, §1

142C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Anatomical gift"* means a donation, effective upon or after the death of the donor, of all or part of the human body of the donor.

2. *"Bank or storage organization"* means a person licensed, accredited, certified, registered, or approved under the laws of any state for the procurement, removal, preservation, storage, or distribution of human bodies or parts.

3. *"Decedent"* means a deceased individual and includes a stillborn infant or fetus.

4. *"Document of gift"* means a card signed by an individual donor, a written statement attached to or imprinted or noted on a driver's license or nonoperator's identification card, an entry in a donor registry, a donor's will, or any other written document used by a donor to make an anatomical gift.

5. *"Donor"* means an individual who makes an anatomical gift.

6. *"Donor registry"* means the statewide organ and tissue donor registry established pursuant to section 142C.18 or a similar registry.

7. *"Enucleator"* means an individual who is certified by the department of ophthalmology of the university of Iowa college of medicine or by the eye bank association of America to remove or process eyes or parts of eyes.

8. *"Hospital"* means a hospital licensed under chapter 135B, or a hospital licensed, accredited, or approved under federal law or the laws of any other state, and includes a hospital operated by the federal government, a state, or a political subdivision of a state, although not required to be licensed under state laws.

9. *"Medical examiner"* means an individual who is appointed as a medical examiner pursuant to section 331.801 or 691.5.

10. *"Organ procurement organization"* means an organization that performs or coordinates the performance of retrieving, preserving, or transplanting organs, which maintains a system of locating prospective recipients for available organs, and which is registered with the united network for organ sharing and designated by the United States secretary of health and human services pursuant to 42 C.F.R. § 485, subpt. D.

11. *"Part"* means organs, tissues, eyes, bones, vessels, whole blood, plasma, blood platelets, blood derivatives, fluid, or any other portion of a human body.

12. *"Person"* means person as defined in section 4.1.

13. *"Physician"* or *"surgeon"* means a physician, surgeon, or osteopathic physician and surgeon, licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

14. *"State"* means any state, district, commonwealth, territory, or insular possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

15. *"Technician"* means an individual who is licensed, certified, or approved by an organ procurement organization or who is certified, or approved by a bank or storage organization to procure, remove, process, preserve, store, or distribute a part.

95 Acts, ch 39, §2; 2001 Acts, ch 74, §3; 2002 Acts, ch 1064, §1, 2

Subsection 4 amended

NEW subsection 6 and former subsections 6 – 14 renumbered as 7 – 15

142C.3 Donation of anatomical gifts — persons who may execute — manner of executing.

1. A competent individual who is at least eighteen years of age, or a minor fourteen through seventeen years of age with written consent of a parent or legal guardian, may make an anatomical gift for one or more of the purposes listed in section 142C.5, may limit an anatomical gift to one or more of the purposes listed in section 142C.5, or may refuse to make an anatomical gift, the gift to take effect upon the death of the donor.

2. An anatomical gift may be made only by completion of a document of gift or as otherwise provided in this section. If the prospective donor is a minor fourteen through seventeen years of

age, to be valid, a document of gift shall be signed by the minor and the minor's parent or legal guardian. If the document of gift requires the signature of the donor, but the donor is unable to sign the document, the document of gift shall be signed by another individual and by two witnesses, all of whom sign at the direction and in the presence of the donor, the other individual, and the two witnesses. The document of gift, including an entry in a donor registry, shall provide certification that the document has been executed in the prescribed manner.

3. If a donor indicates the wish to become a donor, pursuant to section 321.189, and the indication is attached to or imprinted or noted on an individual's driver's license or nonoperator's identification card, or if a donor indicates the wish to become a donor via an entry in a donor registry and the entry is certified as being executed in the prescribed manner, the document, including an entry in a donor registry, shall be considered a valid document of gift.

4. A document of gift may designate a particular physician, technician, or enucleator to perform the appropriate procedures. In the absence of a designation or if the designee is not available to perform the procedures, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, technician, or enucleator to perform the appropriate procedures.

5. A document of gift by will takes effect upon the death of the testator, whether or not the will is probated. For the purposes of a document of gift by will, invalidation of the will for testamentary purposes does not result in the invalidation of the document of gift.

6. A donor may amend or revoke a document of gift by any of the following means:

a. A signed statement, executed by the donor.

b. An oral statement made by the donor in the presence of two individuals.

c. Any form of communication during a terminal illness or injury addressed to a health care professional, licensed or certified pursuant to chapter 148, 148C, 150A, or 152.

d. The delivery of a written statement, signed by the donor, to a specified donee to whom a document of gift has been delivered.

7. The donor of an anatomical gift made by will may amend or revoke the gift as provided in subsection 6 or in the manner provided for amendment or revocation of wills.

8. A document of gift that is not revoked by the donor prior to the donor's death does not require the consent or concurrence of any other person after the donor's death and is sufficient legal authority, following the donor's death, for the removal of any part donated under the document of gift, without the consent or concurrence of any other person. A person, including but not limited to a family member, a guardian, an attorney in fact named under a durable power of attorney for health care, or an executor of the donor's estate, is not authorized to and shall not revoke or in any way supersede a document of gift that is not revoked by the donor prior to the donor's death.

9. An individual may refuse to make an anatomical gift of the individual's body or part by completing any written document expressing the individual's refusal to make an anatomical gift. During a terminal illness or injury, the refusal may be by an oral statement or other form of unwritten communication addressed to a health care professional licensed or certified under chapter 148, 148C, 150A, or 152.

10. In the absence of a contrary indication by the donor, an anatomical gift of a part does not constitute a refusal to donate other parts nor does it constitute a limitation on an anatomical gift made pursuant to section 142C.4.

11. In the absence of a contrary indication by the donor, a revocation or amendment of an anatomical gift does not constitute a refusal to make a subsequent anatomical gift. If the donor intends a revocation to constitute a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection 9.

12. A document of gift may be in the form of a specific donor card such as an eye donor card, a uniform donor card, a driver's license, a nonoperator's identification card, an entry in a donor registry, a will, or any other written document executed pursuant to this chapter. A uniform donor card shall include the options of donating any and all parts, or any specific part or parts. A uniform donor card may, but is not required to, be in the following form:

UNIFORM DONOR CARD

I, ... , have made a commitment to be an anatomical gift donor.

I wish to donate the following:

. . . . . Any needed part . . . . . Only the following part

. . . . . .

Donor Signature . . . . . Date . . . . . .

95 Acts, ch 39, §3; 2002 Acts, ch 1064, §3, 4
Subsections 2 and 3 amended
Subsection 8 stricken and rewritten
Subsection 12 amended

142C.4 Donation of anatomical gifts by individuals other than the donor.

1. Any available member of the following classes of persons, in the order of priority listed, may make an anatomical gift of a decedent's body or parts for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make an anatomical gift:

a. The attorney in fact pursuant to a durable power of attorney for health care.

b. The spouse of the decedent.

c. An adult child of the decedent.

d. A parent of the decedent.

e. An adult sibling of the decedent.

f. A grandparent of the decedent.

g. A guardian of the decedent at the time of the decedent's death.

2. An anatomical gift shall not be made by a person listed in subsection 1 if any of the following conditions apply:

a. A person in a prior class is available, in person or by telephone contact, at the time of the death of the decedent to make an anatomical gift.

b. The person proposing to make an anatomical gift knows of a refusal by the decedent to make an anatomical gift.

c. The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

3. An anatomical gift by a person authorized under subsection 1 shall be made by execution of a document of gift signed by the person or by the person's telegraphic, recorded telephonic, or other recorded message, or by any other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient of the communication.

4. An anatomical gift by a person authorized under subsection 1 may be revoked by any member of the same or prior class if, before the procedures have begun for removal of a part from the body of the decedent, the physician, technician, or enucleator performing the removal procedures is notified of the revocation.

5. Failure to make an anatomical gift under subsection 1 does not constitute an objection to the making of an anatomical gift.

95 Acts, ch 39, §4; 2002 Acts, ch 1064, §5

Subsection 2, paragraph a amended

142C.4A Authority of medical examiner — release and removal of part for making of anatomical gift.

1. A medical examiner may permit the removal of a part from a body in the custody of the medical examiner and may release the part for any purpose authorized pursuant to section 142C.5 if the body of the decedent cannot be identified or if the next of kin of the decedent cannot be located, and if all of the following conditions are met:

a. The medical examiner has received a request for the part from a hospital, physician, organ procurement organization, or bank or storage organization.

b. Given the useful life of the specific part, the medical examiner is satisfied that a reasonable effort has been made by the organ procurement organization or bank or storage organization to locate and examine the decedent's medical records and to inform a person specified in section 142C.4 of the option to make or object to the making of an anatomical gift.

c. The medical examiner does not know of a refusal or contrary indication by the decedent or of an objection by a person having priority to act pursuant to section 142C.4 regarding the making of an anatomical gift.

d. The medical examiner does not know that the decedent, at the time of death, was a member of a religion, church, sect, or denomination which relies solely upon prayer for the healing of disease or which has religious tenets that would be violated by the disposition of the decedent's body or part for any of the purposes provided pursuant to section 142C.5.

e. Removal of a part will be performed by a physician, technician, or enucleator.

f. Removal of a part will not significantly alter or compromise the results of any autopsy or investigation.

g. Removal of a part will be in accordance with accepted medical standards.

h. Cosmetic restoration will be performed, if appropriate.

i. The person's death is not a death which affects the public interest as defined in section 331.802, or if the death is a death which affects the public interest, any investigation relating to the decedent's death has been completed.

2. The medical examiner releasing and permitting the removal of a part shall maintain a permanent record of all of the following:

a. The name of the decedent, if available.

b. The date and time of the release of the body or part and the name of the person to whom the body or part was released.

96 Acts, ch 1048, §1

142C.5 Requirements — acceptable donees and purposes for which anatomical gifts may be made.

1. The following persons may be donees of anatomical gifts for the purposes stated:

a. A hospital, physician, organ procurement organization, or bank or storage organization for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science.

b. An accredited medical or dental school, college, or university for education, research, or the advancement of medical or dental science.

c. A designated individual for transplantation or therapy needed by the individual.

2. An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any person listed in subsection 1.

3. If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift

or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class listed in section 142C.4, the donee shall not accept the anatomical gift.

95 Acts, ch 39, §5

142C.6 Delivery of document of gift.

1. Validity of an anatomical gift does not require delivery of the document of gift during the donor's lifetime.

2. If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after the death of the donor. The document of gift, or a copy, may be deposited in any hospital, organ procurement organization, bank or storage organization, or donor registry office that accepts the document of gift for safekeeping or for the facilitation of procedures after the death of the donor. If a document is deposited by a donor in a hospital, donor registry, or bank or storage organization, the hospital or bank or storage organization may forward the document to an organ procurement organization which will retain the document for facilitating procedures following the death of the donor. Upon request of a hospital, physician, or surgeon, upon or after the donor's death, the person in possession of the document of gift may allow the hospital, physician, or surgeon to examine or copy the document of gift.

95 Acts, ch 39, §6; 2002 Acts, ch 1064, §6
Subsection 2 amended

142C.7 Confidential information.

A hospital, licensed or certified health care professional pursuant to chapter 148, 148C, 150A, or 152, or medical examiner may release patient information to an organ procurement organization, donor registry, or bank or storage organization as part of a referral or retrospective review of the patient as a potential donor. Additionally, a medical examiner or a medical examiner's designee, peace officer, fire fighter, or emergency medical care provider may release an individual's identifying information to an organ procurement organization, donor registry, or bank or storage organization to determine if the individual is a donor. Any information regarding a patient, including the patient's identity, however, constitutes confidential medical information and under any other circumstances is prohibited from disclosure without the written consent of the patient or the patient's legal representative.

95 Acts, ch 39, §7; 96 Acts, ch 1048, §2; 2002 Acts, ch 1064, §7
Section amended

142C.8 Rights and duties at death.

1. The rights of a donee created by an anatomical gift are superior to the rights of any other person except with respect to autopsies pursuant to section 142C.11.

2. A donee may accept or reject an anatomical gift of an entire body or part. If the donee accepts the entire body as a gift, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed with minimal alteration to body appearance. Following removal of the part, custody of the remainder of the body vests in the person under a legal obligation to dispose of the body.

3. The time of death shall be determined by a physician who attends the donor at death, as defined in section 702.8, or, if no attending physician is present, the physician who certifies the death. The physician who attends the donor at death and the physician who certifies the time of death shall not participate in the procedures for removing or transplanting a part of the decedent. A medical examiner acting to determine the time of death or to certify the death, however, may remove a part if otherwise in accordance with this chapter.

4. If an anatomical gift is made, a physician or technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician.

5. A donee may presume that a document of gift is valid absent actual knowledge to the contrary.

95 Acts, ch 39, §8

142C.9 Coordination of procurement and use.

Each hospital in the state shall establish agreements or affiliations for coordination of procurement and use of human parts with an organ procurement organization for any purpose stated in section 142C.5.

95 Acts, ch 39, §9

142C.10 Sale or purchase of parts prohibited.

1. A person shall not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

2. Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, distribution, transportation, or implantation of a part.

3. A person who violates this section is guilty of a class "C" felony and is subject to imprisonment not to exceed ten years and notwithstanding section 902.9, to a fine not to exceed two hundred fifty thousand dollars, or both.

95 Acts, ch 39, §10

142C.11 Examination, autopsy, liability.

1. An anatomical gift is subject to reasonable examination, including but not limited to an autopsy, human immunodeficiency virus testing, and testing for communicable disease, which is necessary to ensure medical acceptability of the gift for the purposes intended.

2. Anatomical gifts made pursuant to this chapter are subject to the laws governing autopsies.

3. A hospital, funeral establishment, health care professional licensed or certified pursuant to chapter 148, 148C, 150A, or 152, a medical examiner or a medical examiner's designee, technician, enucleator, peace officer, fire fighter, emergency medical care provider, funeral director, or other person, who complies with this chapter in good faith or with the applicable anatomical gift law of another state, or who attempts in good faith to comply, is immune from any liability, civil or criminal, which might result from the making or acceptance of an anatomical gift.

4. An individual who makes an anatomical gift pursuant to section 142C.3 or 142C.4 and the individual's estate are not liable for any injury or damages that may result from the making or the use of the anatomical gift, if the gift is made in good faith.

95 Acts, ch 39, §11; 2002 Acts, ch 1064, §8
Subsection 3 amended

142C.12 Service but not a sale.

The procurement, removal, preservation, processing, storage, distribution, or use of parts for the purpose of injecting, transfusing, or transplanting any of the parts into the human body is, for all purposes, the rendition of a service by every person participating in the act, and whether or not any remuneration is paid, is not a sale of the part for any purposes. However, any person that renders such service warrants only under this section that due care has been exercised and that acceptable professional standards of care in providing such service according to the state of the medical arts have been followed. Strict liability, in tort, shall not be applicable to the rendition of such services.

95 Acts, ch 39, §12

142C.13 Transitional provisions.

This chapter applies to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to the making of an anatomical gift on or after July 1, 1995. A document of gift, revocation, or refusal to make an anatomical gift pursuant to the law in effect prior to July 1, 1995, shall not be affected by the provisions of this chapter.

95 Acts, ch 39, §13; 95 Acts, ch 209, §20

142C.14 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate the general purpose to make uniform the law with respect to anatomical gifts among states which enact this law.

95 Acts, ch 39, §14

142C.15 Anatomical gift public awareness and transplantation fund — established — uses of fund.

1. An anatomical gift public awareness and transplantation fund is created as a separate fund in the state treasury under the control of the Iowa department of public health. The fund shall consist of moneys remitted by the county treasurer of a county or by the department of transportation which were collected through the payment of a contribution made by an applicant for registration of a motor vehicle pursuant to section 321.44A and any other contributions to the fund.

2. The moneys collected under this section and deposited in the fund are appropriated to the Iowa department of public health for the purposes specified in this section. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose.

3. The treasurer of state shall act as custodian of the fund and shall disburse amounts contained in the fund as directed by the department. The treasurer of state may invest the moneys deposited in the fund. The income from any investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes of this section.

4. The Iowa department of public health may use not more than five percent of the moneys in the fund for administrative costs. The remaining moneys in the fund may be expended through grants to any of the following persons, subject to the following conditions:

a. Not more than twenty percent of the moneys in the fund annually may be expended in the form of grants to state agencies or to nonprofit legal entities with an interest in anatomical gift public awareness and transplantation to conduct public awareness projects or to research and develop a statewide organ and tissue donor registry. Grants shall be made based upon the submission of a grant application by an agency or entity to conduct a public awareness project or to research and develop a statewide organ and tissue donor registry.

b. Not more than thirty percent of the moneys in the fund annually may be expended in the form of grants to hospitals for reimbursement for costs directly related to the development of in-hospital anatomical gift public awareness projects, ana-

tomical gift referral protocols, and associated administrative expenses. As a condition of receiving a grant, a hospital shall demonstrate, through documentation, that the hospital, during the previous calendar year, properly complied with in-hospital anatomical gift request protocols for all deaths occurring in the hospital at a percentage rate which places the hospital in the upper fifty percent of all protocol compliance rates for hospitals submitting documentation for cost reimbursement under this section.

c. Not more than fifty percent of the moneys in the fund annually may be expended in the form of grants to hospitals which perform heart, lung, liver, pancreas, or kidney transplants. As a condition of receiving a grant, a hospital shall demonstrate, through documentation, that the hospital, during the previous calendar year, properly complied with in-hospital anatomical gift request protocols for all deaths occurring in the hospital at a percentage rate which places the hospital in the upper fifty percent of all protocol compliance rates for hospitals submitting documentation for cost reimbursement under this section. The hospital shall submit an application on behalf of a patient requiring a transplant in the amount of the costs associated with the following, if funds are not available from any other third-party payor:

(1) The costs of the organ transplantation procedure.

(2) The costs of post-transplantation drug or other therapy.

(3) Other transplantation costs including but not limited to food, lodging, and transportation.

96 Acts, ch 1076, §1; 98 Acts, ch 1015, §1; 2000 Acts, ch 1052, §1

142C.16 Anatomical gift public awareness advisory committee — established — duties.

1. The Iowa department of public health shall establish an anatomical gift public awareness advisory committee. Members shall include a representative of each of the following, appointed by the respective entity or that entity's successor:

a. A state organ procurement organization.

b. The Iowa medical society.

c. The Iowa hospital association.

d. The osteopathic medical association.

e. A bank or storage organization.

f. The Iowa chapter of the national association of social workers. The representative shall be a member of the association knowledgeable in anatomical gifts.

g. The Iowa funeral directors association.

h. The Iowa department of public health.

i. The department of human services.

j. The department of inspections and appeals.

2. Members shall serve staggered terms of two years. Appointments of members of the committee shall comply with sections 69.16 and 69.16A. Vacancies shall be filled by the original appointing authority and in the manner of the original appointment.

3. Members shall receive actual expenses incurred while serving in their official capacity and may also be eligible to receive compensation as provided in section 7E.6.

4. The committee shall annually select a chairperson from its membership. A majority of the members of the committee shall constitute a quorum.

5. The advisory committee shall assist the department in all of the following activities:

a. Accepting and awarding grants to promote the donation of anatomical gifts.

b. Establishing criteria for the application for and awarding of grants to promote the donation of anatomical gifts.

c. Examining the anatomical gifts system to identify improvements or enhancements to promote anatomical gifts.

d. Recommending legislation to improve state law regarding anatomical gifts.

96 Acts, ch 1076, §2; 2001 Acts, ch 74, §4

142C.17 Annual donation and compliance report.

The Iowa department of public health, in conjunction with any statewide organ procurement organization in Iowa, shall prepare and submit a report to the general assembly on or before January 1 each year regarding organ donation rates and voluntary compliance efforts with hospital organ and tissue donation protocols by physicians, hospitals, and other health systems organizations. The report shall contain the following:

1. An evaluation of organ procurement efforts in the state, including statistics regarding organ and tissue donation activity as of September 30 of the preceding year.

2. Efforts by any statewide organ procurement organization in Iowa, and related parties, to increase organ and tissue donation and consent rates.

3. Voluntary compliance efforts with hospital organ and tissue donation protocols by physicians, hospitals, and health systems organizations and the results of those efforts.

4. Annual contribution levels to the anatomical gift public awareness and transplantation fund created in section 142C.15, and any distributions made from the fund.

5. Efforts and ideas for increasing public awareness of the option of organ and tissue donation.

6. Additional information deemed relevant by the department in assessing the status and progress of organ and tissue donation efforts in the state.

98 Acts, ch 1015, §2

142C.18 Statewide organ and tissue donor registry.

The director of public health may contract for the establishment of a statewide organ and tissue donor registry. The contract shall provide for a centralized database and automated system to make organ and tissue donor information available to family members and physicians seven days a week, twenty-four hours per day. The registry shall be used to compile the organ and tissue donation information received by the state department of transportation, county treasurers, attorneys, organ donation awareness programs, and others.

The director of public health shall work with the state department of transportation, county treasurers, and the Iowa organ donor network in developing specifications for the registry. Consideration shall be given to implementing an automated toll-free hotline and providing internet access to the registry.

2000 Acts, ch 1052, §2

Study of feasibility of implementation of registry; 2000 Acts, ch 1052, §3

CHAPTER 143

PUBLIC HEALTH NURSES

143.1 Authority to employ.
143.2 Co-operation.
143.3 Duties.

143.1 Authority to employ.

Any local board of health, area education agency board, or the school board of any school district may employ public health nurses at periods each year and in numbers as deemed advisable. The council of any city, or the school board of any school district, or any of them acting in co-operation, may contract with any nonprofit nurses' association for public health nursing service. The compensation and expenses shall be paid out of the general fund of the political subdivision employing nurses.

[C24, 27, 31, 35, 39, §**2362;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §143.1; 81 Acts, ch 117, §1018]

143.2 Co-operation.

The said boards may co-operate in the employment of public health nurses and may apportion the expenses therefor to the various political subdivisions represented by said authorities.

[C24, 27, 31, 35, 39, §**2363;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §143.2]

143.3 Duties.

The authorities employing any public health nurses shall prescribe their duties which in a general way shall be for the promotion and conservation of the public health.

[C24, 27, 31, 35, 39, §**2364;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §143.3]

CHAPTER 144

VITAL STATISTICS

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144.45A Commemorative birth and marriage certificates.
144.46 Fee for copy of record.
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144.52 Unlawful acts — punishment.
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144.54 Report to county attorney.
144.55 Attorney general to assist in enforcement.
144.56 Autopsy.
144.57 Vietnamese refugee children. Repealed by 84 Acts, ch 1219, §41.

144.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the state board of health.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"Court of competent jurisdiction"* when used to refer to inspection of an original certificate of birth based upon an adoption means the court where the adoption was ordered.

4. *"Dead body"* means a lifeless human body or parts or bones of a body, if, from the state of the body, parts, or bones, it may reasonably be concluded that death recently occurred.

5. *"Department"* means the Iowa department of public health.

6. *"Division"* means a division, within the department, for records and statistics.

7. *"Fetal death"* means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. Death is indicated by the fact that after expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. In determining a fetal death, heartbeats shall be distinguished from transient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.

8. *"Filing"* means the presentation of a certificate, report, or other record, provided for in this chapter, of a birth, death, fetal death, adoption, marriage, dissolution, or annulment for registration by the division.

9. *"Final disposition"* means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.

10. *"Institution"* means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more unrelated individuals, or to which persons are committed by law.

11. *"Live birth"* means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. In determining a live birth, heartbeats shall be distinguished from transient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.

12. *"Registration"* means the process by which vital statistic records are completed, filed, and incorporated by the division in the division's official records.

13. *"State registrar"* means the state registrar of vital statistics.

14. *"System of vital statistics"* includes the registration, collection, preservation, amendment, and certification of vital statistics records, and activities and records related thereto including the data processing, analysis, and publication of statistical data derived from such records.

15. *"Vital statistics"* means records of births,

deaths, fetal deaths, adoptions, marriages, dissolutions, annulments, and data related thereto.

[C24, 27, 31, 35, 39, §**2317, 2384;** C46, 50, 54, 58, 62, 66, §141.1, 144.1; C71, 73, 75, 77, 79, 81, §144.1]

83 Acts, ch 101, §21; 97 Acts, ch 159, §7; 99 Acts, ch 141, §14, 15; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

144.2 Division of records and statistics.

There is established in the department a division for records and statistics which shall install, maintain, and operate the system of vital statistics throughout the state. No system for the registration of births, deaths, fetal deaths, adoptions, marriages, dissolutions, and annulments, shall be maintained in the state or any of its political subdivisions other than the one provided for in this chapter. Suitable quarters shall be provided for the division by the executive council at the seat of government. The quarters shall be properly equipped for the permanent and safe preservation of all official records made and returned under this chapter.

[C24, 27, 31, 35, 39, §**2388, 2432;** C46, 50, 54, 58, 62, 66, §144.3, 144.49; C71, 73, 75, 77, 79, 81, §144.2]

83 Acts, ch 101, §22

144.3 Rules adopted.

The department may adopt, amend, and repeal rules for the purpose of carrying out the provisions of this chapter, in accordance with chapter 17A.

[C71, 73, 75, 77, 79, 81, §144.3]

144.4 Registrar.

The director of public health shall be the state registrar of vital statistics and shall carry out the provisions of this chapter.

[C24, 27, 31, 35, 39, §**2387;** C46, 50, 54, 58, 62, 66, §144.2; C71, 73, 75, 77, 79, 81, §144.4]

144.5 Duties of registrar.

The state registrar shall:

1. Administer and enforce this chapter and the rules issued hereunder, and issue instructions for the efficient administration of the statewide system of vital statistics and the division for records and statistics.

2. Direct and supervise the statewide system of vital statistics and the division for records and statistics and be custodian of its records.

3. Direct, supervise, and control the activities of clerks of the district court and county recorders related to the operation of the vital statistics system and provide registrars with necessary postage.

4. Prescribe, print, and distribute the forms required by this chapter and prescribe any other means for transmission of data, as necessary to accomplish complete, accurate reporting.

5. Prepare and publish annual reports of vital statistics of this state and other reports as may be required.

6. Delegate functions and duties vested in the state registrar to officers, to employees of the department, to the clerks of the district court, and to the county registrars as the state registrar deems necessary or expedient.

7. Provide, by rules, for appropriate morbidity reporting.

[C24, 27, 31, 35, 39, §**2393;** C46, 50, 54, 58, 62, 66, §144.8; C71, 73, 75, 77, 79, 81, §144.5; 81 Acts, ch 64, §1]

88 Acts, ch 1158, §33; 95 Acts, ch 124, §1, 2, 26; 97 Acts, ch 159, §8

144.6 Registration districts. Repealed by 88 Acts, ch 1158, § 102.

144.7 Local registrars. Repealed by 88 Acts, ch 1158, § 102.

144.8 Duties. Repealed by 88 Acts, ch 1158, § 102.

144.9 County recorder as registrar.

The county recorder is the county registrar and with respect to the county shall:

1. Administer and enforce this chapter and the rules issued by the department.

2. Record and transmit the certificates, reports, or other returns filed with the county registrar to the state registrar at least semimonthly, or more frequently when directed by the state registrar.

[C46, 50, 54, 58, 62, 66, §144.4, 144.10; C71, 73, 75, 77, 79, 81, §144.9]

88 Acts, ch 1158, §34; 95 Acts, ch 124, §3, 26

144.10 Fees. Repealed by 88 Acts, ch 1158, § 102.

144.11 Public access to records.

The county registrar shall allow public access to public records under the custody of the county registrar during normal business hours for county offices in the county.

95 Acts, ch 124, §4, 26

144.12 Forms uniform.

In order to promote and maintain uniformity in the system of vital statistics, the forms of certificates, reports, and other returns shall include as a minimum the items recommended by the federal agency responsible for national vital statistics, subject to approval and modification by the department. Forms shall be furnished by the department. The forms or other recording methods used to register records required under this chapter

shall be prescribed by the department.

[C71, 73, 75, 77, 79, 81, §144.12]

88 Acts, ch 1158, §35; 97 Acts, ch 159, §9

144.12A Declaration of paternity registry.

1. As used in this section, unless the context otherwise requires:

a. "Child" means a person under eighteen years of age for whom paternity has not been established.

b. "Court" means the juvenile court.

c. "Father" means the male, biological parent of a child.

d. "Putative father" means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of the birth of the child.

e. "Registrant" means a person who has registered pursuant to this section and who claims to be the father of a child.

f. "Registrar" means the state registrar of vital statistics.

g. "Registry" means the declaration of paternity registry established in this section.

2. *a.* The registrar shall establish a declaration of paternity registry to record the name, address, social security number, and any other identifying information required by rule of the department of a putative father who wishes to register under this section prior to the birth of a child and no later than the date of the filing of the petition for termination of parental rights.

b. The declaration does not constitute an affidavit of paternity filed pursuant to section 252A.3 and declarations filed shall be maintained by the registrar in a registry distinct from the registry used to maintain affidavits of paternity filed pursuant to section 252A.3. A declaration of paternity filed with the registry may be used as evidence of paternity in an action to establish paternity or to determine a support obligation with respect to the putative father.

c. Failure or refusal to file a declaration of paternity shall not be used as evidence to avoid a legally established obligation of financial support for a child.

3. A person who files a declaration of paternity with the registrar shall include in the declaration all of the following:

a. The person's name, current address, social security number, and any other identifying information requested by the department. If the person filing the declaration of paternity changes the person's address, the person shall notify the registrar of the new address in a manner prescribed by the department.

b. The name, last known address, and social security number, if known, of the mother of the child, or any other identifying information requested by the department.

c. The name of the child, if known, and the date and location of the birth of the child, if known.

d. The registrar shall accept a declaration of paternity filed in accordance with this section.

e. The registrar shall forward a copy of the declaration to the mother as notification that the person has registered with the registry.

f. The registrar shall accept and immediately register, upon receipt, a declaration of paternity without a fee and without the signature of the biological mother. The registrar may charge a reasonable fee as established by rule of the department for processing searches of the registry.

4. The department shall, upon request, provide the name, address, social security number, and any other identifying information of a registrant to the biological mother of the child; a court; the department of human services; the attorney of any party to an adoption, termination of parental rights, or establishment of paternity or support action; or to the child support recovery unit for an action to establish paternity or support. The information shall not be divulged to any other person and shall be considered a confidential record as to any other person, except upon order of the court for good cause shown. If the registry has not received a declaration of paternity, the department shall provide a written statement to that effect to the person making the inquiry.

5. *a.* Information provided to the registry may be revoked by the registrant by submission of a written statement signed and acknowledged by the registrant before a notary public.

b. The statement shall include a declaration that to the best of the registrant's knowledge, the registrant is not the father of the named child or that paternity of the true father has been established.

c. Revocation nullifies the registration and the information provided by the registrant shall be expunged.

d. Revocation is effective only following the birth of the child.

6. The department shall adopt rules necessary to implement and administer this section. The rules shall include establishment of sites throughout the state for local distribution of declaration of paternity registration forms.

94 Acts, ch 1174, §2; 95 Acts, ch 67, §12

144.13 Birth certificates.

1. Certificates of births shall be filed as follows:

a. A certificate of birth for each live birth which occurs in this state shall be filed as directed by the state registrar within seven days after the birth and shall be registered by the county registrar if it has been completed and filed in accordance with this chapter.

b. When a birth occurs in an institution or en route to an institution, the person in charge of the institution or the person's designated representa-

tive, shall obtain the personal data, prepare the certificate, and file the certificate as directed by the state registrar. The physician in attendance or the person in charge of the institution or the person's designee shall certify to the facts of birth either by signature or as otherwise authorized by rule and provide the medical information required by the certificate within seven days after the birth.

c. When a birth occurs outside an institution and not en route to an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth.

(2) Any other person in attendance at or immediately after the birth.

(3) The father or the mother.

(4) The person in charge of the premises where the birth occurred. The state registrar shall establish by rule the evidence required to establish the facts of birth.

d. The state registrar may share information from birth certificates for the sole purpose of identifying those children in need of immunizations.

e. If an affidavit of paternity is obtained directly from the county registrar and is filed pursuant to section 252A.3A the county registrar shall forward the original affidavit to the state registrar.

2. If the mother was married at the time of conception, birth, or at any time during the period between conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered by the department.

3. If the mother was not married at the time of conception, birth, and at any time during the period between conception and birth, the name of the father shall not be entered on the certificate of birth, unless a determination of paternity has been made pursuant to section 252A.3, in which case the name of the father as established shall be entered by the department. If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

4. The division shall make all of the following available to the child support recovery unit, upon request:

a. A copy of a child's birth certificate.

b. The social security numbers of the mother and the father.

c. A copy of the affidavit of paternity if filed pursuant to section 252A.3A and any subsequent recision form which rescinds the affidavit.

d. Information, other than information for medical and health use only, identified on a child's birth certificate or on an affidavit of paternity filed pursuant to section 252A.3A. The information may be provided as mutually agreed upon by the division and the child support recovery unit, including by automated exchange.

[C24, 27, 31, 35, 39, §**2397, 2398, 2399, 2400, 2401;** C46, 50, 54, 58, 62, 66, §144.12 – 144.16; C71, 73, 75, 77, 79, 81, §144.13]

88 Acts, ch 1158, §36; 90 Acts, ch 1052, §1; 92 Acts, ch 1097, §2; 93 Acts, ch 79, §9; 93 Acts, ch 116, §1; 94 Acts, ch 1171, §2, 3; 95 Acts, ch 94, §1; 97 Acts, ch 159, §10 – 12; 97 Acts, ch 175, §223 – 225; 99 Acts, ch 141, §16

144.13A Fees — use of funds.

The state registrar shall charge the parent a ten dollar fee for the registration of a certificate of birth and a separate fee established under section 144.46 for a certified copy of the certificate. The certified copy shall be mailed to the parent by the state registrar. If the person responsible for the filing of the certificate of birth under section 144.13 is not the parent, the person is entitled to collect the fee from the parent. The fee shall be remitted to the state registrar. If the expenses of the birth are reimbursed under the medical assistance program established by chapter 249A, or paid for under the statewide indigent patient care program established by chapter 255, or paid for under the obstetrical and newborn indigent patient care program established by chapter 255A, or if the parent is indigent and unable to pay the expenses of the birth and no other means of payment is available to the parent, the registration fee and certified copy fee are waived. If the person responsible for the filing of the certificate is not the parent, the person is discharged from the duty to collect and remit the fee under this section if the person has made a good faith effort to collect the fee from the parent. The fees collected by the state registrar shall be remitted to the treasurer of state for deposit in the general fund of the state. It is the intent of the general assembly that the funds generated from the registration fees be appropriated and used for primary and secondary child abuse prevention programs. It is the intent of the general assembly that the funds generated from the fees as established under section 144.46 for the mailing of the certified copy of the birth certificate be appropriated and used to support the distribution of the automatic birth certificate and the implementation of the electronic birth certificate system.

85 Acts, ch 173, §1; 87 Acts, ch 233, §428; 88 Acts, ch 1158, §37; 91 Acts, ch 243, §1; 92 Acts, ch 1097, §3; 95 Acts, ch 124, §5, 26; 99 Acts, ch 96, §13; 99 Acts, ch 141, §17

144.14 Foundlings.

A person who assumes the custody of a living infant of unknown parentage shall report on a form and in the manner prescribed by the state registrar within five days to the county registrar of the county in which the child was found, the following information:

1. The date and place of finding.
2. The sex, color or race, and approximate age of child.
3. The name and address of the person or institution which has assumed custody of the child.
4. The name given to the child by the custodian.
5. Other data required by the state registrar.

The place where the child was found shall be entered as the place of birth and the date of birth shall be determined by approximation. A report registered under this section shall constitute the certificate of birth for the infant.

If the child is identified and a certificate of birth is found or obtained, any report registered under this section shall be sealed and filed and may be opened only by order of a court of competent jurisdiction or as provided by regulation.

[C71, 73, 75, 77, 79, 81, §144.14]
88 Acts, ch 1158, §38

144.15 Delayed registrations of birth.

When the birth of a person born in this state has not been registered, a certificate may be filed in accordance with regulations. The certificate shall be registered subject to evidentiary requirements prescribed to substantiate the alleged facts of birth. Certificates of birth registered one year or more after the date of occurrence shall be marked "delayed" and shall show on their face the date of the delayed registration. A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate. A delayed certificate of birth shall not be registered for a deceased person.

When an applicant does not submit the substantiating evidence required for delayed registration or when the state registrar finds reason to question the validity or adequacy of the evidence, the state registrar shall not register the delayed certificate and shall advise the applicant of the reasons for this action. The registration official shall advise the applicant of the applicant's right of appeal to the district court pursuant to sections 144.17 and 144.18, which sections shall be applicable to such appeal notwithstanding the terms of the Iowa administrative procedure Act.

The department may by regulation provide for the dismissal of an application which is not actively prosecuted.

[C71, 73, 75, 77, 79, 81, §144.15]
97 Acts, ch 159, §13

144.16 Delayed registration of death or marriage.

When a death or marriage occurring in this state has not been registered, a certificate may be filed in accordance with regulations. Such certificate shall be registered subject to evidentiary requirements prescribed to substantiate the alleged facts of death or marriage. Certificates of death and marriage registered one year or more after the date of occurrence shall be marked "delayed" and shall show on their face the date of the delayed registration.

[C71, 73, 75, 77, 79, 81, §144.16]

144.17 Petition to establish certificate.

If a delayed certificate of birth is rejected under the provisions of section 144.15, a petition may be filed with the district court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered. The petition shall be made on a form prescribed and furnished by the state registrar and shall allege:

1. That the person for whom a delayed certificate of birth is sought was born in this state.
2. That no record of birth of that person can be found in the office of the state or county custodian of birth records.
3. That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with section 144.15.
4. That the state registrar has refused to register a delayed certificate of birth.
5. Such other allegations as may be required.

The petition shall be accompanied by a statement of the registration official made in accordance with section 144.15 and all documentary evidence which was submitted to the registration official in support of such registration. The petition shall be verified by the petitioner.

[C71, 73, 75, 77, 79, 81, §144.17]
88 Acts, ch 1158, §39

144.18 Court hearing.

The court shall fix a time and place for hearing the petition and shall give the registration official who refused to register the petitioner's delayed certificate of birth at least ten days' notice of such hearing. If both persons to be named as parents are not a party to the petition, such person or persons, if living, shall also be given at least ten days' notice of the hearing. The court shall prescribe the manner of such notice. Such official, or the official's authorized representative, may appear and testify in the proceeding.

If the court from the evidence presented finds that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as the case may require and shall issue an order on a form prescribed and furnished by the state registrar to establish a record of birth. The order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

The clerks of the district court shall forward each order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the state registrar and shall constitute the record of birth, from which copies may be

issued in accordance with sections 144.42 to 144.46, inclusive.

[C71, 73, 75, 77, 79, 81, §144.18]

144.19 Adoption certificate.

For each adoption decreed by any court in this state, the court shall require the preparation of a certificate of adoption on a form prescribed and furnished by the state registrar. The certificate shall include a report of the facts necessary to locate and identify the certificate of birth of the person adopted, provide information necessary to establish a new certificate of birth of the person adopted, identify the order of adoption, and be certified by the clerk of the court. A fee established by the department by rule based on average administrative cost shall be collected for the preparation of a certificate of adoption. Fees collected under this section shall be deposited in the general fund of the state.

[C46, 50, 54, 58, 62, 66, §144.44; C71, 73, 75, 77, 79, 81, §144.19; 81 Acts, ch 64, §4]

144.20 Information.

Information in the possession of the petitioner necessary to prepare the adoption report shall be furnished with the petition for adoption by each petitioner for adoption or the petitioner's attorney. The social agency, welfare agency, or other person concerned shall supply the court with such additional information in their possession as necessary to complete the certificate. The provision of such information shall be submitted to the court prior to the issuance of a final decree in the matter by the court, unless found by the court to be unavailable after diligent inquiry.

[C71, 73, 75, 77, 79, 81, §144.20]

144.21 Amended record.

Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a certificate, which shall include facts necessary to identify the original adoption report, and facts in the adoption decree necessary to properly amend the birth record.

[C46, 50, 54, 58, 62, 66, §144.44; C71, 73, 75, 77, 79, 81, §144.21]

144.22 Clerk to report to state registrar.

Not later than the tenth day of each calendar month, the clerk of the court shall forward to the state registrar certificates of adoption, or amendment or annulment of adoption, entered in the preceding month, together with such related reports as the state registrar requires. The state registrar, upon receipt from a court of a certificate of adoption, or amendment or annulment of adoption, for a person born outside this state shall forward the certificate to the appropriate registration authority in the state of birth.

[C46, 50, 54, 58, 62, 66, §144.44; C71, 73, 75, 77, 79, 81, §144.22]

144.23 State registrar to issue new certificate.

The state registrar shall establish a new certificate of birth for a person born in this state, when the state registrar receives the following:

1. An adoption certificate as provided in section 144.19, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

2. A request that a new certificate be established and evidence proving that the person for whom the new certificate is requested has been legitimated, or that a court of competent jurisdiction has determined the paternity of the person.

3. A notarized affidavit by a licensed physician and surgeon or osteopathic physician and surgeon stating that by reason of surgery or other treatment by the licensee, the sex designation of the person has been changed. The state registrar may make a further investigation or require further information necessary to determine whether a sex change has occurred.

[C24, 27, 31, 35, 39, §**2406;** C46, 50, 54, 58, 62, 66, §144.21, 144.44; C71, 73, 75, 77, 79, 81, §144.23]

2002 Acts, ch 1040, §1, 5

Subsection 3, unnumbered paragraph 2 stricken

144.24 Substituting new for original birth certificates — inspection.

If a new certificate of birth is established, the actual place and date of birth shall be shown on the certificate. The certificate shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity, legitimation, or sex change shall not be subject to inspection except under order of a court of competent jurisdiction, including but not limited to an order issued pursuant to section 600.16A, or as provided by administrative rule for statistical or administrative purposes only. However, the state registrar shall, upon the application of an adult adopted person, a biological parent, an adoptive parent, or the legal representative of the adult adopted person, the biological parent, or the adoptive parent, inspect the original certificate and the evidence of adoption and reveal to the applicant the date of the adoption and the name and address of the court which issued the adoption decree.

[C24, 27, 31, 35, 39, §**2406;** C46, 50, 54, 58, 62, 66, §144.21, 144.44; C71, 73, 75, 77, 79, 81, §144.24]

91 Acts, ch 243, §2; 99 Acts, ch 141, §18

144.25 No previous certificate — procedure.

If no certificate of birth is on file for the person for whom a new certificate is to be established, a delayed certificate of birth shall be filed with the state registrar as provided in section 144.15, or sections 144.17 and 144.18, before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed certificate shall not be required.

When a new certificate of birth is established by the state registrar, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this state shall be sealed from inspection or forwarded to the state registrar of vital statistics, as the state registrar shall direct.

[C71, 73, 75, 77, 79, 81, §144.25]

144.25A Certificate of birth — foreign and international adoptions.

The department shall adopt rules pursuant to chapter 17A to establish a procedure for the issuance of a certificate of birth for children adopted pursuant to section 600.15.

2002 Acts, ch 1040, §2, 5
NEW section

144.26 Death certificate.

1. A death certificate for each death which occurs in this state shall be filed as directed by the state registrar within three days after the death and prior to final disposition, and shall be registered by the county registrar if it has been completed and filed in accordance with this chapter. A death certificate shall include the social security number, if provided, of the deceased person. All information including the certifying physician's name shall be typewritten.

2. All information included on a death certificate may be provided as mutually agreed upon by the division and the child support recovery unit, including by automated exchange.

3. The county in which a dead body is found is the county of death. If death occurs in a moving conveyance, the county in which the dead body is first removed from the conveyance is the county of death.

4. *a.* The department shall establish by rule procedures for making a finding of presumption of death when no body can be found. The department shall also provide by rule the responsibility for completing and signing the medical certification of cause of death in such circumstances. The presumptive death certificate shall be in a form prescribed by the state registrar and filed in the county where the death was presumed to occur.

b. The division shall provide for the correction, substitution, or removal of a presumptive death certificate when the body of the person is later found, additional facts are discovered, or the person is discovered to be alive.

[SS15, §587-b; C24, 27, 31, 35, 39, §**2319;** C46, 50, 54, 58, 62, 66, §141.3; C71, 73, 75, 77, 79, 81, S81, §144.26; 81 Acts, ch 64, §5]

88 Acts, ch 1158, §40; 97 Acts, ch 159, §14; 97 Acts, ch 175, §226; 2002 Acts, ch 1108, §11
NEW subsection 4

144.27 Funeral director's duty.

The funeral director who first assumes custody of a dead body shall file the death certificate, obtain the personal data from the next of kin or the best qualified person or source available and obtain the medical certification of cause of death from the person responsible for completing the certification. When a person other than a funeral director assumes custody of a dead body, the person shall be responsible for carrying out the provisions of this section.

[C24, 27, 31, 35, 39, §**2321;** C46, 50, 54, 58, 62, 66, §141.5; C71, 73, 75, 77, 79, 81, §144.27]

97 Acts, ch 159, §15

144.28 Medical certification.

1. The medical certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which resulted in death within seventy-two hours after receipt of the death certificate from the funeral director or individual who initially assumes custody of the body, except when inquiry is required by the county medical examiner. When inquiry is required by the county medical examiner, the medical examiner shall investigate the cause of death and shall complete and sign the medical certification within seventy-two hours after determination of the cause of death.

2. The person completing the medical certification of cause of death shall attest to its accuracy either by signature or by an electronic process approved by rule.

[C24, 27, 31, 35, 39, §**2320;** C46, 50, 54, 58, 62, 66, §141.4(18); C71, 73, 75, 77, 79, 81, §144.28]

97 Acts, ch 159, §16; 2002 Acts, ch 1098, §2
Subsection 1 amended

144.29 Fetal deaths.

A fetal death certificate for each fetal death which occurs in this state after a gestation period of twenty completed weeks or greater, or for a fetus with a weight of three hundred fifty grams or more shall be filed as directed by the state registrar within three days after delivery and prior to final disposition of the fetus. The certificate shall be registered if it has been completed and filed in accordance with this chapter.

The county in which a dead fetus is found is the county of death. The certificate shall be filed within three days after the fetus is found. If a fetal death occurs in a moving conveyance, the county in which the fetus is first removed from the con-

veyance is the county of death.

[C24, 27, 31, 35, 39, §**2405;** C46, 50, 54, 58, 62, 66, §144.20; C71, 73, 75, 77, 79, 81, §144.29]

88 Acts, ch 1158, §41; 97 Acts, ch 159, §17

144.29A Termination of pregnancy reporting.

1. A health care provider who initially identifies and diagnoses a spontaneous termination of pregnancy or who induces a termination of pregnancy shall file with the department a report for each termination within thirty days of the occurrence. The health care provider shall make a good faith effort to obtain all of the following information that is available with respect to each termination:

a. The confidential health care provider code as assigned by the department.

b. The report tracking number.

c. The maternal health services region of the Iowa department of public health, as designated as of July 1, 1997, in which the patient resides.

d. The race of the patient.

e. The age of the patient.

f. The marital status of the patient.

g. The educational level of the patient.

h. The number of previous pregnancies, live births, and spontaneous or induced terminations of pregnancies.

i. The month and year in which the termination occurred.

j. The number of weeks since the patient's last menstrual period and a clinical estimate of gestation.

2. It is the intent of the general assembly that the information shall be collected, reproduced, released, and disclosed in a manner specified by rule of the department, adopted pursuant to chapter 17A, which ensures the anonymity of the patient who experiences a termination of pregnancy, the health care provider who identifies and diagnoses or induces a termination of pregnancy, and the hospital, clinic, or other health facility in which a termination of pregnancy is identified and diagnosed or induced. The department may share information with federal public health officials for the purposes of securing federal funding or conducting public health research. However, in sharing the information, the department shall not relinquish control of the information, and any agreement entered into by the department with federal public health officials to share information shall prohibit the use, reproduction, release, or disclosure of the information by federal public health officials in a manner which violates this section. The department shall publish, annually, a demographic summary of the information obtained pursuant to this section, except that the department shall not reproduce, release, or disclose any information obtained pursuant to this section which reveals the identity of any patient, health care provider, hospital, clinic, or other health facility, and shall ensure anonymity in the following ways:

a. The department may use information concerning the report tracking number or concerning the identity of a reporting health care provider, hospital, clinic, or other health facility only for purposes of information collection. The department shall not reproduce, release, or disclose this information for any purpose other than for use in annually publishing the demographic summary under this section.

b. The department shall enter the information, from any report of termination submitted, within thirty days of receipt of the report, and shall immediately destroy the report following entry of the information. However, entry of the information from a report shall not include any health care provider, hospital, clinic, or other health facility identification information including, but not limited to, the confidential health care provider code, as assigned by the department.

c. To protect confidentiality, the department shall limit release of information to release in an aggregate form which prevents identification of any individual patient, health care provider, hospital, clinic, or other health facility. For the purposes of this paragraph, *"aggregate form"* means a compilation of the information received by the department on termination of pregnancies for each information item listed, with the exceptions of the report tracking number, the health care provider code, and any set of information for which the amount is so small that the confidentiality of any person to whom the information relates may be compromised. The department shall establish a methodology to provide a statistically verifiable basis for any determination of the correct amount at which information may be released so that the confidentiality of any person is not compromised.

3. Except as specified in subsection 2, reports, information, and records submitted and maintained pursuant to this section are strictly confidential and shall not be released or made public upon subpoena, search warrant, discovery proceedings, or by any other means.

4. The department shall assign a code to any health care provider who may be required to report a termination under this section. An application procedure shall not be required for assignment of a code to a health care provider.

5. A health care provider shall assign a report tracking number which enables the health care provider to access the patient's medical information without identifying the patient.

6. To ensure proper performance of the reporting requirements under this section, it is preferred that a health care provider who practices within a hospital, clinic, or other health facility authorize one staff person to fulfill the reporting requirements.

7. For the purposes of this section, *"health care provider"* means an individual licensed under

chapter 148, 148C, 148D, 150, 150A, or 152, or any individual who provides medical services under the authorization of the licensee.

8. For the purposes of this section, *"inducing a termination of pregnancy"* means the use of any means to terminate the pregnancy of a woman known to be pregnant with the intent other than to produce a live birth or to remove a dead fetus.

9. For the purposes of this section, *"spontaneous termination of pregnancy"* means the occurrence of an unintended termination of pregnancy at any time during the period from conception to twenty weeks gestation and which is not a spontaneous termination of pregnancy at any time during the period from twenty weeks or greater which is reported to the department as a fetal death under this chapter.

97 Acts, ch 172, §1

144.30 Funeral director's duty — fetal death certificate.

The funeral director who first assumes custody of a fetus shall file the fetal death certificate. In the absence of such a person, the physician or other person in attendance at or after the delivery shall file the certificate of fetal death. The person filing the certificate shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification of cause of death from the person responsible for completing the certification. When a person other than a funeral director assumes custody of a fetus, the person shall be responsible for carrying out the provisions of this section.

[C71, 73, 75, 77, 79, 81, §144.30]

97 Acts, ch 159, §18

144.31 Medical certification — fetal death.

The medical certification shall be completed within twenty-four hours after delivery by the physician in attendance at or after delivery except when inquiry is required by the county medical examiner.

When a fetal death occurs without medical attendance upon the mother at or after delivery or when inquiry is required by the county medical examiner, the medical examiner shall investigate the cause of fetal death and shall complete the medical certification within twenty-four hours after taking charge of the case. The person completing the medical certification of cause of fetal death shall attest to its accuracy either by signature or as authorized by rule.

[C24, 27, 31, 35, 39, §**2322, 2323, 2405;** C46, 50, 54, 58, 62, 66, §141.6, 141.7, 144.20; C71, 73, 75, 77, 79, 81, §144.31]

97 Acts, ch 159, §19

144.32 Burial-transit permit.

If a person other than a funeral director, medical examiner, or emergency medical service assumes custody of a dead body or fetus, the person shall secure a burial-transit permit. To be valid, the burial-transit permit must be issued by the county medical examiner, a funeral director, or the county registrar of the county where the certificate of death or fetal death was filed. The permit shall be obtained prior to the removal of the body or fetus from the place of death and the permit shall accompany the body or fetus to the place of final disposition.

To transfer a dead body or fetus outside of this state, the funeral director who first assumes custody of the dead body or fetus shall obtain a burial-transit permit prior to the transfer. The permit shall accompany the dead body or fetus to the place of final disposition.

A dead body or fetus brought into this state for final disposition shall be accompanied by a burial-transit permit under the law of the state in which the death occurred.

A burial-transit permit shall not be issued to a person other than a funeral director when the cause of death is or is suspected to be a communicable disease as defined by rule of the department.

93 Acts, ch 139, §5; 97 Acts, ch 159, §20

144.33 Bodies brought into state.

A burial-transit permit issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

[C24, 27, 31, 35, 39, §**2324;** C46, 50, 54, 58, 62, 66, §141.18; C71, 73, 75, 77, 79, 81, §144.33]

144.34 Disinterment — permit.

Disinterment of a dead body or fetus shall be allowed for the purpose of autopsy or reburial only, and then only if accomplished by a funeral director. A permit for such disinterment and, thereafter, reinterment shall be issued by the state registrar according to rules adopted pursuant to chapter 17A or when ordered by the district court of the county in which such body is buried. The state registrar, without a court order, shall not issue a permit without the consent of the surviving spouse or in case of such spouse's absence, death, or incapacity, the next of kin. Disinterment for the purpose of reburial may be allowed by court order only upon a showing of substantial benefit to the public. Disinterment for the purpose of autopsy or reburial by court order shall be allowed only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice prescribed by the court to the surviving spouse or in the spouse's absence, death, or incapacity, the next of kin. Due consideration shall be given to the public health, the dead, and the feelings of relatives.

[C24, 27, 31, 35, 39, §**2337, 2338;** C46, 50, 54, 58, 62, 66, §141.21, 141.22; C71, 73, 75, 77, 79, 81, §144.34]

144.35 Extensions of time by rules.

The department may, by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this chapter, provide for extension of the periods prescribed in sections 144.26, 144.28, 144.29, and 144.31, for filing of death certificates, fetal death certificates, and medical certifications of cause of death in cases in which compliance with the applicable prescribed period would result in undue hardship.

[C24, 27, 31, 35, 39, §**2318;** C46, 50, 54, 58, 62, 66, §141.2(2); C71, 73, 75, 77, 79, 81, §144.35]

91 Acts, ch 116, §2

144.36 Marriage certificate filed — prohibited information.

1. A certificate recording each marriage performed in this state shall be filed with the state registrar. The county registrar shall prepare the certificate on the form furnished by the state registrar upon the basis of information obtained from the parties to be married, who shall attest to the information by their signatures. The county registrar in each county shall keep a record book for marriages. The form of marriage record books shall be uniform throughout the state. A properly indexed permanent record of marriage certificates upon microfilm, electronic computer, or data processing equipment may be kept in lieu of marriage record books.

2. Every person who performs a marriage shall certify the fact of marriage and return the certificate to the county registrar within fifteen days after the ceremony. The certificate shall be signed by the witnesses to the ceremony and the person performing the ceremony.

3. The certificate of marriage shall not contain information concerning the race of the married persons, previous marriages of the married persons, or the educational level of the married persons.

4. The county registrar shall record and forward to the state registrar on or before the tenth day of each calendar month the original certificates of marriages filed with the county registrar during the preceding calendar month and the fees collected by the county registrar on behalf of the state for applications for a license to marry in accordance with section 331.605, subsection 6.

[C24, 27, 31, 35, 39, §**2421, 2422, 2425;** C46, 50, 54, 58, 62, 66, §144.36, 144.37, 144.40; C71, 73, 75, 77, 79, 81, §144.36]

83 Acts, ch 186, §10048, 10201; 85 Acts, ch 195, §18; 95 Acts, ch 124, §6, 26; 99 Acts, ch 114, §6

See also §595.13 for certificate

144.37 Dissolution and annulment records.

For each dissolution or annulment of marriage granted by any court in this state, a record shall be prepared by the clerk of court or by the petitioner or the petitioner's legal representative if directed by the clerk and filed by the clerk of court with the state registrar. The information necessary to prepare the report shall be furnished with the petition, to the clerk of court by the petitioner or the petitioner's legal representative, on forms supplied by the state registrar.

The clerk of the district court in each county shall keep a record book for dissolutions. The form of dissolution record books shall be uniform throughout the state. A properly indexed record of dissolutions upon microfilm, electronic computer, or data processing equipment may be kept in lieu of dissolution record books.

On or before the tenth day of each calendar month, the clerk of court shall forward to the state registrar the record of each dissolution and annulment granted during the preceding calendar month and related reports required by regulations issued under this chapter.

[C24, 27, 31, 35, 39, §**2421, 2423, 2425;** C46, 50, 54, 58, 62, 66, §144.36, 144.38, 144.40; C71, 73, 75, 77, 79, 81, §144.37; 81 Acts, ch 64, §6; 82 Acts, ch 1100, §1]

83 Acts, ch 101, §23; 83 Acts, ch 186, §10049, 10201; 85 Acts, ch 195, §19

144.38 Amendment of official record.

To protect the integrity and accuracy of vital statistics records, a certificate or record registered under this chapter may be amended only in accordance with this chapter and regulations adopted hereunder. A certificate that is amended under this section shall be marked "amended" except as provided in section 144.40. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections shall be made to birth certificates within one year after the date of birth without the certificate being marked "amended".

[C24, 27, 31, 35, 39, §**2402, 2404;** C46, 50, 54, 58, 62, 66, §144.17, 144.19, 144.44, 144.45; C71, 73, 75, 77, 79, 81, §144.38]

144.39 Change of name.

Upon receipt of a certified copy of a court order from a court of competent jurisdiction or certificate of the clerk of court pursuant to chapter 674 changing the name of a person born in this state and upon request of the person or the person's parent, guardian, or legal representative, the state registrar shall amend the certificate of birth to reflect the new name. A fee established by the department by rule based on average administrative cost shall be collected for each amended certificate of birth to reflect a new name. Fees collected under this section shall be deposited in the general fund of the state.

[C71, 73, 75, 77, 79, 81, §144.39; 81 Acts, ch 64, §7]

144.40 Paternity of children — birth certificates.

Upon request and receipt of an affidavit of paternity completed and filed pursuant to section 252A.3A, or a certified copy or notification by the clerk of court of a court or administrative order establishing paternity, the state registrar shall amend a certificate of birth to show paternity if paternity is not shown on the birth certificate. Upon written request of the parents, the surname of the child may be changed on the certificate to that of the father. The certificate shall not be marked "amended".

[C24, 27, 31, 35, 39, §**2406;** C46, 50, 54, 58, 62, 66, §144.21; C71, 73, 75, 77, 79, 81, §144.40; 81 Acts, ch 64, §8]

93 Acts, ch 79, §10; 94 Acts, ch 1171, §4

144.41 Amending local records.

When a certificate is amended under sections 144.38 to 144.40 the state registrar shall report the amendment to the custodian of any permanent local records and such records shall be amended accordingly.

[C71, 73, 75, 77, 79, 81, §144.41]

144.42 Reproduction of original records.

To preserve original documents, the state registrar may prepare typewritten, photographic, or other reproductions of original records and files in the state registrar's office. Such reproductions when certified by the state registrar shall be accepted as the original record.

[C71, 73, 75, 77, 79, 81, §144.42; 81 Acts, ch 64, §9]

144.43 Vital records closed to inspection — exceptions.

To protect the integrity of vital statistics records, to ensure their proper use, and to ensure the efficient and proper administration of the vital statistics system kept by the state registrar, access to vital statistics records kept by the state registrar shall be limited to the state registrar and the state registrar's employees, and then only for administrative purposes. It shall be unlawful for the state registrar to permit inspection of, or to disclose information contained in vital statistics records, or to copy or permit to be copied all or part of any such record except as authorized by regulation.

However, the following vital statistics records may be inspected and copied as of right under chapter 22 when they are in the custody of a county registrar or when they are in the custody of the state archivist and are at least seventy-five years old:

1. A record of birth.
2. A record of marriage.
3. A record of divorce, dissolution of marriage, or annulment of marriage.
4. A record of death if that death was not a fetal death.

A public record shall not be withheld from the public because it is combined with data processing software. The state registrar shall not implement any electronic data processing system for the storage, manipulation, or retrieval of vital records that would impair a county registrar's ability to permit the examination of a public record and the copying of a public record, as established by rule. If it is necessary to separate a public record from data processing software in order to permit the examination of the public record, the county registrar shall periodically generate a written log available for public inspection which contains the public record.

[C46, 50, 54, 58, 62, 66, §144.45; C71, 73, 75, 77, 79, 81, S81, §144.43; 81 Acts, ch 64, §10; 82 Acts, ch 1100, §2]

88 Acts, ch 1158, §43; 90 Acts, ch 1025, §1; 94 Acts, ch 1171, §5; 97 Acts, ch 159, §21

144.43A Mutual consent voluntary adoption registry.

1. In addition to other procedures by which birth certificates may be inspected under this chapter, the state registrar shall establish a mutual consent voluntary adoption registry through which adult adopted children, adult siblings, and the biological parents of adult adoptees may register to obtain identifying birth information.

2. If all of the following conditions are met, the state registrar shall reveal the identity of the biological parent to the adult adopted child or the identity of the adult adopted child to the biological parent, shall notify the parties involved that the requests have been matched, and shall disclose the identifying information to those parties:

a. A biological parent has filed a request and provided consent to the revelation of the biological parent's identity to the adult adopted child, upon request of the adult adopted child.

b. An adult adopted child has filed a request and provided consent to the revelation of the identity of the adult adopted child to a biological parent, upon request of the biological parent.

c. The state registrar has been provided sufficient information to make the requested match.

3. Notwithstanding the provisions of this section, if the adult adopted person has a sibling who is a minor and who has also been adopted, the state registrar shall not grant the request of either the adult adopted person or the biological parent to reveal the identities of the parties.

4. If all of the following conditions are met, the state registrar shall reveal the identity of the adult adopted child to an adult sibling and shall notify the parties involved that the requests have

been matched, and disclose the identifying information to those parties:

a. An adult adopted child has filed a request and provided consent to the revelation of the adult adopted child's identity to an adult sibling.

b. The adult sibling has filed a request and provided consent to the revelation of the identity of the adult sibling to the adult adopted child.

c. The state registrar has been provided with sufficient information to make the requested match.

5. A person who has filed a request or provided consent under this section may withdraw the consent at any time prior to the release of any information by filing a written withdrawal of consent statement with the state registrar. The adult adoptee, adult sibling, and biological parent shall notify the state registrar of any change in the information contained in a filed request or consent.

6. The state registrar shall establish a fee by rule based on the average administrative costs for providing services under this section.

99 Acts, ch 141, §19

144.44 Permits for research.

The department may permit access to vital statistics by professional genealogists and historians, and may authorize the disclosure of data contained in vital statistics records when deemed essential for bona fide research purposes which are not for private gain. The department shall adopt rules which establish the parameters for access to and authorized disclosure of vital statistics and data contained in vital statistics records relating to birth and adoption records under this section.

[C24, 27, 31, 35, 39, §**2406, 2415;** C46, 50, 54, 58, 62, 66, §144.21, 144.30; C71, 73, 75, 77, 79, 81, §144.44]

94 Acts, ch 1171, §6

144.45 Certified copies.

The state registrar and the county registrar shall, upon written request from any applicant entitled to a record, issue a certified copy of any certificate or record in the registrar's custody or of a part of a certificate or record. Each copy issued shall show the date of registration; and copies issued from records marked "delayed", "amended", or "court order" shall be similarly marked and show the effective date.

A certified copy of a certificate, or any part thereof, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts therein stated, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

The national division of vital statistics may be furnished copies or data which it requires for national statistics, provided that the state be reimbursed for the cost of furnishing data, and provided further that data shall not be used for other than statistical purposes by the national division of vital statistics unless so authorized by the state registrar.

Federal, state, local, and other public or private agencies may, upon written request, be furnished copies or data for statistical purposes upon terms or conditions prescribed by the department.

No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a certificate of birth, death, fetal death, or marriage except as authorized in this chapter.

[S13, §2575-a45; C24, 27, 31, 35, 39, §**2349, 2416, 2426, 2429, 2431;** C46, 50, 54, 58, 62, 66, §141.33, 144.31, 144.41, 144.46, 144.48; C71, 73, 75, 77, 79, 81, §144.45]

95 Acts, ch 124, §7, 26

144.45A Commemorative birth and marriage certificates.

Upon application and payment of a thirty-five dollar fee, the director may issue a commemorative copy of a certificate of birth or a certificate of marriage. Fees collected pursuant to this section shall be deposited in the emergency medical services fund established in section 135.25 to support the development and enhancement of emergency medical services systems and emergency medical services for children.

97 Acts, ch 203, §20

144.46 Fee for copy of record.

The department by rule shall establish fees based on the average administrative cost which shall be collected by the state registrar or the county registrar for each certified copy or short form certification of certificates or records, or for a search of the files or records when no copy is made, or when no record is found on file. Fees collected by the state registrar and by the county registrar on behalf of the state under this section shall be deposited in the general fund of the state. Fees collected by the county registrar pursuant to section 331.605, subsection 5, shall be deposited in the county general fund. A fee shall not be collected from a political subdivision or agency of this state.

[C24, 27, 31, 35, 39, §**2417, 2418, 2427;** C46, 50, 54, 58, 62, 66, §144.32, 144.33, 144.42; C71, 73, 75, 77, 79, 81, S81, §144.46; 81 Acts, ch 64, §11]

83 Acts, ch 123, §68, 209; 83 Acts, ch 186, §10050, 10201; 94 Acts, ch 1074, §1; 95 Acts, ch 124, §8, 26; 99 Acts, ch 114, §7

Temporary fee increase through June 30, 2003, for vital records modernization project extension; 2002 Acts, 2nd Ex, ch 1003, §105, 109

144.47 Persons confined in institutions.

Every person in charge of an institution shall keep a record of personal particulars and data concerning each person admitted or confined to the in-

stitution. This record shall include information required by the standard certificate of birth, death, and fetal death forms issued under the provisions of this chapter. The record shall be made at the time of admission from information provided by such person, but when it cannot be so obtained, the same shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

[C24, 27, 31, 35, 39, §**2407, 2408, 2409;** C46, 50, 54, 58, 62, 66, §144.22, 144.23, 144.24; C71, 73, 75, 77, 79, 81, §144.47]

144.48 Institutional dead persons.

When a dead human body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, name and address of the person to whom the body is released, date of removal from the institution, or if finally disposed of by the institution, the date, place, and manner of disposition shall be recorded.

[C24, 27, 31, 35, 39, §**2407;** C46, 50, 54, 58, 62, 66, §144.22; C71, 73, 75, 77, 79, 81, §144.48]

144.49 Additional record by funeral director.

A funeral director or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other form required by this chapter, shall keep a record which shall identify the body, and information pertaining to the funeral director's or other person's receipt, removal, and delivery of the body as prescribed by the department.

[C24, 27, 31, 35, 39, §**2414;** C46, 50, 54, 58, 62, 66, §144.29; C71, 73, 75, 77, 79, 81, §144.49]

144.50 Length of time records to be kept.

Records maintained under sections 144.47 to 144.49 shall be retained for a period of not less than ten years and shall be made available for inspection by the state registrar or the state registrar's representative upon demand.

[C71, 73, 75, 77, 79, 81, §144.50]

144.51 Information by others furnished on demand.

Any person having knowledge of the facts shall furnish information the person possesses regarding any birth, death, fetal death, adoption, marriage, dissolution, or annulment, upon demand of the state registrar or the state registrar's representative.

[C24, 27, 31, 35, 39, §**2403, 2414;** C46, 50, 54, 58, 62, 66, §144.18, 144.29; C71, 73, 75, 77, 79, 81, §144.51]

83 Acts, ch 101, §24

144.52 Unlawful acts — punishment.

Any person committing any of the following acts is guilty of a serious misdemeanor:

1. Willfully and knowingly makes any false statement in a report, record, or certificate required to be filed under this chapter, or in an application for an amendment thereof, or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof.

2. Without lawful authority and with the intent to deceive, makes, alters, amends, or mutilates any report, record, or certificate required to be filed under this chapter or a certified copy of such report, record, or certificate.

3. Willfully and knowingly uses or attempts to use or furnish to another for use for any purpose of deception, any certificate, record, report, or certified copy thereof so made, altered, amended, or mutilated.

4. Willfully, with the intent to deceive, uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person.

5. Willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person whose birth the record relates.

6. Disinterring a body in violation of section 144.34.

7. Knowingly violates a provision of section 144.29A.

[C24, 27, 31, 35, 39, §**2349, 2350, 2436;** C46, 50, 54, 58, 62, 66, §141.33, 141.34, 144.53, 144.54; C71, 73, 75, 77, 79, 81, §144.52]

97 Acts, ch 172, §2

144.53 Misdemeanors.

Any person committing any of the following acts is guilty of a simple misdemeanor:

1. Knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in this chapter.

2. Refuses to provide information required by this chapter.

3. Willfully violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon the person by this chapter.

[C24, 27, 31, 35, 39, §**2350, 2436;** C46, 50, 54, 58, 62, 66, §141.34, 144.53; C71, 73, 75, 77, 79, 81, §144.53]

144.54 Report to county attorney.

The department shall report cases of alleged violations to the proper county attorney, with a statement of the facts and circumstances, for such action as is appropriate.

[C27, 31, 35, 39, §**2434;** C46, 50, 54, 58, 62, 66,

§144.51; C71, 73, 75, 77, 79, 81, §144.54]

144.55 Attorney general to assist in enforcement.

Upon request of the department, the attorney general shall assist in the enforcement of the provisions of this chapter.

[C24, 27, 31, 35, 39, §**2435;** C46, 50, 54, 58, 62, 66, §144.52; C71, 73, 75, 77, 79, 81, §144.55]

144.56 Autopsy.

An autopsy or post-mortem examination may be performed upon the body of a deceased person by a physician whenever the written consent to the examination or autopsy has been obtained by any of the following persons, in order of priority stated when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or prior class:

1. The spouse.
2. An adult son or daughter.
3. Either parent.
4. An adult brother or sister.
5. A guardian of the person of the decedent at the time of the decedent's death.
6. Any other person authorized or under obligation to dispose of the body.

This section does not apply to any death investigated under the authority of sections 331.802 to 331.804.

[C75, 77, 79, 81, S81, §144.56; 81 Acts, ch 117, §1207]

144.57 Vietnamese refugee children. Repealed by 84 Acts, ch 1219, § 41.

CHAPTER 144A

LIFE-SUSTAINING PROCEDURES

Policy statement; see 85 Acts, ch 3, §1
See also chapter 144B concerning durable power of attorney for health care

144A.1 Short title.
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144A.12 Application to existing declarations.

144A.1 Short title.

This chapter may be cited as the *"Life-sustaining Procedures Act"*.

85 Acts, ch 3, §2

144A.2 Definitions.

Except as otherwise provided, as used in this chapter:

1. *"Adult"* means an individual eighteen years of age or older.
2. *"Attending physician"* means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.
3. *"Declaration"* means a document executed in accordance with the requirements of section 144A.3.
4. *"Department"* means the Iowa department of public health.
5. *"Emergency medical care provider"* means emergency medical care provider as defined in section 147A.1.
6. *"Health care provider"* means a person, including an emergency medical care provider, who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.
7. *"Hospital"* means hospital as defined in section 135B.1.
8. *"Life-sustaining procedure"* means any medical procedure, treatment, or intervention, including resuscitation, which meets both of the following requirements:

a. Utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function.

b. When applied to a patient in a terminal condition, would serve only to prolong the dying process.

"Life-sustaining procedure" does not include the

provision of nutrition or hydration except when required to be provided parenterally or through intubation or the administration of medication or performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

9. *"Out-of-hospital do-not-resuscitate order"* means a written order signed by a physician, executed in accordance with the requirements of section 144A.7A and issued consistent with this chapter, that directs the withholding or withdrawal of resuscitation when an adult patient in a terminal condition is outside the hospital.

10. *"Physician"* means a person licensed to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery in this state.

11. *"Qualified patient"* means a patient who has executed a declaration or an out-of-hospital do-not-resuscitate order in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

12. *"Resuscitation"* means any medical intervention that utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function, including but not limited to chest compression, defibrillation, intubation, and emergency drugs intended to alter cardiac function or otherwise to sustain life.

13. *"Terminal condition"* means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery.

85 Acts, ch 3, §3; 92 Acts, ch 1132, §1 – 3; 2002 Acts, ch 1061, §1
Section amended

144A.3 Declaration relating to use of life-sustaining procedures.

1. A competent adult may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn. The declaration shall be given operative effect only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions.

2. The declaration must be signed by the declarant or another person acting on behalf of the declarant at the direction of the declarant, must contain the date of the declaration's execution, and must be witnessed or acknowledged by one of the following methods:

a. Is signed by at least two individuals who, in the presence of each other and the declarant, witnessed the signing of the declaration by the declarant or by another person acting on behalf of the declarant at the declarant's direction. At least one of the witnesses shall be an individual who is not a relative of the declarant by blood, marriage, or adoption within the third degree of consanguinity. The following individuals shall not be witnesses for a declaration:

(1) A health care provider attending the declarant on the date of execution of the declaration.

(2) An employee of a health care provider attending the declarant on the date of execution of the declaration.

(3) An individual who is less than eighteen years of age.

b. Is acknowledged before a notarial officer within this state.

3. It is the responsibility of the declarant to provide the declarant's attending physician or health care provider with the declaration. An attending physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

4. A declaration or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state, to the extent the declaration or similar document is consistent with the laws of this state. A declaration or similar document executed by a veteran of the armed forces which is in compliance with the federal department of veterans affairs advance directive requirements shall be deemed valid and enforceable.

5. A declaration executed pursuant to this chapter may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will result either in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery, it is my desire that my life not be prolonged by the administration of life-sustaining procedures. If I am unable to participate in my health care decisions, I direct my attending physician to withhold or withdraw life-sustaining procedures that merely prolong the dying process and are not necessary to my comfort or freedom from pain.

85 Acts, ch 3, §4; 92 Acts, ch 1132, §4; 98 Acts, ch 1083, §1; 2002 Acts, ch 1061, §2, 3
Subsection 2, unnumbered paragraph 1 amended
Subsection 2, paragraph a, subparagraphs (1) and (2) amended

144A.4 Revocation of declaration.

1. A declaration may be revoked at any time and in any manner by which the declarant is able to communicate the declarant's intent to revoke, without regard to mental or physical condition. A revocation is only effective as to the attending physician upon communication to such physician by the declarant or by another to whom the revocation was communicated.

2. The attending physician shall make the revocation a part of the declarant's medical record.

85 Acts, ch 3, §5

144A.5 Determination of terminal condition.

When an attending physician who has been provided with a declaration determines that the declarant is in a terminal condition, this decision must be confirmed by another physician. The attending physician must record that determination in the declarant's medical record.

85 Acts, ch 3, §6

144A.6 Treatment of qualified patients.

1. A qualified patient has the right to make decisions regarding use of life-sustaining procedures as long as the qualified patient is able to do so. If a qualified patient is not able to make such decisions, the declaration shall govern decisions regarding use of life-sustaining procedures.

2. The declaration of a qualified patient known to the attending physician to be pregnant shall not be in effect as long as the fetus could develop to the point of live birth with continued application of life-sustaining procedures. However, the provisions of this subsection do not impair any existing rights or responsibilities that any person may have in regard to the withholding or withdrawal of life-sustaining procedures.

85 Acts, ch 3, §7

144A.7 Procedure in absence of declaration.

1. Life-sustaining procedures may be withheld or withdrawn from a patient who is in a terminal condition and who is comatose, incompetent, or otherwise physically or mentally incapable of communication and has not made a declaration in accordance with this chapter if there is consultation and written agreement for the withholding or the withdrawal of life-sustaining procedures between the attending physician and any of the following individuals, who shall be guided by the express or implied intentions of the patient, in the following order of priority if no individual in a prior class is reasonably available, willing, and competent to act:

a. The attorney in fact designated to make treatment decisions for the patient should such person be diagnosed as suffering from a terminal condition, if the designation is in writing and complies with chapter 144B or section 633.705.

b. The guardian of the person of the patient if one has been appointed, provided court approval is obtained in accordance with section 633.635, subsection 2, paragraph *"c"*. This paragraph does not require the appointment of a guardian in order for a treatment decision to be made under this section.

c. The patient's spouse.

d. An adult child of the patient or, if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation.

e. A parent of the patient, or parents if both are reasonably available.

f. An adult sibling.

2. When a decision is made pursuant to this section to withhold or withdraw life-sustaining procedures, there shall be a witness present at the time of the consultation when that decision is made.

3. Subsections 1 and 2 shall not be in effect for a patient who is known to the attending physician to be pregnant with a fetus that could develop to the point of live birth with continued application of life-sustaining procedures. However, the provisions of this subsection do not impair any existing rights or responsibilities that any person may have in regard to the withholding or withdrawal of life-sustaining procedures.

85 Acts, ch 3, §8; 87 Acts, ch 100, §1; 2002 Acts, ch 1061, §4

Subsection 1, paragraph a amended

144A.7A Out-of-hospital do-not-resuscitate orders.

1. If an attending physician issues an out-of-hospital do-not-resuscitate order for an adult patient under this section, the physician shall use the form prescribed pursuant to subsection 2, include a copy of the order in the patient's medical record, and provide a copy to the patient or an individual authorized to act on the patient's behalf.

2. The department, in collaboration with interested parties, shall prescribe uniform out-of-hospital do-not-resuscitate order forms and uniform personal identifiers, and shall adopt administrative rules necessary to implement this section. The uniform forms and personal identifiers shall be used statewide.

3. The out-of-hospital do-not-resuscitate order form shall include all of the following:

a. The patient's name.

b. The patient's date of birth.

c. The name of the individual authorized to act on the patient's behalf, if applicable.

d. A statement that the patient is in a terminal condition.

e. The physician's signature.

f. The date the form is signed.

g. A concise statement of the nature and scope of the order.

h. Any other information necessary to provide clear and reliable instructions to a health care provider.

4. A health care provider may withhold or withdraw resuscitation outside a hospital consistent with an out-of-hospital do-not-resuscitate order issued under this section and the rules or protocols adopted by the department.

5. In fulfilling the instructions of an out-of-

hospital do-not-resuscitate order under this chapter, a health care provider shall continue to provide appropriate comfort care and pain relief to the patient.

6. An out-of-hospital do-not-resuscitate order shall not apply when a patient is in need of emergency medical services due to a sudden accident or injury resulting from a motor vehicle collision, fire, mass casualty, or other cause of a sudden accident or injury which is outside the scope of the patient's terminal condition.

7. An out-of-hospital do-not-resuscitate order is deemed revoked at any time that a patient, or an individual authorized to act on the patient's behalf as designated on the out-of-hospital do-not-resuscitate order, is able to communicate in any manner the intent that the order be revoked, without regard to the mental or physical condition of the patient. A revocation is only effective as to the health care provider upon communication to that provider by the patient, an individual authorized to act on the patient's behalf as designated in the order, or by another person to whom the revocation is communicated.

8. The personal wishes of family members or other individuals who are not authorized in the order to act on the patient's behalf shall not supersede a valid out-of-hospital do-not-resuscitate order.

9. If uncertainty regarding the validity or applicability of an out-of-hospital do-not-resuscitate order exists, a health care provider shall provide necessary and appropriate resuscitation.

10. A health care provider shall document compliance or noncompliance with an out-of-hospital do-not-resuscitate order and the reasons for not complying with the order, including evidence that the order was revoked or uncertainty regarding the validity or applicability of the order.

11. This section shall not preclude a hospital licensed under chapter 135B from honoring an out-of-hospital do-not-resuscitate order entered in accordance with this section and in compliance with established hospital policies and protocols.

2002 Acts, ch 1061, §5

Applicability to and validity of orders executed prior to July 1, 2002; 2001 Acts, ch 1061, §11

NEW section

144A.8 Transfer of patients.

1. An attending physician who is unwilling to comply with the requirements of section 144A.5, or who is unwilling to comply with the declaration of a qualified patient in accordance with section 144A.6 or an out-of-hospital do-not-resuscitate order pursuant to section 144A.7A, or who is unwilling to comply with the provisions of section 144A.7 or 144A.7A shall take all reasonable steps to effect the transfer of the patient to another physician.

2. If the policies of a health care provider preclude compliance with the declaration or out-of-hospital do-not-resuscitate order of a qualified patient under this chapter or preclude compliance with the provisions of section 144A.7 or 144A.7A, the provider shall take all reasonable steps to effect the transfer of the patient to a facility in which the provisions of this chapter can be carried out.

85 Acts, ch 3, §9; 2002 Acts, ch 1061, §6

Section amended

144A.9 Immunities.

1. In the absence of actual notice of the revocation of a declaration or of an out-of-hospital do-not-resuscitate order, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

a. A physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient.

b. The health care provider in which such withholding or withdrawal occurs.

c. A person who participates in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician.

2. A physician is not subject to civil or criminal liability for actions under this chapter which are in accord with reasonable medical standards.

3. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this chapter may interpose this chapter as an absolute defense.

4. In the absence of actual notice of the revocation of an out-of-hospital do-not-resuscitate order, a health care provider who complies with this chapter is not subject to civil or criminal liability or guilty of unprofessional conduct in entering, executing, or otherwise participating in an out-of-hospital do-not-resuscitate order.

85 Acts, ch 3, §10; 2002 Acts, ch 1061, §7, 8

Subsection 1, unnumbered paragraph 1 amended

NEW subsection 4

144A.10 Penalties.

1. Any person who willfully conceals, withholds, cancels, destroys, alters, defaces, or obliterates the declaration, out-of-hospital do-not-resuscitate order, or out-of-hospital do-not-resuscitate identifier of another without the declarant's or patient's consent or who falsifies or forges a revocation of the declaration or out-of-hospital do-not-resuscitate order of another is guilty of a serious misdemeanor.

2. Any person who falsifies or forges the declaration or out-of-hospital do-not-resuscitate order of another, or willfully conceals or withholds personal knowledge of or delivery of a revocation as provided in section 144A.4 or 144A.7A, with the intent to cause a withholding or withdrawal of life-sustaining procedures, is guilty of a serious misdemeanor.

85 Acts, ch 3, §11; 2002 Acts, ch 1061, §9

Section amended

144A.11 General provisions.

1. Death resulting from the withholding or withdrawal of life-sustaining procedures pursuant to a declaration or out-of-hospital do-not-resuscitate order and in accordance with this chapter does not, for any purpose, constitute a suicide, homicide, or dependent adult abuse.

2. The executing of a declaration pursuant to section 144A.3 or an out-of-hospital do-not-resuscitate order pursuant to section 144A.7A does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance is legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures pursuant to this chapter, notwithstanding any term of the policy to the contrary.

3. A physician, health care provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan shall not require any person to execute a declaration or an out-of-hospital do-not-resuscitate order as a condition for being insured for, or receiving, health care services.

4. This chapter creates no presumption concerning the intention of an individual who has not executed a declaration or an out-of-hospital do-not-resuscitate order with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition.

5. This chapter shall not be interpreted to increase or decrease the right of a patient to make decisions regarding use of life-sustaining procedures as long as the patient is able to do so, nor to impair or supersede any right or responsibility that any person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this chapter are cumulative.

6. This chapter shall not be construed to condone, authorize or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

85 Acts, ch 3, §12; 2002 Acts, ch 1061, §10
Adult abuse, chapter 235B
Homicide, chapter 707
Subsections 1 – 4 amended

144A.12 Application to existing declarations.

A declaration executed prior to April 23, 1992, shall remain valid and shall be given effect in accordance with the then-applicable provisions of this chapter. If a declaration executed prior to April 23, 1992, includes a provision which would not have been given effect under this chapter prior to April 23, 1992, but which would be given effect under 1992 Acts, chapter 1132, then the provision shall be given effect in accordance with 1992 Acts, chapter 1132.

92 Acts, ch 1132, §5

CHAPTER 144B

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

144B.1 Definitions.
144B.2 Durable power of attorney for health care.
144B.3 Requirements.
144B.4 Individuals ineligible to be attorney in fact.
144B.5 Durable power of attorney for health care — form.
144B.6 Attorney in fact — priority to make decisions.
144B.7 Authority to review medical records.
144B.8 Revocation of durable power of attorney.
144B.9 Immunities and responsibilities.
144B.10 Emergency treatment.
144B.11 Prohibited practices.
144B.12 General provisions.

144B.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Attorney in fact"* means an individual who is designated by a durable power of attorney for health care as an agent to make health care decisions on behalf of a principal and has consented to act in that capacity.

2. *"Durable power of attorney for health care"* means a document authorizing an attorney in fact to make health care decisions for the principal if the principal is unable, in the judgment of the attending physician, to make health care decisions.

3. *"Health care"* means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. *"Health care"* does not include the provision of nutrition or hydration except when they are required to be provided parenterally or through intubation.

4. *"Health care decision"* means the consent, refusal of consent, or withdrawal of consent to

health care.

5. *"Health care provider"* means a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

6. *"Principal"* means a person age eighteen or older who has executed a durable power of attorney for health care.

91 Acts, ch 140, §1

144B.2 Durable power of attorney for health care.

A durable power of attorney for health care authorizes the attorney in fact to make health care decisions for the principal if the durable power of attorney for health care substantially complies with the requirements of this chapter. A document executed prior to May 8, 1991, purporting to create a durable power of attorney for health care shall be deemed valid if the document specifically authorizes the attorney in fact to make health care decisions and is signed by the principal.

91 Acts, ch 140, §2

144B.3 Requirements.

1. An attorney in fact shall make health care decisions only if the following requirements are satisfied:

a. The durable power of attorney for health care explicitly authorizes the attorney in fact to make health care decisions.

b. The durable power of attorney for health care contains the date of its execution and is witnessed or acknowledged by one of the following methods:

(1) Is signed by at least two individuals who, in the presence of each other and the principal, witnessed the signing of the instrument by the principal or by another person acting on behalf of the principal at the principal's direction.

(2) Is acknowledged before a notarial officer within this state.

2. The following individuals shall not be witnesses for a durable power of attorney for health care:

a. A health care provider attending the principal on the date of execution.

b. An employee of a health care provider attending the principal on the date of execution.

c. The individual designated in the durable power of attorney for health care as the attorney in fact.

d. An individual who is less than eighteen years of age.

3. At least one of the witnesses for a durable power of attorney for health care shall be an individual who is not a relative of the principal by blood, marriage, or adoption within the third degree of consanguinity.

4. A durable power of attorney for health care or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state, to the extent the document is consistent with the laws of this state. A durable power of attorney or similar document executed by a veteran of the armed forces which is in compliance with the federal department of veterans affairs advance directive requirements shall be deemed valid and enforceable.

91 Acts, ch 140, §3; 98 Acts, ch 1083, §2

144B.4 Individuals ineligible to be attorney in fact.

The following individuals shall not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care:

1. A health care provider attending the principal on the date of execution.

2. An employee of a health care provider attending the principal on the date of execution unless the individual to be designated is related to the principal by blood, marriage, or adoption within the third degree of consanguinity.

91 Acts, ch 140, §4

144B.5 Durable power of attorney for health care — form.

1. A durable power of attorney for health care executed pursuant to this chapter may, but need not, be in the following form:

I hereby designate ..... as my attorney in fact (my agent) and give to my agent the power to make health care decisions for me. This power exists only when I am unable, in the judgment of my attending physician, to make those health care decisions. The attorney in fact must act consistently with my desires as stated in this document or otherwise made known.

Except as otherwise specified in this document, this document gives my agent the power, where otherwise consistent with the law of this state, to consent to my physician not giving health care or stopping health care which is necessary to keep me alive.

This document gives my agent power to make health care decisions on my behalf, including to consent, to refuse to consent, or to withdraw consent to the provision of any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of my desires and any limitations included in this document.

My agent has the right to examine my medical records and to consent to disclosure of such records.

2. In addition to the foregoing, the principal may provide specific instructions in the document conferring the durable power of attorney for

health care, consistent with the provisions of this chapter.

3. The principal may include a statement indicating that the designated attorney in fact has been notified of and consented to the designation.

4. A durable power of attorney for health care may designate one or more alternative attorneys in fact.

91 Acts, ch 140, §5

144B.6 Attorney in fact — priority to make decisions.

1. Unless the district court sitting in equity specifically finds that the attorney in fact is acting in a manner contrary to the wishes of the principal or the durable power of attorney for health care provides otherwise, an attorney in fact who is known to the health care provider to be available and willing to make health care decisions has priority over any other person, including a guardian appointed pursuant to chapter 633, to act for the principal in all matters of health care decisions. The attorney in fact has authority to make a particular health care decision only if the principal is unable, in the judgment of the attending physician, to make the health care decision. If the principal objects to a decision to withhold or withdraw health care, the principal shall be presumed to be able to make a decision.

2. In exercising the authority under the durable power of attorney for health care, the attorney in fact has a duty to act in accordance with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the attorney in fact at any time. A declaration executed by the principal pursuant to the life-sustaining procedures Act, chapter 144A, shall not be interpreted as expressing an intent to prohibit the withdrawal of hydration or nutrition when required to be provided parenterally or through intubation and shall not otherwise restrict the authority of the attorney in fact unless either the declaration or the durable power of attorney for health care expressly provides otherwise. If the principal's desires are unknown, the attorney in fact has a duty to act in the best interests of the principal, taking into account the principal's overall medical condition and prognosis.

91 Acts, ch 140, §6

144B.7 Authority to review medical records.

Except as limited by the durable power of attorney for health care, an attorney in fact has the same right as the principal to receive and review medical records of the principal, and to consent to the disclosure of medical records of the principal when acting pursuant to the durable power of attorney for health care.

91 Acts, ch 140, §7

144B.8 Revocation of durable power of attorney.

1. A durable power of attorney for health care may be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke, without regard to mental or physical condition. Revocation may be by notifying the attorney in fact orally or in writing. Revocation may also be made by notifying a health care provider orally or in writing while that provider is engaged in providing health care to the principal. A revocation is only effective as to a health care provider upon its communication to the provider by the principal or by another to whom the principal has communicated revocation. The health care provider shall document the revocation in the treatment records of the principal.

2. The principal is presumed to have the capacity to revoke a durable power of attorney for health care.

3. Unless it provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health care.

4. If authority granted by a durable power of attorney for health care is revoked under this section, an individual is not subject to criminal prosecution or civil liability for acting in good faith reliance upon the durable power of attorney for health care unless the individual has actual knowledge of the revocation.

5. The fact of execution and subsequent revocation of a durable power of attorney shall have no effect upon subsequent health care decisions made in accordance with accepted principles of law and standards of medical care governing those decisions.

91 Acts, ch 140, §8

144B.9 Immunities and responsibilities.

1. A health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action if the health care provider relies on a health care decision and both of the following requirements are satisfied:

a. The decision is made by an attorney in fact who the health care provider believes in good faith is authorized to make the decision.

b. The health care provider believes in good faith that the decision is not inconsistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the health care provider, and, if the decision is to withhold or withdraw health care necessary to keep the principal alive, the health care provider has provided an opportunity for the principal to object to the decision.

2. Notwithstanding a contrary health care decision of the attorney in fact, the health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action for failing to withhold or withdraw health care necessary to keep the principal alive. However, the attorney

in fact may make provisions to transfer the responsibility for the care of the principal to another health care provider.

3. An attorney in fact is not subject to criminal prosecution or civil liability for any health care decision made in good faith pursuant to a durable power of attorney for health care.

4. It shall be presumed that an attorney in fact, and a health care provider acting pursuant to the direction of an attorney in fact, are acting in good faith and in the best interests of the principal absent clear and convincing evidence to the contrary.

5. For purposes of this section, acting in *"good faith"* means acting consistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the attorney in fact, or where those desires are unknown, acting in the best interests of the principal, taking into account the principal's overall medical condition and prognosis.

6. A health care provider or attorney in fact may presume that a durable power of attorney for health care is valid absent actual knowledge to the contrary.

91 Acts, ch 140, §9

144B.10 Emergency treatment.

This chapter does not affect the law governing health care treatment in an emergency.

91 Acts, ch 140, §10

144B.11 Prohibited practices.

1. A health care provider, health care service plan, insurer, self-insured employee welfare benefit plan, or nonprofit hospital plan shall not condition admission to a facility, or the providing of treatment, or insurance, on the requirement that an individual execute a durable power of attorney for health care.

2. A policy of life insurance shall not be legally impaired or invalidated in any manner by the withholding or withdrawing of health care pursuant to the direction of an attorney in fact appointed pursuant to this chapter.

91 Acts, ch 140, §11

144B.12 General provisions.

1. This chapter does not create a presumption concerning the intention of an individual who has not executed a durable power of attorney for health care and does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a durable power of attorney for health care.

2. This chapter shall not be construed to condone, authorize, or approve any affirmative or deliberate act or omission which would constitute mercy killing or euthanasia.

3. If after executing a durable power of attorney for health care designating a spouse as attorney in fact, the marriage between the principal and the attorney in fact is dissolved, the power is thereby revoked. In the event of remarriage to each other, the power is reinstated unless otherwise revoked by the principal.

4. It is the responsibility of the principal to provide for notification of a health care provider of the terms of the principal's durable power of attorney for health care.

91 Acts, ch 140, §12

CHAPTER 144C

COMMUNITY HEALTH MANAGEMENT INFORMATION SYSTEM

Chapter repealed effective February 28, 1999;
see 98 Acts, ch 1119, §5

CHAPTER 145

HEALTH DATA COMMISSION

Repealed effective July 1, 1996, by its own terms;
93 Acts, ch 170, §9; 94 Acts, ch 1033, §11;
94 Acts, ch 1068, §6

CHAPTER 145A

AREA HOSPITALS

Consolidation of hospital service; see chapter 348

145A.1 Consolidation for purpose.
145A.2 Definitions.
145A.3 Official planning — maximum levy.
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145A.21 Amendment of plan of merger — procedures — qualifications.
145A.22 Actions subject to contest of elections — filing actions — limitation.

145A.1 Consolidation for purpose.

Any of the political subdivisions of this state may consolidate to acquire and operate an area hospital for the purpose of providing hospital service for all residents of such area.

[C71, 73, 75, 77, 79, 81, §145A.1]

145A.2 Definitions.

As used in this chapter, unless the context indicates otherwise:

1. *"Area hospital"* means a hospital established and operated by a merged area.
2. *"Board"* means the board of trustees of an area hospital.
3. *"Merged area"* means a public corporation formed by the residents of two or more contiguous or noncontiguous political subdivisions which have merged resources to establish and operate an area hospital.
4. *"Officials"* means the respective governing bodies of political subdivisions.
5. *"Political subdivision"* means any county, township, school district or city.

[C71, 73, 75, 77, 79, 81, §145A.2]

85 Acts, ch 123, §1, 2

145A.3 Official planning — maximum levy.

The officials of a political subdivision may plan the formation of a public corporation as a merged area to establish and operate an area hospital. In planning for an area hospital, a county board of supervisors may exclude from the merged area any township of the county which the board of supervisors determines would not sufficiently benefit by the merger and the portion of the county not so excluded shall constitute one public corporation for the purposes of this chapter. Plans for an area hospital shall include the maximum amount to be levied for debt service and operation and maintenance of the area hospital in the portion of the merged area within each political subdivision taking part in the merger. However, the maximum tax rates for the various political subdivisions may vary as the officials determine, based upon the need for hospital service of the residents of each political subdivision, the proximity of the residents to the proposed location of the hospital, the property values within the subdivision, and the expected service benefits to the residents of each subdivision by the proposed area hospital.

[C71, 73, 75, 77, 79, 81, §145A.3]

85 Acts, ch 123, §3

145A.4 Plans.

Officials of the various subdivisions may expend public funds for the purpose of formulating plans and in carrying out plans for a merged area and may arrive at an equitable distribution of costs to be paid by each participating political subdivision.

[C71, 73, 75, 77, 79, 81, §145A.4]

145A.5 Order of approval.

When a plan is approved, the officials approving the plan shall jointly issue an order of approval. The order shall specify the area to be merged, the maximum rate of tax to be levied for debt service and operation and maintenance of the proposed area hospital in the portion of the merged area within each political subdivision, the proposed location of the hospital building, the estimated cost of the establishment of the hospital, and any other details concerning the establishment and operation of the hospital the officials deem pertinent. The order shall be published in one or more newspapers which have general circulation within the merged area once each week for three consecutive weeks, but the newspapers selected need not be published in the merged area. The pub-

lished order shall contain a notice to the residents of each subdivision of the proposed merged area that if the residents fail to protest as provided in this chapter, the order shall be deemed approved upon the expiration of a sixty-day period following the date of the last published notice.

[C71, 73, 75, 77, 79, 81, §145A.5]
85 Acts, ch 123, §4

145A.6 Petition of protest.

The plans formulated for the area hospital shall be deemed approved unless, within sixty days after the third and final publication of the order, a petition protesting the proposed plan containing the signatures of at least five percent of the registered voters of any political subdivision within the proposed merged area is filed with the respective officials of the protesting petitioners.

[C71, 73, 75, 77, 79, 81, §145A.6]
2001 Acts, ch 56, §8

145A.7 Special election.

When a protesting petition is received, the officials receiving the petition shall call a special election of all registered voters of that political subdivision for the purpose of approving or rejecting the order setting out the proposed merger plan. The vote will be taken by ballot in the form provided by sections 49.43 to 49.47, and the election shall be initiated and held as provided in chapter 49. A majority vote of those registered voters voting at said special election shall be sufficient to approve the order and thus include the political subdivision within the merged area.

[C71, 73, 75, 77, 79, 81, §145A.7]
2001 Acts, ch 56, §9

145A.8 Effect on other subdivisions.

A protest petition filed in one political subdivision shall have no effect upon the other political subdivisions of the proposed merged area; and in the portion of the proposed area where no protest petition is filed within sixty days after the last published notice, the residents of that portion of the area shall be deemed to have approved the proposed plan, and shall not take part in any special election.

[C71, 73, 75, 77, 79, 81, §145A.8]

145A.9 Continuance or abandonment.

If the voters at the special election approve by a majority vote the proposed plan, then the plan may be carried out as originally proposed. However, if the voters of any political subdivision within the proposed area reject the plan as set out in the original order, then said original order shall be wholly nullified.

[C71, 73, 75, 77, 79, 81, §145A.9]

145A.10 Board of hospital trustees.

Upon acceptance of a plan, the officials of the merged area acting as a committee of the whole shall appoint a board of hospital trustees. The board of trustees shall then meet, elect a chairperson and adopt such rules for the organization of the board as may be necessary. The number and composition of the board shall be determined by the committee appointing the board; but as a matter of public policy the committee is directed to apportion the board into area districts in such a way that the residents of all of the merged area will be represented as nearly equally as possible on the board.

[C71, 73, 75, 77, 79, 81, §145A.10]

145A.11 Terms of members.

The terms of members of the board shall be four years, except that members of the initial board shall determine their respective terms by lot so that the terms of one-half of the members, as nearly as may be, shall expire at the next general election. The remaining initial terms shall expire at the following general election. The successors of the initial board shall be chosen from area districts at regular elections, and shall be nominated and elected in the same manner as county hospital trustees as provided in section 347.25, except that nomination papers on behalf of a candidate shall be signed by not less than twenty-five eligible electors from the area district.

[C71, 73, 75, 77, 79, 81, §145A.11]

145A.12 Operation and management.

The board shall govern the operation and management of the area hospital and may do all things necessary to establish and operate the hospital. The board has all the general powers, duties, and responsibilities of the trustees of county public hospitals as set out in sections 347.13 and 347.14 and may enter into contracts for the operation and management of area hospital facilities.

[C71, 73, 75, 77, 79, 81, §145A.12]
85 Acts, ch 123, §5

145A.13 Political status.

A merged area as a public corporation formed under this chapter may exercise the powers granted under this chapter, and may sue and be sued, purchase and sell property, incur indebtedness in accordance with constitutional limitations, and exercise all the powers granted by law and other powers incident to public corporations of like character and not inconsistent with the laws of this state.

[C71, 73, 75, 77, 79, 81, §145A.13]
85 Acts, ch 123, §6

145A.14 Budget for operation.

The board shall prepare an annual budget designating the proposed expenditures for operation

of the area hospital and payment of bonded indebtedness, and the amount to be raised by taxation, following the requirements of chapter 24. The board shall prorate the amount to be raised for operations by local taxation among the respective political subdivisions forming a part of the merged area in the proportion that the product of the value of taxable property and the maximum tax levy rate in each political subdivision bears to the total product of the value of taxable property and the maximum tax levy rate in the entire merged area, as set out in the published order of merger. The board of hospital trustees shall certify the amount so determined to the respective levying officials of the affected counties, and the officials shall levy a tax sufficient to raise the annual budget. Taxes collected pursuant to the levy shall be paid by the respective county treasurers to the treasurer of the area hospital in the same manner that school taxes are paid to local school districts.

[C71, 73, 75, 77, 79, 81, §145A.14]
85 Acts, ch 123, §7

145A.15 Treasurer of hospital.

If the area hospital is located within the corporate limits of any city, the city treasurer shall act as treasurer of the area hospital; and if the area hospital is located outside the limits of any city, the county treasurer shall act as the treasurer of the area hospital; provided, however, the board may appoint some other person to serve as treasurer. The board may require that the treasurer furnish appropriate bond for faithful performance of the treasurer's duties.

[C71, 73, 75, 77, 79, 81, §145A.15]

145A.16 Funds to aid hospital.

In addition to revenue derived by tax levy, the board of hospital trustees of a merged area shall be authorized to receive and expend:

1. Federal funds which may be available by federal laws, rules and regulations.
2. State aid which may be available by state laws and rules.
3. Fees and expenses charged to persons using the facilities of the hospital.
4. Donations and gifts which may be accepted by the hospital trustees and expended in accordance with the terms of the gift without compliance with the local budget law.

[C71, 73, 75, 77, 79, 81, §145A.16]

145A.17 Indebtedness and bonds.

Boards of hospital trustees may by resolution acquire sites and buildings by purchase, lease, construction, or otherwise, for use by area hospitals and may by resolution contract indebtedness on behalf of the merged area and issue bonds bearing interest at a rate not exceeding the rate of interest permitted by chapter 74A, to raise funds in accordance with chapter 75 for the purpose of acquiring the sites and buildings.

[C71, 73, 75, 77, 79, 81, §145A.17]
85 Acts, ch 123, §8

145A.18 Taxes.

Taxes for the payment of bonds issued under section 145A.17 shall be levied in accordance with chapter 76 and in the same proportion as provided in section 145A.14. Any indebtedness incurred shall not be considered an indebtedness incurred for general and ordinary purposes.

[C71, 73, 75, 77, 79, 81, §145A.18]
85 Acts, ch 123, §9

145A.19 Special tax.

In addition to the tax authorized in connection with the annual budget and with the issuance of bonds, the voters in any merged area may at any regular election vote a special tax for a period not to exceed five years for the purchase of grounds, purchase or construction of buildings, purchase of equipment, and for the purpose of maintaining, remodeling, improving, or expanding the hospital area. Such a tax shall not exceed one-fourth of the maximum levy of each political subdivision as set out in the published order of merger, but the total tax levy for annual budget, bonds, and special purposes shall not exceed the maximum levy as proposed in the published order of merger.

[C71, 73, 75, 77, 79, 81, §145A.19]

145A.20 Revenue bonds.

In addition to any other provisions of this chapter and for the purpose of acquiring, constructing, equipping, enlarging, or improving a hospital building or any part of a hospital building, merged areas may issue revenue bonds and the board has all the powers and duties of a county board of supervisors as provided in chapter 331, division IV, part 4 and section 347A.3.

[C71, 73, 75, 77, 79, 81, §145A.20]
83 Acts, ch 101, §25; 85 Acts, ch 123, §10

145A.21 Amendment of plan of merger — procedures — qualifications.

A plan of merger once approved may be amended. An amendment shall be formulated and approved in the same manner and subject to the same limitations as provided in sections 145A.3 through 145A.9 for the formulation and approval of an original plan of merger. However, an amendment to a plan of merger shall not in any way impair the obligation of or source of payment for bonds or other indebtedness duly contracted prior to the effective date of the amendment to the plan of merger.

85 Acts, ch 123, §11

145A.22 Actions subject to contest of elections — filing actions — limitation.

A special election called to approve or reject an original plan of merger or an amendment to an approved plan of merger is subject to the provisions for contest of elections for public measures set forth in chapter 57. Except as provided with respect to election contests, after one hundred twenty days following the third and final publication of the order of approval of the plan or amendment to the plan of merger, an action shall not be filed to contest the regularity of the proceedings with respect to a plan of merger or amendment to a plan of merger. After one hundred twenty days the organization of the merged area is conclusively presumed to have been lawful.

85 Acts, ch 123, §12

CHAPTER 145B

DOGS FOR SCIENTIFIC RESEARCH

145B.1 Definitions.
145B.2 Application to department of public health.
145B.3 Dogs held for redemption by owner.
145B.4 Fee.
145B.5 Care and treatment.
145B.6 Penalty.
145B.7 Construction.

145B.1 Definitions.

For the purposes of this chapter, the following definitions shall apply:

1. *"Institution"* shall mean any school or college of medicine, veterinary medicine, pharmacy, dentistry, and osteopathy, or hospital, diagnostic or research laboratories, or other educational or scientific establishment situated in this state properly concerned with the investigation of, or instruction concerning the structure or function of living organisms, the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

2. *"Pound"* shall mean any public or private agency, person, society, or corporation having custody of dogs seized or held under the authority of the state or any municipality or any political subdivision of the state.

[C62, 66, 71, 73, 75, 77, 79, 81, §351A.1]
C93, §145B.1

145B.2 Application to department of public health.

An institution may apply annually to the Iowa department of public health for authority to obtain animals from a pound. If the department shall find that such institution, by reason of its ethical standards, its personnel, its facilities and the use it proposes to make of dogs is a fit and proper institution to be authorized to obtain dogs from a pound, and that the public interest would be served by such authority, then the department shall authorize such institution to obtain dogs from a pound.

[C62, 66, 71, 73, 75, 77, 79, 81, §351A.2]
C93, §145B.2

145B.3 Dogs held for redemption by owner.

An institution so authorized by the Iowa department of public health may request dogs from a pound. The pound may tender to such institution dogs in its custody seized or held by authority of the state, municipality, or other political subdivision. However, a dog shall not be tendered unless it has been held for redemption by its owner or for sale for a period of not less than three nor more than fifteen days. A dog lawfully licensed at the time of its seizure shall not be tendered unless its owner consents in writing. Unless a dog is sick or injured or lawfully licensed at the time of seizure, a pound shall not destroy a dog while a request of an authorized institution to that pound is pending.

[C62, 66, 71, 73, 75, 77, 79, 81, §351A.3]
C93, §145B.3
95 Acts, ch 122, §1

145B.4 Fee.

An institution obtaining dogs from a pound shall pay to the municipality or other political subdivision under whose authority each dog is held or was seized a reasonable fee not to exceed five dollars for each dog so obtained, and shall provide for the transportation of the dogs so obtained from the pound.

[C62, 66, 71, 73, 75, 77, 79, 81, §351A.4]
C93, §145B.4

145B.5 Care and treatment.

Animals used in any institution authorized by this chapter shall receive every consideration for their bodily comfort; they shall be kindly treated, properly fed and their surroundings kept in a sanitary condition. All major operative procedures may be done under local infiltration anesthesia.

If the nature of the study is such that the animal may survive, acceptable techniques shall be followed throughout the operation. If the study does not require survival, the animal shall be killed in a humane manner at the conclusion of the observations. The post-operative care of experimental animals shall be such as to minimize discomfort during convalescence. All conditions shall be maintained for the animal's comfort in accordance with the best practices followed in human medicine and surgery.

[C62, 66, 71, 73, 75, 77, 79, 81, §351A.5]
C93, §145B.5

145B.6 Penalty.

It shall be a simple misdemeanor for any person or corporation to violate any provision of this chapter. Any pound failing or refusing to comply with the provisions of this chapter shall become immediately ineligible for any public moneys notwithstanding the provisions of any contract, and it shall be unlawful for any public body to pay any public moneys to a pound after receipt by it of a notice of such noncompliance or refusal from any institution authorized by the Iowa department of public health to obtain dogs until such time as such institution shall have withdrawn its notice or the department shall have notified such public body that such notice was without foundation.

[C66, 71, 73, 75, 77, 79, 81, §351A.6]
C93, §145B.6

145B.7 Construction.

This chapter shall be so construed and interpreted as to effectuate its purpose of making available for scientific, educational and research purposes unclaimed, unwanted and unlicensed dogs.

[C66, 71, 73, 75, 77, 79, 81, §351A.7]
C93, §145B.7

CHAPTER 146

ABORTIONS — REFUSAL TO PERFORM

146.1 Liability of persons relating to performance of abortions.
146.2 Liability of hospitals refusing to perform abortions.

146.1 Liability of persons relating to performance of abortions.

An individual who may lawfully perform, assist, or participate in medical procedures which will result in an abortion shall not be required against that individual's religious beliefs or moral convictions to perform, assist, or participate in such procedures. A person shall not discriminate against any individual in any way, including but not limited to employment, promotion, advancement, transfer, licensing, education, training or the granting of hospital privileges or staff appointments, because of the individual's participation in or refusal to participate in recommending, performing or assisting in an abortion procedure. For the purposes of this chapter, *"abortion"* means the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus. Abortion does not include medical care which has as its primary purpose the treatment of a serious physical condition requiring emergency medical treatment necessary to save the life of a mother.

[C77, 79, 81, §146.1]

146.2 Liability of hospitals refusing to perform abortions.

A hospital, which is not controlled, maintained and supported by a public authority, shall not be required to permit the performance of an abortion. The refusal to permit such procedures shall not be grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory action against the hospital.

[C77, 79, 81, §146.2]

SUBTITLE 3

HEALTH-RELATED PROFESSIONS

CHAPTER 147

GENERAL PROVISIONS, HEALTH-RELATED PROFESSIONS

Continuing education and regulation; see chapter 272C
Pilot project utilizing scope of practice review committees;
duration; 97 Acts, ch 203, §6; 2000 Acts, ch 1222, §11;
2002 Acts, 2nd Ex, ch 1003, §107, 109

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147.1 Definitions.

1. As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. For the purpose of this and the following chapters of this subtitle:

a. "Department" shall mean the Iowa department of public health.

b. "Examining board" shall mean one of the boards appointed by the governor to give examinations to applicants for licenses.

c. "Licensed" or *"certified"* when applied to a physician and surgeon, podiatric physician, osteopath, osteopathic physician and surgeon, physician assistant, psychologist or associate psychologist, chiropractor, nurse, dentist, dental hygienist, optometrist, speech pathologist, audiologist, pharmacist, physical therapist, occupational therapist, respiratory care practitioner, practitioner of

cosmetology arts and sciences, practitioner of barbering, funeral director, dietitian, marital and family therapist, mental health counselor, social worker, massage therapist, athletic trainer, or acupuncturist means a person licensed under this subtitle.

d. "Peer review" means evaluation of professional services rendered by a person licensed to practice a profession.

e. "Peer review committee" means one or more persons acting in a peer review capacity who also serve as an officer, director, trustee, agent, or member of any of the following:

(1) A state or local professional society of a profession for which there is peer review.

(2) Any organization approved to conduct peer review by a society as designated in paragraph *"a"* of this subsection.

(3) The medical staff of any licensed hospital.

(4) An examining board.

(5) The board of trustees of a licensed hospital when performing a function relating to the reporting required by section 147.135, subsection 3.

(6) A health care entity, including but not limited to a group medical practice, that provides health care services and follows a formal peer review process for the purpose of furthering quality health care.

f. "Profession" means medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, practice as a physician assistant, psychology, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, respiratory care, cosmetology arts and sciences, barbering, mortuary science, marital and family therapy, mental health counseling, social work, dietetics, massage therapy, athletic training, or acupuncture.

[C24, 27, 31, 35, 39, §**2438;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.1]

84 Acts, ch 1075, §6; 85 Acts, ch 168, §1; 86 Acts, ch 1211, §13; 87 Acts, ch 91, §6; 88 Acts, ch 1225, §2; 89 Acts, ch 89, §4, 5; 91 Acts, ch 229, §1; 92 Acts, ch 1205, §13; 94 Acts, ch 1132, §10; 95 Acts, ch 41, §8; 95 Acts, ch 108, §3; 96 Acts, ch 1036, §3, 4; 96 Acts, ch 1109, §1; 96 Acts, ch 1219, §20; 98 Acts, ch 1053, §2, 3; 2000 Acts, ch 1053, §1; 2000 Acts, ch 1148, §1

LICENSES

147.2 License required.

A person shall not engage in the practice of medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, physical therapy, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, occupational therapy, respiratory care, pharmacy, cosmetology, barbering, social work, dietetics, marital and family therapy or mental health counseling, massage therapy, mortuary science, or acupuncture, or shall not practice as a physician assistant as defined in the following chapters of this subtitle, unless the person has obtained from the department a license for that purpose.

For purposes of this section, a person who is licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1 shall be considered to have obtained a license to practice nursing from the department.

[C97, §2582, 2588; S13, §2575-a28, -a31, -a36, 2582, 2583-a, -d, -r, 2600-o4; SS15, §2588; C24, 27, 31, 35, 39, §**2439;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.2]

85 Acts, ch 168, §2; 88 Acts, ch 1225, §3; 96 Acts, ch 1035, §1; 96 Acts, ch 1036, §5; 98 Acts, ch 1050, §1, 5; 2000 Acts, ch 1008, §1; 2000 Acts, ch 1053, §2; 2000 Acts, ch 1185, §1

147.3 Qualifications.

An applicant for a license to practice a profession under this subtitle is not ineligible because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. A board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of the profession for which the applicant requests to be licensed. Character references may be required, but shall not be obtained from licensed members of the profession.

[S13, §2575-a29, -a37, 2583-a, -1, 2600-d; C24, 27, 31, 35, 39, §**2440, 2567;** C46, 50, 54, 58, 62, 66, §147.3, 153.3; C71, 73, §147.3, 153.5; C75, 77, 79, 81, §147.3]

84 Acts, ch 1075, §7; 85 Acts, ch 168, §3; 88 Acts, ch 1225, §4; 94 Acts, ch 1132, §11; 96 Acts, ch 1036, §6; 98 Acts, ch 1053, §4

147.4 Grounds for refusing.

The department may refuse to grant a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked or suspended.

[C97, §2578; S13, §2575-a33, -a41, 2578, 2583-c; C24, 27, 31, 35, 39, §**2441;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.4]

90 Acts, ch 1086, §1

Grounds for revocation, §147.55 et seq.

147.5 License required — exception.

Every license to practice a profession shall be in the form of a certificate under the seal of the department, signed by the director of public health. Such license shall be issued in the name of the examining board which conducts examinations for that particular profession.

This section shall not apply to a person who is licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1.

[C97, §2576, 2577, 2591; S13, §2575-a30, -a38, 2576, 2583-k, 2600-d; C24, 27, 31, 35, 39, §**2442;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.5]

2000 Acts, ch 1008, §2; 2000 Acts, ch 1140, §30

147.6 Certificate presumptive evidence.

Every license issued under this subtitle shall be presumptive evidence of the right of the holder to practice in this state the profession therein specified.

[C97, §2576; S13, §2575-a30, -a38, 2576, 2583-k, 2600-d; C24, 27, 31, 35, 39, §**2443;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.6]

94 Acts, ch 1132, §12; 96 Acts, ch 1036, §7; 98 Acts, ch 1053, §5

147.7 Display of license.

Every person licensed under this subtitle to practice a profession shall keep the license publicly displayed in the primary place in which the person practices.

This section shall not apply to a person who is licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1. A person licensed in another state and recognized for licensure in this state pursuant to the compact shall, however, maintain a copy of a license issued by the person's home state available for inspection when engaged in the practice of nursing in this state.

[C97, §2591; S13, §2600-o1; C24, 27, 31, 35, 39, §**2444;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.7]

90 Acts, ch 1086, §2; 94 Acts, ch 1132, §13; 96 Acts, ch 1036, §8; 98 Acts, ch 1053, §6; 2000 Acts, ch 1008, §3

147.8 Record of licenses.

The name, location, number of years of practice of the person to whom a license is issued to practice a profession, the number of the certificate, and the date of registration thereof shall be kept and made available in a manner which is open to public inspection.

[C97, §2591; S13, §2575-a40, 2583-a, -k, 2600-d; C24, 27, 31, 35, 39, §**2445;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.8]

96 Acts, ch 1128, §5

147.9 Change of residence.

When any person licensed to practice a profession under this subtitle changes a residence or place of practice the person shall notify the department.

[C97, §2591; C24, 27, 31, 35, 39, §**2446;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.9]

90 Acts, ch 1086, §3; 94 Acts, ch 1132, §14; 96 Acts, ch 1036, §9; 98 Acts, ch 1053, §7

147.10 Renewal.

Every license to practice a profession shall expire in multiyear intervals and be renewed as determined by the board upon application by the licensee, without examination. Application for renewal shall be made in writing to the department accompanied by the required fee at least thirty days prior to the expiration of such license. Every renewal shall be displayed in connection with the original license. The department shall notify each licensee prior to the expiration of a license. Failure to renew the license within a reasonable time after the expiration shall not invalidate the license, but a reasonable penalty may be assessed by the board.

[C97, §2590; S13, §2575-a39, 2589-d; C24, 27, 31, §2447; C35, §2447, 2573-g2 – 2573-g4; C39, §**2447, 2573.02 – 2573.04;** C46, 50, 54, 58, 62, 66, §147.10, 153.11 – 153.12; C71, 73, §147.10, 153.9, 153.10; C75, 77, 79, 81, §147.10]

2002 Acts, ch 1108, §12

Section amended

147.11 Reinstatement.

Any licensee who allows the license to lapse by failing to renew the same, as provided in section 147.10, may be reinstated without examination upon recommendation of the examining board for the licensee's profession and upon payment of the renewal fees then due.

[C24, 27, 31, 35, 39, §**2448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.11]

EXAMINING BOARDS

147.12 Examining boards.

For the purpose of giving examinations to applicants for licenses to practice the professions for which licenses are required by this subtitle, the governor shall appoint, subject to confirmation by the senate, a board of examiners for each of the professions. The board members shall not be required to be members of professional societies or associations composed of members of their professions.

If a person who has been appointed by the governor to serve on an examining board has ever been disciplined in a contested case by the board to which the person has been appointed, all board complaints and statements of charges, settlement agreements, findings of fact, and orders pertaining to the disciplinary action shall be made available to the senate committee to which the appointment is referred at the committee's request before the full senate votes on the person's appointment.

[C97, §2576, 2584; S13, §2575-a29, -a37, 2576, 2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §**2449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.12]

88 Acts, ch 1128, §2; 94 Acts, ch 1132, §15; 96 Acts, ch 1036, §10; 98 Acts, ch 1053, §8

Confirmation, see §2.32

147.13 Designation of boards.

The examining boards provided in section 147.12 shall be designated as follows:

1. For medicine and surgery, osteopathy, osteopathic medicine and surgery, and acupuncture, medical examiners.
2. For physician assistants, board of physician assistant examiners.
3. For psychology, psychology examiners.
4. For podiatry, podiatry examiners.
5. For chiropractic, chiropractic examiners.
6. For physical therapists and occupational therapists, physical and occupational therapy examiners.
7. For nursing, board of nursing.
8. For dentistry, dental hygiene, and dental assisting, dental examiners.
9. For optometry, optometry examiners.
10. For speech pathology and audiology, speech pathology and audiology examiners.
11. For cosmetology arts and sciences, cosmetology arts and sciences examiners.
12. For barbering, barber examiners.
13. For pharmacy, pharmacy examiners.
14. For mortuary science, mortuary science examiners.
15. For social workers, social work examiners.
16. For marital and family therapists and mental health counselors, behavioral science examiners.
17. For dietetics, dietetic examiners.
18. For respiratory care therapists, respiratory care examiners.
19. For massage therapists, massage therapy examiners.
20. For athletic trainers, athletic training examiners.

[C24, 27, 31, 35, 39, §**2450;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.13]

84 Acts, ch 1075, §8; 85 Acts, ch 168, §4; 88 Acts, ch 1225, §5; 91 Acts, ch 229, §2; 92 Acts, ch 1205, §14; 93 Acts, ch 86, §12; 96 Acts, ch 1036, §11; 98 Acts, ch 1053, §9; 2000 Acts, ch 1002, §1

147.14 Composition of boards.

The boards of examiners shall consist of the following:

1. For barbering, three members licensed to practice barbering, and two members who are not licensed to practice barbering and who shall represent the general public. A quorum shall consist of a majority of the members of the board.
2. For medical examiners, five members licensed to practice medicine and surgery, two members licensed to practice osteopathic medicine and surgery, and three members not licensed to practice either medicine and surgery or osteopathic medicine and surgery, and who shall represent the general public. A majority of members of the board constitutes a quorum.
3. For nursing examiners, four registered nurses, two of whom shall be actively engaged in practice, two of whom shall be nurse educators from nursing education programs; of these, one in higher education and one in area community and vocational-technical registered nurse education; one licensed practical nurse actively engaged in practice; and two members not registered nurses or licensed practical nurses and who shall represent the general public. The representatives of the general public shall not be members of health care delivery systems. A majority of the members of the board constitutes a quorum.
4. For dental examiners, five members shall be licensed to practice dentistry, two members shall be licensed to practice dental hygiene and two members not licensed to practice dentistry or dental hygiene and who shall represent the general public. A majority of the members of the board shall constitute a quorum. No member of the dental faculty of the school of dentistry at the state university of Iowa shall be eligible to be appointed. Beginning January 1, 2000, persons appointed to the board as dental hygienist members shall not be employed by or receive any form of remuneration from a dental or dental hygiene educational institution. The two dental hygienist board members and one dentist board member shall constitute a dental hygiene committee of the board as provided in section 153.33A.
5. For pharmacy examiners, five members licensed to practice pharmacy and two members who are not licensed to practice pharmacy and who shall represent the general public. A majority of the members of the board shall constitute a quorum.
6. For optometry examiners, five members licensed to practice optometry and two members who are not licensed to practice optometry and who shall represent the general public. A majority of the members of the board shall constitute a quorum.
7. For psychology examiners, five members who are licensed to practice psychology and two members not licensed to practice psychology and who shall represent the general public. Of the five members who are licensed to practice psychology, one member shall be primarily engaged in graduate teaching in psychology, two members shall be persons who render services in psychology, one member shall represent areas of applied psychology and may be affiliated with training institutions and shall devote a major part of the member's time to rendering service in psychology, and one member shall be primarily engaged in research psychology. A majority of the members of the board constitutes a quorum.
8. For chiropractic examiners, five members licensed to practice chiropractic and two members who are not licensed to practice chiropractic and

who shall represent the general public. A majority of the members of the board shall constitute a quorum.

9. For speech pathology and audiology examiners, five members licensed to practice speech pathology or audiology at least two of which shall be licensed to practice speech pathology and at least two of which shall be licensed to practice audiology, and two members who are not licensed to practice speech pathology or audiology and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

10. For physical therapy and occupational therapy, three members licensed to practice physical therapy, two members licensed to practice occupational therapy, and two members who are not licensed to practice physical therapy or occupational therapy and who shall represent the general public. A quorum shall consist of a majority of the members of the board.

11. For dietetic examiners, one licensed dietitian representing the approved or accredited dietetic education programs, one licensed dietitian representing clinical dietetics in hospitals, one licensed dietitian representing community nutrition services and two members who are not licensed dietitians and who shall represent the general public. A majority of the members of the board constitutes a quorum.

12. For the board of physician assistant examiners, three members licensed to practice as physician assistants, at least two of whom practice in counties with a population of less than fifty thousand, one member licensed to practice medicine and surgery who supervises a physician assistant, one member licensed to practice osteopathic medicine and surgery who supervises a physician assistant, and two members who are not licensed to practice either medicine and surgery or osteopathic medicine and surgery or licensed as a physician assistant and who shall represent the general public. At least one of the physician members shall be in practice in a county with a population of less than fifty thousand. A majority of members of the board constitutes a quorum.

13. For behavioral science examiners, three members licensed to practice marital and family therapy, one of whom shall be employed in graduate teaching, training, or research in marital and family therapy and two of whom shall be practicing marital and family therapists; three members licensed to practice mental health counseling, one of whom shall be employed in graduate teaching, training, or research in mental health counseling and two of whom shall be practicing mental health counselors; and three members who are not licensed to practice marital and family therapy or mental health counseling and who shall represent the general public. A majority of the members of the board constitutes a quorum.

14. For cosmetology arts and sciences examiners, a total of seven members, three who are licensed cosmetologists, one who is a licensed electrologist, esthetician, or nail technologist, one who is a licensed instructor of cosmetology arts and sciences at a public or private school and who does not own a school of cosmetology arts and sciences, and two who are not licensed in a practice of cosmetology arts and sciences and who shall represent the public.

15. For respiratory care, one licensed physician with training in respiratory care, three respiratory care practitioners who have practiced respiratory care for a minimum of six years immediately preceding their appointment to the board and who are recommended by the society for respiratory care, and one member not licensed to practice medicine or respiratory care who shall represent the general public. A majority of members of the board constitutes a quorum.

16. For mortuary science examiners, four members licensed to practice mortuary science, one member owning, operating, or employed by a crematory, and two members not licensed to practice mortuary science and not a crematory owner, operator, or employee who shall represent the general public. A majority of the members of the board constitutes a quorum.

17. For massage therapists, four members licensed to practice massage therapy and three members who are not licensed to practice massage therapy and who shall represent the general public. A majority of the members of the board constitutes a quorum.

18. For athletic trainers, three members licensed to practice athletic training, three members licensed to practice medicine and surgery, and one member not licensed to practice athletic training or medicine and surgery and who shall represent the general public. A majority of the members of the board constitutes a quorum.

19. For podiatry examiners, five members licensed to practice podiatry and two members who are not licensed to practice podiatry and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

20. For social work examiners, a total of seven members, five who are licensed to practice social work, with at least one from each of three levels of licensure described in section 154C.3, subsection 1, two employed by a licensee under chapter 237, and two who are not licensed social workers and who shall represent the general public.

[C97, §2564, 2576, 2584; S13, §2564, 2575-a29, -a30, -a37, -a38, 2576, 2583-a, -h, -i, 2600-b, -c; SS15, §2584; C24, 27, 31, 35, 39, §**2451, 2452, 2475;** C46, 50, 54, 58, 62, 66, §147.14, 147.15, 147.38; C71, 73, §147.14, 147.15, 147.38, 153.1; C75, 77, 79, 81, §147.14]

84 Acts, ch 1075, §9; 85 Acts, ch 168, §5; 86 Acts, ch 1003, §1; 86 Acts, ch 1022, §1; 88 Acts, ch 1134, §29; 88 Acts, ch 1225, §6, 7; 91 Acts, ch 229, §3; 92 Acts, ch 1183, §2; 92 Acts, ch 1205, §15, 16; 96 Acts,

ch 1035, §2, 3, 13; 96 Acts, ch 1036, §12; 96 Acts, ch 1148, §1, 2; 98 Acts, ch 1002, §1, 2; 98 Acts, ch 1010, §1; 98 Acts, ch 1053, §10; 99 Acts, ch 19, §1; 99 Acts, ch 96, §14

147.15 Repealed by 74 Acts, ch 1086, § 198.

147.16 Examiners.

Each licensed examiner shall be actively engaged in the practice or the instruction of the examiner's profession and shall have been so engaged for a period of five years just preceding the examiner's appointment, the last two of which shall be in this state.

However, each licensed physician assistant member of the board of physician assistant examiners shall be actively engaged in practice as a physician assistant and shall have been so engaged for a period of three years just preceding the member's appointment, the last year of which shall be in this state.

[C97, §2584; S13, §2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §**2453;** C46, 50, 54, 58, 62, 66, §147.16; C71, 73, §147.16, 153.1; C75, 77, 79, 81, §147.16; 81 Acts, ch 65, §1]

88 Acts, ch 1225, §8

147.17 Repealed by 74 Acts, ch 1086, § 198.

147.18 Disqualifications.

No examiner shall be connected in any manner with any wholesale or jobbing house dealing in supplies or have a financial interest in or be an instructor at a proprietary school.

[C97, §2564; S13, §2564, 2583-a, -j, 2600-k; C24, 27, 31, 35, 39, §**2455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.18; 81 Acts, ch 65, §2]

147.19 Terms of office.

The board members shall serve three-year terms, which shall commence and end as provided by section 69.19. Any vacancy in the membership of an examining board shall be filled by appointment of the governor subject to senate confirmation. A member shall serve no more than three terms or nine years.

[C97, §2564, 2576, 2584; S13, §2564, 2575-a29, -a37, 2576, 2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §**2456, 2458**; C46, 50, 54, 58, 62, 66, §147.19, 147.21; C71, 73, §147.19, 147.21, 153.1; C75, 77, 79, 81, §147.19]

Confirmation, see §2.32

147.20 Nomination of examiners.

The regular state association or society for each profession may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations.

[S13, §2583-a, -h, 2600-b; C24, 27, 31, 35, 39, §**2457;** C46, 50, 54, 58, 62, 66, §147.20; C71, 73, §147.20, 153.1; C75, 77, 79, 81, §147.20]

147.21 Examination information.

The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §147.21]

83 Acts, ch 101, §26

147.22 Officers.

Each examining board shall organize annually and shall select a chairperson and a secretary from its own membership.

[C97, §2576, 2585; S13, §2576, 2583-i, 2585, 2600-c; C24, 27, 31, 35, 39, §**2459;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.22]

147.23 Repealed by 78 Acts, ch 1104, § 3.

147.24 Compensation.

Members of an examining board shall receive actual expenses for their duties as a member of the examining board. Each member of each board may also be eligible to receive compensation as provided in section 7E.6. The funds shall be appropriated to the department and allocated to each examining board within the limits of funds.

[C97, §2574; S13, §2574, 2575-a34, -a44, 2583-a, -p, 2600-g; C24, 27, 31, 35, 39, §**2461;** C46, 50, 54, 58, 62, 66, §147.24; C71, 73, §147.24, 153.3; C75, 77, 79, 81, §147.24]

86 Acts, ch 1245, §1141

147.25 System of health personnel statistics — fee.

The division for records and statistics within the department shall establish and maintain a system of health personnel statistics which shall include the collection, preservation, revision and dissemination of statistical data to enable the department or other agencies concerned with delivery of health care services in this state to determine the total number, employment status, location of prac-

tice or place of employment, areas of professional specialization and ages of licensed health care practitioners and other pertinent information bearing on the availability of trained and licensed personnel in health care fields to provide services in this state. The statistical data shall be computed and available upon request at least biannually in the form of a report to agencies, both public and private, which are concerned with the delivery of health care in this state.

The department shall enter into co-operative arrangements with and seek the technical expertise of agencies collecting and producing health personnel statistics in order to eliminate duplication in the collection of health personnel information and to assist in the standardization and co-ordination of procedures relating to the collection of health personnel statistics.

Examining boards collecting information necessary for the division for records and statistics to carry out the provisions of this section shall provide the department with the information which may be gathered by means including, but not limited to, questionnaires forwarded to applicants for a license or renewal of a license.

In addition to any other fee provided by law, a fee may be set by the respective examining boards for each license and renewal of a license to practice a profession, which fee shall be based on the annual cost of collecting information for use by the department in the administration of the system of health personnel statistics established by this section. The fee shall be collected, transmitted to the treasurer of state and deposited in the general fund of the state in the manner in which license and renewal fees of the respective professions are collected, transmitted, and deposited in the general fund.

[C75, 77, 79, 81, §147.25]

84 Acts, ch 1075, §10; 85 Acts, ch 168, §6; 88 Acts, ch 1225, §9

147.26 Supplies and examination quarters.

The department shall furnish each examining board with all articles and supplies required for the public use and necessary to enable said board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and the cost shall be assessed to the examining board. The director of the department of general services shall furnish each examining board with suitable quarters in which to conduct the examination and the cost of the quarters shall be assessed to the examining board.

[C97, §2583; S13, §2575-a34, -a44, 2583, 2583-a, -p, 2600-g; C24, 27, 31, 35, 39, §**2463, 2464;** C46, 50, 54, 58, 62, 66, 71, 73, §147.26, 147.27; C75, 77, 79, 81, §147.26]

147.27 Repealed by 74 Acts, ch 1086, § 198.

147.28 National organization.

Each examining board may maintain a membership in the national organization of the state examining boards of its profession to be paid from funds appropriated to the board.

[C27, 31, 35, §2465-b1; C39, §**2465.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.28]

EXAMINATIONS

147.29 Applications.

Any person desiring to take the examination for a license to practice a profession shall make application to the department at least fifteen days before the examination, on a form provided by the board. The application shall be accompanied by the examination fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take the examination. All applications shall be in accordance with the rules of the department and shall be signed by the applicant. The board may require that a recent photograph of the applicant be attached to the application.

[S13, §2575-a37, 2600-d; C24, 27, 31, 35, 39, §**2466, 2567, 2572, 2573;** C46, 50, 54, 58, 62, 66, §147.29, 153.3, 153.8, 153.9; C71, 73, §147.29, 153.6, 153.8; C75, 77, 79, 81, §147.29]

90 Acts, ch 1086, §4

Exceptions, §147.94, et seq.

147.30 Time and place of examinations.

The department shall give public notice of the time and place of all examinations to be held under this subtitle. Such notice shall be given in such manner as the department may deem expedient and in ample time to allow all candidates to comply with the provisions of this subtitle.

[S13, §2576; C24, 27, 31, 35, 39, §**2467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.30]

94 Acts, ch 1132, §16; 96 Acts, ch 1036, §13; 98 Acts, ch 1053, §11

147.31 Repealed by 74 Acts, ch 1086, § 198.

147.32 Accredited colleges. Repealed by 89 Acts, ch 3, § 3.

147.33 Professional schools.

As a basis for such action on the part of the examining board, the registrar of the state University of Iowa and the dean of the professional school of said institution which teaches the profession for which said board gives license examinations, shall supply such data relative to any such professional school as said board may request.

[C24, 27, 31, 35, 39, §**2470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.33]

147.34 Examinations.

Examinations for each profession licensed under this subtitle shall be conducted at least one time per year at such time as the department may fix in cooperation with each examining board. Examinations may be given at the state university of Iowa at the close of each school year for professions regulated by this subtitle and examinations may be given at other schools located in the state at which any of the professions regulated by this subtitle are taught. At least one session of each examining board shall be held annually at the seat of government and the locations of other sessions shall be determined by the examining board, unless otherwise ordered by the department. Applicants who fail to pass the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, applicants shall be allowed to take the examination at the discretion of the board. Examinations may be given by an examining board which are prepared and scored by persons outside the state, and examining boards may contract for such services. An examining board may make an agreement with examining boards in other states for administering a uniform examination. An applicant who has failed an examination may request in writing information from the examining board concerning the examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the examining board administers a uniform, standardized examination, the examining board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the examining board.

[C97, §2576, 2582, 2589, 2597; S13, §2575-a29, -a37, 2576, 2582, 2583-a, -i, -k, 2589-a, 2600-c, -d; SS15, §2589-a; C24, 27, 31, 35, 39, §**2471, 2567, 2572, 2573;** C46, 50, 54, 58, 62, 66, §147.34, 153.3, 153.8, 153.9; C71, 73, §147.34, 153.2, 153.6, 153.8; C75, 77, 79, 81, §147.34]

94 Acts, ch 1132, §17; 96 Acts, ch 1036, §14; 98 Acts, ch 1053, §12

147.35 Names of eligible candidates.

Prior to each examination the department shall transmit to each examining board the list of candidates who are eligible to take the examination given by such board. In making up such list the department may call upon any examining board, or any member thereof, for information relative to the eligibility of any applicant.

[C24, 27, 31, 35, 39, §**2472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.35]

147.36 Rules.

Each examining board shall establish rules for:

1. The qualifications required for applicants seeking to take examinations.
2. The denial of applicants seeking to take examinations.
3. The conducting of examinations.
4. The grading of examinations and passing upon the technical qualifications of applicants, as shown by such examinations.
5. The minimum scores required for passing standardized examinations.

[C97, §2584; S13, §2575-a38, 2583-a, -i, 2600-e; SS15, §2584; C24, 27, 31, 35, 39, §**2473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.36]

92 Acts, ch 1183, §3

147.37 Identity of candidate concealed.

All examinations in theory shall be in writing, and the identity of the person taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the examining board to know by whom written until after the papers have been passed upon. In examinations in practice the identity of the candidate shall also be concealed as far as possible.

[C97, §2576; S13, §2576, 2583-a; C24, 27, 31, 35, 39, §**2474;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.37]

147.38 Repealed by 74 Acts, ch 1086, § 198.

147.39 Clerk.

Upon the request of any examining board, the department shall detail some employee to act as clerk of any examination given by said examining board. Such clerk shall have charge of the candidates during the examination and perform such other duties as the examining board may direct. If the duties of such clerk are performed away from the seat of government, the clerk shall receive necessary travel and expenses, which shall be paid from the appropriations to the examining board in the same manner in which other similar expenses are paid. The department shall be reimbursed by the examining board for costs incurred.

[C24, 27, 31, 35, 39, §**2476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.39]

147.40 Certification of applicants.

Every examination shall be passed upon in accordance with the established rules of the examining board and shall be satisfactory to at least a majority of the professional members of the board. In the case of the board of dental examiners, only licensed dentist members of the board shall determine whether an applicant has passed the examination to practice as a licensed dentist. After each examination, the examining board shall certify the names of the successful applicants to the department in the manner prescribed by it. The department shall then issue the proper license.

[C97, §2576; S13, §2575-a30, -a38, 2576, 2583-i, 2600-c; C24, 27, 31, 35, 39, §**2477;** C46, 50, 54, 58, 62, 66, §147.40; C71, 73, §147.40, 153.2; C75, 77, 79, 81, §147.40]

2000 Acts, ch 1140, §31

147.41 Partial examinations.

Any examining board may provide for a partial examination for a license to practice a profession to any applicant who has completed a portion of the professional course. For such purpose said board shall establish by rule:

1. The portion of such course which shall be completed prior to such examination.

2. The subjects to be covered by such examination and the subjects to be covered by the final examination to be taken by such applicant after the completion of the professional course and prior to the issuance of the license, but the subjects covered in the partial and final examinations shall be the same as those specified in this subtitle for the regular examination.

[C24, 27, 31, 35, 39, §**2478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.41]

94 Acts, ch 1132, §18; 96 Acts, ch 1036, §15; 98 Acts, ch 1053, §13

147.42 Rules relative to partial examinations.

In case any examining board shall provide for partial examinations under section 147.41, the department shall adopt rules establishing:

1. The portion of the license fee fixed in this chapter which shall be paid for a partial examination.

2. The credentials which shall be presented to the department by an applicant showing the applicant's qualifications to take such examination.

3. The method of certifying the list of the eligible applicants for such examination to the proper examining board.

4. The method of certifying back to the department the list of applicants who successfully pass such examination.

5. The method of keeping the records of such applicants for use at the time of completing the examination for a license.

6. The credentials which shall be presented to the department by such an applicant upon the completion of the professional course.

7. The method of certifying such applicant to the proper examining board for the remainder of the examination.

8. Such other matters of procedure as are necessary to carry into effect section 147.41.

[C24, 27, 31, 35, 39, §**2479;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.42]

147.43 Preservation of records.

All matters connected with each examination for a license shall be filed with the department and preserved for such period of time as specified by the state records commission as a part of the records of the department. The records shall be open to public inspection.

[C97, §2576; S13, §2576, 2578-a, 2583-a; C24, 27, 31, 35, 39, §**2480;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.43]

RECIPROCAL LICENSES

147.44 Agreements.

For the purpose of recognizing licenses which have been issued in other states to practice any profession for which a license is required by this subtitle, the department shall enter into a reciprocal agreement with every state which is certified to it by the proper examining board under the provisions of section 147.45 and with which this state does not have an existing agreement at the time of such certification.

[C97, §2582; S13, §2582; C24, 27, 31, 35, 39, §**2481;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.44]

94 Acts, ch 1132, §19; 96 Acts, ch 1036, §16; 98 Acts, ch 1053, §14

147.45 States entitled to reciprocal relations.

The department shall at least once each year lay before the proper examining board the requirements of the several states for a license to practice the profession for which such examining board conducts examinations for licenses in this state. Said examining board shall immediately examine such requirements and after making such other inquiries as it deems necessary, shall certify to the department the states having substantially equivalent requirements to those existing in this state for that particular profession and with which said examining board desires this state to enter into reciprocal relations.

[S13, §2575-a30, -a39, 2589-b, 2600-m; C24, 27, 31, 35, 39, §**2482;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.45]

147.46 Reciprocal agreements.

In negotiating any reciprocal agreement, the department shall be governed by the following regulations:

1. *Protection to licensees of this state.* When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person licensed in this state to practice any profession regulated by this subtitle, which affects the right of said person to be licensed or to practice the person's profession in said state, then the same requirement or disability shall be placed upon any person licensed in said state when applying for a license to practice in this state.

2. *Special conditions.* When any examining board has established by rule any special condition upon which reciprocal agreements shall be entered into, as provided in section 147.47, such condition shall be incorporated into the reciprocal agreements negotiated with reference to licenses to practice the professions for which such examining board conducts examinations.

[S13, §2575-a30, -a39, 2582-a, 2589-b, 2600-m; C24, 27, 31, 35, 39, §**2483;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.46]

94 Acts, ch 1132, §20; 96 Acts, ch 1036, §17; 98 Acts, ch 1053, §15

147.47 Special conditions.

An examining board shall have power to provide by rule that no reciprocal relation shall be entered into by the department with any state with reference to licenses to practice the profession for which such examining board conducts examinations, unless every person licensed in another state when applying for a license to practice in this state shall comply with one or both of the following conditions:

1. Furnish satisfactory proof to the department that the person has been actively engaged in the practice of the profession for a certain period of years to be fixed by such examining board.

2. Pass a practical examination in the practice of the person's particular profession as prescribed by such examining board.

[S13, §2600-m; C24, 27, 31, 35, 39, §**2484;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.47]

147.48 Termination of agreements.

When the requirements for a license in any state with which this state has a reciprocal agreement are changed by any law or rule of the authorities therein so that such requirements are no longer substantially as high as those existing in this state, then such agreement shall be deemed terminated and licenses issued in such state shall not be recognized as a basis of granting a license in this state until a new agreement has been negotiated. The fact of such change shall be determined by the proper examining board and certified to the department for its guidance in enforcing the provisions of this section.

[C24, 27, 31, 35, 39, §**2485;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.48]

147.49 License of another state.

The department shall, upon presentation of a license to practice a profession issued by the duly constituted authority of another state, with which this state has established reciprocal relations, and subject to the rules of the examining board for such profession, license said applicant to practice in this state, unless under the rules of said examining board a practical examination is required in such cases. The department may, upon the recommendation of the medical examiners, accept in lieu of the examination prescribed in section 148.3 or section 150A.3 a license to practice medicine and surgery or osteopathic medicine and surgery, issued by the duly constituted authority of another state, territory or foreign country. Endorsement may be accepted by the department in lieu of further written examination without regard to the existence or nonexistence of a reciprocal agreement, but shall not be in lieu of the standards and qualifications prescribed by section 148.3 or section 150A.3.

[C97, §2582; S13, §2575-a30, -a39, 2582, 2583-l, 2589-b, 2600-m; C24, 27, 31, 35, 39, §**2486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.49]

147.50 Practical examinations.

If the rules of any examining board require an applicant for a license under a reciprocal agreement to pass a practical examination in the practice of the applicant's profession, then such applicant shall make application therefor to the department upon a form provided by it.

[C24, 27, 31, 35, 39, §**2487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.50]

147.51 Applicability of other provisions.

All the provisions of this chapter relative to applications, transmittal of the names of eligible candidates, certification of successful applicants, and issuance of licenses thereto, in the case of regular examinations, shall apply as far as applicable to applicants for practical examinations.

[C24, 27, 31, 35, 39, §**2488;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.51]

147.52 Reciprocity.

When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person holding a diploma or certificate from any college in this state in which one of the professions regulated by this subtitle is taught, which affects the right of said person to be licensed in said state, the same requirement or disability shall be placed upon any person holding a diploma from a similar college situated therein, when applying for a license to practice in this state.

[S13, §2582-a; C24, 27, 31, 35, 39, §**2489;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.52]

94 Acts, ch 1132, §21; 96 Acts, ch 1036, §18; 98 Acts, ch 1053, §16

147.53 Power to adopt rules.

The department and each examining board shall have power to establish the necessary rules, not inconsistent with law, for carrying out the reciprocal relations with other states which are authorized by this chapter.

[C24, 27, 31, 35, 39, §**2490;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.53]

147.54 Change of residence.

Any licensee who is desirous of changing the licensee's residence to that of another state or territory shall upon application to the department, and payment of the legal fee, receive a certified statement that the licensee is a duly licensed practitioner in this state.

[S13, §2600-n; C24, 27, 31, 35, 39, §**2491;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.54]

REVOCATION OF LICENSES

147.55 Grounds.

A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this Act.*

1. [C97, §2578; S13, §2575-a33, -a41, 2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39, §**2492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(1)]

2. [C97, §2578; S13, §2578, 2583-c, -m; C24, 27, 31, 35, 39, §**2492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(2)]

3. [C97, §2578; S13, §2575-a33, -a41, 2578, 2583-m, 2600-o5; C24, 27, 31, 35, 39, §**2492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(3)]

4. [C97, §2578; S13, §2575-a41, 2578, 2583-c, -m, 2600-o5; C24, 27, 31, 35, 39, §**2492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(4)]

5. [C97, §2578; S13, §2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39, §**2492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(5)]

6. [C97, §2578; S13, §2578, 2583-c; C24, 27, 31, 35, 39, §**2492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(6)]

7. [C97, §2578; S13, §2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39, §**2492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(7)]

8. [C97, §2596; S13, §2575-a33, -a41; C24, 27, 31, 35, 39, §**2492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §147.55(9); C79, 81, §147.55(8)]

*See 78 Acts, ch 1097, §12; also 77 Acts, ch 95; chapter 272C may have been intended

147.56 Repealed by 74 Acts, ch 1086, § 198.

147.57 Dental hygienist and dentist.

The practice of dentistry by a dental hygienist shall also be grounds for the revocation of the dental hygienist's license, and the permitting of such practice by the dentist under whose supervision said dental hygienist is operating shall be grounds for revoking the license of said dentist.

[S13, §2600-o5; C24, 27, 31, 35, 39, §**2494;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.57]

147.58 Jurisdiction of revocation.

The district court of the county in which a licensee resides shall have jurisdiction of the proceeding to revoke or suspend the licensee's license.

[C24, 27, 31, 35, 39, §**2495;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.58]

147.59 Petition for revocation.

The petition for the revocation or suspension of a license may be filed by the attorney general in all cases. Said petition shall be filed in the office of the clerk of the district court having jurisdiction.

[C24, 27, 31, 35, 39, §**2496;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.59]

147.60 Duty of department.

The department shall direct the attorney general to file such petition against any licensee upon its own motion, or it may give such direction upon the sworn information of some person who resides in the county wherein the licensee practices.

[C97, §2578, 2596; S13, §2575-a33, -a41, 2578-a, 2583-c, -m, 2600-o5; C24, 27, 31, 35, 39, §**2497;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.60]

147.61 Attorney general and county attorney.

The attorney general shall comply with such direction of the department and prosecute such action on behalf of the state, but the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in the county attorney's county.

[C24, 27, 31, 35, 39, §**2498;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.61]

147.62 Rules governing petition.

The following rules shall govern the petition in such cases:

1. The state shall be named as plaintiff and the licensee as defendant.
2. The charges against the licensee shall be stated in full.
3. Amendments may be made as in ordinary actions.
4. All allegations shall be deemed denied but the licensee may plead thereto if the licensee desires.

[C24, 27, 31, 35, 39, §**2499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.62]

147.63 Trial.

Upon the presentation of the petition, or a copy thereof, to the court, the court shall make an order fixing the time and place for the hearing, which shall be not less than ten nor more than twenty days thereafter.

[S13, §2575-a33, -a41, 2578-a, 2583-c, -m, 2600-o5; C24, 27, 31, 35, 39, §**2500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.63]

147.64 Notice.

Notice of the filing of such petition and of the time and place of hearing shall be served upon the licensee at least ten days before said hearing in the manner required for the service of notice of the commencement of an ordinary action.

[S13, §2575-a33, -a41, 2578-a, 2583-c, -m, 2600-o5; C24, 27, 31, 35, 39, §**2501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.64]

Manner of service, R.C.P. 1.305 and 1.306

147.65 Nature of action.

The proceeding shall be summary in its nature and triable as an equitable action.

[S13, §2575-a33, -a41, 2578-a, 2583-c, -m, 2600-o5; C24, 27, 31, 35, 39, §**2502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.65]

Trial; see chapter 624 and R.C.P. 1.901 et seq.

147.66 Judgment.

Judgment of revocation or suspension of the license shall be entered of record and the licensee shall not engage in the practice of the licensee's profession after the license is revoked or during the time for which it is suspended. The clerk of the court shall, upon the entry of such judgment, forthwith furnish the department with a certified copy thereof.

[C73, §1535; C97, §2386, 2400; S13, §2386, 2400, 2575-a33, -a41, 2578-a; C24, 27, 31, 35, 39, §**2503;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.66]

147.67 Default.

In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the court, after receiving satisfactory evidence of the truth of the charges, shall order the license revoked or suspended.

[S13, §2575-a33, -a41, 2578-a; C24, 27, 31, 35, 39, §**2504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.67]

147.68 Costs.

If the judgment is adverse to the licensee the costs shall be taxed to the licensee as in ordinary civil actions, but if the state is the unsuccessful party the costs shall be paid out of any money in the state treasury not otherwise appropriated.

[C24, 27, 31, 35, 39, §**2505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.68]

Costs, chapter 625

147.69 Unpaid costs.

All costs accrued at the instance of the state, when the successful party, which the attorney general certifies cannot be collected from the defendant, shall be paid out of any money in the state treasury not otherwise appropriated.

[C24, 27, 31, 35, 39, §**2506;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.69]

147.70 Hearing on appeal.

Both parties shall have the right of appeal. The cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken.

[S13, §2578-b, 2600-o5; C24, 27, 31, 35, 39, §**2507;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.70]

147.71 Effect of appeal.

The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court, or restore the right of said defendant to practice the defendant's profession pending such appeal.

[C24, 27, 31, 35, 39, §**2508;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.71]

USE OF TITLES AND DEGREES

147.72 Professional titles and abbreviations.

Any person licensed to practice a profession under this subtitle may append to the person's name any recognized title or abbreviation, which the person is entitled to use, to designate the person's particular profession, but no other person shall assume or use such title or abbreviation, and no licensee shall advertise in such a manner as to lead the public to believe that the licensee is engaged in the practice of any other profession than the one which the licensee is licensed to practice.

[S13, §2575-a28, -a31, 2583-q; C24, 27, 31, 35, 39, §**2509;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.72]

94 Acts, ch 1132, §22; 96 Acts, ch 1036, §19; 98 Acts, ch 1053, §17

147.73 Titles used by holder of degree.

Nothing in section 147.72 shall be construed:

1. As authorizing any person licensed to practice a profession under this subtitle to use or assume any degree or abbreviation of the same unless such degree has been conferred upon said person by an institution of learning accredited by the appropriate board herein created, together with the director of public health, or by some recognized state or national accredited agency.

2. As prohibiting any holder of a degree conferred by an institution of learning accredited by the appropriate board herein created, together with the director of public health, or by some recognized state or national accrediting agency, from using the title which such degree authorizes the holder to use, but the holder shall not use such degree or abbreviation in any manner which might mislead the public as to the holder's qualifications to treat human ailments.

[C24, 27, 31, 35, 39, §**2510;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.73]

94 Acts, ch 1132, §23; 96 Acts, ch 1036, §20; 98 Acts, ch 1053, §18

147.74 Professional titles or abbreviations — false use prohibited.

1. Any person who falsely claims by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, or advertisements, to be a practitioner of a system of the healing arts other than the one under which the person holds a license or who fails to use the following designations shall be guilty of a simple misdemeanor.

2. A physician or surgeon may use the prefix "Dr." or "Doctor", and shall add after the person's name the letters, "M. D."

3. An osteopath or osteopathic physician and surgeon may use the prefix "Dr." or "Doctor", and shall add after the person's name the letters, "D. O.", or the words "osteopath" or "osteopathic physician and surgeon".

4. A chiropractor may use the prefix "Doctor", but shall add after the person's name the letters, "D. C." or the word, "chiropractor".

5. A dentist may use the prefix "Doctor", but shall add after the person's name the letters "D. D. S." or the word "dentist" or "dental surgeon".

6. A podiatric physician may use the prefix "Dr." but shall add after the person's name the words "podiatric physician".

7. A graduate of a school accredited on the board of optometric examiners may use the prefix "Doctor", but shall add after the person's name the letters "O. D."

8. A physical therapist registered or licensed under chapter 148A may use the words "physical therapist" after the person's name or signify the same by the use of the letters "P. T." after the person's name.

9. A physical therapist assistant licensed under chapter 148A may use the words "physical therapist assistant" after the person's name or signify the same by use of the letters "P. T. A." after the person's name.

10. A psychologist who possesses a doctoral degree and who claims to be a certified practicing psychologist may use the prefix "Doctor" but shall add after the person's name the word "psychologist".

11. A speech pathologist with an earned doctoral degree in speech pathology obtained beyond a bachelor's degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix "Doctor" or "Dr." and add after the person's name the words "speech pathologist". An audiologist with an earned doctoral degree in audiology obtained beyond a bachelor's degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix "Doctor" or "Dr." and add after the person's name the word "audiologist".

12. A bachelor social worker licensed under chapter 154C may use the words "licensed bachelor social worker" or the letters "L. B. S. W." after the person's name. A master social worker licensed under chapter 154C may use the words "licensed master social worker" or the letters "L. M. S. W." after the person's name. An independent social worker licensed under chapter 154C may use the words "licensed independent social worker", or the letters "L. I. S. W." after the person's name.

13. A marital and family therapist licensed under chapter 154D and this chapter may use the words "licensed marital and family therapist" after the person's name or signify the same by the use of the letters "L. M. F. T." after the person's name. A marital and family therapist licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix "Doctor" or "Dr." in conjunction with the person's name, but shall add after the person's name the words "licensed marital and family therapist".

14. A mental health counselor licensed under chapter 154D and this chapter may use the words "licensed mental health counselor" after the person's name. A mental health counselor licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix "Doctor" or "Dr." in conjunction with the person's name, but shall add after the person's name the words "licensed mental health counselor".

15. A pharmacist who possesses a doctoral degree recognized by the American council of pharmaceutical education from a college of pharmacy approved by the board of pharmacy examiners or a doctor of philosophy degree in an area related to pharmacy may use the prefix "Doctor" or "Dr." but shall add after the person's name the word "pharmacist" or "Pharm. D."

16. A physician assistant registered or licensed under chapter 148C may use the words "physician assistant" after the person's name or signify the same by the use of the letters "P. A." after the person's name.

17. A massage therapist licensed under chapter 152C may use the words "licensed massage therapist" or the initials "L. M. T." after the person's name.

18. An acupuncturist licensed under chapter 148E may use the words "licensed acupuncturist" after the person's name.

19. A respiratory care practitioner licensed

under chapter 152B and this chapter may use the title "respiratory care practitioner" or the letters "R. C. P." after the person's name.

20. An athletic trainer licensed under chapter 152D and this chapter may use the title "licensed athletic trainer" after the person's name.

21. A registered nurse licensed under chapter 152 may use the words "registered nurse" or the letters "R. N." after the person's name. A licensed practical nurse licensed under chapter 152 may use the words "licensed practical nurse" or the letters "L. P. N." after the person's name.

22. No other practitioner licensed to practice a profession under any of the provisions of this subtitle shall be entitled to use the prefix "Dr." or "Doctor".

[C31, 35, §2510-d1; C39, §**2510.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.74; 81 Acts, ch 66, §1]

84 Acts, ch 1075, §11; 87 Acts, ch 215, §40; 88 Acts, ch 1225, §10; 90 Acts, ch 1168, §27; 91 Acts, ch 228, §1; 91 Acts, ch 229, §4; 92 Acts, ch 1137, §7; 92 Acts, ch 1183, §4; 93 Acts, ch 86, §13; 95 Acts, ch 108, §4; 96 Acts, ch 1035, §4; 96 Acts, ch 1036, §21; 98 Acts, ch 1053, §19; 99 Acts, ch 101, §1; 2000 Acts, ch 1053, §3; 2001 Acts, ch 58, §7

147.75 Itinerants.

Any person holding an itinerant practitioner's license on July 4, 1963, is hereby granted continuation of the rights and privileges granted under such license for as long as the person's regular license is maintained.

[C97, §2581; S13, §2581, 2583-e; C24, 27, 31, 35, 39, §**2512;** C46, 50, 54, 58, 62, §147.76; C66, 71, 73, 75, 77, 79, 81, §147.75]

147.76 Rules.

The examining boards for the various professions shall adopt all necessary and proper rules to implement and interpret this chapter and chapters 147A through 158, except chapter 148D.

[C77, 79, 81, §147.76]

89 Acts, ch 83, §28; 92 Acts, ch 1097, §4

147.77 to 147.79 Repealed by 63 Acts, ch 123, § 1.

FEES

147.80 License — examination — fees.

An examining board shall set the fees for the examination of applicants, which fees shall be based upon the cost of administering the examinations. An examining board shall set the license fees and renewal fees required for any of the following based upon the cost of sustaining the board and the actual costs of licensing:

1. License to practice dentistry issued upon the basis of an examination given by the board of dental examiners, license to practice dentistry issued under a reciprocal agreement, resident dentist's license, renewal of a license to practice dentistry.

2. License to practice pharmacy issued upon the basis of an examination given by the board of pharmacy examiners, license to practice pharmacy issued under a reciprocal agreement, renewal of a license to practice pharmacy.

3. License to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy and renewal of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

4. Certificate to practice psychology or associate psychology issued on the basis of an examination given by the board of psychology examiners, or certificate to practice psychology or associate psychology issued under a reciprocity agreement or by endorsement, renewal of a certificate to practice psychology or associate psychology.

5. Application for a license to practice as a physician assistant, issuance of a license to practice as a physician assistant issued upon the basis of an examination given or approved by the board of physician assistant examiners, issuance of a license to practice as a physician assistant issued under a reciprocal agreement, renewal of a license to practice as a physician assistant, temporary license to practice as a physician assistant, registration of a physician assistant, temporary registration of a physician assistant, renewal of a registration of a physician assistant.

6. License to practice chiropractic issued on the basis of an examination given by the board of chiropractic examiners. License to practice chiropractic issued by endorsement or under a reciprocal agreement, renewal of a license to practice chiropractic.

7. License to practice podiatry issued upon the basis of an examination given by the board of podiatry examiners, license to practice podiatry issued under a reciprocal agreement, renewal of a license to practice podiatry.

8. License to practice physical therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to practice physical therapy issued under a reciprocal agreement, renewal of a license to practice physical therapy.

9. License to practice as a physical therapist assistant issued on the basis of an examination given by the board of physical and occupational therapy examiners, license to practice as a physical therapist assistant issued under a reciprocal agreement, renewal of a license to practice as a physical therapist assistant.

10. For a license to practice optometry issued upon the basis of an examination given by the board of optometry examiners, license to practice optometry issued under a reciprocal agreement,

renewal of a license to practice optometry.

11. License to practice dental hygiene issued upon the basis of an examination given by the board of dental examiners, license to practice dental hygiene issued under a reciprocal agreement, renewal of a license to practice dental hygiene.

12. License to practice mortuary science issued upon the basis of an examination given by the board of mortuary science examiners, license to practice mortuary science issued under a reciprocal agreement, renewal of a license to practice mortuary science.

13. License to practice nursing issued upon the basis of an examination given by the board of nursing; license to practice nursing based on an endorsement from another state, territory or foreign country; renewal of a license to practice nursing.

14. A nurse who does not engage in nursing during the year succeeding the expiration of the license shall notify the board to place the nurse upon the inactive list and the nurse shall not be required to pay the renewal fee so long as the nurse remains inactive and so notifies the board. To resume nursing, the nurse shall notify the board and remit the renewal fee for the current period.

15. License to practice cosmetology arts and sciences issued upon the basis of an examination given by the board of cosmetology arts and sciences examiners, license to practice cosmetology arts and sciences under a reciprocal agreement, renewal of a license to practice cosmetology arts and sciences, temporary permit to practice as a cosmetology arts and sciences trainee, original license to conduct a school of cosmetology arts and sciences, renewal of license to conduct a school of cosmetology arts and sciences, original license to operate a salon, renewal of a license to operate a salon, original license to practice manicuring, renewal of a license to practice manicuring, annual inspection of a school of cosmetology arts and sciences, annual inspection of a salon, original cosmetology arts and sciences school instructor's license, and renewal of cosmetology arts and sciences school instructor's license.

16. License to practice barbering on the basis of an examination given by the board of barber examiners, license to practice barbering under a reciprocal agreement, renewal of a license to practice barbering, annual inspection by the department of inspections and appeals of barber school and annual inspection of barber shop, an original barber school license, renewal of a barber school license, transfer of license upon change of ownership of a barber shop or barber school, inspection by the department of inspections and appeals and an original barber shop license, renewal of a barber shop license, original barber school instructor's license, renewal of a barber school instructor's license.

17. License to practice speech pathology or audiology issued on the basis of an examination given by the board of speech pathology and audiology, or license to practice speech pathology or audiology issued under a reciprocity agreement, renewal of a license to practice speech pathology or audiology.

18. License to practice occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to practice occupational therapy issued under a reciprocal agreement, renewal of a license to practice occupational therapy.

19. License to assist in the practice of occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to assist in the practice of occupational therapy issued under a reciprocal agreement, renewal of a license to assist in the practice of occupational therapy.

20. License to practice social work issued on the basis of an examination by the board of social work examiners, or license to practice social work issued under a reciprocity agreement, or renewal of a license to practice social work.

21. License to practice marital and family therapy issued upon the basis of an examination given by the board of behavioral science examiners, license to practice marital and family therapy issued under a reciprocal agreement, or renewal of a license to practice marital and family therapy.

22. License to practice mental health counseling issued upon the basis of an examination given by the board of behavioral science examiners, license to practice mental health counseling issued under a reciprocal agreement, or renewal of a license to practice mental health counseling.

23. License to practice dietetics issued upon the basis of an examination given by the board of dietetic examiners, license to practice dietetics issued under a reciprocal agreement, or renewal of a license to practice dietetics.

24. License to practice acupuncture, license to practice acupuncture under a reciprocal agreement, or renewal of a license to practice acupuncture.

25. License to practice respiratory care, license to practice respiratory care under a reciprocal license, or renewal of a license to practice respiratory care.

26. License to practice massage therapy, license to practice massage therapy under a reciprocal license, or renewal of a license to practice massage therapy.

27. License to practice athletic training, license to practice athletic training under a reciprocal license, or renewal of a license to practice athletic training.

28. Registration to practice as a dental assistant, registration to practice as a dental assistant under a reciprocal agreement, or renewal of registration to practice as a dental assistant.

29. For a certified statement that a licensee is licensed in this state.

30. Duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department has been destroyed or lost.

The licensing and certification division shall prepare estimates of projected revenues to be generated by the licensing, certification, and examination fees of each board as well as a projection of the fairly apportioned administrative costs and rental expenses attributable to each board. Each board shall annually review and adjust its schedule of fees so that, as nearly as possible, projected revenues equal projected costs and any imbalance in revenues and costs in a fiscal year is offset in a subsequent fiscal year.

[C97, §2576, 2597, 2590; S13, §2575-a30, -a38, -a39, 2582, 2583-a, -l, 2589-d, 2600-d; C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.80; 81 Acts, ch 2, §10(5), ch 5, §4(5)]

1. [C97, §2597; S13, §2600-d, -m; C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, §147.80(1, 2, 7); C66, 71, 73, §147.80(1, 7); C75, 77, 79, 81, §147.80(1)]

2. [C97, §2590; S13, §2589-b, -d; C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, §147.80(5 – 7); C66, 71, 73, §147.80(1, 7); C75, 77, 79, 81, §147.80(2)]

3. [C97, §2576; S13, §2576, 2582, 2583-a; C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, §147.80(1 – 4); C66, 71, 73, §147.80(2, 7); C75, 77, 79, 81, §147.80(3)]

4. [C75, 77, 79, 81, §147.80(4)]

6. [C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, 66, 71, 73, §147.80(3, 4, 7); C75, 77, 79, 81, §147.80(5)]

7. [C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, 66, 71, 73, §147.80(3, 4, 7); C75, 77, 79, 81, §147.80(6)]

8. [C66, 71, 73, §147.80(3, 4, 7); C75, 77, 79, 81, §147.80(7)]

10. [S13, §2583-l, -n; C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, 66, 71, 73, §147.80(3, 4, 7); C75, 77, 79, 81, §147.80(8)]

11. [C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, 66, 71, 73, §147.80(5 – 7); C75, 77, 79, 81, §147.80(9)]

12. [S13, §2575-a38, -a39; C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, 66, 71, 73, §147.80(5 – 7); C75, 77, 79, 81, §147.80(10)]

13. [S13, §2575-a30; C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, §147.80(5 – 7); C66, §147.80(6, 7, 16, 17); C71, 73, §147.80(6, 7, 19, 20); C75, 77, 79, 81, §147.80(11)]

14. [C66, §147.80(19); C71, 73, §147.80(22); C75, 77, 79, 81, §147.80(12)]

15. [C27, §2516(5 – 7); C31, 35, 39, §**2516(5 – 7, 11, 13);** C46, 50, 54, 58, 62, §147.80(5 – 7, 11, 13); C66, 71, 73, §147.80(5 – 7, 10, 11); C75, 77, 79, 81, §147.80(13)]

16. [C27, 31, 35, 39, §**2516;** C46, 50, 54, §147.80(5 – 7, 12, 13); C58, 62, 66, §147.80(5 – 7, 12 – 14); C71, 73, §147.80(5 – 7, 12 – 17); C75, 77, 79, 81, §147.80(14)]

17. [C77, 79, 81, §147.80(15)]

18. [C81, §147.80(16)]

19. [C81, §147.80(17)]

24. [S13, §2600-n; C24, 27, 31, 35, 39, §**2516;** C46, 50, 54, 58, 62, 66, 71, 73, §147.80(8); C75, §147.80(15); C77, 79, §147.80(16); C81, §147.80(18)]

25. [C66, 71, 73, §147.80(18); C75, §147.80(16); C77, 79, §147.80(17); C81, §147.80(19)]

84 Acts, ch 1075, §12; 85 Acts, ch 168, §7; 85 Acts, ch 246, §1; 88 Acts, ch 1225, §11; 89 Acts, ch 240, §1; 91 Acts, ch 228, §2; 91 Acts, ch 229, §5; 92 Acts, ch 1183, §5; 92 Acts, ch 1205, §17; 93 Acts, ch 86, §14; 96 Acts, ch 1036, §22; 98 Acts, ch 1053, §20; 2000 Acts, ch 1002, §2; 2000 Acts, ch 1053, §4; 2001 Acts, ch 24, §31; 2001 Acts, ch 58, §8

147.81 Repealed by 81 Acts, ch 5, § 10; 82 Acts, ch 1005, § 9.

147.82 Fees.

All fees shall be collected by the department and shall be paid to the treasurer of state and deposited in the general fund of the state, except as provided in sections 147.94 and 147.102.

[C97, §2583; S13, §2575-a44, 2583-a, -s; C24, 27, 31, 35, 39, §**2518;** C46, 50, 54, 58, 62, 66, §147.82; C71, 73, §147.82, 153.4; C75, 77, 79, 81, §147.82]

Paying fees into state treasury, §12.10

VIOLATIONS — CRIMES — PUNISHMENT

147.83 Injunction.

Any person engaging in any business or in the practice of any profession for which a license is required by this subtitle without such license may be restrained by permanent injunction.

[C24, 27, 31, 35, 39, §**2519;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.83]

94 Acts, ch 1132, §24; 96 Acts, ch 1036, §23; 98 Acts, ch 1053, §21

Injunctions, R.C.P. 1.1501 – 1.1511

147.84 Forgeries.

Any person who shall file or attempt to file with the department any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of a fraudulent practice.

[C97, §2580, 2595; S13, §2583-d; C24, 27, 31, 35, 39, §**2520;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.84]

See chapter 715A

147.85 Fraud.

Any person who shall present to the department a diploma or certificate of which the person is not the rightful owner, for the purpose of procuring a

license, or who shall falsely personate anyone to whom a license has been issued by said department shall be guilty of a serious misdemeanor.

[C97, §2580, 2581, 2595; S13, §2575-a45, 2581, 2583-c, -d; C24, 27, 31, 35, 39, §**2521;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.85]

147.86 Penalties.

Any person violating any provision of this or the following chapters of this subtitle, except insofar as the provisions apply or relate to or affect the practice of pharmacy, or where a specific penalty is otherwise provided, shall be guilty of a serious misdemeanor.

[C97, §2580, 2581, 2588, 2590, 2591, 2595; S13, §2575-a35, -a45, 2581, 2583-d, -r, 2589-d, 2600-o4; SS15, §2588; C24, 27, 31, 35, 39, §**2522;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.86]

92 Acts, ch 1183, §6; 94 Acts, ch 1023, §12; 94 Acts, ch 1132, §25; 96 Acts, ch 1036, §24; 98 Acts, ch 1053, §22

ENFORCEMENT PROVISIONS

147.87 Enforcement.

The department shall enforce the provisions of this and the following chapters of this subtitle and for that purpose may request the department of inspections and appeals to make necessary investigations. Every licensee and member of an examining board shall furnish the department or the department of inspections and appeals such evidence as the member or licensee may have relative to any alleged violation which is being investigated.

[C24, 27, 31, 35, 39, §**2523;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.87]

90 Acts, ch 1204, §19; 94 Acts, ch 1132, §26; 96 Acts, ch 1036, §25; 98 Acts, ch 1053, §23

Continuing education and regulation, chapter 272C

147.88 Inspections.

The department of inspections and appeals may perform inspections as required by this subtitle, except for the board of medical examiners, board of pharmacy examiners, board of nursing, and the board of dental examiners. The department of inspections and appeals shall employ personnel related to the inspection functions.

[C31, 35, §2523-c1; C39, §**2523.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.88]

90 Acts, ch 1204, §20; 94 Acts, ch 1132, §27; 96 Acts, ch 1036, §26; 98 Acts, ch 1053, §24

147.89 Report of violators.

Every licensee and member of an examining board shall report, also, to the department the name of every person, without a license, that the member or licensee has reason to believe is engaged in:

1. Practicing any profession for which a license is required.

2. Operating as an itinerant practitioner of such profession.

[C24, 27, 31, 35, 39, §**2524;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.89]

147.90 Rules and forms.

The Iowa department of public health and the department of inspections and appeals shall each establish the necessary rules and forms for carrying out the duties imposed upon it by this subtitle.

[C24, 27, 31, 35, 39, §**2525;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.90]

90 Acts, ch 1204, §21; 94 Acts, ch 1132, §28; 96 Acts, ch 1036, §27; 98 Acts, ch 1053, §25

147.91 Publications.

The department shall have available for each profession the following information:

1. The law regulating the practice of the profession.

2. The rules of the Iowa department of public health and the department of inspections and appeals relative to licenses.

3. The rules of the examining board relative to examinations.

Such information shall be supplied to any person applying for the same. The department may, to the extent feasible, make the information described in this section available by electronic means, including, but not limited to, access to the documents through the internet.

[C24, 27, 31, 35, 39, §**2526;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.91]

90 Acts, ch 1204, §22; 2001 Acts, ch 58, §9

147.92 Attorney general.

Upon request of the department the attorney general shall institute in the name of the state the proper proceedings against any person charged by the department with violating any provision of this or the following chapters of this subtitle.

[S13, §2600-o7; C24, 27, 31, 35, 39, §**2527;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.92]

94 Acts, ch 1132, §29; 94 Acts, ch 1173, §8; 96 Acts, ch 1036, §28; 98 Acts, ch 1053, §26

147.93 Prima facie evidence.

The opening of an office or place of business for the practice of any profession for which a license is required by this subtitle, the announcing to the public in any way the intention to practice any such profession, the use of any professional degree or designation, or of any sign, card, circular, device, or advertisement, as a practitioner of any such profession, or as a person skilled in the same, shall be prima facie evidence of engaging in the practice of such profession.

[S13, §2575-a28, -a31, 2600-o; C24, 27, 31, 35, 39, §**2528;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79,

81, §147.93]

94 Acts, ch 1132, §30; 96 Acts, ch 1036, §29; 98 Acts, ch 1053, §27

147.94 Pharmacists.

The provisions of this chapter relative to the making of application for a license, the issuance of a license, the negotiation of reciprocal agreements for recognition of foreign licenses, the collection of license and renewal fees, and the preservation of records shall not apply to the licensing of persons to practice pharmacy, but such licensing shall be governed by the following regulations:

1. Every application for a license to practice pharmacy shall be made direct to the secretary of the pharmacy examiners.

2. Such license and all renewals thereof shall be issued by said examiners.

3. Every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by said examiners.

4. All license and renewal fees exacted from persons licensed to practice pharmacy shall be paid to and collected by the secretary of the pharmacy examiners.

5. All records in connection with the licensing of pharmacists shall be kept by said secretary.

1. [C97, §2589; S13, §2589-b; SS15, §2589-a; C24, 27, 31, 35, 39, §**2529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.94]

2. [C97, §2590; S13, §2589-d; C24, 27, 31, 35, 39, §**2529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.94]

3. [S13, §2589-b; C24, 27, 31, 35, 39, §**2529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.94]

4. [C97, §2590; S13, §2589-d; C24, 27, 31, 35, 39, §**2529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.94]

5. [C97, §2586, 2595; C24, 27, 31, 35, 39, §**2529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.94]

147.95 Enforcement — agents as peace officers.

The provisions of this subtitle insofar as they affect the practice of pharmacy shall be enforced by the pharmacy examiners and the provisions of sections 147.87, 147.88, and 147.89 shall not apply to said profession. Officers, agents, inspectors, and representatives of the board of pharmacy examiners shall have the powers and status of peace officers when enforcing the provisions of this subtitle.

[C97, §2584; S13, §2596-c; SS15, §2584; C24, 27, 31, 35, 39, §**2530;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.95]

147.96 Pharmacy examiners.

In discharging the duties and exercising the powers provided for in sections 147.94 and 147.95, the pharmacy examiners and their secretary shall be governed by all the provisions of this chapter which govern the department when discharging a similar duty or exercising a similar power with reference to any of the professions regulated by this subtitle.

[C24, 27, 31, 35, 39, §**2531;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.96]

147.97 Repealed by 57 Acts, ch 96, § 3.

147.98 Secretary of pharmacy examiners.

The pharmacy examiners shall have the right to employ a full-time secretary, who shall not be a member of the examining board, at such compensation as may be fixed pursuant to chapter 19A but the provisions of section 147.22 providing for a secretary for each examining board shall not apply to the pharmacy examiners.

[C97, §2585; S13, §2585; C24, 27, 31, 35, 39, §**2532;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.98]

147.99 Duties of secretary.

The secretary of the board of pharmacy examiners shall, upon the direction of the board, make inspections of alleged violations of the provisions of this subtitle relative to the practice of pharmacy and of chapters 124, 126, and 205. The secretary shall be allowed necessary traveling and hotel expenses in making such inspections.

[C97, §2585; S13, §2585; C24, 27, 31, 35, 39, §**2533;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.99]

89 Acts, ch 197, §22

147.100 Expirations and renewals.

Licenses shall expire in multiyear intervals as determined by the examining board. A person who fails to renew a license by the expiration date shall be allowed to do so within thirty days following its expiration, but the examining board may assess a reasonable penalty.

[C75, 77, 79, 81, §147.100]

147.101 Repealed by 74 Acts, ch 1086, § 198.

147.102 Psychologists, chiropractors, and dentists.

Notwithstanding the provisions of this subtitle, every application for a license to practice psychology, chiropractic, or dentistry shall be made directly to the chairperson, executive director, or secretary of the examining board of such profession, and every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by the examining board for such profession. All examination, license, and renewal fees received from persons licensed to practice any of such professions shall be paid to and collected by the chairperson, executive director, or secretary of the examining board of such profession, who shall

transmit the fees to the treasurer of state for deposit into the general fund of the state. The salary of the secretary shall be established by the governor with the approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government.

[S13, §2583-a; C24, 27, 31, 35, 39, §**2535;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.102]

83 Acts, ch 206, §9; 90 Acts, ch 1086, §5; 92 Acts, ch 1183, §7

147.103 Investigators for physician assistants.

The board of physician assistant examiners may appoint investigators, who shall not be members of the examining board, to administer and aid in the enforcement of the provisions of law relating to physician assistants. The amount of compensation for the investigators shall be determined pursuant to chapter 19A.

Investigators authorized by the board of physician assistant examiners have the powers and status of peace officers when enforcing this chapter and chapters 148C, and 272C.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.103]

84 Acts, ch 1161, §1; 88 Acts, ch 1225, §12, 13; 92 Acts, ch 1183, §8

147.103A Physicians and surgeons, osteopaths, and osteopathic physicians and surgeons.

This chapter shall apply to the licensing of persons to practice as physicians and surgeons, osteopaths, and osteopathic physicians and surgeons by the board of medical examiners subject to the following provisions:

1. A person violating the provisions of section 147.2, 147.84, or 147.85, shall upon conviction be guilty of a class "D" felony.

2. The issuance of reciprocal agreements pursuant to section 147.44 is not required and is subject to the discretion of the board.

3. The board may appoint investigators, who shall not be members of the examining board, and whose compensation shall be determined pursuant to chapter 19A. Investigators appointed by the board have the powers and status of peace officers when enforcing this chapter and chapters 148, 150, 150A, and 272C.

4. Applications for a license shall be made to the chairperson, executive director, or secretary of the board. All examination, license, and renewal fees shall be paid to and collected by the chairperson, executive director, or secretary of the board, who shall transmit the fees to the treasurer of state for deposit in the general fund of the state. The salary of the executive director of the board shall be established by the governor with approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government.

5. The board shall give priority to the processing of applications for licensure submitted by physicians and surgeons, osteopaths, and osteopathic physicians and surgeons whose practice will primarily involve provision of service to underserved populations, including but not limited to persons who are minorities or low-income, or who live in rural areas.

6. Disciplinary hearings held pursuant to section 272C.6, subsection 1, shall be heard by the board, or by a panel of not less than three board members, at least two of which are licensed in the profession, or by a panel of not less than three members appointed pursuant to section 272C.6, subsection 2. Notwithstanding chapters 17A and 21, a disciplinary hearing shall be open to the public at the discretion of the licensee.

92 Acts, ch 1183, §9; 99 Acts, ch 141, §20

147.104 Records.

The chairperson, executive director, or secretary of each of the boards shall keep a correct record of the proceedings of the board, and upon the granting of any license to practice any of said professions the board shall, at the time of granting a license, certify to the department the name of the person to whom the license was issued, and the chairperson, executive director, or secretary shall deposit with the department all records not needed for the current use of the board.

[S13, §2583-a; C24, 27, 31, 35, 39, §**2537;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.104]

90 Acts, ch 1086, §6

147.105 and 147.106 Reserved.

DRUG AND LENS DISPENSING, SUPPLYING, AND PRESCRIBING

147.107 Drug dispensing, supplying, and prescribing — limitations.

1. A person, other than a pharmacist, physician, dentist, podiatric physician, or veterinarian who dispenses as an incident to the practice of the practitioner's profession, shall not dispense prescription drugs or controlled substances.

2. A pharmacist, physician, dentist, or podiatric physician who dispenses prescription drugs, including but not limited to controlled substances, for human use, may delegate nonjudgmental dispensing functions to staff assistants only when verification of the accuracy and completeness of the prescription is determined by the pharmacist or practitioner in the pharmacist's or practitioner's physical presence. However, the physical presence requirement does not apply when a pharmacist or practitioner is utilizing an automated dispensing system. When using an automated dispensing system the pharmacist or practitioner shall utilize an internal quality control assurance

plan that ensures accuracy for dispensing. Verification of automated dispensing accuracy and completeness remains the responsibility of the pharmacist or practitioner and shall be determined in accordance with rules adopted by the boards of pharmacy, medicine, dentistry, and podiatry for their respective licensees.

A dentist, physician, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall register the fact that they dispense prescription drugs with the practitioner's respective examining board at least biennially.

A physician, dentist, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall offer to provide the patient with a written prescription that may be dispensed from a pharmacy of the patient's choice or offer to transmit the prescription to a pharmacy of the patient's choice.

3. A physician's assistant or registered nurse may supply when pharmacist services are not reasonably available or when it is in the best interests of the patient, on the direct order of the supervising physician, a quantity of properly packaged and labeled prescription drugs, controlled substances, or contraceptive devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician's assistant or registered nurse, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices.

4. Notwithstanding subsection 3, a physician assistant shall not dispense prescription drugs as an incident to the practice of the supervising physician or the physician assistant, but may supply, when pharmacist services are not reasonably available, or when it is in the best interests of the patient, a quantity of properly packaged and labeled prescription drugs, controlled substances, or medical devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician assistant, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices. Prescription drugs supplied under the provisions of this subsection shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable overhead costs, as they relate to supplying prescription drugs to the patient, and not at a profit to the physician or the physician assistant. If prescription drug supplying authority is delegated by a supervising physician to a physician assistant, a nurse or staff assistant may assist the physician assistant in providing that service. Rules shall be adopted by the board of physician assistant examiners, after consultation with the board of pharmacy examiners, to implement this subsection.

5. Notwithstanding subsection 1 and any other provision of this section to the contrary, a physician may delegate the function of prescribing drugs, controlled substances, and medical devices to a physician assistant licensed pursuant to chapter 148C. When delegated prescribing occurs, the supervising physician's name shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Rules relating to the authority of physician assistants to prescribe drugs, controlled substances, and medical devices pursuant to this subsection shall be adopted by the board of physician assistant examiners, after consultation with the board of medical examiners and the board of pharmacy examiners, as soon as possible after July 1, 1991. The rules shall be reviewed and approved by the physician assistant rules review group created under subsection 7 and shall be adopted in final form by January 1, 1993. However, the rules shall prohibit the prescribing of schedule II controlled substances which are listed as stimulants or depressants pursuant to chapter 124. If rules are not reviewed and approved by the physician assistant rules review group created under subsection 7 and adopted in final form by January 1, 1993, a physician assistant may prescribe drugs as a delegated act of a supervising physician under rules adopted by the board of physician assistant examiners and subject to the rules review process established in section 148C.7. The board of physician assistant examiners shall be the only board to regulate the practice of physician assistants relating to prescribing and supplying prescription drugs, controlled substances and medical devices, notwithstanding section 148C.6A.

6. Health care providers shall consider the instructions of the physician assistant to be instructions of the supervising physician if the instructions concern duties delegated to the physician assistant by a supervising physician.

7. A physician assistant rules review group is established consisting of two physician assistants selected by the board of physician assistants, two physicians selected by the board of medical examiners, and one physician currently practicing as a supervising physician of physician assistants selected by the four other members of the rules review group no later than August 1, 1991. The rules review group shall select its own chairperson.

The rules review group shall review and approve or disapprove rules proposed for adoption relating to the authority of physician assistants to supply or prescribe drugs, controlled substances, and medical devices pursuant to subsection 5. Approval shall be by a simple majority of the members of the rules review group. A rule shall not be-

come effective without the approval of the rules review group unless otherwise specified under this section.

8. Notwithstanding subsection 1, a family planning clinic may dispense birth control drugs and devices upon the order of a physician. Subsections 2 and 3 do not apply to a family planning clinic under this subsection.

9. Notwithstanding subsection 1, but subject to the limitations contained in subsections 2 and 3, a registered nurse who is licensed and registered as an advanced registered nurse practitioner and who qualifies for and is registered in a recognized nursing specialty may prescribe substances or devices, including controlled substances or devices, if the nurse is engaged in the practice of a nursing specialty regulated under rules adopted by the board of nursing in consultation with the board of medical examiners and the board of pharmacy examiners.

10. Notwithstanding section 147.86, a person, including a pharmacist, who violates this section is guilty of a simple misdemeanor.

84 Acts, ch 1006, §1; 88 Acts, ch 1232, §1; 91 Acts, ch 238, §1; 91 Acts, ch 239, §1; 92 Acts, ch 1163, §37; 92 Acts, ch 1183, §10; 94 Acts, ch 1134, §1; 95 Acts, ch 108, §5; 2002 Acts, ch 1108, §13

See also §154.1, 155A.4

Subsections 4 – 7 not to limit certain powers existing on June 5, 1991; 91 Acts, ch 238, §2, 3

Subsection 2, unnumbered paragraphs 1 and 2 amended

147.108 Contact lens prescribing and dispensing.

1. A person shall not dispense or adapt contact lenses without first receiving authorization to do so by a written prescription, except when authorized orally under subsection 2, from a person licensed under chapter 148, 150, 150A, or 154.

2. After contact lenses have been adequately adapted and the patient released from initial follow-up care by a person licensed under chapter 148, 150, 150A, or 154, the patient may request a copy, at no cost, of the contact lens prescription from that licensed person. A person licensed under chapter 148, 150, 150A, or 154 shall not withhold a contact lens prescription after the requirements of this section have been met. The prescription, at the option of the prescriber, may be given orally only to a person who is actively practicing and licensed under chapter 148, 150, 150A, 154, or 155A. The contact lens prescription shall contain an expiration date, at the discretion of the prescriber, but not to exceed eighteen months. The contact lens prescription shall contain the necessary requirements of the ophthalmic lens, and the prescription validation requirements as defined by rules adopted pursuant to this section. The prescription may contain adapting and material guidelines and may also contain specific instructions for use by the patient. For the purpose of this section, *"ophthalmic lens"* means one which has been fabricated to fill the requirements of a particular contact lens prescription.

3. A person who fills a contact lens prescription shall maintain a file of a valid prescription for a period of two years.

4. Notwithstanding section 147.86, a person who violates this section is guilty of a simple misdemeanor for a first violation. Subsequent violations are governed by section 147.86.

94 Acts, ch 1098, §1

147.109 Ophthalmic spectacle lens prescribing and dispensing.

1. A person shall not dispense or adapt an ophthalmic spectacle lens or lenses without first receiving authorization to do so by a written prescription from a person licensed under chapter 148, 150, 150A, or 154. For the purpose of this section, *"ophthalmic spectacle lens"* means one which has been fabricated to fill the requirements of a particular spectacle lens prescription.

2. Upon completion of an eye examination, a person licensed under chapter 148, 150, 150A, or 154 shall furnish the patient a copy of their ophthalmic spectacle lens prescription at no cost. The ophthalmic spectacle lens prescription shall contain an expiration date. The ophthalmic spectacle lens prescription shall contain the requirements of the ophthalmic spectacle lens and the prescription validation requirements as defined by rules adopted pursuant to this section. The prescription, at the option of the prescriber, may contain adapting and material guidelines and may also contain specific instructions for use by the patient.

3. Upon request of a patient, a person licensed under chapter 148, 150, 150A, or 154 shall provide the prescription of the patient, if the prescription has not expired, at no cost to another person licensed under chapter 148, 150, 150A, or 154. The person licensed under chapter 148, 150, 150A, or 154 shall accept the prescription and shall not require the patient to undergo an eye examination unless, due to observation or patient history, the licensee has reason to require an examination.

4. A dispenser shall maintain a file of a valid prescription for a period of two years.

5. Notwithstanding section 147.86, a person who violates this section is guilty of a simple misdemeanor for a first violation. Subsequent violations are governed by section 147.86.

94 Acts, ch 1098, §2

147.110 Reserved.

WOUNDS BY CRIMINAL VIOLENCE

147.111 Report of treatment of wounds and other injuries.

Any person licensed under the provisions of this subtitle who shall administer any treatment to any person suffering a gunshot or stab wound or

other serious injury, as defined in section 702.18, which appears to have been received in connection with the commission of a criminal offense, or to whom an application is made for treatment of any nature because of any such gunshot or stab wound or other serious injury, as defined in section 702.18, shall at once but not later than twelve hours thereafter, report that fact to the law enforcement agency within whose jurisdiction the treatment was administered or an application therefor was made, or if ascertainable, to the law enforcement agency in whose jurisdiction the gunshot or stab wound or other serious injury occurred, stating the name of such person, the person's residence if ascertainable, and giving a brief description of the gunshot or stab wound or other serious injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

[C31, 35, §2537-d1; C39, §**2537.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.111]

93 Acts, ch 100, §2; 94 Acts, ch 1132, §31; 96 Acts, ch 1036, §30; 98 Acts, ch 1053, §28; 99 Acts, ch 114, §8

147.112 Investigation and report by law enforcement agency.

The law enforcement agency who has received any report required by this chapter and who has any reason to believe that the person injured was involved in the commission of any crime, either as perpetrator or victim, shall at once commence an investigation into the circumstances of the gunshot or stab wound or other serious injury and make a report of the investigation to the county attorney in whose jurisdiction the gunshot or stab wound or other serious injury occurred. Law enforcement personnel shall not divulge any information received under the provisions of this section and section 147.111 to any person other than a law enforcing officer, and then only in connection with the investigation of the alleged commission of a crime.

[C31, 35, §2537-d2; C39, §**2537.8;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.112]

93 Acts, ch 100, §3; 99 Acts, ch 114, §9

147.113 Violations.

Any person failing to make the report required herein shall be guilty of a simple misdemeanor.

[C31, 35, §2537-d3; C39, §**2537.9;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.113]

INSPECTOR FOR DENTAL EXAMINERS

147.114 Inspector.

An inspector may be appointed by the board of dental examiners pursuant to the provisions of chapter 19A.

[C62, 66, 71, 73, 75, 77, 79, 81, §147.114]

147.115 Repealed by 74 Acts, ch 1086, § 198.

INSPECTOR FOR OPTOMETRY EXAMINERS

147.116 Inspector. Repealed by 90 Acts, ch 1204, § 65. See § 147.88.

147.117 Repealed by 74 Acts, ch 1086, § 198.

NURSING HOME ADMINISTRATORS

147.118 to 147.134 Transferred to chapter 155.

MALPRACTICE

See also chapter 519A relating to insurance

147.135 Peer review committees — nonliability — records and reports privileged and confidential.

1. A person shall not be civilly liable as a result of acts, omissions, or decisions made in connection with the person's service on a peer review committee. However, such immunity from civil liability shall not apply if an act, omission, or decision is made with malice.

2. As used in this subsection, *"peer review records"* means all complaint files, investigation files, reports, and other investigative information relating to licensee discipline or professional competence in the possession of a peer review committee or an employee of a peer review committee. As used in this subsection, *"peer review committee"* does not include examining boards. Peer review records are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release to a person other than an affected licensee or a peer review committee and are not admissible in evidence in a judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review record and whose competence is at issue. A person shall not be liable as a result of filing a report or complaint with a peer review committee or providing information to such a committee, or for disclosure of privileged matter to a peer review committee. A person present at a meeting of a peer review committee shall not be permitted to testify as to the findings, recommendations, evaluations, or opinions of the peer review committee in any judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review committee meeting and whose competence is at issue. Information or documents discoverable from sources other than the peer review

committee do not become nondiscoverable from the other sources merely because they are made available to or are in the possession of a peer review committee. However, such information relating to licensee discipline may be disclosed to an appropriate licensing authority in any jurisdiction in which the licensee is licensed or has applied for a license. If such information indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. This subsection shall not preclude the discovery of the identification of witnesses or documents known to a peer review committee. Any final written decision and finding of fact by a licensing board in a disciplinary proceeding is a public record. Upon appeal by a licensee of a decision of a licensing board, the entire case record shall be submitted to the reviewing court. In all cases where privileged and confidential information under this subsection becomes discoverable, admissible, or part of a court record the identity of an individual whose privilege has been involuntarily waived shall be withheld.

3. A full and confidential report concerning any final hospital disciplinary action approved by a hospital board of trustees that results in a limitation, suspension, or revocation of a physician's privilege to practice for reasons relating to the physician's professional competence or concerning any voluntary surrender or limitation of privileges for reasons relating to professional competence shall be made to the board of medical examiners by the hospital administrator or chief of medical staff within ten days of such action. The board of medical examiners shall investigate the report and take appropriate action. These reports shall be privileged and confidential as though included in and subject to the requirements for peer review committee information in subsection 2. Persons making these reports and persons participating in resulting proceedings related to these reports shall be immune from civil liability with respect to the making of the report or participation in resulting proceedings. As used in this subsection, *"physician"* means a person licensed pursuant to chapter 148, chapter 150, or chapter 150A.

Notwithstanding subsection 2, if the board of medical examiners conducts an investigation based on a complaint received or upon its own motion, a hospital pursuant to subpoena shall make available information and documents requested by the board, specifically including reports or descriptions of any complaints or incidents concerning an individual who is the subject of the board's investigation, even though the information and documents are also kept for, are the subject of, or are being used in peer review by the hospital. However, the deliberations, testimony, decisions, conclusions, findings, recommendations, evaluations, work product, or opinions of a peer review committee or its members and those portions of any documents or records containing or revealing information relating thereto shall not be subject to the board's request for information, subpoena, or other legal compulsion. All information and documents received by the board from a hospital under this section shall be confidential pursuant to section 272C.6, subsection 4.

[C77, 79, 81, §147.135]

86 Acts, ch 1211, §14; 90 Acts, ch 1086, §7

147.136 Scope of recovery.

In an action for damages for personal injury against a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, or nurse licensed to practice that profession in this state, or against a hospital licensed for operation in this state, based on the alleged negligence of the practitioner in the practice of the profession or occupation, or upon the alleged negligence of the hospital in patient care, in which liability is admitted or established, the damages awarded shall not include actual economic losses incurred or to be incurred in the future by the claimant by reason of the personal injury, including but not limited to, the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and the loss of services and loss of earned income, to the extent that those losses are replaced or are indemnified by insurance, or by governmental, employment, or service benefit programs or from any other source except the assets of the claimant or of the members of the claimant's immediate family.

[C77, 79, 81, §147.136]

95 Acts, ch 108, §6

147.137 Consent in writing.

A consent in writing to any medical or surgical procedure or course of procedures in patient care which meets the requirements of this section shall create a presumption that informed consent was given. A consent in writing meets the requirements of this section if it:

1. Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks, if any, of death, brain damage, quadriplegia, paraplegia, the loss or loss of function of any organ or limb, or disfiguring scars associated with such procedure or procedures, with the probability of each such risk if reasonably determinable.

2. Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.

3. Is signed by the patient for whom the procedure is to be performed, or if the patient for any reason lacks legal capacity to consent, is signed by a person who has legal authority to consent on behalf of that patient in those circumstances.

[C77, 79, 81, §147.137]

147.138 Contingent fee of attorney reviewed by court.

In any action for personal injury or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor or nurse licensed under this chapter or against any hospital licensed under chapter 135B, based upon the alleged negligence of the licensee in the practice of that profession or occupation, or upon the alleged negligence of the hospital in patient care, the court shall determine the reasonableness of any contingent fee arrangement between the plaintiff and the plaintiff's attorney.

[C77, 79, 81, §147.138]

95 Acts, ch 108, §7

147.139 Expert witness standards.

If the standard of care given by a physician and surgeon licensed pursuant to chapter 148, or osteopathic physician and surgeon licensed pursuant to chapter 150A, or a dentist licensed pursuant to chapter 153, is at issue, the court shall only allow a person to qualify as an expert witness and to testify on the issue of the appropriate standard of care if the person's medical or dental qualifications relate directly to the medical problem or problems at issue and the type of treatment administered in the case.

86 Acts, ch 1211, §16

147.140 to 147.150 Reserved.

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

147.151 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Audiologist"* means a person who engages in the practice of audiology as defined in this section.

2. *"Board"* means the Iowa board of speech pathology and audiology examiners established pursuant to section 147.14, subsection 9.

3. The *"practice of audiology"* means the application of principles, methods, and procedures for measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to hearing and disorders of hearing and associated communication disorders for the purpose of nonmedically evaluating, identifying, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals, including the determination and use of appropriate amplification.

4. The *"practice of speech pathology"* means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to the development and disorders of speech, fluency, voice, or language for the purposes of nonmedically evaluating, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals.

5. *"Speech pathologist"* means a person who engages in the practice of speech pathology as defined in this section.

[C77, 79, 81, §147.151]

147.152 Applicability.

Nothing contained in this division shall be construed to apply to:

1. Licensed physicians and surgeons, licensed osteopathic physicians and surgeons, licensed osteopaths, approved physician assistants and registered nurses acting under the supervision of a physician, persons conducting hearing tests under the direct supervision of a licensed physician and surgeon, licensed osteopathic physician and surgeon, or licensed osteopath, or students of medicine or surgery or osteopathic medicine and surgery pursuing a course of study in a medical school or college of osteopathic medicine and surgery approved by the medical examiners while performing functions incidental to their course of study.

2. Hearing aid fitting, the dispensing or sale of hearing aids and the providing of hearing aid service and maintenance by a hearing aid dealer or holder of a temporary permit as defined and licensed under chapter 154A.

3. Students enrolled in an accredited college or university pursuing a course of study leading to a degree in speech pathology or audiology while receiving clinical training as a part of the course of study and acting under the supervision of a licensed speech pathologist or audiologist provided they use the title "trainee" or similar title clearly indicating training status.

4. Nonprofessional aides who perform their services under the supervision of a speech pathologist or audiologist as appropriate and who meet such qualifications as may be established by the board for aides if they use the title "aide", "assistant", "technician", or other similar title clearly indicating their status.

5. Audiometric tests administered pursuant to the United States Occupational Safety and Health Act of 1970 or chapter 88, and in accordance with regulations issued thereunder, by employees of a person engaged in business, including the state of Iowa, its various departments, agencies, and political subdivisions, solely to employees of such employer, while acting within the scope of their employment.

6. Persons certified by the department of education as speech clinicians or hearing clinicians and employed by a school district or area education agency while acting within the scope of their employment.

A person exempted from the provisions of this division by this section shall not use the title speech pathologist or audiologist or any title or device indicating or representing in any manner that the person is a speech pathologist or is an audiologist; provided, a hearing aid dealer licensed under chapter 154A may use the title "certified hearing aid audiologist" when granted by the national hearing aid society; and provided, persons who meet the requirements of section 147.153, subsection 1, who are certified by the department of education as speech clinicians may use the title speech pathologist and persons who meet the requirements of section 147.153, subsection 2, who are certified by the department of education as hearing clinicians may use the title audiologist, while acting within the scope of their employment.

[C77, 79, 81, §147.152]

90 Acts, ch 1086, §8

147.153 Requirements for license.

Each applicant for a license as a speech pathologist or audiologist shall meet all of the following requirements:

1. For a license as a speech pathologist:

a. Possess a master's degree or its equivalent from an accredited school, college or university with a major in speech pathology.

b. Show evidence of completion of not less than three hundred hours of supervised clinical training in speech pathology as a student in an accredited school, college or university.

c. Show evidence of completion of not less than nine months clinical experience under the supervision of a licensed speech pathologist following the receipt of the master's degree.

2. For a license as an audiologist:

a. Possess a master's degree or its equivalent from an accredited school, college or university with a major in audiology.

b. Show evidence of completion of not less than three hundred hours of supervised clinical training in audiology as a student in an accredited school, college or university.

c. Show evidence of completion of not less than nine months clinical experience under the supervision of a licensed audiologist following the receipt of the master's degree.

3. Pass an examination administered by the board to assure the applicant's professional competence in speech pathology or audiology.

[C77, 79, 81, §147.153; 81 Acts, ch 66, §2, 3]

147.154 Examination.

The examinations required in section 147.153, subsection 3, may be waived by the board for holders by examination of licenses or certificates from states whose requirements are substantially equivalent to those of this division.

[C77, 79, 81, §147.154; 81 Acts, ch 66, §4]

147.155 Temporary clinical license.

Any person who has fulfilled all of the requirements for licensure under this division, except for having completed the nine months clinical experience requirement as provided in section 147.153, subsection 1 or 2, and the examination as provided in section 147.153, subsection 3, may apply to the board for a temporary clinical license. The license shall be designated "temporary clinical license in speech pathology" or "temporary clinical license in audiology" and shall authorize the licensee to practice speech pathology or audiology under the supervision of a licensed speech pathologist or licensed audiologist, as appropriate. The license shall be valid for one year and may be renewed once at the discretion of the board. The fee for a temporary clinical license shall be set by the board to cover the administrative costs of issuing the license, and if renewed, a renewal fee as set by the board shall be required. A temporary clinical license shall be issued only upon evidence satisfactory to the board that the applicant will be supervised by a person licensed as a speech pathologist or audiologist, as appropriate. The board shall revoke any temporary clinical license at any time it determines either that the work done by the temporary clinical licensee or the supervision being given the temporary clinical licensee does not conform to reasonable standards established by the board.

[C77, 79, 81, §147.155; 81 Acts, ch 66, §5]

147.156 Temporary permit.

The board may, at its discretion, issue a temporary permit to nonresidents authorizing the permittee to practice speech pathology or audiology in this state for a period of not to exceed three months whenever, in the opinion of the board, a need exists and the permittee, in the opinion of the board, possesses the necessary qualifications which shall be substantially equivalent to those required for licensure by this division.

[C77, 79, 81, §147.156]

147.157 through 147.160 Reserved.

BASIC EMERGENCY MEDICAL CARE PROVIDERS

147.161 Training and certification of first responders, emergency rescue technicians, and emergency medical technicians-ambulance. Repealed by 95 Acts, ch 41, § 27. See chapter 147A.

CHAPTER 147A

EMERGENCY MEDICAL CARE — TRAUMA CARE

Enforcement, §147.87, 147.90, 147.92
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SUBCHAPTER I

EMERGENCY MEDICAL CARE

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SUBCHAPTER II

STATEWIDE TRAUMA CARE SYSTEM

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SUBCHAPTER I

EMERGENCY MEDICAL CARE

147A.1 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Department"* means the Iowa department of public health.

2. *"Director"* means the director of the Iowa department of public health.

3. *"Emergency medical care"* means such medical procedures as:

a. Administration of intravenous solutions.

b. Intubation.

c. Performance of cardiac defibrillation and synchronized cardioversion.

d. Administration of emergency drugs as provided by rule by the department.

e. Any other medical procedure approved by the department, by rule, as appropriate to be performed by emergency medical care providers who have been trained in that procedure.

4. *"Emergency medical care provider"* means an individual trained to provide emergency and nonemergency medical care at the first-responder, EMT-basic, EMT-intermediate, EMT-paramedic level, or other certification levels adopted by rule by the department, who has been issued a certificate by the department.

5. *"Emergency medical services"* or *"EMS"* means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.

6. *"Emergency medical services instructor"* means an individual who has successfully completed an EMS curriculum determined in rules in accordance with chapter 17A by the director and subject to the approval of the state board of health.

7. *"Emergency rescue technician"* or *"ERT"* means an individual trained in various rescue techniques including, but not limited to, extrication from vehicles and agricultural rescue, and who has successfully completed a curriculum approved by the department in cooperation with the Iowa fire service institute.

8. *"First responder"* or *"FR"* means an individual trained in patient-stabilizing techniques, through the use of initial emergency medical care procedures and skills prior to the arrival of an ambulance, pursuant to rules established by the department and who is currently certified as a first responder by the department.

9. *"Physician"* means an individual licensed under chapter 148, 150, or 150A.

[C79, 81, §147A.1]

84 Acts, ch 1287, §1; 86 Acts, ch 1245, §1142; 89 Acts, ch 89, §6; 93 Acts, ch 58, §7; 95 Acts, ch 41, §9; 99 Acts, ch 141, §21

147A.1A Lead agency.

The department is designated as the lead agency for coordinating and implementing the provision of emergency medical services in this state.

93 Acts, ch 58, §2

147A.2 Council established — terms of office.

An EMS advisory council shall be appointed by the director. Membership of the council shall be comprised of individuals nominated from, but not limited to, the following state or national organizations: Iowa osteopathic medical association, Iowa medical society, American college of emergency physicians, Iowa physician assistant society, Iowa academy of family physicians, university of Iowa hospitals and clinics, Iowa EMS association, Iowa firemen's association, Iowa professional firefighters, EMS education programs committee, EMS regional council, Iowa nurses association, Iowa hospital association, and the Iowa state association of counties.

The EMS advisory council shall advise the director and develop policy recommendations concerning the regulation, administration, and coordination of emergency medical services in the state.

95 Acts, ch 41, §10; 98 Acts, ch 1100, §18; 2001 Acts, ch 74, §5

147A.3 Meetings of the council — quorum — expenses.

Membership, terms of office, quorum, and expenses shall be determined by the director pursuant to chapter 135.

95 Acts, ch 41, §11

147A.4 Rulemaking authority.

1. The department shall adopt rules required or authorized by this subchapter pertaining to the operation of ambulance, rescue, and first response services which have received authorization under section 147A.5 to utilize the services of certified emergency medical care providers. These rules shall include, but need not be limited to, requirements concerning physician supervision, necessary equipment and staffing, and reporting by ambulance, rescue, and first response services which have received the authorization pursuant to section 147A.5.

The director, pursuant to rule, may grant exceptions and variances from the requirements of rules adopted under this subchapter for any ambulance, rescue, or first response service. Exceptions or variations shall be reasonably related to undue hardships which existing services experience in complying with this subchapter or the rules adopted pursuant to this subchapter. However, no exception or variance may be granted unless the service has adopted a plan approved by the department prior to July 1, 1996, to achieve compliance during a period not to exceed seven years with this subchapter and rules adopted pursuant to this subchapter. Services requesting exceptions and variances shall be subject to other applicable rules adopted pursuant to this subchapter.

2. The department shall adopt rules required or authorized by this subchapter pertaining to the examination and certification of emergency medical care providers. These rules shall include, but need not be limited to, requirements concerning prerequisites, training, and experience for emergency medical care providers and procedures for determining when individuals have met these requirements. The department shall adopt rules to recognize the previous EMS training and experience of first responders and emergency medical technicians to provide for an equitable transition to the EMT-basic certification. The department may require additional training and examinations as necessary and appropriate to ensure that individuals seeking certification have met the EMT-basic knowledge and skill requirements.

3. The department shall establish the fee for the examination of the emergency medical care providers to cover the administrative costs of the examination program.

[C79, 81, §147A.4; 82 Acts, ch 1005, §1, 2]

84 Acts, ch 1287, §4; 86 Acts, ch 1245, §1143; 89 Acts, ch 89, §7; 93 Acts, ch 58, §3; 95 Acts, ch 41, §12, 28; 99 Acts, ch 141, §22

147A.5 Applications for emergency medical care services — approval — denial, probation, suspension, or revocation.

1. An ambulance, rescue, or first response service in this state that desires to provide emergency medical care in the out-of-hospital setting shall apply to the department for authorization to establish a program for delivery of the care at the scene of an emergency, during transportation to a hospital, during transfer from one medical care facility to another or to a private residence, or while in the hospital emergency department, and until care is directly assumed by a physician or by authorized hospital personnel.

2. The department shall approve an application submitted in accordance with subsection 1 when the department is satisfied that the program proposed by the application will be operated in compliance with this subchapter and the rules adopted pursuant to this subchapter.

3. The department may deny an application for authorization, or may place on probation, suspend, or revoke existing authorization if the department finds reason to believe the program has not been or will not be operated in compliance with this subchapter and the rules adopted pursuant to this subchapter, or that there is insufficient assurance of adequate protection for the public. The de-

nial or period of probation, suspension, or revocation shall be effected and may be appealed as provided by section 17A.12.

[C79, 81, §147A.5]

84 Acts, ch 1287, §5; 86 Acts, ch 1245, §1144; 89 Acts, ch 89, §8; 95 Acts, ch 41, §13

147A.6 Emergency medical care provider certificates — renewal.

1. The department, upon application and receipt of the prescribed fee, shall issue a certificate to an individual who has met all of the requirements for emergency medical care provider certification established by the rules adopted under section 147A.4, subsection 2. All fees received pursuant to this section shall be deposited in the emergency medical services fund established in section 135.25.

2. Emergency medical care provider certificates are valid for the multiyear period determined by the department, unless sooner suspended or revoked. The certificate shall be renewed upon application of the holder and receipt of the prescribed fee if the holder has satisfactorily completed continuing medical education programs as required by rule.

[C79, 81, §147A.6; 82 Acts, ch 1005, §3]

84 Acts, ch 1287, §6; 89 Acts, ch 89, §9; 93 Acts, ch 58, §7; 95 Acts, ch 41, §14; 97 Acts, ch 6, §1

147A.7 Denial, suspension or revocation of certificates — hearing — appeal.

1. The department may deny an application for issuance or renewal of an emergency medical care provider certificate, or suspend or revoke the certificate when it finds that the applicant or certificate holder is guilty of any of the following acts or offenses:

a. Negligence in performing authorized services.

b. Failure to follow the directions of the supervising physician.

c. Rendering treatment not authorized under this subchapter.

d. Fraud in procuring certification.

e. Professional incompetency.

f. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Habitual intoxication or addiction to the use of drugs.

h. Fraud in representations as to skill or ability.

i. Willful or repeated violations of this subchapter or of rules adopted pursuant to this subchapter.

j. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the practice of an emergency medical care provider. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

k. Having certification to practice as an emergency medical care provider revoked or suspended, or having other disciplinary action taken by a licensing or certifying authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

2. A determination of mental incompetence by a court of competent jurisdiction automatically suspends a certificate for the duration of the certificate unless the department orders otherwise.

3. A denial, suspension or revocation under this section shall be effected, and may be appealed in accordance with the rules of the department established pursuant to chapter 272C.

[C79, 81, §147A.7]

84 Acts, ch 1287, §7; 89 Acts, ch 89, §10; 93 Acts, ch 58, §4, 7; 95 Acts, ch 41, §15, 16; 99 Acts, ch 141, §23

147A.8 Authority of certified emergency medical care provider.

An emergency medical care provider properly certified under this subchapter may:

1. Render emergency and nonemergency medical care, rescue, and lifesaving services in those areas for which the emergency medical care provider is certified, as defined and approved in accordance with the rules of the department, at the scene of an emergency, during transportation to a hospital or while in the hospital emergency department, and until care is directly assumed by a physician or by authorized hospital personnel.

2. Function in any hospital or any other entity in which health care is ordinarily provided only when under the direct supervision, as defined by rules adopted pursuant to chapter 17A, of a physician, when:

a. Enrolled as a student or participating as a preceptor in a training program approved by the department; or

b. Fulfilling continuing education requirements as defined by rule; or

c. Employed by or assigned to a hospital or other entity in which health care is ordinarily provided only when under the direct supervision of a physician, as a member of an authorized ambulance, rescue, or first response service, or in an individual capacity, by rendering lifesaving services in the facility in which employed or assigned pursuant to the emergency medical care provider's certification and under the direct supervision of a physician, physician assistant, or registered nurse. An emergency medical care provider shall not routinely function without the direct supervision of a physician, physician assistant, or registered nurse. However, when the physician, physi-

cian assistant, or registered nurse cannot directly assume emergency care of the patient, the emergency medical care provider may perform without direct supervision emergency medical care procedures for which that individual is certified if the life of the patient is in immediate danger and such care is required to preserve the patient's life; or

d. Employed by or assigned to a hospital or other entity in which health care is ordinarily provided only when under the direct supervision of a physician, as a member of an authorized ambulance, rescue, or first response service, or in an individual capacity, to perform nonlifesaving procedures for which those individuals have been certified and are designated in a written job description. Such procedures may be performed after the patient is observed by and when the emergency medical care provider is under the supervision of the physician, physician assistant, or registered nurse, including when the registered nurse is not acting in the capacity of a physician designee, and where the procedure may be immediately abandoned without risk to the patient.

Nothing in this subchapter shall be construed to require any voluntary ambulance, rescue, or first response service to provide a level of care beyond minimum basic care standards.

[C79, 81, §147A.8]

84 Acts, ch 1287, §8; 89 Acts, ch 89, §11; 93 Acts, ch 58, §5, 7; 93 Acts, ch 107, §1; 95 Acts, ch 41, §17; 99 Acts, ch 141, §24; 2000 Acts, ch 1009, §1; 2001 Acts, ch 58, §10

147A.9 Remote supervision — emergency communication failure — authorization to initiate emergency procedures.

1. When voice contact or a telemetered electrocardiogram is monitored by a physician, physician's designee, or physician assistant, and direct communication is maintained, an emergency medical care provider may upon order of the monitoring physician or upon standing orders of a physician transmitted by the monitoring physician's designee or physician assistant perform any emergency medical care procedure for which that emergency medical care provider is certified.

2. If communications fail during an emergency or nonemergency situation, the emergency medical care provider may perform any emergency medical care procedure for which that individual is certified and which is included in written protocols if in the judgment of the emergency medical care provider the life of the patient is in immediate danger and such care is required to preserve the patient's life.

3. The department shall adopt rules to authorize medical care procedures which can be initiated in accordance with written protocols prior to the establishment of communication.

[C79, 81, §147A.9]

84 Acts, ch 1287, §9; 89 Acts, ch 89, §12; 93 Acts, ch 58, §6, 7; 93 Acts, ch 107, §2; 95 Acts, ch 41, §18; 99 Acts, ch 141, §25

147A.10 Exemptions from liability in certain circumstances.

1. A physician, physician's designee, advanced registered nurse practitioner, or physician assistant who gives orders, either directly or via communications equipment from some other point, or via standing protocols to an appropriately certified emergency medical care provider, registered nurse, or licensed practical nurse at the scene of an emergency, and an appropriately certified emergency medical care provider, registered nurse, or licensed practical nurse following the orders, are not subject to criminal liability by reason of having issued or executed the orders, and are not liable for civil damages for acts or omissions relating to the issuance or execution of the orders unless the acts or omissions constitute recklessness.

2. A physician, physician's designee, advanced registered nurse practitioner, physician assistant, registered nurse, licensed practical nurse, or emergency medical care provider shall not be subject to civil liability solely by reason of failure to obtain consent before rendering emergency medical, surgical, hospital or health services to any individual, regardless of age, when the patient is unable to give consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

3. An act of commission or omission of any appropriately certified emergency medical care provider, registered nurse, licensed practical nurse, or physician assistant, while rendering emergency medical care under the responsible supervision and control of a physician to a person who is deemed by them to be in immediate danger of serious injury or loss of life, shall not impose any liability upon the certified emergency medical care provider, registered nurse, licensed practical nurse, or physician assistant, the supervising physician, physician designee, advanced registered nurse practitioner, or any hospital, or upon the state, or any county, city or other political subdivision, or the employees of any of these entities; provided that this section shall not relieve any person of liability for civil damages for any act of commission or omission which constitutes recklessness.

[C79, 81, §147A.10]

84 Acts, ch 1287, §10; 89 Acts, ch 89, §13; 93 Acts, ch 107, §3; 95 Acts, ch 41, §19

147A.11 Prohibited acts.

1. Any person not certified as required by this subchapter who claims to be an emergency medical care provider, or who uses any other term to indicate or imply that the person is an emergency medical care provider, or who acts as an emergency medical care provider without having obtained the appropriate certificate under this subchapter,

is guilty of a class "D" felony.

2. An owner of an unauthorized ambulance, rescue, or first response service in this state who operates or purports to operate an ambulance, rescue, or first response service, or who uses any term to indicate or imply authorization without having obtained the appropriate authorization under this subchapter, is guilty of a class "D" felony.

3. Any person who imparts or conveys, or causes to be imparted or conveyed, or attempts to impart or convey false information concerning the need for assistance of an ambulance, rescue, or first response service or of any personnel or equipment thereof, knowing such information to be false, is guilty of a serious misdemeanor.

[C79, 81, §147A.11]

84 Acts, ch 1287, §11; 89 Acts, ch 89, §14; 95 Acts, ch 41, §20

147A.12 Registered nurse exception.

1. This subchapter does not restrict a registered nurse, licensed pursuant to chapter 152, from staffing an authorized ambulance, rescue, or first response service provided the registered nurse can document equivalency through education and additional skills training essential in the delivery of out-of-hospital emergency care. The equivalency shall be accepted when:

a. Documentation has been reviewed and approved at the local level by the medical director of the ambulance, rescue, or first response service in accordance with the rules of the board of nursing developed jointly with the department.

b. Authorization has been granted to that ambulance, rescue, or first response service by the department.

2. Section 147A.10 applies to a registered nurse in compliance with this section.

84 Acts, ch 1287, §12; 85 Acts, ch 129, §1; 89 Acts, ch 89, §15; 95 Acts, ch 41, §21

147A.13 Physician assistant exception.

This subchapter does not restrict a physician assistant, licensed pursuant to chapter 148C, from staffing an authorized ambulance, rescue, or first response service if the physician assistant can document equivalency through education and additional skills training essential in the delivery of out-of-hospital emergency care. The equivalency shall be accepted when:

1. Documentation has been reviewed and approved at the local level by the medical director of the ambulance, rescue, or first response service in accordance with the rules of the board of physician assistant examiners developed after consultation with the department.

2. Authorization has been granted to that ambulance, rescue, or first response service by the department.

93 Acts, ch 107, §4; 95 Acts, ch 41, §22

147A.14 Enforcement.

Investigators authorized by the department have the powers and status of peace officers when enforcing this chapter.

99 Acts, ch 141, §26

147A.15 through 147A.19 Reserved.

SUBCHAPTER II

STATEWIDE TRAUMA CARE SYSTEM

147A.20 Short title.

This subchapter may be cited as the *"Iowa Trauma Care System Development Act"*.

95 Acts, ch 40, §1

147A.21 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Categorization"* means a preliminary determination by the department that a hospital or emergency care facility is capable of providing trauma care in accordance with criteria adopted pursuant to chapter 17A for level I, II, III, and IV care capabilities.

2. *"Department"* means the Iowa department of public health.

3. *"Director"* means the director of public health.

4. *"Emergency care facility"* means a physician's office, clinic, or other health care center which provides emergency medical care in conjunction with other primary care services.

5. *"Hospital"* means a facility licensed under chapter 135B, or a comparable emergency care facility located and licensed in another state.

6. *"Trauma"* means a single or multisystem life-threatening or limb-threatening injury, or an injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

7. *"Trauma care facility"* means a hospital or emergency care facility which provides trauma care and has been verified by the department as having level I, II, III, or IV care capabilities and issued a certificate of verification pursuant to section 147A.23, subsection 2, paragraph *"c"*.

8. *"Trauma care system"* means an organized approach to providing personnel, facilities, and equipment for effective and coordinated trauma care.

9. *"Verification"* means a formal process by which the department certifies a hospital or emergency care facility's capacity to provide trauma care in accordance with criteria established for level I, II, III, and IV trauma care facilities.

95 Acts, ch 40, §2

147A.22 Legislative findings and intent — purpose.

The general assembly finds the following:

1. Trauma is a serious health problem in the state of Iowa and is the leading cause of death of younger Iowans. The death and disability associated with traumatic injury contributes to the significant medical expenses and lost work, and adversely affects the productivity of Iowans.

2. Optimal trauma care is limited in many parts of the state. With health care delivery in transition, access to quality trauma and emergency medical care continues to challenge our rural communities.

3. The goal of a statewide trauma care system is to coordinate the medical needs of the injured person with an integrated system of optimal and cost-effective trauma care. The result of a well-coordinated statewide trauma care system is to reduce the incidences of inadequate trauma care and preventable deaths, minimize human suffering, and decrease the costs associated with preventable mortality and morbidity.

4. The development of the Iowa trauma care system will achieve these goals while meeting the unique needs of the rural residents of the state.

95 Acts, ch 40, §3

147A.23 Trauma care system development.

1. The department is designated as a lead agency in this state responsible for the development of a statewide trauma care system.

2. The department, in consultation with the trauma system advisory council, shall develop, coordinate, and monitor a statewide trauma care system. This system shall include, but not be limited to, the following:

a. The categorization of all hospitals and emergency care facilities by the department as to their capacity to provide trauma care services. The categorization shall be determined by the department from self-reported information provided to the department by the hospital or emergency care facility. This categorization shall not be construed to imply any guarantee on the part of the department as to the level of trauma care services available at the hospital or emergency care facility.

b. The issuance of a certificate of verification of all categorized hospitals and emergency care facilities from the department at the level preferred by the hospital or emergency care facility. The standards and verification process shall be established by rule and may vary as appropriate by level of trauma care capability. To the extent possible, the standards and verification process shall be coordinated with other applicable accreditation and licensing standards.

c. Upon verification and the issuance of a certificate of verification, a hospital or emergency care facility agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards as required by the trauma care criteria established by rule under this subchapter. Verifications are valid for a period of three years or as determined by the department and are renewable. As part of the verification and renewal process, the department may conduct periodic on-site reviews of the services and facilities of the hospital or emergency care facility.

d. The department is responsible for the funding of the administrative costs of this subchapter. Any funds received by the department for this purpose shall be deposited in the emergency medical services fund established in section 135.25.

e. This section shall not be construed to limit the number and distribution of level I, II, III, and IV categorized and verified trauma care facilities in a community or region.

95 Acts, ch 40, §4

147A.24 Trauma system advisory council established.

1. A trauma system advisory council is established. The following organizations or officials may recommend a representative to the council:

a. American academy of pediatrics.

b. American college of emergency physicians, Iowa chapter.

c. American college of surgeons, Iowa chapter.

d. Department of public health.

e. Governor's traffic safety bureau.

f. Iowa academy of family physicians.

g. Iowa emergency medical services association.

h. Iowa emergency nurses association.

i. Iowa hospital association representing rural hospitals.

j. Iowa hospital association representing urban hospitals.

k. Iowa medical society.

l. Iowa osteopathic medical society.

m. Iowa physician assistant society.

n. Iowa society of anesthesiologists.

o. Orthopedic system advisory council of the American academy of orthopedic surgeons, Iowa representative.

p. Rehabilitation services delivery representative.

q. State emergency medical services medical director.

r. State medical examiner.

s. Trauma nurse coordinator representing a trauma registry hospital.

t. University of Iowa, injury prevention research center.

2. The council shall be appointed by the director from the recommendations of the organizations in subsection 1 for terms of two years. Vacancies on the council shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed.

3. The voting members of the council shall elect a chairperson and a vice chairperson and other officers as the council deems necessary. The officers shall serve until their successors are elected and qualified.

4. The council shall do all of the following:

a. Advise the department on issues and strategies to achieve optimal trauma care delivery throughout the state.

b. Assist the department in the implementation of an Iowa trauma care plan.

c. Develop criteria for the categorization of all hospitals and emergency care facilities according to their trauma care capabilities. These categories shall be for levels I, II, III, and IV, based on the most current guidelines published by the American college of surgeons committee on trauma, the American college of emergency physicians, and the model trauma care plan of the United States department of health and human services' health resources and services administration.

d. Develop a process for the verification of the trauma care capacity of each facility and the issuance of a certificate of verification.

e. Develop standards for medical direction, trauma care, triage and transfer protocols, and trauma registries.

f. Promote public information and education activities for injury prevention.

g. Review the rules adopted under this subchapter and make recommendations to the director for changes to further promote optimal trauma care.

95 Acts, ch 40, §5; 98 Acts, ch 1100, §19; 2001 Acts, ch 74, §6

147A.25 System evaluation and quality improvement committee.

1. The department shall create a system evaluation and quality improvement committee to develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement. The director shall appoint the members of the committee which shall include the following:

a. Two trauma surgeons.

b. One neurologic surgeon and one orthopedic surgeon.

c. Two emergency physicians.

d. Two trauma nurse coordinators.

e. Two emergency nurses.

f. Two out-of-hospital emergency medical care providers.

g. Department of public health trauma coordinator.

h. Iowa foundation of medical care director.

i. State emergency medical services medical director.

j. Two anesthesiologists.

k. Two family physicians.

l. Two physician assistants.

2. Proceedings, records, and reports developed pursuant to this section constitute peer review records under section 147.135, and are not subject to discovery by subpoena or admissible as evidence. All information and documents received from a hospital or emergency care facility under this subchapter shall be confidential pursuant to section 272C.6, subsection 4.

95 Acts, ch 40, §6

147A.26 Trauma registry.

1. The department shall maintain a statewide trauma reporting system by which the system evaluation and quality improvement committee, the trauma system advisory council, and the department may monitor the effectiveness of the statewide trauma care system.

2. The data collected by and furnished to the department pursuant to this section are confidential records of the condition, diagnosis, care, or treatment of patients or former patients, including outpatients, pursuant to section 22.7. The compilations prepared for release or dissemination from the data collected are not confidential under section 22.7, subsection 2. However, information which individually identifies patients shall not be disclosed and state and federal law regarding patient confidentiality shall apply.

3. To the extent possible, activities under this section shall be coordinated with other health data collection methods.

95 Acts, ch 40, §7; 96 Acts, ch 1079, §7

147A.27 Department to adopt rules.

The department shall adopt rules, pursuant to chapter 17A, to implement the Iowa trauma care system plan, which specify all of the following:

1. Standards for trauma care.
2. Triage and transfer protocols.
3. Trauma registry procedures and policies.
4. Trauma care education and training requirements.
5. Hospital and emergency care facility categorization criteria.
6. Procedures for approval, denial, probation, and revocation of certificates of verification.

95 Acts, ch 40, §8

147A.28 Prohibited acts.

A hospital or emergency care facility that imparts or conveys, or causes to be imparted or conveyed, that it is a trauma care facility, or that uses any other term to indicate or imply that the hospital or emergency care facility is a trauma care facility without having obtained a certificate of verification under this subchapter is subject to a civil penalty not to exceed one hundred dollars per day for each offense. In addition, the director may apply to the district court for a writ of injunction to restrain the use of the term *"trauma care facility"*. However, nothing in this subchapter shall be con-

strued to restrict a hospital or emergency facility from providing any services for which it is duly authorized.

95 Acts, ch 40, §9; 95 Acts, ch 209, §21

CHAPTER 148

MEDICINE AND SURGERY

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86
Examining board, support staff exceptions; location and powers; see §135.11A, 135.31
Utilization and cost control review committee; §514F.1

148.1 Persons engaged in practice.
148.2 Persons not required to qualify.
148.2A Board of medical examiners.
148.3 Requirements for license.
148.4 Certificates of national board.
148.5 Resident physician license.
148.6 Revocation.
148.7 Procedure for suspension or revocation.
148.8 Voluntary surrender of license.
148.9 Reinstatement.
148.10 Temporary certificate.
148.11 Special license to practice medicine and surgery.
148.12 Voluntary agreements.
148.13 Authority of board as to supervising physicians and review of contested cases under chapter 148C — rules.

148.1 Persons engaged in practice.

For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery:

1. Persons who publicly profess to be physicians or surgeons or who publicly profess to assume the duties incident to the practice of medicine or surgery.

2. Persons who prescribe, or prescribe and furnish medicine for human ailments or treat the same by surgery.

3. Persons who act as representatives of any person in doing any of the things mentioned in this section.

[C97, §2579; C24, 27, 31, 35, 39, §**2538;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.1]

148.2 Persons not required to qualify.

Section 148.1 shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or proprietary medicines.

2. Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs.

3. Students of medicine or surgery who have completed at least two years' study in a medical school, approved by the medical examiners, and who prescribe medicine under the supervision of a licensed physician and surgeon, or who render gratuitous service to persons in case of emergency.

4. Licensed podiatric physicians, osteopaths, osteopathic physicians and surgeons, chiropractors, physical therapists, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.

5. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or physicians and surgeons licensed in another state, when incidentally called into this state in consultation with a physician and surgeon licensed in this state.

6. A graduate of a medical school who is continuing training and performing the duties of an intern, or who is engaged in postgraduate training deemed the equivalent of an internship in a hospital approved for training by the medical examiners.

[C97, §2579, 2581; S13, §2581; C24, 27, 31, 35, 39, §**2539;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.2]

96 Acts, ch 1034, §68

148.2A Board of medical examiners.

As used in this chapter, *"board"* and *"medical examiners"* mean the board of medical examiners established in chapter 147.

92 Acts, ch 1183, §11

148.3 Requirements for license.

An applicant for a license to practice medicine and surgery shall:

1. Present a diploma issued by a medical college approved by the medical examiners, or present other evidence of equivalent medical education approved by the medical examiners. The

medical examiners may accept, in lieu of a diploma from a medical college approved by them, all of the following:

a. A diploma issued by a medical college which has been neither approved nor disapproved by the medical examiners; and

b. A valid standard certificate issued by the educational commission for foreign medical graduates or similar accrediting agency.

2. Pass an examination prescribed by the medical examiners which shall include subjects which determine the applicant's qualifications to practice medicine and surgery and which shall be given according to the methods deemed by the medical examiners to be the most appropriate and practicable. However, the federation licensing examination (FLEX) or any other national standardized examination which the medical examiners shall approve may be administered to any or all applicants in lieu of or in conjunction with other examinations which the medical examiners shall prescribe. The medical examiners may establish necessary achievement levels on all examinations for a passing grade and adopt rules relating to examinations.

3. Present to the medical examiners satisfactory evidence that the applicant has successfully completed one year of postgraduate internship or resident training in a hospital approved for such training by the medical examiners.

1. [C97, §2582; S13, §2582; C24, 27, 31, 35, 39, §**2540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.3; 82 Acts, ch 1005, §4]

2. [C97, §2576; S13, §2576; C24, 27, 31, 35, 39, §**2540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.3]

3. [C27, 31, 35, 39, §**2540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.3]

90 Acts, ch 1086, §9, 10; 92 Acts, ch 1183, §12

148.4 Certificates of national board.

The medical examiners may accept in lieu of the examination prescribed in section 148.3 a certificate of examination issued by the national board of medical examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed by the medical examiners for licenses.

[S13, §2582; C24, 27, 31, 35, 39, §**2541;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.4]

92 Acts, ch 1183, §13

148.5 Resident physician license.

A physician, who is a graduate of a medical school and is serving as a resident physician who is not otherwise licensed to practice medicine and surgery in this state, shall be required to obtain from the medical examiners a license to practice as a resident physician. The license shall be designated "Resident Physician License" and shall authorize the licensee to serve as a resident physician only, under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery, in an institution approved for such training by the medical examiners. A license shall be valid for a duration as determined by the board. The fee for each license shall be set by the medical examiners to cover the administrative costs of issuing the license. The medical examiners shall determine in each instance those eligible for a license, whether or not examinations shall be given, and the type of examinations. Requirements of the law pertaining to regular permanent licensure shall not be mandatory for a resident physician license except as specifically designated by the medical examiners. The granting of a resident physician license does not in any way indicate that the person licensed is necessarily eligible for regular permanent licensure, nor are the medical examiners in any way obligated to license the individual.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.5]

90 Acts, ch 1086, §11; 92 Acts, ch 1183, §14; 2000 Acts, ch 1140, §32

148.6 Revocation.

1. The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed ten thousand dollars.

2. Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

a. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of the physician's profession.

b. Being convicted of a felony in the courts of this state or another state, territory, or country. Conviction as used in this paragraph shall include a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding in which a finding or verdict of guilt is made or returned, but the adjudication of guilt is either withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state shall be conclusive evidence.

c. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

d. Having the license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revoca-

tion, or disciplinary action is prima facie evidence.

e. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice medicine and surgery, osteopathic medicine and surgery or osteopathy.

f. Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without this state.

h. Inability to practice medicine and surgery, osteopathic medicine and surgery or osteopathy with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition. The medical examiners may, upon probable cause, compel a physician to submit to a mental or physical examination by designated physicians or to submit to alcohol or drug screening within a time specified by the medical examiners. Failure of a physician to submit to an examination or to submit to alcohol or drug screening shall constitute admission to the allegations made against the physician and the finding of fact and decision of the medical examiners may be entered without the taking of testimony or presentation of evidence. At reasonable intervals, a physician shall be afforded an opportunity to demonstrate that the physician can resume the competent practice of medicine with reasonable skill and safety to patients.

A person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy who makes application for the renewal of a license, as required by section 147.10, gives consent to submit to a mental or physical examination as provided by this paragraph when directed in writing by the medical examiners. All objections shall be waived as to the admissibility of the examining physicians' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a physician in another proceeding and shall be confidential, except for other actions filed against a physician to revoke or suspend a license.

i. Willful or repeated violation of lawful rule or regulation adopted by the board or violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.6]
90 Acts, ch 1086, §12 – 14; 92 Acts, ch 1183, §15
Service of notice, R.C.P. 1.305

148.7 Procedure for suspension or revocation.

A proceeding for the revocation or suspension of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy shall be substantially in accord with the following procedure:

1. The medical examiners may, upon their own motion or upon verified complaint in writing, and shall, if such complaint is filed by the director of public health, issue an order fixing the time and place for hearing. A written notice of the time and place of the hearing together with a statement of the charges shall be served upon the licensee at least ten days before the hearing in the manner required for the service of notice of the commencement of an ordinary action or by restricted certified mail.

2. If the licensee has left the state, the notice and statement of the charges shall be so served at least twenty days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by said rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the medical examiners shall proceed with the hearing as hereinafter provided.

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The presiding board member or administrative law judge shall issue subpoenas at the request and on behalf of the licensee. The hearing shall be open to the public.

The administrative law judge shall be an attorney vested with full authority of the board to schedule and conduct hearings. The administrative law judge shall prepare and file with the medical examiners the administrative law judge's findings of fact and conclusions of law, together with a complete written transcript of all testimony and evidence introduced at the hearing and all exhibits, pleas, motions, objections, and rulings of the administrative law judge.

4. A stenographic record of the proceedings shall be kept. The licensee shall have the opportunity to appear personally and by an attorney, with

the right to produce evidence in the licensee's own behalf, to examine and cross-examine witnesses and to examine documentary evidence produced against the licensee.

5. If a person refuses to obey a subpoena issued by the presiding member or administrative law judge or to answer a proper question during the hearing, the presiding member or administrative law judge may invoke the aid of a court of competent jurisdiction or judge of this court in requiring the attendance and testimony of the person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

6. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and the licensee's attorney shall have the opportunity to appear personally to present the licensee's position and arguments to the board. The board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it.

7. If a majority of the members of the board vote in favor of finding the licensee guilty of an act or offense specified in section 147.55 or 148.6, the board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend the licensee's license to practice the profession for a period to be determined by the board.

b. Revoke the licensee's license to practice the profession.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the physician on probation. The probation ordered may be vacated upon noncompliance. The medical examiners may restore and reissue a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, but may impose a disciplinary or corrective measure which it might originally have imposed. A copy of the medical examiners' order, findings of fact, and decision, shall be served on the licensee in the manner of service of an original notice or by certified mail return receipt requested.

8. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act.

9. The medical examiners' order revoking or suspending a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.7]
88 Acts, ch 1109, §16; 90 Acts, ch 1086, §15; 92 Acts, ch 1183, §16, 17; 98 Acts, ch 1202, §31, 46

148.8 Voluntary surrender of license.

The medical examiners may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted, has the same force and effect as an order of revocation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.8]
92 Acts, ch 1183, §18

148.9 Reinstatement.

Any person whose license has been suspended, revoked or placed on probation may apply to the board of medical examiners for reinstatement at any time and the board may hold hearings on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement to the director of public health who shall thereupon issue a license as directed by the board.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.9]

148.10 Temporary certificate.

The medical examiners may, in their discretion, issue a temporary certificate authorizing the licensee to practice medicine and surgery or osteopathic medicine and surgery in a specific location or locations and for a specified period of time if, in the opinion of the medical examiners, a need exists and the person possesses the qualifications prescribed by the medical examiners for the license, which shall be substantially equivalent to those required for licensure under this chapter or chapter 150A, as the case may be. The medical examiners shall determine in each instance those eligible for this license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure are mandatory for this temporary license except as specifically designated by the medical examiners. The granting of a temporary license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure, nor are the medical examiners in any way obligated to so license the person.

The temporary certificate shall be issued for a period not to exceed one year and may be renewed, but a person shall not practice medicine and surgery or osteopathic medicine and surgery in excess of three years while holding a temporary certificate. The fee for this license and the fee for renewal of this license shall be set by the medical examiners. The fees shall be based on the administrative costs of issuing and renewing the licenses. The medical examiners may cancel a temporary

certificate at any time, without a hearing, for reasons deemed sufficient to the medical examiners.

When the medical examiners cancel a temporary certificate they shall promptly notify the licensee by registered United States mail, at the licensee's last-named address, as reflected by the files of the medical examiners, and the temporary certificate is terminated and of no further force and effect three days after the giving of the notice to the licensee.

[C66, 71, 73, 75, 77, 79, 81, §148.10]

87 Acts, ch 128, §1

148.11 Special license to practice medicine and surgery.

1. Whenever the need exists, the board of medical examiners may issue a special license. The special license shall authorize the licensee to practice medicine and surgery under the policies and standards applicable to the health care services of a medical school academic staff member or as otherwise specified in the special license.

2. A person applying for a special license shall:

a. Be a physician in a professional specialty.

b. Present a diploma issued by a medical college.

c. Present evidence of an unrestricted license to practice medicine and surgery which has been issued by a foreign state or territory or an alien country.

d. Present a letter of recommendation from the dean of a medical school in this state indicating that the applicant has been invited to serve on the academic staff of the medical school.

e. Present letters of recommendation from universities, other educational institutions, or research facilities that indicate the noteworthy professional attainment by the applicant.

f. Present biographical background information concerning the applicant's education and qualifications.

3. The fee for initial issuance of a special license shall be established in an amount sufficient to cover the costs of issuing the special license. If the special license is extended beyond one year, an annual renewal fee shall be established in an amount sufficient to cover the costs of renewing the special license.

4. Notwithstanding the provisions of chapter 17A, the board may cancel a special license at any time without hearing. However, when such license is proposed to be canceled, the board shall promptly notify the licensee by certified mail sent to the last known address of the licensee. Thirty days after the service of such notice, the special license shall be canceled.

5. A special license issued under this section shall automatically expire upon the special licensee discontinuing service on the academic staff of a medical school in this state. An expired special license shall not be renewed. However, a former special licensee may reapply for a special license.

[C77, 79, 81, §148.11]

148.12 Voluntary agreements.

The medical examiners, after due notice and hearing, may issue an order to revoke, suspend, or restrict a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy, or to issue a restricted license on application if the medical examiners determine that a physician licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy, or an applicant for licensure has entered into a voluntary agreement to restrict the practice of medicine and surgery, osteopathic medicine and surgery, or osteopathy in another state, district, territory, or country. A certified copy of the voluntary agreement shall be considered prima facie evidence.

86 Acts, ch 1211, §17; 92 Acts, ch 1183, §19

148.13 Authority of board as to supervising physicians and review of contested cases under chapter 148C — rules.

1. The board of medical examiners shall adopt rules setting forth in detail its criteria and procedures for determining the ineligibility of a physician to serve as a supervising physician under chapter 148C. The rules shall be adopted as soon as possible after the effective date of this Act and in no event later than December 31, 1988.

2. The board of medical examiners shall establish by rule specific procedures for consulting with and considering the advice of the board of physician assistant examiners in determining whether to initiate a disciplinary proceeding under chapter 17A against a licensed physician in a matter involving the supervision of a physician assistant.

3. In exercising their respective authorities, the board of medical examiners and the board of physician assistant examiners shall cooperate with the goal of encouraging the utilization of physician assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa.

4. A decision of the board of physician assistant examiners in a contested case involving discipline of a person licensed as a physician assistant under chapter 148C may be appealed to the board of medical examiners as provided in section 148C.6A.

88 Acts, ch 1225, §14

CHAPTER 148A

PHYSICAL THERAPY

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86

148A.1 Definition — referral — authorization.
148A.2 Who engaged in practice.
148A.3 Persons not included.
148A.4 Requirements to practice.
148A.5 Limitations.
148A.6 Physical therapist assistant.

148A.1 Definition — referral — authorization.

As used in this chapter, physical therapy is that branch of science that deals with the evaluation and treatment of human capabilities and impairments. Physical therapy uses the effective properties of physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound, and therapeutic exercises, and rehabilitative procedures to prevent, correct, minimize, or alleviate a physical impairment. Physical therapy includes the interpretation of performances, tests, and measurements, the establishment and modification of physical therapy programs, treatment planning, consultative services, instructions to the patients, and the administration and supervision attendant to physical therapy facilities. Physical therapy evaluation and treatment may be rendered by a physical therapist with or without a referral from a physician, podiatric physician, dentist, or chiropractor, except that a hospital may require that physical therapy evaluation and treatment provided in the hospital shall be done only upon prior review by and authorization of a member of the hospital's medical staff.

[C66, 71, 73, 75, 77, 79, 81, §148A.1]

84 Acts, ch 1268, §1; 86 Acts, ch 1238, §7; 87 Acts, ch 65, §3; 88 Acts, ch 1002, §1; 95 Acts, ch 108, §8

148A.2 Who engaged in practice.

For the purpose of this chapter the following classes of persons shall be deemed to be engaged in the practice of physical therapy:

1. Persons who treat human ailments by physical therapy as defined in this chapter.
2. Persons who publicly profess to be physical therapists or who publicly profess to perform the functions incident to the practice of physical therapy.

[C66, 71, 73, 75, 77, 79, 81, §148A.2]

148A.3 Persons not included.

Section 148A.1 shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, osteopaths, osteopathic physicians and surgeons, podiatric physicians, chiropractors, nurses, dentists, cosmetologists, and barbers, who are engaged in the practice of their respective professions.
2. Students of physical therapy who practice physical therapy under the supervision of a licensed physical therapist in connection with the regular course of instruction at a school of physical therapy.
3. Physical therapists of the United States army, navy, or public health service, or physical therapists licensed in another state, when incidentally called into this state in consultation with a physician and surgeon or physical therapists licensed in this state.
4. Nonprofessional workers not held out as physical therapists who are employed in hospitals, clinics, offices or health care facilities as defined in section 135C.1 working under the supervision and direction of a physical therapist or physician licensed pursuant to chapter 148, 150 or 150A.
5. Massage therapists, massage technicians, masseurs and masseuses who administer body massage by Swedish or other massage technique, including modalities, in a massage establishment, health club, athletic club or school athletic department, but in no instance shall they designate themselves as physical therapists.

[C66, 71, 73, 75, 77, 79, 81, §148A.3]

84 Acts, ch 1268, §2; 96 Acts, ch 1034, §68

148A.4 Requirements to practice.

Each applicant for a license to practice physical therapy shall:

1. Complete a course of study in, and hold a diploma or certificate issued by, a school of physical therapy accredited by the American physical therapy association or another appropriate accrediting body, and meet requirements as established by rules of the board of physical and occupational therapy examiners.
2. Have passed an examination administered by the board of physical and occupational therapy examiners.

[C66, 71, 73, 75, 77, 79, 81, §148A.4]

83 Acts, ch 101, §27; 84 Acts, ch 1268, §3

148A.5 Limitations.

A license to practice physical therapy does not authorize the licensee to practice operative surgery or osteopathic or chiropractic manipulation, or to administer or prescribe any drug or medicine included in materia medica.

88 Acts, ch 1002, §2

148A.6 Physical therapist assistant.

1. A person shall not use the title "physical therapist assistant" or the letters "P.T.A.", or represent to the public that the person is a physical therapist assistant, unless the person has obtained from the department a license pursuant to this section.

2. A licensed physical therapist assistant is required to function under the direction and supervision of a licensed physical therapist to perform physical therapy procedures delegated and supervised by the licensed physical therapist in a manner consistent with the rules adopted by the board of physical and occupational therapy examiners. Selected and delegated tasks of physical therapist assistants may include, but are not limited to, therapeutic procedures and related tasks, routine operational functions, documentation of treatment progress, and the use of selected physical agents. The ability of the licensed physical therapist assistant to perform the selected and delegated tasks shall be assessed on an ongoing basis by the supervising physical therapist. The licensed physical therapist assistant shall not interpret referrals, perform initial evaluation or reevaluations, initiate physical therapy treatment programs, change specified treatment programs, or discharge a patient from physical therapy services.

3. Each applicant for a license to practice as a physical therapist assistant shall:

a. Successfully complete a course of study for the physical therapist assistant accredited by the commission on accreditation in education of the American physical therapy association, or another appropriate accrediting body, and meet other requirements established by the rules of the board of physical and occupational therapy examiners.

b. Have passed an examination administered by the board of physical and occupational therapy examiners.

4. This section does not prevent a person not licensed as a physical therapist assistant from performing services ordinarily performed by a physical therapy aide, assistant, or technician, provided that the person does not represent to the public that the person is a licensed physical therapist assistant, or use the title "physical therapist assistant" or the letters "P.T.A.", and provided that the person performs services consistent with the supervision requirements of the board of physical and occupational therapy examiners for persons not licensed as physical therapist assistants.

91 Acts, ch 228, §3; 2000 Acts, ch 1140, §33

CHAPTER 148B

OCCUPATIONAL THERAPY

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86

148B.1 Title and purpose.
148B.2 Definitions.
148B.3 Persons and practices not affected.
148B.3A Referral.
148B.4 Limited permit.
148B.5 Requirements for licensure.
148B.6 Waiver of requirements for licensing.
148B.7 Board of physical and occupational therapy examiners — powers and duties.
148B.8 Board of physical and occupational therapy examiners — administrative provisions.

148B.1 Title and purpose.

This chapter may be cited and referred to as the *"Occupational Therapy Practice Act"*.

The purpose of this chapter is to provide for the regulation of persons offering occupational therapy services to the public in order to safeguard the public health, safety and welfare.

[C81, §148B.1]

148B.2 Definitions.

As used in this chapter:

1. *"Board"* means the board of physical and occupational therapy examiners.

2. *"Occupational therapy"* means the therapeutic application of specific tasks used for the purpose of evaluation and treatment of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorder, congenital or developmental disability, or the aging process in order to achieve optimum function, for maintenance of health and prevention of disability.

3. *"Occupational therapist"* means a person li-

censed under this chapter to practice occupational therapy.

4. *"Occupational therapy assistant"* means a person licensed under this chapter to assist in the practice of occupational therapy.

[C81, §148B.2]

148B.3 Persons and practices not affected.

This chapter does not prevent or restrict the practice, services or activities of any of the following:

1. A person licensed in this state by any other law from engaging in the profession or occupation for which the person is licensed.

2. A person employed as an occupational therapist or occupational therapy assistant by the government of the United States, if that person provides occupational therapy solely under the direction or control of the organization by which the person is employed.

3. A person pursuing a course of study leading to a degree or certificate in occupational therapy in an accredited or approved educational program, if the activities and services constitute a part of a supervised course of study and the person is designated by a title which clearly indicates the person's status as a student or trainee.

4. A person fulfilling the supervised field work experience requirements of section 148B.5, if the activities and services constitute a part of the experience necessary to meet the requirements of that section.

5. A nonresident performing occupational therapy services in this state who is not licensed under this chapter, if the services are performed for not more than thirty days a calendar year in association with an occupational therapist licensed under this chapter, and the nonresident meets the qualifications for licensing under this chapter except for the qualifying examination.

6. A nonresident performing occupational therapy services in the state who is not licensed under this chapter, if the services are performed for not more than ninety days in a calendar year in association with an occupational therapist licensed under this chapter, and

a. The nonresident is licensed under the law of another state which has licensure requirements at least as stringent as the requirements of this chapter, or

b. The nonresident meets the requirements for certification as an occupational therapist registered (O.T.R.), or a certified occupational therapy assistant (C.O.T.A.) established by the American occupational therapy association.

[C81, §148B.3]

148B.3A Referral.

Occupational therapy may be provided by an occupational therapist without referral from a physician, podiatric physician, dentist, or chiropractor, except that a hospital may require that occupational therapy provided in the hospital be performed only following prior review by and authorization of the performance of the occupational therapy by a member of the hospital medical staff.

2000 Acts, ch 1140, §34

148B.4 Limited permit.

A limited permit may be granted to persons who have completed the education and experience requirements of this chapter. This permit shall allow the person to practice occupational therapy under the supervision of a licensed occupational therapist and shall be valid until the date on which the results of the next qualifying examination have been made public. This limited permit shall not be renewed if the applicant has failed the examination.

[C81, §148B.4]

148B.5 Requirements for licensure.

An applicant applying for a license as an occupational therapist or as an occupational therapy assistant must file a written application on forms provided by the board, showing to the satisfaction of the board that the applicant meets the following requirements:

1. Successful completion of the academic requirements of an educational program in occupational therapy recognized by the board.

a. For an occupational therapist, the program must be one accredited by the accreditation council for occupational therapy education of the American occupational therapy association.

b. For an occupational therapy assistant, the program must be one approved by the American occupational therapy association.

2. Successful completion of a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where the applicant met the academic requirements.

a. For an occupational therapist a minimum of six months of supervised field work experience is required.

b. For an occupational therapy assistant, a minimum of two months of supervised field work experience is required.

3. Successful completion of an examination provided by the board. Such examination shall be conducted no more than once every six months.

[C81, §148B.5]

2000 Acts, ch 1140, §35; 2002 Acts, ch 1108, §14

Subsection 2 stricken and former subsection 1, unnumbered paragraph 1 redesignated as an unnumbered paragraph

Former subsection 1, paragraph a, unnumbered paragraph 1 and subparagraphs (1) and (2) redesignated as subsection 1, unnumbered paragraph 1 and paragraphs a and b respectively

Former subsection 1, paragraph b, unnumbered paragraph 1 and subparagraphs (1) and (2) redesignated as subsection 2, unnumbered paragraph 1 and paragraphs a and b respectively

Former subsection 1, paragraph c redesignated as subsection 3

148B.6 Waiver of requirements for licensing.

1. The board may waive the examination and grant a license to a person certified prior to January 1, 1981, as an occupational therapist registered (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) by the American Occupational Therapy Association.

2. The board shall waive the education and experience requirements for licensure in section 148B.5, subsections 1 and 2, for applicants for a license who present evidence to the board that they have been engaged in the practice of occupational therapy on and prior to January 1, 1981. Proof of actual practice shall be presented to the board in a manner as it prescribes by rule. To obtain the benefit of this waiver, an applicant must successfully complete the examination within one year from January 1, 1981. However, the waiver is conditional upon the applicant satisfying the education and experience requirements of section 148B.5, subsections 1 and 2, within five years of the waiver being granted and if those requirements are not satisfied at the expiration of those five years the board shall revoke the license.

3. The board may waive the examination and grant a license to an applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure of this chapter.

[C81, §148B.6]

148B.7 Board of physical and occupational therapy examiners — powers and duties.

The board shall adopt rules relating to professional conduct to carry out the policy of this chapter, including but not limited to rules relating to professional licensing and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy in this state.

[C81, §148B.7]

148B.8 Board of physical and occupational therapy examiners — administrative provisions.

The board may employ an executive secretary and officers and employees as necessary, and shall determine their duties and fix their compensation.

[C81, §148B.8]

CHAPTER 148C

PHYSICIAN ASSISTANTS

Enforcement, §147.87, 147.90, 147.92
Penalty, general, §147.86
Drug dispensing, supplying, and prescribing; limitations, rules, see §147.107 and 91 Acts, ch 238, §2

148C.1 Definitions.
148C.2 Approved programs.
148C.3 Registration — licensure.
148C.4 Services performed by assistants.
148C.5 Advisory committee created. Repealed by 88 Acts, ch 1225, §27.
148C.5A Initiating disciplinary proceedings — advice from board of medical examiners.
148C.6 Fees and renewals. Repealed by 88 Acts, ch 1225, §27.
148C.6A Appeal to board of medical examiners in contested cases involving discipline.
148C.7 Rules — review group.
148C.8 Right to delegate.
148C.9 Eye examination restricted.
148C.10 Applicability of other provisions of law.
148C.11 Prohibition — crime.

148C.1 Definitions.

1. *"Approved program"* means a program for the education of physician assistants which has been formally approved by the board in accordance with rules adopted pursuant to this chapter.

2. *"Board"* means the board of physician assistant examiners.

3. *"Department"* means the Iowa department of public health.

4. *"Licensed physician assistant"* means a person who is licensed by the board to practice as a physician assistant under the supervision of one or more physicians specified in the license. *"Supervision"* does not require the personal presence of the supervising physician at the place where medical services are rendered except insofar as the personal presence is expressly required by this chapter or required by rules of the board adopted

pursuant to this chapter.

5. *"Physician"* means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

6. *"Physician assistant"* means a person who has successfully completed an approved program and passed an examination approved by the board or is otherwise found by the board to be qualified to perform medical services under the supervision of a physician.

7. *"Review group"* means the physician assistant rules review group established in section 148C.7.

8. *"Trainee"* means a person who is currently enrolled in an approved program.

[C73, 75, 77, 79, §148B.1; C81, §148C.1]
88 Acts, ch 1225, §15

148C.2 Approved programs.

The department shall issue certificates of approval for programs for the education and training of physician assistants which meet board standards. In developing criteria for program approval, the board shall give consideration to and encourage the utilization of equivalency and proficiency testing and other mechanisms whereby full credit is given to trainees for past education and experience in health fields. Rules shall be adopted pursuant to this chapter setting forth standards to insure that such programs operate in a manner which does not endanger the health and welfare of patients who receive services within the scope of the program. The board shall review the quality of curriculum, faculty, and the facilities of such programs and shall approve the issuance of certificates of approval.

Rules shall be adopted pursuant to this chapter setting forth the fees to be charged in connection with the application for and issuance of certificates of approval under this section.

[C73, 75, 77, 79, §148B.2; C81, §148C.2]
88 Acts, ch 1225, §16

148C.3 Registration — licensure.

1. The board shall formulate guidelines and adopt rules, pursuant to section 148C.7, to govern the registration of persons who qualify as physician assistants. An applicant for registration shall submit the fee prescribed by the board and shall meet the requirements established by the board with respect to all of the following:

a. Academic qualifications, including evidence of graduation from an approved program. However, if the board determines that a person has sufficient knowledge and experience to qualify as a physician assistant, the board may approve an application for registration without requiring the completion of an approved program.

b. Examination grades and evidence of passing the national commission on certification of physician assistants examination or an equivalent examination which the board approves.

c. Hours of continuing medical education necessary to remain licensed or eligible for licensure.

2. The board may issue a temporary registration under special circumstances and upon conditions prescribed by the board. A temporary registration shall not exceed one year in duration and shall not be renewed more than once.

3. A person who is registered as a physician assistant is not authorized to practice as a physician assistant unless the person is also a licensed physician assistant.

4. The board shall formulate guidelines and adopt rules, pursuant to section 148C.7, for the consideration of applications from persons seeking to become licensed physician assistants. An applicant for a license to practice as a physician assistant shall submit the fee prescribed by the board and evidence of the applicant's current registration with the board as a physician assistant. In conjunction with the physician assistant submission, the applicant's supervising physician or physicians shall submit evidence of eligibility, as determined by the board of medical examiners, to serve as a supervising physician, information with respect to the supervising physician's professional background and specialty, scope of practice, and a plan for supervision of the physician assistant. In addition the physician assistant applicant and the supervising physician or physicians shall submit a description of how the physician assistant is to function within the scope of practice.

5. The board may issue a temporary license under special circumstances and upon conditions prescribed by the board. A temporary license shall not exceed one year in duration and shall not be renewed more than once.

6. The board may modify the proposed functioning of a physician assistant and then approve the application for licensure as modified.

7. The board shall not approve an application for licensure which would result in a physician supervising more than two physician assistants at one time.

8. A licensed physician assistant shall perform only those services for which the licensed physician assistant is qualified by training, and shall not perform a service that is not permitted by the board.

9. Rules shall be adopted pursuant to this chapter which will permit qualified practicing physicians to supervise licensed physician assistants at a free medical clinic on a temporary basis.

[C73, 75, 77, 79, §148B.3; C81, §148C.3; 82 Acts, ch 1005, §5]
88 Acts, ch 1225, §17

148C.4 Services performed by assistants.

A physician assistant may perform medical services when the services are rendered under the supervision of the physician or physicians specified

in the physician assistant license approved by the board. A trainee may perform medical services when the services are rendered within the scope of an approved program. For the purposes of this section, *"medical services rendered under the supervision of the physician or physicians specified in the physician assistant license approved by the board"* includes making a pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility, with notice of the death to a physician and in accordance with the directions of a physician.

[C73, 75, 77, 79, §148B.4; C81, §148C.4]
88 Acts, ch 1225, §18; 2001 Acts, ch 113, §1

148C.5 Advisory committee created. Repealed by 88 Acts, ch 1225, § 27. See § 148C.5A, 148C.6A, 148C.7.

148C.5A Initiating disciplinary proceedings — advice from board of medical examiners.

Rules shall be adopted pursuant to section 148C.7 to establish specific procedures for consulting with and considering the advice of the board of medical examiners in determining whether to initiate a disciplinary proceeding under chapter 17A against a licensed physician assistant.

88 Acts, ch 1225, §19

148C.6 Fees and renewals. Repealed by 88 Acts, ch 1225, § 27. See § 148C.2, 148C.3.

148C.6A Appeal to board of medical examiners in contested cases involving discipline.

Pursuant to section 17A.15, a decision of the board in a contested case involving discipline of a person licensed as a physician assistant may be appealed to the board of medical examiners.

88 Acts, ch 1225, §20

148C.7 Rules — review group.

1. A physician assistant rules review group is established consisting of one physician assistant member, one supervising physician member, and one public member from the board of physician assistant examiners and two members from the board of medical examiners who are licensed to practice medicine and surgery or osteopathic medicine and surgery. The respective boards shall select their members to serve on the physician assistant rules review group. The review group shall select its own chairperson.

The review group shall review and approve or disapprove rules proposed for adoption by the board of physician assistant examiners. Approval shall be a simple majority of the members of the group. A rule shall not become effective without the approval of the review group.

2. The board may adopt rules reasonably necessary to carry out the purposes of this chapter. Proposed rules must be submitted to the review group for prior review and approval. The rules shall be designed to encourage the utilization of physician assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa through better utilization of available physicians and the development of sound programs for the education and training of skilled physician assistants well qualified to assist physicians in providing health care and medical services.

[C73, 75, 77, 79, §148B.7; C81, §148C.7]
88 Acts, ch 1225, §21

148C.8 Right to delegate.

Nothing in this chapter affects or limits a physician's existing right to delegate various medical tasks to aides, assistants or others acting under the physician's supervision or direction, including orthopedic physician's assistant technologists. Such aides, assistants, orthopedic physician's assistant technologists, and others who perform only those tasks which can be so delegated shall not be required to qualify as physician assistants under this chapter.

[C73, 75, 77, 79, §148B.8; C81, §148C.8]
88 Acts, ch 1225, §22

148C.9 Eye examination restricted.

A physician assistant shall not be permitted to prescribe lenses, prisms, or contact lenses for the aid, relief, or correction of human vision. A physician assistant shall not be permitted to measure the visual power and visual efficiency of the human eye, as distinguished from routine visual screening, except in the personal presence of a supervising physician at the place where such services are rendered.

[C73, 75, 77, 79, §148B.9; C81, §148C.9]
88 Acts, ch 1225, §23

148C.10 Applicability of other provisions of law.

The provisions of chapter 147, not otherwise inconsistent with the provisions of this chapter, shall apply to the provisions of this chapter.

[C73, 75, 77, 79, §148B.10; C81, §148C.10]

148C.11 Prohibition — crime.

A person not registered and licensed as required by this chapter who practices as a physician assistant without having obtained the appropriate approval under this chapter, is guilty of a serious misdemeanor.

[82 Acts, ch 1005, §7]
88 Acts, ch 1225, §24

CHAPTER 148D

RESIDENT PHYSICIANS

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86

148D.1 Definitions.
148D.2 Establishment.
148D.3 Advisory board. Repealed by 86 Acts, ch 1245, §2053.
148D.4 Terms. Repealed by 86 Acts, ch 1245, §2053.
148D.5 Duties of the advisory board. Repealed by 86 Acts, ch 1245, §2053.
148D.6 Use of funds.

148D.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Affiliated"* means established or developed by the college of medicine.
2. *"College of medicine"* means the university of Iowa college of medicine.
3. *"Family practice unit"* means the community facility or classroom for the teaching of ambulatory health care skills within a residency program.
4. The *"medical profession"* means medical and osteopathic physicians.
5. *"Residency program"* means a community based family practice residency education program presently in existence or established under this chapter.

[C75, 77, 79, §148C.1; C81, §148D.1]
86 Acts, ch 1245, §2051; 2001 Acts, ch 74, §7

148D.2 Establishment.

A statewide medical education system is established for the purpose of training resident physicians in family practice. The dean of the college of medicine is responsible for implementing the development and expansion of residency programs in co-operation with the medical profession, hospitals, and clinics located throughout the state. The head of the department of family practice in the college of medicine shall determine where affiliated residency programs shall be established, giving consideration to communities in the state where the population, hospital facilities, number of physicians and interest in medical education indicate the potential success of the residency programs. The medical education systems shall provide financial support for residents in training in accredited affiliated residency programs and shall establish positions for a director, assistant director, and other faculty in the programs. To assure continued growth, development, and academic essentials in ongoing programs, nonaffiliated residency programs which are accredited by a recognized national accrediting organization, shall be funded under this chapter at a level commensurate with the support of the affiliated residency programs having a comparable number of residents in training or, if there are no affiliated residency programs having a comparable number of residents in training, then a nonaffiliated program shall be funded in an amount determined on a pro rata capitation basis for each resident in training, equivalent to the per capita funding for each resident in training in an affiliated program having the nearest number of residents in training. As used in the preceding sentence, *"support"* means both cash grants and the value of service directly provided to affiliated residency programs by the college of medicine.

[C75, 77, 79, §148C.2; C81, §148D.2]
88 Acts, ch 1134, §30

148D.3 Advisory board. Repealed by 86 Acts, ch 1245, § 2053.

148D.4 Terms. Repealed by 86 Acts, ch 1245, § 2053.

148D.5 Duties of the advisory board. Repealed by 86 Acts, ch 1245, § 2053.

148D.6 Use of funds.

1. Moneys appropriated for the residency program shall be in addition to all the income of the state University of Iowa, and shall not be used to supplant funds for other programs under the administration of the college of medicine.
2. The allocation of state funds for a residency program shall not exceed fifty percent of the total cost of the program and shall be used for:

a. The salaries of the director, assistant director and other faculty and auxiliary personnel on the community level.

b. The stipends for the residents in training.

c. The initial construction or remodeling of a facility which serves as a family practice unit within a residency program.

d. The purchase of equipment for use in the family practice unit.

e. Travel expenses for consultative visits by faculty.

3. No more than twenty percent of the appropriation for each fiscal year for affiliated programs shall be authorized for expenditures made in support of the faculty and staff of the college of medicine who are associated with the affiliated residency program.

4. No funds appropriated under this chapter shall be used to subsidize the cost of care incurred by patients.

5. Allocations for the renovation or construction of a family practice unit shall not exceed thirty-five thousand dollars per program.

[C75, 77, 79, §148C.6; C81, §148D.6]

CHAPTER 148E

ACUPUNCTURE

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86

148E.1 Definitions.
148E.2 License required — renewal.
148E.3 Scope of chapter.
148E.4 Standard of care.
148E.5 Use and disposal of needles.
148E.6 Display of certificate and disclosure of information to patients.
148E.7 Duties of board.
148E.8 License revocation or suspension.
148E.9 Accident and health insurance coverage.
148E.10 Evaluation of condition required. Repealed by 2000 Acts, ch 1053, §14.

148E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Acupuncture"* means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

2. *"Acupuncturist"* means a person who is engaged in the practice of acupuncture.

3. *"Board"* means the board of medical examiners established in chapter 147.

4. *"Practice of acupuncture"* means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.

93 Acts, ch 86, §1; 2000 Acts, ch 1053, §5

148E.2 License required — renewal.

1. In order to obtain a license to practice acupuncture, an applicant shall present evidence to the board of all of the following:

a. Current active status as a diplomate in acupuncture of the national commission for the certification of acupuncturists.

b. Successful completion of a three-year postsecondary training program or acupuncture college program which is accredited by, in candidacy for accreditation by, or which meets the standards of the national accreditation commission for schools and colleges of acupuncture and oriental medicine.

c. Successful completion of a course in clean needle technique approved by the national commission for the certification of acupuncturists.

2. Notwithstanding subsection 1, a license to practice acupuncture shall be granted by the board to a resident of this state who has successfully completed an acupuncture degree program approved by the board, or an apprenticeship or tutorial program approved by the board, on or before July 1, 2001.

3. A license granted pursuant to this section shall be renewed every two years. Renewal shall require evidence of current active membership in the national commission for the certification of acupuncturists.

93 Acts, ch 86, §2; 2000 Acts, ch 1053, §6

148E.3 Scope of chapter.

This chapter does not apply to the following:

1. A person otherwise licensed to practice medicine and surgery, osteopathy, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry who is exclusively engaged in the practice of the person's profession.

2. A student practicing acupuncture under the direct supervision of a licensed acupuncturist as

part of a course of study approved by the board.

93 Acts, ch 86, §3; 2000 Acts, ch 1053, §7; 2000 Acts, ch 1232, §49

148E.4 Standard of care.

A person licensed under this chapter shall be held to the same standard of care as a person licensed to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery.

93 Acts, ch 86, §4; 2000 Acts, ch 1053, §8

148E.5 Use and disposal of needles.

An acupuncturist shall use only presterilized, disposable needles, and shall provide for adequate disposal of used needles.

93 Acts, ch 86, §5; 2000 Acts, ch 1053, §9

148E.6 Display of certificate and disclosure of information to patients.

An acupuncturist shall display the license issued pursuant to section 148E.2 in a conspicuous place in the acupuncturist's place of business. An acupuncturist shall provide to each patient upon initial contact with the patient the following information in written form:

1. The name, business address, and business telephone number of the acupuncturist.
2. A fee schedule.
3. A listing of the acupuncturist's education, experience, degrees, certificates, or credentials related to acupuncture awarded by professional acupuncture organizations, the length of time required to obtain the degrees or credentials, and experience.
4. A statement indicating any license, certificate, or registration in a health care occupation which was revoked by any local, state, or national health care agency.
5. A statement that the acupuncturist is complying with statutes and rules adopted by the board, including a statement that only presterilized, disposable needles are used by the acupuncturist.
6. A statement indicating that the practice of acupuncture is regulated by the board.
7. A statement indicating that a license to practice acupuncture does not authorize a person to practice medicine and surgery in this state, and that the services of an acupuncturist must not be regarded as diagnosis and treatment by a person licensed to practice medicine and must not be regarded as medical opinion or advice.

93 Acts, ch 86, §6; 2000 Acts, ch 1053, §10

148E.7 Duties of board.

The board shall adopt rules consistent with this chapter and chapter 147 which are necessary for the performance of its duties.

93 Acts, ch 86, §7; 2000 Acts, ch 1053, §11

148E.8 License revocation or suspension.

In addition to the grounds for revocation or suspension referred to in section 147.55, a license to practice acupuncture shall be revoked or suspended when the acupuncturist is guilty of any of the following acts or offenses:

1. Failure to provide information as required in section 148E.6 or provision of false information to patients.
2. Acceptance of remuneration for referral of a patient to other health professionals.
3. Offering of or giving of remuneration for the referral of patients, not including paid advertisements or marketing services.
4. Failure to comply with this chapter, rules adopted pursuant to this chapter, or applicable provisions of chapter 147.
5. Engaging in sexual activity or genital contact with a patient while acting or purporting to act within the scope of practice, whether or not the patient consented to the sexual activity or genital contact.
6. Disclosure of confidential information regarding the patient.

93 Acts, ch 86, §8; 2000 Acts, ch 1053, §12

148E.9 Accident and health insurance coverage.

This chapter shall not be construed to require accident and health insurance coverage for acupuncture services under an existing or future contract or policy for insurance issued or issued for delivery in this state, unless otherwise provided by the contract or policy.

93 Acts, ch 86, §9; 2000 Acts, ch 1053, §13

148E.10 Evaluation of condition required. Repealed by 2000 Acts, ch 1053, § 14.

CHAPTER 149

PODIATRY

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86
Utilization and cost control review committee; §514F.1

149.1 Persons engaged in practice — definitions.
149.2 Exceptions.
149.3 License.
149.4 Approved school.
149.5 Amputations — general anesthetics.
149.6 Title or abbreviation.
149.7 Temporary certificate.

149.1 Persons engaged in practice — definitions.

1. For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of podiatry:

a. Persons who publicly profess to be podiatric physicians or who publicly profess to assume the duties incident to the practice of podiatry.

b. Persons who diagnose, prescribe, or prescribe and furnish medicine for ailments of the human foot, or treat such ailments by medical, mechanical, or surgical treatments.

2. As used in this chapter, *"human foot"* means the ankle and soft tissue which insert into the foot as well as the foot.

3. *"Podiatric physician"* means a physician or surgeon licensed under this chapter to engage in the practice of podiatric medicine and surgery.

[C24, 27, 31, 35, 39, §**2542;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.1]

88 Acts, ch 1199, §2; 95 Acts, ch 108, §9

149.2 Exceptions.

This chapter shall not apply to the following:

1. Physicians and surgeons, or osteopaths, or osteopathic physicians and surgeons who are authorized to practice in this state and are not licensed podiatric physicians.

2. Podiatric physicians licensed to practice in the state prior to July 4, 1937.

3. Nothing herein shall affect or alter the existing right now held by retailers, manufacturers or others to sell corrective shoes, arch supports, drugs or medicines for use on feet.

[C24, 27, 31, 35, 39, §**2543;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.2]

88 Acts, ch 1199, §3; 96 Acts, ch 1034, §68

149.3 License.

Every applicant for a license to practice podiatry shall:

1. Be a graduate of an accredited high school.

2. Present a diploma issued by a school of podiatry approved by the board of podiatry examiners.

3. Pass an examination in the subjects of anatomy, chemistry, dermatology, diagnosis, pharmacy and materia medica, pathology, physiology, histology, bacteriology, neurology, practical and clinical podiatry, foot orthopedics, and others, as prescribed by the board of podiatry examiners.

4. Have successfully completed a one-year residency or preceptorship approved by the board of podiatry examiners. This subsection applies to all applicants who graduate from podiatric college on or after January 1, 1995.

[C24, 27, 31, 35, 39, §**2544;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.3]

89 Acts, ch 43, §1; 92 Acts, ch 1212, §5

149.4 Approved school.

A school of podiatry shall not be approved by the board of podiatry examiners as a school of recognized standing unless the school:

1. Requires for graduation or the receipt of any podiatric degree the completion of a course of study covering a period of at least eight months in each of four calendar years.

2. After January 1, 1962, a school of podiatry shall not be approved by the board of podiatry examiners which does not have as an additional entrance requirement two years study in a recognized college, university, or academy.

[C24, 27, 31, 35, 39, §**2545;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.4]

90 Acts, ch 1253, §2

149.5 Amputations — general anesthetics.

A license to practice podiatry shall not authorize the licensee to amputate the human foot or use any anesthetics other than local.

A licensed podiatric physician may prescribe and administer drugs for the treatment of human foot ailments as provided in section 149.1.

[C24, 27, 31, 35, 39, §**2546;** C46, 50, 54, 58, 62,

66, 71, 73, 75, 77, 79, 81, §149.5]
88 Acts, ch 1199, §4; 95 Acts, ch 108, §10

149.6 Title or abbreviation.

Every licensee shall be designated as a licensed podiatric physician and shall not use any title or abbreviation without the designation "practice limited to the foot," nor mislead the public in any way as to the limited field or practice.

[C24, 27, 31, 35, 39, §**2547;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.6]
88 Acts, ch 1199, §5; 95 Acts, ch 108, §11
Titles and degrees, §147.72 – 147.74

149.7 Temporary certificate.

The podiatry examiners may issue a temporary certificate authorizing the licensee named in the certificate to practice podiatry if, in the opinion of the podiatry examiners, a need exists and the person possesses the qualifications prescribed by the podiatry examiners for the certificate, which shall be substantially equivalent to those required for regular licensure under this chapter. The podiatry examiners shall determine in each instance the applicant's eligibility for the certificate, whether or not an examination shall be given, and the type of examination. The requirements of the law pertaining to regular permanent licensure shall not be mandatory for this temporary certificate except as specifically designated by the podiatry examiners. The granting of a temporary certificate does not in any way indicate that the person licensed is necessarily eligible for regular licensure, and the podiatry examiners are not obligated to license the person.

The temporary certificate shall be issued for one year and may be renewed, but a person shall not be entitled to practice podiatry in excess of three years while holding a temporary certificate. The fee for this certificate shall be set by the podiatry examiners and if extended beyond one year a renewal fee per year shall be set by the podiatry examiners. The fees shall be based on the administrative costs of issuing and renewing the certificates. The podiatry examiners may cancel a temporary certificate at any time, without a hearing, for reasons deemed sufficient to the podiatry examiners.

When the podiatry examiners cancel a temporary certificate, they shall promptly notify the licensee by registered United States mail, at the licensee's last-named address, which is reflected in the files of the podiatry examiners, and the temporary certificate shall become terminated and of no further force and effect three days after the giving of the notice to the licensee.

A temporary certificate issued under this section to an academic staff member of a podiatry school in this state shall automatically expire when the special licensee terminates affiliation with the school.

[82 Acts, ch 1040, §1]
87 Acts, ch 128, §2

CHAPTER 150

OSTEOPATHY

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86
Utilization and cost control review committee; §514F.1

150.1 Definitions.
150.2 Persons engaged in practice.
150.3 Persons not required to qualify.
150.4 to 150.6 Repealed by 63 Acts, ch 122, §25.
150.7 Scope of practice.
150.8 Practice of surgery banned.
150.9 Repealed by 81 Acts, ch 117, §1097.
150.10 State patients.
150.11 Osteopathy discontinued.

150.1 Definitions.

For the purpose of this Code, the following definitions are enacted:

1. Osteopathy is that school of healing art which teaches and practices scientific methods and modalities used in the prevention and treatment of human diseases, but whose basic concept, in contrast with all other schools, places paramount emphasis upon the normality of blood circulation and all other body functions as a necessary prerequisite to health and holds that such normality is more certain of achievement by and through manual stimulation or inhibition of the nerve mechanism controlling such functions, or by the correction of anatomical maladjustments.

2. Osteopathic practice is that method of rehabilitating, restoring and maintaining body functions by and through manual stimulation or in-

hibition of nerve mechanism controlling such body functions, or by the correction of anatomical maladjustment, or by other therapeutic agents, methods and modalities used supplementary thereto; but such supplementary agents, methods or modalities shall be used only preliminary to, preparatory to or in conjunction with such manual treatment. Such osteopathic practice is hereby declared not to be the practice of medicine within the meaning of chapter 148, nor the practice of osteopathic medicine and surgery within the meaning of chapter 150A, and is not subject to the provisions of chapter 148 or chapter 150A, except sections 148.6 to 148.9, inclusive.

[C35, §2554-g1; C39, §**2554.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §150.1]

150.2 Persons engaged in practice.

For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of osteopathy:

1. Persons publicly professing to be osteopathic physicians or publicly professing to assume the duties incident to such practice of osteopathy.

2. Persons who treat human ailments by that school of healing art hereinbefore defined as osteopathy.

[C24, 27, 31, §2548; C35, §2554-g2; C39, §**2554.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §150.2]

150.3 Persons not required to qualify.

Section 150.2 shall not be so construed as to include the following classes of persons:

1. Licensed practitioners of medicine and surgery, osteopathic medicine and surgery, podiatric physicians, chiropractors, physical therapists, nurses, and dentists, who are exclusively engaged in the practice of their respective professions.

2. Practitioners of medicine and surgery of the United States army, navy, or public health service when acting in the line of duty in this state, or osteopathic physicians, licensed in another state, when incidentally called into this state in consultation with an osteopathic physician licensed in this state.

[C24, 27, 31, §2549; C35, §2554-g3; C39, §**2554.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §150.3]

96 Acts, ch 1034, §68

150.4 to 150.6 Repealed by 63 Acts, ch 122, § 25.

150.7 Scope of practice.

One licensed as an osteopathic physician may practice osteopathy as defined in section 150.1, including obstetrics and minor surgery.

[C35, §2554-g7; C39, §**2554.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §150.7]

150.8 Practice of surgery banned.

A license to practice osteopathy shall not authorize the licensee to engage in major operative surgery, but shall authorize the licensee to prescribe or give drugs and medicines whether or not prescribed or given preliminary to, preparatory to or in connection with manual treatment.

[S13, §2583-b; C24, 27, 31, §2554; C35, §2554-g8; C39, §**2554.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §150.8]

150.9 Repealed by 81 Acts, ch 117, § 1097. See § 331.381(9).

150.10 State patients.

One licensed hereunder shall have the right to examine applicants, recommend admissions and make reports in connection with the admission of patients to all state-owned institutions.

[C35, §2554-g10; C39, §**2554.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §150.10]

150.11 Osteopathy discontinued.

After May 10, 1963, no license to practice osteopathy shall be issued, provided that the Iowa department of public health shall issue renewal licenses to practice osteopathy as provided in chapter 147 and the department, upon recommendation of the medical examiners, may grant a license to practice osteopathy by reciprocity or endorsement if the applicant holds a valid license to practice osteopathy or osteopathic medicine and surgery issued by another state prior to May 10, 1963.

[C66, 71, 73, 75, 77, 79, 81, §150.11]

CHAPTER 150A

OSTEOPATHIC MEDICINE AND SURGERY

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86
Utilization and cost control
review committee; §514F.1

150A.1 Persons engaged in practice.
150A.2 Persons not engaged in practice.
150A.3 Requirements to practice.
150A.4 Approved colleges.
150A.5 Repealed by 81 Acts, ch 117, §1097.
150A.6 Examination of state patients.

150A.7 National board certificate.
150A.8 Extension of licenses.
150A.9 Resident license.

150A.1 Persons engaged in practice.

For the purpose of this subtitle, the following classes of persons shall be deemed to be engaged in the practice of osteopathic medicine and surgery:

1. Persons who publicly profess to be osteopathic physicians and surgeons, or who publicly profess to assume the duties incident to the practice of osteopathic medicine and surgery.

2. Persons who prescribe, or prescribe and furnish medicine for human ailments or treat the same by surgery.

3. Persons who act as representatives of any person in doing any of the things mentioned in this section.

[C66, 71, 73, 75, 77, 79, 81, §150A.1]

150A.2 Persons not engaged in practice.

Section 150A.1 shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or proprietary medicines.

2. Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs.

3. Students of medicine or surgery or osteopathic medicine and surgery, who have completed at least two years study in a medical school or college of osteopathic medicine and surgery approved by the medical examiners, and who prescribe medicine under the supervision of a licensed physician and surgeon or osteopathic physician and surgeon, or who render gratuitous service to persons in case of emergency.

4. Licensed physicians and surgeons, podiatric physicians, osteopaths, chiropractors, nurses, dentists, optometrists and pharmacists who are exclusively engaged in the practice of their respective professions.

5. Physicians and surgeons of the United States army, navy or public health service when acting in the line of duty in this state, or physicians and surgeons, or osteopathic physicians and surgeons, licensed in another state, when incidentally called into this state in consultation with a physician or surgeon, or osteopathic physician and surgeon, licensed in this state.

[C66, 71, 73, 75, 77, 79, 81, §150A.2]
96 Acts, ch 1034, §68

150A.3 Requirements to practice.

Each applicant for a license to practice osteopathic medicine and surgery shall:

1. Either comply with all of the following:

a. Present a diploma issued, after May 10, 1963, by a college of osteopathic medicine and surgery approved by the medical examiners or present other evidence of equivalent medical education approved by the medical examiners.

b. Pass an examination prescribed by the medical examiners in subjects including anatomy, chemistry, physiology, materia medica and therapeutics, obstetrics, pathology, medicine, public health and hygiene and surgery. The board of medical examiners may require written, oral and practical examinations of the applicant.

c. Present to the Iowa department of public health satisfactory evidence that the applicant has completed one year of internship or resident training in a hospital approved for such training by the medical examiners.

2. Or comply with the following:

a. Present a valid license to practice osteopathy in this state together with satisfactory evidence that the applicant has completed either: (1) a two-year postgraduate course, of nine months each, in an accredited college of osteopathy, osteopathic medicine and surgery or medicine approved by the board of medical examiners of Iowa, involving a thorough and intensive study of the subject of surgery as prescribed by such medical examiners, or (2) a one-year postgraduate course of nine months in such accredited college, and in addition thereto, has completed a one-year course of training as a surgical assistant in a hospital having at least twenty-five beds for patients and equipped for doing surgical work.

b. Pass an examination as prescribed by the medical examiners in the subject of surgery, which shall be of such character as to thoroughly test the qualifications of the applicant as a practitioner of major surgery.

[C66, 71, 73, 75, 77, 79, 81, §150A.3]

150A.4 Approved colleges.

Any college of osteopathic medicine and surgery which does not permit the medical examiners to make such reasonable annual inspection as they desire shall not be approved by the medical examiners. Until July 1, 1968, any college of osteopathic medicine and surgery which is accredited by the American Osteopathic Association shall, by virtue thereof, stand as provisionally approved by the medical examiners unless the medical examiners, by majority action including the osteopathic physician and surgeon member, shall disapprove.

[C66, 71, 73, 75, 77, 79, 81, §150A.4]

150A.5 Repealed by 81 Acts, ch 117, § 1097. See § 331.381(9).

150A.6 Examination of state patients.
One licensed hereunder shall have the right to examine applicants, recommend admissions and make reports in connection with the admission of patients to all state-owned institutions.
[C66, 71, 73, 75, 77, 79, 81, §150A.6]

150A.7 National board certificate.
The Iowa department of public health may, with the approval of the medical examiners, accept in lieu of the examination prescribed in section 150A.3 a certificate of examination issued by the National Board of Osteopathic Examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed for license issued under reciprocal agreements.
[C66, 71, 73, 75, 77, 79, 81, §150A.7]

150A.8 Extension of licenses.
On May 10, 1963, all persons licensed under the provisions of chapter 150 to practice osteopathy and surgery, shall be deemed to be licensed as osteopathic physicians and surgeons under this chapter.
[C66, 71, 73, 75, 77, 79, 81, §150A.8]

150A.9 Resident license.
An osteopathic physician and surgeon, who is a graduate of a college of osteopathic medicine and surgery and is serving as a resident physician and who is not licensed to practice osteopathic medicine and surgery in this state, shall be required to obtain from the medical examiners a license to practice as a resident osteopathic physician and surgeon. The license shall be designated "Resident Osteopathic Physician and Surgeon License", and shall authorize the licensee to serve as a resident physician only, under the supervision of a licensed practitioner of osteopathic medicine and surgery or licensed practitioner of medicine and surgery, in an institution approved for such training by the medical examiners. A license shall be valid for a duration as determined by the board. The fee for each license shall be set by the medical examiners and based on the administrative cost of issuing the license. The medical examiners shall determine in each instance those eligible for a license, whether or not examinations shall be given, and the type of examinations. Requirements of the law pertaining to regular permanent licensure shall not be mandatory for a resident osteopathic physician and surgeon's license except as specifically designated by the medical examiners. The granting of a resident osteopathic physician and surgeon's license does not in any way indicate that the person licensed is necessarily eligible for regular permanent licensure, nor are the medical examiners in any way obligated to license the individual.
[C66, 71, 73, 75, 77, 79, 81, §150A.9]
92 Acts, ch 1183, §20; 2000 Acts, ch 1140, §36

CHAPTER 151

CHIROPRACTIC

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86
Utilization and cost control review committee; §514F.1

151.1 "Chiropractic" defined.
151.2 Persons not engaged in.
151.3 License.
151.4 Approved college.
151.5 Operative surgery — drugs.
151.6 Display of word "chiropractor".
151.7 Probation — advertising restrictions. Repealed by 99 Acts, ch 141, §42.
151.8 Training in procedures used in practice.
151.9 Revocation or suspension of license.
151.10 Education requirements.
151.11 Rules.
151.12 Temporary certificate.

151.1 "Chiropractic" defined.
For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of chiropractic:
1. Persons publicly professing to be chiropractors or publicly professing to assume the duties incident to the practice of chiropractic.
2. Persons who treat human ailments by the adjustment of the neuromusculoskeletal structures, primarily, by hand or instrument, through

spinal care.

3. Persons utilizing differential diagnosis and procedures related thereto, withdrawing or ordering withdrawal of the patient's blood for diagnostic purposes, performing or utilizing routine laboratory tests, performing physical examinations, rendering nutritional advice, utilizing chiropractic physiotherapy procedures, all of which are subject to and authorized by section 151.8.

[C24, 27, 31, 35, 39, §**2555;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.1]

83 Acts, ch 83, §1, 2; 99 Acts, ch 141, §27

151.2 Persons not engaged in.

Section 151.1 shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, licensed osteopaths, and licensed osteopaths and surgeons, and physical therapists who are exclusively engaged in the practice of their respective professions.

2. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or to chiropractors licensed in another state, when incidentally called into this state in consultation with a chiropractor licensed in this state.

3. Students of chiropractic who have entered upon a regular course of study in a chiropractic college approved by the chiropractic examiners, who practice chiropractic under the direction of a licensed chiropractor and in accordance with the rules of said examiners.

[C24, 27, 31, 35, 39, §**2556;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.2]

151.3 License.

Every applicant for a license to practice chiropractic shall:

1. Present satisfactory evidence that the applicant possesses a preliminary education equal to the requirements for graduation from an accredited high school or other secondary school.

2. Present a diploma issued by a college of chiropractic approved by the chiropractic examiners.

3. Pass an examination prescribed by the chiropractic examiners in the subjects of anatomy, physiology, nutrition and dietetics, symptomatology and diagnosis, hygiene and sanitation, chemistry, histology, pathology, and principles and practice of chiropractic, including a clinical demonstration of vertebral palpation, nerve tracing and adjusting.

[C24, 27, 31, 35, 39, §**2557;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.3]

83 Acts, ch 83, §3

151.4 Approved college.

No college of chiropractic shall be approved by the chiropractic examiners as a college of recognized standing unless said college:

1. Requires for graduation or for the receipt of any chiropractic degree the completion of a course of study covering a period of four academic years totaling not less than four thousand sixty-minute hours in actual resident attendance.

2. Gives an adequate course of study in the subjects enumerated in subsection 3 of section 151.3 and including practical clinical instruction.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified.

An approved college of chiropractic may include but is not limited to offerings of courses of study in procedures for withdrawing a patient's blood, performing or utilizing laboratory tests, and performing physical examinations for diagnostic purposes. A chiropractor, employed by an approved college of chiropractic and who has been trained to withdraw blood may withdraw blood and instruct, and supervise a student in the withdrawing of blood.

[C24, 27, 31, 35, 39, §**2558;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.4]

83 Acts, ch 83, §4

151.5 Operative surgery — drugs.

A license to practice chiropractic shall not authorize the licensee to practice operative surgery, osteopathy, nor administer or prescribe any drug or medicine included in materia medica.

[C24, 27, 31, 35, 39, §**2559;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.5]

151.6 Display of word "chiropractor".

Every licensee shall place upon all signs used by the licensee, and display prominently in the licensee's office the word "chiropractor".

[C24, 27, 31, 35, 39, §**2560;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.6]

Titles and degrees, §147.72 – 147.74

151.7 Probation — advertising restrictions. Repealed by 99 Acts, ch 141, § 42.

151.8 Training in procedures used in practice.

A chiropractor shall not use in the chiropractor's practice the procedures otherwise authorized by law unless the chiropractor has received training in their use by a college of chiropractic offering courses of instructions approved by the board of chiropractic examiners.

Any chiropractor licensed as of July 1, 1974, may use the procedures authorized by law if the chiropractor files with the board of chiropractic examiners an affidavit that the chiropractor has completed the necessary training and is fully qualified in these procedures and possesses that degree of proficiency and will exercise that care which is common to physicians in this state.

A chiropractor using the additional procedures and practices authorized by this Act* shall be held

to the standard of care applicable to any other health care practitioner in this state.

[C75, 77, 79, 81, §151.8]

83 Acts, ch 83, §5

*See 83 Acts, ch 83

151.9 Revocation or suspension of license.

A entry to practice as a chiropractor may be revoked or suspended when the licensee is guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice as a professional chiropractor. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this Act.*

[C79, 81, §151.9]

*Chapter 272C may have been intended; see 77 Acts, ch 95, §17

151.10 Education requirements.

A person who is an applicant for a license to practice chiropractic shall only be required to be tested for the adjunctive procedures specified in section 151.1, subsection 3 which the person chooses to utilize. A person licensed to practice chiropractic shall only be required to complete continuing education requirements for the adjunctive procedures specified in section 151.1, subsection 3 which the person chooses to utilize. A person who is an applicant for a license to practice chiropractic or a person licensed to practice chiropractic shall not be required to utilize any of the adjunctive procedures specified in section 151.1, subsection 3 to obtain a license or continue to practice chiropractic, respectively.

83 Acts, ch 83, §6

151.11 Rules.

The board of chiropractic examiners shall adopt rules necessary to administer section 151.1, to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic and defining any terms, whether or not specified in section 151.1, subsection 3. Such rules shall not be inconsistent with the practice of chiropractic and shall not expand the scope of practice of chiropractic or authorize the use of procedures not authorized by this chapter. These rules shall conform with chapter 17A.

83 Acts, ch 83, §7

151.12 Temporary certificate.

The chiropractic examiners may, in their discretion, issue a temporary certificate authorizing the licensee to practice chiropractic if, in the opinion of the chiropractic examiners, a need exists and the person possesses the qualifications prescribed by the chiropractic examiners for the license, which shall be substantially equivalent to those required for licensure under this chapter. The chiropractic examiners shall determine in each instance those eligible for this license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure are mandatory for this temporary license except as specifically designated by the chiropractic examiners. The granting of a temporary license does not in any way indicate that the person so licensed is eligible for regular licensure, nor are the chiropractic examiners in any way obligated to so license the person.

The temporary certificate shall be issued for one year and at the discretion of the chiropractic examiners may be renewed, but a person shall not practice chiropractic in excess of three years while holding a temporary certificate. The fee for this license shall be set by the chiropractic examiners and if extended beyond one year a renewal fee per year shall be set by the chiropractic examiners. The fees shall be based on the administrative costs of issuing and renewing the licenses. The chiropractic examiners may cancel a temporary certificate at any time, without a hearing, for reasons deemed sufficient to the chiropractic examiners.

When the chiropractic examiners cancel a temporary certificate they shall promptly notify the licensee by registered mail, at the licensee's last-named address, as reflected by the files of the chiropractic examiners, and the temporary certificate is terminated and of no further force and effect three days after the mailing of the notice to the licensee.

86 Acts, ch 1127, §1

CHAPTER 152

NURSING

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86
Examining board, support staff exception;
location and powers; see §135.11A, 135.31
Utilization and cost control review committee; §514F.1
Authority of advanced registered nurse practitioner
to prescribe drugs; limitations; see §147.107

152.1 Definitions.
152.2 Executive director — assistants.
152.3 Director's duties.
152.4 Appropriations.
152.5 Education programs.
152.6 Licenses — professional abbreviations.
152.7 Applicant qualifications.
152.8 Reciprocity.
152.9 Temporary license.
152.10 License revocation or suspension.
152.11 Investigators for nurses.
152.12 Examination information.

152.1 Definitions.

As used in this chapter:

1. *"Board"* means the board of nursing, created under chapter 147.

2. As used in this section, *"nursing diagnosis"* means to identify and use discriminatory judgment concerning physical and psychosocial signs and symptoms essential to determining effective nursing intervention.

3. *"Physician"* means a person licensed in this state to practice medicine and surgery, osteopathy and surgery, or osteopathy, or a person licensed in this state to practice dentistry or podiatry when acting within the scope of the license. A physician licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy in a state bordering this state shall be considered a physician for purposes of this chapter unless previously determined to be ineligible for such consideration by the Iowa board of medical examiners.

4. The *"practice of a licensed practical nurse"* means the practice of a natural person who is licensed by the board to do all of the following:

a. Perform services in the provision of supportive or restorative care under the supervision of a registered nurse or a physician.

b. Perform additional acts under emergency or other conditions which require education and training and which are recognized by the medical and nursing professions and are approved by the board, as being proper to be performed by a licensed practical nurse.

c. Make the pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility, with notice of the death to a physician and in accordance with any directions of a physician.

5. The *"practice of nursing"* means the practice of a registered nurse or a licensed practical nurse. It does not mean any of the following:

a. The practice of medicine and surgery, as defined in chapter 148, the osteopathic practice, as defined in chapter 150, the practice of osteopathic medicine and surgery, as defined in chapter 150A, or the practice of pharmacy as defined in chapter 155A, except practices which are recognized by the medical and nursing professions and approved by the board as proper to be performed by a registered nurse.

b. The performance of nursing services by a student enrolled in an approved program of nursing if the performance is incidental to a course of study under this program.

c. The performance of services by employed workers in offices, hospitals, or health care facilities, as defined in section 135C.1, under the supervision of a physician or a nurse licensed under this chapter, or employed in the office of a psychologist, podiatric physician, optometrist, chiropractor, speech pathologist, audiologist, or physical therapist licensed to practice in this state, and when acting while within the scope of the employer's license.

d. The practice of a nurse licensed in another state and employed in this state by the federal government if the practice is in discharge of official employment duties.

e. The care of the sick rendered in connection with the practice of the religious tenets of any church or order by the adherents thereof which is not performed for hire, or if performed for hire by those who depend upon prayer or spiritual means for healing in the practice of the religion of their church or denomination, so long as they do not otherwise engage in the practice of nursing as practical nurses.

6. The *"practice of the profession of a registered nurse"* means the practice of a natural person who

is licensed by the board to do all of the following:

a. Formulate nursing diagnosis and conduct nursing treatment of human responses to actual or potential health problems through services, such as case finding, referral, health teaching, health counseling, and care provision which is supportive to or restorative of life and well-being.

b. Execute regimen prescribed by a physician.

c. Supervise and teach other personnel in the performance of activities relating to nursing care.

d. Perform additional acts or nursing specialties which require education and training under emergency or other conditions which are recognized by the medical and nursing professions and are approved by the board as being proper to be performed by a registered nurse.

e. Make the pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility, with notice of the death to a physician and in accordance with any directions of a physician.

f. Apply to the abilities enumerated in paragraphs *"a"* through *"e"* of this subsection scientific principles, including the principles of nursing skills and of biological, physical, and psychosocial sciences.

[S13, §2575-a28, -a31, -a32; C24, 27, 31, 35, 39, §**2561, 2562;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §152.1, 152.2; C77, 79, 81, §152.1]

87 Acts, ch 215, §41; 91 Acts, ch 100, §1; 95 Acts, ch 108, §12; 2001 Acts, ch 113, §2 – 4

152.2 Executive director — assistants.

The board shall appoint a full-time executive director. The executive director shall be a registered nurse and shall not be a member of the board. The governor, with the approval of the executive council pursuant to section 19A.9, subsection 2, under the pay plan for exempt positions in the executive branch of government, shall set the salary of the executive director.

[C35, §2537-g1; C39, §**2537.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.105; C77, 79, 81, §152.2]

152.3 Director's duties.

The duties of the executive director shall be as follows:

1. To receive all applications to be licensed for the practice of nursing.

2. Notwithstanding section 147.82, to collect and receive all fees.

3. To deposit all fees collected in the general fund of the state and, at the same time, to render to the director of revenue and finance an itemized and verified report which indicates the source of the collected fees.

4. To keep all records pertaining to the licensing of nurses, including a record of all board proceedings.

5. To perform such other duties as may be prescribed by the board.

6. To appoint assistants to the director and persons necessary to administer this Act. Any appointments shall be merit appointments made pursuant to chapter 19A.

[C35, §2537-g2, -g3; C39, §**2537.2, 2537.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.106, 147.107; C77, 79, 81, §152.3]

88 Acts, ch 1134, §31

152.4 Appropriations.

The board may apply appropriated funds to:

1. The administration and enforcement of the provisions of this chapter and of chapter 147.

2. The elevation of the standards of the schools of nursing.

3. The promotion of educational and professional standards of nurses in this state.

[C35, §2537-g3; C39, §**2537.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.107; C77, 79, 81, §152.4]

152.5 Education programs.

1. All programs preparing a person to be a registered nurse or a licensed practical nurse shall be approved by the board. The board shall not recognize a program unless it:

a. Is of recognized standing.

b. Has provisions for adequate physical and clinical facilities and other resources with which to conduct a sound education program.

c. Requires, for graduation of a registered nurse applicant, the completion of at least a two academic year course of study.

d. Requires, for graduation of a licensed practical nurse applicant, the completion of at least a one academic year course of study as prescribed by the board.

2. All advanced formal academic nursing education programs shall also be approved by the board.

[S13, §2575-a29; C24, 27, 31, 35, 39, §**2564;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §152.4; C77, 79, 81, §152.5]

95 Acts, ch 79, §1

152.6 Licenses — professional abbreviations.

The board may license a natural person to practice as a registered nurse or as a licensed practical nurse. However, only a person currently licensed as a registered nurse in this state may use that title and the abbreviation "RN" after the person's name and only a person currently licensed as a licensed practical nurse in this state may use that title and the abbreviation "LPN" after the person's name. For purposes of this section, "currently licensed" includes persons licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1.

[C50, 54, 58, 62, 66, 71, 73, 75, §152.5; C77, 79,

81, §152.6]
2000 Acts, ch 1008, §4

152.7 Applicant qualifications.

In addition to the provisions of section 147.3, an applicant to be licensed for the practice of nursing shall have the following qualifications:

1. Be a graduate of an accredited high school or the equivalent.

2. Pass an examination as prescribed by the board.

3. Complete a course of study approved by the board pursuant to section 152.5.

For purposes of licensure pursuant to the nurse licensure compact contained in section 152E.1, the compact administrator may refuse to accept a change in the qualifications for licensure as a registered nurse or as a licensed practical or vocational nurse by a licensing authority in another state which is a party to the compact which substantially modifies that state's qualifications for licensure in effect on July 1, 2000. A refusal to accept a change in a party state's qualifications for licensure may result in submitting the issue to an arbitration panel or in withdrawal from the compact, at the discretion of the compact administrator.

[S13, §2575-a29, -a30; C24, 27, 31, 35, 39, §**2563;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §152.3; C77, 79, 81, §152.7]
95 Acts, ch 79, §2; 2000 Acts, ch 1008, §5; 2000 Acts, ch 1140, §37; 2000 Acts, ch 1232, §50

152.8 Reciprocity.

Notwithstanding the provisions of sections 147.44 through 147.54, the following shall apply regarding applicants for nurse licensure possessing a license from another state:

1. A license possessed by an applicant from a state which has not adopted the nurse licensure compact contained in section 152E.1 shall be recognized by the board under conditions specified which indicate that the licensee meets all the qualifications required under section 152.7. If a foreign license is recognized, the board may issue a license by endorsement without an examination being required. Recognition shall be based on whether the foreign licensee is qualified to practice nursing. The board may issue a temporary license to a natural person who has completed the requirements of and applied for licensure by endorsement. The board shall determine the length of time a temporary license shall remain effective.

2. A license possessed by an applicant and issued by a state which has adopted the nurse licensure compact contained in section 152E.1 shall be recognized pursuant to the provisions of that section.

[C35, §2537-g3; C39, §**2537.3;** C46, 50, 54, 58, 62, §147.107; C66, 71, 73, 75, §147.107, 152.7; C77, 79, 81, §152.8]
2000 Acts, ch 1008, §6

152.9 Temporary license.

The board may issue a temporary license to a natural person who has completed the requirements of and applied for licensure by endorsement. The board shall determine the length of time a temporary license shall remain effective.

[C77, 79, 81, §152.9]
94 Acts, ch 1123, §1

152.10 License revocation or suspension.

1. Notwithstanding sections 147.87 to 147.89 and in addition to the provisions of sections 147.58 to 147.71, the board may restrict, suspend, or revoke a license to practice nursing or place the licensee on probation. The board may also prescribe by rule conditions of license reinstatement. The board shall prescribe rules of procedure by which to restrict, suspend, or revoke a license. These procedures shall conform to the provisions of chapter 17A.

2. In addition to the grounds stated in section 147.55, the following are grounds for suspension or revocation under subsection 1 of this section:

a. Willful violation of the rules of the board.

b. Continued practice while knowingly having an infectious or contagious disease which could be harmful to a patient's welfare.

c. Conviction for a felony in the courts of this state or another state, territory, or country if the felony relates to the practice of nursing. Conviction shall include only a conviction for an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another jurisdiction shall be conclusive evidence of conviction.

d. (1) Having a license to practice nursing as a registered nurse or licensed practical nurse revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence of such fact.

(2) Having a license to practice nursing as a registered nurse or licensed practical nurse revoked or suspended, or having other disciplinary action taken, by a licensing authority in another state which has adopted the nurse licensure compact contained in section 152E.1 and which has communicated information relating to such action pursuant to the coordinated licensure information system established by the compact. If the action taken by the licensing authority occurs in a jurisdiction which does not afford the procedural protections of chapter 17A, the licensee may object to the communicated information and shall be afforded the procedural protections of chapter 17A.

e. Knowingly aiding, assisting, procuring, ad-

vising, or allowing a person to unlawfully practice nursing.

f. Being adjudicated mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license, unless the board orders otherwise.

g. Being guilty of willful or repeated departure from or the failure to conform to the minimum standard of acceptable and prevailing practice of nursing; however, actual injury to a patient need not be established.

h. (1) Inability to practice nursing with reasonable skill and safety by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

(2) The board may, upon probable cause, request a licensee to submit to an appropriate medical examination by a designated physician. If requested by the licensee, the licensee may also designate a physician for an independent medical examination. The reasonable costs of such examinations and medical reports to the board shall be paid by the board. Refusal or failure of a licensee to complete such examinations shall constitute an admission of any allegations relating to such condition. All objections shall be waived as to the admissibility of the examining physicians' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a registered nurse or licensed practical nurse in another proceeding and shall be confidential. At reasonable intervals, a registered nurse or licensed practical nurse shall be afforded an opportunity to demonstrate that the registered nurse or licensed practical nurse can resume the competent practice of nursing with reasonable skill and safety to patients.

[C77, 79, 81, §152.10]
2000 Acts, ch 1008, §7

152.11 Investigators for nurses.

The board of nursing may appoint investigators, who shall not be members of the board, to administer and aid in the enforcement of the provisions of law related to those licensed to practice nursing. The amount of compensation for the investigators shall be determined pursuant to chapter 19A. Investigators authorized by the board of nursing have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

93 Acts, ch 41, §1

152.12 Examination information.

Notwithstanding section 147.21, subsection 3, individual pass or fail examination results made available from the authorized national testing agency may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or county, and the board-approved education program, for purposes of verifying accuracy of national data and determining program approval.

97 Acts, ch 159, §22

CHAPTER 152A

DIETETICS

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86

152A.1 Definitions.
152A.2 License requirements.
152A.3 Exemptions.

152A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of dietetic examiners.

2. *"Licensed dietitian"* or *"dietitian"* means a person who holds a valid license to practice dietetics pursuant to this chapter.

85 Acts, ch 168, §8

152A.2 License requirements.

1. An applicant shall be issued a license to practice dietetics by the board when the applicant satisfies all of the following:

a. Possesses a baccalaureate degree or post-baccalaureate degree with a major course of study in human nutrition, food and nutrition, dietetics, or food systems management, or in an equivalent major course of study which meets minimum academic requirements as established by the American dietetic association and approved by the board.

b. Completes an internship or preplanned professional experience program approved by the

American dietetic association and approved by the board.

c. Satisfactorily completes an examination designed by the board.

2. Renewal of a license granted under this chapter shall not be approved unless the applicant has satisfactorily completed the continuing education requirements for the license as prescribed by the board.

85 Acts, ch 168, §9

152A.3 Exemptions.

The following are not subject to this chapter:

1. Licensed physicians and surgeons, nurses, chiropractors, dentists, dental hygienists, pharmacists or physical therapists who make dietetic or nutritional assessments, or give dietetic or nutritional advice in the normal practice of their profession or as otherwise authorized by law.

2. Dietetics students who engage in clinical practice under the supervision of a dietitian as part of a dietetic education program approved or accredited by the American dietetic association.

3. Dietitians who serve in the armed forces or the public health service of the United States or are employed by the veterans administration, provided their practice is limited to that service or employment.

4. Dietitians who are licensed in another state, United States possession, or country, or have received at least a baccalaureate degree and are in this state for the purpose of:

a. Consultation, provided the practice in this state is limited to consultation.

b. Conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education, or postgraduate education which is sponsored by a dietetic education program or accredited by the American dietetic association and carried out in an educational institution or its affiliated clinical facility or health care agency, or before a group of licensed dietitians.

5. Individuals who do not call themselves dietitians but routinely, in the course of doing business, market or distribute weight loss programs or sell nutritional products and provide explanations for customers regarding the use of the programs or products relative to normal nutritional needs.

6. Individuals who provide routine education and advice regarding normal nutritional requirements and sources of nutrients, including, but not limited to, persons who provide information as to the use and sale of food and food materials including dietary supplements.

85 Acts, ch 168, §10

CHAPTER 152B

RESPIRATORY CARE

Although this chapter was not originally enacted as a part of this subtitle (editorially transferred from chapter 135F in Code 1993), provisions specifying the inapplicability of certain provisions of the subtitle were deleted by subsequent amendment; 96 Acts, ch 1036
Enforcement, §147.87, 147.90, 147.92

152B.1 Definitions.
152B.2 Respiratory care as a practice defined.
152B.3 Performance of respiratory care.
152B.4 Location of respiratory care.
152B.5 Respiratory care students.
152B.6 Board duties.
152B.7 Representation.
152B.7A Exceptions.
152B.8 Penalty.
152B.9 Injunction.
152B.10 Liability.
152B.11 Continuing education.
152B.12 Suspension and revocation of licenses.
152B.13 State board for respiratory care.
152B.14 Licensure through prior examination or practice.

152B.1 Definitions.

As used in this chapter, unless otherwise defined or the context otherwise requires:

1. *"Board"* means the state board for respiratory care.

2. *"Department"* means the Iowa department of public health.

3. *"Formal training"* means a supervised, structured educational activity that includes preclinical didactic and laboratory activities and clinical activities approved by an accrediting agency recognized by the board, and including an evaluation of competence through a standardized testing mechanism that is determined by the board to be both valid and reliable.

4. *"Qualified medical director"* means a licensed physician or surgeon who is a member of a hospital's or health care facility's active medical

staff and who has special interest and knowledge in the diagnosis and treatment of respiratory problems, is qualified by special training or experience in the management of acute and chronic respiratory disorders, is responsible for the quality, safety, and appropriateness of the respiratory care services provided, and is readily accessible to the respiratory care practitioners to assure their competency.

5. *"Respiratory care"* includes "respiratory therapy" or "inhalation therapy".

6. *"Respiratory care education program"* means a course of study leading to eligibility for registration or certification in respiratory care which is recognized or approved by the board.

7. *"Respiratory care practitioner"* or *"practitioner"* means a person who meets all of the following:

a. Is qualified in the practice of cardiorespiratory care and has the knowledge and skill necessary to administer respiratory care as defined in section 152B.3.

b. Is capable of serving as a resource to the physician in relation to the technical aspects of cardiorespiratory care and to safe and effective methods for administering respiratory care modalities.

c. Is able to function in situations of unsupervised patient contact requiring individual judgment.

d. Is capable of supervising, directing, or teaching less skilled personnel in the provision of respiratory care services.

8. *"Respiratory therapist"* means a person who has successfully completed a respiratory care education program for training respiratory therapists and has passed the registry examination for respiratory therapists administered by the national board for respiratory care or a respiratory therapy licensure examination approved by the board.

9. *"Respiratory therapy technician"* means a person who has successfully completed a respiratory care education program for training therapists and has passed the certification examination for respiratory therapy technicians administered by the national board for respiratory care or a respiratory therapist technicians' licensure examination approved by the board.

85 Acts, ch 151, §1
CS85, §135F.1
90 Acts, ch 1193, §1
C93, §152B.1
96 Acts, ch 1036, §31

152B.2 Respiratory care as a practice defined.

"Respiratory care as a practice" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems' functions, and includes all of the following:

1. Direct and indirect pulmonary care services that are safe and of comfort, aseptic, preventative, and restorative to the patient.

2. Direct and indirect respiratory care services, including but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a licensed physician or surgeon.

3. Observation and monitoring of signs and symptoms, general behavior, reactions, general physical response to respiratory care treatment and diagnostic testing.

4. Determination of whether the signs, symptoms, behavior, reactions, or general response exhibit abnormal characteristics.

5. Implementation based on observed abnormalities, of appropriate reporting, referral, or respiratory care protocols or changes in treatment regimen.

"Respiratory care as a practice" does not include the delivery, assembly, setup, testing, or demonstration of respiratory care equipment in the home upon the order of a licensed physician. As used in this paragraph, *"demonstration"* does not include the actual teaching, administration, or performance of the respiratory care procedures.

"Respiratory care protocols" as used in this section means policies and procedures developed by an organized health care system through consultation, when appropriate, with administrators, licensed physicians and surgeons, licensed registered nurses, licensed physical therapists, licensed respiratory care practitioners, and other licensed health care practitioners.

85 Acts, ch 151, §2
CS85, §135F.2
90 Acts, ch 1193, §2
C93, §152B.2
97 Acts, ch 68, §1

152B.3 Performance of respiratory care.

The performance of respiratory care shall be in accordance with the prescription of a licensed physician or surgeon and includes, but is not limited to, the diagnostic and therapeutic use of the following:

1. Administration of medical gases, aerosols, and humidification, not including general anesthesia.

2. Environmental control mechanisms and paramedical therapy.

3. Pharmacologic agents relating to respiratory care procedures.

4. Mechanical or physiological ventilatory support.

5. Bronchopulmonary hygiene.

6. Cardiopulmonary resuscitation.
7. Maintenance of the natural airways.
8. Insertion without cutting tissues and maintenance of artificial airways.
9. Specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment, and research of pulmonary abnormalities, including measurement of ventilatory volumes, pressures, and flows, collection of specimens of blood, and collection of specimens from the respiratory tract.
10. Analysis of blood gases and respiratory secretions.
11. Pulmonary function testing.
12. Hemodynamic and physiologic measurement and monitoring of cardiac function as it relates to cardiopulmonary pathophysiology.
13. Invasive procedures that relate to respiratory care.

A respiratory care practitioner may transcribe and implement a written or verbal order from a licensed physician or surgeon pertaining to the practice of respiratory care.

This chapter does not authorize a respiratory care practitioner to practice medicine, surgery, or other medical practices except as provided in this section.

85 Acts, ch 151, §3
CS85, §135F.3
C93, §152B.3

152B.4 Location of respiratory care.

The practice of respiratory care may be performed in a hospital as defined in section 135B.1, subsection 3, and other settings where respiratory care is to be provided in accordance with a prescription of a licensed physician or surgeon. Respiratory care may be provided during transportation of a patient and under circumstances where an emergency necessitates respiratory care.

85 Acts, ch 151, §4
CS85, §135F.4
C93, §152B.4

152B.5 Respiratory care students.

Respiratory care services may be rendered by a student enrolled in a respiratory therapy training program when these services are incidental to the student's course of study.

A student enrolled in a respiratory therapy training program who is employed in an organized health care system may render services defined in sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for a limited period of time as determined by rule. The student shall be identified as a "student respiratory care practitioner".

A graduate of an approved respiratory care training program employed in an organized health care system may render services as defined in sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for one year. The graduate shall be identified as a "respiratory care practitioner-licensure applicant".

85 Acts, ch 151, §5
CS85, §135F.5
90 Acts, ch 1193, §3
C93, §152B.5

152B.6 Board duties.

The board shall administer and implement this chapter. The board's duties in these areas shall include, but are not limited to, the following:

1. The adoption, publication and amendment of rules, in accordance with chapter 17A, necessary for the administration and enforcement of this chapter.
2. The establishment of a system for the licensure of respiratory care practitioners and the establishment and collection of licensure fees. The fees charged shall be sufficient to defray the costs of administration of this chapter and all fees collected shall be deposited with the treasurer of state who shall deposit them in the general fund of the state.
3. The designation of licensure examinations for respiratory care practitioners.

85 Acts, ch 151, §6
CS85, §135F.6
90 Acts, ch 1193, §4
C93, §152B.6
96 Acts, ch 1036, §32

152B.7 Representation.

A person who is qualified as a respiratory care practitioner and is licensed by the board may use the title "respiratory care practitioner" or the letters R.C.P. after the person's name to indicate that the person is a qualified respiratory care practitioner licensed by the board. No other person is entitled to use the title or letters or any other title or letters that indicate or imply that the person is a respiratory care practitioner, nor may a person make any representation, orally or in writing, expressly or by implication, that the person is a licensed respiratory care practitioner.

85 Acts, ch 151, §7
CS85, §135F.7
90 Acts, ch 1193, §5
C93, §152B.7
96 Acts, ch 1036, §33

152B.7A Exceptions.

1. A person shall not practice respiratory care or represent oneself to be a respiratory care practitioner unless the person is licensed under this chapter.
2. This chapter does not prohibit any of the following:

a. The practice of respiratory care which is an integral part of the program of study by students enrolled in an accredited respiratory therapy

training program approved by the board in those situations where that care is provided under the direct supervision of an appropriate clinical instructor recognized by the educational program.

b. Respiratory care services rendered in the course of an emergency.

c. Care administered in the course of assigned duties of persons in the military services.

3. This chapter is not intended to limit, preclude, or otherwise interfere with the practice of other health care providers not otherwise licensed under this chapter who are licensed and certified by this state to administer respiratory care procedures.

4. An individual who passes an examination that includes the content of one or more of the functions included in sections 152B.2 and 152B.3 shall not be prohibited from performing such procedures for which they were tested, as long as the testing body offering the examination is approved by the board.

96 Acts, ch 1036, §34; 97 Acts, ch 68, §2

152B.8 Penalty.

A person who violates a provision of this chapter is guilty of a simple misdemeanor.

85 Acts, ch 151, §8
CS85, §135F.8
C93, §152B.8

152B.9 Injunction.

The board may apply to a court for the issuance of an injunction or other appropriate restraining order against a person who is engaging in a violation of this chapter.

85 Acts, ch 151, §9
CS85, §135F.9
C93, §152B.9
96 Acts, ch 1036, §35

152B.10 Liability.

A respiratory care practitioner who in good faith renders emergency care at the scene of an emergency is not liable for civil damages as a result of acts or omissions by the person rendering the emergency care. This section does not grant immunity from liability for civil damages when the respiratory care practitioner is grossly negligent.

85 Acts, ch 151, §10
CS85, §135F.10
C93, §152B.10

152B.11 Continuing education.

After July 1, 1991, a respiratory care practitioner shall submit evidence satisfactory to the board that during the year preceding renewal of licensure the practitioner has completed continuing education courses as prescribed by the board. In lieu of the continuing education, a person may successfully complete the most current version of the licensure examination.

Persons who are not licensed under this chapter but who perform respiratory care as defined by sections 152B.2 and 152B.3 shall comply with the continuing education requirements of this section. The board shall adopt rules for the administration of this requirement.

Except for those licensed by the board, this section does not apply to persons who are licensed to practice a health profession covered by chapter 147, when the licensee's performance of respiratory care practices falls within the scope of practice, as permitted by their respective licensing boards.

85 Acts, ch 151, §11
CS85, §135F.11
90 Acts, ch 1193, §6
C93, §152B.11
95 Acts, ch 41, §23; 96 Acts, ch 1036, §36; 97 Acts, ch 68, §3

152B.12 Suspension and revocation of licenses.

The board may suspend, revoke or impose probationary conditions upon a license issued pursuant to rules adopted in accordance with section 152B.6.

85 Acts, ch 151, §12
CS85, §135F.12
90 Acts, ch 1193, §7
C93, §152B.12
96 Acts, ch 1036, §37

152B.13 State board for respiratory care.

1. A state board for respiratory care is established to administer this chapter. Membership of the board shall be established pursuant to section 147.14, subsection 15.

Not more than a simple majority of the board shall be of one gender. A majority of the members of the board constitutes a quorum. Members shall be appointed by the governor, subject to confirmation by the senate, and shall serve three-year terms beginning and ending in accordance with section 69.19. A member may not serve more than three consecutive terms. Members shall be compensated for their actual and necessary expenses incurred in the performance of their duties. Expense moneys paid to the members shall be paid from funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

2. The board shall:

a. Examine, license, and renew the licenses of qualified applicants.

b. Maintain an up-to-date list of every person licensed to practice respiratory care under this chapter. The list shall show a licensee's last known place of employment, last known place of residence, and the date and number of the licensee's license.

c. Cause the prosecution of all persons violating this chapter and incur necessary expenses for

the prosecution.
85 Acts, ch 151, §13
CS85, §135F.13
86 Acts, ch 1245, §1140
C93, §152B.13
96 Acts, ch 1036, §38; 96 Acts, ch 1128, §6
Confirmation; see §2.32

152B.14 Licensure through prior examination or practice.

1. The board shall issue a license to practice respiratory care to an applicant who, on July 1, 1996, has passed an examination administered by the state or a national agency approved by the board.

2. Other applicants who have not passed these examinations or their equivalent on July 1, 1996, and who, through written evidence, verified by oath, demonstrate that they are presently functioning in the capacity of a respiratory care practitioner as defined by this chapter, shall be given a temporary license to practice respiratory care for a period of thirty-six months from July 1, 1996. Such applicants must pass a licensure examination administered or approved by the board within thirty-six months after July 1, 1996, in order to continue to practice respiratory care.
96 Acts, ch 1036, §39

CHAPTER 152C

MASSAGE THERAPY

Enforcement, §147.87, 147.90, 147.92
Penalty, general, §147.86

152C.1 Definitions.
152C.2 Massage therapy advisory board created — duties. Repealed by 98 Acts, ch 1053, §43.
152C.3 Requirements for licensure.
152C.4 Practicing as a massage therapist without a license — employment of person not licensed — civil penalty.
152C.5 Practice or use of title — license required.
152C.6 Enforcement.
152C.7 Suspension and revocation of licenses.
152C.8 Transition provisions.

152C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of examiners for massage therapy created under chapter 147.

2. *"Massage therapist"* means a person licensed to practice the health care service of the healing art of massage therapy under this chapter.

3. *"Massage therapy"* means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation. *"Massage therapy"* does not include diagnosis or service which requires a license to practice medicine or surgery, osteopathic medicine and surgery, osteopathy, chiropractic, cosmetology arts and sciences, or podiatry, and does not include service performed by athletic trainers, technicians, nurses, occupational therapists, or physical therapists who act under a professional license, certificate, or registration or under the prescription or supervision of a person licensed to practice medicine or surgery or osteopathic medicine and surgery.
92 Acts, ch 1137, §1; 98 Acts, ch 1053, §29, 30; 2000 Acts, ch 1185, §2, 3

152C.2 Massage therapy advisory board created — duties. Repealed by 98 Acts, ch 1053, § 43.

152C.3 Requirements for licensure.

1. The board shall adopt rules pursuant to chapter 17A establishing a procedure for licensing of massage therapists. License requirements shall include the following:

a. Completion of a curriculum of massage education at a school approved by the board which requires for admission a diploma from an accredited high school or the equivalent and requires completion of at least five hundred hours of supervised academic instruction. However, educational requirements under this paragraph are subject to

reduction by the board if, after public notice and hearing, the board determines that the welfare of the public may be adequately protected with fewer hours of education.

b. Passage of an examination given or approved by the board.

c. Payment of a reasonable fee required by the board which shall compensate and be retained by the board for the costs of administering this chapter.

2. In addition to provisions for licensure, the rules shall include the following:

a. Requirements regarding completion of at least twelve hours of continuing education annually regarding subjects concerning massage and related techniques or the health and safety of the public, subject to reduction by the board if, after public notice and hearing, the board determines that the welfare of the public may be adequately protected with fewer hours.

b. Requirements for issuance of a reciprocal license to licensees of states with license requirements equal to or exceeding those of this chapter. The rules shall provide for issuance of a temporary reciprocal license for licensees of states with lower requirements.

3. A massage therapist licensed pursuant to this chapter shall be issued a license number and a license certificate.

92 Acts, ch 1137, §3; 93 Acts, ch 71, §1; 98 Acts, ch 1053, §31 – 33

152C.4 Practicing as a massage therapist without a license — employment of person not licensed — civil penalty.

1. The board, or its authorized agents, may inspect any facility that advertises or offers the services of massage therapy. The board may, by order, impose a civil penalty upon a person who practices as a massage therapist without a license issued under this chapter or a person or business that employs an individual who is not licensed under this chapter. The penalty shall not exceed one thousand dollars for each offense. Each day of a continued violation after an order or citation by the board constitutes a separate offense, with the maximum penalty not to exceed ten thousand dollars. In determining the amount of a civil penalty, the board may consider the following:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to or resulting in the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The welfare or best interest of the public.

2. Before issuing an order or citation under this section, the board shall provide written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted as provided in chapter 17A. The board may, in connection with a proceeding under this section, issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

3. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review in accordance with section 17A.19. The board shall notify the attorney general of the failure to pay a civil penalty within thirty days after entry of an order pursuant to subsection 1, or within ten days following final judgment in favor of the board if an order has been stayed pending appeal. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs. An action to enforce an order under this section may be joined with an action for an injunction.

92 Acts, ch 1137, §4; 98 Acts, ch 1053, §34; 2000 Acts, ch 1185, §4

152C.5 Practice or use of title — license required.

The practice of massage therapy as defined in section 152C.1 is strictly prohibited by unlicensed individuals. It is unlawful for a person to engage in or offer to engage in the practice of massage therapy, or use in connection with the person's name, the initials "L.M.T." or the words "licensed massage therapist", "massage therapist", "masseur", "masseuse", or any other word or title that implies or represents that the person practices massage therapy, unless the person possesses a license issued under the provisions of section 152C.3.

92 Acts, ch 1137, §5; 2000 Acts, ch 1185, §5

152C.6 Enforcement.

No city, township, or county governmental body, agency, or department shall enact or enforce restrictions or requirements regarding massage therapists which are not equally enacted or enforced regarding all licensed health care practitioners, including but not limited to zoning, building code, health, and sanitation regulations.

92 Acts, ch 1137, §6

152C.7 Suspension and revocation of licenses.

The board may suspend, revoke, or impose probationary conditions upon a license issued pursuant to rules adopted in accordance with section 152C.3.

92 Acts, ch 1237, §11; 98 Acts, ch 1053, §35

152C.8 Transition provisions.

1. An applicant for a license to practice massage therapy applying prior to July 1, 2002, shall

not be required to meet the completion of curriculum of massage therapy requirements contained in section 152C.3, subsection 1, paragraph *"a"*. The applicant shall, however, be required to pass the board-approved national certification examination and pay the applicable licensing fee.

2. Applicants with a license that has lapsed prior to July 1, 2000, who apply for reinstatement prior to July 1, 2002, shall be required to complete a reinstatement application and pay a renewal fee and reinstatement fee pursuant to section 147.11 and section 147.80, subsection 26. Penalty fees otherwise incurred pursuant to section 147.10, and continuing education requirements applicable to the period prior to licensure reinstatement, shall be waived by the board.

3. Applicants with a license that has lapsed prior to July 1, 2000, who do not apply for reinstatement prior to July 1, 2002, shall be required to apply for reinstatement in accordance with lapsed license reinstatement provisions established by rule of the board.

2000 Acts, ch 1185, §6

CHAPTER 152D

ATHLETIC TRAINING

Enforcement, §147.87, 147.90, 147.92

152D.1 Definitions.
152D.2 Licensing and practice requirements.
152D.3 Qualifications — procedures.
152D.4 Scope of chapter.
152D.5 Duties of the board.
152D.6 License suspension and revocation.
152D.7 Advisory board. Repealed by 98 Acts, ch 1053, §43.
152D.8 Penalty.

152D.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of examiners for athletic training created under chapter 147.

2. *"Licensed athletic trainer"* means a person licensed under this chapter.

3. *"Practice of athletic training"* means the prevention, physical evaluation, emergency care, and physical reconditioning relating to injuries and illnesses incurred through sports-induced trauma, which occurs during the preparation for or participation in a sports competition or during a physical training program, either of which is sponsored by an educational institution, amateur or professional athletic group, or other recognized organization, by a person who uses the title of licensed athletic trainer.

94 Acts, ch 1132, §1; 98 Acts, ch 1053, §36, 37

152D.2 Licensing and practice requirements.

A person shall not use the title of licensed athletic trainer as defined in this chapter without first obtaining a license pursuant to this chapter.

The practice of athletic training shall be carried out only under the supervision of a licensed physician.

The practice of physical reconditioning shall be carried out under the oral or written orders of a physician or physician assistant. A physician or physician assistant who issues an oral order must reduce the order to writing and provide a copy of the order to the athletic trainer within thirty days of the oral order.

94 Acts, ch 1132, §2

152D.3 Qualifications — procedures.

1. An applicant for an athletic trainer license must possess the following qualifications:

a. Graduation from an accredited college or university and compliance with the minimum athletic training curriculum requirements established by the board.

b. Successful completion of an examination prepared or selected by the board.

2. An out-of-state applicant for an athletic trainer license must fulfill the requirements of subsection 1, paragraphs *"a"* and *"b"*, and submit proof of active engagement as an athletic trainer in the other state.

3. Application and renewal procedures, fees, and reciprocal agreements shall be provided in accordance with this chapter.

94 Acts, ch 1132, §3; 95 Acts, ch 94, §2; 98 Acts, ch 1053, §38

152D.4 Scope of chapter.

The provisions of this chapter do not apply to any of the following:

1. Persons otherwise licensed to practice medicine and surgery, osteopathy, osteopathic medicine and surgery, optometry, occupational therapy,

nursing, chiropractic, podiatry, dentistry, or physical therapy, or a licensed physician assistant.

2. Elementary or secondary school teachers, coaches, or authorized volunteers who do not hold themselves out to the public as athletic trainers.

3. Students of athletic training who practice athletic training under the supervision of a licensed athletic trainer in connection with the regular course of instruction at a school providing athletic training instruction.

94 Acts, ch 1132, §4

152D.5 Duties of the board.

The board shall:

1. Adopt rules consistent with this chapter and chapter 147 which are necessary for the performance of its duties.

2. Establish standards and guidelines for athletic trainers including minimum curriculum requirements.

3. Prepare and conduct an examination for applicants for a license.

4. Establish a system for the collection of license fees. The fees charged shall be sufficient to defray the costs of administering this chapter and all fees collected shall be deposited with the treasurer of state who shall deposit them in the general fund of the state.

94 Acts, ch 1132, §5; 98 Acts, ch 1053, §39

152D.6 License suspension and revocation.

A license issued by the board under the provisions of this chapter may be suspended or revoked, or renewal denied by the board, for violation of any provision of this chapter or section 147.55, section 272C.10, or rules adopted by the board.

94 Acts, ch 1132, §6; 98 Acts, ch 1053, §40

152D.7 Advisory board. Repealed by 98 Acts, ch 1053, § 43.

152D.8 Penalty.

A person who violates a provision of this chapter is guilty of a simple misdemeanor.

94 Acts, ch 1132, §8

CHAPTER 152E

NURSE LICENSURE COMPACT

152E.1 Form of compact.
152E.2 Compact administrator.

152E.1 Form of compact.

The nurse licensure compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I — FINDINGS AND PURPOSE

a. The party states find all of the following:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws.

2. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public.

3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex.

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

b. The general purposes of this compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety.

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions.

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction.

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II — DEFINITIONS

As used in this compact:

a. *"Adverse action"* means a home or remote state action.

b. "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

c. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

d. "Current significant investigative information" means either of the following:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

e. "Home state" means the party state which is the nurse's primary state of residence.

f. "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority, including actions against an individual's license such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

g. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

h. "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

i. "Nurse" means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party state's practice laws.

j. "Party state" means any state that has adopted this compact.

k. "Remote state" means a party state, other than the home state, where either of the following applies:

1. Where the patient is located at the time nursing care is provided.

2. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing care is located.

l. "Remote state action" means either of the following:

1. Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which is imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state.

2. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

m. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

n. "State practice laws" means those individual party state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. *"State practice laws"* does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III — GENERAL PROVISIONS AND JURISDICTION

a. A license to practice registered nursing issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical or vocational nursing issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical or vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

b. Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

c. Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing subjects a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

d. This compact does not affect additional re-

quirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

e. Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals shall not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV — APPLICATIONS FOR LICENSURE IN A PARTY STATE

a. Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

b. A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

c. A nurse who intends to change the nurse's primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses shall not be issued by a party state until after a nurse provides evidence of change in the nurse's primary state of residence satisfactory to the new home state's licensing board.

d. 1. If a nurse changes the nurse's primary state of residence by moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid.

2. If a nurse changes the nurse's primary state of residence by moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and shall remain in full force if so provided by the laws of the nonparty state.

3. If a nurse changes the nurse's primary state of residence by moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V — ADVERSE ACTIONS

In addition to the general provisions described in article III, the following provisions apply:

a. The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

b. The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

c. A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

d. For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

e. The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

f. Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI — ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE NURSE LICENSING BOARDS

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to do all of the following:

a. If otherwise permitted by state law, recover

from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

b. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence is located.

c. Issue cease and desist orders to limit or revoke a nurse's authority to practice in the state.

d. Promulgate uniform rules and regulations as provided for in article VIII, section c.

ARTICLE VII — COORDINATED LICENSURE INFORMATION SYSTEM

a. All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical or vocational nurses. This system shall include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

b. Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

c. Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

d. Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that shall not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

e. Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

f. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

g. The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE VIII — COMPACT ADMINISTRATION AND INTERCHANGE OF INFORMATION

a. The head of the nurse licensing board, or the head's designee, of each party state shall be the administrator of this compact for the head's state.

b. The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

c. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under article VI, section d.

ARTICLE IX — IMMUNITY

A party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this compact shall not be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE X — ENTRY INTO FORCE, WITHDRAWAL, AND AMENDMENT

a. This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but such withdrawal shall not take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

b. Withdrawal shall not affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

c. This compact shall not be construed to invalidate or prevent any nurse licensure agreement or

other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

d. This compact may be amended by the party states. An amendment to this compact shall not become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI — CONSTRUCTION AND SEVERABILITY

a. This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

b. 1. In the event party states find a need for settling disputes arising under this compact, the party states may submit the issues in dispute to an arbitration panel which shall be comprised of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote state or states involved, and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

2. The decision of a majority of the arbitrators shall be final and binding.

2000 Acts, ch 1008, §8; 2000 Acts, ch 1232, §51 – 55

152E.2 Compact administrator.

The executive director of the board of nursing, as provided for in section 152.2, shall serve as the compact administrator identified in article VIII, section a, of the nurse licensure compact contained in section 152E.1.

2000 Acts, ch 1008, §9

CHAPTER 153

DENTISTRY

Penalty, §147.86
Examining board, support staff exceptions; location and powers; see §135.11A, 135.31

153.1 to 153.12 Repealed by 74 Acts, ch 1086, §198.
153.13 "Practice of dentistry" defined.
153.14 Persons not included.
153.15 Dental hygienists — scope of term.
153.15A Dental hygienists — license requirements, renewal.
153.16 Dental office where dentist is employed.
153.17 Unlawful practice.
153.18 Employment of unlicensed dentist.
153.19 Temporary permit — fees.
153.20 Drugs, medicine, and surgery.
153.21 License by credentials.
153.22 Resident license.
153.23 through 153.30 Repealed by 2002 Acts, ch 1108, §31.
153.31 Falsification in application for renewal.
153.32 Unprofessional conduct.
153.33 Powers of board.
153.33A Dental hygiene committee.
153.34 Discipline.
153.35 Construction rule.
153.36 Exceptions to other statutes.
153.37 Dental college and dental hygiene program faculty permits.
153.38 Dental assistants — scope of practice.
153.39 Dental assistants — registration requirements, renewal, revocation, or suspension.

153.1 to 153.12 Repealed by 74 Acts, ch 1086, § 198.

153.13 "Practice of dentistry" defined.

For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of dentistry:

1. Persons publicly professing to be dentists, dental surgeons, or skilled in the science of dentistry, or publicly professing to assume the duties incident to the practice of dentistry.

2. Persons who perform examination, diagnosis, treatment, and attempted correction by any

medicine, appliance, surgery, or other appropriate method of any disease, condition, disorder, lesion, injury, deformity, or defect of the oral cavity and maxillofacial area, including teeth, gums, jaws, and associated structures and tissue, which methods by education, background experience, and expertise are common to the practice of dentistry.

[S13, §2600-o; C24, 27, 31, 35, 39, §**2565;** C46, 50, 54, 58, 62, 66, §153.1; C71, 73, 75, 77, 79, 81, §153.13]

96 Acts, ch 1147, §1

153.14 Persons not included.

Section 153.13 shall not be construed to include the following classes:

1. Students of dentistry who practice dentistry upon patients at clinics in connection with their regular course of instruction at the state dental college, students of dental hygiene who practice upon patients at clinics in connection with their regular course of instruction at state-approved schools, and students of dental assisting who practice upon patients at clinics in connection with a regular course of instruction determined by the board of dentistry pursuant to section 153.39.

2. Licensed "physicians and surgeons" or licensed "osteopaths and surgeons" who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession.

3. Persons licensed to practice dental hygiene who are exclusively engaged in the practice of said profession.

4. Dentists and dental hygienists who are licensed in another state and who are active or reserve members of the United States military service when acting in the line of duty in this state.

5. Persons registered to practice as a dental assistant.

1, 2. [S13, §2600-l, -o; C24, 27, 31, 35, 39, §**2566;** C46, 50, 54, 58, 62, 66, §153.2; C71, 73, 75, 77, 79, 81, §153.14]

3. [C24, 27, 31, 35, 39, §**2566;** C46, 50, 54, 58, 62, 66, §153.2; C71, 73, 75, 77, 79, 81, §153.14]

89 Acts, ch 63, §1; 95 Acts, ch 16, §1; 2000 Acts, ch 1002, §3, 4

153.15 Dental hygienists — scope of term.

A licensed dental hygienist may perform those services which are educational, therapeutic, and preventive in nature which attain or maintain optimal oral health as determined by the board of dentistry and may include but are not necessarily limited to complete oral prophylaxis, application of preventive agents to oral structures, exposure and processing of radiographs, administration of medicaments prescribed by a licensed dentist, obtaining and preparing nonsurgical, clinical and oral diagnostic tests for interpretation by the dentist, preparation of preliminary written records of oral conditions for interpretation by the dentist. Such services shall be performed under supervision of a licensed dentist and in a dental office, a public or private school, public health agencies, hospitals, and the armed forces, but nothing herein shall be construed to authorize a dental hygienist to practice dentistry.

[C24, 27, 31, 35, 39, §**2571;** C46, 50, 54, 58, 62, 66, §153.7; C71, 73, 75, 77, 79, 81, §153.15]

153.15A Dental hygienists — license requirements, renewal.

1. In addition to requirements adopted by rule by the board, in order to obtain a license as a dental hygienist, an applicant shall present evidence to the board of both of the following:

a. That the applicant possesses a degree or certificate of graduation from a college, university, or institution of higher education, accredited by a national agency recognized by the council on post-secondary accreditation or the United States department of education, in a program of dental hygiene with a minimum of two academic years of curriculum.

b. That the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

2. In order to renew a license as a dental hygienist, a licensee shall furnish evidence of valid annual certification for cardiopulmonary resuscitation which shall be credited toward the licensee's continuing education requirement.

92 Acts, ch 1121, §1

153.16 Dental office where dentist is employed.

Every person who owns, operates, or controls a dental office in which anyone other than that person is practicing dentistry shall display the name of the other person in a conspicuous manner at the public entrance to said office.

[S13, §2600-o1; C24, 27, 31, 35, 39, §**2568;** C46, 50, 54, 58, 62, 66, §153.4; C71, 73, 75, 77, 79, 81, §153.16]

153.17 Unlawful practice.

Except as herein otherwise provided, it shall be unlawful for any person to practice dentistry or dental surgery or dental hygiene in this state, other than:

1. Those who are now duly licensed dentists, under the laws of this state in force at the time of their licensure; and

2. Those who are now duly licensed dental hygienists under the laws of this state in force at the time of their licensure; and

3. Those who may hereafter be duly licensed as dentists or dental hygienists pursuant to the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §153.17]

153.18 Employment of unlicensed dentist.

No person owning or conducting any place where dental work of any kind is done or contracted for, shall employ or permit any unlicensed dentist to practice dentistry in said place.

[S13, §2600-o2; C24, 27, 31, 35, 39, §**2569;** C46, 50, 54, 58, 62, 66, §153.5; C71, 73, 75, 77, 79, 81, §153.18]

153.19 Temporary permit — fees.

1. The board may, in its discretion, issue a temporary permit authorizing the permit holder to practice dentistry or dental hygiene in a specific location or locations and for a specified period of time if, in the opinion of the board, a need exists and the person possesses the qualifications prescribed by the board for the permit, which shall be substantially equivalent to those required for licensure under this chapter. The board shall determine in each instance those eligible for this permit, whether or not examinations shall be given, and the type of examinations. None of the requirements for regular licensure under this chapter are mandatory for a temporary permit except as specifically designated by the board. The issuance of a temporary permit shall not in any way indicate that the permit holder is necessarily eligible for regular licensure, nor is the board in any way obligated to so license the person.

2. A temporary permit shall be issued for a period determined by the board and may be renewed at the discretion of the board. The fee for a temporary permit and the fee for renewal shall be set by the board. The fees shall be based on the administrative costs of issuing and renewing the permits. The board may revoke a temporary permit at any time, without a hearing, for reasons deemed sufficient by the board.

3. If the board revokes a temporary permit, it shall promptly notify the permit holder by registered mail, at the last known address of the permit holder, and the temporary permit shall be revoked and of no further force and effect three days after the giving of the notice to the permit holder.

2002 Acts, ch 1108, §15
NEW section

153.20 Drugs, medicine, and surgery.

A dentist shall have the right to prescribe and administer drugs or medicine, perform such surgical operations, administer general or local anesthetics and use such appliances as may be necessary to the proper practice of dentistry.

[C71, 73, 75, 77, 79, 81, §153.20]

153.21 License by credentials.

The board may issue a license under this chapter without examination to an applicant who furnishes satisfactory proof that the applicant holds a license from a similar dental board under equal or substantially equal requirements to those of this state, and who for three consecutive years immediately prior to the filing of the application in this state has been in a legal practice of dentistry or dental hygiene in such other state, territory, or district of the United States, and who furnishes such other evidence as to the applicant's qualifications and lawful practice as the board may require.

[C71, 73, 75, 77, 79, 81, §153.21]
2002 Acts, ch 1108, §16
Section stricken and rewritten

153.22 Resident license.

A dentist or dental hygienist who is serving only as a resident, intern, or graduate student and who is not licensed to practice in this state is required to obtain from the board of dentistry a temporary or special license to practice as a resident, intern, or graduate student. The license shall be designated "Resident License" and shall authorize the licensee to serve as a resident, intern, or graduate student only, under the supervision of a licensed practitioner, in an institution approved for this purpose by the board. Such license shall be renewed at the discretion of the board. The fee for a resident license and the renewal fee shall be set by the board based upon the cost of issuance of the license. The board shall determine in each instance those eligible for a resident license, whether or not examinations shall be given, and the type of examination. None of the requirements for regular permanent licensure are mandatory for resident licensure except as specifically designated by the board. The issuance of a resident license shall not in any way indicate that the person so licensed is necessarily eligible for regular licensure, nor is the board in any way obligated to so license such individual. The board may revoke a resident license at any time it shall determine either that the caliber of work done by a licensee or the type of supervision being given such licensee does not conform to reasonable standards established by the board.

[C71, 73, 75, 77, 79, 81, §153.22]
2002 Acts, ch 1108, §17
Section amended

153.23 through 153.30 Repealed by 2002 Acts, ch 1108, § 31. See § 153.33 and 153.34.

153.31 Falsification in application for renewal.

A license to practice either dentistry or dental hygiene, or registration as a dental assistant, shall be revoked or suspended in the manner and upon the grounds elsewhere provided in this chapter, and also when the certificate accompanying the application of such licensee or registrant for renewal of license or registration filed with the board is not in all material respects true.

[C35, §2573-g15; C39, §**2573.15;** C46, 50, 54, 58,

62, 66, §153.24; C71, 73, 75, 77, 79, 81, §153.31]
2002 Acts, ch 1108, §18
Section amended

153.32 Unprofessional conduct.

As to dentists and dental hygienists *"unprofessional conduct"* shall consist of any of the acts denominated as such elsewhere in this chapter, and also any other of the following acts:

1. Receiving any rebate, or other thing of value, directly or indirectly from any dental laboratory or dental technician.

2. Solicitation of professional patronage by agents or persons popularly known as "cappers" or "steerers", or profiting by the acts of those representing themselves to be agents of the licensee.

3. Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured.

4. Division of fees or agreeing to split or divide the fees received for professional services with any person for bringing or referring a patient or assisting in the care or treatment of a patient without the consent of said patient or the patient's legal representative.

5. Willful neglect of a patient in a critical condition.

[C35, §2573-g16; C39, §**2573.16;** C46, 50, 54, 58, 62, 66, §153.25; C71, 73, 75, 77, 79, 81, §153.32]

153.33 Powers of board.

Subject to the provisions of this chapter, any provision of this subtitle to the contrary notwithstanding, the board shall exercise the following powers:

1. To initiate investigations of and conduct hearings on all matters or complaints relating to the practice of dentistry, dental hygiene, or dental assisting or pertaining to the enforcement of any provision of this chapter, to provide for mediation of disputes between licensees or registrants and their patients when specifically recommended by the board, to revoke or suspend licenses or registrations, or the renewal thereof, issued under this or any prior chapter, to provide for restitution to patients, and to otherwise discipline licensees and registrants.

Subsequent to an investigation by the board, the board may appoint a disinterested third party to mediate disputes between licensees or registrants and patients. Referral of a matter to mediation shall not preclude the board from taking disciplinary action against the affected licensee or registrant.

2. To appoint investigators, who shall not be members of the examining board, to administer and aid in the enforcement of the provisions of law relating to those persons licensed to practice dentistry and dental hygiene, and persons registered as dental assistants. The amount of compensation for the investigators shall be determined pursuant to chapter 19A. Investigators authorized by the board of dental examiners have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

3. All employees needed to administer this chapter shall be appointed pursuant to the merit system.

4. To initiate in its own name or cause to be initiated in a proper court appropriate civil proceedings against any person to enforce the provisions of this chapter or this subtitle relating to the practice of dentistry, and the board may have the benefit of counsel in connection therewith. Any such judicial proceeding as may be initiated by the board shall be commenced and prosecuted in the same manner as any other civil action and injunctive relief may be granted therein without proof of actual damage sustained by any person but such injunctive relief shall not relieve the person so enjoined from criminal prosecution by the attorney general or county attorney for violation of any provision of this chapter or this subtitle relating to the practice of dentistry.

5. In any investigation made or hearing conducted by the board on its own motion, or upon written complaint filed with the board by any person, pertaining to any alleged violation of this chapter or the accusation against any licensee, the following procedure and rules so far as material to such investigation or hearing shall obtain:

a. The accusation of such person against any licensee shall be reduced to writing, verified by some person familiar with the facts therein stated, and three copies thereof filed with the board.

b. If the board shall deem the charges sufficient, if true, to warrant suspension or revocation of license, it shall make an order fixing the time and place for hearing thereon and requiring the licensee to appear and answer thereto, such order, together with a copy of the charges so made to be served upon the accused at least twenty days before the date fixed for hearing, either personally or by certified or registered mail, sent to the licensee's last known post office address as shown by the records of the board.

c. At the time and place fixed in said notice for said hearing, or at any time and place to which the said hearing shall be adjourned, the board shall hear the matter and may take evidence, administer oaths, take the deposition of witnesses, including the person accused, in the manner provided by law in civil cases, compel the appearance of witnesses before it in person the same as in civil cases by subpoena issued over the signature of the chairperson of the board and in the name of the state of Iowa, require answers to interrogatories and compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation or relating to the hearing.

d. In all such investigations and hearings pertaining to the suspension or revocation of licenses,

the board and any person affected thereby may have the benefit of counsel, and upon the request of the licensee or the licensee's counsel the board shall issue subpoenas for the attendance of such witnesses in behalf of the licensee, which subpoenas when issued shall be delivered to the licensee or the licensee's counsel. Such subpoenas for the attendance of witnesses shall be effective if served upon the person named therein anywhere within this state, provided, that at the time of such service the fees now or hereafter provided by law for witnesses in civil cases in district court shall be paid or tendered to such person.

e. In case of disobedience of a subpoena lawfully served hereunder, the board or any party to such hearing aggrieved thereby may invoke the aid of the district court in the county where such hearing is being conducted to require the attendance and testimony of such witnesses. Such district court of the county within which the hearing is being conducted may, in case of contumacy or refusal to obey such subpoena, issue an order requiring such person to appear before said board, and if so ordered give evidence touching the matter involved in the hearing. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

f. If the licensee or registrant pleads guilty, or after hearing shall be found guilty by the board of any of the charges made, it may suspend for a limited period or revoke the license or registration, and the last renewal thereof, and shall enter the order on its records and notify the accused of the revocation or suspension of the person's license or registration, as the case may be, who shall thereupon forthwith surrender that license or registration to the board. Any such person whose license or registration has been so revoked or suspended shall not thereafter and while such revocation or suspension is in force and effect practice dentistry, dental hygiene, or dental assisting within this state.

g. The findings of fact made by the board acting within its power shall, in the absence of fraud, be conclusive, but the district court shall have power to review questions of law involved in any final decision or determination of the board; provided, that application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus or such other method of review or appeal permitted under the laws of this state, and to make such further orders in respect thereto as justice may require.

h. Pending the review and final disposition thereof by the district court, the action of the board suspending or revoking such license shall not be stayed.

6. To adopt rules regarding infection control in dental practice which are consistent with standards of the federal Occupational Safety and Health Act of 1970, 29 U.S.C. § 651-678, and recommendations of the centers for disease control.

7. To promulgate rules as may be necessary to implement the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §153.33]

90 Acts, ch 1112, §1; 92 Acts, ch 1121, §2; 93 Acts, ch 41, §2; 2002 Acts, ch 1108, §19, 20

Subsections 1 and 2 amended

Subsection 5, paragraph f amended

153.33A Dental hygiene committee.

1. A three-member dental hygiene committee of the board of dental examiners is created, consisting of the two dental hygienist members of the board and one dentist member of the board. The dentist member of the committee must have supervised and worked in collaboration with a dental hygienist for a period of at least three years immediately preceding election to the committee. The dentist member shall be elected to the committee annually by a majority vote of board members.

2. The committee shall have the authority to adopt recommendations regarding the practice, discipline, education, examination, and licensure of dental hygienists, subject to subsection 3, and shall carry out duties as assigned by the board. The committee shall have no regulatory or disciplinary authority with regard to dentists, dental assistants, dental lab technicians, or any other auxiliary dental personnel.

3. The board shall ratify recommendations of the committee at the first meeting of the board following adoption of the recommendations by the committee, or at a meeting of the board specifically called for the purpose of board review and ratification of committee recommendations. The board shall decline to ratify committee recommendations only if the board makes a specific finding that a recommendation exceeds the jurisdiction or expands the scope of the committee beyond the authority granted in subsection 2, creates an undue financial impact on the board, or is not supported by the record. The board shall pay the necessary expenses of the committee and of the board in implementing committee recommendations ratified by the board.

4. This section shall not be construed as impacting or changing the scope of practice of the profession of dental hygiene or authorizing the independent practice of dental hygiene.

98 Acts, ch 1010, §2

153.34 Discipline.

The board may issue an order to discipline a licensed dentist or dental hygienist, or registered dental assistant, for any of the grounds set forth in this chapter, chapter 272C, or Title IV. Notwithstanding section 272C.3, licensee or registrant discipline may include a civil penalty not to exceed ten thousand dollars. Pursuant to this section, the board may discipline a licensee or registrant for any of the following reasons:

1. For fraud or deceit in procuring the license

or registration or the renewal thereof to practice dentistry, dental hygiene, or dental assisting.

2. For being guilty of willful and gross malpractice or willful and gross neglect in the practice of dentistry, dental hygiene, or dental assisting.

3. For fraud in representation as to skill or ability.

4. For willful or repeated violations of this chapter, this subtitle, or the rules of the state board of dentistry.

5. For obtaining any fee by fraud or misrepresentation.

6. For having failed to pay license or registration fees as provided herein.

7. For gross immorality or dishonorable or unprofessional conduct in the practice of dentistry, dental hygiene, or dental assisting.

8. For failure to maintain a reasonably satisfactory standard of competency in the practice of dentistry, dental hygiene, or dental assisting.

9. For the conviction of a felony in the courts of this state or another state, territory, or country. Conviction as used in this subsection includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction.

10. For a violation of a law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which law relates to the practice of dentistry, dental hygiene, or dental assisting. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction.

11. The revocation or suspension of a license or registration to practice dentistry, dental hygiene, or dental assisting or other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

12. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice dentistry, dental hygiene, or dental assisting.

13. For an adjudication of mental incompetence by a court of competent jurisdiction. Such adjudication shall automatically suspend a license or registration for the duration of the license or registration unless the board orders otherwise.

14. Inability to practice dentistry, dental hygiene, or dental assisting with reasonable skill and safety by reason of illness, drunkenness, or habitual or excessive use of drugs, intoxicants, narcotics, chemicals, or other types of materials or as a result of a mental or physical condition. At reasonable intervals following suspension or revocation under this subsection, a dentist, dental hygienist, or dental assistant shall be afforded an opportunity to demonstrate that the dentist, dental hygienist, or dental assistant can resume the competent practice of dentistry, dental hygiene, or dental assisting with reasonable skill and safety to patients.

15. For being a party to or assisting in any violation of any provision of this chapter.

[C71, 73, 75, 77, 79, 81, §153.34]

88 Acts, ch 1124, §1 – 4; 93 Acts, ch 41, §3; 2002 Acts, ch 1108, §21

Section amended

153.35 Construction rule.

This chapter shall be deemed to be passed in the interest of the public health, safety and welfare of the people of this state, and its provisions shall be liberally construed to carry out its object and purposes.

[C71, 73, 75, 77, 79, 81, §153.35]

153.36 Exceptions to other statutes.

1. Sections 147.44 to 147.71, except section 147.57, and sections 147.87 to 147.92 shall not apply to the practice of dentistry.

2. In addition to the provisions of section 272C.2, subsection 4, a person licensed by the board of dental examiners shall also be deemed to have complied with continuing education requirements of this state if, during periods that the person practiced the profession in another state or district, the person met all of the continuing education and other requirements of that state or district for the practice of the occupation or profession.

3. Notwithstanding the panel composition provisions in section 272C.6, subsection 1, the board of dental examiners' disciplinary hearing panels shall be comprised of three board members, at least two of which are licensed in the profession.

[C71, 73, 75, 77, 79, 81, §153.36]

97 Acts, ch 159, §23

153.37 Dental college and dental hygiene program faculty permits.

The state board of dental examiners may issue a faculty permit entitling the holder to practice dentistry or dental hygiene within a college of dentistry or a dental hygiene program and affiliated teaching facilities as an adjunct to the faculty member's teaching position, associated responsibilities, and functions. The dean of the college of dentistry or chairperson of a dental hygiene program shall certify to the state board of dental examiners those bona fide members of the college's or a dental hygiene program's faculty who are not licensed and registered to practice dentistry or dental hygiene in Iowa. Any faculty member so certified shall, prior to commencing the member's duties in the college of dentistry or a dental hygiene program, make written application to the

state board of dental examiners for a permit. The permit shall be for a period determined by the board and may be renewed at the discretion of the state board of dental examiners. The fee for the faculty permit and the renewal shall be set by the state board of dental examiners based upon the administrative cost of issuance of the permit. The fee shall be deposited in the same manner as fees provided for in section 147.82. The faculty permit shall be valid during the time the holder remains a member of the faculty and shall subject the holder to all provisions of this chapter.

[C79, 81, §153.37]

93 Acts, ch 41, §4; 2002 Acts, ch 1108, §22

Section amended

153.38 Dental assistants — scope of practice.

A registered dental assistant may perform those services of assistance to a licensed dentist as determined by the board of dentistry by rule. Such services shall be performed under supervision of a licensed dentist in a dental office, a public or private school, public health agencies, hospitals, and the armed forces, but shall not be construed to authorize a dental assistant to practice dentistry or dental hygiene. Every licensed dentist who utilizes the services of a registered dental assistant for the purpose of assistance in the practice of dentistry shall be responsible for acts delegated to the registered dental assistant. A dentist shall delegate to a registered dental assistant only those acts which are authorized to be delegated to registered dental assistants by the board of dentistry.

2000 Acts, ch 1002, §5

153.39 Dental assistants — registration requirements, renewal, revocation, or suspension.

1. A person shall not practice on or after July 1, 2001, as a dental assistant unless the person has registered with the board and received a certificate of registration pursuant to this chapter.

2. A person shall be registered upon the successful completion of education and examination requirements. Education requirements shall be determined by the board by rule, and may be satisfied either through a formal series of classes or through job equivalency training, according to standards to be determined by the board. The education requirements may include possession of a valid certificate in a nationally recognized course in cardiopulmonary resuscitation. Successful passage of an examination administered by the board, which shall include sections regarding infection control, hazardous materials, and jurisprudence, shall also be required. The board shall establish continuing education requirements as a condition of renewing registration as a registered dental assistant, as well as standards for the suspension or revocation of registration.

3. Individuals employed as a dental assistant as of July 1, 2001, shall be registered with the board and receive a certificate of registration, and individuals employed as a dental assistant after July 1, 2001, shall have a six-month period following their first date of employment after July 1, 2001, to comply with the provisions of subsection 1.

2000 Acts, ch 1002, §6; 2002 Acts, ch 1108, §23

Subsection 3 amended

CHAPTER 153A

OPHTHALMIC DISPENSERS

Repealed by 92 Acts, ch 1097, §7

CHAPTER 154

OPTOMETRY

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86

154.1 Optometry — certified licensed optometrists — therapeutically certified optometrists.
154.2 Scope of chapter.
154.3 License.
154.4 Revocation.
154.5 Approved school.
154.6 Expiration and renewal of licenses.
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154.1 Optometry — certified licensed optometrists — therapeutically certified optometrists.

For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of optometry:

1. Persons employing any means other than the use of drugs, medicine or surgery for the measurement of the visual power and visual efficiency of the human eye; the prescribing and adapting of lenses, prisms and contact lenses, and the using or employing of visual training or ocular exercise, for the aid, relief or correction of vision.

2. Persons who allow the public to use any mechanical device for such purpose.

3. Persons who publicly profess to be optometrists and to assume the duties incident to said profession.

Certified licensed optometrists may employ cycloplegics, mydriatics and topical anesthetics as diagnostic agents topically applied to determine the condition of the human eye for proper optometric practice or referral for treatment to a person licensed under chapter 148 or 150A. A certified licensed optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry examiners to use diagnostic agents. A certified licensed optometrist shall be provided with a distinctive certificate by the board which shall be displayed for viewing by the patients of the optometrist.

Therapeutically certified optometrists may employ all diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of conditions of the human eye and adnexa pursuant to this paragraph, excluding the use of injections other than to counteract an anaphylactic reaction, and notwithstanding section 147.107, may without charge supply any of the above pharmaceuticals to commence a course of therapy. Therapeutically certified optometrists may prescribe oral steroids for a period not to exceed fourteen days without consultation with a primary care physician. Therapeutically certified optometrists shall not prescribe oral Imuran or oral Methotrexate. Therapeutically certified optometrists may be authorized, where reasonable and appropriate, by rule of the board, to employ new diagnostic and therapeutic pharmaceutical agents approved by the United States food and drug administration on or after July 1, 2002, for the diagnosis and treatment of the human eye and adnexa. The board shall not be required to adopt rules relating to topical pharmaceutical agents, oral antimicrobial agents, oral antihistamines, oral antiglaucoma agents, and oral analgesic agents. Superficial foreign bodies may be removed from the human eye and adnexa. The therapeutic efforts of a therapeutically certified optometrist are intended for the purpose of examination, diagnosis, and treatment of visual defects, abnormal conditions, and diseases of the human eye and adnexa, for proper optometric practice or referral for consultation or treatment to persons licensed under chapter 148 or 150A. A therapeutically certified optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry examiners to use the agents and procedures authorized pursuant to this paragraph. A therapeutically certified optometrist shall be provided with a distinctive certificate by the board which shall be displayed for viewing by the patients of the optometrist.

[S13, §2583-g; C24, 27, 31, 35, 39, §**2574;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.1]

85 Acts, ch 248, §1; 87 Acts, ch 119, §1; 91 Acts, ch 9, §1; 2002 Acts, ch 1026, §1

Emergency rules authorized; 2002 Acts, ch 1026, §2, 3

Unnumbered paragraph 3 amended

154.2 Scope of chapter.

This chapter shall not be construed to include the following classes:

1. Merchants or dealers who sell glasses as merchandise in an established place of business and who do not profess to be optometrists or practice optometry as herein defined.

2. Licensed physicians and surgeons.

[S13, §2583-q; C24, 27, 31, 35, 39, §**2575;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.2]

154.3 License.

1. Every applicant for a license to practice optometry shall:

a. Present satisfactory evidence of a preliminary education equivalent to at least four years study in an accredited high school or other secondary school.

b. Present a diploma from an accredited school of optometry.

c. Pass an examination prescribed by the optometry examiners in the subjects of physiology of the eye, optical physics, anatomy of the eye, ophthalmology, and practical optometry.

2. A person applying to be licensed as an optometrist after January 1, 1980, shall also apply to be a certified licensed optometrist and shall, in addition to satisfactorily completing all requirements for a license to practice optometry, satisfactorily complete a course consisting of at least one hundred contact hours in pharmacology and receive clinical training as it applies to optometry with particular emphasis on the topical application of diagnostic agents to the human eye for the purpose of examination of the human eye, and the diagnosis of conditions of the human eye, at an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States office of education.

3. A person licensed as an optometrist prior to January 1, 1980 who applies to be a certified li-

censed optometrist shall first satisfactorily complete a course consisting of at least one hundred contact hours in pharmacology as it applies to optometry including clinical training as it applies to optometry with particular emphasis on the topical application of diagnostic agents to the human eye and possible adverse reactions thereto, for the purpose of examination of the human eye and the diagnosis of conditions of the human eye, provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States office of education, and approved by the board of optometry examiners.

4. In addition to the examination required by subsection 1, paragraph *"c"*, a person applying to be a certified licensed optometrist shall also pass an examination prescribed by the optometry examiners in the subjects of physiology and pathology appropriate to the use of diagnostic pharmaceutical agents and diagnosis of conditions of the human eye, and pharmacology including systemic effects of ophthalmic diagnostic pharmaceutical agents and the possible adverse reactions thereto, authorized for use by optometrists by section 154.1.

5. A person applying to be licensed as an optometrist after January 1, 1986, shall also apply to be a therapeutically certified optometrist and shall, in addition to satisfactorily completing all requirements for a license to practice optometry, satisfactorily complete a course as defined by rule of the state board of optometry examiners with particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States office of education, and approved by the board of optometry examiners. The rule of the board shall require a course including a minimum of forty hours of didactic education and sixty hours of approved supervised clinical training in the examination, diagnosis and treatment of conditions of the human eye and adnexa. The board may also, by rule, provide a procedure by which an applicant who has received didactic education meeting the requirements of rules adopted pursuant to this subsection at an approved school of optometry may apply to the board for a waiver of the didactic education requirements of this subsection.

6. A person licensed in any state as an optometrist prior to January 1, 1986, who applies to be a therapeutically certified optometrist shall first satisfactorily complete a course as defined by rule of the board of optometry examiners with particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States office of education, and approved by the board of optometry examiners. The rule of the board shall require a course including a minimum of forty hours of didactic education and sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa. Effective July 1, 1987, the board shall require that therapeutically certified optometrists prior to the utilization of topical and oral antiglaucoma agents, oral antimicrobial agents and oral analgesic agents shall complete an additional forty-four hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases, provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States office of education, and approved by the board of optometry examiners. Upon completion of the additional forty-four hours of education, a therapeutically certified optometrist shall also pass an oral or written examination prescribed by the board. The board shall suspend the optometrist's therapeutic certificate for failure to comply with this subsection by July 1, 1988.

The board shall adopt rules requiring an additional twenty hours per biennium of continuing education in the treatment and management of ocular disease for all therapeutically certified optometrists. The department of ophthalmology of the school of medicine of the State University of Iowa shall be one of the providers of this continuing education.

7. A person licensed in any state as an optometrist prior to January 1, 1986, who applies to be a therapeutically certified optometrist shall also be required to qualify as a certified licensed optometrist as defined in subsections 2, 3, and 4.

8. In addition to the examination required by subsection 1, paragraph *"c"*, a person applying to be a therapeutically certified optometrist shall also pass an examination prescribed by the board of optometry examiners in the examination, diagnosis, and treatment of diseases of the human eye and adnexa.

[S13, §2583-l; C24, 27, 31, 35, 39, §**2576;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.3]

85 Acts, ch 248, §2; 86 Acts, ch 1237, §8; 87 Acts, ch 119, §2

154.4 Revocation.

In addition to the grounds for revocation of license set forth in section 147.55, any licensed optometrist who shall practice or advertise as practicing the profession, under a false or assumed name or shall by such advertisement mislead the public to believe that the optometrist is practicing for or on behalf of an unlicensed person, shall have

the license revoked.

[C35, §2576-e1; C39, §**2576.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.4]

154.5 Approved school.

No school of optometry shall be approved by the optometry examiners as a school of recognized standing unless said school:

1. Requires for graduation or any degree the completion of a course of study covering a period of at least four school years of nine months each year of actual continuous attendance.

2. Gives an adequate course of study in which at least one hundred fifty hours of the instruction are devoted to each of the subjects enumerated in subsection 1, paragraph *"c"* of section 154.3.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified.

[S13, §2583-l; C24, 27, 31, 35, 39, §**2577;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.5]

154.6 Expiration and renewal of licenses.

Every license to practice optometry shall expire in multiyear intervals as determined by the board. Application for renewal of such license shall be made in writing to the Iowa department of public health at least thirty days prior to the expiration date, accompanied by the required renewal fee and accompanied by evidence of the licensee's attendance of continuing education programs in this field.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.6]

2001 Acts, ch 58, §11; 2002 Acts, ch 1119, §15

Section amended

154.7 Notice of expiration.

Notice of expiration of the license to practice optometry shall be given by the Iowa department of public health to all certificate holders by mailing the notice to the last known address of such licensee at least sixty days prior to the expiration date, and the notice shall contain a statement of the educational program attendance requirement and the amount of legal fee required as a condition to the renewal of the license. Subject to the provisions of this chapter, the license shall be renewed without examination.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.7]

2001 Acts, ch 58, §12

154.8 Repealed by 77 Acts, ch 95, § 25.

154.9 Ophthalmic lenses — sale. Repealed by 94 Acts, ch 1098, § 3. See § 147.108 and 147.109.

154.10 Standard of care.

A certified licensed optometrist employing diagnostic pharmaceutical agents as authorized by section 154.1 shall be held to the same standard of care in the use of such agents and in diagnosis as is common to persons licensed under chapter 148 or 150A in this state.

A therapeutically certified optometrist employing pharmaceutical agents as authorized by section 154.1 shall be held to the same standard of care in the use of such agents and in diagnosis and treatment as is common to persons licensed under chapter 148 or 150A in this state.

[C81, §154.10]

85 Acts, ch 248, §3

CHAPTER 154A

HEARING AIDS

Enforcement, §147.87, 147.90, 147.92

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154A.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Board"* means the board of examiners for the licensing and regulation of hearing aid dispensers.

2. *"Department"* means the Iowa department of public health.

3. *"Dispense"* or *"sell"* means a transfer of title or of the right to use by lease, bailment, or any other means, but excludes a wholesale transaction with a distributor or dispenser, and excludes the temporary, charitable loan or educational loan of a hearing aid without remuneration.

4. *"Hearing aid"* means a wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing, and any parts, attachments, or accessories, including earmold, but excluding batteries and cords.

5. *"Hearing aid dispenser"* means any person engaged in the fitting, dispensing, and the sale of hearing aids and providing hearing aid services or maintenance, by means of procedures stipulated by this chapter or the board.

6. *"Hearing aid fitting"* means the measurement of human hearing by any means for the purpose of selections, adaptations, and sales of hearing aids, and the instruction and counseling pertaining thereto, and demonstration of techniques in the use of hearing aids, and the making of earmold impressions as part of the fitting of hearing aids.

7. *"License"* means a license issued by the state under this chapter to hearing aid dispensers.

8. *"Person"* means a natural person.

9. *"Temporary permit"* means a permit issued while the applicant is in training to become a licensed hearing aid dispenser.

[C75, 77, 79, 81, §154A.1]
2001 Acts, ch 58, §18

154A.2 Establishment of board.

A board for the licensing and regulation of hearing aid dispensers is established. The board shall consist of three licensed hearing aid dispensers and two members who are not licensed hearing aid dispensers who shall represent the general public. Members, who shall be residents of the state of Iowa, shall be appointed by the governor, subject to confirmation by the senate. A licensed member shall be actively employed as a hearing aid dispenser and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. Hearing aid dispensers appointed to the initial board shall have not less than five years' experience and shall fulfill the qualifications relating to experience for licensure as provided in this chapter.

No more than two members of the board shall be employees of, or dispensers principally, for the same hearing aid manufacturer.

Professional associations or societies composed of licensed hearing aid dispensers may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of licensed hearing aid dispensers.

[C75, 77, 79, 81, §154A.2]
2001 Acts, ch 58, §18
Confirmation, see §2.32

154A.3 Term of office.

Appointments shall be for three-year staggered terms and shall commence and end as provided by section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor subject to senate confirmation. Members shall serve a maximum of three terms or nine years, whichever is least.

[C75, 77, 79, 81, §154A.3]

154A.4 Duties of the board.

Members of the board shall annually elect a chairperson and a secretary-treasurer from their membership. The board shall prepare examinations drawn from comparable examinations given in other states which license hearing aid dispensers, direct the department in administering the provisions of this chapter, determine who is eligible for licensure, suspend or revoke licenses or temporary permits for cause, and promulgate rules for the administration of the provisions of this chapter pursuant to chapter 17A within the limits of funds appropriated to the board.

[C75, 77, 79, 81, §154A.4]
2001 Acts, ch 58, §18

154A.5 Public members.

The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

[C75, 77, 79, 81, §154A.5]

154A.6 Disclosure of confidential information.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communi-

cates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §154A.6]

154A.7 Meetings and expenses.

The members of the board shall receive actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The board shall meet at least one time per year at the seat of government and may hold additional meetings as deemed necessary. Additional meetings shall be held at the call of the chairperson or a majority of the members of the board. At any meeting of the board, a majority of the members shall constitute a quorum.

[C75, 77, 79, 81, §154A.7]

86 Acts, ch 1245, §1146

154A.8 Duties of department.

The department, with the advice and assistance of the board shall:

1. Employ personnel, and authorize disbursements necessary to carry out the provisions of this chapter.
2. Register and issue licenses to persons whom the board deems qualified to engage in the fitting or selection and sale of hearing aids.
3. Purchase, maintain, or rent equipment and other facilities necessary to carry out the examination of applicants.
4. Designate the time and place for examining applicants, and conduct and supervise the examinations as directed by the board.

[C75, 77, 79, 81, §154A.8]

154A.9 Applications.

Applications for licensure or for a temporary permit shall be on forms prescribed and furnished by the board and shall not require that a photograph of the applicant be attached to the application form. An applicant shall not be ineligible for certification because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of fitting or selection and sale of hearing aids. Character references may be required, but shall not be obtained from licensed hearing aid dispensers.

[C75, 77, 79, 81, §154A.9]

2001 Acts, ch 58, §18; 2002 Acts, ch 1119, §16

Section amended

154A.10 Issuance of licenses.

After January 1, 1975, an applicant may obtain a license, if the applicant:

1. Successfully passes the qualifying examination prescribed in section 154A.12.
2. Is free of contagious or infectious disease.
3. Pays the necessary fees set by the board pursuant to section 154A.17.

[C75, 77, 79, 81, §154A.10]

154A.11 Examinations.

Examinations for licensing shall be given as often as deemed necessary by the board, but no less than one time per year. The scope of the examination and methods of procedure shall be prescribed by the board. Any written examination may be given by representatives of the board.

All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded.

As soon as practicable after the close of each examination, a report shall be filed by the board. The report shall show the action of the board upon each application, and the department shall notify each applicant of the result of the applicant's examination. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board.

An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

[C75, 77, 79, 81, §154A.11]

2000 Acts, ch 1140, §38

154A.12 Scope of examination.

The examination required by this chapter shall be designed to demonstrate the applicant's adequate technical qualifications including, but not limited to, the following:

1. Written tests of knowledge in areas such as physics of sound, anatomy and physiology of hearing, and the function of hearing aids, as these areas pertain to the fitting or selection and sale of hearing aids.
2. Evidence of knowledge of the medical and rehabilitation facilities that are available in the area served, for children and adults who have hearing problems.
3. Evidence of knowledge of situations in which it is commonly believed that a hearing aid is inappropriate.

The board shall not require the applicant to possess the degree of professional competence nor-

mally expected of physicians.
[C75, 77, 79, 81, §154A.12]
2000 Acts, ch 1140, §39

154A.13 Temporary permit.
A person who has not been employed as a hearing aid dispenser prior to January 1, 1975, may obtain a temporary permit from the department upon completion of the application accompanied by the written verification of employment from a licensed hearing aid dispenser. The department shall issue a temporary permit for one year which shall not be renewed or reissued. The fee for issuance of the temporary permit shall be set by the board pursuant to section 154A.17. The temporary permit entitles an applicant to engage in the fitting or selection and sale of hearing aids under the supervision of a person holding a valid license.
[C75, 77, 79, 81, §154A.13]
2001 Acts, ch 58, §18

154A.14 Reciprocity.
If the board determines that another state or jurisdiction has requirements equivalent to or higher than those provided in this chapter, the department may issue a license by reciprocity to applicants who hold valid certificates or licenses to dispense and fit hearing aids in the other state or jurisdiction. An applicant for a license by reciprocity is not required to take a qualifying examination, but is required to pay the license fee as provided in section 154A.17. The holder of a license of reciprocity is registered in the same manner as the holder of a regular license. Fees, grounds for renewal, and procedures for the suspension and revocation of license by reciprocity are the same as for a regular license.
[C75, 77, 79, 81, §154A.14]
2001 Acts, ch 58, §13

154A.15 License renewal.
Licenses shall be renewed in multiyear intervals in a manner determined by the board. The renewal fee shall be determined by the board pursuant to section 154A.17. The department shall notify every person licensed under this chapter of the date of expiration of the license and the amount of fee required for its renewal. The notice shall be mailed at least one month in advance of the expiration date. A person who fails to renew a license by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.
[C75, 77, 79, 81, §154A.15]

154A.16 Repealed by 77 Acts, ch 95, § 25.

154A.17 Fees.
The fees for the examination shall be set by the board on the basis of the annual cost of administration. The fees for the temporary permit, license, renewal of a license, and issuance of a duplicate license, shall be set by the board on the basis of the cost of sustaining the board and the administrative costs of the department. The fees for licensure and permit shall be based upon, but not limited to:
1. Actual expenses and compensation of members of the board.
2. Supplies and other expenses.
3. Costs submitted by the department.
[C75, 77, 79, 81, §154A.17]
86 Acts, ch 1245, §1147

154A.18 Display of license.
A person shall not engage in business as a hearing aid dispenser, or display a sign, or in any other way advertise or claim to be a hearing aid dispenser after January 1, 1975, unless the person holds a valid license issued by the department as provided in this chapter. The license shall be conspicuously posted in the person's office or place of business. The department shall issue duplicate licenses to valid license holders operating more than one office. A license confers upon the holder the right to operate a business as a hearing aid dispenser.
[C75, 77, 79, 81, §154A.18]
2001 Acts, ch 58, §18

154A.19 Exceptions.
This chapter shall not prohibit a corporation, partnership, trust, association, or other organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license if it employs only licensed hearing aid dispensers in the direct fitting or selection and sale of hearing aids. Such an organization shall file annually with the board a list of all licensed hearing aid dispensers and persons holding temporary permits directly or indirectly employed by it. Such an organization shall also file with the board a statement on a form approved by the board that the organization submits itself to the rules and regulations of the board and the provisions of this chapter which the department deems applicable.

This chapter shall not apply to a person who engages in the practices covered by this chapter if this activity is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public or charitable institution, or nonprofit organization, unless the institution or organization also dispenses or sells hearing aids.

This chapter shall not prevent any person from engaging in practices covered by this chapter, provided the person, or organization employing the person, does not dispense or sell hearing aids.
[C75, 77, 79, 81, §154A.19]
2001 Acts, ch 58, §18

154A.20 Rights of purchaser.

1. A hearing aid dispenser shall deliver, to each person supplied with a hearing aid, a receipt which contains the licensee's signature and shows the licensee's business address and the number of the license, together with specifications as to the make, model, and serial number of the hearing aid furnished, and full terms of sale clearly stated, including the date of consummation of the sale of the hearing aid. If a hearing aid is sold which is not new, the receipt and the container must be clearly marked "used" or "reconditioned", with the terms of guarantee, if any.

2. The receipt shall bear the following statement in type no smaller than the largest used in the body copy portion of the receipt:

"The purchaser has been advised that any examination or representation made by a licensed hearing aid dispenser in connection with the fitting or selection and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice."

3. Whenever any of the following conditions are found to exist either from observations by the licensed hearing aid dispenser or person holding a temporary permit or on the basis of information furnished by a prospective hearing aid user, the hearing aid dispenser or person holding a temporary permit shall, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that the individual's best interests would be served if the individual would consult a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician:

a. Visible congenital or traumatic deformity of the ear.

b. History of, or active drainage from the ear within the previous ninety days.

c. History of sudden or rapidly progressive hearing loss within the previous ninety days.

d. Acute or chronic dizziness.

e. Unilateral hearing loss of sudden or recent onset within the previous ninety days.

f. Significant air-bone gap (greater than or equal to 15dB ANSI 500, 1000 and 2000 Hz. average).

g. Obstruction of the ear canal, by structures of undetermined origin, such as foreign bodies, impacted cerumen, redness, swelling, or tenderness from localized infections of the otherwise normal ear canal.

4. A copy of the written recommendation shall be retained by the licensed hearing aid dispenser for the period of seven years. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensed hearing aid dispenser for the period of seven years. Nothing in this section required to be performed by a licensed hearing aid dispenser shall mean that the hearing aid dispenser is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by this chapter.

5. No hearing aid shall be sold by any individual licensed under this chapter to a person twelve years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by a physician specializing in otolaryngology. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

6. A licensed hearing aid dispenser shall, upon the consummation of a sale of a hearing aid, keep and maintain records in the dispenser's office or place of business at all times and each such record shall be kept and maintained for a seven-year period. These records shall include:

a. Results of test techniques as they pertain to fitting of the hearing aids.

b. A copy of the written receipt and the written recommendation.

[C75, 77, 79, 81, §154A.20]

2001 Acts, ch 58, §18; 2002 Acts, ch 1119, §17, 18

Subsections 3 and 5 amended

154A.21 Notice of address.

A licensee or person holding a temporary permit shall notify the department in writing of the address of the place where the licensee or permittee engages or intends to engage in business as a hearing aid dispenser. The department shall keep a record of the place of business of licensees and persons holding temporary permits.

Any notice required to be given by the department to a licensee shall be adequately served if sent by certified mail to the address of the last place of business recorded.

[C75, 77, 79, 81, §154A.21]

2001 Acts, ch 58, §18

154A.22 Deposit of fees.

The department shall deposit all fees collected under the provisions of this chapter in the general fund of the state. Compensation and travel expenses of members and employees of the board, and other expenses necessary for the board to administer and carry out the provisions of this chapter shall be paid from funds appropriated from the general fund of the state.

[C75, 77, 79, 81, §154A.22]

154A.23 Complaints.

Any person wishing to make a complaint against a licensee or holder of a temporary permit shall file a written statement with the board within twelve months from the date of the action upon

which the complaint is based. If the board determines that the complaint alleges facts which, if proven, would be cause for the suspension or revocation of the license of the licensee or the permit of the holder of a temporary permit, it shall make an order fixing a time and place for a hearing and requiring the licensee or holder of a temporary permit complained against to appear and defend. The order shall contain a copy of the complaint, and the order and copy of the complaint shall be served upon the licensee or holder of a temporary permit at least twenty days before the date set for hearing, either personally or as provided in section 154A.21. Continuance or adjournment of a hearing date may be made for good cause. At the hearing the licensee or holder of a temporary permit may be represented by counsel. The licensee or holder of a temporary permit and the board may take depositions in advance of hearing and after service of the complaint, and either may compel the attendance of witnesses by subpoenas issued by the board. The board shall issue such subpoenas at the request of a licensee or holder of a temporary permit. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party may attend, with counsel, if desired, and cross-examine.

If the board determines from the evidence and proofs submitted that the licensee or holder of a temporary permit is guilty of violating any of the provisions of this chapter, or any of the regulations promulgated by the board pursuant to this chapter, the department shall, within thirty days after the hearing, issue an order refusing to issue or renew, or revoking or suspending, as the case may be, the hearing aid dispenser's license or temporary permit. The order shall include the findings of fact and the conclusions of law made by the board and counsel. A copy of the order shall be sent to the licensee or holder of a temporary permit by registered mail. The records of the department shall reflect the action taken by the board on the charges, and the department shall preserve a record of the proceedings in a manner similar to that used by courts of record in this state.

The final order of the board in the proceedings may be appealed to the district court of the county where the licensee or holder of a temporary permit resides, or in which the licensed hearing aid dispenser's principal place of business is located.

The department shall send a copy of the complaint and a copy of the board's final order to the attorney general for purposes of information in the event the licensee or holder of a temporary permit pursues a court appeal and for consideration as to whether the violations are flagrant enough to justify prosecution. The attorney general and all county attorneys shall assist the department in the enforcement of the provisions of this chapter.

[C75, 77, 79, 81, §154A.23]
2001 Acts, ch 58, §18; 2002 Acts, ch 1119, §19
Unnumbered paragraph 1 amended

154A.24 Suspension or revocation.

The board may revoke or suspend a license or temporary permit permanently or for a fixed period for any of the following causes:

1. Conviction of a felony. The record of conviction, or a certified copy, shall be conclusive evidence of conviction.

2. Procuring a license or temporary permit by fraud or deceit.

3. Unethical conduct in any of the following forms:

a. Obtaining a fee or making a sale by fraud or misrepresentation.

b. Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.

c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.

d. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.

e. Representing that the service or advice of a person licensed to practice medicine, or one who is certificated as a clinical audiologist by the board of examiners of speech pathology and audiology or its equivalent, will be used or made available in the fitting or selection, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words "doctor", "clinic", "clinical audiologist", "state approved", or similar words, abbreviations or symbols which tend to connote the medical or other professions, except where the title "certified hearing aid audiologist" has been granted by the national hearing aid society, or that the hearing aid dispenser has been recommended by this state or the board when such is not accurate.

f. Habitual intemperance.

g. Permitting another person to use the license or temporary permit.

h. Advertising a manufacturer's product or using a manufacturer's name or trademark to imply a relationship with the manufacturer that does not exist.

i. Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to a person who advises another in a professional capacity, as an inducement to influence the person or cause the person to in-

fluence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence others to refrain from dealing in the products of competitors.

j. Conducting business while suffering from a contagious or infectious disease.

k. Engaging in the fitting or selection and sale of hearing aids under a false name or alias, with fraudulent intent.

l. Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting or selection of hearing aids, except in cases of selling replacement hearing aids of the same make or model within one year of the original sale.

m. Gross incompetence or negligence in fitting or selection and selling of hearing aids.

n. Using an advertisement or other representation which has the effect of misleading or deceiving purchasers or prospective purchasers into the belief that any hearing aid or device, or part or accessory thereof, is a new invention or involves a new mechanical or scientific principle when such is not the fact.

o. Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle, and that in many cases of hearing loss, this type of instrument may not be suitable.

p. Stating or implying that the use of a hearing aid will restore normal hearing or preserve hearing or prevent or retard progressions of hearing impairment or any other false or misleading claim regarding the use or benefit of a hearing aid.

q. Representing or implying that a hearing aid is or will be "custom-made", "made to order", "prescription made", or in any other sense especially fabricated for an individual person when such is not the case.

r. Violating any of the provisions of section 714.16.

s. Failure to place in an advertisement, if an advertisement does not include the words "hearing aid" in the title of the business which is advertising, the qualifying words in the same size type, "for the purpose of fitting, selection, adaption, and sale of hearing aids". However, the qualifying words are not required if the advertisement includes the words, "hearing test", "hearing evaluation", "free hearing test", "free hearing evaluation", "hearing measurement", or "free hearing measurement", and the title of the business which is advertising appears in the advertisement and includes the words "hearing aid".

t. Such other acts or omissions as the board may determine to be unethical conduct.

[C75, 77, 79, 81, §154A.24]
90 Acts, ch 1073, §1; 2001 Acts, ch 58, §18

154A.25 Prohibitions.

A person shall not:

1. Sell, barter, or offer to sell or barter a license or temporary permit.
2. Purchase or procure by barter a license or temporary permit with intent to use it as evidence of the holder's qualifications to engage in business as a hearing aid dispenser.
3. Alter a license or temporary permit with fraudulent intent.
4. Use or attempt to use as a valid license a license or temporary permit which has been purchased, fraudulently obtained, counterfeited, or materially altered.
5. Willfully make a false statement in an application for a license or temporary permit or for renewal of a license or temporary permit.

[C75, 77, 79, 81, §154A.25]
2001 Acts, ch 58, §18

154A.26 Consumer protection.

Nothing in this chapter shall be construed to limit the right of a person who desires to file a complaint against a licensee or holder of a temporary permit from filing a complaint with the attorney general pursuant to the provisions of section 714.16.

[C75, 77, 79, 81, §154A.26]

154A.27 Penalties.

A violation of any provisions of this chapter is a simple misdemeanor.

[C75, 77, 79, 81, §154A.27]

CHAPTER 154B

PSYCHOLOGY

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86

154B.1 Definition.
154B.2 Practice not authorized.
154B.3 Persons not required to qualify.
154B.4 Acts prohibited.
154B.5 Scope of chapter.
154B.6 Requirements for licensure.
154B.7 Health service provider in psychology.
154B.8 Voluntary surrender of license.

154B.1 Definition.

"Practice of psychology" means the application of established principles of learning, motivation, perception, thinking, and emotional relations to problems of behavior adjustment, group relations, and behavior modification, by persons trained in psychology for compensation or other personal gain. The application of principles includes, but is not limited to: Counseling and the use of psychological remedial measures with persons, in groups or individually, with adjustment or emotional problems in the areas of work, family, school and personal relationships; measuring and testing personality, intelligence, aptitudes, public opinion, attitudes, and skills; and the teaching of such subject matter, and the conducting of research on the problems relating to human behavior.

[C75, 77, 79, 81, §154B.1]

154B.2 Practice not authorized.

This chapter shall not authorize the practice of medicine and surgery by any person not licensed pursuant to chapter 148, the practice of osteopathy by any person not licensed pursuant to chapter 150, or the practice of osteopathic medicine and surgery by any person not licensed pursuant to chapter 150A.

[C75, 77, 79, 81, §154B.2]

154B.3 Persons not required to qualify.

The provisions of this chapter shall not apply to the following persons:

1. School psychologists certified by the department of education practicing and functioning within the scope of their employment in either a public or private school or performing as certified school psychologists at any time in either private practice or the public sector, provided they use the title "certified school psychologist".

2. An employee of an accredited academic institution while performing the employee's teaching, training, and research duties.

3. An employee of a federal, state, county or local governmental institution or agency or nonprofit institution or agency, or a research facility, while performing duties of the office or position with such institution, agency, or facility.

4. A student of psychology, psychological intern or person preparing for the practice of psychology in a training institution or facility approved by the board, provided the person is designated by the title "psychological trainee" or any similar title, clearly indicating training status.

5. A practicing psychologist for a period not to exceed ten consecutive business days or fifteen business days in any ninety-day period, if the person's residence and major practice are outside the state, and the person gives the board a summary of the person's intention to practice in the state of Iowa, if the person is certified or licensed in the state in which the person resides under requirements the board considers to be equivalent of requirements for licensing under this chapter, or the person resides in a state which does not certify or license psychologists and the board considers the person's professional qualifications to be the equivalent of requirements for licensing under this chapter.

[C75, 77, 79, 81, §154B.3]

154B.4 Acts prohibited.

Commencing July 1, 1975, a person who is not licensed under this chapter shall not claim to be a licensed practicing psychologist, use a title or description, including the term "psychology" or any of its derivatives, such as "psychologist", "psychological", "psychotherapist" or modifiers such as "practicing" or "licensed" in a manner which implies that the person is certified under this chapter, or offer to practice or practice psychology, except as otherwise permitted in this chapter. The use by a person who is not licensed under this chapter of such terms is not prohibited by this chapter, except when such terms are used in connection with an offer to practice or the practice of psychology.

[C75, 77, 79, 81, §154B.4]

154B.5 Scope of chapter.

Nothing in this chapter shall be construed to prevent qualified members of other professional groups such as physicians, osteopaths, optometrists, chiropractors, members of the clergy, authorized christian science practitioners, attorneys at law, social workers or guidance counselors from performing functions of a psychological nature consistent with the accepted standards of their respective professions, if they do not use any title or description stating or implying that they are psychologists or are certified to practice psychology.

[C75, 77, 79, 81, §154B.5]

154B.6 Requirements for licensure.

Except as provided in this section, an applicant for licensure as a psychologist shall meet the following requirements in addition to those specified in chapter 147:

1. Except as provided in this section, after July 1, 1985 a new applicant for licensure as a psychologist shall possess a doctoral degree in psychology from an institution approved by the board and shall have completed at least one year of supervised professional experience under the supervision of a licensed psychologist.

2. Have passed an examination administered by the board to assure the applicant's professional competence. The examination of any of its divisions may be given by the board at any time after the applicant has met the degree requirements of this section.

3. Have not failed the examination required in

subsection 2 within the six months next preceding the date of the examination.

The examinations required in this section may, at the discretion of the board, be waived for holders by examination of licenses or certificates from states whose requirements are substantially equivalent to those of this chapter, and for holders by examination of specialty diplomas from the American board of professional psychology.

Any person who within one year after July 1, 1975, meets the requirements specified in subsection 1 shall receive licensure without having passed the examination required in subsection 2 if application for licensure is filed with the board of psychology examiners before July 1, 1977. Any person holding a certificate as a psychologist from the board of examiners of the Iowa psychological association on July 1, 1977, who applies for certification before July 1, 1975, shall receive certification.

[C75, 77, 79, 81, §154B.6]
84 Acts, ch 1122, §1

154B.7 Health service provider in psychology.

A certified health service provider in psychology means a person licensed to practice psychology who has a doctoral degree in psychology, or prior to July 1, 1984 was licensed at the doctoral level with a degree in psychology or its equivalent, or was prior to January 1, 1984 licensed as a psychologist in this state and prior to January 1, 1985 receives a doctoral degree equivalent to a doctoral degree in psychology, and who has at least two years of clinical experience in a recognized health service setting or meets the standards of a national register of health service providers in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders, and to treat mental illnesses and nervous disorders, excluding those mental illnesses and nervous disorders which are established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illnesses and nervous disorders.

84 Acts, ch 1122, §2

154B.8 Voluntary surrender of license.

The director of public health may accept the voluntary surrender of license if accompanied by a written statement of intention. The voluntary surrender, when accepted, shall have the same force and effect as an order of revocation.

[C75, 77, 79, 81, §154B.7]

CHAPTER 154C

SOCIAL WORK

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86

154C.1 Definitions.
154C.2 License required — exception — use of title.
154C.3 Requirements to obtain license or reciprocal license — license renewal — continuing education.
154C.4 Rulemaking authority.
154C.5 Confidentiality of information.
154C.6 Transition provisions — exemption from certain license requirements.
154C.7 General exemptions.

154C.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Board"* means the board of social work examiners established in chapter 147.

2. *"Licensee"* means a person licensed to practice social work.

3. *"Practice of social work"* means the professional activity of licensees which is directed at enhancing or restoring people's capacity for social functioning, whether impaired by environmental, emotional, or physical factors, with particular attention to the person-in-situation configuration. The social work profession represents a body of knowledge requiring progressively more sophisticated analytic and intervention skills, and includes the application of psychosocial theory methods to individuals, couples, families, groups, and communities. The practice of social work does not include the making of a medical diagnosis, or the treatment of conditions or disorders of biological etiology except treatment of conditions or disorders which involve psychosocial aspects and conditions. The practice of social work for each of the categories of social work licensure includes the following:

a. Bachelor social workers provide psychosocial assessment and intervention through direct contact with clients or referral of clients to other qualified resources for assistance, including but

not limited to performance of social histories, problem identification, establishment of goals and monitoring of progress, interviewing techniques, counseling, social work administration, supervision, evaluation, interdisciplinary consultation and collaboration, and research of service delivery including development and implementation of organizational policies and procedures in program management.

b. Master social workers are qualified to perform the practice of bachelor social workers and provide psychosocial assessment, diagnosis, and treatment, including but not limited to performance of psychosocial histories, problem identification and evaluation of symptoms and behavior, assessment of psychosocial and behavioral strengths and weaknesses, effects of the environment on behavior, psychosocial therapy with individuals, couples, families, and groups, establishment of treatment goals and monitoring progress, differential treatment planning, and interdisciplinary consultation and collaboration.

c. Independent social workers are qualified to perform the practice of master social workers as a private practice.

4. *"Private practice"* means social work practice conducted only by an independent social worker who is either self-employed or a member of a partnership or of a group practice providing diagnosis and treatment of mental and emotional disorders or conditions.

5. *"Supervision"* means the direction of social work practice in face-to-face sessions.

84 Acts, ch 1075, §1; 96 Acts, ch 1035, §5

154C.2 License required — exception — use of title.

1. A person shall not engage in the practice of social work unless the person is licensed pursuant to this chapter. A person who is not licensed pursuant to this chapter shall not use words or titles which imply or represent that the person is a licensed bachelor social worker, licensed master social worker, or licensed independent social worker.

2. Notwithstanding subsection 1, persons trained as bachelor social workers, or employed as bachelor social workers, are not required to be licensed.

3. Section 147.83 does not apply to persons who are not licensed as bachelor social workers and who do not hold themselves out as licensed bachelor social workers.

84 Acts, ch 1075, §2; 96 Acts, ch 1035, §6

154C.3 Requirements to obtain license or reciprocal license — license renewal — continuing education.

1. *License requirements.* An applicant for a license as a bachelor social worker, master social worker, or independent social worker shall meet the following requirements in addition to paying all fees required by the board:

a. Bachelor social worker. An applicant for a license as a bachelor social worker shall present evidence satisfactory to the board that the applicant:

(1) Possesses a bachelor's degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a bachelor social worker in accordance with standards for professional conduct established by the board.

b. Master social worker. An applicant for a license as a master social worker shall present evidence satisfactory to the board that the applicant:

(1) Possesses a master's or doctoral degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a master social worker in accordance with standards for professional conduct established by the board.

c. Independent social worker. An applicant for a license as an independent social worker shall present evidence satisfactory to the board that the applicant:

(1) Possesses a master's or doctoral degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a social worker in accordance with standards for professional conduct established by the board.

(4) Has engaged in the practice of social work, under supervision, for at least two years as a full-time employee or for four thousand hours prior to taking the examination given by the board.

(5) Supervision shall be provided in any of the following manners:

(a) By a social worker licensed at least at the level of the social worker being supervised and qualified under this section to practice without supervision.

(b) By another qualified professional, if the board of social work examiners determines that supervision by a social worker as defined in subparagraph subdivision (a) is unobtainable or in other situations considered appropriate by the board.

Additional standards for supervision shall be determined by the board of social work examiners.

2. *Reciprocal license.* The board shall issue an appropriate license to an applicant licensed to practice social work in another state which imposes licensure requirements similar or equal to those imposed under subsection 1.

3. *License renewal and continuing educa-*

tion. Licenses shall be renewed biennially, and licensees shall pay a fee for renewal as determined by the board and shall present evidence satisfactory to the board that the licensee has satisfied continuing education requirements as determined by the board.

84 Acts, ch 1075, §3; 96 Acts, ch 1035, §7; 2000 Acts, ch 1140, §40

154C.4 Rulemaking authority.

In addition to duties and responsibilities provided in chapters 147 and 272C, the board shall adopt rules relating to:

1. Standards required for licensees engaging in the private practice of licensed social work.
2. Standards for professional conduct of licensees.
3. The administration of this chapter.
4. The status of active and inactive licensure and guidelines for inactive licensure reentry.
5. Educational activities which fulfill continuing education requirements for renewal of licenses.
6. Evaluation of its rules to refine standards of licensure and improve methods of enforcement of the standards.

84 Acts, ch 1075, §4; 96 Acts, ch 1035, §8

154C.5 Confidentiality of information.

A licensee or a person working under supervision of a licensee shall not disclose or be compelled to disclose information acquired from persons consulting that person in a professional capacity except:

1. If the information reveals the contemplation or commission of a crime.
2. If the person waives the privilege by bringing charges against the licensee.
3. With the written consent of the client, or in the case of death or disability with the consent of the client's personal representative, another person authorized to sue, or the beneficiary of an insurance policy on the client's life, health, or physical condition.
4. To testify in a court hearing concerning matters pertaining to the welfare of children.
5. To seek collaboration or consultation with professional colleagues or administrative superiors on behalf of the client.

84 Acts, ch 1075, §5; 96 Acts, ch 1035, §9

154C.6 Transition provisions — exemption from certain license requirements.

Notwithstanding section 154C.3, the board shall issue a license as a bachelor social worker, master social worker, or independent social worker to an applicant applying for a license prior to July 1, 1998, who meets the following requirements in addition to paying all fees required by the board:

1. *Bachelor social worker.* An applicant for a license as a bachelor social worker shall present evidence satisfactory to the board of either of the following:

a. That the applicant possesses a bachelor's degree in social work from an accredited college or university approved by the board.

b. That the applicant possesses an undergraduate degree from an accredited college or university and has four thousand hours of employment experience in the practice of social work.

2. *Master social worker.* An applicant for a license as a master social worker shall present evidence satisfactory to the board of any of the following:

a. That the applicant possesses a master's degree in social work from an accredited college or university approved by the board.

b. That the applicant possesses a graduate degree from an accredited college or university and has four thousand hours of employment experience in the practice of social work.

c. That the applicant is employed performing master level social work duties as defined in section 154C.1, subsection 3, paragraph *"b"*, as of July 1, 1996, and has four thousand hours of employment experience in the practice of social work as of July 1, 1998.

3. *Independent social worker.* An applicant for a license as an independent social worker shall present evidence satisfactory to the board of either of the following:

a. That the applicant possesses a valid license to practice social work pursuant to this chapter issued prior to July 1, 1996.

b. That the applicant possesses a master's or doctoral degree in social work from an accredited college or university approved by the board and has two years or four thousand hours of postgraduate degree employment experience in the practice of social work.

96 Acts, ch 1035, §10

154C.7 General exemptions.

This chapter and chapter 147 do not prevent qualified members of other professions including, but not limited to, nurses, psychologists, marital and family therapists, mental health counselors, physicians, physician assistants, attorneys at law, or members of the clergy, from providing or advertising that they provide services of a social work nature consistent with the accepted standards of their respective professions, provided that these persons do not use a title or description indicating or implying that they are licensed to practice social work under this chapter or that they are practicing social work as defined in this chapter.

This chapter does not apply to students of social work whose activities are conducted within a course of professional education in social work.

96 Acts, ch 1035, §11

CHAPTER 154D

BEHAVIORAL SCIENCE

Enforcement, §147.87, 147.90, 147.92
Penalty, general, §147.86

154D.1 Definitions.
154D.2 Licensure — marital and family therapy — mental health counseling.
154D.3 Board organization and authority.
154D.4 Exemptions.
154D.5 Sexual conduct with client.
154D.6 Transition provisions.

154D.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of behavioral science examiners, established in section 147.13.

2. *"Licensed marital and family therapist"* means a person licensed to practice marital and family therapy under chapter 147 and this chapter.

3. *"Licensed mental health counselor"* means a person licensed to practice mental health counseling under chapter 147 and this chapter.

4. *"Licensee"* includes a licensed marital and family therapist and a licensed mental health counselor.

5. *"Marital and family therapy"* means the application of counseling techniques in the assessment and resolution of emotional conditions. This includes the alteration and establishment of attitudes and patterns of interaction relative to marriage, family life, and interpersonal relationships.

6. *"Mental health counseling"* means the provision of counseling services involving assessment, referral, consultation, and the application of counseling, human development principles, learning theory, group dynamics, and the etiology of maladjustment and dysfunctional behavior to individuals, families, and groups.

91 Acts, ch 229, §6

154D.2 Licensure — marital and family therapy — mental health counseling.

1. An applicant for a license to practice marital and family therapy shall be granted a license by the board when the applicant satisfies all of the following requirements:

a. Possesses a master's degree in marital and family therapy consisting of at least forty-five credit hours, or its equivalent, from a nationally accredited institution or from a program approved by the board.

b. Has at least two years of supervised clinical experience or its equivalent as approved by the board in consultation with the mental health and developmental disabilities commission created in section 225C.5.

c. Passes an examination administered by the board.

d. Has not failed the examination required in paragraph *"c"* within six months of the date of the current application.

2. An applicant for a license to practice mental health counseling shall be granted a license by the board when the applicant satisfies all of the following requirements:

a. Possesses a master's degree in counseling consisting of at least forty-five credit hours, or its equivalent, from a nationally accredited institution or from a program approved by the board.

b. Has at least two years of clinical experience, supervised by a licensee, in assessing mental health needs and problems and in providing appropriate mental health services as approved by the board of behavioral science examiners in consultation with the mental health and developmental disabilities commission created in section 225C.5.

c. Passes an examination administered by the board.

91 Acts, ch 229, §7; 94 Acts, ch 1170, §25, 26

154D.3 Board organization and authority.

1. In addition to duties and responsibilities provided in chapters 147 and 272C, the board shall adopt rules relating to:

a. Standards required for licensees engaging in the professions covered by this chapter.

b. Standards for professional conduct of persons licensed under this chapter.

c. The administration of this chapter.

d. The status of active and inactive licensure, and guidelines for reentry of inactive licensees.

e. Educational activities which fulfill continuing education requirements for license renewals.

2. A separate subcommittee is established within the board for each of the professions under the board's jurisdiction. The chairperson of the board shall appoint to the subcommittee for each profession those members of the board who represent that profession. The chairperson shall ap-

point two of the public members of the board to serve on a subcommittee. Each subcommittee shall, by majority vote, rule on all license applications within the subcommittee's assigned profession, approve and administer the grading of the examination given to applicants for licenses to practice that profession, and otherwise coordinate the board's administration of all matters pertinent to regulation of the practice of the profession.

3. A decision or recommendation of a subcommittee shall not become effective without approval of the board. The board may initiate action relating to either of the professions within its jurisdiction.

4. Members attending meetings of the board's subcommittees shall be reimbursed on the same basis as members attending board meetings up to a maximum of six subcommittee meetings per calendar year.

91 Acts, ch 229, §8; 98 Acts, ch 1050, §2, 5

154D.4 Exemptions.

1. This chapter and chapter 147 do not prevent qualified members of other professions, including but not limited to nurses, psychologists, social workers, physicians, physician assistants, attorneys at law, or members of the clergy, from providing or advertising that they provide services of a marital and family therapy or mental health counseling nature consistent with the accepted standards of their respective professions, but these persons shall not use a title or description denoting that they are licensed marital and family therapists or licensed mental health counselors.

2. The licensure requirements of this chapter and chapter 147 do not apply to the following:

a. Students whose activities are conducted within a course of professional education in marital and family therapy or mental health counseling.

b. A person who practices marital and family therapy or mental health counseling under the supervision of a person licensed under this chapter as part of a clinical experience as described in section 154D.2, subsection 1, paragraph *"b"*, or section 154D.2, subsection 2, paragraph *"b"*.

c. The provision of children, family, or mental health services through the department of human services or juvenile court, or agencies contracting with the department of human services or juvenile court, by persons who do not represent themselves to be either a marital and family therapist or a mental health counselor.

91 Acts, ch 229, §9; 98 Acts, ch 1050, §3, 5

154D.5 Sexual conduct with client.

The license of a marital and family therapist or a mental health counselor shall be revoked if the board finds that the licensee engaged in sexual activity or genital contact with a client while acting or purporting to act within the licensee's scope of practice, whether or not the client consented to the sexual activity or genital contact.

The revocation shall be in addition to any other penalties provided by law.

91 Acts, ch 229, §10

154D.6 Transition provisions.

1. An applicant for a license to practice marital and family therapy or mental health counseling, applying prior to July 1, 2000, shall not be required respectively to meet the examination requirement contained in section 154D.2, subsection 1, paragraph *"c"*, or subsection 2, paragraph *"c"*, if one of the following is met:

a. The applicant meets the requirements contained in section 154D.2, subsection 1, paragraphs *"a"* and *"b"*, or subsection 2, paragraphs *"a"* and *"b"*, respectively.

b. The applicant meets the requirements contained in section 154D.2, subsection 1, paragraph *"a"*, or subsection 2, paragraph *"a"*, and has four thousand hours of employment experience in the practice of marital and family therapy or mental health counseling, respectively.

2. Penalty fees otherwise incurred pursuant to section 147.10, and continuing education requirements applicable to the period prior to license reinstatement, shall be waived by the board for any previously licensed marital and family therapist or mental health counselor whose license has lapsed prior to July 1, 1998. Applicants with a lapsed license applying for reinstatement shall be required to complete a reinstatement application and pay a renewal fee and reinstatement fee pursuant to section 147.11 and section 147.80, subsections 21 and 22.

3. The department of public health may retain any renewal fees generated by 1998 Iowa Acts, chapter 1050 which exceed the department's revenue projections for fee generation relating to marital and family therapy and mental health counseling under chapters 147 and 154D established prior to the enactment of 1998 Iowa Acts, chapter 1050, during the fiscal year beginning July 1, 1998, and ending June 30, 1999. The department may use the retained fees to pay any administrative expenses directly resulting from the provisions of 1998 Iowa Acts, chapter 1050.

98 Acts, ch 1050, §4, 5

CHAPTER 155

NURSING HOME ADMINISTRATION

Enforcement, §147.87, 147.90, 147.92
Penalty, general, §147.86

155.1 Definitions.
155.2 Composition of board.
155.3 Qualifications for licensure.
155.4 Licensing function.
155.5 License fees.
155.6 Fund created.
155.7 Organization of board.
155.8 Exclusive jurisdiction of board.
155.9 Duties of the board.
155.10 Renewal of license.
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155.1 Definitions.

For the purposes of this chapter, and as used herein:

1. *"Board"* means the Iowa state board of examiners for nursing home administrators hereinafter created.

2. *"Nursing home administrator"* means a person who administers, manages, supervises, or is in general administrative charge of a nursing home whether or not such individual has an ownership interest in such home and whether or not the individual's functions and duties are shared with one or more individuals. A member of a board of directors, unless also serving in a supervisory or managerial capacity, shall not be considered a nursing home administrator.

3. *"Nursing home"* means an institution or facility, or part of an institution or facility, whether proprietary or nonprofit, licensed as a nursing facility, but not including an intermediate care facility for persons with mental retardation or an intermediate care facility for persons with mental illness, defined as such for licensing purposes under state law or administrative rule adopted pursuant to section 135C.2, including but not limited to, a nursing home owned or administered by the federal or state government or an agency or political subdivision of government.

[C71, 73, 75, §147.118; C77, 79, 81, §135E.1]
83 Acts, ch 206, §8; 87 Acts, ch 194, §2; 90 Acts, ch 1039, §12; 90 Acts, ch 1204, §18
C93, §155.1
96 Acts, ch 1129, §113

155.2 Composition of board.

There is established a state board of examiners for nursing home administrators which shall consist of nine members appointed by the governor subject to confirmation by the senate as follows:

1. Four members shall be licensed nursing home administrators, one of whom shall be an administrator of a nonproprietary nursing home.

2. Three members shall be persons who are licensed members of any of the professions concerned with the care and treatment of chronically ill or elderly patients, who are not nursing home administrators or nursing home owners.

3. Two members who are not licensed nursing home administrators or are not licensed persons under chapter 147 and who shall represent the general public. The members shall be interested in the problems of elderly patients and nursing home care, but shall have no financial interest in any nursing home.

The board shall be within the Iowa department of public health for administrative purposes. The department shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter, but shall be reimbursed for all costs incurred from funds appropriated to the board.

A licensed member shall be actively engaged in the practice of the member's profession and shall have been so engaged for five years preceding the appointment, the last two of which shall have been in Iowa. Professional societies composed of licensed members may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations.

A board member shall not be required to be a member of any professional association or society composed of nursing home administrators or any licensed profession.

Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor and are subject to senate confirmation. Members shall serve no more than three terms or nine years, whichever

is least.

[C71, 73, 75, §147.119; C77, 79, 81, §135E.2]
C93, §155.2
Confirmation, see §2.32

155.3 Qualifications for licensure.

The board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

1. The applicant is of sound mental health and physically able to perform the duties.

2. The applicant has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be so designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by nursing homes; knowledge of the laws governing the operation of nursing homes and the protection of the interests of patients therein; and knowledge of the elements of good nursing home administration; or has presented evidence satisfactory to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a nursing home.

3. The applicant has passed an examination administered by the board and designed to test for competence in the subject matter referred to in subsection 2 of this section.

[C71, 73, 75, §147.120; C77, 79, 81, §135E.3]
C93, §155.3

155.4 Licensing function.

The board shall license nursing home administrators in accordance with rules issued, and from time to time revised, by it. A nursing home administrator's license shall not be transferable and shall be valid until surrendered for cancellation or suspended or revoked for violation of this chapter or any other laws or regulations relating to the proper administration and management of a nursing home. Any denial of issuance or renewal, suspension, or revocation under any section of this chapter shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act.

[C71, 73, 75, §147.121; C77, 79, 81, §135E.4]
C93, §155.4

155.5 License fees.

Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board. The license shall expire in multiyear intervals and be renewable and upon payment of the license fee. A person who fails to renew a license by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

[C71, 73, 75, §147.122; C77, 79, 81, §135E.5]
C93, §155.5

155.6 Fund created.

All fees collected under the provisions of this chapter shall be paid to the treasurer of state who shall deposit the fees in the general fund of the state. Funds shall be appropriated to the board to be used and expended by the board to pay the compensation and travel expenses of members and employees of the board, and other expenses necessary for the board to administer and carry out the provisions of this chapter.

[C71, 73, 75, §147.123; C77, 79, 81, §135E.6]
C93, §155.6

155.7 Organization of board.

The board shall elect from its membership a chairperson, vice chairperson, and secretary-treasurer, and shall adopt rules to govern its proceedings. Members of the board shall receive reimbursement for actual expenses incurred in carrying out their duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The board shall hold at least one meeting per year at the seat of government.

[C71, 73, 75, §147.124; C77, 79, 81, §135E.7]
86 Acts, ch 1245, §1139
C93, §155.7

155.8 Exclusive jurisdiction of board.

The board shall have authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home.

[C71, 73, 75, §147.125; C77, 79, 81, §135E.8]
C93, §155.8

155.9 Duties of the board.

The board shall have the duty and responsibility to:

1. Develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.

2. Develop and apply appropriate techniques, including examination and investigations, for determining whether an individual meets such standards. The board may administer as many examinations per year as are necessary, but shall administer at least one examination per year. Any written examination may be given by representatives of the board. Applicants who fail the ex-

amination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

3. Issue licenses to individuals who, after application of such techniques, are found to have met such standards; and for cause and after due notice and hearing, revoke or suspend licenses previously issued by such board in any case where the individual holding such license is found to have failed substantially to conform to the requirements of such standards.

The board may also accept the voluntary surrender of such license without necessity of a hearing. In the event of the inability of the regular administrator of a nursing home to perform the administrator's duties or through death or other cause the nursing home is without a licensed administrator, a provisional administrator may be appointed on a temporary basis by the nursing home owner or owners, to perform such duties for a period not to exceed six months.

4. Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.

5. Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards. Such appropriate action may include revocation of a license, if necessary, or placing the licensee on probation for a period not exceeding six months, and shall be taken only for cause after due notice and a hearing on the charge or complaint.

6. Conduct a continuing study and investigation of nursing homes, and administrators of nursing homes, in this state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

7. Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this chapter, and make provisions for such courses and their accessibility to residents of this state unless it finds that there are, and approves, a sufficient number of courses, which courses are conducted by others within this state. In lieu thereof the board may approve courses conducted within and without this state as sufficient to meet the education and training requirements of this chapter.

[C71, 73, 75, §147.126; C77, 79, 81, §135E.9]
C93, §155.9

155.10 Renewal of license.

Every holder of a nursing home administrator's license shall renew it by making application to the board, except that the individual requesting renewal shall submit evidence satisfactory to the board of continued education in this field. Such renewals shall be granted as a matter of course unless the board finds, after due notice and hearing, that the applicant has acted or failed to act in accordance with the rules or in such a manner or under such circumstances as would constitute grounds for suspension or revocation of a license.

[C71, 73, 75, §147.127; C77, 79, 81, §135E.10]
C93, §155.10

155.11 Reciprocity with other states.

The board may issue a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction if reciprocal agreements are entered into with another jurisdiction under sections 147.45 through 147.54.

[C71, 73, 75, §147.128; C77, 79, 81, §135E.11]
C93, §155.11

155.12 Conflict with federal law — effect.

If any provision of this chapter is in conflict with the requirements of section 1908 of the United States Social Security Act (42 United States Code, section 1396g), relative to a state program for licensing of administrators of nursing homes, and except for such conflict the state would be entitled to receive contributions from the United States for payment of assistance under the program established pursuant to Title XIX of the United States Social Security Act (42 United States Code, sections 1396 – 1396g, inclusive), such provision of this chapter so in conflict with said statute of the United States shall be considered as suspended and of no effect until sixty days after the convening of the next regular session of the general assembly after such conflict is discovered.

[C71, 73, 75, §147.129; C77, 79, 81, §135E.12]
C93, §155.12

155.13 Misdemeanor.

It shall be a serious misdemeanor for any person to act or serve in the capacity of a nursing home administrator unless the person is the holder of a license as a nursing home administrator issued in accordance with the provisions of this chapter.

[C71, 73, 75, §147.130; C77, 79, 81, §135E.13]
C93, §155.13

155.14 Applications.

Applications for licensure shall be on forms prescribed and furnished by the board and shall not contain a recent photograph of the applicant. An applicant shall not be ineligible for licensure because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of nursing home administration. Character references may be required, but shall not be obtained from licensed nursing home administrators.

[C75, §147.131; C77, 79, 81, §135E.14]
C93, §155.14

155.15 Fees.

The board shall set the fees for examination, licensure and renewal of licensure. The fees for examination shall be based upon the annual cost of administering the examinations. The fees for licensure and renewal of licensure shall be based on the administrative costs of sustaining the board which shall include, but shall not be limited to, the following:

1. Per diem, expenses and travel for board members.
2. Office facilities, supplies and equipment.
3. Clerical assistance.

[C75, §147.132; C77, 79, 81, §135E.15]
C93, §155.15

155.16 Public members.

The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

[C75, §147.133; C77, 79, 81, §135E.16]
C93, §155.16

155.17 Disclosure of confidential information.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, §147.134; C77, 79, 81, §135E.17]
C93, §155.17

155.18 Revocation or suspension.

A license to practice as a nursing home administrator may be revoked or suspended when the licensee is guilty of the following acts or omissions:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this Act.*

[C79, 81, §135E.18]
C93, §155.18

*Chapter 272C may have been intended; see 77 Acts, ch 95, §16

CHAPTER 155A

PHARMACY

Enforcement, §147.94 – 147.99
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155A.39 Programs to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians — reporting, confidentiality, immunity, funding.

155A.1 Short title.

This chapter may be cited as the *"Iowa Pharmacy Practice Act."*

87 Acts, ch 215, §1

155A.2 Legislative declaration — purpose.

1. It is the purpose of this chapter to promote, preserve, and protect the public health, safety, and welfare through the effective regulation of the practice of pharmacy and the licensing of pharmacies, pharmacists, and others engaged in the sale, delivery, or distribution of prescription drugs and devices or other classes of drugs or devices which may be authorized.

2. Practitioners licensed under a separate chapter of the Code are not regulated by this chapter except when engaged in the operation of a pharmacy for the retailing of prescription drugs.

87 Acts, ch 215, §2

155A.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administer"* means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by one of the following:

a. A practitioner or the practitioner's authorized agent.

b. The patient or research subject at the direction of a practitioner.

2. *"Authorized agent"* means an individual designated by a practitioner who is under the supervision of the practitioner and for whom the practitioner assumes legal responsibility.

3. *"Board"* means the board of pharmacy examiners.

4. *"Brand name"* or *"trade name"* means the registered trademark name given to a drug product or ingredient by its manufacturer, labeler, or distributor.

5. *"College of pharmacy"* means a school, university, or college of pharmacy that satisfies the accreditation standards of the American council on pharmaceutical education as adopted by the board, or that has degree requirements which meet the standards of accreditation adopted by the board.

6. *"Controlled substance"* means a drug substance, immediate precursor, or other substance listed in division II of chapter 124.

7. *"Controlled substances Act"* means chapter 124.

8. *"Deliver"* or *"delivery"* means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

9. *"Demonstrated bioavailability"* means the rate and extent of absorption of a drug or drug ingredient from a specified dosage form, as reflected by the time-concentration curve of the drug or drug ingredient in the systemic circulation.

10. *"Device"* means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

11. *"Dispense"* means to deliver a prescription drug or controlled substance to an ultimate user or research subject by or pursuant to the lawful pre-

scription drug order or medication order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

12. *"Distribute"* means the delivery of a prescription drug or device.

13. *"Drug"* means one or more of the following:

a. A substance recognized as a drug in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium or any supplement to any of them.

b. A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

c. A substance, other than food, intended to affect the structure or any function of the body of humans or other animals.

d. A substance intended for use as a component of any substance specified in paragraph *"a"*, *"b"*, or *"c"*.

e. A controlled substance.

14. *"Drug product selection"* means the act of selecting the source of supply of a drug product.

15. *"Drug sample"* means a drug that is distributed without consideration to a pharmacist or practitioner.

16. *"Generic name"* means the official title of a drug or drug ingredient published in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium published by the United States pharmacopoeial convention or any supplement to any of them.

17. *"Internship"* means a practical experience program approved by the board for persons training to become pharmacists.

18. *"Label"* means written, printed, or graphic matter on the immediate container of a drug or device.

19. *"Labeling"* means the process of preparing and affixing a label including information required by federal or state law or regulation to a drug or device container. The term does not include the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device or unit dose packaging.

20. *"Medication order"* means a written order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent for administration of a drug or device.

21. *"Pharmacist"* means a person licensed by the board to practice pharmacy.

22. *"Pharmacist in charge"* means the pharmacist designated on a pharmacy license as the pharmacist who has the authority and responsibility for the pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

23. *"Pharmacist-intern"* means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the board, or a graduate of a college of pharmacy, who is participating in a board-approved internship under the supervision of a preceptor.

24. *"Pharmacy"* means a location where prescription drugs are compounded, dispensed, or sold by a pharmacist and where prescription drug orders are received or processed in accordance with the pharmacy laws.

25. *"Pharmacy license"* means a license issued to a pharmacy or other place where prescription drugs or devices are dispensed to the general public pursuant to a prescription drug order.

26. *"Pharmacy technician"* means a person registered by the board who is in a technician training program or who is employed by a pharmacy under the responsibility of a licensed pharmacist to assist in the technical functions of the practice of pharmacy.

27. *"Practice of pharmacy"* is a dynamic patient-oriented health service profession that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and related drug therapy.

28. *"Practitioner"* means a physician, dentist, podiatric physician, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state or a person licensed by another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

29. *"Preceptor"* means a pharmacist in good standing licensed in this state to practice pharmacy and approved by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in the internship program.

30. *"Prescription drug"* means any of the following:

a. A substance for which federal or state law requires a prescription before it may be legally dispensed to the public.

b. A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(1) Caution: Federal law prohibits dispensing without a prescription.

(2) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

c. A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

31. *"Prescription drug order"* means a written order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent who communicates the practitioner's instructions for a prescription drug or device to be dispensed.

32. *"Proprietary medicine"* means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law.

33. *"Ultimate user"* means a person who has

lawfully obtained and possesses a prescription drug or device for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

34. *"Unit dose packaging"* means the packaging of individual doses of a drug in containers which preserve the identity and integrity of the drug from the point of packaging to administration and which are properly labeled pursuant to rules of the board.

35. *"Wholesaler"* means a person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business, or any other business in which prescription drugs, medicinal chemicals, medicines, or poisons are sold, manufactured, compounded, dispensed, stocked, exposed, or offered for sale at wholesale in this state. *"Wholesaler"* does not include those wholesalers who sell only proprietary medicines.

36. *"Wholesale salesperson"* or *"manufacturer's representative"* means an individual who takes purchase orders on behalf of a wholesaler for prescription drugs, medicinal chemicals, medicines, or poisons. *"Wholesale salesperson"* or *"manufacturer's representative"* does not include an individual who sells only proprietary medicines.

87 Acts, ch 215, §3; 88 Acts, ch 1232, §2; 95 Acts, ch 108, §13; 96 Acts, ch 1070, §1; 2002 Acts, ch 1108, §24

Subsection 31 amended

155A.4 Prohibition against unlicensed persons dispensing or distributing prescription drugs — exceptions.

1. A person shall not dispense prescription drugs unless that person is a licensed pharmacist or is authorized by section 147.107 to dispense or distribute prescription drugs.

2. Notwithstanding subsection 1, it is not unlawful for:

a. A manufacturer or wholesaler to distribute prescription drugs as provided by state or federal law.

b. A practitioner, licensed by the appropriate state board, to dispense prescription drugs to patients as incident to the practice of the profession, except with respect to the operation of a pharmacy for the retailing of prescription drugs.

c. A practitioner, licensed by the appropriate state board, to administer drugs to patients. This chapter does not prevent a practitioner from delegating the administration of a prescription drug to a nurse, intern, or other qualified individual or, in the case of a veterinarian, to an orderly or assistant, under the practitioner's direction and supervision.

d. A person to sell at retail a proprietary medicine, an insecticide, a fungicide, or a chemical used in the arts, if properly labeled.

e. A person to procure prescription drugs for lawful research, teaching, or testing and not for resale.

f. A pharmacy to distribute a prescription drug to another pharmacy or to a practitioner.

g. A qualified individual authorized to administer prescription drugs and employed by a home health agency or hospice to obtain, possess, and transport emergency prescription drugs as provided by state or federal law or by rules of the board.

87 Acts, ch 215, §4; 97 Acts, ch 39, §1

155A.5 Injunction.

Notwithstanding the existence or pursuit of any other remedy the board may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a pharmacy or wholesaler, without license, or to prevent the violation of provisions of this chapter. Upon request of the board, the attorney general shall institute the proper proceedings and the county attorney, at the request of the attorney general, shall appear and prosecute the action when brought in the county attorney's county.

87 Acts, ch 215, §5

155A.6 Pharmacist internship program and pharmacy technician registration.

1. A program of pharmacist internships is established. Each internship is subject to approval by the board.

2. A person desiring to be a pharmacist-intern in this state shall apply to the board for registration. The application must be on a form prescribed by the board. A pharmacist-intern shall be registered during internship training and thereafter pursuant to rules adopted by the board.

3. The board shall establish standards for pharmacist-intern registration and may deny, suspend, or revoke a pharmacist-intern registration for failure to meet the standards or for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, or 205, or any rule of the board.

4. The board shall adopt rules in accordance with chapter 17A on matters pertaining to pharmacist-intern registration standards, registration fees, conditions of registration, termination of registration, and approval of preceptors.

5. A registration program for pharmacy technicians is established for the purposes of identification, tracking, and disciplinary action for the violation of federal drug laws or regulations, state drug or pharmacy laws, or board rules by pharmacy technicians. The registration shall not include any determination of the competency of the registered individual and, notwithstanding section

272C.2, subsection 1, shall not require continuing education for renewal. The ultimate responsibility for the actions of a pharmacy technician working under a licensed pharmacist's supervision shall remain with the licensed pharmacist.

6. A person who is or desires to be a pharmacy technician in this state shall apply to the board for registration. The application must be submitted on a form prescribed by the board. A pharmacy technician must be registered pursuant to rules adopted by the board.

7. The board may deny, suspend, or revoke a pharmacy technician registration for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, or 205, or any rule of the board.

8. The board shall adopt rules in accordance with chapter 17A on matters pertaining to pharmacy technician registration applications, renewals, fees, termination of registration, and any other relevant matters.

87 Acts, ch 215, §6; 96 Acts, ch 1070, §2, 3

155A.7 Pharmacist license.

A person shall not engage in the practice of pharmacy in this state without a license. The license shall be identified as a pharmacist license.

87 Acts, ch 215, §7

155A.8 Requirements for pharmacist license.

To qualify for a pharmacist license, an applicant shall meet the following requirements:

1. Be a graduate of a school or college of pharmacy or of a department of pharmacy of a university recognized and approved by the board.

2. File proof, satisfactory to the board, of internship for a period of time fixed by the board.

3. Pass an examination prescribed by the board.

87 Acts, ch 215, §8

155A.9 Approved colleges — graduates of foreign colleges.

1. A college of pharmacy shall not be approved by the board unless the college is accredited by the American council on pharmaceutical education.

2. An applicant who is a graduate of a school or college of pharmacy located outside the United States but who is otherwise qualified to apply for a pharmacist license in this state may be deemed to have satisfied the requirements of section 155A.8, subsection 1, by verification to the board of the applicant's academic record and graduation and by meeting other requirements established by rule of the board. The board may require the applicant to pass an examination or examinations given or approved by the board to establish proficiency in English and equivalency of education as a prerequisite for taking the licensure examination required in section 155A.8, subsection 3.

87 Acts, ch 215, §9

155A.10 Display of pharmacist license.

A pharmacist shall publicly display the license to practice pharmacy and the license renewal certificate pursuant to rules adopted by the board.

87 Acts, ch 215, §10

155A.11 Renewal of pharmacist license.

The board shall specify by rule the procedures to be followed and the fee to be paid for a renewal certificate, and penalties for late renewal or failure to renew a pharmacist license.

87 Acts, ch 215, §11

155A.12 Pharmacist license — grounds for discipline.

The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.

2. Engaged in unethical conduct as that term is defined by rules of the board.

3. Violated any of the provisions for licensee discipline set forth in section 147.55.

4. Failed to keep and maintain records required by this chapter or failed to keep and maintain complete and accurate records of purchases and disposal of drugs listed in the controlled substances Act.

5. Violated any provision of the controlled substances Act or rules relating to that Act.

6. Aided or abetted an unlicensed individual to engage in the practice of pharmacy.

7. Refused an entry into any pharmacy for any inspection authorized by this chapter.

8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.

9. Been convicted of an offense or subjected to a penalty or fine for violation of chapter 124, 126, 147, or the Federal Food, Drug and Cosmetic Act. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.

10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

87 Acts, ch 215, §12; 89 Acts, ch 197, §23

155A.13 Pharmacy license.

1. A person shall not establish, conduct, or maintain a pharmacy in this state without a license. The license shall be identified as a pharmacy license. A pharmacy license issued pursuant to subsection 4 may be further identified as a hospital pharmacy license.

2. The board shall specify by rule the licensing procedures to be followed, including specifications of forms for use in applying for a pharmacy license and fees for filing an application.

3. The board may issue a special or limited-use pharmacy license based upon special conditions of use imposed pursuant to rules adopted by the board for cases in which the board determines that certain requirements may be waived.

4. The board shall adopt rules for the issuance of a hospital pharmacy license to a hospital which provides pharmacy services for its own use. The rules shall:

a. Recognize the special needs and circumstances of hospital pharmacies.

b. Give due consideration to the scope of pharmacy services that the hospital's medical staff and governing board elect to provide for the hospital's own use.

c. Consider the size, location, personnel, and financial needs of the hospital.

d. Give recognition to the standards of the joint commission on the accreditation of health care organizations and the American osteopathic association and to the conditions of participation under Medicare.

To the maximum extent possible, the board shall coordinate the rules with the standards and conditions described in paragraph *"d"* and shall coordinate its inspections of hospital pharmacies with the Medicare surveys of the department of inspections and appeals and with the board's inspections with respect to controlled substances conducted under contract with the federal government.

A hospital which provides pharmacy services by contracting with a licensed pharmacy is not required to obtain a hospital pharmacy license or a general pharmacy license.

5. A hospital which elects to operate a pharmacy for other than its own use is subject to the requirements for a general pharmacy license. If the hospital's pharmacy services for other than its own use are special or limited, the board may issue a special or limited-use pharmacy license pursuant to subsection 3.

6. To qualify for a pharmacy license, the applicant shall submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board that shall include the following information and be given under oath:

a. Ownership.

b. Location.

c. The license number of each pharmacist employed by the pharmacy at the time of application.

d. The trade or corporate name of the pharmacy.

e. The name of the pharmacist in charge, who has the authority and responsibility for the pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

7. A person who falsely makes the affidavit prescribed in subsection 6 is subject to all penalties prescribed for making a false affidavit.

8. A pharmacy license issued by the board under this chapter shall be issued in the name of the pharmacist in charge and is not transferable or assignable.

9. The board shall specify by rule minimum standards for professional responsibility in the conduct of a pharmacy.

10. A separate license is required for each principal place of practice.

11. The license of the pharmacy shall be displayed.

87 Acts, ch 215, §13; 98 Acts, ch 1100, §20

155A.13A Nonresident pharmacy license — required, renewal, discipline.

1. *License required.* A pharmacy located outside of this state which delivers, dispenses, or distributes by any method, prescription drugs or devices to an ultimate user in this state shall obtain a nonresident pharmacy license from the board. The board shall make available an application form for a nonresident pharmacy license and shall require such information it deems necessary to fulfill the purposes of this section. A nonresident pharmacy shall do all of the following in order to obtain a nonresident pharmacy license from the board:

a. Submit a completed application form and an application fee as determined by the board.

b. Submit evidence of possession of a valid license, permit, or registration as a pharmacy in compliance with the laws of the state in which it is located, a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located, and evidence of compliance with all legal directions and requests for information issued by the regulatory or licensing agency of the state in which it is located.

c. Submit a list of the names, titles, and locations of all principal owners, partners, or officers of the nonresident pharmacy, all pharmacists employed by the nonresident pharmacy who deliver, dispense, or distribute by any method prescription drugs to an ultimate user in this state, and of the pharmacist in charge of the nonresident pharmacy. A nonresident pharmacy shall update the list within thirty days of any addition, deletion, or other change to the list.

d. Submit evidence that the nonresident pharmacy maintains records of the controlled sub-

stances delivered, dispensed, or distributed to ultimate users in this state.

e. Submit evidence that the nonresident pharmacy provides, during its regular hours of operation for at least six days and for at least forty hours per week, toll-free telephone service to facilitate communication between ultimate users in this state and a pharmacist who has access to the ultimate user's records in the nonresident pharmacy, and that the toll-free number is printed on the label affixed to each container of prescription drugs delivered, dispensed, or distributed in this state.

2. *License renewal.* A nonresident pharmacy shall renew its license on or before January 1 annually. In order to renew a nonresident pharmacy license, a nonresident pharmacy shall submit a renewal fee as determined by the board, and shall fulfill all of the requirements of subsection 1, paragraphs *"b"* through *"e"*. A nonresident pharmacy shall pay an additional fee for late renewal as determined by the board.

3. *Discipline.* The board may deny, suspend, or revoke a nonresident pharmacy license for any violation of this section, section 155A.15, subsection 2, paragraph *"a"*, *"b"*, *"d"*, *"e"*, *"f"*, *"g"*, *"h"*, or *"i"*, chapter 124, 124A, 124B, 126, or 205, or a rule of the board.

91 Acts, ch 233, §1; 94 Acts, ch 1009, §18

155A.14 Renewal of pharmacy license.

The board shall specify by rule the procedures to be followed and the fee to be paid for a renewal certificate, and the penalties for late renewal or failure to renew a pharmacy license.

87 Acts, ch 215, §14

155A.15 Pharmacies — license required — discipline, violations, and penalties.

1. A pharmacy subject to section 155A.13 shall not be operated until a license or renewal certificate has been issued to the pharmacy by the board.

2. The board shall refuse to issue a pharmacy license for failure to meet the requirements of section 155A.13. The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

a. Been convicted of a felony or a misdemeanor involving moral turpitude, or if the applicant is an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor involving moral turpitude, under the law of this state, another state, or the United States.

b. Advertised any prescription drugs or devices in a deceitful, misleading, or fraudulent manner.

c. Violated any provision of this chapter or any rule adopted under this chapter or that any owner or employee of the pharmacy has violated any provision of this chapter or any rule adopted under this chapter.

d. Delivered without legal authorization prescription drugs or devices to a person other than one of the following:

(1) A pharmacy licensed by the board.

(2) A practitioner.

(3) A person who procures prescription drugs or devices for the purpose of lawful research, teaching, or testing, and not for resale.

(4) A manufacturer or wholesaler licensed by the board.

However, this chapter does not prohibit a pharmacy from furnishing a prescription drug or device to a licensed health care facility for storage in secured emergency pharmaceutical supplies containers maintained within the facility in accordance with rules of the department of inspections and appeals and rules of the board.

e. Allowed an employee who is not a licensed pharmacist to practice pharmacy.

f. Delivered mislabeled prescription or nonprescription drugs.

g. Failed to engage in or ceased to engage in the business described in the application for a license.

h. Failed to keep and maintain records as required by this chapter, the controlled substances Act, or rules adopted under the controlled substances Act.

i. Failed to establish effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by this chapter and other Iowa or federal laws or rules.

87 Acts, ch 215, §15; 91 Acts, ch 233, §2; 97 Acts, ch 39, §2

155A.16 Procedure.

Unless otherwise provided, any disciplinary action taken by the board under section 155A.12 or 155A.15 is governed by chapter 17A and the rules of practice and procedure before the board.

87 Acts, ch 215, §16

155A.17 Wholesale drug license.

1. A person shall not establish, conduct, or maintain a wholesale drug business as defined in this chapter without a license. The license shall be identified as a wholesale drug license.

2. The board shall establish standards for drug wholesaler licensure and may deny, suspend, or revoke a drug wholesale license for failure to meet the standards or for a violation of the laws of this state, another state, or the United States relating to prescription drugs or controlled substances, or for a violation of this chapter, chapter 124, 124A, 124B, 126, or 205, or a rule of the board.

3. The board shall adopt rules pursuant to chapter 17A on matters pertaining to the issuance of a wholesale drug license. The rules shall pro-

vide for conditions of licensure, compliance standards, licensure fees, disciplinary action, and other relevant matters.

4. This section does not apply to a manufacturer's representative acting in the usual course of business or employment as a manufacturer's representative.

87 Acts, ch 215, §17; 91 Acts, ch 233, §3

155A.18 Penalties.

The board shall impose penalties as allowed under section 272C.3. In addition, civil penalties not to exceed twenty-five thousand dollars, may be imposed.

87 Acts, ch 215, §18

155A.19 Notifications to board.

1. A pharmacy shall report in writing to the board, pursuant to its rules, the following:

a. Permanent closing.

b. Change of ownership.

c. Change of location.

d. Change of pharmacist in charge.

e. The sale or transfer of prescription drugs, including controlled substances, on the permanent closing or change of ownership of the pharmacy.

f. Out-of-state purchases of controlled substances.

g. Theft or significant loss of any controlled substance on discovery of the theft or loss.

h. Disasters, accidents, and emergencies that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, and disease.

2. A pharmacist shall report in writing to the board within ten days a change of name, address, or place of employment.

87 Acts, ch 215, §19; 91 Acts, ch 233, §4

155A.20 Unlawful use of terms and titles — impersonation.

1. A person shall not display in or on any store or place of business the word or words: *"apothecary"*, *"drug"*, *"drug store"*, or *"pharmacy"*, either in English or any other language, any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead the public unless it is a pharmacy or drug wholesaler licensed under this chapter.

2. A person shall not do any of the following:

a. Impersonate before the board an applicant applying for licensing under this chapter.

b. Impersonate an Iowa licensed pharmacist.

c. Use the title pharmacist, druggist, apothecary, or words of similar intent unless the person is licensed to practice pharmacy.

3. A pharmacist shall not utilize the title *"Dr."* or *"Doctor"* if that pharmacist has not acquired the doctor of pharmacy degree from an approved college of pharmacy or the doctor of philosophy degree in an area related to pharmacy.

87 Acts, ch 215, §20

155A.21 Unlawful possession of prescription drug — penalty.

1. A person found in possession of a drug limited to dispensation by prescription, unless the drug was so lawfully dispensed, commits a serious misdemeanor.

2. Subsection 1 does not apply to a licensed pharmacy, licensed wholesaler, physician, veterinarian, dentist, podiatric physician, therapeutically certified optometrist, a nurse acting under the direction of a physician, or the board of pharmacy examiners, its officers, agents, inspectors, and representatives, nor to a common carrier, manufacturer's representative, or messenger when transporting the drug in the same unbroken package in which the drug was delivered to that person for transportation.

87 Acts, ch 215, §21; 95 Acts, ch 108, §14

155A.22 General penalty.

A person who violates any of the provisions of this chapter or any chapter pertaining to or affecting the practice of pharmacy for which a specific penalty is not provided commits a simple misdemeanor.

87 Acts, ch 215, §22

155A.23 Prohibited acts.

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a prescription drug by:

a. Fraud, deceit, misrepresentation, or subterfuge.

b. Forgery or alteration of a prescription or of any written order.

c. Concealment of a material fact.

d. Use of a false name or the giving of a false address.

2. Willfully make a false statement in any prescription, report, or record required by this chapter.

3. For the purpose of obtaining a prescription drug, falsely assume the title of or claim to be a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, podiatric physician, veterinarian, or other authorized person.

4. Make or utter any false or forged prescription or written order.

5. Affix any false or forged label to a package or receptacle containing prescription drugs.

Information communicated to a physician in an unlawful effort to procure a prescription drug or to procure the administration of a prescription drug shall not be deemed a privileged communication.

87 Acts, ch 215, §23; 95 Acts, ch 108, §15

155A.24 Penalties.

A person who violates a provision of section 155A.23 or who sells or offers for sale, gives away, or administers to another person any prescription drug commits a public offense and shall be punished as follows:

If the prescription drug is a controlled substance, the person shall be punished pursuant to section 124.401, subsection 1, and section 124.411.

If the prescription drug is not a controlled substance, the person, upon conviction of a first offense, is guilty of a serious misdemeanor. For a second offense, or if in case of a first offense the offender previously has been convicted of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs, the offender is guilty of an aggravated misdemeanor. For a third or subsequent offense or if in the case of a second offense the offender previously has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs, the offender is guilty of a class "D" felony.

A person who violates any provision of this chapter by selling, giving away, or administering any prescription drug to a minor is guilty of a class "C" felony.

This section does not prevent a licensed practitioner of medicine, dentistry, podiatry, nursing, veterinary medicine, or pharmacy from acts necessary in the ethical and legal performance of the practitioner's profession.

87 Acts, ch 215, §24

155A.25 Burden of proof.

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this chapter, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

87 Acts, ch 215, §25

155A.26 Enforcement — agents as peace officers.

The board of pharmacy examiners, its officers, agents, inspectors, and representatives, and all peace officers within the state, and all county attorneys shall enforce all provisions of this chapter, except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to prescription drugs. Officers, agents, inspectors, and representatives of the board of pharmacy examiners shall have the powers and status of peace officers when enforcing the provisions of this chapter.

87 Acts, ch 215, §26

155A.27 Requirements for prescription.

Each prescription drug order issued or filled in this state:

1. If written or electronic, shall contain:

a. The date of issue.

b. The name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed.

c. The name, strength, and quantity of the drug, medicine, or device prescribed.

d. The directions for use of the drug, medicine, or device prescribed.

e. The name, address, and written or electronic signature of the practitioner issuing the prescription.

f. The federal drug enforcement administration number, if required under chapter 124.

2. If oral, the practitioner issuing the prescription shall furnish the same information required for a written prescription, except for the written signature and address of the practitioner. Upon receipt of an oral prescription, the pharmacist shall promptly reduce the oral prescription to a written format by recording the information required in a written prescription.

87 Acts, ch 215, §27; 97 Acts, ch 39, §3, 4

155A.28 Label of prescription drugs.

The label of any drug or device sold and dispensed on the prescription of a practitioner shall be in compliance with rules adopted by the board.

87 Acts, ch 215, §28

155A.29 Prescription refills.

1. Except as specified in subsection 2, a prescription for any prescription drug or device which is not a controlled substance shall not be filled or refilled more than eighteen months after the date on which the prescription was issued and a prescription which is authorized to be refilled shall not be refilled more than eleven times.

2. A pharmacist may exercise professional judgment by refilling a prescription without prescriber authorization if all of the following are true:

a. The pharmacist is unable to contact the prescriber after reasonable effort.

b. Failure to refill the prescription might result in an interruption of therapeutic regimen or create patient suffering.

c. The pharmacist informs the patient or the patient's representative at the time of dispensing, and the practitioner at the earliest convenience that prescriber reauthorization is required.

3. Prescriptions may be refilled once pursuant to subsection 2 for a period of time reasonably necessary for the pharmacist to secure prescriber authorization.

87 Acts, ch 215, §29

155A.30 Out-of-state prescription orders.

Prescription drug orders issued by out-of-state

practitioners who would be authorized to prescribe if they were practicing in Iowa may be filled by licensed pharmacists operating in licensed Iowa pharmacies.

87 Acts, ch 215, §30

155A.31 Reference library.

A licensed pharmacy in this state shall maintain a reference library pursuant to rules of the board.

87 Acts, ch 215, §31

155A.32 Drug product selection — restrictions.

1. If an authorized prescriber prescribes, either in writing or orally, a drug by its brand or trade name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated bioavailability as the one prescribed for dispensing and sale to the patient. If the cost of the prescription or any part of it will be paid by expenditure of public funds authorized under chapter 249A, the pharmacist shall exercise professional judgment by selecting a drug product with the same generic name and demonstrated bioavailability as the one prescribed for dispensing and sale. If the pharmacist exercises drug product selection, the pharmacist shall inform the patient of the savings which the patient will obtain as a result of the drug product selection and pass on to the patient no less than fifty percent of the difference in actual acquisition costs between the drug prescribed and the drug substituted.

2. The pharmacist shall not exercise the drug product selection described in this section if either of the following is true:

a. The prescriber specifically indicates that no drug product selection shall be made.

b. The person presenting the prescription indicates that only the specific drug product prescribed should be dispensed. However, this paragraph does not apply if the cost of the prescription or any part of it will be paid by expenditure of public funds authorized under chapter 249A.

3. If selection of a generically equivalent product is made under this section, the pharmacist making the selection shall note that fact and the name of the manufacturer of the selected drug on the prescription presented by the patient or the patient's adult representative.

87 Acts, ch 215, §32

155A.33 Delegation of technical functions — automated dispensing systems.

A pharmacist may delegate technical dispensing functions to pharmacy technicians, but only if the pharmacist is physically present to verify the accuracy and completeness of the patient's prescription prior to the delivery of the prescription to the patient or the patient's representative. However, the physical presence requirement does not apply when a pharmacist is utilizing an automated dispensing system. When using an automated dispensing system, the pharmacist shall utilize an internal quality control assurance plan that ensures accuracy for dispensing. Verification of automated dispensing accuracy and completeness remains the responsibility of the pharmacist and shall be determined in accordance with rules adopted by the board.

87 Acts, ch 215, §33; 96 Acts, ch 1070, §4; 2002 Acts, ch 1108, §25

Section amended

155A.34 Transfer of prescriptions.

A pharmacist may transfer a valid prescription order to another pharmacist pursuant to rules adopted by the board.

87 Acts, ch 215, §34

155A.35 Patient medication records.

A licensed pharmacy shall maintain patient medication records in accordance with rules adopted by the board.

87 Acts, ch 215, §35

155A.36 Medication delivery systems.

Drugs dispensed utilizing unit dose packaging shall comply with labeling and packaging requirements in accordance with rules adopted by the board.

87 Acts, ch 215, §36

155A.37 Code of professional responsibility for board employees.

1. The board shall adopt a code of professional responsibility to regulate the conduct of board employees responsible for inspections and surveys of pharmacies.

2. The code shall contain a procedure to be followed by personnel of the board in all of the following:

a. On entering a pharmacy.

b. During inspection of the pharmacy.

c. During the exit conference.

3. The code shall contain standards of conduct that personnel of the board are to follow in dealing with the staff and management of the pharmacy and the general public.

4. The board shall establish a procedure for receiving and investigating complaints of violations of this code. The board shall investigate all complaints of violations. The results of an investigation shall be forwarded to the complainant.

5. The board may adopt rules establishing sanctions for violations of this code of professional responsibility.

87 Acts, ch 215, §37

155A.38 Dispensing drug samples.

A person authorized pursuant to this chapter to dispense shall, when dispensing drug samples, do so without additional charge to the patient.

88 Acts, ch 1232, §3

155A.39 Programs to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians — reporting, confidentiality, immunity, funding.

1. A person or pharmaceutical peer review committee may report relevant facts to the board relating to the acts of a pharmacist in this state, a pharmacist-intern as defined in section 155A.3, subsection 23, or a pharmacy technician in this state if the person or peer review committee has knowledge relating to the pharmacist, pharmacist-intern, or pharmacy technician which, in the opinion of the person or pharmaceutical peer review committee, might impair competency due to chemical abuse, chemical dependence, or mental or physical illness, or which might endanger the public health and safety, or which provide grounds for disciplinary action as specified in this chapter and in the rules of the board.

2. A committee of a professional pharmaceutical organization, its staff, or a district or local intervenor participating in a program established to aid pharmacists, pharmacist-interns, or pharmacy technicians impaired by chemical abuse, chemical dependence, or mental or physical illness may report in writing to the board the name of the impaired pharmacist, pharmacist-intern, or pharmacy technician together with pertinent information relating to the impairment. The board may report to a committee of a professional pharmaceutical organization or the organization's designated staff information which the board receives with regard to a pharmacist, pharmacist-intern, or pharmacy technician who may be impaired by chemical abuse, chemical dependence, or mental or physical illness.

3. Upon determination by the board that a report submitted by a peer review committee or a professional pharmaceutical organization committee is without merit, the report shall be expunged from the pharmacist's, pharmacist-intern's, or pharmacy technician's individual record in the board's office. A pharmacist, pharmacist-intern, pharmacy technician, or an authorized representative of the pharmacist, pharmacist-intern, or pharmacy technician shall be entitled on request to examine the peer review committee report or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's, pharmacist-intern's, or pharmacy technician's view with respect to any information existing in the report.

4. Notwithstanding other provisions of the Code, the records and proceedings of the board, its authorized agents, a peer review committee, or a pharmaceutical organization committee as set out in subsections 1 and 2 shall be privileged and confidential and shall not be considered public records or open records unless the affected pharmacist, pharmacist-intern, or pharmacy technician so requests and shall not be subject to a subpoena or to a discovery proceeding. The board may disclose the records and proceedings only as follows:

a. In a criminal proceeding.

b. In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order.

c. To the pharmacist licensing or disciplinary authorities of other jurisdictions.

d. To the pharmacy technician registering, licensing, or disciplinary authorities of other jurisdictions.

e. Pursuant to an order of a court of competent jurisdiction.

f. Pursuant to subsection 11.

g. As otherwise provided by law.

5. An employee or a member of the board, a peer review committee member, a professional pharmaceutical organization committee member, a professional pharmaceutical organization district or local intervenor, or any other person who furnishes information, data, reports, or records in good faith for the purpose of aiding the impaired pharmacist, pharmacist-intern, or pharmacy technician, shall be immune from civil liability. This immunity from civil liability shall be liberally construed to accomplish the purpose of this section and is in addition to other immunity provided by law.

6. An employee or member of the board or a committee or intervenor program is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

7. The board may contract with professional pharmaceutical associations or societies to provide a program for pharmacists, pharmacist-interns, and pharmacy technicians who are impaired by chemical abuse, chemical dependence, or mental or physical illness. Such programs shall include, but not be limited to, education, intervention, and posttreatment monitoring. A contract with a professional pharmaceutical association or society shall include the following requirements:

a. Periodic reports to the board regarding education, intervention, and treatment activities.

b. Immediate notification to the board's executive secretary or director or the executive secretary's or director's designee of the identity of the pharmacist, pharmacist-intern, or pharmacy technician who is participating in a program to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians.

c. Release to the board's executive secretary or director or the executive secretary's or director's designee upon written request of all treatment

records of a participant.

d. Quarterly reports to the board, by case number, regarding each participant's diagnosis, prognosis, and recommendations for continuing care, treatment, and supervision which maintain the anonymity of the participant.

e. Immediate reporting to the board of the name of an impaired pharmacist, pharmacist-intern, or pharmacy technician who the treatment organization believes to be an imminent danger to either the public or to the pharmacist, pharmacist-intern, or pharmacy technician.

f. Reporting to the board, as soon as possible, the name of a participant who refuses to cooperate with the program, who refuses to submit to treatment, or whose impairment is not substantially alleviated through intervention and treatment.

g. Immediate reporting to the board of the name of a participant where additional information is evident that known distribution of controlled substances or legend drugs to other individuals has taken place.

8. The board may add a surcharge of not more than ten percent of the applicable fee to a pharmacist license fee, pharmacist license renewal fee, pharmacist-intern registration fee, pharmacy technician registration fee, or pharmacy technician registration renewal fee authorized under this chapter to fund programs to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians.

9. The board may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to be used in programs authorized by this section. The board may contract to provide funding on an annual basis to a professional pharmaceutical association or society for expenses incurred in management and operation of a program to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians. Documentation of the use of these funds shall be provided to the board not less than annually for review and comment.

10. Funds and surcharges collected under this section shall be deposited in an account and may be used by the board to administer programs authorized by this section, including the provision of education, intervention, and posttreatment monitoring to an impaired pharmacist, pharmacist-intern, or pharmacy technician and to pay the administrative costs incurred by the board in connection with that funding and appropriate oversight, but not for costs incurred for a participant's initial evaluation, referral services, treatment, or rehabilitation subsequent to intervention.

11. The board may disclose that the license of a pharmacist, the registration of a pharmacist-intern, or the registration of a pharmacy technician who is the subject of an order of the board that is confidential pursuant to subsection 4 is suspended, revoked, canceled, restricted, or retired; or that the pharmacist, pharmacist-intern, or pharmacy technician is in any manner otherwise limited in the practice of pharmacy; or other relevant information pertaining to the pharmacist, pharmacist-intern, or pharmacy technician which the board deems appropriate.

12. The board may adopt rules necessary for the implementation of this section.

97 Acts, ch 39, §5

CHAPTER 156

FUNERAL DIRECTING, MORTUARY SCIENCE, AND CREMATION

Enforcement, §147.87, 147.90, 147.92
Penalty, §147.86
See chapter 523A for sales of cemetery and funeral merchandise and funeral services

156.1 Definitions.
156.2 Persons excluded.
156.3 Eligibility requirements.
156.4 Funeral directors.
156.5 to 156.7 Repealed by 78 Acts, ch 1075, §19.
156.8 Internships.
156.8A Student practicum.
156.9 Revocation of license to practice mortuary science.
156.10 Inspection.
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156.12 Funeral directors — solicitation of business — exceptions — penalty.
156.13 Certificate of national board in lieu of examination.
156.14 Funeral establishment and cremation establishment license.
156.15 Funeral establishments and cremation establishments — license required — discipline, violations, and penalties.

156.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Board"* means the board of mortuary sci-

ence examiners.

2. *"Cremation"* means the technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

3. *"Cremation establishment"* means a place of business as defined by the board which provides any aspect of cremation services.

4. *"Funeral director"* means a person licensed by the board to practice mortuary science.

5. *"Funeral establishment"* means a place of business as defined by the board devoted to providing any aspect of mortuary science.

6. *"Intern"* means a person registered by the board to practice mortuary science under the direct supervision of a funeral director.

7. *"Mortuary science"* means the engaging in any of the following:

a. Preparing, for burial or disposal, or directing and supervising burial or disposal of dead human bodies except supervising cremations.

b. Making funeral arrangements or furnishing any funeral services in connection with disposition of dead human bodies or sale of any casket, vault, urn, or other burial receptacle.

c. Using the words *"funeral director"*, *"mortician"*, or any other title implying that the person is engaged as a funeral director as defined in this section.

d. Embalming by disinfecting or preserving dead human bodies, entire or in part, by the use of chemical substances, fluids or gases in the body, or by the introduction of same into the body by vascular or hypodermic injections, or by direct application into the organs or cavities for the purpose of preservation or disinfection.

Nothing contained in this chapter shall be construed as prohibiting the operation of any funeral home, funeral establishment, or cremation establishment by any person, heir, fiduciary, firm, cooperative burial association, or corporation. However, each such person, firm, cooperative burial association, or corporation shall ensure that all mortuary science services are provided by a funeral director, and shall keep the Iowa department of public health advised of the name of the funeral director.

[S13, §2575-a36; C24, 27, §2584; C31, 35, §2585-c1; C39, §**2585.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.1]

96 Acts, ch 1148, §3

156.2 Persons excluded.

Section 156.1 shall not be construed to include the following classes of persons:

1. Manufacturers, wholesalers, distributors, and retailers of caskets, vaults, urns, or other burial receptacles not engaged in the other functions of furnishing of funeral services or embalming as above defined.

2. Those who use bodies for scientific purposes as defined in sections 142.1, 142.2, and 142.5; or those who make scientific examinations of dead bodies; or those who perform autopsies.

3. Physicians or institutions who preserve parts of human bodies either for scientific purposes or for use as evidence in prospective legal cases.

4. Persons who, without compensation, bury their own dead under a burial transit permit secured pursuant to section 144.32.

[C31, 35, §2585-c2; C39, §**2585.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.2]

96 Acts, ch 1148, §4

156.3 Eligibility requirements.

To be eligible to take the examination for a funeral director's license, a person must have completed two academic years of instruction in a recognized college or university in a course of study approved by the board or have equivalent education as defined by the board and have satisfactorily completed a course of instruction in mortuary science in an accredited school approved by the board.

[S13, §2575-a37, -a38; C24, 27, §2585; C31, 35, §2585-c3, -c4, -c9; C39, §**2585.03, 2585.04, 2585.09;** C46, 50, §156.3, 156.4, 156.9; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.3]

90 Acts, ch 1253, §3

156.4 Funeral directors.

1. The practice of a funeral director must be conducted from a funeral establishment licensed by the board.

2. A person shall not engage in the practice of mortuary science unless licensed.

3. Applications for the examination for a funeral director's license shall be in writing and verified on a form furnished by the board.

4. Written examinations for a funeral director's license shall be held at least once a year at a time and place to be designated by the board. The examination shall include the subjects of funeral directing, burial or other disposition of dead human bodies, sanitary science, embalming, restorative art, anatomy, public health, transportation, business ethics, and such other subjects as the board may designate.

5. After the applicant has completed satisfactorily the course of instruction in mortuary science in an accredited school approved by the board, the applicant must pass the examination prescribed by the board as provided in section 147.34. The applicant may then receive an internship certificate and shall then complete a minimum one-year internship as determined by the board.

[C24, 27, §2585; C31, 35, §2585-c3, -c4; C39, §**2585.03, 2585.04;** C46, 50, §156.3, 156.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.4]

96 Acts, ch 1148, §5; 2000 Acts, ch 1140, §41

156.5 to 156.7 Repealed by 78 Acts, ch 1075, § 19.

156.8 Internships.

The board shall, by rule, provide for internships in mortuary science, and shall regulate the registration, training, and fee for internships.

[C31, 35, §2585-c4; C39, §**2585.04;** C46, 50, §156.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.8]

96 Acts, ch 1148, §6

156.8A Student practicum.

The board, by rule, shall provide for practicums in mortuary science for students available through any school accredited by the American board of funeral service education and shall regulate the registration, training, and fees for such practicums.

2000 Acts, ch 1140, §42

156.9 Revocation of license to practice mortuary science.

1. Notwithstanding section 147.87 and in addition to the provisions of sections 147.58 through 147.71, the board may restrict, suspend, or revoke a license to practice mortuary science or place a licensee on probation. The board shall adopt rules of procedure pursuant to chapter 17A by which to restrict, suspend, or revoke a license. The board may also adopt rules pursuant to chapter 17A relating to conditions of license reinstatement.

2. In addition to the grounds stated in sections 147.55 and 272C.10, the board may revoke or suspend the license of a funeral director for any one of the following acts:

a. Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.

b. Executing a death certificate or burial transit permit for use by anyone except a funeral director or a certified intern who is working under the direct supervision of a funeral director unless otherwise allowed under section 144.32.

c. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice mortuary science.

d. Willful or repeated violations of this chapter, or the rules adopted pursuant to this chapter.

[C31, 35, §2585-c5; C39, §**2585.05;** C46, 50, §156.5; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.9]

87 Acts, ch 30, §1; 96 Acts, ch 1148, §7

156.10 Inspection.

The director of public health shall inspect all places where dead human bodies are prepared or held for burial, entombment, or cremation, and shall adopt and enforce such rules and regulations in connection with the inspection as shall be necessary for the preservation of the public health.

An inspection fee for each place where dead human bodies are prepared for burial or cremation shall be fifteen dollars per year, which shall be collected by the director of public health.

[C31, 35, §2585-c7; C39, §**2585.06;** C46, 50, §156.6; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.10]

96 Acts, ch 1148, §8

156.11 Repealed by 78 Acts, ch 1075, § 19.

156.12 Funeral directors — solicitation of business — exceptions — penalty.

Every funeral director, or person acting on behalf of a funeral director, who pays or causes to be paid any money or other thing of value as a commission or gratuity for the securing of business for the funeral director, and every person who accepts or offers to accept any money or other thing of value as a commission or gratuity from a funeral director in order to secure business for the funeral director commits a simple misdemeanor. This section does not prohibit any person, firm, co-operative burial association, or corporation, subject to the provisions of this chapter, from using legitimate and honest advertising. This section does not apply to sales made in accordance with chapter 523A.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.12]

87 Acts, ch 30, §2

156.13 Certificate of national board in lieu of examination.

The Iowa department of public health may, with the approval of the board, accept in lieu of the examination prescribed in section 156.4, a certificate of examination issued by the National Conference of Funeral Service Examining Boards, and every applicant for a license upon the basis of such certificate shall be required to pay the fee.

[C62, 66, 71, 73, 75, 77, 79, 81, §156.13]

156.14 Funeral establishment and cremation establishment license.

1. A person shall not establish, conduct, or maintain a funeral establishment or a cremation establishment in this state without a license. The license shall be identified as an establishment license.

a. An establishment license issued by the board under this chapter shall be issued for a site and in the name of the individual in charge and is not transferable or assignable.

b. A license is required for each place of practice.

c. The license of the establishment shall be displayed.

2. The board shall specify by rule the licensing procedures to be followed, including specifications

of forms for use in applying for an establishment license and fees for filing an application. The board shall specify by rule minimum standards for professional responsibility in the conduct of a funeral establishment or a cremation establishment.

3. To qualify for a funeral establishment or a cremation establishment license, the applicant shall submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board that shall include the following information and be given under oath:

a. Ownership of the establishment.

b. Location of the establishment.

c. The license number of each funeral director employed by the establishment at the time of the application.

d. The trade or corporate name of the establishment.

e. The name of the individual in charge, who has the authority and responsibility for the establishment's compliance with laws and rules pertaining to the operation of the establishment.

4. A person who falsely makes the affidavit prescribed in subsection 3 is subject to all penalties prescribed for making a false affidavit.

96 Acts, ch 1148, §9

156.15 Funeral establishments and cremation establishments — license required — discipline, violations, and penalties.

1. A funeral establishment or cremation establishment shall not be operated until a license or renewal certificate has been issued to the establishment by the board.

2. The board shall refuse to issue an establishment license when an applicant fails to meet the requirements of section 156.14. The board may refuse to issue or renew a license or may impose a penalty, not to exceed ten thousand dollars, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

a. Been convicted of a felony or a misdemeanor involving moral turpitude, or if the applicant is an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor involving moral turpitude, under the laws of this state, another state, or the United States.

b. Violated this chapter or any rule adopted under this chapter or that any owner or employee of the establishment has violated this chapter or any rule adopted under this chapter.

c. Knowingly aided, assisted, procured, advised, or allowed a person to unlawfully practice mortuary science.

d. Failed to engage in or ceased to engage in the business described in the application for a license.

3. Failed to keep and maintain records as required by this chapter or rules adopted under this chapter.

96 Acts, ch 1148, §10

CHAPTER 157

COSMETOLOGY

Enforcement, §147.87, 147.90, 147.92

157.1 Definitions.
157.2 Prohibitions — exceptions.
157.3 License requirements.
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157.5 License to practice electrolysis. Repealed by 92 Acts, ch 1205, §27.
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157.9 License suspension and revocation.
157.10 Course of study.
157.11 Salon licenses.
157.12 Supervisors.
157.13 Violations.
157.14 Rules.
157.15 Penalty.

157.1 Definitions.

For purposes of this chapter:

1. *"Board"* means the board of cosmetology arts and sciences examiners.

2. *"Cosmetologist"* means a person who performs the practice of cosmetology, or otherwise by the person's occupation claims to have knowledge or skill particular to the practice of cosmetology. Cosmetologists shall not represent themselves to the public as being primarily in the practice of haircutting unless that function is, in fact, their primary specialty.

3. *"Cosmetology"* means all of the following practices:

a. Arranging, dressing, curling, waving, shampooing, cutting, singeing, bleaching, coloring, or similar works, upon the hair of any person; or upon a wig or hairpiece when done in conjunction with haircutting or hairstyling by any means.

b. Massaging, cleansing, stimulating, exercising, beautifying, or similar techniques upon the scalp, face, neck, arms, hands, or upper part of the body of any person with the hands or mechanical or electrical apparatus or appliances or with the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or other preparations.

c. Manicuring the nails of any person.

d. Electrology.

e. Esthetics.

f. Nail technology.

4. *"Cosmetology arts and sciences"* means any or all of the following practices, performed with or without compensation by a licensee:

a. Cosmetology.

b. Electrology.

c. Esthetics.

d. Nail technology.

5. *"Department"* means the Iowa department of public health.

6. *"Electrologist"* means a person who performs the practice of electrology.

7. *"Electrology"* means the removal of superfluous hair of a person by the use of an electric needle or other electronic process.

8. *"Esthetician"* means a person who performs the practice of esthetics.

9. *"Esthetics"* means the following:

a. Beautifying, massaging, cleansing, or stimulating the skin of a person, except the scalp, by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams or any device, electrical or otherwise, for the care of the skin.

b. Applying makeup or eyelashes to a person, tinting eyelashes or eyebrows, or lightening hair on the body except the scalp.

c. Removing superfluous hair from the body of a person by the use of depilatories, waxing, or tweezers.

10. *"Instructor"* means a person licensed for the purpose of teaching cosmetology arts and sciences.

11. *"Manicuring"* means the practice of cleansing, shaping, or polishing the fingernails and massaging the hands and lower arms of a person. *"Manicuring"* does not include the application of sculptured nails or nail extensions to the fingernails or toenails of a person, and does not include the practice of pedicuring.

12. *"Manicurist"* means a person who performs the practice of manicuring.

13. *"Nail technologist"* means a person who performs the practice of nail technology.

14. *"Nail technology"* means all of the following:

a. Applying sculptured nails, nail extensions, wraps, overlays, nail art, or any other nail technique to the fingernails and toenails of a person.

b. Massaging the hands, arms, ankles, and feet of a person.

c. Removing superfluous hair from hands, arms, feet, or legs of a person by the use of wax or a tweezer.

d. Manicuring the nails of a person.

15. *"Salon"* means a fixed establishment or place where one or more persons engage in the practice of cosmetology arts and sciences, including, but not limited to, a retail establishment where cosmetologists engage in the practice of cosmetology arts and sciences.

16. *"School of cosmetology arts and sciences"* means an establishment licensed for the purpose of teaching cosmetology arts and sciences.

[C27, 31, 35, §2585-b1; C39, §**2585.10;** C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.1]

92 Acts, ch 1205, §1; 93 Acts, ch 61, §1

157.2 Prohibitions — exceptions.

1. It is unlawful for a person to practice cosmetology arts and sciences with or without compensation unless the person possesses a license issued under section 157.3. However, practices listed in section 157.1 when performed by the following persons are not defined as the practice of cosmetology arts and sciences:

a. Licensed physicians and surgeons, osteopaths, osteopathic physicians and surgeons, nurses, dentists, podiatric physicians, optometrists, chiropractors, and physical therapists, when exclusively engaged in the practice of their respective professions.

b. Licensed barbers who practice barbering as defined in section 158.1.

c. Students enrolled in licensed schools of cosmetology arts and sciences or barber schools who are practicing under the instruction or immediate supervision of an instructor.

d. Persons who perform without compensation any of the practices listed in section 157.1 on an emergency basis or on a casual basis.

e. Employees and residents of hospitals, health care facilities, orphans' homes, juvenile homes, and other similar facilities who shampoo, arrange, dress, or curl the hair of any resident without receiving direct compensation from the person receiving the service.

f. Persons who perform any of the practices listed in section 157.1 on themselves or on a member of the person's immediate family.

g. Employees of a licensed barbershop when manicuring fingernails, if permitted under section 158.14, subsection 2.

h. Persons who apply samples of makeup, nail polish or other nail care products, cosmetics, or other cosmetology or esthetics preparations to persons to demonstrate the products in the regular course of business.

2. Cosmetologists shall not represent themselves to the public as electrologists, estheticians,

or nail technologists unless the cosmetologist has completed the additional course study for the respective practice as prescribed by the board pursuant to section 157.10.

[C27, 31, 35, §2585-b2; C39, §**2585.11;** C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.2]

89 Acts, ch 240, §2; 92 Acts, ch 1205, §2; 93 Acts, ch 61, §2, 3; 96 Acts, ch 1034, §68

157.3 License requirements.

1. An applicant shall be issued a license to practice any of the cosmetology arts and sciences by the department when the applicant satisfies all of the following:

a. Presents to the department a high school diploma or its equivalent.

b. Presents to the department a diploma, or similar evidence, issued by a licensed school of cosmetology arts and sciences indicating that the applicant has completed the course of study for the appropriate practice of the cosmetology arts and sciences prescribed by the board. An applicant may satisfy this requirement upon presenting a diploma or similar evidence issued by a school in another state, recognized by the board, which provides instruction regarding the practice for which licensure is sought, provided that the course of study is equivalent to or greater in length and scope than that required for a school in this state, and is approved by the board.

c. Completes the application form prescribed by the board.

d. Passes an examination prescribed by the board. The examination may include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method. However, a member of the board who is a licensed instructor of cosmetology arts and sciences shall not be involved in the selection or administration of the exam.

2. Notwithstanding subsection 1, a person who completes the application form prescribed by the board and who submits satisfactory proof of having been licensed in a practice of the cosmetology arts and sciences in another state for at least twelve months in the twenty-four month period preceding the submission of the application shall be allowed to take the examination for a license to practice the appropriate practice of the cosmetology arts and sciences. However, the examination requirement shall be waived for those persons who submit evidence of licensure in another state which has a reciprocal agreement with the state of Iowa under sections 147.44 to 147.49.

[C27, 31, 35, §2585-b3, -b4; C39, §**2585.12, 2585.13;** C46, 50, 54, 58, 62, 66, 71, 73, §157.3, 157.4; C77, 79, 81, §157.3]

92 Acts, ch 1097, §5; 92 Acts, ch 1205, §3

157.4 Temporary permits.

1. A person who completes the requirements for licensure listed in section 157.3, except for the examination, shall be known as a trainee and shall be issued a temporary permit by the department which allows the applicant to practice in the cosmetology arts and sciences from the date of application until passage of the examination subject to this subsection. An applicant shall take the first available examination administered by the board, and may retain the temporary permit if the applicant does not pass the examination. An applicant who does not pass the first examination shall take the next available examination administered by the board. The temporary permit of an applicant who does not pass the second examination shall be revoked. An applicant who passes either examination shall be issued a license pursuant to section 157.3. The board shall adopt rules providing for a waiver of the requirement to take the first available examination for good cause.

2. The department may issue a temporary permit for the purpose of demonstrating cosmetology arts and sciences upon recommendation of the board. The board shall determine and state its recommendations and the length of time the temporary permit issued under this subsection is valid.

3. The fee for a temporary permit shall be established by the board as provided in section 147.80.

[C31, 35, §2585-c10; C39, §**2585.20;** C46, 50, 54, 58, 62, 66, 71, 73, §157.11; C77, 79, 81, §157.4]

92 Acts, ch 1205, §4

157.5 License to practice electrolysis. Repealed by 92 Acts, ch 1205, § 27.

157.5A Manicurists.

The department shall issue a license to practice manicuring to any person who submits proof of successful completion of a course of at least forty hours of training relating to manicuring in a licensed school of cosmetology arts and sciences or licensed barber school. The board shall adopt rules defining the course of study for a manicurist and the practices which a licensed manicurist may perform.

The applicant shall pay a license fee as determined by the board under section 147.80.

The rules of the board shall include a provision whereby a license to practice manicuring may be granted by reciprocity or endorsement to a person who is licensed in another state to practice manicuring.

89 Acts, ch 240, §4; 92 Acts, ch 1205, §5

157.6 Sanitary rules — practice in the home.

The department shall prescribe sanitary rules for salons and schools of cosmetology arts and sciences which shall include the sanitary conditions necessary for the practice of cosmetology arts and sciences and for the prevention of infec-

tious and contagious diseases. Subject to local zoning ordinances, a salon may be established in a residence if a room other than the living quarters is equipped for that purpose. The department shall enforce this section and make necessary inspections for enforcement purposes.

[C27, 31, 35, §2585-b6; C39, §**2585.15;** C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.6]

92 Acts, ch 1205, §6

157.7 Inspectors and clerical assistants.

The department of inspections and appeals shall employ personnel under chapter 19A to perform duties related to inspection functions under this chapter. The department of inspections and appeals shall, when possible, integrate inspection efforts under this chapter with inspections conducted under chapter 158.

The Iowa department of public health may employ clerical assistants under chapter 19A to administer and enforce this chapter. The costs and expenses of the clerical assistants shall be paid from funds appropriated to the department of public health.

[C27, 31, 35, §2585-b9; C39, §**2585.17;** C46, 50, 54, 58, 62, 66, 71, 73, §157.8; C77, 79, 81, §157.7]

90 Acts, ch 1204, §23

157.8 Licensing of schools of cosmetology arts and sciences and instructors.

1. It is unlawful for a school of cosmetology arts and sciences to operate unless the owner has obtained a license issued by the department. The owner shall file a verified application with the department on forms prescribed by the board. The application for a license for a school shall be accompanied by the annual license fee determined pursuant to section 147.80 and shall state the name and location of the school and such other additional information as the board may require. The license is valid for one year and may be renewed. A license for a school of cosmetology arts and sciences shall not be issued for any space in any location where the same space is also licensed as a barber school. The school of cosmetology arts and sciences must pass a sanitary inspection under section 157.6. An annual inspection of each school of cosmetology arts and sciences, including the educational activities of each school, shall be conducted and completed by the board prior to renewal of the license.

2. The number of instructors for each school shall be based upon total enrollment, with a minimum of two instructors employed on a full-time basis for up to thirty students and an additional instructor for each fifteen additional students. However, a school operated by an area community college prior to September 1, 1982, with only one instructor per fifteen students is not subject to this paragraph and may continue to operate with the ratio of one instructor to fifteen students.

a. A person employed as an instructor in the cosmetology arts and sciences by a licensed school shall be licensed in the practice and shall possess a separate instructor's license which shall be renewed biennially. An instructor shall file an application with the department on forms prescribed by the board. Prior to licensure, an applicant for an instructor's license shall have been actively engaged in the practice for a period of two years and complete a course of study required by the board or an instructor's course at a school for cosmetology arts and sciences, and meet any other requirement established by the board.

b. The application for an instructor's license shall be accompanied by the biennial fee determined pursuant to section 147.80.

[C31, 35, §2585-c9; C39, §**2585.18;** C46, 50, 54, 58, 62, 66, 71, 73, §157.9; C77, 79, 81, §157.8]

83 Acts, ch 68, §1; 92 Acts, ch 1205, §7

157.9 License suspension and revocation.

Any license issued by the department under the provisions of this chapter may be suspended, revoked, or renewal denied by the board for violation of any provision of this chapter or chapter 158 or rules promulgated by the board under the provisions of chapter 17A.

[C77, 79, 81, §157.9]

157.10 Course of study.

1. The course of study required for licensure for the practice of cosmetology shall be two thousand one hundred hours. The hours of a course of study required for licensure for the practices of electrology, esthetics, and nail technology shall be established by the board. The board shall adopt rules to define the course and content of study for each practice of cosmetology arts and sciences.

2. A person licensed in or a student of a practice of cosmetology arts and sciences shall be granted full credit for each course successfully completed which meets the requirements for licensure in another practice of cosmetology arts and sciences.

3. A barber licensed under chapter 158 or a student in a barber school who applies for licensure in a practice of cosmetology arts and sciences or who enrolls in a school of cosmetology arts and sciences shall be granted, at the discretion of the school, at least half credit and up to full credit for each course successfully completed for licensure as a barber which meets the requirements for licensure in a practice of cosmetology arts and sciences.

[C77, 79, 81, §157.10]

88 Acts, ch 1110, §1; 92 Acts, ch 1205, §8

157.11 Salon licenses.

A salon shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall per-

form a sanitary inspection of each salon biennially and may perform a sanitary inspection of a salon prior to the issuance of a license. An inspection of a salon shall also be conducted upon receipt of a complaint by the department.

The application shall be accompanied by the biennial license fee determined pursuant to section 147.80. The license is valid for two years and may be renewed.

A licensed school of cosmetology arts and sciences at which students practice cosmetology arts and sciences is exempt from licensing as a salon.

[C77, 79, 81, §157.11]

83 Acts, ch 206, §10; 91 Acts, ch 268, §431; 92 Acts, ch 1205, §9; 99 Acts, ch 141, §28

157.12 Supervisors.

A person who directly supervises the work of practitioners of cosmetology arts and sciences shall be licensed in the practice supervised or a barber licensed under section 158.3.

[C31, 35, §2585-c11; C39, §**2585.21;** C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.12]

88 Acts, ch 1110, §2; 92 Acts, ch 1205, §10

157.13 Violations.

1. It is unlawful for a person to employ an individual to practice cosmetology arts and sciences unless that individual is licensed or has obtained a temporary permit under this chapter. It is unlawful for a licensee to practice with or without compensation in any place other than a licensed salon, a licensed school of cosmetology arts and sciences, or a licensed barbershop as defined in section 158.1, except that a licensee may practice at a location which is not a licensed salon or school of cosmetology arts and sciences under extenuating circumstances arising from physical or mental disability or death of a customer. It is unlawful for a licensee to claim to be a licensed barber, but it is lawful for a licensed cosmetologist to work in a licensed barbershop.

2. If the owner or manager of a salon does not comply with the sanitary rules adopted under section 157.6 or fails to maintain the salon as prescribed by rules of the department, the department may notify the owner or manager in writing of the failure to comply. If the rules are not complied with within five days after receipt of the written notice by the owner or manager, the department shall in writing order the salon closed until the rules are complied with. It is unlawful for a person to practice in a salon which has been closed under this section. The county attorney in each county shall assist the department in enforcing this section.

[C31, 35, §2585-c12; C39, §**2585.22;** C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.13]

88 Acts, ch 1110, §3; 92 Acts, ch 1205, §11

157.14 Rules.

The board shall adopt rules pursuant to chapter 17A to administer the provisions of this chapter.

[C77, 79, 81, §157.14]

89 Acts, ch 3, §1

157.15 Penalty.

A person convicted of violating any of the provisions of this chapter or rules adopted pursuant to this chapter is guilty of a serious misdemeanor.

[C35, §2522; C39, §**2585.24;** C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.15]

92 Acts, ch 1205, §12

CHAPTER 158

BARBERING

Enforcement, §147.87, 147.90, 147.92

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158.3 License requirements.
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158.6 Inspectors and clerical assistants.
158.7 Licensing barber schools.
158.8 Course of study.
158.9 Barbershop licenses.
158.10 Supervisors of barbers.
158.11 Barber assistants. Repealed by 2001 Acts, ch 58, §17.
158.12 License suspension and revocation.
158.13 Violations.
158.14 Manicurists.
158.15 Rules.
158.16 Penalty.

158.1 Definitions.

For the purpose of this chapter:

1. *"Barbering"* means practices listed in this subsection performed with or without compensation. The practices include but are not limited to the following practices performed upon the upper part of the human body of any person for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

a. Shaving or trimming the beard or cutting the hair.

b. Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand, or by electrical or mechanical appliances.

c. Singeing, shampooing, hair body processing, arranging, dressing, curling, blow waving, hair relaxing, bleaching or coloring the hair, or applying hair tonics.

d. Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.

e. Styling, cutting or shampooing hairpieces or wigs when done in conjunction with haircutting or hairstyling.

Barbers shall not represent themselves to the public as being primarily engaged in practices other than haircutting unless the functions are in fact their primary function or specialty.

2. *"Barber"* means a person who performs practices of barbering or otherwise by the person's occupation claims to have knowledge or skill peculiar to the practice of barbering.

3. *"Barbershop"* means an establishment in a fixed location where one or more persons engage in the practice of barbering.

4. *"Barber school"* means an establishment operated by a person for the purpose of teaching barbering.

5. *"Board"* means the board of barber examiners.

6. *"Department"* means the Iowa department of public health.

[C27, 31, 35, §2585-b11; C39, §**2585.25;** C46, 50, 54, 58, 62, 66, 71, 73, §158.1, 158.11(1,2); C77, 79, 81, §158.1]

158.2 Prohibition — exceptions.

It is unlawful for a person to practice barbering with or without compensation unless the person possesses a license issued under the provisions of section 158.3. Practices listed in section 158.1 when performed by the following persons are not defined as practicing barbering:

1. Licensed physicians and surgeons, osteopaths, osteopathic physicians and surgeons, nurses, dentists, podiatric physicians, optometrists, chiropractors, and physical therapists, when exclusively engaged in the practice of their respective professions.

2. Licensed practitioners of cosmetology arts and sciences as defined in section 157.1.

3. Students enrolled in licensed barber schools or schools of cosmetology arts and sciences who are practicing under the instruction or immediate supervision of an instructor.

4. Persons who, without compensation, perform any of the practices on an emergency basis or on a casual basis.

5. Employees and residents of hospitals, health care facilities, orphans' homes, juvenile homes, and other similar facilities who shampoo, arrange, dress, or curl the hair of any resident, or who shave or trim the beard of any resident, without receiving direct compensation from the person receiving the service.

6. Persons who perform any of the practices listed in section 158.1 on themselves or on a member of the person's immediate family.

[C27, 31, 35, §2585-b12; C39, §**2585.26;** C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §158.2]

92 Acts, ch 1205, §18; 96 Acts, ch 1034, §68

158.3 License requirements.

1. An applicant shall be issued a license to practice barbering by the department when the applicant satisfies all of the following:

a. Presents to the department a diploma, or other like evidence, issued by a licensed barber school indicating that the applicant has completed the course of study prescribed by the board.

b. Completes the application form prescribed by the board.

c. Passes an examination prescribed by the board. The examination shall include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method.

d. Presents a certificate, or satisfactory evidence, to the department that the applicant has successfully completed tenth grade, or the equivalent. The provisions of this subsection shall not apply to students enrolled in a barber school maintained at an institution under the control of a director of a division of the department of human services.

2. Notwithstanding the provisions of subsection 1, any person who completes the application form prescribed by the board and who submits satisfactory proof of having been a licensed barber in another state for at least twelve months in the twenty-four month period preceding the submission of the application shall be allowed to take the examination for a license to practice barbering. However, the examination requirement shall be waived for those persons who submit evidence of

licensure in another state which has a reciprocal agreement with the state of Iowa under the provisions of sections 147.44 to 147.49.

3. Notwithstanding the provisions of subsection 1, any person who is registered as a barber's apprentice on the effective date of this chapter may apply to the department prior to October 1, 1976 and shall be issued a license to practice barbering upon payment of the fee prescribed under the provisions of section 147.80.

[C27, 31, 35, §2585-b13, -b14; C39, §**2585.27, 2585.28;** C46, 50, 54, 58, 62, 66, 71, 73, §158.3, 158.4; C77, 79, 81, §158.3]

83 Acts, ch 96, §157, 159; 92 Acts, ch 1097, §6

158.4 Temporary permits.

1. A person who completes the requirements for licensure listed in section 158.3, except for the examination, shall be known as a trainee and shall be issued a temporary permit by the department which allows the applicant to practice barbering from the date of application until passage of the examination subject to this subsection. An applicant shall take the first available examination administered by the board, and may retain the temporary permit if the applicant does not pass the examination. An applicant who does not pass the first examination shall take the next available examination administered by the board. The temporary permit of an applicant who does not pass the second examination shall be revoked. An applicant who passes either examination shall be issued a license pursuant to section 158.3. The board shall adopt rules providing for a waiver of the requirement to take the first available examination for good cause.

2. The department may issue a temporary permit for the purpose of demonstrating barbering upon recommendation of the board. The board shall determine and state its recommendations and the length of time the temporary permit issued under this subsection is valid.

3. The fee for a temporary permit shall be established by the board as provided in section 147.80.

[C77, 79, 81, §158.4]

92 Acts, ch 1205, §19

158.5 Sanitary rules.

The department shall prescribe sanitary rules for barbershops and barber schools which shall include the sanitary conditions necessary for the practice of barbering and for the prevention of infectious and contagious diseases. Subject to local zoning ordinances, a barbershop may be established in a residence if a room other than the living quarters is equipped for that purpose. The department shall enforce the provisions of this section and make necessary inspections for enforcement.

[C27, 31, 35, §2585-b15; C39, §**2585.31;** C46, 50, 54, 58, 62, 66, 71, 73, §158.7; C77, 79, 81, §158.5]

158.6 Inspectors and clerical assistants.

The department of inspections and appeals shall employ personnel under chapter 19A to perform duties related to inspection functions under this chapter. The department of inspections and appeals shall, when possible, integrate inspection efforts under this chapter with inspections conducted under chapter 157.

The Iowa department of public health may employ clerical assistants under chapter 19A to administer and enforce this chapter. The costs and expenses of the clerical assistants shall be paid from funds appropriated to the department of public health.

[C27, 31, 35, §2585-b18; C39, §**2585.33;** C46, 50, 54, 58, 62, 66, 71, 73, §158.9; C77, 79, 81, §158.6]

90 Acts, ch 1204, §24

158.7 Licensing barber schools.

It is unlawful for a barber school to operate unless the owner has obtained a license issued by the department. The owner shall file a verified application with the department on forms prescribed by the board. Any person employed as a barbering instructor in a licensed barber school shall be a licensed barber and shall possess a separate instructor's license which shall be renewed annually. An instructor shall file an application with the department on forms prescribed by the board. The barber school must pass a sanitary inspection, and the course of study of the school must be approved by the board under the provisions of section 158.8.

An annual inspection of each barber school, including the educational activities of each school, shall be conducted and completed by the board prior to renewal of the license.

The application shall be accompanied by the annual license fee determined under the provisions of section 147.80 and shall state the name and location of the school, name of the owner, name of the manager, and such other additional information as the board may require. The license is valid for one year and may be renewed.

A license for a barber school shall not be issued for any space in any location where the same space is licensed as a school of cosmetology.

[C46, 50, 54, 58, 62, 66, 71, 73, §158.11; C77, 79, 81, §158.7]

158.8 Course of study.

The course of study of a barber school shall consist of at least two thousand one hundred hours of instruction as prescribed by the board and shall include instruction in all phases of the practice of barbering as defined in section 158.1, subsection 1. The course shall require at least ten months of instruction for completion. The course shall include not less than three hundred hours of demonstrations and lectures in the following areas: Law; ethics; equipment; shop management; history of barbering; sanitation; sterilization; personal hy-

giene; first aid; bacteriology; anatomy; scalp, skin, hair and their common disorders; electricity as applied to barbering; chemistry and pharmacology; scalp care; hair body processing; hairpieces; honing and stropping; shaving; facials, massage and packs; haircutting; hair tonics; dyeing and bleaching; instruments; soaps; and shampoos, creams, lotions, and tonics. It shall include not less than one thousand four hundred hours of supervised practical instruction in the following areas: Scalp care and shampooing, honing and stropping, shaving, haircutting, hairstyling and blow waving, dyeing and bleaching, hair body processing, facials, massage and packs, beard and mustache trimming, and hairpieces.

A person licensed under section 157.3 who enrolls in a barber school shall be granted full credit for each course successfully completed which meets the requirements of the barber school, which shall be credited toward the two thousand one hundred hour requirement, and the ten-month period does not apply. A person who has been a student in a school of cosmetology arts and sciences licensed under chapter 157 may enroll in a barber school and shall be granted, at the discretion of the school, at least half credit and up to full credit for each course successfully completed which meets the requirements of the barber school.

[C77, 79, 81, §158.8]

88 Acts, ch 1110, §4; 92 Acts, ch 1205, §20

158.9 Barbershop licenses.

A barbershop shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall perform a sanitary inspection of each barbershop biennially and may perform a sanitary inspection of a barbershop prior to the issuance of a license. An inspection of a barbershop shall also be conducted upon receipt of a complaint by the department.

The application shall be accompanied by the biennial license fee determined pursuant to section 147.80. The license is valid for two years and may be renewed.

A licensed barber school at which students practice barbering is exempt from licensing as a barbershop.

[C46, 50, 54, 58, 62, 66, 71, 73, §158.11; C77, 79, 81, §158.9]

83 Acts, ch 206, §11; 91 Acts, ch 268, §432; 99 Acts, ch 141, §29; 2001 Acts, ch 58, §14

158.10 Supervisors of barbers.

A person who directly supervises the work of barbers shall be either a barber licensed under this chapter or a cosmetologist licensed under section 157.3.

[C77, 79, 81, §158.10]

88 Acts, ch 1110, §5

158.11 Barber assistants. Repealed by 2001 Acts, ch 58, § 17.

158.12 License suspension and revocation.

Any license issued by the department under the provisions of this chapter may be suspended, revoked, or renewal denied by the board for violation of any provision of chapter 157 or this chapter or rules promulgated by the board under the provisions of chapter 17A.

[C46, 50, 54, 58, 62, 66, 71, 73, §158.11; C77, 79, 81, §158.12]

158.13 Violations.

1. It is unlawful for a person to employ an individual to practice barbering unless that individual is a licensed barber or has obtained a temporary permit. It is unlawful for a licensed barber to practice barbering with or without compensation in any place other than a licensed barbershop or barber school, or a licensed salon as defined in section 157.1, except that a licensed barber may practice barbering at a location which is not a licensed barbershop or barber school under extenuating circumstances arising from physical or mental disability or death of a customer. It is unlawful for a licensed barber to claim to be a licensed cosmetologist, but it is lawful for a licensed barber to work in a licensed salon.

2. If the owner or manager of a barbershop does not comply with the sanitary rules adopted under the provisions of section 158.5 or fails to maintain the barbershop as prescribed by rules of the department, the department may notify the owner or manager in writing of the failure to comply. If the rules are not complied with within five days after receipt of the written notice by the owner or manager, the department shall in writing order the shop closed until the rules are complied with. It is unlawful for a person to practice barbering in a shop which has been closed under the provisions of this section. The county attorney in each county shall assist the department in enforcing the provisions of this section.

[C27, 31, 35, §2585-b12, -c14; C39, §**2585.26, 2585.30;** C46, 50, 54, 58, 62, 66, 71, 73, §158.1, 158.6; C77, 79, 81, §158.13]

88 Acts, ch 1110, §6; 92 Acts, ch 1205, §22

158.14 Manicurists.

1. A licensed barbershop may employ a licensed manicurist to manicure the fingernails of any person.

2. An unlicensed person who was employed by a licensed barbershop to manicure fingernails prior to July 1, 1989, may continue such employment without meeting licensing requirements un-

der chapter 157.
[C77, 79, 81, §158.14]
89 Acts, ch 240, §5

158.15 Rules.
The board shall adopt rules pursuant to chapter 17A to administer the provisions of this chapter.
[C77, 79, 81, §158.15]
89 Acts, ch 3, §2

158.16 Penalty.
A person convicted of violating any of the provisions of this chapter shall be fined not to exceed one hundred dollars.
[C35, §2522; C39, §**2585.24;** C46, §157.15; C50, 54, 58, 62, 66, 71, 73, §158.12; C77, 79, 81, §158.16]

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VOLUME II

CODE OF IOWA

2003

CONTAINING

ALL STATUTES OF A GENERAL AND PERMANENT NATURE

Including the Acts of a permanent nature
of the Seventy-ninth General Assembly, 2001, 2002

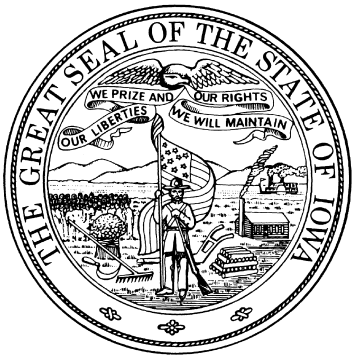

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PREFACE TO 2003 IOWA CODE

The 2003 Iowa Code is published pursuant to Code chapter 2B. Its form is substantially the same as the 2001 Iowa Code, and it covers the permanent enactments of the 2001 and 2002 sessions of the Seventy-ninth General Assembly. The 2003 Code is published in four textual volumes and one Tables and Index volume. A Skeleton and Popular Name Index printed on colored paper appears at the end of each volume.

ARRANGEMENTS OF CODE TITLES, SUBTITLES, AND CHAPTERS. The Table of Contents on page v enumerates the titles and subtitles found in the Code, and each volume contains an Analysis by Titles, Subtitles, and Chapters for that volume.

EDITORIAL DECISIONS. If multiple amendments were enacted to a section or part of a section, all changes that are duplicative or otherwise do not appear to conflict are harmonized as required by Code section 4.11. It is generally assumed that a strike or repeal prevails over an amendment to the same material and does not create an irreconcilable conflict, and that the substitution of the correct title of an officer or department as authorized by law does not create a conflict. Code sections 4.4 through 4.11 provide guidance for codifying conflicting provisions. References to the Iowa court rules have been updated to reflect changes made in the 4th edition of that publication. Code section 2B.13 governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of the changes. At the end of Volume IV are Code Editor's Notes which explain the major editorial decisions relating to enactments of the 2002 session. The Code Editor's Notes relating to enactments of the 2001 session appear at the end of the 2001 Code Supplement.

HISTORIES. Bracketed material at the end of many Code sections traces the history of the subject matter of those sections up through 1982. Beginning with the 1985 Code, that form of section history was not updated. An amendment to or enactment of a section which occurred during or after the 1983 legislative session is indicated by the addition of an Acts citation at the end of the section. If a section is transferred to a new location, the section history will indicate the Code or Code Supplement in which the transfer took place.

CONSTITUTIONS. A codified version of the 1857 Constitution of the State of Iowa, as well as the original version, is included with the introductory material at the beginning of Volume I.

TABLES. The tables appear at the beginning of the index volume which is entitled "Tables and Index."

The editorial staff of the Iowa Code welcomes your comments and suggestions for improvements.

Dennis C. Prouty, Acting Director
Legislative Service Bureau

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DESIGNATION OF GENERAL ASSEMBLY

CITATIONS

OFFICIAL STATUTES

2.2 Designation of general assembly.

Each regular session of the general assembly shall be designated by the year in which it convenes and by a number with a new consecutive number assigned with the session beginning in each odd-numbered year.

A special session of the general assembly shall be designated as an extraordinary session in the particular year of a numbered general assembly.

2B.17 Citations — official statutes.

1. The permanent and official printed versions of the Iowa Codes and Code Supplements published subsequent to the adjournment of the 1982 regular session of the Sixty-ninth General Assembly shall be known and may be cited as "Iowa Code chapter (or section) . . . . ", or "Iowa Code Supplement chapter (or section) . . . . ", inserting the appropriate chapter or section number. If the year of edition is needed, it may be inserted before or after the words "Iowa Code" or "Iowa Code Supplement". In Iowa publications, the word "Iowa" may be omitted if the meaning is clear.

2. The session laws of each general assembly shall be known as "Acts of the . . . . General Assembly, ... Session, Chapter (or File No.) . . . . , Section . . . . " (inserting the appropriate numbers) and shall be cited as " . . . . Iowa Acts, chapter . . . . , section . . . . " (inserting the appropriate year, chapter, and section number).

3. The official printed versions of the Iowa Code, Code Supplement, and session laws published under authority of the state are the only authoritative publications of the statutes of this state. No other publications of the statutes of the state shall be cited in the courts or in the reports or rules of the courts.

4. The Iowa administrative code and the Iowa administrative bulletin shall be cited as provided in section 17A.6.

5. The printed version of the Iowa administrative code is the permanent publication of administrative rules in this state and the Iowa administrative bulletin and the Iowa administrative code published pursuant to chapter 17A are the official publications of the administrative rules of this state, and are the only authoritative publications of the administrative rules of this state. Other publications of the administrative rules of this state shall not be cited in the courts or in the reports or rules of the courts.

Chapters of the Code are cited as whole numerals; as chapter 124 or chapter 124A.

Sections are cited as decimal numerals; as section 124.401 or section 124A.3. Occasionally, sections are divided into subsections as 1., 2., 3., etc.; subsections into paragraphs *a, b, c,* etc.; paragraphs into subparagraphs as (1), (2), (3), etc.; and subparagraphs into subparagraph subdivisions as (a), (b), (c), etc. Example: section 124.401, subsection 1, paragraph *"a"*, subparagraph (2), subparagraph subdivision (a). This may be abbreviated as 124.401(1)(*a*)(2)(a) or 124.401[1*a*(2)(a)].

ABBREVIATIONS

C51	Code of 1851
R60	Revision of 1860
C73	Code of 1873
C97	Code of 1897
S'02	Supplement of 1902
S'07	Supplement of 1907
S13	Supplement of 1913
SS15	Supplemental Supplement 1915
C24	Code of 1924
C27	Code of 1927
C31	Code of 1931
C35	Code of 1935
C39	Code of 1939
C46	Code of 1946
C50	Code of 1950
C54	Code of 1954
C58	Code of 1958
C62	Code of 1962
C66	Code of 1966
C71	Code of 1971
C73	Code of 1973
C75	Code of 1975
C77	Code of 1977
C79	Code of 1979
S79	Supplement of 1979
C81	Code of 1981
S81	Supplement of 1981
C83	Code of 1983
CS83	Supplement of 1983
C85	Code of 1985
CS85	Code Supplement of 1985
C87	Code of 1987
CS87	Code Supplement of 1987
C89	Code of 1989
CS89	Code Supplement of 1989
C91	Code of 1991
CS91	Code Supplement of 1991
C93	Code of 1993
CS93	Code Supplement of 1993
C95	Code of 1995
CS95	Code Supplement of 1995
C97	Code of 1997
CS97	Code Supplement of 1997
C99	Code of 1999
CS99	Code Supplement of 1999
C2001	Code of 2001
CS2001	Code Supplement of 2001
C2003	Code of 2003
GA	General Assembly
§ or Sec.	Section
Ch	Chapter
1st Ex	First Extra Session
2nd Ex	Second Extra Session
R (in tables)	Repealed
Vol	Volume
R.C.P.	Rules of Civil Procedure
R.Cr.P.	Rules of Criminal Procedure
R.App.P.	Rules of Appellate Procedure
Stat. L.	Statutes at Large (U. S.)
U.S.C.	United States Code
Pub. L. No.	Public Law Number (U. S.)
C.F.R.	Code of Federal Regulations (U. S.)

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AGRICULTURE

SUBTITLE 1

AGRICULTURE AND CONSERVATION OF AGRICULTURAL RESOURCES

CHAPTER 159

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159.1 Definitions.

For the purposes of subtitles 1 through 3 of this title, excluding chapters 161A through 161C, unless otherwise provided:

1. *"Agricultural drainage well"* means the same as defined in section 460.101.

2. *"Agricultural drainage well area"* means the same as defined in section 460.101.

3. *"Department"* means the department of agriculture and land stewardship and if the department is required or authorized to do an act, unless otherwise provided, the act may be performed by an officer, regular assistant, or duly authorized agent of the department.

4. *"Designated agricultural drainage well area"* means the same as defined in section 460.101.

5. *"Person"* includes an individual, a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of subtitles 1 through 3 of this title, excluding chapters 161A through 161C.

6. *"Secretary"* means the secretary of agriculture.

[S13, §1657-b; C24, 27, 31, 35, 39, §**2586;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.1]

86 Acts, ch 1245, §604; 91 Acts, ch 74, §1; 92 Acts, ch 1163, §38; 94 Acts, ch 1023, §13; 97 Acts, ch 193, §1

159.2 Object of department.

The object of the department of agriculture and land stewardship shall be:

1. To encourage, promote, and advance the interests of agriculture, including horticulture, livestock industry, dairying, cheese making, poultry raising, beekeeping, production of wool, production of domesticated fur-bearing animals, and other kindred and allied industries.

2. To encourage a relationship between people and the land that recognizes land as a resource to be managed in a manner that avoids irreparable harm.

3. To develop and implement policies that inspire public confidence in the long-term future of agriculture as an economic activity as well as a way of life.

4. To administer efficiently and impartially the inspection service of the state as is now or may hereafter be placed under its supervision.

[S13, §1657-b, -g; C24, 27, 31, 35, 39, §**2587;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.2]

86 Acts, ch 1245, §605

159.3 Cooperation.

The department and the Iowa state university of science and technology shall cooperate in all ways that may be beneficial to the agricultural interests of the state, but without duplicating research or educational work conducted by the university. This section does not subordinate either the department or the university in their spheres of action.

The department may cooperate with the United States department of agriculture as the department deems wise and just.

[C97, §1677; S13, §1657-g; C24, 27, 31, 35, 39, §**2588;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.3]

86 Acts, ch 1245, §606

159.4 Location.

The department of agriculture and land stewardship shall be located at the seat of government.

[C97, §1678; SS15, §2507; C24, 27, 31, 35, 39, §**2589;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.4]

159.5 Powers and duties.

The secretary of agriculture is the head of the department of agriculture and land stewardship which shall:

1. Carry out the objects for which the department is created and maintained.

2. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it.

3. Consolidate the inspection service of the state in respect to the laws administered by the department so as to eliminate duplication of inspection insofar as practicable.

4. Maintain a weather division which shall, in cooperation with the national weather service, collect and disseminate weather and phenological statistics and meteorological data, and promote knowledge of meteorology, phenology and climatology of the state. The division shall be headed by the state climatologist who shall be appointed by the secretary of agriculture, and shall be an officer of the national weather service, if one is detailed for that purpose by the federal government.

5. Establish volunteer weather stations in one or more places in each county, appoint observers thereat, supervise such stations, receive reports of meteorological events and tabulate the same for permanent record.

6. Issue weekly weather and crop bulletins from April 1 to October 1 of each year, and edit and cause to be published monthly weather reports, containing meteorological matter in its relationship to agriculture, transportation, commerce and the general public.

7. Maintain a division of agricultural statistics, which shall, in cooperation with the United States department of agriculture statistical reporting service, gather, compile, and publish statistical information concerning the condition and progress of crops, the production of crops, livestock, livestock products, poultry, and other such

related agricultural statistics, as will generally promote knowledge of the agricultural industry in the state of Iowa. The statistics, when published, constitute official agricultural statistics for the state of Iowa. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and who shall be an officer of the United States department of agriculture statistical reporting service, if one is detailed for that purpose by the federal government.

8. Establish and maintain a marketing news service division in the department which shall, in cooperation with the federal market news and grading division of the United States department of agriculture, collect and disseminate data and information relative to the market prices and conditions of agricultural products raised, produced, and handled in the state. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and shall be an officer of the federal market news and grading division of the United States department of agriculture, if one is detailed for that purpose by the federal government.

9. Inspect and supervise all food producing or distributing establishments including the furniture, fixtures, utensils, machinery, and other equipment so as to prevent the production, preparation, packing, storage, or transportation of food in a manner detrimental to its character or quality.

10. Approve all methods of probing for foreign material content of any type of grain.

11. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of subtitles 1 through 3 of this title, excluding chapters 161A through 161C, and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

12. Establish and maintain a sheep promotion division in the department which shall promote the consumption of lamb, mutton, and the use of wool, aid in the orderly marketing of sheep and wool, and conduct other activities which are beneficial to the sheep industry in Iowa. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture. Funds appropriated for the department of agriculture for state aid to the Iowa sheep association may be used together with other funds available for sheep promotion in establishing and maintaining the sheep promotion division, and the funds may be drawn and expended upon the order of the administrator with the approval of the secretary of agriculture.

13. Establish a swine tuberculosis eradication program including, but not limited to:

a. The inspection of swine herds in this state when the department finds that an animal from a swine herd has, or is believed to have, tuberculosis;

b. Ear tagging or otherwise physically marking all swine reacting positively to tests for tuberculosis;

c. Condemning any swine which has tuberculosis;

d. Depopulating any swine herd where tuberculosis is found to be generally present; and

e. Compensate the owners of condemned swine as provided under section 165.18, following the general procedures for filing claims and paying indemnities as provided in chapter 165.

If the department finds that the source of the tuberculosis in a swine herd is from another species of animal, except bovine, located on or near the premises on which the affected swine herd is located, the department may destroy those animals and indemnify the owners of the condemned animals as provided in chapter 163.

14. Establish and maintain a division of soil conservation. The division administrator shall be appointed by the secretary from a list of names of persons recommended by the soil conservation committee, pursuant to section 161A.4, subsection 2, and shall serve at the pleasure of the secretary.

15. Establish an inspection and regulation program regarding water sold in sealed containers for human consumption. As used in this subsection, *"water sold in sealed containers for human consumption"* includes ice sold in sealed containers and bottled water; *"bottled water"* means drinking water which is placed in sealed containers for the purpose of sale to the public for human consumption; and *"drinking water"* means water sold for drinking, culinary, or other purposes involving the likelihood of the water being ingested for human consumption but does not include distilled water, carbonated beverages, mineral water, or other beverages which contain water. The program shall include, but is not limited to, all of the following:

a. Establish, modify, or repeal rules relating to standards for testing for the presence of chemicals in water sold in sealed containers for human consumption. The standards for testing shall not be less stringent than the rules established for public drinking water supplies pursuant to chapter 455B.

b. Establish, modify, or repeal rules relating to drinking water standards for water sold in sealed containers for human consumption. The standards shall establish the maximum permissible level of any physical, chemical, biological, or radiological substance in the water and shall be as stringent as those established under the federal Food and Drug Act.

c. Establish, modify, or repeal rules relating to the labeling of water sold in sealed containers for human consumption including, but not limited to, requirements that water sold in this state shall have the words "Meets all F.D.A. standards" printed clearly and conspicuously on its label.

d. Establish, modify, or repeal rules relating to

the frequency with which facilities where water is placed in sealed containers, including but not limited to ice making and bottling facilities, are inspected and tested. The frequency standard shall not be less stringent than the frequency standard for testing of public water supplies under chapter 455B.

e. A requirement that all records pertaining to sampling and analysis of water sold in sealed containers for human consumption under this subsection shall be maintained at the bottling facility or if the water is bottled outside of the state at the distributor's facility. The records shall be maintained for at least two years and shall be available upon request for review by officials of the department.

f. Provide that enforcement of this subsection shall be pursuant to chapter 189.

g. The provisions of paragraphs *"a"*, *"b"*, *"c"*, and *"e"* shall not apply to ice produced from a public water supply as defined and regulated in chapter 455B. Ice sold in sealed containers shall be labeled or tagged with the name and location of the ice maker and whether it is produced from a public water supply. The department shall adopt rules relating to the packaging and handling of ice sold in sealed containers.

16. Establish and administer programs for the inspection and control of disease among livestock as defined in section 717.1.

1. [C24, 27, 31, 35, 39, §**2590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]

2. [S13, §1657-g; C24, 27, 31, 35, 39, §**2590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]

3. [C24, 27, 31, 35, 39, §**2590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]

4. [C97, §1677, 1678; C24, 27, 31, 35, 39, §**2590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]

5. [C97, §1679, 1680; S13, §1679; C24, 27, 31, 35, 39, §**2590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]

6. [C97, §1679; S13, §1679; C24, 27, 31, 35, 39, §**2590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]

7. [C97, §1680; S13, §1363; C24, 27, 31, 35, 39, §**2590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]

8. [C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]

9. [S13, §2527-d5, 4527-m; C24, 27, 31, 35, 39, §**2590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]

10. [C79, 81, S81, §159.5(10)]

11. [S13, §2528-d10; C24, 27, 31, 35, 39, §**2590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §159.5(10); C79, 81, S81, §159.5(11)]

12. [C46, 50, 54, 58, 62, 66, §185.2; C71, 73, 75, 77, §159.5(11); C79, 81, S81, §159.5(12)]

13. [C75, 77, §159.5(12); C79, 81, S81, §159.5(13); 81 Acts, ch 117, §1019; 82 Acts, ch 1104, §4]

83 Acts, ch 96, §60, 157, 159; 83 Acts, ch 123, §69, 209; 84 Acts, ch 1067, §22; 86 Acts, ch 1137, §1; 86 Acts, ch 1245, §607, 608; 87 Acts, ch 115, §26; 88 Acts, ch 1134, §32; 89 Acts, ch 83, §29; 89 Acts, ch 106, §1; 94 Acts, ch 1023, §14; 99 Acts, ch 96, §15; 2000 Acts, ch 1038, §1

159.6 Additional duties.

In addition to the duties imposed by section 159.5 the department shall enforce the law relative to:

1. Forest and fruit-tree reservations, chapter 427C.
2. Infectious and contagious diseases among animals, chapter 163.
3. Eradication of bovine tuberculosis, chapter 165.
4. Hog-cholera virus and serum, chapter 166.
5. Use and disposal of dead animals, chapter 167.
6. Practice of veterinary medicine and surgery, chapter 169.
7. Regulation and inspection of foods, drugs, and other articles, as provided in Title V, subtitle 4, but chapter 205 of that subtitle shall be enforced as provided in that chapter.
8. State aid received by certain associations as provided in chapters 176 through 182, 186, and 352.
9. Coal mining and mines as set forth in chapters 207 and 208.
10. Soil and water conservation as set forth in chapters 161A, 161B, 161C, 161E, and 161F.
11. Grain dealers as set forth in chapter 203.
12. Grain bargaining agents as set forth in chapter 203A.
13. Bonded warehouses for agricultural products as set forth in chapter 203C.
14. The grain depositors and sellers indemnity fund as set forth in chapter 203D.

[C24, 27, 31, 35, 39, §**2591;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.6]

86 Acts, ch 1245, §609; 88 Acts, ch 1053, §1; 88 Acts, ch 1134, §33, 34; 89 Acts, ch 83, §30; 89 Acts, ch 197, §24; 90 Acts, ch 1009, §1; 94 Acts, ch 1023, §15; 98 Acts, ch 1032, §1, 2

For 2002 amendment to subsection 8 effective July 1, 2005, see 2002 Acts, ch 1017, §2, 8

159.6A Contributions.

The department may accept contributions, including gifts and grants, in order to carry out and administer the provisions of this chapter and chapter 460, subchapter III. The department shall maintain an itemized accounting of the contributions. At the end of each fiscal year, the department shall prepare a list recognizing private contributors.

92 Acts, ch 1239, §25

159.7 Intake airprobes not approved.

The secretary shall not approve the use of end intake airprobes, which use a vacuum to collect a sample from a load of grain, pursuant to section 159.5, subsection 10. A person who uses a method of probing for foreign material content of grain which is not approved by the secretary is guilty of a simple misdemeanor.

[C81, §159.7]

159.8 Comprehensive management plan — highly erodible acres.

The department shall request cooperation from the federal government, including the United States department of agriculture consolidated farm service agency and the United States department of agriculture natural resources conservation service, to investigate methods to preserve land which is highly erodible, as provided in the federal Food Security Act of 1985, 16 U.S.C. § 3801 et seq., for the purpose of developing with owners of the land a comprehensive management plan for the land. The plan may be based on the soil conservation plan of the natural resources conservation service and may include a farm unit conservation plan and a comprehensive agreement as provided in chapter 161A. The extension services at Iowa state university of science and technology shall cooperate with the department in developing the comprehensive plan.

The investigation shall include methods which help to preserve highly erodible land from row crop production through production of alternative commodities, and financial incentives. The department shall report to the governor and the general assembly not later than January 15, 1990, of the department's progress in the investigation. The department shall report to the governor and the general assembly not later than January 15, 1991, on the department's recommendation for programs necessary to preserve highly erodible land from injury or destruction.

89 Acts, ch 188, §1; 95 Acts, ch 216, §25

159.9 Publication and distribution of rules.

A sufficient number of pamphlets setting forth the statutes and rules of the department shall be published from time to time to supply the various needs for the same and shall be furnished to any resident of the state upon request.

[C24, 27, 31, 35, 39, §**2594;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.9]

159.10 Iowa book of agriculture. Repealed by 2001 Acts, ch 129, § 7.

159.11 Agricultural statistics.

Agricultural statistics shall be collected each year by the department, which shall design surveys, collect data and publish county estimates of agricultural items. The department may make public announcements of the information collected and may provide copies without fee to vocational agricultural schools, state agricultural extension service and libraries. The department shall establish subscription fees for access by other parties to the information collected under this section. The fees shall be deposited in the general fund of the state. Production and acreage data collected under this section and provided by the department to the department of revenue and finance shall not be adjusted for accuracy by the department of revenue and finance.

[C97, §1363; S13, §1363; C24, 27, 31, 35, 39, §**2596;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.11]

83 Acts, ch 202, §3

159.12 Returns. Repealed by 98 Acts, ch 1032, § 10.

159.13 Seal.

The department shall have an official seal, and every commission, license, order, or other paper executed by or under the authority of the department may be attested with such seal.

[S13, §4999-a31b; C24, 27, 31, 35, 39, §**2598;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.13]

159.14 Bonds.

The secretary shall require every inspector or employee who collects fees or handles funds belonging to the state to give an official bond, properly conditioned and signed by sufficient sureties, in a sum to be fixed by the secretary, which bond shall be approved by the secretary and filed in the office of the secretary of state. This section shall not apply to the deputy secretary of agriculture. The state shall pay the reasonable cost of the bonds required by this section.

[C97, §2503; SS15, §2503, 2514-p; C24, 27, 31, 35, 39, §**2599;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.14]

Bond of deputy, §14A.1, 64.15

159.15 Biennial report. Repealed by 2001 Acts, ch 129, § 7.

159.16 Duty of peace officers.

All peace officers of the state when called upon by the secretary or any officer or authorized agent of the department shall enforce its rules and execute its lawful orders within their respective jurisdictions, and upon the request of the secretary such officers shall make such inspections as directed by the secretary and report the results thereof to the secretary.

[C24, 27, 31, 35, 39, §**2601;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.16]

159.17 Interference with department.

Any person resisting or interfering with the department, its employees or authorized agents, in the discharge of any duty imposed by law shall be guilty of a simple misdemeanor.

[C97, §2526; S13, §2528-c, -f3, 4999-a25, -a39, 5077-a23; SS15, §3009-r; C24, 27, 31, 35, 39, §**2602;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.17]

159.18 Publicizing of farm programs.

1. As used in this section, *"farm programs"* includes, but is not limited to, financial incentive programs established within the division of soil conservation of the department of agriculture and land stewardship as provided in section 161A.70 and the beginning farmer loan program administered by the agricultural development authority as provided in section 175.12.

2. The department shall publicize the availability of farm programs to women and minority persons. The department shall disseminate the information electronically or by publishing printed brochures for distribution to locations and institutions serving farmers, including departmental offices, financial institutions participating in farm programs, and soil and water conservation district offices.

3. The department shall cooperate with private institutions and public agencies in order to carry out this section, including the department of economic development and the United States department of agriculture.

2000 Acts, ch 1224, §25

159.19 Salary.

The salary of the secretary of agriculture shall be as fixed by the general assembly.

[C31, 35, §2603-c1; C39, §**2603.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.19]

AGRICULTURAL MARKETING

159.20 Powers of department.

The department shall perform duties designed to lead to more advantageous marketing of Iowa agricultural commodities. The department may do any of the following:

1. Investigate the marketing of agricultural commodities.

2. Promote the sale, distribution, and merchandising of agricultural commodities.

3. Furnish information and assistance concerning agricultural commodities to the public.

4. Cooperate with the college of agriculture of the Iowa state university of science and technology in encouraging agricultural marketing education and research.

5. Accumulate and diffuse information concerning the marketing of agricultural commodities in cooperation with persons, agencies, or the federal government.

6. Investigate methods and practices related to the processing, handling, grading, classifying, sorting, weighing, packing, transportation, storage, inspection, or merchandising of agricultural commodities within this state.

7. Ascertain sources of supply for Iowa agricultural commodities. The department shall prepare and periodically publish lists of names and addresses of producers and consignors of agricultural commodities.

8. Perform inspection or grading of an agricultural commodity if requested by a person engaged in the production, marketing, or processing of the agricultural commodity. However, the person must pay for the services as provided by rules adopted by the department.

9. Cooperate with the Iowa department of economic development to avoid duplication of efforts between the department and the agricultural marketing program operated by the Iowa department of economic development.

10. Assist the office of renewable fuels and coproducts and the renewable fuels and coproducts advisory committee in administering the provisions of chapter 159A.

As used in this subchapter, *"agricultural commodity"* means any unprocessed agricultural product, including animals, agricultural crops, and forestry products grown, raised, produced, or fed in Iowa for sale in commercial channels. *"Commercial channels"* means the processes of sale of an agricultural commodity or unprocessed product from the agricultural commodity to any person, public or private, who resells the agricultural commodity for breeding, processing, slaughter, or distribution.

[C62, 66, 71, 73, 75, 77, 79, 81, §159.20]

86 Acts, ch 1245, §610; 91 Acts, ch 254, §4; 92 Acts, ch 1163, §39; 92 Acts, ch 1239, §26 – 28; 94 Acts, ch 1119, §10; 98 Acts, ch 1032, §3

Agricultural products advisory council; see §15.203

159.21 International relations fund.

1. An international relations fund is created in the state treasury under the control of the department. The fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants written by the director of revenue and finance, drawn upon the written requisition of the department.

3. Moneys in the fund are appropriated exclusively to support costs incurred by the department related to promoting the sale of Iowa agricultural commodities and agricultural products to government officials and business leaders of other na-

tions. The department may use moneys in the fund to support travel, including international travel, for the secretary of agriculture or the secretary's designee, and hosting or attending trade missions, functions, or events.

4. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

2000 Acts, ch 1224, §26

159.22 Grants and gifts of funds.

The secretary may accept grants and allotments of funds from the federal government and enter into co-operative agreements with the United States department of agriculture for projects to effectuate a purpose described in this subchapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §159.22]

91 Acts, ch 254, §5; 92 Acts, ch 1239, §29

159.23 Special fund.

All fees collected as a result of the inspection and grading provisions set out herein shall be paid into the state treasury, there to be set aside in a separate fund which is hereby appropriated for the use of the department except as indicated. Withdrawals therefrom shall be by warrant of the director of revenue and finance upon requisition by the secretary of agriculture. Such fund shall be continued from year to year, provided, however, that if there be any balance remaining at the end of the biennium which, in the opinion of the governor, director of management and secretary of agriculture, is greater than necessary for the proper administration of the inspection and grading program referred to herein, the treasurer of state is hereby authorized on the recommendation and with the approval of the governor, director of management and secretary of agriculture, to transfer to the general fund of the state that portion of such account as they shall deem advisable.

[C62, 66, 71, 73, 75, 77, 79, 81, §159.23]

92 Acts, ch 1239, §30

159.24 Grades or classifications of farm products.

A certificate of the grade, or other classification, of any farm products issued under this chapter shall be accepted in any court of this state as prima facie evidence of the true grade or classification of such farm products as the same existed at the time of their classification.

[C62, 66, 71, 73, 75, 77, 79, 81, §159.24]

92 Acts, ch 1239, §31

159.25 Marketing board. Repealed by 86 Acts, ch 1245, § 852.

159.26 Duties of board. Repealed by 86 Acts, ch 1245, § 852.

159.27 Disposal of manure within designated areas — adoption of rules. Transferred to § 459.314.

SINKHOLES AND DRAINAGE WELLS

159.28 Sinkholes — conservation easement programs. Transferred to § 460.305; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

159.29 Agricultural drainage wells. Transferred to § 460.302; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

159.29A Agricultural drainage wells — alternative drainage system assistance fund. Transferred to § 460.303; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

159.29B Agricultural drainage wells — alternative drainage system assistance program. Transferred to § 460.304; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

DEGRADABLE PACKAGING PRODUCTS

159.30 Laboratory division — packaging determination — promotion. Repealed by 2001 Acts, ch 129, § 7.

IOWA SEAL AGRICULTURAL PRODUCTS

159.31 Iowa seal.

A seal for agricultural products shall be created under the direction of the department of agriculture and land stewardship to identify agricultural products that have been produced or processed in the state. The department shall certify that agricultural products marked with the Iowa seal are of the quality and specifications warranted by the sellers of those products.

The department of agriculture and land stewardship shall adopt rules under chapter 17A to provide methods of identifying, marking, and grading agricultural products, to prevent any misleading use of the Iowa seal, and as necessary or advisable to fully implement this section.

A violation of a rule adopted by the department of agriculture and land stewardship to implement this section is a simple misdemeanor. A fraudulent use of the term *"Iowa Seal"* or of the identifying mark for the Iowa seal, or a deliberately misleading or unwarranted use of the term or identifying mark is a serious misdemeanor.

87 Acts, ch 107, §1

159.32 and 159.33 Reserved.

APPLE STANDARDS

159.34 Standards for apples. Repealed by 98 Acts, ch 1032, § 10.

159.35 and 159.36 Reserved.

SPECIAL QUALITY GRAINS

159.37 Special quality grains electronic bulletin board. Repealed by 2001 Acts, ch 129, § 7.

CHAPTER 159A

RENEWABLE FUELS AND COPRODUCTS

159A.1 Findings.
159A.2 Definitions.
159A.3 Office of renewable fuels and coproducts.
159A.4 Advisory committee.
159A.5 Purpose of the committee.
159A.6 Education, promotion, and advertising.
159A.6A Renewable fuels and coproducts research.
159A.6B Technical assistance.
159A.7 Renewable fuels and coproducts fund.
159A.8 Ethanol production incentive program. Repealed by 94 Acts, ch 1119, §37.

159A.1 Findings.

The general assembly finds and declares the following:

1. The production and processing of agricultural commodities and products represents the foundation of this state's economy, and the economic viability of this nation is contingent upon the production of wealth generated primarily from materials, including food and fiber, produced on this nation's family farms.

2. It is necessary to support industries using agricultural commodities to increase the demand for and production and consumption of sources of energy in order to reduce the state's dependency upon petroleum products; to reduce atmospheric contamination of this state's environment from the combustion of fossil fuels; and to produce coproducts, such as corn gluten feed, distillers grain, and solubles, which can be used to increase livestock production in this state.

3. This state adopts a policy of enhancing agricultural production by encouraging the development and use of fuels and coproducts derived from agricultural commodities, as provided in this chapter, including rules adopted by the office of renewable fuels and coproducts and the renewable fuels and coproducts advisory committee.

91 Acts, ch 254, §6; 94 Acts, ch 1119, §11

159A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Committee"* means the renewable fuels and coproducts advisory committee established pursuant to section 159A.4.

2. *"Coordinator"* means the administrative head of the office of renewable fuels and coproducts appointed by the department as provided in section 159A.3.

3. *"Coproduct"* means a product other than a renewable fuel which at least in part is derived from the processing of agricultural commodities, and which may include corn gluten feed, distillers grain, or solubles, or can be used as livestock feed or a feed supplement.

4. *"Fund"* means the renewable fuels and coproducts fund established pursuant to section 159A.7.

5. *"Office"* means the office of renewable fuels and coproducts created pursuant to section 159A.3.

6. *"Renewable fuel"* means an energy source at least in part derived from an organic compound capable of powering machinery, including an engine or power plant. A renewable fuel includes but is not limited to ethanol-blended or soydiesel fuel.

7. *"Renewable fuels and coproducts activities"* means either of the following:

a. The research, development, production, promotion, marketing, or consumption of renewable fuels and coproducts.

b. The research, development, transfer, or use

of technologies which directly or indirectly increase the supply or demand of renewable fuels and coproducts.

8. *"Soydiesel fuel"* means a fuel which is a mixture of diesel fuel and processed soybean oil, if at least twenty percent of the mixed fuel by volume is processed soybean oil which meets American society for testing and materials standards.

91 Acts, ch 254, §7; 94 Acts, ch 1119, §12; 2000 Acts, ch 1018, §1

Further definitions; see §159.1

159A.3 Office of renewable fuels and coproducts.

1. An office of renewable fuels and coproducts is created within the department and shall be staffed by a coordinator who shall be appointed by the secretary. It shall be the policy of the office to further renewable fuels and coproducts activities. The office shall first further renewable fuels and coproducts activities based on the following considerations:

a. The price competitiveness of the renewable fuel or coproduct.

b. The production capacity and supply of the renewable fuel or coproduct.

c. The ease and safety of transporting and storing the renewable fuel or coproduct.

d. The degree to which the renewable fuel or coproduct is currently developed for ready transfer to current engine technology.

e. The degree to which the renewable fuel or coproduct is environmentally protective.

f. The degree to which the renewable fuel or coproduct provides economic development opportunities.

2. The duties of the office include, but are not limited to, the following:

a. Serving as advisor to the department regarding regulations, including federal and state standards, relating to oxygenate octane enhancers, as defined in section 214A.1.

b. Serving as advisor to the department regarding renewable fuels and coproducts programs.

c. Serving as monitor of regulations administered in the state, in other states, or by the federal government. The office shall collect information and data prepared by state agencies related to these regulations, and provide referral and assistance to interested persons and agencies.

d. Cooperating with persons and agencies involved in renewable fuels and coproducts activities, including other states and the federal government, to standardize regulations and coordinate programs, in order to increase administrative effectiveness and reduce administrative duplication.

e. Implementing policies and procedures designed to facilitate communication between persons involved in renewable fuels and coproducts activities.

f. Assisting state or federal agencies, or assisting commercial enterprises or commodity organizations which are located in or desiring to locate in the state. The assistance may include support of public research relating to renewable fuels and coproducts activities.

g. Conducting studies relating to the viability of producing or using renewable fuels and coproducts, and methods and schedules required to ensure a practicable transition to the use of renewable fuels and coproducts.

h. Preparing an annual report to the secretary regarding renewable fuels and coproducts activities. The report shall include a review of research and research results, areas of study with promising potential, a summary of initiatives in other states, and an analysis of state and federal regulations and programs.

i. Cooperating with the committee in carrying out the purposes of the committee as provided in section 159A.5. The office shall regularly inform the committee regarding its operations and programs administered under this chapter, including financial reports concerning the fund.

j. Approve a renewable fuel which may be used as a flexible fuel powering a motor vehicle required to be purchased by state agencies.

3. *a.* A chief purpose of the office is to further the production and consumption of ethanol fuel in this state. The office shall be the primary state agency charged with the responsibility to promote public consumption of ethanol fuel.

b. The office shall promote the production and consumption of soydiesel fuel in this state.

4. The office shall cooperate with the Wallace technology transfer foundation of Iowa in formulating long-range strategic plans to guide state investment in applied research, development, and commercial transfer of selected scientific and technological innovation relating to renewable fuels and coproducts technology.

5. The office and state entities, including the department, the committee, the Iowa department of economic development, the state department of transportation, the department of natural resources, state board of regents institutions, and the Wallace technology transfer foundation of Iowa, shall cooperate to implement this section.

91 Acts, ch 254, §8; 92 Acts, ch 1239, §33; 94 Acts, ch 1119, §13

159A.4 Advisory committee.

1. A renewable fuels and coproducts advisory committee is established within the department. The committee shall be composed of the following persons:

a. The secretary, or a person designated by the secretary, representing the department of agriculture and land stewardship, who shall be the chairperson of the committee.

b. The director of the Iowa department of economic development, or a person designated by the director, representing the Iowa department of economic development.

c. The director of the state department of transportation, or a person designated by the director, representing the state department of transportation.

d. The director of the department of natural resources, or a person designated by the director, representing the department of natural resources.

e. A person representing retail dealers as defined in section 214A.1 who shall be actively engaged in the business of selling motor vehicle fuel on a retail basis.

f. A person representing refiners of petroleum products who shall be actively engaged in the business of refining petroleum into motor vehicle fuel for the purpose of sale within the state.

g. A person representing an organization serving livestock producers in this state.

h. A person representing the Iowa corn growers association.

i. A person representing the Iowa soybean association.

j. A person actively engaged in farming, as defined in section 9H.1.

k. A person representing the renewable fuels industry in this state.

The governor shall appoint persons who shall be confirmed by the senate, pursuant to section 2.32, to serve as voting members of the committee. However, the secretary of agriculture shall appoint the person representing the department of agriculture and land stewardship, the director of the Iowa department of economic development shall appoint the person representing that department, the director of the state department of transportation shall appoint the person representing that department, and the director of the department of natural resources shall appoint the person representing that department. The governor may make appointments of persons representing organizations listed under paragraphs *"g"* through *"i"* from a list of candidates which shall be provided by the organization upon request by the governor.

2. The members appointed pursuant to subsection 1, paragraphs *"e"* through *"k"*, shall serve three-year terms beginning and ending as provided in section 69.19. However, the governor shall appoint initial members to serve for less than three years to ensure members serve staggered terms. A member is eligible for reappointment. A vacancy on the committee shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

3. The committee shall include four ex officio nonvoting members who shall be legislative members. The legislative members are two state senators, one appointed by the president of the senate, after consultation with the majority leader of the senate, and one appointed by the minority leader of the senate, after consultation with the president of the senate, from their respective parties; and two state representatives, one appointed by the speaker of the house of representatives, after consultation with the majority leader of the house of representatives, and one appointed by the minority leader of the house of representatives, from their respective parties.

4. The committee shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more voting members.

5. The members other than those enumerated in subsection 1, paragraphs *"a"* through *"d"*, are entitled to receive compensation as provided in section 7E.6.

6. Five voting members constitute a quorum and the affirmative vote of a majority of the voting members present is necessary for any substantive action to be taken by the committee. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the committee.

7. The committee shall be staffed by the agricultural marketing division of the department. The coordinator shall serve as secretary to the committee.

91 Acts, ch 254, §9; 92 Acts, ch 1013, §1 – 3; 94 Acts, ch 1119, §14 – 17

159A.5 Purpose of the committee.

1. The purpose of the committee is to provide general oversight of operations of the office and to advise the office about all aspects concerning the production and consumption of renewable fuels and coproducts. However, the committee shall not control policy decisions or direct the administration of this chapter.

2. The committee shall monitor conditions, practices, policies, programs, and procedures affecting the production and consumption of renewable fuels and coproducts.

3. The committee shall monitor the condition of the fund and financial reports concerning the fund submitted by the office.

4. The committee shall review the annual report to the secretary regarding renewable fuels and coproducts activities, as provided in section 159A.3. The committee may make written comments concerning the contents of the report. Upon request of the committee, the coordinator shall include the comments as part of the report.

5. The committee, in cooperation with the coordinator, shall do all of the following:

a. Review the operations of the office and shall make recommendations regarding the effectiveness of programs provided under this chapter.

b. Establish performance goals for the office and adopt recommendations relating to improving

the functions of the office and furthering the purposes of this chapter.

c. Encourage full support of programs designed to inform the public or targeted groups regarding renewable fuels and coproducts production and consumption.

d. Support promotional programs or marketing strategies designed to encourage public consumption of renewable fuels and coproducts.

91 Acts, ch 254, §10; 92 Acts, ch 1099, §1, 2, 10; 92 Acts, ch 1163, §40; 94 Acts, ch 1119, §18

159A.6 Education, promotion, and advertising.

1. The office shall support education regarding, and promotion and advertising of, renewable fuels and coproducts. The office shall consult with the Iowa corn growers association and the Iowa soybean association.

2. The office shall promote the advantages related to the use of renewable fuels as an alternative to nonrenewable fuels. Promotions shall be designed to inform the ultimate consumer of advantages associated with using renewable fuels, and emphasize the benefits to the natural environment. The promotion shall inform consumers at the businesses of retail dealers of motor vehicle fuels.

The committee shall develop standards for decals required pursuant to section 214A.16, which shall be designed to promote the advantages of using renewable fuels. The standards may be incorporated within a model decal adopted by the committee and approved by the office.

3. The office shall promote the advantages related to the use of coproducts derived from the production of renewable fuels, including the use of coproducts used as livestock feed or meal. Promotions shall be designed to inform the potential purchasers of the advantages associated with using coproducts. The office shall promote advantages associated with using coproducts of ethanol production as livestock feed or meal to cattle producers in this state.

4. The office may contract to provide all or part of these services.

91 Acts, ch 254, §11; 92 Acts, ch 1099, §3; 92 Acts, ch 1163, §41; 94 Acts, ch 1119, §19

159A.6A Renewable fuels and coproducts research.

The office shall support research relating to renewable fuels and coproducts, including methods to increase efficiency and reduce costs associated with production. The office shall consult with the Iowa corn growers association and the Iowa soybean association. The office shall support research activities at the university of Iowa, Iowa state university of science and technology, and the university of northern Iowa. The office may contract to provide all or part of these services.

94 Acts, ch 1119, §20

159A.6B Technical assistance.

The office shall assist persons in revitalizing rural regions of this state, by providing technical assistance to new or existing renewable fuel production facilities, including the establishment and operation of facilities, and specifically facilities which create coproducts, including coproducts which support livestock production operations. The office shall consult with the Iowa corn growers association and the Iowa soybean association. The office shall provide planning assistance which may include evaluations of methods to most profitably manage these operations. The business planning assistance shall provide for adequate environmental protection of this state's natural resources from the operation of the facility.

The office may execute contracts in order to provide technical support and outreach services for purposes of assisting and educating interested persons as provided in this section. The office may also contract with a consultant to provide part or all of these services. The office may require that a person receiving assistance pursuant to this section contribute up to fifty percent of the amount required to support the costs of contracting with the consultant to provide assistance to the person. The office shall assist the person in completing any technical information required in order to receive assistance by the department of economic development pursuant to the value-added agricultural products and processes financial assistance program created pursuant to section 15E.111. The office shall cooperate with the department of economic development, the department of natural resources, and regents institutions or other universities and colleges as provided in section 15E.111, in order to carry out this section.

94 Acts, ch 1119, §21

159A.7 Renewable fuels and coproducts fund.

1. A renewable fuels and coproducts fund is created in the state treasury under the control of the office of renewable fuels and coproducts. The fund may also include other moneys available to and obtained or accepted by the office, including moneys from the United States, other states in the union, foreign nations, state agencies, political subdivisions, and private sources.

Moneys in the fund shall be used only to carry out the provisions of this section and sections 159A.3, 159A.4, 159A.5, 159A.6, 159A.6A, and 159A.6B within the state of Iowa.

2. Moneys in the fund shall be allocated during each fiscal year as follows:

a. At least forty percent shall be dedicated to support education, promotion, and advertising of renewable fuels and coproducts as provided in section 159A.6.

b. Up to thirty percent may be dedicated to support research at the university of Iowa, Iowa state university of science and technology, and the university of northern Iowa, as provided in section 159A.6A.

c. Any remaining balance shall be used by the office to support technical assistance as provided in section 159A.6B and any other projects or programs developed by the office.

3. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of revenue and finance, drawn upon the written requisition of the coordinator.

4. In administering the fund, the office may do all of the following:

a. Contract, sue and be sued, and adopt procedures necessary to administer this section. However, the office shall not in any manner, directly or indirectly, pledge the credit of the state.

b. Authorize payment from the fund for commissions, attorney and accountant fees, and other reasonable expenses related to and necessary for administering the fund.

5. Section 8.33 does not apply to moneys in the fund. Income received by investment of moneys in the fund shall remain in the fund.

91 Acts, ch 254, §12; 92 Acts, ch 1099, §4, 10; 93 Acts, ch 180, §74; 94 Acts, ch 1119, §22; 97 Acts, ch 207, §7 – 9, 15; 2000 Acts, ch 1230, §21, 22; 2002 Acts, 2nd Ex, ch 1003, §67, 79

Subsection 6 stricken

159A.8 Ethanol production incentive program. Repealed by 94 Acts, ch 1119, § 37.

CHAPTER 160

STATE APIARIST

160.1 Appointment by secretary of agriculture.
160.1A Definitions.
160.2 Duties.
160.3 Right to enter premises.
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160.5 Instructions — hives — imported bees.
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160.7 Apiarist to disinfect or destroy — costs.
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160.10 Orders prohibiting movement. Repealed by 93 Acts, ch 21, §10.
160.11 Effect of regulations and orders. Repealed by 98 Acts, ch 1032, §10.
160.12 Repealed by 65 Acts, ch 170, §5.
160.13 Annual report.
160.14 Penalties — injunctions.
160.15 Payment of expenses.
160.16 Importing a colony from another state — fee. Repealed by 98 Acts, ch 1032, §10.

160.1 Appointment by secretary of agriculture.

There is hereby created and established within the department the office of state apiarist. The state apiarist shall be appointed by and be responsible to and under the authority of the secretary of agriculture in the issuance of all rules, the establishment of quarantines and other official acts.

[C24, 27, 31, 35, 39, §**4036;** C46, 50, 54, 58, §266.8, 266.9; C62, 66, 71, 73, 75, 77, 79, 81, §160.1]

160.1A Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Apiary"* means a place where one or more bee colonies are maintained.

2. *"Bee"* means a honeybee belonging to the genus apis.

3. *"Colony"* means a queen bee and more than one worker bee located on beeswax combs and enclosed in a container.

4. *"Package"* means a shipping cage exclusively containing adult bees, without beeswax combs.

90 Acts, ch 1104, §1; 93 Acts, ch 21, §1, 2

Further definitions, see §159.1

160.2 Duties.

The state apiarist shall do all of the following:

1. Give lectures and demonstrations in the state on the production of honey, the care of the apiary, the marketing of honey, and upon other kindred subjects relative to the care of bees and the profitable production of honey.

2. Examine bees, combs, and equipment in any locality which the apiarist may suspect of being African in origin or infested with a parasite or foulbrood or any other contagious or infectious disease common to bees.

3. Regulate bees, combs, and used equipment moving across state borders.

[C24, 27, 31, 35, 39, §**4037;** C46, 50, 54, 58, §266.10; C62, 66, 71, 73, 75, 77, 79, 81, §160.2]
88 Acts, ch 1051, §1; 90 Acts, ch 1104, §2; 93 Acts, ch 21, §3

160.3 Right to enter premises.
In the performance of the apiarist's duties, the state apiarist or the apiarist's assistants shall have the right to enter any premises, enclosure, or buildings containing bees or bee supplies.
[C27, 31, 35, §4037-a1; C39, §**4037.1;** C46, 50, 54, 58, §266.11; C62, 66, 71, 73, 75, 77, 79, 81, §160.3]

160.4 Repealed by 65 Acts, ch 170, § 2.

160.5 Instructions — hives — imported bees.
If upon examination the apiarist finds bees to be diseased or infested with parasites, the apiarist shall furnish the owner or person in charge of the apiary with full written instructions as to the nature of the disease or infestation and the best methods of treatment, which information shall be furnished without cost to the owner.
It shall be unlawful to keep bees in any containers except hives with movable frames permitting ready examination in those counties where area clean-up inspection is in progress as may be proclaimed in official regulation.
A person who desires to move a colony, package, or used equipment with combs into this state shall apply to the state apiarist for a written entry permit at least sixty days prior to the proposed entry date. A statement must accompany each application for an entry permit describing each offense related to beekeeping for which the person has been subject to a penalty by a state, federal, or foreign government. The written entry permit must accompany all such shipments when they enter the state. Entry into this state without a permit is unlawful and is punishable pursuant to section 160.14. However, entry requirements of this section shall not apply to a package shipped by the United States postal service.
At least ten days before entry a person who has applied for an entry permit must meet both of the following conditions:
1. A valid Iowa certificate of inspection must be on file with the department or a valid certificate of inspection or certificate of health dated within the last sixty days must have been submitted by the state apiarist or inspector of the state of origin. A certificate must indicate the absence of any contagious diseases, parasites, or Africanized bees in the colony or package to be shipped.
2. A completed apiary registration form with locations of apiaries in Iowa indicated along with any fees required for nonresidents must have been submitted. Descriptions of locations shall include all of the following:
a. The name of the landowner.
b. Number of colonies to be kept at that location.
c. The county, township, section number and quarter section, or street address if located within the city limits.
[C24, 27, 31, 35, 39, §**4039;** C46, 50, 54, 58, §266.13; C62, 66, 71, 73, 75, 77, 79, 81, §160.5]
88 Acts, ch 1051, §2; 90 Acts, ch 1104, §3; 93 Acts, ch 21, §4, 5

160.6 Notice to treat, disinfect, remove, or destroy.
The state apiarist shall provide a notice in writing to an owner of bees or bee equipment infested with contagious diseases, parasites, or Africanized bees to treat, disinfect, destroy, or remove a colony or equipment in a manner and by a time specified by the state apiarist in the order.
[C27, 31, 35, §4039-a1; C39, §**4039.1;** C46, 50, 54, 58, §266.14; C62, 66, 71, 73, 75, 77, 79, 81, §160.6]
93 Acts, ch 21, §6

160.7 Apiarist to disinfect or destroy — costs.
If the owner fails to comply with the notice provided in section 160.6, the state apiarist shall declare the diseased, parasite-infested or Africanized colonies a nuisance, and administer the destruction or disinfection of the bee colonies or equipment required to eliminate the source of the disease, parasites, or Africanized bees. The state apiarist shall keep an account of costs related to the destruction.
[C27, 31, 35, §4039-a2; C39, §**4039.2;** C46, 50, 54, 58, §266.15; C62, 66, 71, 73, 75, 77, 79, 81, §160.7]
93 Acts, ch 21, §7

160.8 Costs certified — collected as tax.
The state apiarist shall certify the amount of such cost to the owner and if the same is not paid to the state apiarist within sixty days, the amount shall be certified to the county auditor of the county in which the premises are located, who shall spread the same upon the tax books which shall be a lien upon the property of the bee owner and be collected as other taxes are collected.
[C27, 31, 35, §4039-a3; C39, §**4039.3;** C46, 50, 54, 58, §266.16; C62, 66, 71, 73, 75, 77, 79, 81, §160.8]
Collection of taxes, chapter 445

160.9 Rules.
The state apiarist shall adopt rules relating to the inspection, regulation of movement, sale, and cleanup of bee colonies and used beekeeping equipment that is infested with a contagious disease, harmful parasites, or an undesirable subspecies of honey bees.
[C27, 31, 35, §4039-a4; C39, §**4039.4;** C46, 50,

54, 58, §266.17; C62, 66, 71, 73, 75, 77, 79, 81, §160.9]

88 Acts, ch 1051, §3; 93 Acts, ch 21, §8

160.10 Orders prohibiting movement. Repealed by 93 Acts, ch 21, § 10.

160.11 Effect of regulations and orders. Repealed by 98 Acts, ch 1032, § 10.

160.12 Repealed by 65 Acts, ch 170, § 5.

160.13 Annual report.

Said apiarist shall also make an annual report to the secretary of agriculture, stating the number of apiaries visited, number of demonstrations held, number of lectures given, the number of examinations and inspections made, together with such other matters of general interest concerning the business of beekeeping as in the apiarist's judgment shall be of value to the public.

[C24, 27, 31, 35, 39, §**4040;** C46, 50, 54, 58, §266.21; C62, 66, 71, 73, 75, 77, 79, 81, §160.13]

160.14 Penalties — injunctions.

1. A person who knowingly sells, barters, gives away, moves, or allows to be moved, a diseased or parasite-infested colony, package, equipment, or combs without the consent of the state apiarist, or exposes infected honey or infected equipment to the bees, or who willfully fails or neglects to give proper treatment to a diseased or parasite-infested colony, or who interferes with the state apiarist or the apiarist's assistants in the performance of official duties or who refuses to permit the examination of bees or their destruction as provided in this chapter or violates another provision of this chapter, except as provided in subsection 2, is guilty of a simple misdemeanor.

2. A person who knowingly moves or causes to be moved into this state a colony, package, used equipment, or combs in violation of section 160.5, is guilty of a serious misdemeanor.

3. Each day a colony, package, used equipment, or combs moved into this state in violation of section 160.5 remain in this state constitutes a separate offense. A colony, package, used equipment, or combs brought into this state in violation of section 160.5 may be declared a nuisance. The department shall provide written notice to the person owning the land where the colony, package, used equipment, or combs are located, and, if known, to the person owning the colony, package, used equipment, or combs. The notice shall state that the owner of the colony, package, used equipment, or combs must remove the colony, package, used equipment, or combs from this state within five days of the notification. After the five days have lapsed the department may seize the colony, package, used equipment, or combs. The department may secure a warrant if the owner of the land objects to the seizure. The department shall maintain the seized property until a court, upon petition by the department, determines the disposition of the property. The court shall render a decision concerning the disposition of the property by the court within ten days of the filing of the petition. Upon conviction of a violation of section 160.5, a person shall forfeit all interest in property moved in violation of that section and the department may immediately destroy the property.

4. The attorney general or persons designated by the attorney general may institute suits on behalf of the state apiarist to obtain injunctive relief to restrain and prevent violations of this chapter.

[C24, 27, 31, 35, 39, §**4041;** C46, 50, 54, 58, §266.22; C62, 66, 71, 73, 75, 77, 79, 81, §160.14]

85 Acts, ch 48, §1; 88 Acts, ch 1051, §5; 90 Acts, ch 1104, §4, 5; 93 Acts, ch 21, §9

160.15 Payment of expenses.

All expenses, except salaries, incurred by the state apiarist or the apiarist's assistants in the performance of their duties within a county shall be paid not to exceed two hundred dollars per annum for the purpose of eradication of diseases and parasites among bees. Such work of eradication shall be done in such county under the supervision of the state apiarist.

[C31, 35, §4041-c1; C39, §**4041.1;** C46, 50, 54, 58, §266.23; C62, 66, 71, 73, 75, 77, 79, 81, §160.15]

83 Acts, ch 123, §70, 209; 88 Acts, ch 1051, §6

160.16 Importing a colony from another state — fee. Repealed by 98 Acts, ch 1032, § 10.

CHAPTER 161

AGRICHEMICAL REMEDIATION

161.1 Title.
161.2 Definitions.
161.3 Agrichemical remediation board.
161.4 Board powers and duties.
161.5 Remediation standards.
161.6 Prioritization.
161.7 Agrichemical remediation fund.
161.8 Remediation agreement.
161.9 Payment of claims.
161.10 Report.

161.1 Title.

This section shall be known and may be cited as the *"Iowa Agrichemical Remediation Act"*.

2000 Acts, ch 1184, §1

161.2 Definitions.

1. *"Action level"* means the same as defined in section 455B.602.

2. *"Active site cleanup"* means the same as defined in section 455B.602.

3. *"Agrichemical"* means a fertilizer or pesticide.

4. *"Board"* means the agrichemical remediation board created under section 161.3.

5. *"Contaminated site"* means the same as defined in section 455B.602.

6. *"Contamination"* means the same as defined in section 455B.602.

7. *"Department"* means the department of agriculture and land stewardship.

8. *"Fertilizer"* means a fertilizer or soil conditioner as defined in section 200.3.

9. *"Fertilizer site"* means a place where containers used for storing or mixing a fertilizer are located, if any of the following apply:

a. The container holds one thousand gallons or more of a liquid fertilizer or one thousand pounds or more of a dry fertilizer.

b. The container is in the process of being transported.

10. *"Fund"* means the agrichemical remediation fund created under section 161.7.

11. *"Passive site cleanup"* means the same as defined in section 455B.602.

12. *"Pesticide"* means a pesticide as defined in section 206.2.

13. *"Pesticide site"* means a place where a container used for storing or mixing a pesticide is located, if any of the following apply:

a. The container holds fifty gallons or more of a liquid pesticide or two hundred pounds or more of a dry pesticide.

b. The container is in the process of being transported.

14. *"Remediation"* means the same as defined in section 455B.602.

15. *"Responsible person"* means the same as defined in section 455B.602.

16. *"Site"* means a fertilizer site or a pesticide site.

2000 Acts, ch 1184, §2; 2002 Acts, ch 1119, §135 – 137

Subsection 4 amended

Subsection 9, unnumbered paragraph 1 amended

Subsection 14 stricken and former subsections 15 – 17 renumbered as 14 – 16

161.3 Agrichemical remediation board.

1. An agrichemical remediation board is established within the department consisting of seven voting members.

2. The members shall include all of the following:

a. Two public officials who shall include the following:

(1) The secretary of agriculture or the secretary's designee.

(2) The director of the department of natural resources, or the director's designee.

b. Five members appointed by the secretary of agriculture. The members shall include all of the following:

(1) One member who is actively engaged in selling agricultural products on a retail basis, or who represents an association of members actively engaged in selling such products.

(2) One member who is actively engaged in producing agricultural crops.

(3) One member who is actively engaged in the distribution of agrichemicals or who is a representative of an association of members actively engaged in the distribution of agrichemicals.

(4) One person who is actively engaged in the manufacture or distribution of fertilizers or who is a representative of an association of members actively engaged in the manufacture or distribution of fertilizers.

(5) One person who is a pesticide registrant actively engaged in the manufacture and distribution of pesticides as provided in section 206.12 or who represents an association of members licensed as pesticide registrants.

3. The appointed members shall serve terms of three years beginning and ending as provided in section 69.19. However, the secretary shall appoint initial members to serve for less than three years to ensure members serve staggered terms. Appointments to the board shall be based upon the training, experience and capacity of the appointees, and not upon political considerations, other than as provided in sections 69.16 and 69.16A.

a. A vacancy on the board shall be filled in the same manner as an original appointment. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. An appointed member is eligible for reappointment.

b. An appointed member may be removed from office by the secretary for misfeasance, malfeasance, willful neglect of duty, or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

c. The appointed members shall receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

4. The board shall elect a chairperson each year. The board shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members.

5. The department shall staff the board.
2000 Acts, ch 1184, §3

161.4 Board powers and duties.

The board shall have all powers necessary to carry out the functions and duties specified for the board as provided in this chapter. The board shall do all of the following:

1. Execute remediation agreements with eligible persons as provided in section 161.8.

2. Review and determine the eligibility of responsible persons under section 161.8 and claims under section 161.9, and approve administrative costs of the department paid from the fund. Of the moneys appropriated from the fund under section 161.7, for each fiscal year the department may expend at least sixty-five thousand dollars for purposes of administering this chapter, including the support of a full-time equivalent position as defined in section 8.36A. However, if more than sixty-five thousand dollars is required in order to administer this chapter, the total amount which the department may expend from the fund during any fiscal year for administering this chapter shall not exceed five percent of the balance of the fund on the day of the year of its greatest balance or one hundred fifty thousand dollars, whichever is less.

3. Consult with the department in the adoption of rules necessary for the administration of this chapter. The rules of the department shall contain the rules of the board adopted for its organization, procedures, programs, and requirements as required in this chapter. The rules shall provide for all of the following:

a. The board's organization and parliamentary procedures.

b. Procedures for paying claims as provided in section 161.9.

4. Approve any contract with a person for assuring that remediation is performed in accordance with the provisions of a remediation agreement as provided in section 161.8.

2000 Acts, ch 1184, §4

161.5 Remediation standards.

Remediation conducted pursuant to a plan of remediation incorporated within a remediation agreement as required in section 161.8 shall be performed according to standards adopted by the department of natural resources pursuant to section 455B.601.

2000 Acts, ch 1184, §5

161.6 Prioritization.

1. The board may adopt rules to establish criteria for the classification and prioritization of sites upon which contamination has been discovered, subject to a plan for remediation as provided in section 161.8.

2. A contaminated site shall be classified as either high, medium, or low priority.

a. A site shall be considered high priority under any of the following conditions:

(1) Groundwater contamination exceeds action levels and is affecting or likely to affect groundwater used as a drinking water source.

(2) Contamination is affecting or likely to affect surface water bodies to a level which exceeds surface water quality standards under section 455B.173.

(3) Contamination is discovered in an ecologically sensitive area. An ecologically sensitive area is one which is designated by the department.

b. A site shall be considered medium priority if contamination of groundwater exceeds action levels, but does not meet the criteria for classification as a high priority site.

c. A site shall be considered low priority under any of the following conditions:

(1) If soil contamination exists at the site, but no groundwater contamination exists at the site.

(2) If soil contamination exists and groundwater contamination has been discovered, but is below action levels.

3. A site shall be reclassified as a site with a higher or lower classification when the site falls within a higher or lower classification, as provided in a plan for remediation pursuant to section 161.8.

4. The remediation of a site classified under this section shall be administered as follows:

a. For a high priority site, soil and groundwater site cleanup shall include active site cleanup where technically feasible, until such time as the groundwater contamination levels are below action levels.

b. For a medium priority site, the remediation shall include either monitoring or active or passive site cleanup as determined by the department on a site-by-site basis upon considering the findings of the plan of remediation. However, the remediation shall at least be the same remediation required if the site were classified as a low priority site.

c. For a low priority site, the remediation shall include active site cleanup, if the site cleanup would be more practical and cost-effective than monitoring. If active site cleanup for soil is undertaken, no further action shall be required on the site. If active site cleanup for soil is not undertaken, the site shall be monitored, for a specified period of time as determined by the department.

5. Contaminated groundwater and soil shall be applied on land in accordance with rules adopted by the department. The application rate shall not exceed a level which precludes the resumption of normal farming practices within a two-year period.

6. This chapter does not affect the ability of the department or the United States environmental protection agency to require monitoring or remediation on sites that are placed on the national priorities list pursuant to the federal Comprehen-

sive Environmental Response, Compensation and Liability Act.

2000 Acts, ch 1184, §6; 2002 Acts, ch 1119, §138
Subsection 4, paragraph a amended

161.7 Agrichemical remediation fund.

1. An agrichemical remediation fund is created within the state treasury under the control of the department.

2. The fund shall consist of any moneys appropriated by the general assembly for placement in the fund, and moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund.

3. Moneys in the fund are appropriated exclusively to support agrichemical remediation as provided in this chapter, including the payment of claims under section 161.9 and the administration of this chapter by the board and the department.

4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department, in consultation with the board. The treasurer of state is authorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this chapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of revenue and finance pursuant to the order of the department. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

2000 Acts, ch 1184, §7

161.8 Remediation agreement.

1. A person is not required to comply with the requirements of this chapter, including the remediation of a site, unless the person is a responsible person who executes a remediation agreement with the board, as provided in this section. The remediation agreement shall provide for all of the following:

a. The terms and conditions required to perform remediation under a plan of remediation as provided in this section, and the payment of claims as provided in section 161.9.

b. A plan for remediation of a site where contamination has been discovered. The plan shall provide procedures for a remediation of the contaminated site, a schedule for providing for the remediation of the site according to remediation standards provided in section 161.5, and the classification and prioritization of sites as provided in section 161.6. The plan may be amended at any time, if approved by the department, if the amendment to the agreement is executed by the responsible person and the board. The plan shall be developed by the responsible person and approved by the department for each site subject to the agreement. The plan shall include all of the following:

(1) A determination as to the extent of the existing soil, groundwater, or surface water contamination.

(2) The proximity of the contamination and the likelihood that the contamination will affect a drinking water well.

(3) The characteristics of the site and the potential for migration of the contamination.

(4) Whether the site is classified as a high, medium, or low priority site, as provided in section 161.6.

The department may require that an initial plan of remediation be submitted prior to execution of a remediation agreement. The department may require that the initial plan recommend whether a site be classified as a high or medium priority site. The department may require further investigation be conducted to determine the extent of the remediation which should be conducted on the site.

2. *a.* The department, upon approval of the board, may contract with a person in order to do any of the following:

(1) Consult with the department and the board in reviewing a remediation agreement, including but not limited to investigating a site or recommending approval or denial of a plan for remediation.

(2) Ensure compliance with the plan for remediation as provided in this section. The person may be authorized to provide a statement to a responsible person, stating that the person is eligible for payment of a claim submitted from the fund as provided in section 161.9.

b. The department may execute the contract with a private individual or entity or a state and local government as provided in chapter 28E.

3. A responsible person is eligible to execute a remediation agreement under this section, if the board determines that all of the following apply:

a. The responsible person is not subject to any of the following:

(1) A pending criminal adjudication against the responsible person relating to the contamination.

(2) Criminal sanctions imposed against the responsible person relating to the contamination.

b. Any of the following:

(1) The responsible person performed reasonable measures necessary for the immediate abatement of any contamination.

(2) The responsible person has complied or is in the process of complying in a timely manner with orders issued by the state or federal govern-

ment for remediation of the contaminated site.

4. Unless the department has cause to believe that the responsible person is not eligible, the department shall provide a statement to the responsible person upon request. The statement shall be printed on forms prescribed by the board. The statement shall verify that to the extent of the department's knowledge, the responsible person is eligible under this section. The board may use the statement as evidence of eligibility. The board shall provide the statement with any weight determined appropriate by the board.

5. The state, a state agency, a political subdivision of the state, or federal government, or an agency of the federal government, is not eligible to submit a claim to the board for reimbursement from the fund.

2000 Acts, ch 1184, §8; 2002 Acts, ch 1119, §139
Subsection 3, paragraph b, subparagraph (1) amended

161.9 Payment of claims.

1. The board shall approve a claim against the fund to pay for remediation of a contaminated site if all of the following apply:

a. The claim is made in a manner and according to procedures contained in a remediation agreement executed by the board and the eligible person and rules adopted by the board.

b. The person who has executed a remediation agreement with the board and is filing the claim is a responsible person eligible under section 161.8.

c. The claim includes all of the following:

(1) Evidence of the contamination, including affidavits of experts, photographs, or documentation by federal or state agencies including the department of natural resources.

(2) The total amount required to pay for all costs related to remediating the site as performed by a qualified person according to a business invoice. The business invoice shall be accompanied by supporting evidence.

(3) Information about any insurance policy required to indemnify the responsible person for costs associated with remediating the contaminated site, including a copy of the policy.

(4) The site has been remediated according to a plan of remediation approved by the department as provided in section 161.8.

(5) The claim is complete and accurate, and contains no false or misleading statements.

(6) The approval by the department, in consultation with the board, of a comprehensive plan by the responsible person for the prevention of future contamination at the site.

2. If the board approves a claim, the board shall reimburse the responsible person by doing any of the following:

a. Providing for the immediate payment of a claim, if the board determines that the contamination causes a clear, present, and impending danger to the public health or the natural environment.

b. Providing for the ordinary payment of a claim as follows:

(1) The board may pay the amount of the claim based on a final statement submitted by a responsible person. The department, in consultation with the board, may establish guidelines for reasonable and necessary charges for specific remediation procedures. Payment shall not exceed these reasonable and necessary charges without prior approval of the board.

(2) Upon a determination that the claim is eligible for payment, the department shall provide for payment of the claim as provided in this subsection.

c. Withholding a portion of the payment as provided in the remediation agreement, for final payment when the department determines that the site has been monitored for a period necessary to ensure that remediation has been successful.

d. The amount of the claim shall be the total amount required to remediate the site subject to all of the following:

(1) A deduction of five thousand dollars.

(2) A deduction in the amount of the insurance payments owed to or received by the responsible person for indemnification of remediation costs. The amount of the insurance payments shall be applied first to satisfy the five thousand dollar deduction required in subparagraph (1).

(3) After making the deductions required in subparagraphs (1) and (2), the department shall provide for payment in the amount of ninety percent of claims up to one hundred thousand dollars, eighty percent of claims over one hundred thousand dollars, but not exceeding two hundred thousand dollars, and seventy percent of claims over two hundred thousand dollars up to two hundred fifty thousand dollars.

(4) The amount of a claim shall not be more than two hundred fifty thousand dollars to pay the costs of remediating a contaminated site.

3. The board shall not provide payments from the fund until the board determines that the claim is reasonable and that the claimant has submitted all evidence necessary in order to support the claim and any expenditure of moneys from the fund. The board shall place conditions or requirements upon the payment of moneys from the fund in order to ensure that the moneys are used to provide remediation in compliance with a remediation plan required pursuant to section 161.8.

4. If at any time the department determines that there are insufficient moneys in the fund to make payment of all claims, the department shall pay claims according to the date that the claims are received by the department. To the extent that a claim cannot be fully satisfied, the department shall order that the unpaid portion of the payment be deferred until the claim can be satisfied. However, the department shall not satisfy claims from moneys dedicated for the administration of the fund.

5. The department shall have a claim on behalf

of the fund against any responsible person who files a claim in violation of this chapter for the amount paid for remediation. The responsible person shall be liable for damages. The moneys collected by the department under this subsection shall be deposited into the fund.

2000 Acts, ch 1184, §9

161.10 Report.

The department in cooperation with the board shall submit a report to the general assembly by January 10 of each odd-numbered year. The report shall provide a summary and a detailed accounting of the fund's financial condition, including expected revenue and expenses during the following two years.

2000 Acts, ch 1184, §10

CHAPTER 161A

SOIL AND WATER CONSERVATION

This chapter not enacted as a part of this title; transferred from chapter 467A in Code 1993

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DIVISION I

DIVISION OF SOIL CONSERVATION

161A.1 Short title.

This chapter may be known and cited as the *"Soil Conservation Districts Law"*.

[C39, §**2603.02;** C46, §160.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.1]

C93, §161A.1

161A.2 Declaration of policy.

It is hereby declared to be the policy of the legislature to integrate the conservation of soil and water resources into the production of agricultural commodities to insure the long-term protection of the soil and water resources of the state of Iowa, and to encourage the development of farm management and agricultural practices that are consistent with the capability of the land to sustain agriculture, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist and maintain the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and promote the health, safety and public welfare of the people of this state.

[C39, §**2603.03;** C46, §160.2; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.2]

86 Acts, ch 1245, §645

C93, §161A.2

161A.3 Definitions.

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. *"Agency of this state"* includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"Commissioner"* means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

4. *"Committee"* or *"state soil conservation committee"* means the committee established by section 161A.4.

5. *"Department"* means the department of agriculture and land stewardship.

6. *"District"* or *"soil and water conservation district"* means a governmental subdivision of this state, and a public body corporate and politic, organized for the purposes, with the powers, and subject to the restrictions in this chapter set forth.

7. *"Division"* means the division of soil conservation created within the department.

8. *"Due notice"* means notice published at least twice, with an interval of at least six days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

9. *"Government"* or *"governmental"* includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, or either of them.

10. *"Landowner"* includes any person, firm, or corporation or any federal agency, this state or any of its political subdivisions, who shall hold title to land lying within a proposed district or a district organized under the provisions of this chapter.

11. *"Nominating petition"* means a petition filed under the provisions of section 161A.5 to

nominate candidates for the office of commissioner of a soil and water conservation district.

12. *"Petition"* means a petition filed under the provisions of subsection 1 of section 161A.5 for the creation of a district.

13. *"State"* means the state of Iowa.

14. *"United States"* or *"agencies of the United States"* includes the United States of America, the United States department of agriculture natural resources conservation service, and any other agency or instrumentality, corporate or otherwise, of the United States.

[C39, §**2603.04;** C46, §160.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.3; 82 Acts, ch 1199, §72, 96]

86 Acts, ch 1238, §61; 86 Acts, ch 1245, §646, 647; 87 Acts, ch 23, §16; 89 Acts, ch 83, §55

C93, §161A.3

95 Acts, ch 216, §25; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

161A.4 Soil conservation division — committee.

1. The soil conservation division is established within the department to perform the functions conferred upon it in chapters 161A through 161C, 161E, 161F, 207, and 208. The division shall be administered in accordance with the policies of the state soil conservation committee, which shall advise the division and which shall approve administrative rules proposed by the division for the administration of chapters 161A through 161C, 161E, 161F, 207, and 208 before the rules are adopted pursuant to section 17A.5. If a difference exists between the committee and secretary regarding the content of a proposed rule, the secretary shall notify the chairperson of the committee of the difference within thirty days from the committee's action on the rule. The secretary and the committee shall meet to resolve the difference within thirty days after the secretary provides the committee with notice of the difference.

The state soil conservation committee consists of a chairperson and eight other voting members. The following shall serve as ex officio nonvoting members of the committee: the director of the Iowa cooperative extension service in agriculture and home economics, or the director's designee; and the director of the department of natural resources or the director's designee. Nine voting members shall be appointed by the governor subject to confirmation by the senate. Six of the appointive members shall be persons engaged in actual farming operations, one of whom shall be a resident of each of six geographic regions in the state, including northwest, southwest, north central, south central, northeast, and southeast Iowa, and no more than one of whom shall be a resident of any one county. The boundaries of the geographic regions shall be established by rule. The seventh, eighth, and ninth appointive members shall be chosen by the governor from the state at large with one appointed to be a representative of cities, one appointed to be a representative of the mining industry, and one appointee who is a farmer actively engaged in tree farming. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the other members, and the president of the Iowa county engineers association may designate a member of the association to serve in the same manner, but these persons have no vote and shall serve in an advisory capacity only. The committee may perform acts, hold public hearings, and propose and approve rules pursuant to chapter 17A as necessary for the execution of its functions.

2. The committee shall recommend three persons to the secretary of agriculture who shall appoint from the persons recommended an administrative director to head the division who shall serve at the pleasure of the secretary. After reviewing the names submitted, the secretary may request the soil conservation committee to submit additional names for consideration. The committee shall recommend to the secretary each year a budget for the division. The secretary, at the earliest opportunity and prior to formulating a budget, shall meet with representatives of the committee to discuss the committee's recommendation. The committee or division may call upon the attorney general of the state for necessary legal services. The committee may delegate to its chairperson, to one or more of its members, or to one or more agents or employees, powers and duties as it deems proper. Upon request of the committee, for the purpose of carrying out any of the functions assigned the committee or the department by law, the supervising officer of any state agency, or of any state institution of learning shall, insofar as possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail the request to the staff or personnel of the agency or institution of learning, and make the special reports, surveys, or studies as the committee requests.

3. The committee shall designate its chairperson, and may change the designation. The members appointed by the governor shall serve for a period of six years. Members shall be appointed in each odd-numbered year to succeed members whose terms expire as provided by section 69.19. Appointments may be made at other times and for other periods as necessary to fill vacancies on the committee. Members shall not be appointed to serve more than two complete six-year terms. Members designated to represent the director of the department of natural resources and the director of the Iowa cooperative extension service in agriculture and home economics shall serve at the pleasure of the officer making the designation. A majority of the voting members of the committee constitutes a quorum, and the concurrence of a majority of the voting members of the committee

in any matter within their duties is required for its determination. Members are entitled to actual expenses necessarily incurred in the discharge of their duties as members of the committee. The expenses paid to the committee members shall be paid from funds appropriated to the department. Each member of the committee may also be eligible to receive compensation as provided in section 7E.6. The committee shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

4. In addition to other duties and powers conferred upon the division of soil conservation, the division has the following duties and powers:

a. To offer assistance as appropriate to the commissioners of soil and water conservation districts in carrying out any of their powers and programs.

b. To take notice of each district's long-range resource conservation plan established under section 161A.7, in order to keep the commissioners of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

c. To coordinate the programs of the soil and water conservation districts so far as this may be done by advice and consultation.

d. To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

e. To disseminate information throughout the state concerning the activities and program of the soil and water conservation districts.

f. To render financial aid and assistance to soil and water conservation districts for the purpose of carrying out the policy stated in this chapter.

g. To assist each soil and water conservation district in developing a district soil and water resource conservation plan as provided under section 161A.7. The plan shall be developed according to rules adopted by the division to preserve and protect the public interest in the soil and water resources of this state for future generations and for this purpose to encourage, promote, facilitate, and where such public interest requires, to mandate the conservation and proper control of and use of the soil and water resources of this state, by measures including, but not limited to, the control of floods, the control of erosion by water or by wind, the preservation of the quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed to be conducive to the public health, convenience, and welfare, both present and future.

h. To file the district soil and water resource conservation plans as part of a state soil and water resource conservation plan. The state plan shall contain on a statewide basis the information required for a district plan under this section.

i. To establish a position of state drainage coordinator for drainage districts and drainage and levee districts which will keep the management of those districts informed of the activities and experience of all other such districts and facilitate an interchange of advice, experience and cooperation among the districts, coordinate by advice and consultation the programs of the districts, secure the cooperation and assistance of the United States and its agencies and of the agencies of this state and other states in the work of the districts, disseminate information throughout the state concerning the activities and programs of the districts and provide other appropriate assistance to the districts.

[C39, §**2603.05;** C46, §160.4; C50, 54, 58, 62, 66, 71, §467A.4; C73, §455A.40(3), 467A.4; C75, 77, 79, 81, §467A.4; 82 Acts, ch 1199, §73, 74, 96]

83 Acts, ch 101, §102; 85 Acts, ch 163, §13; 86 Acts, ch 1245, §648 – 650, 668; 87 Acts, ch 23, §17; 88 Acts, ch 1198, §1, 2; 89 Acts, ch 83, §56; 89 Acts, ch 106, §2

C93, §161A.4

Confirmation, see §2.32

DIVISION II

SOIL AND WATER CONSERVATION DISTRICTS

161A.5 Soil and water conservation districts.

1. The one hundred soil and water conservation districts* established in the manner which was prescribed by law prior to July 1, 1975 shall continue in existence with the boundaries and the names* in effect on July 1, 1975. If the existence of a district so established is discontinued pursuant to section 161A.10, a petition for re-establishment of the district or for annexation of the former district's territory to any other abutting district may be submitted to, and shall be acted upon by, the state soil conservation committee in substantially the manner provided by section 467A.5, Code 1975.

2. The governing body of each district shall consist of five commissioners elected on a nonpartisan basis for staggered four-year terms commencing on the first day of January that is not a Sunday or holiday following their election. Any eligible elector residing in the district is eligible to the office of commissioner, except that no more than one commissioner shall at any one time be a resident of any one township. A vacancy is created in the office of any commissioner who changes residence into a township where another commissioner then resides. If a commissioner is absent for sixty or more percent of monthly meetings dur-

ing any twelve-month period, the other commissioners by their unanimous vote may declare the member's office vacant. A vacancy in the office of commissioner shall be filled by appointment of the state soil conservation committee until the next succeeding general election, at which time the balance of the unexpired term shall be filled as provided by section 69.12.

3. At each general election a successor shall be chosen for each commissioner whose term will expire in the succeeding January. Nomination of candidates for the office of commissioner shall be made by petition in accordance with chapter 45, except that each candidate's nominating petition shall be signed by at least twenty-five eligible electors of the district. The petition form shall be furnished by the county commissioner of elections. Every candidate shall file with the nomination papers an affidavit stating the candidate's name, the candidate's residence, that the person is a candidate and is eligible for the office of commissioner, and that if elected the candidate will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

The signed petitions shall be filed with the county commissioner of elections not later than five p.m. on the sixty-ninth day before the general election. The votes for the office of district commissioner shall be canvassed in the same manner as the votes for county officers, and the returns shall be certified to the commissioners of the district. A plurality is sufficient to elect commissioners, and a primary election for the office shall not be held. If the canvass shows that the two candidates receiving the highest and the second highest number of votes for the office of district commissioner are both residents of the same township, the board shall certify as elected the candidate who received the highest number of votes for the office and the candidate receiving the next highest number of votes for the office who is not a resident of the same township as the candidate receiving the highest number of votes.

[C39, §**2603.06;** C46, §160.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.5]

87 Acts, ch 23, §18; 89 Acts, ch 136, §73; 90 Acts, ch 1238, §41

C93, §161A.5

94 Acts, ch 1180, §41; 96 Acts, ch 1083, §1; 98 Acts, ch 1052, §5

*Established as "soil conservation districts"

161A.6 Commissioners — general provisions.

The commissioners of each soil and water conservation district shall convene on the first day of January that is not a Sunday or holiday in each odd-numbered year. Those commissioners whose term of office begins on that day shall take the oath of office prescribed by section 63.10. The commissioners shall then organize by election of a chairperson and a vice chairperson.

The commissioners of the respective districts shall submit to the department such statements, estimates, budgets, and other information at such times and in such manner as the department may require.

A commissioner shall not receive compensation for the commissioner's services. However, to the extent funds are available, a commissioner is entitled to receive actual expenses necessarily incurred in the discharge of the commissioner's duties, including reimbursement for mileage at the rate provided under section 70A.9 for state business use.

The commissioners may call upon the attorney general of the state for such legal services as they may require. The commissioners may delegate to their chairperson, to one or more commissioners or to one or more agents, or employees, such powers and duties as they may deem proper. The commissioners shall furnish to the division of soil conservation, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall regularly report to the division a summary of financial information regarding moneys controlled by the commissioners, which are not audited by the state, according to rules adopted by the division.

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

[C39, §**2603.08;** C46, §160.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.6]

87 Acts, ch 23, §19

C93, §161A.6

93 Acts, ch 176, §33; 96 Acts, ch 1083, §2

161A.7 Powers of districts and commissioners.

A soil and water conservation district organized under this chapter has the following powers, in addition to others granted in other sections of this chapter:

1. To conduct surveys, investigations, and research relating to the character of soil erosion and erosion, floodwater, and sediment damages, and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a cooperative agreement entered into between the Iowa agricultural experiment station and such district.

2. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; provided, however, that in order to avoid duplication of agricultural extension activities, no district shall initiate any demonstrational projects, except in cooperation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a cooperative agreement entered into between the Iowa agricultural extension service and such district.

3. To carry out preventive and control measures within the district, including, but not limited to, crop rotations, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in section 161A.2, on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

4. To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and watershed protection and flood prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

5. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

6. To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for the prevention of erosion, floodwater, and sediment damages.

7. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

8. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

9. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers.

10. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or

expend such moneys, services, materials, or other contributions in carrying on its operations.

11. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

12. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

13. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, except as specifically stated herein.

14. Subject to the approval of the state soil conservation committee, to change the name of the soil and water conservation district.

15. To provide for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency as provided in section 161A.75.

16. The commissioners shall, as a condition for the receipt of any state cost-sharing funds for permanent soil conservation practices, require the owner of the land on which the practices are to be established to covenant and file, in the office of the soil and water conservation district of the county in which the land is located, an agreement identifying the particular lands upon which the practices for which state cost-sharing funds are to be received will be established, and providing that the project will not be removed, altered, or modified so as to lessen its effectiveness without the consent of the commissioners, obtained in advance and based on guidelines drawn up by the state soil conservation committee, for a period of twenty years after the date of receiving payment. The commissioners shall assist the division in the enforcement of this subsection. The agreement does not create a lien on the land, but is a charge personally against the owner of the land at the time of removal, alteration, or modification if an administrative order is made under section 161A.61, subsection 3.

17. To encourage local school districts to provide instruction in the importance of and in some of the basic methods of soil conservation, as a part of course work relating to conservation of natural resources and environmental awareness required in rules adopted by the state board of education pursuant to section 256.11, subsections 3 and 4, and to offer technical assistance to schools in developing such instructional programs.

18. To develop a soil and water resource conservation plan for the district.

a. The district plan shall contain a comprehensive long-range assessment of soil and surface water resources in the district consistent with rules approved by the committee under section 161A.4. In developing the plan the district may receive technical support from the United States department of agriculture natural resources conservation service and the county board of supervisors in the county where the district is located. The division and the Iowa cooperative extension service in agriculture and home economics may provide technical support to the district. The support may include, but is not limited to, the following: assessing the condition of soil and surface water in the district, including an evaluation of the type, amount, and quality of soil and water, the threat of soil erosion and erosion, floodwater, and sediment damages, and necessary preventative and control measures; developing methods to maintain or improve soil and water condition; and cooperating with other state and federal agencies to carry out this support.

b. The title page of the district plan and a notification stating where the plan may be reviewed shall be recorded with the recorder in the county in which the district is located, and updated as necessary, after the committee approves and the administrator of the division signs the district plan. The commissioners shall provide notice of the recording and may provide a copy of the approved district plan to the county board of supervisors in the county where the district is located. The district plan shall be filed with the division as part of the state soil and water resource conservation plan provided in section 161A.4.

19. To enter into agreements pursuant to chapter 161C with the owner or occupier of land within the district or cooperating districts, or any other private entity or public agency, in carrying out water protection practices, including district and multidistrict projects to protect this state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants.

[C39, §**2603.09;** C46, §160.7; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.7; 82 Acts, ch 1083, §1, ch 1220, §1]

86 Acts, ch 1238, §61; 86 Acts, ch 1245, §651; 87 Acts, ch 23, §20; 88 Acts, ch 1189, §1; 88 Acts, ch 1198, §3; 88 Acts, ch 1262, §9; 89 Acts, ch 83, §57; 92 Acts, ch 1108, §1; 92 Acts, ch 1239, §49

C93, §161A.7

93 Acts, ch 109, §1; 95 Acts, ch 216, §25; 97 Acts, ch 59, §1

Review of road construction projects, §306.50 – 306.54

161A.8 Co-operation between districts.

The commissioners of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter.

[C39, §**2603.10;** C46, §160.8; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.8]
C93, §161A.8

161A.9 State agencies to co-operate.
Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, may co-operate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter.
[C39, §**2603.11;** C46, §160.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.9]
C93, §161A.9

161A.10 Discontinuance of districts.
At any time after five years after the organization of a district under this chapter, any twenty-five owners of land lying within the boundaries of the district, but in no case less than twenty percent of the owners of land lying within the district, may file a petition with the committee asking that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct public meetings and public hearings upon the petition as necessary to assist in the consideration of the petition. Within sixty days after a petition has been received by the committee, the division shall give due notice of the holding of a referendum, shall supervise the referendum, and shall issue appropriate rules governing the conduct of the referendum. The question is to be submitted by ballots upon which the words "For terminating the existence of the ..... (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the ..... (name of the soil and water conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of the propositions as the voter favors or opposes discontinuance of the district. All owners of lands lying within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relating to the referendum invalidate the referendum or the result of the referendum if notice was given substantially as provided in this section and if the referendum was fairly conducted.

When sixty-five percent of the landowners vote to terminate the existence of the district, the committee shall advise the commissioners to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of the sale to be deposited into the state treasury. The commissioners shall then file an application, duly verified, with the secretary of state for the discontinuance of the district, and shall transmit with the application the certificate of the committee setting forth the determination of the committee that the continued operation of the district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as provided in this section, and shall set forth a full accounting of the properties and proceeds of the sale. The secretary of state shall issue to the commissioners a certificate of dissolution and shall record the certificate in an appropriate book of record in the secretary of state's office.

Upon issuance of a certificate of dissolution under this section, all ordinances and regulations previously adopted and in force within the districts are of no further force and effect. All contracts previously entered into, to which the district or commissioners are parties, remain in force and effect for the period provided in the contracts. The committee is substituted for the district or commissioners as party to the contracts. The committee is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued, and to modify or terminate the contracts by mutual consent or otherwise, as the commissioners of the district would have had.

The committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon discontinuance petitions nor make determinations pursuant to the petitions in accordance with this chapter, more often than once in five years.
[C39, §**2603.12;** C46, §160.10; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.10]
86 Acts, ch 1245, §652; 87 Acts, ch 23, §21; 89 Acts, ch 106, §3
C93, §161A.10

161A.11 Report to governor.
The division shall submit to the governor, no later than January 1 next preceding each biennial legislative session, a report which shall state the number and acreage of districts in existence or in process of organization, together with an estimate of the number and probable acreage of the districts which may be organized during the ensuing biennial fiscal period, and a statement of the balances of funds, if any, available to the division for its administrative and other expenses arising from this chapter, and for allocation among the several districts during the ensuing biennial fiscal period.
[C46, §160.11; C50, 54, 58, 62, 66, 71, 73, 75, 77,

79, 81, §467A.11]
86 Acts, ch 1245, §653
C93, §161A.11

161A.12 Statement to department of management.

On or before October 1 next preceding each annual legislative session, the division shall submit to the department of management, on official estimate blanks furnished for those purposes, statements and estimates of the expenditure requirements for each fiscal year, and a statement of the balance of funds, if any, available to the division, and the estimates of the division as to the sums needed for the administrative and other expenses of the division for the purposes of this chapter.

[C46, §160.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.12]
86 Acts, ch 1245, §654
C93, §161A.12
96 Acts, ch 1034, §6

DIVISION III

SUBDISTRICTS

161A.13 Purpose of subdistricts.

Subdistricts of a soil and water conservation district may be formed as provided in this chapter for the purposes of carrying out watershed protection and flood prevention programs within the subdistrict but shall not be formed solely for the purpose of establishing or taking over the operation of an existing drainage district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.13]
86 Acts, ch 1238, §61; 87 Acts, ch 23, §22; 89 Acts, ch 83, §58
C93, §161A.13

161A.14 Petition to form.

When the landowners in a proposed subdistrict desire that a subdistrict be organized, they shall file a petition with the commissioners of the soil and water conservation district. The area must be contiguous and in the same watershed but it shall not include any area located within the boundaries of an incorporated city. The petition shall set forth an intelligible description by congressional subdivision, or otherwise, of the land suggested for inclusion in the subdistrict and shall state whether the special annual tax or special benefit assessments will be used, or whether the use of both is contemplated. The petition shall contain a brief statement giving the reasons for organization, and requesting that the proposed area be organized as a subdistrict, and must be signed by sixty-five percent of the landowners in the proposed subdistrict. Land already in one subdistrict cannot be included in another. The soil and water conservation district commissioners shall review the petition and if it is found adequate shall arrange for a hearing on it.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.14]
87 Acts, ch 23, §23
C93, §161A.14

161A.15 Notice and hearing.

Within thirty days after a petition has been filed with the soil and water conservation district commissioners, they shall fix a date, hour, and place for a hearing and direct the secretary to cause notice to be given to the owners of each tract of land, or lot, within the proposed subdistrict as shown by the transfer books of the auditor's office, and to each lienholder, or encumbrancer, of any such lands as shown by the county records, and to all other persons whom it may concern, and without naming individuals all actual occupants of land in the proposed subdistrict, of the pendency and purpose of the petition and that all objections to establishment of the subdistrict for any reason must be made in writing and filed with the secretary of the soil and water conservation district at, or before, the time set for hearing. The soil and water conservation district commissioners shall consider and determine whether the operation of the subdistrict within the defined boundaries as proposed is desirable, practicable, feasible, and of necessity in the interest of health, safety, and public welfare. All interested parties may attend the hearing and be heard. The soil and water conservation district commissioners may for good cause adjourn the hearing to a day certain which shall be announced at the time of adjournment and made a matter of record. If the soil and water conservation district commissioners determine that the petition meets the requirements set forth in this section and in section 161A.5, they shall declare that the subdistrict is duly organized and shall record such action in their official minutes together with an appropriate official name or designation for the subdistrict.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.15]
87 Acts, ch 23, §24
C93, §161A.15
2001 Acts, ch 24, §32

161A.16 Publication of notice.

The notice of hearing on the formation of a subdistrict shall be by publication once each week for two consecutive weeks in some newspaper of general circulation published in the county or district, the last of which shall be not less than ten days prior to the day set for the hearing on the petition. Proof of such service shall be made by affidavit of the publisher, and be on file with the secretary of the district at the time the hearing begins.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.16]
87 Acts, ch 115, §61
C93, §161A.16

161A.17 Subdistrict in more than one district.

If the proposed subdistrict lies in more than one soil and water conservation district, the petition may be presented to the commissioners of any one of such districts, and the commissioners of all such districts shall act jointly as a board of commissioners with respect to all matters concerning the subdistrict, including its formation. They shall organize as a single board for such purposes and shall designate its chairperson, vice chairperson, and secretary-treasurer to serve for terms of one year. Such a subdistrict shall be formed in the same manner and has the same powers and duties as a subdistrict formed in one soil and water conservation district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.17]
87 Acts, ch 23, §25
C93, §161A.17

161A.18 Certification.

Following the entry in the official minutes of the soil and water conservation district commissioners of the creation of the subdistrict, the commissioners shall certify this fact on a separate form, authentic copies of which shall be recorded with the county recorder of each county in which any portion of the subdistrict lies, and with the division of soil conservation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.18]
87 Acts, ch 23, §26
C93, §161A.18
2001 Acts, ch 24, §33

161A.19 Governing body.

The commissioners of a soil and water conservation district in which the subdistrict is formed are the governing body of the subdistrict. When a subdistrict lies in more than one soil and water conservation district, the combined board of commissioners is the governing body. The governing body of the subdistrict shall appoint three trustees living within the subdistrict to assist with the administration of the subdistrict.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.19]
87 Acts, ch 23, §27
C93, §161A.19

161A.20 Special annual tax.

After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, a subdistrict shall have the authority to impose a special annual tax, the proceeds of which shall be used for the repayment of actual and necessary expenses incurred to organize the subdistrict, to acquire land or rights or interests therein by purchase or condemnation, repair, alteration, maintenance and operation of the present and future works of improvement within its boundaries.

On or before January 10 of each year its governing body shall make an estimate of the amount it deems necessary to be raised by such special tax for the ensuing year and transmit said estimate in dollars to the board of supervisors of the county in which the subdistrict lies.

If portions of the subdistrict are in more than one county, then the governing body, as hereinbefore designated in such event, after arriving at the estimate in dollars deemed necessary for the entire subdistrict shall ratably apportion such amount between the counties and transmit and certify the prorated portion to the respective boards of supervisors of each of the counties.

The board or boards of supervisors shall upon receipt of certification from the governing body of the district make the necessary levy on the assessed valuation of all real estate within the boundaries of the subdistrict lying within their respective county to raise said amounts, but in no event to exceed one dollar and eight cents per thousand dollars of assessed value.

The special tax so levied shall be collected in the same manner as other taxes with like penalty for delinquency, with the proceeds therefrom to be kept in a separate account by the appropriate county treasurer or treasurers identified by the official name of the subdistrict and expenditures therefrom shall be made on requisition of the chairperson and secretary of the governing body of the subdistrict.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.20]
C93, §161A.20

161A.21 Condemnation by subdistrict.

A subdistrict of a soil and water conservation district may condemn land or rights or interests in the subdistrict to carry out the authorized purposes of the subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.21]
87 Acts, ch 23, §28
C93, §161A.21

161A.22 General powers applicable — warrants or bonds.

A subdistrict organized under this chapter has all of the powers of a soil and water conservation district in addition to other powers granted to the subdistrict in other sections of this chapter.

The governing body of the subdistrict, upon determination that benefits from works of improvement as set forth in the watershed work plan to be installed will exceed costs thereof, and that funds needed for purposes of the subdistrict require levy of a special benefit assessment as provided in section 161A.23, in lieu of the special annual tax as provided in section 161A.20, shall record its decision to use its taxing authority and, upon majority vote of the governing body and with the approval of the state soil conservation committee, may issue warrants or bonds payable in not more than

forty semiannual installments in connection with the special benefit assessment, and pledge and assign the proceeds of the special benefit assessment and other revenues of the subdistrict as security for the warrants or bonds. The warrants and bonds of indebtedness are general obligations of the subdistrict, exempt from all taxes, state and local, and are not indebtedness of the soil and water conservation district or the state of Iowa.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.22]
87 Acts, ch 23, §29
C93, §161A.22

DIVISION IV

ALTERNATE METHOD OF TAXATION FOR WATERSHED PROTECTION AND FLOOD PREVENTION

161A.23 Agreement by fifty percent of landowners.

After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, the governing body of the subdistrict shall have the authority to establish a special tax for the purpose of organization, construction, repair, alteration, enlargement, extension and operation of present and future works of improvement within the boundaries of said subdistrict. The governing body shall appoint three appraisers to assess benefits and classify the land affected by such improvements. One of such appraisers shall be a competent registered professional engineer and two of them shall be resident landowners of the county or counties in which the subdistrict is located but not living within nor owning or operating any lands included in said subdistrict.

The appraisers shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages, benefits and apportion and assess the costs and expenses of construction of the said improvement according to law and their best judgment, skill, and ability. If said appraisers or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the governing body of the subdistrict shall appoint others with like qualifications to take their places and perform said duties.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.23]
C93, §161A.23

161A.24 Assessment for improvements.

At the time of appointing said appraisers, the governing body shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the governing body. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto.

The amount of benefit appraised to each forty acres of land within the subdistrict shall be determined by the improvements within said subdistrict based upon the work plan as agreed upon by the subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.24]
C93, §161A.24

161A.25 Report of appraisers.

In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.25]
C93, §161A.25

161A.26 Hearing.

The governing body shall fix a time for a hearing within sixty days upon receiving the report of the appraisers, and the governing body shall cause notice to be served upon each person not less than ten days before said hearing whose name appears as owner, naming that person, and also upon the person or persons in actual occupancy of any tract of land without naming them of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a subdistrict, and shall state the amount of assessment of costs and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the governing body at or before the time set for such hearing.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.26]
C93, §161A.26

161A.27 Determination by board.

At the time fixed or at an adjourned hearing, the governing body shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said subdistrict as may appear to the board to be just and equitable.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.27]
C93, §161A.27

161A.28 Appeal.

Any person aggrieved may appeal from any final action of the governing body in relation to any matter involving the person's rights, to the district court of the county in which the proceeding was held.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.28]
C93, §161A.28

161A.29 Intercounty subdistricts.

In subdistricts extending into two or more counties, appeals from final orders resulting from the joint action of the several governing bodies of such subdistrict may be taken to the district court of any county into which the district extends.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.29]
C93, §161A.29

161A.30 Notice of appeal.

All appeals shall be taken within twenty days after the date of final action or order of the governing body from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken, the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.30]
C93, §161A.30

161A.31 Petition filed.

Within twenty days after perfection of notice, the appellant shall file a petition setting forth the order or final action of the governing body appealed from and the grounds of the appellant's objections and the appellant's complaint, with a copy of the appellant's claim for damages or objections filed by the appellant with the auditor. The appellant shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.31]
C93, §161A.31

161A.32 Assessment certified.

When the board or boards of supervisors shall receive a certification from the governing body of the district to make the necessary assessment on the real estate within the boundaries of the subdistrict lying within their respective county, this shall be construed as final action by the governing body.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.32]
C93, §161A.32

161A.33 Assessments transmitted.

The governing body upon receiving the reports from three appointed appraisers and after holding the hearings shall transmit and certify the amounts of assessments to the respective boards of supervisors which upon receipt of certification from the governing body of the district, make the necessary levy of such assessments as fixed by the governing body upon the land within such subdistrict and all assessments shall be levied at that time as a tax and shall bear interest at a rate not exceeding that permitted by chapter 74A from that date payable annually except as hereafter provided as to cash payments therefor within a specified time. The assessment so levied shall be kept in a separate account by the appropriate county treasurer or treasurers, identified by the official name of the subdistrict and expenditures therefrom shall be made on requisition of the chairperson and secretary of the governing body of the subdistrict.

At no time will an assessment be made where the benefits accrued to the subdistrict do not exceed the cost of the improvements within the said subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.33]
C93, §161A.33

161A.34 Payment to county treasurer.

All assessments for benefits shall be levied at one time against the property benefited and when levied and certified by the board or boards of supervisors shall be paid at the office of the county treasurer. Each person or corporation shall have the right within twenty days after the levy of assessments to pay the person's or corporation's assessment in full without interest.

If any levy of assessments is not sufficient to meet the cost and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, additional assessments may be made on the same classification as the previous ones.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.34]
C93, §161A.34

161A.35 Installments.

If the owner of any premises against which a levy exceeding one hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the owner's property, then such owner shall have the following options:

1. To pay one half of the amount of such assessment at the time of filing such agreement and the remaining one half shall become due and payable one year from the date of filing such agreement. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at a rate fixed by the governing body of the subdistrict, but not exceeding that permitted by chapter 74A, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than forty equal installments, the number to be fixed by the governing body of the subdistrict and interest at the rate fixed by the governing body of the subdistrict, not exceeding that permitted by chapter 74A. The first installment of each assessment shall become due and payable at the September semiannual tax paying date after the date of filing such agreement, unless the agreement is filed with the county treasurer less than ninety days prior to such September semiannual tax paying date, in that event, the first installment shall become due and payable at the next succeeding September semiannual tax paying date. The second and each subsequent installment shall become due and payable at the September semiannual tax paying date each year thereafter. All such installments shall be collected with interest accrued on the unpaid balance to the September semiannual tax paying date and as other taxes on real estate, with like penalty for delinquency.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.35]
C93, §161A.35
98 Acts, ch 1107, §1; 99 Acts, ch 83, §1

161A.36 Option by appellant.

When an owner takes an appeal from the assessment against any of the owner's land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal the owner shall file in the office of the auditor the owner's written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.36]
C93, §161A.36

161A.37 Status of classification.

A classification of land for watershed purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said subdistrict, except as provided in section 161A.38.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.37]
C93, §161A.37

161A.38 New classification.

After a subdistrict has been established and the improvements thereof constructed and put in operation, if the governing body shall find that the original assessments are not equitable as a basis for the expenses of any enlargement or extension thereof which may have become necessary, they shall order a new classification of all lands in said subdistrict by resolution, and appoint three appraisers, which shall meet the same requirements as set forth in section 161A.23.

Upon the completion of the reclassification, those affected by such reclassification shall have the right to appeal as hereinabove set forth.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.38]
C93, §161A.38

161A.39 Benefit of whole subdistrict.

Assessments for repair, alteration, enlargement, extension, and operation of works of improvement within the watershed district shall be a benefit to the entire subdistrict and levied as such.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.39]
C93, §161A.39

161A.40 Compensation of appraisers.

Persons appointed to appraise and make classifications of lands shall receive such compensation as the governing body may fix and in addition thereto, the necessary expenses of transportation of said persons while engaged in their work; such compensation and expenses shall be construed as part of the cost of the subdistrict which shall be included when considering classifications of lands within a subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.40]
C93, §161A.40

161A.41 Election of taxing methods.

Subdistricts organized under the provisions of this chapter shall designate in the petition which of the taxing methods will be used or may stipulate that both methods are contemplated for use. Should the governing body of the subdistrict find it desirable to change from a special annual tax to special benefit assessments it may elect to do so and shall institute proceedings described in sections 161A.23 through 161A.40 and may divert any moneys already collected under section 161A.20, for the purposes authorized in this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.41]
C93, §161A.41

DIVISION V

SOIL AND WATER CONSERVATION PRACTICES

PART 1

DUTIES AND OBLIGATIONS

161A.42 Soil and water conservation practices.

In addition to the definitions established by section 161A.3, as used in this division, unless the context otherwise requires:

1. *"Agricultural land"* has the meaning assigned that term by section 9H.1.

2. *"Conservation agreement"* means a commitment by the owner or operator of a farm unit to implement a farm unit soil conservation plan or, with the approval of the commissioners of the soil and water conservation district within which the farm unit is located, a portion of a farm unit soil conservation plan. The commitment shall be conditioned on the furnishing by the soil and water conservation district of technical or planning assistance in the establishment of, and cost sharing or other financial assistance for establishment and maintenance of the soil and water conservation practices necessary to implement the plan, or a portion of the plan.

3. *"Conservation folder"* means compiled information concerning the topography, soil composition, natural or artificial drainage characteristics, and other pertinent factors concerning a particular farm unit, which is necessary to the preparation of a sound and equitable conservation agreement for that farm unit. The specific items to be contained in a conservation folder shall be prescribed by administrative rules of the department. The department shall provide by rule that an updated farm plan prepared for a particular farm unit within ten years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit.

4. *"Cost-share"* or *"cost-sharing"* means a contribution of money made by the state in order to pay a percentage of the costs related to the establishment of voluntary or mandatory practices as provided under this chapter, including but not limited to soil and water conservation practices and erosion control practices.

5. *"Erosion control practices"* means:

a. The construction or installation, and maintenance, of such structures or devices as are necessary to carry to a suitable outlet from the site of any building housing four or more residential units, any commercial or industrial development or any publicly or privately owned recreational or service facility of any kind, not served by a central storm sewer system, any water which:

(1) Would otherwise cause erosion in excess of the applicable soil loss limit; and

(2) Does not carry nor constitute sewage, industrial waste, or other waste as defined by section 455B.171.

b. The employment of temporary devices or structures, temporary seeding, fibre mats, plastic, straw, or other measures adequate to prevent erosion in excess of the applicable soil loss limits from the site of, or land directly affected by, the construction of any public or private street, road or highway, any residential, commercial, or industrial building or development, or any publicly or privately owned recreational or service facility of any kind, at all times prior to completion of such construction.

c. The establishment and maintenance of vegetation upon the right of way of any completed portion of any public street, road, or highway, or the construction or installation thereon of structures or devices, or other measures adequate to prevent erosion from the right of way in excess of the applicable soil loss limits.

6. *"Farm unit"* means a single contiguous tract of agricultural land, or two or more adjacent tracts of agricultural land, located within a single soil and water conservation district, upon which farming operations are being conducted by a person who owns or is purchasing or renting all of the land, or by that person's tenant or tenants. If a landowner has multiple farm tenants, the land on which farming operations are being conducted by each tenant is a separate farm unit. This definition does not prohibit land which is within a single soil and water conservation district and is owned or being purchased by the same person, or is being rented by the same tenant, from being treated as two or more farm units if the commissioners of the soil and water conservation district deem it preferable to do so.

7. *"Farm unit soil conservation plan"* means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the commissioners of the soil and water conservation district within which that farm unit is located, based on the conservation folder for that farm unit and identifying those permanent soil and water conservation practices and temporary soil and water conservation practices the use of which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil loss limit or limits. The plan shall if practicable identify alternative practices by which this objective may be attained.

8. *"Forest"* means stands of native or introduced trees containing at least two hundred trees per acre and located on privately owned land. However, a stand of fruit trees is not a forest.

9. *"Professional forester"* means a forestry graduate of an institution of higher learning, who has a minimum of two years of forest management experience.

10. *"Soil and water conservation practices"*

means any of the practices designated in or pursuant to this subsection which serve to prevent erosion of soil by wind or water, in excess of applicable soil loss limits, from land used for agricultural or horticultural purposes only.

a. "Permanent soil and water conservation practices" means planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, and the construction of terraces, or other permanent soil and water practices approved by the committee.

b. "Temporary soil and water conservation practices" means planting of annual or biennial crops, use of strip-cropping, contour planting, or minimum or mulch tillage, and any other cultural practices approved by the committee.

11. *"Soil loss limit"* means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commissioners of the respective soil and water conservation districts determine is acceptable in order to meet the objectives expressed in section 161A.2.

12. *"State forester"* means a person employed by the department of natural resources as required by section 456A.13.

[C73, 75, 77, 79, 81, §467A.42]

86 Acts, ch 1238, §40; 86 Acts, ch 1245, §655, 656; 87 Acts, ch 23, §30; 88 Acts, ch 1134, §88; 89 Acts, ch 106, §4; 92 Acts, ch 1184, §2, 3

C93, §161A.42

94 Acts, ch 1107, §8

161A.43 Duty of property owners — liability.

To conserve the fertility, general usefulness, and value of the soil and soil resources of this state, and to prevent the injurious effects of soil erosion, it is hereby made the duty of the owners of real property in this state to establish and maintain soil and water conservation practices or erosion control practices, as required by the regulations of the commissioners of the respective soil and water conservation districts. As used in this section, *"owners of real property in this state"* includes each state government agency, each political subdivision of the state and each agency of such a political subdivision which has under its control publicly owned land, including but not limited to agricultural land, forests, parks, the grounds of state educational, penal and human service institutions, public highways, roads and streets, and other public rights of way.

A landowner shall not be liable for a claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent installation, construction, or reconstruction of a soil and water conservation practice or an erosion control practice that was installed, constructed, or reconstructed in accordance with generally recognized engineering or safety standards, criteria, or design theory in existence at the time of the installation, construction, or reconstruction. A soil and water conservation practice or an erosion control practice installed, constructed, or reconstructed in compliance with rules adopted by the division and currently in effect shall be deemed to be installed, constructed, or reconstructed according to generally recognized engineering or safety standards, criteria, or design theory in existence at the time of the installation, construction, or reconstruction. A claim shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing soil and water conservation practice or erosion control practice to a new, changed, or altered design standard. This paragraph does not apply to a claim based on a failure of a landowner to upgrade, improve, or alter a soil and water conservation practice or erosion control practice in violation of law. This paragraph does not apply to claims based upon gross negligence.

[C73, 75, 77, 79, 81, §467A.43]

92 Acts, ch 1184, §4; 92 Acts, ch 1239, §50

C93, §161A.43

94 Acts, ch 1023, §16

161A.44 Rules by commissioners — scope.

The commissioners of each soil and water conservation district shall, with approval of and within time limits set by administrative order of the state soil conservation committee, adopt reasonable regulations as are deemed necessary to establish a soil loss limit or limits for the district and provide for the implementation of the limit or limits, and may subsequently amend or repeal their regulations as they deem necessary. The committee shall review the soil loss limit regulations adopted by the soil and water conservation districts at least once every five years, and shall recommend changes in the regulations of a soil and water conservation district which the committee deems necessary to assure that the district's soil loss limits are reasonable and attainable. The commissioners may:

1. Classify land in the district on the basis of topography, soil characteristics, current use, and other factors affecting propensity to soil erosion.

2. Establish different soil loss limits for different classes of land in the district if in their judgment and that of the state soil conservation committee a lower soil loss limit should be applied to some land than can reasonably be applied to other land in the district, it being the intent of the general assembly that no land in the state be assigned a soil loss limit that cannot reasonably be applied to such land.

3. Require the owners of real property in the district to employ either soil and water conservation practices or erosion control practices, and:

a. May not specify the particular practices to be employed so long as such owners voluntarily

comply with the applicable soil loss limits established for the district.

b. May specify two or more approved soil and water conservation practices or erosion control practices, one of which shall be employed by the landowner to bring erosion from land under the landowner's control within the applicable soil loss limit of the district when an administrative order is issued to the landowner.

c. In no case may the commissioners require:

(1) The employment of erosion control practices as defined in section 161A.42, subsection 4, on land used in good faith for agricultural or horticultural purposes only.

(2) The employment of soil and water conservation practices or erosion control practices on that portion of any public street, road or highway completed or under construction within the corporate limits of any city, which is or will become the traveled or surfaced portion of such street, road, or highway.

(3) That any owner or operator of agricultural land refrain from fall plowing of land on which the owner or operator intends to raise a crop during the next succeeding growing season, however on those lands which are prone to excessive wind erosion the commissioners may require that reasonable temporary measures be taken to minimize the likelihood of wind erosion so long as such measures do not unduly increase the cost of operation of the farm on which the land is located. However, fall plowing of soil which is commonly known as gumbo shall always be permitted.

d. May require that a person under an order to employ soil and water conservation practices or erosion control practices submit up to three bids to the commissioners for the work and provide an explanation to the commissioners if a bid other than the lowest bid has been selected by that person.

[C73, 75, 77, 79, 81, §467A.44]

83 Acts, ch 45, §1; 86 Acts, ch 1245, §657; 87 Acts, ch 23, §31; 89 Acts, ch 106, §5

C93, §161A.44

161A.45 Submission of regulations to committee — hearing.

Regulations which the commissioners propose to adopt, amend, or repeal shall be submitted to the committee, in a form prescribed by the committee, for its approval. The committee may approve the regulations as submitted, or with amendments as it deems necessary. The commissioners shall, after approval, publish notice of hearing on the proposed regulations, as approved, in a newspaper of general circulation in the district, setting a date and time not less than ten nor more than thirty days after the publication when a hearing on the proposed regulations will be held at a specified place. The notice shall include the full text of the proposed regulations or shall state that the proposed regulations are on file and available for review at the office of the affected soil and water conservation district.

[C73, 75, 77, 79, 81, §467A.45]

86 Acts, ch 1245, §658; 87 Acts, ch 23, §32; 89 Acts, ch 106, §6

C93, §161A.45

161A.46 Conduct of hearing.

At the hearing, the commissioners or their designees shall explain, in reasonable detail, the reasons why adoption, amendment, or repeal of the regulations is deemed necessary or advisable. Any landowner, or any occupant of land who would be affected by the regulations, shall be afforded an opportunity to be heard for or against the proposed regulations. At the conclusion of the hearing, the commissioners shall announce and enter of record their decision whether to adopt or modify the proposed regulations. Any modification must be approved by the committee, which may at its discretion order the commissioners to republish the regulations and hold another hearing in the manner prescribed by this chapter.

[C73, 75, 77, 79, 81, §467A.46]

86 Acts, ch 1245, §659; 89 Acts, ch 106, §7

C93, §161A.46

161A.47 Inspection of land on complaint.

The commissioners shall inspect or cause to be inspected any land within the district to determine if land is being damaged by sediment, from soil erosion occurring on neighboring land in excess of the limits established by the district's soil erosion control regulations. If the land is privately owned, the commissioners shall make or cause to be made the inspection, upon receiving a written complaint signed by an owner or occupant of land claiming that the owner's or occupant's land is being damaged by sediment. If the land is subject to a public interest, the commissioners shall make or cause to be made the inspection upon a majority vote of commissioners at an open meeting held pursuant to chapter 21. Land is subject to a public interest if the land is publicly held, subject to an easement held by the public, or the subject of an improvement made at public expense.

If, after the inspection, the commissioners find that sediment damages are occurring to land which is owned or occupied by the person filing the complaint or subject to a public interest, and that excess soil erosion is occurring on neighboring land, the commissioners shall issue an administrative order to the landowner or landowners of record, and to the occupant of the land if known to the commissioners. The order shall describe the land and state as nearly as possible the extent to which soil erosion on the land exceeds the limits established by the district's regulations. The order shall be delivered either by personal service or by restricted certified mail to each of the persons to whom it is directed, and shall:

1. In the case of erosion occurring on the site

of any construction project or similar undertaking involving the removal of all or a major portion of the vegetation or other cover, exposing bare soil directly to water or wind, state a time not more than five days after service or mailing of the notice of the order when work necessary to establish or maintain erosion control practices must be commenced, and a time not more than thirty days after service or mailing of the notice of the order when the work is to be satisfactorily completed.

2. In all other cases, state a time not more than six months after service or mailing of the notice of the order, by which work needed to establish or maintain the necessary soil and water conservation practices or erosion control measures must be commenced, and a time not more than one year after the service or mailing of the notice of the order when the work is to be satisfactorily completed, unless the requirements of the order are superseded by the provisions of section 161A.48.

[C73, 75, 77, 79, 81, §467A.47]

87 Acts, ch 23, §33; 92 Acts, ch 1057, §1

C93, §161A.47

161A.48 Mandatory establishment of soil and water conservation practices.

1. An owner or occupant of agricultural land in this state is not required to establish any new permanent or temporary soil and water conservation practice unless cost-share or other public moneys have been specifically approved for that land and made available to the owner or occupant pursuant to section 161A.74.

2. Evidence that an application for cost-share or other public moneys, from a source or sources having authority to pay a portion of the cost of work needed to comply with an administrative order issued pursuant to section 161A.47, has been submitted to the proper officer or agency constitutes commencement of the work within the meaning of sections 161A.43 through 161A.53.

3. Upon receiving evidence of the submission of an application, the commissioners shall forward to the officer or agency to which the application was made a written request to receive notification of the disposition of the application. When notified of the approval of the application, the commissioners shall issue to the same parties who received the original administrative order, or their successors in interest, a supplementary order, to be delivered in the same manner as provided by sections 161A.43 to 161A.53 for delivery of original administrative orders. The supplementary order shall state a time, not more than six months after approval of the application for public cost-sharing funds, by which the work needed to comply with the original administrative order shall actually be commenced, and a time thereafter when the work is to be satisfactorily completed. If feasible, that time shall be within one year after the date of the supplementary order, but the owner of land on which a soil and water conservation practice is being established under this section is not required to incur a cost for the practice in any one calendar year which exceeds ten dollars per acre for each acre of land belonging to that owner and located in the county containing the land on which the required practice is being established or in counties contiguous to that county.

[C73, 75, 77, 79, 81, §467A.48]

84 Acts, ch 1192, §1; 86 Acts, ch 1245, §660; 87 Acts, ch 23, §34; 89 Acts, ch 106, §8; 90 Acts, ch 1255, §35; 90 Acts, ch 1260, §29; 91 Acts, ch 268, §238; 92 Acts, ch 1184, §5

C93, §161A.48

96 Acts, ch 1083, §3

161A.49 Petition for court order.

The commissioners shall petition the district court for a court order requiring immediate compliance with an administrative order previously issued by the commissioners as provided in section 161A.47, if:

1. The work necessary to comply with the administrative order is not commenced on or before the date specified in such order, or in any supplementary order subsequently issued as provided in section 161A.48, unless in the judgment of the commissioners the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person or persons to whom such order is directed and the person or persons can be relied upon to commence and complete the necessary work at the earliest possible time.

2. Such work is not being performed with due diligence, or is not satisfactorily completed by the date specified in the administrative order, or when completed does not reduce soil erosion from such land below the limits established by the soil and water conservation district's regulations.

3. The person or persons to whom the administrative order is directed advise the commissioners that they do not intend to commence or complete such work.

[C73, 75, 77, 79, 81, §467A.49]

C93, §161A.49

161A.50 Burden — court order.

In any action brought under section 161A.49, the burden of proof shall be upon the commissioners to show that soil erosion is in fact occurring in excess of the applicable soil loss limits and that the defendant has not established or maintained soil and water conservation practices or erosion control practices in compliance with the soil and water conservation district's regulations. With respect to construction, repair, or maintenance of any public street, road, or highway, evidence that soil erosion control standards equivalent to or in excess of those currently imposed by the United States government on the project or like projects involving use of federal funds shall create a pre-

sumption of compliance with the applicable soil loss limit. Upon receiving satisfactory proof, the court shall issue an order directing the landowner or landowners to comply with the administrative order previously issued by the commissioners. The court may modify such administrative order if deemed necessary. Notice of the court order shall be given either by personal service or by restricted certified mail to each of the persons to whom the order is directed, who may within thirty days from the date of the court order appeal to the supreme court. Any person who fails to comply with a court order issued pursuant to this section within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and may be punished accordingly.

[C73, 75, 77, 79, 81, §467A.50]
C93, §161A.50

161A.51 Entering on land.

The commissioners and their authorized agents or employees may enter upon any private or public property, except private dwellings, at any reasonable time to classify land by soil sampling or other appropriate methods or to determine whether soil erosion is occurring on the property in violation of the district's regulations.

1. If the owner or occupant of any property refuses admittance, or if prior to such refusal the commissioners demonstrate the need for a warrant, the commissioners may make an application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

2. In the application the commissioners shall state that entry on the premises is mandated by the laws of this state or that entry is needed to conduct soil sampling necessary to classify soil in the district as specified in section 161A.44, subsection 1, or to determine whether soil erosion is occurring on the property in violation of the district's regulations. The application shall describe the area or premises, give the date of the last known investigation or sampling, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance or regulation pursuant to which the inspection is to be made.

3. The court may issue a search warrant, after examination of the applicant and any witnesses, if the court is satisfied that there is probable cause to believe the existence of the allegations in the application.

4. In soil sampling and making investigations pursuant to a warrant, the commissioners must execute the warrant in a reasonable manner within the time period specified in the warrant.

[C73, 75, 77, 79, 81, §467A.51]
C93, §161A.51

161A.52 Reserved.

161A.53 Co-operation with other agencies.

Soil and water conservation districts may enter into agreements with the federal government or an agency of the federal government, as provided by state law, or with the state of Iowa or an agency of the state, any other soil and water conservation district, or any other political subdivision of this state, for co-operation in preventing, controlling, or attempting to prevent or control soil erosion. Soil and water conservation districts may accept, as provided by state law, money disbursed for soil erosion control purposes by the federal government or an agency of the federal government, and expend the money for the purposes for which it was received.

[C73, 75, 77, 79, 81, §467A.53]
86 Acts, ch 1238, §61; 87 Acts, ch 23, §35; 89 Acts, ch 83, §59
C93, §161A.53

161A.54 State agency conservation plans — exemptions.

Each state agency shall enter into an agreement with the soil and water conservation district in which the state agency has public land under its control in cultivation. The agreement shall contain a plan of the state agency to prevent soil erosion in excess of soil loss limits by the use of soil and water conservation practices and erosion control practices. This section applies to all public land which is used for horticultural or agricultural purposes. State soil conservation cost-sharing funds shall not be used on these public lands. Conservation plans required by this section shall be completed by July 1, 1986, and implementation shall occur consistent with the schedule contained in the conservation plan. Application for exemption from this section may be submitted to the appropriate soil and water conservation district. The exemption shall be granted for land upon which soil management research for the purposes of the study, evaluation, understanding and control of erosion, sedimentation and run-off water is conducted by or in conjunction with institutions governed by the board of regents.

85 Acts, ch 133, §1
CS85, §467A.54
87 Acts, ch 23, §36
C93, §161A.54

161A.55 to 161A.60 Reserved.

161A.61 Discretionary inspection by commissioners — actions upon certain findings.

1. In addition to the authority granted by section 161A.47, the commissioners of a soil and water conservation district may inspect or cause to be inspected any land within the district on which they have reasonable grounds to believe that soil erosion is occurring in excess of the limits established by the district's soil erosion control regulations. If the commissioners find from an inspection conducted under authority of either section 161A.47 or this section that soil erosion is occurring on that land in excess of the applicable soil loss limits established by the district's soil erosion control regulations, they shall send notice of that finding to the landowner or landowners of record, and to the occupant of the land if known to the commissioners. The notice shall describe the land affected and shall state as nearly as possible the extent to which soil erosion from that land exceeds the applicable soil loss limits.

a. If the commissioners find that the excessive erosion described in the notice is not causing sediment damage to property owned or occupied by any person other than the owner or occupant of the land on which the excessive soil erosion is occurring, and that the rate of the excessive erosion is less than twice the applicable soil loss limit, the notice required by this subsection shall include or be accompanied by information regarding financial or other assistance which the commissioners are able to make available to the owner or occupant of the land to aid in achieving compliance with the applicable soil loss limits.

b. If the commissioners find that the excessive soil erosion described in the notice is not causing sediment damage to property owned or occupied by any person other than the owner or occupant of the land on which it is occurring, but that the erosion is occurring at a rate equal to or greater than twice the applicable soil loss limit, the notice shall so state, shall include or be accompanied by the information required by paragraph *"a"* of this subsection, and shall be delivered by personal service or by restricted certified mail to each of the persons to whom the notice is directed. A notice given under this paragraph shall also include or be accompanied by information explaining the provisions of subsection 2.

2. Beginning January 1, 1985, or five years after the completion of the conservation folder for a particular farm unit pursuant to this section, whichever date is later, the commissioners of the soil and water conservation district in which that farm unit is located may petition the district court for an appropriate order with respect to that farm unit if its owner or occupant has been sent a notice by the commissioners under subsection 1, paragraph *"b"* for three or more consecutive years. The commissioners' petition shall seek a court order which states a time not more than six months after the date of the order when the owner or occupant must commence, and a time when the owner or occupant must complete the steps necessary to comply with the order. The time allowed to complete the establishment of a temporary soil and water conservation practice employed to comply or advance toward compliance with the court's order shall be not more than one year after the date of that order, and the time allowed to complete the establishment of a permanent soil and water conservation practice employed to comply with the court's order shall be not more than five years after the date of that order. Section 161A.48 applies to a court order issued under this subsection. The steps required of the farm unit owner or operator by the court order are those which are necessary to do one of the following:

a. Bring the farm unit which is the subject of the order into compliance with its farm unit soil conservation plan, if such a plan had been agreed upon prior to the time the commissioners petitioned for the order.

b. Bring the farm unit which is the subject of the order into compliance with a plan developed for that farm unit by the commissioners, in accordance with guidelines established by the division of soil conservation, and presented to the court as a part of the commissioners' petition, if a farm unit soil conservation plan has not previously been agreed upon for that farm unit. A plan presented to the court by the commissioners under this paragraph shall specify as many alternative approved soil and water conservation practices as feasible, among which the owner or occupant of the farm unit may choose in taking the steps necessary to comply with the court's order.

c. Bring the farm unit which is the subject of the order into compliance with a soil conservation plan developed by the owner or occupant of that farm unit as an alternative to the proposed soil conservation plan developed by the commissioners, if the owner or occupant so petitions the court and the court finds that the owner or occupant's plan will bring the farm unit into conformity with the applicable soil loss limits of the district.

3. The commissioners may also cause an inspection of land within the district on which they have reasonable grounds to believe that a permanent soil and water conservation practice established with public cost-sharing funds is not being properly maintained or is being altered in violation of section 161A.7, subsection 16. If the commissioners find that the practices are not being maintained or have been altered in violation of section 161A.7, subsection 16, the commissioners shall issue an administrative order to the landowner who made the unauthorized removal, alteration or modification to maintain, repair, or reconstruct the permanent soil and water conservation practices. The requirement for maintenance and

repair is for the length of life as defined in section 161A.7, subsection 16. Public cost-sharing funds are not available for the work under this order. If the landowner fails to comply with the administrative order, the commissioners may petition the district court for an order compelling compliance with the order. Upon receiving satisfactory proof, the court shall issue an order directing compliance with the administrative order and may modify the administrative order. The provisions of section 161A.50 relating to notice, appeals and contempt of court shall apply to proceedings under this subsection.

[C81, §467A.61; 82 Acts, ch 1220, §2]
87 Acts, ch 23, §37, 38
C93, §161A.61

161A.62 Duties of commissioners and of owners and occupants of agricultural land — restrictions on use of cost-sharing funds.

The commissioners of each soil and water conservation district shall seek to implement or to assist in implementing the following requirements:

1. Each farm unit shall be furnished a conservation folder complying with the rules of the department by the soil and water conservation district in which the farm unit is located, not later than January 1, 1985, or as soon thereafter as adequate funding is available to permit completion of a conservation folder for every farm unit in the state. Technical assistance in the development of the conservation folder may be provided by the United States department of agriculture natural resources conservation service through the memorandum of understanding with the district or by the department. The department shall provide by rule that an updated farm plan prepared for a particular farm unit within ten years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit. Upon completion of the conservation folder for a particular farm unit, the district shall send the owner of that farm unit, and also the operator of the farm unit if known by the commissioners to be other than the owner, a letter offering that person or those persons a copy of the folder. The district shall keep a record of the date the folder is completed and the letter is sent. The folder shall be updated from time to time by the district as it deems necessary.

2. The commissioners of each soil and water conservation district shall complete preparation of a farm unit soil conservation plan for each farm unit within the district, not later than January 1, 1985, or five years after completion of the conservation folder for that farm unit, whichever date is later, or as soon thereafter as adequate funding is available to permit compliance with this requirement. Technical assistance in the development of the farm unit soil conservation plan may be provided by the United States department of agriculture natural resources conservation service through the memorandum of understanding with the district or by the department. The commissioners shall make every reasonable effort to consult with the owner and, if appropriate, with the operator of that farm unit, and to prepare the plan in a form which is acceptable to that person or those persons. The plan shall be drawn up and completed without expense to the owner or operator of the farm unit, except that the owner or operator shall not be reimbursed for the value of the owner's or occupant's own time devoted to participation in the preparation of the plan. If the commissioners' plan is unacceptable to the owner or operator of the farm unit, that person or those persons may prepare an alternative farm unit soil conservation plan identifying permanent or temporary soil and water conservation practices which may be expected to achieve compliance with the soil loss limit or limits applicable to that farm unit, and submit that plan to the soil and water conservation district commissioners for their review.

3. Within one year after completion of a farm unit soil conservation plan for a particular farm unit which is acceptable both to the commissioners of the soil and water conservation district within which the farm unit is located and to the owner and, if appropriate, to the operator of that farm unit, the commissioners shall offer to enter into a soil conservation agreement with the owner, and also with the operator if appropriate, based on the mutually acceptable farm unit soil conservation plan.

[C81, §467A.62; 81 Acts, ch 153, §1]
86 Acts, ch 1238, §22; 87 Acts, ch 17, §10; 87 Acts, ch 23, §39
C93, §161A.62
95 Acts, ch 216, §25

161A.63 Right of purchaser of agricultural land to obtain information.

A prospective purchaser of an interest in agricultural land located in this state is entitled to obtain from the seller, or from the office of the soil and water conservation district in which the land is located, a copy of the most recently updated conservation folder and of any farm unit soil conservation plan, developed pursuant to section 161A.62, subsection 2, which are applicable to the agricultural land proposed to be purchased. A prospective purchaser of an interest in agricultural land located in this state is entitled to obtain additional copies of either or both of the documents referred to in this section from the office of the soil and water conservation district in which the land is located, promptly upon request, at a fee not to exceed the cost of reproducing them. All persons who identify themselves to the commissioners or staff of a soil and water conservation district as prospective purchasers of agricultural land in the district shall be given information, prepared in ac-

cordance with rules of the department, which clearly explains the provisions of section 161A.76.

[C81, §467A.63]
87 Acts, ch 23, §40
C93, §161A.63

161A.64 Erosion control plans required for certain projects.

1. If a political subdivision has adopted a sediment control ordinance which the commissioners and the political subdivision jointly agree is at least as equally effective as the commissioners' rules in preventing erosion from exceeding the established soil loss limits, the commissioners and the political subdivision shall execute an agreement under chapter 28E allowing an agency authorized by the political subdivision to receive and file an affidavit from a person, prior to initiating a land disturbing activity in that subdivision, stating that the proposed activity will not exceed the established soil loss limits. A copy of the affidavit shall be mailed to the district as a part of the terms of the agreement. The affidavit shall be in a form prescribed by the department and made available by the district.

2. Prior to initiating a land disturbing activity in a political subdivision which has not adopted sediment control ordinances as described in subsection 1, a person engaged in the land disturbing activity shall file a signed affidavit with the soil and water conservation district that the project will not exceed the soil loss limits. The affidavit shall be in a form prescribed by the department and made available by the district.

3. For the purposes of this section, *"land disturbing activity"* means a land change such as the tilling, clearing, grading, excavating, transporting or filling of land which may result in soil erosion from water or wind and the movement of sediment and sediment related pollutants into the waters of the state or onto lands in the state but does not include the following:

a. Tilling, planting or harvesting of agricultural, horticultural or forest crops.

b. Preparation for single-family residences separately built unless in conjunction with multiple construction in subdivision development.

c. Minor activities such as home gardens, landscaping, repairs and maintenance work.

d. Surface or deep mining.

e. Installation of public utility lines and connections, fence posts, sign posts, telephone poles, electric poles and other kinds of posts or poles.

f. Septic tanks and drainage fields unless they are to serve a building whose construction is a land disturbing activity.

g. Construction and repair of the tracks, right of way, bridges, communication facilities and other related structures of a railroad.

h. Emergency work to protect life or property.

i. Disturbed land areas of less than twenty-five thousand square feet unless a political subdivision by ordinance establishes a smaller exception or establishes conditions for this exception.

j. The construction, relocation, alteration or maintenance of public roads by a public body.

4. If the agency authorized under subsection 1 determines that a land disturbing activity is not being conducted in compliance with the soil loss limits, it shall file a written and signed complaint with the soil and water conservation district commissioners. The complaint shall have the same effect and validity as a complaint filed by an owner or occupant of land being damaged by sediment pursuant to section 161A.47. If the affidavit is filed with the district or the political subdivision, the commissioners may proceed on their own complaint. The soil and water conservation district commissioners may issue an administrative order as provided in that section to the person conducting the land disturbing activity.

[C81, §467A.64; 81 Acts, ch 154, §1, 2]
87 Acts, ch 23, §41
C93, §161A.64

161A.65 Reserved.

161A.66 Procedure when commissioner is complainant.

A soil and water conservation district commissioner who is an owner or occupant of land being damaged by sediment has the same right as any other person in like circumstances to file a complaint under section 161A.47; however, a commissioner who is the complainant shall not vote on the question whether, on the basis of the inspection made pursuant to the complaint, the commissioners shall issue an administrative order under section 161A.47.

[C81, §467A.66]
87 Acts, ch 23, §43
C93, §161A.66

161A.67 through 161A.69 Reserved.

PART 2

FINANCIAL INCENTIVES

161A.70 Establishment and purpose.

Financial incentive programs are established within the division in order to protect the long-term productivity of the soil and water resources of the state from erosion and sediment damage, and to encourage the adoption of farm management and agricultural practices which are consistent with the capability of the land to sustain agriculture and preserve this state's natural resources.

92 Acts, ch 1184, §6

161A.71 Conservation practices revolving loan fund.

1. The division may establish a conservation practices revolving loan fund composed of any money appropriated by the general assembly for that purpose, and of any other moneys available to and obtained or accepted by the committee from the federal government or private sources for placement in that fund. Except as otherwise provided by subsection 3, the assets of the conservation practices revolving loan fund shall be used only to make loans directly to owners of land in this state for the purpose of establishing on that land any new permanent soil and water conservation practice which the commissioners of the soil and water conservation district in which the land is located have found is necessary or advisable to meet the soil loss limits established for that land. A loan shall not be made for establishing a permanent soil and water conservation practice on land that is subject to the restriction on state cost-sharing funds of section 161A.76. Revolving loan funds and public cost-sharing funds shall not be used in combination for funding a particular soil and water conservation practice. Each loan made under this section shall be for a period not to exceed ten years, shall bear no interest, and shall be repayable to the conservation practices revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect. The interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. Applicants are eligible for no more than ten thousand dollars in loans outstanding at any time under this program. *"Permanent soil and water conservation practices"* has the same meaning as defined in section 161A.42 and those established under this program are subject to the requirements of section 161A.7, subsection 16. Loans made under this program shall come due for payment upon sale of the land on which those practices are established.

2. The general assembly finds and declares the following:

a. The erosion of topsoil on agricultural land by wind and water is a serious problem within the state and one which threatens to destroy the natural resource most responsible for Iowa's prosperity.

b. It is necessary to the preservation of the economy and well-being of the state to encourage soil conservation practices by providing loans for permanent soil and water conservation practices on agricultural land within the state.

c. The use of state funds for the conservation practices revolving loan fund established under subsection 1 is in the public interest, and the purposes of this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

3. The division may:

a. Contract, sue and be sued, and promulgate administrative rules necessary to carry out the provisions of this section, but the committee shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

b. Authorize payment from the conservation practices revolving loan fund and from fees for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

4. This section does not negate the provisions of section 161A.48 that an owner or occupant of land in this state shall not be required to establish any new soil and water conservation practice unless public cost-sharing funds have been approved and are available for the land affected. However, the owner of land with respect to which an administrative order to establish soil and water conservation practices has been issued under section 161A.47 but not complied with for lack of public cost-sharing funds, may waive the right to await availability of such funds and instead apply for a loan under this section to establish any permanent soil and water conservation practices necessary to comply with the order. If a landowner does so, that loan application shall be given reasonable preference by the state soil conservation committee if there are applications for more loans under this section than can be made from the money available in the conservation practices revolving loan fund. If it is found necessary to deny an application for a soil and water conservation practices loan to a landowner who has waived the right to availability of public cost-sharing funds before complying with an administrative order issued under section 161A.47, the landowner's waiver is void.

83 Acts, ch 207, §53, 93
CS83, §467A.71
85 Acts, ch 67, §46; 85 Acts, ch 170, §1; 86 Acts, ch 1244, §58; 86 Acts, ch 1245, §661; 87 Acts, ch 23, §44; 91 Acts, ch 260, §1234
C93, §161A.71

161A.72 Administration.

1. Financial incentives provided under this chapter shall be administered by the division. The incentives shall be supported with funds appropriated by the general assembly, and moneys available to or obtained by the division or the committee from public or private sources, including but not limited to the United States, other states, or private organizations. The division shall adopt all rules consistent with chapter 17A necessary to carry out the purpose of this division as provided in section 161A.70.

2. The commissioners of a district shall, to the extent funding is available, contract with a person

who is an owner or occupant of land within the district applying to establish soil and water conservation practices as provided in this chapter. Under the agreement, the person shall receive financial incentives to establish permanent soil and water conservation practices and management practices, in consideration for promising to maintain the practices according to rules adopted by the division. If the land subject to an agreement is converted to a nonagricultural use that does not require a permanent soil and water conservation practice which has been established with financial incentives, the permanent soil and water conservation practice shall not be removed until the owner pays an amount to the district, which shall be deposited into a fund established by the district for use in providing financial incentives under this chapter. The amount shall be a prorated share of the amount paid in financial incentives to establish the practice, as provided in rules adopted by the division.

92 Acts, ch 1184, §7; 96 Acts, ch 1083, §4

161A.73 Voluntary establishment of soil and water conservation practices.

1. The division shall establish voluntary financial incentive programs which shall provide for the following:

a. The allocation of cost-share moneys as financial incentives provided for the purpose of establishing permanent soil and water conservation practices, including but not limited to terraces, diversions, grade stabilization structures, grassed waterways, and critical area planting. The financial incentives shall not exceed fifty percent of the estimated cost of establishing the practices, or fifty percent of the actual cost, whichever is less.

b. The allocation of moneys as financial incentives provided for the purpose of establishing management practices to control soil erosion on land that is row cropped, including but not limited to no-till planting, ridge-till planting, contouring, and contour strip-cropping. The division shall by rule establish limits on the amount of incentives which shall be authorized for payment to landowners upon establishment of the practice.

c. The allocation of cost-share moneys as financial incentives provided to establish practices to protect watersheds above publicly owned lakes of the state from soil erosion and sediment. The financial incentives shall be awarded to watersheds which are of the highest importance based on soil loss as established by the natural resource commission pursuant to section 456A.33A. The financial incentives shall not exceed seventy-five percent of the estimated cost of establishing the practices as determined by the commissioners or seventy-five percent of the actual cost of establishing the practices, whichever is less.

d. The allocation of cost-share moneys as financial incentives to establish permanent grass and buffer zones, including an erosion control structure or an erosion control practice to mitigate the effects of concentrated runoff on surface water quality. The financial incentives shall not exceed one hundred percent of the estimated cost of establishing a zone, as determined by the commissioners, or one hundred percent of the actual cost of establishing the zone, whichever is less.

e. The allocation of cost-share moneys as financial incentives for the same purposes that are supported from the soil and water enhancement account of the resources enhancement and protection fund as provided in section 455A.19, or by the water protection practices account of the water protection fund established pursuant to section 161C.4. The financial incentives shall not exceed fifty percent of the estimated cost of establishing the practices, or fifty percent of the actual cost, whichever is less.

2. The commissioners of a district may establish voluntary financial incentive programs which shall provide for the following:

a. The allocation of cost-share moneys as financial incentives under a special agreement with owners of land in the district who promise to adopt a watershed conservation plan as provided by rules which shall be adopted by the division. The watershed conservation plan shall be in conjunction with the owners' respective farm unit soil conservation plans. The funding agreement must provide for the funding of a project which includes five or more contiguous farm units which have at least five hundred acres of agricultural land and which constitutes at least seventy-five percent of the agricultural land located within a watershed or subwatershed. The financial incentives shall not exceed sixty percent of the estimated cost of the project as determined by the commissioners or sixty percent of the actual cost, whichever is less.

b. The allocation of cost-share moneys as financial incentives to encourage summer construction of permanent soil and water conservation practices. The practices must be constructed on or after June 1 but not later than September 15. The commissioners may also provide for the payment of moneys on a prorated basis to compensate persons for the production loss on an area disturbed by construction, according to rules which shall be adopted by the division. The commissioners shall not allocate cost-share moneys to support summer construction during a fiscal year in which applications for cost-share moneys required to establish permanent soil and water conservation practices, other than established by summer construction, equal the total amount available to support the nonsummer construction practices. The financial incentives shall not exceed sixty percent of the estimated cost of establishing the practice as determined by the commissioners, or sixty percent of the actual cost of establishing the practice, whichever is less.

3. *a.* The division may reimburse private

landowners for a portion of the cost of fencing materials and installation for permanent fence used to protect forest land from domestic livestock grazing, if the division determines that the grazing has caused excessive soil loss. For purposes of this subsection, forests shall be considered as agricultural land eligible for cost-share moneys. The total expenditure of reimbursement moneys shall not exceed fifty percent of the total landowner expenditures. Expenditures for boundary and road fence construction and for repair and replacement of existing fences are not eligible for reimbursement unless the complete fence is replaced.

b. A landowner shall sign an agreement with the division as a condition for receiving cost-share moneys. The agreement shall provide that the landowner shall maintain the fence for a minimum of ten years and shall follow written professional forester recommendations relating to land protected by fencing. The recommendations must be approved by the state forester or the forester's designee.

c. A landowner who violates the maintenance agreement shall maintain, repair, or reconstruct the damaged fence, or shall pay the division an amount equal to the amount of cost-share moneys reimbursed.

d. The division shall adopt rules to administer this subsection, including rules relating to procedures required to receive reimbursement, and eligibility requirements such as the minimum forest acreage required, and the maximum reimbursement amount allowed.

92 Acts, ch 1184, §8; 92 Acts, ch 1239, §51, 52; 96 Acts, ch 1083, §5; 98 Acts, ch 1040, §1

161A.74 Mandatory establishment of soil and water conservation practices — allocations.

1. The commissioners shall allocate cost-share moneys to establish mandatory soil and water conservation practices, as provided in sections 161A.43 through 161A.53, according to the following requirements:

a. The financial incentives shall not exceed more than fifty percent of the estimated cost of establishing the practices as determined by the commissioners, or fifty percent of the actual cost of establishing the practices, whichever is less. However, the commissioners may allocate an amount determined by the committee for management of soil and water conservation practices, except as otherwise provided regarding land classified as agricultural land under conservation cover.

b. The commissioners shall establish the estimated cost of the permanent soil and water conservation practices in the district based upon one and two-tenths of the average cost of the practices installed in the district during the previous year. The average costs shall be reviewed and approved by the commissioners each year.

2. The committee shall review requirements of this section once each year. The committee may authorize commissioners in districts to condition the establishment of a mandatory soil and water conservation practice in a specific case on a higher proportion of public cost-sharing than is required by this section. The commissioners shall determine the amount of cost-sharing moneys allocated to establish a specific soil and water conservation practice in accordance with an administrative order issued pursuant to section 161A.47 by considering the extent to which the practice will contribute benefits to the individual owner or occupant of the land on which the practice is to be established.

92 Acts, ch 1184, §9; 92 Acts, ch 1239, §53, 54

161A.75 Use of moneys for emergency repairs.

1. The commissioners of a district may allocate moneys otherwise available for voluntary financial incentive programs as provided in section 161A.73 to provide for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency. In providing for the restoration, the commissioners may allocate moneys under this section for construction, reconstruction, installation, or repair projects. For each project the commissioners must determine that the allocation is necessary in order to restore permanent soil and water conservation practices in order to prevent erosion in excess of the applicable soil loss limits caused by the disaster emergency.

2. In order to allocate moneys under this section, the disaster emergency must have occurred in an area subject to a state of disaster emergency pursuant to a proclamation made by the governor as provided in section 29C.6. The commissioners shall use the moneys only to the extent that moneys from other sources, including any moneys provided by the state or federal government in response to the disaster emergency, are not adequate. The commissioners are not required to allocate the moneys on a cost-share basis.

3. Following the disaster emergency, the commissioners shall submit a report to the committee providing information regarding restoration projects and moneys allocated under this section for the projects.

97 Acts, ch 59, §2

161A.76 Cost sharing for certain lands restricted.

1. It is the intent of this chapter that, effective January 1, 1981, each tract of agricultural land which has not been plowed or used for growing row crops at any time within fifteen years prior to that date, shall for purposes of this section be considered classified as agricultural land under conservation cover. If a tract of land so classified is thereafter plowed or used for growing row crops, the commissioners of the soil and water conserva-

tion district in which the land is located shall not approve use of state cost-sharing funds for establishing permanent or temporary soil and water conservation practices on that tract of land in an amount greater than one-half the amount of cost-sharing funds which would be available for that land if it were not considered classified as agricultural land under conservation cover. The restriction imposed by this section applies even if an administrative order or court order has been issued requiring establishment of soil and water conservation practices on that land. The commissioners may waive the restriction imposed by this section if they determine in advance that the purpose of plowing or row cropping land classified as land under conservation cover is to revitalize permanent pasture and that the land will revert to permanent pasture within two years after it is plowed.

2. When receiving an application for state cost-sharing funds to pay a part of the cost of establishing a permanent or temporary soil and water conservation practice, the commissioners of the soil and water conservation district to which the application is submitted shall require the applicant to state in writing whether, to the best of the applicant's knowledge, the land on which the proposed practice will be established is land considered to be classified as agricultural land under conservation cover, as defined in subsection 1. An applicant who knowingly makes a false statement of material facts or who falsely denies knowledge of material facts in completing the written statement required by this subsection commits a simple misdemeanor and, in addition to the penalty prescribed therefor by law, shall be required to repay to the department any cost-sharing funds made available to the applicant in reliance on the false statement or false denial.

[C81, §467A.65]
87 Acts, ch 23, §42
C93, §161A.76

161A.77 through 161A.79 Reserved.

DIVISION VI

BLUFFLANDS PROTECTION

161A.80 Blufflands protection program and revolving fund.

1. As used in this section, unless the context otherwise requires:

a. For purposes of this section only, *"bluffland"* means a cliff, headland, or hill with a broad, steep face along the channel or floodplain of the Missouri or Mississippi river and their tributaries.

b. *"Conservation organization"* means a nonprofit corporation incorporated in Iowa or an entity organized and operated primarily to enhance and protect natural resources in this state.

2. A blufflands protection revolving fund is created in the state treasury. All proceeds shall be divided into two equal accounts. One account shall be used for the purchase of blufflands along the Mississippi river and its tributaries and the other account shall be used for the purchase of blufflands along the Missouri river and its tributaries. The proceeds of the revolving fund are appropriated to make loans to conservation organizations which agree to purchase bluffland properties adjacent to state public lands. The department of agriculture and land stewardship, in conjunction with the department of natural resources, shall adopt rules pursuant to chapter 17A to administer the disbursement of funds. Notwithstanding section 12C.7, interest or earnings on investments made pursuant to this section or as provided in section 12B.10 shall be credited to the blufflands protection revolving fund. Notwithstanding section 8.33, unobligated or unencumbered funds credited to the blufflands protection revolving fund shall not revert at the close of a fiscal year. However, the maximum balance in the blufflands protection revolving fund shall not exceed two million five hundred thousand dollars. Any funds in excess of two million five hundred thousand dollars shall be credited to the rebuild Iowa infrastructure fund.

a. This section is repealed on July 1, 2005.

b. The principal and interest from any blufflands protection loan outstanding on July 1, 2005, and payable to the blufflands protection revolving fund, shall be paid to the administrative director of the division of soil conservation on or after July 1, 2005, pursuant to the terms of the loan agreement and shall be credited to the rebuild Iowa infrastructure fund.

98 Acts, ch 1219, §17; 99 Acts, ch 96, §16; 99 Acts, ch 204, §26, 42

Coordination with programs and projects of the loess hills alliance, §161D.7

CHAPTER 161B

AGRICULTURAL ENERGY MANAGEMENT

This chapter not enacted as a part of this title;
transferred from chapter 467E in Code 1993

161B.1 Agricultural energy management fund.

161B.1 Agricultural energy management fund.

1. The agricultural energy management fund is created within the department of agriculture and land stewardship. The fund shall be used to finance education and demonstration projects regarding tillage practices and the management of fertilizer and pesticide use which result in management practices that reduce energy inputs in agriculture and reduce potential for groundwater contamination.

2. The department of agriculture and land stewardship shall report annually to the standing committees on energy and environmental protection of the house and senate on the projects conducted with the agricultural energy management fund.

86 Acts, ch 1249, §3
C87, §467E.1
87 Acts, ch 225, §232; 90 Acts, ch 1223, §27
C93, §161B.1
2000 Acts, ch 1058, §19; 2002 Acts, ch 1119, §20; 2002 Acts, ch 1162, §35
See Code editor's note to §8.55 at the end of Vol IV
Subsection 2 stricken and former subsection 3 renumbered as 2

CHAPTER 161C

WATER PROTECTION PROJECTS AND PRACTICES

This chapter not enacted as a part of this title;
transferred from chapter 467F in Code 1993

161C.1 Definitions.
161C.2 Water protection projects and practices.
161C.3 Cooperation with other agencies.
161C.4 Water protection fund.
161C.5 Organic nutrient management fund.
161C.6 Organic nutrient management program.
161C.7 Watershed protection.

161C.1 Definitions.

As used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. *"Committee"* or *"state soil conservation committee"* means the committee established by section 161A.4.

2. *"Department"* means the department of agriculture and land stewardship.

3. *"District"* means a soil and water conservation district established in chapter 161A.

4. *"Division"* means the division of soil conservation created within the department.

5. *"Landowner"* includes any person, including a federal agency, this state or any of its political subdivisions, who holds title to land lying within a proposed district.

6. *"United States"* or *"agencies of the United States"* includes the United States of America, the United States department of agriculture natural resources conservation service, and any other agency or instrumentality, corporate or otherwise, of the United States.

88 Acts, ch 1189, §2
C89, §467F.1
C93, §161C.1
95 Acts, ch 216, §25

161C.2 Water protection projects and practices.

1. *a.* Each soil and water conservation district, alone and whenever practical in conjunction with other districts, shall carry out district-wide and multiple-district projects to support water protection practices in the district or districts, including projects to protect this state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to contamination by agricultural drainage wells, sinkholes, sedimentation, or chemical pollutants.

b. Any work project with an estimated cost of twenty-five thousand dollars or more shall be undertaken as a public contract as provided in chapters 73A and 573. The local contracting organization shall designate a contracting officer and shall establish procedures to manage the contract, approve bills for payment, and review proposed change orders or amendments to the contract.

2. An owner of or occupant of land within a district may establish a water protection practice under this chapter by entering into an agreement with the district in which the owner or occupant receives financial assistance to establish water

protection practices in consideration for promising to maintain the practices according to rules adopted by the division. The financial assistance may be in the form of grants, loans, or cost-sharing arrangements. An agreement shall not be binding until the assistance is specifically approved for that land and made available to the owner or occupant.

3. The division shall approve an award of financial assistance based on an application submitted by the owner or occupant of the land. The division may require a copy of the application with an evaluation of the application by the district. Each application for financial assistance shall be considered under a priority system adopted by the district for disbursement of unallocated funds. The district, under the supervision of a district technician, shall design proposed clean water practices for which financial assistance has been obligated. The district shall determine compliance with applicable design standards and specifications. The landowner shall construct and is liable for the performance of the water protection practices on the land.

4. The division shall adopt rules necessary for the administration of this chapter, including rules relating to the approval of programs and projects, designing a project or water protection practices, the estimation of costs of a project or program, and the inspection of projects or practices being placed or maintained on the land.

88 Acts, ch 1189, §3
C89, §467F.2
C93, §161C.2
2000 Acts, ch 1068, §8

161C.3 Cooperation with other agencies.

Soil and water conservation districts may enter into agreements with the United States, as provided by state law, or with the state of Iowa or any agency of the state, any other soil and water conservation district, or other political subdivision of this state, for cooperation in preventing, controlling, or attempting to prevent or control contamination of groundwater or surface water by point and nonpoint sources of pollution. Soil and water conservation districts may accept, as provided by state law, any money disbursed for water quality preservation purposes by the federal government or any agency of the federal government, and expend the money for the purposes for which it was received.

88 Acts, ch 1189, §4
C89, §467F.3
C93, §161C.3

161C.4 Water protection fund.

A water protection fund is created within the division. The fund is composed of money appropriated by the general assembly for that purpose, and moneys available to and obtained or accepted by the state soil conservation committee from the United States or private sources for placement in the fund. The fund shall be divided into two accounts, the water quality protection projects account and the water protection practices account. The first account shall be used to carry out water quality protection projects to protect the state's surface and groundwater from point and nonpoint sources of contamination. The second account shall be used to establish water protection practices with individual landowners including but not limited to woodland establishment and protection, establishment of native grasses and forbs, sinkhole management, agricultural drainage well management, streambank stabilization, grass waterway establishment, stream buffer strip establishment, and erosion control structure construction. Twenty-five percent of funds appropriated to the water protection practices account shall be used for woodland establishment and protection, and establishment of native grasses and forbs. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The fund shall be a revolving fund from which moneys may be used for loans, grants, administrative costs, and cost-sharing.

In administering the fund the division may:

1. Contract, sue and be sued, and adopt rules necessary to carry out the provisions of this section, but the division or committee shall not in any manner directly or indirectly pledge the credit of this state.

2. Authorize payment from the water protection fund and from fees for costs, commissions, and other reasonable expenses.

88 Acts, ch 1189, §5
C89, §467F.4
89 Acts, ch 236, §16; 91 Acts, ch 260, §1235
C93, §161C.4
95 Acts, ch 216, §36

161C.5 Organic nutrient management fund.

1. An organic nutrient management fund is created in the state treasury under the control of the division. The fund is composed of moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the division or the state soil conservation committee, from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of revenue and finance, drawn upon the written requisition of the division.

3. The fund shall be used to support the organic nutrient management program provided in section 161C.6. Moneys shall be used to provide financial incentives under the program and to pay for expenses incurred by the division in adminis-

tering the program. Not more than two percent of the moneys shall be used to pay for administering the program. Moneys expended for financial incentives shall be allocated on a cost-share basis. The division may adopt rules to administer this section.

4. The division shall not in any manner directly or indirectly pledge the credit of the state.

5. Section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

94 Acts, ch 1198, §33

161C.6 Organic nutrient management program.

1. The division shall establish an organic nutrient management program as provided by rules which shall be adopted by the division. The program shall be supported from moneys deposited in the organic nutrient management fund.

2. *a.* The program shall provide financial incentives to establish livestock manure management systems to facilitate the proper utilization of livestock manure as a nutrient source, and to protect the water resources of the state from livestock manure runoff.

b. A person shall not be eligible to participate in the program, unless the person is an individual family farmer, an individual actively engaged in farming as provided in section 9H.1, subsection 1, paragraphs *"a"* through *"c"*, or the person is a family farm corporation, family farm limited partnership, a family trust, or a family farm limited liability company, all as defined in section 9H.1.

c. The amount of moneys allocated in cost-share payments to a person qualifying under the organic nutrient management program shall not exceed fifty percent of the estimated cost of establishing the system or fifty percent of the actual cost, whichever is less.

d. The division shall maintain records regarding each award of financial incentives under this section, including the name of the person; the amount of the award; the location of the livestock manure management system established with financial incentive moneys; and whether the person is a family farm corporation, family farm limited partnership, family trust, or a family farm limited liability company.

e. The department shall not allocate moneys to a person who is a party to a legal or administrative action, including a contested case proceeding under chapter 17A, which relates to an alleged violation of chapter 455B or 459, subchapters II and III, involving the disposal of livestock waste, until the action is resolved. The department of natural resources shall cooperate with the division by providing information necessary to administer this paragraph.

f. A person shall not use moneys allocated pursuant to this section for purposes of paying an amount imposed pursuant to a fine or civil penalty, or for remediating or restoring the condition of an area contaminated by livestock waste.

g. A person qualifying under the program shall not receive more than seven thousand five hundred dollars in financial incentives during any fiscal year beginning on July 1 and ending on June 30. A person who has received financial assistance in a prior fiscal year is eligible to receive financial assistance in a subsequent fiscal year, unless the financial assistance is used to support the establishment of a system previously receiving assistance under this program.

94 Acts, ch 1198, §34

161C.7 Watershed protection.

1. The department of agriculture and land stewardship shall initiate and coordinate the establishment of a watershed protection task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of agriculture and land stewardship, the department of natural resources, the emergency management division of the department of public defense, county conservation boards, soil and water conservation districts, and any other appropriate stakeholders. The task force shall study the condition of watershed protection in the state and provide recommendations to the department of agriculture and land stewardship regarding soil conservation, water quality protection, flood control, and other natural resource conservation issues. The task force shall submit recommendations to the department by January 1 of each year through January 1, 2001.

2. The department of agriculture and land stewardship shall implement and administer a watershed protection program. The department of agriculture and land stewardship, in consultation with the department of natural resources, shall annually establish a prioritized list of watersheds that are of the highest importance to the state's water quality. The watershed protection program shall, to the extent practical, target for assistance those watersheds on the prioritized list. A soil and water conservation district, in cooperation with state agencies, local units of government, and private organizations, may submit an application for assistance to the department which provides a strategy for protecting soil, water quality, and other natural resources, and improving flood control in the watershed. Upon approval of an application, the department may provide a grant to the soil and water conservation district for purposes of carrying out the strategy provided in the application.

3. A watershed protection account is created within the water protection fund created in section 161C.4. Moneys credited to the account shall be distributed under the watershed protection

program.

4. Administrative rules used for water quality protection projects under the water protection fund shall be used to administer the watershed protection program.

99 Acts, ch 204, §27

CHAPTER 161D

LOESS HILLS AND SOUTHERN IOWA DEVELOPMENT AND CONSERVATION

SUBCHAPTER 1

LOESS HILLS DEVELOPMENT AND CONSERVATION

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161D.2 Loess hills development and conservation fund.
161D.3 Definitions.
161D.4 Mission statement.
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SUBCHAPTER 2

SOUTHERN IOWA DEVELOPMENT AND CONSERVATION AUTHORITY

161D.11 Southern Iowa development and conservation authority created — membership and duties.
161D.12 Southern Iowa development and conservation fund.
161D.13 Annual report — audit.

SUBCHAPTER 1

LOESS HILLS DEVELOPMENT AND CONSERVATION

161D.1 Loess hills development and conservation authority created — membership and duties.

1. A loess hills development and conservation authority is created. The counties of Lyon, Sioux, Plymouth, Cherokee, Woodbury, Ida, Sac, Monona, Crawford, Carroll, Harrison, Shelby, Audubon, Pottawattamie, Cass, Adair, Mills, Montgomery, Adams, Fremont, Page, and Taylor are entitled to one voting member each on the authority, but membership or participation in projects of the authority is not required. Each member of the authority shall be appointed by the respective board of supervisors for a term to be determined by each board of supervisors, but the term shall not be for less than one year. An appointee shall serve without compensation, but an appointee may be reimbursed for actual expenses incurred while performing the duties of the authority as determined by each board of supervisors. The authority shall meet, organize, and adopt rules of procedures as deemed necessary to carry out its duties. The authority may appoint working committees that include other individuals in addition to voting members.

2. The mission of the authority is to develop and coordinate plans for projects related to the unique natural resource, rural development, and infrastructure problems of counties in the deep loess region of western Iowa. The erosion and degradation of stream channels in the deep loess soils has occurred due to historic channelization of the Missouri river and straightening stream channels of its tributaries. This erosion of land has damaged the rural infrastructure of this area, destroyed public roads and bridges, adversely impacted stream water quality and riparian habitat, and affected other public and private improvements. Stabilization of stream channels is necessary to protect the rural infrastructure in the deep loess soils area of the state. The authority shall cooperate with the division of soil conservation of the department of agriculture and land stewardship, the affected soil and water conservation districts, the department of natural resources, and the state department of transportation in carrying out its mission and duties. The authority shall also cooperate with appropriate federal agencies, including the United States environmental protection agency, the United States department of interior, and the United States department of agriculture natural resources conservation service. The authority shall make use of technical resources available through member counties and cooperating agencies.

3. The authority shall administer the loess hills development and conservation fund created under section 161D.2 and shall deposit and expend moneys in the fund for the planning, development, and implementation of development and conservation activities or measures in the member

counties.

4. A hungry canyons alliance is created. The hungry canyons alliance shall be governed by a board of directors appointed as provided in its bylaws and the board shall carry out its responsibilities under the general direction of the loess hills development and conservation authority. The bylaws of the hungry canyons alliance are subject to review and approval of the loess hills development and conservation authority.

5. This subchapter is not intended to affect the authority of the department of natural resources in its acquisition, development, and management of public lands within the counties represented by the authority.

6. In matters relating to the conservation, preservation, or development of the loess hills, state agencies shall coordinate, cooperate, and consult with the loess hills development and conservation authority and its associated alliances.

93 Acts, ch 136, §1; 95 Acts, ch 216, §25; 99 Acts, ch 119, §1; 2000 Acts, ch 1111, §1, 2; 2000 Acts, ch 1154, §14

161D.2 Loess hills development and conservation fund.

A loess hills development and conservation fund is created in the state treasury. The fund shall include a hungry canyons account and a loess hills alliance account which shall be administered by the loess hills development and conservation authority. The proceeds of the respective accounts shall be used for the purposes specified in section 161D.1 or 161D.6 as applicable. The loess hills development and conservation authority may accept gifts, bequests, other moneys including, but not limited to, state or federal moneys, and in-kind contributions for deposit in the fund. The gifts, grants, bequests from public and private sources, state and federal moneys, and other moneys received by the authority shall be deposited in the respective accounts and any interest earned shall be credited to the respective accounts to be used for the purposes specified in section 161D.1 or 161D.6 as applicable. Notwithstanding section 8.33, any unexpended or unencumbered moneys remaining in the fund at the end of the fiscal year shall not revert to the general fund of the state, but the moneys shall remain available for expenditure by the authority in succeeding fiscal years.

93 Acts, ch 136, §2; 99 Acts, ch 119, §2

161D.3 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Alliance"* means the loess hills alliance created in section 161D.5.

2. *"Authority"* means the loess hills development and conservation authority created in section 161D.1.

3. *"Fund"* means the loess hills development and conservation fund created in section 161D.2.

99 Acts, ch 119, §3; 2000 Acts, ch 1154, §15

161D.4 Mission statement.

The mission of the loess hills alliance is to create a common vision for Iowa's loess hills, protecting special natural and cultural resources while ensuring economic viability and private property rights of the region.

99 Acts, ch 119, §4

161D.5 Loess hills alliance created.

1. A loess hills alliance is created. The alliance shall carry out its responsibilities under the general direction of the loess hills development and conservation authority. The alliance shall encompass the geographic region including the counties of Plymouth, Woodbury, Monona, Harrison, Pottawattamie, Mills, and Fremont. Membership and participation in projects of the alliance is not required. The alliance shall be governed by a board of directors appointed as follows:

a. Three members appointed by the board of supervisors of each county participating in the alliance and at least one of the appointees shall be a member of the board of supervisors of a county participating in the alliance.

b. Seven additional voting members who shall be persons with experience in the fields of environmental affairs, conservation, finance, development, tourism, or related fields, and who shall be appointed by the authority.

c. The voting members of the board of directors appointed pursuant to paragraphs *"a"* and *"b"* shall include agricultural producers owning real property within the loess hills landform.

2. Each voting member of the board of directors shall be a resident of a county which is eligible for membership in the authority pursuant to section 161D.1 and shall be appointed to a term of office as determined by the authority. The directors of the alliance shall carry out their responsibilities pursuant to bylaws approved by the authority.

99 Acts, ch 119, §5; 2000 Acts, ch 1111, §3

161D.6 Responsibilities.

1. The board of directors of the alliance shall have the following responsibilities:

a. To prepare and adopt a comprehensive plan for the development and conservation of the loess hills area subject to the approval of the authority. The plan shall provide for the designation of significant scenic areas, the protection of native vegetation, the education of the public on the need for and methods of preserving the natural resources of the loess hills area, and the promotion of tourism and related business and industry in the loess hills area.

b. To apply for, accept, and expend public and private funds for planning and implementing projects, programs, and other components of the mission of the alliance subject to approval of the au-

thority.

c. To study different options for the protection and preservation of significant historic, scenic, geologic, and recreational areas of the loess hills including but not limited to a federal or state park, preserve, or monument designation, fee title acquisition, or restrictive easement.

d. To make recommendations to and coordinate the planning and projects of the alliance with the authority.

e. To develop and implement pilot projects for the protection of loess hills areas with the use of restrictive easements from willing sellers and fee title ownership from willing sellers subject to approval of the authority.

f. To report annually not later than January 15 to the general assembly the activities of the alliance during the preceding fiscal year including, but not limited to, its projects, funding, and expenditures.

2. A restrictive easement authorized pursuant to this section shall be recorded as provided in section 457A.3. Any compensation agreed to for a restrictive easement shall be paid in equal annual installments during the lifetime of the restrictive easement. At the expiration of a restrictive easement or upon termination for nonperformance, the holder of the restrictive easement shall record an affidavit with the county recorder of the county in which the servient land is located releasing the servient land from the restrictive easement. The holder of the restrictive easement shall send, by certified mail, a copy of the affidavit verifying the recording of the release of the restrictive easement to the landowner. If a holder of the restrictive easement fails to record the release of a restrictive easement at its expiration or for nonperformance, the owner of the servient land may petition the district court for an order removing the restrictive easement. As used in this subsection, *"nonperformance"* means the failure to make an annual payment of any compensation within ninety days of the annual due date.

99 Acts, ch 119, §6, 7, 9

Subsection 2 to be stricken effective July 1, 2004; 99 Acts, ch 119, §7, 9

161D.7 Program coordination.

The department of natural resources shall coordinate the blufflands protection program with the program and projects of the loess hills alliance.

99 Acts, ch 119, §8

Blufflands protection; §161A.80

161D.8 Annual report — audit.

1. The authority shall submit to the department of management, the legislative fiscal bureau, and the division of soil conservation of the department of agriculture and land stewardship, on or before December 31 annually, a report including information regarding all of the following:

a. Its operations and accomplishments.

b. Its budget, receipts, and actual expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.

d. A statement of its proposed and projected activities.

e. Recommendations to the governor and the general assembly, as deemed necessary.

f. Any other information deemed necessary.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period in attaining these goals.

3. The fund shall be subject to an annual audit by the auditor of state.

2001 Acts, ch 185, §45

161D.9 and 161D.10 Reserved.

SUBCHAPTER 2

SOUTHERN IOWA DEVELOPMENT AND CONSERVATION AUTHORITY

161D.11 Southern Iowa development and conservation authority created — membership and duties.

1. A southern Iowa development and conservation authority is created. The counties of Appanoose, Clarke, Davis, Decatur, Jefferson, Lucas, Monroe, Van Buren, Wapello, and Wayne are entitled to one voting member each on the authority, but membership or participation in projects of the authority is not required. Each member of the authority shall be appointed by the respective board of supervisors for a term to be determined by each board of supervisors, but the term shall not be for less than one year. An appointee shall serve without compensation, but an appointee may be reimbursed for actual expenses incurred while performing the duties of the authority as determined by each board of supervisors. The authority shall meet, organize, and adopt rules of procedures as deemed necessary to carry out its duties. The authority may appoint working committees that include other individuals in addition to voting members.

2. The mission of the authority is to develop and coordinate plans for projects related to the unique natural resources, rural development, and infrastructure problems of counties in the most fragile areas of the southern Iowa drift plain. The authority's mission is established in part as a response to the erosion of soils, degradation of water resources, and the destabilization of stream channels in the fragile glacial till soils of southern Iowa that have occurred in a large part due to unchecked conversion of grassland to cropland. This land use conversion was brought about by the economic pressures of past federal agricultural poli-

cies that disregarded the fragile nature of the southern Iowa soil resource and the incompatibility of these soils with the subsidized commodities. The resulting erosion of the land has damaged the rural infrastructure of this area, destroyed public roads and bridges, adversely impacted stream water quality and riparian habitat, affected other public and private improvements, and severely threatens the potable water supply of the region. Reducing soil erosion, preventing sedimentation, and stopping nutrients and pesticides from entering water resources are all necessary to protect the rural infrastructure in the southern area of the state. Important protection measures include structural improvements and the reestablishment of grasslands for sustainable economic uses.

3. The authority shall cooperate with the division of soil conservation of the department of agriculture and land stewardship, the affected soil and water conservation districts, the department of natural resources, and the state department of transportation in carrying out its mission and duties. The authority shall also cooperate with appropriate federal agencies, including the United States environmental protection agency, the United States department of interior, and the United States department of agriculture natural resources conservation service. The authority shall make use of technical resources available through member counties and cooperating agencies.

4. The authority shall administer the southern Iowa development and conservation fund created under section 161D.12 and shall deposit and expend moneys in the fund for the planning, development, and implementation of development and conservation activities or measures in the member counties.

5. This section is not intended to affect the authority of the department of natural resources in its acquisition, development, and management of public lands within the counties represented by the authority.

99 Acts, ch 30, §1

161D.12 Southern Iowa development and conservation fund.

A southern Iowa development and conservation fund is created in the state treasury, to be administered by the southern Iowa development and conservation authority. The proceeds of the fund shall be used for the purposes specified in section 161D.11. The southern Iowa development and conservation authority may accept gifts, bequests, other moneys including, but not limited to, state or federal moneys, and in-kind contributions for deposit in the fund. The gifts, grants, bequests from public and private sources, state and federal moneys, and other moneys received by the authority shall be deposited in the fund and any interest earned on moneys in the fund shall be credited to the fund to be used for the purposes specified in section 161D.11. Notwithstanding section 8.33, any unexpended or unencumbered moneys remaining in the fund at the end of the fiscal year shall not revert to the general fund of the state, but the moneys shall remain available for expenditure by the authority in succeeding fiscal years.

99 Acts, ch 30, §2

161D.13 Annual report — audit.

1. The southern Iowa development and conservation authority shall submit to the department of management, the legislative fiscal bureau, and the division of soil conservation of the department of agriculture and land stewardship, on or before December 31 annually, a report including information regarding all of the following:

a. Its operations and accomplishments.

b. Its budget, receipts, and actual expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.

d. A statement of its proposed and projected activities.

e. Recommendations to the governor and the general assembly, as deemed necessary.

f. Any other information deemed necessary.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period in attaining these goals.

3. The southern Iowa development and conservation fund shall be subject to an annual audit by the auditor of state.

2001 Acts, ch 185, §46

CHAPTER 161E

FLOOD AND EROSION CONTROL

This chapter not enacted as a part of this title;
transferred from chapter 467B in Code 1995

161E.1 Authority of board.
161E.2 Federal aid.
161E.3 Co-operation.
161E.4 Structures or levees.
161E.5 Maintenance cost.
161E.6 Estimate.

161E.7 Projects on private land.
161E.8 Conservation commissioners.
161E.9 Tax levy.
161E.10 Assumption of obligations.
161E.11 Highway law applicable.
161E.12 Payments from federal government.
161E.13 Allocation to secondary road funds.
161E.14 Allocation.
161E.15 Taxes canceled.

161E.1 Authority of board.

If a county, soil and water conservation district, subdistrict of a soil and water conservation district, political subdivision of the state, or other local agency engages or participates in a project for flood or erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, in co-operation with the federal government, or a department or agency of the federal government, the counties in which the project is carried on may, through the board of supervisors, construct, operate, and maintain the project on lands under the control or jurisdiction of the county dedicated to county use, or furnish financial and other assistance in connection with the projects. Flood, soil erosion control, and watershed improvement projects are presumed to be for the protection of the tax base of the county, for the protection of public roads and lands, and for the protection of the public health, sanitation, safety, and general welfare.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.1]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §45; 89 Acts, ch 83, §60

C95, §161E.1

161E.2 Federal aid.

A county may, in accordance with this chapter, accept federal funds for aid in a project for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, and may co-operate with the federal government or a department or agency of the federal government, a soil and water conservation district, subdistrict of a soil and water conservation district, political subdivision of the state, or other local agency, and the county may assume a proportion of the cost of the project as deemed appropriate, and may assume the maintenance cost of the project on lands under the control or jurisdiction of the county which will not be discharged by federal aid or grant.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.2]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §46; 89 Acts, ch 83, §61

C95, §161E.2

See also §161E.12

161E.3 Co-operation.

The counties, soil and water conservation districts, and subdistricts of soil and water conservation districts concerned, shall advise and consult with each other, upon the request of any of them or any affected landowners, and may co-operate with each other or with other state subdivisions or instrumentalities, and affected landowners, as well as with the federal government or a department or agency of the federal government, to construct, operate, and maintain suitable projects for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water on public roads or other public lands or other land granted county use.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.3]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §47; 89 Acts, ch 83, §62

C95, §161E.3

161E.4 Structures or levees.

When structures or levees necessary for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, are constructed on county roads, the cost in total or in part shall be considered a part of the cost of road construction.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.4]

C95, §161E.4

161E.5 Maintenance cost.

If construction of projects has been completed by the soil and water conservation district, subdistricts of soil and water conservation districts, political subdivisions of the state, or other local agencies, or the federal government, or a department or agency of the federal government, on private lands under the easement granted to the county, only the cost of maintenance may be assumed by the county.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.5]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §48; 89 Acts, ch 83, §63

C95, §161E.5

161E.6 Estimate.

In the proceedings to establish such a project the government engineer shall set forth in the engineer's report separately from other items, the amount of the cost of construction on county property and on private lands, and the engineer's estimate of the cost of the maintenance of the same.

If the plan is approved by all co-operating agencies and the project established as a flood or erosion control project the board of supervisors shall make a written record of any such co-operative arrangement and may use such part of the funds of the county now authorized by law and by this chapter as may be necessary to pay the amount agreed upon toward the construction, maintenance and cost of such project.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.6]

C95, §161E.6

161E.7 Projects on private land.

Any flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, projects built on private land with federal or other funds when dedicated to the county use, shall be maintained in the same manner as its own county-owned or controlled property.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.7]

C95, §161E.7

161E.8 Conservation commissioners.

In counties where soil and water conservation districts exist the commissioners in said county shall be responsible for the inspection of all flood and erosion control structures built on private land under easement to the county, shall furnish such technical assistance as they may have available in making estimates of needed repairs without cost to the county, and shall report any needed repair and the nature thereof to the county board of supervisors.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.8]

C95, §161E.8

161E.9 Tax levy.

The county board of supervisors may annually levy a tax not to exceed six and three-fourths cents per thousand dollars of assessed value of all agricultural lands in the county, to be used for flood and erosion control, including acquisition of land or interests in land, and repair, alteration, maintenance, and operation of works of improvement on lands under the control or jurisdiction of the county as provided in this chapter.

83 Acts, ch 123, §188, 209

CS83, §467B.9

C95, §161E.9

161E.10 Assumption of obligations.

This chapter contemplates that actual direction of the project, or projects, and the actual work done in connection with them, will be assumed by the soil and water conservation district, a subdistrict of a soil and water conservation district, or the federal government, and that the county or other state subdivisions or instrumentalities jointly will meet the obligation required for federal co-operation and may make proper commitment for the care and maintenance of the project after its completion for the general welfare of the public and residents of the respective counties.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.10]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §49; 89 Acts, ch 83, §64

C95, §161E.10

161E.11 Highway law applicable.

The counties in maintaining the structures or improvements made under such a project shall do so in a like manner and under like procedure as that used in the maintenance of its highways. Any co-operative agreements with other state subdivisions or instrumentalities shall conform with such an agreement as to the proportion of maintenance cost.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.11]

C95, §161E.11

161E.12 Payments from federal government.

Whenever there shall be payable by the federal government to counties or school districts of the state any sums of money because of the fact that such school districts or counties are entitled to a share of the receipts from the operation of the federal government of flood control projects within any county of the state, such payments shall be payable to the county treasurer of any county in which such payments become due.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.12]

C95, §161E.12

See also §161E.2

161E.13 Allocation to secondary road funds.

Upon receipt of any such payments or payment by the county treasurer twenty-five percent of such amount shall be credited to the secondary road funds of the counties which are principally affected by the construction of such federal flood control projects, and the board of supervisors shall determine which roads of the county are deemed to be principally affected and the amounts which shall be expended from these funds derived from

the federal government on such roads.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.13]

C95, §161E.13

161E.14 Allocation.

Sixty-five percent of any such payments or payment received from the federal government shall be distributed to the general fund of the school districts of the county after the county auditor has determined the districts which are principally affected by the federal flood control project involved in an amount deemed to be the equitable share of each such district and the amount allocated to each school district shall be paid over to the treasurer of such school district.

The county auditor shall certify to the executive council of the state the amounts allocated to each school district in the previous year, on January 2 of each year. The remaining ten percent of a payment received by the county treasurer from the federal government, or as much thereof as is deemed necessary by the board of supervisors, shall be allocated to the local fire departments of the unincorporated villages, townships, and cities of the county which are principally affected by the federal flood control project involved, to be paid and prorated among them as determined by the board of supervisors. If the funds prorated to local fire departments in a county are less than ten percent of the total county share of such federal payments for a year, the amount which exceeds the prorations shall revert back to and be divided equally between the secondary road fund and the local school district fund.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.14]

88 Acts, ch 1134, §89

C95, §161E.14

161E.15 Taxes canceled.

The treasurer of any county wherein is situated any land acquired by the federal government for flood control projects is hereby authorized to cancel any taxes or tax assessments against any such land so acquired where the tax has been extended but has not become a lien thereon at the time of the acquisition thereof.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.15]

C95, §161E.15

CHAPTER 161F

SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS

This chapter not enacted as a part of this title;
transferred from chapter 467C in Code 1995

161F.1 Presumption of benefit.
161F.2 Board of supervisors to establish districts — strip coal mining.
161F.3 Combination of functions.
161F.4 Old districts combined.
161F.5 Approval of commissioners.
161F.6 Chapters made applicable.

161F.1 Presumption of benefit.

The conservation of the soil resources of the state of Iowa, the proper control of water resources of the state and the prevention of damage to property and lands through the control of floods, the drainage of surface waters or the protection of lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare and essential to the economic well-being of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.1]

C95, §161F.1

161F.2 Board of supervisors to establish districts — strip coal mining.

The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session to establish, subject to the provisions of this chapter, districts having for their purpose soil conservation and the control of flood waters and to cause to be constructed as hereinafter provided, such improvements and facilities as shall be deemed essential for the accomplishment of the purpose of soil conservation and flood control. Such board shall also have jurisdiction, power and authority at any regular, special or adjourned session to establish, in the same manner that the districts hereinabove referred to are established, districts having for their purpose soil conservation in mining areas within the county, and provide that anyone engaged in removing the surface soil over any bed or strata of coal in such district for the purpose of obtaining such coal shall replace the surface soil as nearly as

practicable to its original position, and provide that, upon abandonment of such removal operation, all surface soil shall be so replaced. This section shall apply only to surface soil so removed after July 4, 1949, and then only if it is essential for the accomplishment of the purpose of soil conservation and flood control within the purview of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.2]

C95, §161F.2

161F.3 Combination of functions.

Such districts shall have the power to combine in their functions activities affecting soil conservation, flood control and drainage, or any of these objects, singly or in combination with another.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.3]

C95, §161F.3

161F.4 Old districts combined.

If any levee or drainage district or improvement established either by legal proceedings or by private parties shall desire to include in the activities of such district soil conservation or flood control projects, the board upon petition, as for the establishment of an original levee or drainage district, shall establish a new district covering and including such old district and improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.4]

C95, §161F.4

161F.5 Approval of commissioners.

A district shall not be established by a board of supervisors under this chapter unless the organization of the district is approved by the commissioners of a soil and water conservation district established under chapter 161A and which is included all or in part within the district, nor shall a district be established without the approval of the department of natural resources.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.5; 82 Acts, ch 1199, §75, 96]

87 Acts, ch 23, §50

C95, §161F.5

161F.6 Chapters made applicable.

In the organization, operation and financing of districts established under this chapter, the provisions of chapter 468 shall apply.

Wherever any of the provisions of said chapters refer to the word *"drainage"*, the word shall be deemed to include in its meaning soil erosion and flood control or any combination of drainage, flood control and soil erosion control. The term *"drainage district"* shall be considered to include districts having as their purpose soil conservancy or flood control or any combination thereof, and the words *"drainage certificates"* or *"drainage bonds"* shall be deemed to include certificates or bonds issued in behalf of any district organized under the provisions of this chapter; and any procedure provided by these chapters in connection with the organization, financing and operation of any drainage district shall be applicable to the organization, financing and operation of districts organized under this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.6]

C95, §161F.6

SUBTITLE 2

ANIMAL INDUSTRY

CHAPTER 162

CARE OF ANIMALS IN COMMERCIAL ESTABLISHMENTS

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162.2 Definitions.
162.3 Certificate of registration for pound.
162.4 Certificate of registration for animal shelter.
162.5 Pet shop license.
162.6 Commercial kennel or public auction license.
162.7 Dealer license.
162.8 Commercial breeder's license.
162.9 Boarding kennel operator's license.
162.10 Research facility registration.
162.11 Exceptions.
162.12 Denial or revocation of license or registration.
162.13 Penalties.
162.14 Custody by animal warden.
162.15 Violation by animal warden.
162.16 Rules.
162.17 Exceptions. Repealed by 88 Acts, ch 1186, §16.
162.18 Fees.
162.19 Abandoned animals destroyed.
162.20 Sterilization.

162.1 Policy.

The purpose of this chapter is:

1. To insure that all dogs and cats handled by boarding kennels, commercial kennels, commercial breeders, dealers, and public auctions are provided with humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling, and treatment of such animals by persons or organizations engaged in transporting, buying, or selling them and to provide that all vertebrate animals consigned to pet shops are provided humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling, and treatment of such animals by pet shops.

2. To authorize the sale, trade, or adoption of only those animals which appear to be free of infectious or communicable disease.

3. To protect the public from zoonotic disease.

[C75, 77, 79, 81, §162.1]

96 Acts, ch 1034, §7

162.2 Definitions.

As used in this chapter, except as otherwise expressly provided:

1. *"Adequate feed"* means the provision at suitable intervals of not more than twenty-four hours or longer if the dietary requirements of the species so require, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. The foodstuff shall be served in a clean receptacle, dish or container.

2. *"Adequate water"* means reasonable access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed twenty-four hours at any interval.

3. *"Animal shelter"* means a facility which is used to house or contain dogs or cats, or both, and which is owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

4. *"Animal warden"* means any person employed, contracted, or appointed by the state, municipal corporation, or any political subdivision of the state, for the purpose of aiding in the enforcement of the provisions of this chapter or any other law or ordinance relating to the licensing of animals, control of animals or seizure and impoundment of animals and includes any peace officer, animal control officer, or other employee whose duties in whole or in part include assignments which involve the seizure or taking into custody of any animal.

5. *"Boarding kennel"* means a place or establishment other than a pound or animal shelter where dogs or cats not owned by the proprietor are sheltered, fed and watered in return for a consideration.

6. *"Commercial breeder"* means a person, engaged in the business of breeding dogs or cats, who sells, exchanges, or leases dogs or cats in return for consideration, or who offers to do so, whether or not the animals are raised, trained, groomed, or boarded by the person. A person who owns or harbors three or less breeding males or females is not a commercial breeder. However, a person who

breeds or harbors more than three breeding male or female greyhounds for the purposes of using them for pari-mutuel racing shall be considered a commercial breeder irrespective of whether the person sells, leases, or exchanges the greyhounds for consideration or offers to do so.

7. *"Commercial kennel"* means a kennel which performs grooming, boarding, or training services for dogs or cats in return for a consideration.

8. *"Dealer"* means any person who is engaged in the business of buying for resale or selling or exchanging dogs or cats, or both, as a principal or agent, or who claims to be so engaged.

9. *"Euthanasia"* means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during the loss of consciousness.

10. *"Housing facilities"* means any room, building or area used to contain a primary enclosure or enclosures.

11. *"Person"* means person as defined in chapter 4.

12. *"Pet shop"* means an establishment where a dog, cat, rabbit, rodent, nonhuman primate, fish other than live bait, bird, or other vertebrate animal is bought, sold, exchanged, or offered for sale. However, a pet shop does not include an establishment if one of the following applies:

a. The establishment receives less than five hundred dollars from the sale or exchange of vertebrate animals during a twelve-month period.

b. The establishment sells or exchanges less than six animals during a twelve-month period.

13. *"Pound"* or *"dog pound"* means a facility for the prevention of cruelty to animals operated by the state, a municipal corporation, or other political subdivision of the state for the purpose of impounding or harboring seized stray, homeless, abandoned or unwanted dogs, cats or other animals; or a facility operated for such a purpose under a contract with any municipal corporation or incorporated society.

14. *"Primary enclosure"* means any structure used to immediately restrict an animal to a limited amount of space, such as a room, pen, cage or compartment.

15. *"Public auction"* means any place or location where dogs or cats, or both, are sold at auction to the highest bidder regardless of whether the dogs or cats are offered as individuals, as a group, or by weight.

16. *"Research facility"* means any school or college of medicine, veterinary medicine, pharmacy, dentistry, or osteopathy, or hospital, diagnostic or research laboratories, or other educational or scientific establishment situated in this state concerned with the investigation of, or instruction concerning the structure or function of living organisms, the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

17. *"Vertebrate animal"* means those vertebrate animals other than members of the equine, bovine, ovine, and porcine species, and ostriches, rheas, or emus.

[C75, 77, 79, 81, §162.2]

86 Acts, ch 1245, §611; 88 Acts, ch 1186, §1 – 4; 92 Acts, ch 1094, §1; 92 Acts, ch 1212, §6; 95 Acts, ch 43, §4

Further definitions; see §159.1

162.3 Certificate of registration for pound.

A pound shall not be operated unless a certificate of registration for the pound is granted by the secretary. Application for the certificate shall be made in the manner approved by the secretary. Certificates of registration expire one year from date of issue unless revoked and may be renewed upon application in the manner provided by the secretary. A registered pound may engage in the sale of dogs or cats under its control, if the privilege is allowed by the department, but no fee shall be charged unless the registered pound is privately owned. The registration fee for a privately owned pound that sells dogs or cats is fifteen dollars per year.

[C75, 77, 79, 81, §162.3]

88 Acts, ch 1186, §5; 88 Acts, ch 1272, §12; 89 Acts, ch 296, §17

162.4 Certificate of registration for animal shelter.

A person shall not operate an animal shelter unless a certificate of registration for the animal shelter is granted by the secretary. Application for the certificate shall be made in the manner provided by the secretary. A fee is not required for the application or certificate. Certificates of registration expire one year from date of issue unless revoked and may be renewed in the manner provided by the secretary. A registered animal shelter may engage in the sale of dogs or cats if the privilege is allowed by the department.

[C75, 77, 79, 81, §162.4]

88 Acts, ch 1186, §6

162.5 Pet shop license.

A person shall not operate a pet shop unless the person has obtained a license to operate a pet shop issued by the secretary. Application for the license shall be made in the manner provided by the secretary. The license expires one year from date of issue unless revoked and may be renewed in the manner provided by the secretary. The license fee is fifty dollars per year. The license may be renewed if the licensee has conformed to all statutory and regulatory requirements.

[C75, 77, 79, 81, §162.5]

88 Acts, ch 1186, §7; 88 Acts, ch 1272, §13; 89 Acts, ch 296, §17

162.6 Commercial kennel or public auction license.

A person shall not operate a commercial kennel or public auction unless the person has obtained a license to operate a commercial kennel or a public auction issued by the secretary or unless the person has obtained a certificate of registration issued by the secretary if the kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The license and the certificate expire one year from date of issue unless revoked. The license fee is forty dollars per year and the certification fee is twenty dollars annually. If the person has obtained a federal license, the person need only obtain a certificate. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary if the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary.

[C75, 77, 79, 81, §162.6]

88 Acts, ch 1186, §8; 88 Acts, ch 1272, §14; 89 Acts, ch 15, §1; 89 Acts, ch 296, §17

162.7 Dealer license.

A person shall not operate as a dealer unless the person has obtained a license issued by the secretary or unless the person has obtained a certificate of registration issued by the secretary if the kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The license and certificate expire one year from date of issue unless revoked. The license fee is one hundred dollars per year and the certification fee is twenty dollars per year. The license may be renewed upon application and payment of the fee in the manner provided by the secretary if the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the fee in the manner provided by the secretary.

[C75, 77, 79, 81, §162.7]

88 Acts, ch 1186, §9; 88 Acts, ch 1272, §15; 89 Acts, ch 15, §2; 89 Acts, ch 296, §17

162.8 Commercial breeder's license.

A person shall not operate as a commercial breeder unless the person has obtained a license issued by the secretary or unless the person has obtained a certificate of registration issued by the secretary if the kennel is federally licensed. Application for the license or the certificate shall be made in the manner provided by the secretary. The annual license or the certification period expires one year from date of issue. The license fee is forty dollars per year and the certificate fee is twenty dollars per year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary if the licensee has conformed to all statutory and regulatory requirements. The certificate may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary.

[C75, 77, 79, 81, §162.8]

88 Acts, ch 1186, §10; 88 Acts, ch 1272, §16; 89 Acts, ch 296, §18

162.9 Boarding kennel operator's license.

A person shall not operate a boarding kennel unless the person has obtained a license to operate a boarding kennel issued by the secretary. Application for the license shall be made in the manner provided by the secretary and expires one year from date of issue. The license fee is thirty dollars per year. The license may be renewed upon application and payment of the prescribed fee in the manner provided by the secretary if the licensee has conformed to all statutory and regulatory requirements.

[C75, 77, 79, 81, §162.9]

88 Acts, ch 1186, §11; 88 Acts, ch 1272, §17; 89 Acts, ch 296, §17

162.10 Research facility registration.

A person shall not operate a research facility unless the person obtains a certificate issued by the secretary. The certificate expires one year from date of issue. Application for the certificate shall be made in the manner provided by the secretary. A fee is not required for the application or certificate.

[C75, 77, 79, 81, §162.10]

88 Acts, ch 1186, §12; 88 Acts, ch 1272, §18; 89 Acts, ch 296, §17

162.11 Exceptions.

1. Any dealer or commercial breeder and any person who operates a commercial kennel or public auction who has obtained and is operating the business under a current and valid federal license shall, upon payment of the prescribed fee, be forwarded a certificate of registration by the secretary.

2. The certificate of registration may be denied or revoked if the person no longer possesses a current and valid federal license. Other than obtaining the certificate of registration from the secretary, any dealer or commercial breeder and any person who operates a commercial kennel or public auction shall not be subject to further regulation under the provisions of this chapter.

3. Any person who possesses a current and valid federal license may, in lieu of obtaining a certificate of registration, make application for a state license as provided in this chapter. If properly qualified, and upon payment of the prescribed fee, a license shall be issued under the provisions

of this chapter.

4. This chapter does not apply to a place or establishment which operates under the immediate supervision of a duly licensed veterinarian as a hospital where animals are harbored, hospitalized, and cared for incidental to the treatment, prevention, or alleviation of disease processes during the routine practice of the profession of veterinary medicine. However, if animals are accepted by such a place, establishment, or hospital for boarding or grooming for a consideration, the place, establishment, or hospital is subject to the licensing or registration requirements applicable to a boarding kennel or commercial kennel under this chapter and the rules adopted by the secretary.

5. This chapter does not apply to a noncommercial kennel at, in, or adjoining a private residence where dogs or cats are kept for the hobby of the householder, if the dogs or cats are used for hunting, for practice training, for exhibition at shows or field or obedience trials, or for guarding or protecting the householder's property. However, the dogs or cats must not be kept for breeding if a person receives consideration for providing the breeding.

[C75, 77, 79, 81, §162.11]

88 Acts, ch 1186, §13

162.12 Denial or revocation of license or registration.

A certificate of registration may be denied to any pound or animal shelter and a license or certificate of registration may be denied to any public auction, boarding kennel, commercial kennel, research facility, pet shop, commercial breeder, or dealer, or an existing certificate or license may be revoked by the secretary if, after public hearing, it is determined that the housing facilities or primary enclosures are inadequate under this chapter or if the feeding, watering, cleaning, and housing practices at the pound, animal shelter, public auction, pet shop, boarding kennel, commercial kennel, research facility, or those practices by the commercial breeder or dealer, are not in compliance with this chapter or with the rules adopted pursuant to this chapter. The premises of each licensee or certificate holder shall be open for inspection during normal business hours.

[C75, 77, 79, 81, §162.12]

88 Acts, ch 1186, §14

162.13 Penalties.

Operation of a pound, animal shelter, pet shop, boarding kennel, commercial kennel, research facility, or public auction, or dealing in dogs or cats, or both, either as a dealer or a commercial breeder, without a currently valid license or a certificate of registration is a simple misdemeanor and each day of operation is a separate offense.

The failure of any pound, research facility, animal shelter, pet shop, boarding kennel, commercial kennel, commercial breeder, public auction, or dealer, to adequately house, feed, or water dogs, cats, or vertebrate animals in the person's or facility's possession or custody is a simple misdemeanor. The animals are subject to seizure and impoundment and may be sold or destroyed as provided by rules which shall be adopted by the department pursuant to chapter 17A. The rules shall provide for the destruction of an animal by a humane method, including by euthanasia. The failure to meet the requirements of this section is also cause for revocation or suspension of license or registration after public hearing. The commission of an act declared to be an unlawful practice under section 714.16 or prohibited under chapter 717 or 717B, by a person licensed or registered under this chapter is cause for revocation or suspension of the license or registration certificate. Dogs, cats, and other vertebrates upon which euthanasia is permitted by law may be destroyed by a person subject to this chapter or chapter 169, by a humane method, including euthanasia, as provided by rules which shall be adopted by the department pursuant to chapter 17A.

It is unlawful for a dealer to knowingly ship a diseased animal. A dealer violating this paragraph is subject to a fine not exceeding one hundred dollars. Each diseased animal shipped in violation of this paragraph is a separate offense.

[C75, 77, 79, 81, §162.13]

83 Acts, ch 149, §1; 88 Acts, ch 1186, §15; 94 Acts, ch 1103, §1

162.14 Custody by animal warden.

An animal warden, upon taking custody of any animal in the course of the warden's official duties, shall immediately make a record of the matter in the manner prescribed by the secretary and the record shall include a complete description of the animal, reason for seizure, location of seizure, the owner's name and address if known, and all license or other identification numbers, if any. Complete information relating to the disposition of the animal shall be added in the manner provided by the secretary immediately after disposition.

[C75, 77, 79, 81, §162.14]

162.15 Violation by animal warden.

Violation of any provision of this chapter which relates to the seizing, impoundment, and custody of an animal by an animal warden shall constitute a simple misdemeanor and each animal handled in violation shall constitute a separate offense.

[C75, 77, 79, 81, §162.15]

162.16 Rules.

The secretary shall promulgate rules consistent with the objectives and intent of this chapter, for the purpose of carrying out such objectives and intent, within ninety days after July 1, 1974, subject

to chapter 17A. However, rules adopted by the secretary shall not exceed any federal standards or rules except as specifically provided for in this chapter.

[C75, 77, 79, 81, §162.16]

162.17 Exceptions. Repealed by 88 Acts, ch 1186, § 16. See § 162.11.

162.18 Fees.

All fees collected by the secretary from licenses and certificates issued under this chapter shall be paid to the treasurer of state.

[C75, 77, 79, 81, §162.18]

162.19 Abandoned animals destroyed.

Whenever any animal is left with a veterinarian, boarding kennel or commercial kennel pursuant to a written agreement and the owner does not claim the animal by the agreed date, the animal shall be deemed abandoned, and a notice of abandonment and its consequences shall be sent within seven days by certified mail to the last known address of the owner. For fourteen days after mailing of the notice the owner shall have the right to reclaim the animal upon payment of all reasonable charges, and after the fourteen days the owner shall be deemed to have waived all rights to the abandoned animal. If despite diligent effort an owner cannot be found for the abandoned animal within another seven days, the veterinarian, boarding kennel, or commercial kennel may humanely destroy the abandoned animal.

Each veterinarian, boarding kennel or commercial kennel shall warn its patrons of the provisions of this section by a conspicuously posted notice or by conspicuous type in a written receipt.

[C77, 79, 81, §162.19]

162.20 Sterilization.

1. A pound or animal shelter shall not transfer ownership of a dog or cat by sale or adoption, unless the dog or cat is subject to sterilization. The sterilization shall involve a procedure which permanently destroys the capacity of a dog or cat to reproduce, either by the surgical removal or alteration of its reproductive organs, or by the injection or ingestion of a serum. The pound or animal shelter shall not relinquish custody until it provides for one of the following:

a. Sterilization performed by a veterinarian licensed pursuant to chapter 169.

b. The execution of an agreement with a person intended to be the permanent custodian of the dog or cat. The agreement must provide that the custodian shall have the dog or cat sterilized by a veterinarian licensed pursuant to chapter 169.

2. The pound or animal shelter maintaining custody of the dog or cat may require that a person being transferred ownership of the dog or cat reimburse the pound or animal shelter for the amount in expenses incurred by the pound or animal shelter in sterilizing the dog or cat, if the dog or cat is sterilized prior to the transfer of ownership of the dog or cat to the person.

3. *a.* The sterilization agreement may be on a form which shall be prescribed by the department. The agreement shall contain the signature and address of the person receiving custody of the dog or cat, and the signature of the representative of the pound or animal shelter.

b. The sterilization shall be completed as soon as practicable, but prior to the transfer of the ownership of the dog or cat by the pound or animal shelter. The pound or animal shelter may grant an extension of the period required for the completion of the sterilization if the extension is based on a reasonable determination by a licensed veterinarian.

c. A pound or animal shelter shall transfer ownership of a dog or cat, conditioned upon the confirmation that the sterilization has been completed by a licensed veterinarian who performed the procedure. The confirmation shall be a receipt furnished by the office of the attending veterinarian.

d. A person who fails to satisfy the terms of the sterilization agreement shall return the dog or cat within twenty-four hours following receipt of a demand letter which shall be delivered to the person by the pound or animal shelter personally or by certified mail.

4. *a.* A person who does not comply with the provisions of a sterilization agreement is guilty of a simple misdemeanor.

b. A person who fails to return a dog or cat upon receipt of a demand letter is guilty of a simple misdemeanor.

c. A pound or animal shelter which knowingly fails to provide for the sterilization of a dog or cat is subject to a civil penalty of up to two hundred dollars. The department may enforce and collect civil penalties according to rules which shall be adopted by the department. Each violation shall constitute a separate offense. Moneys collected from civil penalties shall be deposited into the general fund of the state and are appropriated on July 1 of each year in equal amounts to each track licensed to race dogs to support the racing dog adoption program as provided in section 99D.27. Upon the third offense, the department may suspend or revoke a certificate of registration issued to the pound or animal shelter pursuant to this chapter. The department may bring an action in district court to enjoin a pound or animal shelter from transferring animals in violation of this section. In bringing the action, the department shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, that irreparable damage or loss will result if the action is brought at law, or that unique or special circumstances exist.

5. This section shall not apply to the following:

a. The return of a dog or cat to its owner by a pound or animal shelter.

b. The transfer of a dog or cat by a pound or animal shelter which has obtained an enforcement waiver issued by the department. The pound or shelter may apply for an annual waiver each year as provided by rules adopted by the department. The department shall grant a waiver, if it determines that the pound or animal shelter is subject to an ordinance by a city or county which includes stricter requirements than provided in this section. The department shall not charge more than ten dollars as a waiver application fee. The fees collected by the department shall be deposited in the general fund of the state.

c. The transfer of a dog or cat to an institution as defined in section 145B.1, a research facility as defined in section 162.2, or a person licensed by the United States department of agriculture as a class B dealer pursuant to 9 C.F.R. subchapter A, part 2. However, a class B dealer who receives an unsterilized dog or cat from a pound or animal shelter shall either sterilize the dog or cat or transfer the unsterilized dog or cat to an institution or research facility provided in this paragraph. The class B dealer shall not transfer a dog to an institution or research facility, if the dog is a greyhound registered with the national greyhound association and the dog raced at a track associated with pari-mutuel racing, unless the class B dealer receives written approval of the transfer from a person who owned an interest in the dog while the dog was racing.

93 Acts, ch 134, §1

CHAPTER 163

INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

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SUBCHAPTER I

GENERAL PROVISIONS

163.1 Powers of department.

The department shall administer and enforce the provisions of this chapter and rules adopted by the department pursuant to this chapter. In administering the provisions of this chapter, the department shall have power to do all of the following:

1. Make all necessary rules for the suppression and prevention of infectious and contagious diseases among animals within the state.
2. Provide for quarantining animals affected with infectious or contagious diseases, or that have been exposed to such diseases, whether within or without the state.
3. Determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of contagious or infectious diseases among animals.
4. Establish, maintain, enforce, and regulate quarantine and other measures relating to the movements and care of diseased animals.
5. Provide for the disinfection of suspected yards, buildings, and articles, and the destruction of such animals as may be deemed necessary.
6. Enter any place where any animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease.
7. Regulate or prohibit the arrival in, departure from, and passage through the state, of animals infected with or exposed to any contagious disease; and in case of violation of any such regulation or prohibition, to detain any animal at the owner's cost.
8. Regulate or prohibit the bringing of animals into the state, which, in its opinion, for any reason, may be detrimental to the health of animals in the state.
9. Cooperate with and arrange for assistance from the United States department of agriculture in performing its duties under this chapter.
10. Impose civil penalties as provided in this chapter. The department may refer cases for prosecution to the attorney general.

[S13, §2538-s; C24, 27, 31, 35, 39, §**2643;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.1]

91 Acts, ch 32, §1; 2001 Acts, ch 136, §1

163.2 Infectious and contagious diseases.

For the purpose of this chapter, infectious and contagious diseases shall be deemed to embrace glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, swine dysentery, tuberculosis, brucellosis, vesicular exanthema, scrapie, rinderpest, ovine foot rot, or any other communicable disease so designated by the department.

As used in this chapter, *"foot and mouth disease"* means a virus of the family picornaviridae, genus aphthovirus, including any immunologically distinct serotypes.

[C24, 27, 31, 35, 39, §**2644;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.2]

2001 Acts, ch 170, §1, 3

163.3 Veterinary assistants.

The department may appoint one or more licensed veterinarians in each county as assistant veterinarians. It may also appoint such special assistants as may be necessary in cases of emergency.

[C24, 27, 31, 35, 39, §**2645;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.3]

163.4 Powers of assistants.

Such assistant veterinarians shall have power, under the direction of the department, to perform all acts necessary to carry out the provisions of law relating to infectious and contagious diseases among animals, and shall be furnished by the department with the necessary supplies and materials which shall be paid for out of the appropriation for the eradication of infectious and contagious diseases among animals.

[C24, 27, 31, 35, 39, §**2646;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.4]

163.5 Oaths.

Such assistant veterinarians shall have power to administer oaths and affirmations to appraisers acting under this and the following chapters of this subtitle.

[C24, 27, 31, 35, 39, §**2647;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.5]

Analogous provisions, §63A.2

163.6 Slaughter facilities — blood samples.

1. As used in this section, unless the context otherwise requires:

a. "Department" means the department of agriculture and land stewardship unless the United States department of agriculture is otherwise specified.

b. "Slaughtering establishment" means a person engaged in the business of slaughtering animals, if the person is an establishment subject to the provisions of chapter 189A which slaughters animals for meat food products as defined in section 189A.2.

2. The department may require that samples of blood be collected from animals at a slaughtering establishment in order to determine if the animals are infected with an infectious or contagious disease, according to rules adopted by the department of agriculture and land stewardship. Upon approval by the department, the collection shall be performed by either of the following:

a. A slaughtering establishment under an agreement executed by the department and the slaughtering establishment.

b. A person authorized by the department.

An authorized person collecting samples shall have access to areas where the animals are confined in order to collect blood samples. The department shall notify the slaughtering establishment in writing that samples of blood must be collected for analysis. The notice shall be provided in a manner required by the department.

3. In carrying out this section, a person authorized by the department to collect blood samples from animals as provided in this section shall have the right to enter and remain on the premises of the slaughtering establishment in the same manner and on the same terms as a meat inspector authorized by the department, including the right to access facilities routinely available to employees of the slaughtering establishment such as toilet and lavatory facilities, lockers, cafeterias, areas reserved for work breaks or dining, and storage facilities. The slaughtering establishment shall provide a secure area for the permanent storage of equipment used to collect blood, an area reserved for collecting the blood, including the storage of blood during the collection, and a refrigerated area used to store blood samples prior to analysis. The area reserved for collecting the blood shall be adjacent to the area where the animals are killed, unless the authorized person and the slaughtering establishment select another area. The department is not required to compensate a slaughtering establishment for allowing a person authorized by the department to carry out this section.

98 Acts, ch 1056, §1; 2001 Acts, ch 136, §2; 2002 Acts, ch 1119, §21

Subsection 1, paragraph a amended

163.7 State and federal rules.

The rules adopted by the department regarding interstate shipments of animals shall not be in conflict with the rules of the federal department of agriculture, unless there is an outbreak of a malignant contagious disease in any locality, state, or territory, in which event the department shall have the right to place an embargo on such locality, state, or territory.

[C24, 27, 31, 35, 39, §**2649;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.7]

163.8 Enforcement of rules.

The assistant veterinarians appointed under this chapter shall enforce all rules of the department, and in so doing may call to their assistance any peace officer.

[S13, §2538-s; C24, 27, 31, 35, 39, §**2650;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.8]

163.9 College at Ames to assist.

The dean of the veterinary college of the Iowa State University of science and technology is authorized to use the equipment and facilities of the college in assisting the department in carrying out the provisions of this chapter.

[C24, 27, 31, 35, 39, §**2651;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.9]

163.10 Quarantining or killing animals.

The department may quarantine or condemn any animal which is infected with any contagious or infectious disease, but no cattle infected with tuberculosis shall be killed without the owner's consent, unless there shall be sufficient funds to pay for such cattle, in the allotment made for that purpose from the appropriation for the eradication of infectious and contagious diseases among animals as provided in this chapter.

[C24, 27, 31, 35, 39, §**2652;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.10]

Allotment, §163.22

163.11 Imported animals.

No person shall bring into this state, except to public livestock markets where federal inspection of livestock is maintained, any animal for work, breeding, or dairy purposes, unless such animal has been examined and found free from all contagious or infectious diseases.

No person shall bring in any manner into this state any cattle for dairy or breeding purposes unless such cattle have been tested within thirty days prior to date of importation by the agglutination test for contagious abortion or abortion disease, and shown to be free from such disease.

Animals for feeding purposes, however, may be brought into the state without inspection, under such regulations as the department may prescribe

except that this sentence shall not apply to swine.

[C24, 27, 31, 35, 39, §**2653;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.11]

Additional provision, §165.36

163.12 Freedom from disease.

Freedom from disease as specified in section 163.11 shall be established by a certificate of health signed by a veterinarian acting under either the authority of the federal department of agriculture, or of the state department of agriculture and land stewardship.

[C24, 27, 31, 35, 39, §**2654;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.12]

163.13 Certificate attached to bill of lading.

A copy of such certificate shall be attached to the waybill accompanying the shipment, and a copy thereof shall be mailed to the department.

[C24, 27, 31, 35, 39, §**2655;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.13]

163.14 Intrastate shipments.

All animals, except those intended for immediate slaughter, shall be inspected when required by the department, and accompanied by the aforesaid certificate when shipped from a public stockyard in this state to another point within the state where federal inspection is not maintained.

[C24, 27, 31, 35, 39, §**2656;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.14]

163.15 Indemnifying owner.

Whenever any animal is found to be infected with one of the contagious diseases enumerated in section 163.2 or one which has been designated by the department thereunder, if there be no other provisions for indemnifying the owner in case the same be condemned and ordered by the department to be killed, and the secretary of agriculture determines that the existence of said communicable disease constitutes a threat to the general welfare or the public health of the inhabitants of the state, the secretary shall formulate a program of eradication including therein the condemnation and killing of the infected animals; provided however, that said program shall not be put into effect as hereinafter provided until the same has been approved by the executive council.

If an animal infected with a contagious disease is destroyed under a program of eradication as provided in this section, the owner shall be compensated according to one of the following methods:

1. *a.* A determination of an indemnity amount as agreed to by appraisal. The determination shall be made by appraisers who shall be three competent and disinterested persons, including one who is appointed by the department, one who is appointed by the owner, and one who is appointed by agreement of the department and the owner. The appraisers shall report their appraisal under oath to the department. The appraisers shall receive compensation and expenses as provided for by the program.

b. A claim for an indemnity filed by the owner shall not exceed the amount agreed upon by the majority decision of the appraisers. For an animal other than registered purebred stock the indemnity amount shall be based on current market prices. For registered purebred stock, the indemnity amount may exceed market prices by not more than fifty percent. The indemnity amount shall be less any amount of indemnification that the owner might be allowed from the United States department of agriculture. An indemnity shall not be allowed for an animal if the department of agriculture and land stewardship determines that the animal has been fed raw garbage as provided in section 163.26.

c. A claim for an indemnity by the owner and a claim for compensation and expenses by the appraisers shall be filed with the department and submitted by the secretary of agriculture to the executive council for its approval or disapproval.

d. Upon approval by the executive council, there is appropriated to the department from any moneys in the general fund of the state not otherwise appropriated moneys sufficient to carry out the provisions of this subsection.

2. A formula established by rule adopted by the department that is effective as determined by the department in accordance with chapter 17A and applicable upon approval of the plan of eradication approved by the executive council. The formula shall be applicable to indemnify owners if the executive council, upon recommendation by the secretary of agriculture, determines that an animal population in this state is threatened with infection from an exceptionally contagious disease.

a. An owner shall be paid an indemnity amount based on the formula, only if the owner elects to be paid under the formula in lieu of the determination by appointed appraisers as otherwise provided in this section.

b. The formula shall provide for the payment of the fair market value of an animal based on market prices paid for similar animals according to categories or criteria established by the department, which may include payment based on the species, breed, type, weight, sex, age, purebred status, and condition of the animal. The department may provide for deductions based on other compensation received by the owner for the destruction of the animals. The department may exclude a claim if the person would be ineligible to receive compensation by three appointed appraisers as provided in this section.

If an owner elects to be paid an indemnity amount based on a method that provides either a determination by appointed appraisers or pur-

suant to a formula, the owner shall not be entitled to revoke the election, unless otherwise provided by the department. An owner's decision to delay or refuse to make an election under this section shall not affect the condemnation and destruction of infected animals under the program of eradication.

[SS15, §2538-1a – 8a; C24, 27, 31, 35, 39, §**2657;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.15]

2002 Acts, ch 1101, §1

Unnumbered paragraph 2 amended

163.16 Limitation on right to receive pay.

Unless an animal was examined at the time of importation into the state and found free from contagious or infectious diseases as provided in this chapter, no person importing the same and no transferee who receives such animal knowing that the provisions of this chapter have been violated shall receive any compensation under section 163.15 for the destruction of such animal by the department.

[C24, 27, 31, 35, 39, §**2658;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.16]

Inspection of imported animals, §163.11

163.17 Local boards of health.

All local boards of health shall assist the department in the prevention, suppression, control, and eradication of contagious and infectious diseases among animals, whenever requested to do so.

[C24, 27, 31, 35, 39, §**2659;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.17]

Local boards of health, chapter 137

163.18 False representation.

A person shall not knowingly make a false representation about the shipment of an animal that is being or will be made, with the intent to avoid or prevent the animal's inspection that is conducted in order to determine whether the animal is free from disease.

[C24, 27, 31, 35, 39, §**2660;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.18]

2001 Acts, ch 136, §3

163.19 Sale or exposure of infected animals.

No owner or person having charge of any animal, knowing the same to have any infectious or contagious disease, shall sell or barter the same for breeding, dairy, work, or feeding purposes, or permit such animal to run at large or come in contact with any other animal.

[C97, §5018; C24, 27, 31, 35, 39, §**2661;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.19]

163.20 Glanders.

No owner or person having charge of any animal, knowing the same to be affected with glanders, shall permit such animal to be driven upon any highway, and no keeper of a public barn shall knowingly permit any animal having such disease to be stabled in such barn.

[C24, 27, 31, 35, 39, §**2662;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.20]

163.21 Penalties. Repealed by 2001 Acts, ch 136, § 10. See § 163.61.

163.22 Annual estimate.

The department shall each year make an estimate of expenditures to be made from the annual appropriation for the eradication of contagious and infectious diseases among animals. Such estimate shall set aside:

1. A sufficient sum for the general administration of this chapter.
2. A sufficient sum for the inspection of herds for tuberculosis under chapter 165, except herds in counties which have been enrolled under the county area plan of eradication.
3. The remainder of said appropriation for allotment among the counties in accordance with the number of breeding cattle owned therein for the eradication of bovine tuberculosis in such counties.

[C24, 27, 31, 35, 39, §**2664;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.22]

163.23 False certificates of health.

A veterinarian shall not issue a certificate of health for an animal knowing that the animal described in the certificate of health was not the same animal from which tests were made as a basis for issuing the certificate. A veterinarian shall not otherwise falsify a certificate of health.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.23]

2001 Acts, ch 136, §4

163.24 Using false certificate.

A person shall not conduct a transaction to import, export, or transport an animal within this state or sell or offer for sale an animal if the person uses a certificate of health in connection with the transaction knowing that the animal described in the certificate of health was not the animal from which tests were made as a basis for issuing the certificate of health. A person shall not otherwise use an altered or otherwise false certificate in connection with such transaction.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.24]

2001 Acts, ch 136, §5

163.25 Altering certificate.

A person shall not remove or alter a tag or mark of identification appearing on an animal, tested or being tested for disease, if the tag or mark of identification is authorized by the department or in-

serted by any qualified veterinarian. A person shall not alter a certificate of vaccination issued by a person authorized to vaccinate the animal.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.25]

2001 Acts, ch 136, §6

SUBCHAPTER II

FEEDING GARBAGE TO ANIMALS

163.26 Definition.

For the purposes of this subchapter, *"garbage"* means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts, and includes all waste material, by-products of a kitchen, restaurant, hotel, or slaughterhouse, every refuse accumulation of animal, fruit, or vegetable matter, liquids or otherwise, except grain not consumed, that is collected from hog sales pen floors in public stockyards and fed under the control of the department of agriculture and land stewardship. Animals or parts of animals, which are processed by slaughterhouses or rendering establishments, and which as part of the processing are heated to not less than 212 degrees F. for thirty minutes, are not garbage for purposes of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.26]

86 Acts, ch 1245, §612; 87 Acts, ch 115, §27; 2001 Acts, ch 136, §9

163.27 Boiling garbage.

It shall be unlawful for any person, firm, partnership, or corporation to feed garbage to animals unless such garbage has been heated to a temperature of 212° F. for thirty minutes, or other acceptable method, as provided by rules promulgated by the department, provided this requirement shall not apply to an individual who feeds to the individual's own animals only the garbage obtained from the individual's own household. It shall be unlawful for any person, firm, partnership, or corporation to feed any public or commercial garbage to swine after September 1, 1970.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.27]

163.28 Licenses.

Before any person shall process any public or commercial garbage for swine, application for a license shall be made to the department setting forth the name and address of the applicant's proposed place of business, and the method used to process such garbage as outlined in section 163.27.

On receipt of such application, the secretary or the secretary's authorized agent shall at once inspect the premises on which the applicant proposes to conduct such business. If the inspector finds that said building complies with the requirements of this chapter, and with the rules of the department, and that the applicant is a responsible and suitable person, the inspector shall so certify in writing to the department.

On receipt of such certificate, the department shall issue a license to said applicant to conduct such business at the place specified until the first day of September following date of issue.

The license fee for each processing plant shall be fifty dollars, except that the first license fee may be prorated on a monthly basis as prescribed by the department. The secretary shall not issue a license which would permit the processing of any garbage for swine feeding after September 1, 1970.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.28]

163.29 Penalty. Repealed by 2001 Acts, ch 136, § 10. See § 163.61.

SUBCHAPTER III

MOVEMENT OF SWINE

163.30 Swine imported or native — pig dealers.

1. This section shall apply to all swine moved interstate and intrastate, except swine moved directly to slaughter or to a livestock market for sale directly to a slaughtering establishment for immediate slaughter.

2. When used in this chapter:

a. "Dealer" means any person who is engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent or who claims to be so engaged, but does not include the owner or operator of a farm who does not claim to be so engaged, and who sells or exchanges only those swine which have been kept by the person solely for feeding or breeding purposes.

b. "Move" or *"movement"* means to ship, transport, or deliver swine by land, water, or air, except that *"move"* or *"movement"* does not mean a relocation.

c. "Relocate" or *"relocation"* means to ship, transport, or deliver swine by land, water, or air, to different premises, if the ownership of the swine does not change, the prior and new premises are located within the state, and the shipment, transportation, or delivery between the prior and new premises occurs within the state.

d. "Separate and apart" means a manner of holding swine so as not to have physical contact with other swine on the premises.

3. No person shall act as a dealer without first securing a dealer's license from the department. The fee for a dealer's license shall be five dollars per annum and all licenses shall expire on the first day of July following date of issue. Licenses shall be numbered and the dealer shall retain the number from year to year. To secure a license, the applicant must file with the department a bond in the sum of ten thousand dollars with the secretary

named as trustee, for the use and benefit of anyone damaged by a violation of this section, except that the bond shall not be required for dealers who are bonded in the same or a greater amount than required pursuant to the federal Packers and Stockyards Act.

Each employee or agent doing business by buying for resale, selling or exchanging feeder swine in the name of a licensed dealer, shall be required to secure a permit and identification card issued by the department showing the person is employed by or represents a licensed dealer. All such permits and identification cards shall be issued upon application forms furnished by the department at a cost of three dollars per annum, and shall expire on the first day of July following the date of issue.

A permittee shall not represent more than one dealer. Failure of a licensee or permittee to comply with this chapter or a rule made pursuant to this chapter is cause for revocation by the secretary of the permit or license after notice to the alleged offender and the holding of a hearing by the secretary. Rules shall be made in accordance with chapter 17A. A rule, the violation of which is made the basis for revocation, except temporary emergency rules, shall first have been approved after public hearing as provided in section 17A.4 after giving twenty days' notice of the hearing as follows:

By mailing notice, by ordinary mail, to every person filing a request for notice accompanied by an addressed envelope with prepaid postage. Any person may file such a request to be listed with any agency for notice for the time and place for all hearings on proposed rules, which request shall be accompanied by a remittance of five dollars. Such fee shall be added to the operating fund of the department. The listing shall expire semiannually on January 1 and July 1.

4. All swine moved shall be individually identified with a distinctive and easily discernible ear tag affixed in either ear of the animal or other identification acceptable to the department, which has been specified by rule promulgated under the department's rulemaking authority. The department shall make ear tags available at convenient locations within each county and shall sell such tags at a price not exceeding the cost to producers and others to comply with this section.

Every seller, dealer and market operator shall keep a record of the ear tag numbers, or other approved identification, and the farm of origin of swine moved by or through that person, which records shall be made available by that person to any appropriate representative of the department or the United States department of agriculture.

5. All swine moved shall be accompanied by an official health certificate or veterinarian inspection certificate issued by the state of origin and prepared and signed by a veterinarian. The health certificate or veterinarian inspection certificate shall show the point of origin, the point of destination, individual identification, immunization status, and, when required, any movement permit number assigned to the shipment by the department. All such movement of swine shall be completed within seventy-two hours unless an extension of time for movement is granted by the department.

However, swine may be moved intrastate directly to an approved state, federal or auction market without such identification or certification, there to be identified and certificated.

However, registered swine for exhibition or breeding purposes which can be individually identified by an ear notch or tattoo or other method approved by the department are excepted from this identification requirement. In addition, native Iowa swine moved from farm to farm shall be excepted from the identification requirement if the owner transferring possession of the feeder pigs executes a written agreement with the person taking possession of the feeder pigs. The agreement shall provide that the feeder pigs shall not be commingled with other swine for a period of thirty days. The owner transferring possession shall be responsible for making certain that the agreement is executed and for providing a copy of the agreement to the person taking possession.

The department may combine an official health certificate or a veterinarian inspection certificate with a certificate of inspection required under chapter 166D.

6. The department may require issuance of movement permits on certain categories of swine moved, prior to their movement, pursuant to departmental rule. The rule shall be promulgated when in the judgment of the secretary, such movements would otherwise threaten or imperil the eradication of hog cholera in Iowa.

7. All swine moved shall be quarantined separate and apart from other swine located at the Iowa farm of destination for thirty days beginning with their arrival at such premises, or if such incoming swine are not held separate and apart, all swine on such premises shall be thus quarantined, except animals moving from such premises directly to slaughter.

There can only be one transfer by a dealer, involving not more than two markets, prior to quarantine.

8. The use of anti-hog-cholera serum or antibody concentrate shall be in accordance with rules issued by the department.

9. All swine found by a registered veterinarian to have any infectious, contagious, or communicable swine disease after delivery to any livestock sale barn or auction market for resale other than for slaughter, shall be immediately returned to the consignor's premises to be quarantined separate and apart for fifteen days. Such swine may not be moved from such premises for any purpose unless an official health certificate or veterinarian inspection certificate accompanies the movement or

unless they are sent to slaughter. This subsection shall in no way supersede the requirements of sections 163A.2 and 163A.3.

[C62, 66, §163.30; C71, §163.30 – 163.33; C73, 75, 77, 79, 81, §163.30]

87 Acts, ch 115, §28; 91 Acts, ch 32, §2; 97 Acts, ch 183, §1, 13; 98 Acts, ch 1056, §2

163.31 Falsification of certificates — penalty. Repealed by 2001 Acts, ch 136, § 10. See § 163.61.

163.32 and 163.33 Repealed by 72 Acts, ch 1046, § 4.

SUBCHAPTER IV

IDENTIFICATION OF SWINE CONSIGNED FOR SLAUGHTER

163.34 Purpose.

The purpose of this subchapter is to establish a positive means of identifying all boars, sows and stags purchased for slaughter on their arrival at the first point of concentration after such sale. The purpose of such swine identification program is to facilitate eradication of swine diseases.

[C77, §172A.15; C79, 81, §163.34]

2001 Acts, ch 136, §9

163.35 Definitions.

1. *"Livestock dealer, livestock market operator, or stockyard operator"* means any person engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent, or one who claims to be so engaged, but does not include the owner or operator of a farm who does not claim to be so engaged, and who sells or exchanges only those swine which have been kept by that person solely for feeding or breeding purposes.

2. *"Person"* means a person as defined in section 4.1, subsection 20.

3. *"Slaughtering establishment"* means any person engaged in the business of slaughtering live animals or receiving or buying live animals for slaughter.

4. *"Stag"* means a male swine that has formerly been used for breeding purposes but that has subsequently been castrated.

[C77, §172A.16; C79, 81, §163.35]

86 Acts, ch 1245, §613

163.36 Identification required.

1. All boars, sows and stags received for sale or shipment to slaughter by a livestock dealer, livestock market operator or stockyard operator shall be identified at the first point of concentration by such dealer or operator by application of a slap tattoo or other identification approved by the department.

2. All boars, sows and stags consigned directly from a farm to a slaughtering establishment shall be identified at the first point of concentration by the consignee.

[C77, §172A.17; C79, 81, §163.36]

163.37 Form of identification required.

1. The slap tattoo or other means of identification required by section 163.36 shall be in accordance with regulations of the department.

2. Each person required by section 163.36 to identify animals shall record such identification on forms specified and furnished by the department. The identification shall include the tattoo specifications, the date of application, and the name, address and county of residence of the person who owned or controlled the herd from which the animals originated.

3. Such records shall be maintained for a length of time as required by and pursuant to chapter 304 and at the point of concentration and shall be made available for inspection by the department at reasonable times.

[C77, §172A.18; C79, 81, §163.37]

163.38 and 163.39 Reserved.

SUBCHAPTER V

BREEDING BULLS

163.40 Definitions.

As used in this subchapter:

1. *"Breeding bull"* means a male animal of dairy or beef bovine genus used for breeding purposes.

2. *"Lease"* when used as a verb means to physically deliver a breeding bull pursuant to a lease agreement.

3. *"Licensee"* means a person required to obtain a license pursuant to section 163.41.

[C79, 81, §163.40]

2000 Acts, ch 1049, §1; 2001 Acts, ch 136, §9

163.41 License required.

A person shall not engage in the business of leasing a breeding bull without having obtained a license from the department and registering each breeding bull as provided in this subchapter. An annual license may be obtained from the department upon application and payment of a ten-dollar fee. Each license shall expire on the first of July following the date of issue. An application shall be made on a form provided by the department and shall contain the name of the person engaged in the business of leasing breeding bulls as lessor, the address of such business, the registration number of each breeding bull, and a description as to breed, color and other distinguishing marks, leased as lessor, and such other information as the secretary of agriculture may specify by

rule promulgated pursuant to chapter 17A.

For the purposes of this section, a person is engaged in the business of leasing a breeding bull within this state as lessor if the person leases any breeding bull to an Iowa resident more than once in any calendar year for a fee.

[C79, 81, §163.41]
2001 Acts, ch 136, §9

163.42 Registration of breeding bulls.

The department shall issue to each licensee a tag or an identifying mark if the lessor desires this method of identification, for each breeding bull to be leased by the licensee. Each tag or identifying mark shall have an identification number which shall be a permanent identification number for such breeding bull and, upon disposition of such animal, the licensee shall notify the department of such disposition and the name and address of the buyer if such animal is sold. When an additional breeding bull to be leased is acquired by a licensee, the department shall issue a tag or approve an identifying mark for such animal without fee. The tag or identifying mark shall be permanently attached to the breeding bull.

[C79, 81, §163.42]

163.43 Health certificate required.

1. A person shall not be a party to a lease of a breeding bull within this state in which the lessor is a licensee, unless the breeding bull is accompanied by a health certificate. For the purposes of this section, a breeding bull is leased within this state if it is leased to an Iowa resident.

2. The health certificate shall be issued by a licensed veterinarian who examines the breeding bull and signs the health certificate. The health certificate shall include all of the following:

a. A statement that, to the best of the knowledge and belief of the veterinarian, the breeding bull is apparently free from any infectious, contagious, or communicable disease.

b. A statement that the breeding bull has reacted negatively to a test for brucellosis conducted within six months prior to the date that the veterinarian signs the health certificate.

c. If the breeding bull does not originate from this state, a statement that importing the breeding bull satisfies applicable importation requirements.

d. The identification number of the breeding bull as required pursuant to section 163.42.

e. The date that the health certificate is issued.

3. The health certificate shall not be valid after the term of the lease expires or after the breeding bull moves from the lessee's premises. Thereafter, a new health certificate must be issued as required in this section.

4. One copy of the health certificate shall be issued to the licensee who shall maintain the health certificate as part of the licensee's business records. One copy of the health certificate shall be issued to the lessee when the breeding bull is delivered to the lessee. A licensee shall show the health certificate upon request to any person designated by the department to enforce the provisions of this section.

[C79, 81, §163.43]
2000 Acts, ch 1049, §2

163.44 Records of breeding bull.

The licensee shall maintain records of each lease of a breeding bull. The records shall contain the name and address of the person to whom a breeding bull is leased, the date of each lease, and a description and the identification number of the breeding bull involved. A lessee or any agent of the department shall have the right to inspect, upon demand to the licensee, those records concerning the bull presently being leased by the lessee.

[C79, 81, §163.44]

163.45 Denial, revocation or suspension of a license.

The department of agriculture and land stewardship may refuse to issue or renew and may suspend or revoke a license issued under this subchapter for any violation of the provisions of this subchapter or rules adopted relating to the leasing of a breeding bull.

[C79, 81, §163.45]
2001 Acts, ch 136, §9

163.46 Sale of semen.

The owner of a breeding bull located within this state shall not sell the semen from that bull for the purpose of artificial insemination unless the owner is in possession of a health certificate signed and issued by a licensed veterinarian within six months before the date the semen is collected. The health certificate shall not be valid if the bull is moved to other premises between the date of examination and the date of collection. The health certificate shall show that on the date of issue the breeding bull had been tested negative for brucellosis and, to the best knowledge and belief of the examining veterinarian, was free from any infectious, contagious, or communicable disease.

[C79, 81, §163.46]
2000 Acts, ch 1049, §3

163.47 Exemptions.

The provisions of this subchapter shall not apply to 4-H or future farmers of America organizations engaged in breeding programs.

[C79, 81, §163.47]
95 Acts, ch 67, §13; 2001 Acts, ch 136, §9

163.48 through 163.50 Reserved.

SUBCHAPTER VI

FOOT AND MOUTH DISEASE

163.51 Security measures.

1. The department may establish security measures in order to control outbreaks of foot and mouth disease in this state, including by providing for the prevention, suppression, and eradication of foot and mouth disease. In administering and enforcing this section, the department may adopt rules and shall issue orders in a manner consistent with sound veterinary principles and federal law for the control of outbreaks of the disease. The department may implement the security measures by doing any of the following:

a. If the department determines that an animal is infected with or exposed to foot and mouth disease, or the department suspects that an animal is so infected or exposed, the department may provide for all of the following:

(1) The quarantine, condemnation, or destruction of the animal. The department may establish quarantined areas and regulate activities in the quarantined areas, including movement or relocation of animals or other property within, into, or from the quarantined areas. This section does not authorize the department to provide for the destruction of personal property other than an animal.

(2) The inspection or examination of the animal's premises in order to perform an examination or test to determine whether the animal is or was infected or exposed or whether the premises is contaminated. The department may take a blood or tissue sample of any animal on the premises.

(3) The compelling of a person who is the owner or custodian of the animal to provide information regarding the movement or relocation of the animal or the vaccination status of the animal or the herd where the animal originates. The department may issue a subpoena for relevant testimony or records as defined in section 516E.1. In the case of a failure or refusal of the person to provide testimony or records, the district court upon application of the department or the attorney general acting upon behalf of the department, may order the person to show cause why the person should not be held in contempt. The court may order the person to provide testimony or produce the record or be punished for contempt as if the person refused to testify before the court or disobeyed a subpoena issued by the court.

b. The department may provide for the cleaning and disinfection of real or personal property if the department determines that the property is contaminated with foot and mouth disease or suspects that the property is contaminated with foot and mouth disease.

2. *a.* If the department determines that there is a suspected outbreak of foot and mouth disease in this state, the department shall immediately notify all of the following:

(1) The governor or a designee of the governor. The notification shall contain information regarding actions being implemented or recommended in order to determine if the outbreak is genuine and measures to control a genuine outbreak.

(2) The administrative unit of the United States department of agriculture responsible for controlling outbreaks in this state.

b. If the department confirms an outbreak of foot and mouth disease in this state, the department shall cooperate with the governor; federal agencies, including the United States department of agriculture; and state agencies, including the emergency management division of the department of public defense, in order to provide the public with timely and accurate information regarding the outbreak. The department shall cooperate with organizations representing agricultural producers in order to provide all necessary information to agricultural producers required to control the outbreak.

3. The department shall cooperate with federal agencies, including the United States department of agriculture, other state agencies and law enforcement entities, and agencies of other states. Other state agencies and law enforcement entities shall assist the department.

4. *a.* To the extent that an animal's owner would not otherwise be compensated, section 163.15 shall apply to the owner's loss of any animal destroyed under this section.

b. Upon the request of the executive council, the department shall develop and submit a plan to the executive council that compensates an owner for property, other than an animal, that is inadvertently destroyed by the department as a result of the department's regulation of activities in a quarantined area. The plan shall not be implemented without the approval of at least three members of the executive council. The payment of the compensation under the plan shall be made in the same manner as provided in section 163.15. The owner may submit a claim for compensation prior to the plan's implementation. The executive council may apply the plan retroactively, but not earlier than June 1, 2001.

5. Nothing in this section limits the department's authority to regulate animals or premises under other provisions of state law, including this chapter.

2001 Acts, ch 170, §2, 3; 2002 Acts, ch 1119, §22
Subsection 4, paragraph b amended

163.52 through 163.60 Reserved.

SUBCHAPTER VII

PENALTIES — INJUNCTIVE RELIEF

163.61 Civil penalties.

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed. The attorney general shall cooperate with the department in the assessment and collection of civil penalties.

2. *a.* Except as provided in paragraph *"b"*, a person violating a provision of this chapter, or a rule adopted pursuant to this chapter, shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars. In the case of a continuing violation, each day of the continuing violation is a separate violation. However, a person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars.

b. Notwithstanding the provisions of paragraph *"a"*, a person who falsifies a health certificate, veterinarian inspection certificate, or certificate of inspection shall be subject to a civil penalty of not more than five thousand dollars for each reference to an animal falsified on the certificate. However, a person who falsifies a certificate of inspection issued pursuant to chapter 166D shall be subject to a civil penalty as provided in this section or section 166D.16, but not both. A person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars for falsifying a certificate, regardless of the number of animals falsified on the certificate.

3. Moneys collected from civil penalties shall be deposited into the general fund of the state.

2001 Acts, ch 136, §7

163.62 Injunctive relief.

The department or the attorney general acting on behalf of the department may apply to the district court for injunctive relief in order to restrain a person from acting in violation of this chapter. In order to obtain injunctive relief, the department shall not be required to post a bond or prove the absence of an adequate remedy at law unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is appropriate under principles of equity, including but not limited to issuing a temporary or permanent restraining order.

2001 Acts, ch 136, §8

CHAPTER 163A

BRUCELLOSIS CONTROL IN SWINE

163A.1 Definitions.
163A.2 Test report required.
163A.3 Test within sixty days.
163A.4 Intrastate movement.
163A.5 Interstate shipments.
163A.6 Exhibition swine.
163A.7 Reactor tag.
163A.8 Swine for slaughter.
163A.9 Rules.
163A.10 Penalty.
163A.11 Educational program herds.
163A.12 Owner requesting test.

163A.1 Definitions.

As used in this chapter:

1. *"Accredited veterinarian"* means a veterinarian who is licensed by the state in which the veterinarian practices, is approved by the department of agriculture and land stewardship or the livestock sanitary authority of that state, and is accredited by the United States department of agriculture.

2. *"Brucellosis"* means the disease wherein an animal of the porcine species is infected with brucella microorganisms irrespective of the occurrence or absence of clinical symptoms of infectious abortion.

3. *"Brucellosis test"* means the test for brucellosis which is approved by the department and administered in accordance with the techniques approved by the department.

4. *"Health certificate"* or *"certificate of health"* or *"interstate health certificate"* means a legible record, made on an official form of the state of origin or the animal disease eradication branch of the United States department of agriculture or any successor agency thereto, and issued by an accredited veterinarian of the state of origin or a veterinarian in the employ of the animal disease eradication branch of the United States department of agriculture or any successor agency thereto, which shows that the animals listed thereon meet the health requirements of the state of destination.

5. *"Infected animal"* or *"reactor"* means an animal which has given a positive reaction as determined by departmental standards to the brucellosis test.

6. *"Licensed veterinarian"* means a veterinari-

an licensed to practice in Iowa.

7. *"Negative animal"* means an animal which does not give a positive reaction to the brucellosis test.

8. *"Official brucellosis test report"* means a legible record made on an official form prescribed by the department.

9. *a.* *"Validated brucellosis-free herd"* means:

(1) A herd which has had at least one test made on all boars, sows and gilts over six months of age with no positive reactions; or

(2) A herd which has been tested pursuant to a test approved by rule of the Iowa department of agriculture and land stewardship pursuant to chapter 17A, which test is in compliance with the recommended uniform methods and rules of the animal and plant health inspection service of the United States department of agriculture.

b. The validation made pursuant to paragraph *"a"*, subparagraph (1), shall be in force and effect for one year from the date of the last test and shall be renewable on an annual basis by the completion of a single test on boars, sows and gilts over six months of age with no positive reactions. A validation made pursuant to paragraph *"a"*, subparagraph (2), shall be in force and effect and shall be renewable in the manner specified in the rule adopted by the Iowa department of agriculture and land stewardship.

c. If the Iowa department of agriculture and land stewardship adopts a rule under paragraph *"a"*, subparagraph (2), and the recommended uniform methods and rules of the animal and plant health inspection service of the United States department of agriculture are subsequently changed, the Iowa department of agriculture and land stewardship shall not change its rule if the effect would be to make less restrictive the standards or procedures for validating a brucellosis-free herd.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.1]

86 Acts, ch 1245, §614; 2000 Acts, ch 1058, §20

Further definitions; see §159.1

163A.2 Test report required.

No person or partnership shall sell, offer for service, or transfer ownership of any breeding swine, as provided in section 163A.3, unless it is accompanied by a negative brucellosis test report.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.2]

163A.3 Test within sixty days.

No person or partnership shall sell or offer for service any breeding swine for breeding purposes unless such breeding swine is accompanied by an official brucellosis test report showing that the breeding swine has been tested by a licensed veterinarian within sixty days of sale or service and found to be negative to the brucellosis test. Such test shall be recognized for one change of ownership or service only within the sixty-day period. Thereafter, a negative test shall be required for each subsequent change of ownership or service.

If an animal is added to a validated brucellosis-free herd, it must be a negative animal that either comes from another validated brucellosis-free herd or has been negative to at least one brucellosis test, or if required by rules of the department, to two brucellosis tests conducted not less than thirty days nor more than sixty days apart, the last test being within thirty days prior to the introduction of the animal into the herd.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.3]

163A.4 Intrastate movement.

The brucellosis test for the intrastate movement of breeding swine shall be conducted by a licensed veterinarian who has been approved by the department to operate a laboratory for making tests for brucellosis, or any official state or federal laboratory.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.4]

163A.5 Interstate shipments.

All breeding swine four months of age and over, entering Iowa for breeding or exhibition purposes, shall be accompanied by an official interstate health certificate issued by an accredited veterinarian of the state of origin, showing that such swine meet the Iowa entry requirements and are negative to the test for brucellosis conducted by an official laboratory of the state of origin within thirty days of entry; provided, that swine from validated brucellosis-free herds may enter the state or be exhibited without a test for brucellosis when accompanied by a certificate of health issued by an accredited veterinarian of the state of origin or a veterinarian employed by the animal disease eradication branch of the United States department of agriculture or any successor agency thereto, showing such swine to have originated from brucellosis-free herds and giving the certificate herd number and showing that the herd has been tested within the past twelve months.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.5]

163A.6 Exhibition swine.

All Iowa breeding swine four months of age and over for exhibition within the state of Iowa shall meet all requirements for exhibition purposes and shall also be accompanied by an official brucellosis test report showing the swine to have been negative to the brucellosis test conducted within sixty days of date of exhibition unless such swine are from validated brucellosis-free herds.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.6]

163A.7 Reactor tag.

All swine showing a positive reaction to the brucellosis test shall be tagged in the left ear with a reactor identification tag and moved to slaughter on such form as shall be designated by the depart-

ment within a thirty-day period from the date of test. The herd of origin shall be placed under immediate quarantine to be retested no sooner than thirty days or later than sixty days from the date of the test showing the positive reaction. Such quarantine shall remain in effect until a complete negative herd test is conducted on all swine intended or used for breeding purposes.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.7]

163A.8 Swine for slaughter.

Swine from herds under quarantine may be moved to slaughter on a form designated for this purpose and issued by the department or an accredited veterinarian.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.8]

163A.9 Rules.

The department may make and adopt reasonable rules for the administration and enforcement of the provisions of this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.9]

163A.10 Penalty.

Any person who shall violate any provision of this chapter or any rule adopted thereunder by the department of agriculture and land stewardship shall be guilty of a serious misdemeanor.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.10]

163A.11 Educational program herds.

Any group of swine that is kept isolated from the parent herd and is known as a 4-H project or educational program of the farmer's sons or daughters shall be considered a separate and distinct herd.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.11]

163A.12 Owner requesting test.

If the owner requests the department to inspect and test breeding swine for brucellosis, and agrees to comply with the rules made by the department under section 163A.9, the department may designate a veterinarian to make an inspection and test, with the expense to be paid as provided in section 164.6 for cattle brucellosis testing, but only to the extent the funds provided in that section are not required for the cattle testing program.

[C73, 75, 77, 79, 81, S81, §163A.12; 81 Acts, ch 117, §1020]

83 Acts, ch 123, §71, 209

CHAPTER 164

BRUCELLOSIS — BOVINE AND DESIGNATED ANIMALS

See §163A.12

164.1 Definitions.
164.2 Eradication area.
164.3 Female designated animals vaccinated.
164.4 Rules.
164.5 Request for test.
164.6 Expense of test.
164.7 Copy of report provided to owner.
164.8 Test at auction premises.
164.9 Retest by order or request — expense.
164.10 Report of laboratory tests to department.
164.11 Identification mark.
164.12 Quarantined marking.
164.13 Unlawful acts.
164.14 Imported designated animals.
164.15 Quarantined designated animals.
164.16 Movement or slaughter permit.
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164.18 Unlawful sale or purchase.
164.19 Quarantine.
164.20 Appraisal of value of bovine animals.
164.21 Indemnification of owner — determination of amount.
164.22 Moneys administered.
164.23 Repealed by 82 Acts, ch 1104, §61.
164.24 to 164.27 Repealed by 81 Acts, ch 117, §1097.
164.28 Certification of claims. Repealed by 83 Acts, ch 123, §206, 209.
164.29 Reciprocal agreements.
164.30 Tagging designated animals received for sale or slaughter.
164.31 Penalty.

164.1 Definitions.

As used in this chapter:

1. *"Animal"* means a nonhuman vertebrate.
2. *"Bovine animal"* means bison or cattle.
3. *"Class free state"* means there has been no known brucellosis in bovine animals for a period of twelve months. A state is classified as class free, class A, class B, and class C, according to guidelines set forth in 9 C.F.R. § 78.1.
4. *"Condemned"* or *"reactor"* applies to a designated animal reacting to an official test conducted to determine if a designated animal is infected with brucellosis.
5. *"Designated animal"* means a bovine ani-

mal or any other species of animal that the department by rule determines is capable of carrying and spreading brucellosis, including elk or goats.

6. *"Official calfhood vaccination"* means the vaccination of a female calf of any species of bovine animal between the ages of four months and ten months with brucella vaccine approved for that species of bovine animal by the United States department of agriculture, if the vaccination has been administered by a veterinarian according to the rules established by the department.

7. *"Official test"* means a test for brucellosis approved for a species of designated animal by the department and to the extent applicable by the United States department of agriculture which is conducted under the supervision of, or the authorization from, the department.

8. *"Owner"* includes any person owning or leasing a designated animal.

9. *"Quarantine"* means the entire herd of designated animals must be confined to a premises designated by the department, if any reactor is disclosed.

10. *"Registered purebred"* includes cattle with a certificate from herdbooks where registered.

11. *"State-approved premises"* means an area, including a feedlot or grazing area, established at the discretion of the department for the care and feeding of untested designated animals as provided by the department. However, for cattle, *"state-approved premises"* means an area where untested heifers over six months of age but under eighteen months of age are subject to care and feeding.

12. *"Veterinarian"* means a licensed accredited veterinarian authorized by the department.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §164.1]

86 Acts, ch 1036, §1 – 3; 86 Acts, ch 1245, §615; 97 Acts, ch 124, §1

Further definitions; see §159.1

164.2 Eradication area.

This state is declared to be a brucellosis eradication area. An owner shall allow the owner's designated animals to be tested when ordered by the department or a representative of the department. The owner shall confine and restrain the designated animal in a suitable place so that a test can be conducted. If the owner refuses to confine and restrain the designated animal, after a reasonable time the department may employ sufficient assistance to properly confine and restrain the designated animal. The expense for obtaining assistance shall be paid by the owner.

[C66, 71, 73, 75, 77, 79, 81, §164.2]

97 Acts, ch 124, §2

164.3 Female designated animals vaccinated.

Native female bovine animals of any breed between the ages of four months and ten months may be officially vaccinated for brucellosis according to procedures approved by the United States department of agriculture. Native female designated animals other than bovine animals may be vaccinated as provided by rules adopted by the department. The expense of the vaccination shall be borne in the same manner as provided in section 164.6.

[C54, §164.11; C58, 62, §164.28; C66, 71, 73, 75, 77, 79, 81, §164.3]

86 Acts, ch 1036, §4; 97 Acts, ch 124, §3

164.4 Rules.

1. The department may adopt rules as provided in chapter 17A relating to the official testing of designated animals, the disposal by segregation and quarantine or slaughter of condemned designated animals, the operation of state-approved premises, the disinfection of the premises where designated animals are kept, the introduction of designated animals into a herd of other designated animals, the control and eradication of brucellosis, the prevention of the spread of brucellosis to designated animals in this state, and the proper enforcement of this chapter.

2. The department shall not adopt rules relating to cattle that are less restrictive than the uniform methods and rules for brucellosis eradication promulgated by the United States department of agriculture, APHIS 91-1, as effective January 1, 1996, but may adopt rules that are more restrictive.

3. The department may implement any procedure provided in the uniform methods and rules if approved jointly by state and federal animal health officials, including but not limited to the use of quarantined pastures, quarantined feedlots, or other options permitted under the uniform methods and rules.

[C46, 50, 54, 58, 62, §164.2; C66, 71, 73, 75, 77, 79, 81, §164.4]

86 Acts, ch 1036, §5; 96 Acts, ch 1079, §8; 97 Acts, ch 124, §4

164.5 Request for test.

Upon request by the owner for a departmental inspection of the owner's designated animals for brucellosis, the department may designate a veterinarian to make an inspection of the designated animals. If authorized by the department, the veterinarian may conduct an official test on the designated animals.

[C46, 50, 54, 58, 62, §164.3; C66, 71, 73, 75, 77, 79, 81, §164.5]

97 Acts, ch 124, §5

164.6 Expense of test.

The expense for an inspection and official test of a designated animal other than for bovine animals shall be borne by the owner. If the designated ani-

mal is a bovine animal, and the owner agrees to comply with and carry out the provisions of this chapter and the rules adopted by the department under section 164.4, the expense of the inspection and test shall be borne by the United States department of agriculture, or by the department, or by the brucellosis and tuberculosis eradication fund or any combination of these sources.

[C46, 50, 54, 58, 62, §164.4; C66, 71, 73, 75, 77, 79, 81, §164.6]

83 Acts, ch 123, §72, 209; 97 Acts, ch 124, §6

164.7 Copy of report provided to owner.

A veterinarian or the department shall provide a report to the owner of a designated animal showing the results of an official test conducted by a veterinarian. The report may be a copy of a test chart.

[C46, 50, 54, 58, 62, §164.5, 164.6; C66, 71, 73, 75, 77, 79, 81, §164.7]

97 Acts, ch 124, §7

164.8 Test at auction premises.

A designated animal purchased at an auction market may be officially tested on the auction market premises, in the new owner's name at the owner's request and expense. This official test must be made within twenty-four hours from the time of sale. If the test discloses reactors, the herd of origin shall be placed under quarantine.

[C66, 71, 73, 75, 77, 79, 81, §164.8]

97 Acts, ch 124, §8

164.9 Retest by order or request — expense.

The department may order a retest of designated animals at any time, if the department determines that a retest is necessary. In case of reactors, one retest shall be granted the owner of the designated animals by the department upon the request of the owner or owner's veterinarian before the designated animals are permanently marked as reactors. The expense of the retest of reactors shall be borne in the same manner as provided in section 164.6.

[C46, 50, 54, 58, 62, §164.7; C66, 71, 73, 75, 77, 79, 81, §164.9]

86 Acts, ch 1036, §6; 97 Acts, ch 124, §9

164.10 Report of laboratory tests to department.

A report of tests conducted by a laboratory under this chapter shall be made in writing to the department within seven days immediately following the completion of the tests. The department shall supply forms for the report. The report shall be signed by the director of the laboratory or the person conducting the test.

[C46, 50, 54, 58, 62, §164.8; C66, 71, 73, 75, 77, 79, 81, §164.10]

97 Acts, ch 124, §10

164.11 Identification mark.

A designated animal subjected to an official test shall be plainly and permanently marked for identification in a manner authorized by the department. Native grade bovine carrying the calfhood vaccination and calves vaccinated after importation from other states shall be tattooed in the ear. Officially vaccinated purebred registered cattle must receive a vaccination tattoo and either an official vaccination tag or a purebred identification tattoo. The vaccination tattoo and the vaccination tag number or the purebred identification tattoo shall be evidenced on the official certificate of vaccination.

[C46, 50, 54, 58, 62, §164.9; C66, 71, 73, 75, 77, 79, 81, §164.11]

97 Acts, ch 124, §11

164.12 Quarantined marking.

A designated animal which is quarantined as a result of a test for brucellosis shall be plainly and permanently marked for identification by a veterinarian making the test in a manner authorized by the department and to the extent applicable by the United States department of agriculture.

[C46, 50, 54, 58, 62, §164.10; C66, 71, 73, 75, 77, 79, 81, §164.12]

97 Acts, ch 124, §12

164.13 Unlawful acts.

An owner shall not sell or transfer ownership of a designated animal, allow the commingling of designated animals belonging to two or more owners, or allow the commingling of designated animals with other designated animals under feeder quarantine on a state-approved premises, unless the commingled designated animals are accompanied by a negative brucellosis test report issued by a veterinarian, conducted within thirty days. The provisions of this section do not apply to the following:

1. Bovine animals under six months of age, spayed heifers, or steers.

2. Official vaccinates of bovine animals other than dairy cattle under twenty-four months of age or dairy cattle under twenty months of age, if not postparturient.

3. Designated animals which are consigned directly to slaughter.

4. Designated animals which are imported for exhibition purposes, if any of the following apply:

a. When under the test-eligible ages as provided by the department for designated animals other than bovine. For bovine the test-eligible ages are as provided in this section. The designated animal must be accompanied by an official vaccination certificate as provided by the department. A bovine animal which is six months or older must be accompanied with a vaccination certificate.

b. Designated animals of any age when accompanied by a report of a negative brucellosis test

conducted within thirty days.

c. Designated animals originating from a herd in a class free state or designated animals from a brucellosis-free herd.

5. Designated animals originating from a herd in a class free state or designated animals from a certified brucellosis-free herd.

6. Designated animals moved to a state-approved premises.

[C54, 58, 62, §164.11; C66, 71, 73, 75, 77, 79, 81, §164.13]

86 Acts, ch 1036, §7; 97 Acts, ch 124, §13

164.14 Imported designated animals.

1. Female designated animals other than female bovine animals, which are under an age established by the department, and female bovine animals over six months and under eighteen months of age, may enter the state for feeding purposes to be consigned to a state-approved premises under quarantine, if the female designated animals are not postparturient. The designated native female animals that have been consigned to the state-approved premises may be released from the state-approved premises if they have been any of the following:

a. Consigned to slaughter.

b. Consigned to a federally approved market.

c. Consigned to another quarantined premises.

d. Tested negative for brucellosis at the owner's expense. The test shall be made not less than sixty days after the last consignment to the premises and shall include all animals on the premises.

2. Female designated animals, other than female bovine, over an age established by the department and female bovine over eighteen months of age may enter the state if the designated animals are any of the following:

a. Consigned to a federally approved market.

b. Consigned to a slaughter plant for immediate slaughter.

c. Accompanied by an official health certificate showing a record of a negative brucellosis test, when required, accomplished within thirty days of importation.

[C54, 58, 62, §164.11(7a); C66, 71, 73, 75, 77, 79, 81, §164.14]

86 Acts, ch 1036, §8; 97 Acts, ch 124, §14

164.15 Quarantined designated animals.

A designated animal shall not be brought into contact with a condemned designated animal held in quarantine. If a designated animal is added to the quarantined lot, the designated animal shall become a part of the lot and held subject to the same requirements as apply to the quarantined designated animals.

[C46, 50, 54, 58, 62, §164.12; C66, 71, 73, 75, 77, 79, 81, §164.15]

97 Acts, ch 124, §15

164.16 Movement or slaughter permit.

A designated animal shall not be slaughtered, have its location changed, or be moved from quarantine except as authorized by an official written permit issued by the department or by a veterinarian.

[C46, 50, 54, 58, 62, §164.13; C66, 71, 73, 75, 77, 79, 81, §164.16]

97 Acts, ch 124, §16

164.17 Quarantined for slaughter permit.

When a written order has been issued by the department or its authorized representative for the removal of a quarantined designated animal to slaughter, the designated animal shall be tagged and handled within fifteen days after the date of testing. Within thirty days the designated animal shall be moved and slaughtered under the direct supervision of a duly authorized agent or representative of the United States department of agriculture at a time and place designated by the department. A designated animal quarantined because of brucellosis shall be disposed of by its owner within a period not to exceed forty-five days from the date on which blood samples were drawn disclosing it as a reactor.

[C46, 50, 54, 58, 62, §164.14; C66, 71, 73, 75, 77, 79, 81, §164.17]

97 Acts, ch 124, §17

164.18 Unlawful sale or purchase.

A person shall not sell, offer for sale, or purchase a designated animal which is quarantined as a result of an official test, except as provided by rules adopted by the department.

[C46, 50, 54, 58, 62, §164.15; C66, 71, 73, 75, 77, 79, 81, §164.18]

97 Acts, ch 124, §18

164.19 Quarantine.

The department may issue any quarantine order deemed necessary for the control and eradication of brucellosis and the proper enforcement of this chapter. A lot or group of designated animals in which reactors have been disclosed shall be under quarantine along with any designated animal from which the lot or group originated or commingled. The designated animals may be sold for slaughter under permit, or returned to their place of origin. In case of hardship the department may upon investigation of the case alter a quarantine order to the extent that the department determines that it is necessary to alleviate the hardship and protect the industry and prospective purchasers. The department shall adopt rules pursuant to chapter 17A necessary in order to administer this section.

[C46, 50, 54, 58, 62, §164.16; C66, 71, 73, 75, 77, 79, 81, §164.19]

97 Acts, ch 124, §19

164.20 Appraisal of value of bovine animals.

Before being slaughtered, quarantined bovine animals shall be appraised at their cash value for dairy and breeding purposes by the owner and a representative of the department, a representative of the United States department of agriculture, or by the owner and both of the representatives. If these parties cannot agree as to the amount of the appraisal, three competent and disinterested persons shall be appointed to render a final appraisal. One person shall be appointed by the department, one by the owner, and one by the first two appointed persons.

[C46, 50, 54, 58, 62, §164.18; C66, 71, 73, 75, 77, 79, 81, §164.20]

97 Acts, ch 124, §20

164.21 Indemnification of owner — determination of amount.

The owner of a bovine animal shall be indemnified for the bovine animal as provided in this section. The department shall certify the claim of the owner for the bovine animal slaughtered in accordance with this chapter. An infected bovine animal herd may be completely depopulated and indemnity paid when, in the opinion of the department and the veterinary service of the United States department of agriculture, the disease cannot be adequately controlled by routine testing.

The owner shall be indemnified to the extent that money is available in the brucellosis and tuberculosis eradication fund as created in section 165.18 and indemnification is also made by the United States department of agriculture. However, if the United States department of agriculture is unable to indemnify the owner, the department may indemnify the owner, if money is available.

In the case of individual payment, all cattle shall be individually appraised and the amount of indemnity shall be equal to the difference between the slaughter value and the appraisal price, less the amount of indemnity paid by the United States department of agriculture. Bison shall be appraised as if the bison are beef cattle. The total amount of indemnity paid by the brucellosis and tuberculosis eradication fund for a grade animal or a purebred animal shall not exceed two hundred dollars. However, if purebred cattle are purchased and owned for at least one year before testing and the owner can verify the actual cost, the department may further indemnify the owner. The amount of the indemnification shall not exceed five hundred fifty dollars or the actual cost of the animal when purchased, whichever is less.

[C46, 50, 54, 58, 62, §164.19; C66, 71, 73, 75, 77, 79, 81, §164.21]

83 Acts, ch 123, §73, 209; 86 Acts, ch 1036, §9; 97 Acts, ch 124, §21

164.22 Moneys administered.

All moneys appropriated by the state for carrying out the provisions of this chapter shall be administered by the department for the payment of the indemnity, salaries, and other necessary expenses.

[C46, 50, 54, 58, 62, §164.20; C66, 71, 73, 75, 77, 79, 81, §164.22]

97 Acts, ch 124, §22

164.23 Repealed by 82 Acts, ch 1104, § 61.

164.24 to 164.27 Repealed by 81 Acts, ch 117, § 1097.

164.28 Certification of claims. Repealed by 83 Acts, ch 123, § 206, 209.

164.29 Reciprocal agreements.

The department to every extent practical shall enter into reciprocal agreements with other states to provide that designated animals which are covered by certificates of vaccination in this state and other states may be transported and sold in interstate commerce between this state and the other states.

[C50, 54, 58, 62, §164.27; C66, 71, 73, 75, 77, 79, 81, §164.29]

97 Acts, ch 124, §23

164.30 Tagging designated animals received for sale or slaughter.

1. The department shall provide requirements for tagging designated animals which are received for sale or shipment to a slaughtering establishment.

a. Bovine animals two years of age and older received for sale or shipment to a slaughtering establishment shall be identified with a back tag issued by the department. The back tag shall be affixed to the animal as directed by the department.

b. A livestock trucker delivering a designated animal to an out-of-state market, livestock dealer, livestock market operator, stockyard operator, or slaughtering establishment shall identify a designated animal which is not tagged as provided in this section, at the time of taking possession or control of the designated animal. A livestock trucker may be exempted from this requirement if the designated animal's farm of origin is identified when delivered to a livestock market, stockyard, or slaughtering establishment which agrees to accept responsibility for tagging the designated animal.

2. A person required to identify a designated animal in accordance with this section shall file a report of the identification on forms and as specified by the department, including the following for bovine animals:

a. The back-tag number and date of application.

b. The name, address, and county of residence of the person who owned or controlled the herd from which the bovine animal originated.

c. The type of bovine animal. If the bovine animal is cattle, the person shall identify whether the animal was a beef or dairy type.

Each report shall cover all bovine animals identified during the preceding week.

3. A person shall not remove a tag affixed to a designated animal, unless the person is authorized by the department, and removes the tag according to instructions and policies established by the department. The removal of a tag by a person who is unauthorized by the department shall be a violation of this section and subject to the penalties provided in section 164.31.

[C71, 73, 75, 77, 79, 81, §164.30]
97 Acts, ch 124, §24

164.31 Penalty.

A person guilty of violating a provision of this chapter is guilty of a simple misdemeanor.

[C66, §164.30; C71, 73, 75, 77, 79, 81, §164.31]
97 Acts, ch 124, §25

CHAPTER 165

ERADICATION OF BOVINE TUBERCULOSIS

Definitions applicable to chapter; see §159.1

165.1 Co-operation.
165.2 State as accredited area.
165.3 Appraisal.
165.4 Presence of tuberculosis.
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165.22 Availability of county fund. Repealed by 83 Acts, ch 123, §206, 209.
165.23 Exhaustion of state allotment. Repealed by 83 Acts, ch 123, §206, 209.
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165.31 Transfer of funds. Repealed by 83 Acts, ch 123, §206, 209.
165.32 Retest.
165.33 Penalty.
165.34 Duty to levy tax. Repealed by 83 Acts, ch 123, §206, 209.
165.35 Township animal board of health.
165.36 Importation of cattle.

165.1 Co-operation.

The state department of agriculture and land stewardship is hereby authorized to co-operate with the federal department of agriculture for the purpose of eradicating tuberculosis from the dairy and beef breeds of cattle in the state.

[C24, 27, 31, 35, 39, §**2665;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.1]

165.2 State as accredited area.

The state of Iowa is hereby declared to be and is hereby established as an accredited area for the eradication of bovine tuberculosis from the dairy and breeding cattle of the state. It shall be the duty of the department of agriculture and land stewardship to eradicate bovine tuberculosis in all of the counties of the state in the manner provided by law as it appears in this chapter. Said department shall proceed with the examination, including the tuberculin test, of all such cattle as rapidly as practicable and as is consistent with efficient work, and as funds are available for paying the indemnities as provided by law.

An owner of dairy or breeding cattle in the state shall conform to and abide by the rules laid down by the department and the federal department of agriculture and follow their instructions designed to suppress the disease, prevent its spread, and avoid reinfection of the herd.

[C24, 27, 31, 35, 39, §**2666;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.2]
86 Acts, ch 1245, §616

165.3 Appraisal.
Before being tested, such animals shall be appraised at their cash value for breeding, dairy, or beef purposes by the owner and a representative of the department, or a representative of the federal department of agriculture, or by the owner and both of such representatives. If these parties cannot agree as to the amount of the appraisal, there shall be appointed three competent and disinterested persons, one by the department, one by the owner, and the third by the first two appointed, to appraise such animals, which appraisal shall be final. Every appraisal shall be under oath or affirmation and the expense of the same shall be paid by the state, except as provided in this chapter.
[C24, 27, 31, 35, 39, §**2668;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.3]

165.4 Presence of tuberculosis.
If, after such examination, tubercular animals are found, the department shall have authority to order such disposition of them as it considers most desirable and economical. If the department deems that a due regard for the public health warrants it, it may enter into a written agreement with the owner, subject to such conditions as it may prescribe, for the separation and quarantine of such diseased animals. Subject to such conditions, the diseased animals may continue to be used for breeding purposes.
[C24, 27, 31, 35, 39, §**2669;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.4]

165.5 Nonright to receive compensation.
Any animal retained, under section 165.4, by the owner for ninety days after it has been adjudged infected with tuberculosis shall not be made the basis of any claim for compensation against the state.
[C24, 27, 31, 35, 39, §**2670;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.5]

165.6 Amount of indemnity.
When breeding animals are slaughtered following any test, there shall be deducted from their appraised value the proceeds from the sale of salvage. The owner shall be paid by the state one-third of the sum remaining after the above deduction is made, but the state shall in no case pay to such owner a sum in excess of seventy-five dollars for any registered purebred animal or fifty dollars for any grade animal.
[C24, 27, 31, 35, 39, §**2671;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.6]

165.7 Pedigree.
The pedigree of purebred cattle shall be proved by certificate of registry from the herdbooks where registered.
[C24, 27, 31, 35, 39, §**2672;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.7]

165.8 Right to receive pay.
No compensation shall be paid to any person for an animal condemned for tuberculosis unless said animal, if produced in, or imported into, the state has been owned by such owner for at least six months prior to condemnation or was raised by such person.
[C24, 27, 31, 35, 39, §**2673;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.8]

165.9 Preference in examinations.
The department in making examinations of cattle shall give priority to applications by owners for the testing of dairy cattle from which are sold, or are offered for sale, in cities milk or milk products in liquid or condensed form.
[C24, 27, 31, 35, 39, §**2674;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.9]

165.10 Examination by department.
The department may at any time, on its own motion, make an examination of any herd, and in case animals are destroyed, the appraisement and payment shall be made as provided in this chapter.
[C24, 27, 31, 35, 39, §**2675;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.10]

165.11 Records public.
All records pertaining to animals infected with tuberculosis shall be open for public inspection and the department shall furnish such information relative thereto as may be requested.
[C24, 27, 31, 35, 39, §**2676;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.11]

165.12 Tuberculosis-free herds.
The department shall establish rules for determining when a herd of cattle, tested and maintained under the provisions of this chapter, the laws of the United States, and the rules of the state department of agriculture and land stewardship and the federal department of agriculture, shall be considered as tuberculosis-free. When any herd meets such requirements the owner shall be entitled to a certificate from the department showing that the herd is a tuberculosis-free accredited herd. Such certificate shall be revoked whenever the herd no longer meets the necessary requirements for an accredited herd, but the herd may be reinstated as an accredited herd upon subsequent compliance with such requirements.
[C24, 27, 31, 35, 39, §**2677;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.12]

165.13 Tuberculin.
The department shall have control of the sale,

distribution, and use of all tuberculin in the state, and shall formulate rules for its distribution and use. Only a licensed veterinarian shall apply a tuberculin test to cattle within this state.

[C24, 27, 31, 35, 39, §**2678;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.13]

165.14 Inspectors and assistants.

The department may appoint one or more accredited veterinarians as inspectors for each county and one or more persons as assistants to such inspectors. Such inspectors, with the assistance of such person or persons, shall test the breeding cattle subject to test, as provided in this chapter, and shall be subject to the direction of the department in making such tests.

[C24, 27, 31, 35, 39, §**2679;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.14]

165.15 Accredited veterinarian.

An accredited veterinarian is one who has successfully passed an examination set by the department and the federal department of agriculture and may make tuberculin tests of accredited herds of cattle under the uniform methods and rules governing accredited herd work which are approved by the United States department of agriculture.

[C24, 27, 31, 35, 39, §**2680;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.15]

86 Acts, ch 1245, §617

165.16 Equipment for inspector.

The department may furnish each inspector with the necessary tuberculin and other material, not including instruments and utensils, necessary to make the tests provided for in this chapter.

[C24, 27, 31, 35, 39, §**2681;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.16]

165.17 Compensation.

An inspector shall receive compensation for such testing as determined by the department.

[C24, 27, 31, 35, 39, §**2682;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.17]

See §70A.9 et seq.

165.18 Brucellosis and tuberculosis eradication fund.

1. A brucellosis and tuberculosis eradication fund is created in the office of the secretary of agriculture, to be used together with state and federal funds available to pay:

a. The indemnity and other expenses provided in this chapter.

b. The indemnity as set out in section 164.21 and other expenses provided in chapter 164.

c. The expenses of the inspection and testing program provided in chapter 163A, but only to the extent that the moneys in the fund are not required for expenses incurred under chapter 164 or 165.

d. Indemnities as provided in section 159.5, subsection 13, but only to the extent that the moneys in the fund are not required to pay expenses under chapter 163A, 164, or 165.

2. If it appears to the secretary of agriculture that the balance in the fund on January 20 is insufficient to carry on the work in the state for the following fiscal year, the secretary shall notify the board of supervisors of each county to levy an amount sufficient to pay the expenses estimated to be incurred under subsection 1 for the following fiscal year, subject to a maximum levy of thirty-three and three-fourths cents per thousand dollars of assessed value of all taxable property in the county.

3. Not later than December 15 or June 15 of a year in which the tax is collected, the county treasurer shall transmit the amount of the tax levied and collected to the treasurer of state, who shall credit it to the brucellosis and tuberculosis eradication fund.

83 Acts, ch 123, §74, 209; 84 Acts, ch 1178, §1

165.19 through 165.21 Repealed by 81 Acts, ch 117, § 1097.

165.22 Availability of county fund. Repealed by 83 Acts, ch 123, § 206, 209.

165.23 Exhaustion of state allotment. Repealed by 83 Acts, ch 123, § 206, 209.

165.24 Repealed by 81 Acts, ch 117, § 1097.

165.25 Certification of claims. Repealed by 83 Acts, ch 123, § 206, 209.

165.26 Permitting test.

Every owner of dairy or breeding cattle in the state shall permit the owner's cattle to be tested for tuberculosis as provided in this chapter, and shall confine the cattle in a proper place so that the examination and test can be applied. If the owner refuses to so confine the cattle the department may employ sufficient help to properly confine them and the expense of such help shall be paid by the owner or deducted from the indemnity if any is paid. Such owner shall comply with all the requirements for the establishment and maintenance of a tuberculosis-free accredited herd.

[C24, 27, 31, 35, 39, §**2699;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.26]

165.27 Penalty.

Any owner of dairy or breeding cattle in the state who prevents, hinders, obstructs, or refuses

to allow a veterinarian authorized by the department to conduct such tests for tuberculosis on the owner's cattle, shall be deemed guilty of a simple misdemeanor.

[S13, §2538-s; C24, 27, 31, 35, 39, §**2700;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.27]

165.28 Preventing test.

The cattle owned by any owner who violates the provisions of this chapter, or which have reacted to the tuberculin test, shall be quarantined by the department until the law is complied with. When such quarantine is established no beef or dairy products shall be sold from cattle under quarantine until the test has been applied or the quarantine released.

The accredited veterinarians appointed under this chapter shall enforce this quarantine and all of the rules of the department of agriculture and land stewardship of the state of Iowa and of the provisions of this chapter, and in so doing may call to their assistance any peace officer of the state.

[C24, 27, 31, 35, 39, §**2701;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.28]

165.29 Notice.

Before any action is commenced under section 165.27, upon request of the secretary of agriculture, the board of supervisors of any county shall cause such owner to be served with a written notice of the provisions of this chapter, at least fifteen days before the commencement of the action.

[C24, 27, 31, 35, 39, §**2702;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.29]

165.30 Allotment of funds. Repealed by 83 Acts, ch 123, § 206, 209.

165.31 Transfer of funds. Repealed by 83 Acts, ch 123, § 206, 209.

165.32 Retest.

The secretary of agriculture may order a retest of any dairy or breeding cattle at any time when, in the secretary's opinion, it is necessary to do so, and shall, once in three years, order the tuberculin testing of any cattle to conform to and comply with the regulations of the federal bureau of animal industry in any county where the percentage of bovine tuberculosis has been reduced to one-half of one percent or less, subject to the provisions of this chapter with reference to the disposition or slaughtering of animals found to be reactors when given a tuberculin test. Such county shall be a modified accredited county, and it shall be unlawful for any person to transport any dairy or breeding cattle into such county unless they have been examined for tuberculosis as provided in this chapter.

[C27, 31, 35, §2704-b1; C39, §**2704.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.32]

165.33 Penalty.

Any person found guilty of violating the provisions of section 165.32 shall be deemed guilty of a simple misdemeanor.

[C31, 35, §2704-c1; C39, §**2704.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.33]

165.34 Duty to levy tax. Repealed by 83 Acts, ch 123, § 206, 209.

165.35 Township animal board of health.

The township trustees in such county are hereby constituted the animal board of health in their respective townships and they shall by April 1 of each year and at such other times as they shall deem advisable, make a survey and report to the department all breeding cattle brought into their respective townships from outside of the county.

[C27, 31, 35, §2704-b3; C39, §**2704.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.35]

165.36 Importation of cattle.

No dairy or breeding cattle shall be shipped, driven on foot, or transported, into the state of Iowa, except upon one of the following conditions:

1. That such cattle come from a herd which has been officially accredited as a tuberculosis-free accredited herd by the state from which such cattle come or by the department of agriculture of the United States; or

2. That such cattle come from an area officially declared as a modified accredited area by such state or the department of agriculture of the United States, and the herd from which they originate, if previously infected, has passed two tests free from tuberculosis; or

3. That such cattle are brought into the state of Iowa under quarantine to be tuberculin tested for tuberculosis and fully examined in not less than sixty days nor more than ninety days, such test to be applied by a veterinarian accredited by the department of agriculture and land stewardship of the state of Iowa and at the expense of the owners. Such cattle brought in under quarantine shall be accompanied by an official certificate issued by a veterinarian accredited by the state from which the cattle come or by the department of agriculture of the United States showing them to be free from tuberculosis. The quarantine thus provided for shall be established by the department of agriculture and land stewardship of the state of Iowa and shall not be released until the examination has been made and such cattle found free from tuberculosis.

[C31, 35, §2704-c2; C39, §**2704.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.36]

Additional provision, §163.11

CHAPTER 165A

PARATUBERCULOSIS CONTROL

165A.1 Definitions.
165A.2 Administration and enforcement.
165A.3 Determination of infection.
165A.4 Infected cattle.
165A.5 Enforcement — penalty.

165A.1 Definitions.

1. *"Concentration point"* means a location or facility where cattle are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of cattle from various sources. *"Concentration point"* includes a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a livestock dealer's yard, truck, or facility.

2. *"Department"* means the department of agriculture and land stewardship.

3. *"Infected"* means infected with paratuberculosis as provided in section 165A.3.

4. *"Paratuberculosis"* means a disease caused by the bacterium mycobacterium paratuberculosis, and which is also referred to as Johne's disease.

5. *"Separate and apart"* means to hold cattle so that neither the cattle nor organic material originating from the cattle has physical contact with other animals.

6. *"Slaughtering establishment"* means a slaughtering establishment operated under the provision of the federal Meat Inspection Act, 21 U.S.C. § 601 et seq., or a slaughtering establishment that has been inspected by the state.

2001 Acts, ch 101, §1

165A.2 Administration and enforcement.

The provisions of this chapter, including departmental rules adopted pursuant to this chapter, shall be administered and enforced by the department. The department may assess and collect civil penalties against persons in violation of this chapter as provided in section 165A.5. The attorney general may assist the department in the enforcement of this chapter.

2001 Acts, ch 101, §2

165A.3 Determination of infection.

The department shall adopt rules providing methods and procedures to determine whether cattle are infected, which may include detection and analysis of paratuberculosis using techniques approved by the United States department of agriculture.

2001 Acts, ch 101, §3

165A.4 Infected cattle.

The owner of infected cattle shall mark the cattle by punching the letter "C" through the right ears of the cattle as required by the department. A person shall not sell infected cattle other than directly to a slaughtering establishment, or to a concentration point for sale directly to a slaughtering establishment, for immediate slaughter. Cattle marked with a letter "C" that are kept at a concentration point shall be kept separate and apart.

2001 Acts, ch 101, §4; 2002 Acts, ch 1119, §23
Section amended

165A.5 Enforcement — penalty.

1. A person violating a provision of this chapter or any rule adopted pursuant to this chapter shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars. The proceeding to assess a civil penalty shall be conducted as a contested case proceeding under chapter 17A.

2. In addition to any other remedies provided, the department may file a petition in the district court seeking an injunction restraining any person from violating provisions of this chapter including a rule adopted pursuant to this chapter.

3. This section does not prevent a person from commencing a civil cause of action based on any right that the person may assert under statute or common law.

2001 Acts, ch 101, §5; 2001 Acts, ch 176, §62

CHAPTER 166

HOG-CHOLERA VIRUS AND SERUM

See §266.24 et seq. re serum laboratory

166.1 Definitions.
166.2 Rules.
166.3 Permit to manufacture or sell.
166.4 Application for permit.
166.5 Manufacturer's permit.
166.6 Dealer's permit.
166.7 Liability on bond.
166.8 New or additional bond.
166.9 Liability of manufacturer.
166.10 Fees.
166.11 Inspection of premises.
166.12 Manufacturer's or dealer's permit.
166.13 Revocation of permit.
166.14 Revocation by department.
166.15 Prohibited sales.
166.16 Sales — limitation.
166.17 to 166.28 Repealed by 65 Acts, ch 177, §2.
166.29 Reports by manufacturers and dealers.
166.30 and 166.31 Repealed by 65 Acts, ch 177, §2.
166.32 Repealed by 69 Acts, ch 142, §9.
166.33 Repealed by 65 Acts, ch 177, §2.
166.34 Seizure of samples.
166.35 Condemnation and destruction.
166.36 Defacing labels.
166.37 Price of virus.
166.38 Compensation.
166.39 Violations.
166.40 Repealed by 65 Acts, ch 177, §2.
166.41 Hog-cholera vaccine prohibited — emergency.
166.42 Biological products reserve — use.

166.1 Definitions.

When used in this chapter:

1. The words *"biological products"* shall include and be deemed to embrace only anti-hog-cholera serum and viruses which are either virulent or nonvirulent, alive or dead.

2. *"Dealer"* includes every person who, for profit, sells, dispenses, or distributes, or offers to do so, either as principal or agent, biological products, except:

a. A manufacturer selling direct to any person licensed under this chapter to sell, dispense, or distribute such biological products.

b. A regularly licensed veterinarian who uses such biological products in the veterinarian's professional practice and does not use it for sale or distribution to any other person.

3. *"Manufacturer"* includes every person engaged in the preparation, at any stage of the process, of biological products, except those engaged in such preparation in the biological laboratory in the Iowa State University of science and technology, or in any other state or governmental institution.

4. *"Place of business"* is construed to mean each place or premises where biological products are sold, or where biological products are stored or kept for the purpose of sale, dispensation or distribution, or where biological products are offered for sale, dispensation or distribution.

[SS15, §2538-w12; C24, 27, 31, 35, 39, §**2705;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.1]

Further definitions; see §159.1

166.2 Rules.

The department shall have power to make such rules governing the manufacture, sale, and distribution of biological products as it deems necessary to maintain their potency and purity.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2706;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.2]

166.3 Permit to manufacture or sell.

Every person, before engaging as a manufacturer of, or dealer in, biological products shall obtain from the department a permit for that purpose and shall be required to have a separate permit for each place of business. A pharmacy licensed under chapter 155A shall not be required to obtain a dealer's permit to deal in biological products.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2707;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.3]

87 Acts, ch 215, §42

166.4 Application for permit.

Every application for such a permit shall be made on a form provided by the department, which form shall call for such information as the department shall deem necessary, including the name and place of business of the applicant.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2708;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.4]

166.5 Manufacturer's permit.

An application for a permit to manufacture biological products shall be accompanied by evidence satisfactory to the department that the applicant is the holder of a valid, unrevoked, United States department of agriculture license for the manufacture and sale of such biological products.

[C24, 27, 31, 35, 39, §**2709;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.5]

166.6 Dealer's permit.

An application for a permit to deal in biological products shall be accompanied by a separate bond for each place of business, with sureties to be approved by the department, in the sum of five thousand dollars for each place of business, which bond shall be conditioned:

1. To faithfully comply with all laws governing the warehousing, sale, and distribution of biological products, and with all the rules of the department relating to such biological products.

2. To indemnify any person who uses any such biological products sold by the principal and is damaged by the negligence of the principal, or any of the principal's agents, in the warehousing, handling, sale, or distribution of such biological products.

3. To pay to the state all penalties which may be adjudged against the principal.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2710;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.6]

99 Acts, ch 114, §10

166.7 Liability on bond.

The principal on such bond shall be liable to every person for any damage caused by the negligence of the principal or of the principal's agents, notwithstanding the execution of the bond.

[C24, 27, 31, 35, 39, §**2711;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.7]

166.8 New or additional bond.

When judgment is rendered on such bond, the principal shall immediately execute and file with the department a new or additional bond, conditioned as the original bond, and in an amount to be fixed by the department, which will furnish the same amount of security that was furnished before the original bond was impaired.

[C24, 27, 31, 35, 39, §**2712;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.8]

166.9 Liability of manufacturer.

A manufacturer shall be liable to an injured person for all damages which occur:

1. By reason of the negligence of the manufacturer or the manufacturer's employees in the manufacture, warehousing, handling, or distribution of biological products.

2. By reason of the failure of the manufacturer, or the manufacturer's employees, to discharge any duty imposed by law, or by the rules of the department.

[C24, 27, 31, 35, 39, §**2713;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.9]

166.10 Fees.

Fees for permits shall be paid by the manufacturer or dealer to the department when the application for such permit is made and shall be:

1. In case of a manufacturer, twenty-five dollars for each plant at which it is proposed to manufacture biological products.

2. In case of a dealer, five dollars for each place of business, warehouse or distributing agency of the dealer.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2714;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.10]

166.11 Inspection of premises.

The premises upon which the business authorized by such permit is carried on shall be subject at all times to inspection by the department. Before issuing an original permit, the department may cause the proposed premises to be inspected, and shall make such requirements regarding the physical conditions and sanitation of said premises as it may deem necessary to secure and maintain the potency and purity of the biological products. If such requirements are not complied with and maintained, the permit shall be refused or revoked as the case may be.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2715;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.11]

166.12 Manufacturer's or dealer's permit.

Every permit issued to a manufacturer or dealer shall expire on the first day of July following the date of issuance. A renewal of the same shall be subject to all the conditions, including fees, that are required in the case of an original permit.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2716;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.12]

166.13 Revocation of permit.

Such a permit shall be automatically revoked:

1. In case of a dealer, by the dealer's failure to execute and file with the department a new and approved bond when required by law, or by the dealer's failure to obtain a separate permit and to file a separate bond in the amount of five thousand dollars for each place of business.

2. In case of a manufacturer, by the manufacturer's ceasing to be the holder of a United States department of agriculture license for the manufacture and sale of biological products.

3. In case of either a manufacturer or dealer, for discrimination in the price at which such biological products are sold, and such permit shall not in such case be renewed for one year.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2717;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.13]

166.14 Revocation by department.

Such a permit may also be revoked by the department at any time after a reasonable notice and hearing:

1. For violation of the terms, conditions, and requirements on which it was issued.
2. For violation of any law, or of any rule of the department, relating to the business authorized by such permit.
3. In case of a dealer's permit, when a judgment has been rendered on the bond, or when the security of such bond has become impaired in any other way and no new bond is given as required by the department.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2718;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.14]

166.15 Prohibited sales.

No biological products shall be sold, offered for sale, distributed, or used, unless produced at a plant which, at the time of producing, held a United States department of agriculture license for the manufacture of such biological products.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §**2719;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.15]

166.16 Sales — limitation.

No person shall sell, distribute, use, or offer to sell, distribute, or use virulent blood or virus from cholera-infected hogs except for one or more of the following purposes:

1. For the purpose of interstate or foreign shipment of such blood or virus.
2. For the purpose of research at any biological laboratory or by any manufacturer of biological products.
3. For the purpose of testing biological products by any governmental authority or by any manufacturer of biological products.
4. For the purpose of manufacturing any biological products or for the purpose of producing immune hogs to be used in the production of hog-cholera serum.

[SS15, §2538-w5; C24, 27, 31, 35, 39, §**2720;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.16]

166.17 to 166.28 Repealed by 65 Acts, ch 177, § 2.

166.29 Reports by manufacturers and dealers.

A person holding a permit as manufacturer or dealer shall make such written reports to the department relative to biological products as it may from time to time require.

[SS15, §2538-w5; C24, 27, 31, 35, 39, §**2733;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.29]

166.30 and 166.31 Repealed by 65 Acts, ch 177, § 2.

166.32 Repealed by 69 Acts, ch 142, § 9.

166.33 Repealed by 65 Acts, ch 177, § 2.

166.34 Seizure of samples.

The department may seize, at any time or place, for examination, samples of biological products manufactured or kept for use or sale within the state.

[S13, §2538-w6; C24, 27, 31, 35, 39, §**2738;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.34]

166.35 Condemnation and destruction.

The department shall have power to condemn and destroy any biological products which it deems unsafe.

[S13, §2538-w6; C24, 27, 31, 35, 39, §**2739;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.35]

166.36 Defacing labels.

No person shall remove or deface any label upon the bottles or packages containing any biological products or change the contents from the original container except for immediate use.

[SS15, §2538-w8; C24, 27, 31, 35, 39, §**2740;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.36]

166.37 Price of virus.

Persons holding permits, either as manufacturers or dealers, shall sell all biological products at a uniform price to all persons to whom sales are made. No rebate on said price shall be given, either directly or indirectly, in any manner whatsoever.

[C24, 27, 31, 35, 39, §**2741;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.37]

166.38 Compensation.

No licensed veterinarian shall receive, directly or indirectly, any compensation of any kind for the handling, sale, or use of any biological products, other than the veterinarian's charges for administering the same, unless the veterinarian makes known in writing the amount of such compensation, if requested to do so by the person using biological products. Any veterinarian violating this section shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §**2742;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.38]

Revocation of license, §169.13

166.39 Violations.

Any person who violates any provision of this chapter, or any rule of the department, or who shall hinder or attempt to hinder the department or any duly authorized agent or official thereof in the discharge of that person's duty, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars.

[S13, §2538-w7; C24, 27, 31, 35, 39, §**2743;** C46,

50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.39]

166.40 Repealed by 65 Acts, ch 177, § 2.

166.41 Hog-cholera vaccine prohibited — emergency.

The sale or use of hog-cholera vaccine, except as provided in section 166.16 is prohibited and it shall be unlawful to use such products in the state of Iowa, except that in case of emergency as defined in section 166.42, a special permit for the use of vaccines may be issued by the secretary.

[C66, 71, 73, 75, 77, 79, 81, §166.41]

166.42 Biological products reserve — use.

The secretary may establish a reserve supply of biological products of approved modified live virus hog-cholera vaccine and of anti-hog-cholera serum or its equivalent in antibody concentrate to be used as directed by the secretary in the event of an emergency resulting from a hog-cholera outbreak. Vaccine and serum or antibody concentrate from the reserve supply, if used for such an emergency, shall be made available to swine producers at a price which will not result in a profit. Payment shall be made by the producer to the department and such vaccine shall be administered by a licensed practicing veterinarian. The secretary may cooperate with other states in the accumulation, maintenance and disbursement of such reserve supply of biological products. The secretary, with the advice and written consent of the state veterinarian, and the advice and written consent of the veterinarian-in-charge for Iowa of the animal and plant health inspection service — veterinary services, United States department of agriculture, shall determine when an emergency resulting from a hog-cholera outbreak exists.

The secretary is authorized to sell or otherwise dispose of such vaccine and serum at such time as the state is declared a hog-cholera-free state by the United States department of agriculture, or if the potency of such vaccine and serum is in doubt. Money received under provisions of this section shall be paid into the state treasury.

[C71, 73, 75, 77, 79, 81, §166.42]

99 Acts, ch 96, §17; 2000 Acts, ch 1058, §21

CHAPTER 166A

SCABIES CONTROL IN SHEEP

166A.1 Definitions.
166A.2 Sheep dealer's license.
166A.3 Injunction.
166A.4 Dipping.
166A.5 Certificate.
166A.6 Records kept.
166A.7 Slaughter without dipping.
166A.8 Quarantine of infected sheep.
166A.9 Scabies-free areas.
166A.10 Restraint of movement.
166A.11 Sheep entering state.
166A.12 Shearers' reports.
166A.13 Rules.
166A.14 Penalty.

166A.1 Definitions.

1. *"Accredited veterinarian"* means a veterinarian who is licensed by the state in which the veterinarian practices, is approved by the department of agriculture and land stewardship or the livestock sanitary authority of that state, and is accredited by the United States department of agriculture.

2. *"Approved stockyard or livestock market"* means any place where sheep are assembled for public auction, private sale, or on a commission basis which is under state or federal supervision.

3. *"Area"* means one or more counties or portions thereof.

4. *"Certified scabies-free area"* means an area in which all sheep have been inspected by a representative of the Iowa department of agriculture and land stewardship or of the animal disease eradication division of the United States department of agriculture and are found to be free of any evidence of scabies and such fact is certified to by both agencies.

5. *"Dealer"* means any person who is engaged in the business of buying for resale, selling, or exchanging sheep as a principal or agent or who claims to be so engaged but does not include employees of a dealer doing business in the name of such dealer or the owner or operator of a farm who exchanges only sheep which have been kept by that person solely for feeding or breeding purposes and does not claim to be so engaged, or as a livestock auction market acting strictly on a consignment basis.

6. *"Division"* means the animal disease eradication division of the agricultural research service of the United States department of agriculture.

7. *"Infected animal"* means an animal of the ovine species which shows clinical evidence of sca-

bies or in which the presence of the scabies mite is demonstrated.

8. *"Official health certificate"* means a legal record covering the requirement of the state of Iowa and approved by the proper livestock sanitary official of the state of origin and issued by an accredited veterinarian.

9. *"Scabies"* means a communicable skin disease caused by infestation with mites of the species psoroptes, sarcoptes, chorioptes or psorergates.

[C66, 71, 73, 75, 77, 79, 81, §166A.1]
86 Acts, ch 1245, §618
Further definitions; see §159.1

166A.2 Sheep dealer's license.

Any person engaged as a dealer shall be required to obtain a license from the department. The fee for such license shall be five dollars per year and all licenses shall expire on the first day of July following date of issue. Licenses shall be numbered and the dealer shall retain the number from year to year.

Applications for licenses shall be made upon blanks furnished by the department.

For good and sufficient grounds the department may refuse to grant a license to any applicant, and it may also revoke a license to any applicant for a violation of any provision of this chapter, or for the refusal or failure of any licensee to obey the lawful directions of the department.

Any person who is licensed as a sheep dealer under chapter 172A shall be exempt from this section.

[C66, 71, 73, 75, 77, 79, 81, §166A.2]

166A.3 Injunction.

Any person engaging in, or claiming to be in, the business of a dealer without obtaining a license may be restrained by injunction, and shall pay all costs made necessary by such procedure.

[C66, 71, 73, 75, 77, 79, 81, §166A.3]

166A.4 Dipping.

All breeding and feeding sheep offered for sale or exchange or otherwise moved or released from any premises, vehicle or conveyance, shall, within ten days prior to exchange, release, or movement, be dipped in an approved dip under the supervision of the Iowa department of agriculture and land stewardship or of the animal disease eradication division of the United States department of agriculture; provided, that when sheep are moved within or from a certified scabies-free area in the state accompanied by an official health certificate, dipping shall not be required prior to such movement; and provided further, that sheep may be moved from premises to an approved facility for the purpose of dipping under such conditions as may be required by the rules of the department, and also sheep moved to a livestock auction market need not be dipped until after sale, nor if consigned directly for slaughter.

[C66, 71, 73, 75, 77, 79, 81, §166A.4]

166A.5 Certificate.

All sheep so dipped shall be accompanied by a certificate showing that the sheep were dipped under supervision.

[C66, 71, 73, 75, 77, 79, 81, §166A.5]

166A.6 Records kept.

Market operators and dealers in sheep shall use satisfactory dipping facilities approved by the department and shall maintain records which show the true origin of the sheep including name and address of the seller or consignor, number, date of receipt, date of dipping, and including all certificates, permits, waybills, bills of lading for each consignment of sheep consigned to and leaving the market or dealer's premises. All records shall be retained for a period of one year and made available upon demand by a representative of the department.

[C66, 71, 73, 75, 77, 79, 81, §166A.6]

166A.7 Slaughter without dipping.

Animals may be sold for slaughter without dipping. Sheep when inspected at the market or dealer's premises and found free of scabies or no known exposure thereto, may be sold for slaughter purposes without dipping if consigned directly and immediately on a slaughter affidavit to a slaughtering establishment operating under federal, state or municipal meat inspection service. Such sheep shall be identified with the letter "K" in red branding paint at least four inches high on their back except those consigned to such slaughtering establishment by the original owner.

[C66, 71, 73, 75, 77, 79, 81, §166A.7]

166A.8 Quarantine of infected sheep.

Sheep found to be infected with or exposed to scabies shall be immediately dipped, as directed by and under the supervision of the department, at owner's expense. Such sheep shall remain under quarantine until released by the department, except that sheep infected with or exposed to scabies may be moved, without dipping, directly to a slaughter establishment under federal inspection, under permit from the department. No sheep shall be moved into or within the state of Iowa for any purpose except as provided in this chapter and the regulations of the department, provided sheep may be moved without dipping between properties owned or rented by the owner of said sheep, if not moved from a noncertified scabies-free area to a certified scabies-free area.

Any person may sell or exchange sheep on the farm between November 1 and April 1 without dipping if accompanied by a certificate from a licensed veterinarian that they are free from sca-

bies issued within ten days prior to such sale or exchange until such time as the county is declared a scabies-free area.

[C66, 71, 73, 75, 77, 79, 81, §166A.8]

166A.9 Scabies-free areas.

When all flocks of sheep within a county have been inspected by a representative of the department and are found to be free of scabies, the department may certify the county as a "scabies-free area."

[C66, 71, 73, 75, 77, 79, 81, §166A.9]

166A.10 Restraint of movement.

Sheep from noncertified scabies-free areas within Iowa shall not enter certified scabies-free areas unless they have been dipped in an approved dip under supervision within ten days preceding movement and satisfactory evidence of dipping accompanies the shipment, except such sheep may move into certified scabies-free areas if consigned directly to a stockyard market, auction market or slaughter establishment, under federal inspection, provided the sheep are accompanied by a certificate stating number, description, consignor and consignee.

[C66, 71, 73, 75, 77, 79, 81, §166A.10]

166A.11 Sheep entering state.

All sheep entering the state for breeding or feeding purposes shall be accompanied by a permit and by a health certificate stating the sheep are from a certified scabies-free area or if not from a certified scabies-free area that they have been dipped in an approved dip within ten days prior to movement. All livestock markets, dealers and individuals shall retain all incoming waybills, permits and health certificates for a period of one year, same to be made available upon demand by the department.

[C66, 71, 73, 75, 77, 79, 81, §166A.11]

166A.12 Shearers' reports.

All persons engaged in the shearing of sheep shall immediately report any suspicion of or evidence of scabies to the department.

[C66, 71, 73, 75, 77, 79, 81, §166A.12]

166A.13 Rules.

The department is empowered to make and promulgate rules necessary for carrying out the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §166A.13]

166A.14 Penalty.

Any person, firm or partnership or corporation violating the provisions of this chapter shall be guilty of a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §166A.14]

CHAPTER 166B

ERADICATION OF HOG CHOLERA

166B.1 Definitions.
166B.2 General authority.
166B.3 Appraisal and indemnification.
166B.4 Institution of indemnification.
166B.5 Co-operation with United States.
166B.6 Rules.
166B.7 Judicial review.

166B.1 Definitions.

As used in this chapter:

1. *"Destroy"* means condemn under state authority and slaughter or otherwise kill as a result of or pursuant to such condemnation.

2. *"Exposed"* means all swine in physical contact with a known infected herd or tended by a person having direct contact with an infected herd.

3. *"Hog cholera"* means the contagious, infectious, and communicable disease of swine commonly known as hog cholera.

[C66, 71, 73, 75, 77, 79, 81, §166B.1]

86 Acts, ch 1245, §619

Further definitions; see §159.1

166B.2 General authority.

The department may destroy or require the destruction of any swine which the state veterinarian knows to be, or suspects is, affected with or exposed to hog cholera, whenever the department finds such destruction to be necessary to prevent or reduce the danger of the spread of hog cholera. Disposal of condemned swine shall be under the supervision of a regulatory employee. Salvage of apparently healthy marketable swine is permissible as a minimum provision and may be discontinued in favor of total herd disposition with indemnification as necessary and without such salvage in

any case or at any time when it is determined by the department and the United States department of agriculture that the procedure would constitute an undue threat to the eradication program. Before being condemned and ordered to be destroyed, a positive diagnosis of hog cholera affecting the herd must be confirmed by a state or federal laboratory or personnel approved by the department and the United States department of agriculture.

[C66, 71, 73, 75, 77, 79, 81, §166B.2]

166B.3 Appraisal and indemnification.

The department shall appraise any swine destroyed or ordered destroyed pursuant to this chapter at not to exceed current market value and shall indemnify the owner of such swine in an amount not to exceed two hundred dollars for purebred, inbred or hybrid or breeding swine; and not to exceed one hundred dollars for all other swine, provided that fifty percent or more of all such indemnities are paid by the United States department of agriculture.

[C66, 71, 73, 75, 77, 79, 81, §166B.3]

166B.4 Institution of indemnification.

It is hereby recognized and declared that indemnification for destruction of swine infected with or exposed to hog cholera is an expression of the public policy of this state but employed only in the final stages of eradication of the disease, or as a means of preventing or minimizing its recurrence. The department of agriculture and land stewardship shall not therefore institute an initial program of indemnification pursuant to the chapter until it is mutually agreed between the state department of agriculture and land stewardship and the United States department of agriculture that such action is necessary in order to carry out the hog-cholera eradication program.

[C66, 71, 73, 75, 77, 79, 81, §166B.4]

166B.5 Co-operation with United States.

The department may co-operate with the United States, or any department, agency or officer thereof, in the control and eradication of hog cholera, including the sharing in payment of indemnities for swine destroyed.

[C66, 71, 73, 75, 77, 79, 81, §166B.5]

166B.6 Rules.

The department of agriculture and land stewardship may make, promulgate, amend, repeal, and enforce necessary rules for implementing this chapter.

[C66, 71, 73, 75, 77, 79, 81, §166B.6]

166B.7 Judicial review.

Judicial review of department action under this chapter may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county, wherein the hogs are situated.

[C66, 71, 73, 75, 77, 79, 81, §166B.7]

CHAPTER 166C

AUJESZKY'S DISEASE

Repealed by 89 Acts, ch 280, §17. See chapter 166D.

CHAPTER 166D

PSEUDORABIES CONTROL

166D.1 Purpose — rules.
166D.2 Definitions.
166D.3 State pseudorabies advisory committee.
166D.3A Departmental determination of pseudorabies prevalence.
166D.4 Establishing program areas. Repealed by 2000 Acts, ch 1110, §22, 25.
166D.5 Administration of program areas. Repealed by 2000 Acts, ch 1110, §22, 25.
166D.6 Reporting of test results.
166D.7 Noninfected herds.
166D.8 Infected herds.
166D.9 Quarantined herds.
166D.10 Movement of swine.
166D.10A Restricted movement — requirements.
166D.10B Approved premises.
166D.11 Vaccination and testing requirements.
166D.12 Concentration points.
166D.13 Exhibition of swine.
166D.14 Pseudorabies immunization products.
166D.15 Tracing pseudorabies to source or destination herds.
166D.16 Enforcement — penalty — certificates.

166D.1 Purpose — rules.

This chapter provides for measures to control the transmission and incidence, and for the eventual eradication, of pseudorabies among swine within this state. The department shall adopt rules to carry out the provisions of this chapter.

89 Acts, ch 280, §1

166D.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Advisory committee"* means the state pseudorabies advisory committee composed of swine producers and other representatives of the swine industry, appointed pursuant to section 166D.3.

2. *"Approved premises"* means a dry lot facility located in an area with confirmed cases of pseudorabies infection, which is certified by the department to receive, feed, and move or relocate infected swine as provided in section 166D.10B.

3. *"Approved premises permit"* means a permit issued by the department necessary for a person to own and operate an approved premises.

4. *"Breeding swine"* means swine over six months of age.

5. *"Certificate of inspection"* means a document approved by the United States department of agriculture or the department of agriculture and land stewardship, and issued by a licensed veterinarian prior to the interstate or intrastate movement of swine or to the relocation of swine. The certificate of inspection must state all of the following:

a. The number, description, and identification of the swine to be moved.

b. Whether the swine to be moved are known to be infected with or exposed to pseudorabies.

c. The farm of origin.

d. The purpose for moving the swine.

e. The point of destination of the swine.

f. The consignor and each consignee of the swine.

g. Additional information as required by state or federal law.

6. *"Cleanup plan"* means a herd cleanup plan or feeder pig cooperator herd cleanup plan as provided in section 166D.8.

7. *"Concentration point"* means a location or facility where swine are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of swine from various sources. *"Concentration point"* includes a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a livestock dealer's yard, truck, or facility.

8. *"Cull swine"* means mature swine fed for purposes of direct slaughter. However, *"cull swine"* does not include swine kept for purposes of breeding or reproduction.

9. *"Differentiable test"* means a laboratory procedure approved by the department to diagnose pseudorabies. The procedure must be capable of recognizing and distinguishing between vaccine-exposed and field-pseudorabies-virus-exposed swine.

10. *"Differentiable vaccinate"* means a swine which has only been exposed to a differentiable vaccine.

11. *"Differentiable vaccine"* means a vaccine which has a licensed companion differentiable test, and includes a modified-live differentiable vaccine.

12. *"Direct movement"* means movement of swine to a destination without unloading the swine in route, without contact with swine of lesser pseudorabies vaccinate status, and without contact with infected or exposed livestock.

13. *"Epidemiologist"* means a state or federal veterinarian designated to investigate and diagnose suspected pseudorabies in livestock. The epidemiologist must have had special training in the diagnosis and epidemiology of pseudorabies.

14. *"Exposed"* means an animal that has not been kept separate and apart or isolated from livestock infected with pseudorabies, including all swine in a known infected herd.

15. *"Exposed livestock"* means livestock that have been in contact with livestock infected with pseudorabies, including all livestock in a known infected herd. However, livestock other than swine that have not been exposed to a clinical case of the disease for a period of ten consecutive days shall not be considered exposed livestock. Swine released from quarantine are no longer considered exposed.

16. *"Farm of origin"* means a location where the swine were born, or on which the swine have been located for at least ninety consecutive days immediately prior to movement.

17. *"Feeder pig"* means an immature swine fed for purposes of direct slaughter which weighs one hundred pounds or less.

18. *"Feeder pig cooperator herd"* means a swine herd not currently determined to be pseudorabies negative, that has not experienced clinical signs of pseudorabies in the last six months, that is capable of segregating offspring at weaning into separate and apart production facilities, and has implemented an approved pseudorabies eradication plan.

19. *"Feeder swine"* means swine fed for purposes of direct slaughter, including feeder pigs and cull swine. However, *"feeder swine"* does not include swine kept for purposes of breeding or reproduction.

20. *"Fixed concentration point"* means a concentration point which is a permanent location where swine are assembled for purposes of sale and movement to a slaughtering establishment as provided in section 166D.12.

21. *"Herd"* means a group of swine as established by departmental rule.

22. *"Herd cleanup plan"* means a plan to eliminate pseudorabies from a swine herd. The plan must be developed by an epidemiologist in consultation with the herd owner and the owner's veterinary practitioner. The plan must be approved and signed by the epidemiologist, the owner, and the practitioner. The plan must be approved and filed with the department.

23. *"Herd of unknown status"* means all swine except swine which are part of a known infected herd, swine known to have been exposed to pseudorabies, or swine which are part of a noninfected herd.

24. *"Infected"* means infected with pseudorabies as determined by an epidemiologist whose diagnosis is supported by test results.

25. *"Infected herd"* means a herd that is known to contain infected swine, a herd containing swine exhibiting clinical signs of pseudorabies, or a herd that is infected according to an epidemiologist.

26. *"Inspection service"* means the animal and plant health inspection service, United States department of agriculture.

27. *"Isolation"* means separation of swine within a physical barrier in a manner to prevent swine from gaining access to swine outside the barrier, including excrement or discharges from swine outside the barrier. Swine in isolation must not share a building with a ventilation system common to other swine. Swine in isolation must not be maintained within ten feet of other swine.

28. *"Isowean feeder pig"* means a feeder pig that weighs twenty pounds or less.

29. *"Known infected herd"* means a herd in which swine have been determined by an epidemiologist to be infected.

30. *"Licensed pseudorabies vaccine"* means a pseudorabies virus vaccine produced under license from the United States secretary of agriculture under the federal Virus, Serum and Toxin Act of March 4, 1913, 21 U.S.C. § 151 et seq.

31. *"Livestock"* means swine, cattle, sheep, goats, horses, ostriches, rheas, or emus.

32. *"Monitored herd"* means a herd of swine, including a feeder swine herd, which has been determined within the past twelve months not to be infected, according to a statistical sampling.

33. *"Move"* or *"movement"* means the same as defined in section 163.30.

34. *"Noninfected herd"* means a herd which is one of the following:

a. A qualified pseudorabies negative herd.

b. A pseudorabies monitored herd.

c. A herd in which the animals have been individually tested negative within the past thirty days.

d. A herd which originates from an area with little or no incidence of pseudorabies as determined by the department based upon epidemiological studies and information relating to the area.

e. A qualified differentiable negative herd.

35. *"Nonvaccinate"* means a swine which has not been exposed to a pseudorabies vaccine.

36. *"Pseudorabies"* means the contagious, infectious, and communicable disease of livestock and other animals known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

37. *"Pseudorabies eradication plan"* means a written herd management program which is based on accepted statistical and epidemiological evaluation and designed to eradicate pseudorabies from the swine herds in a given area.

38. *"Qualified differentiable negative herd"* means a herd in which one hundred percent of the herd's breeding swine have been vaccinated and have reacted negatively to a differentiable test and which have been retested, as provided in this chapter.

39. *"Qualified negative herd"* means a herd in which one hundred percent of the herd's breeding swine have reacted negatively to a test, and have not been vaccinated, and which is retested as provided in this chapter.

40. *"Quarantined herd"* means a herd in which pseudorabies infected or exposed swine are bred, reared, or fed under the supervision and control of the department, as provided in section 166D.9.

41. *"Reaction"* means a result determined by an approved laboratory procedure designed to recognize pseudorabies virus infection or a nondifferentiable vaccinated animal.

42. *"Relocate"* or *"relocation"* means the same as defined in section 163.30.

43. *"Relocation record"* means a record as maintained by the owner of swine in a form and containing information as required by the rules adopted by the department, which indicates a relocation of swine as provided in section 166D.10.

44. *"Restricted movement"* means swine which are moved or relocated as provided in section 166D.10A.

45. *"Separate and apart"* means to hold swine so that neither the swine nor organic material originating from the swine has physical contact with other animals.

46. *"Slaughtering establishment"* means a slaughtering establishment operated under the provision of the federal Meat Inspection Act, 21 U.S.C. § 601 et seq., or a slaughtering establishment which has been inspected by the state.

47. *"Stage II county"* means a county designated by the department as in stage II of the national pseudorabies eradication program.

48. *"Statistical sampling"* means a test based on at least a ninety percent probability of detecting at least a ten percent incidence of positive reaction within a herd.

49. *"Test"* means a serum neutralization (SN) test, virus isolation test, ELISA test, or other test approved by the department and performed by a laboratory approved by the department.

50. *"Transportation certificate"* means a written document evidencing that the movement or relocation of swine complies with the requirements of this chapter, and which may be a transportation certificate as provided in chapter 172B, or another document approved by the department, including but not limited to one or more types of forms covering different circumstances, as prescribed by the department.

89 Acts, ch 280, §2; 90 Acts, ch 1091, §1 – 3; 92 Acts, ch 1163, §42; 95 Acts, ch 43, §5; 97 Acts, ch 183, §2 – 6, 13; 2000 Acts, ch 1110, §1 – 4, 25; 2001 Acts, ch 24, §34

Further definitions; see §159.1

166D.3 State pseudorabies advisory committee.

A state pseudorabies advisory committee is established. The committee shall consist of not more than seven members who shall be appointed by the Iowa pork producers association. At least four members of the committee must be actively engaged in swine production. The members shall serve staggered terms of two years, except that the initial board members shall serve unequal terms. A person appointed to fill a vacancy for a member shall serve only for the unexpired portion of the term. A member is eligible for reappointment for three successive terms. A majority of the board constitutes a quorum and an affirmative vote of the majority of members is necessary for substantive action taken by the board. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the board. The advisory committee shall:

1. Inform and educate interested persons in the state, including persons involved in producing, processing, or marketing swine, regarding eradication activities under this chapter.

2. Review eradication activities under this chapter including the pseudorabies eradication programs. The committee shall make recommendations to the department and the inspection service and may consult with state officials regarding any matter relating to pseudorabies control and eradication, including departmental rules, other state or federal regulations, program areas, the use of vaccine, testing procedures, the progress of pseudorabies eradication programs, and state and federal program standards. The committee in cooperation with the department shall report to the governor and general assembly not later than January 15 the progress of pseudorabies eradication, including recommendations.

3. Maintain communication with other states and with the national pork producers council, the livestock conservation institute, and the inspection service.

89 Acts, ch 280, §3; 2000 Acts, ch 1110, §5, 6, 25

166D.3A Departmental determination of pseudorabies prevalence.

The department shall periodically determine the prevalence of pseudorabies in each county in a manner and according to procedures established by rules adopted by the department.

97 Acts, ch 183, §7, 13

166D.4 Establishing program areas. Repealed by 2000 Acts, ch 1110, § 22, 25.

166D.5 Administration of program areas. Repealed by 2000 Acts, ch 1110, § 22, 25.

166D.6 Reporting of test results.

All tests under this chapter must be taken by a test administered by a licensed veterinarian. Test samples are to be collected by or under the direction of the department and a licensed veterinarian. If the test is determined by a laboratory located outside the state of Iowa, the person whose animal has been tested shall be responsible for assuring that the result is reported to the department within fourteen days following completion of the test. Swine sampled shall be identified with a numbered metal ear tag. The department shall make the ear tags available. Ear notches or other numbered identification methods approved by the department may be used at the herd owner's expense.

Test results shall be reported on forms prescribed by the department signed by the veterinarian and transmitted to the department within fourteen days following completion of the tests. Copies shall be made available to the attending veterinarian. Upon receipt, the attending veterinarian shall provide copies to the herd owner.

89 Acts, ch 280, §6

166D.7 Noninfected herds.

In administering the pseudorabies eradication program, the department shall regulate noninfected herds as follows:

1. A qualified negative herd must be certified, recertified, and maintained as follows:

a. The herd shall be certified when all breeding swine have reacted negatively to a test. The herd must have been free from infection for thirty days prior to testing. At least ninety percent of swine in the herd must have been on the premises as a part of the herd for at least sixty days prior to

testing, or swine in the herd must have been moved or relocated directly from another qualified negative herd. To remain certified, the herd must be retested and recertified each month as provided by the department. The herd shall be recertified when the greater of five head of swine or at least ten percent of the herd's breeding swine react negatively to a test.

b. Before being added to the herd new swine including swine returning to the herd after contact with nonherd swine, shall be isolated until the new swine react negatively to a test conducted thirty days or more after the swine has been placed in isolation. Swine from a herd of unknown status must react negatively to a test not more than thirty days prior to movement from the herd of unknown status and retested in isolation at least thirty days after movement onto the premises where the qualified negative herd is located.

c. Swine from another qualified negative herd may be added without isolation or testing.

d. The owner shall make a request to the department for approval or reapproval of a qualified negative herd when the required tests are completed. Upon satisfactory proof that all requirements have been met, the herd shall be recertified by the department.

2. A monitored herd shall be initially certified, recertified, and maintained as follows:

a. The herd shall be certified when a statistical sampling of the herd is determined to be noninfected.

b. In order to remain certified the herd must be retested and recertified as provided by the department. The herd must be recertified annually. The herd shall be recertified when a statistical sampling of the herd is determined to be noninfected within twelve months from initial certification or the most recent recertification.

A herd shall not be certified or recertified, if the herd is located within a county which is designated by the department as in stage II of the national pseudorabies eradication program, unless the herd is vaccinated with a modified-live differentiable vaccine pursuant to section 166D.11 and as required by the department.

c. A monitored herd may receive new swine into the herd from a noninfected herd.

3. A qualified differentiable negative herd shall be certified, recertified, and maintained as follows:

a. The herd shall be certified when one hundred percent of breeding swine have reacted negatively to a test. The herd must have been free from infection for thirty days prior to testing. At least ninety percent of swine in the herd must have been on the premises as a part of the herd for at least sixty days prior to testing, or swine in the herd must have been directly moved or relocated from a qualified negative herd or qualified differentiable negative herd. A differentiable vaccine must be administered at intervals in accordance with the package insert for that vaccine. To remain certified, the herd must be retested and recertified as provided by the department. The herd shall be recertified when each month at least ten percent of the herd's breeding swine react negatively to a test.

b. Before adding to the herd new swine, including swine returning to the herd after contact with nonherd swine, the herd shall be isolated until the new swine react negatively to a test conducted thirty days or more after the swine have been placed in isolation. Swine from a herd of unknown status must react negatively to a test not more than fifteen days prior to movement from the herd of unknown status and retested in isolation at least thirty days after movement onto the premises where the qualified differentiable negative herd is located.

c. Swine from a qualified negative or qualified differentiable negative herd may be added without isolation or testing.

d. The owner shall make a request to the department for certification or recertification of a qualified differentiable negative herd when the required tests are completed. Upon satisfactory proof that all requirements have been met, the herd shall be recertified by the department.

89 Acts, ch 280, §7; 90 Acts, ch 1091, §5; 98 Acts, ch 1056, §4; 2000 Acts, ch 1110, §7 – 10, 25; 2000 Acts, ch 1232, §24, 39; 2002 Acts, ch 1119, §140

Subsection 1, paragraph a amended

166D.8 Infected herds.

An infected herd which is not quarantined under section 166D.9, shall either adopt a herd cleanup plan or a feeder pig cooperator herd cleanup plan.

1. *a.* A herd cleanup plan shall apply to a herd if feeder pigs are not moved from the herd. The plan shall provide for one of the following:

(1) The testing of all swine capable of being accurately diagnosed with pseudorabies and the removal of infected swine from the herd.

(2) Depopulation.

b. A herd cleanup plan must be implemented as follows:

(1) If the plan provides for the testing and removal of swine, all breeding swine must be tested with a differentiable test and react negatively to the test within fifteen days after the herd is classified by the department as infected. All breeding swine reacting positively to the test must be removed as provided in this section. At least thirty days after removal of the breeding swine reacting positively, all remaining breeding swine must be tested and react negatively to the test. Subsequent testing and removal must be conducted as provided in this subparagraph until all breeding swine react negatively. When all breeding swine are tested and react negatively to the test, the department shall classify the herd as a noninfected herd.

(2) The herd cleanup plan may provide for the relocation of feeder pigs or cull swine. If the plan provides for the relocation of feeder pigs, the plan must provide for the segregation of feeder pigs and identify in writing the approved premises where feeder pigs or cull swine may be relocated upon approval by the department.

2. *a.* A feeder pig cooperator herd cleanup plan shall apply to a herd if feeder pigs are moved from the herd. The plan shall include all the requirements for a herd cleanup plan. In order to be subject to a feeder pig cooperator herd cleanup plan all of the following conditions must be satisfied:

(1) There must have been no clinical signs of pseudorabies during the past thirty days.

(2) The production operation must be capable of segregating offspring at weaning into facilities separate and apart from the remainder of the herd.

b. The feeder pig cooperator herd cleanup plan may provide for the movement or relocation of feeder pigs or cull swine. If the feeder pig cooperator herd cleanup plan provides for the movement or relocation of feeder pigs or cull swine, the plan must identify in writing the approved premises where the feeder pigs or cull swine may be moved or relocated as provided in section 166D.10B.

3. Costs of testing and vaccination may be paid as provided in section 166D.11.

4. An infected herd not subject to a cleanup plan shall be quarantined within fifteen days of becoming a known infected herd. An infected herd which is not subject to a cleanup plan is a quarantined herd.

5. Swine which are part of a herd subject to a cleanup plan shall only be moved or relocated as required pursuant to section 166D.10. If the location where the herd is kept is an approved premises as provided in section 166D.10B, the cleanup plan shall include terms and conditions for being certified as an approved premises.

89 Acts, ch 280, §8; 98 Acts, ch 1056, §5, 6; 2000 Acts, ch 1110, §11, 25

166D.9 Quarantined herds.

1. Swine which are part of a quarantined herd shall only be moved by restricted movement in accordance with section 166D.10A.

2. A herd shall be released from quarantine when no animal, including livestock, on the premises shows clinical symptoms of pseudorabies. In addition one of the following must occur:

a. The swine have been removed from the premises, and the premises have been cleaned and disinfected under supervision of the department or the inspection service. The disinfectant shall be approved by the department or inspection service. The premises must have been maintained free of swine for thirty days. However, the epidemiologist for good cause may determine that premises shall be maintained free of swine for a period greater or less than thirty days.

b. Swine reacting positively to a test have been removed from the premises. Remaining swine, except suckling pigs, must be tested and react negatively to the test thirty days or more after removal of the herd's swine reacting positively to the test.

c. The swine reacting positively to a test have been removed from the premises. At least thirty days after removal of the positive swine, breeding swine remaining plus a random sample equaling twenty-eight of grower-finishing swine more than two months of age must react negatively to the test. While the state is in stage III or IV of the national pseudorabies program pursuant to federal regulations, the grower-finisher swine must react negatively to a test at least thirty days after reacting negatively to the last test.

3. While the state is classified in stage I, II, or III of the national pseudorabies program pursuant to federal regulations, the following requirements must be satisfied:

a. All swine present on the date the quarantine was imposed have been removed.

b. There must have been no clinical signs of pseudorabies in the herd for at least six months.

c. The epidemiologist must either conduct two successive statistical samplings at least ninety days apart, or conduct statistical samplings according to rules adopted by the department which are consistent with the national pseudorabies eradication program, which reveal no infection within the new breeding swine.

d. The epidemiologist must either conduct two successive statistical samplings ninety days apart, or conduct statistical samplings according to rules adopted by the department which are consistent with the national pseudorabies eradication program, which reveal no infection in the herd's progeny at least four months of age.

A herd removed from quarantine under this subsection shall be tested by statistical sampling one year later, unless an epidemiologist determines that the herd must be tested earlier.

89 Acts, ch 280, §9; 90 Acts, ch 1168, §29; 97 Acts, ch 183, §8, 13; 98 Acts, ch 1056, §7; 2000 Acts, ch 1110, §12 – 14, 25

166D.10 Movement of swine.

1. A person shall not sell, lease, exhibit, loan, move, or relocate swine within the state unless the swine are accompanied by a certificate of inspection in the same manner as provided for an official health certificate or veterinarian certificate as provided in section 163.30. The department may combine the certificate of inspection with an official health certificate or a veterinarian inspection certificate. A certificate of inspection is not required if any of the following apply:

a. The swine are moved to slaughter.

b. The swine are relocated, if all of the following apply:

(1) A transportation certificate accompanies the relocated swine.

(2) The swine's owner maintains information regarding the relocation in relocation records. The department may adopt rules excusing a person from maintaining relocation records, if the department determines that the purposes of the chapter as provided in section 166D.1 are not furthered by the requirement.

(3) A certificate of inspection, or an official health certificate or a veterinarian inspection certificate as provided in section 163.30, has been issued for the swine within thirty days prior to the date of relocation. The department may adopt rules excusing a person from complying with this subparagraph if the department determines that the purposes of the chapter as provided in section 166D.1 are not furthered by the requirement.

(4) The swine have a current negative pseudorabies status.

The department shall adopt rules required to administer this paragraph. A transportation certificate accompanying relocated swine shall cite the relevant relocation record and certificate of inspection, or official health certificate or veterinarian inspection certificate. The department may provide for the examination of the relocation records on the owner's premises during normal business hours, or may require that reports containing relevant information contained in relocation records and certificates of inspection, or official health certificates or veterinarian inspection certificates, be periodically submitted to the department. For purposes of this section, swine production information contained in relocation records is a trade secret as provided in section 22.7, unless otherwise provided by rules adopted by the department. The department shall provide for the disclosure of confidential information only to the extent required for enforcement of this chapter, the detection and prosecution of public offenses, or to comply with a subpoena or court order.

c. A person transfers ownership of all or part of a herd, if the herd remains on the same premises. However, the herd must be tested by statistical sampling. If any part of the herd is subsequently moved or relocated, the swine must be moved or relocated in accordance with this section and sections 166D.7, 166D.8, and 166D.10A.

2. Swine that are moved shall be individually identified as provided in section 163.30, which may include requirements for affixing ear tags to swine. However, native Iowa feeder pigs moved from farm to farm within the state shall be exempted from the identification requirements of this subsection if the owner transferring possession of the feeder pigs executes a written agreement with the person taking possession of the feeder pigs. The agreement shall provide that the feeder pigs shall not be commingled with other swine for a period of thirty days. The owner transferring possession shall be responsible for making certain that the agreement is executed and for providing a copy of the agreement to the person taking possession.

As used in this subsection, *"farm to farm within the state"* does not include the movement or relocation of native Iowa feeder pigs to the possession of a dealer licensed pursuant to section 163.30. Native Iowa feeder pigs that are moved shall be accompanied by a certificate of inspection, or an official health certificate or veterinarian certificate as provided in section 163.30, unless swine are otherwise exempted from this requirement by this section.

3. Swine from a herd located within this state must be moved or relocated in compliance with this section. If the swine is moved or relocated from a herd located within a county which is designated by the department as in stage II of the national pseudorabies eradication program, the swine shall not be moved or relocated unless in compliance with section 166D.11. Regardless of whether the swine is from a herd located in a stage II county, the following shall govern the movement or relocation of swine within this state:

a. For swine from a noninfected herd, a person shall not move swine for breeding purposes, unless one of the following applies:

(1) The swine is moved from a qualified negative herd or qualified differentiable negative herd.

(2) The swine reacts negatively to a differentiable test within thirty days prior to moving the swine.

b. For swine which is exposed, a person shall not move or relocate the swine, unless one of the following applies:

(1) The swine reacts negatively to a differentiable test within thirty days prior to moving or relocating the swine.

(2) The swine moves by restricted movement to either a fixed concentration point or slaughtering establishment.

c. For swine from a herd of unknown status, a person shall not move or relocate the swine, unless one of the following applies:

(1) The swine reacts negatively to a differentiable test within thirty days prior to moving or relocating the swine.

(2) The swine moves by restricted movement to either a fixed concentration point or slaughtering establishment. However, the swine is not required to move by restricted movement if the swine is moved from a fixed concentration point directly to another fixed concentration point or to a slaughtering establishment.

d. For swine which is from an infected herd, a person shall not move or relocate the swine, unless one of the following applies:

(1) If the swine is part of a cleanup plan, the following shall apply:

(a) For swine, other than feeder pigs or cull swine, which are part of a herd subject to a cleanup plan, a person shall only move swine by restricted

movement to either a fixed concentration point or slaughtering establishment. A person shall not relocate the swine.

(b) For a feeder pig or cull swine which is part of a herd subject to a herd cleanup plan, a person shall only move the feeder pig or cull swine by restricted movement to either a fixed concentration point or slaughtering establishment or relocate the feeder pig or cull swine by restricted movement to an approved premises. For a feeder pig or cull swine which is part of a feeder pig cooperator herd cleanup plan, a person shall only move the feeder pig or cull swine by restricted movement to either a fixed concentration point or slaughtering establishment or move or relocate the feeder pig or cull swine by restricted movement to an approved premises. However, a person shall not move or relocate a feeder pig or cull swine to an approved premises, unless the approved premises is identified in a cleanup plan as provided in section 166D.8, or the department approves the move or relocation to another approved premises. A person shall not move or relocate a cull swine to an approved premises, unless the cull swine reacts negatively to a test and is vaccinated with a differentiable vaccine. The test and vaccine must be administered within thirty days prior to the movement or relocation to the approved premises. A noninfected feeder pig is not required to be tested or vaccinated prior to movement or relocation to an approved premises, if the feeder pig is vaccinated upon arrival at the approved premises.

(c) For swine from a herd kept on an approved premises, a person shall only move or relocate the swine by restricted movement as provided in the cleanup plan governing the herd and terms and conditions of the certification required for the approved premises as provided in section 166D.10B.

(2) If the swine is not part of a herd that is subject to a cleanup plan because the herd is quarantined, a person shall only move the swine by restricted movement to either a fixed concentration point or slaughtering establishment.

4. Swine from a herd located outside this state must be moved into and maintained in this state in compliance with this section. A person shall not move swine into this state, except as follows:

a. For swine from a herd, other than a noninfected herd, the swine must be moved either to a fixed concentration point or slaughtering establishment.

b. For swine from a noninfected herd, the swine may be moved to a concentration point or slaughtering establishment. If the swine is not moved to a concentration point or slaughtering establishment, the following shall apply:

(1) Unless the person moves the swine into a county designated by the department as in stage II of the national pseudorabies eradication program, the following shall apply:

(a) A person shall not move swine into this state for breeding purposes, unless one of the following applies:

(i) The swine is moved from a qualified negative herd or qualified differentiable negative herd.

(ii) The swine reacts negatively to a differentiable test, within thirty days prior to moving the swine.

(b) A person shall not move a feeder swine which is moved into this state, unless the feeder swine reacts negatively to a differentiable test within thirty days prior to movement from a herd in this state.

(2) If a person moves the swine into a county which is designated by the department as in stage II of the national pseudorabies eradication program, the following shall apply:

(a) Except as provided in this subparagraph, the owner of swine shall vaccinate the swine with a modified-live differentiable vaccine, prior to moving swine into the stage II county. A person is not required to vaccinate swine prior to moving swine into the stage II county if one of the following applies:

(i) The swine is part of a herd that cannot be vaccinated under the law of the state or country in which the herd is kept immediately prior to being moved into the stage II county.

(ii) The swine is an isowean feeder pig.

(iii) The swine is moved either to a fixed concentration point or slaughtering establishment.

(b) For swine which are not vaccinated before being moved into a stage II county as provided in this paragraph, the following shall apply:

(i) For swine other than swine moved into a herd within a stage II county as an isowean feeder pig, the swine must be immediately vaccinated with a differentiable vaccine, as provided in section 166D.11. The swine shall be considered as part of a herd of unknown status, until tested negative and vaccinated.

(ii) For swine moved into a herd within a stage II county as an isowean feeder pig, the swine moved into the herd must be immediately vaccinated with a differentiable vaccine, as provided in section 166D.11. The department may require that the swine be revaccinated with a differentiable vaccine at a later date. The swine shall be considered as part of a herd of unknown status, until tested negative and vaccinated.

5. A person shall not move a swine within this state, other than to a fixed concentration point or slaughtering establishment, if the swine is vaccinated with a vaccine other than a differentiable vaccine approved by the department pursuant to section 166D.14.

6. Known infected swine moved through a fixed concentration point shall only be moved by restricted movement to a slaughtering establishment.

7. Swine moved under this section to a slaughtering establishment shall be for the exclusive purpose of slaughtering the swine. Swine moved under this section to a fixed concentration point

shall be for the exclusive purpose of immediately moving the swine to a slaughtering establishment. Swine moved or relocated under this section to an approved premises shall be for the exclusive purpose of feeding the swine prior to movement or relocation to another approved premises, or movement to either a fixed concentration point or a slaughtering establishment.

89 Acts, ch 280, §10; 90 Acts, ch 1091, §6; 90 Acts, ch 1168, §30; 96 Acts, ch 1214, §30; 97 Acts, ch 183, §9 – 11, 13; 98 Acts, ch 1056, §8 – 10; 2000 Acts, ch 1110, §15, 16, 25; 2002 Acts, ch 1093, §1 – 5, 7; 2002 Acts, ch 1119, §141

Subsection 1, paragraph c amended

Subsection 3, paragraph b amended

Subsection 3, NEW paragraph c and former paragraph c redesignated as d

Subsection 4, paragraph b, subparagraph (2), subparagraph subdivision (a), unnumbered paragraph 1 amended

Subsection 4, paragraph b, subparagraph (2), subparagraph subdivision (b), subparagraph subdivision parts (i) and (ii) amended

Subsection 6 amended

166D.10A Restricted movement — requirements.

1. If swine must be moved or relocated by restricted movement as provided in section 166D.10, the swine shall only be transported by direct movement.

2. *a.* If a person moves or relocates swine subject to restricted movement, the person shall only move the swine to either a fixed concentration point or slaughtering establishment or move or relocate the swine to an approved premises.

b. If a person receives swine subject to restricted movement, the person shall only receive the swine at either a fixed concentration point or slaughtering establishment or an approved premises.

3. Swine required to be moved or relocated by restricted movement must be accompanied by a restricted movement permit, as provided by rules which must be adopted by the department. The department shall issue a restricted movement permit to the person moving or relocating the swine. The permit shall include information required by the department, which shall at least include a description of the swine, the name and address of the owner, the name and address of the person receiving the swine, the date of movement or relocation, and the seal number as prescribed by the department, if a seal is required. The moved or relocated swine must also be accompanied by a transportation certificate and certificate of inspection, if required in section 166D.10.

4. *a.* Except as provided in this section, a vehicle moving swine under restricted movement shall contain a cargo area for the swine which shall be sealed to prevent access. The seal shall conform with requirements adopted by the department. Each seal shall be identified by number as required by the department. The vehicle shall be sealed by an accredited veterinarian at the premises where the swine are kept. The seal shall only be removed by a departmental official, an accredited veterinarian, an official of the United States department of agriculture, or the person authorized by the department to receive the swine upon arrival at the fixed concentration point, slaughtering establishment, or approved premises.

b. The department may adopt rules or issue an order to provide that a vehicle moving or relocating feeder swine from a herd which is subject to a cleanup plan is not required to be sealed as otherwise provided in this subsection, if the herd is kept and moved or relocated in compliance with the cleanup plan.

2000 Acts, ch 1110, §17, 25

166D.10B Approved premises.

1. A person shall not maintain swine other than feeder pigs or cull swine at an approved premises.

a. A person shall not move or relocate swine to an approved premises, unless all of the following apply:

(1) The swine is a feeder pig or cull swine.

(2) The swine is not exposed or from a herd of unknown status.

b. A person shall not receive swine at an approved premises, unless the swine is one of the following:

(1) The swine is a feeder pig or cull swine.

(2) The swine is not exposed or from a herd of unknown status.

2. If swine is moved or relocated to an approved premises, the following shall apply:

a. A cull swine shall not be moved or relocated to an approved premises, unless the cull swine reacts negatively to a test and is vaccinated prior to the movement or relocation, as provided in section 166D.10.

b. A noninfected feeder pig must be vaccinated upon arrival at the approved premises.

3. Dead swine must be disposed of in accordance with chapter 167. The dead swine must be held so as to prevent animals, including wild animals and livestock, from reaching the dead swine.

4. The following shall apply to the location of an approved premises:

a. An approved premises shall not be located within one and one-half miles from a noninfected herd, other than a qualified negative herd or qualified differentiable negative herd.

b. An approved premises shall not be located within three miles from a qualified negative herd or a qualified differentiable negative herd.

c. An approved premises shall not be located in any of the following:

(1) A county in stage III of the national pseudorabies eradication program, as designated by the department.

(2) A county which has a zero percent prevalence of infection among all herds in the county at any time on or after March 1, 2000, regardless of whether the county subsequently has a greater

than zero percent prevalence of infection among all herds in the county.

5. A feeder pig or a cull swine may be kept at the approved premises only for purposes of feeding and restricted movement as provided in section 166D.10.

6. *a.* The department must certify a location as an approved premises pursuant to rules adopted by the department. The department may adopt rules providing for the renewal, suspension, or termination of a certification. The terms and conditions of the certification shall be part of the cleanup plan required for the herd kept at the location pursuant to section 166D.8. Except as provided in this subsection, a location is certified as an approved premises, as long as all of the following apply:

(1) The approved premises complies with the requirements of this section and rules adopted by the department.

(2) The owner of the approved premises or the person managing the approved premises provides to the department during normal business hours access to the approved premises and records required by this subparagraph. Records of swine transfers must be kept for at least one year. Records of vaccinations occurring on the approved premises must be maintained by the owner for at least one year after vaccination. The records shall include information about purchases and sales, the names of buyers and sellers, the dates of transactions, and the number of swine involved in each transaction.

b. The department shall terminate the certification of an approved premises if the county in which the approved premises is located has a zero percent prevalence of infection among all herds in the county, not counting a herd kept at the approved premises. The department shall provide for the suspension or termination of the certification for a violation of a term or condition of the certification. When a certification is suspended, terminated, or not renewed, the location shall remain under a cleanup plan until released pursuant to the provisions of section 166D.8.

2000 Acts, ch 1110, §18, 25; 2002 Acts, ch 1119, §142

Subsection 1, unnumbered paragraph 1 amended

166D.11 Vaccination and testing requirements.

1. A person shall not use in this state any vaccine that is not a differentiable vaccine.

2. *a.* Except as provided in this section, swine within a county which is designated by the department as in stage II of the national pseudorabies eradication program shall be vaccinated with a modified-live differentiable vaccine. The swine located in a stage II county shall be vaccinated as follows:

(1) Except as provided in subparagraph (2), the following applies:

(a) Breeding swine shall at a minimum receive quarterly vaccinations.

(b) Feeder swine shall at a minimum receive one vaccination. The feeder swine shall be vaccinated when the feeder swine reach eight to twelve weeks of age or one hundred pounds, whichever occurs earlier.

(2) If swine are required to be vaccinated prior to or after movement, as provided in section 166D.10, to a stage II county, the swine shall be vaccinated with a modified-live differentiable vaccine as otherwise required in that section.

b. The department shall adopt rules or issue an order that exempts swine from being vaccinated with a modified-live vaccine, as provided in this subsection, based on any of the following:

(1) The swine is part of a qualified negative herd or a qualified differentiable negative herd.

(2) The swine belong to a herd located within a county, if all of the following apply:

(a) The county has a history of zero percent prevalence of infection among all herds in the county, regardless of whether the county currently has a higher than zero percent prevalence of infection among all herds in the county.

(b) All contiguous counties have a zero percent prevalence of infection among herds in that county, as designated by the department.

3. *a.* The person who owns the swine when the swine is required to be vaccinated under this chapter shall be solely liable for providing the vaccine and administering the vaccination. A noninfected feeder pig required to be vaccinated upon arrival at an approved premises as provided in section 166D.10B shall be vaccinated at the expense of the owner who moves the feeder pig. If the swine is transported into this state, the owner shall be deemed to be the person who owns the swine immediately prior to transportation.

b. This subsection does not prohibit the owner of swine from contracting with a person, including a person receiving ownership of swine moved into this state, to provide the vaccination, if the person receives fair compensation for providing the vaccination and the sale price for the swine is not increased because the owner must comply with this subsection.

4. The cost, or any segment of the cost, of purchasing a laboratory product used for testing and vaccination provided in this chapter may be paid for by federal or state funds or a combination of both. Federal or state funds shall not be paid to the owner of a vaccinated herd other than the owner of a herd vaccinated with a modified-live differentiable vaccine.

89 Acts, ch 280, §11; 90 Acts, ch 1091, §7; 2000 Acts, ch 1110, §19, 25

166D.12 Concentration points.

A person shall not move swine through a con-

centration point, except as provided in this section.

1. For swine from a noninfected herd, the swine may be moved through any concentration point. All of the following shall apply:

a. Breeding swine must be kept separate and apart from feeder pigs.

b. Breeding swine must be sold first.

2. *a.* For swine other than swine from a noninfected herd, the swine shall not be moved through a concentration point other than a fixed concentration point, as required by the department. A fixed concentration point shall be used exclusively for the following:

(1) The movement of livestock other than swine.

(2) The immediate movement of swine to a slaughtering establishment.

b. A fixed concentration point shall never be used for the movement of swine other than to a slaughtering establishment.

c. (1) Except as provided in subparagraph (2), a person shall not move swine subject to restricted movement to or from a fixed concentration point or receive swine subject to restricted movement at a fixed concentration point, unless the swine is moved and received in compliance with section 166D.10A.

(2) A person may move swine from a herd of unknown status from a fixed concentration point other than by restricted movement as provided in section 166D.10A, if the person moves the swine directly to another fixed concentration point or to a slaughtering establishment.

d. Livestock, other than swine, moved to the fixed concentration point must be kept separate and apart.

e. If an infected swine, exposed swine, or swine from a herd of unknown status is moved through a fixed concentration point, the owner of the fixed concentration point shall post and maintain a sign on the premises of the fixed concentration point. The sign must be posted in a conspicuous place clearly visible to persons moving livestock through the fixed concentration point. The notice shall appear in black letters a minimum of one inch high and in the following form:

NOTICE
THIS FACILITY MAY SELL SWINE WHICH HAVE BEEN EXPOSED TO PSEUDORABIES. HOWEVER, ALL SWINE ARE MOVED IMMEDIATELY TO SLAUGHTER.

89 Acts, ch 280, §12; 98 Acts, ch 1056, §11; 2000 Acts, ch 1110, §20, 25; 2001 Acts, ch 24, §35; 2002 Acts, ch 1093, §6, 7

Subsection 2, paragraph c amended

166D.13 Exhibition of swine.

1. Swine from an infected herd shall not be displayed or shown at any exhibition.

2. Swine returning from an exhibition to its home herd or moved to a purchaser's herd following an exhibition or consignment sale must be isolated and retested negative for pseudorabies not less than thirty and not more than sixty days after reaching the swine's destination.

3. Animals infected shall not be shown or displayed at an exhibition.

4. Rules controlling exhibition movement requirements may be adopted by the department in addition to the requirements of this section.

89 Acts, ch 280, §13; 98 Acts, ch 1056, §12

166D.14 Pseudorabies immunization products.

A person shall not use, sell, or distribute or offer to sell or distribute a pseudorabies immunization product within the state unless the products are approved by the secretary. However, the secretary shall approve a pseudorabies immunization product for purposes of product research or testing by a biological laboratory, government authority, or manufacturer of biological products if the secretary concludes that the use will not be detrimental to the state pseudorabies disease program.

Only a licensed veterinarian may buy and dispense a department-approved immunization product. The veterinarian must report information relating to the use of the product to the department, including the name and address of the owner and the number of doses used. The report shall be signed by the owner or the owner's agent. The report shall be mailed to the department immediately after the use of the product.

A differentiable vaccinate to be classified as a noninfected animal must react negatively to field strains of pseudorabies virus as determined by a companion differentiable serologic test. The swine must be identified as differentiable vaccinated animals.

89 Acts, ch 280, §14

166D.15 Tracing pseudorabies to source or destination herds.

1. The owner of a known infected herd shall furnish to the department all of the following information:

a. A list of sources of feeder pigs or breeding swine during the preceding twelve months.

b. A list of sales of feeder pigs or breeding swine during the preceding twelve months.

2. If pseudorabies is diagnosed in breeding swine or feeder pigs which have been purchased from or sold to another swine producer within ninety days from the sale, the department may require a statistical sample of the breeding herd of the seller or buyer and a statistical sample of the herd progeny over four months. If the owner of the herd refuses to allow the test, the herd shall be classified as a known infected herd.

3. Tests conducted pursuant to this section shall be completed at the owner's expense unless

state funds are available for this purpose.

89 Acts, ch 280, §15

166D.16 Enforcement — penalty — certificates.

1. The provisions of this chapter including departmental rules adopted pursuant to this chapter shall be administered and enforced by the department.

2. Except as provided in this subsection, a person violating a provision of this chapter or any rule adopted pursuant to this chapter shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars.

a. A person who falsifies a certificate of inspection issued pursuant to this chapter shall be subject to a civil penalty of not more than five thousand dollars for each swine falsified on the certificate. A person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars for falsifying a certificate, regardless of the number of swine falsified on the certificate.

b. The person who owns swine when the swine are required to be vaccinated under this chapter shall be subject to a civil penalty of two dollars for each swine which is not vaccinated as required.

3. In addition to any other remedies provided, the department may file a petition in the district court seeking an injunction restraining any person from violating provisions of this chapter including a rule adopted pursuant to this chapter.

89 Acts, ch 280, §16; 91 Acts, ch 32, §4; 92 Acts, ch 1163, §43; 2000 Acts, ch 1110, §21, 25

CHAPTER 167

USE AND DISPOSAL OF DEAD ANIMALS

Definitions applicable to chapter; see §159.1

167.1 Scope.
167.2 Disposal of dead animals.
167.3 "Disposing" defined.
167.4 Application for license.
167.5 Inspection of place.
167.6 License.
167.7 Record of licenses.
167.8 Inspection revealing unsuitable place.
167.9 Return of fee.
167.10 Renewal of license.
167.11 Disposal plants — specifications.
167.12 Disposing of bodies.
167.13 Rules.
167.14 Annual inspection.
167.15 Transportation of dead animals.
167.16 Driving upon premises of another.
167.17 Disinfecting outfit.
167.18 Duty to dispose of dead bodies.
167.19 Penalty.
167.20 Appropriation.
167.21 Reciprocal agreements with other states.

167.1 Scope.

This chapter shall not apply to licensed slaughterhouses, or to the disposal, by licensed slaughterhouses, of the bodies of animals, or any part thereof, slaughtered for human food.

[C24, 27, 31, 35, 39, §**2744;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.1]

167.2 Disposal of dead animals.

No person shall engage in the business of disposing of the bodies of dead animals without first obtaining a license for that purpose from the department.

[C24, 27, 31, 35, 39, §**2745;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.2]

167.3 "Disposing" defined.

Any person who shall receive from any other person the body of any dead animal for the purpose of obtaining the hide, skin, or grease from such animal, in any way whatsoever, or any part thereof, shall be deemed to be engaged in the business of disposing of the bodies of dead animals, and must be the operator or employee of a licensed disposal plant.

[C24, 27, 31, 35, 39, §**2746;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.3]

167.4 Application for license.

Application for such license shall be made to the department on forms provided by it, which application shall set forth the name and residence of the applicant, the proposed place of business, and the particular method which the applicant intends to employ in disposing of such dead bodies, and such other information as the department may require. Said application shall be accompanied by a fee of one hundred dollars.

[C24, 27, 31, 35, 39, §**2747;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.4]

167.5 Inspection of place.

On receipt of such application, the secretary of agriculture or some person appointed by the secretary, shall at once inspect the building in which the applicant proposes to conduct such business. If the inspector finds that said building complies with the requirements of this chapter, and with the rules of the department, and that the applicant is a responsible and suitable person, the inspector shall so certify in writing to such specific findings, and forward the same to the department.

[C24, 27, 31, 35, 39, §**2748;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.5]

167.6 License.

On the receipt of the foregoing certificate, and the additional payment of one hundred dollars, the department shall issue a license to the applicant to conduct such business, at the place specified in the application, for one calendar year, but the department shall not issue license for disposal plant not located within the boundaries of the state of Iowa.

[C24, 27, 31, 35, 39, §**2749;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.6]

167.7 Record of licenses.

The department shall keep a record of all licenses applied for or issued, which shall show the date of application and by whom made, the cause of all rejections, the date of issue, to whom issued, the date of expiration, and the location of the licensed business.

[C24, 27, 31, 35, 39, §**2750;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.7]

167.8 Inspection revealing unsuitable place.

If the inspector finds that said building does not comply with the requirements of this chapter or with the rules of the department, the inspector shall notify the applicant wherein the same fails to so comply. If within a reasonable time thereafter, to be fixed by the inspector, the specified defects are remedied, the department shall make a second inspection, and proceed therewith as in case of an original inspection. Not more than two inspections need be made under one application.

[C24, 27, 31, 35, 39, §**2751;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.8]

167.9 Return of fee.

In case such applicant is refused a license, no part of the fees paid by the applicant shall be refunded.

[C24, 27, 31, 35, 39, §**2752;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.9]

167.10 Renewal of license.

An original license shall be renewed for each subsequent calendar year on the payment of one hundred dollars, provided the holder, in the opinion of the department, remains responsible and suitable to carry on said business, and the place of business continues to comply with this chapter and the rules of the department, as they then exist.

[C24, 27, 31, 35, 39, §**2753;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.10]

167.11 Disposal plants — specifications.

Each place for the carrying on of said business shall, to the satisfaction of the department, be provided with floors constructed of concrete, or some other nonabsorbent material, adequate drainage, be thoroughly sanitary, and adapted to carrying on the business.

This section shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C24, 27, 31, 35, 39, §**2754;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.11]

167.12 Disposing of bodies.

The following requirements shall be observed in the disposal of such bodies:

1. Cooking vats or tanks shall be airtight, except proper escapes for live steam.
2. Steam shall be so disposed of as not to cause unnecessary annoyance or create a nuisance.
3. The skinning and dismembering of bodies shall be done within said building.
4. The building shall be so situated and arranged, and the business therein so conducted, as not to interfere with the comfortable enjoyment of life and property.
5. Such portions of bodies as are not entirely consumed by cooking or burning shall be disposed of by burying as hereafter provided, or in such manner as the department may direct.
6. In case of disposal by burying, the burial shall be to such depth that no part of such body shall be nearer than four feet to the natural surface of the ground, and every part of such body shall be covered with quicklime, and by at least four feet of earth.
7. All bodies shall be disposed of within twenty-four hours after death.

[C24, 27, 31, 35, 39, §**2755;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.12]

167.13 Rules.

The department shall make such reasonable rules for the carrying on and conducting of such business as it may deem advisable, and all persons engaging in such business shall comply therewith.

[C24, 27, 31, 35, 39, §**2756;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.13]

167.14 Annual inspection.

The department shall inspect each place licensed under this chapter at least once each year, and as often as it deems necessary, and shall see that the licensee conducts the business in conformity to this chapter and the rules made by the department. For a failure or refusal by any licensee to obey the provisions of this chapter or said rules, the department shall suspend or revoke the license held by such licensee.

[C24, 27, 31, 35, 39, §**2757;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.14]

167.15 Transportation of dead animals.

Any person holding a license under the provisions of this chapter may haul and transport the carcasses of animals that have died from disease, except those prohibited by the department, in a covered conveyance, the bed, box, tank or other type of container of which must be covered and watertight, and is so constructed that no drippings or seepings from such carcasses can escape from such bed, box, tank or other type of container, and said carcasses shall not be moved from said bed, box, tank or other type of container except at the place of final disposal or at a place maintained for the purpose of transferring said carcasses from one conveyance to another, such transfer place being subject to all provisions of this chapter relative to licensing, inspection, and sanitation of disposal places. The department may prescribe additional requirements governing the construction and operation of such vehicles, transfer places and such transportation not inconsistent with the above.

[C24, 27, 31, 35, 39, §**2758;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.15]

167.16 Driving upon premises of another.

Vehicles when loaded with the carcass of an animal which has died of disease shall be driven directly to the place of disposal or transfer, except that the driver in so driving may stop on the highway for other like carcasses, but the driver shall not drive into the yard or upon the premises of any person unless the driver first obtains the permission of the person to do so.

[C24, 27, 31, 35, 39, §**2759;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.16]

167.17 Disinfecting outfit.

The driver or owner of a vehicle used in conveying animals which said driver or owner has reason to believe died of disease, shall, immediately after unloading said animals, cause the bed, box, tank or other container of such vehicle, the wheels thereof, all canvas and covers, the feet of the animals drawing said conveyance, and the outer clothing of all persons who have handled said carcasses to be disinfected with a solution of at least one part of creosol dip to four parts of water, or with some other equally effective disinfectant.

[C24, 27, 31, 35, 39, §**2760;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.17]

167.18 Duty to dispose of dead bodies.

A person who has been caring for or who owns an animal that has died shall not allow the carcass to lie about the person's premises. The carcass shall be disposed of within twenty-four hours after death by cooking, burying, or burning, as provided in this chapter, or by disposing of it, within the allowed time, to a person licensed to dispose of it.

[C24, 27, 31, 35, 39, §**2761;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.18]

87 Acts, ch 96, §1

167.19 Penalty.

The violation of any of the provisions of this chapter or any rule adopted thereunder by the department shall be a simple misdemeanor.

[C97, §5019; C24, 27, 31, 35, 39, §**2762;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.19]

167.20 Appropriation.

The expense attending the inspection provided for in this chapter shall be paid from any unappropriated funds in the state treasury.

[C24, 27, 31, 35, 39, §**2763;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.20]

167.21 Reciprocal agreements with other states.

The department is authorized to enter into reciprocal agreements in behalf of this state with any one or more of the states adjacent to this state, providing for permits to be issued to rendering plants located in either state to transport carcasses to their plants over public highways of this state and the reciprocating state.

[C62, 66, 71, 73, 75, 77, 79, 81, §167.21]

CHAPTER 168

BABY CHICKS

168.1 Definitions.
168.2 License of dealers.
168.3 Term and fee.
168.4 Disposal of fees.
168.5 Requirements of dealers.
168.6 Inspection.
168.7 Administration of chapter.
168.8 Punishment.

168.1 Definitions.

For the purpose of this chapter:

1. *"Baby chicks"* shall mean all domestic fowls six weeks of age or under.

2. *"Person"* shall include an individual, partnership, a corporation, company, firm, society, association, community sales, public sale pavilions, or other holders of public auctions any place in the state, operating in the state, but the term *"person"* shall not be construed to include any person who hatches for sale one thousand chicks per year or less; and the act, omission, or conduct of any officer, agent or other person acting in a representative capacity may be imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.1]

86 Acts, ch 1245, §621

Further definitions; see §159.1

168.2 License of dealers.

Every person engaged in the business of custom hatching, producing baby chicks for sale in this state, or of selling or offering for sale baby chicks from any place located in this state shall obtain a license from the department for each establishment at which said business is conducted. Applications for such licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.2]

168.3 Term and fee.

The license fee shall be ten dollars per annum, and each license shall expire on July 1 after date of issue.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.3]

168.4 Disposal of fees.

All fees collected under the provisions of this chapter shall be paid into the state treasury.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.4]

168.5 Requirements of dealers.

All establishments licensed under this chapter shall:

1. Before baby chicks are delivered for sale, determine that the same are in a healthy condition.

2. Provide ample facilities for the proper care and handling of baby chicks on the premises.

3. Maintain sanitary measures such as will properly suppress and prevent the spread of contagious and infectious diseases of baby chicks.

4. When selling or delivering baby chicks to a purchaser in the state, place the same in a box, crate, coop, or other sanitary container for delivery. Each such box, crate, coop, or other container shall be plainly labeled with the name of seller and description of contents. Such description of contents shall include name of breed and variety, percent of guarantee if chicks are sold as sexed chicks, date of hatch, number of chicks, and any tests made on parent stock.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.5]

168.6 Inspection.

All establishments licensed under this chapter shall be subject to inspection by the department to determine that the requirements of section 168.5 are fully met. The failure to comply with section 168.5 or any of the provisions thereof shall constitute a violation of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.6]

168.7 Administration of chapter.

The secretary of agriculture shall be charged with administration and enforcement of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.7]

168.8 Punishment.

Any person, partnership, corporation, company, firm, society, or association who violates any provision of this chapter shall be guilty of a simple misdemeanor.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.8]

CHAPTER 169

VETERINARY PRACTICE

169.1 Title.
169.2 Legislative purpose.
169.3 Definitions.
169.4 License requirement and exceptions.
169.4A Provision of veterinary services.
169.5 Board of veterinary medicine.
169.6 Disclosure of confidential information.
169.7 Status of persons previously licensed.
169.8 Qualifications.
169.9 Examinations.
169.10 License by endorsement.
169.11 Temporary permit.
169.12 License renewal.
169.13 Discipline of licensees.
169.14 Procedure for suspension or revocation.
169.15 Appeal.
169.16 Reinstatement.
169.17 Forgeries.
169.18 Fraud.
169.19 Enforcement — penalties.
169.20 Veterinary assistants.

169.1 Title.

This chapter shall be known as the *"Iowa Veterinary Practice Act"*.

[C79, 81, §169.1]

169.2 Legislative purpose.

This chapter is enacted as an exercise of the police powers of the state to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine. It is declared that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of the personal and professional qualifications specified in this chapter. This chapter shall be liberally construed to effect the legislative purpose.

[C79, 81, §169.2]

169.3 Definitions.

When used in this chapter:

1. *"Accepted livestock management practice"* includes but is not limited to: Dehorning, castration, docking, vaccination, pregnancy testing, clipping swine needle teeth, ear notching, drawing of blood, relief of bloat, draining of abscesses, branding, and other surgical acts of no greater magnitude; artificial insemination, collecting of semen, implanting of growth hormones, feeding commercial feed defined in section 198.3, or administration or prescription of drugs performed by the owner or contract-feeder thereof of livestock, a bona fide employee, or anyone rendering gratuitous assistance with respect to such livestock. Nothing contained herein shall be construed to permit any person except those persons enumerated in this subsection, to provide purportedly gratuitous assistance with regard to the treatment of animals other than advisory assistance, in return for the purchase of goods or services.

2. *"Accredited or approved college of veterinary medicine"* means any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and that conforms to the standards required for accreditation or approval by the board.

3. *"Animal"* means any nonhuman primate, dog, cat, rabbit, rodent, fish, reptile, and other vertebrate or nonvertebrate life forms, living or dead, except domestic poultry.

4. *"Board"* means the Iowa board of veterinary medicine.

5. *"ECFVG certificate"* means a current certificate issued by the American veterinary medical association educational commission for foreign veterinary graduates, indicating that the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited or approved college of veterinary medicine.

6. *"Fee"* means monetary compensation given for a service consisting primarily of an act or acts described in subsection 10, paragraph *"a"*.

7. *"Licensed veterinarian"* means a person who is validly and currently licensed to practice veterinary medicine in the state of Iowa.

8. *"Owner"* means any person, association, partnership, corporation, or other legal entity in whom is vested the ownership, dominion over, or title to an animal, including one who is obligated by law to care for such animal.

9. *"Person"* means natural person or individual.

10. *"Practice of veterinary medicine"* means any of the following:

a. To diagnose, treat, correct, change, relieve or prevent, for a fee, any animal disease, deformity, defect, injury or other physical or mental conditions or cosmetic surgery; including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, for a fee; or to evaluate or correct sterility or infertility, for a fee; or to render, advise or recommend

with regard to any of the above for a fee.

b. To represent, directly or indirectly, publicly or privately, an ability or willingness to do an act described in paragraph *"a"*.

c. To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in paragraph *"a"*.

11. *"Veterinarian"* means a person who has received a doctor of veterinary medicine degree or its equivalent from an accredited or approved college of veterinary medicine.

12. *"Veterinary assistant"* means an assistant employed by a licensed veterinarian as an animal technician and any other assistant the board designates by rule.

13. *"Veterinary medicine"* includes veterinary surgery, veterinary obstetrics, veterinary dentistry, and all other branches or specialties of veterinary medicine.

[S13, §2538-m; C24, 27, 31, 35, 39, §**2764, 2765;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.1, 169.2; C79, 81, §169.3]

83 Acts, ch 115, §2

Further definitions; see §159.1

169.4 License requirement and exceptions.

A person may not practice veterinary medicine in the state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the board. This chapter shall not be construed to prohibit:

1. An employee of the federal, state, or local government from performing official duties.

2. A person who is a veterinary student in an accredited or approved college of veterinary medicine from performing duties or actions assigned by instructors, or working under the direct supervision of a licensed veterinarian. The board shall issue to any veterinary medicine student who attends an accredited veterinary medicine college or school and who has been certified as being competent by an instructor of such college or school to perform veterinary duties under the direction of an instructor of veterinary medicine or under the direct supervision of a licensed veterinarian, a certificate authorizing the veterinary medicine student to perform such functions.

3. A veterinarian currently licensed in another state from consulting with a licensed veterinarian in this state.

4. Any manufacturer, wholesaler, or retailer from advising with respect to or selling in the ordinary course of trade or business, drugs, feeds, including, but not limited to customer-formula feeds as defined in section 198.3, appliances, and other products used in the prevention or treatment of animal diseases.

5. The owner of an animal or the owner's bona fide employees from caring for and treating the animal in the possession of such owner except where the ownership of the animal was transferred solely for the purpose of circumventing this chapter.

6. A member of the faculty of an accredited college of veterinary medicine from performing functions in the classrooms or continuing education. However, those faculty members who have professional responsibility to the owner must be licensed. A temporary permit may be granted for a period not to exceed two years to interns or residents who are on the staff of the college of veterinary medicine of Iowa state university of science and technology. Such permit shall be renewable annually upon the application of the dean of the college of veterinary medicine.

7. Any person from manufacturing, selling, offering for sale, or applying any pesticide, insecticide, or herbicide.

8. Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals.

9. Any veterinary assistant employed by a licensed veterinarian from performing duties other than diagnosis, prescription, or surgery under the direct supervision of such veterinarian which assistant has been issued a certificate by the board subject to section 169.20.

10. A graduate of a foreign college of veterinary medicine who is in the process of obtaining an ECFVG certificate for performing duties or actions under the direction or supervision of a licensed veterinarian.

11. Any person from advising with respect to or performing accepted livestock management practices.

12. Any person from engaging in the full-time study of the improvement of the quality of livestock.

13. Any person from performing post-mortem examinations on swine or cattle.

14. Any person from collecting or evaluating semen from livestock or poultry, or artificial insemination of livestock and poultry.

15. Any person from castrating, dehorning or branding notwithstanding section 169A.14.

[S13, §2538-a; C24, 27, 31, 35, 39, §**2766;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.3; C79, 81, §169.4]

83 Acts, ch 115, §3

169.4A Provision of veterinary services.

A person, including a corporation, limited liability company, or partnership, established on or after July 1, 1994, other than either a professional corporation organized under chapter 496C or a veterinarian licensed under this chapter, shall not provide veterinary medical services, own a veterinary clinic, or practice in this state, except as otherwise provided in this chapter. However, this section shall not prohibit a person from owning an

interest in real property or a building where a clinic is located, if veterinary medical services or a practice is conducted by the clinic by a professional corporation or a veterinarian licensed under this chapter.

94 Acts, ch 1198, §35

169.5 Board of veterinary medicine.

1. The governor shall appoint, subject to confirmation by the senate, a board of five individuals, three of whom shall be licensed veterinarians and two of whom shall not be licensed veterinarians, but shall be knowledgeable in the area of animal husbandry and who shall represent the general public. The representatives of the general public shall not prepare, grade or otherwise administer examinations to applicants for license to practice veterinary medicine. The board shall be known as the Iowa board of veterinary medicine. Each licensed veterinarian shall be actively engaged in veterinary medicine and shall have been so engaged for a period of five years immediately preceding appointment, the last two of which shall have been in Iowa. A member of the board shall not be employed by or have any material or financial interest in any wholesale or jobbing house dealing in supplies, equipment or instruments used or useful in the practice of veterinary medicine. The person designated as the state veterinarian shall serve as secretary of the board.

Professional associations or societies composed of licensed veterinarians may recommend the names of potential board members to the governor, but the governor is not bound by the recommendations.

2. The members of the board shall be appointed for a term of three years except the terms of the members of the initial board shall be rotated in such a manner that at least one member shall retire each year and a successor be appointed. The term of each member shall commence and end as provided by section 69.19. Members shall serve no more than three terms or nine years total, whichever is less.

3. Any vacancy in the membership of the board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments.

4. Members of the board shall, in addition to necessary traveling and other expenses, set their own per diem compensation at a rate not exceeding the per diem specified in section 7E.6 for each day actually engaged in the discharge of their duties including compensation for the time spent traveling to and from the place of conducting the examination and for a reasonable number of days for the preparation of examination and the reading of papers, in addition to the time actually spent in conducting examinations, within the limits of funds appropriated to the board.

5. The department shall furnish the board with all articles and supplies required for the public use and necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained, and the department shall assess the costs to the board for such articles and supplies. The board shall also reimburse the department for direct and indirect administrative costs incurred in issuing and renewing the licenses.

6. The board shall meet at least once each year as determined by the board. Other necessary meetings may be called by the president of the board by giving proper notice. Except as provided, a majority of the board constitutes a quorum. Meetings shall be open and public except that the board may meet in closed session to prepare, approve, administer, or grade examinations, or to deliberate the qualifications of an applicant for license or the disposition of a proceeding to discipline a licensed veterinarian.

7. At its annual meeting, the board shall organize by electing a president and such other officers as may be necessary. Officers of the board serve for terms of one year and until a successor is elected, without limitation on the number of terms an officer may serve. The president shall serve as chairperson of board meetings.

The duties of the board shall include carrying on the correspondence of the board, keeping permanent accounts and records of all receipts and disbursements by the board and of all board proceedings, including the disposition of all applications for license, and keeping a register of all persons currently licensed by the board. All board records shall be open to public inspection during regular office hours.

At the end of each fiscal year, the president and secretary shall submit to the governor a report on the transactions of the board, including an account of moneys received and disbursed.

8. The board shall set the fees by rule for a license to practice veterinary medicine issued upon the basis of the examination. It shall also set the fees by rule for a license granted on the basis of reciprocity, a renewal of a license to practice veterinary medicine, a certified statement that a licensee is licensed to practice in this state, and an issuance of a duplicate license when the original is lost or destroyed. The fee shall be based upon the administrative costs of sustaining the board and shall include, but shall not be limited to, the following:

a. Per diem, expenses, and travel of board members.

b. Costs to the department for administration of this chapter.

9. Upon a three-fifths vote, the board may:

a. Examine and determine the qualifications and fitness of applicants for a license to practice

veterinary medicine in the state.

b. Issue, renew, or deny issuance or renewal of licenses and temporary permits to practice veterinary medicine in this state.

c. Establish and publish annually a schedule of fees for licensing and registration of veterinarians. The fee schedule shall be based on the board's anticipated financial requirements for the year.

d. Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining licensed veterinarians.

e. Hold hearings on all matters properly brought before the board and administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and commission depositions. An administrative law judge may be appointed pursuant to section 17A.11 to perform those functions which properly repose in an administrative law judge.

f. Employ full-time or part-time personnel, professional, clerical, or special, as are necessary to effectuate the provisions of this chapter.

g. Appoint from its own membership one or more members to act as representatives of the board at any meeting within or without the state where such representation is deemed desirable.

h. Bring proceedings in the courts for the enforcement of this chapter or any regulations made pursuant to this chapter.

i. Adopt, amend, or repeal rules relating to the standards of conduct for, testing of, and revocation or suspension of certificates issued to veterinary assistants. However, a certificate shall not be suspended or revoked by less than a two-thirds vote of the entire board in a proceeding conducted in compliance with section 17A.12.

j. Adopt, amend, or repeal all rules necessary for its government and all regulations necessary to carry into effect the provision of this chapter, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

The powers enumerated above are granted for the purpose of enabling the board to effectively supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective.

10. A person who provides veterinary medical services, owns a veterinary clinic, or practices in this state shall obtain a certificate from the board and be subject to the same standards of conduct, as provided in this chapter and rules adopted by the board, as apply to a licensed veterinarian, unless the board determines that the same standards of conduct are inapplicable. The board shall issue, renew, or deny a certificate; adopt rules relating to the standards of conduct; and take disciplinary action against the person, including suspension or revocation of a certificate, in accordance with the procedures established in section 169.14. Certification fees shall be established by the board pursuant to subsection 9, paragraph *"j"*. Fees shall be established in an amount sufficient to fully offset the costs of certification pursuant to this subsection. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, the department shall retain fees collected to administer the program of certifying veterinary clinics and the fees retained are appropriated to the department for the purposes of this subsection. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, notwithstanding section 8.33, fees which remain unexpended at the end of the fiscal year shall not revert to the general fund of the state but shall be available for use for the following fiscal year to administer the program. For the fiscal year beginning July 1, 2002, and succeeding fiscal years, certification fees shall be deposited in the general fund of the state and are appropriated to the department to administer the certification provisions of this subsection. This subsection shall not apply to an animal shelter, as defined in section 162.2, that provides veterinary medical services to animals in the custody of the shelter.

[S13, §2538-f, -h, -i, -j, -t; C24, 27, 31, 35, §2799-d1, -d5; C39, §**2773, 2777-2780, 2782, 2784, 2785, 2799.1, 2799.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.11, 169.15 – 169.19, 169.21, 169.22, 169.37, 169.41; C79, 81, §169.5]

83 Acts, ch 115, §4; 84 Acts, ch 1067, §23; 88 Acts, ch 1109, §17; 90 Acts, ch 1256, §31; 98 Acts, ch 1202, §32, 46; 2000 Acts, ch 1183, §1, 3; 2001 Acts, ch 24, §70, 74

Confirmation, see §2.32

169.6 Disclosure of confidential information.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor for each separate offense.

[C75, 77, §169.56; C79, 81, §169.6]

169.7 Status of persons previously licensed.

Any person holding a valid license to practice veterinary medicine in this state on January 1, 1979 shall be recognized as a licensed veterinarian

and shall be entitled to retain this status as long as licensee complies with the provisions of this chapter.

[C79, 81, §169.7]

169.8 Qualifications.

Any person desiring a license to practice veterinary medicine in this state shall make written application to the board on a form approved by the board. The application shall show that the applicant is a graduate of an accredited or approved college of veterinary medicine or the holder of an ECFVG certificate. The application shall also show such other information and proof as the board may require by rule. The application shall be accompanied by a fee in the amount established and published by the board.

If the board determines that the applicant possesses the proper qualifications, it shall admit the applicant to the next examination, or if the applicant is eligible for license without examination under section 169.10, the board may grant a license to the applicant. If an applicant is found not qualified to take the examination or for a license without examination, the secretary of the board shall immediately notify the applicant in writing of such finding and the grounds therefor. An applicant found unqualified may request a hearing on the question of the applicant's qualification under the procedure set forth in section 169.14. Any applicant who is found not qualified shall be allowed the return of the application fee.

Based upon an applicant's education, experience, and training, the board may grant a limited license to an applicant to perform a restricted range of activities within the practice of veterinary medicine, as specified by the board.

Every individual licensed under this chapter shall keep the license displayed in the place at which an office is maintained.

The name, location, number of years of practice of the person to whom a license is issued, the number of the certificate, and the date of registration thereof shall be entered in a book kept in the office of the department of agriculture and land stewardship, to be known as the "registry book", and the same shall be open to public inspection.

When any person licensed to practice under this chapter changes residence, the board shall be notified within thirty days and such change shall be noted in the registry book.

[S13, §2538-e, -i, -j; C24, 27, 31, 35, 39, §**2767, 2768, 2775, 2776, 2786;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.4, 169.5, 169.13, 169.14, 169.23; C79, 81, §169.8]

83 Acts, ch 115, §5, 6; 90 Acts, ch 1117, §1

169.9 Examinations.

The board shall hold at least one examination during each year and may hold such additional examinations as it deems necessary. The secretary shall give public notice of the time and place for each examination at least ninety days in advance of the date set for the examination. A person desiring to take an examination shall make application at least thirty days before the date of the examination.

The preparation, administration, and grading of examinations shall be governed by rules prescribed by the board. Examinations shall be designed to test the examinee's knowledge of and proficiency in the subjects and techniques commonly taught in veterinary schools. To pass the examination, the examinee must demonstrate scientific and practical knowledge sufficient to establish competency to practice veterinary medicine in the judgment of the board. All examinees shall be tested by a written examination, supplemented by such oral interviews and practical demonstrations as the board may deem necessary. The board may adopt and use the examination prepared by the national board of veterinary examiners as a part of the examination given to examinees.

After each examination, the board shall notify each examinee of the examination result, and the board shall issue licenses to the individuals successfully completing the examination. The board shall record the new licenses and issue a certificate of registration to the new licensees. Any individual failing an examination shall be admitted to any subsequent examination on payment of the application fee.

In all written examinations the identity of the individual taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the examining board to know by whom written until after the papers have been passed upon.

[S13, §2538-e, -f, -i; C24, 27, 31, 35, 39, §**2772, 2790 – 2792;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.10, 169.27 – 169.29; C79, 81, §169.9]

83 Acts, ch 115, §7

169.10 License by endorsement.

1. The board may issue a license to practice veterinary medicine in this state without written examination to an applicant who meets all of the following requirements:

a. Has graduated from an accredited college of veterinary medicine or has received a certificate from the educational commission for foreign veterinary graduates at least five years prior to application.

b. Has actively practiced for at least two thousand hours during the five years preceding application.

c. Has not previously failed and not subsequently passed a veterinary licensing examination in this state.

d. Holds a current license to practice veterinary medicine in another state or United States territory or province of Canada.

e. Is not subject to license investigation, suspension, or revocation in any state, United States territory, or province of Canada.

f. Provides other information and proof as the board may require by rule.

2. The board may issue a license to practice veterinary medicine in this state without written or oral examination to an applicant who meets all of the following requirements:

a. Holds a current certification as a diplomate of a national specialty board or college recognized by the board by rule.

b. Is not subject to license investigation, suspension, or revocation in any state, United States territory, or province of Canada.

c. Provides other information and proof as the board may require by rule.

[S13, §2538-i, -i1; C24, 27, 31, 35, 39, §**2794 – 2797;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.31 – 169.34; C79, 81, §169.10]

90 Acts, ch 1117, §2

169.11 Temporary permit.

The board may issue without examination a temporary permit to practice veterinary medicine in this state:

1. To a qualified applicant for license pending examination and the temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued. The temporary permit holder should keep the secretary continually advised of the permit holder's current address.

2. To a nonresident veterinarian validly licensed in another state, territory, or district of the United States or a foreign country who pays the fee established and published by the board. Such temporary permit shall be issued for a period of no more than one hundred eighty days and no more than one permit shall be issued to a person during each calendar year.

[C79, 81, §169.11]

169.12 License renewal.

All licenses shall expire in multiyear intervals as determined by the board but may be renewed by registration with the board and payment of the registration renewal fee established and published by the board. Prior to expiration the secretary shall mail a notice to each licensed veterinarian that the license will expire and provide the licensee with a form for registration.

Any person who shall practice veterinary medicine after license expiration is practicing in violation of this chapter. However, a person may renew an expired license within five years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After five years have elapsed since the date of expiration, a license may not be renewed, and the holder must make application for a new license and take the license examination.

The board may by rule waive the payment of the registration renewal fee of a licensed veterinarian during the period when the veterinarian is on active duty with any branch of the armed services of the United States.

Any licensee who is desirous of changing residence to another state or territory shall, upon application to the department and payment of the legal fee, receive a certified statement that the licensee is a duly licensed practitioner in this state.

[S13, §2538-j; C24, 27, 31, 35, 39, §**2769, 2769.1, 2798;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.6, 169.35; C79, 81, §169.12]

169.13 Discipline of licensees.

The board of veterinary medicine, after due notice and hearing, may revoke or suspend a license to practice veterinary medicine if it determines that a veterinarian licensed to practice veterinary medicine is guilty of any of the following acts or offenses:

1. Knowingly making misleading, deceptive, untrue, or fraudulent representation in the practice of the profession.

2. Being convicted of a felony in the courts of this state or another state, territory, or country. Conviction as used in this paragraph includes a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding in which a finding or verdict of guilt is made or returned, but the adjudication or guilt is either withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state is conclusive evidence.

3. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of veterinary medicine.

4. Having the person's license to practice veterinary medicine revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

5. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice veterinary medicine.

6. Being adjudged mentally incompetent by a court of competent jurisdiction. The adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

7. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of veterinary medicine as defined in rules adopted by

the board, in which proceeding actual injury to an animal need not be established; or the committing by a veterinarian of an act contrary to honesty, justice, or good morals, whether the act is committed in the course of the practice or otherwise, and whether committed within or without this state.

8. Inability to practice veterinary medicine with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition. The board, upon probable cause, may compel a veterinarian to submit to a mental or physical examination by designated physicians. Failure of a veterinarian to submit to an examination constitutes an admission to the allegations made against that veterinarian and the finding of fact and decision of the board may be entered without the taking of testimony or presentation of evidence. At reasonable intervals, a veterinarian shall be afforded an opportunity to demonstrate that the veterinarian can resume the competent practice of veterinary medicine with reasonable skill and safety to animals.

A person licensed to practice veterinary medicine who makes application for the renewal of the person's license as required by section 169.12 gives consent to submit to a mental or physical examination as provided by this paragraph when directed in writing by the board. All objections shall be waived as to the admissibility of the examining physician's testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a veterinarian in another proceeding and are confidential except for other actions filed against a veterinarian to revoke or suspend that person's license.

9. Willful or repeated violation of lawful rules adopted by the board or violation of a lawful order of the board, previously entered by the board in a disciplinary hearing.

[S13, §2538-e; C24, 27, 31, 35, 39, §**2799;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.36; C79, 81, §169.13]

83 Acts, ch 115, §8

169.14 Procedure for suspension or revocation.

A proceeding for the revocation or suspension of a license to practice veterinary medicine or to discipline a person licensed to practice veterinary medicine shall be substantially in accord with the following:

1. The board, upon its own motion or upon a verified complaint in writing, may request the department of inspections and appeals to conduct an investigation of the charges contained in the complaint. The department of inspections and appeals shall report its findings to the board, and the board may issue an order fixing the time and place for hearing if a hearing is deemed warranted. A written notice of the time and place of the hearing, together with a statement of the charges, shall be served upon the licensee at least ten days before the hearing in the manner required for the service of notice of the commencement of an ordinary action.

2. If the licensee has left the state, the notice and statement of the charges shall be so served at least twenty days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by those rules. If the licensee fails to appear either in person or by counsel at the time and place designated in the notice, the board shall proceed with the hearing.

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The member or officer shall issue subpoenas at the request and on behalf of the licensee.

4. A mechanized or stenographic record of the proceedings shall be kept. The licensee shall be given the opportunity to appear personally and by attorney, with the right to produce evidence in one's own behalf, to examine and cross-examine witnesses, and to examine documentary evidence produced against the licensee.

5. If a person refuses to obey a subpoena issued by the presiding member or administrative law judge or to answer a proper question put to that person during the hearing, the presiding member or administrative law judge may invoke the aid of a court of competent jurisdiction in requiring the attendance and testimony of that person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

6. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and attorney shall be given the opportunity to appear personally to present the licensee's position and arguments to the board. The board shall determine the charge upon the merits on the basis of the evidence in the record before it.

7. Upon three members of the board voting in favor of finding the licensee guilty of an act or offense specified in section 169.13, the board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend the license to practice veterinary medicine for a period to be determined by the board.

b. Revoke the license to practice veterinary medicine.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the veterinarian on probation. The probation ordered may be vacated upon noncompliance. The board may restore and reissue a license to practice veterinary medicine, and may impose a disciplinary or corrective measure which it might originally have imposed.

8. Judicial review of the board's action may be sought in accordance with chapter 17A.

9. The filing of a petition for review does not in itself stay execution or enforcement of board action. Upon application, the board or the review court, in appropriate cases, may order a stay pending the outcome of the review proceedings.

[C31, 35, §2799-d1, -d3, -d4, -d6; C39, §**2799.1, 2799.3, 2799.4, 2799.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.37, 169.39, 169.40, 169.42; C79, 81, §169.14]

83 Acts, ch 115, §9; 88 Acts, ch 1109, §18; 88 Acts, ch 1158, §44; 89 Acts, ch 296, §19; 98 Acts, ch 1202, §33, 46

169.15 Appeal.

Any party aggrieved by a decision of the board may appeal the matter to the district court as provided in section 17A.19.

[C79, 81, §169.15]

83 Acts, ch 115, §10

169.16 Reinstatement.

A person whose license is suspended or revoked may be relicensed or reinstated at any time by a vote of five members of the board after written application made to the board showing cause justifying relicensing or reinstatement. Examination of the applicant may be waived by the board.

[C79, 81, §169.16]

83 Acts, ch 115, §11

169.17 Forgeries.

Any person who shall file or attempt to file with the department or board of veterinary medicine any false or forged diploma or certificate or affidavit of identification or qualification is guilty of a fraudulent practice.

[C24, 27, 31, 35, 39, §**2803;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.43; C79, 81, §169.17]

169.18 Fraud.

Any person who shall present to the department or board of veterinary medicine a diploma or certificate of which the person is not the rightful owner, for the purpose of procuring a license, or who shall falsely impersonate anyone to whom a license has been granted by said department, is guilty of a fraudulent practice.

[C24, 27, 31, 35, 39, §**2804;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.44; C79, 81, §169.18]

169.19 Enforcement — penalties.

1. Any person who practices veterinary medicine without a currently valid license or temporary permit is guilty of a fraudulent practice. Each act of such unlawful practice shall constitute a distinct and separate offense.

2. A person who shall practice veterinary medicine without a currently valid license or temporary permit shall not receive any compensation for services so rendered.

3. The county attorney of the county in which any violation of this chapter occurs shall conduct the necessary prosecution for such violation. Notwithstanding this provision, the board of veterinary medicine or any citizen of this state may bring an action to enjoin any person from practicing veterinary medicine without a currently valid license or temporary permit. The action brought to restrain a person from engaging in the practice of veterinary medicine without possessing a license shall be brought in the name of the state of Iowa. If the court finds that the individual is violating or threatening to violate this chapter it shall enter an injunction restraining the individual from such unlawful acts.

4. The successful maintenance of an action based on any one of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other remedy set forth in this section.

5. The department shall co-operate with the board of veterinary medicine in the enforcement of the provisions of this chapter.

[S13, §2538-l; C24, 27, 31, 35, 39, §**2805 – 2807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.45 – 169.48; C79, 81, §169.19]

83 Acts, ch 115, §12

169.20 Veterinary assistants.

A veterinarian may employ certified veterinary assistants for any purpose other than diagnosis, prescription or surgery. Veterinary assistants must act under the direct supervision of a licensed veterinarian.

The board shall issue certificates to veterinary assistants who have met the educational, experience and testing requirements as the board shall specify by rule. The certificate is not a license and does not expire. The certificate may be suspended or revoked, or any other disciplinary action may be taken as specified in section 272C.3, subsection 2. All disciplinary actions shall be taken pursuant to section 169.14.

83 Acts, ch 115, §1

CHAPTER 169A

MARKING AND BRANDING OF LIVESTOCK

169A.1 Definitions.
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169A.12 Fees to general fund. Repealed by 2001 Acts, ch 183, §23.
169A.13 Renewal of brand and fee.
169A.13A Branding administration fund.
169A.14 Tampering.
169A.15 Effect of prior brands. Repealed by 95 Acts, ch 60, §10.
169A.16 Elimination of competing brands — fee waiver. Repealed by 96 Acts, ch 1119, §2.

169A.1 Definitions.

When used in this chapter:

1. *"Animal"* means a creature belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 481A.1; or poultry.

2. *"Brand"* means an identification mark that is burned into the hide of a live animal by a hot iron or another method approved by the secretary. A brand shall include a cryo-brand.

3. *"Computer"* means the same as defined in section 22.3A.

4. *"Cryo-brand"* means a brand produced by application of extreme cold temperature.

5. *"Identification device"* means a device which when installed is designed to store information regarding an animal or the animal's owner in an electronic format which may be accessed by a computer for purposes of reading or manipulating the information.

6. *"Install"* means to place an identification device onto or beneath the hide or skin of an animal, including but not limited to fixing the device into the ear of an animal or implanting the device beneath the skin of the animal.

7. *"Livestock"* means horses, cattle, sheep, mules, or asses.

[C66, 71, 73, 75, 77, 79, 81, §187.1]
86 Acts, ch 1245, §635
C93, §169A.1
95 Acts, ch 60, §1; 98 Acts, ch 1208, §1
Further definitions; see §159.1

169A.2 Adoption of brand.

Any person owning livestock may adopt a brand for the purpose of branding the livestock. The person shall have the exclusive right to use the brand in this state, after recording the brand as provided in sections 169A.4 and 169A.6 or 169A.9.

[C66, 71, 73, 75, 77, 79, 81, §187.2]
C93, §169A.2
95 Acts, ch 60, §2

169A.3 Must be recorded.

Evidence of an animal's ownership shall not be established in court by the animal's brand, unless the animal is livestock, the brand complies with the requirements of this chapter, and the brand is recorded as provided in sections 169A.4 and 169A.6 or 169A.9.

[C66, 71, 73, 75, 77, 79, 81, §187.3]
C93, §169A.3
95 Acts, ch 60, §3

169A.4 Recording — fee.

A person desiring to adopt a brand shall forward to the secretary a brand application on forms approved by the secretary and providing for the desired brand, together with a recording fee of twenty-five dollars. Upon receipt, the secretary shall file the application and fee, unless the brand is of record of another person or conflicts with or closely resembles the brand of another person. If the secretary determines that such brand is of record or conflicts with or closely resembles the brand of another person, the secretary shall not record it but shall return the facsimile and fee to the forwarding person. However, the secretary shall renew a conflicting brand if the brand was originally recorded prior to July 1, 1996, and the brand is renewed as provided in section 169A.13. The department may notify each owner of a conflicting brand that the owner may record a nonconflicting brand. The power of examination, approval, acceptance, or rejection shall be vested in the secretary. The secretary shall file all brands offered for record pending the examination provided for in this section. The secretary shall make such examination as promptly as possible. If the brand is accepted, the brand's ownership shall vest in the person recording it from the date of filing.

[C51, §921 – 923; R60, §1556 – 1558; C73, §1480, 1481, 3809; C97, §2335, 2336; C24, 27, 31, 35, 39, §**2977, 2978;** C46, 50, 54, 58, 62, §187.2, 187.3;

C66, 71, 73, 75, 77, 79, 81, §187.4]
C93, §169A.4
96 Acts, ch 1119, §1; 2001 Acts, ch 183, §20; 2002 Acts, ch 1050, §61, 65

169A.5 Effect of record.
The recording provided for in sections 169A.4 and 169A.6 or 169A.9 shall secure the brand to the person and shall be considered personal property of said owner.
[C66, 71, 73, 75, 77, 79, 81, §187.5]
C93, §169A.5

169A.6 Certified copy furnished.
As soon as the brand is recorded by the secretary, the secretary shall furnish the owner of the brand with a certified copy of the record of the brand.
[C66, 71, 73, 75, 77, 79, 81, §187.6]
C93, §169A.6
95 Acts, ch 60, §4

169A.7 Unlawful use of brand — penalty.
A person shall not use any brand for branding livestock, unless the brand has been recorded as provided by this chapter. A person may use an unrecorded hot brand or an unrecorded cryo-brand, consisting only of Arabic numerals, if the person uses the unrecorded brand in conjunction with the person's recorded brand, and only for purposes of identifying animals within a herd. However, the unrecorded brand shall not be evidence of ownership. A person convicted of violating this section shall be guilty of an aggravated misdemeanor.
[C66, 71, 73, 75, 77, 79, 81, §187.7]
C93, §169A.7
95 Acts, ch 60, §5

169A.8 Sale or assignment of brand.
Any brand recorded as provided in section 169A.4 shall be the property of the person causing such record to be made and shall be subject to sale, assignment, transfer, devise, and descent as personal property. Instruments of writing, evidencing the sale, assignment, or transfer of such brand shall be recorded by the secretary and the fee for recording such sale, assignment, or transfer shall be in an amount established by rule of the secretary pursuant to chapter 17A, which amount shall be based upon the administrative costs of maintaining the brand program provided for by this chapter.
[C66, 71, 73, 75, 77, 79, 81, §187.8]
C93, §169A.8

169A.9 Certified copy to new owner.
As soon as instruments of writing evidencing the sale, assignment, or transfer of a brand have been recorded by the secretary, the secretary shall furnish such new owner one certified copy of such sale, assignment, or transfer.
[C66, 71, 73, 75, 77, 79, 81, §187.9]
C93, §169A.9

169A.10 Evidence of ownership — investigations.
1. In a suit at law or equity or in any criminal proceedings in which the title to an animal is an issue, the following shall be admissible as evidence:
a. A certified copy of a record as provided for in section 169A.6 or 169A.9. The certified copy shall be prima facie evidence of the ownership of livestock by the person in whose name the brand is recorded.
b. Information stored in an identification device which identifies the owner of an animal. The information shall be prima facie evidence of the ownership of the animal, if all of the following apply:
(1) The identification device meets applicable design standards adopted by the international standard organization, or which may be adopted by the department.
(2) The identification device is installed according to manufacturer's requirements.
(3) The information is not in conflict with a certified copy of a record as provided for in section 169A.6 or 169A.9.
c. The results of a sheriff's investigation as provided in this section.
2. A dispute involving the custody or ownership of an animal branded or subject to electronic identification under this chapter shall be investigated, on request, by the sheriff of the county where the animal is located. The sheriff may call upon the services of an authorized person, approved by the secretary, in reading the brands on animals. The cost of the services shall be paid by the person requesting the investigation. The results of the sheriff's investigation are a public record.
[C66, 71, 73, 75, 77, 79, 81, §187.10]
C93, §169A.10
95 Acts, ch 60, §6; 98 Acts, ch 1208, §2

169A.11 Publication of brands list.
The secretary from time to time shall cause to be published in book form a list of all brands on record at the time of the publication. The secretary may supplement the lists from time to time. The publication shall contain a facsimile of all brands recorded and the owner's name and post office address. The records shall be arranged in convenient form for reference. The secretary shall deliver one copy of the brand book and supplements to the sheriff of each county. The books and supplements shall be delivered without cost to the county. The books and supplements shall be public records as provided in chapter 22. The secretary may sell the books and supplements to the general public at the cost of printing and mailing each book.

[C66, 71, 73, 75, 77, 79, 81, §187.11]
C93, §169A.11
95 Acts, ch 60, §7

169A.12 Fees to general fund. Repealed by 2001 Acts, ch 183, § 23.

169A.13 Renewal of brand and fee.
Each owner of a brand which is recorded pursuant to section 169A.4 shall renew the brand every five years after originally recording the brand and pay a renewal fee. The amount of the renewal fee is twenty-five dollars. The secretary shall notify every owner of a brand of record at least thirty days prior to the date of the renewal period. If the owner of a brand of record does not renew the brand and pay the renewal fee within six months after it is due, the owner shall forfeit the brand and the brand shall no longer be recorded. A forfeited brand shall not be issued to any other person for five years following date of forfeiture.
[C66, 71, 73, 75, 77, 79, 81, §187.13]
C93, §169A.13
95 Acts, ch 60, §8; 96 Acts, ch 1034, §8; 2001 Acts, ch 183, §21; 2002 Acts, ch 1119, §24
Section amended

169A.13A Branding administration fund.
1. A branding administration fund is created in the state treasury under the control of the department. The fund is composed of moneys collected in fees as provided in this chapter, moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund.
2. The fund is subject to warrants written by the director of revenue and finance, drawn upon the written requisition of the department.
3. Moneys in the fund are appropriated to the department for the exclusive purpose of supporting the administration of this chapter by the department.
4. The department may adopt rules pursuant to chapter 17A to administer this section.
5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.
2001 Acts, ch 183, §22

169A.14 Tampering.
1. A person shall not do any of the following to an animal:
a. Brand, attempt to brand, or cause to be branded livestock, without authorization from the owner.
b. Efface, deface, or obliterate or attempt to efface, deface, or obliterate a brand, without authorization from the owner of the livestock.
c. Brand, attempt to brand, or cause to be branded a recorded brand on livestock, without authorization of the owner of the brand.
d. Install an electronic device or remove or damage an installed electronic device, without authorization from the owner of an animal.
2. A person violating this section is guilty of a fraudulent practice as provided in chapter 714.
[C66, 71, 73, 75, 77, 79, 81, §187.14]
C93, §169A.14
98 Acts, ch 1208, §3

169A.15 Effect of prior brands. Repealed by 95 Acts, ch 60, § 10.

169A.16 Elimination of competing brands — fee waiver. Repealed by 96 Acts, ch 1119, § 2.

CHAPTER 169B

ESTRAYS AND TRESPASSING ANIMALS

Chapter repealed by 94 Acts, ch 1173, §42;
§169B.49 also repealed by 94 Acts, ch 1103, §23
See chapter 169C

CHAPTER 169C

TRESPASSING OR STRAY LIVESTOCK

169C.1 Definitions.
169C.2 Custody.
169C.3 Notice to livestock owner.
169C.4 Liability.
169C.5 Satisfaction for damages.

169C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Aggrieved party"* means a landowner or a local authority.

2. *"Landowner"* means a person who holds an interest in land, including a titleholder or tenant.

3. *"Livestock"* means an animal belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 481A.1; or poultry.

4. *"Livestock care provider"* means a person designated by a local authority to provide care to livestock which is distrained by a local authority.

5. *"Livestock owner"* means the person who holds title to livestock or who is primarily responsible for the care and feeding of the livestock as provided by the titleholder.

6. *"Local authority"* means a city as defined in section 362.2 or a county as provided in chapter 331.

7. *"Maintenance"* means the provision of shelter, food, water, or a nutritional formulation as required pursuant to chapter 717.

97 Acts, ch 57, §1

Further definitions, see §159.1

169C.2 Custody.

A landowner may take custody of livestock if the livestock trespasses upon the landowner's land or strays from the livestock owner's control on a public road which adjoins the landowner's land. A local authority may take custody of the livestock as provided by the local authority. The landowner shall not transfer custody of the livestock to a person other than the livestock owner or a local authority, unless the livestock owner approves of the transfer. A local authority shall not transfer custody of the livestock to a person other than the livestock owner or a livestock care provider.

97 Acts, ch 57, §2

169C.3 Notice to livestock owner.

1. *a.* If livestock trespasses upon a landowner's land or the landowner takes custody of the livestock, the landowner shall deliver notice of the trespass or custody to the livestock owner within forty-eight hours following discovery of the trespass or taking custody of livestock which has not trespassed. If a local authority takes custody of the livestock, the local authority shall deliver notice of the custody to the livestock owner within forty-eight hours after taking custody of the livestock. The forty-eight-hour period shall exclude any time that falls on a Sunday or a holiday recognized by the state or the United States. The notice shall be made in writing and delivered by certified mail or personal service to the last known mailing address of the livestock owner.

b. If the aggrieved party does not know the name and address of the livestock owner, the aggrieved party shall make reasonable efforts to determine the identity of the livestock owner. The reasonable efforts shall include obtaining the name and address of the owner of the brand appearing on the livestock from the department of agriculture and land stewardship under chapter 169A. If the name and address of the livestock owner cannot be determined, the aggrieved party shall publish the notice as soon as possible at least once each week for two consecutive weeks in a newspaper having general circulation in the county where the livestock is located.

2. A notice required under this section shall at least provide all of the following:

a. The name and address of the landowner or local authority.

b. A description of the livestock and where it trespassed or strayed.

c. An estimate of the amount of the livestock owner's liability.

97 Acts, ch 57, §3

169C.4 Liability.

1. A livestock owner shall be liable to the following persons:

a. To a landowner for damages caused by the livestock owner's livestock which have trespassed on the landowner's land, including but not limited to property damage and costs incurred by the landowner's custody of the livestock including maintenance costs. A livestock owner's liability is not affected by the failure of a landowner to take custody of the livestock. A livestock owner shall not be liable for damages incurred by a landowner if the livestock trespassed through a fence that was not maintained by the landowner as required pursuant to chapter 359A.

b. To a landowner who takes custody of livestock on a public road as provided in section 169C.2 for costs incurred by the landowner in taking custody of the livestock, including maintenance costs.

c. To a local authority which takes custody of livestock for costs incurred by the local authority in taking custody of the livestock, including maintenance costs.

2. An aggrieved party who fails to provide timely notice of a livestock's trespass or custody as required by section 169C.3 shall not be entitled to compensation for damages for the period of time during which the aggrieved party fails to provide timely notice.

3. A landowner is not liable for an injury or death suffered by the livestock in the landowner's custody, unless the landowner caused the injury or death. The landowner is not liable for livestock that strays from the landowner's land. An aggrieved party is not liable for livestock that strays from the control of the aggrieved party.

97 Acts, ch 57, §4; 98 Acts, ch 1100, §21, 22

169C.5 Satisfaction for damages.

1. *a.* After receiving notice by an aggrieved party as required by section 169C.3, the livestock owner shall pay all damages to the aggrieved party for which the livestock owner is liable.

b. The aggrieved party or the livestock owner may bring a civil action in order to determine the livestock owner's liability and the amount of any claim for damages. The aggrieved party or livestock owner must bring the action within thirty days following receipt or publication of the notice as required by section 169C.3. The court may join all other claims arising out of the same facts that are alleged in the claim for damages. The civil action may be heard by a district judge or a district associate judge. The civil action may be heard by the district court sitting in small claims as provided in chapter 631.

c. If the livestock is in the custody of an aggrieved party or livestock care provider, a rebuttable presumption arises that the livestock has trespassed or strayed from the control of the livestock owner. The rebuttable presumption shall not apply if a criminal charge has been filed involving the removal or transfer of the livestock. The burden of proof regarding all other matters of dispute shall be on the aggrieved party.

d. The failure of an aggrieved party to provide notice as required by section 169C.3 shall not bar the aggrieved party from being awarded a judgment, if the court determines that the livestock owner had actual knowledge that the livestock had trespassed or strayed and the name and address of the aggrieved party.

2. If a civil action is brought by the livestock owner or aggrieved party, the matter shall be heard by a court on an expedited basis. The aggrieved party shall provide for the transfer of the livestock to the livestock owner, if the livestock owner posts a bond or other security with the court in the amount of the aggrieved party's claim. If a bond or security is not posted, the aggrieved party or livestock care provider shall keep custody of and provide maintenance to the livestock. However, the livestock owner shall post the bond or other security if the matter is set for hearing more than thirty days from the date that the petition bringing the civil action is filed. The court shall order the immediate disposition of the livestock as provided in chapter 717, if the livestock is permanently distressed by disease or injury to a degree that would result in severe or prolonged suffering.

3. If a civil action is not timely brought as provided in this section, title to the livestock shall transfer to the aggrieved party thirty days following receipt of the notice by the livestock owner or the first date of the notice's publication as required pursuant to section 169C.3, if the parties fail to agree to the amount, terms, or conditions of payment or if the identity of the livestock owner cannot be determined. Title to the livestock shall transfer subject to any applicable security interests or liens.

4. A landowner is liable to the livestock owner for twice the fair market value of livestock that the landowner transfers to a person other than a local authority in violation of section 169C.2.

5. If the aggrieved party is a local authority, the local authority shall reimburse the landowner for the landowner's damages from proceeds received from the sale of the livestock, after satisfying any superior security interests or liens.

97 Acts, ch 57, §5

CHAPTER 170

RESERVED

CHAPTER 170A

RESERVED

CHAPTER 170B

IOWA HOTEL SANITATION CODE

Chapter transferred to chapter 137C;
90 Acts, ch 1204, §66

CHAPTER 170C

HOME FOOD ESTABLISHMENTS

Chapter transferred to chapter 137D

CHAPTER 171

COLD STORAGE

Repealed by 98 Acts, ch 1032, §9

CHAPTER 172

FROZEN FOOD LOCKER PLANTS

Chapter repealed by 2000 Acts, ch 1100, §2

CHAPTER 172A

BONDING OF SLAUGHTERHOUSE OPERATORS

172A.1 Definitions.
172A.2 License required.
172A.3 Application for license.
172A.4 Proof of financial responsibility required.
172A.5 Bonded packers registration.
172A.6 Low volume dealers exempt from license and bond.
172A.7 Access to records.
172A.8 Reciprocal agreements.
172A.9 Payment for livestock.
172A.10 Injunctions — criminal penalties.
172A.11 Suspension of license.
172A.12 Revocation of license.
172A.13 Rules.
172A.14 Reserved.
172A.15 to 172A.18 Transferred to §163.34 to 163.37.

172A.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Agent"* means a person engaged in the buying or soliciting in this state of livestock for slaughter exclusively on behalf of a dealer or broker.

2. *"Animals"* or *"livestock"* includes cattle, calves, swine, or sheep.

3. *"Dealer"* or *"broker"* means any person, other than an agent, who is engaged in this state in the business of slaughtering live animals or receiving, buying or soliciting live animals for slaughter, the meat products of which are directly or indirectly to be offered for resale or for public consumption.

4. *"Person"* means an individual, partnership, association or corporation, or any other business unit.

[C73, 75, 77, 79, 81, §172A.1]
86 Acts, ch 1245, §623
Further definitions; see §159.1

172A.2 License required.

No person shall act as a dealer or broker without first being licensed. No person shall act for any dealer or broker as an agent unless such dealer or broker is licensed, has designated such agent to act in the dealer's or broker's behalf, and has notified the secretary of the designation in the dealer's or broker's application for license or has given official notice in writing of the appointment of the agent and the secretary has issued to the agent an agent's license. A dealer or broker shall be accountable and responsible for contracts made by an agent in the course of the agent's employment. The license of an agent whose employment by the dealer or broker is terminated shall be void on the date written notice of termination is received by the secretary. The license of a dealer, broker, or agent, unless revoked, shall expire on the last day of June following the date of issue. The annual fee for the license of a dealer or broker is fifty dollars.

The annual fee for an agent's license is ten dollars.

No person may be issued a license if that person previously has had a license revoked, or previously was issued a license and the secretary suspended that license, unless the order of suspension or revocation is thereafter terminated by the secretary.

[C73, 75, 77, 79, 81, §172A.2]

172A.3 Application for license.

Application for a license as a dealer or broker or as an agent shall be made in writing to the department. The application shall state the nature of the business, the municipal corporation, township and county, the post-office address at which the business is to be conducted, and such additional information as the department may prescribe.

The applicant upon satisfying the department of the applicant's character and good faith in seeking to engage in such business and upon complying with such other requirements specified in this chapter, shall be issued by the department a license to conduct the business of a dealer, broker, or agent at the place named in the application.

[C73, 75, 77, 79, 81, §172A.3]

172A.4 Proof of financial responsibility required.

No license shall be issued by the secretary to a dealer or broker until the applicant has furnished proof of financial responsibility as provided in this section. The proof may be in the following forms:

1. A bond of a surety company authorized to do business in the state of Iowa in the form prescribed by and to the satisfaction of the secretary, conditioned for the payment of a judgment against the applicant furnishing the bond because of nonpayment of obligations in connection with the purchase of animals.

a. The amount of bond for an established dealer or broker who does not maintain a business location in this state shall be not less than the nearest multiple of five thousand dollars above twice the average daily value of purchases of livestock originating in this state, handled by such applicant during the preceding twelve months or such parts thereof as the applicant was purchasing livestock. The bond of a person who does not maintain a business location in this state shall be conditioned for the payment only of those claims which arise from purchases of livestock originating in this state.

b. The amount of bond for an established dealer or broker who maintains one or more business locations in this state shall be not less than the nearest multiple of five thousand dollars above twice the average daily value of purchases of livestock originating in this state handled by the applicant during the preceding twelve months or such parts thereof as the applicant was purchasing livestock. The bond of a person who maintains one or more business locations in this state shall be conditioned for the payment only of those claims which arise from purchases of livestock originating in this state.

c. If a new dealer or broker not previously covered by this chapter applies for a license, the amount of bond shall be based on twice the estimated average daily value of purchases of livestock originating in this state.

d. For the purpose of computing average daily value, two hundred sixty is deemed the number of business days in a year.

e. Whenever a dealer or broker's weekly purchases exceed one hundred fifty percent of the dealer's or broker's average weekly volume, the department shall require additional bond in an amount determined by the department.

f. The licensee and surety of the bond shall be held and firmly bound unto the secretary as trustee for all persons who may be damaged because of nonpayment of obligations in connection with the purchase of animals originating in this state. Any person damaged because of such nonpayment may maintain suit in the person's own behalf to recover on the bond, even though not named as a party to the bond.

g. For purposes of subsection 1, *"purchases of livestock originating in this state"* shall not include purchases by dealers or brokers from their subsidiaries.

2. A bond equivalent may be filed in lieu of a bond. The bond equivalent shall be in the form of a trust agreement and the fund of the trust shall be in the form of fully negotiable obligations of the United States or certificates of deposit insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

The trust agreement shall be in the form prescribed by the secretary and executed to the satisfaction of the secretary. The trustee of the trust agreement shall be an institution located in this state in which the funds are invested or deposited.

The trust agreement shall provide as beneficiary, the secretary for the benefit of those persons damaged because of nonpayment of obligations in connection with the purchase of animals originating in this state. The fund in trust shall be an amount calculated in the exact manner as provided in subsection 1. The fund in trust shall not be subject to attachment for any other claim, or to levy of execution upon a judgment based on any other claim.

3. Any person damaged by nonpayment of obligations or by any misrepresentation or fraud on the part of a broker or dealer may maintain an action against the broker or dealer, and the sureties on the bonds or the trustee of a trust fund. The aggregate liability of the sureties or the trust for all such damage shall not exceed the amount of the bond or trust. In the event that the aggregate claims exceed the total amount of the bond or trust, the amount payable on account of any claim

shall be in the same proportion to the amount of the bond or trust as the individual claim bears to the aggregate claims.

Unless the person damaged files claim with the dealer or broker, and with the sureties or trustee, and with the department within ninety days after the date of the transaction on which the claim is based, the claimant shall be barred from maintaining an action on the bond or trust and from receiving any proceeds from the bond or trust.

4. Whenever the secretary determines that the business volume of the applicant or licensee is such as to render the bond or trust inadequate, the amount of the bond or trust shall be, upon notice, adjusted.

5. All bonds and trust agreements shall contain a provision requiring that at least thirty days' prior notice in writing be given to the secretary by the party terminating the bond or trust agreement as a condition precedent to termination.

Whenever a bond or a trust agreement is to be terminated by a cancellation by the surety or trustee, the secretary shall cause to be published notices of the proposed cancellation not less than ten days prior to the date the cancellation is effective. The notices shall be published as follows:

a. In the Iowa administrative code.

b. In a newspaper of general circulation in the county in which the licensee maintains a business location, or if the licensee maintains no business location in this state, then in the county where the licensee transacts a substantial part of the licensee's business.

c. By general news release to all news media. Failure by the secretary to cause the publication of notice as required by this paragraph shall not be deemed to prevent or delay the cancellation.

The termination of a bond or a trust agreement shall not release the parties from any liability arising out of the facts or transactions occurring prior to the termination date.

Trust funds shall not be withdrawn from trust by a licensee until the expiration of ninety days after the date of termination of the trust, and then only if no claims secured by the agreement have been filed with the secretary. If any claims have been filed with the secretary, the withdrawal of funds by the licensee shall not be permitted until the claims have been satisfied or released and evidence of the satisfaction or release filed with the secretary.

6. A person who is not a resident of this state and who either maintains no business location in this state or maintains one or more business locations in this state, and a person who is a resident of this state and who maintains more than one business location in this state, may submit a consolidated proof of financial responsibility. The consolidated proof of financial responsibility shall consist of a bond or a trust agreement meeting all of the requirements of this section, except that the calculation of the amount of the bond or the amount of the trust fund shall be based on the average daily value of all purchases of livestock originating in this state. A person who submits consolidated proof of financial responsibility shall maintain separate records for each business location, and shall maintain such other records respecting purchases of livestock as the secretary by rule shall prescribe.

[C73, 75, 77, 79, 81, §172A.4]

172A.5 Bonded packers registration.

A dealer or broker who has a bond required by the United States department of agriculture under the Packers and Stockyards Act of 1921 as amended, Title VII, sections 181 through 231, United States Code, shall be exempt from the provisions of this chapter upon registration with the secretary. Registration shall be effective upon filing with the secretary a certified copy of the bond filed with the United States department of agriculture, and shall continue in effect until that bond is terminated.

[C73, 75, 77, 79, 81, §172A.5]

172A.6 Low volume dealers exempt from license and bond.

The license and financial responsibility provisions of this chapter do not apply to a person who is licensed as provided in chapter 137F who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars during any period of the preceding twelve months. A person licensed under that chapter is subject to other provisions of this chapter, including the regulatory and penal provisions of this chapter.

The provisions of this chapter shall not apply to any other person who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars based upon the preceding twelve months or such part thereof as the person was purchasing livestock.

[C73, 75, 77, 79, 81, §172A.6]

98 Acts, ch 1032, §4; 98 Acts, ch 1162, §25, 30; 2000 Acts, ch 1100, §1

172A.7 Access to records.

Every dealer or broker shall during all reasonable times permit an authorized representative of the department to examine all records relating to the business necessary in the enforcement of this chapter.

[C73, 75, 77, 79, 81, §172A.7]

172A.8 Reciprocal agreements.

The department shall have the power and authority to enter into reciprocal agreements with the authorized representatives of other federal or state jurisdictions for the exchange of information and audit reports on a co-operative basis which may assist the department in the proper adminis-

tration of this chapter.

[C73, 75, 77, 79, 81, §172A.8]

172A.9 Payment for livestock.

1. Each dealer, or broker purchasing livestock, before the close of the next business day following either the purchase of livestock or the determination of the amount of the purchase price, whichever is later, shall transmit or deliver to the seller or the seller's duly authorized agent the full amount of the purchase price. If livestock is bought on a yield or grade and yield basis, a dealer or broker shall upon the express request in writing of the seller, transmit or deliver to the seller or the seller's duly authorized agent before the close of the next business day following such purchase or delivery, whichever is later, up to eighty percent of the estimated purchase price, and pay the remaining balance on the next business day following the determination of the purchase price.

2. Payment to the seller shall be made by cash, check, or wire transfer of funds. If payment to the seller is by check, the check shall be drawn on a bank located in this state or on a bank located in an adjacent state and in the nearest city to Iowa in which a check processing center of a federal reserve bank district is located. For the purpose of this subsection, "wire transfer" means any telephonic, telegraphic, electronic, or similar communication between the bank of the purchaser and the bank of the seller which results in the transfer of funds or credits of the purchaser to an account of the seller.

3. Provisions of this section may be modified by an agreement signed by both the buyer and the seller or their duly authorized agents at the time of the sale. However, such an agreement shall not be a condition of sale unless expressly requested by the seller.

4. Failure to comply with this section shall be a violation of this chapter.

[C77, 79, 81, §172A.9]

172A.10 Injunctions — criminal penalties.

If any person who is required by this chapter to be licensed fails to obtain the required license, or if any person who is required by this chapter to maintain proof of financial responsibility, or if any licensee fails to discontinue engaging in licensed activities when that person's license has been suspended, such failure shall be deemed a nuisance and the secretary may bring an action on behalf of the state to enjoin such nuisance. Such actions may be heard on not less than five days notice to the person whose activities are sought to be enjoined. The failure to obtain a license when required, or the failure to maintain proof of financial responsibility shall constitute a violation of this chapter.

Any person convicted of violating any provision of this chapter shall be guilty of a serious misdemeanor.

[C73, 75, §172A.9; C77, 79, 81, §172A.10]

172A.11 Suspension of license.

1. The secretary shall have the authority to suspend the license of any dealer or broker or agent if upon hearing it is found that the dealer or broker or agent has committed any of the following acts or omissions:

a. Failure to submit a larger bond amount or trust fund when ordered by the secretary.

b. Failure to pay for purchases of livestock in the manner required by section 172A.9.

An order of suspension issued by the secretary shall be effective for an indefinite period, unless and until the person establishes to the satisfaction of the secretary that the person has taken reasonable precautions to prevent a recurrence of the act or omission in the future.

2. The secretary shall have the authority temporarily to suspend without hearing the license of any licensee in any of the following circumstances:

a. The licensee fails to maintain proof of financial responsibility, or the surety on the licensee's bond loses its authorization to issue bonds in this state, or the trustee of a trust fund loses its authorization to engage in the business of a fiduciary.

b. Claims are filed with the secretary against the bond or trust in an aggregate amount equal to ten percent or more of the amount of the bond.

A temporary suspension shall be effective on the date of issuance of the order of suspension, and until a revocation hearing has been held and the secretary either has entered an order of revocation of the license, or has terminated the order of suspension.

[C77, 79, 81, §172A.11]

172A.12 Revocation of license.

1. The secretary shall have the authority to revoke the license of a dealer or broker or agent upon notice and hearing if any of the following conditions exist:

a. Grounds exist for the temporary suspension of the license without hearing, and it is established that the person is or will be unable to meet obligations to producers of livestock when due.

b. The person has refused access to the secretary to the books and records of the person as required by this chapter.

c. Any other conditions exist which in the opinion of the secretary reasonably establish that it would be financially detrimental to livestock producers of this state to permit the person to engage in licensed activities in this state.

2. An order of revocation shall be effective upon the issuance of the order of revocation, and until the order is rescinded by the secretary, or until the decision of the secretary is reversed by a final order of a court of this state.

[C77, 79, 81, §172A.12]

172A.13 Rules.

The secretary is authorized to adopt rules pursuant to chapter 17A which are reasonable and necessary for the enforcement of this chapter.

[C77, 79, 81, §172A.13]

172A.14 Reserved.

172A.15 to 172A.18 Transferred to § 163.34 to 163.37.

CHAPTER 172B

LIVESTOCK TRANSPORTATION

172B.1 Definitions.
172B.2 Transportation certificate exhibited — public offense.
172B.3 Form of certificate — substitutes.
172B.4 Execution and retention of records.
172B.5 Authority of law enforcement officers.
172B.6 Offenses and penalties.

172B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Driver's license"* means any license or permit issued to a person to operate a motor vehicle on the highways.

2. *"Law enforcement officer"* means an Iowa state patrol officer, a sheriff, or other peace officer so designated by this state or by a county or municipality.

3. *"Livestock"* means and includes live cattle, swine, sheep, horses, ostriches, rheas, or emus, and the carcasses of such animals whether in whole or in part.

4. *"Owner"* means a person having legal title to livestock.

5. *"Transportation certificate"* means the document specified in section 172B.3 and includes either the standard form prescribed by the secretary, or a substitute document the use of which has been authorized by the secretary.

6. *"Transporting livestock"* means being in custody of or operating a vehicle in this state, whether or not on a highway, in which are confined one or more head of livestock. Vehicle includes a truck, trailer, and other device used for the purpose of conveying objects, whether or not the device has motive power or is attached to a vehicle with motive power at the time the livestock are confined.

[C77, 79, 81, §172B.1]

86 Acts, ch 1245, §624; 90 Acts, ch 1230, §1; 95 Acts, ch 43, §6; 98 Acts, ch 1073, §9; 98 Acts, ch 1074, §18

Further definitions; see §159.1

172B.2 Transportation certificate exhibited — public offense.

A person transporting livestock shall execute in the presence of a law enforcement officer, at the request of the officer, a transportation certificate. A person who fails to comply with this section commits a public offense punishable as provided in section 172B.6. A person who fails to execute a transportation certificate upon the request of the officer fails to comply with this section even though the person possesses a transportation certificate.

[C77, 79, 81, §172B.2]

172B.3 Form of certificate — substitutes.

1. *Duties of secretary.* The secretary, pursuant to chapter 17A, shall prescribe a standard form of the transportation certificate required by this chapter. Where the laws of this state or of the United States require the possession of another shipping document by a person transporting livestock, or where the industry practice of carriers requires the possession of a shipping document by a person transporting livestock, and where such a document contains all of the information other than signatures which is prescribed in subsection 2, upon application of a carrier the secretary by rule shall authorize the use of a specific document in lieu of the standard form prescribed by the secretary, but subject to any conditions the secretary may impose. A person who is in possession of a shipping document approved by the secretary shall not be required to possess the standard form transportation certificate prescribed by the secretary, but the person may be required by a law enforcement officer to execute the standard form transportation certificate.

The form prescribed or authorized by the secretary shall be executed in triplicate, and shall be retained as provided in section 172B.4.

The secretary shall distribute, upon request, copies of the prescribed standard form to veterinarians, marketing agencies, carriers, law enforcement officers, and other persons, and may

collect a fee from the recipient totaling not more than the cost of printing and postage. Nothing in this chapter shall be construed to prohibit a person from causing the reproduction of the standard form, and an accurate reproduction of a standard current form may be used as a transportation certificate for all purposes.

2. *Contents.* The transportation certificate shall contain the following information:

a. The date of execution of the certificate.

b. The name, driver's license number, and address of the owner of the livestock.

c. The name and address of the shipper if other than the owner.

d. The address of the loading point of the livestock, or the nearest post office and county.

e. The date of loading of the livestock.

f. The name and address of the purchaser, consignee, or other person receiving shipment.

g. The address of the destination of the livestock, or the nearest post office and county.

h. The name and address of the carrier or person transporting livestock.

i. The driver's license number of the person transporting livestock.

j. The vehicle registration plate number and the state of issuance.

k. The vehicle seal number, if any.

l. The form number and state of issuance of any health certificate accompanying the livestock.

m. A description of the livestock including number, breed, sex, age, and brands, if any.

n. The signature of the owner or shipper, or the signature of the person transporting livestock, or the signatures of either the owner or shipper and the person transporting livestock.

[C77, 79, 81, §172B.3]

89 Acts, ch 202, §1; 90 Acts, ch 1230, §2; 98 Acts, ch 1073, §9

172B.4 Execution and retention of records.

1. *Shipper.* A person who causes the transporting of livestock shall cause to be executed and to be delivered to the person transporting livestock, at the request of that person, duplicate copies of a transportation certificate.

2. *Transporter.* A person transporting livestock who has been given a receipt by a law enforcement officer shall retain that receipt until the person relinquishes custody of the livestock.

3. *Law enforcement officer.* A law enforcement officer, upon requesting and receiving a transportation certificate, shall retain a copy of the certificate and shall submit the certificate to the law enforcement agency by which the officer is employed. The officer shall give to the person transporting livestock, in a form prescribed by the commissioner of public safety or the commissioner's designee, a receipt for the certificate given to the officer. However, a law enforcement officer shall not retain a copy of the certificate if the person transporting livestock has a receipt issued by another law enforcement officer.

The commissioner of public safety may authorize the use of any method of giving receipt, including endorsement by the officer on the certificate retained by the person transporting livestock. The receipt shall make the law enforcement officer issuing the receipt identifiable by other law enforcement officers.

[C77, 79, 81, §172B.4]

172B.5 Authority of law enforcement officers.

1. *Investigation.* A law enforcement officer may stop and detain a person, whether on or off a highway, who is transporting livestock for the purpose of obtaining compliance with section 172B.2, and the officer may request the presentation or execution of a transportation certificate. The officer may examine the livestock for identification, the vehicle for the purpose of obtaining the vehicle registration plate number, and the registration of the vehicle and the driver's license of the driver or person detained. However, nothing in this chapter shall be construed to authorize any law enforcement officer to open or require the opening of the cargo compartment of any vehicle manufactured for use in carrying refrigerated cargo when both the cargo is actually under refrigeration at the time the vehicle is detained by the law enforcement officer, and the person operating the vehicle has in possession when stopped a valid transportation certificate or approved shipping document which was executed by the shipper and which identifies the cargo as processed livestock and otherwise complies with section 172B.3, subsection 2.

2. *Execution of certificate.* If the person transporting livestock does not possess a completed transportation certificate, or if in the opinion of the officer the form possessed is improper, the officer may provide the person with a blank standard form, and may request that the person execute the form, including the person's signature. The person shall be permitted to view any documents in the person's possession for the purpose of completing the form. Except as provided in section 172B.4, the officer shall retain a copy of the certificate and shall give the person a receipt for that certificate.

3. *Detention.* A law enforcement officer may detain a person transporting livestock for a reasonable period of time not to exceed thirty minutes for the purpose of verifying any information obtained by the officer.

4. *Arrest.* A detention for the purposes of subsections 1, 2 and 3 shall not constitute an arrest. If the law enforcement officer has probable cause to believe that the person transporting livestock has committed a public offense, the officer may place the person under arrest. The officer

may require the person to move the vehicle to a place determined by the officer, or the officer may make other provisions for the vehicle and the livestock, as the officer shall determine. If the owner of the livestock is not available, the officer is authorized to incur reasonable expense for the care of the livestock which expense shall be charged to and paid by the owner of the livestock.

[C77, 79, 81, §172B.5]

90 Acts, ch 1230, §3; 98 Acts, ch 1073, §9

172B.6 Offenses and penalties.

1. A person who is convicted of violating section 172B.2 shall be guilty of a simple misdemeanor.

2. A person who makes or utters a transportation certificate with knowledge that some or all of the information contained in the certificate is false, or a person who alters, forges, or counterfeits a transportation certificate, or the receipt prescribed in section 172B.4, commits a class "C" felony.

[C77, 79, 81, §172B.6]

CHAPTER 172C

CORPORATE OR PARTNERSHIP FARMING

Transferred to chapter 9H

CHAPTER 172D

LIVESTOCK FEEDLOTS

172D.1 Definitions.
172D.2 Compliance — a defense to nuisance actions.
172D.3 Compliance with rules of the department.
172D.4 Compliance with zoning requirements.

172D.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"City"* means a municipal corporation, but not including a county, township, school district, or any special-purpose district or authority.

2. *"Department"* means the department of environmental quality in a reference to a time before July 1, 1983, the department of water, air and waste management in a reference to a time on or after July 1, 1983, and through June 30, 1986, and the department of natural resources on or after July 1, 1986, and includes any officer or agency within that department.

3. *"Established date of operation"* means the date on which a feedlot commenced operating with not more livestock than reasonably could be maintained by the physical facilities existing as of that date. If the physical facilities of the feedlot are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of this date of commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot of a previously established date of operation.

4. *"Established date of ownership"* means the date of the recording of an appropriate muniment of title establishing the ownership of realty.

5. *"Establishment cost of a feedlot"* means the cost or value of the feedlot on its established date of operation and includes the cost or value of the building, machinery, vehicles, equipment or other real or personal property used in the operation of the feedlot.

6. *"Feedlot"* means a lot, yard, corral, or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

7. A rule pertaining to *"feedlot design standards"* means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds in excess of two percent of the establishment cost of the feedlot.

8. A rule pertaining to *"feedlot management standards"* means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds not in excess of two percent of the establishment cost of the feedlot.

9. *"Livestock"* means cattle, sheep, swine, ostriches, rheas, emus, poultry, and other animals or

fowl, which are being produced primarily for use as food or food products for human consumption.

10. *"Materially affects"* means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste, or similar products resulting from the operation or the location or use of buildings, machinery, vehicles, equipment, or other real or personal property used in the operation, of a livestock feedlot.

11. *"Nuisance"* means and includes public or private nuisance as defined either by statute or by the common law.

12. *"Nuisance action or proceeding"* means and includes every action, claim or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

13. *"Owner"* shall mean the person holding record title to real estate to include both legal and equitable interests under recorded real estate contracts.

14. *"Rule of the department"* means a rule as defined in section 17A.2 which materially affects the operation of a feedlot and which has been adopted by the department. The term includes a rule which was in effect prior to July 1, 1975. Except as specifically provided in section 172D.3, subsection 2, paragraph *"b"*, subparagraph (5) and paragraph *"c"*, subparagraph (5) nothing in this chapter shall be deemed to empower the department to make any rule.

15. *"Zoning requirement"* means a regulation or ordinance, which has been adopted by a city, county, township, school district, or any special-purpose district or authority, and which materially affects the operation of a feedlot. Nothing in this chapter shall be deemed to empower any agency described in this subsection to make any regulation or ordinance.

[C77, 79, 81, §172D.1; 82 Acts, ch 1199, §92, 96]
84 Acts, ch 1219, §7; 89 Acts, ch 83, §31; 95 Acts, ch 43, §7
Further definitions, see §159.1

172D.2 Compliance — a defense to nuisance actions.

In any nuisance action or proceeding against a feedlot brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of that feedlot, proof of compliance with sections 172D.3 and 172D.4 shall be an absolute defense, provided that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with either section 172D.3 or 172D.4.

[C77, 79, 81, §172D.2]

172D.3 Compliance with rules of the department.

1. *Requirement.* A person who operates a feedlot shall comply with applicable rules of the department. The applicability of a rule of the department shall be as provided in subsection 2. A person complies with this section as a matter of law where no rule of the department exists.

2. *Applicability of rules.*

a. Exclusion for federally mandated requirements. This section shall apply to the department's rules except for rules required for delegation of the national pollutant discharge elimination system permit program pursuant to the federal Water Pollution Control Act, Title 33, United States Code, chapter 126, as amended, and 40 Code of Federal Regulations, Part 124.

b. Applicability of rules of the department other than those relating to air quality under chapter 455B, division II, and chapter 459, subchapter II.

(1) A rule of the department in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(2) A rule of the department shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department adopted after November 1, 1976, does not apply to a feedlot holding a wastewater permit from the department and having an established date of operation prior to the effective date of the rule until either the expiration of the term of the permit in effect on the effective date of the rule, or ten years from the established date of operation of the feedlot, whichever time period is greater.

(4) A rule of the department adopted after November 1, 1976, does not apply to a feedlot not previously required to hold a wastewater permit from the department and having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or five years from the effective date of the rule, whichever time period is greater.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

c. Applicability of rules of the department relating to air quality under chapter 455B, division II, and chapter 459, subchapter II.

(1) A rule of the department under chapter 455B, division II, in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(2) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, pertaining to feedlot management standards adopted after November 1, 1976, shall not apply to any feedlot having an established date of operation prior to the effective date of the rule until one

year after the effective date of the rule.

(4) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, pertaining to feedlot design standards adopted after November 1, 1976, shall not apply to any feedlot having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or two years from the effective date of the rule, whichever time period is greater. However, any design standard rule pertaining to the siting of any feedlot shall apply only to a feedlot with an established date of operation subsequent to the effective date of the rule.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

[C77, 79, 81, §172D.3]

84 Acts, ch 1219, §8

172D.4 Compliance with zoning requirements.

1. *Requirement.* A person who operates a feedlot shall comply with applicable zoning requirements. The applicability of a zoning requirement shall be as provided in subsection 2 of this section. A person complies with this section as a matter of law where no zoning requirement exists.

2. *Applicability.*

a. A zoning requirement shall apply to a feedlot with an established date of operation subsequent to the effective date of the zoning requirement.

b. A zoning requirement, other than one adopted by a city, shall not apply to a feedlot with an established date of operation prior to the effective date of the zoning requirement for a period of ten years from the effective date of that zoning requirement.

c. A zoning requirement which is in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

d. A zoning requirement adopted by a city shall apply to a feedlot located within an incorporated or unincorporated area which is subject to regulation by that city as of November 1, 1976, regardless of the established date of operation of the feedlot.

e. A zoning requirement adopted by a city shall not apply to a feedlot which becomes located within an incorporated or unincorporated area subject to regulation by that city by virtue of an incorporation or annexation which takes effect after November 1, 1976 for a period of ten years from the effective date of the incorporation or annexation.

[C77, 79, 81, §172D.4]

CHAPTER 172E

DAIRY CATTLE SOLD FOR SLAUGHTER

172E.1 Definitions.
172E.2 Marketing practices — dairy cattle sold for slaughter.
172E.3 Penalties.

172E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Dairy cattle"* means cattle belonging to a breed that is used to produce milk for human consumption, including but not limited to Holstein and Jersey breeds.

2. *"Livestock"* means the same as defined in section 717.1.

3. *"Livestock market"* means any place where livestock are assembled from two or more sources for public auction, private sale, or sale on a commission basis, which is under state or federal supervision, including a livestock auction market, if such livestock are kept in the place for ten days or less.

4. *"Packer"* means a person who is engaged in the business of slaughtering livestock or receiving, purchasing, or soliciting livestock for slaughter. As used in this chapter, *"packer"* includes an agent of the packer engaged in buying or soliciting livestock for slaughter on behalf of a packer.

2001 Acts, ch 101, §6; 2001 Acts, ch 176, §63

172E.2 Marketing practices — dairy cattle sold for slaughter.

1. If a livestock market accepts dairy cattle upon condition that the dairy cattle are to be moved directly to slaughter, the dairy cattle shall be segregated with other livestock to be moved directly to slaughter until sold to a packer. A person shall not knowingly sell the dairy cattle to a purchaser other than to a packer at the livestock market. A person other than a packer shall not know-

ingly purchase the dairy cattle at the livestock market.

2. This section shall not supersede requirements relating to the movement or marketing of livestock infected with an infectious or contagious disease, including but not limited to those diseases enumerated in section 163.2.

2001 Acts, ch 101, §7; 2002 Acts, ch 1100, §1
Subsection 1 amended

172E.3 Penalties.

1. The department, with assistance by the attorney general, shall have the same authority to enforce this chapter as it does under chapter 165A. A person who violates section 172E.2 is subject to the same penalties as provided in section 165A.5.

2. This section does not prevent a person from commencing a civil cause of action based on any right that the person may assert under statute or common law.

2001 Acts, ch 101, §8

SUBTITLE 3

AGRICULTURAL DEVELOPMENT AND MARKETING

CHAPTER 173

STATE FAIR

173.1 State fair authority.
173.1A Definitions.
173.2 Convention.
173.3 Certification of state aid associations.
173.4 Voting power — election of district directors.
173.4A State fair board districts.
173.5 Duties of the convention.
173.6 Terms of office.
173.7 Vacancies.
173.8 Compensation and expenses.
173.9 Secretary.
173.10 Salary of secretary.
173.11 Treasurer.
173.12 Salary of treasurer.
173.13 Executive committee — meetings.
173.14 Functions of the board.
173.14A General corporate powers of the authority.
173.14B Bonds and notes.
173.15 Management of state fair.
173.16 Maintenance of state fair.
173.17 Claims.
173.18 Warrants.
173.19 Examination of financial affairs.
173.20 Report.
173.21 Annual report to governor.
173.22 Iowa state fair foundation.
173.23 Lien on property.
173.24 Exemption of state fair by the state's purchasing procedures.

173.1 State fair authority.

The Iowa state fair authority is established as a public instrumentality of the state. The authority is not an agency of state government. However, the authority is considered a state agency and its employees state employees for the purposes of chapters 17A, 20, 91B, 97B, 509A, and 669. The authority is established to conduct an annual state fair and exposition on the Iowa state fairgrounds and to conduct other interim events consistent with its rules. The powers of the authority are vested in the Iowa state fair board. The Iowa state fair board consists of the following:

1. The governor of the state, the secretary of agriculture, and the president of the Iowa state university of science and technology or their qualified representatives.
2. Two district directors from each state fair board district to be elected at a convention as provided in section 173.4.
3. A president and vice president to be elected by the state fair board from the elected directors.
4. A treasurer to be elected by the board who shall serve as a nonvoting member.
5. A secretary to be elected by the board who shall serve as a nonvoting member.

[S13, §1657-c; C24, 27, 31, 35, 39, §**2873;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.1; 81 Acts, ch 67, §1]

86 Acts, ch 1245, §625, 626; 87 Acts, ch 233, §225; 91 Acts, ch 248, §1, 2; 95 Acts, ch 13, §2; 98 Acts, ch 1114, §1; 2001 Acts, ch 29, §1

173.1A Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the Iowa state fair board as provided in section 173.1.
2. *"Convention"* means the convention held each year, to elect members of the state fair board and conduct other business of the board, as provided in section 173.2.
3. *"District director"* means a director of the Iowa state fair board who represents a state fair board district.
4. *"State fair board district"* or *"district"* means any of the six geographic regions established in section 173.4A.

2001 Acts, ch 29, §2; 2002 Acts, ch 1119, §25
Unnumbered paragraph 1 amended

173.2 Convention.

A convention shall be held at a time and place in Iowa to be designated by the Iowa state fair board each year, to elect members of the state fair board and conduct other business of the board. The board shall give sixty days' notice of the location of the convention to all agricultural associations and persons eligible to attend. The convention shall be composed of:

1. The members of the state fair board as then organized.
2. The president or secretary of each county or district agricultural society entitled to receive aid from the state, or a regularly elected delegate

therefrom accredited in writing, who shall be a resident of the county.

3. One delegate, a resident of the county, to be appointed by the board of supervisors in each county where there is no such society, or when such society fails to report to the association of Iowa fairs in the manner provided by law as a basis for state aid. The association shall promptly report such failure to the county auditor.

[R60, §1701, 1704; C73, §1103, 1112; C97, §1653, 1661; S13, §1657-d; SS15, §1661-a; C24, 27, 31, 35, 39, §**2874;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.2; 81 Acts, ch 67, §2 – 4]

87 Acts, ch 115, §29; 96 Acts, ch 1028, §1; 98 Acts, ch 1114, §2; 99 Acts, ch 204, §28

Duties and powers of state fair board retained; election of district directors at 2001 convention; 2001 Acts, ch 29, §7

173.3 Certification of state aid associations.

On or before November 15 of each year, the secretary of agriculture shall certify to the secretary of the state fair board the names of the various associations and societies which have qualified for state aid under the provisions of chapters 176 through 178, 181, 182, 186, and 352, and which are entitled to representation in the convention as provided in section 173.2.

[C24, 27, 31, 35, 39, §**2875;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.3]

90 Acts, ch 1009, §2; 98 Acts, ch 1032, §5

For 2002 amendment effective July 1, 2005, see 2002 Acts, ch 1017, §3, 8

173.4 Voting power — election of district directors.

1. Except as provided in this subsection, each member present at the convention shall be entitled to not more than one vote. A member shall not vote by proxy.

2. A successor to a district director shall be elected by a majority of convention members from the same state fair board district as the district director, according to rules adopted by the convention. A member who is also a district director shall not be entitled to vote for a successor to a district director.

[S13, §1657-d; C24, 27, 31, 35, 39, §**2876;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.4]

91 Acts, ch 248, §3; 98 Acts, ch 1114, §3; 2001 Acts, ch 29, §3

173.4A State fair board districts.

The state shall be divided into six geographic regions known as state fair board districts. The regions shall include all of the following:

1. The northwest state fair board district which shall contain all of the following counties: Buena Vista, Calhoun, Cherokee, Clay, Dickinson, Emmet, Ida, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, and Woodbury.

2. The north central state fair board district which shall contain all of the following counties: Boone, Butler, Cerro Gordo, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Kossuth, Marshall, Mitchell, Story, Tama, Webster, Winnebago, Worth, and Wright.

3. The northeast state fair board district which shall contain all of the following counties: Allamakee, Benton, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Howard, Jackson, Jones, Linn, and Winneshiek.

4. The southwest state fair board district which shall contain the following counties: Adair, Adams, Audubon, Carroll, Cass, Crawford, Fremont, Greene, Guthrie, Harrison, Mills, Monona, Montgomery, Page, Pottawattamie, Shelby, and Taylor.

5. The south central state fair board district which shall contain the following counties: Appanoose, Clarke, Dallas, Decatur, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Poweshiek, Ringgold, Union, Warren, and Wayne.

6. The southeast state fair board district which shall contain the following counties: Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jefferson, Johnson, Keokuk, Lee, Louisa, Muscatine, Scott, Van Buren, Wapello, and Washington.

2001 Acts, ch 29, §4

Election of initial district directors; 2001 Acts, ch 29, §7

173.5 Duties of the convention.

1. The convention shall establish staggered terms of office for the elected directors. Notwithstanding section 173.6, the convention may establish terms of office for initial elected directors for more or less than two years.

2. Each year, the convention shall elect a successor to one of the two district directors whose term expires following the adjournment of the convention, as provided in section 173.4.

3. The Iowa state fair board shall present a financial report to the convention. The report is not required to include an audit, but shall provide an estimate of the accounts under the authority of the board.

[R60, §1700; C73, §1104; C97, §1654; S13, §1657-e; C24, 27, 31, 35, 39, §**2877;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.5]

91 Acts, ch 248, §4; 96 Acts, ch 1028, §2; 98 Acts, ch 1114, §4; 2001 Acts, ch 29, §5

2001 convention duties; 2001 Acts, ch 29, §7

173.6 Terms of office.

The term of the president and vice president of the board shall be one year. A person shall not hold the office of president for more than three consecutive years, plus any portion of a year in which the person was first elected by the board to fill a vacancy.

A member of the board who is a district director shall serve a term of two years. The term of a dis-

trict director shall begin following the adjournment of the convention at which the district director was elected and shall continue until a successor is elected and qualified as provided in this chapter.

[R60, §1700; C73, §1104; C97, §1654; S13, §1657-e; C24, 27, 31, 35, 39, §**2878;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.6]

91 Acts, ch 248, §5; 98 Acts, ch 1114, §5; 99 Acts, ch 96, §18; 2001 Acts, ch 29, §6

Election and terms of office of district directors elected at 2001 convention; 2001 Acts, ch 29, §7

173.7 Vacancies.

If, after the adjournment of the convention, a vacancy occurs in the office of any member of the board elected by the convention the board shall fill the vacancy by election. The elected member shall qualify at once and serve until noon of the day following the adjournment of the next convention. If, by that time, the member elected by the board will not have completed the full term for which the member's predecessor was elected, the convention shall elect a member to serve for the unexpired portion of the term. The member elected by the convention shall qualify at the same time as other members elected by the convention.

[S13, §1657-e; C24, 27, 31, 35, 39, §**2879;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.7]

91 Acts, ch 248, §6

173.8 Compensation and expenses.

A member of the board elected at the annual convention shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses incurred while engaged in official duties. All per diem and expense moneys paid to a member shall be paid from funds of the state fair board.

[S13, §1657-p; C24, 27, 31, 35, 39, §**2880;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.8]

90 Acts, ch 1256, §32

173.9 Secretary.

The board shall appoint a secretary who shall serve at the pleasure of the board. The secretary shall do all of the following:

1. Administer the policies set by the board.

2. Employ other employees and agents as the secretary deems necessary for carrying out the policies of the board and to conduct the affairs of the state fair. The secretary may fix the duties and compensation of any employees or agents with the approval of the board.

3. Keep a complete record of the annual convention and of all meetings of the board.

4. Draw all warrants on the treasurer of the board and keep a correct account of them.

5. Perform other duties as the board directs.

[R60, §1700, 1703; C73, §1104, 1107; C97, §1654, 1656; S13, §1657-k; C24, 27, 31, 35, 39, §**2881;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.9]

86 Acts, ch 1245, §627; 87 Acts, ch 233, §226; 93 Acts, ch 176, §34

173.10 Salary of secretary.

The secretary shall receive the salary fixed by the board.

[S13, §1657-n; C24, 27, 31, 35, 39, §**2882;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.10]

87 Acts, ch 233, §227

173.11 Treasurer.

The board shall elect a treasurer who shall hold office for one year, and the treasurer shall:

1. Keep a correct account of the receipts and disbursements of all moneys belonging to the board.

2. Make payments on all warrants signed by the president and secretary from any funds available for such purpose.

3. Administer the funds of the Iowa state fair foundation as directed by the board and in accordance with procedures of the treasurer of state, and maintain a correct account of receipts and disbursements of assets of the foundation.

[R60, §1700; C73, §1104; C97, §1654; S13, §1657-o; C24, 27, 31, 35, 39, §**2883;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.11]

91 Acts, ch 132, §1; 91 Acts, ch 248, §7

173.12 Salary of treasurer.

The treasurer shall receive such compensation for services as the board may fix, not to exceed five hundred dollars a year, and shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses incurred while engaged in official duties.

[S13, §1657-o; C24, 27, 31, 35, 39, §**2884;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.12]

90 Acts, ch 1256, §33

173.13 Executive committee — meetings.

The president, vice president, and secretary shall constitute an executive committee, which shall transact such business as may be delegated to it by the board. The president may call meetings of the board or executive committee when the interests of the work require it.

[R60, §1104; C73, §1700; C97, §1654; S13, §1657-h; C24, 27, 31, 35, 39, §**2885;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.13]

173.14 Functions of the board.

The state fair board has the custody and control of the state fairgrounds, including the buildings and equipment on it belonging to the state, and may:

1. Hold an annual fair and exposition on those grounds. All revenue generated by the fair and any interim uses shall be retained solely by the board.

2. Prepare premium lists and establish rules of exhibitors for the fair which shall be published by the board not later than sixty days prior to the opening of the fair.

3. Grant a written permit to persons as it deems proper to sell fruit, provisions, and other lawful articles under rules the board prescribes.

4. Appoint, as the president deems necessary, security personnel and peace officers qualified according to standards adopted by the board.

5. Take and hold property by gift, devise, or bequest for fair purposes. The president, secretary, and treasurer of the board shall have custody and control of the property, subject to the action of the board. Those officers shall give bonds as required in the case of executors, to be approved by the board and filed with the secretary of state.

6. Erect and repair buildings on the grounds and make other necessary improvements.

7. Grant written permission to persons to use the fairgrounds when the fair is not in progress.

8. Take, acquire, hold, and dispose of property by deed, gift, devise, bequest, lease, or eminent domain. The title to real estate acquired under this subsection and improvements erected on the real estate shall be taken and held in the name of the state of Iowa and shall be under the custody and control of the board. In the exercise of the power of eminent domain the board shall proceed in the manner provided in chapters 6A and 6B.

9. Solicit and accept contributions from private sources for the purpose of financing and supporting the fair.

10. Make an agreement with the department of public safety to provide for security during the annual fair and exposition and interim events.

11. Administer the Iowa state fair foundation created in section 173.22. In administering the foundation the board shall authorize all payments from the foundation fund. The board on behalf of the foundation may contract, sue and be sued, and adopt rules necessary to carry out the provisions of this subsection, but the board shall not in any manner, directly or indirectly pledge the credit of the state.

[R60, §1702; C73, §1106; C97, §1655; S13, §1657-i, -j, -r; C24, 27, 31, 35, 39, §**2886;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.14]

83 Acts, ch 195, §23; 86 Acts, ch 1244, §28; 87 Acts, ch 233, §228; 88 Acts, ch 1055, §1; 91 Acts, ch 132, §2; 91 Acts, ch 248, §8

173.14A General corporate powers of the authority.

The authority has all of the general corporate powers needed to carry out its purposes and duties, and to exercise its specific powers including, but not limited to, the power to:

1. Issue its negotiable bonds and notes as provided in this chapter.

2. Sue and be sued in its own name.

3. Have and alter a corporate seal.

4. Make and alter bylaws for its management consistent with this chapter.

5. Make and execute agreements, contracts, and other instruments, with any public or private entity.

6. Accept appropriations, gifts, grants, loans, or other aid from public or private entities.

7. Make, alter, and repeal rules consistent with this chapter, subject to chapter 17A.

87 Acts, ch 233, §229

173.14B Bonds and notes.

1. The board may issue and sell negotiable revenue bonds of the authority in denominations and amounts as the board deems for the best interests of the fair. However, the board must first submit a list of the purposes ranked by priority and a purpose must be authorized by a constitutional majority of each house of the general assembly and approved by the governor. A purpose must be one of the following:

a. To acquire real estate to be devoted to uses for the fair.

b. To pay any expenses or costs incidental to a building or repair project.

c. To provide sufficient funds for the advancement of any of its corporate purposes.

2. The board may issue negotiable bonds and notes of the authority in principal amounts which are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the board incident to and necessary or convenient to carry out its purposes and powers, subject to authorization and approval required under subsection 1. However, the total principal amount of bonds and notes outstanding at any time under subsection 1 and this subsection shall not exceed twenty-five million dollars. The bonds and notes are deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

3. Bonds and notes are payable solely out of the moneys, assets, or revenues of the authority and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets, or revenues. Bonds or notes are not an obligation of this state or its political subdivisions other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely from sources provided in this chapter, and the authority shall not pledge the credit or taxing power of this state or its political subdivisions other than the authority or make its debts payable out of any moneys except those of the authority.

4. Bonds shall:

a. State the date and series of the issue, be con-

secutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or its political subdivisions other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the board prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the president or vice president, attested by the manual or facsimile signature of the secretary, have impressed or imprinted on it the seal of the authority or facsimile of it, and coupons attached shall be signed with the facsimile signature of the president or vice president, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places and with reserved rights of prior redemption, as the board prescribes, be sold at prices, at public or private sale, and in a manner as the board prescribes, and the board may pay all expenses, premiums, and commissions which it deems necessary or advantageous in connection with the issuance and sale; and be issued subject to the terms, conditions, and covenant providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the board for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the bonds as to those matters set forth in section 16.26, subsection 4, paragraph *"b"*.

5. The board may issue bonds of the authority for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of the bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with this chapter. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to this chapter in the same manner and to the same extent as other bonds.

6. The board may issue negotiable bond anticipation notes of the authority and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged or from the proceeds of the sale of bonds in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds and notes and the resolution of the board may contain any provisions, conditions, or limitations, not inconsistent with this subsection, which the bonds or a bond resolution of the board may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust, or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under article 9 of the uniform commercial code or any other law of the state is required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created is binding from and after the time it is made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Members of the board and any person executing the authority's bonds, notes, or other obligations are not liable personally on the bonds, notes, or other obligations or subject to personal liability or accountability by reason of the issuance of the authority's bonds or notes.

9. The board shall publish a notice of intention to issue bonds or notes in a newspaper published and of general circulation in the state. The notice shall include a statement of the maximum amount of bonds or notes proposed to be issued, and in general, what net revenues will be pledged to pay the bonds or notes and interest on them. An action shall not be brought questioning the legality of the bonds or notes, the power of the board to issue the bonds or notes, or the legality of any proceedings in connection with the authorization or issuance of the bonds or notes after sixty days from the date of publication of the notice.

87 Acts, ch 233, §230; 91 Acts, ch 268, §228, 229; 94 Acts, ch 1198, §36

173.15 Management of state fair.

The board may delegate the management of the state fair to the executive committee and two or more additional members of the board; and in carrying on such fair it may employ such assistance as may be deemed necessary.

[S13, §1657-i; C24, 27, 31, 35, 39, §**2887;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.15]

173.16 Maintenance of state fair.

All expenses incurred in maintaining the state fairgrounds and in conducting the annual fair on it, including the compensation and expenses of the officers, members, and employees of the board, shall be recorded by the secretary and paid from the state fair receipts, unless a specific appropriation has been provided for that purpose. The board may request special capital improvement appropriations from the state and may request emergency funding from the executive council for natural disasters. The board may request that the department of transportation provide maintenance in accordance with section 307A.2, subsection 11.

In order to efficiently administer facilities and events on the state fairgrounds, and to promote Iowa's conservation ethic, the Iowa state fair board shall handle or dispose of waste generated on the state fairgrounds under supervision of the department of natural resources.

[S13, §1657-i, -t; C24, 27, 31, 35, 39, §**2888;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.16]

87 Acts, ch 233, §231; 89 Acts, ch 311, §25; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §2; 2002 Acts, ch 1162, §36

Unnumbered paragraph 2 amended

173.17 Claims.

The board shall prescribe rules for the presentation and payment of claims out of the state fair receipts and other funds of the board and no claim shall be allowed which does not comply therewith.

[C24, 27, 31, 35, 39, §**2889;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.17]

173.18 Warrants.

No claim shall be paid by the treasurer except upon a warrant signed by the president and secretary of the board, but this section shall not apply to the payment of state fair premiums.

[S13, §1657-o; C24, 27, 31, 35, 39, §**2890;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.18]

173.19 Examination of financial affairs.

The auditor of state shall annually examine and report to the executive council all financial affairs of the board.

[S13, §1657-q; C24, 27, 31, 35, 39, §**2891;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.19]

96 Acts, ch 1028, §3

173.20 Report.

The board shall file each year with the department, at such time as the department may specify, a report containing such information relative to the state fair and exposition and the district and county fairs as the department may require.

[C24, 27, 31, 35, 39, §**2892;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.20]

173.21 Annual report to governor.

The board shall file with the governor each year by February 15 a report containing the following information relative to the state fair and exposition and the district and county fairs:

1. A complete account of the annual state fair and exposition.
2. The proceedings of the annual state agricultural convention.
3. The proceedings of the annual county and district fair managers convention.

[R60, §1703; C73, §1107; C97, §1656; S13, §1657-k; C24, 27, 31, 35, 39, §**2893;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.21]

87 Acts, ch 233, §232

173.22 Iowa state fair foundation.

An Iowa state fair foundation is established under the authority of the Iowa state fair board. A foundation fund is created within the state treasury composed of moneys appropriated or available to and obtained or accepted by the foundation. The foundation fund shall include moneys credited to the fund as provided in section 422.12D. The foundation may solicit or accept gifts, including donations and bequests. A gift, to the greatest extent possible, shall be used according to the expressed desires of the person providing the gift.

Assets of the foundation shall be used to support foundation activities, including foundation administration, or capital projects or major maintenance improvements at the Iowa state fairgrounds or to property under the control of the board. Foundation moneys may be expended on a matching basis with public moneys or Iowa state fair authority receipts. All interest earned on moneys in the foundation fund or through other foundation assets shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

The auditor of state shall conduct regular audits of the foundation and shall make a certified report relating to the condition of the foundation and the foundation fund to the treasurer of the state, and to the treasurer and secretary of the state fair board.

91 Acts, ch 132, §3; 93 Acts, ch 144, §1, 6; 94 Acts, ch 1199, §3 – 6

173.23 Lien on property.

The board has a prior lien upon the property of any concessionaire, exhibitor, or person, immediately upon the property being brought onto the grounds, to secure existing or future indebtedness.

87 Acts, ch 233, §233

173.24 Exemption of state fair by the state's purchasing procedures.

The state fair is exempt from the state system of uniform purchasing procedures. However, the board may contract with the department of general services to purchase any items through the state system. The board shall adopt its own system of uniform standards and specifications for purchasing.

87 Acts, ch 233, §234

CHAPTER 174

COUNTY AND DISTRICT FAIRS

174.1 Terms defined.
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174.7 Refusal to remove obstructions.
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174.10 Appropriation — availability.
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174.12 Payment of state aid.
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174.17 Issuance of revenue bonds — standby tax levy.
174.18 Repealed by 81 Acts, ch 117, §1097.
174.19 Report of county aid.
174.20 Fraudulent entries of horses.
174.21 Violations — penalty.
174.22 Entry under changed name.
174.23 Class determined.
174.24 Repealed by 81 Acts, ch 117, §1097.
174.25 Repealed by 81 Acts, ch 117, §1097.
174.26 and 174.27 Repealed by 81 Acts, ch 117, §1097.

174.1 Terms defined.

For the purposes of this chapter:

1. *"Fair"* shall mean an annual gathering of people that incorporates agricultural exhibits, shows, or competition which has the following activities:

a. Extension, 4-H, or future farmers of America programs.

b. Commercial and educational exhibits.

c. Competition in the fine or home craft arts.

2. *"Management"* shall mean president, vice-president, secretary, or treasurer of the society.

3. *"Society"* shall mean a county or district fair or agricultural society incorporated under the laws of this state for the purpose of holding such fair, and which owns or leases at least ten acres of ground and owns buildings and improvements situated on said ground of a value of at least eight thousand dollars, or any incorporated farm organization authorized to hold an agricultural fair which owns or leases buildings and grounds especially constructed for fair purposes of the value of one hundred and fifty thousand dollars in a county where no other agricultural fair receiving state aid is held.

[C24, 27, 31, 35, 39, §**2894;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.1]

97 Acts, ch 215, §32

174.2 Powers of society.

Each society may hold annually a fair to further interest in agriculture and to encourage the improvement of agricultural products, livestock, articles of domestic industry, implements, and other mechanical devices. It may offer and award such premiums as will induce general competition.

In addition to the powers granted herein the society shall possess the powers of a corporation not for pecuniary profit under the laws of this state and those powers enumerated in its articles of incorporation, such powers to be exercised before and after the holding of such fairs.

No salary or compensation of any kind shall be paid to the president, vice president, treasurer, or to a director of the association for such duties. However, the president, vice president, treasurer, or a director of the association may be reimbursed for actual expenses incurred by carrying out duties under this chapter or chapter 173, including, but not limited to attending the convention provided under section 173.2. A person claiming expenses under this paragraph shall be reimbursed to the same extent that a state employee is entitled to be reimbursed for expenses.

[R60, §1697; C73, §1109; C97, §1658; S13, §1658; C24, 27, 31, 35, 39, §**2895;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §174.2]
91 Acts, ch 248, §9

174.3 Control of grounds.
An ordinance or resolution of a county or city shall not in any way impair the authority of the society, but it shall have sole and exclusive control over and management of such fair.
[C73, §1116; C97, §1664; C24, 27, 31, 35, 39, §**2896;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.3]
99 Acts, ch 204, §29

174.4 Permits to sell articles.
The management of any society may grant a written permit to such persons as it thinks proper, to sell fruit, provisions, and other articles not prohibited by law, under such regulations as the board of directors may prescribe.
[C73, §1115; C97, §1663; C24, 27, 31, 35, 39, §**2897;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.4]

174.5 Appointment of police.
The management of any society may appoint such number of special police as it may deem necessary. Such officers are hereby vested with the powers and charged with the duties of peace officers.
[C97, §1664; C24, 27, 31, 35, 39, §**2898;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.5]

174.6 Removal of obstructions.
All shows, swings, booths, tents, vehicles, or any other thing that may obstruct the grounds of any society or the driveways thereof may be removed from the grounds on the order of the management.
[C73, §1116; C97, §1664; C24, 27, 31, 35, 39, §**2899;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.6]

174.7 Refusal to remove obstructions.
Any person owning, occupying, or using any such obstruction who shall refuse or fail to remove the same when ordered to do so by the management shall be guilty of a simple misdemeanor.
[C73, §1116; C97, §1664; C24, 27, 31, 35, 39, §**2900;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.7]

174.8 Publication of financial statement.
Each society shall annually publish in one newspaper of the county a financial statement of receipts and disbursements for the current year.
[R60, §1698; C73, §1110; C97, §1659; S13, §1659; C24, 27, 31, 35, 39, §**2901;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.8]

174.9 State aid.
Each eligible society which is a member of the association of Iowa fairs and which conducts a county fair shall be entitled to receive aid from the state as provided in this chapter. In order to be eligible for state aid, a society must file with the association of Iowa fairs on or before November 1 of each year, a statement which shall show:
1. The actual amount paid by it in cash premiums at its fair for the current year, which statement must correspond with its published offer of premiums.
2. That no part of said amount was paid for speed events, or to secure games or amusements.
3. A full and accurate statement of the receipts and expenditures of the society for the current year and other statistical data relative to exhibits and attendance for the year.
4. A copy of the published financial statement published as required by law, together with proof of such publication and a certified statement showing an itemized list of premiums awarded, and such other information as the association of Iowa fairs may require.
[R60, §1698, 1704; C73, §1110, 1112; C97, §1659, 1661; S13, §1659; SS15, §1661-a; C24, 27, 31, 35, 39, §**2902;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.9]
96 Acts, ch 1218, §30, 31; 97 Acts, ch 215, §33, 34; 99 Acts, ch 204, §30, 31

174.10 Appropriation — availability.
1. Any moneys appropriated for state aid for county or local fairs shall be paid to the office of treasurer of state to be allocated to the association of Iowa fairs for payments to be made by the association to eligible societies pursuant to this chapter.
2. *a.* The association of Iowa fairs shall maintain a list of each society in a county which is a member of the association and conducts a fair in that county as provided in this chapter. If a county has more than one fair, the association shall list the name of each society conducting a fair in that county for three or more years. The association of Iowa fairs shall not make a payment to a society under this chapter unless the society complies with section 174.9 and the name of the society appears on the association's list.
b. The association shall prepare a report at the end of each fiscal year concerning the state aid appropriated for county or local fairs, the manner in which such aid was allocated to eligible societies, and the manner in which the aid was expended by the societies. The association shall submit the report to the governor and the general assembly by January 1 of each year. The association shall not use moneys appropriated for state aid for county or local fairs, or interest earned on such moneys, for administrative or other expenses.
3. The amount of state aid for each fair which is eligible for state aid shall be equal.

4. If no society in a county qualifies to receive state aid, that county's share shall be divided equally among the counties with societies eligible for state aid, as provided in this section.

5. The board of supervisors, upon receiving a petition seeking to designate an official county fair which meets the requirements of section 331.306, shall submit to the registered voters of the county at the next general election following submission of the petition or at a special election if requested by the petitioners at no cost to the county, the question of which fair shall be designated as the official county fair. Notice of the election shall be given as provided in section 49.53. The fair receiving a majority of the votes cast on the question shall be designated the official county fair.

[R60, §1698, 1704; C73, §1110, 1112; C97, §1661; S13, §1659; SS15, §1661-a; C24, 27, §2902; C31, 35, §2902-d1; C39, §**2902.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §174.10; 81 Acts, ch 117, §1023]

95 Acts, ch 67, §53; 96 Acts, ch 1218, §32; 97 Acts, ch 215, §35; 99 Acts, ch 204, §32

174.11 Amount allowed as state aid. Repealed by 99 Acts, ch 204, § 38.

174.12 Payment of state aid.

The association of Iowa fairs shall pay a society the amount due in state aid, less one thousand dollars, as provided in this chapter. The association of Iowa fairs must certify to the treasurer that the society is eligible under this chapter to receive the amount to be paid to the society by the association. The association shall pay the society the remaining one thousand dollars, if all of the following apply:

1. The secretary of the state fair board certifies to the association that the society had an accredited delegate in attendance at the annual convention for the election of members of the state fair board as provided in section 173.2.

2. A district director of the association of Iowa fairs representing the district in which the county is located, and the director of the Iowa state fair board representing the congressional district in which the county is located, certify to the association that the society had an accredited delegate in attendance at the district meeting.

Any state aid moneys remaining due to the failure of a society to comply with this section shall be distributed equally among the societies which have qualified for state aid under this section. The treasurer of state shall allocate to the association of Iowa fairs the total amount to be paid by the association to eligible societies under this chapter.

[R60, §1698; C73, §1110; C97, §1659; S13, §1659; C24, 27, 31, 35, 39, §**2904;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.12]

96 Acts, ch 1218, §33; 97 Acts, ch 215, §36; 99 Acts, ch 204, §33

174.13 County aid.

The board of supervisors of the county in which a society is located may appropriate moneys to be used for fitting up or purchasing fairgrounds for the society or for aiding 4-H club work and payment of agricultural and livestock premiums in connection with the fair, if the society owns or leases at least ten acres of land for the fairground and owns or leases buildings and improvements on the land of at least eight thousand dollars in value. A society may meet the requirement of owning or leasing land, buildings, and improvements through ownership by a joint entity under chapter 28E, of which the society is a part.

[C73, §1111; C97, §1660; SS15, §1660; C24, 27, 31, 35, 39, §**2905;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §174.13; 81 Acts, ch 117, §1024; 82 Acts, ch 1104, §5]

83 Acts, ch 123, §75, 209; 85 Acts, ch 67, §19

174.14 Fairground aid.

The board of supervisors of a county which has acquired real estate for county or district fair purposes and which has a society using the real estate, may appropriate moneys to be used for the erection and repair of buildings or other permanent improvements on the real estate, and for the payment of debts contracted in the erection or repair and payment of agricultural and livestock premiums. In addition, the net proceeds from the sale of fairground sites and structures on the sites shall be used for the erection of permanent buildings on a new fairground site or the cost of moving structures from the old to the new site.

83 Acts, ch 123, §76, 209; 84 Acts, ch 1178, §2

174.15 Purchase and management.

Title to land purchased or received for fairground purposes shall be taken in the name of the county or a society, but the board of supervisors shall place it under the control and management of a society. The society may act as agent for the county in the erection of buildings, maintenance of grounds and buildings, or improvements constructed on the grounds. Title to new buildings or improvements shall be taken in the name of the county or a society, but the county is not liable for the improvements or expenditures for them.

[SS15, §1660; C24, 27, 31, 35, 39, §**2907;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §174.15; 81 Acts, ch 117, §1025]

98 Acts, ch 1219, §16

174.16 Termination of rights of society.

The right of such society to the control and management of said real estate may be terminated by the board of supervisors whenever well conducted agricultural fairs are not annually held thereon by such society.

[SS15, §1660; C24, 27, 31, 35, 39, §**2908;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.16]

174.17 Issuance of revenue bonds — standby tax levy.

1. The governing body of a society may issue bonds payable from revenue generated by the operations of the county fair and the use or rental of the real and personal property owned or leased by the society. The governing body of a society shall comply with all of the following procedures in issuing such bonds:

a. A society may institute proceedings for the issuance of bonds by causing a notice of the proposal to issue the bonds to be published at least once in a newspaper of general circulation within the county at least ten days prior to the meeting at which the society proposes to take action for the issuance of the bonds. The notice shall include a statement of the amount and purpose of the bonds, the maximum rate of interest the bonds are to bear, and the right to petition for an election.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by three percent of the registered voters of the county is filed with the board of supervisors, asking that the question of issuing the bonds be submitted to the registered voters, the board of supervisors shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. The proposition of issuing bonds under this subsection is not approved unless the vote in favor of the proposition is equal to at least sixty percent of the vote cast. If a petition is not filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the board of supervisors acting on behalf of the society may proceed with the authorization and issuance of the bonds. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

c. All bonds issued under this subsection shall be payable solely from and shall be secured by an irrevocable pledge of a sufficient portion of the net rents, profits, and income derived from the operation of the county fair and the use or rental of the real and personal property owned or leased by the society. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this subsection shall not limit or restrict the authority of the society as otherwise provided by law.

2. To further secure the payment of the bonds, the board of supervisors may, by resolution, provide for the assessment of an annual levy of a standby tax upon all taxable property within the county. A copy of the resolution shall be sent to the county auditor. The revenues from the standby tax shall be deposited in a special fund and shall be expended only for the payment of principal of and interest on the bonds issued as provided in this section, when the receipt of revenues pursuant to subsection 1 is insufficient to pay the principal and interest. If payments are necessary and made from the special fund, the amount of the payments shall be promptly repaid into the special fund from the first available revenues received which are not required for the payment of principal of or interest on bonds due. Reserves shall not be built up in the special fund in anticipation of a projected default. The board of supervisors shall adjust the annual standby tax levy for each year to reflect the amount of revenues in the special fund and the amount of principal and interest which is due in that year.

3. For purposes of this section, *"society"* means a society, as defined by section 174.1, that conducts a county or local fair that has a verifiable annual attendance of at least one hundred fifty thousand persons and annual outside gate admission revenues of at least four hundred thousand dollars.

99 Acts, ch 204, §34

174.18 Repealed by 81 Acts, ch 117, § 1097. See § 331.422(7).

174.19 Report of county aid.

A society shall not receive an appropriation from a county under this chapter, until the society submits a financial statement to the county board of supervisors. The statement shall show all expenditures of moneys appropriated to the society from the county in the previous year. The financial statement submitted to the board of supervisors shall include vouchers related to the expenditures.

[C73, §1113; C97, §1662; C24, 27, 31, 35, 39, §**2911;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.19]

91 Acts, ch 98, §1

174.20 Fraudulent entries of horses.

No person, partnership, company, or corporation shall knowingly enter or cause to be entered any horse of any age or sex under an assumed name, or out of its proper class, to compete for any purse, prize, premium, stake, or sweepstake offered or given by any agricultural or other society, association, person, or persons in the state, or drive any such horse under an assumed name, or out of its proper class, where such prize, purse, premium, stake, or sweepstake is to be decided by a contest of speed.

[C97, §1665; C24, 27, 31, 35, 39, §**2912;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.20]

174.21 Violations — penalty.
Any person convicted of a violation of section 174.20 shall be guilty of a fraudulent practice.
[C97, §1666; C24, 27, 31, 35, 39, §**2913;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.21]

174.22 Entry under changed name.
The name of any horse for the purpose of entry for competition in any contest of speed shall not be changed after having once contested for a prize, purse, premium, stake, or sweepstake, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted, unless the former name is given.
[C97, §1667; C24, 27, 31, 35, 39, §**2914;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.22]

174.23 Class determined.
The class to which a horse belongs for the purpose of an entry in any contest of speed, as provided by the printed rules of the society or association under which such contest is to be made, shall be determined by the public record of said horse in any such former contest.
[C97, §1668; C24, 27, 31, 35, 39, §**2915;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.23]

174.24 Repealed by 81 Acts, ch 117, § 1097.

174.25 Repealed by 81 Acts, ch 117, § 1097. See § 174.14.

174.26 and 174.27 Repealed by 81 Acts, ch 117, § 1097.

CHAPTER 175

AGRICULTURAL DEVELOPMENT

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175.1 Short title.
This chapter shall be called and may be cited as the *"Iowa Agricultural Development Act"*.
[C81, §175.1]

175.2 Definitions.
As used in this chapter, unless the context otherwise requires:
1. *"Agricultural improvements"* means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. *"Agricultural improvements"* includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.
2. *"Agricultural land"* means land suitable for use in farming.
3. *"Agricultural producer"* means a person that engages or wishes to engage or intends to engage in the business of producing and marketing agricultural produce in this state.
4. *"Authority"* means the agricultural development authority established in section 175.3.

5. *"Bankhead-Jones Farm Tenant Act"* means the Act cited as 50 Stat. 522 (1937), formerly codified as 7 U.S.C. § 1000 et seq., repealed by Pub. L. No. 87-128 (1961).

6. *"Beginning farmer"* means an individual, partnership, family farm corporation, or family farm limited liability company, as defined in section 9H.1, with a low or moderate net worth that engages in farming or wishes to engage in farming.

7. *"Bonds"* means bonds issued by the authority pursuant to this chapter.

8. *"Conservation farm equipment"* means the specialized planters, cultivators, and tillage equipment used for reduced tillage or no-till planting of row crops.

9. *"Depreciable agricultural property"* means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax under the Internal Revenue Code as defined in section 422.3.

10. *"Farming"* means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority by rules subject to chapter 17A.

11. *"Lending institution"* means a bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, including without limitation the federal land bank or any of its local associations, or any other financial institution or entity authorized to make farm operating loans in this state.

12. *"Low or moderate net worth"* means:

a. For an individual, an aggregate net worth of the individual and the individual's spouse and minor children of less than three hundred thousand dollars.

b. For a partnership, an aggregate net worth of all partners, including each partner's net capital in the partnership, and each partner's spouse and minor children of less than six hundred thousand dollars. However, the aggregate net worth of each partner and that partner's spouse and minor children shall not exceed three hundred thousand dollars.

c. For a family farm corporation, an aggregate net worth of all shareholders, including the value of each shareholder's share in the family farm corporation, and each shareholder's spouse and minor children of less than six hundred thousand dollars. However, the aggregate net worth of each shareholder and that shareholder's spouse and minor children shall not exceed three hundred thousand dollars.

d. For a family farm limited liability company, an aggregate net worth of all members, including each member's ownership interest in the family farm limited liability company, and each member's spouse and minor children of less than six hundred thousand dollars. However, the aggregate net worth of each member and that member's spouse and minor children shall not exceed three hundred thousand dollars.

13. *"Mortgage"* means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions and encumbrances acceptable to the authority, including any other mortgage liens of equal standing with or subordinate to the mortgage loan retained by a seller or conveyed to a mortgage lender, on a fee interest in agricultural land and agricultural improvements.

14. *"Mortgage lender"* means a bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, including without limitation the federal land bank or any of its local associations, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state.

15. *"Mortgage loan"* means a financial obligation secured by a mortgage.

16. *"Net worth"* means a person's total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of a person's net worth. Assets shall be valued at fair market value.

17. *"Note"* means a bond anticipation note or other obligation or evidence of indebtedness issued by the authority pursuant to this chapter.

18. *"Permanent soil and water conservation practices"* and *"temporary soil and water conservation practices"* have the same meaning as defined in section 161A.42.

19. *"Secured loan"* means a financial obligation secured by a chattel mortgage, security agreement or other instrument creating a lien on an interest in depreciable agricultural property.

20. *"State agency"* means any board, commission, department, public officer, or other agency or authority of the state of Iowa.

The authority may establish by rule further definitions applicable to this chapter and clarification of the definitions in this section, as necessary to assure eligibility for funds, insurance or guarantees available under federal laws and to carry out the public purposes of this chapter.

[C81, §175.2; 81 Acts, ch 68, §2; 82 Acts, ch 1243, §2]

83 Acts, ch 93, §1; 84 Acts, ch 1305, §23; 85 Acts, ch 15, §1, 2; 86 Acts, ch 1026, §1, 2; 86 Acts, ch 1027, §1; 86 Acts, ch 1245, §628; 87 Acts, ch 52, §1; 87 Acts, ch 169, §1; 94 Acts, ch 1118, §1 – 3; 2000 Acts, ch 1010, §1, 2

175.3 Establishment of authority.

1. The agricultural development authority is established within the department of agriculture and land stewardship. The authority is constituted a public instrumentality and agency of the state exercising public and essential governmental functions. The authority is established to undertake programs which assist beginning farmers in purchasing agricultural land and agricultural improvements and depreciable agricultural property for the purpose of farming, and programs which provide financing to farmers for permanent soil and water conservation practices on agricultural land within the state or for the acquisition of conservation farm equipment, and programs to assist farmers within the state in financing operating expenses and cash flow requirements of farming. The authority shall also develop programs to assist qualified agricultural producers within the state with financing other capital requirements or operating expenses. The powers of the authority are vested in and exercised by a board of eleven members with nine members appointed by the governor subject to confirmation by the senate. The treasurer of state or the treasurer's designee and the secretary of agriculture or the secretary's designee are ex officio nonvoting members. No more than five appointed members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent financial institutions experienced in agricultural lending, the real estate sales industry, farmers, beginning farmers, average taxpayers, local government, soil and water conservation district officials, and other persons specially interested in family farm development.

2. The appointed members of the authority shall be appointed by the governor for terms of six years except that, of the first appointments, three members shall be appointed for terms of two years and three members shall be appointed for a term of four years. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. An appointed member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. An appointed member of the authority may also serve as a member of the Iowa finance authority.

3. Five voting members of the authority constitute a quorum and the affirmative vote of a majority of the voting members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. The appointed members of the authority are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The appointed members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two members so request.

7. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority. The chairperson and vice chairperson shall serve on the selection and tenure committee as provided in section 175.7.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations or to implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority including any net earnings shall vest in the state.

[C81, §175.3; 82 Acts, ch 1243, §3]

83 Acts, ch 101, §32; 85 Acts, ch 15, §3; 86 Acts, ch 1026, §3; 86 Acts, ch 1027, §2; 86 Acts, ch 1245, §629; 87 Acts, ch 23, §4; 90 Acts, ch 1256, §34; 96 Acts, ch 1029, §1

Confirmation, see §2.32

175.4 Legislative findings.

The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious problem in this state regarding the ability of nonestablished farmers to acquire agricultural land and agricultural improvements and depreciable agricultural property in order to enter farming.

4. This barrier to entry into farming is conducive to consolidation of acreage of agricultural land with fewer individuals resulting in a grave threat to the traditional family farm.

5. These conditions result in a loss in population, unemployment and a movement of persons from rural communities to urban areas accompanied by added costs to communities for creation of

new public facilities and services.

6. One major cause of this condition has been recurrent shortages of funds in private channels and the high interest cost of borrowing.

7. These shortages and costs have made the sale and purchase of agricultural land to beginning farmers a virtual impossibility in many parts of the state.

8. The ordinary operations of private enterprise have not in the past corrected these conditions.

9. A stable supply of adequate funds for agricultural financing is required to encourage beginning farmers in an orderly and sustained manner and to reduce the problems described in this section.

10. Article IX, section 3, of the Constitution of the State of Iowa requires that, "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement," and agricultural improvement and the public good are served by a policy of facilitating access to capital by beginning farmers unable to obtain capital elsewhere in order to preserve, encourage and protect the family farm which has been the economic, political and social backbone of rural Iowa.

11. It is necessary to create an agricultural development authority to encourage ownership of farms by beginning farmers by providing purchase money loans to beginning farmers who are not able to obtain adequate capital elsewhere to provide such funds and to lower costs through the use of public financing.

12. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

13. The erosion of topsoil on agricultural land by wind and water is a serious problem within the state and one which threatens to destroy the natural resource most responsible for Iowa's prosperity.

14. It is necessary to the preservation of the economy and well-being of the state to encourage soil conservation practices by providing loans for permanent soil and water conservation practices on agricultural land within the state and for the acquisition of conservation farm equipment.

15. There exists a serious problem in this state regarding the ability of farmers to obtain affordable operating loans for reasonable and necessary expenses and cash flow requirements of farming.

16. Farming is one of the principal pursuits of the inhabitants of this state. Many other industries and pursuits, in turn, are wholly dependent upon farming.

17. The inability of farmers to obtain affordable operating loans is conducive to a general decline of the economy in this state.

18. It is necessary to establish an agricultural loan assistance program in this state to assist farmers in obtaining adequate financing at affordable rates for operating expenses and thereby assist in the stabilization of the economic condition of this state.

19. A serious problem continues to exist in this state regarding the ability of agricultural producers to obtain, retain, restructure, or service loans or other financing on a reasonable and affordable basis for operating expenses, cash flow requirements, and capital asset acquisition or maintenance.

20. Because the Iowa economy is dependent upon the production and marketing of agricultural produce, the inability of agricultural producers to obtain, retain, restructure, or service loans or other financing on a reasonable and an affordable basis for operating expenses, cash flow requirements, or capital asset acquisition or maintenance contributes to a general decline of the state's economy.

21. The decline in the number of beef cattle production operations is a serious problem within the state, resulting in the conversion of land used for pasture to row crop production, which threatens to destroy a significant part of Iowa's agricultural base and damage the economic viability of the state.

22. It is necessary to create a program in this state to assist agricultural producers who have established or intend to establish beef cattle production operations, to obtain adequate financing, and management assistance and training, and to convert land used for row crop production to pasture.

[C81, §175.4; 82 Acts, ch 1243, §4]

86 Acts, ch 1027, §3; 87 Acts, ch 52, §2; 87 Acts, ch 169, §2

175.5 Guiding principles.

In the performance of its duties, implementation of its powers, selection of specific programs and projects to receive its assistance, the authority shall be guided by the following principles:

1. The authority shall not become an owner of real or depreciable property, except on a temporary basis where necessary in order to implement its programs, to protect its investments by means of foreclosure or other means, or to facilitate transfer of real or depreciable property for the use of beginning farmers.

2. The authority shall exercise diligence and care in selection of projects to receive its assistance and shall apply customary and acceptable business and lending standards in selection and subsequent implementation of the projects. The authority may delegate primary responsibility for determination and implementation of the projects to any federal governmental agency which assumes any obligation to repay the loan, either directly or by insurance or guarantee.

3. The authority shall establish a beginning farmer loan program to aid beginning farmers in the acquisition of agricultural land and improve-

ments and depreciable agricultural property.

4. The authority shall develop programs for providing financial assistance to agricultural producers in this state.

[C81, §175.5]

86 Acts, ch 1026, §4

175.6 General powers.

The authority has all of the general powers needed to carry out its purposes and duties, and to exercise its specific powers, including but not limited to the power to:

1. Issue its negotiable bonds and notes as provided in this chapter in order to finance its programs.

2. Sue and be sued in its own name.

3. Have and alter a corporate seal.

4. Make and alter bylaws for its management consistent with the provisions of this chapter.

5. Make and execute agreements, contracts and other instruments, with any public or private entity, including but not limited to, any federal governmental agency or instrumentality. The authority may make and execute contracts with any firm of independent certified public accountants to prepare an annual report on behalf of the authority. The authority may make and execute contracts with mortgage lenders for the servicing of mortgage and secured loans. All political subdivisions, other public agencies and state agencies may enter into contracts and otherwise co-operate with the authority.

6. Acquire, hold, improve, mortgage, lease and dispose of real and personal property, including but not limited to, the power to sell at public or private sale, with or without public bidding, any property, mortgage or secured loan or other obligation held by it.

7. Procure insurance against any loss in connection with its operations and property interests, including pool insurance on any group of mortgage or secured loans.

8. Fix and collect fees and charges for its services.

9. Subject to an agreement with bondholders or noteholders, invest or deposit moneys of the authority in a manner determined by the authority, notwithstanding chapter 12B or 12C.

10. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.

11. Provide to public and private entities technical assistance and counseling related to the authority's purposes.

12. In co-operation with other local, state or federal governmental agencies or instrumentalities, conduct studies of beginning farmer or agricultural producer agricultural needs, and gather and compile data useful to facilitate decision making.

13. Contract with architects, engineers, attorneys, accountants, housing construction and finance experts, and other advisors or enter into contracts or agreements for such services with local, state or federal governmental agencies.

14. Make, alter and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.18; C81, §175.6]

84 Acts, ch 1230, §1; 87 Acts, ch 52, §3

175.7 Executive director — staff.

1. The executive director of the authority shall be appointed by a selection and tenure committee, which shall consist of the secretary of agriculture and the chairperson and vice chairperson of the board established pursuant to section 175.3, or their designees. The executive director shall serve at the pleasure of the committee. The votes of three members of the committee are necessary for any substantive action taken by the committee, except that two members may take a substantive action, if the secretary has a conflict of interest. If a member other than the secretary has a conflict of interest, the board shall appoint a substitute member of the committee from the appointed members of the board for the duration of the conflict of interest. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation.

2. The executive director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

3. The executive director shall advise the authority on matters relating to agricultural land and property and agricultural finance, and carry out all directives from the authority, and shall hire and supervise the authority's staff pursuant to its directions and under the merit system provisions of chapter 19A, except that principal administrative assistants with responsibilities in beginning farm loan programs, accounting, mortgage loan processing, and investment portfolio management are exempt from the merit system.

4. The executive director, as secretary of the authority, shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. The executive director may cause to be made copies of all minutes and other records and documents of the authority and give certificates under the seal of the authority to the effect that the copies are true copies and all persons dealing with the authority may rely upon the certificates.

[C81, §175.7]

84 Acts, ch 1236, §1; 86 Acts, ch 1245, §630; 88 Acts, ch 1158, §45; 96 Acts, ch 1029, §2

175.8 Annual report.

1. The authority shall submit to the governor and to the members of the general assembly as request it, not later than January 15 of each year, a complete and economically designed and reproduced report setting forth:

a. Its operations and accomplishments.

b. Its receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of its fiscal year and the status of reserve, special and other funds.

d. A schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and issued during its fiscal year.

e. A statement of its proposed and projected activities.

f. Recommendations to the general assembly, as it deems necessary.

g. An analysis of beginning farmer needs in the state.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period, in attaining the goals. Where possible, results shall be expressed in terms of number of loans and acres of agricultural land.

[C81, §175.8]

175.9 Nondiscrimination.

1. The opportunity to acquire agricultural land and agricultural improvements and depreciable agricultural property financed or otherwise assisted by the authority, directly or indirectly, is open to all persons regardless of race, creed, color, sex, national origin, age, physical or mental impairment, or religion.

2. The authority shall promote marketing plans for its programs under this chapter.

[C81, §175.9]

175.10 Surplus moneys.

Moneys declared by the authority to be surplus moneys which are not required to service bonds and notes, to pay administrative expenses of the authority or to accumulate necessary operating or loss reserves, shall be used by the authority to provide loans, grants, subsidies, and other services or assistance to beginning farmers or agricultural producers through any of the programs authorized in this chapter.

[C81, §175.10]

87 Acts, ch 52, §4

175.11 Combination programs.

Programs authorized in this chapter may be combined with any other programs authorized in this chapter, under chapter 16 or under a federal program in order to facilitate as far as practicable the acquisition of agricultural land and property by beginning farmers or to facilitate the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment.

[C81, §175.11; 82 Acts, ch 1243, §5]

175.12 Beginning farmer program.

1. The authority shall develop a beginning farmer loan program to facilitate the acquisition of agricultural land and improvements and depreciable agricultural property by beginning farmers. The authority shall exercise the powers granted to it in this chapter in order to fulfill the goal of providing financial assistance to beginning farmers in the acquisition of agricultural land and agricultural improvements and depreciable agricultural property. The authority may participate in and cooperate with programs of the United States department of agriculture consolidated farm service agency, federal land bank or any other agency or instrumentality of the federal government or with any program of any other state agency in the administration of the beginning farmer loan program and in the making or purchasing of mortgage or secured loans pursuant to this chapter.

2. The authority may participate in any federal programs designed to assist beginning farmers or in any related federal or state programs.

3. The authority shall provide in a beginning farmer loan program that a mortgage or secured loan to or on behalf of a beginning farmer shall be provided only if the following criteria are satisfied:

a. The beginning farmer is a resident of the state. If the beginning farmer is a partnership, all partners shall be residents of the state. If a beginning farmer is a family farm corporation, all shareholders shall be residents of the state. If the beginning farmer is a family farm limited liability company, all members shall be residents of the state.

b. The agricultural land and agricultural improvements or depreciable agricultural property the beginning farmer proposes to purchase will be located in the state.

c. The beginning farmer has sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a partnership, all partners shall have sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a family farm corporation, all shareholders who are not minors shall have sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a family farm limited liability company, all members who are not minors shall have sufficient edu-

cation, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan.

d. A loan to a beginning farmer for the acquisition of agricultural land and agricultural improvements does not exceed five hundred thousand dollars. A loan to a beginning farmer for the acquisition of depreciable agricultural property does not exceed one hundred twenty-five thousand dollars.

e. If the loan is for the acquisition of agricultural land, the beginning farmer has or will have access to adequate working capital, farm equipment, machinery or livestock. If the loan is for the acquisition of depreciable agricultural property, the beginning farmer has or will have access to adequate working capital or agricultural land.

f. The beginning farmer shall materially and substantially participate in farming. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, each partner, shareholder, or member shall materially and substantially participate in farming.

g. If the beginning farmer is an individual, the agricultural land and agricultural improvements shall only be used for farming by the individual, the individual's spouse, or the individual's minor children. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, the agricultural land and agricultural improvements shall only be used for farming by any or all of the partners, shareholders, or members, including their spouses and minor children.

h. The beginning farmer has not previously received financing under the program for the acquisition of property similar in nature to the property for which the loan is sought. However, this restriction shall not apply if the amount previously received plus the amount of the loan sought does not exceed five hundred thousand dollars in the case of agricultural land and improvements or one hundred twenty-five thousand dollars in the case of depreciable agricultural property.

i. Other criteria as the authority prescribes by rule.

4. The authority may provide in a mortgage or secured loan made or purchased pursuant to this chapter that the loan may not be assumed or any interest in the agricultural land or improvements or depreciable agricultural property may not be leased, sold or otherwise conveyed without its prior written consent and may provide a due-on-sale clause with respect to the occurrence of any of the foregoing events without its prior written consent. The authority may provide by rule the grounds for permitted assumptions of a mortgage or for the leasing, sale or other conveyance of any interest in the agricultural land or improvements. However, the authority shall provide and state in a mortgage or secured loan that the authority has the power to raise the interest rate of the loan to the prevailing market rate if the mortgage or secured loan is assumed by a farmer who is already established in that field at the time of the assumption of the loan. This provision controls with respect to a mortgage loan made or purchased pursuant to this chapter notwithstanding the provisions of chapter 535.

5. The authority may participate in any interest in any mortgage or secured loan made or purchased pursuant to this chapter with a mortgage lender. The participation interest may be on a parity with the interest in the mortgage or secured loan retained by the authority, equally and ratably secured by the mortgage or securing agreement securing the mortgage or secured loan.

[C81, §175.12; 81 Acts, ch 68, §3, 4]

85 Acts, ch 15, §4, 5; 94 Acts, ch 1118, §4 – 7; 95 Acts, ch 216, §25

175.13 Loans to beginning farmers.

1. The authority may make mortgage or secured loans, including but not limited to mortgage or secured loans insured, guaranteed, or otherwise secured by the federal government or a federal governmental agency or instrumentality, a state agency or private mortgage insurers, to beginning farmers to provide financing for agricultural land and agricultural improvements or depreciable agricultural property.

2. Mortgage or secured loans shall contain terms and provisions, including interest rates, and be in a form established by rules of the authority. The authority may require the beginning farmer to execute a note, loan agreement or other evidence of indebtedness and furnish additional assurances and guarantees, including insurance, reasonably related to protecting the security of the mortgage or secured loan, as the authority deems necessary.

[C81, §175.13]

175.13A Financial assistance for agricultural producers.

1. In addition to the other programs authorized pursuant to this chapter, the authority is authorized to provide any type of economic assistance directly or indirectly to agricultural producers, and may develop and implement programs including, but not limited to, the making of loan guarantees, interest buy-downs, grants, secured or unsecured direct loans, secondary market purchases of loans or mortgages, loans to mortgage lenders, lending institutions, other agricultural lenders as designated by rule of the authority, or entities that provide funds or credits to such lenders or institutions, to assist agricultural producers within the state. The authority may exercise any of the powers granted to it in this chapter in order to fulfill the goal of providing financial assistance to agricultural producers. The authority may participate in and cooperate with programs of any agency or instrumentality of the federal government or with programs of any other state agency

in the administration of the programs to provide economic assistance to agricultural producers.

2. The authority shall provide in any program developed and implemented pursuant to this section that assistance shall be provided only if the following criteria are satisfied:

a. The agricultural producer is a resident of the state.

b. The agricultural producer's land and farm operations are located within the state.

c. Based upon the agricultural producer's net worth, cash flow, debt-to-asset ratio, and other criteria as prescribed by rule of the authority, the authority determines that without such assistance the agricultural producer could not reasonably be expected to be able to obtain, retain, restructure, or service loans or other financing for operating expenses, cash flow requirements, or capital acquisition and maintenance upon a reasonable and affordable basis.

d. Other criteria as the authority prescribes by rule.

3. The authority is granted all powers which are necessary or useful to develop and implement programs and authorizations pursuant to subsection 1. These powers include, but are not limited to:

a. All general powers stated in section 175.6.

b. The power to make or enter into or to require the making or entry into of agreements of any type, with or by any person, that are necessary to effect the purposes of this section. These agreements may include, but are not limited to contracts, notes, bonds, guarantees, mortgages, loan agreements, trust indentures, reimbursement agreements, letters of credit or other liquidity or credit enhancement agreements, reserve agreements, loan or mortgage purchase agreements, buy-down agreements, grants, collateral or security agreements, insurance contracts, or other similar documents. The agreements may contain any terms and conditions which the authority determines are reasonably necessary or useful to implement the purposes of this section or which are usually included in agreements or documents between private or public persons in similar transactions.

c. The power to issue its bonds or notes and expend or commit moneys for the purposes set forth in subsection 1. The authority may provide in the documents authorizing its bonds or notes that their principal and interest shall be limited obligations payable solely out of the revenues derived from a specific program or source and do not constitute an indebtedness of the authority or a charge against the authority's general credit or general fund. Alternatively, the authority may provide that the principal and interest of specified bonds or notes do constitute an indebtedness of the authority and a charge against the authority's general credit or general fund.

d. The power to participate in any federal or other state program designed to assist agricultural producers or in related federal or state programs.

e. The power to require submission of evidence satisfactory to the authority of the receipt by an agricultural producer of the assistance intended under a program developed and implemented pursuant to this section. In that connection, the authority, through its members, employees or agents, may inspect the books and records of any person receiving or involved in the provision of assistance in accordance with this section.

f. The power to establish by rule appropriate enforcement provisions in order to assure compliance with this section and rules adopted pursuant to this section, to seek the enforcement of such rules and the terms of any agreement or document by decree of any court of competent jurisdiction, and to require as a condition of providing assistance pursuant to this section the consent of any person receiving or involved in the provision of the assistance to the jurisdiction of the courts of this state over any enforcement proceeding.

g. The power to require, as a condition of the provision of assistance pursuant to this section, any representations and warranties on the part of any person receiving or involved in providing such assistance that the authority determines are reasonably necessary or useful to carry out the purposes of this section. A person receiving or involved in providing assistance pursuant to this section is liable to the authority for damages suffered by the authority by reason of a misrepresentation or the breach of a warranty.

4. All persons, public and private, are authorized to cooperate with the authority and to participate in the programs developed and implemented pursuant to this section and in accordance with the rules of the authority.

5. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 175.19, subsection 4, apply to bonds or notes issued pursuant to powers granted to the authority under this section, to reserve funds, to appropriations, and to the remedies of bondholders and noteholders except to the extent that they are inconsistent with this section.

86 Acts, ch 1026, §5; 87 Acts, ch 52, §5

175.14 Loans to mortgage lenders.

1. The authority may make and contract to make loans to mortgage lenders on terms and conditions it determines are reasonably related to protecting the security of the authority's investment and to implementing the purposes of this chapter. Mortgage lenders are authorized to borrow from the authority in accordance with the provisions of this section and the rules of the authority.

2. The authority shall require as a condition of each loan to a mortgage lender that the mortgage

lender, within a reasonable period after receipt of the loan proceeds as the authority prescribes by rule, shall have entered into written commitments to make and, within a reasonable period thereafter as the authority prescribes by rule, shall have disbursed the loan proceeds in new mortgage or secured loans to beginning farmers in an aggregate principal amount of not less than the amount of the loan. New mortgage or secured loans shall have terms and conditions as the authority prescribes by rules which are reasonably related to implementing the purposes of this chapter.

3. The authority shall require the submission to it by each mortgage lender to which the authority has made a loan, of evidence satisfactory to the authority of the making of new mortgage or secured loans to beginning farmers as required by this section and in that connection may, through its members, employees or agents, inspect the books and records of a mortgage lender.

4. Compliance by a mortgage lender with the terms of its agreement with the authority with respect to the making of new mortgage or secured loans to beginning farmers may be enforced by decree of any district court of this state. The authority may require as a condition of a loan to a national banking association or a federally chartered savings and loan association, the consent of the association to the jurisdiction of courts of this state over any enforcement proceeding. The authority may also require, as a condition of a loan to a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority, and the penalties shall be recoverable at the suit of the authority.

5. The authority shall require that each mortgage lender receiving a loan pursuant to this section shall issue and deliver to the authority evidence of its indebtedness to the authority which shall constitute a general obligation of the mortgage lender and shall bear a date, mature at a time, be subject to prepayment and contain other provisions consistent with this section and reasonably related to protecting the security of the authority's investment, as the authority determines.

6. Notwithstanding any other provision of this section, the interest rate and other terms of loans to mortgage lenders made from the proceeds of an issue of bonds or notes of the authority shall be at least sufficient to assure the payment of the bonds or notes and the interest on them as they become due.

7. The authority may require that loans to mortgage lenders are additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security by special escrow funds or other forms of guarantee and in amounts and forms as the authority by resolution determines to be necessary to assure the payment of the loans and the interest as they become due. Collateral security shall consist of direct obligations of or obligations guaranteed by the United States or one of its agencies, obligations satisfactory to the authority which are issued by other federal agencies, direct obligations of or obligations guaranteed by a state or a political subdivision of a state or investment quality obligations approved by the authority.

8. The authority may require that collateral for loans be deposited with a bank, trust company or other financial institution acceptable to the authority located in this state and designated by the authority as custodian. In the absence of that requirement, each mortgage lender shall enter into an agreement with the authority containing provisions the authority deems necessary to adequately identify and maintain the collateral, service the collateral and require the mortgage lender to hold the collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition of the collateral and the income from it. The authority may also establish additional requirements it deems necessary with respect to the pledging, assigning, setting aside or holding of collateral and the making of substitutions for it or additions to it and the disposition of income and receipts from it.

9. The authority may require as a condition of loans to mortgage lenders any representations and warranties it determines are necessary to secure the loans and carry out the purposes of this section.

10. The authority may require the beginning farmer to satisfy conditions and requirements normally imposed by mortgage lenders in making similar loans, including but not limited to, the purchase of capital stock in the federal land bank.

11. If a provision of this section is inconsistent with a provision of law of this state governing mortgage lenders, the provision of this section controls for the purposes of this section.

[C81, §175.14]

175.15 Purchase of loans.

1. The authority may purchase and make advance commitments to purchase mortgage or secured loans from mortgage lenders at prices and upon terms and conditions as it determines. However, the total purchase price for all mortgage or secured loans which the authority commits to purchase from a mortgage lender at any one time shall not exceed the total of the unpaid principal balances of the mortgage or secured loans purchased. Mortgage lenders are authorized to sell mortgage or secured loans to the authority in accordance with the provisions of this section and the rules of the authority.

2. The authority shall require as a condition of purchase of mortgage or secured loans from mortgage lenders that the mortgage lenders certify that the mortgage or secured loans purchased are loans made to beginning farmers. Mortgage or secured loans to be made by mortgage lenders shall

have terms and conditions as the authority prescribes by rule. The authority may make a commitment to purchase mortgage or secured loans from mortgage lenders in advance of the time the loans are made by mortgage lenders. The authority shall require as a condition of a commitment that mortgage lenders certify in writing that all mortgage or secured loans represented by the commitment will be made to beginning farmers and that the mortgage lender will comply with other authority specifications.

3. The authority shall require the submission to it by each mortgage lender from which the authority has purchased loans of evidence satisfactory to the authority of the making of mortgage or secured loans to beginning farmers as required by this section and in that connection may, through its members, employees or agents, inspect the books and records of a mortgage lender.

4. Compliance by a mortgage lender with the terms of its agreement with the authority with respect to the making of mortgage or secured loans to beginning farmers may be enforced by decree of any district court of this state. The authority may require as a condition of purchase of mortgage or secured loans from any national banking association or federally chartered savings and loan association the consent of the association to the jurisdiction of courts of this state over any enforcement proceeding. The authority may also require as a condition of the purchase of mortgage or secured loans from a mortgage lender agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority and the penalties shall be recoverable at the suit of the authority.

5. The authority may require as a condition of purchase of a mortgage or secured loan from a mortgage lender that the mortgage lender make representations and warranties the authority requires. A mortgage lender is liable to the authority for damages suffered by the authority by reason of the untruth of a representation or the breach of a warranty and, in the event that a representation proves to be untrue when made or in the event of a breach of warranty, the mortgage lender shall, at the option of the authority, repurchase the mortgage or secured loan for the original purchase price adjusted for amounts subsequently paid on it, as the authority determines.

6. The authority shall require the recording of an assignment of a mortgage loan purchased by it from a mortgage lender and is not required to notify the mortgagor of its purchase of the mortgage loan. The authority is not required to inspect or take possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased enters into a contract to service the mortgage loan and account to the authority for it.

7. If a provision of this section is inconsistent with another provision of law of this state governing mortgage lenders, the provision of this section controls for the purposes of this section.

[C81, §175.15]

175.16 Powers relating to loans.

Subject to any agreement with bondholders or noteholders, the authority may renegotiate a mortgage or secured loan or a loan to a mortgage lender in default, waive a default or consent to the modification of the terms of a mortgage or secured loan or a loan to a mortgage lender, forgive or forbear all or part of a mortgage or secured loan or a loan to a mortgage lender and commence, prosecute and enforce a judgment in any action, including but not limited to a foreclosure action, to protect or enforce any right conferred upon it by law, mortgage or secured loan agreement, contract or other agreement and in connection with any action, bid for and purchase the property or acquire or take possession of it, complete, administer, pay the principal of and interest on any obligations incurred in connection with the property and dispose of and otherwise deal with the property in a manner the authority deems advisable to protect its interests.

[C81, §175.16]

175.17 Bonds and notes.

1. The authority may issue its negotiable bonds and notes in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

2. Bonds and notes are payable solely and only out of the moneys, assets or revenues of the authority and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets or revenues. Bonds or notes are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority shall not pledge the credit or taxing power of this state or any political subdivision of this state other than the authority or make its debts payable out of any moneys except those of the authority.

3. Bonds and notes must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the autho-

rized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the authority or a facsimile of it, and the coupons attached shall be signed with the facsimile signature of the chairperson or vice chairperson, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest and other terms, conditions, covenants and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the bonds as to those matters set forth in section 16.26, subsection 4, paragraph *"b"*.

5. The authority may issue its bonds for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this chapter. The interest, income and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds.

6. The authority may issue negotiable bond anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged or from the proceeds of the sale of bonds in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds and notes and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, which the bonds or a bond resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under article 9* of the uniform commercial code, or any other law of the state shall be required to perfect the security interest in the collateral or any additions to it or substitutions for it and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract or otherwise against the pledgor.

8. Members of the authority and any person executing its bonds, notes or other obligations are not liable personally on the bonds, notes or other obligations or subject to personal liability or accountability by reason of the issuance of the authority's bonds or notes.

9. The authority shall publish a notice of intention to issue bonds or notes in a newspaper published and of general circulation in the state. The notice shall include a statement of the maximum amount of bonds or notes proposed to be issued, and in general, what net revenues will be pledged to pay the bonds or notes and interest thereon. An action shall not be brought questioning the legality of the bonds or notes or the power of the authority to issue the bonds or notes or to the legality of any proceedings in connection with the authorization or issuance of the bonds or notes after sixty days from the date of publication of the notice.

10. Bonds and notes issued by the authority for purposes of financing the beginning farmer loan program provided in section 175.12 are ex-

empt from taxation by the state, and interest earned on the bonds and notes is deductible in determining net income for purposes of the state individual and corporate income tax under divisions II and III of chapter 422.

[C81, §175.17]

87 Acts, ch 52, §6; 89 Acts, ch 175, §1

*Section 554.9101 et seq.

175.18 Reserve funds and appropriations.

1. The authority may create and establish one or more special funds, each to be known as a "bond reserve fund" and shall pay into each bond reserve fund any moneys appropriated and made available by the state for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions of the authority authorizing their issuance and any other moneys which are available to the authority for the purpose of the fund from any other sources. Moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

2. Moneys in a bond reserve fund shall not be withdrawn from it in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this section, except for the purpose of making payment when due of principal, interest, redemption premiums and the sinking fund payments with respect to the bonds for the payment of which other moneys of the authority are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the authority to other funds or accounts of the authority to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

3. The authority shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the authority at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund will not be less than the bond reserve fund requirement for the fund. For the purposes of this section, the term *"bond reserve fund requirement"* means, as of any particular date of computation, an amount of money, as provided in the resolutions of the authority authorizing the bonds with respect to which the fund is established, equal to not more than ten percent of the outstanding principal amount of bonds secured by the fund.

4. To assure the continued operation and solvency of the authority for the carrying out of its corporate purposes, provision is made in subsection 1 for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the chairperson of the authority shall, on or before July 1 of each calendar year, make and deliver to the governor a certificate stating the sum, if any, required to restore each bond reserve fund to its bond reserve fund requirement. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including any sum required to restore each bond reserve fund to its bond reserve fund requirement. Sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited by the authority in the applicable bond reserve fund.

5. Amounts paid over to the authority by the state pursuant to the provisions of this section shall constitute and be accounted for as advances by the state to the authority and, subject to the rights of the holders of any bonds or notes of the authority, shall be repaid to the state without interest from all available operating revenues of the authority in excess of amounts required for the payment of bonds, notes or obligations of the authority, the bond reserve fund and operating expenses.

6. The authority shall cause to be delivered to the legislative fiscal committee within ninety days of the close of its fiscal year its annual report certified by an independent certified public accountant, who may be the accountant or a member of the firm of accountants who regularly audits the books and accounts of the authority selected by the authority. In the event that the principal amount of any bonds or notes deposited in a bond reserve fund is withdrawn for payment of principal or interest thereby reducing the amount of that fund to less than the bond reserve fund requirement, the authority shall immediately notify the general assembly of this event and shall take steps to restore the fund to its bond reserve fund requirement from any amounts available, other than principal of a bond issue, which are not pledged to the payment of other bonds or notes.

[C81, §175.18]

175.19 Remedies of bondholders and noteholders.

1. If the authority defaults in the payment of principal or interest on an issue of bonds or notes at maturity or upon call for redemption and the de-

fault continues for a period of thirty days or if the authority fails or refuses to comply with the provisions of this chapter, or defaults in an agreement made with the holders of an issue of bonds or notes, the holders of twenty-five percent in aggregate principal amount of bonds or notes of the issue then outstanding, by instrument filed in the office of the clerk of the county in which the principal office of the authority is located and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds or notes for the purposes provided in this section.

2. The authority or any trustee appointed under the indenture under which the bonds are issued may, but upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of bonds or notes then outstanding shall:

a. Enforce all rights of the bondholders or noteholders including the right to require the authority to carry out its agreements with the holders and to perform its duties under this chapter.

b. Bring suit upon the bonds or notes.

c. By action require the authority to account as if it were the trustee of an express trust for the holders.

d. By action enjoin any acts or things which are unlawful or in violation of the rights of the holders.

e. Declare all the bonds or notes due and payable and if all defaults are made good then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of bonds or notes then outstanding, annul the declaration and its consequences.

3. The trustee shall also have all powers necessary or appropriate for the exercise of functions specifically set forth or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

4. Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority and to the attorney general of the state.

5. The district court has jurisdiction of any action by the trustee on behalf of bondholders or noteholders. The venue of the action shall be in the county in which the principal office of the authority is located.

The bondholders or noteholders may, to the extent provided in the resolution to which the bonds or notes were issued or in its agreement with the authority, enforce any of the remedies in paragraphs *"a"* to *"e"* or the remedies provided in such proceedings or agreements for and on their own behalf.

[C81, §175.19; 81 Acts, ch 68, §5]

175.20 Agreement of the state.

The state pledges and agrees with the holders of any bonds or notes that the state will not limit or alter the rights vested in the authority to fulfill the terms of agreements made with the holders or in any way to impair the rights and remedies of the holders until the bonds or notes together with the interest on them, plus interest on unpaid installments of interest, and all costs and expenses in connection with an action by or on behalf of the holders are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with the holders of bonds or notes.

[C81, §175.20]

175.21 Bonds and notes as legal investments.

Bonds and notes are securities in which public officers, state departments and agencies, political subdivisions, insurance companies and other persons carrying on an insurance business, banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, administrators, executors, guardians, conservators, trustees and other fiduciaries and other persons authorized to invest in bonds or other obligations of this state may properly and legally invest funds including capital in their control or belonging to them. The bonds and notes are also securities which may be deposited with and may be received by public officers, state departments and agencies and political subdivisions for any purpose for which the deposit of bonds or other obligations of this state is authorized.

[C81, §175.21]

175.22 Moneys of the authority.

1. Moneys of the authority, except as otherwise provided in this chapter, shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall be secured in the manner determined by the authority. The auditor of state or the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and the authority shall not be required to pay a fee for the examination.

2. The authority may contract with holders of its bonds or notes as to the custody, collection, security, investment and payment of moneys of the authority, of moneys held in trust or otherwise for the payment of bonds or notes and to carry out the contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of the moneys may be secured in the same manner as moneys of the authority and banks and trust companies may give

security for the deposits.

3. Subject to the provisions of any contract with bondholders or noteholders and to the approval of the director of revenue and finance, the authority shall prescribe a system of accounts.

4. The authority shall submit to the governor, the auditor of state, the department of management, and the department of revenue and finance, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

[C81, §175.22]

88 Acts, ch 1158, §46

175.23 Limitation of liability.

Members of the authority and persons acting in its behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties given in this chapter.

[C81, §175.23]

175.24 Assistance by state officers, agencies and departments.

State officers and state departments and agencies may render services to the authority within their respective functions as requested by the authority.

[C81, §175.24]

175.25 Liberal interpretation.

This chapter, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

[C81, §175.25]

175.26 Conflicts of interest.

1. If a member or employee other than the executive director of the authority has an interest, either direct or indirect, in a contract to which the authority is or is to be a party or in a mortgage lender requesting a loan from or offering to sell mortgage or secured loans to the authority, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member or employee having the interest shall not participate in action by the authority with respect to that contract or mortgage lender.

2. This section does not limit the right of a member, officer or employee of the authority to acquire an interest in bonds or notes or to limit the right of a member or employee other than the executive director to have an interest in a bank or other financial institution in which the funds of the authority are deposited or which is acting as trustee or paying agent under a trust indenture to which the authority is a party.

3. The executive director shall not have an interest in a bank or other financial institution in which the funds of the authority are deposited or which is acting as trustee or paying agent under a trust indenture to which the authority is a party. The executive director shall not receive, in addition to fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, recommending or aiding in any purchase or sale of property or loan made by the authority, nor shall the executive director be pecuniarily interested, either as principal, co-principal, agent or beneficiary, either directly or indirectly or through any substantial interest in any other corporation or business unit, in any purchase, sale or loan.

[C81, §175.26]

175.27 Exemption from competitive bid laws.

The authority and all contracts made by it in carrying out its public and essential governmental functions under sections 175.14 and 175.15, shall be exempt from the laws of the state which provide for competitive bids in connection with such contracts.

[C81, §175.27]

175.28 Trust assets.

The authority shall make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of Pub. L. No. 499, 64 Stat. 152 (1950), (formerly codified 40 U.S.C. 440 et seq. (1976)) all of the trust assets held by the United States in trust for the Iowa rural rehabilitation corporation now dissolved.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.15; C81, §175.28]

175.29 Agreements.

The authority may enter into agreements with the secretary of agriculture of the United States pursuant to Pub. L. No. 499 s. 2(f) (1950) upon terms and conditions and for periods of time as mutually agreeable, authorizing the authority to accept, administer, expend and use in the state of Iowa all or any part of the trust assets or other funds in the state of Iowa which have been appropriated for use in carrying out the purposes of the Bankhead-Jones Farm Tenant Act and to do any and all things necessary to effectuate and carry out the purposes of said agreements.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.16; C81, §175.29]

175.30 Use of assets — insured or guaranteed loans to beginning or displaced farmers.

The trust assets received under the application made pursuant to section 175.28 other than cash

shall be taken on proper transfer or assignment from the department of human services to the authority and administered as provided in this chapter. These funds may be used for any of the purposes of this chapter, including but not limited to costs of administration and insuring or guaranteeing payment of all or a portion of loans made pursuant to this chapter.

Beginning August 11, 1983,* the authority shall establish an insurance or guarantee loan program with those funds received pursuant to section 175.28 to the extent those funds were not committed under a program authorized by this chapter on August 11, 1983.* This program shall provide for the insuring or guaranteeing of seventy-five percent of the amount of an agricultural loan, not in excess of twenty-five thousand dollars, made to a beginning or displaced farmer to provide operating moneys for farming purposes in this state. The authority shall insure or guarantee only one such loan for each beginning or displaced farmer. The authority shall insure or guarantee a loan for only one year but with the option to extend the insurance or guarantee once for an additional year. The authority shall not insure or guarantee a loan where the ratio of the beginning or displaced farmer's liabilities, excluding the amount of the loan, to assets is greater than three to one. Provision shall be made in the insuring or guaranteeing of a loan that only those funds set aside for this program as provided in this paragraph shall be used for the payment of all or a portion of the loan insured or guaranteed. Provision shall also be made that the authority shall pay under its insurance or guarantee seventy-five percent of the actual amount of the default. A mortgage lender which seeks to have a loan of the lender insured or guaranteed under this program shall apply to the authority for the insurance or guarantee pursuant to rules established by the authority for this purpose. This program shall not obligate the state, authority, or other agency except to the extent provided in this paragraph. The authority shall define by rule what constitutes a loan made to provide operating moneys which definition shall not include a loan made for acquisition of agricultural land or agricultural improvements, or the refinancing of an existing loan even if made for operating purposes. As used in this section, *"displaced farmer"* means a person who discontinued farming on or after January 1, 1982 due to foreclosure or voluntary liquidation for financial reasons, and who was actively engaged in farming for at least one year prior to discontinuing farming. For the purposes of this section, *"beginning farmer"* includes an individual or partnership with a low or moderate net worth that became engaged in farming on or after January 1, 1982.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.17; C81, §175.30]

83 Acts, ch 96, §157, 159; 83 Acts, ch 109, §1, 2, 3; 86 Acts, ch 1078, §1

*As determined by the Iowa family farm development authority

175.31 Programs in progress.

The authority shall complete the administration of programs in progress on July 1, 1980 to the extent that funds were committed, obligations incurred or rights accrued prior to July 1, 1980 under the programs authorized under sections 234.15 to 234.20 prior to the repeal of those sections. Moneys received under this section shall be deposited to the authority.

[C81, §175.31]

175.32 Liability.

The United States, the authority and the secretary of agriculture of the United States shall be held free from liability by virtue of the transfer of the assets to the authority. The authority and persons acting in its behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out their powers and duties under this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.20; C81, §175.32]

175.33 Additional loan program.

1. The authority may enter into a loan agreement with a beginning farmer to finance in whole or in part the acquisition by construction or purchase of agricultural land, agricultural improvements, or depreciable agricultural property. The repayment obligation of the beginning farmer may be unsecured, or may be secured by a mortgage or security agreement or by other security as the authority deems advisable, and may be evidenced by one or more notes of the beginning farmer. The loan agreement may contain terms and conditions as the authority deems advisable.

2. The authority may issue its bonds and notes for the purposes set forth in subsection 1 and may enter into a lending agreement or purchase agreement with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. Bonds and notes must be authorized by a resolution of the authority. The authority and the bondholders or noteholders may enter into an agreement to provide for any of the following:

a. That the proceeds of the bonds and notes and investments thereon may be received, held, and disbursed by the bondholders or noteholders, or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority, may collect, invest, and apply the amounts payable under the loan agreement or any other security instrument securing the debt obligation of the beginning farmer.

c. That the bondholders or noteholders may

enforce the remedies provided in the loan agreement or security instrument on their own behalf without the appointment or designation of a trustee and if there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained therein, the payment or performance may be enforced in accordance with the provisions contained therein.

d. That if there is a default in the payment of the principal or interest on a mortgage or security instrument or a violation of an agreement contained in the mortgage or security instrument, the mortgage or security instrument may be foreclosed or enforced and any collateral sold under proceedings or actions permitted by law and a trustee under the mortgage or security agreement or the holder of any bonds or notes secured thereby may become a purchaser if it is the highest bidder.

e. Other terms and conditions.

3. The authority may provide in the resolution authorizing the issuance of the bonds or notes that the principal and interest shall be limited obligations payable solely out of the revenues derived from the debt obligation, collateral, or other security furnished by or on behalf of the beginning farmer, and that the principal and interest does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

4. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 175.17, subsection 9 and section 175.19, subsection 4, apply to bonds or notes issued pursuant to and powers granted to the authority under this section except to the extent that they are inconsistent with this section.

[81 Acts, ch 68, §1]

175.34 Soil conservation loan program.

1. The authority shall establish a soil conservation loan program to facilitate the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment for agricultural land within the state by making financing for this program available to credit worthy owners or operators of agricultural land within the state. The authority may provide this financing under the program by direct loans, loans to lenders, and the purchase of loans in the manner provided in sections 175.13 through 175.15, except that the financing pursuant to these sections shall not be limited to beginning farmers. In addition under the program, the authority may enter into a loan agreement with the owner or operator to finance in whole or in part the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment for agricultural land in the state. The repayment obligation of the owner or operator may be unsecured, or may be secured by a mortgage or security agreement or by other security as the authority deems advisable, and may be evidenced by one or more notes of the owner or operator. The loan agreement may contain terms and conditions as the authority deems advisable.

2. In addition to the other conditions and criteria established for the soil conservation loan program, the following apply:

a. Loans made pursuant to the soil conservation loan program shall only be made to the owner or operator of a farm located within the state for which a conservation plan has been developed by the soil and water conservation district and the project for which the loan is to be made has been approved by the district. However, loans under the soil conservation loan program for implementation of a permanent soil and water conservation practice shall not be remitted to the applicant until the applicant provides evidence that payment of the permanent soil and water conservation practice is arranged for and the soil and water conservation district certifies that the practice is completed and approved.

b. The program and financing provided pursuant to the program shall not be limited to beginning farmers but shall be available to all credit worthy owners or operators of agricultural land within the state, however in providing financing for the acquisition of conservation farm equipment preference shall be given those owners or operators of agricultural land who have the lower net worths.

c. The division of soil conservation or any other state agency and the commissioners and staffs of the soil and water conservation districts may provide technical and financial assistance to the authority or in connection with the soil conservation loan program to assure the success of this program.

d. The amount of financing that may be provided under the soil conservation loan program shall not exceed the cost of implementing the permanent soil and water conservation practice or of acquiring the conservation farm equipment which the owner or operator is seeking to implement or acquire less any amounts the owner or operator will receive in public cost-sharing funds under chapter 161A or other provisions of state or federal law for the implementation or acquisition. However, the maximum amount of loans that an owner or operator may receive pursuant to this program shall not exceed fifty thousand dollars for permanent soil and water conservation practices and fifty thousand dollars for conservation farm equipment.

e. If a cooperator of a soil and water conservation district qualifies for cost sharing under a state soil conservation cost share program, the cooperator is eligible for a loan request. In granting these requests the authority shall give preference to those with the lower net worths.

3. The authority may issue its bonds and notes

for the purposes set forth in subsection 1 and may enter into a lending agreement or purchase agreement with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. Bonds and notes must be authorized by a resolution of the authority. However, the authority shall not have a total principal amount of bonds and notes outstanding under this section at any time in excess of twenty-five percent of the limitation on the amount of bonds and notes at any time specified in section 175.17, subsection 1. The authority and the bondholders or noteholders may enter into an agreement to provide for any of the following:

a. That the proceeds of the bonds and notes and investments thereon may be received, held, and disbursed by the bondholders or noteholders, or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority, may collect, invest, and apply the amounts payable under the loan agreement or any other security instrument securing the debt obligation of the owner or operator of the agricultural land.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreement or security instrument on their own behalf without the appointment or designation of a trustee and if there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained therein, the payment or performance may be enforced in accordance with the provisions contained therein.

d. That if there is a default in the payment of the principal or interest on a mortgage or security instrument or a violation of an agreement contained in the mortgage or security instrument, the mortgage or security instrument may be foreclosed or enforced and any collateral sold under proceedings or actions permitted by law and a trustee under the mortgage or security agreement or the holder of any bonds or notes secured thereby may become a purchaser if it is the highest bidder.

e. Other terms and conditions.

4. The authority may provide in the resolution authorizing the issuance of the bonds or notes that the principal and interest are limited obligations payable solely out of the revenues derived from the debt obligation, collateral, or other security furnished by or on behalf of the owner or operator of the agricultural land, and that the principal and interest do not constitute an indebtedness of the authority or a charge against its general credit or general fund.

5. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 175.12, section 175.17, subsection 9 and section 175.19, subsection 4, apply to bonds or notes issued pursuant to and powers granted to the authority under this section except to the extent that they are inconsistent with this section.

[82 Acts, ch 1243, §1]
83 Acts, ch 93, §2; 87 Acts, ch 23, §5

175.35 Agricultural loan assistance program.

1. The authority shall establish and develop an agricultural loan assistance program to facilitate the availability of affordable operating capital to farmers by providing grants to lending institutions as provided by this section.

2. The authority shall make available to farmers and lending institutions eligibility application forms for the agricultural loan assistance program. Applications to the authority for assistance under this section shall be executed jointly by the lending institution and the farmer upon approved forms.

3. The authority shall provide in the agricultural loan assistance program that a grant will be provided in conjunction with a farmer's operating loan only if the following criteria are satisfied:

a. The farmer is a resident of the state.

b. The farmer is an individual, a partnership, or a family farm corporation, as defined in section 9H.1, subsection 15.

c. The farming operation in which the farmer will use the operating loan is located within the state.

d. The operating loan will be used by the farmer for reasonable and necessary expenses and cash flow requirements of farming as defined by rules of the authority.

e. The farmer has made full disclosure of the farmer's finances to the lending institution and to the authority, to the extent required by the authority.

f. Additional requirements as are prescribed by the authority by rule, which may include but are not limited to:

(1) Participation in federal crop insurance programs, where available.

(2) A consideration of the borrower's agreement to maintain farm management techniques and standards established by the authority.

(3) Participation in federal farm programs, where applicable.

(4) The maximized use of available loan guarantees where applicable.

(5) A consideration of factors demonstrating the farmer's need for operating loan assistance and the probability of success with the assistance in the farming operation in which the operating loan will be used, including net worth, debt-to-asset ratio, debt service coverage ratio, projected income, and projected cash flow.

g. The farmer has a net worth of not more than two hundred thousand dollars.

h. The farmer develops a farm unit conservation plan, as defined in section 161A.42, with the commissioners of the soil and water conservation

district where the land is located within one year from the date of entering into the program, unless the authority prescribes a shorter period by rule.

4. The authority may participate in and cooperate with programs of an agency or instrumentality of the federal government in the administration of the agricultural loan assistance program. The authority may provide in the agricultural loan assistance program that a grant may be provided in conjunction with a farmer's operating loan only if the farmer and lending institution participate in one or more operating loan assistance programs of an agency or instrumentality of the federal government, which are determined to be appropriate by the authority.

5. Upon approval of an eligibility application and a determination by the authority that assistance pursuant to the agricultural loan assistance program is needed to qualify a farmer and lending institution for participation in an appropriate operating loan assistance program of an agency or instrumentality of the federal government, the authority may:

a. Enter into an agreement with the lending institution and the farmer to supplement the assistance to be received pursuant to the federal program in which agreement the lending institution shall agree to reduce for up to three years the interest rate on the farmer's operating loan to the rate determined by the authority to be necessary to qualify the farmer and lending institution for participation in the federal program and the farmer shall agree to comply with the rules and requirements established by the authority.

b. Agree to give the lending institution, for the benefit of the farmer, a grant in an amount to be determined by the authority to partially reimburse the lending institution for the reduction of the interest rate on the farmer's operating loan.

6. In determining the rate reduction to be required under subsection 5, paragraph *"a"*, and the amount of the grant to be given under subsection 5, paragraph *"b"*, the authority shall:

a. Consider the amount of any interest reimbursement to be received by the farmer or lending institution pursuant to the federal operating loan assistance program.

b. Not require a rate reduction pursuant to subsection 5, paragraph *"a"* which is in excess of three percentage points in addition to the interest rate reduction required pursuant to the federal program.

c. Not give a grant pursuant to subsection 5, paragraph *"b"* in an amount greater than three percent per annum of up to one hundred thousand dollars of the principal balance of the farmer's operating loan outstanding from time to time, for the term of the loan or for three years, whichever is less.

7. Notwithstanding the provisions of subsections 4, 5, and 6, upon approval of an eligibility application and a determination by the authority that operating loan assistance will not be available to an individual farmer and lending institution on a timely basis pursuant to an appropriate program of the federal government, the authority may:

a. Enter into an agreement with the lending institution and the farmer in which the lending institution shall agree to reduce for up to three years the interest rate on the farmer's operating loan to a rate determined by the authority below the lending institution's farm operating loan rate as certified to the authority and the farmer shall agree to comply with the rules and requirements established by the authority.

b. Agree to give to the lending institution, for the benefit of the farmer, a grant in the amount, as determined by the authority, up to three percent per annum of up to one hundred thousand dollars of the principal balance of the farmer's operating loan outstanding from time to time, for the term of the loan or for three years, whichever is less, to partially reimburse the lending institution for the reduction of the interest rate on the borrower's operating loan. However, the grant shall not exceed fifty percent of the amount of interest foregone by the lending institution pursuant to the rate reduction under paragraph *"a"*.

8. The authority may require a lending institution to submit evidence satisfactory to the authority that the lending institution has complied with the reduction in the interest rate as required by an agreement pursuant to subsection 5 or 7. The authority may inspect any books and records of a lending institution which are pertinent to the administration of the agricultural loan assistance program.

9. In order to assure compliance with this section and rules adopted pursuant to this section, the authority may establish by rule appropriate enforcement provisions, including but not limited to, the payment of civil penalties by a lending institution or farmer.

86 Acts, ch 1027, §4; 87 Acts, ch 127, §1 – 3; 87 Acts, ch 169, §3

175.36 Assistance and management programs for beef cattle producers.

1. The authority shall create and develop programs to assist agricultural producers who have established or intend to establish in this state, beef cattle production operations, including but not limited to the following assistance:

a. Insurance or loan guarantee program. An insurance or loan guarantee program to provide for the insuring or guaranteeing of all or part of a loan made to an agricultural producer for the acquisition of beef cattle to establish or expand a feeder cattle operation.

b. An interest buy-down program. The authority may contract with a participating lending institution and a qualified agricultural producer to reduce the interest rate charged on a loan for

the acquisition of beef cattle breeding stock. The authority shall determine the amount that the rate is reduced, by considering the lending institution's customary loan rate for the acquisition of beef cattle breeding stock as certified to the authority by the lending institution.

As part of the contract, in order to partially reimburse the lending institution for the reduction of the interest rate on the loan, the authority may agree to grant the lending institution any amount foregone by reducing the interest rate on that portion of the loan which is one hundred thousand dollars or less. However, the amount reimbursed shall not be more than the lesser of the following:

(1) Three percent per annum of the principal balance of the loan outstanding at any time for the term of the loan or within one year from the loan initiation date as defined by rules adopted by the authority, whichever is less.

(2) Fifty percent of the amount of interest foregone by the lending institution on the loan.

c. A cost-sharing program. The authority may contract with an agricultural producer to reimburse the producer for the cost of converting land planted to row crops to pasture suitable for beef cattle production. However, the amount reimbursed shall not be more than twenty-five dollars per acre converted, or fifty percent of the conversion costs, whichever is less. The contract shall apply to not more than one hundred fifty acres of row crop land converted to pasture. The converted land shall be utilized in beef cattle production for a minimum of five years. The amount to be reimbursed shall be reduced by the amount that the agricultural producer receives under any other state or federal program that contributes toward the cost of converting the same land from row crops to pasture.

d. A management assistance and training program. The authority in cooperation with any agency or instrumentality of the federal government or with any state agency, including any state university or those associations organized for the purpose of assisting agricultural producers involved in beef cattle production, or with any farm management company if such company specializes in beef cattle production or in assisting beef cattle producers, as prescribed by rules adopted by the authority, shall establish programs to train and assist agricultural producers to effectively manage beef cattle production operations.

2. An agricultural producer shall be eligible to participate in a program established under this section only if all the following criteria are satisfied:

a. The agricultural producer is a resident of the state.

b. The agricultural producer has land or other facilities available to establish a beef cattle production operation as prescribed by rules of the authority.

c. The agricultural producer is an individual, partnership, or a family farm corporation, as defined in section 9H.1, subsection 15.

d. The land or other facilities available to establish a beef cattle production operation are located within the state.

e. The agricultural producer has a net worth of four hundred thousand dollars or less.

f. The agricultural producer develops a farm unit conservation plan, as defined in section 161A.42, with the commissioners of the soil and water conservation district where the land is located within one year from the date of entering into the program, unless the authority prescribes a shorter period of time by rule.

3. The authority shall adopt rules to enforce the provisions of this section or the terms of a contract to which the authority is a party. The authority may also enforce the provisions of this section or terms of the contract by bringing an action in any court of competent jurisdiction to recover damages. As a condition of entering into the program, the authority may require that the agricultural producer consent to the jurisdiction of the courts of this state to hear any matter arising from the provisions of this section.

87 Acts, ch 169, §4

CHAPTER 175A

GRAPE AND WINE DEVELOPMENT

175A.1 Definitions.
175A.2 Grape and wine development commission.
175A.3 Administration.
175A.4 Grape and wine development programs.
175A.5 Grape and wine development fund.

175A.1 Definitions.

1. *"Commission"* means the grape and wine development commission as established pursuant to section 175A.2.

2. *"Department"* means the department of agriculture and land stewardship.

3. *"Fund"* means the grape and wine development fund created pursuant to section 175A.5.

4. *"Grower"* means a person who owns a vineyard and is actively engaged in growing grapes on a commercial basis in this state for use by a winery.

5. *"Retail seller"* means a person actively engaged in the business of selling wine in this state on a retail basis.

6. *"Vineyard"* means a tract of land used for growing grapes used in making wine.

7. *"Wine"* means the same as defined in section 123.3.

8. *"Winemaker"* means a person who owns a winery and is actively engaged in producing wine in this state on a commercial basis.

9. *"Winery"* means a commercial operation using grapes for the production of wine on a commercial basis.

2001 Acts, ch 162, §2

175A.2 Grape and wine development commission.

1. A grape and wine development commission is established within the department. The commission shall be composed of the following persons:

a. The following persons, or their designees, who shall serve as nonvoting, ex officio members:

(1) The secretary of agriculture.

(2) The dean of the college of agriculture of Iowa state university of science and technology.

(3) The director of the department of economic development.

(4) The director of the department of natural resources.

b. The following persons appointed by the secretary of agriculture, who shall serve as voting members:

(1) Two growers.

(2) Two winemakers.

(3) One retail seller.

The secretary of agriculture shall appoint the voting members based on a list of nominations submitted by organizations representing growers, winemakers, and retail sellers as certified by the department according to requirements of the department. Appointments of voting members are subject to the requirements of sections 69.16 and 69.16A. In addition, the appointments shall be geographically balanced. Unless the secretary of agriculture determines that it is not feasible, at least one person appointed as a voting member shall reside in each of the state's congressional districts at the time of appointment. The secretary of agriculture's appointees shall be confirmed by the senate, pursuant to section 2.32.

2. The voting members shall serve three-year terms beginning and ending as provided in section 69.19. However, the secretary of agriculture shall appoint initial members to serve for less than three years to ensure members serve staggered terms. A member is eligible for reappointment. A vacancy on the commission shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

3. The commission shall elect a chairperson from among its voting members each year on a rotating basis as provided by the commission. The commission shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more voting members.

4. Members are not entitled to receive compensation or reimbursement of expenses from the department notwithstanding anything to the contrary in section 7E.6.

5. Three voting members constitute a quorum and the affirmative vote of a majority of the voting members present is necessary for any substantive action to be taken by the commission. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the commission.

2001 Acts, ch 162, §3; 2002 Acts, ch 1119, §26
Subsection 4 amended

175A.3 Administration.

1. The department shall administer this chapter and shall do all of the following:

a. Establish and administer grape and wine development programs as provided in section 175A.4 and account for and expend moneys from the grape and wine development fund created pursuant to section 175A.5.

b. Report to the commission regarding the status of grape and wine development, including information regarding persons receiving assistance under grape and wine development programs as provided in section 175A.4 and the status of the grape and wine development fund as provided in section 175A.5.

c. Provide facilities for the commission to meet and carry out its powers and duties as provided in this section, including by staffing commission meetings.

d. Adopt all rules necessary to administer this chapter.

2. The grape and wine development commission shall oversee the administration of this chapter by the department and shall do all of the following:

a. Monitor conditions, practices, policies, and programs affecting the grape and wine development in this state.

b. Establish mutually beneficial relationships with local, state, and federal governmental agencies and local, regional, and national associations representing growers and winemakers.

c. Contract with a viticulturist or oenologist to

provide technical assistance under grape and wine development programs as provided in section 175A.4.

d. Approve or disapprove applications for financial assistance under grape and wine development programs as provided in section 175A.4, after departmental review and recommendation and in accordance with rules adopted pursuant to this chapter. The department shall adopt rules for awarding moneys to persons submitting proposals, including procedures for submitting applications and criteria for selecting proposals.

e. Propose rules for adoption by the department pursuant to chapter 17A required for the administration of this chapter.

2001 Acts, ch 162, §4; 2002 Acts, ch 1119, §27
Subsection 2, paragraph e amended

175A.4 Grape and wine development programs.

The department in cooperation with the commission shall establish grape and wine development programs by assisting persons in establishing, improving, or expanding vineyards or winemaking operations, including wineries. To every extent feasible, the programs shall provide assistance to persons located in all regions of the state. The programs may provide for all of the following:

1. Technical assistance which may include all the following:

a. Viticultural assistance in order to increase the size of vineyards, improve yield, and enhance the character, composition, and condition of grapes. The department may provide technical assistance regarding the selection and management of vines suitable for regions of this state; cultivation and harvest practices; the implementation of practices designed to improve grape growing based on soil types, nutrients and minerals, space, climate, and drainage; the use of recommended varieties of native or hybrid cultivars; and disease, weed, and pest control, including the safe and effective application of pesticides or herbicides or the use of organic practices.

b. Oenological assistance which may be based on oenological study in order to produce, preserve, and transport commercially viable wines, including high-quality wines, wines adapted to particular regions of the state, and wines with distinctive tastes produced from native or hybrid cultivars. The technical assistance may include assistance regarding improving practices or constructing facilities designed to expand or improve processing, cellarage, or bottling.

2. Financial assistance which shall be in the form of a loan, forgivable loan, loan guarantee, cost share, indemnification of costs, or any combination of such financing as deemed appropriate by the commission. The financial assistance may be awarded to persons beginning or engaged in grape growing or winemaking, based on a sound business plan that demonstrates the viability of the proposed operations.

2001 Acts, ch 162, §5

175A.5 Grape and wine development fund.

1. A grape and wine development fund is created in the state treasury under the control of the department. The fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund. The fund shall include moneys deposited into the fund from the wine gallonage tax as provided in section 123.183.

2. Moneys in the fund are appropriated to the department exclusively to carry out grape and wine development programs as provided in section 175A.4, including contracting with a viticulturist or oenologist to provide technical assistance and to provide financial assistance to growers and winemakers as provided in that section.

3. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

2001 Acts, ch 162, §6

CHAPTER 176

FARM AID ASSOCIATIONS

Chapter to be repealed effective July 1, 2005;
2002 Acts, ch 1017, §7, 8
Termination of corporations incorporated and governed under this chapter as associations prior to July 1, 2005, that are not governed as corporations under chapter 504A on or before June 30, 2005; procedure to elect to be governed under chapter 504A; see §504A.102

176.1 Incorporation authorized.
176.2 Method of incorporation.
176.3 Articles of incorporation.
176.4 Amendments to articles.
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176.7 Powers of association.
176.8 to 176.12 Repealed by 55 Acts, ch 107, §21.
176.13 Compensation.
176.14 Dividends — diversion of funds.
176.15 and 176.16 Repealed by 55 Acts, ch 107, §21.

176.1 Incorporation authorized.

For the purpose of improving and advancing agriculture, domestic science, animal husbandry, and horticulture, a body corporate may be organized in each county of the state.

[SS15, §1683-a; C24, 27, 31, 35, 39, §**2924;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §176.1]

176.2 Method of incorporation.

Such body corporate may be formed by the acknowledging and filing articles of incorporation with the county recorder, signed by at least ten farmers, landowners, or other persons engaged in business of the county.

[S13, §1683-b; C24, 27, 31, 35, 39, §**2925;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §176.2]

176.3 Articles of incorporation.

Such articles of incorporation shall be substantially as follows:

We, the undersigned farmers, landowners, and persons engaged in business of . . . . . county, Iowa, do hereby adopt the following articles of incorporation:

Article 1. The objects of this corporation shall be to advance and improve, in . . . . . county, Iowa, agriculture, domestic science, horticulture, animal husbandry, and the marketing of farm products.

Article 2. The name of this corporation shall be . . . . . (the name of the county of which the incorporators are residents shall appear as part of the name of the corporation).

Article 3. The affairs of this corporation shall be conducted by a president, a vice president, a secretary, and a treasurer, who shall perform the duties usually pertaining to such positions, and by a board of not less than nine directors, which shall include the president, vice president, secretary, and treasurer as members thereof.

Such officers and directors shall be elected by the members of the corporation at an annual meeting held at such time and place in the county each year, as the board of directors shall by resolution fix and determine and provided further that the members shall be given not less than ten days' notice of such meeting by mailing notice thereof to the members, at their last known address, as shown by the records of the association.

Article 4. This corporation shall endure until terminated by operation of law.

[SS15, §1683-c; C24, 27, 31, 35, 39, §**2926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §176.3]

176.4 Amendments to articles.

The articles of incorporation of such farm aid associations may be amended to conform to the provisions of this Act* at any regular annual meeting, or at any special meeting of the members of such corporation called for that purpose. Notice of such meeting shall be sufficient if published in at least two regular issues of a daily or weekly newspaper of general circulation published in the county in which the meeting is to be held, or by notice mailed to each member at the member's last known address, at least five days prior to such meeting.

[C27, 31, 35, §2926-b1; C39, §**2926.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §176.4]

*See 29 Acts, ch 80

176.5 Additional provisions.

The articles may include other provisions which are not inconsistent with the provisions of this chapter and shall be recorded by the county recorder for the fee specified in section 331.604.

[S13, §1683-f; C24, 27, 31, 35, 39, §**2927;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §176.5]

92 Acts, ch 1073, §2

176.6 Private property exempt from debts — seal.

Such association may sue and be sued, but the private property of the members shall be exempt from corporate debts. It may have a seal which it may alter at pleasure.

[S13, §1683-d; C24, 27, 31, 35, 39, §**2928;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §176.6]

176.7 Powers of association.

Such association shall have power to:

1. Adopt bylaws.
2. Take by gift, purchase, devise, or bequest, real or personal property.
3. Do all things necessary, appropriate, and convenient for the successful carrying out of the objects of the association.

[SS15, §1683-e; C24, 27, 31, 35, 39, §**2929;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §176.7]

176.8 to 176.12 Repealed by 55 Acts, ch 107, § 21.

176.13 Compensation.

No salary or compensation of any kind shall be paid to the president, vice president, treasurer, or

to any director of the association.

[S13, §1683-g; C24, 27, 31, 35, 39, §**2935;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §176.13]

176.14 Dividends — diversion of funds.

No dividend shall ever be declared by the association and any diversion of the funds or property of such organization to any other purpose than that for which such organization was incorporated shall constitute theft.

[S13, §1683-h, -o; C24, 27, 31, 35, 39, §**2936;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §176.14]

176.15 and 176.16 Repealed by 55 Acts, ch 107, § 21.

CHAPTER 176A

COUNTY AGRICULTURAL EXTENSION

176A.1 Short title.
176A.2 Declaration of policy.
176A.3 Definition of terms.
176A.4 Establishment — body corporate — county agricultural extension districts.
176A.5 County agricultural extension council.
176A.6 Elections.
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176A.10 County agricultural extension education tax.
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176A.13 Cooperation extension council — extension service.
176A.14 Extension council officers — duties.
176A.15 Consolidation of extension districts.
176A.16 General election law applicable.

176A.1 Short title.

This chapter may be known and cited as the *"County Agricultural Extension Law"*.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.1]

176A.2 Declaration of policy.

It is the policy of the legislature to provide for aid in disseminating among the people of Iowa useful and practical information on subjects relating to agriculture, home economics, and community and economic development, and to encourage the application of the information in the counties of the state through extension work to be carried on in cooperation with Iowa state university of science and technology and the United States department of agriculture as provided in the Act of Congress May 8, 1914, as amended by Public Law 83 of the Eighty-third Congress.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.2]
86 Acts, ch 1245, §838

176A.3 Definition of terms.

Whenever used or referred to in this chapter unless a different meaning clearly appears from the context (1) *"county agricultural extension district"* hereinafter referred to as *"extension district"* means a governmental subdivision of this state, and a public body corporate organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions hereinafter set forth; (2) *"county agricultural extension council"* hereinafter referred to as *"extension council"* means the agency created and constituted as provided in section 176A.5; (3) *"Iowa state university"* means the "Iowa state university of science and technology", and shall hereinafter be referred to as *"Iowa state university"*; (4) *"extension service"* means the "co-operative extension service in agriculture and home economics of Iowa state university", and shall hereinafter be referred to as *"extension service"*; (5) *"director of extension"* means the "director of Iowa state university of science and technology extension service", and shall hereinafter be referred to as *"director of extension"*.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.3]

176A.4 Establishment — body corporate — county agricultural extension districts.

Each county, except Pottawattamie, is constituted and established as a *"county agricultural extension district"* and shall be a public body corporate organized in accordance with the provisions of this chapter for the purposes, with the powers and subject to the restrictions hereinafter set forth. Pottawattamie county shall be divided into and constitute two districts with one district to be known as "East Pottawattamie" which shall include the following townships: Pleasant, Layton, Knox, James, Valley, Lincoln, Washington, Belknap, Center, Wright, Carson, Macedonia, Grove, Waveland; and the other "West Pottawattamie" which shall include the following town-

ships: Rockford, Boomer, Neola, Minden, Hazel Dell, York, Crescent, Norwalk, Lake, Garner, Hardin, Kane, Lewis, Keg Creek, Silver Creek.

[C24, 27, 31, 35, 39, §**2930;** C46, 50, 54, §176.8; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.4]

176A.5 County agricultural extension council.

There shall be elected in each extension district an extension council consisting of nine members. Each member of the extension council shall be a resident registered voter of the extension district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.5]
90 Acts, ch 1149, §1; 94 Acts, ch 1169, §64

176A.6 Elections.

An election shall be held biennially at the time of the general election in each extension district for the election of members of the extension council. All registered voters of the extension district are entitled to vote in the election.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.6]
90 Acts, ch 1149, §2; 95 Acts, ch 67, §53

176A.7 Terms — meetings.

1. Except as otherwise provided pursuant to law for members elected in 1990, the term of office of an extension council member is four years. The term shall commence on the first day of January following the date of the member's election which is not a Sunday or legal holiday.

2. Each extension council shall meet at least two times during a calendar year and at other times during the year as the council determines. The date, time, and place of each meeting shall be fixed by the council.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.7]
90 Acts, ch 1149, §3; 99 Acts, ch 133, §1

176A.8 Powers and duties of county agricultural extension council.

The extension councils of each extension district of the state shall have, exercise, and perform the following powers and duties:

1. To elect from their own number annually a chairperson, vice chairperson, secretary and a treasurer who shall serve and be the officers of the extension council for a term of one year, and perform the functions and duties as herein in this chapter provided.

2. To serve as an agency of the state and to manage and transact all of the business and affairs of its district and have control of all of the property acquired by it and necessary for the conduct of the business of the district for the purposes of this chapter.

3. To and shall, at least ninety days prior to the date fixed for the election of council members, appoint a nominating committee consisting of four persons who are not council members and designate the chairperson. The membership of the nominating committee shall be gender balanced. The nominating committee shall consider the geographic distribution of potential nominees in nominating one or more resident registered voters of the extension district as candidates for election to each office to be filled at the election. To qualify for the election ballot, each nominee shall file a nominating petition signed by at least twenty-five eligible electors of the district with the county commissioner of elections at least sixty-nine days before the date of election.

The council shall also provide for the nomination by petition of candidates for election to membership on the extension council. A nominating petition shall be signed by at least twenty-five eligible electors of the extension district and shall be filed with the county commissioner of elections at least sixty-nine days before the date of the election.

4. To enter into a Memorandum of Understanding with the extension service setting forth the cooperative relationship between the extension service and the extension district.

5. To employ all necessary extension professional personnel from qualified nominees furnished to it and recommended by the director of extension and not to terminate the employment of any such without first conferring with the director of extension, and to employ such other personnel as it shall determine necessary for the conduct of the business of the extension district, and to fix the compensation for all such personnel in cooperation with the extension service and in accordance with the Memorandum of Understanding entered into with such extension service.

6. To prepare annually before March 15 a budget for the fiscal year beginning July 1 and ending the following June 30, in accordance with the provisions of chapter 24 and certify the same to the board of supervisors of the county of their extension district as required by law.

7. To and shall be responsible for the preparation and adoption of the educational program on extension work in agriculture, home economics and 4-H club work, and periodically review said program and for the carrying out of the same in cooperation with the extension service in accordance with the Memorandum of Understanding with said extension service.

8. To make and adopt such rules not inconsistent with the law as it may deem necessary for its own government and the transaction of the business of the extension district.

9. To fill all vacancies in its membership to serve for the unexpired term of the member creating the vacancy by appointing a resident registered voter of the extension district. However, if an unexpired term in which the vacancy occurs has more than seventy days to run after the date of the next pending election and the vacancy occurs seventy-four or more days before the election,

the vacancy shall be filled at the next pending election.

10. To and shall, as soon as possible following the meeting at which the officers are elected, file in the office of the board of supervisors and of the county treasurer a certificate signed by its chairperson and secretary certifying the names, addresses and terms of office of each member, and the names and addresses of the officers of the extension council with the signatures of the officers affixed thereto, and said certificate shall be conclusive as to the organization of the extension district, its extension council, and as to its members and its officers.

11. To and shall deposit all funds received from the "county agricultural extension education fund" in a bank or banks approved by it in the name of the extension district. These receipts shall constitute a fund known as the "county agricultural extension education fund" which shall be disbursed by the treasurer of the extension council on vouchers signed by its chairperson and secretary and approved by the extension council and recorded in its minutes.

12. To expend the "county agricultural extension education fund" for salaries and travel, expense of personnel, rental, office supplies, equipment, communications, office facilities and services, and in payment of such other items as shall be necessary to carry out the extension district program; provided, however, it shall be unlawful for the county agricultural extension council to lease any office space which is occupied or used by any other farm organization or farm cooperative, and provided further, that it shall be lawful for the county agricultural extension council to lease space in a building owned or occupied by a farm organization or farm cooperative.

13. To carry over unexpended county agricultural extension education funds into the next year so that funds will be available to carry on the program until such time as moneys received from taxes are collected by the county treasurer. However, the unencumbered funds in the county agricultural extension education fund in excess of one-half the amount expended from the fund in the previous year shall be paid over to the county treasurer. The treasurer of the extension council with the approval of the council may invest agricultural extension education funds retained by the council and not needed for current expenses in the manner authorized for treasurers of political subdivisions under section 12C.1.

14. To file with the county auditor and to publish in two newspapers of general circulation in the district before August 1 full and detailed reports under oath of all receipts, from whatever source derived, and expenditures of such county agricultural extension education fund showing from whom received, to whom paid and for what purpose for the last fiscal year.

[S13, §1683-j, -m; C24, 27, 31, 35, 39, §**2930, 2933, 2938;** C46, 50, 54, §176.8, 176.11, 176.16; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.8]

83 Acts, ch 123, §77, 209; 87 Acts, ch 43, §5; 90 Acts, ch 1149, §4 – 6; 91 Acts, ch 129, §22; 94 Acts, ch 1169, §64; 99 Acts, ch 133, §2, 3; 2001 Acts, ch 56, §10

176A.9 Limitation on powers and activities of extension council.

1. The extension council has for its sole purpose the dissemination of information, the giving of instruction and practical demonstrations on subjects relating to agriculture, home economics, and community and economic development, and the encouragement of the application of the information, instruction, and demonstrations to and by all persons in the extension district, and the imparting to the persons of information on those subjects through field demonstrations, publications, or other media.

2. The extension district, its council, or a member or an employee as a representative of either one or the other shall not engage in commercial or other private enterprises, legislative programs, nor attempt in any manner by the adoption of resolutions or otherwise to influence legislation, either state or national, or other activities not authorized by this chapter.

3. The extension council or a member or employee thereof as a representative of either the extension district or the extension council shall not give preferred services to any individual, group or organization or sponsor the programs of any group, organization or private agency other than as herein provided by this chapter.

4. The extension council may collect reasonable fees and may seek and receive grants, donations, gifts, bequests, or other moneys from public and private sources to be used for the purposes set forth in this section, and may enter into contracts to provide educational services.

5. The extension council and its employed personnel may cooperate with, give information and advice to organized and unorganized groups, but shall not promote, sponsor or engage in the organization of any group for any purpose except the promoting, organization and the development of the programs of 4-H clubs. Nothing in this chapter shall prevent the county extension council or extension agents employed by it from using or seeking opportunities to reach an audience of persons interested in agricultural extension work through the help of interested farm organizations, civic organizations or any other group: Provided, that in using or seeking such opportunities, the county extension council or agents employed by it shall make available to all groups and organizations in the county equal opportunity to cooperate in the educational extension program.

6. Members of the council shall serve without compensation, but may receive actual and necessary expenses, including in-state travel expenses

at not more than the state rate, incurred in the performance of official duties other than attendance at regular local county extension council meetings. Payment shall be made from funds available pursuant to section 176A.8, subsection 12.

[SS15, §1683-e; C24, 27, 31, 35, 39, §**2929, 2931;** C46, 50, 54, §176.7, 176.9; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.9]

86 Acts, ch 1245, §839; 98 Acts, ch 1166, §1, 2

176A.10 County agricultural extension education tax.

The extension council of each extension district shall, at a meeting held before March 15, estimate the amount of money required to be raised by taxation for financing the county agricultural extension education program authorized in this chapter. The annual tax levy and the amount of money to be raised from the levy for the county agricultural extension education fund shall not exceed the following:

1. *a.* Except as provided in paragraph *"b"*, for an extension district having a population of less than thirty thousand, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of seventy thousand dollars for the fiscal year commencing July 1, 1985, and seventy-five thousand dollars for each subsequent fiscal year.

b. For an extension district having a population of less than thirty thousand and as provided in subsection 6, an annual levy of thirty cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of eighty-seven thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of six thousand dollars in the amount payable during each subsequent fiscal year.

2. *a.* Except as provided in paragraph *"b"*, for an extension district having a population of thirty thousand or more but less than fifty thousand, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of eighty-four thousand dollars for the fiscal year commencing July 1, 1985, and ninety thousand dollars for each subsequent fiscal year.

b. For an extension district having a population of thirty thousand or more but less than fifty thousand and as provided in subsection 6, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred four thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of seven thousand dollars in the amount payable during each subsequent fiscal year.

3. *a.* Except as provided in paragraph *"b"*, for an extension district having a population of fifty thousand or more but less than ninety-five thousand, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred five thousand dollars for the fiscal year commencing July 1, 1985, and one hundred twelve thousand five hundred dollars for each subsequent fiscal year.

b. For an extension district having a population of fifty thousand or more but less than ninety thousand and as provided in subsection 6, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred thirty thousand five hundred dollars payable during the fiscal year commencing July 1, 1992, and an increase of nine thousand dollars in the amount payable during each subsequent fiscal year.

4. *a.* Except as provided in paragraph *"b"*, for an extension district having a population of ninety-five thousand or more, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred forty thousand dollars for the fiscal year commencing July 1, 1985, and one hundred fifty thousand dollars for each subsequent fiscal year.

b. For an extension district having a population of ninety thousand or more but less than two hundred thousand and as provided in subsection 6, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred eighty thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of fifteen thousand dollars in the amount payable during each subsequent fiscal year.

5. For an extension district having a population of two hundred thousand or more and as provided in subsection 6, an annual levy of five cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of two hundred thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of twenty-five thousand dollars in the amount payable during each subsequent fiscal year.

6. An extension council of an extension district may choose to be subject to the levy and revenue limits specified in paragraphs *"b"* of subsections 1, 2, 3, and 4 and subsection 5 for the purpose of the annual levy for the fiscal year commencing July 1, 1991, which levy is payable in the fiscal year beginning July 1, 1992. Before an extension district may be subject to the levy and revenue limits specified in paragraphs *"b"* of subsections 1, 2, 3, and 4 and subsection 5, for fiscal years beginning on or after July 1, 1992, which levy is payable in fiscal years beginning on or after July 1, 1993, the ques-

tion of whether the district shall be subject to the levy and revenue limits as specified in such subsections must be submitted to the registered voters of the district. The question shall be submitted at the time of a state general election. If the question is approved by a majority of those voting on the question the levy and revenue limits specified in paragraphs *"b"* of subsections 1, 2, 3, and 4 and subsection 5, shall thereafter apply to the extension district. The question need only be approved at one state general election. If a majority of those voting on the question vote against the question, the district may continue to submit the question at subsequent state general elections until approved.

The extension council in each extension district shall comply with chapter 24.

[C24, 27, 31, 35, 39, §**2930;** C46, 50, 54, §176.8; C58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §176A.10; 81 Acts, ch 69, §1]

91 Acts, ch 156, §1; 92 Acts, ch 1212, §7; 92 Acts, ch 1246, §25; 99 Acts, ch 133, §4

176A.11 Annual levy by board of supervisors.

The board of supervisors of each county shall annually, at the time of levying taxes for county purposes, levy the taxes necessary to raise the county agricultural extension education fund and certified to it by the extension council as provided in this chapter, but if the amount certified for such fund is in excess of the amount authorized by this chapter it shall levy only so much thereof as is authorized by this chapter.

[C24, 27, 31, 35, 39, §**2930;** C46, 50, 54, §176.8; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.11]

176A.12 County agricultural extension fund.

A county agricultural extension education fund shall be established in each county and the county treasurer of each county shall keep the amount of tax levied under this chapter in that fund. Before the fifteenth day of each month, the treasurer shall notify the chairperson of the county extension council of the amount collected for this fund to the first day of that month and shall pay that amount to the treasurer of the extension council as provided in section 331.552, subsection 29.

83 Acts, ch 123, §78, 209; 84 Acts, ch 1003, §4

176A.13 Cooperation extension council — extension service.

The extension council is specifically authorized to cooperate with the extension service and the United States department of agriculture in the accomplishment of the county agricultural extension education program contemplated by this chapter, to the end that the federal funds allocated to the extension service and the county agricultural extension education fund of each district may be more efficiently used by the extension service and the extension council. The director of extension shall coordinate the county agricultural extension education program in the several extension districts.

[S13, §1683-p; C24, 27, 31, 35, 39, §**2931, 2932;** C46, 50, 54, §176.9, 176.10; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.13]

176A.14 Extension council officers — duties.

1. The chairperson of the extension council shall preside at all meetings of the extension council, have authority to call special meetings of said council upon such notice as shall be fixed and determined by the extension council, and shall call special meetings of the extension council upon the written request of a majority of the members of said council, and in addition to the duties imposed in this chapter perform and exercise the usual duties performed and exercised by a chairperson or president of a board of directors of a corporation.

2. The vice chairperson, in the absence or disability of the chairperson, or the chairperson's refusal to act, shall perform the duties imposed upon the chairperson and act in the chairperson's stead.

3. The secretary shall perform the duties usually incident to this office. The secretary shall keep the minutes of all meetings of the extension council. The secretary shall sign such instruments and papers as are required to be signed by the secretary as such in this chapter, and by the extension council from time to time.

4. The treasurer shall receive, deposit and have charge of all of the funds of the extension council and pay and disburse the same as in this chapter required, and as may be from time to time required by the extension council. The treasurer shall keep an accurate record of receipts and disbursements and submit a report thereof at such times as may be required by the extension council.

5. Each of the officers of the extension council shall perform and carry out the officer's duties as provided in this section and shall perform and carry out any other duties as required by rules adopted by the extension council as authorized in this chapter. A member of the extension council, within fifteen days after the member's election, shall take and sign the usual oath of public officers which shall be filed in the office of the county auditor of the county of the extension district. The treasurer of the extension council, within ten days after being elected and before entering upon the duties of the office, shall execute to the extension council a corporate surety bond for an amount not less than twenty thousand dollars. The bond shall be continued until the treasurer faithfully discharges the duties of the office. The bond shall be filed with the county auditor of the county of the extension district. The county auditor shall notify the chairperson of the extension council of the bond's filing in the auditor's office. The cost of the surety bond shall be paid for by the extension

council.

[S13, §1683-i, -j, -m; C24, 27, 31, 35, 39, §**2933, 2934, 2938;** C46, 50, 54, §176.11, 176.12, 176.16; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.14]

97 Acts, ch 73, §1; 98 Acts, ch 1107, §2

176A.15 Consolidation of extension districts.

Any two or more extension districts may be consolidated to form a single extension district, by resolution duly adopted by the extension council of each such extension district. Upon adoption of such resolutions providing for such consolidation, the extension councils shall do all things which may be necessary or convenient to carry into effect such consolidation. The initial extension council for such new extension district shall consist of the members of the extension councils of the consolidated extension districts. The extension council of such new extension district shall promptly elect officers as provided in this chapter, and upon such election the terms of the officers of the extension councils of the consolidated extension districts shall terminate. The extension council of the new extension district shall select a name for such district and shall file the name, together with copies of the resolution providing for such consolidation, with the recorder of each county affected thereby. The new extension district shall be regarded for all purposes as an extension district, the same as if such extension district consisted of a single county, and its extension council and officers thereof shall have all the powers and duties which now or hereafter may pertain to extension councils and officers thereof. All assets and liabilities of the consolidated extension districts shall become the assets and liabilities of the new extension district. The tax rate for the "county agricultural extension education fund" shall be the same in each county included in an extension district formed by consolidation. For the purposes of any law requiring extension districts to file any document with or certify any information to any county officer or board, an extension district formed by consolidation shall file or certify the same with or to the appropriate officer or board of each county included in the extension district. An extension district formed by consolidation may be dissolved and the original extension districts as they existed prior to such consolidation may be re-established, by resolution duly adopted by the extension council of such extension district; and upon adoption of such resolution, the extension council shall do all things which may be necessary or convenient to carry into effect such dissolution and the re-establishment of the original extension districts.

[C62, 66, 71, 73, 75, 77, 79, 81, §176A.15]

176A.16 General election law applicable.

The provisions of chapter 49 apply to the elections held pursuant to this chapter, and the county commissioner of elections has responsibility for the conducting of those elections.

[C75, 77, 79, 81, §176A.16]

90 Acts, ch 1149, §7

CHAPTER 176B

LAND PRESERVATION AND USE

Transferred to chapter 352

CHAPTER 177

CROP IMPROVEMENT ASSOCIATION

177.1 Recognition of organization.
177.2 Duties and objects of association.
177.3 Board of directors.
177.4 Employees.
177.5 Expenses of officers.

177.1 Recognition of organization.

The organization now existing in and incorporated under the laws of this state and known as the Iowa crop improvement association, shall be entitled to the benefits of this chapter by filing each year with the department of agriculture and land stewardship verified proofs of its organization and of the names of its president, vice president, secretary, and treasurer, and that five hundred persons are bona fide members of the association, together with such other information as the department of agriculture and land stewardship

may require.

[C24, 27, 31, 35, 39, §**2939;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.1]

177.2 Duties and objects of association.

The purposes and objectives of the Iowa crop improvement association shall be:

1. To encourage the use of good agricultural practices in crop production, including best management practices for applying fertilizer and pesticide, and to conserve, maintain, and improve soil productivity.
2. To encourage the production of high quality pure seed of varieties having proved adaptation and performance as determined by experimental trials.
3. To encourage the more widespread use of superior seeds by such means as may be designated by its members or board of directors.
4. To co-operate with the agricultural experiment station of the Iowa State University of science and technology in conducting tests to determine the adaptation and performance of crop hybrids, crop varieties, and new crops of potential value in Iowa.
5. Promote in such other ways as the association may deem advisable the objects as set out in this section.
6. Hold an annual meeting.
7. Submit an annual report of the proceedings, receipts and expenditures to the Iowa state secretary of agriculture.

[C24, 27, 31, 35, 39, §**2940;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.2]

87 Acts, ch 225, §204

177.3 Board of directors.

The business of the association shall be transacted by a board of directors which shall consist of:

1. The director of the agricultural experiment station of the Iowa State University of science and technology.
2. The head of farm crops in the Iowa agricultural experiment station.
3. The secretary of agriculture or the secretary's designee.
4. Six persons who shall be elected from its membership.

[C24, 27, 31, 35, 39, §**2941;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.3]

87 Acts, ch 115, §30

177.4 Employees.

The directors may employ one or more competent persons who shall devote their entire time, while employed by the association, to carrying out the provisions of this chapter. Such persons shall receive such compensation as the directors may fix and their necessary expenses incurred while engaged in such work.

[C24, 27, 31, 35, 39, §**2942;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.4]

177.5 Expenses of officers.

The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association.

[C24, 27, 31, 35, 39, §**2943;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.5]

CHAPTER 177A

CROP PESTS

177A.1 Short title.
177A.2 Definitions.
177A.3 State entomologist.
177A.4 Employees — expenses.
177A.5 Duties — public nuisances.
177A.6 Rules.
177A.7 Infection — eradication — notice.
177A.8 Importation — regulations.
177A.9 Inspection — certificate — fees.
177A.10 Report of violations.
177A.11 Quarantine — general powers.
177A.12 Federal quarantine — seizures.
177A.13 Quarantines — seizure and destruction.
177A.14 Right of access.
177A.15 Right to hearing.
177A.16 Violations.
177A.17 Duty of owner — assessment of costs.
177A.18 Violations.
177A.19 Harmful barberry.
177A.20 Liability of principal.
177A.21 Party plaintiff.
177A.22 Construction.

177A.1 Short title.

This chapter shall be known by the short title of *"The Iowa Crop Pest Act"*.

[C27, 31, 35, §4062-b1; C39, §**4062.01;** C46, 50, 54, 58, 62, 66, 71, 73, §267.1; C75, 77, 79, 81, §177A.1]

177A.2 Definitions.

1. As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. For the purposes of this chapter, the following terms shall be construed, respectively, to mean:

a. "Insect pests and diseases." Insect pests and diseases injurious to plants and plant products, including any of the stages of development of such insect pests and diseases.

b. "Places." Vessels, cars, boats, trucks, automobiles, aircraft, wagons and other vehicles or carriers, whether air, land or water, buildings, docks, nurseries, greenhouses, orchards, fields, gardens, and other premises or any container where plants and plant products are grown, kept or handled.

c. "Plants and plant products." Trees, shrubs, vines, berry plants, greenhouse plants and all other nursery plants; forage and cereal plants, and all other parts of plants; cuttings, grafts, scions, buds, and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all other plant products.

[C27, 31, 35, §4062-b2; C39, §**4062.02;** C46, 50, 54, 58, 62, 66, 71, 73, §267.2; C75, 77, 79, 81, §177A.2]

2000 Acts, ch 1148, §1

177A.3 State entomologist.

There is hereby created and established within the department of agriculture and land stewardship the office of state entomologist. The state entomologist shall be appointed by, responsible to and under the authority of the secretary of agriculture in the issuance of all rules, the establishment of quarantines and other official acts. The secretary of agriculture shall provide the state entomologist with suitable office space.

[S13, §2575-a47; C24, §4045; C27, 31, 35, §4062-b3; C39, §**4062.03;** C46, 50, 54, 58, 62, 66, 71, 73, §267.3; C75, 77, 79, 81, §177A.3; 81 Acts, ch 70, §1]

177A.4 Employees — expenses.

For the purpose of carrying out the provisions of this chapter, the state entomologist with the approval of the secretary of agriculture shall employ, prescribe the duties of, and fix the compensation of, such inspectors, and other employees as needed and incur such expenses as may be necessary, within the limits of appropriations made by law. The state entomologist shall co-operate with other departments, boards and officers of the state and of the United States as far as practicable.

[S13, §2575-a47; C24, §4046; C27, 31, 35, §4062-b4; C39, §**4062.04;** C46, 50, 54, 58, 62, 66, 71, 73, §267.4; C75, 77, 79, 81, §177A.4]

177A.5 Duties — public nuisances.

The state entomologist shall keep informed as to known species and varieties of insect pests and diseases, the origin, locality, nature and appearance thereof, the manner in which they are disseminated, and approved methods of treatment and eradication. In the rules made pursuant to this chapter the state entomologist shall list the dangerously injurious insect pests and diseases which the entomologist shall find should be prevented from being introduced into, or disseminated within, this state in order to safeguard the plants and plant products likely to become infested or infected with such insect pests and diseases. Every such insect pest and disease listed, and every plant product infested or infected therewith, is hereby declared to be a public nuisance. Every person who has knowledge of the presence in or upon any place of any insect pest or disease so listed, shall immediately report the fact and location to the state entomologist, or the assistant state entomologist, giving such detailed information relative thereto as the person may have. Every person who deals in or engages in the sale of plants and plant products shall furnish to the state entomologist or the entomologist's inspectors, when requested, a statement of the names and addresses of the persons from whom and the localities where the person purchased or obtained such plants and plant products.

[S13, §2575-a47; C24, §4047; C27, 31, 35, §4062-b5; C39, §**4062.05;** C46, 50, 54, 58, 62, 66, 71, 73, §267.5; C75, 77, 79, 81, §177A.5]

177A.6 Rules.

The state entomologist shall, from time to time, make rules for carrying out the provisions and requirements of this chapter, including rules under which the inspectors and other employees shall:

1. Inspect places, plants and plant products, and things and substances used or connected therewith,

2. Investigate, control, eradicate and prevent the dissemination of insect pests and diseases, and

3. Supervise or cause the treatment, cutting and destruction of plants and plant products infested or infected therewith.

The state entomologist, the entomologist's inspectors, employees, or other authorized agents shall have authority to enforce these rules which shall be published in the same manner as are the

other rules of the department.

No nursery stock dealer shall sell, offer for sale, or distribute nursery products by any method, or under any circumstances or condition, which have the capacity and tendency or effect of deceiving purchasers or prospective customers as to quantity, size, grade, kind, species, age, maturity, viability condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect.

When under the provisions of this section it becomes necessary for the state entomologist to verify sizes and grades of nursery stock, or either of them, the entomologist shall use as a guide the *"American Standard for Nursery Stock"* as revised and approved by the American Standards Association, Inc.

[S13, §2575-a48; C24, §4050, 4051, 4054; C27, 31, 35, §4062-b6; C39, §**4062.06;** C46, 50, 54, 58, 62, 66, 71, 73, §267.6; C75, 77, 79, 81, §177A.6]

177A.7 Infection — eradication — notice.

Whenever inspection discloses that any places, or plants or plant products, or things and substances used or connected therewith, are infested or infected with any dangerously injurious insect pest or disease listed as a public nuisance, written notice thereof shall be given the owner or person in possession or control of the place where found, who shall proceed to control, eradicate or prevent the dissemination of such insect pest or disease, and to remove, cut or destroy infested and infected plants and plant products, or things and substances used or connected therewith, as prescribed in the notice or the rules. Whenever such owner or person in possession cannot be found, or shall fail, neglect or refuse to obey the requirements of the notice and the rules, such requirements shall be carried out by the state entomologist, as required by section 177A.17.

[S13, §2575-a48; C24, §4050, 4052, 4053, 4055; C27, 31, 35, §4062-b7; C39, §**4062.07;** C46, 50, 54, 58, 62, 66, 71, 73, §267.7; C75, 77, 79, 81, §177A.7]

177A.8 Importation — regulations.

It shall be unlawful for any person to bring or cause to be brought into this state any plant or plant product listed in the rules, unless there be plainly and legibly marked thereon or affixed thereto, or on or to the carrier, or the bundle, package, or container, in a conspicuous place, a statement or tag or device showing the names and addresses of the consignors or shippers and the consignees or persons to whom shipped, the general nature and quantity of the contents, and the name of the locality where grown, together with a certificate of inspection of the proper official of the state, territory, district, or country from which it was brought or shipped, showing that such plant or plant product was found or believed to be free from dangerously injurious insect pests and diseases, and giving any other information required by the state entomologist.

[S13, §2575-a50; C24, §4058; C27, 31, 35, §4062-b8; C39, §**4062.08;** C46, 50, 54, 58, 62, 66, 71, 73, §267.8; C75, 77, 79, 81, §177A.8]

177A.9 Inspection — certificate — fees.

It shall be unlawful for any person to sell, give away, carry, ship, or deliver for carriage or shipment, within this state, any plants or plant products listed in the rules unless such plants or plant products have been officially inspected and a certificate issued by an inspector of the state entomologist's office stating that such plants or plant products have been inspected and found to be apparently free from dangerously injurious insect pests and diseases, and giving any other facts provided for in the rules. For the issuance of such certificate, the state entomologist may require the payment of a reasonable fee to cover the expense of such inspection and certification. Provided, that if such plants or plant products were brought into this state in compliance with section 177A.8, the certificate required by that section may be accepted in lieu of the inspection and certificate required by this section, in such cases as shall be provided for in the rules. If it shall be found at any time that a certificate of inspection, issued or accepted under the provisions of this section, is being used in connection with plants and plant products which are infested or infected with dangerously injurious insect pests or diseases or in connection with uninspected plants, its further use may be prohibited, subject to such inspection and disposition of the plants and plant products involved as may be provided for by the state entomologist. All moneys collected under the provisions of this chapter shall be turned over to the secretary who shall deposit them in the state treasury.

The fees for inspections and certifications shall not be less than twenty-five dollars nor more than five hundred dollars. Certificates shall be issued to nursery stock growers and dealers on an annual basis. Inspection and certification fees for nursery stock growers shall be twenty-five dollars plus five dollars per acre or part thereof, according to the amount of stock inspected. The inspection and certification fee for nursery stock dealers shall be twenty-five dollars. All fees shall be paid at the time of inspection or before a certificate is issued. Inspection and certification shall take place when necessary to enforce this chapter and the rules pursuant to it. Certificates issued in accordance with this chapter may be revoked when inspection results determine that conditions violate the standards for which certification was issued.

[S13, §2575-a47, -a49; C24, §4047, 4048, 4057; C27, 31, 35, §4062-b9; C39, §**4062.09;** C46, 50, 54, 58, 62, 66, 71, 73, §267.9; C75, 77, 79, 81, §177A.9;

81 Acts, ch 70, §2]
88 Acts, ch 1272, §19

177A.10 Report of violations.

Any person who receives from without the state any plant or plant product without section 177A.8 having been complied with, or who receives any plant or plant product sold, given away, carried, shipped or delivered for carriage or shipment within this state without section 177A.9 having been complied with, shall immediately inform the state entomologist or one of the entomologist's inspectors of such facts and isolate and hold the plant or plant product unopened or unused, subject to such inspection and disposition as may be provided for by the state entomologist.

[S13, §2575-a49; C24, §4057; C27, 31, 35, §4062-b10; C39, §**4062.10;** C46, 50, 54, 58, 62, 66, 71, 73, §267.10; C75, 77, 79, 81, §177A.10]

177A.11 Quarantine — general powers.

Whenever the state entomologist shall find that there exists outside of this state any insect pest or disease, and that its introduction into this state should be prevented in order to safeguard plants and plant products in this state, the state entomologist is authorized to quarantine and promulgate quarantine restrictions covering areas within the states affected by the pest and may adopt, issue, and enforce rules supplemental to such quarantines for the control of the pest. Under such quarantines, the state entomologist or the state entomologist's authorized agents may prohibit and prevent the movement within the state without inspection, or the shipment or transportation within the state, of any agricultural or horticultural product, or any other material of any character whatsoever, capable of carrying any dangerously injurious insect pest or disease in any living state of its development; and, in the enforcement of such quarantine, may intercept, stop, and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon, vehicles or carriers or any container, material, or substance believed or known to be carrying the insect pest or plant disease in any living state of its development in violation of said quarantines or of the rules issued supplemental thereto, and may seize, possess, and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, or transported in violation of such quarantines or the rules.

[S13, §2575-a48; C24, §4049; C27, 31, 35, §4062-b11; C39, §**4062.11;** C46, 50, 54, 58, 62, 66, 71, 73, §267.11; C75, 77, 79, 81, §177A.11]

177A.12 Federal quarantine — seizures.

1. Until the secretary of agriculture of the United States shall have made a determination that a federal quarantine is necessary, and has duly established the same with reference to any dangerous plant disease or insect infestation, the state entomologist of this state is authorized to promulgate and enforce quarantine regulations prohibiting or restricting the transportation of any class of plant material or product or article into this state from any state, territory or district of the United States, when the entomologist shall have information that a dangerous plant disease or insect infestation exists in such state, territory, district, or portion thereof.

2. The state entomologist, the entomologist's inspectors or duly authorized agents are authorized to seize, destroy, or return to the point of origin any material received in this state in violation of any state quarantine established under the authority of subsection 1 hereof, or in violation of any federal quarantine established under the authority of the Act of August 20, 1912, [37 Stat. L. ch 308] or any amendment thereto.

[C27, 31, 35, §4062-b12; C39, §**4062.12;** C46, 50, 54, 58, 62, 66, 71, 73, §267.12; C75, 77, 79, 81, §177A.12]

177A.13 Quarantines — seizure and destruction.

Whenever the state entomologist shall find that there exists in this state, or any part thereof, any dangerously injurious insect pest or plant disease, and that its dissemination should be controlled or prevented, the entomologist may institute quarantines and promulgate quarantine restrictions covering areas within the state affected by such pest or disease, and may adopt, issue and enforce rules supplemental to such quarantines for the control of this pest. Under such quarantines, the state entomologist, the entomologist's inspectors or authorized agents may prohibit and prevent the movement within the state without inspection or the shipment or transportation within this state, of any agricultural or horticultural product, or any other material of any character whatsoever, capable of carrying any dangerously injurious insect pest or disease in any living state of its development; and, in the enforcement of such quarantine, may intercept, stop, and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon, or other vehicles or carriers of any kind or character, whether air, land, or water, or any container or material believed or known to be carrying such insect pest or plant disease in any living state of its development or any such material, in violation of said quarantine or of the rules issued supplemental thereto, and may seize, possess, and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, or transported in violation of such quarantines or the said rules.

The state entomologist shall give public notice of such quarantines, specifying the plants and plant products infested or infected, or likely to become infested or infected; and the movement, planting or other use of any such plant or plant

product, or other thing or substance specified in such notice as likely to carry and disseminate such insect pest or disease, except under such conditions as shall be prescribed as to inspection, treatment and disposition, shall be prohibited within such area as the entomologist may designate. When the state entomologist shall find that the danger of the dissemination of such insect pest or disease has ceased to exist, the entomologist shall give public notice that the quarantine is raised.

[S13, §2575-a48; C24, §4049; C27, 31, 35, §4062-b13; C39, §**4062.13;** C46, 50, 54, 58, 62, 66, 71, 73, §267.13; C75, 77, 79, 81, §177A.13]

177A.14 Right of access.

The state entomologist and the entomologist's authorized inspectors, employees, and agents shall have free access within reasonable hours to any farm, field, orchard, nursery, greenhouse, garden, elevator, seedhouse, warehouse, building, cellar, freight or express office or car, freight yard, truck, automobile, aircraft, wagon, vehicle, carrier, vessel, boat, container or any place which it may be necessary or desirable for such authorized agents to enter in carrying out the provisions of this chapter. It shall be unlawful to deny such access to such authorized agents or to hinder, thwart, or defeat such inspection or entrance by misrepresentation or concealment of facts or conditions, or otherwise.

[S13, §2575-a48; C24, §4049; C27, 31, 35, §4062-b14; C39, §**4062.14;** C46, 50, 54, 58, 62, 66, 71, 73, §267.14; C75, 77, 79, 81, §177A.14]

177A.15 Right to hearing.

Any person affected by any rule made or notice given may have a review thereof by the secretary of agriculture for the purpose of having such rule or notice modified, suspended or withdrawn.

[C27, 31, 35, §4062-b15; C39, §**4062.15;** C46, 50, 54, 58, 62, 66, 71, 73, §267.15; C75, 77, 79, 81, §177A.15]

177A.16 Violations.

Any person, copartnership, association or corporation, or any combination of individuals, violating any provision of a quarantine promulgated under the authority of this chapter, or of any rules issued supplemental thereto, shall be guilty of a simple misdemeanor.

[S13, §2575-a50; C24, §4059; C27, 31, 35, §4062-b16; C39, §**4062.16;** C46, 50, 54, 58, 62, 66, 71, 73, §267.16; C75, 77, 79, 81, §177A.16]

177A.17 Duty of owner — assessment of costs.

When treatment or destruction of an agricultural or horticultural plant or product, in field, feedlot, place of assemblage or storage, or elsewhere, or when a special type of plowing or any other agricultural or horticultural operation is required under the rules, the owner or person having charge of the plants, plant products or places, upon due notice from the state entomologist or the entomologist's authorized agents, shall take the action required within the time and in the manner designated by the notice. If the owner or person in charge refuses or neglects to obey the notice, the secretary of agriculture, or the secretary's authorized agents, may do what is required, and the secretary shall assess the expense to the owner after giving the owner legal notice and a hearing. No expense other than that incidental to normal and usual farm operations shall be so assessed. If the assessment is not paid, the secretary shall certify it to the treasurer of the proper county who shall enter it on the tax books and collect it as ordinary taxes are collected and remit it to the secretary.

[S13, §2575-a48; C24, §4055, 4056; C27, 31, 35, §4062-b17; C39, §**4062.17;** C46, 50, 54, 58, 62, 66, 71, 73, §267.17; C75, 77, 79, 81, §177A.17; 81 Acts, ch 70, §3]

177A.18 Violations.

Any person who shall violate any provision or requirement of this chapter, or of the rules made or of any notice given pursuant thereto, or who shall forge, counterfeit, deface, destroy, or wrongfully use, any certificate provided for in this chapter, or in the rules and regulations made pursuant thereto, shall be deemed guilty of a simple misdemeanor.

[S13, §2575-a50; C24, §4059; C27, 31, 35, §4062-b18; C39, §**4062.18;** C46, 50, 54, 58, 62, 66, 71, 73, §267.18; C75, 77, 79, 81, §177A.18]

177A.19 Harmful barberry.

1. No person, firm, or corporation shall receive, ship, accept for shipment, transport, sell, offer for sale, give away, deliver, plant, or permit to exist on the person's, firm's, or corporation's premises any plant of the harmful barberry, or any plant of a species that shall be designated by the state entomologist in published regulations to be a host or carrier of a dangerous plant disease or insect pest.

2. The state entomologist and the entomologist's inspectors, and authorized agents, are hereby empowered to eradicate any such plant found growing in the state. If the owner shall refuse or neglect to eradicate such plants within ten days after receiving a written notice, the expense of such eradication shall be assessed, collected, and enforced against the premises upon which such expense was incurred as taxes are assessed, collected and enforced.

3. The term "harmful barberry" shall be interpreted to consist of any species of Berberis or Mahonia susceptible to infection by Puccinia graminis, commonly called black stem rust of grain, but not including Japanese barberry (B. thunbergii), which does not propagate the rust.

4. The procedures provided in section 177A.17 and all other applicable provisions of sections 177A.5 to 177A.18 shall govern and apply to the enforcement of this section.

[C24, §4053; C27, 31, 35, §4062-b19; C39, §**4062.19;** C46, 50, 54, 58, 62, 66, 71, 73, §267.19; C75, 77, 79, 81, §177A.19]

177A.20 Liability of principal.

In construing and enforcing the provisions of this chapter, the act, omission, or failure of any official, agent, or other person acting for or employed by an association, partnership or corporation within the scope of the person's authority shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person.

[C27, 31, 35, §4062-b20; C39, §**4062.20;** C46, 50, 54, 58, 62, 66, 71, 73, §267.20; C75, 77, 79, 81, §177A.20]

177A.21 Party plaintiff.

The secretary of agriculture, the state entomologist, or any of their inspectors or authorized agents shall be a proper party plaintiff in any action in any court of equity brought for the purpose of carrying out any of the provisions of this chapter.

[C27, 31, 35, §4062-b21; C39, §**4062.21;** C46, 50, 54, 58, 62, 66, 71, 73, §267.21; C75, 77, 79, 81, §177A.21]

177A.22 Construction.

This chapter shall not be so construed or enforced as to conflict in any way with any Act of Congress regulating the movement of plants and plant products in interstate or foreign commerce.

[C27, 31, 35, §4062-b22; C39, §**4062.22;** C46, 50, 54, 58, 62, 66, 71, 73, §267.22; C75, 77, 79, 81, §177A.22]

CHAPTER 178

STATE DAIRY ASSOCIATION

178.1 Recognition of organization.
178.2 Duties and objects of association.
178.3 Executive committee.
178.4 Employees of committee.
178.5 Expenses of officers.

178.1 Recognition of organization.

The organization known as the Iowa state dairy association shall be entitled to the benefits of this chapter by filing each year with the department verified proofs of its organization, the names of its president, vice president, secretary, and treasurer, and that five hundred persons are bona fide members of said association, together with such other information as the department may require.

[C24, 27, 31, 35, 39, §**2944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.1]

178.2 Duties and objects of association.

The Iowa state dairy association shall:

1. Promote dairy test associations, shows, and sales.
2. Publish a breeders' directory.
3. Furnish such general instruction and assistance, either by institutes or otherwise, as it may deem proper, to advance the general interests of the dairy industry.
4. Make an annual report of the proceedings and expenditures to the secretary of agriculture.

[C24, 27, 31, 35, 39, §**2945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.2]

178.3 Executive committee.

The association shall conduct its business through an executive committee which shall consist of:

1. The president and the secretary of the association.
2. The dean of the college of agriculture of the Iowa State University of science and technology.
3. A member of the faculty of said university engaged in the teaching of dairying to be designated by said dean.
4. The secretary of agriculture or the secretary's designee.

[C24, 27, 31, 35, 39, §**2946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.3]

87 Acts, ch 115, §31

178.4 Employees of committee.

The executive committee may employ two or more competent persons who shall devote their entire time, under the direction of the executive committee, in carrying out the provisions of this chapter. The salary of such persons so employed shall be set by the executive committee subject to the approval of the secretary of agriculture, and

such persons shall hold office at the pleasure of the executive committee.

[C24, 27, 31, 35, 39, §**2947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.4]

178.5 Expenses of officers.

The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association.

[C24, 27, 31, 35, 39, §**2948;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.5]

CHAPTER 179

DAIRY INDUSTRY COMMISSION

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179.1 Definitions.

As used in this chapter:

1. *"Collection period"* means a calendar year.
2. The term *"commission"* shall mean the Iowa dairy industry commission.
3. *"First purchaser"* means a person who buys milk from a producer and resells that milk or products made from the milk to another person.
4. *"Nutrition education"* means activities intended to broaden the understanding of sound nutritional principles including the role of milk in a balanced diet.
5. The term *"person"* shall mean individuals, corporations, partnerships, trusts, associations, co-operatives, and any and all other business units.
6. *"Producer"* means a person who produces milk from cows and thereafter sells the same as milk.
7. *"Promotion"* means actions including but not limited to advertising, sales, promotion, and publicity to advance the image and sales of and demand for milk.
8. *"Qualified financial institution"* means a bank, credit union, or savings and loan as defined in section 12C.1.
9. *"Research"* means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and to product utilization, and other related efforts to expand demand for milk.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.1]

85 Acts, ch 126, §1 – 4; 94 Acts, ch 1146, §1

179.2 Commission created — suspension during national order — reactivation.

1. There is created an Iowa dairy industry commission, referred to in this chapter as the commission. The commission shall be composed of the secretary of agriculture or the secretary's designee, the dean of agriculture at Iowa state university of science and technology or the dean's designee, and sixteen members appointed by the secretary of agriculture as provided in this section.

2. Commissioners shall serve until their successors are duly appointed and qualify. Vacancies occurring in the membership of the commission resulting from death, inability or refusal to serve, or failure to meet the definition of a producer, shall be filled within three months of the time the vacancy occurs in the manner provided by the commission. Vacancy appointments shall be only for the remainder of the unexpired term. A commissioner shall not serve more than two consecutive full terms.

3. Appointive members of the commission shall receive a per diem as specified in section 7E.6 for each day spent on official business of the commission, not to exceed six hundred dollars per annum, and their actual necessary expenses, while engaged in commission activity.

4. When a national promotional order is established by the United States department of agriculture pursuant to the Dairy Product Stabilization Act of 1983, collection of the excise tax in section 179.5 shall be suspended for the period in which the national order is in effect. The commission shall continue to operate thereafter for only the

period of time necessary to pay refunds and disburse the funds remaining in the dairy industry fund for the purposes enumerated in this chapter. Upon completion of these acts, the existence of the Iowa dairy industry commission shall be suspended. The secretary of agriculture shall certify the suspension of the commission as of a date certain to the Iowa dairy industry commission and the Iowa state dairy association. When the existence of the commission is suspended, the terms of office being served by individual commissioners shall terminate.

5. When the national promotional order expires, the period of suspension of the excise tax in section 179.5 shall terminate and the secretary of agriculture shall take the steps necessary to collect that excise tax and otherwise fulfill the duties of the commission, except that of expending funds collected under the excise tax, until those duties can be resumed by the reactivated commission. When the national promotional order expires, the period of suspension of the commission shall terminate. The secretary of agriculture shall call the first meeting of the reactivated commission. Upon reactivation, the commission shall reimburse the secretary of agriculture for expenses incurred in carrying out the duties provided in this subsection.

6. When the national dairy promotion program expires and the suspension of the Iowa dairy industry commission terminates pursuant to subsection 5, all first purchasers shall, in a manner designed to reflect their proportionate contributions to the national dairy promotion program in its most recently completed fiscal year, nominate two resident producers for each of the sixteen offices of the commission. The secretary of agriculture shall then appoint one nominee from each set of two nominees as commissioners of the reactivated Iowa dairy industry commission. The secretary of agriculture shall stagger the terms of the reactivated commission resulting in as nearly as possible one third of the commissioners serving for one year, one third of the commissioners serving for two years, and one third of the commissioners serving for three years. After the initial staggering of terms by the secretary, commissioners shall be appointed to three-year terms.

7. After the reactivated commission has been formed, nominations for commissioners shall be made by first purchasers in a manner designed to reflect their proportionate contributions to the Iowa dairy industry commission in its most recently completed fiscal year.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.2]

84 Acts, ch 1183, §1; 85 Acts, ch 126, §5 – 8; 91 Acts, ch 258, §32

179.3 Powers and duties.

The powers and duties of the commission shall include the following:

1. To elect a chairperson, a secretary, and from time to time such other officers as it may deem advisable, and from time to time to adopt, rescind, modify and amend all proper and necessary rules, regulations and orders for the exercise of its power and the performance of its duties, which rules and orders shall have the force and effect of law when not inconsistent with existing laws.

2. To administer and enforce this chapter, and do and perform all acts and exercise all powers reasonably necessary to effectuate the purpose of this chapter.

3. To employ at its pleasure and discharge at its pleasure such attorneys, advertising counsel, advertising agencies, clerks and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.

4. To establish offices and incur any and all expense, and to enter into any and all contracts and agreements for the proper administration and enforcement of this chapter.

5. To report alleged violations of this chapter to the attorney general of the state of Iowa.

6. To conduct scientific research for the purpose of developing and discovering the health, food, therapeutic, dietetic, and industrial uses for products of milk or its derivatives.

7. To make in the name of the commission such advertising contracts and other agreements as it deems necessary to promote the sale and consumption of dairy products on either a state or national basis.

8. To keep accurate books, records, and accounts of all its dealings, which books, records, and accounts shall be audited annually by the auditor of state.

9. To receive, administer, disburse and account for, in addition to the funds received from the excise tax hereinafter imposed by section 179.5, all such other funds as may be voluntarily contributed to said commission for the purpose of promoting dairy products.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.3]

85 Acts, ch 126, §9

179.4 Expenditure of funds.

Funds collected through the excise tax are to be used for purposes of advertising and promotion, product, process, and nutrition, dietetics, and physiology research, nutrition education, public relations, research and development, and for other activities that contribute to producer efficiency and productivity. In addition, the commission

shall use these funds to maintain existing markets, to make contributions to organizations working toward the purposes of this section, and to assist in the development of new or enlarged markets for milk, both domestic and foreign. The primary purpose for use of these funds is to increase consumption of milk. The commission may contract for advertising, publicity, sales promotion, research, and educational services the committee deems appropriate to further the objectives of this section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.4]

85 Acts, ch 126, §10

179.5 Excise tax — administration of moneys — appropriation.

1. There is levied and imposed an excise tax on all producers within the state of three-fourths of one percent of the gross value of milk produced in the state.

2. All taxes levied and imposed under this chapter shall be deducted from the price received by the producer and shall be collected by the first purchaser, except as follows:

a. If the producer produces milk from cows and sells the milk directly to the consumer, the taxes shall be remitted by that producer.

b. If the producer sells milk to a first purchaser outside the state, the taxes are due and payable by that producer before the shipment is made, except that the commission may make agreements with extra state purchasers for the keeping of records and the collection of the taxes as necessary to secure the payment of the taxes within the time fixed by this chapter.

3. All taxes levied and imposed under this chapter and other contributions made to the dairy industry commission shall be paid to and collected by the commission within thirty days after the end of the month during which the milk was marketed. The commission shall remit the taxes and other contributions to the treasurer of the state each quarter, and at the same time render to the director of revenue and finance an itemized and verified report showing the source from which the taxes and voluntary contributions were obtained. All taxes and voluntary contributions received, collected, and remitted shall be placed in a special fund by the treasurer of state and the director of revenue and finance, to be known as the *"dairy industry fund"* to be used by the Iowa dairy industry commission for the purposes set out in this chapter and to administer and enforce the laws relative to this chapter. The department of revenue and finance shall transfer moneys from the fund to the commission for deposit into an account established by the commission in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the commission. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. Moneys deposited in the fund and transferred to the commission as provided in this section are appropriated and shall be used for the purpose of carrying out the provisions of this chapter.

4. A person from whom the excise tax provided in this chapter is collected may, by application filed with the commission within thirty days after the collection of the tax, have the tax refunded to that person by the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.5]

85 Acts, ch 126, §11; 94 Acts, ch 1146, §2

Suspension during national order; see §179.2

179.5A Right to refund not subject to legal process or transfer.

The right of a person to a refund under this chapter or under chapter 181, 182, 183A, 184A, 185, or 185C is not subject to execution, levy, attachment, garnishment, or other legal process, and is not transferable or assignable at law or in equity.

86 Acts, ch 1100, §1; 89 Acts, ch 137, §1

179.6 Records of producers, first purchasers.

Every producer shipping milk to a first purchaser outside of Iowa who is not by agreement with the commission collecting the tax imposed by this chapter, and every first purchaser within the state, and every producer distributing milk directly to the consumer, shall keep a complete and accurate record of all milk produced or purchased by the person during the period for which an excise tax levy is imposed under this chapter. The records shall be in the form and contain the information prescribed by the commission, shall be preserved by the person charged with their making for a period of two years, and shall be offered or submitted for inspection at any time upon written or oral request by the commission or its duly authorized agent or employee.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.6]

85 Acts, ch 126, §12; 86 Acts, ch 1238, §8

179.7 Returns filed with commission.

Every person charged by this chapter or by agreement with the commission with the keeping of records provided for in this chapter shall at the times the commission may by rule require, file with the commission a return on forms to be prescribed and furnished by the commission. Producers shall state the quantity of milk produced. First purchasers shall state the quantity of milk handled, bottled, processed, distributed, delivered to, or purchased by the person from the producers of dairy products or their agents in the state. Returns shall contain other information as the com-

mission may require, and shall be made in triplicate, one copy of which shall be for the files of the person making the return, one copy available at the office of the person for the use of the person's patrons, and the original filed with the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.7]

85 Acts, ch 126, §13; 86 Acts, ch 1238, §9

179.8 Payment of expenses — limitation.

No part of the expense incurred by the commission shall be paid out of moneys in the state treasury except moneys transferred to the commission from the dairy industry fund. Moneys transferred from the fund to the commission, as provided in section 179.5, shall be used for the payment of all salaries, and other expenses necessary, to carry out the provisions of this chapter. However, in no event shall the total expenses exceed the total taxes collected and transferred from the fund to the commission.

No more than five percent of the excise tax collected and received by the commission pursuant to section 179.5 shall be utilized for administrative expenses of the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.8]

85 Acts, ch 126, §14; 94 Acts, ch 1146, §3

179.9 Investigations by commission.

The commission shall have the power to cause its authorized agents to enter upon the premises of any person charged by this chapter or by agreement with the commission with the collection of the excise tax imposed by this chapter, and to cause to be examined by any such agent any books, records, documents, or other instruments bearing upon the amount of such tax collected or to be collected by such person; provided that the commission has reasonable ground to believe that all the tax herein levied has not been collected, or if it has not been fully accounted for as herein provided.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.9]

179.10 Report.

The commission shall each year prepare and submit a report summarizing the activities of the commission under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.10]

85 Acts, ch 126, §15; 94 Acts, ch 1146, §4

179.11 Penalties.

Except as otherwise provided, any person who shall violate or aid in the violation of any of the provisions of this chapter shall be deemed guilty of a simple misdemeanor. All prosecutions for alleged violations of the provisions of this chapter shall be by the county attorney of the county in which such alleged violation occurred and shall be instituted and conducted under the direction and authority of the attorney general of the state.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.11]

179.12 Repealed by 74 Acts, ch 1153, § 8.

179.13 Referendum.

At a time designated by the commission within eighteen months after termination of the national promotional order made pursuant to the Dairy Product Stabilization Act of 1983, the commission shall conduct a referendum under administrative procedures prescribed by the department.

Upon signing a statement certifying to the department that the person is a bona fide producer as defined in this chapter, each producer is entitled to one vote in each referendum. When the secretary is required to determine the approval or disapproval of producers under this section, the secretary shall consider the approval or disapproval of a cooperative association of producers, engaged in a bona fide manner in marketing milk, as the approval or disapproval of the producers who are members of or contract with the cooperative association of producers. If a cooperative association elects to vote on behalf of its members, the cooperative association shall provide each producer on whose behalf the cooperative association is expressing approval or disapproval with a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. The information shall inform the producer of procedures to follow to cast an individual ballot if the producer chooses to do so within the period of time established by the secretary for casting ballots. The notification shall be made at least thirty days prior to the referendum and shall include an official ballot. The ballots shall be tabulated by the secretary and the vote of the cooperative association shall be adjusted to reflect the individual votes.

The department shall count and tabulate the ballots filed during the referendum within thirty days of the close of the referendum. If from the tabulation the department determines that a majority of the total number of producers voting in the referendum favors the proposal, the excise tax provided for in this chapter shall be continued. The ballots cast pursuant to this section constitute complete and conclusive evidence for use in determinations made by the department under this chapter.

The secretary may conduct a referendum at any time after the Iowa dairy industry commission is

reactivated, and shall hold a referendum on request of a representative group comprising ten percent or more of the number of producers eligible to vote, to determine whether the producers favor the termination or suspension of the excise tax. The secretary shall suspend or terminate collection of the excise tax within six months after the secretary determines that suspension or termination of the excise tax is favored by a majority of the producers voting in the referendum, and shall terminate the excise tax in an orderly manner as soon as practicable after the determination.

[C75, 77, 79, 81, §179.13]

85 Acts, ch 126, §16

179.14 Influencing legislation.

Neither commissioners, nor employees of the commission, shall attempt in any manner to influence legislation affecting any matters pertaining to the activities of the commission. No portion of the dairy industry fund shall be used in any manner to influence legislation or support any political candidate for public office, either directly or indirectly, or to support any political party.

[C75, 77, 79, 81, §179.14]

CHAPTER 180

DAIRY CALF CLUB EXPOSITION

Repealed by 98 Acts, ch 1032, §9

CHAPTER 181

BEEF CATTLE PRODUCERS ASSOCIATION

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181.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Executive committee"* means the executive committee created in section 181.3.

2. *"First purchaser"* means any person who buys cattle or veal calves for slaughter, in the first instance.

3. *"Producer"* means every person who raises cattle or veal calves for slaughter or who feeds cattle or veal calves for slaughter or both.

4. *"Qualified financial institution"* means a bank, credit union, or savings and loan as defined in section 12C.1.

[C71, 73, 75, 77, 79, 81, §181.6]

86 Acts, ch 1100, §5; 94 Acts, ch 1146, §6; 97 Acts, ch 30, §2, 9

CS97, §181.1

181.1A Recognition of organization.

The Iowa beef cattle producers association now existing in and incorporated under the laws of this state is entitled to the benefits of this chapter by filing, each year, with the department of agriculture and land stewardship, verified proof of the names of its president, vice president, secretary, and treasurer, together with other information required by the department of agriculture and land

stewardship.

[C24, 27, 31, 35, 39, §**2949;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.1]

86 Acts, ch 1100, §2

CS97, §181.1A

181.2 Duties and objects of association.

The Iowa beef cattle producers association shall:

1. Aid in the promotion of the beef cattle industry of the state.

2. Provide for practical and scientific instruction in the breeding and raising of beef cattle.

3. Provide for the inspection of herds, premises, appliances, methods, and feedstuffs used in the raising of beef cattle.

4. Make demonstrations in the feeding of beef cattle and publish suggestions beneficial to such business.

5. Aid and promote beef cattle feeding contests, shows, and sales.

6. Publish a breeders' directory.

7. Prepare an annual report of the proceedings and expenditures as provided in section 181.18B.

[C24, 27, 31, 35, 39, §**2950;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.2]

94 Acts, ch 1146, §5

181.3 Executive committee.

1. An executive committee of the Iowa beef cattle producers association is created. The executive committee consists of eight members as follows:

a. Five producers elected by the Iowa beef cattle producers association.

b. One livestock market representative appointed pursuant to subsection 2.

c. The secretary of agriculture or a designee, who shall serve as a voting ex officio member.

d. The dean of the college of agriculture of Iowa state university of science and technology or a designee, who shall serve as a voting ex officio member.

2. The Iowa livestock auction market association shall nominate two livestock market representatives. The secretary of agriculture shall appoint one of the nominees or another livestock market representative of the secretary's choice as the livestock market representative on the executive committee, who shall serve at the pleasure of the secretary.

3. The executive committee shall elect a chairperson, secretary, and other officers it deems necessary.

4. Except for ex officio members, vacancies in the executive committee resulting from death, inability or refusal to serve, or failure to meet the qualifications of this chapter, shall be filled by the executive committee. If the executive committee fails to fill a vacancy, the secretary of agriculture shall fill it. Vacancy appointments shall be only for the remainder of the unexpired term.

[C24, 27, 31, 35, 39, §**2951;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.3]

86 Acts, ch 1100, §3; 97 Acts, ch 30, §1

181.4 Employees of committee.

The executive committee may employ two or more competent persons who shall devote their entire time, under the direction of the committee, in carrying out the provisions of this chapter. The salary of persons so employed shall be set by the executive committee, and the persons shall hold office at the pleasure of the executive committee.

[C24, 27, 31, 35, 39, §**2952;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.4]

86 Acts, ch 1100, §4

181.5 Expenses of officers.

The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association.

[C24, 27, 31, 35, 39, §**2953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.5]

181.6 Transferred to section 181.1; 97 Acts, ch 30, § 9.

181.6A Election of executive committee.

1. The Iowa beef cattle producers association shall hold an annual meeting of producers. An election shall be held at the annual meeting, as necessary, for election of producers to the executive committee.

2. Prior to the annual meeting, the Iowa beef cattle producers association shall appoint a nominating committee. At least sixty days prior to the annual meeting of the Iowa beef cattle producers association, the nominating committee shall nominate two producers as candidates for each position on the executive committee for which an election is to be held. At least forty-five days prior to the annual meeting of the Iowa beef cattle producers association, additional candidates may be nominated by a written petition of fifty producers. Procedures governing the place of filing and the contents of the petition shall be promulgated and publicized by the executive committee.

3. Producers attending the annual meeting of the Iowa beef cattle producers association may vote for one nominee for each position on the executive committee for which an election is held. Producers not attending the annual meeting of the Iowa beef cattle producers association may vote by absentee ballot, if the ballot is requested and mailed, with proper postage, to the executive committee prior to the annual meeting of the Iowa beef cattle producers association. For each position for which an election is held, the candidate receiving the highest number of votes shall be elected.

4. Notice of election for executive committee

membership shall be given by the executive committee by publication in a newspaper of general circulation in the state and in any other reasonable manner as determined by the executive committee, and shall set forth the date, time, and place of the annual meeting of the Iowa beef cattle producers association. The executive committee shall administer the elections, with the assistance of the secretary of agriculture.

86 Acts, ch 1100, §6

181.7 Research and educational programs.

The executive committee shall engage in research and education programs directed toward better and more efficient production, marketing, and utilization of cattle and veal calves and products made therefrom; provide methods and means including, but not limited to, public relations and other promotion techniques for the maintenance of present markets; make donations to nonprofit organizations working toward the purposes of this section; assist in development of new or larger markets both domestic and foreign for cattle and veal calves and products made therefrom.

[C71, 73, 75, 77, 79, 81, §181.7]

181.7A Collection of federal assessment.

Prior to the commencement of the collection of the assessment pursuant to the Beef Promotion and Research Act of 1985, the executive committee may seek certification as a qualified state beef council within the meaning of that Act. If the executive committee does not receive certification as a qualified state beef council it shall, if necessary to prevent collection of an excise tax on beef cattle in addition to the national assessment, suspend the collection of the excise tax provided in this chapter. If the executive committee does suspend collection of the excise tax provided in this chapter, the period of that suspension terminates upon expiration of the assessment collected pursuant to the Beef Promotion and Research Act of 1985.

86 Acts, ch 1100, §7

181.8 Examining books and papers.

The executive committee shall have power to authorize its agents to enter at a reasonable time upon the premises of any purchaser charged by this chapter with remitting to the committee the excise tax, and to cause to be examined by such agent or agents, all books, records, documents, and other instruments bearing upon the amount of such excise tax; provided, however, that the executive committee must first have reasonable grounds to believe that all such excise taxes have not been remitted or fully accounted for, as herein provided.

The executive committee is authorized to enter into arrangements with persons purchasing cattle and veal calves for slaughter outside of Iowa on the basis provided in section 181.9, for remitting the excise tax by such buyers.

[C71, 73, 75, 77, 79, 81, §181.8]

181.9 Referendum.

No excise tax shall be assessed or collected under the provisions of this chapter until the secretary of agriculture finds that the assessment has been assented to by referendum vote. The secretary, upon the request of any fifty beef producers, shall conduct an initial referendum by written ballot to determine such assent, after giving due notice of intention to conduct the referendum.

Notice of any referendum on the question of whether to initiate or extend an excise tax shall be given by publication for a period of not less than five days in a newspaper of general circulation in the state and in such other newspapers as the secretary may prescribe. No referendum shall be commenced prior to five days after the last day of the period of publication. The notice of referendum shall set forth the period and voting places for the referendum, and the amount of the excise tax to be collected if the referendum is favorable.

[C71, 73, 75, 77, 79, 81, §181.9]

181.10 Balloting — procedures.

Each producer, upon signing a statement certifying that the person is a bona fide producer, as defined in this chapter, shall be entitled to one vote. At the close of the referendum period, the secretary of agriculture shall count and tabulate the ballots filed during the referendum period. If the secretary finds that a majority of the total number of producers voting favor the assessment, the excise tax provided in this chapter shall be assessed and levied within ninety days.

The ballots shall constitute complete and conclusive evidence for use in any finding made by the secretary under the provisions of this chapter. The secretary may prescribe additional procedures as necessary to conduct a referendum.

In the event of the failure of the initial referendum, a second initial referendum may be called by producers within one hundred eighty days after the secretary's determination on the first referendum. In the event of failure of the second initial referendum to pass, no further referendums shall be conducted.

[C71, 73, 75, 77, 79, 81, §181.10]

86 Acts, ch 1195, §1

181.11 Excise tax. Repealed by 97 Acts, ch 30, § 8.

181.12 Remission of tax on application.

A person from whom the excise tax is collected may, by written application filed with the executive committee within sixty days after its collection, have the amount remitted to the person by

the executive committee. The information that the excise tax is refundable and the address of the executive committee to which application for a refund may be made shall appear on the invoice of sale form supplied by the purchaser to the producer near the area on the form which shows the amount of the excise tax paid. The executive committee shall furnish uniform application for refund forms and envelopes properly addressed to the executive committee to each purchaser charged by this chapter with remitting the excise tax in sufficient number to make the refund forms and envelopes readily available to all producers. A purchaser charged by this chapter with remitting the excise tax shall display the application for refund forms and envelopes in a prominent position in its place of business and make them readily available to all producers.

[C71, 73, 75, 77, 79, 81, §181.12; 81 Acts, ch 71, §1]

Right to refund not subject to execution or transfer; §179.5A

181.13 Administration of moneys — appropriation.

All excise taxes imposed and levied under this chapter shall be paid to and collected by the executive committee and deposited with the treasurer of state in a separate cattle and veal calf fund which shall be created by the treasurer of state. The department of revenue and finance shall transfer moneys from the fund to the executive committee for deposit into an account established by the executive committee in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the executive committee. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From the moneys collected, deposited, and transferred to the executive committee, in accordance with the provisions of this chapter, the executive committee shall first pay the costs of referendums held pursuant to this chapter, the costs of collection of such excise tax, the expenses of its agents and expenses of officers provided for in section 181.5. Except as otherwise provided in section 181.19, at least ten percent of the remaining funds shall be remitted to the Iowa beef cattle producers association in proportions determined by the executive committee, for use in a manner not inconsistent with section 181.7. The remaining moneys, with approval of a majority of the executive committee, shall be expended as the executive committee finds necessary to carry out the provisions and purposes of this chapter. However, in no event shall the total expenses exceed the total amount transferred from the fund for use by the executive committee.

All moneys deposited in the cattle and veal calf fund and transferred to the executive committee pursuant to this section are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

[C71, 73, 75, 77, 79, 81, §181.13]

86 Acts, ch 1100, §8; 94 Acts, ch 1146, §7; 97 Acts, ch 30, §3

181.14 Notice.

Notice of any such referendum shall be given by the secretary by publishing the same for a period of not less than five days in a newspaper of general circulation in the state and in such other newspapers as the secretary may prescribe. The notice of referendum shall set forth the period for voting and the voting places for the referendum and the amount of the deduction. No referendum shall be commenced prior to five days after the last day of such period of publication.

[C71, 73, 75, 77, 79, 81, §181.14]

86 Acts, ch 1195, §2; 97 Acts, ch 30, §4

181.15 Imposition for additional period.

Each producer upon signing a statement certifying that the person is a bona fide producer, as defined in this chapter, shall be entitled to one vote. At the close of the referendum period, the secretary shall count and tabulate the ballots filed during the referendum period. If from such tabulation the secretary finds that a majority of the total number of producers voting favor the assessment, the excise tax provided for in section 181.9 shall be levied and imposed for an additional four years from the end of the previous taxing period.

The ballots thus cast shall constitute complete and conclusive evidence for use in any finding made by the secretary under the provisions of this chapter. The secretary may prescribe such additional procedures as may be necessary to conduct a referendum.

In the event of the failure of any referendum provided for herein to pass, a subsequent referendum may be called by the secretary upon petition therefor by at least one hundred producers within one hundred eighty days after the secretary's determination that the prior referendum has failed. In the event of failure to make such petition within said period, or, the second consecutive failure of a referendum to pass, no further referendum shall be conducted and the levy and assessment herein created shall terminate and be of no further force or effect.

[C71, 73, 75, 77, 79, 81, §181.15]

86 Acts, ch 1195, §3

181.16 Moneys remaining in fund.

If any extension referendum fails to carry, moneys remaining in the cattle and veal calf fund or transferred to the executive committee shall continue to be transferred and expended in accordance with the provisions of this chapter until exhausted.

[C71, 73, 75, 77, 79, 81, §181.16]
94 Acts, ch 1146, §8

181.17 Producers not members.

A producer who is not a member of the Iowa beef cattle producers association shall be entitled to vote in elections of persons to be members of the executive committee in the same manner as if the producer were a member. The members elected to the executive committee shall elect from their number the officers referred to in section 181.1A.

[C71, 73, 75, 77, 79, 81, §181.17]
97 Acts, ch 30, §5

181.18 Rules.

All rules of the executive committee heretofore or hereinafter promulgated shall be subject to the provisions of chapter 17A.

[C71, 73, 75, 77, 79, 81, §181.18]

181.18A Not a state agency.

The Iowa beef cattle producers association is not an agency of state government.

93 Acts, ch 102, §1

181.18B Report.

The executive committee shall each year prepare and submit a report summarizing the activities of the executive committee under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under this chapter.

94 Acts, ch 1146, §9

181.19 Additional referendum — period assessment effective — extension or termination.

The secretary shall, upon the petition of five hundred producers, conduct an initial referendum to determine whether an excise tax shall be collected, at a rate established by the executive committee, of not to exceed fifty cents per head on all beef cattle sold for slaughter and not to exceed thirty-five cents per head on all veal calves sold for slaughter and on all sales of beef cattle for any other purpose.

The secretary shall, upon the petition of five hundred producers, conduct a special referendum to determine whether an excise tax already collected shall be increased to a rate, established by the executive committee, not to exceed one dollar per head on all beef cattle and veal calves sold for any purpose.

The referenda shall be conducted under the provisions of sections 181.9 and 181.10, as nearly as is possible. Upon determination by the secretary that assent to the assessment has been given, there shall be assessed and levied an excise tax on each sale in the amount provided in this section. The tax shall be due at or before the time the animals are sold and shall be paid at a time prescribed by the council, but not later than the last day of the month following the end of the prior reporting period in which the animals are sold.

The tax shall be assessed and levied on any person selling beef cattle or veal calves and shall be deducted by the purchaser from the price paid to the seller. The purchaser, at the time of the sale, shall make and deliver to the seller separate invoices for each sale showing the names and addresses of the seller and the purchaser, the number and kinds of animals sold, whether sold for slaughter or feeding, and the date of sale.

On the date of the effective date of an excise tax which is larger than provided for in this section, any lesser excise tax being assessed shall terminate. However, if a special referendum to increase the excise tax should fail, it shall not affect the existence or length of the assessment in effect on the date that the special referendum is conducted. The provisions of sections 181.12, 181.13, 181.14, 181.15 and 181.16 shall also be applicable to the tax provided for in this section, as nearly as is possible.

An assessment adopted by referendum shall be effective for four years from its effective date and shall be either extended or terminated as provided in this section.

Upon receipt of a petition not less than one hundred fifty nor more than two hundred forty days from a four-year anniversary of the effective date of the assessment, signed within that same period by a number of producers equal to or greater than two percent of the number of producers reported in the most recent United States census of agriculture, requesting a referendum to determine whether to extend the assessment, the secretary shall call a referendum to be conducted not earlier than thirty days before the four-year anniversary date. If the secretary determines that extension of the assessment is not favored by a majority of the producers voting in the referendum, the secretary and the board shall terminate the assessment in an orderly manner as soon as practicable after the determination.

If no valid petition for extension is received by the secretary within the time period described above, or if a petition is received but the referendum to extend the assessment passes, the assessment shall continue in effect for four additional years from the anniversary of its effective date described above.

[C75, 77, 79, 81, §181.19; 81 Acts, ch 71, §2]
86 Acts, ch 1195, §4; 97 Acts, ch 30, §6, 7

181.20 Misdemeanors.

Any person who shall violate or assist in the violation of any of the provisions of this chapter shall be deemed guilty of a simple misdemeanor.

[C71, 73, §181.19; C75, 77, 79, 81, §181.20]

CHAPTER 182

IOWA SHEEP AND WOOL PROMOTION BOARD

182.1 Definitions.
182.2 Petition for referendum election.
182.3 Notice of referendum.
182.4 Establishment of sheep and wool promotion board — assessment — termination.
182.5 Composition of board.
182.6 Nominations for initial board.
182.7 Notice of election for directors.
182.8 Terms.
182.9 Subsequent membership — nominations — election.
182.10 Vacancies.
182.11 Purposes of board.
182.12 Powers and duties.
182.13 Compensation — meetings.
182.13A Not a state agency.
182.14 Assessment.
182.15 Invoice required.
182.16 Deposit and disbursement of funds.
182.17 Refunds.
182.18 Use of moneys.
182.19 Bond required.
182.20 Examination of records.
182.21 Penalty.
182.22 Purchasers outside Iowa.
182.23 Report.
182.24 Board member disclosure.

182.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Assessment"* means an excise tax on the sale of sheep or wool as provided in this chapter.

2. *"Board"* means the Iowa sheep and wool promotion board established pursuant to section 182.5.

3. *"Concentration point"* means a location or facility where sheep are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of sheep from various sources. *"Concentration point"* includes a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a livestock dealer's yard, truck, or facility.

4. *"District"* means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture and land stewardship.

5. *"Eligible voter"* means a person who has been a producer for the three hundred sixty-five days preceding the date of a referendum conducted pursuant to section 182.4.

6. *"First purchaser"* means a person who purchases sheep or wool from a producer.

7. *"Producer"* means a person who is actively engaged within this state in the business of producing or marketing sheep or wool and who receives income from the production of sheep or wool.

8. *"Sale"* or *"sold"* means a transaction in which the property in or to sheep or wool is transferred from the producer to a first purchaser for full or partial consideration.

9. *"Sheep"* means an animal of the ovine species, regardless of age, produced or marketed in this state.

10. *"Wool"* means the natural fiber produced by sheep.

85 Acts, ch 207, §1; 86 Acts, ch 1245, §631; 99 Acts, ch 50, §1 – 4

Further definitions; see §159.1

182.2 Petition for referendum election.

Upon receipt of a petition signed by at least fifty producers in each district requesting a referendum by election to determine whether to establish the board and to impose an assessment, the secretary shall call a referendum to be conducted within sixty days following receipt of the petition.

85 Acts, ch 207, §2; 99 Acts, ch 50, §5

182.3 Notice of referendum.

The secretary shall give notice of the referendum on the question of whether to establish an Iowa sheep and wool promotion board and to impose the assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the secretary.

A referendum shall not be commenced until five days after the last date of publication.

85 Acts, ch 207, §3

182.4 Establishment of sheep and wool promotion board — assessment — termination.

1. Each producer who signs a statement certifying that the producer is a bona fide producer is entitled to one vote. At the close of the referendum, the secretary shall count and tabulate the ballots cast. If a majority of voters favor establishing an Iowa sheep and wool promotion board and

imposing an assessment, an Iowa sheep and wool promotion board shall be established. The assessment shall be imposed commencing not more than sixty days following the referendum as determined by the Iowa sheep and wool promotion board, and shall continue until terminated by a referendum as provided in subsection 2. If a majority of the voters do not favor establishing an Iowa sheep and wool promotion board and imposing the assessment, the assessment shall not be imposed and the board shall not be established until another referendum is held under this chapter and a majority of the voters favor establishing a board and imposing the assessment. If a referendum fails, another referendum shall not be held within one hundred eighty days.

2. Upon receipt of a petition signed by at least twenty-five producers in each district requesting a referendum election to determine whether to terminate the establishment of the Iowa sheep and wool promotion board and to terminate the imposition of the assessment, the secretary shall call a referendum to be conducted within sixty days following the receipt of the petition. The petitioners shall guarantee the payment of the costs of a referendum held under this subsection. If the majority of the voters of a referendum do not favor termination, an additional referendum may be held when the secretary receives a petition signed by at least twenty-five producers in each district. However, the additional referendum shall not be held within one hundred eighty days.

85 Acts, ch 207, §4

182.5 Composition of board.

The Iowa sheep and wool promotion board established under this chapter shall be composed of nine producers, one from each district. The dean of the college of agriculture of Iowa state university of science and technology or the dean's representative and the secretary or the secretary's designee shall serve as ex officio nonvoting members of the board. The board shall annually elect a chairperson from its membership.

85 Acts, ch 207, §5

182.6 Nominations for initial board.

Candidates for positions on the initial board are nominated by filing a petition with the secretary containing the signatures of at least twenty-five producers in the candidate's district qualified to vote on the referendum. Candidates shall be resident producers of the district from which they are nominated. The secretary shall receive the nominations, and shall call an election for members of the initial board within thirty days following passage of the question at the referendum election.

85 Acts, ch 207, §6

182.7 Notice of election for directors.

Notice of the initial election for directors of the board shall be given by the secretary by publication in a newspaper of general circulation in the state at least five days prior to the date of the election and in any other reasonable manner as determined by the secretary. The notice shall set forth the period of time for voting, voting places, and other information as the secretary deems necessary.

Notice of subsequent elections for the membership position for a district shall be given by the board by publication in a newspaper of general circulation in the district and in any other reasonable manner as determined by the board and shall set forth the period of time for voting, voting places, and other information as the board deems necessary.

85 Acts, ch 207, §7

182.8 Terms.

The term of office for members of the board shall be three years and no member shall serve more than two complete consecutive terms. The producers on the initial board shall determine their terms by lot, so that three producers shall serve a one-year term, three producers shall serve a two-year term, and three producers shall serve a three-year term.

85 Acts, ch 207, §8

182.9 Subsequent membership — nominations — election.

After the appointment of the initial board, the board shall administer subsequent elections for members of the board with the assistance of the secretary. Before the expiration of a member's term of office, the board shall appoint a nominating committee for the district represented by the member. The nominating committee shall consist of five producers who are residents of the district from which a member must be elected. The nominating committee shall nominate two resident producers as candidates for the membership position for which an election is to be held. Additional candidates may be nominated by a written petition of twenty-five resident producers. The board shall provide by rule and shall publish procedures governing the time and place of filing the nominations.

85 Acts, ch 207, §9

182.10 Vacancies.

The board shall by appointment fill an unexpired term if a vacancy occurs on the board. The appointee shall be a resident producer in the district having a vacancy.

85 Acts, ch 207, §10

182.11 Purposes of board.

The purposes of the board shall be to:

1. Enter into contracts or agreements with or make grants to recognized and qualified agencies,

individuals, or organizations for the development and carrying out of research and education programs directed toward better and more efficient production, marketing, and utilization of sheep and wool and their products.

2. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.

3. Assist in development of new or larger markets, both domestic and foreign, for sheep and wool and their products.

85 Acts, ch 207, §11

182.12 Powers and duties.

The board may:

1. Administer and enforce this chapter and perform acts reasonably necessary to effectuate the purposes of this section.

2. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.

3. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

4. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.

5. Enter into arrangements for collection of the assessment on sheep and wool.

6. Formulate and execute assessment procedures and methods of collection.

7. Receive and investigate complaints and violations of this chapter and take necessary action.

8. Confer and cooperate with legally constituted authorities of other states and the United States.

9. Establish accounts in adequately protected financial institutions to receive, hold, and disburse board moneys.

85 Acts, ch 207, §12

182.13 Compensation — meetings.

Members of the board may receive payment for their actual expenses and travel in performing official board functions. Payment shall be made from amounts collected from the assessment. No member of the board shall be a salaried employee of the board or any organization or agency receiving funds from the board. The board shall meet at least once every three months, and at other times it deems necessary.

85 Acts, ch 207, §13

182.13A Not a state agency.

The Iowa sheep and wool promotion board is not an agency of state government.

93 Acts, ch 102, §2

182.14 Assessment.

1. If approved by a majority of voters at a referendum, an assessment shall be set by the board at not more than two cents for each pound of wool produced and sold by a producer and not more than ten cents per head on sheep sold by a producer.

2. The assessment shall be imposed on the producer as follows:

a. If the producer sells wool or sheep to the first purchaser within this state, the following shall apply:

(1) If the sale occurs at a concentration point, the assessment shall be imposed at the time of delivery. The first purchaser shall deduct the assessment from the price paid to the producer at the time of sale.

(2) If the sale does not occur at a concentration point, the producer shall deduct the assessment from the amount received from the sale and shall forward the amount deducted to the board within thirty days following each calendar quarter.

b. If the producer sells, ships, or otherwise disposes of wool or sheep to any person outside this state, the producer shall deduct the assessment from the amount received from the sale and shall forward the amount deducted to the board.

3. The assessment imposed by this section shall be remitted to the board not later than thirty days following each calendar quarter during which the assessment amount was deducted.

85 Acts, ch 207, §14; 99 Acts, ch 50, §6; 2000 Acts, ch 1154, §16

182.15 Invoice required.

At the time of sale, the first purchaser shall sign and deliver to the producer separate invoices for each purchase. The invoices shall show:

1. The name and address of the producer and the seller, if different from the producer.

2. The name and address of the first purchaser.

3. The pounds of wool or head of sheep sold.

4. The date of the purchase.

5. The rate of withholding and the total amount of the assessment withheld.

Invoices shall be legibly written and shall not be altered.

85 Acts, ch 207, §15; 99 Acts, ch 50, §7

182.16 Deposit and disbursement of funds.

The board shall deposit amounts collected from the assessment imposed pursuant to section 182.14 in an account established pursuant to section 182.12. Expenses and disbursements incurred and made pursuant to this chapter shall be made by voucher, draft, or check bearing the signature of a person designated by majority vote of the board.

85 Acts, ch 207, §16; 99 Acts, ch 50, §8

182.17 Refunds.

A producer who has paid the assessment may, by application in writing to the board, secure a refund of all or part of the amount paid. The refund shall be payable only when the application has been made to the board within sixty days after the deduction has been made by the producer or within sixty days after the remittance has been made by the first purchaser. Each application for refund by a producer shall have attached proof that the assessment was paid. The proof of the assessment paid may be in the form of a duplicate or certified copy of the purchase invoice by the purchaser.

85 Acts, ch 207, §17

Right to refund not subject to execution or transfer; §179.5A

182.18 Use of moneys.

Moneys collected under this chapter are subject to audit by the auditor of state and shall be used by the Iowa sheep and wool promotion board first for the payment of collection and refund expenses, second for payment of the costs and expenses arising in connection with conducting referendums, and third for the purposes identified in section 182.11. Moneys of the board remaining after a referendum is held at which a majority of the voters favor termination of the board and the assessment shall continue to be expended in accordance with this chapter until exhausted.

The board shall not engage in any political activity, and it shall be a condition of any allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

85 Acts, ch 207, §18

182.19 Bond required.

All persons holding positions of trust under this chapter shall give bond in the amount required by the board. The premiums for bond costs shall be paid from the moneys of the board.

85 Acts, ch 207, §19

182.20 Examination of records.

Persons subject to this chapter shall furnish on forms provided by the board information needed to enable the board to effectuate the policies of this chapter. For the purpose of ascertaining the correctness of a report made to the board under this chapter, the secretary may examine books, papers, records, copies of tax returns not confidential by law, and accounts, which are in the control of any person. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas in connection with the administration of this chapter.

85 Acts, ch 207, §20

182.21 Penalty.

A person who willfully violates a provision of this chapter, willfully gives a false report, statement, or record required by the board, or willfully fails to furnish or render a report, statement or record required by the secretary is guilty of a simple misdemeanor.

85 Acts, ch 207, §21

182.22 Purchasers outside Iowa.

The secretary may enter into arrangements with first purchasers from outside Iowa for payment of the assessment.

85 Acts, ch 207, §22

182.23 Report.

During the period of collection of the assessment, the board in cooperation with the auditor of state shall make an annual report which shall show all income, expenses and other relevant information.

85 Acts, ch 207, §23

182.24 Board member disclosure.

Notwithstanding section 182.13, a member of the board may receive compensation, including a salary, from an organization or agency, including an educational institution, receiving funds from the board. If a member of the board has a pecuniary interest, either direct or indirect, in a matter considered by the board, the interest shall be disclosed by the member to the board and included in the minutes for that meeting of the board. The member having the pecuniary interest shall not participate in an action taken by the board on the matter.

88 Acts, ch 1284, §66

CHAPTER 183

AGRICULTURAL GRAIN MARKETING COMPACT

Repealed by 98 Acts, ch 1032, §9

CHAPTER 183A

IOWA PORK PRODUCERS COUNCIL

183A.1 Definitions.
183A.2 Iowa pork producers council.
183A.3 Terms.
183A.4 Vacancies.
183A.5 Duties, objects and powers of the council.
183A.6 Assessment.
183A.7 Administration of moneys — appropriation.
183A.8 Refund of assessment.
183A.9 Referendum.
183A.9A Suspension during national order.
183A.10 Per diem and expenses.
183A.11 Audit.
183A.12 Examination of books.
183A.12A Report.
183A.13 Misdemeanors.
183A.14 Influencing legislation.

183A.1 Definitions.

As used in this chapter:

1. *"Assessment"* means an excise tax on the sale of porcine animals as provided in this chapter.

2. *"First purchaser"* means a person who buys porcine animals from a seller in the first instance.

3. *"Iowa pork producers council"* or *"council"* means the body established under section 183A.2.

4. *"Market development"* means research, education, and other programs directed at better and more efficient production, marketing, and utilization of pork; public relations and other promotion techniques for the maintenance of existing markets for pork, including but not limited to contributions to organizations working toward the purposes of this subsection; development of new or larger markets for pork both domestic and foreign, including but not limited to public relations and other promotion techniques; and the adoption, prevention, modification, or elimination of trade barriers which bear on the flow of pork in commercial channels.

5. *"Porcine animals"* means swine raised for slaughter, feeder pigs, or swine seedstock.

6. *"Pork"* means porcine animals and all parts of porcine animals.

7. *"Pork Promotion Act"* means the federal Pork Promotion, Research, and Consumer Information Act of 1985.

8. *"Producer"* means a person engaged in this state in the business of producing and marketing porcine animals in the previous calendar year.

9. *"Qualified financial institution"* means a bank, credit union, or savings and loan as defined in section 12C.1.

85 Acts, ch 199, §1; 86 Acts, ch 1100, §9, 10; 86 Acts, ch 1245, §632; 94 Acts, ch 1146, §10

Further definitions; see §159.1

183A.2 Iowa pork producers council.

The Iowa pork producers council is created. The council consists of seven members, including two producers from each of three districts of the state designated by the secretary, and one producer from the state at large. The secretary shall appoint these members. The Iowa pork producers association may recommend the names of potential members, but the secretary is not bound by the recommendations. The secretary, the dean of the college of agriculture of Iowa state university of science and technology, and the state veterinarian, or their designees, shall serve on the council as nonvoting ex officio members.

85 Acts, ch 199, §2; 86 Acts, ch 1100, §11

183A.3 Terms.

The voting members of the council shall serve terms of three years, and shall not serve for more than two complete consecutive terms.

85 Acts, ch 199, §3; 86 Acts, ch 1100, §12

183A.4 Vacancies.

A vacancy in the voting membership of the council resulting from death, inability or refusal to serve, or failure to meet the qualifications established in this chapter, shall be filled by the council for the remainder of the unexpired term. If the council fails to fill the vacancy, the secretary shall fill it.

85 Acts, ch 199, §4; 86 Acts, ch 1100, §13

183A.5 Duties, objects and powers of the council.

The council shall:

1. Aid in the promotion of the pork industry of the state.

2. Make an annual report of its proceedings and expenditures to the secretary.

3. Elect a chairperson, secretary, and other officers it deems advisable.

4. Administer and enforce this chapter, and do and perform all acts and exercise all powers reasonably necessary to effectuate the purposes and requirements of this chapter.

5. Hire and discharge employees and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.

6. Establish offices, incur expenses, and enter

into any contracts or agreements necessary to carry out the purposes of this chapter.

7. Report alleged violations of this chapter to the attorney general or appropriate county attorney.

8. Keep accurate books, records, and accounts of all its dealings.

9. Receive, administer, disburse and account for, in addition to the funds received from the assessment provided in this chapter, other funds voluntarily contributed to the council for the purpose of promoting the pork industry.

The council or its designated agent may enter into arrangements with persons purchasing Iowa produced pork outside Iowa, for collection of the assessment from those persons.

The council is a state agency only for the purposes of chapters 21 and 22. Chapter 17A does not apply to the council.

85 Acts, ch 199, §5; 86 Acts, ch 1100, §14, 15

183A.6 Assessment.

The council shall make an assessment of not less than point zero zero two nor more than point zero zero three of the gross sale price of all porcine animals. The assessment shall be point zero zero two five of the gross sale price of porcine animals until consent to an assessment has been given through the initial referendum referred to in this chapter. After approval of the initial referendum, the rate of assessment shall be determined by the council. The assessment shall be made at the time of delivery of the animals for sale, and shall be deducted by the first purchaser from the price paid to the seller. The first purchaser, at the time of sale, shall make and deliver to the seller an invoice for each purchase showing the names and addresses of the seller and the first purchaser, the number and kind of animals sold, the date of sale, and the assessment made on the sale.

Assessments shall be paid to the Iowa pork producers council or its designated agent by first purchasers at a time prescribed by the council, but not later than the last day of the month following the month in which the animals were purchased.

85 Acts, ch 199, §6; 86 Acts, ch 1100, §16

183A.7 Administration of moneys — appropriation.

Assessments imposed under this chapter paid to and collected by the Iowa pork producers council shall be deposited in the pork promotion fund which is established in the office of the treasurer of state. The department of revenue and finance shall transfer moneys from the fund to the council for deposit into an account established by the council in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

All moneys deposited in the pork promotion fund and transferred to the council as provided in this section are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

From the moneys collected, deposited, and transferred to the council as provided in this chapter, the council shall first pay the costs of referendums held pursuant to this chapter. Of the moneys remaining, at least twenty-five percent shall be remitted to the national pork producers council and at least fifteen percent shall be remitted to the Iowa pork producers association, in the proportion the committee determines, for use by recipients in a manner not inconsistent with market development as defined in section 183A.1. Moneys remaining shall be spent as found necessary by the council to further carry out the provisions and purposes of this chapter.

However, in no event shall the total expenses exceed the total amount of moneys transferred from the fund for use by the council.

85 Acts, ch 199, §7; 86 Acts, ch 1100, §17; 94 Acts, ch 1146, §11; 2002 Acts, ch 1119, §143

Unnumbered paragraph 3 amended

183A.8 Refund of assessment.

A producer from whom the assessment has been deducted, upon written application filed with the council within thirty days after its collection, shall have that amount refunded by the council. Application forms shall be given by the council to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for a refund by a producer shall have attached a proof of assessment deducted. The proof of assessment deducted shall be in the form of the original or a copy of the purchase invoice by the first purchaser. The council shall have no more than thirty days from the date the application for refund is received to remit the refund to the producer.

85 Acts, ch 199, §8; 86 Acts, ch 1076, §1

Right to refund not subject to execution or transfer; §179.5A

183A.9 Referendum.

At a time designated by the council within eighteen months after the termination of the collection of assessments under the Pork Promotion Act, the secretary shall conduct an initial referendum under administrative procedures prescribed by the department of agriculture and land stewardship.

Upon signing a statement certifying to the secretary that the person is a bona fide producer as defined in this chapter, each producer is entitled to one vote in each referendum. The secretary shall determine the qualification of producers under this section.

The secretary shall count and tabulate the bal-

lots filed during the referendum within thirty days of the close of the referendum. If from the tabulation the secretary determines that a majority of the total number of producers voting in the referendum favors the assessment, the assessment provided for in the referendum shall be levied. The ballots cast pursuant to this section constitute complete and conclusive evidence for use in determinations made by the secretary under this chapter.

The secretary shall hold subsequent referendums on request of ten percent or more of the number of producers eligible to vote, to determine whether the producers favor the termination or suspension of the assessment. The secretary shall suspend or terminate collection of the assessment within six months after the secretary determines that suspension or termination of the assessment is favored by a majority of the producers voting in the referendum, and shall terminate the assessment in an orderly manner as soon as practicable after the determination.

85 Acts, ch 199, §9; 86 Acts, ch 1100, §18

183A.9A Suspension during national order.

1. The terms of all voting members serving on the council on January 31, 1986 terminate at the time provided in subsection 2.

2. On the date of the commencement of the collection of assessments under the Pork Promotion Act, the collection of the assessments under section 183A.6 shall be suspended. The council shall continue to operate after suspension until all refunds are paid and all funds remaining in the pork promotion fund, less a reserve for future refunds, are disbursed for the purposes enumerated in this chapter. Notwithstanding section 183A.7, the council need not retain a reserve for future referendums. Upon completion of these acts, the existence of the Iowa pork producers council is suspended. The secretary of agriculture shall certify the suspension of the council as of a date certain to the Iowa pork producers council and the Iowa pork producers association. When the existence of the council is suspended, the terms of office of council members terminate.

3. On the date of the termination of the collection of assessments under the Pork Promotion Act, the period of suspension of the assessments under subsection 2 terminates. The secretary shall collect the assessments under section 183A.6 until this duty can be resumed by the reactivated council.

4. On the date of the termination of the collection of assessments under the Pork Promotion Act, the period of suspension of the council under subsection 2 terminates. Within sixty days from this date, the secretary shall appoint voting members to the council. For purposes of section 183A.3, a voting member so appointed is deemed not to have served a previous consecutive term. The terms of office of voting members of the initial reactivated council shall be determined by lot, but members from the same district shall not serve the same terms. As nearly as possible one-third of the voting members shall serve for one year, one-third of the voting members shall serve for two years, and one-third of the voting members shall serve for three years. Subsequent voting members shall be appointed pursuant to section 183A.2.

5. The secretary shall call the first meeting of the reactivated council. Upon reactivation, the council shall reimburse the secretary for expenses incurred in carrying out the duties provided in this section.

86 Acts, ch 1100, §19

183A.10 Per diem and expenses.

The members of the council shall receive a per diem as specified in section 7E.6 for each day spent on official business of the council, not to exceed six hundred dollars per annum, and their actual necessary expenses, while engaged in council activity.

85 Acts, ch 199, §10; 91 Acts, ch 258, §33

183A.11 Audit.

Moneys collected, deposited in the fund, and transferred to the council, as provided in this chapter shall be supervised by a certified public accountant employed by the council using generally accepted accounting principles and shall be subject to audit by the auditor of state.

85 Acts, ch 199, §11; 94 Acts, ch 1146, §12

183A.12 Examination of books.

Persons subject to this chapter and first purchasers shall furnish any information needed to enable the council and secretary to carry out the provisions of this chapter. For the purpose of ascertaining the correctness of any information given to the council or the secretary under this chapter, the secretary may examine books, papers, records, copies of tax returns, accounts, correspondence, contracts, or other documents and memoranda the secretary deems relevant which are in the control of any person and which are not otherwise confidential as provided by law. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas duces tecum in connection with the administration of this chapter.

85 Acts, ch 199, §12

183A.12A Report.

The council shall prepare and submit a report summarizing the activities of the council under this chapter each year to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under the provisions of this chapter.

94 Acts, ch 1146, §13

183A.13 Misdemeanors.

A person who violates or assists in the violation of any of the provisions of this chapter is guilty of a simple misdemeanor.

85 Acts, ch 199, §13

183A.14 Influencing legislation.

Neither council members nor employees of the council shall attempt in any manner to influence legislation affecting any matters pertaining to the council's activities. No portion of the pork promotion fund shall be used, directly or indirectly, to influence legislation, to support any candidate for public office, or to support any political party.

85 Acts, ch 199, §14

CHAPTER 184

IOWA EGG COUNCIL

Chapter transferred from chapter 196A in
Code 1999 pursuant to Code editor directive;
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13

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184.2 Establishment of Iowa egg council and assessment.
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184.4 Invoice required.
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184.6 Composition of council.
184.7 Terms and administration procedures.
184.8 Election and appointment procedures.
184.9 Duties of council.
184.10 Powers of council.
184.11 Prohibited actions.
184.12 Compensation.
184.13 Administration of moneys.
184.14 Use of moneys — appropriation — audit.
184.15 Bond required.
184.16 Examination of records.
184.17 Penalty.
184.18 Purchasers outside Iowa.
184.19 Not a state agency.

184.1 Definitions.

As used in this chapter, unless the context indicates otherwise:

1. *"Assessment"* means an excise tax on the sale of eggs as provided in this chapter.

2. *"Council"* means the Iowa egg council.

3. *"Egg product"* means a product produced in whole or in part from eggs or spent fowl.

4. *"Eggs"* means eggs produced from a layer-type chicken. *"Eggs"* includes shell eggs or eggs broken for further processing, but does not include fertile eggs that are incubated, hatched, or used for vaccines.

5. *"Eligible voter"* means a producer who is qualified to vote in a referendum conducted under this chapter according to the requirements of section 184.2 or 184.3.

6. *"Market development"* means programs which are directed toward any of the following:

a. Better and more efficient production, marketing, and utilization of eggs or egg products.

b. The maintenance of present markets and the development of new or larger markets for the sale of eggs or egg products.

c. Prevention, modification, or elimination of trade barriers which obstruct the free flow of eggs or egg products in commerce.

7. *"Processor"* means the first purchaser of eggs from a producer, or a person who both produces and processes eggs.

8. *"Producer"* means any person who owns, or contracts for the care of, thirty thousand or more layer-type chickens raised in this state.

9. *"Purchaser"* means a person who resells eggs purchased from a producer or offers for sale a product produced from the eggs for any purpose.

10. *"Qualified financial institution"* means a bank, credit union, or savings and loan as defined in section 12C.1.

[C75, 77, 79, 81, §196A.1]

86 Acts, ch 1245, §641; 94 Acts, ch 1146, §39; 95 Acts, ch 7, §4; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §1, 2, 13

C99, §184.1

184.2 Establishment of Iowa egg council and assessment.

1. The secretary shall call and the department shall conduct a referendum upon the department's receipt of a petition which is signed by at least twenty producers requesting a referendum to determine whether to establish an Iowa egg council and to impose an assessment as provided in section 184.3. The referendum shall be conducted within sixty days following receipt of the petition. The petitioners shall guarantee payment of the

cost of the referendum by providing evidence of financial security as required by the department.

2. The department shall give notice of the referendum on the question whether to establish a council and to impose an assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

3. *a.* Each producer who signs a statement certifying that the producer is a bona fide producer shall be an eligible voter under this section. An eligible voter is entitled to cast one vote in each referendum conducted under this section.

b. At the close of the referendum, the secretary shall count and tabulate the ballots cast.

(1) If a majority of eligible voters approve establishing an Iowa egg council and imposing an assessment, a council shall be established, and an assessment shall be imposed commencing not more than sixty days following the referendum as determined by the council and shall continue until eligible voters voting in a referendum held pursuant to section 184.5 vote to abolish the council and terminate the imposition of the assessment.

(2) If a majority of the voters do not approve establishing the council and imposing the assessment, the council shall not be established and an assessment shall not be imposed until another referendum is held under this chapter and a majority of the eligible voters approve establishing a council and imposing the assessment. If a referendum should fail, another referendum shall not be held within one hundred eighty days.

4. Immediately after passage of the question at the referendum, the secretary shall appoint seven members to the council in accordance with section 184.6 based on nominations made by the Iowa poultry association. The association shall nominate and the secretary shall appoint two members representing large producers, two members representing medium producers, and three members representing small producers. The department, in consultation with the association, shall determine initial classifications for small, medium, and large producers. The secretary shall complete the appointments within thirty days following passage of the question at the referendum.

[C75, 77, 79, 81, §196A.4]
95 Acts, ch 7, §5; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §3, 13
C99, §184.2

184.3 Assessment.

The council shall establish an assessment amount for each thirty dozen eggs produced in this state. The assessment shall be imposed on a producer at the time of delivery to a purchaser who shall deduct the assessment from the price paid to a producer at the time of sale. The assessment shall not be refundable. The assessment is due to be paid to the council within thirty days following each calendar quarter, as provided by the council.

If the producer sells eggs to a purchaser outside the state of Iowa, the producer shall deduct the tax from the amount received from the sale and shall forward the amount deducted to the council within thirty days following each calendar quarter. If the producer and processor are the same person, then that person shall pay the assessment to the council within thirty days following each calendar quarter.

The council may charge interest on any amount of the assessment that is delinquent. The rate of interest shall not be more than the current rate published in the Iowa administrative bulletin by the department of revenue and finance pursuant to section 421.7. The interest amount shall be computed from the date the assessment is delinquent, unless the council designates a later date. The interest amount shall accrue for each month in which there is delinquency calculated as provided in section 421.7, and counting each fraction of a month as an entire month. The interest amount due shall become a part of the assessment due.

[C75, 77, 79, 81, §196A.15]
95 Acts, ch 7, §14
CS95, §196A.4A
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §4, 13
C99, §184.3
2000 Acts, ch 1164, §1

184.4 Invoice required.

At the time of sale, the purchaser shall sign and deliver to the producer separate invoices for each purchase. The invoices shall show:

1. The name and address of the producer and the seller, if different from the producer.
2. The name and address of the purchaser.
3. The quantity of eggs sold.
4. The date of the purchase.
5. The rate of withholding and the total amount of assessment withheld.

Invoices shall be legibly written and shall not be altered.

[C75, 77, 79, 81, §196A.16]
95 Acts, ch 7, §15
CS95, §196A.4B
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
C99, §184.4

184.5 Referendums conducted to abolish the council and terminate imposition of the assessment.

1. A referendum may be called to abolish the council and terminate the imposition of the assessment. The secretary shall call, and the department shall conduct, the referendum upon the department's receipt of a petition requesting the

referendum. The petition must be signed by at least twenty eligible voters or fifty percent of all eligible voters, whichever is greater. In order to be an eligible voter under this section, a producer must have paid an assessment in the year of the referendum. The referendum shall be conducted within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The following procedures shall apply to a referendum conducted pursuant to this section:

a. The department shall publish a notice of the referendum for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the secretary that the producer is an eligible voter, a producer is entitled to one vote in each referendum conducted pursuant to this section. The department may conduct the referendum by mail, electronic means, or a general meeting of eligible voters. The department shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of the total number of eligible voters who vote in the referendum approve the continuation of the council and the imposition of the assessment, the council and the imposition of the assessment shall continue as provided in this chapter.

(2) If a majority of the total number of eligible voters who vote in the referendum held pursuant to this section do not approve continuing the council and the imposition of the assessment, the secretary shall terminate the collection of the assessment on the first day of the year for which the referendum was to continue. The secretary shall terminate the activities of the council in an orderly manner as soon as practicable after the determination. An additional referendum may be held as provided in section 184.2. However, the subsequent referendum shall not be held within one hundred eighty days.

95 Acts, ch 7, §6
CS95, §196A.4C
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §5, 13
C99, §184.5

184.6 Composition of council.

The Iowa egg council established under this chapter shall be composed of seven members. Each member must be a natural person who is a resident of this state and a producer or an officer, equity owner, or employee of a producer. A producer shall not be represented more than once on the council. Two persons shall represent large producers, two persons shall represent medium producers, and three persons shall represent small producers. The council shall adopt rules pursuant to chapter 17A establishing classifications for large, medium, and small producers. The following persons or their designees shall serve as ex officio nonvoting members:

1. The secretary.
2. The director of the Iowa department of economic development.
3. The chairperson of the poultry science section of the department of animal science at Iowa state university of science and technology.

[C75, 77, 79, 81, §196A.5]
95 Acts, ch 7, §7; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §6, 13
C99, §184.6

184.7 Terms and administration procedures.

1. A person shall serve as a member on the council for a term of three years. A person may serve as a member on the council for more than one term.
2. The council shall elect a chairperson, and other officers as needed, from among its voting members.
3. A majority of voting members of the council present during a meeting shall constitute a quorum. A majority of the members present during a meeting is necessary to carry out the duties and exercise the powers of the council as provided in this chapter, unless the council requires a greater number.
4. The council shall meet at least once every three months and at other times the council determines are necessary.

95 Acts, ch 7, §8
CS95, §196A.5A
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
C99, §184.7
99 Acts, ch 109, §1, 8

184.8 Election and appointment procedures.

1. The council shall appoint a committee to nominate candidates to stand for election to the council. The council may require that the committee nominate candidates to be appointed by the council to fill a vacancy in a position for the unexpired term of a member.
2. The council shall appoint a producer to fill a member's position occurring because of a vacancy on the council. The person appointed to fill the vacancy must meet the same requirements as a person elected to that position. The person shall serve for the remainder of the unexpired term.
3. The council shall provide a notice of an election for members of the council by any means deemed reasonable by the council. The notice shall include the period of time for voting, voting

places, and any other information determined necessary by the council.
95 Acts, ch 7, §9
CS95, §196A.5B
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §7, 13
C99, §184.8

184.9 Duties of council.
The Iowa egg council shall do all of the following:
1. Promote all of the following:
a. The increased utilization of eggs and egg products.
b. Health benefits associated with the consumption of eggs or egg products.
c. Economic benefits associated with the production and processing of eggs or egg products.
d. The safe use and consumption of eggs and egg products.
2. Provide for market development.
3. Administer elections for members of the council and provide for the appointment of persons to fill vacancies occurring on the council, as provided in section 184.8. The department may assist the council in administering an election, upon request to the secretary by the council.
4. Perform any other function the council deems necessary to carry out the provisions of this chapter.
[C75, 77, 79, 81, §196A.11]
95 Acts, ch 7, §10; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §8, 13
C99, §184.9

184.10 Powers of council.
The council may perform any function related to the production and marketing of eggs or egg products, including but not limited to doing any of the following:
1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers and fix their compensation.
2. Establish offices, incur expenses and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
3. Adopt, rescind and amend all proper and necessary rules for the exercise of its powers and duties.
4. Enter into arrangements for the collection of the assessment.
5. Receive gifts, rents, royalties, license fees or other moneys for deposit in the Iowa egg fund as provided in section 184.13.
6. Become a dues-paying member of an organization carrying out a purpose related to the increased consumption and utilization of eggs or egg products.
7. Fund research and education programs directed toward better and more efficient production, marketing, and utilization of eggs and egg products.
[C75, 77, 79, 81, §196A.12]
95 Acts, ch 7, §11; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §9, 10, 13
C99, §184.10
99 Acts, ch 109, §2, 3, 8

184.11 Prohibited actions.
The Iowa egg council shall not do any of the following:
1. Execute a contract or act as an agent of a person who executes a contract for any of the following:
a. Selling eggs or egg products.
b. Selling equipment used in the manufacturing of egg products.
2. *a.* Make any contribution of council moneys, either directly or indirectly, to any political party or organization or in support of a political candidate for public office.
b. Make payments to a political candidate including but not limited to a member of Congress or the general assembly for honoraria, speeches, or for any other purposes above actual and necessary expenses.
[C75, 77, 79, 81, §196A.13]
95 Acts, ch 7, §12; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §11, 13
C99, §184.11
99 Acts, ch 109, §4, 5, 8

184.12 Compensation.
Members of the council may receive payment for their actual expenses and travel in performing official council functions. A voting member of the council shall not be a salaried employee of the council or any organization or agency receiving moneys from the council.
[C75, 77, 79, 81, §196A.14]
95 Acts, ch 7, §13; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
C99, §184.12
99 Acts, ch 109, §6, 8

184.13 Administration of moneys.
Subject to the provisions of section 184.3, the assessment imposed by this chapter shall be remitted by the purchaser to the council not later than thirty days following each calendar quarter during which the assessment was collected. Amounts collected from the assessment shall be deposited in the office of the treasurer of state in a separate fund to be known as the Iowa egg fund. The department of revenue and finance shall transfer moneys from the fund to the council for deposit into an account established by the council in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

[C75, 77, 79, 81, §196A.17]
94 Acts, ch 1146, §40; 95 Acts, ch 209, §22; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
C99, §184.13

184.14 Use of moneys — appropriation — audit.

All moneys deposited in the Iowa egg fund and transferred to the council as provided in section 184.13, are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

Moneys collected, deposited in the fund, and transferred to the council as provided in this chapter are subject to audit by the auditor of state. The moneys transferred to the council shall be used by the council first for the payment of collection expenses, second for payment of the costs and expenses arising in connection with conducting referendums, and third to carry out the duties of the council as provided in section 184.9. Moneys remaining after the council is abolished and the imposition of an assessment is terminated pursuant to a referendum conducted pursuant to section 184.5 shall continue to be expended in accordance with this chapter until exhausted.

[C75, 77, 79, 81, §196A.19]
86 Acts, ch 1100, §24; 89 Acts, ch 137, §3; 94 Acts, ch 1146, §41; 95 Acts, ch 7, §16; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §12, 13
C99, §184.14

184.15 Bond required.

The council shall provide a bond for all persons holding positions of trust under this chapter.

[C75, 77, 79, 81, §196A.21]
94 Acts, ch 1146, §42; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
C99, §184.15
99 Acts, ch 109, §7, 8

184.16 Examination of records.

Persons subject to the provisions of this chapter shall furnish on forms provided by the council any information needed to enable the council to effectuate the policies of this chapter. For the purpose of ascertaining the correctness of any report made to the council under the provisions of this chapter, the secretary may examine books, papers, records, copies of tax returns not confidential by law, and accounts, which are in the control of any person. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas in connection with the administration of this chapter.

[C75, 77, 79, 81, §196A.22]
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
C99, §184.16

184.17 Penalty.

Any person who willfully violates any provision of this chapter, willfully gives a false report, statement, or record required by the council, or willfully fails to furnish or render any report, statement or record required by the secretary shall be guilty of a simple misdemeanor.

[C75, 77, 79, 81, §196A.23]
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
C99, §184.17

184.18 Purchasers outside Iowa.

The secretary may enter into arrangements with purchasers from outside Iowa for payment of the assessment.

[C75, 77, 79, 81, §196A.24]
95 Acts, ch 7, §17; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
C99, §184.18

184.19 Not a state agency.

The Iowa egg council is not an agency of state government.

93 Acts, ch 102, §3
CS93, §196A.14A
CS95, §196A.26
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
C99, §184.19

CHAPTER 184A

EXCISE TAX ON TURKEYS

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184A.18 Not a state agency.
184A.19 Prohibited activities.

184A.1 Definitions.

As used in this chapter, unless the context indicates otherwise:

1. *"Account"* means the turkey council account created pursuant to section 184A.4.

2. *"Council"* means the Iowa turkey marketing council established pursuant to sections 184A.1A and 184A.1B.

3. *"Fund"* means the Iowa turkey fund created pursuant to section 184A.4.

4. *"Integrator"* means any person who is both a producer and a processor.

5. *"Market development"* means research and education programs to provide better and more efficient production, marketing, and utilization of turkey and turkey products produced for resale. The programs may include, but are not limited to, supporting public relations, promotion, and research efforts. The programs may provide for all of the following:

a. The maintenance of present markets and the development of new or larger domestic or foreign markets.

b. The prevention, modification, or elimination of trade barriers which obstruct the free flow of commerce.

c. The education of consumers regarding the benefits of purchasing and consuming turkey products and the role of turkey producers and processors.

d. Participation in activities and events sponsored by the national turkey federation, and the national turkey federation research fund which provide for research and promotion regarding the production and marketing of turkeys and turkey products.

6. *"Processor"* means a person who purchases more than one thousand turkeys for slaughter each year. A processor includes an integrator.

7. *"Producer"* means a person residing within this state or outside this state who does business in this state and who raises more than five thousand turkeys for slaughter each year. A producer includes an integrator.

8. *"Qualified financial institution"* means a bank, credit union, or savings and loan as defined in section 12C.1.

9. *"Qualified producer"* means a producer who resides within this state.

10. *"Turkey"* means a turkey raised for slaughter.

11. *"Turkey product"* means a product produced in whole or in part from a turkey.

[C73, 75, 77, 79, 81, §184A.1]

86 Acts, ch 1100, §20; 94 Acts, ch 1146, §14; 99 Acts, ch 158, §1, 18, 19

184A.1A Referendum conducted to establish an Iowa turkey marketing council and impose an assessment.

1. The department shall call and conduct a referendum upon the department's receipt of a petition which is signed by at least twenty eligible voters requesting a referendum to determine whether to establish an Iowa turkey marketing council as provided in section 184A.1B and impose an assessment as provided in section 184A.2. In order to be an eligible voter under this section, a petitioner must be a qualified producer. The referendum shall be conducted by election within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The department shall give notice of the referendum on the question whether to establish a council and to impose an assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state, and for a similar period in other newspapers as prescribed by the department. The notice shall state the voting places, period of time for voting, the manner of voting, the amount of the assessment, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

3. *a.* Each eligible voter who signs a statement certifying that the eligible voter is a qualified producer shall be an eligible voter under this section. An eligible voter is entitled to cast one vote in each referendum conducted under this section. The department may conduct the referendum by mail, electronic means, or a general meeting of eligible voters.

b. At the close of the referendum, the department shall count and tabulate the ballots cast.

(1) If a majority of eligible voters who vote in the referendum approve establishing the council and imposing an assessment, a council shall be established, and an assessment shall be imposed commencing not more than sixty days following the referendum as determined by the council. The council and assessment shall continue for five years as provided in section 184A.12.

(2) If a majority of eligible voters who vote in the referendum do not approve establishing the council and imposing the assessment, the council shall not be established and an assessment shall not be imposed until another referendum is held under this section and a majority of the eligible voters voting approve establishing a council and imposing the assessment. If a referendum should fail, another referendum shall not be held within one hundred eighty days from the date of the last referendum.

4. Within thirty days after approval at the referendum to establish a council and to impose an assessment, the department shall organize the council as provided in section 184A.1B.

99 Acts, ch 158, §2, 18, 19; 2000 Acts, ch 1058, §22

184A.1B Turkey marketing council — composition and procedures.

1. The council shall consist of the following members:

a. The secretary of agriculture or the secretary's designee who shall serve at the pleasure of the secretary.

b. Six persons appointed by the board of the Iowa turkey federation. The appointees shall be knowledgeable about the care and management of poultry. The board shall appoint and replace the appointees by election as provided by the board. An appointee shall serve on the council at the pleasure of the board.

c. Any number of ex officio nonvoting members appointed by the board of the Iowa turkey federation. The board shall appoint and replace the appointees by election as provided by the board. An appointee shall serve on the council at the pleasure of the board.

2. The council shall elect a chairperson, and other officers, as needed, from among its members. An officer shall serve for a term as provided by the council and may be reelected to serve subsequent terms unless otherwise provided by the council.

3. A majority of voting members of the council present during a meeting shall constitute a quorum. A majority of the voting members present during a meeting is necessary to carry out the duties and exercise the powers of the council as provided in this chapter, unless the council requires a greater number.

4. The council shall meet on the call of the chairperson or as otherwise provided by the council.

99 Acts, ch 158, §3, 18, 19

184A.1C Powers of the council.

The council may do all of the following:

1. Employ, manage, and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and provide for their compensation.

2. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

3. Adopt rules necessary to administer the functions of the council as provided in this chapter.

4. Enter into arrangements for the collection and deposit of the assessment.

5. Require that any administrator, employee, or other person occupying a position of trust under this chapter give bond in the amount required by the council. The premiums for bonds shall be part of the costs of collecting the assessment.

6. Receive money, including in the form of gifts, rents, royalties, or license fees which shall be deposited in the turkey council account as provided in section 184A.4.

99 Acts, ch 158, §4, 18, 19

184A.2 Assessment.

1. If an assessment is approved by a majority of the eligible voters voting at a referendum as provided in section 184A.1A or 184A.12, all of the following shall apply:

a. The assessment shall be imposed on each turkey delivered for processing.

b. The council shall establish a rate of assessment for each turkey delivered for processing. The council may establish different rates based on attributes or characteristics of turkeys. However, a rate shall not be more than three cents for each turkey delivered for processing.

c. The assessment shall be imposed on the producer and collected at the time of delivery of a turkey to the processor. The assessment shall be deducted by the processor at the time of delivery from the price paid to the producer at the time of the sale to the processor. A processor shall remit assessments to the council on a monthly basis as provided by the council. The council shall deposit the remitted assessments in the Iowa turkey fund as provided in section 184A.4.

2. The council may enter into agreements with processors from outside this state for the payment of the assessment.

3. The council shall provide for a refund of an assessment according to rules adopted by the council.

[C73, 75, 77, 79, 81, §184A.2]

99 Acts, ch 158, §5, 18, 19

Right to refund not subject to execution or transfer; §179.5A

184A.3 Assessment documentation.

A processor receiving turkeys for slaughter shall do all of the following:

1. At the time of payment to the producer, the processor shall sign and submit a receipt to the producer which includes the rate of assessment imposed and the amount of the assessment for all turkeys delivered for processing.

2. Within a period established by rules adopted by the council, the processor shall regularly sign and submit to the council an invoice or other records required by the council to expedite collection of the assessment. The council may require that the processor submit a separate invoice for each purchase. The invoice shall be legibly printed and shall not be altered. An invoice shall include all of the following:

a. The name and address of the producer and the seller, if the seller's name is different from the producer.

b. The name and address of the processor.

c. The number of turkeys sold.

d. The date of the delivery.

[C73, 75, 77, 79, 81, §184A.3]

99 Acts, ch 158, §6, 18, 19

184A.4 Administration of moneys.

1. The assessments collected by the council as provided in section 184A.2 shall be deposited in the office of the treasurer of state in a special fund known as the Iowa turkey fund. The department of revenue and finance shall transfer moneys from the fund to the council for deposit into the turkey council account established by the council pursuant to this section. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

2. The council shall establish a turkey council account in a qualified financial institution. The council shall provide for the deposit of all of the following into the account:

a. The assessment collected, deposited in the Iowa turkey fund, and transferred to the council as provided in this section.

b. Moneys, other than assessments, including moneys in the form of gifts, rents, royalties, or license fees received by the council pursuant to section 184A.1C.

[C73, 75, 77, 79, 81, §184A.4]

94 Acts, ch 1146, §15; 99 Acts, ch 158, §7, 18, 19

184A.5 Monthly remittal. Repealed by 99 Acts, ch 158, § 17, 19.

184A.6 Use of moneys.

1. All moneys deposited in the turkey council account pursuant to section 184A.4 shall be used by the council for purposes of administering this chapter.

2. The council shall expend moneys from the account first for the payment of expenses for the collection of assessments, and then for the payment of expenses related to conducting a referendum as provided in section 184A.12. The council shall expend remaining moneys for market development, producer education, and the payment of refunds to producers as provided in this chapter.

[C73, 75, 77, 79, 81, §184A.6]

94 Acts, ch 1146, §16; 99 Acts, ch 158, §8, 18, 19; 2000 Acts, ch 1154, §17

184A.7 Warrants by director. Repealed by 94 Acts, ch 1146, § 46.

184A.8 Refund. Repealed by 99 Acts, ch 158, § 17, 19.

184A.9 Audit.

Moneys required to be deposited in the turkey council account as provided in section 184A.4 shall be subject to audit by the auditor of state.

[C73, 75, 77, 79, 81, §184A.9]

94 Acts, ch 1146, §17; 99 Acts, ch 158, §9, 18, 19

184A.10 Referendum.

Upon receipt of a petition signed by at least twenty-five producers requesting an initial referendum election to determine whether to impose the fee as provided in section 184A.2 the secretary shall call and conduct an initial referendum.

[C73, 75, 77, 79, 81, §184A.10]

184A.11 Notice. Repealed by 99 Acts, ch 158, § 17, 19.

184A.12 Referendum conducted to continue the council and the imposition of the assessment.

1. The council shall call for a referendum to continue the council established pursuant to section 184A.1A, and to continue the assessment established pursuant to section 184A.2. The council shall call and conduct the referendum by election as provided in this section. The department shall oversee the conduct of the referendum. The referendum shall be conducted in the fifth year following the referendum establishing the council and assessment.

2. The following procedures shall apply to a referendum conducted pursuant to this section:

a. The council shall publish a notice of the referendum for a period of not less than five days in at least one newspaper of general circulation in the state and for a similar period in other newspapers as prescribed by the council. The notice shall state the voting places, period of time for voting, manner of voting, and other information deemed

necessary by the council. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the council that a producer is an eligible voter, the producer is entitled to one vote in each referendum conducted pursuant to this section. In order to be an eligible voter under this section, a producer must be a qualified producer who paid an assessment in the year in which the referendum is held. The council may conduct the referendum by mail, electronic means, or a general meeting of eligible voters. The council shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of eligible voters who vote in the referendum approves the continuation of the council and the imposition of the assessment, the council and the imposition of the assessment shall continue as provided in this chapter.

(2) If a majority of eligible voters who vote in the referendum does not approve continuing the council and the imposition of the assessment, the department shall terminate the collection of the assessment on the first day of the year for which the referendum was to continue. The department shall terminate the activities of the council in an orderly manner as soon as practicable after the referendum. A subsequent referendum may be held as provided in section 184A.1A. However, the subsequent referendum shall not be held within one hundred eighty days from the date of the last referendum.

[C73, 75, 77, 79, 81, §184A.12]
99 Acts, ch 158, §10, 18, 19

184A.12A Referendum conducted to abolish the council and terminate the imposition of the assessment.

1. A referendum may be called to abolish the council established pursuant to sections 184A.1A and 184A.1B, and to terminate the imposition of the assessment established pursuant to section 184A.2. The department shall call and conduct the referendum upon the department's receipt of a petition requesting the referendum. The petition must be signed by at least twenty eligible voters or fifty percent of all eligible voters, whichever is greater. In order to be an eligible voter under this section, a producer must be a qualified producer who paid an assessment in the year in which the referendum is held. The referendum shall be conducted by election within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The following procedures shall apply to a referendum conducted pursuant to this section:

a. The department shall publish a notice of the referendum for a period of not less than five days in at least one newspaper of general circulation in the state and for a similar period in other newspapers as prescribed by the department. The notice shall state the voting places, period of time for voting, manner of voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the department that a producer is an eligible voter, the producer is entitled to one vote in each referendum conducted pursuant to this section. The department may conduct the referendum by mail, electronic means, or a general meeting of eligible voters. The department shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of eligible voters who vote in the referendum approves the continuation of the council and the imposition of the assessment, the council and the imposition of the assessment shall continue as provided in this chapter.

(2) If a majority of eligible voters who vote in the referendum does not approve continuing the council and the imposition of the assessment, the department shall terminate the collection of the assessment on the first day of the year for which the referendum was to continue. The department shall terminate the activities of the council in an orderly manner as soon as practicable after the referendum. A subsequent referendum may be held as provided in section 184A.1A. However, the subsequent referendum shall not be held within one hundred eighty days from the date of the last referendum.

99 Acts, ch 158, §11, 18, 19

184A.13 Bonds. Repealed by 99 Acts, ch 158, § 17, 19.

184A.14 Examination of books.

Any person subject to the provisions of this chapter shall furnish, on forms provided by the council, information required by the council to effectuate the provisions of this chapter. In order to administer this chapter, the council may examine books, papers, records, copies of tax returns, accounts, correspondence, contracts, or other documents and memoranda that it deems relevant which are in the control of a person subject to this chapter and which are not otherwise confidential as provided by law. The council may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas duces tecum in connection with the administration of this section.

[C73, 75, 77, 79, 81, §184A.14]
99 Acts, ch 158, §12, 18, 19

184A.15 Misdemeanor.
A person is guilty of a simple misdemeanor for willfully violating any provision of this chapter, or for willfully rendering or furnishing a false or fraudulent report, statement, or record required by the council.
[C73, 75, 77, 79, 81, §184A.15]
99 Acts, ch 158, §13, 18, 19

184A.16 Agreement with processors.
Repealed by 99 Acts, ch 158, § 17, 19.

184A.17 Report.
The council shall prepare and submit a report summarizing the activities of the council under this chapter each year to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning assessments collected and expended under the provisions of this chapter.
[C73, 75, 77, 79, 81, §184A.17]
94 Acts, ch 1146, §18; 99 Acts, ch 158, §14, 18, 19

184A.18 Not a state agency.
The council is not a state agency.
[C73, 75, 77, 79, 81, §184A.18]
99 Acts, ch 158, §15, 18, 19

184A.19 Prohibited activities.
The council shall not do any of the following:
1. Operate with a deficit or use deficit financing for administration of this chapter.
2. Expend moneys from the account in a manner that is not authorized pursuant to section 184A.6.
3. Become involved in supporting a political campaign or issue, by making a contribution of moneys from the account, either directly or indirectly, to any political party or organization or in support of a political candidate for public office. The council shall not expend the moneys to a political candidate including but not limited to a member of Congress or the general assembly for honoraria, speeches, or for any other purposes above actual and necessary expenses.
[C73, 75, 77, 79, 81, §184A.19]
99 Acts, ch 158, §16, 18, 19

CHAPTER 185

SOYBEAN PROMOTION BOARD

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185.1 Definitions.
As used in this chapter:
1. *"Assessment"* means an excise tax on each bushel of soybeans marketed in this state as provided in this chapter.
2. *"Board"* means the Iowa soybean promotion board established by this chapter.
3. *"Bushel"* means sixty pounds of soybeans by weight.
4. *"District"* means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture and land stewardship.
5. *"First purchaser"* means a person, public or private corporation, governmental subdivision,

association, co-operative, partnership, commercial buyer, dealer, or processor who purchases soybeans from a producer for the first time for any purpose except to feed it to the purchaser's livestock or to manufacture a product from the soybeans purchased for the purchaser's personal consumption.

6. *"Market development"* means to engage in research and educational programs directed toward better and more efficient production and utilization of soybeans; to provide methods and means, including but not limited to, public relations and other promotion techniques for the maintenance of present markets; to provide for the development of new or larger domestic and foreign markets; and to provide for the prevention, modification, or elimination of trade barriers which obstruct the free flow of soybeans.

7. *"Marketed in this state"* refers to a sale of soybeans to a first purchaser who is a resident of or doing business in this state where actual delivery of the soybeans occurs in this state.

8. *"Marketing year"* means the twelve-month period beginning the first day of September and ending on the following thirty-first day of August.

9. *"Producer"* means any individual, firm, corporation, partnership, or association engaged in this state in the business of producing and marketing in their name at least two hundred fifty bushels of soybeans in the previous marketing year.

10. *"Promotional order"* means an order administered pursuant to this chapter which establishes a program for the promotion, research and market development of soybeans and provides for an assessment to finance the program.

11. *"Qualified financial institution"* means a bank, credit union, or savings and loan as defined in section 12C.1.

12. *"Sale"* or *"purchase"* includes but is not limited to the pledge or other encumbrance of soybeans as security for a loan extended under a federal price support loan program. Sale and actual delivery of the soybeans under the federal price support loan program occurs when the soybeans are marketed following redemption by the producer or when the soybeans are forfeited in lieu of loan repayment. If the soybeans are forfeited in lieu of repayment, the purchase price of the soybeans is the principal amount of the loan extended and the assessment shall be collected at the time of loan settlement.

13. *"Soybeans"* means and includes all kinds of varieties of soybeans marketed or sold as soybeans by the producer.

[C73, 75, 77, 79, 81, §185.1]

83 Acts, ch 22, §1, 2; 86 Acts, ch 1245, §633; 94 Acts, ch 1146, §19, 20

Further definitions; see §159.1

185.2 Petition for election.

Upon receipt of a petition signed by at least five hundred producers requesting an initial referendum election to determine whether a promotional order shall be placed in effect, the secretary shall call an initial referendum election to be conducted within sixty days following receipt of the petition. Producers shall vote by written ballot in the manner provided by this chapter for referendum elections.

[C73, 75, 77, 79, 81, §185.2]

185.3 Board established.

If a majority of the producers voting in the referendum election approve the passage of the promotional order, an Iowa soybean promotion board shall be established. The board shall consist of one director elected from each district in the state, except that a district producing more than an average of twenty-five million bushels of soybeans in the three previous marketing years is entitled to two directors.

[C73, 75, 77, 79, 81, §185.3]

185.4 Initial board. Repealed by 88 Acts, ch 1134, § 116.

185.5 Notice of election for directors.

Notice of elections for directors of the board in a district shall be given by the board by publication in a newspaper of general circulation in the district and in any other reasonable manner as determined by the board and shall set forth the period of time for voting, voting places, and other information the board deems necessary.

[C73, 75, 77, 79, 81, §185.5]

88 Acts, ch 1134, §35

185.6 Who elected.

In districts electing one director, the candidate receiving the highest number of votes shall be elected. In districts electing two directors, producers shall vote for two directors, and the two candidates receiving the highest number of votes shall be elected.

[C73, 75, 77, 79, 81, §185.6]

185.7 Terms.

Director terms shall be for three years and no director of the board shall serve for more than three complete consecutive terms.

[C73, 75, 77, 79, 81, §185.7]

88 Acts, ch 1134, §36

185.8 Elections.

The board shall administer elections for directors of the board with the assistance of the secretary. Prior to the expiration of a director's term of office, the board shall appoint a nominating committee for the district represented by that director. The nominating committee shall consist of five producers who are residents of the district from which a director must be elected. The nominating committee shall nominate two resident producers

as candidates for each director position for which an election is to be held. Additional candidates may be nominated by a written petition of one hundred producers. Procedures governing the time and place of filing shall be adopted and publicized by the board.

[C73, 75, 77, 79, 81, §185.8]
88 Acts, ch 1134, §37

185.9 Vacancies.

The board shall by appointment fill an unexpired term if a vacancy occurs in the board.

[C73, 75, 77, 79, 81, §185.9]

185.10 Ex officio members.

The secretary, the dean of the college of agriculture of Iowa state university of science and technology, and the director of the Iowa department of economic development, or their designees, and two representatives of first purchaser organizations appointed by the board shall serve on the board as nonvoting ex officio members.

[C73, 75, 77, 79, 81, §185.10]
86 Acts, ch 1100, §21; 94 Acts, ch 1146, §21

185.11 Purpose of board.

The purposes of the board shall be to:

1. Enter into contracts or agreements with recognized and qualified agencies or organizations for the development and carrying out of research and education programs directed toward better and more efficient production, marketing, and utilization of soybeans and soybean products.
2. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.
3. Assist in development of new or larger markets, both domestic and foreign, for soybeans and soybean products.
4. Work for prevention, modification, or elimination of trade barriers which obstruct the free flow of soybeans and soybean products to market.

[C73, 75, 77, 79, 81, §185.11]

185.12 Officers.

The board shall:

1. Elect a chairperson and other officers as advisable.
2. Administer this chapter, and perform all acts reasonably necessary to effectuate the purposes of this chapter.

[C73, 75, 77, 79, 81, §185.12]

185.13 Powers and duties.

The board may:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.
2. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
3. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.
4. Enter into arrangements for collection of the assessment on soybeans marketed in this state.
5. Periodically review or evaluate each program conducted pursuant to this chapter to ensure that the program contributes to one of the purposes of the board.

[C73, 75, 77, 79, 81, §185.13]
94 Acts, ch 1146, §22

185.14 Per diem and expenses.

Each member of the board shall receive a per diem as specified in section 7E.6 and actual expenses in performing official board functions not to exceed forty days per year. No member of the board shall be a salaried employee of the board or any organization or agency which is receiving funds from the board. The board shall meet at least once every three months, and at such other times as deemed necessary by the board.

[C73, 75, 77, 79, 81, §185.14]
91 Acts, ch 258, §34

185.15 Term of promotional order.

A promotional order shall be effective for four years from its effective date, and upon each four-year anniversary of its effective date shall be either extended or terminated as provided in this chapter.

[C73, 75, 77, 79, 81, §185.15]
86 Acts, ch 1195, §5; 88 Acts, ch 1134, §38

185.16 Notice of referendum.

Notice of a referendum election to initiate or extend a promotional order shall be given by publication in a newspaper of general circulation in this state at least ten days prior to the date of the referendum and in any other reasonable manner as may be determined by the secretary for the initial referendum and by the board for extension of the promotional order.

[C73, 75, 77, 79, 81, §185.16]

185.17 Contents of notice.

The notice of referendum shall set forth the period of time for voting, voting places and such other information as the secretary may deem necessary in an initial referendum. The board shall make such determinations in any subsequent referendum.

[C73, 75, 77, 79, 81, §185.17]

185.18 Counting.

At the close of a referendum voting period, the secretary shall count and tabulate the ballots cast during the referendum period.

[C73, 75, 77, 79, 81, §185.18]

185.19 Effect.

The ballots shall constitute conclusive evidence as to the validity of the promotional order.

[C73, 75, 77, 79, 81, §185.19]

185.20 Producers only to vote.

Only producers are eligible to vote in an election for directors or a referendum election and only in the district in which they reside. A producer shall sign an affidavit furnished by the secretary at the time of voting certifying the producer's eligibility to vote. Each qualified producer shall be entitled to one vote.

[C73, 75, 77, 79, 81, §185.20]

185.21 Assessment.

An assessment adopted upon the initiation of a promotional order shall be collected during the effective period of the promotional order, and shall be of no force or effect upon termination of the promotional order.

The board shall determine and set the assessment rate. Assessments pursuant to the promotional order shall be paid into the soybean promotion fund established in section 185.26. An assessment shall not exceed one-quarter of one percent of the net market price of the soybeans marketed in this state and sold to a first purchaser. The net market price is the sales price received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors. The rate of assessment shall be determined by the board. The board shall determine the effective date of a rate change.

[C73, 75, 77, 79, 81, §185.21]

94 Acts, ch 1146, §23

185.22 Promotional order.

After a promotional order has been issued, the first purchaser at the time of payment for soybeans shall show the total amount of assessment deducted from the sale on the purchase invoice.

[C73, 75, 77, 79, 81, §185.22]

185.23 Deduction of assessment.

The assessment shall be deducted from the purchase price of soybeans at the time of sale, and forwarded to the board by the first purchaser in the manner and at intervals determined by the board.

[C73, 75, 77, 79, 81, §185.23]

185.24 Termination of a promotional order.

If a promotional order is not extended as determined by a referendum the secretary and the board shall terminate the promotional order in an orderly manner as soon as practicable. After all funds are expended, the board shall cease to function. Any funds remaining one year following the termination of a promotional order shall be disbursed by the board to the Iowa soybean association. However, if a future referendum passes, the board shall be reorganized by the secretary and members shall serve out their terms as though there had been no lapse of time between effective orders.

[C73, 75, 77, 79, 81, §185.24]

94 Acts, ch 1146, §24

185.25 Special referendum — producer petition.

Upon receipt of a petition not less than one hundred fifty nor more than two hundred forty days from a four-year anniversary of the effective date of an initial promotional order signed within that same period by a number of producers equal to or greater than one percent of the number of producers reported in the most recent United States census of agriculture, requesting a referendum to determine whether to extend the promotional order, the secretary shall call a referendum to be conducted not earlier than thirty days before the four-year anniversary date. If the secretary determines that extension of the promotional order is not favored by a majority of the producers voting in the referendum, the promotional order shall be terminated as provided in section 185.24. If the promotional order is terminated, another referendum shall not be held within one hundred eighty days. A succeeding referendum shall be called by the secretary upon the petition of a number of producers equal to or greater than one percent of the number of producers reported in the most recent United States census of agriculture requesting a referendum, who shall guarantee the costs of the referendum.

If no valid petition is received by the secretary within the time period described above, or if a petition is received but the referendum to extend the promotional order passes, the promotional order shall continue in effect for four additional years from the anniversary of its effective date.

[C73, 75, 77, 79, 81, §185.25]

86 Acts, ch 1195, §6; 94 Acts, ch 1146, §25

185.25A Special referendum — request by the board.

1. If the assessment rate approved by producers in the most recent referendum election conducted pursuant to this chapter is less than the maximum rate established in section 185.21, the board may request the secretary to call a special referendum at any time prior to the expiration of the promotional order. The referendum shall be conducted as provided in this chapter for referendum elections.

2. Producers shall vote on the question, as determined by the board, of whether to authorize an increase in the assessment rate or whether to authorize an extension of the promotional order and

an increase of the assessment rate. The assessment rate shall not exceed the rate established in section 185.21.

a. If the secretary determines that the question of whether to authorize an increase in the assessment rate is approved in the special referendum, the rate of assessment shall be changed as provided in section 185.21.

b. If the secretary determines that the question of whether to extend the promotional order at the increased assessment rate is approved in the special referendum, the promotional order shall continue in effect for four additional years from the anniversary of its effective date, and the rate of assessment shall be changed as provided in section 185.21. If the secretary determines that the question has not been approved, the promotional order shall be terminated as provided in section 185.24.

94 Acts, ch 1146, §26

185.26 Administration of moneys.

Assessments collected by the board from a sale of soybeans shall be deposited in a special fund known as the soybean promotion fund, in the office of the treasurer of state. The fund may also contain any gifts, or federal or state grant received by the board. Moneys collected, deposited into the fund, and transferred to the board, as provided in this chapter, shall be subject to audit by the auditor of state. The department of revenue and finance shall transfer moneys from the fund to the board for deposit into an account established by the board in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the board. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From moneys collected, deposited and transferred to the board as provided in this section, the board shall first pay the costs of referendums, elections and other expenses incurred in the administration of this chapter, before moneys may be expended for the purpose of market development.

[C73, 75, 77, 79, 81, §185.26]

94 Acts, ch 1146, §27

185.27 Refund of assessment.

A producer who has sold soybeans and had an assessment deducted from the sale price may, by application in writing to the board, secure a refund in the amount deducted. The refund shall be payable only when the application shall have been made to the board within sixty days after the deduction. Application forms shall be given by the board to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for refund by a producer shall have attached thereto proof of assessment deducted. The proof of assessment may be in the form of a duplicate or certified copy of the purchase invoice by the first purchaser. The board shall have thirty days from the date the application for refund is received to remit the refund to the producer.

[C73, 75, 77, 79, 81, §185.27]

Right to refund not subject to execution or transfer, §179.5A

185.28 Use of moneys — appropriation.

All moneys collected, deposited, and transferred to the board as provided in this chapter, are appropriated and shall be used for the administration of this chapter by the board and for the payment of claims by the board based upon obligations incurred in the performance of board activities and functions provided in this chapter.

[C73, 75, 77, 79, 81, §185.28]

94 Acts, ch 1146, §28

185.29 Remission of excess funds.

After the board has paid the costs of elections, referendum, necessary board expenses and administrative costs, at least seventy-five percent of the remaining moneys collected, deposited in the fund, and transferred to the board as provided in this chapter, shall be expended by the board for market development activities, including developing and expanding new markets for soybeans and soybean products worldwide. The moneys shall only be used for research, promotion, and education in cooperation with qualified agencies.

[C73, 75, 77, 79, 81, §185.29]

94 Acts, ch 1146, §29

185.30 Bond.

Every person occupying a position of trust under any provisions of this chapter shall provide a bond in an amount required by the board. The premium for the bond shall be paid out of moneys transferred from the soybean promotion fund to the board pursuant to section 185.26.

[C73, 75, 77, 79, 81, §185.30]

94 Acts, ch 1146, §30

185.31 Penalty.

It is a simple misdemeanor for any person to willfully violate any provision of this chapter or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the secretary.

[C73, 75, 77, 79, 81, §185.31]

185.32 First purchaser information.

Every first purchaser shall upon request furnish the secretary with such information as is necessary to enable the secretary and the board to carry out the provisions of this chapter. Such information shall be provided as prescribed by the secretary. The secretary may examine any records relating to the purchase, sale, storage, processing, handling, or assessment of soybeans by any first

purchaser. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas as may be necessary for the proper administration of this chapter.
[C73, 75, 77, 79, 81, §185.32]

185.33 Report.
The board shall each year prepare and submit a report summarizing the activities of the board under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under the provisions of this chapter.
[C73, 75, 77, 79, 81, §185.33]
94 Acts, ch 1146, §31

185.34 Not a state agency.
The Iowa soybean promotion board shall not be a state agency.
[C73, 75, 77, 79, 81, §185.34]

CHAPTER 185A

IOWA SOYBEAN ASSOCIATION

185A.1 Recognition of association.
185A.2 Duties and objects of association.

185A.1 Recognition of association.
The corporation known as the Iowa soybean association incorporated under the laws of this state shall be entitled to the benefits of this chapter by filing each year with the department verified proofs of its organization, names of its officers, and five hundred persons who are bona fide members thereof together with such other information as the department may require.
[C66, 71, 73, 75, 77, 79, 81, §185A.1]

185A.2 Duties and objects of association.
The Iowa soybean association shall:

1. Aid in the promotion of the soybean industry of Iowa through education, research, marketing, transportation study, and public relations programs, and to foster research designed to develop new, additional and improved uses for soybean products and determine better methods of converting them to various industrial and human uses.
2. Make an annual report of the proceedings to the secretary of agriculture.

[C66, 71, 73, 75, 77, 79, 81, §185A.2]

CHAPTER 185B

CORN GROWERS ASSOCIATION

185B.1 Recognition of organization.
185B.2 Duties and objects of association.

185B.1 Recognition of organization.
The corporation known as the Iowa corn growers association incorporated under the laws of this state shall be entitled to the benefits of this chapter by filing each year with the department verified proofs of its organization, names of its officers, and five hundred persons who are bona fide members thereof together with such other information as the department may require.
[C71, 73, 75, 77, 79, 81, §185B.1]

185B.2 Duties and objects of association.
The Iowa corn growers association shall:

1. Aid the promotion of corn growers and the corn industry of Iowa through education, research, marketing, transportation study, and public relations programs, and to foster research designed to develop new additional and improved uses for corn products and determine better methods of converting them to various industrial and human uses.
2. Make an annual report of the proceedings to the secretary of agriculture.

[C71, 73, 75, 77, 79, 81, §185B.2]

CHAPTER 185C

CORN PROMOTION BOARD

185C.1 Definitions.
185C.2 Petition for election.
185C.3 Establishment of corn promotion board.
185C.4 Initial board. Repealed by 88 Acts, ch 1134, §116.
185C.5 Notice of election.
185C.6 Election of directors.
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185C.8 Elections.
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185C.33 Report.
185C.34 Not a state agency.

185C.1 Definitions.

As used in this chapter:

1. *"Assessment"* means a state or federal assessment.

2. *"Board"* means the Iowa corn promotion board established by this chapter.

3. *"Bushel"* means fifty-six pounds of corn by weight.

4. *"Corn"* means and includes all kinds of varieties of corn marketed or sold as corn by the producer but shall not include sweet corn or popcorn or seed corn.

5. *"District"* means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture and land stewardship.

6. *"Federal assessment"* means a federal excise tax or other charge which is imposed for purposes related to market development.

7. *"First purchaser"* means a person, public or private corporation, governmental subdivision, association, co-operative, partnership, commercial buyer, dealer, or processor who purchases corn from a producer for the first time for any purpose except to feed it to the purchaser's livestock or to manufacture a product from the corn purchased for the purchaser's personal consumption.

8. *"Market development"* means to engage in research and educational programs directed toward better and more efficient utilization of corn; to provide methods and means, including but not limited to, public relations and other promotion techniques for the maintenance of present markets; to provide for the development of new or larger domestic and foreign markets; and to provide for the prevention, modification, or elimination of trade barriers which obstruct the free flow of corn.

9. *"Marketed in this state"* refers to a sale of corn to a first purchaser who is a resident of or doing business in this state where actual delivery of the corn occurs in this state.

10. *"Marketing year"* means the twelve-month period beginning the first day of September and ending on the following thirty-first day of August.

11. *"Producer"* means any individual, firm, corporation, partnership, or association engaged in this state in the business of producing and marketing in their name at least two hundred fifty bushels of corn in the previous marketing year.

12. *"Promotional order"* means an order administered pursuant to this chapter which establishes a program for the promotion, research, and market development of corn and provides for a state assessment to finance the program.

13. *"Qualified financial institution"* means a bank, credit union, or savings and loan as defined in section 12C.1.

14. *"Sale"* or *"purchase"* may, to the extent determined by the board, include the pledge or other encumbrance of corn as security for a loan extended under a federal price support loan program. Actual delivery of the corn occurs when the corn is pledged or otherwise encumbered to secure the loan. The purchase price of the corn is the principal amount of the loan extended and the purchase invoice for the corn is the documentation required for extension of the loan.

15. *"State assessment"* means a state excise tax on each bushel of corn marketed in this state which is imposed for purposes related to market development.

[C77, 79, 81, §185C.1]

83 Acts, ch 22, §3, 4; 86 Acts, ch 1245, §634; 89 Acts, ch 198, §1 – 3; 94 Acts, ch 1146, §32, 33

Further definitions; see §159.1

185C.2 Petition for election.

Upon receipt of a petition signed by at least five hundred producers requesting an initial referendum election to determine whether a promotional order shall be placed in effect, the secretary shall call an initial referendum election to be conducted within sixty days following receipt of the petition. Producers shall vote by written ballot in the manner provided by this chapter for referendum elections.

[C77, 79, 81, §185C.2]

185C.3 Establishment of corn promotion board.

If a majority of the producers voting in the referendum election approve the passage of the promotional order, an Iowa corn promotion board shall be established. The board shall consist of one director elected from each district in the state, except that a district producing more than an average of one hundred million bushels of corn in the three previous marketing years is entitled to two directors.

[C77, 79, 81, §185C.3]

185C.4 Initial board. Repealed by 88 Acts, ch 1134, § 116.

185C.5 Notice of election.

Notice of elections for directors of the board in a district shall be given by the board by publication in a newspaper of general circulation in the district and in any other reasonable manner as determined by the board and shall set forth the period of time for voting, voting places, and other information the board deems necessary.

[C77, 79, 81, §185C.5]

88 Acts, ch 1134, §39

185C.6 Election of directors.

In districts electing one director, the candidate receiving the highest number of votes shall be elected. In districts electing two directors, producers shall vote for two directors, and the two candidates receiving the highest number of votes shall be elected.

[C77, 79, 81, §185C.6]

185C.7 Terms of directors.

Director terms shall be for three years and no director of the board shall serve for more than three complete consecutive terms.

If the board is reconstituted pursuant to section 185C.8, the terms of the directors shall be controlled by this section. However, the initial terms of the reconstituted board shall be staggered. To the extent practicable, one-third of the elected directors shall serve an initial term of one year, one-third of the elected directors shall serve an initial term of two years, and one-third of the elected directors shall serve an initial term of three years. The terms shall be determined by board members drawing lots. The board elected under this paragraph shall not contain two directors from the same district serving the same term.

[C77, 79, 81, §185C.7]

88 Acts, ch 1134, §40; 89 Acts, ch 198, §4

185C.8 Elections.

The board shall administer elections for directors of the board with the assistance of the secretary. Prior to the expiration of a director's term of office, the board shall appoint a nominating committee for the district represented by that director. The nominating committee shall consist of five producers who are residents of the district from which a director must be elected. The nominating committee shall nominate two resident producers as candidates for each director position for which an election is to be held. Additional candidates may be nominated by a written petition of twenty-five producers. Procedures governing the time and place of filing shall be adopted and publicized by the board.

Following recommencement of the promotional order, or termination of the promotional order's suspension as provided in section 185C.24, the secretary shall order the reconstitution of the board. An election of directors shall be held within thirty days from the date of the order. The secretary shall call for, provide for notice of, conduct, and certify the results of the election in a manner consistent with section 185C.5 through 185C.7. Directors shall serve terms as provided in section 185C.7. Rules or procedures adopted by the board and in effect at the date of suspension shall continue in effect upon reconstitution of the board. The Iowa corn growers association may nominate two resident producers as candidates for each director position. Additional candidates may be nominated by a written petition of at least twenty-five producers.

[C77, 79, 81, §185C.8]

88 Acts, ch 1134, §41; 89 Acts, ch 198, §5

185C.9 Vacancies.

The board shall by appointment fill an unexpired term if a vacancy occurs in the board.

[C77, 79, 81, §185C.9]

185C.10 Ex officio members.

The secretary, the dean of the college of agricul-

ture of Iowa state university of science and technology, and the director of the Iowa department of economic development, or their designees, and two representatives of first purchaser organizations appointed by the board shall serve on the board as ex officio members.

[C77, 79, 81, §185C.10]
86 Acts, ch 1100, §22; 94 Acts, ch 1146, §34

185C.11 Purpose of the board.

The purposes of the board shall be to:

1. Enter into contracts or agreements with recognized and qualified agencies or organizations for the development and carrying out of research and education programs directed toward better and more efficient production, marketing, and utilization of corn and corn products.
2. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.
3. Assist in development of new or larger markets, both domestic and foreign, for corn and corn products.
4. Work for prevention, modification, or elimination of trade barriers which obstruct the free flow of corn and corn products to market.
5. Promote the production and marketing of ethanol.

[C77, 79, 81, §185C.11]
91 Acts, ch 254, §13

185C.12 Officers.

The board shall:

1. Elect a chairperson and other officers as advisable.
2. Administer this chapter, and perform all acts reasonably necessary to effectuate the purposes of this chapter.

[C77, 79, 81, §185C.12]

185C.13 Powers and duties.

The board may:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.
2. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
3. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.
4. Enter into arrangements for collection of the assessment on corn marketed in this state.
5. To the extent provided by federal law, be responsible for collection of receipts from the federal assessment, and for expenditure of proceeds from the federal assessment.

[C77, 79, 81, §185C.13]
89 Acts, ch 198, §6

185C.14 Per diem and expenses.

Each member of the board shall receive a per diem as specified in section 7E.6 and actual expenses in performing official board functions not to exceed forty days per year. No member of the board shall be a salaried employee of the board or any organization or agency which is receiving funds from the board. The board shall meet at least once every three months, and at such other times as deemed necessary by the board.

[C77, 79, 81, §185C.14]
91 Acts, ch 258, §35

185C.15 Term of promotional order — automatic extension.

A promotional order shall be effective for four years from its effective date. Upon the date that an order is due to expire the order shall automatically be extended for an additional four years from the date that the order or last extension would otherwise expire, except as provided in section 185C.24.

[C77, 79, 81, §185C.15]
88 Acts, ch 1134, §42; 89 Acts, ch 198, §7

185C.16 Notice of referendum.

Notice of a referendum election to initiate or terminate a promotional order shall be given by publication in a newspaper of general circulation in this state at least ten days prior to the date of the referendum and in any other reasonable manner as determined by the secretary for the initial referendum and by the board for termination of the promotional order.

[C77, 79, 81, §185C.16]
89 Acts, ch 198, §8; 90 Acts, ch 1168, §31

185C.17 Contents of notice.

The notice of referendum shall set forth the period of time for voting, voting places and such other information as the secretary may deem necessary in an initial referendum. The board shall make such determinations in any subsequent referendum.

[C77, 79, 81, §185C.17]

185C.18 Counting.

At the close of a referendum voting period, the secretary shall count and tabulate the ballots cast during the referendum period.

[C77, 79, 81, §185C.18]

185C.19 Effect.

The ballots shall constitute conclusive evidence as to the validity of the promotional order.

[C77, 79, 81, §185C.19]

185C.20 Producers only to vote.

Only producers are eligible to vote in an election for directors or a referendum election and only in the district in which they reside. A producer shall

sign an affidavit furnished by the secretary at the time of voting certifying the producer's eligibility to vote. Each qualified producer shall be entitled to one vote.

[C77, 79, 81, §185C.20]

185C.21 State assessment.

1. The board shall determine and set the state assessment rate. State assessments collected pursuant to the promotional order shall be paid into the corn promotion fund established in section 185C.26. Except as provided in subsection 2, a state assessment shall not exceed one-quarter of one cent per bushel upon corn marketed in this state. The board shall establish the effective date of a rate change.

2. Upon request of the board, the secretary shall call a special referendum for producers to vote on whether to authorize an increase in the state assessment above one-quarter of one cent per bushel, notwithstanding subsection 1. The special referendum shall be conducted as provided in this chapter for referendum elections. However, the special referendum shall not affect the existence or length of the promotional order in effect. If a majority of the producers voting in the special referendum approve the increase, the board may increase the assessment to the amount approved in the special referendum. However, a state assessment shall not exceed one cent per bushel of corn marketed in this state.

[C77, 79, 81, §185C.21]

89 Acts, ch 198, §9; 94 Acts, ch 1146, §35; 98 Acts, ch 1030, §1

185C.22 State assessment on purchase invoice.

After a promotional order has been issued, the first purchaser at the time of payment for corn shall show the total amount of state assessment deducted from the sale on the purchase invoice.

[C77, 79, 81, §185C.22]

89 Acts, ch 198, §10

185C.23 Deduction of state assessment.

The state assessment shall be deducted from the purchase price of corn at the time of sale, and forwarded to the board by the first purchaser in the manner and at intervals determined by the board.

[C77, 79, 81, §185C.23]

89 Acts, ch 198, §11

185C.24 Cancellation and suspension.

1. The board shall be suspended and board operations and terms of members shall cease upon either of the following events:

a. The state assessment is terminated pursuant to section 185C.25.

b. The state assessment is suspended pursuant to section 185C.25A.

2. However, notwithstanding subsection 1, the board shall continue to operate until proceeds remaining in the corn promotion fund are disbursed. Disbursement shall be made as provided for payment of moneys under section 185C.26.

3. The secretary shall order that the board be reconstituted upon either of the following events:

a. Recommencement of the promotional order, pursuant to section 185C.25.

b. Termination of the promotional order's suspension, pursuant to section 185C.25A.

4. Until the board is reconstituted under section 185C.8, the secretary has the powers to perform the duties of the board as provided in this chapter, including the collection of the state assessment at the rate in effect on the date when collection of the state assessment was terminated pursuant to section 185C.25. However, the secretary shall not expend funds from state assessment.

[C77, 79, 81, §185C.24]

89 Acts, ch 198, §12

185C.25 Effective period of promotional order — termination.

1. A state assessment adopted upon the initiation of a promotional order shall be collected during the effective period of the order, and shall have no effect upon termination of the promotional order. Upon adoption or extension of the promotional order, the order shall be effective for the period described in section 185C.15 unless the order is terminated as provided in this section or suspended as provided in section 185C.25A.

2. The secretary shall call a referendum to terminate the promotional order if all the following conditions are met:

a. The secretary receives a petition signed by at least five percent of the state's producers reported in the most recent United States census of agriculture.

b. The petition is signed by at least five percent of the state's producers residing in each of five districts according to the most recent United States census of agriculture.

c. The secretary receives the petition not less than one hundred fifty days from the date that the order is due to expire, but receives the petition not more than two hundred forty days before the date that the order is due to expire.

3. The secretary shall conduct the election as provided for a referendum under this chapter, including sections 185C.16 through 185C.20. If upon counting and tabulating the ballots, the secretary determines that a majority of voting producers favor termination of the state assessment, the secretary, in cooperation with the board, shall terminate the state assessment in an orderly manner as soon as practicable.

4. If the assessment is terminated, another referendum shall not be held for at least one hundred eighty days from the date that the assess-

ment is terminated. A succeeding referendum to restore the assessment shall be called by the secretary upon petition of at least five hundred producers requesting a referendum. The petitioners shall guarantee the costs of the succeeding referendum. The secretary shall conduct the election as provided for a referendum under this chapter not later than one hundred fifty days after the secretary receives the petition. If a referendum held pursuant to this subsection is approved by producers, the promotional order shall commence no later than two hundred ten days following the date that the petition is received by the secretary.

[C77, 79, 81, §185C.25]

89 Acts, ch 198, §13

185C.25A Collection of federal assessment.

Prior to the collection of the federal assessment, the board may approve the continued collection of the state assessment during the collection of the federal assessment. If the collection of the state assessment would be in addition to, and not an offset against, the collection of the federal assessment, the board shall suspend the collection of the state assessment. On the date of the termination or suspension of the federal assessment, the promotional order shall recommence and the suspension of the state assessment shall terminate.

89 Acts, ch 198, §14

185C.26 Deposit of moneys.

State assessments collected by the board from a sale of corn shall be deposited in the office of the treasurer of state in a special fund known as the corn promotion fund. The fund may include any gifts, rents, royalties, license fees, or a federal or state grant received by the board. Moneys collected, deposited in the fund, and transferred to the board as provided in this chapter, shall be subject to audit by the auditor of state. The department of revenue and finance shall transfer moneys from the fund to the board for deposit into an account established by the board in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the board. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From moneys collected, the board shall first pay all the direct and indirect costs incurred by the secretary and the costs of referendums, elections, and other expenses incurred in the administration of this chapter, before moneys may be expended for the purpose of market development.

[C77, 79, 81, §185C.26]

89 Acts, ch 198, §15; 94 Acts, ch 1146, §36; 98 Acts, ch 1030, §2

185C.27 Refund of assessment.

A producer who has sold corn and had a state assessment deducted from the sale price, by application in writing to the board, may secure a refund in the amount deducted. The refund shall be payable only when the application shall have been made to the board within sixty days after the deduction. Application forms shall be given by the board to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for refund by a producer shall have attached to the application proof of the assessment deducted. The proof of assessment may be in the form of a duplicate or certified copy of the purchase invoice by the first purchaser. The board shall have thirty days from the date the application for refund is received to remit the refund to the producer. The board may provide for refunds of a federal assessment as provided by federal law. Unless inconsistent with federal law, refunds shall be made under section 185C.26.

[C77, 79, 81, §185C.27]

89 Acts, ch 198, §16

Right to refund not subject to execution or transfer, §179.5A

185C.28 Use of moneys — appropriation.

Moneys deposited in the corn promotion fund and transferred to the board as provided in section 185C.26, including federal moneys to the extent permitted by federal law, are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions provided in this chapter.

[C77, 79, 81, §185C.28]

89 Acts, ch 198, §17; 94 Acts, ch 1146, §37

185C.29 Remission of excess funds.

After the costs of elections, referendum, necessary board expenses, and administrative costs have been paid, at least seventy-five percent of the remaining funds from state assessments in the corn promotion fund shall be allocated to organizations selected by the corn promotion board on the basis of their ability to carry out the purposes of this chapter. The funds can only be used for research, promotion, and education in co-operation with agencies equipped to perform these activities.

The Iowa corn promotion board shall not expend any funds on political activity, and it shall be a condition of any allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

[C77, 79, 81, §185C.29]

89 Acts, ch 198, §18

185C.30 Bond.

Every person occupying a position of trust under any provisions of this chapter shall give bond in

such amount as may be required by the board, the premium for which shall be paid out of the corn promotion fund.

[C77, 79, 81, §185C.30]

185C.31 Penalty.

It is a simple misdemeanor for any person to willfully violate any provision of this chapter or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the secretary.

[C77, 79, 81, §185C.31]

185C.32 First purchaser information.

Every first purchaser shall upon request furnish the secretary with such information as is necessary to enable the secretary and the board to carry out the provisions of this chapter. Such information shall be provided as prescribed by the secretary. The secretary may examine any records relating to the purchase or the state assessment of corn by any first purchaser. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas as may be necessary for the proper administration of this chapter. When requested by the board, the secretary shall employ these powers in the manner requested.

[C77, 79, 81, §185C.32]

89 Acts, ch 198, §19

185C.33 Report.

The board shall each year prepare and submit a report summarizing the activities of the board under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under the provisions of this chapter.

[C77, 79, 81, §185C.33]

89 Acts, ch 198, §20; 94 Acts, ch 1146, §38

185C.34 Not a state agency.

The Iowa corn promotion board is not a state agency.

[C77, 79, 81, §185C.34]

CHAPTER 186

STATE HORTICULTURAL SOCIETY

186.1 Meetings and organization of society.
186.2 Horticultural exposition.
186.3 Affiliation with allied societies.
186.4 Annual report.
186.5 Appropriations.

186.1 Meetings and organization of society.

The state horticultural society shall hold meetings each year, at times as it may fix, for the transaction of business. The officers and board of directors of the society shall be chosen as provided for in the constitution of the society, for the period and in the manner prescribed therein, but the secretary of agriculture or the secretary's designee shall be a member of the board of directors and of the executive committee. Any vacancy in the offices filled by the society may be filled by the executive committee for the unexpired portion of the term.

[C73, §1117; C97, §1669; C24, 27, 31, 35, 39, §**2963;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.1]

87 Acts, ch 115, §32

186.2 Horticultural exposition.

The society is authorized to hold, at such time and in such place in Iowa as it may select, a horticultural exposition, including honey products and manufactured plant products, with practical and scientific demonstrations of approved methods of crop production, grading, packing, marketing, and establishment of standard market grades pertaining to horticulture. It may delegate to its executive committee the duty and power to make and execute all plans for the holding of such an exposition.

[C24, 27, 31, 35, 39, §**2964;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.2]

186.3 Affiliation with allied societies.

The society shall encourage the affiliation with itself of societies organized for the purpose of furthering the horticultural, honey bee, or forestry interests of the state.

[C73, §1118; C97, §1670; C24, 27, 31, 35, 39, §**2965;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.3]

186.4 Annual report.

The secretary shall make an annual report to

the department of agriculture and land stewardship at such time as the department may require. Such report shall contain the proceedings of the society, an account of the exposition, a summarized statement of the expenditures for the year, the general condition of horticultural, honey bee, and forestry interests throughout the state, together with such additional information as the department may require.

[C73, §1119; C97, §1671; C24, 27, 31, 35, 39, §**2966;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.4]

186.5 Appropriations.

All money appropriated by the state for the use of the state horticultural society shall be paid on the warrant of the director of revenue and finance, upon the order of the president and secretary of said society, in such sums and at such times as may be for the interests of said society. All expenditures from state funds for the use of the state horticultural society are to be approved by the secretary of agriculture.

[C27, 31, 35, §2966-a1; C39, §**2966.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.5]

CHAPTER 186A

ARBOR WEEK

Transferred to §1C.10

CHAPTER 187

MARKING AND BRANDING OF LIVESTOCK

Transferred to chapter 169A

CHAPTER 188

ESTRAYS AND TRESPASSING ANIMALS

Transferred to chapter 169B and subsequently repealed
by 94 Acts, ch 1173, §42

SUBTITLE 4

AGRICULTURE-RELATED PRODUCTS AND ACTIVITIES

CHAPTER 189

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DIVISION I

DEFINITIONS AND DUTIES

189.1 Definitions.

For the purpose of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, unless the context otherwise requires:

1. *"Article"* includes food, commercial feed, agricultural seed, commercial fertilizer, drug, insecticide, fungicide, paint, linseed oil, turpentine, and illuminating oil, in the sense in which they are defined in the various provisions of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208.

2. *"Department"* means the department of agriculture and land stewardship, and if the department is required or authorized to do an act, the act may be performed by a regular assistant or a duly authorized agent of the department.

3. *"Official laboratory"* means a biological, chemical, or physical laboratory which performs testing or analysis pursuant to scientific procedures, to the extent the laboratory is recognized by the department as a reliable indicator of scientific results.

4. *"Package"* or *"container"*, unless otherwise defined, includes wrapper, box, carton, case, basket, hamper, can, bottle, jar, tube, cask, vessel, tub, firkin, keg, jug, barrel, tank, tank car, and other receptacles of a like nature; and the expression *"offered or exposed for sale or sold in package or*

wrapped form" means the offering or exposing for sale, or selling of an article which is contained in a package or container as defined in this section.

5. *"Pasteurization"* or *"pasteurized"* means the procedure of processing milk or a milk product, in order to ensure its safety from contaminants, if the procedure of pasteurization is consistent with standards adopted by the department pursuant to section 192.102.

6. *"Person"* includes a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in that capacity shall also be liable for violations of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208.

7. *"Rules"* includes regulations and orders by the department.

8. *"Secretary"* means the secretary of agriculture.

9. *"United States Pharmacopoeia"* or *"National Formulary"* means the latest revision of these publications official at the time of a transaction which is in question.

[S13, §2510-o, 3009-a; SS15, §4999-a31c; C24, 27, 31, 35, 39, §**3029;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.1]

86 Acts, ch 1245, §636; 92 Acts, ch 1163, §44; 94 Acts, ch 1023, §17

189.2 Duties.

The department shall:

1. Execute and enforce this subtitle,* except chapter 205.

2. Make and publish all necessary rules, not inconsistent with law, for enforcing the provisions of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208.

3. Provide educational measures and exhibits, and conduct educational campaigns as are deemed advisable in fostering and promoting the production and sale of the articles dealt with in this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, in accordance with the rules adopted pursuant to this subtitle.

4. Issue from time to time, bulletins showing the results of inspections, analyses, and prosecutions under this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208. These bulletins shall be printed in such numbers as may be approved by the state printing administrator and shall be distributed to the newspapers of the state and to all interested persons.

1. [C97, §2515; S13, §2510-g, -t, -v4, 2528-f2, 3009-a, 4999-a31b, 5077-a22; SS15, §2515; C24, 27, 31, 35, 39, §**3030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.2]

2. [S13, §4999-a18, 5077-a22; C24, 27, 31, 35, 39, §**3030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.2]

3. [C97, §2515; SS15, §2515; C24, 27, 31, 35, 39, §**3030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.2]

4. [S13, §2510-g, -t, -v4, 2528-f2, 3009-s, 4999-a26, -a37, 5077-a11; C24, 27, 31, 35, 39, §**3030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.2]

83 Acts, ch 101, §33; 85 Acts, ch 67, §20; 89 Acts, ch 197, §25; 94 Acts, ch 1023, §18; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

*This provision does not include chapters 203, 203A, 203C, 203D, 207, and 208, which were moved into this subtitle by the Code editor. Chapters 203, 203A, 203C, 203D, 207, and 208 contain the applicable provisions pertaining to those chapters.

DIVISION II

INSPECTION — SAMPLES

189.3 Procuring samples.

The department shall, for the purpose of examination or analysis, procure from time to time, or whenever the department has occasion to believe any of the provisions of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, are being violated, samples of the articles dealt with in these provisions which have been shipped into this state, offered or exposed for sale, or sold in the state.

[C97, §2521, 2524; S13, §2528-f2, 4999-a18, 5077-a11, -a22; C24, 27, 31, 35, 39, §**3031;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.3]

94 Acts, ch 1023, §19

189.4 Access to factories and buildings.

The department shall have full access to all places, factories, buildings, stands, or premises, and to all wagons, auto trucks, vehicles, or cars used in the preparation, production, distribution, transportation, offering or exposing for sale, or sale of any article dealt with in this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208.

[C97, §2505; S13, §2528-a, 5077-a22; SS15, §2505, 2510-4a, 3009-n; C24, 27, 31, 35, 39, §**3032;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.4]

94 Acts, ch 1023, §20

189.5 Dealer to furnish samples.

Upon request and tender of the selling price by the department any person who prepares, manufactures, offers or exposes for sale, or delivers to a purchaser any article dealt with in this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, shall furnish, within business hours, a sample of the same, sufficient in quantity for a proper analysis or examination as shall be provided by the rules of the department.

[S13, §4999-a24, 5077-a11; C24, 27, 31, 35, 39, §**3033;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.5]

94 Acts, ch 1023, §21

189.6 Taking of samples.

The department may, without the consent of the owner, examine or open any package containing, or believed to contain, any article or product which it suspects may be prepared, manufactured, offered, or exposed for sale, sold, or held in possession in violation of the provisions of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, in order to secure a sample for analysis or examination, and the sample and damage to container shall be paid for at the current market price out of the contingent fund of the department.

[C97, §2521, 2526; S13, §2528-b, -f2, 5077-a11, -a22; C24, 27, 31, 35, 39, §**3034;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.6]

94 Acts, ch 1023, §22

189.7 Preservation of sample.

After the sample is taken it shall be carefully sealed with the seal of the department and labeled with the name or brand of the article, the name of the party from whose stock it was taken, and the date and place of taking such sample. Upon request a duplicate sample, sealed and labeled in the same manner, shall be delivered to the person from whose stock the sample was taken. The label and duplicate shall be signed by the person taking the same. The method of taking samples of particular articles may be prescribed by the rules of the department.

[C97, §2521; S13, §4999-a24, 5077-a11, -a22; C24, 27, 31, 35, 39, §**3035;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.7]

189.8 Witnesses.

In the enforcement of the provisions of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, the department shall have power to issue subpoenas for witnesses, enforce their attendance, and examine them under oath. The witnesses shall be allowed the same fees as witnesses in district court. The fees shall be paid out of the contingent fund of the department.

[C97, §2515; SS15, §2515; C24, 27, 31, 35, 39, §**3036;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.8]

94 Acts, ch 1023, §23

Contempts, chapter 665
Witness fees, §622.69 et seq.

DIVISION III

LABELING — ADULTERATIONS

189.9 Labeling.

All articles in package or wrapped form which are required by this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, to be labeled, unless otherwise provided, shall be conspicuously marked in the English language in legible letters of not less than eight point heavy gothic caps on the principal label with the following items:

1. The true name, brand, or trademark of the article.
2. The quantity of the contents in terms of weight, measure, or numerical count. Under this requirement reasonable variations shall be permitted, and small packages shall be excepted in accordance with the rules of the department.
3. The name and place of business of the manufacturer, packer, importer, dispenser, distributor, or dealer.

The above items shall be printed in such a way that there shall be a distinct contrast between the color of the letters and the background upon which printed.

[C73, §4042; C97, §2517, 4989 – 4991, 5070; S13, §2510-d, -q, -r, -v1, -v2, 2515-b – d, 2528-f, 4999-a35, 5070-a, 5077-a6; SS15, §4999-a31c; C24, 27, 31, 35, 39, §**3037;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.9]

94 Acts, ch 1023, §24

189.10 Packages excepted.

In case the size of the package or container will not permit the use of the type specified in section 189.9, the same may be reduced in size proportionately in accordance with the rules of the department.

[S13, §4999-a35; C24, 27, 31, 35, 39, §**3038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.10]

189.11 Labeling of mixtures — federal requirements.

In addition to the requirements of section 189.9, unless otherwise provided, articles which are mixtures, compounds, combinations, blends, or imitations shall be marked as such and immediately followed, without any intervening matter and in the same size and style of type, by the names of all the ingredients contained therein, beginning with the one present in the largest proportion.

Notwithstanding any other requirements of this chapter or of chapter 190, foods and food products labeled in conformance with the labeling requirements of the government of the United States shall be deemed to be labeled in conformance with the laws of the state of Iowa.

[S13, §2510-d, -r, -v2, 5077-a7; SS15, §4999-a31c; C24, 27, 31, 35, 39, §**3039;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.11]

189.12 Trade formulas.

Nothing in section 189.11 shall be construed as requiring the printing of a patented or proprietary trade formula on a label.

[S13, §5077-a7; SS15, §4999-a31c; C24, 27, 31, 35, 39, §**3040;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.12]

189.13 False labels — defacement.

A person shall not use any label required by this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, which bears any representations of any kind which are deceptive as to the true character of the article or the place of its production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208.

[C73, §4042; C97, §2517, 4989 – 4991; S13, §2510-s, -v3, 2515-b – d, 4999-a35, 5077-a7; SS15, §4999-a31c; C24, 27, 31, 35, 39, §**3041;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.13]

94 Acts, ch 1023, §25

189.14 Mislabeled articles.

1. A person shall not knowingly introduce into this state, solicit orders for, deliver, transport, or have in possession with intent to sell, any article which is labeled in any other manner than that prescribed by this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, for the label of the article when offered or exposed for sale, or sold in package or wrapped form in this state.

2. No person shall package any liquid or semisolid product or label any such product as honey, imitation honey or honey blend, or use the word "honey" in any prominent location on the label of such product or sell or offer for sale any such product which is labeled as honey, imitation honey or honey blend or which contains a label with the word "honey" prominently displayed thereon, unless the entire product is honey as defined in section 190.1, subsection 4.

3. A person shall not package a liquid or semisolid product, or label the product, as sorghum, imitation sorghum, or sorghum blend, or use the word "sorghum" in a prominent location on the label of the product or sell or offer for sale a product labeled as sorghum, imitation sorghum, or sorghum blend or which contains a label with the word "sorghum" prominently displayed, unless the product label states that the product is sorghum syrup as defined in section 190.1, imitation sorghum, or a sorghum blend. As used in this subsection, *"imitation sorghum"* means a product that has the flavor of sorghum but contains no sorghum syrup as defined in section 190.1. *"Sorghum blend"* means a product that is not entirely sorghum syrup as defined in section 190.1.

[C73, §4042; C97, §2516, 2517, 2519, 4989 – 4991, 5070; S13, §2510-b, -q, -r, -v1, -v2, 2515-b – d, 2528-f, 4999-a20, 5070-a; SS15, §4999-a32; C24, 27, 31, 35, 39, §**3042;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.14]

89 Acts, ch 151, §1; 94 Acts, ch 1023, §26

189.15 Adulterated articles.

A person shall not knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in possession with the intent to sell, or offer or expose for sale, any article which is adulterated according to the provisions of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208.

[C73, §3901, 4042; C97, §2508, 2516, 4989 – 4991; S13, §2508, 2510-q, -r, -v1, -v2, 2515-b – d, 4999-a20; SS15, §4999-a32; C24, 27, 31, 35, 39, §**3043;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.15]

94 Acts, ch 1023, §27

189.16 Possession and control of adulterated and improperly labeled articles.

1. Except as provided in subsection 2, a person in possession or having control of an article which is adulterated or which is improperly labeled according to the provisions of this subtitle shall be presumed to know that the article is adulterated or improperly labeled. A person's possession of an adulterated or improperly labeled article shall be prima facie evidence that the person intends to violate the provisions of this subtitle.

2. This section does not apply to the possession or control of any of the following:

a. Grain by a person regulated under chapter 203, 203A, 203C, or 203D.

b. Mining materials including coal by a person regulated under chapter 207 or 208.

c. A controlled substance as provided in chapter 124.

[C97, §2519, 2521; S13, §4999-a24, -a40; C24, 27, 31, 35, 39, §**3044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.16]

94 Acts, ch 1023, §28; 99 Acts, ch 12, §7

189.17 Confiscation or condemnation.

Unless a procedure or method of seizure and confiscation or condemnation is otherwise provided, the secretary is hereby authorized to prohibit the entrance into channels of commerce or possession of any article found to be adulterated or improperly labeled according to the provisions of this division or rules established hereunder. Any articles found in channels of commerce or in possession by an inspector which are not in compliance with the adulteration or labeling provisions of this division shall be subject to immediate seizure by the department. Seized articles shall be condemned unless of such character that the articles can be made to conform with the provisions

of this division by methods approved by the secretary. Condemned articles shall be effectively destroyed for the purpose for which they were intended by the owner of the article, or the owner's agent, under the supervision of an inspector in such manner as the secretary may prescribe.

[C71, 73, 75, 77, 79, 81, §189.17]

189.18 Wrongful condemnation — restitution.

A party whose article, item, commodity or product is wrongfully condemned or seized shall be entitled to maintain a cause of action against the state of Iowa, for the damage proximately caused by the wrongful condemnation or seizure. Such cause of action shall be a claim as defined in chapter 669 and shall be subject to the provisions of said chapter, notwithstanding the provisions of section 669.14.

[C71, 73, 75, 77, 79, 81, §189.18]

DIVISION IV

LICENSES

189.19 Licenses.

The following provisions apply to all licenses issued or authorized under this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208:

1. *Applications.* Applications for licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department.

2. *Refusal and revocation.* For good and sufficient grounds the department may refuse to grant a license to any applicant; and it may revoke a license for a violation of any provision of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, or for the refusal or failure of any licensee to obey the lawful directions of the department.

3. *Expiration.* Unless otherwise provided all licenses shall expire one year from the date of issue.

[C97, §2525; S13, §2515-a; SS15, §2515-f, 3009-m; C24, 27, 31, 35, 39, §**3045;** C46, 50, 54, 58, 62, 66, §189.17; C71, 73, 75, 77, 79, 81, §189.19]

94 Acts, ch 1023, §29

189.20 Injunction.

Any person engaging in any business for which a license is required by this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, without obtaining such license, may be restrained by injunction, and shall pay all costs made necessary by such procedure.

[C24, 27, 31, 35, 39, §**3046;** C46, 50, 54, 58, 62, 66, §189.18; C71, 73, 75, 77, 79, 81, §189.20]

94 Acts, ch 1023, §30

DIVISION V

OFFENSES — PENALTIES

189.21 Penalty.

Unless otherwise provided, any person violating any provision of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, or any rule adopted by the department pursuant to such a provision, is guilty of a simple misdemeanor.

[C73, §2068, 3901; C97, §2508, 2527, 2592, 2594, 3029, 5070; S13, §2508, 2510-2a, -h, -j, -u, -v5, 2515-g, 2522, 2528-c, -f3, 2596-b, 4989-b, 4999-a25, -a39, 5070-a, 5077-a23; SS15, §2505, 2506, 3009-j, -r; C24, 27, 31, 35, 39, §**3047;** C46, 50, 54, 58, 62, 66, §189.19; C71, 73, 75, 77, 79, 81, §189.21]

94 Acts, ch 1023, §31

189.22 May charge more than one offense.

In any criminal proceeding brought for violation of this subtitle,* an information or indictment may charge as many offenses as it appears have been committed, and the defendant may be convicted of any or all of the offenses.

[C24, 27, 31, 35, 39, §**3048;** C46, 50, 54, 58, 62, 66, §189.20; C71, 73, 75, 77, 79, 81, §189.22]

94 Acts, ch 1023, §32

*This provision does not include chapters 203, 203A, 203C, 203D, 207, and 208, which were moved into this subtitle by the Code editor. Chapters 203, 203A, 203C, 203D, 207, and 208 contain the applicable provisions pertaining to those chapters.

189.23 Common carrier.

The penalties provided in this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, shall not be imposed upon any common carrier for introducing into the state, or having in its possession, any article which is adulterated or improperly labeled according to the provisions of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, when the same was received by the carrier for transportation in the ordinary course of its business and without actual knowledge of its true character.

[C97, §2516; S13, §4999-a20; SS15, §4999-a32; C24, 27, 31, 35, 39, §**3049;** C46, 50, 54, 58, 62, 66, §189.21; C71, 73, 75, 77, 79, 81, §189.23]

94 Acts, ch 1023, §33

DIVISION VI

ENFORCEMENT

189.24 Report of violations.

When it appears that any of the provisions of this subtitle, excluding chapters 203, 203A, 203C,

203D, 207, and 208, have been violated, the department shall at once certify the facts to the proper county attorney, with a copy of the results of any analysis, examination, or inspection the department may have made, duly authenticated by the proper person under oath, and with any additional evidence which may be in possession of the department.

[C97, §4998; S13, §4999-a19; C24, 27, 31, 35, 39, §**3050;** C46, 50, 54, 58, 62, 66, §189.22; C71, 73, 75, 77, 79, 81, §189.24]

94 Acts, ch 1023, §34

189.25 County attorney.

The county attorney may at once institute the proper proceedings for the enforcement of the penalties provided in this subtitle* for the violations.

[C97, §4998; S13, §2596-c, 4999-a19; C24, 27, 31, 35, 39, §**3051;** C46, 50, 54, 58, 62, 66, §189.23; C71, 73, 75, 77, 79, 81, §189.25]

94 Acts, ch 1023, §35

*This provision does not include chapters 203, 203A, 203C, 203D, 207, and 208, which were moved into this subtitle by the Code editor. Chapters 203, 203A, 203C, 203D, 207, and 208 contain the applicable provisions pertaining to those chapters.

189.26 Refusal to act.

If the county attorney refuses to act, the governor may, in the governor's discretion, appoint an attorney to represent the state.

[S13, §4999-a19; C24, 27, 31, 35, 39, §**3052;** C46, 50, 54, 58, 62, 66, §189.24; C71, 73, 75, 77, 79, 81, §189.26]

189.27 Institution of proceedings.

In any case when it appears that any of the provisions of this subtitle* have been violated, the inspector having the investigation in charge shall, when instructed by the department, file an information against the suspected party.

[C24, 27, 31, 35, 39, §**3053;** C46, 50, 54, 58, 62, 66, §189.25; C71, 73, 75, 77, 79, 81, §189.27]

94 Acts, ch 1023, §36

*This provision does not include chapters 203, 203A, 203C, 203D, 207, and 208, which were moved into this subtitle by the Code editor. Chapters 203, 203A, 203C, 203D, 207, and 208 contain the applicable provisions pertaining to those chapters.

DIVISION VII

MISCELLANEOUS

189.28 Goods for sale in other states.

Any person may keep articles specifically set apart in the person's stock for sale in other states which do not comply with the provisions of this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, as to standards, purity, or labeling.

[S13, §4999-a20, -a40; C24, 27, 31, 35, 39, §**3054;** C46, 50, 54, 58, 62, 66, §189.26; C71, 73, 75, 77, 79, 81, §189.28]

94 Acts, ch 1023, §37

189.29 Reports by dealers.

Every person who deals in or manufactures any of the articles dealt with in this subtitle, excluding chapters 203, 203A, 203C, 203D, 207, and 208, shall make upon blanks furnished by the department such reports and furnish such statistics as may be required by the department and certify to the correctness of the same.

[C97, §2522; S13, §2522; C24, 27, 31, 35, 39, §**3055;** C46, 50, 54, 58, 62, 66, §189.27; C71, 73, 75, 77, 79, 81, §189.29]

94 Acts, ch 1023, §38

189.30 Contracts invalid.

No action shall be maintained in any of the courts of the state upon any contract or sale made in violation of or with the intent to violate any provision of this subtitle* by one who was knowingly a party thereto.

[C97, §2520; C24, 27, 31, 35, 39, §**3056;** C46, 50, 54, 58, 62, 66, §189.28; C71, 73, 75, 77, 79, 81, §189.30]

94 Acts, ch 1023, §39

*This provision does not include chapters 203, 203A, 203C, 203D, 207, and 208, which were moved into this subtitle by the Code editor. Chapters 203, 203A, 203C, 203D, 207, and 208 contain the applicable provisions pertaining to those chapters.

189.31 Fees paid into state treasury.

All fees collected under the provisions of this subtitle* shall be paid into the state treasury.

[C97, §2507; SS15, §2507, 2515-f, 3009-m; C24, 27, 31, 35, 39, §**3057;** C46, 50, 54, 58, 62, 66, §189.29; C71, 73, 75, 77, 79, 81, §189.31]

94 Acts, ch 1023, §40

*This provision does not include chapters 203, 203A, 203C, 203D, 207, and 208, which were moved into this subtitle by the Code editor. Chapters 203, 203A, 203C, 203D, 207, and 208 contain the applicable provisions pertaining to those chapters.

See also §200.9

Time of payment, see §12.10

CHAPTER 189A

MEAT AND POULTRY INSPECTION

Poultry and domestic fowls, chapter 197

189A.1 Title.
189A.2 Definitions.
189A.3 License — fee.
189A.4 Exemptions.
189A.5 Veterinarians and inspectors.
189A.6 Health examination of employees.
189A.7 Powers of secretary of agriculture.
189A.8 Prohibited acts.
189A.9 Hours of operation.
189A.10 Fraudulent practices.
189A.11 Access by inspectors — acceptance by state agencies.
189A.12 Seizure, detention and determination.
189A.13 Rules.
189A.14 Injunctive relief.
189A.15 Co-operation with other agencies.
189A.16 Forgery or counterfeiting.
189A.17 Penalties.
189A.18 Humane slaughter practices.
189A.19 Bribery.
189A.20 No inspection for products inedible as human food.
189A.21 Appropriation authorized.
189A.22 Federal grants.

189A.1 Title.

This chapter shall be known as the *"Meat and Poultry Inspection Act"*.

[C66, 71, 73, 75, 77, 79, 81, §189A.1]

189A.2 Definitions.

As used in this chapter except as otherwise specified:

1. *"Adulterated"* shall apply to any livestock product or poultry product under any one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health.

b. (1) If it bears or contains, by reason of administration of any substance to the livestock or poultry or otherwise, any added poisonous or deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which may, in the judgment of the secretary, make such article unfit for human food.

(2) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the federal Food, Drug, and Cosmetic Act.

(3) If it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal Food, Drug, and Cosmetic Act.

(4) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal Food, Drug, and Cosmetic Act; however, an article which is not otherwise deemed adulterated under subparagraph (2), (3), or (4) of this paragraph shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the secretary in official establishments.

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

e. If it is, in whole or in part, the product of an animal, including poultry, which has died otherwise than by slaughter.

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the federal Food, Drug, and Cosmetic Act.

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

i. If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

2. *"Animal food manufacturer"* means any

person engaged in the business of preparing animal food, including poultry, derived wholly or in part from livestock or poultry carcasses or parts or products of such carcasses.

3. *"Broker"* means any person engaged in the business of buying or selling livestock products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for the person's own account or as an employee of another person.

4. *"Capable of use as human food"* shall apply to any livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the secretary to deter its use as human food, or it is naturally inedible by humans.

5. *"Container"* or *"package"* means any box, can, tin, cloth, plastic or other receptacle, wrapper, or cover.

6. *"Establishment"* means all premises where animals or poultry are slaughtered or otherwise prepared, either for custom, resale, or retail, for food purposes, meat or poultry canneries, sausage factories, smoking or curing operations, restaurants, grocery stores, brokerages, cold storage plants, and similar places.

6A. *"Farm deer"* means an animal belonging to the cervidae family and classified as part of the dama species of the dama genus, commonly referred to as fallow deer; part of the elaphus species of the cervus genus, commonly referred to as red deer or elk; or part of the nippon species of the cervus genus, commonly referred to as sika. However, a farm deer does not include any unmarked free-ranging elk.

7. *"Federal Food, Drug, and Cosmetic Act"* means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

8. *"Federal Meat Inspection Act"* means the Act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584); *"Federal Poultry Products Inspection Act"* means the Act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791); and *"federal Acts"* means these two federal laws.

9. *"Immediate container"* means any consumer package; or any other container in which livestock products or poultry products, not consumer packaged, are packed.

10. *"Inspector"* means an employee or official of the department authorized by the secretary or any employee or official of the government of any county or other governmental subdivision of this state, authorized by the secretary to perform any inspection functions under this chapter under an agreement between the secretary and such governmental subdivision.

11. *"Intrastate commerce"* means commerce within this state.

12. *"Label"* means a display of written, printed, or graphic matter upon any article or the immediate container, not including package liners, of any article.

13. *"Labeling"* means all labels and other written, printed, or graphic matter either upon any article or any of its containers or wrappers, or accompanying such article.

14. *"Livestock"* means a live or dead animal which is limited to cattle, sheep, swine, goats, farm deer, or which is classified as an equine including a horse or mule.

15. *"Livestock product"* means any carcass, part thereof, meat, or meat food product of any livestock.

16. *"Meat food product"* means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the secretary under such conditions as the secretary may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines or farm deer shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

17. *"Misbranded"* shall apply to any livestock product or poultry product under any one or more of the following circumstances:

a. If its labeling is false or misleading in any particular.

b. If it is offered for sale under the name of another food.

c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation", and immediately thereafter the name of the food imitated.

d. If its container is so made, formed, or filled as to be misleading.

e. Unless it bears a label showing both:

(1) The name and place of business of the manufacturer, packer, or distributor.

(2) An accurate statement of the quantity of the product in terms of weight, measure, or numerical count; however, under this paragraph, exemptions as to livestock products not in containers may be established by regulations prescribed by the secretary, and under this subparagraph reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the secretary.

f. If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness,

as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations of the secretary under section 189A.7, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the secretary under section 189A.7, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

i. If it is not subject to the provisions of paragraph *"g"* of this subsection, unless its label bears both:

(1) The common or usual name of the food, if any.

(2) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the secretary, be designated as spices, flavorings, and colorings without naming each; however, to the extent that compliance with the requirements of this subparagraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the secretary.

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary, after consultation with the secretary of agriculture of the United States, determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses.

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; however, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the secretary.

l. If it fails to bear, directly thereon and on its containers, as the secretary may by regulations prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

18. *"Official certificate"* means any certificate prescribed by regulations of the secretary for issuance by an inspector or other person performing official functions under this chapter.

19. *"Official device"* means any device prescribed or authorized by the secretary for use in applying any official mark.

20. *"Official establishment"* means any establishment as determined by the secretary at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this chapter.

21. *"Official inspection legend"* means any symbol prescribed by regulations of the secretary showing that an article was inspected and passed in accordance with this chapter.

22. *"Official mark"* means the official inspection legend or any other symbol prescribed by regulations of the secretary to identify the status of any article or livestock or poultry under this chapter.

23. *"Person"* includes any individual, partnership, corporation, association, or other business unit, and any officer, agent, or employee thereof.

24. *"Pesticide chemical", "food additive", "color additive",* and *"raw agricultural commodity"* shall have the same meanings for purposes of this chapter as under the federal Food, Drug, and Cosmetic Act.

25. *"Poultry"* means any domesticated bird, whether live or dead.

26. *"Poultry product"* means any poultry carcass or part thereof, or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the secretary from definition as a poultry product under such conditions as the secretary may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

27. *"Prepared"* means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

28. *"Reinspection"* includes inspection of the preparation of livestock products and poultry products, as well as re-examination of articles previously inspected.

29. *"Renderer"* means any person engaged in the business of rendering livestock or poultry carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

30. *"Shipping container"* means any container used or intended for use in packaging the product

packed in an immediate container.

31. *"Veterinary inspector"* means a graduate veterinarian with appropriate training to perform the inspection functions under the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.2]

86 Acts, ch 1245, §637; 95 Acts, ch 134, §1 – 3

Further definitions, see §189.1

189A.3 License — fee.

No person shall operate an establishment other than a food establishment as defined in section 137F.1 without first obtaining a license from the department. The license fee for each establishment per year or any part of a year shall be:

1. For all meat and poultry slaughtered or otherwise prepared not exceeding twenty thousand pounds per year for sale, resale, or custom, twenty-five dollars.

2. For all meat and poultry slaughtered or otherwise prepared in excess of twenty thousand pounds per year for sale, resale, or custom, fifty dollars.

The funds shall be deposited with the department. The license year shall be from July 1 to June 30. Applications for licenses shall be in writing on forms prescribed by the department.

It is the objective of this chapter to provide for meat and poultry products inspection programs that will impose and enforce requirements with respect to intrastate operations and commerce that are at least equal to those imposed and enforced under the federal Meat Inspection Act and the federal Poultry Products Inspection Act with respect to operations and transactions in interstate commerce; and the secretary is directed to administer this chapter so as to accomplish this purpose. A director of the meat and poultry inspection service shall be designated as the secretary's delegate to be the appropriate state official to co-operate with the secretary of agriculture of the United States in administration of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.3]

98 Acts, ch 1162, §26, 30

189A.4 Exemptions.

In order to accomplish the objectives of this chapter, the secretary may exempt the following types of operations from inspection:

1. Slaughtering and preparation by any person of livestock and poultry of the person's own raising exclusively for use by the person and members of the person's household, and the person's nonpaying guests and employees.

2. Any other operations which the secretary may determine would best be exempted to further the purposes of this chapter, to the extent such exemptions conform to the federal Meat Inspection Act and the federal Poultry Products Inspection Act and the regulations thereunder.

[C66, 71, 73, 75, 77, 79, 81, §189A.4]

189A.5 Veterinarians and inspectors.

The secretary shall administer this chapter and may appoint a person to act as the secretary's designee in the administration of this chapter. The secretary shall employ veterinarians licensed in the state of Iowa as veterinary inspectors. The secretary is also authorized to employ as meat inspectors other persons who have qualified and are skilled in the inspection of meat and poultry products and any other additional employees the secretary deems necessary to carry out the provisions of this chapter. The meat inspectors shall be under the supervision of the secretary's designee or a veterinary inspector if no designee is appointed. The secretary may also enter into contracts with qualified individuals to perform inspection services as the secretary may designate for a fee per head or per unit volume to be determined by the secretary provided the persons are not employed in an establishment in which the inspection takes place. The secretary may utilize any employee, agent, or equipment of the department in the enforcement of this chapter, and may assign to inspectors other duties related to the acceptance of meat and poultry products.

In order to accomplish the objectives stated in section 189A.3 the secretary shall:

1. By regulations require antemortem and postmortem inspections, quarantine, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments in this state, except those exempted by section 189A.4, at which livestock or poultry are slaughtered or livestock or poultry products are prepared for human food solely for distribution in intrastate commerce.

2. By regulations require the identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, as "Iowa Inspected and Passed" if the products are found upon inspection to be not adulterated, and as "Iowa Inspected and Condemned" if they are found upon inspection to be adulterated; and the destruction for food purposes of all such condemned products under the supervision of an inspector.

3. Prohibit the entry into official establishments of livestock products and poultry products not prepared under federal inspection or inspection pursuant to this chapter and further limit the entry of such articles and other materials into such establishments under such conditions as the secretary deems necessary to effectuate the purposes of this chapter.

4. By regulations require that when livestock products and poultry products leave official establishments they shall bear directly thereon or on their containers, or both, all information required

by subsection 17 of section 189A.2; and require approval of all labeling and containers to be used for such products when sold or transported in intrastate commerce to assure that they comply with the requirements of this chapter.

5. Investigate the sanitary conditions of each establishment within subsection 1 of this section and withdraw or otherwise refuse to provide inspection service at any such establishment where the sanitary conditions are such as to render adulterated any livestock products or poultry products prepared or handled thereat.

6. Prescribe regulations relating to sanitation for all establishments required to have inspection under subsection 1 of this section.

7. By regulations require that both of the following classes of persons shall keep such records and for such periods as are specified in the regulations to fully and correctly disclose all transactions involved in their business, and to afford the secretary and the secretary's representatives, including representatives of other governmental agencies designated by the secretary, access to such places of business, and opportunity at all reasonable times to examine the facilities, inventory, and records thereof, to copy the records, and to take reasonable samples of the inventory upon payment of the fair market value therefor:

a. Any person that engages in or for intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, as a broker, wholesaler, or otherwise, transporting, or storing any livestock products or poultry products for human or animal food.

b. Any person that engages in or for intrastate commerce in business as a renderer or in the business of buying, selling, or transporting any dead, dying, disabled, or diseased livestock or poultry or parts of the carcasses of any such animals, including poultry, that died otherwise than by slaughter.

[C66, §170.20, 189A.5, 189A.7, 189A.8, 189A.10; C71, 73, 75, 77, 79, 81, §189A.5]

87 Acts, ch 144, §1

189A.6 Health examination of employees.

The operator of any establishment shall require all employees of such establishment to have a health examination by a physician and a certified health certificate for each employee shall be kept on file by the operator. The secretary may at any time require an employee of an establishment to submit to a health examination by a physician. No person suffering from any communicable disease, including any communicable skin disease, and no person with infected wounds, and no person who is a *"carrier"* of a communicable disease shall be employed in any capacity in an establishment. No person shall work or be employed in or about any establishment during the time in which a communicable disease exists in the home in which such person resides unless such person has obtained a certificate from a physician to the effect that no danger of public contagion or infection will result from the employment of such person in such establishment. Every person employed by an establishment and engaged in direct physical contact with meat or poultry products during its preparation, processing, or storage, shall be clean in person, wear clean washable outer garments and a suitable cap or other head covering used exclusively in such work. Only persons specifically designated by the operator of an establishment shall be permitted to touch meat or poultry products with their hands, and the persons so designated shall keep their hands scrupulously clean.

[C66, 71, 73, 75, 77, 79, 81, §189A.6]

189A.7 Powers of secretary of agriculture.

In order to accomplish the objective stated in section 189A.3 the secretary may:

1. Remove inspectors from any establishment that fails to destroy condemned products as required under section 189A.5, subsection 2.

2. Refuse to provide inspection service under this chapter with respect to any establishment for causes specified in section 401 of the federal Meat Inspection Act or section 18 of the federal Poultry Products Inspection Act.

3. Order labeling and containers to be withheld from use if the secretary determines that the labeling is false or misleading or the containers are of a misleading size or form.

4. By regulations prescribe the sizes and style of type to be used for labeling information required under this chapter, and definitions and standards of identity or composition or standards of fill of container, consistent with federal standards, when the secretary deems such action appropriate for the protection of the public and after consultation with the secretary of agriculture of the United States.

5. By regulations prescribe conditions of storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting such articles in or for intrastate commerce to assure that such articles will not be adulterated or misbranded when delivered to the consumer.

6. Require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared.

7. By regulations require that every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouser of livestock or poultry products, or engaged in the business of buying, selling, or transporting in intrastate commerce any dead, dying, disabled, or diseased livestock or poultry or parts of the carcasses of any such animals, including poultry, that died other-

wise than by slaughter shall register with the secretary the person's name and the address of each place of business at which and all trade names under which the person conducts such business.

8. Adopt by reference or otherwise such provisions of the rules and regulations under the federal Acts, with such changes therein as the secretary deems appropriate to make them applicable to operations and transactions subject to this chapter, which shall have the same force and effect as if promulgated under this chapter, and promulgate such other rules and regulations as the secretary deems necessary for the efficient execution of the provisions of this chapter, including rules of practice providing opportunity for hearing in connection with issuance of orders under section 189A.5, subsection 5, and subsection 1, 2, or 3 of this section and prescribing procedures for proceedings in such cases; however, this shall not preclude a requirement that a label or container be withheld from use, or a refusal of inspection pursuant to the sections cited herein pending issuance of a final order in any such proceeding.

9. Appoint and prescribe the duties of such inspectors and other personnel as the secretary deems necessary for the efficient execution of the provisions of this chapter.

10. Co-operate with the secretary of agriculture of the United States in administration of this chapter to effectuate the purposes stated in section 189A.3; accept federal assistance for that purpose and spend public funds of this state appropriated for administration of this chapter to pay the state's proportionate share of the estimated total cost of the co-operative program.

11. Recommend to the secretary of agriculture of the United States for appointment to the advisory committees provided for in the federal Acts, such officials or employees of the Iowa meat and poultry inspection service as the secretary shall designate.

12. Serve as a representative of the governor for consultation with said secretary under paragraph "c" of section 301 of the federal Meat Inspection Act and paragraph "c" of section 5 of the federal Poultry Products Inspection Act unless the governor selects another representative.

[C71, 73, 75, 77, 79, 81, §189A.7]

189A.8 Prohibited acts.

1. No person shall sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the secretary to show the kinds of animals from which they were derived.

2. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock products or poultry products which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the secretary or are naturally inedible by humans.

3. No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation in such commerce, any dead, dying, disabled, or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the secretary may prescribe to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.

[C71, 73, 75, 77, 79, 81, §189A.8]

189A.9 Hours of operation.

The secretary may require operations at licensed establishments to be conducted during reasonable hours. The owner or operator of each licensed establishment shall keep the secretary informed in advance of intended hours of operation.

A charge shall be made for overtime inspection in excess of eight hours per day or outside assigned work schedules and also on state legal holidays.

[C66, 71, 73, 75, 77, 79, 81, §189A.9]

189A.10 Fraudulent practices.

1. A person commits a fraudulent practice as defined in section 714.8 if the person does any of the following:

a. Slaughters livestock or poultry or prepares an article produced from livestock or poultry which is capable of use as human food, at any establishment preparing the article solely for intrastate commerce, except in compliance with the requirements of this chapter.

b. Sells, transports, offers for sale or transportation, or receives for transportation in intrastate commerce, any article produced from livestock or poultry which is both of the following:

(1) Capable of use as human food.

(2) Adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or required to be inspected under this chapter unless the article has passed inspection.

c. Commits any act which is intended to cause or has the effect of causing an article produced from livestock or poultry to be adulterated or misbranded, if the article is capable of use as human food and is being transported or held for sale after being transported in intrastate commerce.

2. A person commits a fraudulent practice as defined in section 714.8, if the person sells, trans-

ports, offers for sale or transportation, or receives for transportation in intrastate commerce, or receives from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the secretary.

3. No person shall violate any provision of the regulations or orders of the secretary under section 189A.5, subsection 7, or section 189A.7.

[C71, 73, 75, 77, 79, 81, §189A.10]

88 Acts, ch 1036, §1

189A.11 Access by inspectors — acceptance by state agencies.

No person shall deny access to any authorized inspectors upon the presentation of proper identification at any reasonable time to establishments and to all parts of such premises for the purposes of making inspections under this chapter.

When meat has been inspected and approved by the department, such inspection will be equal to federal inspection and therefore may be accepted by state agencies and political subdivisions of the state and no other inspection can be required.

1. No inspection of products placed in any container at any official establishment shall be deemed to be complete until the products are sealed or enclosed therein under the supervision of an inspector.

2. For purposes of any inspection of products required by this chapter, inspectors authorized by the secretary shall have access at all times by day or night to every part of every establishment required to have inspection under this chapter, whether the establishment is operated or not.

[C66, 71, 73, 75, 77, 79, 81, §189A.11]

189A.12 Seizure, detention and determination.

Whenever any livestock or poultry product or any product exempted from the definition of a livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry is found by any authorized representative of the secretary upon any premises where it is held for purposes of, or during or after distribution in, intrastate commerce or is otherwise subject to this chapter, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected in violation of the provisions of this chapter, the federal Meat Inspection Act, the federal Poultry Products Inspection Act, or the federal Food, Drug, and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under this section or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person from the place at which it is located when so detained until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the secretary that the article or animal is eligible to retain such marks.

1. Any livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry which is being transported in intrastate commerce, or is otherwise subject to this chapter, or is held for sale in this state after such transportation, and which is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter; or is capable of use as human food and is adulterated or misbranded; or is in any other way in violation of this chapter shall be liable to be proceeded against and seized and condemned at any time on a complaint filed in the district court of the particular county within the jurisdiction of which such article or animal is found. If such article or animal is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and any proceeds, less the court costs and fees, storage fees, and other proper expenses, shall be paid into the treasury of this state, but the article or animal shall not be sold contrary to the provisions of this chapter, the federal Meat Inspection Act, the federal Poultry Products Inspection Act, or the federal Food, Drug, and Cosmetic Act; however, upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this chapter or the laws of the United States, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the secretary as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the article or animal and it is released under bond or destroyed, court costs and fees, storage fees, and other proper expenses shall be awarded against any person intervening as claimant of the article or animal. The proceedings in such cases shall be held without a jury, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of this state.

2. The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter or other applicable laws.

[C66, 71, 73, 75, 77, 79, 81, §189A.12]

189A.13 Rules.

The secretary shall promulgate such rules as may be necessary for the effective administration of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.13]

189A.14 Injunctive relief.

1. Judicial review of the action of the secretary may be sought in accordance with the terms of the Iowa administrative procedure Act.

2. The district court in the county where the violation occurs may enjoin a person from violating this chapter or a regulation promulgated by the secretary pursuant to this chapter. The department may apply to the district court for the injunction. In order to obtain injunctive relief the department shall not be required to post a bond or prove the absence of an adequate remedy at law, unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is appropriate under principles of equity, including but not limited to issuing a temporary or permanent restraining order.

[C66, 71, 73, 75, 77, 79, 81, §189A.14]

88 Acts, ch 1036, §2

189A.15 Co-operation with other agencies.

The secretary is hereby authorized to co-operate with all other agencies, federal and state, in order to carry out the effective administration of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.15]

189A.16 Forgery or counterfeiting.

1. No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the secretary.

2. No person shall do any of the following:

a. Forge any official device, mark, or certificate.

b. Without authorization from the secretary, use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate.

c. Contrary to the regulations prescribed by the secretary, fail to use, or to detach, deface, or destroy any official device, mark, or certificate.

d. Knowingly possess, without promptly notifying the secretary or the secretary's representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, including poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark.

e. Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the secretary.

f. Knowingly represent that any article has been inspected and passed, or exempted, under this chapter when it has not been so inspected and passed, or exempted.

[C71, 73, 75, 77, 79, 81, §189A.16]

189A.17 Penalties.

1. Any person who violates any provisions of this chapter for which no other criminal penalty is provided shall be guilty of a simple misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated, except as defined in section 189A.2, subsection 1, paragraph *"h"* such person shall be guilty of a fraudulent practice.

2. Nothing in this chapter shall be construed as requiring the secretary to report, for the institution of legal proceedings, minor violations of this chapter whenever the secretary believes that the public interest will be adequately served by a suitable written notice of warning.

3. The secretary shall also have power:

a. To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons.

b. To require persons engaged in intrastate commerce to file with the secretary in such form as the secretary may prescribe, annual or special reports or answers in writing to specific questions, furnishing to the secretary such information as the secretary may require as to the organization, business, conduct, practices, management, and relation to other persons of the person filing such reports or answers. Such reports and answers shall be made under oath, or otherwise as the secretary may prescribe, and shall be filed with the secretary within such reasonable period as the secretary may prescribe, unless additional time be granted in any case by the secretary.

4. *a.* For the purpose of this chapter the secretary may, at all reasonable times, examine and copy any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The secretary may sign subpoenas and administer oaths and affirmations, examine witnesses, and receive evidence.

b. Such attendance of witnesses, and the production of such documentary evidence may be required at any designated place of hearing. In case of disobedience to a subpoena the secretary may invoke the aid of the district court having jurisdiction over the matter in requiring the attendance and testimony of witnesses and the production of documentary evidence.

c. The district court may, in case of failure or refusal to obey a subpoena issued herein to any person, enter an order requiring such person to appear before the secretary or to produce documen-

tary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey such order of the court may be punished by such court as contempt.

d. Upon the application of the attorney general of this state at the request of the secretary, the court shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any order of the secretary pursuant thereto.

e. The secretary may order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the person's direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the secretary as herein provided.

f. Witnesses summoned before the secretary shall be paid the same fees and mileage that are paid witnesses in the district court, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such district court.

g. No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the secretary or in obedience to the subpoena of the secretary, whether such subpoena be signed or issued by the secretary or the secretary's delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but no person shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

5. *a.* Any person who neglects or refuses to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if it is in the person's power to do so, in obedience to the subpoena or lawful requirement of the secretary shall be guilty of a serious misdemeanor.

b. Any person who willfully makes, or causes to be made, any false entry or statement of fact in any report required to be made under this chapter, or who willfully makes, or causes to be made, any false entry in any account, record, or memorandum kept by any person subject to this chapter, or who willfully neglects or fails to make or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions pertaining to the business of such person, or who willfully leaves the jurisdiction of this state, or willfully mutilates, alters, or by any other means falsifies any documentary evidence of any person subject to this chapter or who willfully refuses to submit to the secretary or to any of the secretary's authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this chapter in the person's possession or control, shall be deemed guilty of an aggravated misdemeanor.

c. If a person required by this chapter to file an annual or special report fails to do so within the time fixed by the secretary for filing it, and the failure continues for thirty days after notice of default, the person shall forfeit to this state the sum of one hundred dollars for each day of the continuance of the failure, which forfeiture is payable into the treasury of this state, and is recoverable in a civil suit in the name of the state brought in the district court of the county where the person has a principal office or in the district court of any county in which the person does business. The county attorneys shall prosecute for the recovery of such forfeitures.

d. Any officer or employee of this state who makes public any information obtained by the secretary, without the secretary's authority, unless directed by a court, or uses any such information to the officer's or employee's advantage, shall be deemed guilty of a serious misdemeanor.

The requirements of this chapter shall apply to persons, establishments, animals, and articles regulated under the federal Meat Inspection Act or the federal Poultry Products Inspection Act to the extent provided for in said federal Acts and also to the extent provided in this chapter and in regulations the secretary may prescribe to promulgate this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.17]
83 Acts, ch 123, §79, 209

189A.18 Humane slaughter practices.

Every establishment subject to the provisions of this chapter engaged in the slaughter of bovine, porcine, or ovine animals or farm deer shall slaughter all such animals in an approved humane slaughtering method. For purposes of this section an approved humane slaughtering method shall include and be limited to slaughter by shooting, electrical shock, captive bolt, or use of carbon dioxide gas prior to the animal being shackle hoisted, thrown, cast or cut; however, the slaughtering, handling or other preparation of livestock in accordance with the ritual requirements of the

Jewish or any other faith that prescribes and requires a method whereby slaughter becomes effected by severance of the carotid arteries with a sharp instrument is hereby designated and approved as a humane method of slaughter under the law.

[C66, 71, 73, 75, 77, 79, 81, §189A.18]
95 Acts, ch 134, §4

189A.19 Bribery.

Any person who gives, pays, or offers, directly or indirectly, to any officer or employee of this state authorized to perform any of the duties prescribed by this chapter or by the regulations of the secretary, any money or other thing of value, with intent to influence said officer or employee in the discharge of any such duty, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than five thousand dollars nor more than ten thousand dollars and by imprisonment in the penitentiary not less than one year nor more than three years; and any officer or employee of this state authorized to perform any of the duties prescribed by this chapter who accepts any money, gift, or other thing of value from any person, given with intent to influence the officer's or employee's official action, or who receives or accepts from any person engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than one thousand dollars nor more than ten thousand dollars and by imprisonment in the penitentiary not less than one year nor more than three years.

[C71, 73, 75, 77, 79, 81, §189A.19]

189A.20 No inspection for products inedible as human food.

Inspection shall not be provided under this chapter at any establishment for the slaughter of livestock or poultry or the preparation of any livestock products or poultry products which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the secretary to deter their use for human food.

[C71, 73, 75, 77, 79, 81, §189A.20]

189A.21 Appropriation authorized.

There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §189A.21]

189A.22 Federal grants.

All federal grants to and the federal receipts of this department are hereby appropriated for the purpose set forth in such federal grants or receipts.

[C71, 73, 75, 77, 79, 81, §189A.22]

CHAPTER 190

ADULTERATION OF FOODS

190.1 Definitions and standards.
190.2 Additional standards — milk and dairy products.
190.3 Food adulterations.
190.4 Adulterations of dairy products.
190.5 Adulterated milk or milk products.
190.6 Adulteration with fats and oils.
190.7 Coloring imitation cheese.
190.8 Coloring vinegar.
190.9 Adulteration of candies.
190.10 Sale by false name.
190.11 Artificial sweetening — labeling.
190.12 Standards for frozen desserts.
190.13 Frozen desserts — edible containers.
190.14 Administration — milk and dairy products.
190.15 Violations — injunction.

190.1 Definitions and standards.

For the purpose of this subtitle, except chapters 192, 203, 203A, 203C, 203D, 207, and 208, the following definitions and standards of food are established:

1. *Butter.* Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, with or without the addition of salt, or harmless coloring matter, and containing at least eighty percent, by weight, of milk fat.

2. *Flavoring extract.* A flavoring extract is a solution in ethyl alcohol or other suitable medium of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.

a. Almond extract. Almond extract is the fla-

voring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one percent by volume of oil of bitter almonds.

b. Anise extract. Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three percent by volume of oil of anise.

c. Cassia extract. Cassia extract is the flavoring extract prepared from oil of cassia, and contains not less than two percent by volume of oil of cassia.

d. Celery seed extract. Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths percent by volume of oil of celery seed.

e. Cinnamon extract. Cinnamon extract is the flavoring extract prepared from oil of cinnamon, and contains not less than two percent by volume of oil of cinnamon.

f. Clove extract. Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two percent by volume of oil of cloves.

g. Ginger extract. Ginger extract is the flavoring extract prepared from ginger, and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger.

h. Lemon extract. Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five percent by volume of oil of lemon.

i. Terpeneless extract of lemon. Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of lemon in such medium, and contains not less than two-tenths percent by weight of citral derived from oil of lemon.

j. Nutmeg extract. Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two percent by volume of oil of nutmeg.

k. Orange extract. Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five percent by volume of oil of orange.

l. Terpeneless extract of orange. Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of orange in such medium, and corresponds in flavoring strength to orange extract.

m. Peppermint extract. Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three percent by volume of oil of peppermint.

n. Rose extract. Rose extract is the flavoring extract prepared from attar of roses, with or without red rose petals, and contains not less than four-tenths percent by volume of attar of roses.

o. Savory extract. Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths percent by volume of oil of savory.

p. Spearmint extract. Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three percent by volume of oil of spearmint.

q. Star anise extract. Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three percent by volume of oil of star anise.

r. Sweet basil extract. Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth percent by volume of oil of sweet basil.

s. Sweet marjoram extract. Sweet marjoram extract is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one percent by volume of oil of marjoram.

t. Thyme extract. Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths percent by volume of oil of thyme.

u. Tonka extract. Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one-tenth percent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof.

v. Vanilla extract. Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean, and contains not less than thirty percent by volume of absolute ethyl alcohol, or other suitable medium.

w. Wintergreen extract. Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three percent by volume of oil of wintergreen.

3. *Food.* Food shall include any article used by humans or domestic animals for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound. The term *"blended"* shall be construed to mean a mixture of like substances.

4. *Honey.* Honey is the secretion of floral nectar collected by the honeybee and stored in wax combs constructed by the honeybee, or the liquid derived therefrom.

5. *Lard.* Lard is the fat rendered from fresh, clean, sound, fatty tissues from hogs in good health at the time of slaughter, with or without lard stearin or a hardened lard. The tissues do not

include bones, detached skin, head fat, ears, tails, organs, windpipes, large blood vessels, scrap fat, skimmings, settlings, pressings and the like and are reasonably free from muscle tissue and blood.

6. *Oleomargarine*. Oleo, oleomargarine or margarine includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, or all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

7. *Oysters*. Oysters shall not contain ice, nor more than sixteen and two-thirds percent by weight of free liquid.

8. *Rendered pork fat*. Rendered pork fat is the fat other than lard, rendered from clean, sound carcasses, parts of carcasses, or edible organs from hogs in good health at the time of slaughter, except that stomachs, tails, bones from the head and bones from cured or cooked pork are not included. The tissues rendered are usually fresh, but may be cured, cooked, or otherwise prepared and may contain some meat food products. Rendered pork fat may be hardened by the use of lard stearin or hardened lard or rendered pork fat stearin or hardened rendered pork fat or any combination.

9. *Renovated butter*. Renovated butter is butter produced by taking original packing stock butter, or other butter, or both, and melting the same so that the milk fat can be extracted, then by mixing the said milk fat with skimmed milk, milk, cream, or some milk product, and rechurning or reworking the said mixture; or butter made by any method which produces a product commonly known as boiled, processed, or renovated butter.

10. *Sorghum syrup*. Sorghum syrup is liquid food derived by the concentration and heat treatment of the juice of sorghum cane including sorgo and sorghum vulgare. Sorghum syrup must contain not less than seventy-four percent by weight of soluble solids derived solely from juices of sorghum cane.

11. *Substitute for sugar*. Where sugar is given as one of the ingredients in a food product when the definition is established by law or by regulation, the following products may be used as optional ingredients: Dextrose (corn sugar) or corn syrup.

12. *Vinegar*. Vinegar is the product made by the alcoholic and subsequent fermentation of fruits, grain, vegetables, sugar, or syrups without the addition of any other substance and containing an acidity of not less than four percent by weight of absolute acetic acid. The product may be distilled, but when not distilled it shall not carry in solution any other substance except the extractive matter derived from the substances from which it was made.

a. Cider or apple vinegar. Cider or apple vinegar is a similar product made by the same process solely from the juice of apples. Such vinegar which during the course of manufacture has developed in excess of four percent acetic acid may be reduced to said strength.

b. Corn sugar vinegar. Corn sugar vinegar is a similar product made by the same process solely from solutions of starch sugar.

c. Malt vinegar. Malt vinegar is a similar product made by the same process solely from barley malt or cereals whose starch has been converted by malt.

d. Sugar vinegar. Sugar vinegar is a similar product made by the same process solely from sucrose.

[C73, §4042; C97, §2516, 2518, 4989 – 4991; S13, §2515-b, -d; SS15, §4999-a31, -a31c; C24, 27, 31, 35, 39, §**3058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §190.1; 81 Acts, ch 72, §1]

88 Acts, ch 1195, §1; 89 Acts, ch 151, §2; 91 Acts, ch 74, §2, 3; 94 Acts, ch 1023, §41

Further definitions, see §189.1

"Person" also defined, §191.4

190.2 Additional standards — milk and dairy products.

The department may establish and publish standards for foods when such standards are not fixed by law. The standards shall conform with standards for foods adopted by federal agencies including, but not limited to, the United States department of agriculture.

The department shall adopt rules specifying standards for milk and dairy products which are consistent with the *"Pasteurized Milk Ordinance"*, as provided in chapter 192, and applicable federal standards of identity.

[S13, §4999-a18; C24, 27, 31, 35, 39, §**3059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §190.2]

91 Acts, ch 74, §4; 98 Acts, ch 1032, §6

190.3 Food adulterations.

For the purposes of this chapter any food shall be deemed to be adulterated:

1. If any substance has been mixed or packed with it so as to reduce or injuriously affect its quality.

2. If any substance has been substituted to any extent.

3. If any valuable constituent has been removed to any extent.

4. If it has been mixed, colored, powdered, coated, or stained whereby damage or inferiority is concealed.

5. If it contains formaldehyde, sulphites or boron compound, or any poisonous or other ingredients injurious to health.

6. If it consists to any extent of a diseased, filthy, or decomposed animal or vegetable substance, whether manufactured or otherwise.

7. If it consists to any extent of an animal that has died otherwise than by slaughter.

8. If it is the product of or obtained from a diseased or infected animal.

9. If it has been damaged by freezing.

10. If it does not conform to the standards established by law or by the department.

The provisions of subsections 2 and 3 shall not apply to the addition of vitamins approved by the United States Pharmacopoeia or the removal of milk fat from milk.

[C73, §4042; C97, §4989, 4990; S13, §2515-b, -d; SS15, §4999-a31e; C24, 27, 31, 35, 39, §**3060;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §190.3]

91 Acts, ch 74, §5

190.4 Adulterations of dairy products.

In addition to the adulterations enumerated in section 190.3, milk, cream, or skimmed milk shall be deemed to be adulterated:

1. If it contains visible dirt or is kept or placed at any time in an unclean container.

2. If obtained from a cow within fifteen days before or five days after calving.

3. If obtained from a cow stabled in an unhealthful place, or fed upon any substance in a state of putrefaction or of unhealthful nature.

4. If obtained from a cow which has consumed chemical, medicinal, or radioactive agents capable of being secreted in milk.

5. If obtained from a cow in a mastitic condition.

[C97, §4989, 4990; S13, §2515-b, -d; C24, 27, 31, 35, 39, §**3061;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §190.4]

190.5 Adulterated milk or milk products.

Any milk or milk product shall further be deemed to be adulterated:

1. If it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health.

2. If it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal regulation, or in excess of such tolerance if one has been established.

3. If it consists, in whole or in part, of any substance unfit for human consumption.

4. If it has been produced, processed, prepared, packed, or held under insanitary conditions.

5. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

6. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

[C71, 73, 75, 77, 79, 81, §190.5]

190.6 Adulteration with fats and oils.

No milk, cream, skimmed milk, buttermilk, condensed or evaporated milk, powdered or desiccated milk, condensed skimmed milk, ice cream, or any fluid derivatives of any of them shall be made from or have added thereto any fat or oil other than milk fat, and no product so made or prepared shall be sold, offered or exposed for sale, or possessed with the intent to sell, under any trade name or other designation of any kind. Provided however, that it shall be lawful to produce and sell a condensed or evaporated milk product in which the milk fat has been replaced by an edible vegetable fat made from soybean oil. Such a product shall be given a distinctive name to distinguish it from natural, condensed, or evaporated milk, which name shall not include the words *"milk"* or *"milk products"* or any derivative thereof, and the label under which such a product is sold at retail shall clearly state the vegetable fat content of the product.

[C24, 27, 31, 35, 39, §**3062;** C46, 50, 54, 58, 62, 66, §190.5; C71, 73, 75, 77, 79, 81, §190.6]

190.7 Coloring imitation cheese.

No imitation cheese shall be colored with any substance and no such imitation cheese shall be made by mixing animal fats, vegetable oils, or other substances for the purpose or with the effect of imparting to the mixture the color of yellow cheese.

[C97, §2518; C24, 27, 31, 35, 39, §**3063;** C46, 50, 54, 58, 62, 66, §190.6; C71, 73, 75, 77, 79, 81, §190.7]

190.8 Coloring vinegar.

Vinegar shall not be colored with coloring matter and distilled vinegar shall not have a brown color in imitation of cider vinegar.

[SS15, §4999-a31; C24, 27, 31, 35, 39, §**3064;** C46, 50, 54, 58, 62, 66, §190.7; C71, 73, 75, 77, 79, 81, §190.8]

190.9 Adulteration of candies.

In addition to the adulterations enumerated in section 190.3, candy shall be deemed to be adulterated if it contains terra alba, barytes, talc, paraffin, chrome yellow, or other mineral substance.

[SS15, §4999-a31e; C24, 27, 31, 35, 39, §**3065;** C46, 50, 54, 58, 62, 66, §190.8; C71, 73, 75, 77, 79, 81, §190.9]

190.10 Sale by false name.

No person shall offer or expose for sale, sell, or deliver any article of food which is defined in this chapter under any other name than the one herein specified or offer or expose for sale, sell, or deliver any article of food which is not defined in this chapter under any other name than its true name, trade name, or trademark name.

[C24, 27, 31, 35, 39, §**3066;** C46, 50, 54, 58, 62, 66, §190.9; C71, 73, 75, 77, 79, 81, §190.10]

190.11 Artificial sweetening — labeling.

Where any approved artificial sweetening product such as saccharin or sulfamate is used by any person in the manufacture or sale of any article of food intended for human consumption, the container in which any such food or beverage is sold or offered for sale to the public shall be clearly, legibly and noticeably labeled with the name of the sweetening product used. The portion of the store, display counter, shelving, or other place where such food or beverage is displayed or offered for sale, shall be clearly and plainly identified by an appropriate sign reading "FOR DIETARY PURPOSES".

[C54, 58, 62, 66, §190.10; C71, 73, 75, 77, 79, 81, §190.11]

190.12 Standards for frozen desserts.

Frozen desserts and the pasteurized dairy ingredients used in the manufacture thereof, shall comply with the following standards:

Milk, cream, and fluid dairy ingredient	Temperature Bacterial limit Coliform limit	Storage at 45 degrees F. 50,000 per milliliter 10 per milliliter
Frozen dessert mixes, frozen desserts (plain)	Temperature Bacterial limit Coliform limit	Storage at 45 degrees F. 50,000 per gram 10 per gram
Dry dairy ingredient	Extra grade or better as defined by U. S. Standards for grades for the particular product.	
Dry powder mix	Bacterial limit Coliform limit	50,000 per gram 10 per gram

The bacteria count and coliform determination shall not exceed this standard in three out of the last five consecutive samples taken by the regulatory agency.

This section shall not preclude holding mix at a higher temperature for a short period of time immediately prior to freezing where applicable to the particular manufacturing or processing practices.

This section shall not apply to sterilized mix in hermetically sealed containers.

The coliform determination for bulky flavored frozen desserts shall not be more than twenty per gram.

[C71, 73, 75, 77, 79, 81, §190.12]

190.13 Frozen desserts — edible containers.

Notwithstanding any other labeling provision of the Code, frozen dessert of any kind or flavor may be dispensed and sold at retail in edible containers or as a part of any food preparation intended for consumption without further preparation, including but not limited to the preparations commonly termed milk shakes, malted milks, sundaes, and floats.

[C71, 73, 75, 77, 79, 81, §190.13]

190.14 Administration — milk and dairy products.

1. The department shall administer this chapter consistent with the provisions of the "Grade 'A' Pasteurized Milk Ordinance", as provided in section 192.102.

2. The department, as provided in section 192.108, may contract with a person qualified by the department to perform inspection of dairy farms, milk plants, receiving stations, or transfer stations to ensure compliance with this chapter.

91 Acts, ch 74, §6; 94 Acts, ch 1198, §37; 97 Acts, ch 33, §4

190.15 Violations — injunction.

The department may restrain a person violating this chapter or a rule adopted by the department under this chapter by petitioning the district court where the violation occurs for injunctive relief. Each day that a violation continues constitutes a separate violation.

91 Acts, ch 74, §7

CHAPTER 190A

FROZEN DESSERTS

Repealed by 98 Acts, ch 1032, §9

CHAPTER 190B

ORGANIC FOOD

Repealed by 98 Acts, ch 1205, §17, 20; see chapter 190C

CHAPTER 190C

ORGANIC AGRICULTURAL PRODUCTS

Department not required to fully implement chapter until federal accreditation or approval received; 98 Acts, ch 1205, §20

SUBCHAPTER 1

DEFINITIONS

190C.1 Definitions.

SUBCHAPTER 2

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SUBCHAPTER 3

REQUIREMENTS

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SUBCHAPTER 1

DEFINITIONS

190C.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Advertise"* means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag, or articulation.

2. *"Agricultural commodity"* includes but is not limited to livestock, crops, fiber, or food, such as vegetables, nuts, seeds, honey, eggs, or milk existing in an unprocessed state, which is produced on a farm and marketed for human or livestock consumption.

3. *"Agricultural product"* means an agricultural commodity or an agricultural processed product.

4. *"Agricultural processed product"* means an agricultural commodity that has been processed.

5. *"Board"* means the organic standards board established in section 190C.2.

6. *"Certified"* means any farm, wild crop harvesting, or handling operation that is verified annually, through an on-site inspection and comprehensive review of the operation by a certifying agent under 21 U.S.C. § 2115 or by the department's certification program, as producing and handling agricultural products in accordance with this chapter and rules adopted pursuant to this chapter.

7. *"Department"* means the department of

agriculture and land stewardship.

8. *"Farm"* means a site where the agricultural commodities are produced.

9. *"Food"* means an agricultural product or an agricultural product ingredient which is used or intended for use in whole or in part for human consumption.

10. *"Handler"* means a person engaged in the business of handling agricultural products, including but not limited to distributors, wholesalers, brokers, and repackers. *"Handler"* does not include a person selling agricultural products to consumers on a retail basis, including a food establishment as defined in section 137F.1, retail grocery, meat market, or bakery, if the person does not process the agricultural product.

11. *"Label"* means a commercial message in a printed medium which is affixed by any method to a product or to a receptacle including a container or package.

12. *"Livestock"* means an animal belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 481A.1; or poultry.

13. *"Organic agricultural product"* means food or fiber that is one of the following:

a. If the food or fiber is an agricultural commodity, it is produced and handled according to the requirements of this chapter.

b. If the food or fiber is an agricultural processed product, it is produced, handled, and processed according to the requirements of this chapter.

14. *"Processing"* means turning an agricultural commodity into an agricultural processed product by physical or chemical modification, including but not limited to canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, repacking, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, brewing, or slaughtering.

15. *"Processor"* means a person who processes an agricultural commodity.

16. *"Produce"* means to grow, raise, collect, or harvest an agricultural commodity.

17. *"Producer"* means a person who produces an agricultural commodity.

18. *"Regional organic association"* means a corporation organized under former chapter 504 or chapter 504A which has certifying members, elects its own officers and directors, and is independent from the department.

19. *"Retailer"* means a person, other than an operator of a food establishment, who is engaged in the business of selling food at retail to the ultimate customer.

20. *"Sale"* or *"sell"* means a commercial transfer or offer for sale and distribution in any manner.

21. *"Secretary"* means the secretary of agriculture.

22. *"System of organic farming"* means a system that is designed to produce agricultural products by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the consumer. This includes a management system which promotes and enhances agroecosystem health, including biodiversity, biological cycles, and soil biological activity. This is accomplished by using cultural, biological, and mechanical methods, as opposed to using synthetic materials, to fulfill any specific function within the system.

23. *"System of organic handling"* means a system that is designed to handle agricultural products without the use of synthetic additives, aids, or ingredients that are used during processing, packaging, or storing agricultural products in accordance with this chapter and by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the consumer.

98 Acts, ch 1205, §1, 20; 99 Acts, ch 96, §19

SUBCHAPTER 2

ADMINISTRATION

190C.2 Organic standards board.

1. An organic standards board is established within the department. The powers of the board are vested in and shall be exercised by eleven members appointed by the governor and secretary, as provided in this section. The governor and secretary shall accept nominations from persons or organizations representing persons who serve on the board, as determined by the governor and secretary making appointments under this section.

2. The members shall serve staggered terms of four years beginning and ending as provided in section 69.19. However, the governor and secretary shall cooperate to appoint initial members to serve for less than four years to ensure members serve staggered terms. Members appointed under this section shall be persons knowledgeable regarding the production, handling, processing, and retailing of organic agricultural products. The members of the board shall be appointed as follows:

a. Five persons who operate farms producing organic agricultural products. The governor shall appoint two of the persons, at least one of which shall be a producer of livestock, who may be a dairy or egg producer. The secretary shall appoint three of the persons, at least one of which shall be a producer of an agricultural commodity other than livestock. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from the production of organic agricultural products for three years prior to appointment.

b. Two persons who operate businesses processing organic agricultural products. One person shall be appointed by the governor and one person

shall be appointed by the secretary. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from processing organic agricultural products for three years prior to appointment.

c. One person appointed by the secretary, who shall be either of the following:

(1) A person who operates a business handling organic agricultural products. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from handling organic agricultural products for three years prior to appointment.

(2) A person who operates a business selling organic agricultural products. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from selling organic agricultural products on a retail basis for three years prior to appointment.

d. Two persons who have an educational degree and experience in agricultural or food science. One person shall be appointed by the governor and one person shall be appointed by the secretary. To qualify for appointment, a person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

e. One person appointed by the governor, who represents the public interest, the natural environment, or consumers. To qualify for appointment, the person must be a member of an organization representing the public interest, consumers, or the natural environment. The person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

3. A vacancy on the board shall be filled in the same manner as an original appointment. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. The governor may remove a member appointed by the governor and the secretary may remove a member appointed by the secretary, if the removal is based on the member's misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

4. Six members of the board constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the board. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the board.

5. The members are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

6. If a member has an interest, either direct or indirect, in a contract to which the board is or is to be a party, the member shall disclose the interest to the board in writing. The writing stating the conflict shall be set forth in the minutes of the board. The member having the interest shall not participate in any action by the board relating to the contract.

7. The board shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members. The department shall provide administrative support to the board.

98 Acts, ch 1205, §2, 20

190C.3 Board powers and duties.

The organic standards board shall have powers and duties to do all of the following:

1. Monitor conditions, practices, policies, programs, and procedures affecting the production, handling, processing, and sale of organic agricultural products.

2. Establish a schedule of state fees as provided in section 190C.5.

3. Compile materials or a list of materials which may assist producers, handlers, processors, and sellers of organic agricultural products in complying with this chapter.

4. Assist the department in the development and interpretation of requirements of this chapter, including requirements established pursuant to this chapter, including standards regarding the production, processing, handling, and selling of organic agricultural products and other matters of concern to the producers, handlers, processors, and retailers of organic agricultural products.

5. Approve or disapprove applications for certification, after reviewing applications, inspection reports, and other materials submitted by applicants. The board may suspend a decision to approve or disapprove an application until an application is complete or additional materials relating to the application are provided to the board.

6. Establish procedures pursuant to rules adopted by the department governing appeals of decisions made by the department or board under this chapter, including final agency action under chapter 17A.

98 Acts, ch 1205, §3, 20

190C.4 Administrative authority.

1. The department, upon approval by the board, shall adopt all rules necessary to administer this chapter.

a. The rules may include regulations governing the production, handling, processing, and selling of agricultural products by persons advertising an agricultural product as organic. These rules may provide for standards, certification, inspections, testing, the assessment and collection

of state fees, the maintenance of records, disciplinary action, and the issuance of stop sale orders as provided in this chapter.

b. The rules adopted under this section shall be consistent with federal regulations adopted pursuant to the federal Organic Food Production Act of 1990. The department may adopt rules which are stricter than federal regulations to the extent allowed by federal law.

2. The secretary, who may act through an authorized agent, shall serve as a certifying agent under 21 U.S.C. § 2115. The secretary or the secretary's agent may serve as an inspector in order to conduct investigations at times and places and to such an extent as the secretary and the board deem necessary to determine whether a person is in compliance with this chapter, according to rules adopted by the department.

3. A violation of this chapter includes a violation of any rule adopted or order issued pursuant to this chapter as provided in this chapter and under chapter 17A.

98 Acts, ch 1205, §4, 20; 99 Acts, ch 96, §20

190C.5 State fees — deposit into general fund of state.

1. The board shall establish a schedule of state fees under this chapter by rule adopted by the department for persons required to be certified as producers, handlers, and processors of agricultural products labeled, sold, or advertised as organic as provided in section 190C.13.

2. Beginning on July 1, 2000, the board shall establish the rate of fees based on an estimate of the amount of revenues from the fees required by the department to administer and enforce this chapter. The department shall annually review the estimate and recommend a change in the rate of fees to the board if the fees must be adjusted in order to comply with this subsection. The board may approve an adjustment in the fees by rule adopted by the department at any time in order to comply with this subsection.

3. The department shall collect state fees under this chapter as provided by the board, which shall be deposited into the general fund of the state.

98 Acts, ch 1205, §5, 20

190C.6 Regional organic associations.

The department, upon approval by the board, may authorize a regional organic association to assist the board in certifying producers, handlers, and processors of agricultural products under section 190C.13. The regional organic association must be registered with the department. The registered regional organic association, upon approval of the board, may administer the provisions of section 190C.13 by doing all of the following:

1. Reviewing applications and providing applicants with technical assistance in completing applications. The department may authorize a regional organic association to process applications, including collecting and forwarding applications to the department.

2. Preparing a summary of an application, including materials accompanying the application, for review by the department and the organic standards board. A regional organic association may include a recommendation for approval, modification, or disapproval of an application.

98 Acts, ch 1205, §6, 20

190C.7 through 190C.11 Reserved.

SUBCHAPTER 3

REQUIREMENTS

190C.12 Standards.

1. A person shall not sell an agricultural product as organic unless the agricultural product is produced and handled in accordance with standards established by rules adopted by the department as provided in this chapter.

2. An agricultural product which is sold or advertised as organic must be produced and handled according to the following standards:

a. The agricultural product must be produced and handled without the use of synthetic chemicals, except as otherwise provided in rules adopted by the department.

b. The agricultural product must not be produced on land to which any prohibited substances have been applied during the three years immediately preceding the harvesting of the agricultural product.

c. The agricultural product must be produced and handled in compliance with an organic plan agreed to by the producer and handler of the product and the certifying agent.

98 Acts, ch 1205, §7, 20

190C.13 Certification.

1. The department shall establish and administer a program to certify producers, handlers, and processors of agricultural products labeled, sold, or advertised as organic. A person shall not be certified unless the certification is approved by the organic standards board.

a. A certification shall expire one year from the date of issuance.

b. In order to be certified by the department, a producer, handler, or processor must submit an organic plan as prescribed by rules adopted by the department. The plan shall include methods used to ensure that the agricultural products are produced, handled, and processed according to requirements established by the department pursuant to this chapter. However, this section shall not require that any of the following persons be certified:

(1) A final retailer of agricultural products who does not process agricultural products.

(2) A person who receives five thousand dollars or less in gross income from the sale of agricultural products.

2. The department shall adopt rules upon approval by the board establishing a certification procedure.

98 Acts, ch 1205, §8, 20

190C.14 Labeling and organic certification seal.

1. A label advertising an agricultural product as organic which is produced in this state shall conform with the requirements of this chapter including requirements established in rules adopted by the department pursuant to this chapter. The department shall adopt rules specifying the content of the label.

2. The department may establish a seal certifying that an agricultural product has been produced, handled, and processed in accordance with this chapter. A person shall not use a seal provided in this section to advertise an agricultural product, unless the person is authorized to use the seal by the department in accordance with requirements established by the department pursuant to rules adopted under chapter 17A. The seal may be used in addition to or in lieu of a label provided in subsection 1, as provided by the department.

98 Acts, ch 1205, §9, 20

190C.15 Records.

A person required to be certified as provided in section 190C.13 shall maintain records regarding the production, processing, and handling of an organic agricultural product for five years. The records shall demonstrate that agricultural products advertised as organic have been produced, processed, and handled in conformance with this chapter.

98 Acts, ch 1205, §10, 20

190C.16 through 190C.20 Reserved.

SUBCHAPTER 4

ENFORCEMENT

190C.21 General enforcement.

The department and the attorney general shall enforce this chapter. The attorney general may commence legal proceedings in district court at the request of the department or upon the attorney general's own initiative in order to enforce this chapter, including rules adopted and orders issued by the department pursuant to this chapter. This chapter does not require the attorney general or the department to institute a proceeding for a minor violation, if the attorney general or department concludes that the public interest will be best served by a suitable notice of warning in writing.

98 Acts, ch 1205, §11, 20

190C.22 Investigations, complaints, inspections, and examinations.

1. The department may conduct an investigation to determine if a person is complying with the requirements of this chapter.

2. Any person may file a complaint with the department regarding a violation of this chapter. The department shall adopt procedures for persons filing complaints. The department shall establish procedures for processing complaints including requiring minimum information to determine the verifiability of a complaint.

3. The department may conduct inspections at times and places and to an extent that the department determines necessary in order to conclude whether an agricultural product is being produced, handled, processed, or sold in accordance with the provisions of this chapter. The department may inspect records required to be maintained pursuant to section 190C.15. The department may enter upon any public or private premises during regular business hours in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, or the fourth amendment to the Constitution of the United States for purposes of carrying out an inspection.

4. The department may conduct examinations of agricultural products in order to determine if the products are produced, handled, processed, and sold in compliance with this chapter.

a. The methods for examination shall be the official methods of the association of official agricultural chemists in all cases where methods have been adopted by the association.

b. A sworn statement by the state chemist or the state chemist's deputy stating the results of an analysis of a sample taken from a lot of agricultural products shall constitute prima facie evidence of the correctness of the analysis of that lot in an administrative hearing or court of this state.

98 Acts, ch 1205, §12, 20

190C.23 Disciplinary action.

1. The board may take disciplinary action concerning a person who is certified pursuant to this chapter by doing any of the following:

a. Issuing a letter of warning or reprimand.

b. Suspending or terminating a certification or denying an application for certification required pursuant to section 190C.13.

2. The disciplinary action must be based upon evidence satisfactory to the board that the person has used fraudulent or deceptive practices in violation of this chapter or has willfully disre-

garded the requirements of this chapter.
98 Acts, ch 1205, §13, 20

190C.24 Stop sale order.
1. If a person sells an agricultural product in violation of this chapter, including a rule adopted or an order issued under this chapter, the department may issue a written order to stop the sale of the agricultural product by a person in control of the agricultural product. The person named in the order shall not sell the item until the department determines that the sale of the agricultural product is in compliance with this chapter.
2. The department may require that the product be held at a designated place until released by the department.
3. The department or the attorney general may enforce the order by petitioning the district court in the county where the agricultural product is being sold.
4. The department shall release the agricultural product when the department issues a release order upon satisfaction that legal requirements compelling the issuance of the stop sale order are satisfied. The board must approve a delay in issuing a release order within three months after requiring that the agricultural product be held. If the person is found to have violated this chapter, the person shall pay all expenses incurred by the department in connection with the agricultural product's removal.
98 Acts, ch 1205, §14, 20

190C.25 Injunctions.
The attorney general, the department, or an individual, private organization or association, county, or city may bring an action in district court to restrain a producer, processor, handler, or retailer from selling an agricultural product by false or misleading advertising claiming that the agricultural product is organic. A petitioner shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, or that irreparable damage or loss will result if the action is brought at law or that unique or special circumstances exist.
98 Acts, ch 1205, §15, 20

190C.26 Penalties.
A person who violates this chapter is subject to a civil penalty of not more than five thousand dollars. Civil penalties shall be assessed by the district court in an action initiated by the attorney general. Each day that the offense continues constitutes a separate offense. Civil penalties collected under this section shall be deposited in the general fund of the state.
98 Acts, ch 1205, §16, 20

CHAPTER 191

LABELING FOODS

See also reference in §210.12

191.1 Label requirements.
191.2 Dairy products and imitations.
191.3 Sale of imitation products — notice to public — penalties.
191.4 "Person" defined.
191.5 Advertising oleomargarine — restrictions.
191.6 Standards for oleomargarine.
191.7 Enforcement of oleomargarine law.
191.8 Baking powder and vinegar.
191.9 Administration — milk and dairy products.
191.10 Violations — injunction.

191.1 Label requirements.
All food offered or exposed for sale, or sold in package or wrapped form, shall be labeled on the package or container as prescribed in sections 189.9 to 189.12, inclusive, unless otherwise provided in this chapter.
[C97, §2517, 2519, 4989; S13, §2515-b, -c; SS15, §4999-a31c; C24, 27, 31, 35, 39, §**3067;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.1]

191.2 Dairy products and imitations.
The products enumerated below shall be labeled on the side or top of the container or package in which placed, kept, offered or exposed for sale, or sold as prescribed in sections 189.9 to 189.12, inclusive, except that the label shall be printed in letters not less than three-quarters inch in height and one-half inch in width and subject to the following regulations:
1. *Renovated butter.* Renovated butter shall be labeled with the words "Renovated Butter", and if offered or exposed for sale or sold in prints or rolls the wrapper of each and the container as required above shall be so labeled. If such butter is offered or exposed for sale uncovered and not in a

container or package, a placard containing the required label shall be attached to the mass so as to be easily seen by the purchaser.

2. *Oleomargarine.* No person shall sell or offer for sale, colored oleo, oleomargarine or margarine unless — such oleo, oleomargarine or margarine is packaged; the net weight of the contents of any package sold in a retail establishment is one pound or less; there appears on the label of the package the word "oleo", "oleomargarine" or "margarine" in type or lettering at least as large as any other type or lettering on such label, and a full and accurate statement of all the ingredients contained in such oleo, oleomargarine or margarine; and each part of the contents of the package is contained in a wrapper which bears the word "oleo", "oleomargarine" or "margarine" in type or lettering not smaller than twenty-point type.

For the purposes of this chapter the term *"oleo", "oleomargarine"* or *"margarine"* includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, and all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter. For the purposes of this chapter colored oleo, oleomargarine or margarine is oleo, oleomargarine or margarine to which any color has been added.

Whenever coloring of any kind has been added it shall be clearly stated on both inside wrapper and the outside package. The ingredients of oleo, oleomargarine or margarine shall be listed on both the inside wrapper and outside package in the order of the amounts of ingredients in the package.

Such oleo, oleomargarine or margarine shall contain vitamin "A" in such quantity that the finished oleo, oleomargarine or margarine contains not less than fifteen thousand United States Pharmacopoeia units of vitamin "A" per pound, as determined by the method prescribed in the Pharmacopoeia of the United States for the total biological vitamin "A" activity.

3. *Imitation cheese.* Imitation cheese shall be labeled with the words "Imitation Cheese" on the cheese and on the package.

4. *Nonfat dry milk.* For the purposes of this chapter the product resulting from the removal of fat and water from milk and containing the lactose, milk proteins, and milk minerals in the same relative proportions as in the fresh milk from which it was made may be labeled and sold as "nonfat dry milk". It shall contain not over five percent by weight of moisture and the fat content shall not be over one and one-half percent by weight unless otherwise indicated.

5. All bottles, containers, and packages enclosing milk or milk products shall be conspicuously labeled or marked with:

a. The name of the contents as given in the definitions of this chapter and chapters 190 and 192.

b. The word "reconstituted" or "recombined" if the product is made by reconstitution or recombination.

c. The grade of the contents.

d. The word "pasteurized" if the contents are pasteurized and the identity of the plant where pasteurized.

e. The word "raw" if the contents are raw and the name or other identity of the producer.

f. The designation vitamin "D" and the number of U.S.P. units per quart in the case of vitamin "D" milk or milk products.

g. The volume or proportion of water to be added for recombining in the case of concentrated milk or milk products.

h. The words "nonfat milk solids added" and the percentage added if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk and milk products.

i. The words "artificially sweetened" in the name if nonnutritive or artificial sweeteners or both are used.

j. The common name of stabilizers, distillates, and ingredients, provided that:

(1) Only the identity of the milk producer shall be required on cans delivered to a milk plant as provided in chapter 192 which receives only grade "A" raw milk for pasteurization, and which immediately dumps, washes, and returns the cans to the milk producer.

(2) The identity of both milk producer and the grade shall be required on cans delivered to a milk plant as provided in chapter 192 which receives both grade "A" raw milk for pasteurization and ungraded raw milk and which immediately dumps, washes, and returns the cans to the milk producer.

(3) In the case of concentrated milk products, the specific name of the product shall be substituted for the generic term "concentrated milk products", e.g., "homogenized concentrated milk", "concentrated skim milk", "concentrated chocolate milk", "concentrated chocolate flavored low fat milk".

(4) In the case of flavored milk or flavored reconstituted milk, the name of the principal flavor shall be substituted for the word "flavored".

(5) In the case of cultured milk and milk products, the special type culture used may be substituted for the word "cultured", e.g., "acidophilus buttermilk", "Bulgarian buttermilk", and "yogurt".

6. All vehicles and transport tanks containing milk or milk products shall be legibly marked with the name and address of the milk plant or hauler in possession of the contents.

7. Tanks transporting raw milk and milk products to a milk plant from sources of supply not under the supervision of the secretary or authorized municipal corporation are required to be marked with the name and address of the milk plant or hauler and shall be sealed; in addition, for each such shipment, a shipping statement shall be pre-

pared containing at least the following information:

a. Shipper's name, address, and permit number.

b. Permit number of hauler, if not employee of shipper.

c. Point of origin of shipment.

d. Tanker identity number.

e. Name of product.

f. Weight of product.

g. Grade of product.

h. Temperature of product.

i. Date of shipment.

j. Name of supervising health authority at the point of origin.

k. Whether the contents are raw, pasteurized, or otherwise heat treated.

Such statement shall be prepared in triplicate and shall be kept on file by the shipper, the consignee, and the carrier for a period of six months for the information of the secretary.

8. The labeling information which is required on all bottles, containers, or packages of milk or milk products shall be in letters of an acceptable size, kind, and color satisfactory to the secretary and shall contain no marks or words which are misleading.

9. Milk and milk products are misbranded:

a. When their container bears or accompanies any false or misleading written, printed, or graphic matter.

b. When such milk and milk products do not conform to their definitions as contained in chapters 190, 191 and 192.

c. When such products are not labeled in accordance with this section.

[C97, §2517, 4989; S13, §2515-b, -c; C24, 27, 31, 35, 39, §**3068;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.2]

91 Acts, ch 74, §8; 92 Acts, ch 1163, §45

191.3 Sale of imitation products — notice to public — penalties.

Every person owning or in charge of any place where food or drink is sold who uses or serves therein imitation cheese shall display at all times opposite each table or place of service a placard for such imitation, with the words "Imitation . . . . . served here", without other matter, printed in black roman letters not less than three inches in height and two inches in width, on a white card twelve by twenty-two inches in dimensions.

No person shall serve colored oleo, oleomargarine or margarine at a public eating place unless a notice that oleo, oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in a manner as to render it likely to be read and understood by the ordinary individual being served in the eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items or unless each separate serving bears or is accompanied by labeling identifying it as oleo, oleomargarine or margarine, or each separate serving thereof is triangular in shape.

Any person violating any provision of this section shall be guilty of a simple misdemeanor, and the person shall have all licenses issued by the state for the public eating place in which a violation occurred suspended for one year.

[C97, §2517; C24, 27, 31, 35, 39, §**3069;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.3]

97 Acts, ch 23, §16

191.4 "Person" defined.

"Person" as used in this chapter and chapters 190 and 192 means any individual, plant operator, partnership, corporation, company, firm, trustee, or association.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.4]

See also §189.1

191.5 Advertising oleomargarine — restrictions.

No person, in person or by an agent, shall, by any means whatever, directly or indirectly, advertise or represent by statement, printing, writing, circular, poster, design, device, grade designation, advertisement, symbol, sound, or any combination thereof, that oleo, oleomargarine or margarine, or any brand of oleo, oleomargarine or margarine, is a dairy product for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase for consumption of oleo, oleomargarine or margarine, or any brand thereof. Whoever shall violate this provision shall be deemed guilty of a simple misdemeanor.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.5]

191.6 Standards for oleomargarine.

The department may prescribe and establish standards for oleo, oleomargarine or margarine manufactured or sold in this state and may adopt the standards set up by now existing regulations of the federal security administration or agency as found in 1949, Code of Federal Regulations, Title 21, Part 45, section 45.0, or any amendments thereto. Any standards so established shall not be contrary to or inconsistent with the provisions of section 190.1, subsection 6 entitled *"Oleo, oleomargarine or margarine"*.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.6]

191.7 Enforcement of oleomargarine law.

It shall be the duty of the secretary of agriculture and the secretary's agents to enforce this chapter and of the county attorneys and of the attorney general of the state to co-operate with the secretary in the enforcement of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.7]

191.8 Baking powder and vinegar.

Baking powder and distilled vinegar shall show on the label the name of each ingredient from which made. Distilled vinegar shall be marked as such; and cider vinegar which, having been in excess of the standard of acidity, has been reduced to the standard, shall have that fact indicated on the label.

[SS15, §4999-a31, -a31c; C24, 27, 31, 35, 39, §**3070;** C46, 50, §191.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.8]

191.9 Administration — milk and dairy products.

1. The department shall administer this chapter consistent with the provisions of the "Grade 'A' Pasteurized Milk Ordinance", as provided in section 192.102.

2. The department, as provided in section 192.108, may contract with a person qualified by the department to perform inspection of dairy farms, milk plants, receiving stations, or transfer stations to ensure compliance with this chapter.

91 Acts, ch 74, §9; 94 Acts, ch 1198, §38; 97 Acts, ch 33, §5

191.10 Violations — injunction.

The department may restrain a person violating this chapter or a rule adopted by the department under this chapter by petitioning the district court where the violation occurs for injunctive relief. Each day that a violation continues constitutes a separate violation.

91 Acts, ch 74, §10

CHAPTER 191A

RESERVED

CHAPTER 192

GRADE "A" MILK INSPECTION

192.1 through 192.100 Reserved.
192.101 Short title.
192.101A Definitions.
192.102 Grade "A" pasteurized milk ordinance.
192.103 Sale of grade "A" milk to final consumer — impoundment of adulterated or misbranded milk.
192.104 Coloring rejected milk.
192.105 and 192.106 Reserved.

PERMITS — INSPECTIONS

192.107 Milk or milk products permit.
192.108 Administration of the chapter — inspections required.
192.109 Certification of grade "A" label.
192.110 Rating required to receive or retain a permit.
192.111 Permit and inspection fees — deposit in general fund — appropriation.
192.112 Regulation — milk haulers, milk graders, and bulk milk tankers.
192.113 Penalties.
192.114 Reserved.

SANITATION — LABORATORIES

192.115 Sanitary regulations.
192.116 Bacteriologists.
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192.118 Certified laboratories.
192.119 and 192.120 Reserved.

CONTAINERS

192.121 Container defined.
192.122 Milk bottles to be marked.
192.123 Adoption of brand.
192.124 Retention of marked container.
192.125 Return of bottles.
192.126 Stray containers.
192.127 Registered mark.
192.128 through 192.130 Reserved.

TESTING FOR MILK FAT

192.131 Testing milk or cream — license. Repealed by 2002 Acts, ch 1148, §9, 11.
192.132 Examination. Repealed by 2002 Acts, ch 1119, §110; 2002 Acts, ch 1148, §9, 11.
192.133 through 192.137 Repealed by 2002 Acts, ch 1148, §9, 11.
192.138 through 192.140 Reserved.

COTTAGE CHEESE — BUTTER

192.141 Grade standards for cottage cheese.
192.142 Butter score required. Repealed by 2002 Acts, ch 1148, §9, 11.
192.143 Imitation butter.
192.144 and 192.145 Reserved.

INJUNCTIONS

192.146 Injunction for violations.

192.1 through 192.100 Reserved.

Former repealed, transferred, and reserved entries for sections 192.1 through 192.100 eliminated per directive in 2001 Acts, ch 129, §8; for former repealed, transferred, and reserved entries for these sections, see Code 2001

192.101 Short title.

This chapter shall be known and may be cited as the *"Iowa Grade 'A' Milk Inspection Law"*.

91 Acts, ch 74, §11

192.101A Definitions.

As used in this chapter, all terms shall have the same meaning as defined in the "Grade 'A' Pasteurized Milk Ordinance, 1999 Revision". However, notwithstanding the ordinance, the following definitions shall apply:

1. *"Bulk milk tanker"* means a mobile bulk container used to transport milk or fluid milk products from a dairy farm to a milk plant or from a milk plant to another milk plant, including an over-the-road semitanker or a tanker that is permanently mounted on a motor vehicle.

2. *"Milk grader"* means a person, including dairy industry milk intake personnel, other than a milk hauler, who collects a milk sample from a bulk tank or a bulk milk tanker.

3. *"Milk hauler"* means a person who takes farm samples or transports raw milk or raw milk products to or from a milk plant, receiving station, or transfer station, including a dairy industry milk field person. However, a milk hauler does not include a person who drives a bulk milk tanker, if the person does not take a milk sample or handle raw milk or raw milk products.

97 Acts, ch 94, §1; 2001 Acts, ch 129, §3

Further definitions; see §189.1, 191.4

192.102 Grade "A" pasteurized milk ordinance.

The department shall adopt, by rule, the "Grade 'A' Pasteurized Milk Ordinance, 1999 Revision", including a subsequent revision of the ordinance. If the ordinance specifies that compliance with a provision of the ordinance's appendices is mandatory, the department shall also adopt that provision. The department shall not amend the ordinance, unless the department explains each amendment and reasons for the amendment in the Iowa administrative bulletin when the rules are required to be published pursuant to chapter 17A. The department shall administer this chapter consistent with the provisions of the ordinance.

91 Acts, ch 74, §12; 94 Acts, ch 1198, §39; 97 Acts, ch 33, §6; 2001 Acts, ch 129, §4

192.103 Sale of grade "A" milk to final consumer — impoundment of adulterated or misbranded milk.

Only grade "A" pasteurized milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments; except in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the secretary, in which case, such products shall be labeled *"ungraded"*.

No person shall within the state produce, provide, sell, offer, or expose for sale, or have in possession with intent to sell, any milk or milk product which is adulterated or misbranded; except, in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the secretary, in which case such products shall be labeled *"ungraded"*.

Any adulterated or misbranded milk or milk product may be impounded by the secretary or authorized municipal corporation and disposed of in accordance with applicable laws or regulations.

[C24, 27, 31, 35, 39, §**3077;** C46, 50, 54, 58, 62, 66, §192.10; C71, 73, 75, 77, 79, 81, §192.11]

88 Acts, ch 1152, §2; 91 Acts, ch 74, §14

CS91, §192.103

192.104 Coloring rejected milk.

A milk hauler or a milk grader may mix a harmless coloring matter in rejected milk to prevent the rejected milk from being offered for sale.

[C54, 58, 62, 66, §192.41; C71, 73, 75, 77, 79, 81, §192.64]

CS91, §192.104

97 Acts, ch 94, §2

192.105 and 192.106 Reserved.

PERMITS — INSPECTIONS

192.107 Milk or milk products permit.

A person who does not possess a permit issued by the department shall not bring, send, or receive into the state for sale, or sell, offer for sale, or store any milk or milk product as provided in this chapter and in chapters 190 and 191. However, the department may exempt from this requirement grocery stores, restaurants, soda fountains, or similar establishments where milk or a milk product is served or sold at retail, but not processed.

Only a person who complies with the requirements of this chapter and chapters 190 and 191 shall be entitled to receive and retain a permit from the department. Permits shall not be transferable with respect to persons or locations.

The department shall suspend a permit whenever there is reason to believe that a public health hazard exists, whenever the permit holder has violated any of the requirements of this chapter, chapter 190, or chapter 191, or whenever the permit holder has interfered with the department in the performance of its duties. However, where the milk or milk product involved creates, or appears

to create, an imminent hazard to the public health, or in any case of a willful refusal to permit authorized inspection, the department shall serve upon the holder a written notice of intent to suspend the permit. The notice shall specify with particularity the violations in question and afford the holder such reasonable opportunity to correct such violations as may be agreed to by the parties, or in the absence of agreement, established by the secretary before making any order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the department. As used in this section, the terms *"public health hazard"* and *"imminent hazard"* shall be defined by rules adopted by the department. The rules shall include examples of public health hazards and imminent hazards.

Upon written application of any person whose permit has been suspended, or upon application within forty-eight hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension, the department shall within seventy-two hours proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify, or rescind the suspension or intention to suspend.

Upon repeated violation, the department may revoke a permit following reasonable notice to the permit holder and an opportunity for a hearing. This section is not intended to preclude the institution of a court action provided in this chapter, chapter 190, or chapter 191.

The provisions of this section are intended for the regulation of the production, processing, labeling, and distribution of grade "A" milk and grade "A" milk products under sanitary requirements which are uniform throughout the state.

[C71, 73, 75, 77, 79, 81, §192.5]
91 Acts, ch 74, §13
CS91, §192.107

192.108 Administration of the chapter — inspections required.

The department shall administer this chapter and rules adopted pursuant to this chapter. The department is responsible for the inspection of a dairy farm, milk plant, transfer station, or receiving station to ensure compliance with this chapter and chapters 190 and 191. The department may enter into an inspection contract with a person qualified to perform inspection services if the agreement for the services is cost-effective and the quality of inspection ensures compliance with state and federal law. A person entering into an inspection contract with the department for the purpose of inspecting premises, taking samples, or testing samples, shall be deemed to be an agent of the department, and shall have the same authority under this chapter provided to the department, unless the contract specifies otherwise. The department shall review inspection services performed by a person under an inspection contract to ensure quality cost-effective inspections. If a person is acting in a manner which is inconsistent with the provisions of the applicable chapter or contract, the department may revoke the inspection contract after notice and hearing, in the manner described for permit revocation in section 192.107 and perform such acts as are necessary to enforce this chapter. Except as provided in this chapter or chapter 194, a person shall not charge a milk plant, receiving station, or transfer station a fee for inspection relating to milk or milk products.

88 Acts, ch 1152, §6
C89, §192.48
91 Acts, ch 74, §19
CS91, §192.108
97 Acts, ch 94, §3

192.109 Certification of grade "A" label.

The Iowa department of public health shall annually survey and certify all milk labeled grade "A" pasteurized and grade "A" raw milk for pasteurization, and, in the event a survey shows the requirements for production, processing, and distribution for such grade are not being complied with, the fact thereof shall be certified by the Iowa department of public health to the secretary of agriculture who shall proceed with the provisions of section 192.107 for suspending the permit of the violator or who, if the secretary did not issue such permit, shall withdraw the grade "A" declared on the label.

[C71, 73, 75, 77, 79, 81, §192.31]
CS91, §192.109

192.110 Rating required to receive or retain a permit.

A person shall not receive or retain a permit under section 192.107, unless both of the following conditions are satisfied:

1. The person has a pasteurized milk and milk products sanitation compliance rating of ninety percent or more as calculated according to the rating system as contained in the federal public health service publications, "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers 1999" and "Method of Making Sanitation Ratings of Milk Supplies, 1999 Revision". The applicable provisions of these publications are incorporated into this section by this reference. A copy of each publication shall be on file with the department or in the office of the person subject to an inspection contract as provided in section 192.108.

2. The facilities and equipment used to produce, store, or transport milk or milk products comply with requirements of the "Grade 'A' Pasteurized Milk Ordinance" as provided in section 192.102.

[C71, 73, 75, 77, 79, 81, §192.33; 81 Acts, ch 72, §6]
90 Acts, ch 1168, §33; 91 Acts, ch 74, §18
CS91, §192.110
93 Acts, ch 132, §1; 94 Acts, ch 1198, §40; 97 Acts, ch 33, §7; 97 Acts, ch 94, §4; 2001 Acts, ch 129, §5

192.111 Permit and inspection fees — deposit in general fund — appropriation.

1. The department shall issue and renew permits under this subsection as provided by rules adopted by the department. A permit, unless earlier revoked, is valid until the second July 1 following the issuance or renewal. The department shall establish and assess the fees for the issuance and renewal of permits annually as provided in this subsection. A permit fee for the renewal period shall be due on the date that the permit expires. Except as otherwise provided in this section, all of the following shall apply:

a. The following persons must receive a permit from and pay an accompanying permit fee to the department:

(1) A milk plant other than a receiving station which must obtain a milk plant permit and pay a permit fee not greater than two thousand dollars.

(2) A transfer station which must obtain a transfer station permit and pay a permit fee not greater than four hundred dollars.

(3) A receiving station other than a milk plant which must obtain a receiving station permit and pay a permit fee of not greater than four hundred dollars.

(4) A milk hauler which must obtain a milk hauler permit and pay a permit fee not greater than twenty dollars.

(5) A milk grader which must obtain a milk grader permit and pay a license fee not greater than twenty dollars.

b. A bulk milk tanker must operate pursuant to a bulk milk tanker permit obtained from the department. The person obtaining the permit must pay a permit fee not greater than fifty dollars.

c. The following fees, which shall be in addition to any fee required to accompany a permit as required in this section, shall be assessed:

(1) A reinspection fee that shall be paid by a person holding a permit under this subsection for which reinspection is required as a condition of retaining the permit. The amount of the reinspection fee shall not be more than forty dollars for each such reinspection.

(2) A resealing fee that shall be paid by a person holding a milk plant permit, for resealing a milk plant's pasteurizer. The amount of the resealing fee shall not be more than one hundred dollars for each such resealing.

d. A person who renews a permit and submits any accompanying renewal fee under this subsection more than thirty days after the date that the renewal period expires shall pay a late fee. The amount of the late fee shall be equal to ten percent of the permit renewal fee. However, in no instance shall the late fee be less than twenty-five dollars.

2. A purchaser of milk from a grade "A" milk producer shall pay an inspection fee not greater than one point five cents per hundredweight. The fee shall be payable monthly to the department in a manner prescribed by the secretary.

3. *a.* Fees collected under this section and section 194.20 shall be deposited in the general fund of the state. All moneys deposited under this section are appropriated to the department for the costs of inspection, sampling, analysis, and other expenses necessary for the administration of this chapter and chapter 194, and shall be subject to the requirements of section 8.60.

b. In each fiscal year, the secretary shall calculate the balance of funds deposited under this section by subtracting all moneys expended for the costs of inspection, sampling, analysis and other expenses necessary for the administration of this chapter and chapter 194. If the calculation shows a balance of funds deposited under this section on June 30 of any fiscal year equal to or exceeding one hundred fifty thousand dollars, the secretary shall reduce the fees provided for in subsection 2 of this section and section 194.20 for the next fiscal year in an amount which will result in an ending estimated balance of such funds for June 30 of the next fiscal year of one hundred fifty thousand dollars.

88 Acts, ch 1152, §5
C89, §192.47
91 Acts, ch 260, §1214
CS91, §192.111
92 Acts, ch 1163, §46; 93 Acts, ch 131, §5; 94 Acts, ch 1107, §38; 97 Acts, ch 94, §5; 2002 Acts, ch 1148, §1, 2, 11
Staggered schedule for issuance or renewal of permits in 2003; fee adjustment during fiscal year beginning July 1, 2002, for permits expiring July 1, 2003, and July 1, 2004; 2002 Acts, ch 1148, §10, 11
Subsection 1 amended
Subsection 3, paragraph a amended

192.112 Regulation — milk haulers, milk graders, and bulk milk tankers.

The department shall adopt rules pursuant to chapter 17A which provide standards for milk haulers, milk graders, and bulk milk tankers. The standards shall include, but need not be limited to, all of the following:

1. The construction of bulk milk tankers.
2. The cleaning, maintenance, and sanitization of bulk milk tankers.
3. Recordkeeping relating to the use and cleaning of bulk milk tankers.
4. Supplies needed to perform the duties of milk hauling and milk grading.
5. Proper milk hauling and milk grading procedures, including but not limited to sanitation, the examination and measurement of milk, the handling of milk, and the taking and handling of milk samples.

6. Recordkeeping required for milk haulers and milk graders.

7. Ongoing training requirements, if any, for milk haulers and milk graders.

97 Acts, ch 94, §6; 2002 Acts, ch 1148, §3, 11
Unnumbered paragraph 1 amended

192.113 Penalties.

1. *a.* A person shall not act as a milk hauler unless the person holds a milk hauler permit required pursuant to section 192.111. A person shall not solicit another person to act as a milk hauler or procure the services of a person to act as a milk hauler unless the person solicited or from whom the services are procured holds a milk hauler permit.

b. A person shall not act as a milk grader unless the person holds a milk grader permit required pursuant to section 192.111. A person shall not solicit another person to act as a milk grader or procure the services of a person to act as a milk grader unless the person solicited or from whom the services are procured holds a milk grader permit.

c. A person shall not operate a bulk milk tanker unless the bulk milk tanker operates pursuant to a bulk milk tanker permit required pursuant to section 192.111. A person shall not solicit another person to operate a bulk milk tanker or procure the services of a person to operate a bulk milk tanker unless the bulk milk tanker operates pursuant to a bulk milk tanker permit.

2. A person who violates this section is subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars for each violation. Each day that a violation continues shall constitute a new violation. However, a person shall not be subject to a civil penalty of more than ten thousand dollars for a continuing violation. Civil penalties shall be deposited in the general fund of the state.

97 Acts, ch 94, §7; 2002 Acts, ch 1148, §4, 11
Subsection 1 amended

192.114 Reserved.

SANITATION — LABORATORIES

192.115 Sanitary regulations.

Every person who deals in or manufactures dairy products or imitations thereof shall maintain the person's premises, utensils, wagons, and equipment in a clean and hygienic condition.

[C97, §2522; S13, §2522; C24, 27, 31, 35, 39, §**3078;** C46, 50, 54, 58, 62, 66, §192.11; C71, 73, 75, 77, 79, 81, §192.34]

CS91, §192.115

192.116 Bacteriologists.

The department of agriculture and land stewardship may employ dairy specialists or bacteriologists who shall devote their full time to the improvement of sanitation in the production, processing and marketing of dairy products. Said dairy specialists and bacteriologists shall have qualifications as to education and experience and such other requirements as the secretary may require.

[C46, 50, 54, 58, 62, 66, §192.12; C71, 73, 75, 77, 79, 81, §192.35]

CS91, §192.116

192.117 Duties.

Said dairy specialists and bacteriologists employed by the department shall co-operate with the dairy and food inspectors of the department and with the health departments of cities for sanitary control of the production, processing, and marketing of dairy products. The department shall provide adequate laboratory facilities for the efficient performance of their duties.

[C46, 50, 54, 58, 62, 66, §192.13; C71, 73, 75, 77, 79, 81, §192.36]

CS91, §192.117

192.118 Certified laboratories.

To insure uniformity in the tests and reporting, an employee certified by the United States public health service of the bacteriological laboratory of the department shall annually certify, in accordance with the United States food and drug administration publication "Evaluation of Milk Laboratories" (1995 revision), all laboratories doing work in the sanitary quality of milk and dairy products for public report. The approval by the department shall be based on the evaluation of these laboratories as to personnel training, laboratory methods used, and reporting. The results on tests made by approved laboratories shall be reported to the department on request, on forms prescribed by the secretary of agriculture, and such reports may be used by the department.

The department shall annually certify, in accordance with the United States food and drug administration publication "Evaluation of Milk Laboratories" (1995 revision), every laboratory in the state doing work in the sanitary quality of milk and dairy products for public report. The certifying officer may enter any such place at any reasonable hour to make the survey. The management of the laboratory shall afford free access to every part of the premises and render all aid and assistance necessary to enable the certifying officer to make a thorough and complete examination.

[C54, 58, 62, 66, §192.40; C71, 73, 75, 77, 79, 81, §192.63]

CS91, §192.118

91 Acts, ch 74, §21; 97 Acts, ch 94, §8

192.119 and 192.120 Reserved.

CONTAINERS

192.121 Container defined.
As used in this chapter, *"container"* means a rigid or nonrigid receptacle, including but not limited to a can, bottle, case, paper carton, cask, keg, or barrel.
[C24, 27, 31, 35, 39, §**3094;** C46, 50, 54, 58, 62, 66, §192.33; C71, 73, 75, 77, 79, 81, §192.56]
CS91, §192.121
91 Acts, ch 74, §20

192.122 Milk bottles to be marked.
Bottles or jars used for the sale of milk shall have clearly blown or permanently marked in the side of the bottle, the capacity of the bottle, and on the bottom of the bottle the name, initials, or certification mark of the manufacturer. The designating number shall be furnished by the department on request.
[S13, §3009-k; C24, 27, 31, 35, 39, §**3095;** C46, 50, 54, 58, 62, 66, §192.34; C71, 73, 75, 77, 79, 81, §192.57]
CS91, §192.122

192.123 Adoption of brand.
With the approval of the department any person who deals in or transports milk, cream, skimmed milk, buttermilk, or ice cream may adopt a distinctive mark or brand to be placed upon any container owned or used by the person, and the same may be registered with the department.
[C24, 27, 31, 35, 39, §**3096;** C46, 50, 54, 58, 62, 66, §192.35; C71, 73, 75, 77, 79, 81, §192.58]
CS91, §192.123

192.124 Retention of marked container.
A person shall not, without the consent of the owner, retain for a longer period than three days a container bearing a registered mark, and any person receiving such a container shall immediately return it to the owner by a common carrier. A receipt from a common carrier is prima facie evidence that the container was returned.
[C24, 27, 31, 35, 39, §**3097;** C46, 50, 54, 58, 62, 66, §192.36; C71, 73, 75, 77, 79, 81, §192.59]
CS91, §192.124
92 Acts, ch 1076, §1; 95 Acts, ch 67, §14

192.125 Return of bottles.
Milk and cream bottles bearing registered marks shall be returned by delivering them to the owner or the owner's agent in person or by leaving them where they may be picked up by the owner.
[C24, 27, 31, 35, 39, §**3098;** C46, 50, 54, 58, 62, 66, §192.37; C71, 73, 75, 77, 79, 81, §192.60]
CS91, §192.125

192.126 Stray containers.
When any person comes into possession of a container bearing a registered mark which belongs to another whose name and address the person does not know, the person shall immediately notify the department in writing, giving the size, shape, and mark of the container. Upon receipt of shipping directions from the department the person shall at once forward the container by a common carrier, collect, to the address furnished. Milk or cream bottles need not be returned when the cost of return is greater than the market value of the bottles.
[C24, 27, 31, 35, 39, §**3099;** C46, 50, 54, 58, 62, 66, §192.38; C71, 73, 75, 77, 79, 81, §192.61]
CS91, §192.126

192.127 Registered mark.
No person shall for any purpose use any registered mark or any container bearing such mark, or remove or alter any such mark placed upon a container without the consent of the owner.
[C24, 27, 31, 35, 39, §**3100;** C46, 50, 54, 58, 62, 66, §192.39; C71, 73, 75, 77, 79, 81, §192.62]
CS91, §192.127

192.128 through 192.130 Reserved.

TESTING FOR MILK FAT

192.131 Testing milk or cream — license. Repealed by 2002 Acts, ch 1148, § 9, 11.

192.132 Examination. Repealed by 2002 Acts, ch 1119, § 110; 2002 Acts, ch 1148, § 9, 11.
See Code editor's note to §8.55 at the end of Vol IV

192.133 through 192.137 Repealed by 2002 Acts, ch 1148, § 9, 11.

192.138 through 192.140 Reserved.

COTTAGE CHEESE — BUTTER

192.141 Grade standards for cottage cheese.
The department may establish grade "A" standards for cottage cheese dry curd, cottage cheese, and low fat cottage cheese as a part of the ordinance required by this chapter. However, a governmental body, including the department, a county as provided in chapter 331, or a city as provided in chapter 364 shall not require a grade "A" rating for these products as a condition precedent to their sale.
[C71, 73, 75, 77, 79, 81, §192.30; 81 Acts, ch 72, §5]
88 Acts, ch 1152, §3; 90 Acts, ch 1168, §32; 91 Acts, ch 74, §15, 16, 25
CS91, §192.141

192.142 Butter score required. Repealed by 2002 Acts, ch 1148, § 9, 11.

192.143 Imitation butter.
Imitation butter shall be sold only under the name of oleomargarine, and no person shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any such product, the word "butter", "creamery", or "dairy", or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter.
[C97, §2517; C24, 27, 31, 35, 39, §**3093;** C46, 50, 54, 58, 62, 66, §192.31; C71, 73, 75, 77, 79, 81, §192.54]
CS91, §192.143

192.144 and 192.145 Reserved.

INJUNCTIONS

192.146 Injunction for violations.
A person who violates any provision of this chapter, chapter 190, or chapter 191, or a rule adopted under any of those chapters may be enjoined from continuing such violations. Each day upon which such a violation occurs constitutes a separate violation.
[C71, 73, 75, 77, 79, 81, §192.32]
91 Acts, ch 74, §17
CS91, §192.146

CHAPTER 192A

MARKETING OF DAIRY PRODUCTS

Repealed by 2000 Acts, ch 1091, §1

CHAPTER 193

OVERRUN IN MANUFACTURE OF BUTTER

Repealed by 97 Acts, ch 94, §10

CHAPTER 194

GRADES OF MILK

194.1 Citation of chapter.
194.2 Enforcement — rules.
194.3 Definitions.
194.3A Permit requirements.
194.4 Physical characteristics.
194.5 Frequency of tests.
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194.7 Acceptable milk.
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194.9 Unlawful milk.
194.10 Milk purchased on basis of grade.
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194.12 through 194.16 Repealed by 2002 Acts, ch 1148, §9, 11.
194.17 Records.
194.18 Coloring unlawful milk.
194.19 Licenses for collection vehicles — fees. Repealed by 2002 Acts, ch 1148, §9, 11.
194.20 Inspection fees — grade "B" milk.
194.21 Bulk tanks on farms for milk.
194.22 through 194.24 Reserved.
194.25 Violations and penalties.

194.1 Citation of chapter.
This chapter may be cited as the *"Iowa Grading Law for Milk Used for Manufacturing Purposes"*.
[C62, 66, 71, 73, 75, 77, 79, 81, §194.1]

194.2 Enforcement — rules.
The secretary of agriculture shall enforce the provisions hereof, and to this end may adopt such rules and regulations as may appear necessary,

but not inconsistent herewith.

The secretary may adopt by rule requirements recommended by the United States Department of Agriculture for the production and processing of milk for manufacturing purposes, including, but not limited to, requirements for the inspection and certification of grade "B" dairy farms and grade "B" dairy plants.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.2]

88 Acts, ch 1152, §7

194.3 Definitions.

For the purpose of this chapter:

1. *"Bulk milk tanker"* means all of the following:

a. A bulk milk tanker as defined in section 192.101A.

b. A vehicle that transports milk stored in milk cans.

2. *"Milk grader"* means the same as defined in section 192.101A.

3. *"Milk hauler"* means the same as defined in section 192.101A.

4. *"Milk processing plant"* means an establishment receiving milk from diverse producers, if the milk is manufactured into butter, cheese, dry milk, or other dairy products for commercial purposes.

5. *"Milk used for manufacturing purposes"* means milk or milk products manufactured into butter, cheese, ungraded dry milk, or other dairy products except milk and milk products as defined in the "Grade 'A' Pasteurized Milk Ordinance" provided in section 192.102.

6. *"Organoleptic examination or grading of milk"* means examination by the senses of sight, smell, and taste.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.3]

86 Acts, ch 1245, §639; 92 Acts, ch 1081, §1; 2002 Acts, ch 1148, §5, 11

Further definitions, see §189.1

Section amended

194.3A Permit requirements.

1. The department shall issue and renew permits under this chapter as provided by rules adopted by the department. The following persons must receive a permit from and pay a permit fee to the department:

a. A milk hauler which must obtain a milk hauler permit.

b. A milk grader which must obtain a milk grader permit.

c. A bulk milk tanker which must operate pursuant to a bulk milk tanker permit.

2. The department shall provide for the issuance and renewal of permits under this section as provided by rules adopted by the department, in the same manner as provided in section 192.111. The amount of the permit fee shall be the same as provided in section 192.111. A person shall not be required to obtain a milk hauler permit, milk grader permit, or bulk milk tanker permit under this section if the person has obtained the same permit under section 192.111.

3. The department may suspend or revoke a permit issued or renewed under this section in the same manner that the department may suspend or revoke a permit issued or renewed under section 192.111.

4. A person who does any of the following is in violation of this section:

a. (1) Acts as a milk hauler or milk grader, unless the person holds a milk hauler permit or milk grader permit as required in this section.

(2) Solicits another person to act as a milk hauler or milk grader or procures the services of a person to act as a milk hauler or milk grader, unless the person solicited or from whom the services are procured holds a milk hauler permit or milk grader permit as required in this section.

b. (1) Operates a bulk milk tanker, unless the bulk milk tanker operates pursuant to a bulk milk tanker permit as required in this section.

(2) Solicits another person to operate a bulk milk tanker or procures the services of a person to operate a bulk milk tanker, unless the bulk milk tanker operates pursuant to a bulk milk tanker permit as required in this section.

2002 Acts, ch 1148, §6, 11

Staggered schedule for issuance or renewal of permits in 2003; fee adjustment during fiscal year beginning July 1, 2002, for permits expiring on July 1, 2003, and July 1, 2004; 2002 Acts, ch 1148, §10, 11

NEW section

194.4 Physical characteristics.

All milk received at a creamery, cheese factory, or milk-processing plant shall be examined for physical characteristics, off-flavors and off-odors, including those associated with developed acidity. The condition of the raw milk shall be wholesome and characteristic of normal milk. The flavor and odor of the raw milk shall be fresh and sweet; however, slight feed flavors may be present.

Any raw milk that shows an abnormal condition including, but not limited to, curdled, ropy, clotted and bloody, or that contains extraneous matter or which shows significant bacterial deterioration, or which contains matter evidencing production from a mastitic cow; or which contains chemicals, medicines, or radioactive agents deleterious to health is unlawful milk and shall be rejected to the producer, seller, or shipper and shall not be used in the processing or manufacturing of dairy products for human consumption.

At least once within each thirty days a test shall be made of a producer's milk to determine the existence of evidence of production from mastitic cows. The secretary shall determine and adopt the standards and methods of testing the milk for this purpose. The secretary shall be guided by recommendations or regulations established by federal agencies regulating this field.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.4]
92 Acts, ch 1081, §2

194.5 Frequency of tests.
A test shall be made on the first purchase of milk from a new producer and at least once within each thirty-day interval thereafter. One lot of milk from each producer shall be selected at random and tested for extraneous matter by an appropriate method. The secretary shall determine and promulgate the standards and methods of testing the milk for extraneous matter. The method and standards shall be no less strict than those recommended by the agricultural marketing service, U.S. department of agriculture.
[C62, 66, 71, 73, 75, 77, 79, 81, §194.5]

194.6 Bacterial test.
At least once every thirty days an estimate of the bacterial quality shall be made of each producer's milk by use of a standard plate count or an equivalent plate counting procedure in an officially designated laboratory.
For the purpose of quality improvement and payment, the following classifications of milk for bacterial estimate are applicable:

Bacterial Estimate Classification	Standard Plate Count or Equivalent
Class 1	Not over 100,000 per Milliliter
Class 2	Not over 300,000 per Milliliter
Undergrade	Over 300,000 per Milliliter

[C62, 66, 71, 73, 75, 77, 79, 81, §194.6]
84 Acts, ch 1120, §1; 92 Acts, ch 1081, §3

194.7 Acceptable milk.
Milk acceptable from the standpoint of organoleptic examination, containing no excessive extraneous matter and complying with class 1 or 2 for bacterial estimate shall be acceptable for use in the processing and manufacturing of dairy products for human consumption.
[C62, 66, 71, 73, 75, 77, 79, 81, §194.7]

194.8 Unacceptable milk.
Milk acceptable from the standpoint of organoleptic examination, containing no excessive extraneous matter and classified in excess of three hundred thousand for bacterial estimate, may be used in the processing and manufacturing of dairy products for human consumption for a period of seven consecutive days.
After a week another quality test must be performed on the producer's milk. If two of the last four consecutive bacterial counts exceed the class 2 standard, the department shall deliver, or require the purchaser to deliver, a written notice to the producer. An additional sample shall be taken at least three days after taking the previous sample, but within twenty-one days following delivery of the notice. The department shall immediately suspend the permit of the producer or immediately institute legal proceedings to restrain production if the class 2 standard is violated according to three of the last five bacterial counts.
[C62, 66, 71, 73, 75, 77, 79, 81, §194.8]
84 Acts, ch 1120, §2; 92 Acts, ch 1081, §4

194.9 Unlawful milk.
Milk, which from the standpoint of organoleptic examination is not acceptable, or which contains excessive extraneous matter or which by three out of five bacterial estimate tests is classified in excess of three hundred thousand, or which contains material evidencing production from a mastitic cow, or which contains chemicals, medicines, or radioactive agents deleterious to health, is unlawful for the manufacture of dairy products for human consumption.
[C62, 66, 71, 73, 75, 77, 79, 81, §194.9]
84 Acts, ch 1120, §3; 92 Acts, ch 1081, §5

194.10 Milk purchased on basis of grade.
All purchases and deliveries of milk and cream for the manufacture of dairy products shall be made on the basis of grades and definitions set forth in this chapter.
[C62, 66, 71, 73, 75, 77, 79, 81, §194.10]

194.11 Price differential.
All purchasers and receivers of milk for the manufacture of dairy products for human consumption shall maintain a reasonable price differential between the grades of milk as defined by the bacterial estimate tests. This price differential shall not be less than five percent of the price for grade one milk.
[C62, 66, 71, 73, 75, 77, 79, 81, §194.11]

194.12 through 194.16 Repealed by 2002 Acts, ch 1148, § 9, 11.
Licenses requiring renewal under former sections 194.12 – 194.14 to be treated as permits requiring renewal under §192.111 and §194.3A; 2002 Acts, ch 1148, §10, 11

194.17 Records.
Each creamery, cheese factory or milk processing plant shall maintain records of all purchases and receipts of milk from individual producers. These records must show:
1. Name of producer.
2. Date of delivery.
3. Quantity delivered.
4. Grade assigned.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.17]

194.18 Coloring unlawful milk.
A person who holds a milk hauler permit or a milk grader permit pursuant to section 192.111 may mix a harmless coloring matter in unlawful milk as provided in section 194.9 to prevent the unlawful milk from being processed and used in any form for human consumption.
[C62, 66, 71, 73, 75, 77, 79, 81, §194.18]
97 Acts, ch 94, §9; 2002 Acts, ch 1148, §7, 11
Section amended

194.19 Licenses for collection vehicles — fees. Repealed by 2002 Acts, ch 1148, § 9, 11.

194.20 Inspection fees — grade "B" milk.
A purchaser of milk from a grade "B" milk producer shall pay an inspection fee not greater than one-half cent per hundredweight. The fee is payable monthly to the department at a time prescribed by the department. Fees collected under this section shall be deposited and used as required in section 192.111.
88 Acts, ch 1152, §10; 91 Acts, ch 74, §22; 92 Acts, ch 1081, §8; 92 Acts, ch 1163, §47; 94 Acts, ch 1107, §43

194.21 Bulk tanks on farms for milk.
Any producer using a bulk tank for cooling and storage of milk to be used for manufacturing purposes shall have an enclosed milk room which shall conform to the standards provided by this section. The floor shall be constructed of concrete or other impervious material, maintained in good repair, and graded to provide proper drainage. The walls and ceilings of the room shall be sealed and constructed of smooth easily cleaned material. All windows shall be screened and doors shall be self-closing. It shall be well ventilated and must meet the following requirements:

1. The bulk tank shall not be located over a drain or under a ventilator.
2. The hose port shall be located in an exterior wall and fitted with a tight self-closing door.
3. A two hundred twenty volt lock type electrical connection with ground and weatherproof type receptacle and switchbox shall be provided near the hose port.
4. Each milk room shall have an adequate supply of water readily accessible with facilities for heating the water, to insure the cleaning and sanitizing of the bulk tank, utensils and equipment and the keeping of the milk room clean.
5. No lights shall be placed directly over the bulk tank.
6. The bulk tank shall be properly located in the milk room for easy access to all areas for cleaning and servicing.
7. The enforcement of this section shall be administered by the department of agriculture and land stewardship.
8. Any person violating any provisions of this section shall be guilty of a simple misdemeanor.

[C66, §192.43; C71, 73, 75, 77, 79, 81, §192.66]
CS91, §194.21

194.22 through 194.24 Reserved.

194.25 Violations and penalties.
1. Except as provided in subsection 2, a person who, in person or by an agent or employee, willfully violates any requirement of this chapter shall be guilty of a simple misdemeanor.
2. A person in violation of section 194.3A is subject to the same civil penalty as applied to that person as provided in section 192.113.
[C62, 66, 71, 73, 75, 77, 79, 81, §194.20]
C89, §194.25
2002 Acts, ch 1148, §8, 11
Section amended

CHAPTER 195

CREAM GRADING

Repealed by 97 Acts, ch 94, §10

CHAPTER 196

EGG HANDLERS

196.1 Definitions.
196.2 Enforcement.
196.3 Egg handler's license and fee.
196.4 Producers and hatcheries exempt.
196.5 Candling and grading capability.
196.6 Candling and grading room.
196.7 Candling and grading prior to sale.
196.8 Quality — storage.
196.9 Eggs unfit for human food.
196.10 Labeling.
196.11 Storage.
196.12 Transportation.
196.13 Records.
196.14 Penalty.

196.1 Definitions.

Unless the context otherwise requires:

1. *"Candling"* means the careful examination of each shell egg and the elimination of those eggs determined unfit for human consumption.

2. *"Consumer"* means a person who buys eggs for personal consumption.

3. *"Department"* means the department of inspections and appeals, as established in section 10A.102.

4. *"Egg handler"* or *"handler"* means a person who buys or sells eggs, or uses eggs in the preparation of human food. *"Egg handler"* or *"handler"* does not include a retailer, a consumer, an establishment, or a producer who sells eggs as provided in section 196.4.

5. *"Establishment"* means any place in which eggs are offered or sold as human food for consumption by its employees, students, patrons, customers, residents, inmates or patients or as an ingredient in food offered or sold in a form ready for immediate consumption.

6. *"Grading"* means classifying each shell egg by weight and grading in accordance with egg grading standards approved by the United States government as of July 1, 1985, pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq.

7. *"Nest run eggs"* means eggs which have not been denatured, candled, graded, processed or labeled.

8. *"Package"* means the same as defined in section 189.1.

9. *"Producer"* means a person who owns layer type chickens.

10. *"Retailer"* means a person who sells eggs directly to consumers except a producer who sells eggs under the provisions of section 196.4.

[C24, 27, 31, 35, 39, §**3107;** C46, 50, 54, §196.7; C58, 62, 66, 71, 73, 75, §196.3, 196.11; C77, 79, 81, §196.1]

85 Acts, ch 195, §20; 95 Acts, ch 7, §1, 2

Further definitions, see §189.1

196.2 Enforcement.

The department shall enforce this chapter, and may adopt rules pursuant to chapter 17A and consistent with regulations of the United States government as they exist on July 1, 1985, pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq., and the Egg Products Inspection Act of 1970, 21 U.S.C. § 1044 et seq.

[C24, 27, 31, 35, 39, §**3111;** C46, 50, 54, §196.11; C58, 62, 66, 71, 73, 75, 77, 79, 81, §196.2]

85 Acts, ch 195, §21; 95 Acts, ch 7, §3

196.3 Egg handler's license and fee.

Every egg handler shall obtain an annual license from the department. The fee for the license shall be determined on the basis of the total number of eggs purchased or handled during the preceding month of April in each calendar year as follows:

1. Less than one hundred twenty-five cases $15.00

2. One hundred twenty-five cases or more but less than two hundred fifty cases $35.00

3. Two hundred fifty cases or more but less than one thousand cases $50.00

4. One thousand cases or more but less than five thousand cases $100.00

5. Five thousand cases or more but less than ten thousand cases $175.00

6. Ten thousand cases or more $250.00

The license shall expire one year after its date of issue. For the purpose of determining fees, a case shall be thirty dozen eggs. All fees collected shall be remitted to the treasurer of state for deposit in the general fund of the state.

If an egg handler is not operating during the month of April, the department shall estimate the volume of eggs purchased or handled, or both, and may revise the fee based on three months of operation.

[C24, 27, 31, 35, 39, §**3101, 3103;** C46, 50, 54, §196.1, 196.3; C58, 62, 66, 71, 73, 75, §196.4, 196.6; C77, 79, 81, §196.3]

196.4 Producers and hatcheries exempt.

Producers who sell eggs produced exclusively by their own flocks directly to handlers, or to consumers, shall not be required to demonstrate to the department or the United States department of agriculture inspector their capability to perform candling and grading.

A hatchery shall obtain an egg handler's license pursuant to section 196.3 if it purchases eggs which are not used for hatching purposes.

[C24, 27, 31, 35, 39, §**3102;** C46, 50, 54, §196.2; C58, 62, 66, 71, 73, 75, §196.5; C77, 79, 81, §196.4]

196.5 Candling and grading capability.

Each person who candles and grades eggs shall demonstrate to the satisfaction of the department or the United States department of agriculture inspector, the capability to perform candling and grading.

[C24, 27, 31, 35, 39, §**3109;** C46, 50, 54, §196.9; C58, 62, 66, 71, 73, 75, §196.7, 196.8; C77, 79, 81, §196.5]

196.6 Candling and grading room.

An egg handler's license shall be obtained from the department for each location at which eggs will be candled and graded. Before a license is issued for each location candling eggs, the department shall make a careful survey of the premises and determine that the premises contain proper facilities for candling and grading.

[C24, 27, 31, 35, 39, §**3109;** C46, 50, 54, §196.6, 196.9; C58, 62, 66, 71, 73, 75, §196.13; C77, 79, 81, §196.6]

196.7 Candling and grading prior to sale.

All eggs offered for sale by an egg handler to a retailer, an establishment or a consumer, shall be candled and graded.

[C24, §3108; C27, 31, 35, §3108, 3112-b1; C39, §**3112.1;** C46, 50, 54, §196.8, 196.13; C58, 62, 66, 71, 73, 75, §196.12, 196.14; C77, 79, 81, §196.7]

196.8 Quality — storage.

1. All eggs offered for sale to an establishment must be no lower than United States department of agriculture consumer grade "B". From the time of candling and grading until they reach the consumer, all eggs designated for human consumption shall be held at a temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius ambient temperature. The forty-five degrees Fahrenheit or seven degrees Celsius ambient temperature requirement applies to any place or room in which eggs are stored, except inside a vehicle during transportation where the ambient temperature may exceed forty-five degrees Fahrenheit or seven degrees Celsius, provided the transport vehicle is equipped with refrigeration units capable of delivering air at a temperature not greater than forty-five degrees Fahrenheit or seven degrees Celsius and capable of cooling the vehicle to a temperature not greater than forty-five degrees Fahrenheit or seven degrees Celsius. All shell eggs shall be kept from freezing.

2. Notwithstanding subsection 1, eggs gathered for sale at a poultry show from fowl exhibited at the show, which show has received financial assistance from the state in prior fiscal years, shall be exempt from the storage temperature and consumer grade quality requirements contained in subsection 1.

[C27, 31, 35, §3112-b1; C39, §**3112.1;** C46, 50, 54, §196.13; C58, 62, 66, 71, 73, 75, §196.14; C77, 79, 81, §196.8]

97 Acts, ch 192, §1; 2001 Acts, ch 176, §15

196.9 Eggs unfit for human food.

Eggs determined to be unfit for human food under title 21, section 1034 of the United States Code as amended to July 1, 1985 shall not be bought or sold or offered for purchase or sale by any person unless the eggs are denatured so that they cannot be used for human food.

[C24, 27, 31, 35, 39, §**3104, 3105, 3108;** C46, 50, 54, §196.4, 196.5, 196.8; C58, 62, 66, 71, 73, 75, §196.10; C77, 79, 81, §196.9]

85 Acts, ch 195, §22

196.10 Labeling.

Sections 189.9 to 189.12 shall apply to the labeling of packaged eggs which have been candled and graded if not inconsistent with the provisions of this chapter. All cases of loose packed eggs sold in this state shall identify the egg handler's name or license number or United States department of agriculture plant number, and, the grade of the eggs contained in the case. Each carton containing eggs for retail sale in Iowa which have been candled and graded shall be marked with the grade and size of the eggs contained, the date they were packed, and the name and address of the distributor or packer.

[C24, 27, 31, 35, 39, §**3110;** C46, 50, 54, §196.10; C58, 62, 66, 71, 73, 75, §196.16; C77, 79, 81, §196.10]

196.11 Storage.

The provisions of section 189.28 shall not apply to eggs.

[C58, 62, 66, 71, 73, 75, §196.19; C77, 79, 81, §196.11]

196.12 Transportation.

Vehicles used to transport eggs from the point of production to an egg handler or between handlers shall be kept in sanitary condition and shall be enclosed. However, this section shall not apply to producers transporting their own eggs to a handler.

[C58, 62, 66, 71, 73, 75, §196.20; C77, 79, 81, §196.12]

196.13 Records.

Handlers shall keep a record for three years of each of their purchases and sales of eggs, including the date of the transaction, the names of the parties, the grade, or nest run, and the quantity of eggs being purchased or sold.

[C77, 79, 81, §196.13]

196.14 Penalty.

Any person who violates a provision of this chapter shall be guilty of a simple misdemeanor. In addition, if the offender is a handler or a retailer, the court for the third offense shall suspend the offender's license for thirty days; for the fourth and any subsequent offense, such license shall be revoked for a period of one year.

[C58, 62, 66, 71, 73, 75, §196.18; C77, 79, 81, §196.14]

CHAPTER 196A

IOWA EGG COUNCIL

Transferred to chapter 184;
98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13
Former §196A.25 repealed by
98 Acts, ch 1038, §14

CHAPTER 197

POULTRY AND DOMESTIC FOWLS

Meat and poultry inspection, chapter 189A

197.1 License.
197.2 Fee.
197.3 Record.
197.4 Inspection of.
197.5 Enforcement.
197.6 Violations.

197.1 License.

Every person, partnership, or corporation engaged in the business of buying for the market, poultry or domestic fowls from the producer thereof, shall obtain a license from the department for each establishment at which said business is conducted.

The word *"producer"* as herein used shall include anyone not a licensed dealer who has acquired such poultry or domestic fowls other than through a licensed dealer.

[C27, 31, 35, §3112-b2; C39, §**3112.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.1]

Further definitions, see §189.1

197.2 Fee.

The license fee shall be three dollars per annum, and each license shall expire on March 1 after the date of issue.

[C27, 31, 35, §3112-b3; C39, §**3112.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.2]

197.3 Record.

Each licensee shall keep such records as the department shall require, as to date of purchase, name and residence of seller and number and description of such poultry or domestic fowls purchased from the producer.

[C27, 31, 35, §3112-b4; C39, §**3112.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.3]

197.4 Inspection of.

Such records as are required by the department to be kept by such licensee shall be open to inspection by any peace officer at any reasonable time.

[C27, 31, 35, §3112-b5; C39, §**3112.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.4]

197.5 Enforcement.

The department shall be charged with the duty of the enforcement of this chapter.

[C27, 31, 35, §3112-b6; C39, §**3112.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.5]

197.6 Violations.

Any person who shall violate the provisions of this chapter shall, for each offense, be deemed guilty of a simple misdemeanor.

[C27, 31, 35, §3112-b7; C39, §**3112.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.6]

CHAPTER 198

COMMERCIAL FEED

198.1 Short title.
198.2 Enforcing official.
198.3 Definitions.
198.4 Licenses.
198.5 Labeling.
198.6 Misbranding.
198.7 Adulteration.
198.8 Prohibited acts.
198.9 Inspection fees and reports.
198.10 Rules.

198.11 Inspection, sampling and analysis.
198.12 Detained commercial feeds.
198.13 Penalties.
198.14 Co-operation with other entities.
198.15 Publication.

198.1 Short title.

This chapter shall be known as the *"Iowa Commercial Feed Law"*.

[C66, 71, 73, 75, 77, 79, 81, §198.1]
90 Acts, ch 1165, §1

198.2 Enforcing official.

This chapter shall be administered by the secretary of agriculture.

[C66, 71, 73, 75, 77, 79, 81, §198.2]

198.3 Definitions.

For the purposes of this chapter:

1. *"Brand name"* means any word, name, symbol, or device or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others.

2. *"Broker"* means a person, other than a licensed manufacturer, who distributes commercial feed or commercial feed ingredients to a manufacturer.

3. *"Commercial feed"* means all materials or a combination of materials which are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of section 198.7, subsection 1, are exempt. The secretary by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 198.7, subsection 1.

4. *"Contract feeder"* means a person who as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product.

5. *"Customer-formula feed"* means commercial feed which consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

6. *"Distribute"* means either of the following:

a. To offer for sale, sell, exchange, or barter commercial feed.

b. To supply, furnish, or otherwise provide commercial feed to a contract feeder.

7. *"Distributor"* means any person who distributes.

8. *"Drug"* means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

9. *"Feed ingredient"* means each of the constituent materials making up a commercial feed.

10. *"Label"* means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

11. *"Labeling"* means all labels and other written, printed or graphic matter upon a commercial feed or any of its containers or wrappers or, accompanying such commercial feed.

12. *"Manufacture"* means to grind, mix or blend or further process a commercial feed for distribution.

13. *"Mineral feed"* means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

14. *"Official sample"* means a sample of feed taken by the secretary or the secretary's agent in accordance with the provisions of section 198.11, subsection 3, 5 or 6.

15. *"Percent"* or *"percentages"* means percentages by weight.

16. *"Pet"* means any domesticated animal normally maintained in or near the household of the owner thereof.

17. *"Pet food"* means any commercial feed prepared and distributed for consumption by dogs or cats.

18. *"Product name"* means the name of the commercial feed which identifies it as to kind, class, or specific use.

19. *"Specialty pet"* means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

20. *"Specialty pet food"* means any commercial feed prepared and distributed for consumption by specialty pets.

21. *"Ton"* means a net weight of two thousand pounds avoirdupois.

[S13, §5077-a8; C24, 27, 31, 35, 39, §**3113;** C46, 50, 54, 58, 62, §198.1; C66, 71, 73, 75, 77, 79, 81,

§198.3]

86 Acts, ch 1245, §642; 90 Acts, ch 1165, §2 – 4; 91 Acts, ch 97, §24; 98 Acts, ch 1046, §1

Further definitions, see §189.1

198.4 Licenses.

1. This section shall apply to any person:

a. Who manufactures a commercial feed within the state.

b. Who distributes a commercial feed in or into the state.

c. Whose name appears on the label of a commercial feed as guarantor.

The person shall obtain a license, for each facility which distributes in or into the state, authorizing the person to manufacture or distribute commercial feed before the person engages in such activity. Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for the tonnage inspection fee due under section 198.9 is not required to obtain a license.

A broker shall not distribute a commercial feed in this state without first obtaining a license from the secretary issued on forms provided by the secretary. The forms must identify the broker's name and place of business.

2. A person obtaining a license under this section shall pay to the secretary a license fee of ten dollars. Fees relating to the issuance of licenses shall be paid by July 1 of each year.

[S13, §5077-a9; C24, 27, 31, 35, 39, §**3117;** C46, 50, 54, 58, 62, §198.7; C66, 71, 73, §198.4, 198.5; C75, 77, 79, 81, §198.4]

90 Acts, ch 1165, §5; 98 Acts, ch 1046, §2

198.5 Labeling.

A commercial feed shall be labeled as follows:

1. In case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:

a. The net weight.

b. The product name and the brand name, if any, under which the commercial feed is distributed.

c. The guaranteed analysis stated in such terms as the secretary by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.

d. An ingredient statement containing the common or usual name of each ingredient used in the manufacture of the commercial feed. However, the secretary by rule may permit the use of a collective term for a group of ingredients which perform a similar function, or the secretary may exempt such commercial feeds, or any group of them, from this requirement if the secretary finds that a statement is not required in the interest of consumers.

e. The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

f. Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the secretary may require by rule as necessary for their safe and effective use.

g. Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the commercial feed.

2. In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip or other shipping document, bearing the following information:

a. Name and address of the manufacturer.

b. Name and address of the purchaser.

c. Date of delivery.

d. The product name and brand name, if any, and the net weight of each commercial feed used in the mixture, and the net weight of each other ingredient used.

e. Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the secretary may require by rule as necessary for their safe and effective use.

f. Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the customer-formula feed.

g. If a drug-containing product is used, information relating to the purpose of the medication in the form of a claim statement, plus the established name of each active drug ingredient and the level of each drug used in the final mixture.

[S13, §5077-a6, -a7; SS15, §5077-a6, -a7; C24, 27, 31, 35, 39, §**3114 – 3116;** C46, 50, 54, 58, 62, §198.2, 198.5, 198.6; C66, 71, 73, §198.6; C75, 77, 79, 81, §198.5]

90 Acts, ch 1165, §6, 7; 91 Acts, ch 97, §25

198.6 Misbranding.

A commercial feed shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If it is distributed under the name of another commercial feed.

3. If it is not labeled as required in section 198.5.

4. If it is not a commercial feed as defined in section 198.3.

5. If any word, statement, or other information required by this chapter to appear on the label is not prominently and conspicuously placed thereon and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

[C66, 71, 73, §198.9; C75, 77, 79, 81, §198.6]

90 Acts, ch 1165, §8

198.7 Adulteration.

A commercial feed shall be deemed to be adulterated:

1. *a.* If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health.

b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal Food, Drug, and Cosmetic Act, other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive.

c. If it is, or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal Food, Drug, and Cosmetic Act.

d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408, subparagraph *"a"* of the federal Food, Drug, and Cosmetic Act, provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agriculture commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408, subparagraph *"a"* of the federal Food, Drug, and Cosmetic Act.

e. If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal Food, Drug, and Cosmetic Act.

f. If it is, or it bears or contains a new animal drug which is unsafe within the meaning of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 512.

2. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

3. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

4. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules promulgated by the secretary to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such rules, the secretary shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the federal Food, Drug, and Cosmetic Act, unless the secretary determines that they are not appropriate to the conditions which exist in this state.

5. If it contains viable weed seeds in amounts exceeding the limits which the secretary shall establish by rule.

[S13, §5077-a13; C24, 27, 31, 35, §3114-d2, 3126; C39, §**3114.2;** C46, 50, 54, 58, 62, §198.4, 198.13; C66, 71, 73, §198.8; C75, 77, 79, 81, §198.7]

90 Acts, ch 1165, §9

198.8 Prohibited acts.

It shall be unlawful for any person to:

1. Manufacture or distribute any commercial feed that is adulterated or misbranded.

2. Adulterate or misbrand any commercial feed.

3. Distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls, which are adulterated within the meaning of section 198.7, subsection 1.

4. Remove or dispose of a commercial feed in violation of an order under section 198.12.

5. Fail or refuse to obtain a license in accordance with section 198.4.

6. Violate section 198.13, subsection 6.

7. Fail to pay inspection fees and file reports as required by section 198.9.

[C75, 77, 79, 81, §198.8]

90 Acts, ch 1165, §10

198.9 Inspection fees and reports.

1. An inspection fee to be fixed annually by the secretary at a rate of not more than sixteen cents per ton, shall be paid on commercial feed distributed in this state by the person who first distributes the commercial feed, subject to the following:

a. The inspection fee is not required on the first distribution, if made to a qualified buyer who, with approval from the secretary, shall become responsible for the fee.

b. A fee shall not be paid on a commercial feed if the payment has been made by a previous distributor.

c. A fee shall not be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as components of the customer-formula feeds.

d. A minimum semiannual fee shall be twenty dollars.

e. A licensed manufacturer shall pay the inspection fee on commercial feed that is fed to livestock owned by the licensee.

In the case of a pet food or specialty pet food, which is distributed in this state in packages of ten pounds or less, each product shall be registered and an annual registration fee of fifty dollars for each product shall be paid by January 1 of each year in lieu of the per ton rate as provided in this subsection. The inspection fee shall apply to those same products distributed in packages of more than ten pounds.

2. Each person who is liable for the payment of such fee shall:

a. File, not later than the last day of January and July of each year, a semiannual statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding six months and upon filing the statement shall pay the inspection fee at the rate stated in subsection 1. Inspection fees which are due and owing and have not been remitted to the secretary within fifteen days following the due date shall have a delinquency fee of ten percent of the amount due or fifty dollars, whichever is greater, added to the amount due when payment is finally made. The assessment of this delinquency fee does not prevent the department from taking other actions as provided in this chapter.

b. Keep such records as may be necessary or required by the secretary to indicate accurately the tonnage of commercial feed distributed in this state, and the secretary shall have the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this section is sufficient cause for cancellation of the license of the distributor.

3. Fees collected shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. Moneys deposited under this section shall be used for the payment of the costs of inspection, sampling, analysis, supportive research, and other expenses necessary for the administration of this chapter.

If there is an unencumbered balance of funds from the fees deposited under this section on June 30 of any fiscal year equal to or exceeding one hundred thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection 1 for the next fiscal year in such amount as will result in an ending estimated balance of the fees deposited less costs paid for from those fees for June 30 of the next fiscal year of one hundred thousand dollars.

[S13, §5077-a10; C24, 27, 31, 35, 39, §**3118 – 3121;** C46, 50, 54, 58, 62, §198.8 – 198.12; C66, 71, 73, §198.7; C75, 77, 79, 81, §198.9]

83 Acts, ch 122, §1; 90 Acts, ch 1165, §11 – 14; 91 Acts, ch 97, §26; 91 Acts, ch 260, §1216; 93 Acts, ch 131, §7; 94 Acts, ch 1107, §45; 95 Acts, ch 42, §1; 98 Acts, ch 1032, §7

198.10 Rules.

1. The secretary may adopt rules for commercial feeds and pet foods as specifically authorized in this chapter and other reasonable rules necessary in order to carry out the purpose and intent of this chapter or to secure the efficient enforcement of this chapter. In the interest of uniformity the secretary shall adopt any rule based on regulations promulgated under the authority of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., provided the secretary has the authority under this chapter to adopt the rule. However, the secretary is not required to adopt such a rule, if the secretary determines that the rule would be inconsistent with this chapter or not appropriate to conditions which exist in this state.

2. Before the issuance, amendment, or repeal of a rule authorized by this chapter, the secretary shall publish the proposed rule, amendment, or notice to repeal an existing rule in a manner reasonably calculated to give interested parties, including all current licensees, adequate notice, and shall afford all interested persons an opportunity to be heard, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the secretary shall take appropriate action to issue the proposed rule or to amend or repeal an existing rule. However, if the secretary adopts rules based on regulations promulgated under the authority of the federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by the United States secretary of health and human services shall be adopted automatically under this chapter without regard to publication of the notice required by this subsection, unless the secretary by order specifically determines that an amendment or modification shall not be adopted.

[C66, 71, 73, §198.11; C75, 77, 79, 81, §198.10]

90 Acts, ch 1165, §15; 91 Acts, ch 97, §27; 95 Acts, ch 42, §2

198.11 Inspection, sampling and analysis.

1. For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the secretary, upon presenting appropriate credentials, and a written notice to the owner, operator or agent in charge, are authorized:

a. To enter, during normal business hours, any factory, warehouse or establishment within the state in which commercial feeds are manufactured, processed, packed or held for distribution, or to enter any vehicle being used to transport or hold such feed.

b. To inspect at reasonable times and within

reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under section 198.7, subsection 4.

2. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

3. If the officer or employee making such inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the officer or employee shall give to the owner, operator or agent in charge a receipt describing the samples obtained.

4. If the owner of any factory, warehouse, or establishment described in subsection 1, or the owner's agent, refuses to admit the secretary or the secretary's agent to inspect in accordance with subsections 1 and 2, the secretary may obtain from any state court a warrant directing such owner or the owner's agent to submit the premises described in such warrant to inspection.

5. For the purpose of the enforcement of this chapter, the secretary or the secretary's duly designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

6. Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

7. The results of all analyses of official samples shall be forwarded by the secretary to the person named on the label. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty days following receipt of the analysis the secretary shall furnish to the licensee a portion of the sample concerned.

8. The secretary, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in section 198.3, subsection 14, and obtained and analyzed as provided for in subsections 3, 5 and 6.

[C66, 71, 73, §198.10; C75, 77, 79, 81, §198.11]
90 Acts, ch 1165, §16

198.12 Detained commercial feeds.

1. When the secretary or the secretary's authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the rules adopted under this chapter, the secretary or agent may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the secretary or the court. The secretary shall release the lot of commercial feed so withdrawn when the provisions and rules have been complied with. If compliance is not obtained within thirty days, the secretary may begin, or upon request of the distributor shall begin, proceedings for condemnation.

2. Any lot of commercial feed not in compliance with said provisions and rules shall be subject to seizure on complaint of the secretary to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter and order the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state, provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter.

[C66, 71, 73, 75, 77, 79, 81, §198.12]
91 Acts, ch 97, §28

198.13 Penalties.

1. Any person convicted of violating any of the provisions of this chapter or who shall impede, hinder or otherwise prevent, or attempt to prevent, said secretary or the secretary's authorized agent in performance of that person's duty in connection with the provisions of this chapter, shall be guilty of a simple misdemeanor.

2. Nothing in this chapter shall be construed as requiring the secretary or the secretary's representative to:

a. Report for prosecution.

b. Institute seizure proceedings.

c. Issue a withdrawal from distribution order, as a result of minor violations of the chapter, or when the secretary or representative believes the public interest will best be served by suitable notice of warning in writing.

3. It shall be the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the secretary reports a violation for such prosecution, an opportunity shall be given

the distributor to present the distributor's view to the secretary.

4. The secretary may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies at law. If granted, the injunction shall be issued without bond.

5. Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within forty-five days thereafter bring action in the district court for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs or prohibitory or mandatory injunctions.

6. Any person who uses to the person's own advantage, or reveals to other than the secretary, or officers of the department or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this chapter, concerning any method, records, formulations or processes which as a trade secret is entitled to protection, is guilty of a serious misdemeanor. This prohibition shall not be deemed as prohibiting the secretary, or the secretary's duly authorized agent, from exchanging information of a regulatory nature with appointed officials of the United States government, or of other states, who are similarly prohibited by law from revealing this information.

[C66, 71, 73, 75, 77, 79, 81, §198.13]

198.14 Co-operation with other entities.

The secretary may co-operate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this chapter.

[C75, 77, 79, 81, §198.14]

198.15 Publication.

The secretary shall publish at least annually, in forms the secretary deems proper, information concerning the sales of commercial feeds, together with data on their production and use as the secretary considers advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed on the label. However, the information concerning production and use of commercial feed shall not disclose the operations of any person.

[C66, 71, 73, §198.14; C75, 77, 79, 81, §198.15]
91 Acts, ch 97, §29

CHAPTER 199

AGRICULTURAL SEEDS

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199.1 Definitions.

For the purpose of this chapter or as used in labeling of seed:

1. *"Advertisement"* means all representations, other than those on the label, relating to seed within the scope of this chapter.

2. *"Agricultural seed"* means grass, forage, cereal, oil, fiber, and any other kind of crop seed commonly recognized within this state as agricultural seed, lawn seed, vegetable seed, or seed mixtures. Agricultural seed may include any additional seed the secretary designates by rules.

3. *"Certifying agency"* means an agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States secretary of agriculture to assure genetic purity and identity of the seed certified, or an

agency of a foreign country determined by the United States secretary of agriculture to adhere to the procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies in the United States.

4. *"Coated seed"* means seed that has been encapsulated or covered with a substance other than those defined as *"inoculated seed"* or *"treated seed"*. Pelleted seed is a subclass of *"coated seed"*.

5. *"Conditioning"* means cleaning to remove chaff, sterile florets, immature seed, weed seed, inert matter, and other crop seed; scarifying; blending to obtain uniform quality; or any other operation which may change the purity or germination of the seed and require retesting to determine the quality of the seed.

6. *"Cultivar"* or *"variety"* means a cultivated subdivision of a kind of plant that may be characterized by growth habits, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind.

7. *"Hybrid"* means the first generation seed produced by controlled pollination of two inbred lines to produce a single cross; an inbred line and a single cross of two unrelated inbred lines to produce a three-way cross; an inbred line and a single cross of two related lines to produce a modified single cross; two single crosses to produce a double cross; an inbred line or a single cross with an open-pollinated or synthetic cultivar to produce a modified cultivar cross; or a cross of two open-pollinated or synthetic cultivars to produce a cultivar cross. The second or subsequent generation from such crosses are not hybrids. Hybrid designations shall be treated as cultivar names.

8. *"Inoculant for leguminous plants"* means a bacterial culture, or material containing bacteria, that is represented as causing the formation of nodules and aiding the growth of leguminous plants by the fixation of nitrogen.

9. *"Inoculated seed"* means seed to which has been added a substance containing the cells, spores or mycelia of microorganisms for which a claim is made.

10. *"Kind"* means one or more related species or subspecies which singly or collectively are known by one common name.

11. *"Labeling"* means all labels and other written, printed, or graphic representations, in any form, accompanying and pertaining to seed, whether in bulk or in containers, and includes invoices.

12. *"Mixture"* or *"blend"* means a combination of seed of more than one kind or variety if present in excess of five percent of the whole.

13. *"Multiline cultivar"* means a planned combination of two or more near-isogenic lines of a normally self-fertilizing kind of crop.

14. *"Noxious weed seed"* shall be divided into two classes, *"primary noxious weed seed"* and *"secondary noxious weed seed"* which are defined in paragraphs *"a"* and *"b"* of this subsection. The secretary, upon the recommendation of the dean of agriculture, Iowa State University of science and technology, shall adopt as a rule, after public hearing, pursuant to chapter 17A, the list of seed classified as *"primary noxious weed seed"* and *"secondary noxious weed seed"*.

a. *"Primary noxious weed seed"* are the seed of perennial weeds that reproduce by seed and by underground roots or stems and which, when established, are highly destructive and difficult to control in this state by good cultural practices. For the purpose of this chapter and the sale of seed, primary noxious weeds in this state are the seeds of:

(1) Quack grass — Agropyron repens (L.) Beauv.

(2) Canada thistle — Cirsium arvense (L.) Scop.

(3) Perennial sow thistle — Sonchus arvensis L.

(4) Perennial pepper grass (hoary cress) — Cardaria draba (L.) Desv.

(5) European morning-glory (field bindweed) — Convolvulus arvensis L.

(6) Horse nettle — Solanum carolinense L.

(7) Leafy spurge — Euphorbia esula L.

(8) Russian knapweed — Centaurea repens L.

b. *"Secondary noxious weed seed"* are the seed of weeds that are very objectionable in fields, lawns, or gardens in this state, but can be controlled by good cultural practices. For the purpose of this chapter and the sale of seed, the secondary noxious weed seeds in this state are the seeds of:

(1) Wild carrot — Daucus carota L.

(2) Sour dock (curly dock) — Rumex crispus L.

(3) Smooth dock — Rumex altissimus Wood.

(4) Sheep sorrel (red sorrel) — Rumex acetosella L.

(5) Butterprint (velvet leaf) — Abutilon theophrasti Medic.

(6) Mustards — Brassica juncea (L.) Coss., Sinapis arvensis L. and B. nigra (L.) Koch.

(7) Cocklebur — Xanthium strumarium L.

(8) Buckhorn — Plantago lanceolata L.

(9) Dodders — Cuscuta species.

(10) Giant foxtail — Setaria faberii Herrm.

(11) Poison hemlock — Conium maculatum.

(12) Wild sunflower — Wild strain of Helianthus annus (L.)

(13) Puncture vine — Tribulus terrestris.

15. *"Permit holder"* is a person who has obtained a permit from the department as required under sections 199.15 and 199.16.

16. *"Person"* means an individual, partnership, corporation, company, society, or association.

17. *"Purity"* means the pure seed percentage by weight, exclusive of inert matter and of other agricultural or weed seed which are distinguishable by their appearance from the crop seed in question.

18. *"Record"* means all information relating to a shipment of agricultural seed and includes a file

sample of each lot of seed.

19. *"Registered seed technologist"* is a person who has attained registered membership in the society of commercial seed technologists through qualifying tests and experience as required by this society.

20. *"Tolerance"* means the allowable deviation from any figure used on a label to designate the percentage of any component or the number of seeds given for the lot in question and is based on the law of normal variation from a mean. The secretary shall prepare tables of tolerances allowable in the enforcement of this chapter and may be guided in the preparation by the regulations under the federal Seed Act, 7 C.F.R., sec. 201.59 et seq.

21. *"Treated seed"* means agricultural seed that has been given an application of a substance, or subjected to a procedure, for which a claim is made or which is designed to reduce, control or repel disease organisms, insects, or other pests which attack seed or seedlings.

22. *"Vegetable seed"* means the crops which are grown in gardens or truck farms and are generally sold under the name of vegetable or herb seed in this state.

23. *"Weed seed"* means the seed of all plants listed as weeds in this chapter or listed as weeds in the rules of the department or commonly recognized as weeds in this state.

The Iowa secretary of agriculture shall, by rule, define the terms *"breeder"*, *"foundation"*, *"registered"*, *"certified"* and *"inbred"*, as used in this chapter.

[S13, §5077-a14 – a17; C24, 27, 31, §3127, 3128; C35, §3137-e1; C39, §**3127, 3128, 3137.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.1, 199.5; 82 Acts, ch 1191, §1]

Weeds, chapter 317
Further definitions, see §189.1

199.2 Dean of agriculture as advisor.

The dean of agriculture of Iowa State University of science and technology or the dean's designee shall be the technical advisor to the secretary in the administration of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.2; 82 Acts, ch 1191, §2]

199.3 Labeling of seed.

Each container of agricultural or vegetable seed which is sold, offered for sale, exposed for sale, or transported within this state shall be labeled according to the following schedule:

1. Seed for sowing purposes shall be labeled as follows:

a. Agricultural or vegetable seed that is treated, inoculated, or coated shall contain a word or statement indicating that the treatment, inoculation, or coating has been done. A separate label may be used.

b. If treated, the label shall indicate the commonly accepted chemical or abbreviated chemical name of the applied substance or substances or a description of the type and purpose of procedure used. If the substance in the amount present with the seed is harmful to human or vertebrate animals, the label shall bear a caution statement such as "Do not use for food, feed, or oil purposes". In addition, for highly toxic substances, a poison statement or symbol shall be shown on the label.

c. If the seed is inoculated, the label shall indicate the month and year beyond which the inoculant is not claimed to be effective.

d. If the seed is coated, the label shall show the percentage by weight in the container of pure seed, inert matter, coating material, other crop seed, and weed seed. The percentage of germination shall be labeled on the basis of a determination made on at least four hundred pellets or capsules, whether or not they contain seed.

e. All seed in package or wrapped form which are required to be labeled, unless otherwise provided, shall conform to the requirements of sections 189.9 and 189.11.

2. Except for seed mixtures for lawn or turf purposes, agricultural seed shall bear a label indicating:

a. The name of the kind or kind and variety for each agricultural seed present in excess of five percent of the whole and the percentage by weight of each. If the variety of those kinds generally labeled as to variety is not stated, the label shall show the name of the kind and the words, "variety not stated". Hybrids shall be labeled as hybrids. Seed shall not be labeled or advertised under a trademark or brand name in a manner that may create the impression that the trademark or brand name is a variety name.

b. Lot number or other lot identification.

c. State or foreign country of origin, if known, of alfalfa and red clover. If the origin is unknown, the fact shall be stated.

d. Percentage by weight of all weed seed.

e. The name and rate of occurrence per unit of weight of each kind of secondary noxious weed seed present.

f. Percentage by weight of agricultural seed which may be designated as "other crop seed" other than those required to be named on the label.

g. Percentage by weight of inert matter.

h. For each named agricultural seed:

(1) Percentage of germination, exclusive of hard seed.

(2) Percentage of hard seed, if present.

(3) The calendar month and year the test was completed to determine the percentages.

Following (1) and (2), the "total germination and hard seed" may be stated as such, if desired.

i. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

3. For seed mixtures for lawn or turf purposes, the label shall indicate:

a. The word "mixed" or "mixture" along with the name of the mixture.

b. The heading "pure seed" and "germination" or "germ" where appropriate.

c. Commonly accepted name of kind or kind and variety of each turf seed component in excess of five percent of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form.

d. Name and percentage by weight of other agricultural seed than those required to be named on the label which shall be designated as "other crop seed." If the mixture contains no "other crop seed" that fact may be indicated by the words "contains no other crop seed."

e. Percentage by weight of inert matter.

f. Percentage by weight of all weed seed. Maximum weed seed content not to exceed one percent by weight.

g. The name and rate of occurrence per unit of weight of each kind of secondary noxious weed seed present.

h. For each turf seed named under paragraph *"c"*:

(1) Percentage of germination, exclusive of hard seed.

(2) Percentage of hard seed, if present.

(3) Calendar month and year the test was completed to determine such percentages. The oldest current test date applicable to any single kind in the mixture shall appear on the label.

i. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within the state.

4. The labeling requirements for vegetable seed sold from containers of more than one pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser. Packets of vegetable seed prepared for use in home gardens or household plantings or vegetable seed in preplanted containers, mats, tapes, or other planting devices, shall bear labels with the following information:

a. Name of kind and variety of seed.

b. Lot identification.

c. The year for which the seed was packed for sale or the percentage of germination and the calendar month and year the test to determine such percentage was completed.

d. Name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within the state.

e. For seed which germinate less than the standard last established by the secretary in rules adopted under chapter 17A:

(1) Percentage of germination, exclusive of hard seed.

(2) Percentage of hard seed, if present.

(3) The words "below standard" in not less than eight point type.

f. For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seed from the medium, mat, tape, or device, a statement to indicate the minimum number of seed in the container.

g. The last date on which the variety of seed will normally germinate according to standards established by rules adopted by the department.

5. All other vegetable seed containers shall be labeled, indicating:

a. The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance.

b. Lot number or other lot identification.

c. For each named vegetable seed:

(1) Percentage germination exclusive of hard seed.

(2) Percentage of hard seed, if present.

(3) The calendar month and year the test was completed to determine such percentages.

Following (1) and (2) the "total germination and hard seed" may be stated as such, if desired.

d. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within the state.

6. Seed sold on or from the farm, which is exempt from the permit requirements by section 199.15, shall be labeled on the basis of tests performed by the Iowa State University of science and technology seed laboratory, department of agriculture and land stewardship seed laboratory, or a commercial seed laboratory personally supervised by a registered seed technologist. Tests for labeling shall be as provided in section 199.10.

[S13, §5077-a6, -a18, -a19, -a21; C24, 27, 31, 35, 39, §**3129, 3130, 3131, 3132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.3; 82 Acts, ch 1191, §3]

92 Acts, ch 1239, §34

199.4 Sales from bulk.

In case agricultural or vegetable seed is offered or exposed for sale in bulk or sold from bulk, the information required under section 199.3 may be supplied by a placard conspicuously displayed with the several required items thereon or a printed or written statement to be furnished to any purchaser of the seed.

[S13, §5077-a6; C24, 27, 31, 35, 39, §**3133;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.4; 82 Acts, ch 1191, §4]

199.5 Hybrid corn.

It is unlawful for any person to sell, offer or expose for sale, or falsely mark or tag, within the state any seed corn as hybrid unless it falls within the definition of hybrid in section 199.1.

[C35, §3137-e1; C39, §**3137.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.5; 82 Acts, ch 1191, §5]

199.6 Inoculant for legumes.

The container of any inoculant for leguminous plants which is sold, offered for sale, or exposed for sale within the state shall bear a label giving in the English language in legible letters the following information:

1. The kind or kinds of leguminous plants for which the contents are to be used.

2. The quantity of seed to which the contents are to be applied.

3. An expiry date after which the inoculant might be ineffective.

4. The name and place of business of the manufacturer or laboratory of origin, or alternately of the vendor only, if the vendor accepts responsibility for the accuracy of the declarations made in subsections 1, 2, and 3 of this section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.6]

199.7 Certified seed.

The classes of certified seed are breeder, foundation, registered, and certified and shall be recognized by the certifying agency.

It shall be unlawful for any person to sell, offer for sale, or expose for sale in the state:

1. Any agricultural seed, including seed potatoes, as a recognized class of certified seed unless:

a. Such seed has been certified by a duly constituted state authority or state association recognized by the Iowa secretary of agriculture.

b. Each container bears an official label approved by the certifying agency stating that the seed has met the certification requirements established by the certifying agency.

c. Each container of the certified class of certified seed bears a label blue in color with the word "certified" thereon.

d. Each container of the foundation and registered classes of certified seed bears a label with a color or colors approved by the certifying agency.

2. Any agricultural seed, including seed potatoes, with a blue label unless such seed is a class of certified seed.

[C35, §3137-g1, -g2; C39, §**3137.3, 3137.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.7; 82 Acts, ch 1191, §6]

199.8 Prohibited acts.

1. It is unlawful for a person to sell, transport, offer for sale, expose for sale, or advertise an agricultural or vegetable seed:

a. Unless the test to determine the percentage of germination as required by this chapter has been completed within nine months, excluding the month of the test, immediately prior to selling, transporting, offering, exposing, or advertising for sale. A retest is not required for seed in hermetically sealed containers or packages provided they have not reached the thirty-six month expiration date.

b. Not labeled in accordance with the provisions of this chapter, or having a false or misleading label.

c. For which there has been false or misleading advertising.

d. Consisting of or containing primary noxious weed seed, subject to recognized tolerances.

e. Consisting of or containing secondary noxious weed seed per weight unit in excess of the number prescribed by rules adopted under this chapter, or in excess of the number declared on the label attached to the container of the seed or associated with the seed.

f. Containing more than one and one-half percent by weight of all weed seed.

g. If any labeling, advertising, or other representation subject to this chapter represents the seed to be certified seed or any class thereof, unless:

(1) It has been determined by a seed certifying agency that the seed conforms to standards of varietal purity and identity as to kind in compliance with the rules and regulations of the agency.

(2) The seed bears an official label issued for the seed by a seed certifying agency stating that the seed is of a specified class and a specified kind or variety.

h. Labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a United States certificate of plant variety protection under the Plant Variety Protection Act, 7 U.S.C. sec. 2321 et. seq., specifies sale only as a class of certified seed. Seed from a certified lot may be labeled as to variety name and used in a blend, by or with the approval of the owner of the variety.

2. It is unlawful for a person to:

a. Detach, alter, deface, or destroy a label provided for in this chapter or the rules adopted under this chapter, or to alter or substitute seed in a manner that may defeat the purpose of this chapter.

b. Disseminate false or misleading advertisements concerning seed subject to this chapter.

c. Hinder or obstruct in any way an authorized person in the performance of duties under this chapter.

d. Fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order or tags attached thereto, except with express permission of the enforcing officer, and for the purpose specified thereby.

e. Use the word "trace" as a substitute for any statement which is required.

f. Use the word "type" in labeling in connection with the name of an agricultural seed variety.

3. It is unlawful for a person to sell, transport, offer for sale, expose for sale, or advertise screenings of any agricultural seed subject to this chapter, unless it is stated on the label if in containers

or on the invoice if in bulk, that they are not intended for seeding purposes. For the purpose of this subsection, *"screenings"* includes chaff, empty florets, immature seed, weed seed, inert matter, and other materials removed by cleaning from any agricultural seed subject to this chapter.

[S13, §5077-a15; C24, 27, 31, 35, 39, §**3137;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.8; 82 Acts, ch 1191, §7]

199.9 Exemptions.

1. Sections 199.3 and 199.8 do not apply to:

a. Seed or grain not intended for sowing purposes.

b. Seed in storage in, or consigned to, or for sale to, a seed cleaning or conditioning establishment for cleaning or conditioning; provided that any labeling or other representation which is made with respect to the unclean or unconditioned seed is subject to this chapter.

c. A carrier in respect to seed transported or delivered for transportation in the ordinary course of its business as a carrier provided that the carrier is not engaged in producing, conditioning, or marketing seed, and subject to this chapter.

2. A person is not subject to the penalties of this chapter for having sold, offered or exposed for sale in this state any agricultural seeds which were incorrectly labeled or represented as to kind, species, variety, or origin when those seeds cannot be identified by examination, unless the person has failed to obtain an invoice or genuine grower's declaration or other labeling information and to take other precautions as reasonable to ensure the identity. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed such as invoices and labels.

[S13, §5077-a20; C24, 27, 31, 35, 39, §**3136;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.9; 82 Acts, ch 1191, §8]

199.10 Testing methods — co-operation of facilities.

1. *Testing methods when seed is for sale.* Seed lots of all kinds of agricultural seed intended for sale in this state shall be tested in accordance with the association of official seed analysts' rules for testing seed or the regulations under the federal Seed Act. The tests required shall be:

a. Purity analysis.

b. Noxious weed examination.

c. Germination.

2. *Charges for testing.* Charges for seed testing by the Iowa State University or department of agriculture and land stewardship seed laboratory shall be determined by the Iowa State University laboratory. Separate fee schedules shall be published for:

a. Tests for seed dealers, permit holders and farmers who plan to sell seed.

b. Tests for out-of-state persons.

3. *Co-operation between the Iowa State University and the department of agriculture and land stewardship.* To furnish farmers and seed dealers with information as to seed quality and guide them in the proper labeling of seed for sale, these organizations shall:

a. Integrate seed testing so as to avoid unnecessary duplication of personnel and equipment. The department of agriculture and land stewardship seed laboratory shall be primarily concerned with seed testing for seed law enforcement purposes. The Iowa State University seed laboratory shall promote seed education and research and shall conduct service testing for farmers and seed dealers.

b. Exchange information which will be mutually beneficial to both agencies in matters pertaining to agricultural seed.

c. Guide seed testing by all individuals or organizations so as to promote uniformity of seed testing in Iowa.

[S13, §5077-a12; C24, 27, 31, 35, 39, §**3135;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.10; 82 Acts, ch 1191, §9 – 11]

85 Acts, ch 67, §21, 22

199.11 Authority of the department.

1. For the purpose of carrying out the provisions of this chapter, the department shall do all of the following:

a. Sample, inspect, analyze, and test agricultural seed, if the agricultural seed is transported, sold, offered, or exposed for sale within this state for sowing. The department shall perform these duties at a time and place and to an extent necessary to determine whether the agricultural seed is in compliance with this chapter. The department shall promptly notify the person who transported, sold, offered, or exposed the seed for sale, of a violation.

b. Adopt rules governing methods of sampling, inspecting, analyzing, testing, and examining agricultural seed. The rules shall include tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce under the federal seed Act and other rules or regulations necessary for the efficient enforcement of this chapter.

2. For the purpose of carrying out the provisions of this chapter, the department may:

a. Enter upon public or private premises during regular business hours in order to have access to commercial seed, subject to this chapter and departmental rules.

b. Issue and enforce a written or printed *"stop sale"* order to the owner or custodian of any lot of agricultural seed which the department believes is in violation of this chapter or departmental rules. The order shall prohibit further sale of the seed until the department has evidence of compli-

ance. However, the owner or custodian of the seed shall be permitted to remove the seed from a salesroom open to the public. Judicial review of the order may be sought in accordance with chapter 17A. However, notwithstanding chapter 17A, petitions for judicial review may be filed in the district court. This subsection does not limit the right of the department to proceed as authorized by other sections of this chapter.

c. Establish and maintain or make provision for seed testing facilities essential to the enforcement of this chapter. The department may employ qualified persons, and incur expenses necessary to comply with these provisions.

d. Cooperate with the United States department of agriculture in seed law enforcement.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.11]

92 Acts, ch 1239, §35; 93 Acts, ch 40, §1, 2

199.12 Seizure of unlawful seed.

Upon the recommendation of the secretary or the secretary's duly authorized agents, the court of competent jurisdiction in the area in which the seed is located shall cause the seizure and subsequent denaturing, conditioning, or destruction to prevent the use for sowing purposes of any lot of agricultural seed found to be prohibited from sale as set forth in section 199.8, provided that in no instance shall the denaturing, conditioning, or destruction be ordered without first having given the claimant of the seed an opportunity to apply to the court for the release of the seed.

[C35, §3137-g3; C39, §**3137.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.12; 82 Acts, ch 1191, §12]

199.13 Penalty.

A violation of this chapter is a simple misdemeanor. The department may institute criminal or civil proceedings in a court of competent jurisdiction to enforce this chapter. When in the performance of the secretary's duties in enforcing this chapter the secretary applies to a court for a temporary or permanent injunction restraining a person from violating or continuing to violate any of the provisions of this chapter or rules adopted under this chapter, the injunction is to be issued without bond and the person restrained by the injunction shall pay the costs made necessary by the procedure.

[C35, §3137-e2; C39, §**3137.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.13; 82 Acts, ch 1191, §13]

199.14 Enforcement.

It shall be the duty of the secretary of agriculture, and the secretary's agents, to enforce this chapter and of the county attorneys and of the attorney general of the state to co-operate with the secretary in the enforcement of this chapter.

[C35, §3137-g4; C39, §**3137.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.14]

199.15 Permit — fee — fraud.

A person shall not sell, distribute, advertise, solicit orders for, offer or expose for sale, agricultural or vegetable seed without first obtaining from the department a permit to engage in the business. A permit is not required of persons selling seeds which have been packed and distributed by a person holding and having in force a permit. A permit is not required of persons selling or advertising seed of their own production, provided that the seed is stored or delivered to a purchaser only on or from the farm or premises where grown. The fee for a new permit is ten dollars and the fee for a renewed permit is based on the gross annual sales of seeds in Iowa during the previous twelve-month period under the permit holder's label and all permits expire on the first day of July following date of issue. Permits shall be issued subject to the following fee schedule:

Gross sales of seeds		Fee
Not more than	$ 25,000	$30
Over $25,000 but not exceeding	50,000	60
Over $50,000 but not exceeding	100,000	90
Over $100,000 but not exceeding	200,000	120

For each additional increment of one hundred thousand dollars of sales in Iowa the fee shall increase by thirty dollars. The fee shall not exceed one thousand five hundred dollars for a permit holder.

After due notice given at least ten days prior to a date of hearing fixed by the secretary, the department may revoke or refuse to renew a permit issued under this section if a violation of this chapter or if intent to defraud is established. The failure to fulfill a contract to repurchase the seed crop produced from any agricultural seed, if the crop meets the requirements set forth in the contract and the standards specified in this chapter, is prima facie evidence of intent to defraud the purchaser at the time of entering into the contract. However, this does not apply when seed stock is furnished by the contractor to the grower at no cost.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.15; 82 Acts, ch 1191, §14]

88 Acts, ch 1272, §20

199.16 Permit holder's bond.

It is unlawful for the permit holder to enter into a contract with a grower who purchases agricultural seed in which the permit holder agrees to repurchase the seed crop produced from the purchased seed at a price in excess of the current market price, unless the permit holder has on file with the department a bond, in a penal sum of twenty-

five thousand dollars running to the state of Iowa, with sureties approved by the secretary, for the use and benefit of a person holding a repurchase contract who might have a cause of action of any nature arising from the purchase or contract. However, the aggregate liability of the surety to all purchasers of seed holding repurchase contracts shall not exceed the sum of the bond.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §199.16; 82 Acts, ch 1191, §15]

85 Acts, ch 84, §1

199.17 Records and seed samples.

A person whose name appears on the label as handling agricultural or vegetable seed subject to this chapter shall keep for a period of two years complete records of each lot of agricultural or vegetable seed handled and shall keep for one year a file sample of each lot of seed after final disposition of the lot. The records and samples pertaining to the shipments involved shall be accessible for inspection by the department during the customary business hours.

[82 Acts, ch 1191, §16]

CHAPTER 200

FERTILIZERS AND SOIL CONDITIONERS

200.1 Title.
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200.1 Title.

This chapter shall be known and may be cited by the short title of *"Iowa Fertilizer Law"*.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §200.1]

200.2 Enforcing official.

This chapter shall be administered by the secretary of agriculture, hereinafter referred to as the secretary.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §200.2]

200.3 Definitions of words and terms.

When used in this chapter:

1. The term *"anhydrous ammonia"* means the compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume.

2. *"Anhydrous ammonia plant"* means a facility used for the manufacture or distribution of the compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume.

3. The term *"brand"* means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

4. The term *"bulk fertilizer"* shall mean commercial fertilizer delivered to the purchaser in the solid, liquid, or gaseous state, in a nonpackaged form to which a label cannot be attached.

5. The term *"commercial fertilizer"* includes fertilizer and fertilizer materials and fertilizer-pesticide mixtures.

6. The term *"distributor"* means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer, or who offers for sale, sells, barters, or otherwise distributes commercial fertilizer in this state.

7. *"Established date of operation"* means the date on which an anhydrous ammonia plant commenced operating. If the physical facilities of the plant are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of the date of commencement of the expanded operations. The com-

mencement of expanded operations does not divest the plant of a previously established date of operation.

8. *"Established date of ownership"* means the date of the recording of an appropriate instrument of title establishing the ownership of real estate.

9. The term *"fertilizer"* means any substance containing one or more recognized plant nutrient which is used for its plant nutrient content and which is designed for use and claimed to have value in promoting plant growth except unmanipulated animal and vegetable manures or calcium and magnesium carbonate materials used primarily for correcting soil acidity.

10. The term *"fertilizer material"* means any substance used as a fertilizer or for compounding a fertilizer containing one or more of the recognized plant nutrients which are used for promoting plant growth or altering plant composition.

11. The term *"grade"* means the percentages of total nitrogen, available phosphorus or P_2O_5 or both, and soluble potassium or K_2O or both stated in whole numbers in same terms, order and percentages as in the *"guaranteed analysis."*

12. *Guaranteed analysis:*

a. The term *"guaranteed analysis"* shall mean the minimum percentage of plant nutrients claimed and reported as Total Nitrogen (N), Available Phosphorus (P) or P_2O_5 or both, Soluble Potassium (K) or K_2O or both and in the following form:

Total Nitrogen (N)	..... percent
Available Phosphorus (P) or P_2O_5 or both	..... percent
Soluble Potassium (K) or K_2O or both	..... percent

Registration and guarantee of water soluble phosphorus (P) or (P_2O_5) shall be permitted.

b. The term *"guaranteed analysis",* in the form specified in paragraph *"a",* includes:

(1) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphorus or P_2O_5 or both and the degree of fineness. For bone tankage and other organic phosphatic materials, total phosphorus or P_2O_5 or both.

(2) When any additional plant nutrient elements contained in a substance as identified in subsection 9 of this section, are claimed in writing, they shall be identified in the guarantee, expressed as the element, and shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Association of Official Agricultural Chemists.

13. *"Nuisance"* means public or private nuisance as defined by statute or by the common law.

14. *"Nuisance action or proceeding"* means an action, claim or proceeding brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

15. The term *"official sample"* means any sample of commercial fertilizer taken by the secretary or the secretary's agent.

16. *"Organic agricultural product"* means the same as defined in section 190C.1.

17. *"Owner"* means the person holding record title to real estate, and includes both legal and equitable interest under recorded real estate contracts.

18. The term *"percent or percentage"* means the percentage by weight.

19. The term *"person"* includes individual, partnership, association, firm and corporation.

20. The term *"pesticide"* as used in this chapter means insecticides, miticides, nemacides, fungicides, herbicides and any other substance used in pest control.

21. *"Rule"* means a rule as defined in section 17A.2 which materially affects the operation of an anhydrous ammonia plant. The term includes a rule which was in effect prior to July 1, 1984.

22. The term *"sell"* or *"sale"* includes exchange.

23. A *"soil conditioner"* is any substance which when added to the soil or applied to plants will produce a favorable growth, yield or quality of crop or soil flora or fauna or other soil characteristics, other than a fertilizer, recognized pesticide, unmanipulated animal and vegetable manures or calcium and magnesium carbonate materials used primarily for correcting soil acidity.

24. A *"specialty fertilizer"* is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries and may include commercial fertilizers used for research or experimental purposes.

25. The term *"ton"* means a net weight of two thousand pounds avoirdupois.

26. The term *"unmanipulated manures"* means any substances composed primarily of excreta, plant remains, or mixtures of such substances which have not been processed in any manner.

27. Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §200.3]

84 Acts, ch 1269, §1; 2000 Acts, ch 1082, §1

Further definitions, see §189.1

200.4 Licenses.

1. Any person who manufactures, mixes, blends, mixes to customers order, offers for sale, sells, or distributes any fertilizer or soil conditioner in Iowa must first obtain a license from the secretary of agriculture and shall pay a ten-dollar license fee for each place of manufacture or distribution from which fertilizer or soil conditioner prod-

ucts are sold or distributed in Iowa. Such license fee shall be paid annually on July 1 of each year.

2. Said licensee shall at all times produce an intimate and uniform mixture of fertilizers or soil conditioners. When two or more fertilizer materials are delivered in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments.

[C46, 50, 54, §200.2, 200.4, 200.6; C58, 62, §200.6; C66, 71, 73, 75, 77, 79, 81, §200.4]

87 Acts, ch 225, §205

200.5 Registration.

1. Each brand and grade of commercial fertilizer and each soil conditioner shall be registered before being offered for sale, sold or otherwise distributed in this state; except that a commercial fertilizer formulated according to special specifications furnished by a consumer to fill the consumer's order shall not be required to be registered, but shall be labeled as provided in subsection 3 of section 200.6. The application for registration shall be submitted to the secretary on forms furnished by the secretary and shall be accompanied by a label setting forth the guaranteed analysis which shall be the same as that appearing on the registered product.

2. All registration will be permanent, provided, however, that the secretary may request a listing of products to be currently manufactured. The application shall include the following information in the following order:

a. Net weight, if sold in packaged form.

b. Name and address of the registrant.

c. Name of product.

d. Brand.

e. Grade.

f. Guaranteed analysis.

3. In addition to the information required in subsection 2 of this section, applications for registration of soil conditioners must include the name or chemical designation and percentage of content of each of the active ingredients.

4. The secretary is authorized, after public hearing, following due notice, to adopt rules regulating the labeling and registration of specialty fertilizers and other fertilizer products, when necessary in the secretary's opinion. The secretary may require any reasonable information in addition to subsection 12 of section 200.3, which is necessary and useful to the purchasers of specialty fertilizers of this state and to promote uniformity among states.

5. The secretary is authorized after public hearing, following due notice, to establish minimum acceptable levels of trace and secondary elements recognized as effective to aid crops produced in Iowa and to require such warning statements as may be deemed necessary to prevent injury to crops.

6. The secretary, whenever the secretary deems it necessary in the administration of this chapter, may require the submission of additional data about any fertilizer or product to support the claims made for it. If it appears to the secretary that the composition of the article is such as to warrant the claims made for it, and if the article, its labeling and other material required to be submitted, comply with the requirements of this chapter, the secretary shall register the product.

7. If it does not appear to the secretary that the article is such as to warrant the proposed claims for it, or if the article and its labeling and other material required to be submitted does not comply with the provision of this chapter, the secretary shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fails to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections before resubmitting the label.

8. It shall be the responsibility of the registrant to submit satisfactory evidence of favorable effects and safety of the product.

9. A distributor shall not be required to register any brand and grade of commercial fertilizer which is already registered under this chapter by another person.

10. The advisory committee created in section 206.23 shall advise and assist the secretary on the registration of a product of commercial fertilizer or soil conditioner under the provisions of this chapter.

[S13, §2528-f, -f1; C24, 27, 31, 35, 39, §**3139 – 3141;** C46, 50, 54, 58, 62, §200.4; C66, 71, 73, 75, 77, 79, 81, §200.5]

200.6 Labeling.

1. Any commercial fertilizer offered for sale or sold or distributed in this state in bags, or other containers, shall have placed on or affixed to the container in legibly written or printed form, the information required by subsection 2 of section 200.5; either on tags affixed to the end of the package or directly on the package.

2. If distributed in bulk, the shipment must be accompanied by a written or printed statement giving the purchaser's name and address in addition to the labeling requirement set forth in subsection 2 of section 200.5.

3. A commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis, and the name and address of the distributor and may show the net weight and guaranteed analysis of each of the fertilizer materials or soil conditioners used. It is the responsibility of the distributor to mix these materials uniformly and intimately so that when sampled in the prescribed manner the resulting analysis would meet the guarantee.

4. All bulk bins or intermediate storage of bulk commercial fertilizer where being offered for sale

or distributed direct to the consumer shall be labeled showing brand, name and grade of product.

5. All fertilizers distributed or stored in bulk, unless in the manufacturers authorized containers shall be labeled as the responsibility of the possessor.

6. Soil conditioners shall be labeled in accordance with subsection 1 of this section and in addition shall show the name or chemical designation and content or the active ingredients.

[S13, §2528-f; C24, 27, 31, 35, 39, §**3142;** C46, 50, 54, 58, 62, §200.5; C66, 71, 73, 75, 77, 79, 81, §200.6]

200.7 Fertilizer-pesticide mixture.

Only those persons licensed under section 200.4 shall be permitted to add pesticides to commercial fertilizers. These persons shall at all times produce a uniform mixture of fertilizer and pesticide and shall register and label their product in compliance with both chapter 206 and this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §200.7]

2001 Acts, ch 24, §36

200.8 Inspection fees.

1. There shall be paid by the licensee to the secretary for all commercial fertilizers and soil conditioners sold, or distributed in this state, an inspection fee to be fixed annually by the secretary of agriculture at not more than twenty cents per ton. Sales for manufacturing purposes only are hereby exempted from fees but must still be reported showing manufacturer who purchased same. Payment of said inspection fee by any licensee shall exempt all other persons, firms or corporations from the payment thereof.

On individual packages of specialty fertilizer containing twenty-five pounds or less, there shall be paid by the manufacturer in lieu of the semiannual inspection fee as set forth in this chapter, an annual registration and inspection fee of one hundred dollars for each brand and grade sold or distributed in the state. In the event that any manufacturer sells specialty fertilizer in packages of twenty-five pounds or less and also in packages of more than twenty-five pounds, this annual registration and inspection fee shall apply only to that portion sold in packages of twenty-five pounds or less, and that portion sold in packages of more than twenty-five pounds shall be subject to the same inspection fee as fixed by the secretary of agriculture as provided in this chapter.

Any person other than a manufacturer who annually offers for sale, sells, or distributes specialty fertilizer in the amount of four thousand pounds or more or applies specialty fertilizer for compensation shall pay an annual inspection fee of thirty dollars in lieu of the semiannual inspection fee as set forth in this chapter.

2. Every licensee and any person required to pay an annual registration and inspection fee under this chapter in this state shall:

a. File not later than the last day of January and July of each year, on forms furnished by the secretary, a semiannual statement setting forth the number of net tons of commercial fertilizer or soil conditioners distributed in this state by grade for each county during the preceding six months' period; and upon filing such statement shall pay the inspection fee at the rate stated in subsection 1 of this section. However, in lieu of the semiannual statement by grade for each county, as hereinabove provided for, the registrant, on individual packages of specialty fertilizer containing twenty-five pounds or less, shall file not later than the last day of July of each year, on forms furnished by the secretary, an annual statement setting forth the number of net tons of specialty fertilizer distributed in this state by grade during the preceding twelve-month period.

b. If the tonnage report is not filed or the payment of inspection fees, or both, is not made within ten days after the last day of January and July of each year as required in paragraph *"a"* of this subsection, a penalty amounting to ten percent of the amount due, if any, shall be assessed against the licensee. In any case, the penalty shall be no less than fifty dollars. The amount of fees due, if any, and penalty shall constitute a debt and become the basis of a judgment against the licensee.

3. If there is an unencumbered balance of funds from the amount of the fees deposited in the general fund pursuant to sections 200.9 and 201A.11 on June 30 of any fiscal year equal to or exceeding three hundred fifty thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection 1 and the annual license fee established pursuant to section 201A.3 for the next fiscal year in such amount as will result in an ending estimated balance of such funds for June 30 of the next fiscal year of three hundred fifty thousand dollars.

4. In addition to the fees imposed under subsection 1, a groundwater protection fee shall be imposed upon nitrogen-based fertilizer. The fee shall be based upon the percentage of actual nitrogen contained in the product. An eighty-two percent nitrogen solution shall be taxed at a rate of seventy-five cents per ton. Other nitrogen-based product formulations shall be taxed on the percentage of actual nitrogen contained in the formulations with the eighty-two percent nitrogen solution serving as the base. The fee shall be paid by each licensee registering to sell fertilizer to the secretary of agriculture. The fees collected shall be deposited in the agriculture management account of the groundwater protection fund. The secretary of agriculture shall adopt rules for the payment, filing, and collection of groundwater protection fees from licensees in conjunction with the collection of registration and inspection fees. The secretary shall, by rule allow an exemption to the payment of this fee for fertilizers which con-

tain trace amounts of nitrogen.

[C46, 50, 54, §200.15; C58, 62, 66, 71, 73, 75, 77, 79, 81, §200.8]

85 Acts, ch 142, §1; 87 Acts, ch 225, §206, 207; 88 Acts, ch 1169, §1; 94 Acts, ch 1107, §46; 96 Acts, ch 1096, §2, 15; 96 Acts, ch 1219, §34

200.9 Fertilizer fees.

Fees collected for licenses and inspection fees under sections 200.4 and 200.8, with the exception of those fees collected for deposit in the agriculture management account of the groundwater protection fund, shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. Moneys deposited under this section to the general fund shall be used only by the department for the purpose of inspection, sampling, analysis, preparation, and publishing of reports and other expenses necessary for administration of this chapter. The secretary may assign moneys to the Iowa agricultural experiment station for research, work projects, and investigations as needed for the specific purpose of improving the regulatory functions for enforcement of this chapter.

[C46, 50, 54, §200.15; C58, 62, 66, 71, 73, 75, 77, 79, 81, §200.9]

87 Acts, ch 225, §208; 91 Acts, ch 260, §1217; 93 Acts, ch 131, §8; 94 Acts, ch 1107, §47

200.10 Inspection, sampling and analysis.

1. It shall be the duty of the secretary, who may act through an authorized agent, to sample, inspect, make analysis of, and test commercial fertilizers or soil conditioners distributed within this state at time and place and to such an extent as the secretary may deem necessary, to determine whether such commercial fertilizers and soil conditioners are in compliance with the provisions of this chapter. In the performance of the foregoing duty, the secretary shall counsel with the director of the Iowa agricultural experimental station in respect to the time, place and extent of sampling. The secretary individually or through an agent is authorized to enter upon any public or private premises or conveyances during regular business hours in order to have access to commercial fertilizers or soil conditioners subject to the provisions of this chapter and the rules and regulations pertaining thereto. It shall be the duty of the secretary to maintain a laboratory with the necessary equipment and to employ such employees as may be necessary to aid in the administration and enforcement of this chapter.

2. The methods of sampling and analysis shall be the official methods of the association of official agricultural chemists in all cases where methods have been adopted by the association.

The findings of the state chemist or the state chemist's deputy, as shown by the sworn statement of the results of analysis of official samples of any brand and grade of commercial fertilizer, fertilizer material or soil conditioner, shall constitute prima facie evidence of their correctness in the courts of this state, as to the particular lots sampled and analyzed.

3. The secretary, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, or soil conditioner deficient in guaranteed active ingredients, shall be guided by the official sample as defined in subsection 15 of section 200.3, and obtained and analyzed as provided for in subsection 2 of this section.

4. The results of official analysis of any commercial fertilizer or soil conditioner which has been found to be in violation of any provision of this chapter, shall be forwarded by the secretary to the registrant. Upon request, the secretary shall furnish to the registrant a portion of any sample.

[C46, 50, 54, §200.7 – 200.9; C58, 62, §200.11; C66, 71, 73, 75, 77, 79, 81, §200.10]

200.11 Filler material.

It shall be unlawful for any person to manufacture, offer for sale or sell in this state, any commercial fertilizer, or soil conditioner containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such commercial fertilizer, or soil conditioner as a filler any substance that contains inert or useless plant food material for the purpose or with the effect of deceiving or defrauding the purchaser.

[C46, 50, 54, §200.10; C58, 62, §200.12; C66, 71, 73, 75, 77, 79, 81, §200.11]

200.12 False or misleading statements.

A commercial fertilizer or soil conditioner is misbranded if it does not identify substances promoting plant growth as defined in subsection 9 of section 200.3, or if it carries any false or misleading statement upon or attached to the container or stated on the invoice or delivery ticket, or if the container or on the invoice or delivery ticket or in any advertising matter whatsoever connected with, accompanying or associated with the commercial fertilizer or soil conditioner. Further, the burden of proof of the desirable effect of the product on plant growth shall be the responsibility of the registrant.

[C46, 50, 54, §200.11; C58, 62, §200.13; C66, 71, 73, 75, 77, 79, 81, §200.12]

200.13 Reports and publications.

The secretary shall publish at least annually, in such forms as the secretary may deem proper, information concerning the sales of commercial fertilizers, together with such data on their production and use as the secretary may consider advisable. The secretary shall report semiannually the results of the analysis based on official samples taken of commercial fertilizers sold within the state as compared with the analyses guaranteed

under section 200.5 and section 200.6, together with name and address of the manufacturer or distributor of such commercial fertilizer at the time the official sample was taken. A copy of this semiannual report will be mailed by the secretary to each corresponding county extension director in the state.

[C46, 50, 54, §200.13; C58, 62, §200.14; C66, 71, 73, 75, 77, 79, 81, §200.13]

200.14 Rules.

1. The secretary is authorized, after public hearing, following due notice, to adopt rules setting forth minimum general safety standards for the design, construction, location, installation and operation of equipment for storage, handling, transportation by tank truck or tank trailer, and utilization of anhydrous ammonia. The rules shall be such as are reasonably necessary for the protection and safety of the public and persons using anhydrous ammonia, and shall be in substantial conformity with the generally accepted standards of safety.

It is hereby declared that rules in substantial conformity with the published standards of the agricultural ammonia institute for the design, installation and construction of containers and pertinent equipment for the storage and handling of anhydrous ammonia, shall be deemed to be in substantial conformity with the generally accepted standards of safety.

2. Anhydrous ammonia equipment shall be installed and maintained in a safe operating condition and in conformity with rules adopted by the secretary.

3. The secretary is hereby charged with the enforcement of this chapter, and after due publicity and due public hearing, is empowered to promulgate and adopt such reasonable rules as may be necessary in order to carry into effect the purpose and intent of this chapter or to secure the efficient administration thereof.

4. Nothing in this chapter shall prohibit the use of storage tanks smaller than transporting tanks nor the transfer of all kinds of fertilizer including anhydrous ammonia directly from transporting tanks to implements of husbandry, if proper safety precautions are observed.

[C46, 50, 54, §200.13; C58, 62, §200.15; C66, 71, 73, 75, 77, 79, 81, §200.14]

98 Acts, ch 1004, §1, 3; 98 Acts, ch 1223, §22, 38; 99 Acts, ch 12, §8

200.15 Refusal to register, or cancellation of registration and licenses.

The secretary is authorized and empowered to cancel the registration of any product of commercial fertilizer or soil conditioner or license or to refuse to register any product of commercial fertilizer or soil conditioner or refuse to license any applicant as herein provided, upon satisfactory evidence that the registrant or licensee has used fraudulent or deceptive practices or who willfully violates any provisions of this chapter or any rules and regulations promulgated thereunder: Except no registration or license shall be revoked or refused until the registrant or licensee shall have been given the opportunity to appear for a hearing by the secretary.

[C46, 50, 54, §200.11; C58, 62, §200.16; C66, 71, 73, 75, 77, 79, 81, §200.15]

200.16 "Stop sale" orders.

The secretary may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of commercial fertilizer or soil conditioner, and to hold at a designated place when the secretary finds said commercial fertilizer or soil conditioner is being offered or exposed for sale in violation of any of the provisions of this chapter or any of the rules and regulations promulgated hereunder until the law has been complied with and said commercial fertilizer or soil conditioner is released in writing by the secretary or said violation has been otherwise legally disposed of by written authority, and all costs and expenses incurred in connection with the withdrawal have been paid.

[C58, 62, §200.17; C66, 71, 73, 75, 77, 79, 81, §200.16]

200.17 Seizure, condemnation and sale.

Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the secretary to a court of competent jurisdiction in the county or adjoining county in which said commercial fertilizer or soil conditioner is located. In the event the court finds the said commercial fertilizer or soil conditioner to be in violation of this chapter and orders the condemnation of said commercial fertilizer or soil conditioner, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil conditioner and the laws of the state: Except in no instance shall the disposition of said commercial fertilizer or soil conditioner be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or soil conditioner or for permission to reprocess or relabel said commercial fertilizer or soil conditioner to bring it into compliance with this chapter.

[C58, 62, §200.18; C66, 71, 73, 75, 77, 79, 81, §200.17]

200.18 Violations.

1. If it shall appear from the examination of any commercial fertilizer or soil conditioner or any anhydrous ammonia installation, equipment, or operation that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the secretary shall cause no-

tice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the secretary may certify the facts to the proper prosecuting attorney.

2. A person violating this chapter or rules adopted by the secretary pursuant to this chapter shall be guilty of a simple misdemeanor. However, a person who tampers with, possesses, or transports anhydrous ammonia or anhydrous ammonia equipment commits a serious misdemeanor under section 124.401F.

3. Nothing in this chapter shall be construed as requiring the secretary or the secretary's representative to report for prosecution or for the institution of seizure proceedings minor violations of the chapter when the secretary believes that the public interest will be best served by a suitable notice of warning in writing.

4. It shall be the duty of each county attorney to whom any violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

5. The secretary is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law, said injunction to be issued without bond.

[C46, 50, 54, §200.11, 200.14; C58, 62, §200.19; C66, 71, 73, 75, 77, 79, 81, §200.18]

98 Acts, ch 1004, §2, 3; 99 Acts, ch 12, §9

200.19 Exchanges between manufacturers.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil conditioner to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

[C46, 50, 54, §200.5, 200.12; C58, 62, §200.20; C66, 71, 73, 75, 77, 79, 81, §200.19]

200.20 Phosphoric acid, nitrogen, and potash requirements.

1. Except as provided in subsection 2, a person shall not sell, offer for sale, or distribute any of the following:

a. Phosphatic fertilizer containing less than eighteen percent available phosphoric acid (P_2O_5).

b. Nitrogen fertilizer containing less than fifteen percent total nitrogen (N).

c. Potash fertilizer containing less than fifteen percent soluble potash (K_2O).

d. Mixed fertilizer in which the sum of the guaranteed analysis of total nitrogen (N), available phosphoric acid (P_2O_5), and soluble potash (K_2O) totals less than twenty percent.

2. Subsection 1 shall not apply to any of the following:

a. A specialty fertilizer.

b. A fertilizer designed to be applied and ordinarily applied directly to growing plant foliage to stimulate further growth.

c. Compost materials to be applied on land, if any of the following apply:

(1) The land is being used to produce an agricultural commodity that is an organic agricultural product as provided in chapter 190C, including rules adopted by the department under that chapter.

(2) The land is in the transition of being used to produce an agricultural commodity that is an organic agricultural product, pursuant to rules adopted by the department as provided in chapter 190C.

[C77, 79, 81, §200.20]

2000 Acts, ch 1082, §2

200.21 Compliance — a defense to certain nuisance actions.

In a nuisance action or proceeding against an anhydrous ammonia plant brought by or on behalf of the person whose established date of ownership is subsequent to the established date of operation of an anhydrous ammonia plant, proof of compliance with applicable provisions of this chapter and applicable rules adopted pursuant to section 200.14 shall be a defense to a nuisance action or proceeding.

84 Acts, ch 1269, §2

200.22 Local legislation — prohibition.

1. As used in this section:

a. "Local governmental entity" means any political subdivision, or any state authority which is not the general assembly or under the direction of a principal central department as enumerated in section 7E.5, including a city as defined in section 362.2, a county as provided in chapter 331, or any special purpose district.

b. "Local legislation" means any ordinance, motion, resolution, amendment, regulation, or rule adopted by a local governmental entity.

2. The provisions of this chapter and rules adopted by the department pursuant to this chapter shall preempt local legislation adopted by a local governmental entity relating to the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufac-

ture of a fertilizer or soil conditioner. A local governmental entity shall not adopt or continue in effect local legislation relating to the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture of a fertilizer or soil conditioner, regardless of whether a statute or rule adopted by the department applies to preempt the local legislation. Local legislation in violation of this section is void and unenforceable.

3. This section does not apply to local legislation of general applicability to commercial activity.

94 Acts, ch 1002, §1; 94 Acts, ch 1198, §41

CHAPTER 200A

BULK DRY ANIMAL NUTRIENT PRODUCTS

200A.1 Title.
200A.2 Purpose.
200A.3 Definitions.
200A.4 Rulemaking.
200A.5 License.
200A.6 Registration.
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200A.8 Distribution reports.
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200A.12 Enforcement.
200A.13 Violations.
200A.14 Exchange between producers.
200A.15 Use of fees.

200A.1 Title.

This chapter shall be known and may be cited by the short title of *"Bulk Dry Animal Nutrient Products Law"*.

98 Acts, ch 1145, §1

200A.2 Purpose.

The purpose of this chapter is to regulate certain bulk dry animal manure for use as a fertilizer or soil conditioner, which is unmanipulated and therefore not subject to regulation under chapter 200.

98 Acts, ch 1145, §2

200A.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Advertise"* means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag, or articulation.

2. *"Bulk dry animal nutrient product"* or *"bulk product"* means a dry animal nutrient product delivered to a purchaser in bulk form to which a label cannot be attached.

3. *"Department"* means the department of agriculture and land stewardship.

4. *"Distribute"* means to offer for sale, sell, hold out for sale, exchange, barter, supply, or furnish a bulk dry animal nutrient product on a commercial basis.

5. *"Distributor"* means a person who distributes a bulk dry animal nutrient product.

6. *"Dry animal nutrient product"* means any unmanipulated animal manure composed primarily of animal excreta, if all of the following apply:

a. The manure contains one or more recognized plant nutrients which are used for their plant nutrient content.

b. The manure promotes plant growth.

c. The manure does not flow perceptibly under pressure.

d. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.

e. The constituent molecules of the manure do not flow freely among themselves but do show the tendency to separate under stress.

7. *"Guaranteed analysis"* means the minimum percentage of plant nutrients claimed and reported to the department pursuant to section 200A.6.

8. *"Official sample"* means any sample of a bulk dry animal nutrient product taken by the department according to procedures established by the department consistent with this chapter.

9. *"Percent"* or *"percentage"* means percentage by weight.

10. *"Purchaser"* means a person to whom a dry animal nutrient product is distributed.

11. *"Ton"* means a net weight of two thousand pounds avoirdupois.

98 Acts, ch 1145, §3; 99 Acts, ch 96, §21; 99 Acts, ch 114, §11

200A.4 Rulemaking.

The department shall adopt all rules necessary to administer this chapter including but not limited to rules regulating licensure, labeling, registra-

tion, distribution, and storage of bulk dry animal nutrient products. A violation of this chapter includes a violation of any rule adopted pursuant to this section as provided in chapter 17A.

98 Acts, ch 1145, §4

200A.5 License.

A person who distributes a bulk dry animal nutrient product in this state must first obtain a license from the department. A license application must be submitted to the department on a form furnished by the department according to procedures required by the department. A license shall expire on July 1 of each year.

98 Acts, ch 1145, §5

200A.6 Registration.

1. A person shall not distribute a bulk dry animal nutrient product unless the bulk product is registered with the department under this section. The department shall register each bulk product which complies with the requirements of this chapter. If the department determines that a registration application does not comply with the requirements of this chapter, the department shall notify the applicant of the department's determination and the reasons why the application failed to comply with the requirements of this chapter. The department shall provide the applicant with an opportunity to make the necessary corrections before resubmitting the application.

2. A registration application must be submitted to the department on a form furnished by the department according to procedures required by the department. A completed application shall include all of the following:

a. An accompanying label setting forth the guaranteed analysis of the bulk product, in the following form:

Total Nitrogen (N)	..... percent
Available Phosphate (P) or P_2O_5 or both	..... percent
Soluble Potassium (K) or K_2O or both	..... percent

Registration and guarantee of water soluble phosphate (P) or (P_2O_5) shall be permitted.

b. A description of how the distributor plans to obtain the acres necessary for proper application of the bulk product which is not distributed.

c. Evidence of favorable effects and safety of the bulk product necessary to satisfy the department according to rules adopted by the department.

d. Additional data about a bulk product necessary to support claims made about the product, if required by the department.

3. A distributor shall not be required to register any bulk product which is already registered under this chapter by another person.

4. Upon request of the department, the advisory committee created in section 206.23 may advise and assist the department regarding the registration of bulk dry animal nutrient products under the provisions of this chapter.

98 Acts, ch 1145, §6

200A.7 Distribution statement required.

1. The distribution of a bulk dry animal nutrient product must be accompanied by a written or printed distribution statement which may be prepared on a form furnished by the department. The distribution statement shall include all of the following information:

a. The bulk product's guaranteed analysis in the same form as required pursuant to section 200A.6.

b. The name and address of the bulk product's purchaser.

c. A notice to the bulk product's purchaser stating the number of acres needed to apply the purchased bulk product based on the average corn yields in the county where the bulk product is to be applied.

d. A warning that application of a bulk product should not exceed the nitrogen levels necessary to obtain optimum crop yields for the crop being grown based on crop nitrogen usage rate factors.

2. Before transferring possession of a bulk product, the distributor shall present the purchaser with an acknowledgment for the purchaser's signature or initials indicating that the purchaser has read the distribution statement and understands the number of acres required to apply the product according to the information in the distribution statement.

98 Acts, ch 1145, §7

200A.8 Distribution reports.

1. A person required to be licensed pursuant to section 200A.5 shall file a distribution report with the department on forms furnished by the department reporting information regarding the person's distribution of bulk products.

2. The report shall be filed with the department not later than the last day of January and the last day of July excluding weekends and state-recognized holidays as provided in section 1C.2.

3. The report shall include all of the following:

a. The number of tons of bulk products distributed by the person in the state during the preceding six-month period. The report shall include the number of tons distributed to each county named in the report and the grade of the distributed bulk product.

b. The name and address of each purchaser and the number of tons purchased.

c. An inspection fee as provided in section 200A.9.

98 Acts, ch 1145, §8

200A.9 Fees.

1. A person required to obtain a license as provided in section 200A.5 shall pay a ten dollar fee for each place from which a bulk product is distributed in this state.

2. *a.* The first person who distributes a bulk product, who is required to be licensed pursuant to section 200A.5, shall pay an inspection fee twice each year. The inspection fee shall be paid at the time of filing each distribution report as required in section 200A.8. The amount of the fee shall be calculated based on the number of tons of bulk dry animal nutrient product distributed by the person as reported in the distribution report.

b. The rate for inspection fees shall be established by the department not more than once each year and shall be not more than twenty cents per ton.

c. An inspection fee shall not be imposed upon a purchaser regardless of whether the purchaser subsequently distributes the product.

3. An inspection fee is delinquent after ten days following the date that a distribution report and fee are due as provided in section 200A.8. A delinquency penalty of not more than ten percent of the amount due shall be assessed against the person who is delinquent. However, the penalty shall be at least fifty dollars. The amount of fees and delinquency penalties due shall constitute a debt and become the basis of a judgment against the delinquent person.

98 Acts, ch 1145, §9

200A.10 Examinations.

1. The department shall maintain a laboratory with the equipment and employees necessary to conduct examinations of bulk dry animal nutrient products and to effectively administer and enforce this chapter.

2. The department, or a person authorized as an agent by the department, shall examine bulk products distributed in this state. An examination may include taking samples, conducting inspections and tests, and analyzing the bulk product.

3. The department shall conduct the examinations to the extent that the department determines necessary in order to conclude whether a bulk product is in compliance with the provisions of this chapter.

a. The department may enter upon any public or private premises during regular business hours in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, and the fourth amendment to the Constitution of the United States, for purposes of carrying out an examination.

b. The methods for examination shall be the official methods of the association of official agricultural chemists in all cases where methods have been adopted by the association.

c. A sworn statement by the state chemist or the state chemist's deputy stating the results of an analysis of an official sample from a lot of a bulk dry animal nutrient product shall constitute prima facie evidence of the correctness of the analysis of that lot in courts of this state.

d. The department, in determining for administrative purposes whether a bulk product is deficient in guaranteed active ingredients, shall rely upon the official sample obtained and analyzed by the state chemist or the state chemist's deputy.

e. The results of an official analysis of a bulk product which has been found to be in violation of any provision of this chapter shall be forwarded by the department to the registrant. Upon request, the department shall furnish the registrant a portion of any official sample.

98 Acts, ch 1145, §10

200A.11 Prohibited acts.

1. A person shall not distribute a bulk dry animal nutrient product containing any substance used as filler material if any of the following applies:

a. The filler injures plant growth or is deleterious to soil.

b. The person distributing the bulk product misrepresents or deceives the person receiving the bulk product regarding the attributes of the filler material or its effect upon plant growth or soil condition.

2. A person shall not advertise a bulk product by making false or misleading statements regarding the bulk product.

3. A person shall not misbrand a bulk product by providing a distribution statement to a purchaser which fails to identify a substance promoting plant growth according to the bulk product's guaranteed analysis as provided in section 200A.6.

4. The burden of proof regarding a claim made by a person distributing a bulk product, including but not limited to the positive effects of the bulk product on plant growth, shall be the responsibility of the distributor.

5. A distributor shall not store a bulk product in a manner which pollutes the waters of the state.

98 Acts, ch 1145, §11

200A.12 Enforcement.

In enforcing this chapter the department may do any of the following:

1. *a.* Take disciplinary action concerning a registration of a bulk dry animal nutrient product as provided in section 200A.6 or the license of a person distributing a bulk product as provided in section 200A.5. The department may do any of the following:

(1) Cancel the registration or deny an application for registration.

(2) Suspend or terminate the license or deny an application for a license.

b. The disciplinary action must be based upon evidence satisfactory to the department that the registrant, licensee, or applicant has used fraudulent or deceptive practices in violation of this chapter or has willfully disregarded the requirements of this chapter.

2. Issue and enforce a "stop sale, use, or removal" order against the owner or distributor of any lot of a bulk product.

a. The order may require that the bulk product be held at a designated place until released by the department.

b. The department shall release the bulk product pursuant to a release order upon satisfaction that legal issues compelling the issuance of the "stop sale, use, or removal order" have been resolved and all expenses incurred by the department in connection with the bulk product's removal have been paid to the department.

3. Seize and dispose of any lot of a bulk product which is not in compliance with the provisions of this chapter upon petition to the district court in the county or adjoining county in which the bulk product is located.

a. If the court finds that the bulk product is in violation of this chapter, the court may order the condemnation of the bulk product. However, the court shall not order the seizure and disposition of a bulk product without first providing the owner of the bulk product with an opportunity to apply to the court for release of the bulk product, consent to reprocess the bulk product, or consent to amend a legal record to accurately describe the composition of the bulk product, including a distribution statement as provided in section 200A.7.

b. The department shall, as provided in the court order, dispose of the bulk product in a manner consistent with the quality of the bulk product and the laws of this state.

4. Apply to the district court in the county where a violation of this chapter occurs for a temporary or permanent injunction restraining a person from violating or continuing to violate this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without a bond.

5. This section does not require the department to institute a proceeding for a minor violation if the department concludes that the public interest will be best served by a suitable written warning.

98 Acts, ch 1145, §12

200A.13 Violations.

1. A person violating a provision of this chapter is guilty of a simple misdemeanor.

2. *a.* If, after a departmental investigation, it appears that a person is in violation of this chapter, the department shall notify the person of the violation and provide the person with an opportunity to be heard under rules adopted by the department consistent with chapter 17A contested case proceedings.

b. If, after a hearing, the department determines that a violation has occurred, the department may report the violation to the appropriate county attorney for prosecution. The report shall include a certified copy of evidence presented during the hearing. This section does not require the department to report a minor violation for prosecution if the department concludes that the public interest will be best served by a suitable written warning.

c. A county attorney who receives a report of a violation from the department shall institute and prosecute the case in district court without delay.

98 Acts, ch 1145, §13

200A.14 Exchange between producers.

Nothing in this chapter shall be construed to restrict or prohibit any of the following:

1. The distribution of a bulk product to importers, manufacturers, or manipulators who mix bulk dry animal nutrient products for distribution.

2. The shipment of a bulk product to a person licensed as a distributor pursuant to section 200A.5 who has registered the bulk product as provided in section 200A.6.

98 Acts, ch 1145, §14

200A.15 Use of fees.

Fees and delinquency penalties collected by the department pursuant to this chapter, including section 200A.9, shall be deposited in the general fund of the state. However, the department may allocate moneys to the Iowa agricultural experiment station for research, work projects, and investigations as needed for the specific purpose of improving the regulatory functions to improve the enforcement of this chapter.

98 Acts, ch 1145, §15

CHAPTER 201

AGRICULTURAL LIME

Repealed effective January 1, 1997, by 96 Acts, ch 1096, §14, 15; 96 Acts, ch 1219, §34; see chapter 201A

CHAPTER 201A

AGRICULTURAL LIMING MATERIAL

201A.1 Short title.
201A.2 Definitions.
201A.3 License required.
201A.4 Labeling and advertising.
201A.5 Inspection and investigation.
201A.6 Certification of effective calcium carbonate equivalent — reporting.
201A.7 Toxic materials prohibited.
201A.8 Rules.
201A.9 Enforcement actions.
201A.10 Violations.
201A.11 Fees and appropriation.

201A.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Agricultural Liming Material Act"*.

96 Acts, ch 1096, §3, 15

201A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agricultural liming material"* means a product having calcium and magnesium compounds capable of neutralizing soil acidity.

2. *"Brand"* means the term, designation, trade name, product name, or other specific designation under which individual agricultural liming material is offered for sale.

3. *"Bulk"* means material which is in a nonpackaged form.

4. *"Effective calcium carbonate equivalent"* means the acid-neutralizing capacity of an agricultural liming material.

96 Acts, ch 1096, §4, 15

201A.3 License required.

Agricultural liming material shall not be distributed in this state unless the manufacturer of the agricultural liming material obtains a license for each facility owned by the manufacturer for distribution in this state. The manufacturer shall obtain the license prior to the facility's manufacture of the agricultural liming material. The license shall expire on January 1 of each year, and may be renewed for a period expiring on January 1 of the following year. The manufacturer shall apply for the license on forms prescribed and according to procedures required by the department. An application for a license, including a license renewal, must be accompanied by a license fee established by the department, which shall not exceed forty dollars.

96 Acts, ch 1096, §5, 15

201A.4 Labeling and advertising.

1. Agricultural liming material shall not be sold, offered for sale, or exposed for sale in this state unless a label accompanies the agricultural liming material which provides the following information:

a. The name and address of the principal office of the manufacturer or distributor.

b. The brand or trade name of the agricultural liming material.

c. The identification of the type of the agricultural liming material.

d. The undried net weight of the agricultural liming material.

e. The effective calcium carbonate equivalent of the agricultural liming material as determined according to rules adopted by the department.

2. The label must be plainly readable. If the agricultural liming material is in packaged form, the label must be affixed to the outside of the package in a conspicuous manner. The label shall be printed, stamped, or otherwise marked in a manner required by the department. If the agricultural liming material is in bulk form, the label may be contained on a delivery slip.

3. The label or advertising which provides information regarding the agricultural liming material shall not be false or misleading to the purchaser, including information relating to the quality, analysis, type, or composition of the agricultural liming material.

4. If the agricultural liming material is adulterated after it has been packaged, labeled, or

loaded, but prior to delivery to a purchaser, the vendor shall provide a notice of the adulteration, which shall be placed on the agricultural liming material as an additional label as provided in this section.

5. For each brand of agricultural liming material sold in bulk, a statement shall be conspicuously posted at the location where the agricultural liming material is delivered for resale or where purchase orders for deliveries of the agricultural liming material are placed. The statement shall include the effective calcium carbonate equivalent of the agricultural liming material as determined according to rules adopted by the department.

96 Acts, ch 1096, §6, 15

201A.5 Inspection and investigation.

The department shall inspect agricultural liming material distributed in this state and investigate persons engaged in the business of manufacturing, distributing, selling, offering for sale, or exposing for sale agricultural liming material in this state. Inspections and investigations shall be performed as determined necessary or practicable by the department, in order to ensure compliance with this chapter. The inspection may include the sampling, analysis, and testing of agricultural liming material, as provided by rules adopted by the department. The department may enter premises of a business engaged in the manufacture, distribution, sale, offer for sale, or exposure for sale of agricultural liming material in this state. The business shall provide timely, convenient, and free access to its agricultural liming material and to its books, records, accounts, papers, documents, and any computer or other recordings relating to the business, during normal business hours. The business shall facilitate the examination and aid in the examination to every extent feasible.

96 Acts, ch 1096, §7, 15

201A.6 Certification of effective calcium carbonate equivalent — reporting.

The department shall certify the effective calcium carbonate equivalent for all agricultural liming material, as provided by rules adopted by the department. The department may establish a fee for analyzing samples of agricultural liming material. The department shall issue a report at least once every three months which lists the agricultural liming material certified by the department. The report shall list the manufacturers of the agricultural liming material, the locations of facilities used to manufacture the agricultural liming material, and the identification of the type of the agricultural liming material produced by the manufacturer.

96 Acts, ch 1096, §8, 15

201A.7 Toxic materials prohibited.

A person shall not sell, offer for sale, or expose for sale agricultural liming material which includes material which is toxic to plants, animals, human, or aquatic life, or which causes soil or water contamination, as provided by rules adopted by the department.

96 Acts, ch 1096, §9, 15

201A.8 Rules.

The department shall adopt rules pursuant to chapter 17A required to administer and enforce the provisions of this chapter.

96 Acts, ch 1096, §10, 15

201A.9 Enforcement actions.

If the department finds that agricultural liming material is being manufactured, used, sold, offered for sale, or exposed for sale in violation of this chapter, the department may enforce the provisions of this chapter by doing any of the following:

1. Issuing and enforcing a stop order to prevent the manufacture, sale, or removal of agricultural liming material. The order may require that the owner or custodian hold the agricultural liming material at a place designated in the order. The stop order shall be in writing and served upon the person owning or controlling the manufacture or sale of the agricultural liming material. The department shall provide for the termination of the stop order upon compliance with the provisions of this chapter. The termination of the stop order shall be in writing and served upon the person as provided for in the stop order. The department may place conditions upon the termination of the stop order, including the payment of reasonable expenses incurred by the department in issuing and enforcing the stop order.

2. Obtaining a court order upon petition filed in district court for the county where the agricultural liming material is being manufactured, sold, offered for sale, or exposed for sale. The court may be petitioned by the department, or, upon request by the department, the attorney general or the county attorney. The court shall hear from all parties in the case. The court may issue an order for any of the following:

a. The seizure of the agricultural liming material. The court shall issue an order, if the court finds that the petition is supported by facts that agricultural liming material is being manufactured, sold, offered for sale, or exposed for sale in violation of this chapter, and the agricultural liming material must be condemned because it fails to meet standards required in this chapter. If warranted, the court shall order that the agricultural

liming material be disposed of in a manner provided by rules adopted by the department, which may include reprocessing or relabeling the agricultural liming material in order to ensure that it complies with this chapter. The court may provide that any party to the case dispose of the agricultural liming material.

b. A temporary or permanent injunction against a person violating the provisions of this chapter. The court shall issue an order, if the court finds that the petition is supported by facts that agricultural liming material is being manufactured, sold, offered for sale, or exposed for sale in violation of this chapter. In order to obtain injunctive relief, the department shall not be required to post a bond or prove the absence of an adequate remedy at law, unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is appropriate under principles of equity.

96 Acts, ch 1096, §11, 15

201A.10 Violations.

1. A person violating this chapter or rules adopted by the department under this chapter is guilty of a simple misdemeanor.

2. The department shall provide for the prosecution of a violation of this chapter by referring the violation to the county attorney in the county where the violation occurs. The department shall compile evidence of the violation for prosecution. The county attorney shall prosecute any case determined by the county attorney to be meritorious without delay. The department shall not refer a violation to the county attorney until the department provides the person subject to the violation with an opportunity to be heard by the department according to procedures adopted by the department. A right to a hearing is not a contested case proceeding as provided in chapter 17A. The department is not required to refer a minor violation to a county attorney, and may instead issue a warning to the person subject to the minor violation.

96 Acts, ch 1096, §12, 15

201A.11 Fees and appropriation.

Fees collected under this chapter shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. Moneys deposited under this section to the general fund shall be used only by the department for the purpose of administering and enforcing the provisions of this chapter, including inspection, sampling, analysis, and the preparation and publishing of reports.

96 Acts, ch 1096, §13, 15

CHAPTER 202

COMMODITY PRODUCTION CONTRACTS

202.1 Definitions.
202.2 Production contracts governed by this chapter.
202.3 Production contracts — confidentiality prohibited.
202.4 Enforcement.
202.5 Penalties.

202.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Active contractor"* means a person who owns a commodity that is produced by a contract producer at the contract producer's contract operation pursuant to a production contract executed pursuant to section 202.2.

2. *"Commodity"* means livestock, raw milk, or a crop.

3. *"Contract crop field"* means farmland where a crop is produced according to a production contract executed pursuant to section 202.2 by a contract producer who holds a legal interest in the farmland.

4. *"Contract livestock facility"* means an animal feeding operation as defined in section 459.102, in which livestock or raw milk is produced according to a production contract executed pursuant to section 202.2 by a contract producer who holds a legal interest in the animal feeding operation. *"Contract livestock facility"* includes a confinement feeding operation as defined in section 459.102, an open feedlot, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed.

5. *"Contract operation"* means a contract livestock facility or contract crop field.

6. *"Contract producer"* means a person who

holds a legal interest in a contract operation and who produces a commodity at the contract producer's contract operation under a production contract executed pursuant to section 202.2.

7. *"Contractor"* means an active contractor or a passive contractor.

8. *a.* *"Crop"* means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.

b. A *"crop"* does not include trees or nuts or fruit grown on trees; sod; shrubs; greenhouse plants; or plants or plant parts produced for precommercial, experimental, or research purposes.

9. *"Farmland"* means agricultural land that is suitable for use in farming as defined in section 9H.1.

10. *"Livestock"* means beef cattle, dairy cattle, sheep, or swine.

11. *"Open feedlot"* means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover is maintained during the period that animals are confined in the operation.

12. *"Passive contractor"* means a person who furnishes management services to a contract producer, and who does not own a commodity that is produced by the contract producer at the contract producer's contract operation according to a production contract which is executed pursuant to section 202.2.

13. *"Produce"* means to do any of the following:

a. Provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, *"produce"* includes milking the dairy cattle and storing raw milk at the contract producer's contract livestock facility.

b. Provide for planting, raising, harvesting, and storing a crop. *"Produce"* includes preparing the soil for planting and nurturing the crop by the application of fertilizers or soil conditioners as defined in section 200.3 or pesticides as defined in section 206.2.

14. *"Production contract"* means an oral or written agreement executed pursuant to section 202.2 that provides for the production of a commodity or the provision of management services relating to the production of a commodity by a contract producer.

99 Acts, ch 169, §2, 22 – 24

202.2 Production contracts governed by this chapter.

1. This chapter applies to a production contract that relates to the production of a commodity owned by an active contractor and produced by a contract producer at the contract producer's contract operation, if one of the following applies:

a. The contract is executed by an active contractor and a contract producer for the production of the commodity.

b. The contract is executed by an active contractor and a passive contractor for the provision of management services to the contract producer in the production of the commodity.

c. The contract is executed by a passive contractor and a contract producer, if all of the following apply:

(1) The contract provides for management services furnished by the passive contractor to the contract producer in the production of the commodity.

(2) The passive contractor has a contractual relationship with the active contractor involving the production of the commodity.

2. A production contract is executed when it is signed or orally agreed to by each party or by a person who is authorized by a party to act on the party's behalf.

99 Acts, ch 169, §3, 22 – 24

202.3 Production contracts — confidentiality prohibited.

1. A contractor shall not on or after May 24, 1999, enforce a provision in a production contract if the provision provides that information contained in the production contract is confidential.

2. A provision which is part of a production contract is void if the provision states that information contained in the production contract is confidential. The confidentiality provision is void whether the confidentiality provision is express or implied; oral or written; required or conditional; contained in the production contract, another production contract, or in a related document, policy, or agreement. This section does not affect other provisions of a production contract or a related document, policy, or agreement which can be given effect without the voided provision. This section does not require a party to a production contract to divulge the information in the production contract to another person.

99 Acts, ch 169, §4, 22 – 24

202.4 Enforcement.

1. The attorney general's office is the primary agency responsible for enforcing this chapter.

2. In enforcing the provisions of this chapter, the attorney general may do all of the following:

a. Apply to the district court for an injunction to do any of the following:

(1) Restrain a contractor from engaging in conduct or practices in violation of this chapter.

(2) Require a contractor to comply with a provision of this chapter.

b. Apply to district court for the issuance of a subpoena to obtain a production contract for purposes of enforcing this chapter.

c. Bring an action in district court to enforce penalties provided in section 202.5, including the

assessment and collection of civil penalties.
99 Acts, ch 169, §5, 22 – 24

202.5 Penalties.
A contractor who executes a production contract that includes a confidentiality provision in a production contract in violation of section 202.3 is guilty of a fraudulent practice as provided in section 714.8.
99 Acts, ch 169, §6, 22 – 24

CHAPTER 202A

LIVESTOCK MARKETING PRACTICES

For future repeal provisions, see 99 Acts, ch 88, §11

202A.1 Definitions.
202A.2 Purchase reports — filing.
202A.3 Purchase notice — posting.
202A.4 Confidentiality provisions in contracts prohibited.
202A.5 Rules.
202A.6 Enforcement.
202A.7 Penalties.

202A.1 Definitions.
1. *"Department"* means the department of agriculture and land stewardship.
2. *"Livestock"* means live cattle, swine, or sheep.
3. *"Packer"* means a person who is engaged in the business of slaughtering livestock or receiving, purchasing, or soliciting livestock for slaughter, if the meat products of the slaughtered livestock which are directly or indirectly to be offered for resale or for public consumption have a total annual value of ten million dollars or more. As used in this chapter, *"packer"* includes an agent of the packer engaged in buying or soliciting livestock for slaughter on behalf of a packer.
99 Acts, ch 88, §2, 13; 99 Acts, ch 208, §49, 74; 2002 Acts, ch 1119, §144
Subsection 3 amended

202A.2 Purchase reports — filing.
1. A packer shall file purchase reports with the department which include information relating to the purchase of livestock as required by the department. The purchase reports shall be completed in a manner prescribed by the department. The department may require that purchase reports be filed in an electronic format. A packer shall file purchase reports at times determined practicable by the department, but not later than two business days following the event being reported.
2. *a.* The information required to be reported may include but is not limited to livestock purchased, committed for delivery, or slaughtered. The information may include the volume of daily purchases and the weight, grade, and price paid for livestock, including all premiums, discounts, or adjustments. If livestock is purchased pursuant to contract, the department may require that information in the purchase report be categorized by the type of contract. The purchase reports shall allow the department to compare prices paid under contract with cash market prices.
b. This section does not require that information reported include future plans, events, or transactions, unless provided for by contract.
3. The department may provide for the public dissemination of information contained in purchase reports.
a. The department may enter into an agreement with the United States department of agriculture or any private marketing service in order to disseminate information contained in purchase reports.
b. The department, in consultation with the office of attorney general, shall designate information in purchase reports that reveals the identity of a packer or livestock seller as confidential pursuant to section 22.7.
99 Acts, ch 88, §3, 11, 13
Future repeal of section if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

202A.3 Purchase notice — posting.
1. *a.* A packer shall post a purchase notice which includes information relating to the purchase of livestock as required by the department. The information contained in the purchase notice shall include a summary of information required to be filed in purchase reports as provided in section 202A.2.
b. This section does not require that information contained in a purchase notice include future plans, events, or transactions unless provided for by contract.
2. The information contained in the purchase

notice shall appear in a format that can be understood by a reasonable person familiar with selling livestock. The notice shall be posted in a conspicuous place at the point of delivery in a manner prescribed by the department.

99 Acts, ch 88, §4, 13

Future repeal of section if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

202A.4 Confidentiality provisions in contracts prohibited.

1. A packer shall not include a provision in a contract executed on or after April 29, 1999, for the purchase of livestock providing that information contained in the contract is confidential.

2. A provision which is part of a contract for the purchase of livestock executed on and after April 29, 1999, for the purchase of livestock is void, if the provision states that information contained in the contract is confidential. The provision is void regardless of whether the confidentiality provision is express or implied; oral or written; required or conditional; contained in the contract, another contract, or in a related document, policy, or agreement. This section does not affect other provisions of a contract or a related document, policy, or agreement which can be given effect without the voided provision. This section does not require either party to the contract to divulge the information in the contract to another person.

99 Acts, ch 88, §5, 13

202A.5 Rules.

1. The department, in consultation with the office of attorney general, shall adopt rules necessary in order to administer this chapter.

2. The department may establish different rules according to the species of livestock governing all of the following:

a. Purchase reporting requirements pursuant to section 202A.2.

b. Purchase notice posting requirements pursuant to section 202A.3.

99 Acts, ch 88, §6, 13

Future repeal of all or a portion of subsection 2 if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

202A.6 Enforcement.

1. *a.* The attorney general's office is the primary agency responsible for enforcing this chapter.

b. The department shall notify the attorney general's office if the department has reason to believe that a violation of section 202A.2 has occurred.

2. In enforcing the provisions of this chapter, the attorney general may do all of the following:

a. Apply to the district court for an injunction to do any of the following:

(1) Restrain a packer from engaging in conduct or practices in violation of this chapter.

(2) Require a packer to comply with a provision of this chapter.

b. Apply to district court for the issuance of a subpoena to obtain contracts, documents, or other records for purposes of enforcing this chapter.

c. Bring an action in district court to enforce penalties provided in this chapter, including the imposition, assessment, and collection of monetary penalties.

3. The attorney general shall have access to all information reported by packers pursuant to section 202A.2, regardless of whether the information is confidential. The attorney general may use the information in order to enforce this chapter or may submit the information to a federal agency.

99 Acts, ch 88, §7, 11, 13

Future repeal of subsection 1, paragraph b, and subsection 3 if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

202A.7 Penalties.

1. A packer who fails to file a timely, accurate, or complete purchase report as required pursuant to section 202A.2 is subject to a civil penalty of not more than five thousand dollars. Each failure by a packer to file a timely, accurate, or complete purchase report constitutes a separate violation.

2. A packer who fails to post a timely, accurate, or complete purchase notice as required pursuant to section 202A.3 is subject to a civil penalty of not more than one thousand dollars. Each failure by a packer to post a timely, accurate, or complete purchase notice constitutes a separate violation.

3. A packer who includes a confidentiality provision in a contract with a livestock seller in violation of section 202A.4 is guilty of a fraudulent practice as provided in section 714.8.

99 Acts, ch 88, §8, 11, 13

Future repeal of subsections 1 and 2 if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

CHAPTER 203

GRAIN DEALERS

203.1	Definitions.
203.2	Powers and duties of the department.
203.2A	Notice requirement for grain purchasers who are not grain dealers.
203.3	License required — financial responsibility.
203.4	Participation in indemnity fund required.
203.5	License.
203.6	Fees.
203.7	Posting of license.
203.8	Payment.
203.9	Inspection of premises, books and records.
203.10	Suspension or revocation — notice.
203.11	Penalties — injunctions.
203.11A	Civil penalties.
203.11B	Grain industry peer review panel.
203.12	Claims — notice of revocation.
203.12A	Lien on grain dealer assets.
203.12B	Appointment of department as receiver.
203.13	Enforcement officers.
203.14	No obligation of state.
203.15	Credit-sale contracts.
203.16	Confidentiality of records.
203.17	Standardization of records and documents.
203.18	Reserved.
203.19	Co-operative agreements.
203.20	Shrinkage adjustments — disclosures — penalties.
203.21	Reserved.
203.22	Prioritization of inspections of grain dealers.

203.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Bond"* means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 5.

2. *"Credit-sale contract"* means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

3. *"Custom livestock feeder"* means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.

4. *"Department"* means the department of agriculture and land stewardship.

5. *"Financial institution"* means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

6. *"Good cause"* means that the department has cause to believe that the net worth or current asset to current liability ratio of a grain dealer presents a danger to sellers with whom the grain dealer does business, based on evidence of any of the following:

a. The making of a payment by use of a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the instrument because of insufficient funds in a grain dealer's account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in section 203.22.

7. *"Grain"* means any grain for which the United States department of agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer) and field peas.

8. *"Grain dealer"* means a person who buys during any calendar month one thousand bushels of grain or more directly from the producers of the grain for purposes of resale, milling, or processing. However, *"grain dealer"* does not include any of the following:

a. A producer of grain who is buying grain for the producer's own use as seed or feed.

b. A person solely engaged in buying grain future contracts on the board of trade.

c. A person who purchases grain only for sale in a feed regulated under chapter 198.

d. A person who purchases grain only from grain dealers licensed under this chapter.

e. A person engaged in the business of selling agricultural seeds regulated by chapter 199.

f. A person buying grain only as a farm manager.

g. An executor, administrator, trustee, guardian, or conservator of an estate.

h. A bargaining agent as defined in section 203A.1.

i. A custom livestock feeder.

j. A cooperative organized under chapter 501, if the cooperative only purchases grain from its members who are producers or from a licensed grain dealer, and the cooperative does not resell that grain.

k. A limited liability company as defined in section 490A.102 that meets all of the following requirements:

(1) The majority of voting rights in the limited liability company are held by its members who are producers.

(2) The purpose of the limited liability company is to produce renewable fuel as defined in section 159A.2.

(3) The limited liability company only purchases grain from its members who are producers or from a licensed grain dealer.

(4) The limited liability company does not resell grain that it purchases.

9. *"Producer"* means the owner, tenant, or operator of land in this state who has an interest in and receives all or a part of proceeds from the sale of grain produced on that land.

10. *"Seller"* means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit-sale contract as a seller.

[C75, 77, 79, 81, §542.1; 81 Acts, ch 180, §1 – 3]

85 Acts, ch 80, §1, 2; 86 Acts, ch 1006, §1; 86 Acts, ch 1152, §1, 2; 86 Acts, ch 1245, §669; 87 Acts, ch 147, §1; 89 Acts, ch 143, §1001; 92 Acts, ch 1239, §55

C93, §203.1

95 Acts, ch 28, §1; 96 Acts, ch 1010, §2; 99 Acts, ch 106, §1 – 3; 2001 Acts, ch 36, §1, 2

203.2 Powers and duties of the department.

The department may exercise general supervision over the business operations of grain dealers. The supervisory and regulatory powers authorized by this chapter shall be the responsibility of the warehouse bureau of the department. The department may inspect or cause to be inspected any grain dealer operating in this state and may require the filing of reports pertaining to the operation of the dealer's business. The department shall adopt rules to provide for the efficient administration and regulation of the provisions of this chapter, and may designate an employee of the department to act for the department in any details connected with such administration, including the issuance of licenses and approval of grain dealers' bonds in the name of the department.

[C75, 77, 79, 81, §542.2]

89 Acts, ch 143, §101

C93, §203.2

203.2A Notice requirement for grain purchasers who are not grain dealers.

A person shall not purchase grain from a producer for purposes of resale, milling, feeding, or processing, unless one of the following applies:

1. The person is a grain dealer licensed pursuant to section 203.3.

2. The person has purchased less than fifty thousand bushels of grain from all producers in the twelve months prior to purchasing grain from the producer.

3. *a.* The person provides notice to the producer. The notice shall be in the following form:

ATTENTION TO PRODUCERS:

THE PERSON PURCHASING THIS GRAIN IS NOT A LICENSED GRAIN DEALER AND THIS IS NOT A COVERED TRANSACTION ELIGIBLE FOR INDEMNIFICATION FROM THE GRAIN DEPOSITORS AND SELLERS INDEMNITY FUND AS PROVIDED IN IOWA CODE SECTION 203D.3.

b. The notice shall be provided prior to or at the time of the purchase. The notice may appear on a separate statement or as part of a document received by the producer, including a contract or receipt, as required by the department.

c. The form of the notice shall be prescribed by the department. The notice shall appear in a printed boldface font in at least ten point type.

99 Acts, ch 106, §4

203.3 License required — financial responsibility.

1. A person shall not engage in the business of a grain dealer in this state without having obtained a license issued by the department.

2. The type of license required shall be determined as follows:

a. A class 1 license is required if the grain dealer purchases any grain by credit-sale contract, or if the value of grain purchased by the grain dealer from producers during the grain dealer's previous fiscal year exceeds five hundred thousand dollars. Any other grain dealer may elect to be licensed as a class 1 grain dealer.

b. A class 2 license is required for any grain dealer not holding a class 1 license. A class 2 licensee whose purchases from producers during a fiscal year exceed a limit of five hundred thousand dollars in value shall file within thirty days of the date the limit is reached a complete application for a class 1 license. If a class 1 license is denied, the person immediately shall cease doing business as a grain dealer.

3. An application for a license to engage in business as a grain dealer shall be filed with the department and shall be in a form prescribed by the department. The application shall include the name of the applicant, its principal officers if the

applicant is a corporation or the active members of a partnership if the applicant is a partnership and the location of the principal office or place of business of the applicant. A separate license shall be required for each location at which records are maintained for transactions of the grain dealer. The application shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and the net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon a written request filed with the department, the department or a designated employee may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least seventy-five thousand dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 grain dealer if the person has a net worth of less than thirty-seven thousand five hundred dollars.

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer, except as provided in section 203.15, may elect to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause.

A grain dealer shall submit a report to the department according to procedures required by the department, if the grain dealer provides a bond based in part on the number of bushels of unpaid grain purchased by the grain dealer, as provided in rules adopted by the department, in order to satisfy the current assets to current liabilities ratio requirement of this section. The report shall contain information required by the department, including the number of bushels of unpaid grain purchased by the grain dealer. The grain dealer shall submit the report not more than once each month. However, the department may require that a grain dealer submit a report on a more frequent basis, if the department has good cause.

c. The grain dealer shall have and maintain current assets equal to at least one hundred percent of current liabilities or provide a bond under the following conditions:

(1) A grain dealer with current assets equal to at least fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. After the amount of the bond equals one million dollars, the grain dealer may elect to base the remainder of the amount of the bond on the number of bushels of unpaid grain being purchased by the grain dealer, as provided for by rules which shall be adopted by the department. The remaining amount shall equal two thousand dollars for each one thousand dollars of the highest amount of bushels of unpaid grain purchased by the grain dealer during each month.

(2) A grain dealer with current assets equal to less than fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than thirty consecutive days in a twelve-month period.

5. In order to receive and retain a class 2 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least thirty-seven thousand five hundred dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net deficiency. However, a person shall not be licensed as a class 2 grain dealer if the person has a net worth of less than seventeen thousand five hundred dollars.

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer may elect,

however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause.

A grain dealer shall submit a report to the department according to procedures required by the department, if the grain dealer provides a bond based in part on the number of bushels of unpaid grain purchased by the grain dealer, as provided in rules adopted by the department, in order to satisfy the current assets to current liabilities ratio requirement of this section. The report shall contain information required by the department, including the number of bushels of unpaid grain purchased by the grain dealer. The grain dealer shall submit the report not more than once each month. However, the department may require that a grain dealer submit a report on a more frequent basis, if the department has good cause.

c. The grain dealer shall have and maintain current assets equal to at least one hundred percent of current liabilities or provide a bond under the following conditions:

(1) A grain dealer with current assets equal to at least fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. After the amount of the bond equals one million dollars, the grain dealer may elect to base the remainder of the amount of the bond on the number of bushels of unpaid grain being purchased by the grain dealer, as provided for by rules which shall be adopted by the department. The remaining amount shall equal two thousand dollars for each one thousand dollars of the highest amount of bushels of unpaid grain purchased by the grain dealer during each month.

(2) A grain dealer with current assets equal to less than fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than thirty consecutive days in a twelve-month period.

6. The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification with respect to the financial resources of the applicant and the applicant's ability to pay producers for grain purchased from them.

7. *a.* When the net worth or current ratio of a licensee in good standing is less than that required by this section, the grain dealer shall correct the deficiency or file a deficiency bond or an irrevocable letter of credit within thirty days of written notice by the department. Unless the deficiency is corrected or the deficiency bond or irrevocable letter of credit is filed within thirty days, the grain dealer license shall be suspended.

b. If the department finds that the welfare of grain producers requires emergency action, and incorporates a finding to that effect in its order, immediate suspension of a license may be ordered notwithstanding the thirty-day period otherwise allowed by paragraph *"a"*.

8. A deficiency bond or irrevocable letter of credit filed with the department pursuant to this section shall not be canceled by the issuer on less than ninety days' notice by certified mail to the secretary of agriculture and the principal.

[C75, 77, 79, 81, §542.3; 81 Acts, ch 180, §4; 82 Acts, ch 1093, §1]

83 Acts, ch 18, §1; 83 Acts, ch 54, §1; 83 Acts, ch 175, §1, 2; 84 Acts, ch 1224, §1; 85 Acts, ch 234, §1, 2; 86 Acts, ch 1152, §3, 4; 87 Acts, ch 147, §2, 3; 89 Acts, ch 143, §201, 202, 301, 302, 401, 402; 92 Acts, ch 1239, §56, 57

C93, §203.3

94 Acts, ch 1086, §1 – 4

203.4 Participation in indemnity fund required.

A person licensed to operate as a grain dealer under this chapter shall participate in and comply with the grain depositors and sellers indemnity fund provided in chapter 203D.

[C75, 77, 79, 81, §542.4; 81 Acts, ch 180, §5]

86 Acts, ch 1006, §2; 86 Acts, ch 1152, §5

C93, §203.4

203.5 License.

Upon the filing of the application and compliance with the terms and conditions of this chapter and rules of the department, the department shall issue a license to the applicant. The license shall terminate at the end of the third calendar month following the close of the grain dealer's fiscal year. A grain dealer's license may be renewed annually by the filing of a renewal fee and a renewal application on a form prescribed by the department. An application for renewal shall be received by the department on or before the end of the third calendar month following the close of the grain dealer's fiscal year. A grain dealer license which has terminated may be reinstated by the department upon receipt of a proper renewal application, the renewal fee, and the reinstatement fee as provided in section 203.6 if filed within thirty days from the date of termination of the grain dealer license. The department may cancel a license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter. Fees for licenses issued

for less than a full year shall be prorated from the date of the application.

If an applicant has had a license under chapter 203, 203A, or 203C revoked for cause within the past three years, or has been convicted of a felony involving violations of chapter 203, 203A, or 203C, or is owned or controlled by a person who has had a license so revoked or who has been so convicted, the department may deny a license to the applicant.

The department may deny a license to an applicant if any of the following apply:

1. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund in regard to a license issued under this chapter or chapter 203C, and the liability has not been discharged, settled, or satisfied.

2. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203C and the liability has not been discharged, settled, or satisfied.

[C75, 77, 79, 81, §542.5; 81 Acts, ch 180, §6]
84 Acts, ch 1100, §1; 89 Acts, ch 143, §701; 92 Acts, ch 1239, §58
C93, §203.5

203.6 Fees.

The department shall charge the following fees for deposit in the general fund:

1. For the issuance or renewal of a license required under section 203.3, and for any inspection of a grain dealer, the fee shall be determined on the basis of all bushels of grain purchased during the grain dealer's previous fiscal year according to the grain dealer's financial statement required in section 203.3. The fee shall be calculated according to the following schedule:

a. If the total number of bushels purchased is thirty-five thousand or less, the license fee is sixty-six dollars and the inspection fee is eighty-three dollars.

b. If the total number of bushels purchased is more than thirty-five thousand, but not more than two hundred fifty thousand, the license fee is one hundred sixteen dollars and the inspection fee is one hundred twenty-five dollars.

c. If the total number of bushels purchased is more than two hundred fifty thousand, but not more than five hundred thousand, the license fee is one hundred sixty-six dollars and the inspection fee is one hundred ninety-one dollars.

d. If the total number of bushels purchased is more than five hundred thousand, but not more than one million, the license fee is two hundred ninety-one dollars and the inspection fee is two hundred forty-nine dollars.

e. If the total number of bushels purchased is more than one million, but not more than one million eight hundred fifty thousand, the license fee is four hundred ninety-eight dollars and the inspection fee is three hundred seven dollars.

f. If the total number of bushels purchased is more than one million eight hundred fifty thousand, but not more than three million two hundred thousand, the license fee is seven hundred six dollars and the inspection fee is three hundred seventy-four dollars.

g. If the total number of bushels purchased is more than three million two hundred thousand, the license fee is nine hundred fifty-five dollars and the inspection fee is four hundred forty dollars.

If the applicant did not purchase grain in the applicant's previous fiscal year, the applicant shall pay the fee specified in paragraph *"a"*. If during the licensee's fiscal year the number of bushels of grain actually purchased exceeds thirty-five thousand, the licensee shall notify the department and the license and inspection fee shall be adjusted accordingly. Subsequent adjustments shall be made as necessary. An applicant may elect licensing in any category of this subsection. Fees for new licenses issued for less than a full year shall be prorated from the date of application.

2. For an amendment to a license, the fee is ten dollars.

3. For a duplicate license, the fee is five dollars.

4. For reinstatement of a license the fee is fifty dollars.

[C75, 77, 79, 81, §542.6; 81 Acts, ch 180, §7, 32]
83 Acts, ch 18, §2; 83 Acts, ch 175, §3, 4; 84 Acts, ch 1100, §2; 92 Acts, ch 1239, §59
C93, §203.6

203.7 Posting of license.

The grain dealer's license shall be posted in a conspicuous location in the place of business. A grain dealer's license is not transferable.

[C75, 77, 79, 81, §542.7; 81 Acts, ch 180, §8]
83 Acts, ch 18, §3
C93, §203.7

203.8 Payment.

A person required to be licensed as a grain dealer shall pay the purchase price to the owner or the owner's agent for grain upon delivery or demand of the owner or agent, but not later than thirty days after delivery by the owner or agent unless in accordance with the terms of a credit-sale contract that satisfies the requirements of this chapter.

As used in this section, *"delivery"* means the transfer of title to and possession of grain by the seller to the grain dealer or to another person in accordance with the agreement of the seller and the grain dealer; and *"payment"* means the actual payment or tender of payment by the grain dealer to the seller of the agreed purchase price, or in the case of disputes as to sales of grain, the undisputed portion of the purchase price without reduction for any separate claim of the grain dealer against the seller.

[C75, 77, 79, 81, §542.8; 81 Acts, ch 180, §9]
C93, §203.8
96 Acts, ch 1030, §1
See §203.15

203.9 Inspection of premises, books and records.

The department may inspect the premises used by any grain dealer in the conduct of the dealer's business at any time, and the books, accounts, records, and papers of every grain dealer which pertain to grain purchases are subject to inspection by the department during ordinary business hours. The department shall cause the business premises and books, accounts, records, and papers of every grain dealer to be inspected at least once each eighteen-month period without justification. The department shall prioritize inspections based on the system provided in section 203.22. The department may use a risk rating produced by a statistical model provided in section 203.22 as justification to conduct an inspection. The transporter of grain in transit shall possess bills of lading or other documents covering the grain, and shall present them to any law enforcement officer or to a person designated as an enforcement officer under section 203.13 on demand. If there is justification to believe that a person is engaged without a license in the business of a grain dealer in this state, the department may inspect the books, papers, and records of the person which pertain to grain purchases.

If the grain dealer does not maintain a place of business in this state, the department is not required to inspect the business premises of the grain dealer, and the grain dealer shall submit all books, records and papers relating to grain transactions occurring within this state to the department for purposes of an inspection required or permitted under this section at any reasonable time and place, including the offices of the department during regular business hours, as ordered by the department or the administrator of the warehouse bureau.

[C75, 77, 79, 81, §542.9; 81 Acts, ch 180, §10]
84 Acts, ch 1224, §2; 86 Acts, ch 1152, §6; 89 Acts, ch 143, §101; 92 Acts, ch 1239, §60
C93, §203.9

203.10 Suspension or revocation — notice.

The department may after hearing and upon information being filed with the department by the administrator of the warehouse bureau of the department or upon complaint filed by any person, suspend or revoke the license of any person licensed under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule adopted under this chapter. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the department in triplicate. The department shall notify the licensee of the complaint and furnish the licensee with a copy of the information or the complaint and a copy of the order of the department fixing the time for a hearing, which time shall be at least five days from the date of notification. If the department determines that the public good requires immediate action, the department may, upon the filing of the information or the complaint and without hearing, temporarily suspend a license pending the determination by it of the complaint. Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act.

The department may revoke a grain dealer's license upon information without hearing if a grain dealer fails to submit to inspection.

[C75, 77, 79, 81, §542.10]
86 Acts, ch 1152, §7; 89 Acts, ch 143, §101
C93, §203.10

203.11 Penalties — injunctions.

1. A person who knowingly submits false information to or knowingly withholds information from the department or any of its employees when required to be submitted or maintained under this chapter, commits a fraudulent practice.

2. A person who engages in business as a grain dealer without obtaining a license, or who refuses to permit inspection of licensed premises, or books, accounts, records, or other documents required by this chapter, or who uses a scale ticket, or credit-sale contract that fails to satisfy requirements established by the department commits a serious misdemeanor, except that a person who commits any of these offenses after having been found guilty of the same offense commits an aggravated misdemeanor.

3. Except as provided in subsections 1 and 2, a person who violates any provision of this chapter commits a simple misdemeanor. With respect to a continuing violation, each day that the violation continues is a separate offense.

4. A person in violation of this chapter, or in violation of chapter 714 or 715A, which violation involves the business of a grain dealer, is subject to prosecution by the county attorney in the county where the business is located. However, if the county attorney fails to initiate prosecution within thirty days and upon request by the department, the attorney general may initiate and carry out the prosecution in cooperation, if possible, with the county attorney. The person in violation may be restrained by an injunction in an action brought by the department or the attorney general upon request by the department.

[C75, 77, 79, 81, §542.11; 81 Acts, ch 180, §11]
92 Acts, ch 1239, §61
C93, §203.11

203.11A Civil penalties.

1. The department shall establish, by rule, civ-

il penalties which may be administratively or judicially assessed against a grain dealer for a violation of this chapter.

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in a case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

3. A civil penalty may be administratively assessed only after an opportunity for a contested case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty becomes final. When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.

4. A person who fails to timely pay a civil penalty as provided in this section shall pay, in addition to the penalty, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

99 Acts, ch 106, §5

203.11B Grain industry peer review panel.

1. The department shall establish a grain industry peer review panel to assist the department in assessing civil penalties pursuant to this section and section 203C.36A. The secretary of agriculture shall appoint to the panel the following members:

a. Two natural persons who are grain dealers licensed under this chapter and actively engaged in the grain dealer business.

b. Two natural persons who are warehouse operators licensed pursuant to chapter 203C and actively engaged in the grain warehouse business.

c. One natural person who is a producer actively engaged in grain farming.

2. *a.* The members appointed pursuant to this section shall serve four-year terms beginning and ending as provided in section 69.19. However, the secretary of agriculture shall appoint initial members to serve for less than four years to ensure that members serve staggered terms. A member is eligible for reappointment. A vacancy on the panel shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

b. The panel shall elect a chairperson who shall serve for a term of one year. The panel shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of three or more members. Three members constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the panel. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the panel.

c. Notwithstanding section 7E.6, the members shall only receive reimbursement for actual expenses for performance of their official duties, as provided by the department.

d. The panel shall be staffed by employees of the department.

3. The panel may propose a schedule of civil penalties for minor and serious violations of this chapter and chapter 203C. The department may adopt rules based on the recommendations of the panel as approved by the secretary of agriculture.

4. *a.* The panel shall review cases of grain dealers regulated under this chapter and warehouse operators regulated under chapter 203C who are subject to civil penalties as provided in section 203.11A or 203C.36A. A review shall be performed upon the request of the department or the person subject to the civil penalty.

b. The department shall present reports to the panel in regard to investigations of cases under review which may result in the assessment of a civil penalty against a person. The reports may be reviewed by the panel in closed session pursuant to section 21.5, and are confidential records. In presenting the reports, the department shall make available to the panel records of persons which are otherwise confidential under section 22.7, 203.16, or 203C.24. The panel members shall maintain the confidentiality of records made available to the panel. However, a determination to assess a civil penalty against a person shall be made exclusively by the department.

c. The panel may establish procedures for the review and establish a system of prioritizing cases for review, consistent with rules adopted by the department. The department shall adopt rules establishing a period for the review and response by the panel which must be completed prior to a contested case hearing under chapter 17A. A hearing shall not be delayed after the required period for review and response, except as provided in chapter 17A or the Iowa rules of civil procedure. The rules adopted by the department may exclude review of minor violations. The review may also include the manner of assessing and collecting the

civil penalty.

d. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the civil penalty. The response may include a recommendation that a proposed civil penalty be modified or suspended, that an alternative method of collection be instituted, or that conditions be placed upon the license of a grain dealer or warehouse operator.

5. This section does not apply to an action by the department for a license suspension or revocation. This section also does not require a review or response if the case is subject to criminal prosecution or involves a petition seeking injunctive relief.

6. A response by the panel may be used as evidence in an administrative hearing or in a civil or criminal case except to the extent that information contained in the response is considered confidential pursuant to section 22.7, 203.16, or 203C.24.

99 Acts, ch 106, §6

203.12 Claims — notice of revocation.

Upon revocation, termination, or cancellation of a grain dealer license, any claim for the purchase price of grain against the grain dealer shall be made in writing and filed with the grain dealer and with the issuer of a deficiency bond or of an irrevocable letter of credit and with the department within one hundred twenty days after revocation, termination, or cancellation. Failure to make this timely claim relieves the issuer and the grain depositors and sellers indemnity fund provided in chapter 203D of all obligations to the claimant.

Upon revocation of a grain dealer license, the department shall cause notice of the revocation to be published once each week for two consecutive weeks in a newspaper of general circulation within the state of Iowa and in a newspaper of general circulation within the county of the grain dealer's principal place of business when that dealer's principal place of business is located in the state of Iowa. The notice shall state the name and address of the grain dealer and the effective date of revocation. The notice shall also state that any claims against the grain dealer shall be made in writing and sent by ordinary mail or delivered personally within one hundred twenty days after revocation to the grain dealer, to the issuer of a deficiency bond or of an irrevocable letter of credit, and to the department, and the notice shall state that the failure to make a timely claim does not relieve the grain dealer from liability to the claimant.

[C79, 81, §542.12]
86 Acts, ch 1152, §8
C93, §203.12

203.12A Lien on grain dealer assets.

1. A statutory lien is imposed on all grain dealer assets in favor of sellers who have surrendered warehouse receipts or other written evidence of ownership as part of a grain sale transaction or who possess written evidence of the sale of grain to a grain dealer, without receiving full payment for the grain.

2. *"Grain dealer assets"* includes proceeds received or due a grain dealer upon the sale, including exchange, collection, or other disposition, of grain sold by the grain dealer. As used in this section, *"proceeds"* means noncash and cash proceeds as defined in section 554.9102. *"Grain dealer assets"* also includes any other funds or property of the grain dealer which can be directly traced as being from the sale of grain by the grain dealer, or which were utilized in the business operation of the grain dealer. A court, upon petition by an affected party, may order that claimed grain dealer assets are not grain dealer assets as defined in this section. The burden of proof shall be upon the petitioner to establish that the assets are not grain dealer assets as defined in this section.

3. The lien shall arise at the time of surrender of warehouse receipts or other written evidence of ownership as part of a grain sale transaction or the time of delivery of the grain for sale, and shall terminate when the liability of the grain dealer to the seller has been discharged. The lien of all sellers is hereby assigned to the Iowa grain indemnity fund board, on behalf of the grain depositors and sellers indemnity fund.

4. To perfect the lien, the Iowa grain indemnity fund board must file a lien statement with the office of the secretary of state. The lien statement is valid only if filed on or after the date of suspension but not later than sixty days after the incurrence date as provided in section 203D.6. The lien statement shall disclose the name of the grain dealer, the address of the dealer's principal place of business, a description of identifiable grain dealer assets, and the amount of the lien. The lien amount shall be the board's estimate of the final cost of reimbursing the grain depositors and sellers indemnity fund for the payment of claims against the fund resulting from the breach of the grain dealer's obligations. The board shall correct the amount not later than one hundred eighty days following the incurrence date. A court, upon petition by an affected person, may correct the amount. The board shall have the burden of proving that the amount is an accurate estimate.

5. The Iowa grain indemnity fund board shall upon written demand of the grain dealer file a termination statement with the secretary of state, if the license of the grain dealer is not revoked, terminated, or canceled after one hundred eighty days from the date that the lien is perfected. Upon filing the termination statement, the lien becomes unperfected. The board shall also deliver a copy of the termination statement to the grain dealer.

6. The secretary of state shall note the filing of a lien statement under this section in a manner provided by chapter 554, the uniform commercial code. The secretary shall note the filing of a ter-

mination statement with the lien statement.

7. A lien statement filed under this section shall be a security interest perfected under chapter 554 and subject to the same priority as provided under section 554.9322.

8. If the grain dealer is also licensed under chapter 203C, and in the event the department is appointed as a receiver under section 203C.3, assets under the authority of the receiver are free from this statutory lien. However, if there are receivership assets in excess of those necessary to fully reimburse depositors, the perfected lien will attach to those excess assets.

9. The board may enforce the lien in the manner provided in chapter 554, article 9, part 6, for the enforcement of security interests. If, upon enforcement of the lien, the lien amount is satisfied in full without exhaustion of the grain dealer assets, the remaining assets shall be returned to the grain dealer or, if there are competing claims to those remaining assets by other creditors, shall place those assets in the custody of the district court and implead the known creditors.

For purposes of enforcement of the lien, the board is deemed to be the secured party and the grain dealer is deemed to be the debtor, and each has the respective rights and duties of a secured party and a debtor as provided in chapter 554, article 9, part 6. If a right or duty under chapter 554, article 9, part 6, is contingent upon the existence of express language in a security agreement, or may be waived by express language in a security agreement, the requisite language is deemed not to exist for purposes of enforcement of the lien created by this section.

10. Actions relating to this section shall be brought in the district court in the county in which the grain dealer's primary place of business is located or in Polk county.

92 Acts, ch 1239, §62; 2000 Acts, ch 1149, §163, 187

203.12B Appointment of department as receiver.

1. As used in this section:

a. "Grain dealer assets" means the same as defined in section 203.12A, including any proceeds from a deficiency bond or irrevocable letter of credit, or any insurance policy relating to those assets.

b. "Interested seller" means a person who delivers or has delivered grain to a grain dealer who has not been paid as provided in section 203.8 or according to the terms of a credit-sale contract breached by the grain dealer.

c. "Issuer" means a person who issues a deficiency bond or an irrevocable letter of credit pursuant to section 203.3, or an issuer of grain assets.

2. *a.* The department may file a verified petition in district court requesting that the department be appointed as a receiver, and the district court shall appoint the department as receiver, in order to protect interested sellers, if any of the following apply:

(1) The grain dealer's license is revoked or suspended under section 203.10.

(2) There is evidence that the grain dealer has engaged or is engaging in business under this chapter without obtaining a license as required pursuant to section 203.3.

b. Upon being appointed as a receiver, the department shall take custody and provide for the disposition of the grain dealer assets of the grain dealer under the supervision of the court. The petition shall be filed in the county in which the grain dealer maintains its principal place of business in this state. The court may issue ex parte any temporary order as it determines necessary to preserve or protect the grain dealer assets and the rights of interested sellers. The petition shall be accompanied by the department's plan for disposition of grain dealer assets which shall provide terms as may be necessary to preserve or protect the grain dealer assets and the rights of interested sellers, less expenses incurred by the department in connection with the receivership. The plan may provide for the delivery or sale of grain as provided in section 203C.4. The plan may provide for the operation of the business of the grain dealer on a temporary basis and any other course of action or procedure which will serve the interests of interested sellers. The petition shall be filed with the clerk of the district court who shall set a date for a hearing in the same manner as provided in section 203C.3. Copies of the petition, the notice of hearing, and the department's plan of disposition shall be delivered to the following:

(1) The grain dealer and each issuer who shall receive copies delivered in the manner required for service of an original notice.

(2) Interested sellers as determined by the department who shall receive copies delivered by ordinary mail.

The failure of a person to receive the required notification shall not invalidate the proceedings on the petition or any part of the petition for the appointment of the department as the receiver. A person is not a party to the action unless admitted by the court upon application.

3. When appointed as a receiver, the department shall publish notice of the appointment in the same manner provided in section 203C.3.

4. The department may employ or appoint a person to appear on behalf of the department in any proceedings before the court as provided in section 203C.3.

5. An action of the department shall not be subject to the provisions of chapter 17A. A person employed or appointed by the department as receiver shall be deemed to be an employee of the state as defined in section 669.2. Chapter 669 is applicable to any claim as defined in section 669.2 against the person carrying out the duties of the department acting as receiver.

6. When the department is appointed as a receiver, the issuer shall be joined as a party, and may be ordered by the court to pay indemnification proceeds, and shall be discharged from further liability as provided in section 203C.4. The department shall provide notice to interested sellers within one hundred twenty days after the date of appointment. A failure of a person to file a timely claim as provided by the department shall defeat the claim, except to the extent of any excess grain dealer assets remaining after all timely claims are paid in full.

7. If the court approves the sale of grain, the department shall employ or appoint a merchandiser who shall enjoy the same status, exercise the same powers, and receive compensation to the same extent as a merchandiser employed or appointed pursuant to section 203C.4. A person employed or appointed as a merchandiser must meet the following requirements:

a. Be experienced or knowledgeable in the operation of grain dealers as provided in this chapter.

b. Be experienced or knowledgeable in the marketing of grain.

c. Not have had a license issued pursuant to section 203.3 suspended or revoked.

d. Not have any pecuniary interest in the grain dealer assets of the grain dealer and not have a business relationship with the grain dealer.

8. The sale of the grain shall proceed in the same manner as grain sold pursuant to section 203C.4. The department may, with the approval of the court, continue the operation of all or any part of the business of the grain dealer on a temporary basis and take any other course of action or procedure which will serve the interests of interested sellers. The department is entitled to reimbursement out of grain dealer assets for costs directly attributable to the receivership. The department shall be reimbursed from the grain dealer assets in the same manner as provided in section 203C.4. If the approved plan of disposition requires a distribution of cash proceeds, the department shall submit to the court a proposed plan of distribution of those proceeds. The plan shall be approved and executed and the department shall be discharged and the receivership terminated in the same manner as provided in section 203C.4.

96 Acts, ch 1030, §2

203.13 Enforcement officers.

The department may designate by resolution certain of its employees in the warehouse bureau to be enforcement officers. Each person so designated shall have the authority of a peace officer to make arrests for violations of this chapter.

[C79, 81, §542.13]
89 Acts, ch 143, §101
C93, §203.13

203.14 No obligation of state.

Nothing in this chapter shall be construed to imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees or officials, either elective or appointive, in respect to any agreement or undertaking to which the provisions of this chapter relate.

[C79, 81, §542.14]
C93, §203.14

203.15 Credit-sale contracts.

1. A grain dealer shall not purchase grain by a credit-sale contract except as provided in this section.

2. A grain dealer shall give written notice to the department prior to engaging in the purchase of grain by credit-sale contracts. Notice shall be on forms provided by the department. The notice shall contain information required by the department.

3. All credit-sale contract forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing of the forms. A grain dealer shall maintain an accurate record of all credit-sale contract forms and numbers obtained by that dealer. The record shall include the disposition of each numbered form, whether by execution, destruction, or otherwise.

4. A grain dealer who purchases grain by credit-sale contracts shall maintain books, records, and other documents as required by the department to establish compliance with this section.

5. In addition to other information as may be required, a credit-sale contract shall contain or provide for all of the following:

a. The seller's name and address.

b. The conditions of delivery.

c. The amount and kind of grain delivered.

d. The price per bushel or basis of value.

e. The date payment is to be made.

f. The duration of the credit-sale contract, which shall not exceed twelve months from the date the contract is executed.

6. Title to all grain sold by a credit-sale contract is in the purchasing dealer as of the time the contract is executed, unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the grain dealer and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a grain dealer license, the payment date for all credit-sale contracts shall be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the business of the grain dealer is sold to another licensed grain dealer,

credit-sale contracts may be assigned to the purchaser of the business.

7. *a.* A grain dealer shall not purchase grain on credit-sale contract during any time period in which the grain dealer fails to maintain fifty cents of net worth for each outstanding bushel of grain purchased under credit. The grain dealer may maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of deficiency in net worth.

b. A grain dealer holding a federal or state warehouse license who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture shall not purchase grain on credit-sale contract to correct the shortage of grain.

c. A grain dealer must meet at least either of the following conditions:

(1) The grain dealer's last financial statement required to be submitted to the department pursuant to section 203.3 is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state.

(2) The grain dealer files a bond with the department in the amount of one hundred thousand dollars payable to the department. The bond shall be used to indemnify sellers for losses resulting from a breach of a credit-sale contract as provided by rules adopted by the department. The rules shall include, but are not limited to, procedures and criteria for providing notice, filing claims, valuing losses, and paying claims. The bond provided in this paragraph shall be in addition to any other bond required in this chapter.

A bond filed with the department under this paragraph shall not be canceled by the issuer on less than ninety days notice by certified mail to the department and the principal. However, if an adequate replacement bond is filed with the department, the department may authorize the cancellation of the original bond before the end of the ninety-day period. If an adequate replacement bond is not received by the department within sixty days of the issuance of the notice of cancellation, the department shall automatically suspend the grain dealer's license. The department shall cause an inspection of the licensed grain dealer immediately at the end of the sixty-day period. If a replacement bond is not filed within another thirty days following the suspension, the grain dealer license shall be automatically revoked. When a license is revoked, the department shall provide notice of the revocation by ordinary mail to the last known address of each holder of an outstanding credit-sale contract and all known sellers.

8. The department may adopt rules to suspend the right of a grain dealer to purchase grain by credit-sale contract based on any of the following conditions:

a. The grain dealer holding a federal or state warehouse license does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture.

b. The grain dealer holding a state or federal warehouse license issues back to the grain dealer a warehouse receipt for purposes of providing collateral, if the grain which is the subject of the warehouse receipt was purchased on credit and is unpaid for by the grain dealer.

c. The grain dealer fails to maintain requirements relating to net worth or fails to maintain a ratio of current assets to current liabilities, as required in section 203.3.

d. The grain dealer violates this section.

e. The grain dealer's total liabilities are greater than seventy-five percent of the grain dealer's total assets.

f. The grain dealer has made payment by use of a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the instrument because of insufficient funds in a grain dealer's account.

g. The department discovers that a grain dealer has delayed payment for grain purchased since the department last inspected the grain dealer pursuant to section 203.9.

9. A licensed grain dealer who purchases grain by credit-sale contract shall obtain from the seller a signed acknowledgment stating that the seller has received notice that grain purchased by credit-sale contract is not protected by the grain depositors and sellers indemnity fund. The form for the acknowledgment shall be prescribed by the department, and the licensed grain dealer and the seller shall each be provided a copy.

[C71, 73, 75, 77, §543.17; C79, 81, §542.8, 543.17; 81 Acts, ch 180, §12]

C83, §542.15

85 Acts, ch 234, §3; 86 Acts, ch 1152, §9; 87 Acts, ch 147, §4; 89 Acts, ch 143, §403; 92 Acts, ch 1239, §63, 64

C93, §203.15

99 Acts, ch 106, §7

203.16 Confidentiality of records.

Notwithstanding chapter 22, all financial statements of grain dealers under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.

2. In actions or administrative proceedings commenced under this chapter or chapter 203C.

3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.

4. When required by subpoena or court order.

5. Disclosure to law enforcement agencies in regard to the detection and prosecution of public offenses.

6. When released to a bonding company approved by the department, or released to the United States department of agriculture or any of its divisions.

7. Where released at the request of the Iowa accountancy examining board for licensee review and discipline in accordance with chapters 272C and 542 and subject to the confidentiality requirements of section 272C.6.

8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

[81 Acts, ch 180, §13]
C83, §542.16
83 Acts, ch 101, §1; 89 Acts, ch 143, §601
C93, §203.16
99 Acts, ch 106, §8; 2001 Acts, ch 55, §23, 38
2001 amendments to subsection 7 are effective July 1, 2002; 2001 Acts, ch 55, §38
Subsection 7 amended

203.17 Standardization of records and documents.

1. The department may adopt rules specifying the form, content and use of scale tickets, and credit-sale contracts. All scale ticket forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing. A grain dealer shall maintain an accurate record of all scale ticket numbers. The record shall include the disposition of each numbered form, whether issued, destroyed, or otherwise disposed of.

2. A licensed grain dealer shall keep complete and accurate records of all grain transactions. Records for the previous six years shall be made available for inspection by the department.

[81 Acts, ch 180, §14]
C83, §542.17
C93, §203.17

203.18 Reserved.

203.19 Co-operative agreements.

1. Notwithstanding the other provisions of this chapter, the department may enter into co-operative agreements with other states for the purpose of making available to those states the information acquired under the bonding, licensing, and examination procedures of this chapter.

2. If a co-operative agreement is in effect under this section, the indemnification requirements of this chapter may be satisfied by:

a. Filing with the department evidence of a bond or an irrevocable letter of credit on file with a state or of participation in an indemnity fund in a state with which Iowa has a co-operative agreement as provided for by this section.

b. Indemnification proceeds shall be co-payable to the state of Iowa for the benefit of sellers of grain under this chapter.

Indemnification proceeds required by this chapter may be made co-payable to any state with whom this state has entered into contracts or agreements as authorized by this section, for the benefit of sellers of grain in that state.

[81 Acts, ch 180, §16]
C83, §542.19
86 Acts, ch 1152, §11
C93, §203.19

203.20 Shrinkage adjustments — disclosures — penalties.

1. A person who, in connection with the receipt of corn or soybeans for storage, processing, or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain shall compute the amount of the adjustment by multiplying the scale weight of the grain by that factor which results in a rate of adjustment of one and eighteen hundredths percent of weight per one percent of moisture content. The use of any rate of weight adjustment for moisture content other than the one prescribed by this subsection is a fraudulent practice. The person shall post on the business premises in a conspicuous place notice of the rate of adjustment for moisture content that is prescribed by this subsection. Failure to make this disclosure is a simple misdemeanor.

2. A person who, in connection with the receipt of grain for storage, processing or sale, adjusts the quantity of the grain received to compensate for losses to be incurred during the handling, processing, or storage of the grain shall post on the business premises in a conspicuous place notice of the rate of adjustment to be made for this shrinkage. Failure to make the required disclosure is a simple misdemeanor.

3. A person who adjusts the scale weight of corn or soybeans both for moisture content and for handling, processing, or storage losses may combine the two adjustment factors into a single factor and may use this resulting factor to compute the amount of weight adjustment in connection with storage, processing, or sale transactions, provided that the person shall post on the business premises in a conspicuous place a notice that discloses the moisture shrinkage factor prescribed by subsection 1, the handling shrinkage factor to be imposed, and the single factor that results from combining these factors. Failure to make the required disclosure is a simple misdemeanor.

[81 Acts, ch 180, §17]
C83, §542.20
C93, §203.20

203.21 Reserved.

203.22 Prioritization of inspections of grain dealers.

The department shall develop a system to prioritize the inspections of grain dealers provided in

section 203.9. The system of prioritization shall be computed each year based on the risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer. The department shall compute the risk by utilizing an available statistical model to measure the financial condition of grain dealers, and especially grain dealers who execute credit-sale contracts. Procedures for utilizing the statistical model shall be adopted by department rules. The statistical model shall be used to provide risk ratings. A risk rating shall be used as a factor by the department to prioritize its inspection schedule. The department may use a risk rating produced by the statistical model as justification to inspect the grain dealer at any time. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on the statistical model shall be good cause.

92 Acts, ch 1239, §65

CHAPTER 203A

GRAIN BARGAINING AGENTS

This chapter not enacted as part of this title;
transferred from chapter 542A in Code 1993

203A.1 "Bargaining agent" defined.
203A.2 Permit required — denial or delay.
203A.3 Bargaining agent's permit.
203A.4 Bond required of bargaining agent.
203A.5 Inspection of bargaining agent's books and records.
203A.6 Penalties — misdemeanor.
203A.7 Suspension or revocation of permit.

203A.1 "Bargaining agent" defined.

As used in this chapter, *"bargaining agent"* means a person, group, firm, association or corporation who bargains with buyers for the sale of grain for agricultural producers.

As used in this chapter, *"department"* means the department of agriculture and land stewardship.

Bargaining agent shall not mean a person selling grain as a farm manager, or an executor, administrator, trustee, guardian, or conservator of an estate. A bargaining agent shall not take title to the grain but shall act only for or on behalf of the beneficiaries whose product the bargaining agent is offering for sale. Unless the bargaining agent agreement provides that proceeds from grain sales shall be paid directly to the agricultural producer by the buyer, the bargaining agent agreement shall provide that proceeds shall be paid to and held in trust by either the bargaining agent, or a third person identified in the bargaining agent agreement as a trustee, for the benefit of the agricultural producers. As used in this section the term *"grain"* means as provided in section 203.1.

[C79, 81, §542A.1]
86 Acts, ch 1245, §670
C93, §203A.1

203A.2 Permit required — denial or delay.

A person shall not engage in the business of a bargaining agent in this state without having obtained a permit issued by the department. Each application for a permit to engage in the business of a bargaining agent shall be made with the department, on a form prescribed by the department which form of application shall require only information pertinent and necessary for the issuance of the bargaining agent permit. The applicant shall supply the department with information to establish that proceeds from sales of grain which are executed by the bargaining agent on behalf of agricultural producers will be received and held in trust for the beneficiaries to assure payment of the proceeds of sale. The application shall also be accompanied by proof of bond pursuant to section 203A.4.

The department may deny an application for a permit to a person licensed as a grain dealer under chapter 203 if the grain dealer license is under suspension or has been revoked pursuant to section 203.10. If information or a complaint is filed with the department against the person as a grain dealer in accordance with section 203.10, the department may delay approving the application for a permit until after a hearing is provided under that section.

[C79, 81, §542A.2]
88 Acts, ch 1148, §1
C93, §203A.2

203A.3 Bargaining agent's permit.

Upon the filing of the application and compliance with the terms and conditions of sections 203A.1 and 203A.2, the department shall issue a permit to the applicant. The permit shall be good

for one year from the date of issuance. The permit may be renewed annually by filing of a renewal application on a form prescribed by the department accompanied by an annual report of the bargaining agent showing any additions to or modification of the trust relationship. The applicant for a bargaining agent permit or a renewal thereof shall pay a permit fee in the amount of twenty-five dollars. The department may cancel a permit upon the request of a permittee.

[C79, 81, §542A.3]
C93, §203A.3

203A.4 Bond required of bargaining agent.

Any applicant for a permit to operate as a bargaining agent in accordance with this chapter, as a condition to the granting of the permit, shall file with the department proof of a bond which is in the form and with such surety or sureties as required by the department covering the fiduciary responsibility of those trustees responsible to the beneficiaries. The bond shall be in a penal sum of fifty thousand dollars.

[C79, 81, §542A.4]
C93, §203A.4

203A.5 Inspection of bargaining agent's books and records.

A bargaining agent's books, accounts, records and papers of grain transactions, and all books, accounts, records and papers relating to trust funds or to funds required by this chapter to be held in trust, shall be subject to inspection by the department during ordinary business hours. Where there is good cause to believe that a person is engaged without a permit in the business of a bargaining agent in this state, the department may inspect the books, papers and records of such person.

[C79, 81, §542A.5]
C93, §203A.5

203A.6 Penalties — misdemeanor.

Any person who engages in business as a bargaining agent without obtaining a permit or any person in violation of any other provision of sections 203A.1 to 203A.5, or any bargaining agent who refuses to permit inspection of books, accounts or records of grain transactions as provided in this chapter, shall be guilty of a simple misdemeanor. Each day that any violation continues shall constitute a separate offense. Any person violating the provisions of this chapter may be restrained by an injunction. The permit of any person who has been found after a hearing, to have willfully violated the provisions of this chapter may be suspended for a reasonable time or revoked by the department.

[C79, 81, §542A.6]
C93, §203A.6

203A.7 Suspension or revocation of permit.

The department may after hearing and upon information being filed with the department by the administrator of the warehouse bureau of the department or upon complaint filed by any person, suspend or revoke a bargaining agent permit issued under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule adopted thereunder. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the department in triplicate. The department shall notify the permittee of the complaint and furnish the permittee with a copy of the information or the complaint and a copy of the order of the department fixing the time for a hearing, which time shall be at least five days from the date of notification. If the department determines that the public good requires immediate action, the department may, upon the filing of the information or the complaint and without hearing, temporarily suspend a permit pending the determination by it of the complaint. Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act.

The department may revoke a bargaining agent permit upon information without hearing if the permittee fails to have sufficient bond on file with the department, or if the permittee fails to submit to inspection.

The department, after a hearing, may suspend or revoke a bargaining agent's permit if the permittee is licensed as a grain dealer under chapter 203 and the permittee's grain dealer license is under suspension or has been revoked pursuant to section 203.10.

Upon revocation of a permit, any claim of a creditor shall be filed against the former permittee within one hundred twenty days after the date of revocation. The department shall provide for giving notice to all agricultural producers under contract with the person holding the bargaining agent permit of the revocation of the permit.

[C79, 81, §542A.7]
88 Acts, ch 1148, §2; 89 Acts, ch 143, §101
C93, §203A.7

CHAPTER 203B

IOWA DRUG, DEVICE, AND COSMETIC ACT

Transferred to chapter 126

CHAPTER 203C

WAREHOUSES FOR AGRICULTURAL PRODUCTS

This chapter not enacted as a part of this title;
transferred from chapter 543 in Code 1993

203C.1 Definitions.
203C.2 Duties and powers of the department.
203C.3 Appointment of department as receiver.
203C.4 Powers and duties of receiver.
203C.5 Rules.
203C.6 Issuance of license and financial responsibility.
203C.7 Application for license.
203C.8 License to specify type and quantity of products which may be stored.
203C.9 Amendment of license.
203C.10 Suspension or revocation of license.
203C.11 Suspension or revocation for insufficient evidence of financial responsibility — notice.
203C.12 Participation in fund required.
203C.12A Lien on warehouse operator assets.
203C.13 Form and amount of evidence of financial responsibility.
203C.14 Suit — claims — notice of revocation.
203C.15 Insurance required — exception.
203C.16 License required for the storage of bulk grain.
203C.17 Receiving bulk grain at licensed and unlicensed warehouses.
203C.18 Issuance of warehouse receipts.
203C.19 Rights and obligations with respect to warehouse receipts — lost receipts.
203C.20 Receipt by warehouse operator to self.
203C.21 and 203C.22 Reserved.
203C.23 Warehouse operator's obligation.
203C.24 Confidentiality of records.
203C.25 Shrinkage adjustments — disclosures — penalties.
203C.26 Reserved.
203C.27 Discrimination.
203C.28 Tariff rates.
203C.29 Reserved.
203C.30 Inspecting and grading.
203C.31 and 203C.32 Reserved.
203C.33 Fees.
203C.34 Display of license.
203C.35 Licensed warehouse operator to keep records.
203C.36 Penalties — injunction.
203C.36A Civil penalties.
203C.37 Failure to pay fee.
203C.38 No obligation of state.
203C.39 Grain stored in another warehouse.
203C.40 Prioritization of inspections of warehouse operators.

203C.1 Definitions.

As used in this chapter:

1. *"Agricultural product"* shall mean any product of agricultural activity suitable for storage in quantity, including refined or unrefined sugar and canned agricultural products and shall also mean any product intended for consumption in the production of other agricultural products, such as stock salt, binding twine, bran, cracked corn, soybean meal, commercial feeds, and cottonseed meal.

2. *"Bond"* means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 25.

3. *"Bulk grain"* shall mean grain which is not contained in sacks.

4. *"Credit-sale contract"* means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

5. *"Department"* means the department of agriculture and land stewardship.

6. *"Depositor"* means any person who deposits an agricultural product in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural product.

7. *"Financial institution"* means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Cred-

it Act, Pub. L. No. 100-233.

7A. *"Good cause"* means that the department has cause to believe that the net worth or current asset to current liability ratio of a warehouse operator presents a danger to depositors with whom the warehouse operator does business, based on evidence of any of the following:

a. The making of a payment by use of a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the instrument because of insufficient funds in the warehouse operator's account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A quality or quantity shortage in the warehouse facility.

d. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator based on a statistical model provided in section 203C.40.

8. *"Grain"* shall mean wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products, as defined in the Grain Standards Act.

9. *"Grain bank"* means grain owned by a depositor and held temporarily by the warehouse operator for use in the formulation of feed or to be processed and returned to the depositor on demand.

10. *"Grain Standards Act"* means the United States Grain Standards Act, 7 U.S.C. ch. 3.

11. *"Incidental warehouse operator"* means a person regulated under chapter 198 whose grain storage capacity does not exceed twenty-five thousand bushels which is used exclusively for grain owned or grain which will be returned to the depositor for use in a feeding operation or as an ingredient in a feed.

12. *"Incidental warehouse operator's obligation"* means a sufficient quantity and quality of grain to cover company owned grain and deposits of grain for which actual payment has not been made.

13. *"License"* means a license issued under this chapter.

14. *"Licensed warehouse"* shall mean a warehouse for the operation of which the department has issued a license in accordance with the provisions of section 203C.6.

15. *"Licensed warehouse operator"* shall mean a warehouse operator who has obtained a license for the operation of a warehouse under the provisions of section 203C.6.

16. *"Official grain standards"* means the standards of quality and condition of grain which establishes the grade, fixed and established by the secretary of agriculture under the Grain Standards Act.

17. *"Open storage"* means grain or agricultural products which are received by a warehouse operator from a depositor for which warehouse receipts have not been issued or a purchase made and the records documented accordingly.

18. *"Person"* shall mean an individual, corporation, partnership, or two or more persons having a joint or common interest in the same venture, and, except with respect to the privilege of operating a warehouse under this chapter, shall include the United States or Iowa state government, or any subdivision or agency of either.

19. *"Receiving and loadout charge"* shall mean the charge made by the warehouse operator for receiving grain into and loading grain from the warehouse, exclusive of the warehouse operator's other charges.

20. *"Scale weight ticket"* means a load slip or other evidence, other than a receipt, given to a depositor by a warehouse operator licensed under this chapter upon initial delivery of the agricultural product to the warehouse.

21. *"Station"* means a warehouse located more than three miles from the central office of the warehouse.

22. *"Storage"* means any grain or other agricultural products that have been received and have come under care, custody or control of a warehouse operator either for the depositor for which a contract of purchase has not been negotiated or for the warehouse operator operating the facility.

23. *"Unlicensed warehouse operator"* means a warehouse operator who retains grain in the warehouse not to exceed thirty days and is not licensed under the provisions of this chapter or Title VII, U.S.C.

24. *"Warehouse"* shall mean any building, structure, or other protected enclosure in this state used or usable for the storage of agricultural products. Buildings used in connection with the operation of the warehouse shall be deemed to be a part of the warehouse.

25. *"Warehouse operator"* means a person engaged in the business of operating or controlling a warehouse for the storing, shipping, handling or processing of agricultural products, but does not include an incidental warehouse operator.

26. *"Warehouse operator's obligation"* means a sufficient quantity and quality of grain or other products for which a warehouse operator is licensed including company owned grain and grain of depositors as the warehouse operator's records indicate. For an unlicensed warehouse operator it means a sufficient quantity and quality of grain to cover company owned grain and all deposits of grain for which actual payment has not been made.

[C24, 27, 31, §9719; C35, §9751-g1; C39, §**9751.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.1; 81 Acts, ch 180, §18]

86 Acts, ch 1006, §3; 86 Acts, ch 1152, §12, 13; 86 Acts, ch 1245, §671; 89 Acts, ch 143, §1002, 1101;

92 Acts, ch 1239, §66
C93, §203C.1
95 Acts, ch 28, §2; 99 Acts, ch 106, §9 – 11

203C.2 Duties and powers of the department.

The department may exercise general supervision over the storage, warehousing, classifying according to grade or otherwise, weighing, and certification of agricultural products. The department may inspect or cause to be inspected any warehouse. Inspections may be made at times and for purposes as the department determines. Except as provided in section 203C.6, the department shall cause every licensed warehouse and its contents to be inspected once in every twelve-month period. The department shall prioritize inspections based on the system provided in section 203C.40. The department may require the filing of reports relating to a warehouse or its operation. If upon inspection a deficiency is found to exist as to the quantity or quality of agricultural products stored, as indicated on the warehouse operator's books and records according to official grain standards, the department may require an employee of the department to remain at the licensed warehouse and supervise all operations involving agricultural products stored there under this chapter until the deficiency is corrected. The charge for the cost of maintaining an employee of the department at a warehouse to supervise the correction of a deficiency is one hundred fifty dollars per day.

The department may make available to the United States government, or any of its agencies, including the commodity credit corporation, the results of inspections made and inspection reports submitted to it by employees of the department, upon payment to it of charges as determined by the department, but the charges shall not be less than the actual cost of services rendered, as determined by the department. The department may enter into contracts and agreements for such purpose and shall keep a record of all money thus received. All such money shall be paid over to the treasurer of state as miscellaneous receipts. The department may classify any warehouse in accordance with its suitability for the storage of agricultural products and shall specify in any license issued for the operation of a warehouse the only type or types and the quantity of agricultural products which may be stored in the warehouse. The department may prescribe, within the limitations of this chapter, the duties of licensed warehouse operators with respect to the care of and responsibility for the contents of licensed warehouses. Grain grades shall be determined under the official grain standards. The department may from time to time publish data in connection with the administration of this chapter as may be of public interest. The department shall administer this chapter.

[C24, 27, 31, §9739, 9744, 9750; C35, §9751-g22, -g27, -g32; C39, §**9751.22, 9751.27, 9751.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.2; 81 Acts, ch 180, §19]
84 Acts, ch 1100, §3; 86 Acts, ch 1152, §14; 92 Acts, ch 1239, §67
C93, §203C.2

203C.3 Appointment of department as receiver.

1. The department in its discretion may, following summary suspension of a license under section 203C.10, or following a suspension or revocation of a license as otherwise provided in section 203C.10 or 203C.11, file a verified petition in the district court requesting that the department be appointed as a receiver to take custody of commodities stored in the licensee's warehouse and to provide for the disposition of those assets in the manner provided in this chapter and under the supervision of the court. The petition shall be filed in the county in which the warehouse is located. The district court shall appoint the department as receiver. Upon the filing of the petition the court shall issue ex parte such temporary orders as may be necessary to preserve or protect the assets in receivership, or the value thereof, and the rights of depositors, until a plan of disposition is approved.

2. A petition filed by the department under subsection 1 shall be accompanied by the department's plan for disposition of stored commodities. The plan may provide for the pro rata delivery of part or all of the stored commodities to depositors holding warehouse receipts or unpriced scale weight tickets, or may provide for the sale under the supervision of the department of part or all of the stored commodities for the benefit of those depositors, or may provide for any combination thereof, as the department in its discretion determines to be necessary to minimize losses.

3. When a petition is filed by the department under subsection 1 the clerk of court shall set a date for hearing on the department's proposed plan of disposition at a time not less than ten nor more than fifteen days after the date the petition is filed. Copies of the petition, the notice of hearing, and the department's plan of disposition shall be served upon the licensee and upon the issuer of a deficiency bond or of an irrevocable letter of credit pursuant to section 203C.6 in the manner required for service of an original notice. A delay in effecting service upon the licensee or issuer is not cause for denying the appointment of a receiver and is not grounds for invalidating any action or proceeding in connection with the appointment.

4. The department shall cause a copy of each of the documents served upon the licensee under subsection 3 to be mailed by ordinary mail to every person holding a warehouse receipt or unpriced scale weight ticket issued by the licensee, as determined by the records of the licensee or the records of the department. The failure of any person referred to in this subsection to receive the required

notification shall not invalidate the proceedings on the petition for the appointment of a receiver or any portion thereof. Persons referred to in this subsection are not parties to the action unless admitted by the court upon application therefor.

5. When appointed as a receiver under this chapter, the department shall cause notification of the appointment to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location, and in a newspaper of general circulation in this state.

6. The department may designate an employee of the department to appear on behalf of the department in any proceedings before the court with respect to the receivership, and to exercise the functions of the department as receiver under this section and section 203C.4, except that the department shall determine whether or not to petition for appointment as receiver, shall approve the proposed plan for disposition of stored commodities, shall approve the proposed plan for distribution of any cash proceeds, and shall approve the proposed final report.

7. The actions of the department in connection with petitioning for appointment as a receiver, and all actions pursuant to such appointment shall not be subject to the provisions of the administrative procedure Act.

8. A person employed or appointed by the department and carrying out the duties of the department acting as receiver under this chapter shall be deemed to be an employee of the state as defined in section 669.2. Chapter 669 is applicable to any claim as defined in section 669.2 against the person carrying out the duties of the department acting as receiver.

[C79, 81, §543.3]
86 Acts, ch 1152, §15; 89 Acts, ch 143, §501
C93, §203C.3

203C.4 Powers and duties of receiver.

1. When the department is appointed as receiver under this chapter the issuer of a deficiency bond or of an irrevocable letter of credit pursuant to section 203C.6 shall be joined as a party defendant by the department. If required by the court, the issuer shall pay the indemnification proceeds or so much thereof as the court finds necessary into the court, and when so paid the issuer shall be absolutely discharged from any further liability under the bond or irrevocable letter of credit to the extent of the payment.

2. When appointed as receiver under this chapter the department is authorized to give notice in the manner specified by the court to persons holding warehouse receipts or other evidence of deposit issued by the licensee to file their claims within one hundred twenty days after the date of appointment. Failure to timely file a claim shall defeat the claim with respect to the issuer of a deficiency bond or of an irrevocable letter of credit, grain depositors and sellers indemnity fund created in chapter 203D, and any commodities or proceeds from the sale of commodities, except to the extent of any excess commodities or proceeds of sale remaining after all timely claims are paid in full.

3. When the court approves the sale of commodities, the department shall employ a merchandiser to effect the sale of those commodities. A person employed or appointed as a merchandiser is deemed to be an employee of the state as defined in section 669.2 and chapter 669 is applicable to any claim as defined in section 669.2 against the person acting as a merchandiser. A person employed as a merchandiser must meet the following requirements:

a. The person shall be experienced or knowledgeable in the operation of warehouses licensed under this chapter; and if the person has ever held a license issued under this chapter, the person shall never have had that license suspended or revoked.

b. The person shall be experienced or knowledgeable in the marketing of agricultural products.

c. The person shall not be the holder of a warehouse receipt or scale weight ticket issued by the licensee, and shall not have a claim against the licensee whether as a secured or unsecured creditor, and otherwise shall not have any pecuniary interest in the licensee or the licensee's business. The merchandiser shall be entitled to reasonable compensation as determined by the department, payable out of funds appropriated for operating expenses of the department. A sale of commodities shall be made in a commercially reasonable manner and under the supervision of the warehouse bureau of the department. The department shall provide for the payment out of appropriations to the department of all expenses incurred in handling and disposing of commodities. The department shall have authority to sell the commodities, any provision of chapter 554 to the contrary notwithstanding, and any commodities so sold shall be free of all liens and other encumbrances.

4. The plan of disposition, as approved by the court, shall provide for the distribution of the stored commodities, or the proceeds from the sale of commodities, or the proceeds from any insurance policy, deficiency bond, or irrevocable letter of credit, less expenses incurred by the department in connection with the receivership, to depositors as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or storage lien or charge.

5. The department may, with the approval of the court, continue the operation of all or any part of the business of the licensee on a temporary basis and take any other course of action or procedure which will serve the interests of the depositors.

6. The department is entitled to reimburse-

ment out of commodities or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of stored commodities, and for all other costs directly attributable to the receivership. The right of reimbursement of the department is prior to any claims against the commodities or proceeds of sales of commodities, and constitutes a claim against a deficiency bond or irrevocable letter of credit.

7. If the approved plan of disposition requires a distribution of cash proceeds, the department shall submit to the court a proposed plan of distribution of those proceeds. Upon notice and hearing as required by the court, the court shall accept or modify the proposed plan. When the plan is approved by the court and executed by the department, the department shall be discharged and the receivership terminated.

8. At the termination of the receivership the department shall file a final report containing the details of its actions, together with such additional information as the court may require.

[C79, 81, §543.4]

86 Acts, ch 1152, §16; 87 Acts, ch 147, §5; 89 Acts, ch 143, §101, 502

C93, §203C.4

203C.5 Rules.

The department shall adopt rules as it deems necessary for the efficient administration of this chapter, and may designate an employee or officer of the department to act for the department in any details connected with administration, including the issuance of licenses and approval of deficiency bonds or irrevocable letters of credit in the name of the department, but not including matters requiring a public hearing or suspension or revocation of licenses.

The department may adopt rules specifying the form, content and use of scale tickets, warehouse receipts, settlement sheets, daily position records, shipping ledgers, and other documents used by licensed warehouses. All scale ticket forms and warehouse receipt forms in the possession of a warehouse operator shall have been permanently and consecutively numbered at the time of printing. A warehouse operator shall maintain an accurate record of the numbers of these documents. The record shall include the disposition of each form, whether issued, destroyed, or otherwise disposed of. The department may by rule require this use of prenumbered forms and recording for documents other than scale tickets and warehouse receipts.

[C24, 27, 31, §9721; C35, §9751-g3; C39, §**9751.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.3; C79, 81, §543.5; 81 Acts, ch 180, §20]

86 Acts, ch 1152, §17

C93, §203C.5

203C.6 Issuance of license and financial responsibility.

1. The department, upon application to it, may issue to a warehouse operator or to a person about to become a warehouse operator a license for the operation of a warehouse in accordance with this chapter and the rules adopted by the department under section 203C.5. A single license to operate two or more warehouses located anywhere within the state may be issued.

2. The type of license required shall be determined as follows:

a. A class 1 license is required if the storage capacity of a warehouse is more than one hundred thousand bushels.

b. A class 2 license is required for a warehouse that is not required to have a class 1 license.

3. An application for a warehouse license shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon written request, the department may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 warehouse operator if the person has a net worth of less than twenty-five thousand dollars.

b. The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the au-

dited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause.

5. In order to receive and maintain a class 2 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 2 warehouse operator if the person has a net worth of less than ten thousand dollars.

b. The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause.

6. The department may adopt rules governing the timing and form of financial statements to be submitted to it. The department may require additional information or verification with respect to the financial resources of the applicant or licensee and the applicant's or licensee's ability to maintain the quantity and quality of stored grain.

7. If an applicant has had a license under chapter 203, 203A or 203C revoked for cause within the past three years, or has been convicted of a felony involving violations of chapter 203, 203A or 203C, or is owned or controlled by a person who has had a license so revoked or who has been so convicted, the department may deny a license to the applicant.

8. The department may deny a license to an applicant if any of the following apply:

a. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund through operations under a license issued under this chapter or chapter 203, and the liability has not been discharged, settled, or satisfied.

b. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203, and the liability has not been discharged, settled, or satisfied.

9. A deficiency bond or irrevocable letter of credit filed with the department pursuant to this section shall not be canceled by the issuer on less than one hundred twenty days' notice by certified mail to the department and the principal.

[C24, 27, 31, §9722; C35, §9751-g4; C39, §**9751.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.4; C79, 81, §543.6; 81 Acts, ch 180, §21]

86 Acts, ch 1152, §18, 19; 87 Acts, ch 147, §6, 7; 88 Acts, ch 1134, §98; 89 Acts, ch 143, §303, 304, 702, 801, 802; 92 Acts, ch 1239, §69, 70

C93, §203C.6

203C.7 Application for license.

Each application for a license or licenses shall be in writing subscribed and sworn to by the applicant or a duly authorized representative of the applicant. In addition to any other information required by rule of the department the application shall include the following:

1. The name of the individual, partnership, or corporation making the application, the names of all partners if applicant is a partnership, and the names and titles of the principal officers if applicant is a corporation.

2. The principal office or place of business of the applicant.

3. A general description of each warehouse as to storage capacity, type of construction, mechanical equipment, if any, and condition.

4. The approximate location of each warehouse.

5. The type and quantity of agricultural product, or products intended to be stored in each warehouse.

6. A complete financial statement for use of the department in the administration of this chapter, as required by section 203C.6.

7. A tariff on a form to be prescribed by the department for storage, receiving and loadout charges.

[C24, 27, 31, §9722; C35, §9751-g4; C39, §**9751.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.5; C79, 81, §543.7]

89 Acts, ch 143, §803

C93, §203C.7

203C.8 License to specify type and quantity of products which may be stored.

The department shall determine with respect to each application for a license whether the warehouse or warehouses described in the application is or are suitable for the proper and safe storage of

the particular agricultural product or products intended to be stored therein in the quantities specified in the application, provided that no warehouse shall be found to be suitable and safe for the storage of bulk grain unless such warehouse is equipped with a fixed or portable mechanical device of a type in common use as an adjunct to the movement of bulk grain. Each license issued for the operation of a single warehouse shall specify the type or types and quantities of agricultural products which may be stored in such warehouse. Each license issued to a warehouse operator for the operation of two or more warehouses shall specify with respect to each warehouse the type or types and quantities of agricultural product which may be stored in such warehouse. It shall be unlawful for any licensed warehouse operator to accept for storage or to store in any licensed warehouse any agricultural product or products other than the type or types and quantities specified in the license for the operation of such warehouse.

[C24, 27, 31, §9722; C35, §9751-g4; C39, §**9751.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.6; C79, 81, §543.8; 81 Acts, ch 180, §22]

C93, §203C.8

203C.9 Amendment of license.

The department is authorized, upon its own motion, or upon receipt of written application, to amend any license previously issued by it, to change or modify the provisions as to the type and quantity of agricultural products which may be stored in the warehouse or warehouses in respect to which the license was originally issued. Application for amendments to licenses shall include the same information, except as to the financial condition of the applicant, as required by section 203C.7 to be included in an original application. Applications for amendments of licenses shall be considered by the department on the same basis as applications for original licenses, and except as otherwise provided in this chapter, a license when amended shall have the same status, as of the date of the amendment, as though originally issued as amended.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.8; C79, 81, §543.9]

C93, §203C.9

203C.10 Suspension or revocation of license.

The department is empowered after hearing before it and upon information being filed with the department by the duly authorized head of the warehouse bureau of the department or upon complaint filed by any person to suspend or revoke the license of anyone licensed under this chapter for the violation of or failure to comply with the provisions of this chapter or any rule made in pursuance of the authority therefor granted under this chapter. An information or a verified complaint stating the grounds for suspension or revocation shall be filed with the department in triplicate, and thereupon the department shall serve the licensee complained against with a copy of the information or the complaint and a copy of the order of the department fixing the time for hearing thereon, which time shall be at least ten days from the date of service.

If upon the filing of the information or complaint the department finds that the licensee has failed to meet the warehouse operator's obligation or otherwise has violated or failed to comply with the provisions of this chapter or any rule promulgated under this chapter, and if the department finds that the public health, safety or welfare imperatively requires emergency action, then the department without hearing may order a summary suspension of the license in the manner provided in section 17A.18A. When so ordered, a copy of the order of suspension shall be served upon the licensee at the time the information or complaint is served as provided in this section.

Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C24, 27, 31, §9747; C35, §9751-g29; C39, §**9751.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.10]

89 Acts, ch 143, §101

C93, §203C.10

98 Acts, ch 1202, §34, 46

203C.11 Suspension or revocation for insufficient evidence of financial responsibility — notice.

1. When the department determines that insurance is not fully provided as required under section 203C.15, it may require the licensed warehouse operator to provide additional evidence of insurance coverage so that the insurance conforms with the requirements of this chapter. If additional insurance is not provided within thirty days after receipt by the licensee of notice by certified mail, the license of the warehouse operator concerned shall be automatically suspended. If additional insurance is not filed within another ten days, the warehouse license shall be automatically revoked. When a license is revoked, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation. The department shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection.

2. If the department determines that the net worth of a licensed warehouse operator is not in compliance with the requirements of section

203C.6, the department shall issue a notice to the warehouse operator and shall suspend the warehouse operator's license if the warehouse operator does not provide evidence of compliance within thirty days of the issuance of the notice. The department shall inspect the warehouse at the end of the thirty-day period. If evidence of compliance is not provided within sixty days of the issuance of the notice, the department shall revoke the warehouse operator's license, and shall again inspect the warehouse. If a license is revoked, the department shall give notice of the revocation to each holder of an outstanding warehouse receipt and to all known persons who have grain retained in open storage. The revocation notice shall state that the grain must be removed from the warehouse not later than the thirtieth day after the issuance of the revocation notice. The revocation notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection. The department shall conduct a final inspection of the warehouse at the end of the thirty-day period following the issuance of the revocation notice.

3. When the department receives notice that a deficiency bond or irrevocable letter of credit is being canceled by the issuer, and determines that upon the cancellation the warehouse operation will not be in compliance with section 203C.6, the department shall suspend the warehouse operator's license if a new deficiency bond or irrevocable letter of credit is not received by the department within sixty days of receipt by the department of the notice of cancellation. If a new deficiency bond or irrevocable letter of credit is not received by the department within thirty days following suspension, the warehouse operator's license shall be revoked. When a license is revoked, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation, and shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following revocation. The notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection.

[C24, 27, 31, §9748; C35, §9751-g30; C39, §**9751.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.11; 81 Acts, ch 180, §23; 82 Acts, ch 1093, §2]

86 Acts, ch 1006, §4; 86 Acts, ch 1152, §20, 21
C93, §203C.11

203C.12 Participation in fund required.

A person licensed to operate a warehouse under this chapter shall participate in and comply with the grain depositors and sellers indemnity fund provided in chapter 203D.

[C24, 27, 31, §9723; C35, §9751-g5; C39, §**9751.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.12]

86 Acts, ch 1152, §22
C93, §203C.12

203C.12A Lien on warehouse operator assets.

1. A statutory lien is imposed on all warehouse operator assets in favor of depositors possessing warehouse receipts covering grain stored by the warehouse operator and depositors with written evidence of ownership other than warehouse receipts disclosing a storage obligation of a warehouse operator.

2. *"Warehouse operator assets"* includes proceeds received or due a warehouse operator upon the sale, including exchange, collection, or other disposition, of grain sold by the warehouse operator. As used in this section, *"proceeds"* means noncash and cash proceeds as defined in section 554.9102. *"Warehouse operator assets"* also includes storage payments received or due to a warehouse operator, grain owned by the warehouse operator, and any other funds or property of the warehouse operator which can be directly traced as being from the sale of grain by the warehouse operator, or which were utilized in the business operation of the warehouse operator. A court, upon petition by an affected party, may order that claimed warehouse operator assets are not warehouse operator assets as defined in this section. The burden of proof shall be upon the petitioner to establish that the assets are not warehouse operator assets as defined in this section.

3. The lien shall arise at the commencement of the storage obligation, and shall terminate when the liability of the warehouse operator to the depositor has been discharged. The lien of all depositors is hereby assigned to the Iowa grain indemnity fund board, on behalf of the grain depositors and sellers indemnity fund.

4. To perfect the lien, the Iowa grain indemnity fund board must file a lien statement with the office of the secretary of state. The lien statement is valid only if filed on or after the date of suspension but not later than sixty days after the incurrence date as provided in section 203D.6. The lien statement shall disclose the name of the warehouse operator, the address of the warehouse operator's principal place of business, a description of identifiable warehouse operator assets, and the amount of the lien. The lien amount shall be the board's estimate of the final cost of reimbursing the grain depositors and sellers indemnity fund for the payment of claims made against the fund resulting from the breach of the warehouse operator's obligations. The board shall correct the amount not later than one hundred eighty days following the incurrence date. A court, upon petition by an affected person, may correct the amount. The board shall have the burden of prov-

ing that the amount is an accurate estimate.

5. The Iowa grain indemnity fund board shall upon written demand of the warehouse operator file a termination statement with the secretary of state, if the license of the warehouse operator is not revoked, terminated, or canceled after one hundred eighty days from the date that the lien is perfected. Upon filing the termination statement, the lien becomes unperfected. The board shall also deliver a copy of the termination statement to the warehouse operator.

6. The secretary of state shall note the filing of a lien statement under this section in a manner provided by chapter 554, the uniform commercial code. The secretary shall note the filing of a termination statement with the lien statement.

7. A lien statement filed under this section shall be a security interest perfected under chapter 554 and subject to the same priority as provided under section 554.9322.

8. In the event the department is appointed as a receiver under section 203C.3, assets under the authority of the receiver are free from this statutory lien. However, if there are receivership assets in excess of those necessary to fully reimburse depositors, the perfected lien will attach to those excess assets.

9. The Iowa grain indemnity fund board may enforce the lien in the manner provided in chapter 554, article 9, part 6, for the enforcement of security interests. If, upon enforcement of the lien, the lien amount is satisfied in full without exhaustion of the warehouse operator assets, the remaining assets shall be returned to the warehouse operator or, if there are competing claims to those remaining assets by other creditors, those assets shall be placed in the custody of the district court and the known creditors impleaded.

For purposes of enforcement of the lien, the board is deemed to be the secured party and the warehouse operator is deemed to be the debtor, and each has the respective rights and duties of a secured party and a debtor as provided in chapter 554, article 9, part 6. If a right or duty under chapter 554, article 9, part 6, is contingent upon the existence of express language in a security agreement, or may be waived by express language in a security agreement, the requisite language is deemed not to exist for purposes of enforcement of the lien created by this section.

10. Actions relating to this section shall be brought in the district court in the county in which the warehouse operator's primary place of business is located or in Polk county.

92 Acts, ch 1239, §71; 2000 Acts, ch 1149, §164, 187

203C.13 Form and amount of evidence of financial responsibility.

1. A warehouse operator who stores only agricultural products other than bulk grain shall have and maintain a net worth of at least ten percent of the value of the warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be eligible for a license to store only agricultural products other than bulk grain if the person has a net worth of less than ten thousand dollars.

2. If the agricultural product or products intended to be stored by the warehouse operator, as specified in the application for a license or amended license, are other than bulk grain, the quantity of such product intended to be stored shall be valued at the fair market price on the date of filing the application, and the minimum amount of bond shall be determined with reference to such value as follows:

a. For intended storage of such products of a value less than twenty thousand dollars the minimum amount of the bond shall be three thousand dollars, plus one thousand dollars for each two thousand dollars, or fraction thereof, of value in excess of six thousand dollars up to twenty thousand dollars.

b. For intended storage of such products of a value not less than twenty thousand dollars and not more than fifty thousand dollars the minimum amount of the bond shall be ten thousand dollars plus one thousand dollars for each three thousand dollars, or fraction thereof, of value in excess of twenty thousand dollars up to fifty thousand dollars.

c. For intended storage of such products of a value not less than fifty thousand dollars the minimum amount of the bond shall be twenty thousand dollars plus one thousand dollars for each five thousand dollars, or fraction thereof, of value in excess of fifty thousand dollars.

3. A bond, deficiency bond, or irrevocable letter of credit on agricultural products other than bulk grain shall not be canceled by the issuer on less than one hundred twenty days' notice by certified mail to the department and the principal. When the department receives notice from an issuer that it has canceled the bond, deficiency bond, or irrevocable letter of credit on agricultural products other than bulk grain of a warehouse operator, the department shall automatically suspend the warehouse operator's authorization to store or accept for storage agricultural products other than bulk grain if a new bond, deficiency bond, or irrevocable letter of credit is not received by the department within sixty days of the issuance of the notice of cancellation. The department shall conduct an inspection of the licensee's warehouse immediately at the end of the sixty-day period. If a new bond, deficiency bond, or irrevocable letter of credit is not provided within ninety days of the issuance of the notice of cancellation, the department shall revoke the warehouse operator's authorization to store or accept for storage agricul-

tural products other than bulk grain. The department shall conduct a further inspection of the licensee's warehouse after the ninety-day period. When an authorization to store or accept for storage agricultural products other than bulk grain is revoked, the department shall give notice of the revocation to all known persons who have agricultural products other than bulk grain in storage, and shall notify them that the agricultural products other than bulk grain must be removed from the warehouse not later than one hundred twenty days after the issuance of the notice of cancellation. The revocation notice shall be sent by ordinary mail to the last known address of each person having agricultural products other than bulk grain in storage. The department shall cause a final inspection of the licensee's warehouse after the end of the one hundred twenty-day period.

[C24, 27, 31, §9725; C35, §9751-g6; C39, §**9751.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.13]

86 Acts, ch 1006, §5; 86 Acts, ch 1152, §23, 24

C93, §203C.13

203C.14 Suit — claims — notice of revocation.

A person injured by the breach of an obligation of a warehouse operator, for the performance of which a bond on agricultural products other than bulk grain, a deficiency bond, or an irrevocable letter of credit has been given under any of the provisions of this chapter, may sue on the bond on agricultural products other than bulk grain, deficiency bond, or irrevocable letter of credit in the person's own name in a court of competent jurisdiction to recover any damages the person has sustained by reason of the breach.

Upon revocation, termination, or cancellation of a warehouse license, a claim against the warehouse operator arising under this chapter shall be made in writing with the warehouse operator, with the issuer of a bond on agricultural products other than bulk grain, a deficiency bond, or an irrevocable letter of credit, and, if the claim relates to bulk grain, with the department within one hundred twenty days after revocation, termination, or cancellation. Failure to make a timely claim relieves the issuer and, if the claim relates to bulk grain, the grain depositors and sellers indemnity fund provided in chapter 203D of all obligations to the claimant. Upon revocation of a warehouse license, the department shall cause notice of the revocation to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location and in a newspaper of general circulation within the state. The notice shall state the name and address of the warehouse operator and the effective date of revocation. The notice shall also state that any claims against the warehouse operator shall be made in writing and sent by ordinary mail to the warehouse operator, to the issuer of a bond on agricultural products other than bulk grain, deficiency bond, or an irrevocable letter of credit, and to the department within one hundred twenty days after revocation, and the notice shall state that the failure to make a timely claim does not relieve the warehouse operator from liability to the claimant. This paragraph does not apply if a receiver is appointed as provided in this chapter pursuant to a petition which is filed by the department prior to the expiration of one hundred twenty days after revocation, termination, or cancellation of the license.

[C24, 27, 31, §9749; C35, §9751-g31; C39, §**9751.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.14]

86 Acts, ch 1152, §25

C93, §203C.14

203C.15 Insurance required — exception.

All agricultural products in storage in a licensed warehouse and all agricultural products which have been deposited temporarily in a licensed warehouse pending storage or for purposes other than storage, shall be kept fully insured by the warehouse operator for the current value of the agricultural products against loss by fire, inherent explosion, or windstorm.

The insurance shall be carried in an insurance company or companies authorized to do business in this state, and evidence of the insurance coverage in a form approved by the department shall be filed with the department. An insurance policy shall not be canceled by the insurance company on less than ninety days' notice by certified mail to the department and the principal unless the policy is being replaced with another policy and evidence of the new policy is filed with the department at the time of cancellation of the policy on file. The insurance shall be provided by, and carried in the name of, the warehouse operator. However, whenever the department shall receive notice from an insurance company that it has canceled the insurance of a licensed warehouse, the department shall automatically suspend the warehouse license if replacement insurance is not received by the department within seventy-five days of receipt of the notice of cancellation. The department shall cause an inspection of the licensed warehouse immediately at the end of the seventy-five day period. If replacement insurance is not filed within another ten days following suspension, the warehouse license shall be automatically revoked. When a license is revoked, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation. The department shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day fol-

lowing the revocation. The notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection. Claimants against the insurance have precedence in the following order:

1. Holders of warehouse receipts other than the warehouse operator and owners of bulk grain other than the warehouse operator.

2. Owners of all other agricultural products as their interests appear.

3. Warehouse operators who have warehouse receipts.

4. Warehouse operators owners of bulk grain.

However, notwithstanding the insurance requirements set forth in this section, a licensed warehouse may exclude from the insurance coverage stored grain to which title is fully vested in the United States government or any of its subdivisions or agencies, provided that the licensed warehouse has on file with the United States government or any of its subdivisions or agencies a current and accepted uninsured storage rate under the provisions of their uniform grain storage agreement. The licensed warehouse shall file a copy of the current uninsured tariff rate with the department immediately upon acceptance of the uninsured rate by the United States government or any of its subdivisions or agencies.

[C24, 27, 31, §9725; C35, §9751-g7; C39, §**9751.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.15]

86 Acts, ch 1006, §6; 86 Acts, ch 1103, §1; 86 Acts, ch 1152, §26; 89 Acts, ch 143, §804

C93, §203C.15

203C.16 License required for the storage of bulk grain.

A person other than a licensed warehouse operator shall not place in storage or accept for storage any bulk grain. A person shall not place bulk grain in storage in a warehouse other than a licensed warehouse. This section shall not apply to any of the following:

1. The acceptance and storage of bulk grain by a person bonded and licensed under the provisions of a federal law, to the extent that the person is authorized under federal law to accept and store bulk grain. However, the person shall comply with all other provisions of this chapter which do not conflict with such federal law.

2. The storage of bulk grain by a person who owns all the stored bulk grain.

3. The storage of bulk grain by more than one person, if all of the following apply:

a. The bulk grain was jointly produced by all persons storing the grain. As used in this subsection, *"jointly produced"* includes but is not limited to grain owned by a landlord who receives a share of agricultural products as rent.

b. The bulk grain is stored on the property owned or leased by one of the persons jointly producing the grain.

c. No person other than persons jointly producing the grain owns the stored bulk grain.

[C24, 27, 31, §9722, 9724; C35, §9751-g2; C39, §**9751.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.16]

C93, §203C.16

94 Acts, ch 1113, §1

203C.17 Receiving bulk grain at licensed and unlicensed warehouses.

1. Any grain which has been received at any licensed warehouse for which the actual sale price is not fixed and proper documentation made or payment made shall be construed to be grain held for storage within the meaning of this chapter. Grain may be held in open storage or placed on warehouse receipt. A warehouse receipt shall be issued for all grain held in open storage within one year from the date of delivery to the warehouse, unless the depositor has signed a statement that the depositor does not desire a warehouse receipt. The warehouse operator's tariff shall apply for any grain that is retained in open storage or under warehouse receipt.

2. Bulk grain deposited with a licensed warehouse operator for processing, cleaning, drying, shipping for the account of the depositor or any other purpose shall be removed within thirty days or such grain shall be determined as stored grain and the warehouse operator's tariff charges shall apply.

3. Grain received on a scale ticket which fails to have the price fixed and properly documented on the records of the warehouse operator shall be construed to be in open storage.

4. All bulk grain whether open storage or having been placed on warehouse receipt is covered by the grain depositors and sellers indemnity fund created in chapter 203D.

5. Any grain which has been received at any unlicensed warehouse and for which the actual sale price has not been fixed and payment made within thirty days from receipt of the grain, unless covered by a credit-sale contract, shall be construed to be unlawful storage within the meaning of this chapter. Bulk grain received at any unlicensed warehouse for any other purpose must either be returned to the depositor or disposed of by order of the depositor within thirty days from date of actual deposit of the bulk grain.

6. If the depositor of bulk grain in an unlicensed warehouse fails to sell the grain or orders other disposition of the grain, the warehouse operator may purchase the grain, if otherwise allowed by law, on the thirtieth day after deposit at not less than the local market price at the close of business on the thirtieth day or return the grain to the depositor by the thirtieth day.

7. A licensed warehouse operator who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on

an examination by the department shall not purchase grain on credit-sale contract to correct the shortage of grain. A licensed warehouse operator shall not issue a warehouse receipt for purposes of providing collateral, if the grain which is the subject of the warehouse receipt was purchased by credit-sale contract and is unpaid for by the warehouse operator.

8. Every licensed warehouse operator shall, on or before July 1 of each year, send a statement for each holder of a warehouse receipt covering grain held for more than one year at that warehouse to the holder's last known address. The statement shall show the amount of all grain held pursuant to warehouse receipt for such warehouse receipt holder and the amount of any storage charges held by the licensed warehouse operator against that grain. However, a licensed warehouse operator need not prepare this annual statement for a holder of a warehouse receipt, if the licensed warehouse operator prepares such statements monthly, quarterly or for any other period more frequent than annually. The failure to prepare a statement required by this subsection is a simple misdemeanor.

Violation of this section shall not constitute grounds for suspension, revocation, or modification of the license of anyone licensed under this chapter.

[C24, 27, 31, §9730; C35, §9751-g12; C39, §**9751.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.17; 81 Acts, ch 180, §24]

86 Acts, ch 1152, §27; 92 Acts, ch 1239, §72, 73

C93, §203C.17

99 Acts, ch 106, §12

See §203.15

203C.18 Issuance of warehouse receipts.

For all agricultural products that become storage in a licensed warehouse, warehouse receipts signed by the licensed warehouse operator or the operator's authorized agent shall be issued by the licensed warehouse operator. Such warehouse receipts shall be in the form required or permitted by Uniform Commercial Code, sections 554.7202 and 554.7204, provided, however, that each receipt issued for agricultural products, in addition to the matters specified in Uniform Commercial Code, section 554.7202 shall embody in its written or printed terms:

1. The receiving and loadout charges which will be made by the warehouse operator.

2. The grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made; provided that such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated; provided, further, that until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the secretary of agriculture of the United States.

3. A statement that the receipt is issued subject to the Iowa warehouse Act and the rules and regulations prescribed pursuant to the Act.

4. Such other terms and conditions as may be required by rules of the department.

Warehouses that are not licensed pursuant to this chapter or by the United States government shall not issue warehouse receipts for agricultural products.

The original copy of every warehouse receipt shall be imprinted with the signature of the secretary of agriculture prior to issuance.

[C24, 27, 31, §9736, 9737; C35, §9751-g17, 9751-g18; C39, §**9751.17, 9751.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.18; 81 Acts, ch 180, §25]

86 Acts, ch 1152, §28

C93, §203C.18

203C.19 Rights and obligations with respect to warehouse receipts — lost receipts.

Insofar as not inconsistent with the provisions of this chapter, original or duplicate receipts issued by licensed warehouse operators shall be deemed to have been issued under the provisions of Uniform Commercial Code, chapter 554, article 7.

Duplicates and releases for lost, destroyed, or stolen warehouse receipts may be issued only in accordance with the provisions of section 554.7601.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.19]

C93, §203C.19

203C.20 Receipt by warehouse operator to self.

A licensed warehouse operator may issue a warehouse receipt for agricultural products owned by the warehouse operator and dispose of the title to or interest in such products through the medium of such receipt. Such receipt shall be of the same standing as though it had been issued to a person other than the licensed warehouse operator upon a rightful deposit of the products by such other person. Sections 203C.18 and 203C.19 shall be applicable to any such receipt.

[C71, 73, 75, 77, 79, 81, §543.20]

C93, §203C.20

203C.21 and 203C.22 Reserved.

203C.23 Warehouse operator's obligation.

1. A warehouse operator shall maintain at all times sufficient quantity and quality of grain or other agricultural products to cover the warehouse operator's obligation. A warehouse operator shall not at any time have less grain or other agricultural products in the warehouse than the obligations to depositors, as determined by an investigation of the warehouse operator's records.

2. An incidental warehouse operator shall maintain at all times sufficient quantity and quality of grain to cover the incidental warehouse operator's obligation. An incidental warehouse operator shall not at any time have less grain in a warehouse than the obligations to depositors, as determined by an investigation of the incidental warehouse operator's records.

[81 Acts, ch 180, §29]
C83, §543.23
C93, §203C.23
99 Acts, ch 106, §13

203C.24 Confidentiality of records.

Notwithstanding the provisions of chapter 22, all financial statements of warehouse operators under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.

2. In actions or administrative proceedings commenced under this chapter or chapter 203.

3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.

4. When required by subpoena or other court orders.

5. Disclosure to law enforcement agencies in regards to the detection and prosecution of public offenses.

6. Where released to a bonding company approved by the department or to the United States department of agriculture or any of their divisions.

7. Where released at the request of the Iowa accountancy examining board for licensee review and discipline in accordance with chapters 272C and 542 and subject to the confidentiality requirements of section 272C.6.

8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

[81 Acts, ch 180, §30]
C83, §543.24
83 Acts, ch 104, §2; 89 Acts, ch 143, §602
C93, §203C.24
99 Acts, ch 106, §14; 2001 Acts, ch 55, §24, 38
2001 amendments to subsection 7 are effective July 1, 2002; 2001 Acts, ch 55, §38
Subsection 7 amended

203C.25 Shrinkage adjustments — disclosures — penalties.

1. A person who, in connection with the receipt of corn or soybeans for storage, processing, or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain shall compute the amount of the adjustment by multiplying the scale weight of the grain by that factor which results in a rate of adjustment of one and eighteen hundredths percent of weight per one percent of moisture content. The use of any rate of weight adjustment for moisture content other than the one prescribed by this subsection is a fraudulent practice. The person shall post on the business premises in a conspicuous place notice of the rate of adjustment for moisture content that is prescribed by this subsection. Failure to make this disclosure is a simple misdemeanor.

2. A person who, in connection with the receipt of grain for storage, processing or sale, adjusts the quantity of the grain received to compensate for losses to be incurred during the handling, processing, or storage of the grain shall post on the business premises in a conspicuous place notice of the rate of adjustment to be made for this shrinkage. Failure to make the required disclosure is a simple misdemeanor.

3. A person who adjusts the scale weight of corn or soybeans both for moisture content and for handling, processing, or storage losses may combine the two adjustment factors into a single factor and may use this resulting factor to compute the amount of weight adjustment in connection with storage, processing, or sale transactions, provided that the person shall post on the business premises in a conspicuous place a notice that discloses the moisture shrinkage factor prescribed by subsection 1, the handling shrinkage factor to be imposed, and the single factor that results from combining these factors. Failure to make the required disclosure is a simple misdemeanor.

[81 Acts, ch 180, §31]
C83, §543.25
C93, §203C.25

203C.26 Reserved.

203C.27 Discrimination.

Every warehouse operator conducting a warehouse licensed under this chapter shall receive for storage therein, so far as its authorized storage capacity permits, any product of the kind the operator is permitted by the operator's license to store, and which may be tendered to the operator in a suitable condition for warehousing, in the usual manner and in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities.

[C24, 27, 31, §9729; C35, §9751-g11; C39,

§**9751.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.27]
C93, §203C.27

203C.28 Tariff rates.

A warehouse operator shall, at the time of application for a license, file a tariff with the department which shall contain rates to be charged for receiving, storage, and load-out of grain. The tariff shall be posted in a conspicuous place at the place of business of the licensee in a form prescribed by the department and shall become effective at the time the license becomes effective.

Storage charges shall commence on the date of delivery to the warehouse. Storage, receiving, or load-out charges other than those specified in the tariff may be made if the charge is required by the terms of a written contract with the United States government or any of its subdivisions or agencies.

Grain deposited with the warehouse for the sole purpose of processing and redelivery to the depositor is subject only to the charges listed under the grain bank section of the tariff. Drying and cleaning of grain shall not be construed as processing.

A tariff may be amended at any time and is effective immediately, except that grain in store on the effective date of a storage charge increase does not assume the increased rate until the subsequent anniversary date of deposit. Any decrease in storage rates shall be effective immediately and shall be applicable to all grain in store on the effective date of the decrease.

A warehouse operator may file with the department and publish the supplemental tariff applicable only to grain meeting special descriptive standards or characteristics as set forth in the supplemental tariff. A supplemental tariff shall be in a form prescribed by the department and be posted adjacent to the warehouse tariff.

All tariff charges shall be nondiscriminatory within classes.

[C24, 27, 31, §9737; C35, §9751-g18; C39, §**9751.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.28]
86 Acts, ch 1103, §2
C93, §203C.28

203C.29 Reserved.

203C.30 Inspecting and grading.

Grain, flaxseed, or any other fungible agricultural product stored in a warehouse licensed under this chapter for which no separate compartment is provided, and its identity preserved, shall be inspected and graded.

[C24, 27, 31, §9733; C35, §9751-g14; C39, §**9751.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.30]
C93, §203C.30

203C.31 and 203C.32 Reserved.

203C.33 Fees.

The department shall charge the following fees for deposit in the general fund:

1. For the issuance or renewal of a warehouse license, the fee shall be determined on the basis of the storage capacity in bushels of grain as follows:

a. If the total storage capacity is one hundred thousand bushels or less, the fee is fifty-eight dollars.

b. If the total storage capacity is more than one hundred thousand bushels, but not more than seven hundred fifty thousand bushels, the fee is one hundred twenty-five dollars.

c. If the total storage capacity is more than seven hundred fifty thousand bushels, but not more than one million five hundred thousand bushels, the fee is one hundred ninety-one dollars.

d. If the total storage capacity is more than one million five hundred thousand bushels, but not more than three million bushels, the fee is two hundred forty-nine dollars.

e. If the total storage capacity is more than three million bushels, but not more than four million seven hundred fifty thousand bushels, the fee is three hundred seven dollars.

f. If the total storage capacity is more than four million seven hundred fifty thousand bushels, but not more than nine million five hundred thousand bushels, the fee is three hundred seventy-four dollars.

g. If the total storage capacity is more than nine million five hundred thousand bushels, the fee is four hundred forty dollars.

2. For the issuance or renewal of a warehouse license for the storage of products other than bulk grain, the fee shall be determined as follows:

a. For intended storage of products of a value of one hundred thousand dollars or less, a fee of sixty dollars.

b. For intended storage of products of a value greater than one hundred thousand dollars but not greater than three hundred thousand dollars, a fee of one hundred dollars.

c. For intended storage of products of a value in excess of three hundred thousand dollars, a fee of two hundred dollars.

For each inspection of a warehouse or station for the purpose of licensing, a fee of twenty-five dollars, and for each additional warehouse or station under the same license, a fee of ten dollars.

3. For each amendment of a license, a fee of ten dollars.

4. For each amendment of a tariff, a fee of ten dollars.

5. For a duplicate license, a fee of five dollars.

6. For the reinstatement of a license, a fee of fifty dollars.

New licenses issued for less than a year shall be prorated from the date of application.

[C24, 27, 31, §9726; C35, §9751-g9; C39,

§**9751.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.33; 81 Acts, ch 180, §26, 32]
83 Acts, ch 175, §3, 4; 84 Acts ch 1100, §4; 92 Acts, ch 1239, §74
C93, §203C.33

203C.34 Display of license.
Every warehouse operator's license issued under this chapter shall be conspicuously displayed in the office of the warehouse for the operation of which the license has been issued.
[C24, 27, 31, §9728; C35, §9751-g10; C39, §**9751.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.34]
86 Acts, ch 1152, §29
C93, §203C.34

203C.35 Licensed warehouse operator to keep records.
Every licensed warehouse operator operating a licensed warehouse shall keep in a place of safety complete and correct records of the storage and withdrawal of all agricultural products handled in each warehouse which the warehouse operator is licensed to operate, and complete records of all original and duplicate receipts issued by, returned to and canceled by the warehouse operator, which records shall be available for the six previous years for inspection by the department.
[C24, 27, 31, §9743, 9746; C35, §9751-g26, -g28; C39, §**9751.26, 9751.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.35]
C93, §203C.35

203C.36 Penalties — injunction.
1. A person who knowingly withholds information from or knowingly submits false information to the department or any of its employees in a document or a book, account, or record required to be submitted or maintained under this chapter commits a fraudulent practice.
2. A person who engages in business as a warehouse operator without obtaining a license, or who refuses to permit inspection of licensed premises, or books, accounts, records or other documents required by this chapter, or who uses a scale ticket, warehouse receipt or other document which fails to satisfy requirements established by the department commits a serious misdemeanor, except that a person who commits any of these offenses after having been found guilty of the same offense commits an aggravated misdemeanor.
3. Except as provided in subsections 1 and 2, a person who violates any provision of this chapter commits a simple misdemeanor. With respect to a continuing violation, each day that the violation continues is a separate offense.
4. A person in violation of this chapter, or in violation of chapter 714 or 715A, which violation involves the business of a warehouse operator, is subject to prosecution by the county attorney in the county where the business is located. However, if the county attorney fails to initiate prosecution within thirty days, and upon request by the department, the attorney general may initiate and carry out the prosecution in cooperation, if possible, with the county attorney. The person in violation may be restrained by injunction in an action brought by the department or the attorney general upon request by the department.
[C24, 27, 31, §9751; C35, §9751-g33; C39, §**9751.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.36; 81 Acts, ch 180, §27]
92 Acts, ch 1239, §75
C93, §203C.36

203C.36A Civil penalties.
1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed against a warehouse operator for a violation of this chapter.
2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in an administrative case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.
3. A civil penalty may be administratively assessed only after an opportunity for a contested case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty becomes final. When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.
4. A person who fails to timely pay a civil penalty as provided in this section shall pay, in addition to the penalty, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.
99 Acts, ch 106, §15

203C.37 Failure to pay fee.
Failure to pay the license fee provided for in section 203C.33 on or before the end of the third calendar month following the close of the licensee's fiscal year shall cause a license to terminate. A warehouse license which has terminated may be reinstated by the department upon receipt of a

proper renewal application, the renewal fee, and the reinstatement fee as provided for in section 203C.33, if filed within thirty days from the date of termination of the warehouse license. The department may cancel the license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter.

[C71, 73, 75, 77, 79, 81, §543.37; 81 Acts, ch 180, §28]

84 Acts, ch 1100, §5; 92 Acts, ch 1239, §76

C93, §203C.37

203C.38 No obligation of state.

Nothing in this chapter shall be construed to imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees or officials, either elective or appointive, in respect of any agreement or undertaking to which the provisions of this chapter relate.

[C71, 73, 75, 77, 79, 81, §543.38]

C93, §203C.38

203C.39 Grain stored in another warehouse.

A licensed warehouse operator may store grain in any other warehouse in Iowa licensed in accordance with section 203C.6 or the United States Warehouse Act, 7 U.S.C. ch. 10, subject to the following conditions:

1. The warehouse operator must obtain from such warehouse operator a nonnegotiable warehouse receipt and such receipt must show clearly the following notation: "Held in trust for depositors of" (name of original receiving warehouse).

2. When the warehouse operator begins to use the additional facilities described in this section, the operator must have sufficient net worth under section 203C.6 or provide a deficiency bond or an irrevocable letter of credit to cover the increase in the operator's gross capacity.

3. A licensed warehouse operator shall not accept grain for storage from another licensed warehouse operator while such warehouse operator has grain stored elsewhere under the provisions of this section.

[C71, 73, 75, 77, 79, 81, §543.39]

86 Acts, ch 1152, §30; 89 Acts, ch 143, §1102

C93, §203C.39

203C.40 Prioritization of inspections of warehouse operators.

The department shall develop a system to prioritize the inspections of warehouse operators provided in section 203C.2. The system of prioritization shall be computed each year based on the risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator. The department shall compute the risk by utilizing an available statistical model to measure the financial condition of warehouse operators. Procedures for utilizing the statistical model shall be adopted by department rules. The statistical model shall be used to provide risk ratings. A risk rating shall be used as a factor by the department to prioritize its inspection schedule. The department may inspect a warehouse operator at any time based on a risk of loss to the fund according to the risk rating. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator based on the statistical model shall be good cause.

92 Acts, ch 1239, §77

CHAPTER 203D

GRAIN DEPOSITORS AND SELLERS INDEMNIFICATION

This chapter not enacted as a part of this title;
transferred from chapter 543A in Code 1993

203D.1 Definitions.
203D.2 Persons participating in fund.
203D.3 Grain depositors and sellers indemnity fund.
203D.4 Indemnity fund board.
203D.5 Adjustments to fee.
203D.5A Lien on licensee's assets.
203D.6 Claims against fund.
203D.7 No obligation of state.

203D.1 Definitions.

1. *"Board"* means the Iowa grain indemnity fund board created in section 203D.4.

2. *"Department"* means the department of agriculture and land stewardship.

3. *"Depositor"* means a person who deposits grain in a state warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt issued by a state warehouse, or who is lawfully entitled to possession of the grain.

4. *"Fund"* means the grain depositors and sell-

ers indemnity fund created in section 203D.3.

5. *"Grain"* means wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products, as defined in the Grain Standards Act, but does not include agricultural products other than bulk grain.

6. *"Licensed grain dealer"* means a person who has obtained a license to engage in the business of a grain dealer pursuant to section 203.3.

7. *"Licensed warehouse operator"* means the same as in section 203C.1.

8. *"Loss"* means the amount of a claim held by a seller or depositor against a grain dealer or warehouse operator which has not been recovered through other legal and equitable remedies including the liquidation of assets.

9. *"Seller"* means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, but excludes a person who executes a credit sale contract as a seller. However, *"seller"* does not include a person licensed as a grain dealer in any jurisdiction who sells grain to a licensed grain dealer.

86 Acts, ch 1152, §31
C87, §543A.1
87 Acts, ch 147, §8 – 10; 89 Acts, ch 143, §901, 902
C93, §203D.1

203D.2 Persons participating in fund.

All licensed grain dealers and licensed warehouse operators shall participate in the fund.

86 Acts, ch 1152, §32
C87, §543A.2
87 Acts, ch 147, §11
C93, §203D.2

203D.3 Grain depositors and sellers indemnity fund.

1. The grain depositors and sellers indemnity fund is created in the state treasury as a separate account. The general fund of the state is not liable for claims presented against the grain depositors and sellers indemnity fund under section 203D.6. The fund consists of a per-bushel fee on purchased grain remitted by licensed grain dealers and licensed warehouse operators; an annual fee charged to and remitted by licensed grain dealers and licensed warehouse operators; delinquency penalties; sums collected by the department by legal action on behalf of the fund; and interest, property, or securities acquired through the use of moneys in the fund. The fiscal year of the fund begins July 1. Fiscal quarters of the fund begin July 1, October 1, January 1, and April 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The moneys collected under this section and deposited in the fund shall be used exclusively to indemnify depositors and sellers as provided in section 203D.6 and to pay the administrative costs of this chapter.

2. A per-bushel fee shall be assessed on all purchased grain. As used in this chapter, *"purchased grain"* means grain which is entered in the company owned paid position as evidenced on the grain dealer's daily position record. However, if the grain dealer provides documentation regarding the transaction satisfactory to the department, the following transactions shall be excluded from the fee:

a. Grain purchased from the United States government or any of its subdivisions or agencies.

b. Grain purchased from a person licensed as a grain dealer in any jurisdiction.

c. Grain purchased under a credit sale contract entered into on or before the date of delivery.

The grain dealer shall forward the per-bushel fee to the department on a quarterly basis in the manner and using the forms prescribed by the department. A licensee is delinquent if the licensee fails to submit the full fee or quarterly forms when due, or if upon examination, an underpayment of the fee is found by the department. The grain dealer is subject to a penalty of ten dollars for each day the grain dealer is delinquent or an amount equal to the amount of the deficiency, whichever is less. However, a licensee who fails to submit the full fee or quarterly forms when due, is subject to a minimum payment of ten dollars. The department may establish and apply a margin of error in determining whether a grain dealer is delinquent. If the per-bushel fee and any penalty due have not been received by the department within thirty days after notice by the department, the grain dealer's license shall be suspended. The per-bushel fee shall be collected only once on each bushel of grain.

3. *a.* All licensed grain dealers and licensed warehouse operators shall annually remit a fee to be deposited into the fund which is determined as follows:

(1) For class 1 grain dealers, five hundred dollars.

(2) For class 2 grain dealers, two hundred fifty dollars.

(3) For warehouse operators or participating federally licensed grain warehouses:

(a) For intended storage of bulk grain in any quantity less than twenty thousand bushels, forty-two dollars plus seven dollars for each two thousand bushels or fraction thereof in excess of twelve thousand bushels.

(b) For intended storage of bulk grain in any quantity not less than twenty thousand bushels and not more than fifty thousand bushels, seventy dollars plus four and a half dollars for each three thousand bushels or fraction thereof in excess of twenty thousand bushels.

(c) For intended storage of bulk grain in any quantity not less than fifty thousand bushels and not more than seventy thousand bushels, one hun-

dred fifteen dollars plus four and a half dollars for each four thousand bushels or fraction thereof in excess of fifty thousand bushels.

(d) For intended storage of bulk grain in any quantity not less than seventy thousand bushels, one hundred thirty-seven and a half dollars plus two and three-quarters dollars for each five thousand bushels or fraction thereof in excess of seventy thousand bushels.

b. Payment of the required amount shall be made before the grain dealer's or warehouse operator's license is renewed.

4. Payment of the full annual fee shall be made before a grain dealer's or warehouse operator's license is issued or renewed. If a licensee amends its license during the fiscal year for which an annual fee was paid, and the licensing entity remains the same, the licensee is required to pay a further fee only if the amendment changes the licensee's class from class 2 to class 1.

5. All disbursements from the fund shall be paid by the treasurer of state pursuant to vouchers authorized by the department.

6. The administrative costs of this chapter shall be paid from the fund after approval of the costs by the board.

7. A grain dealer may choose to pass on the cost of a per-bushel fee to the sellers by an itemized discount noted on the settlement sheet. However, if the per-bushel fee is not in effect, no grain dealer shall make such a discount on the purchase of grain. A discount made nominally for the per-bushel fee while the fee is not in effect is grounds for license suspension and revocation under chapter 203.

86 Acts, ch 1152, §33

C87, §543A.3

87 Acts, ch 147, §12 – 15; 88 Acts, ch 1148, §3; 89 Acts, ch 143, §903 – 905

C93, §203D.3

See 86 Acts, ch 1246, §501(3) for permitted uses of interest

203D.4 Indemnity fund board.

1. The Iowa grain indemnity fund board is established to advise the department on matters relating to the fund and to perform the duties provided it in this chapter. The board is composed of the secretary of agriculture or a designee who shall serve as president; the commissioner of insurance or a designee who shall serve as secretary; the state treasurer or a designee who shall serve as treasurer; and four representatives of the grain industry appointed by the governor, subject to confirmation by the senate, two of whom shall be representatives of producers and who shall be actively participating producers, and two of whom shall be representatives of grain dealers and warehouse operators and who shall be actively participating grain dealers and warehouse operators, each of whom shall be selected from a list of three nominations made by the secretary of agriculture. The term of membership of the grain industry representatives is three years, and the representatives are eligible for reappointment. However, only actively participating producers, and grain dealers and warehouse operators are eligible for reappointment. The grain industry representatives are entitled to a per diem as specified in section 7E.6 for each day spent in the performance of the duties of the board, plus actual expenses incurred in the performance of those duties. Four members of the board constitute a quorum, and the affirmative vote of four members is necessary for any action taken by the board, except that a lesser number may adjourn a meeting. A vacancy in the membership of the board does not impair the rights of a quorum to exercise all the rights and perform all the duties of the board.

2. The duties of the board include the review and determination of claims, and the review and approval of administrative costs of the fund. To carry out these duties, the board has the power to adopt rules regarding its organization and procedures for determining claims. Further, the board shall approve rules proposed by the department for the administration of the per-bushel fee prior to their adoption by the department. The board may provide comment and advice to the department in regard to the department's administration of chapters 203 and 203C where the department's policies and rules may affect the exposure of the fund to liability. However, the board shall not become actively involved in a determination by the department as to whether disciplinary action is to be taken against a particular licensee. The board is not a forum for review or appeal in regard to any particular action taken by the department against a licensee.

3. The department through the grain warehouse bureau shall perform the administrative functions necessary for the operation of the board and the fund. Administrative costs approved by the board shall be paid from the fund. The rules of the department shall contain the rules of the board adopted for its organization and its procedures. The department shall adopt rules for the administration of the per-bushel fee upon the board's approval of the rules proposed by the department. The secretary of agriculture, as president of the board as well as head of the department of agriculture and land stewardship, shall administer the department so as to minimize the risk of loss to the fund while protecting interests of depositors and sellers of grain. Policies and rules for the administration of chapters 203 and 203C which, as determined by the secretary of agriculture, may affect the exposure of the fund, shall be presented to the board for comment prior to their adoption by the department. The department shall make reports to the board in regard to licensee investigations which may result in disciplinary action against a licensee and exposure of the fund. The reports may be discussed by the board in closed session pursuant to section 21.5, and are confiden-

tial. In making the report, the department shall make available to the board records of licensees which are otherwise confidential under section 22.7, 203.16, or 203C.24. However, a determination to take disciplinary action against a particular licensee shall be made exclusively by the department. A report to the board is not a prerequisite to disciplinary action against a licensee. Review of any action against a licensee, whether or not relating to the fund, shall be made exclusively through the department.

86 Acts, ch 1152, §34
C87, §543A.4
87 Acts, ch 147, §16; 89 Acts, ch 143, §906; 90 Acts, ch 1256, §49
C93, §203D.4
Confirmation, see §2.32

203D.5 Adjustments to fee.

1. The board shall review annually the debits of and credits to the grain depositors and sellers indemnity fund created in section 203D.3 and shall make any adjustments in the per-bushel fee required under section 203D.3, subsection 2, and the dealer-warehouse fee required under section 203D.3, subsection 3, that are necessary to maintain the fund within the limits established under this section. Not later than the first day of May of each year, the board shall determine the proposed amount of the per-bushel fee based on the expected volume of grain on which the fee is to be collected and that is likely to be handled under this chapter, and shall also determine any adjustment to the dealer-warehouse fee. The board shall make any changes in the previous year's fees in accordance with chapter 17A. Changes in the fees shall become effective on the following first day of July. The per-bushel fee shall not exceed one-quarter cent per bushel on all purchased grain as defined in section 203D.3. Until the per-bushel fee is adjusted or waived as provided in this section, the per-bushel fee is one-quarter cent on all purchased grain.

2. If, at the end of any three-month period, the assets of the fund exceed six million dollars, less any encumbered balances or pending or unsettled claims, the per-bushel fee required under section 203D.3, subsection 2, and the dealer-warehouse fee required under section 203D.3, subsection 3, shall be waived and the fees are not assessable or owing. The board shall reinstate the fees if the assets of the fund, less any unencumbered balances or pending or unsettled claims, are three million dollars or less.

86 Acts, ch 1152, §35
C87, §543A.5
87 Acts, ch 147, §17; 88 Acts, ch 1148, §4; 89 Acts, ch 143, §907
C93, §203D.5

203D.5A Lien on licensee's assets.

The board may enforce a lien attached to assets held by a licensee under chapter 203 or 203C. The lien shall be perfected and enforced pursuant to section 203.12A or 203C.12A.

92 Acts, ch 1239, §78

203D.6 Claims against fund.

1. *Persons who may file claims — time of filing.* A depositor or seller may file a claim with the department for indemnification of a loss from the grain depositors and sellers indemnity fund. A claim shall be filed in the manner prescribed by the board. A claim shall not be filed prior to the incurrence date, which is the earlier of the following:

a. The revocation, termination, or cancellation of the license of the grain dealer or warehouse operator.

b. The filing of a petition in bankruptcy by a grain dealer or warehouse operator.

To be timely, a claim shall be filed within one hundred twenty days of the incurrence date.

2. *Notice.* The department shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location and in a newspaper of general circulation within the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the fund on account of the licensee shall be sent by ordinary mail to the department within one hundred twenty days after the incurrence date, and that the failure to make a timely claim relieves the fund from liability to the claimant. This notice may be incorporated by the department with a notice required by section 203.12 or 203C.14.

3. *Determination of eligible claims.* The board shall determine a claim to be eligible for payment from the fund if the board finds all of the following:

a. That the claim was timely filed.

b. That the incurrence date was on or after May 15, 1986.

c. That the claimant qualifies as a depositor or seller.

d. That the claim derives from a covered transaction. For purposes of this paragraph, a claim derives from a covered transaction if the claimant is a seller who transferred title to the grain to the grain dealer other than by credit sale contract within six months of the incurrence date, or if the claimant is a depositor who delivered the grain to the warehouse operator.

e. That there is adequate documentation to establish the existence of a claim and to determine the amount of the loss.

4. *Value of loss — warehouse claims.* The board shall determine the dollar value of a claim incurred by a depositor holding a warehouse receipt or a scale weight ticket for grain that the depositor delivered for storage to the licensed warehouse operator. If the department has been appointed by the court as receiver of the grain assets of the warehouse operator, the value shall be presumed to be as stated in the plan of disposition approved by the court. If the warehouse operator has filed a petition in bankruptcy, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date the petition was filed. If there is neither a department receivership nor a bankruptcy filing, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date of license revocation or cancellation. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the depositor or department. All depositors filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at time of payment from the fund.

5. *Value of loss — grain dealer claims.* The dollar value of a claim incurred by a seller who has sold grain or delivered grain for sale or exchange and who is a creditor of the licensed grain dealer for all or part of the value of the grain shall be based on the amount stated on the obligation on the date of the sale. If the sold grain was unpriced, the value of a claim shall be presumed to be based upon the fair market price, free-on-board from the site of the grain dealer, being paid to producers for grain by the grain terminal operator nearest the grain dealer on the date of the license revocation or cancellation or the filing of a petition in bankruptcy. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the seller or department. All sellers filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at the time of payment from the fund.

6. *Procedure — appeal.* The board, through the department, shall provide for notice to each depositor and seller upon its determination of eligibility and value of loss. Within twenty days of the notice, the depositor or seller may request a hearing for the review of either determination. The request shall be made in the manner provided by the board. The hearing and any further appeal shall be conducted as a contested case subject to chapter 17A. A depositor or seller whose claim has been refused by the board may appeal the refusal to either the district court of Polk county or the district court of the county in which the depositor or seller resides.

7. *Payment of claims.* Upon a determination that the claim is eligible for payment, the board shall provide for payment of ninety percent of the loss, as determined under subsection 4, but not more than one hundred fifty thousand dollars per claimant. If at any time the board determines that there are insufficient funds to make payment of all claims, the board may order that payment be deferred on specified claims. The department, upon the board's instruction, shall hold those claims for payment until the board determines that the fund again contains sufficient assets.

8. *Subrogation of fund.* In the event of payment of a loss under this section, the fund is subrogated to the extent of the amount of any payments to all rights, powers, privileges, and remedies of the depositor or seller against any person regarding the loss. The depositor or seller shall render all necessary assistance to aid the department and the board in securing the rights granted in this section. No action or claim initiated by a depositor or seller and pending at the time of payment from the fund shall be compromised or settled without the consent of the board.

86 Acts, ch 1152, §36
C87, §543A.6
87 Acts, ch 147, §18, 19; 89 Acts, ch 143, §908
C93, §203D.6

203D.7 No obligation of state.

This chapter does not imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees, or officials, either elective or appointive, in respect of any agreement or undertaking to which this chapter relates.

86 Acts, ch 1152, §37
C87, §543A.7
C93, §203D.7

CHAPTER 204

MANURE STORAGE INDEMNITY FUND

Transferred to chapter 459; 98 Acts, ch 1209, §50;
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

CHAPTER 204A

IOWA IMITATION CONTROLLED SUBSTANCES ACT

Transferred to chapter 124A

CHAPTER 204B

SALE OR OTHER TRANSFER OF CERTAIN PRECURSOR SUBSTANCES

Transferred to chapter 124B

CHAPTER 205

SALE AND DISTRIBUTION OF POISONS

205.1 Sale of abortifacients.
205.2 Exception.
205.3 Prescriptions.
205.4 Wood or denatured alcohol.
205.5 Regulations as to sales of certain poisons.
205.6 Poison register.
205.7 Labeling poisons.
205.8 Certain sales excepted.
205.9 Prohibited sales.
205.10 False representations.
205.11 Enforcement.
205.12 Chemical analysis of drugs.
205.13 Applicability of other statutes.

205.1 Sale of abortifacients.

No person shall sell, offer or expose for sale, deliver, give away, or have in the person's possession with intent to sell, except upon the original written prescription of a licensed physician, dentist, or veterinarian, any cotton root, ergot, oil of tansy, oil of savin, or derivatives of any of said drugs.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593, 2596-a; C24, 27, 31, 35, 39, §**3170;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.1]

205.2 Exception.

The requirements of section 205.1 that certain drugs shall be furnished only upon written prescription, shall not apply to the sale of such drugs to persons who wholesale or retail the same, nor to any licensed physician, dentist, or veterinarian for use in the practice of that person's profession.

[S13, §2596-a; C24, 27, 31, 35, 39, §**3171;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.2]

205.3 Prescriptions.

A person shall not fill a prescription for a drug required by chapter 124 or this chapter to be furnished only upon written prescription unless the prescription is ordered for a medical, dental, or veterinary purpose only.

[S13, §2596-a; C24, 27, 31, 35, 39, §**3172;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.3]

85 Acts, ch 73, §1

205.4 Wood or denatured alcohol.

No person shall have in the person's possession or dispose of in any manner any article intended for use of humans or domestic animals, for internal or external use, for cosmetic purposes, for inhalation, or for perfumes, which contains methyl (wood) alcohol, crude or refined, or completely denatured alcohol. Nothing in this section shall be construed to apply to specially denatured alcohols the formula of which has been approved and the manufacture and use regulated by the federal government.

[S13, §4999-a36; C24, 27, 31, 35, 39, §**3173;** C46,

50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.4]

205.5 Regulations as to sales of certain poisons.

It shall be unlawful for any person except a licensed pharmacist to sell at retail any of the poisons enumerated in this section: Ammoniated mercury, mercury bichloride, red mercuric iodide, and other poisonous salts and compounds of mercury; salts and compounds of arsenic; salts of antimony; salts of barium except the sulphate; salts of thallium; hydrocyanic acid and its salts; chromic, glacial acetic, and picric acids; chloral hydrate, croton oil, creosol, chloroform, dinitrophenol, ether, oil of bitter almonds, phenol, phosphorus and sodium fluoride; aconitine, arecoline, atropine, brucine, homatropine, hyoscyamine, nicotine, strychnine, and the salts of these alkaloids; aconite, belladonna, cantharides, digitalis, nux vomica, veratrum, and the preparations of these poisonous drugs.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §**3174;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.5]

2001 Acts, ch 24, §37

205.6 Poison register.

It shall be unlawful for any pharmacist to sell at retail any of the poisons enumerated in section 205.5 unless the pharmacist ascertains that the purchaser is aware of the character of the drug and the purchaser represents that it is to be used for a proper purpose and every sale of any poison enumerated in section 205.5 shall be entered in a book kept for that purpose, to be known as a "Poison Register" and the same shall show the date of the sale, the name and address of the purchaser, the name of the poison, the purpose for which it was represented to be purchased, and the name of the natural person making the sale, which book or books shall be open for inspection by the pharmacy examiners, or any magistrate or peace officer of this state, and preserved for at least five years after the date of the last sale therein recorded.

[C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §**3175;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.6]

205.7 Labeling poisons.

Except as otherwise provided, it shall be unlawful to vend, sell, dispense, or give away any poison enumerated in section 205.5, or sodium chlorate or crude carbolic acid, or any other potent poisons, without affixing to the bottle, box, vessel, or package containing the same, a label containing the name of the poison either printed or plainly written, and the word "Poison" printed in red ink, and the name and place of business of the distributor, manufacturer, wholesaler or dealer; and every package or container which contains ammonia water, concentrated lye, denatured alcohol, formaldehyde, benzol, carbon tetrachloride, commercial hydrochloric, nitric, sulphuric or oxalic acids, shall be labeled with the name of the poison, which label shall bear the name and place of business of the distributor, manufacturer, wholesaler, or dealer, the most available antidote and the word "Poison" printed in red ink in a conspicuous place thereon.

[C51, §2728; R60, §4374; C73, §4038; C97, §2588, 2593, 4976; S13, §2593; SS15, §2588; C24, 27, 31, 35, 39, §**3176;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.7]

205.8 Certain sales excepted.

Nothing in sections 205.5 to 205.7 shall apply:

1. To proprietary medicines, provided they are not in themselves poisonous and are sold in original unbroken packages.

2. To the filling of prescriptions from or the sale to licensed physicians, dentists, or veterinarians or sales to another pharmacist or to hospitals; or to drugs dispensed by licensed physicians, dentists, or veterinarians, as an incident to the practice of their professions.

3. To insecticides and fungicides as defined in chapter 206 and commercial feeds as defined in section 198.3, provided same be labeled in accordance with said section and sold in original unbroken packages, provided, however, that stock dips and fly sprays may be sold in bulk or otherwise and the vessel or container need not have printed on the label the most available antidote.

4. To any proprietary preparation intended for use in destroying mice, rats, gophers or other lower animals, provided same is sold in original unbroken packages and bears the word "Poison", the most available antidote, and the name of the manufacturer.

[C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §**3177;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.8]

205.9 Prohibited sales.

It shall be unlawful for any person in this state to sell or deliver any poison to any person known to be of unsound mind or under the influence of intoxicants, and it shall likewise be unlawful for any person in this state to sell or deliver any poison enumerated in section 205.5 to any minor under sixteen years of age except upon a written order signed by some responsible person known to the person selling or delivering the same, which said written order shall contain all of the information required to be entered in the poison register under the provisions of section 205.6.

[C27, 31, 35, §3177-b1; C39, §**3177.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.9]

205.10 False representations.

Any person who obtains any poison enumerated in section 205.5 under a false name or statement shall be guilty of a fraudulent practice.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §**3178;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.10]

205.11 Enforcement.

The provisions of this chapter and chapters 124 and 126 shall be administered and enforced by the board of pharmacy examiners. In discharging any duty or exercising any power under those chapters, the board of pharmacy examiners shall be governed by all the provisions of chapter 189, which govern the department of agriculture and land stewardship when discharging a similar duty or exercising a similar power with reference to any of the articles dealt with in this subtitle, to the extent that chapter 189 is not inconsistent with this chapter and chapters 124 and 126.

[C24, 27, 31, 35, 39, §**3179;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.11]

89 Acts, ch 197, §27

205.12 Chemical analysis of drugs.

Any chemical analysis deemed necessary by the board of pharmacy examiners in the enforcement of this chapter and chapters 124 and 126 shall be made by the department of agriculture and land stewardship when requested by the board of pharmacy examiners.

[C24, 27, 31, 35, 39, §**3180;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.12]

89 Acts, ch 197, §28

205.13 Applicability of other statutes.

Insofar as applicable the provisions of chapter 189 shall apply to the articles dealt with in this chapter and chapters 124 and 126. The powers vested in the department of agriculture and land stewardship by chapter 189 shall be deemed for the purpose of this chapter and chapters 124 and 126 to be vested in the board of pharmacy examiners.

[C24, 27, 31, 35, 39, §**3181;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.13]

89 Acts, ch 197, §29

CHAPTER 206

PESTICIDES

See also reference in §200.7

206.1 Title of Act.
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206.9 Co-operative agreements.
206.10 License renewals — delinquent fee.
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206.24 Agricultural initiative.
206.25 Pesticide containers disposal.
206.26 through 206.30 Reserved.
206.31 Application of pesticides for structural pest control.
206.32 Chlordane — prohibition.
206.33 Daminozide — prohibition.
206.34 Local legislation — prohibition.

206.1 Title of Act.

This chapter shall be known and may be cited as the *"Pesticide Act of Iowa"*.

[C66, 71, 73, 75, 77, 79, 81, §206.1]

206.2 Definitions.

When used in this chapter:

1. The term *"active ingredient"* means:

a. In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

b. In the case of a plant growth regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of

ornamental or crop plants or the produce thereof.

c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

2. The term *"adulterated"* shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

3. The term *"antidote"* means the most practical immediate treatment in case of poisoning and includes first aid treatment.

4. *"Certified applicator"* means any individual who is certified under this chapter as authorized to use any pesticide.

5. *"Certified commercial applicator"* means a pesticide applicator or individual who applies or uses a pesticide or device on any property of another for compensation.

6. *"Certified private applicator"* means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

7. *"Chlordane"* means 1,2,4,5,6,7,8,8-octachloro-4,7-methano-3a,4,7,7a-tetrahydroindane; Octa klor: 1068; Velsicol 1068; Dowklor.

8. *"Commercial applicator"* means a person, corporation, or employee of a person or corporation who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying a pesticide but does not include a farmer trading work with another, a person employed by a farmer not solely as a pesticide applicator who applies pesticide as an incidental part of the person's general duties, or a person who applies pesticide as an incidental part of a custom farming operation.

9. The term *"device"* means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects, birds, or rodents or destroying, repelling, or mitigating fungi, nematodes, weeds or such other pests as may be designated by the secretary, but not including equipment used for the application of pesticides when sold separately therefrom.

10. The term *"distribute"* means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

11. The term *"hazard"* means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

12. The term *"inert ingredient"* means an ingredient which is not an active ingredient.

13. The term *"ingredient statement"* means either:

a. A statement of the name and percentage by weight of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide.

b. When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

14. The term *"label"* means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

15. The term *"labeling"* means all labels and other written, printed or graphic matter:

a. Upon the pesticide or device or any of its containers or wrappers.

b. Accompanying the pesticide or device at any time.

c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, the state agricultural experiment stations, the Iowa state university, the Iowa department of public health, the department of natural resources, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

16. The term *"misbranded"* shall apply:

a. To any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

b. To any pesticide:

(1) If it is an imitation of or is offered for sale under the name of another pesticide.

(2) If its labeling bears any reference to registration under this chapter, when not so registered.

(3) If the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public.

(4) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living persons and other vertebrate animals.

(5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there is to be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or

displayed under customary conditions of purchase.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or graphic matter in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living persons or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(8) If in the case of a plant growth regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant growth regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

17. The term *"permit"* means a written certificate, issued by the secretary or the secretary's agent under rules adopted by the department authorizing the use of certain state restricted use pesticides.

18. The term *"person"* means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

19. The term *"pesticide"* shall mean *(a)* any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living persons, which the secretary shall declare to be a pest, and *(b)* any substances intended for use as a plant growth regulator, defoliant, or desiccant.

20. The term *"pesticide dealer"* means any person who distributes restricted use pesticides; pesticide for use by commercial or public pesticide applicators; or general use pesticides labeled for agricultural or lawn and garden use with the exception of dealers whose gross annual pesticide sales are less than ten thousand dollars for each business location owned or operated by the dealer.

21. The term *"plant growth regulator"* means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

22. *"Poison control center"* means an entity existing as part of a hospital licensed under chapter 135B which is an institutional member of the American association of poison control centers.

23. *"Public applicator"* means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency. This term does not include employees who work only under the direct supervision of a public applicator.

24. The term *"registrant"* means the person registering any pesticide or device or who has obtained a certificate of license from the department pursuant to the provisions of this chapter.

25. The term *"restricted use pesticide"* means any pesticide restricted as to use by rule of the secretary as adopted under section 206.20.

26. *"State restricted use pesticide"* means a pesticide which is restricted for sale, use, or distribution under section 455B.491.

27. *"Toxic to humans"* means not generally recognized as safe as provided by the United States food and drug administration pursuant to 21 C.F.R. pt. 182.

28. The term *"under the direct supervision of"* means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator or a state licensed commercial applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

29. The term *"unreasonable adverse effects on the environment"* means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

[C24, 27, 31, 35, 39, §**3182;** C46, 50, 54, 58, 62, §206.1; C66, 71, 73, 75, 77, 79, 81, §206.2]

83 Acts, ch 101, §34; 86 Acts, ch 1245, §643; 87 Acts, ch 225, §209 – 213; 87 Acts, ch 177, §1; 88 Acts, ch 1197, §1; 91 Acts, ch 124, §2; 92 Acts, ch 1020, §1; 92 Acts, ch 1112, §1; 95 Acts, ch 172, §1

Further definitions, see §189.1

206.3 Examination and orders.

The examination of pesticides and those products to which pesticides have been applied for the content of pesticide residues shall be made under the direction of the secretary, or the secretary's authorized representative, for the purpose of determining whether they comply with the requirements of this chapter and rules adopted under this chapter. If it shall appear from such examination that a pesticide fails to comply with the provisions of this chapter, and the secretary, or the secretary's authorized representative, contemplates instituting criminal proceedings against any per-

son, the secretary or representative shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present the person's views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the secretary, or authorized representative, it shall appear that the provisions of the chapter have been violated by such person, then the secretary or authorized representative may refer the facts to the county attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article; provided, however, that nothing in this chapter shall be construed as requiring the secretary or representative to report for prosecution or for the institution of proceedings in minor violations of the chapter whenever the secretary or representative believes that the public interests will be best served by a suitable notice of warning in writing.

[C66, 71, 73, §206.7; C75, 77, 79, 81, §206.3]

206.4 Classification of licenses.

1. The secretary may classify or subclassify certifications or licenses to be issued under this chapter. Each classification shall be subject to separate testing procedures and requirements. However, no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the secretary under the authority of this section.

2. The secretary in promulgating rules under this chapter shall prescribe standards for the certification of applicators of pesticides. In determining these standards the secretary shall take into consideration standards of the United States environmental protection agency and is authorized to adopt by rule these standards.

[C75, 77, 79, 81, §206.4]

206.5 Certification requirements — rules.

1. A commercial or public applicator shall not apply any pesticide and a person shall not apply any restricted use pesticide without first complying with the certification requirements of this chapter and such other restrictions as determined by the secretary.

2. The secretary shall adopt, by rule, requirements for the examination, reexamination, and certification of applicants.

3. *a.* A commercial applicator shall choose between a one-year certification for which the applicator shall pay a thirty dollar fee or a three-year certification for which the applicator shall pay a seventy-five dollar fee. A public applicator shall choose between a one-year certification for which the applicator shall pay a ten dollar fee or a three-year certification for which the applicator shall pay a fifteen dollar fee. A private applicator shall pay a fifteen dollar fee for a three-year certification.

b. To be initially certified as a commercial, public, or private applicator, a person must complete an educational program which shall consist of an examination required to be passed by the person. After initial certification the commercial, public, or private applicator must renew the certification by completing the educational program which shall consist of either an examination or continuing instructional courses. The commercial, public, or private applicator must pass the examination each third year following initial certification or may elect to attend two hours of continuing instructional courses each year.

The department shall adopt rules providing for the program requirements which shall at least include the safe handling, application, and storage of pesticides, the correct calibration of equipment used for the application of pesticides, and the effects of pesticides upon the groundwater. The department shall adopt by rule criteria for allowing a person required to be certified to complete either a written or oral examination. The department shall administer the instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the courses in each county. The department is not required to compensate persons selected to teach the courses. In selecting persons, the department shall rely upon organizations interested in the application of pesticides, including associations representing pesticide applicators and associations representing agricultural producers. The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the instructional courses. The Iowa cooperative extension service may teach courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

c. A commercial, public, or private applicator is not required to be certified to apply pesticides for a period of twenty-one days from the date of initial employment if the commercial, public, or private applicator is under the direct supervision of a certified applicator. For the purposes of this section, *"under the direct supervision of"* means that the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is physically present, by being in sight or hearing distance of the supervised person.

4. A commercial applicator who applies pesticides to agricultural land may, in lieu of the requirement of direct supervision, elect to be exempt from the certification requirements for a commercial applicator for a period of twenty-one days, if the applicator meets the requirements of a private

applicator.

5. A person employed by a farmer not solely as a pesticide applicator who applies restricted use pesticides as an incidental part of the person's general duties or a person who applies restricted use pesticides as an incidental part of a custom farming operation is required to meet the certification requirements of a private applicator.

6. An employee of a food processing and distribution establishment is exempt from the certification requirements of this section provided that at least one person holding a supervisory position is certified and provided that the employer provides a program, approved by the department, for training, testing, and certification of personnel who apply, as an incidental part of their duties, any pesticide on property owned or rented by the employer. The secretary shall adopt rules to administer the provisions of this paragraph.

7. The secretary may adopt rules to provide for license and certification adjustments, including fees, which may be necessary to provide for an equitable transition for licenses and certifications issued prior to January 1, 1989. The rules shall also include a provision for renewal of certification and for a thirty-day renewal grace period. The secretary shall also adopt rules which allow for an exemption from certification for a person who uses certain services and is not solely a pesticide applicator, but who uses the services as an incidental part of the person's duties.

[C75, 77, 79, 81, §206.5]

87 Acts, ch 225, §214; 88 Acts, ch 1169, §2; 88 Acts, ch 1197, §2; 89 Acts, ch 296, §20; 92 Acts, ch 1112, §2; 93 Acts, ch 176, §35, 36; 95 Acts, ch 172, §2

206.6 License for commercial applicators.

1. *Commercial applicator.* No person shall engage in the business of applying pesticides to the lands or property of another at any time without being licensed by the secretary. The secretary shall require an annual license fee of not more than twenty-five dollars for each license. Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications for which the applicant is applying.

A person who applies pesticides by use of an aircraft and who is licensed as an aerial commercial applicator in another state shall apply pesticides in Iowa only under the direct supervision of a person holding a valid Iowa aerial commercial applicator's license. The supervising aerial commercial applicator is jointly liable with the person who is licensed as an aerial commercial applicator in another state for damages. The supervising applicator shall immediately notify the secretary of the commencement and of the termination of service provided by the supervised applicator. However, a person licensed in another state as an aerial commercial applicator may operate independently if the person acquires an aerial commercial applicator license from the secretary, posts bond in an amount to be determined by the secretary, and registers with the department of transportation. The person is liable for damages.

2. *Nonresident applicator.* Any nonresident applying for a license under this chapter to operate in the state shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicants. A nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The secretary shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be certified by the secretary of state.

3. *Examination for commercial applicator license.* The secretary of agriculture shall not issue a commercial applicator license until the individual engaged in or managing the pesticide application business and employed by the business to apply pesticides is certified by passing an examination to demonstrate to the secretary the individual's knowledge of how to apply pesticides under the classifications the individual has applied for, and the individual's knowledge of the nature and effect of pesticides the individual may apply under such classifications. The applicant successfully completing the certification requirement shall be a licensed commercial applicator.

4. *Renewal of applicant's license.* The secretary of agriculture shall renew any applicant's license under the classifications for which such applicant is licensed, provided that all of the applicant's personnel who apply pesticides are certified commercial applicators.

5. *Issue commercial applicator license.* If the secretary finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied and if the applicant files the bonds or insurance required under section 206.13, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the federal aviation administration, the department of transportation, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the secretary shall issue a commercial applicator license limited to the classifications for

which the applicant is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the secretary for cause. The secretary may limit the license of the applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified. If a license is not issued as applied for, the secretary shall inform the applicant in writing of the reasons.

6. *Public applicator.*

a. All state agencies, counties, municipal corporations, and any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application of pesticides.

b. Public applicators for agencies listed in this subsection shall be subject to certification requirements as provided for in this section. The public applicator license shall be valid only when such applicator is acting as an applicator applying pesticides used by such entities. Government research personnel shall be exempt from this licensing requirement when applying pesticides only to experimental plots. Public agencies or municipal corporations licensed pursuant to this section shall be licensed public applicators.

c. Such agencies and municipal corporations shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred.

[C66, 71, 73, §206.5; C75, 77, 79, 81, §206.6]

83 Acts, ch 101, §35, 36; 87 Acts, ch 225, §215 – 217

206.7 Certified applicators.

1. *Requirement for certification.* A commercial or public applicator shall not apply any pesticide without first complying with the certification standards.

2. *Certification standards.* Certification standards shall be adopted by the secretary to determine the individual's competence with respect to the application and handling of the restricted use pesticides. In determining these standards, the secretary shall take into consideration the standards of the United States environmental protection agency.

3. *Reasons for not qualifying.* If the secretary does not qualify the applicator under this section the secretary shall inform the applicant in writing of the reasons therefor.

[C75, 77, 79, 81, §206.7]

87 Acts, ch 225, §218

206.8 Pesticide dealer license.

1. It shall be unlawful for any person to act in the capacity of a pesticide dealer, or advertise as, or assume to act as a pesticide dealer at any time without first having obtained a license from the secretary which shall expire at the end of the calendar year of issue. A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for the manufacturer's, registrant's, or distributor's principal out-of-state location or outlet.

2. A pesticide dealer shall pay by June 30 of each year to the department an annual license fee based on the gross retail sales of all pesticides sold for use in this state by the dealer in the previous year. The license fee shall be set as follows:

a. A pesticide dealer with less than one hundred thousand dollars in gross retail pesticide sales shall have the option to pay a license fee based on one-tenth of one percent of the gross retail pesticide sales in the previous year or to pay a license fee according to the following:

(1) Twenty-five dollars, if the annual gross retail pesticide sales are less than twenty-five thousand dollars.

(2) Fifty dollars, if the annual gross retail pesticide sales are twenty-five thousand dollars or more but less than fifty thousand dollars.

(3) Seventy-five dollars, if the annual gross retail pesticide sales are fifty thousand dollars or more but less than seventy-five thousand dollars.

(4) One hundred dollars, if the annual gross retail pesticide sales are seventy-five thousand dollars or more but less than one hundred thousand dollars.

The secretary shall provide for a three-month grace period for licensure and shall impose a late fee of ten dollars upon the licensure of a dealer applying for licensure during the month of October, a late fee of fifteen dollars upon the licensure of a dealer applying for licensure during the month of November, a late fee of twenty-five dollars upon the licensure of a dealer applying for licensure during the month of December, and a late fee of twenty-five dollars upon the licensure of a dealer applying for licensure for each month after the month of December.

b. A pesticide dealer with one hundred thousand dollars or more in gross retail pesticide sales shall pay a license fee based on one-tenth of one percent of the gross retail pesticide sales in the previous year. The secretary shall provide for a three-month grace period for licensure and shall impose a late fee of two percent of the license fee upon the licensure of a dealer applying for licensure during the month of October, a late fee of four percent of the license fee upon the licensure of a dealer applying for licensure during the month of November, a late fee of five percent of the license fee upon the licensure of a dealer applying for licensure during the month of December, and a late fee of five percent upon the licensure of a dealer applying for licensure for each month after the

month of December.

Up to twenty-five dollars of each annual license fee shall be retained by the department for administration of the program, and the remaining moneys collected shall be deposited in the agriculture management account of the groundwater protection fund.

3. This section shall not apply to either of the following:

a. A pesticide applicator who applies pesticides which are owned and furnished to the pesticide applicator by another person, if the pesticide applicator does not charge for the sale of the pesticides.

b. A federal, state, county, or municipal governmental entity which provides pesticides only for its own programs.

4. Application for a license required for manufacturers and distributors who are not engaged in the retail sale of pesticides shall be accompanied by a twenty-five dollar fee for each business location within the state required to be licensed, and shall be on a form prescribed by the secretary.

[C75, 77, 79, 81, §206.8]

87 Acts, ch 225, §219, 220; 88 Acts, ch 1156, §1; 91 Acts, ch 89, §1; 93 Acts, ch 176, §37

206.9 Co-operative agreements.

The secretary may co-operate, receive grants-in-aid and enter into agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, or trade associations to obtain assistance in the implementation of this chapter and to do all of the following:

1. Secure uniformity of regulations.

2. Co-operate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement co-operative enforcement programs.

3. Contract for monitoring pesticides for the national plan.

4. Prepare and submit state plans to meet federal certification standards.

5. Regulate certified applicators.

6. Develop, in conjunction with the Iowa co-operative extension service in agriculture and home economics, courses available to the public regarding pesticide best management practices.

[C66, 71, 73, §206.11; C75, 77, 79, 81, §206.9]

87 Acts, ch 225, §221

206.10 License renewals — delinquent fee.

If the application for renewal of a license provided for in this chapter, other than a pesticide dealer license, is not filed prior to the first of January in any year, a delinquent fee of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued. A delinquent fee does not apply if the applicant furnishes an affidavit certifying that the applicant has not applied pesticides after the expiration of the applicant's license. All licenses issued under this chapter expire December 31 each year. However, a license issued to a pesticide dealer expires as provided in section 206.8.

[C75, 77, 79, 81, §206.10]

91 Acts, ch 89, §2

206.11 Distribution or sale of pesticides.

1. It shall be unlawful for any person to distribute, give, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

a. Any pesticide which has not been registered pursuant to the provisions of section 206.12.

b. Any pesticide, if any of the claims made for it, or if any of the directions for its use, differ in substance from the representations made in connection with its registration.

c. Any pesticide if the composition thereof differs from its composition as represented in connection with its registration, unless within the discretion of the secretary, or the secretary's authorized representative, a change in the labeling or formula of a pesticide within a registration period, has been authorized, without requiring a reregistration of the product.

d. Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing the following:

(1) The name and address of the manufacturer, registrant, or person for whom manufactured.

(2) The name, brand, or trademark of said article.

(3) The net weight or measure of the contents subject, however, to such reasonable variations as the secretary may permit.

(4) An ingredient statement as required in section 206.12.

(5) The date of manufacture of products found by the secretary to be subject to deterioration because of age.

e. Any pesticide which contains any substance or substances in quantities highly toxic to humans; determined as provided in section 206.6, unless the label shall bear, in addition to any other matter required by this chapter:

(1) The skull and cross-bones.

(2) The word "poison" prominently, in red, on a background of distinctly contrasting color.

(3) A statement of an antidote for the pesticide.

(4) Instructions for safe disposal of the container when the used container is found by the secretary after public hearing to be hazardous to humans or other vertebrate animals.

f. Any standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate and barium fluosilicate unless such pesticides have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder which the secretary, or the secretary's authorized representatives, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the secretary, or authorized representative, may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the secretary or representative determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health or safety.

g. Any pesticide which is adulterated or misbranded.

2. It shall be unlawful:

a. For any person to detach, alter, deface, or destroy in whole or in part, any label or labeling provided for in this chapter or the rules promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this chapter.

b. For any person to use for the person's own advantage or to reveal, other than to the secretary, or officials or employees of the state or officials or employees of the United States department of agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, in accordance with such directions as the secretary may prescribe, any information relative to formulae of products acquired by authority of section 206.12.

c. For any person to interfere in any way with the secretary or the secretary's duly authorized agents in carrying out the duties imposed by this chapter.

3. It shall be unlawful:

a. To distribute any restricted use pesticide to any person who is required by law or rules promulgated under such law to be certified to use or purchase such restricted pesticides unless such person or the person's agent, to whom distribution is made, is certified to use or purchase such restricted pesticide. Subject to conditions established by the secretary such certification may be obtained immediately prior to distribution from any person designated by the secretary.

b. For any person to use or cause to be used any pesticide contrary to its labeling or to rules of the state of Iowa if those rules differ from or further restrict the usage.

c. For any person to handle, transport, store, display, or distribute pesticides in such a manner as to endanger human beings and their environment or to endanger food, feed, or any other products that may be transported, stored, displayed or distributed with such pesticides.

d. For any person to dispose of, discard, or store any pesticides or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any water supply or waterway.

4. The secretary may suspend an applicator's license pending inquiry, and, after opportunity for a hearing, to be held within ten days, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under this chapter, if the secretary finds that the applicant or the holder of a license, permit or certification has committed any of the following acts, each of which is declared to be a violation of this chapter. However, any licensed or unlicensed person shall be subject to the penalties provided for by section 206.22.

a. Made a pesticide recommendation or application inconsistent with the labeling.

b. Applied known ineffective or improper materials.

c. Operated faulty or unsafe equipment.

d. Operated in a faulty, careless or negligent manner.

e. Neglected or, after notice, refused to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the secretary.

f. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.

g. Made false or fraudulent records, invoice or reports.

h. Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit or certification.

i. Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license, permit or certification to be used by another person.

j. Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.

k. Impersonated any federal, state, county or city inspector or official.

[C97, §2588; SS15, §2588; C24, 27, 31, 35, 39, §**3183, 3184;** C46, 50, 54, 58, 62, §206.2, 206.3; C66, 71, 73, §206.3; C75, 77, 79, 81, §206.11]

206.12 Registration.

1. Every pesticide which is distributed, sold, or offered for sale for use within this state or delivered for transportation or transported in intrastate commerce between points within the state through any point outside this state shall be registered with the department of agriculture and land stewardship. All registration of products shall expire on the thirty-first day of December following date of issuance, unless such registration shall be renewed annually, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated; provided that:

a. For the purpose of this chapter, fertilizers in mixed fertilizer-pesticide formulations shall be considered as inert ingredients.

b. Within the discretion of the secretary, or the secretary's authorized representative, a change in the labeling or formulae of a pesticide may be made within the current period of registration, without requiring a reregistration of the product, provided the name of the item is not changed.

2. The registrant shall file with the department a statement containing:

a. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant.

b. The name of the pesticide.

c. An ingredient statement in which the accepted common name and percentage by weight of each active ingredient is listed as well as the percentage of inert ingredients in the pesticides. A separate inert ingredient statement containing the common name of each inert ingredient listed in rank order according to weight of each inert ingredient in the pesticide shall also be submitted to the secretary. Except as required by subsection 4, the registrant is not required to state the percentage composition or specific weight of any inert ingredient within a pesticide. The information required by this paragraph shall be submitted in a manner and according to procedures specified by the secretary.

Upon written request by the director of the department of natural resources, the secretary shall provide a copy of the ingredient statement and inert ingredient statement to the department. Upon written request by the director of the center for health effects of environmental contamination, the secretary shall provide a copy of the ingredient statement and inert ingredient statement to the center.

From on and after July 1, 1990, to December 31, 1991, the identity of an inert ingredient in a specific pesticide shall be treated as a confidential trade secret which is not subject to release under chapter 22.

On and after January 1, 1992, the identity of an inert ingredient in a specific pesticide shall be treated as a confidential trade secret if the following two conditions are met: the registrant states, at the time of registration, that the inert ingredient is a confidential trade secret; and the registrant certifies one of the following:

(1) The registrant has provided to any data base system used by a poison control center operating in this state the information required by an attending physician to treat a patient for exposure or adverse reaction to the registrant's product, including the identification of all ingredients which are toxic to humans.

(2) The registrant operates an emergency information system as provided in section 139A.21 that is available to poison control centers twenty-four hours a day every day of the year. The emergency information system must provide information to medical professionals required for the sole purpose of treating a specific patient for exposure or adverse reaction to the registrant's product, including the identification of all ingredients which are toxic to humans, and toxicological and medical management information.

Poison control centers may share the information provided by the registrant with an attending physician for the purpose of treating a specific patient exposed to the registrant's product. The secretary, the director of the department of natural resources, and the director of the center for health effects of environmental contamination shall treat the presence of any inert ingredient in a particular pesticide that meets the two conditions as a confidential trade secret which is not subject to release under chapter 22. This section does not prohibit research or monitoring of any aspect of any inert ingredient. This section does not prohibit the public disclosure of research, monitoring, published or summary data relative to any inert ingredient so long as such disclosure does not link an inert ingredient to a particular brand of pesticide registered in this state.

This section shall not be construed to prohibit the release of information independently obtained from a source other than registrations filed under this chapter which links an inert ingredient to a pesticide registered in this state.

d. A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it including directions for use.

e. A full description of the tests made and results thereof upon which the claims are based, if requested by the secretary. In the case of renewal or reregistration, a statement may be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

3. The registrant, before selling or offering for sale any pesticide for use in this state, shall register each brand and grade of such pesticide with the secretary upon forms furnished by the secretary,

and the secretary shall set the registration fee annually at one-fifth of one percent of gross sales within this state with a minimum fee of two hundred fifty dollars and a maximum fee of three thousand dollars for each and every brand and grade to be offered for sale in this state except as otherwise provided. The annual registration fee for products with gross annual sales in this state of less than one million five hundred thousand dollars shall be the greater of two hundred fifty dollars or one-fifth of one percent of the gross annual sales as established by affidavit of the registrant. The secretary shall adopt by rule exemptions to the minimum fee. Fifty dollars of each fee collected shall be deposited in the general fund of the state, shall be subject to the requirements of section 8.60, and shall be used only for the purpose of enforcing the provisions of this chapter and the remainder of each fee collected shall be placed in the agriculture management account of the groundwater protection fund.

4. The secretary, whenever the secretary deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide. If it appears to the secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this chapter, the secretary shall register the article.

5. If it does not appear to the secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, the secretary shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.

6. Notwithstanding any other provisions of this chapter, registration is not required in the case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person.

7. *a.* Each licensee under section 206.8 shall file an annual report at the time of application for licensure with the secretary of agriculture in a form specified by the secretary of agriculture and which includes the following information:

(1) The gross retail sales of all pesticides sold at retail for use in this state by a licensee with one hundred thousand dollars or more in gross retail sales of the pesticides sold for use in this state.

(2) The individual label name and dollar amount of each pesticide sold at retail for which gross retail sales of the individual pesticide are three thousand dollars or more.

b. A person who is subject to the household hazardous materials permit requirements, and whose gross annual retail sales of pesticides are less than ten thousand dollars for each business location owned or operated by the person, shall report annually, the individual label name of an individual pesticide for which annual gross retail sales are three thousand dollars or more. The information shall be submitted on a form provided to household hazardous materials permittees by the department of natural resources, and the department of natural resources shall remit the forms to the department of agriculture and land stewardship.

c. Notwithstanding the reporting requirements of this section, the secretary of agriculture may, upon recommendation of the advisory committee created pursuant to section 206.23, and if the committee declares a pesticide to be a pesticide of special concern, require the reporting of annual gross retail sales of a pesticide.

d. A person who sells feed which contains a pesticide as an integral part of the feed mixture, shall not be subject to the reporting requirements of this section. However, a person who manufactures feed which contains a pesticide as an integral part of the feed mixture shall be subject to the licensing requirements of section 206.8.

e. The information collected and included in the report required under this section shall remain confidential. Public reporting concerning the information collected shall be performed in a manner which does not identify a specific brand name in the report.

[C66, 71, 73, §206.4; C75, 77, 79, 81, §206.12]

87 Acts, ch 225, §222, 223; 88 Acts, ch 1156, §2 – 4; 90 Acts, ch 1133, §1; 91 Acts, ch 89, §3; 91 Acts, ch 124, §3; 91 Acts, ch 260, §1218; 93 Acts, ch 131, §9; 94 Acts, ch 1107, §49; 2000 Acts, ch 1066, §41

206.13 Surety bond or insurance required of commercial applicator.

The secretary shall not issue a commercial applicator's license as required in section 206.6 until the applicant has furnished evidence of financial responsibility with the secretary consisting either of a surety bond or a liability insurance policy or certification thereof. Such surety bond or liability insurance policy shall provide coverage to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages as a result of the pesticide operations of the applicant. However, the surety bond or liability insurance policy will not apply to damages or injury which are either expected or intended from the standpoint of the insured. Any such liability insurance policy shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance. The surety bond or liability insurance policy submitted as evidence of financial responsibility need not apply to damages or injury to agricultural crops, plants, or land being worked upon by the applicant.

The amount of the surety bond or liability insurance as provided for in this section shall be not less

than fifty thousand dollars for property damage and public liability insurance, each separately. Such surety bond or liability insurance shall be maintained at not less than that sum at all times during the licensed period. The secretary shall be notified ten days prior to any reduction at the request of the applicant or cancellation of such surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy.

[C75, 77, 79, 81, §206.13]

206.14 Reports of pesticide accidents, incidents or loss.

1. The secretary may by rule require the reporting of significant pesticide accidents or incidents to a designated state agency.

2. Any person claiming damages from a pesticide application shall have filed with the secretary on a form prescribed by the secretary a written statement claiming that the person has been damaged.

a. This report shall have been filed within sixty days after the alleged date that damages occurred. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that twenty-five percent of the crop has been harvested. Such statement shall contain, but shall not be limited to the name of the person allegedly responsible for the application of said pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred, and the date on which the alleged damage occurred.

b. The secretary shall prepare a form to be furnished to persons to be used in such cases and such form shall contain such other requirements as the secretary may deem proper. The secretary shall, upon receipt of such statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed, and furnish copies of such statements as may be requested. The secretary shall inspect damages whenever possible and when the secretary determines that the complaint has sufficient merit the secretary shall make such information available to the person claiming damage and to the person who is alleged to have caused the damage.

3. The filing of such a report or failure to give notice shall not preclude recovery in an action for damages and shall not affect the limitations of actions set forth in chapter 614. Nothing herein shall prohibit an action for damages for bodily injury or death to any person.

a. The filing of such report or the failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by others, the secretary may, when in the public interest, refuse to hold a hearing for the denial, suspension or revocation of a license or permit issued under this chapter until such report is filed.

b. Where damage is alleged to have occurred, the claimant shall permit the secretary, the licensee and the licensee's representatives, such as surety or insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee.

4. The secretary shall require, by rule, that veterinarians licensed and practicing veterinary medicine in the state promptly report to the department a case of domestic livestock poisoning or suspected poisoning by agricultural chemicals.

[C73, §206.13, 455B.102; C75, 77, §206.14, 455B.102; C79, §206.14, 455B.132; C81, §206.14]

206.15 Licensee to keep records.

The secretary shall require commercial applicators and certified commercial applicators to maintain records with respect to application of pesticides. Such relevant information as the secretary may deem necessary may be specified by regulation. Such records shall be kept for a period of three years from the date of the application of the pesticide to which such records refer, and the secretary shall, upon request in writing, be furnished with a copy of such records forthwith.

[C75, 77, 79, 81, §206.15]

206.16 Confiscation.

1. Any pesticide or device that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any district court in any county of the state where it may be found and seized for confiscation by condemnation.

a. In the case of a pesticide:

(1) If it is adulterated or misbranded.

(2) If it has not been registered under the provisions of section 206.12.

(3) If it fails to bear on its label the information required by this chapter.

(4) If it is a white powder pesticide and is not colored as required under this chapter.

b. In the case of a device, if it is misbranded.

2. If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds if such article is sold, less legal costs, shall be paid to the state treasurer; provided, that the article shall not be sold contrary to the provisions of this chapter; and, provided further, that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not

be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

3. When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

4. When the secretary has reasonable cause to believe a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this chapter, or of any of the prescribed rules under this chapter, the secretary may issue and serve a written "stop sale, use, or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order, the secretary may attach the order to the pesticide or device and notify the registrant. The pesticide or device shall not be sold, used, or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the secretary or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction.

[C66, 71, 73, §206.10; C75, 77, 79, 81, §206.16]

206.17 Reciprocal agreement.

The secretary may waive all or part of the examination requirements provided for in sections 206.6 and 206.7 on a reciprocal basis with any other state which has substantially the same standards.

[C75, 77, 79, 81, §206.17]

206.18 Exception to penalties.

1. The penalties provided for violations of section 206.11, subsection 1, shall not apply to:

a. Any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the secretary or the secretary's designated agent to copy all records showing the transactions in and movement of the articles.

b. Public officials of this state and the federal government engaged in the performance of their official duties.

c. The manufacturer or shipper of a pesticide for experimental use only:

(1) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides.

(2) By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only — not to be sold", together with the manufacturer's name and address; provided, however, that if a written permit has been obtained from the secretary, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

2. No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

3. The provisions of section 206.6 relating to licenses and requirements for their issuance shall not apply to any farmer applying pesticides for the farmer or with ground equipment or manually for the farmer's neighbors; provided, that:

a. The farmer operates farm property and operates and maintains pesticide application equipment primarily for the farmer's own use;

b. The farmer is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and that the farmer shall not publicly claim to be a pesticide applicator;

c. The farmer operates the pesticide application equipment only in the vicinity of the farmer's own property and for the accommodation of the farmer's neighbors.

4. The licensing requirements of section 206.6 shall not apply to persons using hand-powered or self-propelled equipment not exceeding seven and one-half horsepower as determined by rules promulgated by the department to apply pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve feet high, as an incidental part of taking care of household lawns and yards provided, that such persons shall not publicly hold themselves out as being in the business of applying pesticides, and that such persons do not apply restricted use pesticides or state restricted use pesticides, restricted to use only by certified applicators.

5. The provisions of section 206.6 relating to licenses and requirements for their issuance shall not apply to a doctor of veterinary medicine applying pesticides to animals during the normal course of veterinary practice; provided that the veterinarian is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation or does not publicly claim to be a pesticide applicator; and that the veterinarian does not apply restricted use pesticides, or state restricted use pesticides, restricted to use by certified applicators only.

[C66, 71, 73, §206.8; C75, 77, 79, 81, §206.18]

206.19 Rules.

The department shall, by rule, after public hearing following due notice:

1. Declare as a pest any form of plant or animal life or virus which is unduly injurious to plants, humans, domestic animals, articles, or substances.

2. Determine the proper use of pesticides including but not limited to their formulations,

times and methods of application, and other conditions of use.

3. Determine in cooperation with municipalities, the proper notice to be given by a commercial or public applicator to occupants of adjoining properties in urban areas prior to or after the exterior application of pesticides, and establish a schedule to determine the periods of application least harmful to living beings. The rules shall provide that a commercial or public applicator must provide notice only if an occupant requests that the commercial or public applicator provide the occupant notice in a timely manner prior to the application. The request shall include the name and address of the occupant, a telephone number of a location where the occupant may be contacted during normal business hours and evening hours, and the address of each property that adjoins the occupant's property. The notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier. Municipalities shall cooperate with the department by reporting infractions and in implementing this subsection.

4. Adopt rules providing guidelines for public bodies to notify adjacent property occupants regarding the application of herbicides to noxious weeds or other undesirable vegetation within highway rights-of-way.

5. Establish, assess, and collect civil penalties for violations by commercial applicators. In determining the amount of the civil penalty, the department shall consider all of the following factors:

a. The willfulness of the violation.

b. The actual or potential danger of injury to the public health or safety, or damage to the environment caused by the violation.

c. The actual or potential cost of the injury or damage caused by the violation to the public health or safety, or to the environment.

d. The actual or potential cost incurred by the department in enforcing this chapter and rules adopted pursuant to this chapter against the violator.

e. The remedial action required of the violator.

f. The violator's previous history of complying with orders or decisions of the department.

The amount of the civil penalty shall not exceed five hundred dollars for each offense.

[C66, §206.6; C71, §206.6, 206.12; C73, §206.12, 455B.102; C75, 77, §206.19, 455B.102; C79, §206.19, 455B.132; C81, §206.19]

87 Acts, ch 177, §2; 87 Acts, ch 225, §224; 88 Acts, ch 1118, §2; 93 Acts, ch 130, §1; 95 Acts, ch 172, §3

206.20 Restricted use pesticides classified.

The secretary shall determine, by rule, the pesticides to be classified as restricted use pesticides. In determining these rules the secretary shall take into consideration the pesticides classified as restricted use by the United States environmental protection agency and is authorized to adopt by reference these classifications.

[C75, 77, 79, 81, §206.20]

87 Acts, ch 177, §3; 88 Acts, ch 1118, §3

206.21 Secretary of agriculture — duties.

1. The secretary is authorized, after public hearing following due notice, to make appropriate rules for carrying out the provisions of this chapter, including rules providing for the collection and chemical examination of samples of pesticides or devices.

2. For the purpose of carrying out the provisions and the requirements of this chapter and the rules made and notices given pursuant thereto, the secretary or the secretary's authorized agents, inspectors, or employees may enter into or upon any place during reasonable business hours in order to take periodic random samples for chemical examinations of pesticides and devices and to open any bundle, package or other container containing or believed to contain a pesticide in order to determine whether the pesticide or device complies with the requirements of this chapter. Methods of analysis shall be those currently used by the Association of Official Agricultural Chemists.

3. The secretary of agriculture, in cooperation with the advisory committee created pursuant to section 206.23, shall designate areas with a history of concerns regarding nearby pesticide applications as pesticide management areas. The secretary shall adopt rules for designating pesticide management areas.

[C66, 71, 73, §206.6; C75, 77, 79, 81, §206.21]

87 Acts, ch 225, §225

206.22 Penalties.

1. Any person violating section 206.11, subsection 1, paragraph *"a"*, shall be guilty of a simple misdemeanor.

2. Any person violating any provision of this chapter other than section 206.11, subsection 1, paragraph *"a"*, shall be guilty of a serious misdemeanor; provided, that any offense committed more than five years after a previous conviction shall be considered a first offense; and provided, further, that in any case where a registrant was issued a warning by the secretary pursuant to the provisions of this chapter, such registrant shall upon conviction of a violation of any provision of this chapter other than section 206.11, subsection 1, paragraph *"a"*, be guilty of a serious misdemeanor; and the registration of the article with reference to which the violation occurred shall terminate automatically. An article, the registration of which has been terminated, may not again be registered unless the article, its labeling, and other material required to be submitted appear to the secretary to comply with all the requirements of this chapter.

3. Notwithstanding any other provisions of the section, in case any person, with intent to defraud, uses or reveals information relative to formulae of products acquired under authority of section 206.12, the person shall be guilty of a serious misdemeanor.

[C66, 71, 73, §206.9; C75, 77, 79, 81, §206.22]
92 Acts, ch 1112, §3; 95 Acts, ch 172, §4

206.23 Advisory committee created — duties.

1. An advisory committee to the secretary is created. The advisory committee shall have the following members:

a. The dean, college of veterinary medicine, Iowa state university of science and technology, or the dean's designee;

b. The dean, university of Iowa college of medicine, or the dean's designee;

c. An entomologist, botanist, geneticist, horticulturist, agronomist and two persons representing the general public appointed by the secretary. Appointive members of the advisory committee shall serve terms of four years.

2. The advisory committee shall assist the secretary in obtaining scientific data and co-ordinating agricultural chemical regulatory, enforcement, research, and educational functions of the state. The advisory committee shall recommend rules regarding the sale, use, or disuse of agricultural chemicals to the secretary.

3. The advisory committee shall adopt rules relating to its procedures, and meetings under the general supervision of the secretary.

4. The members of the advisory committee shall be reimbursed for actual and necessary expenses incurred by them in the discharge of their official duties.

[C81, §206.23]
2001 Acts, ch 74, §8

206.23A Commercial pesticide applicator peer review panel.

1. The department shall establish a commercial pesticide applicator peer review panel to assist the department in assessing or collecting a civil penalty pursuant to section 206.19. The secretary shall appoint the following members:

a. A person actively engaged in the business of applying pesticides by use of an aircraft and who is licensed as an aerial commercial applicator in this state pursuant to section 206.6.

b. A person actively engaged in the business of applying pesticides in urban areas on lawns and gardens, and who is licensed as a commercial applicator pursuant to section 206.6.

c. A person actively engaged in the business of applying pesticides within structures used for residential or commercial purposes, and who is licensed as a commercial applicator pursuant to section 206.6.

d. A person actively engaged in the business of applying pesticides on agricultural land used for farming and who is licensed as a commercial applicator pursuant to section 206.6.

e. A person certified as a public applicator pursuant to section 206.5.

2. *a.* The members appointed pursuant to this section shall serve four-year terms beginning and ending as provided in section 69.19. However, the secretary shall appoint initial members to serve for less than four years to ensure that members serve staggered terms. A member is eligible for reappointment. A vacancy on the panel shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

b. The panel shall elect a chairperson who shall serve for a term of one year. The panel shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members. Three voting members constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the panel. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the panel.

c. Notwithstanding section 7E.6, the members shall only receive reimbursement for actual expenses for performance of their official duties, as provided by the department.

d. The panel shall be staffed by the department.

3. The panel shall make recommendations to the department regarding the establishment of civil penalties and procedures to assess and collect penalties, as provided in section 206.19. The panel may propose a schedule of penalties for minor and serious violations. The department may adopt rules based on the recommendations of the panel as approved by the secretary.

4. The panel shall review cases of persons required to be licensed as commercial applicators who are subject to civil penalties as provided in section 206.19 according to rules adopted by the department. A review shall be performed upon request by the secretary or the person subject to the civil penalty. The panel may establish procedures for the review and establish a system of prioritizing cases for review, consistent with rules adopted by the department. The rules may exclude review of minor violations. The review may also include the manner of assessing and collecting the civil penalty. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the penalty. The response may include a recommendation that a proposed civil penalty be modified or suspended, that an alternative method of collection be

instituted, or that conditions be placed upon the license of a commercial applicator.

5. The department shall adopt rules establishing a period for the review and response by the panel which must be completed prior to a contested case hearing under chapter 17A. A hearing shall not be delayed after the required period for review and response, except as provided in chapter 17A.

6. This section does not apply to a license revocation proceeding. This section does not require the department to delay the prosecution of a case if immediate action is necessary to reduce the risk of harm to the environment or public health or safety. This section also does not require a review or response if the department refers a violation of this chapter for criminal prosecution, or for an action involving a stop order issued pursuant to section 206.16. The department shall consider any available response by the panel, but is not required to change findings of an investigation, a penalty sought to be assessed, or a manner of collection.

7. An available response by the panel may be used as evidence in an administrative hearing, or a civil or criminal case, except to the extent that information is considered confidential pursuant to section 22.7.

93 Acts, ch 130, §2

206.24 Agricultural initiative.

A program of education and demonstration in the area of the agricultural use of fertilizers and pesticides shall be initiated by the secretary of agriculture on July 1, 1987. The secretary shall coordinate the activities of the state regarding this program.

Education and demonstration programs shall promote the widespread adoption of management practices which protect groundwater. The programs may include but are not limited to programs targeted toward the individual farm owner or operator, high school and college students, and groundwater users, in the areas of best management practices, current research findings, and health impacts. Emphasis shall be given to programs which enable these persons to demonstrate best management practices to their peers.

87 Acts, ch 225, §226

206.25 Pesticide containers disposal.

The department of agriculture and land stewardship, in cooperation with the department of natural resources, shall develop a program for handling used pesticide containers which reflects the state solid waste management policy.

87 Acts, ch 225, §227; 2002 Acts, ch 1162, §37
Section amended

206.26 through 206.30 Reserved.

206.31 Application of pesticides for structural pest control.

1. *Definitions.* Notwithstanding section 206.2, as used in this chapter with regard to the application of pesticides used for structural pest control:

a. "Commercial applicator" means a person, or employee of a person, who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying a pesticide or servicing a device but shall not include a farmer trading work with another.

b. "Public applicator" means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency.

c. "Structural pest control" means controlling any pests in, on, or around food handling establishments; human dwellings; institutions such as schools and hospitals; industrial establishments, including warehouses and grain elevators; and any other structures in adjacent areas.

2. *Additional certification requirements.* A person shall not apply a restricted use pesticide used for structural pest control without first complying with the certification requirements of this chapter and other restrictions as determined by the secretary.

The secretary shall require applicants for certification as commercial or public applicators of pesticides applied for structural pest control to take and pass a written test.

3. *Examination for commercial applicator license.* The secretary of agriculture shall not issue a commercial applicator license for applying pesticides for structural pest control until the individual engaged in or managing the pesticide application business or employed by the business is certified by passing an examination to demonstrate to the secretary the individual's knowledge of how to apply pesticides under the classifications the individual has applied for, and the individual's knowledge of the nature and effect of pesticides the individual may apply under such classifications.

4. *Renewal of applicant's license.* The secretary of agriculture shall renew an applicant's license for applying pesticides for structural pest control under the classifications for which the applicant is licensed, provided that all of the applicant's personnel who apply pesticides for structural pest control have also been certified.

5. *Rules and fee.* The secretary shall adopt by rule, pursuant to chapter 17A, requirements for the examination and certification of the applicants and set a fee of not more than five dollars for certification.

87 Acts, ch 177, §4; 88 Acts, ch 1118, §4; 88 Acts, ch 1197, §3

206.32 Chlordane — prohibition.

1. A person shall not offer for sale, sell, purchase, apply, or use chlordane in this state, on or after January 1, 1989.

2. The department, working in conjunction with the department of natural resources, shall identify existing stocks of chlordane, shall formulate recommendations for the safe disposal of existing stocks of chlordane, and shall make those recommendations available to the owners of existing stocks of chlordane.

88 Acts, ch 1118, §1

206.33 Daminozide — prohibition.

A person shall not offer for sale, sell, purchase, apply, or use a pesticide containing daminozide in this state if the pesticide is sold, purchased, applied, or used for purposes of enhancing or improving a product produced to be consumed.

89 Acts, ch 127, §1; 90 Acts, ch 1260, §24

206.34 Local legislation — prohibition.

1. As used in this section:

a. "Local governmental entity" means any political subdivision, or any state authority which is not the general assembly or under the direction of a principal central department as enumerated in section 7E.5, including a city as defined in section 362.2, a county as provided in chapter 331, or any special purpose district.

b. "Local legislation" means any ordinance, motion, resolution, amendment, regulation, or rule adopted by a local governmental entity.

2. The provisions of this chapter and rules adopted by the department pursuant to this chapter shall preempt local legislation adopted by a local governmental entity relating to the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture of a pesticide. A local governmental entity shall not adopt or continue in effect local legislation relating to the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture of a pesticide, regardless of whether a statute or rule adopted by the department applies to preempt the local legislation. Local legislation in violation of this section is void and unenforceable.

3. This section does not apply to local legislation of general applicability to commercial activity.

94 Acts, ch 1002, §2; 94 Acts, ch 1198, §42

CHAPTER 206A

CHEMIGATION

Repealed by 95 Acts, ch 172, §5

CHAPTER 207

COAL MINING

This chapter not enacted as a part of this title;
transferred from chapter 83 in Code 1993

207.1 Policy.
207.2 Definitions.
207.3 Mining license.
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207.8 Determining if land is unsuitable for mining.
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207.17 Citizen suits.
207.18 Coal exploration permits.
207.19 Surface effects of underground coal mining operations.
207.20 Authority to enter into co-operative agreements.
207.21 Abandoned mine reclamation program.
207.22 Acquisition and reclamation of land.
207.23 Liens.
207.24 Water rights and replacement.
207.25 Additional duties and powers of the division.
207.26 Mining operations not subject to this chapter.
207.27 Experimental practices.
207.28 Employee protection.
207.29 Powers and authority of division.

207.1 Policy.

1. It is the policy of this state to provide for the rehabilitation and conservation of land affected by coal mining and preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the people of this state.

2. The general assembly finds and declares that because the federal Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, provides for a permit system to regulate the mining of coal and reclamation of the mining sites and provides that permits may be issued by states which are authorized to implement the provisions of that Act, it is in the interest of the people of Iowa to enact the provisions of this chapter in order to authorize the state to implement the provisions of the federal Surface Mining Control and Reclamation Act of 1977 and federal regulations and guidelines issued pursuant to that Act.

[C79, §83A.12(2); C81, §83.1]
C93, §207.1

207.2 Definitions.

As used in this chapter, unless context otherwise requires:

1. *"Administrator"* means the division administrator of the division of soil conservation or a designee.

2. *"Committee"* means the state soil conservation committee.

3. *"Division"* means the division of soil conservation within the department of agriculture and land stewardship.

4. *"Fund"* means the abandoned mine reclamation fund established pursuant to this chapter.

5. *"Imminent danger to the health and safety of the public"* means the existence of a condition or practice, or a violation of a permit or other requirement of this chapter in a coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before it can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person's self to the danger during the time necessary for abatement.

6. *"Mine"* means an underground mine operation or surface mine operation developed and operated for the purpose of extracting coal.

7. *"Operator"* means a person engaged in coal mining who removes or intends to remove more than fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in one location.

8. *"Permit"* means a permit to conduct surface coal mining and reclamation operations issued by the division.

9. *"Permit area"* means the area of land indicated on the approved map submitted with the operator's application.

10. *"Prime farmland"* has the same meaning as prescribed by the United States secretary of agriculture and published in the federal register on January 31, 1978.

11. *"Secretary"* means the United States secretary of the interior or a designee.

12. *"State program"* means the procedures for regulating coal mining and reclamation operations established by this chapter.

13. *"Surface coal mining and reclamation operations"* means surface coal mining operations and all activities necessary and incident to the reclamation of such operations after the effective date of this chapter.

14. *"Surface coal mining operations"* means both:

a. Activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground coal mine subject to the requirements of this chapter. However, these activities do not include the extraction of coal incidental to the extraction of other minerals if coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale or include coal explorations subject to this chapter.

b. The areas upon which such activities occur or where such activities disturb the natural land surface.

15. *"Unwarranted failure to comply"* means the failure of an operator to prevent the occurrence of or abate a violation of a permit or a requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care.

[C81, §83.2]
86 Acts, ch 1245, §601
C93, §207.2

207.3 Mining license.

1. A person shall not engage in a surface coal mining operation without first obtaining a license from the division. Licenses shall be issued upon application submitted on a form provided by the division and accompanied by a fee of fifty dollars. An applicant shall furnish on the form information necessary to identify the applicant. Licenses expire on December 31 following the date of issuance and shall be renewed by the division upon application submitted within thirty days prior to the expiration date and accompanied by a fee of ten dollars.

2. The division may, after notification to the committee, commence proceedings to suspend, revoke, or refuse to renew a license of a licensee for repeated or willful violation of any of the provisions of this chapter or of the federal Coal Mine Health and Safety Act of 1969.

3. The hearing shall be held pursuant to chap-

ter 17A not less than fifteen nor more than thirty days after the mailing or service of the notice. If the licensee is found to have willfully or repeatedly violated any of the provisions of this chapter or of the federal Coal Mine Health and Safety Act of 1969, the committee may affirm or modify the proposed suspension, revocation, or refusal to renew the license.

4. Suspension or revocation of a license shall become effective thirty days after the mailing or service of the decision to the licensee. If the committee finds the license should not be renewed, the renewal fee shall be refunded and the license shall expire on the expiration date or thirty days after mailing or service of the decision to the licensee, whichever is later.

[C79, §83A.12(1); C81, §83.3]
C93, §207.3

207.4 Mine site permit.

1. Prior to beginning mining or removal of overburden at mining site, an operator shall obtain a permit from the division for the site. Application for a permit shall be made upon a form provided by the division. The permit fee shall be established by the division in an amount not to exceed the cost of administering the permit provisions of this chapter.

The application shall include, but not be limited to:

a. A legal description of the land where the site is located and the estimated number of acres affected.

b. A statement explaining the authority of the applicant's legal right to operate a mine on the land.

c. A reclamation plan meeting the requirements of this chapter.

d. A determination by an appropriate state or federal agency of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity, and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the division of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. If the division finds that the probable total annual production at all locations of a coal mining operator will not exceed one hundred thousand tons, the determination of probable hydrologic consequences and a statement of the result of test borings on core samplings which the division may require shall upon the written request of the operator be performed by a qualified public or private laboratory designated by the division and the cost of the preparation of the determination and statement shall be assumed by the division.

2. All permits issued pursuant to the requirements of this chapter shall be issued for a term not to exceed five years. If the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the longer term, the division may grant a permit for the longer term. A successor in interest to a permittee who applies for a new permit within thirty days of succeeding to the interest and is able to continue the bond coverage may continue coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's application is granted or denied.

3. A permit terminates if the permittee has not commenced the coal mining operations covered by the permit within three years of its issuance. However, the division may grant reasonable extensions of time upon a showing that the extensions are necessary because of litigation precluding the commencement or threatening substantial economic loss to the permittee or because of conditions beyond the control and without the fault or negligence of the permittee. If a coal lease is issued under the federal Mineral Leasing Act, as amended, extensions of time may not extend beyond the period allowed for diligent development in accordance with section 7 of that Act. If coal is to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is deemed to have commenced mining operations when the construction of the synthetic fuel or generating facility is initiated.

4. A valid permit carries the right of successive renewal upon expiration within the boundaries of the existing permit. On application for renewal the burden shall be on the opponents of approval. Upon application the renewal shall be issued unless the division establishes any of the following:

a. The terms and conditions of the existing permit are not being satisfactorily met.

b. The present coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter.

c. The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas.

d. The operator has not shown that the performance bond for the operation and any additional bond the division may require will continue in full force and effect for the renewal requested.

e. Additional revised or updated information required by the division has not been provided.

5. A permit renewal shall be for a term not to exceed the period of the original permit.

Application for renewal shall be made at least one hundred twenty days prior to the expiration of the permit. Prior to the approval of a renewal of permit the division shall provide notice to the ap-

propriate public authorities.

[C81, §83.4]

C93, §207.4

Mine site permit fee set at fifteen dollars per site acre; 88 Acts, ch 1272, §4

207.5 Public notice and hearing.

1. An applicant for a coal mining and reclamation permit or its renewal shall file a copy of the application for public inspection with the county recorder of each county where the mining is proposed to occur.

2. An applicant for a coal mining and reclamation permit or its renewal shall submit to the division a copy of the applicant's advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission the advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed mine weekly for four consecutive weeks. The division shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies where the proposed mining will take place, informing them of the operator's intention to mine a particularly described tract of land, indicating the application number and where a copy of the proposed mining and reclamation plan may be inspected. They may submit written comments within a reasonable period established by the division on the effect of the proposed operation on the environment within their area of responsibility. The comments shall immediately be transmitted to the applicant and shall be made available to the public at the same locations as the mining permit application.

3. A person having an interest which is or may be adversely affected or a federal, state, or local governmental agency may file written objections to the proposed initial or revised application for a permit for coal mining and reclamation operation with the division within sixty days after the last publication of the advertisement. The objections shall immediately be transmitted to the applicant and shall be made available to the public. If objections are filed and an informal conference requested within a reasonable time, the division shall hold an informal conference in the locality of the proposed mining operations and shall publish the date, time and location in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. Upon request by an interested party, the division may arrange with the applicant access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. The record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. If all parties requesting the informal conference stipulate agreement prior to the conference and withdraw their request, the conference need not be held.

4. An application for a permit shall show a certificate issued by an insurance company authorized to do business in this state certifying that the applicant has a public liability insurance policy in force for that mining and reclamation operation or evidence satisfactory to the division that the applicant has an adequate self-insurance plan. The policy or self-insurance plan shall provide for personal injury and property damage protection adequate to compensate persons entitled to compensation because of damage as a result of coal mining and reclamation operations including use of explosives. The policy or self-insurance plan shall be maintained in full force and effect during the terms of the permit, any renewal and all reclamation operations.

[C81, §83.5]

C93, §207.5

207.6 Blasting plan required.

1. An application for a permit shall contain a blasting plan which outlines the procedures and standards by which the operator will meet the requirements of the division.

2. The division may promulgate rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in coal mining operations.

[C81, §83.6]

C93, §207.6

207.7 Environmental protection performance standards.

The division shall adopt rules for environmental protection performance standards that are consistent with federal regulations authorized under the federal Surface Mining Control and Reclamation Act and amendments to that Act.

[C77, 79, §83A.31; C81, §83.7]

87 Acts, ch 47, §1

C93, §207.7

207.8 Determining if land is unsuitable for mining.

1. The division by rule shall designate a site unsuitable for coal mining if the division determines on the basis of an application or petition that reclamation as required by this chapter is not technologically and economically feasible and may designate a site unsuitable for coal mining if such operations will:

a. Be incompatible with existing state or local land use plans or programs.

b. Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems.

c. Affect renewable resource lands in which such operations could result in a substantial loss

or reduction of long range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas.

d. Affect natural hazards lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

2. The requirements of this section do not apply to lands on which coal mining operations are being conducted as of August 3, 1977, or under a permit issued pursuant to this chapter or pursuant to section 83A.12* of the 1979 Code or where substantial legal and financial commitments in an operation were in existence prior to January 4, 1977.

3. Prior to designating a land area as unsuitable for coal mining operations, the division shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

4. A person having an interest which is or may be adversely affected may petition the division to have an area designated or to have the designation terminated. The petition shall contain allegations of facts with supporting evidence tending to establish the allegations. Within ten months after receipt of the petition the division shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of the hearing. After a person has filed a petition and before the hearing, any person may intervene by filing allegations. Within sixty days after the hearing, the division shall issue and furnish to the petitioner and any other party to the hearing a written decision regarding the petition and the reasons. If all the petitioners stipulate agreement prior to the hearing and withdraw their request, the hearing need not be held.

5. Subject to valid existing rights, coal mining operations, except those which exist on the effective date of this chapter, shall not be permitted on any of the following:

a. Lands within the boundaries of units of the national park systems, the national system of trails, the national wilderness preservation system, the national wildlife refuge systems, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and national recreation areas designated by Act of Congress.

b. Lands which will adversely affect any publicly owned park or places included in the national register of historic sites unless approved jointly by the division and the federal, state, or local agency with jurisdiction over the park or the historic site.

c. Within one hundred feet of the outside right of way line of a public road, except where mine access roads or haulage roads join the right of way line and except that the division may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected.

d. Within three hundred feet of an occupied dwelling or a privately owned building, unless waived by the owner, or within three hundred feet of a public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

[C77, 79, §83A.13; C81, §83.8]

C93, §207.8

*Repealed effective January 1, 1981; 78 Acts, ch 1051, §1

207.9 Permit approval or denial.

1. Upon the basis of a complete mining application and reclamation plan or a revision or renewal, the division shall grant, require modification of, or deny the application for a permit in a reasonable time set by the division and notify the applicant in writing. The applicant shall have the burden of establishing that the application is in compliance with all the requirements of this chapter. Within ten days after granting of a permit, the division shall notify the political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

2. A permit or revision application shall not be approved unless the application affirmatively demonstrates and the division finds in writing on the basis of the application or other information documented in the approval, and made available to the applicant, the following:

a. The permit application is accurate, complete and in compliance with all the requirements of this chapter.

b. The applicant has demonstrated that reclamation as required by this chapter and the state program can be accomplished under the reclamation plan contained in the permit application.

c. The division has assessed the probable cumulative impact of all anticipated mining in the area on the hydrologic balance and the proposed operation has been designed to prevent material damage to hydrologic balance outside permit area.

d. The area proposed to be mined is not included within an area designated unsuitable for coal mining or is not within an area proposed for such designation.

e. If the private mineral estate has been severed from the private surface estate, the applicant has submitted any of the following:

(1) The written consent of the surface owner to the extraction of coal.

(2) A conveyance that expressly grants or reserves the right to extract the coal by surface mining.

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship as determined in accordance with state law. This

chapter does not authorize the division to adjudicate property rights disputes.

3. The applicant shall file with the permit application a schedule listing any and all notices of violations of this chapter and any law or rule of the federal or a state government pertaining to air or water environmental protection incurred by the applicant in connection with a coal mining operation during the three previous years. The schedule shall also indicate the final resolution of the notice of violation. If any information available to the division indicates that a coal mining operation owned or controlled by the applicant is currently in violation of this chapter or the other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority which has jurisdiction over the violation and the permit shall not be issued to an applicant after a finding by the division after an opportunity for a hearing that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter.

4. If the area proposed to be mined contains prime farmland, the division shall, after consultation with the United States secretary of agriculture, and pursuant to regulations issued by the secretary with the concurrence of the secretary of agriculture, grant a permit to mine on prime farmland if the division finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards established by section 207.7. Any operator who mines coal on agricultural land shall restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined agricultural land of similar quality in the surrounding area under equivalent levels of management.

5. Within sixty days a person having an interest which is or may be adversely affected may appeal to the committee the decision of the division granting or denying a permit as a contested case under chapter 17A.

[C81, §83.9]
C93, §207.9

207.10 Performance bond requirement.

1. After a permit application has been approved but before issuance, the applicant shall file with the division, on a form furnished by the division, a bond for performance payable to the state and conditioned upon faithful performance by the operator of all requirements of this chapter and all rules adopted by the division pursuant to this chapter.

2. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Iowa as surety. In lieu of a bond, the operator may deposit cash, or government securities, or certificates of deposit or letters of credit with the division on the same conditions as for filing of bonds.

3. The amount of the bond or other security required to be filed with the division shall be equal to the estimated cost of reclamation of the site if performed by the division. The estimated cost of reclamation of each individual site shall be determined by the division on the basis of relevant factors. The division may require each applicant to furnish information necessary to estimate the cost of reclamation. The amount of the bond or other security may be increased or reduced as the permitted operation changes, or when the cost of future reclamation changes. However, the bond amount shall not be less than ten thousand dollars.

4. Liability under the bond shall be for the duration of the coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements in the rules promulgated under section 207.7.

5. If the license to do business in Iowa of a surety of a bond filed with the division is suspended or revoked, the operator, within thirty days after receiving notice from the division, shall substitute another surety. If the operator fails to make substitution, the division may suspend the operator's authorization to conduct mining on the site covered by the bond until substitution has been made. The commissioner of insurance shall notify the division whenever the license of any surety providing bond for an operator is suspended or revoked.

6. Notwithstanding sections 12C.7, subsection 2, and 666.3, the interest or earnings on investments or time deposits of the proceeds of a performance bond forfeited to the division, cash deposited under subsection 2, any funds provided for the abandoned mine reclamation program under section 207.21 and any civil penalties collected pursuant to sections 207.14 and 207.15 shall be credited to the payment of costs and administrative expenses associated with the reclamation, restoration or abatement activities of the division. The division may expend funds credited to it under this subsection to conduct reclamation activities on any areas disturbed by coal mining not subject to a presently valid permit to conduct surface mining.

[C81, §83.10]
85 Acts, ch 140, §1
C93, §207.10

207.11 Political subdivision engaged in mining.

An agency or political subdivision of the state or a publicly owned utility or corporation of a politi-

cal subdivision which engages or intends to engage in coal mining shall meet all requirements of this chapter.

[C81, §83.11]
C93, §207.11

207.12 Revision of permits.

1. An operator may apply for a revision or cancellation of a permit. The application shall be submitted by the operator on a form provided by the division, and shall contain information as required by the division.

The division shall establish rules for determining the scale or extent of a revision request to which all permit application information requirements and procedures including notice and hearings, shall apply. Revisions which propose significant alterations in the reclamation plan shall be subject to notice and hearing requirements.

2. An application for a revision of a permit shall not be approved unless the division finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan.

3. Extensions to the area covered by the permit except incidental boundary revisions must be made subject to the requirements for an application for new permit.

4. If the application is to cancel the permit as it pertains to any or all of the unmined part of a site, the division shall, after ascertaining that overburden has not been disturbed or deposited on the land, order release of the bond or the security posted on that portion of the land being removed from the permit and cancel or amend the operator's permit to conduct mining on the site. Land where overburden has been disturbed or deposited shall not be removed from a permit or released from bond or security under this section.

5. A transfer, assignment, or sale of the rights granted under a permit shall not be made without the written approval of the division.

6. Fees for revision or cancellation shall be determined by the division but shall not exceed the cost of administering revisions or cancellations of permits as authorized under this section.

7. The division shall review outstanding permits within a time limit prescribed by rule and may require reasonable revision or modification of the permit provisions during the term of the permit. However, the revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the division.

[C81, §83.12]
C93, §207.12

207.13 Inspections and monitoring.

1. The division shall make inspections of any mining and reclamation operations as are necessary to evaluate the administration of this chapter and authorized representatives of the division shall have a right to entry at any mining and reclamation operation. If the operator refuses to consent to the inspection, the division shall request the attorney general to immediately obtain a warrant for the inspection.

The division shall determine what records and other information shall be maintained and furnished to the division by the operators for the effective administration of this chapter.

2. The inspections by the division shall:

a. Occur at a frequency of one complete inspection per calendar quarter and at least one partial inspection on an irregular basis in those months where a complete inspection is not performed.

b. Occur without prior notice to the permittee, agents or employees except for necessary on-site meetings with the permittee.

c. Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

3. If the division has reason to believe that an operator is in violation of a requirement of this chapter or a permit condition, the division shall immediately order an inspection of the coal mining operation within ten days of receiving notice of the alleged violation.

4. An operator shall conspicuously maintain a clearly visible sign at the entrances to the mining and reclamation operation which sets forth the name, business address, permit number and phone number of the operator.

5. Each inspector shall immediately inform the operator in writing of each violation, and shall report in writing any violation to the division.

6. Copies of any record, reports, inspection materials, or information obtained under this section by the division shall be made immediately available to the public at central and sufficient locations in the area of mining so that they are conveniently available to residents in the areas of mining.

7. An employee of the division performing any function or duty under this chapter shall not have a direct or indirect financial interest in any mining operation.

[C81, §83.13]
C93, §207.13
2002 Acts, ch 1050, §20
Subsection 2 amended

207.14 Enforcement.

1. When on the basis of an inspection, the administrator determines that a condition or practice exists which creates an imminent danger to the health or safety of the public or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the administrator shall immediately order a cessation of coal mining and reclamation operations to the extent necessary until the administrator determines that the condition, practice, or

violation has been abated, or until the order is modified, vacated, or terminated by the division pursuant to procedures set out in this section.

If the administrator finds that the ordered cessation will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm, the administrator shall require the operator to take whatever steps the administrator deems necessary to abate the imminent danger or the significant environmental harm.

2. When on the basis of an inspection, the administrator determines that any operator is in violation of any requirement of this chapter or permit condition, but the violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant, imminent environmental harm, the administrator shall issue a notice to the operator fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing.

If upon expiration of the time as fixed the administrator finds in writing that the violation has not been abated, the administrator, notwithstanding sections 17A.18 and 17A.18A, shall immediately order a cessation of coal mining and reclamation operations relating to the violation until the order is modified, vacated, or terminated by the administrator pursuant to procedures outlined in this section. In the order of cessation issued by the administrator under this subsection, the administrator shall include the steps necessary to abate the violation in the most expeditious manner possible.

3. When on the basis of an inspection the administrator determines that a pattern of violations of the requirements of this chapter or any permit conditions exists or has existed, and if the administrator also finds that the violations are willful or caused by the unwarranted failure of the operator to comply with any requirements of this chapter or any permit conditions, the administrator shall immediately issue an order to the operator to show cause as to why the permit should not be suspended or revoked and the bond or security forfeited, and shall provide opportunity for a hearing as a contested case pursuant to chapter 17A. Upon the operator's failure to show cause, the administrator shall immediately suspend or revoke the permit.

4. A permittee may request in writing an appeal to the committee of a decision made in a hearing under subsection 3 within thirty days of the decision. The committee shall review the record made in the contested case hearing, and may hear additional evidence upon a showing of good cause for failure to present the evidence in the hearing, or if evidence concerning events occurring after the hearing is deemed relevant to the proceeding. However, the committee shall not review a decision in a proceeding if the division seeks to collect a civil penalty pursuant to section 207.15, and those decisions are final agency actions subject to direct judicial review as provided in chapter 17A.

The contested case hearing shall be scheduled within thirty days of receipt of the request by the division. If the decision in the contested case is to revoke the permit, the permittee shall be given a specific period to complete reclamation, or the attorney general shall be requested to institute bond forfeiture proceedings.

5. In any administrative proceeding under this chapter or judicial review, the amount of all reasonable costs and expenses, including reasonable attorney fees incurred by a person in connection with the person's participation in the proceedings or judicial review, may be assessed against either party as the court in judicial review or the committee in administrative proceedings deems proper.

6. Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the operator or an agent and all notices and orders shall be in writing and signed. A notice or order issued pursuant to this section may be modified, vacated, or terminated by the administrator. Any notice or order issued pursuant to this section which requires cessation of mining by the operator expires within thirty days of actual notice to the operator unless a public hearing is held at or near the site so that any viewings of the site can be conducted during the course of the hearing.

7. A permittee issued a notice or order under this section or any person having an interest which is or may be adversely affected by the notice or order or by its modification, vacation or termination may apply to the committee for review within thirty days of receipt of the notice or order or within thirty days of its modification, vacation or termination. The review shall be treated as a contested case under chapter 17A. Pending completion of any investigation or hearings required by this section, the applicant may file with the division a written request that the administrator grant temporary relief from any notice or order issued under this section together with a detailed statement giving reasons for granting such relief. The administrator shall issue an order or decision granting or denying the request for relief within five days of its receipt. The administrator may grant such relief under such conditions as the administrator may prescribe if all of the following occur:

a. A hearing has been held in the locality of the permit area in which all parties were given an opportunity to be heard. The hearing need not be

held as a contested case under chapter 17A.

b. The applicant shows that there is substantial likelihood that the findings of the committee will be favorable to the applicant.

c. Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources.

8. At the request of the division, the attorney general shall institute any legal proceedings, including an action for an injunction or a temporary injunction necessary to enforce the penalty provisions of this chapter or to obtain compliance with this chapter. Injunctive relief may be requested to enforce a cessation order issued by the administrator pending a hearing pursuant to subsection 4.

9. When on the basis of an inspection, or other information available to the division, the administrator has reasonable cause to believe that the operator is unable to complete reclamation of all or a portion of the permit area as required by law, the administrator shall issue an order to the operator to show cause as to why all or a portion of the performance bond required by section 207.10 should not be revoked.

[C81, §83.14; 82 Acts, ch 1119, §1, 2]
85 Acts, ch 140, §2 – 4
C93, §207.14
98 Acts, ch 1202, §35, 46

207.15 Penalties.

1. A person who violates a permit condition, a provision of this chapter, or a rule or order issued under this chapter is subject to a civil penalty not to exceed five thousand dollars per day for each day of violation. If a violation results in the issuance of a cessation order, a civil penalty shall be imposed. The penalty shall not exceed five thousand dollars for each day of violation.

In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

An operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction shall be required to pay a civil penalty of not less than seven hundred fifty dollars for each day during which the failure or violations continue.

2. If a notice or order has been issued, the division may assess a recommended penalty in accordance with a schedule established by rule. The person to whom the notice or order was issued may submit written information within fifteen days of the notice or order to be considered by the division. The division shall serve the assessment by certified mail, return receipt requested, within thirty days of issuance of the notice or order. The division may reassess any penalty if necessary to consider facts not reasonably available on the date of issuance of the assessment. A person may consent to a penalty assessment by paying the penalty without resort to judicial proceedings.

If a violation results in the issuance of a cessation order pursuant to section 207.14 the division shall assess a penalty.

3. A contested case hearing may be requested pursuant to section 207.14, subsection 4, to review a notice, order, or penalty assessment. A person to whom a penalty assessment has been issued may request a contested case hearing solely for review of the amount of the penalty. A penalty assessment is final if a request for review is not made in a timely manner.

4. Judicial review of any action of the division shall be in accordance with chapter 17A. Judicial review of a penalty assessment shall not be permitted unless the petitioner has posted a bond equal to the amount of the assessed penalty in the district court or has placed the proposed amount in an interest bearing escrow fund approved by the division.

5. If a violation results in a cessation order pursuant to section 207.14, the attorney general, at the request of the division, shall institute a civil action in district court for injunctive relief.

Notwithstanding section 17A.20, an appeal bond shall be required for an appeal of a judgment assessing a civil penalty.

6. A person who willfully and knowingly violates a condition of a permit or any other provision of this chapter, or makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or any order or decision of this chapter, shall be guilty of a serious misdemeanor and notwithstanding section 903.1 the maximum fine shall be ten thousand dollars.

7. Whenever a corporate operator violates a condition of a permit or any other provision of this chapter or fails or refuses to comply with any provision of this chapter, a director, officer, or agent of that corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties or criminal fines and imprisonment that may be imposed upon a person under this section.

8. An employee of the division performing any function or duty under this chapter who knowingly and willfully has a direct or indirect financial interest in any coal mining operation shall be guilty of a serious misdemeanor and notwithstanding section 903.1 the maximum fine shall be two thou-

sand five hundred dollars.

[C81, §83.15]

84 Acts, ch 1153, §1, 2; 85 Acts, ch 140, §5

C93, §207.15

207.16 Release of performance bonds or deposits.

1. Each operator upon completion of any reclamation work required by this chapter shall apply to the division in writing for approval of the work. The division shall promulgate rules consistent with Pub. L. 95-87, section 519, regarding procedures and requirements to release performance bonds or deposits.

2. The division may release in whole or part the bonds or deposits if the division is satisfied the reclamation covered by the bonds or deposits or portions thereof has been accomplished as required by this chapter according to stages determined by the division by rule. When the operator has completed successfully all surface coal mining and reclamation activities, the remaining portion of the bond shall be released upon the expiration of the period specified for operator responsibility in the rules promulgated pursuant to section 207.7. A bond shall not be fully released until all reclamation requirements of this chapter are fully met.

3. A person with a valid legal interest which might be adversely affected by release of the bond or a federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or which is authorized to develop and enforce environmental standards with respect to such operations may file written objections to the proposed release from bond to the division within sixty days after the last publication as required by rule of a notice of a request for bond release by the operator. If written objections are filed and a hearing is requested, the division shall inform all the interested parties of the time and place of the hearing, and hold a public hearing as a contested case in the locality of the coal mining operation or at the state capital, at the request of the objectors, within thirty days of the request. The date, time, and location shall be advertised by the division in a newspaper of general circulation in the locality for two consecutive weeks.

[C81, §83.16]

C93, §207.16

207.17 Citizen suits.

1. A person having an interest which is or may be adversely affected may commence a civil action on the person's own behalf to compel compliance with this chapter as follows:

a. Against the division or any other governmental agency or subdivision which is alleged to be in violation of the provisions of this chapter or of any rule, order or permit issued or against any other person who is alleged to be in violation of any rule, order or permit issued pursuant to this chapter.

b. Against the division where there is alleged a failure of the division to perform any act or duty required under this chapter. The suit shall be filed in the county where the mining operation is or, if against the division, in the district court for Polk county or the county of the petitioner's residence.

2. An action shall not be commenced:

a. Under subsection 1, paragraph *"a"* of this section until sixty days after the plaintiff has given notice in writing of the violation to the division and to any alleged violator, or if the state has commenced and is diligently prosecuting a civil action against that operator for compliance with the provisions of this chapter; however, the person may intervene in the action as a matter of right.

b. Under subsection 1, paragraph *"b"* of this section until sixty days after the plaintiff has given notice in writing to the division in the manner provided by rule; however, if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff, the action may be brought immediately after giving notice.

3. The division may intervene in any action under this section.

4. The court, in issuing a final order in an action brought pursuant to subsection 1 of this section, may award costs of litigation including attorney and expert witness fees to any party.

5. This section does not restrict a right which any person or class may have under a statute or common law to seek enforcement of any of the provisions of this chapter or to seek any other relief. The availability of judicial review of the actions of the division shall not restrict any rights established by this section.

6. A person whose person or property is injured through the violation by any operator of a rule, order, or permit issued pursuant to this chapter may bring an action for damages including reasonable attorney and expert witness fees only in the county in which the coal mining operation complained of is located. This subsection shall not affect the rights or limits under workers' compensation as provided in chapter 85.

[C81, §83.17]

C93, §207.17

207.18 Coal exploration permits.

1. A coal exploration operation in this state which substantially disturbs the natural land surface shall be conducted in accordance with exploration rules issued by the division. The rules shall include at a minimum the following:

a. The requirement that prior to conducting an exploration the person must file with the division a notice of intention to explore describing the

exploration area and the period of exploration.

b. Provisions for reclamation of the lands disturbed by the exploration in accordance with the environmental performance standards mandated by section 207.7.

2. Information submitted to the division pursuant to this section and determined by the division, following consultation with the person submitting the information, to be confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person intending to explore the described area shall not be available for public examination.

3. A person who conducts coal exploration activities which substantially disturb the natural land surface in violation of this section shall be subject to the provisions of section 207.15.

4. An operator shall not remove more than fifty tons of coal pursuant to an exploration permit without the specific written approval of the division.

[C81, §83.18]
C93, §207.18

207.19 Surface effects of underground coal mining operations.

The provisions of this chapter shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The division shall promulgate such modifications in its rules to allow for such distinct differences and still fulfill the purposes of this chapter and be consistent with the requirements in section 516 of Pub. L. 95-87 and the permanent regulations issued pursuant to that Act.

In order to protect the stability of the land, the division shall suspend underground coal mining under urbanized areas, cities, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the administrator finds imminent danger to inhabitants of the urbanized areas, cities, and communities.

[C81, §83.19]
C93, §207.19

207.20 Authority to enter into co-operative agreements.

The division may enter into a co-operative agreement with the secretary to provide for the division to regulate mining and reclamation operations on federal lands within the state. If the division enters into a co-operative agreement with the secretary under this section, such agreement shall be conducted according to the provisions of chapter 28E.

[C81, §83.20]
C93, §207.20

207.21 Abandoned mine reclamation program.

1. The division shall participate in the abandoned mine reclamation program under Title IV, Pub. L. No. 95-87. There is established an abandoned mine reclamation fund under the control of the division.

2. *a.* Lands and water eligible for reclamation or drainage abatement expenditures under this section include the following:

(1) Lands which were mined for coal or affected by such mining, waste banks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal laws.

(2) Coal lands and water damaged by coal mining processes and abandoned after August 3, 1977, if they were mined for coal or affected by coal mining processes and if either of the following occurred:

(a) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and April 10, 1981, and any moneys for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

(b) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and November 5, 1990, and the surety of the mining operator became insolvent during that period and, as of November 5, 1990, moneys immediately available from proceedings relating to the insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

b. If requested by the governor, the division may fill voids and seal tunnels, shafts, and entryways resulting from any previous noncoal mining operation, and may reclaim surface impacts of any such noncoal underground or surface mines that were mined prior to August 3, 1977, and which constitute an extreme danger to the public health, safety, general welfare, or property. Sites and areas designated for remedial action pursuant to the federal Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 7901 et seq., or which have been listed for remedial action pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., are not eligible for expenditures under this section.

3. Expenditure of moneys from the abandoned mine reclamation fund on eligible lands and water

for the purpose of this program shall reflect the following priorities in the order stated:

a. The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.

b. The protection of public health, safety, and general welfare from adverse effects of coal mining practices.

c. The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water, excluding channelization, woodland, fish and wildlife, recreation resources, and agricultural productivity.

d. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices.

e. The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this section for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

4. The division shall submit to the secretary a state reclamation plan and annual projects to carry out the purposes of this program. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of Title IV of Pub. L. No. 95-87.

The division may annually submit to the secretary an application with such information as determined by the secretary for the support of the state program and implementation of specific reclamation projects.

The costs for each proposed project under this program shall include actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction and inspection costs, and other necessary administrative expenses.

The division shall prepare and submit annual and other reports as required by the secretary.

5. The division in participating in the abandoned mine reclamation program under Title IV of Pub. L. No. 95-87 shall have the following additional powers:

a. To engage in any work and to do all things necessary or expedient, including promulgation of rules, to implement and administer the provisions of this program.

b. To engage in co-operative projects with any other governmental unit provided that such co-operative projects shall be under a co-operative agreement conducted according to the provisions of chapter 28E.

c. To request the attorney general to seek injunctive relief to restrain any interference with the exercise of the right to enter or to conduct work under this program.

d. To construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

[C81, §83.21]
C93, §207.21
97 Acts, ch 115, §1, 2

207.22 Acquisition and reclamation of land.

1. *a.* The division, pursuant to a state program approved by the secretary, may take action as provided in paragraph *"b"* of this subsection if it finds all of the following:

(1) Land or water resources have been adversely affected by past coal mining practices.

(2) The adverse effects are at a stage where in the public interest action to restore, reclaim, abate, control, or prevent should be taken.

(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available, or will not give permission for the United States, this state, political subdivisions, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

b. Upon giving notice by mail to the owners if known or by posting notice upon the premises and advertising once in a local newspaper of general circulation if not known, the division may enter upon the property adversely affected by past coal mining practices and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and not as an act of condemnation of property or trespass. The moneys expended for the work and the benefits accruing to the property shall be chargeable against such property and shall mitigate or offset any claim on or any action brought by an owner of any interest in the property for any alleged damages because of the entry. This provision does not create new rights of action or eliminate existing immunities.

2. The division may enter upon a property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement,

control, or prevention of such adverse effects. The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and not as an act of condemnation of property or trespass.

3. The division pursuant to an approved state program may acquire any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the secretary determines that acquisition of the land is necessary to successful reclamation and that:

a. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open spaces benefits and that permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

b. Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of Title IV of Pub. L. No. 95-87 or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effect of past coal mining practices.

4. Title to all lands acquired pursuant to this section shall be in the name of this state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

5. If land acquired pursuant to this section is deemed to be suitable for industrial, commercial, agricultural, residential, or recreational development, the division with authorization from the secretary may sell the land by public sale under a system of competitive bidding, at not less than fair market value and under rules promulgated to insure that the lands are put to proper use consistent with local land use plans.

6. The division if requested after appropriate public notice shall hold a public hearing with the appropriate notice, in the county of the lands acquired pursuant to this section. The hearings shall be held at a time that affords local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands.

7. The division may co-operate with the secretary in acquiring land by purchase, donation, or condemnation to assist the housing of people disabled as the result of employment in the mines or incidental work, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as determined by the secretary. The fund provided under this section shall not be used to pay the actual construction costs of housing.

[C81, §83.22]
C93, §207.22
2002 Acts, ch 1119, §145
Subsection 3, paragraph b amended

207.23 Liens.

1. Within six months after the completion of a project to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the division shall itemize the money expended on the project and may file a lien statement in the manner provided in section 572.8 in the office of the district court clerk of each county in which a portion of the property affected by the project is located, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining practices if the money so expended results in a significant increase in property value. A copy of the lien statement and the appraisal, if required, shall be served upon affected property owners in the manner provided for service of an original notice. The lien shall not exceed the amount determined by the appraiser to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices. A lien shall not be filed in accordance with this subsection against the property of a person who owned the surface prior to May 2, 1977, and who neither consented to, participated in, nor exercised control over the mining operation which necessitated the reclamation performed.

2. The owner of property to which the lien attaches may petition the court within sixty days after receipt of service of the lien statement, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount found to be the increase in value of the property shall constitute the amount of the lien and shall be recorded in the office of the district court in each county in which the owner's property is located. A party aggrieved by the decision may appeal as provided by law.

3. The lien provided in this section has priority over all other liens or security interests which have attached to the property, whenever those liens may have arisen, except liens of real estate taxes imposed upon the property.

[C81, §83.23]
C93, §207.23
97 Acts, ch 115, §3, 4

207.24 Water rights and replacement.

This chapter shall not be construed as affecting the right of any person's interest in water resources affected by a mining operation.

The operator of a mine shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for any legitimate use from an underground or surface source if the supply has been affected by contamination, diminution, or interruption proximately resulting from the mine operation.

[C81, §83.24]
C93, §207.24

207.25 Additional duties and powers of the division.

In addition to the duties and powers conferred upon the division, it shall have the power to prescribe by rule the necessary procedures and requirements of operators to carry out the purpose and provisions of this chapter.

[C81, §83.25]
C93, §207.25

207.26 Mining operations not subject to this chapter.

The provisions of this chapter shall not apply to any of the following activities:

1. The extraction of coal by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.

2. The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction under rules promulgated by the division.

[C81, §83.26]
88 Acts, ch 1022, §1
C93, §207.26

207.27 Experimental practices.

In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, agricultural, residential, or public use including recreational facilities, the division with approval by the secretary may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 207.7 and 207.20 if the experimental practices are potentially as environmentally protective, during and after mining operations, as those required by promulgated standards, the mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices, and the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

[C81, §83.27]
C93, §207.27

207.28 Employee protection.

1. A person shall not discharge, or in any other way discriminate against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

2. Any employee or a representative of employees who believes that the employee or representative has been fired or discriminated against by a person in violation of subsection 1 of this section may, within thirty days after the alleged violation occurs, apply to the administrator for a review as provided by rule of the firing or alleged discrimination.

[C81, §83.28]
C93, §207.28

207.29 Powers and authority of division.

The division may engage in any work and do all things necessary or expedient, including adoption of rules, to implement and administer the provisions of an abandoned mine reclamation program.

97 Acts, ch 115, §5

CHAPTER 208

MINES

This chapter not enacted as a part of this title;
transferred from chapter 83A in Code 1993

208.1 Policy.
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208.18 Periodic reports.
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208.21 Political subdivision engaged in mining.
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208.23 Form of bond.
208.24 Single bond for multiple sites.
208.25 Cancellation of bond.
208.26 Rules — inspection of site.
208.27 Hearing on violations. Repealed by 96 Acts, ch 1043, §20.
208.28 Forfeiture of bond — licensure restrictions.
208.29 Penalties for operating without a license and for failure to register. Repealed by 96 Acts, ch 1043, §20.
208.30 Governor's approval of rules. Repealed by 96 Acts, ch 1043, §20.

208.1 Policy.

It is the policy of this state to provide for the reclamation and conservation of land affected by the mining of gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal, and thereby to preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the people of this state.

[C71, 73, 75, 77, 79, 81, §83A.1]
85 Acts, ch 137, §1
C93, §208.1
96 Acts, ch 1043, §1

208.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division of soil conservation or a designee.
2. *"Affected land"* means the area of land from which overburden has been removed or upon which overburden has been deposited or land which has otherwise been disturbed, changed, influenced, or altered in any way in the course of mining, including processing and stockpile areas but not including roads.
3. *"Committee"* means the state soil conservation committee.
4. *"Division"* means the division of soil conservation within the department of agriculture and land stewardship.
5. *"Exploration"* means the mining of limited amounts of any mineral to determine the location, quantity, or quality of the mineral deposit.
6. *"Highwall"* means the unexcavated face of exposed overburden and mineral in a surface mine.
7. *"Mine"* or *"mine site"* means a site where mining is being conducted or has been conducted in the past.
8. *"Mineral"* means gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal.
9. *"Mining"* means the excavation of gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal, for sale or for processing or consumption in the regular operation of a business and shall include surface mining and underground mining.
10. *"Mining operation"* means activities conducted by an operator on a mine site relative to the excavation of minerals and shall include disturbing overburden, excavation, and processing of minerals, stockpiling and removal of minerals from a site, and all reclamation activities conducted on a mine site.
11. *"Operator"* means any person, firm, partnership, corporation, or political subdivision engaged in and controlling a mining operation.
12. *"Overburden"* means all of the earth and other materials which lie above natural mineral deposits and includes all earth and other materials disturbed from their natural state in the process of mining.
13. *"Pit floor"* or *"quarry floor"* means the lower limit of a surface excavation to extract minerals.
14. *"Political subdivision"* means any county, district, city, or other public agency within the state of Iowa.
15. *"Reclamation"* means the process of restoring disturbed lands to the premined uses of the lands or other productive uses.
16. *"Surface mining"* means mining by removing the overburden lying above the natural deposits and excavating directly from the natural deposits exposed, or by excavating directly from deposits lying exposed in their natural state and shall include dredge operations conducted in or on natural waterways or artificially created waterways within the state.
17. *"Topsoil"* means the natural medium located at the land surface with favorable characteristics for the growth of vegetation.
18. *"Underground mining"* means mining by digging or constructing access tunnels, adits, ramps, or shafts and excavating directly from the natural mineral deposits exposed.

[C24, 27, 31, 35, 39, §**1244;** C46, 50, 54, 58, 62, 66, §82.27; C71, 73, §82.27, 83A.2; C75, 77, 79, 81, §83A.2]
85 Acts, ch 137, §2 – 5; 86 Acts, ch 1245, §602, 2050
C93, §208.2
96 Acts, ch 1043, §2

208.3 through 208.6 Reserved.

208.7 Mining license.

An operator shall not engage in mining as defined by section 208.2 without first obtaining a license from the division. Licenses shall be issued upon approval by the division following application by the operator. Applications shall be submitted on a form provided by the division and shall be accompanied by a fee of fifty dollars. Each applicant shall be required to furnish on the form information necessary to identify the applicant. Licenses shall expire on December 31 of each year and shall be renewed by the division upon application submitted within thirty days prior to the expiration date and accompanied by a fee of ten dollars. However, a political subdivision shall not be required to pay a license application or renewal fee.

[C39, §**1242.5**; C46, 50, 54, 58, 62, 66, §82.22; C71, 73, §82.22, 83A.7; C75, 77, 79, 81, §83A.7]
C93, §208.7
96 Acts, ch 1043, §3

208.8 Suspension, revocation, or refusal to issue license.

1. The division may, for repeated or willful violation of any of the provisions of this chapter, initiate an action to suspend, revoke, or refuse to issue a mining license.

2. The division shall, by certified mail or personal service, serve on the operator notice in writing of the charges and grounds upon which the license is to be suspended, revoked, or will not be issued. The notice shall include the time and the place at which a hearing shall be held before the committee, a subcommittee appointed by the committee, or the committee's designee, to determine whether to suspend, revoke, or refuse to issue the license. The hearing shall be not less than fifteen nor more than thirty days after the mailing or service of the notice.

3. An operator whose license the division proposes to suspend, revoke, or refuse to issue has the right to counsel and may produce witnesses and present statements, documents, and other information in the operator's behalf at the hearing.

4. If after full investigation and hearing the operator is found to have willfully or repeatedly violated any of the provisions of this chapter, the committee or subcommittee may affirm or modify the proposed suspension, revocation, or refusal to issue the license.

5. When the committee or subcommittee finds that a license should be suspended or revoked or should not be issued, the division shall so notify the operator in writing by certified mail or by personal service.

a. The suspension or revocation of a license shall become effective thirty days after notice to the operator.

b. If the license or renewal fee has been paid and the committee or subcommittee finds that the license should not be issued, then the license shall expire thirty days after notice to the operator.

6. An action by the committee or subcommittee to affirm or modify the proposed suspension, revocation, or refusal to issue a license constitutes a final agency action for purposes of judicial review pursuant to section 208.11 and chapter 17A.

[C71, 73, 75, 77, 79, 81, §83A.8]
85 Acts, ch 137, §8
C93, §208.8
96 Acts, ch 1043, §4

208.9 Registering mine site.

1. At least seven days before beginning mining or removal of overburden at a mine site not previously registered, an operator engaging, or preparing to engage, in mining in this state shall register the mine site with the division. Application for registration shall be made upon a form provided by the division and shall be accompanied by a bond or security as provided by section 208.14. A registration renewal shall be filed annually. Application for renewal of registration shall be on a form provided by the division. The registration and registration cancellation fees shall be established by the division in an amount not to exceed the cost of administering the provisions of this chapter. The application shall include a description of the tract or tracts of land where the site is located and the estimated number of acres at the site to be affected by the mine. The description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty to determine the location and to distinguish the land to be registered from other lands. The application shall include a statement explaining the authority of the applicant's legal right to operate a mine on the land.

2. A mine site registered pursuant to this chapter shall have a clearly visible sign which identifies the mining operation. Failure to post and maintain a sign as required by this subsection, within thirty days after notice from the division, invalidates the registration.

3. The division shall automatically invalidate all registrations of an operator who fails to renew the operator's mining license within a time period set by the division, who has been denied license renewal by the committee or subcommittee, or whose license has been suspended or revoked by the committee or subcommittee.

[C71, 73, 75, 77, 79, 81, §83A.9]
85 Acts, ch 137, §9
C93, §208.9
96 Acts, ch 1043, §5

208.10 Violation — enforcement.

1. The administrator may issue an order directing the operator to desist in an activity or practice which constitutes a violation of any provision of this chapter or any rules adopted by the divi-

sion, or to take such corrective action as may be necessary to ensure that the violation will cease. If corrective measures sought by the division are not commenced within the time period designated in the order, the division may refer the violation to the attorney general for further action.

2. The operator may contest an order issued under this section through contested case proceedings pursuant to chapter 17A by filing with the administrator a notice of appeal within thirty days of receipt of the order for review by the division.

3. At the request of the division, the attorney general shall institute any legal proceedings, including an action for a civil penalty, injunction, or temporary injunction, necessary to enforce the provisions of this chapter or to obtain compliance with this chapter. Action by the attorney general may be taken in lieu of or in conjunction with any administrative action by the division.

4. Falsification of information required to be submitted under this chapter is a violation of this chapter.

[C71, 73, 75, 77, 79, 81, §83A.10]
C93, §208.10
96 Acts, ch 1043, §6

208.10A Penalties.

1. Any person who violates an order issued pursuant to section 208.10 shall be subject to an administrative penalty determined by the division not to exceed five thousand dollars per violation.

a. The division shall establish, by rule, a schedule or range of administrative penalties. The schedule shall provide procedures and criteria for the assessment of these penalties.

b. Administrative penalties may be assessed in lieu of or in conjunction with any action initiated by the attorney general on behalf of the division.

c. All penalties shall be paid within thirty days of the date that the order assessing the penalty becomes final. An operator who fails to pay an administrative penalty assessed by a final order of the division shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

d. The attorney general shall, at the request of the division, institute proceedings to recover all penalties assessed.

2. If any person violates a provision of this chapter, or any rule or order adopted by the division pursuant to this chapter, the division may notify the attorney general who shall institute a civil action in district court for injunctive relief and for the assessment of a civil penalty not to exceed ten thousand dollars per violation.

3. Penalties, bond reversions, and bond forfeitures collected under the provisions of this chapter or any rule adopted by the division pursuant to this chapter shall be deposited in an interest-bearing account and may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

96 Acts, ch 1043, §7

208.11 Judicial review.

Judicial review of the action of the committee or division may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C71, 73, 75, 77, 79, 81, §83A.11]
C93, §208.11

208.12 Reserved.

208.13 Registering surface mining site — sign at entrance — penalty. Repealed by 96 Acts, ch 1043, § 20. See § 208.9.

208.14 Bond.

The application for registration shall be accompanied by a bond or security as required under section 208.23 or 208.24. After ascertaining that the applicant is licensed under section 208.7 and is not in violation of this chapter with respect to any mine site previously registered with the division, the division shall register the mine site and shall issue the applicant written authorization to operate a mine.

[C71, 73, 75, 77, 79, 81, §83A.14]
85 Acts, ch 137, §13
C93, §208.14

208.15 Amendment or cancellation.

An operator may at any time apply for amendment or cancellation of registration of any site. The application for amendment or cancellation of registration shall be submitted by the operator on a form provided by the division and shall identify as required under section 208.9 the tract or tracts of land to be added to or removed from registration. If the application is for an increase in the area of a registered site, the application shall be processed in the same manner as an application for original registration. If the application is to cancel registration of any or all of the unmined part of a site, the division shall after ascertaining that no overburden has been disturbed or deposited on the land order release of the bond or the security posted on the land being removed from registration and cancel or amend the operator's written authorization to conduct mining on the site. Fees for amendment or cancellation of registration shall be determined as provided in section 208.9. No land where overburden has been disturbed or deposited shall be removed from registration or released from bond or security under this section.

[C71, 73, 75, 77, 79, 81, §83A.15]
C93, §208.15
96 Acts, ch 1043, §8

208.16 Transfer to new operator.

1. If control of a mine site registered pursuant to section 208.9 is acquired by an operator other than the operator holding authorization to conduct mining on the site, the new operator shall within thirty days apply for registration of the site. The application shall be made and processed as provided under sections 208.9 and 208.14. The former operator's bond or security shall not be released until the new operator's bond or security has been accepted by the division.

2. The division may establish procedures for transferring the responsibility for reclamation of a mine site to a state agency or political subdivision which intends to use the site for other purposes. The division, with agreement from the receiving agency or subdivision to complete adequate reclamation, may approve the transfer of responsibility, release the bond or security, and terminate or amend the operator's authorization to conduct mining on the site.

[C71, 73, 75, 77, 79, 81, §83A.16]
C93, §208.16
96 Acts, ch 1043, §9

208.17 Reclamation requirements.

1. An operator authorized under this chapter to operate a mine, after completion of mining operations and within the time specified in section 208.19, shall:

a. Grade affected lands to slopes having a maximum of one foot vertical rise for each four feet of horizontal distance. Where the original topography of the affected land was steeper than one foot of vertical rise for each four feet of horizontal distance, the affected lands may be graded to blend with the surrounding terrain. However, water impoundments, pit or quarry floors, and highwalls are not subject to the requirements of this paragraph.

b. Stabilize and revegetate affected lands, except for water impoundments and pit or quarry floors as approved by the division before the release of the bond as provided in section 208.19.

c. Properly dispose of all mine-related debris, junk, waste materials, old equipment, and other materials of similar or like nature, within the registration boundaries of the site.

2. Notwithstanding subsection 1, overburden piles where deposition has not occurred for a period of twelve months shall be stabilized and revegetated.

3. Topsoil that is a part of overburden shall not be destroyed or buried in the process of mining.

4. The division may grant a variance from the requirements of subsections 1 and 2.

5. A bond or security posted under this chapter to assure reclamation of affected lands shall not be released until all of the reclamation work required by this section has been performed in accordance with this chapter and division rules, except when a replacement bond or security is posted by a new operator or responsibility is transferred under section 208.16.

[C71, 73, 75, 77, 79, 81, §83A.17]
85 Acts, ch 137, §14
C93, §208.17
96 Acts, ch 1043, §10

208.18 Periodic reports.

An operator shall file with the division a periodic report for each mine site under registration.

1. The report shall make reference to the most recent registration of the mine site and shall show:

a. The location and extent of all surface land area on the mine site affected by mining during the period covered by the report.

b. The extent to which removal of mineral products from all or any part of the affected lands has been completed.

2. The report shall be filed not later than twelve months after original registration of the site and prior to the expiration of each subsequent twelve-month period. A report shall also be filed within thirty days after completion of all mining operations at the site regardless of the date of the last preceding report. Forms for the filing of periodic reports required by this section shall be provided by the division.

[C71, 73, 75, 77, 79, 81, §83A.18]
85 Acts, ch 137, §15
C93, §208.18
96 Acts, ch 1043, §11

208.19 Reclamation schedule.

An operator of a mine shall reclaim affected lands according to a schedule established by the division, but within a period not to exceed three years, after the filing of a report required under section 208.18 indicating the mining of any part of a site has been completed.

For certain postmining land uses, such as a sanitary landfill, the division may allow an extended reclamation period.

An operator, upon completion of any reclamation work required by section 208.17, shall apply to the division in writing for approval of the work. The division shall within a reasonable time determined by divisional rule inspect the completed reclamation work. Upon determination by the division that the operator has satisfactorily completed all required reclamation work on the land included in the application, the division shall release the bond or security on the reclaimed land, shall remove the land from registration, and shall terminate or amend as necessary the operator's authorization to conduct mining on the site.

[C71, 73, 75, 77, 79, 81, §83A.19]
85 Acts, ch 137, §16; 87 Acts, ch 115, §11
C93, §208.19
96 Acts, ch 1043, §12

208.20 Extension of time.

The time for completion of reclamation work may be extended upon presentation by the operator of evidence satisfactory to the division that reclamation of affected land cannot be completed within the time specified by section 208.19.

[C71, 73, 75, 77, 79, 81, §83A.20]
85 Acts, ch 137, §17
C93, §208.20
96 Acts, ch 1043, §13

208.21 Political subdivision engaged in mining.

Any political subdivision of the state of Iowa which engages or intends to engage in mining shall meet all requirements of this chapter except the subdivision shall not be required to post bond or security on registered land and shall not be required to pay licensing fees.

[C71, 73, 75, 77, 79, 81, §83A.21]
C93, §208.21
96 Acts, ch 1043, §14

208.22 Hearing on violation. Repealed by 96 Acts, ch 1043, § 20.

208.23 Form of bond.

1. A bond filed with the division by an operator pursuant to this chapter shall be in a form prescribed by the division, payable to the state of Iowa, and conditioned upon faithful performance by the operator of all requirements of this chapter and all rules adopted by the division pursuant to this chapter. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Iowa as surety. In lieu of a bond, the operator may deposit cash or certificates of deposit with the division on the same conditions as prescribed by this section for filing of bonds. The amount of the bond required to be filed with an application for registration of a mining site, or to increase the area of a site previously registered, shall be equal to the cost of reclaiming the site as required under section 208.17 and estimated by the division.

2. The estimated cost of reclamation of each individual site shall be determined by the division on the basis of the requirements of this chapter and other relevant factors including, but not limited to, topography of the site, mining methods being employed, depth and composition of overburden, depth of the mineral deposit being mined, and cost of administration. The division may require an operator to furnish information necessary to estimate the cost of reclaiming the site. The amount of the bond may be increased or reduced from time to time as determined necessary and appropriate by the division or in accordance with section 208.15.

[C71, 73, 75, 77, 79, 81, §83A.23]
85 Acts, ch 137, §18
C93, §208.23
96 Acts, ch 1043, §15

208.24 Single bond for multiple sites.

An operator who registers with the division two or more mine sites may elect, at the time the second or a subsequent site is registered, to post a single bond in lieu of separate bonds on each site. A single bond so posted shall be in an amount equal to the estimated cost of reclaiming all sites the operator has registered, determined as provided in section 208.23. The penalty of a single bond on two or more mine sites may be increased or decreased from time to time in accordance with sections 208.14, 208.15, and 208.19. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the division.

[C71, 73, 75, 77, 79, 81, §83A.24]
85 Acts, ch 137, §19
C93, §208.24
96 Acts, ch 1043, §16

208.25 Cancellation of bond.

No bond filed with the division by an operator pursuant to this chapter may be canceled by the surety without at least ninety days' notice to the division. If the license to do business in Iowa of any surety of a bond filed with the division is suspended or revoked, the operator, within thirty days after receiving notice thereof from the division, shall substitute for the surety a corporate surety licensed to do business in Iowa. Upon failure of the operator to make substitution of surety as herein provided, the division shall have the right to suspend the operator's authorization to conduct mining on the site covered by the bond until substitution has been made. The commissioner of insurance shall notify the division whenever the license of any surety to do business in Iowa is suspended or revoked.

[C71, 73, 75, 77, 79, 81, §83A.25]
C93, §208.25
96 Acts, ch 1043, §17

208.26 Rules — inspection of site.

The division may adopt rules to implement the provisions of this chapter. The administrator or the administrator's designee may enter at all times upon any mine site or suspected mine site for the purpose of determining whether the operator is or has been complying with the provisions of this chapter. All operators shall cooperate with the division in seeking methods of operation which will cause minimum disruption to the land and property adjoining a mining operation.

[C71, 73, 75, 77, 79, 81, §83A.26]
C93, §208.26
96 Acts, ch 1043, §18

208.27 Hearing on violations. Repealed by 96 Acts, ch 1043, § 20. See § 208.10.

208.28 Forfeiture of bond — licensure restrictions.

1. The attorney general, upon request of the division, shall institute proceedings for forfeiture of the bond posted by an operator to guarantee reclamation of a site where the operator is in violation of any of the provisions of this chapter or any rule adopted by the division pursuant to this chapter. The division shall have the power to reclaim as required by section 208.17 any mined land with respect to which a bond has been forfeited, using the proceeds of the forfeiture to pay for the necessary reclamation work and associated administrative costs.

2. If the proceeds from bond forfeiture proceedings are insufficient to fully satisfy the estimated cost of reclaiming disturbed lands as required under section 208.17 and division rules, the operator shall be liable for remaining costs. The division may complete, or authorize completion of, the necessary reclamation and may authorize the attorney general to bring a civil action to recover from the operator all actual or estimated costs of reclamation in excess of the amount forfeited or require the operator to complete reclamation.

3. If the amount of bond forfeited exceeds the amount necessary to complete reclamation, the unused funds shall be returned to the operator or the surety, as appropriate.

[C71, 73, 75, 77, 79, 81, §83A.28]
85 Acts, ch 137, §20
C93, §208.28
96 Acts, ch 1043, §19

208.29 Penalties for operating without a license and for failure to register. Repealed by 96 Acts, ch 1043, § 20. See § 208.10 and 208.10A.

208.30 Governor's approval of rules. Repealed by 96 Acts, ch 1043, § 20.

CHAPTER 208A

MOTOR VEHICLE ANTIFREEZE

208A.1 Definitions.
208A.2 What deemed adulterated.
208A.3 What deemed misbranded.
208A.4 Inspection by department.
208A.5 Samples — analysis.
208A.6 Rules.
208A.7 List of approved brands.
208A.8 Advertising restricted.
208A.9 Prosecution.
208A.10 Fees remitted.
208A.11 Penalty.
208A.12 Citation of chapter.

208A.1 Definitions.

As used in this chapter, unless the context or subject matter otherwise requires: (1)*"Antifreeze"* shall include all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point; and (2)*"person"* shall include individuals, partnerships, corporations, companies and associations.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.1]

208A.2 What deemed adulterated.

An antifreeze shall be deemed to be adulterated: (1) If it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user; or (2) if its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.2]

208A.3 What deemed misbranded.

An antifreeze shall be deemed to be misbranded: (1) If its labeling is false or misleading in any particular; or (2) if in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the package.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.3]

208A.4 Inspection by department.

Before any antifreeze shall be sold, exposed for sale, or held with intent to sell within this state, a sample thereof must be inspected by the depart-

ment of agriculture and land stewardship. Upon application of the manufacturer, packer, seller or distributor and the payment of a fee of twenty dollars for each brand of antifreeze submitted, the department shall inspect the antifreeze submitted. If the antifreeze is not adulterated or misbranded, if it meets the standards of the department, and is not in violation of this chapter, the department shall give the applicant a written permit authorizing the sale of such antifreeze in this state until the formula or labeling of the antifreeze is changed in any manner.

If the department shall at a later date find that the product to be sold, exposed for sale or held with intent to sell has been materially altered or adulterated, a change has been made in the name, brand or trademark under which the antifreeze is sold, or it violates the provisions of this chapter, the department shall notify the applicant and the permit shall be canceled forthwith.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.4]

208A.5 Samples — analysis.

The department shall enforce the provisions of this chapter by inspections, chemical analysis, or any other appropriate methods. All samples for inspection or analysis shall be taken from stocks in the state or intended for sale in the state or the department through its agents may call upon the manufacturer or distributor applying for an inspection of an antifreeze to supply such samples thereof for analysis. The department, through its agents, shall have free access by legal means during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any antifreeze, and it may open by legal means any box, carton, parcel, or package, containing or supposed to contain any antifreeze and may take therefrom samples for analysis.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.5]

208A.6 Rules.

The department shall have authority to promulgate such rules as are necessary to promptly and effectively enforce the provisions of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.6]

208A.7 List of approved brands.

The department may furnish upon request a list of the brands and trademarks of antifreeze inspected by the department during the calendar year which have been found to be in accord with this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.7]

208A.8 Advertising restricted.

No advertising literature relating to any antifreeze sold or to be sold in this state shall contain any statement that the antifreeze advertised for sale has met the requirements of the department until such antifreeze has been given the laboratory test and inspection of the department, and found to meet all the standard requirements and not to be in violation of this chapter. Then such statement may be contained in any advertising literature where such brand or trademark of antifreeze is being advertised for sale, and such statement may be used on all regular containers of such antifreeze.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.8]

208A.9 Prosecution.

Whenever the department shall discover any antifreeze is being sold or has been sold in violation of this chapter, the facts shall be furnished to the attorney general who shall institute proper proceedings.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.9]

208A.10 Fees remitted.

All fees provided for in this chapter shall be collected by the secretary of agriculture and shall be deposited in the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.10]

91 Acts, ch 260, §1219

208A.11 Penalty.

If any person, partnership, corporation, or association shall violate the provisions of this chapter, such person, partnership, corporation or association shall be deemed guilty of a simple misdemeanor and, upon conviction thereof, the department may after due hearing cancel registration.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.11]

208A.12 Citation of chapter.

This chapter may be cited as the *"Iowa Antifreeze Act"*.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.12]

CHAPTER 209

MATTRESSES AND COMFORTS

Repealed by 78 Acts, ch 1104, §3

CHAPTER 210

STANDARD WEIGHTS AND MEASURES

210.1 Standard established.
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210.8 Sales of dry commodities.
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210.25 Weighing bread.
210.26 Measuring saw logs.

210.1 Standard established.

The weights and measures which have been presented by the department to the United States national institute of standards and technology and approved, standardized, and certified by the institute in accordance with the laws of the Congress of the United States shall be the standard weights and measures throughout the state.

[C51, §937; R60, §1775; C73, §2037; C97, §3009; S13, §3009-c; C24, 27, 31, 35, 39, §**3227;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.1]

90 Acts, ch 1045, §3

210.2 Length and surface measure.

The unit or standard measure of length and surface from which all other measures of extension shall be derived and ascertained, whether they be lineal, superficial, or solid, shall be the standard yard secured in accordance with the provisions of section 210.1. It shall be divided into three equal parts called feet, and each foot into twelve equal parts called inches, and for the measure of cloth and other commodities commonly sold by the yard it may be divided into halves, quarters, eighths, and sixteenths. The rod, pole, or perch shall contain five and one-half such yards, and the mile, one thousand seven hundred sixty such yards.

[C51, §937; R60, §1775; C73, §2038 – 2040; C97, §3010; S13, §3009-d; C24, 27, 31, 35, 39, §**3228;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.2]

210.3 Land measure.

The acre for land measure shall be measured horizontally and contain ten square chains and be equivalent in area to a rectangle sixteen rods in length and ten rods in breadth, six hundred and forty such acres being contained in a square mile. The chain for measuring land shall be twenty-two yards long, and be divided into one hundred equal parts, called links.

[C73, §2041; C97, §3011; S13, §3009-d; C24, 27, 31, 35, 39, §**3229;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.3]

210.4 Weight.

The units or standards of weight from which all other weights shall be derived and ascertained shall be the standard avoirdupois and troy weights secured in accordance with the provisions of section 210.1. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred sixty, shall be divided into sixteen equal parts called ounces; the hundred-weight shall consist of one hundred avoirdupois pounds, and twenty hundred-weight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound.

[C51, §938; R60, §1776; C73, §2042, 2043; C97, §3012; S13, §3009-e; C24, 27, 31, 35, 39, §**3230;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.4]

210.5 Liquids.

The unit or standard measure of capacity for liq-

uids from which all other measures of liquids shall be derived and ascertained shall be the standard gallon secured in accordance with the provisions of section 210.1. The gallon shall be divided by continual division by the number two so as to make half-gallons, quarts, pints, half-pints, and gills. The barrel shall consist of thirty-one and one-half gallons, and two barrels shall constitute a hogshead.

[C73, §2044, 2045; C97, §3013; S13, §3009-g; C24, 27, 31, 35, 39, §**3231;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.5]

210.6 Dry measure.

The unit or standard measure of capacity for substances not liquids from which all other measures of such substances shall be derived and ascertained shall be the standard half-bushel secured in accordance with the provisions of section 210.1. The peck, half-peck, quarter-peck, quart, pint, and half-pint measures for measuring commodities which are not liquids, shall be derived from the half-bushel by successively dividing the cubic inch capacity of that measure by two.

[C73, §2046, 2047; C97, §3014; S13, §3009-f; C24, 27, 31, 35, 39, §**3232;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.6]

210.7 Bottomless measure.

Bottomless dry measures shall not be used unless they conform in shape to the United States standard dry measures.

[SS15, §3009-j; C24, 27, 31, 35, 39, §**3233;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.7]

210.8 Sales of dry commodities.

All dry commodities unless bought or sold in package or wrapped form shall be bought or sold only by the standard weight or measure herein established, or by numerical count, unless the parties otherwise agree in writing, except as provided in sections 210.9 to 210.12.

[SS15, §3009-j; C24, 27, 31, 35, 39, §**3234;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.8]

210.9 Drugs and section comb honey exempted.

The requirements of section 210.8 shall not apply to drugs or section comb honey.

[SS15, §3009-j; C24, 27, 31, 35, 39, §**3235;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.9]

210.10 Bushel measure.

When any of the commodities enumerated in this section shall be sold by the bushel or fractional part thereof, except when sold in a United States standard container or as provided in sections 210.11 and 210.12, the measure shall be determined by avoirdupois weight and shall be computed as follows:

Commodities	*Pounds*
Apples	48
Apples, dried	24
Alfalfa seed	60
Barley	48
Beans, green, unshelled	56
Beans, dried	60
Beans, lima	56
Beets	56
Blue grass seed	14
Bran	20
Bromus inermis	14
Broom corn seed	50
Buckwheat	48
Carrots	50
Castor beans, shelled	50
Charcoal	20
Cherries	40
Clover seed	60
Coal	80
Coke	40
Corn on the cob (field)	70
Corn in the ear, unhusked (field)	75
Corn, shelled (field)	56
Corn meal	48
Cucumbers	48
Emmer	40
Flaxseed	56
Grapefruit	48
Grapes, with stems	40
Hempseed	44
Hickory nuts, hulled	50
Hungarian grass seed	50
Kaffir corn	56
Lemons	48
Lime	80
Millet seed	50
Oats	32
Onions	52
Onion top sets	28
Onion bottom sets	32
Oranges	48
Orchard grass seed	14
Osage orange seed	32
Parsnips	45
Peaches	48
Peaches, dried	33
Peanuts	22
Pears	45
Peas, green, unshelled	50
Peas, dried	60
Plums	48
Popcorn, on the cob	70
Popcorn, shelled	56
Potatoes	60
Quinces	48
Rape seed	50
Redtop seed	14
Rutabagas	60
Rye	56
Salt	80
Sand	130

Shorts	20
Sorghum saccharatum seed	50
Soybeans	60
Spelt	40
Sweet corn	50
Sweet potatoes	50
Timothy seed	45
Tomatoes	50
Turnips	55
Walnuts, hulled	50
Wheat	60
All root crops not specified above	50

[C51, §940; R60, §1778, 1781 – 1784; C73, §2049; C97, §3016; S13, §3009-h; C24, 27, 31, 35, 39, §**3236;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.10]

210.11 Sale of fruits and vegetables by dry measure.

Blackberries, blueberries, cranberries, currants, gooseberries, raspberries, cherries, strawberries, and similar berries, also onion sets in quantities of one peck or less, may be sold by the quart, pint, or half-pint, dry measure.

[SS15, §3009-i; C24, 27, 31, 35, 39, §**3237;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.11]

210.12 Sale of fruits and vegetables in baskets.

Grapes, other fruits, and vegetables may be sold in climax baskets; but when said commodities are sold in such manner and the containers are labeled with the net weight of the contents in accordance with the provisions of section 189.9, all the provisions of the chapter* relative to labeling foods shall be deemed to have been complied with.

[C24, 27, 31, 35, 39, §**3238;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.12]

*See chapter 191

210.13 Berry boxes and climax baskets.

Berry boxes sold, used, or offered or exposed for sale shall have an interior capacity of one quart, pint, or half-pint dry measure. Climax baskets sold, used, or offered or exposed for sale shall be of the standard size fixed below:

1. Two-quart basket: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches, and width five inches, outside measurement; basket to have a cover five by eleven inches, when a cover is used.

2. Four-quart basket: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement; basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

3. Twelve-quart basket: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch, outside measurement; top of basket, length nineteen inches, height of basket, seven and one-sixteenth inches, width nine inches, outside measurement; basket to have cover nine inches by nineteen inches, when cover is used.

[SS15, §3009-i; C24, 27, 31, 35, 39, §**3239;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.13]

210.14 Hop boxes.

The standard box used in packing hops shall be thirty-six inches long, eighteen inches wide, and twenty-three and one-fourth inches deep, inside measurement.

[C73, §2051; C97, §3018; C24, 27, 31, 35, 39, §**3240;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.14]

210.15 Milk bottles or containers.

The standard bottle or container used for the sale of milk and cream shall be of a capacity of one gallon, one-half gallon, three pints, one quart, one pint, one-half pint, one-third quart, one gill, filled full to the bottom of the lip.

[S13, §3009-k; C24, 27, 31, 35, 39, §**3241;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.15]

210.16 Flour.

The standard weights of flour when sold in package form shall be as follows: Two, five, ten, twenty-five, fifty, or one hundred pounds.

[C24, 27, 31, 35, 39, §**3242;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.16]

210.17 Mason work or stone.

The perch of mason work or stone shall consist of twenty-five feet, cubic measure.

[C51, §939; R60, §1777; C73, §2050; C97, §3017; C24, 27, 31, 35, 39, §**3243;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.17]

210.18 Sales to be by standard weight or measure — labeling.

All commodities bought or sold by weight or measure shall be bought or sold only by the standards established by this chapter, unless the vendor and vendee otherwise agree. Sales by weight shall be by avoirdupois weight unless troy weight is agreed upon by the vendor and vendee.

All commodities bought or sold in package form shall be labeled in compliance with the general provisions for labeling provided for in sections 189.9 to 189.16, unless otherwise provided for in this chapter.

[SS15, §3009-j; C24, 27, 31, 35, 39, §**3244;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.18]

210.19 Standard weight of bread.

The standard loaf of bread shall weigh one pound, avoirdupois weight. All bread manufactured, procured, made or kept for the purpose of sale, offered or exposed for sale, or sold in the form of loaves, shall be one of the following standard weights and no other, namely: Three-quarters pound, one pound, one and one-quarter pound, one and one-half pound, or multiples of one pound, avoirdupois weight; and provided further, that the provisions of this section shall not apply to biscuits, buns, crackers, rolls or to what is commonly known as *"stale"* bread and sold as such, in case the seller shall, at the time of sale, expressly state to the buyer that the bread so sold is *"stale"* bread. In case of twin or multiple loaves, the weight specified in this section shall apply to the combined weight of the two units.

[C27, 31, 35, §3244-b1; C39, §**3244.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.19]

210.20 Wrapper.

There shall be printed upon the wrapper of each loaf of bread in plain conspicuous type, the name and address of the manufacturer and the weight of the loaf in terms of one of the standard weights herein specified.

[C27, 31, 35, §3244-b2; C39, §**3244.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.20]

210.21 Violations.

It shall be unlawful for any person to manufacture, procure, or keep for the purpose of sale, offer or expose for sale, or sell bread in the form of loaves which are not of one of the weights specified in section 210.19 or violate the rules of the secretary of agriculture pertaining thereto. Any person who, in person or by a servant, or agent, or as the servant or agent of another, shall violate any of the provisions of sections 210.19 to 210.25, shall be guilty of a simple misdemeanor.

[C27, 31, 35, §3244-b3; C39, §**3244.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.21]

210.22 "Person" defined.

The word *"person"* as used in section 210.21 shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations.

[C27, 31, 35, §3244-b4; C39, §**3244.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.22]

210.23 Exception.

Any person engaged in home baking is exempt from the provisions of sections 210.19 to 210.22.

[C27, 31, 35, §3244-b5; C39, §**3244.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.23]

210.24 Enforcement — rules and regulations.

The secretary of agriculture shall enforce the provisions of sections 210.19 to 210.25. The secretary shall make rules for the enforcement of the provisions of said sections not inconsistent therewith, and such rules and regulations shall include reasonable variations and tolerances.

[C27, 31, 35, §3244-b6; C39, §**3244.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.24]

210.25 Weighing bread.

Bread when weighed for inspection shall be weighed in the manufacturer's plant when said bread is wrapped ready for delivery, and bread coming into the state from an adjoining state when weighed for inspection shall be weighed in the packages, containers, vehicles, or trucks of the manufacturer at the time when said bread crosses the state line, or at the first point of stop for sale or delivery of said bread after crossing the Iowa state line, and the weight shall be determined by averaging the weight of not less than fifteen loaves picked at random from any given lot.

[C35, §3244-f1; C39, §**3244.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.25]

210.26 Measuring saw logs.

The Scribner decimal "C" log rule is hereby adopted as the standard log rule for determining the board-foot content of saw logs; and all contracts hereafter entered into for the cutting, purchase and sale of saw logs shall be deemed to be made on the basis of such standard rule unless some other method is specifically agreed upon.

[C62, 66, 71, 73, 75, 77, 79, 81, §210.26]

CHAPTER 211

SALE OF LIVESTOCK

Repealed by 76 Acts, ch 1056, §45

CHAPTER 212

SALES OF CERTAIN COMMODITIES FROM BULK

212.1 Coal, charcoal, and coke.
212.2 Delivery tickets required.
212.3 Disposition of delivery tickets.
212.4 Sales without delivery.
212.5 Repealed by 67 Acts, ch 190, §1.
212.6 Inspection of vehicles.

212.1 Coal, charcoal, and coke.

No person shall sell, offer or expose for sale any coal, charcoal, or coke in any other manner than by weight, or represent any of said commodities as being the product of any county, state, or territory, except that in which mined or produced, or represent that said commodities contain more British thermal units than are present therein.

[S13, §3009-l; C24, 27, 31, 35, 39, §**3245;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.1]

212.2 Delivery tickets required.

No person shall deliver any bulk commodities, other than liquids, by vehicle unless otherwise provided for without each such delivery being accompanied by duplicate delivery tickets, on each of which shall be written in ink or other indelible substance the actual weight distinctly expressed in pounds or kilograms of the gross weight of the load, the tare of the delivery vehicle, and the net amount in weight of the commodity or, if the commodity is weighed by hopper scale or belt conveyor, the net weight of the commodity expressed in pounds or kilograms without expression of the tare of the delivery vehicle or the gross weight of the load. The delivery ticket shall display the names of the purchaser and the dealer from whom purchased.

[S13, §3009-l; C24, 27, 31, 35, 39, §**3246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.2]

212.3 Disposition of delivery tickets.

One of said duplicate tickets shall be delivered to the vendee and the other one shall be returned to the vendor. Upon demand of the department the person in charge of the load shall surrender one of said duplicate tickets to the person making such demand. If said ticket is retained an official weight slip shall be delivered by said department to the vendee or the vendee's agent.

[S13, §3009-l; C24, 27, 31, 35, 39, §**3247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.3]

212.4 Sales without delivery.

When the vendee carries away the commodity purchased, a delivery ticket, showing the actual number of pounds received by the vendee, shall be issued to the vendee by the vendor.

[S13, §3009-l; C24, 27, 31, 35, 39, §**3248;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.4]

212.5 Repealed by 67 Acts, ch 190, § 1.

212.6 Inspection of vehicles.

The department may stop any wagon, auto truck, or other vehicle loaded with any commodity being bought, offered or exposed for sale, or sold, and compel the person having charge of the same to bring the load to a scale designated by said department and weighed for the purpose of determining the true net weight of the commodity.

[S13, §3009-l; SS15, §3009-n; C24, 27, 31, 35, 39, §**3250;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.6]

CHAPTER 213

STATE METROLOGIST AND CITY SEALERS

213.1 State metrologist.
213.2 Physical standards.
213.3 Testing weights and measures.
213.4 through 213.6 Repealed by 98 Acts, ch 1032, §10.
213.7 Expenses.

213.1 State metrologist.

The department shall designate one of its assistants to act as state metrologist of weights and measures. All weights and measures sealed by the state metrologist shall be impressed with the word "Iowa."

[C73, §2053 – 2055; C97, §3020; S13, §3009-b; C24, 27, 31, 35, 39, §**3251;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §213.1]

213.2 Physical standards.

Weights and measures, which conform to the standards of the United States national institute of standards and technology existing as of January 1, 1979, that are traceable to the United States standards supplied by the federal government or approved as being in compliance with its standards by the national bureau of standards shall be the state primary standard of weights and measures. Such weights and measures shall be verified upon initial receipt of same and as often as deemed necessary by the secretary of agriculture. The secretary may provide for the alteration in the state primary standard of weights and measures in order to maintain traceability with the standard of the national bureau of standards. All such alterations shall be made pursuant to rules promulgated by the secretary in accordance with chapter 17A.

[C73, §2053, 2054; C97, §3020; S13, §3009-b; C24, 27, 31, 35, 39, §**3252;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §213.2]

90 Acts, ch 1045, §3

213.3 Testing weights and measures.

Upon written request of any citizen, firm, or corporation, city or county, or educational institution of the state made to the department, a test or calibration of any weights, measures, weighing or measuring devices, and instruments or apparatus to be used as standards shall be made.

[S13, §3009-b; C24, 27, 31, 35, 39, §**3253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §213.3]

213.4 through 213.6 Repealed by 98 Acts, ch 1032, § 10.

213.7 Expenses.

All expenses directly incurred in furnishing the several cities with standards, or in comparing those that may be in their possession, shall be borne by said cities.

[C73, §2061; C97, §3024; C24, 27, 31, 35, 39, §**3257;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §213.7]

CHAPTER 214

COMMERCIAL WEIGHING AND MEASURING DEVICES — MOTOR VEHICLE FUEL PUMPS

214.1 Definitions.
214.2 License.
214.3 Fee.
214.4 Tagging of equipment.
214.5 Inspection stickers.
214.6 Oath of weighmasters.
214.7 Registers.
214.8 Penalty.
214.9 Self-service motor vehicle fuel pumps.
214.10 Rules.
214.11 Inspections — recalibrations — penalty.
214.12 Motor vehicle fuel pump pricing labels. Repealed by 80 Acts, ch 1054, §20.

214.1 Definitions.

For the purpose of this chapter:

1. *"Motor vehicle fuel"* means a substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and is kept for sale or sold for that purpose.

2. *"Motor vehicle fuel pump"* means a stationary pump, meter, or similar measuring device used for measuring retail motor vehicle fuel.

3. *"Public scale"* shall mean any scale or weighing device for the use of which a charge is made or compensation is derived.

[C73, §2065; C97, §3027; SS15, §3009-m; C24, 27, 31, 35, 39, §**3258;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.1]

80 Acts, ch 1054, §20; 87 Acts, ch 93, §1, 2; 90 Acts, ch 1084, §1

Further definitions, see §189.1

214.2 License.

A person who uses or displays for use any commercial weighing and measuring device, as defined in section 215.26, shall secure a license from the department.

[SS15, §3009-m; C24, 27, 31, 35, 39, §**3259;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.2]

87 Acts, ch 93, §3; 90 Acts, ch 1084, §2

214.3 Fee.

1. The license for inspection of a commercial weighing and measuring device shall expire on December 31 of each year, and for a motor vehicle fuel pump on June 30 of each year. The amount of the fee due for each license shall be as provided in subsection 3, except that the fee for a motor vehicle fuel pump shall be four dollars and fifty cents if paid within one month from the date the license is due.

2. The license inspection fee on a commercial weighing and measuring device is due the day the device is placed into service. A license inspection fee shall be charged to the person owning or operating a commercial weighing and measuring device inspected in accordance with the class or section for devices as established by handbook 44 of the United States national institute of standards and technology.

3. The fee due under this section for a commercial weighing and measuring device shall be as follows:

a. Class S-IIIL.

(1) Railroad track scales, one hundred six dollars and fifty cents.

(2) Other scales.

(a) 500 to 1,000 pounds capacity, sixteen dollars and fifty cents.

(b) 1,001 to 30,000 pounds capacity, thirty-one dollars and fifty cents.

(c) 30,001 to 50,000 pounds capacity, sixty-one dollars and fifty cents.

(d) 50,001 pounds capacity or more, eighty-four dollars.

(3) A minimum fee of forty-six dollars and fifty cents shall be charged for each vehicle or livestock scale.

b. Class S-II and S-III, nine dollars.

(1) Bench scale, nine dollars.

(2) Counter scale, nine dollars.

(3) Portable platform scale, nine dollars.

(4) Livestock monorail scale, nine dollars.

(5) Single animal scale, nine dollars.

(6) Grain test scale, nine dollars.

(7) Precious metal and gems scale, nine dollars.

(8) Postal scale, nine dollars.

c. (1) Grain moisture meters, twenty-four dollars.

(2) Additional meters at the same location, sixteen dollars and fifty cents.

d. Class M-I. One hundred-gallon prover.

(1) Bulk meters, nine dollars.

(2) Bulk liquid petroleum gas meters, fifty-two dollars and fifty cents.

(3) Bulk refined fuel meters, nine dollars.

(4) Mass flow meters, nine dollars.

e. Class M-II. Five-gallon prover.

(1) Slow flow meters, nine dollars.

(2) Retail motor vehicle fuel pump, nine dollars.

[SS15, §3009-m; C24, 27, 31, 35, 39, §**3260;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.3]

87 Acts, ch 93, §4; 88 Acts, ch 1272, §21; 90 Acts, ch 1084, §3; 92 Acts, ch 1239, §36, 37

214.4 Tagging of equipment.

1. If the department does not receive payment of the license fee required pursuant to section 214.3 within one month from the due date, the department shall send a notice to the owner or operator of the device. The notice shall be delivered by certified mail. The notice shall state all of the following:

a. The owner or operator is delinquent in the payment of the required fee.

b. The owner or operator has fifteen days after receipt of the notice to pay the license fee required pursuant to section 214.3.

c. If the department does not receive payment of the license fee as required, the department may summarily tag and remove from service the commercial weighing and measuring device.

2. If the license fee is not received by the department within fifteen days after receipt of the notice by the owner or operator of the commercial weighing and measuring device, the department may tag and remove from service the device for which the license fee has not been paid.

94 Acts, ch 1198, §43

214.5 Inspection stickers.

For each commercial weighing and measuring device licensed, the department shall issue an inspection sticker, which shall not exceed two inches by two inches in size. The inspection sticker shall be displayed prominently on the front of the commercial weighing and measuring device and the defacing or wrongful removal of the sticker shall be punished as provided in chapter 189. Absence of an inspection sticker is prima facie evidence that the commercial weighing and measuring device is being operated contrary to law.

[SS15, §3009-m; C24, 27, 31, 35, 39, §**3262;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.5]

87 Acts, ch 93, §5; 90 Acts, ch 1084, §4

214.6 Oath of weighmasters.

All persons keeping public scales, before entering upon their duties as weighmasters, shall be sworn before some person having authority to administer oaths, to keep their scales correctly balanced, to make true weights, and to render a correct account to the person having weighing done.

[C73, §2065; C97, §3027; C24, 27, 31, 35, 39, §**3263;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.6]

214.7 Registers.

Weighmasters are required to make true weights and keep a correct register of all weighing done by them, giving the amount of each weight, date thereof, and the name of the person or persons for whom done, and give, upon demand, to any person having weighing done, a certificate showing the weight, date, and for whom weighed.

[C73, §2066, 2067; C97, §3028; C24, 27, 31, 35, 39, §**3264;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.7]

214.8 Penalty.

Any weighmaster violating any of the provisions of sections 214.6 and 214.7, shall be guilty of a simple misdemeanor, and be liable to the person injured for all damages sustained.

[C73, §2068; C97, §3029; C24, 27, 31, 35, 39, §**3265;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.8]

214.9 Self-service motor vehicle fuel pumps.

Self-service motor vehicle fuel pumps at motor vehicle fuel stations may be equipped with automatic latch-open devices on the fuel dispensing hose nozzle only if the nozzle valve is the automatic closing type.

[C81, §214.9]

87 Acts, ch 93, §6

214.10 Rules.

The department of agriculture and land stewardship may promulgate rules pursuant to chapter 17A as necessary to promptly and effectively enforce the provisions of this chapter.

[C81, §214.10]

214.11 Inspections — recalibrations — penalty.

The department of agriculture and land stewardship shall provide for annual inspections of all motor vehicle fuel pumps licensed under this chapter. Inspections shall be for the purpose of determining the accuracy of the pumps' measuring mechanisms, and for such purpose the department's inspectors may enter upon the premises of any wholesale dealer or retail dealer, as they are defined in section 214A.1, of motor vehicle fuel or fuel oil within this state. Upon completion of an inspection, the inspector shall affix the department's seal to the measuring mechanism of the pump. The seal shall be appropriately marked, dated, and recorded by the inspector. If the owner of an inspected and sealed pump is registered with the department as a servicer in accordance with section 215.23, or employs a person so registered as a servicer, the owner or other servicer may open the pump, break the department's seal, recalibrate the measuring mechanism if necessary, and reseal the pump as long as the department is notified of the recalibration within forty-eight hours, on a form provided by the department. A person violating a provision of this section is, upon conviction, guilty of a simple misdemeanor.

87 Acts, ch 93, §7

214.12 Motor vehicle fuel pump pricing labels. Repealed by 80 Acts, ch 1054, § 20.

CHAPTER 214A

MOTOR VEHICLE FUEL

214A.1 Definitions.
214A.2 Tests and standards.
214A.2A Kerosene labeling.
214A.3 False representations.
214A.4 Intrastate shipments.
214A.5 Sales slip on demand.
214A.6 Department tests — fee.
214A.7 Department inspection — samples tested.
214A.8 Prohibition.
214A.9 Poster showing analysis.
214A.10 Transfer pipes.
214A.11 Violations.

214A.12 Industrial petroleum — permits.
214A.13 Chemists — employment of.
214A.14 Appropriation.
214A.15 Gasoline receptacles.
214A.16 Notice of blended fuel — decal.
214A.17 Documentation in transactions.
214A.18 MTBE prohibition.
214A.19 Demonstration grants authorized.

214A.1 Definitions.

The following definitions shall apply to the various terms used in this chapter:

1. *"A.S.T.M."* means the American society for testing and materials.

2. *"Motor vehicle fuel"* means a substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and is kept for sale or sold for that purpose. The products commonly known as kerosene and distillate or petroleum products of lower gravity (Baume scale), when not used to propel a motor vehicle or for compounding or combining with a motor vehicle fuel, are exempt from this chapter except as provided in section 214A.2A.

3. *"Motor vehicle fuel storage tank"* means an aboveground or belowground container that is a fixture, used to keep an accumulation of motor vehicle fuel.

4. *"MTBE"* means methyl tertiary butyl ether.

5. *"Oxygenate octane enhancer"* means oxygen-containing compounds, including but not limited to alcohols, ethers, or ethanol.

6. *"Retail dealer"* shall mean and include any person, firm, partnership, association, or corporation who operates, maintains, or conducts, either in person, or by any agent, employee, or servant, any place of business, filling station, pump station, or tank wagon, from which any motor vehicle fuel, as defined herein, is sold or offered for sale, at retail, or to the final or ultimate consumer.

7. *"Sell"* means to sell or to offer for sale.

8. *"Wholesale dealer"* shall mean and include any person, firm, partnership, association, or corporation, other than retail dealers as defined in subsection 3 of this section, who sells, keeps, or holds, for sale, or purchase for the purpose of sale within this state, any motor vehicle fuel.

[C31, 35, §5093-d1; C39, §**5095.01;** C46, 50, 54, 58, 62, 66, 71, §323.1; C73, 75, 77, 79, 81, §214A.1]

85 Acts, ch 76, §1; 86 Acts, ch 1146, §1; 86 Acts, ch 1245, §644; 89 Acts, ch 75, §1; 2000 Acts, ch 1224, §27

Further definitions, see §189.1

214A.2 Tests and standards.

1. The secretary shall adopt rules pursuant to chapter 17A for carrying out this chapter. The rules may include, but are not limited to, specifications relating to motor fuel or oxygenate octane enhancers. In the interest of uniformity, the secretary shall adopt by reference or otherwise specifications relating to tests and standards for motor fuel or oxygenate octane enhancers, established by the American society for testing and materials (A.S.T.M.), unless the secretary determines those specifications are inconsistent with this chapter or are not appropriate to the conditions which exist in this state.

2. Octane number shall conform to the average of values obtained from the A.S.T.M. D-2699 research method and the A.S.T.M. D-2700 motor method.

Octane number for regular grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than eighty-eight.

Octane number for premium grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety-three.

Octane number for regular grade unleaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than eighty-seven.

Octane number for premium grade unleaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety.

3. *a.* Gasoline with a mixture of ten percent or more ethanol, but not more than thirteen percent, shall be known as conventional blend ethanol.

b. Gasoline with a mixture of more than thirteen percent ethanol, but not more than twenty-five percent, shall be known as high blend ethanol. For purposes of chapters 323A, 422, and 452A, high blend ethanol shall be treated as conventional blend ethanol.

c. Gasoline shall not contain a mixture of more than twenty-five percent ethanol.

4. Motor vehicle fuel shall not contain more than trace amounts of MTBE, as provided in section 214A.18.

[C31, 35, §5093-d2; C39, §**5095.02;** C46, 50, 54, 58, 62, 66, 71, §323.2; C73, 75, 77, 79, 81, §214A.2; 82 Acts, ch 1131, §1, ch 1170, §1]

84 Acts, ch 1083, §1; 85 Acts, ch 76, §2 – 5; 85 Acts, ch 195, §23; 89 Acts, ch 75, §2; 90 Acts, ch 1252, §14; 91 Acts, ch 87, §1; 2000 Acts, ch 1224, §28

214A.2A Kerosene labeling.

Fuel which is sold or is kept, offered, or exposed for sale as kerosene shall be labeled as kerosene. The label shall include the word "kerosene" and a designation as either "K1" or "K2", and shall indicate that the kerosene is in compliance with the

standard specification adopted by the A.S.T.M. in specification D-3699 (1982).
86 Acts, ch 1146, §2

214A.3 False representations.
A person for purposes of selling shall not falsely represent the quality or kind of any motor vehicle fuel or oxygenate octane enhancer or add coloring matter thereto for the purpose of misleading the public as to its quality.
[C31, 35, §5093-d3; C39, §**5095.03;** C46, 50, 54, 58, 62, 66, 71, §323.3; C73, 75, 77, 79, 81, §214A.3]
89 Acts, ch 75, §3

214A.4 Intrastate shipments.
A wholesale dealer or retail dealer shall not receive or sell or hold for sale, within this state, any motor vehicle fuel or oxygenate octane enhancer for which specifications are prescribed in this chapter, unless the dealer first secures from the refiner or producer of the motor vehicle fuel or oxygenate octane enhancer, a statement, verified by the oath of a competent chemist, employed by or representing the refiner or producer, showing the true standards and tests of the motor vehicle fuel or oxygenate octane enhancer, obtained by the methods referred to in section 214A.2. The verified tests are required and must accompany the bill of lading or shipping documents representing the shipment of the motor vehicle fuel or oxygenate octane enhancer into this state before the shipment can be received and unloaded.
[C31, 35, §5093-d4; C39, §**5095.04;** C46, 50, 54, 58, 62, 66, 71, §323.4; C73, 75, 77, 79, 81, §214A.4]
89 Acts, ch 75, §4

214A.5 Sales slip on demand.
Each wholesale dealer or retail dealer in this state shall, when making a sale of motor vehicle fuel, give to each purchaser upon demand a sales slip upon which must be printed the words "This motor vehicle fuel conforms to the standard of specifications required by the state of Iowa."
Each wholesale dealer in this state shall, when making a sale of oxygenate octane enhancer, give to each purchaser upon demand a sales slip upon which must be printed the words "This oxygenate octane enhancer conforms to the standard specifications required by the state of Iowa."
[C31, 35, §5093-d5; C39, §**5095.05;** C46, 50, 54, 58, 62, 66, 71, §323.5; C73, 75, 77, 79, 81, §214A.5]
89 Acts, ch 75, §5

214A.6 Department tests — fee.
A wholesale dealer or retail dealer may, at the dealer's option, forward to the department for testing a sample taken in the manner prescribed in this section. The dealer shall draw from the original container, in the presence of a reputable person, into a clean receptacle, suitable for shipping, a sample of the motor vehicle fuel or oxygenate octane enhancer, not less than eight fluid ounces, and shall carefully seal the receptacle and affix to the receptacle a written label showing the car number or other identifying marks upon the original container from which the sample was taken. This procedure shall be performed in the presence of the reputable person, and the wholesale dealer or retail dealer. The reputable person shall make a statement, under oath, that the sample was taken in the manner provided for in this section, and shall refer to the identifying marks upon the label. The sworn statement, together with a fee of two dollars for making the test, shall be forwarded to the department. The department shall test the sample by the methods provided for in section 214A.2 and shall forward to the wholesale dealer or retail dealer a certified copy of the results of the tests.
[C31, 35, §5093-d6; C39, §**5095.06;** C46, 50, 54, 58, 62, 66, 71, §323.6; C73, 75, 77, 79, 81, §214A.6]
89 Acts, ch 75, §6

214A.7 Department inspection — samples tested.
The department, its agents or employees, shall, from time to time, make or cause to be made tests of any motor vehicle fuel or oxygenate octane enhancer which is being sold, or held or offered for sale within this state, and for such purposes the inspectors have the right to enter upon the premises of any wholesale dealer or retail dealer of motor vehicle fuel or oxygenate octane enhancer within this state, and to take from any container a sample of the motor vehicle fuel or oxygenate octane enhancer, not to exceed eight fluid ounces. The sample shall be sealed and appropriately marked or labeled by the inspector and delivered to the department. The department shall make, or cause to be made, complete analyses or tests of the motor vehicle fuel or oxygenate octane enhancer by the methods specified in section 214A.2.
[C31, 35, §5093-d7; C39, §**5095.07;** C46, 50, 54, 58, 62, 66, 71, §323.7; C73, 75, 77, 79, 81, §214A.7]
89 Acts, ch 75, §7

214A.8 Prohibition.
A retail or wholesale dealer defined in this chapter shall not sell any motor vehicle fuel or oxygenate octane enhancer in the state that fails to meet applicable standards and specifications set out in this chapter.
[C31, 35, §5093-d8; C39, §**5095.08;** C46, 50, 54, 58, 62, 66, 71, §323.8; C73, 75, 77, 79, 81, §214A.8]
89 Acts, ch 75, §8

214A.9 Poster showing analysis.
Any retail dealer who sells or holds for sale motor vehicle fuel, as defined in section 214A.2 hereof, may post upon any container or pump from which such motor vehicle fuel is being sold, a statement or notice in form to be prescribed by the de-

partment, showing the results of the tests of such motor vehicle fuel then being sold from such pumps or other containers.

[C31, 35, §5093-d9; C39, §**5095.09;** C46, 50, 54, 58, 62, 66, 71, §323.9; C73, 75, 77, 79, 81, §214A.9]

214A.10 Transfer pipes.

A wholesale dealer, retail dealer, or other person shall not, within this state, use the same pipeline for transferring motor vehicle fuel, including gasoline, or oxygenate octane enhancer from one container to another, if the pipeline is used for transferring kerosene or other flammable product used for open flame illuminating or heating purposes.

[C31, 35, §5093-d10; C39, §**5095.10;** C46, 50, 54, 58, 62, 66, 71, §323.10; C73, 75, 77, 79, 81, §214A.10]

89 Acts, ch 75, §9; 92 Acts, ch 1163, §48

214A.11 Violations.

Any person violating the provisions of this chapter shall be guilty of a simple misdemeanor.

[C31, 35, §5093-d11; C39, §**5095.11;** C46, 50, 54, 58, 62, 66, 71, §323.11; C73, 75, 77, 79, 81, §214A.11]

214A.12 Industrial petroleum — permits.

Any wholesale dealer as herein defined may apply to the department for a permit to make importations of petroleum products for industrial use only and not intended to be used for internal combustion engines, on a form to be supplied by the department, and upon receiving such permission may make importations of petroleum products for industrial use only, exempt from the specifications of this chapter.

[C31, 35, §5093-d12; C39, §**5095.12;** C46, 50, 54, 58, 62, 66, 71, §323.12; C73, 75, 77, 79, 81, §214A.12]

214A.13 Chemists — employment of.

The secretary of agriculture shall employ one or more chemists and incur such other expense as shall be necessary for the purpose of carrying into effect the provisions of this chapter.

[C31, 35, §5093-d13; C39, §**5095.13;** C46, 50, 54, 58, 62, 66, 71, §323.13; C73, 75, 77, 79, 81, §214A.13]

214A.14 Appropriation.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated funds sufficient to pay the expenses incurred as authorized by this chapter.

[C31, 35, §5093-d14; C39, §**5095.14;** C46, 50, 54, 58, 62, 66, 71, §323.14; C73, 75, 77, 79, 81, §214A.14]

214A.15 Gasoline receptacles.

A person shall not place gasoline or any other petroleum product for public use having a flash point below 100 degrees F. into any can, cask, barrel or other similar receptacle having a capacity in excess of one pint unless the same is painted bright red and is plainly marked with the word "gasoline" or with the warning "flammable — keep fire away" in contrasting letters of a height equal to at least one-tenth of the smallest dimension of such container. Gasoline or other petroleum products having a flash point below 100 degrees F. shall not be placed in bottles and plastic containers except those bottles and plastic containers which are approved by the state fire marshal and which are conspicuously posted with such approval. This section shall not apply to vehicle cargo or supply tanks nor to underground storage nor to storage tanks from which such liquids are withdrawn for manufacturing or agricultural purposes, or are loaded into vehicle cargo tanks, but all outlet faucets or valves from such excepted containers shall be suitably tagged to indicate the nature of the product to be withdrawn from such containers.

[C97, §2505; S13, §2510-1a, -2a, -j, -k; SS15, §2505; C24, 27, 31, 35, 39, §**3194 – 3196;** C46, §208.4 – 208.6; C50, 54, 58, 62, 66, 71, 73, 75, §208.6; C77, 79, 81, §214A.15]

214A.16 Notice of blended fuel — decal.

If motor vehicle fuel containing a renewable fuel is sold from a motor vehicle fuel pump, the pump shall have affixed a decal identifying the name of the renewable fuel. The decal may be different based on the type of renewable fuel used. The design and location of the decal shall be prescribed by rules adopted by the department. A decal identifying a renewable fuel shall be consistent with standards adopted pursuant to section 159A.6. The department may approve an application to place a decal in a special location on a pump or container or use a decal with special lettering or colors, if the decal appears clear and conspicuous to the consumer. The application shall be made in writing pursuant to procedures adopted by the department.

[82 Acts, ch 1170, §2]

85 Acts, ch 76, §6; 89 Acts, ch 296, §21; 91 Acts, ch 254, §14; 94 Acts, ch 1119, §23; 2000 Acts, ch 1224, §29

214A.17 Documentation in transactions.

Upon any delivery of motor vehicle fuel to a retailer, the invoice, bill of lading, shipping or other documentation shall disclose the presence, type, and amount of oxygenate octane enhancers over one percent by weight contained in the fuel.

85 Acts, ch 76, §7

214A.18 MTBE prohibition.

1. A person shall not do any of the following:

a. Sell motor vehicle fuel containing more than trace amounts of MTBE in this state.

b. Store motor vehicle fuel containing more

than trace amounts of MTBE in a motor vehicle fuel storage tank located in this state.

2. As used in this section, *"trace amounts"* means not more than one-half of one percent by volume.

2000 Acts, ch 1224, §30

214A.19 Demonstration grants authorized.

1. The department of natural resources, conditioned upon the availability of funds, is authorized to award demonstration grants to persons who purchase vehicles which operate on alternative fuels, including but not limited to, high blend ethanol, compressed natural gas, electricity, solar energy, or hydrogen. A grant shall be for the purpose of conducting research connected with the fuel or the vehicle, and not for the purchase of the vehicle itself, except that the money may be used for the purchase of the vehicle if all of the following conditions are satisfied:

a. The department retains the title to the vehicle.

b. The vehicle is used for continuing research.

c. If the vehicle is sold or when the research related to the vehicle is completed, the proceeds of the sale of the vehicle shall be used for additional research.

2. The governor shall seek the cooperation of the governors of other states willing to cooperate to establish an alternative fuels consortium. The purposes of the consortium may include, but are not limited to, coordinating the research, production, and marketing of alternative fuels within the participating states. The consortium may also coordinate presentation of consortium policy on alternative fuels to automakers and federal regulatory authorities.

90 Acts, ch 1252, §15

CHAPTER 215

INSPECTION OF WEIGHTS AND MEASURES

215.1 Duty to inspect.
215.2 Special inspection request — fees.
215.3 Payment by party complaining.
215.4 Tag for inaccurate device — reinspection — fee.
215.5 Confiscation of scales.
215.6 False weights or measures.
215.7 Transactions by false weights or measures.
215.8 Reasonable variations.
215.9 Power of cities limited.
215.10 Installation of new scales.
215.11 Dial visible to public.
215.12 Bond of scale repairers.
215.13 Graduations on beam.
215.14 Approval by department.
215.15 Scale pit.
215.16 Weighing beyond capacity.
215.17 Test weights to be used.
215.18 Specifications and tolerances.
215.19 Automatic recorders on scales.
215.20 Liquid petroleum gas measurement.
215.21 Individual carcass weights.
215.22 Packer-monorail scale.
215.23 Servicer's license.
215.24 Rules.
215.25 Railroad track scales.
215.26 Definitions.

215.1 Duty to inspect.

The department shall regularly inspect all commercial weighing and measuring devices, and when complaint is made to the department that any false or incorrect weights or measures are being made, the department shall inspect the commercial weighing and measuring devices which caused the complaint.

[S13, §3009-o; SS15, §3009-n; C24, 27, 31, 35, 39, §**3266;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.1]

215.2 Special inspection request — fees.

The fee for special tests, including but not limited to, using state inspection equipment, for the calibration, testing, certification, or repair of a commercial weighing and measuring device shall be paid by the servicer or person requesting the special test in accordance with the following schedule:

1. Class S, scales, seventy-five dollars per hour.

2. Class M, meters, fifty-two dollars and fifty cents per hour.

[SS15, §3009-n; C24, 27, 31, 35, 39, §**3267;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.2]

88 Acts, ch 1272, §22; 90 Acts, ch 1084, §5; 92 Acts, ch 1239, §38

Annual license fees; §214.3

215.3 Payment by party complaining.

If an inspection is made upon the complaint of a person other than the owner of the commercial

weighing and measuring device, and upon examination the commercial weighing and measuring device is found by the department to be accurate for commercial weighing and measuring, the inspection fee for such inspection shall be paid by the person making the complaint.

[SS15, §3009-n; C24, 27, 31, 35, 39, §**3268;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.3]

90 Acts, ch 1084, §6

215.4 Tag for inaccurate device — reinspection — fee.

A commercial weighing and measuring device found to be inaccurate upon inspection by the department shall be tagged "condemned until repaired" and the "licensed for commercial use" inspection sticker shall be removed. If notice is received by the department that the device has been repaired and upon reinspection the device is found to be accurate, the license fee shall not be charged for the reinspection. However, a second license fee shall be charged if upon reinspection the device is found to be inaccurate.

[SS15, §3009-n; C24, 27, 31, 35, 39, §**3269;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.4]

90 Acts, ch 1084, §7

215.5 Confiscation of scales.

The department may seize without warrant and confiscate any incorrect scales, weights, or measures, or any weighing apparatus or part thereof which do not conform to the state standards or upon which the license fee has not been paid. If any weighing or measuring apparatus or part thereof be found out of order the same may be tagged by the department "Condemned until repaired", which tag shall not be altered or removed until said apparatus is properly repaired.

[S13, §3009-q; C24, 27, 31, 35, 39, §**3270;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.5]

215.6 False weights or measures.

If any person engaged in the purchase or sale of any commodity by weight or measurement, or in the employment of labor where the price thereof is to be determined by weight or measurement of the articles upon which such labor is bestowed, has in the person's possession any inaccurate scales, weights, or measures, or other apparatus for determining the quantity of any commodity, which do not conform to the standard weights and measures, the person shall be punished as provided in chapter 189.

[SS15, §3009-p; C24, 27, 31, 35, 39, §**3271;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.6]

215.7 Transactions by false weights or measures.

Any person shall be deemed to have violated the provisions of this chapter and shall be punished as provided in chapter 189:

1. If such person sell, trade, deliver, charge for or claim to have delivered to a purchaser an amount of any commodity which is less in weight or measure than that which is asked for, agreed upon, claimed to have been delivered, or noted on the delivery ticket.
2. If such person make settlement for or enter credit, based upon any false weight or measurement, for any commodity purchased.
3. If such person make settlement for or enter credit, based upon any false weight or measurement, for any labor where the price of producing or mining is determined by weight or measure.
4. If such person record a false weight or measurement upon the weight ticket or book.

[SS15, §3009-j; C24, 27, 31, 35, 39, §**3272;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.7]

215.8 Reasonable variations.

In enforcing the provisions of section 215.7 reasonable variations shall be permitted and exemptions as to small packages shall be established by rules of the department.

[SS15, §3009-j; C24, 27, 31, 35, 39, §**3273;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.8]

215.9 Power of cities limited.

Commodities weighed upon any scale bearing the inspection card, issued by the department, shall not be required to be reweighed by any ordinance of any city, nor shall their sale, at the weights so ascertained, and because thereof, be, by such ordinance, prohibited or restricted.

[SS15, §3009-m; C24, 27, 31, 35, 39, §**3274;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.9]

215.10 Installation of new scales.

It shall be unlawful to install a scale, used for commercial purposes in this state, unless the scale is so installed that it is easily accessible for inspection and testing by equipment of the department and with due regard to the scale's size and capacity. Every scale manufacturer or dealer shall, upon selling a scale of the above types in Iowa, submit to the department upon forms provided by the department, the make, capacity of the scale, the date of sale, and the date and location of its installation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.10]

215.11 Dial visible to public.

The weight indicating dial or beams on counter scales used to weigh articles sold at retail shall be so located that the reading dial indicating the weight shall at all times be visible to the public.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.11]

215.12 Bond of scale repairers.

Any person, firm, or corporation engaging in any scale repair work for hire in this state shall first file with the department a bond of the form required by chapter 64 in the sum of one thousand dollars conditioned to guarantee the quality and faithful performance of the assumed task and providing for liquidated damages for failure to perform such conditions. Such person, firm, or corporation, on depositing with the department a bond in the amount of one thousand dollars shall be furnished a certificate authorizing them to do what is known as scale repair work, or installation of new scales in the state of Iowa. This certificate shall be valid until revoked by the secretary of agriculture.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.12]

215.13 Graduations on beam.

All new weigh beams or dials on what is known as livestock scales used for determining the weight in buying or selling livestock shall be in not over five-pound graduations.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.13]

215.14 Approval by department.

A commercial weighing and measuring device shall not be installed in this state unless approved by the department. All livestock scales and pit type scales, regardless of capacity, installed on or after July 1, 1990, shall have a clearance of not less than four feet from the finished floor line of the scale to the bottom of the "I" beam of the scale bridge. Livestock shall not be weighed on any scale other than a livestock scale or pit type scale. An electronic pitless scale shall be placed on concrete footings with concrete floor. After approval by the department, the specifications for a commercial weighing and measuring device shall be furnished to the purchaser of the device by the manufacturer. The approval shall be based upon the recommendation of the United States national institute of standards and technology.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.14]

90 Acts, ch 1045, §1

215.15 Scale pit.

Scale pit shall have proper room for inspector or service person to repair or inspect scale. Scale pit shall remain dry at all times and adequate drainage shall be provided for the purpose of inspecting and cleaning.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.15]

215.16 Weighing beyond capacity.

It shall be unlawful for any person, firm, or corporation to use such a scale for weighing commodities the gross weight of which is greater than the factory rated scale capacity. The capacity of the scale shall be stamped by the manufacturer on each weigh beam or dial. The capacity of the scale shall be posted so as to be visible to the public.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.16]

215.17 Test weights to be used.

A person engaged in scale repair work for hire shall use only test weights sealed by the department in determining the effectiveness of repair work and the test weights shall be sealed as to their accuracy once each year. However, a person shall not claim to be an official scale inspector and shall not use the test weights except to determine the accuracy of scale repair work done by the person and the person shall not be entitled to a fee for their use. A fee shall be charged and collected at time of inspection for the inspection of such weights as follows:

All weights up to and including 25 pounds	$ 1.10 each
Over twenty-five pounds capacity, up to and including 50 pounds	2.25 each
Over 50 pounds capacity, up to and including 100 pounds	3.00 each
Over 100 pounds capacity, up to and including 500 pounds	4.50 each
Over 500 pounds capacity, up to and including 1,000 pounds	7.50 each

The fee for all tank calibrations shall be as follows:

100 gallons up to and including 300 gallons	$ 4.50
301 gallons up to and including 500 gallons	7.50
501 gallons up to and including 1,000 gallons	11.25
1,001 gallons up to and including 2,000 gallons	15.00
2,001 gallons up to and including 3,000 gallons	18.00
3,001 gallons up to and including 4,000 gallons	21.00
4,001 gallons up to and including 5,000 gallons	24.00
5,001 gallons up to and including 6,000 gallons	27.00
6,001 gallons up to and including 7,000 gallons	30.00
7,001 gallons and up	37.50

Calibration shall not be required of a tank which is not used for the purpose of measuring, or which is equipped with a meter, and vehicle tanks loaded from meters and carrying a printed ticket showing gallonage shall not be required to be calibrated.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.17]

92 Acts, ch 1239, §39

215.18 Specifications and tolerances.

The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices, as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 44, specifications, tolerances, and other technical requirements for weighing and measuring devices, shall apply to weighing and measuring devices in this state, except insofar as modified or rejected by rule and shall be observed in all inspections and tests.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.18]

90 Acts, ch 1084, §8

215.19 Automatic recorders on scales.

Except for scales used by packers slaughtering fewer than one hundred twenty head of livestock per day, all scales with a capacity over five hundred pounds, which are used for commercial purposes in the state of Iowa, and installed after January 1, 1981, shall be equipped with either a type-registering weigh beam, a dial with a mechanical ticket printer, an automatic weight recorder, or some similar device which shall be used for printing or stamping the weight values on scale tickets.

[C66, 71, 73, 75, 77, 79, 81, §215.19]

215.20 Liquid petroleum gas measurement.

1. All liquefied petroleum gas, including but not limited to propane, butane, and mixtures of them, shall be kept, offered, exposed for sale, or sold by the pound, metered cubic foot of vapor, defined as one cubic foot at sixty degrees Fahrenheit, or by the gallon, defined as two hundred thirty-one cubic inches at sixty degrees Fahrenheit.

2. All metered sales exceeding one hundred gallons shall be corrected to a temperature of sixty degrees Fahrenheit through use of an approved meter with a sealed automatic compensation mechanism. All sale tickets for sales exceeding one hundred gallons shall show the stamped delivered gallons and shall state that the temperature correction was automatically made.

3. A reasonable tolerance within a maximum of plus or minus one percent shall be allowed on liquid petroleum gas meters licensed for commercial use in this state.

[C66, 71, 73, 75, 77, 79, 81, §215.20]

88 Acts, ch 1272, §23; 90 Acts, ch 1084, §9

215.21 Individual carcass weights.

With payment for each purchase of livestock except poultry bought on a carcass weight or grade and yield basis, each packer shall provide the seller with one statement displaying the individual carcass weights of all the animals sold.

[C81, §215.21]

215.22 Packer-monorail scale.

The speed of a monorail scale operation used by a packer shall not exceed the manufacturer's recommendation or specifications for accurate weighing under normal, in-use operating conditions. The operational speed shall be permanently marked on the indicating element. Adequate measures shall be provided whereby testing and inspections can be conducted under normal in-use conditions. Tare weights for trolleys or gambrels shall be registered with the department. The registered tare adjustment on the indicating element shall be sealed or pinned.

[C81, §215.22]

215.23 Servicer's license.

A servicer shall not install, service, or repair a commercial weighing or measuring device until the servicer has demonstrated that the servicer has available adequate testing equipment, and that the servicer possesses a working knowledge of all devices the servicer intends to install or repair and of all appropriate weights, measures, statutes, and rules, as evidenced by passing a qualifying examination to be conducted by the department and obtaining a license. The secretary of agriculture shall establish by rule pursuant to chapter 17A, requirements for and contents of the examination. In determining these qualifications, the secretary shall consider the specifications of the United States national institute of standards and technology, handbook forty-four, *"Specifications, tolerances, and technical requirements for commercial weighing and measuring devices"*, or the current successor or equivalent specifications adopted by the United States national institute of standards and technology. The secretary shall require an annual license fee of not more than five dollars for each license. Each license shall expire one year from date of issuance.

[C81, §215.23]

90 Acts, ch 1045, §2

215.24 Rules.

The department of agriculture and land stewardship may promulgate rules pursuant to chapter 17A as necessary to promptly and effectively enforce the provisions of this chapter.

[C81, §215.24]

215.25 Railroad track scales.

The department shall inspect the railroad track scales referred to in section 327D.127. The department may adopt rules establishing standards for the scales. The rules may include but are not limited to safety standards, accuracy and the style and content of forms and certificates to be used for weighing.

[C81, §215.25]

215.26 Definitions.

As used in this chapter:

1. *"Commercial weighing and measuring device"* means a weight or measure or weighing or measuring device used to establish size, quantity, area or other quantitative measurement of a commodity sold by weight or measurement, or where the price to be paid for producing the commodity is based upon the weight or measurement of the commodity. The term includes an accessory attached to or used in connection with a commercial weighing or measuring device when the accessory is so designed or installed that its operation may affect the accuracy of the device. Commercial weighing and measuring device includes a public scale as defined under section 214.1.

2. *"Liquefied petroleum gas"* means liquids that do not remain in a liquid state at atmospheric pressures and temperatures composed predominantly of any of the following hydrocarbons, or mixtures of hydrocarbons: propane, propylene, butanes including normal butane or isobutane, and butylenes.

3. *"Packer"* means a person engaged in the business of any of the following:

a. Buying livestock in commerce for purposes of slaughter;

b. Manufacturing or preparing meats or meat food products for sale or shipment in commerce;

c. Marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

4. *"Service agency"* means an individual, firm or corporation which holds itself out to the public as having servicers available to install, service or repair a weighing or measuring device for hire.

5. *"Servicer"* means an individual employed by a service agency who installs, services or repairs a commercial weighing or measuring device for hire, commission or salary.

[C81, §215.26]

90 Acts, ch 1084, §10, 11

CHAPTER 215A

MOISTURE-MEASURING DEVICES

215A.1 Definitions.
215A.2 Inspection by department.
215A.3 Rules adopted — hearing.
215A.4 Officer assigned to act.
215A.5 Marking with seal.
215A.6 Procedure when device rejected.
215A.7 Located where visible to public.
215A.8 Untested devices not to be used — exception.
215A.9 Inspection fee.
215A.10 Penalty.

215A.1 Definitions.

As used in this chapter:

1. *"Agricultural products"* means any product of agricultural activity which is tested for moisture content when offered for sale, processing, or storage.

2. *"Department"* means the Iowa department of agriculture and land stewardship.

3. *"Moisture-measuring devices"* means any device or instrument used by any person in proving or ascertaining the moisture content of agricultural products.

4. *"Person"* means an individual, corporation, partnership, co-operative association, or two or more persons having a joint or common interest in the same venture and shall include the United States, the state, or any subdivision of either.

5. *"Secretary"* means the secretary of agriculture.

[C71, 73, 75, 77, 79, 81, §215A.1]

Further definitions, see §189.1

215A.2 Inspection by department.

The department shall inspect or cause to be inspected at least annually every moisture-measuring device used in commerce in this state, except those belonging to the United States or the state, or any subdivision of either, except as herein provided. The department may inspect or cause to be inspected at the convenience of the department any moisture-measuring device upon a request in writing from the owner thereof.

[C71, 73, 75, 77, 79, 81, §215A.2]

215A.3 Rules adopted — hearing.

The department is charged with the enforcement of this chapter and, after due publicity and due public hearing, is empowered to establish rules, regulations, specifications, standards, and tests as necessary in order to secure the efficient administration of this chapter. Publicity concerning the public hearing shall be reasonably calcu-

lated to give interested parties adequate notice and adequate opportunity to be heard. In establishing such rules, regulations, specifications, standards, and tests the department may use the specifications and tolerances established in section 215.18, and shall use the specifications and tolerances established by the United States department of agriculture as of November 15, 1971, in chapter XII of GR instruction 916-6, equipment manual, used by the United States department of agriculture grain inspection, packers and stockyards administration. The department may from time to time publish such data in connection with the administration of this chapter as may be of public interest.

[C71, 73, 75, 77, 79, 81, §215A.3]

95 Acts, ch 216, §25

215A.4 Officer assigned to act.

The department may at its discretion designate an employee or officer of the department to act for the department in any details connected with the administration of this chapter.

[C71, 73, 75, 77, 79, 81, §215A.4]

215A.5 Marking with seal.

If an inspection or comparative test reveals that the moisture-measuring device being inspected or tested conforms to the standards and specifications established by the department, the department shall cause the same to be marked with an appropriate seal. Any moisture-measuring device which upon inspection is found not to conform with the specifications and standards established by the department shall be marked with an appropriate seal showing such device to be defective, which seal shall not be altered or removed until said moisture-measuring device is properly repaired and reinspected. The owner or user of such device shall be notified of such defective condition by the department or its properly designated employees on an inspection form prepared by the department.

[C71, 73, 75, 77, 79, 81, §215A.5]

215A.6 Procedure when device rejected.

Any defective moisture-measuring device, while so marked, sealed, or tagged, as provided in section 215A.5, may be used to ascertain the moisture content of agricultural products offered for sale, processing, or storage, only under the following conditions:

1. The person shall keep a record, open to inspection, of every commercial sample of agricultural products inspected by the tagged device, showing that an adjustment was made on all such agricultural products tested.

2. The device shall be repaired to comply with section 215A.5 within a period of thirty days, and the department thereupon notified.

If, upon reinspection, the device is again rejected under the provisions of section 215A.5, such device shall be sealed and shall not be used until repaired and reinspected.

[C71, 73, 75, 77, 79, 81, §215A.6]

215A.7 Located where visible to public.

Every device used to ascertain the moisture content of agricultural products offered for sale, processing, or storage shall be used in a location visible to the general public and the detailed procedure for operating a moisture-measuring device shall be displayed in a conspicuous place close to the moisture-measuring device.

[C71, 73, 75, 77, 79, 81, §215A.7]

215A.8 Untested devices not to be used — exception.

No person shall use or cause to be used any grain moisture-measuring device which has not been inspected and approved for use by the department; except, a newly purchased grain moisture-measuring device may be used prior to regular inspection and approval if the user of such device has given notice to the department of the purchase and before use of such new device.

[C71, 73, 75, 77, 79, 81, §215A.8]

215A.9 Inspection fee.

The department shall charge, assess, and cause to be collected at the time of inspection an inspection fee in accordance with the fee schedule established pursuant to section 214.3, subsection 3.

A fee of fifteen dollars shall be charged for each device subject to reinspection under section 215A.5. All moneys received by the department under the provisions of this chapter shall be handled in the same manner as *"repayment receipts"* as defined in chapter 8, and shall be used for the administration and enforcement of the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §215A.9]

90 Acts, ch 1084, §12; 92 Acts, ch 1239, §40

215A.10 Penalty.

Every person who uses or causes to be used a moisture-measuring device in commerce with knowledge that such device has not been inspected and approved by the department in accordance with the provisions of this chapter shall be guilty of a simple misdemeanor.

[C71, 73, 75, 77, 79, 81, §215A.10]

TITLE VI

HUMAN SERVICES

SUBTITLE 1

SOCIAL JUSTICE AND HUMAN RIGHTS

CHAPTER 216

CIVIL RIGHTS COMMISSION

This chapter not enacted as a part of this title;
transferred from chapter 601A in Code 1993
See also chapters 729 and 729A

216.1	Citation.
216.2	Definitions.
216.3	Commission appointed.
216.4	Compensation and expenses — rules.
216.5	Powers and duties.
216.6	Unfair employment practices.
216.7	Unfair practices — accommodations or services.
216.8	Unfair or discriminatory practices — housing.
216.8A	Additional unfair or discriminatory practices — housing.
216.9	Unfair or discriminatory practices — education.
216.10	Unfair credit practices.
216.11	Aiding, abetting, or retaliation.
216.11A	Interference, coercion, or intimidation.
216.12	Exceptions.
216.12A	Additional housing exception.
216.13	Exceptions for retirement plans, abortion coverage, life, disability and health benefits.
216.14	Promotion or transfer.
216.15	Complaint — hearing.
216.15A	Additional proceedings — housing discrimination.
216.15B	Formal mediation — confidentiality.
216.16	Sixty-day administrative release.
216.16A	Civil action elected — housing.
216.17	Judicial review — enforcement.
216.17A	Civil proceedings — housing.
216.18	Rule of construction.
216.19	Local laws implementing this chapter.
216.20	Effect on other law.

216.1 Citation.

This chapter may be known and may be cited as the *"Iowa Civil Rights Act of 1965"*.

[C66, 71, §105A.1; C73, 75, 77, 79, 81, §601A.1]
C93, §216.1

216.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the Iowa state civil rights commission created by this chapter.

2. *"Commissioner"* means a member of the commission.

3. *"Court"* means the district court in and for any judicial district of the state of Iowa or any judge of the court if the court is not in session at that time.

4. *"Covered multifamily dwelling"* means any of the following:

a. A building consisting of four or more dwelling units if the building has one or more elevators.

b. The ground floor units of a building consisting of four or more dwelling units.

5. *"Disability"* means the physical or mental condition of a person which constitutes a substantial disability, and the condition of a person with a positive human immunodeficiency virus test result, a diagnosis of acquired immune deficiency syndrome, a diagnosis of acquired immune deficiency syndrome-related complex, or any other condition related to acquired immune deficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of *"disability"* under the provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases.

6. *"Employee"* means any person employed by an employer.

7. *"Employer"* means the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and

every other person employing employees within the state.

8. *"Employment agency"* means any person undertaking to procure employees or opportunities to work for any other person or any person holding itself to be equipped to do so.

9. *"Familial status"* means one or more individuals under the age of eighteen domiciled with one of the following:

a. A parent or another person having legal custody of the individual or individuals.

b. The designee of the parent or the other person having custody of the individual or individuals, with the written permission of the parent or other person.

c. A person who is pregnant or is in the process of securing legal custody of the individual or individuals.

"Familial status" also means a person who is pregnant or who is in the process of securing legal custody of an individual who has not attained the age of eighteen years.

10. *"Labor organization"* means any organization which exists for the purpose in whole or in part of collective bargaining, of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

11. *"Person"* means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.

12. *"Public accommodation"* means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the nonmembers for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

"Public accommodation" includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise. This paragraph shall not be construed by negative implication or otherwise to restrict any part or portion of the preexisting definition of the term *"public accommodation"*.

13. *"Unfair practice"* or *"discriminatory practice"* means those practices specified as unfair or discriminatory in sections 216.6, 216.7, 216.8, 216.8A, 216.9, 216.10, 216.11, and 216.11A.

[C66, 71, §105A.2; C73, 75, 77, 79, 81, §601A.2]

84 Acts, ch 1096, §1; 88 Acts, ch 1236, §1; 89 Acts, ch 205, §1; 91 Acts, ch 184, §1; 92 Acts, ch 1129, §1 – 3

C93, §216.2

94 Acts, ch 1023, §42; 95 Acts, ch 129, §2; 96 Acts, ch 1129, §113

216.3 Commission appointed.

The Iowa state civil rights commission shall consist of seven members appointed by the governor subject to confirmation by the senate. Appointments shall be made to provide geographical area representation insofar as practicable. No more than four members of the commission shall belong to the same political party. Members appointed to the commission shall serve for four-year staggered terms beginning and ending as provided by section 69.19.

Vacancies on the commission shall be filled by the governor by appointment for the unexpired part of the term of the vacancy. Any commissioner may be removed from office by the governor for cause.

The governor subject to confirmation by the senate shall appoint a director who shall serve as the executive officer of the commission.

[C66, 71, §105A.3; C73, 75, 77, 79, 81, §601A.3]

C93, §216.3

Confirmation, see §2.32

216.4 Compensation and expenses — rules.

Commissioners shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses incurred while on official commission business. All per diem and expense moneys paid to commissioners shall be paid from funds appropriated to the commission. The commission shall adopt, amend or rescind rules as necessary for the conduct of its meetings. A quorum shall consist of four commissioners.

[C66, 71, §105A.4; C73, 75, 77, 79, 81, §601A.4]

90 Acts, ch 1256, §51

C93, §216.4

216.5 Powers and duties.

The commission shall have the following powers and duties:

1. To prescribe the duties of a director and appoint and prescribe the duties of such investigators and other employees and agents as the commission shall deem necessary for the enforcement of this chapter.

2. To receive, investigate, mediate, and finally determine the merits of complaints alleging unfair or discriminatory practices.

3. To investigate and study the existence, character, causes, and extent of discrimination in

public accommodations, employment, apprenticeship programs, on-the-job training programs, vocational schools, credit practices, and housing in this state and to attempt the elimination of such discrimination by education and conciliation.

4. To seek a temporary injunction against a respondent when it appears that a complainant may suffer irreparable injury as a result of an alleged violation of this chapter. A temporary injunction may only be issued ex parte, if the complaint filed with the commission alleges discrimination in housing. In all other cases a temporary injunction may be issued only after the respondent has been notified and afforded the opportunity to be heard.

5. To hold hearings upon any complaint made against a person, an employer, an employment agency, or a labor organization, or the employees or members thereof, to subpoena witnesses and compel their attendance at such hearings, to administer oaths and take the testimony of any person under oath, and to compel such person, employer, employment agency, or labor organization, or employees or members thereof to produce for examination any books and papers relating to any matter involved in such complaint. The commission shall issue subpoenas for witnesses in the same manner and for the same purposes on behalf of the respondent upon the respondent's request. Such hearings may be held by the commission, by any commissioner, or by any hearing examiner appointed by the commission. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena and the court shall in a proper case issue the subpoena. Refusal to obey such subpoena shall be subject to punishment for contempt.

6. To issue such publications and reports of investigations and research as in the judgment of the commission shall tend to promote good will among the various racial, religious, and ethnic groups of the state and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, or housing because of race, creed, color, sex, national origin, religion, ancestry or disability.

7. To prepare and transmit to the governor and to the general assembly from time to time, but not less often than once each year, reports describing its proceedings, investigations, hearings conducted and the outcome thereof, decisions rendered, and the other work performed by the commission.

8. To make recommendations to the general assembly for such further legislation concerning discrimination because of race, creed, color, sex, national origin, religion, ancestry or disability as it may deem necessary and desirable.

9. To co-operate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter, and in the planning and conducting of programs designed to eliminate racial, religious, cultural, and intergroup tensions.

10. To adopt, publish, amend, and rescind regulations consistent with and necessary for the enforcement of this chapter.

11. To receive, administer, dispense and account for any funds that may be voluntarily contributed to the commission and any grants that may be awarded the commission for furthering the purposes of this chapter.

12. To defer a complaint to a local civil rights commission under commission rules promulgated pursuant to chapter 17A.

13. To issue subpoenas and order discovery as provided by this section in aid of investigations and hearings of alleged unfair or discriminatory housing or real property practices. The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court.

14. To defer proceedings and refer a complaint to a local commission that has been recognized by the United States department of housing and urban development as having adopted ordinances providing fair housing rights and remedies that are substantially equivalent to those granted under federal law.

15. To utilize volunteers to aid in the conduct of the commission's business including case processing functions such as intake, screening, investigation, and mediation.

[C66, 71, §105A.5; C73, 75, 77, 79, 81, §601A.5]
86 Acts, ch 1245, §1991; 91 Acts, ch 184, §2
C93, §216.5
95 Acts, ch 129, §3, 4

216.6 Unfair employment practices.

1. It shall be an unfair or discriminatory practice for any:

a. Person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, national origin, religion, or disability of such applicant or employee, unless based upon the nature of the occupation. If a person with a disability is qualified to perform a particular occupation, by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

b. Labor organization or the employees, agents, or members thereof to refuse to admit to membership any applicant, to expel any member, or to otherwise discriminate against any applicant for membership or any member in the privileges, rights, or benefits of such membership because of the age, race, creed, color, sex, national origin, religion, or disability of such applicant or member.

c. Employer, employment agency, labor organization, or the employees, agents, or members thereof to directly or indirectly advertise or in any other manner indicate or publicize that individuals of any particular age, race, creed, color, sex, national origin, religion, or disability are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of the occupation. If a person with a disability is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

An employer, employment agency, or their employees, servants, or agents may offer employment or advertise for employment to only persons with disabilities, when other applicants have available to them other employment compatible with their ability which would not be available to persons with disabilities because of their disabilities. Any such employment or offer of employment shall not discriminate among persons with disabilities on the basis of race, color, creed, sex, or national origin.

d. Person to solicit or require as a condition of employment of any employee or prospective employee a test for the presence of the antibody to the human immunodeficiency virus or to affect the terms, conditions, or privileges of employment or terminate the employment of any employee solely as a result of the employee obtaining a test for the presence of the antibody to the human immunodeficiency virus. An agreement between an employer, employment agency, labor organization, or their employees, agents, or members and an employee or prospective employee concerning employment, pay, or benefits to an employee or prospective employee in return for taking a test for the presence of the antibody to the human immunodeficiency virus, is prohibited. The prohibitions of this paragraph do not apply if the state epidemiologist determines and the director of public health declares through the utilization of guidelines established by the center for disease control of the United States department of health and human services, that a person with a condition related to acquired immune deficiency syndrome poses a significant risk of transmission of the human immunodeficiency virus to other persons in a specific occupation.

2. Employment policies relating to pregnancy and childbirth shall be governed by the following:

a. A written or unwritten employment policy or practice which excludes from employment applicants or employees because of the employee's pregnancy is a prima facie violation of this chapter.

b. Disabilities caused or contributed to by the employee's pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority, and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to the employee's pregnancy or giving birth, on the same terms and conditions as they are applied to other temporary disabilities.

c. Disabilities caused or contributed to by legal abortion and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any temporary disability or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority, and other benefits and privileges, reinstatement, and payment under any temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to legal abortion on the same terms and conditions as they are applied to other temporary disabilities. The employer may elect to exclude health insurance coverage for abortion from a plan provided by the employer, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

d. An employer shall not terminate the employment of a person disabled by pregnancy because of the employee's pregnancy.

e. Where a leave is not available or a sufficient leave is not available under any health or temporary disability insurance or sick leave plan available in connection with employment, the employer of the pregnant employee shall not refuse to grant to the employee who is disabled by the pregnancy a leave of absence if the leave of absence is for the period that the employee is disabled because of the employee's pregnancy, childbirth, or related medical conditions, or for eight weeks, whichever is less. However, the employee must provide timely notice of the period of leave requested and the employer must approve any change in the period requested before the change is effective. Before granting the leave of absence, the employer may require that the employee's disability resulting from pregnancy be verified by medical certification stating that the employee is not able to reasonably perform the duties of employment.

3. This section shall not prohibit discrimination on the basis of age if the person subject to the discrimination is under the age of eighteen years, unless that person is considered by law to be an adult.

4. Notwithstanding the provisions of this sec-

tion, a state or federal program designed to benefit a specific age classification which serves a bona fide public purpose shall be permissible.

5. This section shall not apply to age discrimination in bona fide apprenticeship employment programs if the employee is over forty-five years of age.

6. This section shall not apply to:

a. Any employer who regularly employs less than four individuals. For purposes of this subsection, individuals who are members of the employer's family shall not be counted as employees.

b. The employment of individuals for work within the home of the employer if the employer or members of the employer's family reside therein during such employment.

c. The employment of individuals to render personal service to the person of the employer or members of the employer's family.

d. Any bona fide religious institution or its educational facility, association, corporation, or society with respect to any qualifications for employment based on religion when such qualifications are related to a bona fide religious purpose. A religious qualification for instructional personnel or an administrative officer, serving in a supervisory capacity of a bona fide religious educational facility or religious institution, shall be presumed to be a bona fide occupational qualification.

[C66, 71, §105A.7; C73, §601A.7; C75, 77, 79, 81, §601A.6]

87 Acts, ch 201, §1; 88 Acts, ch 1236, §2

C93, §216.6

96 Acts, ch 1129, §27, 113

216.7 Unfair practices — accommodations or services.

1. It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:

a. To refuse or deny to any person because of race, creed, color, sex, national origin, religion or disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of race, creed, color, sex, national origin, religion or disability in the furnishing of such accommodations, advantages, facilities, services, or privileges.

b. To directly or indirectly advertise or in any other manner indicate or publicize that the patronage of persons of any particular race, creed, color, sex, national origin, religion or disability is unwelcome, objectionable, not acceptable, or not solicited.

2. This section shall not apply to:

a. Any bona fide religious institution with respect to any qualifications the institution may impose based on religion when such qualifications are related to a bona fide religious purpose.

b. The rental or leasing to transient individuals of less than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation if the occupant or owner or members of that person's family reside therein.

[C97, §5008; C24, 27, 31, 35, 39, §**13251;** C46, 50, 54, 58, §735.1; C66, 71, §105A.6; C73, §601A.6; C75, 77, 79, 81, §601A.7]

C93, §216.7

216.8 Unfair or discriminatory practices — housing.

It shall be an unfair or discriminatory practice for any person, owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

1. To refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion or interest therein, to any person because of the race, color, creed, sex, religion, national origin, disability, or familial status of such person.

2. To discriminate against any person because of the person's race, color, creed, sex, religion, national origin, disability, or familial status, in the terms, conditions or privileges of the sale, rental, lease assignment or sublease of any real property or housing accommodation or any part, portion or interest in the real property or housing accommodation or in the provision of services or facilities in connection with the real property or housing accommodation.

For purposes of this section, *"person"* means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion or interest therein, by persons of any particular race, color, creed, sex, religion, national origin, disability, or familial status is unwelcome, objectionable, not acceptable or not solicited.

4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation, because of the race, color, creed, religion, sex, disability, age or national origin of persons who may from time to time be present in or on the lessee's or owner's premises for

lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives or in any similar capacity.

[C71, §105A.13; C73, §601A.13; C75, 77, 79, 81, §601A.8]

89 Acts, ch 205, §2; 92 Acts, ch 1129, §4

C93, §216.8

216.8A Additional unfair or discriminatory practices — housing.

1. A person shall not induce or attempt to induce another person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, creed, sex, religion, national origin, disability, or familial status.

2. A person shall not represent to a person of a particular race, color, creed, sex, religion, national origin, disability, or familial status that a dwelling is not available for inspection, sale, or rental when the dwelling is available for inspection, sale, or rental.

3. *a.* A person shall not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to a buyer or renter because of a disability of any of the following persons:

(1) That buyer or renter.

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available.

(3) A person associated with that buyer or renter.

b. A person shall not discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of any of the following persons:

(1) That person.

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available.

(3) A person associated with that person.

c. For the purposes of this subsection only, discrimination includes any of the following circumstances:

(1) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford the person full enjoyment of the premises.

In the case of a rental, a landlord may, where reasonable to do so, condition permission for a modification on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling.

(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after January 1, 1992, a failure to design and construct those dwellings in a manner that meets the following requirements:

(a) The public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.

(b) All doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.

(c) All premises within the dwellings contain the following features of adaptive design:

(i) An accessible route into and through the dwelling.

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(iii) Reinforcements in bathroom walls to allow later installation of grab bars.

(iv) Usable kitchens and bathrooms so that a person in a wheelchair can maneuver about the space.

d. Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for persons with disabilities, commonly cited as "ANSI A 117.1", satisfies the requirements of paragraph *"c"*, subparagraph (3), subparagraph subdivision (c).

e. Nothing in this subsection requires that a dwelling be made available to a person whose tenancy would constitute a direct threat to the health or safety of other persons or whose tenancy would result in substantial physical damage to the property of others.

4. *a.* A person whose business includes engaging in residential real estate related transactions shall not discriminate against a person in making a residential real estate related transaction available or in terms or conditions of a residential real estate related transaction because of race, color, creed, sex, religion, national origin, disability, or familial status.

b. For the purpose of this subsection, *"residential real estate related transaction"* means any of the following:

(1) To make or purchase loans or provide other financial assistance to purchase, construct, improve, repair, or maintain a dwelling, or to secure residential real estate.

(2) To sell, broker, or appraise residential real estate.

5. A person shall not deny another person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in terms or conditions of access, membership, or participation in such organization because of race, color, creed,

sex, religion, national origin, disability, or familial status.

91 Acts, ch 184, §3
CS91, §601A.8A
C93, §216.8A
96 Acts, ch 1129, §28, 113

216.9 Unfair or discriminatory practices — education.

It is an unfair or discriminatory practice for any educational institution to discriminate on the basis of race, creed, color, sex, national origin, religion, or disability in any program or activity. Such discriminatory practices shall include but not be limited to the following practices:

1. Exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity except athletic programs;

2. Denial of comparable opportunity in intramural and interscholastic athletic programs;

3. Discrimination among persons in employment and the conditions of employment;

4. On the basis of sex, the application of any rule concerning the actual or potential parental, family or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions dependent upon the physician's diagnosis and certification.

For the purpose of this section "educational institution" includes any preschool, elementary, secondary, or community college, area education agency, or postsecondary college or university and their governing boards. This section does not prohibit an educational institution from maintaining separate toilet facilities, locker rooms or living facilities for the different sexes so long as comparable facilities are provided. Nothing in this section shall be construed as prohibiting any bona fide religious institution from imposing qualifications based on religion when such qualifications are related to a bona fide religious purpose or any institution from admitting students of only one sex.

[C79, 81, §601A.9]
85 Acts, ch 214, §1; 86 Acts, ch 1245, §1496; 90 Acts, ch 1253, §121
C93, §216.9

216.10 Unfair credit practices.

It shall be an unfair or discriminatory practice for any:

1. Creditor to refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

2. Person authorized or licensed to do business in this state pursuant to chapter 524, 533, 534, 536, or 536A to refuse to loan or extend credit or to impose terms or conditions more onerous than those regularly extended to persons of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

3. Creditor to refuse to offer credit life or health and accident insurance because of color, creed, national origin, race, religion, marital status, age, physical disability, sex, or familial status. Refusal by a creditor to offer credit life or health and accident insurance based upon the age or physical disability of the consumer shall not be an unfair or discriminatory practice if such denial is based solely upon bona fide underwriting considerations not prohibited by title XIII, subtitle 1.

The provisions of this section shall not be construed by negative implication or otherwise to narrow or restrict any other provisions of this chapter.

[C75, 77, §601A.9; C79, 81, §601A.10]
90 Acts, ch 1212, §1
C93, §216.10

216.11 Aiding, abetting, or retaliation.

It shall be an unfair or discriminatory practice for:

1. Any person to intentionally aid, abet, compel, or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter.

2. Any person to discriminate or retaliate against another person in any of the rights protected against discrimination by this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter.

[C66, 71, §105A.8; C73, §601A.8; C75, 77, §601A.10; C79, 81, §601A.11]
91 Acts, ch 94, §1
C93, §216.11

216.11A Interference, coercion, or intimidation.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, on account of the person having exercised or enjoyed, or on account of the person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 216.8, 216.8A, or 216.15A.

91 Acts, ch 184, §4
CS91, §601A.11A
92 Acts, ch 1129, §5
C93, §216.11A

216.12 Exceptions.

The provisions of sections 216.8 and 216.8A shall not apply to:

1. Any bona fide religious institution with re-

spect to any qualifications it may impose based on religion, when the qualifications are related to a bona fide religious purpose unless the religious institution owns or operates property for a commercial purpose or membership in the religion is restricted on account of race, color, or national origin.

2. The rental or leasing of a dwelling in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of the housing accommodations.

3. The rental or leasing of less than four rooms within a single dwelling by the occupant or owner of the dwelling, if the occupant or owner resides in the dwelling.

4. Discrimination on the basis of familial status involving dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program that the commission determines to be consistent with determinations made by the United States secretary of housing and urban development, and housing for older persons. As used in this subsection, *"housing for older persons"* means housing communities consisting of dwellings intended for either of the following:

a. For eighty percent occupancy by at least one person fifty-five years of age or older per unit, and providing significant facilities and services specifically designed to meet the physical or social needs of the persons and the housing facility must publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

b. For and occupied solely by persons sixty-two years of age or older.

5. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the owner resides in one of the housing accommodations for which the owner qualifies for the homestead tax credit under section 425.1.

6. Discrimination on the basis of sex involving the rental, leasing, or subleasing of a dwelling within which residents of both sexes would be forced to share a living area.

The exceptions to the requirements of sections 216.8 and 216.8A provided for dwellings specified in subsections 2, 3, and 5 do not apply to advertising related to those dwellings.

[C71, §105A.14; C73, §601A.14; C75, 77, §601A.11; C79, 81, §601A.12]

89 Acts, ch 205, §3, 4; 91 Acts, ch 184, §5 – 7; 92 Acts, ch 1129, §6 – 9

C93, §216.12

95 Acts, ch 129, §5 – 7

216.12A Additional housing exception.

Sections 216.8 and 216.8A do not prohibit a person engaged in the business of furnishing appraisals of real estate from taking into consideration factors other than race, color, creed, sex, religion, national origin, disability, or familial status in appraising real estate.

91 Acts, ch 184, §8

CS91, §601A.12A

92 Acts, ch 1129, §10

C93, §216.12A

216.13 Exceptions for retirement plans, abortion coverage, life, disability and health benefits.

The provisions of this chapter relating to discrimination because of age do not apply to a retirement plan or benefit system of an employer unless the plan or system is a mere subterfuge adopted for the purpose of evading this chapter.

1. However, a retirement plan or benefit system shall not require the involuntary retirement of a person under the age of seventy because of that person's age. This paragraph does not prohibit the following:

a. The involuntary retirement of a person who has attained the age of sixty-five and has for the two prior years been employed in a bona fide executive or high policy-making position and who is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan of the employer which equals twenty-seven thousand dollars. This retirement benefit test may be adjusted according to the regulations prescribed by the United States secretary of labor pursuant to Public Law 95-256, section 3.

b. The involuntary retirement of a person covered by a collective bargaining agreement which was entered into by a labor organization and was in effect on September 1, 1977. This exemption does not apply after the termination of that agreement or January 1, 1980, whichever first occurs.

2. A health insurance program provided by an employer may exclude coverage of abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

3. An employee welfare plan may provide life, disability or health insurance benefits which vary by age based on actuarial differences if the employer contributes equally for all the participating employees or may provide for employer contributions differing by age if the benefits for all the participating employees do not vary by age.

[C71, §105A.15; C73, §601A.15; C75, 77, §601A.12; C79, 81, §601A.13]

84 Acts, ch 1011, §1

C93, §216.13

216.14 Promotion or transfer.

After a person with a disability is employed, the employer shall not be required under this chapter to promote or transfer the person to another job or occupation, unless, prior to the transfer, the person with the disability, by training or experience, is qualified for the job or occupation. Any collective bargaining agreement between an employer and labor organization shall contain this section as part of the agreement.

[C73, §601A.16; C75, 77, §601A.13; C79, 81, §601A.14]

C93, §216.14

96 Acts, ch 1129, §29

216.15 Complaint — hearing.

1. Any person claiming to be aggrieved by a discriminatory or unfair practice may, in person or by an attorney, make, sign, and file with the commission a verified, written complaint which shall state the name and address of the person, employer, employment agency, or labor organization alleged to have committed the discriminatory or unfair practice of which complained, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.

2. Any place of public accommodation, employer, labor organization, or other person who has any employees or members who refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a verified written complaint in triplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

3. *a.* After the filing of a verified complaint, a true copy shall be served within twenty days by certified mail on the person against whom the complaint is filed. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge employed either by the commission or by the division of administrative hearings created by section 10A.801, who shall then issue a determination of probable cause or no probable cause.

b. For purposes of this chapter, an administrative law judge issuing a determination of probable cause or no probable cause under this section is exempt from section 17A.17.

c. If the administrative law judge concurs with the investigating official that probable cause exists regarding the allegations of the complaint, the staff of the commission shall promptly endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion. If the administrative law judge finds that no probable cause exists, the administrative law judge shall issue a final order dismissing the complaint and shall promptly mail a copy to the complainant and to the respondent by certified mail. A finding of probable cause shall not be introduced into evidence in an action brought under section 216.16.

d. The commission staff must endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion for a period of thirty days following the initial conciliation meeting between the respondent and the commission staff after a finding of probable cause. After the expiration of thirty days, the director may order the conciliation conference and persuasion procedure provided in this section to be bypassed when the director determines the procedure is unworkable by reason of past patterns and practices of the respondent, or a statement by the respondent that the respondent is unwilling to continue with the conciliation. The director must have the approval of a commissioner before bypassing the conciliation, conference and persuasion procedure. Upon the bypassing of conciliation, the director shall state in writing the reasons for bypassing.

4. The members of the commission and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by mediation, conference, conciliation, and persuasion, unless such disclosure is made in connection with the conduct of such investigation.

5. When the director is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, and the thirty-day period provided for in subsection 3 has expired without agreement, the director with the approval of a commissioner, shall issue and cause to be served a written notice specifying the charges in the complaint as they may have been amended and the reasons for bypassing conciliation, if the conciliation is bypassed, and requiring the respondent to answer the charges of the complaint at a hearing before the commission, a commissioner, or a person designated by the commission to conduct the hearing, hereafter referred to as the administrative law judge, and at a time and place to be specified in the notice.

6. The case in support of such complaint shall be presented at the hearing by one of the commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness nor participate in the deliberations of the commission in such case.

7. The hearing shall be conducted in accordance with the provisions of chapter 17A for contested cases. The burden of proof in such a hearing shall be on the commission.

8. If upon taking into consideration all of the evidence at a hearing, the commission determines that the respondent has engaged in a discrimina-

tory or unfair practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to any other public officers and persons as the commission deems proper.

a. For the purposes of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:

(1) Hiring, reinstatement or upgrading of employees with or without pay. Interim earned income and unemployment compensation shall operate to reduce the pay otherwise allowable.

(2) Admission or restoration of individuals to a labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such programs.

(3) Admission of individuals to a public accommodation or an educational institution.

(4) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.

(5) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory or unfair practice.

(6) Reporting as to the manner of compliance.

(7) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission and inclusion of notices in advertising material.

(8) Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.

b. In addition to the remedies provided in the preceding provisions of this subsection, the commission may issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter as follows:

(1) In the case of a respondent operating by virtue of a license issued by the state or a political subdivision or agency, if the commission, upon notice to the respondent with an opportunity to be heard, determines that the respondent has engaged in a discriminatory or unfair practice and that the practice was authorized, requested, commanded, performed or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the licensing agency. Unless the commission finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the licensing agency. If a certification is made pursuant to this subsection, the licensing agency may initiate licensee disciplinary procedures.

(2) In the case of a respondent who is found by the commission to have engaged in a discriminatory or unfair practice in the course of performing under a contract or subcontract with the state or political subdivision or agency, if the practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the contracting agency. Unless the commission's finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.

(3) Upon receiving a certification made under this subsection, a contracting agency may take appropriate action to terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with the provisions of this chapter; and assist the state and all political subdivisions and agencies thereof to refrain from entering into further contracts.

c. The election of an affirmative order under paragraph *"b"* of this subsection shall not bar the election of affirmative remedies provided in paragraph *"a"* of this subsection.

9. The terms of a conciliation or mediation agreement reached with the respondent may require the respondent to refrain in the future from committing discriminatory or unfair practices of the type stated in the agreement, to take remedial action as in the judgment of the commission will carry out the purposes of this chapter, and to consent to the entry in an appropriate district court of a consent decree embodying the terms of the conciliation or mediation agreement. Violation of such a consent decree may be punished as contempt by the court in which it is filed, upon a showing by the commission of the violation at any time within six months of its occurrence. At any time in its discretion, the commission may investigate whether the terms of the agreement are being complied with by the respondent.

Upon a finding that the terms of the conciliation or mediation agreement are not being complied with by the respondent, the commission shall take appropriate action to assure compliance.

10. If, upon taking into consideration all of the evidence at a hearing, the commission finds that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue an order denying relief and stating the findings of fact and conclusions of the commission, and

shall cause a copy of the order dismissing the complaint to be served by certified mail on the complainant and the respondent.

11. The commission shall establish rules to govern, expedite, and effectuate the procedures established by this chapter and its own actions thereunder.

12. A claim under this chapter shall not be maintained unless a complaint is filed with the commission within one hundred eighty days after the alleged discriminatory or unfair practice occurred.

13. The commission or a party to a complaint may request mediation of the complaint at any time during the commission's processing of the complaint. If the complainant and respondent participate in mediation, any mediation agreement may be enforced pursuant to this section. Mediation may be discontinued at the request of any party or the commission.

[C66, 71, §105A.9; C73, §601A.9; C75, 77, §601A.14; C79, 81, §601A.15]

88 Acts, ch 1109, §27, 28

C93, §216.15

95 Acts, ch 129, §8 – 11; 98 Acts, ch 1202, §36, 46

216.15A Additional proceedings — housing discrimination.

1. *a.* The commission may join a person not named in the complaint as an additional or substitute respondent if in the course of the investigation, the commission determines that the person should be alleged to have committed a discriminatory housing or real estate practice.

b. In addition to the information required in the notice, the commission shall include in a notice to a respondent joined under this subsection an explanation of the basis for the determination under this subsection that the person is properly joined as a respondent.

2. *a.* The commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in mediation with respect to the complaint.

b. A mediation agreement is an agreement between a respondent and the complainant and is subject to commission approval.

c. A mediation agreement may provide for binding arbitration or other method of dispute resolution. Dispute resolution that results from a mediation agreement may authorize appropriate relief, including monetary relief.

d. A mediation agreement shall be made public unless the complainant and respondent agree otherwise, and the commission determines that disclosure is not necessary to further the purposes of this chapter relating to unfair or discriminatory practices in housing or real estate.

e. The proceedings or results of mediation shall not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons who are party to the mediation.

f. After the completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent information derived from the investigation and the final investigation report relating to that investigation.

g. When the commission has reasonable cause to believe that a respondent has breached a mediation agreement, the commission shall refer this matter to an assistant attorney general with a recommendation that a civil action be filed for the enforcement of the agreement. The assistant attorney general may commence a civil action in the appropriate district court not later than the expiration of ninety days after referral of the breach.

3. *a.* If the commission concludes, following the filing of a complaint, that prompt judicial action is necessary to carry out the purposes of this chapter relating to unfair or discriminatory housing or real estate practices, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint.

b. On receipt of the commission's authorization, the attorney general shall promptly file the action.

c. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Iowa rules of civil procedure.

d. The filing of a civil action under this section does not affect the initiation or continuation of administrative proceedings in regard to an administrative hearing.

4. *a.* The commission shall prepare a final investigative report.

b. A final report under this section may be amended by the commission if additional evidence is discovered.

5. *a.* The commission shall determine based on the facts whether probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur.

b. The commission shall make its determination under paragraph *"a"* not later than one hundred days after a complaint is filed unless any of the following applies:

(1) It is impracticable to make the determination within that time period.

(2) The commission has approved a mediation agreement relating to the complaint.

c. If it is impracticable to make the determination within the time period provided by paragraph *"b"*, the commission shall notify the complainant and respondent in writing of the reasons for the delay.

d. If the commission determines that probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about

to occur, the commission shall immediately issue a determination unless the commission determines that the legality of a zoning or land use law or ordinance is involved as provided in subsection 7.

6. *a.* A determination issued under subsection 5 must include all of the following:

(1) Must consist of a short and plain statement of the facts on which the commission has found probable cause to believe that a discriminatory housing or real estate practice has occurred or is about to occur.

(2) Must be based on the final investigative report.

(3) Need not be limited to the facts or grounds alleged in the complaint.

b. Not later than twenty days after the commission issues a determination, the commission shall send a copy of the determination with information concerning the election under section 216.16A to all of the following persons:

(1) Each respondent, together with a notice of the opportunity for a hearing as provided under subsection 10.

(2) Each aggrieved person on whose behalf the complaint was filed.

7. If the commission determines that the matter involves the legality of a state or local zoning or other land use ordinance, the commission shall not issue a determination and shall immediately refer the matter to the attorney general for appropriate action.

8. *a.* If the commission determines that no probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the commission shall promptly dismiss the complaint.

b. The commission shall make public disclosure of each dismissal under this section.

9. The commission shall not issue a determination under this section regarding an alleged discriminatory housing or real estate practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing or real estate practice.

10. *a.* If a timely election is not made under section 216.16A, the commission shall provide for a hearing on the charges in the complaint.

b. Except as provided by paragraph *"c"*, the hearing shall be conducted in accordance with chapter 17A for contested cases.

c. A hearing under this section shall not be continued regarding an alleged discriminatory housing or real estate practice after the beginning of the trial of a civil action commenced by the aggrieved person under federal or state law seeking relief with respect to that discriminatory housing or real estate practice.

11. *a.* If the commission determines at a hearing under subsection 10 that a respondent has engaged or is about to engage in a discriminatory housing or real estate practice, the commission may order the appropriate relief, including actual damages, reasonable attorney's fees, court costs, and other injunctive or equitable relief.

b. To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed the following applicable amount:

(1) Ten thousand dollars if the respondent has not been adjudged by the order of the commission or a court to have committed a prior discriminatory housing or real estate practice.

(2) Except as provided by paragraph *"c"*, twenty-five thousand dollars if the respondent has been adjudged by order of the commission or a court to have committed one other discriminatory housing or real estate practice during the five-year period ending on the date of the filing of the complaint.

(3) Except as provided by paragraph *"c"*, fifty thousand dollars if the respondent has been adjudged by order of the commission or a court to have committed two or more discriminatory housing or real estate practices during the seven-year period ending on the date of the filing of the complaint.

c. If the acts constituting the discriminatory housing or real estate practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing or real estate practice, the civil penalties in paragraph *"b"*, subparagraphs (2) and (3) may be imposed without regard to the period of time within which any other discriminatory housing or real estate practice occurred.

d. At the request of the commission, the attorney general shall initiate legal proceedings to recover a civil penalty due under this section. Funds collected under this section shall be paid to the treasurer of state for deposit in the state treasury to the credit of the general fund.

12. This section applies only to the following:

a. Complaints which allege a violation of the prohibitions contained in section 216.8 or 216.8A.

b. Complaints which allege a violation of section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in section 216.8 or 216.8A.

13. If a provision of this section applies under the terms of subsection 12, and the provision of this section conflicts with a provision of section 216.15, then the provision contained within this section shall prevail. Similarly, if a provision of section 216.16A or 216.17A conflicts with a provision of section 216.16 or 216.17, then the provision

contained in section 216.16A or 216.17A shall prevail.

91 Acts, ch 184, §9
CS91, §601A.15A
92 Acts, ch 1129, §11, 12; 92 Acts, ch 1163, §108
C93, §216.15A
2001 Acts, ch 24, §38

216.15B Formal mediation — confidentiality.

1. A mediator may be designated in writing by the commission to conduct formal mediation of a complaint filed under this chapter. The written designation must specifically refer to this section.

2. If formal mediation is conducted by a mediator pursuant to this section, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.

95 Acts, ch 129, §12; 98 Acts, ch 1062, §10; 99 Acts, ch 114, §12; 2001 Acts, ch 71, §1

216.16 Sixty-day administrative release.

1. A person claiming to be aggrieved by an unfair or discriminatory practice must initially seek an administrative relief by filing a complaint with the commission in accordance with section 216.15. This provision also applies to persons claiming to be aggrieved by an unfair or discriminatory practice committed by the state or an agency or political subdivision of the state, notwithstanding the terms of the Iowa administrative procedure Act. A complainant after the proper filing of a complaint with the commission, may subsequently commence an action for relief in the district court if all of the following conditions have been satisfied:

a. The complainant has timely filed the complaint with the commission as provided in section 216.15, subsection 12; and

b. The complaint has been on file with the commission for at least sixty days and the commission has issued a release to the complainant pursuant to subsection 2 of this section.

2. Upon a request by the complainant, and after the expiration of sixty days from the timely filing of a complaint with the commission, the commission shall issue to the complainant a release stating that the complainant has a right to commence an action in the district court. A release under this subsection shall not be issued if a finding of no probable cause has been made on the complaint by the administrative law judge charged with that duty under section 216.15, subsection 3, a conciliation agreement has been executed under section 216.15, the commission has served notice of hearing upon the respondent pursuant to section 216.15, subsection 5, or the complaint is closed as an administrative closure and two years have elapsed since the issuance date of the closure.

Notwithstanding section 216.15, subsection 4, a party may obtain a copy of all documents contained in a case file where the commission has issued a release to the complainant pursuant to this subsection.

3. An action authorized under this section is barred unless commenced within ninety days after issuance by the commission of a release under subsection 2 of this section. If a complainant obtains a release from the commission under subsection 2 of this section, the commission is barred from further action on that complaint.

4. Venue for an action under this section shall be in the county in which the respondent resides or has its principal place of business, or in the county in which the alleged unfair or discriminatory practice occurred.

5. The district court may grant any relief in an action under this section which is authorized by section 216.15, subsection 8 to be issued by the commission. The district court may also award the respondent reasonable attorney's fees and court costs when the court finds that the complainant's action was frivolous.

6. It is the legislative intent of this chapter that every complaint be at least preliminarily screened during the first one hundred twenty days.

This section does not authorize administrative closures if an investigation is warranted.

[C79, 81, §601A.16]

84 Acts, ch 1096, §2; 85 Acts, ch 197, §10; 86 Acts, ch 1245, §263; 88 Acts, ch 1109, §29; 90 Acts, ch 1040, §1, 2
C93, §216.16

For provision governing conflicts between this section and section 216.16A, see §216.15A, subsection 13

216.16A Civil action elected — housing.

1. *a.* A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the charges asserted in the complaint decided in a civil action as provided by section 216.17A.

b. The election must be made not later than twenty days after the date of receipt by the electing person of service under section 216.15A, subsection 5, or in the case of the commission, not later than twenty days after the date the determination was issued.

c. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the election relates.

d. The election to have the charges of a complaint decided in a civil action as provided in paragraph *"a"* is only available if one of the following is alleged:

(1) It is alleged that there has been a violation of section 216.8 or 216.8A.

(2) It is alleged that there has been a violation of section 216.11 or 216.11A arising out of an alleged violation of the prohibitions contained in

section 216.8 or 216.8A.

2. *a.* An aggrieved person may file a civil action in district court not later than two years after the occurrence of the termination of an alleged discriminatory housing or real estate practice, or the breach of a mediation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing or real estate practice or breach.

b. The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge based on the discriminatory housing or real estate practice. This subsection does not apply to actions arising from a breach of a mediation agreement.

c. An aggrieved person may file an action under this subsection whether or not a discriminatory housing or real estate complaint has been filed under section 216.15, and without regard to the status of any discriminatory housing or real estate complaint filed under that section.

d. If the commission has obtained a mediation agreement with the consent of an aggrieved person, the aggrieved person shall not file an action under this subsection with respect to the alleged discriminatory practice that forms the basis for the complaint except to enforce the terms of the agreement.

e. An aggrieved person shall not file an action under this subsection with respect to an alleged discriminatory housing or real estate practice that forms the basis of a charge issued by the commission if the commission has begun a hearing on the record under this chapter with respect to the charge.

f. In an action filed in district court under this subsection, the court may, upon a finding of discrimination, order any of the remedies provided for in section 216.17A, subsection 6.

91 Acts, ch 184, §10
CS91, §601A.16A
92 Acts, ch 1129, §13, 14
C93, §216.16A
95 Acts, ch 129, §13, 14

216.17 Judicial review — enforcement.

1. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petition for judicial review may be filed in the district court in which an enforcement proceeding under subsection 2 may be brought.

For purposes of the time limit for filing a petition for judicial review under the Iowa administrative procedure Act, specified by section 17A.19, the issuance of a final decision of the commission under this chapter occurs on the date notice of the decision is mailed by certified mail, to the parties.

Notwithstanding the time limit provided in section 17A.19, subsection 3, a petition for judicial review of no-probable-cause decisions and other final agency actions which are not of general applicability must be filed within thirty days of the issuance of the final agency action.

2. The commission may obtain an order of court for the enforcement of commission orders in a proceeding as provided in this section. Such an enforcement proceeding shall be brought in the district court of the district in the county in which the alleged discriminatory or unfair practice which is the subject of the commission's order was committed, or in which any respondent required in the order to cease or desist from a discriminatory or unfair practice or to take other affirmative action, resides, or transacts business.

3. Such an enforcement proceeding shall be initiated by the filing of a petition in such court and the service of a copy thereof upon the respondent. Thereupon the commission shall file with the court a transcript of the record of the hearing before it. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside the order of the commission, in whole or in part.

4. An objection that has not been urged before the commission shall not be considered by the court in an enforcement proceeding, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

5. Any party to the enforcement proceeding may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereof, providing such party shall show reasonable grounds for the failure to adduce such evidence before the commission.

6. In the enforcement proceeding the court shall determine its order on the same basis as it would in a proceeding reviewing commission action under section 17A.19.

7. The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.

8. The commission may appear in court by its own attorney.

9. Petitions filed under this section shall be heard expeditiously and determined upon the transcript filed without requirement for printing.

10. If no proceeding to obtain judicial review is instituted within thirty days from the issuance of an order of the commission under section 216.15 or 216.15A, the commission may obtain an order of the court for the enforcement of the order upon showing that respondent is subject to the jurisdiction of the commission and resides or transacts business within the county in which the petition

for enforcement is brought.

[C66, 71, §105A.10; C73, §601A.10; C75, 77, §601A.15; C79, 81, §601A.17]

83 Acts, ch 57, §1; 92 Acts, ch 1129, §15

C93, §216.17

98 Acts, ch 1202, §37, 46

For provision governing conflicts between this section and section 216.17A, see §216.15A, subsection 13

216.17A Civil proceedings — housing.

1. *a.* If timely election is made under section 216.16A, subsection 1, the commission shall authorize, and not later than thirty days after the election is made, the attorney general shall file a civil action on behalf of the aggrieved person in a district court seeking relief.

b. Venue for an action under this section is in the county in which the respondent resides or has its principal place of business, or in the county in which the alleged discriminatory housing or real estate practice occurred.

c. An aggrieved person may intervene in the action.

d. If the district court finds that a discriminatory housing or real estate practice has occurred or is about to occur, the district court may grant as relief any relief that a court may grant in a civil action under subsection 6.

e. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the district court shall not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the district court.

2. A commission order under section 216.15A, subsection 11, and a commission order that has been substantially affirmed by judicial review, do not affect a contract, sale, encumbrance, or lease that was consummated before the commission issued the order and involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge issued under this chapter.

3. If the commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the commission, not later than thirty days after the date of issuance of the order, shall do all of the following:

a. Send copies of the findings and the order to the governmental agency.

b. Recommend to the governmental agency appropriate disciplinary action.

4. If the commission issues an order against a respondent against whom another order was issued within the preceding five years under section 216.15A, subsection 11, the commission shall send a copy of each order issued under that section to the attorney general.

5. On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory practice is alleged, the district court may appoint an attorney for the person.

6. In an action under subsection 1 and section 216.16A, subsection 2, if the district court finds that a discriminatory housing or real estate practice has occurred or is about to occur, the district court may award or issue to the plaintiff one or more of the following:

a. Actual and punitive damages.

b. Reasonable attorney's fees.

c. Court costs.

d. Subject to subsection 7, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

7. Relief granted under this section does not affect a contract, sale, encumbrance, or lease that was consummated before the granting of the relief and involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint under this chapter or a civil action under this section.

8. *a.* On the request of the commission, the attorney general may intervene in an action under section 216.16A, subsection 2, if the commission certifies that the case is of general public importance.

b. The attorney general may obtain the same relief available to the attorney general under subsection 9.

9. *a.* On the request of the commission, the attorney general may file a civil action in district court for appropriate relief if the commission has reasonable cause to believe that any of the following applies:

(1) A person is engaged in a pattern or practice of resistance to the full enjoyment of any housing right granted by this chapter.

(2) A person has been denied any housing right granted by this chapter and that denial raises an issue of general public importance.

b. In an action under this subsection and subsection 8, the district court may do any of the following:

(1) Order preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of housing rights as necessary to assure the full enjoyment of the housing rights granted by this chapter.

(2) Order another appropriate relief, including the awarding of monetary damages, reasonable attorney's fees, and court costs.

(3) To vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed any of the following:

(a) Fifty thousand dollars for a first violation.

(b) One hundred thousand dollars for a second or subsequent violation.

c. A person may intervene in an action under this section if the person is any of the following:

(1) An aggrieved person to the discriminatory housing or real estate practice.

(2) A party to a mediation agreement concerning the discriminatory housing or real estate practice.

10. The attorney general, on behalf of the commission or other party at whose request a subpoena is issued, may enforce the subpoena in appropriate proceedings in district court.

11. A court in a civil action brought under this section or the commission in an administrative hearing under section 216.15A, subsection 11, may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.

91 Acts, ch 184, §11
CS91, §601A.17A
92 Acts, ch 1129, §16, 17
C93, §216.17A
95 Acts, ch 129, §15 – 17

216.18 Rule of construction.

This chapter shall be construed broadly to effectuate its purposes.

[C66, 71, §105A.11; C73, §601A.11; C75, 77, §601A.16; C79, 81, §601A.18]
C93, §216.18

216.19 Local laws implementing this chapter.

Nothing in this chapter shall be construed as indicating an intent on the part of the general assembly to occupy the field in which this chapter operates to the exclusion of local laws not inconsistent with this chapter that deal with the same subject matter.

Nothing in this chapter shall be construed as indicating an intent to prohibit an agency or commission of local government having as its purpose the investigation and resolution of violations of this chapter from developing procedures and remedies necessary to insure the protection of rights secured by this chapter. All cities shall, to the extent possible, protect the rights of the citizens of this state secured by the Iowa civil rights Act. Nothing in this chapter shall be construed as limiting a city or local government from enacting any ordinance or other law which prohibits broader or different categories of unfair or discriminatory practices.

An agency or commission of local government and the Iowa civil rights commission shall co-operate in the sharing of data and research, and coordinating investigations and conciliations in order to expedite claims of unlawful discrimination and eliminate needless duplication. A city with a population of twenty-nine thousand, or greater, shall maintain an independent local civil rights agency or commission consistent with commission rules adopted pursuant to chapter 17A. An agency or commission for which a staff is provided shall have control over such staff. A city required to maintain a local civil rights agency or commission shall structure and adequately fund the agency or commission in order to effect cooperative undertakings with the Iowa civil rights commission and to aid in effectuating the purposes of this chapter. The Iowa civil rights commission may enter into cooperative agreements with any local agency or commission to effectuate the purposes of this chapter. Such agreements may include technical and clerical assistance and reimbursement of expenses incurred by the local agency or commission in the performance of the agency's or commission's duties if funds for this purpose are appropriated by the general assembly.

The Iowa civil rights commission may designate an unfunded local agency or commission as a referral agency. A local agency or commission shall not be designated a referral agency unless the ordinance creating it provides the same rights and remedies as are provided in this chapter. The Iowa civil rights commission shall establish by rules the procedures for designating a referral agency and the qualifications to be met by a referral agency.

A complainant who files a complaint with a referral agency having jurisdiction shall be prohibited from filing a complaint with the Iowa civil rights commission alleging violations based upon the same acts or practices cited in the original complaint; and a complainant who files a complaint with the commission shall be prohibited from filing a complaint with the referral agency alleging violations based upon the same acts or practices cited in the original complaint. However, the Iowa civil rights commission in its discretion may refer a complaint filed with the commission to a referral agency having jurisdiction over the parties for investigation and resolution; and a referral agency in its discretion may refer a complaint filed with that agency to the commission for investigation and resolution. The commission may adopt rules establishing the procedures for referral of complaints. A referral agency may refuse to accept a case referred to it by the Iowa civil rights commission if the referral agency is unable to effect proper administration of the complaint. It shall be the burden of the referral agency to demonstrate that it is unable to properly administer that complaint.

A final decision by a referral agency shall be subject to judicial review as provided in section 216.17 in the same manner and to the same extent as a final decision of the Iowa civil rights commission.

The referral of a complaint by the Iowa civil rights commission to a referral agency or by a referral agency to the Iowa civil rights commission

shall not affect the right of a complainant to commence an action in the district court under section 216.16.

[C66, 71, §105A.12; C73, §601A.12; C75, 77, §601A.17; C79, 81, §601A.19]

90 Acts, ch 1166, §1

C93, §216.19

216.20 Effect on other law.

1. This chapter does not affect:

a. A reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling.

b. Tenancy of an individual that would constitute a direct threat to the health or safety of other individuals or tenancy that would result in substantial physical damage to the property of others.

2. This chapter does not affect a requirement of nondiscrimination in other state or federal law.

91 Acts, ch 184, §12

CS91, §601A.20

92 Acts, ch 1129, §18

C93, §216.20

CHAPTER 216A

DEPARTMENT OF HUMAN RIGHTS

This chapter not enacted as a part of this title; transferred from chapter 601K in Code 1993

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SUBCHAPTER 1

ADMINISTRATION

216A.1 Department of human rights.

A department of human rights is created, with the following divisions:

1. Division of Latino affairs.
2. Division on the status of women.
3. Division of persons with disabilities.
4. Division of community action agencies.
5. Division of deaf services.
6. Division of criminal and juvenile justice planning.
7. Division on the status of African-Americans.

86 Acts, ch 1245, §1201
C87, §601K.1
87 Acts, ch 115, §70; 88 Acts, ch 1277, §27; 89 Acts, ch 83, §78; 90 Acts, ch 1180, §2; 91 Acts, ch 50, §2; 91 Acts, ch 109, §8
C93, §216A.1

216A.2 Appointment of department director and administrators.

The governor shall appoint a director of the department of human rights, subject to confirmation by the senate. The department director shall serve at the pleasure of the governor. The department director shall:

1. Establish general operating policies for the department to provide general uniformity among the divisions while providing for necessary flexibility.
2. Receive budgets submitted by each commission and reconcile the budgets among the divisions. The department director shall submit a budget for the department, subject to the budget requirements pursuant to chapter 8.
3. Coordinate and supervise personnel services and shared administrative support services to assure maximum support and assistance to the divisions.
4. Identify and, with the chief administrative officers of each division, facilitate the opportunities for consolidation and efficiencies within the department.
5. In cooperation with the commissions, make recommendations to the governor regarding the appointment of the administrator of each division.
6. Serve as an ex officio member of all commissions or councils within the department.
7. Serve as chairperson of the human rights administrative-coordinating council.
8. Evaluate each administrator, after receiving recommendations from the appropriate commissions or councils, and submit a written report of the completed evaluations to the governor and the appropriate commissions or councils, annually.

The governor shall appoint the administrators of each of the divisions subject to confirmation by the senate. Each administrator shall serve at the pleasure of the governor and is exempt from the

merit system provisions of chapter 19A. The governor shall set the salary of the division administrators within the ranges set by the general assembly.

86 Acts, ch 1245, §1202
C87, §601K.2
88 Acts, ch 1158, §95; 90 Acts, ch 1180, §3
C93, §216A.2
95 Acts, ch 212, §9; 99 Acts, ch 201, §10, 11
Confirmation, see §2.32

216A.3 Human rights administrative-coordinating council.

1. A human rights administrative-coordinating council composed of nine members is created within the department of human rights. The council is composed of the director, who shall act as the chairperson of the council, and the administrators within the department.

2. The council shall meet periodically to:

a. Identify areas where the divisions within the department might coordinate efforts or share administrative or other support functions to provide greater efficiencies in operation including, but not limited to, accounting, clerical, recordkeeping, and administrative support functions.

b. Develop cooperative arrangements and shared services among the divisions to achieve greater efficiencies, and may establish contracts and agreements between or among the divisions to provide for shared services.

c. Transfer funds within the divisions agreeing to shared services for the implementation of the contracts or agreements between divisions.

d. Make recommendations to the governor and general assembly regarding additional consolidation and coordination that would require legislative action.

e. Advise the department director regarding actions by and for the department.

f. Establish goals and objectives for the department.

86 Acts, ch 1245, §1203
C87, §601K.3
88 Acts, ch 1277, §28; 90 Acts, ch 1180, §4
C93, §216A.3

216A.4 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Department"* means the department of human rights.

2. *"Department director"* means the director of the department of human rights.

86 Acts, ch 1245, §1204
C87, §601K.4
90 Acts, ch 1180, §5
C93, §216A.4

216A.5 Repeal. Repealed by 97 Acts, ch 52, § 1.

216A.6 Confidentiality of individual client advocacy records.

1. For purposes of this section, unless the context otherwise requires:

a. *"Advocacy services"* means services in which a department staff member writes or speaks in support of a client or a client's cause or refers a person to another service to help alleviate or solve a problem.

b. *"Individual client advocacy records"* means those files or records which pertain to problems divulged by a client to the department or any related papers or records which are released to the department about a client for the purpose of assisting the client.

2. Information pertaining to clients receiving advocacy services shall be held confidential, including but not limited to the following:

a. Names and addresses of clients receiving advocacy services.

b. Information about a client reported on the initial advocacy intake form and all documents, information, or other material relating to the advocacy issues or to the client which could identify the client, or divulge information about the client.

c. Information concerning the social or economic conditions or circumstances of particular clients who are receiving or have received advocacy services.

d. Department or division evaluations of information about a person seeking or receiving advocacy services.

e. Medical or psychiatric data, including diagnoses and past histories of disease or disability, concerning a person seeking or receiving advocacy services.

f. Legal data, including records which represent or constitute the work product of an attorney, which are related to a person seeking or receiving advocacy services.

3. Information described in subsection 2 shall not be disclosed or used by any person or agency except for purposes of administration of advocacy services, and shall not be disclosed to or used by a person or agency outside the department except upon consent of the client as evidenced by a signed release.

4. This section does not restrict the disclosure or use of information regarding the cost, purpose, number of clients served or assisted, and results of an advocacy program administered by the department, and other general and statistical information, so long as the information does not identify particular clients or persons provided with advocacy services.

88 Acts, ch 1106, §1
C89, §601K.6
C93, §216A.6

216A.7 through 216A.10 Reserved.

SUBCHAPTER 2

DIVISION OF LATINO AFFAIRS

216A.11 Definitions.

For purposes of this subchapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division of Latino affairs of the department of human rights.

2. *"Commission"* means the commission of Latino affairs.

3. *"Division"* means the division of Latino affairs of the department of human rights.

86 Acts, ch 1245, §1205
C87, §601K.11
90 Acts, ch 1180, §6
C93, §216A.11

216A.12 Commission of Latino affairs — terms — compensation.

The commission of Latino affairs consists of nine members, appointed by the governor. Commission members shall be appointed in compliance with sections 69.16 and 69.16A and with consideration given to geographic residence and density of Latino population represented by each member. The members of the commission shall be appointed during the month of June and shall serve for terms of two years commencing July 1 of each odd-numbered year. Members appointed shall continue to serve until their respective successors are appointed. Vacancies in the membership of the commission shall be filled by the original appointing authority and in the manner of the original appointments. Members shall receive actual expenses incurred while serving in their official capacity. Members may also be eligible to receive compensation as provided in section 7E.6.

86 Acts, ch 1245, §1206
C87, §601K.12
87 Acts, ch 115, §71; 90 Acts, ch 1180, §7; 91 Acts, ch 50, §1
C93, §216A.12
Confirmation, see §2.32

216A.13 Organization.

The commission shall select from its membership a chairperson and other officers as it deems necessary and shall meet not less than six times a year. A majority of the members of the commission shall constitute a quorum.

86 Acts, ch 1245, §1207
C87, §601K.13
C93, §216A.13

216A.14 Commission employees.

The commission may employ personnel who shall be qualified to assume the responsibilities of their several offices. The administrator shall be the administrative officer of the commission and shall serve the commission by gathering and disseminating information, forwarding proposals and evaluations to the governor, the general assembly, and state agencies, carrying out public education programs, conducting hearings and conferences, and performing other duties necessary for the proper operation of the commission. The administrator shall carry out programs and policies as determined by the commission.

86 Acts, ch 1245, §1208
C87, §601K.14
90 Acts, ch 1180, §8
C93, §216A.14

216A.15 Duties.

The commission shall:

1. Coordinate, assist, and cooperate with the efforts of state departments and agencies to serve the needs of Latino persons in the fields of education, employment, health, housing, welfare, and recreation.

2. Develop, coordinate, and assist other public organizations which serve Latino persons.

3. Evaluate existing programs and proposed legislation affecting Latino persons, and propose new programs.

4. Stimulate public awareness of the problems of Latino persons by conducting a program of public education and encouraging the governor and the general assembly to develop programs to deal with these problems.

5. Conduct training programs for Latino persons to enable them to assume leadership positions on the community level.

6. Conduct a survey of the Latino people in Iowa in order to ascertain their needs.

7. Work to establish a Latino information center in the state of Iowa.

8. Pursuant to section 216A.2, be responsible for budgetary and personnel decisions for the commission and division.

9. Maintain information on the qualifications of Spanish language interpreters and maintain and provide a list of those deemed qualified to Iowa courts or administrative agencies, as requested.

86 Acts, ch 1245, §1209
C87, §601K.15
90 Acts, ch 1180, §9
C93, §216A.15

216A.16 Powers.

The commission shall have all powers necessary to carry out the functions and duties specified in this subchapter, including, but not limited to the power to establish advisory committees on special studies, to solicit and accept gifts and grants, adopt rules according to chapter 17A for the commission and division, and to contract with public and private groups to conduct its business. All departments, divisions, agencies and offices of the

state shall make available upon request of the commission information which is pertinent to the subject matter of the study and which is not by law confidential.

86 Acts, ch 1245, §1210
C87, §601K.16
C93, §216A.16

216A.17 Report.

The commission shall make a detailed report of its activities, studies, findings, conclusions and recommendations to the general assembly not later than February 15 of each odd-numbered year.

86 Acts, ch 1245, §1211
C87, §601K.17
C93, §216A.17

216A.18 through 216A.30 Reserved.

SUBCHAPTER 3

216A.31 through 216A.50 Reserved.

SUBCHAPTER 4

DIVISION ON THE STATUS OF WOMEN

216A.51 Definitions.

For purposes of this subchapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division on the status of women of the department of human rights.
2. *"Commission"* means the commission on the status of women.
3. *"Division"* means the division on the status of women of the department of human rights.

86 Acts, ch 1245, §1221
C87, §601K.51
87 Acts, ch 115, §2
C93, §216A.51

216A.52 Commission created.

The commission on the status of women is created, composed of thirteen members as follows:

1. Four members of the general assembly serving as ex officio nonvoting members, one to be appointed by the speaker of the house from the membership of the house, one to be appointed by the minority leader of the house from the membership of the house, one to be appointed by the president of the senate, after consultation with the majority leader of the senate, from the membership of the senate, and one to be appointed by the minority leader of the senate, after consultation with the president of the senate, from the membership of the senate.
2. Nine members to be appointed by the governor representing a cross section of the citizens of the state, subject to confirmation by the senate.

No more than a simple majority of the commission shall be of the same political party. The members of the commission shall elect one of its members to serve as chairperson of the commission.

86 Acts, ch 1245, §1222
C87, §601K.52
88 Acts, ch 1150, §2; 90 Acts, ch 1223, §30
C93, §216A.52
Confirmation, see §2.32

216A.53 Term of office.

Four of the members appointed to the initial commission shall be designated by the governor to serve two-year terms, and five shall be designated by the governor to serve four-year terms. The legislative members of the commission shall be appointed to four-year terms of office, two of which shall expire every two years unless sooner terminated by a commission member ceasing to be a member of the general assembly. Succeeding appointments shall be for a term of four years. Vacancies in the membership shall be filled for the unexpired term in the same manner as the original appointment.

86 Acts, ch 1245, §1223
C87, §601K.53
88 Acts, ch 1150, §3
C93, §216A.53

216A.54 Meetings of the commission.

The commission shall meet at least six times each year, and shall hold special meetings on the call of the chairperson. The commission shall adopt rules pursuant to chapter 17A as it deems necessary for the commission and division. The members of the commission shall receive a per diem as specified in section 7E.6 and be reimbursed for actual expenses while engaged in their official duties. Legislative members of the commission shall receive payment pursuant to sections 2.10 and 2.12.

86 Acts, ch 1245, §1224
C87, §601K.54
88 Acts, ch 1150, §4; 90 Acts, ch 1256, §52
C93, §216A.54

216A.55 Objectives of commission.

The commission shall study the changing needs and problems of the women of this state, and develop and recommend new programs and constructive action to the governor and the general assembly, including but not limited to, the following areas:

1. Public and private employment policies and practices.
2. Iowa labor laws.
3. Legal treatment relating to political and civil rights.
4. The family and the employed woman.
5. Expanded programs to help women as

wives, mothers, and workers.
6. Women as citizen volunteers.
7. Education.
86 Acts, ch 1245, §1225
C87, §601K.55
C93, §216A.55

216A.56 Employees and responsibility.
The commission shall employ other necessary employees. Pursuant to section 216A.2, the commission shall have responsibility for budgetary and personnel decisions for the commission and division. The administrator shall carry out programs and policies as determined by the commission.
86 Acts, ch 1245, §1226
C87, §601K.56
C93, §216A.56

216A.57 Duties.
The commission shall:
1. Serve as a clearinghouse on programs and agencies operating to assist women.
2. Conduct conferences.
3. Cooperate with governmental agencies to assist them in equalizing opportunities between men and women in employment and in expanding women's rights and opportunities.
4. Serve as the central permanent agency for the development of services for women.
5. Cooperate with public and private agencies in joint efforts to study and resolve problems relating to the status of women.
6. Publish and disseminate information relating to women and develop other educational programs.
7. Provide assistance to organized efforts by communities, organizations, associations, and other groups working toward the improvement of women's status.
86 Acts, ch 1245, §1227
C87, §601K.57
C93, §216A.57

216A.58 Additional authority.
The commission may:
1. Do all things necessary, proper, and expedient in accomplishing the duties listed in section 216A.57 and this section.
2. Hold hearings.
3. Enter into contracts, within the limit of funds made available, with individuals, organizations, and institutions for services furthering the objectives of the commission as listed in section 216A.55.
4. Seek advice and counsel of informed individuals, or any agricultural, industrial, professional, labor or trade association, or civic group in the accomplishment of the objectives of the commission.
5. Accept grants of money or property from the federal government or any other source, and may upon its own order use this money, property, or other resources to accomplish the objectives of the commission.
86 Acts, ch 1245, §1228
C87, §601K.58
C93, §216A.58

216A.59 Access to information.
The commission shall have access to all nonconfidential records, data, information, and statistics of all departments, boards, commissions, agencies, and institutions of this state, and upon terms which may be mutually agreed upon, have studies and research conducted.
86 Acts, ch 1245, §1229
C87, §601K.59
C93, §216A.59

216A.60 Annual report.
Not later than February 1 of each year the commission shall file a report with the governor and the general assembly of its proceedings for the previous calendar year, and may submit with the report such recommendations pertaining to its affairs as it deems desirous, including recommendations for legislative consideration and other action it deems necessary.
86 Acts, ch 1245, §1230
C87, §601K.60
C93, §216A.60

216A.61 through 216A.70 Reserved.

SUBCHAPTER 5

DIVISION OF PERSONS WITH DISABILITIES

216A.71 Definitions.
For purposes of this subchapter, unless the context otherwise requires:
1. *"Administrator"* means the administrator of the division of persons with disabilities of the department of human rights.
2. *"Commission"* means the commission of persons with disabilities.
3. *"Division"* means the division of persons with disabilities of the department of human rights.
86 Acts, ch 1245, §1231
C87, §601K.71
C93, §216A.71
95 Acts, ch 212, §10; 99 Acts, ch 201, §12

216A.72 Commission established.
There is hereby established a commission to be known as the "commission of persons with disabilities".
86 Acts, ch 1245, §1232
C87, §601K.72
C93, §216A.72

216A.73 Ex officio members.

The following or designee shall serve as ex officio members of the commission:

1. The director of public health.
2. The director of the department of human services and any administrators of that department so assigned by the director.
3. The director of the department of education.
4. The administrator of the division of vocational rehabilitation of the department of education.
5. The director of the department for the blind.
6. The labor commissioner.
7. The workers' compensation commissioner.
8. The director of the department of workforce development.
9. The director of the department of personnel.

86 Acts, ch 1245, §1233
C87, §601K.73
C93, §216A.73
96 Acts, ch 1186, §23; 98 Acts, ch 1061, §11; 99 Acts, ch 96, §22

216A.74 Membership.

The commission shall be composed of a minimum of twenty-four members appointed by the governor and additional members as the governor may appoint. Insofar as practicable, the commission shall consist of persons with disabilities, family members of persons with disabilities, representatives of industry, labor, business, agriculture, federal, state, and local government, and representatives of religious, charitable, fraternal, civic, educational, medical, legal, veteran, welfare, and other professional groups and organizations. Members shall be appointed representing every geographic center and employment area of the state and shall include members of both sexes.

86 Acts, ch 1245, §1234
C87, §601K.74
C93, §216A.74
Confirmation, see §2.32

216A.75 Term.

Members of the commission appointed by the governor shall serve for a term of two years. Vacancies on the commission shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed.

86 Acts, ch 1245, §1235
C87, §601K.75
C93, §216A.75

216A.76 Officers.

The members of the commission shall appoint a commission chairperson and a vice chairperson and such other officers as the commission deems necessary. Such officers shall serve until their successors are appointed and qualified. Members of the commission shall receive actual expenses for their services. Members may also be eligible to receive compensation as provided in section 7E.6. The commission shall adopt rules pursuant to chapter 17A for the commission and division.

86 Acts, ch 1245, §1236
C87, §601K.76
C93, §216A.76

216A.77 Duties.

The commission shall:

1. Carry on a continuing program to promote the employment of persons with disabilities.
2. Cooperate with all public and private agencies interested in the employment of persons with disabilities.
3. Cooperate with all agencies responsible for or interested in the rehabilitation and placement of persons with disabilities.
4. Encourage the organization of committees at the community level and work closely with such committees in promoting the employment of persons with disabilities.
5. Assist in developing employer acceptance of qualified workers who are persons with disabilities.
6. Inform persons with disabilities of specific facilities available in seeking employment.
7. Conduct such educational programs as members deem necessary.
8. Report annually to the governor and general assembly on commission activities and submit any recommendations believed necessary in promoting the employment of persons with disabilities.
9. Pursuant to section 216A.2, be responsible for budgetary and personnel decisions for the commission and division.

86 Acts, ch 1245, §1237
C87, §601K.77
C93, §216A.77

216A.78 Administrator.

The commission officers may designate the duties and obligations of the position of administrator. The administrator may appoint such other personnel as may be necessary for the efficient performance of the duties prescribed by this part. The administrator shall carry out programs and policies as determined by the commission.

86 Acts, ch 1245, §1238
C87, §601K.78
C93, §216A.78
99 Acts, ch 114, §13

216A.79 Gifts, grants, or donations.

The commission may receive any gifts, grants, or donations made for any of the purposes of its program and disburse and administer the same in

accordance with the terms thereof.
86 Acts, ch 1245, §1239
C87, §601K.79
C93, §216A.79

216A.80 through 216A.90 Reserved.

SUBCHAPTER 6

DIVISION OF COMMUNITY ACTION AGENCIES

216A.91 Definitions.
For purposes of this subchapter, unless the context otherwise requires:
1. *"Administrator"* means the administrator of the division of community action agencies of the department of human rights.
2. *"Commission"* means the commission on community action agencies.
3. *"Community action agency"* means a public agency or a private nonprofit agency which is authorized under its charter or bylaws to receive funds to administer community action programs and is designated by the governor to receive and administer the funds.
4. *"Community action program"* means a program conducted by a community action agency which includes projects to provide a range of services to improve the conditions of poverty in the area served by the community action agency.
5. *"Delegate agency"* means a subgrantee or contractor selected by the community action agency.
6. *"Division"* means the division of community action agencies of the department of human rights.
86 Acts, ch 1245, §1240
C87, §601K.91
90 Acts, ch 1242, §1
C93, §216A.91

216A.92 Administrator's duties.
The administrator shall:
1. Administer the division.
2. Implement programs required in the division.
3. Issue an annual report to the governor and general assembly regarding the community action programs conducted within the state.
86 Acts, ch 1245, §1241
C87, §601K.92
90 Acts, ch 1242, §2
C93, §216A.92

216A.92A Commission established.
1. The commission on community action agencies is created, composed of nine members appointed by the governor, subject to confirmation by the senate. The membership of the commission shall reflect the composition of local community action agency boards as follows:
a. One-third of the members shall be elected officials.
b. One-third of the members shall be representatives of business, industry, labor, religious, welfare, and educational organizations, or other major interest groups.
c. One-third of the members shall be persons who, according to federal guidelines, have incomes at or below poverty level.
2. Commission members shall serve three-year terms which shall begin and end pursuant to section 69.19, and shall serve the entire term even if the member experiences a change in the status which resulted in their appointment under subsection 1. Vacancies on the commission shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed. Members of the commission shall receive actual expenses for their services. Members may also be eligible to receive compensation as provided in section 7E.6. Members as specified under subsection 1, paragraph *"c"*, however, shall receive per diem compensation as provided in section 7E.6 and actual expenses. The membership of the commission shall also comply with the political party affiliation and gender balance requirements of sections 69.16 and 69.16A.
3. The commission shall select from its membership a chairperson and other officers as it deems necessary. A majority of the members of the commission shall constitute a quorum.
90 Acts, ch 1242, §3
C91, §601K.92A
92 Acts, ch 1237, §13
C93, §216A.92A
99 Acts, ch 201, §13
Confirmation, see §2.32

216A.92B Duties of the commission.
The commission shall:
1. Meet at least quarterly to review the progress of programs of the division.
2. Adopt rules pursuant to chapter 17A as it deems necessary for the commission and division, including rules concerning programs and policies for all bureaus of the division.
3. Supervise the collection of data relative to the scope of services provided by the community action agencies.
4. Recommend legislation to the governor and the general assembly designed to improve the status of low-income persons in the state.
90 Acts, ch 1242, §4
C91, §601K.92B
C93, §216A.92B

216A.93 Establishment of community action agencies.
The division shall recognize and assist in the designation of certain community action agencies to assist in the delivery of community action pro-

grams. These programs shall include, but not be limited to, outreach, low-income energy assistance, and weatherization programs. If a community action agency is in effect and currently serving an area, that community action agency shall become the designated community action agency for that area. If there is not a designated community action agency in the area a city council or county board of supervisors or any combination of one or more councils or boards may establish a community action agency and may apply to the division for recognition. The council or board or the combination may adopt an ordinance or resolution establishing a community action agency if a community action agency has not been designated. It is the purpose of the division of community action agencies to strengthen, supplement, and coordinate efforts to develop the full potential of each citizen by recognizing certain community action agencies and the continuation of certain community-based programs delivered by community action agencies.

86 Acts, ch 1245, §1242
C87, §601K.93
C93, §216A.93

216A.94 Community action agency board.

1. A recognized community action agency shall be governed by a board of directors composed of at least nine members. The board membership shall be as follows:

a. One-third of the members of the board shall be elected public officials currently holding office or their representatives. However, if the number of elected officials available and willing to serve is less than one-third of the membership of the board, the membership of the board consisting of appointive public officials may be counted as fulfilling the requirement that one-third of the members of the board be elected public officials.

b. At least one-third of the members of the board shall be chosen in accordance with procedures established by the community action agency to assure representation of the poor in an area served by the agency.

c. The remainder of the members of the board shall be members of business, industry, labor, religious, welfare, education, or other major groups or interests in the community.

2. Notwithstanding subsection 1, a public agency shall establish an advisory board or may contract with a delegate agency to assist the governing board. The advisory board or delegate agency board shall be composed of the same type of membership as a board of directors for community action agencies under subsection 1. However, the public agency acting as the community action agency shall determine annual program budget requests.

86 Acts, ch 1245, §1243
C87, §601K.94
87 Acts, ch 115, §73; 90 Acts, ch 1242, §5
C93, §216A.94
93 Acts, ch 56, §1

216A.95 Duties of board.

1. The governing board, delegate agency board, or advisory board shall:

a. Provide for:

(1) Comprehensive planning of the community action agency.

(2) Local needs assessment surveys conducted by the community action agency.

b. Approve overall program plans and priorities developed by the community action agency.

2. The governing board may:

a. Own, purchase, and dispose of property necessary for the operation of the community action agency.

b. Receive and administer funds and contributions from private or public sources which may be used to support community action programs.

c. Receive and administer funds from a federal or state assistance program pursuant to which a community action agency could serve as a grantee, a contractor, or a sponsor of a project appropriate for inclusion in a community action program.

86 Acts, ch 1245, §1244
C87, §601K.95
C93, §216A.95

216A.96 Duties of community action agency.

A community action agency or delegate agency shall:

1. Plan for a community action program by establishing priorities among projects, activities, and areas to provide for the most efficient use of possible resources.

2. Obtain and administer assistance from available sources on a common or cooperative basis, in an attempt to provide additional opportunities to low-income persons.

3. Establish effective procedures by which the concerned low-income persons and area residents may influence the community action programs affecting them by providing for methods of participation in the implementation of the community action programs and by providing technical support to assist persons to secure assistance available from public and private sources.

4. Encourage and support self-help, volunteer, business, labor, and other groups and organizations to assist public officials and agencies in supporting a community action program which results in the additional use of private resources while developing new employment opportunities, encouraging investments which have an impact on reducing poverty among the poor in areas of

concentrated poverty, and providing methods by which low-income persons can work with private organizations, businesses, and institutions in seeking solutions to problems of common concern.

86 Acts, ch 1245, §1245
C87, §601K.96
C93, §216A.96

216A.97 Administration.

A community action agency or a delegate agency may administer the components of a community action program when the program is consistent with plans and purposes and applicable law. The community action programs may be projects which are eligible for assistance from any source. The programs shall be developed to meet local needs and may be designed to meet eligibility standards of a federal or state program providing assistance to a plan to meet local needs.

86 Acts, ch 1245, §1246
C87, §601K.97
C93, §216A.97

216A.98 Audit.

Each community action agency shall be audited annually but shall not be required to obtain a duplicate audit to meet the requirements of this section. In lieu of an audit by the auditor of state, the community action agency may contract with or employ a certified public accountant to conduct the audit, pursuant to the applicable terms and conditions prescribed by sections 11.6 and 11.19 and an audit format prescribed by the auditor of state. Copies of each audit shall be furnished to the division within three months following the annual audit.

86 Acts, ch 1245, §1247
C87, §601K.98
89 Acts, ch 264, §9
C93, §216A.98

216A.99 Allocation of financial assistance.

The administrator shall provide financial assistance for community action agencies to implement community action programs, as permitted by the community service block grant, administer the low-income energy assistance block grants, department of energy funds for weatherization received in Iowa, and other possible funding sources.

If a political subdivision is the agency, the financial assistance shall be allocated to the political subdivision.

86 Acts, ch 1245, §1248
C87, §601K.99
C93, §216A.99

216A.100 Reserved.

216A.101 Emergency weatherization fund.

1. The division of community action agencies of the department of human rights shall identify all participants in the low-income home energy assistance program for the 1987-1988 winter heating season whose household income was less than seventy-five percent of the poverty level.

2. The division shall conduct within each community action agency an inventory of the residences of these individuals to determine the number of residences eligible for weatherization under the two programs currently administered by the division but which will not be weatherized in the next twelve months due to the current priorities imposed by the federal programs.

3. One and one-half percent of the total amount of funds appropriated by 1988 Iowa Acts, chapter 1280, to the division of community action agencies for the fiscal year beginning October 1, 1988, for the low-income home energy assistance block grants, shall be expended by the division for the operation of the program under this section. The one and one-half percent shall be taken from those funds to be used for low-income residential weatherization or other related home repairs for low-income households; however, no less than ten percent of the total amount of funds appropriated for the low-income home energy assistance block grants shall be expended by the division for other low-income residential weatherization or related home repairs for low-income households.

4. The division shall allocate the available funds among the nineteen community action agencies and shall establish weatherization goals for each agency based upon the inventory in subsection 2 of this section. The division shall give priority to weatherizing these residences.

5. The division shall submit a report to the general assembly on February 1, 1989. The report shall include the number of residences identified as eligible for weatherization in this project, the number of residences weatherized from July 1, 1988, to December 31, 1988, the average cost per dwelling weatherized, and the range of costs for individual weatherizations. In addition, the report shall include the department's recommendation for a program to complete the weatherization of the remaining residences in this category. The report shall also include an inventory of the number of residences not weatherized for the 1987-1988 participants whose household incomes fall between seventy-five percent and one hundred percent of the poverty level.

88 Acts, ch 1175, §5
C89, §601K.101
C93, §216A.101

216A.102 Energy crisis fund.

1. An energy crisis fund is created in the state treasury. Moneys deposited in the fund shall be used to assist low-income families who qualify for

the low-income home energy assistance program to avoid loss of essential heating.

2. The fund may receive moneys including, but not limited to, the following:

a. Moneys appropriated by the general assembly for the fund.

b. Moneys credited to the fund under section 473.11.

c. After July 1, 1988, unclaimed patronage dividends of electric cooperative corporations or associations shall be applied to the fund following the time specified in section 556.12 for claiming the dividend from the holder.

d. The fund may also receive contributions from customer contribution funds established under section 476.66.

3. Under rules developed by the division of community action agencies of the department of human rights, the fund may be used to negotiate reconnection of essential utility services with the energy provider.

88 Acts, ch 1175, §6
C89, §601K.102
91 Acts, ch 270, §6
C93, §216A.102
2002 Acts, ch 1119, §146
Subsection 1 amended

216A.103 Iowa affordable heating program established.

1. The division shall establish an Iowa affordable heating program for the purpose of assisting low-income persons in paying for primary heating fuel costs.

2. In order to be eligible for participation in the Iowa affordable heating program, an applicant must meet all of the following requirements:

a. Meet the income guidelines established pursuant to the federal low-income home energy assistance program, with income at or below one hundred ten percent of the federal poverty income guidelines established by the office of management and budget. The division may adjust the income threshold by rule as necessitated by budgetary restrictions.

b. Participate in annual level payment plans for both gas and electric services if such plans are available to the participant. The division shall develop an alternative plan for participants whose energy providers do not provide such plans.

c. Participate in the weatherization assistance program, if eligible.

d. Have insufficient finances, as determined by rule, which prohibit the payment of the entire cost of the heating of the applicant's home.

e. Submit to the administering agency within thirty days of application for participation in the program third-party verification of all of the following:

(1) The gross income of all of the members of the applicant's household in accordance with the rules adopted for the low-income home energy assistance program.

(2) The applicant's unreimbursed medical expenses for the time period corresponding to that used for the income calculation with proof of personal responsibility for these expenses.

f. Participate in counseling, provided by the administering agency, regarding energy efficiency.

3. In determination of the amount of the affordable heating payment for which the participant is eligible, the following formula shall be used:

a. An annual adjusted income amount shall be calculated.

(1) To be eligible, an applicant must also apply and be eligible for participation in the low-income home energy assistance program. A participant's income shall be determined as the amount verified on a low-income home energy assistance program application.

(2) A participant's adjusted income shall be determined by subtracting from the verified income, the actual costs incurred for each of the following:

(a) Annual rental or mortgage payments, real estate taxes, and real estate insurance payments not to exceed a maximum established by division rule based on the statewide low-income housing cost average.

(b) Annual unreimbursed medical expenses, not to exceed two thousand four hundred dollars.

(c) Annual child support and alimony payments.

(d) The annual costs of water, basic local telephone, and nonheating electric services as defined by division rule.

(e) Annual child care costs incurred by a participant due to employment or participation in an academic or job-training program.

b. A predicted heating cost shall be calculated.

(1) When applicable, the predicted heating costs shall be the annual total calculated under section 216A.103, subsection 2, paragraph *"b"*, for level payment plans.

(2) Where subsection 3, paragraph *"b"*, subparagraph (1) does not apply, the predicted heating cost shall be based upon, but is not limited to, primary heating fuel usage incurred during the twelve-month period immediately preceding application, first adjusted for weather and then adjusted for rate changes occurring during the twelve-month period immediately preceding application.

c. Following the calculation of the participant's adjusted income and predicted heating cost, the participant's adjusted heating cost shall be calculated by:

(1) Adding the predicted heating cost figure to any scheduled repayment of an arrearage which has been negotiated between the participant and the primary heating fuel provider. The arrearage shall not exceed three hundred dollars annually. Any remaining arrearage shall be considered in subsequent years.

(2) Subtracting from the figure determined under paragraph *"b"* the federal low-income home energy assistance program grant, if a grant is received.

d. The division shall promulgate rules to establish a standard percentage not to exceed twenty-five percent of household heating costs to adjusted income, taking into consideration household family size. For each participant, the administering agency shall determine the percentage of adjusted heating cost to adjusted income. If the participant's percentage exceeds the standard percentage, an affordable heating payment shall be made as prescribed by rule. The payment shall be made to the participant's primary heating fuel provider and credited to the participant's heating account for the year in which the participant is eligible.

(1) When offered by the primary heating fuel provider, the provider shall calculate or recalculate the participant's annual level payment plan after all forms of assistance are credited. A monthly level payment shall be established. However, each level payment shall not be less than a monthly minimum as established by division rule.

(2) Reconciliation shall occur as prescribed in the rules of the Iowa utilities board or, at a minimum, annually, for unregulated heating fuel providers.

4. A participant in the Iowa affordable heating program who maintains the monthly level payment shall be protected from disconnection of service by the participant's primary heating fuel provider.

5. The administrator shall adopt rules pursuant to chapter 17A which establish the criteria under which a participant in the Iowa affordable heating program would be determined ineligible for continued participation in the program. The criteria shall include but are not limited to a requirement that the participant maintains the monthly level payment in order to maintain eligibility in the program.

6. Any moneys appropriated for the Iowa affordable heating program which are not expended by April 30 of each fiscal year shall be used to fund the low-income energy assistance program.

90 Acts, ch 1242, §7; 90 Acts, ch 1246, §1
C91, §601K.103
92 Acts, ch 1087, §1 – 8
C93, §216A.103

216A.104 through 216A.110 Reserved.

SUBCHAPTER 7

DIVISION OF DEAF SERVICES

216A.111 Definitions.

For purposes of this subchapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division of deaf services of the department of human rights.

2. *"Commission"* means the commission on the deaf.

3. *"Division"* means the division of deaf services of the department of human rights.

86 Acts, ch 1245, §1250
C87, §601K.111
C93, §216A.111

216A.112 Commission created.

A commission on the deaf is established, consisting of seven members appointed by the governor, subject to confirmation by the senate. Lists of nominees for appointment to membership on the commission may be submitted by the Iowa association of the deaf, the Iowa state registry of interpreters for the deaf, the Iowa school for the deaf, and the commission of persons with disabilities. At least four members shall be persons who are deaf and who cannot hear human speech with or without use of amplification and at least one member who is hard of hearing. All members shall reside in Iowa. The members of the commission shall appoint the chairperson of the commission. A majority of the members of the commission constitutes a quorum.

Terms of office are three years and shall begin and end pursuant to section 69.19. The commission shall adopt rules concerning programs and services for deaf and hard-of-hearing persons.

Commission members shall be reimbursed for actual expenses incurred in performance of their duties. Members may also be eligible to receive compensation as provided in section 7E.6.

86 Acts, ch 1245, §1251
C87, §601K.112
87 Acts, ch 58, §1; 87 Acts, ch 115, §74
C93, §216A.112
93 Acts, ch 75, §3; 95 Acts, ch 212, §11
Confirmation, see §2.32

216A.113 Commission employees.

The commission may employ clerical staff who shall be qualified by experience to assume the responsibilities of the offices. The administrator shall be the administrative officer of the commission and shall be responsible for implementing policy set by the commission. The administrator shall carry out programs and policies as determined by the commission.

86 Acts, ch 1245, §1252
C87, §601K.113
C93, §216A.113

216A.114 Duties of commission.

The commission shall:

1. Interpret to communities and to interested persons the needs of the deaf and hard-of-hearing

and how their needs may be met through the use of service providers.

2. Obtain without additional cost to the state available office space in public and private agencies which service providers may utilize in carrying out service projects for deaf and hard-of-hearing persons. However, if space is not available in a specific service area without additional cost to the state, the commission may obtain other office space which is located with other public or private agencies. The space shall be obtained at the lowest cost available and the terms of the lease must be approved by the director of the department of general services.

3. Establish service projects for deaf and hard-of-hearing persons throughout the state. Projects shall not be undertaken by service providers for compensation which would duplicate existing services when those services are available to deaf and hard-of-hearing persons through paid interpreters or other persons able to communicate with deaf and hard-of-hearing persons.

As used in this section, *"service projects"* includes interpretation services for persons who are deaf and hard-of-hearing, referral and counseling services for deaf and hard-of-hearing persons in the areas of adult education, legal aid, employment, medical, finance, housing, recreation, and other personal assistance and social programs.

"Service providers" are persons who, for compensation or on a volunteer basis, carry out service projects.

4. Identify agencies, both public and private, which provide community services, evaluate the extent to which they make services available to deaf and hard-of-hearing persons, and cooperate with the agencies in coordinating and extending these services.

5. Collect information concerning deafness or hearing loss and provide for the dissemination of the information.

6. Provide for the mutual exchange of ideas and information on services for deaf and hard-of-hearing persons between federal, state, and local governmental agencies and private organizations and individuals.

7. Pursuant to section 216A.2, be responsible for budgeting and personnel decisions for the commission and division.

86 Acts, ch 1245, §1253
C87, §601K.114
87 Acts, ch 115, §75; 89 Acts, ch 54, §1
C93, §216A.114
93 Acts, ch 75, §4

216A.115 Powers.

The commission shall have all powers necessary to carry out the functions and duties specified in this subchapter, including, but not limited to the power to establish advisory committees on special studies, to solicit and accept gifts and grants, to adopt rules according to chapter 17A for the commission and division, and to contract with public and private groups to conduct its business. All departments, divisions, agencies, and offices of the state shall make available upon request of the commission information which is pertinent to the subject matter of the study and which is not by law confidential.

86 Acts, ch 1245, §1254
C87, §601K.115
C93, §216A.115

216A.116 Report.

The commission shall make a detailed report of its activities, studies, conclusions, and recommendations to the general assembly not later than February 15 of each odd-numbered year.

86 Acts, ch 1245, §1255
C87, §601K.116
C93, §216A.116

216A.117 Interpretation services account.

All fees collected by the division for provision of interpretation service by the division to obligated agencies shall be deposited in a separate account within the general operating fund of the division and shall be dedicated to and used by the division for the provision of continued and expanded interpretation services. The commission shall adopt rules which establish a fee schedule for the costs of provision of interpretation services, for collection of the fees, and for disposition of moneys received under this section. Notwithstanding section 8.33, any balance in the separate account at the end of any fiscal year, shall be retained in the account.

88 Acts, ch 1277, §13
C89, §601K.117
89 Acts, ch 320, §12
C93, §216A.117

216A.118 through 216A.120 Reserved.

SUBCHAPTER 8

216A.121 through 216A.130 Reserved.

SUBCHAPTER 9

DIVISION OF CRIMINAL AND JUVENILE JUSTICE PLANNING

216A.131 Definitions.

For the purpose of this subchapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division of criminal and juvenile justice planning.

2. *"Council"* means the criminal and juvenile

justice planning advisory council.

3. *"Division"* means the division of criminal and juvenile justice planning.

88 Acts, ch 1277, §14
C89, §601K.131
90 Acts, ch 1124, §1
C93, §216A.131

216A.132 Council established — terms — compensation.

A criminal and juvenile justice planning advisory council is established consisting of twenty-two members. The governor shall appoint seven members each for a four-year term beginning and ending as provided in section 69.19 and subject to confirmation by the senate as follows:

1. Three persons, each of whom is a county supervisor, county sheriff, mayor, city chief of police, or county attorney.

2. Two persons who represent the general public and are not employed in any law enforcement, judicial, or corrections capacity.

3. Two persons who are knowledgeable about Iowa's juvenile justice system.

The departments of human services, corrections, and public safety, the division on the status of African-Americans, the division of substance abuse of the Iowa department of public health, the chairperson of the board of parole, the attorney general, the state public defender, and the chief justice of the supreme court shall each designate a person to serve on the council.

The chief justice of the supreme court shall appoint two additional members currently serving as district judges. Two members of the senate and two members of the house of representatives shall be ex officio members and shall be appointed by the majority and minority leaders of the senate and the speaker and minority leader of the house of representatives pursuant to section 69.16. Members appointed pursuant to this paragraph shall serve for four-year terms beginning and ending as provided in section 69.19 unless the member ceases to serve as a district court judge or as a member of the senate or of the house of representatives.

Members of the council shall receive reimbursement from the state for actual and necessary expenses incurred in the performance of their official duties. Members may also be eligible to receive compensation as provided in section 7E.6.

88 Acts, ch 1277, §15
C89, §601K.132
90 Acts, ch 1124, §2
C93, §216A.132
Confirmation, see §2.32

216A.133 Duties.

The council shall do all of the following:

1. Identify issues and analyze the operation and impact of present criminal and juvenile justice policy and make recommendations for policy changes, including recommendations pertaining to efforts to curtail criminal gang activity.

2. Coordinate with data resource agencies to provide data and analytical information to federal, state, and local governments, and assist agencies in the use of criminal and juvenile justice data.

3. Report criminal and juvenile justice system needs to the governor, the general assembly, and other decision makers to improve the criminal and juvenile justice system.

4. Provide technical assistance upon request to state and local agencies.

5. Administer federal funds and funds appropriated by the state or that are otherwise available for study, research, investigation, planning, and implementation in the areas of criminal and juvenile justice.

6. Make grants to cities, counties, and other entities pursuant to applicable law.

7. Maintain an Iowa correctional policy project as provided in section 216A.137.

88 Acts, ch 1277, §16
C89, §601K.133
90 Acts, ch 1124, §3; 92 Acts, ch 1231, §47
C93, §216A.133

216A.134 Administrator.

The administrator shall be responsible to the council, and pursuant to section 216A.2, with the approval of the council, shall employ and supervise other persons necessary to carry out the programs and policies established by the council.

88 Acts, ch 1277, §17
C89, §601K.134
C93, §216A.134

216A.135 Plan and report.

Beginning in 1989, and every five years thereafter, the division shall develop a twenty-year criminal and juvenile justice plan for the state which shall include ten-year, fifteen-year, and twenty-year goals and a comprehensive five-year plan for criminal and juvenile justice programs. The five-year plan shall be updated annually and each twenty-year plan and annual updates of the five-year plan shall be submitted to the governor and the general assembly by February 1.

Beginning in 1992, the division shall include in the plans, updates, and reports required by this section an identification and evaluation of existing juvenile treatment programs based upon quantifiable goals established by the division, utilizing its existing computer capacity and access.

88 Acts, ch 1277, §18
C89, §601K.135
92 Acts, ch 1231, §48
C93, §216A.135

216A.136 Statistical analysis center — access to records.

The division shall maintain an Iowa statistical analysis center for the purpose of coordinating with data resource agencies to provide data and analytical information to federal, state, and local governments, and assist agencies in the use of criminal and juvenile justice data. Notwithstanding any other provision of state law, unless prohibited by federal law or regulation, the division shall be granted access, for purposes of research and evaluation, to criminal history records, official juvenile court records, juvenile court social records, and any other data collected or under control of the board of parole, department of corrections, district departments of correctional services, department of human services, judicial branch, and department of public safety. However, intelligence data and peace officer investigative reports maintained by the department of public safety shall not be considered data for the purposes of this section. Any record, data, or information obtained by the division under this section and the division itself is subject to the federal and state confidentiality laws and regulations which are applicable to the original record, data, or information obtained by the division and to the original custodian of the record, data, or information. The access shall include but is not limited to all of the following:

1. Juvenile court records and all other information maintained under sections 232.147 through 232.153.
2. Child abuse information under sections 235A.15 through 235A.19.
3. Dependent adult abuse records maintained under chapter 235B.
4. Criminal history data maintained under chapter 692.
5. Sex offender registry information maintained under chapter 692A.
6. Presentence investigation reports maintained under section 901.4.
7. Corrections records maintained under sections 904.601 and 904.602.
8. Community-based correctional program records maintained under chapter 905.
9. Parole records maintained under chapter 906.
10. Deferred judgment, deferred or suspended sentence, and probation records maintained under chapter 907.
11. Violation of parole or probation records maintained under chapter 908.
12. Fines and victim restitution records maintained under chapters 909 and 910.

88 Acts, ch 1277, §19
C89, §601K.136
90 Acts, ch 1124, §4
C93, §216A.136
96 Acts, ch 1150, §2; 96 Acts, ch 1193, §3, 4; 98 Acts, ch 1047, §18

216A.137 Correctional policy project.

The division shall maintain an Iowa correctional policy project for the purpose of conducting analyses of major correctional issues affecting the criminal and juvenile justice system. The council shall identify and prioritize the issues and studies to be addressed by the division through this project and shall report project plans and findings annually along with the report required in section 216A.135. Issues and studies to be considered by the council shall include, but are not limited to a review of the information systems available to assess corrections trends and program effectiveness, the development of an evaluation plan for assessing the impact of corrections expenditures, a study of the desirability and feasibility of changing the state's sentencing practices, a public opinion survey to assess the public's view of possible changes in current corrections practices, and the development of parole guidelines.

The division may form subcommittees for the purpose of addressing major correctional issues affecting the criminal and juvenile justice system. The division shall establish a subcommittee to address issues specifically affecting the juvenile justice system.

90 Acts, ch 1124, §5
C91, §601K.137
C93, §216A.137

216A.138 Multiagency data base concerning juveniles.

1. The division shall coordinate the development of a multiagency data base to track the progress of juveniles through various state and local agencies and programs. The division shall develop a plan which utilizes existing data bases, including the Iowa court information system, the federally mandated national adoption and foster care information system, and the other state and local data bases pertaining to juveniles, to the extent possible.

2. The department of human services, department of corrections, judicial branch, department of public safety, department of education, local school districts, and other state agencies and political subdivisions shall cooperate with the division in the development of the plan.

3. The data base shall be designed to track the progress of juveniles in various programs, evaluate the experiences of juveniles, and evaluate the success of the services provided.

4. The division shall develop the plan within the context of existing federal privacy and confidentiality requirements. The plan shall build upon existing resources and facilities to the extent possible.

5. The plan shall include proposed guidelines for the sharing of information by case management teams, consisting of designated representatives of various state and local agencies and politi-

cal subdivisions to coordinate the delivery of services to juveniles under the jurisdiction of the juvenile court. The guidelines shall be developed to structure and improve the information-sharing procedures of case management teams established pursuant to any applicable state or federal law or approved by the juvenile court with respect to a juvenile who is the recipient of the case management team services. The plan shall also contain proposals for changes in state laws or rules to facilitate the exchange of information among members of case management teams.

6. The plan shall include development of a resource guide outlining successful programs and practices established within this state which are designed to promote positive youth development and that assist delinquent and other at-risk youth in overcoming personal and social problems. The guide shall be made publicly available.

7. If the division has insufficient funds and resources to implement this section, the division shall determine what, if any, portion of this section may be implemented, and the remainder of this section shall not apply.

8. The division shall submit a report on the plan required by this section to the general assembly on or before January 15, 1994.

92 Acts, ch 1231, §49; 97 Acts, ch 126, §9; 98 Acts, ch 1047, §19

216A.139 and 216A.140 Reserved.

SUBCHAPTER 10

DIVISION ON THE STATUS OF AFRICAN-AMERICANS

216A.141 Definitions.

For purposes of this subchapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division on the status of African-Americans of the department of human rights.

2. *"Commission"* means the commission on the status of African-Americans.

3. *"Division"* means the division on the status of African-Americans of the department of human rights.

88 Acts, ch 1201, §1
C89, §601K.141
91 Acts, ch 50, §3
C93, §216A.141

216A.142 Establishment.

There is established a commission on the status of African-Americans to consist of nine members, appointed by the governor, and confirmed by the senate, to staggered four-year terms. At least five members shall be individuals who are African-American. Members shall be appointed representing every geographical area of the state. No more than a simple majority of the commission shall be of the same political party. The members of the commission shall appoint from its membership a commission chairperson and a vice chairperson and other officers as the commission deems necessary. Vacancies on the commission shall be filled for the remainder of the term of the original appointment.

88 Acts, ch 1201, §2
C89, §601K.142
91 Acts, ch 50, §4
C93, §216A.142
Confirmation, see §2.32

216A.143 Meetings of the commission.

The commission shall meet at least once each quarter and may hold special meetings on the call of the chairperson. The commission may adopt rules pursuant to chapter 17A as it deems necessary for the conduct of its business. The members of the commission shall be reimbursed for actual expenses while engaged in their official duties. Members may also be eligible to receive compensation as provided in section 7E.6.

88 Acts, ch 1201, §3
C89, §601K.143
C93, §216A.143
95 Acts, ch 69, §1

216A.144 Objectives of commission.

The commission shall study the changing needs and problems of African-Americans in this state, and recommend new programs, policies, and constructive action to the governor and the general assembly including, but not limited to, the following areas:

1. Public and private employment policies and practices.

2. Iowa labor laws.

3. Legal treatment relating to political and civil rights.

4. African-American children, youth, and families.

5. Expanded programs to assist African-Americans as consumers.

6. The employment of African-Americans and the initiation and sustaining of African-American businesses and African-American entrepreneurship.

7. African-Americans as members of private and public boards, committees, and organizations.

8. Education, health, housing, social welfare, human rights, and recreation.

9. The legal system, including law enforcement, both criminal and civil.

10. Social service programs.

88 Acts, ch 1201, §4
C89, §601K.144
91 Acts, ch 50, §5
C93, §216A.144

216A.145 Employees and responsibility.

The administrator shall be the administrative officer of the division and shall be responsible for implementing policies and programs. The administrator may employ, in accordance with chapter 19A, other persons necessary to carry out the programs of the division.

88 Acts, ch 1201, §5
C89, §601K.145
C93, §216A.145

216A.146 Duties.

The commission shall do all of the following:

1. Serve as an information clearinghouse on programs and agencies operating to assist African-Americans. Clearinghouse duties shall include, but are not limited to:

a. Service as a referral agency to assist African-Americans in securing access to state agencies and programs.

b. Service as a liaison with federal, state, and local governmental units and private organizations on matters relating to African-Americans.

c. Service as a communications conduit to state government for African-American organizations in the state.

d. Stimulation of public awareness of the problems of African-Americans.

2. Conduct conferences and training programs for African-Americans, public and private agencies and organizations, and the general public.

3. Coordinate, assist, and cooperate with public and private agencies in efforts to expand equal rights and opportunities for African-Americans in the areas of: employment, economic development, education, health, housing, recreation, social welfare, social services, and the legal system.

4. Serve as the central permanent agency for the advocacy of services for African-Americans.

5. Provide assistance to and cooperate with individuals and public and private agencies and organizations in joint efforts to study and resolve problems relating to the improvement of the status of African-Americans.

6. Publish and disseminate information relating to African-Americans, including publicizing their accomplishments and contributions to this state.

7. Evaluate existing and proposed programs and legislation for their impact on African-Americans.

8. Coordinate or conduct training programs for African-Americans to enable them to assume leadership positions.

9. Conduct surveys of African-Americans to ascertain their needs.

10. Assist the department of personnel in the elimination of underutilization of African-Americans in the state's workforce.

11. Recommend legislation to the governor and the general assembly designed to improve the educational opportunities and the economic and social conditions of African-Americans in this state.

88 Acts, ch 1201, §6
C89, §601K.146
91 Acts, ch 50, §6
C93, §216A.146

216A.147 Additional authority.

The commission may do any or all of the following:

1. Do all things necessary, proper, and expedient in accomplishing the duties listed in section 216A.146 and this section.

2. Hold hearings.

3. Enter into contracts, within the limit of funds made available, with individuals, organizations, and institutions for services furthering the objectives of the commission as listed in section 216A.144.

4. Seek advice and counsel of informed individuals and organizations, in the accomplishment of the objectives of the commission.

5. Apply for and accept grants of money or property from the federal government or any other source, and upon its own order use this money, property, or other resources to accomplish the objectives of the commission.

88 Acts, ch 1201, §7
C89, §601K.147
C93, §216A.147

216A.148 Access to information.

For the purpose of research and study, the commission and the administrator shall have access to all nonconfidential records, data, information, and statistics of all departments, boards, commissions, agencies, and institutions of this state.

88 Acts, ch 1201, §8
C89, §601K.148
C93, §216A.148

216A.149 Annual report.

Not later than August 1 of each year, the commission shall file a report with the governor and the general assembly of its activities for the previous fiscal year and its programmatic priorities for the current year beginning July 1. The commission may submit with the report any recommendations pertaining to its affairs and shall submit recommendations for legislative consideration and other action it deems necessary.

88 Acts, ch 1201, §9
C89, §601K.149
C93, §216A.149

CHAPTER 216B

DEPARTMENT FOR THE BLIND

This chapter not enacted as a part of this title;
transferred from chapter 601L in Code 1993

216B.1 Definitions.
216B.2 Commission created.
216B.3 Commission duties.
216B.4 Federal aid.
216B.5 Commission employees.
216B.6 Powers.
216B.7 Report.
216B.8 Contract bids.

216B.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Commission"* means the commission for the blind.

2. *"Department"* means the department for the blind.

3. *"Director"* means the director of the department for the blind.

86 Acts, ch 1245, §1256
C87, §601K.121
88 Acts, ch 1277, §29, 31
C89, §601L.1
C93, §216B.1

216B.2 Commission created.

The commission for the blind is established consisting of three members appointed by the governor, subject to confirmation by the senate. Members of the commission shall serve three-year terms beginning and ending as provided in section 69.19. The commission shall adopt rules concerning programs and services for blind persons provided under this chapter.

Commission members shall be reimbursed for actual expenses incurred in performance of their duties. Members may also be eligible to receive compensation as provided in section 7E.6. The members of the commission shall appoint officers for the commission. A majority of the members of the commission shall constitute a quorum.

86 Acts, ch 1245, §1257
C87, §601K.122
88 Acts, ch 1277, §31
C89, §601L.2
C93, §216B.2
99 Acts, ch 96, §23
Confirmation, see §2.32

216B.3 Commission duties.

The commission shall:

1. Prepare and maintain a complete register of the blind of the state which shall describe the condition, cause of blindness, ability to receive education and industrial training, and other facts the commission deems of value.

2. Assist in marketing of products of blind workers of the state.

3. Ameliorate the condition of the blind by promoting visits to them in their homes for the purpose of instruction and by other lawful methods as the commission deems expedient.

4. Make inquiries concerning the causes of blindness to ascertain what portion of cases are preventable, and cooperate with the other organized agents of the state in the adoption and enforcement of proper preventive measures.

5. Provide for suitable vocational training if the commission deems it advisable and necessary. The commission may establish workshops for the employment of the blind, paying suitable wages for work under the employment. The commission may provide or pay for, during their training period, the temporary lodging and support of persons receiving vocational training. The commission may use receipts or earnings that accrue from the operation of workshops as provided in this chapter, but a detailed statement of receipts or earnings and expenditures shall be made monthly to the director of the department of management.

6. Establish, manage, and control a special training, orientation, and adjustment center or centers for the blind. Training in the centers shall be limited to persons who are sixteen years of age or older, and the department shall not provide or cause to be provided any academic education or training to children under the age of sixteen except that the commission may provide library services to these children. The commission may provide for the maintenance, upkeep, repair, and alteration of the buildings and grounds designated as centers for the blind including the expenditure of funds appropriated for that purpose. Nonresidents may be admitted to Iowa centers for the blind as space is available, upon terms determined by rule.

7. Establish and maintain offices for the department and commission.

8. Accept gifts, grants, devises, or bequests of real or personal property from any source for the use and purposes of the department. Notwith-

standing sections 8.33 and 12C.7, the interest accrued from moneys received under this section shall not revert to the general fund of the state.

9. Provide library services to persons who are blind and persons with physical disabilities.

10. Act as a bureau of information and industrial aid for the blind, such as assisting the blind in finding employment.

11. Be responsible for the budgetary and personnel decisions for the department and commission.

12. Manage and control the property, both real and personal, belonging to the department. The commission shall, according to the schedule established in this subsection, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners. For purposes of this subsection, *"recycled content"* means that the content of the product contains a minimum of thirty percent postconsumer material.

a. By July 1, 1991, one hundred percent of the purchases of inks which are used for newsprint paper for printing services performed internally or contracted for by the commission shall be soybean-based.

b. By July 1, 1995, a minimum of ten percent of the purchases of garbage can liners made by the commission shall be plastic garbage can liners with recycled content. The percentage purchased shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

c. By July 1, 1993, one hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the commission, shall be soybean-based to the extent formulations for such inks are available.

d. The commission shall report to the general assembly on February 1 of each year, the following:

(1) A listing of plastic products which are regularly purchased by the commission for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the commission, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

e. The department of natural resources shall review the procurement specifications currently used by the commission to eliminate, wherever possible, discrimination against the procurement of products manufactured with recycled content and soybean-based inks.

f. The department of natural resources shall assist the commission in locating suppliers of products with recycled content and soybean-based inks, and collecting data on recycled content and soybean-based ink purchases.

g. The commission, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

h. The department of natural resources shall cooperate with the commission in all phases of implementing this section.

13. The commission shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, *"packing material"* means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

14. Purchase and use recycled printing and writing paper in accordance with the schedule established in section 18.18; establish a wastepaper recycling program, by January 1, 1990, in accordance with the recommendations made by the department of natural resources and requirements of section 18.20; and, in accordance with section 18.6, require product content statements and compliance with requirements regarding contract bidding.

15. Develop a plan to provide telephone yellow pages information without charge to persons declared to be blind under the standards in section 422.12, subsection 1, paragraph *"e"*. The department may apply for federal funds to support the service. The program shall be limited in scope by the availability of funds.

16. *a.* A motor vehicle purchased by the commission shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

b. Of all new passenger vehicles and light pickup trucks purchased by the commission, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

(1) A flexible fuel which is either of the following:

(a) A fuel blended with not more than fifteen

percent gasoline and at least eighty-five percent ethanol.

(b) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

(2) Compressed or liquefied natural gas.

(3) Propane gas.

(4) Solar energy.

(5) Electricity.

The provisions of this paragraph *"b"* do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

17. Comply with the requirements for the purchase of lubricating oils, industrial oils, greases, and hydraulic fluids as established pursuant to section 18.22.

86 Acts, ch 1244, §61
C87, §601K.123
88 Acts, ch 1185, §4; 88 Acts, ch 1277, §31
C89, §601L.3
89 Acts, ch 83, §79; 89 Acts, ch 272, §39; 90 Acts, ch 1237, §5, 6; 91 Acts, ch 97, §59; 91 Acts, ch 194, §8; 91 Acts, ch 254, §23; 92 Acts, ch 1095, §4
C93, §216B.3
93 Acts, ch 26, §2; 93 Acts, ch 176, §38; 94 Acts, ch 1119, §24; 95 Acts, ch 44, §1; 95 Acts, ch 62, §2; 96 Acts, ch 1129, §30; 98 Acts, ch 1082, §3; 99 Acts, ch 114, §14; 99 Acts, ch 121, §8; 2000 Acts, ch 1109, §3

216B.4 Federal aid.

The director may accept financial aid from the government of the United States for carrying out rehabilitation and physical restoration of the blind and for providing library services to persons who are blind and persons with physical disabilities.

A contribution or grant shall not be accepted if a condition is attached to it for its use or administration other than that it be used for assistance to the blind.

86 Acts, ch 1245, §1258
C87, §601K.124
88 Acts, ch 1277, §31
C89, §601L.4
C93, §216B.4
96 Acts, ch 1129, §31; 2002 Acts, ch 1119, §28
Unnumbered paragraph 1 amended

216B.5 Commission employees.

The commission may employ staff who shall be qualified by experience to assume the responsibilities of the offices. The director shall be the administrative officer of the commission and shall be responsible for implementing policy set by the commission. The director shall carry out programs and policies as determined by the commission.

86 Acts, ch 1245, §1259
C87, §601K.125
88 Acts, ch 1277, §31
C89, §601L.5
C93, §216B.5

216B.6 Powers.

The commission shall have all powers necessary to carry out the functions and duties specified in this chapter, including, but not limited to the power to establish advisory committees on special studies, to solicit and accept gifts and grants, to adopt rules according to chapter 17A for the commission and department, and to contract with public and private groups to conduct its business. All departments, divisions, agencies, and offices of the state shall make available upon request of the commission information which is pertinent to the subject matter of the study and which is not by law confidential.

86 Acts, ch 1245, §1260
C87, §601K.126
88 Acts, ch 1277, §31
C89, §601L.6
C93, §216B.6
99 Acts, ch 96, §24

216B.7 Report.

The commission shall make a detailed report of its activities, studies, conclusions and recommendations to the general assembly not later than February 15 of each odd-numbered year.

86 Acts, ch 1245, §1261
C87, §601K.127
88 Acts, ch 1277, §31
C89, §601L.7
C93, §216B.7

216B.8 Contract bids.

A bidder awarded a contract with the department shall disclose the names of all subcontractors, who will work on the project being bid, within forty-eight hours after the award of the contract. If a subcontractor named by a bidder awarded a contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

90 Acts, ch 1161, §5
C91, §601L.8
C93, §216B.8

CHAPTER 216C

RIGHTS OF PERSONS WHO ARE BLIND OR PARTIALLY BLIND AND PERSONS WITH PHYSICAL DISABILITIES

This chapter not enacted as a part of this title;
transferred from chapter 601D in Code 1993

216C.1 Participation by persons with disabilities.
216C.2 Public employment.
216C.3 Free use of public facilities.
216C.4 Accommodations.
216C.5 Use of guide dogs.
216C.6 Failure to use cane or dog not negligence.
216C.7 Penalty for denying rights.
216C.8 White cane safety day.
216C.9 Curb cutouts and ramps for persons with disabilities.
216C.10 Use of hearing dog.
216C.11 Service dogs and assistive animals.

216C.1 Participation by persons with disabilities.

It is the policy of this state to encourage and enable persons who are blind or partially blind and persons with physical disabilities to participate fully in the social and economic life of the state and to engage in remunerative employment.

To encourage participation by persons with disabilities, it is the policy of this state to ensure compliance with federal requirements concerning persons with disabilities.

[C71, §93B.1; C73, 75, 77, 79, 81, §601D.1]
C93, §216C.1
93 Acts, ch 95, §6; 96 Acts, ch 1129, §32

216C.2 Public employment.

Persons who are blind or partially blind and persons with physical disabilities shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds, on the same terms and conditions as other persons, unless it is shown that the particular disability prevents the performance of the work required.

[C71, §93B.2; C73, 75, 77, 79, 81, §601D.2]
C93, §216C.2
96 Acts, ch 1129, §33

216C.3 Free use of public facilities.

Persons who are blind or partially blind and persons with physical disabilities have the same right as other persons to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public elevators, public facilities, and other public places.

[C62, 66, §351.31; C71, §93B.3; C73, 75, 77, 79, 81, §601D.3]
C93, §216C.3
96 Acts, ch 1129, §34

216C.4 Accommodations.

Persons who are blind or partially blind and persons with physical disabilities are entitled to full and equal accommodations, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, other public conveyances or modes of transportation, hotels, lodging places, eating places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

[C71, §93B.4; C73, 75, 77, 79, 81, §601D.4]
C93, §216C.4
96 Acts, ch 1129, §35

216C.5 Use of guide dogs.

Every blind or partially blind person shall have the right to be accompanied by a guide dog, under control and especially trained for the purpose, in any of the places listed in sections 216C.3 and 216C.4 without being required to make additional payment for the guide dog. A landlord shall waive lease restrictions on the keeping of a guide dog for a blind person. The blind person is liable for damage done to the premises or facilities by a guide dog.

[C62, 66, §351.30; C71, §93B.5; C73, 75, 77, 79, 81, §601D.5]
83 Acts, ch 46, §3
C93, §216C.5

216C.6 Failure to use cane or dog not negligence.

A blind or partially blind pedestrian not carrying a cane or using a guide dog in any place shall have all of the rights and privileges conferred by law upon other persons, and the failure of a blind or partially blind pedestrian to carry a cane or to use a guide dog in any place shall not be held to constitute or be evidence of contributory negligence.

[C71, §93B.6; C73, 75, 77, 79, 81, §601D.6]
C93, §216C.6

216C.7 Penalty for denying rights.

Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with the rights of any person under this chapter shall be guilty of a simple misdemeanor.

[C62, 66, §351.32; C71, §93B.7; C73, 75, 77, 79, 81, §601D.7]
C93, §216C.7

216C.8 White cane safety day.

The governor shall annually take suitable public notice of October 15 as white cane safety day. The governor shall issue a proclamation commenting upon the significance of the white cane; calling upon the citizens to observe the provisions of this chapter and sections 321.332 and 321.333 and to take precautions necessary for the safety of persons with disabilities; reminding the citizens of the policies herein declared and urging the citizens to cooperate in giving effect to them; and emphasizing the need of the citizens to be aware of the presence of persons with disabilities in the community and to offer assistance to persons with disabilities upon appropriate occasions.

[C71, §93B.8; C73, 75, 77, 79, 81, §601D.8]
C93, §216C.8
96 Acts, ch 1129, §36

216C.9 Curb cutouts and ramps for persons with disabilities.

1. Curbs constructed along any public street in this state, when the street is paralleled or intersected by sidewalks, or when city ordinances or other lawful regulations will require the construction of sidewalks parallel to or intersecting the street, shall be constructed with not less than two curb cuts or ramps per lineal block which shall be located on or near the crosswalks at intersections. Each curb cut or ramp shall be at least thirty inches wide, shall be sloped at not greater than one inch of rise per twelve inches lineal distance, except that a slope no greater than one inch of rise per eight inches lineal distance may be used where necessary, shall have a nonskid surface, and shall otherwise be so constructed as to allow reasonable access to the crosswalk for persons with physical disabilities using the sidewalk.

2. The requirements of subsection 1 shall apply after January 1, 1975, to all new curbs constructed and to all replacement curbs constructed at any point along a public street which gives reasonable access to a crosswalk.

3. Curbs constructed that are subject to the requirements of this section shall comply with federal requirements concerning persons with disabilities.

[C75, 77, 79, 81, §601D.9]
C93, §216C.9
93 Acts, ch 95, §7; 96 Acts, ch 1129, §37

216C.10 Use of hearing dog.

A deaf or hard-of-hearing person has the right to be accompanied by a hearing dog, under control and especially trained at a recognized training facility to assist the deaf or hard-of-hearing by responding to sound, in any place listed in sections 216C.3 and 216C.4 without being required to make additional payment for the hearing dog. A landlord shall waive lease restrictions on the keeping of dogs for a deaf or hard-of-hearing person with a hearing dog. The deaf or hard-of-hearing person is liable for damage done to any premise or facility by a hearing dog.

A person who denies or interferes with the right of a deaf or hard-of-hearing person under this section is, upon conviction, guilty of a simple misdemeanor.

86 Acts, ch 1245, §1263
C87, §601D.10
C93, §216C.10
93 Acts, ch 75, §5

216C.11 Service dogs and assistive animals.

1. For purposes of this section *"service dog"* means a dog specially trained at a recognized training facility to assist a person with a disability, whether described as a service dog, a support dog, an independence dog, or otherwise. *"Assistive animal"* means a simian or other animal specially trained or in the process of being trained under the auspices of a recognized training facility to assist a person with a disability.

2. A person with a disability or person training an assistive animal has the right to be accompanied by a service dog or an assistive animal, under control, in any of the places listed in sections 216C.3 and 216C.4 without being required to make additional payment for the service dog or assistive animal. A landlord shall waive lease restrictions on the keeping of animals for the service dog or assistive animal of a person with a disability. The person is liable for damage done to any premises or facility by a service dog or assistive animal.

3. A person who knowingly denies or interferes with the right of a person under this section is, upon conviction, guilty of a simple misdemeanor.

88 Acts, ch 1067, §1
C89, §601D.11
91 Acts, ch 69, §1
C93, §216C.11
96 Acts, ch 1129, §113

CHAPTER 216D

OPERATION OF FOOD SERVICE IN PUBLIC BUILDINGS

This chapter not enacted as a part of this title;
transferred from chapter 601C in Code 1993

216D.1 Public policy.
216D.2 Definitions.
216D.3 Agreement with commission for blind.
216D.4 Other public buildings.

216D.1 Public policy.

It is the policy of this state to provide maximum opportunities for training blind persons, helping them to become self-supporting and demonstrating their capabilities. This chapter shall be construed to carry out this policy.

[C71, §93C.1; C73, 75, 77, 79, 81, §601C.1]
C93, §216D.1

216D.2 Definitions.

For the purposes of this chapter:

1. *"Food service"* includes restaurant, cafeteria, snack bar, vending machines for food and beverages, and goods and services customarily offered in connection with any of these.

2. *"Public office building"* means the state capitol, all county courthouses, all city halls, and all buildings used primarily for governmental offices of the state or any county or city. It does not include public schools or buildings at institutions of the state board of regents or the state department of human services.

[C71, §93C.2; C73, 75, 77, 79, 81, S81, §601C.2; 81 Acts, ch 117, §1095]
83 Acts, ch 96, §157, 159
C93, §216D.2
94 Acts, ch 1173, §9

216D.3 Agreement with commission for blind.

A governmental agency which proposes to operate or continue a food service in a public office building shall first attempt in good faith to make an agreement for the commission for the blind to operate the food service without payment of rent. The governmental agency shall not offer or grant to any other party a contract or concession to operate such food service unless the governmental agency determines in good faith that the commission for the blind is not willing to or cannot satisfactorily provide such food service. This chapter shall not impair any valid contract existing on July 1, 1969, and shall not preclude renegotiation of such contract on the same terms and with the same parties.

[C71, §93C.3; C73, 75, 77, 79, 81, §601C.3]
C93, §216D.3

216D.4 Other public buildings.

With respect to all state, county, municipal, and school buildings which are not subject to section 216D.3, the governmental agency in charge of the building shall consider allowing the commission for the blind to operate any existing or proposed food service in the building, and shall discuss such operation with the commission for the blind upon its request.

[C71, §93C.4; C73, 75, 77, 79, 81, §601C.4]
C93, §216D.4

CHAPTER 216E

ASSISTIVE DEVICES

216E.1 Definitions.
216E.2 Express warranties.
216E.3 Assistive device replacement or refund.
216E.4 Manufacturer's duty to provide reimbursement or a loaner for temporary replacement of assistive devices — penalties.
216E.5 Nonconformity disclosure requirement.
216E.6 Remedies.
216E.7 Exemptions.

216E.1 Definitions.

As used in this chapter, unless the context otherwise provides:

1. *"Assistive device"* means any item, piece of equipment, or product system which is purchased, or whose transfer is accepted in this state, and which is used to increase, maintain, or improve the functional capabilities of individuals with disabilities concerning a major life activity as defined in section 225C.46. *"Assistive device"* does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. *"Assistive device"* does not mean any device for which a certificate of title is issued by the state department of transportation but does mean any item, piece of equipment, or product system otherwise meeting the definition of *"assistive device"* that is incorporated, attached, or included as a modification in or to such a certificated device.

2. *"Assistive device dealer"* means a person who is in the business of selling assistive devices.

3. *"Assistive device lessor"* means a person who leases assistive devices to consumers, or who holds the lessor's rights, under a written lease.

4. *"Collateral costs"* means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of shipping, sales tax, and of obtaining an alternative assistive device.

5. *"Consumer"* means any one of the following:

a. The purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale.

b. A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device.

c. A person who may enforce the warranty.

d. A person who leases an assistive device from an assistive device lessor under a written lease.

6. *"Demonstrator"* means an assistive device used primarily for the purpose of demonstration to the public.

7. *"Early termination costs"* means any expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to the manufacturer. *"Early termination costs"* includes a penalty for prepayment under a finance arrangement.

8. *"Early termination savings"* means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer which shall include an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total payments remaining for the period of the lease term remaining after the early termination and the present value of those remaining payments at the date of the early termination.

9. *"Loaner"* means an assistive device, provided free of charge to the consumer, for use by the consumer, that need not be new or be identical to, or have functional capabilities equal to or greater than, those of the original assistive device, but that meets all of the following conditions:

a. The loaner is in good working order.

b. The loaner performs, at a minimum, the most essential functions of the original assistive device, in light of the disabilities of the consumer.

c. Any differences between the loaner and the original assistive device do not create a threat to the consumer's health or safety.

10. *"Manufacturer"* means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, distributor branch, and any warrantors of the assistive device, but does not include an assistive device dealer or assistive device lessor.

11. *"Nonconformity"* means any defect, malfunction, or condition which substantially impairs the use, value, or safety of an assistive device or any of its component parts, but does not include a condition, defect, or malfunction that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive device by the consumer.

12. *"Reasonable attempt to repair"* means any of the following occurring within the terms of an express warranty applicable to a new assistive device or within one year after first delivery of the assistive device to a consumer, whichever is sooner:

a. The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers accepts return of the new assistive device for repair at least two times.

b. The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers places the assistive device out of service for an aggregate of at least thirty cumulative days because of warranty nonconformities.

98 Acts, ch 1042, §1

216E.2 Express warranties.

1. A manufacturer or assistive device lessor who sells or leases an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device, warranting the assistive device to be free of any nonconformity. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. If a manufacturer fails to furnish an express warranty as required by

this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

2. An express warranty does not take effect until the consumer takes possession of the new assistive device.

98 Acts, ch 1042, §2

216E.3 Assistive device replacement or refund.

1. If an assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers, and makes the assistive device available for repair before one year after first delivery of the device to the consumer or within the period of the express warranty if the warranty is longer than one year, a reasonable attempt to repair the nonconformity shall be made.

2. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirements of either paragraph *"a"* or *"b"* upon the request of a consumer.

a. The manufacturer shall provide for a refund by doing one of the following:

(1) If the assistive device was purchased by the consumer, accept return of the assistive device and refund to the consumer and to any holder of perfected security interest in the consumer's assistive device, as the holder's interest may appear, the full purchase price plus any finance charge paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use.

(2) If the assistive device was leased by the consumer, accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as the holder's interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use. The manufacturer shall have a cause of action against the dealer or lessor for reimbursement of any amount that the manufacturer pays to a consumer which exceeds the net price received by the manufacturer for the assistive device.

b. The manufacturer shall provide a comparable new assistive device or offer a refund to the consumer if the consumer does any one of the following:

(1) Offers to transfer possession of the assistive device to the manufacturer. No later than thirty days after that offer, the manufacturer shall provide the consumer with the comparable new assistive device or a refund. When the manufacturer provides the new assistive device or refund, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(2) Offers to return the assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide a refund to the consumer. When the manufacturer provides a refund, the consumer shall return the assistive device having the nonconformity to the manufacturer.

(3) Offers to transfer possession of a leased assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide a refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

3. Under the provisions of this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device lessor's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings.

4. Under the provisions of this section, a reasonable allowance for use shall not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor, or assistive device dealer.

5. A person shall not enforce a lease against a consumer after the consumer receives a refund.

98 Acts, ch 1042, §3

216E.4 Manufacturer's duty to provide reimbursement or a loaner for temporary replacement of assistive devices — penalties.

1. Whenever an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom the assistive device was purchased or exchanged for the repair of any defect, malfunction, or nonconformity to which the warranty is applicable, the manufacturer shall provide the consumer, at the consumer's choice, for the duration of the repair period, either a rental assistive device reimbursement of up to twenty dollars per day, or a loaner, without cost to the consumer, if a loaner is reasonably available or obtainable by the manufacturer, assistive device lessor, or assistive device dealer, if any of the following applies:

a. The repair period exceeds ten working days, including the day on which the device is tendered to the manufacturer or an assistive device dealer

designated by the manufacturer for repairs. If the assistive device dealer does not tender the assistive device to the manufacturer in a timely enough manner for the manufacturer to make the repairs within ten days, the manufacturer shall have a cause of action against the assistive device dealer for reimbursement of any penalties that the manufacturer must pay.

b. The nonconformity is the same for which the assistive device has been tendered to the assistive device dealer for repair on at least two previous occasions.

2. The provisions of this section regarding a manufacturer's duty shall apply for the period of the applicable express warranty, or until the date any repair required by the warranty is completed and the assistive device is returned to the consumer with the nonconformity eliminated, whichever is later, even if the assistive device is returned after the end of the warranty period.

98 Acts, ch 1042, §4

216E.5 Nonconformity disclosure requirement.

An assistive device returned by a consumer or assistive device lessor in this state or any other state for nonconformity shall not be sold or leased again in this state unless full written disclosure of the reason for return is made to any prospective buyer or lessee by the manufacturer, assistive device dealer, or assistive device lessor.

98 Acts, ch 1042, §5

216E.6 Remedies.

1. This chapter shall not limit rights or remedies available to a consumer under any other law.

2. Any waiver of rights by a consumer under this chapter is void.

3. In addition to pursuing any other remedy, a consumer may bring an action to recover any damages caused by a violation of this chapter. The court shall award a consumer who prevails in such an action no more than three times the amount of any pecuniary loss, together with costs and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

98 Acts, ch 1042, §6

216E.7 Exemptions.

This chapter does not apply to a hearing aid sold, leased, or transferred to a consumer by an audiologist licensed under chapter 147, or a hearing aid dealer licensed under chapter 154A, if the audiologist or dealer provides either an express warranty for the hearing aid or provides for service and replacement of the hearing aid.

98 Acts, ch 1042, §7

SUBTITLE 2

HUMAN SERVICES — INSTITUTIONS

CHAPTER 217

DEPARTMENT OF HUMAN SERVICES

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FIELD SERVICES ORGANIZATION

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217.1 Programs of department.

There is established a department of human services to administer programs designed to improve the well-being and productivity of the people of the state of Iowa. The department shall concern itself with the problems of human behavior, adjustment, and daily living through the administration of programs of family, child, and adult welfare, economic assistance including costs of medical care, rehabilitation toward self-care and support, delinquency prevention and control, treatment and rehabilitation of juvenile offenders, care and treatment of persons with mental illness or mental retardation, and other related programs as provided by law.

[C71, 73, 75, 77, 79, 81, §217.1]

83 Acts, ch 96, §63, 159; 96 Acts, ch 1129, §38

217.2 Council on human services.

There is created within the department of human services a council on human services which shall act in a policy-making and advisory capacity on matters within the jurisdiction of the department. The council shall consist of seven members appointed by the governor subject to confirmation by the senate. Appointments shall be made on the basis of interest in public affairs, good judgment, and knowledge and ability in the field of human services. Appointments shall be made to provide a diversity of interest and point of view in the membership and without regard to religious opinions or affiliations. Members of the council shall serve for six-year staggered terms.

Each term shall commence and end as provided by section 69.19.

All members of the council shall be electors of the state of Iowa. No more than four members shall belong to the same political party and no more than two members shall, at the time of appointment, reside in the same congressional district. At least one member of the council shall be a member of a county board of supervisors at the time of appointment to the council. Vacancies occurring during a term of office shall be filled in the same manner as the original appointment for the balance of the unexpired term subject to confirmation by the senate.

[C71, 73, 75, 77, 79, 81, §217.2; 81 Acts, ch 78, §20, 21]

83 Acts, ch 96, §157, 159

Confirmation, see §2.32

217.3 Duties of council.

The council on human services shall:

1. Organize annually and select a chairperson and vice chairperson.

2. Adopt and establish policy for the operation and conduct of the department of human services, subject to any guidelines which may be adopted by the general assembly, and the implementation of all services and programs thereunder.

3. Report immediately to the governor any failure by the director or any administrator of the department of human services to carry out any of the policy decisions or directives of the council.

4. Approve the budget of the department of human services prior to submission to the governor. Prior to approval of the budget, the council shall publicize and hold a public hearing to provide explanations and hear questions, opinions, and suggestions regarding the budget. Invitations to the hearing shall be extended to the governor, the governor-elect, the director of the department of management, and other persons deemed by the council as integral to the budget process. The budget materials submitted to the governor shall include a review of options for revising the medical assistance program made available by federal action or by actions implemented by other states as identified by the department, the medical assistance advisory council created in section 249A.4, subsection 8, and by county representatives. The review shall address what potential revisions could be made in this state and how the changes would be beneficial to Iowans.

5. Insure that all programs administered or services rendered by the department directly to any citizen or through a local board of welfare to any citizen are co-ordinated and integrated so that any citizen does not receive a duplication of services from various departments or local agencies that could be rendered by one department or local agency. If the council finds that such is not the case, it shall hear and determine which department or local agency shall provide the needed service or services and enter an order of their determination by resolution of the council which must be concurred in by at least a majority of the members. Thereafter such order or resolution of the council shall be obeyed by all state departments and local agencies to which it is directed.

6. Adopt all necessary rules recommended by the director or administrators of divisions hereinafter established prior to their promulgation pursuant to chapter 17A.

7. Approve the establishment of any new division or reorganization, consolidation or abolition of any established division prior to the same becoming effective.

8. Recommend to the governor the names of individuals qualified for the position of director of human services when a vacancy exists in the office.

[C71, 73, 75, 77, 79, 81, §217.3]

83 Acts, ch 96, §157, 159; 89 Acts, ch 283, §18; 95 Acts, ch 205, §36; 98 Acts, ch 1155, §7

217.4 Meetings of council.

The council shall meet at least monthly. Additional meetings shall be called by the chairperson or upon written request of any three members thereof as necessary to carry out the duties of the council. The chairperson shall preside at all meetings or in the absence of the chairperson the vice chairperson shall preside. The members of the council shall be paid a per diem as specified in section 7E.6 and their reasonable and necessary expenses.

[C71, 73, 75, 77, 79, 81, §217.4]

90 Acts, ch 1256, §36

Mileage expense rate, see §70A.9

217.5 Director of human services.

The chief administrative officer for the department of human services is the director of human services. The director shall be appointed by the governor subject to confirmation by the senate and shall serve at the pleasure of the governor. The governor shall fill a vacancy in this office in the same manner as the original appointment was made. The director shall be selected primarily for administrative ability.

The director shall not be selected on the basis of political affiliation and shall not engage in political activity while holding this position.

[C71, 73, 75, 77, 79, 81, §217.5]

83 Acts, ch 96, §157, 159; 88 Acts, ch 1134, §43

Confirmation, see §2.32

217.6 Rules and regulations.

The director is hereby authorized to recommend to the council for adoption such rules and regulations as are necessary to carry into practice the programs of the various divisions and to establish such divisions and to assign or reassign duties, powers, and responsibilities within the department, all with the approval of the council on human services, within the department as the direc-

tor deems necessary and appropriate for the proper administration of the duties, functions and programs with which the department is charged. Any action taken, decision made, or administrative rule adopted by any administrator of a division may be reviewed by the director. The director, upon such review, may affirm, modify, or reverse any such action, decision, or rule. The director shall organize the department of human services into divisions to carry out in efficient manner the intent of this chapter.

The department of human services may be initially divided into the following divisions of responsibility: the division of child and family services, the division of mental health and developmental disabilities, the division of administration, and the division of planning, research and statistics.

[C71, 73, 75, 77, 79, 81, §217.6; 81 Acts, ch 78, §20, 22]

83 Acts, ch 96, §64, 159; 94 Acts, ch 1170, §27

217.7 Administrators of divisions.

The director may appoint an administrator of each of the divisions. The administrators shall be selected on the basis of their particular professional qualifications, education, and background relative to the assigned responsibilities of their divisions.

[C71, 73, 75, 77, 79, 81, §217.7]

88 Acts, ch 1134, §44

217.8 Division of child and family services.

The administrator of the division of child and family services shall be qualified by training, experience, and education in the field of welfare and social problems. The administrator is charged with the administration of programs involving neglected, dependent, and delinquent children, child welfare, family investment program, and aid to persons with disabilities and shall administer and be in control of other related programs established for the general welfare of families, adults, and children as directed by the director.

[C50, 54, 58, 62, 66, §218.79; C71, 73, 75, 77, 79, 81, §217.8; 81 Acts, ch 27, §2; 82 Acts, ch 1260, §17]

90 Acts, ch 1239, §3; 93 Acts, ch 97, §24; 96 Acts, ch 1129, §113

217.9 Additional duties.

The administrator of the division of child and family services may have the additional following duties, powers and responsibilities:

1. Develop a program of basic education, recreation, vocational training and guidance for social adjustment.
2. Administer programs and statutes involved with child placement, employment and supervision of state boards.
3. Prepare a budget and such report or reports as required by law or as directed by the director.
4. Develop a program in corrective institutions for juveniles designed to rehabilitate the inmates and patients and institute a program of placement and parole supervision for all parolees of said corrective institutions for juveniles.

[C50, 54, 58, 62, 66, §218.80; C71, 73, 75, 77, 79, 81, §217.9]

217.9A Commission on children, youth, and families. Repealed by 98 Acts, ch 1206, § 19. See § 28.3.

217.10 Administrator of division of mental health and developmental disabilities.

The administrator of the division of mental health and developmental disabilities shall be qualified as provided in section 225C.3, subsection 3. The administrator's duties are enumerated in section 225C.4.

[C50, 54, 58, 62, 66, §218.75; C71, 73, 75, 77, 79, 81, §217.10; 81 Acts, ch 78, §20, 23, 50]

94 Acts, ch 1170, §28

217.11 Family development and self-sufficiency council created.

A family development and self-sufficiency council is established within the department of human services. The council consists of the following persons:

1. The director of the department of human services or the director's designee.
2. The director of the Iowa department of public health or the director's designee.
3. The administrator of the division of community action agencies in the department of human rights or the administrator's designee.
4. The administrator of the division of child and family services of the department of human services or the administrator's designee.
5. The dean of the college of family and consumer sciences at Iowa state university or the dean's designee.
6. The director of the public policy center at the university of Iowa or the director's designee.
7. Two recipients or former recipients of the family investment program, selected by the other members of the council.
8. The head of the department of home economics at the university of northern Iowa or that person's designee.
9. The director of the department of education or the director's designee.
10. The director of the department of workforce development or the director's designee.
11. Two persons representing the business community, selected by the other members of the council.

The department of human services shall contract with the department of human rights to staff and administer grants provided under section 217.12.

88 Acts, ch 1253, §1; 89 Acts, ch 283, §19; 91 Acts, ch 109, §2; 93 Acts, ch 97, §25; 94 Acts, ch 1114, §2, 3; 96 Acts, ch 1106, §6; 98 Acts, ch 1102, §1

217.12 Council duties.

The family development and self-sufficiency council shall:

1. Identify the factors and conditions that place Iowa families at risk of long-term dependency upon the family investment program. The council shall seek to use relevant research findings and national and Iowa specific data on the family investment program.

2. Identify the factors and conditions that place Iowa families at risk of family instability and foster care placement. The council shall seek to use relevant research findings and national and Iowa specific data on the foster care system.

3. Subject to the availability of funds for this purpose, award grants to public or private organizations for provision of family development services to families at risk of long-term welfare dependency. Grant proposals for the family development and self-sufficiency grant program shall include the following elements:

a. Designation of families to be served that meet some criteria of being at risk of long-term welfare dependency, and agreement to serve clients that are referred by the department of human services from the family investment program which meet the criteria. The criteria may include, but are not limited to, factors such as educational level, work history, family structure, age of the youngest child in the family, previous length of stay on the family investment program, and participation in the family investment program or the foster care program while the head of a household was a child. Grant proposals shall also establish the number of families to be served under the grant.

b. Designation of the services to be provided for the families served, including assistance regarding job-seeking skills, family budgeting, nutrition, self-esteem, methamphetamine education, health and hygiene, child rearing, child education preparation, and goal setting. Grant proposals shall indicate the support groups and support systems to be developed for the families served during the transition between the need for assistance and self-sufficiency.

c. Designation of the manner in which other needs of the families will be provided including, but not limited to, child care assistance, transportation, substance abuse treatment, support group counseling, food, clothing, and housing.

d. Designation of the training and recruitment of the staff which provides services, and the appropriateness of the training for the purposes of meeting family development and self-sufficiency goals of the families being served.

e. Designation of the support available within the community for the program and for meeting subsequent needs of the clients, and the manner in which community resources will be made available to the families being served.

f. Designation of the manner in which the program will be subject to audit and to evaluation.

g. Designation of agreement provisions for tracking and reporting performance measures developed pursuant to subsection 4.

Not more than five percent of any funds appropriated by the general assembly for the purposes of this subsection may be used for staffing and administration of the grants.

4. In cooperation with the legislative fiscal bureau, develop measures to independently evaluate the effectiveness of any grant funded under the program, that include measurement of the grantee's effectiveness in meeting its goals in a quantitative sense through reduction in length of stay on welfare programs or a reduced need for other state child and family welfare services. Families referred to the program shall be selected from those meeting the criteria established in the program as being at risk.

5. Seek to enlist research support from the Iowa research community in meeting the duties outlined in subsections 1 through 4.

6. Seek additional support for the funding of grants under the program, including but not limited to funds available through the federal government in serving families at risk of long-term welfare dependency, and private foundation grants.

7. Make recommendations to the governor and the general assembly on the effectiveness of early intervention programs in Iowa and throughout the country that provide family development services that lead to self-sufficiency for families at risk of long-term welfare dependency.

8. Evaluate and make recommendations regarding the costs and benefits of the expansion of the services provided under the special needs program of the family investment program to include tuition for parenting skills programs, family support and counseling services, child development services, and transportation and child care expenses associated with the programs and services.

88 Acts, ch 1253, §2; 92 Acts, ch 1229, §1; 93 Acts, ch 97, §26; 94 Acts, ch 1114, §4 – 7; 98 Acts, ch 1218, §67; 99 Acts, ch 192, §33; 99 Acts, ch 195, §5

217.13 Department to provide certain volunteer services — volunteer liability.

1. The department of human services shall establish volunteer programs designed to enhance the services provided by the department. Roles for volunteers may include but shall not be limited to parent aides, friendly visitors, commodity distributors, clerical assistants, and medical transporters. Roles for volunteers shall include conserva-

tors and guardians. The department shall adopt rules for programs which are established.

2. *a.* The director shall appoint a coordinator of volunteer services to oversee the provision of services of volunteer conservators and guardians on a volunteer basis to individuals in this state requiring such services. The coordinator, after consulting with personnel assigned to the district of the department, shall recommend to the director how best to serve the needs of individuals in need of the services of a guardian or conservator. Where possible, the coordinator shall recommend that the services be provided on a multicounty basis.

b. The coordinator shall cooperate with the administrators of the divisions of the department in providing these services and shall seek out alternative sources for providing the services required under this section.

3. All volunteers registered with the department and in compliance with departmental rules are considered state employees for purposes of chapter 669. However, this section does not except a conservator or guardian from an action brought under section 658.1A or 658.3. This section does not relieve a guardian or conservator from duties under chapter 633.

88 Acts, ch 1170, §1

Volunteer guardians and conservators, recruitment and assistance; 88 Acts, ch 1170, §13

217.14 Additional powers and duties. Repealed by 83 Acts, ch 96, § 156, 159. See § 904.108.

217.15 Administrator of division of administration.

The administrator of the division of administration shall be qualified in the general field of governmental administration with special training and experience in the areas of competitive bidding, contract letting, accounting and budget preparation.

[C71, 73, 75, 77, 79, 81, §217.15]

217.16 Co-operation with other divisions.

The administrator of the division of administration shall co-operate with the administrators of the other divisions of the department of human services, assist them and the director of the department in the preparation of annual budgets and such other like reports as may be requested by the director or required by law.

[C71, 73, 75, 77, 79, 81, §217.16]

83 Acts, ch 96, §157, 159

217.17 Administrator of division of planning.

The administrator of the division of planning, research, and statistics shall be qualified in the general field of governmental planning with special training and experience in the areas of preparation and development of plans for future efficient reorganization and administration of government social functions. The administrator of the division of planning, research, and statistics shall cooperate with the administrators of the other divisions of the department of human services assisting them and the director of the department in their planning, research, and statistical problems. The administrator of the division of planning, research, and statistics shall assist the administrators, director, and the council on human services by proposing administrative and organizational changes at both the state and local level to provide more efficient and integrated social services to the citizens of this state. The planning, research, and statistical operations now forming an integral part of the present state functions assigned to the administrators of this department along with their future needs in this regard are all assigned to and shall be administered by the administrator of this division.

[C71, 73, 75, 77, 79, 81, §217.17]

83 Acts, ch 96, §65, 159

217.18 Official seal.

The department shall have an official seal with the words "Iowa Department of Human Services" and such other design as the department prescribes engraved thereon. Every commission, order or other paper of an official nature executed by the department may be attested with such seal.

[S13, §2727-a1; SS15, §2727-a3; C24, 27, 31, 35, 39, §**3281;** C46, 50, 54, 58, 62, 66, §217.8; C71, 73, 75, 77, 79, 81, §217.18]

83 Acts, ch 96, §157, 159

217.19 Expenses.

The director of said department, the director's staff, assistants and employees shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route, when engaged in the performance of official business.

[S13, §2727-a5; C24, 27, 31, 35, 39, §**3282;** C46, 50, 54, 58, 62, 66, §217.9; C71, 73, 75, 77, 79, 81, §217.19]

217.20 Trips to other states.

No authority shall be granted to any person to travel to another state except by approval of the director under guidelines established by the executive council.

[S13, §2727-a5; C24, 27, 31, 35, 39, §**3284;** C46, 50, 54, 58, 62, 66, §217.10; C71, 73, 75, 77, 79, 81, §217.20]

88 Acts, ch 1249, §4

217.21 Annual report.

The department shall, annually, at the time provided by law make a report to the governor and general assembly, and cover therein the annual

period ending with June 30 preceding, which report shall embrace:

1. An itemized statement of its expenditures concerning each program under its administration.

2. Adequate and complete statistical reports for the state as a whole concerning all payments made under its administration.

3. Such recommendations as to changes in laws under its administration as the director may deem necessary.

4. The observations and recommendations of the director and the council on human services relative to the programs of the department.

5. Such other information as the director or council on human services may deem advisable, or which may be requested by the governor or by the general assembly.

[S13, §2727-a9, -a12, -a16, -a34; SS15, §2727-a3; C24, 27, 31, 35, 39, §**3285;** C46, 50, 54, 58, 62, 66, §217.11; C71, 73, 75, 77, 79, 81, §217.21]

83 Acts, ch 96, §157, 159

217.22 Transfer hearing. Repealed by 83 Acts, ch 96, § 156, 159.

217.23 Personnel — merit system — reimbursement for damaged property.

1. The director of human services or the director's designee, shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the department. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 19A.

2. The department is hereby authorized to expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The department shall establish rules in accordance with chapter 17A to carry out the purpose of this section.

[C75, 77, 79, 81, §217.23]

85 Acts, ch 253, §7

217.24 to 217.29 Repealed by 77 Acts, ch 154, § 23. See chapter 905.

217.30 Confidentiality of records — report of recipients.

1. The following information relative to individuals receiving services or assistance from the department shall be held confidential:

a. Names and addresses of individuals receiving services or assistance from the department, and the types of services or amounts of assistance provided, except as otherwise provided in subsection 4.

b. Information concerning the social or economic conditions or circumstances of particular individuals who are receiving or have received services or assistance from the department.

c. Agency evaluations of information about a particular individual.

d. Medical or psychiatric data, including diagnosis and past history of disease or disability, concerning a particular individual.

2. Information described in subsection 1 shall not be disclosed to or used by any person or agency except for purposes of administration of the programs of services or assistance, and shall not in any case, except as otherwise provided in subsection 4, paragraph *"b"*, be disclosed to or used by persons or agencies outside the department unless they are subject to standards of confidentiality comparable to those imposed on the department by this division.

3. Nothing in this section shall restrict the disclosure or use of information regarding the cost, purpose, number of persons served or assisted by, and results of any program administered by the department, and other general and statistical information, so long as the information does not identify particular individuals served or assisted.

4. *a.* The general assembly finds and determines that the use and disclosure of information as provided in this subsection are for purposes directly connected with the administration of the programs of services and assistance referred to in this section and are essential for their proper administration.

b. Confidential information described in subsection 1, paragraphs *"a"*, *"b"*, and *"c"*, shall be disclosed to public officials for use in connection with their official duties relating to law enforcement, audits and other purposes directly connected with the administration of such programs, upon written application to and with approval of the director or the director's designee. Confidential information described in subsection 1, paragraphs *"a"*, *"b"*, and *"c"*, shall also be disclosed to public officials for use in connection with their official duties relating to the support and protection of children and families, upon written application to and with the approval of the director or the director's designee.

c. It shall be unlawful for any person to solicit, disclose, receive, use, or to authorize or knowingly permit, participate in, or acquiesce in the use of any information obtained from any such report or record for commercial or political purposes.

d. The department may disclose information described in subsection 1 to other state agencies or to any other person who is not subject to the provisions of chapter 17A and is providing services to recipients under chapter 239B who are participating in the promoting independence and self-sufficiency through employment job opportunities and

basic skills program, if necessary for the recipients to receive the services.

5. If it is definitely established that any provision of this section would cause any of the programs of services or assistance referred to in this section to be ineligible for federal funds, such provision shall be limited or restricted to the extent which is essential to make such program eligible for federal funds. The department shall adopt, pursuant to chapter 17A, any rules necessary to implement this subsection.

6. The provisions of this section shall apply to recipients of assistance under chapter 252. The reports required to be prepared by the department under this section shall, with respect to such assistance or services, be prepared by the person or officer charged with the oversight of the poor.

7. Violation of this section shall constitute a serious misdemeanor.

8. The provisions of this section shall take precedence over section 17A.12, subsection 7.

[C39, §**3828.047;** C46, 50, 54, 58, §239.10, 241.25, 249.44; C62, 66, §239.10, 241.25, 241A.16, 249.44, 249A.18; C71, 73, §239.10, 241.25, 241A.16, 249.44, 249A.8; C75, 77, 79, 81, §217.30]

93 Acts, ch 54, §1; 93 Acts, ch 97, §8; 97 Acts, ch 41, §32; 2000 Acts, ch 1088, §1; 2000 Acts, ch 1123, §1

217.31 Action for damages.

Any person may institute a civil action for damages under chapter 669 or to restrain the dissemination of confidential records set out in subsection 1, paragraph *"b," "c,"* or *"d"* of section 217.30, in violation of that section, and any person, agency or governmental body proven to have disseminated or to have requested and received confidential records in violation of subsection 1, paragraph *"b," "c,"* or *"d"* of section 217.30, shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorneys' fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

Any reasonable grounds that a public employee has violated any provision of this division shall be grounds for immediate removal from access of any kind to confidential records or suspension from duty without pay.

[C75, 77, 79, 81, §217.31]

217.32 Office space in county.

Where the department of human services assigns personnel to an office located in a county for the purpose of performing in that county designated duties and responsibilities assigned by law to the department, it shall be the responsibility of the county to provide and maintain the necessary office space and office supplies and equipment for the personnel so assigned in the same manner as if they were employees of the county. The department shall at least annually, or more frequently if the department so elects, reimburse the county for a portion, designated by law, of the cost of maintaining office space and providing supplies and equipment as required by this section, and also for a similar portion of the cost of providing the necessary office space if in order to do so it is necessary for the county to lease office space outside the courthouse or any other building owned by the county. The portion of the foregoing costs reimbursed to the county under this section shall be equivalent to the proportion of those costs which the federal government authorizes to be paid from available federal funds, unless the general assembly directs otherwise when appropriating funds for support of the department.

[C75, 77, 79, 81, §217.32]

83 Acts, ch 96, §157, 159

217.33 Legal services.

The director of human services pursuant to a state plan funded in part by the federal government may provide services for eligible persons by contract with nonprofit legal aid organizations.

[C77, 79, 81, §217.33]

83 Acts, ch 96, §157, 159

217.34 Debt setoff.

The investigations division of the department of inspections and appeals and the department of human services shall provide assistance to set off against a person's or provider's income tax refund or rebate any debt which has accrued through written contract, subrogation, departmental recoupment procedures, or court judgment and which is in the form of a liquidated sum due and owing the department of human services. The department of inspections and appeals, with approval of the department of human services, shall adopt rules under chapter 17A necessary to assist the department of revenue and finance in the implementation of the setoff under section 421.17, subsection 21 in regard to money owed to the state for public assistance overpayments. The department of human services shall adopt rules under chapter 17A necessary to assist the department of revenue and finance in the implementation of the setoff under section 421.17, subsection 21, in regard to collections by the child support recovery unit and the foster care recovery unit.

83 Acts, ch 96, §160; 83 Acts, ch 153, §2; 89 Acts, ch 250, §1

217.35 and 217.36 Reserved.

217.37 Rules for spouse's support. Repealed by 91 Acts, ch 258, § 72. See § 249A.3(9).

217.38 Restitution to individuals of Japanese ancestry.

Notwithstanding any other law of this state, payments paid to an eligible individual of Japanese ancestry under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383, Title I, shall not be considered as income or an asset for determining the eligibility for state or local government benefit or entitlement programs. The proceeds are not subject to recoupment for the receipt of governmental benefits or entitlements and liens, except liens for child support, are not enforceable against these sums for any reason.

89 Acts, ch 285, §1

217.39 Persecuted victims of World War II — reparations — heirs.

Notwithstanding any other law of this state, payments paid to and income from lost property of a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or as an heir of such victim which is exempt from state income tax as provided in section 422.7, subsection 35, shall not be considered as income or an asset for determining the eligibility for state or local government benefit or entitlement programs. The proceeds are not subject to recoupment for the receipt of governmental benefits or entitlements, and liens, except liens for child support, are not enforceable against these sums for any reason.

2000 Acts, ch 1103, §1, 3

217.40 Training for guardians and conservators.

The department of human services, or a person designated by the director, shall establish training programs designed to assist all duly appointed guardians and conservators in understanding their fiduciary duties and liabilities, the special needs of the ward, and how to best serve the ward and the ward's interests.

89 Acts, ch 178, §2

217.41 Private agency contracts. Repealed by 98 Acts, ch 1218, § 63.

FIELD SERVICES ORGANIZATION

217.42 Service areas — offices.

1. The organizational structure to deliver the department's field services shall be based upon service areas. The service areas shall serve as a basis for providing field services to persons residing in the counties comprising the service area. The service areas shall be those designated by the department effective January 1, 2002. In determining the service areas, the department shall consider other geographic service areas including but not limited to judicial districts and community empowerment areas. The department shall consult with the county boards of supervisors in a service area with respect to the selection of the service area manager responsible for the service area who is initially selected for the service area designated effective January 1, 2002, and any service area manager selected for the service area thereafter. Following establishment of the service areas effective January 1, 2002, if a county seeks to change the boundaries of a service area, the change shall only take place if the change is mutually agreeable to the department and all affected counties. If it is necessary for the department to significantly modify its field operations or the composition of a designated service area, or if it is necessary for the department to change the number of offices operating less than full-time, the department shall consult with the affected counties prior to implementing such action.

2. The department shall maintain an office in each county. Based on the annual appropriations for field operations, the department shall strive to maintain a full-time presence in each county. If it is not possible to maintain a full-time presence in each county, the department shall provide staff based on its caseweight system to assure the provision of services. The department shall consult with the county boards of supervisors of those counties regarding staffing prior to any modification of office hours.

3. A county or group of counties may voluntarily enter into a chapter 28E agreement with the department to provide funding or staff persons to deliver field services in county offices. The agreement shall cover the full fiscal year but may be revised by mutual consent.

92 Acts, ch 1079, §1; 2001 Acts, 2nd Ex, ch 4, §1, 9

217.43 Service area advisory boards — location of county offices.

1. The department shall establish a service area advisory board in each service area. Each of the county boards of supervisors of the counties comprising the service area shall appoint two service area advisory board members. The following requirements apply to the appointments made by a county board of supervisors: the membership shall be appointed in accordance with section 69.16, relating to political affiliation, and section 69.16A, relating to gender balance; not more than one of the members shall be a member of the board of supervisors; and appointments shall be made on the basis of interest in maintaining and improving service delivery. Appointments shall be made a part of the regular proceedings of the board of supervisors and shall be filed with the county auditor and the service area manager. A vacancy on the board shall be filled in the same manner as the original appointment. The boards of supervisors

shall develop and agree to other organizational provisions involving the advisory board, including reporting requirements.

2. The purpose of the advisory boards is to improve communication and coordination between the department and the counties and to advise the department regarding maintenance and improvement of service delivery in the counties and communities comprising the service areas.

3. The department shall determine the community in which each county office will be located. The county board of supervisors shall determine the location of the office space for the county office. The county board of supervisors shall make reasonable efforts to collocate the office with other state and local government or private entity offices in order to maintain the offices in a cost-effective location that is convenient to the public.

92 Acts, ch 1079, §2; 93 Acts, ch 54, §2; 2001 Acts, 2nd Ex, ch 4, §2, 9

Emergency relief duties of service area advisory board, see §251.5

217.44 Service areas — employee and volunteer record checks.

1. The department shall conduct criminal and child and dependent adult abuse record checks of persons who are potential employees, employees, potential volunteers, and volunteers in service area offices in a position having direct contact with the department's clients. The record checks shall be performed in this state and the department may conduct these checks in other states. If the department determines that a person has been convicted of a crime or has a record of founded child or dependent adult abuse, the department shall perform an evaluation to determine whether the crime or founded abuse warrants prohibition of the person's employment or participation as a volunteer. The record checks and evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

2. In an evaluation, the department shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded abuse again, and the number of crimes or founded abuses committed by the person involved.

3. The department may permit a person who is evaluated to be employed or to participate as a volunteer if the person complies with the department's conditions relating to employment or participation as a volunteer which may include completion of additional training.

4. If the department determines that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment or participation as a volunteer, the person shall not be employed by or participate as a volunteer in a department service area office in a position having direct contact with the department's clients.

2000 Acts, ch 1112, §52; 2001 Acts, 2nd Ex, ch 4, §3, 9

CHAPTER 217A

IOWA DEPARTMENT OF CORRECTIONS

Transferred to chapter 246; 85 Acts, ch 21, §54;
chapter 246 transferred to chapter 904

CHAPTER 218

INSTITUTIONS GOVERNED BY HUMAN SERVICES DEPARTMENT

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218.1 Institutions controlled.

The director of human services shall have the general and full authority given under statute to control, manage, direct, and operate the following institutions under the director's jurisdiction, and may at the director's discretion assign the powers and authorities given the director by statute to any one of the deputy directors, division administrators, or officers or employees of the divisions of the department of human services:

1. Glenwood state resource center.
2. Woodward state resource center.
3. Mental health institute, Cherokee, Iowa.
4. Mental health institute, Clarinda, Iowa.
5. Mental health institute, Independence, Iowa.
6. Mental health institute, Mount Pleasant, Iowa.
7. State training school.
8. Iowa juvenile home.
9. Other facilities not attached to the campus of the main institution as program developments require.

[S13, §2727-a8, -a77; SS15, §2713-n2, 2727-a96; C24, 27, 31, 35, 39, §**3287;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.1; 81 Acts, ch 73, §1; 82 Acts, ch 1260, §18]

83 Acts, ch 96, §66, 157, 159; 83 Acts, ch 101, §37; 92 Acts, ch 1140, §21; 2000 Acts, ch 1112, §1, 45

218.2 Powers of governor — report of abuses.

Nothing contained in section 218.1 shall limit the general supervisory or examining powers vested in the governor by the laws or Constitution of the state, or legally vested by the governor in any committee appointed by the governor.

The administrator to whom primary responsibility of a particular institution has been assigned shall make reports to the director of human services as are requested by the director and the director shall report, in writing, to the governor any abuses found to exist in any of the institutions.

[S13, §2727-a9, -a18; C24, 27, 31, 35, 39, §**3288, 3289;** C46, 50, 54, 58, 62, 66, §218.2, 218.3; C71, 73, 75, 77, 79, 81, §218.2]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §2

218.3 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. *"Administrator"* means the person to whom the director of human services has assigned power and authority over an institution in accordance with section 218.1.

2. *"Institution"* means an institution listed in section 218.1.

[C71, 73, 75, 77, 79, 81, §218.3; 81 Acts, ch 78, §20, 24; 82 Acts, ch 1260, §19]

83 Acts, ch 96, §67, 157, 159; 83 Acts, ch 101, §38; 91 Acts, ch 258, §36; 94 Acts, ch 1170, §29; 2000 Acts, ch 1112, §3

218.4 Recommendation for rules.

The administrators of particular institutions shall recommend to the council on human services for adoption such rules not inconsistent with law as they may deem necessary for the discharge of their duties, the management of each of such institutions, the admission of residents thereto and the treatment, care, custody, education and discharge of residents. It is made the duty of the particular administrators to establish rules by which danger to life and property from fire will be minimized. In the discharge of their duties and in the enforcement of their rules, they may require any of their appointees to perform duties in addition to those required by statute.

Rules adopted by the council shall be uniform and shall apply to all institutions under the particular administrator and to all other institutions under the administrator's jurisdiction, and the primary rules for use in institutions where persons with mental illness are served shall, unless otherwise indicated, uniformly apply to county or private hospitals in which persons with mental illness are served, but the rules shall not interfere with proper medical treatment administered to patients by competent physicians. Annually, signed copies of the rules shall be sent to the superintendent of each institution or hospital under the control or supervision of a particular administrator and copies shall also be sent to the clerk of each district court, the chairperson of the board of supervisors of each county and, as appropriate, to the officer in charge of institutions or hospitals caring for persons with mental illness in each county who shall be responsible for seeing that the rules are posted in each institution or hospital in a prominent place. The rules shall be kept current to meet the public need and shall be revised and published annually.

The state fire marshal shall cause to be made an annual inspection of all the institutions listed in section 218.1 and shall make written report thereof to the particular administrator of the state department of human services in control of such institution.

[S13, §2727-a30, -a48, 5718-a3; SS15, §2727-a50, -a96; C24, 27, 31, 35, 39, §**3290;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.4]

83 Acts, ch 96, §157, 159, 160; 94 Acts, ch 1170, §30; 2000 Acts, ch 1112, §4

218.5 Fire protection contracts.

The administrators shall have power to enter into contracts with the governing body of any city or other municipal corporation for the protection from fire of any property under the administrators' primary control, located in any municipal corporation or in territory contiguous to the municipal corporation, upon terms as may be agreed upon.

[C31, 35, §3290-d1; C39, §**3290.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.5]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §5

218.6 Repealed by 78 Acts, ch 1104, § 3.

218.7 Emergency purchases. Repealed by 83 Acts, ch 96, § 156, 159.

218.8 Repealed by 78 Acts, ch 1104, § 3.

218.9 Appointment of superintendents.

The administrator in charge of an institution, subject to the approval of the director of human services, shall appoint the superintendent of the institution.

The superintendent or warden shall have immediate custody and control, subject to the orders and policies of the division administrator in charge of the institution, of all property used in connection with the institution except as provided in this chapter. The tenure of office shall be at the pleasure of the appointing authority. The appointing authority may transfer a superintendent or warden from one institution to another.

[S13, §2727-a24; C24, 27, 31, 35, 39, §**3292;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.9; 81 Acts, ch 27, §3, ch 73, §2, ch 78, §20, 25; 82 Acts, ch 1260, §20]

83 Acts, ch 96, §68, 157, 159; 83 Acts, ch 101, §39;

84 Acts, ch 1277, §17; 90 Acts, ch 1239, §4; 94 Acts, ch 1170, §31; 2000 Acts, ch 1112, §6

218.10 Subordinate officers and employees.

The administrator in charge of a particular institution, with the consent and approval of the director of human services, shall determine the number of subordinate officers and employees for the institution. Subject to this chapter, the officers and employees shall be appointed and discharged by the superintendent or business manager pursuant to chapter 19A. The superintendent shall keep, in the record of each subordinate officer and employee, the date of employment, the compensation, and the date of each discharge, and the reasons for discharge.

[S13, §2727-a37; SS15, §2713-n2, 2727-a96; C24, 27, 31, 35, 39, §**3293;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.10]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1245, §260; 2000 Acts, ch 1112, §7

218.11 Interagency case information service.

The department of human services shall provide for and be the administrative agency for the interagency case information service. The department shall perform such duties and responsibilities as required under the provisions of chapter 220A.

[C71, 73, 75, 77, 79, 81, §218.11]

83 Acts, ch 96, §157, 159

218.12 Bonds.

The administrator in charge of any particular institution shall require each officer and any employee of such administrator and of every institution under the administrator's control who may be charged with the custody or control of any money or property belonging to the state to give an official bond, properly conditioned, and signed by sufficient sureties in a sum to be fixed by the administrator, which bond shall be approved by the administrator, and filed in the office of the secretary of state.

[S13, §2727-a31; C24, 27, 31, 35, 39, §**3295;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.12]

218.13 Record checks.

1. For the purposes of this section, unless the context otherwise requires:

a. "Department" means the department of human services.

b. "Institution" means an institution controlled by the department as described in section 218.1.

c. "Resident" means a person committed or admitted to an institution.

2. If a person is being considered for employment involving direct responsibility for a resident or with access to a resident when the resident is alone, or if a person will reside in a facility utilized by an institution, and if the person has been convicted of a crime or has a record of founded child or dependent adult abuse, the department shall perform an evaluation to determine whether the crime or founded abuse warrants prohibition of employment or residence in the facility. The department shall conduct criminal and child and dependent adult abuse record checks of the person in this state and may conduct these checks in other states. The investigation and evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

3. If the department determines that a person, who is employed by an institution or resides in a facility utilized by an institution, has been convicted of a crime or has a record of founded child or dependent adult abuse, the department shall perform an evaluation to determine whether prohibition of the person's employment or residence is warranted. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

4. In an evaluation, the department shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded abuse again, and the number of crimes or founded abuses committed by the person involved. The department may permit a person who is evaluated to be employed or reside or to continue employment or residence if the person complies with the department's conditions relating to employment or residence which may include completion of additional training.

5. If the department determines that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment or residence, the person shall not be employed by an institution or reside in a facility utilized by an institution.

91 Acts, ch 138, §3; 97 Acts, ch 169, §12

218.14 Dwelling of superintendent or other employee.

1. The administrator having control over an institution may, with consent of the director of human services, furnish the superintendent of the institution, in addition to salary, with a dwelling or with appropriate quarters in lieu of the dwelling, or the administrator may compensate the superintendent of the institution in lieu of furnishing a dwelling or quarters. If the superintendent of the institution is furnished with a dwelling or quarters, either of which is owned by the state, the superintendent may also be furnished with water, heat, and electricity.

2. The administrator having control over an institution may furnish assistant superintendents or other employees, or both, with a dwelling or with appropriate quarters, owned by the state. The assistant superintendent or employee, who is so furnished, shall pay rent for the dwelling or quarters in an amount to be determined by the superintendent of the institution, which shall be the fair market rental value of the dwelling or quarters. If an assistant superintendent or employee is furnished with a dwelling or quarters, either of which is owned by the state, the assistant superintendent or employee may also be furnished with water, heat, and electricity. However, the furnishing of these utilities shall be considered in determining the fair market rental value of the dwelling or quarters.

[S13, §2727-a38; SS15, §2713-n2, 2727-a96, 5717; C24, 27, 31, 35, 39, §**3297, 3746;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §218.14, 246.7; C81, §218.14]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §8

218.15 Salaries — how paid.

The salaries and wages shall be included in the semimonthly payrolls and paid in the same manner as other expenses of the several institutions.

[S13, §2727-a38; C24, 27, 31, 35, 39, §**3298;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.15]

218.16 Annuity contracts for employees. Repealed by 86 Acts, ch 1245, § 264. See § 19A.30.

218.17 Authorized leave.

Vacations and sick leave with pay as authorized in section 70A.1 shall only be taken at such times as the superintendent or the business manager in charge of an officer or employee, as the case may be, may direct, and only after written authorization by the superintendent or business manager, and for the number of days specified in the authorization. A copy of the authorization shall be attached to the institution's copy of the payroll of the institution, for audit purposes, for the period during which the vacation was taken, and the semimonthly payroll shall show the number of days the person was absent under the authorization.

[S13, §2727-a74c, -a74d; C24, 27, 31, 35, 39, §**3300;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.17]

2000 Acts, ch 1112, §9

218.18 Record of employees and residents. Repealed by 90 Acts, ch 1129, § 2.

218.19 Districts.

The administrator having control over a type of institution shall, from time to time, divide the state into districts from which the type of institution may receive residents. The particular administrator shall promptly notify the proper county or judicial officers of all changes in the districts.

[S13, §2727-a21; C24, 27, 31, 35, 39, §**3302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.19]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §10

218.20 Place of commitments — transfers.

Commitments, unless otherwise permitted by the administrator having control over an institution, shall be to the institution located in the district embracing the county from which the commitment is issued. An administrator may, at the expense of the state, transfer a resident of one institution to another like institution.

[S13, §2727-a26; C24, 27, 31, 35, 39, §**3303;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.20]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §11

218.21 Record of residents.

The administrator of the department of human services in control of a state institution shall, as to every person committed to any of said institutions, keep the following record: Name, residence, sex, age, nativity, occupation, civil condition, date of entrance or commitment, date of discharge, whether a discharge was final, condition of the person when discharged, the name of the institutions from which and to which such person has been transferred, and, if dead, the date, and cause of death.

[S13, §2727-a22; C24, 27, 31, 35, 39, §**3304;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.21]

83 Acts, ch 96, §157, 159, 160

218.22 Record privileged.

Except with the consent of the administrator in charge of an institution, or on an order of a court of record, the record provided in section 218.21 shall be accessible only to the administrator of the division of the department of human services in control of such institution, the director of the department of human services and to assistants and proper clerks authorized by such administrator or the administrator's director. The administrator of the division of such institution is authorized to permit the division of libraries and information services of the department of education and the historical division of the department of cultural affairs to copy or reproduce by any photographic, photostatic, microfilm, microcard or other process which accurately reproduces a durable medium for reproducing the original and to destroy in the manner described by law such records of residents designated in section 218.21.

[S13, §2727-a22; C24, 27, 31, 35, 39, §**3305;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.22]

83 Acts, ch 96, §157, 159, 160; 93 Acts, ch 48, §11

218.23 Reports to administrator.

The superintendent of an institution shall, within ten days after the commitment or entrance of a person to the institution, cause a true copy of the person's entrance record to be made and forwarded to the administrator in control of the institution. When a patient or resident leaves, or is discharged, or transferred, or dies in an institution, the superintendent or person in charge shall within ten days after that date send the information to the office of the institution's administrator on forms which the administrator prescribes.

[S13, §2727-a22; C24, 27, 31, 35, 39, §**3306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.23]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §12

218.24 Questionable commitment.

The superintendent is required to immediately notify the administrator in control of the superintendent's particular institution if there is any question as to the propriety of the commitment or detention of any person received at such institution, and said administrator, upon such notification, shall inquire into the matter presented, and take such action as may be deemed proper in the premises.

[S13, §2727-a29; C24, 27, 31, 35, 39, §**3307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.24]

218.25 Religious beliefs.

The superintendent of an institution, receiving a person committed to the institution, shall inquire of the person as to the person's religious preference and enter the preference in the book kept for the purpose, and cause the person to sign the book.

[S13, §5718-a1; C24, 27, 31, 35, 39, §**3308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.25]

2000 Acts, ch 1112, §13

218.26 Religious worship.

Any such resident, during the time of the resident's detention, shall be allowed, for at least one hour on each Sunday and in times of extreme sickness, and at such other suitable and reasonable times as is consistent with proper discipline in said institution, to receive spiritual advice, instruction, and ministration from any recognized member of the clergy of the church or denomination which represents the resident's religious belief.

[S13, §5718-a1, -a2; C24, 27, 31, 35, 39, §**3309;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.26]

83 Acts, ch 96, §159, 160

218.27 Religious belief of minors.

In case such resident is a minor and has formed no choice, the minor's preference may, at any time, be expressed by the minor with the approval of parents or guardian, if the minor has any such.

[S13, §5718-a3; C24, 27, 31, 35, 39, §**3310;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.27]

83 Acts, ch 96, §159, 160

218.28 Investigation.

The administrator of the department of human services in control of a particular institution or the administrator's authorized officer or employee shall visit, and minutely examine, at least once in six months, and oftener if necessary or required by law, the institutions under such administrator's control, and the financial condition and management thereof.

[S13, §2727-a10, -a19; C24, 27, 31, 35, 39, §**3311;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.28]

83 Acts, ch 96, §157, 159

218.29 Scope of investigation.

The administrator of the department of human services in control of a particular institution or the administrator's authorized officer or employee shall, during such investigation and as far as possible, see every resident of each institution, especially those admitted since the preceding visit, and shall give such residents as may require it, suitable opportunity to converse with such administrator or authorized officer or employee apart from the officers and attendants.

[S13, §2727-a19; C24, 27, 31, 35, 39, §**3312;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.29]

83 Acts, ch 96, §157, 159

218.30 Investigation of other institutions.

The administrators to whom control of institutions has been assigned, or their authorized officers or employees, may investigate charges of abuse, neglect, or mismanagement on the part of an officer or employee of a private institution which is subject to the administrator's particular supervision or control. The administrator who has been assigned to have authority over the state mental health institutes, or the administrator's authorized officer or employee, shall also investigate charges concerning county care facilities in which persons with mental illness are served.

[S13, §2727-a74b; C24, 27, 31, 35, 39, §**3313;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.30]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §32; 2000 Acts, ch 1112, §14

218.31 Witnesses.

In aid of any investigation the administrator shall have the power to summon and compel the attendance of witnesses; to examine the same under oath, which the administrator shall have power to administer; to have access to all books, papers, and property material to such investigation,

and to order the production of any other books or papers material thereto. Witnesses other than those in the employ of the state shall be entitled to the same fees as in civil cases in the district court.

[S13, §2727-a10; C24, 27, 31, 35, 39, §**3314;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.31]

Witness fees, §622.69 et seq.

218.32 Contempt.

Any person failing or refusing to obey the orders of the administrator issued under section 218.31, or to give or produce evidence when required, shall be reported by the administrator to the district court in the county where the offense occurs, and shall be dealt with by the court as for contempt of court.

[S13, §2727-a10; C24, 27, 31, 35, 39, §**3315;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.32]

Contempts, chapter 665

218.33 Transcript of testimony.

The particular administrator involved shall cause the testimony taken at such investigation to be transcribed and filed in the administrator's office at the seat of government within ten days after the same is taken, or as soon thereafter as practicable, and when so filed the same shall be open for the inspection of any person.

[S13, §2727-a10; C24, 27, 31, 35, 39, §**3316;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.33]

218.34 to 218.39 Repealed by 78 Acts, ch 1104, § 3.

218.40 Services required.

Residents of said institutions subject to the provisions hereinafter provided, may be required to render any proper and reasonable service either in the institutions proper or in the industries established in connection therewith.

[S13, §2727-a51; SS15, §5718-a11; C24, 27, 31, 35, 39, §**3323;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.40]

83 Acts, ch 96, §159, 160

218.41 Custody.

When a resident of an institution is so working outside the institution proper, the resident shall be deemed at all times in the actual custody of the head of the institution.

[SS15, §5718-a11; C24, 27, 31, 35, 39, §**3324;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.41]

83 Acts, ch 96, §159, 160

218.42 Wages of residents.

If a resident performs services for the state at an institution listed in section 218.1, the administrator in control of the institution shall pay the resident a wage in accordance with federal wage and hour requirements. However, the wage amount shall not exceed the amount of the prevailing wage paid in the state for a like service or its equivalent.

[SS15, §5718-a11a; C24, 27, 31, 35, 39, §**3325;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.42]

83 Acts, ch 96, §159, 160; 95 Acts, ch 82, §1

218.43 Deduction to pay court costs.

If such wage be paid, the administrator in control of such institution may deduct therefrom an amount sufficient to pay all or a part of the costs taxed to such resident by reason of the resident's commitment to said institution. In such case the amount so deducted shall be forwarded to the clerk of the district court or proper official.

[SS15, §5718-a11a; C24, 27, 31, 35, 39, §**3326;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.43]

83 Acts, ch 96, §159, 160

218.44 Wages paid to dependent — deposits.

If such wage be paid, the administrator in control of such institution may pay all or any part of the same directly to any dependent of such resident, or may deposit such wage to the account of such resident, or may so deposit part thereof and allow the resident a portion for the resident's own personal use, or may pay to the county of commitment all or any part of the resident's care, treatment or subsistence while at said institution from any credit balance accruing to the account of said resident.

[SS15, §5718-a11a; C24, 27, 31, 35, 39, §**3327;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.44]

83 Acts, ch 96, §159, 160

218.45 Conferences.

Quarterly conferences of the superintendents of the institutions shall be held with the administrator in control of the institutions at Des Moines or at institutions under the administrator's jurisdiction, for the consideration of all matters relative to the management of the institutions. Full minutes of the conferences shall be preserved in the records of the administrator. The administrator in control may cause papers on appropriate subjects to be prepared and read at the conferences.

[S13, §2727-a20; C24, 27, 31, 35, 39, §**3328;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.45]

2000 Acts, ch 1112, §15

218.46 Scientific investigation.

1. The administrator who is in charge of an institution shall encourage the scientific investigation, on the part of the superintendent and medical staff of the institution, as to the most successful methods of institutional management and treating the persons committed to the institution.

In addition, the administrator shall procure and furnish to the superintendent and medical staff information relative to such management and treatment and, from time to time, publish bulletins and reports of scientific and clinical work done in that type of institution.

2. The administrators of such state institutions are authorized to provide services and facilities for the scientific observation, rechecking, and treatment of persons with mental illness within the state. Application by, or on behalf of, any person for such services and facilities shall be made to the administrator in charge of the particular institution involved and shall be made on forms furnished by such administrator. The time and place of admission of any person to outpatient or clinical services and facilities for scientific observation, rechecking and treatment and the use of such services and facilities for the benefit of persons who have already been hospitalized for psychiatric evaluation and appropriate treatment or involuntarily hospitalized as seriously mentally ill shall be in accordance with rules and regulations adopted by the administrator in control of the particular institution involved.

[S13, §2727-a27; C24, 27, 31, 35, 39, §**3329;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.46]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §16

Publications; §7A.27

218.47 Monthly report.

The superintendent or business manager of each institution shall, on the first day of each month, account to the administrator in control of the particular institution for all state funds received during the preceding month, and, at the same time, remit the accounting to the treasurer of state.

[S13, §2727-a40; C24, 27, 31, 35, 39, §**3330;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.47]

2000 Acts, ch 1112, §17

218.48 Annual reports.

The superintendent or business manager of each institution shall make an annual report to the administrator in control of the particular institution and include in the report a detailed and accurate inventory of the stock and supplies on hand, and their amount and value, under the following headings: livestock, farm produce on hand, vehicles, agricultural implements, machinery, mechanical fixtures, real estate, furniture, and bedding in residents' department, state property in superintendent's department, clothing, dry goods, provisions and groceries, drugs and medicine, fuel, library, and all other state property under appropriate headings to be determined by the particular administrator involved.

[S13, §2705-b, 2727-a32; C24, 27, 31, 35, 39, §**3331;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.48]

2000 Acts, ch 1112, §18

218.49 Contingent fund.

The administrator in control of an institution may permit the superintendent or the business manager of each institution to retain a stated amount of funds under the superintendent's or business manager's supervision as a contingent fund for the payment of freight, postage, commodities purchased on authority of the particular superintendent or business manager involved on a cash basis, salaries, and bills granting discount for cash.

[SS15, §2727-a44; C24, 27, 31, 35, 39, §**3332;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.49]

2000 Acts, ch 1112, §19

218.50 Requisition for contingent fund.

If necessary, the director of the department of human services shall make proper requisition upon the director of revenue and finance for a warrant on the state treasurer to secure the said contingent fund for each institution.

[SS15, §2727-a44; C24, 27, 31, 35, 39, §**3333;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.50]

83 Acts, ch 96, §157, 159

218.51 Monthly reports of contingent fund.

A monthly report of the status of such contingent fund shall be submitted by the proper officer of said institution to the administrator in control of the institution involved and such rules as such administrator may establish.

[SS15, §2727-a44; C24, 27, 31, 35, 39, §**3334;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.51]

218.52 Supplies — competition.

The administrator in control of a state institution shall, in the purchase of supplies, afford all reasonable opportunity for competition, and shall give preference to local dealers and Iowa producers when such can be done without loss to the state.

[S13, §2727-a46; SS15, §2727-a50; C24, 27, 31, 35, 39, §**3335;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.52]

Preference to Iowa products, §18.6, 73.1 et seq.

218.53 Dealers may file addresses.

Jobbers or others desirous of selling supplies shall, by filing with the administrator in control of a state institution a memorandum showing their address and business, be afforded an opportunity to compete for the furnishing of supplies, under such rules as such administrator may prescribe.

[SS15, §2727-a50; C24, 27, 31, 35, 39, §**3336;**

C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.53]

218.54 Samples preserved.

When purchases are made by sample, the same shall be properly marked and retained until after an award or delivery of such items is made.

[SS15, §2727-a50; C24, 27, 31, 35, 39, §**3337;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.54]

218.55 Purchase from an institution.

An administrator may purchase supplies of any institution under the administrator's control, for use in any other institution under the administrator's control, and reasonable payment for the supplies shall be made as in the case of other purchases.

[S13, §2727-a47; C24, 27, 31, 35, 39, §**3338;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.55]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §20

218.56 Purchase of supplies — vendor warrants.

The administrators shall, from time to time, adopt and make of record, rules and regulations governing the purchase of all articles and supplies needed at the various institutions under their control, and the form and verification of vouchers for such purchases.

The department of human services shall mail vendor warrants for the department of corrections.

[S13, §2727-a41, -a42, -a49; C24, 27, 31, 35, 39, §**3339;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.56]

90 Acts, ch 1247, §4

218.57 Combining appropriations.

The director of revenue and finance may combine the balances carried in all specific appropriations into a special account for each institution under the control of a particular administrator, except that the support fund for each institution shall be carried as a separate account.

[S13, §2727-a43; C24, 27, 31, 35, 39, §**3344;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.57]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §21

218.58 Construction, repair, and improvement projects — emergencies — rules.

The department shall work with the department of general services to accomplish the following responsibilities:

1. The department shall prepare and submit to the director of the department of management, as provided in section 8.23, a multiyear construction program including estimates of the expenditure requirements for the construction, repair, or improvement of buildings, grounds, or equipment at the institutions listed in section 218.1.

2. The director shall have plans and specifications prepared by the department of general services for authorized construction, repair, or improvement projects costing over twenty-five thousand dollars. An appropriation for a project shall not be expended until the department of general services has adopted plans and specifications and has completed a detailed estimate of the cost of the project, prepared under the supervision of a registered architect or registered professional engineer. Plans and specifications shall not be adopted and a project shall not proceed if the project would require an expenditure of money in excess of the appropriation.

3. The department of general services shall let all contracts under chapter 18 for authorized construction, repair, or improvement of departmental buildings, grounds, or equipment.

4. If the director of the department of human services and the director of the department of general services determine that emergency repairs or improvements estimated to cost more than twenty-five thousand dollars are necessary to assure the continued operation of a departmental institution, the requirements of subsections 2 and 3 for preparation of plans and specifications and competitive procurement procedures are waived. A determination of necessity for waiver by the director of the department of human services and the director of the department of general services shall be in writing and shall be entered in the project record for emergency repairs or improvements. Emergency repairs or improvements shall be accomplished using plans and specifications and competitive procurement procedures to the greatest extent possible, considering the necessity for rapid completion of the project. A waiver of the requirements of subsections 2 and 3 does not authorize an expenditure in excess of an amount otherwise authorized for the repair or improvement.

5. A claim for payment relating to a project shall be itemized on a voucher form pursuant to section 421.40, certified by the claimant and the architect or engineer in charge, and audited and approved by the department of general services. Upon approval by the department of general services, the voucher shall be forwarded to the director of revenue and finance, who shall draw a warrant to be paid by the treasurer of state from funds appropriated for the project. A partial payment made before completion of the project does not constitute final acceptance of the work or a waiver of any defect in the work.

6. Subject to the prior approval of the administrator in control of a departmental institution, minor projects costing five thousand dollars or less may be authorized and completed by the executive head of the institution through the use of day labor. A contract is not required if a minor project is to be completed with the use of resident labor.

84 Acts, ch 1256, §1; 86 Acts, ch 1245, §314

218.59 Plans and specifications. Repealed by 84 Acts, ch 1256, § 2. See § 218.58.

218.60 Letting of contracts. Repealed by 84 Acts, ch 1256, § 2. See § 218.58.

218.61 Preliminary deposit. Repealed by 84 Acts, ch 1256, § 2.

218.62 Improvements by day labor. Repealed by 84 Acts, ch 1256, § 2.

218.63 Improvements at institutions. Repealed by 84 Acts, ch 1256, § 2. See § 218.58.

218.64 Payment for improvements. Repealed by 84 Acts, ch 1256, § 2. See § 218.58.

218.65 Property of deceased resident.

The superintendent or business manager of each institution shall, upon the death of any resident or patient, immediately take possession of all property of the deceased left at the institution, and deliver the property to the duly appointed and qualified representative of the deceased.

[S13, §2727-a72; C24, 27, 31, 35, 39, §**3352;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.65]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §22

218.66 Property of small value.

If administration be not granted within one year from the date of the death of the decedent, and the value of the estate of decedent is so small as to make the granting of administration inadvisable, then delivery of the money and other property left by the decedent may be made to the surviving spouse and heirs of the decedent.

[S13, §2727-a72; C24, 27, 31, 35, 39, §**3353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.66]

218.67 Estate administrator not identified.

If an estate administrator is not identified within one year from the death of a decedent in an institution, and a surviving spouse or heir is not known, the superintendent of the institution may convert all the decedent's property into cash and in so doing the superintendent shall have the powers possessed by a general administrator of an estate.

[S13, §2727-a72; C24, 27, 31, 35, 39, §**3354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.67]

2000 Acts, ch 1112, §23

218.68 Money deposited with treasurer of state.

Said money shall be transmitted to the treasurer of state as soon after one year after the death of the intestate as practicable, and be credited to the support fund of the institution of which the intestate was a resident.

[S13, §2727-a72; C24, 27, 31, 35, 39, §**3355;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.68]

83 Acts, ch 96, §159, 160

218.69 Permanent record.

A complete permanent record of the money transmitted to the treasurer of state under section 218.68, showing by whom and with whom it was left, its amount, the date of the death of the owner, the owner's reputed place of residence before the owner became a resident of the institution, the date on which it was transmitted to the state treasurer, and any other facts which may tend to identify the intestate and explain the case, shall be kept by the superintendent of the institution or business manager, as the case may be, and a transcript of the record shall be sent to, and kept by, the treasurer of state.

[S13, §2727-a72; C24, 27, 31, 35, 39, §**3356;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.69]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §24

218.70 Payment to party entitled.

Said money shall be paid, at any time within ten years from the death of the intestate, to any person who is shown to be entitled thereto. Payment shall be made from the state treasury out of the support fund of such institution in the manner provided for the payment of other claims from that fund.

[S13, §2727-a73, -a74; C24, 27, 31, 35, 39, §**3357;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.70]

218.71 Repealed by 79 Acts, ch 2, § 49.

218.72 Temporary quarters in emergency.

In case the buildings at any institution under the control of an administrator are destroyed or rendered unfit for habitation by reason of fire, storms, or other like causes, to such an extent that the residents cannot be housed and cared for, the administrator shall make temporary provision for the housing and care of the residents at some other place in the state. Like provision may be made in case any pestilence breaks out among the residents. The reasonable cost of the change, including transfer of residents, shall be paid from any money in the state treasury not otherwise appropriated.

[C51, §3143; R60, §5156; C73, §4795; C97, §5693; SS15, §2713-n18; C24, 27, 31, 35, 39, §**3359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.72]

83 Acts, ch 96, §157, 159, 160; 2000 Acts, ch 1112, §25

218.73 Industries. Repealed by 84 Acts, ch 1184, § 22. See § 904.705.

218.74 Revolving farm fund. Repealed by 84 Acts, ch 1184, § 22. See § 904.706.

218.75 Payments for medical assistance. Repealed by 85 Acts, ch 146, § 4. See § 249A.11.

218.76 and 218.77 Repealed by 67 Acts, ch 209, § 95.

218.78 Institutional receipts deposited.

1. All institutional receipts of the department of human services, including funds received from client participation at the state resource centers under section 222.78 and at the state mental health institutes under section 230.20, shall be deposited in the general fund except for reimbursements for services provided to another institution or state agency, for receipts deposited in the revolving farm fund under section 904.706, for deposits into the medical assistance fund under section 249A.11, and rentals charged to employees or others for room, apartment, or house and meals, which shall be available to the institutions.

2. If approved by the director of human services, the department may use appropriated funds for the granting of educational leave.

[C77, 79, 81, §218.78, 218.101; 81 Acts, ch 11, §14, ch 75, §2]

83 Acts, ch 96, §157, 159; 85 Acts, ch 146, §1; 88 Acts, ch 1249, §5; 2000 Acts, ch 1112, §51

218.79 to 218.82 Repealed by 67 Acts, ch 209, § 95.

218.83 Administrative improvement.

The director of human services and the administrators assigned to have authority over the institutions shall cooperate with any department or agency of the state government in any manner, including the exchange of employees, calculated to improve administration of the affairs of the institutions.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.83]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §26

218.84 Abstracting claims and keeping accounts.

The director of the department of human services shall have sole charge of abstracting and certifying claims for payment and the keeping of a central system of accounts in institutions under the director's control.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.84]

83 Acts, ch 96, §157, 159

218.85 Uniform system of accounts.

The director of human services through the administrators in control of the institutions shall install in all the institutions the most modern, complete, and uniform system of accounts, records, and reports possible. The system shall be prescribed by the director of revenue and finance as authorized in section 421.31, subsection 10, and, among other matters, shall clearly show the detailed facts relative to the handling and uses of all purchases.

[S13, §2727-a13; C24, 27, 31, 35, 39, §**3286;** C46, §217.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.85]

83 Acts, ch 96, §157, 159; 89 Acts, ch 284, §5; 2000 Acts, ch 1112, §27

Requirement of auditor of state, §11.5

218.86 Abstract of claims.

Vouchers for expenditures other than salaries shall be submitted to the director of revenue and finance, who shall prepare in triplicate an abstract of claims submitted showing the name of the claimant and the institutions and institutional fund on account of which the payment is made. The claims and abstracts of claims shall be returned to the director of the department of human services where the correctness of the abstracts shall be certified by the director. The original abstract shall be delivered to the director of revenue and finance, the duplicate to be retained in the office of the director of the department of human services and the triplicate forwarded to the proper institution to be retained as a record of claims paid.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.86]

94 Acts, ch 1107, §9

218.87 Warrants issued by director of revenue and finance.

Upon such certificate the director of revenue and finance shall, if the institution named has sufficient funds, issue the director's warrants upon the state treasurer, for the amounts and to the claimants indicated thereon. The director of revenue and finance shall deliver the warrants thus issued to the director of human services, who will cause same to be transmitted to the payees thereof.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.87]

218.88 Institutional payrolls.

At the close of each pay period, the superintendent or business manager of each institution shall prepare and forward to the director of human services a semimonthly payroll which shall show the name of each officer and employee, the semi-

monthly pay, time paid for, the amount of pay, and any deductions. A substitute shall not be permitted to receive compensation in the name of the employee for whom the substitute is acting.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.88]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §28

218.89 Abstracts of payrolls.

After said payroll has been audited as provided for in section 421.31, audited payroll vouchers shall be submitted to the director of revenue and finance who shall therefrom prepare in triplicate an abstract, and shall draw one warrant for the sum total of said payroll in favor of the institution having submitted said payroll voucher.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.89]

218.90 Transfer of prisoners. Repealed by 83 Acts, ch 96, § 156, 159.

218.91 Boys transferred from training school to reformatory. Repealed by 83 Acts, ch 96, § 156, 159.

218.92 Patients with dangerous mental disturbances.

When a patient in a state resource center for persons with mental retardation, a state mental health institute, or another institution under the administration of the department of human services has become so mentally disturbed as to constitute a danger to self, to other patients or staff of the institution, or to the public, and the institution cannot provide adequate security, the administrator in charge of the institution, with the consent of the director of the Iowa department of corrections, may order the patient to be transferred to the Iowa medical and classification center, if the superintendent of the institution from which the patient is to be transferred, with the support of a majority of the medical staff, recommends the transfer in the interest of the patient, other patients, or the public. If the patient transferred was hospitalized pursuant to sections 229.6 to 229.15, the transfer shall be promptly reported to the court that ordered the hospitalization of the patient, as required by section 229.15, subsection 4. The Iowa medical and classification center has the same rights, duties, and responsibilities with respect to the patient as the institution from which the patient was transferred had while the patient was hospitalized in the institution. The cost of the transfer shall be paid from the funds of the institution from which the transfer is made.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.92; 82 Acts, ch 1100, §5]

83 Acts, ch 96, §69, 159; 89 Acts, ch 83, §34; 94 Acts, ch 1170, §33; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §29, 51

See also §226.30

218.93 Consultants for director or administrators.

The director of human services or the administrators in control of the institutions are authorized to secure the services of consultants to furnish advice on administrative, professional, or technical problems to the director or the administrators, their employees, or employees of institutions under their jurisdiction or to provide in-service training and instruction for the employees. The director and administrators are authorized to pay the consultants at a rate to be determined by them from funds under their control or from any institutional funding under their jurisdiction as the director or administrator may determine.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.93]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §30

218.94 Director may buy and sell real estate — options.

The director of the department of human services shall have full power to secure options to purchase real estate, to acquire and sell real estate, and to grant utility easements, for the proper uses of said institutions. Real estate shall be acquired and sold and utility easements granted, upon such terms and conditions as the director may determine. Upon sale of the real estate, the proceeds shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the department of human services, which may be used to purchase other real estate or for capital improvements upon property under the director's control.

The costs incident to securing of options, acquisition and sale of real estate and granting of utility easements, including, but not limited to, appraisals, invitations for offers, abstracts, and other necessary costs, may be paid from moneys appropriated for support and maintenance to the institution at which such real estate is located. Such fund shall be reimbursed from the proceeds of the sale.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.94]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1244, §29

218.95 Synonymous terms.

For purposes of construing the provisions of this and the following subtitles of this title and chapters 16, 35B, 347B, 709A, 904, 913, and 914 relating to persons with mental illness and reconciling these provisions with other former and present provisions of statute, the following terms shall be considered synonymous:

1. *"Mentally ill"* and *"insane"*, except that the hospitalization or detention of any person for treatment of mental illness shall not constitute a

finding or create a presumption that the individual is legally insane in the absence of a finding of incompetence made pursuant to section 229.27.

2. *"Parole"* and *"convalescent leave"*.
3. *"Resident"* and *"patient"*.
4. *"Escape"* and *"depart without proper authorization"*.
5. *"Warrant"* and *"order of admission"*.
6. *"Escapee"* and *"patient"*.
7. *"Sane"* and *"in good mental health"*.
8. *"Asylum"* and *"hospital"*.
9. *"Commitment"* and *"admission"*.

It is hereby declared to be the policy of the general assembly that words which have come to have a degrading meaning shall not be employed in institutional records having reference to persons with various mental conditions and that in all records pertaining to persons with various mental conditions the less discriminatory of the foregoing synonyms shall be employed.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.95]
83 Acts, ch 96, §159, 160; 96 Acts, ch 1129, §39

218.96 Gifts, grants and devises.

The director of the department of human services is authorized to accept gifts, grants, devises or bequests of real or personal property from the federal government or any source. The director may exercise such powers with reference to the property so accepted as may be deemed essential to its preservation and the purposes for which given, devised or bequeathed.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.96]
83 Acts, ch 96, §157, 159

218.97 Diagnostic clinic — information furnished. Repealed by 83 Acts, ch 96, § 156, 159.

218.98 Canteen maintained.

The administrators in control of the institutions may maintain a canteen at any institution under their jurisdiction and control for the sale to persons residing in the institution of toilet articles, candy, tobacco products, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise for such sale. The administrators shall specify what commodities will be sold in the canteen. The department may establish and maintain a permanent operating fund for each canteen. The fund shall consist of the receipts from the sale of commodities at the canteen.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.98]
83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §31

218.99 Counties to be notified of patients' personal accounts.

The administrator in control of a state institution shall direct the business manager of each institution under the administrator's jurisdiction which is mentioned in section 331.424, subsection 1, paragraphs *"a"* and *"b"*, and for which services are paid under section 331.424A, to quarterly inform the county of legal settlement's entity designated to perform the county's single entry point process of any patient or resident who has an amount in excess of two hundred dollars on account in the patients' personal deposit fund and the amount on deposit. The administrators shall direct the business manager to further notify the entity designated to perform the county's single entry point process at least fifteen days before the release of funds in excess of two hundred dollars or upon the death of the patient or resident. If the patient or resident has no county of legal settlement, notice shall be made to the director of human services and the administrator in control of the institution involved.

[C66, 71, 73, 75, 77, 79, 81, S81, §218.99; 81 Acts, ch 117, §1026]
83 Acts, ch 96, §157, 159, 160; 83 Acts, ch 123, §80, 209; 95 Acts, ch 206, §6, 12; 97 Acts, ch 169, §1; 98 Acts, ch 1100, §23; 2000 Acts, ch 1112, §32

218.100 Central warehouse and supply depot.

The department of human services shall establish a fund for maintaining and operating a central warehouse as a supply depot and distribution facility for surplus government products, carload canned goods, paper products, other staples and such other items as determined by the department. The fund shall be permanent and shall be composed of the receipts from the sales of merchandise, recovery of handling, operating and delivery charges of such merchandise and from the funds contributed by the institutions now in a contingent fund being used for this purpose. All claims for purchases of merchandise, operating and salary expenses shall be subject to the provisions of sections 218.86 to 218.89.

[C71, 73, 75, 77, 79, 81, §218.100]
83 Acts, ch 96, §157, 159

218.101 Repealed by 81 Acts, ch 75, § 4. See § 218.78.

CHAPTER 218A

INTERSTATE MENTAL HEALTH COMPACT

Transferred to chapter 221

CHAPTER 218B

INTERSTATE CORRECTIONS COMPACT

Transferred to chapter 247; 85 Acts, ch 21, §54;
chapter 247 transferred to chapter 913

CHAPTER 219

VETERANS HOME

Transferred to chapter 35D

SUBTITLE 3

MENTAL HEALTH

CHAPTER 220

IOWA FINANCE AUTHORITY

Transferred to chapter 16

CHAPTER 220A

INTERAGENCY INFORMATION SERVICE
ON PERSONS WITH MENTAL DISABILITIES

220A.1 Purpose.
220A.2 Definitions.
220A.3 Administrative agency.
220A.4 Agencies involved.
220A.5 Duties of department.
220A.6 Information to others.
220A.7 Restrictions not applicable.
220A.8 Statistical information.
220A.9 Statutory immunity.

220A.1 Purpose.

The purpose of this chapter is to permit information concerning persons who are believed to have mental disabilities to be efficiently used by and exchanged among the state and local governments, their departments and agencies, and with other public or private agencies, where the use or exchange of the information is for the purpose of assisting any of the agencies in providing care, evaluation, services, assistance, education, or habilitation to such persons.

[C71, 73, 75, 77, 79, 81, §220A.1]
96 Acts, ch 1129, §40

220A.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of human services.
2. *"Private agency"* means any individual and any nonprofit or business organization authorized under the laws of Iowa.
3. *"Public agency"* means any agency, department, board, commission, or division of the state of Iowa or the United States, any political subdivision of or school board in the state of Iowa, any state of the United States, and the District of Columbia.
4. *"Service"* means the interagency case information service.

[C71, 73, 75, 77, 79, 81, §220A.2]
83 Acts, ch 96, §157, 159

220A.3 Administrative agency.

The department of human services is hereby designated as the administrative agency to provide for a central data control and exchange agency known as the interagency case information service.

[C71, 73, 75, 77, 79, 81, §220A.3]
83 Acts, ch 96, §157, 159

220A.4 Agencies involved.

The service shall receive from and make available to the following state agencies case information on persons who are believed to have mental disabilities: the Iowa department of public health, the department of education, the state board of regents, and the department of human services.

[C71, 73, 75, 77, 79, 81, §220A.4]
83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §41

220A.5 Duties of department.

The department shall:

1. Administer and enforce the provisions of this chapter.
2. Be the official agency to join or co-operate with the government of the United States or any state of the United States and the District of Columbia through their appropriate agencies or departments in carrying out the provisions of this chapter.
3. Apply for and receive funds, appropriations, moneys, grants, gifts, or services of any kind from the United States or any agency thereof, as well as this state and any person or private agency for the purpose of carrying out the provisions of this chap-

ter and the services hereunder.

4. Make such reports and budget estimates to the governor and to the general assembly as are necessary to obtain the appropriation of state funds for the service.

5. Co-operate with the other state departments and public and private agencies as authorized by this chapter in obtaining, exchanging, and disseminating case information.

6. Employ personnel for the administration of the service and contract with other public or private agencies to carry out the services.

[C71, 73, 75, 77, 79, 81, §220A.5]

220A.6 Information to others.

The state agencies designated in section 220A.4 may receive from and disseminate to other public agencies or private agencies such information as is necessary or proper for the purpose of providing evaluation services, treatment services, education, support, or habilitation services to the person with a mental disability. The enumerated state agencies or their designated staff shall be authorized to make determination of the proper receipt or dissemination of information to other public or private agencies.

[C71, 73, 75, 77, 79, 81, §220A.6]
96 Acts, ch 1129, §42

220A.7 Restrictions not applicable.

Any law or departmental rule of the state of Iowa which restricts or declares confidential information concerning persons who are believed to have mental disabilities shall not apply to information exchanged through the service for the purposes of this chapter. Information supplied under a restriction by the government of the United States, its departments or agencies, or by other state government, its departments and agencies, shall be processed in compliance with such restrictions. Any case information restricted by any order of court shall be processed in compliance with the order.

[C71, 73, 75, 77, 79, 81, §220A.7]
96 Acts, ch 1129, §43

220A.8 Statistical information.

For purposes of research, study, and public information, public or private agencies may receive from the service comprehensive statistical information which may be disseminated to the public. Such information shall not use names of individual persons nor be so specific as to make possible the identification of individual persons.

[C71, 73, 75, 77, 79, 81, §220A.8]

220A.9 Statutory immunity.

Any person or any public or private agency or employee thereof who participates in good faith in the collection, exchange, or dissemination of case information for the purposes of this chapter shall have immunity from any liability, civil or criminal, which might be otherwise imposed.

[C71, 73, 75, 77, 79, 81, §220A.9]

CHAPTER 221

INTERSTATE MENTAL HEALTH COMPACT

221.1 Mental health compact enacted.
221.2 Administrator.
221.3 Supplementary agreements.
221.4 Payments.
221.5 Consultation.
221.6 Distribution of compact.

221.1 Mental health compact enacted.

The interstate compact on mental health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by co-operative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in

terms of such welfare.

ARTICLE II

As used in this compact:

a. *"Sending state"* shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

b. *"Receiving state"* shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

c. *"Institution"* shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

d. *"Patient"* shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

e. *"After-care"* shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

f. *"Mental illness"* shall mean mental disease to such extent that a person so afflicted requires care and treatment for the person's own welfare, or the welfare of others, or of the community.

g. *"Mental deficiency"* shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing the person and the person's affairs, but shall not include mental illness as defined herein.

h. *"State"* shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

a. Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, the person shall be eligible for care and treatment in an institution in that state irrespective of the person's residence, settlement or citizenship qualifications.

b. The provisions of paragraph *"a"* of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

c. No state shall be obliged to receive any patient pursuant to the provisions of paragraph *"b"* of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

d. In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that the interstate patient would be taken if the interstate patient were a local patient.

e. Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

a. Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

b. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

c. In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treat-

ment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, the patient shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

a. No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

b. The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

c. No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

d. Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

e. Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

a. Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on the guardian's own behalf or in respect of any patient for whom the guardian may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue the guardian's power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

b. The term *"guardian"* as used in paragraph *"a"* of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

a. No provision of this compact except article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

b. To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

a. Each party state shall appoint a *"compact administrator"* who, on behalf of the compact administrator's state, shall act as general co-ordinator of activities under the compact in the administrator's state and who shall receive copies of all re-

ports, correspondence, and other documents relating to any patient processed under the compact by the administrator's state either in the capacity of sending or receiving state. The compact administrator or the administrator's duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

b. The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or co-operative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

a. A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

b. Withdrawal from any agreement permitted by article VII *"b"* as to costs or from any supplementary agreement made pursuant to article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[C66, 71, 73, 75, 77, 79, 81, §218A.1]
C93, §221.1

221.2 Administrator.

Pursuant to the compact, the administrator of the division of mental health and developmental disabilities of the department of human services shall be the compact administrator. The compact administrator may cooperate with all departments, agencies and officers of this state and its subdivisions in facilitating the proper administration of the compact and of any supplementary agreement entered into by this state under the compact.

[C66, 71, 73, 75, 77, 79, 81, §218A.2; 81 Acts, ch 78, §20, 26]
83 Acts, ch 96, §157, 159
C93, §221.2
94 Acts, ch 1170, §34

221.3 Supplementary agreements.

The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provisions of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

[C66, 71, 73, 75, 77, 79, 81, §218A.3]
C93, §221.3

221.4 Payments.

The compact administrator, subject to the approval of the director of the department of human services, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

[C66, 71, 73, 75, 77, 79, 81, §218A.4]
83 Acts, ch 96, §157, 159
C93, §221.4

221.5 Consultation.

The compact administrator is hereby directed to consult with the immediate family of our proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without approval of the district court of the county of admission or commitment.

[C66, 71, 73, 75, 77, 79, 81, §218A.5]
C93, §221.5

221.6 Distribution of compact.

Duly authorized copies of this chapter shall, upon its approval be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments.

[C66, 71, 73, 75, 77, 79, 81, §218A.6]
C93, §221.6

CHAPTER 222

PERSONS WITH MENTAL RETARDATION

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222.88 Special mental retardation unit.
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222.90 Superintendent.
222.91 Direct referral to special unit.
222.92 Revolving fund. Repealed by 83 Acts, ch 191, §10, 26.
222.93 Medical assistance payments. Repealed by 85 Acts, ch 146, §4.

222.1 Purpose of state resource centers.

1. The Glenwood state resource center and the Woodward state resource center are established and shall be maintained as the state's regional resource centers for the purpose of providing treatment, training, instruction, care, habilitation, and support of persons with mental retardation or other disabilities in this state, and providing facilities, services, and other support to the communities located in the region being served by a state resource center. In addition, the state resource centers are encouraged to serve as a training resource for community-based program staff, medical students, and other participants in professional education programs. A resource center may request the approval of the council on human services to change the name of the resource center for use in communication with the public, in signage, and in other forms of communication.

2. A special mental retardation unit may be maintained at one of the state mental health institutes for the purposes set forth in sections 222.88 to 222.91.

[S13, §2727-a93, -a95; SS15, §2727-a93, -a96; C24, 27, 31, 35, 39, §**3465, 3468;** C46, 50, 54, 58, 62, §223.1, 223.4; C66, 71, 73, 75, 77, 79, 81, §222.1]

95 Acts, ch 82, §6; 98 Acts, ch 1155, §8; 2000 Acts, ch 1112, §46

222.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the person assigned by the director of human services, in accordance with section 218.1, to control the state resource centers.

2. *"Auditor"* means the county auditor or the auditor's designee.

3. *"Department"* means the department of human services.

4. *"Mental retardation"* or *"mentally retarded"* means a term or terms to describe children and adults who as a result of inadequately developed intelligence are significantly impaired in ability to learn or to adapt to the demands of society.

5. *"Single entry point process"* means the same as defined in section 331.440.

6. *"Special unit"* means a special mental retardation unit established at a state mental health institute pursuant to sections 222.88 to 222.91.

7. *"State resource centers"* or *"resource centers"* means the Glenwood state resource center and the Woodward state resource center.

8. *"Superintendents"* means the superintendents of the state resource centers.

[C97, §2699; C24, 27, 31, 35, 39, §**3411;** C46, 50, 54, 58, 62, §222.1; C66, 71, 73, 75, 77, 79, 81, §222.2; 81 Acts, ch 78, §20, 30]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §35; 96 Acts, ch 1183, §1; 97 Acts, ch 169, §14; 2000 Acts, ch 1112, §47 – 50; 2001 Acts, ch 155, §14

222.3 Superintendents.

The administrator shall appoint a qualified superintendent for each of the resource centers who shall receive such salary as the administrator shall determine.

[SS15, §2727-a96; C24, 27, 31, 35, 39, §**3466;** C46, 50, 54, 58, 62, §223.2; C66, 71, 73, 75, 77, 79, 81, §222.3]

2000 Acts, ch 1112, §51

222.4 Duties.

The superintendents shall:

1. Perform all duties required by law and by the administrator not inconsistent with law.

2. Oversee and insure individual treatment and professional care of each patient in the resource centers.

3. Maintain a full and complete record of the condition of each patient in the resource centers.

4. Have custody, control, and management of all patients in such manner as deemed best subject to the regulations of the administrator.

[SS15, §2727-a96; C24, 27, 31, 35, 39, §**3467;** C46, 50, 54, 58, 62, §223.3; C66, 71, 73, 75, 77, 79, 81, §222.4]

2000 Acts, ch 1112, §51

222.5 Preadmission diagnostic evaluation.

No person shall be eligible for admission to a resource center or a special unit until a preadmission diagnostic evaluation has been made by a resource center or a special unit which confirms or establishes the need for admission.

[C24, 27, 31, 35, 39, §**3444;** C46, 50, 54, 58, 62,

§222.34; C66, 71, 73, 75, 77, 79, 81, §222.5]
2000 Acts, ch 1112, §51

222.6 State districts.
The administrator shall divide the state into two districts in such manner that one of the resource centers shall be located within each of the districts. Such districts may from time to time be changed. After such districts have been established, the administrator shall notify all boards of supervisors, county auditors, and clerks of the district courts of the action. Thereafter, unless the administrator otherwise orders, all admissions or commitments of persons with mental retardation from a district shall be to the resource center located within such district.
[C24, 27, 31, 35, 39, §**3476;** C46, 50, 54, 58, 62, §223.10; C66, 71, 73, 75, 77, 79, 81, §222.6]
96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51

222.7 Transfers.
The administrator may transfer patients from one state resource center to the other and may at any time transfer patients from the resource centers to the hospitals for persons with mental illness, or transfer patients in the resource centers to a special unit or vice versa. The administrator may also transfer patients from a hospital for persons with mental illness to a resource center if:
1. In the case of a patient who entered the hospital for persons with mental illness voluntarily, consent is given in advance by the patient or, if the patient is a minor or is incompetent, the person responsible for the patient.
2. In the case of a patient hospitalized pursuant to sections 229.6 to 229.15, the consent of the court which hospitalized the patient is obtained in advance, rather than afterward as otherwise permitted by section 229.15, subsection 3.
[SS15, §2727-a96; C24, 27, 31, 35, 39, §**3456, 3472, 3477;** C46, 50, 54, 58, 62, §222.46, 223.8, 223.11; C66, 71, 73, 75, 77, 79, 81, §222.7]
83 Acts, ch 96, §71, 159; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51

222.8 Communications by patients.
Persons admitted to the resource centers or a special unit shall have all reasonable opportunity and facility for communication with their friends. Such persons shall be permitted to write and send letters, provided the letters contain nothing of an offensive character. Letters written by any patient to the administrator or to any state or county official shall be forwarded unopened.
[C24, 27, 31, 35, 39, §**3445;** C46, 50, 54, 58, 62, §222.35; C66, 71, 73, 75, 77, 79, 81, §222.8]
2000 Acts, ch 1112, §51

222.9 Unauthorized departures.
If any person with mental retardation shall depart without proper authorization from a resource center or a special unit, it shall be the duty of the superintendent and the superintendent's assistants and all peace officers of any county in which such patient may be found to take and detain the patient without a warrant or order and to immediately report such detention to the superintendent who shall immediately provide for the return of such patient to the resource center or special unit.
[C24, 27, 31, 35, 39, §**3460;** C46, 50, 54, 58, 62, §222.50; C66, 71, 73, 75, 77, 79, 81, §222.9]
96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51

222.10 Duty of peace officer.
When any person with mental retardation departs without proper authority from an institution in another state and is found in this state, any peace officer in any county in which such patient is found may take and detain the patient without warrant or order and shall report such detention to the administrator. The administrator shall provide for the return of the patient to the authorities in the state from which the unauthorized departure was made. Pending return, such patient may be detained temporarily at one of the institutions of this state governed by the administrator or by the administrator of the division of child and family services of the department of human services. The provisions of this section relating to the administrator shall also apply to the return of other nonresident persons with mental retardation having legal settlement outside the state of Iowa.
[C58, 62, §222.55; C66, 71, 73, 75, 77, 79, 81, §222.10]
83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §113

222.11 Expense.
All actual and necessary expenses incurred in the taking into protective custody, restraint, and transportation of such patients to the resource centers shall be paid on itemized vouchers, sworn to by the claimants, and approved by the superintendent and the administrator from any money in the state treasury not otherwise appropriated.
[C24, 27, 31, 35, 39, §**3461;** C46, 50, 54, 58, 62, §222.51; C66, 71, 73, 75, 77, 79, 81, §222.11]
2000 Acts, ch 1112, §51

222.12 Deaths investigated.
In the event of a sudden or mysterious death of a patient of a resource center or the special unit or any private institution for persons with mental retardation, an investigation shall be held by the county medical examiner. The superintendent of a resource center or a special unit or chief administrative officer of any private institution may request an investigation of the death of any patient by the county medical examiner. Notice of the death of the patient, and the cause thereof, shall be sent to the county board of supervisors and to the judge of the court having had jurisdiction over a committed patient. The fact of death with the

time, place, and alleged cause shall be entered upon the docket of the court. The parent, guardian, or other person responsible for the admission of a patient to such institutions may request an investigation by the county medical examiner in the event of the death of the patient. The person or persons making the request shall be liable for the expense of such investigation and payment therefor may be required in advance. The expense of a county medical examiner's investigation when requested by the superintendent of a state resource center or a special unit shall be paid from support funds of that institution.

[C24, 27, 31, 35, 39, §**3447;** C46, 50, 54, 58, 62, §222.37; C66, 71, 73, 75, 77, 79, 81, §222.12]

96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51

222.13 Voluntary admissions.

1. If an adult person is believed to be a person with mental retardation, the adult person or the adult person's guardian may submit a request through the single entry point process for the county board of supervisors to apply to the superintendent of any state resource center for the voluntary admission of the adult person either as an inpatient or an outpatient of the resource center. After determining the legal settlement of the adult person as provided by this chapter, the board of supervisors shall, on forms prescribed by the administrator, apply to the superintendent of the resource center in the district for the admission of the adult person to the resource center. An application for admission to a special unit of any adult person believed to be in need of any of the services provided by the special unit under section 222.88 may be made in the same manner, upon request of the adult person or the adult person's guardian. The superintendent shall accept the application providing a preadmission diagnostic evaluation, performed through the single entry point process, confirms or establishes the need for admission, except that an application may not be accepted if the institution does not have adequate facilities available or if the acceptance will result in an overcrowded condition.

2. If the resource center has no appropriate program for the treatment of an adult or minor person with mental retardation applying under this section or section 222.13A, the board of supervisors shall arrange for the placement of the person in any public or private facility within or without the state, approved by the director of the department of human services, which offers appropriate services for the person, as determined through the single entry point process.

3. Upon applying for admission of an adult or minor person to a resource center, or a special unit, or upon arranging for the placement of the person in a public or private facility, the board of supervisors shall make a full investigation into the financial circumstances of that person and those liable for that person's support under section 222.78 to determine whether or not any of them are able to pay the expenses arising out of the admission of the person to a resource center, special treatment unit, or public or private facility. If the board finds that the person or those legally responsible for the person are presently unable to pay the expenses, the board shall direct that the expenses be paid by the county. The board may review its finding at any subsequent time while the person remains at the resource center, or is otherwise receiving care or treatment for which this chapter obligates the county to pay. If the board finds upon review that the person or those legally responsible for the person are presently able to pay the expenses, the finding shall apply only to the charges incurred during the period beginning on the date of the review and continuing thereafter, unless and until the board again changes its finding. If the board finds that the person or those legally responsible for the person are able to pay the expenses, the board shall direct that the charges be so paid to the extent required by section 222.78, and the county auditor shall be responsible for the collection of the charges.

[C24, 27, 31, 35, 39, §**3464, 3477.2;** C46, 50, 54, 58, 62, §222.54, 223.13; C66, 71, 73, 75, 77, 79, 81, §222.13]

83 Acts, ch 96, §157, 159; 95 Acts, ch 82, §7; 96 Acts, ch 1183, §2; 97 Acts, ch 169, §2; 2000 Acts, ch 1112, §51

222.13A Voluntary admissions — minors.

1. If a minor is believed to be a person with mental retardation, the minor's parent, guardian, or custodian may request the county board of supervisors to apply for admission of the minor as a voluntary patient in a state resource center. If the resource center does not have appropriate services for the minor's treatment, the board of supervisors may arrange for the admission of the minor in a public or private facility within or without the state, approved by the director of human services, which offers appropriate services for the minor's treatment.

2. Upon receipt of an application for voluntary admission of a minor, the board of supervisors shall provide for a preadmission diagnostic evaluation of the minor to confirm or establish the need for the admission. The preadmission diagnostic evaluation shall be performed by a person who meets the qualifications of a qualified mental retardation professional who is designated through the single entry point process.

3. During the preadmission diagnostic evaluation, the minor shall be informed both orally and in writing that the minor has the right to object to the voluntary admission. If the preadmission diagnostic evaluation determines that the voluntary admission is appropriate but the minor objects to the admission, the minor shall not be admitted to the state resource center unless the

court approves of the admission. A petition for approval of the minor's admission may be submitted to the juvenile court by the minor's parent, guardian, or custodian.

4. As soon as practicable after the filing of a petition for approval of the voluntary admission, the court shall determine whether the minor has an attorney to represent the minor in the proceeding. If the minor does not have an attorney, the court shall assign to the minor an attorney. If the minor is unable to pay for an attorney, the attorney shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

5. The court shall order the admission of a minor who objects to the admission, only after a hearing in which it is shown by clear and convincing evidence that both of the following circumstances exist:

a. The minor needs and will substantially benefit from treatment or habilitation.

b. A placement which involves less restriction of the minor's liberties for the purposes of treatment or habilitation is not feasible.

95 Acts, ch 82, §8; 96 Acts, ch 1183, §3; 99 Acts, ch 135, §15; 2000 Acts, ch 1112, §51

222.14 Care by county pending admission.

If the institution is unable to receive a patient, the superintendent shall notify the county board of supervisors of the county from which the application in behalf of the prospective patient was made of the time when such person may be received. Until such time as the patient is able to be received by the institution, or when application has been made for admission to a public or private facility as provided in section 222.13 and the application is pending, the care of said person shall be provided as arranged by the county board of supervisors.

[C24, 27, 31, 35, 39, §**3433;** C46, 50, 54, 58, 62, §222.23; C66, 71, 73, 75, 77, 79, 81, §222.14]

222.15 Discharge of patients admitted voluntarily.

This section applies to any person who was voluntarily admitted to a state resource center or other facility in accordance with the provisions of section 222.13 or 222.13A. Except as otherwise provided by this section, if the person or the person's parent, guardian, or custodian submits a written request for the person's release, the person shall be immediately released.

1. If the person is an adult and was admitted pursuant to an application by the person or the person's guardian and the request for release is made by a different person, the release is subject to the agreement of the person voluntarily admitted or the person's guardian, if the guardian submitted the application.

2. If the person is a minor who was admitted pursuant to the provisions of section 222.13A, the person's release prior to becoming eighteen years of age is subject to the consent of the person's parent, guardian, or custodian, or to the approval of the court if the admission was approved by the court.

3. *a.* If the administrator of the facility in which the patient is admitted certifies that in the administrator's opinion the release of the person would be contrary to the safety of the person or the community, the release may be postponed by a court order. The administrator's certification shall be filed with the clerk of the district court for the county in which the facility is located no later than one day following the submission of the written request for release. The period of postponement shall be the period of time the court determines necessary to permit the commencement of judicial proceedings for the person's involuntary commitment. The period of postponement shall not exceed five days unless the period of postponement is extended by court order for good cause shown.

b. If a petition for the person's involuntary commitment is timely filed, the administrator may detain the person in the facility and provide treatment until disposition of the petition. The treatment shall be limited to that necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to the person or to others if allowed to continue. The administrator shall not otherwise provide treatment to the person without the person's consent.

[SS15, §2727-a96; C24, 27, 31, 35, 39, §**3473;** C46, 50, 54, 58, 62, §223.9; C66, 71, 73, 75, 77, 79, 81, §222.15]

95 Acts, ch 82, §9; 2000 Acts, ch 1112, §51

222.16 Petition for adjudication of mental retardation.

A petition for the adjudication of the mental retardation of a person within the meaning of this chapter may, with the permission of the court, be filed without fee against a person with the clerk of the district court of the county or city in which the person who is alleged to have mental retardation resides or is found. The petition may be filed by any relative of the person, by a guardian, or by any reputable citizen of the county where the person who is alleged to have mental retardation resides or is found.

Commitment of a person pursuant to section 222.31 does not constitute a finding or raise a presumption that the person is incompetent to vote. The court shall make a separate determination as to the person's competency to vote. The court shall

find a person incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

[C24, 27, 31, 35, 39, §**3413;** C46, 50, 54, 58, 62, §222.3; C66, 71, 73, 75, 77, 79, 81, §222.16]

96 Acts, ch 1129, §44; 98 Acts, ch 1185, §6

222.16A Judicial proceedings.

1. The chief judge of a judicial district may appoint one or more judicial hospitalization referees for each county in the district to discharge the duties imposed on the court by this chapter. The judicial hospitalization qualification provisions of section 229.21 shall apply to referees appointed under this section in performing duties pursuant to this chapter. An order or findings by a referee pursuant to this chapter may be appealed to a judge of the district court by filing notice with the clerk of the district court within seven days after the findings or order is made, and hearing by the district court shall be de novo. The court shall schedule a hearing before a district judge at the earliest practicable time.

2. The juvenile court has exclusive original jurisdiction in any court proceedings concerning a minor pursuant to this chapter.

95 Acts, ch 82, §10

222.17 Allegations verified.

The petition shall be verified by affidavit, may be filed on information or belief, and shall:

1. Allege that such person is mentally retarded within the meaning of this chapter.

2. Allege that the filing of the petition is conducive to the welfare of such person and of the community.

3. List the name and residence of all known persons supervising, caring for, or supporting such person, or assuming, or under obligation to do so.

4. List the name and residence, if known, of the parents of such person and of all other persons legally chargeable with the supervision, care, or support of such person.

5. List the names of all obtainable witnesses known to the petitioner by which the allegations of the petition may be established.

6. State whether such person has been examined by a qualified physician with a view of determining the person's mental condition.

[C24, 27, 31, 35, 39, §**3414, 3415;** C46, 50, 54, 58, 62, §222.4, 222.5; C66, 71, 73, 75, 77, 79, 81, §222.17]

222.18 County attorney to appear.

The county attorney shall, if requested, appear on behalf of any petitioner for the commitment of a person alleged to be mentally retarded under this chapter, and on behalf of all public officials and superintendents in all matters pertaining to the duties imposed upon them by this chapter.

Upon the filing of the petition, the court shall enter an order directing the county attorney of the county in which the person who is alleged to have mental retardation resides to make a full investigation regarding the financial condition of that person and of those persons legally liable for that person's support under section 222.78.

[C24, 27, 31, 35, 39, §**3412;** C46, 50, 54, 58, 62, §222.2; C66, 71, 73, 75, 77, 79, 81, §222.18]

84 Acts, ch 1299, §1; 96 Acts, ch 1129, §45

222.19 Party respondents.

The following persons, in addition to the person alleged to be mentally retarded, shall be made party respondents if the persons reside in this state and their names and residences are known:

1. The parent or parents of said principal person.

2. The person with whom said principal person is living.

3. The person or persons assuming to give the principal respondent care and attention.

4. The guardian, if there be such, of the person or property of the principal respondent.

[C24, 27, 31, 35, 39, §**3416;** C46, 50, 54, 58, 62, §222.6; C66, 71, 73, 75, 77, 79, 81, §222.19]

222.20 Notice served.

Notice of the pendency of said petition and of the time and place of hearing thereon shall be served upon all respondents who are residents of the county in which the petition is filed, in the manner in which the original notices are served. The court shall by written order direct the manner and time of service on all other parties. No notice need be served on those who are personally before the court.

[C24, 27, 31, 35, 39, §**3417;** C46, 50, 54, 58, 62, §222.7; C66, 71, 73, 75, 77, 79, 81, §222.20]

Manner of service, R.C.P. 1.302 – 1.315

222.21 Order requiring attendance.

If the person alleged to have mental retardation is not before the court, the court may issue an order requiring the person who has the care, custody, and control of the person who is alleged to have mental retardation to bring the person into court at the time and place stated in the order.

[C24, 27, 31, 35, 39, §**3417;** C46, 50, 54, 58, 62, §222.7; C66, 71, 73, 75, 77, 79, 81, §222.21]

96 Acts, ch 1129, §46

222.22 Time of appearance.

The time of appearance shall not be less than five days after completed service unless the court orders otherwise. Appearance on behalf of the person who is alleged to have mental retardation may be made by any citizen of the county or by any relative. The district court shall assign counsel for the person who is alleged to have mental retardation. Counsel shall prior to proceedings personally con-

sult with the person who is alleged to have mental retardation unless the judge appointing counsel certifies that in the judge's opinion, consultation shall serve no useful purpose. The certification shall be made a part of the record. An attorney assigned by the court shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

[C24, 27, 31, 35, 39, §**3418;** C46, 50, 54, 58, 62, §222.8; C66, 71, 73, 75, 77, 79, 81, §222.22]

96 Acts, ch 1129, §47; 99 Acts, ch 135, §16

222.23 Persons to be present.

At any hearing for commitment under this chapter, the person whose commitment is sought, the person's appointed counsel, the person's own attorney, if any, and any physician or psychologist whose testimony is to be made a part of the record shall be present unless the presiding judge shall determine that the presence will not be in the best interest of the person whose commitment is sought. Such determination shall be made a part of the record.

[C66, 71, 73, 75, 77, 79, 81, §222.23]

222.24 When held.

The hearing may be heard in term time or in vacation. The petition shall be taken as confessed by all respondents, except the principal person, who are duly served and who do not appear at the time required by the notice.

[C24, 27, 31, 35, 39, §**3419;** C46, 50, 54, 58, 62, §222.9; C66, 71, 73, 75, 77, 79, 81, §222.24]

222.25 Custody pending hearing.

Pending final hearing, the court may at any time after the filing of the petition and on satisfactory showing that it is in the best interest of the person who is alleged to have mental retardation and of the community that the person be at once taken into custody, or that service of notice will be ineffectual if the person is not taken into custody, issue an order for the immediate production of the person before the court. In such case, the court may make any proper order for the custody or confinement of the person as will protect the person and the community and insure the presence of the person at the hearing. The person shall not be confined with those accused or convicted of crime.

[C24, 27, 31, 35, 39, §**3420;** C46, 50, 54, 58, 62, §222.10; C66, 71, 73, 75, 77, 79, 81, §222.25]

96 Acts, ch 1129, §48

222.26 Hearing in equity.

The hearing on the allegations of the petition shall be as in equity proceedings. Answers to allegations shall not be required but may be filed. The court may require the petitioner to answer under oath such interrogatories as may be propounded by said court.

[C24, 27, 31, 35, 39, §**3421, 3422;** C46, 50, 54, 58, 62, §222.11, 222.12; C66, 71, 73, 75, 77, 79, 81, §222.26]

222.27 Hearing in public.

Hearings shall be public, unless otherwise requested by the parent, guardian, or other person having the custody of the person with mental retardation, or if the judge considers, a closed hearing in the best interests of the person with mental retardation.

[C24, 27, 31, 35, 39, §**3423;** C46, 50, 54, 58, 62, §222.13; C66, 71, 73, 75, 77, 79, 81, §222.27]

96 Acts, ch 1129, §113

222.28 Commission to examine.

The court may, at or prior to the final hearing, appoint a commission of one qualified physician and one qualified psychologist, designated through the single entry point process, who shall make a personal examination of the person alleged to be mentally retarded for the purpose of determining the mental condition of the person.

[C24, 27, 31, 35, 39, §**3424;** C46, 50, 54, 58, 62, §222.14; C66, 71, 73, 75, 77, 79, 81, §222.28]

96 Acts, ch 1183, §4

222.29 Report.

Said commission shall report in writing to the court the facts attending the mental condition of said person, its conclusion based thereon, and its recommendations concerning such person. The commission shall also report to the court sworn answers to such questions as may be required by the court. Such reports shall be filed with the clerk of the court.

[C24, 27, 31, 35, 39, §**3425;** C46, 50, 54, 58, 62, §222.15; C66, 71, 73, 75, 77, 79, 81, §222.29]

222.30 Ruling on report.

No objections or exceptions need be made to said report. The court may set the report aside, and may order a new examination by the same or by a new commission, or may make such findings of fact in lieu of said report as may be justified by the evidence before the court.

[C24, 27, 31, 35, 39, §**3426;** C46, 50, 54, 58, 62, §222.16; C66, 71, 73, 75, 77, 79, 81, §222.30]

222.31 Commitment — liability for charges.

If in the opinion of the court, or of a commission as authorized in section 222.28, the person is mentally retarded within the meaning of this chapter and the court determines that it will be conducive to the welfare of that person and of the community to commit the person to a proper institution for treatment, training, instruction, care, habilitation, and support, and that services or support provided to the family of such a person who is a child

will not enable the family to continue to care for the child in the child's home, the court shall by proper order:

1. Commit the person to any public or private facility within or without the state, approved by the director of the department of human services. If the person has not been examined by a commission as appointed in section 222.28, the court shall, prior to issuing an order of commitment, appoint such a commission to examine the person for the purpose of determining the mental condition of the person. No order of commitment shall be issued unless the commission shall recommend that such order be issued and the private institution to which the person is to be committed shall advise the court that it is willing to receive the person.

2. Commit the person to the state resource center designated by the administrator to serve the county in which the hearing is being held, or to a special unit. The court shall, prior to issuing an order of commitment, request that a diagnostic evaluation of the person be made by the superintendent of the resource center or the special unit, or the superintendent's qualified designee. The evaluation shall be conducted at a place as the superintendent may direct. The cost of the evaluation shall be defrayed by the county of legal settlement unless otherwise ordered by the court. The cost may be equal to but shall not exceed the actual cost of the evaluation. Persons referred by a court to a resource center or the special unit for diagnostic evaluation shall be considered as outpatients of the institution. No order of commitment shall be issued unless the superintendent of the institution recommends that the order be issued, and advises the court that adequate facilities for the care of the person are available.

The court shall examine the report of the county attorney filed pursuant to section 222.13, and if the report shows that neither the person nor those liable for the person's support under section 222.78 are presently able to pay the charges rising out of the person's care in the resource center, or special treatment unit, shall enter an order stating that finding and directing that the charges be paid by the person's county of residence. The court may, upon request of the board of supervisors, review its finding at any subsequent time while the person remains at the resource center, or is otherwise receiving care or treatment for which this chapter obligates the county to pay. If the court finds upon review that the person or those legally responsible for the person are presently able to pay the expenses, that finding shall apply only to the charges incurred during the period beginning on the date of the board's request for the review and continuing thereafter, unless and until the court again changes its finding. If the court finds that the person, or those liable for the person's support, are able to pay the charges, the court shall enter an order directing that the charges be so paid to the extent required by section 222.78.

3. In its order, the court shall include a finding as to whether the person has sufficient mental capacity to comprehend and exercise the right to vote.

[C24, 27, 31, 35, 39, §**3428;** C46, 50, 54, 58, 62, §222.18; C66, 71, 73, 75, 77, 79, 81, §222.31]

83 Acts, ch 96, §157, 159; 83 Acts, ch 123, §81, 209; 84 Acts, ch 1299, §2, 3; 85 Acts, ch 67, §23; 92 Acts, ch 1229, §2; 98 Acts, ch 1185, §7; 2000 Acts, ch 1112, §51

222.32 Committed person under jurisdiction of court.

Any person committed to any private institution shall remain under the jurisdiction of the court and the order of commitment may at any time be set aside or modified by changing the place of commitment or terminating the commitment and appointing a guardian in lieu thereof.

[C24, 27, 31, 35, 39, §**3429;** C46, 50, 54, 58, 62, §222.19; C66, 71, 73, 75, 77, 79, 81, §222.32]

222.33 Power of guardian. Repealed by 84 Acts, ch 1299, § 19.

222.34 Guardianship proceedings.

If a guardianship is proposed for a person with mental retardation, guardianship proceedings shall be initiated and conducted as provided in chapter 633.

[C24, 27, 31, 35, 39, §**3431;** C46, 50, 54, 58, 62, §222.21; C66, 71, 73, 75, 77, 79, 81, §222.34]

84 Acts, ch 1299, §4; 96 Acts, ch 1129, §113

222.35 No change without notice. Repealed by 84 Acts, ch 1299, § 19.

222.36 Custody pending admission.

If a resource center or a special unit is unable to immediately receive a person committed under section 222.31, subsection 2, the superintendent shall notify the court of the time when such person may be received. In the meantime, said person shall be cared for under such order as the court may enter.

[C24, 27, 31, 35, 39, §**3433;** C46, 50, 54, 58, 62, §222.23; C66, 71, 73, 75, 77, 79, 81, §222.36]

2000 Acts, ch 1112, §51

222.37 Order to deliver committed person.

Upon the entry of an order of commitment, the clerk shall deliver to a suitable person designated by the court, an order of commitment and a duplicate thereof commanding such person to immediately deliver the committed person to the institution, resource center, or special unit, as designated by the court.

[C24, 27, 31, 35, 39, §**3434;** C46, 50, 54, 58, 62, §222.24; C66, 71, 73, 75, 77, 79, 81, §222.37]

2000 Acts, ch 1112, §51

222.38 Delivery of person to institution, resource center, or special unit.

The court may, for the purpose of committing a person direct the clerk to authorize the employment of one or more assistants. If a person with mental retardation is taken to an institution, resource center, or special unit, at least one attendant shall be of the same sex.

[C24, 27, 31, 35, 39, §**3435;** C46, 50, 54, 58, 62, §222.25; C66, 71, 73, 75, 77, 79, 81, §222.38]

85 Acts, ch 99, §3; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51

222.39 Receipt acknowledged by superintendent.

The superintendent of the institution, resource center, or special unit on the order of commitment shall acknowledge receipt for said person. The duplicate order shall be left with the superintendent and shall be sufficient authority to restrain and care for said committed person.

[C24, 27, 31, 35, 39, §**3436;** C46, 50, 54, 58, 62, §222.26; C66, 71, 73, 75, 77, 79, 81, §222.39]

2000 Acts, ch 1112, §51

222.40 Filing order with clerk.

The person executing said order shall make due return thereon of the person's doings and forthwith file the same with the clerk.

[C24, 27, 31, 35, 39, §**3437;** C46, 50, 54, 58, 62, §222.27; C66, 71, 73, 75, 77, 79, 81, §222.40]

222.41 Exclusive method of discharge.

No person committed under this chapter shall be discharged from the institution, resource center, or special unit except as provided in this chapter. Nothing in this chapter shall abridge the right of petition for a writ of habeas corpus.

[C24, 27, 31, 35, 39, §**3438;** C46, 50, 54, 58, 62, §222.28; C66, 71, 73, 75, 77, 79, 81, §222.41]

2000 Acts, ch 1112, §51

Constitutional provision, Art. I, §13

Habeas corpus, chapter 663

222.42 Petition for discharge.

A petition for the discharge of a person who has been committed to an institution, a resource center, or a special unit under this chapter or to vary such order of commitment may at any time after six months from the date of such commitment be filed by the person committed or by any reputable person. If the commitment be to a private institution, the petition shall be filed with the court ordering such commitment. If the commitment be to a resource center or a special unit, the petition shall be filed in the proper court of the county where the institution is situated.

[C24, 27, 31, 35, 39, §**3439;** C46, 50, 54, 58, 62, §222.29; C66, 71, 73, 75, 77, 79, 81, §222.42]

2000 Acts, ch 1112, §51

222.43 Grounds.

Discharges and modifications of orders may be made on any of the following grounds:

1. That the person adjudged to be mentally retarded is not mentally retarded.
2. That the person adjudged to be mentally retarded has improved as to be capable of self care.
3. That the relatives or friends of the person with mental retardation are able and willing to support and care for the person with mental retardation and request the person's discharge, and in the judgment of the superintendent of the institution or resource center having charge of the person, no harmful consequences are likely to follow such discharge.
4. That, for any other cause, said discharge should be made or such modification should be entered.

Petitions for discharge or modification of an order of commitment to a special unit may be made upon any of the foregoing grounds, when applicable.

[C24, 27, 31, 35, 39, §**3440;** C46, 50, 54, 58, 62, §222.30; C66, 71, 73, 75, 77, 79, 81, §222.43]

96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51

222.44 Notice to superintendent.

Notice of the hearing for discharge or modification of orders shall be served on the superintendent of the institution, resource center, or special unit, and on such parties as the court may find from the record are interested.

[C24, 27, 31, 35, 39, §**3441;** C46, 50, 54, 58, 62, §222.31; C66, 71, 73, 75, 77, 79, 81, §222.44]

2000 Acts, ch 1112, §51

222.45 Power of court.

On the hearing, the court may discharge the person with mental retardation from all supervision, control, and care, or may transfer the person from a public institution to a private institution, or vice versa, or transfer the person from a special unit to a resource center, or vice versa, as the court deems appropriate under all the circumstances. If the person has been determined to lack the mental capacity to vote, the court shall include in its order a finding that this determination remains in force or is revoked.

[C24, 27, 31, 35, 39, §**3442;** C46, 50, 54, 58, 62, §222.32; C66, 71, 73, 75, 77, 79, 81, §222.45]

84 Acts, ch 1299, §5; 96 Acts, ch 1129, §113; 98 Acts, ch 1185, §8; 2000 Acts, ch 1112, §51

222.46 No bar to future petitions.

The denial of one petition for discharge or modification shall be no bar to another on the same or different grounds within a reasonable time thereafter, such reasonable time to be determined by the court.

[C24, 27, 31, 35, 39, §**3443;** C46, 50, 54, 58, 62, §222.33; C66, 71, 73, 75, 77, 79, 81, §222.46]

222.47 Penalty for false petition of commitment.

Any person who shall maliciously seek to have any person adjudged mentally retarded, knowing that such person is not mentally retarded, shall be guilty of a fraudulent practice.

[C24, 27, 31, 35, 39, §**3448;** C46, 50, 54, 58, 62, §222.38; C66, 71, 73, 75, 77, 79, 81, §222.47]

222.48 Fees for witnesses.

The fees for attendance of witnesses and execution of legal process shall be the same as are allowed by law for similar service in other cases. For service as commissioner, a reasonable sum as determined by the court and the actual and necessary traveling expenses shall be allowed.

[C24, 27, 31, 35, 39, §**3449;** C46, 50, 54, 58, 62, §222.39; C66, 71, 73, 75, 77, 79, 81, §222.48]

Fees, §331.655, 622.69

222.49 Costs paid.

The costs of proceedings shall be defrayed from the county treasury unless otherwise ordered by the court. When the person alleged to be mentally retarded is found not to be mentally retarded, the court shall render judgment for such costs against the person filing the petition except when the petition is filed by order of court.

[C24, 27, 31, 35, 39, §**3450;** C46, 50, 54, 58, 62, §222.40; C66, 71, 73, 75, 77, 79, 81, §222.49]

222.50 County of legal settlement to pay.

When the proceedings are instituted in a county in which the person who is alleged to have mental retardation was found but which is not the county of legal settlement of the person, and the costs are not taxed to the petitioner, the county which is the legal settlement of the person shall, on presentation of a properly itemized bill for such costs, repay the costs to the former county. When the person's legal settlement is outside the state or is unknown, the costs shall be paid out of money in the state treasury not otherwise appropriated, itemized on vouchers executed by the auditor of the county which paid the costs, and approved by the administrator.

[C24, 27, 31, 35, 39, §**3451;** C46, 50, 54, 58, 62, §222.41; C66, 71, 73, 75, 77, 79, 81, §222.50]

96 Acts, ch 1129, §49

222.51 Costs collected.

Costs incident to the hearings and commitment of a person with mental retardation to an institution, a resource center, or a special unit may be collected from the person with mental retardation and from all persons legally chargeable with the support of the person with mental retardation.

[C24, 27, 31, 35, 39, §**3452;** C46, 50, 54, 58, 62, §222.42; C66, 71, 73, 75, 77, 79, 81, §222.51]

84 Acts, ch 1299, §6; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51

222.52 Proceedings against delinquent — hearing on retardation.

When in proceedings against an alleged delinquent or dependent child, the court is satisfied from any evidence that such child is mentally retarded, the court may order a continuance of such proceeding, and may direct an officer of the court or some other proper person to file a petition against such child permitted under the provisions of this chapter. Pending hearing of the petition the court may by order provide proper custody for the child.

[C24, 27, 31, 35, 39, §**3453;** C46, 50, 54, 58, 62, §222.43; C66, 71, 73, 75, 77, 79, 81, §222.52]

222.53 Conviction — suspension.

If on the conviction in the district court of any person for any crime or for any violation of any municipal ordinance, or if on the determination in said courts that a child is dependent, neglected, or delinquent and it appears from any evidence presented to the court before sentence, that such person is mentally retarded within the meaning of this chapter, the court may suspend sentence or order, and may order any officer of the court or some other proper person to file a petition permitted under the provisions of this chapter against said person. Pending hearing of the petition, the court shall provide for the custody of said person as directed in section 222.52.

[C24, 27, 31, 35, 39, §**3454;** C46, 50, 54, 58, 62, §222.44; C66, 71, 73, 75, 77, 79, 81, §222.53]

222.54 Procedure after hearing.

Should it be found under sections 222.52 and 222.53 that said person is not mentally retarded, the court shall proceed with the original proceedings as though no petition had been filed.

[C24, 27, 31, 35, 39, §**3455;** C46, 50, 54, 58, 62, §222.45; C66, 71, 73, 75, 77, 79, 81, §222.54]

222.55 Procedure regarding a person with mental illness.

If it appears at any time that a person has under the provisions of this chapter been committed to a private institution and should be evaluated and treated in a hospital for persons with mental illness, the person may be hospitalized under any of the provisions of sections 229.2 to 229.15.

[C24, 27, 31, 35, 39, §**3457;** C46, 50, 54, 58, 62, §222.47; C66, 71, 73, 75, 77, 79, 81, §222.55]

84 Acts, ch 1299, §7; 96 Acts, ch 1129, §113

Hospitalization of persons with mental illness, chapter 229

222.56 Transfer to institution for persons with mental retardation.

When the mental condition of a person in a private institution for persons with mental illness is found to be such that the patient should be trans-

ferred to an institution for persons with mental retardation, the person may be proceeded against under this chapter.

[C24, 27, 31, 35, 39, §**3458;** C46, 50, 54, 58, 62, §222.48; C66, 71, 73, 75, 77, 79, 81, §222.56]

84 Acts, ch 1299, §8; 96 Acts, ch 1129, §113

222.57 Court records.

Each court having jurisdiction under this chapter shall keep a separate docket of proceedings in which shall be made such entries as shall, together with the papers filed, preserve a complete and perfect record of each case. The original petitions, writs, and returns made thereto and the reports of commissions shall be filed with the clerk of the court.

[C24, 27, 31, 35, 39, §**3462;** C46, 50, 54, 58, 62, §222.52; C66, 71, 73, 75, 77, 79, 81, §222.57]

222.58 Administrator to keep record.

The administrator shall keep a record of all persons adjudged to be mentally retarded and of the orders respecting such persons by the courts throughout the state. Copies of such orders shall be furnished by the clerk of the court without the administrator's application therefor.

[C24, 27, 31, 35, 39, §**3463;** C46, 50, 54, 58, 62, §222.53; C66, 71, 73, 75, 77, 79, 81, §222.58]

222.59 Alternative to state resource center placement.

1. Upon receiving a request from an authorized requester, the superintendent of a state resource center shall coordinate with the single entry point process in assisting the requester in identifying available community-based services as an alternative to continued placement of a patient in the state resource center. For the purposes of this section, *"authorized requester"* means the parent, guardian, or custodian of a minor patient, the guardian of an adult patient, or an adult patient who does not have a guardian. The assistance shall identify alternatives to continued placement which are appropriate to the patient's needs and shall include but are not limited to any of the following:

a. Providing information on currently available services that are an alternative to residence in the state resource center.

b. Referring the patient to an appropriate case management agency or other provider of service.

2. If a patient was admitted pursuant to section 222.13 or section 222.13A and the patient wishes to be placed outside of the state resource center, the discharge for the placement shall be made in accordance with the provisions of section 222.15.

3. If a patient was involuntarily committed, a petition for approval of a proposed placement outside the state resource center shall be filed, by the authorized requester or the superintendent of the state resource center where the patient is placed, with the court which made the commitment with either of the following recommendations for the court's consideration:

a. That the patient's commitment is no longer necessary and should be discontinued.

b. That the patient's commitment is still appropriate but the patient should be transferred to another public or private facility in accordance with the provisions of section 222.31, subsection 1.

[C97, §2698; C24, 27, 31, 35, 39, §**3405, 3446;** C46, §221.4; C46, 50, 54, 58, 62, §222.36, 223.19; C66, 71, 73, 75, 77, 79, 81, §222.59]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1271, §1502; 95 Acts, ch 82, §11; 96 Acts, ch 1183, §5; 2000 Acts, ch 1112, §51

222.60 Costs paid by county or state — diagnosis and evaluation.

All necessary and legal expenses for the cost of admission or commitment or for the treatment, training, instruction, care, habilitation, support and transportation of persons with mental retardation, as provided for in the county management plan provisions implemented pursuant to section 331.439, subsection 1, in a state resource center, or in a special unit, or any public or private facility within or without the state, approved by the director of the department of human services, shall be paid by either:

1. The county in which such person has legal settlement as defined in section 252.16.

2. The state when such person has no legal settlement or when such settlement is unknown.

Prior to a county of legal settlement approving the payment of expenses for a person under this section, the county may require that the person be diagnosed to determine if the person has mental retardation or that the person be evaluated to determine the appropriate level of services required to meet the person's needs relating to mental retardation. The diagnosis and the evaluation may be performed concurrently and shall be performed by an individual or individuals approved by the county who are qualified to perform the diagnosis or the evaluation. Following the initial approval for payment of expenses, the county of legal settlement may require that an evaluation be performed at reasonable time periods. The cost of a county-required diagnosis and an evaluation is at the county's expense. In the case of a person without legal settlement or whose legal settlement is unknown, the state may apply the diagnosis and evaluation provisions of this paragraph at the state's expense. A diagnosis or an evaluation under this section may be part of a county's single entry point process under section 331.440, provided that a diagnosis is performed only by an individual qualified as provided in this section.

A diagnosis of mental retardation under this section shall be made only when the onset of the person's condition was prior to the age of eighteen

years and shall be based on an assessment of the person's intellectual functioning and level of adaptive skills. The diagnosis shall be made by an individual who is a psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills.

A diagnosis of mental retardation shall be made in accordance with the criteria provided in the diagnostic and statistical manual of mental disorders, fourth edition, published by the American psychiatric association.

[C39, §**3477.3, 3477.4, 3477.7;** C46, 50, 54, 58, 62, §223.14, 223.15, 223.18; C66, 71, 73, 75, 77, 79, 81, §222.60]

83 Acts, ch 96, §157, 159; 95 Acts, ch 82, §12; 95 Acts, ch 190, §1; 95 Acts, ch 206, §13; 2000 Acts, ch 1112, §51

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13

222.61 Legal settlement determined.

When a county receives an application on behalf of any person for admission to a resource center or a special unit or when any court issues an order committing any person to a resource center or a special unit, the board of supervisors shall utilize the single entry point process to determine or the court shall determine and enter as a matter of record whether the legal settlement of the person is in one of the following:

1. In the county in which the application is received or court is located.
2. In some other county of the state.
3. In another state or in a foreign country.
4. Unknown.

[C66, 71, 73, 75, 77, 79, 81, §222.61]

97 Acts, ch 169, §3; 2000 Acts, ch 1112, §51

222.62 Settlement in another county.

Whenever the board of supervisors utilizes a single entry point process to determine or the court determines that the legal settlement of the person is other than in the county in which the application is received or the court is located, the board or court shall, as soon as determination is made, certify such finding to the superintendent of the resource center or the special unit where the person is a patient. The superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of the patient, to the county so certified until the patient's legal settlement shall be otherwise determined as provided by this chapter.

[C66, 71, 73, 75, 77, 79, 81, §222.62]

97 Acts, ch 169, §4; 2000 Acts, ch 1112, §51

222.63 Finding of settlement — objection.

Said finding of legal settlement shall also be certified by the board of supervisors or the court to the county auditor of the county of legal settlement. Such auditor shall lay such notification before the board of supervisors of the auditor's county whereupon it shall be conclusively presumed that the patient has a legal settlement in said county unless the county shall, within six months, in writing filed with the board of supervisors or the court giving such notice, dispute said legal settlement.

[C66, 71, 73, 75, 77, 79, 81, §222.63]

222.64 Foreign state or unknown legal settlement.

If the legal settlement of the person is found by the board of supervisors through a single entry point process or the court to be in a foreign state or country or is found to be unknown, the board of supervisors or the court shall immediately notify the administrator of the finding and shall furnish the administrator with a copy of the evidence taken on the question of legal settlement. The care of the person shall be as arranged by the board of supervisors or by an order as the court may enter. Application for admission or order of commitment may be made pending investigation by the administrator.

[C66, 71, 73, 75, 77, 79, 81, §222.64]

97 Acts, ch 169, §5

222.65 Investigation.

The administrator shall immediately investigate the legal settlement of the person and proceed as follows:

1. If the administrator finds that the decision of the board of supervisors or the court as to legal settlement of the person is correct, the administrator shall cause the person either to be transferred to a resource center or a special unit and there maintained at the expense of the state or to be transferred to the place of foreign settlement.
2. If the administrator finds that the decision of the board of supervisors or the court is not correct, the administrator shall order the person transferred to a state resource center or a special unit and there maintained at the expense of the county of legal settlement in this state.

[C66, 71, 73, 75, 77, 79, 81, §222.65]

2000 Acts, ch 1112, §51

222.66 Transfers — expenses.

The transfer to a resource center or a special unit or to the place of legal settlement of a person with mental retardation who has no legal settlement in this state or whose legal settlement is unknown, shall be made in accordance with such directions as shall be prescribed by the administrator and when practicable by employees of the state resource center or the special unit. The actual and necessary expenses of such transfers shall be paid on itemized vouchers sworn to by the claimants and approved by the administrator from any funds in the state treasury not otherwise appropriated.

[C66, 71, 73, 75, 77, 79, 81, §222.66]

96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51

222.67 Charge on finding of settlement.

Where a person has been received into a resource center or a special unit as a patient whose legal settlement is supposedly outside the state or is unknown and the administrator finds that the legal settlement of the patient was at the time of admission or commitment in a county of this state, the administrator shall charge all legal costs and expenses pertaining to the admission or commitment and support of the patient to the county of such legal settlement. The costs and expenses shall be collected as provided by law in other cases.

[C66, 71, 73, 75, 77, 79, 81, §222.67]

2000 Acts, ch 1112, §51

222.68 Costs paid in first instance.

All necessary and legal expenses for the cost of admission or commitment of a person to a resource center or a special unit when the person's legal settlement is found to be in another county of this state shall in the first instance be paid by the county from which the person was admitted or committed. The county of legal settlement shall reimburse the county which pays for all such expenses. Where any county fails to make such reimbursement within forty-five days following submission of a properly itemized bill to the county of legal settlement, a penalty of not greater than one percent per month on and after forty-five days from submission of the bill may be added to the amount due.

[C24, 27, 31, 35, 39, §**3451;** C46, 50, 54, 58, 62, §222.41; C66, 71, 73, 75, 77, 79, 81, §222.68]

98 Acts, ch 1218, §68; 2000 Acts, ch 1112, §51

222.69 Payment by state.

All necessary and legal expenses for the cost of admission or commitment of a person to a resource center or a special unit when the person's legal settlement is outside this state or is unknown shall be paid out of any money in the state treasury not otherwise appropriated. Such payments shall be made on itemized vouchers executed by the auditor of the county from which the expenses have been paid and approved by the administrator.

[C66, 71, 73, 75, 77, 79, 81, §222.69]

2000 Acts, ch 1112, §51

222.70 Legal settlement disputes.

1. If a dispute arises between counties or between the administrator and a county as to the legal settlement of a person admitted or committed to a resource center, a special unit, or a community-based service, the attorney general at the request of the administrator shall without advancement of fees cause an action to be brought in the district court of any county where the dispute exists. The action shall be brought to determine the person's legal settlement, except that action shall not be filed in a county in which the district court or a judge of that district court originally made the disputed finding. The action may be brought at any time when it appears that the dispute cannot be amicably settled. All counties which may be the county of the person's legal settlement, so far as known, shall be made defendants and the allegation of settlement may be in the alternative. The action shall be tried as in equity.

2. In lieu of an action filed under subsection 1, the parties to a dispute concerning a person's legal settlement or a payment for a community-based service may settle the dispute through an alternative dispute resolution process agreed to by the parties. The alternative dispute resolution process may include but is not limited to mediation, binding arbitration, or other mutually agreeable form of resolution. A resolution of the dispute agreed to by the parties shall be stipulated to and filed in the office of the clerk of the district court.

[C66, 71, 73, 75, 77, 79, 81, §222.70]

94 Acts, ch 1170, §1; 2000 Acts, ch 1112, §51

222.71 Legal settlement — finding by court.

If an action is filed under section 222.70, subsection 1, the court shall determine whether the legal settlement of the person with mental retardation was in one of the defendant counties at the time of admission or commitment. If the court finds the person to have legal settlement in a county, judgment shall be entered against the county in favor of any other county for all necessary and legal expenses arising from the person's admission or commitment and shall be paid by the county of legal settlement. If any such costs have not been paid, judgment shall be rendered against the county of legal settlement in favor of the parties, including the state, to whom the costs or expenses may be due.

[C66, 71, 73, 75, 77, 79, 81, §222.71]

94 Acts, ch 1170, §2

222.72 Finding legal settlement outside state.

If an alternative dispute resolution of the dispute filed under section 222.70 stipulates or the court finds pursuant to section 222.70 or 222.71 that the legal settlement of the person with mental retardation, at the time of admission or commitment, was outside the state or was unknown, an order shall be entered that the person shall be maintained in the resource center, the special unit, or a community-based service at the expense of the state. In such case, the state shall refund to any county all necessary and legal expenses for the cost of said admission or commitment paid by a county. A decision by the court shall be final.

[C66, 71, 73, 75, 77, 79, 81, §222.72]

94 Acts, ch 1170, §3; 2000 Acts, ch 1112, §51

222.73 Billing of patient charges — computation of actual costs — cost settlement.

1. The superintendent of each resource center and special unit shall compute by February 1 the average daily patient charge and outpatient treatment charges for which each county will be billed for services provided to patients chargeable to the county during the fiscal year beginning the following July 1. The department shall certify the amount of the charges and notify the counties of the billing charges.

a. The superintendent shall compute the average daily patient charge for a resource center or special unit for services provided in the following fiscal year, in accordance with generally accepted accounting procedures, by totaling the expenditures of the resource center or special unit for the immediately preceding calendar year, by adjusting the expenditures by a percentage not to exceed the percentage increase in the consumer price index for all urban consumers for the immediately preceding calendar year, and by dividing the adjusted expenditures by the total inpatient days of service provided during the immediately preceding calendar year.

b. The department shall compute the outpatient treatment charges, in accordance with generally accepted accounting procedures, on the basis of the actual cost of the outpatient treatment provided during the immediately preceding calendar year.

2. The superintendent shall certify to the department the billings to each county for services provided to patients chargeable to the county during the preceding calendar quarter. The county billings shall be based on the average daily patient charge and outpatient treatment charges computed pursuant to subsection 1, and the number of inpatient days and outpatient treatment service units chargeable to the county. The billings to a county of legal settlement are subject to adjustment for all of the following circumstances:

a. The county billing for a patient shall be reduced by the amount received for the patient's care from a source other than state appropriated funds.

b. If more than twenty percent of the cost of a patient's care is initially paid from a source other than state appropriated funds, the amount paid shall be subtracted from the average per-patient-per-day cost of that patient's care and the patient's county shall be billed for the full balance of the cost so computed.

c. The county of a patient who is eligible for reimbursement under the medical assistance program shall be responsible for the costs which are not reimbursed by the medical assistance program, regardless of the level of care provided to the patient.

d. A county shall be responsible for eighty percent of the cost of care of a patient who is not eligible for reimbursement under the medical assistance program.

e. The billings for counties shall be credited with one hundred percent of the client participation for patients eligible for medical assistance in the calculation of the per diem rate for patients.

f. A county shall not be billed for the cost of a patient unless the patient's admission is authorized through the applicable single entry point process. The state resource center and the county shall work together to locate appropriate alternative placements and services, and to educate patients and the family members of patients regarding such alternatives.

The per diem costs billed to each county shall not exceed the per diem costs billed to the county in the fiscal year beginning July 1, 1996. However, the per diem costs billed to a county may be adjusted in a fiscal year to reflect increased costs to the extent of the percentage increase in the total of county fixed budgets pursuant to the allowed growth factor adjustment authorized by the general assembly for that fiscal year in accordance with section 331.439.

3. The superintendent shall compute in January the actual per-patient-per-day cost for each resource center or special unit for the immediately preceding calendar year, in accordance with generally accepted accounting procedures, by totaling the actual expenditures of the resource center or special unit for the calendar year and by dividing the total actual expenditures by the total inpatient days of service provided during the calendar year.

4. The department shall certify to the counties by February 1 the actual per-patient-per-day costs, as computed pursuant to subsection 3, and the actual costs owed by each county for the immediately preceding calendar year for patients chargeable to the county. If the actual costs owed by the county are greater than the charges billed to the county pursuant to subsection 2, the department shall bill the county for the difference with the billing for the quarter ending June 30. If the actual costs owed by the county are less than the charges billed to the county pursuant to subsection 2, the department shall credit the county for the difference starting with the billing for the quarter ending June 30.

5. A superintendent of a resource center or special unit may request that the director of human services enter into a contract with a person for the resource center or special unit to provide consultation or treatment services or for fulfilling other purposes which are consistent with the purposes stated in section 222.1. The contract provisions shall include charges which reflect the actual cost of providing the services. Any income from a contract authorized under this subsection may be retained by the resource center or special unit to defray the costs of providing the services or fulfilling the other purposes. Except for a contract

voluntarily entered into by a county under this subsection, the costs or income associated with a contract authorized under this subsection shall not be considered in computing charges and per diem costs in accordance with the provisions of subsections 1 through 4.

[SS15, §2727-a96; C24, 27, 31, 35, 39, §**3469;** C46, 50, 54, 58, 62, §223.5; C66, 71, 73, 75, 77, 79, 81, §222.73]

86 Acts, ch 1169, §1; 88 Acts, ch 1249, §6; 88 Acts, ch 1276, §38; 95 Acts, ch 82, §4; 96 Acts, ch 1183, §6 – 8; 98 Acts, ch 1155, §9; 2000 Acts, ch 1112, §51; 2001 Acts, ch 155, §15 – 17

222.74 Duplicate to county.

When certifying to the department amounts to be charged against each county as provided in section 222.73, the superintendent shall send to the county auditor of each county against which the superintendent has so certified any amount, a duplicate of the certification statement. The county auditor upon receipt of the duplicate certification statement shall enter it to the credit of the state in the ledger of state accounts, and shall immediately issue a notice to the county treasurer authorizing the treasurer to transfer the amount from the county fund to the general state revenue. The county treasurer shall file the notice as authority for making the transfer and shall include the amount transferred in the next remittance of state taxes to the treasurer of state, designating the fund to which the amount belongs.

[C66, 71, 73, 75, 77, 79, 81, §222.74]

83 Acts, ch 123, §82, 209; 2001 Acts, ch 155, §18

222.75 Delinquent payments — penalty.

If a county fails to pay a billed charge within forty-five days from the date the county auditor received the certification statement from the superintendent pursuant to section 222.74, the department may charge the delinquent county a penalty of not greater than one percent per month on and after forty-five days from the date the county auditor received the certification statement until paid.

[C66, 71, 73, 75, 77, 79, 81, §222.75]

98 Acts, ch 1218, §69; 2001 Acts, ch 155, §19

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13

222.76 Repealed by 81 Acts, ch 117, § 1097.

222.77 Patients on leave.

The cost of support of patients placed on convalescent leave or removed as a habilitation measure from a resource center, or a special unit, except when living in the home of a person legally bound for the support of the patient, shall be paid by the county of legal settlement. If the patient has no county of legal settlement, the cost shall be paid from the support fund of the resource center or special unit and charged on abstract in the same manner as other state inpatients until the patient becomes self-supporting or qualifies for support under other statutes.

[C66, 71, 73, 75, 77, 79, 81, S81, §222.77; 81 Acts, ch 117, §1027]

83 Acts, ch 123, §83, 209; 2000 Acts, ch 1112, §51

222.78 Parents and others liable for support.

The father and mother of any patient admitted or committed to a resource center or to a special unit, as either an inpatient or an outpatient, and any person, firm, or corporation bound by contract made for support of the patient are liable for the support of the patient. The patient and those legally bound for the support of the patient shall be liable to the county for all sums advanced by the county to the state under the provisions of sections 222.60 and 222.77. The liability of any person, other than the patient, who is legally bound for the support of a patient who is under eighteen years of age in a resource center or a special unit shall not exceed the average minimum cost of the care of a normally intelligent minor without a disability of the same age and sex as the minor patient. The administrator shall establish the scale for this purpose but the scale shall not exceed the standards for personal allowances established by the state division under the family investment program. The father or mother shall incur liability only during any period when the father or mother either individually or jointly receive a net income from whatever source, commensurate with that upon which they would be liable to make an income tax payment to this state. The father or mother of a patient shall not be liable for the support of the patient upon the patient attaining eighteen years of age. Nothing in this section shall be construed to prevent a relative or other person from voluntarily paying the full actual cost as established by the administrator for caring for the patient with mental retardation.

[C39, §**3477.5;** C46, 50, 54, 58, 62, §223.16, 223.20; C66, 71, 73, 75, 77, 79, 81, §222.78]

93 Acts, ch 97, §27; 98 Acts, ch 1218, §70; 2000 Acts, ch 1112, §51

222.79 Certification statement presumed correct.

In actions to enforce the liability imposed by section 222.78, the certification statement sent from the superintendent to the county auditor pursuant to section 222.74 stating the sums charged in such cases shall be presumptively correct.

[C66, 71, 73, 75, 77, 79, 81, §222.79]

2001 Acts, ch 155, §20

222.80 Liability to county.

A person admitted or committed to a county institution or home or admitted or committed at county expense to a private hospital, sanitarium,

or other facility for treatment, training, instruction, care, habilitation, and support as a patient with mental retardation shall be liable to the county for the reasonable cost of the support as provided in section 222.78.

[C66, 71, 73, 75, 77, 79, 81, §222.80]
96 Acts, ch 1129, §50

222.81 Claim against estate.

The total amount of liability provided in section 222.78 shall be allowed as a claim of the sixth class against the estate of the person or against the estate of the father or mother of such person.

[C66, 71, 73, 75, 77, 79, 81, §222.81]

222.82 Collection of liabilities and claims.

The board of supervisors of each county may direct the county attorney to proceed with the collection of said liabilities and claims as a part of the duties of the county attorney's office when the board of supervisors deems such action advisable. The board of supervisors may and is hereby empowered to compromise any and all liabilities to the county arising under this chapter when such compromise is deemed to be in the best interests of the county. Any collections and liens shall be limited in conformance to section 614.1, subsection 4.

[C39, §**3477.6;** C46, 50, 54, 58, 62, §223.17; C66, 71, 73, 75, 77, 79, 81, §222.82]

222.83 Nonresident patients.

The estates of all nonresident patients who are provided treatment, training, instruction, care, habilitation, and support in or by a resource center or a special unit, and all persons legally bound for the support of such persons, shall be liable to the state for the reasonable value of such services. The certificate of the superintendent of the resource center or special unit in which any nonresident is or has been a patient, showing the amounts drawn from the state treasury or due therefrom as provided by law on account of such nonresident patient, shall be presumptive evidence of the reasonable value of such services furnished such patient by the resource center or special unit.

[C66, 71, 73, 75, 77, 79, 81, §222.83]
2000 Acts, ch 1112, §51

222.84 Patients' personal deposit fund.

There is hereby established at each resource center and special unit a fund which shall be known as the "patients' personal deposit fund"; provided that in the case of a special unit, the director may direct that the patients' personal deposit fund be maintained and administered as a part of the fund established, pursuant to sections 226.43 to 226.46, by the mental health institute where the special unit is located.

[C66, 71, 73, 75, 77, 79, 81, §222.84]
2000 Acts, ch 1112, §51

222.85 Deposit of moneys — exception to guardians.

Any funds coming into the possession of the superintendent or any employee of a resource center or special unit belonging to any patient in that institution shall be deposited in the name of the patient in the patients' personal deposit fund, except that if a guardian of the property has been appointed for the person, the guardian shall have the right to demand and receive such funds. Funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals, desires, and comforts for the patient.

Money paid to a resource center from any source other than state appropriated funds and intended to pay all or a portion of the cost of care of a patient, which cost would otherwise be paid from state or county funds or from the patient's own funds, shall not be deemed money belonging to the patient for the purposes of this section.

[C66, 71, 73, 75, 77, 79, 81, §222.85]
2000 Acts, ch 1112, §51

222.86 Payment for care from fund.

If a patient is not receiving medical assistance under chapter 249A and the amount in the account of any patient in the patients' personal deposit fund exceeds two hundred dollars, the business manager of the resource center or special unit may apply any amount of the excess to reimburse the county of legal settlement or the state in a case where no legal settlement exists for liability incurred by the county or the state for the payment of care, support, and maintenance of the patient, when billed by the county of legal settlement or by the administrator for a patient having no legal settlement.

[C66, 71, 73, 75, 77, 79, 81, S81, §222.86; 81 Acts, ch 11, §15]
2000 Acts, ch 1112, §51

222.87 Deposit in bank.

The business manager shall deposit the patients' personal deposit fund in a commercial account of a bank of reputable standing. When deposits in the commercial account exceed average monthly withdrawals, the business manager may deposit the excess at interest. The savings account shall be in the name of the patients' personal deposit fund and interest paid thereon may be used for recreational purposes for the patients at the resource center or special unit.

[C66, 71, 73, 75, 77, 79, 81, §222.87]
2000 Acts, ch 1112, §51

222.88 Special mental retardation unit.

The director of human services may organize

and establish a special mental retardation unit at an existing institution which may provide:

1. Psychiatric and related services to children with mental retardation and adults who are also emotionally disturbed or otherwise mentally ill.

2. Specific programs to meet the needs of such other special categories of persons with mental retardation as may be designated by the director.

3. Appropriate diagnostic evaluation services.

[C71, 73, 75, 77, 79, 81, §222.88]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §51, 113

222.89 Location — staff and personnel.

The director may:

1. Designate a portion of the physical facilities of one of the mental health institutes to be occupied by the offices and facilities of the special unit.

2. Determine the extent to which the special unit may effectively utilize services of the mental health institute staff, and what staff personnel should be employed for and assigned specifically to the special unit.

[C71, 73, 75, 77, 79, 81, §222.89]

222.90 Superintendent.

The director shall appoint a qualified superintendent of the special unit. The superintendent shall employ all staff personnel to be assigned specifically to the special unit, and shall have the same duties with respect to the special unit as are imposed upon superintendents of resource centers by section 222.4.

[C71, 73, 75, 77, 79, 81, §222.90]

2000 Acts, ch 1112, §51

222.91 Direct referral to special unit.

In addition to any other manner of referral, admission, or commitment to the special unit provided for by this chapter, persons may be referred directly to the special unit by courts, law enforcement agencies, or state penal or correctional institutions for services under subsection 2 of section 222.88; but persons so referred shall not be admitted or committed unless a preadmission diagnostic evaluation indicates that the person would benefit from such services, and the admission or commitment of the person to the special unit would not cause the special unit's patient load to exceed its capacity.

[C71, 73, 75, 77, 79, 81, §222.91]

222.92 Revolving fund. Repealed by 83 Acts, ch 191, § 10, 26.

222.93 Medical assistance payments. Repealed by 85 Acts, ch 146, § 4. See § 249A.11.

CHAPTER 223

IOWA MEDICAL AND CLASSIFICATION CENTER

Repealed by 85 Acts, ch 21, §53; see §904.201

CHAPTER 224

DRUG ADDICTS

Repealed by 77 Acts, ch 74, §47; see chapter 125

CHAPTER 224A

TREATMENT OF DRUG ADDICTION OR DEPENDENCY

Repealed by 77 Acts, ch 74, §47; see chapter 125

CHAPTER 224B

DRUG ABUSE AUTHORITY

Abolished effective June 30, 1978; see chapter 125

CHAPTER 225

PSYCHIATRIC HOSPITAL

225.1 Establishment.
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225.32 Report and order to accompany patient.
225.33 Death of patient — disposal of body.
225.34 Appropriation. Repealed by 96 Acts, ch 1215, §59.
225.35 Expense collected.
225.36 to 225.42 Repealed by 75 Acts, ch 139, §82.
225.43 to 225.45 Repealed by 77 Acts, ch 44, §1.

225.1 Establishment.

There shall be established a state psychiatric hospital, especially designed, kept, and administered for the care, observation, and treatment of those persons who are afflicted with abnormal mental conditions.

[C24, 27, 31, 35, §3954; C39, §**3482.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.1]

225.2 Name — location.

It shall be known as the state psychiatric hospital, and shall be located at Iowa City, and integrated with the university of Iowa college of medicine and university hospital of the state university of Iowa.

[C24, 27, 31, 35, §3955; C39, §**3482.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.2]

2001 Acts, ch 74, §9

225.3 Under control of state board of regents.

The state board of regents shall have full power to manage, control, and govern the said hospital the same as other institutions already under its control.

[C24, 27, 31, 35, §3957; C39, §**3482.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.3]

225.4 Repealed by 76 Acts, ch 1136, § 26.

225.5 Cooperation of hospitals.

The medical director of the state psychiatric hospital shall seek to bring about systematic cooperation between the several state hospitals for persons with mental illness and the state psychiatric hospital.

[C24, 27, 31, 35, §3959; C39, §**3482.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.5]

96 Acts, ch 1129, §113

225.6 Repealed by 76 Acts, ch 1136, § 26.

225.7 Classes of patients.

Patients admitted to the said state psychiatric hospital shall be divided into four classes:

1. Voluntary private patients.
2. Committed private patients.
3. Voluntary public patients.
4. Committed public patients.

[C24, 27, 31, 35, §3961; C39, §**3482.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.7]

225.8 Maintenance.

All voluntary private patients and committed private patients shall be kept and maintained without expense to the state, and the voluntary public patients and committed public patients shall be kept and maintained by the state.

[C24, 27, 31, 35, §3962; C39, §**3482.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.8]

225.9 Voluntary private patients.

Voluntary private patients may be admitted in accordance with the regulations to be established by the state board of regents, and their care, nurs-

ing, observation, treatment, medicine, and maintenance shall be without expense to the state. However, the charge for such care, nursing, observation, treatment, medicine, and maintenance shall not exceed the cost of the same to the state. The physicians on the hospital staff may charge such patients for their medical services under such rules, regulations and plan therefor as approved by the state board of regents.

[C24, 27, 31, 35, §3963; C39, §**3482.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.9]

225.10 Voluntary public patients.

Persons suffering from mental diseases may be admitted as voluntary public patients as follows: Any physician authorized to practice medicine, osteopathy, or osteopathic medicine in the state of Iowa may file information with any district court of the state or with any judge thereof, stating that the physician has examined the person named therein and finds that the person is suffering from some abnormal mental condition that can probably be remedied by observation, treatment, and hospital care; that the physician believes it would be appropriate for the person to enter the state psychiatric hospital for that purpose and that the person is willing to do so; and that neither the person nor those legally responsible for the person are able to provide the means for such observation and hospital care.

[C24, 27, 31, 35, §3964; C39, §**3482.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.10]

225.11 Initiating commitment procedures.

When a court finds upon completion of a hearing held pursuant to section 229.12 that the contention that a respondent is seriously mentally impaired has been sustained by clear and convincing evidence, and the application filed under section 229.6 also contends or the court otherwise concludes that it would be appropriate to refer the respondent to the state psychiatric hospital for a complete psychiatric evaluation and appropriate treatment pursuant to section 229.13, the judge may order that a financial investigation be made in the manner prescribed by section 225.13. If the costs of a respondent's evaluation or treatment are payable in whole or in part by a county, an order under this section shall be for referral of the respondent through the single entry point process for an evaluation and referral of the respondent to an appropriate placement or service, which may include the state psychiatric hospital for additional evaluation or treatment. For purposes of this chapter, *"single entry point process"* means the same as defined in section 331.440.

[C77, 79, 81, §225.11]

96 Acts, ch 1183, §9

225.12 Voluntary public patient — physician's report.

A physician filing information under section 225.10 shall include a written report to the judge, giving such a history of the case as will be likely to aid in the observation, treatment, and hospital care of the person named in the information and describing the same in detail.

[C24, 27, 31, 35, §3966; C39, §**3482.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.12]

2002 Acts, ch 1119, §29

Section amended

225.13 Financial condition.

It shall be the duty of the judge to have a thorough investigation made by the county attorney of the county of residence of the person named in the information regarding the financial condition of that person and of those legally responsible for the person.

[C24, 27, 31, 35, §3967; C39, §**3482.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.13]

225.14 Finding and order.

Upon the filing of the report of a financial investigation made pursuant to an order issued under section 225.11, the judge of the district court as aforesaid shall review it and make a determination in the matter. If the judge finds that the respondent is an appropriate subject for referral to the state psychiatric hospital, and that the respondent and those legally responsible for the respondent are unable to pay the expenses thereof, the judge shall enter an order directing that the respondent shall be sent to the state psychiatric hospital at the state University of Iowa for observation, treatment, and hospital care as a committed public patient.

[C24, 27, 31, 35, §3968; C39, §**3482.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.14]

225.15 Examination and treatment.

When a respondent arrives at the state psychiatric hospital, the admitting physician shall examine the respondent and determine whether or not, in the physician's judgment, the respondent is a fit subject for observation, treatment, and hospital care. If, upon examination, the physician decides that the respondent should be admitted to the hospital, the respondent shall be provided a proper bed in the hospital; and the physician who has charge of the respondent shall proceed with observation, medical treatment, and hospital care as in the physician's judgment are proper and necessary, in compliance with sections 229.13 to 229.16.

A proper and competent nurse shall also be assigned to look after and care for the respondent during observation, treatment, and care. Observation, treatment, and hospital care under this section which are payable in whole or in part by a county shall only be provided as determined

through the single entry point process.

[C24, 27, 31, 35, §3969; C39, §**3482.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.15]

96 Acts, ch 1183, §10

225.16 Voluntary public patients — admission.

If the judge of the district court, or the clerk of the court, as aforesaid, finds from the physician's information which was filed under the provisions of section 225.10, that it would be appropriate for the person to enter the state psychiatric hospital, and the report of the county attorney shows that neither the person nor those legally responsible for the person, are able to pay the expenses thereof, or able to pay only a part of the expenses, the judge or clerk shall enter an order directing that the said person shall be sent to the state psychiatric hospital at the state University of Iowa for observation, treatment, and hospital care as a voluntary public patient.

When the said patient arrives at the hospital, the patient shall receive the same treatment as is provided for committed public patients in section 225.15.

[C24, 27, 31, 35, §3970; C39, §**3482.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.16]

225.17 Committed private patient — treatment.

If the judge of the district court finds upon the review and determination made under the provisions of section 225.14 that the respondent is an appropriate subject for placement at the state psychiatric hospital, and that the respondent, or those legally responsible for the respondent, are able to pay the expenses associated with the placement, the judge shall enter an order directing that the respondent shall be sent to the state psychiatric hospital at the state university of Iowa for observation, treatment, and hospital care as a committed private patient.

When the respondent arrives at the hospital, the respondent shall receive the same treatment as is provided for committed public patients in section 225.15, in compliance with sections 229.13 to 229.16. However, observation, treatment, and hospital care under this section of a respondent whose expenses are payable in whole or in part by a county shall only be provided as determined through the single entry point process.

[C24, 27, 31, 35, §3971; C39, §**3482.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.17]

96 Acts, ch 1183, §11

225.18 Attendants.

The court or clerk may appoint a person to accompany the committed public patient or the voluntary public patient or the committed private patient from the place where the patient may be to the state psychiatric hospital of the state university at Iowa City, or to accompany the patient from the hospital to a place as may be designated by the court or clerk. If a patient is moved pursuant to this section, at least one attendant shall be of the same sex.

[C24, 27, 31, 35, §3974; C39, §**3482.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.18]

85 Acts, ch 99, §4

225.19 Compensation for attendant.

Any person appointed by the court or judge or clerk to accompany said person to or from the hospital or to make an investigation and report on any question involved in the complaint, other than the physician making the examination, shall receive the sum of three dollars per day for the time actually spent in making such investigation (except in cases where the person appointed therefor receives a fixed salary or compensation) and actual necessary expenses incurred in making such investigation or trip.

[C24, 27, 31, 35, §3975; C39, §**3482.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.19]

225.20 Compensation for physician.

The physician making the examination on which is based any information filed under section 225.10 shall receive such sum as the court may direct for each and every examination information so made, and the actual necessary expenses incurred by the physician in making such examination, in conformity with the requirements of this chapter, if the person named in the information is referred to the state psychiatric hospital.

[C24, 27, 31, 35, §3976; C39, §**3482.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.20]

225.21 Vouchers.

The person making claim to compensation shall present to the court or judge an itemized sworn statement of the claim, and when the claim for compensation has been approved by the court or judge or clerk, it shall be filed in the office of the county auditor and shall be allowed by the board of supervisors.

[C24, 27, 31, 35, §3977; C39, §**3482.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.21; 82 Acts, ch 1104, §6]

83 Acts, ch 123, §84, 209

225.22 Liability of private patients — payment.

Every committed private patient, if the patient has an estate sufficient for that purpose, or if those legally responsible for the patient's support are financially able, shall be liable to the county and state for all expenses paid by them in behalf of such patient. All bills for the care, nursing, observation, treatment, medicine, and maintenance of such patients shall be paid by the director of revenue and finance in the same manner as those of

committed and voluntary public patients as provided in this chapter, unless the patient or those legally responsible for the patient make such settlement with the state psychiatric hospital.

[C24, 27, 31, 35, §3978; C39, §**3482.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.22]

225.23 Collection for treatment.

If the bills for such patient are paid by the state, it shall be the duty of the state psychiatric hospital to file a certified copy of the claim which has been so paid, with the auditor of the proper county, who shall proceed to collect the same by action, if necessary, in the name of the state psychiatric hospital, and when collected pay the same to the director of revenue and finance. The hospital shall also, at the same time, forward a duplicate of the account to the director of revenue and finance.

[C24, 27, 31, 35, §3979; C39, §**3482.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.23]

225.24 Collection of preliminary expense.

Unless said committed private patient or those legally responsible for the patient offer to make such settlement, it shall also be the duty of the county auditor of the proper county as aforesaid to proceed to collect, by action if necessary, in the name of the said county, the amount of all claims for per diem and expenses that have been approved by the said court or judge and paid by the county treasurer of said county as provided for under the provisions of section 225.21, and when collected to pay the same into the county treasury.

[C24, 27, 31, 35, §3980; C39, §**3482.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.24]

225.25 Commitment of private patient as public.

If any patient be admitted to the state psychiatric hospital and thereafter an order of commitment of the patient as a public patient be made by the court or judge or clerk having jurisdiction thereof, the expense of keeping and maintaining the patient from the date of the filing of the information upon which the order is made shall be paid by the state.

[C24, 27, 31, 35, §3981; C39, §**3482.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.25]

225.26 Private patients — disposition of funds.

All moneys collected from private patients shall be used for the support of the said hospital.

[C24, 27, 31, 35, §3982; C39, §**3482.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.26]

225.27 Discharge — transfer.

The state psychiatric hospital may, at any time, discharge any patient as recovered, as improved, or as not likely to be benefited by further treatment. If the patient being so discharged was involuntarily hospitalized, the hospital shall notify the committing judge or court of the discharge as required by section 229.14 or section 229.16, whichever is applicable. Upon receiving the notification, the court shall issue an order confirming the patient's discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. The court or judge shall, if necessary, appoint a person to accompany the discharged patient from the state psychiatric hospital to such place as the hospital or the court may designate, or authorize the hospital to appoint such attendant.

[C24, 27, 31, 35, §3983; C39, §**3482.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.27]

2001 Acts, ch 155, §41

225.28 Appropriation.

The state shall pay to the state psychiatric hospital, out of any money in the state treasury not otherwise appropriated, all expenses for the administration of the hospital, and for the care, treatment, and maintenance of committed and voluntary public patients therein, including their clothing and all other expenses of the hospital for the public patients. The bills for the expenses shall be rendered monthly in accordance with rules agreed upon by the director of revenue and finance and the state board of regents.

[C24, 27, 31, 35, §3984; C39, §**3482.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.28]

225.29 Repealed by 76 Acts, ch 1136, § 26.

225.30 Blanks — audit.

The medical faculty of the university of Iowa college of medicine shall prepare blanks containing such questions and requiring such information as may be necessary and proper to be obtained by the physician who examines a person or respondent whose referral to the state psychiatric hospital is contemplated. A judge may request that a physician who examines a respondent as required by section 229.10 complete such blanks in duplicate in the course of the examination. A physician who proposes to file information under section 225.10 shall obtain and complete such blanks in duplicate and file them with the information. The blanks shall be printed by the state and a supply thereof shall be sent to the clerk of each district court of the state. The director of revenue and finance shall audit, allow, and pay the cost of the blanks as other bills for public printing are allowed and paid.

[C24, 27, 31, 35, §3986, 3987; C39, §**3482.30, 3482.31;** C46, 50, 54, 58, 62, 66, 71, 73, §225.30; C75, §225.30, 225.31; C77, 79, 81, §225.30]

2001 Acts, ch 74, §10; 2002 Acts, ch 1119, §30

Section amended

225.31 Repealed by 75 Acts, ch 139, § 82.

225.32 Report and order to accompany patient.

One of the duplicate reports shall be sent to the state psychiatric hospital with the patient, together with a certified copy of the order of the court.

[C24, 27, 31, 35, §3988; C39, §**3482.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.32]

225.33 Death of patient — disposal of body.

In the event that a committed public patient or a voluntary public patient or a committed private patient should die while at the state psychiatric hospital or at the university hospital, the state psychiatric hospital shall have the body prepared for shipment in accordance with the rules prescribed by the state board of health for shipping such bodies; and it shall be the duty of the state board of regents to make arrangements for the embalming and such other preparation as may be necessary to comply with the rules and for the purchase of suitable caskets.

[C24, 27, 31, 35, §3989; C39, §**3482.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.33]

2001 Acts, ch 74, §11

225.34 Appropriation. Repealed by 96 Acts, ch 1215, § 59.

225.35 Expense collected.

In the event that the said person is a committed private patient, it shall be the duty of the county auditor of the proper county to proceed to collect all of such expenses, in accordance with the provisions of sections 225.23 and 225.24.

[C24, 27, 31, 35, §3991; C39, §**3482.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.35]

225.36 to 225.42 Repealed by 75 Acts, ch 139, § 82.

225.43 to 225.45 Repealed by 77 Acts, ch 44, § 1.

CHAPTER 225A

CRIMINAL SEXUAL PSYCHOPATHS

Repealed by 76 Acts, ch 1245(4), §526

CHAPTER 225B

PREVENTION OF DISABILITIES

Chapter repealed effective July 1, 2006;
see §225B.8

225B.1 Findings and intent.
225B.2 Definitions.
225B.3 Prevention of disabilities policy council established — membership — duties.
225B.4 Technical assistance committee to the prevention policy council established — membership — duties.
225B.5 State agencies — cooperative efforts.
225B.6 Evaluation.
225B.7 Implementation.
225B.8 Repeal.

225B.1 Findings and intent.

1. The general assembly finds that:

a. Thousands of Iowans are affected by a developmental disability which is a disability that arises before age twenty-two and is of sufficient severity to affect an individual's ability to participate as an independent, productive member of the community. Many other Iowans experience less severe mental or physical disabilities or disabilities which occur in their adult years which require specialized services. Many disabilities are due to conditions that are preventable or could be minimized if recognized or treated early. Preventing disabilities would result in a substantial savings to the state both in terms of human potential and public funds.

b. There is a need for a coordinated and comprehensive prevention of disabilities effort in the state. Many state departments and private organizations are involved in prevention activities but

there is no unified prevention strategy or ongoing coordination in the planning, implementation, and evaluation of prevention of disabilities activities in the state.

2. It is the intent of the general assembly to establish a system to coordinate prevention of disability activities among the state departments and to assist the governor and the general assembly in determining priorities and establishing policies for the prevention of disabilities.

91 Acts, ch 169, §1

225B.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Committee"* means the technical assistance committee to the council.

2. *"Council"* means the prevention of disabilities policy council.

3. *"Disability"* means a mental or physical impairment that results in significant functional limitation in one or more areas of major life activity and in the need for specialized care, treatment, or training services of extended duration.

4. *"Prevention activities"* means activities that attempt to eliminate the occurrence of the disability, reduce the prevalence of the disability in the community, identify a problem early and use intervention at the outset to eliminate the potential for abnormality, or minimize the long-term disability or mitigate the effects of the disability.

91 Acts, ch 169, §2

225B.3 Prevention of disabilities policy council established — membership — duties.

1. A prevention of disabilities policy council is established to provide oversight in the development and operation of a coordinated prevention of disabilities system. The council shall consist of the following members:

a. Two members of the senate appointed by the senate majority leader and minority leader and two members of the house of representatives appointed by the speaker of the house and the house minority leader.

b. Three providers of disability prevention services, recommended by the governor's developmental disabilities council, appointed by the governor, and confirmed by the senate.

c. Three persons with expertise in priority prevention areas, recommended by the governor's developmental disabilities council, appointed by the governor, and confirmed by the senate.

d. Three persons with disabilities or family members of a person with disabilities, recommended by the governor's developmental disabilities council, appointed by the governor and confirmed by the senate.

2. Members of the council appointed by the governor shall serve three-year staggered terms. Members of the general assembly appointed to the council shall serve two-year terms and shall serve as ex officio, nonvoting members. Vacancies on the council shall be filled in the same manner as original appointments. Members are entitled to reimbursement of actual expenses incurred in performance of their official duties.

3. The council shall do all of the following:

a. Oversee the planning, implementation, and evaluation of a coordinated strategy for the prevention of disabilities among state departments which is based upon the Iowa state plan for the prevention of developmental disabilities of 1988.

b. Promote cooperative and complementary planning among the public, private, and volunteer sectors involved in prevention activities and research regarding disabilities.

c. Develop and implement a system to measure the outcome and assess the overall impact of the prevention efforts of the state.

d. Encourage research into the causes and prevention of disabling conditions.

e. Promote professional and provider training in state-of-the-art prevention of disabilities measures.

f. Recommend policy and priorities for the prevention of disabilities.

g. Adopt rules to implement this chapter.

h. Seek and apply for federal grants and private foundation funding to support the responsibilities of the council. The council shall also seek in-kind and other private contributions to fulfill the federal matching funds requirements for the purpose of section 225B.7.

i. Submit to the governor and the general assembly by November 1, 1992, and annually on November 1 thereafter, a report that includes all of the following:

(1) A continuum of cost-effective prevention of disability activities.

(2) A listing of existing activities and the state agency responsible for the activities.

(3) Recommendations to coordinate the planning, delivery, and evaluation of existing activities.

(4) Recommendations to address the lack of prevention of disability activities.

(5) Recommendations to measure the outcomes and assess the overall impacts of the state's prevention of disability efforts.

(6) Recommendations to promote cooperative planning among the public, private, and volunteer sectors and to increase public-private partnership involvement in prevention of disability activities.

(7) A review of existing research and personnel training programs.

(8) Priorities for disability prevention activities in the state.

(9) Recommendations for legislative, administrative, or budgetary changes.

4. The council shall meet at least six times during the year. A majority of the members of the council constitutes a quorum, and a majority of the

council is necessary to act on matters within the purview of the council.

91 Acts, ch 169, §3; 2001 Acts, ch 74, §12

Confirmation, see §2.32

225B.4 Technical assistance committee to the prevention policy council established — membership — duties.

1. A technical assistance committee to the prevention of disabilities policy council is established and shall consist of the following members:

a. The director of the department of human services, or the director's designee.

b. The director of the Iowa department of public health, or the director's designee.

c. The director of the department of education, or the director's designee.

d. The director of the department of natural resources, or the director's designee.

e. The director of the state department of transportation, or the director's designee.

f. The commissioner of the department of public safety, or the commissioner's designee.

g. The director of the department of human rights, or the director's designee.

h. The president of Iowa state university of science and technology, or the president's designee.

i. The president of the university of Iowa, or the president's designee.

j. The president of the university of northern Iowa, or the president's designee.

2. The technical assistance committee shall do all of the following:

a. Provide technical assistance to the council in developing a prevention of disabilities coordination system.

b. Establish policies to facilitate the development, implementation, and evaluation of the prevention of disabilities coordination system.

c. Recommend prevention of disability priorities to the council.

3. The committee shall meet as needed to assist the council.

4. Members are entitled to reimbursement of actual expenses incurred in performance of their official duties.

91 Acts, ch 169, §4

225B.5 State agencies — cooperative efforts.

The departments represented by the committee shall cooperate with the council in collecting and sharing pertinent data, and in developing, implementing, and evaluating the prevention of disabilities coordination system.

91 Acts, ch 169, §5

225B.6 Evaluation.

The prevention coordination system and the council are subject to review and evaluation by the governor and the general assembly.

91 Acts, ch 169, §6

225B.7 Implementation.

The prevention coordination system and the activities of the council shall be implemented as resources are made available.

91 Acts, ch 169, §7; 2001 Acts, ch 74, §13; 2002 Acts, ch 1119, §31

Subsection 2 stricken and former subsection 1 redesignated as an unnumbered paragraph

225B.8 Repeal.

This chapter is repealed July 1, 2006.

2000 Acts, ch 1228, §40, 46; 2001 Acts, ch 191, §36

CHAPTER 225C

MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, OR BRAIN INJURY

County participation in funding for services to persons with disabilities; §249A.26
Review of out-of-state placements; 98 Acts, ch 1155, §3

225C.1 Findings and purpose.
225C.2 Definitions.
225C.3 Division of mental health and developmental disabilities — state mental health authority.
225C.4 Administrator's duties.
225C.5 Mental health and developmental disabilities commission.
225C.6 Duties of commission.
225C.7 Mental health and developmental disabilities community services fund.
225C.8 Distribution of general allocation. Repealed by 94 Acts, ch 1170, §54.
225C.9 Formula for distribution of general allocation. Repealed by 94 Acts, ch 1170, §54.
225C.10 Requirements of counties receiving general allocation money. Repealed by 94 Acts, ch 1170, §54.
225C.11 Special allocation. Repealed by 94 Acts, ch 1170, §54.
225C.12 Partial reimbursement to counties for local inpatient mental health care and treatment.
225C.13 Authority to establish and lease facilities.
225C.14 Preliminary diagnostic evaluation.
225C.15 County implementation of evaluations.

225C.16 Referrals for evaluation.
225C.17 Alternative diagnostic facility.
225C.18 Mental health and developmental disabilities regional planning councils.
225C.19 Mental health, mental retardation, and developmental disabilities advisory committee. Repealed by 92 Acts, ch 1247, §19.
225C.20 Responsibilities of counties for individual case management services.
225C.21 Supported community living services.
225C.22 Central registry for brain injuries. Repealed by 89 Acts, ch 320, §13.
225C.23 Brain injury recognized as disability.
225C.24 Future status of division. Repealed by 90 Acts, ch 1012, §1, 2.

BILL OF RIGHTS

225C.25 Short title.
225C.26 Scope.
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225C.28 Rights. Repealed by 92 Acts, ch 1241, §79.
225C.28A Service quality standards.
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FAMILY SUPPORT SUBSIDY

225C.35 Definitions.
225C.36 Family support subsidy program.
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PUBLIC HOUSING UNIT

225C.45 Public housing unit.

PERSONAL ASSISTANCE AND FAMILY SUPPORT SERVICES

225C.46 Personal assistance services program.
225C.47 Comprehensive family support program.
225C.48 Personal assistance and family support services council.
225C.49 Departmental duties concerning services to individuals with a disability.

225C.1 Findings and purpose.

The general assembly finds that services to persons with mental illness, mental retardation, developmental disabilities, or brain injury are provided in many parts of the state by highly autonomous community-based service providers working cooperatively with state and county officials. However, the general assembly recognizes that heavy reliance on property tax funding for mental health and mental retardation services has restricted uniform availability of this care. Consequently, greater efforts should be made to assure close coordination and continuity of care for those persons receiving publicly supported disability services in Iowa. It is the purpose of this chapter to continue and to strengthen the services to persons with disabilities now available in the state of Iowa, to make these services conveniently available to all persons in this state upon a reasonably uniform financial basis, and to assure the continued high quality of these services.

It is the intent of the general assembly that the service system for persons with disabilities emphasize the ability of persons with disabilities to exercise their own choices about the amounts and types of services received; that all levels of the service system seek to empower persons with disabilities to accept responsibility, exercise choices, and take risks; and that services be provided in a manner which supports the ability of persons with disabilities to live, learn, work, and recreate in natural communities of their choice.

[81 Acts, ch 78, §1, 20]
94 Acts, ch 1170, §10

225C.2 Definitions.

As used in this chapter:

1. *"Administrator"* means the administrator of the division of mental health and developmental disabilities of the department of human services.
2. *"Commission"* means the mental health and developmental disabilities commission.
3. *"Department"* means the department of human services.
4. *"Director"* means the director of human services.
5. *"Disability services"* means services or other assistance available to a person with mental illness, mental retardation or other developmental disability, or brain injury.
6. *"Division"* means the division of mental health and developmental disabilities of the department of human services.
7. *"Person with a disability"* means a person with mental illness, mental retardation or other developmental disability, or brain injury.
8. *"Single entry point process"* means the same

as defined in section 331.440.

[S81, §225C.1; 81 Acts, ch 78, §2, 20; 82 Acts, ch 1117, §1, 2]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §11; 96 Acts, ch 1183, §12

225C.3 Division of mental health and developmental disabilities — state mental health authority.

1. The division is designated the state mental health authority as defined in 42 U.S.C. § 201(m) (1976) for the purpose of directing the benefits of the National Mental Health Act, 42 U.S.C. § 201 et seq. This designation does not preclude the board of regents from authorizing or directing any institution under its jurisdiction to carry out educational, prevention, and research activities in the areas of mental health and mental retardation. The division may contract with the board of regents or any institution under the board's jurisdiction to perform any of these functions.

2. The division is designated the state developmental disabilities agency for the purpose of directing the benefits of the Developmental Disabilities Services and Facilities Construction Act, 42 U.S.C. § 6001 et seq.

3. The division is administered by the administrator. The administrator of the division shall be qualified in the general field of mental health, mental retardation, or other disability services, and preferably in more than one field. The administrator shall have at least five years of experience as an administrator in one or more of these fields.

1, 2. [C66, 71, 73, 75, 77, §225B.1; C79, 81, §225B.2; S81, §225C.2; 81 Acts, ch 78, §3, 20]

3. [C50, 54, 58, 62, 66, §218.75; C71, 73, 75, 77, 79, 81, §217.10; S81, §225C.2; 81 Acts, ch 78, §3, 20]

94 Acts, ch 1170, §12

225C.4 Administrator's duties.

1. To the extent funding is available, the administrator shall perform the following duties:

a. Prepare and administer state mental health and mental retardation plans for the provision of disability services within the state and prepare and administer the state developmental disabilities plan. The administrator shall consult with the Iowa department of public health, the state board of regents or a body designated by the board for that purpose, the department of management or a body designated by the director of the department for that purpose, the department of education, the department of workforce development and any other appropriate governmental body, in order to facilitate coordination of disability services provided in this state. The state mental health and mental retardation plans shall be consistent with the state health plan, and shall incorporate county disability services plans.

b. Assist county boards of supervisors and mental health and developmental disabilities regional planning councils in planning for community-based disability services.

c. Emphasize the provision of outpatient services by community mental health centers and local mental retardation providers as a preferable alternative to inpatient hospital services.

d. Encourage and facilitate coordination of disability services with the objective of developing and maintaining in the state a disability service delivery system to provide disability services to all persons in this state who need the services, regardless of the place of residence or economic circumstances of those persons.

e. Encourage and facilitate applied research and preventive educational activities related to causes and appropriate treatment for disabilities. The administrator may designate, or enter into agreements with, private or public agencies to carry out this function.

f. Promote coordination of community-based services with those of the state mental health institutes and state resource centers.

g. Administer state programs regarding the care, treatment, and supervision of persons with mental illness or mental retardation, except the programs administered by the state board of regents.

h. Administer state appropriations to the mental health and developmental disabilities community services fund established by section 225C.7.

i. Act as compact administrator with power to effectuate the purposes of interstate compacts on mental health.

j. Establish and maintain a data collection and management information system oriented to the needs of patients, providers, the department, and other programs or facilities.

k. Prepare a division budget and reports of the division's activities.

l. Establish suitable agreements with other state agencies to encourage appropriate care and to facilitate the coordination of disability services.

m. Provide consultation and technical assistance to patients' advocates appointed pursuant to section 229.19, in cooperation with the judicial branch and the resident advocate committees appointed for health care facilities pursuant to section 135C.25.

n. Provide technical assistance to agencies and organizations, to aid them in meeting standards which are established, or with which compliance is required, under statutes administered by the administrator, including but not limited to chapters 227 and 230A.

o. Recommend to the commission minimum accreditation standards for the maintenance and operation of community mental health centers, services, and programs under section 230A.16. The administrator's review and evaluation of the centers, services, and programs for compliance

with the adopted standards shall be as provided in section 230A.17.

p. Recommend to the commission minimum standards for supported community living services. The administrator shall review and evaluate the services for compliance with the adopted standards.

q. In cooperation with the department of inspections and appeals, recommend minimum standards under section 227.4 for the care of and services to persons with mental illness and mental retardation residing in county care facilities.

r. In cooperation with the Iowa department of public health, recommend minimum standards for the maintenance and operation of public or private facilities offering disability services, which are not subject to licensure by the department or the department of inspections and appeals.

s. Provide technical assistance concerning disability services and funding to counties and mental health and developmental disabilities regional planning councils.

2. The administrator may:

a. Apply for, receive, and administer federal aids, grants, and gifts for purposes relating to disability services or programs.

b. Establish and supervise suitable standards of care, treatment, and supervision for persons with disabilities in all institutions under the control of the director of human services.

c. Appoint professional consultants to furnish advice on any matters pertaining to disability services. The consultants shall be paid as provided by an appropriation of the general assembly.

d. Administer a public housing unit within a bureau of the division to apply for, receive, and administer federal assistance, grants, and other public or private funds for purposes related to providing housing in accordance with section 225C.45.

[C50, 54, 58, 62, 66, §218.76; C71, 73, 75, 77, 79, 81, §217.11, 217.12; S81, §225C.3; 81 Acts, ch 78, §4, 20]

83 Acts, ch 96, §157, 159; 85 Acts, ch 122, §1; 90 Acts, ch 1204, §45; 92 Acts, ch 1128, §1; 94 Acts, ch 1170, §13; 95 Acts, ch 82, §2, 13; 95 Acts, ch 206, §7, 12; 96 Acts, ch 1186, §23; 98 Acts, ch 1047, §20; 99 Acts, ch 129, §9; 99 Acts, ch 160, §2, 3; 2000 Acts, ch 1112, §33, 51

225C.5 Mental health and developmental disabilities commission.

1. A mental health and developmental disabilities commission is created as the state policymaking body for the provision of services to persons with mental illness, mental retardation or other developmental disabilities, or brain injury. The commission shall consist of sixteen voting members appointed to three-year staggered terms by the governor and subject to confirmation by the senate. Commission members shall be appointed on the basis of interest and experience in the fields of mental health, mental retardation or other developmental disabilities, and brain injury, in a manner so as to ensure adequate representation from persons with disabilities and individuals knowledgeable concerning disability services. The department shall provide staff support to the commission, and the commission may utilize staff support and other assistance provided to the commission by other persons. The commission shall meet at least four times per year. Members of the commission shall include the following persons who, at the time of appointment to the commission, are active members of the indicated groups:

a. Three members shall be members of a county board of supervisors selected from nominees submitted by the county supervisor affiliate of the Iowa state association of counties.

b. Two members shall be selected from nominees submitted by the director.

c. One member shall be an active board member of a community mental health center.

d. One member shall be an active board member of an agency serving persons with a developmental disability selected from nominees submitted by the Iowa association of community providers.

e. One member shall be a board member or employee of a provider of mental health or developmental disabilities services to children.

f. Two members shall be administrators of the single entry point process established in accordance with section 331.440 selected from nominees submitted by the community services affiliate of the Iowa state association of counties.

g. One member shall be selected from nominees submitted by the state's council of the association of federal, state, county, and municipal employees.

h. Three members shall be service consumers or family members of service consumers. Of these members, one shall be a service consumer, one shall be a parent of a child service consumer, and one shall be a parent or other family member of a person admitted to and living at a state resource center.

i. Two members shall be selected from nominees submitted by service advocates. Of these members, one shall be an active member of a statewide organization for persons with brain injury.

j. In addition to the voting members, the membership shall include four members of the general assembly with one member designated by each of the following: the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives. A legislative member serves in an ex officio, nonvoting capacity and is eligible for per diem and expenses as provided in section 2.10.

2. The three-year terms shall begin and end as

provided in section 69.19. Vacancies on the commission shall be filled as provided in section 2.32. A member shall not be appointed for more than two consecutive three-year terms.

3. Members of the commission shall qualify by taking the oath of office prescribed by law for state officers. At its first meeting of each year, the commission shall organize by electing a chairperson and a vice chairperson for terms of one year. Commission members are entitled to a per diem as specified in section 7E.6 and reimbursement for actual and necessary expenses incurred while engaged in their official duties, to be paid from funds appropriated to the department.

[C66, 71, 73, 75, 77, §225B.2, 225B.3, 225B.6; C79, 81, §225B.3; S81, §225C.4; 81 Acts, ch 78, §5, 20]

90 Acts, ch 1256, §39; 94 Acts, ch 1170, §14; 2002 Acts, ch 1146, §1; 2002 Acts, 2nd Ex, ch 1003, §238, 262

Confirmation; §2.32

For transition provisions to reflect membership requirements of 2002 amendments to subsection 1, see 2002 Acts, ch 1146, §23

Subsection 1 amended

225C.6 Duties of commission.

1. To the extent funding is available, the commission shall perform the following duties:

a. Advise the administrator on the administration of the overall state disability services system.

b. Adopt necessary rules pursuant to chapter 17A which relate to disability programs and services, including but not limited to definitions of each disability included within the term *"disability services"* as necessary for purposes of state, county, and regional planning, programs, and services.

c. Adopt standards for community mental health centers, services, and programs as recommended under section 230A.16. The commission shall determine whether to grant, deny, or revoke the accreditation of the centers, services, and programs.

d. Adopt standards for the care of and services to persons with mental illness and mental retardation residing in county care facilities recommended under section 227.4.

e. Unless another governmental body sets standards for a service available to persons with disabilities, adopt state standards for that service. The commission shall provide that a service provider's compliance with standards for a service set by a nationally recognized body shall be deemed to be in compliance with the state standards adopted by the commission for that service. The commission shall adopt state standards for those residential and community-based providers of services to persons with mental illness or developmental disabilities that are not otherwise subject to licensure by the department of human services or department of inspections and appeals, including but not limited to services payable under the adult rehabilitation option of the medical assistance program and other services payable from funds credited to a county mental health, mental retardation, and developmental disabilities services fund created in section 331.424A. In addition, the commission shall review the licensing standards used by the department of human services or department of inspections and appeals for those facilities providing services to persons with mental illness or developmental disabilities.

f. Assure that proper appeal procedures are available to persons aggrieved by decisions, actions, or circumstances relating to accreditation.

g. Adopt necessary rules for awarding grants from the state and federal government as well as other moneys that become available to the division for grant purposes.

h. Annually submit to the governor and the general assembly:

(1) A report concerning the activities of the commission.

(2) Recommendations formulated by the commission for changes in law.

i. By January 1 of each odd-numbered year, submit to the governor and the general assembly an evaluation of:

(1) The extent to which services to persons with disabilities are actually available to persons in each county in the state and the quality of those services.

(2) The effectiveness of the services being provided by disability service providers in this state and by each of the state mental health institutes established under chapter 226 and by each of the state resource centers established under chapter 222.

j. Advise the administrator, the council on human services, the governor, and the general assembly on budgets and appropriations concerning disability services.

k. Coordinate activities with the governor's developmental disabilities council.

l. Establish standards for the provision under medical assistance of individual case management services. The commission shall determine whether to grant, deny, or revoke the accreditation of the services.

m. Identify model eligibility guidelines for disability services.

n. Identify basic disability services for planning purposes.

o. Prepare five-year plans based upon the county management plans developed pursuant to section 331.439.

p. Work with other state agencies on coordinating, collaborating, and communicating concerning activities involving persons with disabilities.

q. Perform analyses and other functions associated with a redesign of the mental health and de-

velopmental disability services systems for adults and for children.

2. Notwithstanding section 217.3, subsection 6, the commission may adopt the rules authorized by subsection 1, pursuant to chapter 17A, without prior review and approval of those rules by the council on human services.

3. If the executive branch creates a committee, task force, council, or other advisory body to consider mental health and developmental disabilities policy, services, or program options involving children or adult consumers, the commission is designated to receive and consider any report, findings, recommendations, or other work product issued by such body. The commission may address the report, findings, recommendations, or other work product in fulfilling the commission's functions and to advise the department, council on human services, governor, and general assembly concerning disability services.

[C66, 71, 73, 75, 77, §225B.4, 225B.7; C79, 81, §225B.3(2); S81, §225C.5; 81 Acts, ch 78, §6, 20]

83 Acts, ch 96, §157, 159; 88 Acts, ch 1245, §1; 94 Acts, ch 1170, §15; 98 Acts, ch 1181, §15; 99 Acts, ch 160, §4, 5; 2000 Acts, ch 1112, §51; 2001 Acts, ch 74, §14; 2001 Acts, ch 155, §28; 2002 Acts, ch 1146, §2, 3, 25

Applicability of the requirements of subsection 3 to the work products of other bodies created prior to July 1, 2002; 2002 Acts, ch 1146, §25

Subsection 1, NEW paragraph q

NEW subsection 3

225C.7 Mental health and developmental disabilities community services fund.

1. A mental health and developmental disabilities community services fund is established in the office of the treasurer of state under the authority of the department, which shall consist of the amounts appropriated to the fund by the general assembly for each fiscal year. Before completion of the department's budget estimate as required by section 8.23, the department shall determine and include in the estimate the amount which should be appropriated to the fund for the forthcoming fiscal period in order to implement the purpose stated in section 225C.1.

2. Moneys appropriated to the fund shall be allocated to counties for funding of community-based mental health, mental retardation, developmental disabilities, and brain injury services in the manner provided in the appropriation to the fund.

3. If a county has not established or is not affiliated with a community mental health center under chapter 230A, the county shall expend a portion of the money received under this appropriation to contract with a community mental health center to provide mental health services to the county's residents. If such a contractual relationship is unworkable or undesirable, the mental health and developmental disabilities commission may waive the expenditure requirement. However, if the commission waives the requirement, the commission shall address the specific concerns of the county and shall attempt to facilitate the provision of mental health services to the county's residents through an affiliation agreement or other means.

4. *a.* A county is entitled to receive money from the fund if that county raised by county levy and expended for mental health, mental retardation, and developmental disabilities services, in the preceding fiscal year, an amount of money at least equal to the amount so raised and expended for those purposes during the fiscal year beginning July 1, 1980.

b. With reference to the fiscal year beginning July 1, 1980, money *"raised by county levy and expended for mental health, mental retardation, and developmental disabilities services"* means the county's maintenance of effort determined by using the general allocation application for the state community mental health and mental retardation services fund under section 225C.10, subsection 1, Code 1993. The department, with the agreement of each county, shall establish the actual amount expended by each county for persons with mental illness, mental retardation, or a developmental disability in the fiscal year which began on July 1, 1980, and this amount shall be deemed each county's maintenance of effort.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.17; S81, §225C.6; 81 Acts, ch 78, §7, 20]

94 Acts, ch 1170, §16; 97 Acts, ch 169, §7

225C.8 Distribution of general allocation. Repealed by 94 Acts, ch 1170, § 54. See § 225C.7.

225C.9 Formula for distribution of general allocation. Repealed by 94 Acts, ch 1170, § 54. See § 225C.7.

225C.10 Requirements of counties receiving general allocation money. Repealed by 94 Acts, ch 1170, § 54. See § 225C.7.

225C.11 Special allocation. Repealed by 94 Acts, ch 1170, § 54. See § 225C.7.

225C.12 Partial reimbursement to counties for local inpatient mental health care and treatment.

1. A county which pays, from county funds budgeted under section 331.424A, the cost of care and treatment of a person with mental illness who is admitted pursuant to a preliminary diagnostic evaluation under sections 225C.14 to 225C.17 for treatment as an inpatient of a hospital facility, other than a state mental health institute, which has a designated mental health program and is a

hospital accredited by the accreditation program for hospital facilities of the joint commission on accreditation of health care organizations, is entitled to reimbursement from the state for a portion of the daily cost so incurred by the county. However, a county is not entitled to reimbursement for a cost incurred in connection with the hospitalization of a person who is eligible for medical assistance under chapter 249A, or who is entitled to have care or treatment paid for by any other third party payor, or who is admitted for preliminary diagnostic evaluation under sections 225C.14 to 225C.17. The amount of reimbursement for the cost of treatment of a local inpatient to which a county is entitled, on a per-patient-per-day basis, is an amount equal to twenty percent of the average of the state mental health institutes' individual average daily patient costs in the most recent calendar quarter for the program in which the local inpatient would have been served if the patient had been admitted to a state mental health institute.

2. A county may claim reimbursement by filing with the administrator a claim in a form prescribed by the administrator by rule. Claims may be filed on a quarterly basis, and when received shall be verified as soon as reasonably possible by the administrator. The administrator shall certify to the director of revenue and finance the amount to which each county claiming reimbursement is entitled, and the director of revenue and finance shall issue warrants to the respective counties drawn upon funds appropriated by the general assembly for the purpose of this section. A county shall place funds received under this section in the county mental health, mental retardation, and developmental disabilities services fund created under section 331.424A. If the appropriation for a fiscal year is insufficient to pay all claims arising under this section, the director of revenue and finance shall prorate the funds appropriated for that year among the claimant counties so that an equal proportion of each county's claim is paid in each quarter for which proration is necessary.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.16, 227.18; S81, §225C.11; 81 Acts, ch 78, §12, 20, ch 117, §1028]

96 Acts, ch 1129, §113; 96 Acts, ch 1183, §13

225C.13 Authority to establish and lease facilities.

1. The administrator assigned, in accordance with section 218.1, to control the state mental health institutes and the state resource centers may enter into agreements under which a facility or portion of a facility administered by the administrator is leased to a department or division of state government, a county or group of counties, or a private nonprofit corporation organized under chapter 504A. A lease executed under this section shall require that the lessee use the leased premises to deliver either disability services or other services normally delivered by the lessee.

2. The administrator of the division of mental health and developmental disabilities may work with the appropriate administrator of the department's institutions to establish mental health and mental retardation services for all institutions under the control of the director of human services and to establish an autism unit, following mutual planning and consultation with the medical director of the state psychiatric hospital, at an institution or a facility administered by the department to provide psychiatric and related services and other specific programs to meet the needs of autistic persons, and to furnish appropriate diagnostic evaluation services.

[S81, §225C.12; 81 Acts, ch 78, §14, 20]

94 Acts, ch 1170, §17; 2000 Acts, ch 1112, §34

225C.14 Preliminary diagnostic evaluation.

1. Except in cases of medical emergency, a person shall be admitted to a state mental health institute as an inpatient only after a preliminary diagnostic evaluation performed through the single entry point process has confirmed that the admission is appropriate to the person's mental health needs, and that no suitable alternative method of providing the needed services in a less restrictive setting or in or nearer to the person's home community is currently available. If provided for through the single entry point process, the evaluation may be performed by a community mental health center or by an alternative diagnostic facility. The policy established by this section shall be implemented in the manner and to the extent prescribed by sections 225C.15, 225C.16 and 225C.17.

2. As used in this section and sections 225C.15, 225C.16 and 225C.17, the term *"medical emergency"* means a situation in which a prospective patient is received at a state mental health institute in a condition which, in the opinion of the chief medical officer, or that officer's physician designee, requires the immediate admission of the person notwithstanding the policy stated in subsection 1.

[C79, 81, §225B.4; S81, §225C.13; 81 Acts, ch 78, §15, 20]

94 Acts, ch 1170, §18; 96 Acts, ch 1183, §14

225C.15 County implementation of evaluations.

The board of supervisors of a county shall, no later than July 1, 1982, require that the policy stated in section 225C.14 be followed with respect to admission of persons from that county to a state mental health institute. A community mental health center which is supported, directly or in affiliation with other counties, by that county may perform the preliminary diagnostic evaluations

for that county, unless the performance of the evaluations is not covered by the agreement entered into by the county and the center under section 230A.12, and the center's director certifies to the board of supervisors that the center does not have the capacity to perform the evaluations, in which case the board of supervisors shall proceed under section 225C.17.

[C79, 81, §225B.5; S81, §225C.14; 81 Acts, ch 78, §16, 20]

96 Acts, ch 1183, §15

225C.16 Referrals for evaluation.

1. The chief medical officer of a state mental health institute, or that officer's physician designee, shall advise a person residing in that county who applies for voluntary admission, or a person applying for the voluntary admission of another person who resides in that county, in accordance with section 229.41, that the board of supervisors has implemented the policy stated in section 225C.14, and shall advise that a preliminary diagnostic evaluation of the prospective patient be sought, if that has not already been done. This subsection does not apply when voluntary admission is sought in accordance with section 229.41 under circumstances which, in the opinion of the chief medical officer or that officer's physician designee, constitute a medical emergency.

2. The clerk of the district court in that county shall refer a person applying for authorization for voluntary admission, or for authorization for voluntary admission of another person, in accordance with section 229.42, to the appropriate entity designated through the single entry point process under section 225C.14 for the preliminary diagnostic evaluation unless the applicant furnishes a written statement from the appropriate entity which indicates that the evaluation has been performed and that the person's admission to a state mental health institute is appropriate. This subsection does not apply when authorization for voluntary admission is sought under circumstances which, in the opinion of the chief medical officer or that officer's physician designee, constitute a medical emergency.

3. Judges of the district court in that county or the judicial hospitalization referee appointed for that county shall so far as possible arrange for the entity designated through the single entry point process under section 225C.14 to perform a prehearing examination of a respondent required under section 229.8, subsection 3, paragraph *"b"*.

4. The chief medical officer of a state mental health institute shall promptly submit to the appropriate entity designated through the single entry point process under section 225C.14 a report of the voluntary admission of a patient under the medical emergency clauses of subsections 1 and 2. The report shall explain the nature of the emergency which necessitated the admission of the patient without a preliminary diagnostic evaluation by the designated entity.

[C79, 81, §225B.6; S81, §225C.15; 81 Acts, ch 78, §17, 20]

96 Acts, ch 1183, §16

225C.17 Alternative diagnostic facility.

If a county is not served by a community mental health center having the capacity to perform the required preliminary diagnostic evaluations, the board of supervisors shall arrange for the evaluations to be performed by an alternative diagnostic facility for the period until the county is served by a community mental health center with the capacity to provide that service. An alternative diagnostic facility may be the outpatient service of a state mental health institute or any other mental health facility or service able to furnish the requisite professional skills to properly perform a preliminary diagnostic evaluation of a person whose admission to a state mental health institute is being sought or considered on either a voluntary or an involuntary basis.

[C79, 81, §225B.7; S81, §225C.16; 81 Acts, ch 78, §18, 20]

225C.18 Mental health and developmental disabilities regional planning councils.

1. A county may participate in a mental health and developmental disabilities regional planning council. The region encompassed by a planning council shall be determined by the counties participating in the planning council.

2. The boards of supervisors of the counties comprising the planning council shall determine the size and membership of the planning council.

3. A planning council may perform the following tasks:

a. Develop a planning process and plan for services to persons with disabilities residing in the region. Planning shall encompass a five-year time span and shall be annually updated. The plans shall be submitted to the boards of supervisors of the counties in the region and to the commission.

b. Recommend the expenditure of all state and county funds, and to the extent possible, federal funds for disability services within the region.

c. Provide for input into the planning process by the public and service consumers, providers, and funders.

d. Work with staff assigned to the planning council to perform needs assessments, plan development, and to work with consumers, providers, and funders, and fulfill other necessary functions.

e. Make recommendations to the county boards of supervisors associated with the planning area and to the commission, concerning disability services and related budget issues.

f. Perform other duties at the request of the counties comprising the region and of the commission.

4. The provisions of this section relating to services to persons with disabilities are not intended as and shall not be construed as a requirement to provide services.

94 Acts, ch 1170, §19; 97 Acts, ch 169, §8 – 11

225C.19 Mental health, mental retardation, and developmental disabilities advisory committee. Repealed by 92 Acts, ch 1247, § 19.

225C.20 Responsibilities of counties for individual case management services.

Individual case management services funded under medical assistance shall be provided by the department except when a county or a consortium of counties contracts with the department to provide the services. A county or consortium of counties may contract to be the provider at any time and the department shall agree to the contract so long as the contract meets the standards for case management adopted by the department. The county or consortium of counties may subcontract for the provision of case management services so long as the subcontract meets the same standards. A county board of supervisors may change the provider of individual case management services at any time. If the current or proposed contract is with the department, the county board of supervisors shall provide written notification of a change at least ninety days before the date the change will take effect.

88 Acts, ch 1245, §7; 89 Acts, ch 283, §20; 93 Acts, ch 172, §31; 2000 Acts, ch 1112, §53, 58

225C.21 Supported community living services.

1. As used in this section, *"supported community living services"* means services provided in a noninstitutional setting to adult persons with mental illness, mental retardation, or developmental disabilities to meet the persons' daily living needs.

2. The commission shall adopt rules pursuant to chapter 17A establishing minimum standards for supported community living services. The commission shall determine whether to grant, deny, or revoke approval for any supported community living service.

3. Approved supported community living services may receive funding from the state, federal and state social services block grant funds, and other appropriate funding sources, consistent with state legislation and federal regulations. The funding may be provided on a per diem, per hour, or grant basis, as appropriate.

85 Acts, ch 141, §1; 91 Acts, ch 38, §1

CS85, §225C.19

C89, §225C.21

94 Acts, ch 1170, §20; 96 Acts, ch 1129, §52; 98 Acts, ch 1181, §12; 99 Acts, ch 160, §6

225C.22 Central registry for brain injuries. Repealed by 89 Acts, ch 320, § 13. See § 135.22.

225C.23 Brain injury recognized as disability.

1. The department of human services, the Iowa department of public health, the department of education and its divisions of special education and vocational rehabilitation services, the department of human rights and its division for persons with disabilities, the department for the blind, and all other state agencies which serve persons with brain injuries, shall recognize brain injury as a distinct disability and shall identify those persons with brain injuries among the persons served by the state agency.

2. For the purposes of this section and section 135.22A,* *"brain injury"* means the occurrence of injury to the head not primarily related to a degenerative disease or aging process that is documented in a medical record with one or more of the following conditions attributed to the head injury:

a. An observed or self-reported decreased level of consciousness.

b. Amnesia.

c. A skull fracture.

d. An objective neurological or neuropsychological abnormality.

e. A diagnosed intracranial lesion.

88 Acts, ch 1219, §2; 94 Acts, ch 1068, §7; 94 Acts, ch 1109, §3; 99 Acts, ch 141, §30

*Section 135.22A refers to "brain injury" definition in §135.22

225C.24 Future status of division. Repealed by 90 Acts, ch 1012, § 1, 2.

BILL OF RIGHTS

225C.25 Short title.

Sections 225C.25 through 225C.28B shall be known as "the bill of rights and service quality standards of persons with mental retardation, developmental disabilities, brain injury, or chronic mental illness".

85 Acts, ch 249, §2; 92 Acts, ch 1241, §63

225C.26 Scope.

These rights and service quality standards apply to any person with mental retardation, a developmental disability, brain injury, or chronic men-

tal illness who receives services which are funded in whole or in part by public funds or services which are permitted under Iowa law.

85 Acts, ch 249, §3; 92 Acts, ch 1241, §64

225C.27 Purpose.

Sections 225C.25 through 225C.28B shall be liberally construed and applied to promote their purposes and the stated rights and service quality standards. The commission, in coordination with appropriate agencies, shall adopt rules to implement the purposes of section 225C.28B, subsections 3 and 4, which include, but are not limited to, the following:

1. Promotion of the human dignity and protection of the constitutional and statutory rights of persons with mental retardation, developmental disabilities, or chronic mental illness in the state.
2. Encouraging the development of the ability and potential of each person with mental retardation, developmental disabilities, or chronic mental illness in the state to the fullest extent possible.
3. Encouraging activities to ensure that recipients of services shall not be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Iowa, or the Constitution of the United States solely on account of the receipt of the services.

85 Acts, ch 249, §4; 92 Acts, ch 1241, §65; 92 Acts, ch 1247, §15, 16

225C.28 Rights. Repealed by 92 Acts, ch 1241, § 79. See § 225C.28A and 225C.28B.

225C.28A Service quality standards.

As the state participates more fully in funding services to persons with mental retardation, developmental disabilities, brain injury, or chronic mental illness, it is the intent of the general assembly that the state shall seek to attain the following quality standards in the provision of the services:

1. Provide comprehensive evaluation and diagnosis adapted to the cultural background, primary language, and ethnic origin of the person.
2. Provide an individual treatment, habilitation, and program plan.
3. Provide individualized treatment, habilitation, and program services as appropriate.
4. Provide periodic review of the individual plan.
5. Provide for the least restrictive environment and age-appropriate services.
6. Provide appropriate training and employment opportunities so that the person's ability to contribute to and participate in the community is maximized.

92 Acts, ch 1241, §66

225C.28B Rights of persons with mental retardation, developmental disabilities, brain injury, or chronic mental illness.

All of the following rights shall apply to a person with mental retardation, a developmental disability, brain injury, or chronic mental illness:

1. *Wage protection.* A person with mental retardation, a developmental disability, brain injury, or chronic mental illness engaged in work programs shall be paid wages commensurate with the going rate for comparable work and productivity.
2. *Insurance protection.* Pursuant to section 507B.4, subsection 7, a person or designated group of persons shall not be denied insurance coverage by reason of mental retardation, a developmental disability, brain injury, or chronic mental illness.
3. *Due process.* A person with mental retardation, a developmental disability, brain injury, or chronic mental illness retains the right to citizenship in accordance with the laws of the state.
4. *Participation in planning activities.* If an individual treatment, habilitation, and program plan is developed for a person with mental retardation, a developmental disability, brain injury, or chronic mental illness, the person has the right to participate in the formulation of the plan.

92 Acts, ch 1241, §67

225C.29 Compliance.

Except for a violation of section 225C.28B, subsection 2, the sole remedy for violation of a rule adopted by the commission to implement sections 225C.25 through 225C.28B shall be by a proceeding for compliance initiated by request to the division pursuant to chapter 17A. Any decision of the division shall be in accordance with due process of law and is subject to appeal to the Iowa district court pursuant to sections 17A.19 and 17A.20 by any aggrieved party. Either the division or a party in interest may apply to the Iowa district court for an order to enforce the decision of the division. Any rules adopted by the commission to implement sections 225C.25 through 225C.28B do not create any right, entitlement, property or liberty right or interest, or private cause of action for damages against the state or a political subdivision of the state or for which the state or a political subdivision of the state would be responsible. Any violation of section 225C.28B, subsection 2, shall solely be subject to the enforcement by the commissioner of insurance and penalties granted by chapter 507B for a violation of section 507B.4, subsection 7.

85 Acts, ch 249, §6; 92 Acts, ch 1241, §68; 92 Acts, ch 1247, §17

225C.30 and 225C.31 Reserved.

225C.32 Plan appeals process.

The department shall establish an appeals process by which a mental health, mental retarda-

tion, and developmental disabilities coordinating board or an affected party may appeal a decision of the department or of the coordinating board.

88 Acts, ch 1245, §8

225C.33 and 225C.34 Reserved.

FAMILY SUPPORT SUBSIDY

225C.35 Definitions.

For purposes of this division, unless the context otherwise requires:

1. *"Department"* means the department of human services.

2. *"Family"* means a family member and the parent or legal guardian of the family member.

3. *"Family member"* means a person less than eighteen years of age who by educational determination has a moderate, severe, or profound educational disability or special health care needs or who otherwise meets the definition of developmental disability in the federal Developmental Disabilities Act, section 102(5), as codified in 42 U.S.C. § 6001(5). The department shall adopt rules establishing procedures for determining whether a child has a developmental disability.

4. *"Legal guardian"* means a person appointed by a court to exercise powers over a family member.

5. *"Medical assistance"* means payment of all or part of the care authorized to be provided pursuant to chapter 249A.

6. *"Parent"* means a biological or adoptive parent.

7. *"Supplemental security income"* means financial assistance provided to individuals pursuant to Title XVI of the federal Social Security Act, 42 U.S.C. § 1381 to 1383c.

88 Acts, ch 1122, §2; 90 Acts, ch 1114, §1; 96 Acts, ch 1129, §113

225C.36 Family support subsidy program.

A family support subsidy program is created as specified in this division. The purpose of the family support subsidy program is to keep families together by defraying some of the special costs of caring for a family member at home. The department shall adopt rules to implement the purposes of this section and sections 225C.37 through 225C.42 which assure that families retain the greatest possible flexibility in determining appropriate use of the subsidy.

88 Acts, ch 1122, §3; 90 Acts, ch 1114, §2

225C.37 Program specifications rules.

A parent or legal guardian of a family member may apply to the local office of the department for the family support subsidy program. The application shall include:

1. A statement that the family resides in a county of this state.

2. Verification that the family member meets the definitional requirements of section 225C.35, subsection 3.

3. A statement that the family member resides, or is expected to reside, with the parent or legal guardian of the family member or, on a temporary basis, with another relative of the family member.

4. A statement that if the child receives medical assistance, then the family support subsidy shall only be used for the cost of a service which is not covered by medical assistance. The family may receive welfare assistance for which the family is eligible.

5. Verification that the net taxable income for the family for the calendar year immediately preceding the date of application did not exceed forty thousand dollars unless it can be verified that the estimated net taxable income for the family for the year in which the application is made will be less than forty thousand dollars.

Within the limits set by the appropriation for this purpose, the department shall approve or disapprove the application based on the family support services plan which identifies the needs of the child and the family and the eligibility criteria required to be included in the application under subsections 1 through 5 and shall notify the parent or legal guardian of the decision.

88 Acts, ch 1122, §4; 90 Acts, ch 1039, §13; 90 Acts, ch 1114, §3

225C.38 Payment — amount — reports.

1. If an application for a family support subsidy is approved by the department:

a. A family support subsidy shall be paid to the parent or legal guardian on behalf of the family member. An approved subsidy shall be payable as of the first of the next month after the department approves the written application.

b. A family support subsidy shall be used to meet the special needs of the family. This subsidy is intended to complement but not supplant public assistance or social service benefits based on economic need, available through governmental programs.

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

the special needs of the family in preparing for in-home care. The parent or legal guardian receiving a family support subsidy may elect to receive a payment amount which is less than the amount determined in accordance with this paragraph.

2. The department shall administer the family support subsidy program and the payments made under the program as follows:

a. In each fiscal year, the department shall establish a figure for the number of family members for whom a family support subsidy shall be provided at any one time during the fiscal year. The figure shall be established by dividing the amount appropriated by the general assembly for family support subsidy payments during the fiscal year by the family support subsidy payment amount established in subsection 1, paragraph *"c"*.

b. On or before July 15 in each fiscal year, the department shall approve the provision of a number of family support subsidies equal to the figure established in paragraph *"a"*. During any thirty-day period, the number of family members for whom a family support subsidy is provided shall not be less than this figure.

3. The parent or legal guardian who receives a family support subsidy shall report, in writing, the following information to the department:

a. Not less than annually, a statement that the family support subsidy was used to meet the special needs of the family.

b. The occurrence of any event listed in section 225C.40.

c. A request to terminate the family support subsidy.

88 Acts, ch 1122, §5; 91 Acts, ch 38, §2, 3; 98 Acts, ch 1218, §71

225C.39 Subsidy payments not alienable.

Family support subsidy payments shall not be alienable by action, including but not limited to, assignment, sale, garnishment, or execution, and in the event of bankruptcy shall not pass to or through a trustee or any other person acting on behalf of creditors.

88 Acts, ch 1122, §6

225C.40 Termination or denial of subsidy — hearing.

1. The family support subsidy shall terminate if any of the following occur:

a. The family member dies.

b. The family no longer meets the eligibility criteria in section 225C.37.

c. The family member attains the age of eighteen years.

d. The family member is no longer eligible for special education pursuant to section 256B.9, subsection 1, paragraph *"c"* or *"d"*.

2. The family support subsidy may be terminated by the department if a report required by section 225C.38, subsection 3, is not timely made or a report required by section 225C.38, subsection 3, paragraph *"a"*, contains false information.

3. If an application for a family support subsidy is denied or a family support subsidy is terminated by the department, the parent or legal guardian of the affected family member may request, in writing, a hearing before an impartial hearing officer.

88 Acts, ch 1122, §7

225C.41 Appropriations.

Family support subsidy payments shall be paid from funds appropriated by the general assembly for this purpose.

Notwithstanding section 8.33, funds remaining unexpended on June 30 of any fiscal year shall not revert to the general fund of the state but shall remain available to provide family support subsidy payments in the succeeding fiscal year.

88 Acts, ch 1122, §8; 91 Acts, ch 38, §4

225C.42 Annual evaluation of program.

1. The department shall conduct an annual evaluation of the family support subsidy program and shall submit the evaluation report with recommendations to the governor and general assembly by September 30 following the end of the fiscal year.

2. The evaluation content shall include but is not limited to all of the following items:

a. A statement of the number of children and families served by the program during the fiscal year and the number remaining on the waiting list at the end of the fiscal year.

b. A description of the children and family needs to which payments were applied.

c. An analysis of the extent to which payments enabled children to remain in their homes. The analysis shall include but is not limited to all of the following items concerning children affected by the payments: the number and percentage of children who remained with their families; the number and percentage of children who returned to their home from an out-of-home placement and the type of placement from which the children returned; and the number of children who received an out-of-home placement during the fiscal year and the type of placement.

d. An analysis of parent satisfaction with the program.

e. An analysis of efforts to encourage program participation by eligible families.

f. The results of a survey of families participating in the program in order to assess the adequacy of subsidy payment amounts and the degree of unmet need for services and supports.

3. The evaluation content may include any of the following items:

a. An overview of the reasons families voluntarily terminated participation in the family sup-

port subsidy program and the involvement of the department in offering suitable alternatives.

b. The geographic distribution of families receiving subsidy payments.

c. An overview of problems encountered by families in applying for the program, including obtaining documentation of eligibility.

88 Acts, ch 1122, §9; 91 Acts, ch 38, §5

Requirements relating to an annual evaluation are suspended for the period beginning July 1, 2002, and ending June 30, 2003; 2002 Acts, 2nd Ex, ch 1003, §148, 151

225C.43 and 225C.44 Reserved.

PUBLIC HOUSING UNIT

225C.45 Public housing unit.

1. The administrator may establish a public housing unit within a bureau of the division to apply for, receive, and administer federal assistance, grants, and other public or private funds for purposes related to providing housing.

2. In implementing the public housing unit, the division may do all of the following:

a. Prepare, implement, and operate housing projects and provide for the construction, improvement, extension, alteration, or repair of a housing project under the division's jurisdiction.

b. Develop and implement studies, conduct analyses, and engage in research concerning housing and housing needs. The information obtained from these activities shall be made available to the public and to the building, housing, and supply industries.

c. Cooperate with the Iowa finance authority and participate in any of the authority's programs. Use any funds obtained pursuant to subsection 1 to participate in the authority's programs. The division shall comply with rules adopted by the authority as the rules apply to the housing activities of the division.

3. In accepting contributions, grants, or other financial assistance from the federal government relating to a housing activity of the division, including construction, operation, or maintenance, or in managing a housing project or undertaking constructed or owned by the federal government, the division may do any of the following:

a. Comply with federally required conditions or enter into contracts or agreements as may be necessary, convenient, or desirable.

b. Take any other action necessary or desirable in order to secure the financial aid or cooperation of the federal government.

c. Include in a contract with the federal government for financial assistance any provision which the federal government may require as a condition of the assistance that is consistent with the provisions of this section.

4. The division shall not proceed with a housing project pursuant to this section, unless both of the following conditions are met:

a. A study for a report which includes recommendations concerning the housing available within a community is publicly issued by the division. The study shall be included in the division's recommendations for a housing project.

b. The division's recommendations are approved by a majority of the city council or board of supervisors with jurisdiction over the geographic area affected by the recommendations.

5. Property acquired or held pursuant to this section is public property used for essential public purposes and is declared to be exempt from any tax or special assessment of the state or any state public body as defined in section 403A.2. In lieu of taxes on the property, the division may agree to make payments to the state or a state public body, including but not limited to the division, as the division finds necessary to maintain the purpose of providing low-cost housing in accordance with this section.

6. Any property owned or held by the division pursuant to this section is exempt from levy and sale by execution. An execution or other judicial process shall not be issued against the property and a judgment against the division shall not be a lien or charge against the property. However, the provisions of this subsection shall not apply to or limit the right of the federal government to pursue any remedies available under this section. The provisions of this subsection shall also not apply to or limit the right of an obligee to take either of the following actions:

a. Foreclose or otherwise enforce a mortgage or other security executed or issued pursuant to this section.

b. Pursue remedies for the enforcement of a pledge or lien on rents, fees, or revenues.

7. In any contract with the federal government to provide annual payments to the division, the division may obligate itself to convey to the federal government possession of or title to the housing project in the event of a substantial default as defined in the contract and with respect to the covenant or conditions to which the division is subject. The obligation shall be specifically enforceable and shall not constitute a mortgage. The contract may also provide that in the event of a conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the housing project and funds in accordance with the terms of the contract. However, the contract shall require that, as soon as is practicable after the federal government is satisfied that all defaults with respect to the housing project are cured and the housing project will be operated in accordance with the terms of the contract, the federal government shall reconvey the housing project to the division.

8. The division shall not undertake a housing project pursuant to this section until a public hearing has been held. At the hearing, the division

shall notify the public of the proposed project's name, location, number of living units proposed, and approximate cost. Notice of the public hearing shall be published at least once in a newspaper of general circulation at least fifteen days prior to the date set for the hearing.

92 Acts, ch 1128, §2; 94 Acts, ch 1170, §21; 95 Acts, ch 82, §3

PERSONAL ASSISTANCE AND FAMILY SUPPORT SERVICES

Legislative findings; 94 Acts, ch 1041, §1

225C.46 Personal assistance services program.

1. As used in this section, unless the context otherwise requires:

a. (1) *"Disability"* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(2) *"Disability"* does not include any of the following:

(a) Homosexuality or bisexuality.

(b) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.

(c) Compulsive gambling, kleptomania, or pyromania.

(d) Psychoactive substance abuse disorders resulting from current illegal use of drugs.

(e) Alcoholism.

b. *"Major life activity"* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

c. *"Personal assistance services"* means services performed by a person to assist an individual with a disability with tasks which that individual would typically do if the individual did not have a disability. The services are intended to enable an individual with a disability to live in the individual's home or community rather than in an institutional setting and may include but are not limited to any of the following:

(1) Dressing.

(2) Bathing.

(3) Access to and from bed or a wheelchair.

(4) Toilet assistance, including bowel, bladder, and catheter assistance.

(5) Eating and feeding.

(6) Cooking and housekeeping assistance.

(7) Employment support.

(8) Cognitive assistance with tasks such as handling money and scheduling.

(9) Fostering communication access through interpreting and reading services.

d. (1) *"Substantially limits"* means either of the following:

(a) Unable to perform a major life activity that the average person in the general population can perform.

(b) Significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

(2) The following factors may be considered in determining whether an individual is substantially limited in a major life activity:

(a) The nature and severity of the impairment.

(b) The duration or expected duration of the impairment.

(c) The permanent or long-term impact, or expected permanent or long-term impact of or resulting from the impairment.

2. Eligibility for the personal assistance services program shall be limited to individuals with a disability, who have Iowa or federal taxable income of less than forty thousand dollars, who are residents of this state, and who are at least eighteen years of age or are emancipated minors. For the purposes of this subsection, *"emancipated minor"* means a person under eighteen years of age who is married or who is living separate and apart from the person's parent, regardless of the duration of the separate residence, and is managing the person's own financial affairs regardless of the source or extent of the person's income.

3. An individual served under the personal assistance services program shall determine the components of the personal assistance services to be provided with the person who is providing the services to the individual. Based upon the components determined by the individual, the department shall develop a provider contract or other means of paying for services. The components may include but are not limited to all of the following:

a. Training of the person providing services.

b. Selection of the person providing services.

c. Management of the person providing services.

d. Performance standards for the person providing services.

e. Annual review or review upon demonstration of significant changes in the circumstances of the individual being provided with personal assistance services.

4. The department shall adopt rules providing for all of the following:

a. Coordination of personal assistance service

activities and funding with other state and local agencies which provide services to individuals with disabilities or funding of such services.

b. The components of contracts between individuals with disabilities being provided personal assistance services and providers of personal assistance services.

c. Upon request of an individual with disabilities, provision of assistance in locating a provider of personal assistance services for the individual.

d. Upon request of an individual with disabilities, provision of technical assistance to the individual concerning the employment of a personal assistant or contracting for services with a personal assistance services provider.

e. Procedures for disbursement of funds. Funds for the purchase of personal assistance services shall be paid directly to individuals with disabilities pursuant to a contract or by other appropriate means of payment. The rules shall include provisions to track the use of the funds and to monitor contract compliance.

f. Implementation of the program in accordance with the funding appropriated for the program.

94 Acts, ch 1041, §2

225C.47 Comprehensive family support program.

1. For the purposes of this section, unless the context otherwise requires:

a. *"Family"* means a group of interdependent persons living in the same household. A family consists of an individual with a disability and any of the following:

(1) The individual's parent.

(2) The individual's sibling.

(3) The individual's grandparent, aunt, or uncle.

(4) The individual's legal custodian.

(5) A person who is providing short-term foster care to the individual subject to a case permanency plan which provides for reunification between the individual and the individual's parent.

"Family" does not include a person who is employed to provide services to an individual with a disability in an out-of-home setting, including but not limited to a hospital, nursing facility, personal care home, board and care home, group foster care home, or other institutional setting.

b. *"Individual with a disability"* means an individual who is less than twenty-two years of age and meets the definition of developmental disability in 42 U.S.C. § 6001.

c. *"Services and support"* means services or other assistance intended to enable an individual with a disability to control the individual's environment, to remain living with the individual's family, to function more independently, and to increase the integration of the individual into the individual's community. Services and support may include but are not limited to funding for purchase of equipment, respite care, supplies, assistive technology, and payment of other costs attributable to the individual's disability which are identified by the individual's family.

2. A comprehensive family support program is created in the department of human services to provide a statewide system of services and support to eligible families. The program shall be implemented in a manner which enables a family member of an individual with a disability to identify the services and support needed to enable the individual to reside with the individual's family, to function more independently, and to increase the individual's integration into the community.

3. Eligibility for the comprehensive family support program is limited to families who meet all the following conditions:

a. The family resides in the state of Iowa.

b. The family includes an individual with a disability.

c. The family expresses an intent for the family member who is an individual with a disability to remain living in the family's home.

d. The family's taxable income is less than sixty thousand dollars in the most recently completed tax year.

4. A family may apply to the department for assistance under the comprehensive family support program. The department shall determine eligibility for the program in accordance with the provisions of this section.

5. The department shall design the program in consultation with the personal assistance and family support services council created in section 225C.48. The department shall adopt rules to implement the program which provide for all of the following:

a. (1) An application process incorporating the eligibility determination processes of other disability services programs to the extent possible.

(2) Eligible families maintain control of decisions which affect the families' children who are individuals with a disability.

b. (1) Existing local agencies are utilized to provide facilities and a single entry point for comprehensive family support program applicants.

(2) Services and support are provided in a timely manner and emergency access to needed services and support is provided.

c. Technical assistance is provided to service and support providers and users.

d. State, regional, and local media are utilized to publicize the family support program.

e. A process is available to appeal the department's decisions involving families which apply for the comprehensive family support program and are denied services and support under the comprehensive family support program. The department shall make reasonable efforts to utilize telecommunications so that a family initiating an

appeal may complete the appeal process in the family's local geographic area.

f. (1) Identification of the services and support and service provider components included in the comprehensive family support program.

(2) Upon request by a family member, provision of assistance in locating a service provider.

g. Identification of payment for services and support directly to families, by voucher, or by other appropriate means to maintain family control over decision making.

h. Implementation of the program in accordance with the funding appropriated for the program.

i. The utilization of a voucher system for payment provisions for the children-at-home component of the program under subsection 7.

6. Services and support provided under the comprehensive family support program shall not be used to supplant other services and support available to a family of an individual with disabilities but shall be used to meet family needs that would not be met without the program.

7. The comprehensive family support program shall include a children-at-home component developed by the department in accordance with this subsection. A family eligible for the comprehensive family support program may choose the children-at-home component. Under the children-at-home component, a family member of an individual with a disability shall be assisted by department staff in identifying the services and support to be provided to the family under the program. The identification of services and support shall be based upon the specific needs of the individual and the individual's family which are not met by other service programs available to the individual and the individual's family. Based upon the services and support identified, the department shall develop a contract for direct payment of the services and support provided to the family.

94 Acts, ch 1041, §3; 96 Acts, ch 1084, §1 – 5

225C.48 Personal assistance and family support services council.

1. An eleven-member personal assistance and family support services council is created in the department. The members of the council shall be appointed by the following officials as follows: governor, five members; majority leader of the senate, three members; and speaker of the house, three members. At least three of the governor's appointments and one of each legislative chamber's appointments shall be a family member of an individual with a disability as defined in section 225C.47. At least five of the members shall be consumers of personal services. Members shall serve for three-year staggered terms. A vacancy on the council shall be filled in the same manner as the original appointment. The members of the council shall be entitled to reimbursement of actual and necessary expenses incurred in the performance of their official duties. The council shall elect officers from among the council's members.

2. The council shall provide ongoing guidance, advice, and direction to the department and other agencies working with the department in the development and implementation of the personal assistance services program created in section 225C.46 and the comprehensive family support program created in section 225C.47. The council shall perform an annual evaluation of each program, and annually make recommendations concerning each program to the governor and general assembly. The department shall provide sufficient staff support to the council to enable the council to carry out its responsibilities.

3. The council shall perform the following duties in consultation with the department and any department staff with duties associated with the personal assistance services and comprehensive family support programs:

a. Oversee the operations of the programs.

b. Coordinate with the department of education and programs administered by the department of education to individuals with a disability, in providing information to individuals and families eligible for the programs under sections 225C.46 and 225C.47.

c. Work with the department and counties regarding managed care provisions utilized by the department and counties for services to individuals with a disability to advocate the inclusion of personal assistance services and the comprehensive family support program as approved service provisions under managed care.

d. Develop and oversee implementation of evaluation processes for the programs.

e. Oversee statewide training of department staff regarding the two programs.

f. Oversee efforts to promote public awareness of the programs.

4. The department shall consider recommendations from the council in developing and implementing each program, including the development of administrative rules. The department shall regularly report to the council on the status of each program and any actions planned or taken by the department related to each program.

94 Acts, ch 1041, §4; 96 Acts, ch 1084, §6; 98 Acts, ch 1218, §72, 83

225C.49 Departmental duties concerning services to individuals with a disability.

1. The department shall provide coordination of the programs administered by the department which serve individuals with a disability and the individuals' families, including but not limited to the following juvenile justice and child welfare services: family-centered and intensive family preservation services described under section 232.102, decategorization of child welfare funding

provided for under section 232.188, and foster care services paid under section 234.35, subsection 3. The department shall regularly review administrative rules associated with such programs and make recommendations to the council on human services, governor, and general assembly for revisions to remove barriers to the programs for individuals with a disability and the individuals' families including the following:

a. Eligibility prerequisites which require declaring the individual at risk of abuse, neglect, or out-of-home placement.

b. Time limits on services which restrict addressing ongoing needs of individuals with a disability and their families.

2. The department shall coordinate the department's programs and funding utilized by individuals with a disability and their families with other state and local programs and funding directed to individuals with a disability and their families.

3. In implementing the provisions of this section, the department shall do all of the following:

a. Compile information concerning services and other support available to individuals with a disability and their families. Make the information available to individuals with a disability and their families and department staff.

b. Utilize internal training resources or contract for additional training of staff concerning the information under paragraph *"a"* and training of families and individuals as necessary to develop plans and contracts under sections 225C.46 and 225C.47.

4. The department shall designate one individual whose sole duties are to provide central coordination of the programs under sections 225C.46 and 225C.47 and to work with the personal assistance and family support services council to oversee development and implementation of the programs.

96 Acts, ch 1084, §7

CHAPTER 226

STATE MENTAL HEALTH INSTITUTES

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MENTAL PATIENTS' PERSONAL FUNDS

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226.1 Official designation.

1. The state hospitals for persons with mental illness shall be designated as follows:

a. Mental Health Institute, Mount Pleasant, Iowa.

b. Mental Health Institute, Independence, Iowa.

c. Mental Health Institute, Clarinda, Iowa.

d. Mental Health Institute, Cherokee, Iowa.

2. The purpose of the mental health institutes is to operate as regional resource centers providing one or more of the following:

a. Treatment, training, care, habilitation, and support of persons with mental illness or a substance abuse problem.

b. Facilities, services, and other support to the communities located in the region being served by a mental health institute so as to maximize the usefulness of the mental health institutes while minimizing overall costs.

c. A unit for the civil commitment of sexually violent predators committed to the custody of the director of human services pursuant to chapter 229A.

In addition, the mental health institutes are encouraged to act as a training resource for community-based program staff, medical students, and other participants in professional education programs.

3. A mental health institute may request the approval of the council on human services to change the name of the institution for use in communication with the public, in signage, and in other forms of communication.

[R60, §1471; C73, §1383; C97, §2253; S13, §2253-a; C24, 27, 31, 35, 39, §**3483;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.1]

96 Acts, ch 1129, §113; 98 Acts, ch 1155, §10; 2001 Acts, 2nd Ex, ch 6, §33, 37

Department of human services may collocate the unit for civil commitment of sexually violent predators at mental health institute at Mount Pleasant; 2001 Acts, 2nd Ex, ch 6, §35, 37

226.2 Qualifications of superintendent.

The superintendent of each institute must be qualified by experience and training in the administration of human service programs. A physician shall not serve as both superintendent and business manager. A hospital administrator or other person qualified in business management appointed superintendent may also be designated to perform the duties of business manager without additional compensation. A physician appointed superintendent shall be designated clinical director and shall perform the duties imposed on the superintendent by section 226.6, subsection 1, and such other duties of the superintendent as must by their nature be performed by a physician.

[R60, §1430, 1474; C73, §1386, 1391; C97, §2255, 2258; C24, 27, 31, 35, 39, §**3484;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.2; 81 Acts, ch 79, §1]

226.3 Assistant physicians.

The assistant physicians shall be of such character and qualifications as to be able to perform the ordinary duties of the superintendent during the superintendent's absence or inability to act.

[R60, §1432; C73, §1394; C97, §2260; C24, 27, 31, 35, 39, §**3485;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.3]

226.4 Salary of superintendent.

The salary of the superintendent of each hospital shall be determined by the administrator.

[R60, §1469, 1496; C97, §2258; C24, 27, 31, 35, 39, §**3486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.4]

Administrator, §226.47

226.5 Superintendent as witness.

The superintendents and assistant physicians of said hospitals, when called as witnesses in any court, shall be paid the same mileage which other witnesses are paid and in addition thereto shall be paid a fee of twenty-five dollars per day, said fee to revert to the support fund of the hospital the superintendent or assistant physician serves.

[C73, §1429; C97, §2293; C24, 27, 31, 35, 39, §**3487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.5]

Mileage, §622.69

226.6 Duties of superintendent.

The superintendent shall:

1. Have the control of the medical, mental, moral, and dietetic treatment of the patients in the superintendent's custody subject to the approval of the administrator.

2. Require all subordinate officers and employees to perform their respective duties.

3. Have an official seal with the name of the hospital and the word "Iowa" thereon and affix the same to all notices, orders of discharge, or other papers required to be given by the superintendent.

4. Keep proper books in which shall be entered all moneys and supplies received on account of any patient and a detailed account of the disposition of the same.

[R60, §1430, 1431; C73, §1391, 1393, 1430; C97, §2258, 2294; C24, 27, 31, 35, 39, §**3488;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.6]

226.7 Order of receiving patients.

Preference in the reception of patients into said hospitals shall be exercised in the following order:

1. Cases of less duration than one year.

2. Chronic cases, where the disease is of more than one-year duration, presenting the most favorable prospect for recovery.

3. Those for whom application has been longest on file, other things being equal.

Where cases are equally meritorious in all other respects, the indigent shall have the preference.

If the district court commits a patient to a state mental health institute and a bed for the patient is not available, the institute shall assist the court in locating an alternative placement for the patient.

[R60, §1438; C73, §1422; C97, §2286; C24, 27, 31, 35, 39, §**3489;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.7]

92 Acts, ch 1241, §69

226.8 Persons with mental retardation not receivable — exception.

No person who is mentally retarded, as defined by section 222.2, shall be admitted, or transferred pursuant to section 222.7, to a state mental health institute unless a professional diagnostic evaluation indicates that such person will benefit from psychiatric treatment or from some other specific program available at the mental health institute to which it is proposed to admit or transfer the person. Charges for the care of any person with mental retardation admitted to a state mental health institute shall be made by the institute in the manner provided by chapter 230, but the liability of any other person to any county for the cost of care of such person with mental retardation shall be as prescribed by section 222.78.

[R60, §1468, 1491; C73, §1434; C97, §2298; C24, 27, 31, 35, 39, §**3490;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.8]

96 Acts, ch 1129, §113

226.9 Custody of patient.

The superintendent, upon the receipt of a duly executed order of admission of a patient into the hospital for persons with mental illness, pursuant to section 229.13, shall take such patient into custody and restrain the patient as provided by law and the rules of the administrator, without liability on the part of such superintendent and all other officers of the hospital to prosecution of any kind on account thereof, but no person shall be detained in the hospital who is found by the superintendent to be in good mental health.

[C73, §1411; C97, §2278; C24, 27, 31, 35, 39, §**3491;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.9]

96 Acts, ch 1129, §113

226.9A Custody of juvenile patients.

Effective January 1, 1991, a juvenile who is committed to a state mental health institute shall not be placed in a secure ward with adults.

89 Acts, ch 283, §21

226.10 Equal treatment.

The several patients, according to their different conditions of mind and body, and their respective needs, shall be provided for and treated with equal care.

[C73, §1420; C97, §2284; C24, 27, 31, 35, 39, §**3492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.10]

226.11 Special care permitted.

Patients may have such special care as may be agreed upon with the superintendent, if the friends or relatives of the patient will pay the expense thereof. Charges for such special care and attendance shall be paid quarterly in advance.

[C73, §1420, 1421; C97, §2284, 2285; C24, 27, 31, 35, 39, §**3493;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.11]

226.12 Monthly reports.

The administrator shall assure that the superintendent of each institute provides monthly reports concerning the programmatic, environmental, and fiscal condition of the institute. The administrator or the administrator's designee shall periodically visit each institute to validate the information.

[C73, §1435, 1441; C97, §2299; SS15, §2727-a11; C24, 27, 31, 35, 39, §**3494;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.12]

91 Acts, ch 38, §6

226.13 Patients allowed to write.

The name and address of the administrator shall be kept posted in every ward in each hospital. Every patient shall be allowed to write once a week what the patient pleases to said administrator and to any other person. The superintendent may send letters addressed to other parties to the administrator for inspection before forwarding them to the individual addressed.

[C73, §1436; C97, §2300; C24, 27, 31, 35, 39, §**3495;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.13]

226.14 Writing material.

Every patient shall be furnished by the superintendent or party having charge of such person, at least once in each week, with suitable materials for writing, enclosing, sealing, and mailing letters, if the patient requests and uses the same.

[C73, §1437; C97, §2301; C24, 27, 31, 35, 39, §**3496;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.14]

226.15 Letters to administrator.

The superintendent or other officer in charge of a patient shall, without reading the same, receive all letters addressed to the administrator, if so requested, and shall properly mail the same, and deliver to such patient all letters or other writings addressed to the patient. Letters written to the person so confined may be examined by the superintendent, and if, in the superintendent's opinion, the delivery of such letters would be injurious to the person so confined, the superintendent shall

return the letters to the writer with the superintendent's reasons for not delivering them.

[C73, §1438; C97, §2302; C24, 27, 31, 35, 39, §**3497;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.15]

226.16 Unauthorized departure and retaking.

It shall be the duty of the superintendent and of all other officers and employees of any of said hospitals, in case of the unauthorized departure of any involuntarily hospitalized patient, to exercise all due diligence to take into protective custody and return said patient to the hospital. A notification by the superintendent of such unauthorized departure to any peace officer of the state or to any private person shall be sufficient authority to such officer or person to take and return such patient to the hospital.

[R60, §1445; C73, §1423; C97, §2287; S13, §2287; C24, 27, 31, 35, 39, §**3498;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.16]

226.17 Expense attending retaking.

All actual and necessary expenses incurred in the taking into protective custody, restraint, and return to the hospital of the patient shall be paid on itemized vouchers, sworn to by the claimants and approved by the business manager and the administrator, from any money in the state treasury not otherwise appropriated.

[R60, §1445; C73, §1423; C97, §2287; S13, §2287; C24, 27, 31, 35, 39, §**3499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.17]

226.18 Investigation as to mental health.

The administrator may investigate the mental condition of any patient and shall discharge any person, if, in the administrator's opinion, such person is not mentally ill, or can be cared for after such discharge without danger to others, and with benefit to the patient; but in determining whether such patient shall be discharged, the recommendation of the superintendent shall be secured. If the administrator orders the discharge of an involuntarily hospitalized patient, the discharge shall be by the procedure prescribed in section 229.16. The power to investigate the mental condition of a patient is merely permissive, and does not repeal or alter any statute respecting the discharge or commitment of patients of the state hospitals.

[S13, §2727-a25; C24, 27, 31, 35, 39, §**3500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.18]

226.19 Discharge — certificate.

All patients shall be discharged, by the procedure prescribed in section 229.3 or section 229.16, whichever is applicable, immediately on regaining their good mental health.

[R60, §1485; C73, §1424; C97, §2288; C24, 27, 31, 35, 39, §**3501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.19]

226.20 and 226.21 Repealed by 75 Acts, ch 139, § 82.

226.22 Clothing furnished.

Upon such discharge the business manager shall furnish such person, unless otherwise supplied, with suitable clothing and a sum of money not exceeding twenty dollars, which shall be charged with the other expenses of such patient in the hospital.

[R60, §1485; C73, §1424; C97, §2288; C24, 27, 31, 35, 39, §**3504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.22]

226.23 Convalescent leave of patients.

Upon the recommendation of the superintendent and in accordance with section 229.15, subsection 4, in the case of an involuntary patient, the administrator may place on convalescent leave said patient for a period not to exceed one year, under such conditions as are prescribed by said administrator.

[C73, §1424; C97, §2288; C24, 27, 31, 35, 39, §**3505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.23]

226.24 and 226.25 Repealed by 75 Acts, ch 139, § 82.

226.26 Dangerous patients.

The administrator, on the recommendation of the superintendent, and on the application of the relatives or friends of a patient who is not cured and who cannot be safely allowed to go at liberty, may release the patient when fully satisfied that the relatives or friends will provide and maintain all necessary supervision, care, and restraint over the patient. If the patient being released was involuntarily hospitalized, the consent of the district court which ordered the patient's hospitalization placement shall be obtained in advance in substantially the manner prescribed by section 229.14.

[R60, §1482; C73, §1408; C97, §2276; C24, 27, 31, 35, 39, §**3508;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.26]

2001 Acts, ch 155, §42

226.27 Patient accused or acquitted of crime or awaiting judgment.

If a patient was committed to a state hospital for evaluation or treatment under chapter 812 or the rules of criminal procedure, further proceedings shall be had under chapter 812 or the applicable rule when the evaluation has been completed or the patient has regained mental capacity, as the case may be.

[R60, §1460; C73, §1413; C97, §2280; C24, 27,

31, 35, 39, §**3509;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.27]
84 Acts, ch 1323, §1

226.28 Return by sheriff. Repealed by 84 Acts, ch 1323, § 7.

226.29 Discharge of mentally ill criminals. Repealed by 84 Acts, ch 1323, § 7.

226.30 Transfer of dangerous patients.
When a patient of any hospital for persons with mental illness becomes incorrigible, and unmanageable to such an extent that the patient is dangerous to the safety of others in the hospital, the administrator may apply in writing to the district court or to any judge thereof, of the county in which the hospital is situated, for an order to transfer the patient to the Iowa medical and classification center and if the order is granted the patient shall be so transferred. The county attorney of the county shall appear in support of the application on behalf of the administrator.
[C24, 27, 31, 35, 39, §**3512;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.30; 82 Acts, ch 1100, §6]
96 Acts, ch 1129, §113
See also §218.92

226.31 Examination by court — notice.
Before granting the order authorized in section 226.30 the court or judge shall investigate the allegations of the petition and before proceeding to a hearing on the allegations shall require notice to be served on the attorney who represented the patient in any prior proceedings under sections 229.6 to 229.15 or the advocate appointed under section 229.19, or in the case of a patient who entered the hospital voluntarily, on any relative, friend, or guardian of the person in question of the filing of the application. At the hearing the court or judge shall appoint a guardian ad litem for the person, if the court or judge deems such action necessary to protect the rights of the person. The guardian ad litem shall be a practicing attorney.
[C24, 27, 31, 35, 39, §**3513;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.31]
90 Acts, ch 1271, §1503

226.32 Overcrowded conditions.
The administrator shall order the discharge or removal from the hospital of incurable and harmless patients whenever it is necessary to make room for recent cases. If a patient who is to be so discharged entered the hospital voluntarily, the administrator shall notify the auditor of the county interested at least ten days in advance of the day of actual discharge.
[R60, §1483; C73, §1425; C97, §2289; C24, 27, 31, 35, 39, §**3514;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.32]

226.33 Notice to court.
When a patient who was hospitalized involuntarily and who has not fully recovered is discharged from the hospital by the administrator under section 226.32, notice of the order shall at once be sent to the court which ordered the patient's hospitalization, in the manner prescribed by section 229.14.
[R60, §1484; C73, §1426; C97, §2290; C24, 27, 31, 35, 39, §**3515;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.33]
2001 Acts, ch 155, §43

226.34 Investigation of death — notice.
An investigation by the county medical examiner shall be held in those cases where a death shall occur suddenly and without apparent cause, or a patient die and the patient's relatives so request, but in the latter case the relatives making the request shall be liable for the expense of the same, and payment therefor may be required in advance. When a patient in any mental health institute shall die from any cause, the superintendent of said institute shall within three days of the date of death, send by certified mail a written notice of death to:
1. The decedent's nearest relative.
2. The clerk of the district court of the county from which the patient was committed, and
3. The sheriff of the county from which the patient was committed.
[C73, §1439; C97, §2303; C24, 27, 31, 35, 39, §**3516;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.34]

226.35 to 226.39 Repealed by 74 Acts, ch 1131, § 51.

226.40 Emergency patients.
In case of emergency disaster, with the infliction of numerous casualties among the civilian population, the mental health institutes are authorized to accept sick and wounded persons without commitment or any other formalities.
[C62, 66, 71, 73, 75, 77, 79, 81, §226.40]

226.41 Charge permitted.
The hospital is authorized to make a charge for these patients, in the manner now provided by law and subject to the changes hereinafter provided.
[C62, 66, 71, 73, 75, 77, 79, 81, §226.41]

226.42 Emergency powers of superintendents.
In case the mental health institutes lose contact with the statehouse, due to enemy action or otherwise, the superintendents of the institutes are hereby delegated the following powers and duties:
1. May collect moneys due the state treasury

from the counties and from responsible persons or other relatives, these funds to be collected monthly, instead of quarterly, and to be deposited for use in operating the institutes.

2. The superintendent shall have the power to requisition supplies, such as food, fuel, drugs and medical equipment, from any source available, in the name of the state, with the power to enter into contracts binding the state for payment at an indefinite future time.

3. The superintendent shall be authorized to employ personnel in all categories and for whatever remuneration the superintendent deems necessary, without regard to existing laws, rules or regulations, in order to permit the institute to continue its old functions, as well as meet its additional responsibilities.

[C62, 66, 71, 73, 75, 77, 79, 81, §226.42]

MENTAL PATIENTS' PERSONAL FUNDS

226.43 Fund created.

There is hereby established at each hospital a fund known as the *"patients' personal deposit fund"*.

[C66, 71, 73, 75, 77, 79, 81, §226.43]

226.44 Deposits.

Any funds, including social security benefits, coming into the possession of the superintendent or any employee of the hospital belonging to any patient in that hospital, shall be deposited in the name of that patient in the patients' personal deposit fund, except that if a guardian of the property of that patient has been appointed, the guardian shall have the right to demand and receive such funds. Funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals, desires and comforts for the patient.

[C66, 71, 73, 75, 77, 79, 81, §226.44]

226.45 Reimbursement to county or state.

If a patient is not receiving medical assistance under chapter 249A and the amount to the account of any patient in the patients' personal deposit fund exceeds two hundred dollars, the business manager of the hospital may apply any of the excess to reimburse the county of legal settlement or the state in a case where no legal settlement exists for liability incurred by the county or the state for the payment of care, support and maintenance of the patient, when billed by the county of legal settlement or by the administrator for a patient having no legal settlement.

[C66, 71, 73, 75, 77, 79, 81, S81, §226.45; 81 Acts, ch 11, §16]

226.46 Deposit of fund.

The business manager shall deposit the patients' personal deposit fund in a commercial account of a bank of reputable standing. When deposits in the commercial account exceed average monthly withdrawals, the business manager may deposit the excess at interest. The savings account shall be in the name of the patients' personal deposit fund and interest paid thereon may be used for recreational purposes at the hospital.

[C66, 71, 73, 75, 77, 79, 81, §226.46]

226.47 Administrator defined.

For the purpose of this chapter, *"administrator"* means the person assigned, in accordance with section 218.1, to control the state mental health institutes.

[C71, 73, 75, 77, 79, 81, §226.47; 81 Acts, ch 78, §20, 31]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §36; 2000 Acts, ch 1112, §35

CHAPTER 227

COUNTY AND PRIVATE HOSPITALS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

227.1 Supervision.
227.2 Inspection.
227.3 Residents to have hearing.
227.4 Standards for care of persons with mental illness or mental retardation in county care facilities.
227.5 Repealed by 47 Acts, ch 126, §3.
227.6 Removal of residents.
227.7 Cost — collection from county.
227.8 Notification to guardians.
227.9 Investigating mental health.
227.10 Transfers from county or private institutions.
227.11 Transfers from state hospitals.
227.12 Difference of opinion.
227.13 Discharge of transferred patient.
227.14 Caring for persons with mental illness from other counties.
227.15 Authority to confine in hospital.
227.16 Repealed by 81 Acts, ch 78, §51.
227.17 Repealed by 81 Acts, ch 78, §51.
227.18 Repealed by 81 Acts, ch 78, §51.
227.19 Administrator defined.

227.1 Supervision.

All county and private institutions wherein persons with mental illness are kept shall be under the supervision of the administrator.

[S13, §2727-a58; C24, 27, 31, 35, 39, §**3517;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.1]

96 Acts, ch 1129, §113

227.2 Inspection.

1. The director of inspections and appeals shall make, or cause to be made, at least one licensure inspection each year of every county care facility. Either the administrator of the division or the director of inspections and appeals, in cooperation with each other, upon receipt of a complaint or for good cause, may make, or cause to be made, a review of a county care facility or of any other private or county institution where persons with mental illness or mental retardation reside. A licensure inspection or a review shall be made by a competent and disinterested person who is acquainted with and interested in the care of persons with mental illness and persons with mental retardation. The objective of a licensure inspection or a review shall be an evaluation of the programming and treatment provided by the facility. After each licensure inspection of a county care facility, the person who made the inspection shall consult with the county authorities on plans and practices that will improve the care given patients and shall make recommendations to the administrator of the division and the director of public health for coordinating and improving the relationships between the administrators of county care facilities, the administrator of the division, the director of public health, the superintendents of state mental health institutes and resource centers, community mental health centers, and other cooperating agencies, to cause improved and more satisfactory care of patients. A written report of each licensure inspection of a county care facility under this section shall be filed with the administrator of the division and the director of public health and shall include:

a. The capacity of the institution for the care of residents.

b. The number, sex, ages, and primary diagnoses of the residents.

c. The care of residents, their food, clothing, treatment plan, employment, and opportunity for recreational activities and for productive work intended primarily as therapeutic activity.

d. The number, job classification, sex, duties, and salaries of all employees.

e. The cost to the state or county of maintaining residents in a county care facility.

f. The recommendations given to and received from county authorities on methods and practices that will improve the conditions under which the county care facility is operated.

g. Any failure to comply with standards adopted under section 227.4 for care of persons with mental illness and persons with mental retardation in county care facilities, which is not covered in information submitted pursuant to paragraphs *"a"* to *"f"*, and any other matters which the director of public health, in consultation with the administrator of the division, may require.

2. A copy of the written report prescribed by subsection 1 shall be furnished to the county board of supervisors, to the county mental health and mental retardation coordinating board or to its advisory board if the county board of supervisors constitutes ex officio the coordinating board, to the administrator of the county care facility inspected and to its resident advocate committee, and to the department of elder affairs.

3. The department of inspections and appeals shall inform the administrator of the division of an action by the department to suspend, revoke, or deny renewal of a license issued by the department of inspections and appeals to a county care facility, and the reasons for the action.

4. In addition to the licensure inspections required or authorized by this section, the administrator of the division shall cause to be made an evaluation of each person cared for in a county care facility at least once each year by one or more qualified mental health, mental retardation, or medical professionals, whichever is appropriate.

a. It is the responsibility of the state to secure the annual evaluation for each person who is on convalescent leave or who has not been discharged from a state mental health institute. It is the responsibility of the county to secure the annual evaluation for all other persons with mental illness in the county care facility.

b. It is the responsibility of the state to secure the annual evaluation for each person who is on leave and has not been discharged from a state resource center. It is the responsibility of the county to secure the annual evaluation for all other persons with mental retardation in the county care facility.

c. It is the responsibility of the county to secure an annual evaluation of each resident of a county care facility to whom neither paragraph *"a"* nor paragraph *"b"* is applicable.

5. The evaluations required by subsection 4 shall include an examination of each person which shall reveal the person's condition of mental and physical health and the likelihood of improvement or discharge and other recommendations concerning the care of those persons as the evaluator deems pertinent. One copy of the evaluation shall be filed with the administrator of the division and one copy shall be filed with the administrator of the county care facility.

[S13, §2727-a59; C24, 27, 31, 35, 39, §**3518;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §227.2;

81 Acts, ch 78, §20, 32]

96 Acts, ch 1129, §53 – 55; 99 Acts, ch 129, §10; 2000 Acts, ch 1112, §51

227.3 Residents to have hearing.

The inspector conducting any licensure inspection or review under section 227.2 shall give each resident an opportunity to converse with the inspector out of the hearing of any officer or employee of the institution, and shall fully investigate all complaints and report the result in writing to the administrator of the division. The administrator before acting on the report adversely to the institution, shall give the persons in charge a copy of the report and an opportunity to be heard.

[S13, §2727-a60; C24, 27, 31, 35, 39, §**3519;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §227.3; 81 Acts, ch 78, §20, 33]

227.4 Standards for care of persons with mental illness or mental retardation in county care facilities.

The administrator, in cooperation with the department of inspections and appeals, shall recommend, and the mental health and developmental disabilities commission created in section 225C.5 shall adopt standards for the care of and services to persons with mental illness or mental retardation residing in county care facilities. The standards shall be enforced by the department of inspections and appeals as a part of the licensure inspection conducted pursuant to chapter 135C. The objective of the standards is to ensure that persons with mental illness or mental retardation who are residents of county care facilities are not only adequately fed, clothed, and housed, but are also offered reasonable opportunities for productive work and recreational activities suited to their physical and mental abilities and offering both a constructive outlet for their energies and, if possible, therapeutic benefit. When recommending standards under this section, the administrator shall designate an advisory committee representing administrators of county care facilities, county mental health and developmental disabilities regional planning councils, and county care facility resident advocate committees to assist in the establishment of standards.

[S81, §227.4; 81 Acts, ch 78, §20, 34]

85 Acts, ch 122, §2; 94 Acts, ch 1170, §37; 99 Acts, ch 129, §11

227.5 Repealed by 47 Acts, ch 126, § 3.

227.6 Removal of residents.

If a county care facility fails to comply with rules and standards adopted under this chapter, the administrator may remove all persons with mental illness and all persons with mental retardation cared for in the county care facility at public expense, to the proper state mental health institute or resource center, or to some private or county institution or hospital for the care of persons with mental illness or mental retardation that has complied with the rules prescribed by the administrator. Residents being transferred to a state mental health institute or resource center shall be accompanied by an attendant or attendants sent from the institute or resource center. If a resident is transferred under this section, at least one attendant shall be of the same sex. If the administrator finds that the needs of residents with mental illness and residents with mental retardation of any other county or private institution are not being adequately met, those residents may be removed from that institution upon order of the administrator.

[S13, §2727-a63; C24, 27, 31, 35, 39, §**3522;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §227.6; 81 Acts, ch 78, §20, 35]

90 Acts, ch 1204, §46; 96 Acts, ch 1129, §56; 2000 Acts, ch 1112, §51

227.7 Cost — collection from county.

The cost of such removal, including all expenses of said attendant, shall be certified by the superintendent of the hospital receiving the patient, to the director of revenue and finance, who shall draw a warrant upon the treasurer of state for said sum, which shall be credited to the support fund of said hospital and charged against the general revenues of the state and collected by the director of revenue and finance from the county which sent said patient to said institution.

[S13, §2727-a63; C24, 27, 31, 35, 39, §**3523;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.7]

227.8 Notification to guardians.

The administrator shall notify the guardian, or one or more of the relatives, of patients kept at private expense, of all violations of said rules by said private or county institutions, and of the action of the administrator as to all other patients.

[S13, §2727-a63; C24, 27, 31, 35, 39, §**3524;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.8]

227.9 Investigating mental health.

Should the administrator believe that any person in any such county or private institution is in good mental health, or illegally restrained of liberty, the administrator shall institute and prosecute proceedings in the name of the state, before the proper officer, board, or court, for the discharge of such person.

[S13, §2727-a63; C24, 27, 31, 35, 39, §**3525;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.9]

227.10 Transfers from county or private institutions.

Patients who have been admitted at public expense to any institution to which this chapter is applicable may be involuntarily transferred to the proper state hospital for persons with mental illness in the manner prescribed by sections 229.6 to 229.13. The application required by section 229.6 may be filed by the administrator of the division or the administrator's designee, or by the administrator of the institution where the patient is then being maintained or treated. If the patient was admitted to that institution involuntarily, the administrator of the division may arrange and complete the transfer, and shall report it as required of a chief medical officer under section 229.15, subsection 4. The transfer shall be made at county expense, and the expense recovered, as provided in section 227.7. However, transfer under this section of a patient whose expenses are payable in whole or in part by a county is subject to an authorization for the transfer through the single entry point process.

[S13, §2727-a64; C24, 27, 31, 35, 39, §**3526;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.10]

96 Acts, ch 1129, §113; 96 Acts, ch 1183, §17

227.11 Transfers from state hospitals.

A county chargeable with the expense of a patient in a state hospital for persons with mental illness shall transfer the patient to a county or private institution for persons with mental illness that is in compliance with the applicable rules when the administrator of the division or the administrator's designee orders the transfer on a finding that the patient is suffering from chronic mental illness or from senility and will receive equal benefit by being so transferred. A county shall transfer to its county care facility any patient in a state hospital for persons with mental illness upon request of the superintendent of the state hospital in which the patient is confined pursuant to the superintendent's authority under section 229.15, subsection 4, and approval by the board of supervisors of the county of the patient's residence. In no case shall a patient be thus transferred except upon compliance with section 229.14A or without the written consent of a relative, friend, or guardian if such relative, friend, or guardian pays the expense of the care of such patient in a state hospital. Patients transferred to a public or private facility under this section may subsequently be placed on convalescent or limited leave or transferred to a different facility for continued full-time custody, care, and treatment when, in the opinion of the attending physician or the chief medical officer of the hospital from which the patient was so transferred, the best interest of the patient would be served by such leave or transfer. For any patient who is involuntarily committed, any transfer made under this section is subject to the placement hearing requirements of section 229.14A.

[S13, §2727-a64; C24, 27, 31, 35, §3527, 3528; C39, §**3527;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.11]

96 Acts, ch 1129, §113; 2001 Acts, ch 155, §44

227.12 Difference of opinion.

When a difference of opinion exists between the administrator of the division and the authorities in charge of any private or county hospital in regard to the removal of a patient or patients as herein provided, the matter shall be submitted to the district court of the county in which such hospital is situated and shall be summarily tried as an equitable action, and the judgment of the district court shall be final.

[S13, §2727-a68; C24, 27, 31, 35, 39, §**3529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.12]

227.13 Discharge of transferred patient.

Patients transferred from a state hospital to such county or private institutions shall not be discharged, when not cured, without the consent of the administrator of the division.

[S13, §2727-a64; C24, 27, 31, 35, 39, §**3530;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.13]

227.14 Caring for persons with mental illness from other counties.

Boards of supervisors of counties having no proper facilities for caring for persons with mental illness may, with the consent of the administrator of the division, provide for such care at the expense of the county in any convenient and proper county or private institution for persons with mental illness which is willing to receive them.

[S13, §2727-a65; C24, 27, 31, 35, 39, §**3531;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.14]

96 Acts, ch 1129, §113

227.15 Authority to confine in hospital.

No person shall be involuntarily confined and restrained in any private institution or hospital or county hospital or other general hospital with a psychiatric ward for the care or treatment of persons with mental illness, except by the procedure prescribed in sections 229.6 to 229.15.

[S13, §2727-a66; C24, 27, 31, 35, 39, §**3532;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.15]

96 Acts, ch 1129, §113

227.16 Repealed by 81 Acts, ch 78, § 51. See § 225C.12(1).

227.17 Repealed by 81 Acts, ch 78, § 51. See § 225C.7.

227.18 Repealed by 81 Acts, ch 78, § 51. See § 225C.12(2).

227.19 Administrator defined.

For the purpose of this chapter, *"administrator"* or *"administrator of the division"* means the person assigned, in accordance with section 218.1, to control the state mental health institutes or that person's designee.

[C71, 73, 75, 77, 79, 81, S81, §227.19; 81 Acts, ch 78, §20, 36]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §38; 2000 Acts, ch 1112, §36

CHAPTER 228

DISCLOSURE OF MENTAL HEALTH AND PSYCHOLOGICAL INFORMATION

228.1 Definitions.
228.2 Mental health information disclosure prohibited — exceptions — record of disclosure.
228.3 Voluntary disclosures.
228.4 Revocation of disclosure authorization.
228.5 Administrative disclosures.
228.6 Compulsory disclosures.
228.7 Disclosures for claims administration and peer review — safeguards — penalty.
228.8 Disclosures to family members.
228.9 Disclosure of psychological test material.

228.1 Definitions.

As used in this chapter:

1. *"Administrative information"* means an individual's name, identifying number, age, sex, address, dates and character of professional services provided to the individual, fees for the professional services, third-party payor name and payor number of a patient, if known, name and location of the facility where treatment is received, the date of the individual's admission to the facility, and the name of the individual's attending physician or attending mental health professional.

2. *"Data collector"* means a person, other than a mental health professional or an employee of or agent for a mental health facility, who regularly assembles or evaluates mental health information.

3. *"Diagnostic information"* means a therapeutic characterization of the type found in the diagnostic and statistical manual of mental disorders of the American psychiatric association or in a comparable professionally recognized diagnostic manual.

4. *"Mental health facility"* means a community mental health center, hospital, clinic, office, health care facility, infirmary, or similar place in which professional services are provided.

5. *"Mental health information"* means oral, written, or recorded information which indicates the identity of an individual receiving professional services and which relates to the diagnosis, course, or treatment of the individual's mental or emotional condition.

6. *"Mental health professional"* means an individual who has all of the following qualifications:

a. The individual holds at least a master's degree in a mental health field, including but not limited to, psychology, counseling and guidance, nursing, and social work, or the individual is a physician and surgeon or an osteopathic physician and surgeon.

b. The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law.

c. The individual has at least two years of post-degree clinical experience, supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services.

7. *"Peer review organization"* means a utilization and quality control peer review organization that has a contract with the federal secretary of health and human services pursuant to Title XI, part B, of the federal Social Security Act to review health care services paid for in whole or in part under the Medicare program established by Title XVIII of the federal Social Security Act, or another organization of licensed health care professionals performing utilization and quality control review functions.

8. *"Professional services"* means diagnostic or treatment services for a mental or emotional condition provided by a mental health professional.

9. *"Self-insured employer"* means a person which provides accident and health benefits or medical, surgical, or hospital benefits on a self-insured basis to its own employees or to employees of an affiliated company or companies and which does not otherwise provide accident and health benefits or medical, surgical, or hospital benefits.

10. *"Third-party payor"* means a person which provides accident and health benefits or medical,

surgical, or hospital benefits, whether on an indemnity, reimbursement, service, or prepaid basis, including but not limited to, insurers, nonprofit health service corporations, health maintenance organizations, governmental agencies, and self-insured employers.

86 Acts, ch 1082, §1; 88 Acts, ch 1226, §2, 3; 95 Acts, ch 120, §2

228.2 Mental health information disclosure prohibited — exceptions — record of disclosure.

1. Except as specifically authorized in section 228.3, 228.5, 228.6, 228.7, or 228.8, a mental health professional, data collector, or employee or agent of a mental health professional, of a data collector, or of or for a mental health facility shall not disclose or permit the disclosure of mental health information.

2. Upon disclosure of mental health information pursuant to section 228.3, 228.5, 228.6, 228.7, or 228.8, the person disclosing the mental health information shall enter a notation on and maintain the notation with the individual's record of mental health information, stating the date of the disclosure and the name of the recipient of mental health information.

The person disclosing the mental health information shall give the recipient of the information a statement which informs the recipient that disclosures may only be made pursuant to the written authorization of an individual or an individual's legal representative, or as otherwise provided in this chapter, that the unauthorized disclosure of mental health information is unlawful, and that civil damages and criminal penalties may be applicable to the unauthorized disclosure of mental health information.

3. A recipient of mental health information shall not disclose the information received, except as specifically authorized for initial disclosure in section 228.3, 228.5, 228.6, 228.7, or 228.8. However, mental health information may be transferred at any time to another facility, physician, or mental health professional in cases of a medical emergency or if the individual or the individual's legal representative requests the transfer in writing for the purposes of receipt of medical or mental health professional services, at which time the requirements of subsection 2 shall be followed.

86 Acts, ch 1082, §2; 88 Acts, ch 1226, §4, 5; 90 Acts, ch 1079, §2

228.3 Voluntary disclosures.

1. An individual eighteen years of age or older or an individual's legal representative may consent to the disclosure of mental health information relating to the individual by a mental health professional, data collector, or employee or agent of a mental health professional, of a data collector, or of or for a mental health facility, by signing a voluntary written authorization. The authorization shall:

a. Specify the nature of the mental health information to be disclosed, the persons or type of persons authorized to disclose the information, and the purposes for which the information may be used both at the time of the disclosure and in the future.

b. Advise the individual of the individual's right to inspect the disclosed mental health information at any time.

c. State that the authorization is subject to revocation and state the conditions of revocation.

d. Specify the length of time for which the authorization is valid.

e. Contain the date on which the authorization was signed.

2. A copy of the authorization shall:

a. Be provided to the individual or to the legal representative of the individual authorizing the disclosure.

b. Be included in the individual's record of mental health information.

86 Acts, ch 1082, §3; 88 Acts, ch 1226, §6, 7, 9

228.4 Revocation of disclosure authorization.

An individual or an individual's legal representative may revoke a prior authorization by providing a written revocation to the recipient named in the authorization and to the mental health professional, data collector, or employee or agent of a mental health professional, of a data collector, or of or for a mental health facility previously authorized to disclose the mental health information. The revocation is effective upon receipt of the written revocation by the person previously authorized to disclose the mental health information. After the effective revocation date, mental health information shall not be disclosed pursuant to the revoked authorization. However, mental health information previously disclosed pursuant to the revoked authorization may be used for the purposes stated in the original written authorization.

86 Acts, ch 1082, §4

228.5 Administrative disclosures.

1. An individual or an individual's legal representative shall be informed that mental health information relating to the individual may be disclosed to employees or agents of or for the same mental health facility or to other providers of professional services or their employees or agents if and to the extent necessary to facilitate the provision of administrative and professional services to the individual.

2. If an individual eighteen years of age or older or an individual's legal representative has received a written notification that a fee is due a mental health professional or a mental health facility and has failed to arrange for payment of the fee within a reasonable time after the notification,

the mental health professional or mental health facility may disclose administrative information necessary for the collection of the fee to a person or agency providing collection services.

If a civil action is filed for the collection of the fee, additional mental health information shall not be disclosed in the litigation, except to the extent necessary to respond to a motion of the individual or the individual's legal representative for greater specificity or to dispute a defense or counterclaim.

3. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information if necessary for the purpose of conducting scientific and data research, management audits, or program evaluations of the mental health professional or mental health facility, to persons who have demonstrated and provided written assurances of their ability to ensure compliance with the requirements of this chapter. The persons shall not identify, directly or indirectly, an individual in any report of the research, audits, or evaluations, or otherwise disclose individual identities in any manner. A disclosure under this section is not subject to the requirements of section 228.2, subsection 2, with the exception that a person receiving mental health information under this section shall be provided a statement prohibiting redisclosure of information unless otherwise authorized by this chapter.

4. Mental health information relating to an individual may be disclosed to other providers of professional services or their employees or agents if and to the extent necessary to facilitate the provision of administrative and professional services to the individual.

86 Acts, ch 1082, §5; 88 Acts, ch 1226, §8; 96 Acts, ch 1213, §33, 34

228.6 Compulsory disclosures.

1. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information if and to the extent necessary, to meet the requirements of section 229.24, 229.25, 230.20, 230.21, 230.25, 230.26, 230A.13, 232.74, or 232.147, or to meet the compulsory reporting or disclosure requirements of other state or federal law relating to the protection of human health and safety.

2. Mental health information acquired by a mental health professional pursuant to a court-ordered examination may be disclosed pursuant to court rules.

3. Mental health information may be disclosed by a mental health professional if and to the extent necessary, to initiate or complete civil commitment proceedings under chapter 229.

4. Mental health information may be disclosed in a civil or administrative proceeding in which an individual eighteen years of age or older or an individual's legal representative or, in the case of a deceased individual, a party claiming or defending through a beneficiary of the individual, offers the individual's mental or emotional condition as an element of a claim or a defense.

5. An individual eighteen years of age or older or an individual's legal representative or any other party in a civil, criminal, or administrative action, in which mental health information has been or will be disclosed, may move the court to denominate, style, or caption the names of all parties as "JOHN OR JANE DOE" or otherwise protect the anonymity of all of the parties.

86 Acts, ch 1082, §6

228.7 Disclosures for claims administration and peer review — safeguards — penalty.

1. Mental health information may be disclosed, in accordance with the prior written consent of the patient or the patient's legal representative, by a mental health professional, data collector, or employee or agent of a mental health professional, a data collector, or a mental health facility to a third-party payor or to a peer review organization if the third-party payor or the peer review organization has filed a written statement with the commissioner of insurance in which the filer agrees to:

a. Instruct its employees and agents to maintain the confidentiality of mental health information and of the penalty for unauthorized disclosure.

b. Comply with the limitations on use and disclosure of the information specified in subsection 2 of this section.

c. Destroy the information when it is no longer needed for the purposes specified in subsection 2 of this section.

2. An employee or agent of a third-party payor or of a peer review organization shall not use mental health information or disclose mental health information to any person, except to the extent necessary to administer claims submitted or to be submitted for payment to the third-party payor, to conduct a utilization and quality control review of mental health care services provided or proposed to be provided, to conduct an audit of claims paid, or as otherwise authorized by law.

Employees of a self-insured employer, and agents of a self-insured employer which have not filed a statement with the commissioner of insurance pursuant to subsection 1, shall not be granted routine or ongoing access to mental health information unless the employees or agents have signed a statement indicating that they are aware that the information shall not be used or disclosed except as provided in this subsection and that they are aware of the penalty for unauthorized disclosure.

3. An employee or agent of a third-party payor or a peer review organization who willfully uses or discloses mental health information in violation of

subsection 2 of this section is guilty of a serious misdemeanor, and, notwithstanding section 903.1, the sentence for a person convicted under this subsection is a fine not to exceed five hundred dollars in the case of a first offense, and not to exceed five thousand dollars in the case of each subsequent offense.

88 Acts, ch 1226, §1

228.8 Disclosures to family members.

1. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information to the spouse, parent, adult child, or adult sibling of an individual who has chronic mental illness, if all of the following conditions are met:

a. The disclosure is necessary to assist in the provision of care or monitoring of the individual's treatment.

b. The spouse, parent, adult child, or adult sibling is directly involved in providing care to or monitoring the treatment of the individual.

c. The involvement of the spouse, parent, adult child, or adult sibling is verified by the individual's attending physician, attending mental health professional, or a person other than the spouse, parent, adult child, or adult sibling who is responsible for providing treatment to the individual.

2. A request for mental health information by a person authorized to receive such information under this section shall be in writing, except in an emergency as determined by the mental health professional verifying the involvement of the spouse, parent, adult child, or adult sibling.

3. Unless the individual has been adjudged incompetent, the person verifying the involvement of the spouse, parent, adult child, or adult sibling shall notify the individual of the disclosure of the individual's mental health information under this section.

4. Mental health information disclosed under this section is limited to the following:

a. A summary of the individual's diagnosis and prognosis.

b. A listing of the medication which the individual has received and is receiving and the individual's record of compliance in taking medication prescribed for the previous six months.

c. A description of the individual's treatment plan.

90 Acts, ch 1079, §1

228.9 Disclosure of psychological test material.

Except as otherwise provided in this section, a person in possession of psychological test material shall not disclose the material to any other person, including the individual who is a subject of the test. In addition, the test material shall not be disclosed in any administrative, judicial, or legislative proceeding. However, upon the request of an individual who is the subject of a test, all records associated with a psychological test of that individual shall be disclosed to a psychologist licensed pursuant to chapter 154B designated by the individual. An individual's request for the records shall be in writing and shall comply with the requirements of section 228.3, relating to voluntary disclosures of mental health information, except that the individual shall not have the right to inspect the test materials.

94 Acts, ch 1159, §1

CHAPTER 229

HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS

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229.1 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. *"Administrator"* means the administrator of the department of human services assigned, in accordance with section 218.1, to control the state mental health institutes, or that administrator's designee.

2. *"Auditor"* means the county auditor or the auditor's designee.

3. *"Chemotherapy"* means treatment of an individual by use of a drug or substance which cannot legally be delivered or administered to the ultimate user without a physician's prescription or medical order.

4. *"Chief medical officer"* means the medical director in charge of a public or private hospital, or that individual's physician-designee. This chapter does not negate the authority otherwise reposed by law in the respective superintendents of each of the state hospitals for persons with mental illness, established by chapter 226, to make decisions regarding the appropriateness of admissions or discharges of patients of that hospital, however it is the intent of this chapter that if the superintendent is not a licensed physician the decisions by the superintendent shall be corroborated by the chief medical officer of the hospital.

5. *"Clerk"* means the clerk of the district court.

6. *"Hospital"* means either a public hospital or a private hospital.

7. *"Licensed physician"* means an individual licensed under the provisions of chapter 148, 150, or 150A to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery.

8. *"Mental illness"* means every type of mental disease or mental disorder, except that it does not refer to mental retardation as defined in section 222.2, subsection 4, or to insanity, diminished responsibility, or mental incompetency as the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules.

9. *"Patient"* means a person who has been hospitalized or ordered hospitalized to receive treatment pursuant to section 229.14.

10. *"Private hospital"* means any hospital or institution not directly supported by public funds, or a part thereof, which is equipped and staffed to provide inpatient care to persons with mental illness.

11. *"Public hospital"* means:

a. A state mental health institute established by chapter 226; or

b. The state psychiatric hospital established by chapter 225; or

c. Any other publicly supported hospital or institution, or part of such hospital or institution, which is equipped and staffed to provide inpatient care to persons with mental illness, except the Iowa medical and classification center established by chapter 904.

12. *"Qualified mental health professional"* means an individual experienced in the study and treatment of mental disorders in the capacity of:

a. A psychologist certified under chapter 154B; or

b. A registered nurse licensed under chapter 152; or

c. A social worker licensed under chapter 154C.

13. *"Respondent"* means any person against whom an application has been filed under section 229.6, but who has not been finally ordered committed for full-time custody, care and treatment in a hospital.

14. *"Serious emotional injury"* is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other quali-

fied mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.

15. *"Seriously mentally impaired"* or *"serious mental impairment"* describes the condition of a person with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness meets any of the following criteria:

a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.

b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.

c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.

16. *"Single entry point process"* means the same as defined in section 331.440.

[R60, §1468; C73, §1434; C97, §2298; C24, 27, 31, 35, 39, §**3580;** C46, 50, 54, 58, 62, 66, §229.40; C71, 73, 75, §229.40, 229.44; C77, §229.1, 229.44; C79, 81, §229.1; 82 Acts, ch 1100, §7]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1323, §2; 85 Acts, ch 21, §35; 87 Acts, ch 90, §1; 89 Acts, ch 275, §1; 95 Acts, ch 24, §1; 96 Acts, ch 1035, §12; 96 Acts, ch 1129, §57, 113; 96 Acts, ch 1183, §18; 97 Acts, ch 169, §15; 2000 Acts, ch 1112, §37; 2002 Acts, ch 1119, §107

Subsection 8 amended

229.1A Legislative intent.

As mental illness is often a continuing condition which is subject to wide and unpredictable changes in condition and fluctuations in reoccurrence and remission, this chapter shall be liberally construed to give recognition to these medical facts.

89 Acts, ch 275, §2

229.1B Single entry point process.

Notwithstanding any provision of this chapter to the contrary, any person whose hospitalization expenses are payable in whole or in part by a county shall be subject to all requirements of the single entry point process.

96 Acts, ch 1183, §19

229.2 Application for voluntary admission — authority to receive voluntary patients.

1. An application for admission to a public or private hospital for observation, diagnosis, care, and treatment as a voluntary patient may be made by any person who is mentally ill or has symptoms of mental illness.

In the case of a minor, the parent, guardian, or custodian may make application for admission of the minor as a voluntary patient.

a. Upon receipt of an application for voluntary admission of a minor, the chief medical officer shall provide separate prescreening interviews and consultations with the parent, guardian or custodian and the minor to assess the family environment and the appropriateness of the application for admission.

b. During the interview and consultation the chief medical officer shall inform the minor orally and in writing that the minor has a right to object to the admission. If the chief medical officer of the hospital to which application is made determines that the admission is appropriate but the minor objects to the admission, the parent, guardian or custodian must petition the juvenile court for approval of the admission before the minor is actually admitted.

c. As soon as is practicable after the filing of a petition for juvenile court approval of the admission of the minor, the juvenile court shall determine whether the minor has an attorney to represent the minor in the hospitalization proceeding, and if not, the court shall assign to the minor an attorney. If the minor is financially unable to pay for an attorney, the attorney shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

d. The juvenile court shall determine whether the admission is in the best interest of the minor and is consistent with the minor's rights.

e. The juvenile court shall order hospitalization of a minor, over the minor's objections, only after a hearing in which it is shown by clear and convincing evidence that:

(1) The minor needs and will substantially benefit from treatment.

(2) No other setting which involves less restriction of the minor's liberties is feasible for the purposes of treatment.

f. Upon approval of the admission of a minor over the minor's objections, the juvenile court shall appoint an individual to act as an advocate representing the interests of the minor in the same manner as an advocate representing the interests of patients involuntarily hospitalized pursuant to section 229.19.

2. Upon receiving an application for admission as a voluntary patient, made pursuant to subsection 1:

a. The chief medical officer of a public hospital shall receive and may admit the person whose admission is sought, subject in cases other than medical emergencies to availability of suitable accommodations and to the provisions of sections 229.41 and 229.42.

b. The chief medical officer of a private hospital may receive and may admit the person whose

admission is sought.

[R60, §1480; C73, §1399; C97, §2264; C24, 27, 31, 35, 39, §**3544;** C46, §229.1; C50, 54, 58, 62, 66, 71, 73, 75, §229.1, 229.41; C77, 79, 81, §229.2]

87 Acts, ch 90, §2; 99 Acts, ch 135, §17

229.2A Dual filings.

An application for involuntary hospitalization of a respondent under this chapter may be filed contemporaneously with an application for involuntary commitment or treatment of the respondent under chapter 125.

98 Acts, ch 1181, §22

229.3 Discharge of voluntary patients.

Any voluntary patient who has recovered, or whose hospitalization the chief medical officer of the hospital determines is no longer advisable, shall be discharged. Any voluntary patient may be discharged if to do so would in the judgment of the chief medical officer contribute to the most effective use of the hospital in the care and treatment of that patient and of other persons with mental illness.

[C77, 79, 81, §229.3]

96 Acts, ch 1129, §113

229.4 Right to release on application.

A voluntary patient who requests release or whose release is requested, in writing, by the patient's legal guardian, parent, spouse or adult next of kin shall be released from the hospital forthwith, except that:

1. If the patient was admitted on the patient's own application and the request for release is made by some other person, release may be conditioned upon the agreement of the patient.

2. If the patient is a minor who was admitted on the application of the patient's parent, guardian or custodian pursuant to section 229.2, subsection 1, the patient's release prior to becoming eighteen years of age may be conditioned upon the consent of the parent, guardian or custodian, or upon the approval of the juvenile court if the admission was approved by the juvenile court; and

3. If the chief medical officer of the hospital, not later than the end of the next secular day on which the office of the clerk of the district court for the county in which the hospital is located is open and which follows the submission of the written request for release of the patient, files with that clerk a certification that in the chief medical officer's opinion the patient is seriously mentally impaired, the release may be postponed for the period of time the court determines is necessary to permit commencement of judicial procedure for involuntary hospitalization. That period of time may not exceed five days, exclusive of days on which the clerk's office is not open unless the period of time is extended by order of a district court judge for good cause shown. Until disposition of the application for involuntary hospitalization of the patient, if one is timely filed, the chief medical officer may detain the patient in the hospital and may provide treatment which is necessary to preserve the patient's life, or to appropriately control behavior by the patient which is likely to result in physical injury to the patient or to others if allowed to continue, but may not otherwise provide treatment to the patient without the patient's consent.

[C50, 54, 58, 62, 66, 71, 73, 75, §229.41; C77, 79, 81, §229.4]

229.5 Departure without notice.

If a voluntary patient departs from the hospital without notice, and in the opinion of the chief medical officer the patient is seriously mentally impaired, the chief medical officer may file an application for involuntary hospitalization of the departed voluntary patient, and request that an order for immediate custody be entered by the court pursuant to section 229.11.

[C77, 79, 81, §229.5]

229.6 Application for order of involuntary hospitalization.

Proceedings for the involuntary hospitalization of an individual may be commenced by any interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located, or which is the respondent's place of residence. The clerk, or the clerk's designee, shall assist the applicant in completing the application. The application shall:

1. State the applicant's belief that the respondent is seriously mentally impaired.

2. State any other pertinent facts.

3. Be accompanied by:

a. A written statement of a licensed physician in support of the application; or

b. One or more supporting affidavits otherwise corroborating the application; or

c. Corroborative information obtained and reduced to writing by the clerk or the clerk's designee, but only when circumstances make it infeasible to comply with, or when the clerk considers it appropriate to supplement the information supplied pursuant to, either paragraph *"a"* or paragraph *"b"* of this subsection.

[R60, §1480; C73, §1399; C97, §2264; C24, 27, 31, 35, 39, §**3544;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.1; C77, 79, 81, §229.6]

Summary of involuntary commitment procedures available from clerk; see §229.45

229.6A Hospitalization of minors — jurisdiction — due process.

1. Notwithstanding section 229.11, the juvenile court has exclusive original jurisdiction in proceedings concerning a minor for whom an application for involuntary admission is filed under section 229.6 or for whom an application for volun-

tary admission is made under section 229.2, subsection 1, to which the minor objects. In proceedings under this chapter concerning a minor, notwithstanding section 229.11, the term *"court"*, *"judge"*, or *"clerk"* means the juvenile court, judge, or clerk.

2. The procedural requirements of this chapter are applicable to minors involved in hospitalization proceedings pursuant to subsection 1 and placement proceedings pursuant to section 229.14A.

3. It is the intent of this chapter that when a minor is involuntarily or voluntarily hospitalized or hospitalized with juvenile court approval over the minor's objection the minor's family shall be included in counseling sessions offered during the minor's stay in a hospital when feasible. Prior to the discharge of the minor the juvenile court may, after a hearing, order that the minor's family be evaluated and therapy ordered if necessary to facilitate the return of the minor to the family setting.

87 Acts, ch 90, §3; 92 Acts, ch 1124, §2; 2001 Acts, ch 155, §29

229.7 Service of notice upon respondent.

Upon the filing of an application for involuntary hospitalization, the clerk shall docket the case and immediately notify a district court judge, district associate judge, or magistrate who is admitted to the practice of law in this state, who shall review the application and accompanying documentation. If the application is adequate as to form, the court may set a time and place for a hearing on the application, if feasible, but the hearing shall not be held less than forty-eight hours after notice to the respondent unless the respondent waives such minimum prior notice requirement. The court shall direct the clerk to send copies of the application and supporting documentation, together with a notice informing the respondent of the procedures required by this chapter, to the sheriff or the sheriff's deputy for immediate service upon the respondent. If the respondent is taken into custody under section 229.11, service of the application, documentation and notice upon the respondent shall be made at the time the respondent is taken into custody.

[R60, §1480; C73, §1400; C97, §2265; C24, 27, 31, 35, 39, §**3545;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.2; C77, 79, 81, §229.7]

91 Acts, ch 108, §4

229.8 Procedure after application is filed.

As soon as practicable after the filing of an application for involuntary hospitalization, the court shall:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the hospitalization proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting one. In accordance with those determinations, the court shall if necessary allow the respondent to select, or shall assign to the respondent, an attorney. If the respondent is financially unable to pay an attorney, the attorney shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

2. Cause copies of the application and supporting documentation to be sent to the county attorney or the county attorney's attorney-designate for review.

3. Issue a written order which shall:

a. If not previously done, set a time and place for a hospitalization hearing, which shall be at the earliest practicable time not less than forty-eight hours after notice to the respondent, unless the respondent waives such minimum prior notice requirement; and

b. Order an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report on the examination to the court as required by section 229.10.

[C73, §1400; C97, §2265; C24, 27, 31, 35, 39, §**3548, 3549;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.5, 229.6; C77, 79, 81, §229.8]

99 Acts, ch 135, §18

229.9 Respondent's attorney informed.

The court shall direct the clerk to furnish at once to the respondent's attorney copies of the application for involuntary hospitalization of the respondent and the supporting documentation, and of the court's order issued pursuant to section 229.8, subsection 3. If the respondent is taken into custody under section 229.11, the attorney shall also be advised of that fact. The respondent's attorney shall represent the respondent at all stages of the proceedings, and shall attend the hospitalization hearing.

[C77, 79, 81, §229.9]

229.9A Advocate informed.

The court shall direct the clerk to furnish the advocate of the respondent's county of legal settlement with a copy of application and any order issued pursuant to section 229.8, subsection 3. The advocate may attend the hospitalization hearing of any respondent for whom the advocate has received notice of a hospitalization hearing.

94 Acts, ch 1027, §1

229.10 Physicians' examination — report.

1. An examination of the respondent shall be conducted by one or more licensed physicians, as required by the court's order, within a reasonable time. If the respondent is detained pursuant to section 229.11, subsection 2, the examination shall be conducted within twenty-four hours. If

the respondent is detained pursuant to section 229.11, subsection 1 or 3, the examination shall be conducted within forty-eight hours. If the respondent so desires, the respondent shall be entitled to a separate examination by a licensed physician of the respondent's own choice. The reasonable cost of such separate examination shall, if the respondent lacks sufficient funds to pay the cost, be paid from county funds upon order of the court.

Any licensed physician conducting an examination pursuant to this section may consult with or request the participation in the examination of any qualified mental health professional, and may include with or attach to the written report of the examination any findings or observations by any qualified mental health professional who has been so consulted or has so participated in the examination.

If the respondent is not taken into custody under section 229.11, but the court is subsequently informed that the respondent has declined to be examined by the licensed physician or physicians pursuant to the court order, the court may order such limited detention of the respondent as is necessary to facilitate the examination of the respondent by the licensed physician or physicians.

2. A written report of the examination by the court-designated physician or physicians shall be filed with the clerk prior to the time set for hearing. A written report of any examination by a physician chosen by the respondent may be similarly filed. The clerk shall immediately:

a. Cause the report or reports to be shown to the judge who issued the order; and

b. Cause the respondent's attorney to receive a copy of the report of the court-designated physician or physicians.

3. If the report of the court-designated physician or physicians is to the effect that the individual is not seriously mentally impaired, the court may without taking further action terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of the court-designated physician or physicians is to the effect that the respondent is seriously mentally impaired, the court shall schedule a hearing on the application as soon as possible. The hearing shall be held not more than forty-eight hours after the report is filed, excluding Saturdays, Sundays and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exist for delaying the hearing.

[C77, 79, 81, §229.10]

229.11 Judge may order immediate custody.

If the applicant requests that the respondent be taken into immediate custody and the judge, upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent has a serious mental impairment and is likely to injure the respondent or other persons if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody by the sheriff or the sheriff's deputy and be detained until the hospitalization hearing. The hospitalization hearing shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next succeeding business day. If the expenses of a respondent are payable in whole or in part by a county, for a placement in accordance with subsection 1, the judge shall give notice of the placement to the single entry point process, and for a placement in accordance with subsection 2 or 3, the judge shall order the placement in a hospital or facility designated through the single entry point process. The judge may order the respondent detained for the period of time until the hearing is held, and no longer, in accordance with subsection 1 if possible, and if not then in accordance with subsection 2 or, only if neither of these alternatives is available, in accordance with subsection 3. Detention may be:

1. In the custody of a relative, friend or other suitable person who is willing to accept responsibility for supervision of the respondent, and the respondent may be placed under such reasonable restrictions as the judge may order including, but not limited to, restrictions on or a prohibition of any expenditure, encumbrance or disposition of the respondent's funds or property; or

2. In a suitable hospital the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered and may provide treatment which is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to the respondent or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or

3. In the nearest facility in the community which is licensed to care for persons with mental illness or substance abuse, provided that detention in a jail or other facility intended for confinement of those accused or convicted of crime shall not be ordered.

The clerk shall furnish copies of any orders to the respondent and to the applicant if the applicant files a written waiver signed by the respondent.

[C77, 79, 81, §229.11]

89 Acts, ch 275, §3; 92 Acts, ch 1072, §3; 92 Acts, ch 1165, §2; 96 Acts, ch 1183, §20

229.12 Hearing procedure.

1. At the hospitalization hearing, evidence in support of the contentions made in the application

shall be presented by the county attorney. During the hearing the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The respondent has the right to be present at the hearing. If the respondent exercises that right and has been medicated within twelve hours, or such longer period of time as the court may designate, prior to the beginning of the hearing or an adjourned session thereof, the judge shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

2. All persons not necessary for the conduct of the proceeding shall be excluded, except that the court may admit persons having a legitimate interest in the proceeding and shall permit the advocate from the respondent's county of legal settlement to attend the hearing. Upon motion of the county attorney, the judge may exclude the respondent from the hearing during the testimony of any particular witness if the judge determines that witness's testimony is likely to cause the respondent severe emotional trauma.

3. The respondent's welfare shall be paramount and the hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, but consistent therewith the issue shall be tried as a civil matter. Such discovery as is permitted under the Iowa rules of civil procedure shall be available to the respondent. The court shall receive all relevant and material evidence which may be offered and need not be bound by the rules of evidence. There shall be a presumption in favor of the respondent, and the burden of evidence in support of the contentions made in the application shall be upon the applicant. If upon completion of the hearing the court finds that the contention that the respondent is seriously mentally impaired has not been sustained by clear and convincing evidence, it shall deny the application and terminate the proceeding.

4. If the respondent is not taken into custody under section 229.11, but the court subsequently finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order such limited detention of the respondent as is authorized by section 229.11 and is necessary to insure that the respondent will not depart from the jurisdiction of the court without the court's approval until the proceeding relative to the respondent has been concluded.

5. The clerk shall furnish copies of any orders to the respondent and to the applicant if the applicant files a written waiver signed by the respondent.

[R60, §1480; C73, §1400; C97, §2265; C24, 27, 31, 35, 39, §**3547**; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.4; C77, 79, 81, §229.12]

89 Acts, ch 275, §4; 94 Acts, ch 1027, §2

229.13 Evaluation order — treatment — unauthorized departure or failure to appear.

1. If upon completion of the hospitalization hearing the court finds by clear and convincing evidence that the respondent has a serious mental impairment, the court shall order the respondent committed as expeditiously as possible for a complete psychiatric evaluation and appropriate treatment as follows:

a. The court shall order a respondent whose expenses are payable in whole or in part by a county placed under the care of an appropriate hospital or facility designated through the single entry point process on an inpatient or outpatient basis.

b. The court shall order any other respondent placed under the care of an appropriate hospital or facility licensed to care for persons with mental illness or substance abuse on an inpatient or outpatient basis.

2. The court shall provide notice to the respondent and the respondent's attorney of the placement order under subsection 1. The court shall advise the respondent and the respondent's attorney that the respondent has a right to request a placement hearing held in accordance with the requirements of section 229.14A.

3. If the respondent is ordered at a hearing to undergo outpatient treatment, the outpatient treatment provider must be notified and agree to provide the treatment prior to placement of the respondent under the treatment provider's care.

4. The court shall furnish to the chief medical officer of the hospital or facility at the time the respondent arrives at the hospital or facility for inpatient or outpatient treatment a written finding of fact setting forth the evidence on which the finding is based. If the respondent is ordered to undergo outpatient treatment, the order shall also require the respondent to cooperate with the treatment provider and comply with the course of treatment.

5. The chief medical officer of the hospital or facility at which the respondent is placed shall report to the court no more than fifteen days after the respondent is placed, making a recommendation for disposition of the matter. An extension of time may be granted, not to exceed seven days upon a showing of cause. A copy of the report shall be sent to the respondent's attorney, who may contest the need for an extension of time if one is requested. An extension of time shall be granted upon request unless the request is contested, in which case the court shall make such inquiry as it deems appropriate and may either order the respondent's release from the hospital or facility or grant an extension of time for psychiatric evaluation. If the chief medical officer fails to report to the court within fifteen days after the individual is placed under the care of the hospital or facility,

and an extension of time has not been requested, the chief medical officer is guilty of contempt and shall be punished under chapter 665. The court shall order a rehearing on the application to determine whether the respondent should continue to be detained at or placed under the care of the facility.

6. If, after placement of a respondent in or under the care of a hospital or other suitable facility for inpatient treatment, the respondent departs from the hospital or facility or fails to appear for treatment as ordered without prior proper authorization from the chief medical officer, upon receipt of notification of the respondent's departure or failure to appear by the chief medical officer, a peace officer of the state shall without further order of the court exercise all due diligence to take the respondent into protective custody and return the respondent to the hospital or facility.

[R60, §1479; C73, §1401; C97, §2266; C24, 27, 31, 35, 39, §**3552, 3553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.9, 229.10; C77, 79, 81, §229.13]

90 Acts, ch 1020, §3; 91 Acts, ch 108, §5; 92 Acts, ch 1165, §3; 96 Acts, ch 1183, §21; 2001 Acts, ch 155, §30

229.14 Chief medical officer's report.

1. The chief medical officer's report to the court on the psychiatric evaluation of the respondent shall be made not later than the expiration of the time specified in section 229.13. At least two copies of the report shall be filed with the clerk, who shall dispose of them in the manner prescribed by section 229.10, subsection 2. The report shall state one of the four following alternative findings:

a. That the respondent does not, as of the date of the report, require further treatment for serious mental impairment. If the report so states, the court shall order the respondent's immediate release from involuntary hospitalization and terminate the proceedings.

b. That the respondent is seriously mentally impaired and in need of full-time custody, care and inpatient treatment in a hospital, and is considered likely to benefit from treatment. The report shall include the chief medical officer's recommendation for further treatment.

c. That the respondent is seriously mentally impaired and in need of treatment, but does not require full-time hospitalization. If the report so states, it shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis.

d. The respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further inpatient treatment in a hospital. The report shall include the chief medical officer's recommendation for an appropriate alternative placement for the respondent.

2. Following receipt of the chief medical officer's report under subsection 1, paragraph *"b"*, *"c"*, or *"d"*, the court shall issue an order for appropriate treatment as follows:

a. For a respondent whose expenses are payable in whole or in part by a county, placement as designated through the single entry point process in the care of an appropriate hospital or facility on an inpatient or outpatient basis, or other appropriate treatment, or in an appropriate alternative placement.

b. For any other respondent, placement in the care of an appropriate hospital or facility on an inpatient or outpatient basis, or other appropriate treatment, or an appropriate alternative placement.

c. For a respondent who is an inmate in the custody of the department of corrections, the court may order the respondent to receive mental health services in a correctional program.

d. If the court orders treatment of the respondent on an outpatient or other appropriate basis as described in the chief medical officer's report pursuant to subsection 1, paragraph *"c"*, the order shall provide that, should the respondent fail or refuse to submit to treatment in accordance with the court's order, the court may order that the respondent be taken into immediate custody as provided by section 229.11 and, following notice and hearing held in accordance with the procedures of section 229.12, may order the respondent treated on an inpatient basis requiring full-time custody, care, and treatment in a hospital until such time as the chief medical officer reports that the respondent does not require further treatment for serious mental impairment or has indicated the respondent is willing to submit to treatment on another basis as ordered by the court. If a patient is transferred for treatment to another provider under this paragraph, the treatment provider who will be providing the outpatient or other appropriate treatment shall be provided with copies of relevant court orders by the former treatment provider.

[C77, 79, 81, §229.14; 82 Acts, ch 1228, §1]

90 Acts, ch 1020, §4; 91 Acts, ch 219, §2; 92 Acts, ch 1165, §4; 2001 Acts, ch 155, §31; 2002 Acts, ch 1119, §32

Subsection 2, paragraph d amended

229.14A Placement order — notice and hearing.

1. With respect to a chief medical officer's report made pursuant to section 229.14, subsection 1, paragraph *"b"*, *"c"*, or *"d"*, or any other provision of this chapter related to involuntary commitment for which the court issues a placement order or a transfer of placement is authorized, the court

shall provide notice to the respondent and the respondent's attorney or mental health advocate pursuant to section 229.19 concerning the placement order and the respondent's right to request a placement hearing to determine if the order for placement or transfer of placement is appropriate.

2. The notice shall provide that a request for a placement hearing must be in writing and filed with the clerk within seven days of issuance of the placement order.

3. A request for a placement hearing may be signed by the respondent, the respondent's next friend, guardian, or attorney.

4. The court, on its own motion, may order a placement hearing to be held.

5. *a.* A placement hearing shall be held no sooner than four days and no later than seven days after the request for the placement hearing is filed unless otherwise agreed to by the parties.

b. The respondent may be transferred to the placement designated by the court's placement order and receive treatment unless a request for hearing is filed prior to the transfer. If the request for a placement hearing is filed prior to the transfer, the court shall determine where the respondent shall be detained and treated until the date of the hearing.

c. If the respondent's attorney has withdrawn pursuant to section 229.19, the court shall appoint an attorney for the respondent in the manner described in section 229.8, subsection 1.

6. Time periods shall be calculated for the purposes of this section excluding weekends and official holidays.

7. If a respondent's expenses are payable in whole or in part by a county through the single entry point process, notice of a placement hearing shall be provided to the county attorney and the county's single entry point process administrator. At the hearing, the county may present evidence regarding appropriate placement.

8. In a placement hearing, the court shall determine a placement for the respondent in accordance with the requirements of section 229.23, taking into consideration the evidence presented by all the parties.

9. A placement made pursuant to an order entered under section 229.13 or 229.14 or this section shall be considered to be authorized through the single entry point process.

2001 Acts, ch 155, §33, 40

Former §229.14A transferred to §229.14B pursuant to directive in 2001 Acts, ch 155, §40

229.14B Escape from custody.

A person who is placed in a hospital or other suitable facility for evaluation under section 229.13 or who is required to remain hospitalized for treatment under section 229.14 shall remain at that hospital or facility unless discharged or otherwise permitted to leave by the court or the chief medical officer of the hospital or facility. If a person placed at a hospital or facility or required to remain at a hospital or facility leaves the facility without permission or without having been discharged, the chief medical officer may notify the sheriff of the person's absence and the sheriff shall take the person into custody and return the person promptly to the hospital or facility.

92 Acts, ch 1072, §4
C93, §229.14A
2001 Acts, ch 155, §32, 40
CS2001, §229.14B

229.15 Periodic reports required.

1. Not more than thirty days after entry of an order for continued hospitalization of a patient under section 229.14, subsection 1, paragraph *"b"*, and thereafter at successive intervals of not more than sixty days continuing so long as involuntary hospitalization of the patient continues, the chief medical officer of the hospital shall report to the court which entered the order. The report shall be submitted in the manner required by section 229.14, shall state whether the patient's condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will be required to remain at the hospital. The chief medical officer may at any time report to the court a finding as stated in section 229.14, subsection 1, and the court shall act upon the finding as required by section 229.14, subsection 2.

2. Not more than sixty days after the entry of a court order for treatment of a patient pursuant to a report issued under section 229.14, subsection 1, paragraph *"c"*, and thereafter at successive intervals as ordered by the court but not to exceed ninety days so long as that court order remains in effect, the medical director of the facility treating the patient shall report to the court which entered the order. The report shall state whether the patient's condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will require treatment by the facility. If at any time the patient without good cause fails or refuses to submit to treatment as ordered by the court, the medical director shall at once so notify the court, which shall order the patient hospitalized as provided by section 229.14, subsection 2, paragraph *"d"*, unless the court finds that the failure or refusal was with good cause and that the patient is willing to receive treatment as provided in the court's order, or in a revised order if the court sees fit to enter one. If at any time the medical director reports to the court that in the director's opinion the patient requires full-time custody, care and treatment in a hospital, and the patient is willing to be admitted voluntarily to the hospital for these purposes, the court may enter an order approving hospitalization for appropriate treatment upon consultation with the chief medical officer of the hospital in which the patient is to be hospitalized. If the pa-

tient is unwilling to be admitted voluntarily to the hospital, the procedure for determining involuntary hospitalization, as set out in section 229.14, subsection 2, paragraph *"d"*, shall be followed.

3. When a patient has been placed in an alternative facility other than a hospital pursuant to a report issued under section 229.14, subsection 1, paragraph *"d"*, a report on the patient's condition and prognosis shall be made to the court which placed the patient, at least once every six months, unless the court authorizes annual reports. If an evaluation of the patient is performed pursuant to section 227.2, subsection 4, a copy of the evaluation report shall be submitted to the court within fifteen days of the evaluation's completion. The court may in its discretion waive the requirement of an additional report between the annual evaluations. If the administrator exercises the authority to remove residents from a county care facility or other county or private institution under section 227.6, the administrator shall promptly notify each court which placed in that facility any resident so removed.

4. *a.* When in the opinion of the chief medical officer the best interest of a patient would be served by a convalescent or limited leave, the chief medical officer may authorize the leave and, if authorized, shall promptly report the leave to the court. When in the opinion of the chief medical officer the best interest of a patient would be served by a transfer to a different hospital for continued full-time custody, care, and treatment, the chief medical officer shall promptly send a report to the court. The court shall act upon the report in accordance with section 229.14A.

b. This subsection shall not be construed to add to or restrict the authority otherwise provided by law for transfer of patients or residents among various state institutions administered by the department of human services. If a patient is transferred under this subsection, the treatment provider to whom the patient is transferred shall be provided with copies of relevant court orders by the former treatment provider.

5. Upon receipt of any report required or authorized by this section the court shall furnish a copy to the patient's attorney, or alternatively to the advocate appointed as required by section 229.19. The court shall examine the report and take the action thereon which it deems appropriate. Should the court fail to receive any report required by this section or section 229.14 at the time the report is due, the court shall investigate the reason for the failure to report and take whatever action may be necessary in the matter.

[C77, 79, 81, §229.15; 81 Acts, ch 78, §20, 37; 82 Acts, ch 1228, §2]

83 Acts, ch 96, §157, 159; 92 Acts, ch 1165, §5; 2000 Acts, ch 1112, §38; 2001 Acts, ch 155, §34, 35

229.16 Discharge and termination of proceeding.

When the condition of a patient who is hospitalized pursuant to a report issued under section 229.14, subsection 1, paragraph *"b"*, or is receiving treatment pursuant to a report issued under section 229.14, subsection 1, paragraph *"c"*, or is in full-time care and custody pursuant to a report issued under section 229.14, subsection 1, paragraph *"d"*, is such that in the opinion of the chief medical officer the patient no longer requires treatment or care for serious mental impairment, the chief medical officer shall tentatively discharge the patient and immediately report that fact to the court which ordered the patient's hospitalization or care and custody. Upon receiving the report, the court shall issue an order confirming the patient's discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by regular mail to the hospital, the patient, and the applicant if the applicant has filed a written waiver signed by the patient.

[C77, 79, 81, §229.16]

89 Acts, ch 275, §5; 99 Acts, ch 144, §2; 2001 Acts, ch 155, §36

229.17 Status of respondent during appeal.

If a respondent appeals to the supreme court from a finding that the contention the respondent is seriously mentally impaired has been sustained, and the respondent was previously ordered taken into immediate custody under section 229.11 or has been hospitalized for psychiatric evaluation and appropriate treatment under section 229.13 before the court is informed of intent to appeal its finding, the respondent shall remain in custody as previously ordered by the court, the time limit stated in section 229.11 notwithstanding, or shall remain in the hospital subject to compliance by the hospital with sections 229.13 to 229.16, as the case may be, unless the supreme court orders otherwise. If a respondent appeals to the supreme court regarding a placement order, the respondent shall remain in placement unless the supreme court orders otherwise.

[C77, 79, 81, §229.17]

2001 Acts, ch 155, §37

229.18 Status of respondent if hospitalization is delayed.

When the court directs that a respondent who was previously ordered taken into immediate custody under section 229.11 be placed in a hospital

for psychiatric evaluation and appropriate treatment under section 229.13, and no suitable hospital can immediately admit the respondent, the respondent shall remain in custody as previously ordered by the court, the time limit stated in section 229.11 notwithstanding, until a suitable hospital can admit the respondent. The court shall take appropriate steps to expedite the admission of the respondent to a suitable hospital at the earliest feasible time.

[R60, §1436; C73, §1403; C97, §2271; S13, §2271; C24, 27, 31, 35, 39, §**3564;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.24; C77, 79, 81, §229.18]

229.19 Advocates — duties — compensation — state and county liability.

The district court in each county with a population of under three hundred thousand inhabitants and the board of supervisors in each county with a population of three hundred thousand or more inhabitants shall appoint an individual who has demonstrated by prior activities an informed concern for the welfare and rehabilitation of persons with mental illness, and who is not an officer or employee of the department of human services nor of any agency or facility providing care or treatment to persons with mental illness, to act as advocate representing the interests of patients involuntarily hospitalized by the court, in any matter relating to the patients' hospitalization or treatment under section 229.14 or 229.15. The court or, if the advocate is appointed by the county board of supervisors, the board shall assign the advocate appointed from a patient's county of legal settlement to represent the interests of the patient. If a patient has no county of legal settlement, the court or, if the advocate is appointed by the county board of supervisors, the board shall assign the advocate appointed from the county where the hospital or facility is located to represent the interests of the patient. The advocate's responsibility with respect to any patient shall begin at whatever time the attorney employed or appointed to represent that patient as respondent in hospitalization proceedings, conducted under sections 229.6 to 229.13, reports to the court that the attorney's services are no longer required and requests the court's approval to withdraw as counsel for that patient. However, if the patient is found to be seriously mentally impaired at the hospitalization hearing, the attorney representing the patient shall automatically be relieved of responsibility in the case and an advocate shall be assigned to the patient at the conclusion of the hearing unless the attorney indicates an intent to continue the attorney's services and the court so directs. If the court directs the attorney to remain on the case the attorney shall assume all the duties of an advocate. The clerk shall furnish the advocate with a copy of the court's order approving the withdrawal and shall inform the patient of the name of the patient's advocate. With regard to each patient whose interests the advocate is required to represent pursuant to this section, the advocate's duties shall include all of the following:

1. To review each report submitted pursuant to sections 229.14 and 229.15.
2. If the advocate is not an attorney, to advise the court at any time it appears that the services of an attorney are required to properly safeguard the patient's interests.
3. To make the advocate readily accessible to communications from the patient and to originate communications with the patient within five days of the patient's commitment.
4. To visit the patient within fifteen days of the patient's commitment and periodically thereafter.
5. To communicate with medical personnel treating the patient and to review the patient's medical records pursuant to section 229.25.
6. To file with the court quarterly reports, and additional reports as the advocate feels necessary or as required by the court, in a form prescribed by the court. The reports shall state what actions the advocate has taken with respect to each patient and the amount of time spent.

The hospital or facility to which a patient is committed shall grant all reasonable requests of the advocate to visit the patient, to communicate with medical personnel treating the patient and to review the patient's medical records pursuant to section 229.25. An advocate shall not disseminate information from a patient's medical records to any other person unless done for official purposes in connection with the advocate's duties pursuant to this chapter or when required by law.

The court or, if the advocate is appointed by the county board of supervisors, the board shall prescribe reasonable compensation for the services of the advocate. The compensation shall be based upon the reports filed by the advocate with the court. The advocate's compensation shall be paid by the county in which the court is located, either on order of the court or, if the advocate is appointed by the county board of supervisors, on the direction of the board. If the advocate is appointed by the court, the advocate is an employee of the state for purposes of chapter 669. If the advocate is appointed by the county board of supervisors, the advocate is an employee of the county for purposes of chapter 670. If the patient or the person who is legally liable for the patient's support is not indigent, the board shall recover the costs of compensating the advocate from that person. If that person has an income level as determined pursuant to section 815.9 greater than one hundred percent but not more than one hundred fifty percent of the poverty guidelines, at least one hundred dollars of the advocate's compensation shall be recovered in the manner prescribed by the county board of supervisors. If that person has an income level as determined pursuant to section 815.9 greater than one hundred fifty percent of the poverty guide-

lines, at least two hundred dollars of the advocate's compensation shall be recovered in substantially the same manner prescribed by the county board of supervisors as provided in section 815.7.

[C77, 79, 81, §229.19]

83 Acts, ch 96, §157, 159; 83 Acts, ch 123, §85, 209; 85 Acts, ch 62, §1; 87 Acts, ch 57, §1; 93 Acts, ch 83, §1; 94 Acts, ch 1173, §10; 96 Acts, ch 1129, §113; 99 Acts, ch 135, §19

229.20 Respondents charged with or convicted of crime. Repealed by 84 Acts, ch 1323, § 7.

229.21 Judicial hospitalization referee — appeals to district court.

1. The chief judge of each judicial district may appoint at least one judicial hospitalization referee for each county within the district. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall be chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the office. The referee shall hold office at the pleasure of the chief judge of the judicial district and receive compensation at a rate fixed by the supreme court. If the referee expects to be absent for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

2. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of chronic substance abusers under sections 125.75 to 125.94 is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge, district associate judge, or magistrate who is admitted to the practice of law in this state is accessible, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 125.77. The referee shall discharge all of the duties imposed upon the court by sections 229.7 to 229.22 or sections 125.75 to 125.94 in the proceeding so initiated. Subject to the provisions of subsection 4, orders issued by a referee, in discharge of duties imposed under this section, shall have the same force and effect as if ordered by a district judge. However, any commitment to a facility regulated and operated under chapter 135C, shall be in accordance with section 135C.23.

3. *a.* Any respondent with respect to whom the magistrate or judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a chronic substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 125.82, may appeal from the magistrate's or referee's finding to a judge of the district court by giving the clerk notice in writing, within ten days after the magistrate's or referee's finding is made, that an appeal is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian, or attorney.

b. An order of a magistrate or judicial hospitalization referee with a finding that the respondent is seriously mentally impaired or a chronic substance abuser shall include the following notice, located conspicuously on the face of the order:

"NOTE: The respondent may appeal from this order to a judge of the district court by giving written notice of the appeal to the clerk of the district court within ten days after the date of this order. The appeal may be signed by the respondent or by the respondent's next friend, guardian, or attorney. For a more complete description of the respondent's appeal rights, consult section 229.21 of the Code of Iowa or an attorney."

c. When appealed, the matter shall stand for trial de novo. Upon appeal, the court shall schedule a hospitalization or commitment hearing before a district judge at the earliest practicable time.

d. Any respondent with respect to whom the magistrate or judicial hospitalization referee has held a placement hearing and has entered a placement order may appeal the order to a judge of the district court. The request for appeal must be given to the clerk in writing within ten days of the entry of the magistrate's or referee's order. The request for appeal shall be signed by the respondent, or the respondent's next friend, guardian, or attorney.

4. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, the appellant shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11 or section 125.81, in which case the appellant shall be detained as provided in that section until the hospitalization or commitment hearing before the district judge. If the appellant is in the custody of a hospital or facility at the time of service of the notice of appeal, the appellant shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill or a substance abuser. In that case, the appellant shall remain in custody of the hospital or facility until the hospitalization or commitment hearing before the district court.

5. The hospitalization or commitment hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate

order entered, as prescribed by sections 229.12 and 229.13 or sections 125.82 and 125.83. If the judge orders the appellant hospitalized or committed for a complete psychiatric or substance abuse evaluation, jurisdiction of the matter shall revert to the judicial hospitalization referee.

[C97, §2267, 2268; C24, 27, 31, 35, 39, §**3560, 3561;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.17, 229.18; C77, 79, 81, §229.21; 82 Acts, ch 1212, §27]

85 Acts, ch 195, §25; 87 Acts, ch 190, §2; 90 Acts, ch 1085, §20; 91 Acts, ch 108, §6; 92 Acts, ch 1165, §6; 98 Acts, ch 1181, §23; 99 Acts, ch 144, §3, 4; 2001 Acts, ch 155, §38

229.22 Hospitalization — emergency procedure.

1. The procedure prescribed by this section shall not be used unless it appears that a person should be immediately detained due to serious mental impairment, but that person cannot be immediately detained by the procedure prescribed in sections 229.6 and 229.11 because there is no means of immediate access to the district court.

2. In the circumstances described in subsection 1, any peace officer who has reasonable grounds to believe that a person is mentally ill, and because of that illness is likely to physically injure the person's self or others if not immediately detained, may without a warrant take or cause that person to be taken to the nearest available facility as defined in section 229.11, subsections 2 and 3. A person believed mentally ill, and likely to injure the person's self or others if not immediately detained, may be delivered to a hospital by someone other than a peace officer. Upon delivery of the person believed mentally ill to the hospital, the chief medical officer may order treatment of that person, including chemotherapy, but only to the extent necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The peace officer who took the person into custody, or other party who brought the person to the hospital, shall describe the circumstances of the matter to the chief medical officer. If the chief medical officer finds that there is reason to believe that the person is seriously mentally impaired, and because of that impairment is likely to physically injure the person's self or others if not immediately detained, the chief medical officer shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. The magistrate shall, based upon the circumstances described by the chief medical officer, give the chief medical officer verbal instructions either directing that the person be released forthwith or authorizing the person's continued detention at that facility. In the latter case, the magistrate shall:

a. By the close of business on the next working day, file with the clerk a written report stating the substance of the information on the basis of which the person's continued detention was ordered; and

b. Proceed to the facility where the person is being detained within twenty-four hours of giving instructions that the person be detained.

3. Upon arrival at the hospital, the magistrate shall at once review the matter. Unless convinced upon initial inquiry that there are no grounds for further detention of the person, the magistrate shall in the manner prescribed by section 229.8, subsection 1 insure that the person has or is provided legal counsel at the earliest practicable time, and shall arrange for the counsel to be present, if practicable, before proceeding further under this section. If the magistrate finds upon review of the report prepared by the chief medical officer under subsection 2 of this section, and of such other information or evidence as the magistrate deems pertinent, that there is probable cause to believe that the person is seriously mentally impaired and because of that impairment is likely to physically injure the person's self or others if not detained, the magistrate shall enter a written order for the person to be detained in custody and, if the facility where the person is at that time is not an appropriate hospital, transported to an appropriate hospital. The magistrate's order shall state the circumstances under which the person was taken into custody or otherwise brought to a hospital and the grounds supporting the finding of probable cause to believe that the person is seriously mentally impaired and likely to physically injure the person's self or others if not immediately detained. The order shall be filed with the clerk of the district court in the county where it is anticipated that an application will be filed under section 229.6, and a certified copy of the order shall be delivered to the chief medical officer of the hospital where the person is detained, at the earliest practicable time.

4. The chief medical officer of the hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours from the time such order is dated, excluding Saturdays, Sundays and holidays, unless the order is sooner dismissed by a magistrate. The hospital may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is likely to result in physical injury to the person's self or others if allowed to continue, but may not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the hospital and released from custody not later than the expiration of that period, unless an application for the person's involuntary hospitalization is sooner filed with the clerk pursuant to section 229.6. The detention of any person by the procedure and not in excess of the period of time prescribed by this section shall not render the peace officer, physician or hospital so detaining that person liable in

a criminal or civil action for false arrest or false imprisonment if the peace officer, physician or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure the person's self or others if not immediately detained.

5. The cost of hospitalization at a public hospital of a person detained temporarily by the procedure prescribed in this section shall be paid in the same way as if the person had been admitted to the hospital by the procedure prescribed in sections 229.6 to 229.13.

[C77, 79, 81, §229.22]

95 Acts, ch 24, §2

229.23 Rights and privileges of hospitalized persons.

Every person who is hospitalized or detained under this chapter shall have the right to:

1. Prompt evaluation, necessary psychiatric services, and additional care and treatment as indicated by the patient's condition. A comprehensive, individualized treatment plan shall be timely developed following issuance of the court order requiring involuntary hospitalization. The plan shall be consistent with current standards appropriate to the facility to which the person has been committed and with currently accepted standards for psychiatric treatment of the patient's condition, including chemotherapy, psychotherapy, counseling and other modalities as may be appropriate.

2. The right to refuse treatment by shock therapy or chemotherapy, unless the use of these treatment modalities is specifically consented to by the patient's next of kin or guardian. The patient's right to refuse treatment by chemotherapy shall not apply during any period of custody authorized by section 229.4, subsection 3, section 229.11 or section 229.22, but this exception shall extend only to chemotherapy treatment which is, in the chief medical officer's judgment, necessary to preserve the patient's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The patient's right to refuse treatment by chemotherapy shall also not apply during any period of custody authorized by the court pursuant to section 229.13 or 229.14. In any other situation in which, in the chief medical officer's judgment, chemotherapy is appropriate for the patient but the patient refuses to consent thereto and there is no next of kin or guardian to give consent, the chief medical officer may request an order authorizing treatment of the patient by chemotherapy from the district court which ordered the patient's hospitalization.

3. In addition to protection of the person's constitutional rights, enjoyment of other legal, medical, religious, social, political, personal and working rights and privileges which the person would enjoy if the person were not so hospitalized or detained, so far as is possible consistent with effective treatment of that person and of the other patients of the hospital. If the patient's rights are restricted, the physician's direction to that effect shall be noted on the patient's record. The department of human services shall, in accordance with chapter 17A establish rules setting forth the specific rights and privileges to which persons so hospitalized or detained are entitled under this section, and the exceptions provided by section 17A.2, subsection 11, paragraphs *"a"* and *"k"*, shall not be applicable to the rules so established. The patient or the patient's next of kin or friend shall be advised of these rules and be provided a written copy upon the patient's admission to or arrival at the hospital.

[C77, 79, 81, §229.23]

83 Acts, ch 96, §157, 159; 89 Acts, ch 275, §6

229.24 Records of involuntary hospitalization proceeding to be confidential.

1. All papers and records pertaining to any involuntary hospitalization or application for involuntary hospitalization of any person under this chapter, whether part of the permanent record of the court or of a file in the department of human services, are subject to inspection only upon an order of the court for good cause shown. Nothing in this section shall prohibit a hospital from complying with the requirements of this chapter and of chapter 230 relative to financial responsibility for the cost of care and treatment provided a patient in that hospital, nor from properly billing any responsible relative or third-party payer for such care and treatment.

2. If authorized in writing by a person who has been the subject of any proceeding or report under sections 229.6 to 229.13 or section 229.22, or by the parent or guardian of that person, information regarding that person which is confidential under subsection 1 may be released to any designated person.

3. If all or part of the costs associated with hospitalization of an individual under this chapter are chargeable to a county of legal settlement, the clerk of the district court shall provide to the county of legal settlement and to the county in which the hospitalization order is entered, in a form prescribed by the mental health and developmental disabilities commission, the following information pertaining to the individual which would be confidential under subsection 1:

a. Administrative information, as defined in section 228.1.

b. An evaluation order under this chapter and the location of the individual's placement under the order.

c. A hospitalization or placement order under this chapter and the location of the individual's placement under the order.

d. The date, location, and disposition of any

hearing concerning the individual held under this chapter.

e. Any payment source available for the costs of the individual's care.

[C77, 79, 81, §229.24]

83 Acts, ch 96, §157, 159; 95 Acts, ch 120, §3; 96 Acts, ch 1183, §22; 2002 Acts, ch 1146, §4

Subsection 3, unnumbered paragraph 1 amended

229.25 Medical records to be confidential — exceptions.

The records maintained by a hospital or other facility relating to the examination, custody, care and treatment of any person in that hospital or facility pursuant to this chapter shall be confidential, except that the chief medical officer shall release appropriate information under any of the following circumstances:

1. The information is requested by a licensed physician, attorney or advocate who provides the chief medical officer with a written waiver signed by the person about whom the information is sought.

2. The information is sought by a court order.

3. The person who is hospitalized or that person's guardian, if the person is a minor or is not legally competent to do so, signs an informed consent to release information. Each signed consent shall designate specifically the person or agency to whom the information is to be sent, and the information may be sent only to that person or agency.

Such records may be released by the chief medical officer when requested for the purpose of research into the causes, incidence, nature and treatment of mental illness, however information shall not be provided in a way that discloses patients' names or which otherwise discloses any patient's identity.

When the chief medical officer deems it to be in the best interest of the patient and the patient's next of kin to do so, the chief medical officer may release appropriate information during a consultation which the hospital or facility shall arrange with the next of kin of a voluntary or involuntary patient, if requested by the patient's next of kin.

[C77, 79, 81, §229.25; 82 Acts, ch 1135, §1]

89 Acts, ch 275, §7

229.26 Exclusive procedure for involuntary hospitalization.

Sections 229.6 through 229.19 constitute the exclusive procedure for involuntary hospitalization of persons by reason of serious mental impairment in this state, except that this chapter does not negate the provisions of section 904.503 relating to transfer of prisoners with mental illness to state hospitals for persons with mental illness and does not apply to commitments of persons under chapter 812 or the rules of criminal procedure, Iowa court rules, or negate the provisions of section 232.51 relating to disposition of children with mental illness or mental retardation.

[C77, 79, 81, §229.26]

84 Acts, ch 1323, §3; 85 Acts, ch 21, §36; 87 Acts, ch 90, §4; 88 Acts, ch 1134, §45; 96 Acts, ch 1129, §58; 2002 Acts, ch 1119, §108

Section amended

229.27 Hospitalization not to equate with incompetency — procedure for finding incompetency due to mental illness.

1. Hospitalization of a person under this chapter, either voluntarily or involuntarily, does not constitute a finding of nor equate with nor raise a presumption of incompetency, nor cause the person so hospitalized to be deemed a person of unsound mind nor a person under legal disability for any purpose, including but not limited to any circumstances to which sections 6B.15, 447.7, 487.402, subsection 5, paragraph *"b"*, sections 487.705, 597.6, 600B.21, 614.8, 614.19, 614.22, 614.24, 614.27, and 633.244 are applicable.

2. The applicant may, in initiating a petition for involuntary hospitalization of a person under section 229.6 or at any subsequent time prior to conclusion of the involuntary hospitalization proceeding, also petition the court for a finding that the person is incompetent by reason of mental illness. The test of competence for the purpose of this section shall be whether the person possesses sufficient mind to understand in a reasonable manner the nature and effect of the act in which the person is engaged; the fact that a person is mentally ill and in need of treatment for that illness but because of the illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment does not necessarily mean that that person is incapable of transacting business on any subject.

3. A hearing limited to the question of the person's competence and conducted in substantially the manner prescribed in sections 633.552 to 633.556 shall be held when:

a. The court is petitioned or proposes upon its own motion to find incompetent by reason of mental illness a person whose involuntary hospitalization has been ordered under section 229.13 or 229.14, and who contends that the person is not incompetent; or

b. A person previously found incompetent by reason of mental illness under subsection 2 petitions the court for a finding that the person is no longer incompetent and, after notice to the applicant who initiated the petition for hospitalization of the person and to any other party as directed by the court, an objection is filed with the court. The court may order a hearing on its own motion before acting on a petition filed under this paragraph. A petition by a person for a finding that the person is no longer incompetent may be filed at any time without regard to whether the person is at that time hospitalized for treatment of mental illness.

4. Nothing in this chapter shall preclude use of any other procedure authorized by law for declaring any person legally incompetent for reasons which may include mental illness, without regard to whether that person is or has been hospitalized for treatment of mental illness.

[C77, 79, 81, §229.27; 82 Acts, ch 1103, §1109]

91 Acts, ch 93, §1; 96 Acts, ch 1034, §9; 98 Acts, ch 1181, §24

229.28 Hospitalization in certain federal facilities.

When a court finds that the contention that a respondent is seriously mentally impaired has been sustained or proposes to order continued hospitalization of any person, or an alternative placement, as described under section 229.14, subsection 1, paragraph *"b"* or *"d"*, and the court is furnished evidence that the respondent or patient is eligible for care and treatment in a facility operated by the veterans administration or another agency of the United States government and that the facility is willing to receive the respondent or patient, the court may so order. The respondent or patient, when so hospitalized or placed in a facility operated by the veterans administration or another agency of the United States government within or outside of this state, shall be subject to the rules of the veterans administration or other agency, but shall not thereby lose any procedural rights afforded the respondent or patient by this chapter. The chief officer of the facility shall have, with respect to the person so hospitalized or placed, the same powers and duties as the chief medical officer of a hospital in this state would have in regard to submission of reports to the court, retention of custody, transfer, convalescent leave or discharge. Jurisdiction is retained in the court to maintain surveillance of the person's treatment and care, and at any time to inquire into that person's mental condition and the need for continued hospitalization or care and custody.

[C27, 31, 35, §3562-b1; C39, §**3562.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.20; C77, 79, 81, §229.28]

2001 Acts, ch 155, §39

229.29 Transfer to certain federal facilities.

Upon receipt of a certificate stating that any person involuntarily hospitalized under this chapter is eligible for care and treatment in a facility operated by the veterans administration or another agency of the United States government which is willing to receive the person without charge to the state of Iowa or any county in the state, the chief medical officer may transfer the person to that facility. Upon so doing, the chief medical officer shall notify the court which ordered the person's hospitalization in the same manner as would be required in the case of a transfer under section 229.15, subsection 4, and the person transferred shall be entitled to the same rights as the person would have under that subsection. No person shall be transferred under this section who is confined pursuant to conviction of a public offense or whose hospitalization was ordered upon contention of incompetence to stand trial by reason of mental illness, without prior approval of the court which ordered that person's hospitalization.

[C27, 31, 35, §3562-b1; C39, §**3562.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.20; C77, 79, 81, §229.29]

229.30 Orders of courts in other states.

A judgment or order of hospitalization or commitment by a court of competent jurisdiction of another state or the District of Columbia, under which any person is hospitalized or placed in a facility operated by the veterans administration or another agency of the United States government, shall have the same force and effect with respect to that person while the person is in this state as the judgment or order would have if the person were in the jurisdiction of the court which issued it. That court shall be deemed to have retained jurisdiction of the person so hospitalized or placed for the purpose of inquiring into that person's mental condition and the need for continued hospitalization or care and custody, as do courts in this state under section 229.28. Consent is hereby given to the application of the law of the state or district in which is situated the court which issued the judgment or order as regards authority of the chief officer of any facility, operated in this state by the veterans administration or another agency of the United States government, to retain custody, transfer, place on convalescent leave or discharge the person so hospitalized or committed.

[C27, 31, 35, §3562-b1; C39, §**3562.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.20; C77, 79, 81, §229.30]

229.31 Commission of inquiry.

A sworn complaint, alleging that a named person is not seriously mentally impaired and is unjustly deprived of liberty in any hospital in the state, may be filed by any person with the clerk of the district court of the county in which such named person is so confined, or of the county in which such named person has a legal settlement, and thereupon a judge of said court shall appoint a commission of not more than three persons to inquire into the truth of said allegations. One of said commissioners shall be a physician and if additional commissioners are appointed, one of such commissioners shall be a lawyer.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §**3571;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.31]

229.32 Duty of commission.

Said commission shall at once proceed to the place where said person is confined and make a thorough and discreet examination for the purpose of determining the truth of said allegations and shall promptly report its findings to said judge in writing. Said report shall be accompanied by a written statement of the case signed by the chief medical officer of the hospital in which the person is confined.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §**3572;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.32]

229.33 Hearing.

If, on such report and statement, and the hearing of testimony if any is offered, the judge shall find that such person is not seriously mentally impaired, the judge shall order the person's discharge; if the contrary, the judge shall so state, and authorize the continued detention of the person, subject to all applicable requirements of this chapter.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §**3573;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.33]

97 Acts, ch 23, §17

229.34 Finding and order filed.

The finding and order of the judge, with the report and other papers, shall be filed in the office of the clerk of the court where the complaint was filed. Said clerk shall enter a memorandum thereof on the appropriate record, and forthwith notify the chief medical officer of the hospital of the finding and order of the judge, and the chief medical officer shall carry out the order.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §**3574;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.34]

229.35 Compensation — payment.

Said commissioners shall be entitled to their necessary expenses and a reasonable compensation, to be allowed by the judge, who shall certify the same to the director of revenue and finance who shall thereupon draw the proper warrants on any funds in the state treasury not otherwise appropriated. The applicant shall pay said costs and expenses if the judge shall so order on a finding that the complaint was filed without probable cause.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §**3575;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.35]

Appropriation limited for fiscal years beginning on or after July 1, 1993, see §8.59

229.36 Limitation on proceedings.

The proceeding authorized in sections 229.31 to 229.35, inclusive, shall not be had oftener than once in six months regarding the same person; nor regarding any patient within six months after the patient's admission to the hospital.

[C73, §1443; C97, §2305; C24, 27, 31, 35, 39, §**3576;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.36]

229.37 Habeas corpus.

All persons confined as seriously mentally impaired shall be entitled to the benefit of the writ of habeas corpus, and the question of serious mental impairment shall be decided at the hearing. If the judge shall decide that the person is seriously mentally impaired, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person is no longer seriously mentally impaired.

[R60, §1441; C73, §1444; C97, §2306; C24, 27, 31, 35, 39, §**3577;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.37]

Constitutional provision, Art. I, §13
Habeas corpus, chapter 663

229.38 Cruelty or official misconduct.

If any person having the care of a person with mental illness who has voluntarily entered a hospital or other facility for treatment or care, or who is responsible for psychiatric examination care, treatment, and maintenance of any person involuntarily hospitalized under sections 229.6 to 229.15, whether in a hospital or elsewhere, with or without proper authority, shall treat such patient with unnecessary severity, harshness, or cruelty, or in any way abuse the patient or if any person unlawfully detains or deprives of liberty any person with mental illness or any person who is alleged to have mental illness, or if any officer required by the provisions of this chapter and chapters 226 and 227, to perform any act shall willfully refuse or neglect to perform the same, the offending person shall, unless otherwise provided, be guilty of a serious misdemeanor.

[C73, §1415, 1416, 1440, 1445; C97, §2307; C24, 27, 31, 35, 39, §**3578;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.38]

96 Acts, ch 1129, §59

229.39 Status of persons hospitalized under former law.

1. Each person admitted or committed to a hospital for treatment of mental illness on or before December 31, 1975 who remained so hospitalized, or was on convalescent leave or was receiving care in another facility on transfer from such hospitalization, on or after January 1, 1976 shall be considered to have been hospitalized under this chapter, and its provisions shall apply to each such person on and after the effective date of this section, except as otherwise provided by subsection 3.

2. Hospitalization of a person for treatment of mental illness, either voluntary or involuntary, on or before December 31, 1975 does not constitute a

finding nor equate with nor raise a presumption of incompetency, nor cause the person hospitalized to be deemed a person of unsound mind nor a person under legal disability for any purpose, including but not limited to the circumstances enumerated in section 229.27, subsection 1. This subsection does not invalidate any specific declaration of incompetence of a person hospitalized if the declaration was made pursuant to a separate procedure authorized by law for that purpose, and did not result automatically from the person's hospitalization.

3. Where a person was hospitalized involuntarily for treatment of mental illness on or before December 31, 1975 and remained so hospitalized, or was on convalescent leave or was receiving care in another facility on transfer from such hospitalization, on or after January 1, 1976, but was subsequently discharged prior to July 1, 1978, this section shall not be construed to require:

a. The filing after July 1, 1978 of any report relative to that person's status which would have been required to be filed prior to said date if that person had initially been hospitalized under this chapter as amended by Acts of the Sixty-sixth General Assembly, 1975 Session, chapter 139, sections 1 to 30.

b. That legal proceedings be taken under this chapter, as so amended, to clarify the status of the person so hospitalized, unless that person or the district court considers such proceedings necessary in a particular case to appropriately conclude the matter.

[C79, 81, §229.39]

229.40 Rules for proceedings.

Proceedings under this chapter are subject to rules prescribed by the supreme court under section 602.4201.

[C79, 81, §229.40]

83 Acts, ch 186, §10053, 10201

Rules adopted by the Supreme Court are published in the compilation "Iowa Court Rules"

229.41 Voluntary admission.

Persons making application pursuant to section 229.2 on their own behalf or on behalf of another person who is under eighteen years of age, if the person whose admission is sought is received for observation and treatment on the application, shall be required to pay the costs of hospitalization at rates established by the administrator. The costs may be collected weekly in advance and shall be payable at the business office of the hospital. The collections shall be remitted to the department of human services monthly to be credited to the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.41]

2000 Acts, ch 1112, §39; 2001 Acts, ch 155, §21

229.42 Costs paid by county.

If a person wishing to make application for voluntary admission to a mental hospital established by chapter 226 is unable to pay the costs of hospitalization or those responsible for the person are unable to pay the costs, application for authorization of voluntary admission must be made through a single entry point process before application for admission is made to the hospital. The person's county of legal settlement shall be determined through the single entry point process and if the admission is approved through the single entry point process, the person's admission to a mental health hospital shall be authorized as a voluntary case. The authorization shall be issued on forms provided by the administrator. The costs of the hospitalization shall be paid by the county of legal settlement to the department of human services and credited to the general fund of the state, provided that the mental health hospital rendering the services has certified to the county auditor of the county of legal settlement the amount chargeable to the county and has sent a duplicate statement of the charges to the department of human services. A county shall not be billed for the cost of a patient unless the patient's admission is authorized through the single entry point process. The mental health institute and the county shall work together to locate appropriate alternative placements and services, and to educate patients and family members of patients regarding such alternatives.

All the provisions of chapter 230 shall apply to such voluntary patients so far as is applicable.

The provisions of this section and of section 229.41 shall apply to all voluntary inpatients or outpatients receiving mental health services either away from or at the institution.

If a county fails to pay the billed charges within forty-five days from the date the county auditor received the certification statement from the superintendent, the department of human services shall charge the delinquent county the penalty of one percent per month on and after forty-five days from the date the county received the certification statement until paid. The penalties received shall be credited to the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.42]

96 Acts, ch 1183, §23; 97 Acts, ch 169, §6; 98 Acts, ch 1218, §73; 2001 Acts, ch 155, §22; 2002 Acts, ch 1050, §21

Section amended

229.43 Nonresidents or no-settlement patients.

The administrator may place patients of mental health institutes who have no county of legal settlement, who are nonresidents, or whose legal settlement is unknown on convalescent leave to a private sponsor or in a health care facility licensed under chapter 135C, when in the opinion of the ad-

ministrator the placement is in the best interests of the patient and the state of Iowa. If the patient was involuntarily hospitalized, the district court which ordered hospitalization of the patient must be informed when the patient is placed on convalescent leave, as required by section 229.15, subsection 4.

[C24, 27, 31, 35, 39, §**3446;** C46, 50, 54, 58, 62, §222.36; C66, 71, 73, 75, 77, 79, 81, §229.43]

2000 Acts, ch 1112, §40

229.44 Venue.

1. Venue for hospitalization proceedings shall be in the county where the respondent is found, unless the matter is transferred pursuant to Iowa court rule 12.15 for the involuntary hospitalization of persons with mental illness, in which case venue shall be in the county where the matter is transferred for hearing.

2. After an order is entered pursuant to section 229.13 or 229.14, the court may transfer proceedings to the court of any county having venue at any further stage in the proceeding as follows:

a. When it appears that the best interests of the respondent or the convenience of the parties will be served by a transfer, the court may transfer the case to the court of the county of the respondent's residence.

b. When it appears that the best interests of the respondent or the convenience of the parties will be served by a transfer, the court may transfer the case to the court of the county where the respondent is found.

3. If a proceeding is transferred, the court shall contact the court in the county which is to be the recipient of the transfer before entering the order to transfer the case. The court shall then transfer the case by ordering a transfer of the matter to the recipient county, by ordering a continuance of the matter in the transferring county, and by forwarding to the clerk of the receiving court a certified copy of all papers filed, together with the order of transfer. The referee of the receiving court may accept the filings of the transferring court or may direct the filing of a new application and may hear the case anew.

92 Acts, ch 1165, §7; 96 Acts, ch 1079, §9; 96 Acts, ch 1129, §113

229.45 Provision of summary of procedures to applicant in involuntary commitment.

The department of human services, in consultation with the office of attorney general, shall develop a summary of the procedures involved in an involuntary commitment and information concerning the participation of an applicant in the proceedings. The summary shall be provided by the department, at the department's expense, to the clerks of the district court who shall make the summary available to all applicants prior to the filing of a verified application, or to any other person upon request, and who shall attach a copy of the summary to the notice of hearing which is served upon the respondent under section 125.77 or 229.7. The summary may include, but is not limited to, the following:

1. The statutory criteria for ordering that a person be involuntarily committed under chapter 125 or sections 229.11 and 229.13.

2. A description of the hearing process.

3. An explanation of the applicant's right to testify and examples of the kinds of relevant information which may be introduced at the hearing.

4. An explanation of the duties of the county attorney in civil commitment proceedings.

94 Acts, ch 1024, §1

229.46 through 229.49 Reserved.

229.50 through 229.53 Repealed by 82 Acts, ch 1212, § 28.

CHAPTER 229A

COMMITMENT OF SEXUALLY VIOLENT PREDATORS

Notice to victims of discharge of committed person, see §915.45

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229A.1 Legislative findings.

The general assembly finds that a small but extremely dangerous group of sexually violent predators exists which is made up of persons who do not have a mental disease or defect that renders them appropriate for involuntary treatment pursuant to the treatment provisions for mentally ill persons under chapter 229, since that chapter is intended to provide short-term treatment to persons with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 229, sexually violent predators generally have antisocial personality features that are unamenable to existing mental illness treatment modalities and that render them likely to engage in sexually violent behavior. The general assembly finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high and that the existing involuntary commitment procedure under chapter 229 is inadequate to address the risk these sexually violent predators pose to society.

The general assembly further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, because the treatment needs of this population are very long-term, and the treatment modalities for this population are very different from the traditional treatment modalities available in a prison setting or for persons appropriate for commitment under chapter 229. Therefore, the general assembly finds that a civil commitment procedure for the long-term care and treatment of the sexually violent predator is necessary. The procedures regarding sexually violent predators should reflect legitimate public safety concerns, while providing treatment services designed to benefit sexually violent predators who are civilly committed. The procedures should also reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs.

98 Acts, ch 1171, §1; 2002 Acts, ch 1139, §1, 27
Unnumbered paragraph 2 amended

229A.2 Definitions.

As used in this chapter:

1. *"Agency with jurisdiction"* means an agency which has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority, and includes but is not limited to the department of corrections, the department of human services, a judicial district department of correctional services, and the Iowa board of parole.

2. *"Appropriate secure facility"* means a state facility that is designed to confine but not necessarily to treat a sexually violent predator.

3. *"Discharge"* means an unconditional discharge from the sexually violent predator program. A person released from a secure facility into a transitional release program or released with or without supervision is not considered to be discharged.

4. *"Likely to engage in predatory acts of sexual violence"* means that the person more likely than not will engage in acts of a sexually violent nature. If a person is not confined at the time that a petition is filed, a person is *"likely to engage in predatory acts of sexual violence"* only if the person commits a recent overt act.

5. *"Mental abnormality"* means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others.

6. *"Predatory"* means acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.

7. *"Recent overt act"* means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

8. *"Safekeeper"* means a person who is confined in an appropriate secure facility pursuant to this chapter but who is not subject to an order of commitment pursuant to this chapter.

9. *"Sexually motivated"* means that one of the purposes for commission of a crime is the purpose

of sexual gratification of the perpetrator of the crime.

10. *"Sexually violent offense"* means:

a. A violation of any provision of chapter 709.

b. A violation of any of the following if the offense involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse:

(1) Murder as defined in section 707.1.

(2) Kidnapping as defined in section 710.1.

(3) Burglary as defined in section 713.1.

(4) Child endangerment under section 726.6, subsection 1, paragraph *"e"*.

c. Sexual exploitation of a minor in violation of section 728.12, subsection 1.

d. Pandering involving a minor in violation of section 725.3, subsection 2.

e. An offense involving an attempt or conspiracy to commit any offense referred to in this subsection.

f. An offense under prior law of this state or an offense committed in another jurisdiction which would constitute an equivalent offense under paragraphs *"a"* through *"e"*.

g. Any act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated.

11. *"Sexually violent predator"* means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.

12. *"Transitional release"* means a conditional release from a secure facility operated by the department of human services with the conditions of such release set by the court or the department of human services.

98 Acts, ch 1171, §2; 99 Acts, ch 61, §1, 14; 2002 Acts, ch 1139, §2, 27

NEW subsection 3 and former subsections 3 – 6 renumbered as 4 – 7
NEW subsection 8 and former subsections 7 – 9 renumbered as 9 – 11
NEW subsection 12

229A.3 Notice of discharge of sexually violent predator — immunity from liability — multidisciplinary team — prosecutor's review committee — assessment of person.

1. When it appears that a person who is confined may meet the definition of a sexually violent predator, the agency with jurisdiction shall give written notice to the attorney general and the multidisciplinary team established in subsection 4, no later than ninety days prior to any of the following events:

a. The anticipated discharge of a person who has been convicted of a sexually violent offense from total confinement, except that in the case of a person who is returned to prison for no more than ninety days as a result of revocation of parole, written notice shall be given as soon as practicable following the person's readmission to prison.

b. The discharge of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to chapter 812.

c. The discharge of a person who has been found not guilty by reason of insanity of a sexually violent offense.

2. If notice is given under subsection 1, the agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection 4, of both of the following:

a. The person's name, identifying factors, anticipated future residence, and offense history.

b. Documentation of any institutional evaluation and any treatment received.

3. The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection 4, members of the prosecutor's review committee appointed as provided in subsection 5, and individuals contracting, appointed, or volunteering to perform services under this section shall be immune from liability for any good-faith conduct under this section.

4. The director of the department of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection 1. The team, within thirty days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.

5. The attorney general shall appoint a prosecutor's review committee to review the records of each person referred to the attorney general pursuant to subsection 1. The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

98 Acts, ch 1171, §3

229A.4 Petition, time, contents.

1. If it appears that a person presently confined may be a sexually violent predator and the prosecutor's review committee has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition alleging that the person is a sexually violent predator and stating sufficient facts to support such an allegation.

2. A prosecuting attorney of the county in which the person was convicted or charged, or the attorney general if requested by the prosecuting attorney, may file a petition alleging that a person is a sexually violent predator and stating sufficient facts to support such an allegation, if it appears that a person who has committed a recent overt act meets any of the following criteria:

a. The person was convicted of a sexually violent offense and has been discharged after the completion of the sentence imposed for the offense.

b. The person was charged with, but was acquitted of, a sexually violent offense by reason of insanity and has been released from confinement or any supervision.

c. The person was charged with, but was found to be incompetent to stand trial for, a sexually violent offense and has been released from confinement or any supervision.

98 Acts, ch 1171, §4; 99 Acts, ch 61, §2, 14

229A.5 Person taken into custody, determination of probable cause, hearing, evaluation.

1. Upon filing of a petition under section 229A.4, the court shall make a preliminary determination as to whether probable cause exists to believe that the person named in the petition is a sexually violent predator. Upon a preliminary finding of probable cause, the court shall direct that the person named in the petition be taken into custody and that the person be served with a copy of the petition and any supporting documentation and notice of the procedures required by this chapter. If the person is in custody at the time of the filing of the petition, the court shall determine whether a transfer of the person to an appropriate secure facility is appropriate pending the outcome of the proceedings or whether the custody order should be delayed until the date of release of the person.

2. Within seventy-two hours after being taken into custody or being transferred to an appropriate secure facility, a hearing shall be held to determine whether probable cause exists to believe the detained person is a sexually violent predator. The hearing may be waived by the respondent. The hearing may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and if the respondent is not substantially prejudiced. At the probable cause hearing, the detained person shall have the following rights:

a. To be provided with prior notice of date, time, and location of the probable cause hearing.

b. To respond to the preliminary finding of probable cause.

c. To appear in person at the hearing.

d. To be represented by counsel.

e. To present evidence on the respondent's own behalf.

f. To cross-examine witnesses who testify against the respondent.

g. To view and copy all petitions and reports in the possession of the court.

3. At the hearing, the rules of evidence do not apply, and the state may rely solely upon the petition filed under subsection 1, but the state may also supplement the petition with additional documentary evidence or live testimony.

4. At the conclusion of the hearing, the court shall enter an order which does both of the following:

a. Verifies the respondent's identity.

b. Determines whether probable cause exists to believe that the respondent is a sexually violent predator.

5. If the court determines that probable cause does exist, the court shall direct that the respondent be transferred to an appropriate secure facility for an evaluation as to whether the respondent is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

98 Acts, ch 1171, §5; 99 Acts, ch 61, §3, 4, 14; 2002 Acts, ch 1139, §3, 27

Subsection 3 amended

229A.5A Powers of investigative personnel before a petition is filed.

1. The prosecuting attorney or attorney general is authorized upon the occurrence of a recent overt act, or upon receiving written notice pursuant to section 229A.3, or before the filing of a petition under this chapter, to subpoena and compel the attendance of witnesses, examine the witnesses under oath, and require the production of documentary evidence for inspection, reproduction, or copying. Except as otherwise provided by this section, the prosecuting attorney or attorney general shall have the same powers and limitations, subject to judicial oversight and enforcement, as provided by this chapter and by the Iowa rules of civil procedure. Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel at the person's own expense.

2. The examination of all witnesses under this section shall be conducted by the prosecuting attorney or attorney general before an officer authorized to administer oaths under section 63A.1. The testimony shall be taken by a certified shorthand reporter or by a sound recording device and shall be transcribed or otherwise preserved in the same manner as provided for the preservation of depositions under the Iowa rules of civil procedure. The prosecuting attorney or attorney general may exclude from the examination all persons except the witness, witness's counsel, the officer before whom the testimony is to be taken, law enforcement officials, and a certified shorthand reporter. Prior to oral examination, the person shall be advised by the prosecuting attorney or attorney general of the person's right to refuse to answer any questions on the basis of the privilege against self-incrimination. The examination shall be conducted in a manner consistent with the rules deal-

ing with the taking of depositions.

99 Acts, ch 61, §5, 14; 2000 Acts, ch 1058, §23

229A.5B Escape from custody — penalty.

1. A person who is detained pursuant to section 229A.5 or is subject to an order of civil commitment under this chapter shall remain in custody unless released by court order or discharged under section 229A.8 or 229A.10. A person who has been placed in a transitional release program or who is under release with or without supervision is considered to be in custody. A person in custody under this chapter shall not do any of the following:

a. Leave or attempt to leave a facility without the accompaniment of authorized personnel or leave or attempt to leave a facility without authorization.

b. Knowingly and voluntarily be absent from a place where the person is required to be present.

c. Leave or attempt to leave the custody of personnel transporting or guarding the person while the person is away from a facility.

2. A person who violates subsection 1 commits a simple misdemeanor or may be subject to punishment for contempt.

3. If a person commits a violation of subsection 1 and remains unconfined, the attorney general or the chief law enforcement officer of the political subdivision where the violation occurs may make a public announcement that the person is unconfined and may provide relevant information about the person to the community. The attorney general may also notify a victim or the family of a victim of the person that the person is unconfined.

4. This section shall not be construed to prohibit the use of other lawful means for the return of the person.

2001 Acts, ch 27, §1; 2002 Acts, ch 1139, §4, 27
Section amended

229A.5C Criminal offenses committed while detained or subject to an order of commitment.

1. If a person who is detained pursuant to section 229A.5 or who is subject to an order of civil commitment under this chapter commits a public offense, the civil commitment proceedings or treatment process shall be suspended until the criminal proceedings, including any term of confinement, are completed. The person shall also not be eligible for bail pursuant to section 811.1.

2. Upon the filing of a complaint, indictment, or information, the person shall be transferred to the county jail in the county where the public offense occurred until the criminal proceedings have been completed. If the person is sentenced to a term of confinement in a county jail, the person shall serve the sentence at the county jail. If the person is sentenced to the custody of the director of the department of corrections, the person shall serve the sentence at a correctional institution.

3. A person who is subject to an order of civil commitment under this chapter shall not be released from jail or paroled or released to a facility or program located outside the county jail or correctional institution other than to a secure facility operated by the department of human services.

4. A person who committed a public offense while in a transitional release program or on release with or without supervision may be returned to a secure facility operated by the department of human services upon completion of any term of confinement that resulted from the commission of the public offense.

5. If the civil commitment proceedings for a person are suspended due to the commission of a public offense by the person, the ninety-day trial demand lapses. Upon completion of any term of confinement that resulted from the commission of the public offense, a new ninety-day trial demand automatically begins.

2002 Acts, ch 1139, §5, 27
NEW section

229A.5D Medical treatment.

A safekeeper is entitled to necessary medical treatment.

2002 Acts, ch 1139, §6, 27
NEW section

229A.6 Counsel and experts, indigent persons.

1. A respondent to a petition alleging the person to be a sexually violent predator shall be entitled to the assistance of counsel upon the filing of the petition under section 229A.4 and, if the respondent is indigent, the court shall appoint counsel to assist the respondent at state expense.

2. If a respondent is subjected to an examination under this chapter, the respondent may retain experts or professional persons to perform an independent examination on the respondent's behalf. If the respondent wishes to be examined by a qualified expert or professional person of the respondent's own choice, the examiner of the respondent's choice shall be given reasonable access to the respondent for the purpose of the examination, as well as access to all relevant medical and psychological records and reports. If the respondent is indigent, the court, upon the respondent's request, shall determine whether the services are necessary and the reasonable compensation for the services. If the court determines that the services are necessary and the requested compensation for the services is reasonable, the court shall assist the respondent in obtaining an expert or professional person to perform an examination or participate in the trial on the respondent's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses

incurred on behalf of the respondent, and compensation received in the same case or for the same services from any other source.

98 Acts, ch 1171, §6

229A.6A Transport orders.

1. A person who has been detained prior to trial pursuant to section 229A.5 or who has been civilly committed may be transported for the following purposes:

a. To trial and any other court proceedings if the court has authorized a transport order. A transport order may only be requested by the court, the person's attorney, or the attorney general. Transportation shall be provided by the sheriff of the county in which the action has been brought, unless the court specifies otherwise or the parties agree to a different transportation arrangement. If a transport order is not authorized, the person may appear at any court proceedings other than trial by telephone or electronic means.

b. To a medical facility for medical treatment, if necessary medical treatment is not available at the facility where the person is confined. A transport order is not required to transport the person for medical treatment. However, the person is not entitled to choose the medical facility where treatment is to be obtained or the medical personnel to provide the treatment. Transportation of a committed person shall be provided by the sheriff of the county in which the person is confined if requested by the department of human services.

c. To a medical, psychological, or psychiatric evaluation. A person shall not be transported to another facility for evaluation without a court order. When a transportation order is requested under this paragraph, notice must be provided to the opposing party, and the opposing party must be given a reasonable amount of time to object to the issuance of such an order. The cost of the transportation shall be paid by the party who requests the order.

d. To a facility for placement or treatment in a transitional release program or for release with or without supervision. A transport order is not required under this paragraph.

2. This section shall not be construed to grant a person the right to personally appear at all court proceedings under this chapter.

2002 Acts, ch 1139, §7, 27

NEW section

229A.7 Trial, determination, commitment procedure, chapter 28E agreements, mistrials.

1. If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released pursuant to section 812.5, or the person has been found not guilty of a sexually violent offense by reason of insanity, if a petition has been filed seeking the person's commitment under this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. At the hearing on this issue, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or insanity affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

2. Within ninety days after either the entry of the order waiving the probable cause hearing or completion of the probable cause hearing held under section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. The respondent or the attorney for the respondent may waive the ninety-day trial requirement as provided in this section; however, the respondent or the attorney for the respondent may reassert a demand and the trial shall be held within ninety days from the date of filing the demand with the clerk of court. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. In determining what constitutes good cause, the court shall consider the length of the pretrial detention of the respondent.

3. The respondent, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least ten days prior to trial. If no demand is made, the trial shall be before the court. Except as otherwise provided, the Iowa rules of evidence and the Iowa rules of civil procedure shall apply to all civil commitment proceedings initiated pursuant to this chapter.

4. At trial, the court or jury shall determine whether, beyond a reasonable doubt, the respondent is a sexually violent predator. If the case is before a jury, the verdict shall be unanimous that the respondent is a sexually violent predator.

If the court or jury determines that the respondent is a sexually violent predator, the respondent shall be committed to the custody of the director of

the department of human services for control, care, and treatment until such time as the person's mental abnormality has so changed that the person is safe to be placed in a transitional release program or discharged. The determination may be appealed.

5. The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times prior to placement in a transitional release program or release with or without supervision, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be segregated at all times from any other patient under the supervision of the department of human services. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services may enter into a chapter 28E agreement with the department of corrections or other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the custody of the director of the department of corrections pursuant to a chapter 28E agreement and who have not been placed in a transitional release program or released with or without supervision shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

6. If the court makes the determination or the jury determines that the respondent is not a sexually violent predator, the court shall direct the respondent's release. Upon release, the respondent shall comply with any requirements to register as a sex offender as provided in chapter 692A. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued or the ninety days are waived as provided in subsection 2.

98 Acts, ch 1171, §7; 99 Acts, ch 61, §6, 7, 14; 2000 Acts, ch 1058, §24; 2002 Acts, ch 1139, §8, 9, 27

Subsection 2 amended and divided into subsections 2 and 3 and former subsections 3 – 5 renumbered as 4 – 6

Subsections 4 – 6 amended

229A.8 Annual examinations and review — discharge or transitional release petitions by persons committed.

1. Upon civil commitment of a person pursuant to this chapter, a rebuttable presumption exists that the commitment should continue. The presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses if discharged, or the committed person is suitable for placement in a transitional release program.

2. A person committed under this chapter shall have a current examination of the person's mental abnormality made once every year. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine such person, and such expert or professional person shall be given access to all records concerning the person.

3. The annual report shall be provided to the court that committed the person under this chapter. The court shall conduct an annual review and, if warranted, set a final hearing on the status of the committed person. The annual review may be based only on written records.

4. Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge or placement in a transitional release program at the annual review. The director of human services shall provide the committed person with an annual written notice of the person's right to petition the court for discharge or placement in a transitional release program without authorization from the director. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

5. The following provisions apply to an annual review:

a. The committed person shall have a right to have an attorney represent the person but the person is not entitled to be present at the hearing, if a hearing is held.

b. The Iowa rules of evidence do not apply.

c. The committed person may waive an annual review or may stipulate that the commitment should continue for another year.

d. The court shall review the annual report of the state and the report of any qualified expert or professional person retained by or appointed for the committed person and may receive arguments from the attorney general and the attorney for the committed person if either requests a hearing. The request for a hearing must be in writing, within thirty days of the notice of annual review being provided to counsel for the committed person, or on motion by the court. Such a hearing may be conducted in writing without any attorneys present.

e. The burden is on the committed person to show by a preponderance of the evidence that there is competent evidence which would lead a

reasonable person to believe a final hearing should be held to determine either of the following:

(1) The mental abnormality of the committed person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged.

(2) The committed person is suitable for placement in a transitional release program pursuant to section 229A.8A.

If the committed person shows by a preponderance of the evidence that a final hearing should be held on either determination under subparagraph (1) or (2), or both, the court shall set a final hearing within sixty days of the determination that a final hearing be held.

f. If at the time for the annual review the committed person has filed a petition for discharge or placement in a transitional release program with authorization from the director of human services, the court shall set a final hearing within ninety days of the authorization by the director, and no annual review shall be held.

g. If the committed person has not filed a petition, or has filed a petition for discharge or for placement in a transitional release program without authorization from the director of human services, the court shall first conduct the annual review as provided in this subsection.

h. Any petition can summarily be dismissed by the court as provided in section 229A.11.

i. If at the time of the annual review the committed person is in a secure facility and not in the transitional release program, the state shall have the right to demand that both determinations in paragraph *"e"* be submitted to the court or jury.

6. The following provisions shall apply to a final hearing:

a. The committed person shall be entitled to an attorney and is entitled to the benefit of all constitutional protections that were afforded the person at the original commitment proceeding. The committed person shall be entitled to a jury trial, if such a demand is made in writing and filed with the clerk of court at least ten days prior to the final hearing.

b. The committed person shall have the right to have experts evaluate the person on the person's behalf. The court shall appoint an expert if the person is indigent and requests an appointment.

c. The attorney general shall represent the state and shall have a right to demand a jury trial. The jury demand shall be filed, in writing, at least ten days prior to the final hearing.

d. The burden of proof at the final hearing shall be upon the state to prove beyond a reasonable doubt either of the following:

(1) The committed person's mental abnormality remains such that the person is likely to engage in predatory acts that constitute sexually violent offenses if discharged.

(2) The committed person is not suitable for placement in a transitional release program pursuant to section 229A.8A.

e. If the director of human services has authorized the committed person to petition for discharge or for placement in a transitional release program and the case is before a jury, testimony by a victim of a prior sexually violent offense committed by the person is not admissible. If the director has not authorized the petition or the case is before the court, testimony by a victim of a sexually violent offense committed by the person may be admitted.

f. If a mistrial is declared, the confinement or placement status of the committed person shall not change. After a mistrial has been declared, a new trial must be held within ninety days of the mistrial.

7. The state and the committed person may stipulate to a transfer to a transitional release program if the court approves the stipulation.

98 Acts, ch 1171, §8; 2002 Acts, ch 1139, §10, 27
Section amended

229A.8A Transitional release.

1. The department of human services is authorized to establish a transitional release program and provide control, care, and treatment, and supervision of committed persons placed in such a program.

2. A committed person is suitable for placement in the transitional release program if the court finds that all of the following apply:

a. The committed person's mental abnormality is no longer such that the person is a high risk to reoffend.

b. The committed person has achieved and demonstrated significant insights into the person's sex offending cycle.

c. The committed person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.

d. A detailed relapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the committed person's mental abnormality and sex offending history.

e. No major discipline reports have been issued for the committed person for a period of six months.

f. The committed person is not likely to escape or attempt to escape custody pursuant to section 229A.5B.

g. The committed person is not likely to commit acts constituting sexually violent offenses while in the program.

h. The placement is in the best interest of the committed person.

i. The committed person has demonstrated a willingness to agree to and abide by all rules of the program.

3. If the committed person does not agree to the conditions of release, the person is not eligible for the transitional release program.

4. For purposes of registering as a sex offender under chapter 692A, a person placed in the transitional release program shall be classified a "high-risk" sex offender and public notification shall be as provided in section 692A.13A, subsection 2. A committed person who refuses to register as a sex offender is not eligible for placement in a transitional release program.

5. Committed persons in the transitional release program are not necessarily required to be segregated from other persons.

6. The department of human services shall be responsible for establishing and implementing the rules and directives regarding the location of the transitional release program, staffing needs, restrictions on confinement and the movement of committed persons, and for assessing the progress of committed persons in the program. The court may also impose conditions on a committed person placed in the program.

7. The department of human services may contract with other government or private agencies, including the department of corrections, to implement and administer the transitional release program.

2002 Acts, ch 1139, §11, 27
NEW section

229A.8B Violations of transitional release.

1. The treatment staff in a transitional release program may remove the committed person from the program for a violation of any rule or directive, and return the person to a secure facility. The treatment staff may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the committed person into custody so that the person can be returned to a secure facility. The request for an ex parte order may be made orally or by telephone, but the original written request or a facsimile copy of the original request shall be filed with the clerk of court no later than four-thirty p.m. on the next business day the office of the clerk of court is open.

2. If a committed person absconds from a transitional release program in violation of the rules or directives, a presumption arises that the person poses a risk to public safety. The department of human services, in cooperation with local law enforcement agencies, may make a public announcement about the absconder. The public announcement may include a description of the committed person, that the person is in transitional release from the sexually violent predator program, and any other information important to public safety.

3. Upon the return of the committed person to a secure facility, the director of human services or the director's designee shall notify the court that issued the ex parte order that the absconder has been returned to a secure facility, and the court shall set a hearing within five days to determine if a violation occurred. If a court order was not issued, the director or the director's designee shall contact the nearest district court with jurisdiction to set a hearing to determine whether a violation of the rules or directives occurred. The court shall schedule a hearing within five days of receiving notice that the committed person has been returned from the transitional release program to a secure facility.

4. At the hearing, the burden shall be upon the attorney general to show by a preponderance of the evidence that a violation of the rules or directives occurred. The hearing shall be to the court.

5. If the court determines a violation occurred, the court shall either order the committed person to be returned to the transitional release program or to be confined in a secure facility. The court may impose further conditions upon the committed person if returned to the transitional release program. If the court determines no violation occurred, the committed person shall be returned to the transitional release program.

2002 Acts, ch 1139, §12, 27
NEW section

229A.9 Detention and commitment to conform to constitutional requirements.

The involuntary detention or commitment of persons under this chapter shall conform to constitutional requirements for care and treatment.

98 Acts, ch 1171, §9

229A.9A Release with or without supervision.

1. In any proceeding under section 229A.8, the court may order the committed person released with or without supervision if any of the following apply:

a. The attorney general stipulates to the release with or without supervision.

b. The court or jury has determined that the person should be discharged from the program, but the court has determined it is in the best interest of the community to order release with or without supervision before the committed person is discharged.

2. If release with or without supervision is ordered, the department of human services shall prepare within thirty days of the order of the court a release plan addressing the person's needs for counseling, medication, community support services, residential services, vocational services, alcohol or other drug abuse treatment, sex offender treatment, or any other treatment or supervision necessary.

3. The court shall set a hearing on the release plan prepared by the department of human services before the committed person is released from a secure facility or a transitional release program.

4. If the court orders release with supervision, the court shall order supervision by an agency with jurisdiction that is familiar with the place-

ment of criminal offenders in the community. The agency with jurisdiction shall be responsible for initiating proceedings for violations of the release plan as provided in section 229A.9B. If the court orders release without supervision, the agency with jurisdiction shall also be responsible for initiating proceedings for any violations of the release plan as provided in section 229A.9B.

5. A committed person may not petition the court for release with or without supervision.

6. A committed person released with or without supervision is not considered discharged from civil commitment under this chapter.

7. After being released with or without supervision, the person may petition the court for discharge as provided in section 229A.8.

8. The court shall retain jurisdiction over the committed person who has been released with or without supervision until the person is discharged from the program. The department of human services shall not be held liable for any acts committed by a committed person who has been ordered released with or without supervision.

2002 Acts, ch 1139, §13, 27
NEW section

229A.9B Violations of release with or without supervision.

1. If a committed person violates the release plan, the agency with jurisdiction over the person may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody so that the person can be returned to a secure facility. The request for an ex parte order may be made orally or by telephone, but the original written request or a facsimile copy of the request shall be filed with the clerk of court no later than four-thirty p.m. on the next business day the office of the clerk of court is open.

2. If a committed person has absconded in violation of the conditions of the person's release plan, a presumption arises that the person poses a risk to public safety. The department of human services or contracting agency, in cooperation with local law enforcement agencies, may make a public announcement about the absconder. The public announcement may include a description of the committed person, that the committed person is on release with or without supervision from the sexually violent predator program, and any other information pertinent to public safety.

3. Upon the return of the committed person to a secure facility, the director of human services or the director's designee shall notify the court that issued the ex parte order that the committed person has been returned to a secure facility, and the court shall set hearing within five days to determine if a violation occurred. If a court order was not issued, the director or the director's designee shall contact the nearest district court with jurisdiction to set a hearing to determine whether a violation of the conditions of the release plan occurred. The court shall schedule a hearing within five days of receiving notice that the committed person has been returned to a secure facility.

4. At the hearing, the burden shall be upon the attorney general to show by a preponderance of the evidence that a violation of the release plan occurred.

5. If the court determines a violation occurred, the court shall receive release recommendations from the department of human services and either order that the committed person be returned to release with or without supervision or placed in a transitional release program, or be confined in a secure facility. The court may impose further conditions upon the committed person if returned to release with or without supervision or placed in the transitional release program. If the court determines no violation occurred, the committed person shall be returned to release with or without supervision.

2002 Acts, ch 1139, §14, 27
NEW section

229A.10 Petition for discharge — procedure.

1. If the director of human services determines that the person's mental abnormality has so changed that the person is not likely to commit predatory acts or sexually violent offenses if discharged, the director shall authorize the person to petition the court for discharge. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for discharge, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the attorney general's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. If the attorney general objects to the petition for discharge, the burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is likely to engage in predatory acts that constitute sexually violent offenses if discharged.

2. Upon a finding that the state has failed to meet its burden of proof under this section, the court shall authorize the committed person to be discharged.

98 Acts, ch 1171, §10; 99 Acts, ch 61, §8, 14; 2002 Acts, ch 1139, §15, 27
Section amended

229A.11 Subsequent discharge or transitional release petitions — limitations.

Nothing in this chapter shall prohibit a person from filing a petition for discharge or placement in a transitional release program, pursuant to this chapter. However, if a person has previously filed

a petition for discharge or for placement in a transitional release program without the authorization of the director of human services, and the court determines either upon review of the petition or following a hearing that the petition was frivolous or that the petitioner's condition had not so changed that the person was not likely to engage in predatory acts constituting sexually violent offenses if discharged, or was not suitable for placement in the transitional release program, then the court shall summarily deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the director's authorization, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds. If the court determines that a petition is frivolous, the court shall dismiss the petition without a hearing.

98 Acts, ch 1171, §11; 2002 Acts, ch 1139, §16, 27
Section amended

229A.12 Director of human services — responsibility for costs — reimbursement.

The director of human services shall be responsible for all costs relating to the evaluation, treatment, and services provided to a person that are incurred after the person is committed to the director's custody after the court or jury determines that the respondent is a sexually violent predator and pursuant to commitment under any provision of this chapter. If placement in a transitional release program or supervision is ordered, the director shall also be responsible for all costs related to the transitional release program or to the supervision and treatment of any person. Reimbursement may be obtained by the director from the patient and any person legally liable or bound by contract for the support of the patient for the cost of confinement or of care and treatment provided. As used in this section, *"any person legally liable"* does not include a political subdivision.

98 Acts, ch 1171, §12; 98 Acts, ch 1181, §26; 99 Acts, ch 61, §9, 14; 2002 Acts, ch 1139, §17, 27
Section amended

229A.12A Director of the department of corrections — responsibility for safekeeper.

The director of the department of corrections shall have authority, once a person is detained pursuant to section 229A.5, to make a determination as to the appropriate secure facility within the department of corrections in which the safekeeper is to be placed, taking into consideration the safekeeper's medical needs and ability to interact with offenders who have been committed to the custody of the director of the department of corrections. The director has authority to determine the safekeeper's degree of segregation from offenders, including whether total segregation is appropriate under the circumstances or whether the safekeeper should be permitted to participate in normal confinement activities in the presence of offenders.

2002 Acts, ch 1139, §18, 27
NEW section

229A.13 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application and, to this end, the provisions of this chapter are severable.

98 Acts, ch 1171, §14

229A.14 Release of confidential or privileged information and records.

Notwithstanding any provision in the Code regarding confidentiality to the contrary, any relevant information and records which would otherwise be confidential or privileged, except information subject to attorney-client privilege and attorney work product, shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in section 229A.3 and determining whether a person is or continues to be a sexually violent predator.

98 Acts, ch 1171, §15; 2002 Acts, ch 1139, §19, 27
Section amended

229A.15 Court records — sealed and opened by court order.

Any psychological reports, drug and alcohol reports, treatment records, reports of any diagnostic center, medical records, or victim impact statements which have been submitted to the court or admitted into evidence under this chapter shall be part of the record but shall be sealed and opened only on order of the court.

98 Acts, ch 1171, §16

229A.15A Civil protective order.

A victim of a crime that was committed before the filing of a petition under this chapter by a safekeeper or by a person subjected to an order of civil commitment pursuant to this chapter, may obtain a protective order against the safekeeper or person using the procedures set out in section 915.22.

2002 Acts, ch 1139, §20, 27
NEW section

229A.15B Rulemaking authority.

The department of human services shall adopt rules pursuant to chapter 17A necessary to administer this chapter.

2002 Acts, ch 1139, §21, 27
NEW section

229A.16 Short title.

This chapter shall be known and may be cited as the *"Sexually Violent Predator Act"*.

98 Acts, ch 1171, §17

CHAPTER 230

SUPPORT OF PERSONS WITH MENTAL ILLNESS

Obligation to pay for costs of service rendered
prior to July 1, 1997; disputed billings;
see 2001 Acts, ch 155, §12, 13

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230.35 Releasing liens.

230.1 Liability of county and state.

1. The necessary and legal costs and expenses attending the taking into custody, care, investigation, admission, commitment, and support of a person with mental illness admitted or committed to a state hospital shall be paid by a county or by the state as follows:

a. By the county in which such person has a legal settlement, if the person is eighteen years of age or older.

b. By the state when such person has no legal settlement in this state, when the person's legal settlement is unknown, or if the person is under eighteen years of age.

2. The legal settlement of any person found mentally ill who is a patient of any state institution shall be that existing at the time of admission thereto.

3. A county of legal settlement is not liable for costs and expenses associated with a person with mental illness unless the costs and expenses are for services and other support authorized for the person through the single entry point process. For the purposes of this chapter, *"single entry point process"* means the same as defined in section 331.440.

[C73, §1402; C97, §2270; S13, §2270; C24, 27, 31, 35, 39, §**3581;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.1]

96 Acts, ch 1129, §113; 96 Acts, ch 1183, §24; 98 Acts, ch 1181, §6, 7, 10

230.2 Finding of legal settlement.

The district court shall, when a person is ordered placed in a hospital for psychiatric examination and appropriate treatment, or as soon thereafter as it obtains the proper information, determine and enter of record whether the legal settlement of said person is:

1. In the county from which the person was placed in the hospital;

2. In some other county of the state;

3. In some foreign state or country; or
4. Unknown.

[C24, 27, 31, 35, 39, §**3582;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.2]

Acquisition of legal settlement; see §252.16

230.3 Certification of settlement.

If such legal settlement is found to be in another county of this state, the court shall, as soon as said determination is made, certify such finding to the superintendent of the hospital to which said patient is admitted or committed, and thereupon said superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of such patient, to the county so certified until said settlement shall be otherwise determined as hereinafter provided.

[C73, §1417; C97, §2281; C24, 27, 31, 35, 39, §**3583;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.3]

230.4 Certification to debtor county.

Said finding of legal settlement shall also be certified by the court to the county auditor of the county of such legal settlement. Such auditor shall lay such notification before the board of supervisors of the auditor's county, and it shall be conclusively presumed that such person has a legal settlement in said notified county unless said county shall within sixty days give notice in writing to the court that the county disputes the finding of legal settlement.

[C73, §1402; C97, §2270; S13, §2270; C24, 27, 31, 35, 39, §**3584;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.4]

230.5 Nonresidents.

If such legal settlement is found by the court to be in some foreign state or country, or unknown, the court shall immediately notify the administrator of the finding and furnish the administrator with a copy of the evidence taken on the question of legal settlement, and shall in its order issued pursuant to section 229.13 direct that the patient be hospitalized at the appropriate state hospital for persons with mental illness.

[C73, §1402; C97, §2270; S13, §2270, 2727-a28a; C24, 27, 31, 35, 39, §**3585;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.5]

96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §41

230.6 Determination by administrator.

The administrator shall immediately investigate the legal settlement of said patient and proceed as follows:

1. If the administrator finds that the decision of the court as to legal settlement is correct, the administrator shall cause said patient either to be transferred to a state hospital for persons with mental illness at the expense of the state, or to be transferred, with approval of the court as required by chapter 229 to the place of foreign settlement.

2. If the administrator finds that the decision of the court is not correct, the administrator shall order said patient to be maintained at a state hospital for persons with mental illness at the expense of the state, and shall at once inform the court of such finding and request that the court's order be modified accordingly.

[S13, §2727-a28a; C24, 27, 31, 35, 39, §**3586;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.6]

96 Acts, ch 1129, §113; 97 Acts, ch 23, §18

230.7 Transfer of nonresidents.

Upon determining that a patient in a state hospital who has been involuntarily hospitalized under chapter 229 or admitted voluntarily at public expense was not a resident of this state at the time of the involuntary hospitalization or admission, the administrator may cause that patient to be conveyed to the patient's place of residence. However, a transfer under this section may be made only if the patient's condition so permits and other reasons do not render the transfer inadvisable. If the patient was involuntarily hospitalized, prior approval of the transfer must be obtained from the court which ordered the patient hospitalized.

[C73, §1419; C97, §2283; S13, §2283, 2727-a28a; C24, 27, 31, 35, 39, §**3587;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.7]

97 Acts, ch 23, §19

230.8 Transfers of persons with mental illness — expenses.

The transfer to state hospitals or to the places of their legal settlement of persons with mental illness who have no legal settlement in this state or whose legal settlement is unknown, shall be made according to the directions of the administrator, and when practicable by employees of state hospitals, and the actual and necessary expenses of such transfers shall be paid on itemized vouchers sworn to by the claimants and approved by the administrator, from any funds in the state treasury not otherwise appropriated.

[S13, §2308-a, 2727-a28b; C24, 27, 31, 35, 39, §**3588;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.8]

96 Acts, ch 1129, §113

Appropriation limited for fiscal years beginning on or after July 1, 1993; see §8.59

230.9 Subsequent discovery of residence.

If, after a patient has been received into a state hospital for persons with mental illness as a patient whose legal settlement is supposed to be outside this state or unknown, the administrator finds that the legal settlement of said patient was, at the time of admission or commitment, in a county of this state, said administrator shall charge all legal costs and expenses pertaining to the admission or commitment and support of said

patient to the county of such legal settlement, and the same shall be collected as provided by law in other cases.

[S13, §2727-a28a; C24, 27, 31, 35, 39, §**3589;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.9]

96 Acts, ch 1129, §113

230.10 Payment of costs.

All legal costs and expenses attending the taking into custody, care, investigation, and admission or commitment of a person to a state hospital for persons with mental illness under a finding that such person has a legal settlement in another county of this state shall be charged against the county of legal settlement.

[S13, §2308-a; C24, 27, 31, 35, 39, §**3590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.10]

87 Acts, ch 36, §1; 96 Acts, ch 1129, §113

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13

230.11 Recovery of costs from state.

Costs and expenses attending the taking into custody, care, and investigation of a person who has been admitted or committed to a state hospital, veterans administration hospital, or other agency of the United States government, for persons with mental illness and who has no legal settlement in this state or whose legal settlement is unknown, including cost of commitment, if any, shall be paid out of any money in the state treasury not otherwise appropriated, on itemized vouchers executed by the auditor of the county which has paid them, and approved by the administrator.

[S13, §2308-a; C24, 27, 31, 35, 39, §**3591;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.11]

96 Acts, ch 1129, §113

Appropriation limited for fiscal years beginning on or after July 1, 1993; see §8.59

230.12 Legal settlement disputes.

1. If a dispute arises between different counties or between the administrator and a county as to the legal settlement of a person admitted or committed to a state hospital for persons with mental illness, the attorney general, at the request of the administrator, shall, without the advancement of fees, cause an action to be brought in the district court of any county where such dispute exists, to determine the person's legal settlement. This action may be brought at any time when it appears that the dispute cannot be amicably settled. All counties which may be the place of the legal settlement, so far as known, shall be made defendants and the allegation of the settlement may be in the alternative. The action shall be tried as in equity.

2. In lieu of an action filed under subsection 1, the parties to a dispute concerning a person's legal settlement may settle the dispute through an alternative dispute resolution process agreed to by the parties. The alternative dispute resolution process may include but is not limited to mediation, binding arbitration, or other mutually agreeable form of resolution. A resolution of the dispute agreed to by the parties shall be stipulated to and filed in the office of the clerk of the district court.

3. If an action under this section involves a dispute between counties, the county determined to be the county of legal settlement shall reimburse a county for the amount of costs paid by that county on behalf of the person and for interest on this amount in accordance with section 535.3. In addition, the court may order the county determined to be the county of legal settlement to reimburse any other county involved in the dispute for the other county's reasonable legal costs related to the dispute and may tax the reasonable legal costs as court costs. The court may order the county determined to be the county of legal settlement to pay a penalty to the other county, in an amount which does not exceed twenty percent of the total amount of reimbursement and interest.

4. An action filed or an alternative dispute resolution stipulated to under this section is subject to the applicable provisions of sections 230.13 and 230.14.

[C73, §1418; C97, §2270, 2282; S13, §2270; C24, 27, 31, 35, 39, §**3592;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.12]

91 Acts, ch 267, §141; 94 Acts, ch 1170, §4; 95 Acts, ch 119, §1, 5; 96 Acts, ch 1129, §113

230.13 Judgment when legal settlement found within state.

If an action is entered under section 230.12, subsection 1, the court shall determine whether the legal settlement of the person with mental illness, at the time of the person's admission or commitment, was in one of the defendant counties. If the court finds a county to be the county of legal settlement, judgment shall be entered against the county in favor of any other county for all legal costs and expenses arising out of the proceedings involving the person, and paid by the county of legal settlement. If any such costs have not been paid, judgment shall be rendered against the county of legal settlement in favor of the parties, including the state, to whom the costs or expenses may be due.

[C73, §1418; C97, §2282; S13, §2308-a; C24, 27, 31, 35, 39, §**3593;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.13]

94 Acts, ch 1170, §5

230.14 Legal settlement in cases involving nonresidence or unknown settlement.

If an alternative dispute resolution of the dispute filed under section 230.12, subsection 2, stipulates or the court finds that the legal settlement of the person with mental illness, at the time of ad-

mission or commitment, was in a foreign state or country, or was unknown, an order shall be entered that the person shall be maintained in the hospital for persons with mental illness at the expense of the state. In such case the state shall refund to any county, with interest, all legal costs and expenses arising out of the legal settlement dispute and paid by a county. Any stipulation filed or decision by the court shall be final.

[C73, §1402; C97, §2270; S13, §2270; C24, 27, 31, 35, 39, §**3594;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.14]

94 Acts, ch 1170, §6; 96 Acts, ch 1129, §113

230.15 Personal liability.

A person with mental illness and a person legally liable for the person's support remain liable for the support of the person with mental illness as provided in this section. Persons legally liable for the support of a person with mental illness include the spouse of the person, any person bound by contract for support of the person, and, with respect to persons with mental illness under eighteen years of age only, the father and mother of the person. The county auditor, subject to the direction of the board of supervisors, shall enforce the obligation created in this section as to all sums advanced by the county. The liability to the county incurred by a person with mental illness or a person legally liable for the person's support under this section is limited to an amount equal to one hundred percent of the cost of care and treatment of the person with mental illness at a state mental health institute for one hundred twenty days of hospitalization. This limit of liability may be reached by payment of the cost of care and treatment of the person with mental illness subsequent to a single admission or multiple admissions to a state mental health institute or, if the person is not discharged as cured, subsequent to a single transfer or multiple transfers to a county care facility pursuant to section 227.11. After reaching this limit of liability, a person with mental illness or a person legally liable for the person's support is liable to the county for the care and treatment of the person with mental illness at a state mental health institute or, if transferred but not discharged as cured, at a county care facility in an amount not in excess of the average minimum cost of the maintenance of an individual who is physically and mentally healthy residing in the individual's own home, which standard shall be established and may from time to time be revised by the department of human services. A lien imposed by section 230.25 shall not exceed the amount of the liability which may be incurred under this section on account of a person with mental illness.

A substance abuser or chronic substance abuser is legally liable for the total amount of the cost of providing care, maintenance, and treatment for the substance abuser or chronic substance abuser while a voluntary or committed patient. When a portion of the cost is paid by a county, the substance abuser or chronic substance abuser is legally liable to the county for the amount paid. The substance abuser or chronic substance abuser shall assign any claim for reimbursement under any contract of indemnity, by insurance or otherwise, providing for the abuser's care, maintenance, and treatment in a state hospital to the state. Any payments received by the state from or on behalf of a substance abuser or chronic substance abuser shall be in part credited to the county in proportion to the share of the costs paid by the county. Nothing in this section shall be construed to prevent a relative or other person from voluntarily paying the full actual cost or any portion of the care and treatment of any person with mental illness, substance abuser, or chronic substance abuser as established by the department of human services.

[R60, §1488; C73, §1433; C97, §2297; C24, 27, 31, 35, 39, §**3595;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.15; 82 Acts, ch 1260, §114 – 116]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1001, §17; 90 Acts, ch 1085, §21; 96 Acts, ch 1129, §60

230.16 Presumption.

In actions to enforce the liability imposed by section 230.15, the certificate from the superintendent to the county auditor stating the sums charged in such cases, shall be presumptively correct.

[R60, §1488; C73, §1433; C97, §2297; C24, 27, 31, 35, 39, §**3596;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.16]

230.17 Board may compromise lien.

The board of supervisors is hereby empowered to compromise any and all liabilities to the county, created by this chapter, when such compromise is deemed to be for the best interests of the county.

[C73, §1433; C97, §2297; C24, 27, 31, 35, 39, §**3597;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.17]

230.18 Expense in county or private hospitals.

The estates of persons with mental illness who may be treated or confined in any county hospital or home, or in any private hospital or sanatorium, and the estates of persons legally bound for their support, shall be liable to the county for the reasonable cost of such support.

[R60, §1488; C73, §1433; C97, §2297; C24, 27, 31, 35, 39, §**3598;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.18]

96 Acts, ch 1129, §113

230.19 Nonresidents liable to state — presumption.

The estates of all nonresident patients provided

for and treated in state hospitals for persons with mental illness in this state, and all persons legally bound for the support of such patients, shall be liable to the state for the reasonable value of the care, maintenance, and treatment of such patients while in such hospitals. The certificate of the superintendent of the state hospital in which any nonresident is or has been a patient, showing the amounts drawn from the state treasury or due therefrom as provided by law on account of such nonresident patient, shall be presumptive evidence of the reasonable value of the care, maintenance, and treatment furnished such patient.

[S13, §2297-a; C24, 27, 31, 35, 39, §**3599;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.19]

96 Acts, ch 1129, §113

230.20 Billing of patient charges — computation of actual costs — cost settlement.

1. The superintendent of each mental health institute shall compute by February 1 the average daily patient charges and other service charges for which each county will be billed for services provided to patients chargeable to the county during the fiscal year beginning the following July 1. The department shall certify the amount of the charges and notify the counties of the billing charges.

a. The superintendent shall separately compute by program the average daily patient charge for a mental health institute for services provided in the following fiscal year, in accordance with generally accepted accounting procedures, by totaling the expenditures of the program for the immediately preceding calendar year, by adjusting the expenditures by a percentage not to exceed the percentage increase in the consumer price index for all urban consumers for the immediately preceding calendar year, and by dividing the adjusted expenditures by the total inpatient days of service provided in the program during the immediately preceding calendar year. However, the superintendent shall not include the following in the computation of the average daily patient charge:

(1) The costs of food, lodging, and other maintenance provided to persons not patients of the hospital.

(2) The costs of certain direct medical services identified in administrative rule, which may include but need not be limited to X-ray, laboratory, and dental services.

(3) The costs of outpatient and state placement services.

(4) The costs of the psychiatric residency program.

(5) The costs of the chaplain intern program.

b. The department shall compute the direct medical services, outpatient, and state placement services charges, in accordance with generally accepted accounting procedures, on the basis of the actual cost of the services provided during the immediately preceding calendar year. The direct medical services, outpatient, and state placement services shall be billed directly against the patient who received the services.

2. *a.* The superintendent shall certify to the department the billings to each county for services provided to patients chargeable to the county during the preceding calendar quarter. The county billings shall be based on the average daily patient charge and other service charges computed pursuant to subsection 1, and the number of inpatient days and other service units chargeable to the county. However, a county billing shall be decreased by an amount equal to reimbursement by a third party payor or estimation of such reimbursement from a claim submitted by the superintendent to the third party payor for the preceding calendar quarter. When the actual third party payor reimbursement is greater or less than estimated, the difference shall be reflected in the county billing in the calendar quarter the actual third party payor reimbursement is determined.

b. The per diem costs billed to each county shall not exceed the per diem costs billed to the county in the fiscal year beginning July 1, 1996. However, the per diem costs billed to a county may be adjusted annually to reflect increased costs to the extent of the percentage increase in the total of county fixed budgets pursuant to the allowed growth factor adjustment authorized by the general assembly for the fiscal year in accordance with section 331.439.

3. The superintendent shall compute in January the actual per-patient-per-day cost for each mental health institute for the immediately preceding calendar year, in accordance with generally accepted accounting procedures, by totaling the actual expenditures of the mental health institute for the calendar year and by dividing the total actual expenditures by the total inpatient days of service provided during the calendar year.

4. The department shall certify to the counties by February 1 the actual per-patient-per-day costs, as computed pursuant to subsection 3, and the actual costs owed by each county for the immediately preceding calendar year for patients chargeable to the county. If the actual costs owed by the county are greater than the charges billed to the county pursuant to subsection 2, the department shall bill the county for the difference with the billing for the quarter ending June 30. If the actual costs owed by the county are less than the charges billed to the county pursuant to subsection 2, the department shall credit the county for the difference starting with the billing for the quarter ending June 30.

5. An individual statement shall be prepared for a patient on or before the fifteenth day of the month following the month in which the patient leaves the mental health institute, and a general statement shall be prepared at least quarterly for each county to which charges are made under this

section. Except as otherwise required by sections 125.33 and 125.34 the general statement shall list the name of each patient chargeable to that county who was served by the mental health institute during the preceding month or calendar quarter, the amount due on account of each patient, and the specific dates for which any third party payor reimbursement received by the state is applied to the statement and billing, and the county shall be billed for eighty percent of the stated charge for each patient specified in this subsection. The statement prepared for each county shall be certified by the department and a duplicate statement shall be mailed to the auditor of that county.

6. All or any reasonable portion of the charges incurred for services provided to a patient, to the most recent date for which the charges have been computed, may be paid at any time by the patient or by any other person on the patient's behalf. Any payment so made, and any federal financial assistance received pursuant to Title XVIII or XIX of the federal Social Security Act for services rendered to a patient, shall be credited against the patient's account and, if the charges so paid have previously been billed to a county, reflected in the mental health institute's next general statement to that county.

7. A superintendent of a mental health institute may request that the director of human services enter into a contract with a person for the mental health institute to provide consultation or treatment services or for fulfilling other purposes which are consistent with the purposes stated in section 226.1. The contract provisions shall include charges which reflect the actual cost of providing the services or fulfilling the other purposes. Any income from a contract authorized under this subsection may be retained by the mental health institute to defray the costs of providing the services. Except for a contract voluntarily entered into by a county under this subsection, the costs or income associated with a contract authorized under this subsection shall not be considered in computing charges and per diem costs in accordance with the provisions of subsections 1 through 6 of this section.

8. The department shall provide a county with information, which is not otherwise confidential under law, in the department's possession concerning a patient whose cost of care is chargeable to the county, including but not limited to the information specified in section 229.24, subsection 3.

[R60, §1487; C73, §1428; C97, §2292; S13, §2292; C24, 27, 31, 35, 39, §**3600;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §230.20; 81 Acts, ch 78, §20, 38, 39]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1169, §2; 87 Acts, ch 37, §1; 88 Acts, ch 1249, §9; 88 Acts, ch 1276, §39; 95 Acts, ch 82, §5; 95 Acts, ch 120, §4; 96 Acts, ch 1183, §25, 26; 98 Acts, ch 1155, §11; 2001 Acts, ch 155, §23 – 25

Obligation to pay for costs of services rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13

230.21 Duty of county auditor and treasurer.

The county auditor, upon receipt of the duplicate statement required by section 230.20, shall enter it to the credit of the state in the ledger of state accounts, shall furnish to the board of supervisors a list of the names of the persons so certified, and at once issue a notice authorizing the county treasurer to transfer the amount billed to the county by the statement, from the county to the general state revenue, which notice shall be filed by the treasurer as authority for making the transfer. The auditor shall promptly remit the amount so transferred to the treasurer of state, designating the fund to which it belongs.

[R60, §1487; C73, §1428; C97, §2292; S13, §2292; C24, 27, 31, 35, 39, §**3601**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.21]

83 Acts, ch 123, §86, 209

230.22 Penalty.

Should any county fail to pay the amount billed by a statement submitted pursuant to section 230.20 within forty-five days from the date the statement is received by the county, the department shall charge the delinquent county the penalty of one percent per month on and after forty-five days from the date the statement is received by the county until paid. Provided, however, that the penalty shall not be imposed if the county has notified the department of error or questionable items in the billing, in which event, the department shall suspend the penalty only during the period of negotiation.

[C97, §2292; S13, §2292; C24, 27, 31, 35, 39, §**3602;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.22]

98 Acts, ch 1218, §74; 2001 Acts, ch 155, §26

230.23 Repealed by 81 Acts, ch 117, § 1097.

230.24 Repealed by 81 Acts, ch 117, § 1097.

230.25 Financial investigation by supervisors.

1. Upon receipt from the county auditor of the list of names furnished pursuant to section 230.21, the board of supervisors shall make an investigation to determine the ability of each person whose name appears on the list, and also the ability of any person liable under section 230.15 for the support of that person, to pay the expenses of that person's hospitalization. If the board finds that neither the hospitalized person nor any person legally liable for the person's support is able to pay those expenses, they shall direct the county audi-

tor not to index the names of any of those persons as would otherwise be required by section 230.26. However the board may review its finding with respect to any person at any subsequent time at which another list is furnished by the auditor upon which that person's name appears. If the board finds upon review that that person or those legally liable for the person's support are presently able to pay the expenses of that person's hospitalization, that finding shall apply only to charges stated upon the certificate from which the list was drawn up and any subsequent charges similarly certified, unless and until the board again changes its finding.

2. All liens created under section 230.25, as that section appeared in the Code of 1975 and prior editions of the Code, are abolished effective January 1, 1977, except as otherwise provided by subsection 1. The board of supervisors of each county shall, as soon as practicable after July 1, 1976, review all liens resulting from the operation of said section 230.25, Code 1975, and make a determination as to the ability of the person against whom the lien exists to pay the charges represented by the lien, and if they find that the person is able to pay those charges they shall direct the county attorney of that county to take immediate action to enforce the lien. If action is commenced under this section on any lien prior to the effective date of the abolition thereof, that lien shall not be abolished but shall continue until the action is completed. The board of supervisors shall release any such lien when the charge on which the lien is based is fully paid or is compromised and settled by the board in such manner as its members deem to be in the best interest of the county, or when the estate affected by the lien has been probated and the proceeds allowable have been applied on the lien.

[C39, §**3604.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.25]

230.26 Auditor to keep record.

The auditor of each county shall keep an accurate account of the cost of the maintenance of any patient kept in any institution as provided for in this chapter and keep an index of the names of the persons admitted or committed from such county. The name of the husband or the wife of such person designating such party as the spouse of the person admitted or committed shall also be indexed in the same manner as the names of the persons admitted or committed are indexed. The book shall be designated as an account book or index, and shall have no reference in any place to a lien.

[C39, §**3604.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.26]

230.27 Board and county attorney to collect.

It shall be the duty of the board of supervisors to collect said claims and direct the county attorney to proceed with the collection of said claims as a part of the duties of the county attorney's office.

[C39, §**3604.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.27]

230.28 and 230.29 Repealed by 76 Acts, ch 1104, § 17.

230.30 Claim against estate.

On the death of a person receiving or who has received assistance under the provisions of this chapter, and whom the board has previously found, under section 230.25, is able to pay there shall be allowed against the estate of such decedent a claim of the sixth class for that portion of the total amount paid for that person's care which exceeds the total amount of all claims of the first through the fifth classes, inclusive, as defined in section 633.425, which are allowed against that estate.

[C39, §**3604.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.30]

230.31 Departers from other states.

If a person with mental illness departs without proper authority from an institution in another state and is found in this state, a peace officer in the county in which the patient is found may take and detain the patient without order and shall report the detention to the administrator who shall provide for the return of the patient to the authorities of the state where the unauthorized leave was made. Pending such return, the patient may be detained temporarily at one of the institutions of this state under the control of the administrator or any other administrator of the department of human services. Expenses incurred under this section shall be paid in the same manner as is provided for transfers in section 230.8.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §230.31]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §42

230.32 Support of nonresident patients on leave.

The cost of support of patients without legal settlement in this state, who are placed on convalescent leave or removed from a state mental institute to any health care facility licensed under chapter 135C for rehabilitation purposes, shall be paid from the hospital support fund and shall be charged on abstract in the same manner as state inpatients, until such time as the patient becomes self-supporting or qualifies for support under existing statutes.

[C66, 71, 73, 75, 77, 79, 81, §230.32]

230.33 Reciprocal agreements.

The administrator may enter into agreements with other states, through their duly constituted

authorities, to effect the reciprocal return of persons with mental illness and persons with mental retardation to the contracting states, and to effect the reciprocal supervision of persons on convalescent leave.

Provided that in the case of a proposed transfer of a person with mental illness or mental retardation from this state that no final action be taken without the approval either of the commission of hospitalization, or of the district court, of the county of admission or commitment.

[C66, 71, 73, 75, 77, 79, 81, §230.33]

96 Acts, ch 1129, §61; 2000 Acts, ch 1112, §43

230.34 Definitions.

1. As used in this chapter, *"administrator"* means the administrator of the department of human services assigned, in accordance with section 218.1, to control the state mental health institutes, or that administrator's designee.

2. As used in this chapter, *"auditor"* means the county auditor or the auditor's designee.

3. As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

4. As used in this chapter, unless the context otherwise requires, *"department"* means the department of human services.

[C71, 73, 75, 77, 79, 81, §230.34; 81 Acts, ch 78, §20, 40]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §39; 97 Acts, ch 169, §16; 2000 Acts, ch 1112, §44; 2000 Acts, ch 1148, §1; 2001 Acts, ch 155, §27

230.35 Releasing liens.

A lien obtained pursuant to an action to collect any claim arising under this chapter shall be released by the board of supervisors when the claim or claims on which the lien is based have been fully paid or compromised and settled by the board, or when the estate of which the real estate subject to the lien is a part has been probated and the proceeds allowable have been applied to the claim or claims on which the lien is based.

[C79, 81, §230.35]

CHAPTER 230A

COMMUNITY MENTAL HEALTH CENTERS

230A.1 Establishment and support of community mental health centers.
230A.2 Services offered.
230A.3 Forms of organization.
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230A.15 Comprehensive community mental health program.
230A.16 Establishment of standards.
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230A.1 Establishment and support of community mental health centers.

A county or affiliated counties, by action of the board or boards of supervisors, with approval of the administrator of the division of mental health and developmental disabilities of the department of human services, may establish a community mental health center under this chapter to serve the county or counties. This section does not limit the authority of the board or boards of supervisors of any county or group of counties to continue to expend money to support operation of the center, and to form agreements with the board of supervisors of any additional county for that county to join in supporting and receiving services from or through the center.

[C66, 71, 73, §230.24; C75, 77, 79, 81, S81, §230A.1; 81 Acts, ch 78, §20, 41, ch 117, §1029]

83 Acts, ch 123, §87, 209; 94 Acts, ch 1170, §40; 98 Acts, ch 1181, §1

230A.2 Services offered.

A community mental health center established or operating as authorized by section 230A.1 may offer to residents of the county or counties it serves any or all of the mental health services defined by the mental health and developmental disabilities commission in the state mental health plan.

[C75, 77, 79, 81, §230A.2; 82 Acts, ch 1117, §3]

94 Acts, ch 1170, §41

230A.3 Forms of organization.

Each community mental health center established or continued in operation as authorized by section 230A.1 shall be organized and administered in accordance with one of the following alternative forms:

1. Direct establishment of the center by the county or counties supporting it and administration of the center by an elected board of trustees, pursuant to sections 230A.4 to 230A.11.

2. Establishment of the center by a nonprofit corporation providing services to the county or counties on the basis of an agreement with the board or boards of supervisors, pursuant to sections 230A.12 and 230A.13.

[C75, 77, 79, 81, §230A.3]

98 Acts, ch 1181, §2, 5; 99 Acts, ch 96, §25

230A.4 Trustees — qualifications — manner of selection.

When the board or boards of supervisors of a county or affiliated counties decides to directly establish a community mental health center under this chapter, the supervisors, acting jointly in the case of affiliated counties, shall appoint a board of community mental health center trustees to serve until the next succeeding general election. The board of trustees shall consist of at least seven members each of whom shall be a resident of the county or one of the counties served by the center. An employee of the center is not eligible for the office of community mental health center trustee. At the first general election following establishment of the center, all members of the board of trustees shall be elected. They shall assume office on the second day of the following January which is not a Sunday or legal holiday, and shall at once divide themselves by lot into three classes of as nearly equal size as possible. The first class shall serve for terms of two years, the second class for terms of four years, and the third class for terms of six years. Thereafter, a member shall be elected to the board of trustees for a term of six years at each general election to succeed each member whose term will expire in the following year.

[C75, 77, 79, 81, S81, §230A.4; 81 Acts, ch 117, §1030]

230A.5 Election of trustees.

The election of community mental health center trustees shall take place at the general election on ballots which shall not reflect a nominee's political affiliation. Nomination shall be made by petition in accordance with chapter 45. The petition form shall be furnished by the county commissioner of elections, signed by eligible electors of the county or affiliated counties equal in number to one percent of the vote cast therein for president of the United States or governor, as the case may be, in the last previous general election, and shall be filed with the county commissioner of elections. A plurality shall be sufficient to elect community mental health center trustees, and no primary election for that office shall be held.

[C75, 77, 79, 81, §230A.5]

91 Acts, ch 129, §23

230A.6 Vacancies.

Vacancies on the community mental health center board of trustees shall be filled by appointment in accordance with sections 69.11 and 69.12, by the remaining trustees, except that if the offices of more than half of the members of the board are vacant at any one time the vacancies shall be filled by the board of supervisors or boards of supervisors acting jointly in the case of affiliated counties. The office of any trustee who is absent from four consecutive regular board meetings, without prior excuse, may be declared vacant by the board of trustees and filled in accordance with this section.

[C75, 77, 79, 81, §230A.6]

230A.7 Organization — meetings — quorum.

The members of the board of community mental health center trustees shall qualify by taking the usual oath of office within ten days after their appointment or prior to the beginning of the term to which they were elected, as the case may be. At the initial meeting following appointment of a board of trustees or of a majority of the members of a board, and at the first meeting in January after each biennial general election, the board shall organize by election of one of the trustees as chairperson, one as secretary and one as treasurer. The secretary and treasurer shall each file with the chairperson a surety bond in a penal sum set by the board of trustees and with sureties approved by the board for the use and benefit of the center, the reasonable cost of which shall be paid from the operating funds of the center. No other members of the board shall be required to post bond. The board shall meet at least once each month. One half plus one of the members of the board shall constitute a quorum.

[C75, 77, 79, 81, §230A.7]

230A.8 Duties of secretary.

1. The secretary shall report to the county auditor and treasurer the names of the chairperson, secretary and treasurer of the community mental health center board of trustees as soon as practicable after each has qualified.

2. The secretary shall keep a complete record of all proceedings of the board of trustees.

3. The secretary shall draw warrants on the funds of the center, which shall be countersigned by the chairperson of the board of trustees, after claims are certified by the board.

4. The secretary shall file with the board of trustees, on or before the tenth day of each month, a complete statement of all receipts and disburse-

ments from the center's funds during the preceding month and the balance remaining on hand at the close of the month.

[C75, 77, 79, 81, §230A.8]

230A.9 Duties of treasurer.

1. The treasurer of the community mental health center shall receive the funds made available to the center by the county or counties it serves, and any other funds which may be made available to the center, and shall disburse the center's funds upon warrants drawn as required by section 230A.8, subsection 3.

2. The treasurer shall keep an accurate account of all receipts and disbursements and shall register all orders drawn and reported to the treasurer by the secretary, showing the number, date, to whom drawn, the purpose and amount.

3. At intervals specified by the county board of supervisors, not less often than once each ninety days, the county treasurer of each county served by the center shall notify the chairperson of the center's board of trustees of all amounts due the center from the county which have not previously been paid over to the treasurer of the center. The chairperson shall then file a claim for payment as specified in sections 331.504, subsection 7, 331.506 and 331.554. Section 331.504, subsection 8 notwithstanding, the claims shall not include information which in any manner identifies an individual who is receiving or has received treatment at the center.

[C75, 77, 79, 81, S81, §230A.9; 81 Acts, ch 117, §1209]

230A.10 Powers and duties of trustees.

The community mental health center board of trustees shall:

1. Have authority to adopt bylaws and rules for its own guidance and for the government of the center.

2. Employ a director and staff for the center, fix their compensation, and have control over the director and staff.

3. Designate at least one of the trustees to visit and review the operation of the center at least once each month.

4. Procure and pay premiums on insurance policies required for the prudent management of the center, including but not limited to public liability, professional malpractice liability, workers' compensation and vehicle liability, any of which may include as additional insureds the board of trustees and employees of the center.

5. Establish, with approval of the board or joint boards of supervisors of the county or counties served by the center, standards to be followed in determining whether and to what extent persons seeking services from the center shall be considered able to pay the cost of the services received.

6. Establish, with approval of the board or joint boards of supervisors of the county or counties served by the center, policies regarding whether the services of the center will be made available to persons who are not residents of the county or counties served by the center, and if so upon what terms.

7. Purchase or lease a site for the center, and provide and equip suitable quarters for the center.

8. Prepare and approve plans and specifications for all center buildings and equipment, and advertise for bids as required by law for county buildings before making any contract for the construction of any building or purchase of equipment.

9. File with the board of supervisors within thirty days after the close of each budget year, a report covering their proceedings with reference to the center and a statement of all receipts and expenditures during the preceding budget year.

10. Accept property by gift, devise, bequest or otherwise; and, if the board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of trustees, and apply the proceeds thereof, or property received in exchange therefor, to the purposes enumerated in subsection 7, or to purchase equipment.

11. There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 349.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job classification and category, but not by listing names of individual employees. The names, addresses, salaries and job classification of all employees paid in whole or in part from public funds shall be a public record and open to inspection at reasonable times as designated by the board of trustees.

12. Recruit, promote, accept and use local financial support for the community mental health center from private sources such as community service funds, business, industrial and private foundations, voluntary agencies and other lawful sources.

13. Accept and expend state and federal funds available directly to the community mental health center for all or any part of the cost of any service the center is authorized to provide.

14. Enter into a contract with an affiliate, which may be an individual or a public or private group, agency, or corporation, organized and operating on either a profit or a nonprofit basis, for any of the services described in section 230A.2, to be provided by the affiliate to residents of the county or counties served by the community mental health center who are patients or clients of the center and are referred by the center to the affiliate for service.

[C75, 77, 79, 81, §230A.10]

83 Acts, ch 101, §41

230A.11 Trustees — reimbursement — restrictions.

1. No community mental health center trustee shall receive any compensation for services in that office, but the trustee shall be reimbursed for actual and necessary personal expenses incurred in the performance of the trustee's duties. An itemized and verified statement of any such expenses may be filed with the secretary of the board of trustees, and shall be allowed upon approval by the board.

2. No trustee shall have, directly or indirectly, any pecuniary interest in the purchase or sale of any commodities or supplies procured for or disposed of by the center.

[C75, 77, 79, 81, §230A.11]

230A.12 Center organized as nonprofit corporation — agreement with county.

Each community mental health center established or continued in operation pursuant to section 230A.3, shall be organized under the Iowa nonprofit corporation Act appearing as chapter 504A, except that a community mental health center organized under chapter 504 prior to July 1, 1974, shall not be required by this chapter to adopt the Iowa nonprofit corporation Act if it is not otherwise required to do so by law. The board of directors of each such community mental health center shall enter into an agreement with the county or affiliated counties which are to be served by the center, which agreement shall include but need not be limited to the period of time for which the agreement is to be in force, what services the center is to provide for residents of the county or counties to be served, standards the center is to follow in determining whether and to what extent persons seeking services from the center shall be considered able to pay the cost of the services received, and policies regarding availability of the center's services to persons who are not residents of the county or counties served by the center. The board of directors, in addition to exercising the powers of the board of directors of a nonprofit corporation may:

1. Recruit, promote, accept and use local financial support for the community mental health center from private sources such as community service funds, business, industrial and private foundations, voluntary agencies, and other lawful sources.

2. Accept and expend state and federal funds available directly to the community mental health center for all or any part of the cost of any service the center is authorized to provide.

3. Enter into a contract with an affiliate, which may be an individual or a public or private group, agency or corporation, organized and operating on either a profit or a nonprofit basis, for any of the services described in section 230A.2, to be provided by the affiliate to residents of the county or counties served by the community mental health center who are patients or clients of the center and are referred by the center to the affiliate for service.

[C75, 77, 79, 81, §230A.12]
83 Acts, ch 101, §42; 98 Acts, ch 1181, §3

230A.13 Annual budget.

The board of directors of each community mental health center which is organized as a nonprofit corporation shall prepare an annual budget for the center and, when satisfied with the budget, submit it to the auditor or auditors of the county or affiliated counties served by the center, at the time and in the manner prescribed by chapter 24. The budget shall be subject to review by and approval of the board of supervisors of the county which is served by the center or, in the case of a center serving affiliated counties, by the board of supervisors of each county, acting separately, to the extent the budget is to be financed by taxes levied by that county or by funds allocated to that county by the state which the county may by law use to help support the center.

Release of administrative and diagnostic information, as defined in section 228.1, subsections 1 and 3, and demographic information necessary for aggregated reporting to meet the data requirements established by the department of human services, division of mental health and developmental disabilities, relating to an individual who receives services from a community mental health center through the applicable single entry point process, may be made a condition of support of that center by any county under this section.

[C75, 77, 79, 81, §230A.13]
83 Acts, ch 101, §43; 96 Acts, ch 1183, §27

230A.14 Support of center — federal funds.

The board of supervisors of any county served by a community mental health center established or continued in operation as authorized by section 230A.1 may expend money from county funds or federal matching funds designated by the board of supervisors for that purpose, without a vote of the electorate of the county, to pay the cost of any services described in section 230A.2 which are provided by the center or by an affiliate under contract with the center, or to pay the cost of or grant funds for establishing, reconstructing, remodeling, or improving any facility required for the center.

[C75, 77, 79, 81, §230A.14]
83 Acts, ch 123, §88, 209; 92 Acts, ch 1241, §70

230A.15 Comprehensive community mental health program.

A community mental health center established or operating as authorized by section 230A.1, or which a county or group of counties has agreed to

establish or support pursuant to that section, may with approval of the board or boards of supervisors of the county or counties supporting or establishing the center, undertake to provide a comprehensive community mental health program for the county or counties. A center providing a comprehensive community mental health program shall, at a minimum, make available to residents of the county or counties it serves all of the comprehensive mental health services described in the state mental health plan.

[C75, 77, 79, 81, §230A.15; 82 Acts, ch 1117, §4]

230A.16 Establishment of standards.

The administrator of the division of mental health and developmental disabilities of the department of human services shall recommend and the mental health and developmental disabilities commission shall adopt standards for community mental health centers and comprehensive community mental health programs, with the overall objective of ensuring that each center and each affiliate providing services under contract with a center furnishes high quality mental health services within a framework of accountability to the community it serves. The standards shall be in substantial conformity with those of the psychiatric committee of the joint commission on accreditation of health care organizations and other recognized national standards for evaluation of psychiatric facilities unless in the judgment of the administrator of the division of mental health and developmental disabilities, with approval of the mental health and developmental disabilities commission, there are sound reasons for departing from the standards. When recommending standards under this section, the administrator of the division shall designate an advisory committee representing boards of directors and professional staff of community mental health centers to assist in the formulation or revision of standards. At least a simple majority of the members of the advisory committee shall be lay representatives of community mental health center boards of directors. At least one member of the advisory committee shall be a member of a county board of supervisors. The standards recommended under this section shall include requirements that each community mental health center established or operating as authorized by section 230A.1 shall:

1. Maintain and make available to the public a written statement of the services it offers to residents of the county or counties it serves, and employ or contract for services with affiliates employing specified minimum numbers of professional personnel possessing specified appropriate credentials to assure that the services offered are furnished in a manner consistent with currently accepted professional standards in the field of mental health.

2. Unless it is governed by a board of trustees elected or selected under sections 230A.5 and 230A.6, be governed by a board of directors which adequately represents interested professions, consumers of the center's services, socioeconomic, cultural, and age groups, and various geographical areas in the county or counties served by the center.

3. Arrange for the financial condition and transactions of the community mental health center to be audited once each year by the auditor of state. However, in lieu of an audit by state accountants, the local governing body of a community mental health center organized under this chapter may contract with or employ certified public accountants to conduct the audit, pursuant to the applicable terms and conditions prescribed by sections 11.6 and 11.19 and audit format prescribed by the auditor of state. Copies of each audit shall be furnished by the accountant to the administrator of the division of mental health and developmental disabilities, and the board of supervisors supporting the audited community mental health center.

4. Adopt and implement procedural rules ensuring that no member of the center's board of directors, or board of trustees receives from the center information which identifies or is intended to permit the members of the board to identify any person who is a client of that center.

[C75, 77, 79, 81, S81, §230A.16; 81 Acts, ch 78, §20, 42]

89 Acts, ch 264, §6; 94 Acts, ch 1170, §42, 43

230A.17 Review and evaluation.

The administrator of the division of mental health and developmental disabilities of the department of human services may review and evaluate any community mental health center upon the recommendation of the mental health and developmental disabilities commission, and shall do so upon the written request of the center's board of directors, its chief medical or administrative officer, or the board of supervisors of any county from which the center receives public funds. The cost of the review shall be paid by the division.

[C75, 77, 79, 81, S81, §230A.17; 81 Acts, ch 78, §20, 43]

94 Acts, ch 1170, §44

230A.18 Report of review and evaluation.

Upon completion of a review made pursuant to section 230A.17, the review shall be submitted to the board of directors and chief medical or administrative officer of the center. If the review concludes that the center fails to meet any of the standards established pursuant to section 230A.16, subsection 1, and that the response of the center to this finding is unsatisfactory, these conclusions shall be reported to the mental health and developmental disabilities commission which may forward the conclusions to the board of directors of the center and request an appropriate response within thirty days. If no response is received within thirty days, or if the response is unsatisfactory, the commission may call this fact to the attention of the board of supervisors of the county or counties served by the center, and in doing so shall indicate what corrective steps have been recommended to the center's board of directors.

[C75, 77, 79, 81, S81, §230A.18; 81 Acts, ch 78, §20, 44]

94 Acts, ch 1170, §45

SUBTITLE 4

ELDERS

CHAPTER 231

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SUBCHAPTER I

FINDINGS, POLICY, AND DEFINITIONS

231.1 Short title.

This chapter, entitled the *"Elder Iowans Act"*, sets forth the state's commitment to its elders, their dignity, independence, and rights.

86 Acts, ch 1245, §1001
C87, §249D.1
C93, §231.1

231.2 Legislative findings and declaration.

The general assembly finds and declares that:

1. Iowa's elders constitute a fundamental resource which has been undervalued, and the means must be found to recognize and use the competence, wisdom, and experience of our elders for the benefit of all Iowans.

2. The number of persons in this state age sixty and older is increasing rapidly, and of these elders, the number of women, minorities, and persons eighty-five years of age or older is increasing at an even greater rate.

3. The social and health problems of older people are compounded by a lack of access to existing services and by the unavailability of a complete range of services in all areas of the state.

4. The ability of older people to maintain self-sufficiency and to live their lives with dignity, productivity, and creativity is a matter of profound importance and concern for this state.

86 Acts, ch 1245, §1002
C87, §249D.2
C93, §231.2

231.3 State policy and objectives.

The general assembly declares that it is the policy of the state to work toward attainment of the following objectives for Iowa's elders:

1. An adequate income in retirement.

2. Access to physical and mental health care without regard to economic status.

3. Suitable housing, appropriate to the special needs of older people.

4. Full restorative services for those who require institutional care, and a comprehensive array of community-based, long-term care services adequate to sustain older people in their communities and, whenever possible, in their homes.

5. Pursuit of meaningful activity within the widest range of civic, cultural, educational, recreational, and employment opportunities.

6. Suitable community transportation systems to assist in the attainment of independent movement.

7. Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives.

86 Acts, ch 1245, §1003
C87, §249D.3
C93, §231.3

231.4 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Administrative action"* means an action or decision made by an owner, employee, or agent of a long-term care facility, or by a governmental agency, which affects the service provided to residents covered in this chapter.

2. *"Commission"* means the commission of elder affairs.

3. *"Comprehensive and coordinated system"* means a system for providing all necessary supportive services, including nutrition services, in a manner designed to:

a. Facilitate accessibility to, and utilization of, all supportive services and nutrition services provided within the geographic area served by the system by any public or private agency or organization.

b. Develop and make the most efficient use of supportive services and nutrition services in meeting the needs of elders.

c. Use available resources efficiently and with a minimum of duplication.

4. *"Department"* means the department of elder affairs.

5. *"Director"* means the director of the department of elder affairs.

6. *"Elder"* means an individual who is sixty years of age or older. *"Elderly"* means individuals sixty years of age or older.

7. *"Equivalent support"* means in-kind contributions of services, goods, volunteer support time, administrative support, or other support reasonably determined by the commission as equivalent to a dollar amount.

8. *"Federal Act"* means the Older Americans Act of 1965, 42 U.S.C. § 3001 et seq., as amended to and including February 1, 1986.

9. *"Focal point"* means a facility established to encourage the maximum collocation and coordination of services for elders.

10. *"Greatest economic need"* means the need resulting from an income level at or below the poverty threshold established by the bureau of the census.

11. *"Greatest social need"* means the need caused by noneconomic factors which include physical and mental disabilities, language barriers, and cultural or social isolation including that caused by racial or ethnic status which restricts an individual's ability to perform normal daily tasks or which threatens the elder's capacity to live independently.

12. *"Information and referral source"* means a location where a department of elder affairs or any public or private agency or organization:

a. Maintains current information with respect to the opportunities and services available to elders, and develops current lists of elders in need of services and opportunities.

b. Employs, where feasible, a specially trained staff to assess the needs and capacities of elders, and to inform elders of the opportunities and services.

13. *"Legal assistance"* means legal advice and representation by an attorney including, but not limited to, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney, and includes counseling or representation by a person who does not possess a juris doctorate, where permitted by law, of elders with economic or social needs.

14. *"Long-term care facility"* means a long-term care unit of a hospital, a licensed hospice program, a foster group home, a group living arrangement, or a facility licensed under section 135C.1 whether the facility is public or private.

15. *"Multipurpose senior center"* means a community facility for the organization and provision of a broad spectrum of services, which shall include, but not be limited to, health, social, nutritional, and educational services and the provision

of facilities for recreational activities for elders.

16. *"Resident's advocate program"* means the state long-term care resident's advocate program operated by the commission of elder affairs and administered by the long-term care resident's advocate.

86 Acts, ch 1245, §1004
C87, §249D.4
C93, §231.4

231.5 through 231.10 Reserved.

SUBCHAPTER II

COMMISSION OF ELDER AFFAIRS

231.11 Commission established.

The commission of elder affairs is established which shall consist of eleven members. Two members shall be appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, from the members of the senate to serve as ex officio nonvoting members with no more than one member being appointed from the same political party. Two members shall be appointed by the speaker of the house of representatives from the members of the house to serve as ex officio nonvoting members with no more than one member being appointed from the same political party. Seven members shall be appointed by the governor subject to confirmation by the senate. Not more than a simple majority of the governor's appointees shall belong to the same political party. At least four of the seven members appointed by the governor shall be fifty-five years of age or older when appointed.

86 Acts, ch 1245, §1005
C87, §249D.11
90 Acts, ch 1223, §22
C93, §231.11
Confirmation, see §2.32

231.12 Terms.

All members of the commission shall be appointed for terms of four years, with staggered expiration dates. The terms of office shall commence and end as provided by section 69.19. A vacancy on the commission shall be filled for the unexpired term of the vacancy in the same manner as the original appointment was made. If a legislative member ceases to be a member of the general assembly the legislative member may continue to serve until a successor is appointed.

86 Acts, ch 1245, §1006
C87, §249D.12
88 Acts, ch 1134, §59
C93, §231.12

231.13 Meetings — officers.

Members of the commission shall elect from the commission's membership a chairperson, and other officers as commission members deem necessary, who shall serve for a period of two years. The commission shall meet at regular intervals at least six times each year and may hold special meetings at the call of the chairperson or at the request of a majority of the commission membership. The commission shall meet at the seat of government or such other place as the commission may designate. Members shall be paid a per diem as specified in section 7E.6 and shall receive reimbursement for actual expenses for their official duties.

86 Acts, ch 1245, §1007
C87, §249D.13
90 Acts, ch 1256, §42
C93, §231.13

231.14 Commission duties and authority.

The commission is the policymaking body of the sole state agency responsible for administration of the Older Americans Act of 1965, as amended. The commission shall:

1. Approve state and area plans on aging.
2. Adopt policies to coordinate state activities related to the purposes of this chapter.
3. Serve as an effective and visible advocate for elders by establishing policies for reviewing and commenting upon all state plans, budgets, and policies which affect elders and for providing technical assistance to any agency, organization, association, or individual representing the needs of elders.
4. Divide the state into distinct planning and service areas after considering the geographical distribution of elders in the state, the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal services, the distribution of elders who have low incomes residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the state which are drawn for the planning or administration of supportive services programs, the location of units of general purpose, local government within the state, and any other relevant factors.
5. Designate for each planning and service area a public or private nonprofit agency or organization as the area agency on aging for that area.
6. Adopt policies to assure that the department will take into account the views of recipients of supportive services or nutrition services, or elders using multipurpose senior centers in the development of policy.
7. Adopt a formula for the distribution of federal Older Americans Act funds taking into account, to the maximum extent feasible, the best available data on the geographic distribution of elders in the state, and publish the formula for review and comment.

8. Adopt policies to assure that preference will be given to providing services to elders with the greatest economic or social needs, with particular attention to low-income minority elders, and include methods of carrying out the preference in the state plan.

9. Adopt policies to administer state programs authorized by this chapter.

The commission shall adopt administrative rules pursuant to chapter 17A to implement the duties specified in this chapter.

10. Adopt policies by which eligibility for federal, state, and local funding is established at age sixty, with preference in service delivery given to elders age seventy-five or older.

86 Acts, ch 1245, §1008
C87, §249D.14
88 Acts, ch 1073, §1
C93, §231.14

231.15 through 231.20 Reserved.

SUBCHAPTER III

DEPARTMENT OF ELDER AFFAIRS

231.21 Department of elder affairs.

An Iowa department of elder affairs is established which shall administer this chapter under the policy direction of the commission of elder affairs. The department of elder affairs shall be administered by a director.

86 Acts, ch 1245, §1009
C87, §249D.21
C93, §231.21

231.22 Director.

The governor, subject to confirmation by the senate, shall appoint a director of the department of elder affairs who shall, subject to chapter 19A, employ and direct staff as necessary to carry out the powers and duties created by this chapter. The director shall serve at the pleasure of the governor. However, the director is subject to reconfirmation by the senate as provided in section 2.32, subsection 8. The governor shall set the salary for the director within the range set by the general assembly.

The director shall have the following qualifications and training:

1. Training in the field of gerontology, social work, public health, public administration, or other related fields.

2. Direct experience or extensive knowledge of programs and services related to elders.

3. Demonstrated understanding and concern for the welfare of elders.

4. Demonstrated competency and recent working experience in an administrative, supervisory, or management position.

86 Acts, ch 1245, §1010
C87, §249D.22
C93, §231.22
Confirmation, see §2.32

231.23 Department of elder affairs — duties and authority.

The department of elder affairs director shall:

1. Develop and administer a state plan on aging.

2. Assist the commission in the review and approval of area plans.

3. Pursuant to commission policy, coordinate state activities related to the purposes of this chapter.

4. Advocate for elders by reviewing and commenting upon all state plans, budgets, and policies which affect elders and by providing technical assistance to any agency, organization, association, or individual representing the needs of the elders.

5. Assist the commission in dividing the state into distinct planning and service areas.

6. Assist the commission in designating for each area a public or private nonprofit agency or organization as the area agency on aging for that area.

7. Pursuant to commission policy, take into account the views of elder Iowans.

8. Assist the commission in adopting a formula for the distribution of funds available from the federal Act.

9. Assist the commission in assuring that preference will be given to providing services to elders with the greatest economic or social needs, with particular attention to low-income minority elders.

10. Assist the commission in developing, adopting, and enforcing administrative rules, by issuing necessary forms and procedures.

11. Apply for, receive, and administer grants and gifts to conduct projects consistent with the purposes of this chapter.

12. Administer state authorized programs.

86 Acts, ch 1245, §1011
C87, §249D.23
C93, §231.23

231.24 Information on acceptance of medicare assignments.

1. The department, in cooperation with the appropriate professional medical organizations, shall collect and analyze information on the number of physicians in Iowa in each of the following categories, including breakdowns by geographic region and by medical specialization:

a. Physicians who accept medicare assignments as payment in full for all medicare patients.

b. Physicians who accept medicare assignments as payment in full for all medicare patients with income and resources below the level established by the department.

c. Physicians who participate in a voluntary medicare assignment program.

2. The department shall identify any areas of the state and physician specialty areas in which physician participation in any of the categories under subsection 1 is not sufficient to meet the access to care needs of medicare patients in Iowa and shall recommend activities to improve access in those areas.

3. The information developed by the department shall be provided at least annually to the governor and the general assembly and to other interested persons upon request.

4. As used in this section:

a. *"Medicare"* means the program of health insurance established under Title XVIII of the federal Social Security Act.

b. *"Medicare assignment"* means payment by medicare of charges for health care services provided to medicare patients.

c. *"Medicare patient"* means a patient who is a beneficiary under medicare.

89 Acts, ch 304, §303
CS89, §249D.24
C93, §231.24
Legislative findings; 89 Acts, ch 304, §302

231.25 through 231.30 Reserved.

SUBCHAPTER IV

PLANNING AND SERVICE DELIVERY

231.31 State plan on aging.

The department of elder affairs shall develop, and submit to the commission of elder affairs for approval, a multiyear state plan on aging. The state plan on aging shall meet all applicable federal requirements and shall:

1. Be based upon area plans developed by area agencies on aging and submitted in a uniform format prepared and distributed by the department.

2. Require that each area agency on aging develop and submit to the commission for approval an area plan which complies with federal law.

3. Evaluate the need for supportive services, including legal assistance, nutrition services, and multipurpose senior centers within the state, and determine the extent to which existing public or private programs meet those needs.

4. Adopt methods for effective and efficient administration of the state and area plans.

5. Adopt methods for periodic evaluation of activities and projects carried out under the state plan.

6. Prohibit the direct provision of supportive services or nutrition services by the department of elder affairs or an area agency on aging unless necessary to assure an adequate supply of such services, or unless the services are directly related to the department of elder affairs or area agency on aging's administrative functions, or unless services of comparable quality can be provided more economically by the department of elder affairs or area agency on aging.

86 Acts, ch 1245, §1012
C87, §249D.31
C93, §231.31

231.32 Criteria for designation of area agencies on aging.

1. The commission shall designate thirteen area agencies on aging, the same of which existed on July 1, 1985. The commission shall continue the designation until an area agency on aging's designation is removed for cause as determined by the commission or until the agency voluntarily withdraws as an area agency on aging. In that event, the commission shall then proceed with subsections 2 and 3.

2. The commission shall designate an area agency to serve each planning and service area, after consideration of the views offered by the political subdivisions in the area. An area agency may be:

a. An established office of aging which is operating within a planning and service area designated by the commission.

b. Any office or agency of a unit of a political subdivision, which is designated for the purpose of serving as an area agency by the chief elected official of such unit.

c. Any office or agency designated by the appropriate chief elected officials of any combination of political subdivisions to act on behalf of the combination for such purpose.

d. Any public or nonprofit private agency in a planning and service area which is under the supervision or direction for this purpose of the department of elder affairs and which can engage in the planning or provision of a broad range of supportive services or nutrition services within the planning and service area.

Each area agency shall provide assurance, determined adequate by the commission, that the area agency has the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program in accordance with the plan within the planning and service area. In designating an area agency on aging within the planning and service area, the commission shall give preference to an established office of aging, unless the commission finds that no such office within the planning and service area has the capacity to carry out the area plan.

3. When the commission designates a new area agency on aging the commission shall give the right of first refusal to a political subdivision if:

a. Such unit can meet the requirements of subsection 1.

b. The boundaries of such a unit and the

boundaries of the area are reasonably contiguous.
86 Acts, ch 1245, §1013
C87, §249D.32
C93, §231.32

231.33 Area agencies on aging duties.
Each area agency on aging shall:
1. Develop and administer an area plan on aging.
2. Assess the types and levels of services needed by older persons in the planning and service area, and the effectiveness of other public or private programs serving those needs.
3. Enter into subgrants or contracts to provide all services under the plan.
4. Provide technical assistance as needed, prepare written monitoring reports at least quarterly, and provide a written report of an annual on-site assessment of all service providers funded by the area agency.
5. Coordinate the administration of its plan with federal programs and with other federal, state, and local resources in order to develop a comprehensive and coordinated service system.
6. Establish an advisory council.
7. Give preference in the delivery of services under the area plan to elders with the greatest economic or social need.
8. Assure that elders in the planning and service area have reasonably convenient access to information and referral services.
9. Provide adequate and effective opportunities for elders to express their views to the area agency on policy development and program implementation under the area plan.
10. Designate community focal points.
11. Contact outreach efforts, with special emphasis on the rural elderly, to identify elders with greatest economic or social needs and inform them of the availability of services under the area plan.
12. Develop and publish the methods that the agency uses to establish preferences and priorities for services.
13. Attempt to involve the area lawyers in legal assistance activities.
14. Submit all fiscal and performance reports in accordance with the policies of the commission.
15. Monitor, evaluate, and comment on policies, programs, hearings, levies, and community actions which significantly affect the lives of elders.
16. Conduct public hearings on the needs of elders.
17. Represent the interests of elders to public officials, public and private agencies, or organizations.
18. Coordinate activities in support of the statewide long-term care resident's advocate program.
19. Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for elders.
20. Coordinate planning with other agencies for assuring the safety of elders in a natural disaster or other safety threatening situation.
21. Submit a report to the department of elder affairs every six months, of the name of each health care facility in its area for which the resident advocate committee has failed to submit the report required by rules adopted pursuant to section 231.44.
86 Acts, ch 1245, §1014
C87, §249D.33
89 Acts, ch 241, §6
C93, §231.33
99 Acts, ch 129, §12

231.34 through 231.40 Reserved.

SUBCHAPTER V

LONG-TERM CARE RESIDENT'S ADVOCATE

231.41 Purpose.
The purpose of this subchapter is to establish the long-term care resident's advocate program operated by the Iowa commission of elder affairs in accordance with the requirements of the Older Americans Act of 1965, and to adopt the supporting federal regulations and guidelines for its implementation. In accordance with chapter 17A, the commission of elder affairs shall adopt and enforce rules for the implementation of this subchapter.
86 Acts, ch 1245, §1015
C87, §249D.41
C93, §231.41

231.42 Long-term care resident's advocate — duties.
The Iowa commission of elder affairs, in accordance with section 3027(a)(12) of the federal Act, shall establish the office of long-term care resident's advocate within the commission. The long-term care resident's advocate shall:
1. Investigate and resolve complaints about administrative actions that may adversely affect the health, safety, welfare, or rights of elderly in long-term care facilities.
2. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care facilities in Iowa.
3. Provide information to other agencies and to the public about the problems of elderly in long-term care facilities.
4. Train volunteers and assist in the development of citizens' organizations to participate in the long-term care resident's advocate program.
5. Carry out other activities consistent with the resident's advocate provisions of the federal Act.

6. Administer the resident advocate committee program.

7. Report annually to the general assembly on the activities of the resident's advocate office.

The resident's advocate shall have access to long-term care facilities, private access to residents, access to residents' personal and medical records, and access to other records maintained by the facilities or governmental agencies pertaining only to the person on whose behalf a complaint is being investigated.

86 Acts, ch 1245, §1016
C87, §249D.42
C93, §231.42
99 Acts, ch 129, §13

231.43 Authority and responsibilities of the commission.

To ensure compliance with the federal Act the commission of elder affairs shall establish the following:

1. Procedures to protect the confidentiality of a resident's records and files.

2. A statewide uniform reporting system.

3. Procedures to enable the long-term care resident's advocate to elicit, receive, and process complaints regarding administrative actions which may adversely affect the health, safety, welfare, or rights of elderly in long-term care facilities.

86 Acts, ch 1245, §1017
C87, §249D.43
C93, §231.43

231.44 Resident advocate committee — duties — disclosure — liability.

1. The resident advocate committee program is administered by the long-term care resident's advocate program.

2. The responsibilities of the resident advocate committee are in accordance with the rules adopted by the commission pursuant to chapter 17A. When adopting the rules, the commission shall consider the needs of residents of each category of licensed health care facility as defined in section 135C.1, subsection 6, and the services each facility may render. The commission shall coordinate the development of rules with the mental health and developmental disabilities commission created in section 225C.5 to the extent the rules would apply to a facility primarily serving persons with mental illness, mental retardation, or a developmental disability. The commission shall coordinate the development of appropriate rules with other state agencies.

3. A health care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a resident advocate committee member, unless permission for this disclosure is refused in writing by a family member.

4. Neither the state nor any resident advocate committee member is liable for an action undertaken by a resident advocate committee member in the performance of duty, if the action is undertaken and carried out in good faith.

86 Acts, ch 1245, §1018
C87, §249D.44
87 Acts, ch 70, §2; 88 Acts, ch 1068, §3
C93, §231.44
94 Acts, ch 1170, §46; 99 Acts, ch 129, §14

231.45 through 231.50 Reserved.

SUBCHAPTER VI

PROGRAMS

231.51 Older American community service employment program, Title V of the Older Americans Act.

1. The department shall direct and administer the older American community service employment program as authorized by the federal Act in coordination with the department of workforce development and the department of economic development.

2. The purpose of the program is to foster individual economic self-sufficiency and to increase the number of participants placed in unsubsidized employment in the public and private sectors while maintaining the community service focus of the program.

3. Funds appropriated to the department from the United States department of labor shall be distributed to local projects in accordance with federal requirements.

4. The department shall require such uniform reporting and financial accounting by area agencies on aging and local projects as may be necessary to fulfill the purposes of this section.

86 Acts, ch 1245, §1019
C87, §249D.51
C93, §231.51
96 Acts, ch 1186, §23; 2002 Acts, ch 1058, §1
Section amended

231.52 Senior internship program.

1. The department shall establish the senior internship program in coordination with the department of workforce development to encourage and promote the meaningful employment of older Iowans.

2. Funds appropriated to the department for this purpose shall be distributed according to administrative rules by the commission.

3. The department shall require such uniform reporting and financial accounting by area agencies on aging and local projects as may be neces-

sary to fulfill the purposes of this section.
86 Acts, ch 1245, §1020
C87, §249D.52
C93, §231.52
96 Acts, ch 1186, §23; 2002 Acts, ch 1058, §2
Section amended

231.53 Coordination with Workforce Investment Act.

The employment and training program administered by the department shall be coordinated with the training program for older individuals administered by the department of workforce development under the federal Workforce Investment Act.
2002 Acts, ch 1058, §3
Former section relating to coordination with the Job Training Partnership Act repealed effective July 1, 2001; 2001 Acts, ch 61, §19
NEW section

231.54 Elderlaw education program.

The department shall establish a program of financial support for law school clinic programs in Iowa to provide legal assistance to elders and to provide training and experience to law students in serving elders. Funds appropriated for this purpose shall be instituted based on administrative rules adopted by the commission. The department shall require such records as needed to implement this section.
86 Acts, ch 1245, §1022
C87, §249D.54
C93, §231.54

231.55 Retired senior volunteer programs.

The department shall establish a program of financial support for local retired senior volunteer programs to provide basic administrative support through block grants and to provide for program expansion through discretionary grants. Funds appropriated for this purpose shall be distributed in accordance with administrative rules adopted by the commission. The department shall require such records of local projects as needed to implement this section.
86 Acts, ch 1245, §1023
C87, §249D.55
C93, §231.55

231.56 Elderly services program.

The department shall establish an elderly services program to reduce institutionalization and encourage community involvement to help the elderly remain in their own homes. Funds appropriated for this purpose shall be instituted based on administrative rules adopted by the commission. The department shall require such records as needed to implement this section.
86 Acts, ch 1245, §1024
C87, §249D.56
C93, §231.56

231.57 Coordination of advocacy.

The department shall establish a program for the coordination of information and assistance provided within the state to assist elders in obtaining and protecting their rights and benefits. The insurance division of the department of commerce, office of the attorney general, the citizens' aide, and other state and local agencies providing information and assistance to elders in seeking their rights and benefits shall cooperate with the department in developing and implementing this program. The program shall include review of health insurance policies marketed to elders and other health-related written material distributed to elders for marketing purposes.
86 Acts, ch 1245, §1025
C87, §249D.57
C93, §231.57

231.58 Senior living coordinating unit.

1. A senior living coordinating unit is created within the department of elder affairs. The membership of the coordinating unit consists of:

a. The director of human services.

b. The director of the department of elder affairs.

c. The director of public health.

d. The director of the department of inspections and appeals.

e. Two members appointed by the governor.

f. Four members of the general assembly, as ex officio, nonvoting members.

2. The legislative members of the unit shall be appointed by the majority leader of the senate, after consultation with the president of the senate and the minority leader of the senate, and by the speaker of the house, after consultation with the majority leader and the minority leader of the house of representatives.

3. Nonlegislative members shall receive actual expenses incurred while serving in their official capacity and may also be eligible to receive compensation as provided in section 7E.6. Legislative members shall receive compensation pursuant to section 2.12.

4. The senior living coordinating unit shall:

a. Develop, for legislative review, the mechanisms and procedures necessary to implement, utilizing current personnel, a case-managed system of long-term care based on a uniform comprehensive assessment tool.

b. Develop common intake and release procedures for the purpose of determining eligibility at one point of intake and determining eligibility for programs administered by the departments of human services, public health, and elder affairs, such as the medical assistance program, federal food stamp program, and homemaker-home health aide programs.

c. Develop common definitions for long-term care services.

d. Develop procedures for coordination at the

local and state level among the providers of long-term care, including when possible co-campusing of services. The director of the department of general services shall give particular attention to this section when arranging for office space pursuant to section 18.12 for these three departments.

e. Prepare a long-range plan for the provision of long-term care services within the state.

f. Propose rules and procedures for the development of a comprehensive long-term care and community-based services program.

g. Submit a report of its activities to the governor and general assembly on January 15 of each year.

h. Provide direction and oversight for disbursement of moneys from the senior living trust fund created in section 249H.4.

i. Consult with the state universities and other institutions with expertise in the area of senior issues and long-term care.

86 Acts, ch 1245, §1026
C87, §249D.58
89 Acts, ch 52, §1
C93, §231.58
2000 Acts, ch 1004, §13, 22

231.59 Insurance information.

The department, with information provided by the insurance division of the department of commerce, shall develop and disseminate annually information regarding insurance policies available to supplement medicare, as defined in section 514D.2. The information shall permit a prospective insured to review the extent of coverage of various policies in order of most comprehensive to least, and shall include but is not limited to, the following:

1. The number of policies issued in Iowa by each corporation issuing contracts or policies relating to medicare supplement coverage.

2. The number of unresolved complaints against a corporation filed with the commissioner of insurance.

3. The percentage of complaints resolved satisfactorily for subscribers.

86 Acts, ch 1045, §1
C87, §249D.59
C93, §231.59
Long-term care insurance; chapter 514G

231.60 Representative payee project.

1. The department of elder affairs shall provide appropriate public and private organizations with written notice of the department's intent to serve as sponsor of the representative payee project in Iowa. The director shall designate a departmental staff person to serve as the project staff coordinator.

2. The department shall provide logistical support for the project including office space, telephone communications, office supplies, and postage.

3. The department shall provide for the training of representative payees.

4. The department shall establish and maintain an advisory council for the project which shall hold meetings quarterly. The department shall determine the council's membership by rule.

5. The department shall assist representative payees, and shall negotiate banking services for the project.

6. The department shall designate a volunteer, who may be a representative payee, as the public liaison to inform interested agencies and persons about the project, and to undertake to increase public awareness and referral of potential clients.

7. A person acting as a representative payee shall be considered acting in a fiduciary capacity, and shall be liable for acts or omissions of the representative payee constituting a breach of the fiduciary duty imposed by chapter 633.

8. For purposes of this section, *"representative payee"* means a person appointed by the social security administration to provide financial management services, without compensation, to individuals receiving social security administration or other government benefits, who are medically incapable of making responsible financial decisions.

89 Acts, ch 178, §5
CS89, §249D.60
C93, §231.60

231.61 Adult day services requirements — oversight.

1. As used in this section, unless the context otherwise requires, *"adult day services"* means personal care services provided on a planned basis in a supervised, protective, congregate setting during some portion of the twenty-four hour day. Services offered as adult day services may include but are not limited to social, recreational, or health services, support services such as training and counseling, meals, medication assistance, rehabilitation services, and home health aide services. Adult day services provided in an existing facility must have separate and distinct staff, hours of operation, and designated space.

2. The department shall establish, in cooperation with the department of inspections and appeals, the department of human services, the Iowa department of public health, the area agencies on aging, industry representatives, and consumers, a system of oversight for all adult day services in the state. The system shall address, but is not limited to, all of the following:

a. Requirements for the operation of adult day services.

b. Oversight measures including evaluation of adult day services and assessment of compliance with rules for adult day services.

c. A system for formal investigation of consumer complaints relating to adult day services.

d. Coordination of requirements and funding

sources available to adult day services.

3. The department shall adopt rules pursuant to chapter 17A to implement the system.

2001 Acts, ch 64, §6

System to be implemented on July 1, 2002, or upon appropriation of funding; 2001 Acts, ch 64, §12

CHAPTER 231A

ELDER FAMILY HOMES

231A.1 Definitions.

231A.2 Registration of elder family homes.

231A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Assessment"* means the administration of a standardized tool and the use of other procedures to identify existing impairments, situations, and problems which are barriers to a resident's ability to function and to identify strengths and specific needs.

2. *"Department"* means the department of elder affairs.

3. *"Elder"* means a person sixty years of age or older.

4. *"Elder family home"* means a private household owned by a responsible party offering a social living arrangement for at least two but not more than five persons, the majority of whom are elders, who are not related within the third degree of consanguinity and who are not able or willing to adequately maintain themselves in an independent living arrangement, but who are essentially capable of physical self care.

5. *"Essentially capable of self care"* means the elder is ambulatory or can move from place to place; is of sound mind; can manage the activities of daily living including personal hygiene and grooming, toileting, dressing and undressing, feeding, and medicating; and can attend to the care of personal property adequately with minimal support or occasional assistance.

6. *"Not able or willing to adequately maintain themselves in an independent living arrangement"* means that the elders require some assistance, encouragement, or social stimulation for adequate self care or to maintain physical or mental health or personal safety.

7. *"Responsible party"* means the person providing room and board in an elder family home who resides in the home. The responsible party may be but is not required to be an elder.

91 Acts, ch 88, §1

CS91, §249E.1

C93, §231A.1

231A.2 Registration of elder family homes.

1. The department shall establish a registration program for elder family homes. In order to meet the zoning requirements for classification as an elder family home under section 335.31 or 414.29, all of the following conditions must be met:

a. The responsible party shall register the home as an elder family home with the department.

b. The responsible party shall comply with visitation and assessment requirements as determined by the department.

c. The responsible party shall attend annual training as prescribed by the commission of elder affairs.

2. If, following a visitation, the resident advocate committee finds that the needs of all of the residents of an elder family home are not being adequately met, the resident advocate committee shall notify the appropriate area agency on aging. The area agency on aging shall cause to be performed a complete assessment of any of the residents whose needs are not being met. If, following the full assessment, the resident advocate committee determines that any of the residents require additional services to meet the needs of the resident, the resident advocate committee shall inform the responsible party that unless the resident relocates to a facility which is able to provide necessary services, the elder family home will no longer be designated as an elder family home and will no longer be in compliance with zoning requirements. The department shall notify the city council or the county board of supervisors if an elder family home is found to no longer be in compliance.

3. If the responsible party does not comply with the recommendations of the resident advocate committee pursuant to subsection 2, the elder family home shall lose its designation for the purposes of zoning.

4. If the resident advocate committee has probable cause to believe that any elder family home is in fact acting as a health care facility as defined under chapter 135C, upon producing identification that an individual is an inspector, an inspector of the department of inspections and appeals may enter the elder family home to determine if the home is in fact operating as an unlicensed health care facility. If the inspector is denied entrance, the inspector may, with the assistance of the county attorney in the county in which the elder family home is located, apply to the district court for an order requiring the responsible party to permit entry and inspection.

5. The department of elder affairs shall maintain a registry of elder family homes and shall act as a resource and referral agency for elder family homes.

6. Upon application for registration by a person seeking approval for an elder family home, the department shall notify the city council or county board of supervisors of the city or county in which the proposed elder family home is to be located. The city council or county board of supervisors shall respond to the application within thirty days of notification.

7. The department may delegate any duties under this section to local area agencies on aging.

8. The commission shall adopt by rule procedures for appointing members of a resident advocate committee for each elder family home. To the maximum extent possible, the resident advocate committee appointed for an elder family home shall include a person involved in a local retired senior volunteer program. The rules shall incorporate the provisions, if applicable, for resident advocate committees pursuant to sections 135C.25, 135C.38, and 231.44.

9. The commission of elder affairs shall adopt rules as necessary, to implement this section.

91 Acts, ch 88, §2
CS91, §249E.2
C93, §231A.2
99 Acts, ch 129, §15

CHAPTER 231B

ELDER GROUP HOMES

Legislative findings; see 93 Acts, ch 72, §1

231B.1 Definitions.
231B.2 Certification of elder group homes.
231B.3 Referral to uncertified elder group home prohibited.
231B.4 Applicability.

231B.1 Definitions.

1. *"Ambulatory"* means the condition of a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

2. *"Department"* means the department of elder affairs or the department's designee.

3. *"Elder"* means a person sixty years of age or older.

4. *"Elder group home"* means a single-family residence that is a residence of a person who is providing room, board, and personal care to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity.

5. *"Personal care"* means assistance with the essential activities of daily living which the recipient can perform personally only with difficulty. *"Personal care"* may include bathing, personal hygiene, dressing, grooming, and the supervision of self-administered medications, but does not include the administration of medications.

93 Acts, ch 72, §2

231B.2 Certification of elder group homes.

1. The department shall establish by rule in accordance with chapter 17A a special classification for elder group homes. An elder group home established pursuant to this subsection is exempt from the requirements of section 135.63.

2. The department shall adopt rules to establish requirements for certification of elder group homes. The requirements shall include but are not limited to all of the following:

a. Certification shall be for three years, unless revoked for good cause by the department.

b. An elder group home shall be inspected at the time of certification and subsequently upon receipt of a complaint.

c. An elder group home shall be owner-occupied, or owned by a nonprofit corporation and occupied by a resident manager. A resident manager

shall reside in and provide services for no more than one elder group home.

d. An elder group home shall be located in an area zoned for single-family or multiple-family housing or in an unincorporated area and shall be constructed in compliance with applicable local housing codes and the rules adopted for the special classification by the state fire marshal. In the absence of local building codes, the facility shall comply with the state plumbing code established pursuant to section 135.11 and the state building code established pursuant to chapter 103A.

e. A minimum private space shall be required for each resident sufficient for sleeping and dressing.

f. A minimum level of training shall be required for persons providing personal care.

g. The commission of elder affairs shall adopt by rule procedures for appointing members of resident advocate committees for elder group homes.

h. Notwithstanding any other requirements relating to performance of visitations or meetings of a resident advocate committee, a resident advocate committee appointed for an elder group home shall perform no more than four visitations, annually, to fulfill the duties of the resident advocate committee in relation to the elder group home.

i. Elder group home tenants shall have reasonable access to community resources and shall have opportunities for integrated interaction with the community.

3. An elder group home established pursuant to this chapter shall be certified by the department.

4. A provider under the special classification shall comply with the rules adopted by the department for an elder group home.

5. Inspections and certification services shall be provided by the department. However, beginning July 1, 1994, the department may enter into contracts with the area agencies on aging to provide these services.

93 Acts, ch 72, §3; 99 Acts, ch 129, §16

231B.3 Referral to uncertified elder group home prohibited.

1. A person shall not place, refer, or recommend the placement of another person in an elder group home that is not certified pursuant to this chapter.

2. A person who has knowledge that an elder group home is operating without certification shall report the name and address of the home to the department. The department shall investigate a report made pursuant to this section.

93 Acts, ch 72, §4

231B.4 Applicability.

This chapter shall not be construed to require that a facility, currently licensed or licensed as a different type of facility and serving persons sixty years of age or older, also comply with the requirements of this chapter.

93 Acts, ch 72, §5

CHAPTER 231C

ASSISTED LIVING PROGRAMS

Senior living program; see chapter 249H

231C.1 Findings and purpose.
231C.2 Definitions.
231C.3 Certification or voluntary accreditation of assisted living programs.
231C.4 Fire and safety standards.
231C.5 Coordination of the long-term care system — transitional provisions.
231C.6 Iowa assisted living fees.

231C.1 Findings and purpose.

1. The general assembly finds that assisted living is an important part of the long-term care system in this state. Assisted living emphasizes the independence and dignity of the individual while providing services in a cost-effective manner.

2. The purposes of establishing an assisted living program include all of the following:

a. To encourage the establishment and maintenance of a safe and homelike environment for individuals of all income levels who require assistance to live independently but who do not require health-related care on a continuous twenty-four hour per day basis.

b. To establish standards for assisted living programs that allow flexibility in design which promotes a social model of service delivery by focusing on individual independence, individual needs and desires, and consumer-driven quality of service.

c. To encourage general public participation in the development of assisted living programs for individuals of all income levels.

96 Acts, ch 1192, §1

231C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Assisted living"* means provision of housing with services which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living to six or more tenants in a physical structure which provides a homelike environment. *"Assisted living"* also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. *"Assisted living"* includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included.

2. *"Department"* means the department of elder affairs created in chapter 231 or the department's designee.

3. *"Health-related care"* means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis, as defined by rule.

4. *"Instrumental activities of daily living"* means those activities that reflect the tenant's ability to perform household and other tasks necessary to meet the tenant's needs within the community, which may include but are not limited to shopping, cooking, housekeeping, chores, and traveling within the community.

5. *"Personal care"* means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, housekeeping essential to the health and welfare of the tenant, and supervising of self-administered medications, but does not include the administration of medications.

6. *"Tenant"* means an individual who receives assisted living services through a certified or accredited assisted living program.

96 Acts, ch 1192, §2; 2000 Acts, ch 1004, §14, 22

231C.3 Certification or voluntary accreditation of assisted living programs.

1. The department shall establish, by rule in accordance with chapter 17A, a program for certification and monitoring of assisted living programs. An assisted living program which is voluntarily accredited is not required to also be certified by the department and the department shall accept voluntary accreditation in lieu of certification by the department. An assisted living program certified or voluntarily accredited under this section is exempt from the requirements of section 135.63 relating to certificate of need requirements.

2. Each assisted living program operating in the state shall be certified with the department or shall be voluntarily accredited. The owner or manager of a certified assisted living program shall comply with the rules adopted by the department for an assisted living program. A person shall not represent an assisted living program to the public as a certified or voluntarily accredited program unless the program is certified or voluntarily accredited pursuant to this chapter.

3. Services provided by a certified or voluntarily accredited assisted living program may be provided directly by staff of the assisted living program, by individuals contracting with the assisted living program to provide services, or by individuals employed by the tenant or with whom the tenant contracts if the tenant agrees to assume the responsibility and risk of the employment or the contractual relationship.

4. The department may enter into contracts to provide certification and monitoring of assisted living programs. The department shall have full access to a program during certification and monitoring of programs seeking certification or currently certified. Upon the request of the department the entity providing accreditation of a program shall provide copies to the department of all materials related to the accreditation process.

96 Acts, ch 1192, §3

Exception to allow for compliance by applicants for assisted living certification with chapter 104A relative to buildings in existence on July 1, 1998; modification of accessibility requirements; 99 Acts, ch 201, §3; 2000 Acts, ch 1222, §3; 2001 Acts, ch 182, §3; 2002 Acts, 2nd Ex, ch 1003, §98, 109

Execution of chapter 28E agreement providing for certification and monitoring of assisted living programs by the department of inspections and appeals effective April 26, 2002

231C.4 Fire and safety standards.

The state fire marshal shall adopt rules, in coordination with the department, relating to the certification or voluntary accreditation and monitoring of the fire and safety standards of certified or voluntarily accredited assisted living programs.

96 Acts, ch 1192, §4; 97 Acts, ch 23, §21

231C.5 Coordination of the long-term care system — transitional provisions.

1. Any person representing a program to the public as an assisted living program prior to July 1, 1996, shall be granted a temporary certification by the department or shall be voluntarily accredited and shall meet the requirements of this chapter within one year of the issuance of the temporary certification or voluntary accreditation to receive subsequent certification or voluntary accreditation.

2. A hospital licensed pursuant to chapter 135B or a health care facility licensed pursuant to chapter 135C may operate an assisted living program, located in a distinct part of or separate structure under the control of the hospital or health care facility, if certified or voluntarily accredited pursuant to this chapter.

3. This chapter shall not be construed to re-

quire that a facility licensed as a different type of facility also comply with the requirements of this chapter, unless the facility is represented to the public as a certified or voluntarily accredited assisted living program.

96 Acts, ch 1192, §5

231C.6 Iowa assisted living fees.

The department of elder affairs shall collect and retain assisted living program certification and accreditation fees as established by rule. Fees collected and retained pursuant to this section shall be deposited into an assisted living program fund created in the state treasury under the authority of the department and are appropriated to the department to carry out the purposes of this chapter. Amounts deposited in the fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited into the fund shall be credited to the fund. Amounts deposited in the fund that remain unexpended or unencumbered at the close of the fiscal year shall remain in the fund for utilization as provided in this section for the following fiscal year.

2000 Acts, ch 1222, §13, 17

Section takes effect May 8, 2000, and applies retroactively to July 1, 1999; 2000 Acts, ch 1222, §17

SUBTITLE 5

JUVENILES

CHAPTER 232

JUVENILE JUSTICE

For provisions concerning court orders under this chapter which impose terms and conditions on the parent, guardian, or custodian of a child, see §232.106

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DIVISION I

CONSTRUCTION AND DEFINITIONS

232.1 Rules of construction.

This chapter shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in the child's own home, the care, guidance and control that will best serve the child's welfare and the best interest of the state. When a child is removed from the control of the child's parents, the court shall secure for the child care as nearly as possible equivalent to that which should have been given by the parents.

[S13, §254-a14; C24, 27, 31, 35, 39, §**3617;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §232.1]

232.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Abandonment of a child"* means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

2. *"Adjudicatory hearing"* means a hearing to determine if the allegations of a petition are true.

3. *"Adult"* means a person other than a child.

4. *"Case permanency plan"* means the plan, mandated by Pub. L. No. 96-272 and Pub. L. No. 105-89, as codified in 42 U.S.C. § 622(b)(10), 671(a)(16), and 675(1),(5), which is designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian.

The plan shall specifically include all of the following:

a. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.

b. The type and appropriateness of the placement and services to be provided to the child.

c. The care and services that will be provided to the child, biological parents, and foster parents.

d. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

e. To the extent the records are available and accessible, a summary of the child's health and education records, including the date the records were supplied to the agency or individual who is the child's foster care provider.

f. When a child is sixteen years of age or older, a written plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to independent living. The written plan of services and needs assessment shall be developed with any person who may reasonably be expected to be a service provider for the child when the child becomes an adult or to become responsible for the costs of services at that time, including but not limited to the administrator of county general relief under chapter 251 or 252 or of the single entry point process implemented under section 331.440. If the child is interested in pursuing higher education, the plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

g. The actions expected of the parent, guardian, or custodian in order for the department or agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the department or agency to end its involvement with the child and the child's family.

h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

i. A provision that a designee of the department or other person responsible for placement of a child out of state shall visit the child at least once every twelve months.

j. If it has been determined that the child cannot return to the child's home, documentation of the steps taken to make and finalize an adoption or other permanent placement.

5. *"Child"* means a person under eighteen years of age.

6. *"Child in need of assistance"* means an unmarried child:

a. Whose parent, guardian or other custodian has abandoned or deserted the child.

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political or artistic value.

j. Who is without a parent, guardian or other custodian.

k. Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.

l. Who for good cause desires to have the child's parents relieved of the child's care and custody.

m. Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

o. In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

p. Whose parent, guardian, or custodian does any of the following: unlawfully manufactures a dangerous substance in the presence of a child, knowingly allows such manufacture by another person in the presence of a child, or in the presence of a child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

(1) For the purposes of this paragraph, *"in the presence of a child"* means the physical presence of a child during the manufacture or possession, the manufacture or possession occurred in a child's home, on the premises, or in a motor vehicle located on the premises, or the manufacture or possession occurred under other circumstances in which a reasonably prudent person would know that the manufacture or possession may be seen, smelled, or heard by a child.

(2) For the purposes of this paragraph, *"dangerous substance"* means any of the following:

(a) Amphetamine, its salts, isomers, or salts of its isomers.

(b) Methamphetamine, its salts, isomers, or salts of its isomers.

(c) A chemical or combination of chemicals that poses a reasonable risk of causing an explosion, fire, or other danger to the life or health of persons who are in the vicinity while the chemical or combination of chemicals is used or is intended to be used in any of the following:

(i) The process of manufacturing an illegal or controlled substance.

(ii) As a precursor in the manufacturing of an illegal or controlled substance.

(iii) As an intermediary in the manufacturing of an illegal or controlled substance.

q. Who is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

6A. *"Chronic runaway"* means a child who is reported to law enforcement as a runaway more than once in any thirty-day period or three or more times in any year.

7. *"Complaint"* means an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

8. *"Court"* means the juvenile court established under section 602.7101.

9. *"Court appointed special advocate"* means a person duly certified by the child advocacy board created in section 237.16 for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

10. *"Criminal or juvenile justice agency"* means any agency which has as its primary responsibility the enforcement of the state's criminal laws or of local ordinances made pursuant to state law.

11. *"Custodian"* means a stepparent or a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child are as follows:

a. To maintain or transfer to another the physical possession of that child.

b. To protect, train, and discipline that child.

c. To provide food, clothing, housing, and medical care for that child.

d. To consent to emergency medical care, including surgery.

e. To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

12. *"Delinquent act"* means:

a. The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

b. The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

c. The violation of section 123.47 which is committed by a child.

13. *"Department"* means the department of human services and includes the local, county and regional officers of the department.

14. *"Desertion"* means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

15. *"Detention"* means the temporary care of a child in a physically restricting facility designed to ensure the continued custody of the child at any point between the child's initial contact with the juvenile authorities and the final disposition of the

child's case.

16. *"Detention hearing"* means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

17. *"Director"* means the director of the department of human services or that person's designee.

18. *"Dismissal of complaint"* means the termination of all proceedings against a child.

19. *"Dispositional hearing"* means a hearing held after an adjudication to determine what dispositional order should be made.

20. *"Family in need of assistance"* means a family in which there has been a breakdown in the relationship between a child and the child's parent, guardian or custodian.

21. *"Guardian"* means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and duties of a guardian with respect to a child shall be as follows:

a. To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.

b. To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.

c. To serve as custodian, unless another person has been appointed custodian.

d. To make periodic visitations if the guardian does not have physical possession or custody of the child.

e. To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

f. To make other decisions involving protection, education, and care and control of the child.

22. *a.* *"Guardian ad litem"* means a person appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party, and includes a court appointed special advocate, except that a court appointed special advocate shall not file motions or petitions pursuant to section 232.54, subsections 1 and 4, section 232.103, subsection 2, paragraph *"c"*, and section 232.111.

b. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include the following:

(1) Conducting in-person interviews with the child, if the child's age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.

(2) Conducting interviews with the child, if the child's age is appropriate for the interview, prior to any court-ordered hearing.

(3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.

(4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in subparagraph (2).

(5) Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(6) Attending any hearings in the matter in which the person is appointed as the guardian ad litem.

c. The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian ad litem may interview any person providing medical, mental health, social, educational, or other services to the child, may attend any departmental staff meeting, case conference, or meeting with medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem, and may inspect and copy any records relevant to the proceedings.

23. *"Health practitioner"* means a licensed physician or surgeon, osteopath, osteopathic physician or surgeon, dentist, optometrist, podiatric physician, or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

24. *"Informal adjustment"* means the disposition of a complaint without the filing of a petition and may include but is not limited to the following:

a. Placement of the child on nonjudicial probation.

b. Provision of intake services.

c. Referral of the child to a public or private agency other than the court for services.

25. *"Informal adjustment agreement"* means an agreement between an intake officer, a child who is the subject of a complaint, and the child's parent, guardian or custodian providing for the informal adjustment of the complaint.

26. *"Intake"* means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if

so, what action.

27. *"Intake officer"* means a juvenile court officer or other officer appointed by the court to perform the intake function.

28. *"Judge"* means the judge of a juvenile court.

29. *"Juvenile"* means the same as *"child"*. However, in the interstate compact on juveniles, sections 232.171 and 232.172, *"juvenile"* means a person defined as a juvenile in the law of a state which is a party to the compact.

30. *"Juvenile court officer"* means a person appointed as a juvenile court officer under section 602.7202 and a chief juvenile court officer appointed under section 602.1217.

31. *"Juvenile court social records"* or *"social records"* means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this chapter other than official records and includes but is not limited to the records made and compiled by intake officers, predisposition reports, and reports of physical and mental examinations.

32. *"Juvenile detention home"* means a physically restricting facility used only for the detention of children.

33. *"Juvenile parole officer"* means a person representing an agency which retains jurisdiction over the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed.

34. *"Juvenile shelter care home"* means a physically unrestricting facility used only for the shelter care of children.

35. *"Mental injury"* means a nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin.

36. *"Nonjudicial probation"* means the informal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or juvenile court officer for a period during which the child may be required to comply with specified conditions concerning the child's conduct and activities.

37. *"Nonsecure facility"* means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this chapter.

38. *"Official juvenile court records"* or *"official records"* means official records of the court of proceedings over which the court has jurisdiction under this chapter which includes but is not limited to the following:

a. The docket of the court and entries therein.

b. Complaints, petitions, other pleadings, motions, and applications filed with a court.

c. Any summons, notice, subpoena, or other process and proofs of publication.

d. Transcripts of proceedings before the court.

e. Findings, judgments, decrees and orders of the court.

39. *"Parent"* means a biological or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

40. *"Peace officer"* means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

41. *"Petition"* means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

42. *"Physical abuse or neglect"* or *"abuse or neglect"* means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian or custodian or other person legally responsible for the child.

42A. *"Preadoptive care"* means the provision of parental nurturing on a full-time basis to a child in foster care by a person who has signed a preadoptive placement agreement with the department for the purposes of proceeding with a legal adoption of the child. Parental nurturing includes but is not limited to furnishing of food, lodging, training, education, treatment, and other care.

43. *"Predisposition investigation"* means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction.

44. *"Predisposition report"* is a report furnished to the court which contains the information collected during a predisposition investigation.

45. *"Probation"* means a legal status which is created by a dispositional order of the court in a case where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile court officer or other person or agency designated by the court. The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions.

46. *"Registry"* means the central registry for child abuse information as established under chapter 235A.

47. *"Residual parental rights and responsibilities"* means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child. These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support.

48. *"Secure facility"* means a physically restricting facility in which children adjudicated to have committed a delinquent act may be placed pursuant to a dispositional order of the court.

49. *"Sexual abuse"* means the commission of a

sex offense as defined by the penal law.

50. *"Shelter care"* means the temporary care of a child in a physically unrestricting facility at any time between a child's initial contact with juvenile authorities and the final judicial disposition of the child's case.

51. *"Shelter care hearing"* means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

52. *"Social investigation"* means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a child in need of assistance case over which the court has jurisdiction.

53. *"Social report"* means a report furnished to the court which contains the information collected during a social investigation.

54. *"Taking into custody"* means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.

55. *"Termination hearing"* means a hearing held to determine whether the court should terminate a parent-child relationship.

56. *"Termination of the parent-child relationship"* means the divestment by the court of the parent's and child's privileges, duties and powers with respect to each other.

57. *"Voluntary placement"* means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child's parent or guardian.

58. *"Waiver hearing"* means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a delinquent act so that the state may prosecute the child as if the child were an adult.

[S13, §254-a14, -a21; C24, 27, 31, 35, 39, §**3618, 3619, 3620, 3638;** C46, 50, 54, 58, 62, §232.2, 232.3, 232.4, 232.22; C66, 71, 73, 75, 77, 79, 81, §232.2; 82 Acts, ch 1209, §1]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10054, 10055, 10201; 84 Acts, ch 1279, §1, 2; 87 Acts, ch 121, §1, 2; 88 Acts, ch 1134, §46, 47; 89 Acts, ch 169, §1; 89 Acts, ch 229, §1 – 4; 89 Acts, ch 230, §1, 2; 90 Acts, ch 1251, §22; 91 Acts, ch 232, §1; 92 Acts, ch 1231, §10; 93 Acts, ch 93, §1; 94 Acts, ch 1046, §1, 2; 94 Acts, ch 1172, §12; 95 Acts, ch 108, §16; 95 Acts, ch 147, §3; 95 Acts, ch 182, §1, 2, 6; 95 Acts, ch 191, §7; 96 Acts, ch 1092, §1; 97 Acts, ch 90, §1; 97 Acts, ch 126, §10; 97 Acts, ch 164, §1; 98 Acts, ch 1019, §1; 98 Acts, ch 1047, §21; 98 Acts, ch 1190, §1 – 3; 99 Acts, ch 164, §1; 99 Acts, ch 208, §33, 34; 2000 Acts, ch 1067, §4, 5; 2000 Acts, ch 1232, §56; 2001 Acts, ch 46, §1; 2001 Acts, ch 67, §7, 13; 2002 Acts, ch 1081, §1; 2002 Acts, ch 1162, §16

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

For temporary provisions relating to case permanency plans for the period beginning July 1, 2002, and ending June 30, 2003, see 2002 Acts, 2nd Ex, ch 1003, §148, 151

Subsection 4, paragraph f amended

Subsection 9 amended

232.3 Concurrent court proceedings.

1. During the pendency of an action under this chapter, a party to the action is estopped from litigating concurrently the custody, guardianship, or placement of a child who is the subject of the action, in a court other than the juvenile court. A district judge, district associate judge, magistrate, or judicial hospitalization referee, upon notice of the pendency of an action under this chapter, shall not issue an order, finding, or decision relating to the custody, guardianship, or placement of the child who is the subject of the action, under any law, including but not limited to chapter 598, 598B, or 633.

2. The juvenile court with jurisdiction of the pending action under this chapter, however, may, upon the request of a party to the action or on its own motion, authorize the party to litigate concurrently in another court a specific issue relating to the custody, guardianship, or placement of the child who is the subject of the action. Before authorizing a party to litigate a specific issue in another court, the juvenile court shall give all parties to the action an opportunity to be heard on the proposed authorization. The juvenile court may request but shall not require another court to exercise jurisdiction and adjudicate a specific issue relating to the custody, guardianship, or placement of the child.

83 Acts, ch 21, §2; 83 Acts, ch 186, §10056, 10201; 99 Acts, ch 103, §42

232.4 Jurisdiction — support obligation.

Notwithstanding any other provision of this chapter, and for the purposes of establishing a parental liability obligation for a child under the jurisdiction of the juvenile court, a support obligation shall be established pursuant to section 234.39.

92 Acts, ch 1195, §302; 94 Acts, ch 1171, §7

232.5 Abortion performed on a minor — waiver of notification proceedings.

The court shall have exclusive jurisdiction over the proceedings for the granting of an order for waiver of the notification requirements relating to the performance of an abortion on a minor pursuant to section 135L.3.

96 Acts, ch 1011, §10; 96 Acts, ch 1174, §6

232.6 Jurisdiction — adoptions and terminations of parental rights.

The court may exercise jurisdiction over adoption and termination of parental rights proceedings under chapters 600 and 600A.

2000 Acts, ch 1145, §1

232.7 Reserved.

DIVISION II

JUVENILE DELINQUENCY PROCEEDINGS

PART 1

GENERAL PROVISIONS

232.8 Jurisdiction.

1. *a.* The juvenile court has exclusive original jurisdiction in proceedings concerning a child who is alleged to have committed a delinquent act unless otherwise provided by law, and has exclusive original jurisdiction in proceedings concerning an adult who is alleged to have committed a delinquent act prior to having become an adult, and who has been transferred to the jurisdiction of the juvenile court pursuant to an order under section 803.5.

b. Violations by a child of provisions of chapter 321, 321G, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. A child convicted of a violation excluded from the jurisdiction of the juvenile court under this paragraph shall be sentenced pursuant to section 805.8, where applicable, and pursuant to section 903.1, subsection 3, for all other violations.

c. Violations by a child, aged sixteen or older, which subject the child to the provisions of section 124.401, subsection 1, paragraph *"e"* or *"f"*, or violations of section 723A.2 which involve a violation of chapter 724, or violation of chapter 724 which constitutes a felony, or violations which constitute a forcible felony are excluded from the jurisdiction of the juvenile court and shall be prosecuted as otherwise provided by law unless the court transfers jurisdiction of the child to the juvenile court upon motion and for good cause. A child over whom jurisdiction has not been transferred to the juvenile court, and who is convicted of a violation excluded from the jurisdiction of the juvenile court under this paragraph, shall be sentenced pursuant to section 124.401B, 902.9, or 903.1. Notwithstanding any other provision of the Code to the contrary, the court may accept from a child a plea of guilty, or may instruct the jury on a lesser included offense to the offense excluded from the jurisdiction of the juvenile court under this section, in the same manner as regarding an adult. However, the juvenile court shall have exclusive original jurisdiction in a proceeding concerning an offense of animal torture as provided in section 717B.3A alleged to have been committed by a child under the age of seventeen.

d. The juvenile court shall have jurisdiction in proceedings commenced against a child pursuant to section 236.3 over which the district court has waived its jurisdiction. The juvenile court shall hear the action in the manner of an adjudicatory hearing under section 232.47, subject to the following:

(1) The juvenile court shall abide by the provisions of sections 236.4 and 236.6 in holding hearings and making a disposition.

(2) The plaintiff is entitled to proceed pro se under sections 236.3A and 236.3B.

2. A case involving a person charged in a court other than the juvenile court with the commission of a public offense not exempted by law from the jurisdiction of the juvenile court and who is within the provisions of subsection 1 of this section shall immediately be transferred to the juvenile court. The transferring court shall order a transfer and shall forward the transfer order together with all papers, documents and a transcript of all testimony filed or admitted into evidence in connection with the case to the clerk of the juvenile court. The jurisdiction of the juvenile court shall attach immediately upon the signing of an order of transfer. From the time of transfer, the custody, shelter care and detention of the person alleged to have committed a delinquent act shall be in accordance with the provisions of this chapter and the case shall be processed in accordance with the provisions of this chapter.

3. The juvenile court, after a hearing and in accordance with the provisions of section 232.45, may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult or youthful offender for such offense in another court. If the child, except a child being prosecuted as a youthful offender, pleads guilty or is found guilty of a public offense other than a class "A" felony in another court of this state, that court may suspend the sentence or, with the consent of the child, defer judgment and without regard to restrictions placed upon deferred judgments for adults, place the child on probation for a period of not less than one year upon such conditions as it may require. Upon fulfillment of the conditions of probation, a child who receives a deferred judgment shall be discharged without entry of judgment.

This subsection does not apply in a proceeding concerning an offense of animal torture as provided in section 717B.3A alleged to have been committed by a child under the age of seventeen.

4. In a proceeding concerning a child who is alleged to have committed a second delinquent act or a second violation excluded from the jurisdiction of the juvenile court, the court or the juvenile court shall determine whether there is reason to believe that the child regularly abuses alcohol or other controlled substance and may be in need of treatment. If the court so determines, the court

shall advise appropriate juvenile authorities and refer such offenders to the juvenile court for disposition pursuant to section 232.52A.

5. Nothing in this chapter shall be interpreted as affecting the statutory limitations on prosecutions for murder in the first or second degree.

6. The supreme court shall prescribe rules under section 602.4202 to resolve jurisdictional and venue issues when juveniles who are placed in another court's jurisdiction are alleged to have committed subsequent delinquent acts.

[C71, 73, 75, 77, §232.63 – 232.67, 232.72; C79, 81, §232.8]

84 Acts, ch 1275, §6; 86 Acts, ch 1186, §1, 2; 87 Acts, ch 149, §1; 88 Acts, ch 1134, §48; 88 Acts, ch 1167, §1; 90 Acts, ch 1251, §23, 24; 91 Acts, ch 240, §9; 92 Acts, ch 1160, §21; 92 Acts, ch 1231, §12; 95 Acts, ch 180, §2; 95 Acts, ch 191, §8; 96 Acts, ch 1134, §1; 97 Acts, ch 126, §11; 2000 Acts, ch 1056, §1; 2000 Acts, ch 1152, §1, 2; 2000 Acts, ch 1232, §57, 58

232.9 Motion for change of judge.

Prior to a hearing pursuant to sections 232.44 to 232.47, 232.50 or 232.54, the child may file a motion with the district court for the appointment of a new judge. The chief judge of the district court for cause shown shall appoint a new judge.

[C79, 81, §232.9]

232.10 Venue.

1. Venue for delinquency proceedings shall be in the judicial district where the child is found, where the child resides or where the alleged delinquent act occurred.

2. The court may transfer delinquency proceedings to the court of any county having venue at any stage in the proceeding as follows:

a. When it appears that the best interests of the child or society or the convenience of the parties will be served by a transfer, the court may transfer the case to the court of the county of the child's residence.

b. With the consent of the receiving court, the court may transfer the case to the court of the county where the child is found.

c. The court may transfer the case to the county where the alleged delinquent act occurred.

3. The court shall transfer the case by ordering the transfer and a continuance and by forwarding to the clerk of the receiving court a certified copy of all papers filed together with an order of transfer. The judge of the receiving court may accept the filings of the transferring court or may direct the filing of a new petition and hear the case anew.

[C71, 73, 75, 77, §232.68 – 232.70; C79, 81, §232.10]

88 Acts, ch 1134, §49

232.11 Right to assistance of counsel.

1. A child shall have the right to be represented by counsel at the following stages of the proceedings within the jurisdiction of the juvenile court under division II:

a. From the time the child is taken into custody for any alleged delinquent act that constitutes a serious or aggravated misdemeanor or felony under the Iowa criminal code, and during any questioning thereafter by a peace officer or probation officer.

b. A detention or shelter care hearing as required by section 232.44.

c. A waiver hearing as required by section 232.45.

d. An adjudicatory hearing required by section 232.47.

e. A dispositional hearing as required by section 232.50.

f. Hearings to review and modify a dispositional order as required by section 232.54.

2. The child's right to be represented by counsel under subsection 1, paragraphs *"b"* to *"f"* of this section shall not be waived by a child of any age. The child's right to be represented by counsel under subsection 1, paragraph *"a"* shall not be waived by a child less than sixteen years of age without the written consent of the child's parent, guardian, or custodian. The waiver by a child who is at least sixteen years of age is valid only if a good faith effort has been made to notify the child's parent, guardian, or custodian that the child has been taken into custody and of the alleged delinquent act for which the child has been taken into custody, the location of the child, and the right of the parent, guardian, or custodian to visit and confer with the child.

3. If the child is not represented by counsel as required under subsection 1, counsel shall be provided as follows:

a. If the court determines, after giving the child's parent, guardian or custodian an opportunity to be heard, that such person has the ability in whole or in part to pay for the employment of counsel, it shall either order that person to retain an attorney to represent the child or shall appoint counsel for the child and order the parent, guardian or custodian to pay for that counsel as provided in subsection 5.

b. If the court determines that the parent, guardian, or custodian cannot pay any part of the expenses of counsel to represent the child, it shall appoint counsel, who shall be reimbursed according to section 232.141, subsection 2, paragraph *"b"*.

c. The court may appoint counsel to represent the child and reserve the determination of payment until the parent, guardian or custodian has an opportunity to be heard.

4. If the child is represented by counsel and the court determines that there is a conflict of interest between the child and the child's parent, guardian or custodian and that the retained counsel could not properly represent the child as a re-

sult of the conflict, the court shall appoint other counsel to represent the child and order the parent, guardian or custodian to pay for such counsel as provided in subsection 5.

5. If the court determines, after an inquiry which includes notice and reasonable opportunity to be heard that the parent, guardian or custodian has the ability to pay in whole or in part for the attorney appointed for the child, the court may order that person to pay such sums as the court finds appropriate in the manner and to whom the court directs. If the person so ordered fails to comply with the order without good reason, the court shall enter judgment against the person.

6. Nothing in this section shall be construed to prevent the child or the child's parent, guardian or custodian from retaining counsel to represent the child in proceedings under this division II of this chapter in which the alleged delinquent act constitutes a simple misdemeanor under the Iowa Code.

[C24, 27, 31, 35, 39, §**3631;** C46, 50, 54, 58, 62, §232.15; C66, 71, 73, 75, 77, §232.28; C79, 81, §232.11; 82 Acts, ch 1209, §2]

90 Acts, ch 1168, §34

232.12 Duties of county attorney.

Upon the filing of a petition the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition.

[C66, 71, 73, 75, 77, §232.19; C79, 81, §232.12]

232.13 State liability.

1. For purposes of chapter 669, the following persons shall be considered state employees:

a. A child given a work assignment of value to the state or the public or a community work assignment under this chapter.

b. A court appointed special advocate.

2. The state of Iowa is exclusively liable for and shall pay any compensation becoming due a person under section 85.59.

84 Acts, ch 1280, §2; 85 Acts, ch 177, §2; 87 Acts, ch 24, §1; 87 Acts, ch 121, §3

232.14 to 232.18 Reserved.

PART 2

CHILD CUSTODY

232.19 Taking a child into custody.

1. A child may be taken into custody:

a. By order of the court.

b. For a delinquent act pursuant to the laws relating to arrest.

c. By a peace officer, when the peace officer has reasonable grounds to believe the child has run away from the child's parents, guardian, or custodian, for the purposes of determining whether the child shall be reunited with the child's parents, guardian, or custodian, placed in shelter care, or, if the child is a chronic runaway and the county has an approved county runaway treatment plan, placed in a runaway assessment center under section 232.196.

d. By a peace officer, juvenile court officer, or juvenile parole officer when the officer has reasonable grounds to believe the child has committed a material violation of a dispositional order.

2. When a child is taken into custody as provided in subsection 1 the person taking the child into custody shall notify the child's parent, guardian, or custodian as soon as possible. The person may place bodily restraints, such as handcuffs, on the child if the child physically resists; threatens physical violence when being taken into custody; is being taken into custody for an alleged delinquent act of violence against a person; or when, in the reasonable judgment of the officer, the child presents a risk of injury to the child or others. The child may also be restrained by handcuffs or other restraints at any time after the child is taken into custody if the child has a known history of physical violence to others. Unless the child is placed in shelter care or detention in accordance with the provisions of section 232.21 or 232.22, the child shall be released to the child's parent, guardian, custodian, responsible adult relative, or other adult approved by the court upon the promise of such person to produce the child in court at such time as the court may direct.

3. Notwithstanding any other provision of this chapter, a child shall not be placed in detention as a result of a violation by that child of section 123.47.

4. Information pertaining to a child who is at least ten years of age and who is taken into custody for a delinquent act which would be a public offense is a public record and is not confidential under section 232.147.

[SS15, §254-a16; C24, 27, 31, 35, 39, §**3630;** C46, 50, 54, 58, 62, §232.14; C66, 71, 73, 75, 77, §232.15, 232.16; C79, 81, §232.19]

83 Acts, ch 186, §10055, 10201; 90 Acts, ch 1251, §25; 94 Acts, ch 1172, §13; 97 Acts, ch 90, §2; 97 Acts, ch 126, §12, 13; 98 Acts, ch 1100, §24

232.20 Admission of child to shelter care or detention.

1. If a child is taken into custody and not released as provided in section 232.19, subsection 2, the child shall immediately be taken to a detention or shelter care facility as specified in sections 232.21 or 232.22.

2. When a child is admitted to a detention or shelter care facility the person in charge of the facility or the person's designated representative shall notify the court, the child's attorney, and the child's parent, guardian, or custodian as soon as possible of the admission and the reasons for that admission.

[C66, 71, 73, 75, 77, §232.17; C79, 81, §232.20]

232.21 Placement in shelter care.

1. No child shall be placed in shelter care unless one of the following circumstances applies:

a. The child has no parent, guardian, custodian, responsible adult relative or other adult approved by the court who will provide proper shelter, care and supervision.

b. The child desires to be placed in shelter care.

c. It is necessary to hold the child until the child's parent, guardian, or custodian has been contacted and has taken custody of the child.

d. It is necessary to hold the child for transfer to another jurisdiction.

e. The child is being placed pursuant to an order of the court.

2. A child may be placed in shelter care as provided in this section only in one of the following facilities:

a. A juvenile shelter care home.

b. A licensed foster home.

c. An institution or other facility operated by the department of human services, or one which is licensed or otherwise authorized by law to receive and provide care for the child.

d. Any other suitable place designated by the court provided that no place used for the detention of a child may be so designated.

Placement shall be made in the least restrictive facility available consistent with the best interests and special needs of the child. Foster family care shall be used for a child unless the child has problems requiring specialized service or supervision which cannot be provided in a family living arrangement.

3. When there is reason to believe that a child placed in shelter care pursuant to section 232.19, subsection 1, paragraph *"c"* would not voluntarily remain in the shelter care facility, the shelter care facility shall impose reasonable restrictions necessary to ensure the child's continued custody.

4. A child placed in a shelter care facility under this section shall not be held for a period in excess of forty-eight hours without an oral or written court order authorizing the shelter care. When the action is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order. A child placed in shelter care pursuant to section 232.19, subsection 1, paragraph *"c"*, shall not be held in excess of seventy-two hours in any event. If deemed appropriate by the court, an order authorizing shelter care placement may include a determination that continuation of the child in the child's home is contrary to the child's welfare and that reasonable efforts as defined in section 232.57 have been made. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may be used by the department to assist in obtaining federal funding for the child's placement.

5. If no satisfactory provision is made for uniting a child placed in shelter care pursuant to section 232.19, subsection 1, paragraph *"c"* with the child's family, a child in need of assistance complaint may be filed pursuant to section 232.81. Nothing in this subsection shall limit the right of a child to file a family in need of assistance petition under section 232.125.

6. A child twelve years of age or younger shall not be placed in a group shelter care home, unless there have been reasonable but unsuccessful efforts to place the child in an emergency foster family home which is able to meet the needs of the child. The efforts shall be documented at the shelter care hearing.

[S13, §254-a24; SS15, §254-a16; C24, 27, 31, 35, 39, §**3633;** C46, 50, 54, 58, 62, §232.17; C66, 71, 73, 75, 77, §232.17, 232.18; C79, 81, §232.21; 82 Acts, ch 1209, §3]

83 Acts, ch 96, §157, 159; 88 Acts, ch 1249, §10, 11; 2001 Acts, ch 135, §5; 2001 Acts, ch 176, §64; 2002 Acts, ch 1050, §22

Subsection 4 amended

232.22 Placement in detention.

1. A child shall not be placed in detention unless one of the following conditions is met:

a. The child is being held under warrant for another jurisdiction.

b. The child is an escapee from a juvenile correctional or penal institution.

c. There is probable cause to believe that the child has violated conditions of release imposed under section 232.44, subsection 5, paragraph *"b"*, or section 232.52 or 232.54, and there is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance.

d. There is probable cause to believe the child has committed a delinquent act, and one of the following conditions is met:

(1) There is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance.

(2) There is a serious risk that the child if released may commit an act which would inflict serious bodily harm on the child or on another.

(3) There is a serious risk that the child if released may commit serious damage to the property of others.

e. There is probable cause to believe that the child has committed a delinquent act involving possession with intent to deliver any of the following controlled substances:

(1) A mixture or substance containing cocaine base, also known as crack cocaine, and if the act was committed by an adult, it would be a violation

of section 124.401, subsection 1, paragraph *"a"*, subparagraph (3), paragraph *"b"*, subparagraph (3), or paragraph *"c"*, subparagraph (3).

(2) A mixture or substance containing cocaine, its salts, optical and geometric isomers, and salts of isomers, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1, paragraph *"a"*, subparagraph (2), subparagraph subdivision (b), paragraph *"b"*, subparagraph (2), subparagraph subdivision (b), or paragraph *"c"*, subparagraph (2), subparagraph subdivision (b).

(3) A mixture or substance containing methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1.

f. A dispositional order has been entered under section 232.52 placing the child in secure custody in a facility defined in subsection 3, paragraph *"a"* or *"b"*.

g. There is probable cause to believe that the child has committed a delinquent act which would be domestic abuse under chapter 236 or a domestic abuse assault under section 708.2A if committed by an adult.

2. If deemed appropriate by the court, an order for placement of a child in detention may include a determination that continuation of the child in the child's home is contrary to the child's welfare and that reasonable efforts as defined in section 232.57 have been made. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may assist the department in obtaining federal funding for the child's placement.

3. Except as provided in subsection 7, a child may be placed in detention as provided in this section in one of the following facilities only:

a. A juvenile detention home.

b. Any other suitable place designated by the court other than a facility under paragraph *"c"*.

c. A room in a facility intended or used for the detention of adults if there is probable cause to believe that the child has committed a delinquent act which if committed by an adult would be a felony, or aggravated misdemeanor under section 708.2 or 709.11, a serious or aggravated misdemeanor under section 321J.2, or a violation of section 123.46, and if all of the following apply:

(1) The child is at least fourteen years of age.

(2) The child has shown by the child's conduct, habits, or condition that the child constitutes an immediate and serious danger to another or to the property of another, and a facility or place enumerated in paragraph *"a"* or *"b"* is unavailable, or the court determines that the child's conduct or condition endangers the safety of others in the facility.

(3) The facility has an adequate staff to supervise and monitor the child's activities at all times.

(4) The child is confined in a room entirely separated from detained adults, is confined in a manner which prohibits communication with detained adults, and is permitted to use common areas of the facility only when no contact with detained adults is possible.

However, if the child is to be detained for a violation of section 123.46 or section 321J.2, placement in a facility pursuant to this paragraph shall be made only after an attempt has been made to notify the parents or legal guardians of the child and request that the parents or legal guardians take custody of the child. If the parents or legal guardians cannot be contacted, or refuse to take custody of the child, an attempt shall be made to place the child in another facility, including but not limited to a local hospital or shelter care facility. Also, a child detained for a violation of section 123.46 or section 321J.2 pursuant to this paragraph shall only be detained in a facility with adequate staff to provide continuous visual supervision of the child.

d. A place used for the detention of children prior to an adjudicatory hearing may also be used for the detention of a child awaiting disposition to a placement under section 232.52, subsection 2, paragraph *"e"* while the adjudicated child is awaiting transfer to the disposition placement.

4. A child shall not be held in a facility under subsection 3, paragraph *"a"* or *"b"* for a period in excess of twenty-four hours without an oral or written court order authorizing the detention. When the detention is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order.

5. A child shall not be detained in a facility under subsection 3, paragraph *"c"* for a period of time in excess of six hours without the oral or written order of a judge or a magistrate authorizing the detention. A judge or magistrate may authorize detention in a facility under subsection 3, paragraph *"c"* for a period of time in excess of six hours but less than twenty-four hours, excluding weekends and legal holidays, but only if all of the following occur or exist:

a. The facility serves a geographic area outside a standard metropolitan statistical area as determined by the United States census bureau.

b. The court determines that an acceptable alternative placement does not exist pursuant to criteria developed by the department of human services.

c. The facility has been certified by the department of corrections as being capable of sight and sound separation pursuant to this section and section 356.3.

d. The child is awaiting an initial hearing before the court pursuant to section 232.44.

The restrictions contained in this subsection relating to the detention of a child in a facility under subsection 3, paragraph *"c"* do not apply if the

court has waived its jurisdiction over the child for the alleged commission of a felony offense pursuant to section 232.45.

6. An adult within the jurisdiction of the court under section 232.8, subsection 1, who has been placed in detention, is not bailable under chapter 811. If such an adult is detained in a room in a facility intended or used for the detention of adults, the adult shall be confined in a room entirely separated from adults not within the jurisdiction of the court under section 232.8, subsection 1.

7. If the court has waived its jurisdiction over the child for the alleged commission of a forcible felony offense pursuant to section 232.45 or 232.45A, and there is a serious risk that the child may commit an act which would inflict serious bodily harm on another person, the child may be held in the county jail, notwithstanding section 356.3. However, wherever possible the child shall be held in sight and sound separation from adult offenders. A child held in the county jail under this subsection shall have all the rights of adult post-arrest or pretrial detainees.

8. Notwithstanding any other provision of the Code to the contrary, a child shall not be placed in detention for a violation of section 123.47, or for failure to comply with a dispositional order which provides for performance of community service for a violation of section 123.47.

[S13, §254-a24; SS15, §254-a16; C24, 27, 31, 35, 39, §**3633;** C46, 50, 54, 58, 62, §232.17; C66, 71, 73, 75, 77, §232.17 – 232.19; C79, 81, §232.22; 82 Acts, ch 1209, §4, 5]

86 Acts, ch 1186, §3; 87 Acts, ch 149, §2 – 4; 88 Acts, ch 1167, §2, 3; 91 Acts, ch 232, §2, 3; 92 Acts, ch 1231, §14, 15; 95 Acts, ch 180, §3; 95 Acts, ch 191, §9; 96 Acts, ch 1164, §7; 97 Acts, ch 126, §14; 2001 Acts, ch 135, §6

232.23 Detention — youthful offenders.

1. After waiver of a child who will be prosecuted as a youthful offender, the child shall be held in a facility under section 232.22, subsection 3, paragraph *"a"* or *"b"*, unless released in accordance with subsection 2.

2. *a.* The court shall determine, at the detention hearing under section 232.44, the amount of bail, appearance bond, or other conditions necessary for a child who has been waived for prosecution as a youthful offender to be released from detention or that the child should not be released from detention.

b. A child placed in detention or released under this subsection shall be supervised by a juvenile court officer or juvenile court services personnel.

c. An order under this section may be reviewed by the court upon motion of either party.

97 Acts, ch 126, §15

232.24 through 232.27 Reserved.

PART 3

INTAKE

232.28 Intake.

1. Any person having knowledge of the facts may file a complaint with the court or its designee alleging that a child has committed a delinquent act. A written record shall be maintained of any oral complaint received.

2. The court or its designee shall refer the complaint to an intake officer who shall consult with law enforcement authorities having knowledge of the facts and conduct a preliminary inquiry to determine what action should be taken.

3. In the course of a preliminary inquiry, the intake officer may:

a. Interview the complainant, victim or witnesses of the alleged delinquent act.

b. Check existing records of the court, law enforcement agencies and public records of other agencies.

c. Hold conferences with the child and the child's parent or parents, guardian or custodian for the purpose of interviewing them and discussing the disposition of the complaint in accordance with the requirements set forth in subsection 8.

d. Examine any physical evidence pertinent to the complaint.

e. Interview such persons as are necessary to determine whether the filing of a petition would be in the best interests of the child and the community as provided in section 232.35, subsections 2 and 3.

4. Any additional inquiries may be made only with the consent of the child and the child's parent or parents, guardian or custodian.

5. Participation of the child and the child's parent or parents, guardian or custodian in a conference with an intake officer shall be voluntary, and they shall have the right to refuse to participate in such conference. At such conference the child shall have the right to the assistance of counsel in accordance with section 232.11 and the right to remain silent when questioned by the intake officer.

6. The intake officer, after consultation with the county attorney when necessary, shall determine whether the complaint is legally sufficient for the filing of a petition. A complaint shall be deemed legally sufficient for the filing of a petition if the facts as alleged are sufficient to establish the jurisdiction of the court and probable cause to believe that the child has committed a delinquent act. If the intake officer determines that the complaint is legally sufficient to support the filing of a petition, the officer shall determine whether the interests of the child and the public will best be served by the dismissal of the complaint, the informal adjustment of the complaint, or the filing of a petition.

7. If the intake officer determines that the complaint is not legally sufficient for the filing of

a petition or that further proceedings are not in the best interests of the child or the public, the intake officer shall dismiss the complaint.

8. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that an informal adjustment of the complaint is in the best interests of the child and the community, the officer may make an informal adjustment of the complaint in accordance with section 232.29.

9. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that the filing of a petition is in the best interests of the child and the public, the officer shall request the county attorney to file a petition in accordance with section 232.35.

[SS15, §254-a15; C24, 27, 31, 35, 39, §**3621;** C46, 50, 54, 58, 62, §232.5; C66, 71, 73, 75, 77, §232.3; C79, 81, §232.28; 82 Acts, ch 1209, §6, 7]

88 Acts, ch 1134, §50; 95 Acts, ch 191, §10; 96 Acts, ch 1110, §1; 97 Acts, ch 126, §16, 17; 98 Acts, ch 1090, §61, 84

232.28A Victim rights. Repealed by 98 Acts, ch 1090, § 81, 84. See § 915.24 and 915.26.

232.29 Informal adjustment.

1. The informal adjustment of a complaint is a permissible disposition of a complaint at intake subject to the following conditions:

a. The child has admitted the child's involvement in a delinquent act.

b. The intake officer shall advise the child and the child's parent, guardian or custodian that they have the right to refuse an informal adjustment of the complaint and demand the filing of a petition and a formal adjudication.

c. Any informal adjustment agreement shall be entered into voluntarily and intelligently by the child with the advice of the child's attorney, or by the child with the consent of a parent, guardian, or custodian if the child is not represented by counsel.

d. The terms of such agreement shall be clearly stated in writing and signed by all parties to the agreement and a copy of this agreement shall be given to the child; the counsel for the child; the parent, guardian or custodian; and the intake officer, who shall retain the copy in the case file.

e. An agreement providing for the supervision of a child by a juvenile court officer or the provision of intake services shall not exceed six months.

f. An agreement providing for the referral of a child to a public or private agency for services shall not exceed six months.

g. The child and the child's parent, guardian or custodian shall have the right to terminate such agreement at any time and to request the filing of a petition and a formal adjudication.

h. If an informal adjustment of a complaint has been made, a petition based upon the events out of which the original complaint arose may be filed only during the period of six months from the date the informal adjustment agreement was entered into. If a petition is filed within this period the child's compliance with all proper and reasonable terms of the agreement shall be grounds for dismissal of the petition by the court.

i. The person performing the duties of intake officer shall file a report at least annually with the court listing the number of informal adjustments made during the reporting time, the conditions imposed in each case, the number of informal adjustments resulting in dismissal without the filing of a petition, and the number of informal adjustments resulting in the filing of a petition upon the original complaint.

2. An informal adjustment agreement may prohibit a child from driving a motor vehicle for a specified period of time or under specific circumstances, require the child to perform a work assignment of value to the state or to the public, or require the child to make restitution consisting of a monetary payment to the victim or a work assignment directly of value to the victim. The juvenile court officer shall notify the state department of transportation of the informal adjustment prohibiting the child from driving.

3. The person performing the duties of intake officer shall notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school which the child attends, of any informal adjustment regarding the child, fourteen years of age or older, for an act which would be an aggravated misdemeanor or felony if committed by an adult.

4. An informal adjustment agreement regarding a child who has been placed in detention under section 232.22, subsection 1, paragraph *"g"*, may include a provision that the child voluntarily participate in a batterers' treatment program under section 708.2B.

[C79, 81, §232.29; 82 Acts, ch 1209, §8]

83 Acts, ch 186, §10055, 10201; 94 Acts, ch 1172, §14; 95 Acts, ch 180, §4; 95 Acts, ch 191, §11

Juvenile victim restitution; see chapter 232A

232.30 to 232.34 Reserved.

PART 4

JUDICIAL PROCEEDINGS

232.35 Filing of petition.

1. A formal judicial proceeding to determine whether a child has committed a delinquent act shall be initiated by the filing by the county attorney of a petition alleging that a child has committed a delinquent act.

2. If the intake officer determines that a complaint is legally sufficient for the filing of a petition alleging that a child has committed a delinquent

act and that the filing of a petition would be in the best interests of the child and the community, the officer shall submit a written request for the filing of a petition to the county attorney. The county attorney may grant or deny the request of the intake officer for the filing of a petition. A determination by the county attorney that a petition should not be filed shall be final.

3. If the intake officer determines that a complaint is not legally sufficient for the filing of a petition or that the filing of a petition would not be in the best interests of the child and the community, the officer shall notify the complainant of the officer's determination and the reasons for such determination, and shall advise the complainant that the complainant may submit the complaint to the county attorney for review. Upon receiving a request for review, the county attorney shall consider the facts presented by the complainant, consult with the intake officer and make the final determination as to whether a petition should be filed. In the absence of a request by the complainant for a review of the intake officer's determination that a petition should not be filed, the officer's determination shall be final, and the intake officer shall inform the county attorney of this decision concerning complaints involving allegations of acts which, if committed by an adult, would constitute an aggravated misdemeanor or a felony.

[SS15, §254-a15; C24, 27, 31, 35, 39, §**3621;** C46, 50, 54, 58, 62, §232.5; C66, 71, 73, 75, 77, §232.3; C79, 81, §232.35]

92 Acts, ch 1231, §16

232.36 Contents of petition.

1. The petition and subsequent court documents shall be entitled "In the interests of . . . . . , a child."

2. The petition shall be verified and any statements in the petition may be made upon information and belief.

3. The petition shall set forth plainly:

a. The name, age, and residence of the child who is the subject of the petition.

b. The names and residences of any:

(1) Living parent of the child.

(2) Guardian of the child.

(3) Legal custodian of the child.

(4) Guardian ad litem.

c. With reasonable particularity, the time, place and manner of the delinquent act alleged and the penal law allegedly violated by such act.

4. If any of the facts required under subsection 3, paragraphs *"a"* and *"b"* are not known by the petitioner, the petition shall so state.

5. The petition shall set forth plainly the nearest known relative of the child if no parent or guardian can be found.

[SS15, §254-a15; C24, 27, 31, 35, 39, §**3621, 3622;** C46, 50, 54, 58, 62, §232.5, 232.6; C66, 71, 73, 75, 77, §232.3; C79, 81, §232.36]

232.37 Summons, notice, subpoenas and service — order for removal.

1. After a petition has been filed the court shall set a time for an adjudicatory hearing and unless the parties named in subsection 2 voluntarily appear, shall issue a summons requiring the child to appear before the court at a time and place stated and requiring the person who has custody or control of the child to appear before the court and to bring the child with the person at that time. The summons shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

2. Notice of the pendency of the case shall be served upon the known parents, guardians or legal custodians of a child if these persons are not summoned to appear as provided in subsection 1. Notice shall also be served upon the child and upon the child's guardian ad litem, if any. The notice shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

3. Upon request of the child who is identified in the petition as a party to the proceeding, the child's parent, guardian or custodian, a county attorney or on the court's own motion, the court or the clerk of the court shall issue subpoenas requiring the attendance and testimony of witnesses and production of papers at any hearing under this division.

4. Service of summons or notice shall be made personally by the delivery of a copy of the summons or notice to the person being served. If the court determines that personal service of a summons or notice is impracticable, the court may order service by certified mail addressed to the last known address. Service of summons or notice shall be made not less than five days before the time fixed for hearing. Service of summons, notice, subpoenas or other process, after an initial valid summons or notice, shall be made in accordance with the rules of the court governing such service in civil actions.

5. If a person personally served with a summons or subpoena fails without reasonable cause to appear or to bring the child, the person may be proceeded against for contempt of court or the court may issue an order for the arrest of such person or both the arrest of the person and the taking into custody of the child.

6. The court may issue an order for the removal of the child from the custody of the child's parent, guardian or custodian when there exists an immediate threat that the parent, guardian or custodian will flee the state with the child, or when it appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health.

[SS15, 254-a16; C24, 27, 31, 35, 39, §**3623 – 3628, 3630;** C46, 50, 54, 58, 62, §232.7 – 232.12, 232.14; C66, 71, 73, 75, 77, §232.4 – 232.10; C79,

81, §232.37]

84 Acts, ch 1279, §3; 85 Acts, ch 195, §26; 95 Acts, ch 92, §1

232.38 Presence of parents at hearings.

1. Any hearings or proceedings under this division subsequent to the filing of a petition shall not take place without the presence of one or both of the child's parents, guardian or custodian except that a hearing or proceeding may take place without such presence if the parent, guardian or custodian fails to appear after reasonable notification, or if the court finds that a reasonably diligent effort has been made to notify the child's parent, guardian, or custodian, and the effort was unavailing.

2. In any such hearings or proceedings the court may temporarily excuse the presence of the parent, guardian or custodian when the court deems it in the best interests of the child. Counsel for the parent, guardian or custodian shall have the right to participate in a hearing or proceeding during the absence of the parent, guardian or custodian.

[SS15, §254-a16; C24, 27, 31, 35, 39, §**3631;** C46, 50, 54, 58, 62, §232.15; C66, 71, 73, 75, 77, §232.11, 232.30; C79, 81, §232.38]

232.39 Exclusion of public from hearings.

At any time during the proceedings, the court, on the motion of any of the parties or upon the court's own motion, may exclude the public from hearings under this division if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

[C24, 27, 31, 35, 39, §**3635;** C46, 50, 54, 58, 62, §232.19; C66, 71, 73, 75, 77, §232.27; C79, 81, §232.39]

88 Acts, ch 1134, §51

232.40 Other issues adjudicated.

When it appears during the course of any hearing or proceeding that some action or remedy other than those indicated by the application or pleading is appropriate, the court, with the consent of all necessary parties, may proceed to hear and determine the additional or other issues as though originally properly sought and pleaded.

[C66, 71, 73, 75, 77, §232.12; C79, 81, §232.40]

232.41 Reporter required.

Stenographic notes or mechanical or electronic recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. Matters which must be reported under the provisions of this section shall be reported in the same manner as required in section 624.9.

[C66, 71, 73, 75, 77, §232.32; C79, 81, §232.41]

232.42 Continuances.

1. Continuances in juvenile delinquency proceedings may be granted by the court only for good cause shown on the record if the child is being held in detention.

2. Where the child requests a continuance of proceedings, the court, in an order granting the continuance, may suspend the time limitations imposed on the state by this division for a period of time not to exceed the length of the continuance.

3. Proceedings may be continued for up to one year upon the request of the county attorney and the child to permit the making of probation arrangements prior to the adjudicatory hearing. If either the child or the county attorney requests that the adjudicatory hearing be held at any time during the period of the continuance, the court shall set the matter for hearing.

[S13, §254-a23; C24, 27, 31, 35, 39, §**3637;** C46, 50, 54, 58, 62, §232.21; C66, 71, 73, 75, 77, §232.34; C79, §232.13, 232.42; C81, §232.42]

94 Acts, ch 1172, §15

232.43 Answer — plea agreement — acceptance of plea admitting allegations of petition.

1. A written answer to a delinquency petition need not be filed by the child, but any matters which might be set forth in an answer or other pleading may be filed in writing or pleaded orally before the court.

2. The county attorney and the child's counsel may mutually consider a plea agreement which contemplates entry of a plea admitting the allegations of the petition in the expectation that other charges will be dismissed or not filed or that a specific disposition will be recommended by the county attorney and granted by the court. Any plea discussion shall be open to the child and the child's parent, guardian or custodian.

3. The court shall not accept a plea admitting the allegations of the petition without first addressing the child personally in court, determining that the plea is voluntary and not the result of any force or threats or promises other than promises made in connection with a plea agreement and informing the child of and determining that the child understands the following:

a. The nature of the allegations of the petition to which the plea is offered.

b. The severest possible disposition and the maximum length of such disposition which the court may order if the court accepts the plea.

c. The child has the right to deny the allegations of the petition.

d. If the child admits the allegations of the

petition the child waives the right to a further adjudicatory hearing.

4. The court shall not accept a plea admitting the allegations of the petition without first addressing the county attorney and the child's counsel in court and making an inquiry into whether such a plea is the result of a plea agreement. The court shall require the disclosure of the terms of any such agreement in court. If a plea agreement has been reached which contemplates entry of the plea in the expectation that the court will order a specific disposition or dismiss other charges against the child before the court, the court shall state to the parties whether the court will concur in the proposed disposition or dismissal of charges. If the court will not concur in such disposition or dismissal, the court should advise the child personally of this fact, advise the child that the disposition of the case may be less favorable to the child than that contemplated by the plea agreement, and afford the child the opportunity to withdraw the plea. If the court defers decision as to whether the court will concur with the proposed disposition or dismissal until there has been an opportunity to consider the predisposition report, the court shall advise the child that the court is not bound by the plea agreement and afford the child the opportunity to withdraw the plea.

5. The court shall not accept a plea admitting the allegations of the petition without:

a. Determining that there is a factual basis for the plea.

b. Determining that the child was given effective assistance of counsel prior to tender of the plea.

c. Inquiring of the parent or parents who are present in court whether they agree as to the course of action that their child has chosen. If either parent expresses disagreement with the plea, the court may refuse to accept that plea.

6. If the court determines that a plea is not in the child's best interest it may refuse to accept that plea regardless of the agreement of the parties.

[C79, 81, §232.43]

232.44 Detention or shelter care hearing — release from detention upon change of circumstance.

1. A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of the time of the child's admission to a shelter care facility, and within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, of the time of a child's admission to a detention facility. If the hearing is not held within the time specified, the child shall be released from shelter care or detention. Prior to the hearing a petition shall be filed, except where the child is already under the supervision of a juvenile court under a prior judgment.

If the child is placed in a detention facility in a county other than the county in which the child resides or in which the delinquent act allegedly occurred but which is within the same judicial district, the hearing may take place in the county in which the detention facility is located. The child shall appear in person at the hearing required by this subsection.

2. The county attorney or a juvenile court officer may apply for a hearing at any time after the petition is filed to determine whether the child who is the subject of the petition should be placed in detention or shelter care. The court may upon the application or upon its own motion order such hearing. The court shall order a detention hearing for a child waived under section 232.45, subsection 7, at the time of waiver.

3. A notice shall be served upon the child, the child's attorney, the child's guardian ad litem if any, and the child's known parent, guardian, or custodian not less than twelve hours before the time the hearing is scheduled to begin and in a manner calculated fairly to apprise the parties of the time, place, and purpose of the hearing. In the case of a hearing for a child waived for prosecution as a youthful offender, this notice may accompany the waiver order. If the court finds that there has been reasonably diligent effort to give notice to a parent, guardian, or custodian and that the effort has been unavailing, the hearing may proceed without the notice having been served.

4. At the hearing to determine whether detention or shelter care is authorized under section 232.21 or 232.22 the court shall admit only testimony and other evidence relevant to the determination of whether there is probable cause to believe the child has committed the act as alleged in the petition and to the determination of whether the placement of the child in detention or shelter care is authorized under section 232.21 or 232.22. At the hearing to determine whether a child who has been waived for prosecution as a youthful offender should be released from detention the court shall also admit evidence of the kind admissible to determine bond or bail under chapter 811, notwithstanding section 811.1. Any written reports or records made available to the court at the hearing shall be made available to the parties. A copy of the petition or waiver order shall be given to each of the parties at or before the hearing.

5. The court shall find release to be proper under the following circumstances:

a. If the court finds that there is not probable cause to believe that the child is a child within the jurisdiction of the court under this chapter, it shall release the child and dismiss the petition.

b. If the court finds that detention or shelter care is not authorized under section 232.21 or 232.22, or is authorized but not warranted in a particular case, the court shall order the child's release, and in so doing, may impose one or more of the following conditions:

(1) Place the child in the custody of a parent,

guardian or custodian under that person's supervision, or under the supervision of an organization which agrees to supervise the child.

(2) Place restrictions on the child's travel, association, or place of residence during the period of release.

(3) Impose any other condition deemed reasonably necessary and consistent with the grounds for detaining children specified in section 232.21 or 232.22, including a condition requiring that the child return to custody as required.

(4) In the case of a child waived for prosecution as a youthful offender, require bail, an appearance bond, or set other conditions consistent with this section or section 811.2.

c. An order releasing a child on conditions specified in this section may be amended at any time to impose equally or less restrictive conditions. The order may be amended to impose additional or more restrictive conditions, or to revoke the release, if the child has failed to conform to the conditions originally imposed.

6. If the court finds that there is probable cause to believe that the child is within the jurisdiction of the court under this chapter and that full-time detention or shelter care is authorized under section 232.21 or 232.22 or that detention is authorized under section 232.23, it may issue an order authorizing either shelter care or detention until the adjudicatory hearing or trial is held or for a period not exceeding seven days, whichever is shorter. However, in the case of a child placed in detention under section 232.23, this period may be extended by agreement of the parties and the court.

7. If a child held in shelter care or detention by court order has not been released after a detention hearing or has not appeared at an adjudicatory hearing before the expiration of the order of detention, an additional hearing shall automatically be scheduled for the next court day following the expiration of the order. The child, the child's counsel, the child's guardian ad litem, and the child's parent, guardian or custodian shall be notified of this hearing not less than twenty-four hours before the hearing is scheduled to take place. The hearing required by this subsection may be held by telephone conference call.

8. A child held in a detention or shelter care facility pursuant to section 232.21 or 232.22 under order of court after a hearing may be released upon a showing that a change of circumstances makes continued detention unnecessary.

9. A written request for the release of the child, setting forth the changed circumstances, may be filed by the child, by a responsible adult on the child's behalf, by the child's custodian, or by the juvenile court officer.

10. Based upon the facts stated in the request for release the court may grant or deny the request without a hearing, or may order that a hearing be held at a date, time and place determined by the court. Notice of the hearing shall be given to the child and the child's custodian or counsel. Upon receiving evidence at the hearing, the court may release the child to the child's custodian or other suitable person, or may deny the request and remand the child to the detention or shelter care facility.

11. This section does not apply to a child placed in accordance with section 232.78, 232.79, or 232.95.

[C79, 81, §232.44; 82 Acts, ch 1209, §9, 10]

87 Acts, ch 149, §5; 94 Acts, ch 1172, §16, 17; 95 Acts, ch 67, §15; 97 Acts, ch 126, §19

232.45 Waiver hearing and waiver of jurisdiction.

1. After the filing of a petition which alleges that a child has committed a delinquent act on the basis of an alleged commission of a public offense and before an adjudicatory hearing on the merits of the petition is held, the county attorney or the child may file a motion requesting the court to waive its jurisdiction over the child for the alleged commission of the public offense or for the purpose of prosecution of the child as an adult or a youthful offender. If the county attorney and the child agree, a motion for waiver for the purpose of being prosecuted as a youthful offender may be heard by the district court as part of the proceedings under section 907.3A, or by the juvenile court as provided in this section. If the motion for waiver for the purpose of being prosecuted as a youthful offender is made as a result of a conditional agreement between the county attorney and the child, the conditions of the agreement shall be disclosed to the court in the same manner as provided in rules of criminal procedure 2.8 and 2.10.

2. The court shall hold a waiver hearing on all such motions.

3. Reasonable notice that states the time, place, and purpose of the waiver hearing shall be provided to the persons required to be provided notice for adjudicatory hearings under section 232.37. Summons, subpoenas, and other process may be issued and served in the same manner as for adjudicatory hearings as provided in section 232.37.

4. Prior to the waiver hearing, the juvenile probation officer or other person or agency designated by the court shall conduct an investigation for the purpose of collecting information relevant to the court's decision to waive its jurisdiction over the child for the alleged commission of the public offense and shall submit a report concerning the investigation to the court. The report shall include any recommendations made concerning waiver. Prior to the hearing the court shall provide the child's counsel and the county attorney with access to the report and to all written material to be considered by the court.

5. At the waiver hearing all relevant and material evidence shall be admitted.

6. At the conclusion of the waiver hearing the court may waive its jurisdiction over the child for the alleged commission of the public offense if all of the following apply:

a. The child is fourteen years of age or older.

b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute the public offense.

c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed the delinquent act, and that waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.

7. At the conclusion of the waiver hearing and after considering the best interests of the child and the best interests of the community the court may, in order that the child may be prosecuted as a youthful offender, waive its jurisdiction over the child if all of the following apply:

a. The child is fifteen years of age or younger.

b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute a public offense under section 232.8, subsection 1, paragraph *"c"*, notwithstanding the application of that paragraph to children aged sixteen or older.

c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child, prior to the child's eighteenth birthday, if the juvenile court retains jurisdiction over the child and the child enters into a plea agreement, is a party to a consent decree, or is adjudicated to have committed the delinquent act.

The court shall retain jurisdiction over the child for the purpose of determining whether the child should be released from detention under section 232.23. If the court has been apprised of conditions of an agreement between the county attorney and the child which resulted in a motion for waiver for purposes of the child being prosecuted as a youthful offender, and the court finds that the conditions are in the best interests of the child, the conditions of the agreement shall constitute conditions of the waiver order.

8. In making the determination required by subsection 6, paragraph *"c"*, the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

c. The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

9. In making the determination required by subsection 7, paragraph *"c"*, the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

c. The age of the child, the programs, facilities, and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities, and personnel which would be available to the district court after the child reaches the age of eighteen in the event the child is given youthful offender status.

10. If at the conclusion of the hearing the court waives its jurisdiction over the child for the alleged commission of the public offense, the court shall make and file written findings as to its reasons for waiving its jurisdiction.

11. If the court waives jurisdiction, statements made by the child after being taken into custody and prior to intake are admissible as evidence in chief against the child in subsequent criminal proceedings provided that the statements were made with the advice of the child's counsel or after waiver of the child's right to counsel and provided that the court finds the child had voluntarily waived the right to remain silent. Other statements made by a child are admissible as evidence in chief provided that the court finds the statements were voluntary. In making its determination, the court may consider any factors it finds relevant and shall consider the following factors:

a. Opportunity for the child to consult with a parent, guardian, custodian, lawyer or other adult.

b. The age of the child.

c. The child's level of education.

d. The child's level of intelligence.

e. Whether the child was advised of the child's constitutional rights.

f. Length of time the child was held in shelter care or detention before making the statement in question.

g. The nature of the questioning which elicited the statement.

h. Whether physical punishment such as deprivation of food or sleep was used upon the child during the shelter care, detention, or questioning.

Statements made by the child during intake or at a waiver hearing held pursuant to this section

are not admissible as evidence in chief against the child in subsequent criminal proceedings over the child's objection in any event.

12. If the court waives its jurisdiction over the child for the alleged commission of the public offense so that the child may be prosecuted as an adult or a youthful offender, the judge who made the waiver decision shall not preside at any subsequent proceedings in connection with that prosecution if the child objects.

13. The waiver does not apply to other delinquent acts which are not alleged in the delinquency petition presented at the waiver hearing.

14. If a child who is alleged to have delivered, manufactured, or possessed with intent to deliver or manufacture, a controlled substance except marijuana, as defined in chapter 124, is waived to district court for prosecution, the mandatory minimum sentence provided in section 124.413 shall not be imposed if a conviction is had; however, each child convicted of such an offense shall be confined for not less than thirty days in a secure facility.

Upon application of a person charged or convicted under the authority of this subsection, the district court shall order the records in the case sealed if:

a. Five years have elapsed since the final discharge of that person; and

b. The person has not been convicted of a felony or an aggravated or serious misdemeanor, or adjudicated a delinquent for an act which if committed by an adult would be a felony, or an aggravated or serious misdemeanor since the final discharge of that person.

[C79, 81, §232.45]

85 Acts, ch 130, §1, 2; 97 Acts, ch 126, §20 – 23; 2001 Acts, ch 135, §26

Age of majority deemed attained for certain purposes during incarceration following waiver and conviction; see §599.1

232.45A Waiver to and conviction by district court — processing.

1. Once jurisdiction over a child has been waived by the juvenile court as provided in section 232.45, for the alleged commission of a felony, and once a conviction is entered by the district court, for all other offenses, the clerk of the juvenile court shall immediately send a certified copy of the findings required by section 232.45, subsection 10, and the judgment of conviction, as applicable, to the department of public safety. The department shall maintain a file on each child who has previously been waived to or waived to and convicted by the district court in a prosecution as an adult. The file shall be accessible by law enforcement officers on a twenty-four hour per day basis.

2. Once a child sixteen years of age or older has been waived to and convicted of an aggravated misdemeanor or a felony in the district court, all criminal proceedings against the child for any aggravated misdemeanor or felony occurring subsequent to the date of the conviction of the child shall begin in district court, notwithstanding sections 232.8 and 232.45. A copy of the findings required by section 232.45, subsection 10, shall be made a part of the record in the district court proceedings.

3. If proceedings against a child for an aggravated misdemeanor or a felony who has previously been waived to and convicted of an aggravated misdemeanor or a felony in the district court are mistakenly begun in the juvenile court, the matter shall be transferred to district court upon the discovery of the prior waiver and conviction, notwithstanding sections 232.8 and 232.45.

4. This section shall not apply to a child who was waived to the district court for the purpose of being prosecuted as a youthful offender.

91 Acts, ch 232, §4; 92 Acts, ch 1231, §17; 94 Acts, ch 1172, §18; 95 Acts, ch 191, §12; 97 Acts, ch 126, §24

232.46 Consent decree.

1. At any time after the filing of a petition and prior to entry of an order of adjudication pursuant to section 232.47, the court may suspend the proceedings on motion of the county attorney or the child's counsel, enter a consent decree, and continue the case under terms and conditions established by the court. These terms and conditions may include prohibiting a child from driving a motor vehicle for a specified period of time or under specific circumstances, or the supervision of the child by a juvenile court officer or other agency or person designated by the court, and may include the requirement that the child perform a work assignment of value to the state or to the public or make restitution consisting of a monetary payment to the victim or a work assignment directly of value to the victim. The court shall notify the state department of transportation of an order prohibiting the child from driving.

2. A consent decree entered regarding a child placed in detention under section 232.22, subsection 1, paragraph *"g"*, shall require the child to attend a batterers' treatment program under section 708.2B. The second time the child fails to attend the batterers' treatment as required by the consent decree shall result in the decree being vacated and proceedings commenced under section 232.47.

3. A consent decree shall not be entered unless the child and the child's parent, guardian or custodian is informed of the consequences of the decree by the court and the court determines that the child has voluntarily and intelligently agreed to the terms and conditions of the decree. If the county attorney objects to the entry of a consent decree, the court shall proceed to determine the appropriateness of entering a consent decree after consideration of any objections or reasons for entering such a decree.

4. A consent decree shall remain in force for six months unless the child is sooner discharged by

the court or by the juvenile court officer or other agency or person supervising the child. Upon application of a juvenile court officer or other agency or person supervising the child made prior to the expiration of the decree and after notice and hearing, or upon agreement by the parties, a consent decree may be extended for an additional six months by order of the court.

5. When a child has complied with the express terms and conditions of the consent decree for the required amount of time or until earlier dismissed as provided in subsection 4, the original petition may not be reinstated. However, failure to so comply may result in the child's being thereafter held accountable as if the consent decree had never been entered.

6. A child who is discharged or who completes a period of continuance without the reinstatement of the original petition shall not be proceeded against in any court for a delinquent act alleged in the petition.

[C79, 81, §232.46; 82 Acts, ch 1209, §11]

83 Acts, ch 186, §10055, 10201; 94 Acts, ch 1172, §19; 95 Acts, ch 180, §5

232.47 Adjudicatory hearing — findings — adjudication.

1. If a child denies the allegations of the petition, that child may be found to be delinquent only after an adjudicatory hearing conducted in accordance with the provisions of this section.

2. The court shall hear and adjudicate all cases involving a petition alleging a child to have committed a delinquent act.

3. The child shall have the right to adjudication by an impartial finder of fact. A judge of the juvenile court may not serve as the finder of fact over objection of the child based upon a showing of prejudice on the part of the judge. In the event that a judge is disqualified from serving as a finder of fact under this provision, a substitute judge shall serve as the finder of fact.

4. At an adjudicatory hearing the state shall have the burden of proving the allegations of the petition.

5. Only evidence which is admissible under the rules of evidence applicable to the trial of criminal cases shall be admitted at the hearing except as otherwise provided by this section.

6. Statements or other evidence derived directly or indirectly from statements which a child makes to a law enforcement officer while in custody without presence of counsel may be admitted into evidence at an adjudicatory hearing over the child's objection only after the court determines whether the child has voluntarily waived the right to remain silent. In making its determination the court may consider any factors it finds relevant and shall consider the following factors:

a. Opportunity for the child to consult with a parent, guardian, custodian, lawyer or other adult.

b. The age of the child.

c. The child's level of education.

d. The child's level of intelligence.

e. Whether the child was advised of the child's constitutional rights.

f. Length of time the child was held in shelter care or detention before making the statement in question.

g. The nature of the questioning which elicited the statement.

h. Whether physical punishment such as deprivation of food or sleep was used upon the child during the shelter care, detention, or questioning.

7. The following statements or other evidence shall not be admitted as evidence in chief at an adjudicatory hearing:

a. Statements or other evidence derived directly or indirectly from statements which a child makes to a juvenile intake officer without the presence of counsel subsequent to the filing of a complaint and prior to adjudication unless the child and the child's attorney consent to the admission of such statements or evidence.

b. Statements which the child makes to a juvenile probation officer or other person conducting a predisposition investigation during such an investigation.

8. At the conclusion of an adjudicatory hearing, the court shall make a finding as to whether the child has committed a delinquent act. The court shall make and file written findings as to the truth of the specific allegations of the petition and as to whether the child has engaged in delinquent conduct.

9. If the court finds that the child did not engage in delinquent conduct, the court shall enter an order dismissing the petition.

10. If the court finds that the child did engage in delinquent conduct, the court may enter an order adjudicating the child to have committed a delinquent act. The child shall be presumed to be innocent of the charges and no finding that a child has engaged in delinquent conduct may be made unless the state has proved beyond a reasonable doubt that the child engaged in such behavior.

11. If the court enters an order adjudicating the child to have committed a delinquent act, the court may issue an order authorizing either shelter care or detention until the dispositional hearing is held.

12. A juvenile court officer shall notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school which the child attends of the child's adjudication for a delinquent act which would be an indictable offense if committed by an adult.

[C66, 71, 73, 75, 77, §232.31; C79, 81, §232.47]

94 Acts, ch 1172, §20

232.48 Predisposition investigation and report.

1. The court shall not make a disposition of the matter following the entry of an order of adjudication pursuant to section 232.47 until a predisposition report has been submitted to and considered by the court.

2. After a petition is filed, the court shall direct a juvenile court officer or any other agency or individual to conduct a predisposition investigation and to prepare a predisposition report. The investigation and report shall cover all of the following:

a. The social history, environment and present condition of the child and the child's family.

b. The performance of the child in school.

c. The presence of child abuse and neglect histories, learning disabilities, physical impairments and past acts of violence.

d. Other matters relevant to the child's status as a delinquent, treatment of the child or proper disposition of the case.

3. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing without the consent of the child and the child's counsel.

4. A predisposition report shall not be disclosed except as provided in this section and in division VIII of this chapter. The court shall permit the child's attorney to inspect the predisposition report prior to consideration by the court. The court may order counsel not to disclose parts of the report to the child, or to the child's parent, guardian, guardian ad litem, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the child.

[C79, 81, §232.48]

83 Acts, ch 186, §10055, 10201; 85 Acts, ch 88, §1

232.49 Physical and mental examinations.

1. Following the entry of an order of adjudication under section 232.47 the court may, after a hearing which may be simultaneous with the adjudicatory hearing, order a physical or mental examination of the child if it finds that an examination is necessary to determine the child's physical or mental condition. The court may consider chemical dependency as either a physical or mental condition and may consider a chemical dependency evaluation as either a physical or mental examination.

2. When possible an examination shall be conducted on an out-patient basis, but the court may, if it deems necessary, commit the child to a suitable hospital, facility or institution for the purpose of examination. Commitment for examination shall not exceed thirty days and the civil commitment provisions of chapter 229 shall not apply.

3. At any time after the filing of a delinquency petition the court may order a physical or mental examination of the child if the following circumstances apply:

a. The court finds such examination to be in the best interest of the child; and

b. The parent, guardian or custodian and the child's counsel agree.

An examination shall be conducted on an outpatient basis unless the court, the child's counsel and the parent, guardian or custodian agree that it is necessary the child be committed to a suitable hospital, facility or institution for the purpose of examination. Commitment for examination shall not exceed thirty days and the civil commitment provisions of chapter 229 shall not apply.

[C66, 71, 73, 75, 77, §232.13; C79, 81, §232.49]

86 Acts, ch 1186, §4

232.50 Dispositional hearing.

1. As soon as practicable following the entry of an order of adjudication pursuant to section 232.47 or notification that the child has received a youthful offender deferred sentence pursuant to section 907.3A, the court shall hold a dispositional hearing in order to determine what disposition should be made of the matter.

2. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to section 232.52, subsection 2, paragraph *"d"* or *"e"*, to determine the future disposition status of the child. The hearings shall not be waived or continued beyond twelve months after the last dispositional hearing or dispositional review hearing.

3. At dispositional hearings under this section all relevant and material evidence shall be admitted.

4. When a dispositional hearing under this section is concluded the court shall enter an order to make any one or more of the dispositions authorized under section 232.52.

[C66, 71, 73, 75, 77, §232.31; C79, 81, §232.50]

87 Acts, ch 159, §1; 97 Acts, ch 99, §1; 97 Acts, ch 126, §25

232.51 Disposition of child with mental illness or mental retardation.

If the evidence received at an adjudicatory or a dispositional hearing indicates that the child is mentally ill, the court may direct the juvenile court officer or the department to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the juvenile court. These proceedings in the juvenile court shall adhere to the requirements of chapter 229. If the evidence received at an adjudicatory or a dispositional hearing indicates that the child is mentally retarded, the court may direct the juvenile court officer or the department to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the juvenile court. These proceedings shall adhere to the requirements of chapter 222. If the child is committed as a child with mental illness or mental re-

tardation, any order adjudicating the child to have committed a delinquent act shall be set aside and the petition shall be dismissed.

[C79, 81, §232.51]

83 Acts, ch 186, §10055, 10201; 86 Acts, ch 1186, §5; 96 Acts, ch 1129, §62

232.52 Disposition of child found to have committed a delinquent act.

1. Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child, the child's prior record, or the fact that the child has received a youthful offender deferred sentence under section 907.3A. The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department or facility in whom custody is vested. In the case of a child who has received a youthful offender deferred sentence, the initial duration of the dispositional order shall be until the child reaches the age of eighteen.

2. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order prescribing one or more of the following:

(1) A work assignment of value to the state or to the public.

(2) Restitution consisting of monetary payment or a work assignment of value to the victim.

(3) If the child is fourteen years of age or older, restitution consisting of monetary payment or a work assignment of value to the county or to the public for fees of attorneys appointed to represent the child at public expense pursuant to section 232.11.

(4) The suspension or revocation of the driver's license or operating privilege of the child, for a period of one year, for the commission of delinquent acts which are a violation of any of the following:

(a) Section 123.46.

(b) Section 123.47 regarding the purchase or attempt to purchase of alcoholic beverages.

(c) Chapter 124.

(d) Section 126.3.

(e) Chapter 453B.

(f) Two or more violations of section 123.47 regarding the possession of alcoholic beverages.

(g) Section 708.1, if the assault is committed upon an employee of the school at which the child is enrolled, and the child intended to inflict serious injury upon the school employee or caused bodily injury or mental illness.

(h) Section 724.4, if the child carried the dangerous weapon on school grounds.

(i) Section 724.4B.

The child may be issued a temporary restricted license or school license if the child is otherwise eligible.

(5) The suspension of the driver's license or operating privilege of the child for a period not to exceed one year. The order shall state whether a work permit may or shall not be issued to the child.

An order under paragraph *"a"* may be the sole disposition or may be included as an element in other dispositional orders.

b. An order placing the child on probation and releasing the child to the child's parent, guardian or custodian.

c. An order providing special care and treatment required for the physical, emotional or mental health of the child, and

(1) Placing the child on probation or other supervision; and

(2) If the court deems appropriate, ordering the parent, guardian, or custodian to reimburse the county for any costs incurred as provided in section 232.141, subsection 1, or to otherwise pay or provide for such care and treatment.

A parent or guardian may be required by the juvenile court to participate in educational or treatment programs as part of a probation plan if the court determines it to be in the best interest of the child. A parent or guardian who does not participate in the probation plan when required to do so by the court may be held in contempt.

d. An order transferring the legal custody of the child, subject to the continuing jurisdiction of the court for purposes of section 232.54, to one of the following:

(1) An adult relative or other suitable adult and placing the child on probation.

(2) A child-placing agency or other suitable private agency or facility which is licensed or otherwise authorized by law to receive and provide care for children and placing the child on probation or other supervision.

(3) The department of human services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court. The court shall consider ordering placement in family foster care as an alternative to group foster care.

(4) The chief juvenile court officer or the officer's designee for placement in a program under section 232.191, subsection 4. The chief juvenile court officer or the officer's designee may place a child in group foster care for failure to comply with the terms and conditions of the supervised community treatment program for up to seventy-two hours without notice to the court or for more than seventy-two hours if the court is notified of the placement within seventy-two hours of placement, subject to a hearing before the court on the placement within ten days.

e. An order transferring the guardianship of the child, subject to the continuing jurisdiction

and custody of the court for the purposes of section 232.54, to the director of the department of human services for purposes of placement in the state training school or other facility, provided that the child is at least twelve years of age and the court finds the placement to be in the best interests of the child or necessary for the protection of the public, and that the child has been found to have committed an act which is a forcible felony, as defined in section 702.11, or a felony violation of section 124.401 or chapter 707, or the court finds any three of the following conditions exist:

(1) The child is at least fifteen years of age and the court finds the placement to be in the best interests of the child or necessary to the protection of the public.

(2) The child has committed an act which is a crime against a person and which would be an aggravated misdemeanor or a felony if the act were committed by an adult.

(3) The child has previously been found to have committed a delinquent act.

(4) The child has previously been placed in a treatment facility outside the child's home or in a supervised community treatment program established pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

f. An order committing the child to a mental health institute or other appropriate facility for the purpose of treatment of a mental or emotional condition after making findings pursuant to the standards set out for involuntary commitment in chapter 229.

g. An order placing a child, other than a child who has committed a violation of section 123.47, in secure custody for not more than two days in a facility under section 232.22, subsection 3, paragraph *"a"* or *"b"*.

h. In the case of a child adjudicated delinquent for an act which would be a violation of chapter 236 or section 708.2A if committed by an adult, an order requiring the child to attend a batterers' treatment program under section 708.2B.

2A. Notwithstanding subsection 2, the court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

3. When the court enters an order placing a child on probation pursuant to this section, the court may in cases of change of residency transfer jurisdiction of the child to the juvenile court of the county where the child's residence is established. The court to which the jurisdiction of the child is transferred shall have the same powers with respect to the child as if the petition had originally been filed in that court.

4. When the court enters an order transferring the legal and physical custody of a child to an agency, facility, department or institution, the court shall transmit its order, its finding, and a summary of its information concerning the child to such agency, facility, department or institution.

5. If the court orders the transfer of custody of the child to the department of human services or other agency for placement, the department or agency responsible for the placement of the child shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible.

6. When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph *"d"*, *"e"*, or *"f"*, the order shall state that reasonable efforts as defined in section 232.57 have been made. If deemed appropriate by the court, the order may include a determination that continuation of the child in the child's home is contrary to the child's welfare. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may be used to assist the department in obtaining federal funding for the child's placement.

When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph *"d"*, and the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to independent living. If the child has a case permanency plan, the court shall consider the written plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the written plan and needs assessment at the time the transfer order is entered, in determining the services to be specified in the order, the court shall consider a written plan for such services and a needs assessment which shall be developed with any person who may reasonably be expected to be a service provider for the child or to become responsible for the costs of services at that time, including but not limited to the administrator of county general relief under chapter 251 or 252 or of the single entry point process implemented under section 331.440. If the child is interested in pursuing higher education, the plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

7. If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child within the state, in the least restrictive, most family-like, and most appropriate setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time

of placement.

8. If a child has previously been adjudicated as a child in need of assistance, and a social worker or other caseworker from the department of human services has been assigned to work on the child's case, the court may order the department of human services to assign the same social worker or caseworker to work on any matters related to the child arising under this division.

9. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the state training school pursuant to subsection 2, paragraph *"e"*, to a facility which has been designated to be an alternative placement site for the state training school, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a substitute dispositional order under section 232.54.

(2) Immediate removal of the child from the state training school is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph *"a"* exist and there is insufficient time to provide notice as required under rule of juvenile procedure 8.12, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a substitute dispositional order under section 232.54 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

[C73, §1653 – 1659; C97, §2708, 2709; S13, §254-a23, 2708; C24, 27, 31, 35, 39, §**3637, 3646, 3647, 3652;** C46, 50, 54, 58, 62, §232.27, 232.28, 232.34; C66, 71, 73, 75, 77, §232.34, 232.38, 232.39; C79, 81, §232.52; 82 Acts, ch 1260, §22]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §5; 85 Acts, ch 124, §1; 88 Acts, ch 1249, §12, 13; 90 Acts, ch 1168, §35; 90 Acts, ch 1239, §7, 8; 90 Acts, ch 1271, §1505; 91 Acts, ch 232, §5, 6; 91 Acts, ch 258, §37; 92 Acts, ch 1229, §3; 92 Acts, ch 1231, §20, 21; 94 Acts, ch 1172, §21, 22; 95 Acts, ch 180, §6; 95 Acts, ch 191, §13, 14; 96 Acts, ch 1134, §2; 96 Acts, ch 1218, §57; 97 Acts, ch 51, §1; 97 Acts, ch 99, §2; 97 Acts, ch 126, §26, 27; 97 Acts, ch 208, §40; 98 Acts, ch 1073, §9; 99 Acts, ch 208, §35; 2001 Acts, ch 24, §39; 2001 Acts, ch 135, §7; 2002 Acts, ch 1081, §2

Juvenile victim restitution; see chapter 232A

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

Subsection 6, unnumbered paragraph 2 amended

232.52A Disposition of certain juvenile offenders.

In addition to any other order of the juvenile court, a person under age eighteen, who may be in need of treatment as determined under section 232.8, may be ordered to participate in an alcohol or controlled substance education or evaluation program approved by the juvenile court. If recommended after evaluation, the court may also order the person to participate in a treatment program approved by the court. The juvenile court may also require the custodial parent or parents or other legal guardian to participate in an educational program with the person under age eighteen if the court determines that such participation is in the best interests of the person under age eighteen.

90 Acts, ch 1251, §26

232.53 Duration of dispositional orders.

1. Any dispositional order entered by the court pursuant to section 232.52 shall remain in force for an indeterminate period or until the child becomes eighteen years of age unless otherwise specified by the court or unless sooner terminated pursuant to the provisions of section 232.54. No dispositional order made under section 232.52, subsection 2, paragraph *"e"* shall remain in force longer than the maximum possible duration of the sentence which may be imposed on an adult for the commission of the act which the child has been found by the court to have committed.

2. All dispositional orders entered prior to the child attaining the age of seventeen years shall automatically terminate when the child becomes eighteen years of age. Dispositional orders entered subsequent to the child attaining the age of seventeen years and prior to the child's eighteenth birthday shall automatically terminate one year and six months after the date of disposition. In the case of an adult within the jurisdiction of the court under the provisions of section 232.8, subsection 1, the dispositional order shall automatically terminate one year and six months after the last date upon which jurisdiction could attach.

3. Notwithstanding section 233A.13, a child committed to the training school subsequent to the child attaining the age of seventeen years and prior to the child's eighteenth birthday may be held at the school beyond the child's eighteenth birthday pursuant to subsection 2, provided that the training school makes application to and receives permission from the committing court. This extension shall be for the purpose of completion by the child of a course of instruction established for the child pursuant to section 233A.4 and cannot extend for more than one year and six months beyond the date of disposition.

4. *a.* Any person supervising but not having

custody of the child pursuant to such an order shall file a written report with the court at least every six months concerning the status and progress of the child.

b. Any agency, facility, institution, or person to whom custody of the child has been transferred pursuant to such order shall file a written report with the court at least every six months concerning the status and progress of the child.

c. Any report prepared pursuant to this subsection shall be included in the record considered by the court in a permanency hearing conducted pursuant to section 232.58.

[C73, §1653 – 1658; C97, §2708; S13, §254-a23, 2708; C24, 27, 31, 35, 39, §**3639, 3649;** C46, 50, 54, 58, 62, §232.23, 232.30; C66, 71, 73, 75, §232.36, 232.37; C79, 81, §232.53; 82 Acts, ch 1209, §12]

84 Acts, ch 1166, §1; 2000 Acts, ch 1056, §2; 2001 Acts, ch 135, §8

232.54 Termination, modification, or vacation and substitution of dispositional order.

At any time prior to its expiration, a dispositional order may be terminated, modified, or vacated and another dispositional order substituted therefor only in accordance with the following provisions:

1. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraph *"a"*, *"b"* or *"c"* and upon the motion of a child, a child's parent or guardian, a child's guardian ad litem, a person supervising the child under a dispositional order, a county attorney, or upon its own motion, the court may terminate the order and discharge the child, modify the order, or vacate the order and substitute another order pursuant to the provisions of section 232.52. Notice shall be afforded all parties, and a hearing shall be held at the request of any party.

2. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs *"d"*, and *"e"*, the court shall grant a motion of the person to whom custody has been transferred for termination of the order and discharge of the child, for modification of the order by imposition of less restrictive conditions, or for vacation of the order and substitution of a less restrictive order unless there is clear and convincing evidence that there has not been a change of circumstance sufficient to grant the motion. Notice shall be afforded all parties, and a hearing shall be held at the request of any party or upon the court's own motion.

3. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs *"d"*, or *"e"* or *"f"*, the court shall grant a motion of a person or agency to whom custody has been transferred for modification of the order by transfer to an equally restrictive placement, unless there is clear and convincing evidence that there has not been a change of circumstance sufficient to grant the motion. Notice shall be afforded all parties, and a hearing shall be held at the request of any party or upon the court's own motion.

4. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs *"d"*, *"e"* or *"f"*, the court may, after notice and hearing, either grant or deny a motion of the child, the child's parent or guardian, or the child's guardian ad litem, to terminate the order and discharge the child, to modify the order either by imposing less restrictive conditions or by transfer to an equally or less restrictive placement, or to vacate the order and substitute a less restrictive order. A motion may be made pursuant to this paragraph no more than once every six months.

5. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs *"d"* and *"e"*, the court may, after notice and a hearing at which there is presented clear and convincing evidence to support such an action, either grant or deny a motion by a county attorney or by a person or agency to whom custody has been transferred, to modify an order by imposing more restrictive conditions or to vacate the order and substitute a more restrictive order.

6. With respect to a temporary transfer order made pursuant to section 232.52, subsection 9, if the court finds that removal of a child from the state training school is necessary to safeguard the child's physical or emotional health and is in the best interests of the child, the court shall grant the director's motion for a substitute dispositional order to place the child in a facility which has been designated to be an alternative placement site for the state training school.

7. With respect to a juvenile court dispositional order entered regarding a child who has received a youthful offender deferred sentence under section 907.3A, the dispositional order may be terminated prior to the child reaching the age of eighteen upon motion of the child, the person or agency to whom custody of the child has been transferred, or the county attorney following a hearing before the juvenile court if it is shown by clear and convincing evidence that it is in the best interests of the child and the community to terminate the order. The hearing may be waived if all parties to the proceeding agree. The dispositional order regarding a child who has received a youthful offender deferred sentence may also be terminated prior to the child reaching the age of eighteen upon motion of the county attorney, if the waiver of the child to district court was conditioned upon the terms of an agreement between the county attorney and the child, and the child violates the terms of the agreement after the waiver order has been entered. The district court shall discharge the child's youthful offender status upon receiving a termination order under this section.

8. With respect to a dispositional order entered regarding a child who has received a youthful offender deferred sentence under section 907.3A, the juvenile court may, in the case of a child who violates the terms of the order, modify or terminate the order in accordance with the following:

a. After notice and hearing at which the facts of the child's violation of the terms of the order are found, the juvenile court may refuse to modify the order, modify the order and impose a more restrictive order, or, after an assessment of the child by a juvenile court officer in consultation with the judicial district department of correctional services and if the child is age fourteen or over, terminate the order and return the child to the supervision of the district court under chapter 907.

b. The juvenile court shall only terminate an order under this subsection if after considering the best interests of the child and the best interests of the community the court finds that the child should be returned to the supervision of the district court.

c. A youthful offender over whom the juvenile court has terminated the dispositional order under this subsection shall be treated in the manner of an adult who has been arrested for a violation of probation under section 908.11 for sentencing purposes only.

Notice requirements of this section shall be satisfied by providing reasonable notice to the persons required to be provided notice for adjudicatory hearings under section 232.37, except that notice shall be waived regarding a person who was notified of the adjudicatory hearing and who failed to appear. At a hearing under this section all relevant and material evidence shall be admitted.

[C79, 81, §232.54]

90 Acts, ch 1239, §9; 95 Acts, ch 92, §2; 97 Acts, ch 126, §28; 98 Acts, ch 1100, §25; 2001 Acts, ch 135, §27

232.55 Effect of adjudication and disposition.

1. An adjudication or disposition in a proceeding under this division shall not be deemed a conviction of a crime and shall not impose any civil disabilities or operate to disqualify the child in any civil service application or appointment.

2. Adjudication and disposition proceedings under this division are not admissible as evidence against a person in a subsequent proceeding in any other court before or after the person reaches majority except in a sentencing proceeding after conviction of the person for an offense other than a simple or serious misdemeanor. Adjudication and disposition proceedings may properly be included in a presentence investigation report prepared pursuant to chapter 901 and section 906.5.

However, the use of adjudication and disposition proceedings pursuant to this subsection shall be subject to the restrictions contained in section 232.150.

This section does not apply to dispositional orders entered regarding a child who has received a youthful offender deferred sentence under section 907.3A who is not discharged from probation before or upon the child's eighteenth birthday.

[C79, 81, §232.55]

85 Acts, ch 179, §1; 97 Acts, ch 126, §29

232.56 Youthful offenders — transfer to district court supervision.

The juvenile court shall deliver a report, which includes an assessment of the child by a juvenile court officer after consulting with the judicial district department of correctional services, to the district court prior to the eighteenth birthday of a child who has received a youthful offender deferred sentence under section 907.3A. A hearing shall be held in the district court in accordance with section 907.3A to determine whether the child should be discharged from youthful offender status or whether the child shall continue under the supervision of the district court after the child's eighteenth birthday.

97 Acts, ch 126, §30

232.57 Reasonable efforts defined — effect of aggravated circumstances.

1. For the purposes of this division, unless the context otherwise requires, *"reasonable efforts"* means the efforts made to prevent permanent removal of a child from the child's home and to encourage reunification of the child with the child's parents and family. If a court order includes a determination that continuation of the child in the child's home is not appropriate or not possible, reasonable efforts may include the efforts made in a timely manner to finalize a permanency plan for the child.

2. If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

a. The parent has abandoned the child.

b. The court finds the circumstances described in section 232.116, subsection 1, paragraph *"i"*, are applicable to the child.

c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

d. The parent has been convicted of the murder of another child of the parent.

e. The parent has been convicted of the voluntary manslaughter of another child of the parent.

f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

3. Any order entered under this division may include findings regarding reasonable efforts.

2001 Acts, ch 135, §9

232.58 Permanency hearings.

1. If an order entered pursuant to this division for an out-of-home placement of a child includes a determination that continuation of the child in the child's home is contrary to the child's welfare, the court shall review the child's continued placement by holding a permanency hearing or hearings in accordance with this section. The initial permanency hearing shall be the earlier of the following:

a. For an order for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

b. For an order in a case in which aggravated circumstances exist for which the court has waived reasonable efforts requirements, the permanency hearing shall be held within thirty days of the date the requirements were waived.

2. Reasonable notice shall be provided of a permanency hearing for an out-of-home placement in which the court order has included a determination that continuation of the child in the child's home is contrary to the child's welfare. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing, the court shall consider the child's need for a secure and permanent placement in light of any case permanency plan or evidence submitted to the court. Upon completion of the hearing, the court shall enter written findings identifying a primary permanency goal for the child. If a case permanency plan is in effect at the time of the hearing, the court shall also make a determination as to whether reasonable progress is being made in achieving the permanency goal and in complying with the other provisions of that case permanency plan.

3. After a permanency hearing, the court shall do one of the following:

a. Enter an order pursuant to section 232.52 to return the child to the child's home.

b. Enter an order pursuant to section 232.52 to continue the out-of-home placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

c. Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.

d. Enter an order, pursuant to findings based upon the existence of the evidence required by subsection 4, to do one of the following:

(1) Transfer guardianship and custody of the child to a suitable person.

(2) Transfer sole custody of the child from one parent to another parent.

(3) Transfer custody of the child to a suitable person for the purpose of long-term care.

(4) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph *"d"* would not be in the child's best interest, order another planned permanent living arrangement for the child.

4. Prior to entering a permanency order pursuant to subsection 3, paragraph *"d"*, clear and convincing evidence must exist showing that all of the following apply:

a. A termination of the parent-child relationship would not be in the best interest of the child.

b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.

c. The child cannot be returned to the child's home.

5. Any permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interest of the child.

6. Subsequent to the entry of a permanency order pursuant to this section, the child shall not be returned to the care, custody, or control of the child's parent or parents, over a formal objection filed by the child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence that returning the child to such custody would be in the best interest of the child.

7. Following an initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When the order places the child in the custody of the department for the purpose of a planned permanent living arrangement, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and

procedural due process shall be provided to all parties.
2001 Acts, ch 135, §10

232.59 and 232.60 Reserved.

DIVISION III

CHILD IN NEED OF ASSISTANCE PROCEEDINGS

PART 1

GENERAL PROVISIONS

232.61 Jurisdiction.
1. The juvenile court shall have exclusive jurisdiction over proceedings under this chapter alleging that a child is a child in need of assistance.
2. In determining such jurisdiction the age and marital status of the child at the time the proceedings are initiated is controlling.
[C71, 73, 75, 77, §232.63; C79, 81, §232.61]

232.62 Venue.
1. Venue for child in need of assistance proceedings shall be in the judicial district where the child is found or in the judicial district of the child's residence.
2. The court may transfer any child in need of assistance proceedings brought under this chapter to the juvenile court of any county having venue at any stage in the proceedings as follows:
a. When it appears that the best interests of the child or the convenience of the proceedings shall be served by a transfer, the court may transfer the case to the court of the county of the child's residence.
b. With the consent of the receiving court, the court may transfer the case to the court of the county where the child is found.
3. The court shall transfer the case by ordering the transfer and a continuance and by forwarding to the clerk of the receiving court a certified copy of all papers filed together with an order of transfer. The judge of the receiving court may accept the filings of the transferring court or may direct the filing of a new petition and hear the case anew.
[C71, 73, 75, 77, §232.68 – 232.70; C79, 81, §232.62]

232.63 Modification of custody decree. Repealed by 83 Acts, ch 21, § 3 and 83 Acts, ch 186, § 10201, 10203. See § 232.3.

232.64 to 232.66 Reserved.

PART 2

CHILD ABUSE REPORTING, ASSESSMENT, AND REHABILITATION

232.67 Legislative findings — purpose and policy.
Children in this state are in urgent need of protection from abuse. It is the purpose and policy of this part 2 of division III to provide the greatest possible protection to victims or potential victims of abuse through encouraging the increased reporting of suspected cases of abuse, ensuring the thorough and prompt assessment of these reports, and providing rehabilitative services, where appropriate and whenever possible to abused children and their families which will stabilize the home environment so that the family can remain intact without further danger to the child.
[C66, 71, 73, 75, 77, §235A.1; C79, 81, §232.67]
97 Acts, ch 35, §3, 25

232.68 Definitions.
The definitions in section 235A.13 are applicable to this part 2 of division III. As used in sections 232.67 through 232.77 and 235A.12 through 235A.23, unless the context otherwise requires:
1. *"Child"* means any person under the age of eighteen years.
2. *"Child abuse"* or *"abuse"* means:
a. Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.
b. Any mental injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.
c. The commission of a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5, the commission of a sexual offense under this paragraph includes any sexual offense referred to in this paragraph with or to a person under the age of eighteen years.
d. The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a

child for that reason alone shall not be considered abusing the child, however this provision shall not preclude a court from ordering that medical service be provided to the child where the child's health requires it.

e. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this paragraph include an act or omission referred to in this paragraph with or to a person under the age of eighteen years.

f. An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.

g. The person responsible for the care of a child has, in the presence of the child, as defined in section 232.2, subsection 6, paragraph *"p"*, manufactured a dangerous substance, as defined in section 232.2, subsection 6, paragraph *"p"*, or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

h. The commission of bestiality in the presence of a minor under section 717C.1 by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child.

2A. *"Child protection worker"* means an individual designated by the department to perform an assessment in response to a report of child abuse.

3. *"Confidential access to a child"* means access to a child, during an assessment of an alleged act of child abuse, who is alleged to be the victim of the child abuse. The access may be accomplished by interview, observation, or examination of the child. As used in this subsection and this part:

a. *"Interview"* means the verbal exchange between the child protection worker and the child for the purpose of developing information necessary to protect the child. A child protection worker is not precluded from recording visible evidence of abuse.

b. *"Observation"* means direct physical viewing of a child under the age of four by the child protection worker where the viewing is limited to the child's body other than the genitalia and pubes. *"Observation"* also means direct physical viewing of a child aged four or older by the child protection worker without touching the child or removing an article of the child's clothing, and doing so without the consent of the child's parent, custodian, or guardian. A child protection worker is not precluded from recording evidence of abuse obtained as a result of a child's voluntary removal of an article of clothing without inducement by the child protection worker. However, if prior consent of the child's parent or guardian, or an ex parte court order, is obtained, *"observation"* may include viewing the child's unclothed body other than the genitalia and pubes.

c. *"Physical examination"* means direct physical viewing, touching, and medically necessary manipulation of any area of the child's body by a physician licensed under chapter 148 or 150A.

4. *"Department"* means the state department of human services and includes the local, county and regional offices of the department.

5. *"Health practitioner"* includes a licensed physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, optometrist, podiatric physician, or chiropractor; a resident or intern in any of such professions; a licensed dental hygienist, a registered nurse or licensed practical nurse; a physician assistant; and an emergency medical care provider certified under section 147A.6.

6. *"Mental health professional"* means a person who meets the following requirements:

a. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling, nursing, or social work; or is licensed to practice medicine pursuant to chapter 148, 150, or 150A.

b. Holds a license to practice in the appropriate profession.

c. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals used in providing appropriate mental health services for those individuals.

7. *"Person responsible for the care of a child"* means:

a. A parent, guardian, or foster parent.

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

8. *"Registry"* means the central registry for child abuse information established in section 235A.14.

[C66, 71, 73, 75, 77, §235A.2; C79, 81, §232.68]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1207, §1, 2; 85 Acts, ch 173, §2; 86 Acts, ch 1177, §1; 87 Acts, ch 153, §1, 2; 89 Acts, ch 24, §1; 89 Acts, ch 89, §16; 89 Acts, ch 230, §3, 4; 93 Acts, ch 76, §1; 93 Acts, ch 93, §2; 94 Acts, ch 1130, §1, 2; 95 Acts, ch 41, §24; 95 Acts, ch 108, §17; 95 Acts, ch 182, §7; 96 Acts,

ch 1092, §2; 97 Acts, ch 35, §4, 5, 25; 97 Acts, ch 176, §1; 2001 Acts, ch 46, §2; 2001 Acts, ch 131, §1

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

232.69 Mandatory and permissive reporters — training required.

1. The classes of persons enumerated in this subsection shall make a report within twenty-four hours and as provided in section 232.70, of cases of child abuse. In addition, the classes of persons enumerated in this subsection shall make a report of abuse of a child who is under twelve years of age and may make a report of abuse of a child who is twelve years of age or older, which would be defined as child abuse under section 232.68, subsection 2, paragraph *"c"* or *"e"*, except that the abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child.

a. Every health practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused. Notwithstanding section 139A.30, this provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease.

b. Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

(1) A social worker.

(2) An employee or operator of a public or private health care facility as defined in section 135C.1.

(3) A certified psychologist.

(4) A licensed school employee, certified paraeducator, or holder of a coaching authorization issued under section 272.31.

(5) An employee or operator of a licensed child care center, registered child development home, head start program, family development and self-sufficiency grant program under section 217.12, or healthy opportunities for parents to experience success – healthy families Iowa program under section 135.106.

(6) An employee or operator of a substance abuse program or facility licensed under chapter 125.

(7) An employee of a department of human services institution listed in section 218.1.

(8) An employee or operator of a juvenile detention or juvenile shelter care facility approved under section 232.142.

(9) An employee or operator of a foster care facility licensed or approved under chapter 237.

(10) An employee or operator of a mental health center.

(11) A peace officer.

(12) A counselor or mental health professional.

2. Any other person who believes that a child has been abused may make a report as provided in section 232.70.

3. *a.* For the purposes of this subsection, *"licensing board"* means an examining board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

b. A person required to make a report under subsection 1, other than a physician whose professional practice does not regularly involve providing primary health care to children, shall complete two hours of training relating to the identification and reporting of child abuse within six months of initial employment or self-employment involving the examination, attending, counseling, or treatment of children on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person's employer or, if self-employed, from the department. The person shall complete at least two hours of additional child abuse identification and reporting training every five years.

c. If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be responsible for providing the child abuse identification and reporting training. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to licensure, regulation, or approval by a state agency, the person shall obtain the child abuse identification and reporting training as provided in paragraph *"d"*.

d. The person may complete the initial or additional training requirements as part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing or examining board.

(2) A training program using a curriculum approved by the abuse education review panel established by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

e. A licensing board with authority over the license of a person required to make a report under subsection 1 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document

for the licensing board the person's completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or suspension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering child abuse in this state.

f. For persons required to make a report under subsection 1 who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of renewal of the facility's or program's licensure, registration, or approval, that such persons employed by the facility or program are in compliance with the training requirements of this subsection.

g. For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

h. For persons required to make a report under subsection 1 who are employees of state departments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons' compliance with the training requirements of this subsection.

[C66, 71, 73, 75, 77, §235A.3; C79, 81, §232.69]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §4, 6; 85 Acts, ch 173, §3 – 5; 87 Acts, ch 153, §3; 88 Acts, ch 1238, §1; 89 Acts, ch 89, §17; 89 Acts, ch 230, §5; 89 Acts, ch 265, §40; 94 Acts, ch 1130, §3; 97 Acts, ch 85, §1; 99 Acts, ch 192, §27, 33; 2000 Acts, ch 1066, §42; 2001 Acts, ch 122, §2, 3; 2002 Acts, ch 1142, §1, 31

For future amendments to this section effective July 1, 2003, see 2002 Acts, ch 1047, §2, 20

2002 amendment to subsection 1, paragraph b, subparagraph (5), is effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Subsection 1, paragraph b, subparagraph (5) amended

232.70 Reporting procedure.

1. Each report made by a mandatory reporter, as defined in section 232.69, subsection 1, shall be made both orally and in writing. Each report made by a permissive reporter, as defined in section 232.69, subsection 2, may be oral, written, or both.

2. The employer or supervisor of a person who is a mandatory or permissive reporter shall not apply a policy, work rule, or other requirement that interferes with the person making a report of child abuse.

3. The oral report shall be made by telephone or otherwise to the department of human services. If the person making the report has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

4. The written report shall be made to the department of human services within forty-eight hours after such oral report.

5. Upon receipt of a report the department shall do all of the following:

a. Immediately, upon receipt of an oral report, make a determination as to whether the report constitutes an allegation of child abuse as defined in section 232.68.

b. Notify the appropriate county attorney of the receipt of the report.

6. The oral and written reports shall contain the following information, or as much thereof as the person making the report is able to furnish:

a. The names and home address of the child and the child's parents or other persons believed to be responsible for the child's care;

b. The child's present whereabouts if not the same as the parent's or other person's home address;

c. The child's age;

d. The nature and extent of the child's injuries, including any evidence of previous injuries;

e. The name, age and condition of other children in the same home;

f. Any other information which the person making the report believes might be helpful in establishing the cause of the injury to the child, the identity of the person or persons responsible for the injury, or in providing assistance to the child; and

g. The name and address of the person making the report.

7. A report made by a permissive reporter, as defined in section 232.69, subsection 2, shall be regarded as a report pursuant to this chapter whether or not the report contains all of the information required by this section and may be made to the department of human services, county attorney, or law enforcement agency. If the report is made to any agency other than the department of human services, such agency shall promptly refer the report to the department of human services.

8. If a report would be determined to constitute an allegation of child abuse as defined under section 232.68, subsection 2, paragraph *"c"* or *"e"*, except that the suspected abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child, the department shall refer the report to the appropriate law enforcement agency having jurisdiction to investigate the allegation. The department shall refer the report orally as soon as practicable and in writing within seventy-two hours of receiving the report.

9. Within twenty-four hours of receiving a report from a mandatory or permissive reporter, the

department shall inform the reporter, orally or by other appropriate means, whether or not the department has commenced an assessment of the allegation in the report.

[C66, 71, 73, 75, 77, §235A.4; C79, 81, §232.70]

83 Acts, ch 96, §157, 159; 87 Acts, ch 153, §4; 97 Acts, ch 176, §2, 17; 2000 Acts, ch 1137, §4, 14; 2001 Acts, ch 122, §4

2000 amendment applies to disclosures of information made on or after April 21, 2000, related to child abuse reported before, on, or after that date; 2000 Acts, ch 1137, §14

232.71 Duties of the department upon receipt of report. Repealed by 97 Acts, ch 35, § 24, 25. See § 232.71B.

232.71A Child abuse assessment pilot projects. Repealed by 97 Acts, ch 35, § 24, 25. See § 232.71B.

232.71B Duties of the department upon receipt of report.

1. *Commencement of assessment — purpose.*

a. If the department determines a report constitutes a child abuse allegation, the department shall promptly commence an appropriate assessment within twenty-four hours of receiving the report.

b. The primary purpose of the assessment shall be the protection of the child named in the report. The secondary purpose of the assessment shall be to engage the child's family in services to enhance family strengths and to address needs.

2. *Notification of parents.* The department, within five working days of commencing the assessment, shall provide written notification of the assessment to the child's parents. However, if the department shows the court to the court's satisfaction that notification is likely to endanger the child or other persons, the court shall orally direct the department to withhold notification. Within one working day of issuing an oral directive, the court shall issue a written order restraining the notification. The department shall not reveal in the written notification to the parents or otherwise the identity of the reporter of child abuse to a subject of a child abuse report listed in section 235A.15, subsection 2, paragraph *"a"*.

3. *Involvement of law enforcement.* The department shall apply a protocol, developed with representatives of law enforcement agencies at the local level, to work jointly with law enforcement agencies in performing assessment and investigative processes for child abuse reports in which a criminal act harming a child is alleged. The county attorney and appropriate law enforcement agencies shall also take any other lawful action which may be necessary or advisable for the protection of the child. If a report is determined not to constitute a child abuse allegation, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency.

4. *Assessment process.* The assessment is subject to all of the following:

a. Identification of the nature, extent, and cause of the injuries, if any, to the child named in the report.

b. Identification of the person or persons responsible for the alleged child abuse.

c. A description of the name, age, and condition of other children in the same home as the child named in the report.

d. An evaluation of the home environment. If concerns regarding protection of children are identified by the child protection worker, the child protection worker shall evaluate the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

e. An interview of the person alleged to have committed the child abuse, if the person's identity and location are known. The offer of an interview shall be made to the person prior to any consideration or determination being made that the person committed the alleged abuse. The purpose of the interview shall be to provide the person with the opportunity to explain or rebut the allegations of the child abuse report or other allegations made during the assessment. The court may waive the requirement to offer the interview only for good cause. The person offered an interview or the person's attorney may decline to be interviewed.

f. Unless otherwise prohibited under section 234.40 or 280.21, the use of corporal punishment by the person responsible for the care of a child which does not result in a physical injury to the child shall not be considered child abuse.

5. *Home visit.* The assessment may, with the consent of the parent or guardian, include a visit to the home of the child named in the report and an interview or observation of the child may be conducted. If permission to enter the home to interview or observe the child is refused, the juvenile court or district court upon a showing of probable cause may authorize the person making the assessment to enter the home and interview or observe the child.

6. *Facility or school visit.* The assessment may include a visit to a facility providing care to the child named in the report or to any public or private school subject to the authority of the department of education where the child named in the report is located. The administrator of a facility, or a public or private school shall cooperate with the child protection worker by providing confidential access to the child named in the report for the purpose of interviewing the child, and shall allow the child protection worker confidential access to other children for the purpose of conducting interviews in order to obtain relevant information. The child protection worker may observe a child named in a report in accordance with the provisions of section 232.68, subsection 3, paragraph

"b". A witness shall be present during an observation of a child. Any child aged ten years of age or older can terminate contact with the child protection worker by stating or indicating the child's wish to discontinue the contact. The immunity granted by section 232.73 applies to acts or omissions in good faith of administrators and their facilities or school districts for cooperating in an assessment and allowing confidential access to a child.

7. *Information requests*.

a. The department may request information from any person believed to have knowledge of a child abuse case. The county attorney, any law enforcement or social services agency in the state, and any mandatory reporter, whether or not the reporter made the specific child abuse report, shall cooperate and assist in the assessment upon the request of the department.

b. In performing an assessment, the department may request criminal history data from the department of public safety on any person believed to be responsible for an injury to a child which, if confirmed, would constitute child abuse. The department shall establish procedures for determining when a criminal history records check is necessary.

8. *Physical examination*. If the department refers a child to a physician for a physical examination, the department shall contact the physician regarding the examination within twenty-four hours of making the referral. If the physician who performs the examination upon referral by the department reasonably believes the child has been abused, the physician shall report to the department within twenty-four hours of performing the examination.

9. *Multidisciplinary team*. In each county or multicounty area in which more than fifty child abuse reports are made per year, the department shall establish a multidisciplinary team, as defined in section 235A.13, subsection 8. Upon the department's request, a multidisciplinary team shall assist the department in the assessment, diagnosis, and disposition of a child abuse report.

10. *Facility protocol*. The department shall apply a protocol, developed in consultation with facilities providing care to children, for conducting an assessment of reports of abuse of children allegedly caused by employees of facilities providing care to children. As part of such an assessment, the department shall notify the licensing authority for the facility, the governing body of the facility, and the administrator in charge of the facility of any of the following:

a. A violation of facility policy noted in the assessment.

b. An instance in which facility policy or lack of facility policy may have contributed to the reported incident of alleged child abuse.

c. An instance in which general practice in the facility appears to differ from the facility's written policy.

The licensing authority, the governing body, and the administrator in charge of the facility shall take any lawful action which may be necessary or advisable to protect children receiving care.

11. *Assessment report*. The department, upon completion of the assessment, shall make a written report of the assessment, in accordance with all of the following:

a. The written assessment shall incorporate the information required by subsection 4.

b. The written assessment shall be completed within twenty business days of the receipt of the report.

c. The written assessment shall include a description of the child's condition, identification of the injury or risk to which the child was exposed, the circumstances which led to the injury or risk to the child, and the identity of any person alleged to be responsible for the injury or risk to the child.

d. The written assessment shall identify the strengths and needs of the child, and of the child's parent, home, and family.

e. The written assessment shall identify services available from the department and informal and formal services and other support available in the community to address the strengths and needs identified in the assessment.

f. Upon completion of the assessment, the department shall consult with the child's family in offering services to the child and the child's family to address strengths and needs identified in the assessment.

g. The department shall notify each subject of the child abuse report, as identified in section 235A.15, subsection 2, paragraph *"a"*, of the results of the assessment, of the subject's right, pursuant to section 235A.19, to correct the report data or disposition data which refers to the subject, and of the procedures to correct the data.

12. *Court-ordered and voluntary services*. The department shall provide or arrange for and monitor services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court.

13. *County attorney — juvenile court*. The department shall provide the juvenile court and the county attorney with a copy of the portion of the written assessment pertaining to the child abuse report. The juvenile court and the county attorney shall notify the department of any action taken concerning an assessment provided by the department.

14. *False reports*. If a fourth report is received from the same person who made three earlier reports which identified the same child as a victim of child abuse and the same person responsible for the care of the child as the alleged abuser and which were determined by the department to be entirely false or without merit, the department may determine that the report is again false or without merit due to the report's spurious or frivo-

lous nature and may in its discretion terminate its assessment of the report. If the department receives more than three reports which identify the same child as a victim of child abuse or the same person as the alleged abuser of a child, or which were made by the same person, and the department determined the reports to be entirely false or without merit, the department shall provide information concerning the reports to the county attorney for consideration of criminal charges under section 232.75, subsection 3.

97 Acts, ch 35, §6, 25; 97 Acts, ch 176, §24, 43; 2001 Acts, ch 122, §5; 2002 Acts, ch 1074, §1
Subsection 4, paragraph e amended

232.71C Court action following child abuse assessment — guardian ad litem.

1. If, upon completion of an assessment performed under section 232.71B, the department determines that the best interests of the child require juvenile court action, the department shall act appropriately to initiate the action. If at any time during the assessment process the department believes court action is necessary to safeguard a child, the department shall act appropriately to initiate the action. The county attorney shall assist the department as provided under section 232.90, subsection 2.

2. The department shall assist the juvenile court or district court during all stages of court proceedings involving an alleged child abuse case in accordance with the purposes of this chapter.

3. In every case involving child abuse which results in a child protective judicial proceeding, whether or not the proceeding arises under this chapter, a guardian ad litem shall be appointed by the court to represent the child in the proceedings. Before a guardian ad litem is appointed pursuant to this section, the court shall require the person responsible for the care of the child to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court determines that the person responsible for the care of the child is able to bear the cost of the guardian ad litem, the court shall so order. In cases where the person responsible for the care of the child is unable to bear the cost of the guardian ad litem, the expense shall be paid out of the county treasury.

97 Acts, ch 35, §7, 25

232.71D Founded child abuse — central registry.

1. The requirements of this section shall apply to child abuse information relating to a report of child abuse and to an assessment performed in accordance with section 232.71B.

2. If the alleged child abuse meets the definition of child abuse under section 232.68, subsection 2, paragraph *"a"* or *"d"*, and the department determines the injury or risk of harm to the child was minor and isolated and is unlikely to reoccur, the names of the child and the alleged perpetrator of the child abuse and any other child abuse information shall not be placed in the central registry as a case of founded child abuse.

3. Except as otherwise provided in section 232.68, subsection 2, paragraph *"d"*, regarding parents legitimately practicing religious beliefs, the names of the child and the alleged perpetrator and the report data and disposition data shall be placed in the central registry as a case of founded child abuse under any of the following circumstances:

a. The case was referred for juvenile or criminal court action as a result of the acts or omissions of the alleged perpetrator or a criminal or juvenile court action was initiated by the county attorney or juvenile court within twelve months of the date of the department's report concerning the case, in which the alleged perpetrator was convicted of a crime involving the child or there was a delinquency or child in need of assistance adjudication.

b. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph *"a"*, involving nonaccidental physical injury suffered by the child and the injury was not minor or was not isolated or is likely to reoccur.

c. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse and the department has previously determined within the eighteen-month period preceding the issuance of the department's report that the acts or omissions of the alleged perpetrator in a prior case met the definition of child abuse.

d. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph *"b"*, involving mental injury.

e. The department determines the acts or omissions meet the definition of child abuse under section 232.68, subsection 2, paragraph *"c"*, and the alleged perpetrator of the acts or omissions is age fourteen or older. However, the juvenile court may order the removal from the central registry of the name of an alleged perpetrator placed in the registry pursuant to this paragraph who is age fourteen through seventeen upon a finding of good cause. The name of an alleged perpetrator who is less than age fourteen shall not be placed in the central registry pursuant to this paragraph.

f. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph *"d"*, involving failure to provide care necessary for the child's health and welfare, and any injury to the child or risk to the child's health and welfare was not minor or was not isolated or is likely to reoccur, in any of the following ways:

(1) Failure to provide adequate food and nutrition.

(2) Failure to provide adequate shelter.

(3) Failure to provide adequate health care.

(4) Failure to provide adequate mental health care.

(5) Gross failure to meet emotional needs.

(6) Failure to respond to an infant's life-threatening condition.

g. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph *"e"*, involving prostitution.

h. The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse under section 232.68, subsection 2, paragraph *"f"*, involving the presence of an illegal drug.

i. The alleged abuse took place in any of the following licensed, registered, unregistered, or regulated facilities or services:

(1) Substance abuse program licensed under chapter 125.

(2) Hospital licensed under chapter 135B.

(3) Health care facility or residential care facility licensed under chapter 135C.

(4) Psychiatric medical institution licensed under chapter 135H.

(5) Medical assistance home and community-based waiver for persons with mental retardation residential program regulated by the department of human services and the department of inspections and appeals.

(6) An institution controlled by the department and enumerated in section 218.1.

(7) Mental health center, juvenile shelter care facility, or juvenile detention facility.

(8) Child foster care licensee under chapter 237.

(9) Child care provider under chapter 237A.

(10) Public or private school which provides overnight care.

(11) The Iowa braille and sight saving school and the Iowa school for the deaf controlled by the state board of regents.

j. The department determines the alleged perpetrator of the child abuse will continue to pose a danger to the child who is the subject of the report of child abuse or to another child with whom the alleged perpetrator may come into contact.

4. If report data and disposition data are placed in the central registry in accordance with this section, the department shall make periodic follow-up reports in a manner prescribed by the registry so that the registry is kept up-to-date and fully informed concerning the case.

5. *a.* The confidentiality of all of the following shall be maintained in accordance with section 217.30:

(1) Assessment data.

(2) Information pertaining to an allegation of child abuse for which there was no assessment performed.

(3) Information pertaining to an allegation of child abuse which was determined to not meet the definition of child abuse. Individuals identified in section 235A.15, subsection 4, are authorized to have access to such information under section 217.30.

(4) Report data and disposition data pertaining to an allegation of child abuse determined to meet the definition of child abuse which is not subject to placement in the central registry. Individuals identified in section 235A.15, subsection 3, are authorized to have access to such data under section 217.30.

b. The confidentiality of report data and disposition data pertaining to an allegation of child abuse determined to meet the definition of child abuse which is subject to placement in the central registry, shall be maintained as provided in chapter 235A.

97 Acts, ch 176, §5, 25, 26, 43; 99 Acts, ch 192, §33

232.72 Jurisdiction — transfer.

1. For the purposes of this division, the terms *"department of human services"*, *"department"*, or *"county attorney"* ordinarily refer to the regional or local office of the department of human services or of the county attorney's office serving the county in which the child's home is located.

2. However, if the person making a report of child abuse pursuant to this chapter does not know where the child's home is located, or if the child's home is not located in the service area where the health practitioner examines, attends, or treats the child, the report may be made to the department or to the local office serving the county where the person making the report resides or the county where the health practitioner examines, attends, or treats the child. These agencies shall promptly proceed as provided in section 232.71B, unless the matter is transferred as provided in this section.

3. If the child's home is located in a county not served by the office receiving the report, the department shall promptly transfer the matter by transmitting a copy of the report of injury and any other pertinent information to the office and the county attorney serving the other county. They shall promptly proceed as provided in section 232.71B.

[C66, 71, 73, 75, 77, §235A.6; C79, 81, §232.72]

83 Acts, ch 96, §157, 159; 97 Acts, ch 35, §8, 25

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

232.73 Medically relevant tests — immunity from liability.

A person participating in good faith in the mak-

ing of a report, photographs, or X rays, or in the performance of a medically relevant test pursuant to this chapter, or aiding and assisting in an assessment of a child abuse report pursuant to section 232.71B, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed. The person shall have the same immunity with respect to participation in good faith in any judicial proceeding resulting from the report or relating to the subject matter of the report.

As used in this section and in sections 232.77 and 232.78, *"medically relevant test"* means a test that produces reliable results of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives of the illegal drugs, including a drug urine screen test.

[C66, 71, 73, 75, 77, §235A.7; C79, 81, §232.73]

83 Acts, ch 88, §1; 90 Acts, ch 1264, §28; 95 Acts, ch 182, §8; 96 Acts, ch 1092, §3; 97 Acts, ch 35, §9, 25; 2001 Acts, ch 135, §11

232.74 Evidence not privileged or excluded.

Sections 622.9 and 622.10 and any other statute or rule of evidence which excludes or makes privileged the testimony of a husband or wife against the other or the testimony of a health practitioner or mental health professional as to confidential communications, do not apply to evidence regarding a child's injuries or the cause of the injuries in any judicial proceeding, civil or criminal, resulting from a report pursuant to this chapter or relating to the subject matter of such a report.

[C66, 71, 73, 75, 77, §235A.8; C79, 81, §232.74]

83 Acts, ch 37, §1; 87 Acts, ch 153, §6

232.75 Sanctions.

1. Any person, official, agency, or institution required by this chapter to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor.

2. Any person, official, agency, or institution required by section 232.69 to report a suspected case of child abuse who knowingly fails to do so or who knowingly interferes with the making of such a report in violation of section 232.70 is civilly liable for the damages proximately caused by such failure or interference.

3. A person who reports or causes to be reported to the department of human services false information regarding an alleged act of child abuse, knowing that the information is false or that the act did not occur, commits a simple misdemeanor.

[C75, 77, §235A.9; C79, 81, §232.75]

86 Acts, ch 1238, §11; 87 Acts, ch 13, §2; 2001 Acts, ch 122, §6

232.76 Publicity and educational programs.

The department, within the limits of available funds, shall conduct a continuing publicity and educational program for the personnel of the department, persons required to report, and any other appropriate persons to encourage the fullest possible degree of reporting of suspected cases of child abuse. Educational programs shall include but not be limited to the diagnosis and cause of child abuse, the responsibilities, obligations, duties and powers of persons and agencies under this chapter and the procedures of the department and the juvenile court with respect to suspected cases of child abuse and disposition of actual cases.

[C75, 77, §235A.10; C79, 81, §232.76]

232.77 Photographs, X rays, and medically relevant tests.

1. A person who is required to report a case of child abuse may take or cause to be taken, at public expense, photographs, X rays, or other physical examinations or tests of a child which would provide medical indication of allegations arising from a child abuse assessment. A health practitioner may, if medically indicated, cause to be performed radiological examination, physical examination, or other medical tests of the child. A person who takes any photographs or X rays or performs physical examinations or other tests pursuant to this section shall notify the department that the photographs or X rays have been taken or the examinations or other tests have been performed. The person who made notification shall retain the photographs or X rays or examination or test findings for a reasonable time following the notification. Whenever the person is required to report under section 232.69, in that person's capacity as a member of the staff of a medical or other private or public institution, agency or facility, that person shall immediately notify the person in charge of the institution, agency, or facility or that person's designated delegate of the need for photographs or X rays or examinations or other tests.

2. If a health practitioner discovers in a child physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, which were not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed in utero, the health practitioner may perform or cause to be performed a medically relevant test, as defined in section 232.73, on the child. The practitioner shall report any positive results of such a test on the child to the department. The department shall begin an assessment pursuant to section 232.71B upon receipt of such a report. A positive test result obtained prior to the birth of a child shall not be used for the criminal prosecution of a parent for acts and omissions resulting in

intrauterine exposure of the child to an illegal drug.

[C75, 77, §235A.11; C79, 81, §232.77]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1264, §29; 93 Acts, ch 93, §3; 94 Acts, ch 1130, §6; 96 Acts, ch 1092, §4; 97 Acts, ch 35, §10, 25

PART 3

TEMPORARY CUSTODY OF A CHILD

232.78 Temporary custody of a child pursuant to ex parte court order.

1. The juvenile court may enter an ex parte order directing a peace officer or a juvenile court officer to take custody of a child before or after the filing of a petition under this chapter provided all of the following apply:

a. The person responsible for the care of the child is absent, or though present, was asked and refused to consent to the removal of the child and was informed of an intent to apply for an order under this section, or there is reasonable cause to believe that a request for consent would further endanger the child, or there is reasonable cause to believe that a request for consent will cause the parent, guardian, or legal custodian to take flight with the child.

b. It appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health. The circumstances or conditions indicating the presence of such imminent danger shall include but are not limited to any of the following:

(1) The refusal or failure of the person responsible for the care of the child to comply with the request of a peace officer, juvenile court officer, or child protection worker for such person to obtain and provide to the requester the results of a physical or mental examination of the child. The request for a physical examination of the child may specify the performance of a medically relevant test.

(2) The refusal or failure of the person responsible for the care of the child or a person present in the person's home to comply with a request of a peace officer, juvenile court officer, or child protection worker for such a person to submit to and provide to the requester the results of a medically relevant test of the person.

c. There is not enough time to file a petition and hold a hearing under section 232.95.

d. The application for the order includes a statement of the facts to support the findings specified in paragraphs *"a"*, *"b"*, and *"c"*.

2. The person making the application for an order shall assert facts showing there is reasonable cause to believe that the child cannot either be returned to the place where the child was residing or placed with the parent who does not have physical care of the child.

3. Except for good cause shown or unless the child is sooner returned to the place where the child was residing or permitted to return to the child care facility, a petition shall be filed under this chapter within three days of the issuance of the order.

4. The juvenile court may enter an order authorizing a physician or hospital to provide emergency medical or surgical procedures before the filing of a petition under this chapter provided:

a. Such procedures are necessary to safeguard the life and health of the child; and

b. There is not enough time to file a petition under this chapter and hold a hearing as provided in section 232.95.

5. The juvenile court, before or after the filing of a petition under this chapter, may enter an ex parte order authorizing a physician or hospital to conduct an outpatient physical examination or authorizing a physician, a psychologist certified under section 154B.7, or a community mental health center accredited pursuant to chapter 230A to conduct an outpatient mental examination of a child if necessary to identify the nature, extent, and cause of injuries to the child as required by section 232.71B, provided all of the following apply:

a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to provide written consent to the examination.

b. The juvenile court has entered an ex parte order directing the removal of the child from the child's home or a child care facility under this section.

c. There is not enough time to file a petition and to hold a hearing as provided in section 232.98.

6. Any person who may file a petition under this chapter may apply for, or the court on its own motion may issue, an order for temporary removal under this section. An appropriate person designated by the court shall confer with a person seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application. The person designated by the court shall file with the court a complete written report providing all details of the designee's conference with the person seeking the removal order, the designee's efforts to inform the parents or other person legally responsible for the child's care of the application, any inquiries made by the designee to aid the court in disposing of the application, and all information the designee communicated to the court. The report shall be filed within five days of the date of the removal order. If the court does not designate an appropriate person who performs the required duties, notwithstanding section 234.39 or any other provision of law, the child's parent shall not be responsible for paying the cost of care and services for the duration of the removal order.

7. Any order entered under this section authorizing temporary removal of a child must include both of the following:

a. A determination made by the court that continuation of the child in the child's home would be contrary to the welfare of the child. Such a determination must be made on a case-by-case basis. The grounds for the court's determination must be explicitly documented and stated in the order. However, preserving the safety of the child must be the court's paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determination shall not be a prerequisite to the removal of the child.

b. A statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

[C79, 81, §232.78]

84 Acts, ch 1279, §9; 85 Acts, ch 173, §10, 11; 89 Acts, ch 230, §14; 94 Acts, ch 1172, §23; 97 Acts, ch 35, §11, 25; 98 Acts, ch 1190, §4 – 6; 99 Acts, ch 192, §33; 2000 Acts, ch 1067, §6, 7; 2001 Acts, ch 135, §12, 13

232.79 Custody without court order.

1. A peace officer or juvenile court officer may take a child into custody, a physician treating a child may keep the child in custody, or a juvenile court officer may authorize a peace officer, physician, or medical security personnel to take a child into custody, without a court order as required under section 232.78 and without the consent of a parent, guardian, or custodian provided that both of the following apply:

a. The child is in a circumstance or condition that presents an imminent danger to the child's life or health.

b. There is not enough time to apply for an order under section 232.78.

2. If a person authorized by this section removes or retains custody of a child, the person shall:

a. Bring the child immediately to a place designated by the rules of the court for this purpose, unless the person is a physician treating the child and the child is or will presently be admitted to a hospital.

b. Make every reasonable effort to inform the parent, guardian, or custodian of the whereabouts of the child.

c. In accordance with court-established procedures, immediately orally inform the court of the emergency removal and the circumstances surrounding the removal.

d. Within twenty-four hours of orally informing the court of the emergency removal in accordance with paragraph *"c"*, inform the court in writing of the emergency removal and the circumstances surrounding the removal.

3. Any person, agency, or institution acting in good faith in the removal or keeping of a child pursuant to this section, and any employer of or person under the direction of such a person, agency, or institution, shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed as the result of such removal or keeping.

4. *a.* When the court is informed that there has been an emergency removal or keeping of a child without a court order, the court shall direct the department of human services or the juvenile probation department to make every reasonable effort to communicate immediately with the child's parent or parents or other person legally responsible for the child's care. Upon locating the child's parent or parents or other person legally responsible for the child's care, the department of human services or the juvenile probation department shall, in accordance with court-established procedures, immediately orally inform the court. After orally informing the court, the department of human services or the juvenile probation department shall provide to the court written documentation of the oral information.

b. The court shall authorize the department of human services or the juvenile probation department to cause a child thus removed or kept to be returned if it concludes there is not an imminent risk to the child's life and health in so doing. If the department of human services or the juvenile probation department receives information which could affect the court's decision regarding the child's return, the department of human services or the juvenile probation department, in accordance with court established procedures, shall immediately orally provide the information to the court. After orally providing the information to the court, the department of human services or the juvenile probation department shall provide to the court written documentation of the oral information. If the child is not returned, the department of human services or the juvenile probation department shall forthwith cause a petition to be filed within three days after the removal.

c. If deemed appropriate by the court, upon being informed that there has been an emergency removal or keeping of a child without a court order, the court may enter an order in accordance with section 232.78.

5. When there has been an emergency removal or keeping of a child without a court order, a physical examination of the child by a licensed medical practitioner shall be performed within twenty-four hours of such removal, unless the child is returned to the child's home within twenty-four hours of the removal.

[C79, 81, §232.79]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §10; 89 Acts, ch 230, §15; 90 Acts, ch 1215, §1; 94 Acts,

ch 1172, §24; 2001 Acts, ch 135, §14

232.79A Children without adult supervision.

If a peace officer determines that a child does not have adult supervision because the child's parent, guardian, or other person responsible for the care of the child has been arrested and detained or has been unexpectedly incapacitated, and that no adult who is legally responsible for the care of the child can be located within a reasonable period of time, the peace officer shall attempt to place the child with an adult relative of the child, an adult person who cares for the child, or another adult person who is known to the child. The person with whom the child is placed is authorized to give consent for emergency medical treatment of the child and shall not be held liable for any action arising from giving the consent. Upon the request of the peace officer, the department shall assist in making the placement. The placement shall not exceed a period of twenty-four hours and shall be terminated when a person who is legally responsible for the care of the child is located and takes custody of the child. If a person who is legally responsible for the care of the child cannot be located within the twenty-four hour period or a placement in accordance with this section is unavailable, the provisions of section 232.79 shall apply. If the person with whom the child is placed charges a fee for the care of the child, the fee shall be paid from funds provided in the appropriation to the department for protective child care.

90 Acts, ch 1215, §2

232.80 Homemaker services.

A homemaker-home health aide may be assigned to give care to a child in the child's place of residence. Whenever possible, the services shall be provided in preference to removal of the child from the home. The care may be provided under this Act* on an emergency basis for up to twenty-four hours without court order, and may be ordered by the court for a period of time extending until dismissal or disposition of the case.

[C79, 81, §232.80; 82 Acts, ch 1260, §118]

*See 78 Acts, ch 1088

232.81 Complaint.

1. Any person having knowledge of the circumstances may file a complaint with the person or agency designated by the court to perform intake duties alleging that a child is a child in need of assistance.

2. Upon receipt of a complaint, the court may request the department of human services, juvenile probation office, or other authorized agency or individual to conduct a preliminary investigation of the complaint to determine if further action should be taken.

3. A petition alleging the child to be a child in need of assistance may be filed pursuant to section 232.87 provided the allegations of the complaint, if proven, are sufficient to establish the court's jurisdiction and the filing is in the best interests of the child.

4. A person or agency shall not maintain any records with regard to a complaint filed under division III of this chapter which is dismissed without the filing of a petition. This subsection does not apply to records maintained pursuant to chapter 235A.

[SS15, §254-a15; C24, 27, 31, 35, 39, §**3621;** C46, 50, 54, 58, 62, §232.5; C71, 73, 75, 77, §232.3; C79, 81, §232.81]

83 Acts, ch 96, §157, 159

232.82 Removal of sexual offenders and physical abusers from the residence pursuant to court order.

1. Notwithstanding section 561.15, if it is alleged by a person authorized to file a petition under section 232.87, subsection 2, or by the court on its own motion, that a parent, guardian, custodian, or an adult member of the household in which a child resides has committed a sexual offense with or against the child, pursuant to chapter 709 or section 726.2, or a physical abuse as defined by section 232.2, subsection 42, the juvenile court may enter an ex parte order requiring the alleged sexual offender or physical abuser to vacate the child's residence upon a showing that probable cause exists to believe that the sexual offense or physical abuse has occurred and that substantial evidence exists to believe that the presence of the alleged sexual offender or physical abuser in the child's residence presents a danger to the child's life or physical, emotional, or mental health.

2. If an order is entered under subsection 1 and a petition has not yet been filed under this chapter, the petition shall be filed under section 232.87 by the county attorney, the department of human services, or a juvenile court officer within three days of the entering of the order.

3. The juvenile court may order on its own motion, or shall order upon the request of the alleged sexual offender or physical abuser, a hearing to determine whether the order to vacate the residence should be upheld, modified, or vacated. The juvenile court may in any later child in need of assistance proceeding uphold, modify, or vacate the order to vacate the residence.

[82 Acts, ch 1209, §14]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201; 86 Acts, ch 1186, §6; 90 Acts, ch 1251, §27

232.83 Child sexual abuse involving a person not responsible for the care of the child.

1. A complaint related to circumstances involving a child who is alleged to be a victim of an

offense defined in chapter 709, 726, or 728 and an alleged offender who is not a person responsible for the care of the child shall be handled pursuant to section 232.81.

2. Anyone authorized to conduct a preliminary investigation in response to a complaint may apply for, or the court on its own motion may enter an ex parte order authorizing a physician or hospital to conduct an outpatient physical examination or authorizing a physician, a psychologist certified under section 154B.7, or a community mental health center accredited pursuant to chapter 230A to conduct an outpatient mental examination of a child if necessary to identify the nature, extent, and causes of any injuries, emotional damage, or other such needs of a child as specified in section 232.2, subsection 6, paragraph *"c"*, *"e"*, or *"f"*, provided that all of the following apply:

a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to authorize the examination.

b. There is not enough time to file a petition and hold a hearing under this chapter.

c. The parent, guardian, or legal custodian has not provided care and treatment related to their child's alleged victimization.

88 Acts, ch 1252, §2

232.84 through 232.86 Reserved.

PART 4

JUDICIAL PROCEEDINGS

232.87 Filing of a petition — contents of petition.

1. A formal judicial proceeding to determine whether a child is a child in need of assistance under this chapter shall be initiated by the filing of a petition alleging a child to be a child in need of assistance.

2. A petition may be filed by the department of human services, juvenile court officer, or county attorney.

3. The department, juvenile court officer, county attorney or judge may authorize the filing of a petition with the clerk of the court by any competent person having knowledge of the circumstances without the payment of a filing fee.

4. The petition shall be submitted in the form specified in section 232.36.

5. The petition shall contain the information specified in section 232.36 and a clear and concise summary of the facts which bring the child within the jurisdiction of the court under this division.

[C79, 81, §232.87]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201

232.88 Summons, notice, subpoenas, and service.

After a petition has been filed, the court shall issue and serve summons, subpoenas, and other process in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section 232.37. Reasonable notice shall be provided to the persons required to be provided notice under section 232.37, except that notice shall be waived regarding a person who was notified of the adjudicatory hearing and who failed to appear. In addition, reasonable notice for any hearing under this division shall be provided to the agency, facility, institution, or person, including a foster parent, relative, or other individual providing preadoptive care, with whom a child has been placed.

[SS15, §254-a16; C24, 27, 31, 35, 39, §**3623;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §232.4; C79, 81, §232.88]

89 Acts, ch 229, §5; 95 Acts, ch 182, §3; 96 Acts, ch 1034, §10; 97 Acts, ch 164, §2; 2001 Acts, ch 135, §28

232.89 Right to and appointment of counsel.

1. Upon the filing of a petition the parent, guardian, or custodian identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If that person desires but is financially unable to employ counsel, the court shall appoint counsel.

2. Upon the filing of a petition, the court shall appoint counsel and a guardian ad litem for the child identified in the petition as a party to the proceedings. If a guardian ad litem has previously been appointed for the child in a proceeding under division II of this chapter or a proceeding in which the court has waived jurisdiction under section 232.45, the court shall appoint the same guardian ad litem upon the filing of the petition under this part. Counsel shall be appointed as follows:

a. If the child is represented by counsel and the court determines there is a conflict of interest between the child and the child's parent, guardian or custodian and that the retained counsel could not properly represent the child as a result of the conflict, the court shall appoint other counsel to represent the child, who shall be compensated pursuant to the provisions of subsection 3.

b. If the child is not represented by counsel, the court shall either order the parent, guardian or custodian to retain counsel for the child or shall appoint counsel for the child, who shall be compensated pursuant to the provisions of subsection 3.

3. The court shall determine, after giving the parent, guardian, or custodian an opportunity to be heard, whether the person has the ability to pay in whole or in part for counsel appointed for the child. If the court determines that the person possesses sufficient financial ability, the court shall then consult with the department of human services, the juvenile probation office, or other autho-

rized agency or individual regarding the likelihood of impairment of the relationship between the child and the child's parent, guardian or custodian as a result of ordering the parent, guardian, or custodian to pay for the child's counsel. If impairment is deemed unlikely, the court shall order that person to pay an amount the court finds appropriate in the manner and to whom the court directs. If the person fails to comply with the order without good reason, the court shall enter judgment against the person. If impairment is deemed likely or if the court determines that the parent, guardian, or custodian cannot pay any part of the expenses of counsel appointed to represent the child, counsel shall be reimbursed pursuant to section 232.141, subsection 2, paragraph *"b"*.

4. The same person may serve both as the child's counsel and as guardian ad litem. However, the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interest of the child as guardian ad litem, or a separate guardian ad litem is required to fulfill the requirements of subsection 2.

5. The court may appoint a court appointed special advocate to act as guardian ad litem. The court appointed special advocate shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child. The court appointed special advocate shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. The court appointed special advocate shall submit a written report to the court and to each of the parties to the proceedings containing results of the court appointed special advocate's initial investigation of the child's case, including but not limited to recommendations regarding placement of the child and other recommendations based on the best interest of the child. The court appointed special advocate shall submit subsequent reports to the court and parties, as needed, detailing the continuing situation of the child's case as long as the child remains under the jurisdiction of the court. In addition, the court appointed special advocate shall file other reports to the court as required by the court.

[C24, 27, 31, 35, 39, §**3631;** C46, 50, 54, 58, 62, §232.15; C66, 71, 73, 75, 77, §232.28; C79, 81, §232.89]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1186, §7; 87 Acts, ch 121, §4; 89 Acts, ch 283, §24; 90 Acts, ch 1271, §1506, 1507; 96 Acts, ch 1193, §5; 97 Acts, ch 23, §22; 97 Acts, ch 99, §3, 11; 2002 Acts, ch 1162, §17

Subsection 5 amended

232.90 Duties of county attorney.

1. The county attorney shall represent the state in proceedings arising from a petition filed under this division and shall present evidence in support of the petition. The county attorney shall be present at proceedings initiated by petition under this division filed by an intake officer or the county attorney, or if a party to the proceedings contests the proceedings, or if the court determines there is a conflict of interest between the child and the child's parent, guardian, or custodian or if there are contested issues before the court.

2. The county attorney shall represent the department in proceedings arising under this division. However, if there is disagreement between the department and the county attorney regarding the appropriate action to be taken, the department may request to be represented by the attorney general in place of the county attorney.

[C66, 71, 73, 75, 77, §232.29; C79, 81, §232.90]

87 Acts, ch 151, §1; 89 Acts, ch 230, §16

232.91 Presence of parents, guardian ad litem, and others at hearings — additional parties.

1. Any hearings or proceedings under this division subsequent to the filing of a petition shall not take place without the presence of the child's parent, guardian, custodian, or guardian ad litem in accordance with and subject to section 232.38. A parent without custody may petition the court to be made a party to proceedings under this division.

2. An agency, facility, institution, or person, including a foster parent or an individual providing preadoptive care, may petition the court to be made a party to proceedings under this division.

3. Any person who is entitled under section 232.88 to receive notice of a hearing concerning a child shall be given the opportunity to be heard in any other review or hearing involving the child.

[SS15, §254-a16; C24, 27, 31, 35, 39, §**3631;** C46, 50, 54, 58, 62, §232.15; C66, 71, 73, 75, 77, §232.11; C79, 81, §232.91]

84 Acts, ch 1279, §11; 95 Acts, ch 182, §4; 97 Acts, ch 164, §3; 98 Acts, ch 1190, §7

232.92 Exclusion of public from hearings.

Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

[C79, 81, §232.92]

89 Acts, ch 230, §17

232.93 Other issues adjudicated.

When it appears during the course of any hearing or proceeding that some action or remedy other than those indicated by the application or plead-

ing appears appropriate, the court may, provided all necessary parties consent, proceed to hear and determine the other issues as though originally properly sought and pleaded.

[C66, 71, 73, 75, 77, §232.12; C79, 81, §232.93]

232.94 Reporter required.

Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. Matters which must be reported under the provisions of this section shall be reported in the same manner as required in section 624.9.

[C66, 71, 73, 75, 77, §232.32; C79, 81, §232.94]

232.94A Records — subsequent hearings.

Juvenile court records, social records, and the material required to be recorded pursuant to section 232.94 shall be maintained and shall be a part of each hearing relating to the child so long as and whenever the child is a child in need of assistance.

84 Acts, ch 1279, §12

232.95 Hearing concerning temporary removal.

1. At any time after the petition is filed, any person who may file a petition under section 232.87 may apply for, or the court on its own motion may order, a hearing to determine whether the child should be temporarily removed from home. If the child is in the custody of a person other than the child's parent, guardian, or custodian as the result of action taken pursuant to section 232.78 or 232.79, the court shall hold a hearing within ten days of the date of temporary removal to determine whether the temporary removal should be continued.

2. Upon such hearing, the court may:

a. Remove the child from home and place the child in a shelter care facility or in the custody of a suitable person or agency pending a final order of disposition if the court finds that substantial evidence exists to believe that removal is necessary to avoid imminent risk to the child's life or health.

(1) If removal is ordered, the court must, in addition, make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and that reasonable efforts, as defined in section 232.102, have been made to prevent or eliminate the need for removal of the child from the child's home.

(2) The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child must be the court's paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for removal of the child.

(3) The order shall also include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

3. The court shall make and file written findings as to the grounds for granting or denying an application under this section.

4. If the court orders the child removed from the home pursuant to subsection 2, paragraph *"a"*, the court shall hold a hearing to review the removal order within six months unless a dispositional hearing pursuant to section 232.99 has been held.

[C79, 81, §232.95]

84 Acts, ch 1279, §13; 86 Acts, ch 1186, §8; 87 Acts, ch 159, §2; 98 Acts, ch 1190, §8; 2000 Acts, ch 1067, §8; 2001 Acts, ch 135, §15

232.96 Adjudicatory hearing.

1. The court shall hear and adjudicate cases involving a petition alleging a child to be a child in need of assistance.

2. The state shall have the burden of proving the allegations by clear and convincing evidence.

3. Only evidence which is admissible under the rules of evidence applicable to the trial of civil cases shall be admitted, except as otherwise provided by this section.

4. A report made to the department of human services pursuant to chapter 235A shall be admissible in evidence, but such a report shall not alone be sufficient to support a finding that the child is a child in need of assistance unless the attorneys for the child and the parents consent to such a finding.

5. Neither the privilege attaching to confidential communications between a health practitioner or mental health professional and patient nor the prohibition upon admissibility of communications between husband and wife shall be ground for excluding evidence at an adjudicatory hearing.

6. A report, study, record, or other writing or an audiotape or videotape recording made by the department of human services, a juvenile court officer, a peace officer or a hospital relating to a child in a proceeding under this division is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child's parent, guardian, or custodian. The circumstances of the making of the report, study, record or other writing or an audiotape or videotape recording, including the maker's lack of

personal knowledge, may be proved to affect its weight.

7. After the hearing is concluded, the court shall make and file written findings as to the truth of allegations of the petition and as to whether the child is a child in need of assistance.

8. If the court concludes facts sufficient to sustain a petition have not been established by clear and convincing evidence or if the court concludes that its aid is not required in the circumstances, the court shall dismiss the petition.

9. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required, the court may enter an order adjudicating the child to be a child in need of assistance.

10. If the court enters an order adjudicating the child to be a child in need of assistance, the court, if it has not previously done so, may issue an order authorizing temporary removal of the child from the child's home as set forth in section 232.95, subsection 2, paragraph *"a"*, pending a final order of disposition. The order shall include both of the following:

a. A determination that continuation of the child in the child's home would be contrary to the welfare of the child, and that reasonable efforts, as defined in section 232.102, have been made to prevent or eliminate the need for removal of the child from the child's home. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child is the paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for temporary removal of the child.

b. A statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

[C66, 71, 73, 75, 77, §232.31; C79, 81, §232.96]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201; 84 Acts, ch 1207, §4; 87 Acts, ch 153, §7; 98 Acts, ch 1190, §9; 2000 Acts, ch 1067, §9; 2001 Acts, ch 135, §16

232.97 Social investigation and report.

1. The court shall not make a disposition of the petition until two working days after a social report has been submitted to the court and counsel for the child and has been considered by the court. The court may waive the two-day requirement upon agreement by all the parties. The court may direct either the juvenile court officer or the department of human services or any other agency licensed by the state to conduct a social investigation and to prepare a social report which may include any evidence provided by an individual providing foster care for the child. A report prepared shall include any founded reports of child abuse.

2. The social investigation may be conducted and the social history may be submitted to the court prior to the adjudication of the child as a child in need of assistance with the consent of the parties.

3. The social report shall not be disclosed except as provided in this section and except as otherwise provided in this chapter. Prior to the hearing at which the disposition is determined, the court shall permit counsel for the child, counsel for the child's parent, guardian or custodian, and the guardian ad litem to inspect any social report to be considered by the court. The court may in its discretion order counsel not to disclose parts of the report to the child, or to the parent, guardian or custodian if disclosure would seriously harm the treatment or rehabilitation of the child or would violate a promise of confidentiality given to a source of information.

[C66, 71, 73, 75, 77, §232.14; C79, 81, §232.97]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201; 84 Acts, ch 1279, §14; 86 Acts, ch 1186, §9

232.98 Physical and mental examinations.

1. Except as provided in section 232.78, subsection 5, a physical or mental examination of the child may be ordered only after the filing of a petition pursuant to section 232.87 and after a hearing to determine whether an examination is necessary to determine the child's physical or mental condition. The court may consider chemical dependency as either a physical or mental condition and may consider a chemical dependency evaluation as either a physical or mental examination.

The hearing required by this section may be held simultaneously with the adjudicatory hearing.

An examination ordered prior to the adjudication shall be conducted on an outpatient basis when possible, but if necessary the court may commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed fifteen days if all of the following are found to be present:

a. Probable cause exists to believe that the child is a child in need of assistance pursuant to section 232.2, subsection 6, paragraph *"e"* or *"f"*.

b. Commitment is necessary to determine whether there is clear and convincing evidence that the child is a child in need of assistance.

c. The child's attorney agrees to the commitment.

An examination ordered after adjudication shall be conducted on an outpatient basis when possible, but if necessary the court may commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed thirty days.

The child's parent, guardian, or custodian shall be included in counseling sessions offered during the child's stay in a hospital, facility, or institution when feasible, and when in the best interests of the child and the child's parent, guardian, or custodian. If separate counseling sessions are conducted for the child and the child's parent, guardian, or custodian, a joint counseling session shall be offered prior to the release of the child from the hospital, facility, or institution. The court shall require that notice be provided to the child's guardian ad litem of the counseling sessions and of the participants and results of the sessions.

2. Following an adjudication that a child is a child in need of assistance, the court may after a hearing order the physical or mental examination of the parent, guardian or custodian if that person's ability to care for the child is at issue.

[C66, 71, 73, 75, 77, §232.13; C79, 81, §232.98; 82 Acts, ch 1209, §15]

84 Acts, ch 1279, §15; 85 Acts, ch 173, §12; 86 Acts, ch 1186, §10

232.99 Dispositional hearing — findings.

1. Following the entry of an order pursuant to section 232.96, the court shall, as soon as practicable, hold a dispositional hearing in order to determine what disposition should be made of the petition.

2. All relevant and material evidence shall be admitted.

3. In the initial dispositional hearing, any hearing held under section 232.103, and any dispositional review or permanency hearing, the court shall inquire of the parties as to the sufficiency of the services being provided and whether additional services are needed to facilitate the safe return of the child to the child's home. If the court determines such services are needed, the court shall order the services to be provided. The court shall advise the parties that failure to identify a deficiency in services or to request additional services may preclude the party from challenging the sufficiency of the services in a termination of parent-child relationship proceeding.

4. When the dispositional hearing is concluded the court shall make the least restrictive disposition appropriate considering all the circumstances of the case. The dispositions which may be entered under this division are listed in sections 232.100 to 232.102 in order from least to most restrictive.

5. The court shall make and file written findings as to its reason for the disposition.

[C66, 71, 73, 75, 77, §232.31; C79, 81, §232.99]

98 Acts, ch 1190, §10

232.100 Suspended judgment.

After the dispositional hearing the court may enter an order suspending judgment and continuing the proceedings subject to terms and conditions imposed to assure the proper care and protection of the child. Such terms and conditions may include the supervision of the child and of the parent, guardian or custodian by the department of human services, juvenile court office or other appropriate agency designated by the court. The maximum duration of any term or condition of a suspended judgment shall be twelve months unless the court finds at a hearing held during the last month of that period that exceptional circumstances require an extension of the term or condition for an additional six months.

[C79, 81, §232.100]

83 Acts, ch 96, §157, 159

232.101 Retention of custody by parent.

1. After the dispositional hearing, the court may enter an order permitting the child's parent, guardian or custodian at the time of the filing of the petition to retain custody of the child subject to terms and conditions which the court prescribes to assure the proper care and protection of the child. Such terms and conditions may include supervision of the child and the parent, guardian or custodian by the department of human services, juvenile court office or other appropriate agency which the court designates. Such terms and conditions may also include the provision or acceptance by the parent, guardian or custodian of special treatment or care which the child needs for the child's physical or mental health. If the parent, guardian or custodian fails to provide the treatment or care, the court may order the department of human services or some other appropriate state agency to provide such care or treatment.

2. The duration of any period of supervision or other terms or conditions shall be for an initial period of no more than twelve months and the court, at the expiration of that period, upon a hearing and for good cause shown, may make not more than two successive extensions of such supervision or other terms or conditions of up to twelve months each.

[S13, §254-a20, 2708; C24, 27, 31, 35, 39, §**3637;** C46, 50, 54, 58, 62, §232.21; C66, 71, 73, 75, 77, §232.33; C79, 81, §232.101]

83 Acts, ch 96, §157, 159; 97 Acts, ch 99, §4

232.102 Transfer of legal custody of child and placement.

1. After a dispositional hearing the court may enter an order transferring the legal custody of the child to one of the following for purposes of placement:

a. A parent who does not have physical care of the child, other relative, or other suitable person.

b. A child placing agency or other suitable private agency, facility, or institution which is li-

censed or otherwise authorized by law to receive and provide care for the child.

c. The department of human services.

If the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to independent living. If the child has a case permanency plan, the court shall consider the written plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the written plan and needs assessment at the time the order is entered, in determining the services to be specified in the order, the court shall consider a written plan for such services and a needs assessment which shall be developed with any person who may reasonably be expected to be a service provider for the child or to become responsible for the costs of services at that time, including but not limited to the administrator of county general relief under chapter 251 or 252 or of the single entry point process implemented under section 331.440.

1A. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

2. After a dispositional hearing and upon the request of the department, the court may enter an order appointing the department as the guardian of an unaccompanied refugee child or of a child without parent or guardian.

3. After a dispositional hearing and upon written findings of fact based upon evidence in the record that an alternative placement set forth in subsection 1, paragraph *"b"*, has previously been made and is not appropriate the court may enter an order transferring the guardianship of the child for the purposes of subsection 8, to the director of human services for the purposes of placement in the Iowa juvenile home at Toledo.

4. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the Iowa juvenile home at Toledo pursuant to subsection 3, to a facility which has been designated to be an alternative placement site for the juvenile home, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a new dispositional order under section 232.103.

(2) Immediate removal of the child from the juvenile home is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph *"a"* exist and there is insufficient time to provide notice as required under rule of juvenile procedure 8.12, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a new dispositional order under section 232.103 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

5. *a.* Whenever possible the court should permit the child to remain at home with the child's parent, guardian, or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

(1) The child cannot be protected from physical abuse without transfer of custody; or

(2) The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

b. In order to transfer custody of the child under this subsection, the court must make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and shall identify the reasonable efforts that have been made. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child is the paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for removal of the child.

6. The child shall not be placed in the state training school.

7. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the

court orders the transfer of custody to a parent who does not have physical care of the child, other relative, or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian, or custodian in order to enable them to resume custody of the child. If the court orders the transfer of custody to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child within Iowa, in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

8. Any order transferring custody to the department or an agency shall include a statement informing the child's parent that the consequences of a permanent removal may include the termination of the parent's rights with respect to the child.

9. An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to this section shall file a written report with the court at least every six months concerning the status and progress of the child. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6. If the placement is extended, the court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency responsible for the placement of the child shall consider placing the child in the same licensed foster care facility.

a. The initial dispositional review hearing shall not be waived or continued beyond six months after the date of the dispositional hearing.

b. Subsequent dispositional review hearings shall not be waived or continued beyond twelve months after the date of the most recent dispositional review hearing.

c. For purposes of this subsection, a hearing held pursuant to section 232.103 satisfies the requirements for initial dispositional review or subsequent permanency hearing.

10. *a.* As used in this division, *"reasonable efforts"* means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child. A child's health and safety shall be the paramount concern in making reasonable efforts. Reasonable efforts may include intensive family preservation services or family-centered services, if the child's safety in the home can be maintained during the time the services are provided. In determining whether reasonable efforts have been made, the court shall consider both of the following:

(1) The type, duration, and intensity of services or support offered or provided to the child and the child's family. If intensive family preservation services were not provided, the court record shall enumerate the reasons the services were not provided, including but not limited to whether the services were not available, not accepted by the child's family, judged to be unable to protect the child and the child's family during the time the services would have been provided, judged to be unlikely to be successful in resolving the problems which would lead to removal of the child, or other services were found to be more appropriate.

(2) The relative risk to the child of remaining in the child's home versus removal of the child.

b. As used in this section:

(1) *"Family-centered services"* means services which utilize a comprehensive approach to addressing the problems of individual family members, whether or not the problems are integrally related to the family, within the context of the family. Family-centered services are adapted to the individual needs of a family in the intensity and duration of service delivery and are intended to improve overall family functioning.

(2) *"Intensive family preservation services"* means services provided to a family with a child who is at imminent risk of out-of-home placement. The services are designed to address any problem creating the need for out-of-home placement and have the following characteristics: are persistently offered but provided at the family's option; are provided in the family's home; are available twenty-four hours per day; provide a response within twenty-four hours of the initial contact for assistance; have worker caseloads of not more than two through four families per worker at any one time; are provided for a period of four to six weeks; and provide funding in order to meet the special needs of a family.

11. The performance of reasonable efforts to place a child for adoption or with a guardian may be made concurrently with making reasonable efforts as defined in this section.

12. If the court determines by clear and convincing evidence that aggravated circumstances

exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

a. The parent has abandoned the child.

b. The court finds the circumstances described in section 232.116, subsection 1, paragraph *"i"*, are applicable to the child.

c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

d. The parent has been convicted of the murder of another child of the parent.

e. The parent has been convicted of the voluntary manslaughter of another child of the parent.

f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

[S13, §254-a20, -a23, 2708, 2709; C24, 27, 31, 35, 39, §**3637, 3646, 3647;** C46, 50, 54, 58, 62, §232.21, 232.27, 232.28; C66, 71, 73, 75, 77, §232.33; C79, 81, §232.102; 81 Acts, ch 11, §17; 82 Acts, ch 1260, §23]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §16 – 18; 85 Acts, ch 173, §13; 87 Acts, ch 159, §3; 88 Acts, ch 1134, §52; 88 Acts, ch 1249, §14; 90 Acts, ch 1239, §10, 11; 91 Acts, ch 232, §7, 8; 92 Acts, ch 1229, §5; 92 Acts, 1st Ex, ch 1004, §2; 95 Acts, ch 67, §16; 97 Acts, ch 99, §5; 98 Acts, ch 1190, §11 – 17; 2000 Acts, ch 1067, §10; 2001 Acts, ch 24, §40; 2001 Acts, ch 135, §17 – 19; 2002 Acts, ch 1081, §3

Copy of dispositional order under subsection 9 to be submitted to foster care review boards; 84 Acts, ch 1279, §42

Limitation on placing child in mental health institute; 86 Acts, ch 1246, §305

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

Subsection 1, unnumbered paragraph 2 amended

232.103 Termination, modification, vacation and substitution of dispositional order.

1. At any time prior to expiration of a dispositional order and upon the motion of an authorized party or upon its own motion as provided in this section, the court may terminate the order and discharge the child, modify the order, or vacate the order and make a new order.

2. The following persons shall be authorized to file a motion to terminate, modify or vacate and substitute a dispositional order:

a. The child.

b. The child's parent, guardian or custodian, except that such motion may be filed by that person not more often than once every six months except with leave of court for good cause shown.

c. The child's guardian ad litem.

d. A person supervising the child pursuant to a dispositional order.

e. An agency, facility, institution or person to whom legal custody has been transferred pursuant to a dispositional order.

f. The county attorney.

3. A hearing shall be held on a motion to terminate or modify a dispositional order except that a hearing on a motion to terminate an order may be waived upon agreement by all parties. Reasonable notice of the hearing shall be given to the parties. The hearing shall be conducted in accordance with the provisions of section 232.50.

4. The court may terminate an order and release the child if the court finds that the purposes of the order have been accomplished and the child is no longer in need of supervision, care or treatment.

5. The court may modify or vacate an order for good cause shown provided that where the request to modify or vacate is based on the child's alleged failure to comply with the conditions or terms of the order, the court may modify or vacate the order only if it finds that there is clear and convincing evidence that the child violated a material and reasonable condition or term of the order.

6. If the court vacates the order it may make any other order in accordance with and subject to the provisions of sections 232.100 to 232.102.

7. With respect to a temporary transfer order made pursuant to section 232.102, subsection 4, if the court finds that removal of a child from the Iowa juvenile home is necessary to safeguard the child's physical or emotional health and is in the best interests of the child, the court shall grant the director's motion for a new dispositional order to place the child in a facility which has been designated to be an alternative placement site for the juvenile home.

[C79, 81, §232.103]

90 Acts, ch 1239, §12; 2001 Acts, ch 135, §20

232.104 Permanency hearing.

1. *a.* The time for the initial permanency hearing for a child subject to out-of-home placement shall be the earlier of the following:

(1) For a temporary removal order entered under section 232.78, 232.95, or 232.96, for a child who was removed without a court order under section 232.79, or for an order entered under section 232.102, for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

(2) For an order entered under section 232.102, for which the court has waived reasonable efforts requirements under section 232.102, subsection 12, the permanency hearing shall be held within thirty days of the date the require-

ments were waived.

b. The permanency hearing may be held concurrently with a hearing under section 232.103 to review, modify, substitute, vacate, or terminate a dispositional order.

c. Reasonable notice of a permanency hearing shall be provided to the parties. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing, the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court. Upon completion of the hearing, the court shall enter written findings and make a determination identifying a primary permanency goal for the child. If a permanency plan is in effect at the time of the hearing, the court shall also make a determination as to whether reasonable progress is being made in achieving the permanency goal and complying with the other provisions of that permanency plan.

2. After a permanency hearing the court shall do one of the following:

a. Enter an order pursuant to section 232.102 to return the child to the child's home.

b. Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

c. Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.

d. Enter an order, pursuant to findings required by subsection 3, to do one of the following:

(1) Transfer guardianship and custody of the child to a suitable person.

(2) Transfer sole custody of the child from one parent to another parent.

(3) Transfer custody of the child to a suitable person for the purpose of long-term care.

(4) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph would not be in the child's best interest, order another planned permanent living arrangement for the child.

3. Prior to entering a permanency order pursuant to subsection 2, paragraph *"d"*, convincing evidence must exist showing that all of the following apply:

a. A termination of the parent-child relationship would not be in the best interest of the child.

b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.

c. The child cannot be returned to the child's home.

4. Any permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interest of the child.

5. Subsequent to the entry of a permanency order pursuant to this section, the child shall not be returned to the care, custody, or control of the child's parent or parents, over a formal objection filed by the child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence, that returning the child to such custody would be in the best interest of the child.

6. Following an initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When the order places the child in the custody of the department for the purpose of long-term foster care placement in a facility, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

87 Acts, ch 159, §4; 89 Acts, ch 229, §6; 95 Acts, ch 182, §5; 98 Acts, ch 1190, §18, 19; 2000 Acts, ch 1067, §11, 12; 2001 Acts, ch 135, §21, 22

232.105 Reserved.

232.106 Terms and conditions on child's parent.

If the court enters an order under this chapter which imposes terms and conditions on the child's parent, guardian, or custodian, the purpose of the terms and conditions shall be to assure the protection of the child. The order is subject to the following provisions:

1. The order shall state the reasons for and purpose of the terms and conditions.

2. If a parent, guardian, or custodian is required to have a chemical test of blood or urine for the purpose of determining the presence of an illegal drug, the test shall be a medically relevant test as defined in section 232.73.

95 Acts, ch 182, §9; 96 Acts, ch 1092, §5

232.107 Parent visitation.

If a child is removed from the child's home in accordance with an order entered under this division based upon evidence indicating the presence of an illegal drug in the child's body, unless the court finds that substantial evidence exists to believe that reasonable visitation or supervised visitation

would cause an imminent risk to the child's life or health, the order shall allow the child's parent reasonable visitation or supervised visitation with the child.

96 Acts, ch 1092, §6

232.108 Reserved.

DIVISION IV

TERMINATION OF PARENT-CHILD RELATIONSHIP PROCEEDING

232.109 Jurisdiction.

The juvenile court shall have exclusive jurisdiction over proceedings under this chapter to terminate a parent-child relationship and all parental rights with respect to a child. No such termination shall be ordered except under the provisions of this chapter if the court has made an order concerning the child pursuant to the provisions of division III of this chapter and the order is in force at the time a petition for termination is filed.

[C79, 81, §232.109]

232.110 Venue.

1. Venue for termination proceedings under this chapter shall be in the judicial district where the child is found or the judicial district where the child resides except as otherwise provided in subsection 2.

2. If a court has made an order concerning the child pursuant to the provisions of this chapter and the order is still in force at the time the termination petition is filed, such court shall hear and adjudicate the case unless the court transfers the case.

3. The judge may transfer the case to the juvenile court of any county having venue in accordance with the provisions of section 232.62.

[C79, 81, §232.110]

232.111 Petition.

1. A child's guardian, guardian ad litem, or custodian, the department of human services, a juvenile court officer, or the county attorney may file a petition for termination of the parent-child relationship and parental rights with respect to a child.

2. *a.* Unless any of the circumstances described in paragraph *"b"* exist, the county attorney shall file a petition for termination of the parent-child relationship and parental rights with respect to a child or if a petition has been filed, join in the petition, under any of the following circumstances:

(1) The child has been placed in foster care for fifteen months of the most recent twenty-two-month period. The petition shall be filed by the end of the child's fifteenth month of foster care placement.

(2) A court has determined aggravated circumstances exist and has waived the requirement for making reasonable efforts under section 232.102 because the court has found the circumstances described in section 232.116, subsection 1, paragraph *"i"*, are applicable to the child.

(3) The child is less than twelve months of age and has been judicially determined to have been abandoned or the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

(4) The parent has been convicted of the murder or the voluntary manslaughter of another child of the parent.

(5) The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

(6) The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

b. If any of the following conditions exist, the county attorney is not required to file a petition or join in an existing petition as provided in paragraph *"a"*:

(1) At the option of the department or by order of the court, the child is being cared for by a relative.

(2) The department or a state agency has documented in the child's case permanency plan provided or available to the court a compelling reason for determining that filing the petition would not be in the best interest of the child. A compelling reason shall include but is not limited to documentation in the child's case permanency plan indicating it is reasonably likely the completion of the services being received in accordance with the permanency plan will eliminate the need for removal of the child or make it possible for the child to safely return to the family's home within six months.

(3) The department has not provided the child's family, consistent with the time frames outlined in the child's case permanency plan, with those services the state deems necessary for the safe return of the child to the child's home, and the limited extension of time necessary to complete the services is clearly documented in the case permanency plan.

3. The department, juvenile court officer, county attorney or judge may authorize any competent person having knowledge of the circumstances to file a termination petition with the clerk of the court without the payment of a filing fee.

4. A petition for termination of parental rights shall include the following:

a. The legal name, age, and domicile, if any, of the child.

b. The names, residences, and domicile of any:

(1) Living parents of the child.

(2) Guardian of the child.

(3) Custodian of the child.

(4) Guardian ad litem of the child.

(5) Petitioner.

(6) Person standing in the place of the parents of the child.

c. A plain statement of those facts and grounds specified in section 232.116 which indicate that the parent-child relationship should be terminated.

d. A plain statement explaining why the petitioner does not know any of the information required under paragraphs *"a"* and *"b"* of this subsection.

e. A complete list of the services which have been offered to preserve the family and a statement specifying the services provided to address the reasons stated in any order for removal or in any dispositional or permanency order which did not return the child to the child's home.

f. The signature and verification of the petitioner.

[C79, 81, §232.111]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201; 95 Acts, ch 147, §6; 98 Acts, ch 1190, §20, 21; 2001 Acts, ch 67, §8, 13; 2001 Acts, ch 135, §25; 2002 Acts, ch 1050, §23

Subsection 2, paragraph a, subparagraph (3) amended

232.112 Notice — service.

1. Persons listed in section 232.111, subsection 4, shall be necessary parties to a termination of parent-child relationship proceeding and are entitled to receive notice and an opportunity to be heard, except that notice may be dispensed with in the case of any such person whose name or whereabouts the court determines is unknown and cannot be ascertained by reasonably diligent search. In addition to the persons who are necessary parties who may be parties under section 232.111, notice for any hearing under this division shall be provided to the child's foster parent, an individual providing preadoptive care for the child, or a relative providing care for the child.

2. Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a child if the child does not have a guardian or guardian ad litem or if the interests of the guardian or guardian ad litem conflict with the interests of the child. Such guardian ad litem shall be a necessary party under subsection 1.

3. Notice under this section shall be served personally or shall be sent by restricted certified mail, whichever is determined by the court to be the most effective means of notification. Such notice shall be made according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice by personal delivery shall be served not less than seven days prior to the hearing on termination of parental rights. Notice by restricted certified mail shall be sent not less than fourteen days prior to the hearing on termination of parental rights. A notice by restricted certified mail which is refused by the necessary party given notice shall be sufficient notice to the party under this section.

[C79, 81, §232.112]

98 Acts, ch 1190, §22

232.113 Right to and appointment of counsel.

1. Upon the filing of a petition the parent identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If the parent desires but is financially unable to employ counsel, the court shall appoint counsel.

2. Upon the filing of a petition the court shall appoint counsel for the child identified in the petition as a party to the proceedings. The same person may serve both as the child's counsel and as guardian ad litem.

[C79, 81, §232.113]

232.114 Duties of county attorney.

1. Upon the filing of a petition the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition.

2. The county attorney shall represent the department in proceedings arising under this division. However, if there is disagreement between the department and the county attorney regarding the appropriate action to be taken, the department may request to be represented by the attorney general in place of the county attorney.

[C81, §232.114]

89 Acts, ch 230, §18

232.115 Reporter required.

Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. Matters which must be reported under the provisions of this section shall be reported in the same manner as required in section 624.9.

[C81, §232.115]

232.116 Grounds for termination.

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

a. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

b. The court finds that there is clear and convincing evidence that the child has been aban-

doned or deserted.

c. The court finds that there is clear and convincing evidence that the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

d. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

e. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, *"significant and meaningful contact"* includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

f. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

g. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

h. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

i. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

j. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

k. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that

the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

l. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

m. The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child, the child's sibling, or any other child in the household.

n. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The parent has been convicted of child endangerment resulting in the death of the child's sibling, has been convicted of three or more acts of child endangerment involving the child, the child's sibling, or another child in the household, or has been convicted of child endangerment resulting in a serious injury to the child, the child's sibling, or another child in the household.

(3) There is clear and convincing evidence that the circumstances surrounding the parent's conviction for child endangerment would result in a finding of imminent danger to the child.

2. In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child. This consideration may include any of the following:

a. Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

b. For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent or by another person, whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

c. For a child who has been placed in foster family care, any relevant testimony or written statement provided by the child's foster parents.

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

b. The child is over ten years of age and objects to the termination.

c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

d. It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.

e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

[C79, §232.114; C81, §232.116]

84 Acts, ch 1279, §19, 20; 86 Acts, ch 1186, §11; 87 Acts, ch 159, §6; 89 Acts, ch 229, §7 – 12; 90 Acts, ch 1251, §28; 92 Acts, ch 1231, §27 – 29; 93 Acts, ch 76, §2; 94 Acts, ch 1174, §3, 22; 95 Acts, ch 182, §10, 11; 98 Acts, ch 1190, §23; 2001 Acts, ch 67, §9, 13

232.117 Termination — findings — disposition.

1. After the hearing is concluded the court shall make and file written findings.

2. If the court concludes that facts sufficient to terminate parental rights have not been established by clear and convincing evidence, the court shall dismiss the petition.

3. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence, the court may order parental rights terminated. If the court terminates the parental rights of the child's parents, the court shall transfer the guardianship and custody of the child to one of the following:

a. The department of human services.

b. A child-placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive

and provide care for the child.

c. A parent who does not have physical care of the child, other relative, or other suitable person.

4. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

5. If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance, under section 232.2, subsection 6, due to the acts or omissions of one or both of the child's parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of section 232.100, 232.101, 232.102, or 232.104.

6. If the court orders the termination of parental rights and transfers guardianship and custody under subsection 3, the guardian shall submit a case permanency plan to the court and shall make every effort to establish a stable placement for the child by adoption or other permanent placement. Within forty-five days of receipt of the termination order, and every forty-five days thereafter until the court determines such reports are no longer necessary, the guardian shall report to the court regarding efforts made to place the child for adoption or providing the rationale as to why adoption would not be in the child's best interest.

7. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has not been placed for adoption shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed six months after the date of the termination of parental rights or the last placement review hearing.

8. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has been placed for adoption and whose adoption has not been finalized shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed twelve months after the date of the adoptive placement or the last placement review hearing.

9. Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having a public hearing. Upon closing the hearing, the court may admit persons who have a direct interest in the case or in the work of the court.

10. If a termination of parental rights order is issued on the grounds that the child is a newborn infant whose parent has voluntarily released custody of the child under section 232.116, subsection 1, paragraph *"c"*, the court shall retain jurisdiction to change a guardian or custodian and to allow a parent whose rights have been terminated to request vacation or appeal of the termination order which request must be made within thirty days of issuance of the granting of the termination order. The period for request for vacation or appeal by a parent whose rights have been terminated shall not be waived or extended and a vacation or appeal shall not be granted for a request made after the expiration of this period. The court shall grant the vacation request only if it is in the best interest of the child. The supreme court shall prescribe rules to establish the period of thirty days, which shall not be waived or extended, in which a parent whose parental rights have been terminated may request a vacation or appeal of such a termination order.

[C79, §232.115; C81, §232.117]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §21; 87 Acts, ch 159, §5, 7; 89 Acts, ch 229, §13; 89 Acts, ch 230, §19; 92 Acts, ch 1229, §6; 94 Acts, ch 1046, §3; 98 Acts, ch 1190, §24, 25; 2001 Acts, ch 67, §10, 13

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

232.118 Removal of guardian.

1. Upon application of an interested party or upon the court's own motion, the court having jurisdiction of the child may, after notice to the parties and a hearing, remove a court appointed guardian and appoint a guardian in accordance with the provisions of section 232.117, subsection 3.

2. A child fourteen years of age or older who has not been adopted but who is placed in a satisfactory foster home may, with the consent of the foster parents, join with the guardian appointed by the court in an application to the court to remove the existing guardian and appoint the foster parents as guardians of the child.

3. The authority of a guardian appointed by the court terminates when the child reaches the age of majority or is adopted.

[C79, §232.116; C81, §232.118]

88 Acts, ch 1134, §53

232.119 Adoption exchange established.

1. The purpose of this section is to facilitate the placement of all children in Iowa who are legally available for adoption through the establishment of an adoption exchange to help find adoptive homes for these children.

2. An adoption information exchange is established within the department to be operated by the

department or by an individual or agency under contract with the department.

a. All special needs children under state guardianship shall be registered on the adoption exchange within sixty days of the termination of parental rights pursuant to section 232.117 or 600A.9 and assignment of guardianship to the director.

b. Prospective adoptive families requesting a special needs child shall be registered on the adoption exchange upon receipt of an approved home study.

3. To register a child on the Iowa exchange, the department adoption worker or the private agency worker shall register the pertinent information concerning the child on the exchange. A photo of the child and other necessary information shall be forwarded to the department to be included in the photo-listing book which shall be updated regularly. The department adoption worker or the private agency worker who places a child on the exchange shall update the registration information within ten working days after a change in the information occurs.

4. The exchange shall include a matching service for children registered or listed in the adoption photo-listing book and prospective adoptive families listed on the exchange. The department shall register a child with the national electronic exchange and electronic photo-listing system if the child has not been placed for adoption after three months on the exchange established pursuant to this section.

5. A request to defer registering the child on the exchange shall be submitted in writing and shall be granted if any of the following conditions exist:

a. The child is in an adoptive placement.

b. The child's foster parents or another person with a significant relationship is being considered as the adoptive family.

c. A diagnostic study or testing is necessary to clarify the child's needs and to provide an adequate description of the child's needs.

d. At the time of the request, the child is receiving medical care, mental health treatment, or other treatment and the child's care or treatment provider has determined that meeting prospective adoptive parents is not in the child's best interest.

e. The child is fourteen years of age or older and will not consent to an adoption plan and the consequences of not being adopted have been explained to the child.

6. The following requirements apply to a request to defer registering a child on the adoption exchange under subsection 5:

a. For a deferral granted by the exchange pursuant to subsection 5, paragraph *"a"*, *"b"*, or *"e"*, the child's guardian shall address the child's deferral status in the report filed with the court and the court shall review the deferral status in the six-month review hearings held pursuant to section 232.117, subsection 7.

b. In addition to the requirements of paragraph *"a"*, a deferral granted by the exchange pursuant to subsection 5, paragraph *"b"*, shall be limited to not more than a one-time, ninety-day period unless the termination of parental rights order is appealed or the child is placed in a hospital or other institutional placement. However, if the foster parents or another person with a significant relationship continues to be considered the child's prospective adoptive family, additional extensions of the deferral request under subsection 5, paragraph *"b"*, may be granted until sixty days after the date of the final decision regarding the appeal or until the date the child is discharged from a hospital or other institutional placement.

c. A deferral granted by the exchange pursuant to subsection 5, paragraph *"c"*, shall be limited to not more than a one-time, ninety-day period.

d. A deferral granted by the exchange pursuant to subsection 5, paragraph *"d"*, shall be limited to not more than a one-time, one-hundred-twenty-day period.

87 Acts, ch 159, §8; 91 Acts, ch 232, §9, 10; 93 Acts, ch 22, §1; 95 Acts, ch 182, §12; 98 Acts, ch 1190, §26

232.120 Preadoptive care — continued placement.

If a foster parent is providing preadoptive care to a child for whom a termination of parental rights petition has been filed, the placement of the child with that foster parent shall continue through the termination of parental rights proceeding unless the court orders otherwise based upon the best interests of the child.

98 Acts, ch 1190, §27

232.121 Reserved.

DIVISION V

FAMILY IN NEED OF ASSISTANCE PROCEEDINGS

232.122 Jurisdiction.

The juvenile court shall have exclusive jurisdiction over family in need of assistance proceedings.

[C79, 81, §232.122]

232.123 Venue.

Venue for family in need of assistance proceedings shall be determined in accordance with section 232.62.

[C79, 81, §232.123]

232.124 Modification of custody decree. Repealed by 83 Acts, ch 21, § 3, and 83 Acts, ch 186, § 10201, 10203. See § 232.3.

232.125 Petition.

1. A family in need of assistance proceeding

shall be initiated by the filing of a petition alleging that a child and the child's parent, guardian or custodian are a family in need of assistance.

2. Such a petition may be filed by the child's parent, guardian or custodian or by the child. The judge, county attorney, or juvenile court officer may authorize such parent, guardian, custodian, or child to file a petition with the clerk of the court without the payment of a filing fee.

3. The petition and subsequent court documents shall be entitled "In re the family of . . . . . ."

4. The petition shall state the names and residences of the child, and the child's living parents, guardian, custodian and guardian ad litem, if any and the age of the child.

5. The petition shall allege that there has been a breakdown in the familial relationship and that the petitioner has sought services from public or private agencies to maintain and improve the familial relationship.

[C79, 81, §232.125]

83 Acts, ch 186, §10055, 10201

232.126 Appointment of counsel and guardian ad litem.

The court shall appoint counsel or a guardian ad litem to represent the interests of the child at the hearing to determine whether the family is a family in need of assistance unless the child already has such counsel or guardian. The court shall appoint counsel for the parent, guardian or custodian if that person desires but is financially unable to employ counsel.

The court may appoint a court appointed special advocate to act as guardian ad litem. The court appointed special advocate shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child. The court appointed special advocate shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. The court appointed special advocate shall submit reports to the court and the parties to the proceedings containing the information required in reports submitted by a court appointed special advocate under section 232.89, subsection 5. In addition, the court appointed special advocate shall file other reports to the court as required by the court.

[C79, 81, §232.126]

87 Acts, ch 121, §5; 2002 Acts, ch 1162, §18

Unnumbered paragraph 2 amended

232.127 Hearing — adjudication — disposition.

1. Upon the filing of a petition, the court shall fix a time for a hearing and give notice thereof to the child and the child's parent, guardian or custodian.

2. A parent without custody may petition the court to be made a party to proceedings under this division.

3. The court shall exclude the general public from such hearing except the court in its discretion may admit persons having a legitimate interest in the case or the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. The court may adjudicate the family to be a family in need of assistance and enter an appropriate dispositional order if the court finds:

a. There has been a breakdown in the relationship between the child and the child's parent, guardian or custodian; and

b. The child or the child's parent, guardian or custodian has sought services from public or private agencies to maintain and improve the familial relationship; and

c. The court has at its disposal services for this purpose which can be made available to the family.

6. If the court makes such a finding the court may order any or all of the parties to accept counseling and to comply with any other reasonable orders designed to maintain and improve the familial relationship. At the conclusion of any counseling ordered by the court, or at any other time deemed necessary, the parties shall be required to meet together and be apprised of the findings and recommendations of such counseling. Such an order shall remain in force for a period not to exceed one year unless the court otherwise specifies or sooner terminates the order.

7. The court may not order the child placed on probation, in a foster home or in a nonsecure facility unless the child requests and agrees to such supervision or placement. In no event shall the court order the child placed in the state training school or other secure facility.

8. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

9. A child found in contempt of court because of violation of conditions imposed under this section shall not be considered delinquent. Such a contempt may be punished by imposition of a work assignment or assignments to benefit the state or a governmental subdivision of the state. In addition to or in lieu of such an assignment or assignments, the court may impose one of the dispositions set out in sections 232.100 to 232.102.

[C79, 81, §232.127; 82 Acts, ch 1260, §24]

92 Acts, ch 1229, §7

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

232.128 to 232.132 Reserved.

DIVISION VI

APPEAL

232.133 Appeal.

1. An interested party aggrieved by an order or decree of the juvenile court may appeal from the court for review of questions of law or fact. However, an order adjudicating a child to have committed a delinquent act, entered pursuant to section 232.47, shall not be appealed until the court enters a corresponding dispositional order pursuant to section 232.52. An appeal that affects the custody of a child shall be heard at the earliest practicable time.

2. Except for appeals from an order entered pursuant to section 232.117, appellate procedures shall be governed by the same provisions applicable to appeals from the district court. The supreme court may prescribe rules to expedite the resolution of appeals from final orders entered pursuant to section 232.117.

3. The pendency of an appeal or application therefor shall not suspend the order of the juvenile court regarding a child and shall not discharge the child from the custody of the court or the agency, association, facility, institution or person to whom the court has transferred legal custody unless the appellate court otherwise orders on application of an appellant.

4. If the appellate court does not dismiss the proceedings and discharge the child, the appellate court shall affirm or modify the order of the juvenile court and remand the child to the jurisdiction of the juvenile court for disposition not inconsistent with the appellate court's finding on the appeal.

[C66, 71, 73, 75, 77, §232.58; C79, 81, §232.133]
86 Acts, ch 1186, §12; 2001 Acts, ch 117, §1

232.134 to 232.138 Reserved.

232.139 and 232.140 Transferred to § 232.171 and 232.172.

DIVISION VII

EXPENSES AND COSTS

232.141 Expenses.

1. Except as otherwise provided by law, the court shall inquire into the ability of the child or the child's parent to pay expenses incurred pursuant to subsection 2 and subsection 4 and, after giving the parent a reasonable opportunity to be heard, the court may order the parent to pay all or part of the costs of the child's care, examination, treatment, legal expenses, or other expenses. An order entered under this section does not obligate a parent paying child support under a custody decree, except that part of the monthly support payment may be used to satisfy the obligations imposed by the order entered pursuant to this section. If a parent fails to pay as ordered, without good reason, the court may proceed against the parent for contempt and may inform the county attorney who shall proceed against the parent to collect the unpaid amount. Any payment ordered by the court shall be a judgment against each of the child's parents and a lien as provided in section 624.23. If all or part of the amount that the parents are ordered to pay is subsequently paid by the county or state, the judgment and lien shall thereafter be against each of the parents in favor of the county to the extent of the county's payments and in favor of the state to the extent of the state's payments.

2. All of the following expenses are a charge upon the county in which the proceedings are held, to the extent provided in subsection 3:

a. The fees and mileage of witnesses and the expenses of officers serving notices and subpoenas which are incurred by an attorney appointed by the court to serve as counsel to any party or to serve as a guardian ad litem for any child.

b. Reasonable compensation for an attorney appointed by the court to serve as counsel to any party or as guardian ad litem for any child.

3. Costs incurred under subsection 2 shall be paid as follows:

a. A county shall be required to pay for the fiscal year beginning July 1, 1989, an amount equal to the county's base cost for witness and mileage fees and attorney fees established pursuant to section 232.141, subsection 8, paragraph *"d"*, Code 1989, for the fiscal year beginning July 1, 1988, plus an amount equal to the percentage rate of change in the consumer price index as tabulated by the federal bureau of labor statistics for the current year times the county's base cost.

b. A county's base cost for a fiscal year plus the percentage rate of change amount as computed in paragraph *"a"* is the county's base cost for the succeeding fiscal year. The amount to be paid in the succeeding year by the county shall be computed as provided in paragraph *"a"*.

c. Costs incurred for compensation of an attorney appointed by the court to serve as counsel to any party or as guardian ad litem for any child shall be paid in accordance with sections 13B.4 and 815.7.

d. Costs incurred under subsection 2 shall be paid by the state. The county shall be required to reimburse the indigent defense fund for costs incurred by the state up to the county's base in this subsection.

4. Upon certification of the court, all of the following expenses are a charge upon the state to the extent provided in subsection 5:

a. The expenses of transporting a child to or from a place designated by the court for the purpose of care or treatment.

b. Expenses for mental or physical examinations of a child if ordered by the court.

c. The expenses of care or treatment ordered by the court.

5. If no other provision of law requires the county to reimburse costs incurred pursuant to subsection 4, the department shall reimburse the costs as follows:

a. The department shall prescribe by administrative rule all services eligible for reimbursement pursuant to subsection 4 and shall establish an allowable rate of reimbursement for each service.

b. The department shall receive billings for services provided and, after determining allowable costs, shall reimburse providers at a rate which is not greater than allowed by administrative rule. Reimbursement paid to a provider by the department shall be considered reimbursement in full unless a county voluntarily agrees to pay any difference between the reimbursement amount and the actual cost. When there are specific program regulations prohibiting supplementation those regulations shall be applied to providers requesting supplemental payments from a county. Billings for services not listed in administrative rule shall not be paid. However, if the court orders a service not currently listed in administrative rule, the department shall review the order and, if reimbursement for the service of the department is not in conflict with other law or administrative rule, and meets the criteria of subsection 4, the department shall reimburse the provider.

6. If a child is given physical or mental examinations or treatment relating to a child abuse assessment with the consent of the child's parent, guardian, or legal custodian and no other provision of law otherwise requires payment for the costs of the examination and treatment, the costs shall be paid by the state. Reimbursement for costs of services described in this subsection is subject to subsection 5.

7. A county charged with the costs and expenses under subsections 2 and 3 may recover the costs and expenses from the county where the child has legal settlement by filing verified claims which are payable as are other claims against the county. A detailed statement of the facts upon which a claim is based shall accompany the claim. Any dispute involving the legal settlement of a child for which the court has ordered payment under this section shall be settled pursuant to sections 252.22 and 252.23.

8. This subsection applies only to placements in a juvenile shelter care home which is publicly owned, operated as a county or multicounty shelter care home, organized under a chapter 28E agreement, or operated by a private juvenile shelter care home. If the actual and allowable costs of a child's shelter care placement exceed the amount the department is authorized to pay in accordance with law and administrative rule, the unpaid costs may be recovered from the child's county of legal settlement. However, the maximum amount of the unpaid costs which may be recovered under this subsection is limited to the difference between the amount the department is authorized to pay and the statewide average of the actual and allowable rates in effect in May of the preceding fiscal year for reimbursement of juvenile shelter care homes. In no case shall the home be reimbursed for more than the home's actual and allowable costs. The unpaid costs are payable pursuant to filing of verified claims against the county of legal settlement. A detailed statement of the facts upon which a claim is based shall accompany the claim. Any dispute between counties arising from filings of claims pursuant to this subsection shall be settled in the manner provided to determine legal settlement in section 230.12.

[S13, §254-a25, -a45; C24, 27, 31, 35, 39, §**3644, 3645;** C46, 50, 54, 58, 62, §232.25, 232.26; C66, 71, 73, 75, 77, §232.51 – 232.53; C79, 81, §232.141; 82 Acts, ch 1260, §119]

85 Acts, ch 173, §14; 87 Acts, ch 152, §1; 88 Acts, ch 1134, §54; 89 Acts, ch 283, §23; 90 Acts, ch 1233, §8; 92 Acts, ch 1229, §8; 92 Acts, 1st Ex, ch 1004, §3; 93 Acts, ch 76, §15; 93 Acts, ch 172, §34; 97 Acts, ch 35, §12, 25; 97 Acts, ch 126, §31; 99 Acts, ch 135, §20, 21; 2000 Acts, ch 1115, §2 – 4; 2002 Acts, ch 1119, §147

Subsection 3, paragraphs c and d amended

232.142 Maintenance and cost of juvenile homes — fund.

1. County boards of supervisors which singly or in conjunction with one or more other counties provide and maintain juvenile detention and juvenile shelter care homes are subject to this section.

2. For the purpose of providing and maintaining a county or multicounty home, the board of supervisors of any county may issue general county purpose bonds in accordance with sections 331.441 to 331.449. Expenses for providing and maintaining a multicounty home shall be paid by the counties participating in a manner to be determined by the boards of supervisors.

3. A county or multicounty juvenile detention home approved pursuant to this section shall receive financial aid from the state in a manner approved by the director. Aid paid by the state shall be at least ten percent and not more than fifty percent of the total cost of the establishment, improvements, operation, and maintenance of the home.

4. The director shall adopt minimal rules and standards for the establishment, maintenance, and operation of such homes as shall be necessary to effect the purposes of this chapter. The rules shall apply the requirements of section 237.8, concerning employment and evaluation of persons with direct responsibility for a child or with access to a child when the child is alone and persons residing in a child foster care facility, to persons employed by or residing in a home approved under

this section. The director shall, upon request, give guidance and consultation in the establishment and administration of the homes and programs for the homes.

5. The director shall approve annually all such homes established and maintained under the provisions of this chapter. A home shall not be approved unless it complies with minimal rules and standards adopted by the director and has been inspected by the department of inspections and appeals.

6. A juvenile detention home fund is created in the state treasury under the authority of the department. The fund shall consist of moneys deposited in the fund pursuant to sections 321.218A and 321A.32A. The moneys in the fund shall be used for the costs of the establishment, improvement, operation, and maintenance of county or multicounty juvenile detention homes in accordance with annual appropriations made by the general assembly from the fund for these purposes.

[S13, §254-a20, -a26, -a29, -a30; C24, 27, 31, 35, 39, §**3653 – 3655;** C46, 50, 54, 58, 62, §232.35 – 232.37; C66, 71, 73, 75, 77, §232.21 – 232.26; C79, 81, S81, §232.142; 81 Acts, ch 117, §1031]

83 Acts, ch 123, §91, 209; 88 Acts, ch 1134, §55; 90 Acts, ch 1204, §47; 90 Acts, ch 1239, §13; 91 Acts, ch 138, §4; 92 Acts, ch 1229, §9; 2001 Acts, ch 191, §38

232.143 Regional group foster care budget targets.

1. A statewide expenditure target for children in group foster care placements in a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually in an appropriation bill by the general assembly. The department and the judicial branch shall jointly develop a formula for allocating a portion of the statewide expenditure target established by the general assembly to each of the department's regions. The formula shall be based upon the region's proportion of the state population of children and of the statewide usage of group foster care in the previous five completed fiscal years and other indicators of need. The expenditure amount determined in accordance with the formula shall be the group foster care budget target for that region. A region may exceed its budget target for group foster care by not more than five percent in a fiscal year, provided the overall funding allocated by the department for all child welfare services in the region is not exceeded.

2. For each of the department's regions, representatives appointed by the department and the juvenile court shall establish a plan for containing the expenditures for children placed in group foster care ordered by the court within the budget target allocated to that region pursuant to subsection 1. The plan shall include monthly targets and strategies for developing alternatives to group foster care placements in order to contain expenditures for child welfare services within the amount appropriated by the general assembly for that purpose. Each regional plan shall be established within sixty days of the date by which the group foster care budget target for the region is determined. To the extent possible, the department and the juvenile court shall coordinate the planning required under this subsection with planning for services paid under section 232.141, subsection 4. The department's regional administrator shall communicate regularly, as specified in the regional plan, with the juvenile courts within that region concerning the current status of the regional plan's implementation.

3. State payment for group foster care placements shall be limited to those placements which are in accordance with the regional plans developed pursuant to subsection 2.

92 Acts, ch 1229, §10; 96 Acts, ch 1213, §35; 98 Acts, ch 1047, §22; 99 Acts, ch 111, §9

Provisions of this section applicable to juvenile court and juvenile court representatives shall instead apply to juvenile court services and juvenile court services representatives for fiscal year beginning July 1, 2002; 2002 Acts, 2nd Ex, ch 1003, §121, 151

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

232.144 through 232.146 Reserved.

DIVISION VIII

RECORDS

232.147 Confidentiality of juvenile court records.

1. Juvenile court records shall be confidential. They shall not be inspected and their contents shall not be disclosed except as provided in this section.

2. Official juvenile court records in cases alleging delinquency, including complaints under section 232.28, shall be public records, subject to sealing under section 232.150. If the court has excluded the public from a hearing under division II of this chapter, the transcript of the proceedings shall not be deemed a public record and inspection and disclosure of the contents of the transcript shall not be permitted except pursuant to court order or unless otherwise provided in this chapter. Complaints under section 232.28 shall be released in accordance with section 915.25. Other official juvenile court records may be released under this section by a juvenile court officer.

3. Official juvenile court records in all cases except those alleging delinquency may be inspected and their contents shall be disclosed to the following without court order:

a. The judge and professional court staff, including juvenile court officers.

b. The child and the child's counsel.

c. The child's parent, guardian or custodian,

court-appointed special advocate, and guardian ad litem.

d. The county attorney and the county attorney's assistants.

e. An agency, association, facility or institution which has custody of the child, or is legally responsible for the care, treatment or supervision of the child.

f. A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.

g. The child's foster parent or an individual providing preadoptive care to the child.

4. Official juvenile court records enumerated in section 232.2, subsection 38, paragraph *"e"*, relating to paternity, support, or the termination of parental rights, shall be disclosed, upon request, to the child support recovery unit without court order.

5. Pursuant to court order official records may be inspected by and their contents may be disclosed to:

a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

6. Inspection of social records and disclosure of their contents shall not be permitted except pursuant to court order or unless otherwise provided in this subsection or chapter.

If an informal adjustment of a complaint is made pursuant to section 232.29, the intake officer shall disclose to the victim of the delinquent act, upon the request of the victim, the name and address of the child who committed the delinquent act.

7. Social records prior to adjudication may be disclosed without court order to the superintendent or superintendent's designee of a school district, authorities in charge of an accredited nonpublic school, or any other state or local agency that is part of the juvenile justice system, in accordance with an interagency agreement established under section 280.25. The disclosure shall only include identifying information that is necessary to fulfill the purpose of the disclosure. The social records disclosed shall be used solely for the purpose of determining the programs and services appropriate to the needs of the child or the family of the child and shall not be disclosed for any other purpose unless otherwise provided by law.

8. All juvenile court records shall be made available for inspection and their contents shall be disclosed to any party to the case and the party's counsel and to any trial or appellate court in connection with an appeal pursuant to division VI of this chapter.

9. The clerk of the district court shall enter information from the juvenile record on the judgment docket and lien index, but only as necessary to record support judgments.

10. The state agency designated to enforce support obligations may release information as necessary in order to meet statutory responsibilities.

11. Release of official juvenile court records to a victim of a delinquent act is subject to the provisions of section 915.24, notwithstanding contrary provisions of this chapter.

[C66, 71, 73, 75, 77, §232.54, 232.57; C79, 81, §232.147; 82 Acts, ch 1209, §16]

83 Acts, ch 186, §10057, 10201; 84 Acts, ch 1208, §2; 90 Acts, ch 1271, §1508; 92 Acts, ch 1195, §301; 93 Acts, ch 172, §35, 56; 95 Acts, ch 191, §15; 96 Acts, ch 1110, §3; 97 Acts, ch 164, §4; 98 Acts, ch 1090, §63, 83, 84; 2000 Acts, ch 1123, §2; 2001 Acts, ch 79, §1

232.148 Fingerprints — photographs.

1. Except as provided in this section, a child shall not be fingerprinted or photographed by a criminal or juvenile justice agency after the child is taken into custody.

2. Fingerprints of a child who has been taken into custody shall be taken and filed by a criminal or juvenile justice agency investigating the commission of a public offense other than a simple misdemeanor. In addition, photographs of a child who has been taken into custody may be taken and filed by a criminal or juvenile justice agency investigating the commission of a public offense other than a simple misdemeanor. The criminal or juvenile justice agency shall forward the fingerprints to the department of public safety for inclusion in the automated fingerprint identification system and may also retain a copy of the fingerprint card for comparison with latent fingerprints and the identification of repeat offenders.

3. If a peace officer has reasonable grounds to believe that latent fingerprints found during the investigation of the commission of a public offense are those of a particular child, fingerprints of the child may be taken for immediate comparison with the latent fingerprints regardless of the nature of the offense. If the comparison is negative the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive, the fingerprint card and other copies of the fingerprints taken shall be delivered to the division of criminal investigation of the department of public safety in the manner and on the forms prescribed by the commissioner of public safety within two working days after the fingerprints are taken. After notification by the child or the child's representative that the child has not had a delinquency petition filed against the child or has not entered into an informal adjustment agreement, the fingerprint card and copies of the fingerprints shall be immediately destroyed.

4. Fingerprint and photograph files of children may be inspected by peace officers when necessary for the discharge of their official duties. The juvenile court may authorize other inspections of such files in individual cases upon a showing that inspection is necessary in the public interest.

5. Fingerprints and photographs of a child shall be removed from the file and destroyed upon notification by the child's guardian ad litem or legal counsel to the department of public safety that either of the following situations apply:

a. A petition alleging the child to be delinquent is not filed and the child has not entered into an informal adjustment, admitting involvement in a delinquent act alleged in the complaint.

b. After a petition is filed, the petition is dismissed or the proceedings are suspended and the child has not entered into a consent decree and has not been adjudicated delinquent on the basis of a delinquent act other than one alleged in the petition in question, or the child has not been placed on youthful offender status.

[C79, 81, §232.148; 82 Acts, ch 1209, §17]

94 Acts, ch 1172, §25; 95 Acts, ch 67, §17; 95 Acts, ch 191, §16, 17; 96 Acts, ch 1034, §11; 97 Acts, ch 126, §32, 33; 98 Acts, ch 1100, §26; 99 Acts, ch 37, §1

See also §690.2

232.149 Records of criminal or juvenile justice agencies.

1. The taking of a child into custody under the provisions of section 232.19 shall not be considered an arrest.

2. Records and files of a criminal or juvenile justice agency concerning a child involved in a delinquent act are public records, except that release of criminal history data, intelligence data, and law enforcement investigatory files is subject to the provisions of section 22.7 and chapter 692, and juvenile court social records, as defined in section 232.2, subsection 31, shall be deemed confidential criminal identification files under section 22.7, subsection 9. The records are subject to sealing under section 232.150 unless the juvenile court waives its jurisdiction over the child so that the child may be prosecuted as an adult for a public offense.

3. Notwithstanding subsection 2, if a juvenile who has been placed in detention under section 232.22 escapes from the facility, the criminal or juvenile justice agency may release the name of the juvenile, the facts surrounding the escape, and the offense or alleged offense which resulted in the placement of the juvenile in the facility.

[C66, 71, 73, 75, 77, §232.15; C79, 81, §232.149]

83 Acts, ch 186, §10057, 10201; 85 Acts, ch 173, §15; 94 Acts, ch 1172, §26; 95 Acts, ch 191, §18, 19; 97 Acts, ch 126, §34, 35

232.150 Sealing of records.

1. Upon application of a person who was taken into custody for a delinquent act or was the subject of a complaint alleging delinquency or was the subject of a delinquency petition, or upon the court's own motion, the court, after hearing, shall order the records in the case including those specified in sections 232.147 and 232.149 sealed if the court finds all of the following:

a. Two years have elapsed since the final discharge of the person or since the last official action in the person's case if there was no adjudication and disposition.

b. The person has not been subsequently convicted of a felony or an aggravated or serious misdemeanor or adjudicated a delinquent child for an act which if committed by an adult would be a felony, an aggravated misdemeanor or a serious misdemeanor and no proceeding is pending seeking such conviction or adjudication.

c. The person was not placed on youthful offender status, transferred back to district court after the youthful offender's eighteenth birthday, and sentenced for the offense which precipitated the youthful offender placement.

However, if the person was adjudicated delinquent for an offense which if committed by an adult would be an aggravated misdemeanor or a felony, the court shall not order the records in the case sealed unless, upon application of the person or upon the court's own motion and after hearing, the court finds that paragraphs *"a"* and *"b"* apply and that the sealing is in the best interests of the person and the public.

2. Reasonable notice of the hearing shall be given to the person who is the subject of the records named in the motion, the county attorney, and the agencies having custody of the records named in the application or motion.

3. Notice and copies of a sealing order shall be sent to each agency or person having custody or the records named therein.

4. On entry of a sealing order:

a. All agencies and persons having custody of records which are named therein, shall send such records to the court issuing the order.

b. All index references to sealed records shall be deleted.

5. The sealed records shall no longer be deemed to exist as a matter of law, and the juvenile court and any other agency or person who received notice and a copy of the sealing order shall reply to an inquiry that no such records exist, except when such reply is made to an inquiry pursuant to subsection 6.

6. Inspection of sealed records and disclosure of their contents thereafter may be permitted only pursuant to an order of the court upon application of the person who is the subject of such records except that the court in its discretion may permit reports to be inspected by or their contents to be disclosed for research purposes to a person conducting bona fide research under whatever conditions

the court deems proper.

[C79, 81, §232.150; 82 Acts, ch 1209, §18]
97 Acts, ch 126, §36

232.151 Criminal penalties.

Any person who knowingly discloses, receives, or makes use or permits the use of information derived directly or indirectly from the records concerning a child referred to in sections 232.147 to 232.150 except as provided by those sections shall be guilty of a serious misdemeanor.

[C79, 81, §232.151]

232.152 Rules of juvenile procedure.

Proceedings under this chapter are subject to rules prescribed by the supreme court under section 602.4201.

[C79, 81, §232.152]
83 Acts, ch 186, §10058, 10201

Rules adopted by the Supreme Court are published in the compilation "Iowa Court Rules"

232.153 Applicability of this chapter prior to its effective date.

1. Except as provided in subsections 2 and 3 of this section, this chapter does not apply to juvenile court cases brought prior to July 1, 1979 or to acts committed prior to July 1, 1979 which would otherwise bring a child or a child's parent, guardian or custodian within the jurisdiction of the juvenile court pursuant to this chapter.

2. In a case pending on or commenced after July 1, 1979, involving acts committed prior to July 1, 1979, upon the request of any party and the approval of the court:

a. Procedural provisions of this chapter shall apply insofar as they are justly applicable.

b. The court may order a disposition of the case pursuant to the provisions of this chapter.

3. Provisions of this chapter governing the termination, modification or vacation of a dispositional order shall apply to persons to whom a dispositional order has been issued for acts committed prior to July 1, 1979, except that the maximum length of the order and the severity of the disposition shall not be increased. The provisions of this chapter shall not affect the substantive or procedural validity of a judgment entered before July 1, 1979, regardless of the fact that appeal time has not run or that an appeal is pending.

[C81, §232.153]

232.154 through 232.157 Reserved.

DIVISION IX

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

232.158 Interstate compact on placement of children.

The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I — PURPOSE AND POLICY

It is the purpose and policy of the party states to co-operate with each other in the interstate placement of children to the end that:

a. Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

b. The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

c. The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

d. Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II — DEFINITIONS

As used in this compact:

a. *"Child"* means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

b. *"Sending agency"* means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

c. *"Receiving state"* means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

d. *"Placement"* means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution, but not in an institution caring for the mentally ill, mentally defective, or epileptic, in an institution primarily educational in character, or in a hospital or other medical facility.

ARTICLE III — CONDITIONS FOR PLACEMENT

a. A sending agency shall not send, bring, or cause to be sent or brought into any other party state a child for placement in foster care or as a preliminary to a possible adoption unless the sending agency complies with every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children in the receiving state.

b. Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

1. The name, date and place of birth of the child.
2. The identity and address or addresses of the parents or legal guardian.
3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

c. Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph *"b"* of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

d. The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV — PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V — RETENTION OF JURISDICTION

a. The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

b. When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

c. Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph *"a"* hereof.

ARTICLE VI — INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child being sent to such other party jurisdiction for institutional care and the court finds that:

a. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

b. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII — COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general co-ordinator of activities under this

compact in the officer's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII — LIMITATIONS

This compact shall not apply to:

a. The sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

b. Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX — ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X — CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[S13, §3260-1; C24, §3672, 3675; C27, 31, 35, §3661-a90, -a93, -a95, -a96; C39, §**3661.104, 3661.107, 3661.109, 3661.110;** C46, 50, 54, 58, 62, 66, §238.33, 238.36, 238.38, 238.39; C71, 73, 75, 77, 79, 81, §238.33]

85 Acts, ch 173, §21 – 23, 30

CS85, §232.158

232.158A Legal risk placement.

1. Notwithstanding any provision of the interstate compact on the placement of children to the contrary, the department of human services shall permit the legal risk placement of a child under the interstate compact on the placement of children if the prospective adoptive parent provides a legal risk statement, in writing, acknowledging all of the following:

a. That the placement is a legal risk placement.

b. That the court of the party state of the sending agency retains jurisdiction over the child for purposes of the termination of the parental rights of the biological parents.

c. That if termination of parental rights cannot be accomplished in accordance with applicable laws, the child shall be promptly returned to the party state of the sending agency to be returned to the child's biological parent or placed as deemed appropriate by a court of the party state of the sending agency.

d. That the prospective adoptive parent assumes full legal, financial, and other risks associated with the legal risk placement and that the prospective adoptive parent agrees to hold the department of human services harmless for any disruption or failure of the placement.

e. That the prospective adoptive parent shall provide support and medical and other appropriate care to the child pending the termination of parental rights of the biological parents and shall assume liability for all costs associated with the return of the child to the party state of the sending agency if the placement is disrupted or fails.

2. Any written legal risk statement utilized in establishing a legal risk placement shall, at a minimum, state all of the information required under subsection 1, shall be signed by any prospective adoptive parent, and shall be notarized. The legal risk statement shall also contain the following notice printed in clearly legible type: If termination of parental rights is not accomplished and return of the child to the biological parent is required, the prospective adoptive parents are encouraged to seek mental health counseling to address any resulting psychological or family problems.

3. For the purposes of this section, *"legal risk placement"* means the placement of a child, who is to be adopted, with a prospective adoptive parent prior to the termination of parental rights of the biological parents, under which the prospective adoptive parent assumes the risk that if the parental rights of the biological parents are not ter-

minated the child shall be returned to the biological parents or placed as deemed appropriate by a court of the party state of the sending agency, and under which the prospective adoptive parent assumes other risks and liabilities specified in a written agreement.

2001 Acts, ch 57, §1

232.159 Financial responsibility.

Financial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of chapters 252 and 252A, fixing responsibility for the support of children also may be invoked.

[C71, 73, 75, 77, 79, 81, §238.34]
85 Acts, ch 173, §30
CS85, §232.159

232.160 Department of human services as public authority.

The *"appropriate public authorities"* as used in article III of the interstate compact on the placement of children shall, with reference to this state, mean the state department of human services and said department shall receive and act with reference to notices required by said article III.

[C71, 73, 75, 77, 79, 81, §238.35]
83 Acts, ch 96, §157, 159
85 Acts, ch 173, §30
CS85, §232.160

232.161 Department as authority in receiving state.

As used in paragraph *"a"* of article V of the interstate compact on the placement of children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the state department of human services.

[C71, 73, 75, 77, 79, 81, §238.36]
83 Acts, ch 96, §157, 159
85 Acts, ch 173, §30
CS85, §232.161

232.162 Authority to enter agreements.

The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph *"b"* of article V of the interstate compact on the placement of children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or a subdivision or agency of this state shall not be binding unless it has the approval in writing of the administrator of child and family services in the case of the state and the county general assistance director in the case of a subdivision of the state.

[C71, 73, 75, 77, 79, 81, §238.37]
85 Acts, ch 173, §30
CS85, §232.162
92 Acts, ch 1212, §8

232.163 Visitation, inspection, or supervision.

1. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision of this state as contemplated by paragraph *"b"* of article V of the interstate compact on the placement of children.

2. If a child is placed outside the residency state of the child's parent, the sending agency shall provide for a designee to visit the child at least once every twelve months and to submit a written report to the court concerning the child and the visit.

[C71, 73, 75, 77, 79, 81, §238.38]
85 Acts, ch 173, §30
CS85, §232.163
97 Acts, ch 99, §6; 98 Acts, ch 1100, §27

232.164 Court authority to place child in another state.

Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to article VI of the interstate compact on the placement of children and shall retain jurisdiction as provided in article V thereof.

[C71, 73, 75, 77, 79, 81, §238.39]
85 Acts, ch 173, §30
CS85, §232.164

232.165 Executive head.

As used in article VII of the interstate compact on the placement of children, the term *"executive head"* means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said article VII.

[C71, 73, 75, 77, 79, 81, §238.40]
85 Acts, ch 173, §30
CS85, §232.165

232.166 Statutes not affected.

Nothing contained in sections 232.158 to 232.165 shall be deemed to affect or modify the other provisions of this chapter or of chapter 600.

[C71, 73, 75, 77, 79, 81, §238.41]
85 Acts, ch 173, §30
CS85, §232.166

232.167 Penalty.

A person or agency which violates or aids and abets in the violation of any of the provisions of sections 232.158 through 232.166 commits a fraudulent practice.

88 Acts, ch 1249, §15

232.168 Attorney general to enforce.

The attorney general may, on the attorney general's own initiative, institute any criminal and civil actions and proceedings under this division, at whatever stage of placement necessary, to enforce the interstate compact on the placement of children, including, but not limited to, seeking enforcement of the provisions of the compact through the courts of a party state. The department of human services shall cooperate with the attorney general and shall refer any placement or proposed placement to the attorney general which may require enforcement measures.

94 Acts, ch 1174, §4

232.169 and 232.170 Reserved.

DIVISION X

INTERSTATE COMPACT ON JUVENILES

232.171 Interstate juvenile compacts.

The state of Iowa through its courts and agencies is hereby authorized to enter into interstate compacts on juveniles in behalf of this state with any other contracting state which legally joins therein in substantially the following form.

The contracting states solemnly agree:

ARTICLE I — FINDINGS AND PURPOSES

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The co-operation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to

1. Co-operative supervision of delinquent juveniles on probation or parole;

2. The return, from one state to another, of delinquent juveniles who have escaped or absconded;

3. The return, from one state to another, of nondelinquent juveniles who have run away from home; and

4. Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake co-operatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to co-operate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II — EXISTING RIGHTS AND REMEDIES

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III — DEFINITIONS

That, for the purposes of this compact, *"delinquent juvenile"* means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; *"probation or parole"* means any kind of conditional release of juveniles authorized under the laws of the states party hereto; *"court"* means any court having jurisdiction over delinquent, neglected or dependent children; *"state"* means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and *"residence"* or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV — RETURN OF RUNAWAYS

a. That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of the juvenile's running away, the juvenile's location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or

custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to the juvenile's legal custody, and that it is in the best interest and for the protection of such juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the officer or person to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may appoint counsel or guardian ad litem for the juvenile. If the judge of such court shall find that the requisition is in order, the judge shall deliver such juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to the juvenile's legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the person's own protection and welfare, for such a time not exceeding ninety days as will enable the person's return to another state party to this compact pursuant to a requisition for the person's return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

b. That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

c. That *"juvenile"* as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V — RETURN OF ESCAPEES AND ABSCONDERS

a. That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody the delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the juvenile's probation or parole or of the juve-

nile's escape from an institution or agency vested with the juvenile's legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the officer or person to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the juvenile's return and who may appoint counsel or guardian ad litem for the juvenile. If the judge of such court shall find that the requisition is in order, the judge shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the person's legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, the person must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable the person's detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with the juvenile's legal custody or supervision, there is pending in the state wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

b. That the state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

ARTICLE VI — VOLUNTARY RETURN PROCEDURE

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the juvenile's legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV *"a"* or of Article V *"a"*, may consent to the juvenile's immediate return to the state from which the juvenile absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, consent to the juvenile's return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of the juvenile's rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile to the duly accredited officer or officers of the state demanding the juvenile's return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the

juvenile or delinquent juvenile is being returned, order the juvenile to return unaccompanied to such state and shall provide the juvenile with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII — CO-OPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES

a. That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

b. That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

c. That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against the juvenile within the receiving state any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for any act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

d. That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII — RESPONSIBILITY FOR COSTS

a. That the provisions of Articles IV *"b"*, V *"b"* and VII *"d"* of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

b. That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV *"b"*, V *"b"* or VII *"d"* of this compact.

ARTICLE IX — DETENTION PRACTICES

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X — SUPPLEMENTARY AGREEMENTS

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the co-operative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

1. Provide the rates to be paid for the care, treatment and custody of such delinquent juve-

niles, taking into consideration the character of facilities, services and subsistence furnished;

2. Provide that the delinquent juvenile shall be given a court hearing prior to the juvenile being sent to another state for care, treatment and custody;

3. Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

4. Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

5. Provide for reasonable inspection of such institutions by the sending state;

6. Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to the juvenile being sent to another state; and

7. Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the co-operating states.

ARTICLE XI — ACCEPTANCE OF FEDERAL AND OTHER AID

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII — COMPACT ADMINISTRATORS

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII — EXECUTION OF COMPACT

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV — RENUNCIATION

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

ARTICLE XV — RENDITION AMENDMENT

a. This Article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

b. All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

OUT-OF-STATE CONFINEMENT AMENDMENT

a. Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

b. Escapees and absconders who would otherwise be returned pursuant to Article V of the compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such Article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

c. The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

d. As used in this amendment: (1) *"Sending state"* means sending state as that term is used in Article VII of the compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the compact; (2) *"receiving state"* means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.

e. Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a *"Compact Institution"* and shall confine persons therein as provided in paragraph *"a"* hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to *"Compact Institutions"* at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

f. Persons confined in *"Compact Institutions"* pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said *"Compact Institution"* for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge or for any purpose permitted by the laws of the sending state.

g. All persons who may be confined in a *"Compact Institution"* pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if the delinquent had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

h. Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

i. This amendment shall take initial effect when entered into by any two or more states party to the compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment.

[C62, 66, 71, 73, 75, 77, §231.14; C79, 81, §232.139]

85 Acts, ch 182, §1

CS85, §232.171

232.172 Confinement of delinquent juvenile.

In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of a delinquent juvenile, such authorities may, pursuant to the out-of-state confinement amendment to the interstate compact on juveniles, confine or order the confinement of a delinquent juvenile in a compact institution within another party state.

[C66, 71, 73, 75, 77, §231.15; C79, 81, §232.140]

CS85, §232.172

232.173 and 232.174 Reserved.

DIVISION XI

VOLUNTARY FOSTER CARE PLACEMENT

232.175 Placement oversight.

Placement oversight shall be provided pursuant to this division when the parent, guardian, or custodian of a child with mental retardation or other developmental disability requests placement of the child in foster family care for a period of more than thirty days. The oversight shall be provided through review of the placement every six months by the department's foster care review committees or by a local citizen foster care review board. Court oversight shall be provided prior to the initial placement and at periodic intervals which shall not exceed twelve months. It is the purpose and policy of this division to assure the existence of oversight safeguards as required by the federal Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. § 671(a)(16), 627(a)(2)(B), and 675(1),(5), while maintaining parental decision-making authority.

89 Acts, ch 169, §2; 92 Acts, ch 1141, §2; 92 Acts, ch 1229, §11; 97 Acts, ch 99, §7; 99 Acts, ch 111, §1, 7

1999 amendment is effective September 6, 2000; 99 Acts, ch 111, §7

232.176 Jurisdiction.

The court shall have exclusive jurisdiction over

voluntary placement proceedings.
89 Acts, ch 169, §3

232.177 Venue.
Venue for voluntary placement proceedings shall be determined in accordance with section 232.62.
89 Acts, ch 169, §4

232.178 Petition.
1. For a placement initiated on or after July 1, 1992, the department shall file a petition to initiate a voluntary placement proceeding prior to the child's placement in accordance with criteria established pursuant to the federal Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. § 627(a). For a placement initiated before July 1, 1992, the department shall file a petition to approve placement on or before September 1, 1992.
2. The petition and subsequent court documents shall be entitled "In the interests of . . . . . , a child".
3. The petition shall state the names and residence of the child and the child's living parents, guardian, custodian, and guardian ad litem, if any, and the age of the child.
4. The petition shall describe the child's emotional, physical, or intellectual disability which requires care and treatment; the reasonable efforts to maintain the child in the child's home; the department's request to the family of a child with mental retardation, other developmental disability, or organic mental illness to determine if any services or support provided to the family will enable the family to continue to care for the child in the child's home; and the reason the child's parent, guardian, or custodian has requested a foster family care placement. The petition shall also describe the commitment of the parent, guardian, or custodian in fulfilling the responsibilities defined in the case permanency plan and how the placement will serve the child's best interests.
89 Acts, ch 169, §5; 92 Acts, ch 1229, §12; 99 Acts, ch 111, §2, 7
1999 amendment to subsection 4 is effective September 6, 2000; 99 Acts, ch 111, §7

232.179 Appointment of counsel and guardian ad litem.
Upon the filing of a petition, the court shall appoint a guardian ad litem to represent the best interests of the child unless the court determines that the child already has a guardian ad litem who represents the child's best interests. If the child's parent, guardian, or custodian desires counsel but cannot pay the counsel's expenses, the court may appoint counsel.
89 Acts, ch 169, §6

232.180 Duties of county attorney.
Upon the filing of a petition and the request of the department, the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition as provided under section 232.90.
89 Acts, ch 169, §7

232.181 Social history report.
Upon the filing of a petition, the department shall submit a social history report regarding the child and the child's family. The report shall include a description of the child's disability and resultant functional limitations, the case permanency plan, a description of the proposed foster care placement, and a description of family participation in developing the child's case permanency plan and the commitment of the parent, guardian, or custodian in fulfilling the responsibilities defined in the plan.
89 Acts, ch 169, §8; 92 Acts, ch 1229, §13

232.182 Initial determination.
1. Upon the filing of a petition, the court shall fix a time for an initial determination hearing and give notice of the hearing to the child's parent, guardian, or custodian, counsel or guardian ad litem, and the department.
2. A parent who does not have custody of the child may petition the court to be made a party to proceedings under this division.
3. An initial determination hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing only if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.
4. The hearing shall be informal and all relevant and material evidence shall be admitted.
5. After the hearing is concluded, the court shall make and file written findings as to whether reasonable efforts, as defined in section 232.102, subsection 10, have been made and whether the voluntary foster family care placement is in the child's best interests. The court shall order foster family care placement in the child's best interests if the court finds that all of the following conditions exist:
a. The child has an emotional, physical, or intellectual disability which requires care and treatment.
b. The child's parent, guardian, or custodian has demonstrated a willingness or ability to fulfill the responsibilities defined in the case permanency plan.
c. Reasonable efforts have been made and the placement is in the child's best interests.

d. A determination that services or support provided to the family of a child with mental retardation, other developmental disability, or organic mental illness will not enable the family to continue to care for the child in the child's home.

If the court finds that reasonable efforts have not been made and that services or support are available to prevent the placement, the court may order the services or support to be provided to the child and the child's family. If the court finds that the foster care placement is necessary and the child's parent, guardian, or custodian has not demonstrated a commitment to fulfill the responsibilities defined in the child's case permanency plan, the court shall cause a child in need of assistance petition to be filed.

5A. If the court orders placement of the child into foster care, the court or the department shall establish a support obligation for the costs of the placement pursuant to section 234.39.

6. The hearing may be waived and the court may issue the findings and order required under subsection 5 on the basis of the department's written report if all parties agree to the hearing's waiver and the department's written report.

89 Acts, ch 169, §9; 92 Acts, ch 1229, §14, 15; 93 Acts, ch 78, §1; 99 Acts, ch 111, §3, 4, 7

1999 amendment to subsection 5 and strike of subsection 7 are effective September 6, 2000; 99 Acts, ch 111, §7

232.183 Dispositional hearing.

1. Following an entry of an initial determination order pursuant to section 232.182, the court shall hold a dispositional hearing in order to determine the future status of the child based on the child's best interests. Notice of the hearing shall be given to the child and the child's parent, guardian, or custodian, and the department.

2. The dispositional hearing shall be held within twelve months of the date the child was placed in foster care.

3. A dispositional hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. Following the hearing, the court shall issue a dispositional order. The dispositional orders which the court may enter, subject to its continuing jurisdiction, are as follows:

a. An order that the child's voluntary placement shall be terminated and the child returned to the child's home and provided with available services and support needed for the child to remain in the home.

b. An order that the child's voluntary placement may continue if the department and the child's parent or guardian continue to agree to the voluntary placement.

c. If the court finds that the child's parent, guardian, or custodian has failed to fulfill responsibilities outlined in the case permanency plan, an order that the child remain in foster care and that the county attorney or department file, within three days, a petition alleging the child to be a child in need of assistance.

6. With respect to each child whose placement was approved pursuant to subsection 5, the court shall continue to hold periodic dispositional hearings. The hearings shall not be waived or continued beyond twelve months following the last dispositional hearing. After a dispositional hearing, the court shall enter one of the dispositional orders authorized under subsection 5.

7. A dispositional hearing is not required if the court has approved the local citizen foster care review board review procedure, and all parties agree. This provision does not eliminate the initial judicial determination required under section 232.182.

89 Acts, ch 169, §10; 92 Acts, ch 1141, §3; 92 Acts, ch 1229, §16; 93 Acts, ch 172, §36, 56; 97 Acts, ch 99, §8, 9

232.184 through 232.186 Reserved.

DIVISION XII

JUVENILE JUSTICE REFORM

232.187 Regional out-of-state placement committees. Repealed by 93 Acts, ch 172, § 48, 56.

232.188 Decategorization of child welfare funding.

1. Decategorization of child welfare funding is intended to establish a system of delivering human services based upon client needs to replace a system based upon a multitude of categorical programs and funding sources, each with different service definitions and eligibility requirements. The purposes of decategorization include but are not limited to redirecting child welfare funding to services which are more preventive, family-centered, and community-based in order to reduce use of restrictive approaches which rely upon institutional, out-of-home, and out-of-community services.

2. In partnership with an interested county or group of counties which has demonstrated the commitment and involvement of the affected county department of human services, juvenile court system, and board of supervisors, the department shall develop agreements providing for the decategorization of specific state and state-

federal funding categories into a child welfare funding pool for that county or group of counties. A decategorization agreement shall require the decategorization program to be implemented by a decategorization governance board. The decategorization governance board shall develop specific, quantifiable short-term and long-term plans for enhancing the county's or group of counties' family-centered and community-based services and reducing reliance upon out-of-community care. The affected service systems shall include child welfare and juvenile justice systems. A decategorization agreement may vary depending upon the approaches selected by the county or group of counties which shall be detailed in an annual child welfare services plan developed by the decategorization governance board. A decategorization governance board shall involve community representatives and county organizations in the development of the plan.

3. The child welfare funding pool shall be used by the county or group of counties to provide more flexible, individualized, family-centered, preventive, community-based, comprehensive, and coordinated service systems for children and families served in that area. The decategorization of the funding shall not limit the legal rights of those children and families to services, but shall provide more flexibility to the partnership county or counties in responding to individual and family needs.

4. In a decategorization agreement, the department and the county's or group of counties' decategorization governance board shall agree on all of the following items: the governance relationship between the department and the decategorization governance board; the respective areas of autonomy of the department and the board; the budgeting structure for the decategorization; and a method for resolving disputes between the department and the board. The decategorization agreement shall require the department and the decategorization governance board to agree upon a budget within sixty days of the date by which the regional group foster care budget targets are determined under section 232.143 for the fiscal year to which the budget applies. The budget may later be modified to reflect new or changed circumstances.

5. The state shall provide incentives for a county or counties to participate in a decategorization agreement while maintaining an expectation that the service outcomes for children and families can be improved by the funding flexibility, and the redeployment of funding currently available for services within the system. Moneys in the child welfare funding pool established for a county or group of counties participating in a decategorization agreement which remain unobligated or unexpended at the end of a fiscal year shall remain available to the county or group of counties during the succeeding fiscal year to finance other child welfare service enhancements.

6. Initially the department shall work with the five counties previously authorized under law to enter into decategorization agreements with the state. At a minimum, any of those counties may elect to use funding for foster care, family-centered services, subsidized adoption, child care, local purchase of service, state juvenile institution care, juvenile detention, department direct services, and court-ordered services for juveniles in the child welfare fund established for that county.

7. The annual child welfare services plan developed by a decategorization governance board pursuant to subsection 2 shall be submitted to the department and the Iowa empowerment board. In addition, the decategorization governance board shall submit an annual progress report to the department and the Iowa empowerment board which summarizes the progress made toward attaining the objectives contained in the plan. The progress report shall serve as an opportunity for information sharing and feedback.

8. A decategorization governance board shall coordinate the board's planning and budgeting activities with the community empowerment area board for the community empowerment area within which the decategorization county is located.

92 Acts, ch 1229, §18; 98 Acts, ch 1206, §11, 20; 99 Acts, ch 111, §10; 99 Acts, ch 190, §16; 99 Acts, ch 192, §33

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

232.189 Reasonable efforts administrative requirements.

Based upon a model reasonable efforts family court initiative, the director of human services and the chief justice of the supreme court or their designees shall jointly establish and implement a statewide protocol for reasonable efforts, as defined in section 232.102. In addition, the director and the chief justice shall design and implement a system for judicial and departmental reasonable efforts education for deployment throughout the state. The system for reasonable efforts education shall be developed in a manner which addresses the particular needs of rural areas and shall include but is not limited to all of the following topics:

1. Regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

2. The duties of judicial and departmental employees associated with placing a child removed from the child's home into a permanent home and the urgency of the placement for the child.

3. The essential elements, including writing techniques, in developing effective permanency plans.

4. The essential elements of gathering evidence sufficient for the evidentiary standards required for judicial orders under this chapter.

92 Acts, ch 1229, §19; 95 Acts, ch 182, §13; 98 Acts, ch 1190, §28

232.190 Community grant fund — future repeal.

1. A community grant fund is established in the state treasury under the control of the division of criminal and juvenile justice planning of the department of human rights for the purposes of awarding grants under this section. The criminal and juvenile justice planning advisory council and the juvenile justice advisory council shall assist the division in administering grants awarded under this section. The departments of education, human services, public health, and public safety, and the governor's office of drug control policy shall advise the division on grant award criteria and performance measures for the programs. Not more than five percent of the moneys appropriated to the fund shall be used for administrative purposes.

2. Any decategorization governance board organized in accordance with section 232.188 may apply to the division for a grant to fund juvenile crime prevention programs that emphasize positive youth development. The division shall adopt rules for awarding of grant moneys, including but not limited to data factors and a methodology for use in allocating moneys among the decategorization projects based upon a project's proportion of the state's population of children.

3. Applications for moneys from the community grant fund shall demonstrate a collaborative effort by all relevant local government and school officials and service agencies with authority, responsibilities, or other interests within the decategorization project area. Proposed plans set forth in the applications shall reflect community-wide consensus in how to remediate community problems related to juvenile crime. Services provided under a grant through this program shall be comprehensive, preventive, community-based, and shall utilize flexible delivery systems and promote youth development. A plan for grant moneys under this section shall be a part of or be consistent with the annual child welfare services plan developed by the governance board of the decategorization project area and submitted to the department of human services and Iowa empowerment board pursuant to section 232.188.

4. The division shall provide decategorization governance boards with information describing comprehensive community planning techniques and performance measures for this program. The division shall establish a monitoring system for this program that requires participating decategorization governance boards to report information with which to measure program performance. Applications for grant moneys shall state specific results sought to be obtained by any service or activity funded by a grant under this section and shall describe how their desired results are related to the program's performance measures.

5. This section is repealed effective June 30, 2005. The division of criminal and juvenile justice planning shall annually submit a report to the general assembly by January 15 regarding the program's performance measures and the effectiveness of the services and activities funded under this section.

94 Acts, ch 1172, §27; 96 Acts, ch 1212, §16; 98 Acts, ch 1221, §13, 14; 2000 Acts, ch 1126, §5; 2000 Acts, ch 1222, §14, 17

232.191 Early intervention and follow-up programs.

Contingent on a specific appropriation for these purposes, the department shall do the following:

1. Develop or expand programs providing specific life skills and interpersonal skills training for adjudicated delinquent youth who pose a low or moderate risk to the community.

2. Develop or expand a school-based program addressing truancy and school behavioral problems for youth ages twelve through seventeen.

3. Develop or expand an intensive tracking and supervision program for adjudicated delinquent youth at risk for placement who have been released from resident facilities, which shall include telephonic or electronic tracking and monitoring and intervention by juvenile authorities.

4. Develop or expand supervised community treatment for adjudicated delinquent youth who experience significant problems and who constitute a moderate community risk.

94 Acts, ch 1172, §28

232.192 through 232.194 Reserved.

232.195 Runaway treatment plan.

A county may develop a runaway treatment plan to address problems with chronic runaway children in the county. The plan shall identify the problems with chronic runaway children in the county and specific solutions to be implemented by the county, including the development of a runaway assessment center.

97 Acts, ch 90, §3; 98 Acts, ch 1100, §28

232.196 Runaway assessment center.

1. As part of a county runaway treatment plan under section 232.195, a county may establish a runaway assessment center or other plan. The center or other plan, if established, shall provide services to assess a child who is referred to the center or plan for being a chronic runaway and intensive family counseling services designed to address any problem causing the child to run away. A center shall at least meet the requirements es-

tablished for providing child foster care under chapter 237.

2. *a.* If not sent home with the child's parent, guardian, or custodian, a chronic runaway may be placed in a runaway assessment center by the peace officer who takes the child into custody under section 232.19, if the officer believes it to be in the child's best interest after consulting with the child's parent, guardian, or custodian. A chronic runaway shall not be placed in a runaway assessment center for more than forty-eight hours.

b. If a runaway is placed in an assessment center according to a county plan, the runaway shall be assessed within twenty-four hours of being placed in the center by a center counselor to determine the following:

(1) The reasons why the child is a runaway.

(2) Whether the initiation or continuation of child in need of assistance or family in need of assistance proceedings is appropriate.

c. As soon as practicable following the assessment, the child and the child's parents, guardian, or custodian shall be provided the opportunity for a counseling session to identify the underlying causes of the runaway behavior and develop a plan to address those causes.

d. A child shall be released from a runaway assessment center, established pursuant to the county plan, to the child's parents, guardian, or custodian not later than forty-eight hours after being placed in the center unless the child is placed in shelter care under section 232.21 or an order is entered under section 232.78. A child whose parents, guardian, or custodian failed to attend counseling at the center or fail to take custody of the child at the end of placement in the center may be the subject of a child in need of assistance petition or such other order as the juvenile court finds to be in the child's best interest.

97 Acts, ch 90, §4; 98 Acts, ch 1100, §29

CHAPTER 232A

JUVENILE VICTIM RESTITUTION

232A.1 Definition. Repealed by 98 Acts, ch 1047, §67.
232A.2 Program created.
232A.3 Reports required.
232A.4 Restitution for delinquent acts. Repealed by 98 Acts, ch 1090, §80, 84.

232A.1 Definition. Repealed by 98 Acts, ch 1047, § 67.

232A.2 Program created.

A juvenile victim restitution program is created which shall be funded through moneys appropriated by the general assembly to the judicial branch. The primary purpose of the program is to provide funds to compensate victims for losses due to the delinquent acts of juveniles.

Upon completion of a district's plan, the judicial branch shall provide funds in conformance with the procedures and policies of the state. The judicial branch shall reclaim any portion of an initial allocation to a judicial district that is unencumbered on December 31 of any year. The judicial branch shall immediately reallocate the reclaimed funds to those judicial districts from which funds were not reclaimed in the manner provided in this section for the original allocation. Any portion of an amount allocated that remains unencumbered on June 30 of any year shall revert to the general fund of the state.

83 Acts, ch 94, §3; 90 Acts, ch 1247, §6; 98 Acts, ch 1047, §23

232A.3 Reports required.

Each judicial district shall submit a report of the progress and financial status of its juvenile victim restitution program to the judicial branch on a quarterly basis. The judicial branch shall prepare and submit annually a report on the progress and financial status of the programs to the general assembly no later than March 15.

83 Acts, ch 94, §4; 90 Acts, ch 1247, §7; 98 Acts, ch 1047, §24

232A.4 Restitution for delinquent acts. Repealed by 98 Acts, ch 1090, § 80, 84. See § 915.28.

CHAPTER 233

NEWBORN INFANT CUSTODY RELEASE PROCEDURES (NEWBORN SAFE HAVEN ACT)

233.1 Newborn safe haven Act — definitions.
233.2 Newborn infant custody release procedures.
233.3 Immunity.
233.4 Rights of parents.
233.5 Confidentiality protections.
233.6 Educational and public information.

233.1 Newborn safe haven Act — definitions.

1. This chapter may be cited as the *"Newborn Safe Haven Act"*.

2. For the purposes of this chapter, unless the context otherwise requires:

a. "Institutional health facility" means a hospital as defined in section 135B.1, including a facility providing medical or health services that is open twenty-four hours per day, seven days per week and is a hospital emergency room or a health care facility as defined in section 135C.1.

b. "Newborn infant" means a child who is, or who appears to be, fourteen days of age or younger.

2001 Acts, ch 67, §1, 13; 2002 Acts, ch 1119, §33
Subsection 2, paragraph a amended

233.2 Newborn infant custody release procedures.

1. A parent of a newborn infant may voluntarily release custody of the newborn infant by relinquishing physical custody of the newborn infant, without expressing an intent to again assume physical custody, at an institutional health facility or by authorizing another person to relinquish physical custody on the parent's behalf. If physical custody of the newborn infant is not relinquished directly to an individual on duty at the institutional health facility, the parent may take other actions to be reasonably sure that an individual on duty is aware that the newborn infant has been left at the institutional health facility. The actions may include but are not limited to making telephone contact with the institutional health facility or a 911 service. For the purposes of this chapter and for any judicial proceedings associated with the newborn infant, a rebuttable presumption arises that the person who relinquishes physical custody at an institutional health facility in accordance with this section is the newborn infant's parent or has relinquished physical custody with the parent's authorization.

2. *a.* Unless the parent or other person relinquishing physical custody of a newborn infant clearly expresses an intent to return to again assume physical custody of the newborn infant, an individual on duty at the facility at which physical custody of the newborn infant was relinquished pursuant to subsection 1 shall take physical custody of the newborn infant. The individual on duty may request the parent or other person to provide the name of the parent or parents and information on the medical history of the newborn infant and the newborn infant's parent or parents. However, the parent or other person is not required to provide the names or medical history information to comply with this section. The individual on duty may perform reasonable acts necessary to protect the physical health or safety of the newborn infant. The individual on duty and the institutional health facility in which the individual was on duty are immune from criminal or civil liability for any acts or omissions made in good faith to comply with this section.

b. If the physical custody of the newborn infant is relinquished at an institutional health facility, the state shall reimburse the institutional health facility for the institutional health facility's actual expenses in providing care to the newborn infant and in performing acts necessary to protect the physical health or safety of the newborn infant. The reimbursement shall be paid from moneys appropriated for this purpose to the department of human services.

c. The individual on duty or other person designated by the institutional health facility at which physical custody of the newborn infant was relinquished shall submit the certificate of birth report as required pursuant to section 144.14.

3. As soon as possible after the individual on duty assumes physical custody of a newborn infant released under subsection 1, the individual shall notify the department of human services and the department shall take the actions necessary to assume the care, control, and custody of the newborn infant. The department shall immediately notify the juvenile court and the county attorney of the department's action and the circumstances surrounding the action and request an ex parte order from the juvenile court ordering, in accordance with the requirements of section 232.78, the department to take custody of the newborn infant. Upon receiving the order, the department shall take custody of the newborn infant. Within twenty-four hours of taking custody of the newborn infant, the department shall notify the juve-

nile court and the county attorney in writing of the department's action and the circumstances surrounding the action.

4. *a.* Upon being notified in writing by the department under subsection 3, the county attorney shall file a petition alleging the newborn infant to be a child in need of assistance in accordance with section 232.87 and a petition for termination of parental rights with respect to the newborn infant in accordance with section 232.111, subsection 2, paragraph *"a"*. A hearing on a child in need of assistance petition filed pursuant to this subsection shall be held at the earliest practicable time. A hearing on a termination of parental rights petition filed pursuant to this subsection shall be held no later than thirty days after the day the physical custody of the newborn child was relinquished in accordance with subsection 1 unless the juvenile court continues the hearing beyond the thirty days for good cause shown.

b. Notice of a petition filed pursuant to this subsection shall be provided to any known parent and others in accordance with the provisions of chapter 232 and shall be served upon any putative father registered with the state registrar of vital statistics pursuant to section 144.12A. In addition, prior to holding a termination of parental rights hearing with respect to the newborn infant, notice by publication shall be provided as described in section 600A.6, subsection 5.

5. Reasonable efforts, as defined in section 232.102, that are made in regard to the newborn infant shall be limited to the efforts made in a timely manner to finalize a permanency plan for the newborn infant.

6. An individual on duty at an institutional health facility who assumes custody of a newborn infant upon the release of the newborn infant under subsection 1 shall be provided notice of any hearing held concerning the newborn infant at the same time notice is provided to other parties to the hearing and the individual may provide testimony at the hearing.

2001 Acts, ch 67, §2, 13

233.3 Immunity.

Any person authorized by the parent to assist with release of custody in accordance with section 233.2 by relinquishing physical custody of the newborn infant or to otherwise act on the parent's behalf is immune from criminal prosecution for abandonment or neglect of the newborn infant under section 726.3 or 726.6 and civil liability for any reasonable acts or omissions made in good faith in assisting with the release.

2001 Acts, ch 67, §3, 13

Parental immunity, see §726.3, 726.6

233.4 Rights of parents.

Either parent of a newborn infant whose custody was released in accordance with section 233.2 may intervene in the child in need of assistance or termination of parental rights proceedings held regarding the newborn infant and request that the juvenile court grant custody of the newborn infant to the parent. The requester must show by clear and convincing evidence that the requester is the parent of the newborn infant. If the court determines that the requester is the parent of the newborn infant and that granting custody of the newborn infant to the parent is in the newborn infant's best interest, the court shall issue an order granting custody of the newborn infant to the parent. In addition to such order, the court may order services for the newborn infant and the parent as are in the best interest of the newborn infant.

2001 Acts, ch 67, §4, 13

233.5 Confidentiality protections.

1. In addition to any other privacy protection established in law, a record that is developed, acquired, or held in connection with an individual's good faith effort to voluntarily release a newborn infant in accordance with this chapter and any identifying information concerning the individual shall be kept confidential. Such record shall not be inspected or the contents disclosed except as provided in this section.

2. A record described in subsection 1 may be inspected and the contents disclosed without court order to the following:

a. The court and professional court staff, including juvenile court officers.

b. The newborn infant and the newborn infant's counsel.

c. The newborn infant's parent, guardian, custodian, and those persons' counsel.

d. The newborn infant's court-appointed special advocate and guardian ad litem.

e. The county attorney and the county attorney's assistants.

f. An agency, association, facility, or institution which has custody of the newborn infant, or is legally responsible for the care, treatment, or supervision of the newborn infant.

g. The newborn infant's foster parent or an individual providing preadoptive care to the newborn infant.

3. Pursuant to court order a record described in subsection 1 may be inspected by and the contents may be disclosed to any of the following:

a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

4. Any person who knowingly discloses, receives, or makes use or permits the use of information derived directly or indirectly from such a record or discloses identifying information concerning such individual, except as provided by this sec-

tion, commits a serious misdemeanor.

2001 Acts, ch 67, §5, 13

233.6 Educational and public information.

The department of human services, in consultation with the Iowa department of public health and the department of justice, shall develop and distribute the following:

1. An information card or other publication for distribution by an institutional health facility to a parent who releases custody of a newborn infant in accordance with this chapter. The publication shall inform the parent of a parent's rights under section 233.4, explain the request for medical history information under section 233.2, subsection 2, and provide other information deemed pertinent by the departments.

2. Educational materials, public information announcements, and other resources to develop awareness of the availability of the newborn safe haven Act among adolescents, young parents, and others who might avail themselves of this chapter.

3. Signage that may be used to identify the institutional health facilities at which physical custody of a newborn infant may be relinquished in accordance with this chapter.

2001 Acts, ch 67, §6, 13; 2002 Acts, ch 1119, §34

Subsection 2 amended

CHAPTER 233A

TRAINING SCHOOL

233A.1 State training school — Eldora and Toledo.
233A.2 Superintendent — powers and duties.
233A.3 Salary.
233A.4 Education and training.
233A.5 Procedure to commit.
233A.6 Visits.
233A.7 Placing in families.
233A.8 Articles of agreement.
233A.9 Resuming custody of child.
233A.10 Unlawful interference.
233A.11 County attorney to appear for child.
233A.12 Discharge or parole.
233A.13 Binding out or discharge.
233A.14 Transfers to other institutions.
233A.15 Transfers to work in parks.
233A.16 Reserved.
233A.17 Cost of care.

233A.1 State training school — Eldora and Toledo.

1. Effective January 1, 1992, a diagnosis and evaluation center and other units are established at Eldora to provide to juvenile delinquents a program which focuses upon appropriate developmental skills, treatment, placements, and rehabilitation.

2. The diagnosis and evaluation center which is used to identify appropriate treatment and placement alternatives for juveniles and any other units for juvenile delinquents which are located at Eldora and the unit for juvenile delinquents at Toledo shall together be known as the *"state training school"*. For the purposes of this chapter *"director"* means the director of human services and *"superintendent"* means the administrator in charge of the diagnosis and evaluation center for juvenile delinquents and other units at Eldora and the unit for juvenile delinquents at Toledo.

[S13, §2701-a; C24, 27, 31, 35, 39, §**3685;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.1; 82 Acts, ch 1260, §25]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1239, §15, 16

C93, §233A.1

233A.2 Superintendent — powers and duties.

The superintendent has charge and custody of the juveniles committed to the state training school. The superintendent shall administer the state training school and direct the staff in order to provide a positive living experience designed to prepare the juveniles for a productive future.

[C73, §1651, 1652; C97, §2707; S13, §2707; C24, 27, 31, 35, 39, §**3686;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.2]

90 Acts, ch 1239, §17

C93, §233A.2

233A.3 Salary.

The salary of the superintendent of the state training school shall be determined by the administrator.

[S13, §2727-3a; C24, 27, 31, 35, 39, §**3687;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.3; 82 Acts, ch 1260, §26]

C93, §233A.3

233A.4 Education and training.

The state training school shall provide a positive living experience for older juveniles who require secure custody and who live at the state training school for an extended period of time. The education and training programs provided to the juveniles shall reflect the age level and extended period of stay by focusing upon appropriate developmental skills to prepare the juveniles for productive living.

[C73, §1648; C97, §2706; C24, 27, 31, 35, 39, §**3688;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.4; 82 Acts, ch 1260, §27]

85 Acts, ch 21, §37; 90 Acts, ch 1239, §18

C93, §233A.4

233A.5 Procedure to commit.

The procedure for the commitment of children to the state training school, except as otherwise provided, shall be the same as provided in chapter 232.

[C73, §1653 – 1659; C97, §2708, 2709; S13, §2708, 2709; C24, 27, 31, 35, 39, §**3689;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.5]

C93, §233A.5

233A.6 Visits.

Members of the executive council, the attorney general, the lieutenant governor, members of the general assembly, judges of the supreme and district court and court of appeals, magistrates, county attorneys and persons ordained or designated as regular leaders of a religious community are authorized to visit the state training school at reasonable times. No other person shall be granted admission except by permission of the superintendent.

85 Acts, ch 21, §38

CS85, §242.6

C93, §233A.6

233A.7 Placing in families.

All children committed to and received in the state training school may be placed by the department under foster care arrangements, with any persons or in families of good standing and character where they will be properly cared for and educated. The cost of foster care provided under these arrangements shall be paid as provided in section 234.35.

[C73, §1649; C97, §2704; S13, §2704; C24, 27, 31, 35, 39, §**3691;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.7; 82 Acts, ch 1260, §29]

90 Acts, ch 1270, §47

C93, §233A.7

233A.8 Articles of agreement.

Such children shall be so placed under articles of agreement, approved by the administrator and signed by the person or persons taking them and by the superintendent. Said articles shall provide for the custody, care, education, maintenance, and earnings of said children for a time to be fixed in said articles, which shall not extend beyond the time when the persons bound shall attain the age of eighteen years.

[C73, §1649; C97, §2704; S13, §2704; C24, 27, 31, 35, 39, §**3692;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.8]

C93, §233A.8

233A.9 Resuming custody of child.

In case a child so placed be not given the care, education, treatment, and maintenance required by such agreement, the administrator may cause the child to be taken from the person with whom placed and returned to the institution, or may replace, release, or finally discharge the child as may seem best.

[C73, §1649; C97, §2704; S13, §2704; C24, 27, 31, 35, 39, §**3693;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.9]

C93, §233A.9

233A.10 Unlawful interference.

It shall be unlawful for any parent or other person not a party to such placing of a child to interfere in any manner or assume or exercise any control over such child or the child's earnings. Said earnings shall be used, held, or otherwise applied for the exclusive benefit of such child, in accordance with section 234.37.

[S13, §2704; C24, 27, 31, 35, 39, §**3694;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.10]

C93, §233A.10

233A.11 County attorney to appear for child.

In case legal proceedings are necessary to enforce any right conferred on any child by sections 233A.7 to 233A.10, inclusive, the county attorney of the county in which such proceedings should be instituted shall, on request of the superintendent, approved by the administrator, institute and carry on, in the name of the superintendent, the proceedings in behalf of the superintendent.

[S13, §2704; C24, 27, 31, 35, 39, §**3695;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.11]

C93, §233A.11

233A.12 Discharge or parole.

The administrator may at any time after one year's service order the discharge or parole of any inmate as a reward for good conduct, and may, in exceptional cases, discharge or parole inmates without regard to the length of their service or conduct, when satisfied that the reasons therefor are urgent and sufficient. If paroled upon satisfactory evidence of reformation, the order may remain in effect or terminate under such rules as the administrator may prescribe.

[C73, §1660, 1661; C97, §2711; S13, §2711; C24, 27, 31, 35, 39, §**3696;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.12]
C93, §233A.12

233A.13 Binding out or discharge.
The binding out or the discharge of an inmate as reformed, or having arrived at the age of eighteen years, shall be a complete release from all penalties incurred by the conviction for the offense upon which the child was committed to the school.
[C73, §1661; C97, §2711; S13, §2711; C24, 27, 31, 35, 39, §**3697;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.13]
C93, §233A.13

233A.14 Transfers to other institutions.
The administrator may transfer to the schools minor wards of the state from any institution under the administrator's charge but no person shall be so transferred who is mentally ill or mentally retarded. Any child in the schools who is mentally ill or mentally retarded may be transferred by the administrator to the proper state institution.
[C66, 71, 73, 75, 77, 79, 81, §242.14]
C93, §233A.14

233A.15 Transfers to work in parks.
The administrator may detail children, classed as trustworthy, from the state training school, to perform services for the department of natural resources within the state parks, state game and forest areas and other lands under the jurisdiction of the department of natural resources. The department of natural resources shall provide permanent housing and work guidance supervision, but the care and custody of the children so detailed shall remain under employees of the division of child and family services of the department of human services. All such programs shall have as their primary purpose and shall provide for inculcation or the activation of attitudes, skills and habit patterns which will be conducive to the habilitation of the youths involved.
The administrator is hereby authorized to use state-owned mobile housing equipment and facilities in performing such services at temporary locations in the above areas.
[C66, 71, 73, 75, 77, 79, 81, §242.15; 82 Acts, ch 1260, §30]
83 Acts, ch 96, §157, 159
C93, §233A.15

233A.16 Reserved.

233A.17 Cost of care.
If a child receives unearned income, the department shall reserve a portion of the unearned income for the use of the child as a personal allowance and apply the remaining portion to the cost of the child's custody, care, and maintenance provided pursuant to this chapter.
89 Acts, ch 283, §29
CS89, §242.17
C93, §233A.17

CHAPTER 233B

JUVENILE HOME

233B.1 Definitions — objects.
233B.2 Salary.
233B.3 Admissions.
233B.4 Procedure.
233B.5 Transfers.
233B.6 Profits and earnings.
233B.7 Rules.
233B.8 and 233B.9 Reserved.
233B.10 Placing child under contract.
233B.11 Recovery of possession.
233B.12 Recovery of child — duty of county attorney.
233B.13 Interference with child.
233B.14 Counties liable.
233B.15 Reserved.
233B.16 Cost of care.

233B.1 Definitions — objects.
For the purpose of this chapter, unless the context otherwise requires:
1. *"Administrator"* or *"director"* means the director of the department of human services.
2. *"Home"* means the Iowa juvenile home.
3. *"Superintendent"* means the superintendent of the Iowa juvenile home.

The Iowa juvenile home shall be maintained for the purpose of providing care, custody and education of such children as are committed to the home. Such children shall be wards of the state. Their education shall embrace instruction in the common school branches and in such other higher branches as may be practical and will enable the children to gain useful and self-sustaining em-

ployment. The administrator and the superintendent of the home shall assist all discharged children in securing suitable homes and proper employment.

[C97, §2689; C24, 27, 31, 35, 39, §**3698, 3706;** C46, §243.1, 244.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.1]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1239, §19

C93, §233B.1

233B.2 Salary.

The salary of the superintendent of the home shall be determined by the administrator.

[S13, §2727-3a; C24, 27, 31, 35, 39, §**3707;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.2]

C93, §233B.2

233B.3 Admissions.

Admission to the home shall be granted to resident children of the state under seventeen years of age, as follows, giving preference in the order named:

1. Neglected or dependent children committed by the juvenile court.
2. Other destitute children.

[C97, §2685; S13, §2685; C24, 27, 31, 35, 39, §**3699, 3708;** C46, §243.2, 244.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.3; 82 Acts, ch 1260, §31]

85 Acts, ch 21, §39

C93, §233B.3

233B.4 Procedure.

The procedure for commitment to the home is as provided by chapter 232.

[C97, §2685; S13, §2685; C24, 27, 31, 35, 39, §**3709;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.4]

90 Acts, ch 1239, §20

C93, §233B.4

233B.5 Transfers.

The administrator may transfer to the home minor wards of the state from any institution under the administrator's charge or under the charge of any other administrator of the department of human services; but no person shall be so transferred who is a person with mental illness or mental retardation, or who is incorrigible, or has any vicious habits, or whose presence in the home would be inimical to the moral or physical welfare of the other children within the home, and any such child in the home may be transferred to the proper state institution.

[C24, 27, 31, 35, 39, §**3710;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.5]

83 Acts, ch 96, §157, 159

C93, §233B.5

96 Acts, ch 1129, §63

233B.6 Profits and earnings.

Any money earned by a child who is admitted to or placed in foster care from the home shall be used, held or otherwise applied for the exclusive benefit of that child, in accordance with section 234.37.

[C97, §2689; S13, §2690-d; C24, 27, 31, 35, 39, §**3711;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.6]

C93, §233B.6

233B.7 Rules.

All children admitted or committed to the home shall be wards of the state and subject to the rules of the home. Subject to the approval of the administrator, any child received under voluntary application may be expelled by the superintendent for disobedience and refusal to submit to proper discipline. Children shall be discharged upon arriving at the age of eighteen years, or sooner if possessed of sufficient means to provide for themselves.

[C73, §1634; C97, §2685, 2688; S13, §2685, 2688, 2690-b; C24, 27, 31, 35, 39, §**3712;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.7]

C93, §233B.7

233B.8 and 233B.9 Reserved.

233B.10 Placing child under contract.

A child received in the home, unless adopted, may be placed by the department in foster care with any proper person or family. The foster care arrangement shall provide for the custody, care, education, maintenance, and earnings of the child for a fixed time which shall not extend beyond the age of majority, except that the time may extend beyond the child's eighteenth birthday until the child is twenty-one years of age if the child is regularly attending an accredited school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs.

[S13, §2690-b; C24, 27, 31, 35, 39, §**3716;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.10]

86 Acts, ch 1245, §1420

C93, §233B.10

233B.11 Recovery of possession.

In case of a violation of the terms of such contract, the administrator may cause the child to be taken from the person or persons with whom placed, and may make such other disposition of the child as shall seem to be for the child's best interests.

[S13, §2690-c; C24, 27, 31, 35, 39, §**3717;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.11]

C93, §233B.11

233B.12 Recovery of child — duty of county attorney.

In case legal proceedings are necessary to recover the possession of such child, they may be instituted and carried on in the name of the superintendent, and the county attorney of the county in which the child is placed shall, if requested by the superintendent, act as the superintendent's attorney in the proceedings.

[S13, §2690-c; C24, 27, 31, 35, 39, §**3718;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.12]

C93, §233B.12

233B.13 Interference with child.

It shall be unlawful for any parent or other person not a party to the placing of a child for a term of years, to interfere in any manner with or to assume or exercise any control over such child or the child's earnings while such contract is in force.

[S13, §2690-d; C24, 27, 31, 35, 39, §**3719;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.13]

C93, §233B.13

233B.14 Counties liable.

Each county is liable for sums paid by the home in support of all its children to the extent of a sum equal to one-half of the net cost of the support and maintenance of its children. The superintendent shall certify to the director of revenue and finance on the first day of each fiscal quarter the amount chargeable to each county for support. The sums for which each county is liable shall be charged to the county and collected as a part of the taxes due the state, and paid by the county at the same time state taxes are paid.

Should any county fail to pay these bills within sixty days from the date of certificate from superintendent, the director of revenue and finance shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state.

[C97, §2692; SS15, §2692; C24, 27, 31, 35, 39, §**3720;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.14]

83 Acts, ch 123, §94, 209

C93, §233B.14

233B.15 Reserved.

233B.16 Cost of care.

If a child receives unearned income, the department shall reserve a portion of the unearned income for the use of the child as a personal allowance and apply the remaining portion equally to the state and county liability for the cost of the child's support and maintenance provided pursuant to this chapter.

89 Acts, ch 283, §30

CS89, §244.16

C93, §233B.16

SUBTITLE 6

CHILDREN AND FAMILIES

CHAPTER 234

CHILD AND FAMILY SERVICES

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234.9 County board of social welfare. Repealed by 93 Acts, ch 54, §12.
234.10 Compensation of county board members. Repealed by 93 Acts, ch 54, §12.
234.11 Duties of the county board. Repealed by 93 Acts, ch 54, §12.
234.12 Department to provide food programs.
234.12A Electronic benefits transfer program.
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234.15 to 234.17 Repealed by 80 Acts, ch 1050, §40.
234.18 Repealed by 80 Acts, ch 1050, §40.
234.19 Repealed by 80 Acts, ch 1050, §40.
234.20 Repealed by 80 Acts, ch 1050, §40.

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MARRIAGE INITIATIVE GRANT FUND

234.45 Iowa marriage initiative grant fund.

234.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division.

2. *"Child"* means either a person less than eighteen years of age or a person eighteen or nineteen years of age who meets any of the following conditions:

a. Is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma.

b. Is attending an instructional program leading to a high school equivalency diploma.

c. Has been identified by the director of special education of the area education agency as a child requiring special education as defined in section 256B.2, subsection 1.

A person over eighteen years of age who has received a high school diploma or a high school equivalency diploma is not a child within the definition in this subsection.

3. *"Division"* or *"state division"* means that division of the department of human services to which the director has assigned responsibility for income and service programs.

4. *"Food programs"* means the food stamp and donated foods programs authorized by federal law under the United States department of agriculture.

[C71, 73, 75, 77, 79, 81, S81, §234.1; 81 Acts, ch 7, §11]

83 Acts, ch 96, §160; 86 Acts, ch 1245, §1419; 92 Acts, ch 1229, §20; 93 Acts, ch 54, §3

234.2 Division created.

Within the state department of human services, there is hereby created a division of child and fami-

ly services which shall be administered by the administrator of said division and such other officers and employees as may be hereafter provided.

[C71, 73, 75, 77, 79, 81, §234.2]

234.3 to 234.5 Repealed by 67 Acts, ch 209, § 215.

234.6 Powers and duties of the administrator.

The administrator shall be vested with the authority to administer the family investment program, state supplementary assistance, food programs, child welfare, and emergency relief, family and adult service programs, and any other form of public welfare assistance and institutions that are placed under the administrator's administration. The administrator shall perform duties, formulate and adopt rules as may be necessary; shall outline policies, dictate procedure, and delegate such powers as may be necessary for competent and efficient administration. Subject to restrictions that may be imposed by the director of human services and the council on human services, the administrator may abolish, alter, consolidate, or establish subdivisions and may abolish or change offices previously created. The administrator may employ necessary personnel and fix their compensation; may allocate or reallocate functions and duties among any subdivisions now existing or later established; and may adopt rules relating to the employment of personnel and the allocation of their functions and duties among the various subdivisions as competent and efficient administration may require.

The administrator shall:

1. Cooperate with the federal social security board created by Title VII of the Social Security Act [42 U.S.C. 901], enacted by the 74th Congress of the United States and approved August 14, 1935, or other agency of the federal government for public welfare assistance, in such reasonable manner as may be necessary to qualify for federal aid, including the making of such reports in such form and containing such information as the federal social security board, from time to time, may require, and to comply with such regulations as such federal social security board, from time to time, may find necessary to assure the correctness and verification of such reports.

2. Furnish information to acquaint the public generally with the operation of the acts under the jurisdiction of the administrator.

3. With the approval of the director of human services, the governor, the director of management, and the director of revenue and finance, set up from the funds under the administrator's control and management an administrative fund and from the administrative fund pay the expenses of operating the division.

4. Notwithstanding any provisions to the contrary in chapter 239B relating to the consideration of income and resources of claimants for assistance, the administrator, with the consent and approval of the director of human services and the council on human services, shall make such rules as may be necessary to qualify for federal aid in the assistance programs administered by the administrator.

5. The department of human services shall have the power and authority to use the funds available to it, to purchase services of all kinds from public or private agencies to provide for the needs of children, including but not limited to psychiatric services, supervision, specialized group, foster homes and institutional care.

6. Have authority to use funds available to the department, subject to any limitations placed on the use thereof by the legislation appropriating the funds, to provide to or purchase, for families and individuals eligible therefor, services including but not limited to the following:

a. Child care for children or adult day services, in facilities which are licensed or are approved as meeting standards for licensure.

b. Foster care, including foster family care, group homes and institutions.

c. Intensive family preservation services and family-centered services, as defined in section 232.102, subsection 10, paragraph *"b"*.

d. Family planning.

e. Protective services.

f. Services or support provided to a child with mental retardation or other developmental disability or to the child's family.

g. Transportation services.

h. Any services, not otherwise enumerated in this subsection, authorized by or pursuant to the United States Social Security Act of 1934, as amended.

7. Administer the food programs authorized by federal law, and recommend rules necessary in the administration of those programs to the director for promulgation pursuant to chapter 17A.

8. Provide consulting and technical services to the director of the department of education, or the director's designee, upon request, relating to prekindergarten, kindergarten, and before and after school programming and facilities.

9. Recommend rules for their adoption by the council on human services for before and after school child care programs, conducted within and by or contracted for by school districts, that are appropriate for the ages of the children who receive services under the programs.

10. In determining the reimbursement rate for services purchased by the department of human services from a person or agency, the department shall not include private moneys contributed to the person or agency unless the moneys are contributed for services provided to a specific individual.

[C39, §**3661.007;** C46, 50, 54, 58, 62, 66, 71, 73,

75, 77, 79, 81, §234.6]

88 Acts, ch 1134, §56; 89 Acts, ch 206, §2; 92 Acts, ch 1229, §21 – 23; 93 Acts, ch 97, §28; 97 Acts, ch 41, §32; 99 Acts, ch 111, §5, 7; 99 Acts, ch 192, §28; 2001 Acts, ch 64, §5

See §13.6

1999 amendment to subsection 6, paragraph f, is effective September 6, 2000; 99 Acts, ch 111, §7

234.7 Department duties.

The department of human services shall comply with the following requirement associated with child foster care licensees under chapter 237:

The department shall include a child's foster parent in, and provide timely notice of, planning and review activities associated with the child, including but not limited to permanency planning and placement review meetings, which shall include discussion of the child's rehabilitative treatment needs.

95 Acts, ch 182, §14

234.8 Fees for child welfare services.

The department of human services may charge a fee for child welfare services to a person liable for the cost of the services. The fee shall not exceed the reasonable cost of the services. The fee shall be based upon the person's ability to pay and consideration of the fee's impact upon the liable person's family and the goals identified in the case permanency plan. The department may assess the liable person for the fee and the means of recovery shall include a setoff against an amount owed by a state agency to the person assessed pursuant to section 421.17, subsection 29. In addition the department may establish an administrative process to recover the assessment through automatic income withholding. The department shall adopt rules pursuant to chapter 17A to implement the provisions of this section. This section does not apply to court-ordered services provided to juveniles which are a charge upon the state pursuant to section 232.141 and services for which the department has established a support obligation pursuant to section 234.39.

92 Acts, ch 1229, §24

234.9 County board of social welfare. Repealed by 93 Acts, ch 54, § 12.

234.10 Compensation of county board members. Repealed by 93 Acts, ch 54, § 12.

234.11 Duties of the county board. Repealed by 93 Acts, ch 54, § 12. See § 217.43.

234.12 Department to provide food programs.

The department of human services is authorized to enter into such agreements with agencies of the federal government as are necessary in order to make available to the people of this state any federal food programs which may, under federal laws and regulations, be implemented in this state. Each such program shall be implemented in every county in the state, or in each county where implementation is permitted by federal laws and regulations.

The provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 115, shall not apply to an applicant for or recipient of food stamp benefits in this state. However, the department of human services may apply contingent eligibility requirements as provided under state law and allowed under federal law.

Upon request by the department of human services, the department of inspections and appeals shall conduct investigations into possible fraudulent practices, as described in section 234.13, relating to food programs administered by the department of human services.

[C79, 81, §234.12]

90 Acts, ch 1204, §48; 97 Acts, ch 41, §1

234.12A Electronic benefits transfer program.

1. The department of human services may establish an electronic benefits transfer program utilizing electronic funds transfer systems. The program, if established, shall at a minimum provide for all of the following:

a. A retailer shall not be required to make cash disbursements or to provide, purchase, or upgrade electronic funds transfer system equipment as a condition of participation in the program.

b. A retailer providing electronic funds transfer system equipment for transactions pursuant to the program shall be reimbursed seven cents for each approved transaction pursuant to the program utilizing the retailer's equipment.

c. A retailer that provides electronic funds transfer system equipment for transactions pursuant to the program and who makes cash disbursements pursuant to the program utilizing the retailer's equipment shall be paid a fee of seven cents by the department for each cash disbursement transaction by the retailer.

2. A point-of-sale terminal which is used only for purchases from a retailer by electronic benefits transfer utilizing electronic funds transfer systems is not a satellite terminal as defined in section 527.2.

3. For the purposes of this section, *"retailer"* means a business authorized by the United States department of agriculture to accept food stamp benefits.

98 Acts, ch 1066, §1; 98 Acts, ch 1218, §75; 2001 Acts, ch 191, §39

Expansion of program to meet federal requirements; extension of time for implementation; 2002 Acts, 2nd Ex, ch 1003, §111, 151

Suspension of transaction fee reimbursements to retailers for fiscal year beginning July 1, 2002; 2002 Acts, 2nd Ex, ch 1003, §111, 151

234.13 Fraudulent practices relating to food programs.

For the purposes of this section, unless the context otherwise requires, *"benefit transfer instrument"* means a food stamp coupon, authorization-to-purchase card, or electronic benefits transfer card. A person commits a fraudulent practice if that person does any of the following:

1. With intent to gain financial assistance to which that person is not entitled, knowingly makes or causes to be made a false statement or representation or knowingly fails to report to an employee of the department of human services any change in income, resources or other circumstances affecting that person's entitlement to such financial assistance.

2. As a beneficiary of the food programs, transfers any food stamp benefit transfer instrument to any other individual with intent that the benefit transfer instrument be used for the benefit of someone other than persons within the beneficiary's food stamp household as certified by the department of human services.

3. Knowingly acquires, uses or attempts to use any food stamp benefit transfer instrument which was not issued for the benefit of that person's food stamp household by the department of human services, or by an agency administering food programs in another state.

4. Acquires, alters, transfers, or redeems a food stamp benefit transfer instrument or possesses a benefit transfer instrument, knowing that the benefit transfer instrument has been received, transferred, or used in violation of this section or the provisions of the federal food stamp program under 7 U.S.C. ch. 51 or the federal regulations issued pursuant to that chapter.

[C79, 81, §234.13; 82 Acts, ch 1260, §120]
96 Acts, ch 1106, §15

234.14 Federal grants.

The state treasurer is hereby authorized to receive such federal funds as may be made available for carrying out any of the activities and functions of the state division, and all such funds are hereby appropriated for expenditure upon authorization of the administrator.

[C39, §**3661.015;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §234.14]

234.15 to 234.17 Repealed by 80 Acts, ch 1050, § 40. See § 175.28 – 175.30.

234.18 Repealed by 80 Acts, ch 1050, § 40. See § 175.6.

234.19 Repealed by 80 Acts, ch 1050, § 40.

234.20 Repealed by 80 Acts, ch 1050, § 40. See § 175.32.

FAMILY PLANNING SERVICES

234.21 Services to be offered.

The state division may offer, provide, or purchase family planning and birth control services to every person who is an eligible applicant or recipient of service or any financial assistance from the department of human services, or who is receiving federal supplementary security income as defined in section 249.1.

[C66, 71, 73, 75, 77, 79, 81, §234.21]

234.22 Extent of services.

Such family planning and birth control services may include interview with trained personnel; distribution of literature; referral to a licensed physician for consultation, examination, tests, medical treatment and prescription; and, to the extent so prescribed, the distribution of rhythm charts, drugs, medical preparations, contraceptive devices and similar products.

[C66, 71, 73, 75, 77, 79, 81, §234.22]

234.23 Charge for services.

In making provision for and offering such services, the state division may charge those persons to whom family planning and birth control services are rendered a fee sufficient to reimburse the state division all or any portion of the costs of the services rendered.

[C66, 71, 73, 75, 77, 79, 81, §234.23]

234.24 Services may be refused.

The refusal of any person to accept family planning and birth control services shall in no way affect the right of such person to receive public assistance or any other public benefit and every person to whom such services are offered shall be so advised initially both orally and in writing. Employees engaged in the administration of this section shall recognize that the right to make decisions concerning family planning and birth control is a fundamental personal right of the individual and nothing in this division shall in any way abridge such individual right, nor shall any individual be required to state the individual's reason for refusing the offer of family planning and birth control services.

[C66, 71, 73, 75, 77, 79, 81, §234.24]

234.25 Language to be used.

In all cases where the recipient does not speak or read the English language, the services shall not be given unless the interviews shall be conducted in, and all literature shall be written in, a language which the recipient understands.

[C66, 71, 73, 75, 77, 79, 81, §234.25]

234.26 Construction.

This division shall be liberally construed to pro-

tect the rights of all individuals to pursue their religious beliefs and to follow the dictates of their own consciences, and to prevent the imposition upon any individual of practices offensive to the individual's moral standards.

[C66, 71, 73, 75, 77, 79, 81, §234.26]

234.27 Policy.

The general assembly hereby finds, determines, and declares that this division is necessary for the immediate preservation of the public peace, health, and safety.

[C66, 71, 73, 75, 77, 79, 81, §234.27]

234.28 Obscenity laws not applicable.

The provisions of chapter 728 do not apply to services provided under the terms of this division.

[C66, 71, 73, 75, 77, 79, 81, §234.28]

234.29 to 234.34 Reserved.

FOSTER CARE EXPENSE

234.35 When state to pay foster care costs.

1. The department of human services is responsible for paying the cost of foster care for a child, according to rates established pursuant to section 234.38, under any of the following circumstances:

a. When a court has committed the child to the director of human services or the director's designee.

b. When a court has transferred legal custody of the child to the department of human services.

c. When the department has agreed to provide foster care services for the child for a period of not more than thirty days on the basis of a signed placement agreement between the department and the child's parent or guardian initiated on or after July 1, 1992.

d. When the child has been placed in emergency care for a period of not more than thirty days upon approval of the director or the director's designee.

e. When a court has entered an order transferring the legal custody of the child to a foster care placement pursuant to section 232.52, subsection 2, paragraph *"d"*, or section 232.102, subsection 1. However, payment for a group foster care placement shall be limited to those placements which conform to a regional group foster care plan established pursuant to section 232.143.

f. When the department has agreed to provide foster care services for a child who is eighteen years of age or older on the basis of a signed placement agreement between the department and the child or the person acting on behalf of the child.

g. When the department has agreed to provide foster care services for the child on the basis of a signed placement agreement initiated before July 1, 1992, between the department and the child's parent or guardian.

h. When the child is placed in shelter care pursuant to section 232.20, subsection 1, or section 232.21.

i. When the court has entered an order in a voluntary foster care placement proceeding pursuant to section 232.182, subsection 5, placing the child into foster care.

2. Except as provided under section 234.38 for direct payment of foster parents, payment for foster care costs shall be limited to foster care providers with whom the department has a contract in force.

3. Payment for foster care services provided to a child who is eighteen years of age or older shall be limited to the following:

a. For a child who is eighteen years of age, family foster care or independent living arrangements.

b. For a child who is nineteen years of age, independent living arrangements.

c. For a child who is at imminent risk of becoming homeless or failing to graduate from high school or to obtain a graduate equivalency diploma, if the services are in the child's best interests, funding is available for the services, and an appropriate alternative service is unavailable.

[C75, 77, 79, 81, §234.35]

90 Acts, ch 1270, §42, 43; 92 Acts, ch 1229, §25; 93 Acts, ch 172, §37, 56

See Iowa Acts for special provisions relating to foster care payments in a given fiscal year

For the fiscal year beginning July 1, 2002, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2002 Acts, 2nd Ex, ch 1003, §132, 151, and governor's item veto message

234.36 When county to pay foster care costs. Repealed by 90 Acts, ch 1270, § 50.

234.37 Department may establish accounts for certain children.

The department of human services is authorized to establish an account in the name of any child committed to the director of human services or the director's designee, or whose legal custody has been transferred to the department, or who is voluntarily placed in foster care pursuant to section 234.35. Any money which the child receives from the United States government or any private source shall be placed in the child's account, unless a guardian of the child's property has been appointed and demands the money, in which case it shall be paid to the guardian. The account shall be maintained by the department as trustee for the child in an interest-bearing account at a reputable bank or savings and loan association, except that if the child is residing at an institution administered by the department a limited amount of the child's funds may be maintained in a separate account, which need not be interest bearing, in the child's name at the institution. Any money held in

an account in the child's name or in trust for the child under this section may be used, at the discretion of the department and subject to restrictions lawfully imposed by the United States government or other source from which the child receives the funds, for the purchase of personal incidentals, desires and comforts of the child. All of the money held for a child by the department under this section and not used in the child's behalf as authorized by law shall be promptly paid to the child or the child's parent or legal guardian upon termination of the commitment of the child to the director or the director's designee, or upon transfer or cessation of legal custody of the child by the department.

[C75, 77, 79, 81, §234.37]

234.38 Foster care reimbursement rates.

The department of human services shall make reimbursement payments directly to foster parents for services provided to children pursuant to section 234.6, subsection 6, paragraph *"b"*, or section 234.35. In any fiscal year, the reimbursement rate shall be based upon sixty-five percent of the United States department of agriculture estimate of the cost to raise a child in the calendar year immediately preceding the fiscal year. The department may pay an additional stipend for a child with special needs.

[C75, 77, 79, 81, §234.38]

90 Acts, ch 1270, §44; 92 Acts, ch 1229, §26; 92 Acts, ch 1247, §46; 92 Acts, 1st Ex, ch 1004, §4

Rates for fiscal year beginning July 1, 2002; 2002 Acts, 2nd Ex, ch 1003, §137

234.39 Responsibility for cost of services.

It is the intent of this chapter that an individual receiving foster care services and the individual's parents or guardians shall have primary responsibility for paying the cost of the care and services. The support obligation established and adopted under this section shall be consistent with the limitations on legal liability established under sections 222.78 and 230.15, and by any other statute limiting legal responsibility for support which may be imposed on a person for the cost of care and services provided by the department. The department shall notify an individual's parents or guardians, at the time of the placement of an individual in foster care, of the responsibility for paying the cost of care and services. Support obligations shall be established as follows:

1. For an individual to whom section 234.35, subsection 1, is applicable, a dispositional order of the juvenile court requiring the provision of foster care, or an administrative order entered pursuant to chapter 252C, or any order establishing paternity and support for a child in foster care, shall establish, after notice and a reasonable opportunity to be heard is provided to a parent or guardian, the amount of the parent's or guardian's support obligation for the cost of foster care provided by the department. The amount of the parent's or guardian's support obligation and the amount of support debt accrued and accruing shall be established in accordance with the child support guidelines prescribed under section 598.21, subsection 4. However, the court, or the department of human services in establishing support by administrative order, may deviate from the prescribed obligation after considering a recommendation by the department for expenses related to goals and objectives of a case permanency plan as defined under section 237.15, and upon written findings of fact which specify the reason for deviation and the prescribed guidelines amount. Any order for support shall direct the payment of the support obligation to the collection services center for the use of the department's foster care recovery unit. The order shall be filed with the clerk of the district court in which the responsible parent or guardian resides and has the same force and effect as a judgment when entered in the judgment docket and lien index. The collection services center shall disburse the payments pursuant to the order and record the disbursements. If payments are not made as ordered, the child support recovery unit may certify a default to the court and the court may, on its own motion, proceed under section 598.22 or 598.23 or the child support recovery unit may enforce the judgment as allowed by law. An order entered under this subsection may be modified only in accordance with the guidelines prescribed under section 598.21, subsection 8, or under chapter 252H.

2. For an individual who is served by the department of human services under section 234.35, and is not subject to a dispositional order of the juvenile court requiring the provision of foster care, the department shall determine the obligation of the individual's parent or guardian pursuant to chapter 252C and in accordance with the child support guidelines prescribed under section 598.21, subsection 4. However, the department may adjust the prescribed obligation for expenses related to goals and objectives of a case permanency plan as defined under section 237.15. An obligation determined under this subsection may be modified only in accordance with conditions under section 598.21, subsection 8, or under chapter 252H.

3. A person entitled to periodic support payments pursuant to an order or judgment entered in any action for support, who also is or has a child receiving foster care services, is deemed to have assigned to the department current and accruing support payments attributable to the child effective as of the date the child enters foster care placement, to the extent of expenditure of foster care funds. The department shall notify the clerk of the district court when a child entitled to support payments is receiving foster care services pursuant to chapter 234. Upon notification by the department that a child entitled to periodic support payments is receiving foster care services, the

clerk of the district court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of assignment. The clerk of court shall furnish the department with copies of all orders and decrees awarding support when the child is receiving foster care services. At the time the child ceases to receive foster care services, the assignment of support shall be automatically terminated. Unpaid support accrued under the assignment of support rights during the time that the child was in foster care remains due to the department up to the amount of unreimbursed foster care funds expended. The department shall notify the clerk of court of the automatic termination of the assignment. Unless otherwise specified in the support order, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order or judgment for purposes of an assignment under this section.

4. The support debt for the costs of services, for which a support obligation is established pursuant to this section, which accrues prior to the establishment of the support debt, shall be collected, at a maximum, in the amount which is the amount of accrued support debt for the three months preceding the earlier of the following:

a. The provision by the child support recovery unit of the initial notice to the parent or guardian of the amount of the support obligation.

b. The date that the written request for a court hearing is received by the child support recovery unit as provided in section 252C.3 or 252F.3.

5. If the department makes a subsidized guardianship payment for a child, the payment shall be considered a foster care payment for purposes of child support recovery. All provisions of this and other sections, and of rules and orders adopted or entered pursuant to those sections, including for the establishment of a paternity or support order, for the amount of a support obligation, for the modification or adjustment of a support obligation, for the assignment of support, and for enforcement shall apply as if the child were receiving foster care services, or were in foster care placement, or as if foster care funds were being expended for the child. This subsection shall apply regardless of the date of placement in foster care or subsidized guardianship or the date of entry of an order, and foster care and subsidized guardianship shall be considered the same for purposes of child support recovery.

[C75, 77, 79, 81, §234.39]

83 Acts, ch 96, §160; 83 Acts, ch 153, §3; 89 Acts, ch 166, §1; 90 Acts, ch 1270, §45; 92 Acts, ch 1195, §303, 304; 92 Acts, ch 1229, §27; 94 Acts, ch 1171, §8; 95 Acts, ch 52, §1; 96 Acts, ch 1213, §36, 37; 97 Acts, ch 175, §227; 99 Acts, ch 127, §1

234.40 Corporal punishment.

The department of human services shall adopt rules prohibiting corporal punishment of foster children by foster parents licensed by the department. The rules shall allow foster parents to use reasonable physical force to restrain a foster child in order to prevent injury to the foster child, injury to others, the destruction of property, or extremely disruptive behavior. For the purposes of this section, *"corporal punishment"* means the intentional physical punishment of a foster child. A foster parent's physical contact with the body of a foster child shall not be considered corporal punishment if the contact is reasonable and necessary under the circumstances and is not designed or intended to cause pain or if the foster parent uses reasonable force, as defined under section 704.1.

[C79, 81, §234.40]

92 Acts, ch 1241, §71

234.41 Tort actions.

A foster parent licensed by the department of human services stands in the same relationship to the foster parent's minor foster child, for purposes of tort actions by or on behalf of the foster child against the foster parent, as a biological parent to the biological parent's minor child who resides at home. This section does not apply to a foster parent whose malicious, willful and wanton conduct causes injury or damage to a foster child or exposes the foster child to a danger caused by violation of a statute or the rules of the department of human services.

[C79, 81, §234.41]

94 Acts, ch 1046, §4

234.42 Foster care review committees — confidentiality. Repealed effective July 1, 1994, by 93 Acts, ch 172, § 48, 56.

234.43 and 234.44 Reserved.

MARRIAGE INITIATIVE GRANT FUND

234.45 Iowa marriage initiative grant fund.

1. An Iowa marriage initiative grant fund is established in the state treasury under the authority of the department of human services. The grant fund shall consist of moneys appropriated to the fund and notwithstanding section 8.33 such moneys shall not revert to the fund from which appropriated at the close of the fiscal year but shall remain in the Iowa marriage initiative grant fund. Moneys credited to the fund shall be used as directed in appropriations made by the general assembly for funding of services to support marriage and to encourage the formation and maintenance of two-parent families that are secure and nurturing.

2. It is the intent of the general assembly to credit to the Iowa marriage initiative grant fund, federal moneys provided to the state for the express purpose of supporting marriage or two-parent families.

2001 Acts, ch 191, §37

CHAPTER 235

CHILD WELFARE

235.1 Definitions.
235.2 Powers and duties of state division.
235.3 Powers and duties of administrator.
235.4 Licenses.
235.5 Inspections.
235.6 Short title.

235.1 Definitions.

The terms *"state division"*, *"administrator"*, and *"child"* are used in this chapter and chapter 238 as the terms are defined in section 234.1.

"Child welfare services" means social welfare services for the protection and care of children who are homeless, dependent or neglected, or in danger of becoming delinquent, or who have a mental illness or mental retardation or other developmental disability, including, when necessary, care and maintenance in a foster care facility. Child welfare services are designed to serve a child in the child's home whenever possible. If not possible, and the child is placed outside the child's home, the placement should be in the least restrictive setting available and in close proximity to the child's home.

[C39, §**3661.016;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.1]

83 Acts, ch 101, §44; 92 Acts, ch 1229, §28; 94 Acts, ch 1023, §88

235.2 Powers and duties of state division.

The state division, in addition to all other powers and duties given it by law, shall:

1. Administer and enforce the provisions of this chapter.

2. Join and co-operate with the government of the United States through its appropriate agency or instrumentality or with any other officer or agency of the federal government in planning, establishing, extending and strengthening public and private child welfare services within the state.

3. Make such investigations and to obtain such information as will permit the administrator to determine the need for public child welfare services within the state and within the several county departments thereof.

4. Apply for and receive any funds which are or may be allotted to the state by the United States or any agency thereof for the purpose of developing child welfare services.

5. Make such reports and budget estimates to the governor and to the general assembly as are required by law or such as are necessary and proper to obtain the appropriation of state funds for child welfare services within the state and for all the purposes of this chapter.

6. Co-operate with the several county departments within the state, and all county boards of supervisors and other public or private agencies charged with the protection and care of children, in the development of child welfare services.

7. Aid in the enforcement of all laws of the state for the protection and care of children.

8. Co-operate with the juvenile courts of the state and with the other administrators and divisions of the department of human services regarding the management and control of state institutions and the inmates thereof.

[C39, §**3661.017;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.2]

83 Acts, ch 96, §157, 159

235.3 Powers and duties of administrator.

The administrator shall:

1. Plan and supervise all public child welfare services and activities within the state as provided by this chapter.

2. Make such reports and obtain and furnish such information from time to time as may be necessary to permit co-operation by the state division with the United States children's bureau, the social security board, or any other federal agency which is now or may hereafter be charged with any duty regarding child care or child welfare services.

3. Adopt rules as necessary or advisable for the supervision of the private child-caring agencies or their officers which the administrator is empowered to license and supervise.

4. Supervise private institutions for the care of dependent, neglected, and delinquent children, and make reports regarding the institutions.

5. Designate and approve the private and county institutions within the state to which neglected, dependent and delinquent children may

be legally committed and to have supervision of the care of children committed thereto, and the right of visitation and inspection of said institutions at all times.

6. Receive and keep on file annual reports from all institutions to which children subject to the jurisdiction of the juvenile court are committed; compile statistics regarding juvenile delinquency, make reports regarding juvenile delinquency, and study prevention and cure of juvenile delinquency.

7. Require and receive from the clerks of the courts of record within the state duplicates of the findings of the courts upon petitions for adoption, and keep records and compile statistics regarding adoptions.

8. License private child-placing agencies, make reports regarding them, and revoke such licenses.

9. Make such rules and regulations as may be necessary for the distribution and use of funds appropriated for child welfare services.

[C27, 31, 35, §3661-a1, -a2; C39, §**3661.018;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.3; 82 Acts, ch 1100, §8]

88 Acts, ch 1158, §52; 89 Acts, ch 19, §1; 90 Acts, ch 1204, §49

235.4 Licenses.

Licenses issued to private boarding homes for children and private child-placing agencies by the administrator shall remain in effect for the period for which issued, unless sooner revoked according to law. Thereafter each of such agencies shall apply to the administrator for a new license, and shall submit to such rules regarding licensing as the administrator prescribes.

[C39, §**3661.020;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.5]

90 Acts, ch 1204, §50

C91, §235.4

235.5 Inspections.

The department of inspections and appeals shall conduct inspections of private institutions for the care of dependent, neglected, and delinquent children in accordance with procedures established pursuant to chapters 10A and 17A.

90 Acts, ch 1204, §51

235.6 Short title.

This chapter shall be known and may be cited as *"The Child Welfare Act of 1937"*.

[C39, §**3661.021;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.6]

CHAPTER 235A

CHILD ABUSE

CHILD ABUSE PREVENTION

235A.1 Child abuse prevention program.
235A.2 to 235A.11 Transferred to §232.68 to 232.77.

CHILD ABUSE INFORMATION REGISTRY

235A.12 Legislative findings and purposes.
235A.13 Definitions.
235A.14 Creation and maintenance of a central registry.
235A.15 Authorized access — procedures involving other states.
235A.16 Requests for child abuse information.
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235A.18 Sealing and expungement of founded child abuse information.
235A.19 Examination, requests for correction or expungement and appeal.
235A.20 Civil remedy.
235A.21 Criminal penalties.
235A.22 Education program.
235A.23 Reports.
235A.24 Order for disclosure of child abuse information.

CHILD ABUSE PREVENTION

235A.1 Child abuse prevention program.

1. A program for the prevention of child abuse is established within the state department of human services. Any moneys appropriated by the general assembly for child abuse prevention shall be used by the department of human services solely for the purposes of child abuse prevention and shall not be expended for treatment or other service delivery programs regularly maintained by the department. Moneys appropriated for child abuse prevention shall be used by the department through contract with an agency or organization which shall administer the funds with maximum use of voluntary administrative services for the following:

a. Matching federal funds to purchase services relating to community-based programs for the prevention of child abuse and neglect.

b. Funding the establishment or expansion of community-based prevention projects or educa-

tional programs for the prevention of child abuse and neglect.

c. To study and evaluate community-based prevention projects and educational programs for the problems of families and children.

Funds for the programs or projects shall be applied for and received by a community-based volunteer coalition or council.

2. The director of human services may accept grants, gifts, and bequests from any source for the purposes designated in subsection 1. The director shall remit funds so received to the treasurer of state who shall deposit them in the general fund of the state for the use of the child abuse prevention program.

3. The child abuse prevention program advisory council is created consisting of five members appointed by and serving at the pleasure of the governor. Two members shall be appointed on the basis of expertise in the area of child abuse and neglect, and three members shall be private citizens. The council shall select its own chairperson. Members of the council are entitled to receive actual expenses incurred in the discharge of their duties. A member of the council may also be eligible to receive an additional expense allowance as provided in section 7E.6.

4. The advisory council shall:

a. Advise the director of human services and the administrator of the division of the department of human services responsible for child and family programs regarding expenditures of funds received for the child abuse prevention program.

b. Review the implementation and effectiveness of legislation and administrative rules concerning the child abuse prevention program.

c. Recommend changes in legislation and administrative rules to the general assembly and the appropriate administrative officials.

d. Require reports from state agencies and other entities as necessary to perform its duties.

e. Receive and review complaints from the public concerning the operation and management of the child abuse prevention program.

f. Approve grant proposals.

[82 Acts, ch 1259, §1]

83 Acts, ch 96, §157, 159; 87 Acts, ch 153, §8

235A.2 to 235A.11 Transferred to § 232.68 to 232.77.

CHILD ABUSE INFORMATION REGISTRY

Definitions applicable to this division, see §232.68

235A.12 Legislative findings and purposes.

The general assembly finds and declares that a central registry is required to provide a single source for the state-wide collection, maintenance and dissemination of child abuse information. Such a registry is imperative for increased effectiveness in dealing with the problem of child abuse. The general assembly also finds that vigorous protection of rights of individual privacy is an indispensable element of a fair and effective system of collecting, maintaining and disseminating child abuse information.

The purposes of this section and sections 235A.13 to 235A.23 are to facilitate the identification of victims or potential victims of child abuse by making available a single, statewide source of child abuse data; to facilitate research on child abuse by making available a single, statewide source of child abuse data; and to provide maximum safeguards against the unwarranted invasions of privacy which such a registry might otherwise entail.

[C75, 77, 79, 81, §235A.12]

84 Acts, ch 1035, §1

235A.13 Definitions.

As used in chapter 232, division III, part 2, and sections 235A.13 to 235A.23, unless the context otherwise requires:

1. *"Assessment data"* means any of the following information pertaining to the department's evaluation of a family:

a. Identification of the strengths and needs of the child, and of the child's parent, home, and family.

b. Identification of services available from the department and informal and formal services and other support available in the community to meet identified strengths and needs.

2. *"Child abuse information"* means any or all of the following data maintained by the department in a manual or automated data storage system and individually identified:

a. Report data.

b. Assessment data.

c. Disposition data.

3. *"Confidentiality"* means the withholding of information from any manner of communication, public or private.

4. *"Department"* means the department of human services.

5. *"Disposition data"* means information pertaining to an opinion or decision as to the occurrence of child abuse, including:

a. Any intermediate or ultimate opinion or decision reached by assessment personnel.

b. Any opinion or decision reached in the course of judicial proceedings.

c. The present status of any case.

6. *"Expungement"* means the process of destroying child abuse information.

7. *"Individually identified"* means any report, assessment, or disposition data which names the person or persons responsible or believed responsible for the child abuse.

8. *"Multidisciplinary team"* means a group of individuals who possess knowledge and skills re-

lated to the diagnosis, assessment, and disposition of child abuse cases and who are professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, mental health, social work, child development, education, law, juvenile probation, or law enforcement, or a group established pursuant to section 235B.1, subsection 1.

9. *"Near fatality"* means a bodily injury which involves substantial risk of death, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty and includes a serious bodily injury as described in section 702.18.

10. *"Report data"* means any of the following information pertaining to an assessment of an allegation of child abuse in which the department has determined the alleged child abuse meets the definition of child abuse:

a. The name and address of the child and the child's parents or other persons responsible for the child's care.

b. The age of the child.

c. The nature and extent of the injury, including evidence of any previous injury.

d. Additional information as to the nature, extent, and cause of the injury, and the identity of the person or persons alleged to be responsible for the injury.

e. The names and conditions of other children in the child's home.

f. A recording made of an interview conducted under chapter 232 in association with a child abuse assessment.

g. Any other information believed to be helpful in establishing the information in paragraph *"d"*.

11. *"Sealing"* means the process of removing child abuse information from authorized access as provided by this chapter.

[C75, 77, 79, 81, §235A.13; 82 Acts, ch 1066, §1]

84 Acts, ch 1035, §2; 87 Acts, ch 153, §9; 87 Acts, ch 182, §1; 92 Acts, ch 1143, §2; 97 Acts, ch 35, §13, 25; 97 Acts, ch 176, §6, 7, 27 – 31, 43; 99 Acts, ch 96, §26; 2000 Acts, ch 1137, §5, 14; 2002 Acts, ch 1074, §2

For additional definitions, see §232.68

Subsection 10, NEW paragraph f and former paragraph f redesignated as g

235A.14 Creation and maintenance of a central registry.

1. There is created within the state department of human services a central registry for child abuse information. The department shall organize and staff the registry and adopt rules for its operation.

2. The registry shall collect, maintain and disseminate child abuse information as provided for by this chapter.

3. The department shall maintain a toll-free telephone line, which shall be available on a twenty-four hour a day, seven-day a week basis and which the department of human services and all other persons may use to report cases of suspected child abuse and that all persons authorized by this chapter may use for obtaining child abuse information.

4. An oral report of suspected child abuse initially made to the central registry shall be immediately transmitted by the department to the appropriate county department of social services or law enforcement agency, or both.

5. The registry, upon receipt of a report of suspected child abuse, shall search the records of the registry, and if the records of the registry reveal any previous report of child abuse involving the same child or any other child in the same family, or if the records reveal any other pertinent information with respect to the same child or any other child in the same family, the appropriate office of the department of human services or law enforcement agency shall be immediately notified of that fact.

6. The central registry shall include report data and disposition data which is subject to placement in the central registry under section 232.71D. The central registry shall not include assessment data.

[C75, 77, 79, 81, §235A.14]

83 Acts, ch 96, §157, 159; 97 Acts, ch 176, §8

235A.15 Authorized access — procedures involving other states.

1. Notwithstanding chapter 22, the confidentiality of all child abuse information shall be maintained, except as specifically provided by this section.

2. Access to report data and disposition data subject to placement in the central registry pursuant to section 232.71D is authorized only to the following persons or entities:

a. Subjects of a report as follows:

(1) To a child named in a report as a victim of abuse or to the child's attorney or guardian ad litem.

(2) To a parent or to the attorney for the parent of a child named in a report as a victim of abuse.

(3) To a guardian or legal custodian, or that person's attorney, of a child named in a report as a victim of abuse.

(4) To a person or the attorney for the person named in a report as having abused a child.

b. Persons involved in an assessment of child abuse as follows:

(1) To a health practitioner or mental health professional who is examining, attending, or treating a child whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to a child believed to have been the victim of abuse is requested by the department.

(2) To an employee or agent of the department of human services responsible for the assessment

of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an assessment of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) To a multidisciplinary team, or to parties to an interagency agreement entered into pursuant to section 280.25, if the department of human services approves the composition of the multidisciplinary team or the relevant provisions of the interagency agreement and determines that access to the team or to the parties to the interagency agreement is necessary to assist the department in the diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to each mandatory reporter who reported the child abuse.

(6) To the county attorney.

(7) To the juvenile court.

(8) To a licensing authority for a facility providing care to a child named in a report, if the licensing authority is notified of a relationship between facility policy and the alleged child abuse under section 232.71B.

(9) To a person or agency responsible for the care or supervision of a child named in a report as a victim of abuse or a person named in a report as having abused a child, if the juvenile court or department deems access to report data and disposition data by the person or agency to be necessary.

c. Individuals, agencies, or facilities providing care to a child, but only with respect to disposition data and, if authorized in law to the extent necessary for purposes of an employment evaluation, report data, for cases of founded child abuse placed in the central registry in accordance with section 232.71D as follows:

(1) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

(2) To an administrator of a child foster care facility licensed under chapter 237 if the data concerns a person employed or being considered for employment by the facility.

(3) To an administrator of a child care facility registered or licensed under chapter 237A if the data concerns a person employed or being considered for employment by or living in the facility.

(4) To the superintendent of the Iowa braille and sight saving school if the data concerns a person employed or being considered for employment or living in the school.

(5) To the superintendent of the school for the deaf if the data concerns a person employed or being considered for employment or living in the school.

(6) To an administrator of a community mental health center accredited under chapter 230A if the data concerns a person employed or being considered for employment by the center.

(7) To an administrator of a facility or program operated by the state, a city, or a county which provides services or care directly to children, if the data concerns a person employed by or being considered for employment by the facility or program.

(8) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the data concerns a person employed by or being considered by the agency for employment.

(9) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the data concerns a person employed by or being considered by the agency for employment.

(10) To an administrator of a child care resource and referral agency which has entered into an agreement authorized by the department to provide child care resource and referral services. Access is authorized if the data concerns a person providing child care services or a person employed by a provider of such services and the agency includes the provider as a referral or the provider has requested to be included as a referral.

(11) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

d. Report data and disposition data, and assessment data to the extent necessary for resolution of the proceeding, relating to judicial and administrative proceedings as follows:

(1) To a juvenile court involved in an adjudication or disposition of a child named in a report.

(2) To a district court upon a finding that data is necessary for the resolution of an issue arising in any phase of a case involving child abuse.

(3) To a court or administrative agency hearing an appeal for correction of report data and disposition data as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of report data and disposition data as provided in section 235A.19.

(5) To a probation or parole officer, juvenile court officer, court appointed special advocate as defined in section 232.2, or adult correctional officer having custody or supervision of, or conducting an investigation for a court or the board of parole regarding, a person named in a report as a victim of child abuse or as having abused a child.

(6) To the department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

(7) Each board of examiners specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

e. Others as follows, but only with respect to

report data and disposition data for cases of founded child abuse subject to placement in the registry pursuant to section 232.71D:

(1) To a person conducting bona fide research on child abuse, but without data identifying individuals named in a child abuse report, unless having that data open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the child, the child's guardian or guardian ad litem and the person named in a report as having abused a child give permission to release the data.

(2) To registry or department personnel when necessary to the performance of their official duties or to a person or agency under contract with the department to carry out official duties and functions of the department.

(3) To the department of justice for the sole purpose of the filing of a claim for restitution or compensation pursuant to sections 915.21 and 915.84. Data provided pursuant to this subparagraph is subject to the provisions of section 915.90.

(4) To a legally constituted child protection agency of another state which is investigating or assessing or treating a child named in a report as having been abused or which is investigating or assessing or treating a person named as having abused a child.

(5) To a public or licensed child placing agency of another state responsible for an adoptive or foster care preplacement or placement evaluation.

(6) To the attorney for the department of human services who is responsible for representing the department.

(7) To the child advocacy and local citizen foster care review boards created pursuant to sections 237.16 and 237.19.

(8) To an employee or agent of the department of human services regarding a person who is providing child care if the person is not registered or licensed to operate a child care facility.

(9) To the board of educational examiners created under chapter 272 for purposes of determining whether a practitioner's license should be denied or revoked.

(10) To a legally constituted child protection agency in another state if the agency is conducting a records check of a person who is providing care or has applied to provide care to a child in the other state.

(11) To the legally authorized protection and advocacy agency recognized in section 135C.2, if a person identified in the information as a victim or a perpetrator of abuse resides in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(12) To the department of human services for a record check relating to employment or residence pursuant to section 218.13.

(13) To the Iowa board for the treatment of sexual abusers for purposes of certifying sex offender treatment providers.

(14) To an employee or agent of the department responsible for registering or licensing or approving the registration or licensing of an agency or facility, or to an individual providing care to a child and regulated by the department.

(15) To an employee of the department responsible for an adoptive placement, a certified adoption investigator, or licensed child placing agency responsible for an adoptive placement.

(16) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(17) To the department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

f. Only with respect to disposition data for cases of founded child abuse subject to placement in the central registry pursuant to section 232.71D, to a person who submits written authorization from an individual allowing the person access to data pursuant to this subsection on behalf of the individual in order to verify whether the individual is named in a founded child abuse report as having abused a child.

3. Access to report data and disposition data for a case of child abuse determined to meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following persons:

a. Subjects of a report identified in subsection 2, paragraph *"a"*.

b. Persons involved in an assessment of child abuse identified in subsection 2, paragraph *"b"*, subparagraphs (2), (3), (4), (6), (7), and (9).

c. Others identified in subsection 2, paragraph *"e"*, subparagraphs (2), (3), and (6).

d. The department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

4. Access to report data for a case of child abuse determined to not meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following:

a. Subjects of a report identified in subsection 2, paragraph *"a"*.

b. Persons involved in an assessment of child abuse identified in subsection 2, paragraph *"b"*, subparagraphs (2), (6), and (7).

c. Others identified in subsection 2, paragraph *"e"*, subparagraph (2).

d. The department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

5. Access to disposition data subject to place-

ment in the central registry pursuant to section 232.71D is authorized to the department of personnel or to the personnel office of a public employer, as defined in section 20.3, as necessary for presentation in grievance or arbitration procedures provided for in sections 19A.14 and 20.18. Disposition data introduced into a grievance or arbitration proceeding shall not be considered a part of the public record of a case.

6. *a.* If a child who is a legal resident of another state is present in this state and a report of child abuse is made concerning the child, the department shall act to ensure the safety of the child. The department shall contact the child's state of legal residency to coordinate the assessment of the report. If the child's state of residency refuses to conduct an assessment, the department shall commence an appropriate assessment.

b. If a report of child abuse is made concerning an alleged perpetrator who resides in this state and a child who resides in another state, the department shall assist the child's state of residency in conducting an assessment of the report. The assistance shall include but is not limited to an offer to interview the alleged perpetrator and any other relevant source. If the child's state of residency refuses to conduct an assessment of the report, the department shall commence an appropriate assessment. The department shall seek to develop protocols with states contiguous to this state for coordination in the assessment of a report of child abuse when a person involved with the report is a resident of another state.

7. Upon the request of a person listed in this subsection, child abuse information relating to a specific case of child abuse involving a fatality or near fatality to a child and reported to the department shall be disclosed to that person by the director of human services. The purpose of the disclosure is to provide for oversight of the department and others involved with the state's child protection system in order to improve the system. After completing a review of the child abuse information received, an authorized requester may issue a report to the governor regarding the specific case of child abuse. The following persons are authorized to make a request and receive child abuse information under this section relating to a specific case of child abuse involving a fatality or near fatality to a child:

a. The governor or the governor's designee.

b. The member of the senate or employee of the general assembly designated by the majority leader or minority leader of the senate.

c. The member of the house of representatives or employee of the general assembly designated by the speaker or minority leader of the house of representatives.

8. Upon the request of the governor, the department shall disclose child abuse information to the governor relating to a specific case of child abuse reported to the department.

9. If the department receives a request for child abuse information relating to a case of a fatality or near fatality to a child, within five business days of receiving the request the director of human services or the director's designee shall consult with the county attorney responsible for prosecution of any alleged perpetrator of the fatality or near fatality and shall disclose child abuse information relating to the case and the child in accordance with this subsection. The director or the director's designee shall release all child abuse information associated with the case and the child, except for the following:

a. The substance or content of any mental health or psychological information that is confidential under chapter 228.

b. Information that constitutes the substance or contains the content of an attorney work product or is a privileged communication under section 622.10.

c. Information pertaining to the child, the child's family, or any other person that is not directly related to the cause of the fatality or near fatality.

d. Information that would reveal the identity of any individual who provided information relating to a report of child abuse or an assessment of such a report involving the child.

e. Information that the director or the director's designee reasonably believes is likely to cause mental or physical harm to a sibling of the child or to another child residing in the child's household.

f. Information that the director or the director's designee reasonably believes is likely to jeopardize the prosecution of any alleged perpetrator of the fatality or near fatality.

g. Information that the director or the director's designee reasonably believes is likely to jeopardize the rights of any alleged perpetrator of the fatality or near fatality to a fair trial.

h. Information that the director or the director's designee reasonably believes is likely to undermine an ongoing or future criminal investigation.

i. Information, the release of which is a violation of federal law or regulation.

[C75, 77, 79, 81, §235A.15; 82 Acts, ch 1066, §2]

83 Acts, ch 96, §157, 159; 85 Acts, ch 173, §16; 85 Acts, ch 174, §1; 86 Acts, ch 1177, §2; 87 Acts, ch 153, §10, 11; 88 Acts, ch 1158, §53; 89 Acts, ch 65, §1; 89 Acts, ch 283, §25; 90 Acts, ch 1221, §3, 4; 90 Acts, ch 1248, §1; 90 Acts, ch 1249, §1; 91 Acts, ch 97, §30; 91 Acts, ch 138, §5, 6; 92 Acts, ch 1141, §4; 92 Acts, ch 1143, §3, 4; 93 Acts, ch 76, §3, 4; 94 Acts, ch 1023, §43; 94 Acts, ch 1156, §1; 95 Acts, ch 93, §1 – 3; 95 Acts, ch 182, §15, 16; 96 Acts, ch 1175, §4; 96 Acts, ch 1183, §28; 97 Acts, ch 176, §9, 32 – 37, 43; 98 Acts, ch 1090, §64, 84; 98 Acts, ch 1100, §97; 98 Acts, ch 1115, §3; 99 Acts, ch 61, §10 – 12, 14; 99 Acts, ch 111, §8; 99 Acts, ch 141, §31; 99 Acts, ch 192, §33; 2000 Acts, ch 1123, §3; 2000 Acts, ch

1137, §6 – 9, 14; 2000 Acts, ch 1153, §1; 2001 Acts, ch 8, §2; 2002 Acts, ch 1034, §2; 2002 Acts, ch 1162, §19

See §235A.24

2000 amendment to subsection 1; subsection 2, paragraph b, subparagraph (5); subsection 2, paragraph f; and adding subsections 7 – 9 apply to disclosures of information made on or after April 21, 2000, related to child abuse reported before, on, or after that date; 2000 Acts, ch 1137, §14

Subsection 2, paragraph c, NEW subparagraph (11)

Subsection 2, paragraph e, subparagraph (7) amended

235A.16 Requests for child abuse information.

1. Requests for child abuse information shall be in writing on forms prescribed by the department, except as otherwise provided by subsection 2. Request forms shall require information sufficient to demonstrate authorized access.

2. *a.* Requests for child abuse information may be made orally by telephone where a person making such a request believes that the information is needed immediately and where information sufficient to demonstrate authorized access is provided. In the event that a request is made orally by telephone, a written request form shall nevertheless be filed within seventy-two hours.

b. The department of inspections and appeals may provide access to the single contact repository established under section 135C.33, subsection 6, for criminal and abuse history checks made by those employers, agencies, and other persons that are authorized access to child abuse information under section 235A.15 and are required by law to perform such checks.

3. Subsections 1 and 2 do not apply to child abuse information that is disseminated to an employee of the department of human services, to a juvenile court, or to the attorney representing the department as authorized by section 235A.15.

[C75, 77, 79, 81, §235A.16]

87 Acts, ch 153, §12; 2001 Acts, ch 191, §40

235A.17 Redissemination of child abuse information.

1. A person, agency or other recipient of child abuse information authorized to receive such information shall not redisseminate such information, except that redissemination shall be permitted when all of the following conditions apply:

a. The redissemination is for official purposes in connection with prescribed duties or, in the case of a health practitioner, pursuant to professional responsibilities.

b. The person to whom such information would be redisseminated would have independent access to the same information under section 235A.15.

c. A written record is made of the redissemination, including the name of the recipient and the date and purpose of the redissemination.

d. The written record is forwarded to the registry within thirty days of the redissemination.

2. The department of human services may notify orally the mandatory reporter in an individual child abuse case of the results of the case assessment and of the confidentiality provisions of sections 235A.15 and 235A.21. The department shall subsequently transmit a written notice to the mandatory reporter of the results and confidentiality provisions. If the report data and disposition data have been placed in the registry as founded child abuse pursuant to section 232.71D, a copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in section 235A.18. Otherwise, a copy of the written notice shall be retained by the department with the case file.

3. For the purposes of this subsection, *"subject of a child abuse report"* means any individual listed in section 235A.15, subsection 2, paragraph *"a"*, other than the attorney or guardian ad litem of such individual. An individual who is the subject of a child abuse report may redisseminate to the governor or the governor's designee or to a member of the general assembly or an employee of the general assembly designated by the member, child abuse information that was disseminated to the individual by the department or other official source. The child abuse information may also include the following related information that the individual is allowed under law to possess: department of human services information described in section 217.30, subsection 1; mental health information as defined in section 228.1; and juvenile court social records and other information in official juvenile court records described in section 232.147. A person who receives confidential child abuse information and related information redisseminated under this subsection shall not further disseminate, communicate, or attempt to communicate the information to a person who is not authorized by this section or other provision of law to have access to the information.

[C75, 77, 79, 81, §235A.17]

84 Acts, ch 1279, §23; 87 Acts, ch 153, §13; 97 Acts, ch 35, §17, 25; 97 Acts, ch 176, §10, 38, 43; 2000 Acts, ch 1137, §10, 14

Subsection 3 applies to disclosures of information made on or after April 21, 2000, related to child abuse reported before, on, or after that date; 2000 Acts, ch 1137, §14

235A.18 Sealing and expungement of founded child abuse information.

1. Report data and disposition data relating to a particular case of alleged abuse which has been determined to be founded child abuse and placed in the central registry in accordance with section 232.71D shall be maintained in the registry as follows:

a. Report and disposition data relating to a particular case of alleged child abuse shall be sealed ten years after the initial placement of the data in the registry unless good cause be shown why the data should remain open to authorized access. If a subsequent report of an alleged case of child abuse involving the child named in the initial

data placed in the registry as the victim of abuse or a person named in the data as having abused a child is received by the department within this ten-year period, the data shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the data should remain open to authorized access. However, such report and disposition data shall be made available to the department of justice if the department requests access to the alleged child abuse records for purposes of review by the prosecutor's review committee or commitment of sexually violent predators under chapter 229A.

b. Data sealed in accordance with this section shall be expunged eight years after the date the data was sealed. However, if the report data and the disposition data involve child abuse as defined in section 232.68, subsection 2, paragraph *"c"* or *"e"*, the data shall not be expunged for a period of thirty years. Sealed data shall be made available to the department of justice upon request if the prosecutor's review committee is reviewing records or if a prosecuting attorney has filed a petition to commit a sexually violent predator under chapter 229A.

2. The juvenile or district court and county attorney shall expunge child abuse information upon notice from the registry. The supreme court shall prescribe rules establishing the period of time child abuse information is retained by the juvenile and district courts. A county attorney shall not retain child abuse information in excess of the time period the information would be retained under the rules prescribed by the supreme court. Child abuse information relating to a particular case of child abuse placed in the central registry that a juvenile or district court determines is unfounded in a written finding based upon a preponderance of evidence shall be expunged from the central registry.

3. If required by this subsection, for child abuse information in the central registry as of July 1, 1997, the central registry shall perform a review of the information utilizing the requirements for referral of child abuse information to the central registry as founded child abuse under section 232.71D. If the review indicates the information would not be placed in the registry as founded child abuse under section 232.71D, the information shall be expunged from the central registry. Child abuse information which is expunged from the central registry under this subsection shall not be retained by the department any longer than the time period in the rule for retaining information which is not placed in the central registry, allowing credit for the amount of time the information was held in the central registry. If the review indicates the child abuse information would be placed in the central registry under section 232.71D, the information shall be subject to the provisions of subsection 1, as to the time period the information is to be retained in the registry. A review shall be performed under any of the following conditions:

a. The department is considering the information while performing a record check evaluation under law or administrative rule.

b. A review is indicated under a procedure for performing reviews adopted by the department.

4. The department of human services shall adopt rules establishing the period of time child abuse information which is not maintained in the central registry is retained by the department.

[C75, 77, 79, 81, §235A.18]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §24; 85 Acts, ch 173, §17; 89 Acts, ch 230, §20; 90 Acts, ch 1221, §5, 6; 93 Acts, ch 76, §5, 6; 97 Acts, ch 176, §11; 99 Acts, ch 61, §13, 14; 2000 Acts, ch 1137, §11, 14; 2000 Acts, ch 1154, §18

2000 amendment to subsection 2 applies to disclosures of information made on or after April 21, 2000, related to child abuse reported before, on, or after that date; 2000 Acts, ch 1137, §14

235A.19 Examination, requests for correction or expungement and appeal.

1. A subject of a child abuse report, as identified in section 235A.15, subsection 2, paragraph *"a"*, shall have the right to examine report data and disposition data which refers to the subject. The department may prescribe reasonable hours and places of examination.

2. *a.* A subject of a child abuse report may file with the department within six months of the date of the notice of the results of an assessment performed in accordance with section 232.71B, a written statement to the effect that report data and disposition data referring to the subject is in whole or in part erroneous, and may request a correction of that data or of the findings of the assessment report. The department shall provide the subject with an opportunity for an evidentiary hearing pursuant to chapter 17A to correct the data or the findings, unless the department corrects the data or findings as requested. The department may defer the hearing until the conclusion of a pending juvenile or district court case relating to the data or findings.

b. The department shall not disclose any report data or disposition data until the conclusion of the proceeding to correct the data or findings, except as follows:

(1) As necessary for the proceeding itself.

(2) To the parties and attorneys involved in a judicial proceeding.

(3) For the regulation of child care or child placement.

(4) Pursuant to court order.

(5) To the subject of an assessment or a report.

(6) For the care or treatment of a child named in a report as a victim of abuse.

(7) To persons involved in an assessment of child abuse.

(8) For statutorily authorized record checks

for employment of an individual by a provider of adult home care, adult health facility care, or other adult placement facility care.

3. The subject of a child abuse report may appeal the decision resulting from a hearing held pursuant to subsection 2 to the district court of Polk county or to the district court of the district in which the subject of the child abuse report resides. Immediately upon appeal the court shall order the department to file with the court a certified copy of the report data or disposition data. Appeal shall be taken in accordance with chapter 17A.

4. Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access to the record and evidence shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. A person other than the appellant shall not permit a copy of any of the testimony or pleadings or the substance of the testimony or pleadings to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this subsection shall be a public offense punishable under section 235A.21.

5. Whenever the department corrects or eliminates data as requested or as ordered by the court, the department shall advise all persons who have received the incorrect data of such fact. Upon application to the court and service of notice on the department, any subject of a child abuse report may request and obtain a list of all persons who have received report data or disposition data referring to the subject.

6. In the course of any proceeding provided for by this section, the identity of the person who reported the disputed data and the identity of any person who has been reported as having abused a child may be withheld upon a determination by the department that disclosure of their identities would be detrimental to their interests.

[C75, 77, 79, 81, §235A.19]

85 Acts, ch 173, §18; 89 Acts, ch 230, §21; 92 Acts, ch 1143, §5; 94 Acts, ch 1130, §10; 95 Acts, ch 49, §3; 97 Acts, ch 35, §21, 25; 97 Acts, ch 176, §12, 39, 40, 43; 98 Acts, ch 1100, §98; 2000 Acts, ch 1067, §2

235A.20 Civil remedy.

Any aggrieved person may institute a civil action for damages under chapter 669 or 670 or to restrain the dissemination of child abuse information in violation of this chapter, and any person, agency or other recipient proven to have disseminated or to have requested and received child abuse information in violation of this chapter, or any employee of the department who knowingly destroys assessment data except in accordance with rule as established by the department for retention of child abuse information under section 235A.18 shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney's fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

[C75, 77, 79, 81, §235A.20]

97 Acts, ch 176, §13, 41, 43

235A.21 Criminal penalties.

1. Any person who willfully requests, obtains, or seeks to obtain child abuse information under false pretenses, or who willfully communicates or seeks to communicate child abuse information to any agency or person except in accordance with sections 235A.15 and 235A.17, or any person connected with any research authorized pursuant to section 235A.15 who willfully falsifies child abuse information or any records relating to child abuse information, or any employee of the department who knowingly destroys assessment data except in accordance with rule as established by the department for retention of child abuse information under section 235A.18 is guilty of a serious misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate child abuse information except in accordance with sections 235A.15 and 235A.17 shall be guilty of a simple misdemeanor.

2. Any reasonable grounds for belief that a person has violated any provision of this chapter shall be grounds for the immediate withdrawal of any authorized access such person might otherwise have to child abuse information.

[C75, 77, 79, 81, §235A.21]

97 Acts, ch 176, §14, 42, 43

235A.22 Education program.

The department of human services shall require an educational program for employees of the department with access to child abuse information on the proper use and control of child abuse information.

[C75, 77, 79, 81, §235A.22]

97 Acts, ch 176, §15

235A.23 Reports.

1. The department of human services may compile statistics, conduct research, and issue reports on child abuse, provided identifying details of the subject of child abuse reports are deleted from any report issued.

2. The department shall issue an annual report on its administrative operation, including information as to the number of requests for child abuse data, the proportion of requests attributable to each type of authorized access, the frequency and nature of irregularities, and other pertinent matters.

[C75, 77, 79, 81, §235A.23]

87 Acts, ch 153, §14; 97 Acts, ch 176, §16

235A.24 Order for disclosure of child abuse information.

A person whose request for child abuse information under section 235A.15, subsection 9, is denied may apply to the juvenile court for an order compelling disclosure of the information. The application shall state in reasonable detail the factors in support of the application. The juvenile court shall have jurisdiction to issue the order. A hearing shall be set immediately upon filing of an application under this section and subsequent proceedings shall be accorded priority by other courts. After the court has reviewed the child abuse information relating to the case in camera, unless the court finds that a restriction listed in section 235A.15, subsection 9, is applicable, the court shall issue an order compelling disclosure of the child abuse information.

2000 Acts, ch 1137, §12, 14

Section applies to disclosures of information made on or after April 21, 2000, related to child abuse reported before, on, or after that date; 2000 Acts, ch 1137, §14

CHAPTER 235B

ADULT ABUSE

Legislative fiscal bureau to monitor reporting, investigations, workload and performance of personnel, and report annually by February 1; elder affairs, human services, and inspections and appeals departments to cooperate; 87 Acts, ch 182, §11

235B.1 Dependent adult abuse services.
235B.2 Definitions.
235B.3 Dependent adult abuse reports.
235B.3A Prevention of additional abuse — notification of rights.

DEPENDENT ADULT ABUSE INFORMATION REGISTRY

235B.4 Legislative findings and purposes.
235B.5 Creation and maintenance of a central registry.
235B.6 Authorized access.
235B.7 Requests for dependent adult abuse information.
235B.8 Redissemination of dependent adult abuse information.
235B.9 Sealing and expungement of dependent adult abuse information.
235B.10 Examination, requests for correction or expungement and appeal.
235B.11 Civil remedy.
235B.12 Criminal penalties.
235B.13 Registry reports.
235B.14 and 235B.15 Reserved.
235B.16 Information, education, and training requirements.
235B.17 Provision of protective services with the consent of dependent adult — caretaker refusal.
235B.18 Provision of services to dependent adult who lacks capacity to consent — hearing — findings.
235B.19 Emergency order for protective services.
235B.20 Dependent adult abuse — initiation of charges — penalty.

235B.1 Dependent adult abuse services.

The department shall establish and operate a dependent adult abuse services program. The program shall emphasize the reporting and evaluation of cases of abuse of a dependent adult who is unable to protect the adult's own interests or unable to perform activities necessary to meet essential human needs. The program shall include but is not limited to:

1. The establishment of local or regional multidisciplinary teams to assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to victims of dependent adult abuse. The membership of a team shall include individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, law, law enforcement, or other disciplines relative to dependent adults. Members of a team shall include, but are not limited to, persons representing the area agencies on aging, county attorneys, health care providers, and other persons involved in advocating or providing services to dependent adults.

2. Provisions for information sharing and case consultation among service providers, care providers, and victims of dependent adult abuse.

3. Procedures for referral of cases among service providers, including the referral of victims of dependent adult abuse residing in licensed health care facilities.

4. *a.* The establishment of a dependent adult

protective advisory council. The advisory council shall do all of the following:

(1) Advise the director of human services and the administrator of the division of child and family services of the department of human services regarding dependent adult abuse.

(2) Evaluate state law and rules and make recommendations to the general assembly and to executive branch departments regarding laws and rules concerning dependent adults.

(3) Receive and review recommendations and complaints from the public concerning the dependent adult abuse services program.

b. (1) The advisory council shall consist of ten members. Six members shall be appointed by and serve at the pleasure of the governor. Four of the members appointed shall be appointed on the basis of knowledge and skill related to expertise in the area of dependent adult abuse including professionals practicing in the disciplines of medicine, public health, mental health, long-term care, social work, law, and law enforcement. Two of the members appointed shall be members of the general public with an interest in the area of dependent adult abuse. In addition, the membership of the council shall include the director or the director's designee of the department of human services, the department of elder affairs, the Iowa department of public health, and the department of inspections and appeals.

(2) The members of the advisory council shall be appointed to terms of four years beginning May 1. Appointments shall comply with sections 69.16 and 69.16A. Vacancies shall be filled in the same manner as the original appointment.

(3) Members shall receive actual expenses incurred while serving in their official capacity.

(4) The advisory council shall select a chairperson, annually, from its membership.

83 Acts, ch 96, §159, 160; 83 Acts, ch 153, §4; 84 Acts, ch 1178, §3; 85 Acts, ch 180, §1; 87 Acts, ch 182, §2 – 8; 88 Acts, ch 1238, §2; 89 Acts, ch 24, §2, 3; 90 Acts, ch 1204, §52; 90 Acts, ch 1271, §1509; 91 Acts, ch 231, §1; 96 Acts, ch 1130, §1

235B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Caretaker"* means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

2. *"Court"* means the district court.

3. *"Department"* means the department of human services.

4. *"Dependent adult"* means a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.

5. *a. "Dependent adult abuse"* means:

(1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

(a) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.

(b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(c) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(d) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.

(2) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

(3) Sexual exploitation of a dependent adult who is a resident of a health care facility, as defined in section 135C.1, by a caretaker providing services to or employed by the health care facility, whether within the health care facility or at a location outside of the health care facility.

"Sexual exploitation" means any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or dependent adult, which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

b. "Dependent adult abuse" does not include any of the following:

(1) Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

(2) Circumstances in which the dependent adult's caretaker, acting in accordance with the

dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

(3) The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin or guardian pursuant to the applicable procedures under chapter 125, 222, 229, or 633.

6. *"Emergency shelter services"* means and includes, but is not limited to, secure crisis shelters or housing for victims of dependent adult abuse.

7. *"Family or household member"* means a spouse, a person cohabiting with the dependent adult, a parent, or a person related to the dependent adult by consanguinity or affinity, but does not include children of the dependent adult who are less than eighteen years of age.

8. *"Immediate danger to health or safety"* means a situation in which death or severe bodily injury could reasonably be expected to occur without intervention.

9. *"Individual employed as an outreach person"* means a natural person who, in the course of employment, makes regular contacts with dependent adults regarding available community resources.

10. *"Legal holiday"* means a legal public holiday as defined in section 1C.1.

11. *"Person"* means person as defined in section 4.1.

12. *"Recklessly"* means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

13. *"Serious injury"* means a disabling mental illness, or a bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

14. *"Support services"* includes but is not limited to community-based services including area agency on aging assistance, mental health services, fiscal management, home health services, housing-related services, counseling services, transportation services, adult day services, respite services, legal services, and advocacy services.

87 Acts, ch 182, §9; 88 Acts, ch 1238, §3; 91 Acts, ch 231, §2; 92 Acts, ch 1143, §6, 7; 93 Acts, ch 76, §7; 95 Acts, ch 51, §3; 96 Acts, ch 1130, §2; 2001 Acts, ch 64, §7

235B.3 Dependent adult abuse reports.

1. The department shall receive dependent adult abuse reports and shall collect, maintain, and disseminate the reports by establishing a central registry for dependent adult abuse information. The department shall evaluate the reports expeditiously. However, the department of inspections and appeals is solely responsible for the evaluation and disposition of dependent adult abuse cases within health care facilities and shall inform the department of human services of such evaluations and dispositions.

Reports of dependent adult abuse which is the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments only and shall not be included in the central registry.

2. All of the following persons shall report suspected dependent adult abuse to the department:

a. A social worker.

b. A certified psychologist.

c. A person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse, including:

(1) A member of the staff of a community mental health center, a member of the staff of a hospital, a member of the staff or employee of a public or private health care facility as defined in section 135C.1.

(2) A peace officer.

(3) An in-home homemaker-home health aide.

(4) An individual employed as an outreach person.

(5) A health practitioner, as defined in section 232.68.

(6) A member of the staff or an employee of a supported community living service, sheltered workshop, or work activity center.

d. A person who performs inspections of elder group homes for the department of elder affairs and a resident advocate committee member assigned to an elder group home pursuant to chapter 231B.

3. *a.* If a staff member or employee is required to report pursuant to this section, the person shall immediately notify the person in charge or the person's designated agent, and the person in charge or the designated agent shall make the report by the end of the next business day.

b. The employer or supervisor of a person who is required to or may make a report pursuant to this section shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

4. Any other person who believes that a dependent adult has suffered abuse may report the suspected abuse to the department of human services.

5. Following the reporting of suspected dependent adult abuse, the department of human services shall complete an assessment of necessary services and shall make appropriate referrals for receipt of these services. The assessment shall include interviews with the dependent adult, and, if appropriate, with the alleged perpetrator of the dependent adult abuse and with any person believed to have knowledge of the circumstances of the case. The department may provide necessary protective services and may establish a sliding fee schedule for those persons able to pay a portion of the protective services.

6. Upon a showing of probable cause that a dependent adult has been abused, a court may authorize a person, also authorized by the department, to make an evaluation, to enter the residence of, and to examine the dependent adult. Upon a showing of probable cause that a dependent adult has been financially exploited, a court may authorize a person, also authorized by the department, to make an evaluation, and to gain access to the financial records of the dependent adult.

7. The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, a social services agency in the state, or any person who is required pursuant to subsection 2 to report dependent adult abuse, whether or not the person made the specific dependent adult abuse report, shall cooperate and assist in the evaluation upon the request of the department. If the department's assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

a. If, upon completion of the evaluation or upon referral from the department of inspections and appeals, the department determines that the best interests of the dependent adult require court action, the department shall initiate action for the appointment of a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633, or shall pursue other remedies provided by law. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action and shall appear and represent the department at all district court proceedings.

b. The department shall assist the court during all stages of court proceedings involving a suspected case of dependent adult abuse.

c. In every case involving abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this section, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

8. A person participating in good faith in reporting or cooperating with or assisting the department in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participating in good faith in a judicial proceeding resulting from the report or cooperation or assistance or relating to the subject matter of the report, cooperation, or assistance.

9. It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 4, or cooperating with, or assisting the department of human services in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person's reporting or assistance relative to the instance of dependent adult abuse. A person or employer found in violation of this subsection is guilty of a simple misdemeanor.

10. A person required by this section to report a suspected case of dependent adult abuse who knowingly and willfully fails to do so commits a simple misdemeanor. A person required by this section to report a suspected case of dependent adult abuse who knowingly fails to do so or who knowingly, in violation of subsection 3, interferes

with the making of such a report or applies a requirement that results in such a failure is civilly liable for the damages proximately caused by the failure.

11. The department of inspections and appeals shall adopt rules which require licensed health care facilities to separate an alleged dependent adult abuser from a victim following an allegation of perpetration of abuse and prior to the completion of an investigation of the allegation.

91 Acts, ch 231, §3; 92 Acts, ch 1143, §8, 9; 93 Acts, ch 72, §6; 95 Acts, ch 51, §4; 96 Acts, ch 1130, §3 – 5; 98 Acts, ch 1181, §13; 99 Acts, ch 129, §17; 2001 Acts, ch 122, §7 – 10

235B.3A Prevention of additional abuse — notification of rights.

If a peace officer has reason to believe that dependent adult abuse, which is criminal in nature, has occurred, the officer shall use all reasonable means to prevent further abuse, including but not limited to any of the following:

1. If requested, remaining on the scene as long as there is a danger to the dependent adult's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain at the scene, assisting the dependent adult in leaving the residence and securing support services or emergency shelter services.

2. Assisting the dependent adult in obtaining medical treatment necessitated by the dependent adult abuse, including providing assistance to the dependent adult in obtaining transportation to the emergency room of the nearest hospital.

3. Providing a dependent adult with immediate and adequate notice of the dependent adult's rights. The notice shall consist of handing the dependent adult a copy of the following written statement, requesting the dependent adult to read the card and asking the dependent adult whether the dependent adult understands the rights:

"*a.* You have the right to ask the court for the following help on a temporary basis:

(1) Keeping the alleged perpetrator away from you, your home, and your place of work.

(2) The right to stay at your home without interference from the alleged perpetrator.

(3) Professional counseling for you, your family, or household members, and the alleged perpetrator of the dependent adult abuse.

b. If you are in need of medical treatment, you have the right to request that the peace officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

c. If you believe that police protection is needed for your physical safety, you have the right to request that the peace officer present remain at the scene until you and other affected parties can leave or safety is otherwise ensured."

The notice shall also contain the telephone number of the local emergency shelter services, support services, or crisis lines operating in the area.

96 Acts, ch 1130, §6

DEPENDENT ADULT ABUSE
INFORMATION REGISTRY

235B.4 Legislative findings and purposes.

The general assembly finds and declares that a central registry is required to provide a single source for the statewide collection, maintenance, and dissemination of dependent adult abuse information. Such a registry is imperative for increased effectiveness in dealing with the problem of dependent adult abuse. The general assembly also finds that vigorous protection of rights of individual privacy is an indispensable element of a fair and effective system of collecting, maintaining, and disseminating dependent adult abuse information.

The purposes of this section and sections 235B.5 to 235B.13 are to facilitate the identification of victims or potential victims of dependent adult abuse by making available a single, statewide source of dependent adult abuse data; to facilitate research on dependent adult abuse by making available a single, statewide source of dependent adult abuse data; and to provide maximum safeguards against the unwarranted invasions of privacy which such a registry might otherwise entail.

91 Acts, ch 231, §4

235B.5 Creation and maintenance of a central registry.

1. There is created within the department a central registry for dependent adult abuse information. The department shall organize and staff the registry and adopt rules for its operation.

2. The registry shall collect, maintain, and disseminate dependent adult abuse information as provided in this chapter.

3. The department shall maintain a toll-free telephone line, which shall be available on a twenty-four-hour-a-day, seven-day-a-week basis and which the department and all other persons may use to report cases of suspected dependent adult abuse and that all persons authorized by this chapter may use for obtaining dependent adult abuse information.

4. An oral report of suspected dependent adult abuse initially made to the central registry shall be immediately transmitted by the department to the appropriate county department of human services or law enforcement agency, or both.

5. An oral report of suspected dependent adult abuse initially made to the central registry regarding a health care facility shall be transmitted

by the department to the department of inspections and appeals on the first working day following the submitting of the report.

6. The registry, upon receipt of a report of suspected dependent adult abuse, shall search the records of the registry, and if the records of the registry reveal any previous report of dependent adult abuse involving the same adult or if the records reveal any other pertinent information with respect to the same adult, the appropriate office of the department of human services or the appropriate law enforcement agency shall be immediately notified of that fact.

7. The central registry shall include but not be limited to report data, investigation data, and disposition data.

91 Acts, ch 231, §5

235B.6 Authorized access.

1. Notwithstanding chapter 22, the confidentiality of all dependent adult abuse information shall be maintained, except as specifically provided by subsections 2 and 3.

2. Access to dependent adult abuse information other than unfounded dependent adult abuse information is authorized only to the following persons:

a. A subject of a report including all of the following:

(1) To an adult named in a report as a victim of abuse or to the adult's attorney or guardian ad litem.

(2) To a guardian or legal custodian, or that person's attorney, of an adult named in a report as a victim of abuse.

(3) To the person or the attorney for the person named in a report as having abused an adult.

b. A person involved in an investigation of dependent adult abuse including all of the following:

(1) A health practitioner or mental health professional who is examining, attending, or treating an adult whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to an adult believed to have been the victim of abuse is requested by the department.

(2) An employee or agent of the department responsible for the investigation of a dependent adult abuse report or for the purpose of performing record checks as required under section 135C.33.

(3) A representative of the department involved in the certification or accreditation of an agency or program providing care or services to a dependent adult believed to have been a victim of abuse.

(4) A law enforcement officer responsible for assisting in an investigation of a dependent adult abuse allegation.

(5) A multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the investigation, diagnosis, assessment, and disposition of a case of dependent adult abuse.

(6) The mandatory reporter who reported the dependent adult abuse in an individual case.

(7) Each board of examiners specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

c. A person providing care to an adult including all of the following:

(1) A licensing authority for a facility providing care to an adult named in a report.

(2) A person authorized as responsible for the care or supervision of an adult named in a report as a victim of abuse or a person named in a report as having abused an adult if the court or registry deems access to dependent adult abuse information by such person to be necessary.

(3) An employee or agent of the department responsible for registering or licensing or approving the registration or licensing of a person, or to an individual providing care to an adult and regulated by the department.

(4) The legally authorized protection and advocacy agency recognized pursuant to section 135C.2 if a person identified in the information as a victim or a perpetrator of abuse resided in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(5) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the information concerns a person employed by or being considered by the agency for employment.

(6) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the information concerns a person employed by or being considered by the agency for employment.

(7) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

d. Relating to judicial and administrative proceedings, persons including all of the following:

(1) A court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving dependent adult abuse.

(2) A court or administrative agency hearing an appeal for correction of dependent adult abuse information as provided in section 235B.10.

(3) An expert witness at any stage of an appeal

necessary for correction of dependent adult abuse information as provided in section 235B.10.

e. Other persons including all of the following:

(1) A person conducting bona fide research on dependent adult abuse, but without information identifying individuals named in a dependent adult abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the adult, the adult's guardian or guardian ad litem, and the person named in a report as having abused an adult give permission to release the information.

(2) Registry or department personnel when necessary to the performance of their official duties or a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) The department of justice for the sole purpose of the filing of a claim for reparation pursuant to sections 915.21 and 915.84.

(4) A legally constituted adult protection agency of another state which is investigating or treating an adult named in a report as having been abused.

(5) The attorney for the department who is responsible for representing the department.

(6) A health care facility administrator or the administrator's designee, following the appeals process, for the purpose of hiring staff or continued employment of staff.

(7) To the administrator of an agency providing care to a dependent adult in another state, for the purpose of performing an employment background check.

(8) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(9) The department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

3. Access to unfounded dependent adult abuse information is authorized only to those persons identified in subsection 2, paragraph *"a"*, paragraph *"b"*, subparagraphs (2) and (6), and paragraph *"e"*, subparagraph (2).

91 Acts, ch 231, §6; 92 Acts, ch 1163, §50; 95 Acts, ch 50, §1; 95 Acts, ch 93, §4; 96 Acts, ch 1183, §29; 97 Acts, ch 42, §2; 98 Acts, ch 1090, §65, 84; 99 Acts, ch 141, §32; 2000 Acts, ch 1067, §3; 2000 Acts, ch 1153, §2; 2001 Acts, ch 8, §3; 2001 Acts, ch 20, §4, 5; 2002 Acts, ch 1034, §3

Subsection 2, paragraph c, NEW subparagraph (7)

235B.7 Requests for dependent adult abuse information.

1. Requests for dependent adult abuse information shall be in writing on forms prescribed by the department, except as otherwise provided by subsection 2. Request forms shall require information sufficient to demonstrate authorized access.

2. Requests for dependent adult abuse information may be made orally by telephone if a person making the request believes that the information is needed immediately and if information sufficient to demonstrate authorized access is provided. If a request is made orally by telephone, a written request form shall be filed within seventy-two hours of the oral request.

3. Subsections 1 and 2 do not apply to dependent adult abuse information that is disseminated to an employee of the department or to the attorney representing the department as authorized by section 235B.6.

91 Acts, ch 231, §7

235B.8 Redissemination of dependent adult abuse information.

1. A recipient of dependent adult abuse information authorized to receive the information shall not redisseminate the information, except that redissemination shall be permitted when all of the following conditions apply:

a. The redissemination is for official purposes in connection with prescribed duties or, in the case of a health practitioner, pursuant to professional responsibilities.

b. The person to whom such information would be redisseminated would have independent access to the same information under section 235B.6.

c. A written record is made of the redissemination, including the name of the recipient and the date and purpose of the redissemination.

d. The written record is forwarded to the registry within thirty days of the redissemination.

2. The department may notify, orally, the mandatory reporter in an individual dependent adult abuse case of the results of the case investigation and of the confidentiality provisions of sections 235B.6 and 235B.12. The department shall subsequently transmit a written notice to the mandatory reporter of the results and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in section 235B.9.

91 Acts, ch 231, §8

235B.9 Sealing and expungement of dependent adult abuse information.

1. Dependent adult abuse information relating to a particular case of suspected dependent adult abuse shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause is shown why the information should remain open to authorized access. If a subsequent report of a suspected case of dependent adult abuse involving the adult named in the initial report as the victim of abuse or a person named in such report as having abused an adult is

received by the registry within the ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause is shown why the information should remain open to authorized access.

2. Dependent adult abuse information which cannot be determined by a preponderance of the evidence to be founded or unfounded shall be expunged one year after the receipt of the initial report of abuse and dependent adult abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged immediately when it is determined to be unfounded.

3. However, if a correction of dependent adult abuse information is requested under section 235B.10 and the issue is not resolved at the end of one year the information shall be retained until the issue is resolved and if the dependent adult abuse information is not determined to be founded, the information shall be expunged immediately when it is determined to be unfounded.

4. The registry, at least annually, shall review and determine the current status of dependent adult abuse reports which are at least one year old and in connection with which no investigatory report has been filed by the department. If no investigatory report has been filed, the registry shall request the department to file a report. If a report is not filed within ninety days subsequent to a request, the report and relative information shall be sealed and remain sealed unless good cause is shown why the information should remain open to authorized access.

91 Acts, ch 231, §9

235B.10 Examination, requests for correction or expungement and appeal.

1. Any person or that person's attorney shall have the right to examine dependent adult abuse information in the registry which refers to that person. The registry may prescribe reasonable hours and places of examination.

2. A person may file with the department within six months of the date of the notice of the results of an investigation, a written statement to the effect that dependent adult abuse information referring to the person is in whole or in part erroneous, and may request a correction of that information or of the findings of the investigation report. The department shall provide the person with an opportunity for an evidentiary hearing pursuant to chapter 17A to correct the information or the findings, unless the department corrects the information or findings as requested. The department shall delay the expungement of information which is not determined to be founded until the conclusion of a proceeding to correct the information or findings. The department may defer the hearing until the conclusion of a court case relating to the information or findings.

3. The decision resulting from the hearing may be appealed to the court of Polk county by the person requesting the correction or to the court of the district in which the person resides. Immediately upon appeal the court shall order the department to file with the court a certified copy of the dependent adult abuse information. Appeal shall be taken in accordance with chapter 17A.

4. Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access to the record and evidence shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. A person other than the appellant shall not permit a copy of the testimony or pleadings or the substance of the testimony or pleadings to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this subsection shall be a public offense punishable under section 235B.12.

5. If the registry corrects or eliminates information as requested or as ordered by the court, the registry shall advise all persons who have received the incorrect information of the fact. Upon application to the court and service of notice on the registry, an individual may request and obtain a list of all persons who have received dependent adult abuse information referring to the individual.

6. In the course of any proceeding provided for by this section, the identity of the person who reported the disputed information and the identity of any person who has been reported as having abused an adult may be withheld upon a determination by the registry that disclosure of the person's identity would be detrimental to the person's interest.

91 Acts, ch 231, §10

235B.11 Civil remedy.

Any aggrieved person may institute a civil action for damages under chapter 669 or 670 or to restrain the dissemination of dependent adult abuse information in violation of this chapter, and any person proven to have disseminated or to have requested and received dependent adult abuse information in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney's fees incurred by the party bringing the action. In no case shall the award for damages be less than five hundred dollars.

91 Acts, ch 231, §11

235B.12 Criminal penalties.

1. Any person who willfully requests, obtains, or seeks to obtain dependent adult abuse information under false pretenses, or who willfully communicates or seeks to communicate dependent adult abuse information to any person except in

accordance with sections 235B.6 through 235B.8, or any person connected with any research authorized pursuant to section 235B.6 who willfully falsifies dependent adult abuse information or any records relating to the information is guilty of a serious misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate dependent adult abuse information except in accordance with sections 235B.6 through 235B.8 is guilty of a simple misdemeanor.

2. Any reasonable grounds for belief that a person has violated any provision of this chapter is grounds for the immediate withdrawal of any authorized access the person might otherwise have to dependent adult abuse information.

91 Acts, ch 231, §12

235B.13 Registry reports.

1. The registry may compile statistics, conduct research, and issue reports on dependent adult abuse, provided identifying details of the subjects of dependent adult abuse reports are deleted from any report issued.

2. The registry shall issue an annual report on its administrative operation, including information as to the number of requests for dependent adult abuse data, the proportion of requests attributable to each type of authorized access, the frequency and nature of irregularities, and other pertinent matters.

91 Acts, ch 231, §13

235B.14 and 235B.15 Reserved.

235B.16 Information, education, and training requirements.

1. The department of elder affairs, in cooperation with the department, shall conduct a public information and education program. The elements and goals of the program include but are not limited to:

a. Informing the public regarding the laws governing dependent adult abuse and the reporting requirements for dependent adult abuse.

b. Providing caretakers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caretaker and dependent adult relationship.

c. Affecting public attitudes regarding the role of a dependent adult in society.

2. The department, in cooperation with the department of elder affairs and the department of inspections and appeals, shall institute a program of education and training for persons, including members of provider groups and family members, who may come in contact with dependent adult abuse. The program shall include but is not limited to instruction regarding recognition of dependent adult abuse and the procedure for the reporting of suspected abuse.

3. The content of the continuing education required pursuant to chapter 272C for a licensed professional providing care or service to a dependent adult shall include, but is not limited to, the responsibilities, obligations, powers, and duties of a person regarding the reporting of suspected dependent adult abuse, and training to aid the professional in identifying instances of dependent adult abuse.

4. The department of inspections and appeals shall provide training to investigators regarding the collection and preservation of evidence in the case of suspected dependent adult abuse.

5. *a.* For the purposes of this subsection, *"licensing board"* means an examining board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

b. A person required to report cases of dependent adult abuse pursuant to section 235B.3, other than a physician whose professional practice does not regularly involve providing primary health care to adults, shall complete two hours of training relating to the identification and reporting of dependent adult abuse within six months of initial employment or self-employment which involves the examination, attending, counseling, or treatment of adults on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person's employer or, if self-employed, from the department. The person shall complete at least two hours of additional dependent adult abuse identification and reporting training every five years.

c. If the person is an employee of a hospital or similar public or private facility, the employer shall be responsible for providing the training. To the extent that the employer provides approved training on the employer's premises, the hours of training completed by employees shall be included in the calculation of nursing or service hours required to be provided to a patient or resident per day. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to licensure, regulation, or approval by a state agency, the person shall obtain the training as provided in paragraph *"d"*.

d. The person may complete the initial or additional training requirements as a part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing or examining board.

(2) A training program using a curriculum approved by the abuse education review panel established by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of

human services, the department of elder affairs, the department of inspections and appeals, the Iowa law enforcement academy, or a similar public agency.

e. A person required to complete both child abuse and dependent adult abuse mandatory reporter training may complete the training through a program which combines child abuse and dependent adult abuse curricula and thereby meet the training requirements of both this subsection and section 232.69 simultaneously. A person who is a mandatory reporter for both child abuse and dependent adult abuse may satisfy the combined training requirements of this subsection and section 232.69 through completion of a two-hour training program, if the training program curriculum is approved by the appropriate licensing or examining board or the abuse education review panel established by the director of public health pursuant to section 135.11.

f. A licensing board with authority over the license of a person required to report cases of dependent adult abuse pursuant to section 235B.3 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document for the licensing board the person's completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or suspension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering dependent adult abuse in this state.

g. For persons required to report cases of dependent adult abuse pursuant to section 235B.3, who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of the renewal of the facility's or program's licensure, registration, or approval, that such persons employed by the facility or program are in compliance with the training requirements of this subsection.

h. For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

i. For persons required to report cases of dependent adult abuse pursuant to section 235B.3 who are employees of state departments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons' compliance with the training requirements of this subsection.

6. The department shall require an educational program for employees of the registry on the proper use and control of dependent adult abuse information.

91 Acts, ch 231, §14; 92 Acts, ch 1143, §10; 92 Acts, ch 1163, §51; 2001 Acts, ch 122, §11; 2002 Acts, ch 1119, §35

Subsection 5, paragraph e amended

235B.17 Provision of protective services with the consent of dependent adult — caretaker refusal.

If a caretaker of a dependent adult, who consents to the receipt of protective services, refuses to allow provision of the services, the department may petition the court for an order enjoining the caretaker from interfering with the provision of services. The petition shall allege specific facts sufficient to demonstrate that the dependent adult is in need of protective services and consents to the provision of services and that the caretaker refuses to allow provision of the services. If the judge finds by clear and convincing evidence that the dependent adult is in need of protective services and consents to the services and that the caretaker refuses to allow the services, the judge may issue an order enjoining the caretaker from interfering with the provision of the protective services.

96 Acts, ch 1130, §7

235B.18 Provision of services to dependent adult who lacks capacity to consent — hearing — findings.

1. If the department reasonably determines that a dependent adult is a victim of dependent adult abuse and lacks capacity to consent to the receipt of protective services, the department may petition the court for an order authorizing the provision of protective services. The petition shall allege specific facts sufficient to demonstrate that the dependent adult is in need of protective services and lacks capacity to consent to the receipt of services.

2. The court shall set the case for hearing within fourteen days of the filing of the petition. The dependent adult shall receive at least five days' notice of the hearing. The dependent adult has the right to be present and represented by counsel at the hearing. If the dependent adult, in the determination of the judge, lacks the capacity to waive the right of counsel, the court may appoint a guardian ad litem for the dependent adult.

3. If, at the hearing, the judge finds by clear and convincing evidence that the dependent adult is in need of protective services and lacks the capacity to consent to the receipt of protective services, the judge may issue an order authorizing

the provision of protective services. The order may include the designation of a person to be responsible for performing or obtaining protective services on behalf of the dependent adult or otherwise consenting to the receipt of protective services on behalf of the dependent adult. Within sixty days of the appointment of such a person the court shall conduct a review to determine if a petition shall be initiated in accordance with section 633.552 for good cause shown. The court may extend the sixty-day period for an additional sixty days, at the end of which the court shall conduct a review to determine if a petition shall be initiated in accordance with section 633.552. A dependent adult shall not be committed to a mental health facility under this section.

4. A determination by the court that a dependent adult lacks the capacity to consent to the receipt of protective services under this chapter shall not affect incompetency proceedings under sections 633.552 through 633.556 or any other proceedings, and incompetency proceedings under sections 633.552 through 633.556 shall not have a conclusive effect on the question of capacity to consent to the receipt of protective services under this chapter.

5. This section shall not be construed and is not intended as and shall not imply a grant of entitlement for services to persons who are not otherwise eligible for the services or for utilization of services which do not currently exist or are not otherwise available.

96 Acts, ch 1130, §8

235B.19 Emergency order for protective services.

1. If the department determines that a dependent adult is suffering from dependent adult abuse which presents an immediate danger to the health or safety of the dependent adult, that the dependent adult lacks capacity to consent to receive protective services, and that no consent can be obtained, the department may petition the court with probate jurisdiction in the county in which the dependent adult resides for an emergency order authorizing protective services.

2. The petition shall be verified and shall include all of the following:

a. The name, date of birth, and address of the dependent adult who needs protective services.

b. The nature of the dependent adult abuse.

c. The services required.

3. Upon finding that there is probable cause to believe that the dependent adult abuse presents an immediate threat to the health or safety of the dependent adult and that the dependent adult lacks capacity to consent to the receipt of services, the court may do any of the following:

a. Order removal of the dependent adult to safer surroundings.

b. Order the provision of medical services.

c. Order the provision of other available services necessary to remove conditions creating the danger to health or safety, including the services of peace officers or emergency services personnel.

4. The emergency order expires at the end of seventy-two hours from the time of the order unless the seventy-two-hour period ends on a Saturday, Sunday, or legal holiday in which event the order is automatically extended to four p.m. on the first succeeding business day. An order may be renewed for not more than fourteen additional days. A renewal order that ends on a Saturday, Sunday, or legal holiday is automatically extended to four p.m. on the first succeeding business day. The court may modify or terminate the emergency order on the petition of the department, the dependent adult, or any person interested in the dependent adult's welfare.

5. If the department cannot obtain an emergency order under this section due to inaccessibility of the court, the department may contact law enforcement to remove the dependent adult to safer surroundings, authorize the provision of medical treatment, and order the provision of or provide other available services necessary to remove conditions creating the immediate danger to the health or safety of the dependent adult. The department shall obtain an emergency order under this section not later than four p.m. on the first succeeding business day after the date on which protective or other services are provided. If the department does not obtain an emergency order within the prescribed time period, the department shall cease providing protective services and, if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place. A person, agency, or institution acting in good faith in removing a dependent adult or in providing services under this subsection, and an employer of or person under the direction of such a person, agency, or institution, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the removal or provision of services.

6. The court may also enter orders as may be appropriate to third persons enjoining them from specific conduct. The orders may include temporary restraining orders which impose criminal sanctions if violated. The court may enjoin third persons from any of the following:

a. Removing the dependent adult from the care or custody of another.

b. Committing dependent adult abuse on the dependent adult.

c. Living at the dependent adult's residence.

d. Contacting the dependent adult in person or by telephone.

e. Selling, removing, or otherwise disposing of the dependent adult's personal property.

f. Withdrawing funds from any bank, savings

and loan association, credit union, or other financial institution, or from a stock account in which the dependent adult has an interest.

g. Negotiating any instruments payable to the dependent adult.

h. Selling, mortgaging, or otherwise encumbering any interest that the dependent adult has in real property.

i. Exercising any powers on behalf of the dependent adult through representatives of the department, any court-appointed guardian or guardian ad litem, or any official acting on the dependent adult's behalf.

j. Engaging in any other specified act which, based upon the facts alleged, would constitute harm or a threat of imminent harm to the dependent adult or would cause damage to or the loss of the dependent adult's property.

7. This section shall not be construed and is not intended as and shall not imply a grant of entitlement for services to persons who are not otherwise eligible for the services or for utilization of services which do not currently exist or are not otherwise available.

96 Acts, ch 1130, §9

235B.20 Dependent adult abuse — initiation of charges — penalty.

1. Charges of dependent adult abuse may be initiated upon complaint of private individuals or as a result of investigations by social service agencies or on the direct initiative of a county attorney or law enforcement agency.

2. A caretaker who intentionally commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class "C" felony if the intentional dependent adult abuse results in serious injury.

3. A caretaker who recklessly commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class "D" felony if the reckless dependent adult abuse results in serious injury.

4. A caretaker who intentionally commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class "C" felony if the intentional dependent adult abuse results in physical injury.

5. A caretaker who commits dependent adult abuse by exploiting a dependent adult in violation of this chapter is guilty of a class "D" felony if the value of the property, assets, or resources exceeds one hundred dollars.

6. A caretaker who recklessly commits dependent adult abuse on a person in violation of this chapter is guilty of an aggravated misdemeanor if the reckless dependent adult abuse results in physical injury.

7. A caretaker who commits dependent adult abuse by exploiting a dependent adult in violation of this chapter is guilty of a simple misdemeanor if the value of the property, assets, or resources is one hundred dollars or less.

8. A caretaker alleged to have committed a violation of this chapter shall be charged with the respective offense cited, unless a charge may be brought based upon a more serious offense, in which case the charge of the more serious offense shall supersede the less serious charge.

96 Acts, ch 1130, §10

CHAPTER 235C

COUNCIL ON CHEMICALLY EXPOSED INFANTS AND CHILDREN

235C.1 Council created — purpose.
235C.2 Membership.
235C.3 Council duties.

235C.1 Council created — purpose.

A council on chemically exposed infants and children is established as a subcommittee of the committee on maternal and child health of the community health division of the Iowa department of public health. The purpose of the council is to help the state develop and implement policies to reduce the likelihood that infants will be born chemically exposed, and to assist those who are born chemically exposed to grow and develop in a safe environment.

As used in this chapter, a *"chemically exposed infant or child"* is an infant or child who shows evidence of exposure to or the presence of alcohol, cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs or combinations or derivatives thereof which were not prescribed by a health practitioner.

90 Acts, ch 1264, §30; 93 Acts, ch 93, §4

235C.2 Membership.

The council on chemically exposed infants and children shall be composed of the following members:

1. Two members of the Iowa department of public health selected by the director of the Iowa department of public health, one from the division of substance abuse, and one from the division of family and community health.

2. The director of human services or the director's designee.

3. The director of the department of human rights or the director's designee.

4. The director of the department of education or the director's designee.

5. The director of the department of corrections or the director's designee.

6. The chairperson of the state maternal and child health advisory council or the chairperson's designee.

7. A physician selected by the board of the Iowa medical society with expertise in the care of the mother and a physician selected by the board of the Iowa medical society with expertise in the care of the infant.

8. A hospital administrator or the administrator's designee selected by the board of the Iowa hospital association.

9. A representative from a community health center located in Iowa selected by the Iowa/Nebraska primary care association.

10. A representative from a maternal and child health center selected by the governor.

11. A representative from a substance abuse treatment program, selected by the governor.

12. Two citizen members, selected by the governor.

13. A representative from the governor's office of drug control policy selected by the office.

14. A representative from the university of Iowa medical school selected by the director of the medical school.

15. A representative from a community-based substance abuse prevention program, selected by the governor.

16. A representative from the juvenile court, selected by the chief justice of the Iowa supreme court.

17. An attorney who practices in the area of juvenile law, selected by the Iowa state bar association.

18. Two consumer representatives selected by the governor, one of whom shall be a parent and one of whom shall be a nonparent family member.

The council shall be staffed by the Iowa department of public health. The council shall elect its own chairperson.

90 Acts, ch 1264, §31; 93 Acts, ch 93, §5; 93 Acts, ch 139, §6; 98 Acts, ch 1100, §30; 99 Acts, ch 141, §33, 34; 2000 Acts, ch 1126, §6; 2001 Acts, ch 74, §15

235C.3 Council duties.

The council shall be responsible for the following activities:

1. *Data collection.* The council shall assemble relevant materials regarding the extent to which infants born in Iowa are chemically exposed, the services currently available to meet the needs of chemically exposed infants and children, and the costs incurred in caring for chemically exposed infants and children, including both costs borne directly by the state and costs borne by society.

2. *Prevention and education.* The council, after reviewing the data collected pursuant to subsection 1, and after reviewing education and prevention programs employed in Iowa and in other states, shall make recommendations to the appropriate division to develop a state prevention and education campaign, including the following components:

a. A broad-based public education campaign outlining the dangers inherent in substance use during pregnancy.

b. A health professional training campaign, including recommendations concerning the curriculum offered at the university of Iowa college of medicine and Des Moines university — osteopathic medical center, providing assistance in the identification of women at risk of substance abuse during pregnancy and strategies to be employed in assisting those women to maintain healthy lifestyles during pregnancy. This education campaign shall offer information to health professionals on assessment, laboratory testing, and referrals.

c. A targeted public education campaign directed toward high-risk populations.

d. A technical assistance program for developing support programs to identified high-risk populations, including pregnant women who previously have given birth to chemically exposed infants or currently are using substances dangerous to the health of the fetus.

e. An education program for use within the school system, including training materials for school personnel to assist those personnel in identification, care, and referral.

3. *Identification.* The council shall develop recommendations regarding state programs or policies to increase the accuracy of the identification of chemically exposed infants and children.

4. *Treatment services.* The council shall seek to improve effective treatment services within the state for chemically exposed infants and children. As part of this responsibility, the council shall make recommendations which shall include, but are not limited to, the following:

a. Identification of programs available within the state for serving chemically exposed infants, children, and their families.

b. Recommended ways to enhance funding for effective treatment programs, including the use of state health care programs and services under the medical assistance program and the maternal and child health programs.

c. Identification of means to serve children

who were chemically exposed infants when the children enter the school system.

As an additional part of this responsibility, the council shall determine whether a problem exists with respect to substance abuse treatment providers and physicians discriminating against pregnant women in providing treatment or prenatal care.

5. *Care and placement.* The council shall work with the department of human services to expand appropriate placement options for chemically exposed infants and children who have been abandoned by their parents or cannot safely be returned home. As part of this responsibility, the council shall do all of the following:

a. Assist the department of human services in developing rules to establish specialized foster care services that can attract foster parents to care for chemically exposed infants and children.

b. Identify additional services, such as therapeutic child care services, that may be needed to effectively care for chemically exposed infants and children.

c. Review the need for residential programs designed to meet the needs of chemically exposed infants and children.

6. *Awards of grants and development of pilot programs.* From funds appropriated for this purpose, the council shall award grants or develop pilot programs to achieve the purposes of the council.

7. *Meetings.* The council shall meet at least twice annually, and may establish such subcommittees and task forces as are necessary to achieve its purpose.

8. *Confidentiality of information.* Data collected pursuant to this chapter shall be confidential to the extent necessary to protect the identity of persons who are the subjects of the data collection.

90 Acts, ch 1264, §32; 91 Acts, ch 97, §31; 93 Acts, ch 93, §6 – 9; 95 Acts, ch 182, §17; 97 Acts, ch 203, §15; 99 Acts, ch 141, §35, 36; 99 Acts, ch 192, §33; 2000 Acts, ch 1058, §25; 2000 Acts, ch 1223, §22; 2001 Acts, ch 74, §16

CHAPTER 236

DOMESTIC ABUSE

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236.1 Short title.

This chapter may be cited as the *"Domestic Abuse Act"*.

[C81, §236.1]

236.2 Definitions.

For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. *"Department"* means the department of justice.

2. *"Domestic abuse"* means committing assault as defined in section 708.1 under any of the following circumstances:

a. The assault is between family or household members who resided together at the time of the assault.

b. The assault is between separated spouses or

persons divorced from each other and not residing together at the time of the assault.

c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.

d. The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.

e. The assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault. In determining whether persons are or have been in an intimate relationship, the court may consider the following nonexclusive list of factors:

(1) The duration of the relationship.

(2) The frequency of interaction.

(3) Whether the relationship has been terminated.

(4) The nature of the relationship, characterized by either party's expectation of sexual or romantic involvement.

A person may be involved in an intimate relationship with more than one person at a time.

3. *"Emergency shelter services"* include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.

4. *a. "Family or household members"* means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity.

b. "Family or household members" does not include children under age eighteen of persons listed in paragraph *"a"*.

5. *"Intimate relationship"* means a significant romantic involvement that need not include sexual involvement. An intimate relationship does not include casual social relationships or associations in a business or professional capacity.

6. *"Pro se"* means a person proceeding on the person's own behalf without legal representation.

7. *"Support services"* include, but are not limited to, legal services, counseling services, transportation services, child care services, and advocacy services.

[C81, §236.2]

85 Acts, ch 175, §2; 87 Acts, ch 154, §1; 89 Acts, ch 279, §2, 3; 91 Acts, ch 218, §4; 93 Acts, ch 157, §1; 95 Acts, ch 180, §7; 2002 Acts, ch 1004, §1, 2

For definition of "plaintiff", see §236.3, subsection 2

Subsection 2, NEW paragraph e

NEW subsection 5 and former subsections 5 and 6 renumbered as 6 and 7

236.3 Commencement of actions — waiver to juvenile court.

A person, including a parent or guardian on behalf of an unemancipated minor, may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides. The petition shall state the:

1. Name of the plaintiff and the name and address of the plaintiff's attorney, if any. If the plaintiff is proceeding pro se, the petition shall state a mailing address for the plaintiff. A mailing address may be provided by the plaintiff pursuant to section 236.10.

2. Name and address of the parent or guardian filing the petition, if the petition is being filed on behalf of an unemancipated minor. For the purposes of this chapter, *"plaintiff"* includes a person filing an action on behalf of an unemancipated minor. A mailing address may be provided by the plaintiff pursuant to section 236.10.

3. Name and address, if known, of the defendant.

4. Relationship of the plaintiff to the defendant.

5. Nature of the alleged domestic abuse.

6. Name and age of each child under eighteen whose welfare may be affected by the controversy.

7. Desired relief, including a request for temporary or emergency orders.

A temporary or emergency order shall be based on a showing of a prima facie case of domestic abuse. If the factual basis for the alleged domestic abuse is contested, the court shall issue a protective order based upon a finding of domestic abuse by a preponderance of the evidence.

The filing fee and court costs for an order for protection under this chapter shall be waived for the plaintiff. The clerk of court, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties relating to service of process without charge to the plaintiff. When an order for protection is entered by the court, the court may direct the defendant to pay to the clerk of court the fees for the filing of the petition and reasonable costs of service of process if the court determines the defendant has the ability to pay the plaintiff's fees and costs.

If the person against whom relief from domestic abuse is being sought is seventeen years of age or younger, the district court shall waive its jurisdiction over the action to the juvenile court.

[C81, §236.3]

85 Acts, ch 175, §3; 86 Acts, ch 1237, §12; 91 Acts, ch 218, §5; 95 Acts, ch 180, §8 – 10; 96 Acts, ch 1034, §12; 2000 Acts, ch 1119, §1; 2001 Acts, ch 43, §1; 2002 Acts, ch 1004, §3; 2002 Acts, ch 1119, §36

NEW unnumbered paragraph 2

Unnumbered paragraph 3 amended

236.3A Plaintiffs proceeding pro se — provision of forms and assistance.

1. The department shall prescribe standard forms to be used by plaintiffs seeking protective orders by proceeding pro se in actions under this chapter. The standard forms shall include language in fourteen-point boldface type, with a box which may be checked by the plaintiff, indicating that the plaintiff wishes to proceed by filing an af-

fidavit pursuant to section 236.3, because the plaintiff does not have sufficient funds to pay the cost of filing and service. Standard forms prescribed by the department shall be the exclusive forms used by plaintiffs proceeding pro se, and may be used by other plaintiffs. The department shall distribute the forms to the clerks of the district courts.

2. The clerk of the district court shall furnish the required forms to persons seeking protective orders through pro se proceedings pursuant to this chapter.

91 Acts, ch 218, §6

236.3B Assistance by county attorney.

A county attorney's office may provide assistance to a person wishing to initiate proceedings pursuant to this chapter or to a plaintiff at any stage of a proceeding under this chapter, if the individual does not have sufficient funds to pay for legal assistance and if the assistance does not create a conflict of interest for the county attorney's office. The assistance provided may include, but is not limited to, assistance in obtaining or completing forms, filing a petition or other necessary pleading, presenting evidence to the court, and enforcing the orders of the court entered pursuant to this chapter. Providing assistance pursuant to this section shall not be considered the private practice of law for the purposes of section 331.752.

93 Acts, ch 157, §2

236.4 Hearings — temporary orders.

1. Not less than five and not more than fifteen days after commencing a proceeding and upon notice to the other party, a hearing shall be held at which the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence.

2. The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.

3. If a hearing is continued, the court may make or extend any temporary order under subsection 2 that it deems necessary.

4. Upon application of a party, the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers.

5. The court shall advise the defendant of a right to be represented by counsel of the defendant's choosing and to have a continuance to secure counsel.

6. Hearings shall be recorded.

[C81, §236.4]

93 Acts, ch 157, §3

236.5 Disposition.

Upon a finding that the defendant has engaged in domestic abuse:

1. The court may order that the plaintiff, the defendant, and the children who are members of the household receive professional counseling, either from a private source approved by the court or from a source appointed by the court. Costs of counseling shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the county treasury.

2. The court may grant a protection order or approve a consent agreement which may contain but is not limited to any of the following provisions:

a. That the defendant cease domestic abuse of the plaintiff.

b. That the defendant grant possession of the residence to the plaintiff to the exclusion of the defendant or that the defendant provide suitable alternate housing for the plaintiff.

c. That the defendant stay away from the plaintiff's residence, school, or place of employment.

d. The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen. In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the victim and the children. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children. The court shall also investigate whether any other existing orders awarding custody or visitation rights should be modified.

e. Unless prohibited pursuant to 28 U.S.C. § 1738B, that the defendant pay the clerk a sum of money for the separate support and maintenance of the plaintiff and children under eighteen.

An order for counseling, a protection order, or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend or extend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing. The court may extend the order if the court, after hearing at which the defendant has the opportunity to be heard, finds that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. At the time of the extension, the parties need not meet the requirement in section 236.2, subsection 2, paragraph *"d"*, that the parties lived together during the last year if the parties met the requirements of section 236.2, subsection 2, paragraph *"d"*, at the time of the original order. The number of extensions that can be granted by the court is not limited.

The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

3. The court may order that the defendant pay the plaintiff's attorneys fees and court costs.

4. An order or consent agreement under this section shall not affect title to real property.

5. A copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant, the county sheriff having jurisdiction to enforce the order or consent agreement, and the twenty-four hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and the county sheriff previously notified. The clerk shall notify the county sheriff and the twenty-four hour dispatcher for the county sheriff in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The clerk may fulfill this requirement by sending the notice by facsimile or other electronic transmission which reproduces the notice in writing within six hours of filing the order. The county sheriff's dispatcher shall notify all law enforcement agencies having jurisdiction over the matter and the twenty-four hour dispatcher for the law enforcement agencies upon notification by the clerk.

[C81, §236.5]

83 Acts, ch 123, §93, 209; 86 Acts, ch 1179, §1; 87 Acts, ch 154, §2, 3; 89 Acts, ch 85, §1; 91 Acts, ch 218, §7, 8; 91 Acts, ch 219, §3; 93 Acts, ch 157, §4; 95 Acts, ch 180, §11; 96 Acts, ch 1019, §1; 97 Acts, ch 175, §228; 99 Acts, ch 57, §1

For restrictions concerning issuance of mutual protective orders, see §236.20

236.6 Emergency orders.

1. When the court is unavailable from the close of business at the end of the day or week to the resumption of business at the beginning of the day or week, a petition may be filed before a district judge, or district associate judge designated by the chief judge of the judicial district, who may grant emergency relief in accordance with section 236.5, subsection 2 if the district judge or district associate judge deems it necessary to protect the plaintiff from domestic abuse, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.

2. An emergency order issued under subsection 1 shall expire seventy-two hours after issuance. When the order expires, the plaintiff may seek a temporary order from the court pursuant to section 236.4.

3. A petition filed and emergency order issued under this section and any documentation in support of the petition and order shall be immediately certified to the court. The certification shall commence a proceeding for purposes of section 236.3.

[C81, §236.6]

236.7 Procedure.

1. A proceeding under this chapter shall be held in accordance with the rules of civil procedure, except as otherwise set forth in this chapter, and is in addition to any other civil or criminal remedy.

2. The plaintiff's right to relief under this chapter is not affected by leaving the residence or household to avoid domestic abuse.

[C81, §236.7]

236.8 Violation of order — contempt — penalties — hearings.

A person commits a simple misdemeanor or the court may hold a person in contempt for a violation of an order or court-approved consent agreement entered under this chapter, for violation of a temporary or permanent protective order or order to vacate the homestead under chapter 598, for violation of any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault, or for violation by an adult of a protective order under chapter 232. If convicted or held in contempt, the defendant shall serve a jail sentence. Any jail sentence of more than one day imposed under this section shall be served on consecutive days. A defendant who is held in contempt or convicted may be ordered by the court to pay the plaintiff's attorney fees and court costs incurred in the proceedings under this section.

A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court.

A person shall not be convicted of and held in contempt for the same violation of an order or court-approved consent agreement entered under this chapter, for the same violation of a temporary or permanent protective order or order to vacate the homestead under chapter 598, for violation of any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault, or for violation of a protective order under chapter 232.

[C81, §236.8]

87 Acts, ch 154, §4; 88 Acts, ch 1065, §1; 88 Acts, ch 1218, §17, 18; 91 Acts, ch 218, §9; 93 Acts, ch 157, §5; 95 Acts, ch 180, §12; 96 Acts, ch 1134, §3

236.9 Domestic abuse information.

Criminal or juvenile justice agencies, as defined in section 692.1, shall collect and maintain information on incidents involving domestic abuse and shall provide the information to the department of public safety in the manner prescribed by the department of public safety.

The department of public safety may compile

statistics and issue reports on domestic abuse in Iowa, provided individual identifying details of the domestic abuse are deleted. The statistics and reports may include nonidentifying information on the personal characteristics of perpetrators and victims. The department of public safety may request the cooperation of the department of justice in compiling the statistics and issuing the reports. The department of public safety may provide nonidentifying information on individual incidents of domestic abuse to persons conducting bona fide research, including but not limited to personnel of the department of justice.

[C81, §236.9]

83 Acts, ch 96, §157, 159; 85 Acts, ch 175, §4; 89 Acts, ch 279, §4; 91 Acts, ch 19, §1; 96 Acts, ch 1034, §13

236.10 Plaintiff's address — confidentiality of records.

1. A person seeking relief from domestic abuse under this chapter may use any of the following addresses as a mailing address for purposes of filing a petition under this chapter, as well as for the purpose of obtaining any utility or other service:

a. The mailing address of a shelter or other agency.

b. A public or private post office box.

c. Any other mailing address, with the permission of the resident of that address.

2. A person shall report any change of address, whether designated according to subsection 1 or otherwise, to the clerk of court no more than five days after the previous address on record becomes invalid.

3. The entire file or a portion of the file in a domestic abuse case shall be sealed by the clerk of court as ordered by the court to protect the privacy interest or safety of any person.

4. Notwithstanding subsection 3, court orders and support payment records shall remain public records, although the court may order that address and location information be redacted from the public records.

[C81, §236.10]

97 Acts, ch 175, §229; 98 Acts, ch 1170, §1; 2000 Acts, ch 1119, §2; 2000 Acts, ch 1132, §1

236.11 Duties of peace officer — magistrate.

A peace officer shall use every reasonable means to enforce an order or court-approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault, or a protective order under chapter 232. If a peace officer has reason to believe that domestic abuse has occurred, the peace officer shall ask the abused person if any prior orders exist, and shall contact the twenty-four hour dispatcher to inquire if any prior orders exist. If a peace officer has probable cause to believe that a person has violated an order or approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, an order establishing conditions of release or a protective or sentencing order in a criminal prosecution arising from a domestic abuse assault, or, if the person is an adult, a violation of a protective order under chapter 232, the peace officer shall take the person into custody and shall take the person without unnecessary delay before the nearest or most accessible magistrate in the judicial district in which the person was taken into custody. The magistrate shall make an initial preliminary determination whether there is probable cause to believe that an order or consent agreement existed and that the person taken into custody has violated its terms. The magistrate's decision shall be entered in the record.

If a peace officer has probable cause to believe that a person has violated an order or approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, an order establishing conditions of release or a protective or sentencing order in a criminal prosecution arising from a domestic abuse assault, or a protective order under chapter 232, and the peace officer is unable to take the person into custody within twenty-four hours of making the probable cause determination, the peace officer shall either request a magistrate to make a determination as to whether a rule to show cause or arrest warrant should be issued, or refer the matter to the county attorney.

If the magistrate finds probable cause, the magistrate shall order the person to appear before the court which issued the original order or approved the consent agreement, whichever was allegedly violated, at a specified time not less than five days nor more than fifteen days after the initial appearance under this section. The magistrate shall cause the original court to be notified of the contents of the magistrate's order.

A peace officer shall not be held civilly or criminally liable for acting pursuant to this section provided that the peace officer acts in good faith, on probable cause, and the officer's acts do not constitute a willful and wanton disregard for the rights or safety of another.

[C81, §236.11]

86 Acts, ch 1179, §2; 87 Acts, ch 154, §5; 88 Acts, ch 1065, §2; 88 Acts, ch 1218, §17, 18; 91 Acts, ch 218, §10; 93 Acts, ch 157, §6; 96 Acts, ch 1134, §4

236.12 Prevention of further abuse — notification of rights — arrest — liability.

1. If a peace officer has reason to believe that

domestic abuse has occurred, the officer shall use all reasonable means to prevent further abuse including but not limited to the following:

a. If requested, remaining on the scene as long as there is a danger to an abused person's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain on the scene, assisting the person in leaving the residence.

b. Assisting an abused person in obtaining medical treatment necessitated by an assault, including providing assistance to the abused person in obtaining transportation to the emergency room of the nearest hospital.

c. Providing an abused person with immediate and adequate notice of the person's rights. The notice shall consist of handing the person a copy of the following statement written in English and Spanish, asking the person to read the card and whether the person understands the rights:

"You have the right to ask the court for the following help on a temporary basis:

(1) Keeping your attacker away from you, your home and your place of work.

(2) The right to stay at your home without interference from your attacker.

(3) Getting custody of children and obtaining support for yourself and your minor children if your attacker is legally required to provide such support.

(4) Professional counseling for you, the children who are members of the household, and the defendant.

You have the right to seek help from the court to seek a protective order with or without the assistance of legal representation. You have the right to seek help from the courts without the payment of court costs if you do not have sufficient funds to pay the costs.

You have the right to file criminal charges for threats, assaults, or other related crimes.

You have the right to seek restitution against your attacker for harm to yourself or your property.

If you are in need of medical treatment, you have the right to request that the officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and other affected parties can leave or until safety is otherwise ensured."

The notice shall also contain the telephone numbers of safe shelters, support groups, or crisis lines operating in the area.

2. *a.* A peace officer may, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph *"a"*, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which did not result in any injury to the alleged victim.

b. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph *"b"*, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which resulted in the alleged victim's suffering a bodily injury.

c. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph *"c"*, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed with the intent to inflict a serious injury.

d. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph *"c"*, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed and that the alleged abuser used or displayed a dangerous weapon in connection with the assault.

3. As described in subsection 2, paragraph *"b"*, *"c"*, or *"d"*, the peace officer shall arrest the person whom the peace officer believes to be the primary physical aggressor. The duty of the officer to arrest extends only to those persons involved who are believed to have committed an assault. Persons acting with justification, as defined in section 704.3, are not subject to mandatory arrest. In identifying the primary physical aggressor, a peace officer shall consider the need to protect victims of domestic abuse, the relative degree of injury or fear inflicted on the persons involved, and any history of domestic abuse between the persons involved. A peace officer's identification of the primary physical aggressor shall not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident, and shall not be based solely upon the absence of visible indications of injury or impairment.

4. A peace officer is not civilly or criminally liable for actions pursuant to this section taken in good faith.

84 Acts, ch 1258, §1; 85 Acts, ch 175, §5; 86 Acts, ch 1179, §3; 87 Acts, ch 154, §6; 89 Acts, ch 85, §2; 90 Acts, ch 1056, §1, 2; 91 Acts, ch 218, §11; 92 Acts, ch 1163, §52

236.13 Prohibition against referral.

In a criminal action arising from domestic abuse, as defined in section 236.2, the prosecuting attorney or court shall not refer or order the parties involved to mediation or other nonjudicial procedures prior to judicial resolution of the action.

86 Acts, ch 1179, §4

236.14 Initial appearance required — contact to be prohibited — extension of no-contact order.

1. Notwithstanding chapters 804 and 805, a person taken into custody pursuant to section 236.11 or arrested pursuant to section 236.12 may be released on bail or otherwise only after an initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure or section 236.11, whichever is applicable.

2. When a person arrested for a domestic abuse assault, or taken into custody for contempt proceedings pursuant to section 236.11, is brought before a magistrate and the magistrate finds probable cause to believe that domestic abuse or a violation of an order or consent agreement has occurred and that the presence of the alleged abuser in the victim's residence poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the alleged abuser to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, in addition to any other conditions of release determined and imposed by the magistrate under section 811.2. A no-contact order requiring the alleged abuser to have no contact with the alleged victim's children shall prevail over any existing order awarding custody or visitation rights, which may be in conflict with the no-contact order.

The court order shall contain the court's directives restricting the defendant from having contact with the victim or the victim's relatives.

The clerk of the court or other person designated by the court shall provide a copy of this order to the victim pursuant to chapter 915. The order has force and effect until it is modified or terminated by subsequent court action in the contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of section 708.2A, the court shall modify the no-contact order issued by the magistrate to provide that the no-contact order shall continue in effect for a period of one year from the date that the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation. Upon an application by the state which is filed within ninety days prior to the expiration of the modified no-contact order, the court shall modify and extend the no-contact order for an additional period of one year, if the court finds that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. The number of modifications extending the no-contact order permitted by this subsection is not limited.

The clerk of the district court shall also provide notice and copies of the no-contact order to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

Violation of this no-contact order, including modified no-contact orders, is punishable by summary contempt proceedings. A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court. If held in contempt for violation of a no-contact order or a modified no-contact order, the person shall be confined in the county jail for a minimum of seven days. A jail sentence imposed pursuant to this paragraph shall be served on consecutive days. No portion of the mandatory minimum term of confinement imposed by this section shall be deferred or suspended. A deferred judgment, deferred sentence, or suspended sentence shall not be entered for violation of a no-contact order or a modified no-contact order, and the court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence.

3. This section shall not be construed to limit a pretrial release order issued pursuant to chapter 811.

87 Acts, ch 154, §7; 91 Acts, ch 218, §12; 91 Acts, ch 219, §4; 92 Acts, ch 1163, §53; 93 Acts, ch 157, §7, 8; 94 Acts, ch 1093, §1; 98 Acts, ch 1090, §66, 84

236.15 Application for designation and funding as a provider of services for victims of domestic abuse.

Upon receipt of state or federal funding designated for victims of domestic abuse by the department, a public or private nonprofit organization may apply to the department for designation and funding as a provider of emergency shelter services and support services to victims of domestic abuse or sexual assault. The application shall be submitted on a form prescribed by the department and shall include, but not be limited to, information regarding services to be provided, budget, and

security measures.

85 Acts, ch 175, §6; 89 Acts, ch 279, §5; 91 Acts, ch 218, §13

236.15A Income tax checkoff for domestic abuse services. Repealed by 97 Acts, ch 158, § 48; 97 Acts, ch 209, § 13, 15. See § 236.15B.

236.15B Income tax checkoff for domestic abuse services.

A person who files an individual or a joint income tax return with the department of revenue and finance under section 422.13 may designate any amount to be paid to the general fund of the state and used for the purposes of providing emergency shelter services, support services, and other services to victims of domestic abuse or sexual assault. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to be used for the purposes of providing services to victims of domestic abuse or sexual assault, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return.

It is the intent of the general assembly that the funds generated from the checkoff be appropriated and used for the purposes of providing services to victims of domestic abuse or sexual assault.

The director of revenue and finance shall draft the income tax form to allow the designation of contributions to be used for the purposes of providing services to victims of domestic abuse or sexual assault on the tax return.

The department of revenue and finance on or before January 31 of the calendar year following the calendar year in which the tax returns were filed shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the treasurer of state.

The department of revenue and finance shall consult the crime victim assistance board concerning the adoption of rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and finance and accounts identified as owing under section 421.17 and the political contribution allowed under section 56.18 shall be satisfied.

97 Acts, ch 209, §12

Limitation on number of income tax return checkoffs; automatic repeal of certain checkoffs; see §422.12E

236.16 Department powers and duties.

1. The department shall:

a. Designate and award grants for existing and pilot programs pursuant to this chapter to provide emergency shelter services and support services to victims of domestic abuse.

b. Design and implement a uniform method of collecting data from domestic abuse organizations funded under this chapter.

c. Designate and award moneys for publicizing and staffing a statewide, toll-free telephone hotline for use by victims of domestic abuse. The department may award a grant to a public agency or a private, nonprofit organization for the purpose of operating the hotline. The operation of the hotline shall include informing victims of their rights and of various community services that are available, referring victims to service providers, receiving complaints concerning misconduct by peace officers and encouraging victims to refer such complaints to the office of citizens' aide, providing counseling services to victims over the telephone, and providing domestic abuse victim advocacy.

d. Advertise the toll-free telephone hotline through the use of public service announcements, billboards, print and broadcast media services, and other appropriate means, and contact media organizations to encourage the provision of free or inexpensive advertising concerning the hotline and its services.

e. Develop, with the assistance of the entity operating the telephone hotline and other domestic abuse victim services providers, brochures explaining the rights of victims set forth under section 236.12 and the services of the telephone hotline, and distribute the brochures to law enforcement agencies, victim service providers, health practitioners, charitable and religious organizations, and other entities that may have contact with victims of domestic abuse.

2. The department shall consult and cooperate with all public and private agencies which may provide services to victims of domestic abuse, including but not limited to, legal services, social services, prospective employment opportunities, and unemployment benefits.

3. The department may accept, use, and dispose of contributions of money, services, and property made available by an agency or department of the state or federal government, or a private agency or individual.

85 Acts, ch 175, §7; 89 Acts, ch 279, §6; 91 Acts, ch 218, §15

236.17 Domestic abuse training requirements.

The department, in cooperation with victim service providers, shall work with various professional organizations to encourage organizations to establish training programs for professionals who work in the area of domestic abuse prevention and services. Domestic abuse training may include, but is not limited to, the following areas:

1. The enforcement of both civil and criminal remedies in domestic abuse matters.

2. The nature, extent, and causes of domestic abuse.

3. The legal rights and remedies available to domestic abuse victims, including crime victim compensation.

4. Services available to domestic abuse victims and their children, including the domestic abuse telephone hotline.

5. The mandatory arrest provisions of section 236.12, and other duties of peace officers pursuant to this chapter.

6. Techniques for intervention in domestic abuse cases.

91 Acts, ch 218, §16; 91 Acts, ch 219, §33

236.18 Reference to certain criminal provisions.

In addition to the criminal penalties contained in this chapter, certain criminal penalties and provisions pertaining to domestic abuse assaults are set forth in sections 708.2A and 708.2B.

91 Acts, ch 218, §17

236.19 Foreign protective orders — registration — enforcement.

1. As used in this section, *"foreign protective order"* means a protective order entered by a court of another state, Indian tribe, or United States territory that would be an order or court-approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault if it had been entered in Iowa.

2. A certified or authenticated copy of a permanent foreign protective order may be filed with the clerk of the district court in any county that would have venue if the original action was being commenced in this state or in which the person in whose favor the order was entered may be present.

a. The clerk shall file foreign protective orders that are not certified or authenticated, if supported by an affidavit of a person with personal knowledge, subject to the penalties for perjury. The person protected by the order may provide this affidavit.

b. The clerk shall provide copies of the order as required by section 236.5, except that notice shall not be provided to the respondent without the express written direction of the person in whose favor the order was entered.

3. *a.* A valid foreign protective order has the same effect and shall be enforced in the same manner as a protective order issued in this state whether or not filed with a clerk of court or otherwise placed in a registry of protective orders.

b. A foreign protective order is valid if it meets all of the following:

(1) The order states the name of the protected individual and the individual against whom enforcement is sought.

(2) The order has not expired.

(3) The order was issued by a court or tribunal that had jurisdiction over the parties and subject matter under the law of the foreign jurisdiction.

(4) The order was issued in accordance with the respondent's due process rights, either after the respondent was provided with reasonable notice and an opportunity to be heard before the court or tribunal that issued the order, or in the case of an ex parte order, the respondent was granted notice and opportunity to be heard within a reasonable time after the order was issued.

c. Proof that a foreign protective order failed to meet all of the factors listed in paragraph *"b"* shall be an affirmative defense in any action seeking enforcement of the order.

4. A peace officer shall treat a foreign protective order as a valid legal document and shall make an arrest for a violation of the foreign protective order in the same manner that a peace officer would make an arrest for a violation of a protective order issued within this state.

a. The fact that a foreign protective order has not been filed with the clerk of court or otherwise placed in a registry shall not be grounds to refuse to enforce the terms of the order unless it is apparent to the officer that the order is invalid on its face.

b. A peace officer acting reasonably and in good faith in connection with the enforcement of a foreign protective order shall be immune from civil and criminal liability in any action arising in connection with such enforcement.

5. Filing and service costs in connection with foreign protective orders are waived as provided in section 236.3.

95 Acts, ch 180, §13; 99 Acts, ch 57, §2; 2000 Acts, ch 1132, §2; 2001 Acts, ch 43, §2

236.20 Mutual protective orders prohibited — exceptions.

A court in an action under this chapter shall not issue mutual protective orders against the victim and the abuser unless both file a petition requesting a protective order.

95 Acts, ch 180, §14

CHAPTER 236A

CONFIDENTIAL COMMUNICATIONS — COUNSELORS AND VICTIMS

Repealed by 99 Acts, ch 114, §54; see §915.20A

CHAPTER 237

CHILD FOSTER CARE FACILITIES

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DIVISION I

CHILD FOSTER CARE

237.1 Definitions.

As used in this chapter:

1. *"Administrator"* means the administrator of that division of the department designated by the director of human services to administer this chapter or the administrator's designee.

2. *"Agency"* means a person, as defined in section 4.1, subsection 20, which provides child foster care and which does not meet the definition of an individual in subsection 7.

3. *"Child"* means child as defined in section 234.1, subsection 2.

4. *"Child foster care"* means the provision of parental nurturing, including but not limited to the furnishing of food, lodging, training, education, supervision, treatment or other care, to a child on a full-time basis by a person other than a relative or guardian of the child, but does not include:

a. Care furnished by an individual person who receives the child of a personal friend as an occasional and personal guest in the individual person's home, free of charge and not as a business.

b. Care furnished by an individual person with whom a child has been placed for lawful adoption, unless that adoption is not completed within two years after placement.

c. Care furnished by a private boarding school subject to approval by the state board of education pursuant to section 256.11.

d. Child care furnished by a child care center, a child development home, or a child care home as defined in section 237A.1.

e. Care furnished in a hospital licensed under chapter 135B or care furnished in a nursing facility licensed under chapter 135C.

5. *"Department"* means the department of human services.

6. *"Facility"* means the personnel, program, physical plant, and equipment of a licensee.

7. *"Individual"* means an individual person or a married couple who provides child foster care in a single-family home environment and which does not meet the definition of an agency in subsection 2.

8. *"Licensee"* means an individual or an agency licensed by the administrator under this chapter.

[C27, 31, 35, §3661-a42, -a43; C39, §**3661.056, 3661.057;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.1, 237.2; C81, §237.1; 82 Acts, ch 1016, §1]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1245, §1418; 87 Acts, ch 44, §1; 90 Acts, ch 1039, §14; 99 Acts, ch 192, §29; 2002 Acts, ch 1142, §2, 31

2002 amendment is effective October 1, 2002; applicability to providers;

2002 Acts, ch 1142, §31
Subsection 4, paragraph d amended

237.2 Purpose.

It is the policy of this state to provide appropriate protection for children who are separated from the direct personal care of their parents, relatives, or guardians and, as a result, are subject to difficulty in achieving appropriate physical, mental, emotional, educational, or social development. This chapter shall be construed and administered to further that policy by assuring that child foster care is adequately provided by competently staffed and well-equipped child foster care facilities, including but not limited to residential treatment centers, group homes, and foster family homes.

[C81, §237.2]

237.3 Rules.

1. Except as otherwise provided by subsections 3 and 4, the administrator shall promulgate, after their adoption by the council on human services, and enforce in accordance with chapter 17A, administrative rules necessary to implement this chapter. Formulation of the rules shall include consultation with representatives of child foster care providers, and other persons affected by this chapter. The rules shall encourage the provision of child foster care in a single-family, home environment, exempting the single-family, home facility from inappropriate rules.

2. Rules applicable to licensees shall include but are not limited to:

a. Types of facilities which include but are not limited to group foster care facilities and family foster care homes.

b. The number, qualifications, character, and parenting ability of personnel necessary to assure the health, safety and welfare of children receiving child foster care.

c. Programs for education and in-service training of personnel.

d. The physical environment of a facility.

e. Policies for intake, assessment, admission and discharge.

f. Housing, health, safety, and medical care policies for children receiving child foster care. The medical care policies shall include but are not limited to all of the following:

(1) Provision by the department to the foster care provider at or before the time of a child's placement of the child's health records and any other information possessed or known about the health of the child or about a member of the child's family that pertains to the child's health.

(2) If the health records supplied in accordance with the child's case permanency plan to the foster care provider are incomplete, provision for obtaining additional health information from the child's parent or other source and supplying the additional information to the foster care provider.

(3) Provision for emergency health coverage of the child while the child is engaged in temporary out-of-state travel with the child's foster family.

g. The adequacy of programs available to children receiving child foster care provided by agencies, including but not limited to:

(1) Dietary services.

(2) Social services.

(3) Activity programs.

(4) Behavior management procedures.

(5) Educational programs, including special education as defined in section 256B.2, subsection 2 where appropriate, which are approved by the state board of education. The department shall not promulgate rules which regulate individual licensees in the subject areas enumerated in this paragraph.

h. Policies for involvement of biological parents.

i. Records a licensee is required to keep, and reports a licensee is required to make to the administrator.

j. Prior to the licensing of an individual as a foster family home, a required, written social assessment of the quality of the living situation in the home of the individual, and a required compilation of personal references for the individual other than those references given by the individual.

k. Elements of a foster care placement agreement outlining rights and responsibilities associated with an individual providing family foster care.

3. Rules governing fire safety in facilities with child foster care provided by agencies shall be promulgated by the state fire marshal pursuant to section 100.1, subsection 5 after consultation with the administrator.

4. Rules governing sanitation, water and waste disposal standards for facilities shall be promulgated by the Iowa department of public health pursuant to section 135.11, subsection 14, after consultation with the administrator.

5. In case of a conflict between rules promulgated pursuant to subsections 3 and 4 and local rules, the more stringent requirement applies.

6. Rules of the department shall not prohibit the licensing, as foster family homes, of individuals who are departmental employees not directly engaged in the administration of the child foster care program pursuant to this chapter.

7. If an agency is accredited by the joint commission on the accreditation of health care organizations under the commission's consolidated standards for residential settings or by the council on accreditation of services for families and children, the department shall modify facility licensure standards applied to the agency in order to avoid duplicating standards applied through accreditation.

8. The department, in consultation with the judicial branch, the division of criminal and juve-

nile justice planning of the department of human rights, residential treatment providers, the foster care provider association, and other parties which may be affected, shall review the licensing rules pertaining to residential treatment facilities, and examine whether the rules allow the facilities to accept and provide effective treatment to juveniles with serious problems who might not otherwise be placed in those facilities.

9. The department shall adopt rules specifying the elements of a preadoptive care agreement outlining the rights and responsibilities associated with a person providing preadoptive care, as defined in section 232.2.

10. The department shall adopt rules to administer the exception to the definition of child care in section 237A.1, subsection 3, paragraph *"m"*, allowing a child care facility, for purposes of providing respite care to a foster family home, to provide care, supervision, or guidance of a child for a period of twenty-four hours or more who is placed with the licensed foster family home.

[C27, 31, 35, §3661-a52; C39, §**3661.066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.11; C81, §237.3]

83 Acts, ch 96, §157, 159; 89 Acts, ch 283, §26; 90 Acts, ch 1023, §1; 92 Acts, ch 1231, §39; 93 Acts, ch 172, §40; 94 Acts, ch 1046, §5; 97 Acts, ch 164, §5, 6; 98 Acts, ch 1047, §25; 2001 Acts, ch 105, §1, 2, 4; 2002 Acts, ch 1102, §1, 2

Subsection 2, paragraph f, unnumbered paragraph 1 amended

Subsection 2, paragraph f, NEW subparagraph (1) and former subparagraphs (1) and (2) renumbered as (2) and (3)

237.4 License required — exceptions.

An individual or an agency, as defined in section 237.1, shall not provide child foster care unless the individual or agency obtains a license issued by the administrator under this chapter. However, a license is not required of the following:

1. An individual providing child foster care for a total of not more than twenty days in one calendar year.

2. A residential care facility licensed under chapter 135C which is approved for the care of children.

3. A hospital licensed under chapter 135B.

4. A health care facility licensed under chapter 135C.

5. A juvenile detention home or juvenile shelter care home approved under section 232.142.

6. An institution listed in section 218.1.

7. A facility licensed under chapter 125.

8. An individual providing child care as a babysitter at the request of a parent, guardian or relative having lawful custody of the child.

[C27, 31, 35, §3661-a49; C39, §**3661.063;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.8; C81, §237.4; 82 Acts, ch 1016, §2]

84 Acts, ch 1050, §1; 87 Acts, ch 44, §2

237.5 License application and issuance — denial, suspension, or revocation — provisional licenses.

1. An individual or an agency shall apply for a license by completing an application to the administrator upon forms furnished by the administrator. The administrator shall issue or reissue a license if the administrator determines that the applicant or licensee is or upon commencing operation will provide child foster care in compliance with this chapter. A license for an individual is valid for one year from the date of issuance. A license for an agency is valid for up to three years from the date of issuance for the period determined by the administrator in accordance with administrative rules providing criteria for making the determination. The license shall state on its face the name of the licensee, the type of facility, the particular premises for which the license is issued, and the number of children who may be cared for by the facility on the premises at one time. The license shall be posted in a conspicuous place in the physical plant of the facility, except that if the facility is in a single-family home the license may be kept where it is readily available for examination upon request.

2. The administrator, after notice and opportunity for an evidentiary hearing, may deny an application for a license, and may suspend or revoke a license, if the applicant or licensee violates this chapter or the rules promulgated pursuant to this chapter, or knowingly makes a false statement concerning a material fact or conceals a material fact on the license application or in a report regarding operation of the facility submitted to the administrator.

3. The administrator may issue a provisional license for not more than one year to a licensee whose facility does not meet the requirements of this chapter, if written plans to bring the facility into compliance with the applicable requirements are submitted to and approved by the administrator. The plans shall state a specific time when compliance will be achieved. Only one provisional license shall be issued for a facility by reason of the same deficiency.

[C27, 31, 35, §3661-a44, -a46, -a51, -a53, -a54; C39, §**3661.058, 3661.060, 3661.065, 3661.067, 3661.068;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.3, 237.5, 237.10, 237.12, 237.13; C81, §237.5]

87 Acts, ch 153, §15; 2002 Acts, ch 1102, §3

Subsection 1 amended

237.5A Foster parent training.

As a condition for initial licensure, each individual licensee shall complete thirty hours of foster parent training offered or approved by the department. Prior to annual renewal of licensure, each individual licensee shall also complete six hours of foster parent training. The training shall include but is not limited to physical care, education, learning disabilities, referral to and receipt of nec-

essary professional services, behavioral assessment and modification, self-assessment, self-living skills, and biological parent contact. An individual licensee may complete the training as part of an approved training program offered by a public or private agency with expertise in the provision of child foster care or in related subject areas. The department shall adopt rules to implement and enforce this training requirement.

84 Acts, ch 1279, §25; 87 Acts, ch 117, §1; 2002 Acts, ch 1102, §4

Section amended

237.6 Restricted use of facility.

A licensee shall not furnish child foster care in a building or on premises not designated in the license. A licensee shall not furnish child foster care to a greater number of children than is designated in the license, unless the administrator so authorizes. Multiple licenses authorizing separate and distinct parts of a facility to provide different categories of child foster care may be issued.

[C27, 31, 35, §3661-a50; C39, §**3661.064;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.9; C81, §237.6]

237.7 Reports and inspections.

The administrator may require submission of reports by a licensee, and shall cause at least one annual unannounced inspection of each facility to assess the quality of the living situation and to determine compliance with applicable requirements and standards. The inspections shall be conducted by the department of inspections and appeals. The director of the department of inspections and appeals may examine records of a licensee, including but not limited to corporate records and board minutes, and may inquire into matters concerning a licensee and its employees relating to requirements and standards for child foster care under this chapter.

[C27, 31, 35, §3661-a55; C39, §**3661.069;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.14; C81, §237.7]

90 Acts, ch 1204, §53

237.8 Personnel.

1. A person shall not be allowed to provide services in a facility if the person has a disease which is transmissible to other persons through required contact in the workplace, which presents a significant risk of infecting other persons, which presents a substantial possibility of harming other persons, or for which no reasonable accommodation can eliminate the risk of infecting other persons.

2. *a.* (1) If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a licensee under this chapter, or if a person will reside in a facility utilized by a licensee, and if the person has been convicted of a crime or has a record of founded child abuse, the department and the licensee for an employee of the licensee shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

(2) An individual applying to be a foster parent licensee shall not be granted a license and an evaluation shall not be performed under this subsection if the individual has been convicted of any of the following felony offenses:

(a) Within the five-year period preceding the application date, a drug-related offense.

(b) Child endangerment or neglect or abandonment of a dependent person.

(c) Domestic abuse.

(d) A crime against a child, including but not limited to sexual exploitation of a minor.

(e) A forcible felony.

b. Except as otherwise provided in paragraph *"a"*, if the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee, or resides in a licensed facility the department shall notify the licensee that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

c. In an evaluation, the department and the licensee for an employee of the licensee shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be licensed, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department has final authority in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

d. If the department determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of

licensure, employment, or residence, the person shall not be licensed under this chapter and shall not be employed by a licensee or reside in a licensed facility.

3. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsection 2, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random check conducted under this subsection.

4. On or after July 1, 1994, a licensee shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

5. On or after July 1, 1994, a licensee shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

[C81, §237.8]

87 Acts, ch 153, §16; 88 Acts, ch 1134, §57; 89 Acts, ch 283, §27; 90 Acts, ch 1221, §7; 91 Acts, ch 138, §7; 94 Acts, ch 1130, §14; 98 Acts, ch 1190, §29

237.9 Confidential information.

A person who receives information from or through the department concerning a child who has received or is receiving child foster care, a relative or guardian of the child, a single-family, home licensee, or an individual employee of a licensee, shall not disclose that information directly or indirectly, except as authorized by section 217.30, or as authorized or required by section 232.69.

[C81, §237.9]

237.10 Repealed by 82 Acts, ch 1213, § 6.

237.11 Penalty.

An individual or an agency who provides child foster care without obtaining a license under this chapter or who knowingly violates this chapter or the rules promulgated pursuant to this chapter is guilty of a serious misdemeanor.

[C27, 31, 35, §3661-a57; C39, §**3661.071;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.16; C81, §237.11]

237.12 Injunctive relief.

An individual or an agency who provides child foster care without obtaining a license under this chapter or who knowingly violates this chapter or the rules promulgated pursuant to this chapter may be temporarily or permanently enjoined by a court in an action brought by the state, a political subdivision of the state or an interested person.

[C58, 62, 66, 71, 73, 75, 77, 79, §237.16; C81, §237.12]

237.13 Foster home insurance fund.

1. For the purposes of this section, *"foster home"* means either of the following:

a. An individual, as defined in section 237.1, subsection 7, who is licensed to provide child foster care and shall also be known as a *"licensed foster home"*.

b. A guardian appointed on a voluntary petition pursuant to section 232.178, or a voluntary petition of a ward pursuant to section 633.557, or a conservator appointed on a voluntary petition of a ward pursuant to section 633.572, provided the ward has an income that does not exceed one hundred fifty percent of the current federal office of management and budget poverty guidelines and who does not have resources in excess of the criteria for resources under the federal supplemental security income program. However, the ward's ownership of one residence and one vehicle shall not be considered in determining resources.

2. The foster home insurance fund is created within the office of the treasurer of state to be administered by the department of human services. The fund consists of all moneys appropriated by the general assembly for deposit in the fund. The general fund of the state is not liable for claims presented against the fund. The department may contract with another state agency, or private organization, to perform the administrative functions necessary to carry out this section.

3. Except as provided in this section, the fund shall pay, on behalf of each licensed foster home, any valid and approved claim of foster children, their parents, guardians, or guardians ad litem, for damages arising from the foster care relationship and the provision of foster care services. The fund shall also compensate licensed foster homes for property damage, at replacement cost, or for bodily injury, as a result of the activities of the foster child, and reasonable and necessary legal fees incurred in defense of civil claims filed pursuant to subsection 7, paragraph *"d"*, and any judgments awarded as a result of such claims.

4. The fund is not liable for any of the following:

a. A loss arising out of a foster parent's dishonest, fraudulent, criminal, or intentional act.

b. An occurrence which does not arise from the foster care relationship.

c. A bodily injury arising out of the operation or use of a motor vehicle, aircraft, recreational vehicle, or watercraft owned, operated by, rented, leased, or loaned to, a foster parent.

d. A loss arising out of a foster parent's lascivious acts, indecent contact, or sexual activity, as defined in chapters 702 and 709. Notwithstanding any definition to the contrary in chapters 702 and 709, for purposes of this subsection a child is a per-

son under the age of eighteen.

e. A loss or damage arising out of occurrences prior to July 1, 1988.

f. Exemplary or punitive damages.

g. A loss or damage arising out of conduct which is in violation of administrative rules.

5. Except as provided in this section, the fund shall pay, on behalf of a guardian or conservator, the reasonable and necessary legal costs incurred in defending against a suit filed by a ward or the ward's representative and the damages awarded as a result of the suit, so long as it is determined that the guardian or conservator acted in good faith in the performance of the guardian's or conservator's duties. A payment shall not be made if there is evidence of intentional misconduct or a knowing violation of the law by the guardian or conservator, including, but not limited to, failure to carry out the applicable responsibilities required under chapter 232 and sections 633.633 through 633.635 and 633.641 through 633.650.

6. The fund is not liable for the first one hundred dollars for all claims arising out of one or more occurrences during a fiscal year related to a single foster home. The fund is not liable for damages in excess of three hundred thousand dollars for all claims arising out of one or more occurrences during a fiscal year related to a single home.

7. Procedures for claims against the fund:

a. A claim against the fund shall be filed in accordance with the claims procedures and on forms prescribed by the department of human services.

b. A claim shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim. If a claim is not submitted to the fund within the applicable time, the claim shall be rejected.

c. The department shall issue a decision on a claim within one hundred eighty days of its presentation.

d. A person shall not bring a civil action against a foster parent for which the fund may be liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid in part, and damages in excess of the payment are claimed.

8. All processing of decisions and reports, payment of claims, and other administrative actions relating to the fund shall be conducted by the department of human services.

9. The department of human services shall adopt rules, pursuant to chapter 17A, to carry out the provisions of this section.

88 Acts, ch 1223, §1; 89 Acts, ch 178, §4; 93 Acts, ch 172, §41; 99 Acts, ch 55, §1 – 5; 2001 Acts, ch 135, §1, 2

237.14 Enhanced foster care services.

The department shall provide for enhanced foster care services by establishing supplemental per diem or performance-based contracts which include payment of costs relating to payments of principal and interest for bonds and notes issued pursuant to section 16.155 with facilities licensed under this chapter which provide special services to children who would otherwise be placed in a state juvenile institution or an out-of-state program. Before completion of the department's budget estimate as required by section 8.23, the department shall determine and include in the estimate the amount which should be appropriated for enhanced foster care services for the forthcoming fiscal year in order to provide sufficient services.

90 Acts, ch 1239, §14

DIVISION II

FOSTER CARE REVIEW

237.15 Definitions.

For the purposes of this division unless otherwise defined:

1. *"Case permanency plan"* means the same as defined in section 232.2, subsection 4, except the plan shall also include the following:

a. The efforts to place the child with a relative.

b. The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out-of-state.

c. Time frames to meet the stated permanency goal and short-term objectives.

2. *"Child receiving foster care"* means a child defined in section 234.1 who is described by any of the following circumstances:

a. The child's foster care placement is the financial responsibility of the state pursuant to section 234.35.

b. The child is under the guardianship of the department.

c. The child has been involuntarily hospitalized for mental illness pursuant to chapter 229.

d. The child is at-risk of being placed outside the child's home, the department or court is providing or planning to provide services to the child, and the department or court has requested the involvement of the state or local board.

3. *"Court appointed special advocate"* means the same as defined in section 232.2.

4. *"Family"* means the social unit consisting of the child and the biological or adoptive parent, stepparent, brother, sister, stepbrother, stepsister, and grandparent of the child.

5. *"Local board"* means a local citizen foster care review board created pursuant to section 237.19.

6. *"Person or court responsible for the child"* means the department, including but not limited to the department of human services, agency, or individual who is the guardian of a child by court order issued by the juvenile or district court and

has the responsibility of the care of the child, or the court having jurisdiction over the child.

7. *"State board"* means the child advocacy board created pursuant to section 237.16.

84 Acts, ch 1279, §26; 88 Acts, ch 1233, §1, 2; 89 Acts, ch 296, §22; 90 Acts, ch 1270, §46; 91 Acts, ch 232, §11; 92 Acts, ch 1141, §5; 92 Acts, ch 1231, §40; 94 Acts, ch 1046, §6; 95 Acts, ch 182, §18, 19; 2000 Acts, ch 1067, §13; 2002 Acts, ch 1162, §20, 21

NEW subsection 3 and former subsections 3 – 6 renumbered as 4 – 7
Subsection 7 amended

237.16 Child advocacy board.

1. The child advocacy board is created within the department of inspections and appeals. The state board consists of nine members appointed by the governor, subject to confirmation by the senate and directly responsible to the governor. One member shall be an active court appointed special advocate volunteer and one member shall be a judicial branch employee or judicial officer appointed from nominees submitted by the judicial branch. The appointment is for a term of four years that begins and ends as provided in section 69.19. Vacancies on the state board shall be filled in the same manner as original appointments are made.

2. The members of the state board shall annually select a chairperson, vice chairperson, and other officers the members deem necessary. The members may be entitled to receive reimbursement for actual and necessary expenses incurred in the performance of their duties, subject to available funding. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The state board shall meet at least twice a year.

3. An employee of the department or of the department of inspections and appeals, an employee of a child-placing agency, an employee of an agency with which the department contracts for services for children under foster care, a foster parent providing foster care, or an employee of the district court is not eligible to serve on the state board. However, the judicial branch employee or judicial officer appointed from nominees submitted by the judicial branch in accordance with subsection 1 shall be eligible to serve on the state board.

84 Acts, ch 1279, §27; 86 Acts, ch 1245, §549; 88 Acts, ch 1233, §3; 89 Acts, ch 296, §23; 92 Acts, ch 1141, §6; 92 Acts, ch 1242, §27; 2002 Acts, ch 1162, §22; 2002 Acts, 2nd Ex, ch 1003, §239, 262

Confirmation, see §2.32
Subsections 1 and 3 amended

237.17 Foster care registry.

The state board shall establish a registry of the placements of all children receiving foster care. The department shall notify the state board of each placement within five working days of the department's notification of the placement. The notification to the state board shall include information identifying the child receiving foster care and placement information for that child.

Within thirty days of the placement or two days after the dispositional hearing the agency responsible for the placement shall submit the case permanency plan to the state board. All subsequent revisions of the case permanency plan shall be submitted when the revisions are developed.

84 Acts, ch 1279, §28; 88 Acts, ch 1233, §4

237.18 Duties of state board.

The state board shall:

1. Review the activities and actions of local boards.

2. Adopt rules pursuant to chapter 17A to:

a. Establish a recordkeeping system for the files of local review boards including individual case reviews.

b. Accumulate data and develop an annual report regarding children in foster care. The report shall include:

(1) Personal data regarding the total number of days of foster care provided and the characteristics of the children receiving foster care.

(2) The number of placements of children in foster care.

(3) The frequency and results of court reviews.

c. Evaluate the judicial and administrative data collected on foster care and disseminate the data to the governor, the supreme court, the chief judge of each judicial district, the department, and child-placing agencies.

d. Establish mandatory training programs for members of the state and local review boards including an initial training program and periodic in-service training programs. Training shall focus on, but not be limited to, the following:

(1) The history, philosophy and role of the juvenile court in the child protection system.

(2) Juvenile court procedures under the juvenile justice act.

(3) The foster care administrative review process of the department of human services.

(4) The role and procedures of the citizen's foster care review system.

(5) The Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272.

(6) The purpose of case permanency plans, and the type of information that will be available in those plans.

(7) The situations where the goals of either reuniting the child with the child's family or adoption would be appropriate.

(8) The legal processes that may lead to foster care placement.

(9) The types and number of children involved in those legal processes.

(10) The types of foster care placement available, with emphasis on the types and number of facilities available on a regional basis.

(11) The impact of specific physical or mental conditions of a child on the type of placement most

appropriate and the kind of progress that should be expected in those situations.

e. Establish procedures for the local review board consistent with the provisions of section 237.20.

f. Establish grounds and procedures for removal of a local review board member.

g. Establish procedures and protocols for administering the court appointed special advocate program in accordance with subsection 7.

3. Assign the case of each child receiving foster care within the judicial district to the appropriate local board.

4. Assist local boards in reviewing each case of a child receiving foster care, as provided in section 237.20.

5. Employ appropriate staff in accordance with available funding. The board shall coordinate with the department of inspections and appeals regarding administrative functions of the board.

6. In conjunction with the legislative fiscal bureau and in consultation with the department of human services, supreme court, and private foster care providers, develop and maintain an evaluation program regarding citizen foster care review programming. The evaluation program shall be designed to evaluate the effectiveness of citizen reviews in improving case permanency planning and meeting case permanency planning goals, identify the amount of time children spend in foster care placements, and identify problem issues in the foster care system. The state board shall submit an annual evaluation report to the governor and the general assembly.

7. Administer the court appointed special advocate program, including but not limited to performance of all of the following:

a. Establish standards for the program, including but not limited to standards for selection and screening of volunteers, preservice training, ongoing education, and assignment and supervision of volunteers. Identifying information concerning a court appointed special advocate, other than the advocate's name, shall not be considered to be a public record under chapter 22.

b. Implement the court appointed special advocate program in additional areas of the state.

c. Promote adherence to the national guidelines for state and local court appointed special advocate programs.

d. Issue an annual report of the court appointed special advocate program for submission to the general assembly, the governor, and the supreme court.

e. Employ appropriate court appointed special advocate program staff in accordance with available funding. The state board shall coordinate with the department of inspections and appeals the performance of the administrative functions of the state board.

8. Receive gifts, grants, or donations made for any of the purposes of the state board's programs and disburse and administer the funds received in accordance with the terms of the donor and under the direction of program staff. The funds received shall be used according to any restrictions attached to the funds and any unrestricted funds shall be retained and applied to the applicable program budget for the next succeeding fiscal year.

The state board shall make recommendations to the general assembly, the department, to child-placing agencies, the governor, the supreme court, the chief judge of each judicial district, and to the judicial branch. The recommendations shall include, but are not limited to, identification of systemic problems in the foster care and the juvenile justice systems, specific proposals for improvements that assist the systems in being more cost-effective and better able to protect the best interests of children, and necessary changes relating to the data collected and the annual report made under subsection 2, paragraph *"b"*.

84 Acts, ch 1279, §29; 88 Acts, ch 1233, §5 – 8; 92 Acts, ch 1141, §7; 92 Acts, ch 1242, §28; 98 Acts, ch 1047, §26; 2002 Acts, ch 1162, §23, 24

Subsection 2, NEW paragraph g
NEW subsections 7 and 8

237.19 Local citizen foster care review boards.

1. The state board shall establish local citizen foster care review boards to review cases of children receiving foster care. The department shall discontinue its foster care review process for those children reviewed by local boards as local boards are established and operating. The state board shall select five members and two alternate members to serve on each local board in consultation with the chief judge of each judicial district. The actual number of local boards needed and established shall be determined by the state board. The members of each local board shall consist of persons of the various social, economic, racial, and ethnic groups and various occupations of their district. A person employed by the state board or the department, the department of inspections and appeals, the district court, an employee of an agency with which the department contracts for services for children under foster care, a foster parent providing foster care, or a child-placing agency shall not serve on a local board. The state board shall provide the names of the members of the local boards to the department.

2. Vacancies on a local board shall be filled in the same manner as original appointments. The members shall not receive per diem but shall receive reimbursement for actual and necessary expenses incurred in their duties as members.

84 Acts, ch 1279, §30; 88 Acts, ch 1233, §9; 92 Acts, ch 1141, §8

Local boards to be established in additional judicial districts as moneys become available; 88 Acts, ch 1233, §21

237.20 Local board duties.

A local board shall:

1. Review at least every six months the case of each child receiving foster care assigned to the local board by the state board to determine whether satisfactory progress is being made toward the goals of the case permanency plan pursuant to section 237.22. As much as is possible, review shall be conducted immediately prior to court reviews of the case.

During each review, the agency responsible for the placement of or services provided to the child shall attend the review and the local board shall review all of the following:

a. The past, current, and future status of the child and placement as shown through the case permanency plan and case progress reports submitted by the agency responsible for the placement of the child and other information the board may require.

b. The efforts of the agency responsible for the placement of the child to locate and provide services to the biological or adoptive parents of the child.

c. The efforts of the agency responsible for the placement of the child to facilitate the return of the child to the home or to find an alternative permanent placement other than foster care if reunion with the parent or previous custodian is not feasible. The agency shall report to the board all factors which either favor or mitigate against a decision or alternative with regard to these matters.

d. Any problems, solutions, or alternatives which may be capable of investigation, or other matters with regard to the child which the agency responsible for the placement of the child or the board feels should be investigated with regard to the best interests of the state or of the child.

e. The compliance of the interested parties with the decision-making rights and responsibilities contained in the family foster care or preadoptive care agreement applicable to a child.

The review shall include issues pertaining to the case permanency plan and shall not include issues that do not pertain to the case permanency plan. A person notified pursuant to subsection 4 shall either attend the review or submit testimony as requested by the local board or in accordance with a written protocol jointly developed by the state board and the department. Oral testimony may, upon the request of the testifier or upon motion of the local board, be given in a private setting when to do so would facilitate the presentation of evidence. Local board questions shall pertain to the permanency plan and shall not include issues that do not pertain to the permanency plan.

A person who gives oral testimony has the right to representation by counsel at the review.

An agency or individual providing services to the child shall submit testimony as requested by the board. The testimony may be written or oral, or may be a tape recorded telephone call. Written testimony from other interested parties may also be considered by the board in its review.

2. *a.* Submit to the appropriate court within fifteen days after the review under subsection 1, the findings and recommendations of the review. The local board shall ensure that the most recent report is available for a court hearing. The report to the court shall include information regarding the case permanency plan and the progress in attaining the permanency goals. The report shall not include issues that do not pertain to the case permanency plan. The findings and recommendations shall include the proposed date of the next review by the local board. The local board shall notify the persons specified in subsection 4 of the findings and recommendations.

b. If the person or agency responsible for services provided to the child disagrees with the review findings or recommendations, the person or agency shall respond during the review or submit a statement to the local board and the court within ten working days of receiving the local board's report. The response shall explain the reasons the person or agency disagrees with the board's findings or does not plan to implement the board's recommendations.

3. Encourage placement of the child in the most appropriate setting reflecting the provisions of chapter 232.

4. Notify the following persons at least ten days before the review of a case of a child receiving foster care:

a. The person, court, or agency responsible for the child.

b. The parent or parents of the child unless termination of parental rights has occurred pursuant to section 232.117.

c. The foster care provider of the child.

d. The child receiving foster care if the child is fourteen years of age or older. The child shall be informed of the review's purpose and procedure, and of the right to have a guardian ad litem present.

e. The guardian ad litem of the foster child. An attorney appointed as guardian ad litem shall be eligible for compensation under section 232.141, subsection 2.

f. The department.

g. The county attorney.

h. The person providing services to the child or the child's family.

The notice shall include a statement that the person notified has the right to representation by counsel at the review.

84 Acts, ch 1279, §31; 88 Acts, ch 1233, §10 – 15; 89 Acts, ch 64, §1 – 3; 92 Acts, ch 1141, §9 – 12; 97 Acts, ch 164, §7; 99 Acts, ch 135, §22

237.21 Confidentiality of records — penalty.

1. The information and records of or provided to a local board or the state board regarding a child receiving foster care and the child's family when relating to the foster care placement are not public records pursuant to chapter 22. The state board and local boards, with respect to hearings involving specific children receiving foster care and the child's family, are not subject to chapter 21.

2. Information and records relating to a child receiving foster care and to the child's family shall be provided to a local board or the state board by the department or child-care agency receiving purchase-of-service funds from the department upon request by either board. A court having jurisdiction of a child receiving foster care shall release the information and records the court deems necessary to determine the needs of the child, if the information and records are not obtainable elsewhere, to a local board or the state board upon request by either board. If confidential information and records are distributed to individual members in advance of a meeting of the state board or a local board, the information and records shall be clearly identified as confidential and the members shall take appropriate steps to prevent unauthorized disclosure.

3. Members of the state board and local boards and the employees of the department and the department of inspections and appeals are subject to standards of confidentiality pursuant to sections 217.30, 228.6, subsection 1, sections 235A.15, 600.16, and 600.16A. Members of the state and local boards and employees of the department and the department of inspections and appeals who disclose information or records of the board or department, other than as provided in subsection 2, are guilty of a simple misdemeanor.

84 Acts, ch 1279, §32; 87 Acts, ch 117, §2; 88 Acts, ch 1233, §16, 17; 89 Acts, ch 64, §4; 92 Acts, ch 1196, §1

237.22 Case permanency plan.

The agency responsible for the placement of the child shall create a case permanency plan. The plan shall include, but not be limited to:

1. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.
2. Time frames to meet the stated permanency goal and short-term objectives.
3. The type and appropriateness of the placement and services to be provided to the child.
4. The care and services that will be provided to the child, biological parents, and foster parents.
5. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.
6. The efforts to place the child with a relative.
7. The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out of state.

84 Acts, ch 1279, §33; 88 Acts, ch 1233, §18, 19; 94 Acts, ch 1046, §7

237.23 Automatic repeal. Repealed by 94 Acts, ch 1186, § 37, 38.

CHAPTER 237A

CHILD CARE FACILITIES

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237A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Administrator"* means the administrator of the division of the department designated by the director to administer this chapter.

2. *"Child"* means either of the following:

a. A person twelve years of age or younger.

b. A person thirteen years of age or older but younger than nineteen years of age who has a developmental disability as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in 42 U.S.C. § 15002(8).

3. *"Child care"* means the care, supervision, and guidance of a child by a person other than the child's parent, guardian, or custodian for periods of less than twenty-four hours per day per child on a regular basis, but does not include care, supervision, and guidance of a child by any of the following:

a. An instructional program for children who are attending prekindergarten as defined by the state board of education under section 256.11 or a higher grade level and are at least four years of age administered by any of the following:

(1) A public or nonpublic school system accredited by the department of education or the state board of regents.

(2) A nonpublic school system which is not accredited by the department of education or the state board of regents.

b. A program provided under section 279.49 or 280.3A.

c. Any of the following church-related programs:

(1) An instructional program.

(2) A youth program other than a preschool, before or after school child care program, or other child care program.

(3) A program providing care to children on church premises while the children's parents are attending church-related or church-sponsored activities on the church premises.

d. Short-term classes of less than two weeks' duration held between school terms or during a break within a school term.

e. A child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the department of inspections and appeals pursuant to chapter 135B.

f. A program operated not more than one day per week by volunteers which meets all of the following conditions:

(1) Not more than eleven children are served per volunteer.

(2) The program operates for less than four hours during any twenty-four-hour period.

(3) The program is provided at no cost to the children's parent, guardian, or custodian.

g. A program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.

h. An after school program continuously offered throughout the school year calendar to children who are at least five years of age and are enrolled in school, and attend the program intermittently or a summer-only program for such children. The program must be provided through a nominal membership fee or at no cost.

i. A special activity program which meets less than four hours per day for the sole purpose of the special activity. Special activity programs include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.

j. A nationally accredited camp.

k. A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:

(1) A purchase of service or managed care contract with the department.

(2) A contract approved by a local decategorization governance board created under section 232.188.

(3) An arrangement approved by a juvenile court order.

l. Care provided on-site to children of parents residing in an emergency, homeless, or domestic violence shelter.

m. A child care facility providing respite care to a licensed foster family home for a period of twenty-four hours or more to a child who is placed with that licensed foster family home.

n. A program offered to a child whose parent, guardian, or custodian is engaged solely in a recreational or social activity, remains immediately available and accessible on the physical premises on which the child's care is provided, and does not engage in employment while the care is provided.

4. *"Child care center"* or *"center"* means a facility providing child care or preschool services for seven or more children, except when the facility is registered as a child development home.

5. *"Child care facility"* or *"facility"* means a child care center, preschool, or a registered child development home.

6. *"Child care home"* means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under section 237A.3.

7. *"Child development home"* means a person or program registered under section 237A.3A that may provide child care to six or more children at any one time.

8. *"Department"* means the department of hu-

man services.

9. *"Director"* means the director of human services.

10. *"Infant"* means a child who is less than twenty-four months of age.

11. *"Licensed center"* means a center issued a full or provisional license by the department under the provisions of this chapter or a center for which a license is being processed.

12. *"Poverty level"* means the poverty level defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

13. *"Preschool"* means a child care facility which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, social skills, and motor skills, and to extend their interest and understanding of the world about them.

14. *"School"* means kindergarten or a higher grade level.

15. *"State child care advisory council"* means the state child care advisory council established pursuant to sections 237A.21 and 237A.22.

[C75, 77, 79, 81, §237A.1; 82 Acts, ch 1213, §1 – 3]

83 Acts, ch 96, §157, 159; 87 Acts, ch 115, §34; 88 Acts, ch 1097, §1; 89 Acts, ch 206, §3; 90 Acts, ch 1005, §1 – 3; 91 Acts, ch 151, §1; 92 Acts, ch 1083, §1; 92 Acts, ch 1109, §1; 93 Acts, ch 54, §4; 93 Acts, ch 76, §8, 9; 94 Acts, ch 1129, §1; 94 Acts, ch 1175, §1; 97 Acts, ch 151, §1; 99 Acts, ch 192, §1; 2000 Acts, ch 1067, §14; 2001 Acts, ch 105, §3, 4; 2002 Acts, ch 1142, §3 – 8, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Subsection 2 amended

Subsection 3, paragraph h amended and NEW paragraph n

Subsections 4 – 6 amended

NEW subsection 7 and former subsection 7 stricken

Subsection 10 stricken and former subsections 11 – 16 renumbered as 10 – 15

237A.2 Licensing of child care centers.

1. A person shall not establish or operate a child care center without obtaining a license under the provisions of this chapter. A center may operate for a specified period of time, to be established by rule of the department, if application for a license has been made. If the department denies an application for an initial license, notwithstanding section 17A.8, the applicant center shall not continue to provide child care pending the outcome of an evidentiary hearing. The department shall issue a license if it determines that all of the following conditions have been met:

a. An application for a license or a renewal has been filed with the administrator on forms provided by the department.

b. The center is maintained to comply with state health and fire laws.

c. The center is maintained to comply with rules adopted under section 237A.12.

2. *a.* A person denied a license under this section shall receive written notice of the denial stating the reasons for denial and shall be provided with an opportunity for an evidentiary hearing.

b. A license issued under this chapter shall be valid for twenty-four months from the date of issuance. A license shall remain valid unless it is revoked or suspended in accordance with the provisions of section 237A.8 or is reduced to a provisional license under subsection 3. The department may inspect a licensed center at any time. A record of the license shall be kept by the department.

c. The license shall be posted in a conspicuous place in the center and shall state the particular premises in which child care may be offered and the number of individuals who may be received for care at any one time. A greater number of children than is authorized by the license shall not be kept in the center at any one time.

3. The administrator may reduce a previously issued license to a provisional license or issue a provisional license for a period of time not to exceed one year if the center does not meet standards required under this section. A provisional license shall not be renewable in regard to the same standards for more than two consecutive years. A provisional license shall be posted in a conspicuous place in the center as provided in this section. If written plans to bring the center up to standards, giving specific dates for completion of work, are submitted to and approved by the department, the provisional license shall be renewable as provided in this subsection.

4. A program which is not a child care center by reason of the exceptions to the definition of child care in section 237A.1, subsection 3, but which provides care, supervision, and guidance to a child may be issued a license if the program complies with all the provisions of this chapter.

5. If the department has denied or revoked a license because the applicant or person has continually or repeatedly failed to operate a licensed center in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not own or operate a child care center for a period of twelve months from the date the license is denied or revoked. The department shall not act on an application for a license submitted by the applicant or person during the twelve-month period.

[C75, §237A.2, 237A.3; C77, 79, 81, §237A.2]

90 Acts, ch 1005, §4; 91 Acts, ch 232, §12; 92 Acts, ch 1163, §54; 99 Acts, ch 192, §2; 2002 Acts, ch 1142, §9, 10, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Subsections 2 and 5 amended

237A.3 Child care homes.

A person or program providing child care to five children or fewer at any one time is a child care home provider and is not required to register under section 237A.3A as a child development home.

However, the person or program may register as a child development home.

[C75, 77, 79, 81, §237A.3; 82 Acts, ch 1016, §3, ch 1213, §4]

90 Acts, ch 1005, §5; 91 Acts, ch 151, §2; 91 Acts, ch 232, §13; 91 Acts, ch 267, §142; 92 Acts, ch 1163, §55; 93 Acts, ch 76, §10, 11; 94 Acts, ch 1129, §2, 3; 97 Acts, ch 151, §2; 99 Acts, ch 192, §3; 2001 Acts, ch 135, §3; 2002 Acts, ch 1142, §11, 31

2002 amendment is effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Section stricken and rewritten

237A.3A Child development homes.

1. *Registration.*

a. A person shall not establish or operate a child development home unless the person obtains a certificate of registration. The department shall issue a certificate of registration upon receipt of a statement from the person or upon completion of an inspection conducted by the department or a designee of the department verifying that the person complies with applicable rules adopted by the department pursuant to this section and section 237A.12.

b. The certificate of registration shall be posted in a conspicuous place in the child development home and shall state the name of the registrant, the registration category of the child development home, the maximum number of children who may be present for child care at any one time, and the address of the child development home. In addition, the certificate shall include a checklist of registration compliances.

c. The registration process for a child development home shall be repeated every twenty-four months as provided by rule.

d. A person who holds a child foster care license under chapter 237 shall register as a child development home provider in order to provide child care.

2. *Revocation or denial of registration.* If the department has denied or revoked a certificate of registration because a person has continually or repeatedly failed to operate a registered or licensed child care facility in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not operate or establish a registered child development home for a period of twelve months from the date the registration or license was denied or revoked. The department shall not act on an application for registration submitted by the person during the twelve-month period.

3. *Rules.*

a. Three categories of standards shall be applicable to child development homes. The initial designations of the categories, which may be revised by the department, shall be "A", "B", and "C", as ranked from less stringent standards and capacity to more stringent standards and capacity. The "C" registration category standards shall require the highest level of provider qualifications and allow the greatest capacity of the three categories. The department of human services, in consultation with the Iowa department of public health, shall adopt rules applying standards to each category specifying provider qualifications and training, health and safety requirements, capacity, amount of space available per child, and other minimum requirements. The capacity requirements shall take into consideration the provider's own children, children who have a mild illness, children receiving part-time child care, and children served as a sibling group in overnight care.

b. The rules shall allow a child development home to be registered in a particular category for which the provider is qualified even though the amount of space required to be available for the maximum number of children authorized for that category exceeds the actual amount of space available in that home. However, the total number of children authorized for the child development home at that category of registration shall be limited by the amount of space available per child.

c. In consultation with the state fire marshal, the department shall adopt rules relating to the provision of fire extinguishers, smoke detectors, and two exits accessible to children in a child development home.

4. *Number of children.*

a. In determining the number of children present for child care at any one time in a child development home, each child present in the child development home shall be considered as being provided child care unless the child is described by one of the following exceptions:

(1) The child's parent, guardian, or custodian operates or established the child development home and the child is attending school or the child is provided child care full-time on a regular basis by another person.

(2) The child has been present in the child development home for more than seventy-two consecutive hours and the child is attending school or the child is provided child care full-time on a regular basis by another person.

b. For purposes of determining the number of children present for child care in a child development home, a child receiving foster care from a child development home provider shall be considered to be the child of the provider.

5. Smoking, as defined in section 142B.1, shall not be permitted during a child development home's hours of operation in an area of the child development home which may be used by the children receiving child care.

97 Acts, ch 151, §3; 98 Acts, ch 1127, §1, 2, 6; 99 Acts, ch 192, §4 – 11, 37; 2001 Acts, ch 135, §4; 2002 Acts, ch 1142, §12, 31

2002 amendments are effective October 1, 2002; applicability to providers; transition exception for child development home registration; 2002 Acts, ch 1142, §30, 31

Section stricken and rewritten

237A.4 Inspection and evaluation.

The department shall make periodic inspections of licensed centers to ensure compliance with licensing requirements provided in this chapter, and the local boards of health may make periodic inspections of licensed centers to ensure compliance with health-related licensing requirements provided in this chapter. The department may inspect records maintained by a licensed center and may inquire into matters concerning these centers and the persons in charge. The department shall require that the center be inspected by the state fire marshal or a designee for compliance with rules relating to fire safety before a license is granted or renewed. The department or a designee may periodically visit registered child development homes for the purpose of evaluation of an inquiry into matters concerning compliance with rules adopted under section 237A.12. Evaluation of child development homes under this section may include consultative services provided pursuant to section 237A.6.

[C75, 77, 79, 81, §237A.4]

85 Acts, ch 173, §19; 99 Acts, ch 192, §12; 2002 Acts, ch 1142, §13, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Section amended

237A.5 Personnel.

1. All personnel in licensed or registered facilities shall have good health as evidenced by a report following a preemployment physical examination taken within six months prior to beginning employment. The examination shall include communicable disease tests by a licensed physician as defined in section 135C.1 and shall be repeated every three years after initial employment. Controlled medical conditions which would not affect the performance of the employee in the capacity employed shall not prohibit employment.

2. *a.* If a person is being considered for licensure or registration under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a child care facility subject to licensure or registration under this chapter, or if a person will reside in a facility, and if the person has been convicted of a crime or has a record of founded child abuse, the department shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, registration, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

b. If the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee or registrant or registered under this chapter, or resides in a licensed or registered facility the department shall notify the licensee or registrant that an evaluation will be conducted to determine whether prohibition of the person's licensure, registration, employment, or residence is warranted.

c. In an evaluation, the department shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, registered, employed, or to reside, or to continue to be licensed, registered, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, registration, employment, or residence, which may include completion of additional training. The department has final authority in determining whether prohibition of the person's licensure, registration, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

d. If the department determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, registration, employment, or residence, the person shall not be licensed or registered under this chapter to operate a child care facility and shall not be employed by a licensee or registrant or reside in a facility licensed or registered under this chapter.

e. If it has been determined that a child receiving child care from a child care facility is the victim of founded child abuse committed by an employee, license or registration holder, or resident of the child care facility for which a report is placed in the central registry pursuant to section 232.71D, the administrator shall provide notification at the time of the determination to the parents, guardians, and custodians of children receiving care from the facility. A notification made under this paragraph shall identify the type of abuse but shall not identify the victim or perpetrator or circumstances of the founded abuse.

3. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsection 2, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random dependent adult abuse record check conducted under this subsection.

4. On or after July 1, 1994, a licensee or registrant shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

5. On or after July 1, 1994, a licensee or registrant shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

6. A person who receives public funds for providing child care and who is not registered or licensed under this chapter and individuals who reside with the person shall be subject to the provisions of subsection 2 as though the person either is being considered for registration or is registered to provide child care under this chapter. If the person or individual residing with the person would be prohibited from licensure, registration, employment, or residence under subsection 2, the person shall not provide child care and is not eligible to receive public funds to do so. A person who continues to provide child care in violation of this subsection is subject to penalty under section 237A.19 and injunction under section 237A.20.

7. A person who serves as an unpaid volunteer in a child care facility shall not be required to complete training as a mandatory reporter of child abuse under section 232.69 or under any other requirement.

[C75, 77, 79, 81, §237A.5]

83 Acts, ch 153, §5; 85 Acts, ch 184, §1; 87 Acts, ch 153, §17; 88 Acts, ch 1134, §58; 90 Acts, ch 1221, §8; 91 Acts, ch 138, §8; 94 Acts, ch 1130, §15; 97 Acts, ch 45, §1; 98 Acts, ch 1127, §3, 6; 99 Acts, ch 192, §13

237A.6 Consultative services.

The department shall, and the director of public health may provide consultative services to a person applying for a license or registration, or licensed or registered by the administrator under this chapter.

[C75, 77, 79, 81, §237A.6]

237A.7 Confidential information.

Anyone who acquires through the administration of this chapter information relative to an individual in a child care facility or to a relative of the individual shall not, directly or indirectly, disclose the information except upon inquiry before a court of law or with the written consent of the individual or, in the case of a child, the written consent of the parent or guardian or as otherwise specifically required or allowed by law.

This section shall not prohibit the disclosure of information relative to the structure and operation of a facility nor shall it prohibit the statistical analysis by duly authorized persons of data collected by virtue of this chapter, or the publication of the results of the analysis in a manner which does not disclose information identifying individual persons.

[C75, 77, 79, 81, §237A.7]

99 Acts, ch 192, §14

237A.8 Violations — actions against license or registration.

The administrator, after notice and opportunity for an evidentiary hearing before the department of inspections and appeals, may suspend or revoke a license or certificate of registration issued under this chapter or may reduce a license to a provisional license if the person to whom a license or certificate is issued violates a provision of this chapter or if the person makes false reports regarding the operation of the child care facility to the administrator or a designee of the administrator. The administrator shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care at the time of action to suspend or revoke a license or certificate of registration.

[C75, 77, 79, 81, §237A.8]

83 Acts, ch 153, §6; 90 Acts, ch 1204, §54; 99 Acts, ch 192, §15

237A.9 to 237A.11 Repealed by 75 Acts, ch 144, § 11.

237A.12 Rules.

1. Subject to the provisions of chapter 17A, the department shall adopt rules setting minimum standards to provide quality child care in the operation and maintenance of child care centers and registered child development homes, relating to all of the following:

a. The number and qualifications of personnel necessary to assure the health, safety, and welfare of children in the facilities. Rules for facilities which are preschools shall be drawn so that any staff-to-children ratios which relate to the age of the children enrolled shall be based on the age of the majority of the children served by a particular class rather than on the age of the youngest child served.

b. Physical facilities.

c. The adequacy of activity programs and food services available to the children. The department shall not restrict the use of or apply nutritional standards to a lunch or other meal which is brought to the center, child development home, or child care home by a school-age child for the child's consumption.

d. Policies established by the center for parental participation.

e. Programs for education and in-service training of staff.

f. Records kept by the facilities.

g. Administration.

h. Health, safety, and medical policies for children.

2. Rules adopted by the state fire marshal for buildings, other than school buildings, used as child care centers as an adjunct to the primary purpose of the building shall take into consideration that children are received for temporary care only and shall not differ from rules adopted for these buildings when they are used by groups of persons congregating from time to time in the primary use and occupancy of the buildings. However, the rules may require a fire-rated separation from the remaining portion of the building if the fire marshal determines that the separation is necessary for the protection of children from a specific flammable hazard.

3. Rules relating to fire safety for child care centers shall be adopted under this chapter by the state fire marshal in consultation with the department. Rules adopted by the state fire marshal for a building which is owned or leased by a school district or accredited nonpublic school and used as a child care facility shall not differ from standards adopted by the state fire marshal for school buildings under chapter 100. Rules relating to sanitation shall be adopted by the department in consultation with the director of public health. All rules shall be developed in consultation with the state child care advisory council. The state fire marshal shall inspect the facilities.

4. If a building is owned or leased by a school district or accredited nonpublic school and complies with standards adopted by the state fire marshal for school buildings under chapter 100, the building is considered appropriate for use by a child care facility. The rules adopted by the administrator under this section shall not require the facility to comply with building requirements which differ from requirements for use of the building as a school.

5. Standards and requirements set by a city or county for a building which is owned or leased by a school district or accredited nonpublic school and used as a child care facility shall take into consideration that children are received for temporary care only and shall not differ from standards and requirements set for use of the building as a school.

[C75, 77, 79, 81, §237A.12]

85 Acts, ch 173, §20; 91 Acts, ch 151, §3; 92 Acts, ch 1083, §2; 94 Acts, ch 1129, §4, 5; 94 Acts, ch 1175, §2; 99 Acts, ch 192, §16; 2002 Acts, ch 1142, §14 – 16, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Subsection 1, unnumbered paragraph 1 and paragraph c amended

Subsection 3 amended

237A.13 State child care assistance.

1. A state child care assistance program is established in the department to assist children in families who meet eligibility guidelines and are described by any of the following circumstances:

a. The child's parent, guardian, or custodian is participating in approved academic or vocational training.

b. The child's parent, guardian, or custodian is seeking employment. Eligibility for assistance while seeking employment shall be limited to thirty days during a twelve-month period.

c. The child's parent, guardian, or custodian is employed and the family income meets income requirements.

d. The child's parent, guardian, or custodian is absent for a limited period of time due to hospitalization, physical illness, or mental illness.

e. The child needs protective services to prevent or alleviate child abuse or neglect.

2. Services under the program may be provided in a licensed child care center, a child development home, the home of a relative, the child's own home, a child care home, or in a facility exempt from licensing or registration.

3. The department shall set reimbursement rates as authorized by appropriations enacted for payment of the reimbursements. The department shall conduct a statewide reimbursement rate survey to compile information on each county and the survey shall be conducted at least every two years. The department shall set rates in a manner so as to provide incentives for an unregistered provider to become registered.

4. The department shall not apply waiting list requirements to any of the following persons:

a. Persons deemed to be eligible for benefits under the state child care assistance program in accordance with section 239B.24.

b. A family that is receiving state child care assistance at the time a child is born into the family. The newborn child shall be approved for services when the family reports the birth of the child.

c. Children who need protective services to prevent or alleviate child abuse or neglect.

5. Based upon the availability of the funding appropriated for state child care assistance for a fiscal year, the department shall establish waiting lists for state child care assistance in descending order of prioritization as follows:

a. Families with an income at or below one hundred percent of the federal poverty level whose members are employed at least twenty-eight hours per week, and parents with a family income at or below one hundred percent of the federal poverty level who are under the age of twenty-one years and are participating in an educational program leading to a high school diploma or the equivalent.

b. Parents with a family income at or below one hundred percent of the federal poverty level who are under the age of twenty-one years and are participating, at a satisfactory level, in an approved training program or in an educational program.

c. Families with an income of more than one hundred percent but not more than one hundred

forty percent of the federal poverty level whose members are employed at least twenty-eight hours per week.

d. Families with an income at or below one hundred seventy-five percent of the federal poverty level whose members are employed at least twenty-eight hours per week with a special needs child as a member of the family.

6. A child care facility that previously received child care wrap-around funding, meets the requirements for being a shared vision program except that a shared vision program is not operated in the county in which the facility is located, and is providing a child care wrap-around service that is included in the community empowerment area board's plan for the community empowerment area in which the facility is located shall be deemed to be qualified for child care wrap-around funding.

7. Nothing in this section shall be construed as or is intended as, or shall imply, a grant of entitlement for services to persons who are eligible for assistance due to an income level or other eligibility circumstance addressed in this section. Any state obligation to provide services pursuant to this section is limited to the extent of the funds appropriated for the purposes of state child care assistance.

2000 Acts, ch 1067, §15; 2002 Acts, ch 1142, §17, 18, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Subsection 2 amended

NEW subsection 6 and former subsection 6 renumbered as 7

237A.14 through 237A.18 Repealed by 93 Acts, ch 54, § 12.

237A.19 Penalty.

1. A person who establishes, conducts, manages, or operates a center without a license commits a serious misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, shall be considered a separate offense.

2. If registration is required under section 237A.3A, a person who establishes, conducts, manages, or operates a child development home without registering or a person who operates a child development home contrary to section 237A.5, commits a simple misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, is a separate offense. A single charge alleging continuing violation may be made in lieu of filing charges for each day of violation.

[C77, 79, 81, §237A.19; 82 Acts, ch 1213, §5]

85 Acts, ch 184, §2; 99 Acts, ch 192, §17; 2002 Acts, ch 1142, §19, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Section amended

237A.20 Injunction.

A person who establishes, conducts, manages, or operates a center without a license or a child development home without a certificate of registration, if registration is required under section 237A.3A, may be restrained by temporary or permanent injunction. A person who has been convicted of a crime against a person or a person with a record of founded child abuse may be restrained by temporary or permanent injunction from providing unregistered, registered, or licensed child care. The action may be instituted by the state, the county attorney, a political subdivision of the state, or an interested person.

[C77, 79, 81, §237A.20]

83 Acts, ch 153, §7; 90 Acts, ch 1248, §2; 99 Acts, ch 192, §18; 2002 Acts, ch 1142, §20, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Section amended

237A.21 State child care advisory council.

1. A state child care advisory council is established consisting of not more than thirty-five members from urban and rural areas across the state. The membership shall include, but is not limited to, all of the following persons or representatives with an interest in child care: a licensed center provider, a registered child development home provider from a county with a population of less than twenty-two thousand, an unregistered child care home provider, a parent of a child in child care, staff members of appropriate governmental agencies, and other members as deemed necessary by the director. The members are eligible for reimbursement of their actual and necessary expenses while engaged in performance of their official duties.

2. Members shall be appointed by the director from a list of names submitted by a nominating committee to consist of one member of the state council established pursuant to this section, one member of the department's child care staff, three consumers of child care, and one member of a professional child care organization. Two names shall be submitted for each appointment. Members shall be appointed for terms of three years but no member shall be appointed to more than two consecutive terms. The state council shall develop its own operational policies which are subject to departmental approval.

3. The membership of the council shall be appointed in a manner so as to provide equitable representation of persons with an interest in child care and shall include all of the following:

a. Two parents of a child served by a registered child development home.

b. Two parents of a child served by a licensed center.

c. Two not-for-profit child care providers.

d. Two for-profit child care providers.

e. One child care home provider.

f. Three child development home providers.

g. One child care resource and referral service grantee.

h. One nongovernmental child advocacy group representative.

i. One designee of the department of human services.

j. One designee of the Iowa department of public health.

k. One designee of the department of education.

l. One head start program provider.

m. Two legislators appointed in a manner so that both major political parties are represented.

[C75, §237A.1(8); C77, 79, 81, §237A.21]

86 Acts, ch 1044, §1; 92 Acts, ch 1083, §3; 99 Acts, ch 192, §19; 2002 Acts, ch 1142, §21, 22, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Subsection 1 amended

Subsection 3, paragraphs a, e, and f amended

237A.22 Duties of state child care advisory council.

The state child care advisory council shall do all of the following:

1. Consult with and make recommendations to the department concerning policy issues relating to child care.

2. Advise the department concerning services relating to child care, including but not limited to any of the following:

a. Resource and referral services.

b. Provider training.

c. Quality improvement.

d. Public-private partnerships.

e. Standards review and development.

3. Assist the department in developing an implementation plan to provide seamless service to recipients of public assistance which includes child care services. For the purposes of this subsection, *"seamless service"* means coordination, where possible, of the federal and state requirements which apply to child care.

4. Advise and provide technical services to the director of the department of education or the director's designee, upon request, relating to prekindergarten, kindergarten, and before and after school programming and facilities.

[C75, §237A.12; C77, 79, 81, §237A.22]

89 Acts, ch 206, §4; 92 Acts, ch 1083, §4; 99 Acts, ch 192, §20

237A.23 Child care training and development system.

1. The departments of education, public health, and human services shall jointly establish a leadership council for child care training and development in this state. In addition to representatives of the three departments, the leadership council shall include but is not limited to representatives of community colleges, institutions of higher learning under the state board of regents and private institutions of higher education, the Iowa cooperative extension service in agriculture and home economics, and child care resource and referral service agencies.

2. The charge of the council is to develop a proposal for a statewide child care training and development system and to monitor implementation of the proposal. The purpose of the system is to improve support for persons providing or administering child care services. The system shall be developed in a manner so as to incorporate and enhance existing efforts to provide this support.

3. The proposal for the child care training and development system shall include all of the following elements:

a. Identification of core competencies for providers and administrators that may be incorporated into professional standards.

b. Establishing levels for professional development.

c. Implementing a professional experience registry to track the training, educational attainment, and experience of providers and administrators.

d. Implementing a unified training and technical assistance approach for identifying needs, ensuring equal access, and establishing minimum requirements for training and trainers.

e. Establishing an articulation process to permit recognition of training provided by entities that do not grant academic credit by entities that do grant academic credit.

f. Implementing a financing structure to support the training registry.

g. Identifying other means for enhancing the training and development of persons who provide and administer child care.

4. The proposal shall include an implementation plan and budget provisions and may provide for implementation through a contract with a private nonprofit agency.

99 Acts, ch 192, §21, 38; 2000 Acts, ch 1058, §26

Submission of initial proposal for statewide child care training and development system by December 31, 1999, for implementation in fiscal year beginning July 1, 2001; 99 Acts, ch 192, §38

237A.24 and 237A.25 Reserved.

237A.26 Statewide resource and referral services — grants.

1. The department shall administer a statewide grant program for child care resource and referral services. Grants shall only be awarded to community-based nonprofit incorporated agencies and public agencies. Grants shall be awarded to facilitate the establishment of regional resource and referral agencies throughout the state, based upon the distribution of the child population in the state.

2. The department shall provide oversight of and annually evaluate an agency which is

awarded a grant to provide resource and referral services to a region.

3. An agency which receives a grant to provide resource and referral services shall perform both of the following functions:

a. Organize assistance to child care homes and child development homes utilizing training levels based upon the homes' degrees of experience and interest.

b. Operate in partnership with both public and private interests and coordinate resource and referral services with existing community services.

4. An agency, to be eligible to receive a grant to provide resource and referral services, must match the grant with financial resources equal to at least twenty-five percent of the amount of the grant. The financial resources may include a private donation, an in-kind contribution, or a public funding source other than a separate state grant for child care service improvement.

5. An agency, to be eligible to receive a grant to provide resource and referral services, must have a board of directors if the agency is an incorporated nonprofit agency or must have an advisory board if the agency is a public agency, to oversee the provision of resource and referral services. The board shall include providers, consumers, and other persons interested in the provision or delivery of child care services.

6. An agency which receives a child care resource and referral grant shall provide all of the following services:

a. Assist families in selecting quality child care. The agency must provide referrals to registered and licensed child care facilities, and to persons providing care, supervision, and guidance of a child which is not defined as child care under section 237A.1 and may provide referrals to unregistered providers.

b. Assist child care providers in adopting appropriate program and business practices to provide quality child care services.

c. Provide information to the public regarding the availability of child care services in the communities within the agency's region.

d. Actively encourage the development of new and expansion of existing child care facilities in response to identified community needs.

e. Provide specialized services to employers, including the provision of resource and referral services to employee groups identified by the employer and the provision of technical assistance to develop employer-supported child care programs. The specialized services may include but are not limited to working with employers to identify networks of recommended registered and licensed child care providers for employee groups and to implement employer-supported quality improvement initiatives among the network providers.

f. Refer eligible child care facilities to the federal child care food programs.

g. Loan toys, other equipment, and resource materials to child care facilities.

h. Administer funding designated within the grant to provide a substitute caregiver program for registered child development homes to provide substitute child care in a home when the home provider is ill, on vacation, receiving training, or is otherwise unable to provide the care.

7. The department may contract with an agency receiving a child care resource and referral grant to perform any of the following functions relating to publicly funded services providing care, supervision, and guidance of a child:

a. Determine an individual's eligibility for the services in accordance with income requirements.

b. Administer a voucher, certificate, or other system for reimbursing an eligible provider of the services.

8. For purposes of improving the quality and consistency of data collection, consultation, and other support to child care home and child development home providers, a resource and referral services agency grantee shall coordinate and assist with publicly and privately funded efforts administered at the community level to provide the support. The support and efforts addressed by a grantee may include but are not limited to community-funded child care home and child development home consultants. Community members involved with the assistance may include but are not limited to the efforts of a community empowerment area board under chapter 28, and of community representatives of education, health, human services, business, faith, and public interests.

90 Acts, ch 1248, §4; 92 Acts, ch 1083, §5; 99 Acts, ch 192, §22; 2002 Acts, ch 1142, §23 – 26, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Subsection 3, paragraph a amended

Subsection 6, paragraphs e and h amended

NEW subsection 8

237A.27 Crisis child care. Repealed by 2002 Acts, ch 1142, § 29, 31.

2002 repeal is effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

237A.28 Child care credit fund.

A child care credit fund is created in the state treasury under the authority of the department of human services. The moneys in the fund shall consist of moneys deposited pursuant to section 422.100 and shall be used for child care services as annually appropriated by the general assembly.

93 Acts, ch 172, §42; 99 Acts, ch 192, §24

237A.29 Public funding of child care — sanctions.

1. State funds and federal funds provided to the state in accordance with federal requirements shall not be used to pay for the care, supervision, and guidance of a child for periods of less than twenty-four hours per day on a regular basis unless the care, supervision, and guidance is defined as child care as used in this chapter.

2. *a.* For the purposes of this subsection, *"fraudulent means"* means knowingly making or causing to be made a false statement or a misrepresentation of a material fact, knowingly failing to disclose a material fact, or committing a fraudulent practice.

b. A child care provider that has been found in an administrative or judicial proceeding to have obtained, or has agreed to entry of a civil judgment or judgment by confession that includes a conclusion of law that the child care provider has obtained, by fraudulent means, public funding for provision of child care in an amount equal to or in excess of the minimum amount for a fraudulent practice in the second degree under section 714.10, subsection 1, shall be subject to sanction in accordance with this subsection. Such child care provider shall be subject to a period during which receipt of public funding for provision of child care is conditioned upon no further violations and to one or more of the following sanctions as determined by the department and imposed in an administrative proceeding:

(1) Ineligibility to receive public funding for provision of child care.

(2) Suspension from receipt of public funding for provision of child care.

(3) Special review of the child care provider's claims for providing publicly funded child care.

c. The following factors shall be considered in determining the sanction or sanctions to be imposed under paragraph *"b"*, subparagraphs (1) through (3):

(1) Seriousness of the violation.

(2) Extent of the violation.

(3) History of prior violations.

(4) Prior imposition of sanctions.

(5) Prior provision of provider education.

(6) Provider willingness to obey program rules.

(7) Whether a lesser sanction will be sufficient to remedy the problem.

d. In determining the value of the public funding obtained by fraudulent means, if the public funding is obtained by two or more acts of fraudulent means by the same person or location, or is obtained by different persons by two or more acts which occur in approximately the same location or time period so that the acts of fraudulent means used to obtain the public funding are attributable to a single scheme, plan, or conspiracy, these acts may be considered as a single instance of the use of fraudulent means and the value may be the total value of all moneys involved.

3. *a.* If a child care provider is subject to sanctions under subsection 2, the provider shall submit to the department the names and addresses of children receiving child care from the provider. The department shall send information to the parents of the children regarding the provider's actions leading to the imposition of the sanctions and the nature of the sanctions imposed. If the provider fails to submit the names and addresses within five business days of the department notifying the provider, the department shall suspend the provider's registration or license under this chapter until the names and addresses are provided.

b. In addition to applying the suspension, the department may request that the attorney general file a petition with the district court of the county in which the provider is located for issuance of a temporary injunction enjoining the provider from providing child care until the names and addresses are submitted to the department. The attorney general may file the petition upon receiving the request from the department. Any temporary injunction may be granted without a bond being required from the department.

c. If the sanctions imposed under subsection 2 involve the provider's suspension or ineligibility for receiving public funding for provision of child care, the department shall not impose those sanctions before the parents of the affected children are informed, and upon request, shall provide assistance to the parents in locating replacement child care.

93 Acts, ch 76, §13; 99 Acts, ch 192, §25; 2002 Acts, ch 1104, §1

Section amended

237A.30 High quality child care providers.

1. The department shall accept nationally recognized accreditations in identifying and listing high quality child care providers. Any registered child development home or licensed child care provider in this state that is accredited in good standing by the national association for the education of young children or the national association for family child care shall be included in the listing.

2. Providers included in the listing which remain in good standing with the accrediting body and with state regulation shall be designated as a gold seal quality child care provider. Any provider included in the listing may publicly utilize the designation as a gold seal quality child care provider. Child care resource and referral services shall be encouraged to make use of the providers holding this designation as a resource in quality improvement efforts and to identify these providers in making referrals to the public.

3. Holders of the gold seal quality designation shall be recognized annually in April during the week of national recognition of young children. A recognition event shall be hosted during that week by a committee which may include but is not limited to the governor, legislative leaders, department staff and other child care experts, and the chairpersons and ranking members of the legislative committees involved with regulation or funding of child care.

4. Subject to the availability of funding, an eligible holder of the gold seal quality designation receiving an initial or renewal national accredita-

tion may receive a one-time cash award in the year of initial or renewal accreditation on or after July 1, 1999. Holders of the designation who received funding assistance to obtain the initial or renewal national accreditation under a grant administered by the child development coordinating council or as part of being a federal head start program are not eligible for the cash award. Eligible holders of the designation may receive a cash award of two hundred fifty dollars for registered child development home providers and five hundred dollars for licensed centers.

99 Acts, ch 192, §33; 99 Acts, ch 203, §49; 2002 Acts, ch 1142, §27, 28, 31

2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

Subsections 1 and 4 amended

CHAPTER 237B

CHILDREN'S CENTERS — FACILITY STANDARDS

237B.1 Children's centers.

237B.1 Children's centers.

1. For the purposes of this section, unless the context requires otherwise, *"children's center"* means a privately funded facility designed to serve seven or more children at any one time who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency, and that offers one or more of the following services:

a. Child care.

b. Child care for children with a chronic illness.

c. Respite care.

d. Family support services.

e. Medical equipment.

f. Therapeutic day programming.

g. Educational enrichment.

h. Housing.

2. The department of human services shall consult with the department of inspections and appeals, department of education, Iowa department of public health, state fire marshal, and community-based providers of services to children in establishing certification or licensing standards for children's centers.

3. In establishing the initial and subsequent standards, the department of human services shall review other certification and licensing standards applicable to the centers. The standards established by the department shall be broad facility standards for the protection of children's safety. The department of human services shall not establish program standards or other requirements under this section involving program development or oversight of the programs provided to the children served by children's centers.

99 Acts, ch 189, §1; 99 Acts, ch 192, §33

CHAPTER 238

CHILD-PLACING AGENCIES

Child and family services, see chapter 234

238.1 Definitions.
238.2 "Child-placing agency" defined.
238.3 Authority to license.
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238.16 Rules and regulations.
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238.22 Licensee to aid inspection.
238.23 Annual report. Repealed by 2002 Acts, ch 1102, §8.

238.24 Information confidential — exceptions.
238.25 to 238.29 Repealed by 76 Acts, ch 1229, §38.
238.30 Reports as to placements. Repealed by 97 Acts, ch 99, §10.
238.31 Inspection of foster homes.
238.32 Authority to agencies.
238.33 through 238.41 Transferred to §232.158 – 232.166; 85 Acts, ch 173, §30.
238.42 Agreement in child placements.
238.43 Exceptions.
238.44 Contracts for services — liability for costs.
238.45 Penalty.

238.1 Definitions.

1. For the purpose of this chapter the word *"administrator"* means administrator of the division of child and family services of the department of human services.

2. The word *"person"* or *"agency"* where used in this chapter shall include individuals, institutions, partnerships, voluntary associations, and corporations, other than institutions under the management or control of any division of the department of human services or any administrator thereof.

[C27, 31, 35, §3661-a58; C39, §**3661.072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.1]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §41; 94 Acts, ch 1046, §8; 96 Acts, ch 1034, §14

238.2 "Child-placing agency" defined.

Any agency, public, semipublic, or private, which represents itself as placing children permanently or temporarily in private family homes or as receiving children for such placement, or which actually engages, for gain or otherwise, in such placement, shall be deemed to operate a child-placing agency.

[C27, 31, 35, §3661-a59; C39, §**3661.073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.2]

238.3 Authority to license.

The administrator may grant a license under this chapter for the period specified in section 238.9 for the conduct of any child-placing agency in this state.

[C27, 31, 35, §3661-a60; C39, §**3661.074;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.3]

2002 Acts, ch 1102, §5
Section amended

238.4 Granting of license conditional.

No such license shall be issued unless the person applying shall have shown that the person and the person's agents are properly equipped by training and experience to find and select suitable temporary or permanent homes for children and to supervise such homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them shall be properly safeguarded.

[C27, 31, 35, §3661-a61; C39, §**3661.075;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.4]

238.5 License required.

No person shall conduct a child-placing agency or solicit or receive funds for its support without an unrevoked license issued by the administrator within the twelve months preceding to conduct such agency.

[C27, 31, 35, §3661-a62; C39, §**3661.076;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.5]

238.6 Form of license.

The license shall state the name of the licensee and the particular premises in which the business may be carried on.

[C27, 31, 35, §3661-a63; C39, §**3661.077;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.6]

238.7 Posting of license.

Such license shall be kept posted in a conspicuous place on the licensed premises.

[C27, 31, 35, §3661-a64; C39, §**3661.078;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.7]

238.8 Record of license.

A record of the licenses so issued shall be kept by the administrator.

[C27, 31, 35, §3661-a65; C39, §**3661.079;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.8]

238.9 Term of license.

A license granted under this chapter shall be valid for three years from the date of issuance unless the license is revoked in accordance with section 238.10.

[C27, 31, 35, §3661-a66; C39, §**3661.080;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.9]

2002 Acts, ch 1102, §6
Section amended

238.10 Revocation of license.

The administrator may, after due notice and hearing, revoke the license:

1. In case the person to whom the same is issued violates any provision of this chapter.

2. When in the opinion of the administrator such agency is maintained in such a way as to waste or misuse funds contributed by the public or without due regard to sanitation or hygiene or to the health, comfort, or well-being of the child cared for or placed by the agency.

3. In case of violation by the licensee or the licensee's agents of any law of the state in a manner disclosing moral turpitude or unfitness to main-

tain such agency.

4. In case any such agency is conducted by a person of ill repute or bad moral character.

5. In case said agency operates in persistent violation of the reasonable regulations of the administrator governing such agencies.

[S13, §3260-k; C24, §3663; C27, 31, 35, §3661-a67; C39, §**3661.081;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.10]

238.11 Written charges — findings — notice.

Written charges against the licensee shall be served upon the licensee at least ten days before hearing shall be had thereon and a written copy of the findings and decisions of the administrator upon hearing shall be served upon the licensee in the manner prescribed for the service of original notice in civil actions.

[C27, 31, 35, §3661-a68; C39, §**3661.082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.11]

Service of notice, R.C.P. 1.302 – 1.315

238.12 Appeal — judicial review.

Any licensee feeling aggrieved by any decision of the administrator revoking the licensee's license may appeal to the council on human services in the manner of form prescribed by such council. The council shall, upon receipt of such an appeal give the licensee reasonable notice and opportunity for a fair hearing before such council or its duly authorized representative or representatives. Following such hearing the council on human services shall take its final action and notify the licensee in writing.

Judicial review of the actions of the council may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C27, 31, 35, §3661-a69; C39, §**3661.083;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.12]

83 Acts, ch 96, §157, 159

238.13 to 238.15 Repealed by 74 Acts, ch 1090, § 211.

238.16 Rules and regulations.

It shall be the duty of the administrator to provide such general regulations and rules for the conduct of all such agencies as shall be necessary to effect the purposes of this chapter and of all other laws of the state relating to children so far as the same are applicable, and to safeguard the well-being of children placed or cared for by such agencies.

[C27, 31, 35, §3661-a73; C39, §**3661.087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.16]

238.17 Forms for registration and record — preservation.

The administrator shall prescribe forms for the registration and record of persons cared for by any child-placing agency licensed under this chapter and for reports required by said administrator from the agencies.

If, for any reason, a child-placing agency as defined by section 238.2 shall cease to exist, all records of registration and placement and all other records of any kind and character kept by such child-placing agency shall be turned over to the administrator, for preservation, to be kept by the said administrator as a permanent record.

[C27, 31, 35, §3661-a74; C39, §**3661.088;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.17]

238.18 Duty of licensee.

The licensee shall keep a record and make reports in the form to be prescribed by said administrator.

[C27, 31, 35, §3661-a75; C39, §**3661.089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.18]

238.19 Inspection generally.

Authorized employees of the department of inspections and appeals may inspect the premises and conditions of the agency at any time and examine every part of the agency; and may inquire into all matters concerning the agency and the children in the care of the agency.

[S13, §3260-j; C24, §3669, 3684; C27, 31, 35, §3661-a76; C39, §**3661.090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.19]

90 Acts, ch 1204, §55

238.20 Minimum inspection — record.

Authorized employees of the department of inspections and appeals shall visit and inspect the premises of licensed child-placing agencies at least once every six months and make and preserve written reports of the conditions found.

[C27, 31, 35, §3661-a77; C39, §**3661.091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.20]

90 Acts, ch 1204, §56

238.21 Other inspecting agencies.

Authorized agents of the local board of health in whose jurisdiction a licensed child-placing agency is located may make inspection of the premises.

[C27, 31, 35, §3661-a78; C39, §**3661.092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.21]

90 Acts, ch 1204, §57

238.22 Licensee to aid inspection.

The licensees shall give all reasonable information to such inspectors and afford them every reasonable facility for obtaining pertinent information.

[C27, 31, 35, §3661-a79; C39, §**3661.093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.22]

238.23 Annual report. Repealed by 2002 Acts, ch 1102, § 8.

238.24 Information confidential — exceptions.

1. Except as authorized by this section, a person who acquires under this chapter or from the records provided for in this chapter, information relative to any agency or relative to any individual cared for by the agency or relative to any relative of the individual, shall not directly or indirectly disclose the information.

2. Disclosure of information acquired under this chapter or from the records provided for in this chapter is authorized under any of the following circumstances:

a. Disclosure made upon inquiry before a court of law, or before some other tribunal, or for the information of the governor, general assembly, medical examiners, administrator, Iowa department of public health, or the local board of health in the jurisdiction where the agency is located.

b. Disclosure may be made by the administrator to proper persons as may be in the interest of a child cared for by the agency or in the interest of the child's parents or foster parents and not inimical to the child, or as may be necessary to protect the interests of the child's prospective foster parents. However, disclosure of termination and adoption records shall be governed by the provisions of sections 600.16 and 600.16A.

c. Disclosure for purposes of statistical analysis performed by duly authorized persons of data collected under this chapter or the publication of the results of such analysis in such manner as will not disclose confidential information.

[C27, 31, 35, §3661-a81; C39, §**3661.095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.24]

92 Acts, ch 1196, §2; 2002 Acts, ch 1102, §7

Section amended

238.25 to 238.29 Repealed by 76 Acts, ch 1229, § 38.

238.30 Reports as to placements. Repealed by 97 Acts, ch 99, § 10.

238.31 Inspection of foster homes.

The administrator shall be satisfied that each licensed child-placing agency is maintaining proper standards in its work, and said administrator may at any time cause the child and home in which the child has been placed to be visited by the administrator's agents for the purpose of ascertaining whether the home is a suitable one for the child, and may continue to visit and inspect the foster home and the conditions therein as they affect said child.

[C27, 31, 35, §3661-a88; C39, §**3661.102;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.31]

238.32 Authority to agencies.

Any institution incorporated under the laws of this state or maintained for the purpose of caring for, placing out for adoption, or otherwise improving the condition of unfortunate children may, under the conditions specified in this chapter and when licensed in accordance with the provisions of this chapter:

1. Receive children in need of assistance, or delinquent children who are under eighteen years of age, under commitment from the juvenile court, and control and dispose of them subject to the provisions of chapter 232 and chapter 600A.

2. Receive, control, and dispose of all minor children voluntarily surrendered to such institutions.

[S13, §254-a22, 3260-b; C24, §3662; C27, 31, 35, §3661-a89; C39, §**3661.103;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.32]

Transferring legal custody of a child, §232.102, 232.103

238.33 through 238.41 Transferred to § 232.158 – 232.166; 85 Acts, ch 173, § 30.

238.42 Agreement in child placements.

Every agency placing a child in a foster home shall enter into a written agreement with the person taking the child, which agreement shall provide that the agency placing the child shall have access at all reasonable times to such child and to the home in which the child is living, and for the return of the child by the person taking the child whenever, in the opinion of the agency placing such child, or in the opinion of the administrator, the best interests of the child shall require it.

[C27, 31, 35, §3661-a97; C39, §**3661.111;** C46, 50, 54, 58, 62, 66, §238.40; C71, 73, 75, 77, 79, 81, §238.42]

238.43 Exceptions.

The provisions of section 238.42 shall not apply to children who have been legally adopted.

[C27, 31, 35, §3661-a98; C39, §**3661.112;** C46, 50, 54, 58, 62, 66, §238.41; C71, 73, 75, 77, 79, 81, §238.43]

238.44 Contracts for services — liability for costs.

An agency which enters into a contract with a referral agency to provide child placement services is liable for the costs of services which are paid prior to the provision of services, if the services are not subsequently provided.

94 Acts, ch 1174, §5

238.45 Penalty.

Every person who violates any of the provisions of this chapter or who intentionally shall make any false statements or reports to the administrator with reference to the matters contained herein, shall be guilty of a fraudulent practice.

[C27, 31, 35, §3661-a100; C39, §**3661.114;** C46, 50, 54, 58, 62, 66, §238.43; C71, 73, 75, 77, 79, 81, §238.45]

CHAPTER 239

FAMILY INVESTMENT PROGRAM

Repealed by 97 Acts, ch 41, §29; see chapter 239B

CHAPTER 239A

PUBLIC WORKS POSITIONS FOR CERTAIN PERSONS

239A.1 Who may be placed.
239A.2 Projects determined.
239A.3 Target areas selected.

239A.1 Who may be placed.

Any person who is receiving or has obtained approval of an application to receive assistance under chapter 239B, and who is eligible under the promoting independence and self-sufficiency through employment job opportunities and basic skills program, may be referred to the department of workforce development for placement in public works positions available pursuant to this chapter or to such other authority as may be applicable.

[C77, 79, 81, §239A.1]

96 Acts, ch 1186, §23; 97 Acts, ch 41, §32

239A.2 Projects determined.

The department of workforce development, in consultation with the director of human services, shall establish a procedure for assignment of persons referred under section 239A.1 to positions available in public works projects. The department of workforce development shall arrange with units of local government for establishment of such projects, which may include any type of work or endeavor that is within the scope of authority of the unit of local government involved so long as the project meets the following requirements:

1. The project must create new employment opportunities and not fund existing employment of persons working for the local government unit or resume funding of projects for which the local government unit has, without fault, terminated employees within the previous six months and has not recalled those employees.

2. The benefits of the project result must inure primarily to the community or public at large.

3. The following conditions of employment must be satisfied:

a. The unit of local government with which the project is arranged must be the employer of the persons hired under the project.

b. The employees under the project must be paid at the same rate as other employees doing similar work for that unit of local government.

c. The employees must be considered regular employees of the unit of local government involved and must be entitled to participate in benefit programs of that unit of local government, including but not limited to workers' compensation, but shall not be entitled to qualify for unemployment compensation benefits on the basis of employment under the project.

[C77, 79, 81, §239A.2; 82 Acts, ch 1161, §27]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1186, §23

239A.3 Target areas selected.

The department of workforce development shall select not to exceed two target counties for implementation of sections 239A.1 and 239A.2. In selecting the target county or counties in which this chapter is to be implemented, the department of workforce development shall be guided by the following criteria:

1. The total number of unemployed persons in the county.

2. The number of unemployed persons in the county as a percentage of the available work force there.

3. The total number of persons receiving assistance under chapter 239B in that county.

4. The number of persons receiving assistance under chapter 239B in that county as a percentage of the total population of the county.

5. The number of unemployed heads of households receiving assistance under chapter 239B in that county.

6. The number of unemployed heads of households receiving assistance under chapter 239B in that county as a percentage of all recipients of such assistance in that county.

[C77, 79, 81, §239A.3]

96 Acts, ch 1186, §23; 97 Acts, ch 41, §32

CHAPTER 239B

FAMILY INVESTMENT PROGRAM

239B.1 Definitions.
239B.2 Conditions of eligibility.
239B.2A School attendance.
239B.2B Eligibility of noncitizens.
239B.3 Cash assistance.
239B.4 Departmental role.
239B.5 Compliance with federal law.
239B.6 Assignment of support rights or benefits.
239B.7 Income and resource exemptions, deductions, and disregards.
239B.8 Family investment agreements.
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239B.10 Minor and young parents — other requirements.
239B.11 Family investment program account.
239B.12 Immunization.
239B.13 Needy relative payee — protective payee — vendor payment.
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239B.15 County attorney to enforce.
239B.16 Appeal — judicial review.
239B.17 PROMISE JOBS program.
239B.18 JOBS program participation.
239B.19 JOBS program availability.
239B.20 JOBS program health and safety.
239B.21 JOBS program — workers' compensation law applicable.
239B.22 JOBS program — participant not state employee.
239B.23 Child day care provisions. Repealed by 98 Acts, ch 1218, §82.
239B.24 State child care assistance eligibility.

239B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Applicant"* means a person who files an application for participation in the family investment program under this chapter.

2. *"Assistance"* means a family investment program payment.

3. *"Child"* means an unmarried person who is less than eighteen years of age or an unmarried person who is eighteen years of age and is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.

4. *"Department"* means the department of human services.

5. *"Family"* means a family unit that includes at least one child and at least one parent or other specified relative of the child.

6. *"Family investment agreement"* means the agreement developed with a participant in accordance with section 239B.8.

7. *"Family investment program"* means the family investment program under this chapter.

8. *"Limited benefit plan"* means a period of time in which a participant or member of a participant's family is either eligible for reduced assistance only or ineligible for any assistance under the family investment program, in accordance with section 239B.9.

9. *"Minor parent"* means an applicant or participant parent who is less than eighteen years of age and has never been married.

10. *"Participant"* means a person who is receiving full or partial family investment program assistance.

11. *"PROMISE JOBS program"* or *"JOBS program"* means the promoting independence and self-sufficiency through employment job opportunities and basic skills program created in section 239B.17.

12. *"Specified relative"* means a person who is, or was at any time, one of the following relatives of an applicant or participant child, by means of blood relationship, marriage, or adoption, or is a spouse of one of the following relatives:

a. Parent.
b. Grandparent.
c. Great-grandparent.
d. Great-great-grandparent.
e. Stepparent of the child, but not the parent of the stepparent.
f. Sibling.
g. Stepsibling.
h. Sibling by at least the half blood.
i. Uncle or aunt by at least the half blood.
j. Great-uncle or great-aunt.
k. Great-great-uncle or great-great-aunt.
l. First cousin.
m. Nephew or niece.
n. Second cousin.

97 Acts, ch 41, §2, 34

239B.2 Conditions of eligibility.

Within available funding, the department shall make assistance available to eligible families under the family investment program. At a minimum, a family shall meet all of the following condi-

tions of eligibility:

1. *Application.* An application for the program is made to the department. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application shall be made by the specified relative with whom the child resides or will reside, and shall contain the information required on the application form. One application may be made for several children of the same family if the children reside or will reside with the same specified relative.

2. *Income and resources.* The family meets income and resource guidelines established by the department to attain or retain financial eligibility. In determining a family's income and resources, the department shall consider the income and resources of the child, the child's parent, the child's stepparent living with the child, or any other specified relative with whom the child resides or will reside available to the family unless specifically exempted as provided in section 239B.7 or by rule or unless otherwise provided by federal law. A family's failure to meet the income or resource guidelines shall result in denial of the family's eligibility for the program.

3. *Unemployment.* A determination of eligibility for a family with an unemployed parent shall not include consideration of either parent's number of hours of employment. Both parents must enter into and participate in a family investment agreement and participate in JOBS program activities unless good cause not to participate is established in accordance with rules.

Any of the following reasons for refusing employment or training are not good cause:

a. Unsuitable or unpleasant work or training, if the parent is able to perform the work or training without unusual danger to the parent's health.

b. The amount of wages or compensation, unless the wages for employment are below the amount customary for the same work in the community.

4. *Written statement — family investment agreement.*

a. The department may require an applicant family to commit to the initial actions the applicant family will take to achieve self-sufficiency as contained in a signed, written statement. An applicant family which fails to commit to the actions as contained in the written statement shall be denied eligibility for the family investment program. If the applicant family becomes a participant family, the family's written statement may be replaced by, incorporated within, or become the family investment agreement for that family.

b. Unless exempt as provided in section 239B.8, a participant family which is eligible for the program shall continue to comply with the provisions of a written statement which contains actions committed to by the family under paragraph *"a"* or shall enter into a family investment agreement with the department. A participant family must comply with the provisions of the written statement or the conditions in the agreement in order to retain eligibility. A participant family which does not comply shall be deemed to have chosen a limited benefit plan.

5. *Provision of information.* The family provides requested information to the department. The department shall adopt rules specifying the conditions under which an applicant or participant family is denied eligibility for family investment program assistance for failure to provide requested information.

6. *Cooperation with child support requirements.* The department shall provide for prompt notification of the department's child support recovery unit if assistance is provided to a child whose parent is absent from the home. An applicant or participant shall cooperate with the child support recovery unit and the department as provided in 42 U.S.C. § 608(a)(2) unless the applicant or participant qualifies for good cause or other exception as determined by the department in accordance with the best interest of the child, parent, or specified relative, and with standards prescribed by rule. The authorized good cause or other exceptions shall include participation in a family investment agreement safety plan option to address or prevent family or domestic violence and other consideration given to the presence of family or domestic violence. If a specified relative with whom a child is residing fails to comply with these cooperation requirements, a sanction shall be imposed as defined by rule in accordance with state and federal law.

7. *Periodic reviews.* As a condition of eligibility, the department may require periodic reports from a participant concerning the participant's income, resources, family composition, and other circumstances. If the participant's circumstances change, the participant's assistance may be continued, renewed, suspended, changed in amount, or entirely withdrawn, as determined in accordance with rule.

8. *Out-of-state assistance.* Assistance shall be paid to a participant residing temporarily out-of-state if the participant retains residency in this state and remains otherwise eligible for assistance. The department shall periodically redetermine the eligibility of a participant who is temporarily residing out-of-state.

97 Acts, ch 41, §3, 34; 98 Acts, ch 1218, §50; 99 Acts, ch 100, §1; 2000 Acts, ch 1088, §2

239B.2A School attendance.

1. As a condition of eligibility for an applicant for or a recipient of assistance under this chapter, the department shall require a child's parent or other specified relative whose needs are included in the cash assistance grant payable to the child's family to cooperate with efforts to ensure children receiving assistance under this chapter complete

educational requirements through the sixth grade. As a further condition of eligibility, an applicant or recipient shall provide written authorization for release of information to a school concerning the receipt of assistance and for release of information by a school concerning the child's compliance with attendance requirements.

2. If the department of human services receives written notification from a school truancy officer under section 299.12 that a child receiving assistance under this chapter is deemed to be truant, the child's family shall be subject to sanction as provided in this section. The sanction shall continue to apply until the department of human services receives written notification from the school truancy officer of any of the following:

a. The child is complying with the attendance policy applicable to the child's school.

b. The child has satisfactorily completed educational requirements through the sixth grade.

c. The child's school has determined there is good cause for the child's nonattendance and the school withdraws the written notification.

d. The child is no longer enrolled in the school for which the written notification was provided and the child's family demonstrates that the child is enrolled in and is attending another school or is otherwise receiving equivalent schooling as authorized under state law.

3. The sanction under this section shall be a deduction of twenty-five percent from the net cash assistance grant amount payable to the child's family prior to any deduction for recoupment of prior overpayment. If more than one child in the family is deemed to be truant, the sanction shall continue to apply until the department receives written notification from the school truancy officer, as provided in subsection 2 concerning each child.

4. Notwithstanding any contrary provision of this chapter, unless prohibited by federal law, the department may release or make information available to a school truancy officer, as defined in section 299.12, regarding persons applying for or receiving assistance under this chapter as necessary to verify the family investment program assistance status of a child of a family who may be subject to sanction under this section. The department shall implement protocols restricting information access under this section by region or other means to provide for the minimum access to information necessary to implement the purposes of this section. The department may adopt rules as necessary to administer this section.

97 Acts, ch 41, §32, 34; 97 Acts, ch 174, §1, 7

Requirements relating to school attendance by children participating in the family investment program are suspended for the period beginning July 1, 2002, and ending June 30, 2003; 2002 Acts, 2nd Ex, ch 1003, §148, 151

239B.2B Eligibility of noncitizens.

A person who meets the conditions of eligibility under section 239B.2 and who meets either of the following requirements shall be eligible for participation in the family investment program:

1. The person is a conditional resident alien who was battered or subjected to extreme cruelty, or whose child was battered or subjected to extreme cruelty, perpetrated by the person's spouse who is a United States citizen or lawful permanent resident as described in 8 C.F.R. § 216.5(a)(3).

2. The person was battered or subjected to extreme cruelty, or the person's child was battered or subjected to extreme cruelty, perpetrated by the person's spouse who is a United States citizen or lawful permanent resident and the person's petition has been approved or a petition is pending that sets forth a prima facie case that the person has noncitizen status under any of the following categories:

a. Status as a spouse or child of a United States citizen or lawful permanent resident under the federal Immigration and Nationality Act, § 204(a)(1), as codified in 8 U.S.C. § 1154(a)(1)(A).

b. Status as a spouse or child who was battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident, under the federal Immigration and Nationality Act, § 204(a)(iii), as codified in 8 U.S.C. § 1154(a)(1)(A)(iii).

c. Classification as a person lawfully admitted for permanent residence under the federal Immigration and Nationality Act.

d. Suspension of deportation and adjustment of status under the federal Immigration and Nationality Act, § 244(a), as in effect before the date of enactment of the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

e. Cancellation of removal or adjustment of status under the federal Immigration and Nationality Act, § 240A, as codified in 8 U.S.C. § 1229b.

f. Status as an asylee, if asylum is pending, under the federal Immigration and Nationality Act, § 208, as codified in 8 U.S.C. § 1158.

2002 Acts, ch 1175, §27

NEW section

239B.3 Cash assistance.

1. *a.* Within available funding, the department shall provide an ongoing cash assistance grant under the family investment program to a family eligible under section 239B.2.

b. For an eligibility decision involving an applicant family with a specified relative, within thirty days of the date of an application, the department shall authorize issuance of notice of the department's decision to the specified relative.

2. For an applicant or participant family, the department shall calculate and pay the cash assistance grant on a monthly basis, taking into consideration all of the following:

a. The income and resources of the family.

b. Whether the family has entered into a limited benefit plan.

c. The size of the family.

d. Available funding.

3. The department may pay cash assistance and other cash benefits paid under this chapter by warrant, through a direct deposit to a financial institution of a participant, or through an electronic benefits transfer.

4. The department may pay, from funds appropriated for this purpose, a maximum of four hundred dollars toward funeral expenses on the death of a child who is a participant or has been authorized to participate in the family investment program, provided both of the following conditions apply:

a. The decedent does not leave an estate which may be probated with sufficient proceeds to allow for payment of the funeral expenses.

b. Payments which are due the decedent's estate or beneficiary by reason of the liability of a life insurance, death or funeral benefit company, association, or society, or in the form of United States social security, railroad retirement, or veterans' benefits upon the death of the decedent, are deducted from the department's payment under this section.

97 Acts, ch 41, §4, 34; 99 Acts, ch 100, §2

239B.4 Departmental role.

1. The department is the state entity designated to administer federal funds received for purposes of the family investment program and the JOBS program under this chapter, including, but not limited to, the funding received under the federal temporary assistance for needy families block grant as authorized under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and as such is the lead agency in preparing and filing state plans, state plan amendments, and other reports required by federal law.

2. The department is responsible for a management information system, eligibility determination, participant grant calculations and issuance of payments, contracting for services, provision of an appeal or resolution process to applicants and participants, determining the suitability of a family home maintained by a specified relative applicant or participant, and other activities as necessary to administer the family investment program and the JOBS program.

3. The department shall develop and use a screening tool for determining the likely presence of family and domestic violence affecting applicant and participant families. The department shall require the use of the screening tool by trained employees.

4. The department may adopt rules pursuant to chapter 17A as necessary to administer this chapter.

97 Acts, ch 41, §5, 34; 98 Acts, ch 1218, §51

239B.5 Compliance with federal law.

1. If, as a condition of receiving federal funds for the family investment program, federal law requires implementation and administration of certain activities during a period when the general assembly is not in session, the department shall proceed to implement and administer those provisions, even if in conflict with other existing state law. However, the period of implementation authorized under this subsection shall end upon the adjournment of the regular session of the general assembly immediately following the commencement of the period of implementation.

2. The department may submit waiver requests to the United States department of health and human services as necessary to implement and administer any provision under this chapter, or to implement any subsequent initiative that requires a waiver from federal law.

3. *a.* The provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 115, shall not apply to an applicant or participant.

b. However, unless exempt for good cause under rules adopted by the department for this purpose, an applicant or participant convicted under federal or state law of a felony offense, which has as an element the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. § 802(6), shall be required to participate in drug rehabilitation activities or to fulfill other requirements to verify that the applicant or participant does not illegally possess, use, or distribute a controlled substance.

97 Acts, ch 41, §6, 34

239B.6 Assignment of support rights or benefits.

1. An assignment of support rights to the department is created by either of the following:

a. An applicant and other persons covered by an application are deemed to have assigned to the department at the time of application all rights to periodic support payments to the extent of the amount of assistance received by the applicant and by other persons covered by the application.

b. A determination that a child or another person covered by an application is eligible for assistance under this chapter creates an assignment by operation of law to the department of all rights to periodic support payments not to exceed the amount of assistance received by the child and other persons covered by the application.

2. An assignment takes effect upon determination that an applicant or another person covered by an application is eligible for assistance under this chapter, applies to both current and accrued support obligations, and terminates when an applicant or another person covered by an application ceases to receive assistance under this chapter, except with respect to the amount of unpaid support obligations accrued under the as-

signment. If an applicant or another person covered by an application ceases to receive assistance under this chapter and the applicant or other person covered by the application receives a periodic support payment, subject to limitations under federal law, the department is entitled only to that amount of the periodic support payment above the current periodic support obligation.

3. Assistance paid or payable under this chapter is not transferable or assignable at law or in equity, and none of the assistance paid or payable is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

97 Acts, ch 41, §7, 34

239B.7 Income and resource exemptions, deductions, and disregards.

In determining a family's income and resources for purposes of the family's initial and continuing eligibility for assistance and for determining grant amounts, the provisions of this section shall apply to the family and individual family members.

1. *Work expense deduction.* If an individual's earned income is considered by the department, the individual shall be allowed a work expense deduction equal to twenty percent of the earned income. The work expense deduction is intended to include all work-related expenses other than child care. These expenses shall include but are not limited to all of the following: taxes, transportation, meals, uniforms, and other work-related expenses. However, the work expense deduction shall not be allowed for an individual who is subject to a sanction for failure to comply with family investment program requirements.

2. *Work-and-earn incentive.* If an individual's earned income is considered by the department, the individual shall be allowed a work-and-earn incentive. The incentive shall be equal to fifty percent of the amount of earned income remaining after all other deductions are applied. The department shall disregard the incentive amount when considering the earned income available to the individual. The incentive shall not have a time limit. The work-and-earn incentive shall not be withdrawn as a penalty for failure to comply with family investment program requirements.

3. Reserved.

4. Reserved.

5. *Income consideration.* If an individual has timely reported an absence of income to the department, consideration of the individual's income shall cease beginning in the first month the income is absent. However, this provision shall not apply to an individual who has quit employment without good cause as defined in rules.

6. *Interest income.* Interest income shall be disregarded.

7. *Individual development account deposits.* The department shall disregard as income any moneys an individual deposits in an individual development account established pursuant to chapter 541A.

8. *Motor vehicle disregard.* The department shall disregard the first three thousand eight hundred eighty-nine dollars in equity value of a motor vehicle. Beginning July 1, 1997, and continuing in succeeding fiscal years, the motor vehicle equity value disregarded by the department shall be increased by the latest increase in the consumer price index for used vehicles during the previous state fiscal year. This disregard shall be applicable to each adult and to each working individual in a family who is nineteen years of age or younger. The amount of a motor vehicle's equity in excess of the amount of the motor vehicle disregard shall apply to the resource limitation established in subsection 9.

9. *Resource limitation.*

a. The resource limitation for an applicant family for the family investment program shall be two thousand dollars.

b. The resource limitation for a participant family shall be five thousand dollars.

c. The department shall disregard not more than ten thousand dollars of a self-employed individual's tools of the trade or capital assets in considering the individual's resources.

10. *Individual development account earnings and balance.* The department shall disregard any earnings and the balance of an individual development account established pursuant to chapter 541A in considering an individual's resources.

97 Acts, ch 41, §8, 34 – 36; 99 Acts, ch 192, §33, 34

239B.8 Family investment agreements.

The department shall establish a policy regarding the implementation of family investment agreements which limits the period of eligibility for the family investment program based upon the requirements of a family's plan for self-sufficiency. The policy shall require a family's plan to be specified in a family investment agreement between the family and the department. The department shall adopt rules to administer the policy. The components of the policy shall include but are not limited to all of the following:

1. *Participation — exemptions.* A parent living in a home with a child for whom an application for family investment program assistance has been made or for whom the assistance is provided, and all other individual members of the family whose needs are included in the assistance shall be subject to a family investment agreement unless exempt under rules adopted by the department or unless any of the following conditions exists:

a. The individual is less than sixteen years of age and is not a parent.

b. The individual is sixteen through eighteen years of age, is not a parent, and is attending elementary or secondary school, or the equivalent level of vocational or technical school, on a full-time basis.

c. The individual is not a United States citizen and is not a qualified alien as defined in 8 U.S.C. § 1641.

2. *Agreement options.* A family investment agreement shall require an individual to participate in one or more of the options enumerated in this subsection. An individual's level of participation in one or more of the options shall be equivalent to the level of commitment required for full-time employment or shall be significant so as to move the individual's level of participation toward that level. The department shall adopt rules for each option defining requirements and establishing assistance provisions for child care, transportation, and other support services. The options shall include but are not limited to all of the following:

a. Full-time or part-time employment.

b. Active job search.

c. Participation in the JOBS program.

d. Participation in other education or training programming.

e. Participation in a family development and self-sufficiency grant program under section 217.12 or other family development program.

f. Work experience placement.

g. Unpaid community service. Community service shall be authorized in any nonprofit association which has been determined under section 501(c)(3) of the Internal Revenue Code to be exempt from taxation or in any government agency. Upon request, the department shall provide a listing of potential community service placements to an individual. However, an individual shall locate the individual's own placement and perform the number of hours required by the agreement. The individual shall file a monthly report with the department which is signed by the director of the community service placement verifying the community service hours performed by the individual during that month. The department shall develop a form for this purpose.

h. Any other arrangement which would strengthen the individual's ability to be a better parent, including but not limited to participation in a parenting education program. Parental leave from employment shall be authorized for a parent of a child who is less than three months of age. An opportunity to participate in a parental education program shall also be authorized for such a parent. An individual who is not a parent who is nineteen years of age or younger or a parent of a child who is less than three months of age shall simultaneously participate in at least one other option enumerated in this subsection.

i. Participation in a safety plan to address or prevent family or domestic violence. The safety plan may include a temporary waiver period from required participation in the JOBS program or other employment-related activities, as appropriate for the situation of the applicant or participant. All applicants and participants shall be informed regarding the existence of this option. Participation in this option shall be subject to review in accordance with administrative rule.

3. *Limited benefit plan.* If a participant fails to comply with the provisions of the participant's family investment agreement during the period of the agreement, the limited benefit plan provisions of section 239B.9 shall apply.

4. *Completion of agreement.*

a. Upon the completion of the terms of the agreement, family investment program assistance to a participant family covered by the agreement shall cease or be reduced in accordance with rules.

b. However, if the period in which a participant family is without cash assistance is one month or less and the participant family has not become exempt from JOBS program participation at the time the participant family reapplies for cash assistance, the participant family's family investment agreement shall be reinstated at the time the participant family reapplies. The reinstated agreement may be revised to accommodate changed circumstances present at the time of reapplication.

c. The department shall adopt rules to administer this subsection and to determine when a family is eligible to reenter the family investment program.

5. *Contracts.* The department may contract with the department of workforce development, department of economic development, or any other entity to provide services relating to a family investment agreement.

6. *Confidential information disclosure.* The department may disclose confidential information described in section 217.30, subsection 1, to other state agencies or to any other entity which is not subject to the provisions of chapter 17A and is providing services to a participant family who is subject to a family investment agreement, if necessary in order for the participant family to receive the services. The department shall adopt rules establishing standards for disclosure of confidential information if disclosure is necessary in order for a participant to receive services.

7. *Postsecondary education.* For family investment agreements entered into on or after July 1, 1996, the maximum allowable time period for supported postsecondary education is limited to a total of twenty-four months. The twenty-four-month allowance shall only be available for a period of forty-eight consecutive months.

97 Acts, ch 41, §9, 34; 98 Acts, ch 1218, §52; 99 Acts, ch 192, §33; 2000 Acts, ch 1088, §3; 2001

Acts, ch 128, §1; 2001 Acts, ch 191, §41

Subsection 7 applies to family investment agreements entered into on or after July 1, 2001; department of human services to amend prior agreements to apply maximum support allowance limitations where needed; 2001 Acts, ch 128, §2

239B.9 Limited benefit plan.

1. *General provisions.*

a. If a participant responsible for signing and fulfilling the terms of a family investment agreement, as defined by the director of human services in accordance with section 239B.8, chooses not to sign or fulfill the terms of the agreement, the participant's family, or the individual participant shall enter into a limited benefit plan. Initial actions in a written statement under section 239B.2, subsection 4, which were committed to by a participant during the application period and which commitment remains in effect, shall be considered to be a term of the participant's family investment agreement. A limited benefit plan shall apply for the period of time specified in this section. The first month of the limited benefit plan is the first month after the month in which timely and adequate notice of the limited benefit plan is given to the participant as defined by the director of human services. A participant who is exempt from the JOBS program but who volunteers for the program is not subject to imposition of a limited benefit plan. The elements of a limited benefit plan shall be specified in the department's rules.

b. For purposes of this lettered paragraph, *"significant contact with or action in regard to the JOBS program"* means the individual participant communicates to the JOBS program worker the desire to engage in JOBS program activities, signs a new or updated family investment agreement, and takes any other action required by the department in accordance with rules adopted for this purpose. A limited benefit plan applied in error shall not be considered to have been applied. A limited benefit plan is applicable to the individual participant choosing the limited benefit plan and to the individual participant's family members to which the plan is applicable under subsection 2. A limited benefit plan shall either be a first limited benefit plan or a subsequent limited benefit plan. A limited benefit plan shall be applied as follows:

(1) A first limited benefit plan shall provide for continuing ineligibility for assistance until the individual participant completes significant contact with or action in regard to the JOBS program.

(2) A limited benefit plan subsequent to a first limited benefit plan chosen by the same individual participant shall provide for a six-month period of ineligibility beginning with the effective date of the limited benefit plan and continuing indefinitely following the six-month period until the individual participant completes significant contact with or action in regard to the JOBS program.

(3) For a two-parent family in which both parents are responsible for a family investment agreement, a first or subsequent limited benefit plan shall remain applicable until both parents complete significant contact with or action in regard to the JOBS program. A limited benefit plan applied more than once to the same two-parent family shall be treated as a subsequent limited benefit plan.

2. *Plan applied.* The department shall apply the limited benefit plan to the participants responsible for the family investment agreement and other members of the participant's family as follows:

a. Parent. If the participant responsible for the family investment agreement is a parent or a specified relative, the limited benefit plan is applicable to the entire participant family. If the family reapplies for assistance after an ineligibility period, eligibility shall be established in the same manner as for any other new applicant.

b. Needy relative payee. If the participant choosing a limited benefit plan is a needy relative who acts as payee when the parent is in the home but is unable to act as payee, or is a dependent child's stepparent whose needs are included in the assistance because of incapacity or caregiving, the limited benefit plan shall apply only to the individual participant choosing the plan.

c. Minor parent living with adult parent or specified relative. If the participant family includes a minor parent living with the minor parent's adult parent or specified relative who receives family investment program assistance and both individuals are responsible for developing a family investment agreement, each individual is responsible for a separate family investment agreement, and the limited benefit plan shall be applied as follows:

(1) If the adult parent or specified relative chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the entire participant family, even though the minor parent has not chosen the limited benefit plan. However, the minor parent may reapply for assistance as a minor parent living with self-supporting parents or living independently and continue in the family investment agreement process.

(2) If the minor parent chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the minor parent and any child of the minor parent.

d. Minor parent — only child. If the minor parent is the only child in the adult parent's or specified relative's home and the minor parent chooses the limited benefit plan, assistance shall not be paid to the adult parent or specified relative in this instance.

e. Children who are mandatory JOBS program participants. If the participant family includes children who are mandatory JOBS program participants, the children shall not have a separate family investment agreement but shall

be asked to sign the family investment agreement applicable to the family and to carry out the responsibilities of that family investment agreement. A limited benefit plan shall be applied as follows:

(1) If the parent or specified relative responsible for a family investment agreement meets the responsibilities of the family investment agreement but a child who is a mandatory JOBS program participant chooses an individual limited benefit plan, the family is eligible for reduced assistance during the child's limited benefit plan.

(2) If the child who chooses a limited benefit plan under subparagraph (1) is the only child in the participant family, assistance shall not be paid to the adult parent, parents, or specified relative in this instance.

f. Exempt parent. If a participant family includes a parent, parents, or specified relative who are exempt from JOBS program participation and children who are mandatory JOBS program participants, the children are responsible for completing a family investment agreement. If a child who is a mandatory JOBS program participant chooses the limited benefit plan, the limited benefit plan shall be applied in the manner provided in paragraph *"e"*.

g. Two parents. If the participant family includes two parents, a limited benefit plan shall be applied as follows:

(1) If only one parent of a child in the family is responsible for a family investment agreement and that parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the voluntary participation in a family investment agreement by the exempt parent. If the parent responsible for the family investment agreement chooses a limited benefit plan, the limited benefit plan applies to the entire family.

(2) If both parents of a child in the family are responsible for a family investment agreement, both parents shall sign the agreement. If either parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the participation of the other parent in a family investment agreement.

(3) If the parents from a two-parent family in a limited benefit plan separate, the limited benefit plan shall follow only the parent who chose the limited benefit plan and any children in the home of that parent.

3. *Plan chosen.* A participant shall be considered to have chosen a limited benefit plan under any of the following circumstances:

a. A participant who does not establish an orientation appointment with the JOBS program or who fails to keep or reschedule an orientation appointment shall receive a reminder letter which informs the participant that those who do not attend orientation have elected to choose a limited benefit plan. A participant who chooses not to respond to the reminder letter within ten calendar days from the mailing date shall receive notice establishing the effective date of the limited benefit plan. If a participant is deemed to have chosen a limited benefit plan, timely and adequate notice provisions, as determined by the director of human services, shall apply.

b. A participant who chooses not to sign the family investment agreement after attending a JOBS program orientation shall enter into a limited benefit plan as described in paragraph *"a"*.

c. A participant who has signed a family investment agreement but then chooses a limited benefit plan under circumstances defined by the director of human services.

4. *Reconsideration.* A participant who chooses a limited benefit plan may reconsider that choice as follows:

a. A participant who chooses a first limited benefit plan may reconsider at any time following the effective date of the limited benefit plan. The participant may contact the department or the appropriate JOBS program office any time to begin the reconsideration process.

b. A participant who chooses a subsequent limited benefit plan may reconsider that choice at any time following the required period of ineligibility.

5. *Well-being visit.* If a participant has chosen a subsequent limited benefit plan, the department may conduct a well-being visit or contract for a well-being visit to be conducted, provided funding is available for the costs of such visits. A well-being visit shall meet all of the following criteria:

a. A qualified professional shall attempt to visit with the participant family with a focus upon the children's well-being.

b. The visit shall be conducted during or within four weeks of the second month of the start of the subsequent limited benefit plan.

c. The visit shall serve as an extension of the family investment program and the family investment agreement philosophy of supporting families as they move toward self-sufficiency.

6. *Appeal.* A participant has the right to appeal the establishment of the limited benefit plan only once, at the time the department issues the timely and adequate notice that establishes the limited benefit plan. However, if the reason for the appeal is based on an incorrect grant computation, an error in determining the composition of the family, or another worker error, a hearing shall be granted, regardless of the person's limited benefit plan status.

97 Acts, ch 41, §10, 34; 98 Acts, ch 1218, §55 – 60; 99 Acts, ch 100, §3; 2000 Acts, ch 1088, §4; 2002 Acts, ch 1015, §1, 4

Emergency rules authorized to implement provisions in 2002 Acts, ch 1015, relating to the conduct of well-being visits; termination of existing contract for services; 2002 Acts, ch 1015, §2 – 4

Subsection 5 amended

239B.10 Minor and young parents — other requirements.

1. *Living arrangement.* Unless any of the following conditions apply, a minor parent shall be required to live with the minor's parent or legal guardian:

a. The parent or guardian of the minor parent is deceased, missing, or living in another state.

b. The minor parent's health or safety would be jeopardized if the minor parent is required to live with the parent or guardian.

c. The minor parent is in foster care.

d. The minor parent is participating in the job corps solo parent program or independent living program.

e. Other good cause exists, which is identified in rules adopted by the department for this purpose, for the minor parent to participate in the family investment program while living apart from the minor parent's parent or guardian.

2. *Family development.* A minor parent who is a participant and is not required to live with the minor parent's parent or guardian pursuant to subsection 1 shall be required to participate in a family development program identified in rules adopted by the department.

3. *Parenting classes.* Participant parents who are nineteen years of age or younger shall be required to attend parenting classes.

4. *Education.* The department shall require, subject to the availability of child care for a minor parent's children, that a minor parent must either have graduated from high school or have received a high school equivalency diploma, or be engaged full-time in completing high school graduation or equivalency requirements.

5. *Earnings disregard.* In determining family investment program eligibility and calculating the amount of assistance, the department shall disregard earnings of an applicant or a participant who is nineteen years of age or younger who is engaged full-time in completing high school graduation or equivalency requirements.

6. *Family planning.* The department shall do all of the following with newly eligible and existing participant parents:

a. Discuss orally and in writing the financial implications of newly born children on the participant's family.

b. Discuss orally and in writing the available family planning resources.

c. Include family planning counseling as an optional component of the JOBS program.

d. Include the participant's family planning objectives in the family investment agreement.

97 Acts, ch 41, §11, 34; 99 Acts, ch 192, §33

239B.11 Family investment program account.

1. An account is established in the state treasury to be known as the family investment program account under control of the department to which shall be credited all funds appropriated by the state for the payment of assistance and JOBS program expenditures. All other moneys received at any time for these purposes, including child support revenues, shall be deposited into the account as provided by law. All assistance and JOBS program expenditures under this chapter shall be paid from the account.

2. A diversion program subaccount is created within the family investment program account. The subaccount may be used to provide incentives to divert applicants' participation in the family investment program if the applicants meet income eligibility requirements for assistance. Incentives may be provided in the form of payment or services with a focus on helping applicants to obtain or retain employment. The diversion program subaccount may also be used for payments to participants as necessary to cover the expenses of removing barriers to employment. In addition, the diversion program subaccount may be used for funding of services and payments for persons whose family investment program eligibility has ended, in order to help the persons to stabilize or improve their employment status.

97 Acts, ch 41, §12, 34; 98 Acts, ch 1218, §76; 2000 Acts, ch 1088, §5

239B.12 Immunization.

1. To the extent feasible, the department shall determine the immunization status of children receiving assistance under this chapter. The status shall be determined in accordance with the immunization recommendations adopted by the Iowa department of public health under section 139A.8, including the exemption provisions in section 139A.8, subsection 4. If the department determines a child is not in compliance with the immunization recommendations, the department shall refer the child's parent or guardian to a local public health agency for immunization services for the child and other members of the child's family.

2. The department of human services shall cooperate with the Iowa department of public health to establish an interagency agreement allowing the sharing of pertinent client data, as permitted under federal law and regulation, for the purposes of determining immunization rates of participants, evaluating family investment program efforts to encourage immunizations, and developing strategies to further encourage immunization of participants.

97 Acts, ch 41, §13, 34; 2000 Acts, ch 1066, §43

239B.13 Needy relative payee — protective payee — vendor payment.

1. The department may provide for a needy relative to act as a payee when the parent of a participant family is in the home but is unable to act as the payee.

2. The department may order the cash assis-

tance under this chapter to be paid to a protective payee if it has been demonstrated that the specified relative with whom the child is residing is unable to manage the assistance in the best interest of the child. Protective payment of cash assistance shall not be made beyond a period of two years. The department may petition the district court sitting in probate to establish, pursuant to chapter 633, a conservatorship over a participant. If a conservatorship is established, the participant's cash assistance shall be paid to the conservator. In addition to the cash assistance, an amount not to exceed ten dollars per case per month may be allowed for conservatorship or guardianship fees if authorized by court order. The department may pay cash assistance or other cash benefits to a third party if the department determines that a third-party payment is essential to assure the proper use of the assistance or benefits.

97 Acts, ch 41, §14, 34

239B.14 Fraudulent practices — recovery of overpayments.

1. An individual who obtains, or attempts to obtain, or aids or abets an individual to obtain, by means of a willfully false statement or representation, by knowingly failing to disclose a material fact, or by impersonation, or any fraudulent device, any assistance or other benefits under this chapter to which the individual is not entitled, commits a fraudulent practice.

2. An individual who commits a fraudulent practice under this section is personally liable for the amount of assistance or other benefits fraudulently obtained. The amount of the assistance or other benefits may be recovered from the offender or the offender's estate in an action brought or by claim filed in the name of the state and the recovered funds shall be deposited in the family investment program account. The action or claim filed in the name of the state shall not be considered an election of remedies to the exclusion of other remedies.

3. The department shall adopt rules pursuant to chapter 17A as necessary to recover overpayments of assistance and benefits provided under this chapter. The recovery methods shall include but are not limited to reducing the amount of assistance or benefits provided.

97 Acts, ch 41, §15, 34; 2000 Acts, ch 1088, §6

Fraudulent practices; see §714.8 et seq.

Use of recovered moneys generated through fraud and recoupment activities for additional fraud and recoupment activities; 2000 Acts, ch 1228, §34; 2002 Acts, 2nd Ex, ch 1003, §140, 151

239B.15 County attorney to enforce.

Violations of law relating to the family investment program shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide prosecution assistance.

97 Acts, ch 41, §16, 34

239B.16 Appeal — judicial review.

If an applicant's application is not acted upon within a reasonable time, if it is denied in whole or in part, or if a participant's assistance or other benefits under this chapter are modified, suspended, or canceled under a provision of this chapter, the applicant or participant may appeal to the department of human services which shall request the department of inspections and appeals to conduct a hearing. Upon completion of a hearing, the department of inspections and appeals shall issue a decision which is subject to review by the department of human services. Judicial review of the actions of the department of human services may be sought in accordance with chapter 17A. Upon receipt of a notice of the filing of a petition for judicial review, the department of human services shall furnish the petitioner with a copy of any papers filed in support of the petitioner's position, a transcript of any testimony taken, and a copy of the department's decision.

97 Acts, ch 41, §17, 34

239B.17 PROMISE JOBS program.

1. *Program established.* The promoting independence and self-sufficiency through employment job opportunities and basic skills program is established for applicants and participants of the family investment program. The requirements of the JOBS program shall vary as provided in the family investment agreement applicable to a family. The department of workforce development, department of economic development, department of education, and all other state, county, and public educational agencies and institutions providing vocational rehabilitation, adult education, or vocational or technical training shall assist and cooperate in the JOBS program. The departments, agencies, and institutions shall make agreements and arrangements for maximum cooperation and use of all available resources in the program. By mutual agreement the department of human services may delegate any of the department of human services' powers and duties under this chapter to the department of workforce development or to the department of economic development.

2. *Program activities.* The JOBS program shall include, but is not limited to, provision of the following activities:

a. Placing applicants and participants in employment and on-the-job training.

b. Institutional and work experience training for applicants and participants for whom the training is likely to lead to regular employment.

c. Special work projects for applicants and participants for whom a job in the regular economy cannot be found.

d. Incentives, opportunities, services, and other benefits to aid applicants and participants.

e. Providing services and payments for persons whose family investment program eligibility

has ended, in order to help the persons to stabilize or improve their employment status.

97 Acts, ch 41, §18, 34; 2000 Acts, ch 1088, §7

239B.18 JOBS program participation.

Except for participants who are exempt from the requirement to enter into a family investment agreement under section 239B.8, a participant in the family investment program shall participate in JOBS program activities as provided in the participant's family investment agreement. Except for an individual who is not a United States citizen and is not a qualified alien and exempt from the requirement to enter into a family investment agreement under section 239B.8, subsection 1, paragraph *"c"*, a participant who is exempt may voluntarily participate in the JOBS program.

97 Acts, ch 41, §19, 34; 2000 Acts, ch 1088, §8

239B.19 JOBS program availability.

1. Within available funding, the department shall make JOBS program services and benefits available to individuals who are participating in the JOBS program.

2. An individual's efforts under the JOBS program to attain a certificate of general educational development, high school diploma, or adult basic literacy where the individual has not previously received the certification shall be optional except as otherwise required by this chapter or by federal law. The department shall provide incentives to encourage optional efforts to attain such certifications.

3. When needed, arrangements shall be made for the care of children during the absence from the home of an individual participating in the JOBS program.

97 Acts, ch 41, §20, 34

239B.20 JOBS program health and safety.

The director shall establish and maintain reasonable standards for health, safety, and other conditions under the JOBS program.

97 Acts, ch 41, §21, 34

239B.21 JOBS program — workers' compensation law applicable.

A participant, with respect to employment performed under the JOBS program, shall be covered by the workers' compensation law or shall otherwise be provided with comparable protection.

97 Acts, ch 41, §22, 34

239B.22 JOBS program — participant not state employee.

A participant shall not be deemed to be an employee of the state or any of its political subdivisions by reason of participation in the JOBS program. However, this section shall not prevent the participant from having the status of an employee for the purposes of workers' compensation.

97 Acts, ch 41, §23, 34

239B.23 Child day care provisions. Repealed by 98 Acts, ch 1218, § 82.

239B.24 State child care assistance eligibility.

1. The following persons are deemed to be eligible for benefits under the state child care assistance program administered by the department in accordance with section 237A.13, notwithstanding the program's eligibility requirements or any waiting list:

a. A participant who is employed.

b. Any other person whose earned income is considered in determining eligibility and benefits for a participant.

c. A person who is participating in activities approved under the JOBS program.

2. A person who is deemed to be eligible for state child care assistance program benefits under this section is subject to all other state child care assistance requirements, including but not limited to provider requirements under chapter 237A, provider reimbursement methodology and rates, and any other requirements established by the department in rule.

99 Acts, ch 192, §35; 2000 Acts, ch 1067, §16; 2000 Acts, ch 1232, §91

CHAPTER 240

PRIVATE INSTITUTIONS FOR NEGLECTED, DEPENDENT AND DELINQUENT CHILDREN

Repealed by 76 Acts, ch 1056, §45

CHAPTER 241

DISPLACED HOMEMAKERS

241.1 Definitions.
241.2 Application for designation and funding as a provider of services for displaced homemakers.
241.3 Department powers and duties.
241.4 Advisory board — membership. Repealed by 86 Acts, ch 1245, §2053.
241.5 Duties of the advisory board. Repealed by 86 Acts, ch 1245, §2053.
241.6 Project co-ordinator.

241.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Displaced homemaker"* means an individual who meets all of the following criteria:

a. Has worked principally in the home providing unpaid household services for family members.

b. Is not gainfully employed.

c. Has had, or would apparently have, difficulty finding appropriate paid employment.

d. Has been dependent on the income of another family member but is no longer supported by that income, is or has been dependent on government assistance, or is supported as the parent of a child who is sixteen or seventeen years of age.

2. *"Department"* means the department of human services.

3. *"Director"* means the director of the department of human services.

[C81, §241.1]

83 Acts, ch 96, §157, 159

241.2 Application for designation and funding as a provider of services for displaced homemakers.

Upon receipt of state or federal funding designated to assist displaced homemakers, a public or private nonprofit group may apply to the director for designation and funding as a provider of services to displaced homemakers. The application shall be submitted on a form prescribed by the director and shall include all of the following:

1. A proposal for the establishment of a multipurpose service program for displaced homemakers which provides some or all of the following:

a. Job counseling specifically designed for a person entering or re-entering the job market after a number of years as a homemaker.

b. Job training and placement services including but not limited to:

(1) Training programs for available jobs in the public and private sectors developed by working with public and private employers, taking into account the skills and job experiences of a homemaker.

(2) Assistance in locating available employment for displaced homemakers, some of which may be in existing job training and placement programs.

(3) Utilization of services of the state employment service, which shall co-operate with the department in locating employment opportunities.

c. Utilization of services of existing agencies and programs to provide information on and assistance with financial management, legal problems and health care.

d. Utilization of services of existing agencies and programs to obtain educational services, including assistance in attaining high school equivalency diplomas and other courses which are of interest and benefit to displaced homemakers.

e. Outreach and information services with respect to public employment, education, health and unemployment assistance programs which are of interest and benefit to displaced homemakers.

f. Development and implementation of an educational program designed to promote public and professional awareness of the problems of displaced homemakers and of the availability of services for displaced homemakers.

g. Development and implementation of a counseling program providing emotional support by qualified personnel or peer groups or both.

2. A proposed budget.

3. Assurance by the applicant that the uniform method of data collection and program evaluation established by the director pursuant to section 241.3, subsection 1, paragraph *"c"* will be implemented.

4. Any other information the director may require.

A public or private nonprofit group which receives designation as a provider of services to displaced homemakers under this chapter shall comply with all applicable department rules.

[C81, §241.2]

241.3 Department powers and duties.

1. The director shall do all of the following:

a. Designate and award grants for existing and pilot programs, pursuant to section 241.2, to provide services to displaced homemakers.

b. Designate an existing department staff

member to perform the duties set forth in section 241.6.

c. Design and implement a uniform method of collecting data on displaced homemakers receiving services under this chapter and of evaluating funded programs.

2. The department shall consult and cooperate with the department of workforce development, the United States commissioner of social security administration, the division of the status of women of the department of human rights, the department of education, and other persons in the executive branch of the state government as the department considers appropriate to facilitate the coordination of multipurpose service programs established under this chapter with existing programs of a similar nature.

3. The director, in carrying out the provisions of this chapter, may accept, use, and dispose of contributions of money, services, and property made available to the department by an agency or department of the state or federal government, or a private agency or individual.

[C81, §241.3]

86 Acts, ch 1245, §938; 96 Acts, ch 1186, §23; 2001 Acts, ch 61, §16

241.4 Advisory board — membership. Repealed by 86 Acts, ch 1245, § 2053.

241.5 Duties of the advisory board. Repealed by 86 Acts, ch 1245, § 2053.

241.6 Project co-ordinator.

The director shall appoint a project co-ordinator who shall administer appropriated funds, co-ordinate funded programs, and perform other duties the director assigns to the co-ordinator.

[C81, §241.6]

CHAPTER 241A

AID TO DISABLED PERSONS

Repealed by 73 Acts, ch 186, §26

CHAPTER 242

TRAINING SCHOOL

Transferred to chapter 233A

CHAPTER 243

IOWA JUVENILE HOME

Repealed by 47 Acts, ch 139, §8; see chapter 233B

CHAPTER 244

IOWA JUVENILE HOME

Transferred to chapter 233B

CHAPTER 245

WOMEN'S CORRECTIONAL FACILITIES

Repealed by 85 Acts, ch 21, §53; see chapter 904

CHAPTER 246

IOWA DEPARTMENT OF CORRECTIONS

Transferred to chapter 904

CHAPTER 246A

CORRECTIONAL RELEASE CENTER

Repealed by 85 Acts, ch 21, §53

CHAPTER 247

INTERSTATE CORRECTIONS COMPACT

Transferred to chapter 913

CHAPTER 247A

WORK RELEASE FOR INMATES OF INSTITUTIONS

Section 247A.1 repealed by 85 Acts, ch 21, §53
Sections 247A.2 – 247A.5 and 247A.7 – 247A.11 transferred
to division IX of new chapter 246; 85 Acts, ch 21, §54;
chapter 246 transferred to chapter 904
Section 247A.6 was repealed by 76 Acts, ch 1245(4), §525

CHAPTER 248

PARDONS, COMMUTATIONS, REMISSION OF FINES AND FORFEITURES, AND CITIZENSHIP

Repealed by 86 Acts, ch 1112, §13; see chapter 914

CHAPTER 248A

REPRIEVES, PARDONS, COMMUTATIONS, REMISSIONS, AND RESTORATIONS OF RIGHTS

Transferred to chapter 914

CHAPTER 249

STATE SUPPLEMENTARY ASSISTANCE

Child and family services, see chapter 234

249.1 Definitions.
249.2 Agreement with federal authority.
249.3 Eligibility.
249.4 Application — amount of grant.
249.5 Judicial review.
249.6 Charge for cashing warrant unlawful.
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249.8 Cancellation of warrants.
249.9 Funeral expenses.
249.10 Prior liens, claims and assignments.
249.11 Fraud — investigations and audits.
249.12 Cost-related system.
249.13 County attorney to enforce.
249.14 Old-age assistance revolving fund.

249.1 Definitions.

As used in this chapter:

1. *"Department"* means the department of human services.

2. *"Director"* means the director of human services.

3. *"Federal supplemental security income"* means cash payments made to individuals by the United States government under Title XVI of the Social Security Act as amended by United States public law 92-603, or any other amendments thereto.

4. *"Previous categorical assistance programs"* means the aid to the blind program authorized by chapter 241, the aid to the disabled program authorized by chapter 241A and the old-age assistance program authorized by chapter 249 of the Code of 1973.

5. *"State supplementary assistance"* means cash payments made to individuals:

a. By the United States government on behalf of the state of Iowa pursuant to section 249.2.

b. By the state of Iowa directly pursuant to sections 249.3 to 249.5.

[C35, §5926-f1; C39, §**3684.01, 3828.001;** C46, 50, 54, 58, §241.1, 249.1; C62, 66, 71, 73, §241.1, 241A.1, 249.1; C75, 77, 79, 81, §249.1]

83 Acts, ch 96, §157, 159

249.2 Agreement with federal authority.

The director may enter into an agreement with the United States secretary of health and human services for federal administration of a program of state supplementary assistance to prescribed categories of persons who are, or would be except for the amount of income they receive from other sources, receiving federal supplemental security income. The agreement may authorize the secretary to make rules, in addition to and not in conflict with state laws and regulations, respecting eligibility for or the amount of state supplementary assistance paid under this section as the secretary finds necessary to achieve efficient and effective administration of both the basic federal supplemental security income program and the state supplementary assistance program administered by the secretary under the agreement. The agreement shall provide for the state of Iowa to reimburse the federal government, from funds appropriated for that purpose, for state supplementary assistance paid by the federal government pursuant to the agreement.

[C35, §5296-f4, -f36; C39, §**3684.04, 3828.003, 3828.045;** C46, 50, 54, 58, §241.4, 249.2, 249.42; C62, 66, 71, 73, §241.4, 241A.4, 249.2, 249.42; C75, 77, 79, 81, §249.2]

83 Acts, ch 101, §56

249.3 Eligibility.

The persons eligible to receive state supplementary assistance under section 249.1, subsection 5, paragraph *"b,"* are:

1. Any person whose needs were taken into account in computing the grant of a recipient, who was eligible for and was receiving assistance under a previous categorical assistance program during the month of December 1973, because the person was deemed essential to the well-being of the recipient in maintaining a living arrangement in the recipient's own home, so long as the person continues to act in the capacity of essential person to the former recipient and to be in financial need according to standards established by the department.

2. Any person who meets the criteria established by paragraphs *"a," "b"* and *"c"* of this subsection:

a. Is receiving either:

(1) Care in a licensed adult foster home, boarding home or custodial home, as defined by section 135C.1, or in another type of protective living arrangement as defined by the department; or

(2) Nursing care in the person's own home, certified by a physician as being required, so long as the cost of the nursing care does not exceed standards established by the department.

b. Is in fact receiving or would, except for income in excess of applicable maximums, be receiving federal supplemental security income.

c. Does not have sufficient income to meet the cost of care in one of the living arrangements defined in paragraph *"a"* of this subsection, which cost of care shall not exceed the amount established by the rules of the department for each of those living arrangements.

3. Any person living in any living arrangement other than as a patient or resident of a facility licensed under chapter 135C, who meets the criteria established by paragraphs *"a", "b"* and *"c"*:

a. Lives with a dependent spouse, parent, child or adult child who is sharing the recipient's living arrangement, so long as the person continues in the relationship of dependent spouse, parent, child or adult child to the recipient and to be in financial need according to standards established by the department.

b. Is in fact receiving or would, except for income in excess of applicable maximums, be receiving federal supplemental security income.

c. Does not have sufficient income to meet the cost of providing for the dependent spouse, parent, child or adult child, according to standards established by the department.

[SS15, §2722-i, -j, -k; C24, 27, 31, §5379; C35, §5296-f9, -f12, 5379; C39, §**3684.02, 3828.007, 3828.008;** C46, 50, 54, 58, §241.2, 249.5, 249.6; C62, 66, 71, 73, §241.2, 241A.2, 249.5, 249.6; C75, 77, 79, 81, §249.3]

249.4 Application — amount of grant.

Applications for state supplementary assistance shall be made in the form and manner prescribed by the director or the director's designee, with the approval of the council on human services, pursuant to chapter 17A. Each person who so applies and is found eligible under section 249.3 shall, so long as the person's eligibility continues, receive state supplementary assistance on a monthly basis, from funds appropriated to the de-

partment for the purpose.

[SS15, §2722-m, -p; C24, 27, 31, §5382, 5384; C35, §5296-f17, -f18, 5382, 5384; C39, §**3684.06, 3684.09, 3828.013, 3828.014;** C46, 50, 54, 58, §241.6, 241.9, 249.10, 249.11; C62, 66, 71, 73, §241.6, 241.9, 241A.5, 241A.6, 249.10, 249.11; C75, 77, 79, 81, §249.4]

83 Acts, ch 96, §157, 159

249.5 Judicial review.

If an application is not acted upon within a reasonable time, if it is denied in whole or in part, or if an award of assistance is modified, suspended, or canceled under a provision of this chapter, the applicant or recipient may appeal to the department of human services, which shall request the department of inspections and appeals to conduct a hearing. Upon completion of a hearing, the department of inspections and appeals shall issue a decision which is subject to review by the department of human services. Judicial review of the actions of the department of human services may be sought in accordance with chapter 17A. Upon receipt of the petition for judicial review, the department of human services shall furnish the petitioner with a copy of any papers filed by the petitioner in support of the petitioner's position, a transcript of any testimony taken, and a copy of the department's decision.

[C35, §5296-f18; C39, §**3684.11, 3828.014;** C46, 50, 54, 58, §241.11, 249.11; C62, 66, 71, 73, §241.11, 241A.8, 249.11; C75, 77, 79, 81, §249.5]

90 Acts, ch 1204, §59

249.6 Charge for cashing warrant unlawful.

It shall be unlawful for any person to charge a fee, service charge or exchange for the cashing of a warrant issued in payment of state supplementary assistance, or to discount or pay less than the face value of any warrant drawn in payment of such assistance, when cashing such a warrant or accepting it in payment of the purchase price of goods, services, rent, taxes or indebtedness.

[C35, §5296-g4; C39, §**3828.036;** C46, 50, 54, 58, 62, 66, 71, 73, §249.33; C75, 77, 79, 81, §249.6]

249.7 Assistance inalienable.

All rights to state supplementary assistance shall be absolutely inalienable by any assignment, sale, execution or otherwise and, in case of bankruptcy, the assistance shall not pass to or through any trustees or other persons acting on behalf of creditors.

[C35, §5296-f29; C39, §**3684.10, 3828.037;** C46, 50, 54, 58, §241.10, 249.34; C62, 66, 71, 73, §241.10, 241A.7, 249.34; C75, 77, 79, 81, §249.7]

249.8 Cancellation of warrants.

The director of revenue and finance, as of January, April, July and October 1 of each year, shall stop payment on and issue duplicates of all state supplementary assistance warrants which have been outstanding and unredeemed by the treasurer of state for six months or longer. No bond of indemnity shall be required for the issuance of such duplicate warrants which shall be canceled immediately by the director of revenue and finance. If the original warrants are subsequently presented for payment, warrants in lieu thereof shall be issued by the director of revenue and finance at the discretion of and upon certification by the director of human services or the director's designee.

[C39, §**3828.044;** C46, 50, 54, 58, 62, 66, 71, 73, §249.41; C75, 77, 79, 81, §249.8]

249.9 Funeral expenses.

The department may pay, from funds appropriated to it for the purpose, a maximum of four hundred dollars toward funeral expenses on the death of a person receiving state supplementary assistance or who received assistance under a previous categorical assistance program prior to January 1, 1974, provided:

1. The decedent does not leave an estate which may be probated with sufficient proceeds to allow for payment of the funeral claim.

2. Payments which are due the decedent's estate or beneficiary by reason of the liability of a life insurance, death or funeral benefit company, association or society, or in the form of United States social security, railroad retirement, or veterans' benefits upon the death of the decedent, are deducted from the department's liability under this section.

[C35, §5296-f25; C39, §**3684.17, 3828.021;** C46, 50, 54, 58, §241.17, 249.18; C62, 66, 71, 73, §241.17, 241A.11, 249.18; C75, 77, 79, 81, §249.9]

83 Acts, ch 153, §11; 84 Acts, ch 1297, §1

249.10 Prior liens, claims and assignments.

Any lien or claim against the estate of a decedent existing on January 1, 1974, which lien was perfected or which claim was filed under the provisions of section 249.19, 249.20 or 249.21 as they appeared in the Code of 1973 and prior Codes, and which liens or claims have not been satisfied, are void. Any assignment of personal property which was made under the provisions of chapter 249 as it appeared in the Code of 1973 and prior Codes, is void. The director may in furtherance of this section release any lien or claim created or existing under that chapter. Each release made pursuant to this section shall be executed and acknowledged by the director or the director's authorized designee, and when recorded shall be conclusive in favor of any third person dealing with or concerning the property affected by the release in reliance upon such record.

[C35, §5296-f15, -f16, -g1; C39, §**3828.022, 3828.023, 3828.024;** C46, 50, 54, 58, 62, 66, 71, 73,

§249.19, 249.20, 249.21; C75, 77, 79, 81, §249.10]

249.11 Fraud — investigations and audits.

Any person who obtains assistance under this chapter by misrepresentation or by failure with fraudulent intent to bring forth all of the facts required of an applicant for assistance under this chapter, or any person who shall knowingly make false statements concerning an applicant's eligibility for assistance under this chapter, is guilty of a fraudulent practice.

The department of inspections and appeals shall conduct investigations and audits as deemed necessary to ensure compliance with state supplementary assistance programs administered under this chapter. The department of inspections and appeals shall cooperate with the department of human services on the development of procedures relating to such investigations and audits to ensure compliance with federal and state single state agency requirements.

[C35, §5296-f31, -f32; C39, §**3684.19, 3828.049, 3828.050;** C46, 50, 54, 58, §241.19, 249.46, 249.47; C62, 66, 71, 73, §241.19, 241A.12, 249.46, 249.47; C75, 77, 79, 81, §249.11]

90 Acts, ch 1204, §60

See §714.8 et seq.

249.12 Cost-related system.

In order to assure that the necessary data is available to aid the general assembly to determine appropriate funding for the custodial care program, the department of human services shall develop a cost-related system for financial supplementation to individuals who need custodial care and who have insufficient resources to purchase the care needed.

All privately operated licensed custodial facilities in Iowa shall co-operate with the department of human services to develop the cost-related plan. After the plan is implemented, state supplemental funds shall not be used for the care of any individual in facilities that have not submitted cost statements to the department of human services.

[C35, §5296-f37; C39, §**3828.046;** C46, 50, 54, 58, 62, 66, 71, 73, §249.43; C75, 77, 79, 81, §249.12]

83 Acts, ch 96, §157, 159

249.13 County attorney to enforce.

It is the intent of the general assembly that violations of law relating to the family investment program, medical assistance, and supplemental assistance shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide such assistance in prosecution as may be required. It is the intent of the general assembly that the first priority for investigation and prosecution for which funds are provided shall be for fraudulent claims or practices by health care vendors and providers.

[C79, 81, §249.13]

93 Acts, ch 97, §36

249.14 Old-age assistance revolving fund.

The old-age assistance revolving fund shall remain in the state treasury until all property managed by the department and maintained by the fund is disposed of, at which time all money in the fund shall be transferred to the general fund of the state and the fund shall be closed. If the balance of the fund exceeds fifteen thousand dollars at the end of any calendar quarter, the excess over that amount shall be transferred to the general fund of the state.

83 Acts, ch 191, §2, 27

CHAPTER 249A

MEDICAL ASSISTANCE

See Iowa Acts for special provisions relating to medical assistance reimbursements in a given year
Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; 2001 Acts, ch 155, §12, 13
Modified price-based case-mix reimbursement for nursing facilities; three-year phase-in period; 2001 Acts, ch 192, §4; 2002 Acts, ch 1172, §2

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249A.1 Title.

This chapter may be cited as the *"Medical Assistance Act"*.

[C62, 66, 71, 73, 75, 77, 79, 81, §249A.1]

249A.2 Definitions.

As used in this chapter:

1. *"Additional medical assistance"* means payment of all or part of the costs of any or all of the care and services authorized to be provided by Title XIX of the federal Social Security Act, section 1905(a), paragraphs (6), (7), (9) to (16), and (18), as codified in 42 U.S.C. § 1396d(a), pars. (6), (7), (9) to (16), and (18).

2. *"Department"* means the department of human services.

3. *"Director"* means the director of human services.

4. *"Discretionary medical assistance"* means medical assistance or additional medical assistance provided to individuals whose income and resources are in excess of eligibility limitations but are insufficient to meet all of the costs of necessary medical care and services, provided that if the assistance includes services in institutions for mental diseases or intermediate care facilities for persons with mental retardation, or both, for any group of such individuals, the assistance also includes for all covered groups of such individuals at least the care and services enumerated in Title XIX of the federal Social Security Act, section 1905(a), paragraphs (1) through (5), and (17), as codified in 42 U.S.C. § 1396d(a), pars. (1) through (5), and (17), or any seven of the care and services enumerated in Title XIX of the federal Social Security Act, section 1905(a), paragraphs (1) through (7) and (9) through (18), as codified in 42 U.S.C. § 1396d(a), pars. (1) through (7), and (9) through (18).

5. *"Family investment program"* means the family investment program eligibility requirements under chapter 239B, except to the extent federal law requires application of the eligibility requirements under chapter 239, Code 1997, as in effect on July 16, 1996.

6. *"Group health plan cost sharing"* means payment under the medical assistance program of a premium, a coinsurance amount, a deductible amount, or any other cost sharing obligation for a group health plan as required by Title XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.

7. *"Medical assistance"* means payment of all or part of the costs of the care and services required to be provided by Title XIX of the federal Social Security Act, section 1905(a), paragraphs (1) through (5), and (17), as codified in 42 U.S.C. § 1396d(a), pars. (1) through (5), and (17).

8. *"Medicare cost sharing"* means payment under the medical assistance program of a premium, a coinsurance amount, or a deductible amount for federal Medicare as provided by Title XIX of the federal Social Security Act, section 1905(p)(3), as codified in 42 U.S.C. § 1396d(p)(3).

9. *"Provider"* means an individual, firm, corporation, association, or institution which is providing or has been approved to provide medical assistance to recipients under this chapter.

10. *"Recipient"* means a person who receives medical assistance under this chapter.

11. *"Retained life estate"* means any of the following:

a. A life estate created by the recipient or recipient's spouse, in which either the recipient or the recipient's spouse held any interest in the property at the time of the creation of the life estate.

b. A life estate created for the benefit of the recipient or the recipient's spouse in property in which either the recipient or the recipient's spouse held any interest in the property within five years

prior to the creation of the life estate.

[C62, 66, 71, 73, 75, 77, 79, 81, §249A.2]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1297, §2; 89 Acts, ch 104, §1; 90 Acts, ch 1039, §15; 91 Acts, ch 107, §11; 91 Acts, ch 158, §1, 2; 93 Acts, ch 54, §5; 96 Acts, ch 1129, §113; 97 Acts, ch 41, §25; 2002 Acts, ch 1086, §1, 21

NEW subsection 11

249A.3 Eligibility.

The extent of and the limitations upon eligibility for assistance under this chapter is prescribed by this section, subject to federal requirements, and by laws appropriating funds for assistance provided pursuant to this chapter.

1. Medical assistance shall be provided to, or on behalf of, any individual or family residing in the state of Iowa, including those residents who are temporarily absent from the state, who:

a. Is a recipient of federal supplemental security income or who would be eligible for federal supplemental security income if living in their own home.

b. Is an individual who is eligible for the family investment program or is an individual who would be eligible for unborn child payments under the family investment program, as authorized by Title IV-A of the federal Social Security Act, if the family investment program provided for unborn child payments during the entire pregnancy.

c. Was a recipient of one of the previous categorical assistance programs as of December 31, 1973, and would continue to meet the eligibility requirements for one of the previous categorical assistance programs as the requirements existed on that date.

d. Is a child up to one year of age who was born on or after October 1, 1984, to a woman receiving medical assistance on the date of the child's birth, who continues to be a member of the mother's household, and whose mother continues to receive medical assistance.

e. Is a pregnant woman whose pregnancy has been medically verified and who qualifies under either of the following:

(1) The woman would be eligible for cash assistance under the family investment program, if the child were born and living with the woman in the month of payment.

(2) The woman meets the income and resource requirements of the family investment program, provided the unborn child is considered a member of the household, and the woman's family is treated as though deprivation exists.

f. Is a child who is less than seven years of age and who meets the income and resource requirements of the family investment program.

g. (1) Is a child who is one through five years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6401, whose income is not more than one hundred thirty-three percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

(2) Is a child who has attained six years of age but has not attained nineteen years of age, whose income is not more than one hundred thirty-three percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

h. Is a woman who, while pregnant, meets eligibility requirements for assistance under the federal Social Security Act, section 1902(l), and continues to meet the requirements except for income. The woman is eligible to receive assistance until sixty days after the date pregnancy ends.

i. Is a pregnant woman who is determined to be presumptively eligible by a health care provider qualified under the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9407. The woman is eligible for ambulatory prenatal care assistance until the last day of the month following the month of the presumptive eligibility determination. If the department receives the woman's medical assistance application by the last day of the month following the month of the presumptive eligibility determination, the woman is eligible for ambulatory prenatal care assistance until the department actually determines the woman's eligibility or ineligibility for medical assistance. The costs of services provided during the presumptive eligibility period shall be paid by the medical assistance program for those persons who are determined to be ineligible through the regular eligibility determination process.

j. Is a pregnant woman or infant less than one year of age whose income does not exceed the federally prescribed percentage of the poverty level in accordance with the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302.

k. Is a pregnant woman or infant whose income is more than the limit prescribed under the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302, but not more than two hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

l. Is an infant whose income is not more than two hundred percent of the federal poverty level, as defined by the most recently revised income guidelines published by the United States department of health and human services.

m. Is a child for whom adoption assistance or foster care maintenance payments are paid under Title IV-E of the federal Social Security Act.

n. Is an individual or family who is ineligible for the family investment program because of requirements that do not apply under Title XIX of the federal Social Security Act.

o. Was a federal supplemental security income or a state supplementary assistance recipient, as defined by section 249.1, and a recipient of federal social security benefits at one time since August 1, 1977, and would be eligible for federal supplemental security income or state supplementary assistance but for the increases due to the cost of living in federal social security benefits since the last date of concurrent eligibility.

p. Is an individual whose spouse is deceased and who is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, due to the elimination of the actuarial reduction formula for federal social security benefits under the federal Social Security Act and subsequent cost of living increases.

q. Is an individual who is at least sixty years of age and is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of receipt of social security widow or widower benefits and is not eligible for federal Medicare, part A coverage.

r. Is an individual with a disability, and is at least eighteen years of age, who receives parental social security benefits under the federal Social Security Act and is not eligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of the receipt of the social security benefits.

s. Is an individual who is no longer eligible for the family investment program due to earned income. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

t. Is an individual who is no longer eligible for the family investment program due to the receipt of child or spousal support. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

2. Medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 5 of this section and whose incomes and resources are insufficient to meet the cost of necessary medical care and services in accordance with the following order of priorities:

a. As allowed under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XIII), individuals with disabilities, who are less than sixty-five years of age, who are members of families whose income is less than two hundred fifty percent of the most recently revised official poverty line published by the federal office of management and budget for the family, who have earned income and who are eligible for medical assistance or additional medical assistance under this section if earnings are disregarded. As allowed by 42 U.S.C. § 1396a(r)(2), unearned income shall also be disregarded in determining whether an individual is eligible for assistance under this paragraph. For the purposes of determining the amount of an individual's resources under this paragraph and as allowed by 42 U.S.C. § 1396a(r)(2), a maximum of ten thousand dollars of available resources shall be disregarded and any additional resources held in a retirement account, in a medical savings account, or in any other account approved under rules adopted by the department shall also be disregarded. Individuals eligible for assistance under this paragraph, whose individual income exceeds one hundred fifty percent of the official poverty line published by the federal office of management and budget for an individual, shall pay a premium. The amount of the premium shall be based on a sliding fee schedule adopted by rule of the department and shall be based on a percentage of the individual's income. The maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty line shall be commensurate with premiums charged for private group health insurance in this state. This paragraph shall be implemented no later than March 1, 2000.

b. As provided under the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000, Pub. L. No. 106-354, women who meet all of the following criteria:

(1) Are not described in 42 U.S.C. § 1396a(a)(10)(A)(i).

(2) Have not attained age sixty-five.

(3) Have been screened for breast and cervical cancer under the United States centers for disease control and prevention breast and cervical cancer early detection program established under 42 U.S.C. § 300k et seq., in accordance with the requirements of 42 U.S.C. § 300n, and need treatment for breast or cervical cancer. A woman is considered screened for breast and cervical cancer under this subparagraph if the woman is screened by any provider or entity, and the state grantee of the United States centers for disease control and prevention funds under Title XV of the federal Public Health Services Act has elected to include screening activities by that provider or entity as screening activities pursuant to Title XV of the federal Public Health Services Act. This screening includes but is not limited to breast or cervical cancer screenings or related diagnostic services provided by family planning or community health centers and breast cancer screenings funded by the Susan G. Komen foundation which are provided to women who meet the eligibility requirements established by the state grantee of the United States centers for disease control and prevention funds under Title XV of the federal Public Health Services Act.

(4) Are not otherwise covered under creditable coverage as defined in 42 U.S.C. § 300gg(c).

A woman who meets the criteria of this paragraph shall be presumptively eligible for medical

assistance.

c. Individuals who are receiving care in a hospital or in a basic nursing home, intermediate nursing home, skilled nursing home or extended care facility, as defined by section 135C.1, and who meet all eligibility requirements for federal supplemental security income except that their income exceeds the allowable maximum therefor, but whose income is not in excess of the maximum established by subsection 4 for eligibility for medical assistance and is insufficient to meet the full cost of their care in the hospital or health care facility on the basis of standards established by the department.

d. Individuals under twenty-one years of age living in a licensed foster home, or in a private home pursuant to a subsidized adoption arrangement, for whom the department accepts financial responsibility in whole or in part and who are not eligible under subsection 1.

e. Individuals who are receiving care in an institution for mental diseases, and who are under twenty-one years of age and whose income and resources are such that they are eligible for the family investment program, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph *"a"* of this subsection.

f. Individuals and families whose incomes and resources are such that they are eligible for federal supplemental security income or the family investment program, but who are not actually receiving such public assistance.

g. Individuals who are receiving state supplementary assistance as defined by section 249.1 or other persons whose needs are considered in computing the recipient's assistance grant.

h. Individuals under twenty-one years of age who qualify on a financial basis for, but who are otherwise ineligible to receive assistance under the family investment program.

i. Individuals and families who would be eligible under subsection 1 or 2 of this section except for excess income or resources, or a reasonable category of those individuals and families.

j. Individuals who have attained the age of twenty-one but have not yet attained the age of sixty-five who qualify on a financial basis for, but who are otherwise ineligible to receive, federal supplemental security income or assistance under the family investment program.

Notwithstanding the provisions of this subsection establishing priorities for individuals and families to receive medical assistance, the department may determine within the priorities listed in this subsection which persons shall receive medical assistance based on income levels established by the department, subject to the limitations provided in subsection 4.

3. Additional medical assistance may, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, either:

a. Only those individuals and families described in subsection 1 of this section; or

b. Those individuals and families described in both subsections 1 and 2.

4. Discretionary medical assistance, within the limits of available funds and in accordance with section 249A.4, subsection 1, may be provided to or on behalf of those individuals and families described in subsection 2, paragraph *"i"* of this section.

5. Assistance shall not be granted under this chapter to:

a. An individual or family whose income, considered to be available to the individual or family, exceeds federally prescribed limitations.

b. An individual or family whose resources, considered to be available to the individual or family, exceed federally prescribed limitations.

5A. In determining eligibility for children under subsection 1, paragraphs *"b"*, *"f"*, *"g"*, *"j"*, *"k"*, *"n"*, and *"s"*; subsection 2, paragraphs *"c"*, *"e"*, *"f"*, *"h"*, and *"i"*; and subsection 5, paragraph *"b"*, all resources of the family, other than monthly income, shall be disregarded.

6. In determining the eligibility of an individual for medical assistance under this chapter, for resources transferred to the individual's spouse before October 1, 1989, or to a person other than the individual's spouse before July 1, 1989, the department shall include, as resources still available to the individual, those nonexempt resources or interests in resources, owned by the individual within the preceding twenty-four months, which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter.

a. A transaction described in this subsection is presumed to have been for the purpose of establishing eligibility for medical assistance under this chapter unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

b. The value of a resource or an interest in a resource in determining eligibility under this subsection is the fair market value of the resource or interest at the time of the transaction less the amount of any compensation received.

c. If a transaction described in this subsection results in uncompensated value exceeding twelve thousand dollars, the department shall provide by rule for a period of ineligibility which exceeds twenty-four months and has a reasonable relationship to the uncompensated value above twelve thousand dollars.

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual's spouse on or after October 1, 1989, or to a person other than the individual's spouse on or after July 1, 1989, and prior to August 11, 1993, as provided by the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No.

100-360, § 303(b), as amended by the federal Family Support Act of 1988, Pub. L. No. 100-485, § 608(d)(16)(B), (D), and the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6411(e)(1).

8. Medicare cost sharing shall be provided in accordance with the provisions of Title XIX of the federal Social Security Act, section 1902(a)(10)(E), as codified in 42 U.S.C. § 1396a(a)(10)(E), to or on behalf of an individual who is a resident of the state or a resident who is temporarily absent from the state, and who is a member of any of the following eligibility categories:

a. A qualified Medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1905(p)(1), as codified in 42 U.S.C. § 1396d(p)(1).

b. A qualified disabled and working person as defined under Title XIX of the federal Social Security Act, section 1905(s), as codified in 42 U.S.C. § 1396d(s).

c. A specified low-income Medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iii), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iii).

d. An additional specified low-income Medicare beneficiary as described under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(I), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(I).

e. An additional specified low-income Medicare beneficiary described under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(II), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(II).

9. Beginning October 1, 1990, in determining the eligibility of an institutionalized individual for assistance under this chapter, the department shall establish a minimum community spouse resource allowance amount of twenty-four thousand dollars to be retained for the benefit of the institutionalized individual's community spouse in accordance with the federal Social Security Act, section 1924(f) as codified in 42 U.S.C. § 1396r-5(f).

10. Group health plan cost sharing shall be provided as required by Title XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.

11. *a.* In determining the eligibility of an individual for medical assistance, the department shall consider transfers of assets made on or after August 11, 1993, as provided by the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. § 1396p(c).

b. The department shall exercise the option provided in 42 U.S.C. § 1396p(c) to provide a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual. For noninstitutionalized individuals, the number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual or the individual's spouse on or after the look-back date specified in 42 U.S.C. § 1396p(c)(1)(B)(i), divided by the average monthly cost to a private patient for nursing facility services in Iowa at the time of application. The services for which noninstitutionalized individuals shall be made ineligible shall include any long-term care services for which medical assistance is otherwise available. Notwithstanding section 17A.4, the department may adopt rules providing a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual without notice of opportunity for public comment, to be effective immediately upon filing under section 17A.5, subsection 2, paragraph *"b"*, subparagraph (1).

c. A disclaimer of any property, interest, or right pursuant to section 633.704 constitutes a transfer of assets for the purpose of determining eligibility for medical assistance in an amount equal to the value of the property, interest, or right disclaimed.

d. Failure of a surviving spouse to take against a will pursuant to chapter 633, division V, constitutes a transfer of assets for the purpose of determining eligibility for medical assistance to the extent that the value received by taking against the will would have exceeded the value of the inheritance received under the will.

12. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established on or before August 10, 1993, as available to the individual, in accordance with the federal Comprehensive Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, § 9506(a), as amended by the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9435(c).

13. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established after August 10, 1993, as available to the individual, in accordance with 42 U.S.C. § 1396p(d) and sections 633.708 and 633.709.

[C62, 66, §249A.3, 249A.4; C71, 73, 75, 77, 79, 81, §249A.3; 81 Acts, ch 7, §15, ch 82, §1]

84 Acts, ch 1297, §3 – 5; 85 Acts, ch 146, §2; 89 Acts, ch 104, §2 – 4; 89 Acts, ch 304, §202; 90 Acts, ch 1258, §6; 90 Acts, ch 1270, §48; 91 Acts, ch 158, §3, 4; 92 Acts, ch 1043, §4; 92 Acts, 2nd Ex, ch 1001, §420; 93 Acts, ch 97, §37; 94 Acts, ch 1120, §1, 8, 9, 16; 95 Acts, ch 68, §1; 96 Acts, ch 1129, §64; 97 Acts, ch 41, §26 – 28; 98 Acts, ch 1218, §77; 99 Acts, ch 94, §1; 99 Acts, ch 203, §50; 99 Acts, ch 208, §50; 2000 Acts, ch 1060, §1 – 3; 2000 Acts, ch 1221, §6; 2000 Acts, ch 1228, §41; 2001 Acts, ch 184, §9

Spousal support debt for medical assistance to institutionalized spouse;

community spouse resource allowance; chapter 249B

Increase of medical assistance eligibility income limit for pregnant women and infants; 2000 Acts, ch 1228, §8; 2001 Acts, ch 191, §45, 53

For proposed amendment to section contingent upon department not winning appeal relating to the state plan amendment (SPA No. 01-013), see 2002 Acts, ch 1175, §28, 69; state withdrew request for reconsideration of state plan amendment after approval of the amendment by federal centers for Medicare and Medicaid services in transmittal number 01-013.

249A.4 Duties of director.

The director shall be responsible for the effective and impartial administration of this chapter and shall, in accordance with the standards and priorities established by this chapter, by applicable federal law, by the regulations and directives issued pursuant to federal law, by applicable court orders, and by the state plan approved in accordance with federal law, make rules, establish policies, and prescribe procedures to implement this chapter. Without limiting the generality of the foregoing delegation of authority, the director is hereby specifically empowered and directed to:

1. Determine the greatest amount, duration, and scope of assistance which may be provided, and the broadest range of eligible individuals to whom assistance may effectively be provided, under this chapter within the limitations of available funds. In so doing, the director shall at least every six months evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing a like program, and compare the probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period. After each evaluation of the scope of the program, the director shall report to the general assembly through the legislative council or in another manner as the general assembly may by resolution direct.

2. Reserved.

3. Have authority to provide for payment under this chapter of assistance rendered to any applicant prior to the date the application is filed.

4. Have authority to contract with any corporation authorized to engage in this state in insuring groups or individuals for all or part of the cost of medical, hospital, or other health care or with any corporation maintaining and operating a medical, hospital, or health service prepayment plan under the provisions of chapter 514 or with any health maintenance organization authorized to operate in this state, for any or all of the benefits to which any recipients are entitled under this chapter to be provided by such corporation or health maintenance organization on a prepaid individual or group basis.

5. May, to the extent possible, contract with a private organization or organizations whereby such organization will handle the processing of and the payment of claims for services rendered under the provisions of this chapter and under such rules and regulations as shall be promulgated by such department. The state department may give due consideration to the advantages of contracting with any organization which may be serving in Iowa as "intermediary" or "carrier" under Title XVIII of the federal Social Security Act, as amended.

6. Shall cooperate with any agency of the state or federal government in any manner as may be necessary to qualify for federal aid and assistance for medical assistance in conformity with the provisions of chapter 249, this chapter and Titles XVI and XIX of the federal Social Security Act, as amended.

7. Shall provide for the professional freedom of those licensed practitioners who determine the need for or provide medical care and services, and shall provide freedom of choice to recipients to select the provider of care and services, except when the recipient is eligible for participation in a health maintenance organization or prepaid health plan which limits provider selection and which is approved by the department. However, this shall not limit the freedom of choice to recipients to select providers in instances where such provider services are eligible for reimbursement under the medical assistance program but are not provided under the health maintenance organization or under the prepaid health plan, or where the recipient has an already established program of specialized medical care with a particular provider. The department may also restrict the recipient's selection of providers to control the individual recipient's overuse of care and services, provided the department can document this overuse. The department shall promulgate rules for determining the overuse of services, including rights of appeal by the recipient.

8. Shall advise and consult at least semiannually with a council composed of the presidents of the following organizations, or a president's representative who is a member of the organization represented by the president: the Iowa medical society, the Iowa osteopathic medical association, the Iowa academy of family physicians, the Iowa chapter of the American academy of pediatrics, the Iowa physical therapy association, the Iowa dental association, the Iowa nurses association, the Iowa pharmacy association, the Iowa podiatric medical society, the Iowa optometric association, the Iowa association of community providers, the Iowa psychological association, the Iowa psychiatric society, the Iowa chapter of the national association of social workers, the Iowa hospital association, the Iowa association of rural health clinics, the opticians' association of Iowa, inc., the Iowa association of hearing health professionals, the Iowa speech and hearing association, the Iowa health care association, the Iowa association for home care, the Iowa council of health care centers, the Iowa physician assistant society, the Iowa association of nurse practitioners, the Iowa occupational therapy association, the Iowa association of homes and services for the aging, the ARC of Iowa which

was formerly known as the association for retarded citizens of Iowa, the alliance for the mentally ill of Iowa, Iowa state association of counties, and the governor's developmental disabilities council, together with one person designated by the Iowa chiropractic society; one state representative from each of the two major political parties appointed by the speaker of the house, one state senator from each of the two major political parties appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, each for a term of two years; four public representatives, appointed by the governor for staggered terms of two years each, none of whom shall be members of, or practitioners of, or have a pecuniary interest in any of the professions or businesses represented by any of the several professional groups and associations specifically represented on the council under this subsection, and at least one of whom shall be a recipient of medical assistance; the director of public health, or a representative designated by the director; the dean of Des Moines university — osteopathic medical center, or a representative designated by the dean; and the dean of the university of Iowa college of medicine, or a representative designated by the dean.

For each council meeting, other than those held during the time the general assembly is in session, each legislative member of the council shall be reimbursed for actual traveling and other necessary expenses and shall receive a per diem as specified in section 7E.6 for each day in attendance, as shall the public representatives, regardless of whether the general assembly is in session.

The director shall consider the advice and consultation offered by the council in the director's preparation of medical assistance budget recommendations.

9. Adopt rules pursuant to chapter 17A in determining the method and level of reimbursement for all medical and health services referred to in section 249A.2, subsection 1 or 7, after considering all of the following:

a. The promotion of efficient and cost-effective delivery of medical and health services.

b. Compliance with federal law and regulations.

c. The level of state and federal appropriations for medical assistance.

d. Reimbursement at a level as near as possible to actual costs and charges after priority is given to the considerations in paragraphs *"a"*, *"b"*, and *"c"*.

10. Shall provide an opportunity for a fair hearing before the department of inspections and appeals to an individual whose claim for medical assistance under this chapter is denied or is not acted upon with reasonable promptness. Upon completion of a hearing, the department of inspections and appeals shall issue a decision which is subject to review by the department of human services.

11. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), resources which are used as tools of the trade shall not be considered.

12. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), or pursuant to section 249A.3, subsection 2, paragraph *"i"*, the department shall establish resource standards and exclusions not less generous than the resource standards and exclusions adopted pursuant to section 255A.5, if in compliance with federal laws and regulations.

13. In implementing subsection 9, relating to reimbursement for medical and health services under this chapter, when a selected out-of-state acute care hospital facility is involved, a contractual arrangement may be developed with the out-of-state facility that is in accordance with the requirements of Titles XVIII and XIX of the federal Social Security Act. The contractual arrangement is not subject to other reimbursement standards, policies, and rate setting procedures required under this chapter.

14. A medical assistance copayment shall only be applied to those services and products specified in administrative rules of the department in effect on February 1, 1991, which under federal medical assistance requirements, are provided at the option of the state.

15. Establish appropriate reimbursement rates for community mental health centers that are accredited by the mental health and developmental disabilities commission. The reimbursement rates shall be phased in over the three-year period beginning July 1, 1998, and ending June 30, 2001.

Judicial review of the decisions of the department of human services may be sought in accordance with chapter 17A. If a petition for judicial review is filed, the department of human services shall furnish the petitioner with a copy of the application and all supporting papers, a transcript of the testimony taken at the hearing, if any, and a copy of its decision.

[C62, 66, §249A.5, 249A.10; C71, 73, 75, 77, 79, 81, §249A.4; 82 Acts, ch 1260, §121, 122]

83 Acts, ch 96, §157, 159; 83 Acts, ch 153, §12, 13; 83 Acts, ch 201, §13; 86 Acts, ch 1245, §2031; 89 Acts, ch 37, §1; 89 Acts, ch 104, §5; 89 Acts, ch 304, §203; 90 Acts, ch 1204, §61, 62; 90 Acts, ch 1223, §21; 90 Acts, ch 1256, §41; 90 Acts, ch 1264, §34; 91 Acts, ch 97, §32; 91 Acts, ch 158, §5; 92 Acts, ch 1229, §29, 30; 94 Acts, ch 1150, §1, 2; 97 Acts, ch 165, §1; 98 Acts, ch 1181, §4; 99 Acts, ch 96, §27; 2000 Acts, ch 1029, §1, 2; 2001 Acts, ch 24, §65, 74;

2001 Acts, ch 74, §17

Reimbursement for family and pediatric nurse practitioners; emergency rules; 2000 Acts, ch 1228, §8; 2001 Acts, ch 191, §45, 53

Pharmaceutical case management study; reports; emergency rules; 2000 Acts, ch 1228, §9; 2001 Acts, ch 191, §46, 53

Designation and eligibility of a children's hospital as a qualifying hospital for receipt of disproportionate share hospital payments for inpatient services under the medical assistance program; 2002 Acts, ch 1025

249A.4A Garnishment.

When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a recipient, the department may garnish the wages, salary, or other compensation of the person obligated to pay child support or may withhold amounts pursuant to chapter 252D from the income of the person obligated to pay support, and shall withhold amounts from state income tax refunds of a person obligated to pay support, to the extent necessary to reimburse the department for expenditures for medical care or expenses on behalf of a recipient if all of the following conditions apply:

1. The person is required by court or administrative order to provide medical support to a recipient.

2. The person has received payment from a third party for the costs of medical assistance to the recipient and has not used the payments to reimburse the costs of medical care or expenses.

94 Acts, ch 1171, §9

249A.5 Recovery of payment.

1. Medical assistance paid to, or on behalf of, a recipient or paid to a provider of services is not recoverable, except as provided in subsection 2, unless the assistance was incorrectly paid. Assistance incorrectly paid is recoverable from the provider, or from the recipient, while living, as a debt due the state and, upon the recipient's death, as a claim classified with taxes having preference under the laws of this state.

2. The provision of medical assistance to an individual who is fifty-five years of age or older, or who is a resident of a nursing facility, intermediate care facility for persons with mental retardation, or mental health institute, who cannot reasonably be expected to be discharged and return to the individual's home, creates a debt due the department from the individual's estate for all medical assistance provided on the individual's behalf, upon the individual's death.

a. The department shall waive the collection of the debt created under this subsection from the estate of a recipient of medical assistance to the extent that collection of the debt would result in either of the following:

(1) Reduction in the amount received from the recipient's estate by a surviving spouse, or by a surviving child who was under age twenty-one, blind, or permanently and totally disabled at the time of the individual's death.

(2) Otherwise work an undue hardship as determined on the basis of criteria established pursuant to 42 U.S.C. § 1396p(b)(3).

b. If the collection of all or part of a debt is waived pursuant to subsection 2, paragraph *"a"*, the amount waived shall be a debt due from the estate of the recipient's surviving spouse, child who is blind or has a disability, or the recipient of a hardship waiver under subsection 2, paragraph *"a"*, subparagraph (2), upon the death of such spouse, child, or recipient, or due from a surviving child, who was under twenty-one years of age at the time of the recipient's death, upon the child reaching age twenty-one, to the extent the recipient's estate is received by such spouse, child, or recipient.

c. For purposes of this section, the estate of a medical assistance recipient, surviving spouse, or surviving child includes any real property, personal property, or other asset in which the recipient, spouse, or child had any legal title or interest at the time of the recipient's, spouse's, or child's death, to the extent of such interests, including but not limited to interests in jointly held property, retained life estates, and interests in trusts.

d. For purposes of collection of a debt created by this subsection, all assets included in the estate of a medical assistance recipient, surviving spouse, or surviving child pursuant to paragraph *"c"* are subject to probate.

e. Interest shall accrue on a debt due under this subsection, at the rate provided pursuant to section 535.3, beginning six months after the death of a medical assistance recipient, surviving spouse, or surviving child.

f. (1) If a debt is due under this subsection from the estate of a recipient, the administrator of the nursing facility, intermediate care facility for persons with mental retardation, or mental health institute in which the recipient resided at the time of the recipient's death, and the personal representative of the recipient, if applicable, shall report the death to the department within ten days of the death of the recipient.

(2) If a personal representative or executor of an estate makes a distribution either in whole or in part of the property of an estate to the heirs, next of kin, distributees, legatees, or devisees without having executed the obligations pursuant to section 633.425, the personal representative or executor may be held personally liable for the amount of medical assistance paid on behalf of the recipient, to the full value of any property belonging to the estate which may have been in the custody or control of the personal representative or executor.

(3) For the purposes of this paragraph, *"executor"* means executor as defined in section 633.3, and *"personal representative"* means a person who filed a medical assistance application on behalf of the recipient or who manages the financial affairs of the recipient.

[C62, 66, §249A.13; C71, 73, 75, 77, 79, 81, §249A.5]

83 Acts, ch 153, §14; 94 Acts, ch 1120, §10; 95 Acts, ch 68, §2; 96 Acts, ch 1107, §1; 96 Acts, ch 1129, §65, 113; 2002 Acts, ch 1086, §2, 21

Subsection 2, paragraphs b and c amended

249A.6 Lien.

1. When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a recipient, the department shall have a lien, to the extent of those payments, upon all monetary claims which the recipient may have against third parties. A lien under this section is not effective unless the department files a notice of lien with the clerk of the district court in the county where the recipient resides and with the recipient's attorney when the recipient's eligibility for medical assistance is established. The notice of lien shall be filed before the third party has concluded a final settlement with the recipient, the recipient's attorney, or other representative. The third party shall obtain a written determination from the department concerning the amount of the lien before a settlement is deemed final for purposes of this section. A compromise, including but not limited to a settlement, waiver or release, of a claim under this section does not defeat the department's lien except pursuant to the written agreement of the director or the director's designee. A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a recipient or on behalf of a recipient which fails to state a claim for recovery of medical expenses does not defeat the department's lien if there is any recovery on the recipient's claim.

2. The department shall be given notice of monetary claims against third parties as follows:

a. Applicants for medical assistance shall notify the department of any possible claims against third parties upon submitting the application. Recipients of medical assistance shall notify the department of any possible claims when those claims arise.

b. A person who provides health care services to a person receiving assistance through the medical assistance program shall notify the department whenever the person has reason to believe that third parties may be liable for payment of the costs of those health care services.

c. An attorney representing an applicant for or recipient of assistance on a claim upon which the department has a lien under this section shall notify the department of the claim of which the attorney has actual knowledge, prior to filing a claim, commencing an action or negotiating a settlement offer. Actual knowledge under this section shall include the notice to the attorney pursuant to subsection 1.

The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the department at its state or district office location, is adequate legal notice of the claim.

3. The department's lien is valid and binding on an attorney, insurer, or other third party only upon notice by the department or unless the attorney, insurer, or third party has actual notice that the recipient is receiving medical assistance from the department and only to the extent to which the attorney, insurer, or third party has not made payment to the recipient or an assignee of the recipient prior to the notice. Payment of benefits by an insurer or third party pursuant to the rights of the lienholder in this section discharges the attorney, insurer, or third party from liability to the recipient or the recipient's assignee to the extent of the payment to the department.

4. If a recipient of assistance through the medical assistance program incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim upon which the department has a lien under this section, upon the receipt of the judgment or settlement of the total claim, of which the lien for medical assistance payments is a part, the court costs and reasonable attorney fees shall first be deducted from this total judgment or settlement. One-third of the remaining balance shall then be deducted and paid to the recipient. From the remaining balance, the lien of the department shall be paid. Any amount remaining shall be paid to the recipient. An attorney acting on behalf of a recipient of medical assistance for the purpose of enforcing a claim upon which the department has a lien shall not collect from the recipient any amount as attorney fees which is in excess of the amount which the attorney customarily would collect on claims not subject to this section.

5. For purposes of this section the term *"third party"* includes an attorney, individual, institution, corporation, or public or private agency which is or may be liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant for or recipient of assistance under the medical assistance program.

6. The department may enforce its lien by a civil action against any liable third party.

[C79, 81, §249A.6]

83 Acts, ch 120, §1; 83 Acts, ch 153, §15; 89 Acts, ch 111, §1; 93 Acts, ch 180, §50; 94 Acts, ch 1023, §89

249A.7 Fraudulent practices — investigations and audits.

A person who obtains assistance or payments for medical assistance under this chapter by knowingly making or causing to be made, a false statement or a misrepresentation of a material fact or by knowingly failing to disclose a material fact required of an applicant for aid under the pro-

visions of this chapter and a person who knowingly makes or causes to be made, a false statement or a misrepresentation of a material fact or knowingly fails to disclose a material fact concerning the applicant's eligibility for aid under this chapter commits a fraudulent practice.

The department of inspections and appeals shall conduct investigations and audits as deemed necessary to ensure compliance with the medical assistance program administered under this chapter. The department of inspections and appeals shall cooperate with the department of human services on the development of procedures relating to such investigations and audits to ensure compliance with federal and state single state agency requirements.

[C62, 66, §249A.15; C71, 73, 75, 77, 79, 81, §249A.7]

90 Acts, ch 1204, §63; 97 Acts, ch 56, §3

See §714.8 et seq.

249A.8 Fraudulent practice.

A person who knowingly makes or causes to be made false statements or misrepresentations of material facts or knowingly fails to disclose material facts in application for payment of services or merchandise rendered or purportedly rendered by a provider participating in the medical assistance program under this chapter commits a fraudulent practice.

91 Acts, ch 107, §12; 97 Acts, ch 56, §4

249A.9 Direct payment to health care facility — no deduction for service. Repealed by 84 Acts, ch 1297, § 7.

249A.10 Repealed by 81 Acts, ch 7, § 17.

249A.11 Payment for patient care segregated.

A state resource center or mental health institute, upon receipt of any payment made under this chapter for the care of any patient, shall segregate an amount equal to that portion of the payment which is required by law to be made from nonfederal funds. The money segregated shall be deposited in the medical assistance fund of the department of human services.

[C77, 79, 81, §249A.11]

83 Acts, ch 96, §157, 159; 85 Acts, ch 146, §3; 2000 Acts, ch 1112, §51

249A.12 Assistance to persons with mental retardation.

1. Assistance may be furnished under this chapter to an otherwise eligible recipient who is a resident of a health care facility licensed under chapter 135C and certified as an intermediate care facility for persons with mental retardation.

2. A county shall reimburse the department on a monthly basis for that portion of the cost of assistance provided under this section to a recipient with legal settlement in the county, which is not paid from federal funds, if the recipient's placement has been approved by the appropriate review organization as medically necessary and appropriate. The department's goal for the maximum time period for submission of a claim to a county is not more than sixty days following the submission of the claim by the provider of the service to the department. The department's goal for completion and crediting of a county for cost settlement for the actual costs of a home and community-based waiver service is within two hundred seventy days of the close of a fiscal year for which cost reports are due from providers. The department shall place all reimbursements from counties in the appropriation for medical assistance, and may use the reimbursed funds in the same manner and for any purpose for which the appropriation for medical assistance may be used.

3. If a county reimburses the department for medical assistance provided under this section and the amount of medical assistance is subsequently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in section 633.707, the department shall reimburse the county on a proportionate basis. The department shall adopt rules to implement this subsection.

4. *a.* Effective July 1, 1995, the state shall be responsible for all of the nonfederal share of the costs of intermediate care facility for persons with mental retardation services provided under medical assistance to minors. Notwithstanding subsection 2 and contrary provisions of section 222.73, effective July 1, 1995, a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of such services provided to minors.

b. Effective July 1, 1995, the state shall be responsible for all of the nonfederal share of medical assistance home and community-based waivers for persons with mental retardation services provided to minors and a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of the services.

5. *a.* The mental health and developmental disabilities commission shall recommend to the department the actions necessary to assist in the transition of individuals being served in an intermediate care facility for persons with mental retardation, who are appropriate for the transition, to services funded under a medical assistance waiver for home and community-based services for persons with mental retardation in a manner which maximizes the use of existing public and private facilities. The actions may include but are not limited to submitting any of the following or a combination of any of the following as a request for a revision of the medical assistance waiver for

home and community-based services for persons with mental retardation in effect as of June 30, 1996:

(1) Allow for the transition of intermediate care facilities for persons with mental retardation licensed under chapter 135C as of June 30, 1996, to services funded under the medical assistance waiver for home and community-based services for persons with mental retardation. The request shall be for inclusion of additional persons under the waiver associated with the transition.

(2) Allow for reimbursement under the waiver for day program or other service costs.

(3) Allow for exception provisions in which an intermediate care facility for persons wih mental retardation which does not meet size and other facility-related requirements under the waiver in effect on June 30, 1996, may convert to a waiver service for a set period of time such as five years. Following the set period of time, the facility would be subject to the waiver requirements applicable to services which were not operating under the exception provisions.

b. In implementing the provisions of this subsection, the mental health and developmental disabilities commission shall consult with other states. The waiver revision request or other action necessary to assist in the transition of service provision from intermediate care facilities for persons with mental retardation to alternative programs shall be implemented by the department in a manner that can appropriately meet the needs of individuals at an overall lower cost to counties, the federal government, and the state. In addition, the department shall take into consideration significant federal changes to the medical assistance program in formulating the department's actions under this subsection. The department shall consult with the mental health and developmental disabilities commission in adopting rules for oversight of facilities converted pursuant to this subsection. A transition approach described in paragraph *"a"* may be modified as necessary to obtain federal waiver approval.

[C77, 79, 81, §249A.12]

83 Acts, ch 123, §96, 209; 84 Acts, ch 1297, §6; 94 Acts, ch 1120, §2; 94 Acts, ch 1163, §1; 95 Acts, ch 68, §3; 96 Acts, ch 1129, §113; 96 Acts, ch 1183, §30, 31; 2002 Acts, ch 1146, §5, 6

Appropriations to fund the costs under subsection 4 from the property tax relief fund; see §426B.1(3)

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13

Subsection 5, paragraph a, unnumbered paragraph 1 amended

Subsection 5, paragraph b amended

249A.13 Pilot program on surgery for medicaid clients. Repealed by 87 Acts, ch 28, § 1.

249A.14 County attorney to enforce.

It is the intent of the general assembly that violations of law relating to the family investment program, medical assistance, and supplemental assistance shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide assistance in prosecution as required.

[C79, 81, §249A.14]

85 Acts, ch 195, §27; 93 Acts, ch 97, §38

249A.15 Licensed psychologists eligible for payment.

The department shall adopt rules pursuant to chapter 17A entitling psychologists who are licensed in the state where the services are provided and have a doctorate degree in psychology, have had at least two years of clinical experience in a recognized health setting, or have met the standards of a national register of health service providers in psychology, to payment for services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations and of funds available for the medical assistance program.

[81 Acts, ch 7, §16]

249A.16 New rates for services — effective date.

Health care facilities licensed under chapter 135C receiving assistance payments for persons provided services by the health care facility shall submit the financial report to the department as provided by rule. Payment at a new rate is effective for services rendered as of the first day of the month in which the report is postmarked, or if the report is personally delivered, in which the report is received by the department.

[81 Acts, ch 83, §1]

249A.17 Transitional medical assistance. Repealed by 97 Acts, ch 41, § 29. See § 249A.3.

249A.18 Cost-based reimbursement — rural health clinics and federally qualified health centers.

Rural health clinics and federally qualified health centers shall receive cost-based reimbursement for one hundred percent of the reasonable costs for the provision of services to recipients of medical assistance.

98 Acts, ch 1069, §1; 99 Acts, ch 203, §51

249A.18A Resident assessment.

A nursing facility as defined in section 135C.1 shall complete a resident assessment prior to initial admission of a resident and periodically during the resident's stay in the facility. The assessment shall be completed for each prospective resident and current resident regardless of payor source. The nursing facility may utilize the same

resident assessment tool required for certification of the facility under the medical assistance and federal Medicare programs to comply with this section.

2000 Acts, ch 1004, §12, 22

249A.19 Health care facilities — penalty.

The department shall adopt rules pursuant to chapter 17A to assess and collect, with interest, a civil penalty for each day a health care facility which receives medical assistance reimbursements does not comply with the requirements of the federal Social Security Act, section 1919, as codified in 42 U.S.C. § 1396r. A civil penalty shall not exceed the amount authorized under 42 C.F.R. § 488.438 for health care facility violations. Any moneys collected by the department pursuant to this section shall be applied to the protection of the health or property of the residents of the health care facilities which are determined by the state or by the federal centers for Medicare and Medicaid services to be out of compliance. The purposes for which the collected moneys shall be applied may include payment for the costs of relocation of residents to other facilities, maintenance or operation of a health care facility pending correction of deficiencies or closure of the facility, and reimbursing residents for personal funds lost. If a health care facility is assessed a civil penalty under this section, the health care facility shall not be assessed a penalty under section 135C.36 for the same violation.

90 Acts, ch 1031, §1; 96 Acts, ch 1107, §2; 2002 Acts, ch 1050, §24

Section amended

249A.20 Noninstitutional health providers — reimbursement.

Beginning November 1, 2000, the department shall use the federal Medicare resource-based relative value scale methodology to reimburse all applicable noninstitutional health providers, excluding anesthesia and dental services, that on June 30, 2000, are reimbursed on a fee-for-service basis for provision of services under the medical assistance program. The department shall apply the federal Medicare resource-based relative value scale methodology to such health providers in the same manner as the methodology is applied under the federal Medicare program and shall not utilize the resource-based relative value scale methodology in a manner that discriminates between such health providers. The reimbursement schedule shall be adjusted annually on July 1, and shall provide for reimbursement that is not less than the reimbursement provided under the fee schedule established for Iowa under the federal Medicare program in effect on January 1 of that calendar year.

A provider reimbursed under section 249A.31 is not a noninstitutional health provider.

2000 Acts, ch 1221, §7; 2002 Acts, ch 1120, §2, 9

NEW unnumbered paragraph 2

249A.21 Intermediate care facilities for persons with mental retardation — assessment.

1. The department may assess intermediate care facilities for persons with mental retardation, as defined in section 135C.1, that are not operated by the state, a fee in an amount not to exceed six percent of the total annual revenue of the facility for the preceding fiscal year.

2. The assessment shall be paid to the department in equal monthly amounts on or before the fifteenth day of each month. The department may deduct the monthly amount from medical assistance payments to a facility described in subsection 1. The amount deducted from payments shall not exceed the total amount of the assessments due.

3. Revenue from the assessments shall be credited to the state medical assistance appropriation. This revenue may be used only for services for which federal financial participation under the medical assistance program is available to match state funds.

4. If federal financial participation to match the assessments made under subsection 1 becomes unavailable under federal law, the department shall terminate the imposing of the assessments beginning on the date that the federal statutory, regulatory, or interpretive change takes effect.

5. The department of human services may procure a sole source contract to implement the provisions of this section.

2002 Acts, 2nd Ex, ch 1001, §36, 46

NEW section

249A.22 and 249A.23 Reserved.

249A.24 Iowa medical assistance drug utilization review commission — created.

1. An Iowa medical assistance drug utilization review commission is created within the department. The commission membership, duties, and related provisions shall comply with 42 C.F.R. pt. 456, subpt. K.

2. In addition to any other duties prescribed, the commission shall make recommendations to the council on human services regarding strategies to reduce state expenditures for prescription drugs under the medical assistance program excluding provider reimbursement rates. The commission shall make initial recommendations to the council by October 1, 2002. Following approval of any recommendation by the council on human services, the department shall include the approved recommendation in a notice of intended action under chapter 17A and shall comply with chapter 17A in adopting any rules to implement

the recommendation. The department shall seek any federal waiver necessary to implement any approved recommendation. The strategies to be considered for recommendation by the commission shall include at a minimum all of the following:

a. Development of a preferred drug formulary pursuant to 42 U.S.C. § 1396r-8.

b. Negotiation of supplemental rebates from manufacturers that are in addition to those required by Title XIX of the federal Social Security Act. For the purposes of this paragraph, *"supplemental rebates"* may include, at the department's discretion, cash rebates and other program benefits that offset a medical assistance expenditure. Pharmaceutical manufacturers agreeing to provide a supplemental rebate as provided in this paragraph shall have an opportunity to present evidence supporting inclusion of a product on any preferred drug formulary developed.

c. Disease management programs.

d. Drug product donation programs.

e. Drug utilization control programs.

f. Prescriber and beneficiary counseling and education.

g. Fraud and abuse initiatives.

h. Pharmaceutical case management.

i. Services or administrative investments with guaranteed savings to the medical assistance program.

j. Expansion of prior authorization for prescription drugs and pharmaceutical case management under the medical assistance program.

k. Any other strategy that has been approved by the United States department of health and human services regarding prescription drugs under the medical assistance program.

2002 Acts, 2nd Ex, ch 1003, §263, 266

For transition provisions relating to the Iowa Medicaid drug utilization review commission, and for emergency rules authorization, see 2002 Acts, 2nd Ex, ch 1003, §264 – 266

NEW section

249A.25 Enhanced mental health, mental retardation, and developmental disabilities services plan oversight committee. Repealed by 94 Acts, ch 1150, § 4.

249A.26 State and county participation in funding for services to persons with disabilities.

1. The state shall pay for one hundred percent of the nonfederal share of the services paid for under any prepaid mental health services plan for medical assistance implemented by the department as authorized by law.

2. The county of legal settlement shall pay for fifty percent of the nonfederal share of the cost of case management provided to adults, day treatment, and partial hospitalization provided under the medical assistance program for persons with mental retardation, a developmental disability, or chronic mental illness. For purposes of this section, persons with mental disorders resulting from Alzheimer's disease or substance abuse shall not be considered chronically mentally ill. To the maximum extent allowed under federal law and regulations, the department shall consult with and inform a county of legal settlement's single entry point process, as defined in section 331.440, regarding the necessity for and the provision of any service for which the county is required to provide reimbursement under this subsection.

3. To the maximum extent allowed under federal law and regulations, a person with mental illness or mental retardation shall not be eligible for any service which is funded in whole or in part by a county share of the nonfederal portion of medical assistance funds unless the person is referred through the single entry point process, as defined in section 331.440. However, to the extent federal law allows referral of a medical assistance recipient to a service without approval of the single entry point process, the county of legal settlement shall be billed for the nonfederal share of costs for any adult person for whom the county would otherwise be responsible.

4. The county of legal settlement shall pay for one hundred percent of the nonfederal share of the cost of services provided to persons with chronic mental illness implemented under the adult rehabilitation option of the state medical assistance plan. The state shall pay for one hundred percent of the nonfederal share of the cost of such services provided to such persons without a county of legal settlement.

91 Acts, ch 158, §7; 92 Acts, ch 1241, §74; 93 Acts, ch 172, §43; 94 Acts, ch 1150, §3; 96 Acts, ch 1183, §32; 2002 Acts, ch 1120, §3, 9

Prohibition against requiring county funding for medical assistance program waiver for services to persons with brain injury; 94 Acts, ch 1170, §57

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13

NEW subsection 4

249A.27 Indemnity for case management and disallowed costs.

1. If the department contracts with a county or consortium of counties to provide case management services funded under medical assistance, the state shall appear and defend the department's employees and agents acting in an official capacity on the department's behalf and the state shall indemnify the employees and agents for acts within the scope of their employment. The state's duties to defend and indemnify shall not apply if the conduct upon which any claim is based constitutes a willful and wanton act or omission or malfeasance in office.

2. If the department is the case management contractor, the state shall be responsible for any costs included within the unit rate for case management services which are disallowed for medical assistance reimbursement by the federal centers for Medicare and Medicaid services. The contract-

ing county shall be credited for the county's share of any amounts overpaid due to the disallowed costs. However, if certain costs are disallowed due to requirements or preferences of a particular county in the provision of case management services, the county shall not receive credit for the amount of the costs.

91 Acts, ch 158, §8; 2002 Acts, ch 1050, §25
Subsection 2 amended

249A.28 Reserved.

249A.29 Home and community-based services waiver providers — records checks.

1. For purposes of this section and section 249A.30 unless the context otherwise requires:

a. "Consumer" means an individual approved by the department to receive services under a waiver.

b. "Provider" means an agency certified by the department to provide services under a waiver.

c. "Waiver" means a home and community-based services waiver approved by the federal government and implemented under the medical assistance program.

2. If a person is being considered by a provider for employment involving direct responsibility for a consumer or with access to a consumer when the consumer is alone, and if the person has been convicted of a crime or has a record of founded child or dependent adult abuse, the department shall perform an evaluation to determine whether the crime or founded abuse warrants prohibition of employment by the provider. The department shall conduct criminal and child and dependent adult abuse records checks of the person in this state and may conduct these checks in other states. The records checks and evaluations required by this section shall be performed in accordance with procedures adopted for this purpose by the department.

3. If the department determines that a person employed by a provider has committed a crime or has a record of founded abuse, the department shall perform an evaluation to determine whether prohibition of the person's employment is warranted.

4. In an evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded abuse again, and the number of crimes or founded abuses committed by the person involved. The department may permit a person who is evaluated to be employed or to continue to be employed by the provider if the person complies with the department's conditions relating to the employment, which may include completion of additional training.

5. If the department determines that the person has committed a crime or has a record of founded abuse which warrants prohibition of employment, the person shall not be employed by a provider.

95 Acts, ch 93, §5; 2002 Acts, ch 1120, §4
Subsection 1, unnumbered paragraph 1 amended

249A.30 Home and community-based waiver services reimbursement.

1. The base reimbursement rate for a provider of services under a medical assistance program home and community-based waiver for persons with mental retardation shall be recalculated at least every three years to adjust for the changes in costs during the immediately preceding three-year period.

2. The annual inflation factor used to adjust such a provider's reimbursement rate for a fiscal year shall not exceed the percentage increase in the employment cost index for private industry compensation issued by the federal department of labor, bureau of labor statistics, for the most recently completed calendar year.

2002 Acts, ch 1120, §5
NEW section

249A.31 Cost-based reimbursement — mental health and developmental disabilities providers.

All of the following shall receive cost-based reimbursement for one hundred percent of the reasonable costs for the provision of services to recipients of medical assistance:

1. Providers of individual case management services for persons with mental retardation, a developmental disability, or chronic mental illness in accordance with standards adopted by the mental health and developmental disabilities commission pursuant to section 225C.6.

2. Providers of services to persons with chronic mental illness implemented under the adult rehabilitation option of the state medical assistance plan.

2002 Acts, ch 1120, §6, 9
NEW section

CHAPTER 249B

MEDICAL ASSISTANCE TO INSTITUTIONALIZED SPOUSES

249B.1 Definitions.
249B.2 Creation of spousal support debt.
249B.3 Notice of spousal support debt — failure to respond — hearing — order.
249B.4 Certification to court — hearing — default.
249B.5 Filing and docketing of financial responsibility order — order effective as court decree.
249B.6 Interest on spousal support debts.
249B.7 Security for payment of spousal support — forfeiture.

249B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Community spouse"* means an individual who has not resided or is not likely to reside in a hospital or a health care facility for more than twenty-nine consecutive days and is married to an institutionalized spouse.

2. *"Community spouse resource allowance"* means a resource amount established for a community spouse pursuant to state policy adopted in accordance with the federal Social Security Act, section 1924(f)(2), as codified in 42 U.S.C. § 1396r-5(f)(2).

3. *"Court order"* means a judgment or order of a court of this state or another state requiring the payment of a set or determinable amount of monetary support.

4. *"Department"* means the department of human services.

5. *"Institutionalized spouse"* means a married individual who has resided or is likely to reside in a hospital or a health care facility for more than twenty-nine consecutive days.

6. *"Medical assistance"* means *"medical assistance"*, *"additional medical assistance"*, *"discretionary medical assistance"* or *"medicare cost sharing"* as defined in section 249A.2 which is provided to an individual pursuant to chapter 249A and Title XIX of the federal Social Security Act.

7. *"Minimum monthly maintenance needs allowance"* or *"minimum allowance"* means the minimum monthly maintenance needs allowance established for the community spouse in accordance with Title XIX of the federal Social Security Act, section 1924(d)(3), as codified in 42 U.S.C. § 1396r-5(d)(3).

90 Acts, ch 1098, §1; 91 Acts, ch 158, §9

249B.2 Creation of spousal support debt.

1. Medical assistance provided to an institutionalized spouse due to the institutionalized spouse's assignment of support rights, an inability to execute an assignment of support rights, or hardship, creates a spousal support debt due and owing to the department from the community spouse in an amount equal to the medical assistance provided on behalf of the institutionalized spouse.

2. The department may recover the spousal support debt from any income or resources of the community spouse that are not exempt for medical assistance eligibility purposes and that are in excess of the minimum monthly maintenance needs allowance and the community spouse resource allowance.

3. When an institutionalized spouse is determined to be eligible for medical assistance pursuant to subsection 1, prior to issuing a formal notice of a spousal support debt pursuant to section 249B.3, the department shall offer to meet with the community spouse concerning creation of the spousal support debt.

90 Acts, ch 1098, §2

249B.3 Notice of spousal support debt — failure to respond — hearing — order.

1. The department may issue a notice establishing and demanding payment of an accrued or accruing spousal support debt due and owing to the department. The notice shall be served upon the community spouse in accordance with the rules of civil procedure. The notice shall include all of the following:

a. The amount of medical assistance provided to the institutionalized spouse which creates the spousal support debt.

b. A computation of spousal support debt, the minimum monthly maintenance needs allowance, and the community spouse resource allowance.

c. A demand for immediate payment of the spousal support debt.

d. (1) A statement that if the community spouse desires to discuss the amount of support that the community spouse should be required to pay, the community spouse, within ten days after being served, may contact the unit of the department which issued the notice and request a conference.

(2) A statement that if a conference is re-

quested, the community spouse has ten days from the date set for the conference or twenty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the unit of the department which issued the notice.

(3) A statement that after the holding of the conference, the department may issue a new notice and finding of financial responsibility to be sent to the community spouse by regular mail addressed to the community spouse's last known address, or if applicable, to the last known address of the community spouse's attorney.

(4) A statement that if the department issues a new notice and finding of financial responsibility, the community spouse has ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the unit of the department which issued the notice.

e. A statement that if the community spouse objects to all or any part of the notice or finding of financial responsibility and no negotiation conference is requested, the community spouse, within twenty days of the date of service, shall send to the unit of the department which issued the notice, a written response setting forth any objections and requesting a hearing.

f. A statement that if a timely written request for a hearing is received by the unit of the department which issued the notice, the spouse has the right to a hearing to be held in district court; and that if no timely written response is received, the department will enter an order in accordance with the notice and finding of financial responsibility.

g. A statement that, as soon as the order is entered, the property of the community spouse is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

h. A statement that the community spouse must notify the department of any change of address or employment.

i. A statement that if the community spouse has any questions, the community spouse should telephone or visit the department or consult an attorney.

j. Other information as the department finds appropriate.

2. If a timely written response setting forth objections and requesting a hearing is received by the unit of the department which issued the notice, a hearing shall be held in district court.

3. If timely written response and request for hearing is not received by the department, the department may enter an order in accordance with the notice, and the order shall specify all of the following:

a. The amount to be paid with directions as to the manner of payment.

b. The amount of the spousal support debt accrued and accruing in favor of the department.

c. Notice that the property of the community spouse is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

4. The community spouse shall be sent a copy of the order by regular mail addressed to the community spouse's last known address, or if applicable, to the last known address of the community spouse's attorney. The order is final, and action by the department to enforce and collect upon the order may be taken from the date of the issuance of the order.

90 Acts, ch 1098, §3

249B.4 Certification to court — hearing — default.

1. If a timely written request for a hearing is received, the department shall certify the matter to the district court in the county where the institutionalized spouse resides.

2. The certification shall include true copies of the notice and finding of financial responsibility or notice of the spousal support debt accrued and accruing, the return of service, the written objections and request for hearing, and true copies of any administrative orders previously entered.

3. The district court shall set the matter for hearing and notify the parties of the time and place of hearing.

4. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the district court may find the party in default and enter an appropriate order.

90 Acts, ch 1098, §4

249B.5 Filing and docketing of financial responsibility order — order effective as court decree.

A true copy of an order entered by the department pursuant to this chapter, along with a true copy of the return of service if applicable, may be filed in the office of the clerk of the district court in the county in which the institutionalized spouse resides. Upon filing, the clerk shall enter the order in the judgment docket, and the department's order shall be presented to the district court for ex parte review and approval, and unless defects appear on the face of the order or on the attachments, the district court shall approve the order and the order has the force, effect, and attributes of a docketed order or decree of the district court.

90 Acts, ch 1098, §5

249B.6 Interest on spousal support debts.

Interest accrues on a spousal support debt at the rate provided in section 535.3 for court judgments. The department may collect the accrued interest, but is not required to maintain interest balance accounts. The department may waive payment of the interest if the waiver will facilitate the collection of the spousal support debt.

90 Acts, ch 1098, §6

249B.7 Security for payment of spousal support — forfeiture.

Upon entry of a court order or upon the failure of a community spouse to make payments pursuant to a court order, the court may require the community spouse to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the spousal support obligation under the court order. If the community spouse fails to make payments pursuant to the court order, the court may declare the security, bond, or other guarantee forfeited.

90 Acts, ch 1098, §7

CHAPTER 249C

JOBS PROGRAM

Repealed by 97 Acts, ch 41, §29;
see chapter 239B

CHAPTER 249D

ELDER IOWANS ACT

Transferred to chapter 231

CHAPTER 249E

ELDER FAMILY HOMES

Transferred to chapter 231A

CHAPTER 249F

TRANSFER OF ASSETS — MEDICAL ASSISTANCE DEBT

249F.1 Definitions.
249F.2 Creation of debt.
249F.3 Notice of debt — failure to respond — hearing — order.
249F.4 Certification to court — hearing — default.
249F.5 Filing and docketing of order — order effective as court decree.
249F.6 Security for payment of debt — forfeiture.
249F.6A Exemption from chapter 17A.
249F.7 Administration.
249F.8 Inconsistency with federal laws.

249F.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Medical assistance"* means "medical assistance", "additional medical assistance", "discretionary medical assistance", or "Medicare cost sharing" as each is defined in section 249A.2 which is provided to an individual pursuant to chapter 249A and Title XIX of the federal Social Security Act.

2. *a.* *"Transfer of assets"* means any transfer or assignment of a legal or equitable interest in property, as defined in section 702.14, from a transferor to a transferee for less than fair consideration, made while the transferor is receiving medical assistance or within five years prior to application for medical assistance by the transferor. Any such transfer or assignment is presumed to be made with the intent, on the part of the transferee, of enabling the transferor to obtain or maintain eligibility for medical assistance. This presumption is rebuttable only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was no part of the transferee's reason for accepting the transfer or assignment.

b. However, transfer of assets does not include the following:

(1) Transfers to or for the sole benefit of the transferor's spouse, including a transfer to a spouse by an institutionalized spouse pursuant to section 1924(f)(1) of the federal Social Security Act.

(2) Transfers to or for the sole benefit of the transferor's child who is blind or has a disability as defined in section 1614 of the federal Social Security Act.

(3) Transfer of a dwelling, which serves as the transferor's home as defined in 20 C.F.R. § 416.1212, to a child of the transferor under twenty-one years of age.

(4) Transfer of a dwelling, which serves as the transferor's home as defined in 20 C.F.R. § 416.1212, after the transferor is institutionalized, to either of the following:

(a) A sibling of the transferor who has an equity interest in the dwelling and who was residing in the dwelling for a period of at least one year immediately prior to the date the transferor became institutionalized.

(b) A child of the transferor who was residing in the dwelling for a period of at least two years immediately prior to the date the transferor became institutionalized and who provided care to the transferor which permitted the transferor to reside at the dwelling rather than in an institution or facility.

(5) Transfers of less than two thousand dollars. However, all transfers by the same transferor during the five-year period prior to application for medical assistance by the transferor shall be aggregated. If a transferor transfers property to more than one transferee during the five-year period prior to application for medical assistance by the transferor, the two thousand dollar exemption shall be divided equally between the transferees.

(6) Transfers of assets that would, at the time of the transferor's application for medical assistance, have been exempt from consideration as a resource if retained by the transferor, pursuant to 42 U.S.C. § 1382b(a), as implemented by regulations adopted by the secretary of the United States department of health and human services.

(7) Transfers to a trust established solely for the benefit of the transferor's child who is blind or permanently and totally disabled as defined in the federal Social Security Act, section 1614, as codified in 42 U.S.C. § 1382b.

(8) Transfers to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled, as defined in the federal Social Security Act, section 1614, as codified in 42 U.S.C. § 1382b.

3. *"Transferee"* means the person who receives a transfer of assets.

4. *"Transferor"* means the person who makes a transfer of assets.

93 Acts, ch 106, §1; 96 Acts, ch 1107, §3; 96 Acts, ch 1129, §66; 97 Acts, ch 23, §23; 2000 Acts, ch 1060, §4, 5

249F.2 Creation of debt.

A transfer of assets creates a debt due and owing to the department of human services from the transferee in an amount equal to medical assistance provided to or on behalf of the transferor, on or after the date of the transfer of assets, but not exceeding the fair market value of the assets at the time of the transfer.

93 Acts, ch 106, §2; 96 Acts, ch 1107, §4

249F.3 Notice of debt — failure to respond — hearing — order.

1. The department of human services may issue a notice establishing and demanding payment of an accrued or accruing debt due and owing to the department of human services as provided in section 249F.2. The notice shall be sent by restricted certified mail as defined in section 618.15, to the transferee at the transferee's last known address. If service of the notice is unable to be completed by restricted certified mail, the notice shall be served upon the transferee in accordance with the rules of civil procedure. The notice shall include all of the following:

a. The amount of medical assistance provided to the transferor to date which creates the debt.

b. A computation of the debt due and owing.

c. A demand for immediate payment of the debt.

d. (1) A statement that if the transferee desires to discuss the notice, the transferee, within ten days after being served, may contact the department of human services and request an informal conference.

(2) A statement that if a conference is requested, the transferee has until ten days after the date set for the conference or until twenty days after the date of service of the original notice, whichever is later, to send a request for a hearing to the department of human services.

(3) A statement that after the holding of the conference, the department of human services may issue a new notice to be sent to the transferee by first-class mail addressed to the transferee at the transferee's last known address, or if applicable, to the transferee's attorney at the last known address of the transferee's attorney.

(4) A statement that if the department of human services issues a new notice, the transferee has until ten days after the date of mailing of the new notice or until twenty days after the date of service of the original notice, whichever is later, to send a request for a hearing to the department of human services.

e. A statement that if the transferee objects to all or any part of the original notice and no conference is requested, the transferee has until twenty days after the date of service of the original notice

to send a written response setting forth any objections and requesting a hearing to the department of human services.

f. A statement that if a timely written request for a hearing is received by the department of human services, the transferee has the right to a hearing to be held in district court as provided in section 249F.4; and that if no timely written request for hearing is received, the department of human services will enter an order in accordance with the latest notice.

g. A statement that as soon as the order is entered, the property of the transferee is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, or execution.

h. A statement that the transferee must notify the department of human services of any change of address or employment.

i. A statement that if the transferee has any questions concerning the transfer of assets, the transferee should contact the department of human services or consult an attorney.

j. Other information as the department of human services finds appropriate.

2. If a timely written request for hearing is received by the department of human services, a hearing shall be held in district court.

3. If a timely written request for hearing is not received by the department of human services, the department may enter an order in accordance with the latest notice, and the order shall specify all of the following:

a. The amount to be paid with directions as to the manner of payment.

b. The amount of the debt accrued and accruing in favor of the department of human services.

c. Notice that the property of the transferee is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

4. The transferee shall be sent a copy of the order by first-class mail addressed to the transferee at the transferee's last known address, or if applicable, to the transferee's attorney at the last known address of the transferee's attorney. The order is final, and action by the department of human services to enforce and collect upon the order may be taken from the date of the issuance of the order.

93 Acts, ch 106, §3; 99 Acts, ch 52, §1

249F.4 Certification to court — hearing — default.

1. If a timely written request for a hearing is received, the department of human services shall certify the matter to the district court in the county where the transferee resides.

2. The certification shall include true copies of the original notice, the return of service, if applicable, any request for an informal conference, any subsequent notices, the written request for hearing, and true copies of any administrative orders previously entered.

3. The department of human services may also request a hearing on its own motion regarding the determination of a debt, at any time prior to entry of an administrative order.

4. The district court shall set the matter for hearing and notify the parties of the time and place of hearing.

5. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the district court may find the party in default and enter an appropriate order.

93 Acts, ch 106, §4; 99 Acts, ch 52, §2

249F.5 Filing and docketing of order — order effective as court decree.

1. A true copy of an order entered by the department of human services pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the county in which the transferee resides or, if the transferee resides in another state, in the office of the district court in the county in which the transferor resides.

2. The department of human services order shall be presented, ex parte, to the district court for review and approval. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. The approved order shall have all force, effect, and attributes of a docketed order or decree of the district court.

3. Upon filing, the clerk shall enter the order in the judgment docket.

93 Acts, ch 106, §5

249F.6 Security for payment of debt — forfeiture.

Upon entry of a court order or upon the failure of a transferee to make payments pursuant to a court order, the court may require the transferee to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the debt under the court order. If the transferee fails to make payments pursuant to the court order, the court may declare the security, bond, or other guarantee forfeited.

93 Acts, ch 106, §6

249F.6A Exemption from chapter 17A.

Actions initiated under this chapter are not subject to chapter 17A. Review by the district court shall be an original hearing before the district court.

2000 Acts, ch 1060, §6

249F.7 Administration.

As provided in this chapter, the establishment of a debt for medical assistance due to transfer of assets shall be administered by the department of

human services. All administrative discretion in the administration of this chapter shall be exercised by the department of human services, and any state administrative rules implementing or interpreting this chapter shall be adopted by the department of human services.

93 Acts, ch 106, §7

249F.8 Inconsistency with federal laws.

If it is determined by the attorney general that any provision of this chapter would cause denial of funds from the United States government under Title XIX of the federal Social Security Act, or would otherwise be inconsistent or conflict with the requirements of federal law for state participation in the Title XIX program, such provision shall be suspended, but only to the extent necessary to prevent denial of such funds or to eliminate the inconsistency or conflict with the requirements of federal law. If the attorney general makes such a suspension determination, the attorney general shall report it to the general assembly at its next session. This report shall include any recommendations in regard to corrective legislation needed to conform this chapter with federal law.

93 Acts, ch 106, §8

CHAPTER 249G

LONG-TERM CARE ASSET PRESERVATION PROGRAM

249G.1 Long-term care asset preservation program.
249G.2 Duties of departments.
249G.3 Eligibility — participation in program.
249G.4 Asset adjustment.

249G.1 Long-term care asset preservation program.

1. The Iowa long-term care asset preservation program is established to do all of the following:

a. Provide incentives for an individual to insure against the costs of providing for the individual's own long-term care.

b. Provide a mechanism for an individual to qualify for coverage of the costs of the individual's long-term care needs under the medical assistance program pursuant to chapter 249A prior to substantially exhausting the assets of the individual.

c. Assist in developing methods for increasing access to and the affordability of a long-term care policy.

d. Provide counseling services to individuals regarding planning for long-term care needs.

e. Assist in alleviating the financial burden on the state's medical assistance program by encouraging the pursuit of private long-term care payment initiatives.

2. The department of human services and the division of insurance of the department of commerce shall administer this program as provided in this chapter.

93 Acts, ch 92, §1

249G.2 Duties of departments.

1. The department of human services shall seek approval of a state plan amendment or make application to the United States department of health and human services for any necessary waivers under 42 U.S.C. § 1396n relating to providing assistance under chapter 249A.

2. The division of insurance shall adopt rules pursuant to chapter 17A for the certification of any long-term care policy or contract which, if purchased by an eligible individual, will allow such individual to retain additional assets as provided in section 249G.4. A policy certified pursuant to this section shall satisfy the definition in section 514G.4, subsection 5, and additionally shall, at a minimum, do all of the following:

a. Inform the purchaser of the availability of consumer information concerning the long-term care asset preservation program established in this chapter.

b. Provide the option of home and community-based services in addition to nursing home care.

c. Provide case management services in all home care plans.

d. Provide for inflation protection.

e. Provide for recordkeeping and an explanation of benefit reports on insurance payments which qualify for the asset adjustment under section 249G.4.

f. Provide for written reports to the division regarding the effects of this program on the amount of medical assistance payments made under chapter 249A.

3. The division of insurance shall develop and implement a plan providing information to persons who may be eligible to participate in the long-

term care asset preservation program.
93 Acts, ch 92, §2

249G.3 Eligibility — participation in program.

An individual who elects to participate in the long-term care asset preservation program shall make application to the department of human services on a form provided by the department. The department shall find that the individual is eligible if the individual satisfies all of the following:

1. Is at least sixty-five years of age.
2. Is eligible to receive medical assistance pursuant to chapter 249A upon application of the asset adjustment.
3. Is the beneficiary of a certified long-term care policy or contract approved by the division of insurance, or is enrolled in a prepaid health care delivery plan that provides long-term care services.

93 Acts, ch 92, §3

249G.4 Asset adjustment.

1. As used in this chapter, *"asset adjustment"* means an additional exemption in the amount of assets an individual who purchases a qualified long-term care policy or contract and who meets the requirements of section 249G.3 may retain for purposes of determining eligibility for long-term care services under chapter 249A equal to the benefit amount actually paid out under the individual's policy or contract.
2. The department of human services shall make an asset adjustment for an individual who is qualified pursuant to section 249G.3 and who purchases a qualified long-term care policy. The asset adjustment is available to the individual after the benefits of the long-term care policy have been applied to the cost of long-term care as required in subsection 1.

93 Acts, ch 92, §4

CHAPTER 249H

SENIOR LIVING PROGRAM

249H.1 Title.
249H.2 Legislative findings — goal.
249H.3 Definitions.
249H.4 Senior living trust fund — created — appropriations.
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249H.9 Senior living program information — electronic access — education — advisory council.
249H.10 Caregiver support — access and education programs.
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249H.1 Title.

This chapter shall be known and may be cited as the *"Iowa Senior Living Program Act"*.
2000 Acts, ch 1004, §1, 22

249H.2 Legislative findings — goal.

1. The general assembly finds that:

a. The preservation, improvement, and coordination of the health care infrastructure of Iowa are critical to the health and safety of Iowans.

b. An increasing number of seniors and persons with disabilities in the state requires long-term care services provided outside of a medical institution.

c. A full array of long-term care services is necessary to provide cost-effective and appropriate services to the varied population of health care consumers.

d. The supported development of long-term care alternatives, including assisted-living facility services, adult day services, and home and community-based services, is critical in areas of the state where such alternatives otherwise are not likely to be developed.

e. Cost containment in the delivery of health care is necessary to improve services and access for all Iowans.

f. Grants are necessary to cover the expenditures related to the development of alternative health care services. Development of these alternatives will improve access to and delivery of long-term care services to underserved individuals or in underserved areas, which will in turn contain or reduce the cost and improve the quality of health care services.

g. A continuing source of funding is necessary to enhance the state's ability to meet the rising demand of seniors with low and moderate incomes in

obtaining an appropriate variety of long-term care services.

2. The goal of this program is to create a comprehensive long-term care system that is consumer-directed, provides a balance between the alternatives of institutionally and noninstitutionally provided services, and contributes to the quality of the lives of Iowans.

2000 Acts, ch 1004, §2, 22; 2000 Acts, ch 1232, §59; 2001 Acts, ch 64, §8

249H.3 Definitions.

As used in this chapter, unless the context otherwise provides:

1. *"Affordable"* means rates for payment of services which do not exceed the rates established for providers of medical and health services under the medical assistance program with eligibility for an individual equal to the eligibility for medical assistance pursuant to section 249A.3. In relation to services provided by a provider of services under a home and community-based waiver, *"affordable"* means that the total monthly cost of the home and community-based waiver services provided does not exceed the cost for that level of care as established by rule by the department of human services, pursuant to chapter 17A, in consultation with the department of elder affairs.

2. *"Assisted living"* means assisted living as defined in section 231C.2.

3. *"Case mix reimbursement"* means a reimbursement methodology that recognizes the acuity and need level of the residents of a nursing facility.

4. *"Long-term care alternatives"* means those services specified under the medical assistance program as home and community-based waiver services for elder persons or adults with disabilities, elder group homes certified under chapter 231B, assisted-living programs certified under chapter 231C, and the PACE program.

5. *"Long-term care provider"* means a provider of services through long-term care alternatives.

6. *"Long-term care service development"* means any of the following:

a. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate development of long-term care alternatives, excluding the development of assisted-living programs or elder group home alternatives.

b. New construction for long-term care alternatives, excluding new construction of assisted-living programs or elder group homes, if the senior living coordinating unit determines that new construction is more cost-effective than the conversion of existing space.

7. *"Nursing facility"* means a licensed nursing facility as defined in section 135C.1 or a licensed hospital as defined in section 135B.1, a distinct part of which provides long-term care nursing facility beds.

8. *"Nursing facility conversion"* means any of the following:

a. The remodeling of nursing facility space existing on July 1, 1999, and certified for medical assistance nursing facility reimbursement and, if necessary, the construction of additional space required to accommodate an assisted-living program.

b. New construction of an assisted-living program if existing nursing facility beds are no longer licensed and the senior living coordinating unit determines that new construction is more cost-effective than the conversion of existing space.

9. *"PACE program"* means a program of all-inclusive care for the elderly established pursuant to 42 U.S.C. § 1396(u)(4) that provides delivery of comprehensive health and social services to seniors by integrating acute and long-term care services, and that is operated by a public, private, nonprofit, or proprietary entity. *"Pre-PACE program"* means a PACE program in the initial start-up phase that provides the same scope of services as a PACE program.

10. *"Persons with disabilities"* means individuals eighteen years of age or older with disabilities as disability is defined in section 225B.2.

11. *"Senior"* means elder as defined in section 231.4 and as defined under the PACE program pursuant to 42 U.S.C. § 1396(u)(4).

12. *"Senior living coordinating unit"* means the senior living coordinating unit created within the department of elder affairs pursuant to section 231.58, or its designee.

13. *"Senior living program"* means the senior living program created in this chapter to provide for long-term care alternatives, long-term care service development, and nursing facility conversion.

2000 Acts, ch 1004, §3, 22; 2000 Acts, ch 1232, §60

249H.4 Senior living trust fund — created — appropriations.

1. A senior living trust fund is created in the state treasury under the authority of the department of human services. Moneys received through intergovernmental agreements for the senior living program and moneys received from sources, including grants, contributions, and participant payments, shall be deposited in the fund.

2. The department of human services, upon receipt of federal revenue on or after October 1, 1999, from public nursing facilities participating in the medical assistance program, shall deposit the federal revenue received in the trust fund, less a sum of five thousand dollars as an administration fee per participating public nursing facility.

3. Moneys deposited in the trust fund shall be used only for the purposes of the senior living program as specified in this chapter.

4. The trust fund shall be operated in accor-

dance with the guidelines of the centers for Medicare and Medicaid services of the United States department of health and human services. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund shall not be considered revenue of the state, but rather shall be funds of the senior living program. The moneys deposited in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter. Moneys in the trust fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the trust fund by the end of that fiscal year. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

5. The department of human services shall adopt rules pursuant to chapter 17A to administer the trust fund and to establish procedures for participation by public nursing facilities in the intergovernmental transfer of funds to the senior living trust fund.

6. The treasurer of state shall provide a quarterly report of trust fund activities and balances to the senior living coordinating unit.

2000 Acts, ch 1004, §4, 22, 23; 2000 Acts, ch 1232, §88, 95; 2002 Acts, ch 1050, §26; 2002 Acts, 2nd Ex, ch 1001, §30, 52

Provisions which relate to receipt of federal funding are retroactively applicable to October 1, 1999; 2000 Acts, ch 1004, §22, 23; 2000 Acts, ch 1232, §88, 95

Subsection 4 amended

249H.4A Pending senior living trust fund.

A pending senior living trust fund is created in the state treasury under the authority of the department of human services. Moneys received through intergovernmental agreements for the senior living program but not yet available for appropriation are to be deposited into this fund. When the moneys are determined to be available for appropriation, they shall be transferred to the senior living trust fund established in section 249H.4. Moneys in the fund may be used for cash flow purposes during the fiscal year provided that any moneys so allocated are returned to the fund by the end of that fiscal year.

2002 Acts, 2nd Ex, ch 1001, §31, 52

NEW section

249H.5 Allocations — senior living trust fund.

1. Moneys deposited in the senior living trust fund created in section 249H.4 shall be used only as provided in appropriations from the trust fund to the department of human services and the department of elder affairs, and for purposes, including the awarding of grants, as specified in this chapter.

2. Moneys in the trust fund are allocated, subject to their appropriation by the general assembly, as follows:

a. To the department of human services, a maximum of eighty million dollars for the fiscal period beginning July 1, 2000, and ending on or before June 30, 2005, to be used for the conversion of existing nursing facility space and development of long-term care alternatives.

b. To the department of elder affairs, an amount necessary, annually, for expenses incurred in implementation and administration of the long-term care alternatives programs and for delivery of long-term care services to seniors with low or moderate incomes.

c. To the department of human services, an amount necessary, annually, for all of the following:

(1) Expenses incurred in implementation of the senior living program.

(2) Expenses incurred in administration of medical assistance home and community-based waivers and the PACE program due to implementation of the senior living trust fund.

(3) Expenses incurred due to increased service delivery provided under medical assistance home and community-based waivers as a result of nursing facility conversions and long-term care service development, for the fiscal period beginning July 1, 2000, and ending on or before June 30, 2005.

(4) Expenses incurred in program administration related to implementation of nursing facility case mix reimbursement under the medical assistance program.

d. To the department of human services, an amount necessary to provide funding for nursing facility provider reimbursements, using the percentile-based reimbursement system, and to provide funding for the transition to a case-mix reimbursement system. Funding shall be provided under this section for the percentile-based reimbursement system until such time as the case-mix reimbursement system is fully implemented.

e. To the department of human services an amount necessary, annually, for additional expenses incurred relative to implementation of the senior living program in assisting home and community-based waiver consumers with rent expenses pursuant to the state supplementary assistance program.

3. Any funds remaining after disbursement of moneys under subsection 2 shall be invested with the interest earned to be available in subsequent fiscal years for the purposes provided in subsection 2, paragraph *"b"*, and subsection 2, paragraph *"c"*, subparagraphs (1) and (2).

2000 Acts, ch 1004, §5, 22

249H.6 Nursing facility conversion and long-term care services development grants.

1. The department of human services, at the direction of the senior living coordinating unit, may use moneys appropriated to the department from the senior living trust fund to award grants to any of the following:

a. A licensed nursing facility that has been an approved provider under the medical assistance program for the two-year period prior to application for the grant. The grant awarded may be used to convert all or a portion of the licensed nursing facility to a certified assisted-living program and may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation following conversion associated with the nursing facility conversion.

b. A long-term care provider or a licensed nursing facility that has been an approved provider under the medical assistance program for the two-year period prior to application for the grant or a provider that will meet applicable medical assistance provider requirements as specified in subsection 2, paragraph *"c"* or *"d"*. The grant awarded may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation for long-term care service development.

2. A grant shall be awarded only to an applicant who meets all of the following criteria, as applicable to the type of grant:

a. The applicant is a long-term care provider or a nursing facility that is located in an area determined by the senior living coordinating unit to be underserved with respect to a particular long-term care alternative service, and that has demonstrated the ability or potential to provide quality long-term care alternative services.

b. The applicant is able to provide a minimum matching contribution of twenty percent of the total cost of any conversion, remodeling, or construction.

c. The applicant is applying for a nursing facility conversion grant and is able to demonstrate all of the following:

(1) Conversion of the nursing facility or a distinct portion of the nursing facility to an assisted-living program is projected to offer efficient and economical care to individuals requiring long-term care services in the service area.

(2) Assisted-living services are otherwise not likely to be available in the area for individuals eligible for services under the medical assistance program.

(3) The resulting reduction in the availability of nursing facility services is not projected to cause undue hardship on those individuals requiring nursing facility services for a period of at least ten years.

(4) Public support following a community-based assessment.

(5) Conversion of the nursing facility is projected to result in a lower per client reimbursement cost to the grant applicant under the medical assistance program.

d. The applicant is applying for a long-term care service development grant and is able to demonstrate all of the following:

(1) Long-term care service development is projected to offer efficient and economical care to individuals requiring long-term care services in the service area.

(2) The proposed long-term care alternative is otherwise not likely to be available in the area for individuals eligible for services under the medical assistance program.

(3) Public support following a community-based assessment.

e. The applicant agrees to do all of the following as applicable to the type of grant:

(1) Participate and maintain a minimum medical assistance client base participation rate of forty percent, subject to the demand for participation by individuals eligible for medical assistance.

(2) Provide a service delivery package that is affordable for those individuals eligible for services under the medical assistance home and community-based services waiver program.

(3) Provide a refund to the senior living trust fund, on an amortized basis, in the amount of the grant, if the applicant or the applicant's successor in interest ceases to operate an affordable long-term care alternative within the first ten-year period of operation following the awarding of the grant or if the applicant or the applicant's successor in interest fails to maintain a participation rate of forty percent in accordance with subparagraph (1).

3. The department of human services shall adopt rules in consultation with the senior living coordinating unit, pursuant to chapter 17A, to provide all of the following:

a. An application process and eligibility criteria for the awarding of grants. The eligibility criteria shall include but are not limited to the applicant's demonstration of an affordable service package, the applicant's use of the funds for allowable costs, and the applicant's ability to refund the funds if required under subsection 2, paragraph *"e"*, subparagraph (3). The primary eligibility criterion used shall be the applicant's potential impact on the overall goal of moving toward a balanced, comprehensive, affordable, high-quality, long-term care system.

b. Criteria to be utilized in determining the amount of the grant awarded.

c. Weighted criteria to be utilized in prioritizing the awarding of grants to individual grantees during a grant cycle. Greater weight shall be given to the applicant's demonstration of potential re-

duction of nursing facility beds, the applicant's ability to meet demonstrated community need, and the established history of the applicant in providing quality long-term care services.

d. Policies and procedures for certification of the matching funds required of applicants under subsection 2, paragraph *"b"*.

e. Other procedures the department of human services deems necessary for the proper administration of this section, including but not limited to the submission of progress reports on a bimonthly basis to the senior living coordinating unit.

4. The department of human services shall adopt rules to ensure that a nursing facility that receives a nursing facility conversion grant allocates costs in an equitable manner.

5. In addition to the types of grants described in subsection 1, the department of human services, at the direction of the senior living coordinating unit, may also use moneys appropriated to the department from the senior living trust fund to award grants, of not more than one hundred thousand dollars per grant, to licensed nursing facilities that are awarded nursing facility conversion grants and agree, as part of the nursing facility conversion, to also provide adult day services, child care for children with special needs, safe shelter for victims of dependent adult abuse, or respite care.

6. The department of human services shall establish a calendar for receiving and evaluating applications and for awarding of grants.

7. *a.* The department of human services shall develop a cost report to be completed by a grantee which includes, but is not limited to, revenue, costs, loans undertaken by the grantee, fixed assets of the grantee, a balance sheet, and a profit and loss statement.

b. Grantees shall submit, annually, completed cost reports to the department of human services regarding the project for a period of ten years following the date of initial operation of the grantee's long-term care alternative.

8. The department of human services, in consultation with the department of elder affairs, shall provide annual reports to the governor and the general assembly concerning grants awarded. The annual report shall include the total number of applicants and approved applicants, an overview of the various grants awarded, and detailed reports of the cost of each project funded by a grant and information submitted by the approved applicant.

9. For the purpose of this section, *"underserved"* means areas in which four and four-tenths percent of the number of individuals sixty-five years of age and older is not greater than the number of currently licensed nursing facility beds and certified assisted-living units. In addition, the department, in determining if an area is underserved, may consider additional information gathered through the department's own research or submitted by an applicant, including but not limited to any of the following:

a. Availability of and access to long-term care alternatives relative to individuals eligible for medical assistance.

b. The current number of seniors and persons with disabilities and the projected number of these individuals.

c. The current number of seniors and persons with disabilities requiring professional nursing care and the projected number of these individuals.

d. The current availability of long-term care alternatives and any known changes in the availability of such alternatives.

10. This section does not create an entitlement to any funds available for grants under this section, and the department of human services may only award grants to the extent funds are available and within its discretion, to the extent applications are approved.

11. In addition to any other remedies provided by law, the department of human services may recoup any grant funding previously awarded and disbursed to a grantee or the grantee's successor in interest and may reduce the amount of any grant awarded, but not yet disbursed, to a grantee or the grantee's successor in interest, by the amount of any refund owed by a grantee or the grantee's successor in interest pursuant to subsection 2, paragraph *"e"*, subparagraph (3).

12. The senior living coordinating unit shall review projects that receive grants under this section to ensure that the goal to provide alternatives to nursing facility care is being met and that an adequate number of nursing facility services remains to meet the needs of Iowans.

2000 Acts, ch 1004, §6, 22; 2000 Acts, ch 1232, §61; 2001 Acts, ch 64, §9; 2001 Acts, ch 192, §7

For future repeal of this section, see §249H.11

Certification of programs established through nursing facility conversion grants; use of nursing facility conversion grant funds, service delivery package, medical assistance program reimbursement; moratorium; 2002 Acts, ch 1172, §3, 4, 8

249H.7 Home and community-based services for seniors.

1. Beginning October 1, 2000, the department of elder affairs, in consultation with the senior living coordinating unit, shall use funds appropriated from the senior living trust fund for activities related to the design, maintenance, or expansion of home and community-based services for seniors, including but not limited to adult day services, personal care, respite, homemaker, chore, and transportation services designed to promote the independence of and to delay the use of institutional care by seniors with low and moderate incomes. At any time that moneys are appropriated, the department of elder affairs, in consultation with the senior living coordinating unit, shall disburse the funds to the area agencies on aging.

2. The department of elder affairs shall adopt

rules, in consultation with the senior living coordinating unit and the area agencies on aging, pursuant to chapter 17A, to provide all of the following:

a. (1) The criteria and process for disbursement of funds, appropriated in accordance with subsection 1, to area agencies on aging.

(2) The criteria shall include, at a minimum, all of the following:

(a) A distribution formula that triple weights all of the following:

(i) Individuals seventy-five years of age and older.

(ii) Individuals aged sixty and older who are members of a racial minority.

(iii) Individuals sixty years of age and older who reside in rural areas as defined in the federal Older Americans Act.

(iv) Individuals who are sixty years of age and older who have incomes at or below the poverty level as defined in the federal Older Americans Act.

(b) A distribution formula that single weights individuals sixty years of age and older who do not meet the criteria specified in subparagraph subdivision (a).

b. The criteria for long-term care providers to receive funding as subcontractors of the area agencies on aging.

c. Other procedures the department of elder affairs deems necessary for the proper administration of this section, including but not limited to the submission of progress reports, on a bimonthly basis, to the senior living coordinating unit.

3. This section does not create an entitlement to any funds available for disbursement under this section and the department of elder affairs may only disburse moneys to the extent funds are available and, within its discretion, to the extent requests for funding are approved.

4. Long-term care providers that receive funding under this section shall submit annual reports to the appropriate area agency on aging. The department of elder affairs shall develop the report to be submitted, which shall include, but is not limited to, units of service provided, the number of service recipients, costs, and the number of units of service identified as necessitated but not provided.

5. The department of elder affairs, in cooperation with the department of human services, shall provide annual reports to the governor and the general assembly concerning the impact of moneys disbursed under this section on the availability of long-term care services in Iowa. The reports shall include the types of services funded, the outcome of those services, and the number of individuals receiving those services.

2000 Acts, ch 1004, §7, 22; 2001 Acts, ch 64, §10

249H.8 PACE and pre-PACE programs.

For the purposes of this chapter, all of the following apply to a PACE program:

1. A person operating a PACE program shall have a PACE program agreement with the centers for Medicare and Medicaid services of the United States department of health and human services, shall enter into a contract with the department of human services, and shall comply with 42 U.S.C. § 1396(u)(4) and all regulations promulgated pursuant to that section.

2. Services provided under a PACE or pre-PACE program shall be provided on a capitated basis.

3. A pre-PACE program may contract with the department of human services to provide services to individuals eligible for medical assistance, on a capitated basis, for a limited scope of the PACE service package through a prepaid health plan agreement, with the remaining services reimbursed directly to the service providers by the medical assistance or federal Medicare programs.

4. PACE and pre-PACE programs are not subject to regulation under chapter 514B.

5. A PACE or pre-PACE program shall, at the time of entering into the initial contract and of renewal of a contract with the department of human services, demonstrate cash reserves in an amount established by rule of the department to cover expenses in the event of insolvency.

2000 Acts, ch 1004, §8, 22; 2000 Acts, ch 1232, §62; 2002 Acts, ch 1050, §27

Subsection 1 amended

249H.9 Senior living program information — electronic access — education — advisory council.

1. The department of elder affairs and the area agencies on aging, in consultation with the senior living coordinating unit, shall create, on a county basis, a database directory of all health care and support services available to seniors. The department of elder affairs shall make the database electronically available to the public, and shall update the database on at least a monthly basis.

2. The department of elder affairs shall seek foundation funding to develop and provide an educational program for individuals aged twenty-one and older which assists participants in planning for and financing health care services and other supports in their senior years.

3. The department of human services shall develop and distribute an informational packet to the public that explains, in layperson terms, the law, regulations, and rules under the medical assistance program relative to health care services options for seniors, including but not limited to those relating to transfer of assets, prepaid funeral expenses, and life insurance policies.

4. The director of human services, the director of the department of elder affairs, the director of public health, the director of the department of inspections and appeals, the director of revenue and finance, and the commissioner of insurance shall constitute a senior advisory council to provide oversight in the development and operation of all informational aspects of the senior living program under this section.

2000 Acts, ch 1004, §9, 22

249H.10 Caregiver support — access and education programs.

The department of human services and the department of elder affairs, in consultation with the senior living coordinating unit, shall implement a caregiver support program to provide access to respite care and to provide education to caregivers in providing appropriate care to seniors and persons with disabilities. The program shall be provided through the area agencies on aging or other appropriate agencies.

2000 Acts, ch 1004, §10, 22

249H.11 Future repeal.

Section 249H.6 is repealed on June 30, 2005. However, grants awarded and moneys appropriated for grants on or before June 30, 2005, shall be disbursed to eligible applicants after that date if necessary.

2000 Acts, ch 1004, §11, 22

CHAPTER 249I

HOSPITAL TRUST FUND

249I.1 Title.
249I.2 Legislative findings — goal.
249I.3 Definitions.
249I.4 Hospital trust fund — created — appropriations.
249I.5 State plan amendment.

249I.1 Title.

This chapter shall be known and may be cited as the *"Iowa Hospital Trust Fund"*.

2001 Acts, 2nd Ex, ch 3, §1, 7

249I.2 Legislative findings — goal.

1. The general assembly finds that:

a. The preservation, improvement, and coordination of the health care infrastructure of Iowa is critical to the health and safety of Iowans.

b. Iowa hospital providers are a vital and critical component of Iowa's health care and economic infrastructure.

c. An increasing number of Iowans are eligible for and enrolled in Iowa's medical assistance program.

2. The goal of the trust fund is to provide a continuing source of funding to ensure the state's ability to support the labor force, infrastructure, technology needs, and other elements of the hospital system.

2001 Acts, 2nd Ex, ch 3, §2, 7

249I.3 Definitions.

As used in this chapter, unless the context otherwise provides:

1. *"Department"* means the department of human services.

2. *"Director"* means the director of human services.

3. *"Hospital"* means hospital as defined in section 135B.1.

4. *"Hospital trust fund"* means the fund created in this chapter to secure funds based on hospital inpatient and outpatient prospective payment methodologies under the medical assistance program.

5. *"Public hospital"* means a hospital licensed pursuant to chapter 135B and governed pursuant to chapter 145A, 347, 347A, or 392.

2001 Acts, 2nd Ex, ch 3, §3, 7

249I.4 Hospital trust fund — created — appropriations.

1. A hospital trust fund is created in the state treasury under the authority of the department of human services. Moneys received through agreements for the trust fund and moneys received from sources, including grants, contributions, and participant payments, shall be deposited in the trust fund.

2. Moneys deposited in the trust fund shall be used only as provided in appropriations from the trust fund to the department for the purposes specified in the appropriation.

3. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund shall not be considered revenue of the state, but rather shall be funds of

the trust fund. The moneys in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

4. The department shall adopt rules pursuant to chapter 17A to administer the trust fund and to establish procedures for participation by public hospitals.

5. The treasurer of state shall provide a quarterly report of trust fund activities and balances to the director.

2001 Acts, 2nd Ex, ch 3, §4, 7, 8

Section is effective November 16, 2001, and applies retroactively to October 1, 2001; 2001 Acts, 2nd Ex, ch 3, §7, 8

249I.5 State plan amendment.

The director shall amend the state medical assistance plan as necessary to implement this chapter.

2001 Acts, 2nd Ex, ch 3, §5, 7

CHAPTER 250

COMMISSIONS OF VETERAN AFFAIRS

Transferred to chapter 35B

CHAPTER 251

EMERGENCY RELIEF ADMINISTRATION

Child and family services, see chapter 234

251.1 Definitions.
251.2 Administration of emergency relief.
251.3 Powers and duties.
251.4 Grants from state funds to counties.
251.5 Duties of the service area advisory board.
251.6 County supervisors to determine relief and work projects.
251.7 County appointees to act as executive officers.

251.1 Definitions.

As used in this chapter: *"Division"* or *"state division"* means the division of child and family services of the department of human services; *"administrator"* means the administrator of the division of child and family services of the department of human services.

[C71, 73, 75, 77, 79, 81, §251.1]

83 Acts, ch 96, §157, 159

251.2 Administration of emergency relief.

The state division, in addition to all other powers and duties given it by law, shall be charged with the supervision and administration of all funds coming into the hands of the state now or hereafter provided for emergency relief.

[C39, §**3828.067;** C46, 50, 54, 58, 62, 66, §251.1; C71, 73, 75, 77, 79, 81, §251.2]

251.3 Powers and duties.

The administrator shall have the power to:

1. Appoint such personnel as may be necessary for the efficient discharge of the duties imposed upon the administrator in the administration of emergency relief, and to make such rules and regulations as the administrator deems necessary or advisable covering the administrator's activities and those of the service area advisory boards created under section 217.43, concerning emergency relief.

2. Join and cooperate with the government of the United States, or any of its appropriate agencies or instrumentalities, in any proper relief activity.

3. Make such reports of budget estimates to the governor and to the general assembly as are required by law, or are necessary and proper to obtain appropriations of funds necessary for relief purposes and for all the purposes of this chapter.

4. Determine the need for funds in the various counties of the state basing such determination upon the amount of money needed in the various counties to provide adequate relief, and upon the counties' financial inability to provide such relief from county funds. The administrator may administer said funds belonging to the state within the various counties of the state to supplement local funds as needed.

5. Make such reports, obtain and furnish such information from time to time as may be required by the governor, by the general assembly, or by any other proper office or agency, state or federal, and make an annual report of its activities.

[C39, §**3828.068;** C46, 50, 54, 58, 62, 66, §251.2; C71, 73, 75, 77, 79, 81, §251.3]

93 Acts, ch 54, §6; 2001 Acts, 2nd Ex, ch 4, §4, 9

251.4 Grants from state funds to counties.

The state division may require as a condition of making available state assistance to counties for emergency relief purposes, that the county boards of supervisors shall establish budgets as needed in respect to the relief situation in the counties.

[C39, §**3828.069;** C46, 50, 54, 58, 62, 66, §251.3; C71, 73, 75, 77, 79, 81, S81, §251.4; 81 Acts, ch 117, §1035]

83 Acts, ch 123, §101, 209

251.5 Duties of the service area advisory board.

A service area advisory board created in section 217.43 shall perform the following activities for any county in the board's service area concerning emergency relief:

1. Cooperate with a county's board of supervisors in all matters pertaining to administration of relief.

2. At the request of a county's board of supervisors, prepare requests for grants of state funds.

3. At the request of a county's board of supervisors, administer county relief funds.

4. In a county receiving grants of state funds upon approval of the director of revenue and finance and the county's board of supervisors, administer both state and county relief funds.

5. Perform other duties as may be prescribed by the administrator and a county's board of supervisors.

[C39, §**3828.070;** C46, 50, 54, 58, 62, 66, §251.4; C71, 73, 75, 77, 79, 81, S81, §251.5; 81 Acts, ch 117, §1036]

93 Acts, ch 54, §7; 2001 Acts, 2nd Ex, ch 4, §5, 9

251.6 County supervisors to determine relief and work projects.

The county board of supervisors shall supervise administration of emergency relief, and shall determine the minimum amount of relief required for each person or family, which persons are employable, and whether and under what conditions persons receiving emergency relief may be employed by the county.

[C39, §**3828.071;** C46, 50, 54, 58, 62, 66, §251.5; C71, 73, 75, 77, 79, 81, S81, §251.6; 81 Acts, ch 117, §1037]

251.7 County appointees to act as executive officers.

The county board of supervisors may appoint an individual to serve as the executive officer of the service area advisory board in all matters pertaining to relief for that county.

[C39, §**3828.072;** C46, 50, 54, 58, 62, 66, §251.6; C71, 73, 75, 77, 79, 81, S81, §251.7; 81 Acts, ch 117, §1038]

93 Acts, ch 54, §8; 2001 Acts, 2nd Ex, ch 4, §6, 9

CHAPTER 252

SUPPORT OF THE POOR

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252.1 "Poor person" defined.

The words *"poor"* and *"poor person"* as used in this chapter shall be construed to mean those who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor; but this section shall not be construed to forbid aid to needy persons who have some means, when the board shall be of opinion that the same will be conducive to their welfare and the best interests of the public.

[C97, §2252; C24, 27, 31, 35, §5297; C39, §**3828.073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.1]

252.2 Parents and children liable.

The father, mother, and children of any poor person, who is unable to maintain the poor person's self by labor, shall jointly or severally relieve or maintain such person in such manner as, upon application to the board of supervisors of the county where such person has a residence or may be, they may direct.

[C51, §787; R60, §1355; C73, §1330; C97, §2216; C24, 27, 31, 35, §5298; C39, §**3828.074;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.2]

252.3 Putative father.

The word *"father"* in this chapter includes the putative father of an illegitimate child, and the question of parentage may be tried in any proceeding to recover for or compel the support of such a child, and like proceedings may be prosecuted against the mother independently of or jointly with the alleged father.

[C51, §788; R60, §1356; C73, §1332; C97, §2250; C24, 27, 31, 35, §5299; C39, §**3828.075;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.3]

Obligation of parent, chapter 600B

252.4 Who deemed trustee.

The word *"trustees"* in this chapter shall be construed to include and mean any person or officer of any county or city charged with the oversight of the poor.

[C51, §789; R60, §1357; C73, §1333; C97, §2251; C24, 27, 31, 35, §5300; C39, §**3828.076;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.4]

252.5 Remote relatives.

In the absence or inability of nearer relatives, the same liability shall extend to grandparents, if of ability without personal labor, and to the grandchildren who are of ability by personal labor or otherwise.

[C51, §787; R60, §1355; C73, §1331; C97, §2217; C24, 27, 31, 35, §5301; C39, §**3828.077;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.5]

252.6 Enforcement of liability.

Upon the failure of such relatives to assist or maintain a poor person who has made application for assistance, the county board of supervisors, service area advisory board created under section 217.43, or state division of child and family services of the department of human services may apply to the district court of the county where the poor person resides or may be found for an order to compel the assistance or maintenance.

[C51, §789; R60, §1357; C73, §1333; C97, §2218; C24, 27, 31, 35, §5302; C39, §**3828.078;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.6]

83 Acts, ch 96, §157, 159; 92 Acts, ch 1212, §9; 93 Acts, ch 54, §9; 2001 Acts, 2nd Ex, ch 4, §7, 9

252.7 Notice — hearing.

At least ten days' notice in writing of the application shall be given to the parties sought to be charged, service thereof to be made as of an original notice, in which proceedings the county shall be plaintiff and the parties served defendants. No order shall be made affecting a person not served, but, as to such, notice may be given at any stage of the proceedings. The court may proceed in a summary manner to hear all the allegations and proofs of the parties, and order any one or more of the relatives who shall be able, to relieve or maintain the poor person, charging them as far as practicable in the order above named, and for that purpose may bring in new parties when necessary.

[C51, §790 – 792; R60, §1358 – 1360; C73, §1334 – 1336; C97, §2219; C24, 27, 31, 35, §5303; C39, §**3828.079;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.7]

Service of notice, R.C.P. 1.302 – 1.315

252.8 Scope of order.

The order may be for the entire or partial support of the applicant, may be for the payment of money or the taking of the applicant to a relative's house, or may assign the applicant for a certain time to one and for another period to another, as is just and right, taking into view the means of the several relatives liable, but no such assignment shall be made to one who is willing to pay the amount necessary for support. If the order is for assistance in any other form than money, it shall state the extent and value of the assistance per week, and the time assistance shall continue; or the order may make the time of continuance indefinite, and it may be varied from time to time by a new order, as circumstances require, upon application to the court by the trustees, the poor person, or the relative affected, ten days' notice being given to the party or parties concerned.

[C51, §793 – 795; R60, §1361 – 1363; C73, §1337 – 1339; C97, §2219; C24, 27, 31, 35, §5304; C39, §**3828.080;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.8]

92 Acts, ch 1212, §10

252.9 Judgment — appeal.

When money is ordered to be paid, it shall be paid to such person as the court may direct. If support be not rendered as ordered, the court upon such fact being shown by the affidavit of one or more of the proper trustees, may render judgment and order execution for the amount due, rating any support ordered in kind at the valuation previously made. An appeal may be taken from the judgment rendered to the supreme court. Support for later periods under the same order may be, as it becomes due, applied for and obtained in the same manner.

[C51, §796 – 798; R60, §1364 – 1366; C73, §1340 – 1342; C97, §2219; C24, 27, 31, 35, §5305; C39, §**3828.081;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.9]

252.10 to 252.12 Repealed by 76 Acts, ch 1104, § 17.

252.13 Recovery by county.

Any county having expended money for the assistance or support of a poor person under this chapter, may recover the money from any of the following: from the poor person if the person becomes able, or from the person's estate; from relatives by action brought within two years from the payment of the assistance or support, from the poor person by action brought within two years after the person becomes able, and from the person's estate by filing the claim as provided by law. There shall be allowed against the person's estate a claim of the sixth class for that portion of the liability to the county which exceeds the total amount of all claims of the first through the fifth classes, inclusive, as defined in section 633.425, which are allowed against that estate.

[C51, §806; R60, §1374; C73, §1350; C97, §2222; C24, 27, 31, 35, §5309; C39, §**3828.085;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.13]

92 Acts, ch 1212, §11

Claims against estate, §633.410 et seq.

252.14 Homestead — when liable.

When expenditures have been made for and on behalf of a poor person and the person's family, as contemplated by section 252.13, the homestead of such poor person is liable for such expenditures when such poor person dies without leaving a surviving spouse, or child, as defined in section 234.1.

[C31, 35, §5309-c1; C39, §**3828.086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.14]

See also §561.21

252.15 Recovery by relative.

A more distant relation, who may have been compelled to aid a poor person, may recover from any one or more of the nearer relatives, and one so compelled to aid may recover contribution from others in the same degree, and a recovery may be had against the poor person or the person's estate, if, after such aid or support has been given, the person aided or supported becomes able to repay the same; but proceedings to recover therefor must be brought within two years from the time a cause of action accrues.

[C51, §807; R60, §1375; C73, §1351; C97, §2223; C24, 27, 31, 35, §5310; C39, §**3828.087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.15]

252.16 Settlement — how acquired.

A legal settlement in this state may be acquired as follows:

1. A person continuously residing in a county in this state for a period of one year acquires a settlement in that county except as provided in subsection 7 or 8.

2. A person having acquired a settlement in a county of this state shall not acquire a settlement in any other county until the person has continuously resided in the other county for a period of one year except as provided in subsection 7.

3. A person who is an inpatient, a resident, or an inmate of or is supported by an institution whether organized for pecuniary profit or not or an institution supported by charitable or public funds in a county in this state does not acquire a settlement in the county unless the person before becoming an inpatient, a resident, or an inmate in the institution or being supported by an institution has a settlement in the county. A minor child residing in an institution assumes the settlement of the child's custodial parent. Settlement of the minor child changes with the settlement of the child's custodial parent, except that the child retains the settlement that the child's custodial parent has on the child's eighteenth birthday until the child is discharged from the institution, at which time the child acquires the child's own settlement by continuously residing in a county for one year.

4. Minor children who reside with both parents take the settlement of the parents. If the minor child resides on a permanent basis with only one parent or a guardian, the minor child takes the settlement of the parent or guardian with whom the child resides.

An emancipated minor acquires a legal settlement in the minor's own right. An emancipated minor is one who is absent from the minor's parents with the consent of the parents, is self-supporting, and has assumed a new relationship inconsistent with being a part of the family of the parents.

A minor, placed in the care of a public agency or facility as custodian or guardian, takes the legal settlement that the parents had upon severance of the parental relationship, and retains that legal settlement until a natural person is appointed custodian or guardian at which time the minor takes the legal settlement of the natural person or until the minor person attains the age of eighteen

and acquires another legal settlement in the person's own right.

5. A person with settlement in this state who becomes a member on active duty of an armed service of the United States retains the settlement during the period of active duty. A person without settlement in this state who is a member on active duty of an armed service of the United States within the borders of this state does not acquire settlement during the period of active duty.

6. *a.* Subsections 1, 2, 3, 7, and 8 do not apply to a blind person who is receiving assistance under the laws of this state.

b. A blind person who has resided in one county of this state for a period of six months acquires legal settlement for support as provided in this chapter, except as specified in paragraph *"c"*.

c. A blind person who is an inpatient or resident of, is supported by, or is receiving treatment or support services from a state resource center created under chapter 222, a state mental health institute created under chapter 226, the Iowa braille and sight saving school administered by the state board of regents, or any community-based provider of treatment or services for mental retardation, developmental disabilities, mental health, or substance abuse, does not acquire legal settlement in the county in which the institution, facility, or provider is located, unless the blind person has resided in the county in which the institution, facility, or provider is located for a period of six months prior to the date of commencement of receipt of assistance under the laws of this state or for a period of six months subsequent to the date of termination of assistance under the laws of this state.

7. A person hospitalized in or receiving treatment at a state mental health institute or state resource center does not acquire legal settlement in the county in which the institute or resource center is located unless the person is discharged from the institute or resource center, continuously resides in the county for a period of one year subsequent to the discharge, and during that year is not hospitalized in and does not receive treatment at the institute or resource center.

8. A person receiving treatment or support services from any provider, whether organized for pecuniary profit or not or whether supported by charitable or public or private funds, that provides treatment or services for mental retardation, developmental disabilities, mental health, brain injury, or substance abuse does not acquire legal settlement in a county unless the person continuously resides in that county for one year from the date of the last treatment or support service received by the person.

[C51, §808; R60, §1376; C73, §1352; C97, §2224; C24, 27, 31, 35, §5311; C39, §**3828.088;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.16]

84 Acts, ch 1165, §1; 87 Acts, ch 50, §1, 2; 94 Acts, ch 1186, §34; 95 Acts, ch 119, §2; 97 Acts, ch 75, §1; 97 Acts, ch 169, §27; 98 Acts, ch 1181, §8; 2000 Acts, ch 1112, §51

Applicability of 1995 amendments to subsection 6; redetermination of legal settlement for certain blind persons; exception to §252.17; 95 Acts, ch 119, §4 – 6

Proposals for determination of legal settlement and resolution of settlement disputes; 98 Acts, ch 1181, §9

252.17 Settlement continues.

A legal settlement once acquired shall so remain until such person has removed from this state for more than one year or has acquired a legal settlement in some other county or state.

[C51, §809; R60, §1377; C73, §1353; C97, §2224; C24, 27, 31, 35, §5312; C39, §**3828.089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.17]

Exception for blind persons who acquired legal settlement in this state on or after July 1, 1994, and prior to May 1, 1995; see 95 Acts, ch 119, §4 – 6

252.18 Foreign paupers.

1. A person who is a county charge or is likely to become so, coming from another state and not having acquired a settlement in a county of this state or any such person having acquired a settlement in a county of this state who moves to another county, may be removed from this state or from the county into which the person has moved at the expense of the county where the person is found, upon the petition of the county to the district court in that county.

2. The court or judge shall fix the time and place of hearing on said petition and prescribe the time and manner of service of the notice of such hearing.

3. If upon the hearing on said petition such person shall be ordered to remove from the state or county and fails to do so, the person shall be deemed and declared in contempt of court and may be punished accordingly; or the judge may order the sheriff of the county seeking the removal to return such person to the state or county of the person's legal settlement.

[C51, §811; R60, §1379; C73, §1354; C97, §2225; C24, 27, 31, 35, §5313; C39, §**3828.090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.18]

83 Acts, ch 186, §10062, 10201

Contempts, chapter 665

252.19 Repealed by 76 Acts, ch 1245(4), § 525.

252.20 and 252.21 Repealed by 59 Acts, ch 181, § 2.

252.22 Contest between counties — chapter applicable to county public hospitals.

When assistance is granted to a poor person having a settlement in another county, the auditor shall at once by mail notify the auditor of the county of settlement of that fact, and, within fifteen days after receipt of the notice, the auditor shall inform the auditor of the county granting assistance if the claim of settlement is disputed. If it is not, the poor person, at the request of the audi-

tor or board of supervisors of the county of settlement, may be maintained where the person then is at the expense of the county of legal settlement, and without affecting legal settlement as provided in section 252.16.

All laws relating to the support of the poor as provided by this chapter shall be applicable to care, treatment, and hospitalization provided by county public hospitals.

For the purposes of this section, *"auditor"* means the county auditor or the auditor's designee.

[C51, §814, 816, 817; R60, §1382, 1384, 1385; C73, §1357, 1359, 1360; C97, §2228; C24, 27, 31, 35, §5317; C39, §**3828.094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.22]

84 Acts, ch 1165, §2; 92 Acts, ch 1212, §12; 97 Acts, ch 169, §17

252.23 Trial.

If the alleged settlement is disputed, then, within thirty days after notice as provided in section 252.22, a copy of the notices sent and received shall be filed in the office of the clerk of the district court of the county against which claim is made, and a cause docketed without other pleadings, and tried as an ordinary action, in which the county granting the assistance shall be plaintiff, and the other defendant, and the burden of proof shall be upon the county granting the assistance.

[C51, §816, 817; R60, §1384, 1385; C73, §1359, 1360; C97, §2228; C24, 27, 31, 35, §5318; C39, §**3828.095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.23]

92 Acts, ch 1212, §13

252.24 County of settlement liable.

The county where the settlement is shall be liable to the county granting assistance for all reasonable charges and expenses incurred in the assistance and care of a poor person.

When assistance is furnished by any governmental agency of the county, township, or city, the assistance shall be deemed to have been furnished by the county in which the agency is located and the agency furnishing the assistance shall certify the correctness of the costs of the assistance to the board of supervisors of that county and that county shall collect from the county of the person's settlement. The amounts collected by the county where the agency is located shall be paid to the agency furnishing the assistance. This statute applies to services and supplies furnished as provided in section 139A.18.

[C51, §815; R60, §1383; C73, §1358; C97, §2229; C24, 27, 31, 35, §5319; C39, §**3828.096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.24]

92 Acts, ch 1212, §14; 2000 Acts, ch 1066, §44

252.25 County general assistance.

The board of supervisors of each county shall provide for the assistance of poor persons lawfully in the county who are ineligible for, or are in immediate need and are awaiting approval and receipt of, assistance under programs provided by state or federal law, or whose actual needs cannot be fully met by the assistance furnished under those programs. The county board of supervisors shall establish general rules as the board's members deem necessary to properly discharge their responsibility under this section.

All applications, investigation reports, and case records of persons applying for county general assistance under this chapter are privileged communications and confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and administration of this chapter or as authorized by order of a district court. Examination of an individual's applications, reports, and records may also be authorized by a signed release from the individual.

[C73, §1361; C97, §2230; S13, §2230; C24, 27, 31, 35, §5320; C39, §**3828.097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.25]

90 Acts, ch 1017, §2; 92 Acts, ch 1212, §15; 96 Acts, ch 1140, §1

252.26 General assistance director.

The board of supervisors in each county shall appoint or designate a general assistance director for the county, who shall have the powers and duties conferred by this chapter. In counties of one hundred thousand or less population, the county board may designate as general assistance director an employee of the state department of human services who is assigned to work in that county and is directed by the director of human services, pursuant to an agreement with the county board, to exercise the functions and duties of general assistance director in that county. The director shall receive as compensation an amount to be determined by the county board.

[C51, §819; R60, §1387; C73, §1361, 1364; C97, S13, §2230, 2233; C24, 27, 31, 35, §5321, 5327; C39, §**3828.098, 3828.104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §252.26, 252.32; C81, §252.26]

83 Acts, ch 96, §157, 159; 83 Acts, ch 123, §102, 209; 92 Acts, ch 1212, §16

252.27 Form of assistance — condition.

The board of supervisors shall determine the form of the assistance. However, legal aid shall be only in civil matters and provided only through a legal aid program approved by the board of supervisors. The amount of assistance issued shall be determined by standards of assistance established by the board of supervisors. They may require any able-bodied person to work on public programs or projects at the prevailing local rate per hour in payment for and as a condition of granting assistance. The labor shall be performed under the direction of the officers having charge of

the public programs or projects. Subject to section 142.1, assistance may consist of the burial of nonresident indigent transients and the payment of the reasonable cost of burial, not to exceed two hundred fifty dollars.

The board shall record its proceedings relating to the provision of assistance to specific persons under this chapter. A person who is aggrieved by a decision of the board may appeal the decision as if it were a contested case before an agency and as if the person had exhausted administrative remedies in accordance with the procedures and standards in section 17A.19, subsections 2 to 12 except subsection 10, paragraphs *"b"* and *"g"*, and section 17A.20.

[C73, §1361; C97, §2230; S13, §2230; C24, 27, 31, 35, §5322; C39, §**3828.099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §252.27; 81 Acts, ch 117, §1039]

92 Acts, ch 1212, §17; 98 Acts, ch 1202, §38, 46

252.28 to 252.31 Repealed by 81 Acts, ch 117, § 1097.

252.32 Repealed by 79 Acts, ch 57, § 18. See § 252.26.

252.33 Application for assistance.

A person may make application for assistance to a member of the board of supervisors, or to the general assistance director of the county where the person is. If application is made to the general assistance director and that officer is satisfied that the applicant is in a state of want which requires assistance at the public expense, the director may afford temporary assistance, subject to the approval of the board of supervisors, as the necessities of the person require and shall immediately report the case to the board of supervisors, who may continue or deny assistance, as they find cause.

[C51, §820; R60, §1388; C73, §1365; C97, §2234; S13, §2234; C24, 27, 31, 35, §5328; C39, §**3828.105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.33]

92 Acts, ch 1212, §18

252.34 Repealed by 81 Acts, ch 117, § 1097. See § 331.381(8).

252.35 Payment of claims.

All claims and bills for the care and support of the poor shall be certified to be correct by the general assistance director and presented to the board of supervisors, and, if the board is satisfied that the claims and bills are reasonable and proper, they shall be paid.

[C51, §821; R60, §1389; C73, §1366; C97, §2235; C24, 27, 31, 35, §5330; C39, §**3828.107;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.35]

83 Acts, ch 123, §103, 209; 92 Acts, ch 1212, §19

252.36 Repealed by 81 Acts, ch 117, § 1097.

252.37 Appeal to supervisors.

If a poor person, on application to the general assistance director, is refused the required assistance, the applicant may appeal to the board of supervisors, who, upon examination into the matter, may order the director to provide assistance, or it may direct specific assistance.

[C51, §823; R60, §1391; C73, §1368; C97, §2237; C24, 27, 31, 35, §5333; C39, §**3828.109;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.37]

92 Acts, ch 1212, §20

252.38 to 252.41 Repealed by 81 Acts, ch 117, § 1097. See § 331.381(8).

252.42 Co-operation on work-assistance projects.

The county board of supervisors may join and cooperate with the United States government, or a city within the city's boundaries, or both the United States government and a city within the city's boundaries, in sponsoring work projects, provided that the money used does not exceed the cost per month of supplying assistance to the certified persons working on projects who would be receiving direct assistance if they were not employed on the projects.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.42]

83 Acts, ch 123, §104, 209; 92 Acts, ch 1212, §21

252.43 State support for Indians. Repealed by 93 Acts, ch 172, § 49.

252.44 Repealed by 76 Acts, ch 1056, § 45.

252.45 Repealed by 81 Acts, ch 117, § 1097.

CHAPTER 252A

SUPPORT OF DEPENDENTS

See also chapter 252K, the Uniform Interstate Family Support Act

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252A.1 Title and purpose.

This chapter may be cited and referred to as the *"Support of Dependents Law"*.

The purpose of this chapter is to secure support in civil proceedings for dependent spouses, children and poor relatives from persons legally responsible for their support.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.1]

97 Acts, ch 175, §8

252A.2 Definitions.

As used in this chapter, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

1. *"Birthing hospital"* means a private or public hospital licensed pursuant to chapter 135B that has a licensed obstetric unit or is licensed to provide obstetric services, or a licensed birthing center associated with a hospital.

2. *"Child"* includes but shall not be limited to a stepchild, foster child, or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent person eighteen years of age or over who is unable to maintain the person's self and is likely to become a public charge.

3. *"Court"* shall mean and include any court upon which jurisdiction has been conferred to determine the liability of persons for the support of dependents.

4. *"Dependent"* shall mean and include a spouse, child, mother, father, grandparent, or grandchild who is in need of and entitled to support from a person who is declared to be legally liable for such support.

5. *"Institution"* means a birthing hospital.

6. *"Party"* means a petitioner, a respondent, or a person who intervenes in a proceeding instituted under this chapter.

7. *"Petitioner"* includes each dependent person for whom support is sought in a proceeding instituted pursuant to this chapter or a mother or putative father of a dependent. However, in an action brought by the child support recovery unit, the state is the petitioner.

8. *"Petitioner's representative"* includes counsel of a dependent person for whom support is sought and counsel for a mother or putative father of a dependent. In an action brought by the child support recovery unit, *"petitioner's representative"* includes a county attorney, state's attorney and any other public officer, by whatever title the officer's public office may be known, charged by law with the duty of instituting, maintaining, or prosecuting a proceeding under this chapter or under the laws of the state.

9. *"Putative father"* means a man who is alleged to be or who claims to be the biological father

of a child born to a woman to whom the man is not married at the time of the birth of the child.

10. *"Register"* means to file a foreign support order in the registry of foreign support orders maintained as a filing in equity by the clerk of court.

11. *"Respondent"* includes each person against whom a proceeding is instituted pursuant to this chapter. *"Respondent"* may include the mother or the putative father of a dependent.

12. *"State registrar"* means state registrar as defined in section 144.1.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.2; 82 Acts, ch 1004, §6, 7]

93 Acts, ch 79, §11; 94 Acts, ch 1171, §10, 11; 97 Acts, ch 175, §9; 2002 Acts, ch 1162, §78

Section amended

252A.3 Liability for support.

For the purpose of this chapter:

1. A spouse is liable for the support of the other spouse and any child or children under eighteen years of age and any other dependent. The court shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21.

2. A parent is liable for the support of the parent's child or children under eighteen years of age, whenever the other parent of such child or children is dead, or cannot be found, or is incapable of supporting the child or children, and, if the liable parent is possessed of sufficient means or able to earn the means. The court having jurisdiction of the respondent in a proceeding instituted under this chapter shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4.

3. The parents are severally liable for the support of a dependent child eighteen years of age or older, whenever such child is unable to maintain the child's self and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

5. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage are deemed the legitimate child or children of both parents.

6. A man or woman who was or is held out as the person's spouse by a person by virtue of a common law marriage is deemed the legitimate spouse of such person.

7. Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from the respondent's spouse or a decree dissolving the marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

8. The parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the father shall not be enforceable unless paternity has been legally established. Paternity may be established as follows:

a. By order of a court of competent jurisdiction or by administrative order when authorized by state law.

b. By the statement of the person admitting paternity in court and upon concurrence of the mother. If the mother was married, at the time of conception, birth, or at any time during the period between conception and birth of the child, to an individual other than the person admitting paternity, the individual to whom the mother was married at the time of conception, birth, or at any time during the period between conception and birth must deny paternity in order to establish the paternity of the person admitting paternity upon the sole basis of the admission.

c. Subject to the right of any signatory to rescind as provided in section 252A.3A, subsection 12, by the filing and registration by the state registrar of an affidavit of paternity executed on or after July 1, 1993, as provided in section 252A.3A, provided that the mother of the child was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child or if the mother was married at the time of conception, birth, or at any time during the period between conception and birth of the child, a court of competent jurisdiction has determined that the individual to whom the mother was married at that time is not the father of the child.

d. By establishment of paternity in a foreign jurisdiction in any manner provided for by the laws of that jurisdiction.

9. The court may order a party to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, including medical support as defined in chapter 252E, expenses of confinement, expenses of education of a child, funeral expenses, and such other reasonable and proper expenses of the dependent as justice requires, giving due regard to the circumstances of the respective parties.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.3]

89 Acts, ch 166, §2; 93 Acts, ch 79, §12; 94 Acts, ch 1171, §12; 96 Acts, ch 1141, §16; 97 Acts, ch 175, §1, 10, 11

Spousal support debt for medical assistance to institutionalized spouse; chapter 249B

252A.3A Establishing paternity by affidavit.

1. The paternity of a child born out of wedlock may be legally established by the completion, filing, and registration by the state registrar of an af-

fidavit of paternity only as provided by this section.

2. When paternity has not been legally established, paternity may be established by affidavit under this section for the following children:

a. The child of a woman who was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child.

b. The child of a woman who is married at the time of conception, birth, or at any time during the period between conception and birth of the child if a court of competent jurisdiction has determined that the individual to whom the mother was married at that time is not the father of the child.

3. *a.* Prior to or at the time of completion of an affidavit of paternity, written and oral information about paternity establishment, developed by the child support recovery unit created in section 252B.2, shall be provided to the mother and putative father. Video or audio equipment may be used to provide oral information.

b. The information provided shall include a description of parental rights and responsibilities, including the duty to provide financial support for the child, the benefits of establishing paternity, and the alternatives to and legal consequences of signing an affidavit of paternity, including the rights available if a parent is a minor.

c. Copies of the written information shall be made available by the child support recovery unit or the Iowa department of public health to those entities where an affidavit of paternity may be obtained as provided under subsection 4.

4. *a.* The affidavit of paternity form developed and used by the Iowa department of public health is the only affidavit of paternity form recognized for the purpose of establishing paternity under this section. It shall include the minimum requirements specified by the secretary of the United States department of health and human services pursuant to 42 U.S.C. § 652(a)(7). A properly completed affidavit of paternity form developed by the Iowa department of public health and existing on or after July 1, 1993, but which is superseded by a later affidavit of paternity form developed by the Iowa department of public health, shall have the same legal effect as a paternity affidavit form used by the Iowa department of public health on or after July 1, 1997, regardless of the date of the filing and registration of the affidavit of paternity, unless otherwise required under federal law.

b. The form shall be available from the state registrar, each county registrar, the child support recovery unit, and any institution in the state.

c. The Iowa department of public health shall make copies of the form available to the entities identified in paragraph *"b"* for distribution.

5. A completed affidavit of paternity shall contain or have attached all of the following:

a. A statement by the mother consenting to the assertion of paternity and the identity of the father and acknowledging either of the following:

(1) That the mother was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child.

(2) That the mother was married at the time of conception, birth, or at any time during the period between conception and birth of the child, and that a court order has been entered ruling that the individual to whom the mother was married at that time is not the father of the child.

b. If paragraph *"a"*, subparagraph (2), is applicable, a certified copy of the filed order ruling that the husband is not the father of the child.

c. A statement from the putative father that the putative father is the father of the child.

d. The name of the child at birth and the child's birth date.

e. The signatures of the mother and putative father.

f. The social security numbers of the mother and putative father.

g. The addresses of the mother and putative father, as available.

h. The signature of a notary public attesting to the identities of the parties signing the affidavit of paternity.

i. Instructions for filing the affidavit.

6. A completed affidavit of paternity shall be filed with the state registrar. However, if the affidavit of paternity is obtained directly from the county registrar, the completed affidavit may be filed with the county registrar who shall forward the original affidavit to the state registrar. For the purposes of legal establishment of paternity under this section, paternity is legally established only upon filing of the affidavit with and registration of the affidavit by the state registrar subject to the right of any signatory to recision pursuant to subsection 12.

7. The state registrar shall make copies of affidavits of paternity and identifying information from the affidavits filed and registered pursuant to this section available to the child support recovery unit created under section 252B.2 in accordance with section 144.13, subsection 4, and any subsequent recision form which rescinds the affidavit.

8. An affidavit of paternity completed and filed with and registered by the state registrar pursuant to this section has all of the following effects:

a. Is admissible as evidence of paternity.

b. Has the same legal force and effect as a judicial determination of paternity subject to the right of any signatory to recision pursuant to subsection 12.

c. Serves as a basis for seeking child or medical support without further determination of paternity subject to the right of any signatory to recision pursuant to subsection 12.

9. All institutions in the state shall provide the

following services with respect to any newborn child born out of wedlock:

a. Prior to discharge of the newborn from the institution, the institution where the birth occurs shall provide the mother and, if present, the putative father, with all of the following:

(1) Written and oral information about establishment of paternity pursuant to subsection 3. Video or audio equipment may be used to provide oral information.

(2) An affidavit of paternity form.

(3) An opportunity for consultation with the staff of the institution regarding the written information provided under subparagraph (1).

(4) An opportunity to complete an affidavit of paternity at the institution, as provided in this section.

b. The institution shall file any affidavit of paternity completed at the institution with the state registrar, pursuant to subsection 6, accompanied by a copy of the child's birth certificate, within ten days of the birth of the child.

10. *a.* An institution may be reimbursed by the child support recovery unit created in section 252B.2 for providing the services described under subsection 9, or may provide the services at no cost.

b. An institution electing reimbursement shall enter into a written agreement with the child support recovery unit for this purpose.

c. An institution entering into an agreement for reimbursement shall assist the parents of a child born out of wedlock in completing and filing an affidavit of paternity.

d. Reimbursement shall be based only on the number of affidavits completed in compliance with this section and submitted to the state registrar during the duration of the written agreement with the child support recovery unit.

e. The reimbursement rate is twenty dollars for each completed affidavit filed with the state registrar.

11. The state registrar, upon request of the mother or the putative father, shall provide the following services with respect to a child born out of wedlock:

a. Written and oral information about the establishment of paternity pursuant to subsection 3. Video or audio equipment may be used to provide oral information.

b. An affidavit of paternity form.

c. An opportunity for consultation with staff regarding the information provided under paragraph *"a"*.

12. *a.* A completed affidavit of paternity may be rescinded by registration by the state registrar of a completed and notarized recision form signed by either the mother or putative father who signed the affidavit of paternity that the putative father is not the father of the child. The completed and notarized recision form shall be filed with the state registrar for the purpose of registration prior to the earlier of the following:

(1) Sixty days after the latest notarized signature of the mother or putative father on the affidavit of paternity.

(2) Entry of a court order pursuant to a proceeding in this state to which the signatory is a party relating to the child, including a proceeding to establish a support order under this chapter, chapter 252C, 252F, 598, or 600B or other law of this state.

b. Unless the state registrar has received and registered an order as provided in section 252A.3, subsection 8, paragraph *"a"*, which legally establishes paternity, upon registration of a timely recision form the state registrar shall remove the father's information from the certificate of birth, and shall send a written notice of the recision to the last known address of the signatory of the affidavit of paternity who did not sign the recision form.

c. The Iowa department of public health shall develop a recision form and an administrative process for recision. The form shall be the only recision form recognized for the purpose of rescinding a completed affidavit of paternity. A completed recision form shall include the signature of a notary public attesting to the identity of the party signing the recision form. The Iowa department of public health shall adopt rules which establish a fee, based upon the average administrative cost, to be collected for the registration of a recision.

d. If an affidavit of paternity has been rescinded under this subsection, the state registrar shall not register any subsequent affidavit of paternity signed by the same mother and putative father relating to the same child.

13. The child support recovery unit may enter into a written agreement with an entity designated by the secretary of the United States department of health and human services to offer voluntary paternity establishment services.

a. The agreement shall comply with federal requirements pursuant to 42 U.S.C. § 666(a)(5)(C) including those regarding notice, materials, training, and evaluations.

b. The agreement may provide for reimbursement of the entity by the state if reimbursement is permitted by federal law.

93 Acts, ch 79, §13; 94 Acts, ch 1171, §13; 95 Acts, ch 52, §2; 97 Acts, ch 175, §2; 98 Acts, ch 1170, §28 – 31

252A.4 Jurisdiction. Repealed by 97 Acts, ch 175, § 21, 22. See chapter 252K.

252A.4A Choice of law. Repealed by 97 Acts, ch 175, § 21, 22. See chapter 252K.

252A.5 When proceeding may be maintained.

Unless prohibited pursuant to 28 U.S.C. § 1738B, a proceeding to compel support of a de-

pendent may be maintained under this chapter in any of the following cases:

1. Where the petitioner and the respondent are residents of or domiciled or found in this state.

2. Whenever the state or a political subdivision thereof furnishes support to a dependent, it has the same right through proceedings instituted by the petitioner's representative to invoke the provisions hereof as the dependent to whom the support was furnished, for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support; the petition in such case may be verified by any official having knowledge of such expenditures without further verification of any person and consent of the dependent shall not be required in order to institute proceedings under this chapter. The child support recovery unit may bring the action based upon a statement of a witness, regardless of age, with knowledge of the circumstances, including, but not limited to, statements by the mother of the dependent or a relative of the mother or the putative father.

3. If the child support recovery unit is providing services, the unit has the same right to invoke the provisions of this section as the dependent for which support is owed for the purpose of securing support. The petition in such case may be verified by any official having knowledge of the request for services by the unit, without further verification by any other person, and consent of the dependent shall not be required in order to institute proceedings under this chapter. The child support recovery unit may bring the action based upon the statement of a witness, regardless of age, with knowledge of the circumstances, including, but not limited to, statements by the mother of the dependent or a relative of the mother or the putative father.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.5]

96 Acts, ch 1141, §18; 97 Acts, ch 175, §12

252A.5A Limitations of actions.

1. An action to establish paternity and support under this chapter may be brought within the time limitations set forth in section 614.8.

2. Notwithstanding subsection 1, an action to establish paternity and support under this chapter may be brought concerning a person who was under age eighteen on August 16, 1984, regardless of whether any prior action was dismissed because a statute of limitations of less than eighteen years was then in effect. Such an action may be brought within the time limitations set forth in section 614.8, or until July 2, 1992, whichever is later.

90 Acts, ch 1224, §3

252A.6 How commenced — trial.

1. A proceeding under this chapter shall be commenced by filing a verified petition in the court in equity in the county where the dependent resides or is domiciled, showing the name, age, residence, and circumstances of the dependent, alleging that the dependent is in need of and is entitled to support from the respondent, giving the respondent's name, age, residence, and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of the respondent's person, other names and aliases by which the respondent has been or is known, the name of the respondent's employer, the respondent's fingerprints, or social security number.

2. It shall not be necessary for the dependent or the dependent's witnesses to appear personally at a hearing on the petition, but it shall be the duty of the petitioner's representative to appear on behalf of and represent the petitioner at all stages of the proceeding.

3. If at a hearing on the petition the respondent controverts the petition and enters a verified denial of any of the material allegations, the judge presiding at the hearing shall stay the proceedings. The petitioner shall be given the opportunity to present further evidence to address issues which the respondent has controverted.

4. If the respondent appears at the hearing and fails to answer the petition or admits the allegations of the petition, or if, after a hearing, the court has found and determined that the prayer of the petitioner, or any part of the prayer, is supported by the evidence adduced in the proceeding, and that the dependent is in need of and entitled to support from a party, the court shall make and enter an order directing a party to furnish support for the dependent and to pay a sum as the court determines pursuant to section 598.21. Upon entry of an order for support or upon failure of a person to make payments pursuant to an order for support, the court may require a party to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the party's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

5. The court making such order may require the party to make payment at specified intervals to the clerk of the district court or to the collection services center, and to report personally to the sheriff or any other official, at such times as may be deemed necessary.

6. A party who willfully fails to comply with or who violates the terms or conditions of the support order or of the party's probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

7. Except as provided in 28 U.S.C. § 1738B, any order of support issued by a court shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both. This subsection also applies to orders entered following an administrative process including, but not limited to, the administrative processes provided pursuant to chapters 252C and 252F.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.6]

85 Acts, ch 100, §1; 89 Acts, ch 166, §3; 93 Acts, ch 79, §35; 96 Acts, ch 1141, §19, 20; 97 Acts, ch 175, §13

252A.6A Additional provisions regarding paternity establishment.

1. When an action is initiated under this chapter to establish paternity, all of the following shall apply:

a. Except with the consent of all parties, the trial shall not be held until after the birth of the child and shall be held no earlier than twenty days from the date the respondent is served with notice of the action or, if blood or genetic tests are conducted, no earlier than thirty days from the date the test results are filed with the clerk of the district court as provided under section 600B.41.

b. If the respondent, after being served with notice as required under section 252A.6, fails to timely respond to the notice, or to appear for blood or genetic tests pursuant to a court or administrative order, or to appear at a scheduled hearing after being provided notice of the hearing, the court shall find the respondent in default, and shall enter an order establishing paternity and establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

c. Appropriate genetic testing procedures shall be used which include any genetic test generally acknowledged as reliable by accreditation bodies designated by the secretary of the United States department of health and human services and which are performed by a laboratory approved by such an accreditation body.

d. A copy of a bill for blood or genetic testing, or for the cost of prenatal care or the birth of the child, shall be admitted as evidence without requiring third-party foundation testimony and shall constitute prima facie evidence of amounts incurred for testing.

2. When an action is initiated to establish child or medical support based on a prior determination of paternity and the respondent files an answer to the notice denying paternity, all of the following shall apply:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or an administrative order entered pursuant to chapter 252F, or an order by the courts of this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A are applicable.

(2) If the court determines that the prior determination of paternity should not be overcome, pursuant to section 600B.41A, and that the party has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

b. If the prior determination of paternity is based on an administrative or court order or by any other means, pursuant to the laws of a foreign jurisdiction, an action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless the party requests and is granted a stay of an action to establish child or medical support, the action shall proceed as otherwise provided.

3. If the expert analyzing the blood or genetic test concludes that the test results demonstrate that the putative father is not excluded and that the probability of the putative father's paternity is ninety-nine percent or higher and if the test results have not been challenged, the court, upon motion by a party, shall enter a temporary order for child support to be paid pursuant to section 598.21, subsection 4. The court shall require temporary support to be paid to the clerk of court or to the collection services center. If the court subsequently determines the putative father is not the father, the court shall terminate the temporary support order. All support obligations which came due prior to the order terminating temporary support are unaffected by this action and remain a judgment subject to enforcement.

94 Acts, ch 1171, §14; 95 Acts, ch 67, §18; 97 Acts, ch 175, §3 – 5, 14 – 17

252A.7 Petitioner's representatives to appear. Repealed by 97 Acts, ch 175, § 21, 22. See § 252A.6.

252A.8 Additional remedies.

Unless otherwise provided pursuant to 28 U.S.C. § 1738B, this chapter shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.8]

96 Acts, ch 1141, §21

252A.9 Construction. Repealed by 97 Acts, ch 175, § 21, 22.

252A.10 Costs advanced.

Actual costs incurred in this state incidental to any action brought under the provisions of this chapter shall be advanced by the initiating party or agency, as appropriate, unless otherwise ordered by the court. Where the action is brought by an agency of the state or county there shall be no filing fee or court costs of any type either advanced by or charged to the state or county.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.10]
97 Acts, ch 175, §6

252A.11 Custody of respondent. Repealed by 97 Acts, ch 175, § 21, 22. See § 252K.305.

252A.12 Exchange lists of courts. Repealed by 97 Acts, ch 175, § 21, 22. See § 252K.310.

252A.13 Recipients of public assistance — assignment of support payments.

If public assistance is provided by the department of human services to or on behalf of a dependent child or a dependent child's caretaker, there is an assignment by operation of law to the department of any and all rights in, title to, and interest in any support obligation, payment, and arrearages owed to or on behalf of the child or caretaker not to exceed the amount of public assistance paid for or on behalf of the child or caretaker. The department shall immediately notify the clerk of court by mail when such child or caretaker has been determined to be eligible for public assistance. Upon notification by the department, the clerk of court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of the assignment. If the applicant for public assistance, for whom public assistance is approved and provided on or after July 1, 1997, is a person other than a parent of the child, the department shall send notice of the assignment by regular mail to the last known addresses of the obligee and obligor. The clerk of court shall forward support payments received pursuant to section 252A.6, to which the department is entitled, to the department, unless the court has ordered the payments made directly to the department under that section. The department may secure support payments in default through other proceedings. The clerk shall furnish the department with copies of all orders or decrees awarding and temporary domestic abuse orders addressing support when the parties are receiving public assistance or services are otherwise provided by the child support recovery unit. Unless otherwise specified in the order, an equal and proportionate share of any child support awarded is presumed to be payable on behalf of each child, subject to the order or judgment, for purposes of an assignment under this section.

[C77, 79, 81, §252A.13; 82 Acts, ch 1237, §2]
83 Acts, ch 96, §157, 159; 97 Acts, ch 175, §7

252A.14 and 252A.15 Reserved.

252A.16 Additional remedies for foreign support orders. Repealed by 97 Acts, ch 175, § 21, 22. See chapter 252K.

252A.17 Registry of foreign support orders.

The petitioner may register a foreign support order in a court of this state in the manner and with the effect provided in chapter 252K. The clerk of the court shall maintain a registry of foreign support orders in which foreign support orders shall be filed. The filing is in equity.

[82 Acts, ch 1004, §3]
97 Acts, ch 175, §18

252A.18 Registration of foreign support order — notice.

Registration of a foreign support order shall be in accordance with chapter 252K except that, with regard to service, promptly upon registration, the clerk of the court shall send a notice, by restricted certified mail to the respondent, of the registration with a copy of the registered support order or the respondent may be personally served with the notice and the copy of the order in the same manner as original notices are personally served. The clerk shall also docket the case and notify the prosecuting attorney of the action.

[82 Acts, ch 1004, §4]
93 Acts, ch 78, §2; 97 Acts, ch 175, §19

252A.19 Enforcement procedure for registered foreign support orders. Repealed by 97 Acts, ch 175, § 21, 22. See chapter 252K.

252A.20 Limitation on actions.

Issues related to visitation, custody, or other provisions not related to the support provisions of a support order shall not be grounds for a hearing, modification, adjustment, or other action under this chapter.

93 Acts, ch 78, §5; 96 Acts, ch 1141, §23; 97 Acts, ch 175, §20

252A.21 through 252A.23 Reserved.

252A.24 Interstate rendition. Repealed by 97 Acts, ch 175, § 21, 22. See § 252K.801.

252A.25 Conditions of interstate rendition. Repealed by 97 Acts, ch 175, § 21, 22. See § 252K.802.

CHAPTER 252B

CHILD SUPPORT RECOVERY

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252B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Absent parent"* means the parent who either cannot be located or who is located and is not residing with the child at the time the support collection or paternity determination services provided in sections 252B.5 and 252B.6 are requested or commenced.

2. *"Child"* includes but shall not be limited to a stepchild, foster child or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent person eighteen years of age or over who is unable to maintain the person's self and is likely to become a public charge. *"Child"* includes *"child"* as defined in section 239B.1.

3. *"Child support agency"* means child support agency as defined in section 252H.2.

4. *"Department"* means the department of human services.

5. *"Director"* means the director of human services.

6. *"Obligor"* means the person legally responsible for the support of a child as defined in section 252D.16 or 598.1 under a support order issued in this state or a foreign jurisdiction.

7. *"Resident parent"* means the parent with whom the child is residing at the time the support collection or paternity determination services provided in sections 252B.5 and 252B.6 are requested or commenced.

8. *"Unit"* means the child support recovery unit created in section 252B.2.

[C77, 79, 81, §252B.1]

83 Acts, ch 96, §157, 159; 91 Acts, ch 97, §33; 92 Acts, ch 1195, §502; 93 Acts, ch 79, §25; 97 Acts, ch 41, §32; 97 Acts, ch 175, §23, 24; 98 Acts, ch 1100, §31

252B.2 Unit established — intervention.

There is created within the department of human services a child support recovery unit for the purpose of providing the services required in sections 252B.3 to 252B.6. The unit is not required to intervene in actions to provide such services.

[C77, 79, 81, §252B.2]

83 Acts, ch 96, §157, 159; 97 Acts, ch 175, §25

252B.3 Duty of department to enforce child support — cooperation — rules.

1. Upon receipt by the department of an application for public assistance on behalf of a child and determination by the department that the child is eligible for public assistance and that provision of child support services is appropriate, the department shall take appropriate action under the provisions of this chapter or under other appropriate statutes of this state including but not limited to chapters 239B, 252A, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 598, and 600B, to ensure that the parent or other person responsible for the support of the child fulfills the support obligation. The department shall also take appropriate action as required by federal law upon receiving a request from a child support agency for a

child receiving public assistance in another state.

2. The department of human services may negotiate a partial payment of a support obligation with a parent or other person responsible for the support of the child, provided that the negotiation and partial payment are consistent with applicable federal law and regulation.

3. The department shall adopt rules pursuant to chapter 17A regarding cases in which, under federal law, it is a condition of eligibility for an individual who is an applicant for or recipient of public assistance to cooperate in good faith with the department in establishing the paternity of, or in establishing, modifying, or enforcing a support order by identifying and locating the parent of the child or enforcing rights to support payments. The rules shall include all of the following provisions:

a. As required by the unit, the individual shall provide the name of the noncustodial parent and additional necessary information, and shall appear at interviews, hearings, and legal proceedings.

b. If paternity is an issue, the individual and child shall submit to blood or genetic tests pursuant to a judicial or administrative order.

c. The individual may be requested to sign a voluntary affidavit of paternity, after notice of the rights and consequences of such an acknowledgment, but shall not be required to sign an affidavit or otherwise relinquish the right to blood or genetic tests.

d. The unit shall promptly notify the individual and the appropriate division of the department administering the public assistance program of each determination by the unit of noncooperation of the individual and the reason for such determination.

e. A procedure under which the individual may claim that, and the department shall determine whether, the individual has sufficient good cause or other exception for not cooperating, taking into consideration the best interest of the child.

4. Without need for a court order and notwithstanding the requirements of section 598.22A, the support payment ordered pursuant to any chapter shall be satisfied as to the department, the child, and either parent for the period during which the parents are reconciled and are cohabiting, the child for whom support is ordered is living in the same residence as the parents, and the obligor receives public assistance on the obligor's own behalf for the benefit of the child. The department shall implement this subsection as follows:

a. The unit shall file a notice of satisfaction with the clerk of court.

b. This subsection shall not apply unless all the children for whom support is ordered reside with both parents, except that a child may be absent from the home due to a foster care placement pursuant to chapter 234 or a comparable law of a foreign jurisdiction.

c. The unit shall send notice by regular mail to the obligor when the provisions of this subsection no longer apply. A copy of the notice shall be filed with the clerk of court.

d. This section shall not limit the rights of the parents or the department to proceed by other means to suspend, terminate, modify, reinstate, or establish support.

5. On or after July 1, 1999, the department shall implement a program for the satisfaction of accrued support debts, based upon timely payment by the obligor of both current support due and any payments due for accrued support debt under a periodic payment plan. The unit shall adopt rules pursuant to chapter 17A to establish the criteria and procedures for obtaining satisfaction under the program. The rules adopted under this subsection shall specify the cases and amounts to which the program is applicable, and may provide for the establishment of the program as a pilot program.

[C77, 79, 81, §252B.3; 82 Acts, ch 1237, §3]

83 Acts, ch 96, §157, 159; 93 Acts, ch 79, §36; 97 Acts, ch 41, §32; 97 Acts, ch 175, §26; 98 Acts, ch 1170, §41

252B.4 Nonassistance cases.

The child support and paternity determination services established by the department pursuant to this chapter and other appropriate services provided by law including but not limited to the provisions of chapters 239B, 252A, 252C, 252D, 252E, 252F, 598, and 600B shall be made available by the unit to an individual not otherwise eligible as a public assistance recipient upon application by the individual for the services or upon referral as described in subsection 5. The application shall be filed with the department.

1. The director shall require an application fee of twenty-five dollars.

2. The director may collect a fee to cover the costs incurred by the department for service of process, genetic testing and court costs if the entity providing the service charges a fee for the services.

3. Fees collected pursuant to this section shall be retained by the department for use by the unit. The director or a designee shall keep an accurate record of funds so retained.

4. An application fee paid by a recipient of services pursuant to subsection 1 may be recovered by the unit from the person responsible for payment of support and if recovered, shall be used to reimburse the recipient of services.

a. The fee shall be an automatic judgment against the person responsible to pay support.

b. This subsection shall serve as constructive notice that the fee is a debt due and owing, is an automatic judgment against the person responsible for support, and is assessed as the fee is paid by a recipient of services. The fee may be collected in addition to any support payments or support

judgment ordered, and no further notice or hearing is required prior to collecting the fee.

c. Notwithstanding any provision to the contrary, the unit may collect the fee through any legal means by which support payments may be collected, including but not limited to income withholding under chapter 252D or income tax refund offsets, unless prohibited under federal law.

d. The unit is not required to file these judgments with the clerk of the district court, but shall maintain an accurate accounting of the fee assessed, the amount of the fee, and the recovery of the fee.

e. Support payments collected shall not be applied to the recovery of the fee until all other support obligations under the support order being enforced, which have accrued through the end of the current calendar month, have been paid or satisfied in full.

f. This subsection applies to fees that become due on or after July 1, 1992.

5. The unit shall also provide child support and paternity determination services and shall respond as provided in federal law for an individual not otherwise eligible as a public assistance recipient if the unit receives a request from any of the following:

a. A child support agency.

b. A foreign reciprocating country or foreign country with which the state has an arrangement as provided in 42 U.S.C. § 659A.

[C77, 79, 81, §252B.4]

83 Acts, ch 153, §16; 92 Acts, ch 1195, §101, 102; 93 Acts, ch 78, §6, 7; 93 Acts, ch 79, §37; 96 Acts, ch 1213, §39; 97 Acts, ch 41, §32; 97 Acts, ch 175, §27 – 29; 2002 Acts, 2nd Ex, ch 1003, §143, 151

Subsection 1 amended

252B.5 Services of unit.

The child support recovery unit shall provide the following services:

1. Assistance in the location of an absent parent or any other person who has an obligation to support the child of the resident parent.

2. Aid in establishing paternity and securing a court or administrative order for support pursuant to chapter 252A, 252C, 252F, or 600B, or any other chapter providing for the establishment of paternity or support.

3. Aid in enforcing through court or administrative proceedings an existing court order for support issued pursuant to chapter 252A, 252C, 252F, 598, or 600B, or any other chapter under which child or medical support is granted. The director may enter into a contract with a private collection agency to collect support payments for cases which have been identified by the department as difficult collection cases if the department determines that this form of collection is more cost-effective than departmental collection methods. The department shall utilize, to the maximum extent possible, every available automated process to collect support payments prior to referral of a case to a private collection agency. A private collection agency with whom the department enters a contract under this subsection shall comply with state and federal confidentiality requirements and debt collection laws. The director may use a portion of the state share of funds collected through this means to pay the costs of any contract authorized under this subsection.

4. Assistance to set off against a debtor's income tax refund or rebate any support debt, which is assigned to the department of human services or which the child support recovery unit is attempting to collect on behalf of any individual not eligible as a public assistance recipient, which has accrued through written contract, subrogation, or court judgment, and which is in the form of a liquidated sum due and owing for the care, support, or maintenance of a child. Unless the periodic payment plan provisions for a retroactive modification pursuant to section 598.21, subsection 8, apply, the entire amount of a judgment for accrued support, notwithstanding compliance with a periodic payment plan or regardless of the date of entry of the judgment, is due and owing as of the date of entry of the judgment and is delinquent for the purposes of setoff, including for setoff against a debtor's federal income tax refund or other federal nontax payment. The department of human services shall adopt rules pursuant to chapter 17A necessary to assist the department of revenue and finance in the implementation of the child support setoff as established under section 421.17, subsection 21.

5. Determine periodically whether an individual receiving unemployment compensation benefits under chapter 96 owes a support obligation which is being enforced by the unit, and enforce the support obligation through court or administrative proceedings to have specified amounts withheld from the individual's unemployment compensation benefits.

6. Assistance in obtaining medical support as defined in chapter 252E.

7. At the request of either parent who is subject to the order of support or upon its own initiation, review the amount of the support award in accordance with the guidelines established pursuant to section 598.21, subsection 4, and Title IV-D of the federal Social Security Act, as amended, and take action to initiate modification proceedings if the criteria established pursuant to this section are met. However, a review of a support award is not required if the child support recovery unit determines that such a review would not be in the best interest of the child and neither parent has requested such review.

The department shall adopt rules no later than October 13, 1990, setting forth the process for review of requests for modification of support obligations and the criteria and process for taking action to initiate modification proceedings.

8. *a.* Assistance, in consultation with the department of revenue and finance, in identifying and taking action against self-employed individuals as identified by the following conditions:

(1) The individual owes support pursuant to a court or administrative order being enforced by the unit and is delinquent in an amount equal to or greater than the support obligation amount assessed for one month.

(2) The individual has filed a state income tax return in the preceding twelve months.

(3) The individual has no reported tax withholding amount on the most recent state income tax return.

(4) The individual has failed to enter into or comply with a formalized repayment plan with the unit.

(5) The individual has failed to make either all current support payments in accordance with the court or administrative order or to make payments against any delinquency in each of the preceding twelve months.

b. Notwithstanding section 252B.9, the unit may forward information to the department of revenue and finance as necessary to implement this subsection, including but not limited to both of the following:

(1) The name and social security number of the individual.

(2) Support obligation information in the specific case, including the amount of the delinquency.

9. The review and adjustment, modification, or alteration of a support order pursuant to chapter 252H upon adoption of rules pursuant to chapter 17A and periodic notification, at a minimum of once every three years, to parents subject to a support order of their rights to these services.

10. The unit shall not establish orders for spousal support. The unit shall enforce orders for spousal support only if the spouse is the custodial parent of a child for whom the unit is also enforcing a child support or medical support order.

11. *a.* Comply with federal procedures to periodically certify to the secretary of the United States department of health and human services, a list of the names of obligors determined by the unit to owe delinquent support, under a support order as defined in section 252J.1, in excess of five thousand dollars. The certification of the delinquent amount owed may be based upon one or more support orders being enforced by the unit if the delinquent support owed exceeds five thousand dollars. The certification shall include any amounts which are delinquent pursuant to the periodic payment plan when a modified order has been retroactively applied. The certification shall be in a format and shall include any supporting documentation required by the secretary.

b. All of the following shall apply to an action initiated by the unit under this subsection:

(1) The obligor shall be sent a notice by regular mail in accordance with federal law and regulations and the notice shall remain in effect until support delinquencies have been paid in full. The notice shall include all of the following:

(a) A statement regarding the amount of delinquent support owed by the obligor.

(b) A statement providing information that if the delinquency is in excess of five thousand dollars, the United States secretary of state may apply a passport sanction by revoking, restricting, limiting, or refusing to issue a passport as provided in 42 U.S.C. § 652(k).

(c) Information regarding the procedures for challenging the certification by the unit.

(2) (a) A challenge shall be based upon mistake of fact. For the purposes of this subsection, *"mistake of fact"* means a mistake in the identity of the obligor or a mistake in the amount of the delinquent child support owed if the amount did not exceed five thousand dollars on the date of the unit's decision on the challenge.

If the obligor chooses to challenge the certification, the obligor shall notify the unit within the time period specified in the notice to the obligor. The obligor shall include any relevant information with the challenge.

(b) Upon timely receipt of the challenge, the unit shall review the certification for a mistake of fact, or refer the challenge for review to the child support agency in the state chosen by the obligor as provided by federal law.

(c) Following the unit's review of the certification, the unit shall send a written decision to the obligor within ten days of timely receipt of the challenge.

(i) If the unit determines that a mistake of fact exists, the unit shall send notification in accordance with federal procedures withdrawing the certification for passport sanction.

(ii) If the unit determines that a mistake of fact does not exist, the obligor may contest the determination within ten days following the issuance of the decision by submitting a written request for a contested case proceeding pursuant to chapter 17A.

(3) Following issuance of a final decision under chapter 17A that no mistake of fact exists, the obligor may request a hearing before the district court pursuant to chapter 17A. The department shall transmit a copy of its record to the district court pursuant to chapter 17A. The scope of the review by the district court shall be limited to demonstration of a mistake of fact. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a hearing under this subsection.

c. Following certification to the secretary, if the unit determines that an obligor no longer owes delinquent support in excess of five thousand dollars, the unit shall provide information and notice as the secretary requires to withdraw the certification for passport sanction.

[C77, 79, 81, §252B.5; 82 Acts, ch 1260, §123]
83 Acts, ch 96, §157, 159; 90 Acts, ch 1224, §4, 5; 92 Acts, ch 1195, §503; 93 Acts, ch 78, §8; 93 Acts, ch 79, §33, 38; 94 Acts, ch 1171, §15; 97 Acts, ch 41, §32; 97 Acts, ch 175, §30 – 33; 98 Acts, ch 1170, §34; 2001 Acts, ch 79, §2, 4

252B.6 Additional services in assistance cases.

In addition to the services enumerated in section 252B.5, the unit may provide the following services in the case of a dependent child for whom public assistance is being provided:

1. Represent the state in obtaining a support order necessary to meet the child's needs or in enforcing a similar order previously entered.

2. Represent the state's interest in obtaining support for a child in dissolution of marriage and separate maintenance proceedings, or proceedings supplemental to these proceedings or any other support proceedings, when either or both of the parties to the proceedings are receiving public assistance, for the purpose of advising the court of the financial interest of the state in the proceeding.

3. Appear on behalf of the state for the purpose of facilitating the modification of support awards consistent with guidelines established pursuant to section 598.21, subsection 4, and Title IV-D of the federal Social Security Act. The unit shall not otherwise participate in the proceeding.

4. Apply to the district court or initiate an administrative action, as necessary, to obtain, enforce, or modify support.

5. Initiate necessary civil proceedings to recover from the parent of a child, money expended by the state in providing public assistance or services to the child, including support collection services.

[C77, 79, 81, §252B.6]
83 Acts, ch 153, §17; 90 Acts, ch 1224, §6, 7; 97 Acts, ch 175, §34, 46

252B.6A External services.

1. Provided that the action is consistent with applicable federal law and regulation, an attorney licensed in this state shall receive compensation as provided in this section for support collected as the direct result of a judicial proceeding maintained by the attorney, if all of the following apply to the case:

a. The unit is providing services under this chapter.

b. The current support obligation is terminated and only arrearages are due under an administrative or court order and there has been no payment under the order for at least the twelve-month period prior to the provision of notice to the unit by the attorney under this section.

c. Support is assigned to the state based upon cash assistance paid under chapter 239B, or its successor.

d. The attorney has provided written notice to the central office of the unit and to the obligee at the last known address of the obligee of the intent to initiate a specified judicial proceeding, at least thirty days prior to initiating the proceeding.

e. The attorney has provided documentation to the unit that the attorney is insured against loss caused by the attorney's legal malpractice or acts or omissions of the attorney which result in loss to the state or other person.

f. The collection is received by the collection services center within ninety days of provision of the notice to the unit. An attorney may provide subsequent notices to the unit to extend the time for receipt of the collection by subsequent ninety-day periods.

2. *a.* If, prior to February 15, 1998, notice is provided pursuant to subsection 1 to initiate a specific judicial proceeding, this section shall not apply to the proceeding unless the unit consents to the proceeding.

b. (1) If, on or after February 15, 1998, notice is provided pursuant to subsection 1 to initiate a specific judicial proceeding, this section shall apply to the proceeding only if the case is exempt from application of rules adopted by the department pursuant to subparagraph (2) which limit application of this section.

(2) The department shall adopt rules which include, but are not limited to, exemption from application of this section to proceedings based upon, but not limited to, any of the following:

(a) A finding of good cause pursuant to section 252B.3.

(b) The existence of a support obligation due another state based upon public assistance provided by that state.

(c) The maintaining of another proceeding by an attorney under this section for which the unit has not received notice that the proceeding has concluded or the ninety-day period during which a collection may be received pertaining to the same case has not yet expired.

(d) The initiation of a seek employment action under section 252B.21, and the notice from the attorney indicates that the attorney intends to pursue a contempt action.

(e) Any other basis for exemption of a specified proceeding designated by rule which relates to collection and enforcement actions provided by the unit.

3. The unit shall issue a response to the attorney providing notice within ten days of receipt of the notice. The response shall advise the attorney whether the case to which the specified judicial proceeding applies meets the requirements of this section.

4. For the purposes of this section, a *"judicial proceeding"* means an action to enforce support filed with a court of competent jurisdiction in which the court issues an order which identifies

the amount of the support collection which is a direct result of the court proceeding. *"Judicial proceedings"* include but are not limited to those pursuant to chapters 598, 626, 633, 642, 654, or 684 and also include contempt proceedings if the collection payment is identified in the court order as the result of such a proceeding. *"Judicial proceedings"* do not include enforcement actions which the unit is required to implement under federal law including, but not limited to, income withholding.

5. All of the following are applicable to a collection which is the result of a judicial proceeding which meets the requirements of this section:

a. All payments made as the result of a judicial proceeding under this section shall be made to the clerk of the district court or to the collection services center and shall not be made to the attorney. Payments received by the clerk of the district court shall be forwarded to the collection services center as provided in section 252B.15.

b. The attorney shall be entitled to receive an amount which is equal to twenty-five percent of the support collected as the result of the specified judicial proceeding not to exceed the amount of the nonfederal share of assigned support collected as the result of that proceeding. The amount paid under this paragraph is the full amount of compensation due the attorney for a proceeding under this section and is in lieu of any attorney fees. The court shall not order the obligor to pay additional attorney fees. The amount of compensation calculated by the unit is subject, upon application of the attorney, to judicial review.

c. Any support collected shall be disbursed in accordance with federal requirements and any support due the obligee shall be disbursed to the obligee prior to disbursement to the attorney as compensation.

d. The collection services center shall disburse compensation due the attorney only from the nonfederal share of assigned collections. The collection services center shall not disburse any compensation for court costs.

e. The unit may delay disbursement to the attorney pending the resolution of any timely appeal by the obligor or obligee.

f. Negotiation of a partial payment or settlement for support shall not be made without the approval of the unit and the obligee, as applicable.

6. The attorney initiating a judicial proceeding under this section shall notify the unit when the judicial proceeding is completed.

7. *a.* An attorney who initiates a judicial proceeding under this section represents the state for the sole and limited purpose of collecting support to the extent provided in this section.

b. The attorney is not an employee of the state and has no right to any benefit or compensation other than as specified in this section.

c. The state is not liable or subject to suit for any acts or omissions resulting in any damages as a consequence of the attorney's acts or omissions under this section.

d. The attorney shall hold the state harmless from any act or omissions of the attorney which may result in any penalties or sanctions, including those imposed under federal bankruptcy laws, and the state may recover any penalty or sanction imposed by offsetting any compensation due the attorney under this section for collections received as a result of any judicial proceeding initiated under this section.

e. The attorney initiating a proceeding under this section does not represent the obligor.

8. The unit shall comply with all state and federal laws regarding confidentiality. The unit may release to an attorney who has provided notice under this section, information regarding child support balances due, to the extent provided under such laws.

9. This section shall not be interpreted to prohibit the unit from providing services or taking other actions to enforce support as provided under this chapter.

97 Acts, ch 41, §32; 97 Acts, ch 175, §35

252B.7 Legal services.

1. The attorney general may perform the legal services for the child support recovery program and may enforce all laws for the recovery of child support from responsible relatives. The attorney general may file and prosecute:

a. Contempt of court proceedings to enforce any order of court pertaining to child support.

b. Cases under chapter 252A, the Support of Dependents Law.

c. An information charging a violation of section 726.3, 726.5 or 726.6.

d. Any other lawful action which will secure collection of support for minor children.

2. For the purposes of subsection 1, the attorney general has the same power to commence, file and prosecute any action or information in the proper jurisdiction, which the county attorney could file or prosecute in that jurisdiction. This section does not relieve a county attorney from the county attorney's duties, or the attorney general from the supervisory power of the attorney general, in the recovery of child support.

3. The unit may contract with a county attorney, the attorney general, a clerk of the district court, or another person or agency to collect support obligations and to administer the child support program established pursuant to this chapter. Notwithstanding section 13.7, the unit may contract with private attorneys for the prosecution of civil collection and recovery cases and may pay reasonable compensation and expenses to private attorneys for the prosecution services provided.

4. An attorney employed by or under contract with the child support recovery unit represents and acts exclusively on behalf of the state when

providing child support enforcement services. An attorney-client relationship does not exist between the attorney and an individual party, witness, or person other than the state, regardless of the name in which the action is brought.

[C77, 79, 81, §252B.7]

83 Acts, ch 153, §18; 90 Acts, ch 1224, §8; 97 Acts, ch 175, §36, 47

252B.7A Determining parent's income.

1. The unit shall use any of the following in determining the amount of the net monthly income of a parent for purposes of establishing or modifying a support obligation:

a. Income as identified in a signed statement of the parent pursuant to section 252B.9, subsection 1, paragraph *"b"*. If evidence suggests that the statement is incomplete or inaccurate, the unit may present the evidence to the court in a judicial proceeding or to the administrator in a proceeding under chapter 252C or a comparable chapter, and the court or administrator shall weigh the evidence in setting the support obligation. Evidence includes but is not limited to income as established under paragraph *"c"*.

b. If a sworn statement is not provided by the parent, the unit may determine income as established under paragraph *"c"* or *"d"*.

c. Income established by any of the following:

(1) Income verified by an employer or payor of income.

(2) Income reported to the department of workforce development.

(3) For a public assistance recipient, income as reported to the department case worker assigned to the public assistance case.

(4) Other written documentation which identifies income.

d. By July 1, 1999, the department shall adopt rules for imputing income, whenever possible, based on the earning capacity of a parent who does not provide income information or for whom income information is not available. Until such time as the department adopts rules establishing a different standard for determining the income of a parent who does not provide income information or for whom income information is not available, the estimated state median income for a one-person family as published annually in the Federal Register for use by the federal office of community services, office of energy assistance, for the subsequent federal fiscal year.

(1) This provision is effective beginning July 1, 1992, based upon the information published in the Federal Register dated March 8, 1991.

(2) The unit may revise the estimated income each October 1. If the estimate is not available or has not been published, the unit may revise the estimate when it becomes available.

e. When the income information obtained pursuant to this subsection does not include the information necessary to determine the net monthly income of the parent, the unit may deduct twenty percent from the parent's gross monthly income to arrive at the net monthly income figure.

2. The amount of the income determined may be challenged any time prior to the entry of a new or modified order for support.

3. If the child support recovery unit is providing services pursuant to this chapter, the court shall use the income figure determined pursuant to this section when applying the guidelines to determine the amount of support.

4. The department may develop rules as necessary to further implement disclosure of financial information of the parties.

92 Acts, ch 1195, §201; 96 Acts, ch 1186, §23; 97 Acts, ch 175, §37; 98 Acts, ch 1170, §43

252B.7B Informational materials provided by the unit.

1. The unit shall prepare and make available to the public, informational materials which explain the unit's procedures including, but not limited to, procedures with regard to all of the following:

a. Accepting applications for services.

b. Locating individuals.

c. Establishing paternity.

d. Establishing support.

e. Enforcing support.

f. Modifying, suspending, or reinstating support.

g. Terminating services.

2. The informational materials shall include general information about and descriptions of the processes involved relating to the services provided by the unit including application for services, fees for services, the responsibilities of the recipient of services, resolution of disagreements with the unit, rights to challenge the actions of the unit, and obtaining additional information.

97 Acts, ch 175, §38

252B.8 Central information center.

The department shall establish within the unit an information and administration co-ordinating center which shall serve as a registry for the receipt of information and for answering interstate inquiries concerning absent parents and shall coordinate and supervise unit activities. The information and administration co-ordinating center shall promote co-operation between the unit and law enforcement agencies to facilitate the effective operation of the unit.

[C77, 79, 81, §252B.8]

252B.9 Information and assistance from others — availability of records.

1. *a.* The director may request from state, county, and local agencies information and assistance deemed necessary to carry out the provisions of this chapter. State, county, and local agen-

cies, officers, and employees shall cooperate with the unit and shall on request supply the department with available information relative to the absent parent, the custodial parent, and any other necessary party, notwithstanding any provisions of law making this information confidential. The cooperation and information required by this subsection shall also be provided when it is requested by a child support agency. Information required by this subsection includes, but is not limited to, information relative to location, income, property holdings, records of licenses as defined in section 252J.1, and records concerning the ownership and control of corporations, partnerships, and other business entities. If the information is maintained in an automated database, the unit shall be provided automated access.

b. Parents of a child on whose behalf support enforcement services are provided shall provide information regarding income, resources, financial circumstances, and property holdings to the department for the purpose of establishment, modification, or enforcement of a support obligation. The department may provide the information to parents of a child as needed to implement the requirements of section 598.21, subsection 4, notwithstanding any provisions of law making this information confidential.

c. Notwithstanding any provisions of law making this information confidential, all persons, including for-profit, nonprofit, and governmental employers, shall, on request, promptly supply the unit or a child support agency information on the employment, compensation, and benefits of any individual employed by such person as an employee or contractor with relation to whom the unit or a child support agency is providing services.

d. Notwithstanding any provisions of law making this information confidential, the unit may subpoena or a child support agency may use the administrative subpoena form promulgated by the secretary of the United States department of health and human services under 42 U.S.C. § 652(a)(11)(C), to obtain any of the following:

(1) Books, papers, records, or information regarding any financial or other information relating to a paternity or support proceeding.

(2) Certain records held by public utilities and cable television companies with respect to individuals who owe or are owed support, or against or with respect to whom a support obligation is sought, consisting of the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records. If the records are maintained in automated databases, the unit shall be provided with automated access.

e. The unit or a child support agency may subpoena information for one or more individuals.

f. If the unit or a child support agency issues a request under paragraph *"c"*, or a subpoena under paragraph *"d"*, all of the following shall apply:

(1) The unit or child support agency may issue a request or subpoena to a person by sending it by regular mail. Proof of service may be completed according to rule of civil procedure 1.442.

(2) A person who is not a parent or putative father in a paternity or support proceeding, who is issued a request or subpoena, shall be provided an opportunity to refuse to comply for good cause by filing a request for a conference with the unit or child support agency in the manner and within the time specified in rules adopted pursuant to subparagraph (7).

(3) Good cause shall be limited to mistake in the identity of the person, or prohibition under federal law to release such information.

(4) After the conference the unit shall issue a notice finding that the person has good cause for refusing to comply, or a notice finding that the person does not have good cause for failing to comply. If the person refuses to comply after issuance of notice finding lack of good cause, or refuses to comply and does not request a conference, the person is subject to a penalty of one hundred dollars per refusal.

(5) If the person fails to comply with the request or subpoena, fails to request a conference, and fails to pay a fine imposed under subparagraph (4), the unit may petition the district court to compel the person to comply with this paragraph. If the person objects to imposition of the fine, the person may seek judicial review by the district court.

(6) If a parent or putative father fails to comply with a subpoena or request for information, the provisions of chapter 252J shall apply.

(7) The unit may adopt rules pursuant to chapter 17A to implement this section.

g. Notwithstanding any provisions of law making this information confidential, the unit or a child support agency shall have access to records and information held by financial institutions with respect to individuals who owe or are owed support, or with respect to whom a support obligation is sought including information on assets and liabilities. If the records are maintained in automated databases, the unit shall be provided with automated access. For the purposes of this section, *"financial institution"* means financial institution as defined in section 252I.1.

h. Notwithstanding any law to the contrary, the unit and a child support agency shall have access to any data maintained by the state of Iowa which contains information that would aid the agency in locating individuals. Such information shall include, but is not limited to, driver's license, motor vehicle, and criminal justice information. However, the information does not include criminal investigative reports or intelligence files maintained by law enforcement. The unit and child support agency shall use or disclose the information obtained pursuant to this paragraph only in accordance with subsection 3. Criminal

history records maintained by the department of public safety shall be disclosed in accordance with chapter 692. The unit shall also have access to the protective order file maintained by the department of public safety.

i. Liability shall not arise under this subsection with respect to any disclosure by a person as required by this subsection, and no advance notice from the unit or a child support agency is required prior to requesting information or assistance or issuing a subpoena under this subsection.

2. Notwithstanding other statutory provisions to the contrary, including but not limited to chapters 22 and 217, as the chapters relate to confidentiality of records maintained by the department, the payment records of the collection services center maintained under section 252B.13A are public records only as follows:

a. Payment records of the collection services center which are maintained pursuant to chapter 598 are public records and may be released upon request. Payment records of the clerk of the district court, to which the department has access to meet the requirements of a state disbursement unit, are also public records and may be released upon request. A payment record shall not include address or location information.

b. Except as otherwise provided in subsection 1, the department shall not release details related to payment records or provide alternative formats for release of the information, with the following additional exceptions:

(1) The unit or collection services center may provide additional detail or present the information in an alternative format to an individual or to the individual's legal representative if the individual owes or is owed a support obligation, to an agency assigned the obligation as the result of receipt by a party of public assistance, to an agency charged with enforcing child support pursuant to Title IV-D of the federal Social Security Act, or to the court.

(2) For support orders entered in Iowa which are being enforced by the unit, the unit may compile and make available for publication a listing of cases in which no payment has been credited to an accrued or accruing support obligation during a previous three-month period. Each case on the list shall be identified only by the name of the support obligor, the address, if known, of the support obligor, unless the information pertaining to the address of the support obligor is protected through confidentiality requirements established by law and has not otherwise been verified with the unit, the support obligor's court order docket or case number, the county in which the obligor's support order is filed, the collection services center case numbers, and the range within which the balance of the support obligor's delinquency is established. The department shall determine dates for the release of information, the specific format of the information released, and the three-month period used as a basis for identifying cases. The department may not release the information more than twice annually. In compiling the listing of cases, no prior public notice to the obligor is required, but the unit may send notice annually by mail to the current known address of any individual owing a support obligation which is being enforced by the unit. The notice shall inform the individual of the provisions of this subparagraph. Actions taken pursuant to this subparagraph are not subject to review under chapter 17A, and the lack of receipt of a notice does not prevent the unit from proceeding in implementing this subparagraph.

(3) The provisions of subparagraph (2) may be applied to support obligations entered in another state, at the request of a child support agency if the child support agency has demonstrated that the provisions of subparagraph (2) are not in conflict with the laws of the state where the support obligation is entered and the unit is enforcing the support obligation.

(4) Records relating to the administration, collection, and enforcement of surcharges pursuant to section 252B.23 which are recorded by the unit or a collection entity shall be confidential records except that information, as necessary for support collection and enforcement, may be provided to other governmental agencies, the obligor or the resident parent, or a collection entity under contract with the unit unless otherwise prohibited by the federal law. A collection entity under contract with the unit shall use information obtained for the sole purpose of fulfilling the duties required under the contract, and shall disclose any records obtained by the collection entity to the unit for use in support establishment and enforcement.

3. Notwithstanding other statutory provisions to the contrary, including but not limited to chapters 22 and 217, as the chapters relate to the confidentiality of records maintained by the department, information recorded by the department pursuant to this section or obtained by the unit is confidential and, except when prohibited by federal law or regulation, may be used or disclosed as provided in subsection 1, paragraphs *"b"* and *"h"*, and subsection 2, and as follows:

a. The attorney general may utilize the information to secure, modify, or enforce a support obligation of an individual.

b. This subsection shall not permit or require the release of information, except to the extent provided in this section.

c. The unit may release or disclose information as necessary to provide services under section 252B.5, as provided by chapter 252G, as provided by Title IV-D of the federal Social Security Act, as amended, or as required by federal law.

d. The unit may release information under section 252B.9A to meet the requirements of Title IV-D of the federal Social Security Act for parent locator services.

e. Information may be released if directly con-

nected with any of the following:

(1) The administration of the plan or program approved under Title I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI, XIX, or XX, or the supplemental security income program established under Title XVI, of the federal Social Security Act, as amended.

(2) Any investigations, prosecutions, or criminal or civil proceeding conducted in connection with the administration of any such plan or program.

(3) The administration of any other federal or federally assisted program which provides assistance in cash or in kind or provides services, directly to individuals on the basis of need.

(4) Reporting to an appropriate agency or official, information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child support enforcement action under circumstances which indicate that the child's health or welfare is threatened.

f. Information may be released to courts having jurisdiction in support proceedings. If a court issues an order, which is not entered under section 252B.9A, directing the unit to disclose confidential information, the unit may file a motion to quash pursuant to this chapter, Title IV-D of the federal Social Security Act, or other applicable law.

g. The child support recovery unit shall release information relating to an absent parent to another unit of the department pursuant to a written request for the information approved by the director or the director's designee.

h. For purposes of this subsection, *"party"* means an absent parent, obligor, resident parent, or other necessary party.

i. If the unit receives notification under this paragraph, the unit shall notify the federal parent locator service as required by federal law that there is reasonable evidence of domestic violence or child abuse against a party or a child and that the disclosure of information could be harmful to the party or the child. The notification to the federal parent locator service shall be known as notification of a disclosure risk indicator. For purposes of this paragraph, the unit shall notify the federal parent locator service of a disclosure risk indicator only if at least one of the following applies:

(1) The unit receives notification that the department, or comparable agency of another state, has made a finding of good cause or other exception as provided in section 252B.3, or comparable law of another state.

(2) The unit receives and, through automation, matches notification from the department of public safety or the unit receives notification from a court of this or another state, that a court has issued a protective order or no contact order against a party with respect to another party or child.

(3) The unit receives notification that a court has dismissed a petition for specified confidential information pursuant to section 252B.9A.

(4) The unit receives notification that a tribunal has issued an order under chapter 252K, the uniform interstate family support Act, or the comparable law of another state, that the address or other identifying information of a party or child not be disclosed.

(5) The unit receives and, through automation, matches notification from the division of child and family services of the department, or the unit receives notification from a comparable agency of another state, of a founded allegation of child abuse, or a comparable finding under the law of the other state.

(6) The unit receives notification that an individual has an exemption from cooperation with child support enforcement under a family investment program safety plan which addresses family or domestic violence.

(7) The unit receives notification, as the result of a request under section 252B.9A, of the existence of any finding, order, safety plan, or founded allegation referred to in subparagraphs (1) through (6) of this paragraph.

[C77, 79, 81, §252B.9]

89 Acts, ch 283, §31; 90 Acts, ch 1034, §1; 91 Acts, ch 177, §1; 93 Acts, ch 79, §31, 32, 57; 94 Acts, ch 1171, §16; 97 Acts, ch 175, §39, 242; 98 Acts, ch 1170, §2, 20, 23 – 26

252B.9A Disclosure of confidential information — authorized person — court.

1. A person, except a court or government agency, who is an authorized person to receive specified confidential information under 42 U.S.C. § 653, may submit a written request to the unit for disclosure of specified confidential information regarding a nonrequesting party. The written request shall comply with federal law and regulations and shall include a sworn statement attesting to the reason why the requester is an authorized person under 42 U.S.C. § 653, including that the requester would use the confidential information only for purposes permitted in that section.

2. Upon receipt of a request from an authorized person which meets all of the requirements under subsection 1, the unit shall search available records as permitted by law or shall request the information from the federal parent locator service as provided in 42 U.S.C. § 653.

a. If the unit locates the specified confidential information, the unit shall disclose the information to the extent permitted under federal law, unless one of the following applies:

(1) There is a notice from the federal parent locator service that there is reasonable evidence of domestic violence or child abuse pursuant to 42 U.S.C. § 653(b)(2).

(2) The unit has notified the federal parent locator service of a disclosure risk indicator as pro-

vided in section 252B.9, subsection 3, paragraph *"i"*, and has not removed that notification.

(3) The unit receives notice of a basis for a disclosure risk indicator listed in section 252B.9, subsection 3, paragraph *"i"*, within twenty days of sending a notice of the request to the subject of the request by regular mail.

b. If the unit locates the specified confidential information, but the unit is prohibited from disclosing confidential information under paragraph *"a"*, the unit shall deny the request and notify the requester of the denial in writing. Upon receipt of a written notice from the unit denying the request, the requester may file a petition in district court for an order directing the unit to release the requested information to the court as provided in subsection 3.

3. A person may file a petition in district court for disclosure of specified confidential information. The petition shall request that the court direct the unit to release specified confidential information to the court, that the court make a determination of harm if appropriate, and that the court release specified confidential information to the petitioner.

a. The petition shall include a sworn statement attesting to the intended use of the information by the petitioner as allowed by federal law. Such statement may specify any of the following intended uses:

(1) To establish parentage, or to establish, set the amount of, modify, or enforce a child support obligation.

(2) To make or enforce a child custody or visitation determination or order.

(3) To carry out the duty or authority of the petitioner to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

b. Upon the filing of a petition, the court shall enter an order directing the unit to release to the court within thirty days specified confidential information which the unit would be permitted to release under 42 U.S.C. § 653 and 42 U.S.C. § 663, unless one of the following applies:

(1) There is a notice from the federal parent locator service that there is reasonable evidence of domestic violence or child abuse pursuant to 42 U.S.C. § 653(b)(2).

(2) The unit has notified the federal parent locator service of a disclosure risk indicator as provided in section 252B.9, subsection 3, paragraph *"i"*, and has not removed that notification.

(3) The unit receives notice of a basis for a disclosure risk indicator listed in section 252B.9, subsection 3, paragraph *"i"*, within twenty days of sending notice of the order to the subject of the request by regular mail. The unit shall include in the notice to the subject of the request a copy of the court order issued under this paragraph.

c. Upon receipt of the order, the unit shall comply as follows:

(1) If the unit has the specified confidential information, and none of the domestic violence, child abuse, or disclosure risk indicator provisions of paragraph *"b"* applies, the unit shall file the confidential information with the court along with a statement that the unit has not received any notice that the domestic violence, child abuse, or disclosure risk indicator provisions of paragraph *"b"* apply. The unit shall be granted at least thirty days to respond to the order. The court may extend the time for the unit to comply. Upon receipt by the court of the confidential information under this subparagraph, the court may order the release of the information to the petitioner.

(2) If the unit has the specified confidential information, and the domestic violence, child abuse, or disclosure risk indicator provision of paragraph *"b"* applies, the unit shall file with the court a statement that the domestic violence, child abuse, or disclosure risk indicator provision of paragraph *"b"* applies, along with any information the unit has received related to the domestic violence, child abuse, or disclosure risk indicator. The unit shall be granted at least thirty days to respond to the order. The court may extend the time for the unit to comply. Upon receipt by the court of information from the unit under this subparagraph, the court shall make a finding whether disclosure of confidential information to any other person could be harmful to the nonrequesting party or child. In making the finding, the court shall consider any relevant information provided by the parent or child, any information provided by the unit or by a child support agency, any information provided by the petitioner, and any other relevant evidence. The unit or unit's attorney does not represent any individual person in this proceeding.

(a) If the court finds that disclosure of confidential information to any other person could be harmful to the nonrequesting party or child, the court shall dismiss the petition for disclosure and notify the unit to notify the federal parent locator service of a disclosure risk indicator.

(b) If the court does not find that disclosure of specified confidential information to any other person could be harmful to the nonrequesting party or child, the court shall notify the unit to file the specified confidential information with the court. Upon receipt by the court of the specified confidential information, the court may release the information to the petitioner and inform the unit to remove the disclosure risk indicator.

(3) If the unit does not have the specified confidential information and cannot obtain the information from the federal parent locator service, the unit shall comply with the order by notifying the court of the lack of information.

4. The confidential information which may be released by the unit to a party under subsection 2, or by the unit to the court under subsection 3, shall be limited by the federal Social Security Act and other applicable federal law, and the unit may use

the sworn statement filed pursuant to subsections 1 or 3 in applying federal law. Any information filed with the court by the unit, when certified over the signature of a designated employee, shall be considered to be satisfactorily identified and shall be admitted as evidence, without requiring third-party foundation testimony. Additional proof of the official character of the person certifying the document or the authenticity of the person's signature shall not be required.

5. When making a request for confidential information under this section, a party or petitioner shall indicate the specific information requested.

6. For purposes of this section, *"party"* means party as defined in section 252B.9, subsection 3.

7. The unit may adopt rules pursuant to chapter 17A to prescribe provisions in addition to or in lieu of the provisions of this section to comply with federal requirements for parent locator services or the safeguarding of information.

98 Acts, ch 1170, §27

252B.10 Criminal penalties.

1. Any person who willfully requests, obtains, or seeks to obtain paternity determination and support collection data available under section 252B.9 under false pretenses, or who willfully communicates or seeks to communicate such data to any agency or person except in accordance with this chapter, shall be guilty of an aggravated misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate paternity determination and support collection data except in accordance with this chapter shall be guilty of a simple misdemeanor.

2. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to paternity determination and support collection data available through or recorded under section 252B.9.

[C77, 79, 81, §252B.10]

97 Acts, ch 175, §40

252B.11 Recovery of costs of collection services.

The unit may initiate necessary civil proceedings to recover the unit's costs of support collection services provided to an individual, whether or not the individual is a public assistance recipient, from an individual who owes and is able to pay a support obligation but willfully fails to pay the obligation. The unit may seek a lump sum recovery of the unit's costs or may seek to recover the unit's costs through periodic payments which are in addition to periodic support payments. If the unit's costs are recovered from an individual owing a support obligation, the costs shall not be deducted from the amount of support money received from the individual. The costs collected pursuant to this section shall be retained by the department for use by the unit. The director or a designee shall keep an accurate record of funds so retained.

83 Acts, ch 153, §19; 92 Acts, ch 1195, §103

252B.12 Jurisdiction over nonresidents.

In an action to establish paternity or to establish or enforce a child support obligation, or to modify a support order, a nonresident person is subject to the jurisdiction of the courts of this state as specified in section 252K.201.

84 Acts, ch 1242, §1; 97 Acts, ch 175, §48

252B.13 Collection services center. Repealed by 88 Acts, ch 1218, § 14. See § 252B.13A.

252B.13A Collection services center.

1. The department shall establish within the unit a collection services center for the receipt and disbursement of support payments as defined in section 252D.16 or 598.1 as required for orders by section 252B.14. For purposes of this section, support payments do not include attorney fees, court costs, or property settlements. The center may also receive and disburse surcharges as provided in section 252B.23.

2. *a.* The collection services center shall meet the requirements for a state disbursement unit pursuant to 42 U.S.C. § 654B, section 252B.14, and this section by October 1, 1999.

b. Prior to October 1, 1999, the department and the judicial branch shall enter into a cooperative agreement for implementation of the state disbursement unit requirement. The agreement shall include, but is not limited to, provisions for all of the following:

(1) Coordination with the state case registry created in section 252B.24.

(2) The receipt and disbursement of income withholding payments for orders not receiving services from the unit pursuant to section 252B.14, subsection 4.

(3) The transmission of information, orders, and documents, and access to information.

(4) Furnishing, upon request, timely information on the current status of support payments as provided in 42 U.S.C. § 654B(b)(4), in a manner consistent with state law.

(5) The notification of payors of income to direct income withholding payments to the collection services center as provided in section 252B.14, subsection 4.

90 Acts, ch 1224, §9; 91 Acts, ch 177, §2; 93 Acts, ch 79, §39, 40; 97 Acts, ch 175, §41, 243; 98 Acts, ch 1047, §68; 98 Acts, ch 1170, §3

252B.14 Support payments — collection services center — clerk of the district court.

1. For the purposes of this section, *"support order"* includes any order entered pursuant to chapter 234, 252A, 252C, 598, 600B, or any other sup-

port chapter or proceeding which establishes support payments as defined in section 252D.16 or 598.1.

2. For support orders being enforced by the child support recovery unit, support payments made pursuant to the order shall be directed to and disbursed by the collection services center.

3. With the exception of support payments to which subsection 2 or 4 applies, support payments made pursuant to an order shall be directed to and disbursed by the clerk of the district court in the county in which the order for support is filed. The clerk of the district court may require the obligor to submit payments by bank draft or money order if the obligor submits an insufficient funds support payment to the clerk of the district court.

4. By October 1, 1999, for a support order to which subsection 2 does not apply, regardless of the terms of the support order directing or redirecting the place of payment, support payments made through income withholding by a payor of income as provided in chapter 252D shall be directed to and disbursed by the collection services center. The judicial branch and the department shall develop and implement a plan to notify payors of income of this requirement and the effective date of the requirement applicable to the respective payor of income.

5. If the collection services center is receiving and disbursing payments pursuant to a support order, but the unit is not providing other services under Title IV-D of the federal Social Security Act, or if the order is not being enforced by the unit, the parties to that order are not considered to be receiving services under this chapter.

6. Payments to persons other than the clerk of the district court or the collection services center do not satisfy the support obligations created by a support order or judgment, except as provided for in sections 598.22 and 598.22A.

86 Acts, ch 1246, §316; 87 Acts, ch 228, §31; 88 Acts, ch 1218, §2; 90 Acts, ch 1224, §10; 91 Acts, ch 177, §3; 93 Acts, ch 79, §41; 97 Acts, ch 175, §42, 43; 98 Acts, ch 1047, §68; 98 Acts, ch 1170, §4

Crediting of support payments ordered on or after July 1, 1985; §598.22A

252B.15 Processing and disbursement of support payments.

1. The collection services center shall notify the clerk of the district court of any order for which the child support recovery unit is providing enforcement services. The clerk of the district court shall forward any support payment made pursuant to the order, along with any support payment information, to the collection services center. Unless the agreement developed pursuant to section 252B.13A otherwise provides, by October 1, 1999, the clerk of the district court shall forward any support payment made and any support payment information provided through income withholding pursuant to chapter 252D, to the collection services center. The collection services center shall process and disburse the payment in accordance with federal requirements.

2. Unless otherwise provided under federal law, if it is possible to identify the support order to which a payment is to be applied and if sufficient information is provided to identify the obligee, a payment received by the collection services center or the clerk of the district court shall be disbursed to the appropriate individual or office within two working days in accordance with section 598.22.

90 Acts, ch 1224, §11; 91 Acts, ch 177, §4; 93 Acts, ch 79, §42; 98 Acts, ch 1170, §5

252B.16 Transfer of support order processing responsibilities — ongoing procedures.

1. For a support order being processed by the clerk of the district court, upon notification that the unit is providing enforcement services related to the order, the clerk of the district court shall immediately transfer the responsibility for the disbursement of support payments received pursuant to the order to the collection services center.

2. The department shall adopt rules pursuant to chapter 17A to ensure that the affected parties are notified that the support payment disbursement responsibilities have been transferred to the collection services center from the clerk of the district court. The rules shall include a provision requiring that a notice shall be sent by regular mail to the last known addresses of the obligee and the obligor. The issuance of notice to the obligor is the equivalent of a court order requiring the obligor to direct payment to the collection services center for disbursement.

3. Once the responsibility for receiving and disbursing support payments has been transferred from a clerk of the district court to the collection services center, the responsibility shall remain with the collection services center even if the child support recovery unit is no longer providing enforcement services, unless redirected by court order. However, the responsibility for receiving and disbursing income withholding payments shall not be redirected to a clerk of the district court.

86 Acts, ch 1246, §316; 88 Acts, ch 1218, §3; 90 Acts, ch 1224, §12; 91 Acts, ch 177, §5; 93 Acts, ch 79, §43; 98 Acts, ch 1170, §6

252B.17 Admissibility and identification of support payment records.

Copies of support payment records maintained by the collection services center, when certified over the signature of a designated employee of the center, shall be considered to be satisfactorily identified and shall be admitted in any proceeding as prima facie evidence of the transactions. Additional proof of the official character of the person certifying the record or the authenticity of the person's signature shall not be required. Whenever an employee of the collection services center is

served with a summons, subpoena, subpoena duces tecum, or order directing that person to produce such records, the employee may comply by transmitting a copy of the payment records certified as described above to the clerk of the district court.

86 Acts, ch 1246, §316

252B.17A Imaging or photographic copies — originals destroyed.

1. If the unit, in the regular course of business or activity, has recorded or received any memorandum, writing, entry, print, document, representation, or combination thereof, of any act, transaction, occurrence, event, or communication from any source, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, electronic imaging, electronic data processing, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original, the original may be destroyed. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original recording, copy, or reproduction is in existence and available for inspection. The introduction of a reproduced record, enlargement, or facsimile, does not preclude admission of the original.

2. The electronically imaged, copied, or otherwise reproduced record or document maintained or received by the unit, when certified over the signature of a designated employee of the unit, shall be considered to be satisfactorily identified. Certified documents are deemed to have been imaged or copied or otherwise reproduced accurately and unaltered in the regular course of business, and such documents are admissible in any judicial or administrative proceeding as evidence. Additional proof of the official character of the person certifying the record or authenticity of the person's signature shall not be required. Whenever the unit or an employee of the unit is served with a summons, subpoena, subpoena duces tecum, or order directing production of such records, the unit or employee may comply by transmitting a copy of the record certified as described above to the district court.

97 Acts, ch 175, §44

252B.18 Child support advisory committee — established — duties.

1. *a.* The department shall establish a child support advisory committee. Members shall include at least one district judge and representatives of custodial parent groups, noncustodial parent groups, the general assembly, the office of citizens' aide, the Iowa state bar association, the Iowa county attorneys association, and other constituencies which have an interest in child support enforcement issues, appointed by the respective entity.

b. The legislative members of the committee shall be appointed by the majority leader of the senate, after consultation with the president of the senate, and the minority leader of the senate, and by the speaker of the house, after consultation with the majority leader and the minority leader of the house of representatives. Members shall serve staggered terms of two years. Appointments shall comply with sections 69.16 and 69.16A. Vacancies shall be filled by the original appointing authority and in the manner of the original appointments.

c. Nonlegislative members shall receive actual expenses incurred while serving in their official capacity and may also be eligible to receive compensation as provided in section 7E.6. Legislative members shall receive compensation pursuant to section 2.12.

2. The committee shall select a chairperson, annually, from its membership. A majority of the members of the committee shall constitute a quorum.

3. The child support advisory committee shall assist the department in all of the following activities:

a. Review of existing child support guidelines and recommendations for revision.

b. Examination of the operation of the child support system to identify program improvements or enhancements which would increase the effectiveness of securing parental support and parental involvement.

c. Recommendation of legislation which would clarify and improve state law regarding support for children.

4. The committee shall receive input from the public regarding the issues identified in subsection 3. The methods by which public input may be accessed may include but are not limited to public hearings, focus groups, and surveys.

90 Acts, ch 1224, §13; 94 Acts, ch 1171, §17

252B.19 Reserved.

252B.20 Suspension of support.

1. If the unit is providing child support enforcement services pursuant to this chapter, the parents of a dependent child for whom support has been ordered pursuant to chapter 252A, 252C, 252F, 598, 600B, or any other chapter, may jointly request the assistance of the unit in suspending the obligation for support if all of the following conditions exist:

a. The parents have reconciled and are cohabiting, and the child for whom support is ordered is living in the same residence as the parents, or the child is currently residing with the parent who is

ordered to pay support.

b. The child for whom support is ordered is not receiving public assistance pursuant to chapter 239B, 249A, or a comparable law of a foreign jurisdiction, unless the person against whom support is ordered is considered to be a member of the same household as the child for the purposes of public assistance eligibility.

c. The parents have signed a notarized affidavit attesting to the conditions under paragraphs *"a"* and *"b"*, have consented to suspension of the support order, and have submitted the affidavit to the unit.

d. No prior request for suspension has been filed with the unit during the two-year period preceding the request.

e. Any other criteria established by rule of the department.

2. Upon receipt of the application for suspension and properly executed and notarized affidavit, the unit shall review the application and affidavit to determine that the necessary criteria have been met. The unit shall then do one of the following:

a. Deny the request and notify the parents in writing that the application is being denied, providing reasons for the denial and notifying the parents of the right to proceed through private counsel. Denial of the application is not subject to contested case proceedings or further review pursuant to chapter 17A.

b. Approve the request and prepare an order which shall be submitted, along with the affidavit, to a judge of a district court for approval, suspending the accruing support obligation and, if requested by the obligee, and if not prohibited by chapter 252K, satisfying the obligation of support due the obligee.

3. An order approved by the court for suspension of an accruing support obligation is effective upon the date of filing of the suspension order. The satisfaction of an obligation of support due the obligee shall be final upon the filing of the suspension order. A support obligation which is satisfied is not subject to the reinstatement provisions of this section.

4. An order suspending an accruing support obligation entered by the court pursuant to this section shall be considered a temporary order for the period of six months from the date of filing of the suspension order. However, the six-month period shall not include any time during which an application for reinstatement is pending before the court.

5. During the six-month period the unit may request that the court reinstate the accruing support order if any of the following conditions exist:

a. Upon application to the unit by either parent or other person who has physical custody of the child.

b. Upon the receipt of public assistance benefits, pursuant to chapter 239B, 249A, or a comparable law of a foreign jurisdiction, by the person entitled to receive support and the child on whose behalf support is paid, provided that the person owing the support is not considered to be a member of the same household as the child for the purposes of public assistance eligibility.

6. Upon filing of an application for reinstatement, service of the application shall be made either in person or by first class mail upon both parents. Within ten days following the date of service, the parents may file a written objection with the clerk of the district court to the entry of an order for reinstatement.

a. If no objection is filed, the court may enter an order reinstating the accruing support obligation without additional notice.

b. If an objection is filed, the clerk of court shall set the matter for hearing and send notice of the hearing to both parents and the unit.

7. The reinstatement is effective as follows:

a. For reinstatements initiated under subsection 5, paragraph *"a"*, the date the notices were served on both parents pursuant to subsection 6.

b. For reinstatements initiated under subsection 5, paragraph *"b"*, the date the child began receiving public assistance benefits during the suspension of the obligation.

c. Support which became due during the period of suspension but prior to the reinstatement is waived and not due and owing unless the parties requested and agreed to the suspension under false pretenses.

8. If the order suspending a support obligation has been on file with the court for a period exceeding six months as computed pursuant to subsection 4, the order becomes final by operation of law and terminates the support obligation, and thereafter, a party seeking to establish a support obligation against either party shall bring a new action for support as provided by law.

9. This section shall not limit the rights of the parents or the unit to proceed by other means to suspend, terminate, modify, reinstate, or establish support.

10. This section does not provide for the suspension or retroactive modification of support obligations which accrued prior to the entry of an order suspending enforcement and collection of support pursuant to this section. However, if in the application for suspension, an obligee elects to satisfy an obligation of accrued support due the obligee, the suspension order may satisfy the obligation of accrued support due the obligee.

11. Nothing in this section shall prohibit or limit the unit or a party entitled to receive support from enforcing and collecting any unpaid or unsatisfied support that accrued prior to the suspension of the accruing obligation.

93 Acts, ch 79, §24; 94 Acts, ch 1171, §18; 96 Acts, ch 1141, §4; 97 Acts, ch 41, §32; 98 Acts, ch 1170, §46, 47

252B.21 Administrative seek employment orders.

1. For any support order being enforced by the unit, the unit may enter an ex parte order requiring the obligor to seek employment if employment of the obligor cannot be verified and if the obligor has failed to make support payments. Advance notice is not required prior to entering the ex parte order. The order shall be served upon the obligor by regular mail, with proof of service completed as provided in rule of civil procedure 1.442. The unit shall file a copy of the order with the clerk of the district court.

2. The order to seek employment shall contain directives, including all of the following:

a. That the obligor seek employment within a determinate amount of time.

b. That the obligor file with the unit on a weekly basis a report of at least five new attempts to find employment or of having found employment. The report shall include the names, addresses, and the telephone numbers of any employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom an inquiry was directed.

c. That failure to comply with the notice is evidence of a willful failure to pay support under section 598.23A.

d. That the obligor shall provide the child support recovery unit with verification of any reason for noncompliance with the order.

e. The duration of the order, not to exceed three months.

3. The department may establish additional criteria or requirements relating to seek employment orders by rule as necessary to implement this section.

93 Acts, ch 79, §26; 94 Acts, ch 1171, §19

252B.22 Liens — motor vehicle registration — task force.

1. The child support recovery unit created in this chapter shall establish a task force to assist in the development and implementation of all of the following:

a. The filing of notices of liens and actions to release liens.

b. The process for delaying the renewal of a motor vehicle registration due to a support delinquency and recommendations for additional statutory changes to the general assembly.

2. Members of the task force may include, but shall not be limited to, representatives, appointed by the respective entity, of the Iowa land title association, the Iowa realtors' association, the Iowa state bar association, the Iowa county recorders' association, the Iowa clerks of court association, the Iowa county treasurers' association, the Iowa automobile dealers' association, the Iowa bankers association, the Iowa recreational vehicle dealers' association, the independent automobile dealers' association of Iowa, the Iowa mortgage bankers' association, the Iowa motorcycle association, the Iowa credit union league, department of revenue and finance, state department of transportation, the office of the secretary of state, the office of the state court administrator, and other constituency groups and agencies which have an interest in a statewide support lien index to the record liens. Appointments are not subject to sections 69.16 and 69.16A. Vacancies shall be filled by the original appointment authority and in the manner of the original appointments.

97 Acts, ch 175, §201; 2000 Acts, ch 1125, §1, 4

252B.23 Surcharge.

1. A surcharge shall be due and payable by the obligor on a support arrearage identified as difficult to collect and referred by the unit on or after January 1, 1998, to a collection entity under contract with the unit or other state entity. The amount of the surcharge shall be a percent of the amount of the support arrearage referred to the collection entity and shall be specified in the contract with the collection entity. For the purpose of this chapter, a *"collection entity"* includes but is not limited to a state agency, including the central collection unit of the department of revenue and finance, or a private collection agency. Use of a collection entity is in addition to any other legal means by which support payments may be collected. The unit shall continue to use other enforcement actions, as appropriate.

2. *a.* Notice that a surcharge may be assessed on a support arrearage referred to a collection entity pursuant to this section shall be provided to an obligor in accordance with one of the following as applicable:

(1) In the order establishing or modifying the support obligation. The unit or district court shall include notice in any new or modified support order issued on or after July 1, 1997.

(2) Through notice sent by the unit by regular mail to the last known address of the support obligor.

b. The notice shall also advise that any appropriate information may be provided to a collection entity for purposes of administering and enforcing the surcharge.

3. Arrearages submitted for referral and surcharge pursuant to this section shall meet all of the following criteria:

a. The arrearages owed shall be based on a court or administrative order which establishes the support obligation.

b. The arrearage is due for a case in which the unit is providing services pursuant to this chapter and one for which the arrearage has been identified as difficult to collect by the unit.

c. The obligor was provided notice pursuant to subsection 2 at least fifteen days prior to sending

the notice of referral pursuant to subsection 4.

4. The unit shall send notice of referral to the obligor by regular mail to the obligor's last known address, with proof of service completed according to rule of civil procedure 1.442, at least thirty days prior to the date the arrearage is referred to the collection entity. The notice shall inform the obligor of all of the following:

a. The arrearage will be referred to a collection entity.

b. Upon referral, a surcharge is due and payable by the obligor.

c. The amount of the surcharge.

d. That the obligor may avoid referral by paying the amount of the arrearage to the collection services center within twenty days of the date of notice of referral.

e. That the obligor may contest the referral by submitting a written request for review of the unit. The request shall be received by the unit within twenty days of the date of the notice of referral.

f. The right to contest the referral is limited to a mistake of fact, which includes a mistake in the identity of the obligor, a mistake as to fulfillment of the requirements for referral under this subsection, or a mistake in the amount of the arrearages.

g. The unit shall issue a written decision following a requested review.

h. Following the issuance of a written decision by the unit denying that a mistake of fact exists, the obligor may request a hearing to challenge the surcharge by sending a written request for a hearing to the office of the unit which issued the decision. The request shall be received by the office of the unit which issued the decision within ten days of the unit's written decision. The only grounds for a hearing shall be mistake of fact. Following receipt of the written request, the unit which receives the request shall certify the matter for hearing in the district court in the county in which the underlying support order is filed.

i. The address of the collection services center for payment of the arrearages.

5. If the obligor pays the amount of arrearage within twenty days of the date of the notice of referral, referral of the arrearage to a collection entity shall not be made.

6. If the obligor requests a review or court hearing pursuant to this section, referral of the arrearages shall be stayed pending the decision of the unit or the court.

7. Actions of the unit under this section shall not be subject to contested case proceedings or further review pursuant to chapter 17A and any resulting court hearing shall be an original hearing before the district court. However, the department shall establish, by rule pursuant to chapter 17A, an internal process to provide an additional review by the administrator of the child support recovery unit or the administrator's designee.

8. If an obligor does not pay the amount of the arrearage, does not contest the referral, or if following the unit's review and any court hearing the unit or court does not find a mistake of fact, the arrearages shall be referred to a collection entity. Following the review or hearing, if the unit or court finds a mistake in the amount of the arrearage, the arrearages shall be referred to the collection entity in the appropriate arrearage amount. For arrearages referred to a collection entity, the obligor shall pay a surcharge equal to a percent of the amount of the support arrearage due as of the date of the referral. The surcharge is in addition to the arrearages and any other fees or charges owed, and shall be enforced by the collection entity as provided under section 252B.5. Upon referral to the collection entity, the surcharge is an automatic judgment against the obligor.

9. The director or the director's designee may file a notice of the surcharge with the clerk of the district court in the county in which the underlying support order is filed. Upon filing, the clerk shall enter the amount of the surcharge on the lien index and judgment docket.

10. Following referral of a support arrearage to a collection entity, the surcharge shall be due and owing and enforceable by a collection entity or the unit notwithstanding satisfaction of the support obligation or whether the collection entity is enforcing a support arrearage. However, the unit may waive payment of all or a portion of the surcharge if waiver will facilitate the collection of the support arrearage.

11. All surcharge payments shall be received and disbursed by the collection services center.

12. *a.* A payment received by the collection services center which meets all the following conditions shall be allocated as specified in paragraph *"b"*:

(1) The payment is for a case in which arrearages have been referred to a collection entity.

(2) A surcharge is assessed on the arrearages.

(3) The payment is collected under the provisions of the contract with the collection entity.

b. A payment meeting all of the conditions in paragraph *"a"* shall be allocated between support and costs and fees, and the surcharge according to the following formula:

(1) The payment shall be divided by the sum of one hundred percent plus the percent specified in the contract.

(2) The quotient shall be the amount allocated to the support arrearage and other fees and costs.

(3) The difference between the dividend and the quotient shall be the amount allocated to the surcharge.

13. Any computer or software programs developed and any records used in relation to a contract with a collection entity remain the property of the department.

97 Acts, ch 175, §244

252B.24 State case registry.

1. Beginning October 1, 1998, the unit shall operate a state case registry to the extent determined by applicable time frames and other provisions of 42 U.S.C. § 654A(e) and this section. The unit and the judicial branch shall enter into a cooperative agreement for the establishment and operation of the registry by the unit. The state case registry shall include records with respect to all of the following:

a. Unless prohibited by federal law, each case for which services are provided under this chapter.

b. Each order for support, as defined in section 252D.16 or 598.1, which meets at least one of the following criteria:

(1) The support order is established or modified in this state on or after October 1, 1998.

(2) The income of the obligor is subject to income withholding under chapter 252D, including any support order for which the district court enters an ex parte order under chapter 252D on or after October 1, 1998.

2. The clerk of the district court shall provide the unit with any information, orders, or documents requested by the unit to establish or operate the state case registry, which are specified in the agreement described in subsection 1, within the time frames specified in that agreement. The agreement shall include but is not limited to provisions to provide for all of the following:

a. Provision to the unit of information, orders, and documents necessary for the unit to meet requirements described in 42 U.S.C. § 654A(e) and this section.

b. Provision to the unit of information filed with the clerk of the district court by a party under section 598.22B, and the social security number of a child filed with the clerk of the district court under section 602.6111.

c. Use of automation, as appropriate, to meet the requirements described in 42 U.S.C. § 654A(e) and this section.

3. The records of the state case registry are confidential records pursuant to chapter 22 and may only be disclosed or used as provided in section 252B.9.

98 Acts, ch 1047, §68; 98 Acts, ch 1170, §15

CHAPTER 252C

CHILD SUPPORT DEBTS — ADMINISTRATIVE PROCEDURES

252C.1 Definitions.
252C.2 Assignment — creation of support debt — subrogation.
252C.3 Notice of support debt — failure to respond — hearing — order.
252C.4 Certification to court — hearing — default.
252C.5 Filing and docketing of financial responsibility order — order effective as district court decree.
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252C.7 Employers — assignments of earnings. Repealed by 97 Acts, ch 175, §55.
252C.8 Temporary restraining order or bond.
252C.9 Prevailing orders. Repealed by 93 Acts, ch 79, §54.
252C.10 Schedule of minimum support guidelines. Repealed by 89 Acts, ch 166, §8.
252C.11 Security for payment of support — forfeiture.
252C.12 Waiver of time limitations by responsible person.

252C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the child support recovery unit of the department of human services, or the administrator's designee.

2. *"Caretaker"* means a parent, relative, guardian, or another person who is responsible for paying foster care costs pursuant to chapter 234 or whose needs are included in an assistance payment made pursuant to chapter 239B.

3. *"Court order"* means a judgment or order of a court of this state or another state requiring the payment of a set or determinable amount of monetary support. For orders entered on or after July 1, 1990, unless the court specifically orders otherwise, medical support, as defined in section 252E.1, is not included in the amount of monetary support.

4. *"Department"* means the department of human services.

5. *"Dependent child"* means a person who meets the eligibility criteria established in chapter 234 or 239B and whose support is required by chapter 234, 239B, 252A, 252F, 598, or 600B.

6. *"Medical support"* means either the provision of coverage under a health benefit plan, including a group or employment-related or an individual health benefit plan, or a health benefit plan provided pursuant to chapter 514E, to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of providing coverage under a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid.

7. *"Public assistance"* means foster care costs paid by the department pursuant to chapter 234 or assistance provided pursuant to chapter 239B.

8. *"Responsible person"* means a parent, relative, guardian, or another person legally liable for the support of a child or a child's caretaker.

84 Acts, ch 1278, §1; 90 Acts, ch 1224, §14, 15; 93 Acts, ch 79, §44; 97 Acts, ch 41, §32

252C.2 Assignment — creation of support debt — subrogation.

1. If public assistance is provided by the department to or on behalf of a dependent child or a dependent child's caretaker, there is an assignment by operation of law to the department of any and all right in, title to, and interest in any support obligation, payment, and arrearages owed to or for the child or caretaker up to the amount of public assistance paid for or on behalf of the child or caretaker. Unless otherwise specified in the order, an equal and proportionate share of any child support awarded is presumed to be payable on behalf of each child subject to the order or judgment for purposes of an assignment under this section.

2. The payment of public assistance to or for the benefit of a dependent child or a dependent child's caretaker creates a support debt due and owing to the department by the responsible person in an amount equal to the public assistance payment, except that the support debt is limited to the amount of a support obligation established by court order or by the administrator. The administrator may establish a support debt as to amounts accrued and accruing pursuant to section 598.21, subsection 4. However, when establishing a support obligation against a responsible person, no debt shall be created for the period during which the responsible person is a recipient on the person's own behalf of public assistance for the benefit of the dependent child or the dependent child's caretaker, if any of the following conditions exist:

a. The parents have reconciled and are cohabiting, and the child for whom support would otherwise be sought is living in the same residence as the parents.

b. The child is living with the parent from whom support would otherwise be sought.

3. The provision of child support collection or paternity determination services under chapter 252B to an individual, even though the individual is ineligible for public assistance, creates a support debt due and owing to the individual or the individual's child or ward by the responsible person in the amount of a support obligation established by court order or by the administrator. The administrator may establish a support debt in favor of the individual or the individual's child or ward and against the responsible person, both as to amounts accrued and accruing, pursuant to section 598.21, subsection 4.

4. The payment of medical assistance pursuant to chapter 249A for the benefit of a dependent child or a dependent child's caretaker creates a support debt due and owing to the department. The administrator may establish an order for medical support.

5. The department is subrogated to the rights of a dependent child or a dependent child's caretaker to bring a court action or to execute an administrative remedy for the collection of support. The administrator may petition an appropriate court for modification of a court order on the same grounds as a party to the court order can petition the court for modification.

84 Acts, ch 1278, §2; 89 Acts, ch 166, §4; 92 Acts, ch 1195, §401, 402; 94 Acts, ch 1171, §20; 97 Acts, ch 175, §50

252C.3 Notice of support debt — failure to respond — hearing — order.

1. The administrator may issue a notice stating the intent to secure an order for either payment of medical support established as defined in chapter 252E or payment of an accrued or accruing support debt due and owed to the department or an individual under section 252C.2, or both. The notice shall be served upon the responsible person in accordance with the rules of civil procedure. The notice shall include all of the following:

a. A statement that the support obligation will be set pursuant to the child support guidelines established pursuant to section 598.21, subsection 4, and the criteria established pursuant to section 252B.7A, and that the responsible person is required to provide medical support in accordance with chapter 252E.

b. The name of a public assistance recipient and the name of the dependent child or caretaker for whom the public assistance is paid.

c. (1) A statement that if the responsible person desires to discuss the amount of support that the responsible person should be required to pay, the responsible person may, within ten days after being served, contact the office of the child support recovery unit which sent the notice and request a negotiation conference.

(2) A statement that if a negotiation conference is requested, then the responsible person shall have ten days from the date set for the negotiation conference or thirty days from the date of service of the original notice, whichever is later,

to send a request for a hearing to the office of the child support recovery unit which issued the notice.

(3) A statement that after the holding of the negotiation conference, the administrator may issue a new notice and finding of financial responsibility for child support or medical support, or both, to be sent to the responsible person by regular mail addressed to the responsible person's last known address, or if applicable, to the last known address of the responsible person's attorney.

(4) A statement that if the administrator issues a new notice and finding of financial responsibility for child support or medical support, or both, then the responsible person shall have thirty days from the date of issuance of the new notice to send a request for a hearing to the office of the child support recovery unit which issued the notice. If the administrator does not issue a new notice and finding of financial responsibility for child support or medical support, or both, the responsible party shall have ten days from the date of issuance of the conference report to send a request for a hearing to the office of the child support recovery unit which issued the conference report.

d. A statement that if the responsible person objects to all or any part of the notice or finding of financial responsibility for child support or medical support, or both, and a negotiation conference is not requested, the responsible person shall, within thirty days of the date of service send to the office of the child support recovery unit which issued the notice a written response setting forth any objections and requesting a hearing.

e. A statement that if a timely written request for a hearing is received by the office of the child support recovery unit which issued the notice, the responsible person shall have the right to a hearing to be held in district court; and that if no timely written response is received, the administrator may enter an order in accordance with the notice and finding of financial responsibility for child support or medical support, or both.

f. A statement that, as soon as the order is entered, the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

g. A statement that the responsible person shall notify the administrator of any change of address, employment, or medical coverage as required by chapter 252E.

h. A statement that if the responsible person has any questions, the responsible person should telephone or visit an office of the child support recovery unit or consult an attorney.

i. Such other information as the administrator finds appropriate.

2. The time limitations for requesting a hearing in subsection 1 may be extended by the administrator.

3. If a timely written response setting forth objections and requesting a hearing is received by the appropriate office of the child support recovery unit, a hearing shall be held in district court.

4. If timely written response and request for hearing is not received by the appropriate office of the child support recovery unit, the administrator may enter an order in accordance with the notice, and shall specify all of the following:

a. The amount of monthly support to be paid, with directions as to the manner of payment.

b. The amount of the support debt accrued and accruing in favor of the department.

c. The name of the custodial parent or agency having custody of the dependent child and the name and birth date of the dependent child for whom support is to be paid.

d. That the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

e. The medical support required pursuant to chapter 598 and rules adopted pursuant to chapter 252E.

5. The responsible person shall be sent a copy of the order by regular mail addressed to the responsible person's last known address, or if applicable, to the last known address of the responsible person's attorney. The order is final, and action by the administrator to enforce and collect upon the order, including arrearages and medical support, or both, may be taken from the date of approval of the order by the court pursuant to section 252C.5.

84 Acts, ch 1278, §3; 90 Acts, ch 1224, §16 – 21; 92 Acts, ch 1195, §202, 203, 403; 95 Acts, ch 52, §3, 4; 97 Acts, ch 175, §51 – 53

252C.4 Certification to court — hearing — default.

1. A responsible person or the child support recovery unit may request a hearing regarding a determination of support. If a timely written request for a hearing is received, the administrator shall certify the matter to the district court as follows:

a. If the child or children reside in Iowa, and the unit is seeking an accruing obligation, in the county in which the dependent child or children reside.

b. If the child or children received public assistance in Iowa, and the unit is seeking only an accrued obligation, in the county in which the dependent child or children last received public assistance.

c. If the action is the result of a request from a foreign jurisdiction to establish support by a responsible person located in Iowa, in the county in which the responsible person resides.

2. The certification shall include true copies of the notice and finding of financial responsibility or notice of the support debt accrued and accruing, the return of service, the written objections and request for hearing, and true copies of any administrative orders previously entered.

3. The court shall set the matter for hearing and notify the parties of the time and place of hearing.

4. The court shall establish the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

5. If a party fails to appear at the hearing, upon a showing of proper notice to that party, the court shall find that party in default and enter an appropriate order.

6. Actions initiated by the administrator under this chapter are not subject to chapter 17A and resulting court hearings following certification shall be an original hearing before the district court.

7. If a responsible person contests an action initiated under this chapter by denying paternity, the following shall apply, as necessary:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or an administrative order entered pursuant to chapter 252F, or an order by the courts of this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A are applicable.

(2) If the court determines that the prior determination of paternity should not be overcome pursuant to section 600B.41A, and that the responsible person has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

b. If the prior determination of paternity is based on an administrative or court order or other means, pursuant to the laws of a foreign jurisdiction, an action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless the responsible person requests and is granted a stay of an action initiated under this chapter to establish child or medical support, the action shall proceed as otherwise provided by this chapter.

84 Acts, ch 1278, §4; 89 Acts, ch 166, §5; 89 Acts, ch 179, §1; 90 Acts, ch 1224, §22; 92 Acts, ch 1195, §204; 93 Acts, ch 78, §9; 94 Acts, ch 1171, §21, 22; 95 Acts, ch 67, §19

252C.5 Filing and docketing of financial responsibility order — order effective as district court decree.

1. A true copy of any order entered by the administrator pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the manner established pursuant to section 252C.4, subsection 1.

2. The administrator's order shall be presented, ex parte, to the district court for review and approval. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. The approved order shall have all the force, effect, and attributes of a docketed order or decree of the district court.

3. Upon filing, the clerk shall enter the order in the judgment docket.

4. If the responsible party appeals the order approved by the court under this section, and the court on appeal establishes an amount of support which is less than the amount of support established under the approved order, the court, in the order issued on appeal, shall reconcile the amounts due and shall provide that any amount which represents the unpaid difference between the amount under the approved order and the amount under the order of the court on appeal is satisfied.

84 Acts, ch 1278, §5; 89 Acts, ch 179, §2; 92 Acts, ch 1195, §504; 94 Acts, ch 1171, §23; 97 Acts, ch 175, §54

252C.6 Interest on support debts.

Interest accrues on support debts at the rate provided in section 535.3 for court judgments. The administrator may collect the accrued interest but is not required to maintain interest balance accounts. The department may waive payment of the interest if the waiver will facilitate the collection of the support debt.

84 Acts, ch 1278, §6

252C.7 Employers — assignments of earnings. Repealed by 97 Acts, ch 175, § 55. See § 252D.17.

252C.8 Temporary restraining order or bond.

If the administrator reasonably believes that the responsible person is not a resident of this state, is about to move from this state, or is concealing the responsible person's whereabouts, or that the responsible person has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection procedures to satisfy the support debt, the administrator may petition the district court for a temporary restraining order barring the removal, secretion, waste, or disposal. However, if the responsible person furnishes a bond satisfactory to the court, the temporary restraining order shall be vacated.

84 Acts, ch 1278, §8

252C.9 Prevailing orders. Repealed by 93 Acts, ch 79, § 54.

252C.10 Schedule of minimum support guidelines. Repealed by 89 Acts, ch 166, § 8. See § 598.21(4).

252C.11 Security for payment of support — forfeiture.

Upon entry of a court order or upon the failure of a person to make payments pursuant to a court order, the court may require the person to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support obligation. Upon the person's failure to pay the support obligation under the court order, the court may declare the security, bond, or other guarantee forfeited.

85 Acts, ch 100, §2

252C.12 Waiver of time limitations by responsible person.

1. A responsible person may waive the time limitations established in section 252C.3.

2. Upon receipt of a signed statement from the responsible person waiving the time limitations established in section 252C.3, the administrator may proceed to enter an order for support and the court may approve the order, whether or not the time limitations have expired.

3. If a responsible person waives the time limitations established in section 252C.3 and an order for support is entered under this chapter, the signed statement of the responsible person waiving the time limitations shall be filed with the order for support.

92 Acts, ch 1195, §205

CHAPTER 252D

SUPPORT PAYMENTS — INCOME WITHHOLDING

SUBCHAPTER I

DELINQUENT PAYMENTS

252D.1 Delinquent support payments.
252D.2 Motion to quash order of assignment. Repealed by 97 Acts, ch 175, §69.
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SUBCHAPTER I

DELINQUENT PAYMENTS

252D.1 Delinquent support payments.

If support payments ordered under chapter 232, 234, 252A, 252C, 252D, 252E, 252F, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction, as certified to the child support recovery unit established in section 252B.2, are not paid to the clerk of the district court or the collection services center pursuant to section 598.22 and become delinquent in an amount equal to the payment for one month, the child support recovery unit may enter an ex parte order or, upon application of a person entitled to receive the support payments, the district court may enter an ex parte order, notifying the person whose income is to be withheld, of the delinquent amount, of the amount of income to be withheld, and of the procedure to file a motion to quash the order for income withholding, and ordering the withholding of specified sums to be deducted from the delinquent person's income as defined in section 252D.16 sufficient to pay the support obligation and, except as provided in section 598.22, requiring the payment of such sums to the clerk of the district court or the collection services center. Beginning October 1, 1999, all income withholding payments shall be paid to the collection services center. Notification of income withholding shall be provided to the obligor and to the payor of income pursuant to section 252D.17.

84 Acts, ch 1239, §1; 85 Acts, ch 100, §3; 85 Acts, ch 178, §2; 86 Acts, ch 1191, §1; 86 Acts, ch 1245, §1421; 86 Acts, ch 1246, §317, 323; 88 Acts, ch 1218, §4; 90 Acts, ch 1224, §24; 90 Acts, ch 1253, §120; 92 Acts, ch 1195, §104; 93 Acts, ch 78, §10; 93 Acts, ch 79, §45; 97 Acts, ch 175, §56; 98 Acts, ch 1170, §7

252D.2 Motion to quash order of assignment. Repealed by 97 Acts, ch 175, § 69. See § 252D.31.

252D.3 Notice of income withholding.

All orders for support entered on or after July 1, 1984, shall notify the person ordered to pay support of the mandatory withholding of income required under section 252D.1. However, for orders for support entered before July 1, 1984, the clerk of the district court, the child support recovery unit, or the person entitled by the order to receive the support payments, shall notify each person ordered to pay support under such orders of the mandatory withholding of income required under section 252D.1. The notice shall be sent by certified mail to the person's last known address or the person shall be personally served with the notice in the manner provided for service of an original notice at least fifteen days prior to the ordering of income withholding under section 252D.1. A person ordered to pay support may waive the right to receive the notice at any time.

84 Acts, ch 1239, §3; 85 Acts, ch 100, §4; 97 Acts, ch 175, §57

252D.4 Duties of payor — liability. Repealed by 90 Acts, ch 1123, § 14. See § 252D.18.

252D.5 Other remedies. Repealed by 90 Acts, ch 1123, § 14. See § 252D.19.

252D.6 Administration of wage withholding procedures. Repealed by 90 Acts, ch 1123, § 14. See § 252D.20.

252D.7 Penalty for misrepresentation. Repealed by 90 Acts, ch 1123, § 14. See § 252D.21.

SUBCHAPTER II

IMMEDIATE INCOME WITHHOLDING

252D.8 Persons subject to immediate income withholding.

1. In a support order issued or modified on or after November 1, 1990, for which services are being provided by the child support recovery unit, and in any support orders issued or modified after January 1, 1994, for which services are not provided by the child support recovery unit, the income of a support obligor is subject to withholding, on the effective date of the order, regardless of whether support payments by the obligor are in arrears. If services are being provided pursuant to chapter 252B, the child support recovery unit may enter an ex parte order for an immediate withholding of income. The district court may enter an ex parte order for immediate income withholding for cases in which the child support recovery unit is not providing services. The income of the obligor is subject to immediate withholding unless one of the following occurs:

a. One of the parties demonstrates and the court or child support recovery unit finds there is good cause not to require immediate withholding. A finding of good cause shall be based on, at a minimum, written findings and conclusions by the court or administrative authority as to why implementing immediate withholding would not be in the best interests of the child. In cases involving modifications, the findings shall also include proof of timely payment of previously ordered support.

b. A written agreement is reached between both parties which provides for an alternative arrangement. If the support payments have been assigned to the department of human services pursuant to chapter 234 or 239B, or a comparable statute of another jurisdiction, the department shall be considered a party to the support order,

and a written agreement pursuant to this section to waive immediate withholding is void unless approved by the child support recovery unit. Any agreement existing at the time an assignment of support is made pursuant to chapter 234 or 239B or pursuant to a comparable statute of another jurisdiction shall not prevent the child support recovery unit from implementing immediate withholding.

2. For an order not requiring immediate withholding, income of an obligor is subject to immediate withholding, without regard to whether there is an arrearage, on the earliest of the following:

a. The date the obligor requests that the withholding begin.

b. The date the custodial parent or party to the proceeding requests that the withholding begin, if the request is approved by the district court or, in cases in which services are being provided pursuant to chapter 252B, if the child support recovery unit approves the request.

90 Acts, ch 1123, §1; 93 Acts, ch 78, §11; 94 Acts, ch 1171, §24; 97 Acts, ch 41, §32

252D.9 Sums subject to immediate withholding.

Specified sums shall be deducted from the obligor's income sufficient to pay the support obligation and any judgment established or delinquency accrued under the support order. The amount withheld pursuant to an income withholding order or notice of order for income withholding shall not exceed the amount specified in 15 U.S.C. § 1673(b).

90 Acts, ch 1123, §2; 92 Acts, ch 1195, §206; 97 Acts, ch 175, §58

252D.10 Notice of immediate income withholding.

The notice requirements of section 252D.3 do not apply to this subchapter. An order for support entered after November 1, 1990, shall contain the notice of immediate income withholding. However, this subchapter is sufficient notice for implementation of immediate income withholding without any further notice.

90 Acts, ch 1123, §3; 97 Acts, ch 175, §59

252D.11 Motion to quash withholding order. Repealed by 97 Acts, ch 175, § 69. See § 252D.31.

252D.12 Notice to employer or income payor. Repealed by 93 Acts, ch 78, § 47. See § 252D.17.

252D.13 Priority. Repealed by 93 Acts, ch 78, § 47. See § 252D.17.

252D.14 Modification or revocation of immediate income withholding. Repealed by 93 Acts, ch 78, § 47. See § 252D.18.

252D.15 Reserved.

SUBCHAPTER III

GENERAL PROVISIONS

252D.16 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Income"* means all of the following:

a. Any periodic form of payment due an individual, regardless of source, including but not limited to wages, salaries, commissions, bonuses, worker's compensation, disability payments, payments pursuant to a pension or retirement program, and interest.

b. A sole payment or lump sum as provided in section 252D.18C.

c. Irregular income as defined in section 252D.18B.

2. *"Payor of income"* or *"payor"* means and includes, but is not limited to, an obligor's employer, trustee, the state of Iowa and all governmental subdivisions and agencies and any other person from whom an obligor receives income.

3. *"Support"* or *"support payments"* means any amount which the court or administrative agency may require a person to pay for the benefit of a child under a temporary order or a final judgment or decree entered under chapter 232, 234, 252A, 252C, 252F, 252H, 598, 600B, or any other comparable chapter, and may include child support, maintenance, medical support as defined in chapter 252E, spousal support, and any other term used to describe these obligations. These obligations may include support for a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability. The obligations may include support for a child eighteen or more years of age with respect to whom a child support order has been issued pursuant to the laws of a foreign jurisdiction. These obligations shall not include amounts for a postsecondary education subsidy as defined in section 598.1.

97 Acts, ch 175, §60

252D.17 Notice to payor of income — duties and liability — criminal penalty.

The district court shall provide notice by sending a copy of the order for income withholding or a notice of the order for income withholding to the obligor and the obligor's payor of income by regular mail, with proof of service completed according

to rule of civil procedure 1.442. The child support recovery unit shall provide notice of the income withholding order by sending a notice of the order to the obligor's payor of income by regular mail or by electronic means. Proof of service may be completed according to rule of civil procedure 1.442. The child support recovery unit's notice of the order may be sent to the payor of income on the same date that the order is sent to the clerk of court for filing. In all other instances, the income withholding order shall be filed with the clerk of court prior to sending the notice of the order to the payor of income. In addition to the amount to be withheld for payment of support, the order or the notice of the order shall be in a standard format as prescribed by the unit and shall include all of the following information regarding the duties of the payor in implementing the withholding order:

1. The withholding order or notice of the order for income withholding for child support or child support and spousal support has priority over a garnishment or an assignment for any other purpose.

2. As reimbursement for the payor's processing costs, the payor may deduct a fee of no more than two dollars for each payment in addition to the amount withheld for support. The payor of income is not required to vary the payroll cycle to comply with the frequency of payment of a support order.

3. The amount withheld for support, including the processing fee, shall not exceed the amounts specified in 15 U.S.C. § 1673(b).

4. The income withholding order is binding on an existing or future payor of income ten days after receipt of the copy of the order or the notice of the order, and is binding whether or not the copy of the order received is file-stamped.

5. The payor shall send the amounts withheld to the collection services center or the clerk of the district court pursuant to section 252B.14 within seven business days of the date the obligor is paid. *"Business day"* means a day on which state offices are open for regular business.

6. The payor may combine amounts withheld from the obligors' income in a single payment to the clerk of the district court or to the collection services center, as appropriate. Whether combined or separate, payments shall be identified by the name of the obligor, account number, amount, and the date withheld. If payments for multiple obligors are combined, the portion of the payment attributable to each obligor shall be specifically identified.

7. The withholding is binding on the payor until further notice by the court or the child support recovery unit.

8. If the payor knowingly fails to withhold income or to pay the amounts withheld to the collection services center or the clerk of court in accordance with the provisions of the order, the notice of the order, or the notification of payors of income provisions established in section 252B.13A, the payor commits a simple misdemeanor and is liable for the accumulated amount which should have been withheld, together with costs, interest, and reasonable attorney fees related to the collection of the amounts due from the payor.

9. The payor shall promptly notify the court or the child support recovery unit when the obligor's employment or other income terminates, and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

10. Any payor who discharges an obligor, refuses to employ an obligor, or takes disciplinary action against an obligor based upon income withholding is guilty of a simple misdemeanor. A withholding order or the notice of the order for income withholding has the same force and effect as any other district court order, including, but not limited to, contempt of court proceedings for noncompliance.

11. *a.* Beginning July 1, 1997, if a payor of income does business in another state through a registered agent and receives a notice of income withholding issued by another state the payor shall, and beginning January 1, 1998, any payor of income shall withhold funds as directed in a notice issued by another state, except that a payor of income shall follow the laws of the obligor's principal place of employment when determining all of the following:

(1) The payor's fee for processing an income withholding payment.

(2) The maximum amount permitted to be withheld from the obligor's income.

(3) The time periods for implementing the income withholding order and forwarding the support payments.

(4) The priorities for withholding and allocating income withheld for multiple child support obligees.

(5) Any withholding terms or conditions not specified in the order.

b. A payor of income who complies with an income withholding notice that is regular on its face shall not be subject to any civil liability to any individual or agency for conduct in compliance with the notice.

12. The payor of income shall comply with chapter 252K when receiving a notice of income withholding from another state.

93 Acts, ch 78, §12; 95 Acts, ch 52, §5, 6; 96 Acts, ch 1141, §10, 11; 97 Acts, ch 175, §61, 70, 72; 98 Acts, ch 1170, §8; 2000 Acts, ch 1125, §2, 4

252D.17A Notice to obligor of implementation of income withholding order.

The child support recovery unit or the district court shall send a notice of the income withholding order to the obligor at the time the notice is sent

to the payor of income.

97 Acts, ch 175, §62

252D.18 Modification or termination of withholding.

1. The court or the child support recovery unit may, by ex parte order, modify a previously entered income withholding order if the court or the unit determines any of the following:

a. There has been a change in the amount of the current support obligation.

b. The amount required to be withheld under the income withholding order is in error.

c. Any past due support debt has been paid in full. Should a delinquency later accrue, the withholding order may be modified to secure payment toward the delinquency.

d. There has been a change in the rules adopted by the department pursuant to chapter 17A regarding the amount of income to be withheld to pay a delinquency.

2. The court or the child support recovery unit may, by ex parte order, terminate an income withholding order when the current support obligation has terminated and when the delinquent support obligation has been fully satisfied as applicable to all of the children covered by the income withholding order.

3. In no case shall payment of overdue support be the sole basis for termination of withholding.

90 Acts, ch 1123, §8; 91 Acts, ch 177, §6; 92 Acts, ch 1195, §106; 93 Acts, ch 78, §13; 98 Acts, ch 1170, §44

252D.18A Multiple income withholding orders — amounts withheld by payor.

When the obligor is responsible for paying more than one support obligation and the payor of income has received more than one income withholding order or notice of an order for the obligor, the payor shall withhold amounts in accordance with all of the following:

1. The total of all amounts withheld shall not exceed the amounts specified in 15 U.S.C. § 1673(b). For orders or notices issued by the child support recovery unit, the limit for the amount to be withheld shall be specified in the order or notice.

2. As reimbursement for the payor's processing costs, the payor may deduct a fee of no more than two dollars for each payment withheld in addition to the amount withheld for support.

3. Priority shall be given to the withholding of current support rather than delinquent support. The payor shall not allocate amounts withheld in a manner which results in the failure to withhold an amount for one or more of the current support obligations.

a. To arrive at the amount to be withheld for each obligee, the payor shall total the amounts due for current support under the income withholding orders and the notices of orders and determine the proportionate share for each obligee. The proportionate share shall be determined by dividing the amount due for current support for each order or notice of order by the total due for current support for all orders and notices of orders. The results are the percentages of the obligor's net income which shall be withheld for each obligee.

b. If, after completing the calculation in paragraph *"a"*, the withholding limit specified under subsection 1 has not been attained, the payor shall total the amounts due for arrearages and determine the proportionate share for each obligee. The proportionate share amounts shall be established utilizing the procedures established in paragraph *"a"* for current support obligations.

4. The payor shall identify and report payments by the obligor's name, account number, amount, and date withheld pursuant to section 252D.17. Until October 1, 1999, if payments for multiple obligees are combined, the portion of the payment attributable to each obligee shall be specifically identified. Beginning October 1, 1999, if payments for multiple obligees are combined, the portion of the payment attributable to each obligee shall be specifically identified only if the payor is directed to do so by the child support recovery unit.

93 Acts, ch 78, §14; 96 Acts, ch 1141, §12, 13; 97 Acts, ch 175, §63, 64; 98 Acts, ch 1170, §9; 2002 Acts, ch 1018, §1, 2

Subsection 1 amended

Subsection 3, paragraph b amended

252D.18B Irregular income.

When payment of income is irregular, and an order for immediate or mandatory income withholding has been entered by the child support recovery unit or the district court, the income payor shall withhold income equal to the total that would have been withheld had there been regular monthly income. The amounts withheld shall not exceed the amounts specified in 15 U.S.C. § 1673(b). For the purposes of this section, an income source is irregular when there are periods in excess of one month during which the income payor makes no payment to the obligor and the periods are not the result of termination or suspension of employment.

93 Acts, ch 78, §15

252D.18C Withholding from lump sum payments.

The child support recovery unit or the district court may enter an ex parte order for income withholding when the obligor is paid by a lump sum income source. When a sole payment is made or payment occurs at two-month or greater intervals, the withholding order may include all current and delinquent support due through the current month, but shall not exceed the amounts specified in 15 U.S.C. § 1673(b).

93 Acts, ch 78, §16

252D.19 Other remedies.

The remedies provided in this chapter do not exclude the use of other civil or criminal remedies in enforcing support obligations.

90 Acts, ch 1123, §9

252D.19A Disparity between order and pay dates — not delinquent.

1. An obligor whose support payments are automatically withheld from the obligor's paycheck shall not be delinquent or in arrears if all of the following conditions are met:

a. Any delinquency or arrearage is caused solely by a disparity between the schedules of the obligor's regular pay dates and the scheduled date the support is due.

b. The amount calculated to be withheld is such that the total amount of current support to be withheld from the paychecks of the obligor and the amount ordered to be paid in the support order are the same on an annual basis.

c. The automatic deductions for support are continuous and occurring.

2. If the unit takes an enforcement action during a calendar year against an obligor and the obligor is not delinquent or in arrears solely due to the applicability of this section to the obligor, upon discovering the circumstances, the unit shall promptly discontinue the enforcement action.

97 Acts, ch 175, §65

252D.20 Administration of income withholding procedures.

The child support recovery unit is designated as the entity of the state to administer income withholding in accordance with the procedures specified for keeping adequate records to document, track, and monitor support payments on cases subject to Title IV-D of the federal Social Security Act. Until October 1, 1999, the clerks of the district court are designated as the entities for administering income withholding on cases which are not subject to Title IV-D. Beginning October 1, 1999, the collection services center is designated as the entity for administering income withholding for cases which are not subject to Title IV-D. The collection services center's responsibilities for administering income withholding in cases not subject to Title IV-D are limited to the receipt, recording, and disbursement of income withholding payments and to responding to requests for information on the current status of support payments pursuant to section 252B.13A. Notwithstanding section 622.53, in cases where the court or the child support recovery unit is enforcing a foreign judgment through income withholding, a certified copy of the underlying judgment is sufficient proof of authenticity.

90 Acts, ch 1123, §10; 92 Acts, ch 1195, §404; 98 Acts, ch 1170, §10

252D.21 Penalty for misrepresentation.

A person who knowingly makes a false statement or representation of a material fact or knowingly fails to disclose a material fact in order to secure an income withholding order or notice of income withholding against another person and to receive support payments or additional support payments pursuant to this chapter, is guilty, upon conviction, of a serious misdemeanor.

90 Acts, ch 1123, §11; 97 Acts, ch 175, §66

252D.22 Rules.

The department shall adopt the administrative rules necessary to implement the provisions of this chapter as they pertain to the operations of the child support recovery unit.

90 Acts, ch 1123, §12

252D.23 Filing of withholding order — order effective as district court order.

An income withholding order entered by the child support recovery unit pursuant to this chapter shall be filed with the clerk of the district court. In lieu of any signature on the order which may otherwise be required by law or rule, the order shall have affixed the name and address of the appropriate child support office. For the purposes of demonstrating compliance by the payor of income, the copy of the withholding order or the notice of the order received, whether or not the copy of the order is file-stamped, shall have all the force, effect, and attributes of a docketed order of the district court including, but not limited to, availability of contempt of court proceedings against a payor of income for noncompliance. However, any information contained in the income withholding order or the notice of the order related to the amount of the accruing or accrued support obligation which does not reflect the correct amount of support due does not modify the underlying support judgment.

92 Acts, ch 1195, §207; 94 Acts, ch 1171, §25; 95 Acts, ch 52, §7; 96 Acts, ch 1141, §14; 97 Acts, ch 175, §67; 99 Acts, ch 127, §2

252D.24 Applicability to support orders of foreign jurisdictions.

1. An income withholding order may be entered to enforce a support order of a foreign jurisdiction. The foreign support order may be entered and filed with the clerk of the district court at the time the income withholding order is entered. Entry of the foreign support order under this subsection does not constitute registration of the order.

2. Notice of withholding requirements pursuant to section 252D.3 is met if comparable notice was issued in the foreign jurisdiction, was included in the support order, or was provided as a separate written notice.

3. Income withholding for a support order is-

sued by a foreign jurisdiction is governed by chapter 252K, articles 5 or 6, and this chapter, as appropriate.

93 Acts, ch 78, §17; 97 Acts, ch 175, §71

252D.25 Limitations on scope of proceedings.

1. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a motion to quash, revoke, suspend, or stay a withholding order.

2. Support orders shall not be modified under a motion to quash a withholding order.

93 Acts, ch 78, §18

252D.26 through 252D.29 Reserved.

252D.30 Ex parte order — provisions for medical support.

An ex parte order entered under this chapter may also include provisions for enforcement of medical support when medical support provisions are included in the support order. The ex parte order may require income withholding of a dollar amount for medical support or implementation of provision for dependent coverage under a health benefit plan pursuant to chapter 252E.

93 Acts, ch 78, §19

252D.31 Motion to quash.

An obligor under this chapter may move to quash an income withholding order or a notice of income withholding by filing a motion to quash with the clerk of court.

1. Grounds for contesting a withholding order under this chapter include all of the following:

a. A mistake of fact, which for purposes of this chapter means an error in the amount withheld or the amount of the withholding or the identity of the obligor.

b. For immediate withholding only, the conditions for exception to immediate income withholding as defined under section 252D.8 existed at the time of implementation of the withholding.

2. The clerk of the district court shall schedule a hearing on the motion to quash for a time not later than seven days after the filing of the motion to quash and the notice of the motion to quash. The clerk shall mail to the parties copies of the motion to quash, the notice of the motion to quash, and the order scheduling the hearing.

3. The payor shall withhold and transmit the amount specified in the order or notice of the order of income withholding to the clerk of the district court or the collection services center, as appropriate, until the notice that a motion to quash has been granted is received.

97 Acts, ch 175, §68

CHAPTER 252E

MEDICAL SUPPORT

Effective for support orders entered on or after July 1, 1990;
prior orders; §252E.16

252E.1 Definitions.
252E.2 Order for medical support.
252E.3 Health benefit coverage of obligee.
252E.4 Order to employer.
252E.5 Effect of order on employer.
252E.6 Duration of health benefit plan coverage.
252E.6A Motion to quash.
252E.7 Insurer authorization.
252E.8 Releases of information.
252E.9 Responsibilities of the obligor.
252E.10 Responsibility of the department.
252E.11 Assignment.
252E.12 Enforcement.
252E.13 Modification of support order.
252E.14 Child support.
252E.15 Rulemaking authority — compliance.
252E.16 Scope and effect.

252E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Accessible"* means any of the following, unless otherwise provided in the support order:

a. The health benefit plan does not have service area limitations or provides an option not subject to service area limitations.

b. The health benefit plan has service area limitations and the dependent lives within thirty miles or thirty minutes of a network primary care provider.

2. *"Basic coverage"* means coverage provided under a health benefit plan that at a minimum provides coverage for emergency care, inpatient and outpatient hospital care, physician services whether provided within or outside a hospital setting, and laboratory and x-ray services.

3. *"Child"* means a person for whom child or medical support may be ordered pursuant to chap-

ter 234, 239B, 252A, 252C, 252F, 252H, 252K, 598, 600B, or any other chapter of the Code or pursuant to a comparable statute of a foreign jurisdiction.

4. *"Department"* means the department of human services, which includes but is not limited to the child support recovery unit, or any comparable support enforcement agency of another state.

5. *"Dependent"* means a child, or an obligee for whom a court may order coverage by a health benefit plan pursuant to section 252E.3.

6. *"Enroll"* means to be eligible for and covered by a health benefit plan.

7. *"Health benefit plan"* means any policy or contract of insurance, indemnity, subscription or membership issued by an insurer, health service corporation, health maintenance organization, or any similar corporation, organization, or a self-insured employee benefit plan, for the purpose of covering medical expenses. These expenses may include but are not limited to hospital, surgical, major medical insurance, dental, optical, prescription drugs, office visits, or any combination of these or any other comparable health care expenses.

8. *"Insurer"* means any entity which provides a health benefit plan.

9. *"Medical support"* means either the provision of a health benefit plan, including a group or employment-related or an individual health benefit plan, or a health benefit plan provided pursuant to chapter 514E, to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid. Medical support is not alimony.

10. *"National medical support notice"* means a notice as prescribed under 42 U.S.C. § 666(a)(19) or a substantially similar notice, that is issued and forwarded by the department to enforce medical support provisions of a support order.

11. *"Obligee"* means a parent or another natural person legally entitled to receive a support payment on behalf of a child.

12. *"Obligor"* means a parent or another natural person legally responsible for the support of a dependent.

13. *"Order"* means a support order entered pursuant to chapter 234, 252A, 252C, 252F, 252H, 252K, 598, 600B, or any other support chapter, or pursuant to a comparable statute of a foreign jurisdiction, or an ex parte order entered pursuant to section 252E.4. *"Order"* also includes a notice of such an order issued by the department.

14. *"Plan administrator"* means the employer or sponsor that offers the health benefit plan or the person to whom the duty of plan administrator is delegated by the employer or sponsor offering the health benefit plan, by written agreement of the parties.

15. *"Primary care provider"* means a physician who provides primary care who is a family or general practitioner, a pediatrician, an internist, an obstetrician, or a gynecologist.

90 Acts, ch 1224, §25; 92 Acts, ch 1195, §505; 93 Acts, ch 78, §20; 93 Acts, ch 79, §46; 97 Acts, ch 41, §32; 2000 Acts, ch 1096, §1; 2002 Acts, ch 1018, §3
Section amended

252E.2 Order for medical support.

1. An order requiring the provision of coverage under a health benefit plan is authorization for enrollment of the dependent if the dependent is otherwise eligible to be enrolled. The dependent's eligibility and enrollment for coverage under such a plan shall be governed by all applicable terms and conditions, including, but not limited to, eligibility and insurability standards. The dependent, if eligible, shall be provided the same coverage as the obligor.

2. An insurer who is subject to the federal Employee Retirement Income Security Act, as codified in 29 U.S.C. § 1169, shall provide benefits in accordance with that section which meet the requirements of a qualified medical child support order. For the purposes of this subsection *"qualified medical child support order"* means and includes a medical child support order as defined in 29 U.S.C. § 1169, or a child support order which creates or recognizes the existence of a child's right to, or assigns to a child the right to, receive benefits for which a participant or child is eligible under a group health plan or a notice of such an order issued by the department, and which specifies the following:

a. The name and the last known mailing address of the participant and the name and mailing address of each child covered by the order except that, to the extent provided in the order, the name and mailing address of an official of the department may be substituted for the mailing address of the child.

b. A reasonable description of the type of coverage to be provided to each child, or the manner in which the type of coverage is to be determined.

c. The period during which the coverage applies.

3. The obligor shall take all actions necessary to enroll and maintain coverage under a health benefit plan for a dependent at the obligor's present and all future places of employment.

4. A medical support order of a foreign jurisdiction may be entered or filed with the clerk of the district court. However, entry of such a medical support order under this subsection does not constitute registration of that medical support order.

90 Acts, ch 1224, §26; 92 Acts, ch 1195, §506; 93 Acts, ch 78, §21; 94 Acts, ch 1171, §26; 97 Acts, ch 175, §73; 98 Acts, ch 1170, §32; 2000 Acts, ch 1096,

§2; 2002 Acts, ch 1018, §4
Subsection 2, unnumbered paragraph 1 amended

252E.3 Health benefit coverage of obligee.

For cases for which services are being provided pursuant to chapter 252B, the order may require an obligor providing a health benefit plan for a child to also provide a health benefit plan for the benefit of an obligee if the obligee is eligible for enrollment under the plan in which the child or the obligor is enrolled, and if the plan is available at no additional cost.

90 Acts, ch 1224, §27

252E.4 Order to employer.

1. When a support order requires an obligor to provide coverage under a health benefit plan, the district court or the department may enter an ex parte order directing an employer to take all actions necessary to enroll an obligor's dependent for coverage under a health benefit plan or may include the provisions in an ex parte income withholding order or notice of income withholding pursuant to chapter 252D. The child support recovery unit, where appropriate, shall issue a national medical support notice to an employer within two business days after the date information regarding a newly hired employee is entered into the centralized employee registry and matched with a noncustodial parent in the case being enforced by the unit. The department may amend the information in the ex parte order or may amend or terminate the national medical support notice regarding health insurance provisions if necessary to comply with health insurance requirements including but not limited to the provisions of section 252E.2, subsection 2, or to correct a mistake of fact.

2. The obligee, district court, or department may forward either the support order containing the provision for coverage under a health benefit plan or the ex parte order provided for in subsection 1 to the obligor's employer.

3. This chapter shall be constructive notice to the obligor of enforcement and further notice prior to enforcement is not required.

4. The order requiring coverage is binding on all future employers or insurers if the dependent is eligible to be enrolled in the health benefit plan under the applicable plan terms and conditions.

90 Acts, ch 1224, §28; 93 Acts, ch 78, §22; 96 Acts, ch 1141, §24; 97 Acts, ch 175, §74; 2002 Acts, ch 1018, §5
Subsection 1 amended

252E.5 Effect of order on employer.

1. When the order has been forwarded to the obligor's employer pursuant to section 252E.4, the order is binding on the employer and the employer's insurer to the extent that the dependent is eligible to be enrolled in the plan under the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer. The employer shall allow enrollment of the dependent at any time, notwithstanding any enrollment season restrictions. If a provision of this section conflicts with a provision in the national medical support notice, or in subsection 8, the provision in the notice and subsection 8 shall apply.

2. The employer shall forward a copy of the order to the insurer and request enrollment of the dependent in the health benefit plan. If the obligor fails to apply to obtain coverage for the dependent, the employer shall accept an application to enroll a dependent which has been signed by the obligee or other legal custodian of a child or by the department. Within sixty days of receipt of the order or within sixty days of receipt of application, whichever is earlier, the insurer shall determine whether the dependent is eligible for enrollment under the plan and shall notify the employer of the dependent's eligibility status. If more than one plan is offered by the employer, the dependent shall be enrolled in the health benefit plan in which the obligor is enrolled. However, if more than one plan is offered to the obligor, the plan selected shall provide coverage which is accessible to the dependent.

3. The employer shall withhold from the employee's compensation, the employee's share, if any, of premiums for the health benefit plan in an amount that does not exceed the amount specified in the national medical support notice or the amount specified in 15 U.S.C. § 1673(b) and which is consistent with federal law. The employer shall forward the amount withheld to the insurer.

4. Within thirty days of receipt of an order that requires an obligor to enroll a dependent in a health benefit plan, the obligor's employer shall provide the following information, as applicable, regarding the enrollment status of the dependent to the obligor, the obligee, or other legal custodian of the child, and the department:

a. That the dependent has been enrolled in a health benefit plan.

b. That the dependent is not eligible for enrollment and the reasons that the dependent is not eligible to be enrolled.

c. That the order has been forwarded to the insurer and a determination of eligibility for enrollment has not been made.

5. If the dependent has been enrolled in a health benefit plan, all of the following information shall be provided:

a. The name of the insurer providing the health benefit plan.

b. The dependent's effective date of coverage.

c. The health benefit plan or account number.

d. The type of health benefit plan under which the dependent has been enrolled, including whether dental, optical, office visits, and prescrip-

tion drugs are covered services. Additionally, the response shall include a brief description of the applicable deductibles, coinsurance, waiting periods for preexisting medical conditions, and other significant terms or conditions which materially affect the coverage.

6. An employer shall not revoke enrollment or eliminate coverage for a dependent unless the employer is provided with satisfactory written evidence that one of the following conditions exists:

a. A court or administrative order requiring coverage in a health benefit plan is no longer in effect.

b. The dependent is eligible for or will be enrolled in a comparable health benefit plan which will take effect no later than the effective date of revocation of enrollment in the other plan.

c. The employer has eliminated dependent health coverage for all employees.

Nothing in this section requires an employer to maintain coverage for the dependent if the premiums are no longer being paid by the obligor because the employer no longer owes compensation to the obligor or because the obligor's employment has been terminated and the obligor has not elected to continue coverage.

If an order requiring that the obligor provide coverage under a health benefit plan for the dependent has been forwarded to the obligor's employer pursuant to section 252E.4, and the obligor's employment is terminated, the employer shall provide notice to the obligee and the department within ten days of termination of the obligor's employment.

7. If an order requiring that the obligor provide coverage under a health benefit plan for the dependent has been forwarded to the obligor's employer pursuant to section 252E.4, and the employer's health benefit plan is terminated either in its entirety or with respect to the obligor's insurance classification, or the employer has changed its insurer or become self-insured, the employer shall provide notice to the obligee or other legal custodian of the child and the department ten days prior to the termination or change in insurer.

8. If the department issues a national medical support notice to an employer or plan administrator, all of the following shall apply:

a. The employer and plan administrator shall comply with the provisions in the notice.

b. The employer and the plan administrator shall treat the notice as an application by the department for health benefit plan coverage for the dependent to the extent such application is required by the health benefit plan.

c. If the obligor named in the notice is not an employee of the employer, or if a health benefit plan is not offered or available to the employee, the employer shall notify the department, as provided in the notice, within twenty business days after the date of the notice.

d. If a health benefit plan is offered or available to the employee, the employer shall send the plan administrator's portion of the notice to each appropriate plan administrator within twenty business days after the date of the notice.

e. Upon notification from the plan administrator that the dependent is enrolled, the employer shall either withhold and forward the premiums as provided in subsection 3, or shall notify the department that the enrollment cannot be completed due to limits established for withholding as provided in subsection 3.

f. If the plan administrator notifies the employer that the obligor is subject to a waiting period that expires more than ninety days from the date of receipt of the notice by the plan administrator or that the obligor is subject to a waiting period that is measured in a manner other than the passage of time, the employer shall notify the plan administrator when the obligor becomes eligible to enroll in the plan and that the notice requires enrollment in the plan of the dependent named in the notice.

g. The plan administrator shall enroll the dependent, and if necessary to enrollment of the dependent shall also enroll the obligor, in the plan selected in accordance with this paragraph. All of the following shall apply to the selection of the plan:

(1) If the obligor is enrolled in a health benefit plan that offers dependent coverage, that plan shall be selected.

(2) If the obligor is not enrolled in a plan or is not enrolled in a plan that offers dependent coverage, and if only one plan with dependent coverage is offered by the employer, that plan shall be selected.

(3) If the obligor is not enrolled in a health benefit plan or is not enrolled in a health benefit plan that offers dependent coverage, if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by the child support recovery unit, all of the following shall apply:

(a) If only one of the plans is accessible to the dependent, that plan shall be selected. If none of the plans with dependent coverage is accessible to the dependent, the unit shall amend or terminate the notice.

(b) If more than one of the plans is accessible to the dependent, the plan selected shall be the plan that provides basic coverage for which the employee's share of the premium is lowest.

(c) If more than one of the plans is accessible to the dependent but none of the accessible plans provides basic coverage, the plan selected shall be a plan that is accessible and for which the employee's share of the premium is lowest.

(d) If the employee's share of the premiums is the same under all plans described in subparagraph (b) or (c), the unit shall attempt to consult with the obligee when selecting the plan. If the obligee does not respond within ten days of the unit's

attempt, the unit shall select a plan which shall be the plan's default option, if any, or the plan with the lowest deductibles and copayment requirements.

(4) If the obligor is not enrolled in a health benefit plan or is not enrolled in a health benefit plan that offers dependent coverage, if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by the child support enforcement agency of another state, that agency shall select the plan as provided in paragraph *"h"*, subparagraph (3).

h. Within forty business days after the date of the notice, the plan administrator shall do all of the following as directed by the notice:

(1) Complete the appropriate portion of the notice and return the portion to the department.

(2) If the dependent is or is to be enrolled, notify the obligor, the obligee, and the child and furnish the obligee with necessary information. Provide the child support recovery unit with the type of health benefit plan under which the dependent has been enrolled, including whether dental, optical, office visits, and prescription drugs are covered services.

(3) If more than one health benefit plan is available to the obligor and the obligor is not enrolled, forward plan descriptions and documents to the department and enroll the dependent, and if necessary the obligor, in the plan selected by the department or in any default option if the plan administrator has not received a selection from the department within twenty business days of the date the plan administrator returned the national medical support notice response to the department.

(4) If the obligor is subject to a waiting period that expires more than ninety days from the date of receipt of the notice by the plan administrator or if the obligor has not completed a waiting period that is measured in a manner other than the passage of time, notify the employer, the department, the obligor, and the obligee. Upon satisfaction of the period or requirement, complete the enrollment.

(5) Upon completion of the enrollment, notify the employer for a determination of whether the necessary employee share of the premium is available.

(6) If the plan administrator is subject to the federal Employee Retirement Income Security Act, as codified in 29 U.S.C. § 1169, or is subject to the federal Child Support Performance and Incentive Act of 1998, Pub. L. No. 105-200, § 401, subsection (e) or (f), and the plan administrator determines the notice does not constitute a qualified medical child support order, complete and send the response to the department and notify the obligor, the obligee, and the child of the specific reason for the determination.

9. This chapter does not preclude the exchange of required information between the department and employers or insurers through electronic data transfer.

90 Acts, ch 1224, §29; 94 Acts, ch 1171, §27; 2002 Acts, ch 1018, §6, 7
Subsections 1 and 3 amended
NEW subsection 8 and former subsection 8 renumbered as 9

252E.6 Duration of health benefit plan coverage.

1. A child is eligible for medical support for the duration of the obligor's child support obligation. However, the child's eligibility for coverage under a health benefit plan shall be governed by all applicable plan provisions including, but not limited to, eligibility and insurability standards.

2. For cases for which services are being provided pursuant to chapter 252B, the department shall notify the employer when there is no longer a current order for medical support in effect for which the department is responsible. However, termination of medical support ordered pursuant to section 252E.3 shall be governed by the insurer's health benefit plan provisions for termination and by applicable federal law.

90 Acts, ch 1224, §30; 2002 Acts, ch 1018, §8
Subsection 2 amended

252E.6A Motion to quash.

1. An obligor may move to quash the order to the employer under section 252E.4 by following the same procedures and alleging a mistake of a fact as provided in section 252D.31 or as provided in subsection 2. If the unit is enforcing an income withholding order and a medical support order simultaneously, any challenge to the income withholding order and medical support enforcement shall be filed and heard simultaneously.

2. The obligor may allege as a mistake of fact an error in the availability of dependent coverage under the health benefit plan because the coverage is not accessible to the dependent. Even if the plan is not accessible as defined in section 252E.1, the court may determine that the plan is substantially accessible if the obligee demonstrates that the dependent may receive a benefit under the plan. Section 252K.316 relating to evidence and procedure shall apply to the court proceeding.

3. The employer shall comply with the requirements of this chapter until the employer receives notice that a motion to quash has been granted, or that the unit has amended or terminated the national medical support notice.

97 Acts, ch 175, §75; 2002 Acts, ch 1018, §9
Section amended

252E.7 Insurer authorization.

1. The entry of an order requiring a health benefit plan is authorization for enrollment of the dependent if the dependent is otherwise eligible to be enrolled. If the obligor fails to obtain coverage for a dependent, the insurer shall accept the signature of the obligee or other legal custodian of the child or of an employee of the department on the

application for enrollment of the dependent under the health benefit plan. If the dependent is otherwise eligible to be enrolled in the plan pursuant to the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer, the insurer shall allow enrollment of the dependent at any time, notwithstanding any enrollment season restrictions.

2. An insurer shall not deny enrollment of a child under the health benefit plan of the obligor based on any of the following:

a. The child was born out of wedlock.

b. The child is not claimed as a dependent on the obligor's federal income tax form.

c. The child does not reside with the obligor or in the insurer's service area.

3. For purposes of processing claims for payment, the insurer shall accept the signature of the obligee or other legal custodian of the child or of an employee of the department as valid authorization for purposes of processing any medical expense claims on behalf of the dependent for payment or reimbursement of medical services rendered to the dependent.

4. The insurer shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed for actions taken in implementing this section including, but not limited to, the insurer's release of any information, or the payment of any claims for services by the insurer, or the insurer's acceptance of applications for enrollment of the dependent and medical expense claims for the dependent which are signed by the obligee or an employee of the department pursuant to this section.

5. If a dependent has coverage under the health benefit plan of and through the insurer of the obligor, the insurer shall make payment directly to the obligee, the provider, or the department for claims submitted by the obligee, by the provider with the obligee's approval, or by the department.

6. Payments remitted to the obligor by the insurer for services received by the dependent shall be recoverable by the obligee or the department from the obligor if not properly paid by the obligor to the provider or the obligee.

90 Acts, ch 1224, §31; 94 Acts, ch 1171, §28

252E.8 Releases of information.

1. If an order for coverage under a health benefit plan has been forwarded pursuant to section 252E.5, the obligor's employer or insurer shall release to the obligee or other legal custodian of the child or the department, upon receiving a written request, the information necessary to complete an application, to file a claim for medical expenses of the dependent or to create a qualified medical child support order pursuant to section 252E.2, subsection 2.

2. The employer or insurer shall make available to the obligee or the department any necessary claim forms or enrollment membership cards if required to obtain services.

3. The obligor's employer and insurer shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed for any information released by such employer or insurer pursuant to this chapter.

4. The department may release to the obligor's employer or insurer or to the obligee information necessary to obtain, enforce, and collect medical support.

90 Acts, ch 1224, §32; 94 Acts, ch 1171, §29

252E.9 Responsibilities of the obligor.

1. For cases for which services are being provided pursuant to chapter 252B, an obligor who fails to maintain medical support for the benefit of the dependent as ordered shall be liable to the obligee or the department for any medical expenses incurred from the date of the court order. Proof of failure to maintain medical support constitutes a showing of increased need and provides a basis for the establishment of a monetary amount for medical support.

2. For cases for which services are being provided pursuant to chapter 252B, the obligor shall notify the obligee and the department within ten days of a change in the terms or conditions of coverage under a health benefit plan. Such changes may include, but are not limited to, a change in deductibles, coinsurance, preadmission notification requirements, coverage for dental, optical, office visits, prescription drugs, inpatient and outpatient hospitalization, and any other changes which materially affect the coverage. Costs incurred by the obligee or the department as a result of the obligor's failure to provide notification as required are recoverable from the obligor.

90 Acts, ch 1224, §33

252E.10 Responsibility of the department.

For cases for which services are being provided pursuant to chapter 252B, the department shall take steps required by federal regulations to implement and enforce an order for medical support.

90 Acts, ch 1224, §34

252E.11 Assignment.

If medical assistance is provided by the department to a dependent pursuant to chapter 249A, rights to medical support payments are assigned to the department.

90 Acts, ch 1224, §35; 93 Acts, ch 78, §23

252E.12 Enforcement.

For the purposes of enforcement pursuant to chapter 252B, medical support may be reduced to a dollar amount and may be collected through the same remedies available for the collection and en-

forcement of child support.
90 Acts, ch 1224, §36

252E.13 Modification of support order.
1. Subject to 28 U.S.C. § 1738B, when high potential for obtaining medical support exists, the obligee or the department may petition for a modification of the obligor's support order to include medical support or a monetary amount for medical support pursuant to this chapter.
2. In addition, if a support order does not provide medical support as defined in this chapter or equivalent medical support, the department or a party to the order may seek a modification of the order.
3. Subject to 28 U.S.C. § 1738B, the department may amend information concerning the provisions regarding health benefits in a court or administrative order if notice of the amendment is provided to the court and to the parties to the order and if the amendment is filed with the clerk of court.
90 Acts, ch 1224, §37; 94 Acts, ch 1171, §30; 96 Acts, ch 1141, §25; 97 Acts, ch 175, §76

252E.14 Child support.
Unless the order specifies otherwise, medical support is not included in the monetary amount of child support ordered to be paid for orders entered on or after July 1, 1990.
90 Acts, ch 1224, §38

252E.15 Rulemaking authority — compliance.
The department shall adopt rules pursuant to chapter 17A to implement this chapter for cases for which services are being provided pursuant to chapter 252B. The department shall cooperate with any agency of the state or federal government as may be necessary to qualify for federal funds in conformity with provisions of this chapter and Title IV-D of the federal Social Security Act.
90 Acts, ch 1224, §39

252E.16 Scope and effect.
1. The provisions of this chapter take effect July 1, 1990, for all support orders entered pursuant to chapter 234, 252A, 252C, 598, or 600B.
2. If an obligor was ordered to provide a health benefit plan or insurance coverage under an order entered prior to July 1, 1990, but did not comply with the order, insurers are not liable for medical expenses incurred prior to July 1, 1990. However, such an order may be implemented pursuant to the provisions of this chapter following its enactment. This chapter shall not be implemented retroactively; however, previous orders for medical support not otherwise complied with may be reduced to a dollar amount and collected from the obligor.
90 Acts, ch 1224, §40

CHAPTER 252F

ADMINISTRATIVE ESTABLISHMENT OF PATERNITY

252F.1 Definitions.
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252F.3 Notice of alleged paternity and support debt — conference — request for hearing.
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252F.1 Definitions.
As used in this chapter unless the context otherwise requires:
1. *"Administrator"* means the administrator of the child support recovery unit of the department of human services or the administrator's designee.
2. *"Mother"* means a mother of the child for whom paternity is being established.
3. *"Paternity is at issue"* means any of the following conditions:
a. A child was not born or conceived within marriage.
b. A child was born or conceived within marriage but a court has declared that the child is not the issue of the marriage.
4. *"Paternity test"* means and includes any form of blood, tissue, or genetic testing administered to determine the biological father of a child.
5. *"Putative father"* means a person alleged to be the biological father of a child.
6. *"Unit"* means the child support recovery unit created in section 252B.2.
93 Acts, ch 79, §14; 94 Acts, ch 1171, §31

252F.2 Jurisdiction.
In any case in which the unit is providing ser-

vices pursuant to chapter 252B and paternity is at issue, proceedings may be initiated by the unit pursuant to this chapter for the sole purpose of establishing paternity and any accrued or accruing child support or medical support obligations. Proceedings under this chapter are in addition to other means of establishing paternity or support. Issues in addition to establishment of paternity or support obligations shall not be addressed in proceedings initiated under this chapter.

An action to establish paternity and support under this chapter may be brought within the time limitations set forth in section 614.8.

93 Acts, ch 79, §15

252F.3 Notice of alleged paternity and support debt — conference — request for hearing.

1. The unit may prepare a notice of alleged paternity and support debt to be served on the putative father if the mother of the child provides a written statement to the unit certifying in accordance with section 622.1 that the putative father is or may be the biological father of the child or children involved. The notice shall be accompanied by a copy of the statement and served on the putative father in accordance with rule of civil procedure 1.305. Service upon the mother shall not constitute valid service upon the putative father. The notice shall include or be accompanied by all of the following:

a. The name of the recipient of services under chapter 252B and the name and birth date of the child or children involved.

b. A statement that the putative father has been named as the biological father of the child or children named.

c. A statement that if paternity is established, the amount of the putative father's monthly support obligation and the amount of the support debt accrued and accruing will be established in accordance with the guidelines established in section 598.21, subsection 4, and the criteria established pursuant to section 252B.7A.

d. A statement that if paternity is established, the putative father has a duty to provide accrued and accruing medical support to the child or children in accordance with chapter 252E.

e. A written explanation of the procedures for determining the child support obligation and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21, subsection 4.

f. (1) The right of the putative father to request a conference with the unit to discuss paternity establishment and the amount of support that the putative father may be required to pay, within ten days of the date of service of the original notice or, if paternity is contested and paternity testing is conducted, within ten days of the date the paternity test results are issued or mailed to the putative father by the unit.

(2) A statement that if a conference is requested, the putative father shall have one of the following time frames, whichever is the latest, to send a written request for a court hearing on the issue of support to the unit:

(a) Ten days from the date set for the conference.

(b) Twenty days from the date of service of the original notice.

(c) If paternity was contested and paternity testing was conducted, and the putative father does not deny paternity after the testing or challenge the paternity test results, twenty days from the date paternity test results are issued or mailed by the unit to the putative father.

(3) A statement that after the holding of the conference, the unit shall issue a new notice of alleged paternity and finding of financial responsibility for child support or medical support, or both, to be provided in person to the putative father or sent to the putative father by regular mail addressed to the putative father's last known address or, if applicable, to the last known address of the putative father's attorney.

(4) A statement that if the unit issues a new notice of alleged paternity and finding of financial responsibility for child support or medical support, or both, the putative father shall have one of the following time frames, whichever is the latest, to send a written request for a court hearing on the issue of support to the unit:

(a) Ten days from the date of issuance of the new notice.

(b) Twenty days from the date of service of the original notice.

(c) If paternity was contested and paternity testing conducted, and the putative father does not deny paternity after the testing or challenge the paternity test results, twenty days from the date the paternity test results are issued or mailed to the putative father by the unit.

g. A statement that if a conference is not requested, and the putative father does not deny paternity or challenge the results of any paternity testing conducted but objects to the finding of financial responsibility or the amount of child support or medical support, or both, the putative father shall send a written request for a court hearing on the issue of support to the unit within twenty days of the date of service of the original notice, or, if paternity was contested and paternity testing conducted, and the putative father does not deny paternity after the testing or challenge the paternity test results, within twenty days from the date the paternity test results are issued or mailed to the putative father by the unit, whichever is later.

h. A statement that if a timely written request for a hearing on the issue of support is received by the unit, the putative father shall have the right

to a hearing to be held in district court and that if no timely written request is received and paternity is not contested, the administrator shall enter an order establishing the putative father as the father of the child or children and establishing child support or medical support, or both, in accordance with the notice of alleged paternity and support debt.

i. A written explanation of the rights and responsibilities associated with the establishment of paternity.

j. A written explanation of the putative father's right to deny paternity, the procedures for denying paternity, and the consequences of the denial.

k. A statement that if the putative father contests paternity, the putative father shall have twenty days from the date of service of the original notice to submit a written denial of paternity to the unit.

l. A statement that if paternity is contested, the unit shall, at the request of the party contesting paternity or on its own initiative, enter an administrative order requiring the putative father, mother, and child or children involved, to submit to paternity testing.

m. A statement that if paternity tests are conducted, the unit shall provide a copy of the test results to the putative father in person or send a copy to the putative father by regular mail, addressed to the putative father's last known address, or, if applicable, to the last known address of the putative father's attorney.

n. A statement setting forth the time frames for contesting paternity after paternity tests are conducted.

o. Other information as the unit finds appropriate.

2. The time limitations established for the notice provisions under subsection 1 are binding unless otherwise specified in this chapter or waived pursuant to section 252F.8.

3. If notice is served on the putative father, the unit shall file a true copy of the notice and the original return of service with the appropriate clerk of the district court as follows:

a. In the county in which the child or children reside if the action is for purposes of establishing paternity and future child or medical support, or both.

b. In the county in which the child or children involved last received public assistance benefits in the state, if the action is for purposes of establishing paternity and child or medical support, or both, only for prior periods of time when the child or children received public assistance, and no ongoing child or medical support obligation is to be established by this action.

c. If the action is the result of a request from a foreign jurisdiction to establish paternity of a putative father located in Iowa, in the county in which the putative father resides.

All subsequent documents filed or court hearings held related to the action shall be in the district court in the county in which notice was filed pursuant to this subsection. The clerk shall file and docket the action.

4. A putative father or the child support recovery unit may request a court hearing regarding establishment of paternity or a determination of support, or both.

a. Upon receipt of a timely written response requesting a hearing or on its own initiative, the unit shall certify the matter for hearing in the district court in the county where the original notice of alleged paternity and support debt is filed, in accordance with section 252F.5.

b. If paternity establishment was contested and paternity tests conducted, a court hearing on the issue of paternity shall be held no earlier than thirty days from the date paternity test results are issued to all parties by the unit, unless the parties mutually agree to waive the time frame pursuant to section 252F.8.

c. Any objection to the results of paternity tests shall be filed no later than twenty days after the date paternity test results are issued or mailed to the putative father by the unit. Any objection to paternity test results filed by a party more than twenty days after the date paternity tests are issued or mailed to the putative father by the unit shall not be accepted or considered by the court.

5. If a timely written response and request for a court hearing is not received by the unit and the putative father does not deny paternity, the administrator shall enter an order in accordance with section 252F.4.

6. *a.* If a party contests the establishment of paternity, the party shall submit, within twenty days of service of the notice on the putative father under subsection 1, a written statement contesting paternity establishment to the unit. Upon receipt of a written challenge of paternity establishment, or upon initiation by the unit, the administrator shall enter ex parte administrative orders requiring the mother, child or children involved, and the putative father to submit to paternity testing. Either the mother or putative father may contest paternity under this chapter.

b. The orders shall be filed with the clerk of the district court in the county where the notice was filed and have the same force and effect as a court order for paternity testing.

c. The unit shall issue copies of the respective administrative orders for paternity testing to the mother and putative father in person, or by regular mail to the last known address of each, or if applicable, to the last known address of the attorney for each.

d. If a paternity test is ordered under this section, the administrator shall direct that inherited characteristics be analyzed and interpreted, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the re-

sults. The test shall be of a type generally acknowledged as reliable by accreditation entities designated by the secretary of the United States department of health and human services and shall be performed by a laboratory approved by an accreditation entity.

e. The party contesting paternity shall be provided one opportunity to reschedule the paternity testing appointment if the testing is rescheduled prior to the date of the originally scheduled appointment.

f. An original copy of the test results shall be filed with the clerk of the district court in the county where the notice was filed. The child support recovery unit shall issue a copy of the filed test results to the putative father and mother of the child or children in person, or by regular mail to the last known address of each, or if applicable, to the last known address of the attorney for each. However, if the action is the result of a request from a foreign jurisdiction, the unit shall issue a copy of the results to the initiating agency in that foreign jurisdiction.

g. Verified documentation of the chain of custody of the blood or genetic specimens is competent evidence to establish the chain of custody. The testimony of the appointed expert is not required. A verified expert's report of test results which indicate a statistical probability of paternity is sufficient authenticity of the expert's conclusion.

h. A verified expert's report shall be admitted as evidence to establish administrative paternity, and, if a court hearing is scheduled to resolve the issue of paternity, shall be admitted as evidence and is admissible at trial.

i. If the verified expert concludes that the test results show that the putative father is not excluded and that the probability of the putative father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the putative father is the biological father, and the evidence shall be sufficient as a basis for administrative establishment of paternity.

(1) In order to challenge the presumption of paternity, a party shall file a written notice of the challenge with the district court within twenty days from the date the paternity test results are issued or mailed to all parties by the unit. Any challenge to a presumption of paternity resulting from paternity tests, or to paternity test results filed after the lapse of the twenty-day time frame shall not be accepted or admissible by the unit or the court.

(2) A copy of the notice challenging the presumption of paternity shall be provided to any other party in person, or by mailing the notice to the last known address of each party, or if applicable, to the last known address of each party's attorney.

(3) The party challenging the presumption of paternity has the burden of proving that the putative father is not the father of the child.

(4) The presumption of paternity may be rebutted only by clear and convincing evidence.

j. If the verified expert concludes that the test results indicate that the putative father is not excluded and that the probability of the putative father's paternity is less than ninety-five percent, the administrator shall order a subsequent administrative paternity test or certify the case to the district court for resolution in accordance with the procedures and time frames specified in paragraph *"i"* and section 252F.5.

k. If the results of the test or the verified expert's analysis are timely challenged as provided in this subsection, the administrator, upon the request of a party and advance payment by the contestant or upon the unit's own initiative, shall order that an additional test be performed by the same laboratory or an independent laboratory. If the party requesting additional testing does not advance payment, the administrator shall certify the case to the district court in accordance with paragraph *"i"* and section 252F.5.

l. When a subsequent paternity test is conducted, the time frames in this chapter associated with paternity tests shall apply to the most recently completed test.

m. If the paternity test results exclude the putative father as a potential biological father of the child or children, and additional tests are not requested by either party or conducted on the unit's initiative, or if additional tests exclude the putative father as a potential biological father, the unit shall withdraw its action against the putative father and shall file a notice of the withdrawal with the clerk of the district court, and shall provide a copy of the notice to the putative father in person, or by regular mail sent to the putative father's last known address, or if applicable, the last known address of the putative father's attorney.

n. Except as provided in paragraph *"k"*, the unit shall advance the costs of genetic testing. If paternity is established and paternity testing was conducted, the unit shall enter an order or, if the action proceeded to a court hearing, request that the court enter a judgment for the costs of the paternity tests consistent with applicable federal law. In a proceeding under this chapter, a copy of a bill for genetic testing shall be admitted as evidence without requiring third-party foundation testimony and shall constitute prima facie evidence of the amount incurred for genetic testing.

93 Acts, ch 79, §16; 94 Acts, ch 1171, §32; 96 Acts, ch 1141, §5, 6; 97 Acts, ch 175, §77 – 84

252F.4 Entry of order.

1. If the putative father fails to respond to the initial notice within twenty days after the date of service of the notice or fails to appear at a conference pursuant to section 252F.3 on the scheduled date of the conference, and paternity has not been contested and the putative father fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the pu-

tative father, declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E, against the father.

2. If paternity is contested pursuant to section 252F.3, subsection 6, and the party contesting paternity fails to appear for a paternity test and fails to request a rescheduling pursuant to section 252F.3, or fails to appear for both the initial and the rescheduled paternity tests and the putative father fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the putative father declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E, against the father.

3. If the putative father appears at a conference pursuant to section 252F.3, and paternity is not contested, and the putative father fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the putative father after the second notice has been sent declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

4. If paternity was contested and paternity testing was performed and the putative father was not excluded, if the test results indicate that the probability of the putative father's paternity is ninety-five percent or greater, if the test results are not timely challenged, and if the putative father fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the putative father declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E, against the father.

5. The administrator shall establish a support obligation under this section based upon the best information available to the unit and pursuant to section 252B.7A.

6. The order shall contain all of the following:

a. A declaration of paternity.

b. The amount of monthly support to be paid, with direction as to the manner of payment.

c. The amount of accrued support.

d. The name of the custodial parent or caretaker.

e. The name and birth date of the child or children to whom the order applies.

f. A statement that property of the father is subject to income withholding, liens, garnishment, tax offset, and other collection actions.

g. The medical support required pursuant to chapter 598 and chapter 252E.

h. A statement that the father is required to inform the child support recovery unit, on a continuing basis, of the name and address of the father's current employer, whether the father has access to health insurance coverage through employment or at reasonable cost through other sources, and if so, the health insurance policy information.

i. If paternity was contested, the amount of any judgment assessed to the father for costs of paternity tests conducted pursuant to this chapter.

j. Statements as required pursuant to section 598.22B.

7. If paternity is not contested but the putative father does wish to challenge the issues of child or medical support, the administrator shall enter an order establishing paternity and reserving the issues of child or medical support for determination by the district court.

93 Acts, ch 79, §17; 94 Acts, ch 1171, §33; 97 Acts, ch 175, §85

252F.5 Certification to district court.

1. Actions initiated under this chapter are not subject to contested case proceedings or further review pursuant to chapter 17A.

2. An action under this chapter may be certified to the district court if a party timely contests paternity establishment or paternity test results, or if the putative father requests a court hearing on the issues of child or medical support, or both, or upon the initiation of the unit as provided in this chapter. Review by the district court shall be an original hearing before the court.

3. In any action brought under this chapter, the action shall not be certified to the district court in a contested paternity action unless all of the following have occurred:

a. Paternity testing has been completed.

b. The results of the paternity test have been issued to all parties.

c. A timely written objection to paternity establishment or paternity test results has been received from a party, or a timely written request for a court hearing on the issue of support has been received from the putative father by the unit, or the unit has requested a court hearing on the unit's own initiative.

4. A matter shall be certified to the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 3.

5. The court shall set the matter for hearing and notify the parties of the time of and place for hearing.

6. If the court determines that the putative father is the legal father, the court shall establish

the amount of the accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and shall establish medical support pursuant to chapter 252E.

7. If the putative father or another party contesting paternity fails to appear at the hearing, upon a showing that proper notice has been provided to the party, the court shall find the party in default and enter an appropriate order establishing paternity and support.

93 Acts, ch 79, §18; 94 Acts, ch 1171, §34; 97 Acts, ch 175, §86

252F.6 Filing with the district court.

Following issuance of an order by the administrator, the order shall be presented to an appropriate district court judge for review and approval. Unless a defect appears on the face of the order, the district court shall approve the order. Upon approval by the district court judge, the order shall be filed in the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 3. Upon filing, the order has the same force and effect as a district court order.

93 Acts, ch 79, §19

252F.7 Report to vital records.

Upon the filing of an order with the district court pursuant to this chapter, the clerk of the district court shall report the information from the order to the bureau of vital records in the manner provided in section 600B.36.

93 Acts, ch 79, §20; 2001 Acts, ch 24, §41

252F.8 Waiver of time limitations.

1. A putative father or other party may waive the time limitations established in this chapter.

2. If a party does not contest paternity or wish to request a conference or court hearing on the issue of support, upon receipt of a signed statement from the putative father and any other party that may contest establishment of paternity, waiving the time limitations, the administrator shall enter an order establishing paternity and support and the court may approve the order, notwithstanding the expiration of the period of the time limitations if paternity is established.

3. If a putative father or other party waives the time limitations and an order establishing paternity or determining support, or both, is entered under this chapter, the signed statement of the putative father and other party waiving the time limitations shall be filed with the order.

93 Acts, ch 79, §21; 94 Acts, ch 1171, §35

CHAPTER 252G

CENTRAL EMPLOYEE REGISTRY

252G.1 Definitions.
252G.2 Establishment of central employee registry.
252G.3 Employer reporting requirements — penalty.
252G.4 Alternative reporting requirements — penalty.
252G.5 Access to centralized employee registry.
252G.6 Administration and costs of the centralized employee registry.
252G.7 Data entry and transmitting centralized employee registry records to the national new hire registry.
252G.8 Income withholding requirements.

252G.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Business day"* means a day on which state offices are open for regular business.

2. *"Compensation"* means payment owed by the payor of income for:

a. Labor or services rendered by an employee or contractor to the payor of income.

b. Benefits including, but not limited to, vacation, holiday, and sick leave, and severance payments which are due an employee under an agreement with the employer or under a policy of the employer.

3. *"Contractor"* means a natural person who is eighteen years of age or older, who performs labor in this state to whom a payor of income makes payments which are not subject to withholding and for whom the payor of income is required by the internal revenue service to complete a 1099-MISC form.

4. *"Date of hire"* means either of the following:

a. The first day for which an employee is owed compensation by the payor of income.

b. The first day that a contractor performs labor or services for the payor of income.

5. *"Days"* means calendar days.

6. *"Department"* means the department of human services.

7. *"Dependent"* includes a spouse or child or

any other person who is in need of and entitled to support from a person who is declared to be legally liable for the support of that dependent.

8. *"Employee"* means a natural person who performs labor in this state and is employed by an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

9. *"Employer"* means a person doing business in this state who engages an employee for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation. *"Employer"* includes any governmental entity and any labor organization.

10. *"Labor organization"* means any organization of any kind, or any agency, or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

11. *"Natural person"* means an individual and not a corporation, government, business trust, estate, partnership, proprietorship, or other legal entity, however organized.

12. *"Payor of income"* includes both an employer and a person engaged in a trade or business in this state who engages a contractor for compensation.

13. *"Registry"* means the central employee registry created in section 252G.2.

14. *"Rehire"* means the first day for which an employee is owed compensation by the payor of income following a termination of employment lasting a minimum of six consecutive weeks. Termination of employment does not include temporary separations from employment such as unpaid medical leave, an unpaid leave of absence, or a temporary layoff.

15. *"Unit"* means the child support recovery unit created in section 252B.2.

93 Acts, ch 79, §3; 94 Acts, ch 1171, §36; 97 Acts, ch 175, §87, 88

252G.2 Establishment of central employee registry.

By January 1, 1994, the unit shall establish a centralized employee registry database for the purpose of receiving and maintaining information on newly hired or rehired employees from employers. The unit shall establish the database and the department may adopt rules in conjunction with the department of revenue and finance and the department of workforce development to identify appropriate uses of the registry and to implement this chapter, including implementation through the entering of agreements pursuant to chapter 28E.

93 Acts, ch 79, §4; 96 Acts, ch 1186, §23

252G.3 Employer reporting requirements — penalty.

1. Beginning January 1, 1994, an employer who hires or rehires an employee on or after January 1, 1994, shall report the hiring or rehiring of the employee to the centralized employee registry in accordance with one of the following time frames:

a. Within fifteen days of the hiring or rehiring of the employee.

b. If the employer is transmitting hire and rehire reports magnetically or electronically, the employer may report through transmissions which are not less than twelve nor more than sixteen days apart.

2. The report submitted shall contain all of the following:

a. The employer's name, address, and federal identification number.

b. The employee's name, address, and social security number.

c. Information regarding whether the employer has employee dependent health care coverage available and the appropriate date on which the employee may qualify for the coverage.

d. The address to which income withholding orders or the notices of orders and garnishments should be sent.

e. The employee's date of birth.

3. Employers required to report may report the information required under subsection 2 by any of the following means:

a. By mailing a copy of the employee's Iowa employee's withholding allowance certificate to the registry.

b. By submitting electronic media in a format approved by the unit in advance.

c. By submitting a fax transmission of the employee's Iowa employee's withholding allowance certificate to the registry.

d. By any other means authorized by the unit in advance if the means will result in timely reporting.

e. By submitting both of the following:

(1) For the information in subsection 2, paragraphs *"a"* and *"b"*, by transmitting by first class mail, magnetically or electronically, a federal W-4 form, or, at the option of the employer, an equivalent form.

(2) By reporting the other information required in subsection 2 by any of the means provided in paragraph *"a"*, *"b"*, *"c"*, or *"d"* of this subsection.

4. An employer with employees in two or more states that transmits reports magnetically or electronically may comply with subsection 1 by transmitting the report described in subsection 1 to each state, or by designating as the recipient state one state, in which the employer has employees,

and transmitting the report to that state. An employer that transmits reports pursuant to this subsection shall notify the United States secretary of health and human services, in writing, of the state designated by the employer for the purpose of transmitting reports.

5. If an employer fails to report as required under this section, an action may be brought against the employer by any state agency accessing or administering the registry, or by the attorney general. The action may be brought in district court in the county in which the employer has its principal place of business, or if the employer has no principal place of business, in any county in which an employee is performing labor or service for compensation, or in Polk county to determine noncompliance with this section. A willful failure to provide the information shall be punishable as contempt.

93 Acts, ch 79, §5; 94 Acts, ch 1171, §37; 96 Acts, ch 1141, §15; 97 Acts, ch 175, §89, 90; 98 Acts, ch 1170, §21

252G.4 Alternative reporting requirements — penalty.

1. Beginning January 1, 1994, a payor of income to whom section 252G.3 is inapplicable, who enters into an agreement for the performance of services with a contractor, shall report the contractor to the registry. Payors of income shall report contractors performing labor under an agreement within fifteen days of the date on which all of the following conditions are met:

a. The payor issues payment to the contractor in an amount which exceeds the amount required for the filing of a 1099-MISC report.

b. Payment to the contractor under an agreement is made in a form which is other than a lump sum payment, within a calendar year.

The payor of income is not required to file more than one report for any contractor.

2. The report submitted to the registry shall contain all of the following:

a. The name, address, and federal identification number of the payor of income.

b. The contractor's name, address, social security number, and if known, the contractor's date of birth.

3. A payor of income required to report under this section may report the information required under subsection 1 by any written means authorized by the unit which results in timely reporting.

4. Information reported under this section shall be received and maintained as provided in section 252G.2.

5. A payor of income required to report under this section who fails to report is subject to the penalty provided in section 252G.3, subsection 5.

93 Acts, ch 79, §6; 94 Acts, ch 1171, §38

252G.5 Access to centralized employee registry.

The records of the centralized employee registry are confidential records pursuant to sections 22.7 and 252B.9, and may be accessed only by state agencies as provided in this section and section 252B.9. When a state agency accesses information in the registry, the agency may use the information to update the agency's own records. Access to and use of the information contained in the registry shall be limited to the following:

1. The unit for administration of the child support enforcement program, including but not limited to activities related to establishment and enforcement of child and medical support obligations through administrative or judicial processes, and other services authorized pursuant to chapter 252B.

2. State agencies which utilize income information for the determination of eligibility or calculation of payments for benefit or entitlement payments unless prohibited under federal law.

3. State agencies which utilize income information for the recoupment of debts to the state unless prohibited under federal law.

93 Acts, ch 79, §7; 98 Acts, ch 1170, §22

252G.6 Administration and costs of the centralized employee registry.

1. The registry shall maintain the information received from employers for a minimum period of six months.

2. State agencies accessing the centralized registry shall participate in a proportionate cost sharing to defray the administrative costs of the registry. The amount of a state agency's proportionate share shall be established by rule of the department.

93 Acts, ch 79, §8

252G.7 Data entry and transmitting centralized employee registry records to the national new hire registry.

The unit shall enter new hire data into the centralized employee directory database within five business days of receipt from employers and shall transmit the records of the centralized employee registry to the national directory of new hires within three business days after the date information regarding a newly hired employee is entered into the centralized employee registry.

97 Acts, ch 175, §91

252G.8 Income withholding requirements.

Within two business days after the date information regarding a newly hired employee is entered into the centralized employee registry and matched with obligors in cases being enforced by the unit, the unit shall transmit a notice to the employer or payor of income of the employee directing

the employer or payor of income to withhold from the income of the employee in accordance with chapter 252D.

97 Acts, ch 175, §92

CHAPTER 252H

ADJUSTMENT AND MODIFICATION OF SUPPORT ORDERS

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SUBCHAPTER I

GENERAL PROVISIONS

252H.1 Purpose and intent.

This chapter is intended to provide a means for state compliance with Title IV-D of the federal Social Security Act, as amended, requiring states to provide procedures for the review and adjustment of support orders being enforced under Title IV-D of the federal Social Security Act, and also to provide an expedited modification process when review and adjustment procedures are not required, appropriate, or applicable. Actions under this chapter shall be initiated only by the child support recovery unit.

93 Acts, ch 78, §24; 97 Acts, ch 175, §93

252H.2 Definitions.

As used in this chapter, unless the context otherwise requires, *"administrator"*, *"caretaker"*, *"court order"*, *"department"*, *"dependent child"*, *"medical support"*, and *"responsible person"* mean the same as defined in section 252C.1.

As used in this chapter, unless the context otherwise requires:

1. *"Act"* means the federal Social Security Act.

2. *"Adjustment"* applies only to the child support provisions of a support order and means either of the following:

a. A change in the amount of child support based upon an application of the child support guidelines established pursuant to section 598.21, subsection 4.

b. An addition of or change to provisions for medical support as defined in section 252E.1.

3. *"Child"* means a child as defined in section 252B.1.

4. *"Child support agency"* means any state, county, or local office or entity of another state that

has the responsibility for providing child support enforcement services under Title IV-D of the Act.

5. *"Child support recovery unit"* or *"unit"* means the child support recovery unit created pursuant to section 252B.2.

6. *"Cost-of-living alteration"* means a change in an existing child support order which equals an amount which is the amount of the support obligation following application of the percentage change of the consumer price index for all urban consumers, United States city average, as published in the federal register by the federal department of labor, bureau of labor statistics.

7. *"Determination of controlling order"* means the process of identifying a child support order which must be recognized pursuant to section 252K.207 and 28 U.S.C. § 1738B, when more than one state has issued a support order for the same child and the same obligor. Registration of a foreign order is not necessary for a court or the unit to make a determination of controlling order.

8. *"Modification"* means either of the following:

a. A change, correction, or termination of an existing support order.

b. The establishment of a child or medical support obligation in a previously established order entered pursuant to chapter 234, 252A, 252C, 598, 600B, or any other support proceeding, in which such support was not previously established, or in which support was previously established and subsequently terminated prior to the emancipation of the children affected.

9. *"Parent"* means, for the purposes of requesting a review of a support order and for being entitled to notice under this chapter:

a. The individual ordered to pay support pursuant to the order.

b. An individual or entity entitled to receive current or future support payments pursuant to the order, or pursuant to a current assignment of support including but not limited to an agency of this or any other state that is currently providing public assistance benefits to the child for whom support is ordered and any child support agency. Service of notice of an action initiated under this chapter on an agency is not required, but the agency may be advised of the action by other means.

10. *"Public assistance"* means benefits received in this state or any other state, under Title IV-A (temporary assistance to needy families), IV-E (foster care), or XIX (Medicaid) of the Act.

11. *"Review"* means an objective evaluation conducted through a proceeding before a court, administrative body, or an agency, of information necessary for the application of a state's mandatory child support guidelines to determine:

a. The appropriate monetary amount of support.

b. Provisions for medical support.

12. *"State"* means *"state"* as defined in section 252K.101.

13. *"Support order"* means a *"court order"* as defined in section 252C.1 or an order establishing support entered pursuant to an administrative or quasi-judicial process if authorized by law.

93 Acts, ch 78, §25; 93 Acts, ch 79, §47; 97 Acts, ch 175, §94 – 96; 98 Acts, ch 1170, §35; 2002 Acts, ch 1018, §10

Subsection 12 amended

252H.3 Scope of the administrative adjustment or modification — role of district court in contested cases.

1. Any action initiated under this chapter, including any court hearing resulting from an action, shall be limited in scope to the adjustment or modification of the child or medical support or cost-of-living alteration of the child support provisions of a support order. A determination of a controlling order is within the scope of this chapter. If the social security disability provisions of sections 598.22 and 598.22C apply, a determination of the amount of delinquent support due is within the scope of this chapter.

2. Nonsupport issues shall not be considered by the unit or the court in any action resulting under this chapter.

3. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or further review pursuant to chapter 17A and resulting court hearings following certification shall be an original hearing before the district court.

93 Acts, ch 78, §26; 97 Acts, ch 175, §97; 98 Acts, ch 1170, §36; 2002 Acts, ch 1018, §11

Subsection 1 amended

252H.4 Role of the child support recovery unit.

1. The unit may administratively adjust or modify or may provide for an administrative cost-of-living alteration of a support order entered under chapter 234, 252A, 252C, 598, or 600B, or any other support chapter if the unit is providing enforcement services pursuant to chapter 252B. The unit is not required to intervene to administratively adjust or modify or provide for an administrative cost-of-living alteration of a support order under this chapter.

2. The unit is a party to an action initiated pursuant to this chapter.

3. The unit shall conduct a review to determine whether an adjustment is appropriate or, upon the request of a parent or upon the unit's own initiative, determine whether a modification is appropriate.

4. The unit shall adopt rules pursuant to chapter 17A to establish the process for the review of requests for adjustment, the criteria and procedures for conducting a review and determining when an adjustment is appropriate, the procedure and criteria for a cost-of-living alteration, the cri-

teria and procedure for a request for review pursuant to section 252H.18A, and other rules necessary to implement this chapter.

5. Legal representation of the unit shall be provided pursuant to section 252B.7, subsection 4.

93 Acts, ch 78, §27; 97 Acts, ch 175, §98

252H.5 Fees and cost recovery for review — adjustment — modification.

The unit shall, consistent with applicable federal law, charge the following fees for providing the services described in this chapter:

1. A parent ordered to provide support, who requests a review of a support order under subchapter II, shall file an application for services and pay an application fee pursuant to section 252B.4.

2. A parent requesting a service shall pay the fee established for that service as established under this subsection. The fees established are not applicable to a parent who as a condition of eligibility for receiving public assistance benefits has assigned the rights to child or medical support for the order to be reviewed. The following fees shall be paid for the following services:

a. A fee for conducting the review, to be paid at the time the request for review is submitted to the unit. If the request for review is denied for any reason, the fee shall be refunded to the parent making the request. Any request submitted without full payment of the fee shall be denied.

b. A fee for a second review requested pursuant to section 252H.17, to be paid at the time the request for the second review is submitted to the unit. Any request submitted without full payment of the fee shall be denied.

c. A fee for activities performed by the unit in association with a court hearing requested pursuant to section 252H.8.

d. A fee for activities performed by the unit in entering an administrative order to adjust support when neither parent requests a court hearing pursuant to section 252H.8. The fee shall be paid during the postreview waiting period under section 252H.17. If the fee is not paid in full during the postreview notice period, further action shall not be taken by the unit to adjust the order unless the parent not requesting the adjustment pays the fee in full during the postreview waiting period, or unless the children affected by the order reviewed are currently receiving public assistance benefits and the proposed adjustment would result in either an increase in the amount of support or in provisions for medical support for the children.

e. A fee for conducting a conference requested pursuant to section 252H.20.

3. A parent who requests a review of a support order pursuant to section 252H.13, shall pay any service of process fees for service or attempted service of the notice required in section 252H.15. The unit shall not proceed to conduct a review pursuant to section 252H.16 until service of process fees have been paid in full. The service of process fee requirement of this subsection is not applicable to a parent who as a condition of eligibility for public assistance benefits has assigned the rights to child or medical support for the order to be reviewed. Service of process fees charged by a person other than the unit are distinct from any other fees and recovery of costs provided for in this section.

4. The unit shall, consistent with applicable federal law, recover administrative costs in excess of any fees collected pursuant to subsections 1, 2, and 3 for providing services under this chapter and shall adopt rules providing for collection of fees for administrative costs.

5. The unit shall adopt rules pursuant to chapter 17A to establish procedures and criteria to determine the amount of any fees specified in this section and the administrative costs in excess of these fees.

93 Acts, ch 78, §28

252H.6 Collection of information.

The unit may request, obtain, and validate information concerning the financial circumstances of the parents of a child as necessary to determine the appropriate amount of support pursuant to the guidelines established in section 598.21, subsection 4, including but not limited to those sources and procedures described in sections 252B.7A and 252B.9. The collection of information does not constitute a review conducted pursuant to section 252H.16.

93 Acts, ch 78, §29; 97 Acts, ch 175, §99

252H.7 Waiver of notice periods and time limitations.

1. A parent may waive the thirty-day prereview waiting period provided for in section 252H.16.

a. Upon receipt of signed requests from both parents waiving the prereview waiting period, the unit may conduct a review of the support order prior to the expiration of the thirty-day period provided in section 252H.16.

b. If the parents jointly waive the prereview waiting period and the order under review is subsequently adjusted, the signed statements of both parents waiving the waiting period shall be filed in the court record with the order adjusting the support obligation.

2. A parent may waive the postreview waiting period provided for in section 252H.8, subsection 6, for a court hearing or in section 252H.17 for requesting of a second review.

a. Upon receipt of signed requests from both parents subject to the order reviewed, waiving the postreview waiting period, the unit may enter an administrative order adjusting the support order, if appropriate, prior to the expiration of the postreview waiting period.

b. If the parents jointly waive the postreview

waiting period and an administrative order to adjust the support order is entered, the signed statements of both parents waiving the waiting period shall be filed in the court record with the administrative order adjusting the support obligation.

3. A parent may waive the time limitations established in section 252H.8, subsection 2, for requesting a court hearing, or in section 252H.20 for requesting a conference.

a. Upon receipt of signed requests from both parents who are subject to the order to be modified, waiving the time limitations, the unit may proceed to enter an administrative modification order.

b. If the parents jointly waive the time limitations and an administrative modification order is entered under this chapter, the signed statements of both parents waiving the time limitations shall be filed in the court record with the administrative modification order.

93 Acts, ch 78, §30

252H.8 Certification to court — hearing — default.

1. For actions initiated under subchapter II, either parent or the unit may request a court hearing within thirty days from the date of issuance of the notice of decision under section 252H.16, or within ten days of the date of issuance of the second notice of decision under section 252H.17, whichever is later.

2. For actions initiated under subchapter III, either parent or the unit may request a court hearing within the latest of any of the following time periods:

a. Twenty days from the date of successful service of the notice of intent to modify required under section 252H.19.

b. Ten days from the date scheduled for a conference to discuss the modification action.

c. Ten days from the date of issuance of a second notice of a proposed modification action.

3. The time limitations for requesting a court hearing under this section may be extended by the unit.

4. If a timely written request for a hearing is received by the unit, a hearing shall be held in district court, and the unit shall certify the matter to the district court in the county in which the order subject to adjustment or modification is filed. The certification shall include the following, as applicable:

a. Copies of the notice of intent to review or notice of intent to modify.

b. The return of service, acceptance of service, or signed statement by the parent requesting review and adjustment waiving service of the notice.

c. Copies of the notice of decision and any revised notice as provided in section 252H.16.

d. Copies of any written objections to and request for a second review or conference or hearing.

e. Copies of any second notice of decision issued pursuant to section 252H.17, or second notice of proposed modification action issued pursuant to section 252H.20.

f. Copies of any financial statements and supporting documentation provided by the parents including proof of a substantial change in circumstances for a request filed pursuant to section 252H.18A.

g. Copies of any computation worksheet prepared by the unit to determine the amount of support calculated using the mandatory child support guidelines established under section 598.21, subsection 4, and, if appropriate and the social security disability provisions of sections 598.22 and 598.22C apply, a determination of the amount of delinquent support due.

h. A certified copy of each order, issued by another state, considered in determining the controlling order.

5. The court shall set the matter for hearing and notify the parties of the time and place of the hearing.

6. For actions initiated under subchapter II, a hearing shall not be held for at least thirty-one days following the date of issuance of the notice of decision unless the parents have jointly waived, in writing, the thirty-day postreview period.

7. Pursuant to section 252H.3, the district court shall review the matter as an original hearing before the court.

8. Issues subject to review by the court in any hearing resulting from an action initiated under this chapter shall be limited to the issues identified in section 252H.3.

9. Notwithstanding any other law to the contrary, if more than one support order exists involving children with the same legally established parents, one hearing on all of the affected support orders shall be held in the district court in the county where the unit files the action. For the purposes of this subsection, the district court hearing the matter shall have jurisdiction over all other support orders entered by a court of this state and affected under this subsection.

10. The court shall establish the amount of child support pursuant to section 598.21, subsection 4, or medical support pursuant to chapter 252E, or both.

11. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the court may find the party in default and enter an appropriate order.

93 Acts, ch 78, §31; 96 Acts, ch 1141, §1, 2; 97 Acts, ch 175, §100; 98 Acts, ch 1170, §37; 2002 Acts, ch 1018, §12

Subsection 4, paragraph g amended

252H.9 Filing and docketing of administrative adjustment or modification order — order effective as district court order.

1. If timely request for a court hearing is not

made pursuant to section 252H.8, the unit shall prepare and present an administrative order for adjustment or modification, as applicable, for review and approval, ex parte, to the district court where the order to be adjusted or modified is filed.

2. For orders to which subchapter II or III is applicable, the unit shall determine the appropriate amount of the child support obligation using the current child support guidelines established pursuant to section 598.21, subsection 4, and the criteria established pursuant to section 252B.7A and shall determine the provisions for medical support pursuant to chapter 252E.

3. The administrative order prepared by the unit shall specify all of the following:

a. The amount of support to be paid and the manner of payment.

b. The name of the custodian of any child for whom support is to be paid.

c. The name of the parent ordered to pay support.

d. The name and birth date of any child for whom support is to be paid.

e. That the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and other methods of execution.

f. Provisions for medical support.

g. If applicable, the order determined to be the controlling order.

h. If applicable, the amount of delinquent support due based upon the receipt of social security disability payments as provided in sections 598.22 and 598.22C.

4. Supporting documents as described in section 252H.8, subsection 4, may be presented to the court with the administrative order, as applicable.

5. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. Upon filing, the approved order shall have the same force, effect, and attributes of an order of the district court.

6. Upon filing, the clerk of the district court shall enter the order in the judgment docket and judgment lien index.

7. A copy of the order shall be sent by regular mail within fourteen days after filing to each parent's last known address, or if applicable, to the last known address of the parent's attorney.

8. The order is final, and action by the unit to enforce and collect upon the order, including arrearages and medical support, or both, may be taken from the date of the entry of the order by the district court.

93 Acts, ch 78, §32; 97 Acts, ch 175, §101; 98 Acts, ch 1170, §38; 2002 Acts, ch 1018, §13

Subsection 3, NEW paragraph h

252H.10 Effective date of adjustment — modification.

Pursuant to section 598.21, subsection 8, any administrative or court order resulting from an action initiated under this chapter may be made retroactive only to the date that all parties were successfully served the notice required under section 252H.15 or section 252H.19, as applicable.

The periodic due date established under a prior order for payment of child support shall not be changed in any order modified as a result of an action initiated under this chapter, unless the child support recovery unit or the court determines that good cause exists to change the periodic due date. If the unit or the court determines that good cause exists, the unit or the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

93 Acts, ch 78, §33; 95 Acts, ch 115, §10

252H.11 Concurrent actions.

This chapter does not prohibit or affect the ability or right of a parent or the parent's attorney to file a modification action at the parent's own initiative. If a modification action is filed by a parent concerning an order for which an action has been initiated but has not yet been completed by the unit under this chapter, the unit shall terminate any action initiated under this chapter, subject to the following:

1. The modification action filed by the parent must address the same issues as the action initiated under this chapter.

2. If the modification action filed by the parent is subsequently dismissed before being heard by the court, the unit shall continue the action previously initiated under subchapter II or III, or initiate a new action as follows:

a. If the unit previously initiated an action under subchapter II, and had not issued a notice of decision as required under section 252H.16, the unit shall proceed as follows:

(1) If notice of intent to review was served ninety days or less prior to the date the modification action filed by the parent is dismissed, the unit shall complete the review and issue the notice of decision.

(2) If the modification action filed by the parent is dismissed more than ninety days after the original notice of intent to review was served, the unit shall serve or issue a new notice of intent to review and conduct the review.

b. If the unit previously initiated an action under subchapter II and had issued the notice of decision as required under section 252H.16, the unit shall proceed as follows:

(1) If the notice of decision was issued ninety days or less prior to the date the modification action filed by the parent is dismissed, the unit shall request, obtain, and verify any new or different information concerning the financial circumstances of the parents and issue a revised notice of decision to each parent, or if applicable, to the parent's attorney.

(2) If the modification action filed by the parent is dismissed more than ninety days after the date of issuance of the notice of decision, the unit shall serve or issue a new notice of intent to review pursuant to section 252H.15 and conduct a review pursuant to section 252H.16.

c. If the unit previously initiated an action under subchapter III, the unit shall proceed as follows:

(1) If the modification action filed by the parent is dismissed more than ninety days after the original notice of intent to modify was served, the unit shall serve a new notice of intent to modify pursuant to section 252H.19.

(2) If the modification action filed by the parent is dismissed ninety days or less after the original notice of intent to modify was served, the unit shall complete the original modification action initiated by the unit under this subchapter.

(3) Each parent shall be allowed at least twenty days from the date the administrative modification action is reinstated to request a court hearing as provided for in section 252H.8.

3. If an action initiated under this chapter is terminated as the result of a concurrent modification action filed by one of the parents or the parent's attorney, the unit shall advise each parent, or if applicable, the parent's attorney, in writing, that the action has been terminated and the provisions of subsection 2 of this section for continuing or initiating a new action under this chapter. The notice shall be issued by regular mail to the last known mailing address of each parent, or if applicable, each parent's attorney.

4. If an action initiated under this chapter by the unit is terminated as the result of a concurrent action filed by one of the parents and is subsequently reinstated because the modification action filed by the parent is dismissed, the unit shall advise each parent, or if applicable, each parent's attorney, in writing, that the unit is continuing the prior administrative adjustment or modification action. The notice shall be issued by regular mail to the last known mailing address of each parent, or if applicable, each parent's attorney.

93 Acts, ch 78, §34; 97 Acts, ch 175, §102

SUBCHAPTER II

REVIEW AND ADJUSTMENT

252H.12 Support orders subject to review and adjustment.

A support order meeting all of the following conditions is eligible for review and adjustment under this subchapter:

1. The support order is subject to the jurisdiction of this state for the purposes of adjustment.

2. The support order provides for the ongoing support of at least one child under the age of eighteen or a child between the ages of eighteen and nineteen who has not yet graduated from high school but who is reasonably expected to graduate from high school before attaining the age of nineteen.

3. The ongoing support for at least one child described in subsection 2 continues, under the terms of the order, beyond October 13, 1993.

4. The unit is providing enforcement services for the ongoing support obligation pursuant to chapter 252B.

93 Acts, ch 78, §35

252H.13 Right to request review.

A parent shall have the right to request the review of a support order for which the unit is currently providing enforcement services of an ongoing child support obligation pursuant to chapter 252B including by objecting to a cost-of-living alteration pursuant to section 252H.24, subsections 1 and 2.

93 Acts, ch 78, §36; 97 Acts, ch 175, §103

252H.14 Reviews initiated by the child support recovery unit.

1. The unit may periodically initiate a review of support orders meeting the conditions in section 252H.12 in accordance with the following:

a. The right to any ongoing child support obligation is currently assigned to the state due to the receipt of public assistance.

b. The right to any ongoing medical support obligation is currently assigned to the state due to the receipt of public assistance unless:

(1) The support order already includes provisions requiring the parent ordered to pay child support to also provide medical support.

(2) The parent entitled to receive support has satisfactory health insurance coverage for the children, excluding coverage resulting from the receipt of public assistance benefits.

c. The review is otherwise necessary to comply with the Act.

2. The unit may periodically initiate a request to a child support agency of another state to con-

duct a review of a support order entered in that state when the right to any ongoing child or medical support obligation due under the order is currently assigned to the state of Iowa.

3. The unit shall adopt rules establishing criteria to determine the appropriateness of initiating a review.

4. The unit shall initiate reviews under this section in accordance with the Act.

93 Acts, ch 78, §37; 97 Acts, ch 175, §104

252H.15 Notice of intent to review and adjust.

1. Prior to conducting a review of a support order, the unit shall issue a notice of intent to review and adjust to each parent, or if applicable, to each parent's attorney. However, notice to a child support agency or an agency entitled to receive child or medical support payments as the result of an assignment of support rights is not required.

2. Notice shall be served upon each parent in accordance with the rules of civil procedure, except that a parent requesting a review pursuant to section 252H.13 may waive the right to personal service of the notice in writing and accept service by regular mail. If the service by regular mail does not occur within ninety days of the written waiver of personal service, personal service of the notice is required unless a new waiver of personal service is obtained.

3. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. The legal basis and purpose of the action.

b. Information sufficient to identify the affected parties and the support order or orders affected.

c. An explanation of the procedures for determining child support and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21, subsection 4.

d. An explanation of the legal rights and responsibilities of the affected parties, including the time frames in which the parties must act.

e. Criteria for determining appropriateness of an adjustment and a statement that the unit will use the child support guidelines established pursuant to section 598.21, subsection 4, and the provisions for medical support pursuant to chapter 252E to adjust the order.

f. Procedures for contesting the action.

g. An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

h. Other information as appropriate.

93 Acts, ch 78, §38

252H.16 Conducting the review — notice of decision.

1. The unit shall conduct the review and determine whether an adjustment is appropriate. As necessary, the unit shall make a determination of the controlling order or the amount of delinquent support due based upon the receipt of social security disability payments as provided in sections 598.22 and 598.22C.

2. Unless both parents have waived the prereview notice period as provided for in section 252H.7, the review shall not be conducted for at least thirty days from the date both parents were successfully served with the notice required in section 252H.15.

3. Upon completion of the review, the unit shall issue a notice of decision by regular mail to the last known address of each parent, or if applicable, each parent's attorney.

4. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. Information sufficient to identify the affected parties and the support order or orders affected.

b. A statement indicating whether the unit finds that an adjustment is appropriate and the basis for the determination.

c. Other information, as appropriate.

5. A revised notice of decision shall be issued when the unit receives or becomes aware of new or different information affecting the results of the review after the notice of decision has been issued and before the entry of an administrative order adjusting the support order, when new or different information is not received in conjunction with a request for a second review, or subsequent to a request for a court hearing. If a revised notice of decision is issued, the time frames for requesting a second review or court hearing shall apply from the date of issuance of the revised notice.

93 Acts, ch 78, §39; 98 Acts, ch 1170, §39; 2002 Acts, ch 1018, §14

Subsection 1 amended

252H.17 Challenging the notice of decision — second review — notice.

1. Each parent shall have the right to challenge the notice of decision issued under section 252H.16, by requesting a second review by the unit.

2. A challenge shall be submitted, in writing, to the local child support office that issued the notice of decision, within ten days of the issuance of the notice.

3. A parent challenging the notice of decision shall submit any new or different information, not previously considered by the unit in conducting the review, with the challenge and request for second review.

4. A parent challenging the notice of decision shall submit any required fees with the challenge. Any request submitted without full payment of the required fee shall be denied.

5. If a timely challenge along with any neces-

sary fee is received, the unit shall issue by regular mail to the last known address of each parent, or if applicable, to each parent's attorney, a notice that a second review will be conducted. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. A statement of purpose of the second review.

b. Information sufficient to identify the affected parties and the support order or orders affected.

c. A statement of the information that is eligible for consideration at the second review.

d. The procedures and time frames in conducting and completing a second review, including a statement that only one second review shall be conducted as the result of a challenge received from either or both parents.

e. An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

f. Other information, as appropriate.

6. The unit shall conduct a second review, utilizing any new or additional information provided or available since issuance of the notice of decision under section 252H.16, to determine whether an adjustment is appropriate.

7. Upon completion of the review, the unit shall issue a second notice of decision by regular mail to the last known address of each parent, or if applicable, to each parent's attorney. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. Information sufficient to identify the affected parties and the support order or orders affected.

b. The unit's finding resulting from the second review indicating whether the unit finds that an adjustment is appropriate, the basis for the determination, and the impact on the first review.

c. An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

d. Other information, as appropriate.

8. If the determination resulting from the first review is revised or reversed by the second review, the following shall be issued to each parent along with the second notice of decision and the amount of any proposed adjustment:

a. Any updated or revised financial statements provided by either parent.

b. A computation prepared by the local child support office issuing the notice, demonstrating how the amount of support due under the child support guidelines was calculated, and a comparison of the newly computed amount with the current support obligation amount.

93 Acts, ch 78, §40; 96 Acts, ch 1141, §3

SUBCHAPTER III

ADMINISTRATIVE MODIFICATION

252H.18 Orders subject to administrative modification.

An order meeting all of the following conditions is eligible for administrative modification under this subchapter.

1. The order is subject to the jurisdiction of this state for the purposes of modification.

2. The unit is providing services pursuant to chapter 252B.

3. The child was conceived or born during a marriage or paternity has been legally established.

4. Review and adjustment services pursuant to subchapter II are not required or are not applicable.

93 Acts, ch 78, §41

252H.18A Request for review outside applicable time frames.

1. If a support order is not eligible for review and adjustment because the support order is outside of the minimum time frames specified by rule of the department, a parent may request a review and administrative modification by submitting all of the following to the unit:

a. A request for review of the support order which is outside of the applicable time frames.

b. Verified documentation of a substantial change in circumstances as specified by rule of the department.

2. Upon receipt of the request and all documentation required in subsection 1, the unit shall review the request and documentation and if appropriate shall issue a notice of intent to modify as provided in section 252H.19.

3. Notwithstanding section 598.21, subsections 8 and 9, for purposes of this section, a substantial change in circumstances means there has been a change of fifty percent or more in the income of a parent, and the change is due to financial circumstances which have existed for a minimum period of three months and can reasonably be expected to exist for an additional three months.

97 Acts, ch 175, §105

252H.19 Notice of intent to modify.

1. The unit shall issue a notice of intent to modify to each parent. Notice to a child support agency or an agency entitled to receive child or medical support payments as the result of an assignment of support rights is not required.

2. The notice shall be served upon each parent in accordance with the rules of civil procedure. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included

in the notice:

a. The legal basis and purpose of the action.

b. Information sufficient to identify the affected parties and the support order or orders affected.

c. An explanation of the procedures for determining child support and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21, subsection 4.

d. An explanation of the legal rights and responsibilities of the affected parties, including the time frames in which the parties must act.

e. Procedures for contesting the action through a conference or a court hearing.

f. Other information, as appropriate.

93 Acts, ch 78, §42

252H.20 Conference — second notice and finding of financial responsibility.

1. Each parent shall have the right to request a conference with the office of the unit that issued the notice of intent to modify. The request may be made in person, in writing, or by telephone, and shall be made within ten days of the date of successful service of the notice of intent to modify.

2. A parent requesting a conference shall submit any required fee no later than the date of the scheduled conference. A conference shall not be held unless the required fee is paid in full.

3. Upon a request and full payment of any required fee, the office of the unit that issued the notice of intent to modify shall schedule a conference with the parent and advise the parent of the date, time, place, and procedural aspects of the conference. The unit shall adopt rules pursuant to chapter 17A to specify the manner in which a conference is conducted and the purpose of the conference.

4. Following the conference, the office of the unit that conducted the review shall issue a second notice of proposed modification and finding of financial responsibility to the parent requesting the conference. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. Information sufficient to identify the affected parties and the support order or orders affected.

b. If the unit will continue or terminate the action.

c. Procedures for contesting the action and the applicable time frames for actions by the parents.

d. Other information, as appropriate.

93 Acts, ch 78, §43

SUBCHAPTER IV

COST-OF-LIVING ALTERATION

252H.21 Purpose — intent — effect on requirements for guidelines.

1. This subchapter is intended to provide a procedure to accommodate a request of both parents to expeditiously change a support order due to changes in the cost of living.

2. All of the following shall apply to a cost-of-living alteration under this subchapter:

a. To the extent permitted under 42 U.S.C. § 666(a)(10)(A)(i)(II), the cost-of-living alteration shall be an exception to any requirement under law for the application of the child support guidelines established pursuant to section 598.21, subsection 4, including but not limited to any requirement in this chapter or chapter 234, 252A, 252B, 252C, 252F, 598, or 600B.

b. The cost-of-living alteration shall not prevent any subsequent modification or adjustment to the support order as otherwise provided in law based on application of the child support guidelines.

c. The calculation of a cost-of-living alteration to a child support order shall be compounded as follows:

(1) Increase or decrease the child support order by the percentage change of the appropriate consumer price index for the month and year after the month and year the child support order was last issued, modified, adjusted, or altered.

(2) Increase or decrease the amount of the child support order calculated in subparagraph (1) for each subsequent year by applying the appropriate consumer price index for each subsequent year to the result of the calculation for the previous year. The final year in the calculation shall be the year immediately preceding the year the unit received the completed request for the cost-of-living alteration.

d. The amount of the cost-of-living alteration in the notice in section 252H.24, subsection 1, shall be the result of the calculation in paragraph *"c"*.

97 Acts, ch 175, §106

252H.22 Support orders subject to cost-of-living alteration.

A support order meeting all of the following conditions is eligible for a cost-of-living alteration under this subchapter.

1. The support order is subject to the jurisdiction of this state for the purposes of a cost-of-living alteration.

2. The support order provides for the ongoing support of at least one child under the age of eigh-

teen or a child between the ages of eighteen and nineteen who has not yet graduated from high school but who is reasonably expected to graduate from high school before attaining the age of nineteen.

3. The unit is providing enforcement services for the ongoing support obligation pursuant to chapter 252B.

4. A parent requests a cost-of-living alteration as provided in section 252H.23.

5. The support order addresses medical support for the child.

6. The support order is not subject to the social security disability provisions pursuant to sections 598.22 and 598.22C.

97 Acts, ch 175, §107; 2002 Acts, ch 1018, §15
NEW subsection 6

252H.23 Right to request cost-of-living alteration.

A parent may request a cost-of-living alteration by submitting all of the following to the unit:

1. A written request for a cost-of-living alteration to the support order signed by the parent making the request.

2. A statement signed by the nonrequesting parent agreeing to the cost-of-living alteration to the support order.

3. A statement signed by each parent waiving that parent's right to personal service and accepting service by regular mail.

4. Other documentation specified by rule of the department.

97 Acts, ch 175, §108

252H.24 Role of the child support recovery unit — filing and docketing of cost-of-living alteration order — order effective as district court order.

1. Upon receipt of a request and required documentation for a cost-of-living alteration, the unit shall issue a notice of the amount of cost-of-living alteration by regular mail to the last known address of each parent, or, if applicable, each parent's attorney. The notice shall include all of the following:

a. A statement that either parent may contest the cost-of-living alteration within thirty days of the date of the notice by making a request for a review of a support order as provided in section 252H.13, and if either parent does not make a request for a review within thirty days, the unit shall prepare an administrative order as provided in subsection 4.

b. A statement that the parent may waive the thirty-day notice waiting period provided for in this section.

2. Upon timely receipt of a request and required documentation for a review of a support order as provided in subsection 1 from either parent, the unit shall terminate the cost-of-living alteration process and apply the provisions of subchapters I and II of this chapter relating to review and adjustment.

3. Upon receipt of signed requests from both parents subject to the support order, waiving the notice waiting period, the unit may prepare an administrative order pursuant to subsection 4 altering the support obligation.

4. If timely request for a review pursuant to section 252H.13 is not made, and if the thirty-day notice waiting period has expired, or if both parents have waived the notice waiting period, the unit shall prepare and present an administrative order for a cost-of-living alteration, ex parte, to the district court where the order to be altered is filed.

5. Unless defects appear on the face of the administrative order or on the attachments, the district court shall approve the order. Upon filing, the approved order shall have the same force, effect, and attributes of an order of the district court.

6. Upon filing, the clerk of the district court shall enter the order in the judgment docket and judgment lien index.

7. If the parents jointly waive the thirty-day notice waiting period, the signed statements of both parents waiving the notice period shall be filed in the court record with the administrative order altering the support obligation.

8. The unit shall send a copy of the order by regular mail to each parent's last known address, or, if applicable, to the last known address of the parent's attorney.

9. An administrative order approved by the district court is final, and action by the unit to enforce and collect upon the order may be taken from the date of the entry of the order by the district court.

97 Acts, ch 175, §109

CHAPTER 252I

SUPPORT PAYMENTS — LEVIES AGAINST ACCOUNTS

252I.1 Definitions.
252I.2 Purpose and use.
252I.3 Initial notice to obligor.
252I.4 Verification of accounts and immunity from liability.
252I.5 Administrative levy — notice to financial institution.
252I.6 Administrative levy — notice to support obligor.
252I.7 Responsibilities of financial institution.
252I.8 Challenges to action.

252I.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Account"* means "account" as defined in section 524.103, "share account or shares" as defined in section 534.102, the savings or deposits of a member received or being held by a credit union, or certificates of deposit. *"Account"* also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102 and money-market mutual fund accounts and "account" as defined in 42 U.S.C. § 666(a)(17). However, *"account"* does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

2. *"Bank"* means "bank", "insured bank", and "state bank" as defined in section 524.103.

3. *"Court order"* means "support order" as defined in section 252J.1.

4. *"Credit union"* means "credit union" as defined in section 533.51.

5. *"Financial institution"* means "financial institution" as defined in 42 U.S.C. § 669A(d)(1). *"Financial institution"* also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in section 502.102.

6. *"Obligor"* means a person who has been ordered by a court or administrative authority to pay support.

7. *"Savings and loan association"* means "association" as defined in section 534.102.

8. *"Support"* or *"support payments"* means "support" or "support payments" as defined in section 252D.16.

9. *"Unit"* or *"child support recovery unit"* means the child support recovery unit created in section 252B.2.

10. *"Working days"* means only Monday, Tuesday, Wednesday, Thursday, and Friday, but excluding the holidays specified in section 1C.2, subsections 1 through 9.

94 Acts, ch 1101, §1; 96 Acts, ch 1034, §15; 97 Acts, ch 175, §110; 98 Acts, ch 1170, §33

252I.2 Purpose and use.

1. Notwithstanding other statutory provisions which provide for the execution, attachment, or levy against accounts, the unit may utilize the process established in this chapter to collect delinquent support payments provided that any exemptions or exceptions which specifically apply to enforcement of support obligations pursuant to other statutory provisions also apply to this chapter.

2. An obligor is subject to the provisions of this chapter if the obligor's support obligation is being enforced by the child support recovery unit, and if the support payments ordered under chapter 232, 234, 252A, 252C, 252D, 252E, 252F, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction, as certified to the child support recovery unit, are not paid to the clerk of the district court or the collection services center pursuant to section 598.22 and become delinquent in an amount equal to the support payment for one month.

3. Any amount forwarded by a financial institution under this chapter shall not exceed the amounts specified in 15 U.S.C. § 1673(b) and shall not exceed the delinquent or accrued amount of support owed by the obligor.

94 Acts, ch 1101, §2

252I.3 Initial notice to obligor.

The unit may proceed under this chapter only if notice has been provided to the obligor in one of the following manners:

1. The obligor is provided notice of the provisions of this chapter in the court order establishing the support obligation. The unit or district court may include language in any new or modified support order issued on or after July 1, 1994, notifying the obligor that the obligor is subject to the provisions of this chapter.

2. The unit may send a notice by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to the provisions of this chapter, with proof of service completed according to rule of civil procedure 1.442.

94 Acts, ch 1101, §3

252I.4 Verification of accounts and immunity from liability.

1. The unit may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for the account, and the account balance of any account held by an obligor. Contact with a financial institution may be by telephone or by written communication. The financial institution may require positive voice recognition and may require the telephone number of the authorized person from the unit before releasing an obligor's account information by telephone.

2. The unit and financial institutions doing business in Iowa shall enter into agreements to develop and operate a data match system, using automated data exchanges to the maximum extent feasible. The data match system shall allow a means by which each financial institution shall provide to the unit for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each obligor who maintains an account at the institution and who owes past-due support, as identified by the unit by name and social security number or other taxpayer identification number. The unit shall work with representatives of financial institutions to develop a system to assist nonautomated financial institutions in complying with the provisions of this section.

3. The unit may pay a reasonable fee to a fi-

nancial institution for conducting the data match required in subsection 2, not to exceed the lower of either one hundred fifty dollars for each quarterly data match or the actual costs incurred by the financial institution for each quarterly data match. However, the unit may also adopt rules pursuant to chapter 17A to specify a fee amount for each quarterly data match based upon the estimated state share of funds collected under this chapter, which, when adopted, shall be applied in lieu of the one hundred fifty dollar fee under this subsection. In addition, the unit may pay a reasonable fee to a financial institution for automation programming development performed in order to conduct the data match required in subsection 2, not to exceed the lower of either five hundred dollars or the actual costs incurred by the financial institution. The unit may use the state share of funds collected under this chapter to pay the fees to financial institutions under this subsection. For state fiscal years beginning July 1, 1999, and July 1, 2000, the unit may use up to one hundred percent of the state share of such funds. For state fiscal years beginning on or after July 1, 2001, the unit may use up to fifty percent of the state share of such funds. Notwithstanding any other provision of law to the contrary, a financial institution shall have until a date provided in the agreement in subsection 2 to submit its claim for a fee under this subsection. If the unit does not have sufficient funds available under this subsection for payment of fees under this subsection for conducting data matches or for automation program development performed in the fiscal year beginning July 1, 1999, the cost may be carried forward to the fiscal year beginning July 1, 2000. The unit may also use funds from an amount assessed a child support agency of another state, as defined in section 252H.2, to conduct a data match requested by that child support agency as provided in 42 U.S.C. § 666(a)(14) to pay fees to financial institutions under this subsection.

4. *a.* A financial institution is immune from any liability in any action or proceeding, whether civil or criminal, for any of the following:

(1) The disclosure of any information by a financial institution to the unit pursuant to this chapter or the rules or procedures adopted by the unit to implement this chapter, including disclosure of information relating to an obligor who maintains an account with the financial institution or disclosure of information relating to any other person who maintains an account with the financial institution that is provided for the purpose of complying with the data match requirements of this section and with the agreement entered into between the financial institution and the unit pursuant to subsection 2.

(2) Any encumbrance or surrender of any assets held by a financial institution in response to a notice of lien or levy issued by the unit.

(3) Any action or omission in connection with good faith efforts to comply with this chapter or any rules or procedures that are adopted by the unit to implement this chapter.

(4) The disclosure, use, or misuse by the unit or by any other person of information provided or assets delivered to the unit by a financial institution.

b. For the purposes of this section, *"financial institution"* includes officers, directors, employees, contractors, and agents of the financial institution.

5. The financial institution or the unit is not liable for the cost of any early withdrawal penalty of an obligor's certificate of deposit.

94 Acts, ch 1101, §4; 97 Acts, ch 175, §111; 99 Acts, ch 127, §3; 2000 Acts, ch 1096, §3, 4; 2000 Acts, ch 1232, §90, 95

2000 amendment to subsection 4 applies retroactively to January 1, 2000; 2000 Acts, ch 1096, §4; 2000 Acts, ch 1232, §90, 95

252I.5 Administrative levy — notice to financial institution.

1. If an obligor is subject to this chapter under section 252I.2, the unit may initiate an administrative action to levy against the accounts of the obligor. If notice has previously been provided pursuant to section 252I.3, further notice is not required.

2. The unit may send a notice to the financial institution with which the account is placed, directing that the financial institution forward all or a portion of the moneys in the obligor's account or accounts to the collection services center established pursuant to chapter 252B. The notice shall be sent by regular mail, with proof of service completed according to rule of civil procedure 1.442.

3. The notice to the financial institution shall contain all of the following:

a. The name and social security number of the obligor.

b. A statement that the obligor is believed to have one or more accounts at the financial institution.

c. A statement that pursuant to the provisions of this chapter, the obligor's accounts are subject to seizure and the financial institution is authorized and required to forward moneys to the collection services center.

d. The maximum amount that shall be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of support owed by the obligor.

e. The prescribed time frame which the financial institution must meet in forwarding amounts.

f. The address of the collection services center and the collection services center account number.

g. A telephone number, address, and contact name of the child support recovery unit contact initiating the action.

94 Acts, ch 1101, §5

252I.6 Administrative levy — notice to support obligor.

1. The unit may administratively initiate an action to seize accounts of an obligor who is subject to this chapter under section 252I.2.

2. The unit shall notify an obligor subject to this chapter, and any other party known to have an interest in the account, of the action. The notice shall contain all of the following:

a. The name and social security number of the obligor.

b. A statement that the obligor is believed to have one or more accounts at the financial institution.

c. A statement that pursuant to the provisions of this chapter, the obligor's accounts are subject to seizure and the financial institution is authorized and required to forward moneys to the collection services center.

d. The maximum amount to be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of support owed by the obligor.

e. The prescribed time frames within which the financial institution must comply.

f. A statement that any challenge to the action shall be in writing and shall be received by the child support recovery unit within ten days of the date of the notice to the obligor.

g. The address of the collection services center and the collection services center account number.

h. A telephone number, address, and contact name for the child support recovery unit contact initiating the action.

3. The unit shall forward the notice to the obligor by regular mail within two working days of sending the notice to the financial institution pursuant to section 252I.5. Proof of service shall be completed according to rule of civil procedure 1.442.

94 Acts, ch 1101, §6

252I.7 Responsibilities of financial institution.

Upon receipt of a notice under section 252I.5, the financial institution shall do all of the following:

1. Immediately encumber funds in all accounts in which the obligor has an interest to the extent of the debt indicated in the notice from the unit.

2. No sooner than fifteen days, and no later than twenty days from the date the financial institution receives the notice under section 252I.5, unless notified by the unit of a challenge by the obligor or an account holder of interest, the financial institution shall forward the moneys encumbered to the collection services center with the obligor's name and social security number, collection services center account number, and any other information required in the notice.

3. The financial institution may assess a fee against the obligor, not to exceed ten dollars, for forwarding of moneys to the collection services center. This fee is in addition to the amount of support due. In the event that there are insufficient moneys to cover the fee and the support amount due, the institution may deduct the fee amount prior to forwarding moneys to the collection services center and the amount credited to the support obligation shall be reduced by the fee amount.

94 Acts, ch 1101, §7

252I.8 Challenges to action.

1. Challenges under this chapter may be initiated only by an obligor or by an account holder of interest. Actions initiated by the unit under this chapter are not subject to chapter 17A, and resulting court hearings following certification shall be an original hearing before the district court.

2. The person challenging the action shall submit a written challenge to the person identified as the contact for the unit in the notice, within ten working days of the date of the notice.

3. The unit shall, upon receipt of a written challenge, review the facts of the case with the challenging party. Only a mistake of fact, including but not limited to, a mistake in the identity of the obligor or a mistake in the amount of delinquent support due shall be considered as a reason to dismiss or modify the proceeding.

4. If the unit determines that a mistake of fact has occurred the unit shall proceed as follows:

a. If a mistake in identity has occurred or the obligor is not delinquent in an amount equal to the payment for one month, the unit shall notify the financial institution that the administrative levy has been released. The unit shall provide a copy of the notice to the support obligor by regular mail.

b. If the obligor is delinquent, but the amount of the delinquency is less than the amount indicated in the notice, the unit shall notify the financial institution of the revised amount with a copy of the notice and issue a copy to the obligor or forward a copy to the obligor by regular mail. Upon written receipt of instructions from the unit, the financial institution shall release the funds in excess of the revised amount to the obligor and the moneys in the amount of the debt shall be processed according to section 252I.7.

5. If the unit finds no mistake of fact, the unit shall provide a notice to that effect to the challenging party by regular mail. Upon written request of the challenging party, the unit shall request a hearing before the district court in the county in which the underlying support order is filed.

a. The financial institution shall encumber moneys if the child support recovery unit notifies the financial institution to do so.

b. The clerk of the district court shall schedule a hearing upon the request by the unit for a time not later than ten calendar days after the filing of

the request for hearing. The clerk shall mail copies of the request for hearing and the order scheduling the hearing to the unit and to all account holders of interest.

c. If the court finds that there is a mistake of identity or that the obligor does not owe the delinquent support, the unit shall notify the financial institution that the administrative levy has been released.

d. If the court finds that the obligor has an interest in the account, and the amount of support due was incorrectly overstated, the unit shall notify the financial institution to release the excess moneys to the obligor and remit the remaining moneys in the amount of the debt to the collection services center for disbursement to the appropriate recipient.

e. If the court finds that the obligor has an interest in the account, and the amount of support due is correct, the financial institution shall forward the moneys to the collection services center for disbursement to the appropriate recipient.

f. If the obligor or any other party known to have an interest in the account fails to appear at the hearing, the court may find the challenging party in default, shall ratify the administrative levy, if valid upon its face, and shall enter an order directing the financial institution to release the moneys to the unit.

g. Issues related to visitation, custody, or other provisions not related to levies against accounts are not grounds for a hearing under this chapter.

h. Support orders shall not be modified under a challenge pursuant to this section.

i. Any findings in the challenge of an administrative levy related to the amount of the accruing or accrued support obligation do not modify the underlying support order.

j. An order entered under this chapter for a levy against an account of a support obligor has priority over a levy for a purpose other than the support of the dependents in the court order being enforced.

6. The support obligor may withdraw the request for challenge by submitting a written withdrawal to the person identified as the contact for the unit in the notice or the unit may withdraw the administrative levy at any time prior to the court hearing and provide notice of the withdrawal to the obligor and any account holder of interest and to the financial institution, by regular mail.

7. If the financial institution has forwarded moneys to the collection services center and has deducted a fee from the moneys of the account, or if any additional fees or costs are levied against the account, and all funds are subsequently refunded to the account due to a mistake of fact or ruling of the court, the child support recovery unit shall reimburse the account for any fees assessed by the financial institution. If the mistake of fact is a mistake in the amount of support due and any portion of the moneys is retained as support payments, however, the unit is not required to reimburse the account for any fees or costs levied against the account. Additionally, for the purposes of reimbursement to the account for any fees or costs, each certificate of deposit is considered a separate account.

94 Acts, ch 1101, §8

CHAPTER 252J

CHILD SUPPORT — LICENSING SANCTIONS

252J.1 Definitions.
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252J.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Certificate of noncompliance"* means a document provided by the child support recovery unit certifying that the named individual is not in compliance with any of the following:

a. A support order.

b. A written agreement for payment of support entered into by the unit and the obligor.

c. A subpoena or warrant relating to a paternity or support proceeding.

2. *"Individual"* means a parent, an obligor, or a putative father in a paternity or support proceeding.

3. *"License"* means a license, certification, registration, permit, approval, renewal, or other similar authorization issued to an individual by a li-

censing authority which evidences the admission to, or granting of authority to engage in, a profession, occupation, business, industry, or recreation or to operate or register a motor vehicle. *"License"* includes licenses for hunting, fishing, boating, or other recreational activity.

4. *"Licensee"* means an individual to whom a license has been issued, or who is seeking the issuance of a license.

5. *"Licensing authority"* means a county treasurer, county recorder or designated depositary, the supreme court, or an instrumentality, agency, board, commission, department, officer, organization, or any other entity of the state, which has authority within this state to suspend or revoke a license or to deny the renewal or issuance of a license authorizing an individual to register or operate a motor vehicle or to engage in a business, occupation, profession, recreation, or industry.

6. *"Obligor"* means a natural person as defined in section 252G.1 who has been ordered by a court or administrative authority to pay support.

7. *"Subpoena or warrant"* means a subpoena or warrant relating to a paternity or support proceeding initiated or obtained by the unit or a child support agency as defined in section 252H.2.

8. *"Support"* means support or support payments as defined in section 252D.16, whether established through court or administrative order.

9. *"Support order"* means an order for support issued pursuant to chapter 232, 234, 252A, 252C, 252D, 252E, 252F, 252H, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction as registered with the clerk of the district court or certified to the child support recovery unit.

10. *"Unit"* means the child support recovery unit created in section 252B.2.

11. *"Withdrawal of a certificate of noncompliance"* means a document provided by the unit certifying that the certificate of noncompliance is withdrawn and that the licensing authority may proceed with issuance, reinstatement, or renewal of an individual's license.

95 Acts, ch 115, §1; 97 Acts, ch 175, §112, 113

252J.2 Purpose and use.

1. Notwithstanding other statutory provisions to the contrary, and if an individual has not been cited for contempt and enjoined from engaging in the activity governed by a license pursuant to section 598.23A, the unit may utilize the process established in this chapter to collect support.

2. For cases in which services are provided by the unit all of the following apply:

a. An obligor is subject to the provisions of this chapter if the obligor's support obligation is being enforced by the unit, if the support payments required by a support order to be paid to the clerk of the district court or the collection services center pursuant to section 598.22 are not paid and become delinquent in an amount equal to the support payment for three months, and if the obligor's situation meets other criteria specified under rules adopted by the department pursuant to chapter 17A. The criteria specified by rule shall include consideration of the length of time since the obligor's last support payment and the total amount of support owed by the obligor.

b. An individual is subject to the provisions of this chapter if the individual has failed, after receiving appropriate notice, to comply with a subpoena or warrant.

3. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or further review pursuant to chapter 17A and any resulting court hearing shall be an original hearing before the district court.

4. Notwithstanding chapter 22, all of the following apply:

a. Information obtained by the unit under this chapter shall be used solely for the purposes of this chapter or chapter 252B.

b. Information obtained by a licensing authority shall be used solely for the purposes of this chapter.

95 Acts, ch 115, §2; 97 Acts, ch 175, §114

252J.3 Notice to individual of potential sanction of license.

The unit shall proceed in accordance with this chapter only if notice is served on the individual in accordance with rule of civil procedure 1.305 or notice is sent by certified mail addressed to the individual's last known address and served upon any person who may accept service under rule of civil procedure 1.305. Return acknowledgment is required to prove service by certified mail. The notice shall include all of the following:

1. The address and telephone number of the unit and the unit case number.

2. A statement that the obligor is not in compliance with a support order or the individual has not complied with a subpoena or warrant.

3. A statement that the individual may request a conference with the unit to contest the action.

4. A statement that if, within twenty days of service of notice on the individual, the individual fails to contact the unit to schedule a conference, the unit shall issue a certificate of noncompliance, bearing the individual's name, social security number and unit case number, to any appropriate licensing authority, certifying that the obligor is not in compliance with a support order or an individual has not complied with a subpoena or warrant.

5. A statement that in order to stay the issuance of a certificate of noncompliance the request for a conference shall be in writing and shall be received by the unit within twenty days of service of notice on the individual.

6. The names of the licensing authorities to

which the unit intends to issue a certificate of noncompliance.

7. A statement that if the unit issues a certificate of noncompliance to an appropriate licensing authority, the licensing authority shall initiate proceedings to refuse to issue or renew, or to suspend or revoke the individual's license, unless the unit provides the licensing authority with a withdrawal of a certificate of noncompliance.

95 Acts, ch 115, §3; 97 Acts, ch 175, §115

252J.4 Conference.

1. The individual may schedule a conference with the unit following service of notice pursuant to section 252J.3, or at any time after service of notice of suspension, revocation, denial of issuance, or nonrenewal of a license from a licensing authority, to challenge the unit's actions under this chapter.

2. The request for a conference shall be made to the unit, in writing, and, if requested after service of a notice pursuant to section 252J.3, shall be received by the unit within twenty days following service of notice.

3. The unit shall notify the individual of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than ten days following issuance of notice of the conference by the unit. If the individual fails to appear at the conference, the unit shall issue a certificate of noncompliance.

4. Following the conference, the unit shall issue a certificate of noncompliance unless any of the following applies:

a. The unit finds a mistake in the identity of the individual.

b. The unit finds a mistake in determining that the amount of delinquent support is equal to or greater than three months.

c. The obligor enters a written agreement with the unit to comply with a support order, the obligor complies with an existing written agreement to comply with a support order, or the obligor pays the total amount of delinquent support due.

d. Issuance of a certificate of noncompliance is not appropriate under other criteria established in accordance with rules adopted by the department pursuant to chapter 17A.

e. The unit finds a mistake in determining the compliance of the individual with a subpoena or warrant.

f. The individual complies with a subpoena or warrant.

5. The unit shall grant the individual a stay of the issuance of a certificate of noncompliance upon receiving a timely written request for a conference, and if a certificate of noncompliance has previously been issued, shall issue a withdrawal of a certificate of noncompliance if the obligor enters into a written agreement with the unit to comply with a support order or if the individual complies with a subpoena or warrant.

6. If the individual does not timely request a conference or does not comply with a subpoena or warrant or if the obligor does not pay the total amount of delinquent support owed within twenty days of service of the notice pursuant to section 252J.3, the unit shall issue a certificate of noncompliance.

95 Acts, ch 115, §4; 95 Acts, ch 209, §23; 97 Acts, ch 175, §116

252J.5 Written agreement.

1. If an obligor is subject to this chapter as established in section 252J.2, subsection 2, paragraph *"a"*, the obligor and the unit may enter into a written agreement for payment of support and compliance which takes into consideration the obligor's ability to pay and other criteria established by rule of the department. The written agreement shall include all of the following:

a. The method, amount, and dates of support payments by the obligor.

b. A statement that upon breach of the written agreement by the obligor, the unit shall issue a certificate of noncompliance to any appropriate licensing authority.

2. A written agreement entered into pursuant to this section does not preclude any other remedy provided by law and shall not modify or affect an existing support order.

3. Following issuance of a certificate of noncompliance, if the obligor enters into a written agreement with the unit, the unit shall issue a withdrawal of the certificate of noncompliance and shall forward a copy of the withdrawal by regular mail to the obligor and any appropriate licensing authority.

95 Acts, ch 115, §5; 97 Acts, ch 175, §117

252J.6 Decision of the unit.

1. If an obligor is not in compliance with a support order or the individual is not in compliance with a subpoena or warrant pursuant to section 252J.2, the unit notifies the individual pursuant to section 252J.3, and the individual requests a conference pursuant to section 252J.4, the unit shall issue a written decision if any of the following conditions exists:

a. The individual fails to appear at a scheduled conference under section 252J.4.

b. A conference is held under section 252J.4.

c. The obligor fails to comply with a written agreement entered into by the obligor and the unit under section 252J.5.

2. The unit shall send a copy of the written decision to the individual by regular mail at the individual's most recent address of record. If the decision is made to issue a certificate of noncompliance or to withdraw the certificate of noncompliance, a copy of the certificate of noncompliance or of the withdrawal of the certificate of noncompliance shall be attached to the written decision. The writ-

ten decision shall state all of the following:

a. That a copy of the certificate of noncompliance or withdrawal of the certificate of noncompliance has been provided to the licensing authorities named in the notice provided pursuant to section 252J.3.

b. That upon receipt of a certificate of noncompliance, the licensing authority shall initiate proceedings to suspend, revoke, deny issuance, or deny renewal of a license, unless the licensing authority is provided with a withdrawal of a certificate of noncompliance from the unit.

c. That in order to obtain a withdrawal of a certificate of noncompliance from the unit, the obligor shall enter into a written agreement with the unit, comply with an existing written agreement with the unit, or pay the total amount of delinquent support owed or the individual shall comply with a subpoena or warrant.

d. That if the unit issues a written decision which includes a certificate of noncompliance, that all of the following apply:

(1) The individual may request a hearing as provided in section 252J.9, before the district court as follows:

(a) If the action is a result of section 252J.2, subsection 2, paragraph *"a"*, in the county in which the underlying support order is filed, by filing a written application to the court challenging the issuance of the certificate of noncompliance by the unit and sending a copy of the application to the unit within the time period specified in section 252J.9.

(b) If the action is a result of section 252J.2, subsection 2, paragraph *"b"*, and the individual is not an obligor, in the county in which the dependent child or children reside if the child or children reside in Iowa; in the county in which the dependent child or children last received public assistance if the child or children received public assistance in Iowa; or in the county in which the individual resides if the action is the result of a request from a child support agency in a foreign jurisdiction.

(2) The individual may retain an attorney at the individual's own expense to represent the individual at the hearing.

(3) The scope of review of the district court shall be limited to demonstration of a mistake of fact related to the delinquency of the obligor or the compliance of the individual with a subpoena or warrant.

3. If the unit issues a certificate of noncompliance, the unit shall only issue a withdrawal of the certificate of noncompliance if any of the following applies:

a. The unit or the court finds a mistake in the identity of the individual.

b. The unit finds a mistake in determining compliance with a subpoena or warrant.

c. The unit or the court finds a mistake in determining that the amount of delinquent support due is equal to or greater than three months.

d. The obligor enters a written agreement with the unit to comply with a support order, the obligor complies with an existing written agreement to comply with a support order, or the obligor pays the total amount of delinquent support owed.

e. The individual complies with the subpoena or warrant.

f. Issuance of a withdrawal of the certificate of noncompliance is appropriate under other criteria in accordance with rules adopted by the department pursuant to chapter 17A.

95 Acts, ch 115, §6; 95 Acts, ch 209, §24; 97 Acts, ch 175, §118

252J.7 Certificate of noncompliance — certification to licensing authority.

1. If the individual fails to respond to the notice of potential license sanction provided pursuant to section 252J.3 or the unit issues a written decision under section 252J.6 which states that the individual is not in compliance, the unit shall certify, in writing, to any appropriate licensing authority that the support obligor is not in compliance with a support order or the individual is not in compliance with a subpoena or warrant and shall include a copy of the certificate of noncompliance.

2. The certificate of noncompliance shall contain the individual's name and social security number.

3. The certificate of noncompliance shall require all of the following:

a. That the licensing authority initiate procedures for the revocation or suspension of the individual's license, or for the denial of the issuance or renewal of a license using the licensing authority's procedures.

b. That the licensing authority provide notice to the individual, as provided in section 252J.8, of the intent to suspend, revoke, deny issuance, or deny renewal of a license including the effective date of the action. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the individual.

95 Acts, ch 115, §7; 97 Acts, ch 175, §119

252J.8 Requirements and procedures of licensing authority.

1. A licensing authority shall maintain records of licensees by name, current known address, and social security number.

2. In addition to other grounds for suspension, revocation, or denial of issuance or renewal of a license, a licensing authority shall include in rules adopted by the licensing authority as grounds for suspension, revocation, or denial of issuance or renewal of a license, the receipt of a certificate of noncompliance from the unit.

3. The supreme court shall prescribe rules for admission of persons to practice as attorneys and counselors pursuant to chapter 602, article 10,

which include provisions, as specified in this chapter, for the denial, suspension, or revocation of the admission for failure to comply with a child support order or a subpoena or warrant.

4. A licensing authority that is issued a certificate of noncompliance shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. The licensing authority shall utilize existing rules and procedures for suspension, revocation, or denial of the issuance or renewal of a license.

In addition, the licensing authority shall provide notice to the individual of the licensing authority's intent to suspend, revoke, or deny issuance or renewal of a license under this chapter. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the individual. The notice shall state all of the following:

a. The licensing authority intends to suspend, revoke, or deny issuance or renewal of an individual's license due to the receipt of a certificate of noncompliance from the unit.

b. The individual must contact the unit to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the unit furnishes a withdrawal of a certificate of noncompliance to the licensing authority within thirty days of the issuance of the notice under this section, the individual's license will be revoked, suspended, or denied.

d. If the licensing authority's rules and procedures conflict with the additional requirements of this section, the requirements of this section shall apply. Notwithstanding section 17A.18, the individual does not have a right to a hearing before the licensing authority to contest the authority's actions under this chapter but may request a court hearing pursuant to section 252J.9 within thirty days of the provision of notice under this section.

5. If the licensing authority receives a withdrawal of a certificate of noncompliance from the unit, the licensing authority shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements established by the licensing authority.

95 Acts, ch 115, §8; 97 Acts, ch 175, §120

252J.9 District court hearing.

1. Following the issuance of a written decision by the unit under section 252J.6 which includes the issuance of a certificate of noncompliance, or following provision of notice to the individual by a licensing authority pursuant to section 252J.8, an individual may seek review of the decision and request a hearing before the district court as follows:

a. If the action is a result of section 252J.2, subsection 2, paragraph *"a"*, in the county in which the underlying support order is filed, by filing an application with the district court, and sending a copy of the application to the unit by regular mail.

b. If the action is a result of section 252J.2, subsection 2, paragraph *"b"*, and the individual is not an obligor, in a county in which the dependent child or children reside if the child or children reside in Iowa; in the county in which the dependent child or children last received public assistance if the child or children received public assistance in Iowa; or in the county in which the individual resides if the action is the result of a request from a child support agency in a foreign jurisdiction.

An application shall be filed to seek review of the decision by the unit or following issuance of notice by the licensing authority no later than within thirty days after the issuance of the notice pursuant to section 252J.8. The clerk of the district court shall schedule a hearing and mail a copy of the order scheduling the hearing to the individual and the unit and shall also mail a copy of the order to the licensing authority, if applicable. The unit shall certify a copy of its written decision and certificate of noncompliance, indicating the date of issuance, and the licensing authority shall certify a copy of a notice issued pursuant to section 252J.8, to the court prior to the hearing.

2. The filing of an application pursuant to this section shall automatically stay the actions of a licensing authority pursuant to section 252J.8. The hearing on the application shall be scheduled and held within thirty days of the filing of the application. However, if the individual fails to appear at the scheduled hearing, the stay shall be lifted and the licensing authority shall continue procedures pursuant to section 252J.8.

3. The scope of review by the district court shall be limited to demonstration of a mistake of fact relating to the delinquency of the obligor or the noncompliance of the individual with a subpoena or warrant. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a hearing under this chapter.

4. Support orders shall not be modified by the court in a hearing under this chapter.

5. If the court finds that the unit was in error in issuing a certificate of noncompliance, or in failing to issue a withdrawal of a certificate of noncompliance, the unit shall issue a withdrawal of a certificate of noncompliance to the appropriate licensing authority.

95 Acts, ch 115, §9; 97 Acts, ch 175, §121

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UNIFORM INTERSTATE FAMILY SUPPORT ACT

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ARTICLE 1

GENERAL PROVISIONS

252K.101 Definitions.

In this chapter:

1. *"Child"* means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

2. *"Child support order"* means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

3. *"Duty of support"* means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

4. *"Home state"* means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

5. *"Income"* includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

6. *"Income withholding order"* means an order or other legal process directed to an obligor's employer or other payor of income, as defined by the income withholding law of this state, to withhold support from the income of the obligor.

7. *"Initiating state"* means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

8. *"Initiating tribunal"* means the authorized tribunal in an initiating state.

9. *"Issuing state"* means the state in which a tribunal issues a support order or renders a judgment determining parentage.

10. *"Issuing tribunal"* means the tribunal that issues a support order or renders a judgment determining parentage.

11. *"Law"* includes decisional and statutory law and rules and regulations having the force of law.

12. *"Obligee"* means any of the following:

a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered.

b. A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee.

c. An individual seeking a judgment determining parentage of the individual's child.

13. *"Obligor"* means an individual, or the estate of a decedent, to which any of the following applies:

a. Who owes or is alleged to owe a duty of support.

b. Who is alleged but has not been adjudicated to be a parent of a child.

c. Who is liable under a support order.

14. *"Register"* means to file a support order or judgment determining parentage in the appropriate location for the filing of foreign judgments.

15. *"Registering tribunal"* means a tribunal in which a support order is registered.

16. *"Responding state"* means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

17. *"Responding tribunal"* means the authorized tribunal in a responding state.

18. *"Spousal support order"* means a support order for a spouse or former spouse of the obligor.

19. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

a. An Indian tribe.

b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

20. *"Support enforcement agency"* means a public official or agency authorized to seek any of the following:

a. Enforcement of support orders or laws relating to the duty of support.

b. Establishment or modification of child support.

c. Determination of parentage.

d. Location of obligors or their assets.

21. *"Support order"* means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

22. *"Tribunal"* means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

97 Acts, ch 175, §122

252K.102 Tribunals of this state.

The child support recovery unit when the unit establishes or modifies an order, upon ratification by the court, and the court, are the tribunals of this state.

97 Acts, ch 175, §123

252K.103 Remedies cumulative.

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

97 Acts, ch 175, §124

ARTICLE 2

PART 1

EXTENDED PERSONAL JURISDICTION

252K.201 Bases for jurisdiction over nonresident.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if any of the following applies:

1. The individual is personally served with notice within this state.

2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.

3. The individual resided with the child in this state.

4. The individual resided in this state and provided prenatal expenses or support for the child.

5. The child resides in this state as a result of the acts or directives of the individual.

6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.

7. The individual asserted parentage in the declaration of paternity registry maintained in this state by the Iowa department of public health pursuant to section 144.12A or established paternity by affidavit under section 252A.3A.

8. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

97 Acts, ch 175, §125

252K.202 Procedure when exercising jurisdiction over nonresident.

A tribunal of this state exercising personal jurisdiction over a nonresident under section 252K.201 may apply section 252K.316 to receive evidence from another state, and section 252K.318 to obtain discovery through a tribunal of another state. In all other respects, articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

97 Acts, ch 175, §126

PART 2

PROCEEDINGS INVOLVING TWO OR MORE STATES

252K.203 Initiating and responding tribunal of this state.

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

97 Acts, ch 175, §127

252K.204 Simultaneous proceedings in another state.

1. A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state only if all of the following apply:

a. The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state.

b. The contesting party timely challenges the exercise of jurisdiction in the other state.

c. If relevant, this state is the home state of the child.

2. A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if all of the following apply:

a. The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state.

b. The contesting party timely challenges the exercise of jurisdiction in this state.

c. If relevant, the other state is the home state of the child.

97 Acts, ch 175, §128

252K.205 Continuing, exclusive jurisdiction.

1. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order if any of the following applies:

a. As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued.

b. Until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

2. A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter.

3. If a child support order of this state is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

a. Enforce the order that was modified as to amounts accruing before the modification.

b. Enforce nonmodifiable aspects of that order.

c. Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

4. A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to this chapter or a law substantially similar to this chapter.

5. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

6. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

97 Acts, ch 175, §129

252K.206 Enforcement and modification of support order by tribunal having continuing jurisdiction.

1. A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

2. A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 252K.316 to receive evidence from another state and section 252K.318 to obtain discovery through a tribunal of another state.

3. A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

97 Acts, ch 175, §130

PART 3

RECONCILIATION OF MULTIPLE ORDERS

252K.207 Recognition of controlling child support order.

1. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

2. If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

a. If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

b. If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

c. If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

3. If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be so recognized under subsection 2. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

4. The tribunal that issued the controlling order under subsection 1, 2, or 3 is the tribunal that has continuing, exclusive jurisdiction under section 252K.205.

5. A tribunal of this state which determines by order the identity of the controlling order under subsection 2, paragraph *"a"* or *"b"*, or which issues a new controlling order under subsection 2, paragraph *"c"*, shall state in that order the basis upon which the tribunal made its determination.

6. Within thirty days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

97 Acts, ch 175, §131

252K.208 Multiple child support orders for two or more obligees.

In responding to multiple registrations or requests for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

97 Acts, ch 175, §132

252K.209 Credit for payments.

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.

97 Acts, ch 175, §133

ARTICLE 3

CIVIL PROVISIONS OF GENERAL APPLICATION

252K.301 Proceedings under this chapter.

1. Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

2. This chapter provides for the following proceedings:

a. Establishment of an order for spousal support or child support pursuant to article 4.

b. Enforcement of a support order and income withholding order of another state without registration pursuant to article 5.

c. Registration of an order for spousal support or child support of another state for enforcement pursuant to article 6.

d. Modification of an order for child support or spousal support issued by a tribunal of this state pursuant to article 2, part 2.

e. Registration of an order for child support of another state for modification pursuant to article 6.

f. Determination of parentage pursuant to article 7.

g. Assertion of jurisdiction over nonresidents pursuant to article 2, part 1.

3. An individual movant or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition or a comparable pleading in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tri-

bunal of another state which has or can obtain personal jurisdiction over the respondent or nonmoving party.

97 Acts, ch 175, §134

252K.302 Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

97 Acts, ch 175, §135

252K.303 Application of law of this state.

Except as otherwise provided by this chapter, a responding tribunal of this state shall do all of the following:

1. Apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state, and may exercise all powers and provide all remedies available in those proceedings.

2. Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

97 Acts, ch 175, §136

252K.304 Duties of initiating tribunal.

1. Upon the filing of a petition or comparable pleading authorized by this chapter, an initiating tribunal of this state shall forward three copies of the petition or comparable pleading and its accompanying documents:

a. To the responding tribunal or appropriate support enforcement agency in the responding state.

b. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

2. If a responding state has not enacted this law or a law or procedure substantially similar to this chapter, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

97 Acts, ch 175, §137

252K.305 Duties and powers of responding tribunal.

1. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 252K.301, subsection 3, it shall cause the petition or pleading to be filed and notify the movant where and when it was filed.

2. A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

a. Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage.

b. Order an obligor to comply with a support order, specifying the amount and the manner of compliance.

c. Order income withholding.

d. Determine the amount of any arrearages, and specify a method of payment.

e. Enforce orders by civil or criminal contempt, or both.

f. Set aside property for satisfaction of the support order.

g. Place liens and order execution on the obligor's property.

h. Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment.

i. Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants.

j. Order the obligor to seek appropriate employment by specified methods.

k. Award reasonable attorney's fees and other fees and costs.

l. Grant any other available remedy.

3. A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

4. A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

5. If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the movant and the respondent and to the initiating tribunal, if any.

97 Acts, ch 175, §138

252K.306 Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the movant where and when the pleading was sent.

97 Acts, ch 175, §139

252K.307 Duties of support enforcement agency.

1. A support enforcement agency of this state, upon request, shall provide services to a movant in a proceeding under this chapter.

2. A support enforcement agency that is providing services to the movant as appropriate shall:

a. Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent.

b. Request an appropriate tribunal to set a date, time, and place for a hearing.

c. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties.

d. Within five days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the movant.

e. Within five days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the movant.

f. Notify the movant if jurisdiction over the respondent cannot be obtained.

3. This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

97 Acts, ch 175, §140

252K.308 Duty of attorney general.

If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

97 Acts, ch 175, §141

252K.309 Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

97 Acts, ch 175, §142

252K.310 Duties of state information agency.

1. The child support recovery unit is the state information agency under this chapter.

2. The state information agency shall:

a. Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state.

b. Maintain a register of tribunals and support enforcement agencies received from other states.

c. Forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state.

d. Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

97 Acts, ch 175, §143

252K.311 Pleadings and accompanying documents.

1. A movant seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under section 252K.312, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

2. The petition must specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

97 Acts, ch 175, §144

252K.312 Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

97 Acts, ch 175, §145

252K.313 Costs and fees.

1. The movant shall not be required to pay a filing fee or other costs.

2. If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may

be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

3. The tribunal shall order the payment of costs and reasonable attorney's fees if the tribunal determines that a hearing was requested primarily for delay. In a proceeding under article 6, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

97 Acts, ch 175, §146

252K.314 Limited immunity of movant.

1. Participation by a movant in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the movant in another proceeding.

2. A movant is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

3. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding.

97 Acts, ch 175, §147

252K.315 Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

97 Acts, ch 175, §148

252K.316 Special rules of evidence and procedure.

1. The physical presence of the movant in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

2. A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

3. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

4. Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

5. Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

6. In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

7. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self incriminating, the trier of fact may draw an adverse inference from the refusal.

8. A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

9. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

97 Acts, ch 175, §149

252K.317 Communications between tribunals.

A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

97 Acts, ch 175, §150

252K.318 Assistance with discovery.

A tribunal of this state may:

1. Request a tribunal of another state to assist in obtaining discovery.

2. Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

97 Acts, ch 175, §151

252K.319 Receipt and disbursement of payments.

A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or a tribunal of another state a certified statement by the custodian of the record

of the amounts and dates of all payments received.
97 Acts, ch 175, §152

ARTICLE 4

ESTABLISHMENT OF SUPPORT ORDER

252K.401 Petition to establish support order.

1. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if any of the following applies:

a. The individual seeking the order resides in another state.

b. The support enforcement agency seeking the order is located in another state.

2. The tribunal may issue a temporary child support order if any of the following applies:

a. The respondent has signed a verified statement acknowledging parentage.

b. The respondent has been determined by or pursuant to law to be the parent.

c. There is other clear and convincing evidence that the respondent is the child's parent.

3. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 252K.305.

97 Acts, ch 175, §153

ARTICLE 5

ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

252K.501 Employer's receipt of income withholding order of another state.

An income withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under the income withholding law of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

97 Acts, ch 175, §154

252K.502 Employer's compliance with income withholding order of another state.

1. Upon receipt of an income withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

2. The employer shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

3. Except as otherwise provided in subsection 4 and section 252K.503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

a. The duration and amount of periodic payments of current child support, stated as a sum certain.

b. The person or agency designated to receive payments and the address to which the payments are to be forwarded.

c. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment.

d. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain.

e. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

4. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

a. The employer's fee for processing an income withholding order.

b. The maximum amount permitted to be withheld from the obligor's income.

c. The times within which the employer must implement the withholding order and forward the child support payment.

97 Acts, ch 175, §155

252K.503 Compliance with multiple income withholding orders.

If an obligor's employer receives multiple income withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

97 Acts, ch 175, §156

252K.504 Immunity from civil liability.

An employer who complies with an income withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

97 Acts, ch 175, §157

252K.505 Penalties for noncompliance.

An employer who willfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

97 Acts, ch 175, §158

252K.506 Contest by obligor.

1. An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 252K.604 applies to the contest.

2. The obligor shall give notice of the contest to:

a. A support enforcement agency providing services to the obligee.

b. Each employer that has directly received an income withholding order.

c. The person or agency designated to receive payments in the income withholding order, or if no person or agency is designated, to the obligee.

97 Acts, ch 175, §159

252K.507 Administrative enforcement of orders.

1. A party seeking to enforce a support order or an income withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

2. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

97 Acts, ch 175, §160

ARTICLE 6

ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

PART 1

REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

252K.601 Registration of order for enforcement.

A support order or an income withholding order issued by a tribunal of another state may be registered in this state for enforcement.

97 Acts, ch 175, §161

252K.602 Procedure to register order for enforcement.

1. A support order or income withholding order of another state may be registered in this state by sending the following documents and information to the appropriate tribunal in this state:

a. A letter of transmittal to the tribunal requesting registration and enforcement.

b. Two copies, including one certified copy, of all orders to be registered, including any modification of an order.

c. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage.

d. The name of the obligor and, if known:

(1) The obligor's address and social security number.

(2) The name and address of the obligor's employer and any other source of income of the obligor.

(3) A description and the location of property of the obligor in this state not exempt from execution.

e. The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

2. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

3. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

97 Acts, ch 175, §162

252K.603 Effect of registration for enforcement.

1. A support order or income withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

2. A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

3. Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

97 Acts, ch 175, §163

252K.604 Choice of law.

1. The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

2. In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

97 Acts, ch 175, §164

See §252A.5A relating to statute of limitation in this state

PART 2

CONTEST OF VALIDITY OR ENFORCEMENT

252K.605 Notice of registration of order.

1. When a support order or income withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

2. The notice must inform the nonregistering party:

a. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state.

b. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of mailing or personal service of the notice.

c. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted.

d. Of the amount of any alleged arrearages.

3. Upon registration of an income withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income withholding law of this state.

97 Acts, ch 175, §165

252K.606 Procedure to contest validity or enforcement of registered order.

1. A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 252K.607.

2. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

3. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

97 Acts, ch 175, §166

252K.607 Contest of registration or enforcement.

1. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

a. The issuing tribunal lacked personal jurisdiction over the contesting party.

b. The order was obtained by fraud.

c. The order has been vacated, suspended, or modified by a later order.

d. The issuing tribunal has stayed the order pending appeal.

e. There is a defense under the law of this state to the remedy sought.

f. Full or partial payment has been made.

g. The statute of limitation under section 252K.604 precludes enforcement of some or all of the arrearages.

2. If a party presents evidence establishing a full or partial defense under subsection 1, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

3. If the contesting party does not establish a defense under subsection 1 to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

97 Acts, ch 175, §167

252K.608 Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

97 Acts, ch 175, §168

PART 3

REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER

252K.609 Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in part 1 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

97 Acts, ch 175, §169

252K.610 Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the

registered order may be modified only if the requirements of section 252K.611 have been met.

97 Acts, ch 175, §170

252K.611 Modification of child support order of another state.

1. After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if section 252K.613 does not apply and after notice and hearing it finds that paragraph *"a"* or *"b"* applies:

a. The following requirements are met:

(1) The child, the individual obligee, and the obligor do not reside in the issuing state.

(2) A movant who is a nonresident of this state seeks modification.

(3) The respondent is subject to the personal jurisdiction of the tribunal of this state.

b. The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

2. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

3. A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under section 252K.207 establishes the aspects of the support order which are nonmodifiable.

4. On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

97 Acts, ch 175, §171

252K.612 Recognition of order modified in another state.

A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to this chapter or a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

1. Enforce the order that was modified only as to amounts accruing before the modification.

2. Enforce only nonmodifiable aspects of that order.

3. Provide other appropriate relief only for violations of the order which occurred before the effective date of the modification.

4. Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

97 Acts, ch 175, §172

252K.613 Jurisdiction to modify child support order of another state when individual parties reside in this state.

1. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

2. A tribunal of this state exercising jurisdiction under this section shall apply the provisions of articles 1 and 2, this article, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.

97 Acts, ch 175, §173

252K.614 Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

97 Acts, ch 175, §174

ARTICLE 7

DETERMINATION OF PARENTAGE

252K.701 Proceeding to determine parentage.

1. A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

2. In a proceeding to determine parentage, a responding tribunal of this state shall apply the procedural and substantive laws pursuant to chapters 252A and 252F, and the rules of this state on choice of law.

97 Acts, ch 175, §175

ARTICLE 8

INTERSTATE RENDITION

252K.801 Grounds for rendition.

1. For purposes of this article, *"governor"* includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

2. The governor of this state may:

a. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee.

b. On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

3. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

97 Acts, ch 175, §176

252K.802 Conditions of rendition.

1. Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

2. If, under this chapter, or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

3. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the movant prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

97 Acts, ch 175, §177

ARTICLE 9

MISCELLANEOUS PROVISIONS

252K.901 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

97 Acts, ch 175, §178

252K.902 Short title.

This chapter may be cited as the *"Uniform Interstate Family Support Act"*.

97 Acts, ch 175, §179

252K.903 Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

97 Acts, ch 175, §180

252K.904 Effective date — pending matters.

1. This chapter takes effect January 1, 1998.

2. A tribunal of this state shall apply this chapter beginning January 1, 1998, with the following conditions:

a. Matters pending on January 1, 1998, shall be governed by this chapter.

b. Pleadings and accompanying documents on pending matters are sufficient if the documents substantially comply with the requirements of chapter 252A in effect on December 31, 1997.

97 Acts, ch 175, §181

CHAPTER 253

COUNTY CARE FACILITIES

Transferred to chapter 347B

CHAPTER 254

TUBERCULOUS PATIENTS

Repealed by 76 Acts, ch 1056, §45

CHAPTER 255

MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

Obstetrical and newborn indigent patient care program; chapter 255A

255.1 Complaint — determination of medical assistance eligibility.
255.2 Duty of public officers and others.
255.3 "Patient" defined.
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255.24A Indigent patient program report.
255.25 Audit of accounts of hospital.
255.26 Expenses — how paid — action to reimburse county.
255.27 Faculty to prepare blanks — printing.
255.28 Transfer of patients from state institutions.
255.29 Medical care for parolees and persons on work release.
255.30 Collecting and settling claims for care.

255.1 Complaint — determination of medical assistance eligibility.

Any adult resident of the state may file a complaint in the office of the clerk of any juvenile court, charging that any legal resident of Iowa residing in the county where the complaint is filed is pregnant or is suffering from some malady or deformity that can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with the person's support are able to pay therefor.

The county general assistance director shall ascertain from the local office of human services if an applicant for the indigent patient program would qualify for medical assistance or the medically needy program under chapter 249A without the spend-down provision required pursuant to section 249A.3, subsection 2, paragraph *"i"*. If the applicant qualifies, the patient shall be certified for medical assistance and shall not be counted under this chapter.

[SS15, §254-b; C24, 27, 31, 35, §4005; C39, §**3828.132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.1]

91 Acts, ch 267, §226

255.2 Duty of public officers and others.

Physicians, public health nurses, members of boards of supervisors, general assistance directors, sheriffs, police officers, and public school teachers, having knowledge of persons suffering from any such malady or deformity, shall file or cause a complaint to be filed.

[SS15, §254-b; C24, 27, 31, 35, §4006; C39, §**3828.133;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.2]

92 Acts, ch 1212, §22

255.3 "Patient" defined.

The word *"patient"* as used in this chapter means the person against whom the complaint is filed.

[C24, 27, 31, 35, §4007; C39, §**3828.134;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.3]

255.4 Examination by physician.

Upon the filing of such complaint, the clerk shall number and index the same and shall appoint a competent physician and surgeon, living in the vicinity of the patient, who shall personally examine the patient with respect to said pregnancy, malady, or deformity. The clerk may, after the expiration of five years from the filing of a complaint, destroy it and all papers or records in connection therewith.

[SS15, §254-b; C24, 27, 31, 35, §4008; C39, §**3828.135;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.4]

255.5 Report by physician.

Such physician shall make a report in duplicate on blanks furnished as hereinafter provided, answering the questions contained therein and setting forth the information required thereby, giving such history of the case as will be likely to aid the medical or surgical treatment or hospital care of such patient, describing the pregnancy, deformity, or malady in detail, and stating whether or not in the physician's opinion the same can probably be improved or cured or advantageously treated, which report shall be filed in the office of the clerk within such time as the clerk may fix.

[SS15, §254-b, -j; C24, 27, 31, 35, §4009; C39, §**3828.136;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.5]

255.6 Investigation and report.

When a complaint is filed, the clerk of juvenile court shall furnish the county attorney and board of supervisors with a copy and the board shall, by the general assistance director or other agent it selects, make a thorough investigation of facts as to the legal residence of the patient, and the ability of the patient or others chargeable with the patient's support to pay the expense of treatment and care; and shall file a report of the investigation in the office of the clerk, at or before the time of hearing.

[SS15, §254-b; C24, 27, 31, 35, §4010; C39, §**3828.137;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.6]

92 Acts, ch 1212, §23

255.7 Notice of hearing — duty of county attorney.

When the physician's report has been filed, the clerk shall, with the consent of the court or judge, fix a time and place for hearing of the matter by the court, and the county attorney shall cause such patient and the parent or parents, guardian, or person having the legal custody of said patient, if under legal disability, to be served with such notice of the time and place of the hearing as the judge or clerk may prescribe.

[SS15, §254-c; C24, 27, 31, 35, §4011; C39, §**3828.138;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.7]

255.8 Hearing — order — emergency cases — cancellation of commitments.

The county attorney and the general assistance director, or other agent of the board of supervisors of the county, shall appear at the hearing. The complainant, the county attorney, the general assistance director or other agent of the board of supervisors, and the patient, or any person representing the patient, may introduce evidence and be heard. If the court finds that the patient is a legal resident of Iowa and is pregnant or is suffering from a malady or deformity which can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither the patient nor any person legally chargeable with the patient's support is able to pay the expenses, then the clerk of court, except in obstetrical cases and orthopedic cases, shall immediately ascertain from the admitting physician at the university hospital whether the person can be received as a patient within a period of thirty days, and if the patient can be received, the court, or in the event of no actual contest, the clerk of the court, shall enter an order directing that the patient be sent to the university hospital for proper medical and surgical treatment and hospital care. If the court ascertain, except in obstetrical cases and orthopedic cases, that a person of the age or sex of the patient, or afflicted by the complaint, disease, or deformity with which the person is afflicted, cannot be received as a patient at the university hospital within the period of thirty days, then the court or the clerk shall enter an order directing the board of supervisors of the county to provide adequate treatment at county expense for the patient at home or in a hospital. Obstetrical cases and orthopedic cases may be committed to the university hospital without regard to the limiting period of thirty days.

In any case of emergency the court or the clerk without previous inquiry may at its discretion order the patient to be immediately taken to and accepted by the university hospital for the necessary care as provided in section 255.11, but if such a patient cannot be immediately accepted at the university hospital as ascertained by telephone if necessary, the court or the clerk may enter an order as in certain cases above set forth directing the board of supervisors to provide adequate treatment at county expense for the said patient at home or in a hospital.

[SS15, §254-c; C24, 27, 31, 35, §4012; C39, §**3828.139;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.8]

92 Acts, ch 1212, §24

255.9 Treatment for infant.

Whenever a woman who is pregnant is committed to the hospital under the provisions of section 255.8, the said commitment shall authorize the hospital to provide proper medical or surgical treatment and hospital care for the infant.

[C31, 35, §4012-d1; C39, §**3828.140;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.9]

255.10 Religious belief — denial of order.

The court in its discretion may refuse to make such order in any case where the court finds the patient or the patient's parent, parents, or guardian are members of a religious denomination whose tenets preclude dependence on the practice of medicine or surgery and desire in good faith to rely upon the practice of their religion for relief from disease or disorder.

[C24, 27, 31, 35, §4013; C39, §**3828.141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.10]

255.11 Order in case of emergency.

In cases of great emergency, when the court or judge is satisfied that delay would be seriously injurious to the patient, the court or judge may make such order with the consent of the patient, if adult, or of the parent or parents, guardian, or person having the legal custody of said patient, if a minor or incompetent, without examination, report, notice, or hearing.

[SS15, §254-c; C24, 27, 31, 35, §4014; C39, §**3828.142;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.11]

255.12 Certified copy of order.

The clerk shall prepare a certified copy of said order, which, together with a copy of the physician's report, shall be delivered to the admitting physician of said hospital at or before the time of the reception of the patient into the hospital.

[SS15, §254-j; C24, 27, 31, 35, §4015; C39, §**3828.143;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.12]

255.13 Attendant — physician — compensation.

If the physician appointed to examine the patient shall certify that an attendant to accompany the patient to the said hospital is necessary, and the university hospital attendant and ambulance service is not available, then the court or judge or clerk of the court may appoint an attendant who shall receive not exceeding two dollars per day for the time thus necessarily employed and actual necessary traveling expenses by the most feasible route to said hospital whether by ambulance, train or automobile; but if such appointee is a relative of the patient or a member of the patient's immediate family, or receives a salary or other compensation from the public for the appointee's services, no such per diem compensation shall be paid. The physician appointed by the court or clerk to make the examination and report shall receive therefor three dollars for each examination and report so made and the physician's actual necessary expenses incurred in making such examination, but if said physician receives a salary or other compensation from the public for the physician's full-time services, then no such examination fee shall be paid. The actual, necessary expenses of transporting and caring for the patient shall be paid as hereinafter provided.

[SS15, §254-h; C24, 27, 31, 35, §4016; C39, §**3828.144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.13]

255.14 Expenses — how paid.

An itemized, verified statement of all charges provided for in sections 255.8 and 255.13, in cases where the patient is admitted or accepted for treatment at the university hospital shall be filed with the superintendent of the university hospital, and upon the superintendent's recommendation when approved by the judge or clerk of the court under whose order the same were incurred, they shall be charged on the regular bill for the maintenance, transportation and treatment of the patient, and be audited and paid in the manner as hereinafter provided.

[SS15, §254-h; C24, 27, 31, 35, §4017; C39, §**3828.145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.14]

255.15 Duty of admitting physician at hospital.

The authorities in control of the medical college shall designate some physician to pass upon the admission of the patient, and it shall be the physician's duty to receive the patient into the hospital and to provide for the patient, if available, a cot, bed, or room in the hospital, and to assign the patient to the appropriate clinic and for treatment by the proper physician, unless, in the physician's judgment, the presence of the patient in the hospital would be dangerous to other patients, or there is no reasonable probability that the patient may be benefited by the proposed treatment or hospital care. If the admitting physician denies admission to the patient, the physician shall make a report of the reasons for the denial.

[SS15, §254-d; C24, 27, 31, 35, §4018; C39, §**3828.146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.15]

94 Acts, ch 1023, §90

255.16 County quotas.

Subject to subsequent qualifications in this section, there shall be treated at the university hospital during each fiscal year a number of committed indigent patients from each county which bears the same relation to the total number of committed indigent patients admitted during the year as the population of the county bears to the total population of the state according to the last preceding official census. This standard applies to indigent patients, the expenses of whose commitment, transportation, care, and treatment are borne by appropriated funds, and does not govern the admission of obstetrical patients under chapter 255A or obstetrical or orthopedic patients under this chapter in accordance with eligibility standards pursuant to section 255A.5. If the number of patients admitted from any county exceeds by more than ten percent the county quota as fixed under the first sentence of this section, the charges and expenses of the care and treatment of the patients in excess of ten percent of the quota shall be paid from the funds of the county at actual cost; but if the number of excess patients from any county does not exceed ten percent, all costs, expenses, and charges incurred in their behalf shall be paid from the appropriation for the support of the hospital. Notwithstanding the quota established for a county under this section, the governor, upon a finding of necessity due to a regional or statewide economic emergency, may increase a county's quota of the number of committed indigent patients admitted to the university hospital.

[C35, §4018-f1; C39, §**3828.147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.16]

87 Acts, ch 233, §432; 90 Acts, ch 1272, §36; 91 Acts, ch 97, §34

255.17 Report of physician in charge of clinic.

If the physician or surgeon in charge of the clinic, or to whom the patient has been assigned for treatment, declines to treat the patient, the physician or surgeon shall make a report of the physician's or surgeon's examination of the patient, and state in the report the reasons for declining the treatment.

[SS15, §254-d; C24, 27, 31, 35, §4019; C39, §**3828.148;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.17]

94 Acts, ch 1023, §91

255.18 Records.

One copy of each of the reports named in sections 255.15 and 255.17 shall be preserved in the records of the hospital.

[SS15, §254-d; C24, 27, 31, 35, §4020; C39, §**3828.149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.18]

93 Acts, ch 70, §7

255.19 Treatment of other patients — use of earnings for new facilities.

The university hospital authorities may at their discretion receive into the hospital for medical, obstetrical or surgical treatment or hospital care, patients not committed thereto under the provisions of this chapter; but the treatment or care of such patients shall not in any way interfere with the proper medical or surgical treatment or hospital care of committed patients. The university hospital ambulances and ambulance personnel may be used for the transportation of such patients at a reasonable charge if specialized equipment is required and is not otherwise available and if such use does not interfere with the ambulance transportation of patients committed to the hospital.

All of the provisions of this chapter except as to commitment of patients shall apply to such patients. The university hospital authorities shall collect from the person or persons liable for the support of such patients reasonable charges for hospital care and service and deposit the same with the treasurer of the university for the use and benefit of the university hospital except as specified for obstetrical patients pursuant to section 255A.9. Earnings of the hospital whether from private patients, cost patients, or indigents shall be administered so as to increase as much as possible, the service available for indigents, including the acquisition, construction, reconstruction, completion, equipment, improvement, repair, and remodeling of medical buildings and facilities and additions thereto and the payment of principal and interest on bonds issued to finance the cost thereof as authorized by the provisions of chapter 263A. The physicians and surgeons on the hospital staff who care for patients provided for in this section may charge for their medical services under such rules, regulations and plan therefor as approved by the state board of regents.

[C24, 27, 31, 35, §4021; C39, §**3828.150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.19]

87 Acts, ch 233, §433

255.20 Hospital treatment.

When any patient has been admitted to the hospital for treatment, the physician or surgeon in charge of the case shall proceed with due care and diligence to perform such operation or bestow such treatment upon such patient as in the physician's or surgeon's judgment shall be necessary and proper. Adequate nursing and hospital care shall be provided for said patient during such treatment.

[SS15, §254-d; C24, 27, 31, 35, §4022; C39, §**3828.151;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.20]

255.21 Treatment outside hospital — attendant.

If, in the judgment of the physician or surgeon to whom the patient has been assigned for treatment, continuous residence of the patient in the hospital is unnecessary, such patient may, by the hospital authorities, be sent to the patient's home or other appropriate place, and be required to return to the hospital when and for such length of time as may be for the patient's benefit. The hospital authorities may, if necessary, appoint an attendant to accompany such patient and discharged patients, and the compensation of such attendant shall be fixed by the state board of regents and charged by the hospital as part of the costs of transporting patients. The compensation paid to and the expenses of the attendant shall be audited and paid in the same manner as is provided by law for the compensation of an attendant appointed by the court.

[SS15, §254-h, -i; C24, 27, 31, 35, §4023; C39, §**3828.152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.21]

255.22 Treatment authorized.

No minor or incompetent person shall be treated for any malady or deformity except such as is reasonably well described in the order of court or the report of the examining physician, unless permission for such treatment is provided for in the order of court, or is granted by the person's parents or guardian; but the physician in charge may administer such treatment or perform such surgical operations as are usually required in cases of emergency.

[SS15, §254-l; C24, 27, 31, 35, §4024; C39, §**3828.153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.22]

255.23 Treatment gratuitous — exception.

No physician, surgeon, or nurse who shall treat or care for such patient shall charge or receive any compensation therefor except the salary or compensation fixed by the state board of regents to be paid from the hospital funds. If the physician, surgeon, or nurse is not in the regular employ of the state board of regents, the compensation shall be paid by the county upon approval of the board of supervisors.

[SS15, §254-e; C24, 27, 31, 35, §4025; C39, §**3828.154;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.23]

255.24 Record and report of expenses — purchases.

The superintendent of said hospital shall keep a correct account of all medicine, care, and maintenance furnished to said patients, and shall make and file with the director of revenue and finance an itemized, sworn statement of all expenses thereof incurred in said hospital. But the superintendent shall render separate bills showing the actual cost of all appliances, instruments, X-ray and other special services used in connection with such treatment, commitments, and transportation to and from the said university hospital, including the expenses of attendants and escorts.

All purchases of materials, appliances, instruments and supplies by the university hospital, in cases where more than one hundred dollars is to be expended, and where the prices of the commodity or commodities to be purchased are subject to competition, shall be upon open competitive quotations, and all contracts therefor shall be subject to the provisions of chapter 72. However, purchases may be made through a hospital group purchasing organization provided that university hospitals is a member of the organization and the group purchasing organization selects the items to be offered to members through a competitive bidding process.

[SS15, §254-f; C24, 27, 31, 35, §4026; C39, §**3828.155;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.24]

89 Acts, ch 319, §38

See also §263A.13

255.24A Indigent patient program report.

Funds shall not be allocated to the university hospital fund until the superintendent of the university of Iowa hospitals and clinics has filed with the department of revenue and finance and the legislative fiscal bureau a quarterly report containing the account required in section 255.24. The report shall include information required in section 255.24 for patients by the type of service provided.

91 Acts, ch 267, §237

See also §263A.13

255.25 Audit of accounts of hospital.

To arrive at a proper basis for the payment of said bills for treatment, care, and maintenance, the state board of regents shall cause to be made annually an audit of the accounts of the university hospital, and determine the average cost per day for the care and maintenance of each patient therein, exclusive of the salaries of the members of the faculty of said university college of medicine, and said bills shall be allowed at such average cost. All accounts shall be so adjusted and paid as to reimburse the funds of the hospital used for the purposes of this chapter.

[C24, 27, 31, 35, §4027; C39, §**3828.156;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.25]

255.26 Expenses — how paid — action to reimburse county.

Warrants issued under section 255.25 shall be promptly drawn on the treasurer of state and for-

warded by the director of revenue and finance to the treasurer of the state university, and the same shall be by the treasurer of the state university placed to the credit of the funds which are set aside for the support of the university hospital. The superintendent of the university hospital shall certify to the auditor of state on the first day of January, April, July, and October of each year, the amount as herein provided not previously certified by the superintendent due the state from the several counties having patients chargeable thereto, and the auditor of state shall thereupon charge the same to the county so owing. A duplicate certificate shall also be mailed to the auditor of each county having patients chargeable thereto. Expenses for obstetrical patients served under section 255A.9 shall be reimbursed as specified in section 255A.9.

The county auditor, upon receipt of the certificate, shall enter it to the credit of the state in the ledger of state accounts, and at once issue a notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which notice shall be filed by the treasurer as authority for making the transfer. The county treasurer shall include the amount transferred in the next remittance of state taxes to the treasurer of state, to accrue to the credit of the university hospital fund.

The state auditor shall certify the total cost of commitment and caring for each indigent patient under the terms of this statute to the county auditor of such patient's legal residence, and such certificate shall be preserved by the county auditor and shall be a debt due from the patient or the persons legally responsible for the patient's care, maintenance or support; and whenever in the judgment of the board of supervisors the same or any part thereof shall be collectible, the said board may in its own name collect the same and is hereby authorized to institute suits for such purpose; and after deducting the county's share of such cost shall cause the balance to be paid into the state treasury to reimburse the university hospital fund. Transportation shall be provided at no charge to a patient who is certified for medical assistance under chapter 249A, and shall be reimbursed from the university hospital fund.

Should any county fail to pay these bills within sixty days from the date of certificate from the superintendent, the director of revenue and finance shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state.

[SS15, §254-g; C24, 27, 31, 35, §4028; C39, §**3828.157;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.26]

83 Acts, ch 123, §105, 209; 87 Acts, ch 233, §434; 91 Acts, ch 267, §227; 98 Acts, ch 1100, §32; 2000 Acts, ch 1058, §27

255.27 Faculty to prepare blanks — printing.

The medical faculty of the state university hospital shall from time to time prepare blanks containing questions and requiring information that it finds necessary and proper to be obtained by the physician who examines a patient under order of court. The blanks shall be printed by the state, and a sufficient supply shall be furnished by the state printing administrator to the clerk of each juvenile court in the state. The cost of printing the blanks shall be audited, allowed, and paid in the same manner as other bills for public printing.

[SS15, §254-j; C24, 27, 31, 35, §4029; C39, §**3828.158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.27]

91 Acts, ch 97, §35; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

255.28 Transfer of patients from state institutions.

The director of the department of human services, in respect to institutions under the director's control, the administrator of any of the divisions of the department, in respect to the institutions under the administrator's control, the director of the Iowa department of corrections, in respect to the institutions under the department's control, and the state board of regents in respect to the Iowa braille and sight saving school and the Iowa school for the deaf, may send any inmate, student, or patient of an institution, or any person committed or applying for admission to an institution, to the hospital of the medical college of the state university for treatment and care as provided in this chapter, without securing the order of court required in other cases. The department of human services, the Iowa department of corrections and the state board of regents, shall respectively pay the traveling expenses of a patient thus committed, and when necessary the traveling expenses of an attendant for the patient, out of funds appropriated for the use of the institution from which the patient is sent.

[SS15, §254-k; C24, 27, 31, 35, §4030; C39, §**3828.159;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §255.28]

83 Acts, ch 96, §109, 159; 84 Acts, ch 1067, §25

255.29 Medical care for parolees and persons on work release.

The director of the Iowa department of corrections may send former inmates of the institutions provided for in section 904.102, while on parole or work release, to the hospital of the university of Iowa college of medicine for treatment and care as provided in this chapter, without securing the order of the court required in other cases. The director may pay the traveling expenses of any patient thus committed, and when necessary the traveling expenses of an attendant of the patient out of funds appropriated for the use of the department.

[C62, 66, 71, 73, 75, 77, 79, 81, §255.29]
83 Acts, ch 96, §110, 159; 84 Acts, ch 1184, §17; 2001 Acts, ch 74, §18

255.30 Collecting and settling claims for care.

Whenever a patient or person legally liable for the patient's care at the hospital has insurance, an estate, rights of action against others, or other assets, any of which can be subjected thereto, the university hospital, by its superintendent or the superintendent's assistants through the facilities of the attorney general's office, is hereby authorized to file claims, institute or defend suits in courts, and use such other legal means as may be available to collect accounts incurred for the care of indigent or private patients, and may compromise, settle and release the same, all under such rules and procedures therefor as may be prescribed by the president of the university and the attorney general. If a county has paid any part of such patient's care a pro rata part of the amount collected, after deduction for cost of collection, shall be remitted to said county and the balance shall go into the hospital fund.
[C66, 71, 73, 75, 77, 79, 81, §255.30]

CHAPTER 255A

OBSTETRICAL AND NEWBORN INDIGENT PATIENT CARE

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255A.3 Administration of program.
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255A.1 State policy.

It is the policy of the state to provide obstetrical and newborn care to medically indigent individuals in this state, at the appropriate and necessary level, at a licensed hospital or health care facility closest and most available to the residence of the indigent individual.
87 Acts, ch 233, §435

255A.2 Obstetrical and newborn indigent patient care program.

A statewide obstetrical and newborn indigent patient care program is established for the purpose of providing obstetrical and newborn care to medically indigent residents of this state. Appropriations by the general assembly for this chapter shall be allocated for the obstetrical and newborn patient care fund within the Iowa department of public health and shall be utilized for the obstetrical and newborn indigent patient care program as specified in this chapter. Indigent patients in need of such care residing in the counties of Cedar, Clinton, Iowa, Johnson, Keokuk, Louisa, Muscatine, Scott, and Washington shall be provided the care at the university hospitals under the nonquota obstetrical program under chapter 255.
87 Acts, ch 233, §436

255A.3 Administration of program.

The Iowa department of public health shall administer the statewide obstetrical and newborn indigent patient care program. The department shall adopt administrative rules to implement the program pursuant to chapter 17A. Administrative costs of the department shall not exceed three percent of the annual funds appropriated for the obstetrical and newborn patient care fund.
87 Acts, ch 233, §437

255A.4 Patient quota formula.

The Iowa department of public health shall establish a patient quota formula for determining the maximum number of obstetrical and newborn patients eligible for the program from each county. The formula shall be based upon the annual appropriation for the program, the average number of live births in each county during the most recent three-year period for which statistics are avail-

able, and the per capita income for each county during the most recent one-year period for which statistics are available. In accordance with this formula the department shall allocate a patient quota to each county at the beginning of each fiscal year. The department shall provide for the reassignment of an unused county quota allotment on April 1 of each year. The reassignment shall be taken only from a county which has an unused quota allotment for the portion of the fiscal year ending March 31. A county may utilize its quota allotment for a patient determined to be eligible before the end of the fiscal year but scheduled to need care after the end of the fiscal year. The reassignment of an unused county allotment shall be made to other counties on the basis of rules adopted by the department pursuant to chapter 17A.

A woman who resides in a county which exceeds the patient quota allocated for the county, and who has been deemed eligible under section 255A.5, shall be served at the University of Iowa hospitals and clinics pursuant to section 255.16.

87 Acts, ch 233, §438

255A.5 Minimum eligibility standards.

The Iowa department of public health, in collaboration with the department of human services and in consultation with the Iowa state association of counties, shall adopt rules, pursuant to chapter 17A, establishing minimum standards for eligibility for obstetrical and newborn care, including physician examination, medical testing, ambulance services, and inpatient transportation costs, for indigent obstetrical and newborn care provided by the university of Iowa hospitals and clinics and by other licensed hospitals and physicians. The minimum standards for eligibility shall provide eligibility for persons with incomes at or below one hundred eighty-five percent of the annual revision of the poverty income guidelines published by the United States department of health and human services, and shall provide, but shall not be limited to providing, eligibility for uninsured and underinsured persons financially unable to pay for necessary obstetrical and newborn care and orthopedic care. The minimum standards may include a spend-down provision. The resource standards shall be set at or above the resource standards under the federal supplemental security income program. The resource exclusions allowed under the federal supplemental security income program shall be allowed and shall include resources necessary for self-employment.

87 Acts, ch 233, §439; 91 Acts, ch 122, §1

255A.6 Application and certification for care.

A person desiring obstetrical and newborn care, the cost of which is payable from the obstetrical and newborn patient care fund, or the parent or guardian of a minor desiring or in need of such care, may apply to the director of a maternal health center, operated by the Iowa department of public health, to have the cost of such care paid from the fund. In counties not served by such a center, the department shall contract with another agency, institution or organization to receive and process applications for care. The director of the center shall first ascertain from the local office of the department of human services if the applicant would be eligible for medical assistance or for assistance under the medically needy program without any spend-down requirement, pursuant to chapter 249A. If the applicant is eligible for assistance pursuant to chapter 249A, or if the applicant is eligible for maternal and child health care services covered by a maternal and child health program, the obstetrical patient care program shall not provide such assistance, care, or covered services provided under other programs. The Iowa department of public health, with the department of human services, shall jointly develop a standardized application form and shall coordinate the determination of eligibility for medical assistance and the obstetrical patient care program. In counties in which the maternal and child health clinic processes the application, the clinic shall notify the county relief office of the application process.

87 Acts, ch 233, §440

255A.7 Freedom of choice of provider.

A person certified for obstetrical and newborn care under this chapter may choose to receive the appropriate level of care at the University of Iowa hospitals and clinics or any other licensed hospital or health care facility.

87 Acts, ch 233, §441

255A.8 Reimbursable costs of care.

The obstetrical and newborn care costs of a person certified for such care under this chapter at a licensed hospital or health care facility or from licensed physicians shall be paid by the Iowa department of public health from the obstetrical and newborn patient care fund. However, a physician who provides obstetrical or newborn care at the University of Iowa hospitals and clinics to a person certified for care under this chapter is not entitled to receive any compensation for the provision of such care in accordance with section 255.23.

87 Acts, ch 233, §442

255A.9 Allowable reimbursements.

All providers of services to obstetrical and newborn patients under this chapter shall agree to accept as full payment the reimbursements allowable under the medical assistance program established pursuant to chapter 249A, adjusted for intensity of care. However, the total reimbursement from the obstetrical and newborn patient care

fund to providers of services for residents of a county is limited to that county's obstetrical and newborn patient quota multiplied by the medical assistance program's average reimbursement for obstetrical and newborn care for the most recent fiscal year except as otherwise provided in this section. The Iowa department of public health shall reserve ten percent of the fund annually for payment of the costs of care of a patient certified for care under this chapter in excess of the medical assistance program's average reimbursements if the nature and extent of the care justifies such additional reimbursement. The department shall adopt rules pursuant to chapter 17A, establishing the requirements for such additional reimbursement.

87 Acts, ch 233, §443

255A.10 Procedures for payment.

The Iowa department of public health shall establish procedures for payment for providers of services to obstetrical and newborn patients under this chapter from the obstetrical and newborn patient care fund. All billings from such providers shall be submitted directly to the department. However, payment shall not be made unless the application and certification for care pursuant to section 255A.6 is performed.

87 Acts, ch 233, §444

255A.11 County responsibility for costs of care.

A county shall not be held responsible for the costs of providing obstetrical and newborn care, including physician examination, medical testing, ambulance services, and transportation costs, to pregnant women and their newborn infants who meet the eligibility requirements adopted by the Iowa department of public health.

87 Acts, ch 233, §445

255A.12 Reversion or transfer of moneys in the obstetrical and newborn patient care fund.

Moneys encumbered prior to June 30 of a fiscal year for a certified eligible pregnant woman scheduled to deliver in the next fiscal year shall not revert from the obstetrical and newborn patient care fund to the general fund of the state. Moneys allocated to the obstetrical and newborn patient care fund shall not be transferred nor voluntarily reverted from the fund within a given fiscal year.

87 Acts, ch 233, §446

255A.13 Data collection.

The university of Iowa hospitals and clinics shall submit, on a quarterly basis, UB-92 claims for all patients discharged after being served under the indigent patient program under chapter 255.

87 Acts, ch 233, §447; 98 Acts, ch 1100, §33; 2000 Acts, ch 1058, §28

255A.14 Funds — reversion of unencumbered balance. Repealed by 91 Acts, ch 122, § 2.

TITLE VII

EDUCATION AND CULTURAL AFFAIRS

SUBTITLE 1

ELEMENTARY AND SECONDARY EDUCATION

CHAPTER 256

DEPARTMENT OF EDUCATION

Department includes Iowa advance funding authority; §7E.7, chapter 257C

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SUBCHAPTER I

GENERAL PROVISIONS

256.1 Department established.

1. The department of education is established to act in a policymaking and advisory capacity and to exercise general supervision over the state system of education including all of the following:

a. Public elementary and secondary schools.

b. Community colleges.

c. Area education agencies.

d. Vocational rehabilitation.

e. Educational supervision over the elementary and secondary schools under the control of an administrator of a division of the department of human services.

f. Nonpublic schools to the extent necessary for compliance with Iowa school laws.

2. The department shall stimulate and encourage educational radio and television and other educational communications services as necessary to aid in accomplishing the educational objectives of the state.

3. The department shall meet the informational needs of the three branches of state government.

4. The department shall provide for the improvement of library services to all Iowa citizens and foster development and cooperation among libraries.

5. The department shall act as an administrative, supervisory, and consultative state agency.

86 Acts, ch 1245, §1401; 93 Acts, ch 48, §12; 94 Acts, ch 1023, §92

256.2 Definitions.

As used in this chapter:

1. *"Department"* means the department of education.

2. *"Director"* means the director of the department of education.

3. *"State board"* means the state board of education.

86 Acts, ch 1245, §1402

256.3 State board established.

The state board of education is established for the department. The state board consists of ten members, nine voting members and one nonvoting student member. The voting members shall be appointed by the governor subject to senate confirmation. The nonvoting student member shall be appointed as provided in section 256.5A. The voting members shall be registered voters of the state and hold no other elective or appointive state office. A voting member shall not be engaged in professional education for a major portion of the member's time nor shall the member derive a major portion of income from any business or activity connected with education. Not more than five voting members shall be of the same political party.

The terms of office for voting members are for six years beginning and ending as provided in section 69.19.

Three of the voting members shall have substantial knowledge related to the community college system. The remaining six voting members shall be members of the general public.

86 Acts, ch 1245, §1403; 90 Acts, ch 1253, §4; 95 Acts, ch 49, §4; 2002 Acts, ch 1140, §1

Confirmation, see §2.32
Section amended

256.4 Oath — vacancies.

The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. Vacancies in the voting membership shall be filled in the same manner in which regular appointments are required to be made.

86 Acts, ch 1245, §1404; 2002 Acts, ch 1140, §2

Section amended

256.5 Compensation and expenses.

The members of the state board shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties. Members of the state board may also be eligible to receive compensation as provided in section 7E.6. All expense moneys paid to the members shall be paid from funds appropriated to the department.

86 Acts, ch 1245, §1405

256.5A Nonvoting member.

The governor shall appoint the one nonvoting student member of the state board for a term of one year beginning and ending as provided in section 69.19. The nonvoting student member shall be appointed from a list of names submitted by the state board of education. Students enrolled in either grade ten or eleven in a public school may apply to the state board to serve as a nonvoting student member. The department shall develop an application process that requires the consent of the student's parent or guardian if the student is a minor, initial application approval by the school district in which the student applicant is enrolled, and submission of approved applications by a school district to the department. The nonvoting student member's school district of enrollment shall notify the student's parents if the student's grade point average falls during the period in which the student is a member of the state board. The state board shall adopt rules under chapter 17A specifying criteria for the selection of applicants whose names shall be submitted to the governor. Criteria shall include, but are not limited to, academic excellence, participation in extracurricular and community activities, and interest in serving on the board. Rules adopted by the state board shall also require, if the student is a minor, supervision of the student by the student's parent or guardian while the student is engaged in authorized state board business at a location other than the community in which the student resides, unless the student's parent or guardian submits to the state board a signed release indicating the parent or guardian has determined that supervision of the student by the parent or guardian is unnecessary. The nonvoting student member shall be appointed without regard to political affiliation. The nonvoting student member shall have been enrolled in a public school in Iowa for at least one year prior to the member's appointment. A nonvoting student member who will not graduate from high school prior to the end of a second term may apply to the state board for submission of candidacy to the governor for a second one-year term. A nonvoting student member shall be paid a per diem as provided in section 7E.6 and the student and the student's parent or guardian shall be reimbursed for actual and necessary expenses incurred in the performance of the student's duties as a nonvoting member of the state board. A vacancy in the membership of the nonvoting student member shall not be filled until the expiration of the term.

2002 Acts, ch 1140, §3
NEW section

256.6 Regular and special meetings.

The state board shall meet in May of each year for purposes of organization and shall hold at least five additional regular meetings during the twelve-month period ending April 30. Special meetings of the state board may be called by the president or by any five members of the board on five days' notice given to each member.

86 Acts, ch 1245, §1406; 88 Acts, ch 1013, §1

256.7 Duties of state board.

Except for the college student aid commission and the public broadcasting board and division, the state board shall:

1. Adopt and establish policy for programs and services of the department pursuant to law.
2. Constitute the state board for vocational education under chapter 258.
3. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs, offered by practitioner preparation institutions and area education agencies, in this state. Procedures provided for approval of programs shall include procedures for enforcement of the prescribed standards and shall not include a procedure for the waiving of any of the standards prescribed.
4. Adopt, and update annually, a five-year plan for the achievement of educational goals in Iowa.
5. Adopt rules under chapter 17A for carrying out the responsibilities of the department.
6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board may review the record and shall review the decision of the director of the department of education or the administrative law judge designated for any appeals heard and decided by the director under chapter 290, and may affirm, modify, or vacate the decision, or may direct a rehearing before the director.
7. Adopt rules under chapter 17A for the use of telecommunications as an instructional tool for students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the state board of regents, and independent colleges and universities in elementary and secondary school classes and courses. The rules shall include but need not be limited to rules relating to programs, educational policy, instructional practices, staff development, use of pilot projects, curriculum monitoring, and the accessibility of licensed teachers.

When curriculum is provided by means of telecommunications, it shall be taught by an appropriately licensed teacher. The teacher shall either be present in the classroom, or be present at the location at which the curriculum delivered by means of telecommunications originates.

The rules shall provide that when the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originates, the curriculum received at a remote site shall be under the supervision of a licensed teacher. The licensed teacher at the originating site may provide supervision of students at a remote site or the school district in which the remote site is located may provide for supervision at the remote site if the school district deems it necessary or if requested to do so by the licensed teacher at the originating site. For the purposes of this subsection, *"supervision"* means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

The state board shall establish an advisory committee to make recommendations for rules required under this subsection on the use of telecommunications as an instructional tool. The committee shall be composed of representatives from community colleges, area education agencies, accredited or approved nonpublic schools, and local school districts from various enrollment categories. The representatives shall include board members, school administrators, teachers, parents, students, and associations interested in education.

For the purpose of the rules adopted by the state board, telecommunications means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications.

8. Rules adopted under this section shall provide that telecommunications shall not be used by school districts as the exclusive means to provide any course which is required by the minimum educational standards for accreditation.

9. Develop evaluation procedures that will measure the effects of instruction by means of telecommunications on student achievement, socialization, intellectual growth, motivation, and other related factors deemed relevant by the state board, for the development of an educational data base. The state board shall consult with the state board of regents and the practitioner preparation departments at its institutions, other practitioner preparation departments located within private colleges and universities, educational research agencies or facilities, and other agencies deemed appropriate by the state board, in developing these procedures.

10. Adopt rules pursuant to chapter 17A relating to educational programs and budget limitations for educational programs pursuant to sections 282.28, 282.29, 282.30, and 282.31.

11. Prescribe guidelines for facility standards, maximum class sizes, and maximum in classroom pupil-teacher and teacher-aide ratios for grades kindergarten through three and before and after school and summer child care programs provided under the direction of the school district. The department also shall indicate modifications to such guidelines necessary to address the needs of at-risk children.

12. Elect to a two-year term, from its members in each even-numbered year, a president of the state board, who shall serve until a successor is elected and qualified.

13. Adopt rules and a procedure for accrediting all apprenticeship programs in the state which receive state or federal funding. In developing the rules, the state board shall consult with schools and labor or trade organizations affected by or currently operating apprenticeship or training programs. Rules adopted shall be the same or similar to criteria established for the operation of apprenticeship programs at community colleges.

14. Adopt rules which require each community college which establishes a new jobs training project or projects and receives funds derived from or associated with the project or projects to establish a separate account to act as a repository for any funds received and to report annually, by January 15, to the general assembly on funds received and disbursed during the preceding fiscal year in the form required by the department.

15. If funds are appropriated by the general assembly for the program, adopt rules for the administration of the teacher exchange program, including, but not limited to, rules for application to participate in the program, rules relating to the number of times that a given applicant may participate in the program, and rules describing reimbursable expenses and establishing honoraria for teacher participants.

16. Adopt rules that set standards for approval of family support preservice and in-service training programs, offered by area education agencies and practitioner preparation institutions, and family support programs offered by or through local school districts.

17. Receive and review the budget and unified plan of service submitted by the division of libraries and information services.

18. Adopt rules that include children who retain some sight but who have a medically diagnosed expectation of visual deterioration within the definition of children requiring special education pursuant to section 256B.2, subsection 1. Rules adopted pursuant to this subsection shall provide for or include, but are not limited to, the following:

a. A presumption that proficiency in braille reading and writing is essential for satisfactory educational progress for a visually impaired student who is not able to communicate in print with the same level of proficiency as a student of other-

wise comparable ability at the same grade level. This presumption includes a student as defined in paragraph *"b"*. A student for whom braille services are appropriate, as defined in this subsection, is entitled to instruction in braille reading and writing that is sufficient to enable the pupil to communicate with the same level of proficiency as a pupil of otherwise comparable ability at the same grade level.

b. A pupil who retains some sight but who has a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

c. Instruction in braille reading and writing may be used in combination with other special education services appropriate to a pupil's educational needs.

d. The annual review of a pupil's individual education plan shall include discussion of instruction in braille reading and writing and a written explanation of the reasons why the pupil is using a given reading and writing medium or media. If the reasons have not changed since the previous year, the written explanation for the current year may refer to the fuller explanation from the previous year.

e. A pupil as defined in paragraph *"b"* whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the pupil can effectively use.

f. A pupil who receives instruction in braille reading and writing pursuant to this subsection shall be taught by a teacher licensed to teach students with visual impairments.

19. Define the minimum school day as a day consisting of five and one-half hours of instructional time for grades one through twelve. The minimum hours shall be exclusive of the lunch period, but may include passing time between classes. Time spent on parent-teacher conferences shall be considered instructional time. A school or school district may record a day of school with less than the minimum instructional hours as a minimum school day if any of the following apply:

a. If emergency health or safety factors require the late arrival or early dismissal of students on a specific day.

b. If the total hours of instructional school time for grades one through twelve for any five consecutive school days equal a minimum of twenty-seven and one-half hours, even though any one day of school is less than the minimum instructional hours because of a staff development opportunity provided for the professional instructional staff or because parent-teacher conferences have been scheduled beyond the regular school day. Furthermore, if the total hours of instructional time for the first four consecutive days equal at least twenty-seven and one-half hours because parent-teacher conferences have been scheduled beyond the regular school day, a school or school district may record zero hours of instructional time on the fifth consecutive school day as a minimum school day.

20. Adopt rules that require the board of directors of a school district to waive school fees for indigent families.

21. Develop and adopt rules by July 1, 1999, incorporating accountability for student achievement into the standards and accreditation process described in section 256.11. The rules shall provide for all of the following:

a. Requirements that all school districts and accredited nonpublic schools develop, implement, and file with the department a comprehensive school improvement plan that includes, but is not limited to, demonstrated school, parental, and community involvement in assessing educational needs, establishing local education standards and student achievement levels, and, as applicable, the consolidation of federal and state planning, goal-setting, and reporting requirements.

b. A set of core academic indicators in mathematics and reading in grades four, eight, and eleven, a set of core academic indicators in science in grades eight and eleven, and another set of core indicators that includes, but is not limited to, graduation rate, postsecondary education, and successful employment in Iowa. Annually, the department shall report state data for each indicator in the condition of education report.

c. A requirement that all school districts and accredited nonpublic schools annually report to the department and the local community the district-wide progress made in attaining student achievement goals on the academic and other core indicators and the district-wide progress made in attaining locally established student learning goals. The school districts and accredited nonpublic schools shall demonstrate the use of multiple assessment measures in determining student achievement levels. The school districts and accredited nonpublic schools shall also report the number of students who enter ninth grade but do not graduate from the school or school district; and the number of students who are tested and the percentage of students who are so tested annually. The board shall develop and adopt uniform definitions consistent with the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110 and any federal regulations adopted pursuant to the federal Act. The school districts and accredited nonpublic schools may report on other locally determined factors influencing student achievement. The school districts and accredited nonpublic schools shall also report to the local community their results by individual attendance center.

22. Adopt rules and a procedure for the approval of para-educator preparation programs offered by a public school district, area education agency, community college, institution of higher education under the state board of regents, or an

accredited private institution as defined in section 261.9, subsection 1. The programs shall train and recommend individuals for para-educator certification under section 272.12.

23. Adopt rules directing the community colleges to annually and uniformly submit data from the most recent fiscal year to the division of community colleges and workforce preparation, using criteria determined and prescribed by the division via the management information system. Financial data submitted to the division by a community college shall be broken down by fund. Community colleges shall provide data to the division by a deadline set by the division. The deadline shall be set for a date that permits the division to include the data in a report submitted for state board approval and for review by December 15 of each year by the house and senate standing education committees and the joint subcommittee on education appropriations.

24. Adopt rules on or before January 1, 2001, to require school districts and accredited nonpublic schools to adopt local policies relating to health services, media services programs, and guidance programs, as part of the general accreditation standards applicable to school districts pursuant to section 256.11. This subsection shall be applicable strictly for reporting purposes and shall not be interpreted to require school districts and accredited nonpublic schools to provide or offer health services, media services programs, or guidance programs.

25. Adopt rules establishing standards for school district and area education agency career development programs and for individual teacher career development plans in accordance with section 284.6.

86 Acts, ch 1245, §1407; 87 Acts, ch 224, §24, 25; 87 Acts, ch 207, §1; 87 Acts, ch 211, §2; 87 Acts, ch 233, §449; 88 Acts, ch 1266, §1; 89 Acts, ch 8, §1; 89 Acts, ch 206, §5; 89 Acts, ch 210, §1 – 3; 89 Acts, ch 265, §19 – 22; 90 Acts, ch 1249, §2, 3; 90 Acts, ch 1253, §5, 122; 90 Acts, ch 1272, §37; 91 Acts, ch 84, §1; 92 Acts, ch 1158, §2; 92 Acts, ch 1246, §26; 93 Acts, ch 48, §13; 93 Acts, ch 59, §1; 93 Acts, ch 82, §1; 94 Acts, ch 1043, §1; 94 Acts, ch 1091, §1 – 3; 94 Acts, ch 1193, §17; 96 Acts, ch 1007, §1; 96 Acts, ch 1127, §2; 98 Acts, ch 1176, §1; 98 Acts, ch 1202, §39, 46; 2000 Acts, ch 1098, §1; 2000 Acts, ch 1167, §1; 2000 Acts, ch 1170, §1; 2001 Acts, ch 24, §66, 74; 2001 Acts, ch 26, §1; 2002 Acts, ch 1140, §4; 2002 Acts, ch 1152, §1

Subsection 21, paragraph c amended
NEW subsection 25

256.8 Director of department of education.

The governor shall appoint a director of the department of education subject to confirmation by the senate. The director shall possess a background in education and administrative experience and shall serve at the pleasure of the governor.

86 Acts, ch 1245, §1408
Confirmation, see §2.32

256.9 Duties of director.

Except for the college student aid commission and the public broadcasting board and division, the director shall:

1. Carry out programs and policies as determined by the state board.

2. Recommend to the state board rules necessary to implement programs and services of the department.

3. Establish divisions of the department as necessary or desirable in addition to divisions required by law. The organization of the department shall promote coordination of functions and services relating to administration, supervision, and improvement of instruction.

4. Employ personnel and assign duties and responsibilities of the department. The director shall appoint a deputy director and division administrators deemed necessary. They shall be appointed on the basis of their professional qualifications, experience in administration, and background. Members of the professional staff are not subject to the merit system provisions of chapter 19A and are subject to section 256.10.

5. Transmit to the department of management information about the distribution of state and federal funds pursuant to state law and rules of the department.

6. Develop a budget and transmit to the department of management estimates of expenditure requirements for all functions and services of the department.

7. Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department.

8. Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education.

9. Conduct research on education matters.

10. Submit to each regular session of the general assembly recommendations relating to revisions or amendments to the school laws.

11. Approve, coordinate, and supervise the use of electronic data processing by school districts, area education agencies, and merged areas.

12. Act as the executive officer of the state board.

13. Act as custodian of a seal for the director's office and authenticate all true copies of decisions or documents.

14. Appoint advisory committees, in addition to those required by law, to advise in carrying out the programs, services, and functions of the de-

partment.

15. Provide the same educational supervision for the schools maintained by the director of human services as is provided for the public schools of the state and make recommendations to the director of human services for the improvement of the educational program in those institutions.

16. Interpret the school laws and rules relating to the school laws.

17. Hear and decide appeals arising from the school laws not otherwise specifically granted to the state board.

18. Prepare forms and procedures as necessary to be used by area education agency boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports, and notify the area education agency board, district board, or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited until the report has been properly filed.

19. Determine by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of the schools, and request a state audit of the accounts of a school district, area education agency, school official, or school employee handling school funds when it is apparent that an audit should be made.

20. Preserve reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions.

21. Keep a record of the business transacted by the director.

22. Endeavor to promote among the people of the state an interest in education.

23. Classify and define the various schools under the supervision of the department, formulate suitable courses of study, and publish and distribute the classifications and courses of study and promote their use.

24. Report biennially to the governor, at the time provided by law, the condition of the schools under the department's supervision, including the number of school districts, the number and value of schoolhouses, the enrollment and attendance in each district for the previous year, any measures proposed for the improvement of the public schools, financial and statistical information of public importance, and general information relating to educational affairs and conditions within the state or elsewhere. The report shall also review the programs and services of the department.

25. Direct area education agency administrators to arrange for professional teachers' meetings, demonstration teaching, or other field work for the improvement of instruction as best fits the needs of the public schools in each area.

26. Cause to be printed in book form, during the months of June and July in the year 1987 and every four years thereafter, if deemed necessary, all school laws then in force with forms, rulings, decisions, notes, and suggestions which may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to school officers, directors, superintendents, area administrators, members of the general assembly, and others as reasonably requested.

27. Direct that any amendments or changes in the school laws, with necessary notes and suggestions, be distributed as prescribed in subsection 26 annually.

28. Prepare and submit to each regular session of the general assembly a report containing the recommendations of the state board as to revisions, amendments, and new provisions of school laws.

29. Reserved.

30. Approve the salaries of area education agency administrators.

31. Develop criteria and procedures to assist in the identification of at-risk children and their developmental needs.

32. Develop, in conjunction with the child development coordinating council or other similar agency, child-to-staff ratio recommendations and standards for at-risk programs based on national literature and test results and Iowa longitudinal test results.

33. Develop programs in conjunction with the center for early development education to be made available to the school districts to assist them in identification of at-risk children and their developmental needs.

34. Conduct or direct the area education agency to conduct feasibility surveys and studies, if requested under section 282.11, of the school districts within the area education agency service areas and all adjacent territory, including but not limited to contiguous districts in other states, for the purpose of evaluating and recommending proposed whole grade sharing agreements requested under section 282.7 and section 282.10, subsections 1 and 4. The surveys and studies shall be revised periodically to reflect reorganizations which may have taken place in the area education agency, adjacent territory, and contiguous districts in other states. The surveys and studies shall include a cover page containing recommendations and a short explanation of the recommendations. The factors to be used in determining the recommendations include, but are not limited to:

a. The possibility of long-term survival of the proposed alliance.

b. The adequacy of the proposed educational programs versus the educational opportunities offered through a different alliance.

c. The financial strength of the new alliance.

d. Geographical factors.

e. The impact of the alliance on surrounding schools.

Copies of the completed surveys and studies shall be transmitted to the affected districts' school boards.

35. Develop standards and instructional materials to do all of the following:

a. Assist school districts in developing appropriate before and after school programs for elementary school children.

b. Assist school districts in the development of child care services and programs to complement half-day and all-day kindergarten programs.

c. Assist school districts in the development of appropriate curricula for all-day, everyday kindergarten programs.

d. Assist school districts in the development of appropriate curricula for the early elementary grades one through three.

e. Assist prekindergarten instructors in the development of appropriate curricula and teaching practices.

Standards and materials developed shall include materials which employ developmentally appropriate practices and incorporate substantial parental involvement. The materials and standards shall include alternative teaching approaches including collaborative teaching and alternative dispute resolution training. The department shall consult with the child development coordinating council, the state child care advisory council, the department of human services, the state board of regents center for early developmental education, the area education agencies, the department of child development in the college of family and consumer sciences at Iowa state university of science and technology, the early childhood elementary division of the college of education at the university of Iowa, and the college of education at the university of northern Iowa, in developing these standards and materials.

For purposes of this section *"substantial parental involvement"* means the physical presence of parents in the classroom, learning experiences designed to enhance the skills of parents in parenting and in providing for their children's learning and development, or educational materials which may be borrowed for home use.

36. Develop, or direct the area education agencies to develop, a statewide technical assistance support network to provide school districts or district subcontractors under section 279.49 with assistance in creating developmentally appropriate programs under section 279.49.

37. Administer and approve grants to school districts which provide innovative in-school programming for at-risk children in grades kindergarten through three, in addition to regular school curricula for children participating in the program, with the funds for the grants being appropriated for at-risk children by the general assembly. Grants approved shall be for programs in schools with a high percentage of at-risk children. Preference shall be given to programs which integrate at-risk children with the rest of the school population, which agree to limit class size and pupil-teacher ratios, which include parental involvement, which demonstrate community support, which cooperate with other community agencies, which provide appropriate guidance counseling services, and which use teachers with an early childhood endorsement. Grant programs shall contain an evaluation component that measures student outcomes.

38. Develop a model written publications code including reasonable provisions for the regulation of the time, place, and manner of student expression.

39. Provide educational resources and technical assistance to schools relating to the implementation of the nutritional guidelines for food and beverages sold on public school grounds or on the grounds of nonpublic schools receiving funds under section 283A.10.

40. Develop an application and review process for the identification of quality instructional centers at the community colleges. The process developed shall include but is not limited to the development of criteria for the identification of a quality instructional center as well as for the enhancement of other program offerings in order to upgrade programs to quality instructional center status. Criteria established shall be designed to increase student access to programs, establish high quality occupational and vocational education programs, and enhance interinstitutional cooperation in program offerings.

41. Explore, in conjunction with the state board of regents, the need for coordination between school districts, area education agencies, regents institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include, but is not limited to, coordination of calendars, programs, schedules, or telecommunications emissions.

42. Develop an application and review process for approval of administrative and program sharing agreements between two or more community colleges or a community college and an institution of higher education under the board of regents entered into pursuant to section 260C.46.

43. Prepare a plan and a report for ensuring that all Iowa children will be able to satisfy the requirements for high school graduation. The plan and report shall include a statement of the dimensions of the dropout problem in Iowa; a survey of existing programs geared to dropout prevention; a plan for use of competency-based outcome methods and measures; proposals for alternative means for satisfying graduation requirements including alternative high school settings, supervised vocational experiences, education experi-

ences within the correctional system, screening and assessment mechanisms for identifying students who are at risk of dropping out and the development of an individualized education plan for identified students; a requirement that schools provide information to students who drop out of school on options for pursuing education at a later date; the development of basic materials and information for schools to present to students leaving school; a requirement that students notify their school districts of residence when the student discontinues school, including the reasons for leaving school and future plans for career development; a requirement that, unless a student chooses to make the information relating to the student leaving school confidential, schools make the information available to community colleges, area education agencies, and other educational institutions upon request; recommendations for the establishment of pilot projects for the development of model alternative options education programs; a plan for implementation of any recommended courses of action to attain a zero dropout rate by the year 2000; and other requirements necessary to achieve the goals of this subsection. Alternative means for satisfying graduation requirements which relate to the development of individualized education plans for students who have dropped out of the regular school program shall include, but are not limited to, a tracking component that requires a school district to maintain periodic contact with a student, assistance to a dropout in curing any of the student's academic deficiencies, an assessment of the student's employability skills and plans to improve those skills, and treatment or counseling for a student's social needs. The department shall also prepare a cost estimate associated with implementation of proposals to attain a zero dropout rate, including but not limited to evaluation of existing funding sources and a recommended allocation of the financial burden among federal, state, local, and family resources.

44. If funds are appropriated by the general assembly for the program, administer the teacher exchange program, develop forms for requests to participate in the program, and process requests from teacher participants for reimbursement of expenses incurred as a result of participating in the program.

45. Develop in-service and preservice training programs through the area education agencies and practitioner preparation institutions and guidelines for school districts for the establishment of family support programs. Guidelines developed shall describe barriers to learning and development which can affect children served by family support programs.

46. Serve as an ex officio member of the commission of libraries.

47. Grant annual exemptions from one or more of the minimum education standards contained in section 256.11 and rules adopted by the state board of education to nonpublic schools or public school districts who are engaging in comprehensive school transformation efforts that are broadly consistent with the current standards, but require exemption from one or more standards in order to implement the comprehensive school transformation effort within the nonpublic school or school district. Nonpublic schools or public school districts wishing to be exempted from one or more of the minimum standards contained in section 256.11 and rules adopted by the state board of education shall file a request for an exemption with the department. Requests for exemption shall include all of the following:

a. A description of the nonpublic school or public school district's school transformation plan, including but not limited to new structures, methodologies, and creative approaches designed to help students achieve at higher levels.

b. Identification of the standard or standards for which the exemption is being sought, including a statement of the reasons for requesting the exemption from the standard or standards.

c. Identification of a method for periodic demonstration that student achievement will not be lessened by the granting of the exemption.

The director shall develop a procedure for application for exemption and receipt, review, and evaluation of nonpublic school and public school district requests, including but not limited to development of criteria for the granting or denying of requests for exemptions and a time line for the submission, review, and granting or denying of requests for exemption from one or more standards.

48. Develop and administer, with the cooperation of the commission of veterans affairs, a program which shall be known as operation recognition. The purpose of the program is to award high school diplomas to veterans of World War I, World War II, and the Korean and Vietnam conflicts who left high school prior to graduation to enter United States military service. The department and the commission shall jointly develop an application procedure, distribute applications, and publicize the program to school districts, accredited nonpublic schools, county commissions of veteran affairs, veterans organizations, and state, regional, and local media. All honorably discharged veterans who are residents or former residents of the state; who served at any time between April 6, 1917, and November 11, 1918, at any time between September 16, 1940, and December 31, 1946, at any time between June 25, 1950, and January 31, 1955, or at any time between February 28, 1961, and May 5, 1975, all dates inclusive; and who did not return to school and complete their education after the war or conflict shall be eligible to receive a diploma. Diplomas may be issued posthumously. Upon approval of an application, the department shall issue an honorary high school diploma for an eligible veteran. The diploma shall indicate the

veteran's school of attendance. The department and the commission shall work together to provide school districts, schools, communities, and county commissions of veteran affairs with information about hosting a diploma ceremony on or around Veterans Day. The diploma shall be mailed to the veteran or, if the veteran is deceased, to the veteran's family.

49. Reconcile, with the assistance of the community colleges, audited financial statements and the financial data submitted to the department. The reconciliation shall include an analysis of funding by funding source.

50. Develop core knowledge and skill criteria models, based upon the Iowa teaching standards, for the evaluation, the advancement, and for teacher career development purposes pursuant to chapter 284. The model criteria shall further define the characteristics of quality teaching as established by the Iowa teaching standards. The director, in consultation with the board of educational examiners, shall also develop a transition plan for implementation of the career development standards developed pursuant to section 256.7, subsection 25, with regard to licensure renewal requirements. The plan shall include a requirement that practitioners be allowed credit for career development completed prior to implementation of the career development standards developed pursuant to section 256.7, subsection 25.

51. Disburse, transfer, or receive funds as authorized or required under federal or state law or regulation in a manner that utilizes electronic transfer of the funds whenever possible.

86 Acts, ch 1245, §1409; 87 Acts, ch 115, §36; 88 Acts, ch 1114, §1; 88 Acts, ch 1158, §54; 88 Acts, ch 1263, §1; 89 Acts, ch 155, §2; 89 Acts, ch 206, §6; 90 Acts, ch 1152, §1; 90 Acts, ch 1253, §6, 122; 90 Acts, ch 1271, §1101; 91 Acts, ch 84, §2; 91 Acts, ch 126, §1; 92 Acts, ch 1158, §3; 92 Acts, ch 1159, §1, 6; 92 Acts, ch 1221, §2; 92 Acts, ch 1246, §27; 93 Acts, ch 48, §14, 15; 94 Acts, ch 1091, §4 – 12; 98 Acts, ch 1215, §23, 63; 99 Acts, ch 192, §30; 2000 Acts, ch 1081, §1; 2000 Acts, ch 1167, §2; 2001 Acts, ch 161, §14; 2001 Acts, ch 181, §12; 2002 Acts, ch 1140, §5; 2002 Acts, ch 1152, §2; 2002 Acts, 2nd Ex, ch 1003, §92, 95

Subsections 48 and 50 amended
NEW subsection 51

256.10 Employment of professional staff.

1. The salary of the director shall be fixed by the governor within a range established by the general assembly.

2. Appointments to the professional staff of the department shall be without reference to political party affiliation, religious affiliation, sex, or marital status, but shall be based solely upon fitness, ability, and proper qualifications for the particular position. The professional staff shall serve at the discretion of the director. A member of the professional staff shall not be dismissed for cause without appropriate due process procedures including a hearing.

3. The director may employ full-time professional staff for less than twelve months each year, but such staff shall be employed by the director for at least nine months of each year. Salaries for full-time professional staff employed as provided in this subsection shall be comparable to other professional staff, adjusting for time worked. Salaries for professional staff employed for periods of less than twelve months shall be paid during each month of the year in which they are employed on the same schedule as full-time permanent professional staff. The director shall provide for and the department shall pay for health and dental insurance benefits for twelve months each year for the full-time professional staff employed as provided in this subsection, and the health and dental insurance benefits provided shall be comparable to the benefits provided to all other professional staff employed by the director.

86 Acts, ch 1245, §1410; 97 Acts, ch 212, §21; 2002 Acts, ch 1140, §6

Section amended

256.10A Duties of consultants.

Consultants employed by the director and paid from the fund created by section 8.41 from moneys received from Pub. L. No. 97-35, Title V, subtitle D, chapter 2, shall assist those employees designated by the department as school improvement specialists in helping school districts to participate in school improvement activities identified as a result of the accreditation process conducted pursuant to section 256.11. The department shall assign consultants to assist school districts that the department determines are most in need of participation in school improvement activities.

For the purpose of this section, *"school improvement specialist"* means a consultant employed by the department who is responsible for the accreditation of school districts under section 256.11.

87 Acts, ch 233, §450

256.11 Educational standards.

The state board shall adopt rules under chapter 17A and a procedure for accrediting all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve. The rules of the state board shall require that a multicultural, gender fair approach is used by schools and school districts. The educational program shall be taught from a multicultural, gender fair approach. Global perspectives shall be incorporated into all levels of the educational program.

The rules adopted by the state board pursuant to section 256.17, Code Supplement 1987, to establish new standards shall satisfy the requirements of this section to adopt rules to implement the educational program contained in this section.

The educational program shall be as follows:

1. If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child's developing sense of self and perception of others. Planning and carrying out prekindergarten activities designed to encourage cooperative efforts between home and school shall focus on community resources. Except as otherwise provided in this subsection, a prekindergarten teacher shall hold a license certifying that the holder is qualified to teach in prekindergarten. A nonpublic school which offers only a prekindergarten may, but is not required to, seek and obtain accreditation.

If the board of directors of a school district contracts for the operation of a prekindergarten program, the program shall be under the oversight of an appropriately licensed teacher. If the program contracted with was in existence on July 1, 1989, oversight of the program shall be provided by the district. If the program contracted with was not in existence on July 1, 1989, the director of the program shall be a licensed teacher and the director shall provide program oversight. Any director of a program contracted with by a school district under this section who is not a licensed teacher is required to register with the department of education.

2. The kindergarten program shall include experiences designed to develop healthy emotional and social habits and growth in the language arts and communication skills, as well as a capacity for the completion of individual tasks, and protect and increase physical well-being with attention given to experiences relating to the development of life skills and human growth and development. A kindergarten teacher shall be licensed to teach in kindergarten. An accredited nonpublic school must meet the requirements of this subsection only if the nonpublic school offers a kindergarten program.

3. The following areas shall be taught in grades one through six: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, traffic safety, music, and visual art. The health curriculum shall include the characteristics of communicable diseases including acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for implementing the elementary program.

4. The following shall be taught in grades seven and eight: English-language arts; social studies; mathematics; science; health; human growth and development, family, consumer, career, and technology education; physical education; music; and visual art. The health curriculum shall include the characteristics of sexually transmitted diseases and acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for implementing the program in grades seven and eight. However, this subsection shall not apply to the teaching of family, consumer, career, and technology education in nonpublic schools.

5. In grades nine through twelve, a unit of credit consists of a course or equivalent related components or partial units taught throughout the academic year. The minimum program to be offered and taught for grades nine through twelve is:

a. Five units of science including physics and chemistry; the units of physics and chemistry may be taught in alternate years.

b. Five units of the social studies including instruction in voting statutes and procedures, voter registration requirements, the use of paper ballots and voting machines in the election process, and the method of acquiring and casting an absentee ballot. All students shall complete a minimum of one-half unit of United States government and one unit of United States history. The one-half unit of United States government shall include the voting procedure as described in this lettered paragraph and section 280.9A. The government instruction shall also include a study of the Constitution of the United States and the Bill of Rights contained in the Constitution and an assessment of a student's knowledge of the Constitution and the Bill of Rights.

The county auditor, upon request and at a site chosen by the county auditor, shall make available to schools within the county voting machines or sample ballots that are generally used within the county, at times when these machines or sample ballots are not in use for their recognized purpose.

c. Six units of English-language arts.

d. Four units of a sequential program in mathematics.

e. Two additional units of mathematics.

f. Four sequential units of one foreign language other than American sign language. Provision of instruction in American sign language shall be in addition to and not in lieu of provision of instruction in other foreign languages. The department may waive the third and fourth years of the foreign language requirement on an annual basis upon the request of the board of directors of a school district or the authorities in charge of a nonpublic school if the board or authorities are able to prove that a licensed teacher was employed and assigned a schedule that would have allowed students to enroll in a foreign language class, the foreign language class was properly scheduled, students were aware that a foreign language class was scheduled, and no students enrolled in the class.

g. All students physically able shall be required to participate in physical education activi-

ties during each semester they are enrolled in school except as otherwise provided in this paragraph. A minimum of one-eighth unit each semester is required. A twelfth grade student who meets the requirements of this paragraph may be excused from the physical education requirement by the principal of the school in which the student is enrolled if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. A student who wishes to be excused from the physical education requirement must be seeking to be excused in order to enroll in academic courses not otherwise available to the student, or be enrolled or participating in one of the following:

(1) A cooperative or work-study program or other educational program authorized by the school which requires the student to leave the school premises for specified periods of time during the school day.

(2) An organized and supervised athletic program which requires at least as much participation per week as one-eighth unit of physical education.

Students in grades nine through eleven may be excused from the physical education requirement in order to enroll in academic courses not otherwise available to the student if the board of directors of the school district in which the school is located, or the authorities in charge of the school, if the school is a nonpublic school, determine that students from the school may be permitted to be excused from the physical education requirement. A student may be excused by the principal of the school in which the student is enrolled, in consultation with the student's counselor, for up to one semester, trimester, or the equivalent of a semester or trimester, per year if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. The student seeking to be excused from the physical education requirement must, at some time during the period for which the excuse is sought, be a participant in an organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

The principal of the school shall inform the superintendent of the school district or nonpublic school that the student has been excused. Physical education activities shall emphasize leisure time activities which will benefit the student outside the school environment and after graduation from high school.

h. A minimum of three sequential units in at least four of the following six vocational service areas: agriculture, business or office occupations, health occupations, family and consumer sciences or home economics occupations, industrial technology or trade and industrial education, and marketing education. Instruction shall be competency-based, articulated with postsecondary programs of study, and include field, laboratory, or on-the-job training. Each sequential unit shall include instruction in a minimum set of competencies established by the department of education that relate to the following: new and emerging technologies; job-seeking, job-adaptability, and other employment, self-employment and entrepreneurial skills that reflect current industry standards and labor-market needs; and reinforcement of basic academic skills. The instructional programs shall also comply with the provisions of chapter 258 relating to vocational education. However, this paragraph does not apply to the teaching of vocational education in nonpublic schools.

The department of education shall permit school districts, in meeting the requirements of this section, to use vocational core courses in more than one vocational service area and to use multioccupational courses to complete a sequence in more than one vocational service area.

i. Three units in the fine arts which shall include at least two of the following: dance, music, theatre, and visual art.

j. One unit of health education which shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; human growth and development; substance abuse and nonuse; emotional and social health; health resources; and prevention and control of disease, including sexually transmitted diseases and acquired immune deficiency syndrome.

The state board as part of accreditation standards shall adopt curriculum standards for implementing the program in grades nine through twelve.

6. A pupil is not required to enroll in either physical education or health courses if the pupil's parent or guardian files a written statement with the school principal that the course conflicts with the pupil's religious belief.

7. Programs that meet the needs of each of the following:

a. Pupils requiring special education.

b. Gifted and talented pupils.

c. At-risk students.

8. Upon request of the board of directors of a public school district or the authorities in charge of a nonpublic school, the director may, for a number of years to be specified by the director, grant the district board or the authorities in charge of the nonpublic school exemption from one or more of the requirements of the educational program specified in subsection 5. The exemption may be renewed. Exemptions shall be granted only if the director deems that the request made is an essential part of a planned innovative curriculum project which the director determines will adequately meet the educational needs and interests of the pupils and be broadly consistent with the intent of

the educational program as defined in subsection 5.

The request for exemption shall include all of the following:

a. Rationale of the project to include supportive research evidence.

b. Objectives of the project.

c. Provisions for administration and conduct of the project, including the use of personnel, facilities, time, techniques, and activities.

d. Plans for evaluation of the project by testing and observational measures of pupil progress in reaching the objectives.

e. Plans for revisions of the project based on evaluation measures.

f. Plans for periodic reports to the department.

g. The estimated cost of the project.

9. Reserved.

9A. Reserved.

10. The state board shall establish an accreditation process for school districts and nonpublic schools seeking accreditation pursuant to this subsection and subsections 11 and 12. By July 1, 1989, all school districts shall meet standards for accreditation. For the school year commencing July 1, 1989, and school years thereafter, the department of education shall use a two-phase process for the continued accreditation of schools and school districts.

Phase I shall consist of annual monitoring by the department of education of all accredited schools and school districts for compliance with accreditation standards adopted by the state board of education as provided in this section. The phase I monitoring requires that accredited schools and school districts annually complete accreditation compliance forms adopted by the state board and file them with the department of education. Phase I monitoring requires a comprehensive desk audit of all accredited schools and school districts including review of accreditation compliance forms, accreditation visit reports, methods of administration reports, and reports submitted in compliance with section 256.7, subsection 21, paragraph *"a"*, and section 280.12.

The department shall conduct site visits to schools and school districts to address accreditation issues identified in the desk audit. Such a visit may be conducted by an individual departmental consultant or may be a comprehensive site visit by a team of departmental consultants and other educational professionals. The purpose of a comprehensive site visit is to determine that a district is in compliance with minimum standards and to provide a general assessment of educational practices in a school or school district and make recommendations with regard to the visit findings for the purposes of improving educational practices above the level of minimum compliance. The department shall establish a long-term schedule of site visits that includes visits of all accredited schools and school districts as needed.

Phase II requires the use of an accreditation committee, appointed by the director of the department of education, to conduct an on-site visit to an accredited school or school district if any of the following conditions exist:

a. When either the annual monitoring or the biennial on-site visit of phase I indicates that a school or school district is deficient and fails to be in compliance with accreditation standards.

b. In response to a petition filed with the director requesting such a committee visitation that is signed by eligible electors residing in the school district equal in number to at least twenty percent of the registered voters of the school district.

c. In response to a petition filed with the director requesting such a committee visitation that is signed by twenty percent or more of the parents or guardians who have children enrolled in the school or school district.

d. At the direction of the state board of education.

The number and composition of the membership of an accreditation committee shall be determined by the director and may vary due to the specific nature or reason for the visit. In all situations, however, the chairperson and a majority of the committee membership shall be from the instructional and administrative program specialty staff of the department of education. Other members may include instructional and administrative staff from school districts, area education agencies, institutions of higher education, local board members and the general public. An accreditation committee visit to a nonpublic school requires membership on the committee from nonpublic school instructional or administrative staff or board members. A member of a committee shall not have a direct interest in the nonpublic school or school district being visited.

Rules adopted by the state board may include provisions for coordination of the accreditation process under this section with activities of accreditation associations.

Prior to a visit to a school district or nonpublic school, members of the accreditation committee shall have access to all annual accreditation report information filed with the department by that nonpublic school or school district.

After visiting the school district or nonpublic school, the accreditation committee shall determine whether the accreditation standards have been met and shall make a report to the director, together with a recommendation whether the school district or nonpublic school shall remain accredited. The accreditation committee shall report strengths and weaknesses, if any, for each standard and shall advise the school or school district of available resources and technical assistance to further enhance strengths and improve areas of weakness. A school district or nonpublic school shall be provided with the opportunity to respond to the accreditation committee's report.

11. The director shall review the accreditation committee's report, and the response of the school district or nonpublic school, and provide a report and recommendation to the state board along with copies of the accreditation committee's report, the response to the report, and other pertinent information. The state board shall determine whether the school district or nonpublic school shall remain accredited. If the state board determines that a school district or nonpublic school should not remain accredited, the director, in cooperation with the board of directors of the school district, or authorities in charge of the nonpublic school, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards, and shall establish a deadline date for completion of the procedures. The plan is subject to approval of the state board.

12. During the period of time specified in the plan for its implementation by a school district or nonpublic school, the school district or school remains accredited. The accreditation committee shall revisit the school district or nonpublic school and shall determine whether the deficiencies in the standards have been corrected and shall make a report and recommendation to the director and the state board. The committee recommendation shall specify whether the school district or school shall remain accredited or under what conditions the district may remain accredited. The conditions may include, but are not limited to, providing temporary oversight authority, operational authority, or both oversight and operational authority to the director and the state board for some or all aspects of the school district operation, in order to bring the school district into compliance with minimum standards. The state board shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies have been corrected. If the deficiencies have not been corrected, and the conditional accreditation alternatives contained in the report are not mutually acceptable to the local board and the state board, the state board shall merge the territory of the school district with one or more contiguous school districts at the end of the school year. Division of assets and liabilities of the school district shall be as provided in sections 275.29 through 275.31. Until the merger is completed, and subject to a decision by the state board of education, the school district shall pay tuition for its resident students to an accredited school district under section 282.24. However, in lieu of merger and payment of tuition by a nonaccredited school district, the state board may place a district under receivership for the remainder of the school year. The receivership shall be under the direct supervision and authority of the director. The decision of whether to merge the school district and require payment of tuition for the district's students or to place the district under receivership shall be based upon a determination by the state board of the best interests of the students, parents, residents of the community, teachers, administrators, and board members of the district and the recommendations of the accreditation committee and the director. If the state board declares a nonpublic school to be nonaccredited, the removal of accreditation shall take effect on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

13. Notwithstanding subsections 1 through 12 and as an exception to their requirements, a private high school or private combined junior-senior high school operated for the express purpose of teaching a program designed to qualify its graduates for matriculation at accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities shall be placed on a special accredited list of college preparatory schools, which list shall signify accreditation of the school for that express purpose only, if:

a. The school complies with minimum standards established by the Code other than this section, and rules adopted under the Code, applicable to:

(1) Courses comprising the limited program.

(2) Health requirements for personnel.

(3) Plant facilities.

(4) Other environmental factors affecting the programs.

b. At least eighty percent of those graduating from the school within the four most recent calendar years, other than those graduating who are aliens, graduates entering military or alternative civilian service, or graduates deceased or incapacitated before college acceptance, have been accepted by accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities.

c. A school claiming to be a private college preparatory school which fails to comply with the requirement of paragraph *"b"* of this subsection shall be placed on the special accredited list of college preparatory schools probationally if the school complies with the requirements of paragraph *"a"* of this subsection, but a probational accreditation shall not continue for more than four successive years.

14. Notwithstanding subsections 1 through 13 and as an exception to their requirements, a nonpublic grade school which is reopening is accredited even if it does not have a complete grade one through grade six program. However, the nonpublic grade school must comply with other minimum standards established by law and administrative rules adopted pursuant to the law and the nonpublic grade school must show progress toward reaching a grade one through grade six program.

86 Acts, ch 1245, §1411; 87 Acts, ch 224, §26; 87 Acts, ch 233, §451; 88 Acts, ch 1018, §1, 2; 88 Acts, ch 1262, §1, 2; 89 Acts, ch 210, §4, 5; 89 Acts, ch

265, §23 – 26; 89 Acts, ch 278, §1, 2; 89 Acts, ch 319, §39, 40; 90 Acts, ch 1272, §32, 39, 40; 91 Acts, ch 104, §1; 91 Acts, ch 193, §1; 92 Acts, ch 1088, §1; 92 Acts, ch 1127, §1, 2; 92 Acts, ch 1159, §2; 92 Acts, ch 1163, §58; 93 Acts, ch 127, §1, 2; 94 Acts, ch 1091, §13; 94 Acts, ch 1152, §1; 2001 Acts, ch 56, §11; 2001 Acts, ch 159, §1 – 3; 2002 Acts, ch 1140, §7

Vocational agriculture education; §280.20
Subsection 10, unnumbered paragraph 3 amended

256.11A Guidance program — media services program — waiver.

1. Schools and school districts unable to meet the standard adopted by the state board requiring each school or school district operating a kindergarten through grade twelve program to provide an articulated sequential elementary-secondary guidance program may, not later than August 1, 1995, for the school year beginning July 1, 1995, file a written request to the department of education that the department waive the requirement for that school or school district. The procedures specified in subsection 3 apply to the request. Not later than August 1, 1996, for the school year beginning July 1, 1996, the board of directors of a school district or the authorities in charge of a nonpublic school may request a one-year extension of the waiver.

2. Not later than August 1, 1995, for the school year beginning July 1, 1995, the board of directors of a school district, or authorities in charge of a nonpublic school, may file a written request with the department of education that the department waive the rule adopted by the state board to establish and operate a media services program to support the total curriculum for that district or school. The procedures specified in subsection 3 apply to the request. Not later than August 1, 1996, for the school year beginning July 1, 1996, the board of directors of a school district or the authorities in charge of a nonpublic school may request an additional one-year extension of the waiver.

3. A request for a waiver filed by the board of directors of a school district or authorities in charge of a nonpublic school shall describe actions being taken by the district or school to meet the requirement for which the district or school has requested a waiver.

88 Acts, ch 1262, §3; 89 Acts, ch 210, §6; 90 Acts, ch 1272, §41; 92 Acts, ch 1159, §3; 93 Acts, ch 4, §1; 93 Acts, ch 52, §1; 94 Acts, ch 1091, §14; 95 Acts, ch 96, §1

256.11B Vocational education instruction — nonpublic schools.

A nonpublic school which provides an educational program that includes grades nine through twelve shall offer and teach five units of occupational education subjects, which may include, but are not limited to, programs, services, and activities which prepare students for employment in business or office occupations, trade and industrial occupations, consumer and family sciences or home economics occupations, agriculture occupations, marketing occupations, and health occupations. By July 1, 1993, instruction shall be competency-based, articulated with postsecondary programs of study, and may include field, laboratory, or on-the-job training.

92 Acts, ch 1127, §3

256.12 Sharing instructors and services.

1. The director, when necessary to realize the purposes of this chapter, shall approve the enrollment in public schools for specified courses of students who also are enrolled in private schools, when the courses in which they seek enrollment are not available to them in their private schools, provided the students have satisfactorily completed prerequisite courses, if any, or have otherwise shown equivalent competence through testing. Courses made available to students in this manner shall be considered as compliance by the private schools in which the students are enrolled with any standards or laws requiring private schools to offer or teach the courses.

2. This section does not deprive the respective boards of public school districts of any of their legal powers, statutory or otherwise, and in accepting the specially enrolled students, each of the boards shall prescribe the terms of the special enrollment, including but not limited to scheduling of courses and the length of class periods. In addition, the board of the affected public school district shall be given notice by the department of its decision to permit the special enrollment not later than six months prior to the opening of the affected public school district's school year, except that the board of the public school district may waive the notice requirement. School districts and area education agency boards shall make public school services, which shall include special education programs and services and may include health services, services for remedial education programs, guidance services, and school testing services, available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. However, services that are made available shall be provided on neutral sites, or in mobile units located off the nonpublic school premises as determined by the boards of the school districts and area education agencies providing the services, and not on nonpublic school property, except for health services, services funded by Title I of the federal Elementary and Secondary Education Act of 1965, diagnostic services for speech, hearing, and psychological purposes, and assistance with physical and communication needs of students with physical disabilities, and services of an educational interpreter, which may be provided on

nonpublic school premises, with the permission of the lawful custodian.

Students enrolled in nonpublic schools who receive services pursuant to this subsection shall be weighted at the level provided for in section 256B.9, subsection 1.

A local school district providing services pursuant to this subsection shall submit an accounting to the department of education by August 1 following the school year for the actual costs of the special education programs and services provided. The department shall review and approve or modify the accounting by September 1 and shall notify the department of revenue and finance of the approved accounting amount. The department of revenue and finance shall adjust the September payment to the local school district for the next fiscal year by the difference between the amount generated by the weighting for the provision of services to nonpublic school students, as provided in this subsection, and the amount of the actual costs as reflected in the local school district's accounting. Any amount paid by the department of revenue and finance shall be deducted monthly from the state foundation aid paid under section 257.16 during that fiscal year to all school districts in the state. The portion of the total amount of the approved accounting amount that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year.

86 Acts, ch 1245, §1412; 93 Acts, ch 101, §101; 94 Acts, ch 1161, §1; 98 Acts, ch 1096, §1

256.13 Nonresident pupils.

The boards of directors of two or more school districts may by agreement provide for attendance of pupils residing in one district in the schools of another district for the purpose of taking courses not offered in the district of their residence. The boards may also provide by agreement that the districts will combine their enrollments for one or more grades. Courses and grades made available to students in this manner shall be considered as complying with any standards or laws requiring the offering of such courses and grades. The boards of directors of districts entering into such agreements may provide for sharing the costs and expenses of the courses. If the agreement provides for whole grade sharing, the costs and expenses shall be paid as provided in sections 282.10 through 282.12.

86 Acts, ch 1245, §1413; 87 Acts, ch 224, §27

256.14 Permanent revolving fund.

1. A permanent revolving fund is established for the department. Expenses incurred by the department from this fund shall be paid subject to reimbursement by the federal government.

2. There is appropriated from the general fund of the state to the department of education the sum of one hundred twenty-five thousand dollars for the purpose of establishing the fund created by subsection 1. If any surplus accrues to the revolving fund in excess of the original appropriation for which there is no anticipated need or use, the governor shall order the surplus to be transferred to the general fund.

86 Acts, ch 1244, §32; 86 Acts, ch 1245, §1414

256.15 Nonpublic school advisory committee.

A nonpublic school advisory committee is established which consists of five members, to be appointed by the governor, each of them to be a citizen of the United States and a resident of the state of Iowa. The term of the members is four years. The duties of the committee are to advise the state board and the director on matters affecting nonpublic schools, including but not limited to the establishment of standards for teacher certification and the establishment of standards for, and approval of, all nonpublic schools. Notice of meetings of the state board shall be sent by the director to members of the committee.

Committee members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Members may also be eligible to receive compensation as provided in section 7E.6. The expense money shall be paid from the appropriations to the department of education.

86 Acts, ch 1245, §1415

256.16 Specific criteria for teacher preparation and certain educators.

1. Pursuant to section 256.7, subsection 5, the state board shall adopt rules requiring all higher education institutions providing practitioner preparation to do the following:

a. Administer a basic skills test to practitioner preparation program admission candidates. Rules adopted shall require institutions to deny admission to the program to any candidate who does not successfully pass the test.

b. Include preparation in reading programs, including reading recovery, and integrate reading strategies into content area methods coursework.

c. Include in the professional education program, preparation that contributes to the education of students with disabilities and students who are gifted and talented, and preparation in classroom management addressing high-risk behaviors including, but not limited to, behaviors related to substance abuse. Preparation required under this paragraph must be successfully completed before graduation from the practitioner preparation program.

2. A person initially applying for a license shall successfully complete a professional education program containing the subject matter specified in this section, before the initial action by the

board of educational examiners takes place.

86 Acts, ch 1245, §1416; 89 Acts, ch 265, §27; 96 Acts, ch 1129, §67; 99 Acts, ch 191, §1

256.17 Standards for accredited schools. Repealed by 88 Acts, ch 1262, § 12.

256.18 Character education policy.

1. It is the policy of the general assembly that Iowa's schools be the best and safest possible. To that end, each school is encouraged to instill the highest character and academic excellence in each student, in close cooperation with the student's parents, and with input from the community and educators.

Schools should make every effort, formally and informally, to stress character qualities that will maintain a safe and orderly learning environment, and that will ultimately equip students to be model citizens. These qualities may include caring, civic virtue and citizenship, justice and fairness, respect, responsibility, trustworthiness, giving, honesty, self-discipline, respect for and obedience to the law, citizenship, courage, initiative, commitment, perseverance, kindness, compassion, service, loyalty, patience, the dignity and necessity of hard work, and any other qualities deemed appropriate by a school.

2. The department of education shall assist schools in accessing financial and curricular resources to implement programs stressing these character qualities. Schools are encouraged to use their existing resources to implement programs stressing these qualities. Whenever possible, the department shall develop partnerships with schools, nonprofit organizations, or an institution of higher education, or with a consortium of two or more of those entities, to design and implement character education programs that may be integrated into classroom instruction and may be carried out with other educational reforms.

Schools may use phase III funds in the establishment of the programs.

3. The department of education shall report to the state board and to the general assembly regarding the success of any character education initiative.

94 Acts, ch 1131, §1; 2002 Acts, ch 1083, §1
Section amended

256.19 Pilot projects to improve instructional programs.

For fiscal years in which moneys are appropriated by the general assembly for the purpose of conducting pilot projects as approved by the state board of education to improve school district instructional programs, the state board of education shall notify the department of revenue and finance of the amounts necessary for each pilot project in order to reimburse the school districts for costs related to the approved pilot projects.

87 Acts, ch 224, §30; 89 Acts, ch 265, §40; 91 Acts, ch 126, §2

256.20 Year around schools.

Pursuant to section 279.10, subsection 1, relating to the maintenance of school during an entire year, the board of directors of a school district may request approval from the state board of education for a pilot project for a year around three semester school year.

The application shall describe the anticipated additional costs to the school district and the benefits to be gained from the three semester school year. Students would not be required to attend school more than two semesters each school year.

Participation in a pilot project shall not modify provisions of a master contract negotiated between a school district and a certified bargaining unit pursuant to chapter 20 unless mutually agreed upon.

If moneys are appropriated by the general assembly for funding the costs of pilot projects under this section, the state board of education shall notify the department of revenue and finance of the amounts to be paid to each school district with an approved pilot project.

87 Acts, ch 224, §31; 92 Acts, ch 1163, §59

256.21 Sabbatical program.

If the general assembly appropriates money for grants to provide sabbaticals for teachers, a sabbatical program shall be established as provided in this section. A teacher with at least seven years of teaching experience in this state may submit an application for a sabbatical to the department of education not later than November 1 of the preceding school year.

A teacher's application shall include a plan for the use of the period of the sabbatical, including, but not limited to, additional education, use of a fellowship, conducting of research, writing relating to a particular subject area, or other activities relating to an enhancement of teaching skills. The teacher's plan must be accompanied by the written approval of the superintendent of the school district and a statement by the superintendent describing the benefits of the sabbatical to the school district.

The state board of education shall adopt rules under chapter 17A relating to submission of sabbatical plans and criteria for awarding the sabbaticals, including both the benefit to the teacher and the benefit to the school district. Sabbaticals shall be awarded by the department not later than January 1 of the preceding school year.

A sabbatical grant to a teacher shall be equal to the costs to the school district of the teacher's regular compensation as defined in section 294A.2 plus the cost to the district of the fringe benefits of the teacher. The grant shall be paid to the school

district, and the district shall continue to pay the teacher's regular compensation as well as the cost to the district of the substitute teacher. Teachers and boards of school districts are encouraged to seek funding from other sources to pay the costs of sabbaticals for teachers. Grant moneys are miscellaneous income for purposes of chapter 257.

A sabbatical approved by the department may be for any period of time not exceeding one year.

A teacher granted a sabbatical under this section shall agree either to return to the school district granting the leave for a period of not less than two years or to repay to the department of education the amount of the sabbatical grant received during the leave.

Notwithstanding section 8.33, if moneys are appropriated by the general assembly for the sabbatical program for a fiscal year, the moneys shall not revert at the end of that fiscal year but shall carry over and may be expended during the next fiscal year.

This section does not preclude a school district from providing a sabbatical program for its teachers separate from the sabbatical program provided under this section.

87 Acts, ch 224, §32; 89 Acts, ch 135, §53

256.22 Extended year school grant program.

1. Subject to an appropriation of sufficient funds by the general assembly, the department shall establish an extended year school grant program to provide for the allocation of grants to school districts, or a collaboration of school districts, to provide technical assistance for conversion of an existing school to an extended school year calendar, or for investigating the possibility of converting an existing school within a district to an extended school year calendar.

2. Grant moneys shall be distributed to qualifying school districts by the department no later than October 15, 1999. Grant amounts shall be distributed as determined by the department.

3. By February 15, 1999, a school district or collaboration of districts receiving moneys under this section shall submit an interim report to the department describing the planning activities conducted by the school district or the collaboration and providing preliminary conclusions. The school district or collaboration shall submit a final report by June 1, 1999, to the department. The department shall summarize the school district reports in a final report to the chairpersons and ranking members of the house and senate standing education committees by January 1, 2000.

4. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for purposes of this section.

98 Acts, ch 1215, §27; 98 Acts, ch 1216, §4; 99 Acts, ch 205, §19

256.23 Administrative advancement and recruitment program.

The department shall establish a recruitment and advancement program to provide for the allocation of grants to school corporations. A school corporation may submit plans and a budget to the department for approval of a pilot project that will encourage the advancement of women and minorities to administrative positions within that school corporation or will encourage the recruitment and employment of minorities to positions within that school corporation. The state board shall adopt rules under chapter 17A establishing criteria for approval of the pilot projects and payment of the grants. The criteria for a pilot project encouraging the advancement of women and minorities shall include the use of staff development for assisting employees of the school corporation to meet the requirements for advancement to administrative positions. School corporations approved for the establishment of pilot projects under this section shall submit reports of the results of the pilot projects to the department of education by October 1 of the fiscal year following the fiscal year in which the grants are received.

88 Acts, ch 1078, §1

256.24 through 256.29 Reserved.

256.30 Educational expenses for American Indians.

The department of education shall provide moneys to pay the expense of educating American Indian children residing in the Sac and Fox Indian settlement on land held in trust by the secretary of the interior of the United States in excess of federal moneys paid to the tribal council for educating the American Indian children when moneys are appropriated for that purpose. The tribal council shall administer the moneys distributed to it by the department and shall submit an annual report and other reports as required by the department to the department on the expenditure of the moneys.

The tribal council shall first use moneys distributed to it by the department of education for the purposes of this section to pay the additional costs of salaries for licensed instructional staff for educational attainment and full-time equivalent years of experience to equal the salaries listed on the proposed salary schedule for the school at the Sac and Fox Indian settlement for that school year, but the salary for a licensed instructional staff member employed on a full-time basis shall not be less than eighteen thousand dollars. The department of management shall approve allotments of moneys appropriated in this section when the department of education certifies to the

department of management that the requirements of this section have been met.

87 Acts, ch 233, §453; 88 Acts, ch 1284, §43; 89 Acts, ch 265, §40

256.31 Community college council.

1. A community college council is established consisting of six members. Membership of the council shall be as follows:

a. The three members of the state board of education who have knowledge of issues and concerns affecting the community college system as provided in section 256.3.

b. An additional member of the state board of education appointed annually by the president of the state board of education.

c. A community college president appointed by an association which represents the largest number of community college presidents in the state.

d. A community college trustee appointed by an association which represents the largest number of community college trustees in the state.

2. The nonboard members shall serve staggered terms of three years beginning on May 1 of the year of appointment. Vacancies on the council shall be filled in the same manner as the original appointment. A person appointed to fill a vacancy shall commence service on the date of appointment and shall serve only for the unexpired portion of the term.

3. The council shall assist the state board of education with substantial issues which are directly related to the community college system. The state board shall refer all substantial issues directly related to the community college system to the council. The council shall formulate recommendations on each issue referred to it by the state board and shall submit the recommendations to the state board within any specified time periods.

4. *a.* The council shall prepare a written five-year statewide strategic plan at least once every five years for Iowa's community colleges in consultation with a working group of stakeholders. The working group shall be composed of thirteen members appointed as follows:

(1) The governor shall appoint one member.

(2) The Iowa association of community college trustees shall appoint one member.

(3) The Iowa association of community college presidents shall appoint one member.

(4) The administrator of the division of community colleges and workforce preparation of the department of education or the administrator's designee.

(5) The director of the department of workforce development or the director's designee.

(6) The director of the department of economic development or the director's designee.

(7) The president of the senate, after consultation with the majority leader of the senate, shall appoint one legislative member.

(8) The minority leader of the senate shall appoint one legislative member.

(9) The speaker of the house shall appoint one legislative member.

(10) The minority leader of the house of representatives shall appoint one legislative member.

(11) The Iowa association of school boards shall appoint one member.

(12) The Iowa state education association shall appoint one member.

(13) The Iowa association of business and industry shall appoint one member.

b. A legislative member is eligible for per diem and expenses as provided in section 2.10. Appointments to the task force are subject to the requirements of sections 69.16 and 69.16A.

c. The plan shall be submitted to the state board of education for approval and adoption.

90 Acts, ch 1253, §7; 92 Acts, ch 1027, §1, 2; 2000 Acts, ch 1167, §3

256.32 Council for agricultural education.

1. An advisory council for agricultural education is established, which consists of nine members appointed by the governor. The nine members shall include the following:

a. Five persons representing all areas of agriculture and diverse geographical areas.

b. The individual representing agriculture on the state council for vocational education.

c. A secondary school program instructor, a postsecondary school program instructor, and a teacher educator.

2. The council may also include as ex officio members the following persons, as determined by the voting members of the council:

a. The state future farmers of America president.

b. The current state future farmers of America alumni association president.

c. The current postsecondary agriculture students president.

d. The current young farmers educational association president.

e. A state consultant in agricultural education.

f. The secretary of agriculture or the secretary's designee.

g. A member of each house of the general assembly. This membership shall be bipartisan in composition and shall be selected by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and the speaker of the house.

3. The duties of the council are to review, develop, and recommend standards for secondary and postsecondary agricultural education. The council shall annually issue a report to the state board of education and the chairpersons of the house and senate agriculture and education com-

mittees regarding both short-term and long-term curricular standards for agricultural education and the council's activities. The council shall meet a minimum of twice annually, and must have a quorum consisting of a majority of voting members present to hold an official meeting and to take any final council action. However, hearings may be held without a quorum. The chairperson shall be elected annually by and from the voting membership. The initial organizational meeting shall be called by the director of the department of education.

4. The term of membership is three years. The terms shall be staggered so that three of the terms end each year, but no member serving on the initial council shall serve less than one year. The governor shall determine the length of the initial terms of office.

88 Acts, ch 1264, §1; 90 Acts, ch 1223, §23

256.33 Educational technology assistance.

The department shall consort with school districts, area education agencies, community colleges, and colleges and universities to provide assistance to them in the use of educational technology for instruction purposes. The department shall consult with the advisory committee on telecommunications, established in section 256.7, subsection 7, and other users of educational technology on the development and operation of programs under this section.

If moneys are appropriated by the general assembly for a fiscal year for purposes provided in this section, the programs funded by the department may include but not be limited to:

1. The development and delivery of in-service training, including summer institutes and workshops for individuals employed by elementary, secondary, and higher education corporations and institutions who are using educational technology for instructional purposes. The in-service programs shall include the use of hardware as well as effective methods of delivery and maintenance of a learning environment.

2. Research projects on ways to improve instruction at all educational levels using educational technology.

3. Demonstration projects which model effective uses of educational technology.

4. Establishment of a clearinghouse for information and research concerning practices relating to and uses of educational technology.

5. Development of curricula that could be used by approved teacher preparation institutions to prepare teachers to use educational technology in the classroom.

6. Pursuit of additional funding from public and private sources for the functions listed in this section.

Priority shall be given to programs integrating telecommunications into the classroom. The department may award grants to school corporations and higher education institutions to perform the functions listed in this section.

89 Acts, ch 319, §41; 93 Acts, ch 48, §16; 95 Acts, ch 67, §20

256.34 Conservation education program board. Repealed by 2002 Acts, ch 1140, § 44. See § 455A.21.

256.35 Regional autism assistance program.

The department shall establish a regional autism assistance program, to be administered by the child health specialty clinic of the university of Iowa hospitals and clinics. The program shall be designed to coordinate educational, medical, and other human services for persons with autism, their parents, and providers of services to persons with autism. The function of the program shall include, but is not limited to, the coordination of diagnostic and assessment services, the maintaining of a research base, coordination of in-service training, providing technical assistance, and providing consultation.

90 Acts, ch 1272, §42

256.36 Math and science grant program.

1. The department shall establish a math and science education grant program to provide for the allocation of grant moneys to public school corporations and to contract for the development of statewide program models and recommendations in keeping with the goals stated in this section. A public school corporation desiring to receive grant moneys under the program may submit plans and a proposed budget to the department for approval. The department shall review each plan and its proposed budget and award grants, which may be matching funds grants, for approved plans by July 1 of the calendar year in which the approved plans were submitted. Provision of matching funds from institutional private sources shall be considered by the department in reviewing plans and proposed budgets and awarding grant moneys.

However, for the first school year for which program funds are appropriated, a board of directors of a public school corporation may submit a proposed plan and budget not later than January 1 of that school year and the department shall notify public school corporations by February 15 of that same school year that their plans have been approved or disapproved by the department.

In addition to awarding grants, and if the activity does not violate federal matching funds requirements for an Iowa math and science grant program, the department may expend funds to contract with a public or private nonprofit education organization, association, or laboratory for the de-

velopment of models or recommendations with statewide applications to further the goals of this section.

2. The department shall make recommendations for, and the state board shall adopt, rules relating to program goals and program administration. The goals of the math and science education program may include, but are not limited to, the development of a model multidisciplinary science curricula that will serve as the framework for the development of individual teaching modules; the design and implementation of a statewide model for staff development in science and math education; the development of specific recommendations and rationale for changes in school standards that will facilitate improvements in math and science education and provide outcomes that serve as a standard of successful learning; provision of a sequence of competencies and instructional strategies for inclusion in teacher preparation programs for those entering math and science programs in Iowa teacher preparation institutions; development and implementation of a new statewide assessment program that is consistent with the materials and approaches envisioned; and the development and implementation strategies for recruitment and retention of females and minorities in math and science education.

The board of educational examiners may develop recommendations for specific changes in the licensing requirements for math and science teachers.

Program administration rules shall include, but are not limited to, development of standard formats and procedures for the submission and assessment of grant applications.

3. There is established in the state treasury a math and science education account that is under the control of and administered by the department of education. The department may accept gifts, grants, bequests, and other private contributions, as well as state or federal funds, and shall deposit the moneys in the account to be used for distribution as grant award moneys under the math and science education program. Moneys in the account are appropriated and may be used for the purposes of this section. The department shall not commingle federal, state, and private funds within the account. Not more than six percent of any state funds appropriated for the program may be used for administrative purposes. State funds appropriated and any interest earned on the state funds but not expended for the first two years of the program shall not revert to the general fund under section 8.33, but shall remain available for expenditure until June 30 of the third year of the program. In subsequent years, state funds and any interest earned on the state funds which are appropriated, but not expended by June 30 of the school year shall revert to the general fund as provided under section 8.33. Receipt of funds during the first year of the program shall not affect eligibility to receive funds during any subsequent years.

91 Acts, ch 71, §1

256.37 School restructuring and effectiveness — policy — findings.

It is the policy of the state of Iowa to provide an education system that prepares the children of this state to meet and exceed the technological, informational, and communications demands of our society. The general assembly finds that the current education system must be transformed to deliver the enriched educational program that the adults of the future will need to have to compete in tomorrow's world. The general assembly further finds that the education system must strive to reach the following goals:

1. All children in Iowa must start school ready to learn.

2. Iowa's high school graduation rate must increase to at least ninety percent.

3. Students graduating from Iowa's education system must demonstrate competency in challenging subject matter, and must have learned to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in a global economy.

4. Iowa students must be first in the world in science and mathematics achievement.

5. Every adult Iowan must be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

6. Every school in Iowa must be free of drugs and violence and offer a disciplined environment conducive to learning.

92 Acts, ch 1159, §4

256.38 School-to-work transition system.

1. It is the policy of the state of Iowa to provide an education system that prepares the students of this state to meet the high skills demands of today's workplace. The general assembly recognizes the need to prepare students for any postsecondary opportunity that leads to high-wage, high-skill careers. In order to meet this need, the high school curriculum must be redesigned so students appreciate the relevance of academic course work, reach higher levels of learning in science, math, and communications skills, and acquire the ability to apply this knowledge. Career pathways will modify high school curricula and instruction to provide students with opportunities to achieve high levels of skills and knowledge within a broad range of related career areas, which will require a variety of levels of preparation.

2. The departments of education, workforce development, and economic development shall develop a statewide school-to-work transition system in consultation with local school districts, community colleges, and labor, business, and industry interests. The system shall be designed to

attain the following objectives:

a. Motivate youths to stay in school and become productive citizens.

b. Set high standards by promoting higher academic performance levels.

c. Connect work and learning so that the classroom is linked to worksite learning and experience.

d. Ready students for work in order to improve their prospects for immediate employment after leaving school through career pathways that provide significant opportunity to continued education and career development.

e. Engage employers and workers by promoting their participation in the education of youth in order to ensure the development of a skilled, flexible, entry-level workforce.

f. Provide a framework to position the state to access federal resources for state youth apprenticeship systems and local programs.

95 Acts, ch 196, §1; 96 Acts, ch 1186, §23

256.39 Career pathways program.

1. If the general assembly appropriates moneys for the establishment of a career pathways program, the department of education shall develop a career pathways grant program, criteria for the formation of ongoing career pathways consortia in each merged area, and guidelines and a process to be used in selecting career pathways consortium grant recipients, including a requirement that grant recipients shall provide matching funds or match grant funds with in-kind resources on a dollar-for-dollar basis. A portion of the moneys appropriated by the general assembly shall be made available to schools to pay for the issuance of employability skills assessments to public or nonpublic school students. An existing partnership or organization, including a regional school-to-work partnership, that meets the established criteria, may be considered a consortium for grant application purposes. One or more school districts may be considered a consortium for grant application purposes, provided the district can demonstrate the manner in which a community college, area education agency, representatives from business and labor organizations, and others as determined within the region will be involved. Existing school-to-work partnerships are encouraged to assist the local consortia in developing a plan and budget. The department shall provide assistance to consortia in planning and implementing career pathways program efforts.

2. To be eligible for a career pathways grant, a career pathways consortium shall develop a career pathways program that includes, but is not limited to, the following:

a. Measure the employability skills of students. Employability skills shall include, but are not limited to, reading for information, applied mathematics, listening, and writing.

b. Curricula designed to integrate academic and work-based learning to achieve high employability skills by all students related to career pathways. The curricula shall be designed through the cooperative efforts of secondary and postsecondary education professionals, business professionals, and community services professionals.

c. Staff development to implement the high-standard curriculum. These efforts may include team teaching techniques that utilize expertise from partnership businesses and postsecondary institutions.

3. In addition to the provisions of subsection 2, a career pathways program may include, but is not limited to, the following:

a. Career guidance and exploration for students.

b. Involvement and recognition of business, labor, and community organizations as partners in the career pathways program.

c. Provision for program accountability.

d. Encouragement of team teaching within the school or in partnership with postsecondary schools, and business, labor, community, and nonprofit organizations.

e. Service learning opportunities for students.

4. Business, labor, and community organizations are encouraged to market the career pathways program to the local community and provide students with mentors, shadow professionals, speakers, field trip sites, summer jobs, internships, and job offers for students who graduate with high performance records. Students are encouraged to volunteer their time to community organizations in exchange for workplace learning opportunities that do not displace current employees.

5. In developing career pathways program efforts, each consortium shall make every effort to cooperate with the juvenile courts, the department of economic development, the department of workforce development, the department of human services, and the new Iowa schools development corporation.

6. The department of education shall direct and monitor the progress of each career pathways consortium in developing career pathways programs. By January 15, 1998, the department shall submit to the general assembly any findings and recommendations of the career pathways consortia, along with the department's recommendations for specific career pathways program efforts and for appropriate funding levels to implement and sustain the recommended programs.

7. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for the purposes of this section.

8. A career pathways program is a comprehensive school transformation program under section

294A.14.

95 Acts, ch 196, §2; 96 Acts, ch 1186, §23

256.40 through 256.43 Repealed by 2001 Acts, ch 159, § 18.

256.44 National board certification pilot project.

1. A national board certification pilot project is established to be administered by the department of education. A teacher, as defined in section 272.1, who registers for or achieves national board for professional teaching standards certification, and who is employed by a school district in Iowa and receiving a salary as a classroom teacher, may be eligible for the following:

a. If a teacher registers for national board for professional teaching standards certification prior to June 30, 2005, a one-time initial reimbursement award in the amount of up to one-half of the registration fee paid by the teacher for registration for certification by the national board for professional teaching standards. The teacher shall apply to the department of education within one year of registration, submitting to the department any documentation the department requires. A teacher who receives an initial reimbursement award shall receive a one-time final registration award in the amount of the remaining national board registration fee paid by the teacher if the teacher notifies the department of the teacher's certification achievement and submits any documentation requested by the department.

b. (1) If, by May 1, 2000, the teacher applies to the department for an annual award and submits documentation of certification by the national board for professional teaching standards, an annual award in the amount of five thousand dollars. However, if the teacher does not achieve certification on the teacher's first attempt to pass the national board for professional teaching standards assessment, the teacher shall be paid the award amount as provided in subparagraph (2) upon achieving certification. The department shall award not more than a total of fifty thousand dollars in annual awards to an individual during the individual's term of eligibility for annual awards.

(2) If the teacher registers for national board for professional teaching standards certification between January 1, 1999, and January 1, 2005, and achieves certification within three years from the date of initial score notification, an annual award in the amount of two thousand five hundred dollars upon achieving certification by the national board of professional teaching standards.

To receive an annual award pursuant to this paragraph *"b"*, a teacher shall apply to the department for an award within one year of eligibility. Payment for awards shall be made only upon departmental approval of an application or recertification of eligibility. A term of eligibility shall be for ten years or for the years in which the individual maintains a valid certificate, whichever time period is shorter. In order to continue receipt of payments, a recipient shall annually recertify eligibility.

2. *a.* If the amount appropriated annually for purposes of this section is insufficient to pay the full amount of reimbursement awards in accordance with subsection 1, paragraph *"a"*, the department shall annually prorate the amount of the registration awards provided to each teacher who meets the requirements of this section.

b. If the amount appropriated annually for purposes of providing an annual award in accordance with subsection 1, paragraph *"b"*, is insufficient to pay the full annual award to all teachers approved by the department for an annual award, the department shall prorate the amount of the annual award based upon the amount appropriated.

3. A teacher receiving an annual award pursuant to this section may provide additional services to the school district that employs the teacher. The additional services to be provided by the teacher may be mutually agreed upon by the school district and the teacher.

4. Awards shall be paid to teachers by the department as follows:

a. Upon receipt of reimbursement documentation as provided in subsection 1, paragraph *"a"*.

b. Not later than June 1 to teachers whose applications and recertifications for annual awards as provided in subsection 1, paragraph *"b"*, are submitted to the department by May 1 and subsequently approved.

5. Notwithstanding any provision to the contrary, a teacher approved by the department to receive an annual award for certification in accordance with this section in the fiscal year beginning July 1, 1998, shall receive the annual award amount specified in subsection 1, paragraph *"b"*, subparagraph (1), to commence with the fiscal year beginning July 1, 1999.

6. From funds appropriated for purposes of this section by the general assembly to the department of education for each fiscal year in the fiscal period beginning July 1, 1999, and ending June 30, 2004, three hundred thousand dollars, or so much thereof as may be necessary, shall be used for the payment of registration awards as provided in subsection 4, paragraph *"a"*.

7. The department shall prorate the amount of the annual awards paid in accordance with this section when the number of award recipients exceeds one thousand one hundred individuals.

8. Notwithstanding section 8.33, funds appropriated for purposes of this section which remain unencumbered or unobligated at the close of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for purposes of

this section.

98 Acts, ch 1216, §5; 99 Acts, ch 142, §1; 99 Acts, ch 205, §20; 2002 Acts, ch 1152, §3, 4

Subsection 1, paragraph a amended

Subsection 1, paragraph b, subparagraph (2), unnumbered paragraph 1 amended

256.45 Ambassador to education.

The department of education shall establish and administer the position of ambassador to education. It shall be the function of the ambassador to education to act as an education liaison to primary and secondary schools in this state. The ambassador to education position shall be filled by the educator selected as teacher of the year by the governor, but only if that person agrees to fill the ambassador to education position.

The ambassador to education's duties shall be established by the director of the department and shall be tailored to the relative skills and educational background of the person designated as ambassador. Duties of the ambassador may include, but are not limited to, providing seminars and workshops in the subject matter area in which the ambassador possesses expertise, accompanying the director of the department of education in the exercise of the director's duties in the state, and speaking at public gatherings in the state.

The ambassador to education shall receive, in lieu of compensation from the district in which the ambassador is regularly employed, a salary equal to the amount of salary the person would have received from the district in the person's regular position during the school year for which the person serves as ambassador, or thirty thousand dollars, whichever amount is greater. The ambassador shall also be compensated for actual expenses incurred as a result of the performance of duties under this section.

The department shall grant funds in an amount equal to the salary and benefits the person selected as ambassador to education would have received from the district, or thirty thousand dollars, whichever amount is greater, to the school district that employs the person selected as the ambassador. The department shall also reimburse the school district for actual expenses incurred as a result of the performance of duties under this section. The school district shall grant the person a one-year sabbatical in order to allow the person to be the ambassador to education, and during the sabbatical, shall pay the salary and benefits of the ambassador with funds granted by the department. The person selected as the ambassador to education shall be entitled to return to the person's same or a comparable position without loss of accrued benefits or seniority.

90 Acts, ch 1272, §43; 98 Acts, ch 1216, §6

SUBCHAPTER II

PARTICIPATION IN INTERSCHOLASTIC ACTIVITIES

256.46 Rules for participation in extracurricular activities by certain children.

The state board shall adopt rules that permit a child who does not meet the residence requirements for participation in extracurricular interscholastic contests or competitions sponsored or administered by an organization as defined in section 280.13 to participate in the contests or competitions immediately if the child is duly enrolled in a school, is otherwise eligible to participate, and meets one of the following circumstances or a similar circumstance: the child has been adopted; the child is placed under foster or shelter care; the child is living with one of the child's parents as a result of divorce, separation, death, or other change in the child's parents' marital relationship, or pursuant to other court-ordered decree or order of custody; the child is a foreign exchange student; the child has been placed in a juvenile correctional facility; the child is a ward of the court or the state; the child is a participant in a substance abuse or mental health program; or the child is enrolled in an accredited nonpublic high school because the child's district of residence has entered into a whole grade sharing agreement for the pupil's grade with another district.

90 Acts, ch 1049, §1; 92 Acts, ch 1135, §1; 93 Acts, ch 101, §201; 2002 Acts, ch 1129, §1

Section amended

256.47 through 256.49 Reserved.

SUBCHAPTER III

LIBRARIES AND INFORMATION SERVICES

PART 1

GENERAL PROVISIONS

256.50 Division of libraries and information services — definitions.

As used in this part, unless the context otherwise requires:

1. *"Commission"* means the commission of libraries.

2. *"Division"* means the division of libraries and information services of the department of education.

3. *"State agency"* means a legislative, executive, or judicial office of the state and all of its respective officers, departments, divisions, bureaus, boards, commissions, and committees, except the state institutions of higher education governed by the state board of regents.

4. *"State publications"* means all multiply produced publications regardless of format, which are

issued by a state agency and supported by public funds, but it does not include:

a. Correspondence and memoranda intended solely for internal use within the agency or between agencies.

b. Materials excluded from this definition by the commission through the adoption and enforcement of rules.

93 Acts, ch 48, §17

256.51 Division of libraries and information services — duties and responsibilities.

1. The division of libraries and information services is established within the department of education. The division shall do all of the following:

a. Determine policy for providing information service to the three branches of state government and to the legal and medical communities in this state.

b. Coordinate a statewide interregional interlibrary loan and information network among libraries in this state and support activities which increase cooperation among all types of libraries.

c. Establish and administer a program for the collection and distribution of state publications to depository libraries.

d. Develop and adopt, in conjunction with the library service areas, long-range plans for the continued improvement of library services and which will explore or broaden the information mission in the state. To insure that the concerns of all types of libraries are addressed, the division shall establish a long-range planning committee to review and evaluate progress and report findings and recommendations to the division and to the trustees of the library service areas at an annual meeting.

e. Develop, in consultation with the library service areas and the area education agency media centers, a biennial unified plan of service and service delivery for the division of libraries and information services.

f. Establish and administer a statewide continuing education program for librarians and trustees.

g. Give to libraries advice and counsel in specialized areas which may include, but are not limited to, building construction and space utilization, children's services, and technological developments.

h. Obtain from libraries reports showing the condition, growth, and development of services provided and disseminate this information in a timely manner to the citizens of Iowa.

i. Establish and administer certification guidelines for librarians not covered by other accrediting agencies.

j. Foster public awareness of the condition of libraries in Iowa and of methods to improve library services to the citizens of the state.

k. Establish and administer standards for state agency libraries, the library service areas, and public libraries.

2. The division may do all of the following:

a. Enter into interstate library compacts on behalf of the state of Iowa with any state which legally joins in the compacts as provided in section 256.70.

b. Receive and expend money for providing programs and services. The division may receive, accept, and administer any moneys appropriated or granted to it, separate from the general library fund, by the federal government or by any other public or private agency.

c. Accept gifts, contributions, bequests, endowments, or other moneys, including but not limited to the Westgate endowment fund, for any or all purposes of the division. Interest earned on moneys accepted under this paragraph shall be credited to the fund or funds to which the gifts, contributions, bequests, endowments, or other moneys have been deposited, and is available for any or all purposes of the division. The division shall report annually to the director and the general assembly regarding the gifts, contributions, bequests, endowments, or other moneys accepted pursuant to this paragraph and the interest earned on them.

93 Acts, ch 48, §18; 2001 Acts, ch 158, §12

256.52 Commission of libraries established — duties of commission and state librarian — state library fund created.

1. The state commission of libraries consists of one member appointed by the supreme court, the director of the department of education, or the director's designee, and six members appointed by the governor to serve four-year terms beginning and ending as provided in section 69.19. Of the governor's appointees, one member shall be from the medical profession and five members selected at large. Not more than three of the members appointed by the governor shall be of the same gender. The members shall be reimbursed for their actual expenditures necessitated by their official duties. Members may also be eligible for compensation as provided in section 7E.6.

2. The commission shall elect one of its members as chairperson. The commission shall meet at the time and place specified by call of the chairperson. Five members are a quorum for the transaction of business.

3. The commission shall appoint the state librarian who shall administer the division, and serve at the pleasure of the commission.

The state librarian shall do all of the following:

a. Direct and organize the activities of the division.

b. Submit a biennial report to the governor on the activities and an evaluation of the division and its programs and policies.

c. Control all property of the division. The state librarian may dispose of, through sale, con-

veyance, or exchange, any library materials that may be obsolete or worn out or that may no longer be needed or appropriate to the mission of the state library of Iowa. These materials may be sold by the state library directly or the library may sell the materials by consignment with an outside entity. A state library fund is created in the state treasury. Proceeds from the sale of the library materials shall be remitted to the treasurer of state and credited to the state library fund and shall be used for the purchase of books and other library materials. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

d. Appoint and approve the technical, professional, excepting the medical librarian and the law librarian, secretarial, and clerical staff necessary to accomplish the purposes of the division subject to chapter 19A.

e. Perform other duties imposed by law.

4. The commission shall adopt rules under chapter 17A for carrying out the responsibilities of the division.

5. The commission shall receive and approve the budget and unified plan of service submitted by the division of libraries and information services.

93 Acts, ch 48, §19; 94 Acts, ch 1193, §18; 96 Acts, ch 1215, §21

256.53 State publications.

Upon issuance of a state publication in any format, a state agency shall deposit with the division at no cost to the division, seventy-five copies of the publication or a lesser number if specified by the division.

93 Acts, ch 48, §20

256.54 State library — medical and law libraries.

The state library includes, but is not limited to, a medical library, a law library, and the state data center.

1. The medical library shall be administered by a medical librarian, appointed by the director subject to chapter 19A, who shall do all of the following:

a. Operate the medical library which shall always be available for free use by the residents of Iowa under rules the commission adopts.

b. Give no preference to any school of medicine and shall secure books, periodicals, and pamphlets for every legally recognized school of medicine without discrimination.

c. Perform other duties imposed by law or prescribed by the rules of the commission.

2. The law library shall be administered by a law librarian appointed by the director subject to chapter 19A, who shall do all of the following:

a. Operate the law library which shall be maintained in the state capitol or in rooms convenient to the state supreme court and which shall be available for free use by the residents of Iowa under rules the commission adopts.

b. Maintain, as an integral part of the law library, reports of various boards and agencies, copies of bills, journals, other information relating to current or proposed legislation, and copies of the Iowa administrative bulletin and Iowa administrative code and any publications incorporated by reference in the bulletin or code.

c. Arrange to make exchanges of all printed material published by the states and the government of the United States.

d. Perform other duties imposed by law or by the rules of the commission.

93 Acts, ch 48, §21; 95 Acts, ch 14, §2

256.55 State data center.

A state data center is established in the department of education. The state data center shall be administered by the state data center coordinator, who shall do all of the following:

1. Manage the state data center program to make United States census data available to the residents of Iowa under rules the commission adopts.

2. Act as the state's liaison with the United States census bureau in matters relating to United States decennial, economic, and agricultural census data, and population estimates and projections.

3. Perform other duties imposed by law or prescribed by the commission.

93 Acts, ch 48, §22

256.56 Electronic access to documents.

The state library shall work to develop a system of electronic access to documents maintained by the state library with a goal of providing electronic access to all such documents. The access shall be provided initially through the use of compact disc technology. This section shall not prohibit the state librarian from considering other forms of electronic access if the use of such other access is shown to exceed the benefits of, and is more cost-effective than, the use of compact disc technology.

93 Acts, ch 178, §32

256.57 through 256.59 Reserved.

PART 2

LIBRARY SERVICE AREAS

256.60 Library service areas established — purposes.

Library service areas are established as provided in section 256.61 to provide supporting services to libraries, including, but not limited to, consulting, continuing education, and interlibrary loan and reference services, to assure consistency

of service statewide, and to encourage local financial support for library services.

93 Acts, ch 48, §23; 2001 Acts, ch 158, §13

256.61 Library service areas and boards of trustees — appointment — terms.

1. Seven library service areas shall serve and represent seven geographic regions consisting of the following counties:

a. The southwestern area shall serve and represent the counties of Adair, Adams, Audubon, Cass, Clarke, Decatur, Fremont, Guthrie, Harrison, Lucas, Mills, Montgomery, Page, Pottawattamie, Ringgold, Shelby, Taylor, Union, and Wayne.

b. The northwestern area shall serve and represent the counties of Buena Vista, Calhoun, Carroll, Cherokee, Clay, Crawford, Dickinson, Emmet, Ida, Lyon, Monona, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, and Woodbury.

c. The north central area shall serve and represent the counties of Cerro Gordo, Floyd, Franklin, Hamilton, Hancock, Hardin, Humboldt, Kossuth, Mitchell, Webster, Winnebago, Worth, and Wright.

d. The central area shall serve and represent the counties of Boone, Dallas, Greene, Jasper, Madison, Marion, Marshall, Polk, Story, and Warren.

e. The southeastern area shall serve and represent the counties of Appanoose, Davis, Des Moines, Henry, Jefferson, Keokuk, Lee, Louisa, Mahaska, Monroe, Muscatine, Scott, Van Buren, Wapello, and Washington.

f. The east central area shall serve and represent the counties of Benton, Cedar, Clinton, Iowa, Jackson, Johnson, Jones, Linn, Poweshiek, and Tama.

g. The northeastern area shall serve and represent the counties of Allamakee, Black Hawk, Bremer, Buchanan, Butler, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Grundy, Howard, and Winneshiek.

2. Each area shall have a board of trustees composed of seven members, who shall be appointed as follows:

a. One member shall be appointed mutually by the area education agency media divisions located within the boundaries of the library service area.

b. One member shall be appointed mutually by the boards of trustees of the public libraries located within the boundaries of the library service area.

c. One member shall be appointed mutually by librarians employed by public libraries located within the boundaries of the library service area.

d. One member shall be appointed mutually by the boards of trustees of the community colleges located within the boundaries of the library service area.

e. One member shall be appointed by the commission of libraries to represent library patrons residing within the boundaries of the library service area.

f. Two members shall be appointed by the commission of libraries to represent the public at-large residing within the boundaries of the library service area.

3. All appointments shall comply with sections 69.16 and 69.16A.

4. The members of each library service area board shall be appointed to four-year, staggered terms of office. A term shall be effective on the first of July of the year of appointment and a vacancy shall be filled for the unexpired term in the same manner as the original appointment.

5. The members of a board shall not receive compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. The expenses of the board members shall be paid from the appropriation to the library service areas.

6. Each board shall elect a chairperson and vice chairperson annually from among its membership. A board shall meet at the call of its chairperson or upon written request of a majority of its membership. Four members constitute a quorum. The concurrence of a majority of the members of a board is required to determine any matter relating to its duties.

7. The commission of libraries shall adopt rules providing for the coordination of appointments made to the board of trustees in accordance with this section.

93 Acts, ch 48, §24; 2001 Acts, ch 158, §14

Expiration of terms of elected regional library trustees on July 1, 2001; 2001 Acts, ch 158, §39

256.62 through 256.65 Repealed by 2001 Acts, ch 158, § 40.

256.66 Powers and duties of regional trustees.

In carrying out the purposes of section 256.60, each board of trustees:

1. Shall appoint and evaluate a qualified administrator who shall have a master's degree in librarianship from a program of study accredited by the American library association and who may be terminated for good cause.

2. Subject to the approval of the annual plan of service by the director of the department of education, may receive and expend state appropriated funds.

3. May receive and expend other funds and receive and expend gifts of real property, personal property or mixed property, and devises and bequests including trust funds; may take title to the property; may execute deeds and bills of sale for the conveyance of the property; and may expend the funds received from the gifts.

4. May accept and administer trusts and may

authorize nonprofit foundations acting solely for the support of the library service area to accept and administer trusts deemed by the board to be beneficial to the operation of the library service area. Notwithstanding section 633.63, the board and the nonprofit foundation may act as trustees in these instances. The board shall require that moneys belonging to a nonprofit foundation be audited annually.

5. May contract with libraries, library agencies, private corporations or individuals to improve library service.

6. May acquire land and construct or lease facilities to carry out the provisions of this part.

7. Shall provide consultation and educational programs for library staff and trustees concerning all facets of library management and operation.

8. Shall provide interlibrary loan and information services throughout the area and across area lines according to the standards developed by the commission of libraries.

9. Shall develop and adopt, in cooperation with other members of the library service area and the director of the department of education, a long-range plan for the area.

10. Shall prepare, in cooperation with all members of the library service area and the director of the department of education, an annual plan of service.

11. Shall provide data and prepare reports as directed by the director of the department of education.

12. Shall encourage governmental subdivisions to maintain local financial support for the operating expenses of local libraries.

13. Shall assume all of the outstanding obligations of the regional library and be liable for and recognize, assume, and carry out all valid contracts and obligations of the regional library that the library service area replaces. Each regional library in existence prior to July 1, 2001, shall transfer its assets and title to any real estate owned by the regional library to the library service area that replaces the regional library.

14. May perform other acts necessary to carry out its powers and duties under this part.

93 Acts, ch 48, §29; 2001 Acts, ch 158, §15, 16

256.67 Duties of the area administrator.

An area administrator shall:

1. Act as administrator and executive secretary of the library service area in accordance with the objectives and policies adopted by the area board of trustees and with the intent of this chapter.

2. Organize, staff, and administer the library service area so as to render the greatest benefit to libraries and information services in the area.

3. Advise and counsel with the area board of trustees and individual libraries in all matters pertaining to the improvement of library services in the library service area.

4. Cooperate with other members of the library service area, the state library of Iowa and representatives of the Iowa library community in considering and developing plans for the improvement of library services in Iowa.

5. Carry out the policies of the board of trustees not inconsistent with state law.

93 Acts, ch 48, §30; 2001 Acts, ch 158, §17; 2002 Acts, ch 1175, §29

Subsection 1 amended

256.67A Insurance eligibility.

Personnel employed by a library service area shall be considered state employees for purposes of eligibility for receiving employee health and dental insurance as provided to state employees by the department of personnel. If a library service area elects to participate in a state employee health and dental insurance program, the library service area shall continue to pay the costs of employee participation in a program from funds appropriated for purposes of the library service areas by the general assembly.

99 Acts, ch 205, §21; 2001 Acts, ch 158, §18

256.68 Distribution and administration of funds.

1. Funds appropriated for the purpose of carrying out this part shall be distributed equally to the library service area boards by the commission of libraries.

2. In addition to funds received under subsection 1, a library service area board of trustees may individually or cooperatively apply to the commission of libraries for available grants.

93 Acts, ch 48, §31; 2001 Acts, ch 158, §19 – 21

256.69 Local financial support.

Commencing July 1, 1977, each city within its corporate boundaries and each county within the unincorporated area of the county shall levy a tax of at least six and three-fourths cents per thousand dollars of assessed value on the taxable property or at least the monetary equivalent thereof when all or a portion of the funds are obtained from a source other than taxation, for the purpose of providing financial support to the public library which provides library services within the respective jurisdictions.

93 Acts, ch 48, §32

Public library funding study; report to general assembly; 2001 Acts, ch 158, §38

PART 3

LIBRARY COMPACT

256.70 Library compact authorized.

The division of libraries and information services of the department of education is hereby authorized to enter into interstate library compacts

on behalf of the state of Iowa with any state bordering on Iowa which legally joins therein in substantially the following form.

The contracting states agree that:

ARTICLE I — PURPOSE

Because the desire for the services provided by public libraries transcends governmental boundaries and can be provided most effectively by giving such services to communities of people regardless of jurisdictional lines, it is the policy of the states who are parties to this compact to cooperate and share their responsibilities in providing joint and cooperative library services in areas where the distribution of population makes the provision of library service on an interstate basis the most effective way to provide adequate and efficient services.

ARTICLE II — PROCEDURE

The appropriate state library officials and agencies having comparable powers with those of the Iowa commission of libraries of the party states or any of their political subdivisions may, on behalf of said states or political subdivisions, enter into agreements for the cooperative or joint conduct of library services when they shall find that the execution of agreements to that end as provided herein will facilitate library services.

ARTICLE III — CONTENT

Any such agreement for the cooperative or joint establishment, operation or use of library services, facilities, personnel, equipment, materials or other items not excluded because of failure to enumerate shall, as among the parties of the agreement:

1. Detail the specific nature of the services, facilities, properties or personnel to which it is applicable;
2. Provide for the allocation of costs and other financial responsibilities;
3. Specify the respective rights, duties, obligations and liabilities;
4. Stipulate the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of said agreement.

ARTICLE IV — CONFLICT OF LAWS

Nothing in this compact or in any agreement entered into hereunder shall alter, or otherwise impair any obligation imposed on any public library by otherwise applicable laws, or be constituted to supersede.

ARTICLE V — ADMINISTRATOR

Each state shall designate a compact administrator with whom copies of all agreements to which the state or any subdivision thereof is party shall be filed. The administrator shall have such powers as may be conferred by the laws of the administrator's state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact.

ARTICLE VI — EFFECTIVE DATE

This compact shall become operative when entered in by two or more entities having the powers enumerated herein.

ARTICLE VII — RENUNCIATION

This compact shall continue in force and remain binding upon each party state until six months after any such state has given notice of repeal by the legislature. Such withdrawal shall not be construed to relieve any party to an agreement authorized by articles II and III of the compact from the obligation of that agreement prior to the end of its stipulated period of duration.

ARTICLE VIII — SEVERABILITY — CONSTRUCTION

The provisions of this compact shall be severable. It is intended that the provisions of this compact be reasonably and liberally construed.

93 Acts, ch 48, §33

256.71 Administrator.

The administrator of the division of libraries and information services shall be the compact administrator. The compact administrator shall receive copies of all agreements entered into by the state or its political subdivisions and other states or political subdivisions; consult with, advise and aid such governmental units in the formulation of such agreements; make such recommendations to the governor, legislature, governmental agencies and units as the administrator deems desirable to effectuate the purposes of this compact and consult and co-operate with the compact administrators of other party states.

93 Acts, ch 48, §34

256.72 Agreements.

The compact administrator and the chief executive of a county, city, or library board may enter into agreements with other states or their political subdivisions pursuant to the compact. The agreements made pursuant to this compact on behalf of the state of Iowa shall be made by the compact administrator. The agreements made on behalf of a political subdivision shall be made after due notice

to and consultation with the compact administrator.

93 Acts, ch 48, §35

256.73 Enforcement.

The agencies and officers of this state and its subdivisions shall enforce this compact and do all things appropriate to effect its purpose and intent which may be within their respective jurisdiction.

93 Acts, ch 48, §36

256.74 through 256.79 Reserved.

SUBCHAPTER IV

PUBLIC BROADCASTING

256.80 Definitions.

As used in this subchapter unless the context otherwise requires:

1. *"Administrator"* means the administrator of the public broadcasting division of the department of education.

2. *"Board"* means the Iowa public broadcasting board.

3. *"Broadcast"* means communications through a system that is receivable by the general public with programming designed for a large group of users.

4. *"Narrowcast"* means communications through systems that are directed toward a narrowly defined audience.

5. *"Radio and television facility"* means transmitters, towers, studios, and all necessary associated equipment for broadcasting, including closed circuit television.

93 Acts, ch 48, §37

256.81 Public broadcasting division created — administrator — duties.

1. The public broadcasting division of the department of education is created. The chief administrative officer of the division is the administrator who shall be appointed by and serve at the pleasure of the Iowa public broadcasting board. The governor shall set the division administrator's salary unless otherwise provided by law. Educational programming shall be the highest priority of the division. The director of the department of education and the state board of education are not liable for the activities of the division of public broadcasting.

2. The administrator shall do all of the following:

a. Direct and organize the activities of the division.

b. Submit a biennial report to the governor on the activities and an evaluation of the division and its programs and policies.

c. Control all property of the division.

d. Perform other duties imposed by law.

93 Acts, ch 48, §38

256.82 Board — advisory committees.

1. The Iowa public broadcasting board is created to plan, establish, and operate educational radio and television facilities and other telecommunications services including narrowcast and broadcast systems to serve the educational needs of the state. The board shall be composed of nine members selected in the following manner:

a. Four members shall be appointed by the governor so that the portion of the board membership appointed under this paragraph includes two male board members and two female board members at all times:

(1) One member shall be appointed from the business community other than the commercial broadcasting industry and the telecommunications industry.

(2) One member shall be appointed from the commercial broadcast industry.

(3) One member shall be appointed from the membership of a fund-raising nonprofit organization financially assisting the Iowa public broadcasting division.

(4) One member shall represent the general public.

b. Five members shall be selected in the manner provided in this paragraph and the gender balance of the membership shall be coordinated among the associations and boards making the appointments so that not more than three members serving under this paragraph at the same time are of the same gender.

(1) One member shall be appointed by the state association of private colleges and universities.

(2) One member shall be appointed jointly by the superintendents of the community colleges created by chapter 260C.

(3) One member shall be appointed jointly by the administrators of the area education agencies created by chapter 273.

(4) One member who is knowledgeable about telecommunications shall be appointed by the state board of regents.

(5) One member shall be appointed by the state board of education.

2. Board members shall serve a three-year term commencing on July 1 of the year of appointment. A vacancy shall be filled in the same manner as the original appointment for the remainder of the term.

Membership on the board does not constitute holding a public office and members shall not be required to take and file oaths of office before serving. A member shall not be disqualified from holding any public office or employment by reason of appointment to the board nor shall a member forfeit an office or employment by reason of appointment to the board.

3. The board shall appoint an advisory committee on journalistic and editorial integrity which has no more than a simple majority of members of the same gender. The division shall be governed by the national principles of editorial integrity developed by the editorial integrity project.

Duties of the advisory committee, and of additional advisory committees the board may from time to time appoint, shall be specified in rules of internal management adopted by the board.

Members of advisory committees shall receive actual expenses incurred in performing their official duties.

93 Acts, ch 48, §39; 94 Acts, ch 1184, §22

256.83 Meetings.

1. The board shall elect from among its members a president and a vice president to serve a one-year term. The board shall meet at least four times annually and shall hold special meetings at the call of the president or in the absence of the president by the vice president or by the president upon written request of four members. The board shall establish procedures and requirements relating to quorum, place, and conduct of meetings.

2. Board members shall receive actual expenses incurred in performing their official duties.

93 Acts, ch 48, §40

256.84 Powers — facilities — rules.

1. The board may purchase, lease, and improve property, equipment, and services for educational telecommunications including the broadcast and narrowcast systems, and may dispose of property and equipment when not necessary for its purposes. The board and division administrator may arrange for joint use of available services and facilities.

2. The board shall apply for channels, frequencies, licenses, and permits as necessary for the performance of the board's duties.

3. This section does not prohibit institutions under the state board of regents and community colleges under the department of education from owning, operating, improving, maintaining, and restructuring educational radio and television stations and transmitters now in existence or other educational narrowcast telecommunications systems and services. The institutions and schools may enter into agreements with the board for the lease or purchase of equipment and facilities.

4. The board may locate its administrative offices and production facilities outside the city of Des Moines.

5. The board shall adopt and update a design plan for educational telecommunications systems and services in this state. The design plan shall be updated at least every two years. Copies of the design plan and updated design plan shall be made available to the governor and members of the general assembly upon request. The plan shall include a list of public utilities and private telecommunications companies being utilized by the educational telecommunications system; the cost of the system; the fees or charges established for the system; and information on areas where construction is required because facilities are not available from private telecommunications companies.

6. The board shall establish guidelines for and may impose and collect fees and charges for services. Fees and charges collected by the board for services shall be deposited to the credit of the division. Any interest earned on these receipts, and revenues generated under subsection 7, shall be retained and may be expended by the division subject to the approval of the board.

7. The board may make and execute agreements, contracts, and other instruments with any public or private entity and may retain revenues generated from these contracts. State departments and agencies, other public agencies, and governmental subdivisions and private entities including but not limited to institutions of higher education and nonpublic schools may enter into contracts and otherwise cooperate with the board.

8. The board may contract with engineers, attorneys, accountants, financial experts, and other advisors upon the recommendation of the administrator. The board may enter into contracts or agreements for such services with local, state, or federal governmental agencies.

9. The board may adopt rules to implement and administer the programs of the division.

10. The decision of the board is final agency action under chapter 17A.

93 Acts, ch 48, §41

256.85 Purchase of energy efficiency packages.

The public broadcasting division of the department of education may use the state of Iowa facilities improvement corporation to purchase energy efficiency packages for its ultrahigh frequency transmitters.

93 Acts, ch 48, §42

256.86 Competition with private sector.

It is the intent of the general assembly that the division shall not compete with the private sector by actively seeking revenue from its operations. It is not the intent of the general assembly to prohibit the receipt of charitable contributions as defined by section 170 of the Internal Revenue Code. The board, the governor, or the administrator may apply for and accept federal or nonfederal gifts, loans, or grants of funds and may use the funds for projects under this chapter.

93 Acts, ch 48, §43

256.87 Costs and fees — capital equipment replacement revolving fund.

1. The board may provide noncommercial production or reproduction services for other public agencies, nonprofit corporations or associations organized under state law, or other nonprofit organizations, and may collect the costs of providing the services from the public agency, corporation, association, or organization, plus a separate equipment usage fee in an amount determined by the board and based upon the equipment used. The costs shall be deposited to the credit of the board. The separate equipment usage fee shall be deposited in the capital equipment replacement revolving fund.

2. The board may establish a capital equipment replacement revolving fund into which shall be deposited equipment usage fees collected under subsection 1 and funds from other sources designated for deposit in the capital equipment replacement revolving fund. The board may expend moneys from the capital equipment replacement revolving fund to purchase technical equipment for operating the educational radio and television facility.

93 Acts, ch 48, §44

256.88 Trusts.

Notwithstanding section 633.63, the board may accept and administer trusts and may authorize nonprofit foundations acting solely for the support of educational telecommunications including the broadcast and narrowcast systems to accept and administer trusts deemed by the board to be beneficial to the operation of the educational radio and television facility. The board and the foundations may act as trustees in such instances.

93 Acts, ch 48, §45

256.89 State plan.

The board shall cause to be developed and adopt a state educational telecommunications design plan. Any agency of the state and any political subdivision of the state shall submit plans for the development of educational telecommunications systems to the board to be coordinated with the state educational telecommunications design plan adopted by the board. Private institutions and entities may submit educational telecommunications proposals for coordination.

93 Acts, ch 48, §46

256.90 Narrowcast operations.

The board shall not use, permit use, or permit resale of its telecommunications narrowcast system for other than educational purposes. The board, in the establishment and operation of its telecommunications narrowcast system, shall use facilities and services of the private telecommunications industry companies to the greatest extent possible and is prohibited from constructing telecommunications facilities unless comparable facilities are not available from the private telecommunications industry at comparable quality and price.

Notwithstanding chapter 476, the provisions of chapter 476 shall not apply to a public utility in furnishing a telecommunications service or facility to the board.

93 Acts, ch 48, §47

CHAPTER 256A

CHILD DEVELOPMENT ASSISTANCE

256A.1 Title.
256A.2 Child development coordinating council established.
256A.3 Duties of council.
256A.4 Family support programs.
256A.5 District advisory committees.

256A.1 Title.

This chapter shall be known as the *"Child Development Assistance Act"*.

88 Acts, ch 1130, §2

256A.2 Child development coordinating council established.

A child development coordinating council is established to promote the provision of child development services to at-risk three-year- and four-year-old children. The council shall consist of the following members:

1. The administrator of the division of child and family services of the department of human services or the administrator's designee.

2. The director of the department of education or the director's designee.

3. The director of human services or the director's designee.

4. The director of the department of public health or the director's designee.

5. An early childhood specialist of an area education agency selected by the area education agency administrators.

6. The dean of the college of family and consumer sciences at Iowa State University of science and technology or the dean's designee.

7. The dean of the college of education from the University of Northern Iowa or the dean's designee.

8. The professor and head of the department of pediatrics at the University of Iowa or the professor's designee.

9. A resident of this state who is a parent of a child who is or has been served by a federal head start program.

Staff assistance for the council shall be provided by the department of education. Members of the council shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties and shall receive per diem compensation at the level authorized under section 7E.6, subsection 1, paragraph *"a"*.

88 Acts, ch 1130, §3; 89 Acts, ch 206, §7; 91 Acts, ch 109, §5, 6

256A.3 Duties of council.

The child development coordinating council shall:

1. Develop a definition of at-risk children for the purposes of this chapter. The definition shall include income, family structure, the child's level of development, and availability or accessibility for the child of a head start or other child care program as criteria.

2. Establish minimum guidelines for comprehensive early child development services for at-risk three-year- and four-year-old children. The guidelines shall reflect current research findings on the necessary components for cost-effective child development services.

3. At least biennially, develop an inventory of child development services provided to at-risk three-year- and four-year-old children in this state and identify the number of children receiving and not receiving these services, the types of programs under which the services are received, the degree to which each program meets the council's minimum guidelines for a comprehensive program, and the reasons children not receiving the services are not being served. The council is not required to conduct independent research in developing the inventory, but shall determine information needs necessary to provide a more complete inventory.

4. Make recommendations to the department of education and the general assembly regarding appropriate curricula and staff qualifications and training for early elementary education, coordination of the curricula with child development programs, and the development of an at-risk children definition for use in school-district-sponsored early elementary and before and after school child care programs.

5. Subject to the availability of funds appropriated or otherwise available for the purpose of providing child development services, award grants for programs that provide new or additional child development services to at-risk children.

In awarding program grants to an agency or individual, the council shall consider the following:

a. The quality of the staff and staff background in child development services.

b. The degree to which the program is or will be integrated with existing community resources and has the support of the local community.

c. The ability of the program to provide for child care in addition to child development services for families needing full-day child care.

d. A staff-to-children ratio within the guidelines established under subsection 2, but not less than one staff member per eight children.

e. The degree to which the program involves and works with the parents, and includes home visits, instruction for parents on parenting skills, on enhancement of skills in providing for their children's learning and development, and the physical, mental, and emotional development of children, and experiential education.

f. The manner in which health, medical, dental, and nutrition services are incorporated into the program.

g. The degree to which the program complements existing programs and services for at-risk three-year- and four-year-old children available in the area, including other child care services, services provided through the school district, and services available through area education agencies.

h. The degree to which the program can be monitored and evaluated to determine its ability to meet its goals.

i. The provision of transportation or other auxiliary services that may be necessary for families to participate in the program.

j. The provision of staff training and development, and staff compensation sufficient to assure continuity.

Program grants funded under this subsection may integrate children not meeting at-risk criteria into the program and shall establish a fee for participation in the program in the manner provided in section 279.49, but grant funds shall not be used to pay the costs for those children.

6. Encourage the submission of grant requests from all potential providers of child development services and shall be flexible in evaluating grants, recognizing that different types of programs may be suitable for different locations in the state. However, requests for grants must contain a procedure for evaluating the effectiveness of the program and accounting procedures for monitoring the expenditure of grant moneys.

The council shall seek to use performance-based measures to evaluate programs. Not more than five percent of any state funds appropriated for

child development purposes may be used for administration and evaluation.

7. Encourage the establishment of regional councils designed to facilitate the development on a regional basis of programs for at-risk three-year- and four-year-old children.

8. Annually, submit recommendations to the governor and the general assembly on the need for investment in child development services in the state.

9. Subject to a decision by the council to initiate the programs, develop criteria for and award grants under section 279.51, subsection 2.

10. Encourage the establishment of programs that will enhance the skills of parents in parenting and in providing for the learning and development of their children.

11. Cooperate with the department of education in establishing the family resource center demonstration program. Assistance shall include, but is not limited to, identification of various funding sources which, in addition to or in combination with state funds, can be used to support the services provided in a family resource center demonstration program and the development of recommended approaches for obtaining and blending funds from various sources.

88 Acts, ch 1130, §4; 89 Acts, ch 135, §54, 55; 89 Acts, ch 206, §8, 9; 92 Acts, ch 1221, §3; 99 Acts, ch 192, §33

256A.4 Family support programs.

1. The board of directors of each school district may develop and offer a program which provides outreach and incentives for the voluntary participation of expectant parents and parents of children in the period of life from birth through age five, who reside within district boundaries, in educational family support experiences designed to assist parents in learning about the physical, mental, and emotional development of their children. A district providing a family support program, which seeks additional funding under sections 294A.13 through 294A.16, shall meet the requirements of this section and the program shall be subject to approval by the department of education. A board may contract with another school district or public or private nonprofit agency for provision of the approved program or program site.

A family support program shall meet multicultural gender fair guidelines. The program shall encourage parents to be aware of practices that may affect equitable development of children. The program shall include parents in the planning, implementation, and evaluation of the program. A program shall be designed to meet the needs of the residents of the participating district and may use unique approaches to provide for those needs. The goals of a family support program shall include, but are not limited to, the following:

a. Family involvement as a key component of school improvement with an emphasis on communication and active family participation in family support programming.

b. Family participation in the planning and decision-making process for the program and encouragement of long-term parental involvement in their children's education.

c. Meeting the educational and developmental needs of expectant parents and parents of young children.

d. Developmentally appropriate activities for children that include those skills necessary for adaptation to both the home and school environments.

2. The department of education shall develop guidelines for family support programs. Program components may include, but are not limited to, all of the following:

a. Instruction, techniques, and materials designed to educate parents about the physical, mental, character, and emotional development of children.

b. Instruction, techniques, and materials designed to enhance the skills of parents in assisting in their children's learning and development.

c. Assistance to parents about learning experiences for both children and parents.

d. Activities, such as developmental screenings, designed to detect children's physical, mental, emotional, or behavioral problems that may cause learning problems and referrals to appropriate agencies, authorities, or service providers.

e. Activities and materials designed to encourage parents' and children's self-esteem and to enhance parenting skills and both parents' and children's appreciation of the benefits of education.

f. Information on related community resources, programs, or activities.

g. Role modeling and mentoring techniques for families of children who meet one or more of the criteria established for the definition of at-risk children by the child development coordinating council.

3. Family support programs shall be provided by family support program educators who have completed a minimum of thirty clock hours of an approved family support preservice or in-service training program and meet one of the following requirements:

a. The family support program educator is licensed in elementary education, early childhood education, early childhood special education, home economics, or consumer and homemaking education, or is licensed or certified in occupational child care services and has demonstrated an ability to work with young children and their parents.

b. The family support program educator has achieved child development associate recognition in early childhood education, has completed programming in child development and nursing, and has demonstrated an ability to work with young

children and their parents.

c. The family support program educator has completed sixty college credit hours and possesses two years of experience in a program working with young children and their parents.

d. The family support program educator possesses five years of experience in a program working with young children and their parents.

4. Each district shall maintain a separate account within the district budget for moneys allocated for family support programs. A district may receive moneys from state and federal sources, and may solicit funds from private sources, for deposit into the account.

5. A district shall coordinate a family support program with district special education and vocational education programs and with any related services or programs provided by other state, federal, or private nonprofit agencies.

92 Acts, ch 1158, §4; 2001 Acts, ch 159, §4
Legislative intent; 92 Acts, ch 1158, §1

256A.5 District advisory committees.

The board of directors of a school district shall appoint an advisory committee for each family support program. The members shall include participating parents and members of the community which participates in the program, such as members of the district's local early childhood education committees and representatives of local businesses, service organizations, educators, head start educators, parents, private child care providers, county home extension economists, area education agencies, the school board, the community education advisory board, local social services organizations, the local board of health, public health care practitioners, maternal and child health care providers, and persons knowledgeable about developmentally appropriate learning and parent or family education programs. The committee shall be responsible for assessing current programs and services for expectant parents and parents of children who are less than six years of age. The committee shall also assist the board in developing, planning, and monitoring the program and shall submit any recommendations in a report to the board.

The child development coordinating council shall develop a resource directory of parent involvement programs to assist districts in planning family support programs.

92 Acts, ch 1158, §5

CHAPTER 256B

SPECIAL EDUCATION

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256B.1 Division of special education created.

There is created within the department of education a division of special education for the promotion, direction, and supervision of education for children requiring special education in the schools under the supervision and control of the department. The director of the department of education may organize the division and employ the necessary qualified personnel to implement this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.1]

85 Acts, ch 212, §22; 86 Acts, ch 1245, §1476
C93, §256B.1

256B.2 Definitions — policies — funds.

1. *"Children requiring special education"* means persons under twenty-one years of age, including children under five years of age, who have a disability in obtaining an education because of a head injury, autism, behavioral disorder, or physical, mental, communication, or learning disability, as defined by the rules of the department of education.

2. *"Special education"* means classroom, home, hospital, institutional, or other instruction designed to meet the needs of children requiring special education as defined in subsection 1; transportation and corrective and supporting services required to assist children requiring special edu-

cation, as defined in subsection 1, in taking advantage of, or responding to, educational programs and opportunities, as defined by rules of the state board of education.

3. It is the policy of this state to require school districts and state operated educational programs to provide or make provision, as an integral part of public education, for a free and appropriate public education sufficient to meet the needs of all children requiring special education. This chapter is not to be construed as encouraging separate facilities or segregated programs designed to meet the needs of children requiring special education when the children can benefit from all or part of the education program as offered by the local school district. To the maximum extent possible, children requiring special education shall attend regular classes and shall be educated with children who do not require special education. Whenever possible, hindrances to learning and to the normal functioning of children requiring special education within the regular school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education. Special classes, separate schooling, or other removal of children requiring special education from the regular educational environment, shall occur only when, and to the extent that the nature or severity of the educational disability is such, that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily. For those children who cannot adapt to the regular educational or home living conditions, and who are attending facilities under chapters 263, 269, and 270, upon the request of the board of directors of an area education agency, the department of human services shall provide residential or detention facilities and the area education agency shall provide special education programs and services. The area education agencies shall cooperate with the board of regents to provide the services required by this chapter.

Special aids and services shall be provided to children requiring special education who are less than five years of age if the aids and services will reasonably permit the child to enter the educational process or school environment when the child attains school age.

Every child requiring special education shall, if reasonably possible, receive a level of education commensurate with the level provided each child who does not require special education. The cost of providing such an education shall be paid as provided in section 273.9, this chapter, and chapter 257. It shall be the primary responsibility of each school district to provide special education to children who reside in that district if the children requiring special education are properly identified, the educational program or service has been approved, the teacher or instructor has been licensed, the number of children requiring special education needing that educational program or service is sufficient to make offering the program or service feasible, and the program or service cannot more economically and equably be obtained from the area education agency, another school district, another group of school districts, a qualified private agency, or in cooperation with one or more other districts.

4. Moneys received by the school district of the child's residence for the child's education, derived from moneys received through chapter 257, this chapter, and section 273.9 shall be paid by the school district of the child's residence to the appropriate education agency, private agency, or other school district providing special education for the child pursuant to contractual arrangements as provided in section 273.3, subsections 5 and 7.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.2]

83 Acts, ch 3, §1; 83 Acts, ch 96, §157, 159; 85 Acts, ch 24, §1; 89 Acts, ch 135, §82; 89 Acts, ch 265, §41; 92 Acts, ch 1022, §1; 92 Acts, ch 1163, §63

C93, §256B.2

96 Acts, ch 1129, §68, 113; 97 Acts, ch 23, §24

256B.3 Powers and duties of division of special education.

The division of special education has the following duties and powers:

1. To aid in the organization of special schools, classes and instructional facilities for children requiring special education, and to supervise the system of special education for children requiring special education.

2. To administer rules adopted by the state board that are consistent with this chapter for the approval of plans for special education programs and services submitted by the director of special education of the area education agency.

3. To adopt plans for the establishment and maintenance of day classes, schools, home instruction, and other methods of special education for children requiring special education.

4. To purchase and otherwise acquire special equipment, appliances and other aids for use in special education, and to loan or lease same under such rules and regulations as the department may prescribe.

5. To prescribe courses of study, and curricula for special schools, special classes and special instruction of children requiring special education, including physical and psychological examinations, and to prescribe minimum requirements for children requiring special education to be admitted to any such special schools, classes or instruction.

6. To provide for certification by the director of special education of the eligibility of children requiring special education for admission to, or discharge from, special schools, classes or instruction.

7. To initiate the establishment of classes for

children requiring special education or home study services in hospitals, nursing, convalescent, juvenile and private homes, in co-operation with the management thereof and local school districts or area education agency boards.

8. To co-operate with school districts or area education agency boards in arranging for any child requiring special education to attend school in a district other than the one in which the child resides when there is no available special school, class, or instruction in the districts in which the child resides.

9. To co-operate with existing agencies such as the department of human services, the Iowa department of public health, the state school for the deaf, the Iowa braille and sight saving school, the state tuberculosis sanatorium, the children's hospitals, or other agencies concerned with the welfare and health of children requiring special education in the co-ordination of their educational activities for such children.

10. To investigate and study the needs, methods and costs of special education for children requiring special education.

11. To provide for the employment and establish standards for the performance of special education support personnel required to assist in the identification of and educational programs for children requiring special education.

12. To provide for the establishment of special education research and demonstration projects and models for special education program development.

13. To establish a special education resource, materials and training system for the purposes of developing specialized instructional materials and provide in-service training to personnel employed to provide educational services to children requiring special education.

14. To approve the acquisition and use of special facilities designed for the purpose of providing educational services to children requiring special education.

15. To make rules to carry out the powers and duties provided for in this section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.3]

83 Acts, ch 96, §160; 83 Acts, ch 101, §64; 86 Acts, ch 1245, §1477, 1478

C93, §256B.3

256B.4 Powers of board of directors.

The board of directors of a school district or area education agency, with the approval of the director of the department of education, may provide special education programs and services as defined in this chapter. If services are provided by the area education agency the board of directors of the area education agency with the cooperation of the local school districts within its jurisdiction may:

1. Establish and operate special education programs and classes for the education of children requiring special education.

2. Acquire, maintain, and construct facilities in which to provide education, corrective services, and supportive services for children requiring special education.

3. Make arrangements with participating school districts for the provision of special education, corrective, and supportive services to the children requiring special education residing in the school districts.

4. Employ special education teachers and personnel required to furnish corrective or supportive services to children requiring special education services.

5. Provide transportation for children requiring special education services that are in need of transportation in connection with any programs, classes, or services.

6. Receive, administer, and expend funds appropriated for its use.

7. Receive, administer, and expend the proceeds of any issue of school bonds or other bonds intended wholly or partly for its benefit.

8. Apply for, accept, and utilize grants, gifts, or other assistance.

9. Participate in, and make its employees eligible to participate in, any retirement system, group insurance system, or other program of employee benefits, on the same terms as govern school districts and their employees.

10. Do such other things as are necessary and incidental to the execution of any of its powers.

The board of directors of the local district or the area education agency shall employ qualified teachers certified by the authority provided by law as teachers for children requiring such special education. The maximum number of pupils per teacher shall be determined by the board of directors of the local district or the area education agency board in accordance with the rules and regulations of the state board of education.

The board of directors of the local district or the area education agency may establish and operate one or more special education centers to provide diagnostic, therapeutic, corrective, and other services, on a more comprehensive, expert, economical, and efficient basis than can be reasonably provided by a single school district. The services, if offered by the area education agency board, may be provided in the regular schools using personnel and equipment of the area education agency or, if it is impractical or inefficient to provide them on the premises of a regular school, the area education agency may provide services in its own facilities. To the maximum extent feasible, centers shall be established at and in conjunction with, or in close proximity to, one or more elementary and secondary schools. Local districts or the area education agencies may accept diagnostic and evaluation studies conducted by other individuals, hospitals, or centers, if determined to be competent.

Children requiring special education services may be identified in any way that the department of education determines to be reliable. Centers established pursuant to this section may contain classrooms and other educational facilities and equipment to supplement instruction and other services to children with disabilities in the regular schools, and to provide separate instruction to children whose degree or type of educational disability makes it impractical or inappropriate for them to participate in classes with normal children.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.4]
86 Acts, ch 1245, §1479, 1480
C93, §256B.4
96 Acts, ch 1129, §113

256B.5 Information available upon request by bureau.

The Iowa department of public health shall furnish to the state bureau of special education upon request information obtained from birth certificates relative to the name, address, and disability of any case of developmental disability. The state child health specialty clinics of the university of Iowa shall upon request furnish to the state bureau of special education the name, address, and disability of all children of their register.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.5]
C93, §256B.5
94 Acts, ch 1091, §15

256B.6 Parent's or guardian's duties — review.

When the school district or area education agency has provided special education services and programs as provided herein for any child requiring special education, either by admission to a special class or by supportive services, it shall be the duty of the parent or guardian to enroll said child for instruction in such special classes or supportive services as may be established, except in the event a doctor's certificate is filed with the secretary of the school district showing that it is inadvisable for medical reasons for the child requiring special education to receive the special education provided; all the provisions and conditions of chapter 299 and amendments thereto shall be applicable to this section, and any violations shall be punishable as provided in said chapter.

A child, or the parent or guardian of the child, or the school district in which the child resides, may obtain a review of an action or omission of state or local authorities pursuant to the procedures established by the state board of education on the ground that the child has been or is about to be:

1. Denied entry or continuance in a program of special education appropriate to the child's condition and needs.

2. Placed in a special education program which is inappropriate to the child's condition and needs.

3. Denied educational services because no suitable program of education or related services is maintained.

4. Provided with special education which is insufficient in quantity to satisfy the requirements of law.

5. Assigned to a program of special education when the child does not have a disability.

Notwithstanding section 17A.11, the state board of education shall adopt rules for the appointment of an impartial administrative law judge for special education appeals. The rules shall comply with federal statutes and regulations.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.6]
84 Acts, ch 1070, §1; 88 Acts, ch 1109, §22
C93, §256B.6
96 Acts, ch 1129, §69

256B.7 Examinations of children.

In order to render proper instruction to each child requiring special education, the school districts shall certify children requiring special education for special instruction in accordance with the requirements set up by the division of special education and shall provide examinations for children preliminary to making certification. The examinations necessary for the certification of children requiring special education shall be prescribed by the state division of special education. Final decision in case of disagreement or appeal is the responsibility of the director of the department of education, who may secure the advice of competent medical and educational authorities including the Iowa department of public health, the university hospitals, the department of human services, the superintendent of the state school for the deaf, and the superintendent of the Iowa braille and sight saving school.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.7]
86 Acts, ch 1245, §1481
C93, §256B.7

256B.8 Exceptions.

It is not incumbent upon the school districts to keep a child requiring special education in regular instruction when the child cannot sufficiently profit from the work of the regular classroom, nor to keep a child requiring special education in the special class or instruction for children requiring special education when it is determined by the diagnostic educational team that the child can no longer benefit from the instruction or needs more specialized instruction available in special schools. However, the school district shall count the child requiring special education in the enrollment as provided in sections 256B.9, 257.6, and

273.9 and shall ensure that appropriate educational provisions are made for the child requiring special education.

An area education agency director of special education may request approval from the department of education to continue the special education program of a person beyond the person's twenty-first birthday if the person had an accident or prolonged illness that resulted in delays in the initiation of or interruptions in that person's special education program. Approval may be granted by the department to continue the special education program of that person for up to three years or until the person's twenty-fourth birthday.

No provision of this chapter shall be construed to require or compel any person who is a member of a well-recognized church or religious denomination and whose religious convictions, in accordance with the tenets or principles of the person's church or religious denomination, are opposed to medical or surgical treatment for disease to take or follow a course of physical therapy, or submit to medical treatment, nor shall any parent or guardian who is a member of such church or religious denomination and who has such religious convictions be required to enroll a child in any course or instruction which utilizes medical or surgical treatment for disease.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.8]

84 Acts, ch 1001, §1; 89 Acts, ch 135, §83

C93, §256B.8

93 Acts, ch 101, §102

256B.9 Weighting plan — audits — evaluations — expenditures.

1. In order to provide funds for the excess costs of instruction of children requiring special education, above the costs of instruction of pupils in a regular curriculum, a special education weighting plan for determining enrollment in each school district is adopted as follows:

a. Pupils in a regular curriculum are assigned a weighting of one.

b. Children requiring special education who require special adaptations while assigned to a regular classroom for basic instructional purposes and pupils with disabilities placed in a special education class who receive part of their instruction in regular classrooms are assigned a weighting of one and eight-tenths for the school year commencing July 1, 1975.

Effective July 1, 1991, this paragraph also applies to children requiring special education who require specially designed instruction while assigned to a regular classroom for basic instructional purposes.

c. Children requiring special education who require full-time, self-contained special education placement with little integration into a regular classroom are assigned a weighting of two and two-tenths for the school year commencing July 1, 1975.

Effective July 1, 1991, this paragraph also applies to children requiring special education who require substantial modifications, adaptations, or special education accommodations in order to benefit from instruction in an integrated classroom.

d. Children requiring special education who have severe disabilities or who have multiple disabilities are assigned a weighting of four and four-tenths for the school year commencing July 1, 1975.

Effective July 1, 1991, this paragraph also applies to children requiring special education who have severe and profound disabilities.

e. Shared-time and part-time pupils of school age who require special education shall be placed in the proper category and counted in the proportion that the time for which they are enrolled or receive instruction for the school year bears to the time that full-time pupils, carrying a normal course schedule, in the same school district, for the same school year are enrolled and receive instruction.

2. The weighting for each category of child multiplied by the number of children in each category in the enrollment of a school district, as identified and certified by the director of special education for the area, determines the weighted enrollment to be used in that district for purposes of computations required under the state school foundation plan in chapter 257.

3. The weight that a child is assigned under this section shall be dependent upon the required educational modifications necessary to meet the special education needs of the child. Enrollment for the purpose of this section, and all payments to be made pursuant thereto, includes all children for whom a special education program or course is to be provided pursuant to section 256.12, subsection 2, sections 273.1 to 273.9, and this chapter, whether or not the children are actually enrolled upon the records of a school district.

4. On December 1, 1987, and no later than December 1 every two years thereafter, for the school year commencing the following July 1, the director of the department of education shall report to the school budget review committee the average costs of providing instruction for children requiring special education in the categories of the weighting plan established under this section, and for providing services to nonpublic school students pursuant to section 256.12, subsection 2, and the director of the department of education shall make recommendations to the school budget review committee for needed alterations to make the weighting plan suitable for subsequent school years. The school budget review committee shall establish the weighting plan for each school year and shall report the plan to the director of the department of education. The school budget review

committee may establish weights to the nearest hundredth. The school budget review committee shall not alter the weighting assigned to pupils in a regular curriculum, but it may increase or decrease the weighting assigned to each category of children requiring special education by not more than two-tenths of the weighting assigned to pupils in a regular curriculum. The state board of education shall adopt rules under chapter 17A to implement the weighting plan for each year and to assist in identification and proper indexing of each child in the state who requires special education.

5. The division of special education shall audit the reports required in section 273.5 to determine that all children in the area who have been identified as requiring special education have received the appropriate special education instructional and support services, and to verify the proper identification of pupils in the area who will require special education instructional services during the school year in which the report is filed. The division shall certify to the director of the department of management the correct total enrollment of each school district in the state, determined by applying the appropriate pupil weighting index to each child requiring special education, as certified by the directors of special education in each area.

6. The division may conduct an evaluation of the special education instructional program or special education support services being provided by an area education agency, school district, or private agency, pursuant to sections 273.1 to 273.9 and this chapter, to determine if the program or service is adequate and proper to meet the needs of the child; if the child is benefiting from the program or service; if the costs are in proportion to the educational benefits being received; and if there are any improvements that can be made in the program or service. A written report of the evaluation shall be sent to the area education agency, school district, or private agency evaluated and to the president of the senate and speaker of the house of representatives of the general assembly.

7. The costs of special education instructional programs include the costs of purchase of transportation equipment to meet the special needs of children requiring special education with the approval of the director of the department of education. The state board of education shall adopt rules under chapter 17A for the purchase of transportation equipment pursuant to this section.

8. Commencing with the school year beginning July 1, 1976, a school district may expend an amount not to exceed two-sevenths of an amount equal to the district cost of a school district for the costs of regular classroom instruction of a child certified under the special education weighting plan in subsection 1, paragraph *"b"*, as a pupil with disabilities who is enrolled in a special class, but who receives part of the pupil's instruction in a regular classroom. Unencumbered funds generated for special education instructional programs for the school year beginning July 1, 1975, and for the school year beginning July 1, 1976, shall not be expended for such purpose.

9. Funds generated for special education instructional programs under this chapter and chapter 257 shall not be expended for modifications of school buildings to make them accessible to children requiring special education.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §281.9]

83 Acts, ch 3, §2; 85 Acts, ch 212, §21; 86 Acts, ch 1237, §18; 86 Acts, ch 1245, §1482; 88 Acts, ch 1134, §64; 89 Acts, ch 135, §84; 91 Acts, ch 39, §1

C93, §256B.9

94 Acts, ch 1161, §2; 96 Acts, ch 1129, §70, 71

256B.10 Reserved.

256B.11 Program plans.

Program plans submitted to the department of education pursuant to section 273.5 for approval by the director of the department of education shall establish all of the following:

1. That there are sufficient children requiring special education within the area.

2. That the service or program will be provided by the most appropriate educational agency.

3. That the educational agency providing the service or program has employed qualified special educational personnel.

4. That the instruction is a natural and normal progression of a planned course of instruction.

5. That all revenue raised for support of special education instruction and services is expended for actual delivery of special education instruction or services.

6. Other factors as the state board may require.

[C73, 75, 77, 79, 81, §281.11]

86 Acts, ch 1245, §1483

C93, §256B.11

256B.12 through 256B.14 Reserved.

256B.15 Reimbursement for special education services.

1. The state board of education in conjunction with the department of education shall develop a program to utilize federally funded health care programs, except the federal medically needy program for individuals who have a spend-down, to share in the costs of services which are provided to children requiring special education.

2. The department of education shall designate an area education agency to develop a system for collecting the information necessary to implement procedures for billing and collecting the costs of the services. The area education agency shall begin to develop the system immediately. The area education agency shall consult with and work jointly with state agencies and federal agen-

cies to determine procedures and standards which shall be initiated by all area education agencies to qualify for receipt of benefits under federal programs.

3. The department of education, in conjunction with the area education agency, shall determine those specific services which are covered by federally funded health care programs, which shall include, but not be limited to, physical therapy, audiology, speech language therapy, and psychological evaluations. The department shall also determine which other special services may be subject to reimbursement and the qualifications necessary for personnel providing those services. If it is determined that services are required from other service providers, these providers shall be reimbursed for those services.

4. All services referred to in subsection 1 shall be initially funded by the area education agency and shall be provided regardless of subsequent subrogation collections. The area education agency shall make a claim for reimbursement to federally funded health care programs.

5. Not later than July 1, 1988, the area education agency designated by the department of education shall have developed the program for collecting for the services provided. The program shall be distributed to all of the area education agencies in the state. All area education agencies shall begin collecting the information on July 1, 1988.

6. Effective November 1, 1988, all area education agencies in the state shall participate in the program and begin billing for and collecting for the covered services and shall bill for services provided retroactive to July 1, 1988. Retroactive Title XIX billing is contingent upon state plan approval. Nothing contained in this section shall be construed to allow nonlicensed individuals to perform services which otherwise require licenses under the laws of this state or to allow licensed providers to perform services outside their scope of practice.

7. *a.* The treasurer of the state shall credit receipts received under this section to the department of human services to pay contractual fees incurred by the department to maximize federal funding for special education services. All remaining receipts in excess of the amount necessary to pay contractual fees shall be credited to the department of human services medical assistance account.

b. The area education agencies shall, after determining the administrative costs associated with the implementation of medical assistance reimbursement for the eligible services, be permitted to retain up to twenty-five percent of the federal portion of the total amount reimbursed to pay for the administrative costs. This limitation does not apply to medical assistance reimbursement for services provided by an area education agency under part C of the federal Individuals with Disabilities Education Act. Funds received under this section shall not be considered or included as part of the area education agencies' budgets when calculating funds that are to be received by area education agencies during a fiscal year.

8. Students or their parents or guardians covered by a federal health care program shall provide health care information to an area education agency or local school district.

9. The department of education and the department of human services shall adopt rules to implement this section to be effective immediately upon filing with the administrative rules coordinator, or at a stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing, and publication.

10. The department of human services shall offer assistance to the area education agencies in the identification of children eligible for reimbursement for services under this section.

88 Acts, ch 1155, §1

C89, §281.15

89 Acts, ch 296, §25; 91 Acts, ch 125, §1, 2; 92 Acts, ch 1021, §1

C93, §256B.15

94 Acts, ch 1120, §12; 2000 Acts, ch 1223, §24; 2001 Acts, ch 41, §1, 2

CHAPTER 256C

FAMILY RESOURCE CENTER DEMONSTRATION PROGRAM

Repealed by 2001 Acts, ch 181, §26

CHAPTER 256D

IOWA EARLY INTERVENTION AND SCHOOL IMPROVEMENT TECHNOLOGY BLOCK GRANT PROGRAMS

Future repeal of chapter; see §256D.9

256D.1 Iowa early intervention block grant program established — goals.
256D.2 Program expenditures.
256D.3 Annual reports.
256D.4 Program allocation.
256D.5 Appropriations.

SCHOOL IMPROVEMENT TECHNOLOGY

256D.6 through 256D.8 Repealed by 2002 Acts, ch 1171, §183.

FUTURE REPEAL

256D.9 Future repeal.

256D.1 Iowa early intervention block grant program established — goals.

1. An Iowa early intervention block grant program is established within the department of education. The program's goals for kindergarten through grade three are to provide the resources needed to reduce class sizes in basic skills instruction to the state goal of seventeen students for every one teacher; provide direction and resources for early intervention efforts by school districts to achieve a higher level of student success in the basic skills, especially reading skills; and increase communication and accountability regarding student performance. The Iowa early intervention block grant program shall consist of the following:

a. Class size management. School districts shall develop a class size management strategy to work toward, or to maintain, class sizes in basic skills instruction for kindergarten through grade three that are at the state goal of seventeen students for every one teacher.

b. Improving instruction in the basics. The department of education shall identify diagnostic assessment tools that can be used to assist teachers in measuring reading accuracy and fluency skills, including but not limited to phonemic awareness, oral reading ability, and comprehension skills, to improve student achievement in kindergarten through grade three. The department, in collaboration with the area education agencies, school districts, and institutions with approved practitioner preparation programs, shall identify and serve as a clearinghouse on intensive, research-based strategies and programs for training teachers in both diagnosis and appropriate instruction interventions.

(1) A school district shall at a minimum biannually inform parents of their individual child's performance on the diagnostic assessments in kindergarten through grade three. If intervention is appropriate, the school district shall inform the parents of the actions the school district intends to take to improve the child's reading skills and provide the parents with strategies to enable the parents to improve their child's skills. The board of directors of each school district shall adopt a policy indicating the methods the school district will use to inform parents of their individual child's performance.

(2) The department shall also identify for school districts programs and materials by which parents may support classroom reading instruction.

2. A school district shall integrate its specific early intervention block grant program goals and activities into the comprehensive school improvement plan required under section 256.7, subsection 21, paragraph *"a"*.

3. For purposes of this chapter, unless the context otherwise requires, *"parent"* means a biological or adoptive parent, a stepparent, or a legal guardian or custodian of a student.

99 Acts, ch 18, §1; 2002 Acts, ch 1119, §148
Subsection 1, paragraph b, unnumbered paragraph 1 amended

256D.2 Program expenditures.

A school district shall expend funds received pursuant to section 256D.4 at the kindergarten through grade three levels to reduce class sizes to the state goal of seventeen students for every one teacher and to achieve a higher level of student success in the basic skills, especially reading. In order to support these efforts, school districts may expend funds received pursuant to section 256D.4 at the kindergarten through grade three level on programs, instructional support, and materials that include, but are not limited to, the following: additional licensed instructional staff; additional support for students, such as before and after school programs, tutoring, and intensive sum-

mer programs; the acquisition and administration of diagnostic reading assessments; the implementation of research-based instructional intervention programs for students needing additional support; the implementation of all-day, everyday kindergarten programs; and the provision of classroom teachers with intensive training programs to improve reading instruction and professional development in best practices, including but not limited to training programs related to instruction to increase students' phonemic awareness, reading abilities, and comprehension skills.

99 Acts, ch 18, §2

256D.3 Annual reports.

1. A school district shall report annually to its school community the proportion of fourth grade students who are proficient in reading in accordance with section 256.7, subsection 21, paragraph *"c"*. School districts are encouraged to submit to their communities composite information concerning the reading proficiency of their kindergarten through grade three enrollments, by grade level.

2. The annual report submitted to the department of education in accordance with section 256.7, subsection 21, paragraph *"c"*, shall include the district's current class sizes for kindergarten through grade three.

3. Beginning January 15, 2001, the department shall submit an annual report to the chairpersons and ranking members of the senate and house education committees that includes the statewide average school district class size in basic skills instruction in kindergarten through grade three, by grade level and by district size, and describes school district progress toward achieving early intervention block grant program goals and the ways in which school districts are using moneys received pursuant to section 256D.4.

99 Acts, ch 18, §3

256D.4 Program allocation.

1. For each fiscal year in the fiscal period beginning July 1, 1999, and ending June 30, 2001, moneys appropriated pursuant to section 256D.5, subsections 1 or 2, shall be allocated to school districts in accordance with the following formula:

a. Fifty percent of the allocation shall be based upon the proportion that the kindergarten through grade three enrollment of a district bears to the sum of the kindergarten through grade three enrollments of all school districts in the state as reported for the base year.

b. Fifty percent of the allocation shall be based upon the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three of a school district bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three in all school districts in the state for the base year.

2. For each fiscal year in the fiscal period beginning July 1, 2001, and ending June 30, 2003, moneys appropriated pursuant to section 256D.5, subsection 3, shall be allocated to school districts as follows:

a. Allocation of the sum of twenty million dollars shall be based upon the proportion that the kindergarten through grade three enrollment of a district bears to the sum of the kindergarten through grade three enrollments of all school districts in the state as reported for the base year.

b. Allocation of the sum of ten million dollars shall be based upon the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three of a school district bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three in all school districts in the state for the base year.

3. For each year in which an appropriation is made to the Iowa early intervention block grant program, the department of education shall notify the department of revenue and finance of the amount of the allocation to be paid to each school district as provided in subsections 1 and 2. The allocation to each school district shall be made in one payment on or about October 15 of the fiscal year for which the appropriation is made, taking into consideration the relative budget and cash position of the state resources. Moneys received under this section shall not be commingled with state aid payments made under section 257.16 to a school district and shall be accounted for by the local school district separately from state aid payments. Payments made to school districts under this section are miscellaneous income for purposes of chapter 257. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section. A school district shall certify to the department of education that moneys received under this section were used to supplement, not supplant, moneys otherwise received and used by the school district.

4. For purposes of this section, unless the context otherwise requires, *"kindergarten through grade three enrollment"* means the enrollment as reported in the basic educational data survey for the base year.

99 Acts, ch 18, §4

256D.5 Appropriations.

There is appropriated from the general fund of the state to the department of education, the following amounts, for the following fiscal years, for the Iowa early intervention block grant program:

1. For the fiscal year beginning July 1, 1999, and ending June 30, 2000, the sum of ten million dollars.

2. For the fiscal year beginning July 1, 2000, and ending June 30, 2001, the sum of twenty million dollars.

3. For each fiscal year of the fiscal period beginning July 1, 2001, and ending June 30, 2003, the sum of thirty million dollars.

99 Acts, ch 18, §5; 2002 Acts, ch 1171, §182

Former subsection 1, unnumbered paragraph 1, and paragraphs a – c renumbered as unnumbered paragraph 1 and subsections 1 – 3

Former subsection 2 stricken

SCHOOL IMPROVEMENT TECHNOLOGY

Appropriations for school improvement technology; 2002 Acts, ch 1166, §4; 2002 Acts, ch 1173, §10; 2002 Acts, 2nd Ex, ch 1003, §200, 213

Technology services for accredited nonpublic school students; appropriation and allocation of funds; 2001 Acts, ch 189, §5, 14, 15; 2002 Acts, ch 1173, §18, 19

256D.6 through 256D.8 Repealed by 2002 Acts, ch 1171, § 183.

FUTURE REPEAL

256D.9 Future repeal.

This chapter is repealed effective July 1, 2003.

99 Acts, ch 18, §9

CHAPTER 256E

BEGINNING TEACHER INDUCTION PROGRAMS

Repealed by 2001 Acts, ch 161, §20; see chapter 284

CHAPTER 256F

CHARTER SCHOOLS

For text of chapter providing for the establishment of charter schools effective upon department of education's receipt of federal funds, see 2002 Acts, ch 1124; 2002 Acts, ch 1175, §81, 96, 102; Code editor notified by department that funds not received in 2002

CHAPTER 257

FINANCING SCHOOL PROGRAMS

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257.1 State school foundation program — state aid.

1. *Program established.* A state school foundation program is established for the school year commencing July 1, 1991, and succeeding school years.

2. *State school foundation aid — foundation base.* For a budget year, each school district in the state is entitled to receive foundation aid, in an amount per pupil equal to the difference between the amount per pupil of foundation property tax in the district, and the combined foundation base per pupil or the combined district cost per pupil, whichever is less. However, if the amount of foundation aid received by a school district under this chapter is less than three hundred dollars per pupil, the district is entitled to receive three hundred dollars per pupil unless the receipt of three hundred dollars per pupil plus the per pupil amount raised by the foundation property tax exceeds the combined district cost per pupil of the district for the budget year. In that case, the district is entitled to receive an amount per pupil equal to the difference between the per pupil amount raised by the foundation property tax for the budget year and the combined district cost per pupil for the budget year.

For the budget year commencing July 1, 1999, and for each succeeding budget year the regular program foundation base per pupil is eighty-seven and five-tenths percent of the regular program state cost per pupil. For the budget year commencing July 1, 1991, and for each succeeding budget year the special education support services foundation base is seventy-nine percent of the special education support services state cost per pupil. The combined foundation base is the sum of the regular program foundation base and the special education support services foundation base.

For the budget year commencing July 1, 1999, the department of management shall add the amount of the additional budget adjustment computed in section 257.14, subsection 1, to the combined foundation base.

3. *Computations rounded.* In making computations and payments under this chapter, except in the case of computations relating to funding of special education support services, media services, and educational services provided through the area education agencies, the department of management shall round amounts to the nearest whole dollar.

4. *Legislative review.* The provisions of this chapter shall be subject to legislative review at least every five years. The review shall be based upon a school finance formula status report containing the recommendations of a legislative interim committee appointed to conduct a review of the school finance formula, to be prepared with the assistance of the department of education, in association with the departments of management and revenue and finance. The report shall include recommendations for school finance formula changes or revisions based upon demographic changes, enrollment trends, and property tax valuation fluctuations observed during the preceding five-year interval; an analysis of the operation of the school finance formula during the preceding five-year interval; and a summary of issues that have arisen since the previous review and potential approaches for their resolution. The first such report shall be submitted to the general assembly no later than January 1, 2005, with subsequent reports developed and submitted by January 1 at least every fifth year thereafter.

89 Acts, ch 135, §1; 91 Acts, ch 267, §517; 95 Acts, ch 130, §1; 96 Acts, ch 1197, §5, 6; 99 Acts, ch 2, §1, 4; 99 Acts, ch 178, §1, 10; 2000 Acts, ch 1186, §2

257.2 Definitions.

As used in this chapter:

1. *"Allowable growth"* means the amount by which state cost per pupil and district cost per pupil will increase from one budget year to the next.

2. *"Base year"* means the school year ending during the calendar year in which a budget is certified.

3. *"Budget adjustment"* means an adjustment to the regular program district cost of a school district for school districts in which the regular program district cost for a year would be less than the regular program district cost for the previous year.

4. *"Budget year"* means the school year beginning during the calendar year in which a budget is certified.

5. *"Combined district cost per pupil"* is an amount determined by adding together the regular program district cost per pupil for a year and the special education support services district cost per pupil for that year as calculated under section 257.10.

6. *"Combined state cost per pupil"* is a per pupil amount determined by adding together the regular program state cost per pupil for a year and the special education support services state cost per pupil for that year as calculated under section 257.9.

7. *"Committee"* means the school budget review committee.

8. *"Expenditures"* means the total amounts paid from the general fund of a school district.

9. *"Miscellaneous income"* means the receipts deposited to the general fund of the school district but not including any of the following:

a. Foundation aid.

b. Revenue obtained from the foundation property tax.

c. Revenue obtained from the additional property tax under section 257.4.

10. *"Property tax adjustment"* means state aid distributed to those school districts in which the property tax revenues generated under this chapter would be higher than the revenues generated under chapter 442, Code 1991.

11. *"School district"* means a school corporation organized under chapter 274.

12. *"State percent of growth"* means the percent of growth which is established by statute pursuant to section 257.8, and which is used in determining the allowable growth.

89 Acts, ch 135, §2; 90 Acts, ch 1190, §1; 91 Acts, ch 267, §518; 94 Acts, ch 1023, §93

257.3 Foundation property tax.

1. *Amount of tax.* Except as provided in subsections 2 and 3, a school district shall cause to be levied each year, for the school general fund, a foundation property tax equal to five dollars and forty cents per thousand dollars of assessed valuation on all taxable property in the district. The county auditor shall spread the foundation levy over all taxable property in the district.

The amount paid to each school district for the tax replacement claim for industrial machinery, equipment and computers under section 427B.19A shall be regarded as property tax. The portion of the payment which is foundation property tax shall be determined by applying the foundation property tax rate to the amount computed under section 427B.19, subsection 3, paragraph *"a"*, as adjusted by paragraph *"d"*, if any adjustment was made.

Replacement taxes under chapter 437A shall be regarded as property taxes for purposes of this chapter.

2. *Tax for reorganized and dissolved districts.* Notwithstanding subsection 1, a reorganized school district shall cause a foundation property tax of four dollars and forty cents per thousand dollars of assessed valuation to be levied on all taxable property which, in the year preceding a reorganization, was within a school district affected by the reorganization as defined in section 275.1, or in the year preceding a dissolution was a part of a school district that dissolved if the dissolution proposal has been approved by the director of the department of education pursuant to section 275.55. In the year preceding the reorganization or dissolution, the school district affected by the reorganization or the school district that dissolved must have had a certified enrollment of fewer than six hundred in order for the four-dollar-and-forty-cent levy to apply. In succeeding school years, the foundation property tax levy on that portion shall be increased to the rate of four dollars and ninety cents per thousand dollars of assessed valuation the first succeeding year, five dollars and fifteen cents per thousand dollars of assessed valuation the second succeeding year, and five dollars and forty cents per thousand dollars of assessed valuation the third succeeding year and each year thereafter.

For purposes of this section, a reorganized school district is one which absorbs at least thirty percent of the enrollment of the school district affected by a reorganization or dissolved during a dissolution and in which action to bring about a reorganization or dissolution is initiated by a vote of the board of directors or jointly by the affected boards of directors to take effect on or after July 1, 2002, and on or before July 1, 2006. Each district which initiated, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution to take effect on or after July 1, 2002, and on or before July 1, 2006, shall certify the date and the nature of the action taken to the department of education by January 1 of the year in which the reorganization or dissolution takes effect.

3. *Railway corporations.* For purposes of section 257.1, the *"amount per pupil of foundation property tax"* does not include the tax levied under subsection 1 or 2 on the property of a railway corporation, or on its trustee if the corporation has been declared bankrupt or is in bankruptcy proceedings.

89 Acts, ch 135, §3; 91 Acts, ch 178, §1; 93 Acts, ch 180, §92 – 95; 95 Acts, ch 206, §34; 98 Acts, ch

1194, §27, 40; 2001 Acts, ch 126, §1 – 3

257.4 Additional property tax.

1. *Computation of tax.* A school district shall cause an additional property tax to be levied each year. The rate of the additional property tax levy in a school district shall be determined by the department of management and shall be calculated to raise the difference between the combined district cost for the budget year and the sum of the products of the regular program foundation base per pupil times the weighted enrollment in the district and the special education support services foundation base per pupil times the special education support services weighted enrollment in the district.

2. *Supplemental aid.* However, if the rate of the additional property tax levy determined under subsection 1 with the application of section 257.15 for a budget year for a reorganized school district is higher than the rate of additional property tax levy determined under subsection 1 with the application of section 257.15 for the year previous to the reorganization for a school district that had a certified enrollment of less than six hundred and that was within the school districts affected by the reorganization as defined in section 275.1, the department of management shall reduce the rate of the additional property tax levy in the portion of the reorganized district where the new rate is higher, to the rate that was levied in that portion of the district during the year preceding the reorganization, for a five-year period. The department of management shall include in the state aid payments made to each reorganized school district under section 257.16 during each of the first five years of existence of the reorganized district as supplemental aid, moneys equal to the reduction in property tax revenues made under this subsection. For the budget year beginning July 1, 1991, the base year calculation shall be made using chapter 442, Code 1991.

For purposes of this section, a reorganized school district is one in which action to bring about a reorganization was initiated by a vote of the board of directors or jointly by the affected boards of directors prior to November 30, 1990, and the reorganization will take effect on or after July 1, 1991, and on or before July 1, 1993. Each district which initiated, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution by November 30, 1990, shall certify the date and the nature of the action taken to the department of education by September 1, 1991.

3. *Application of tax.* No later than June 15 of each year, the department of management shall notify the county auditor of each county the amount, in dollars and cents per thousand dollars of assessed value, of the additional property tax levy in each school district in the county. A county auditor shall spread the additional property tax levy for each school district in the county over all taxable property in the district.

89 Acts, ch 135, §4; 91 Acts, ch 178, §2; 93 Acts, ch 1, §3; 2001 Acts, ch 126, §4, 12

257.5 Continuation of supplemental aid.

A reorganized school district, as defined in section 257.4, subsection 2, receiving supplemental aid prior to July 1, 1991, under section 442.9A, Code 1991, shall continue to receive supplemental aid as provided in that section for the five-year period specified in that section.

There is appropriated from the general fund of the state to the department of management for each fiscal year an amount sufficient to pay the supplemental aid to school districts under this section. Supplemental aid shall be paid in the manner provided in section 257.16.

For the purpose of the department of management's determination of the portion of a school district's budget that was property tax and the portion that was state aid under section 257.36, supplemental aid shall be considered property tax.

89 Acts, ch 135, §5; 91 Acts, ch 178, §3

257.6 Enrollment.

1. *Actual enrollment.* Actual enrollment is determined on the third Friday of September in each year and includes all of the following:

a. Resident pupils who were enrolled in public schools within the district in grades kindergarten through twelve and including prekindergarten pupils enrolled in special education programs.

b. Full-time equivalent resident pupils of high school age for which the district pays tuition to attend an Iowa community college.

c. Shared-time and part-time pupils of school age enrolled in public schools within the district, irrespective of the districts in which the pupils reside, in the proportion that the time for which they are enrolled or receive instruction for the school year is to the time that full-time pupils carrying a normal course schedule, at the same grade level, in the same school district, for the same school year, are enrolled and receive instruction. Tuition charges to the parent or guardian of a shared-time or part-time nonresident pupil shall be reduced by the amount of any increased state aid received by the district by the counting of the pupil.

d. Eleventh and twelfth grade nonresident pupils who were residents of the district during the preceding school year and are enrolled in the district until the pupils graduate. Tuition for those pupils shall not be charged by the district in which the pupils are enrolled and the requirements of section 282.18 do not apply.

e. Resident pupils receiving competent private instruction from a licensed practitioner provided through a public school district pursuant to chapter 299A shall be counted as six-tenths of one pupil.

f. Resident pupils receiving competent private instruction under dual enrollment pursuant to chapter 299A shall be counted as one-tenth of one pupil.

Pupils attending a university laboratory school are not counted in the actual enrollment of a school district, but the laboratory school shall report their enrollment directly to the department of education.

A school district shall certify its actual enrollment to the department of education by October 1 of each year, and the department shall promptly forward the information to the department of management.

The department of management shall adjust the enrollment of the school district for the audit year based upon reports filed under section 11.6, and shall further adjust the budget of the second year succeeding the audit year for the property tax and state aid portions of the reported differences in enrollments for the year succeeding the audit year.

2. *Basic enrollment.* Basic enrollment for a budget year is a district's actual enrollment for the base year. Basic enrollment for the base year is a district's actual enrollment for the year preceding the base year.

3. *Additional enrollment because of special education.* A school district shall determine its additional enrollment because of special education, as defined in this section, by November 1 of each year and shall certify its additional enrollment because of special education to the department of education by November 15 of each year, and the department shall promptly forward the information to the department of management.

For the purposes of this chapter, *"additional enrollment because of special education"* is determined by multiplying the weighting of each category of child under section 256B.9 times the number of children in each category totaled for all categories minus the total number of children in all categories.

4. *Budget enrollment.* Budget enrollment for the budget year is the basic enrollment for the budget year.

5. *Weighted enrollment.* Weighted enrollment is the budget enrollment plus the district's additional enrollment because of special education calculated by November 1 of the base year plus additional pupils added due to the application of the supplementary weighting.

Weighted enrollment for special education support services costs is equal to the weighted enrollment minus the additional pupils added due to the application of the supplementary weighting.

6. *Students excluded.* For the school year beginning July 1, 2001, and each succeeding school year, a student shall not be included in a district's enrollment for purposes of this chapter or considered an eligible pupil under chapter 261C if the student meets all of the following:

a. Was eligible to receive a diploma with the class in which they were enrolled and that class graduated in the previous school year.

b. Continues enrollment in the district to take courses either provided by the district, offered by community colleges under the provisions of section 257.11, or to take courses under the provisions of chapter 261C.

89 Acts, ch 135, §6; 92 Acts, ch 1187, §2; 92 Acts, ch 1230, §1, 2; 92 Acts, ch 1247, §47; 2001 Acts, ch 159, §6 – 8; 2001 Acts, ch 176, §32, 33

257.7 Authorized expenditures.

1. *Budgets.* School districts are subject to chapter 24. The authorized expenditures of a school district during a base year shall not exceed the lesser of the budget for that year certified under section 24.17 plus any allowable amendments permitted in this section, or the authorized budget, which is the sum of the combined district cost for that year, the actual miscellaneous income received for that year, and the actual unspent balance from the preceding year.

2. *Budget amendments.* If actual miscellaneous income for a budget year exceeds the anticipated miscellaneous income in the certified budget for that year, or if an unspent balance has not been previously certified, a school district may amend its certified budget.

89 Acts, ch 135, §7; 90 Acts, ch 1190, §2

257.8 State percent of growth — allowable growth.

1. *State percent of growth.* The state percent of growth for the budget year beginning July 1, 2002, is one percent. The state percent of growth for the budget year beginning July 1, 2003, is two percent. The state percent of growth for each subsequent budget year shall be established by statute which shall be enacted within thirty days of the submission in the year preceding the base year of the governor's budget under section 8.21. The establishment of the state percent of growth for a budget year shall be the only subject matter of the bill which enacts the state percent of growth for a budget year.

2. *Allowable growth calculation.* The department of management shall calculate the regular program allowable growth for a budget year by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year and shall calculate the special education support services allowable growth for the budget year by multiplying the state percent of growth for the budget year by the special education support services state cost per pupil for the base year.

3. *Alternate allowable growth — gifted and talented programs.* Notwithstanding the calculation in subsection 2, the department of management shall calculate the regular program allowable growth for the budget year beginning July

1, 1999, by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year, and add to the resulting product thirty-eight dollars. For purposes of determining the amount of a budget adjustment as defined in section 257.14, for a school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to this subsection, thirty-eight dollars shall be subtracted from the school district's regular program cost per pupil for the budget year beginning July 1, 1999, prior to determining the amount of the adjustment.

4. *Alternate allowable growth — regular program state cost.* A school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to the provisions of subsection 3, shall calculate allowable growth pursuant to the provisions of subsection 2 for the school budget year beginning July 1, 2000, and succeeding budget years, utilizing a regular program state cost per pupil figure which incorporates the thirty-eight dollar increase in regular program allowable growth calculated for the budget year beginning July 1, 1999.

5. *Combined allowable growth.* The combined allowable growth per pupil for each school district is the sum of the regular program allowable growth per pupil and the special education support services allowable growth per pupil for the budget year, which may be modified as follows:

a. By the school budget review committee under section 257.31.

b. By the department of management under section 257.36.

6. *Alternate allowable growth — definitions.* For budget years beginning July 1, 2000, and subsequent budget years, references to the terms *"allowable growth"*, *"regular program state cost per pupil"*, and *"regular program district cost per pupil"* shall mean those terms as calculated for those school districts that calculated regular program allowable growth for the school budget year beginning July 1, 1999, with the additional thirty-eight dollars.

89 Acts, ch 135, §8; 92 Acts, ch 1227, §15; 95 Acts, ch 11, §1; 96 Acts, ch 1001, §1; 98 Acts, ch 1005, §1, 2; 99 Acts, ch 1, §1, 2; 99 Acts, ch 178, §2, 10; 2000 Acts, ch 1001, §1, 2; 2001 Acts, ch 2, §1, 2; 2002 Acts, ch 1159, §1, 2; 2002 Acts, ch 1167, §1, 6

Reduction in state percent of growth for the budget year beginning July 1, 2002, from four to one percent is effective beginning March 28, 2002; 2002 Acts, ch 1167, §6

Subsection 1 amended

257.9 State cost per pupil.

1. *Regular program state cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, for the regular program state cost per pupil, the department of management shall add together the sum of the products of each district's regular program district cost per pupil for the base year, as regular program district cost per pupil would have been calculated under section 442.9, Code 1989, multiplied by its budget enrollment as budget enrollment would have been calculated under section 442.4, Code 1989, for the base year, plus the sum of the amounts added to the district cost of school districts pursuant to section 442.21, Code 1989.

The total calculated under this subsection shall be divided by the total of the budget enrollments of all school districts for the budget year beginning July 1, 1990, calculated under section 257.6, subsection 4, if section 257.6, subsection 4, had been in effect for that budget year. The regular program state cost per pupil for the budget year beginning July 1, 1991, is the amount calculated by the department of management under this subsection plus an allowable growth amount that is equal to the state percent of growth for the budget year multiplied by the amount calculated by the department of management under this subsection.

2. *Regular program state cost per pupil for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the regular program state cost per pupil for a budget year is the regular program state cost per pupil for the base year plus the regular program allowable growth for the budget year.

3. *Special education support services state cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, for the special education support services state cost per pupil, the department of management shall divide the total of the approved budgets of the area education agencies for special education support services for that year approved by the state board of education under section 273.3, subsection 12, by the total of the weighted enrollment for special education support services in the state for the budget year. The special education support services state cost per pupil for the budget year is the amount calculated by the department of management under this subsection.

4. *Special education support services state cost per pupil for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the special education support services state cost per pupil for the budget year is the special education support services state cost per pupil for the base year plus the special education support services allowable growth for the budget year.

5. *Combined state cost per pupil.* The combined state cost per pupil is the sum of the regular program state cost per pupil and the special education support services state cost per pupil.

89 Acts, ch 135, §9; 90 Acts, ch 1190, §3

257.10 District cost per pupil — district cost.

1. *Regular program district cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, in order to determine the regular program district cost per pupil for a district, the department of management shall divide the product of the regular program district cost per pupil of the district for the base year, as regular program district cost per pupil would have been calculated under section 442.9, Code 1989, multiplied by its budget enrollment for the base year as budget enrollment would have been calculated under section 442.4, Code 1989, plus the amount added to district cost pursuant to section 442.21, Code 1989, for each school district, by the budget enrollment of the school district for the budget year beginning July 1, 1990, calculated under section 257.6, subsection 4, as if section 257.6, subsection 4, had been in effect for that budget year. The regular program district cost per pupil for the budget year beginning July 1, 1991, is the amount calculated by the department of management under this subsection plus the allowable growth amount calculated for regular program state cost per pupil, except that if the regular program district cost per pupil for the budget year calculated under this subsection in any school district exceeds one hundred ten percent of the regular program state cost per pupil for the budget year, the department of management shall reduce the regular program district cost per pupil of that district for the budget year to an amount equal to one hundred ten percent of the regular program state cost per pupil for the budget year, and if the regular program district cost per pupil for the budget year calculated under this subsection in any school district is less than the regular program state cost per pupil for the budget year, the department of management shall increase the regular program district cost per pupil of that district to an amount equal to the regular program state cost per pupil for the budget year.

2. *Regular program district cost per pupil for 1992-1993 and succeeding years.*

a. For the budget year beginning July 1, 1992, and succeeding budget years, the regular program district cost per pupil for each school district for a budget year is the regular program district cost per pupil for the base year plus the regular program allowable growth for the budget year except as otherwise provided in this subsection.

b. If the regular program district cost per pupil of a school district for the budget year under paragraph *"a"* exceeds one hundred five percent of the regular program state cost per pupil for the budget year and the state percent of growth for the budget year is greater than two percent, the regular program district cost per pupil for the budget year for that district shall be reduced to one hundred five percent of the regular program state cost per pupil for the budget year. However, if the difference between the regular program district cost per pupil for the budget year and the regular program state cost per pupil for the budget year is greater than an amount equal to two percent multiplied by the regular program state cost per pupil for the base year, the regular program district cost per pupil for the budget year shall be reduced by the amount equal to two percent multiplied by the regular program state cost per pupil for the base year.

3. *Special education support services district cost per pupil for 1991-1992.* For the budget year beginning July 1, 1991, for the special education support services district cost per pupil, the department of management shall divide the approved budget of each area education agency for special education support services for that year approved by the state board of education, under section 273.3, subsection 12, by the total of the weighted enrollment for special education support services in the area for that budget year.

The special education support services district cost per pupil for each school district in an area for the budget year is the amount calculated by the department of management under this subsection.

4. *Special education support services district cost per pupil for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the special education support services district cost per pupil for the budget year is the special education support services district cost per pupil for the base year plus the special education support services allowable growth for the budget year.

Notwithstanding the special education support services district cost per pupil for the budget year beginning July 1, 1991, calculated under subsection 3, for area education agencies that have fewer than three and five-tenths public school pupils per square mile, the special education support services district cost per pupil for the budget year beginning July 1, 1991, is one hundred forty-seven dollars.

5. *Combined district cost per pupil.* The combined district cost per pupil for a school district is the sum of the regular program district cost per pupil and the special education support services district cost per pupil. Combined district cost per pupil does not include additional allowable growth added for school districts that have a negative balance of funds raised for special education instruction programs, additional allowable growth granted by the school budget review committee for a single school year, or additional allowable growth added for programs for dropout prevention.

6. *Regular program district cost.* Regular program district cost for a school district for a budget year is equal to the regular program district cost per pupil for the budget year multiplied by the

budget enrollment for the budget year.

7. *Special education support services district cost.* Special education support services district cost for a school district for a budget year is equal to the special education support services district cost per pupil for the budget year multiplied by the special education support services weighted enrollment for the district for the budget year. If the special education support services district cost for a school district for a budget year is less than the special education support services district cost for that district for the base year, the department of management shall adjust the special education support services district cost for that district for the budget year to equal the special education support services district cost for the base year.

8. *Combined district cost.* Combined district cost is the sum of the regular program district cost per pupil multiplied by the weighted enrollment and the special education support services district cost, plus the additional district cost allocated to the district to fund media services and educational services provided through the area education agency.

A school district may increase its combined district cost for the budget year to the extent that an excess tax levy is authorized by the school budget review committee.

89 Acts, ch 135, §10; 90 Acts, ch 1190, §4 – 6; 90 Acts, ch 1272, §44; 99 Acts, ch 178, §3, 10

Exclusion of technology expenditures for accredited nonpublic schools from computation of district cost; 2001 Acts, ch 189, §14

257.11 Supplementary weighting plan.

1. *Regular curriculum.* Pupils in a regular curriculum attending all their classes in the district in which they reside, taught by teachers employed by that district, and having administrators employed by that district, are assigned a weighting of one.

2. *District-to-district sharing.*

a. In order to provide additional funds for school districts which send their resident pupils to another school district, which jointly employ and share the services of teachers under section 280.15, or which use the services of a teacher employed by another school district, a supplementary weighting plan for determining enrollment is adopted.

b. If the school budget review committee certifies to the department of management that the shared classes or teachers would otherwise not be implemented without the assignment of additional weighting, pupils attending classes in another school district, attending classes taught by a teacher who is employed jointly under section 280.15, or attending classes taught by a teacher who is employed by another school district are assigned a weighting of forty-eight hundredths of the percentage of the pupil's school day during which the pupil attends classes in another district, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district.

c. Pupils attending class for all or a substantial portion of a school day pursuant to a whole grade sharing agreement executed under sections 282.10 through 282.12 shall be eligible for supplementary weighting pursuant to this subsection as follows:

(1) A school district which was participating in a whole grade sharing arrangement during the budget year beginning July 1, 2001, and which adopts a resolution jointly with the other affected boards to study the question of undergoing a reorganization or dissolution to take effect on or before July 1, 2006, shall receive a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes in another district, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district. A district shall be eligible for supplementary weighting pursuant to this subparagraph for a maximum of two years. Receipt of supplementary weighting for a second year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress toward the objective of reorganization on or before July 1, 2006.

(2) A school district which was not participating in a whole grade sharing arrangement during the budget year beginning July 1, 2000, which executes a whole grade sharing agreement pursuant to sections 282.10 through 282.12 for the budget year beginning July 1, 2002, or July 1, 2003, and which adopts a resolution jointly with the other affected boards to study the question of undergoing a reorganization or dissolution to take effect on or before July 1, 2006, shall receive a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes in another district, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district. A district shall be eligible for supplementary weighting pursuant to this subparagraph for a maximum of three years. Receipt of supplementary weighting for a second and third year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress toward the objective of reorganization on or before July 1, 2006.

3. *District-to-community college sharing.*

a. In order to provide additional funds for school districts which send their resident pupils to a community college for classes, a supplementary weighting plan for determining enrollment is adopted.

b. If the school budget review committee certifies to the department of management that the class would not otherwise be implemented with-

out the assignment of additional weighting, pupils attending a community college-offered class or attending a class taught by a community college-employed teacher are assigned a weighting of forty-eight hundredths of the percentage of the pupil's school day during which the pupil attends class in the community college or attends a class taught by a community college-employed teacher. The following requirements shall be met for the purposes of assigning an additional weighting for classes offered through a sharing agreement between a school district and community college. The class must be:

(1) Supplementing, not supplanting, high school courses.

(2) Included in the community college catalog or an amendment or addendum to the catalog.

(3) Open to all registered community college students, not just high school students.

(4) For college credit and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

(5) Taught by a teacher meeting community college licensing requirements.

(6) Taught utilizing the community college course syllabus.

(7) Of the same quality as a course offered on a community college campus.

4. *At-risk programs and alternative schools.*

a. In order to provide additional funding to school districts for programs serving at-risk pupils and alternative school pupils in secondary schools, a supplementary weighting plan for at-risk pupils is adopted. A supplementary weighting of forty-eight ten-thousandths per pupil shall be assigned to the percentage of pupils in a school district enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who are eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, multiplied by the budget enrollment in the school district; and a supplementary weighting of one hundred fifty-six one-hundred-thousandths per pupil shall be assigned to pupils included in the budget enrollment of the school district. Amounts received as supplementary weighting for at-risk pupils shall be utilized by a school district to develop or maintain at-risk pupils' programs, which may include alternative school programs.

b. Notwithstanding paragraph *"a"*, a school district which received supplementary weighting for an alternative high school program for the school budget year beginning July 1, 1999, shall receive an amount of supplementary weighting for the next three school budget years as follows:

(1) For the budget year beginning July 1, 2000, the greater of the amount of supplementary weighting determined pursuant to paragraph *"a"*, or sixty-five percent of the amount received for the budget year beginning July 1, 1999.

(2) For the budget year beginning July 1, 2001, the greater of the amount of supplementary weighting determined pursuant to paragraph *"a"*, or forty percent of the amount received for the budget year beginning July 1, 1999.

(3) For the budget year beginning July 1, 2002, and succeeding budget years, the amount of supplementary weighting determined pursuant to paragraph *"a"*.

If a school district receives an amount pursuant to this paragraph *"b"* which exceeds the amount the district would otherwise have received pursuant to paragraph *"a"*, the department of management shall annually determine the amount of the excess that would have been state aid and the amount that would have been property tax if the school district had generated that amount pursuant to paragraph *"a"*, and shall include the amounts in the state aid payments and property tax levies of school districts. The department of management shall recalculate the supplementary weighting amount received each year to reflect the amount of the reduction in funding from one budget year to the next pursuant to subparagraphs (1) through (3). It is the intent of the general assembly that when weights are recalculated under this subsection, the total amounts generated by each weight shall be approximately equal.

c. If the amount to be received under paragraph *"a"* or *"b"* by a school district or a consortium of school districts is less than fifty thousand dollars and the school district or consortium received funds under section 279.51, subsection 1, paragraph *"c"* or *"e"*, Code 1999, for school-based youth services during the budget year beginning July 1, 1999, such school district or consortium shall receive a total amount under this subsection of fifty thousand dollars for each of the budget years beginning July 1, 2000, and July 1, 2001. The department of management shall adjust the supplementary weighting of a school district or the school district acting as the fiscal agent for a consortium eligible under this paragraph in a manner to assure that the district or the consortium receives the total sum of fifty thousand dollars as guaranteed in this paragraph. If the consortium elects not to continue a school-based youth service program, the funds shall be distributed equally to the school districts in the consortium. This paragraph is repealed effective July 1, 2002, for budget years beginning on or after that date. To the extent possible, the total amount of moneys generated by the enactment of this subsection, including this paragraph, shall be equivalent to the amount generated under this subsection without the inclusion of this paragraph. The department of management shall adjust the weighting assigned in this subsection to reflect this intent.

5. *Regional academies.*

a. For the school budget year beginning July 1,

2002, and succeeding budget years, in order to provide additional funds for school districts in which a regional academy is located, a supplementary weighting plan for determining enrollment is adopted.

b. A school district which establishes a regional academy shall be eligible to assign its resident pupils attending classes at the academy a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes at the regional academy. For the purposes of this subsection, *"regional academy"* means an educational institution established by a school district to which multiple schools send pupils in grades seven through twelve, and may include a virtual academy. A regional academy shall include in its curriculum advanced-level courses and may include in its curriculum vocational-technical programs. The maximum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to fifteen additional pupils.

6. *Shared classes delivered over the Iowa communications network.* A pupil attending a class in which students from one or more other school districts are enrolled and which is taught via the Iowa communications network is not deemed to be attending a class in another school district or in a community college for the purposes of this section and the school district is not eligible for supplementary weighting for that class under this section.

7. *Pupils ineligible.* A pupil eligible for the weighting plan provided in section 256B.9 is not eligible for supplementary weighting pursuant to this section. A pupil attending an alternative program or an at-risk pupils' program, including alternative high school programs, is not eligible for supplementary weighting under subsection 2.

8. *School finance appropriations report.* The department of education shall annually prepare a report regarding school finance provisions or programs receiving a standing appropriation, including supplementary weighting programs. The report shall provide information regarding amounts received or accessed by school districts pursuant to the provisions or programs, whether the amounts received represent an increase or decrease over amounts received during the previous budget year and the percentage increase or decrease, conclusions regarding the adequacy of amounts received by school districts and whether the amounts received are equitable between school districts based upon input from the school districts and analysis by the department, and the rationale for current trends being observed by the department and projections regarding possible trends in the future. The report shall be submitted to the general assembly by January 1 each year, and copies of the report shall be forwarded to the chairpersons and members of the committee on education in the senate and in the house of representatives.

89 Acts, ch 135, §11; 90 Acts, ch 1190, §7; 93 Acts, ch 180, §96; 95 Acts, ch 111, §1; 95 Acts, ch 209, §13; 2000 Acts, ch 1198, §1, 6; 2001 Acts, ch 126, §5, 6; 2002 Acts, ch 1140, §8

For future amendments to this section effective July 1, 2003, see 2002 Acts, ch 1047, §3, 4, 20

Subsection 2, paragraph c, subparagraph (2) amended

257.11A Supplementary weighting and school reorganization.

1. In determining weighted enrollment under section 257.6, if the board of directors of a school district has approved a contract for sharing pursuant to section 257.11 and the school district has approved an action to bring about a reorganization to take effect on and after July 1, 2002, and on or before July 1, 2006, the reorganized school district shall include, for a period of three years following the effective date of the reorganization, additional pupils added by the application of the supplementary weighting plan, equal to the pupils added by the application of the supplementary weighting plan in the year preceding the reorganization. For the purposes of this subsection, the weighted enrollment for the period of three years following the effective date of reorganization shall include the supplementary weighting in the base year used for determining the combined district cost for the first year of the reorganization. However, the weighting shall be reduced by the supplementary weighting added for a pupil whose residency is not within the reorganized district.

2. For purposes of this section, a reorganized district is one in which the reorganization was approved in an election pursuant to sections 275.18 and 275.20 and takes effect on or after July 1, 2002, and on or before July 1, 2006. Each district which initiates, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution to take effect on or after July 1, 2002, and on or before July 1, 2006, shall certify the date and the nature of the action taken to the department of education by January 1 of the year in which the reorganization or dissolution takes effect.

3. Notwithstanding subsection 1, a school district which was participating in a whole grade sharing arrangement during the budget year beginning July 1, 2001, and which received a maximum of two years of supplementary weighting pursuant to section 257.11, subsection 2, paragraph *"c"*, shall include additional pupils added by the application of the supplementary weighting plan, equal to the pupils added by the application of the supplementary weighting plan in the year preceding the reorganization, for a period of four years following the effective date of the reorganization.

4. A school district shall be eligible for a combined maximum total of six years of supplementa-

ry weighting under the provisions of this section and section 257.11, subsection 2, paragraph *"c"*.

2001 Acts, ch 126, §7

257.12 Supplementary weighting and school reorganization. Repealed by 2000 Acts, ch 1198, § 5, 6.

257.13 On-time funding budget adjustment.

1. For the school budget year beginning July 1, 2001, and succeeding budget years, if a district's actual enrollment for the budget year, determined under section 257.6, is greater than its budget enrollment for the budget year, the district shall be eligible to receive an on-time funding budget adjustment. The adjustment shall be in an amount equal to the difference between the actual enrollment for the budget year and the budget enrollment for the budget year, multiplied by the district cost per pupil.

2. The board of directors of a school district that wishes to receive an on-time funding budget adjustment shall adopt a resolution to receive the adjustment and notify the school budget review committee by November 1, annually. The school budget review committee shall establish a modified allowable growth in an amount determined pursuant to subsection 1.

3. If the board of directors of a school district determines that a need exists for additional funds exceeding the authorized budget adjustment for on-time funding pursuant to this section, a request for modified allowable growth based upon increased enrollment may be submitted to the school budget review committee as provided in section 257.31.

99 Acts, ch 2, §2, 4; 2000 Acts, ch 1055, §1, 3; 2001 Acts, ch 126, §8

257.14 Budget adjustment.

1. For the budget year commencing July 1, 2001, if the department of management determines that the regular program district cost of a school district for a budget year is less than the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the school district shall be eligible to receive a budget adjustment for that district for that budget year up to an amount equal to the difference. The board of directors of a school district that wishes to receive a budget adjustment pursuant to this subsection shall, notwithstanding the public notice and hearing provisions of chapter 24 or any other provision to the contrary, within thirty days following May 9, 2001, adopt a resolution to receive the budget adjustment and immediately notify the department of management of the adoption of the resolution and the amount of the budget adjustment to be received.

2. For the budget years commencing July 1, 2002, and July 1, 2003, if the department of management determines that the regular program district cost of a school district for a budget year is less than the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the school district shall be eligible to receive a budget adjustment for that district for that budget year up to an amount equal to the difference. The board of directors of a school district that wishes to receive a budget adjustment pursuant to this subsection shall adopt a resolution to receive the budget adjustment by April 15, annually, and shall notify the department of management of the adoption of the resolution and the amount of the budget adjustment to be received.

3. For the budget year commencing July 1, 2004, and succeeding budget years, if the department of management determines that the regular program district cost of a school district for a budget year is less than one hundred one percent of the regular program district cost for the base year for that school district, a district shall be eligible for a budget adjustment corresponding to the following schedule:

a. For the budget year commencing July 1, 2004, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or ninety percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the *"adjusted guarantee amount"* means the amount which would be applicable for the budget year beginning July 1, 2004, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

b. For the budget year commencing July 1, 2005, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or eighty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the *"adjusted guarantee amount"* means the amount which would be applicable for the budget year beginning July 1, 2005, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

c. For the budget year commencing July 1, 2006, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or seventy percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount.

For purposes of this paragraph, the *"adjusted guarantee amount"* means the amount which would be applicable for the budget year beginning July 1, 2006, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

d. For the budget year commencing July 1, 2007, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or sixty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the *"adjusted guarantee amount"* means the amount which would be applicable for the budget year beginning July 1, 2007, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

e. For the budget year commencing July 1, 2008, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or fifty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the *"adjusted guarantee amount"* means the amount which would be applicable for the budget year beginning July 1, 2008, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

f. For the budget year commencing July 1, 2009, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or forty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the *"adjusted guarantee amount"* means the amount which would be applicable for the budget year beginning July 1, 2009, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

g. For the budget year commencing July 1, 2010, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or thirty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the *"adjusted guarantee amount"* means the amount which would be applicable for the budget year beginning July 1, 2010, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

h. For the budget year commencing July 1, 2011, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or twenty percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the *"adjusted guarantee amount"* means the amount which would be applicable for the budget year beginning July 1, 2011, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

i. For the budget year commencing July 1, 2012, the greater of the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year, or ten percent of the amount by which the budget guarantee as calculated for the budget year beginning July 1, 2003, exceeds the adjusted guarantee amount. For purposes of this paragraph, the *"adjusted guarantee amount"* means the amount which would be applicable for the budget year beginning July 1, 2012, if the budget guarantee were determined for that budget year as calculated for the budget year beginning July 1, 2003.

j. For the budget year commencing July 1, 2013, and each budget year thereafter, the difference between the regular program district cost for the budget year and one hundred one percent of the regular program district cost for the base year.

For the purposes of this subsection, a school district shall be eligible to apply the eighty, seventy, sixty, fifty, forty, thirty, twenty, and ten percent provisions in paragraphs *"b"* through *"i"*, only if the school district received a budget adjustment for the budget year beginning July 1, 2004, based on the ninety percent provision in paragraph *"a"*.

The board of directors of a school district that wishes to receive a budget adjustment pursuant to this subsection shall adopt a resolution to receive the budget adjustment by April 15, annually, and shall notify the department of management of the adoption of the resolution and the amount of the budget adjustment to be received.

89 Acts, ch 135, §14; 90 Acts, ch 1190, §8; 92 Acts, ch 1230, §6; 93 Acts, ch 179, §17; 95 Acts, ch 130, §2; 97 Acts, ch 18, §1, 2; 99 Acts, ch 2, §3, 4; 2000 Acts, ch 1055, §2, 3; 2001 Acts, ch 126, §9 – 12; 2002 Acts, ch 1050, §59, 65; 2002 Acts, ch 1140, §9, 10, 47

2002 amendments to subsections 2 and 3 apply retroactively for budget adjustment notification for the school budget year beginning July 1, 2002; 2002 Acts, ch 1140, §47

Subsection 2 amended

Subsection 3, unnumbered paragraph 3 amended

257.15 Property tax adjustment.

1. *Property tax adjustment for 1991-1992.* For the budget year beginning July 1, 1991, the department of management shall cal-

culate for each district the difference between the sum of the revenues generated by the foundation property tax and the additional property tax in the district calculated under this chapter and the revenues that would have been generated by the foundation property tax and the additional property tax in that district for that budget year calculated under chapter 442, Code 1989, if chapter 442 were in effect, except that the revenues that would have been generated by the additional property tax levy under chapter 442 shall not include revenues generated for the school improvement program. However in making the calculation of the difference in revenues under this subsection, the department shall not include the revenues generated under section 257.37 and under chapter 442, Code 1989, for funding media and educational services through the area education agencies. If the property tax revenues for a district calculated under this chapter exceed the property tax revenues for that district calculated under chapter 442, Code 1989, the department of management shall reduce the revenues raised by the additional property tax levy in that district under this chapter by that difference and the department of education shall pay property tax adjustment aid to the district equal to that difference from moneys appropriated for property tax adjustment aid.

For purposes of this subsection, in computing the amount of revenues generated by the foundation property tax and the additional property tax under chapter 442, Code 1989, the computation shall be based on a regular program foundation base per pupil of eighty-three percent of the regular program state cost per pupil except that for the portion of weighted enrollment that is additional enrollment because of special education the regular program foundation base per pupil shall be seventy-nine percent of the regular program state cost per pupil. The special education support services foundation base shall be seventy-nine percent of the special education support services state cost per pupil.

2. *Property tax adjustment aid for 1992-1993 and succeeding years.* For the budget year beginning July 1, 1992, and succeeding budget years, the department of education shall pay property tax adjustment aid to a school district equal to the amount paid to the district for the base year less an amount equal to the product of the percent by which the taxable valuation in the district increased, if the taxable valuation increased, from January 1 of the year prior to the base year to January 1 of the base year and the property tax adjustment aid. The department of management shall adjust the rate of the additional property tax accordingly and notify the department of education of the amount of aid to be paid to each district from moneys appropriated for property tax adjustment aid.

3. *Property tax adjustment aid appropriation.* There is appropriated from the general fund of the state to the department of education, for each fiscal year, an amount necessary to pay property tax adjustment aid to school districts under this section. Property tax adjustment aid shall be paid to school districts in the manner provided in section 257.16.

89 Acts, ch 135, §15; 91 Acts, ch 6, §1; 91 Acts, ch 267, §519

257.16 Appropriations.

1. There is appropriated each year from the general fund of the state an amount necessary to pay the foundation aid and supplementary aid under section 257.4, subsection 2.

2. All state aids paid under this chapter, unless otherwise stated, shall be paid in monthly installments beginning on September 15 of a budget year and ending on or about June 15 of the budget year as determined by the department of management, taking into consideration the relative budget and cash position of the state resources.

3. All moneys received by a school district from the state under this chapter shall be deposited in the general fund of the school district, and may be used for any school general fund purpose.

4. Notwithstanding any provision to the contrary, if the governor orders budget reductions in accordance with section 8.31, reductions in the appropriations provided in accordance with this section shall be distributed on a per pupil basis calculated with the weighted enrollment determined in accordance with section 257.6, subsection 5.

89 Acts, ch 135, §16; 91 Acts, ch 178, §5; 92 Acts, ch 1208, §1; 92 Acts, ch 1232, §303; 94 Acts, ch 1023, §44; 94 Acts, ch 1181, §12, 18; 95 Acts, ch 214, §10, 11; 2002 Acts, ch 1140, §11

Section amended

257.17 Aid reduction for early school starts.

State aid payments made pursuant to section 257.16 for a fiscal year shall be reduced by one one-hundred-eightieth for each day of that fiscal year for which the school district begins school before the earliest starting date specified in section 279.10, subsection 1. However, this section does not apply to a school district that has received approval from the director of the department of education under section 279.10, subsection 4, to commence classes for regularly established elementary and secondary schools in advance of the starting date established in section 279.10, subsection 1.

89 Acts, ch 135, §17

257.18 Instructional support program.

1. An instructional support program that provides additional funding for school districts is established. A board of directors that wishes to consider participating in the instructional support program shall hold a public hearing on the question of participation. The board shall set forth its

proposal, including the method that will be used to fund the program, in a resolution and shall publish the notice of the time and place of a public hearing on the resolution. Notice of the time and place of the public hearing shall be published not less than ten nor more than twenty days before the public hearing in a newspaper which is a newspaper of general circulation in the school district. At the hearing, or no later than thirty days after the date of the hearing, the board shall take action to adopt a resolution to participate in the instructional support program for a period not exceeding five years or to direct the county commissioner of elections to submit the question of participation in the program for a period not exceeding ten years to the registered voters of the school district at the next regular school election or at a special election. If the board submits the question at an election and a majority of those voting on the question favors participation in the program, the board shall adopt a resolution to participate and certify the results of the election to the department of management.

2. If the board does not provide for an election and adopts a resolution to participate in the instructional support program, the district shall participate in the instructional support program unless within twenty-eight days following the action of the board, the secretary of the board receives a petition containing the required number of signatures, asking that an election be called to approve or disapprove the action of the board in adopting the instructional support program. The petition must be signed by eligible electors equal in number to not less than one hundred or thirty percent of the number of voters at the last preceding regular school election, whichever is greater. The board shall either rescind its action or direct the county commissioner of elections to submit the question to the registered voters of the school district at the next following regular school election or a special election. If a majority of those voting on the question at the election favors disapproval of the action of the board, the district shall not participate in the instructional support program. If a majority of those voting on the question favors approval of the action, the board shall certify the results of the election to the department of management and the district shall participate in the program.

At the expiration of the twenty-eight day period, if no petition is filed, the board shall certify its action to the department of management and the district shall participate in the program.

3. Participation in an instructional support program is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in a school reorganization under chapter 275 has approved an instructional support program, and if the voters have not voted upon the question of participation in the program in the reorganized district, the instructional support program shall be in effect for the reorganized district that has been approved for the least amount and the shortest time in any of the districts.

89 Acts, ch 135, §18; 92 Acts, ch 1171, §1; 95 Acts, ch 67, §53; 96 Acts, ch 1112, §1, 2

257.19 Instructional support funding.

The additional funding for the instructional support program for a budget year is limited to an amount not exceeding ten percent of the total of regular program district cost for the budget year and moneys received under section 257.14 as a budget adjustment for the budget year. Moneys received by a district for the instructional support program are miscellaneous income and may be used for any general fund purpose. However, moneys received by a district for the instructional support program shall not be used as, or in a manner which has the effect of, supplanting funds authorized to be received under sections 257.41, 257.46, 298.2, and 298.4, or to cover any deficiencies in funding for special education instructional services resulting from the application of the special education weighting plan under section 256B.9.

Certification of a board's intent to participate for a budget year, the method of funding, and the amount to be raised shall be made to the department of management not later than April 15 of the base year. Funding for the instructional support program shall be obtained from instructional support state aid and from local funding using either an instructional support property tax or a combination of an instructional support property tax and an instructional support income surtax.

The board of directors shall determine whether the instructional support property tax or the combination of the instructional support property tax and instructional support income surtax shall be used for the local funding. Subject to the limitation specified in section 298.14, if the board elects to use the combination of the instructional support property tax and instructional support income surtax, for each budget year the board shall determine the percent of income surtax that will be imposed, expressed as full percentage points, not to exceed twenty percent.

89 Acts, ch 135, §19; 91 Acts, ch 126, §3; 93 Acts, ch 1, §4

257.20 Instructional support state aid appropriation.

1. In order to determine the amount of instructional support state aid and the amount of local funding for the instructional support program for a district, the department of management shall divide the total assessed valuation in the state by the total budget enrollment for the budget year in the state to determine a state assessed valuation per pupil and shall divide the assessed valuation in each district by the district's budget enrollment for the budget year to determine the district as-

sessed valuation per pupil. The department of management shall multiply the ratio of the state's valuation per pupil to the district's valuation per pupil by twenty-five hundredths and subtract that result from one to determine the portion of the instructional support program budget that is local funding. The remaining portion of the budget shall be funded by instructional support state aid. However, for the budget year beginning July 1, 1992, only, the amount of state aid is three and one-quarter percent less than the amount computed under this paragraph for that budget year.

2. There is appropriated for each fiscal year from the general fund of the state to the department of education, an amount necessary to pay instructional support state aid as determined under subsection 1.

a. However, moneys appropriated under this subsection shall not exceed the amount of moneys appropriated as instructional support state aid for the budget year which commenced on July 1, 1992.

b. If the amount appropriated under this subsection is insufficient to pay the amount of instructional support state aid determined under subsection 1, the department of education shall prorate the amount of the instructional support state aid provided to each district.

3. If the general assembly makes an appropriation for instructional support state aid in lieu of the standing appropriation provided under subsection 2, the appropriation for instructional support state aid shall include in the appropriation the allocation of the instructional support state aid to the school districts applicable for that appropriation and subsections 1 and 2 do not apply to the appropriation.

4. Instructional support state aid shall be paid at the same time and in the same manner as foundation aid is paid under section 257.16.

89 Acts, ch 135, §20; 92 Acts, ch 1227, §16; 92 Acts, ch 1230, §8

257.21 Computation of instructional support amount.

The department of management shall establish the amount of instructional support property tax to be levied and the amount of instructional support income surtax to be imposed by a district in accordance with the decision of the board under section 257.19 for each school year for which the instructional support program is authorized. The department of management shall determine these amounts based upon the most recent figures available for the district's valuation of taxable property, individual state income tax paid, and budget enrollment in the district, and shall certify to the district's county auditor the amount of instructional support property tax, and to the director of revenue and finance the amount of instructional support income surtax to be imposed if an instructional support income surtax is to be imposed.

The instructional support income surtax shall be imposed on the state individual income tax for the calendar year during which the school's budget year begins, or for a taxpayer's fiscal year ending during the second half of that calendar year and after the date the board adopts a resolution to participate in the program or the first half of the succeeding calendar year, and shall be imposed on all individuals residing in the school district on the last day of the applicable tax year. As used in this section, *"state individual income tax"* means the taxes computed under section 422.5, less the credits allowed in sections 422.11A, 422.11B, 422.12, and 422.12B.

89 Acts, ch 135, §21; 91 Acts, ch 159, §1; 97 Acts, ch 23, §25

Limit on total surtax, §298.14

257.22 Statutes applicable.

The director of revenue and finance shall administer the instructional support income surtax imposed under this chapter, and sections 422.20, 422.22 to 422.31, 422.68, and 422.72 to 422.75 shall apply with respect to administration of the instructional support income surtax.

89 Acts, ch 135, §22

257.23 Form and time of return.

The instructional support income surtax shall be made a part of the Iowa individual income tax return subject to the conditions and restrictions set forth in section 422.21.

89 Acts, ch 135, §23

257.24 Deposit of instructional support income surtax.

The director of revenue and finance shall deposit all moneys received as instructional support income surtax to the credit of each district from which the moneys are received, in the school district income surtax fund which is established in section 298.14.

The director of revenue and finance shall deposit instructional support income surtax moneys received on or before November 1 of the year following the close of the school budget year for which the surtax is imposed to the credit of each district from which the moneys are received in the school district income surtax fund.

Instructional support income surtax moneys received or refunded after November 1 of the year following the close of the school budget year for which the surtax is imposed shall be deposited in or withdrawn from the general fund of the state and shall be considered part of the cost of administering the instructional support income surtax.

89 Acts, ch 135, §24

257.25 Instructional support income surtax certification.

On or before October 20 each year, the director

of revenue and finance shall make an accounting of the instructional support income surtax collected under this chapter applicable to tax returns for the last preceding calendar year, or for a taxpayer's fiscal year ending during the second half of that calendar year and after the date the board adopts a resolution to participate in the program, or the first half of the succeeding calendar year, from taxpayers in each school district in the state which has approved the instructional support program, and shall certify to the department of management and the department of education the amount of total instructional support income surtax credited from the taxpayers of each school district.

89 Acts, ch 135, §25

257.26 Instructional support income surtax distribution.

The director of revenue and finance shall draw warrants in payment of the amount of instructional support surtax in the manner provided in section 298.14.

89 Acts, ch 135, §26

257.27 Continuation of instructional support program.

At the expiration of the period for which the instructional support program was adopted, the program may be extended for a period of not exceeding five or ten years in the manner provided in section 257.18.

If the voters do not approve adoption of the instructional support program, the board shall wait at least one hundred twenty days following the election before taking action to adopt the program or resubmit the proposition.

89 Acts, ch 135, §27

257.28 Enrichment levy.

If a school district has approved the use of the instructional support program for a budget year, the district shall not also collect moneys under the additional enrichment amount approved by the voters under chapter 442, as it appeared in Code 1991, for the budget year.

89 Acts, ch 135, §28; 92 Acts, ch 1163, §60

257.29 Educational improvement program.

An educational improvement program is established to provide additional funding for school districts in which the regular program district cost per pupil for a budget year is one hundred ten percent of the regular program state cost per pupil for the budget year and which have approved the use of the instructional support program established in section 257.18. A board of directors that wishes to consider participating in the educational improvement program shall hold a hearing on the question of participation and the maximum percent of the regular program district cost of the district that will be used. The hearing shall be held in the manner provided in section 257.18 for the instructional support program. Following the hearing, the board may direct the county commissioner of elections to submit the question to the registered voters of the school district at the next following regular school election or a special election held not later than the following February 1. If a majority of those voting on the question favors participation in the program, the board shall adopt a resolution to participate and shall certify the results of the election to the department of management and the district shall participate in the program. If a majority of those voting on the question does not favor participation, the district shall not participate in the program.

The educational improvement program shall provide additional revenues each fiscal year equal to a specified percent of the regular program district cost of the district, as determined by the board but not more than the maximum percent authorized by the electors if an election has been held. Certification of a district's participation for a budget year, the method of funding, and the amount to be raised shall be made to the department of management not later than April 15 of the base year.

The educational improvement program shall be funded by either an educational improvement property tax or by a combination of an educational improvement property tax and an educational improvement income surtax. The method of raising the educational improvement moneys shall be determined by the board. Subject to the limitation in section 298.14, if the board uses a combination of an educational improvement property tax and an educational improvement income surtax, the board shall determine the percent of income surtax to be imposed, expressed as full percentage points, not to exceed twenty percent.

The department of management shall establish the amount of the educational improvement property tax to be levied or the amount of the combination of the educational improvement property tax to be levied and the amount of the school district income surtax to be imposed for each school year that the educational improvement amount is authorized. The educational improvement property tax and income surtax, if an income surtax is imposed, shall be levied and imposed, collected, and paid to the school district in the manner provided for the instructional support program in sections 257.21 through 257.26. Moneys received by a school district under the educational improvement program are miscellaneous income.

Once approved at an election, the authority of the board to use the educational improvement program shall continue until the board votes to rescind the educational improvement program or the voters of the school district by majority vote or-

der the discontinuance of the program. The board shall call an election to vote on the proposition whether to discontinue the program upon the receipt of a petition signed by not less than one hundred eligible electors or thirty percent of the number of electors voting at the last preceding school election, whichever is greater.

Participation in an educational improvement program is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in school reorganization under chapter 275 has approved an educational improvement program, and if the voters have not voted upon the question of participation in the program in the reorganized district, the educational improvement program shall be in effect for the reorganized district that has been approved for the least amount and the shortest time in any of the districts.

Notwithstanding the requirement in the first unnumbered paragraph of this section that the regular program district cost per pupil for a budget year is one hundred ten percent of the regular state cost per pupil, the board of directors may participate in the educational improvement program as provided in this section if the school district had adopted an enrichment levy of fifteen percent of the state cost per pupil multiplied by the budget enrollment in the district prior to July 1, 1992, and upon expiration of the period for which the enrichment levy was adopted, adopts a resolution for the use of the instructional support program established in section 257.18. The maximum percent of the regular district cost of the district that may be used under this paragraph shall not exceed five percent.

89 Acts, ch 135, §29; 90 Acts, ch 1190, §9; 92 Acts, ch 1171, §2; 92 Acts, ch 1187, §3; 93 Acts, ch 1, §5; 95 Acts, ch 67, §53

Limit on total surtax, §298.14

257.30 School budget review committee.

A school budget review committee is established in the department of education and consists of the director of the department of education, the director of the department of management, and three members who are knowledgeable in the areas of Iowa school finance or public finance issues appointed by the governor to represent the public. At least one of the public members shall possess a master's or doctoral degree in which areas of school finance, economics, or statistics are an integral component, or shall have equivalent experience in an executive administrative or senior research position in the education or public administration field. The members appointed by the governor shall serve staggered three-year terms beginning and ending as provided in section 69.19 and are subject to senate confirmation as provided in section 2.32. The committee shall meet and hold hearings each year and shall continue in session until it has reviewed budgets of school districts, as provided in section 257.31. It may call in school board members and employees as necessary for the hearings. Legislators shall be notified of hearings concerning school districts in their constituencies.

The committee shall adopt its own rules of procedure under chapter 17A. The director of the department of education shall serve as chairperson, and the director of the department of management shall serve as secretary. The committee members representing the public are entitled to receive their necessary expenses while engaged in their official duties. Members shall be paid a per diem at the rate specified in section 7E.6. Per diem and expense payments shall be made from appropriations to the department of education.

The department of education shall employ a staff member to assist the school budget review committee.

89 Acts, ch 135, §30

257.31 Duties of the committee.

1. The school budget review committee may recommend the revision of any rules, regulations, directives, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating to any budgeting or accounting matters, and direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district.

2. The committee shall report to each session of the general assembly, which report shall include any recommended changes in laws relating to school districts, and shall specify the number of hearings held annually, the reasons for the committee's recommendations, information about the amounts of property tax levied by school districts for a cash reserve, and other information the committee deems advisable.

3. The committee shall review the proposed budget and certified budget of each school district, and may make recommendations. The committee may make decisions affecting budgets to the extent provided in this chapter. The costs and computations referred to in this section relate to the budget year unless otherwise expressly stated.

4. Not later than January 1, 1992, the committee shall adopt recommendations relating to the implementation by school districts and area education agencies of procedures pertaining to the preparation of financial reports in conformity with generally accepted accounting principles and submit those recommendations to the state board of education. The state board shall consider the recommendations and adopt rules under section 256.7 specifying procedures and requiring the school districts and area education agencies to conform to generally accepted accounting prin-

ciples commencing with the school year beginning July 1, 1996.

5. If a district has unusual circumstances, creating an unusual need for additional funds, including but not limited to the following circumstances, the committee may grant supplemental aid to the district from any funds appropriated to the department of education for the use of the school budget review committee for the purposes of this subsection, and such aid shall be miscellaneous income and shall not be included in district cost, or may establish a modified allowable growth for the district by increasing its allowable growth, or both:

a. Any unusual increase or decrease in enrollment.

b. Unusual natural disasters.

c. Unusual initial staffing problems.

d. The closing of a nonpublic school, wholly or in part.

e. Substantial reduction in miscellaneous income due to circumstances beyond the control of the district.

f. Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to pupils.

g. Unusual need for a new course or program which will provide substantial benefit to pupils, if the district establishes the need and the amount of necessary increased cost.

h. Unusual need for additional funds for special education or compensatory education programs.

i. Year-round or substantially year-round attendance programs which apply toward graduation requirements, including but not limited to trimester or four-quarter programs. Enrollment in such programs shall be adjusted to reflect equivalency to normal school year attendance.

j. Unusual need to continue providing a program or other special assistance to non-English speaking pupils after the expiration of the three-year period specified in section 280.4.

k. Circumstances caused by unusual demographic characteristics.

l. Any unique problems of school districts.

6. The committee shall establish a modified allowable growth for a district by increasing its allowable growth when the district submits evidence that it requires additional funding for removal, management, or abatement of environmental hazards due to a state or federal requirement. Environmental hazards shall include but are not limited to the presence of asbestos, radon, or the presence of any other hazardous material dangerous to health and safety.

The district shall include a budget for the actual cost of the project that may include the costs of inspection, reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans, recordkeeping requirements, and encapsulation or removal of the hazardous material.

7. The committee may authorize a district to spend a reasonable and specified amount from its unexpended cash balance for either of the following purposes:

a. Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a bond issue as provided by law or the tax levy provided in section 298.2.

b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

Other expenditures, including but not limited to expenditures for salaries or recurring costs, are not authorized under this subsection. Expenditures authorized under this subsection shall not be included in allowable growth or district cost, and the portion of the unexpended cash balance which is authorized to be spent shall be regarded as if it were miscellaneous income. Any part of the amount not actually spent for the authorized purpose shall revert to its former status as part of the unexpended cash balance.

8. The committee may approve or modify the initial base year district cost of any district which changes accounting procedures.

9. When the committee makes a decision under subsections 3 through 8, it shall make all necessary changes in the district cost, budget, and tax levy. It shall give written notice of its decision, including all such changes, to the school board through the department of education.

10. All decisions by the committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter. All such policies of general application shall be stated in rules adopted in accordance with chapter 17A. The committee shall take into account the intent of this chapter to equalize educational opportunity, to provide a good education for all the children of Iowa, to provide property tax relief, to decrease the percentage of school costs paid from property taxes, and to provide reasonable control of school costs. The committee shall also take into account the amount of funds available.

11. Failure by any school district to provide information or appear before the committee as requested for the accomplishment of review or hearing is justification for the committee to instruct the director of the department of management to withhold any state aid to that district until the committee's inquiries are satisfied completely.

12. The committee shall review the recommendations of the director of the department of education relating to the special education

weighting plan, and shall establish a weighting plan for each school year pursuant to section 256B.9, and report the plan to the director of the department of education.

13. The committee may recommend that two or more school districts jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment, and facilities as specified in section 280.15.

14. As soon as possible following June 30 of the base year, the school budget review committee shall determine for each school district the balance of funds, whether positive or negative, raised for special education instruction programs under the special education weighting plan established in section 256B.9. The committee shall certify the balance of funds for each school district to the director of the department of management.

a. If the amount certified for a school district to the director of the department of management under this subsection for the base year is positive, the director of the department of management shall subtract the amount of the positive balance exceeding ten percent of the additional funds generated for special education, not to include any previous carryover, from the amount of state aid remaining to be paid to the district during the budget year. If the positive amount exceeding the ten percent amount exceeds the amount of state aid that remains to be paid to the district, not including any previous carryover, the school district shall pay the excess on a quarterly basis prior to June 30 of the budget year to the director of the department of management from other funds received by the district. The director of the department of management shall determine the amount of the positive balance that exceeds the ten percent amount that came from local property tax revenues and shall increase the district's total state school aids available under this chapter for the next following budget year by the amount so determined and shall reduce the district's tax levy computed under section 257.4 for the next following budget year by the amount necessary to compensate for the increased state aid.

b. If the amount certified for a school district to the director of the department of management under this subsection for the base year is negative, the director of the department of management shall determine the amount of the deficit that would have been state aid and the amount that would have been property taxes for each eligible school district.

There is appropriated from the general fund of the state to the school budget review committee for each fiscal year an amount equal to the state aid portion of five percent of the receipts for special education instruction programs in all districts that has a positive balance determined under paragraph *"a"* for the base year, or the state aid portion of all of the positive balances determined under paragraph *"a"* for the base year, whichever is less, to be used for supplemental aid payments to school districts. Except as otherwise provided in this lettered paragraph, supplemental aid paid to a district is equal to the state aid portion of the district's negative balance. The school budget review committee shall direct the director of the department of management to make the payments to school districts under this lettered paragraph.

A school district is only eligible to receive supplemental aid payments during the budget year if the school district certifies to the school budget review committee that for the year following the budget year it will notify the school budget review committee to instruct the director of the department of management to increase the district's allowable growth and will fund the allowable growth increase either by using moneys from its unexpended cash balance to reduce the district's property tax levy or by using cash reserve moneys to equal the amount of the deficit that would have been property taxes and any part of the state aid portion of the deficit not received as supplemental aid under this subsection. The director of the department of management shall make the necessary adjustments to the school district's budget to provide the additional allowable growth and shall make the supplemental aid payments.

If the amount appropriated under this lettered paragraph is insufficient to make the supplemental aid payments under this subsection, the director of the department of management shall prorate the payments on the basis of the amount appropriated.

15. Annually the school budget review committee shall review the amount of property tax levied by each school district for the cash reserve authorized in section 298.10. If in the committee's judgment, the amount of a district's cash reserve levy is unreasonably high, the committee shall instruct the director of the department of management to reduce that district's tax levy computed under section 257.4 for the following budget year by the amount the cash reserve levy is deemed excessive. A reduction in a district's property tax levy for a budget year under this subsection does not affect the district's authorized budget.

16. The committee shall perform the duties assigned to it under sections 257.32 and 260C.18B.

17. *a.* If a district's average transportation costs per pupil exceed the state average transportation costs per pupil determined under paragraph *"c"* by one hundred fifty percent, the committee may grant transportation assistance aid to the district. Such aid shall be miscellaneous income and shall not be included in district cost.

b. To be eligible for transportation assistance aid, a school district shall annually certify its actual cost for all children transported in all school buses not later than July 31 after each school year on forms prescribed by the committee.

c. A district's average transportation costs per

pupil shall be determined by dividing the district's actual cost for all children transported in all school buses for a school year pursuant to section 285.1, subsection 12, less the amount received for transporting nonpublic school pupils under section 285.1, by the district's actual enrollment for the school year excluding the shared-time enrollment for the school year as defined in section 257.6. The state average transportation costs per pupil shall be determined by dividing the total actual costs for all children transported in all districts for a school year, by the total of all districts' actual enrollments for the school year.

d. Funds transferred to the committee in accordance with section 321.34, subsection 22, are appropriated to and may be expended for the purposes of the committee, as described in this section. However, highest priority shall be given to districts that meet the conditions described in this subsection. Notwithstanding any other provision of the Code, unencumbered or unobligated funds transferred to the committee pursuant to section 321.34, subsection 22, remaining on June 30 of the fiscal year for which the funds were transferred, shall not revert but shall be available for expenditure for the purposes of this subsection in subsequent fiscal years.

89 Acts, ch 135, §31; 91 Acts, ch 267, §520; 93 Acts, ch 101, §202; 94 Acts, ch 1175, §3; 96 Acts, ch 1088, §1; 96 Acts, ch 1215, §22; 97 Acts, ch 23, §26

257.32 Area education budget review.

1. An area education agency budget review procedure is established for the school budget review committee created in section 257.30. The school budget review committee, in addition to its duties under section 257.31, shall meet and hold hearings each year to review unusual circumstances of area education agencies, either upon the committee's motion or upon the request of an area education agency. The committee may grant supplemental aid to the area education agency from funds appropriated to the department of education for area education agency budget review purposes, or an amount may be added to the area education agency special education support services allowable growth for districts in an area or an additional amount may be added to district cost for media services or educational services for all districts in an area for the budget year either on a temporary or permanent basis, or both.

Unusual circumstances shall include but are not limited to the following:

a. An unusual increase or decrease in enrollment of children requiring special education or unusual need for additional moneys for special education support services.

b. Unusual need for additional moneys for media services.

c. Unusual need for additional moneys for educational services.

d. Unusual costs for building repair, building maintenance, or removal of environmental hazards.

e. Participation by the area education agency in telecommunications, electronic, and technological development with school districts, and related staff development programs.

2. When the school budget review committee makes a decision under subsection 1, it shall provide written notice of its decision, including all changes, to the board of directors of the area education agency, and to the department of management and the department of education.

3. All decisions by the school budget review committee under this section shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter.

4. Failure by an area education agency to provide information or appear before the school budget review committee as requested for the accomplishment of review or hearing constitutes justification for the committee to instruct the department of revenue and finance to withhold payments for the area education agency until the committee's inquiries are satisfied completely.

89 Acts, ch 135, §32

257.33 Prior enrichment approval.

If the electors of a school district approved the use of the additional enrichment amount prior to July 1, 1991, under chapter 442 or section 279.43, as they appeared in Code 1991, the approval for use of the enrichment amount shall continue in effect until the expiration of the period for which it was approved and districts may use the additional enrichment amount during that period. However, section 257.28 applies to the use of the additional enrichment amount.

Use of the additional enrichment amounts approved under chapter 442, Code 1991, is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in a school reorganization under chapter 275 has approved the use of the additional enrichment amount, and if the voters have not voted upon the question of participation in the instructional support program in the reorganized district, the use of the additional enrichment amount shall be in effect for the reorganized district that has been approved for the least amount and the shortest time in any of the districts.

89 Acts, ch 135, §33; 92 Acts, ch 1163, §61; 93 Acts, ch 8, §1

257.34 Cash reserve information.

If a school district receives less state school foundation aid under section 257.1 than is due under that section for a base year and the school district uses funds from its cash reserve during the base year to make up for the amount of state aid not paid, the board of directors of the school dis-

trict shall include in its general fund budget document information about the amount of the cash reserve used to replace state school foundation aid not paid.

89 Acts, ch 135, §34

257.35 Area education agency payments.

1. The department of management shall deduct the amounts calculated for special education support services, media services, and educational services for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the respective area education agencies on a monthly basis from September 15 through June 15 during each school year. The department of management shall notify each school district of the amount of state aid deducted for these purposes and the balance of state aid shall be paid to the district. If a district does not qualify for state aid under this chapter in an amount sufficient to cover its amount due to the area education agency as calculated by the department of management, the school district shall pay the deficiency to the area education agency from other moneys received by the district, on a quarterly basis during each school year.

2. Notwithstanding subsection 1, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for each fiscal year of the fiscal period beginning July 1, 2002, and ending June 30, 2004, shall be reduced by the department of management by seven million five hundred thousand dollars. The reduction for each area education agency shall be equal to the reduction that the agency received in the fiscal year beginning July 1, 2001.

89 Acts, ch 135, §35; 2002 Acts, ch 1167, §2, 6
Section amended

257.36 Special education support services balances.

Notwithstanding chapters 256B and 273 and sections of this chapter relating to the moneys available to area education agencies for special education support services, for each school year, the department of education may direct the department of management to deduct amounts from the portions of school district budgets that fund special education support services in an area education agency. The total amount deducted in an area shall be based upon excess special education support services unreserved and undesignated fund balances in that area education agency for a school year as determined by the department of education. The department of management shall determine the amount deducted from each school district in an area education agency on a proportional basis. The department of management shall determine from the amounts deducted from the portions of school district budgets that fund area education agency special education support services the amount that would have been local property taxes and the amount that would have been state aid and for the next following budget year shall increase the district's total state school aid available under this chapter for area education agency special education support services and reduce the district's property tax levy for area education agency special education support services by the amount necessary for the property tax portion of the deductions made under this section during the budget year.

The amount deducted from a school district's budget shall not affect the calculation of the state cost per pupil or its district cost per pupil in that school year or a subsequent year.

89 Acts, ch 135, §36

257.37 Funding media and educational services.

Media services and educational services provided through the area education agencies shall be funded, to the extent provided, by an addition to the combined district cost of each school district, determined as follows:

1. For the budget year beginning July 1, 1991, and succeeding budget years, the total amount funded in each area for media services shall be computed as provided in this subsection. For the budget year beginning July 1, 1991, the total amount funded in each area for media services in the base year, including the cost for media resource material which shall only be used for the purchase or replacement of material required in section 273.6, subsection 1, paragraphs *"a"*, *"b"*, and *"c"*, shall be divided by the enrollment served in the base year to provide an area media services cost per pupil in the base year, and the department of management shall compute the state media services cost per pupil in the base year which is equal to the average of the area media services costs per pupil in the base year. For the budget year beginning July 1, 1991, and succeeding budget years, the department of management shall compute the allowable growth for media services in the budget year by multiplying the state media services cost per pupil in the base year times the state percent of growth for the budget year, and the total amount funded in each area for media services cost in the budget year equals the area media services cost per pupil in the base year plus the allowable growth for media services in the budget year times the enrollment served in the budget year. Funds shall be paid to area education agencies as provided in section 257.35.

2. Thirty percent of the budget of an area for media services shall be expended for media resource material which shall only be used for the purchase or replacement of material required in section 273.6, subsection 1. Funds shall be paid to area education agencies as provided in section 257.35.

3. For the budget year beginning July 1, 1991,

and succeeding budget years, the total amount funded in each area for educational services shall be computed as provided in this subsection. For the budget year beginning July 1, 1991, the total amount funded in each area for educational services in the base year shall be divided by the enrollment served in the area in the base year to provide an area educational services cost per pupil in the base year, and the department of management shall compute the state educational services cost per pupil in the base year, which is equal to the average of the area educational services costs per pupil in the base year. For the budget year beginning July 1, 1991, and succeeding budget years, the department of management shall compute the allowable growth for educational services by multiplying the state educational services cost per pupil in the base year times the state percent of growth for the budget year, and the total amount funded in each area for educational services for the budget year equals the area educational services cost per pupil for the base year plus the allowable growth for educational services in the budget year times the enrollment served in the area in the budget year. Funds shall be paid to area education agencies as provided in section 257.35.

4. *"Enrollment served"* means the basic enrollment plus the number of nonpublic school pupils served with media services or educational services, as applicable, except that if a nonpublic school pupil or a pupil attending another district under a whole-grade sharing agreement or open enrollment receives services through an area other than the area of the pupil's residence, the pupil shall be deemed to be served by the area of the pupil's residence, which shall by contractual arrangement reimburse the area through which the pupil actually receives services. Each school district shall include in the third Friday in September enrollment report the number of nonpublic school pupils within each school district for media and educational services served by the area.

5. If an area education agency does not serve nonpublic school pupils in a manner comparable to services provided public school pupils for media and educational services, as determined by the state board of education, the state board shall instruct the department of management to reduce the funds for media services and educational services one time by an amount to compensate for such reduced services. The media services budget shall be reduced by an amount equal to the product of the cost per pupil in basic enrollment for the budget year for media services times the difference between the enrollment served and the basic enrollment recorded for the area. The educational services budget shall be reduced by an amount equal to the product of the cost per pupil in basic enrollment for the budget year for educational services times the difference between the enrollment served and the basic enrollment recorded for the area.

This subsection applies only to media and educational services which cannot be diverted for religious purposes.

Notwithstanding this subsection, an area education agency shall distribute to nonpublic schools media materials purchased wholly or partially with federal funds in a manner comparable to the distribution of such media materials to public schools as determined by the director of the department of education.

6. For the budget years beginning July 1, 2002, and July 1, 2003, notwithstanding the requirements of this section for determining the budgets and funding of media services and education services, an area education agency may, within the limits of the total of the funds provided for the budget years pursuant to section 257.35, expend for special education support services an amount that exceeds the payment for special education support services pursuant to section 257.35 in order to maintain the level of required special education support services in the area education agency.

91 Acts, ch 6, §2; 91 Acts, ch 267, §228; 2002 Acts, ch 1167, §3, 6

NEW subsection 6

257.38 Programs for returning dropouts and dropout prevention.

Boards of school districts, individually or jointly with boards of other school districts, requesting to use additional allowable growth for programs for returning dropouts and dropout prevention, shall annually submit comprehensive program plans for the programs and budget costs, including requests for additional allowable growth for funding the programs, to the department of education as provided in this chapter. The program plans shall include:

1. Program goals, objectives, and activities to meet the needs of children who may drop out of school.
2. Student identification criteria and procedures.
3. Staff in-service education design.
4. Staff utilization plans.
5. Evaluation criteria and procedures and performance measures.
6. Program budget.
7. Qualifications required of personnel delivering the program.
8. A provision for dropout prevention and integration of dropouts into the educational program of the district.
9. A provision for identifying dropouts.
10. A program for returning dropouts.
11. Other factors the department requires.

Program plans shall identify the parts of the plan that will be implemented first upon approval of the application. If a district is requesting to use additional allowable growth to finance the program, it shall not identify more than five percent of its budget enrollment for the budget year as re-

turning dropouts and potential dropouts.

89 Acts, ch 135, §38; 2001 Acts, ch 159, §9

257.39 Definitions.

As used in this chapter:

1. *"Returning dropouts"* are resident pupils who have been enrolled in a public or nonpublic school in any of grades seven through twelve who withdrew from school for a reason other than transfer to another school or school district and who subsequently enrolled in a public school in the district.

2. *"Potential dropouts"* are resident pupils who are enrolled in a public or nonpublic school who demonstrate poor school adjustment as indicated by two or more of the following:

a. High rate of absenteeism, truancy, or frequent tardiness.

b. Limited or no extracurricular participation or lack of identification with school, including but not limited to, expressed feelings of not belonging.

c. Poor grades, including but not limited to, failing in one or more school subjects or grade levels.

d. Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.

e. Children in grades kindergarten through three who meet the definition of at-risk children adopted by the department of education.

89 Acts, ch 135, §39

257.40 Plans for returning dropouts and dropout prevention.

The board of directors of a school district requesting to use additional allowable growth for programs for returning dropouts and dropout prevention shall submit applications for approval for the programs to the department not later than November 1 preceding the budget year during which the program will be offered. The department shall review the program plans and shall prior to January 15 either grant approval for the program or return the request for approval with comments of the department included. An unapproved request for a program may be resubmitted with modifications to the department not later than February 1. Not later than February 15, the department shall notify the department of management and the school budget review committee of the names of the school districts for which programs using additional allowable growth for funding have been approved and the approved budget of each program listed separately for each school district having an approved program.

89 Acts, ch 135, §40

257.41 Funding for programs for returning dropouts and dropout prevention.

The budget of an approved program for returning dropouts and dropout prevention for a school district, after subtracting funds received from other sources for that purpose, shall be funded annually on a basis of one-fourth or more from the district cost of the school district and up to three-fourths by an increase in allowable growth as defined in section 257.8. Annually, the department of management shall establish a modified allowable growth for each such district equal to the difference between the approved budget for the program for returning dropouts and dropout prevention for that district and the sum of the amount funded from the district cost of the school district plus funds received from other sources.

89 Acts, ch 135, §41

257.42 Gifted and talented children.

Boards of school districts, individually or jointly with the boards of other school districts, shall annually submit program plans for gifted and talented children programs and budget costs to the department of education and to the applicable gifted and talented children advisory council, if an advisory council has been established, as provided in this chapter.

The parent or guardian of a pupil may request that a gifted and talented children program be established for pupils who qualify as gifted and talented children under section 257.44, including demonstrated achievement or potential ability in a single subject area.

The department shall employ a consultant for gifted and talented children programs.

The department of education shall adopt rules under chapter 17A relating to the administration of sections 257.42 through 257.49. The rules shall prescribe the format of program plans submitted under section 257.43 and shall require that programs fulfill specified objectives. The department shall encourage and assist school districts to provide programs for gifted and talented children.

The department may request that the staff of the auditor of state conduct an independent program audit to verify that the gifted and talented programs conform to a district's program plans.

89 Acts, ch 135, §42; 94 Acts, ch 1088, §1; 99 Acts, ch 178, §5, 10

257.43 Program plans.

The program plans submitted by school districts shall be part of the school improvement plan submitted pursuant to section 256.7, subsection 21, paragraph *"a"*, and shall include all of the following:

1. Program goals, objectives, and activities to meet the needs of gifted and talented children.
2. Student identification criteria and procedures.
3. Staff in-service education design.
4. Staff utilization plans.
5. Evaluation criteria and procedures and performance measures.
6. Program budget.

7. Qualifications required of personnel administering the program.
8. Other factors the department requires.
89 Acts, ch 135, §43; 99 Acts, ch 178, §6, 10

257.44 Gifted and talented children defined.

"Gifted and talented children" are those identified as possessing outstanding abilities who are capable of high performance. Gifted and talented children are children who require appropriate instruction and educational services commensurate with their abilities and needs beyond those provided by the regular school program.

Gifted and talented children include those children with demonstrated achievement or potential ability, or both, in any of the following areas or in combination:
1. General intellectual ability.
2. Creative thinking.
3. Leadership ability.
4. Visual and performing arts ability.
5. Specific ability aptitude.
89 Acts, ch 135, §44

257.45 Submission of program plans.

1. The board of directors of a school district shall submit applications for approval for the programs to the department not later than November 1 preceding the fiscal year during which the program will be offered. The board shall also submit a copy of the program plans to the gifted and talented children advisory council, if an advisory council has been established. The department shall review the program plans and shall prior to January 15 either grant approval for the program or return the request for approval with comments of the department included. Any unapproved request for a program may be resubmitted with modifications to the department not later than a date established by the department. Not later than February 15 the department shall notify the department of management and the school budget review committee of the names of the school districts for which gifted and talented children programs have been approved and the approved budget of each program listed separately for each school district having an approved program.

2. The department of education may waive the November 1 deadline, if the department finds that the school district applying for approval of gifted and talented programs missed the deadline for good cause. The department shall adopt rules defining good cause for purposes of this section.

89 Acts, ch 135, §45; 94 Acts, ch 1088, §2; 99 Acts, ch 178, §7, 10

257.46 Funding.

1. The budget of an approved gifted and talented children program for a school district, after subtracting funds received from other sources for that purpose, shall be funded annually on a basis of one-fourth or more from the district cost of the school district.

2. The remaining portion of the budget shall be funded by the thirty-eight dollar increase in allowable growth for the school budget year beginning July 1, 1999, multiplied by a district's budget enrollment. The thirty-eight dollar increase for the school budget year beginning July 1, 1999, shall increase in subsequent years by each year's state percent of growth. School districts shall annually report the amount expended for a gifted and talented program to the department of education. The proportion of a school district's budget which corresponds to the thirty-eight dollar increase in allowable growth for the school budget year beginning July 1, 1999, added to the amount in subsection 1, shall be utilized exclusively for a school district's gifted and talented program.

3. If any portion of the gifted and talented program budget remains unexpended at the end of the budget year, the remainder shall be carried over to the subsequent budget year and added to the gifted and talented program budget for that year.

89 Acts, ch 135, §46; 94 Acts, ch 1088, §3; 99 Acts, ch 178, §8, 10; 2000 Acts, ch 1058, §29; 2000 Acts, ch 1151, §1, 2

257.47 Cooperation by area education agencies.

The area education agencies in which the school districts having approved gifted and talented children programs are located shall cooperate with the school district in the identification and placement of gifted and talented children and may assist school districts in the establishment of such programs.

89 Acts, ch 135, §47

257.48 Advisory council.

At the written request of one or more boards of school districts, in an area education agency, the area education agency board shall establish one or more gifted and talented children advisory councils and shall appoint members for four-year staggered terms. The terms of office of advisory council members shall commence on July 1 of each year. An advisory council shall consist of seven members including teachers, parents, school administrators, and other persons interested in education in the area. Except as otherwise provided in this section, members shall be eligible electors residing in the merged area. Members shall serve without compensation but shall be reimbursed for actual and necessary expenses and mileage incurred in the performance of their duties from funds available to the area education agency.

If an area education agency has a weighted enrollment of more than thirty-five thousand, the board may appoint additional advisory councils for each thirty-five thousand weighted enrollment

or fraction of thirty-five thousand. If more than one advisory council is appointed by the board, the board shall divide the merged area along school district boundary lines for jurisdiction of the advisory councils, and membership of these advisory councils shall be appointed from the designated portion of the merged area.

89 Acts, ch 135, §48

257.49 Duties of advisory council.

The gifted and talented children advisory council shall:

1. Elect a chairperson and vice chairperson from the membership of the advisory council.
2. Meet as often as deemed necessary by the advisory council.
3. Advise and assist a local board of directors in the establishment of gifted and talented children programs, when requested by the local board.
4. Review program plans and proposed budgets for a gifted and talented children program, in consultation with a gifted and talented children consultant employed by the area education agency, when requested by a local board.
5. When requested by a local board, evaluate the results of a gifted and talented children program and file a written report together with recommendations for improvement or change with the board of directors of the applicable school district, the area education agency and the department of education. The evaluation shall be conducted by three or more members of the advisory council.

89 Acts, ch 135, §49

257.50 Federal assistance — school district responsibilities.

The director of the department of education, in accepting and administering federal funds in accordance with section 256.9, subsection 7, shall upon receiving federal grant moneys under the federal 21st Century Community Learning Center Grant, Title IV, Part B of the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110, designate that a school district be the fiscal agent for an eligible local grant. Whenever possible, the grant applicant school district shall collaborate with a community-based organization, a public or private entity, or a consortium of two or more of such organizations or entities in establishing a community learning center. The department shall give priority to applications for programs serving students determined through research-based methods to be in the greatest need of eligible services. Notwithstanding the provisions of this section, if federal rules or regulations relating to the 21st Century Community Learning Center Grant are adopted that are inconsistent with the provisions of this section, the department of education shall comply with the requirements of the federal rules or regulations.

2002 Acts, ch 1140, §12

NEW section

CHAPTER 257A

FIRST IN THE NATION IN EDUCATION

Repealed effective December 31, 1998,
by 98 Acts, ch 1215, §57, 63
Continuation of first in the nation in education foundation as
nonprofit corporation; rights, properties, and financial
obligations of foundation; 98 Acts, ch 1215, §59, 63

CHAPTER 257B

SCHOOL FUNDS

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257B.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §257B.1 transferred to §257B.1A

257B.1A Permanent fund.

The permanent school fund, the interest of which only can be appropriated for school purposes, shall consist of:

1. Five percent of the net proceeds of the public lands of the state.

2. The proceeds of the sale of the five hundred thousand acres of land granted the state under the eighth section of an Act of Congress passed September 4, 1841, entitled: "An Act to appropriate the proceeds of all sales of public lands, and to grant pre-emption rights".

3. The proceeds of all intestate estates escheated to the state.

4. The proceeds of the sales of the sixteenth section in each township, or lands selected in lieu thereof.

5. All other moneys by law credited to the permanent school fund.

[R60, §1962, 1964; C73, §1837, 1839; C97, §2838; C24, 27, 31, 35, 39, §**4469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.1]

86 Acts, ch 1246, §139, 140; 87 Acts, ch 115, §46; 88 Acts, ch 1278, §24

C93, §257B.1

95 Acts, ch 218, §16

C2001, §257B.1A

Former §257B.1A transferred to §257B.1B

257B.1B Interest for Iowa schools fund — transfer of interest.

An interest for Iowa schools fund is established in the office of treasurer of state. The department of revenue and finance shall deposit interest earned on the permanent school fund in the interest for Iowa schools fund. The treasurer shall transfer moneys in the interest for Iowa schools fund on a quarterly basis as follows:

1. Fifty-five percent of the moneys deposited in the fund to the department of education for allocation to assist school districts in developing reading recovery programs. From the moneys allocated in this subsection, $100,000 shall be distributed to the reading recovery center, and the remaining balance shall be distributed to the area education agencies in the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751 – 1785, in the basic enrollment of grades one through six in the area served by an agency, bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751 – 1785, in the basic enrollments of grades one through six in all of the areas served by area education agencies in the state for the budget year.

2. Forty-five percent of the moneys deposited in the fund to the credit of the international center endowment fund of the international center for gifted and talented education established in section 263.8A.

86 Acts, ch 1246, §141

C87, §302.1A

88 Acts, ch 1012, §2; 88 Acts, ch 1284, §51; 89 Acts, ch 319, §77, 78

C93, §257B.1A

95 Acts, ch 218, §17; 96 Acts, ch 1184, §1, 2; 98 Acts, ch 1215, §30

C2001, §257B.1B

257B.2 Lands and escheats.

The proceeds of all lands sold, and all sums due from escheats, shall be payable to the treasurer of the county in which the lands or escheated estates are situated or found, and the county treasurer shall pay the proceeds to the state treasurer once each month.

[R60, §1965; C73, §1840; C97, §2838; C24, 27, 31, 35, 39, §**4470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.2]

C93, §257B.2

257B.3 Reserved.

257B.4 Division and appraisement.

The board of supervisors may, as preliminary to a sale, authorize the trustees of a township, where the sixteenth section or land selected in lieu of the sixteenth section has not been sold, to lay out the

section into tracts as in their judgment will be for the best interests of the permanent school fund, conforming, as far as the interests of the fund will permit, to the legal subdivisions of the United States surveys, and appraise each tract at what they believe to be its true value, and certify to the board the divisions and appraisements made by them. The division and appraisement shall be approved or disapproved by the board at its first meeting after the report, and in case it disapproves, it may at once order another division and appraisement. If the board of supervisors approves, the county auditor shall make and keep a record of the division, appraisement, and approval; but school lands shall not be sold for less than the appraised value per acre, except as provided. A member of the board of supervisors, county auditor, township trustee, or a person who was engaged in the division and appraisement of the land, shall not be directly or indirectly interested in the purchase of the land; and any sale made, where the parties have an interest in the land, shall be void.

[R60, §1970, 1971; C73, §1845 – 1847; C97, §2840; C24, 27, 31, 35, 39, §**4472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.4]

83 Acts, ch 185, §9, 62

C93, §257B.4

257B.5 Notice — sale.

When the board of supervisors shall offer for sale the sixteenth section or lands selected in lieu thereof, or any portion of the same, or any part of the five-hundred-thousand-acre grant, the county auditor shall give at least forty days' notice, by written or printed notices posted in five public places in the county, two of which shall be in the township in which the land to be sold is situated, and also publish a notice of said sale once each week for two weeks preceding the same in a newspaper published in the county, describing the land to be sold and the time and place of such sale. At such time and place, or at such other time and place as the sale may be adjourned to, the county auditor shall offer to the highest bidder, subject to the provisions of this chapter, and sell, either for cash or one-third cash and the balance on a credit not exceeding ten years, with interest on the same at the rate of not less than three and one-half percent per annum, to be paid at the office of the county treasurer of said county on the first day of January in each year, delinquent interest to bear the same rate as the principal. Such county treasurer shall pay to the state treasurer on the first day of February all interest collected.

[R60, §1971; C73, §1846; C97, §2841; S13, §2841; C24, 27, 31, 35, 39, §**4473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.5]

C93, §257B.5

257B.6 Sale without appraisement.

When the county board of supervisors has once offered for sale school lands held under section 257B.1A in compliance with the requirements of this chapter, and they remain unsold, and it is unable to obtain the appraised value of the lands and, in the opinion of the board, it is for the best interests of the permanent school fund that the lands be sold for a less price, it may instruct the auditor to transmit to the secretary of state a certified copy of its proceedings in relation to the order of sale of the land and subsequent proceedings in relation to the sale, including the action of the township trustees, and the price per acre at which the land had been appraised. The secretary of state shall submit the transcript of the proceedings to the executive council; and if it approves of a sale at a less sum, it shall certify the approval to the auditor of the county from which the transcript came. The certificate shall be recorded in the minute book of the board of supervisors, and the land may again be offered and sold to the highest bidder without again being appraised, after notice given as in case of sales in the first instance.

[C73, §1849; C97, §2842; C24, 27, 31, 35, 39, §**4474;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.6]

83 Acts, ch 185, §10, 62

C93, §257B.6

257B.7 Sale on credit — taxation — waste.

When lands are sold upon a partial credit, the contract therefor shall be at once reduced to writing, signed by the proper parties, recorded in the county where the land is situated, and immediately thereafter filed in the office of the county auditor. Any purchaser or the purchaser's assigns may at any time pay the full amount for lands with accrued interest, and receive from the county auditor a certificate of purchase, which shall be at once transmitted to the secretary of state and will entitle the holder to a patent for the lands, to be issued by the secretary of state and the governor. All school lands sold in pursuance of law shall be subject to taxation from and after the execution and delivery of a contract of purchase. All sales made, where the full price is not paid, shall be subject to the law relative to the prevention or punishment of waste, and in all such cases the township trustees in each township are charged with the duty of preventing the commission of waste upon any school lands lying in their township, and, if attempted, they shall apply by petition for an injunction to stay the same, and if granted the writ shall issue without bond, and the court issuing it may make such order in the premises as shall be equitable and best calculated to prevent threatened injury, and may adjudge damages for any injury done, the costs to abide the event of the action, and the damages adjudged shall be paid to the county treasurer and the county treasurer shall forthwith

pay the same to the state treasurer which shall become a part of the permanent school fund.

[R60, §1972, 1973, 1976 – 1978; C73, §1851, 1852, 1856 – 1858; C97, §2843; C24, 27, 31, 35, 39, §**4475;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.7]

C93, §257B.7

257B.8 Sale of lands bid in.

When lands have been sold and bid in by the state in behalf of the permanent school fund upon a judgment in favor of the fund, the land may be sold in the same manner as other school lands, and when lands have been conveyed to the counties in which they are situated for the use of the permanent school fund, instead of to the state, the conveyance is valid and binding, and upon proper certificates of sales patents shall issue in the same manner as if the conveyances had been properly made to the state.

[C73, §1850; C97, §2844; C24, 27, 31, 35, 39, §**4476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.8]

83 Acts, ch 185, §11, 62

C93, §257B.8

257B.9 Cash or collateral security.

When, in the judgment of the board of supervisors, school lands held under section 257B.1A are of such a character that a sale upon partial credit would be unsafe or incompatible with the interest of the permanent school fund, and especially in the case of timbered lands, the board of supervisors may require the entire purchase money in advance; or if the board sells the land upon a partial credit, it shall require good collateral security for the payment of the part upon which credit is given.

[R60, §1974; C73, §1853; C97, §2845; C24, 27, 31, 35, 39, §**4477;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.9]

83 Acts, ch 185, §12, 62

C93, §257B.9

257B.10 Uniform interest date.

If money is due to the permanent school fund, either for loans or deferred payments of the purchase price of land sold, the interest shall be made payable on the first day of January each year, and if the debtor fails to pay the interest within six months of the date it is due, the entire amount of both principal and interest shall become due, and the county auditor shall report the nonpayment to the county attorney, who shall immediately commence action for the collection of the amount reported as due. This section is a part of a contract made by virtue of this chapter, whether expressed in the contract or not.

[R60, §1975, 1979; C73, §1854, 1855; C97, §2846; C24, 27, 31, 35, 39, §**4478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.10]

83 Acts, ch 185, §13, 62

C93, §257B.10

257B.11 School fund accounts — audit of losses.

The director of revenue and finance shall keep the permanent school fund accounts in books provided for that purpose, separate and distinct from the revenue books. The auditor of state shall audit losses to the permanent school or university fund caused by defalcation, mismanagement, or fraud. The auditor of state shall adopt rules pursuant to chapter 17A as necessary to ascertain the losses.

[R60, §1969; C73, §1842; C97, §2847; C24, 27, 31, 35, 39, §**4479;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.11]

83 Acts, ch 185, §14, 62; 92 Acts, ch 1156, §12

C93, §257B.11

94 Acts, ch 1023, §45

257B.12 Bonds to cover losses.

When any sum not less than one thousand dollars shall be so audited and so become a debt of the state to the fund, as provided by the Constitution, the auditor of state shall issue the bond or bonds of the state in favor of the fund, bearing interest at a rate not exceeding that permitted by chapter 74A, payable semiannually on the first day of January and July after issuance, and the amount to pay the interest as it becomes due is appropriated out of any funds in the state treasury.

[C73, §1843; C97, §2847; C24, 27, 31, 35, 39, §**4480;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.12]

C93, §257B.12

Constitution, Art. VII, §3

257B.13 and 257B.14 Reserved.

257B.15 Management.

Property and money accrued to the permanent school fund shall be managed and controlled by the treasurer of state, and the treasurer of state is responsible for the safekeeping, investment, reinvestment and disbursement of the property and money.

[R60, §1980; C73, §1859, 1860; C97, §2848; C24, 27, 31, 35, 39, §**4483;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.15]

83 Acts, ch 185, §15, 62

C93, §257B.15

257B.16 Actions.

Actions for and in behalf of the fund may be brought in the name of the state for the use of the permanent school fund, by the attorney general.

[C73, §1860; C97, §2848; C24, 27, 31, 35, 39, §**4484;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.16]

83 Acts, ch 185, §16, 62

C93, §257B.16

257B.17 Liability of county.

Each county is liable for losses upon loans of the permanent school fund, principal or interest, made in the county, unless the loss was not occasioned by reason of a default of its officers or by taking insufficient or imperfect securities, or from a failure to bid at an execution sale the full amount of the judgment and costs.

[C73, §1860; C97, §2848; C24, 27, 31, 35, 39, §**4485;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.17]

83 Acts, ch 185, §17, 62

C93, §257B.17

257B.18 Exemption of county.

All claims for exemption from liability on account of losses shall be examined into and adjusted by the director of revenue and finance, upon proof submitted to the director in writing in behalf of the county within three months after the county auditor shall be advised by the director of the director's readiness to receive the proof. In the absence of evidence, or if that submitted is insufficient, the loss may be charged against the county and be conclusive, but if found sufficient, the director of revenue and finance shall present the facts in the report to the next general assembly.

[C73, §1860; C97, §2848; C24, 27, 31, 35, 39, §**4486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.18]

C93, §257B.18

257B.19 Loans.

The permanent school fund shall be loaned out or invested by the treasurer of state as it comes into the treasurer's hands.

[R60, §1981; C73, §1861; C97, §2849; S13, §2849; C24, 27, 31, 35, 39, §**4487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.19]

83 Acts, ch 185, §18, 62

C93, §257B.19

257B.20 Investment of permanent fund.

The permanent school fund which is, at any time, in the custody of the treasurer of state, shall be invested as follows:

1. In bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

2. In bonds, or other evidences of indebtedness of the state of Iowa, or of any school district, county, township, city or other political subdivision of the state of Iowa which are issued pursuant to law.

3. In savings accounts or in time deposits in Iowa banks approved as depositories by the executive council.

4. In any investments authorized for the Iowa public employees' retirement system in section 97B.7A, except that investment in common stocks shall not be permitted.

[C39, §**4487.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.20]

C93, §257B.20

2001 Acts, ch 68, §16, 24

2001 amendment to subsection 4 takes effect July 1, 2002; 2001 Acts, ch 68, §24

Subsection 4 amended

257B.21 through 257B.27 Reserved.

257B.28 Statute of limitation.

Lapse of time is not a bar to action to recover a part of the permanent school fund, and it does not prevent the introduction of evidence in an action, except as provided in sections 614.29 to 614.38.

[C73, §1880, 2542; C97, §2852; C24, 27, 31, 35, 39, §**4495;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.28]

83 Acts, ch 185, §19, 62

C93, §257B.28

257B.29 Payments.

Payments to the permanent school fund upon contracts, or loans of another nature, shall be made to the treasurer of the county upon a certificate from the auditor showing the amount due.

[R60, §1986; C73, §1867; C97, §2853; C24, 27, 31, 35, 39, §**4496;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.29]

83 Acts, ch 185, §20, 62

C93, §257B.29

257B.30 Release of mortgage.

The auditor shall, when the debt is paid, release any mortgage or issue a certificate of purchase, as the case may be, and report the same to the board of supervisors at its next meeting, which report shall be carried into the records of the board.

[R60, §1986; C73, §1867; C97, §2853; C24, 27, 31, 35, 39, §**4497;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.30]

C93, §257B.30

257B.31 School fund account — settlement.

The auditor shall also keep, in books to be provided for that purpose, an account to be known as the permanent school fund account, in which a memorandum of the notes, mortgages, bonds, money, and assets which may come into the auditor's hands and those of the treasurer shall be entered, and separate accounts of principal and interest be kept. The county treasurer shall also keep an account and record of all school funds coming into the county treasurer's hands. Settlements of the account shall be made with the board of supervisors at its January and June sessions, and the settlements shall be recorded with the proceedings of the board.

[R60, §1990, 1991; C73, §1876, 1877; C97, §2853; C24, 27, 31, 35, 39, §**4498;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.31]
83 Acts, ch 185, §21, 62
C93, §257B.31

257B.32 Notice of default.
When outstanding contracts for the sale of school lands or notes for money of the permanent school fund loaned, or interest on the permanent school fund, are due, the auditor shall by mail at once notify the debtor to make payment within three months.
[C73, §1872, 1873; C97, §2854; C24, 27, 31, 35, 39, §**4499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.32]
83 Acts, ch 185, §22, 62
C93, §257B.32

257B.33 Suit — attorney fee.
If the debtor does not comply with the notice, the auditor shall report the noncompliance to the county attorney, who shall bring an action to recover the debt, and an injunction may issue for cause, without bond when so petitioned, and there shall be allowed in the judgment, entered and taxed as a part of the costs in the case, a reasonable sum as compensation to plaintiff's attorney, not exceeding the amount provided by law for attorneys' fees.
[C73, §1873; C97, §2854; C24, 27, 31, 35, 39, §**4500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.33]
90 Acts, ch 1168, §42
C93, §257B.33
Attorney fees, §625.22

257B.34 Bid at execution sale.
Upon a sale of lands under an execution founded upon a permanent school fund claim or right, the auditor shall bid a sum required by the interests of the fund, and, if struck off to the state, it shall be thereafter treated the same as other lands belonging to the fund.
[C73, §1874; C97, §2854; C24, 27, 31, 35, 39, §**4501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.34]
83 Acts, ch 185, §23, 62
C93, §257B.34

257B.35 Sheriff's deed to state.
When lands have been bid in by the county for the state under foreclosure of permanent school fund mortgages and the time for redemption has expired, a sheriff's deed shall be issued to the state for the use and benefit of the permanent school fund. The county auditor shall file the deed for record in the office of the county recorder who shall record the deed without fee and return it when recorded to the county auditor who shall then forward it to the secretary of state. The secretary of state shall record the deed and then file it with the director of revenue and finance.
[C73, §1881; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §**4502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.35]
83 Acts, ch 185, §24, 62
C93, §257B.35

257B.36 Resale by state.
All lands now acquired under permanent school fund foreclosure proceedings shall be resold within ten years from January 1, 1939, and lands acquired after such date shall be resold within six years from date of foreclosure. Such land shall be appraised, advertised, and sold in the manner provided for the appraisement, advertisement, sale and conveyance of the sixteenth section or lands selected in lieu thereof.
[S13, §2855; C24, 27, 31, 35, 39, §**4503;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.36]
C93, §257B.36
Appraisement, §257B.4

257B.37 Proceeds on resale.
When a resale is made, the county auditor shall notify the director of revenue and finance, who shall thereupon charge the county with the full amount of the resale, except that when the lands are sold for more than the unpaid portion of the principal, the excess shall be applied to reimburse the county for the costs of foreclosure and the interest paid by the county to the state by reason of default of payment of same by the makers of the notes, previous to the time when the right of redemption has expired, not to exceed three years.
[C73, §1881, 1882; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §**4504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.37]
C93, §257B.37

257B.38 Excess — loss borne by county.
An excess over the amount of the unpaid portion of the principal, costs of foreclosure, and interest on the principal, shall inure to the county and be credited to the general county fund. If the lands are sold for a less amount than the unpaid portion of the principal, the loss shall be sustained by the county, and the board of supervisors shall at once order the amount of the loss transferred from the general fund of the county to the permanent school fund account.
[C73, §1881; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §**4505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.38]
83 Acts, ch 185, §25, 62
C93, §257B.38

257B.39 Report as to sales — interest.
County auditors shall report, on or before January 1 of each year, to the director of revenue and finance the amount of the sales and resales made during the previous year, of the sixteenth section,

five-hundred-thousand-acre grant, and escheat estates, and the director of revenue and finance shall charge them to the counties with interest from the date of the sale or resale to January 1, at the rate of three percent per annum.

[C73, §1881; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §**4506;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.39]

83 Acts, ch 185, §26, 62

C93, §257B.39

94 Acts, ch 1173, §11

257B.40 Interest charged to counties.

The director of revenue and finance shall also, on the first day of January, charge to each county having permanent school funds under its control, interest thereon at the rate of three percent per annum for the preceding year, or such part thereof as such funds shall have been in the control of the county, which shall be taken as the whole amount of interest due from such county. All interest collected above the three percent charged by the state shall be transferred to the general county fund.

[C73, §1882; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §**4507;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.40]

C93, §257B.40

257B.41 Uncollected interest.

If any county fails or refuses to collect the amount of interest due the state, the deficiency shall be paid to the state from the general county fund. Any county delinquent in the payment of interest due the state shall be charged one percent per month on the amount delinquent until paid.

[C73, §1882; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §**4508;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.41]

C93, §257B.41

257B.42 Report as to rents.

By January 1 of each year, county auditors shall report to the director of revenue and finance the amount of rents collected during the preceding year on unsold school lands and the director shall include the amount reported in the semiannual apportionment of interest.

[C73, §1884; C97, §2855; S13, §2855; C24, 27, 31, 35, 39, §**4509;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.42]

83 Acts, ch 185, §27, 62

C93, §257B.42

94 Acts, ch 1173, §12

257B.43 Reserved.

257B.44 Penalty against county auditor.

A county auditor failing or neglecting to perform required duties under this chapter, is liable to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of supervisors. The judgment shall be entered against the party and the party's sureties, and the proceeds shall be paid to the treasurer of state for deposit in the general fund of the state.

[R60, §1992; C73, §1878; C97, §2857; C24, 27, 31, 35, 39, §**4511;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §302.44]

83 Acts, ch 185, §28, 62; 83 Acts, ch 186, §10066, 10201, 10204

C93, §257B.44

CHAPTER 257C

ADVANCE FUNDING AUTHORITY

Iowa advance funding authority is included in the department of education; §7E.7, chapter 256
This chapter not enacted as a part of this title; transferred from chapter 442A in Code 1993
See §421.7 pertaining to interest rates

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257C.1 Title.

This chapter may be cited as the *"Iowa Advance Funding Authority Act"*.

85 Acts, ch 34, §1
CS85, §442A.1
C93, §257C.1

257C.2 Legislative findings.

The general assembly finds as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa and the improvement of the financing procedures for Iowa's schools.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. Iowa schools face a serious and increasing problem with cash flow difficulties caused, among other factors, by increasing reliance on state school foundation aid, delays in the payment of state school foundation aid, and the periodic payment of property taxes for school purposes.

4. As a result of their increasing cash flow difficulties, Iowa schools have had to borrow on a short-term basis larger amounts of funds more often, thus increasing their borrowing costs significantly.

5. The short-term borrowing costs of Iowa schools are a direct burden on the taxpayers of the state.

6. It is necessary to create the authority to provide a means for Iowa schools to reduce substantially or eliminate their short-term borrowing costs and thus reduce costs to the taxpayers.

7. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

85 Acts, ch 34, §2
CS85, §442A.2
C93, §257C.2

257C.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Authority"* means the Iowa advance funding authority created by this chapter.

2. *"Board"* means the governing board of the authority created in section 257C.5.

3. *"Bonds"* means bonds, notes and other obligations issued by the authority pursuant to this chapter.

4. *"Notes"* means notes, warrants, loan agreements, and all other forms of evidence of indebtedness now or hereafter authorized for schools. *"Purchase of notes"* includes lending money to schools or any other forms of financing of schools by the authority.

5. *"School"* includes each public school district as defined in chapter 274, area education agency as defined in chapter 273 and community college as defined in chapter 260C.

85 Acts, ch 34, §3
CS85, §442A.3
90 Acts, ch 1253, §121
C93, §257C.3

257C.4 Iowa advance funding authority.

The Iowa advance funding authority is created. It is a public instrumentality and agency of the state exercising public and essential governmental functions, established for the purposes of reducing the cash flow difficulties faced by Iowa schools, improving the financial procedures of Iowa schools, and reducing the short-term borrowing costs of Iowa schools.

85 Acts, ch 34, §4
CS85, §442A.4
C93, §257C.4

257C.5 Governing board.

1. The powers of the authority are vested in and exercised by a board consisting of five members, including the treasurer of state, the director of the department of education, and the director of the department of management, and two members appointed by the governor, subject to confirmation by the senate. The state officials may designate representatives to serve on the board for them. As far as possible, the governor shall appoint members who are knowledgeable or experienced in the school systems of this state or in finance.

2. The governor shall appoint the members of the authority for terms of six years, beginning and ending as provided in section 69.19. An appointed member of the authority may be removed from office by the governor for misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing are expressly waived in writing by the member.

3. Three members of the board constitute a quorum.

4. The appointed members of the authority receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The appointed members of the authority shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or when a majority of the members so request.

7. The members shall elect a chairperson, vice chairperson and secretary annually, and other of-

ficers as they determine necessary.

85 Acts, ch 34, §5
CS85, §442A.5
88 Acts, ch 1134, §83; 90 Acts, ch 1256, §47
C93, §257C.5
Confirmation, see §2.32

257C.6 General powers.

The board has all of the general powers needed to carry out its purposes and duties and exercise its specific powers, including but not limited to the power to:

1. Issue its negotiable bonds as provided in this chapter in order to finance its programs.
2. Have perpetual succession as a public authority.
3. Sue and be sued in its own name.
4. Make and execute agreements, contracts, and other instruments, with any public or private entity.
5. Hire and compensate legal counsel, notwithstanding chapter 13.
6. Invest or deposit moneys of the authority, subject to any agreement with bondholders, in any manner determined by the authority, notwithstanding chapters 12B and 12C.
7. Procure insurance and other credit enhancement arrangements including but not limited to municipal bond insurance and letters of credit.
8. Fix and collect fees and charges for its services.
9. Accept appropriations, gifts, grants, loans, or other aid from public or private entities.
10. Adopt rules consistent with this chapter, and subject to chapter 17A.
11. The authority is exempt from chapter 18.

85 Acts, ch 34, §6
CS85, §442A.6
C93, §257C.6

257C.7 Staff.

The executive director and staff of the Iowa finance authority, pursuant to chapter 16, shall also serve as executive director and staff of the advance funding authority, respectively. The executive director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

85 Acts, ch 34, §7; 85 Acts, ch 252, §56
CS85, §442A.7
C93, §257C.7

257C.8 Advance funding program.

1. The authority shall establish a statewide advance funding program for the purchase from schools of notes issued in anticipation of the receipt of moneys for school purposes or for making loans to schools to alleviate cash flow difficulties and to otherwise improve the financial well-being of the schools.

2. The authority may issue its bonds and use the proceeds from the bonds for the purpose of making loans to or purchasing the notes of any school for the use of the various funds of the school for any lawful school purpose excluding debt service. Bonds issued pursuant to this section may be secured by a pledge of payments made to the authority by the school, to be derived from the receipt of anticipated funds evidenced by the notes of the school, including a pooling of payments of notes from two or more participating schools. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds.

3. The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds, the establishment of reserves to secure its bonds, the costs of issuance of its bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

4. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the authority and are not an indebtedness of this state, and this state is not liable on the bonds. Bonds issued under this chapter shall contain on their face a statement that the state is not liable.

5. The proceeds of bonds issued by the authority and not required for immediate disbursement may be invested in any investment approved by the board and specified in the trust indenture or resolution pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

6. The bonds of the authority shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, as the board prescribes in the resolution authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the board. Chapters 73A, 74, 74A and 75 do not apply to their sale or issuance.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by resolution of the board.

7. The bonds of the authority are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying

on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

8. Bonds must be authorized by a resolution of the board. However, a resolution authorizing the issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds by an appropriate certificate of the authorized officer.

85 Acts, ch 34, §8
CS85, §442A.8
C93, §257C.8

257C.9 Moneys of the authority.

1. Moneys of the authority, except as otherwise provided in this chapter, shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall be secured in the manner determined by the authority. The auditor of state or the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing, and the authority is not required to pay a fee for the examination.

2. The authority may contract with the holders of its bonds as to the custody, collection, security, investment, and payment of moneys of the authority, of moneys held in trust or otherwise for the payment of bonds, and to carry out the contract. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of the moneys may be secured in the same manner as moneys of the authority, and banks and trust companies may give security for the deposits.

3. Subject to a contract with bondholders, and to the approval of the director of revenue and finance, the authority shall prescribe a system of accounts.

4. The authority shall submit to the governor, the auditor of state, the department of management, and the department of revenue and finance, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

85 Acts, ch 34, §9
CS85, §442A.9
C93, §257C.9
94 Acts, ch 1023, §46

257C.10 Powers not restricted — law complete in itself.

This chapter is not a restriction or limitation on powers which the authority or a school has under the laws of this state, but is cumulative to any such powers. No proceedings, referendum, notice, or approval is required for the creation of the authority or the issuance of obligations or an instrument as security except as provided in this chapter.

85 Acts, ch 34, §10
CS85, §442A.10
C93, §257C.10

257C.11 Limitation of liability.

Members of the board and persons acting in the authority's behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties given in this chapter.

85 Acts, ch 34, §11
CS85, §442A.11
C93, §257C.11

257C.12 Conflicts of interest.

1. If a member or employee other than the executive director of the authority has an interest, either direct or indirect, in a contract to which the authority is or is to be a party, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of a meeting of the authority. The member having the interest shall not participate in action by the board with respect to that contract.

2. This section does not limit the right of a member of the board to acquire an interest in bonds, or limit the right of a member to have an interest in a bank or other financial institution in which the funds of the authority are deposited or which is acting as trustee or paying agent under a trust indenture to which the authority is a party.

3. The executive director shall not have an interest in a bank or other financial institution in which the funds of the authority are deposited or which is acting as trustee or paying agent under a trust indenture to which the authority is a party. The executive director shall not receive, in addition to fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, recommending, or aiding in any loan made by the authority, nor shall the executive director be pecuniarily interested, either as principal, co-principal, agent, or beneficiary, either directly or indirectly or through any substantial interest in any other corporation or business unit, in any loan.

85 Acts, ch 34, §12
CS85, §442A.12
C93, §257C.12

257C.13 Exemption from competitive bid laws.

The authority and contracts made by it in carrying out its public and essential governmental functions under sections 257C.6 and 257C.8 are exempt from the laws of the state which provide for competitive bids and hearings in connection with contracts.

85 Acts, ch 34, §13
CS85, §442A.13
C93, §257C.13

257C.14 Annual report.

1. The authority shall submit to the governor and the general assembly, not later than December 31 of each year, a report setting forth:

a. Its operations and accomplishments.

b. Its receipts and expenditures during the previous fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.

d. A schedule of its bonds outstanding at the end of the previous fiscal year, together with a statement of the amounts redeemed and issued during the fiscal year.

e. A statement of its proposed and projected activities.

f. Recommendations to the governor and general assembly, as it deems necessary.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period, in attaining the goals.

85 Acts, ch 34, §14
CS85, §442A.14
C93, §257C.14

257C.15 Assistance by state officers, agencies and departments.

State officers and state departments and agencies may render services to the authority within their respective functions as requested by the authority.

85 Acts, ch 34, §15
CS85, §442A.15
C93, §257C.15

257C.16 Authority of schools.

A school may issue and sell or pledge its notes to the authority or the authority's designated agent or trustee. Schools may enter into contracts and agreements with the authority to effectuate the purposes of this chapter. In acting pursuant to this section, schools are exempt from all laws of the state which provide for competitive bids and hearings in connection with such sales, pledges, contracts and agreements.

85 Acts, ch 34, §16
CS85, §442A.16
C93, §257C.16

257C.17 Liberal interpretation.

This chapter, being necessary for the welfare of this state and its people, shall be liberally construed to effect its purpose.

85 Acts, ch 34, §17
CS85, §442A.17
C93, §257C.17

CHAPTER 258

VOCATIONAL EDUCATION

258.1 Federal Act accepted.
258.2 State board for vocational education.
258.3 Personnel.
258.3A Duties of board.
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258.12 Custodian of funds — reports.
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258.15 State plan continued. Repealed by 94 Acts, ch 1091, §25.
258.16 Regional vocational education planning boards established — duties.
258.17 Community-based workplace learning program — workstart.
258.18 School-to-work transition system. Repealed by 95 Acts, ch 196, §3.

258.1 Federal Act accepted.

The provisions of the Act of Congress entitled "An Act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and in the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure", approved February 23, 1917, [39 Stat. L. 929; 20 U.S.C., ch 2] and all amendments thereto and the benefit of all funds appropriated under said Act and all other Acts pertaining to vocational education, are accepted.

[C24, 27, 31, 35, 39, §**3837;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.1]

258.2 State board for vocational education.

The state board of education shall constitute the board for vocational education.

[C24, 27, 31, 35, 39, §**3838;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.2]

258.3 Personnel.

The director of the department of education shall appoint and direct the work of personnel as necessary to carry out this chapter.

[C24, 27, 31, 35, 39, §**3839;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.3]

85 Acts, ch 212, §21; 86 Acts, ch 1245, §1425

258.3A Duties of board.

The board shall:

1. Cooperate with the federal board for vocational education in the administration of the Act of Congress.

2. Adopt rules prescribing standards for teachers of agricultural, industrial, and commercial subjects and home economics in approved schools, departments, and classes.

3. Adopt rules prescribing standards for approval of schools, departments, and classes; area vocational-technical high schools and programs; and community colleges with vocational programs; and practitioner preparation schools, departments, and classes, applying for federal and state moneys under this chapter.

86 Acts, ch 1245, §1426; 89 Acts, ch 265, §30; 90 Acts, ch 1253, §8

Additional duties, see §289.5

258.4 Duties of director.

The director of the department of education shall:

1. Co-operate with the federal board for vocational education in the administration of the Act of Congress.

2. Provide for making studies and investigations relating to prevocational and vocational training in agricultural, industrial, and commercial subjects, and home economics.

3. Promote and aid in the establishment in local communities and public schools of departments and classes giving instruction in subjects listed in subsection 2.

4. Co-operate with local communities in the maintenance of schools, departments, and classes.

5. Make recommendations to the board of educational examiners relating to the enforcement of rules prescribing standards for teachers of subjects listed in subsection 2 in accredited schools, departments, and classes.

6. Co-operate in the maintenance of practitioner preparation schools, departments, and classes, supported and controlled by the public, for the training of teachers and supervisors of subjects listed in subsection 2.

7. Annually review at least twenty percent of the approved vocational programs as a basis for continuing approval to ensure that the programs are compatible with educational reform efforts, are capable of responding to technological change and innovation, and meet the educational needs of students and the employment community. The review shall include an assessment of the extent to which the competencies in the program are being mastered by the students enrolled, the costs are proportionate to educational benefits received, the vocational curriculum is articulated and integrated with other curricular offerings required of all students, the programs would permit students with vocational education backgrounds to pursue other educational interests in a postsecondary institutional setting, and the programs remove barriers for both traditional and nontraditional students to access educational and employment opportunities.

8. Establish a minimum set of competencies and core curriculum for approval of a vocational program sequence that addresses the following: new and emerging technologies; job-seeking, job-keeping, and other employment skills, including self-employment and entrepreneurial skills, that reflect current industry standards, leadership skills, entrepreneurial, and labor-market needs; and the strengthening of basic academic skills.

9. Establish a regional planning process to be implemented by regional planning boards, which utilizes the services of local school districts, community colleges, and other resources to assist local school districts in meeting vocational education standards while avoiding unnecessary duplication of services.

10. Enforce rules prescribing standards for approval of vocational education programs in schools, departments, and classes.

11. Notwithstanding the accreditation process contained in section 256.11, permit school districts, which provide a program which does not meet the standards for accreditation for vocation-

al education, to cooperate with the regional planning boards and contract for an approved program under this chapter without losing accreditation. A school district which fails to cooperate with the regional planning boards and contract for an approved program shall, however, be subject to section 256.11.

12. Notwithstanding the accreditation standard and process contained in section 256.11 for vocational education for students in grades nine through twelve, provide a process that permits school districts to establish community-based workplace learning programs, called *"workstart"* programs, that provide students with competency-based learning experiences that reinforce basic academic skills and include, but are not limited to, new and emerging technologies; job-seeking, job-adaptability, and other employment; and self-employment and entrepreneurial skills that reflect current industry standards and labor-market needs. An approved workstart program may consist of two of the required sequential units in one of the six occupational service areas in grades nine through twelve, and shall be a priority for receipt of vocational education secondary funds.

[C24, 27, 31, 35, 39, §**3840;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.4]

86 Acts, ch 1245, §1427; 89 Acts, ch 265, §31; 89 Acts, ch 278, §3, 4; 90 Acts, ch 1253, §9; 92 Acts, ch 1198, §2

258.5 Reimbursement from federal and state moneys.

If a school corporation maintains an approved vocational school, department, or classes in accordance with the rules adopted by the state board, and rules and standards adopted by the board of educational examiners, and the state plan for vocational education, adopted by the board for vocational education and approved by the United States department of education, the director of the department of education shall reimburse the school corporation at the end of the fiscal year for its expenditures for salaries and authorized travel of vocational teachers from federal and state funds. However, a school corporation shall not receive from federal and state funds a larger amount than one-half the sum which has been expended by the school corporation for that particular type of program. If federal and state funds are not sufficient to make the reimbursement to the extent provided in this section, the director shall prorate the respective amounts available to the corporations entitled to reimbursement.

The director may use federal funds to reimburse approved practitioner preparation schools, departments, or classes for the training of teachers of agriculture, home economics, trades and industrial education, distributive education, and for the training of guidance counselors.

[C24, 27, 31, 35, 39, §**3841, 3844;** C46, 50, §258.5, 258.8; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.5]

86 Acts, ch 1245, §1428; 89 Acts, ch 265, §32

258.6 Definitions.

"Approved school, department, or class" means a school, department, or class approved by the board as entitled under this chapter to federal and state moneys for the salaries and authorized travel of teachers of vocational subjects. *"Approved practitioner preparation school, department, or class"* means a school, department, or class approved by the board as entitled under this chapter to federal moneys for the training of teachers of vocational subjects.

[C24, 27, 31, 35, 39, §**3842;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.6]

89 Acts, ch 265, §33

258.7 and 258.8 Repealed by 2001 Acts, ch 159, § 18.

258.9 Local advisory council.

The board of directors of a school district that maintains a school, department, or class receiving federal or state funds under this chapter shall, as a condition of approval by the state board, appoint a local advisory council for vocational education composed of public members with emphasis on persons representing business, agriculture, industry and labor. The local advisory council shall give advice and assistance to the board of directors in the establishment and maintenance of schools, departments, and classes that receive federal or state funds under this chapter. Local advisory councils may be organized according to program area, school, community, or region. The state board shall adopt rules requiring that the memberships of local advisory councils fairly represent each sex and minorities residing in the school district. Members of an advisory council shall serve without compensation.

[C24, 27, 31, 35, 39, §**3845;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.9]

86 Acts, ch 1245, §1431

258.10 Powers of district boards.

1. The board of directors of a school district may carry on prevocational and vocational instruction in subjects relating to agriculture, commerce, industry, and home economics, and pay the expense of such instruction in the same way as the expenses for other subjects in the public schools are paid.

2. The board of directors of a school district may establish and maintain school-to-work programs including alternative learning opportunities through which students may obtain skills or training outside the classroom. School-to-work programs include, but are not limited to, the following:

a. Short-term job shadowing opportunities for students to explore career interests by observing work at a workplace or to include a series of visits to various workplaces and time spent with individual workers to observe specific jobs.

b. Structured work experiences integrating school and work-based experiences in an internship that may be an extension of a job shadowing experience.

c. Mentoring experiences providing students with a formal relationship with a worksite role model who shares career insights and teaches students specific work-related skills.

d. Career-oriented work experiences tied to school lessons through formal or informal training agreements, formal learning plans or mentoring, by workplace personnel who may be paid or unpaid, and which may earn students credit toward graduation.

e. Structured on-the-job training or apprenticeships for students who are enrolled in a technical or professional program that leads to a high school diploma, advanced certificate of mastery, or associate degree.

f. Work experiences available to students in school and community placements directly supervised by a school district or community college staff member.

3. The board may provide workers' compensation coverage by insuring, or self-insuring as provided in section 87.4, students participating in unpaid school-to-work programs. A school district's liability to students injured while participating in an unpaid school-to-work program is as provided in section 85.20.

[C24, 27, 31, 35, 39, §**3846;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.10]

97 Acts, ch 37, §6

258.11 Salary and expenses for administration.

The director may make expenditures for salaries of assistants, actual expenses of the board and the director and the state council incurred in the discharge of their duties, and other expenses as necessary to the proper administration of this chapter.

[C24, 27, 31, 35, 39, §**3847;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.11]

86 Acts, ch 1245, §1432; 88 Acts, ch 1134, §60

258.12 Custodian of funds — reports.

The treasurer of state shall be custodian of the funds paid to the state from the appropriations made under said Act of Congress, and shall disburse the same on vouchers audited as provided by law. The treasurer of state shall report the receipts and disbursements of said funds to the general assembly at each biennial session.

[C24, 27, 31, 35, 39, §**3848;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.12]

258.13 Biennial report.

The director of the department of education shall embrace in the director's biennial report a full report of all receipts and expenditures under this chapter, together with such observations relative to vocational education as may be deemed of value.

[C24, 27, 31, 35, 39, §**3849;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §258.13]

85 Acts, ch 212, §21, 23

258.14 Vocational youth organization fund. Repealed by 94 Acts, ch 1091, § 25.

258.15 State plan continued. Repealed by 94 Acts, ch 1091, § 25.

258.16 Regional vocational education planning boards established — duties.

1. Regional planning boards are established to assist school corporations in providing an effective, efficient, and economical means of delivering sequential vocational educational programs for students in grades seven through fourteen, which use both local school district services and merged area school services.

2. A regional planning board shall be established in each merged area, as determined by the state board for vocational education. Each regional planning board shall have as members persons who are representatives from the merged area school board of directors, the area education agency board of directors, the local councils on vocational education, the local school districts' boards of directors, and vocational education certificated instructional personnel.

3. The regional planning boards shall do all of the following:

a. Provide for the participation of merged area schools and the local school districts in the delivery of vocational education in the region, as well as for the participation of representatives of the business and industry community.

b. Determine the occupational needs of students based on labor-market, entrepreneurial, and self-employment opportunities and demand within the region, the state, the nation, and in other countries.

c. Provide for development of a five-year plan addressing the delivery of quality vocational education instructional programs pursuant to section 256.11, subsection 4, and subsection 5, paragraph *"h"*, and section 260C.14, subsection 1. The plan shall be updated annually.

d. Implement the procedures and contract, at the request of the director of the board of vocational education, for the delivery of vocational education programs and services pursuant to section 256.11, subsection 4, and subsection 5, paragraph *"h"*, and section 260C.14, subsection 1.

89 Acts, ch 278, §5

258.17 Community-based workplace learning program — workstart.

1. A community-based workplace learning program, called *"workstart"*, is established as a voluntary collaborative educational program between business and Iowa's secondary and postsecondary education system designed to provide the means by which students can be better prepared to enter the workforce. The program is to provide all participating high school students with academic skills and appropriate competency-based job-specific skills needed to enter high performance workplace employment through a jointly planned and supervised instructional and worksite-based training program that is articulated with postsecondary advanced programs of preparation, United States department of labor-approved apprenticeship programs, and other appropriate job training programs. Schools and school districts are encouraged to work with current employers of students attending instruction in the schools or school districts in order to articulate educational programming with the work experiences of the students. The workstart program is designed to prepare students for employment in occupations which not only require high skill levels but which also offer students opportunities within those occupations for career and personal advancement.

2. Each school or school district that desires to establish a workstart program shall appoint a local employment and training council, the members of which shall serve at the pleasure of the board of directors of the district or the authorities in charge of the nonpublic school. The majority of the council members shall be local secondary and postsecondary educators. Other council members shall include, but are not limited to, members of the business community and chamber of commerce, appropriate labor representatives, parents, and representatives from any local municipal, county, state, or federal job placement or training agencies. The council shall identify and assess all of the following:

a. The types of high performance workplace employment opportunities for individuals who live in the community.

b. The skills, knowledge, and attitudes required by employers for placement in entry level and advanced positions.

c. The private and institutional resources necessary and available to provide the appropriate high school training and advanced educational offerings for persons seeking to acquire job skills for the positions.

The council, in identifying and assessing high performance workplace employment opportunities, shall consult with local and regional job placement organizations and take into consideration possible job placement trends and opportunities that may become available to program participants. The council shall consult with the vocational regional planning board or consortia to determine what educational resources are available within the merged area and to ascertain the occupational needs of local students. The council shall summarize those jobs, skills, and resources identified and assessed and develop a proposed plan for utilization of available resources to permit the acquisition of those skills in a workstart program. In addition to any agreements with local businesses, the proposed plan for a workstart program shall include an articulated, sequential plan that coordinates and complements the curricula and training available in a secondary education setting with the curricula and training available at the community or private college or other postsecondary training program level. The council shall forward the proposed plan for a workstart program to the board of directors of the school district, or the authorities in charge of the nonpublic school, for review, modification, and approval.

3. Each workstart program shall consist of two phases, each of which shall be supervised by an appropriately licensed education practitioner: the preparation phase and the workplace phase.

a. The preparation phase of a workstart program is a school-based program that provides students with basic and advanced academic skills that will be necessary to perform in a vocational service area chosen by the student. The preparation phase shall also include instruction in skills that are necessary to succeed in high performance workplace employment. The preparation phase of a workstart program shall be directed by education practitioners possessing the appropriate licensing and endorsements for the vocational service area.

b. The workplace phase of a workstart program shall consist of an intensive workplace-specific training program that may be conducted at a worksite or both at a worksite and in the school setting. The workplace phase of a workstart program shall be coordinated by an education practitioner possessing the appropriate license and endorsements for the vocational service area, and may be directed at the worksite by persons employed in the occupational training area which has been selected by the student.

Both the preparation and workplace phases shall be articulated with United States department of labor-approved apprenticeship programs and other postsecondary educational and training offerings that permit participating students to obtain advanced training and education that may be necessary upon graduation from the workstart secondary education program or to obtain an advancement in an occupational field chosen by the student during the student's participation in a workstart secondary education program.

4. Each workstart program shall include a written agreement by the school or school district

with one or more businesses from the surrounding community to provide workplace-specific training and learning programs which are related to the skills needed to succeed in those occupational areas. The proposed plan for implementation of the workstart program shall include a copy of the written agreement between the school or school district and the business or businesses and a business support component, which shall consist of financial or in-kind support, or both financial and in-kind support, from the businesses that have entered into the agreement with the school or school district. The plan may provide for the utilization of phase III and other available school funds in the establishment of the program. A workstart program is a comprehensive school transformation program under section 294A.14.

5. The state board of education shall adopt rules pursuant to chapter 17A to provide for the implementation of this section.

6. The department of education shall adopt guidelines for the establishment of workstart programs. Guidelines may include, but are not limited to, acceptable levels of business financial participation in a workstart program, maximum hour and workload guidelines for education practitioners working in or supervising a workstart program, and maximum and minimum class size guidelines for the preparation and workplace phases of a workstart program.

7. A school or local school district that implements a workstart program shall annually conduct a survey which counts the number of students who participate in, or graduate from, the program that are actually employed in an occupational area for which they received training. The school or school district shall disseminate the results of the surveys to the local employment and training councils for the school or school district and the department of education.

92 Acts, ch 1198, §3

258.18 School-to-work transition system. Repealed by 95 Acts, ch 196, § 3. See § 256.38.

CHAPTER 258A

CONTINUING PROFESSIONAL AND OCCUPATIONAL EDUCATION — LICENSEE DISCIPLINARY PROCEDURE

Transferred to chapter 272C

CHAPTER 259

VOCATIONAL REHABILITATION

259.1 Acceptance of federal Act.
259.2 Custodian of funds.
259.3 Board and division.
259.4 Duties of division.
259.5 Report to governor.
259.6 Gifts and donations.
259.7 Fund.
259.8 Report of gifts.
259.9 Agreement continued.

259.1 Acceptance of federal Act.

The state of Iowa, through its legislative authority, accepts the provisions and benefits of the federal Rehabilitation Act of 1973, as amended and codified in 29 U.S.C. § 701 et seq.

[C24, 27, 31, 35, 39, §**3850;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §259.1]

85 Acts, ch 23, §1; 89 Acts, ch 1, §1; 94 Acts, ch 1109, §4

259.2 Custodian of funds.

The treasurer of state is custodian of moneys received by the state from appropriations made by the Congress of the United States for the vocational rehabilitation of individuals with disabilities, and may receive and provide for the proper custody of the moneys and make disbursement of them upon the requisition of the director of the department of education.

The treasurer of state is appointed custodian of moneys paid by the federal government to the state for the purpose of carrying out the agreement relative to making determinations of disability under Title II and Title XVI of the federal Social Security Act as amended, 42 U.S.C. ch 7, and may receive the moneys and make disbursements of them upon the requisition of the director of the de-

partment of education.

[C24, 27, 31, 35, 39, §**3851;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §259.2]

86 Acts, ch 1245, §1434; 94 Acts, ch 1109, §5

259.3 Board and division.

The division of vocational rehabilitation services is established in the department of education. The director of the department of education shall cooperate with the United States secretary of education in carrying out the federal law cited in sections 259.1 and 259.2 providing for the vocational rehabilitation of individuals with disabilities. The state board of education shall adopt rules under chapter 17A for the administration of this chapter.

[C24, 27, 31, 35, 39, §**3852;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §259.3]

86 Acts, ch 1237, §14; 86 Acts, ch 1245, §1435; 94 Acts, ch 1109, §6; 96 Acts, ch 1127, §3

259.4 Duties of division.

The division of vocational rehabilitation services shall:

1. Cooperate with the secretary of education in the administration of the federal law cited in section 259.1.

2. Administer legislation pursuant to the federal law cited in section 259.1, and direct the disbursement and administer the use of funds provided by the federal government and this state for the vocational rehabilitation of individuals with disabilities.

3. Utilize in the rehabilitation of individuals with disabilities existing educational and other facilities as are advisable and practicable, including public and private educational institutions, community rehabilitation programs, public or private establishments, plants, factories, and the services of individuals specially qualified for the instruction and vocational rehabilitation of individuals with disabilities.

4. Promote the establishment and assist in the development of training agencies for the vocational rehabilitation of individuals with disabilities.

5. Cooperate with an agency of the federal government or of the state, or of a county or other municipal authority within the state, or any other agency, public or private, in carrying out the purposes of this chapter.

6. Do those things necessary to secure the rehabilitation of those individuals entitled to the benefits of this chapter, including those individuals with significant disabilities.

7. Provide rehabilitation services to individuals with significant disabilities who are homebound, and other individuals with significant disabilities, who can wholly or substantially achieve an ability to live independently.

8. Provide financial and other necessary assistance to public or private agencies in the development or expansion of community rehabilitation programs, or programs in other public agencies, needed for the rehabilitation of individuals with disabilities.

[C24, 27, 31, 35, 39, §**3853;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §259.4]

83 Acts, ch 101, §59; 86 Acts, ch 1237, §15; 86 Acts, ch 1245, §1436; 87 Acts, ch 115, §37; 94 Acts, ch 1109, §7; 96 Acts, ch 1127, §4 – 7; 99 Acts, ch 28, §1

259.5 Report to governor.

The division shall report biennially to the governor the condition of vocational rehabilitation within the state, designating the educational institutions, establishments, plants, factories, and other agencies in which training is being given, and include a detailed statement of expenditures of the state and federal funds in the rehabilitation of individuals with disabilities.

[C24, 27, 31, 35, 39, §**3854;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §259.5]

86 Acts, ch 1237, §16; 86 Acts, ch 1245, §1437; 94 Acts, ch 1109, §8; 96 Acts, ch 1127, §8

259.6 Gifts and donations.

The division may receive gifts and donations from either public or private sources offered unconditionally or under conditions related to the vocational rehabilitation of individuals with disabilities that are consistent with this chapter.

[C24, 27, 31, 35, 39, §**3855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §259.6]

86 Acts, ch 1245, §1438; 94 Acts, ch 1109, §9

259.7 Fund.

All the moneys received as gifts or donations shall be deposited in the state treasury and shall constitute a permanent fund to be called the special fund for the vocational rehabilitation of individuals with disabilities, to be used by the director of the department of education in carrying out the provisions of this chapter or for related purposes.

[C24, 27, 31, 35, 39, §**3856;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §259.7]

94 Acts, ch 1109, §10; 96 Acts, ch 1127, §9

259.8 Report of gifts.

A full report of gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and disbursements from the fund shall be submitted at call or biennially to the governor of the state by the division.

[C24, 27, 31, 35, 39, §**3857;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §259.8]

86 Acts, ch 1245, §1439

259.9 Agreement continued.

The agreement between the director of the department of education and the commissioner of

the United States social security administration relating to making determinations of disability under Title II and Title XVI of the federal Social Security Act as amended, 42 U.S.C. ch. 7, completed prior to July 1, 1986, remains in effect.

86 Acts, ch 1245, §1440; 96 Acts, ch 1127, §10

CHAPTER 259A

HIGH SCHOOL EQUIVALENCY DIPLOMAS

259A.1 Tests.
259A.2 Age.
259A.3 Notice and fee.
259A.4 Use of fees.
259A.5 Rules.
259A.6 Residents of juvenile institutions and juvenile probationers.

259A.1 Tests.

The department of education shall cause to be made available for qualified individuals a high school equivalency diploma. The diploma shall be issued on the basis of satisfactory competence as shown by tests covering: The correctness and effectiveness of expression; the interpretation of reading materials in the social studies; interpretation of reading material in the natural sciences; interpretation of literary materials; and general mathematical ability.

[C66, 71, 73, 75, 77, 79, 81, §259A.1]

259A.2 Age.

Every applicant must have attained the age of eighteen years, be a nonhigh school graduate, and not currently enrolled in a secondary school. However, an applicant is not eligible for the diploma until after the class in which the applicant was enrolled has graduated.

Application shall be made to a testing center approved by the department of education, accompanied by an application fee in an amount prescribed by the department. The test scores shall be forwarded by the testing center to the department.

[C66, 71, 73, 75, 77, 79, 81, §259A.2]

259A.3 Notice and fee.

Any applicant who has achieved the minimum passing standards as established by the department, and approved by the state board, shall be issued a high school equivalency diploma by the department upon payment of an additional five dollars.

[C66, 71, 73, 75, 77, 79, 81, §259A.3]

259A.4 Use of fees.

The fees collected under the provisions of this chapter shall be used for the expenses incurred in administering, providing test materials, scoring of examinations and issuance of high school equivalency diplomas, and shall be disbursed on the authorization of the director of the department of education. The treasurer of state shall be custodian of the funds paid to the department and shall disburse the same on vouchers audited as provided by law. The unobligated balance in such funds at the close of each biennium shall be placed in the general fund of the state.

[C66, 71, 73, 75, 77, 79, 81, §259A.4]

85 Acts, ch 212, §21

259A.5 Rules.

The director of the department of education shall adopt tests, definitions of terms, and forms as necessary for the administration of this chapter. The state board shall adopt rules under chapter 17A to carry out this chapter.

[C66, 71, 73, 75, 77, 79, 81, §259A.5]

85 Acts, ch 212, §21; 86 Acts, ch 1245, §1441

259A.6 Residents of juvenile institutions and juvenile probationers.

Notwithstanding the provisions of section 259A.2 a minor who is a resident of a state training school or the Iowa juvenile home or a minor who is placed under the supervision of a juvenile probation office may make application for a high school equivalency diploma and upon successful completion of the program receive a high school equivalency diploma.

[C77, 79, 81, §259A.6]

CHAPTER 259B

NATIONAL DEFENSE EDUCATION

Repealed by 76 Acts, ch 1056, §45

SUBTITLE 2

COMMUNITY COLLEGES

CHAPTER 260

BOARD OF EDUCATIONAL EXAMINERS

Transferred to chapter 272

CHAPTER 260A

COMMUNITY COLLEGE VOCATIONAL-TECHNICAL TECHNOLOGY IMPROVEMENT

Repealed by 2002 Acts, 2nd Ex, ch 1003, §94, 95
Appropriations for community college vocational-technical technology improvement program; 2002 Acts, ch 1173, §10; 2002 Acts, 2nd Ex, ch 1003, §199

CHAPTER 260B

HIGHER EDUCATION STRATEGIC PLANNING COUNCIL

Transferred to chapter 272D; repealed by 94 Acts, ch 1193, §37

CHAPTER 260C

COMMUNITY COLLEGES

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GENERAL PROVISIONS

260C.1 Statement of policy.

It is hereby declared to be the policy of the state of Iowa and the purpose of this chapter to provide for the establishment of not more than fifteen areas which shall include all of the area of the state and which may operate community colleges offering to the greatest extent possible, educational opportunities and services in each of the following, when applicable, but not necessarily limited to:

1. The first two years of college work including preprofessional education.
2. Vocational and technical training.
3. Programs for in-service training and retraining of workers.
4. Programs for high school completion for students of post-high school age.
5. Programs for all students of high school age who may best serve themselves by enrolling for vocational and technical training while also enrolled in a local high school, public or private.
6. Programs for students of high school age to provide advanced college placement courses not taught at a student's high school while the student is also enrolled in the high school.
7. Student personnel services.
8. Community services.
9. Vocational education for persons who have academic, socioeconomic, or other disabilities which prevent succeeding in regular vocational education programs.
10. Training, retraining, and all necessary preparation for productive employment of all citizens.
11. Vocational and technical training for persons who are not enrolled in a high school and who have not completed high school.
12. Developmental education for persons who are academically or personally underprepared to succeed in their program of study.

[C66, 71, 73, 75, 77, 79, 81, §280A.1]
85 Acts, ch 212, §11; 90 Acts, ch 1253, §26
C93, §260C.1
93 Acts, ch 101, §203; 96 Acts, ch 1129, §113

260C.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Community college"* means a publicly supported school which may offer programs of adult and continuing education, lifelong learning, community education, and up to two years of liberal arts, preprofessional, or occupational instruction partially fulfilling the requirements for a baccalaureate degree but confers no more than an associate degree; or which offers as the whole or as part of the curriculum up to two years of vocational or technical education, training, or retraining to persons who are preparing to enter the labor market.
2. *"Director"* means the director of the department of education.
3. *"Instructional cost center"* means one of the

following areas of course offerings of the community colleges:

a. Arts and sciences cost center.

b. Vocational-technical preparatory cost center.

c. Vocational-technical supplementary cost center.

d. Adult basic education and high school completion cost center.

e. Continuing and general education cost center.

4. *"Merged area"* means an area where two or more school systems or parts of school systems merge resources to operate a community college in the manner provided in this chapter.

5. *"State board"* means the state board of education.

[C66, 71, 73, 75, 77, 79, 81, §280A.2]
85 Acts, ch 212, §21, 22; 90 Acts, ch 1253, §27
C93, §260C.2
96 Acts, ch 1215, §24

260C.3 State board for community colleges.

The state board of education shall constitute the state board for community colleges.

90 Acts, ch 1253, §33
C91, §280A.22A
C93, §260C.22A
C95, §260C.3

260C.4 Duties of state board.

The state board for community colleges shall:

1. Adopt and establish policies for programs and services of the department which relate to community colleges.

2. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs under section 256.7, subsection 3.

3. Review and make recommendations that relate to community colleges in the five-year plan for the achievement of educational goals.

90 Acts, ch 1253, §34
C91, §280A.22B
C93, §260C.22B
93 Acts, ch 82, §2
C95, §260C.4
96 Acts, ch 1215, §25

260C.5 Duties of director.

The director shall:

1. Designate a community college as an *"area vocational education school"* within the meaning of, and for the purpose of administering, the Act of Congress designated the *"Vocational Education Act of 1963"*. A community college shall not be so designated by the director of the department of education for the expenditure of funds under 20 U.S.C. § 35c(a)(5), which has not been designated and classified as a community college by the state board.

2. Change boundaries of director districts in a merged area when the board fails to change boundaries as required by law.

3. Make changes in boundaries of merged areas with the approval of the board of directors of each merged area affected by the change. When the boundaries of a merged area are changed, the director of the department of education may authorize the board of directors of the merged area to levy additional taxes upon the property within the merged area, or any part of the merged area, and distribute the taxes so that all parts of the merged area are paying their share toward the support of the college.

4. Administer, allocate, and disburse federal or state funds made available to pay a portion of the cost of acquiring sites for and constructing, acquiring, or remodeling facilities for community colleges, and establish priorities for the use of such funds.

5. Administer, allocate, and disburse federal or state funds available to pay a portion of the operating costs of community colleges.

6. Propose administrative rules to carry out this chapter subject to approval of the state board.

7. Enter into contracts with local school boards within the area that have and maintain a technical or vocational high school and with private schools or colleges in the cooperative or merged areas to provide courses or programs of study in addition to or as a part of the curriculum made available in the community college.

8. Make arrangements with boards of merged areas and local school districts to permit students attending high school to participate in vocational-technical programs and advanced college placement courses and obtain credit for such participation for application toward the completion of a high school diploma. The granting of credit is subject to the approval of the director of the department of education.

9. Prescribe a uniform system of accounting for community colleges.

10. Ensure that community colleges that provide intercollegiate athletics as a part of their program comply with section 216.9.

[C66, 71, 73, 75, 77, 79, 81, §280A.25; 82 Acts, ch 1136, §11]
85 Acts, ch 212, §12; 86 Acts, ch 1245, §1470; 87 Acts, ch 115, §41; 87 Acts, ch 224, §57, 58; 90 Acts, ch 1253, §36
C93, §260C.25
93 Acts, ch 82, §4
C95, §260C.5
2002 Acts, ch 1140, §13
Subsection 6 stricken and former subsections 7 – 11 renumbered as 6 – 10

260C.6 Community colleges division in department.

A community colleges division shall be established within the department of education. The division shall exercise the powers and perform the duties conferred by law upon the department with respect to community colleges.

[C66, 71, 73, 75, 77, 79, 81, §280A.27]
90 Acts, ch 1253, §37
C93, §260C.27
C95, §260C.6

260C.7 through 260C.10 Reserved.

GOVERNANCE, FINANCING, AND PROGRAMS

260C.11 Governing board.

The governing board of a merged area is a board of directors composed of one member elected from each director district in the area by the electors of the respective district. Members of the board shall be residents of the district from which elected. Successors shall be chosen at the annual school elections for members whose terms expire. The term of a member of the board of directors is three years and commences at the organization meeting. Vacancies on the board shall be filled at the next regular meeting of the board by appointment by the remaining members of the board. A member so chosen shall be a resident of the district in which the vacancy occurred and shall serve until a member is elected pursuant to section 69.12 to fill the vacancy for the balance of the unexpired term. A vacancy is defined in section 277.29. A member shall not serve on the board of directors who is a member of a board of directors of a local school district or a member of an area education agency board.

Commencing with the regular school election in 1981, the governing board of a merged area shall consist of not less than five nor more than nine members.

Director districts shall be of approximately equal population within each merged area.

[C66, 71, 73, 75, §280A.12; C77, §280A.12, 280A.23(2); C79, 81, §280A.12, 280A.28; 82 Acts, ch 1136, §7]
C83, §280A.11
84 Acts, ch 1219, §15; 89 Acts, ch 136, §66
C93, §260C.11

260C.12 Directors of merged area.

The board of directors of the merged area shall organize at the first regular meeting in October of each year. Organization of the board shall be effected by the election of a president and other officers from the board membership as board members determine. The board of directors shall appoint a secretary and a treasurer who shall each give bond as prescribed in section 291.2 and who shall each receive the salary determined by the board. The secretary and treasurer shall perform duties under chapter 291 and additional duties the board of directors deems necessary. However, the board may appoint one person to serve as the secretary and treasurer. If one person serves as the secretary and treasurer, only one bond is necessary for that person. The frequency of meetings other than organizational meetings shall be as determined by the board of directors but the president or a majority of the members may call a special meeting at any time.

Members of the board, other than the secretary and the treasurer, shall be allowed their actual expenses incurred in the performance of their duties and may be eligible to receive per diem compensation.

[C66, 71, 73, 75, 77, 79, 81, §280A.13; 82 Acts, ch 1039, §1, ch 1086, §1]
C83, §280A.12
90 Acts, ch 1253, §28
C93, §260C.12

260C.13 Director districts.

1. The board of a merged area may change the number of directors on the board and shall make corresponding changes in the boundaries of director districts. Changes shall be completed not later than June 1 for the regular school election to be held the next following September. As soon as possible after adoption of the boundary changes, notice of changes in the director district boundaries shall be submitted by the merged area to the county commissioner of elections in all counties included in whole or in part in the merged area.

2. The board of the merged area shall redraw boundary lines of director districts in the merged area after each census to compensate for changes in population if changes in population have taken place.

3. Boundary lines of director districts shall be drawn according to the following standards:

a. All boundaries shall follow precinct boundaries or school director district boundaries unless a merged area director district boundary follows the boundary of a school district which divides one or more election precincts.

b. To the extent possible in order to comply with paragraph *"a"*, all districts shall be as nearly equal as practicable to the ideal population for the districts as determined by dividing the number of districts to be established into the population of the merged area.

c. All districts shall be composed of contiguous territory as compact as practicable.

d. Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

e. Cities shall not be divided into two or more districts unless the population of the city is greater than the ideal size of a district. Cities shall be divided into the smallest number of districts possible.

4. If more than one incumbent officeholder resides in a district redrawn during reprecincting, their terms of office expire after the next regular school election.

[C66, 71, 73, 75, 77, §280A.23(2); C79, §280A.28, 280A.30; C81, §280A.28, 280A.29; 82 Acts, ch 1136, §9]

C83, §280A.13

C93, §260C.13

94 Acts, ch 1179, §14, 15

260C.14 Authority of directors.

The board of directors of each community college shall:

1. Determine the curriculum to be offered in such school or college subject to approval of the director and ensure that all vocational offerings are competency-based, provide any minimum competencies required by the department of education, comply with any applicable requirements in chapter 258, and are articulated with local school district vocational education programs. If an existing private educational or vocational institution within the merged area has facilities and curriculum of adequate size and quality which would duplicate the functions of the area school, the board of directors shall discuss with the institution the possibility of entering into contracts to have the existing institution offer facilities and curriculum to students of the merged area. The board of directors shall consider any proposals submitted by the private institution for providing such facilities and curriculum. The board of directors may enter into such contracts. In approving curriculum, the director shall ascertain that all courses and programs submitted for approval are needed and that the curriculum being offered by an area school does not duplicate programs provided by existing public or private facilities in the area. In determining whether duplication would actually exist, the state board* shall consider the needs of the area and consider whether the proposed programs are competitive as to size, quality, tuition, purposes, and area coverage with existing public and private educational or vocational institutions within the merged area. If the board of directors of the merged area chooses not to enter into contracts with private institutions under this subsection, the board shall submit a list of reasons why contracts to avoid duplication were not entered into and an economic impact statement relating to the board's decision.

2. Have authority to determine tuition rates for instruction. Tuition for residents of Iowa shall not exceed the lowest tuition rate per semester, or the equivalent, charged by an institution of higher education under the state board of regents for a full-time resident student. However, except for students enrolled under chapter 261C, if a local school district pays tuition for a resident pupil of high school age, the limitation on tuition for residents of Iowa shall not apply, the amount of tuition shall be determined by the board of directors of the community college with the consent of the local school board, and the pupil shall not be included in the full-time equivalent enrollment of the community college for the purpose of computing general aid to the community college. Tuition for nonresidents of Iowa shall not be less than the marginal cost of instruction of a student attending the college. A lower tuition for nonresidents may be permitted under a reciprocal tuition agreement between a merged area and an educational institution in another state, if the agreement is approved by the state board. The board may designate that a portion of the tuition moneys collected from students be used for student aid purposes.

3. Have the powers and duties with respect to community colleges, not otherwise provided in this chapter, which are prescribed for boards of directors of local school districts by chapter 279 except that the board of directors is not required to prohibit the use of tobacco and the use or possession of alcoholic liquor or beer by any student of legal age under the provisions of section 279.9.

4. Have the power to enter into contracts and take other necessary action to insure a sufficient curriculum and efficient operation and management of the college and maintain and protect the physical plant, equipment, and other property of the college.

5. Establish policy and make rules, not inconsistent with law and administrative rules, regulations, and policies of the state board, for its own government and that of the administrative, teaching, and other personnel, and the students of the college, and aid in the enforcement of such laws, rules, and regulations.

6. Have authority to sell a student-constructed building and the property on which the student-constructed building is located or any article resulting from any vocational program or course offered at a community college by any procedure which may be adopted by the board. Governmental agencies and governmental subdivisions of the state within the merged areas shall be given preference in the purchase of such articles. All revenue received from the sale of any article shall be credited to the funds of the board of the merged area.

7. With the consent of the inventor, and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors, and officials of any community college of the merged area, or take assignment of such letters patent or copyright and make all necessary expenditures in regard thereto. Letters patent or copyright on inventions when so secured shall be the

property of the board of the merged area and the royalties and earnings thereon shall be credited to the funds of the board.

8. Set the salary of the area superintendent. In setting the salary, the board shall consider the salaries of administrators of educational institutions in the merged area and the enrollment of the community college.

9. At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for any of its employees, which annuity contracts are issued by a nonprofit corporation issuing retirement annuities exclusively for educational institutions and their employees or are purchased from any company the employee chooses that is authorized to do business in this state or through an Iowa-licensed salesperson that the employee selects, on a group or individual basis, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. If an existing tax-sheltered annuity contract is to be replaced by a new contract, the agent or representative of the company shall submit a letter of intent by registered mail to the company being replaced, to the insurance commissioner of the state of Iowa, and to the agent's or representative's own company at least thirty days prior to any action. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract. As used in this section, unless the context otherwise requires, *"annuity contract"* includes any custodial account which meets the requirements of section 403(b)(7) of the Internal Revenue Code, as defined in section 422.3.

10. Make necessary rules to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on the property of the community college. The rules may provide for the use of institutional roads, driveways, and grounds; registration of vehicles and bicycles; the designation of parking areas; the erection and maintenance of signs designating prohibitions or restrictions; the installation and maintenance of parking control devices except parking meters; and assessment, enforcement, and collection of reasonable penalties for the violation of the rules.

Rules made under this subsection may be enforced under procedures adopted by the board of directors. Penalties may be imposed upon students, faculty, and staff for violation of the rules, including, but not limited to, a reasonable monetary penalty which may be deducted from student deposits and faculty or staff salaries or other funds in possession of the community college or added to student tuition bills. The rules made under this subsection may also be enforced by the impoundment of vehicles and bicycles parked in violation of the rules, and a reasonable fee may be charged for the cost of impoundment and storage prior to the release of the vehicle or bicycle to the owner. Each community college shall establish procedures for the determination of controversies in connection with the imposition of penalties. The procedures shall require giving notice of the violation and the penalty prescribed and providing the opportunity for an administrative hearing.

11. Be authorized to issue to employees of community colleges school credit cards to use for payment of authorized expenditures incurred in the performance of work-related duties.

12. During the second week of August of each year, publish by one insertion in at least one newspaper published in the merged area a summarized statement verified by affidavit of the secretary of the board showing the receipts and disbursements of all funds of the community college for the preceding fiscal year. The statement of disbursements shall show the names of the persons, firms, or corporations, and the total amount paid to each during the fiscal year. The board is not required to make the publications and notices required under sections 279.35 and 279.36.

13. Adopt policies and procedures for the use of telecommunications as an instructional tool at the community college. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

14. In its discretion, adopt rules relating to the classification of students enrolled in the community college who are residents of Iowa's sister states as residents or nonresidents for tuition and fee purposes.

15. By July 1, 1991, develop a policy which requires oral communication competence of persons who provide instruction to students attending institutions under the control of the board. The policy shall include a student evaluation mechanism which requires student evaluation of persons providing instruction on at least an annual basis.

16. By July 1, 1991, develop a policy relating to the teaching proficiency of teaching assistants which provides a teaching proficiency standard, instructional assistance to, and evaluation of persons who provide instruction to students at the higher education institutions under the control of the board.

17. Provide for eligible alternative retirement benefits systems which shall be limited to the following:

a. An alternative retirement benefits system

which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees for persons newly employed after July 1, 1990, and for persons employed by the community college who are members of the Iowa public employees' retirement system on July 1, 1994, and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system.

b. An alternative retirement benefits system which is issued by or through an insurance company authorized to issue annuity contracts in this state, for persons newly employed on or after July 1, 1997, who are already members of the alternative retirement benefits system and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system.

c. An alternative retirement benefits system offered through the community college, at the discretion of the board of directors of the community college, pursuant to this lettered paragraph which is issued by or through an insurance company authorized to issue annuity contracts in this state, for persons newly employed by that community college on or after July 1, 1998, who are not members of the alternative retirement benefits system and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system. The board of directors of a community college may limit the number of providers of alternative retirement benefits systems offered pursuant to this lettered paragraph to no more than six. The selection by the board of directors of a community college of a provider of an alternative retirement benefits system pursuant to this lettered paragraph shall not constitute an endorsement of that provider by the community college.

However, the employer's annual contribution in dollars under an eligible alternative retirement benefits system described in this subsection shall not exceed the annual contribution in dollars which the employer would contribute if the employee had elected to remain an active member pursuant to the Iowa public employees' retirement system, as set forth in section 97B.11. For purposes of this subsection, *"alternative retirement benefits system"* means an employer-sponsored primary pension plan requiring mandatory employer contributions that meets the requirements of section 401(a), 403(a), or 403(b) of the Internal Revenue Code.

18. Develop and implement a written policy, which is disseminated during student registration or orientation, addressing the following four areas relating to sexual abuse:

a. Counseling.

b. Campus security.

c. Education, including prevention, protection, and the rights and duties of students and employees of the community college.

d. Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

19. Provide, within a reasonable time, information as requested by the departments of management and education.

[C66, 71, 73, 75, 77, 79, 81, §280A.23]

84 Acts, ch 1315, §36; 86 Acts, ch 1213, §6; 86 Acts, ch 1246, §134; 87 Acts, ch 207, §7; 87 Acts, ch 233, §478; 88 Acts, ch 1284, §47; 89 Acts, ch 278, §6; 90 Acts, ch 1240, §46; 90 Acts, ch 1253, §35; 92 Acts, ch 1106, §3, 4

C93, §260C.23

93 Acts, ch 82, §3; 94 Acts, ch 1183, §60, 61

C95, §260C.14

96 Acts, ch 1215, §26; 97 Acts, ch 14, §2, 3; 98 Acts, ch 1077, §2, 3; 2001 Acts, ch 39, §1; 2002 Acts, ch 1140, §14

*The "director", and not the "state board", probably intended; corrective legislation is pending

Subsection 1 amended

260C.15 Conduct of elections.

1. Regular elections held annually by the merged area for the election of members of the board of directors as required by section 260C.11, for the renewal of the twenty and one-fourth cents per thousand dollars of assessed valuation levy authorized in section 260C.22, or for any other matter authorized by law and designated for election by the board of directors of the merged area, shall be held on the date of the school election as fixed by section 277.1. The election notice shall be made a part of the local school election notice published as provided in section 49.53 in each local school district where voting is to occur in the merged area election and the election shall be conducted by the county commissioner of elections pursuant to chapters 39 to 53 and section 277.20.

2. A candidate for member of the board of directors of a merged area shall be nominated by a petition signed by not less than fifty eligible electors of the director district from which the member is to be elected. The petition shall state the number of the director district from which the candidate seeks election, and the candidate's name and status as an eligible elector of the director district. Signers of the petition, in addition to signing their names, shall show their residence, including street and number if any, the school district in which they reside, and the date they signed the petition. A person may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office. The petition shall include the affidavit of the candidate being nominated, stating the candidate's name and residence, and that the individual is a candidate, is eligible for the office sought, and if elected will quali-

fy for the office.

3. Nomination papers in behalf of candidates for member of the board of directors of a merged area shall be filed with the secretary of the board not earlier than sixty-five days nor later than five o'clock p.m. on the fortieth day prior to the election at which members of the board are to be elected. The secretary shall deliver all nomination petitions so filed, together with the text of any public measure being submitted by the board of directors to the electorate, to the county commissioner of elections who is responsible under section 47.2 for conducting elections held for the merged area, not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed. That commissioner shall certify the names of candidates, and the text and summary of any public measure being submitted to the electorate, to all county commissioners of elections in the merged area by the thirty-fifth day prior to the election.

4. The votes cast in the election shall be canvassed and abstracts of the votes cast shall be certified as required by section 277.20. In each county whose commissioner of elections is responsible under section 47.2 for conducting elections held for a merged area, the county board of supervisors shall convene on the last Monday in September or at the last regular board meeting in September, canvass the abstracts of votes cast and declare the results of the voting. The commissioner shall at once issue certificates of election to each person declared elected, and shall certify to the merged area board in substantially the manner prescribed by section 50.27 the result of the voting on any public question submitted to the voters of the merged area. Members elected to the board of directors of a merged area shall qualify by taking the oath of office prescribed in section 277.28.

[C66, 71, 73, 75, 77, 79, 81, §280A.15]
88 Acts, ch 1119, §34; 88 Acts, ch 1158, §57; 89 Acts, ch 136, §67
C93, §260C.15
93 Acts, ch 35, §1

260C.16 Status of merged area.

A merged area formed under the provisions of this chapter shall be a body politic as a school corporation for the purpose of exercising powers granted under this chapter, and as such may sue and be sued, hold property, and exercise all the powers granted by law and such other powers as are incident to public corporations of like character and are not inconsistent with the laws of the state.

The boundary lines of a merged area may divide a school district.

[C66, 71, 73, 75, 77, 79, 81, §280A.4, 280A.16; 82 Acts, ch 1136, §8]
C93, §260C.16

260C.17 Preparation and approval of budget — tax.

The board of directors of each merged area shall prepare an annual budget designating the proposed expenditures for operation of the community college. The board shall further designate the amounts which are to be raised by local taxation and the amounts which are to be raised by other sources of revenue for the operation. The budget of each merged area shall be submitted to the state board no later than May 1 preceding the next fiscal year for approval. The state board shall review the proposed budget and shall, prior to June 1, either grant its approval or return the budget without approval with the comments of the state board attached to it. Any unapproved budget shall be resubmitted to the state board for final approval. Upon approval of the budget by the state board, the board of directors shall certify the amount to the respective county auditors and the boards of supervisors annually shall levy a tax of twenty and one-fourth cents per thousand dollars of assessed value on taxable property in a merged area for the operation of a community college. Taxes collected pursuant to the levy shall be paid by the respective county treasurers to the treasurer of the merged area as provided in section 331.552, subsection 29.

It is the policy of this state that the property tax for the operation of community colleges shall not in any event exceed twenty and one-fourth cents per thousand dollars of assessed value, and that the present and future costs of such operation in excess of the funds raised by such levy shall be the responsibility of the state and shall not be paid from property tax.

[C66, 71, 73, 75, 77, 79, 81, §280A.17]
84 Acts, ch 1003, §2; 90 Acts, ch 1253, §29
C93, §260C.17

260C.18 Other funds received.

In addition to revenue derived by tax levy, a board of directors of a merged area shall be authorized to receive and expend:

1. Federal funds made available and administered by the director of the department of education, for purposes provided by federal laws, rules, and regulations.

2. Other federal funds for such purposes as provided by federal law, subject to the approval of the director.

3. Tuition in accordance with section 260C.14, subsection 2.

4. State aid and supplemental state aid to be paid in accordance with the statutes which provide such aid.

5. State funds for sites and facilities made available and administered by the director.

6. Donations and gifts which may be accepted by the governing board and expended in accordance with the terms of the gift without compliance with the local budget law.

7. Student fees collected from students for ac-

tivities, laboratory breakage, instructional materials, and other objects and purposes for which student fees other than tuition are customarily charged by colleges and universities, as provided in a schedule of fees adopted by the area board of directors. The expenditure of funds collected from students for activities shall be determined by the student government unit with administrative and board approval. Any increases in student fees for activities shall be determined by the student government unit with administrative and board approval.

[C66, 71, 73, 75, 77, 79, 81, §280A.18]
86 Acts, ch 1245, §1469
C93, §260C.18
96 Acts, ch 1215, §27

260C.18A State aid. Repealed by 96 Acts, ch 1215, § 58.

260C.18B Community college budget review.

1. A community college budget review procedure is established for the school budget review committee created in section 257.30. The school budget review committee, in addition to its duties under chapter 257, shall meet and hold hearings each year under this chapter to review unusual circumstances of community colleges, either upon the committee's motion or upon the request of a community college. The committee may grant supplemental state aid to the community college from funds appropriated to the department of education for community college budget review purposes.

Unusual circumstances shall include but not be limited to the following:

a. An unusual increase or decrease in enrollment or contact hours.

b. Natural disasters.

c. Unusual staffing problems.

d. Unusual necessity for additional funds to permit continuance of a course or program in an instructional cost center which provides substantial benefit to students.

e. Unusual need for a new course or program in an instructional cost center which will provide substantial benefit to students, if the community college establishes the need and the amount of necessary increased cost.

f. Unique problems of community colleges to include vandalism, civil disobedience, and other costs incurred by community colleges.

2. When the school budget review committee makes a decision under subsection 1, it shall provide written notice of its decision, including the amount of supplemental state aid approved, to the board of directors of the community college and to the department of education.

3. All decisions by the school budget review committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter.

4. Failure by a community college to provide information or appear before the school budget review committee as requested for the accomplishment of review or hearing constitutes justification for the committee to instruct the department of revenue and finance to withhold supplemental state aid to that community college until the committee's inquiries are satisfied completely.

96 Acts, ch 1215, §29

260C.19 Acquisition of sites and buildings.

Boards of directors of merged areas may acquire sites and erect and equip buildings for use by community colleges and may contract indebtedness and issue bonds to raise funds for such purposes.

[C66, 71, 73, 75, 77, 79, 81, §280A.19]
90 Acts, ch 1253, §30
C93, §260C.19

260C.19A Motor vehicles required to operate on alternative fuels.

1. A motor vehicle purchased by or used under the direction of the board of directors to provide services to a merged area shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

2. Of all new passenger vehicles and light pickup trucks purchased by or under the direction of the board of directors to provide services to a merged area, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

a. A flexible fuel which is either of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used

for law enforcement or off-road maintenance work.

91 Acts, ch 254, §17
CS91, §280A.19A
C93, §260C.19A
93 Acts, ch 26, §3; 94 Acts, ch 1119, §25

260C.19B Purchase of bio-based hydraulic fluids, greases, and other industrial lubricants.

Hydraulic fluids, greases, and other industrial lubricants purchased by or used under the direction of the board of directors to provide services to a merged area shall be purchased in compliance with the preference requirements for purchasing bio-based hydraulic fluids, greases, and other industrial lubricants as provided pursuant to section 18.22.

98 Acts, ch 1082, §4; 2000 Acts, ch 1109, §4

260C.20 Payment of bonds.

Taxes for the payment of bonds issued under section 260C.19 shall be levied in accordance with chapter 76. The bonds shall be payable from a fund created from the proceeds of the taxes in not more than twenty years and bear interest at a rate not exceeding the rate permitted by chapter 74A, and shall be of the form as the board issuing the bonds shall by resolution provide. Any indebtedness incurred shall not be considered an indebtedness incurred for general and ordinary purposes.

[C66, 71, 73, 75, 77, 79, 81, §280A.20]
83 Acts, ch 188, §2
C93, §260C.20

260C.21 Election to incur indebtedness.

No indebtedness shall be incurred under section 260C.19 until authorized by an election. A proposition to incur indebtedness and issue bonds for community college purposes shall be deemed carried in a merged area if approved by a sixty percent majority of all voters voting on the proposition in the area. However, if the costs of utilities are paid by a community college with funds derived from the levy authorized under section 260C.22, the community college may use the general fund moneys that would have been used to pay the costs of utilities for capital expenditures, may invest the funds, or may incur indebtedness without an election, provided that the payments on the indebtedness incurred, and any interest on the indebtedness, can be made using general funds of the community college and the total payments on the principal and interest on the indebtedness do not exceed the amount of the costs of the utilities.

[C66, 71, 73, 75, 77, 79, 81, §280A.21]
90 Acts, ch 1253, §31
C93, §260C.21

260C.22 Facilities levy by vote — borrowing — temporary cash reserve levy.

1. *a.* In addition to the tax authorized under section 260C.17, the voters in any merged area may at the annual school election vote a tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value in any one year for a period not to exceed ten years for the purchase of grounds, construction of buildings, payment of debts contracted for the construction of buildings, purchase of buildings and equipment for buildings, and the acquisition of libraries, for the purpose of paying costs of utilities, and for the purpose of maintaining, remodeling, improving, or expanding the community college of the merged area. If the tax levy is approved under this section, the costs of utilities shall be paid from the proceeds of the levy. The tax shall be collected by the county treasurers and remitted to the treasurer of the merged area as provided in section 331.552, subsection 29. The proceeds of the tax shall be deposited in a separate and distinct fund to be known as the voted tax fund, to be paid out upon warrants drawn by the president and secretary of the board of directors of the merged area district for the payment of costs incurred in providing the school facilities for which the tax was voted.

b. In order to make immediately available to the merged area the proceeds of the voted tax hereinbefore authorized to be levied, the board of directors of any such merged area is hereby authorized, without the necessity for any further election, to borrow money and enter into loan agreements in anticipation of the collection of such tax, and such board shall, by resolution, provide for the levy of an annual tax, within the limits of the special voted tax hereinbefore authorized, sufficient to pay the amount of any such loan and the interest thereon to maturity as the same becomes due. A certified copy of this resolution shall be filed with the county auditors of the counties in which such merged area is located, and the filing thereof shall make it a duty of such auditors to enter annually this levy for collection until funds are realized to repay the loan and interest thereon in full. Said loan must mature within the number of years for which the tax has been voted and shall bear interest at a rate or rates not exceeding that permitted by chapter 74A. Any loan agreement entered into pursuant to authority herein contained shall be in such form as the board of directors shall by resolution provide and the loan shall be payable as to both principal and interest from the proceeds of the annual levy of the voted tax hereinbefore authorized, or so much thereof as will be sufficient to pay the loan and interest thereon. In furtherance of the foregoing the board of directors of such merged area may, with or without notice, negotiate and enter into a loan agreement or agreements with any bank, investment banker, trust company, insurance company or group thereof, whereunder the borrowing of the

necessary funds may be assured and consummated. The proceeds of such loan shall be deposited in a special fund, to be kept separate and apart from all other funds of the merged area, and shall be paid out upon warrants drawn by the president and secretary of the board of directors to pay the cost of acquiring the school facilities for which the tax was voted.

c. If the boundary lines of a merged area are changed, the levy of the annual tax provided in this section sufficient to pay the amount due for a loan agreement and the interest on the loan agreement to maturity shall continue in any territory severed from the merged area until the loan with interest on the loan has been paid in full.

d. Nothing herein contained shall be construed to limit the authority of the board of directors to levy the full amount of the voted tax, but if and to whatever extent said tax is levied in any year in excess of the amount of principal and interest falling due in such year under any loan agreement, the first available proceeds thereof, to an amount sufficient to meet maturing installments of principal and interest under the loan agreement, shall be paid into the sinking fund for such loan before any of such taxes are otherwise made available to the merged area for other school purposes, and the amount required to be annually set aside to pay the principal of and interest on the money borrowed under such loan agreement shall constitute a first charge upon all of the proceeds of such annual special voted tax, which tax shall be pledged to pay said loan and the interest thereon.

e. This law shall be construed as supplemental and in addition to existing statutory authority and as providing an independent method of financing the cost of acquiring school facilities for which a tax has been voted under this section and for the borrowing of money and execution of loan agreements in connection therewith and shall not be construed as subject to the provisions of any other law. The fact that a merged area may have previously borrowed money and entered into loan agreements under authority herein contained shall not prevent such merged area from borrowing additional money and entering into further loan agreements provided that the aggregate of the amount payable under all of such loan agreements does not exceed the proceeds of the voted tax. All acts and proceedings heretofore taken by the board of directors or by any official of any merged area for the exercise of any of the powers granted by this section are hereby legalized and validated in all respects.

2. The proceeds of the tax voted under subsection 1, paragraph *"a"*, prior to July 1, 1987 shall be used for the purposes for which it was approved by the voters and may be used for the purpose of paying the costs of utilities.

3. In addition to the tax authorized under section 260C.17, the board of directors of an area school may certify for levy by March 15, 1982 and March 15, 1983, a tax on taxable property in the merged area at rates that will provide total revenues for the two years equal to five percent of the area school's general fund expenditures for the fiscal year ending June 30, 1980 in order to provide a cash reserve for that area school. As nearly as possible, one-half the revenue for the cash reserve fund shall be collected during each year.

The revenues derived from the levies shall be placed in a separate cash reserve fund. Moneys from the cash reserve fund shall only be used to alleviate temporary cash shortages. If moneys from the cash reserve fund are used to alleviate a temporary cash shortage, the cash reserve fund shall be reimbursed immediately from the general fund of the community college as funds in the general fund become available, but in no case later than June 30 of the current fiscal year, to repay the funds taken from the cash reserve fund.

4. The board of directors of any merged area that failed to certify for levy under subsection 3 by March 15, 1982, and March 15, 1983, may certify for levy by April 15, 1997, and April 15, 1998, a tax on taxable property in the merged area at rates that will provide total revenues for the two years equal to five percent of the area school's general fund expenditures for the fiscal year ending June 30, 1995, in order to provide a cash reserve for that area school. As nearly as possible, one-half the revenue for the cash reserve fund shall be collected during each year.

The revenues derived from the levies shall be placed in a separate cash reserve fund. Notwithstanding subsection 3, moneys from the cash reserve fund established by a merged area under subsection 3 or this subsection shall be used only to alleviate temporary cash shortages. If moneys from the cash reserve fund are used to alleviate a temporary cash shortage, the cash reserve fund shall be reimbursed immediately from the general fund of the community college as funds in the general fund become available, but in no case later than June 30 of the current fiscal year, to repay the funds taken from the cash reserve fund.

[C66, 71, 73, 75, 77, 79, 81, §280A.22; 81 Acts, ch 88, §1; 82 Acts, ch 1136, §10]

84 Acts, ch 1003, §3; 87 Acts, ch 233, §476, 477; 90 Acts, ch 1253, §32

C93, §260C.22

96 Acts, ch 1215, §30

260C.22A State board for community colleges. Transferred to § 260C.3.

260C.22B Duties of state board. Transferred to § 260C.4.

260C.23 Authority of directors. Transferred to § 260C.14.

260C.24 Payment of appropriations.

Payment of appropriations for distribution under this chapter, or of appropriations made in lieu of such appropriations, shall be made by the department of revenue and finance in monthly installments due on or about the fifteenth of each month of a budget year, and installments shall be as nearly equal as possible, as determined by the department of revenue and finance, taking into consideration the relative budget and cash position of the state resources.

95 Acts, ch 218, §18

260C.25 Duties of director. Transferred to § 260C.5.

260C.26 Reserved.

260C.27 Community colleges division in department. Transferred to § 260C.6.

260C.28 Tax for equipment replacement and program sharing.

1. Annually, the board of directors may certify for levy a tax on taxable property in the merged area at a rate not exceeding three cents per thousand dollars of assessed valuation for equipment replacement for the community college.

2. However, the board of directors may annually certify for levy a tax on taxable property in the merged area at a rate in excess of the three cents per thousand dollars of assessed valuation specified under subsection 1 if the excess tax levied does not cause the total rate certified to exceed a rate of nine cents per thousand dollars of assessed valuation, and the excess revenue generated is used for purposes of program sharing between community colleges or for the purchase of instructional equipment. Programs that are shared shall be designed to increase student access to community college programs and to achieve efficiencies in program delivery at the community colleges, including, but not limited to, the programs described under sections 260C.45 and 260C.46. Prior to expenditure of the excess revenues generated under this subsection, the board of directors shall obtain the approval of the director of the department of education.

3. If the board of directors wishes to certify for a levy under subsection 2, the board shall direct the county commissioner of elections to call an election to submit the question of such authorization for the board at a regular or special election. If a majority of those voting on the question at the election favors authorization of the board to make such a levy, the board may certify for a levy as provided under subsection 2 during each of the ten years following the election. If a majority of those voting on the question at the election does not favor authorization of the board to make a levy under subsection 2, the board shall not submit the question to the voters again until three hundred fifty-five days have elapsed from the election.

83 Acts, ch 180, §1, 2

CS83, §280A.28

87 Acts, ch 187, §1; 90 Acts, ch 1253, §38; 92 Acts, ch 1246, §46

C93, §260C.28

94 Acts, ch 1175, §4; 98 Acts, ch 1215, §31

260C.29 Academic incentives for minorities program — mission.

1. The mission of the academic incentives for minorities program established in this section is to encourage collaborative efforts by community colleges, the institutions of higher learning under the control of the state board of regents, and business and industry to enhance educational opportunities and provide for job creation and career advancement for Iowa's minorities by providing assistance to minorities who major in fields or subject areas where minorities are currently underrepresented or underutilized.

2. An academic incentives for minorities program is established to be administered by a community college located in a county with a population in excess of three hundred thousand. The community college shall provide office space for the efficient operation of the program. The community college shall employ a director for the program. The director of the program shall employ necessary support staff. The director and staff shall be employees of the community college.

3. The director of the program shall do the following:

a. Direct the coordination of the program between the community college and the institutions of higher education under the control of the state board of regents.

b. Propose rules to the state board of education as necessary to implement the program.

c. Recruit minority persons into the program.

d. Enlist the assistance and cooperation of leaders from business and industry to provide job placement services for students who are successfully completing the program.

e. Prepare and submit an annual report to the governor and the general assembly by January 15.

f. Contract with other community colleges to expand the availability of program services and increase the number of students served by the program.

g. Establish a separate account, which shall consist of all appropriations, grants, contributions, bequests, endowments, or other moneys or gifts received specifically for purposes of the program by the community college administering the program as provided in subsection 2. Not less than eighty percent of the funds received from state appropriations for purposes of the program shall be used for purposes of assistance to students as pro-

vided in subsection 5.

4. To be eligible for the program, a minority person shall be a resident of Iowa who is accepted for admission at or attends a community college or an institution of higher education under the control of the state board of regents. In addition, the person shall major in or achieve credit toward an associate degree, a bachelor's degree, or a master's degree in a field or subject area where minorities are underrepresented or underutilized.

5. The amount of assistance provided to a student under this section shall not exceed the cost of tuition, fees, and books required for the program in which the student is enrolled and attends. As used in this section, *"books"* may include book substitutes, including reusable workbooks, loose-leaf or bound manuals, and computer software materials used as book substitutes. A student who meets the qualifications of this section shall receive assistance under this section for not more than the equivalent of two full years of study.

6. For purposes of this section, *"minority person"* means a person who is Black, Hispanic, Asian, or a Pacific Islander, American Indian, or an Alaskan Native American.

95 Acts, ch 218, §19; 96 Acts, ch 1215, §31; 97 Acts, ch 212, §24

260C.30 Reserved.

260C.31 Auxiliary enterprises.

The board of directors may expend profits from auxiliary enterprises of community colleges for services and equipment which includes but is not limited to tutoring services, scholarships, grants, furniture, fixtures and equipment for noninstructional student use, and support of intramural and intercollegiate athletics.

For the purpose of this section:

1. *"Auxiliary enterprises"* means self-supporting services provided at the community college for which fees or charges are paid, and includes but is not limited to food services, college stores, student unions, institutionally operated vending services, recreational activities, faculty clubs, laundries, parking facilities, and intercollegiate athletics.

2. *"Profits from auxiliary enterprises"* means the difference between the total fees or charges collected for auxiliary enterprises and the expenditures by the community college for the auxiliary enterprises.

[C81, §280A.31]
90 Acts, ch 1253, §39
C93, §260C.31

260C.32 Trusts.

The board of a merged area may accept and administer trusts and may authorize nonprofit foundations acting solely for the support of the community college to accept and administer trusts deemed by the board to be beneficial to the operation of the community college. Notwithstanding section 633.63, the board and the nonprofit foundations may act as trustees in these instances. The board shall require that moneys belonging to a nonprofit foundation are audited annually.

[82 Acts, ch 1121, §1]
C83, §280A.32
90 Acts, ch 1253, §40
C93, §260C.32

260C.33 Joint action with board of regents. Repealed by 93 Acts, ch 82, § 10 – 12. See § 260C.4.

260C.34 Uses of funds.

Funds obtained pursuant to section 260C.17; section 260C.18, subsections 3, 4, and 5; and sections 260C.18B, 260C.19, and 260C.22 shall not be used for the construction or maintenance of athletic buildings or grounds but may be used for a project under section 260C.56.

[C71, 73, 75, 77, 79, 81, §280A.34]
91 Acts, ch 267, §241
C93, §260C.34
96 Acts, ch 1215, §32; 96 Acts, ch 1215, §58

260C.35 Limitation on land.

A merged area shall not purchase land which will increase the aggregate of land owned by the merged area, excluding land acquired by donation or gift, to more than three hundred twenty acres without the approval of the director of the department of education. The limitation does not apply to a merged area owning more than three hundred twenty acres, excluding land acquired by donation or gift, prior to January 1, 1969.

With the approval of the director of the department of education, the board of directors of a merged area at any time may sell any land in excess of one hundred sixty acres owned by the merged area, and an election is not necessary in connection with the sale. The proceeds of the sale may be used for any of the purposes stated in section 260C.22. This paragraph is in addition to any authority under other provisions of law.

[C71, 73, 75, 77, 79, 81, §280A.35]
83 Acts, ch 25, §1; 86 Acts, ch 1245, §1473; 92 Acts, ch 1037, §1
C93, §260C.35

260C.36 Quality faculty plan.

1. By October 1, 2002, the college administration shall establish a committee consisting of instructors and administrators, equally representative of the arts and sciences faculty and the vocational-technical faculty, which has no more than a simple majority of members of the same gender. The faculty members shall be appointed by the certified employee organization if one exists and if not, by the college administration. The adminis-

trators shall be appointed by the college administration. The committee shall develop a plan for hiring and developing quality faculty that includes all of the following:

a. An implementation schedule for the plan.

b. Orientation for new faculty.

c. Continuing professional development for faculty.

d. Procedures for accurate recordkeeping and documentation for plan monitoring.

e. Consortium arrangements when appropriate, cost-effective, and mutually beneficial.

f. Specific activities that ensure faculty attain and demonstrate instructional competencies and knowledge in their subject or technical areas.

g. Procedures for collection and maintenance of records demonstrating that each faculty member has attained or documented progress toward attaining minimal competencies.

h. Compliance with the faculty accreditation standards of the north central association of colleges and schools and with faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies.

2. The committee shall submit the plan to the board of directors, which shall consider the plan and, once approved, submit the plan to the department of education and implement the plan not later than July 1, 2003.

3. Between July 1, 2003, and June 30, 2006, the department of education shall conduct on-site visits to ensure each community college's compliance and progress in implementing its plan. At a minimum, the department shall visit five colleges each year until the department has conducted on-site visits at each community college. By July 1, 2006, the department shall submit a report summarizing the department's findings to each community college and to the state accreditation team appointed pursuant to section 260C.47.

4. The administration of the college shall encourage the continued development of faculty potential by doing all of the following:

a. Regularly stimulating department chairpersons or heads to meet their responsibilities for the continued development of faculty potential.

b. Reducing the instructional loads of first-year instructors whose course preparation and in-service training demand a reduction.

c. Stimulating curricular evaluation.

d. Encouraging the development of an atmosphere in which the faculty brings a wide range of ideas and experiences to the students, each other, and the community.

[C71, 73, 75, 77, 79, 81, §280A.36]
C93, §260C.36
2002 Acts, ch 1047, §5
Section amended

260C.37 Membership in association of school boards.

Boards of directors of community colleges may pay, out of funds available to them, reasonable annual dues to an Iowa association of school boards.

Membership in such an Iowa association of school boards shall be limited to those duly elected members of boards of directors of community colleges.

[C71, 73, 75, 77, 79, 81, §280A.37]
90 Acts, ch 1253, §42
C93, §260C.37

260C.38 Lease agreements for space.

The board of directors may enter into lease agreements, with or without purchase options, not to exceed twenty years in duration, for the leasing or rental of buildings for use basically as classrooms, laboratories, shops, libraries, and study halls for community college purposes, and pay for the leasing or rental with funds acquired pursuant to section 260C.17, section 260C.18, and section 260C.22.

The agreements may include the leasing of existing buildings on public or private property, buildings to be constructed upon real estate owned by the community college, or buildings to be placed upon real estate owned by the community college.

Before entering into a lease agreement with a purchase option for a building to be constructed, or placed, upon real estate owned by the community college, the board shall first adopt plans and specifications for the proposed building which it considers suitable for the intended use, and the board shall also adopt the proposed terms of the lease agreement and purchase option. The board shall invite bids, by advertisement published once each week for two consecutive weeks in the county where the building is to be located. The lease agreement shall be awarded to the lowest responsible bidder, or the board may reject all bids and readvertise for new bids.

[C71, 73, 75, 77, 79, 81, §280A.38; 82 Acts, ch 1230, §1]
86 Acts, ch 1245, §1474; 90 Acts, ch 1253, §43
C93, §260C.38
2002 Acts, ch 1140, §15
Unnumbered paragraphs 1 and 3 amended

260C.39 Combining merged areas — election.

Any merged area may combine with any adjacent merged area after a favorable vote by the electors of each of the areas involved. If the boards of directors of two or more merged areas agree to a combination, the question shall be submitted to the electors of each area at a special election to be held on the same day in each area. The special election shall not be held within thirty days of any

general election. Prior to the special election, the board of each merged area shall notify the county commissioner of elections of the county in which the greatest proportion of the merged area's taxable base is located who shall publish notice of the election according to section 49.53. The two respective county commissioners of elections shall conduct the election pursuant to the provisions of chapters 39 to 53. The votes cast in the election shall be canvassed by the county board of supervisors and the county commissioners of elections who conducted the election shall certify the results to the board of directors of each merged area.

If the vote is favorable in each merged area, the boards of each area shall proceed to transfer the assets, liabilities, and facilities of the areas to the combined merged area, and shall serve as the acting board of the combined merged area until a new board of directors is elected. The acting board shall submit to the director of the department of education a plan for redistricting the combined merged area, and upon receiving approval from the director, shall provide for the election of a director from each new district at the next regular school election. The directors elected from each new district shall determine their terms by lot so that the terms of one-third of the members, as nearly as may be, expire each year. Election of directors for the combined merged area shall follow the procedures established for election of directors of a merged area. A combined merged area is subject to all provisions of law and rules governing merged areas.

The terms of employment of personnel, for the academic year following the effective date of the agreement to combine the merged areas shall not be affected by the combination of the merged areas, except in accordance with the procedures under sections 279.15 to 279.18 and section 279.24, to the extent those procedures are applicable, or under the terms of the base bargaining agreement. The authority and responsibility to offer new contracts or to continue, modify, or terminate existing contracts pursuant to any applicable procedures under chapter 279, shall be transferred to the acting, and then to the new, board of the combined merged area upon certification of a favorable vote to each of the merged areas affected by the agreement. The collective bargaining agreement of the merged area receiving the greatest amount of general state aid shall serve as the base agreement for the combined merged area and the employees of the merged areas which combined to form the new combined merged area shall automatically be accreted to the bargaining unit from that former merged area for purposes of negotiating the contracts for the following years without further action by the public employment relations board. If only one collective bargaining agreement is in effect among the merged areas which are combining under this section, then that agreement shall serve as the base agreement, and the employees of the merged areas which are combining to form the new combined merged area shall automatically be accreted to the bargaining unit of that former merged area for purposes of negotiating the contracts for the following years without further action by the public employment relations board. The board of the combined merged area, using the base agreement as its existing contract, shall bargain with the combined employees of the merged areas that have agreed to combine for the academic year beginning with the effective date of the agreement to combine merged areas. The bargaining shall be completed by March 15 prior to the academic year in which the agreement to combine merged areas becomes effective or within one hundred eighty days after the organization of the acting board of the new combined merged area, whichever is later. If a bargaining agreement was already concluded in the former merged area which has the collective bargaining agreement that is serving as the base agreement for the new combined merged area, between the former merged area board and the employees of the former merged area, that agreement is void, unless the agreement contained multiyear provisions affecting academic years subsequent to the effective date of the agreement to form a combined merged area. If the base collective bargaining agreement contains multiyear provisions, the duration and effect of the agreement shall be controlled by the terms of the agreement. The provisions of the base agreement shall apply to the offering of new contracts, or the continuation, modification, or termination of existing contracts between the acting or new board of the combined merged area and the combined employees of the new combined merged area.

[C71, 73, 75, 77, 79, 81, §280A.39]

86 Acts, ch 1245, §1475; 90 Acts, ch 1168, §40; 90 Acts, ch 1253, §44; 91 Acts, ch 117, §2

C93, §260C.39

96 Acts, ch 1215, §33; 97 Acts, ch 23, §27

260C.40 Prohibition of controlled substances.

Each merged area school shall adopt a policy that prohibits unlawful possession, use, or distribution of controlled substances by students and employees on property owned or leased by the merged area school or in conjunction with activities sponsored by a merged area school. Each merged area school shall provide information about the policy to all students and employees. The policy shall include a clear statement of sanctions for violation of the policy and information about available drug or alcohol counseling and rehabilitation programs. In carrying out this policy, the merged area school shall provide substance abuse prevention programs for students and em-

ployees.
91 Acts, ch 267, §242
CS91, §280A.40
C93, §260C.40

260C.41 Reserved.

260C.42 Payment of expenses.
The board of directors of a merged area shall audit and allow all just claims against the community college and an order shall not be drawn upon the treasury until the claim has been audited and allowed. However, the board of directors, by resolution, may authorize the secretary of the board, when the board is not in session, to issue payments for salaries pursuant to the terms of a written contract and to issue payments upon the receipt of verification filed with the secretary for all other general fund and plant fund expenses within limits established by resolution of the board; expenses involving auxiliary, agency, and scholarship and loan accounts; and refunds to students for tuition and fees. The secretary shall either deliver in person or mail the payments to the payees. A payment shall be made payable only to the person performing the service or furnishing the supplies for which the payment is issued. Payments issued prior to audit and allowance by the board shall be allowed by the board at the first meeting held after the issuance and shall be entered in the minutes of the meeting.
[82 Acts, ch 1058, §1]
C83, §280A.42
87 Acts, ch 233, §479; 88 Acts, ch 1061, §1; 90 Acts, ch 1253, §45
C93, §260C.42

260C.43 Claims.
The board of directors of each merged area shall audit claims against the merged area to ensure proper and just payment of all claims. Each payment shall be made payable to the vendor entitled to receive the payment with appropriate justification to ensure that the payment is in accordance with generally accepted accounting principles and procedures and in accordance with the system prescribed under section 260C.5, subsection 9. The board may designate one or more members of the board or may employ a certified public accountant to perform and certify the audit to the board to comply with this section.
[82 Acts, ch 1059, §1]
C83, §280A.43
C93, §260C.43

260C.44 Apprenticeship programs.
Each community college is authorized to establish or contract for the establishment of apprenticeship programs for apprenticeable occupations. Any apprenticeship program established under this section shall comply with requirements established by the United States department of labor, bureau of apprenticeship and training. Participation in an apprenticeship program or apprenticeship agreement by an apprenticeship sponsor shall be on a voluntary basis.

For purposes of this section, *"apprenticeship program"* means a plan, registered with the United States bureau of apprenticeship and training which contains the terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including the requirement for a written apprenticeship agreement.

For purposes of this section, *"apprenticeship sponsor"* means a person operating an apprenticeship program or in whose name an apprenticeship program is being operated, registered, or approved.

For purposes of this section, *"apprenticeable occupation"* means an occupation approved for apprenticeship by the United States department of labor, bureau of apprenticeship and training.

For purposes of this section, *"apprentice"* means a person who is at least sixteen years of age, except where a higher minimum age is required by law, who is employed in an apprenticeable occupation, and is registered with the United States department of labor, bureau of apprenticeship and training.
90 Acts, ch 1253, §46
C91, §280A.44
C93, §260C.44

260C.45 Quality instructional centers.
A quality instructional centers program is established for the community colleges to promote the creation or enhancement of high quality, unique, high cost, capital intensive, or highly specialized vocational-technical and occupational programs, which cannot be practically or economically offered at more than a few community colleges. The department of education shall establish criteria for the identification, approval, and review of programs for which an application for identification as a quality instructional center has been submitted.

A community college seeking to have a program identified as a quality instructional center shall submit an application to the department, describing the program, costs associated with program delivery, and current and projected student participation in the program. The department shall review each application, either accept or reject the application, and inform the applicant of the department's action on the application. Rejection of an application shall not preclude a community college from resubmitting the same or a different program for consideration as a candidate for identification as a quality instructional center.

The department shall provide assistance to community colleges to ensure that each communi-

ty college is able to offer at least one program which meets the standards adopted for quality instructional centers.

A community college with an approved quality instructional center shall annually submit a report indicating how funds received during the past year were spent and the projections of the next year's funding needs. The department shall review the reports to determine which centers will continue to be identified as quality instructional centers and the next year's funding levels for each approved center.

90 Acts, ch 1253, §47
C91, §280A.45
C93, §260C.45
97 Acts, ch 23, §28

260C.46 Program and administrative sharing.

By September 1, 1990, the department shall establish guidelines and an approval process for program sharing agreements and for administrative sharing agreements entered into by two or more community colleges or by a community college and a higher education institution under the control of the board of regents. Guidelines established shall be designed to increase student access to programs, enhance educational program offerings throughout the state, and enhance interinstitutional cooperation in program offerings.

90 Acts, ch 1253, §48
C91, §280A.46
C93, §260C.46
97 Acts, ch 23, §29

260C.47 Accreditation of community college programs.

1. The state board of education shall establish an accreditation process for community college programs by July 1, 1997. The process shall be jointly developed and agreed upon by the department of education and the community colleges. The state accreditation process shall be integrated with the accreditation process of the north central association of colleges and schools, including the evaluation cycle, the self-study process, and the criteria for evaluation, which shall incorporate the standards for community colleges developed under section 260C.48; and shall identify and make provision for the needs of the state that are not met by the association's accreditation process. For the academic year commencing July 1, 1998, and in succeeding school years, the department of education shall use a two-component process for the continued accreditation of community college programs.

a. The first component consists of submission of required data by the community colleges and annual monitoring by the department of education of all community colleges for compliance with state program evaluation requirements adopted by the state board.

b. The second component consists of the use of an accreditation team appointed by the director of the department of education, to conduct an evaluation, including an on-site visit of each community college, with a comprehensive evaluation to occur during the same year as the evaluation by the north central association of colleges and schools, and an interim evaluation midway between comprehensive evaluations. The number and composition of the accreditation team shall be determined by the director, but the team shall include members of the department of education staff and community college staff members from community colleges other than the community college that conducts the programs being evaluated for accreditation.

c. Rules adopted by the state board shall include provisions for coordination of the accreditation process under this section with activities of accreditation associations, which are designed to avoid duplication in the accreditation process.

2. Prior to a visit to a community college, members of the accreditation team shall have access to the program audit report filed with the department for that community college. After a visit to a community college, the accreditation team shall determine whether the accreditation standards for a program have been met and shall make a report to the director and the state board, together with a recommendation as to whether the program of the community college should remain accredited. The accreditation team shall report strengths and weaknesses, if any, for each program standard and shall advise the community college of available resources and technical assistance to further enhance strengths and improve areas of weakness. A community college may respond to the accreditation team's report.

3. The state board shall determine whether a program of a community college shall remain accredited. If the state board determines that a program of a community college does not meet accreditation standards, the director of the department of education, in cooperation with the board of directors of the community college, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the program standards, and shall establish a deadline date for correction of the deficiencies. The deadline for correction of deficiencies under a plan shall be no later than June 30 of the year following the on-site visit of the accreditation team. The plan is subject to approval of the state board. Plans shall include components which address meeting program deficiencies, sharing or merger options, discontinuance of specific programs or courses of study, and any other options proposed by the state board or the accreditation team to allow the college to meet the program standards.

4. During the time specified in the plan for its implementation, the community college program

remains accredited. The accreditation team shall revisit the community college and shall determine whether the deficiencies in the standards for the program have been corrected and shall make a report and recommendation to the director and the state board. The state board shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies in the program have been corrected.

5. If the deficiencies have not been corrected in a program of a community college, the community college board shall take one of the following actions within sixty days from removal of accreditation:

a. Merge the deficient program or programs with a program or programs from another accredited community college.

b. Contract with another educational institution for purposes of program delivery at the community college.

c. Discontinue the program or programs which have been identified as deficient.

6. The director of the department of education shall give a community college which has a program which fails to meet accreditation standards at least one year's notice prior to removal of accreditation of the program. The notice shall be given by certified mail or restricted certified mail addressed to the superintendent of the community college and shall specify the reasons for removal of accreditation of the program. The notice shall also be sent by ordinary mail to each member of the board of directors of the community college. Any good faith error or failure to comply with the notice requirements shall not affect the validity of any action by the director. If, during the year, the community college remedies the reasons for removal of accreditation of the program and satisfies the director that the community college will comply with the accreditation standards for that program in the future, the director shall continue the accreditation of the program of the community college and shall transmit notice of the action to the community college by certified mail or restricted certified mail.

7. The action of the director to remove a community college's accreditation of the program may be appealed to the state board. At the hearing, the community college may be represented by counsel and may present evidence. The state board may provide for the hearing to be recorded or reported. If requested by the community college at least ten days before the hearing, the state board shall provide for the hearing to be recorded or reported at the expense of the community college, using any reasonable method specified by the community college. Within ten days after the hearing, the state board shall render a written decision, and shall affirm, modify, or vacate the action or proposed action to remove the college's accreditation of the program. Action by the state board is final agency action for purposes of chapter 17A.

90 Acts, ch 1253, §49; 90 Acts, ch 1254, §2
C91, §280A.47
92 Acts, ch 1040, §1
C93, §260C.47
93 Acts, ch 82, §5, 6, 11; 96 Acts, ch 1215, §34; 99 Acts, ch 114, §15

For future amendments to subsection 1, effective July 1, 2003, see 2002 Acts, ch 1047, §6, 7, 20

260C.48 Standards for accrediting community college programs.

1. The state board shall develop standards and rules for the accreditation of community college programs. Standards developed shall be general in nature so as to apply to more than one specific program of instruction.

2. Standards developed shall include a provision that the standard academic work load for an instructor in arts and science courses shall be fifteen credit hours per school term, and the maximum academic work load for any instructor shall be sixteen credit hours per school term, for classes taught during the normal school day. In addition thereto, any faculty member may teach a course or courses at times other than the regular school week, involving total class instruction time equivalent to not more than a three-credit-hour course. The total work load for such instructors shall not exceed the equivalent of eighteen credit hours per school term.

3. Standards developed shall include provisions requiring equal access in recruitment, enrollment, and placement activities for students with special education needs. The provisions shall include a requirement that students with special education needs shall receive instruction in the least restrictive environment with access to the full range of program offerings at a college, through, but not limited to, adaptation of curriculum, instruction, equipment, facilities, career guidance, and counseling services.

90 Acts, ch 1253, §50; 90 Acts, ch 1254, §3
C91, §280A.48
C93, §260C.48
93 Acts, ch 82, §7, 8

For future amendments to this section, effective July 1, 2003, see 2002 Acts, ch 1047, §8, 9, 20

260C.49 Rules.

The department of education shall adopt rules and definitions of terms necessary for the administration of this chapter. The school budget review committee shall adopt rules under chapter 17A to carry out section 260C.18B.

96 Acts, ch 1215, §35

260C.50 through 260C.55 Repealed by 93 Acts, ch 179, § 32.

RESIDENCE HALLS AND
DORMITORIES — FINANCING

260C.56 Definitions.

As used in this division:

1. *"Board"* means a board of directors of a community college.

2. *"Bonds or notes"* means revenue bonds or revenue notes which are payable solely from net rents, profits, and other income derived from the operation of residence halls, dormitories, incidental facilities, and additions.

3. *"Institution"* means a community college organized under this chapter.

4. *"Project"* means the acquisition by purchase, lease in accordance with section 260C.38, or construction of buildings for use as student residence halls and dormitories, including dining and other incidental facilities therefor, and additions to such buildings, the reconstruction, completion, equipment, improvement, repair or remodeling of residence halls, dormitories, or additions or incidental facilities, and the acquisition of property of every kind and description, whether real, personal, or mixed, by gift, purchase, lease, condemnation, or otherwise and the improvement of the property.

90 Acts, ch 1253, §58; 90 Acts, ch 1254, §4
C91, §280A.56
91 Acts, ch 267, §243, 244
C93, §260C.56

260C.57 Authorization — contracts — title.

Subject to and in accordance with the provisions of this division, the board of directors of each community college is hereby authorized to undertake and carry out any project at a community college under the board's control and to operate, control, maintain, and manage student residence halls and dormitories, including dining and other incidental facilities, and additions to such buildings at each of said institutions. All contracts for the construction, reconstruction, completion, equipment, improvement, repair or remodeling of any buildings, additions or facilities shall be let in accordance with the provisions of section 260C.19. The title to all real estate acquired under the provisions of this division and the improvements erected on the real estate shall be taken and held in the name of the merged area. The board is authorized to rent the rooms in such residence halls and dormitories to the students, officers, guests and employees of the institutions at such rates, fees or rentals as will provide a reasonable return upon the investment, but which will in any event produce net rents, profits and income sufficient to insure the payment of the principal of and interest on all bonds or notes issued to pay any part of the cost of any project and refunding bonds or notes issued pursuant to the provisions of this division and to insure that no property tax revenues will be needed to retire the bonds or notes.

90 Acts, ch 1253, §59
C91, §280A.57
C93, §260C.57
94 Acts, ch 1023, §94

260C.58 Bonds or notes.

To pay all or any part of the cost of carrying out any project at any institution the board is authorized to borrow money and to issue and sell negotiable bonds or notes and to refund and refinance bonds or notes issued for any project or for refunding purposes at a lower rate, the same rate, or a higher rate or rates of interest and from time to time as often as the board shall find it to be advisable and necessary so to do. Bonds or notes issued by the board for residence hall or dormitory purposes at any institution, including dining or other facilities and additions, or issued for refunding purposes, may either be sold in the manner specified for the selling of certificates under section 260E.6 and the proceeds applied to the payment of the obligations being refunded, or the refunding bonds or notes may be exchanged for and in payment and discharge of the obligations being refunded. A finding by the board in the resolution authorizing the issuance of the refunding bonds or notes, that the bonds or notes being refunded were issued for a purpose specified in this division and constitute binding obligations of the board, shall be conclusive and may be relied upon by any holder of any refunding bond or note issued under the provisions of this division. The refunding bonds or notes may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds or notes may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds or notes may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds or other obligations to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds or notes, except that the principal amount of the refunding bonds or notes may exceed the principal amount of the bonds or notes to be refunded to the extent necessary to pay any premium due on the call of the bonds or notes to be refunded, to fund interest in arrears or about to become due, or to allow for sufficient funding of the escrow account on the bonds to be refunded.

All bonds or notes issued under the provisions of this division shall be payable from and shall be secured by an irrevocable first lien pledge of a sufficient portion of the following: the net rents, profits and income derived from the operation of residence halls, dormitories, dining or other incidental facilities and additions, including necessary real and personal property, acquired or improved

in whole or in part with the proceeds of such bonds or notes, regardless of the manner of such acquisition or improvement; and the net rents, profits and income not pledged for other purposes derived from the operation of any other residence halls or dormitories, including dining or other incidental facilities and additions, at the particular institution. In addition, the board may secure any bonds or notes issued by borrowing money, by mortgaging any real estate or improvements erected on real estate, or by pledging rents, profits, and income received from property for the discharge of mortgages. All bonds or notes issued under the provisions of this division shall have all the qualities of negotiable instruments under the laws of this state.

90 Acts, ch 1253, §60
C91, §280A.58
91 Acts, ch 267, §245
C93, §260C.58

260C.59 Rates and terms of bonds or notes.

The bonds or notes may bear a date or dates, may bear interest at such rate or rates, may mature at such time or times, may be in such form, carry such registration privileges, may be payable at such place or places, may be subject to such terms of redemption prior to maturity with or without premium, if so stated on the face of the bonds, and may contain any terms and covenants as may be provided by the resolution of the board authorizing the issuance of the bonds or notes. In addition to the estimated cost of construction, the cost of the project shall be deemed to include interest upon the bonds or notes during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, any underwriter discount, and engineering, administrative and legal expenses. The bonds or notes shall be executed by the president of the board of directors and attested by the secretary. Any bonds or notes bearing the signatures of officers in office on the date of the signing shall be valid and binding for all purposes, notwithstanding that before delivery of the bonds or notes any or all persons whose signatures appear on the bonds or notes shall have ceased to be officers. Each bond or note shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from the net rents, profits and income derived from the operation of residence halls or dormitories, including dining and other incidental facilities, at the institution named, and that it does not constitute a charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision. The issuance of bonds or notes shall be recorded in the office of the treasurer of the institution on behalf of which the bonds or notes are issued, and a certificate by such treasurer to this effect shall be printed on the back of each such bond or note.

90 Acts, ch 1253, §61
C91, §280A.59
91 Acts, ch 267, §246
C93, §260C.59
94 Acts, ch 1023, §95

260C.60 Issuance resolution.

Upon the determination by the board to undertake and carry out any project or to refund outstanding bonds or notes, the board shall adopt a resolution generally describing the contemplated project and setting forth the estimated cost, or describing the obligations to be refunded, fixing the amount of bonds or notes to be issued, the maturity or maturities, the interest rate or rates and all details of the project. The resolution shall contain any covenants as may be determined by the board as to the issuance of additional bonds or notes that may be issued payable from the net rents, profits and income of the residence halls or dormitories, the amendment or modification of the resolution authorizing the issuance of any bonds or notes, the manner, terms and conditions and the amount or percentage of assenting bonds or notes necessary to effectuate the amendment or modification, and any other covenants as may be deemed necessary or desirable. In the discretion of the board any bonds or notes issued under the terms of this division may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the boundaries of the state of Iowa. The provisions of this division and of any resolution or other proceedings authorizing the issuance of bonds or notes and providing for the establishment and maintenance of adequate rates, fees or rentals and the application of the proceeds thereof shall constitute a contract with the holders of the bonds or notes.

90 Acts, ch 1253, §62
C91, §280A.60
91 Acts, ch 267, §247
C93, §260C.60

260C.61 Rates, fees, and rentals — pledge.

If bonds or notes are issued by a board, the board shall establish, impose, and collect rates, fees or rentals for the use of and services provided by the residence halls and dormitories, including dining and other incidental facilities therefor, at the institution on behalf of which the bonds or notes are issued, shall adjust the rates, fees, or rentals from time to time, in order to always provide net amounts sufficient to pay the principal of and interest on the bonds or notes as they become due, and shall maintain a reserve. The board may pledge a sufficient amount of the net rents, profits and income derived from the operation of residence halls and dormitories, including dining and

other facilities, at the institution for this purpose. Rates, fees, or rentals collected at one institution shall not be used to discharge bonds or notes issued for or on account of another institution. All bonds or notes issued under the terms of this division shall be exempt from taxation by the state of Iowa and the interest on the bonds or notes is exempt from the state income tax.

90 Acts, ch 1253, §63
C91, §280A.61
C93, §260C.61

260C.62 Accounts.

A certified copy of each resolution providing for the issuance of bonds or notes under this division shall be filed with the treasurer of the institution on behalf of which the bonds or notes are issued and the treasurer shall keep and maintain separate accounts for each issue of bonds or notes in accordance with the covenants and directions set out in the resolution providing for the issuance of the bonds or notes. All rates, fees, or rentals collected for the use of and services provided by the residence halls and dormitories, including dining and other incidental facilities, at each institution shall be held in trust by the treasurer, separate and apart from all other funds, to be used only for the purposes specified in this division and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds or notes. The treasurer of each institution shall disburse funds from the proper account for the payment of the principal of and interest on the bonds or notes in accordance with the directions and covenants of the resolution authorizing the issuance of the bonds or notes.

If the amount of bonds or notes issued under this chapter exceeds the actual costs of the projects for which the bonds or notes were issued, the amount of the difference shall be used to pay the principal and interest due on bonds or notes issued under this chapter.

90 Acts, ch 1253, §64
C91, §280A.62
C93, §260C.62

260C.63 No obligation against state.

Under no circumstances shall any bonds or notes issued under the terms of this division be or become or be construed to constitute a charge against the state of Iowa within the purview of any constitutional or statutory limitation or provision. Taxes, appropriations, or other funds of the state of Iowa shall not be pledged for or used to pay for the bonds or notes or for the interest on the bonds or notes. Any principal and interest on bonds or notes issued under this division shall be payable only from the net rents, profits, and income derived from the operation of residence halls and dormitories, including dining and other incidental facilities, at the institutions of higher learning under the control of the board, and the sole remedy for any breach or default of the terms of any bonds or notes or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action, or mandamus to enforce and compel performance of the duties required by this division and the terms of the resolution under which the bonds or notes are issued.

90 Acts, ch 1253, §65
C91, §280A.63
C93, §260C.63

260C.64 Who may invest.

All banks, trust companies, building and loan associations, savings and loan associations, investment companies, and other persons carrying on an investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or notes issued pursuant to this division. However, this section shall not be construed as relieving any persons from any duty of exercising reasonable care in selecting securities for purchase or investment.

90 Acts, ch 1253, §66
C91, §280A.64
C93, §260C.64

260C.65 Federal or other aid accepted.

The board of directors of each community college may apply for and accept federal aid or nonfederal gifts or grants of funds, and may use the aid, gifts, or funds to pay all or any part of the cost of carrying out any project at any institution under the terms of this division or to pay any bonds and interest on the bonds issued for any of the purposes specified in this division.

90 Acts, ch 1253, §67
C91, §280A.65
C93, §260C.65
94 Acts, ch 1023, §96

260C.66 Reports to general assembly.

The board of directors of each community college shall determine, in consultation with the legislative fiscal bureau, the financial information to be included in line item budget information for projects funded by the issuance of bonds or notes under this chapter and shall submit the line item budget information to the general assembly as requested. The board of directors of each community college shall submit quarterly reports to the general assembly concerning the projects funded by the issuance of bonds or notes under this chapter as follows:

1. Identification of both undercharges and overcharges for line items of projects.

2. Identification of contracts in which any line item for a project exceeds the adopted budget for

that line item by ten percent or more.

3. Identification of complaints received by an institution regarding the construction of a project.

If the board of directors of a community college approves a change in the amount of the line item of a budget for a project, the change shall be transmitted to the appropriations committees of the house of representatives and senate, while the general assembly is in session, and to the legislative council, when the general assembly is not in session, for review.

90 Acts, ch 1253, §68
C91, §280A.66
C93, §260C.66
94 Acts, ch 1023, §97

260C.67 Alternative method.

This division shall be construed as providing an alternative and independent method for carrying out any project at any institution under the control of a community college board of directors, for the issuance and sale or exchange of bonds or notes in connection with a project and for refunding bonds or notes pertinent to the project, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, whether under section 73A.12 or otherwise, and no other or further proceeding in respect to the issuance or sale or exchange of bonds or notes under this division, shall be required except as prescribed by this division, any provisions of other statutes of the state to the contrary notwithstanding.

90 Acts, ch 1253, §69
C91, §280A.67
C93, §260C.67
94 Acts, ch 1023, §98

260C.68 Prior action legalized.

All rights previously acquired in connection with the financing of any project at any institution are preserved and all acts and proceedings taken by the board preliminary to and in connection with the authorization and issuance of any previously issued and outstanding notes or other obligations for any project are hereby legalized, validated, and confirmed and the notes or obligations are hereby declared to be legal and to constitute valid and binding obligations of the board according to their terms and payable solely and only from the sources referred to in the notes or obligations.

90 Acts, ch 1253, §70
C91, §280A.68
C93, §260C.68

260C.69 Dormitory space priority.

Each community college which completes a project, as defined under section 260C.56, subsection 4, shall set aside a percentage of available dormitory space for the purposes of meeting the needs of the following students:

1. Students, with families, who are participating in specialized or intensive programs.
2. Students who are participating in specialized or intensive programs.
3. Child care arrangements for students, faculty, or staff.
4. Students whose residence is located too far from the community college to permit commuting to and from school, as determined by the board of directors of the merged area.
5. Students whose disabilities require special housing adaptations.

Once all priorities have been met, students shall be allotted rooms on a first come, first served basis.

90 Acts, ch 1253, §71
C91, §280A.69
C93, §260C.69
99 Acts, ch 192, §33

260C.70 Ten-year program and two-year bonding estimate submitted each year. Repealed by 2002 Acts, ch 1140, § 44.

FINANCING THROUGH IOWA FINANCE AUTHORITY

260C.71 Community college bond program — definitions — funding — bonds and notes.

1. As used in this section and section 260C.72, unless the context otherwise requires:

a. "Authority" means the Iowa finance authority.

b. "Bonds" means revenue bonds which are payable solely as provided in this section and section 260C.72.

2. The authority shall cooperate with the state board for community colleges, individual community colleges, and private developers, acting in conjunction with a community college to build housing facilities in connection with the community college, in the creation, administration, and funding of a community college dormitory bond program to finance housing facilities, such as dormitories, in connection with a community college.

3. The authority may issue its bonds and notes for the purpose of funding the nonrecurring cost of acquiring, constructing, and equipping a community college related facility, such as a dormitory.

4. The authority may issue its bonds and notes for the purposes of this chapter and may enter into one or more lending agreements or purchase agreements with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders or a trustee agent designated by the authority may enter into agreements to provide for any of the following:

a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the authority or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority may collect, invest, and apply the amount payable under the loan agreements or any other instruments securing the debt obligations under the loan agreements.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreements or other instruments on their own behalf without the appointment or designation of a trustee. If there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained in the loan agreements or other instruments, the payment or performance may be enforced in accordance with the loan agreement or other instrument.

d. Other terms and conditions as deemed necessary or appropriate by the authority.

5. The powers granted the authority under this section are in addition to other powers contained in chapter 16. All other provisions of chapter 16, except section 16.28, subsection 4, apply to bonds or notes issued and powers granted to the authority under this section, except to the extent they are inconsistent with this section.

6. All bonds or notes issued by the authority in connection with the program are exempt from taxation by this state and the interest on the bonds or notes is exempt from state income tax, both personal and corporate.

90 Acts, ch 1253, §76; 90 Acts, ch 1254, §6
C91, §280A.71
C93, §260C.71

260C.72 Security — reserve funds — pledges — nonliability.

1. The authority may provide in the resolution, trust agreement, or other instrument authorizing the issuance of its bonds or notes pursuant to section 260C.71 that the principal of, premium, and interest on the bonds or notes are payable from any of the following and may pledge the same to its bonds and notes:

a. From the net rents, profits, and income arising from the project or property pledged or mortgaged.

b. From the net rents, profits, and income which has not been pledged for other purposes arising from any similar housing facility under the control and management of the community college or state board for community colleges.

c. From the fees or charges established by the community college or state board for community colleges for students attending the institution who are living in the housing facility for which the obligation was incurred.

d. From the income derived from gifts and bequests made to the institutions under the control of the community college or state board for community colleges for such purposes.

e. From the amounts on deposit in the name of a community college or a private developer or operator of a community college facility, including but not limited to revenues from a purchase, rental, or lease agreement, loan agreement, or dormitory charges.

f. From the amounts payable to the authority, the community college board of directors, the state board for community colleges, or a private developer or operator, pursuant to a loan agreement, lease agreement, or sale agreement.

g. From the other funds or accounts established by the authority in connection with the program or the sale and issuance of its bonds or notes.

No obligation created hereunder shall ever be or become a charge against the state of Iowa but all such obligations, including principal and interest, shall be payable solely as provided in this section and section 260C.71.

2. The authority may establish reserve funds to secure one or more issues of its bonds or notes. The authority may deposit in a reserve fund established under this subsection, the proceeds of the sale of its bonds or notes and other money which is made available from any other source.

3. A pledge made in respect of bonds or notes is valid and binding from the time the pledge is made. The money or property so pledged and received after the pledge by the authority is immediately subject to the lien of the pledge without physical delivery or further act. The lien of the pledge is valid and binding as against all persons having claims of any kind in tort, contract, or otherwise against the authority whether or not the parties have notice of the lien. Neither the resolution, trust agreement, or any other instrument by which a pledge is created needs to be recorded, filed, or perfected under chapter 554, to be valid, binding, or effective against all persons.

4. The members of the authority or persons executing the bonds or notes are not personally liable on the bonds or notes and are not subject to personal liability or accountability by reason of the issuance of the bonds or notes.

5. The bonds or notes issued by the authority are not an indebtedness or other liability of the state or of a political subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority and are payable solely from the income and receipts or other funds or property of the community college or private developer, and the amounts on deposit in a community college bond fund, and the amounts payable to the authority under its loan agreements with a community college or private developer to the extent that the amounts are designated in the resolution, trust agreement, or other instrument of the authority authorizing the issuance of the bonds or notes as

being available as security for the bonds or notes. The authority shall not pledge the faith or credit of the state or of a political subdivision of the state to the payment of any bonds or notes. The issuance of any bonds or notes by the authority does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply money from, or levy, or pledge any form of taxation whatever to the payment of the bonds or notes.

90 Acts, ch 1253, §77; 90 Acts, ch 1254, §7, 8
C91, §280A.72
C93, §260C.72

260C.73 Rules.

The authority shall adopt rules pursuant to chapter 17A to implement sections 260C.71 and 260C.72.

90 Acts, ch 1253, §78
C91, §280A.73
C93, §260C.73

CHAPTER 260D

FUNDING FOR COMMUNITY COLLEGES

Repealed by 96 Acts, ch 1215, §59, 62; see chapter 260C

CHAPTER 260E

INDUSTRIAL NEW JOBS TRAINING

Legislative intent that chapter 260F complement this chapter; 85 Acts, ch 235, §9
New jobs tax credit; §422.11A, 422.33
Supplemental new jobs credit from withholding; see §15A.7

260E.1 Title.
260E.2 Definitions.
260E.3 Agreement.
260E.4 Incremental property taxes.
260E.5 New jobs credit from withholding.
260E.6 Certificates.
260E.7 Department of economic development.

260E.1 Title.

This chapter shall be known and may be cited as the *"Iowa Industrial New Jobs Training Act"*.

83 Acts, ch 171, §1, 8
CS83, §280B.1
C93, §260E.1

260E.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Agreement"* is the agreement between an employer and a community college concerning a project.
2. *"Board of directors"* means the board of directors of a community college.
3. *"Certificate"* means industrial new jobs training certificates issued pursuant to section 260E.6.
4. *"Community college"* means a community college established under chapter 260C.
5. *"Date of commencement of the project"* means the date of the agreement.
6. *"Employee"* means the person employed in a new job.
7. *"Employer"* means the person providing new jobs in the merged area served by the community college and entering into an agreement.
8. *"Incremental property taxes"* means the taxes as provided in sections 403.19 and 260E.4.
9. *"Industry"* means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, or professional services. *"Industry"* does not include a business which closes or substantially reduces its operation in one area of the state of Iowa and relocates substantially the same operation in another area of the state of Iowa. This subsection does not prohibit a business from expanding its operations in another area of the state provided that existing operations of a similar nature are not closed or substantially reduced.
10. *"New job"* means a job in a new or expand-

ing industry but does not include jobs of recalled workers, or replacement jobs or other jobs that formerly existed in the industry in the state of Iowa.

11. *"New jobs credit from withholding"* means the credit as provided in section 260E.5.

12. *"New jobs training program"* or *"program"* means the project or projects established by a community college for the creation of jobs by providing education and training of workers for new jobs for new or expanding industry in the merged area served by the community college.

13. *"Program costs"* means all necessary and incidental costs of providing program services.

14. *"Program services"* includes but is not limited to the following:

a. New jobs training.

b. Adult basic education and job-related instruction.

c. Vocational and skill-assessment services and testing.

d. Training facilities, equipment, materials, and supplies.

e. On-the-job training.

f. Administrative expenses for the new jobs training program.

g. Subcontracted services with institutions governed by the board of regents, private colleges or universities, or other federal, state, or local agencies.

h. Contracted or professional services.

i. Issuance of certificates.

15. *"Project"* means a training arrangement which is the subject of an agreement entered into between the community college and an employer to provide program services.

83 Acts, ch 171, §2, 8
CS83, §280B.2
85 Acts, ch 240, §2; 90 Acts, ch 1253, §73
C93, §260E.2

260E.3 Agreement.

1. A community college may enter into an agreement to establish a project. If an agreement is entered into, the community college and the employer shall notify the department of revenue and finance as soon as possible. An agreement shall provide for program costs, including deferred costs, which may be paid from one or a combination of the following sources:

a. Incremental property taxes to be received or derived from an employer's business property where new jobs are created as a result of the project.

b. New jobs credit from withholding to be received or derived from new employment resulting from the project.

c. Tuition, student fees, or special charges fixed by the board of directors to defray program costs in whole or in part.

d. Guarantee of payments to be received under paragraph *"a," "b,"* or *"c"*.

2. Payment of program costs shall not be deferred for a period longer than ten years from the date of commencement of the project.

3. Costs of on-the-job training for employees shall not exceed fifty percent of the annual gross payroll costs for up to one year of the new jobs. For purposes of this subsection, *"gross payroll"* can be the gross wages, salaries, and benefits for the jobs in training in the project.

4. An agreement shall include a provision which fixes the minimum amount of incremental property taxes, new jobs credit from withholding, or tuition and fee payments which shall be paid for program costs.

5. Any payments required to be made by an employer are a lien upon the employer's business property until paid and have equal precedence with ordinary taxes and shall not be divested by a judicial sale. Property subject to the lien may be sold for sums due and delinquent at a tax sale, with the same forfeitures, penalties, and consequences as for the nonpayment of ordinary taxes. The purchaser at tax sale obtains the property subject to the remaining payments.

83 Acts, ch 171, §3, 8
CS83, §280B.3
90 Acts, ch 1253, §74
C93, §260E.3
94 Acts, ch 1182, §1, 2; 95 Acts, ch 195, §11, 44; 95 Acts, ch 201, §1, 3

260E.4 Incremental property taxes.

If an agreement provides that all or part of program costs are to be paid for by incremental property taxes, the board of directors shall provide by resolution that taxes levied on the employer's taxable business property, where new jobs are created as a result of a project, each year by or for the benefit of the state, city, county, school district, or other taxing district after the effective date of the resolution shall be divided as provided in section 403.19, subsections 1 and 2, in the same manner as if the employer's business property, where new jobs are created as a result of a project, was taxable property in an urban renewal project and the resolution was an ordinance within the meaning of those subsections. The taxes received by the board of directors shall be allocated to and when collected be paid into a special fund of the community college and may be irrevocably pledged by the community college to pay the principal of and interest on the certificates issued by the community college to finance or refinance, in whole or in part, the project. However, with respect to any urban renewal project as to which an ordinance is in effect under section 403.19, the collection of incremental property taxes authorized by this chapter are suspended in favor of collection of incremental taxes under section 403.19. As used in this section, *"taxes"* includes, but is not limited to, all levies on an ad valorem basis upon land or real property of the employer's business, where new jobs are creat-

ed as a result of a project.

83 Acts, ch 171, §4, 8
CS83, §280B.4
90 Acts, ch 1253, §79
C93, §260E.4

260E.5 New jobs credit from withholding.

If an agreement provides that all or part of program costs are to be met by receipt of new jobs credit from withholding, it shall be done as follows:

1. New jobs credit from withholding shall be based upon the wages paid to the employees in the new jobs.

2. An amount equal to one and one-half percent of the gross wages paid by the employer to each employee participating in a project shall be credited from the payment made by an employer pursuant to section 422.16. If the amount of the withholding by the employer is less than one and one-half percent of the gross wages paid to the employees covered by the agreement, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall remit the amount of the credit quarterly in the same manner as withholding payments are reported to the department of revenue and finance, to the community college to be allocated to and when collected paid into a special fund of the community college to pay the principal of and interest on certificates issued by the community college to finance or refinance, in whole or in part, the project. When the principal and interest on the certificates have been paid, the employer credits shall cease and any money received after the certificates have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

3. The new jobs credit from withholding and the special fund into which it is paid, may be irrevocably pledged by a community college for the payment of the principal of and interest on the certificate issued by a community college to finance or refinance, in whole or in part, the project.

4. The employer shall certify to the department of revenue and finance that the credit in withholding is in accordance with an agreement and shall provide other information the department may require.

5. A community college shall certify to the department of revenue and finance the amount of new jobs credit from withholding an employer has remitted to the special fund and shall provide other information the department may require.

6. An employee participating in a project will receive full credit for the amount withheld as provided in section 422.16.

83 Acts, ch 171, §5, 8
CS83, §280B.5
90 Acts, ch 1253, §80
C93, §260E.5
See also §15.331 and 15A.9

260E.6 Certificates.

To provide funds for the present payment of the costs of new jobs training programs, a community college may borrow money and issue and sell certificates payable from a sufficient portion of the future receipts of payments authorized by the agreement. The receipts shall be pledged to the payment of principal of and interest on the certificates.

1. Certificates may be sold at public sale or at private sale at par, premium, or discount at the discretion of the board of directors. Chapter 75 does not apply to the issuance of these certificates.

2. Certificates may be issued with respect to a single project or multiple projects and may contain terms or conditions as the board of directors may provide by resolution authorizing the issuance of the certificates.

3. Certificates issued to refund other certificates may be sold at public sale or at private sale as provided in this section with the proceeds from the sale to be used for the payment of the certificates being refunded. The refunding certificates may be exchanged in payment and discharge of the certificates being refunded, in installments at different times or an entire issue or series at one time. Refunding certificates may be sold or exchanged at any time on, before, or after the maturity of the outstanding certificates to be refunded, may be issued for the purpose of refunding a like, greater, or lesser principal amount of certificates and may bear a higher, lower, or equivalent rate of interest than the certificates being renewed or refunded.

4. To further secure the payment of the certificates, the board of directors shall, by resolution, provide for the assessment of an annual levy of a standby tax upon all taxable property within the merged area. A copy of the resolution shall be sent to the county auditor of each county in which the merged area is located. The revenues from the standby tax shall be deposited in a special fund and shall be expended only for the payment of principal of and interest on the certificates issued as provided in this section, when the receipt of payment for program costs as provided in the agreement is insufficient. If payments are necessary and made from the special fund, the amount of the payments shall be promptly repaid into the special fund from the first available payments received for program costs as provided in the agreement which are not required for the payment of principal of or interest on certificates due. No reserves may be built up in this fund in anticipation of a projected default. The board of directors shall adjust the annual standby tax levy for each year to reflect the amount of revenues in the special fund and the amount of principal and interest which is due in that year.

5. Before certificates are issued, the board of directors shall publish once a notice of its intention to issue the certificates, stating the amount,

the purpose, and the project or projects for which the certificates are to be issued. A person may, within fifteen days after the publication of the notice by action in the district court of a county in the area within which the community college is located, appeal the decision of the board of directors in proposing to issue the certificates. The action of the board of directors in determining to issue the certificates is final and conclusive unless the district court finds that the board of directors has exceeded its legal authority. An action shall not be brought which questions the legality of the certificates, the power of the board of directors to issue the certificates, the effectiveness of any proceedings relating to the authorization of the project, or the authorization and issuance of the certificates from and after fifteen days from the publication of the notice of intention to issue.

6. The board of directors shall determine if revenues are sufficient to secure the faithful performance of obligations in the agreement.

83 Acts, ch 171, §6, 8
CS83, §280B.6
88 Acts, ch 1158, §58; 90 Acts, ch 1253, §81
C93, §260E.6

260E.7 Department of economic development.

The Iowa department of economic development in consultation with the department of education shall coordinate the new jobs training program. The Iowa department of economic development shall adopt, amend, and repeal rules under chapter 17A that the community college will use in developing projects with new and expanding industrial new jobs training proposals. The department is authorized to make any rule that is adopted, amended, or repealed effective immediately upon filing with the administrative rules coordinator or at a subsequent stated date prior to indexing and publication, or at a stated date less than thirty-five days after filing, indexing, and publication. The department shall prepare an annual report for the governor and general assembly on the activities of the industrial new jobs training program.

83 Acts, ch 171, §7, 8
CS83, §280B.7
90 Acts, ch 1253, §82
C93, §260E.7

CHAPTER 260F

JOBS TRAINING

Legislative intent that chapter complement chapter 260E;
85 Acts, ch 235, §9

260F.1 Title.
260F.2 Definitions.
260F.3 Agreement.
260F.4 Incremental property taxes. Repealed by 96 Acts, ch 1180, §21.
260F.5 New jobs credit from withholding. Repealed by 96 Acts, ch 1180, §21.
260F.6 Job training fund.
260F.6A Business network training.
260F.6B High technology apprenticeship program.
260F.7 Department of economic development to coordinate.
260F.8 Allocation.

260F.1 Title.

This chapter shall be known and may be cited as the *"Iowa Jobs Training Act"*.

85 Acts, ch 235, §1
CS85, §280C.1
C93, §260F.1
96 Acts, ch 1180, §9

260F.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Agreement"* is the agreement between a business and a community college concerning a project.

2. *"Community college"* means a community college established under chapter 260C.

3. *"Date of commencement of the project"* means the date of the preliminary agreement or the date an application for assistance is received by the department.

4. *"Department"* means the department of economic development.

5. *"Eligible business"* or *"business"* means a business training employees which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, or professional services and which meets the other criteria established by the

department. *"Eligible business"* does not include a business whose training costs can be economically funded under chapter 260E, a business which closes or substantially reduces its employment base in order to relocate substantially the same operation to another area of the state, or a business which is involved in a strike, lockout, or other labor dispute in Iowa.

6. *"Employee"* means a person currently employed by a business who is to be trained. However, *"employee"* does not include replacement workers who are hired as a result of a strike, lockout, or other labor dispute in Iowa.

7. *"Jobs training program"* or *"program"* means the project or projects established by a community college for the training of employees.

8. *"Participating business"* means a business training employees which enters into an agreement with the community college.

9. *"Program costs"* means all necessary and incidental costs of providing program services.

10. *"Program services"* includes but is not limited to the following:

a. Training of employees.

b. Adult basic education and job-related instruction.

c. Vocational and skill-assessment services and testing.

d. Training facilities, equipment, materials, and supplies.

e. Administrative expenses for the jobs training program.

f. Subcontracted services with institutions governed by the state board of regents, private colleges or universities, or other federal, state, or local agencies.

g. Contracted or professional services.

11. *"Project"* means a training arrangement which is the subject of an agreement entered into between the community college and a business to provide program services. *"Project"* also means a department-sponsored training arrangement which is sponsored by the department and administered under sections 260F.6A and 260F.6B.

85 Acts, ch 235, §2
CS85, §280C.2
90 Acts, ch 1253, §83; 92 Acts, ch 1042, §1, 2
C93, §260F.2
96 Acts, ch 1180, §10; 97 Acts, ch 201, §20

260F.3 Agreement.

A community college may enter into an agreement to establish a project. An agreement shall provide for, but is not limited to, the following:

1. Date of agreement.

2. Anticipated number of employees to be trained.

3. Estimated cost of training.

4. Anticipated dates of commencement and termination of training.

5. Other criteria established by the department.

85 Acts, ch 235, §3
CS85, §280C.3
90 Acts, ch 1253, §84; 92 Acts, ch 1042, §3, 4
C93, §260F.3
94 Acts, ch 1182, §3, 4; 96 Acts, ch 1180, §11; 96 Acts, ch 1186, §23

260F.4 Incremental property taxes. Repealed by 96 Acts, ch 1180, § 21.

260F.5 New jobs credit from withholding. Repealed by 96 Acts, ch 1180, § 21.

260F.6 Job training fund.

1. There is established for the community colleges a job training fund in the department of economic development in the workforce development fund. The job training fund consists of moneys appropriated for the purposes of this chapter plus the interest and principal from repayment of advances made to businesses for program costs, plus the repayments, including interest, of loans made from that retraining fund, and interest earned from moneys in the job training fund.

2. To provide funds for the present payment of the costs of a training program by the business, the community college may provide to the business an advance of the moneys to be used to pay for the program costs as provided in the agreement. To receive the funds for this advance from the job training fund established in subsection 1, the community college shall submit an application to the department of economic development. The amount of the advance shall not exceed twenty-five thousand dollars for any business site, or fifty thousand dollars within a three-fiscal-year period for any business site. If the project involves a consortium of businesses, the maximum award per project shall not exceed fifty thousand dollars. Participation in a consortium does not affect a business site's eligibility for individual project assistance. Prior to approval a business shall agree to match program amounts in accordance with criteria established by the department.

3. Notwithstanding the requirements of this section, moneys in the job training fund may be used by a community college to conduct entrepreneur development and support activities.

85 Acts, ch 235, §6
CS85, §280C.6
88 Acts, ch 1131, §1; 90 Acts, ch 1253, §86; 90 Acts, ch 1255, §16; 91 Acts, ch 2, §1, 2; 92 Acts, ch 1042, §7
C93, §260F.6
93 Acts, ch 180, §44; 95 Acts, ch 184, §8; 96 Acts, ch 1180, §12; 2001 Acts, ch 188, §24

260F.6A Business network training.

The community colleges and the department

are authorized to fund business network training projects which include five or more businesses and are located in two or more community college districts. A business network training project must have a designated organization or lead business to serve as the administrative entity that will coordinate the training program. The businesses must have common training needs and develop a plan to meet those needs. The department shall adopt rules governing this section's operation and participant eligibility.

96 Acts, ch 1180, §13

260F.6B High technology apprenticeship program.

The community colleges and the department of economic development are authorized to fund high technology apprenticeship programs which comply with the requirements specified in section 260C.44 and which may include both new and statewide apprenticeship programs. Notwithstanding the provisions of section 260F.6, subsection 2, relating to maximum award amounts, moneys allocated to the community colleges with high technology apprenticeship programs shall be distributed to the community colleges based upon contact hours under the programs administered during the prior fiscal year as determined by the department of education. The department of economic development shall adopt rules governing this section's operation and participant eligibility.

97 Acts, ch 201, §21

260F.7 Department of economic development to coordinate.

The department of economic development, in consultation with the department of education and the department of workforce development, shall coordinate the jobs training program. A project shall not be funded under this chapter unless the department of economic development approves the project. The department shall adopt rules pursuant to chapter 17A governing the program's operation and eligibility for participation in the program. The department shall establish by rule criteria for determining what constitutes an eligible business.

85 Acts, ch 235, §7

CS85, §280C.7

88 Acts, ch 1131, §2; 90 Acts, ch 1253, §87; 92 Acts, ch 1042, §8

C93, §260F.7

96 Acts, ch 1180, §14; 96 Acts, ch 1186, §23

260F.8 Allocation.

1. For each fiscal year, the department shall make funds available to the community colleges. The department shall allocate by formula from the moneys in the fund an amount for each community college to be used to provide the financial assistance for proposals of businesses whose applications have been approved by the department. The financial assistance shall be provided by the department from the amount set aside for that community college. If any portion of the moneys set aside for a community college have not been used or committed by May 1 of the fiscal year, that portion is available for use by the department to provide financial assistance to businesses applying to other community colleges. The department shall adopt by rule a formula for this set-aside.

2. Moneys available to the community colleges for this program may be used to provide forgivable loans to train employees.

92 Acts, ch 1042, §9; 93 Acts, ch 180, §45; 96 Acts, ch 1180, §15; 97 Acts, ch 23, §30

CHAPTER 260G

ACCELERATED CAREER EDUCATION PROGRAM

260G.1	Title.
260G.2	Definitions.
260G.3	Program agreements.
260G.4	Program eligibility and designation.
260G.4A	Program job credits from withholding.
260G.4B	Maximum statewide program job credit.
260G.4C	Facilitator.
260G.5	Customer tracking system.
260G.6	Program capital funds allocation.
260G.7	Future program discontinuance.

260G.1 Title.

This chapter shall be known and may be cited as the *"Accelerated Career Education Program Act"*.

99 Acts, ch 179, §1, 12

260G.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Accelerated career education program"* means a program established pursuant to section 260G.3.

2. *"Agreement"* means a program agreement referred to in section 260G.3 between an employer and a community college.

3. *"Board of directors"* means the board of di-

rectors of a community college.

4. *"Community college"* means a community college established under chapter 260C or a consortium of two or more community colleges.

5. *"Employee"* means a person employed in a program job.

6. *"Employer"* means a business or consortium of businesses engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, construction, conducting research and development, or providing services in interstate or intrastate commerce, but excludes retail services.

7. *"Highly skilled job"* means a job with a broadly based, high performance skill profile including advanced computation and communication skills, technology skills, and workplace behavior skills, and for which an applied technical education is required.

8. *"Participant"* means an individual who is enrolled in an accelerated career education program at a community college.

9. *"Participant position"* means the individual student enrollment position available in an accelerated career education program.

10. *"Program capital costs"* includes, but is not limited to, costs related to any or all of the following:

a. Classroom and laboratory renovation.

b. New classroom and laboratory construction.

c. Site acquisition or preparation.

d. Instructional equipment and technology.

11. *"Program costs"* means all necessary and incidental costs of providing program services.

12. *"Program job"* means a highly skilled job available from an employer pursuant to a program agreement.

13. *"Program job credit"* means the credit as provided in section 260G.4A.

14. *"Program job position"* means a job position which is planned or available for an employee by the employer pursuant to a program agreement.

15. *"Program services"* includes, but is not limited to, all of the following provided they are pursuant to a program agreement:

a. Program needs assessment and development.

b. Job task analysis.

c. Curriculum development and revision.

d. Instruction.

e. Instructional materials and supplies.

f. Computer software and upgrades.

g. Instructional support.

h. Administrative and student services.

i. Related school-to-career training programs.

j. Skill or career interest assessment services and testing.

k. Contracted services.

99 Acts, ch 179, §2, 12; 2000 Acts, ch 1196, §2, 10

260G.3 Program agreements.

1. A community college may enter into an agreement with an employer in the community college's merged area to establish an accelerated career education program. The program shall be developed by an employer, a community college, and any employee of an employer who represents a program job. If a bargaining agreement is in place, a representative of the employee bargaining unit shall also take part in the development of the program.

2. An agreement may include reasonable and necessary provisions to implement the accelerated career education program. If an agreement is entered into, the community college and the employer shall notify the department of revenue and finance as soon as possible. The community college shall also file a copy of the agreement with the department of economic development as required in section 260G.4B. The agreement shall provide for program costs, including deferred costs, which may be paid from any of the following sources:

a. Program job credits which the employer receives based on the number of program job positions agreed to by the employer to be available under the agreement.

b. Cash or in-kind contributions by the employer toward the program cost. At a minimum, the employer contribution shall be twenty percent of the program costs.

c. Tuition, student fees, or special charges fixed by the board of directors to defray program costs.

d. Guarantee by the employer of payments to be received under paragraphs *"a"* and *"b"*.

3. An agreement shall include a provision which specifies the type and amount of funding sources which shall be used to pay for program costs.

4. An agreement shall describe program services and schedules for implementation.

5. The term of an agreement shall not exceed five years from the date of the agreement. However, the agreement may be renewed.

6. As part of the agreement, the employer shall agree to interview graduating participants for full-time positions with the employer and to provide future hiring preferences to graduates of the accelerated career education program provided for in the agreement.

7. As part of an agreement, if an employer has more than four sponsored participants in the program, the employer shall agree to offer a program job position of full-time employment to at least twenty-five percent of those participants who successfully complete the program.

8. An agreement shall provide for a wage level of no less than two hundred percent of the federal poverty level for a family of two as defined by the most recently revised poverty income guidelines as published by the United States department of

health and human services at the time the agreement is entered into. The wage level shall be recertified for each year provided in the agreement on the anniversary of the effective date of the agreement.

9. An agreement shall allow an employer to decline to satisfy any provisions in the agreement relating to subsections 6 and 7 if an employer experiences an economic downturn. For purposes of this subsection, *"economic downturn"* may include a layoff of existing employees, reduced employment levels, increased inventories, or reduced sales, if specified in the agreement.

10. Participants shall agree to interview with the employer following completion of the accelerated career education program.

11. An agreement shall provide for employer default procedures.

99 Acts, ch 179, §3, 12; 2000 Acts, ch 1196, §3, 10

260G.4 Program eligibility and designation.

1. Any of the following community college programs are eligible for designation and approval as an accelerated career education program by the board of directors:

a. A credit career, vocational, or technical education program resulting in the conferring of a certificate, diploma, associate of science degree, or associate of applied science degree, which increases program capacity to enroll added participants.

b. A credit equivalent career, vocational, or technical educational program consisting of not less than five hundred forty contact hours of classroom and laboratory instruction and resulting in the conferring of a certificate or other recognized, competency-based credential, which increases program capacity to enroll added participants.

2. Program costs shall be calculated or recalculated on an annual basis based on the required program services and for a specific number of participant positions.

99 Acts, ch 179, §4, 12

260G.4A Program job credits from withholding.

In order to develop and retain program jobs within the state, an agreement entered into under section 260G.3 may include a provision for program job credits based on program jobs identified in the agreement. If a program provides that part of the program costs are to be met by receipt of program job credits, the method to be used shall be as follows:

1. Program job credits shall be based upon the program job positions identified and agreed to in the agreement.

2. Eligibility for program job credits shall be based on certification of program job positions and program job wages by the employer at the time established in the agreement. An amount up to ten percent of the gross program job wage as certified by the employer in the agreement shall be credited from the total payment made by an employer pursuant to section 422.16. The employer shall receive a credit against all withholding taxes due by the employer regardless of whether or not the withholding from the employer of current program job wages is less than ten percent. The employer shall remit the amount of the credit quarterly in the same manner as withholding payments are reported to the department of revenue and finance, to the community college to be allocated to and when collected paid into a special fund of the community college to pay, in part, the program costs. When the program costs have been paid, the employer credits shall cease and any moneys received after the program costs have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

3. The employer shall certify to the department of revenue and finance that the program job credit is in accordance with the agreement and shall provide other information the department may require.

4. A community college shall certify to the department of revenue and finance that the amount of the program job credit is in accordance with an agreement and shall provide other information the department may require.

5. Employees from an employer participating in an agreement shall receive full credit for the amount withheld as provided in section 422.16.

6. Pursuant to an agreement or a statement of intent to enter into an agreement dated on or after July 1, 2000, program job credits may be allocated retroactively to program costs incurred on or after July 1, 2000.

2000 Acts, ch 1196, §4, 10; 2001 Acts, ch 99, §1, 2

Subsection 6 is effective May 2, 2001, and applies retroactively on and after July 1, 2000; 2001 Acts, ch 99, §2

260G.4B Maximum statewide program job credit.

1. The total amount of program job credits from all employers which shall be allocated for all accelerated career education programs in the state in any one fiscal year shall not exceed the sum of three million dollars in the fiscal year beginning July 1, 2000, three million dollars in the fiscal year beginning July 1, 2001, three million dollars in the fiscal year beginning July 1, 2002, and six million dollars in the fiscal year beginning July 1, 2003, and every fiscal year thereafter. Any increase in program job credits above the six-million-dollar limitation per fiscal year shall be developed, based on recommendations in a study which shall be conducted by the department of economic development of the needs and performance of approved programs in the fiscal years beginning July 1, 2000, and July 1, 2001. The study's findings and

recommendations shall be submitted to the general assembly by the department by December 31, 2002. The study shall include but not be limited to an examination of the quality of the programs, the number of program participant placements, the wages and benefits in program jobs, the level of employer contributions, the size of participating employers, and employer locations. A community college shall file a copy of each agreement with the department of economic development. The department shall maintain an annual record of the proposed program job credits under each agreement for each fiscal year. Upon receiving a copy of an agreement, the department shall allocate any available amount of program job credits to the community college according to the agreement sufficient for the fiscal year and for the term of the agreement. When the total available program job credits are allocated for a fiscal year, the department shall notify all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. Once program job credits have been allocated to a community college, the full allocation shall be received by the community college throughout the fiscal year and for the term of the agreement even if the statewide program job credit maximum amount is subsequently allocated and used.

2. For the fiscal years beginning July 1, 2000, and July 1, 2001, the department of economic development shall allocate eighty thousand dollars of the first one million two hundred thousand dollars of program job credits authorized and available for that fiscal year to each community college. This allocation shall be used by each community college to provide funding for approved programs. For the fiscal year beginning July 1, 2002, and for every fiscal year thereafter, the department of economic development shall divide equally among the community colleges thirty percent of the program job credits available for that fiscal year for allocation to each community college to be used to provide funding for approved programs. If any portion of the allocation to a community college under this subsection has not been committed by April 1 of the fiscal year for which the allocation is made, the uncommitted portion is available for use by other community colleges. Once a community college has committed its allocation for any fiscal year under this subsection, the community college may receive additional program job credit allocations from those program job credits authorized and still available for that fiscal year.

2000 Acts, ch 1196, §5, 10; 2001 Acts, ch 176, §35; 2002 Acts, ch 1175, §30

Subsection 1 amended

260G.4C Facilitator.

The department of economic development shall administer the statewide allocations of program job credits to accelerated career education programs. The department shall collect data related to the programs and prepare an annual report regarding the activities of the programs during the previous fiscal year. The report shall be submitted to the governor and the general assembly by December 31 of each year.

2000 Acts, ch 1196, §6, 10

260G.5 Customer tracking system.

All participants in an accelerated career education program shall be included in the customer tracking system implemented by the department of workforce development pursuant to section 84A.5 following program completion.

99 Acts, ch 179, §8, 12

260G.6 Program capital funds allocation.

If moneys are appropriated by the general assembly to support program capital costs, the moneys shall be allocated according to rules adopted by the department of economic development pursuant to chapter 17A. In order to receive such moneys a program agreement approved by the community college board of directors must be in place, program capital cost requests shall be approved by the Iowa economic development board created in section 15.103, program capital cost requests shall be approved or denied not later than sixty days following receipt of the request by the department of economic development, and employer contributions toward program capital costs shall be certified and agreed to in the agreement.

99 Acts, ch 179, §9, 12; 2000 Acts, ch 1154, §19

260G.7 Future program discontinuance.

The general assembly shall act on or before March 1, 2006, to discontinue the program job credits from withholding provided for in section 260G.4A.

2000 Acts, ch 1196, §7, 10

SUBTITLE 3

HIGHER EDUCATION

CHAPTER 261

COLLEGE STUDENT AID COMMISSION

Iowa higher education loan authority
is attached to the commission; §7E.7, chapter 261A

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DIVISION I

GENERAL PROVISIONS

261.1 Commission created.

There is hereby created a commission to be known as the *"College Student Aid Commission"* of the state of Iowa. Membership of the commission shall be as follows:

1. A member of the state board of regents to be named by the board, or the secretary thereof if so appointed by the board, who shall serve for a four-year term or until the expiration of the member's term of office. Such member shall convene the organizational meeting of the commission.

2. The director of the department of education

or the director's designee.

3. A member of the senate to be appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, to serve as an ex officio nonvoting member for a term of four years beginning on July 1 of the year of appointment.

4. A member of the house of representatives to be appointed by the speaker of the house to serve as an ex officio nonvoting member for a term of four years beginning on July 1 of the year of appointment.

5. Eight additional members to be appointed by the governor. One of the members shall be selected to represent private colleges, private universities and private junior colleges located in the state of Iowa. When appointing this member, the governor shall give careful consideration to any person or persons nominated or recommended by any organization or association of some or all private colleges, private universities and private junior colleges located in the state of Iowa. One of the members shall be selected to represent community colleges located in the state of Iowa. When appointing this member, the governor shall give careful consideration to any person or persons nominated or recommended by any organization or association of Iowa community colleges. One member shall be enrolled as a student at a board of regents institution, community college, or accredited private institution. One member shall be a representative of a lending institution located in this state. One member shall be a representative of the Iowa student loan liquidity corporation. The other three members, none of whom shall be official board members or trustees of an institution of higher learning or of an association of institutions of higher learning, shall be selected to represent the general public.

The members of the commission appointed by the governor shall serve for a term of four years.

Vacancies on the commission shall be filled for the unexpired term of such vacancies in the same manner as the original appointment.

A vacancy shall exist on the commission when a legislative member of the commission ceases to be a member of the general assembly or when a student member ceases to be enrolled as a student. Such vacancy shall be filled within thirty days.

[C66, 71, 73, 75, 77, 79, 81, §261.1]

85 Acts, ch 67, §31; 85 Acts, ch 212, §21; 86 Acts, ch 1245, §2032; 89 Acts, ch 83, §37; 89 Acts, ch 300, §1; 90 Acts, ch 1223, §24; 90 Acts, ch 1253, §121, 122; 91 Acts, ch 61, §1, 2; 2000 Acts, ch 1095, §2

261.2 Duties of commission.

The commission shall:

1. Prepare and administer a state plan for a state supported and administered scholarship program. The state plan shall provide for scholarships to deserving students of Iowa, matriculating in Iowa universities, colleges, community colleges, or schools of professional nursing. Eligibility of a student for receipt of a scholarship shall be based upon academic achievement and completion of advanced level courses prescribed by the commission.

2. Administer the tuition grant program under this chapter.

3. Develop and implement, in cooperation with the state board of regents, an educational program and marketing strategies designed to inform parents about the options available for financing a college education and the need to accumulate the financial resources necessary to pay for a college education. The educational program shall include, but not be limited to, distribution of informational material to public and nonpublic elementary schools for distribution to parents and guardians of five-year and six-year old children.

4. Approve transfers from the scholarship and tuition grant reserve fund under section 261.20.

5. Develop and implement, in cooperation with the judicial district departments of correctional services and the department of corrections, a program to assist criminal offenders in applying for federal and state aid available for higher education.

6. Develop and implement, in cooperation with the department of human services and the judicial branch, a program to assist juveniles who are sixteen years of age or older and who have a case permanency plan under chapter 232 or 237 or are otherwise under the jurisdiction of chapter 232 in applying for federal and state aid available for higher education.

[C66, 71, 73, 75, 77, 79, 81, §261.2]

83 Acts, ch 101, §60; 83 Acts, ch 184, §5, 11, 15; 88 Acts, ch 1003, §1; 88 Acts, ch 1261, §2; 88 Acts, ch 1284, §20, 21; 89 Acts, ch 300, §2; 90 Acts, ch 1253, §122; 90 Acts, ch 1272, §45; 92 Acts, ch 1231, §42; 92 Acts, ch 1240, §17; 93 Acts, ch 179, §20; 95 Acts, ch 70, §1; 98 Acts, ch 1047, §27; 2000 Acts, ch 1095, §3

261.3 Organization — bylaws.

The commission is an autonomous state agency which is attached to the department of education for organizational purposes only.

The commission shall determine its own organization, draw up its own bylaws, adopt rules under chapter 17A, and do such other things as may be necessary and incidental in the administration of this chapter, including the housing, employment, and fixing the compensation and bond of persons required to carry out its functions and responsibilities. A decision of the commission is final agency action under chapter 17A.

The commission shall function at the seat of government or such other place as it might designate.

[C66, 71, 73, 75, 77, 79, 81, §261.3]

86 Acts, ch 1245, §1454

261.4 Funds — compensation and expenses of commission.

The director of revenue and finance shall keep an accounting of all funds received and expended by the commission. The members of the commission, except those members who are employees of the state, shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses. All per diem and expense moneys paid to nonlegislative members shall be paid from funds appropriated to the commission. Legislative members of the commission shall receive payment pursuant to section 2.10 and section 2.12.

[C66, 71, 73, 75, 77, 79, 81, §261.4]

90 Acts, ch 1256, §44

261.5 Response to national emergency — waiver authority.

1. For purposes of this section, unless the context otherwise requires:

a. "Active duty" means *"active duty"* as defined in 10 U.S.C. § 101(d)(1), except that the term does not include active duty for training or attendance at a service school.

b. "Affected individual" means an individual who is serving on active duty during the national emergency; or who resides or is employed in an area that is declared a disaster area by any federal, state, or local official in connection with the national emergency; or who suffered direct economic hardship as a result of the national emergency, as determined under a waiver or modification issued pursuant to this section.

c. "Serving on active duty during the national emergency" means any of the following individuals:

(1) A reserve of an armed force ordered to active duty under 10 U.S.C. § 12301(a), 12301(g), 12302, 12304, or 12306, or any retired member of an armed force ordered to active duty under 10 U.S.C. § 688, as amended, for service in connection with the emergency or subsequent actions or conditions, regardless of the location at which the active duty service is performed.

(2) Any other member of an armed force on active duty in connection with the emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned.

2. Notwithstanding any other provision of this chapter, in the event of a national emergency declared by the president of the United States by reason of terrorist attack, the commission may waive or modify any statutory or regulatory provision applicable to state financial aid programs established pursuant to this chapter to ensure, with regard to affected individuals, that the following occurs:

a. The financial positions of affected individuals who are state student loan borrowers are not worsened in relation to those loans because of their status as affected individuals.

b. Administrative requirements placed on state student loan borrowers are minimized, to the extent possible, without impairing the integrity of the student loan programs, to ease the burden on these borrowers and to avoid inadvertent technical violations or defaults.

c. The calculation of "annual adjusted family income" and "available income", as used in the determination of need for student financial assistance under 20 U.S.C. § 1070 et seq., for affected individuals, or if applicable, for the spouses or dependents of affected individuals, may be modified to mean the sums received in the first calendar year of the award year for which the determination is made, in order to reflect more accurately the financial condition of the affected individuals or their families.

3. Notwithstanding any other provision of this chapter, in the event of a national emergency declared by the president of the United States by reason of terrorist attack, the commission may grant temporary relief from requirements rendered infeasible or unreasonable, including due diligence requirements and reporting deadlines, by the national emergency, to an institution of higher education under the state board of regents, a community college, an accredited private institution as defined in section 261.9, eligible lenders, and other entities participating in the state student assistance programs in accordance with this chapter, that are located in, or whose operations are directly affected by, areas that are declared disaster areas by any federal, state, or local official in connection with the national emergency. If the commission issues a waiver in accordance with this section, the report prepared by the commission pursuant to section 17A.9A, subsection 5, shall include examples of measures that a postsecondary institution may take in the appropriate exercise of discretion, as provided in 20 U.S.C. § 1087tt, to adjust financial need and aid eligibility determinations for affected individuals.

4. This section shall not be construed as a requirement that the commission exercise the waiver or modification authority provided pursuant to this section on a case-by-case basis.

2002 Acts, ch 1036, §1, 2

Section applies retroactively to September 11, 2001; 2002 Acts, ch 1036, §2

NEW section

261.6 to 261.8 Repealed by 78 Acts, ch 1049, § 24.

DIVISION II

TUITION GRANTS TO STUDENTS

261.9 Definitions.

When used in this division, unless the context otherwise requires:

1. *"Accredited private institution"* means an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state, except for county hospitals as provided in paragraph *"c"* of this subsection, and which meets at least one of the criteria in paragraphs *"a"* through *"c"* and all of the criteria in paragraphs *"d"* through *"f"*:

a. Is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements.

b. Is certified by the north central association of colleges and secondary schools accrediting agency as a candidate for accreditation by that agency.

c. Is a school of nursing accredited by the national league for nursing and approved by the board of nursing, including such a school operated, controlled, and administered by a county public hospital.

d. Promotes equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel at the institution. In carrying out this responsibility the institution shall do all of the following:

(1) Designate a position as the affirmative action coordinator.

(2) Adopt affirmative action standards.

(3) Gather data necessary to maintain an ongoing assessment of affirmative action efforts.

(4) Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans.

(5) Conduct studies of preemployment and postemployment processes in order to evaluate employment practices and develop improved methods of dealing with all employment issues related to equal employment opportunity and affirmative action.

(6) Establish an equal employment committee to assist in addressing affirmative action needs, including recruitment.

(7) Address equal opportunity and affirmative action training needs by:

(a) Providing appropriate training for managers and supervisors.

(b) Insuring that training is available for all staff members whose duties relate to personnel administration.

(c) Investigating means for training in the area of career development.

(8) Require development of equal employment opportunity reports, including the initiation of the processes necessary for the completion of reports required by the federal equal employment opportunity commission.

(9) Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.

(10) File annual reports with the college aid commission of activities under this paragraph.

e. Adopts a policy that prohibits unlawful possession, use, or distribution of controlled substances by students and employees on property owned or leased by the institution or in conjunction with activities sponsored by the institution. Each institution shall provide information about the policy to all students and employees. The policy shall include a clear statement of sanctions for violation of the policy and information about available drug or alcohol counseling and rehabilitation programs. In carrying out this policy, an institution shall provide substance abuse prevention programs for students and employees.

f. Develops and implements a written policy, which is disseminated during student registration or orientation, addressing the following four areas relating to sexual abuse:

(1) Counseling.

(2) Campus security.

(3) Education, including prevention, protection, and the rights and duties of students and employees of the institution.

(4) Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

2. *"Commission"* means the college student aid commission.

3. *"Full-time resident student"* means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least twelve semester hours or the trimester equivalent of twelve semester hours. *"Course of study"* does not include correspondence courses.

4. *"Financial need"* means the difference between the student's financial resources available, including those available from the student's parents as determined by a completed parents' confidential statement, and the student's anticipated expenses while attending the accredited private institution. Financial need shall be redetermined at least annually.

5. *"Part-time resident student"* means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least three semester hours or the trimester or quarter equivalent of three semester hours. *"Course of study"* does not include correspondence courses.

6. *"Qualified student"* means a resident student who has established financial need and who is making satisfactory progress toward graduation.

7. *"Tuition grant"* means an award by the state of Iowa to a qualified student under this division.

[C71, 73, 75, 77, 79, 81, §261.9]

87 Acts, ch 233, §455; 88 Acts, ch 1284, §22 – 24; 89 Acts, ch 319, §42; 90 Acts, ch 1253, §122; 90 Acts, ch 1272, §48; 91 Acts, ch 180, §1; 92 Acts, ch 1106, §1, 4; 2000 Acts, ch 1095, §4 – 11; 2001 Acts, ch 24, §42; 2001 Acts, ch 39, §2

261.10 Who qualified.

A tuition grant may be awarded to a resident of Iowa who is admitted and in attendance as a full-time or part-time resident student at an accredited private institution and who establishes financial need.

[C71, 73, 75, 77, 79, 81, §261.10]

88 Acts, ch 1284, §25

261.11 Extent of grant.

A qualified full-time resident student may receive tuition grants for not more than eight semesters of undergraduate study or the trimester or quarter equivalent. A qualified part-time resident student may receive tuition grants for not more than sixteen semesters of undergraduate study or the trimester or quarter equivalent.

[C71, 73, 75, 77, 79, 81, §261.11]

88 Acts, ch 1284, §26

261.12 Amount of grant.

1. The amount of a tuition grant to a qualified full-time student for the fall and spring semesters, or the trimester equivalent, shall be the amount of the student's financial need for that period. However, a tuition grant shall not exceed the lesser of:

a. The total tuition and mandatory fees for that student for two semesters or the trimester or quarter equivalent, less the base amount determined annually by the college student aid commission, which base amount shall be within ten dollars of the average tuition for two semesters or the trimester equivalent of undergraduate study at the state universities under the board of regents, but in any event the base amount shall not be less than four hundred dollars; or

b. For the fiscal year beginning July 1, 2000, and for each following fiscal year, four thousand dollars.

2. The amount of a tuition grant to a qualified full-time student for the summer semester or trimester equivalent shall be one-half the amount of the tuition grant the student receives under subsection 1.

3. The amount of a tuition grant to a qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours for the fall, spring, and summer semesters, or the trimester or quarter equivalent, shall be equal to the amount of a tuition grant that would be paid to a full-time student times a number which represents the number of hours in which the part-time student is actually enrolled divided by twelve semester hours, or the trimester or quarter equivalent.

[C71, 73, 75, 77, 79, 81, §261.12]

83 Acts, ch 197, §13; 84 Acts, ch 1302, §16; 85 Acts, ch 263, §16; 88 Acts, ch 1284, §27; 89 Acts, ch 300, §3; 89 Acts, ch 319, §43; 90 Acts, ch 1253, §122; 90 Acts, ch 1272, §49; 91 Acts, ch 10, §1; 91 Acts, ch 258, §39; 95 Acts, ch 218, §21; 96 Acts, ch 1215, §36; 96 Acts, ch 1219, §4, 5; 97 Acts, ch 212, §25; 98 Acts, ch 1215, §33; 99 Acts, ch 205, §28; 2000 Acts, ch 1223, §26

261.13 Annual grant.

A tuition grant may be made annually for the fall, spring, and summer semesters or the trimester equivalent. Payments under the grant shall be allocated equally among the semesters or trimesters and shall be paid at the beginning of each semester or trimester upon certification by the accredited private institution that the student is admitted and in attendance. If the student discontinues attendance before the end of any semester or trimester after receiving payment under the grant, the entire amount of any refund due that student, up to the amount of any payments made under the annual grant, shall be paid by the accredited private institution to the state.

[C71, 73, 75, 77, 79, 81, §261.13]

96 Acts, ch 1219, §6

261.14 Other aid considered.

If a student receives financial aid under any other program the full amount of such financial aid shall be considered part of the student's financial resources available in determining the amount of the student's financial need for that period. In no case may the state's total financial contribution to the student's education, including financial aid under any other state program, exceed the tuition and mandatory fees at the institution which the student attends.

[C71, 73, 75, 77, 79, 81, §261.14]

261.15 Administration by commission — rules.

The commission shall administer this program and shall:

1. Provide application forms and parents' confidential statement forms.

2. Adopt rules and regulations for determining financial need, defining tuition and mandatory fees, defining residence for the purposes of this division, processing and approving applications for tuition grants, and determining priority of grants. The commission may provide for proration of funds if the available funds are insufficient to pay all approved grants. Such proration shall take primary account of the financial need of the applicant. In determining who is a resident of Iowa, the commission's rules shall be at least as restrictive as those of the board of regents.

3. Approve and award tuition grants.

4. Make an annual report to the governor and general assembly, and evaluate the tuition grant program for the period. The commission may require the accredited private institution to promptly furnish any information which the commission may request in connection with the tuition grant program.

[C71, 73, 75, 77, 79, 81, §261.15]

261.16 Application for grants.

Each applicant, in accordance with the rules and regulations of the commission, shall:

1. Complete and file an application for a tuition grant.

2. Be responsible for the submission of the parents' confidential statement for processing, the processed information to be returned both to the commission and to the college in which the applicant is enrolling.

3. Report promptly to the commission any information requested.

4. File a new application and parents' confidential statement annually on the basis of which the applicant's eligibility for a renewed tuition grant will be evaluated and determined.

[C71, 73, 75, 77, 79, 81, §261.16]

261.17 Vocational-technical tuition grants.

1. A vocational-technical tuition grant may be awarded to any resident of Iowa who is admitted and in attendance as a full-time or part-time student in a vocational-technical or career option program at a community college in the state, and who establishes financial need.

2. All classes, including liberal arts classes, identified by the community college as required for completion of the student's vocational-technical or career option program shall be considered a part of the student's vocational-technical or career option program for the purpose of determining the student's eligibility for a grant. Notwithstanding subsection 3, if a student is making satisfactory academic progress but the student cannot complete a vocational-technical or career option program in the time frame allowed for a student to receive a vocational-technical tuition grant as provided in subsection 3 because additional classes are required to complete the program, the student may continue to receive a vocational-technical tuition grant for not more than one additional enrollment period.

3. A qualified full-time student may receive vocational-technical tuition grants for not more than four semesters or the trimester or quarter equivalent of two full years of study. A qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours or the trimester or quarter equivalent may receive vocational-technical tuition grants for not more than eight semesters or the trimester or quarter equivalent of two full years of full-time study.

However, if a student resumes study after at least a two-year absence, the student may again be eligible for the specified amount of time, except that the student shall not receive assistance for courses for which credit was previously received.

4. *a.* The amount of a vocational-technical tuition grant to a qualified full-time student shall not exceed the lesser of one thousand two hundred dollars per year or the amount of the student's established financial need.

b. The amount of a vocational-technical tuition grant to a qualified part-time student enrolled in a course of study including at least three semester hours but fewer than twelve semester hours or the trimester or quarter equivalent shall be equal to the amount of a vocational-technical tuition grant that would be paid to a full-time student, except that the commission shall prorate the amount in a manner consistent with the federal Pell grant program proration.

5. A vocational-technical tuition grant shall be awarded on an annual basis, requiring reapplication by the student for each year. Payments under the grant shall be allocated equally among the semesters or quarters of the year upon certification by the institution that the student is in full-time or part-time attendance in a vocational-technical or career option program, as defined under rules of the department of education. If the student discontinues attendance before the end of any term after receiving payment of the grant, the entire amount of any refund due that student, up to the amount of any payments made under the annual grant, shall be paid by the institution to the state.

6. If a student receives financial aid under any other program, the full amount of that financial aid shall be considered part of the student's financial resources available in determining the amount of the student's financial need for that period.

7. The commission shall administer this program and shall:

a. Provide application forms for distribution to students by Iowa high schools and community colleges.

b. Adopt rules for determining financial need, defining residence for the purposes of this section, processing and approving applications for grants and determining priority for grants.

c. Approve and award grants on an annual basis.

d. Make an annual report to the governor and general assembly.

8. Each applicant, in accordance with the rules established by the commission, shall:

a. Complete and file an application for a vocational-technical tuition grant.

b. Be responsible for the submission of the financial information required for evaluation of the

applicant's need for a grant, on forms determined by the commission.

c. Report promptly to the commission any information requested.

d. Submit a new application and financial statement for re-evaluation of the applicant's eligibility to receive a second-year renewal of the grant.

[C75, 77, 79, 81, §261.17]

83 Acts, ch 197, §14; 87 Acts, ch 233, §456; 89 Acts, ch 319, §44; 90 Acts, ch 1253, §120; 90 Acts, ch 1272, §50; 97 Acts, ch 212, §26; 98 Acts, ch 1215, §34, 35; 99 Acts, ch 205, §29, 30; 2001 Acts, 2nd Ex, ch 6, §20, 37; 2002 Acts, ch 1014, §1

Subsection 4, paragraph a amended

261.17A Iowa hope loan program.

1. An Iowa hope loan may be awarded to a resident of Iowa who is admitted and in attendance as a student in a single, twelve-month or less, vocational-technical or career option program in a community college in the state, who meets the eligibility requirements for a Pell grant, and who is working toward certification, a diploma, or a degree in a skilled occupation. In addition, an eligible applicant shall have obtained the bona fide intent of a company operating in Iowa to employ the applicant upon the applicant's attainment of a certificate, diploma, or degree, or shall be currently employed by a company operating in Iowa that has expressed a bona fide intent to advance the employee in employment upon the employee's attainment of a certificate, diploma, or degree.

2. A student who meets the qualifications of subsection 1 may receive an Iowa hope loan for not more than twelve months. A student shall not receive assistance for courses for which credit was previously received.

3. The amount of an Iowa hope loan shall not exceed the cost of tuition for the community college program in which the student is enrolled and attends. If a student receives financial aid under any other program, the full amount of that financial aid shall be considered part of the student's financial resources available in determining the amount of the Iowa hope loan.

4. Payments under the loan shall be allocated equally among the semesters or quarters of the year upon certification by the community college that the student is in attendance in a vocational-technical or career option program, as defined under rules of the department of education. If the student discontinues attendance before the end of any term after the community college receives payment from the loan, the entire amount of any refund due that student, up to the amount of any payments made to the community college from the loan, shall be paid by the community college to the state.

5. The commission shall administer this program and shall do all of the following:

a. Provide application forms for distribution to students by Iowa high schools and community colleges.

b. Adopt rules for determining financial need, requiring that no interest be charged for an Iowa hope loan, defining residence for the purposes of this section, processing and approving applications for grants, determining priority for loans, and establishing procedures for the repayment of the loan. The repayment schedule shall commence not less than six months after the loan recipient successfully completes the program and is awarded a certificate, a diploma, or a degree in a skilled occupation. The repayment schedule may be suspended if the loan recipient is a full-time student in an accredited postsecondary institution.

c. Approve and award loans on an annual basis. A student approved for a loan under the program shall enter into a payment agreement with the commission before receiving a loan under the program.

d. Make an annual report to the governor and general assembly.

6. Each applicant, in accordance with the rules established by the commission, shall do all of the following:

a. Complete and file an application for an Iowa hope loan.

b. Be responsible for the submission of the financial information provided for evaluation of the applicant's need for a loan, on forms provided by the commission.

c. Report promptly to the commission any necessary information requested by the commission.

7. An Iowa hope loan revolving fund is created in the state treasury as a separate fund under the control of the commission. All moneys deposited or paid into the fund are appropriated and made available to the college student aid commission to be used for loans as provided in this section. The commission shall deposit payments made by Iowa hope loan recipients into the Iowa hope loan fund. Notwithstanding section 8.33, any balance in the fund on June 30 of each fiscal year shall not revert to the general fund of the state, but shall be available for the purposes of this section in subsequent fiscal years.

8. Loans awarded under this section are subject to the limitations of any appropriations made by the general assembly and of the moneys in the revolving fund. The amount of a loan awarded to an eligible student shall not be less than five hundred dollars and shall not exceed one thousand dollars. However, if full tuition is less than five hundred dollars, the amount of the loan shall be for not more than an amount equal to the full tuition.

95 Acts, ch 197, §1

261.18 Osteopathic grant program. Repealed by 97 Acts, ch 134, § 2. See § 261.19.

261.19 Osteopathic physician recruitment program.

1. A physician recruitment program is established, to be administered by the college student aid commission, for Des Moines university — osteopathic medical center. The program shall consist of a forgivable loan program and a tuition scholarship program for students and a loan repayment program for physicians. The commission shall regularly adjust the physician service requirement under each aspect of the program to provide, to the extent possible, an equal financial benefit for each period of service required. From funds appropriated for purposes of the program by the general assembly, the commission shall pay a fee to Des Moines university — osteopathic medical center for the administration of the program. A portion of the fee shall be paid by the commission to the university based upon the number of physicians recruited under subsection 4.

2. A forgivable loan may be awarded to a resident of Iowa who is enrolled at Des Moines university — osteopathic medical center if the student agrees to practice in this state for a period of time to be determined by the commission at the time the loan is awarded. Forgivable loans to eligible students shall not become due until after the student completes a residency program. Interest on the loans shall begin to accrue the day following the student's graduation date. If the student completes the period of practice established by the commission and agreed to by the student, the loan amount shall be forgiven. The loan amount shall not be forgiven if the osteopathic physician fails to complete the required time period of practice in this state or fails to satisfactorily continue in the university's program of medical education.

3. A student enrolled at Des Moines university — osteopathic medical center shall be eligible for a tuition scholarship for the student's study at the university. The scholarship shall be for an amount not to exceed the annual tuition at the university. A student who receives a tuition scholarship shall not be eligible for the loan repayment program provided for by this section. A student who receives a tuition scholarship shall agree to practice in an eligible rural community in this state for a period of time to be determined by the commission at the time the scholarship is awarded. The student shall repay the scholarship to the commission if the student fails to practice in a medically underserved rural community in this state for the required period of time.

4. A physician shall be eligible for the physician loan repayment program if the physician agrees to practice in an eligible rural community in this state. Des Moines university — osteopathic medical center shall recruit and place physicians in rural communities which have agreed to provide additional funds for the physician's loan repayment. The contract for the loan repayment shall stipulate the time period the physician shall practice in an eligible rural community in this state. In addition, the contract shall stipulate that the physician repay any funds paid on the physician's loan by the commission if the physician fails to practice in an eligible rural community in this state for the required period of time. For purposes of this subsection, *"eligible rural community"* means a medically underserved rural community which agrees to match state funds provided on at least a dollar-for-dollar basis for the loan repayment of a physician who practices in the community.

5. The commission shall adopt rules pursuant to chapter 17A to administer this section.

[C77, 79, 81, §261.19]

87 Acts, ch 115, §38; 89 Acts, ch 319, §46; 90 Acts, ch 1253, §122; 90 Acts, ch 1272, §51; 97 Acts, ch 134, §1; 2000 Acts, ch 1058, §30; 2000 Acts, ch 1095, §12; 2000 Acts, ch 1223, §27

261.19A Osteopathic forgivable loan program. Repealed by 97 Acts, ch 134, § 2. See § 261.19.

261.19B Osteopathic physician recruitment revolving fund.

An osteopathic physician recruitment revolving fund is created in the state treasury as a separate fund under the control of the commission. The commission shall deposit payments made by osteopathic physician recruitment recipients and the proceeds from the sale of osteopathic loans into the osteopathic physician recruitment revolving fund. Moneys credited to the fund shall be used to supplement moneys appropriated for the osteopathic physician recruitment program, for loan forgiveness to eligible physicians, and to pay for loan or interest repayment defaults by eligible physicians. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

94 Acts, ch 1108, §2; 2000 Acts, ch 1095, §13; 2000 Acts, ch 1232, §63

261.20 Scholarship and tuition grant reserve fund.

1. A scholarship and tuition grant reserve fund is created to assure that financial assistance will be available to all students who are awarded scholarships or tuition grants through programs funded under this chapter. The fund is created as a separate fund in the state treasury, and moneys in the fund shall not revert to the general fund unless, and then only to the extent that, the funds exceed the maximum allowed balance.

2. The maximum balance of the scholarship and tuition grant reserve fund is an amount equal

to one percent of the funds appropriated to the scholarship and tuition grant programs under section 261.25 during the preceding fiscal year. The moneys in the fund shall be placed in separate accounts within the fund, according to the source and purpose of the original appropriation. Moneys in the various accounts shall only be used to alleviate a current fiscal year shortfall in appropriations for scholarship or tuition grant programs that have the same nature as the programs for which the moneys were originally appropriated. At the conclusion of a fiscal year, any surplus appropriations made to the commission for scholarship or tuition grant programs are appropriated to the scholarship and grant reserve fund in an amount equal to the amount of the surplus or the amount necessary to achieve the maximum balance, whichever amount is less.

3. Transfers of moneys from the scholarship and tuition grant reserve fund to appropriation accounts in which there is a current fiscal year shortfall may be made only with the prior written approval of the governor. At least two weeks before moneys are transferred from the fund, the commission shall notify the chairpersons of the standing appropriations committees of the general assembly and the co-chairpersons of the education appropriations subcommittee of the proposed transfer. The notice shall include information concerning the amount of and reason for the proposed transfer. The chairpersons shall be given at least two weeks to review and comment on the proposed transfer before the transfer can be made.

4. The commission shall annually report to the general assembly the methodology and manner in which the commission makes the determination of awards for programs for which funds are appropriated under section 261.25.

89 Acts, ch 300, §4

261.21 National guard tuition aid program. Repealed by 99 Acts, ch 205, § 47. See § 261.86.

261.22 Accelerated career education grants.

1. An accelerated career education grant program is established to be administered by the college student aid commission. An individual is eligible for the grant program if the individual is a resident of this state who is enrolled at a community college as a participant in an accelerated career education program in accordance with the provisions of chapter 260G. The college student aid commission shall adopt rules pursuant to chapter 17A for determining financial need and to administer this section and shall develop and implement a method for allocating moneys based upon the need for skills and occupations for which an applied technical education is required.

2. To be eligible to receive a grant under this section, an applicant shall, in accordance with the rules of the commission, do the following:

a. Complete and file an application for an accelerated career education grant. The individual shall be responsible for the prompt submission of any information required by the commission.

b. File a new application and submit information as required by the commission annually on the basis of which the applicant's eligibility for the renewed grant will be evaluated and determined.

3. If a student receives financial aid from any source other than the program established under this section, the full amount of such financial aid shall be considered part of the student's financial resources available in determining the amount of the student's financial need for the period of the financial aid. Grant moneys received by a student in accordance with this section shall be used to pay the student's cost of attendance, which includes community college tuition and fees, materials, textbooks and supplies, transportation, room and board, dependent care during the time the person is in class, and the purchase or rental of a computer.

4. The amount of the grant shall not exceed a student's annual financial need or two thousand dollars, whichever is less. The grants shall be awarded on an annual basis. Applicants who meet the application deadline shall be ranked by the commission in order of need. The commission shall award grants to applicants in order of need beginning with applicants with the greatest need, insofar as funds permit. If a student receiving grant moneys discontinues attendance before the end of any term, the entire amount of any refund due that student, up to the amount of any payments made under the grant, shall be paid by the institution to the state for deposit in the accelerated career education grant fund.

5. An accelerated career education grant fund is created in the state treasury as a separate fund under the control of the commission. Moneys in the fund shall be used for accelerated career education grants. The fund shall consist of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the commission from the federal government or private sources for placement in the fund. Notwithstanding section 8.33, any balance in the fund on June 30 of each fiscal year shall not revert to the general fund of the state, but shall be available for the purposes of this section in subsequent fiscal years.

6. By December 15 of each year, the commission shall submit a report to the general assembly, the department of management, and the legislative fiscal bureau including, but not limited to, all of the following data:

a. The total funding of the grant program for the previous fiscal year itemized by type of funding including state, federal, or other funding. The information shall also be provided according to each

community college.

b. The expenditures under the grant program and related information of the grant program including, but not limited to, all of the following:

(1) The number of participants in the accelerated career education program receiving moneys under the grant program.

(2) The number of participants in the accelerated career education program receiving moneys under the grant program who remain in the state upon completion of a program agreement.

(3) The number of participants in the accelerated career education program receiving moneys under the grant program who successfully complete a program agreement and the number who fail to successfully complete a program agreement.

c. Any other information requested by the general assembly.

2000 Acts, ch 1196, §8, 10

261.23 Registered nurse recruitment program.

1. A registered nurse recruitment program is established to be administered by the college student aid commission. The program shall consist of a forgivable loan program and a tuition scholarship program for students and a loan repayment program for registered nurses. The commission shall regularly adjust the registered nurse service requirement under each aspect of the program to provide, to the extent possible, an equal financial benefit for each period of service required. From funds appropriated for purposes of the program by the general assembly, the commission shall pay a fee to schools of nursing, accredited by the board of nursing, for the administration of the program. A portion of the fee shall be based upon the number of registered nurses recruited under subsection 4.

2. A forgivable loan may be awarded to a resident of Iowa who is enrolled at an accredited school of nursing, which is located in this state, on a full-time or part-time basis in a course of study leading to a collegiate or associate degree of nursing, a diploma in nursing, or a graduate or equivalent degree in nursing, if the student agrees to practice in this state for a period of time to be determined by the commission at the time the loan is awarded. Forgivable loans to eligible students shall not become due until after the student completes a licensing examination prescribed by the board of nursing. Interest on the loans shall begin to accrue the day following the student's graduation date. If the student completes the period of practice established by the commission and agreed to by the student, the loan amount shall be forgiven. The loan amount shall not be forgiven if the student fails to complete the required time period of practice in this state or fails to satisfactorily continue in the school of nursing.

3. A student enrolled at an accredited school of nursing, which is located in this state, on a full-time or part-time basis in a course of study leading to a collegiate or associate degree of nursing, a diploma in nursing, or a graduate or equivalent degree in nursing, shall be eligible for a tuition scholarship for the student's study at the school of nursing. The scholarship shall be for an amount not to exceed the resident tuition rate established for institutions of higher learning under the control of the state board of regents. A student who receives a tuition scholarship shall not be eligible for the loan repayment program provided for by this section. A student who receives a tuition scholarship shall agree to practice in a community in this state for a period of time to be determined by the commission at the time the scholarship is awarded. The student shall repay the scholarship to the commission if the student fails to practice in a community in this state for the required period of time.

4. A registered nurse shall be eligible for the registered nurse repayment program if the registered nurse has received from an accredited school of nursing located in this state a collegiate or associate degree of nursing, a diploma in nursing, or a graduate or equivalent degree in nursing and agrees to practice in an eligible community in this state that has agreed to provide additional funds for the registered nurse's loan repayment. The contract for the loan repayment shall stipulate the time period the registered nurse shall practice in an eligible community in this state. In addition, the contract shall stipulate that the registered nurse repay any funds paid on the registered nurse's loan by the commission if the registered nurse fails to practice in an eligible community in this state for the required period of time. For purposes of this subsection, *"eligible community"* means a community that agrees to match state funds provided on at least a dollar-for-dollar basis for the loan repayment of a registered nurse who practices in the community.

5. A registered nurse recruitment revolving fund is created in the state treasury as a separate fund under the control of the commission. The commission shall deposit payments made by registered nurse recruitment program recipients and the proceeds from the sale of registered nurse forgivable loans into the registered nurse recruitment revolving fund. Moneys credited to the fund shall be used to supplement moneys appropriated for the registered nurse recruitment program. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

6. The commission shall adopt rules pursuant to chapter 17A to administer this section.

2002 Acts, ch 1131, §1
NEW section

261.24 Iowa state fair scholarship.

The Iowa state fair scholarship fund is established in the office of treasurer of state to be administered by the commission. The commission shall adopt rules pursuant to chapter 17A for the administration of this section. The rules shall provide, at a minimum, that only residents of Iowa who have actively participated in the Iowa state fair and graduated from an accredited secondary school in Iowa shall be eligible to receive an Iowa state fair scholarship for matriculation at an eligible institution as defined in section 261.35. Notwithstanding section 12C.7, interest earned on money in the Iowa state fair scholarship fund shall be deposited into the fund and may be used by the commission only for Iowa state fair scholarship awards.

98 Acts, ch 1215, §36, 63

261.25 Appropriations — standing limited — minority student and faculty information.

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of forty-six million one hundred seventeen thousand nine hundred sixty-four dollars for tuition grants.

2. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of four hundred seventy-seven thousand one hundred three dollars for scholarships.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million three hundred seventy-five thousand six hundred fifty-seven dollars for vocational-technical tuition grants.

4. This section shall not be construed to be a limitation on any of the amounts which may be appropriated by the general assembly for any program enumerated in this section.

5. For each fiscal year, the institutions of higher education that enroll recipients of Iowa tuition grants shall transmit to the Iowa college student aid commission information about the numbers of minority students enrolled and minority faculty members employed at the institution, and existing or proposed plans for the recruitment and retention of minority students and faculty as well as existing or proposed plans to serve nontraditional students. The Iowa college student aid commission shall compile and report the first fall academic semester or quarter enrollment and employment information and plans for the next fiscal year to the chairpersons and ranking members of the house and senate education committees, members of the joint education appropriations subcommittee, the governor, and the legislative fiscal bureau by March 1 of each year.

[C77, 79, 81, §261.25]

83 Acts, ch 197, §15; 85 Acts, ch 263, §17; 87 Acts, ch 233, §458; 88 Acts, ch 1003, §2; 88 Acts, ch 1284, §13, 28; 89 Acts, ch 319, §47, 48; 90 Acts, ch 1253, §122; 90 Acts, ch 1272, §54; 91 Acts, ch 180, §3; 91 Acts, ch 260, §908; 91 Acts, ch 267, §218; 92 Acts, ch 1246, §30; 93 Acts, ch 179, §21; 94 Acts, ch 1193, §19, 20; 95 Acts, ch 218, §22; 96 Acts, ch 1215, §38; 97 Acts, ch 212, §27; 98 Acts, ch 1215, §37, 38; 99 Acts, ch 205, §31, 32; 2000 Acts, ch 1095, §14; 2000 Acts, ch 1223, §28; 2002 Acts, ch 1171, §85; 2002 Acts, 2nd Ex, ch 1003, §93, 95

Subsections 1 – 3 amended

261.26 Optometry schools. Repealed by 95 Acts, ch 70, § 3.

261.27 Contract for right to enter school. Repealed by 95 Acts, ch 70, § 3.

261.28 to 261.34 Reserved.

DIVISION III

IOWA GUARANTEED LOAN PROGRAM

261.35 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Commission"* means the college student aid commission of the state of Iowa.

2. *"Eligible borrower"* means a person, or the parent of a person, who is a resident of this state and is enrolled or will be enrolled at an eligible institution within or without the state or who is a nonresident of this state and is enrolled or will be enrolled at an eligible institution within the state, or who is a resident of another state and is borrowing from an Iowa-based eligible lender and is enrolled or will be enrolled at an eligible institution within or without the state, or who has previously received a loan guaranteed by the commission. All eligible borrowers must meet the eligibility requirements established by the commission. The commission shall establish the qualifications for being a resident of this state; however, the qualifications shall not be more stringent than those established by the state board of regents.

3. *"Eligible institution"* means any postsecondary educational institution which meets the requirements of the provisions of the Higher Education Act of 1965 for student participation in the federal interest subsidy program and the requirements prescribed by rule of the commission.

4. *"Eligible lender"* means a financial or credit institution, insurance company or other approved lender which meets the standards prescribed by the commission and has executed a lender participation agreement with the commission.

5. *"Higher Education Act of 1965"* means the federal Higher Education Act of 1965, as amended and codified in 20 U.S.C. § 1071 et seq.

[C79, 81, §261.35; 81 Acts, ch 8, §12, ch 85, §1]
86 Acts, ch 1246, §25; 89 Acts, ch 300, §5; 90 Acts, ch 1253, §122

261.36 Powers.

The commission shall have necessary powers to carry out its purposes and duties under this division, including but not limited to the power to:

1. Sue and be sued in its own name.
2. Incur and discharge debts including the payment of any defaulted loan obligations which have been guaranteed by the commission.
3. Make and execute agreements, contracts and other instruments with any public or private person or agency including the United States secretary of education.
4. Guarantee loans made by eligible lenders to eligible borrowers who are, or whose children are, enrolled or will be enrolled at eligible institutions as at least half-time students as defined by the commission.
5. Approve educational institutions as eligible institutions upon their meeting the requirements established by the commission.
6. Approve financial or credit institutions, insurance companies or other lenders as eligible lenders upon their meeting the standards established by the commission for making guaranteed loans.
7. Accept appropriations, gifts, grants, loans or other aid from public or private persons or agencies including the United States secretary of education.
8. Implement various means of encouraging maximum lender participation in the Iowa guaranteed loan program.

[C71, 73, 75, 77, §261.5, 261.6; C79, 81, §261.36; 81 Acts, ch 8, §13]
83 Acts, ch 101, §61; 89 Acts, ch 300, §26; 90 Acts, ch 1168, §36

261.37 Duties.

The duties of the commission under this division shall be as follows:

1. To review the Iowa guaranteed loan program.
2. To review and make disposition of all applications for the guarantee of student loans.
3. Collect an insurance premium of not more than the amount authorized by the federal Higher Education Act of 1965. The premium shall be collected by the lender upon the disbursement of the loan and shall be remitted promptly to the commission.
4. To enter into all necessary agreements with the United States secretary of education as required for the purpose of receiving full benefit of the state program incentives offered pursuant to the Higher Education Act of 1965.
5. To adopt rules pursuant to chapter 17A to implement the provisions of this division including establishing standards for educational institutions, lenders, and individuals to become eligible institutions, lenders, and borrowers. Notwithstanding any contrary provisions in chapter 537, the rules and standards established shall be consistent with the requirements provided in the Higher Education Act of 1965.
6. To reimburse eligible lenders for the amount authorized by the federal Higher Education Act of 1965 on defaulted loans guaranteed by the commission upon receipt of written notice of the default accompanied by evidence that the lender has exercised the required degree of diligence in efforts to collect the loan.
7. To establish an effective system for the collection of delinquent loans, including the adoption of an agreement with the Iowa department of revenue and finance to set off against a defaulter's income tax refund or rebate the amount that is due because of a default on a guaranteed or parental loan made under this division. The commission shall adopt rules under chapter 17A necessary to assist the department of revenue and finance in the implementation of the student loan setoff program as established under section 421.17, subsection 23.
8. To develop and disseminate informational and educational materials to lenders, postsecondary institutions and borrowers. The commission shall provide applicants, as deemed necessary by the commission, with information about the past default rates of borrowers, enrollment, and placement statistics by postsecondary institution.
9. To develop all forms necessary to the proper administration of the guaranteed student loan program and provide supplies of such forms to participating lenders and postsecondary institutions.
10. To report annually to the governor and the general assembly on the status of the guaranteed student loan program.
11. To implement all possible assistance to eligible lenders for the purpose of easing the workload entailed in participation in the guaranteed student loan program.

[C79, 81, §261.37; 81 Acts, ch 8, §14; 82 Acts, ch 1057, §1]
83 Acts, ch 101, §62; 87 Acts, ch 233, §459; 88 Acts, ch 1284, §29; 89 Acts, ch 300, §6; 90 Acts, ch 1168, §37; 96 Acts, ch 1158, §1

261.38 Loan reserve and agency operating accounts.

1. The commission shall establish a loan reserve account and an agency operating account as authorized by the federal Higher Education Act of 1965. The commission shall credit to these accounts all moneys provided for the state student loan program by the United States, the state of Iowa, or any of their agencies, departments or instrumentalities, as well as any funds accruing to the program which are not required for current administrative expenses. The commission may ex-

pend moneys in the loan reserve and agency operating accounts as authorized by the federal Higher Education Act of 1965.

2. The payment of any funds for the default on a guaranteed student loan shall be solely from the loan reserve and agency operating accounts. The general assembly shall not be obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the loan reserve account. The commission shall not give or lend the credit of the state of Iowa.

3. Notwithstanding section 8.33, funds on deposit in the loan reserve and operating accounts shall not revert to the state general fund at the close of any fiscal year.

4. The treasurer of state shall invest any funds, including those in the loan reserve and operating accounts, and, notwithstanding section 12C.7, the interest income earned shall be credited back to the appropriate account.

5. The commission may enter into agreements with the Iowa student loan liquidity corporation in order to increase access for students to education loan programs that the commission determines meet the education needs of Iowa residents. The agreements shall permit the establishment, funding, and operation of alternative education loan programs, as described in section 144(b)(1)(B) of the Internal Revenue Code of 1986 as amended, as defined in section 422.3, in addition to programs permitted under the federal Higher Education Act of 1965. In accordance with those agreements, the Iowa student loan liquidity corporation may issue bonds, notes, or other obligations to the public and others for the purpose of funding the alternative education loan programs. This authority to issue bonds, notes, or other obligations shall be in addition to the authority established in the articles of incorporation and bylaws of the Iowa student loan liquidity corporation.

Bonds, notes, or other obligations issued by the Iowa student loan liquidity corporation are not an obligation of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are special obligations of the Iowa student loan liquidity corporation, and the corporation shall not pledge the credit or taxing power of this state or any political subdivision of this state, or make its debts payable out of any of the moneys except those of the corporation.

[C71, 73, 75, 77, §261.5, 261.8; C79, 81, §261.38]

86 Acts, ch 1246, §26, 27; 89 Acts, ch 300, §7; 90 Acts, ch 1253, §122; 91 Acts, ch 180, §4, 5; 92 Acts, ch 1246, §31; 99 Acts, ch 205, §33 – 37

261.39 Transfer of funds and assets.

All moneys which are to be refunded to the state under the contract with United Student Aid Funds, Incorporated, involving the Iowa guaranteed student loan program in effect prior to July 1, 1978, shall be refunded to the commission and shall be credited to the loan reserve account except those funds which must be repaid to the United States government.

All assets and liabilities of the student loan program established pursuant to sections 261.5 to 261.8, Code 1977, and existing on July 1, 1978, are assets and liabilities of the Iowa guaranteed loan program established pursuant to this chapter.

[C79, 81, §261.39]

89 Acts, ch 300, §26; 90 Acts, ch 1168, §38

261.40 Repayment of state appropriations. Repealed by 91 Acts, ch 180, § 9.

261.41 Account dissolved — balance to general fund.

The loan program and the loan reserve account established by this division shall not be dissolved until all guaranteed loans have been repaid by the borrower or, if in default, by the commission. Upon dissolution of the loan program, all the property and moneys of the program and in the loan reserve account not owed to the federal government shall be transferred to the state general fund.

[C79, 81, §261.41]

261.42 Short title.

This division shall be known and may be cited as the *"Iowa Guaranteed Loan Program"*.

[C79, 81, §261.42]

89 Acts, ch 300, §8; 90 Acts, ch 1168, §39

261.43 Actions not barred.

No lapse of time shall be a bar to any action to recover on any loan guaranteed by the commission.

89 Acts, ch 300, §9

261.43A Security interest in education loans.

A nonprofit organization qualifying for tax-exempt status under the Internal Revenue Code, as defined in section 422.3, that provides or acquires education loans in the organization's normal course of business shall, notwithstanding any contrary provision of chapter 554 or other state law, establish and perfect a security interest and establish priority over other security interests in such education loans by filing in the same manner as provided for perfecting a security interest in a student loan pursuant to 20 U.S.C. § 1082(m)(1)(E). This section applies to education loans provided under this chapter by such nonprofit organizations and other education loans provided by such nonprofit organizations.

2002 Acts, ch 1021, §1

NEW section

DIVISION IV

GUARANTEED LOAN PAYMENT PROGRAM

261.44 Guaranteed loan payment program.

A guaranteed loan payment program is established to be administered by the commission. The purpose of the program is to assist individuals to enter professions in areas of employment critical to the welfare of the citizens of the state. The commission shall adopt rules pursuant to chapter 17A to provide for the administration of the program. Moneys appropriated for the program shall be used to repay loans to students demonstrating the greatest financial need and shall not be prorated among all qualified applicants.

89 Acts, ch 300, §10; 90 Acts, ch 1272, §56

261.45 Teacher loan payments. Repealed by 96 Acts, ch 1215, § 59.

261.46 Occupational therapist loan payments. Repealed by 95 Acts, ch 70, § 3.

261.47 Nursing loan payments. Repealed by 95 Acts, ch 70, § 3.

261.48 Minority teacher loan payments.

An individual is eligible for reimbursement payments under the guaranteed loan payment program if the individual meets all of the following conditions:

1. Is a teacher employed on a full-time basis under sections 279.13 through 279.19 in a school district in this state, is a teacher in an approved nonpublic school in this state, or is a licensed teacher at the Iowa braille and sight saving school or the Iowa school for the deaf.
2. Is a member of a minority.
3. Has never defaulted on a loan guaranteed by the commission.
4. Has an outstanding debt with an eligible lender under the Iowa guaranteed student loan program or the Iowa supplemental loans for students program, has parents with an outstanding debt with an eligible lender under the Iowa PLUS loan program, or has an outstanding debt under the Stafford loan program, the supplemental loans for students program, or the PLUS loan program.
5. Graduated from college after January 1, 1989.

The maximum annual reimbursement payment to an eligible teacher under this section for loan repayments made during a school year is one thousand dollars or the remainder of the teacher's loan, whichever is less. Total payments under this section for an eligible teacher are limited to a six-year period and shall not exceed six thousand dollars. If a teacher fails to complete a year of employment on a full-time basis as provided in subsection 1, the teacher shall not be reimbursed for loan payments made during that school year. If the number of eligible applicants exceeds the funding available, the commission may accept applicants based on academic scholarship.

The commission may sign contracts with eligible students at or after the time of loan origination to assure loan repayment.

89 Acts, ch 300, §14; 96 Acts, ch 1215, §39

261.49 National guard loan payments. Repealed by 95 Acts, ch 70, § 3.

261.50 Physician loan payments. Repealed by 95 Acts, ch 70, § 3.

DIVISION V

GRADUATE STUDENT FINANCIAL ASSISTANCE PROGRAM

261.51 Science and mathematics loan program. Repealed by 89 Acts, ch 319, § 83.

261.52 Loans. Repealed by 89 Acts, ch 319, § 83.

261.52A Graduate student financial assistance program. Repealed by 96 Acts, ch 1215, § 59.

261.53 Appropriation. Repealed by 89 Acts, ch 319, § 83.

261.54 Repayment of science and mathematics loans.

Repayment of a loan made under the science and mathematics loan program prior to July 1, 1988, shall begin one year after the recipient completes the educational program for which tuition and fees were received except as otherwise provided in this section. If a recipient submits evidence to the commission that the recipient was employed as a teacher of one or more science or mathematics courses or as an elementary teacher teaching science and mathematics in a public school district or nonpublic school in this state or at the Iowa braille and sight saving school or the Iowa school for the deaf during that year, fifty percent of the amount of the loan is canceled. If the recipient continues employment as a teacher of science or mathematics courses or as an elementary teacher teaching science and mathematics during the next succeeding school year and submits evidence to the commission of the continuation of teaching employment, the recipient is not required to commence repayment during that school year and at the end of that school year the remain-

ing fifty percent of the loan is canceled.

There is created a science and mathematics loan repayment fund for deposit of payments made by recipients. Payments made by recipients of the loans shall be used to supplement moneys appropriated to the guaranteed loan payment program. Any funds remaining on June 30 of a fiscal year shall be transferred from the fund created in this section to the general fund of the state.

The interest rate collected on the loan shall be equal to the interest rate being collected by an eligible lender under the guaranteed loan payment program.

The commission shall prescribe by rule the terms of repayment which shall provide for monthly payments of principal and interest of not less than seventy-five dollars.

83 Acts, ch 184, §9, 15; 84 Acts, ch 1044, §1; 84 Acts, ch 1060, §2; 85 Acts, ch 263, §23; 89 Acts, ch 300, §17; 89 Acts, ch 319, §49

261.55 to 261.60 Reserved.

DIVISION VI

SUPPLEMENTAL GRANT PROGRAM

261.61 Supplemental grant program. Repealed by 88 Acts, ch 1003, § 7.

261.62 Payment of grants. Repealed by 88 Acts, ch 1003, § 5.

261.63 Appropriation. Repealed by 88 Acts, ch 1003, § 6.

261.64 to 261.70 Reserved.

DIVISION VII

CHIROPRACTIC GRADUATE STUDENT FORGIVABLE LOAN PROGRAM

261.71 Chiropractic graduate student forgivable loans.

1. A chiropractic graduate student forgivable loan program is established, to be administered by the college student aid commission for resident graduate students who are enrolled at Iowa chiropractic colleges and universities. A resident graduate student attending an Iowa chiropractic college or university is eligible for loan forgiveness under the program if the student meets all of the following conditions:

a. The student graduates from an Iowa chiropractic college or university that meets the requirements for approval under section 151.4.

b. The student has completed a chiropractic residency program.

c. The student agrees to practice in an underserved area in the state of Iowa for a period of time to be determined by the commission at the time the loan is awarded.

d. The student has received a loan from moneys appropriated to the college student aid commission for this program.

2. The contract for the loan repayment shall stipulate the time period the chiropractor shall practice in an underserved area in this state. In addition, the contract shall stipulate that the chiropractor repay any funds paid on the chiropractor's loan by the commission if the chiropractor fails to practice in an underserved area in this state for the required period of time. Forgivable loans made to eligible students shall not become due, for repayment purposes, until one year after the student has graduated. A loan that has not been forgiven may be sold to a bank, savings and loan association, credit union, or nonprofit agency eligible to participate in the guaranteed student loan program under the federal Higher Education Act of 1965, 20 U.S.C. § 1071 et seq., by the commission when the loan becomes due for repayment.

3. For purposes of this section *"graduate student"* means a student who has completed at least ninety semester hours, or the trimester or quarter equivalent, of postsecondary course work at a public higher education institution or at an accredited private institution, as defined under section 261.9. *"Underserved area"* means a geographical area included on the Iowa governor's health practitioner shortage area list, which is compiled by the center for rural health and primary care of the Iowa department of public health. The commission shall adopt rules, consistent with rules used for students enrolled in higher education institutions under the control of the state board of regents, for purposes of determining Iowa residency status of graduate students under this section. The commission shall also adopt rules which provide standards, guidelines, and procedures for the receipt, processing, and administration of student applications and loans under this section.

95 Acts, ch 218, §23; 96 Acts, ch 1158, §2, 3; 99 Acts, ch 205, §38, 39

261.72 Chiropractic loan revolving fund.

A chiropractic loan revolving fund is created in the state treasury as a separate fund under the control of the commission. The commission shall deposit payments made by chiropractic loan recipients and the proceeds from the sale of chiropractic loans, less costs of collection of delinquent chiropractic loans, into the chiropractic loan revolving fund. Moneys credited to the fund shall be used to supplement moneys appropriated for the chiropractic graduate student forgivable loan program, for loan forgiveness to eligible chiropractic physicians, and to pay for loan or interest repayment defaults by eligible chiropractic physicians. Not-

withstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

96 Acts, ch 1158, §4

261.73 Repealed by 91 Acts, ch 180, § 9.

261.74 to 261.80 Reserved.

DIVISION VIII

WORK-STUDY PROGRAM

261.81 Work-study program.

The Iowa college work-study program is established to stimulate and promote the part-time employment of students attending Iowa postsecondary educational institutions, and the part-time or full-time summer employment of students registered for classes at Iowa postsecondary institutions during the succeeding school year, who are in need of employment earnings in order to pursue postsecondary education. The program shall be administered by the commission. The commission shall adopt rules under chapter 17A to carry out the program. The employment under the program shall be employment by the postsecondary education institution itself or work in a public agency or private nonprofit organization under a contract between the institution or the commission and the agency or organization. The work shall not result in the displacement of employed workers or impair or affect existing contracts for services. Moneys used by an institution for the work-study program shall supplement and not supplant jobs and existing financial aid programs provided for students through the institution.

85 Acts, ch 219, §1; 88 Acts, ch 1284, §31; 89 Acts, ch 300, §18; 89 Acts, ch 319, §50; 91 Acts, ch 180, §6; 95 Acts, ch 70, §2

261.81A Iowa heritage corps.

An Iowa heritage corps is created. The objectives of the corps are to promote public appreciation of Iowa's natural and cultural heritage, promote the economic development of Iowa tourism, and provide meaningful and productive service and research opportunities for students enrolled in public and private colleges and universities in the state. The corps shall provide opportunities in the areas of historical and cultural preservation and education, community improvement, public policy research, and tourism. The corps shall provide participants with an opportunity to explore careers, gain work experience and college credit, and to contribute to the general welfare of their communities and state.

The commission shall solicit participation in the Iowa heritage corps and cooperate with museums, historical organizations, public and nonprofit agencies, and community development organizations in the development of pilot projects for internship positions to be included in the work-study program under section 261.81 and shall allocate moneys to participating museums, organizations, and agencies for the employment of the students under a pilot project. The internships shall include programs which increase public awareness of, and appreciation for, Iowa's natural and cultural heritage. A public or private person using interns under the corps for a pilot project shall contribute to the eligible postsecondary institution in which the intern is enrolled the cost of tuition for credits earned by the intern and all costs for materials, supplies, travel, and other work-related expenses of the project.

89 Acts, ch 319, §51

261.82 Duties of college student aid commission.

The college student aid commission shall:

1. Enter into agreements with eligible postsecondary education institutions for participation in the program.
2. Allocate funds to participating postsecondary education institutions if funds are available to the commission for that purpose.
3. Allocate work-study moneys appropriated to the commission to museums, historical organizations, public and nonprofit agencies, and community development organizations for pilot projects for internships for the Iowa heritage corps.
4. Review reports from participating postsecondary education institutions.
5. Conduct program reviews and audits of participating postsecondary education institutions.
6. Accept gifts, grants, and other aid from public and private persons or agencies.

85 Acts, ch 219, §2; 89 Acts, ch 319, §52; 90 Acts, ch 1253, §122

261.83 Eligibility and duties of institutions.

An eligible postsecondary education institution is an institution of higher education under the state board of regents, a community college, or an accredited private institution as defined in section 261.9, subsection 1. The commission may enter into an agreement with an eligible postsecondary education institution under which the commission will make grants to the institution for the work-study program.

The participating institution shall:

1. File the proper forms with the commission for participation in the program.
2. Develop jobs that meet the requirements of the Iowa college work-study program. To the extent possible, the job should complement the student's educational program and career goal.
3. Supervise and evaluate employment and maintain the records required by the commission.

4. Participate in the federal work-study program.

85 Acts, ch 219, §3; 90 Acts, ch 1253, §121

261.84 Student eligibility.

In order to be eligible, a student must:

1. Be a citizen of the United States and a resident of this state.

2. Be enrolled and making satisfactory academic progress or accepted for enrollment at an eligible postsecondary institution on a half-time or greater basis.

3. Demonstrate financial need. A student's need shall be determined on the basis of a need analysis system approved for use by the commission or under the federal work-study program.

4. Have not defaulted on an Iowa guaranteed loan payment or on a loan guaranteed by the federal government.

85 Acts, ch 219, §4; 89 Acts, ch 300, §19, 26

261.85 Appropriation.

There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million seven hundred fifty thousand dollars for the work-study program.

From moneys appropriated in this section, one million five hundred thousand dollars shall be allocated to institutions of higher education under the state board of regents and community colleges and the remaining dollars appropriated in this section shall be allocated by the commission on the basis of need as determined by the portion of the federal formula for distribution of work-study funds that relates to the current need of institutions.

87 Acts, ch 233, §463; 88 Acts, ch 1284, §32; 89 Acts, ch 319, §58; 90 Acts, ch 1272, §58; 91 Acts, ch 260, §909; 91 Acts, ch 267, §219; 92 Acts, ch 1246, §33; 93 Acts, ch 179, §22; 95 Acts, ch 218, §24; 2000 Acts, ch 1223, §29

Work-study program funding eliminated for fiscal year beginning July 1, 2002, and ending June 30, 2003; 2002 Acts, ch 1171, §77

DIVISION IX

NATIONAL GUARD EDUCATIONAL ASSISTANCE

261.86 National guard educational assistance program.

1. A national guard educational assistance program is established to be administered by the college student aid commission for members of the Iowa national guard who are enrolled as undergraduate students in a community college, an institution of higher learning under the state board of regents, or an accredited private institution. The college student aid commission shall adopt rules pursuant to chapter 17A to administer this section. An individual is eligible for the national guard educational assistance program if the individual meets all of the following conditions:

a. Is a resident of the state and a member of an Iowa army or air national guard unit while receiving educational assistance pursuant to this section.

b. Satisfactorily completed required initial active duty training.

c. Maintains satisfactory performance of duty upon return from initial active duty training, including attending a minimum ninety percent of scheduled drill dates and attending annual training.

d. Is enrolled as an undergraduate student in a community college as defined in section 260C.2, an institution of higher learning under the control of the board of regents, or an accredited private institution as defined in section 261.9, and is maintaining satisfactory academic progress.

e. Provides proper notice of national guard status to the community college or institution at the time of registration for the term in which tuition benefits are sought.

f. Submits an application to the adjutant general of Iowa, on forms prescribed by the adjutant general, who shall determine eligibility and whose decision is final.

2. Educational assistance paid pursuant to this section shall not exceed the resident tuition rate established for institutions of higher learning under the control of the state board of regents. If the amount appropriated in a fiscal year for purposes of this section is insufficient to provide educational assistance to all national guard members who apply for the program and who are determined by the adjutant general to be eligible for the program, the adjutant general shall, in coordination with the commission, determine the distribution of educational assistance. However, educational assistance paid pursuant to this section shall not be less than fifty percent of the resident tuition rate established for institutions of higher learning under the control of the state board of regents or fifty percent of the tuition rate at the institution attended by the national guard member, whichever is lower. Neither eligibility nor educational assistance determinations shall be based upon a national guard member's unit, the location at which drills are attended, or whether the eligible individual is a member of the Iowa army or air national guard.

3. An eligible member of the national guard, attending an institution as provided in subsection 1, paragraph *"d"*, as a full-time student, shall not receive educational assistance under this section for more than eight semesters, or if attending as a part-time student for not more than sixteen semesters, of undergraduate study, or the trimester or quarter equivalent. A national guard member who has met the educational requirements for a baccalaureate degree is ineligible for educational assistance under this section.

4. The eligibility of applicants and amounts of educational assistance to be paid shall be certified by the adjutant general of Iowa to the college student aid commission, and all amounts that are or become due to a community college, accredited private institution, or institution of higher learning under the control of the state board of regents under this section shall be paid to the college or institution by the college student aid commission upon receipt of certification by the president or governing board of the educational institution as to accuracy of charges made, and as to the attendance and academic progress of the individual at the educational institution. The college student aid commission shall maintain an annual record of the number of participants and the dollar value of the educational assistance provided.

5. For purposes of this section, unless otherwise required, *"educational assistance"* means the same as *"cost of attendance"* as defined in Title IV, part B, of the federal Higher Education Act of 1965 as amended.

99 Acts, ch 205, §40; 2000 Acts, ch 1095, §15

DIVISION X

WORK FOR COLLEGE PROGRAM
— EDUCATION SAVINGS PROGRAM

261.87 through 261.91 Repealed by 95 Acts, ch 70, § 3.

DIVISION XI

IOWA GRANT PROGRAM

261.92 Definitions.

When used in this division, unless the context otherwise requires:

1. *"Accredited higher education institution"* means a public institution of higher learning located in Iowa which is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements as of April 1, 1969, or an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state, and which meets the following requirements:

a. Is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements as of April 1, 1969, and,

b. Promotes equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel at the institution. In carrying out this responsibility the institution shall do all of the following:

(1) Designate a position as the affirmative action coordinator.

(2) Adopt affirmative action standards.

(3) Gather data necessary to maintain an ongoing assessment of affirmative action efforts.

(4) Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans.

(5) Conduct studies of preemployment and postemployment processes in order to evaluate employment practices and develop improved methods of dealing with all employment issues related to equal employment opportunity and affirmative action.

(6) Establish an equal employment committee to assist in addressing affirmative action needs, including recruitment.

(7) Address equal opportunity and affirmative action training needs by doing all of the following:

(a) Providing appropriate training for managers and supervisors.

(b) Insuring that training is available for all staff members whose duties relate to personnel administration.

(c) Investigating means for training in the area of career development.

(8) Require development of equal employment opportunity reports, including the initiation of the processes necessary for the completion of reports required by the federal equal employment opportunity commission.

(9) Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.

(10) File annual reports with the college student aid commission of activities under this paragraph.

2. *"Commission"* means the college student aid commission.

3. *"Financial need"* means the difference between the student's financial resources available, including those available from the student's parents as determined by a completed parents' confidential statement, and the student's anticipated expenses while attending the accredited higher education institution. Financial need shall be redetermined at least annually.

4. *"Full-time resident student"* means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least twelve semester hours or the trimester equivalent of twelve semester hours or the quarter equivalent of twelve semester hours. *"Course of study"* does not include correspondence courses.

5. *"Grant"* means an award by the state of Iowa to an accredited higher education institution for a qualified resident student under the Iowa grant program.

6. *"Part-time resident student"* means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least three semester hours or the trimester or the four quarter equivalent of

three semester hours. *"Course of study"* does not include correspondence courses.

7. *"Qualified student"* means a resident student who has established financial need and who is making satisfactory progress toward graduation.

90 Acts, ch 1272, §59; 2000 Acts, ch 1095, §16

261.93 Program established — who qualified.

An Iowa grant program is established.

A grant may be awarded to a resident of Iowa who is admitted and in attendance as a full-time or part-time resident student at an accredited higher education institution and who establishes financial need. Grants awarded shall be distributed to the appropriate accredited higher education institution for payment of educational expenses, including tuition, room, board, and mandatory fees, with any balance to be distributed to the student for whom the grant is awarded.

90 Acts, ch 1272, §60

261.93A Appropriation — percentages.

Of the funds appropriated to the college student aid commission to be allocated for the Iowa grant program for each fiscal year, thirty-seven and six-tenths percent shall be reserved for students attending regents' institutions, twenty-five and nine-tenths percent shall be reserved for students attending community colleges, and thirty-six and five-tenths percent shall be reserved for students attending private colleges and universities. Funds appropriated for the Iowa grant program shall be used to supplement, not supplant, funds appropriated for other existing programs at the eligible institutions.

91 Acts, ch 267, §233

261.94 Extent of grant.

A qualified full-time resident student may receive grants for not more than eight semesters of undergraduate study or the trimester or quarter equivalent. A qualified part-time resident student may receive grants for not more than sixteen semesters of undergraduate study or the trimester or quarter equivalent.

90 Acts, ch 1272, §61

261.95 Amount of grant.

1. The amount of a grant to a qualified full-time student for an academic year shall be the lesser of the student's financial need for that period or up to one thousand dollars.

2. The amount of a grant to a qualified part-time student enrolled in a course of study shall be equal to the average amount of a grant to a full-time student times a number which represents twenty-four semester hours, or the trimester or quarter equivalent, divided by the number of hours in which the part-time student is actually enrolled.

3. A grant may be made annually for both the fall and spring semesters or the trimester equivalent. Payments under the grant shall be allocated equally among the semesters or trimesters and shall be paid at the beginning of each semester or trimester, upon certification by the accredited higher education institution that the student is admitted and in attendance. If the student discontinues attendance before the end of the semester or trimester after receiving payment under the grant, the entire amount of any refund due that student, up to the amount of any payments made under the annual grant, shall be paid by the accredited higher education institution to the state.

4. If a student receives financial aid under any other program except a federal, state, or institutional work-study program, the full amount of the other financial aid shall be considered part of the student's financial resources available in determining the amount of the student's financial need for that period. In no case may the total financial aid for the student's education, including financial aid under any other state program, exceed the student's financial need at the institution which the student attends.

90 Acts, ch 1272, §62

261.96 Administration by commission — rules.

The commission shall administer this program and shall:

1. Provide application forms and parents' confidential statement forms.

2. Adopt rules and regulations for determining financial need, defining tuition and mandatory fees, defining residence for the purposes of the Iowa grant program, determining grant award amounts on the basis of student need, processing and approving applications for grants, and determining priority of grants. If resources are insufficient to award grants to all eligible applicants, the commission shall give priority to students who have the greatest demonstrated financial need. In determining who is a resident of Iowa, the commission's rules shall be at least as restrictive as those of the board of regents.

3. Approve and award grants.

4. Make an annual report to the governor and general assembly, and evaluate the Iowa grant program for the period. The commission may require the accredited higher education institution to promptly furnish any information which the commission may request in connection with the Iowa grant program.

90 Acts, ch 1272, §63

261.97 Application for grants.

Each applicant, in accordance with the rules of the commission, shall:

1. Complete and file an application for a grant.

2. Be responsible for the submission of the parents' confidential statement for processing, the processed information to be returned both to the commission and to the accredited higher education institution in which the applicant is enrolling.

3. Report promptly to the commission any information requested.

4. File a new application and parents' confidential statement annually on the basis of which the applicant's eligibility for a renewed grant will be evaluated and determined.

90 Acts, ch 1272, §64

261.98 Access to education program. Repealed by 95 Acts, ch 70, § 3.

261.99 and 261.100 Reserved.

DIVISION XII

MINORITY ACADEMIC GRANTS FOR ECONOMIC SUCCESS

261.101 Legislative intent.

The general assembly finds that the failure of many young Iowans to complete their education limits their opportunity for a life of fulfillment and hinders the state's efforts to provide a well-trained work force for business and industry in Iowa. The general assembly also declares that it is the policy of this state to apply positive measures to ensure that equal opportunities exist for minority persons to pursue their educational goals. Therefore, the *"Iowa Minority Academic Grants for Economic Success"* program is established to provide additional funding to the state board of regents' institutions, community colleges, and accredited private institutions in order to encourage resident minority students to remain in Iowa, to attend community colleges, private colleges, and universities in Iowa, and to assure that a limited family income will not be a barrier for a minority person to pursue a postsecondary education.

89 Acts, ch 319, §53; 90 Acts, ch 1253, §14

261.102 Definitions.

1. *"Accredited private institution"* means an institution of higher education as defined in section 261.9, subsection 1.

2. *"Commission"* means the college student aid commission.

3. *"Financial need"* means the difference between the student's financial resources, including resources available from the student's parents and the student, as determined by a completed parents' financial statement and including any noncampus-administered federal or state grants and scholarships, and the student's estimated expenses while attending the institution. A student shall accept all available federal and state grants and scholarships before being considered eligible for grants under the Iowa minority academic grants for economic success program. Financial need shall be reconsidered on at least an annual basis.

4. *"Full-time student"* means an individual who is enrolled at an accredited private institution, community college, or board of regents' university for at least twelve semester hours or the trimester or quarter equivalent.

5. *"Minority person"* means an individual who is black, Hispanic, Asian, or a Pacific islander, American Indian, or an Alaskan Native American.

6. *"Part-time student"* means an individual who is enrolled at an accredited private institution, community college, or board of regents' university in a course of study including at least three semester hours or the trimester or quarter equivalent of three semester hours.

7. *"Program"* means the Iowa minority academic grants for economic success program established in this division.

89 Acts, ch 319, §54; 90 Acts, ch 1253, §15, 122

261.103 Program qualifications.

1. A grant under the program may be awarded to any minority person who is a resident of Iowa, who is accepted for admission or is attending a board of regents' university, community college, or an accredited private institution, and who demonstrates financial need. Applicants who receive vouchers under section 262.92 shall be given priority in receiving grants under the program, but an applicant shall not be denied a grant because the applicant does not hold vouchers under the program in section 262.92. For the fiscal year commencing July 1, 1990, and in subsequent years, grants shall be awarded to all minority persons, with priority to be given to those minority persons who are residents of Iowa.

2. Full-time students may receive grants for not more than eight semesters of undergraduate study or the trimester or quarter equivalent of eight semesters of undergraduate study. Part-time students may receive grants for not more than sixteen semesters of undergraduate study or the trimester or quarter equivalent of sixteen semesters of undergraduate study.

3. The amount of the grant shall not exceed a student's yearly financial need or three thousand five hundred dollars, whichever is less. If the student is attending or seeking to enroll in an accredited private institution, fifty percent of the amount of the grant shall be provided by the accredited private institution and fifty percent shall be provided by the commission from state funds appropriated for that purpose.

4. Grants shall be awarded on an annual basis and shall be credited by the institution against the student's tuition, fees, room, and board, at the beginning of each semester, trimester, or quarter in equal installments upon certification by the insti-

tution that the student is admitted and attending the institution.

5. If a student receiving a grant under the program discontinues attendance before the end of any academic period, but after receiving payment of grant moneys for the academic period, the entire amount of any refund due the student, up to the amount of any payments made by the state, shall be remitted by the private institution to the commission.

89 Acts, ch 319, §55; 89 Acts, ch 322, §8; 90 Acts, ch 1253, §16

261.104 Powers of the commission.

In administering the program for the community colleges and the private institutions, the commission shall:

1. Provide application forms to students enrolled and attending or seeking to enroll and attend community colleges or accredited private institutions.

2. Develop and provide confidential financial statement forms to the parents or guardians of students applying for grants under this program.

3. Approve and award grants to community colleges and accredited private institutions under the program.

4. Adopt rules for determining financial need and residency for the purpose of awarding grants to qualified students, and any other rules necessary for the administration of the program.

5. Report annually to the governor and the general assembly on the progress and implementation of the program.

6. Require postsecondary institutions that receive moneys from students awarded grants under the program to furnish any information necessary for the implementation or administration of the program.

7. Solicit and receive private contributions and federal grants available for purposes of the program.

8. Maintain records on the recipients of vouchers under section 262.92 and adopt rules to provide for the giving of priority to students holding vouchers under that section.

9. Administer funds appropriated for the Iowa minority academic grants for economic success program to carry out the duties of the commission.

10. Provide for the proration of funds among qualified applicants if funds available are insufficient to pay all approved grants.

89 Acts, ch 319, §56; 90 Acts, ch 1253, §17

261.105 Duties of applicant.

An applicant for a grant under the program shall:

1. Complete and file an application for a grant on forms provided by the commission or regents' institutions.

2. Submit the financial information required for evaluation of the applicant's financial need for a grant.

3. Comply with rules and information requests of the commission or regents' institutions made in relation to the program.

89 Acts, ch 319, §57

261.106 through 261.110 Reserved.

DIVISION XIII

TEACHER SHORTAGE FORGIVABLE LOAN PROGRAM

261.111 Teacher shortage forgivable loan program.

1. A teacher shortage forgivable loan program is established to be administered by the college student aid commission. An individual is eligible for the forgivable loan program if the individual is a resident of this state who is enrolled as a sophomore, junior, senior, or graduate student in an approved practitioner preparation program in a designated area in which teacher shortages are anticipated at an institution of higher learning under the control of the state board of regents or an accredited private institution as defined in section 261.9.

2. The director of the department of education shall annually designate the areas in which teacher shortages are anticipated. The director shall periodically conduct a survey of school districts, accredited nonpublic schools, and approved practitioner preparation programs to determine current shortage areas and predict future shortage areas.

3. Each applicant shall, in accordance with the rules of the commission, do the following:

a. Complete and file an application for a teacher shortage forgivable loan. The individual shall be responsible for the prompt submission of any information required by the commission.

b. File a new application and submit information as required by the commission annually on the basis of which the applicant's eligibility for the renewed forgivable loan will be evaluated and determined.

4. Forgivable loans to eligible students shall not become due until after the student graduates or leaves school. The individual's total loan amount, including principal and interest, shall be reduced by twenty percent for each year in which the individual remains an Iowa resident and is employed in Iowa by a school district or an accredited nonpublic school as a practitioner in the teacher shortage area for which the loan was approved. If the commission determines that the person does not meet the criteria for forgiveness of the principal and interest payments, the commission shall establish a plan for repayment of the principal and interest over a ten-year period. If a person required to make the repayment does not

make the required payments, the commission shall provide for payment collection.

5. The amount of a teacher shortage forgivable loan shall not exceed three thousand dollars annually, or the amount of the student's established financial need, whichever is less.

6. The commission shall prescribe by rule the interest rate for the forgivable loan.

7. A teacher shortage forgivable loan repayment fund is created for deposit of payments made by forgivable loan recipients who do not fulfill the conditions of the forgivable loan program and any other moneys appropriated to or received by the commission for deposit in the fund. Notwithstanding section 8.33, moneys deposited in the fund shall not revert to the general fund of the state at the end of any fiscal year but shall remain in the forgivable loan repayment fund and be continuously available to make additional loans under the program. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

8. For purposes of this section, unless the context otherwise requires, *"teacher"* means the same as defined in section 272.1.

98 Acts, ch 1215, §39; 99 Acts, ch 205, §41

DIVISION XIV

INDUSTRIAL TECHNOLOGY
FORGIVABLE LOAN PROGRAM

261.112 Industrial technology forgivable loan administration. Repealed by 99 Acts, ch 207, § 47.

261.113 through 261.120 Reserved.

DIVISION XV

LICENSING SANCTIONS

Authority of licensing boards or authorities to act against licensees who default on repayment or service obligations under federal or state educational loan or service-conditional scholarship programs; see §272C.4, subsection 10

261.121 Notice to individual of potential sanction of license.

1. The commission may initiate action to deny, revoke, or suspend any license authorized by the laws of this state, as defined in section 252J.1, to any person who has defaulted on an obligation owed to or collected by the commission as provided in this section and sections 261.122 through 261.127.

2. The commission shall proceed in accordance with this section and sections 261.122 through 261.127 only if notice is served on an individual by restricted certified mail addressed to the individual at the individual's last known address or principal place of business. The return post office receipt signed by the individual shall be proof of notice.

The notice shall include all of the following:

a. The address and telephone number of the commission and the individual's file number.

b. A statement that the individual is in default on an obligation owed to or collected by the commission.

c. A statement that the individual may request a conference with the commission to contest the action.

d. A statement that if, within twenty days of service of notice on the individual, the individual fails to contact the commission to schedule a conference or pay the total amount of delinquent obligation owed, the commission shall issue a certificate of noncompliance bearing the individual's name, social security number, and file number to any appropriate licensing authority, certifying that the individual is in default on an obligation owed to or collected by the commission.

e. A statement that in order to stay the issuance of a certificate of noncompliance, the request for a conference shall be in writing and shall be received by the commission within twenty days of service of notice on the individual.

f. The names of the licensing authorities to which the commission intends to issue a certificate of noncompliance.

g. A statement that if the commission issues a certificate of noncompliance to an appropriate licensing authority, the licensing authority shall initiate proceedings to refuse to issue or renew, or to suspend or revoke, the individual's license, unless the commission provides the licensing authority with a withdrawal of a certificate of noncompliance.

98 Acts, ch 1081, §1

261.122 Conference.

1. An individual may schedule a conference with the commission following service of notice pursuant to section 261.121 or at any time after notice of suspension, revocation, denial of issuance, or nonrenewal of a license from a licensing authority, to challenge the commission's actions under sections 261.121 through 261.127.

2. The request for a conference shall be made to the commission, in writing, and, if requested after service of notice pursuant to this section, shall be received by the commission within twenty days following service of notice.

3. The commission shall notify the individual of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than ten days following issuance of notice of the conference by the commission. If the individual fails to appear at the conference, the commission shall issue a certificate of noncompliance if not already issued.

4. The commission shall grant the individual

a stay of the issuance of a certificate of noncompliance upon receiving a timely written request for a conference, and if a certificate of noncompliance has previously been issued, shall issue a stay of action on the certificate. The commission shall issue a withdrawal of a certificate of noncompliance as a result of the conference if the individual enters into a written agreement with the commission to repay the obligation.

5. Following the conference, the commission shall issue a certificate of noncompliance, if not already issued, unless any of the following applies:

a. The commission finds a mistake in the identity of the individual.

b. The individual enters into a written agreement with the commission to comply with a repayment plan agreed to by the commission and the individual as a result of the conference, or to comply with the existing contract, or the individual pays the total amount of the delinquent obligation due.

c. Issuance of a certificate of noncompliance is not appropriate under other criteria established in accordance with rules adopted by the commission pursuant to chapter 17A.

6. If the individual does not timely request a conference or pay the total amount of delinquent obligation owed within twenty days of service of notice pursuant to section 261.121, the commission shall issue a certificate of noncompliance.

98 Acts, ch 1081, §2

261.123 Written agreement.

1. An individual served with notice pursuant to section 261.121 may enter into a written agreement with the commission for payment of the obligation owed by the individual. The agreement shall take into consideration the individual's ability to pay and other criteria established by rule of the commission. The written agreement shall include all of the following:

a. The method, amount, and dates of payments by the individual.

b. A statement that upon breach of the written agreement by the individual, the commission shall issue a certificate of noncompliance to any appropriate licensing authority.

c. A written agreement entered into pursuant to this subsection does not preclude any other remedy provided by law.

2. If the individual enters into a written agreement with the commission following issuance of a certificate of noncompliance, the commission shall issue a withdrawal of the certificate of noncompliance and shall forward a copy of the withdrawal by regular mail to the individual and any appropriate licensing authority.

98 Acts, ch 1081, §3

261.124 Decision of the commission.

1. The commission shall issue a written decision in regard to an individual served with notice pursuant to section 261.121, if any of the following occurs:

a. The individual fails to appear at a scheduled conference under section 261.122.

b. A conference is held under section 261.122.

c. The individual fails to comply with a written agreement entered into by the individual and the commission under section 261.123.

2. The commission shall send a copy of the written decision to the individual by regular mail at the individual's most recent address of record or principal place of business.

3. If the commission issues a certificate of noncompliance or withdraws a certificate of noncompliance, a copy of the certificate or of the withdrawal shall be attached to the written decision as applicable.

4. The written decision shall state all of the following:

a. That a copy of the certificate of noncompliance or withdrawal of the certificate of noncompliance has been provided to the licensing authorities named in the notice provided pursuant to section 261.121.

b. That upon receipt of a certificate of noncompliance, the licensing authority shall initiate proceedings to suspend, revoke, deny issuance, or deny renewal of a license, unless the licensing authority is provided with a withdrawal of the certificate of noncompliance from the commission.

c. If the decision is not to withdraw a certificate of noncompliance, that in order to obtain a withdrawal of a certificate of noncompliance from the commission, the individual shall enter into a written agreement with the commission, comply with an existing written agreement with the commission, or pay the total amount of delinquent obligation owed.

d. If the written decision includes a certificate of noncompliance, that all of the following apply:

(1) The individual may request a hearing as provided in section 261.127, before the district court in the county of the individual's residence, by filing a written application to the court challenging the issuance of the certificate of noncompliance by the commission and sending a copy of the application to the commission within the time period specified in section 261.127.

(2) The individual may retain an attorney at the individual's own expense to represent the individual at the hearing.

(3) The scope of review of the district court shall be limited to demonstration of a mistake of fact related to the delinquency of the individual.

5. If the commission issues a certificate of noncompliance, the commission shall only issue a withdrawal of the certificate of noncompliance if any of the following applies:

a. The commission or the court finds a mistake in the identity of the individual.

b. The commission or the court finds a mistake

in determining the amount of a delinquent obligation.

c. The individual enters into a written agreement with the commission to comply with an obligation, the individual complies with an existing written agreement to comply with an obligation, or the individual pays the total amount of delinquent obligation owed.

d. Issuance of a withdrawal of the certificate of noncompliance is appropriate under other criteria in accordance with rules adopted by the commission pursuant to chapter 17A.

98 Acts, ch 1081, §4

261.125 Certificate of noncompliance — certification to licensing authority.

1. If an individual fails to respond to the notice of potential license sanction provided pursuant to section 261.121 or the commission issues a written decision under section 261.124 which states that the individual is not in compliance, the commission shall certify, in writing, to any appropriate licensing authority that the individual is not in compliance and shall include a copy of the certificate of noncompliance.

2. The certificate of noncompliance shall contain the individual's name, social security number, and file number.

3. The certificate of noncompliance shall require all of the following:

a. That the licensing authority initiate procedures for the revocation or suspension of the individual's license, or for the denial of the issuance or renewal of a license using the licensing authority's procedures.

b. That the licensing authority provide notice to the individual, as provided in section 261.126, of the intent to suspend, revoke, deny issuance, or deny renewal of a license including the effective date of the action. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the individual.

98 Acts, ch 1081, §5

261.126 Requirements and procedures of licensing authority.

1. A licensing authority shall maintain records of licensees by name, current known address, and social security number.

2. In addition to other grounds for suspension, revocation, or denial of issuance or renewal of a license, a licensing authority shall include in rules adopted by the licensing authority as grounds for suspension, revocation, or denial of issuance or renewal of a license, the receipt of a certificate of noncompliance from the commission.

3. The supreme court shall prescribe rules for admission of persons to practice as attorneys and counselors pursuant to chapter 602, article 10, which include provisions, as specified in this chapter, for the denial, suspension, or revocation of the admission for failure to repay an obligation owed to or collected by the commission.

4. A licensing authority that is issued a certificate of noncompliance shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. The licensing authority shall utilize existing rules and procedures for suspension, revocation, or denial of the issuance or renewal of a license.

In addition, the licensing authority shall provide notice to the individual of the licensing authority's intent to suspend, revoke, or deny issuance or renewal of a license under this chapter. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the individual. The notice shall state all of the following:

a. The licensing authority intends to suspend, revoke, or deny issuance or renewal of an individual's license due to the receipt of a certificate of noncompliance from the commission.

b. The individual must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within thirty days of the issuance of the notice under this section, the individual's license shall be revoked, suspended, or denied.

d. If the licensing authority's rules and procedures conflict with the additional requirements of this section, the requirements of this section shall apply. Notwithstanding section 17A.18, the individual does not have a right to a hearing before the licensing authority to contest the authority's actions under this chapter, but may request a court hearing pursuant to section 261.127 within thirty days of the provision of notice under this section.

5. If the licensing authority receives a withdrawal of a certificate of noncompliance from the commission, the licensing authority shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements established by the licensing authority.

98 Acts, ch 1081, §6

261.127 District court hearing.

1. Following the issuance of a written decision by the commission under section 261.124, which includes the issuance of a certificate of noncompliance, or following provision of notice to the individual by a licensing authority pursuant to section 261.126, an individual may seek review of the decision and request a hearing before the district court in the individual's county of residence by filing an application with the district court and sending a copy of the application to the commission by regular mail. An application shall be filed to seek review of the decision by the commission or following

issuance of notice by the licensing authority no later than thirty days after the issuance of the notice pursuant to section 261.126. The clerk of the district court shall schedule a hearing and mail a copy of the order scheduling the hearing to the individual and the commission and shall also mail a copy of the order to the licensing authority, if applicable. The commission shall certify a copy of its written decision and certificate of noncompliance, indicating the date of issuance, and the licensing authority shall certify a copy of a notice issued pursuant to section 261.126, to the court prior to the hearing.

2. The filing of an application pursuant to this section shall automatically stay the actions of a licensing authority pursuant to section 261.126. The hearing on the application shall be scheduled and held within thirty days of the filing of the application. However, if the individual fails to appear at the scheduled hearing, the stay shall be lifted and the licensing authority shall continue procedures pursuant to section 261.126.

3. The scope of review by the district court shall be limited to demonstration of a mistake of fact relating to the delinquency of the individual.

4. If the court finds that the commission was in error in issuing a certificate of noncompliance, or in failing to issue a withdrawal of a certificate of noncompliance, the commission shall issue a withdrawal of a certificate of noncompliance to the appropriate licensing authority.

98 Acts, ch 1081, §7

CHAPTER 261A

HIGHER EDUCATION LOAN AUTHORITY (PRIVATE INSTITUTIONS)

Authority is attached to the college student aid commission; §7E.7, chapter 261

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DIVISION I

GENERAL PROVISIONS

261A.1 Short title and citation.

This chapter may be cited as the *"Iowa Higher Education Loan Authority Act"*.

[82 Acts, ch 1031, §1]

261A.2 Declaration of purpose.

It is declared that for the benefit of the people of the state of Iowa, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of continued prosperity and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills; that to achieve these ends it is of the utmost importance that students attending institutions of higher education located in Iowa have reasonable financial alternatives to enhance their access to such institutions; that reasonable financial access to institutions of higher education will assist youth in achieving the optimum levels of learning and development of their intellectual and mental capacities and skills; that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable students and the families of students attending institutions of higher education located in Iowa to appropriately and prudently finance the cost or a portion of the cost of higher education; and that it is the intent of this chapter to supplement federal guaranteed higher education loan programs, other student loan programs, and grant or scholarship programs to provide the needed additional options for the financing of a student's higher education in execution of the public policy set forth above.

[82 Acts, ch 1031, §2]

261A.3 Legislative findings.

The general assembly finds as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their education, health and welfare, and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious problem in this state regarding the ability of students to obtain financing for the cost of education beyond the high school level.

4. Escalating costs of securing such an education have contributed to the difficulties faced by students in attempting to finance an education.

5. Without public action as contemplated by this chapter, many students will be forced to postpone or abandon plans for obtaining additional education.

6. It is in the interests and welfare of the citizens of the state to provide a means for assisting students to continue their education.

7. Without public action as contemplated by this chapter, the inability to obtain educational financing will result in declining enrollments at institutions of higher education.

8. It is necessary to create a higher education loan authority to encourage the investment of private capital in the provision of funds for the financing of student loans.

9. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

[82 Acts, ch 1031, §3]

261A.4 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Authority"* means the Iowa higher education loan authority created by this chapter, and *"members of the authority"* means those persons appointed to the authority pursuant to section 261A.6.

2. *"Authority loans"* means loans by the authority to institutions of higher education for the purpose of funding education loans.

3. *"Bond resolution"* means a resolution of the authority and the trust agreement, if any, and any supplements or amendments to the resolution and agreement, authorizing the issuance of and providing for the terms and conditions applicable to obligations.

4. *"Bond service charges"* means principal, including mandatory sinking fund requirements for retirement of obligations, and interest, and redemption premium, if any, required to be paid by the authority on obligations.

5. *"Borrower"* means a student who has received an education loan or a parent who has received or agreed to pay an education loan.

6. *"Cost of attendance"* means the amount defined by the institution for the purpose of the guaranteed student loan program as defined under Title IV, part B, of the "Higher Education Act of 1965" as amended.

7. *"Default insurance"* means insurance insuring education loans, authority loans, or obligations against default.

8. *"Default reserve fund"* means a fund established pursuant to a bond resolution for the purpose of securing education loans, authority loans, or obligations.

9. *"Education loan"* means a loan which is made by an institution to a student or parents of a student, or both, in amounts not in excess of the maximum amounts specified in rules adopted by

the authority under chapter 17A to finance all or a portion of the cost of the student's attendance at the institution.

10. *"Education loan series portfolio"* means all education loans made by a specific institution which are funded from the proceeds of an authority loan to the institution from the proceeds of a related specific issue of obligations through the authority.

11. *"Governmental agency"* means the state or a state department, division, commission, institution, or authority, an agency, city, county, township, school district, and any other political subdivision or special district in this state established pursuant to law, and, except where otherwise indicated, also means the United States or a department, division, or agency of the United States, and an agency, commission, or authority established pursuant to an interstate compact or agreement.

12. *"Institution"* means a nonprofit educational institution located in Iowa not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or city of the state, which is authorized by law to provide a program of education beyond the high school level and which meets all of the following requirements:

a. Admits as regular students only individuals having a certificate of graduation from high school, or the recognized equivalent of such a certificate.

b. Provides an educational program for which it awards a baccalaureate degree; or provides an educational program which conditions admission upon the prior attainment of a baccalaureate degree or its equivalent, for which it awards a postgraduate degree; or provides not less than a two-year program which is acceptable for full credit toward a baccalaureate degree, or offers not less than a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge.

c. Is accredited by a nationally recognized accrediting agency or association or, if not accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are accredited.

d. Does not discriminate in the admission of students on the basis of age, race, creed, color, sex, national origin, religion, or disability.

e. Has a governing board which possesses its own sovereignty.

f. Has a governing board, or delegated institutional officials, which possess final authority in all matters of local control, including educational policy, choice of personnel, determination of program, and financial management.

13. *"Loan funding deposit"* means money or other property deposited by an institution with the authority or a trustee for the purpose of one or more of the following:

a. Providing security for obligations.

b. Funding a default reserve fund.

c. Acquiring default insurance.

d. Defraying costs of the authority.

The moneys or properties shall be in amounts deemed necessary by the authority as a condition for the institution's participation in the authority's programs.

14. *"Obligations"* means bonds, notes, or other evidences of indebtedness of the authority, including interest coupons pertaining thereto, issued under this chapter, including refunding bonds.

15. *"Parent"* means a parent or guardian of a student at an institution.

16. *"Person"* means a public or private person, firm, partnership, association, corporation or other body.

[82 Acts, ch 1031, §4]

261A.5 Creation as public instrumentality.

The Iowa higher education loan authority is created as a body politic and corporate. The authority is a public instrumentality and the exercise by the authority of the powers conferred by this chapter is the performance of an essential public function. The authority is attached to the college student aid commission for administrative purposes.

[82 Acts, ch 1031, §5]

86 Acts, ch 1245, §1455; 90 Acts, ch 1253, §122

261A.6 Membership of authority.

1. The authority consists of five members to be appointed by the governor subject to confirmation by the senate. The powers of the authority are vested in and exercised by the members of the authority. Each member of the authority shall be a resident of the state and not more than three members shall be members of the same political party.

2. The members of the authority shall be appointed by the governor for terms of six years beginning and ending as provided in section 69.19. A member of the authority is eligible for reappointment. The governor shall fill a vacancy for the remainder of the unexpired term. A member of the authority may be removed by the governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless the notice and hearing are waived by the member in writing.

3. The members of the authority shall annually elect one of the members as chairperson and one as vice chairperson. The members of the authority may appoint an executive director, an assistant executive director, and other officers as the members of the authority determine. The officers shall not be members of the authority, shall serve at the pleasure of the authority, and shall receive com-

pensation as fixed by the authority.

4. The executive director or assistant executive director or other person designated by resolution of the authority shall keep a record of the proceedings of the authority and shall be custodian of all books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal. The executive director, assistant executive director, or other person may cause copies to be made of minutes and other records and documents of the authority and may give certificates under the official seal of the authority that the copies are true copies, and persons dealing with the authority may rely upon the certificates.

5. Three members of the authority constitute a quorum. The affirmative vote of a majority of the members of the authority is necessary for any action taken by the authority. The majority shall not include a member who has a conflict of interest and a statement by a member of a conflict of interest is conclusive for this purpose. A vacancy in the membership of the authority does not impair the right of a quorum to exercise the rights and perform the duties of the authority. An action taken by the authority under this chapter may be authorized by resolution at a regular or special meeting, and each resolution shall take effect immediately and need not be published or posted, except as provided in section 261A.25. Meetings of the authority shall be held at the call of the chairperson or at the request of two members.

6. The members of the authority shall not receive compensation for the performance of their duties as members but each member shall be paid necessary expenses while engaged in the performance of duties of the authority.

7. The members of the authority shall give bond as required for public officers in chapter 64.

8. The members of the authority are subject to and are officials within the meaning of chapter 68B.

9. Notwithstanding chapter 68B or any other laws to the contrary, it is not a conflict of interest or violation of a law for a trustee, director, officer, or employee of a participating institution or for a person having a favorable reputation for skill, knowledge, and experience in state and municipal finance or for a person having a favorable reputation for skill, knowledge, and experience in the higher education loan finance field to serve as a member of the authority. However, in each case to which this chapter is applicable, the trustee, director, officer, or employee of the participating institution shall abstain from discussion, deliberation, action, and vote by the authority in respect to an undertaking pursuant to this chapter in which the participating institution of higher education has an interest; and the person having a favorable reputation for skill, knowledge, and experience in state and municipal finance shall abstain from discussion, deliberation, action, and vote by the authority in respect to a sale, purchase, or ownership of obligations of the authority in which an investment banking firm or insurance company or bank of which the person is a partner, officer, or employee has or may have a current or future interest; and the person having a favorable reputation for skill, knowledge, and experience in the higher education loan finance field shall abstain from discussion, deliberation, action, and vote by the authority in respect to an action of the authority in which a partnership, firm, joint venture, sole proprietorship, or corporation of which the person is an owner, venturer, participant, partner, officer, or employee has or may have a current or future interest.

10. All employees of the authority are exempt from chapters 19A and 97B.

[82 Acts, ch 1031, §6, 28]

86 Acts, ch 1245, §843

Confirmation, see §2.32

261A.7 Duties of authority.

The authority shall:

1. Adopt rules for the regulation of its affairs and the conduct of its business.

2. Adopt an official seal and alter the seal at pleasure.

3. Maintain an office at a place or places it designates.

4. Establish criteria for and guidelines encompassing the types of and qualifications for education loan financing programs. The authority may issue obligations for the purpose of making authority loans to institutions participating in a program of the authority for the purpose of providing education loans. The criteria and guidelines established by the authority for its education loan financing programs include eligibility standards for borrowers the authority determines are necessary or desirable in order to effectuate the purposes of this chapter, including the following:

a. Each student shall have a certificate of admission or enrollment at a specific participating institution.

b. Each student or the student's parents shall satisfy financial qualifications the authority establishes to effectuate the purposes of this chapter.

c. Each student and the student's parents shall submit information required by the authority to the applicable institution.

The authority may contract with financial institutions and other qualified loan origination and servicing organizations, which shall assist in prequalifying borrowers for education loans and which shall service and administer each education loan and each institution's respective loan series portfolio. Each education loan's fees shall include a portion, if necessary, to cover the applicable pro rata cost of a servicing organization.

The authority may establish criteria governing the eligibility of institutions to participate in its

programs, the making of authority loans and education loans, provisions for default, the establishment of default reserve funds, the purchase of default insurance, the provision of prudent debt service reserves, and the furnishing by participating institutions of higher education of additional guarantees of the education loans, authority loans, or obligations that the authority determines necessary. Criteria shall be established to assure the marketability of the obligations and the adequacy of the security for the obligations.

The authority shall establish limitations upon the principal amounts and the terms of education loans, criteria regarding the qualifications and characteristics of borrowers and procedures for allocating authority loans among institutions eligible for its program in order to effectuate the purposes of this chapter.

5. Issue obligations for its corporate purposes and fund or refund the obligations as provided in this chapter.

6. Fix and revise from time to time and charge and collect rates, fees, and charges for the services furnished or to be furnished by the authority, and contract with persons in respect to the services, including financial institutions, loan originators, servicers, administrators, issuers of letters of credit, and insurers.

7. Establish rules under chapter 17A with respect to authority loans, education loans, and education loan series portfolios.

8. Receive and accept from any source, loans, contributions or grants for or in aid of an authority education loan financing program or any portion of a program and, when required, use the funds, property, or labor only for the purposes for which it was loaned, contributed, or granted.

9. Make authority loans to institutions and require that the proceeds of the authority loans be used for making education loans and paying costs and fees in connection with the education loans.

10. Charge to and apportion among participating institutions its administrative and operating costs and expenses incurred in the exercise of its powers and duties.

11. Borrow working capital funds and other funds as necessary for start-up and continuing operations, provided that the funds are borrowed in the name of the authority only. Borrowings are limited obligations of the character described in section 261A.12 and are payable solely from revenues of the authority or the proceeds of obligations pledged for that purpose.

12. Notwithstanding other provisions in this chapter, commingle and pledge as security for a series or issue of obligations, with the consent of all of the institutions which are participating in the series or issue, the education loan series portfolios and some or all future education loan series portfolios of the institutions, and the loan funding deposits of the institutions. However, the education loan series portfolios and other security and moneys set aside in a fund or funds pledged for a series or issue of obligations shall be held for the sole benefit of the series or issue separate and apart from education loan series portfolios and other security and moneys pledged for any other series or issue of obligations. Obligations may be issued in series under one or more resolutions or trust agreements in the discretion of the authority.

13. Examine records and financial reports of participating institutions, and examine records and financial reports of a contractor organization or institution retained by the authority.

14. Require that authority loans be used solely to make education loans. The authority shall require that institutions require that each borrower under an education loan use the proceeds solely for the cost of attendance and that each borrower certify as to the use of the proceeds.

15. Authorize its officers, agents, and employees to take any other action and do all things necessary or desirable in order to carry out the purposes of this chapter.

[82 Acts, ch 1031, §7]

261A.8 Powers of authority.

The authority may:

1. Sue and be sued in its own name, plead and be impleaded.

2. Employ consultants, attorneys, accountants, financial experts, loan processors, bankers, managers, and other employees and agents necessary in the authority's judgment, and fix their compensation.

3. When refunding obligations are issued to refund obligations, the proceeds of which were used to make authority loans, reduce the amount it is owed by the institutions which had received authority loans from the proceeds of the refunded obligations. The institutions may use this reduced amount to reduce the amount of interest being paid on education loans which the institutions had made pursuant to the authority loans from the proceeds of the refunded obligations.

[82 Acts, ch 1031, §8]

261A.9 Expenses of authority — limitation of liability.

Expenses incurred in carrying out this chapter are payable solely from funds provided under this chapter and, except as specifically authorized under this chapter, a liability shall not be incurred by the authority beyond the extent to which moneys have been provided under this chapter.

[82 Acts, ch 1031, §9]

261A.10 Acquisition of moneys, endowments, properties and guarantees.

The authority may establish guidelines relating to the deposits of moneys, endowments, or properties by institutions which would provide prudent security for education loan funding programs, authority loans, education loans, or for obligations

and may establish guidelines relating to guarantees of or contracts to purchase education loans or obligations by the institutions or by financial institutions or others. A default reserve fund may be established for each series or issue of obligations. The authority may receive moneys, endowments, properties, and guarantees it deems appropriate and, if necessary, may take title in the name of the authority or in the name of a participating institution or a trustee.

[82 Acts, ch 1031, §10]

261A.11 Conveyance of loan funding deposit after payment of principal and interest.

When the principal of and interest on obligations of the authority issued to finance the cost of an education loan financing program or programs, including any refunding obligations issued to refund and refinance the obligations, have been fully paid and retired or when adequate provision has been made to fully pay and retire the obligations of the authority, and all other conditions of the bond resolution have been satisfied and the lien created by the bond resolution has been released in accordance with its provisions, the authority shall promptly perform functions and execute deeds and conveyances necessary and required to convey remaining moneys, properties, and other assets comprising loan funding deposits to the institutions which furnished the loan funding deposits in proportion to the amounts furnished by the respective institutions.

[82 Acts, ch 1031, §11]

261A.12 Obligations.

1. The authority may from time to time issue obligations for any corporate purpose and the obligations of the authority are declared to be negotiable for all purposes notwithstanding their payment from limited sources and without regard to any other law.

2. The authority shall not have outstanding at any one time obligations in an aggregate principal amount exceeding one hundred million dollars excluding obligations issued to refund the obligations of the authority.

3. Each issue of obligations is payable solely out of revenues of the authority pertaining to the program relating to the issue, including principal and interest on authority loans and education loans; payments by institutions of higher education, banks, insurance companies, or others pursuant to letters of credit or purchase agreements; investment earnings from funds or accounts maintained pursuant to the bond resolution; insurance proceeds; loan funding deposits; proceeds of sales of education loans; proceeds of refunding obligations; and fees, charges, and other revenues of the authority from the program.

4. Obligations may be issued as serial obligations or as term obligations, or both. Obligations shall be authorized by a bond resolution of the authority and shall bear dates, mature at times not later than the year following the last year in which the final payments in an education loan series portfolio are due, or thirty years, whichever is sooner, from their respective dates of issue, bear interest at rates, be payable at times, be in denominations, be in a form, either coupon or fully registered, carry registration and conversion privileges, be payable in lawful money of the United States of America, and be subject to terms of redemption as the bond resolution provides. Obligations shall be executed by the manual or facsimile signatures of officers of the authority designated by the authority. Obligations shall be sold in a manner and at prices as the authority determines.

5. A bond resolution may contain provisions, which shall be a part of the contract with the holders of the obligations to be authorized, as to all of the following:

a. Pledging or assigning the revenues derived from the authority loans and education loans with respect to which the obligations are to be issued.

b. The fees and other amounts to be charged, and the sums to be raised in each year, and the use, investment, and disposition of the sums.

c. The setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost of insurance accounts, and sinking funds, and their regulation, investment, and disposition.

d. Limitations on the use of the education loans.

e. Limitations on the purpose to which or the investments in which the proceeds of sale of an issue of obligations then or thereafter to be issued may be applied.

f. Limitations on the issuance of additional obligations, the terms upon which additional obligations may be issued and secured, the terms upon which additional obligations may rank on a parity with, or be subordinate or superior to, other obligations.

g. The refunding of outstanding obligations.

h. The procedure, if any, by which the terms of a contract with holders of obligations may be amended or abrogated, the amount of obligations to which the holders must consent to the amendment or abrogation, and the manner in which the consent may be given.

i. Defining the acts or omissions to act which constitute a default in the duties of the authority to holders of obligations and providing the rights or remedies of holders in the event of a default.

j. Providing for guarantees, pledges, endowments, letters of credit, property, or other security for the benefit of the holders of the obligations.

k. Any other matters relating to the obligations which the authority deems desirable.

6. Neither the members of the authority nor a person executing the obligations is liable person-

ally on the obligations or subject to personal liability or accountability by reason of their issuance.

7. The authority may purchase its obligations out of funds available. The authority may hold, pledge, cancel, or resell obligations subject to and in accordance with agreements with holders of obligations.

8. The authority may refund any of its obligations. Refunding obligations shall be issued in the same manner as other obligations of the authority.

[82 Acts, ch 1031, §12]

261A.13 Trust agreement to secure obligations.

In the discretion of the authority, obligations may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be a trust company or bank located in the state of Iowa that has the powers of a trust company. The bond resolution shall pledge the revenues to be received by the authority, may contain provisions for protecting and enforcing the rights and remedies of the holders of obligations as reasonable and proper and not in violation of law, including provisions that have been authorized to be included in any bond resolution of the authority, and may restrict the individual right of action by holders of obligations. A trust agreement may contain other provisions the authority deems reasonable and proper for the security of the holders of obligations. Expenses incurred in carrying out the trust agreement may be treated as a part of the cost of the operation of an education loan program.

[82 Acts, ch 1031, §13]

261A.14 Payment of obligations — nonliability of state.

Obligations are obligations of the authority only, and not of the state of Iowa. Each obligation shall state upon its face that it represents and constitutes a debt of the authority, but not of the state of Iowa within the meaning of any constitutional or statutory limitation, and that it does not constitute a pledge of the full faith and credit of the authority or of the state of Iowa. The obligations shall not grant to the owners or holders of the obligations the right to have the authority or the state levy taxes or appropriate funds for the payment of the principal or interest on the obligations. The obligations are payable, and shall state that they are payable, solely from the revenues pledged for their payment in accordance with the bond resolution.

This chapter does not authorize the authority or any department, board, commission, or other agency to create an obligation of the state within the meaning of the constitution or laws of Iowa.

[82 Acts, ch 1031, §14]

261A.15 Pledge of revenues.

The authority shall fix, revise, charge, and collect fees and may contract with a person to do so. Each agreement entered into by the authority with an institution shall provide that the fees and other amounts payable by the institution of higher education with respect to a program of the authority are sufficient at all times to meet all of the following:

1. To pay its share of the administrative costs and expenses of the program.

2. To pay the principal of, the premium, if any, and the interest on outstanding obligations of the authority, issued in respect of the program to the extent that other revenues of the authority pledged for the payment of the obligations are insufficient to pay the obligations as they become due and payable.

3. To create and maintain reserves which may but need not be required or provided for in the bond resolution relating to the obligations of the authority.

4. To establish and maintain whatever education loan servicing, control, or audit procedures are deemed by the authority to be necessary to the prudent operation of the authority.

The authority shall pledge the revenues from each program as security for the issue of obligations relating to the program. A pledge is valid and binding from the time when the pledge is made, the revenues pledged by the authority are immediately subject to the lien of the pledge without physical delivery of the pledge or further act, and the lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority or a participating institution, irrespective of whether the parties have notice of the lien. The bond resolution and a financing statement, continuation statement, or other instrument by which the authority's interest in revenues is assigned need not be filed or recorded in public records in order to perfect the lien against third parties except that a copy of it shall be filed in the records of the authority and with the treasurer of state.

[82 Acts, ch 1031, §15]

261A.16 Funds for sales of obligations as trust funds — application of funds.

Moneys received by or on behalf of the authority under this chapter, whether as proceeds from the sale of obligations or as revenues, are trust funds to be held and applied as provided in this chapter. An officer with whom, or a bank or trust company with which the moneys are deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purposes of this chapter, subject to rules that this chapter and the bond resolution authorizing the obligations of an issue may provide.

[82 Acts, ch 1031, §16]

261A.17 Rights of holders of obligations.

A holder of obligations or a trustee under a trust agreement entered into pursuant to this chapter,

except to the extent that their rights are restricted by a bond resolution, may, by any suitable form of legal proceedings, protect and enforce rights under the laws of this state or granted by the bond resolution, may enjoin unlawful activities, and if there is a default on the payment of the principal of, premiums, if any, and interest on an obligation or in the performance of a covenant or agreement on the part of the authority in the bond resolution, may apply to the district court to appoint a receiver to administer and operate the education loan program, the revenues of which are pledged to the payment of principal of, premium, if any, and interest on the obligations, with full power to pay, and to provide for payment of principal of, premium, if any, and interest on the obligations, and with powers, subject to the direction of the court, as permitted by law and accorded to receivers, excluding the power to pledge additional revenues of the authority to the payment of the principal, premium, and interest.

[82 Acts, ch 1031, §17]

261A.18 Refunding bonds — purpose — proceeds — investment of proceeds.

1. The authority may issue its obligations for the purpose of refunding obligations then outstanding, including the payment of a redemption premium on the obligations and interest accrued or to accrue to the earliest or a subsequent date of redemption, purchase, or maturity of the obligations.

2. The proceeds of obligations issued for the purpose of refunding outstanding obligations may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of the outstanding obligations either on their earliest or a subsequent redemption date or upon the purchase or at the maturity of the obligations and may, pending an application, be placed in escrow to be applied to the purchase or retirement at maturity or redemption on a date determined by the authority.

3. Any escrowed proceeds, pending their use, may be invested and reinvested in direct obligations of the United States of America, maturing at times as appropriate to assure the prompt payment of the principal of and interest and redemption premium, if any, on the outstanding obligations to be refunded. The interest, income, and profits, if any, earned or realized on an investment may also be applied to the payment of the outstanding obligations to be refunded. After the terms of the escrow have been fully satisfied and carried out, a balance of the proceeds and interest, income, and profits, if any, earned or realized on the investments shall be returned to the institution of higher education for use by it in any lawful manner.

4. Refunding obligations are subject to this chapter in the same manner and to the same extent as other obligations issued pursuant to this chapter.

[82 Acts, ch 1031, §18]

261A.19 Investment of funds of authority.

Except as otherwise provided in section 261A.18, subsection 3, the authority may invest funds in direct obligations of the United States of America; obligations for which the timely payment of principal and interest is fully guaranteed by the United States of America; obligations of the federal intermediate credit banks, federal banks for cooperatives, federal land banks, federal home loan banks, federal national mortgage association, government national mortgage association and the student loan marketing association; certificates of deposit or time deposits constituting direct obligations of a bank as defined by chapter 524; and in withdrawable capital accounts or deposits of state or federal chartered savings and loan associations which are insured by the federal savings and loan insurance corporation. However, investments may be made only in certificates of deposit or time deposits in banks which are insured by the federal deposit insurance corporation if then in existence. Securities authorized in this section may be purchased at the offering or market price at the time of the purchase. The securities purchased shall mature or be redeemable on dates prior to the time when, in the judgment of the authority, the funds invested will be required for expenditure. The judgment of the authority as to the time when funds will be required for expenditure or be redeemable is final.

[82 Acts, ch 1031, §19]

261A.20 Obligations as legal investments.

Banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, insurance companies and insurance associations, and executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, moneys, or other funds belonging to them or within their control in obligations of the authority.

[82 Acts, ch 1031, §20]

261A.21 Annual report.

The authority shall keep an accurate account of its activities and shall annually provide a report of its activities to the governor and the members of the general assembly. The report is a public record and open for inspection at the offices of the authority during normal business hours. The report shall include all of the following:

1. Summaries of applications by institutions of higher education for education loan financing assistance presented to the authority during the fiscal year.

2. Summaries of education loan programs

which have received any form of financial assistance from the authority during the year.

3. The nature and amount of all assistance.

4. A report concerning the financial condition of the various education loan series portfolios.

5. Projected activities of the authority for the next fiscal year, including projections of the total amount of financial assistance anticipated and the amount of obligations that will be necessary to provide the projected level of assistance during the next fiscal year.

[82 Acts, ch 1031, §21]

261A.22 Waiver of competitive bidding.

Competitive bidding requirements of the Code or other similar requirements that may be lawfully waived are waived by this section and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts is not applicable to action taken under this chapter.

[82 Acts, ch 1031, §22]

261A.23 Institution power — interest rates.

Institutions may borrow money from the authority, make education loans and take all other actions and do things necessary or convenient to consummate the transactions contemplated under this chapter. It is lawful for the authority to establish, charge, contract for, and receive any amount or rate of interest or compensation with respect to authority loans and, subject to rules adopted by the authority, for participating institutions to charge, contract for, and receive any amount or rate of interest or compensation with respect to education loans.

[82 Acts, ch 1031, §23]

261A.24 Chapter as alternative method — powers not subject to supervision or regulation.

Sections 261A.1 to 261A.23 provide a complete, additional, and alternative method for the doing of the things authorized by the chapter and the limitations imposed by this chapter do not affect powers or rights conferred by other laws, and the issuance of obligations and refunding obligations under this chapter need not comply with the requirements of any other law applicable to the issuance of obligations. Except as otherwise expressly provided in this chapter, the powers granted to the authority under this chapter are not subject to the supervision or regulation and do not require the approval or consent of a city or political subdivision or department, division, commission, board, body, bureau, official, or agency of a political subdivision or of the state.

[82 Acts, ch 1031, §24]

261A.25 Notice.

The authority shall publish a notice of its intention to issue obligations in a newspaper published in and with general circulation in the state. The notice shall include a statement of the maximum amount of obligations proposed to be issued, and in general terms, what receipts will be pledged to pay bond service charges on the obligations. An action which questions the legality or validity of the obligations or the power of the authority to issue the obligations or the effectiveness or validity of any proceedings adopted for the authorization or issuance of the obligations shall not be brought after sixty days from the date of publication of the notice.

[82 Acts, ch 1031, §25]

261A.26 Liberal construction of chapter.

This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purpose.

[82 Acts, ch 1031, §26]

261A.27 Exercise of powers as essential public function — exemption from taxation.

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare, and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a program by the authority or its agent will constitute the performance of an essential public function. Income of the authority is exempt from all taxation in the state. Property of the authority, acquired or held for purposes of this chapter, is exempt from all taxation and special assessments in the state if the property was exempt for the fiscal year in which the property was first acquired or held and such property shall continue to be exempt for subsequent fiscal years. Property of the authority, acquired or held for purposes of this chapter, is subject to taxation and special assessments in the state if the property was taxable for the fiscal year in which the property was first acquired or held and such property shall continue to be taxable for subsequent fiscal years.

Obligations issued by the authority on or after July 1, 2000, pursuant to either division of this chapter, their transfer, and income therefrom are exempt from taxation of any kind by the state or any political subdivision of the state.

[82 Acts, ch 1031, §27]
2000 Acts, ch 1209, §1

261A.28 to 261A.31 Reserved.

DIVISION II

HIGHER EDUCATION FACILITIES PROGRAM

261A.32 Legislative findings.

The general assembly finds:

1. For the benefit of the people of the state of Iowa, the increase of their commerce, welfare, and prosperity, and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the greatest opportunity to learn and to fully develop their intellectual and mental capacities and skills.

2. To achieve these ends it is of the utmost importance that educational institutions within the state be provided with appropriate additional means of assisting the youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills through new or enhanced physical facilities and equipment at these institutions.

3. The financing and refinancing of educational facilities, through means as described in this division, other than the appropriation of public funds to institutions, is a valid public purpose.

85 Acts, ch 210, §2

261A.33 Purpose of division.

It is the purpose of this division to provide a measure of assistance and an alternative method of enabling institutions in the state to finance the acquisition, construction, and renovation of needed educational facilities, structures and equipment and to refund, refinance, or reimburse outstanding indebtedness incurred by them or advances made by them, including advances from an endowment or any other similar fund, for the construction, acquisition, or renovation of needed educational facilities and structures, whether or not constructed, acquired, or renovated prior to July 1, 1985.

85 Acts, ch 210, §3

261A.34 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Cost"* as applied to a project or any portion of a project financed under this division means all or a part of the cost of construction and acquisition of land, buildings, or structures, including the cost of machinery and equipment; finance charges; interest prior to, during, and after completion of the construction for a reasonable period as determined by the authority; reserves for principal and interest; extensions, enlargements, additions, replacements, renovations, and improvements; improvements, replacements, and renovations for energy conservation and other purposes; engineering, financial, and legal services; plans, specifications, studies, surveys, estimates of cost of revenue, administrative expenses, expenses necessary or incidental to determining the feasibility or practicability of constructing the project; and such other expenses as the authority determines may be necessary or incidental to the construction and acquisition of the project, the financing of the construction and acquisition, and the placing of the project in operation.

2. *"Obligation"* means an obligation issued by the authority under this division.

3. *"Project"* means any property located within the state, constructed or acquired before or after July 1, 1985, that may be used or will be useful in connection with the instruction, feeding, or recreation of students, the conducting of research, administration, or other work of an institution, or any combination of the foregoing. *"Project"* includes, but is not limited to, any academic facility, administrative facility, assembly hall, athletic facility, instructional facility, laboratory, library, maintenance facility, student health facility, recreational facility, research facility, student union, or other facility suitable for the use of an institution. *"Project"* also means the refunding or refinancing of outstanding obligations, mortgages, or advances, including advances from an endowment or similar fund, originally issued, made, or given by the institution to finance the cost of a project. *"Project"* also includes a project that is to be leased to an institution.

4. *"Property"* means the real estate upon which a project is or will be located, including equipment, machinery, and other similar items necessary or convenient for the operation of the project in the manner for which its use is intended, but not including such items as fuel, supplies, or other items that are customarily deemed to result in a current operation charge. Property does not include property used or to be used primarily for sectarian instruction or study, or as a place for devotional activities or religious worship, or any property which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, rabbis, or other professional persons in the field of religion.

85 Acts, ch 210, §4; 97 Acts, ch 181, §1; 2000 Acts, ch 1209, §2

261A.35 General power of authority.

The authority is authorized to assist institutions in the constructing, financing, and refinancing of projects, and the authority may take action authorized by this division. The authority is authorized to be a member of limited liability companies organized for the purpose of leasing projects to institutions.

85 Acts, ch 210, §5; 2000 Acts, ch 1209, §3

261A.36 Issuance of obligations.

The authority may issue obligations of the authority for any of its corporate purposes as pro-

vided for in this division including the issuing of obligations to finance projects to be leased to an institution, and fund or refund the obligations pursuant to this division.

85 Acts, ch 210, §6; 97 Acts, ch 181, §2; 2000 Acts, ch 1209, §4

261A.37 Loans authorized.

The authority may make loans to an institution for the cost of a project or in anticipation of the receipt of tuition by the institution in accordance with an agreement between the authority and the institution, except that a loan for the cost of a project shall not exceed the total cost of the project, as determined by the institution and approved by the authority and except that loans in anticipation of the receipt of tuition shall not exceed the anticipated amount of tuition to be received by the institution in the one-year period following the date of the loan. The authority may lease projects to institutions under the terms of lease agreements determined by the institution and the authority, except that the term of the lease shall not exceed the estimated useful economic life of the project. The authority may make loans to an entity other than an institution in accordance with an agreement between the authority and the entity for the cost of a project if the project is to be leased to an institution.

85 Acts, ch 210, §7; 97 Acts, ch 181, §3; 2000 Acts, ch 1209, §5

261A.38 Issuance of obligations — conditions.

The authority may issue obligations and make loans to an institution or another entity if the project is to be leased to an institution or may issue obligations to finance projects to be leased by the authority to an institution and refund, refinance, or reimburse outstanding obligations, indebtedness, mortgages, or advances, including advances from an endowment or any similar fund, issued, made, or given by the institution, whether before or after July 1, 1985, for the cost of a project, when the authority finds that the financing prescribed in this section is in the public interest, and either alleviates a financial hardship upon the institution, results in a lesser cost of education, or enables the institution to offer greater security for a loan or loans to finance a new project or projects or to effect savings in interest costs or more favorable amortization terms.

85 Acts, ch 210, §8; 97 Acts, ch 181, §4; 2000 Acts, ch 1209, §6

261A.39 General powers — apportionment of costs.

The authority may do all things necessary or convenient to carry out the purposes of this division. The authority may charge to and equitably apportion among participating institutions its administrative costs and expenses incurred in the exercise of the powers and duties conferred on the authority by this division.

85 Acts, ch 210, §9

261A.40 Joint and combination projects.

The authority may undertake a project for two or more institutions jointly or for any combination of institutions, and may combine for financing purposes, with the consent of all of the institutions which are involved, the project and some or all future projects of any institution or institutions, and this division applies to and is for the benefit of the authority and the joint participants. However, the money set aside in a fund or funds pledged for any series or issue of obligations shall be held for the sole benefit of the series or issue separate and apart from money pledged for another series or issue of obligations of the authority. To facilitate the combining of projects, obligations may be issued in series under one or more resolutions or trust agreements and may be fully open-ended, thus providing for the unlimited issuance of additional series, or partially open-ended, limited as to additional series. The authority may permit an institution to substitute one or more projects of equal value, as determined by an independent appraiser satisfactory to the authority, for a project financed under this division on terms and subject to conditions the authority prescribes.

85 Acts, ch 210, §10

261A.41 Expenses.

Expenses incurred in carrying out this division are payable solely from funds provided under this division and a liability or obligation shall not be incurred by the authority beyond the extent to which money is provided under this division.

85 Acts, ch 210, §11

261A.42 Obligations.

The authority may provide by resolution for the issuance of obligations for the purpose of paying, refinancing, or reimbursing all or part of the cost of a project. Except to the extent payable from payments to be made on federally guaranteed securities as provided in section 261A.45, the principal of and the interest on the obligations shall be payable solely out of the revenue of the authority derived from the project to which they relate and from other facilities pledged or made available for this purpose by the institution for whose benefit the obligations were issued. The obligations of each issue shall be dated, shall bear interest at rate or rates, without regard to any limit contained in any other statute or law of the state, and shall mature at times not exceeding forty years from the date of issuance, all as determined by the authority; and may be made redeemable before maturity at the prices and under terms fixed by the authority in the authorizing resolution.

Except as otherwise provided by this division,

the obligations are to be paid solely out of the revenue of the project to which they relate and, in certain instances, out of the revenue of certain other facilities, and subject to section 261A.45 with respect to a pledge of government securities, the obligations may be unsecured or secured in the manner and to the extent determined by the authority. The authority shall determine the form of the obligations, including interest coupons, if any, to be attached, and shall fix the denominations of the obligations and the places of payment of principal and interest which may be at any bank or trust company within or without the state. The obligations and coupons attached, if any, shall be executed by the manual or facsimile signatures of officers of the authority designated by the authority. If an official of the authority whose signature or a facsimile of whose signature appears on any obligations or coupons ceases to be an official before the delivery of the obligations, the signature or facsimile, nevertheless, is valid and sufficient for all purposes the same as if the individual had remained an official of the authority until delivery. Obligations issued under this division have all the qualities and incidents of negotiable instruments, notwithstanding this payment from limited sources and without regard to any other law. The obligations may be issued in coupon or in registered form, or both, and one form may be exchangeable for the other in the manner as the authority may determine. Provision may be made for the registration of any coupon obligations as to principal alone and also as to both principal and interest, and for the reconversion into coupon obligations of any obligations registered as to both principal and interest. The obligations may be sold in the manner, either at public or private sale, as the authority determines.

The proceeds of the obligations of each issue shall be used solely for the payment of the cost of the project for which the obligations have been issued, and shall be disbursed in the manner and under the restrictions, if any, as the authority provides in the resolution authorizing the issuance of the obligations or in the trust agreement provided for in section 261A.44 securing the obligations. If the proceeds of the obligations of an issue, by error of estimates or otherwise, are less than the costs, additional obligations may in like manner be issued to provide the amount of the deficit, and, unless otherwise provided in the resolution authorizing the issuance of the obligations or in the trust agreement securing them, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the obligations first issued. If the proceeds of the obligations of an issue shall exceed the cost of the project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for the obligations. Prior to the preparation of definitive obligations, the authority may, under like restrictions, issue interim receipts or temporary obligations, with or without coupons, exchangeable for definitive obligations when the obligations have been executed and are available for delivery.

The authority may also provide for the replacement of obligations which become mutilated or are destroyed or lost. Obligations may be issued under this division without obtaining the consent of an officer, department, division, commission, board, bureau, or agency of the state, and without other proceedings or conditions other than those which are specifically required by this division. The authority may purchase its bonds out of funds available for that purpose. The authority may hold, pledge, cancel, or resell the obligations, subject to and in accordance with any agreement with the obligation holders. Members of the authority and any person executing the obligations are not liable personally on the obligations or subject to personal liability or accountability by reason of the issuance of the obligations.

85 Acts, ch 210, §12; 97 Acts, ch 181, §5

261A.43 Resolution provisions.

The resolution authorizing obligations or an issue of obligations may contain provisions, which shall be a part of the contract with the holders of the obligations to be authorized, as to:

1. Pledging or assigning the revenue of the project with respect to which the obligations are to be issued or the revenue of other property or facilities.
2. Setting aside reserves or sinking funds, and the regulation, investment, and disposition of them.
3. Limitations on the use of the project.
4. Limitations on the purpose to which or the investments in which the proceeds of sale of an issue of obligations then or thereafter to be issued may be applied and pledging the proceeds to secure the payment of the obligations or an issue of the obligations.
5. Limitations on the issuance of additional obligations, the terms upon which additional obligations may be issued and secured, and the refunding of outstanding obligations.
6. The procedure, if any, by which the terms of any contract with obligation holders may be amended or abrogated, the amount of obligations the holders of which must consent to the amendment or abrogation, and the manner in which the consent may be given.
7. Limitations on the amount of money derived from the project to be expended for operating, administrative, or other expenses of the authority.
8. Defining the acts or omissions to act which constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of the holders in the event of a default.
9. Mortgaging a project and the project site or

other property for the purpose of securing the obligation holders.

10. Other matters relating to the obligations which the authority deems desirable.

85 Acts, ch 210, §13

261A.44 Obligations secured by trust agreement.

Obligations issued under this division may be secured by a trust agreement by and between the authority and an incorporated trustee, which may be a trust company or bank having the powers of a trust company within or without the state. The trust agreement or the resolution providing for the issuance of the obligations may pledge or assign the revenue to be received or proceeds of any contract pledged and may convey or mortgage the project or any portion of the project. A pledge or assignment made by the authority pursuant to this section is valid and binding from the time that the pledge or assignment is made, and the revenue pledged and thereafter received by the authority is immediately subject to the lien of the pledge or assignment without physical delivery or any further act. The lien of the pledge or assignment is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether the parties have notice of the lien. The resolution or trust agreement by which a pledge is created or an assignment made shall be filed or recorded in the records of the authority, with the secretary of state, and in each county in which the project is located. The trust agreement or resolution providing for the issuance of the obligations may contain provisions for protecting and enforcing the rights and remedies of the obligation holders as are reasonable and proper, not in violation of law, or provided for in this division. A bank or trust company incorporated under the laws of this state which acts as depository of proceeds of the obligations, revenue, or other money shall furnish the indemnifying obligations or pledge the securities as required by the authority. The trust agreement may set forth the rights and remedies of the obligation holders and of the trustee, and may restrict the individual right of action by obligation holders. The trust agreement or resolution may contain other provisions the authority deems reasonable and proper for the security of the obligation holders. Expense incurred in carrying out the trust agreement or resolution may be treated as a part of the cost of the operation of a project.

85 Acts, ch 210, §14

261A.45 Obligations issued to acquire federally guaranteed securities.

The authority may finance the cost of a project, refund outstanding indebtedness, or reimburse advances from an endowment or similar fund of an institution as authorized by this division, by issuing its obligations pursuant to a plan of financing involving the acquisition of a federally guaranteed security or the acquisition or entering into of commitments to acquire a federally guaranteed security. For the purposes of this section, *"federally guaranteed security"* means any direct obligation of, or obligation the principal of and interest on which are fully guaranteed or insured by the United States, or an obligation issued by, or the principal of and interest on which are fully guaranteed or insured by any agency or instrumentality of the United States, including without limitation an obligation that is issued pursuant to the National Housing Act, or any successor provision of law.

The authority may acquire or enter into commitments to acquire a federally guaranteed security and pledge or otherwise use the federally guaranteed security in the manner the authority deems in its best interest to secure or otherwise provide a source of repayment of its obligations issued to finance or refinance a project, or may enter into an appropriate agreement with an institution whereby the authority may make a loan to the institution for the purpose of acquiring or entering into commitments to acquire a federally guaranteed security. An agreement entered into pursuant to this section may contain provisions deemed necessary or desirable by the authority for the security or protection of the authority or the holders of the obligations, except that the authority, prior to making an acquisition, commitment, or loan, shall determine and enter into an agreement with the institution or another appropriate institution to require that the proceeds derived from the acquisition of a federally guaranteed security will be used, directly or indirectly, for the purpose of financing or refinancing a project.

The obligations issued pursuant to this section shall not exceed in principal amount the cost of financing or refinancing the project as determined by the participating institution and approved by the authority, except that the costs may include, without limitation, all costs and expenses necessary or incidental to the acquisition of or commitment to acquire a federally guaranteed security and to the issuance and obtaining of insurance or guarantee of an obligation issued or incurred in connection with a federally guaranteed security. In other respects the bonds are subject to this division, and the trust agreement creating the bonds may contain provisions set forth in this division as the authority deems appropriate.

If a project is financed or refinanced pursuant to this section, the title to the project shall remain in the participating institution owning the project, subject to the lien of a mortgage or security interest securing, directly or indirectly, the federally guaranteed securities being purchased or to be purchased.

85 Acts, ch 210, §15

261A.46 Obligations not liability of state or political subdivision.

Obligations issued pursuant to this division are not debts of the state or of any political subdivision of the state or a pledge of the faith and credit of the state or of any political subdivision, but the obligations are limited obligations of the authority payable solely from the funds or securities, pledged for their payment as authorized in this division, unless the obligations are refunded by refunding obligations issued under this division, which refunding obligations shall be payable solely from funds or securities pledged for their payment as authorized in this division. All revenue obligations shall contain on their face a statement to the effect that the obligations, as to both principal and interest, are not obligations of the state, or of any political subdivision of the state, but are limited obligations of the authority payable solely from revenue or securities pledged for their payment. Expenses incurred in carrying out this division are payable solely from funds provided under this division, and this division does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision of the state.

85 Acts, ch 210, §16

261A.47 Money received by authority.

All money received by the authority, whether as proceeds from the sale of obligations, from revenue, or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this division, but prior to the time when needed for use may be invested to the extent and in the manner provided by the authority. The funds shall be deposited, held, and secured as determined by the authority, except to the extent provided otherwise in the resolution authorizing the issuance of the related obligations or in the trust agreement securing the obligations. The resolution authorizing the issuance of the obligations or the trust agreement securing the obligations shall provide that an officer, bank or trust company to which the money is entrusted shall act as trustee of the money and shall hold and apply the money for the purposes of this division, subject to the provisions of this division and of the authorizing resolution or trust agreement.

85 Acts, ch 210, §17

261A.48 Powers of holders and trustees.

A holder of obligations or of the coupons pertaining to obligations and the trustee under a trust agreement, except to the extent the rights given in this division are restricted by the authorizing resolution or trust agreement, may, by suit, mandamus, or other proceedings, protect and enforce any and all rights under the laws of this state, or under the trust agreement or resolution authorizing the issuance of the obligations, and may enforce and compel the performance of all duties required by this division or by the trust agreement or resolution to be performed by the authority or by an officer, employee, or agent of the authority, including the fixing, charging, and collecting of fees and charges authorized in this division and required by the resolution or trust agreement to be fixed and collected.

The rights of holders include the right to compel the performance of all duties of the authority required by this division or the resolution or trust agreement, to enjoin unlawful activities, and in the event of default with respect to the payment of any principal of, premium, if any, and interest on an obligation or in the performance of a covenant or agreement on the part of the authority in the resolution, to apply to a court having jurisdiction of the cause to appoint a receiver to administer and operate the project, the revenue of which is pledged to the payment of the principal of, premium, if any, and interest on the obligations, the receiver to have full power to pay and to provide for payment of the principal of, premium, if any, and interest on the obligations, and to have the powers, subject to the direction of the court, as are permitted by law and are accorded receivers in general equity cases, including the power to foreclose the mortgage on the project in the same manner as the foreclosure of a mortgage on real estate of private corporations, but excluding any power to pledge additional revenue of the authority to the payment of the principal, premium, and interest.

85 Acts, ch 210, §18

261A.49 Bondholders — pledge — agreement of the state.

The state pledges to and agrees with the holders of any obligations issued under this division, and with those parties who enter into contracts with the authority pursuant to this division, that the state will not limit or alter the rights vested in the authority until the obligations, together with the interest on the obligations, are fully met and discharged and the contracts are fully performed on the part of the authority, except that this section does not preclude the limitation or alteration if and when adequate provision is made by law for the protection of the rights of the holders of the obligations of the authority or those entering into contracts with the authority.

85 Acts, ch 210, §19

261A.50 Provisions controlling.

The powers granted the authority under this division are in addition to the powers of the authority contained in other provisions of this chapter. All other provisions of this chapter apply to obligations issued pursuant to and powers granted the authority under this division, except to the extent they are inconsistent with this division.

85 Acts, ch 210, §20

CHAPTER 261B

REGISTRATION OF POSTSECONDARY SCHOOLS

For restriction on sale of courses of instruction, see §714.17 to 714.22

261B.1 Policy.
261B.2 Definitions.
261B.3 Registration.
261B.3A Requirement.
261B.4 Registration information.
261B.5 Changes.
261B.6 List of schools.
261B.7 Unauthorized representation.
261B.8 Registration fees.
261B.9 Disclosure to students.
261B.10 Advisory committee.
261B.11 Exceptions.
261B.12 Enforcement.

261B.1 Policy.

The general assembly finds that the availability of courses and programs leading to educational degrees and the existence of institutions of postsecondary education that offer courses and programs leading to educational degrees are in the best interest of the state. The general assembly has found that the state can provide protection for persons choosing institutions and programs by ensuring that accurate and complete information about institutions and programs is available to these persons and to the public.

84 Acts, ch 1098, §1

261B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Degree"* means a postsecondary credential conferring on the recipient the title of associate, bachelor, master, or doctor, or an equivalent title, signifying educational attainment based on any one or a combination of study or the equivalent experience or achievement testing. A postsecondary degree under this chapter shall not include an honorary degree or other unearned degree.

2. *"Presence"* means maintaining an address within Iowa.

3. *"School"* means an agency of the state or political subdivision of the state, individual, partnership, company, firm, society, trust, association, corporation, or any combination which meets any of the following criteria:

a. Is, owns, or operates a nonprofit postsecondary educational institution.

b. Provides a postsecondary instructional program or course leading to a degree.

c. Uses in its name the term *"college", "academy", "institute",* or *"university"* or a similar term to imply that the person is primarily engaged in the education of students at the postsecondary level, and which makes a charge for its services.

4. *"Secretary"* means the secretary of state.

5. *"Student"* means a person who enrolls in or seeks to enroll in a course of instruction offered or conducted by a school.

84 Acts, ch 1098, §2; 96 Acts, ch 1158, §5, 6

261B.3 Registration.

1. A school that maintains or conducts one or more courses of instruction, including courses of instruction by correspondence, offered in this state or which has a presence in this state and offers courses in other states or foreign countries shall register annually with the secretary. Registration shall be made on application forms approved and supplied by the secretary and at the time and in the manner prescribed by the secretary. Upon receipt of a complete and accurate registration application, the secretary shall issue an acknowledgment of document filed and send it to the school.

2. The secretary may request additional information as necessary to enable the secretary to determine the accuracy and completeness of the information contained in the registration application. If the secretary believes that false, misleading, or incomplete information has been submitted in connection with an application for registration, the secretary may deny registration. The secretary shall conduct a hearing on the denial if a hearing is requested by a school. The secretary may withhold an acknowledgment of document filed pending the outcome of the hearing. Upon a finding after the hearing that information contained in the registration application is false, misleading, or incomplete, the secretary shall deny an acknowledgment of document filed to the school. The secretary shall make the final decision on each registration. However, the decision of the secretary is subject to judicial review in accordance with section 17A.19.

3. The secretary shall utilize the advisory committee created in section 261B.10 in reviewing new and continuing registrations.

4. The secretary shall adopt rules under chapter 17A for the implementation of this chapter.

84 Acts, ch 1098, §3; 96 Acts, ch 1158, §7

261B.3A Requirement.

In order to register, a school shall be accredited by an agency or organization approved or recognized by the United States department of education or a successor agency and be approved for operation by the college student aid commission.

96 Acts, ch 1158, §8; 97 Acts, ch 13, §1; 2000 Acts, ch 1095, §17

261B.4 Registration information.

As a basis for registration, schools shall provide the secretary with the following information:

1. The name or title of the school.
2. The principal location of the school in this state, in other states, and in foreign countries, and the location of the place or places in this state, in other states, and in foreign countries where instruction is likely to be given.
3. A schedule of tuition charges, fees, and other costs payable to the school by a student.
4. The refund policy of the school for the return of refundable portions of tuition, fees, or other charges.
5. The degrees granted by the school.
6. The names and addresses of the principal owners of the school or the officers and members of the legal governing body of the school.
7. The name and address of the chief executive officer of the school.
8. A copy of or a description of the means by which the school intends to comply with section 261B.9.
9. The name of the accrediting agency recognized by the United States department of education or a successor agency which has accredited the school and the status under which accreditation is held.
10. The name, address, and telephone number of a contact person in this state.
11. The names or titles and a description of the courses and degrees to be offered.
12. A description of procedures for the preservation of student records.
13. The academic and instructional methodologies and delivery systems to be used by the school and the extent to which the school anticipates each methodology and delivery system will be used, including, but not limited to, classroom instruction, correspondence, electronic telecommunications, independent study, and portfolio experience evaluation.

84 Acts, ch 1098, §4; 96 Acts, ch 1158, §9, 10; 2000 Acts, ch 1095, §18

261B.5 Changes.

If any information provided to the secretary under section 261B.3 or 261B.4 changes, the school shall inform the secretary within ninety days of the effective date of the change on forms prescribed and furnished by the secretary.

84 Acts, ch 1098, §5

261B.6 List of schools.

The secretary shall maintain a list of registered schools and the list and the information submitted under sections 261B.3 and 261B.4 are public records under chapter 22.

84 Acts, ch 1098, §6; 95 Acts, ch 67, §21

261B.7 Unauthorized representation.

Neither a school nor its officials or employees shall advertise or represent that the school is approved or accredited by the secretary or the state of Iowa nor shall it use the registration as a reference in promotional materials.

84 Acts, ch 1098, §7

261B.8 Registration fees.

The secretary shall collect an initial registration fee of one thousand dollars and an annual renewal of registration fee of five hundred dollars from each registered school.

84 Acts, ch 1098, §8; 96 Acts, ch 1158, §11

261B.9 Disclosure to students.

Prior to the commencement of a course of instruction and prior to the receipt of a tuition charge or fee for a course of instruction, a school shall provide written disclosure to students of the following information accompanied by a statement that the information is being provided in compliance with this section:

1. The name or title of the course.
2. A brief description of the subject matter of the course.
3. The tuition charge or other fees charged for the course. If a student is enrolled in more than one course at the school, the tuition charge or fee for all courses may be stated in one sum.
4. The refund policy of the school for the return of the refundable portion of tuition, fees, or other charges. If refunds are not to be paid, the information shall state that fact.
5. Whether the credential or certificate issued, awarded, or credited to a student upon completion of the course or the fact of completion of the course is applicable toward a degree granted by the school and, if so, under what circumstances the application will be made.
6. The name of the accrediting agency recognized by the United States department of education or its successor agency which has accredited the school.

84 Acts, ch 1098, §9; 2000 Acts, ch 1095, §19

261B.10 Advisory committee.

The state advisory committee for postsecondary school registration is created. The committee shall consist of the secretary of state and seven members appointed by the coordinating council for post-high school education. Members shall serve for staggered four-year terms and shall include representatives from public and private two-

year and four-year colleges, universities, and specialized and vocational schools.

The committee shall meet at least annually to advise the secretary and other agencies in matters relating to the administration of this chapter and to serve as a resource and advisory board to the secretary as needed. The secretary shall serve as chairperson of the advisory committee and may call meetings and set the agenda as needed.

84 Acts, ch 1098, §10; 96 Acts, ch 1158, §12

261B.11 Exceptions.

This chapter does not apply to the following types of schools and courses of instruction:

1. Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees.
2. Apprentice or other training programs provided by labor unions to members or applicants for membership.
3. Courses of instruction of an avocational or recreational nature that do not lead to an occupational objective.
4. Seminars, refresher courses, and programs of instruction sponsored by professional, business, or farming organizations or associations for the members and employees of members of these organizations or associations.
5. Courses of instruction conducted by a public school district or a combination of public school districts.
6. Colleges and universities authorized by the laws of this state to grant degrees.
7. Schools or courses of instruction or courses of training that are offered by a vendor to the purchaser or prospective purchaser of the vendor's product when the objective of the school or course is to enable the purchaser or the purchaser's employees to gain skills and knowledge to enable the purchaser to use the product.
8. Schools and educational programs conducted by religious organizations solely for the religious instruction of members of that religious organization.
9. Postsecondary educational institutions licensed by the state of Iowa to conduct business in the state.
10. Accredited higher education institutions that meet the criteria established under section 261.92, subsection 1.
11. Postsecondary educational institutions offering programs limited to nondegree specialty vocational training programs.

84 Acts, ch 1098, §11; 96 Acts, ch 1158, §13; 97 Acts, ch 13, §2

261B.12 Enforcement.

When the secretary or the secretary's designee believes a school is in violation of this chapter, the secretary shall order the school to show cause why the secretary should not issue a cease and desist order to the school.

After the school's response to the show cause order has been reviewed by the secretary, the secretary may issue a cease and desist order to the school if the secretary believes the school continues to be in violation of this chapter. If the school does not cease and desist, the secretary may seek judicial enforcement of the cease and desist order in any district court.

84 Acts, ch 1098, §12

CHAPTER 261C

POSTSECONDARY ENROLLMENT OPTIONS

261C.1 Title.
261C.2 Policy.
261C.3 Definitions.
261C.4 Authorization.
261C.5 High school credits.
261C.6 School district payments.
261C.7 Transportation.
261C.8 Prohibition on charges.
261C.9 Tuition refund.

261C.1 Title.

This chapter may be cited as the *"Postsecondary Enrollment Options Act"*.

87 Acts, ch 224, §35

261C.2 Policy.

It is the policy of this state to promote rigorous academic or vocational-technical pursuits and to provide a wider variety of options to high school pupils by enabling ninth and tenth grade pupils who have been identified as gifted and talented, and eleventh and twelfth grade pupils, to enroll part-time in nonsectarian courses in eligible postsecondary institutions of higher learning in this state.

87 Acts, ch 224, §36; 90 Acts, ch 1253, §18; 92

Acts, ch 1110, §1

261C.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Eligible postsecondary institution"* means an institution of higher learning under the control of the state board of regents, a community college established under chapter 260C, or an accredited private institution as defined in section 261.9, subsection 1.

2. *"Eligible pupil"* means a pupil classified by the board of directors of a school district, by the state board of regents for pupils of the school for the deaf and the Iowa braille and sight saving school, or by the authorities in charge of an accredited nonpublic school as a ninth or tenth grade pupil who is identified according to the school district's gifted and talented criteria and procedures, pursuant to section 257.43, as a gifted and talented child, or an eleventh or twelfth grade pupil, during the period the pupil is participating in the enrollment option provided under this chapter. A pupil attending an accredited nonpublic school shall be counted as a shared-time student in the school district in which the nonpublic school of attendance is located for state foundation aid purposes.

87 Acts, ch 224, §37; 90 Acts, ch 1253, §19; 91 Acts, ch 126, §4; 92 Acts, ch 1110, §2; 93 Acts, ch 69, §1

261C.4 Authorization.

An eligible pupil may make application to an eligible institution to allow the eligible pupil to enroll for academic or vocational-technical credit in a nonsectarian course offered at that eligible institution. A comparable course, as defined in rules made by the board of directors of the public school district, must not be offered by the school district or accredited nonpublic school which the pupil attends. If an eligible institution accepts an eligible pupil for enrollment under this section, the institution shall send written notice to the pupil, the pupil's school district or accredited nonpublic school or the school for the deaf or the Iowa braille and sight saving school, and the department of education. The notice shall list the course, the clock hours the pupil will be attending the course, and the number of hours of postsecondary academic or vocational-technical credit that the eligible pupil will receive from the eligible institution upon successful completion of the course.

87 Acts, ch 224, §38; 90 Acts, ch 1253, §20; 91 Acts, ch 123, §1; 92 Acts, ch 1110, §3; 93 Acts, ch 69, §2

261C.5 High school credits.

A school district, the school for the deaf, the Iowa braille and sight saving school, or accredited nonpublic school shall grant high school academic or vocational-technical credit to an eligible pupil enrolled in a course under this chapter if the eligible pupil successfully completes the course as determined by the eligible institution. Eligible pupils, who have completed the eleventh grade but who have not yet completed the requirements for graduation, may take up to seven semester hours of credit during the summer months when school is not in session and receive credit for that attendance, if the pupil pays the cost of attendance of those summer credit hours. The board of directors of the school district, the state board of regents for the school for the deaf and the Iowa braille and sight saving school, or authorities in charge of an accredited nonpublic school shall determine the number of high school credits that shall be granted to an eligible pupil who successfully completes a course.

The high school credits granted to an eligible pupil under this section shall count toward the graduation requirements and subject area requirements of the school district of residence, the school for the deaf, the Iowa braille and sight saving school, or accredited nonpublic school of the eligible pupil. Evidence of successful completion of each course and high school credits and postsecondary academic or vocational-technical credits received shall be included in the pupil's high school transcript.

87 Acts, ch 224, §39; 90 Acts, ch 1253, §21; 91 Acts, ch 123, §2; 93 Acts, ch 69, §3

261C.6 School district payments.

Not later than June 30 of each year, a school district shall pay a tuition reimbursement amount to an eligible postsecondary institution that has enrolled its resident eligible pupils under this chapter, unless the eligible pupil is participating in open enrollment under section 282.18, in which case, the tuition reimbursement amount shall be paid by the receiving district. However, if a child's residency changes during a school year, the tuition shall be paid by the district in which the child was enrolled as of the third Friday in September or the district in which the child was counted under section 257.6, subsection 1, paragraph *"f"*. For pupils enrolled at the school for the deaf and the Iowa braille and sight saving school, the state board of regents shall pay a tuition reimbursement amount by June 30 of each year. The amount of tuition reimbursement for each separate course shall equal the lesser of:

1. The actual and customary costs of tuition, textbooks, materials, and fees directly related to the course taken by the eligible student.

2. Two hundred fifty dollars.

A pupil is not eligible to enroll on a full-time basis in an eligible postsecondary institution and receive payment for all courses in which a student is enrolled.

87 Acts, ch 224, §40; 90 Acts, ch 1253, §22; 93 Acts, ch 69, §4; 96 Acts, ch 1215, §40; 2002 Acts, ch

1129, §2
Unnumbered paragraph 1 amended

261C.7 Transportation.

The parent or guardian of an eligible pupil who has enrolled in and is attending an eligible postsecondary institution under this chapter shall furnish transportation to and from the eligible postsecondary institution for the pupil.

87 Acts, ch 224, §41

261C.8 Prohibition on charges.

An eligible postsecondary institution that enrolls an eligible pupil under this chapter shall not charge that pupil for tuition, textbooks, materials, or fees directly related to the course in which the pupil is enrolled except that the pupil may be required to purchase equipment that becomes the property of the pupil. However, if the pupil fails to complete and receive credit for the course, the pupil is responsible for all costs directly related to the course as provided in section 261C.6 and shall reimburse the school district for its costs. If the pupil is under eighteen years of age, the pupil's parent, guardian, or custodian shall sign the student registration form indicating that the parent, guardian, or custodian is responsible for all costs directly related to the course, if the pupil fails to complete and receive credit for the course.

If the local area education agency verifies that the pupil was unable to complete the course for reasons including but not limited to the pupil's physical incapacity, death in the family, or the pupil's move to another school district, a verification by the area education agency shall constitute a waiver to the requirement that the pupil, pupil's parent, guardian, or legal custodian pay the costs of the course to the school district.

87 Acts, ch 224, §42; 93 Acts, ch 117, §1

261C.9 Tuition refund.

An eligible postsecondary institution shall make pro rata adjustments to tuition reimbursement amounts based upon federal guidelines established pursuant to 20 U.S.C. § 1091b.

93 Acts, ch 117, §2

SUBTITLE 4

REGENTS INSTITUTIONS

CHAPTER 262

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262.1 Membership.

The state board of regents consists of nine members, eight of whom shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of the office. The ninth member shall be a student enrolled on a full-time basis in good standing at either the graduate or undergraduate level at one of the institutions listed in section 262.7, subsection 1, 2, or 3, at the time of the member's appointment. Not more than five members shall be of the same political party.

[S13, §2682-c, -d; C24, 27, 31, 35, 39, §**3912;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.1]

88 Acts, ch 1260, §1

262.2 Appointment — term of office.

The members shall be appointed by the governor subject to confirmation by the senate. The term of each member of the board shall be for six years. The terms of three members of the board shall begin and expire in each odd-numbered year as provided in section 69.19.

[S13, §2682-d; C24, 27, 31, 35, 39, §**3913, 3914;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §262.2, 262.3; C81, §262.2; 81 Acts, ch 86, §1]

Confirmation, see §2.32

262.3 Repealed by 80 Acts, ch 1010, § 86.

262.4 Removals.

The governor, with the approval of a majority of the senate during a session of the general assembly, may remove any member of the board for malfeasance in office, or for any cause which would render the member ineligible for appointment or incapable or unfit to discharge the duties of office, and the member's removal, when so made, shall be final.

[S13, §2682-d; C24, 27, 31, 35, 39, §**3916;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.4]

262.5 Suspension.

When the general assembly is not in session, the governor may suspend any member so disqualified and shall appoint another to fill the vacancy thus created, subject to the approval of the senate when next in session.

[S13, §2682-d; C24, 27, 31, 35, 39, §**3917;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.5]

262.6 Vacancies.

Vacancies shall be filled in the same manner in which regular appointments are required to be made. If the ninth member resigns prior to the expiration of the term, the individual appointed to fill the vacancy shall meet the requirements for the ninth member specified in section 262.1. Other vacancies occurring prior to the expiration of the ninth member's term shall be filled in the same manner as the original appointments for those vacancies.

[S13, §2682-d; C24, 27, 31, 35, 39, §**3918;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.6]

88 Acts, ch 1260, §2

See §2.32

262.7 Institutions governed.

The state board of regents shall govern the fol-

lowing institutions:

1. The state university of Iowa.
2. The Iowa state university of science and technology, including the agricultural experiment station.
3. The university of northern Iowa.
4. The Iowa braille and sight saving school.
5. The state school for the deaf.
6. The Oakdale campus.
7. The university of Iowa hospitals and clinics' center for disabilities and development.

[R60, §2157, 2158; C73, §1685, 1686; C97, §2723; S13, §2682-c; C24, 27, 31, 35, 39, §**3919;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.7]
2001 Acts, ch 181, §15

262.8 Meetings.

The board shall meet four times a year. Special meetings may be called by the board, by the president of the board, or by the secretary of the board upon written request of any five members thereof.

[S13, §2682-e; C24, 27, 31, 35, 39, §**3920;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.8]

262.9 Powers and duties.

The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until a successor is elected and qualified.
2. Elect a president of each of the institutions of higher learning; a superintendent of each of the other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation. Sections 279.12 through 279.19 and section 279.27 apply to employees of the Iowa braille and sight saving school and the state school for the deaf, who are licensed pursuant to chapter 272. In following those sections in chapter 279, the references to boards of directors of school districts shall be interpreted to apply to the board of regents.
3. Make rules for admission to and for the government of said institutions, not inconsistent with law.
4. Manage and control the property, both real and personal, belonging to the institutions. The board shall purchase or require the purchase of, when the price is reasonably competitive and the quality as intended, soybean-based inks. All inks purchased that are used internally or are contracted for by the board shall be soybean-based to the extent formulations for such inks are available.

a. The department of natural resources shall review the procurement specifications currently used by the board to eliminate, wherever possible, discrimination against the procurement of products manufactured with soybean-based inks.

b. The department of natural resources shall assist the board in locating suppliers of recycled content products and soybean-based inks and collecting data on recycled content and soybean-based ink purchases.

c. The board, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

d. The department of natural resources shall cooperate with the board in all phases of implementing this section.

5. The board shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, *"packing material"* means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.
6. Purchase and use recycled printing and writing paper, with the exception of specialized paper when no recyclable product is available, in accordance with the schedule established in section 18.18; establish a wastepaper recycling program for all institutions governed by the board in accordance with recommendations made by the department of natural resources and the requirements of section 18.20; shall, in accordance with the requirements of section 18.6, require product content statements and compliance with requirements regarding procurement specifications; and shall comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 18.22.
7. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes. A disposal of such real estate shall be made upon such terms, conditions and consideration as the board may recommend and subject to the approval of the executive council. If real estate subject to sale hereunder has been purchased or acquired from appropriated funds, the proceeds of such sale shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the state board of regents which, with the prior approval of the executive council, may be used to purchase other real estate and buildings, and for the construction and alteration of buildings and other capital improvements. All transfers shall be by state patent in the manner provided by law.
8. Accept and administer trusts and may authorize nonprofit foundations acting solely for the support of institutions governed by the board to accept and administer trusts deemed by the board

to be beneficial. Notwithstanding the provisions of section 633.63, the board and such nonprofit foundations may act as trustee in such instances.

9. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the Iowa state university of science and technology, nor the permanent funds of the university of Iowa derived under Acts of Congress, be diminished.

10. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

11. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. The letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

12. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

13. Grant leaves of absence with full or partial compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as the staff member shall have received during such leave.

14. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

15. In its discretion employ or retain attorneys or counselors when acting as a public employer for the purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20. This subsection shall supersede the provisions of section 13.7.

The state board of regents may make payment to an attorney or counselor for services rendered prior to July 1, 1978, to the state board of regents in connection with its responsibilities as a public employer pursuant to chapter 20.

16. In its discretion, adopt rules relating to the classification of students enrolled in institutions of higher education under the board who are residents of Iowa's sister states as residents or nonresidents for fee purposes.

17. In issuing bonds or notes under this chapter, chapter 262A, chapter 263A, or other provision of law, select and fix the compensation for, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the board's judgment are necessary to carry out the board's intention. Prior to the initial selection, the board shall establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The board shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of engagement. The board may waive the requirements for a competitive selection procedure for any specific employment upon adoption of a resolution of the board stating why the waiver is in the public interest and shall provide the executive council with written notice of the granting of any such waiver.

18. Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on an increase in tuition or mandatory fees charged to all students at an institution for a fiscal year shall be made no later than the regular meeting held in November of the preceding fiscal year and shall be reflected in a final docket memorandum that states the estimated total cost of attending each of the institutions of higher education under the board's control. The regular meeting held in November shall be held in Ames, Cedar Falls, or Iowa City and shall not be held during the period in which classes have been suspended for Thanksgiving vacation.

19. Adopt policies and procedures for the use of telecommunications as an instructional tool at its institutions. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

20. Establish a hall of fame for distinguished graduates at the Iowa braille and sight saving school and at the Iowa school for the deaf.

21. Assist a nonprofit organization located in Sioux City in the creation of a tristate graduate center, comparable to the quad cities graduate

center, located in the quad cities in Iowa. The purpose of the Sioux City graduate center shall be to create graduate education opportunities for students living in northwest Iowa.

22. Direct the administration of the Iowa minority academic grants for economic success program as established in section 261.101 for the institutions under its control.

23. Develop a policy and adopt rules relating to the establishment of tuition rates which provide a predictable basis for assessing and anticipating changes in tuition rates.

24. Develop a policy requiring oral communication competence of persons who provide instruction to students attending institutions under the control of the board. The policy shall include a student evaluation mechanism which requires student evaluation of persons providing instruction on at least an annual basis. However, the board shall establish criteria by which an institution may discontinue annual evaluations of a specific person providing instruction. The criteria shall include receipt by the institution of two consecutive positive annual evaluations from the majority of students evaluating the person.

25. Develop a policy relating to the teaching proficiency of teaching assistants which provides a teaching proficiency standard, instructional assistance to, and evaluation of persons who provide instruction to students at the higher education institutions under the control of the board.

26. Explore, in conjunction with the department of education, the need for coordination between school districts, area education agencies, state board of regents institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include, but is not limited to, coordination of calendars, programs, schedules, or telecommunications emissions. The state board shall develop recommendations as necessary, which shall be submitted in a report to the general assembly on a timely basis.

27. Develop and implement a written policy, which is disseminated during registration or orientation, addressing the following four areas relating to sexual abuse:

a. Counseling.

b. Campus security.

c. Education, including prevention, protection, and the rights and duties of students and employees of the institution.

d. Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

28. Authorize the institutions of higher learning under the board to charge an interest rate, not to exceed the prime rate plus six percent, on delinquent bills. However, the board shall prohibit the institutions from charging interest on late tuition payments and room and board payments if financial aid payments to students enrolled in the institutions are delayed by the lending institution.

1. [S13, §2682-f; C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

2. [R60, §1739, 2157, 2158, 2162; C73, §1614, 1685, 1686, 1690; C97, §2654, 2676, 2723; S13, §2682-f; C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

3. [C97, §2676; S13, §2682-f; C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

4. [S13, §2682-f; C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

6. [S13, §2682-f; C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

7. [S13, §2682-f; C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

8. [C51, §1017, 1018; R60, §1938; C73, §1599, 1617; C97, §2638, 2666; S13, §2682-f; C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

9. [C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

10. [S13, §2682-j; C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

11. [C35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

12. [S13, §2682-f; C24, 27, 31, 35, 39, §**3921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.9]

13. [C66, 71, 73, 75, 77, 79, 81, §262.9]

14. [C66, 71, 73, 75, 77, 79, 81, §262.9]

15. [C79, 81, §262.9]

86 Acts, ch 1245, §844; 86 Acts, ch 1246, §125; 87 Acts, ch 191, §1; 87 Acts, ch 207, §6; 87 Acts, ch 233, §464, 465; 88 Acts, ch 1185, §2; 88 Acts, ch 1284, §64; 89 Acts, ch 265, §40; 89 Acts, ch 272, §23; 89 Acts, ch 319, §59; 90 Acts, ch 1237, §2, 3; 90 Acts, ch 1253, §24; 91 Acts, ch 29, §1; 91 Acts, ch 97, §36; 92 Acts, ch 1095, §2; 92 Acts, ch 1106, §2, 4; 92 Acts, ch 1246, §35; 93 Acts, ch 176, §39; 94 Acts, ch 1091, §16 – 20; 94 Acts, ch 1193, §21; 95 Acts, ch 44, §2; 95 Acts, ch 62, §3; 96 Acts, ch 1215, §41 – 43; 97 Acts, ch 212, §28; 99 Acts, ch 114, §16; 99 Acts, ch 121, §9; 2001 Acts, ch 39, §3

262.9A Prohibition of controlled substances.

The state board of regents shall adopt a policy that prohibits unlawful possession, use, or distribution of controlled substances by students and employees on property owned or leased by an institution or in conjunction with activities sponsored by an institution governed by the board. Each institution shall provide information about the policy to all students and employees. The policy shall include a clear statement of sanctions for violation of the policy and information about available drug or alcohol counseling and rehabilitation programs. In carrying out this policy, the institutions shall provide substance abuse prevention programs for students and employees.

91 Acts, ch 267, §235

262.10 Purchases — prohibitions.

No sale or purchase of real estate shall be made save upon the order of the board, made at a regular meeting, or one called for that purpose, and then in such manner and under such terms as the board may prescribe and only with the approval of the executive council. No member of the board or any of its committees, offices or agencies nor any officer of any institution, shall be directly or indirectly interested in such purchase or sale.

Purchases of real estate may be made on written contracts providing for payment over a period of years but the obligations thereon shall not constitute a debt or charge against the state of Iowa nor against the funds of the board or the funds of the institution for which said purchases are made. Purchase payments may be made from appropriated capital funds or from other funds lawfully available for that purpose and allocated therefor by the board, or from any combination of the foregoing, but not from appropriated operating funds. All state appropriated capital funds used for any one purchase contract shall be taken entirely from a single capital appropriation and shall be set aside for that purpose. In event of default, the only remedy of the seller shall be against the property itself and the rents and profits thereof, and in no event shall any deficiency judgment be entered or enforced against the state of Iowa, the board, or the institution for which the purchase was made. Provided, however, that no part of the tuition fees shall be used in the purchase of such real estate.

[C24, 27, 31, 35, 39, §**3922;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.10]

262.11 Record.

All acts of the board relating to the management, purchase, disposition, or use of lands and other property of said institutions shall be entered of record, which shall show the members present, and how each voted upon each proposition.

[S13, §2682-h; C24, 27, 31, 35, 39, §**3923;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.11]

262.12 Committees and administrative offices under board.

The board of regents shall also have and exercise all the powers necessary and convenient for the effective administration of its office and of the institutions under its control, and to this end may create such committees, offices and agencies from its own members or others, and employ persons to staff the same, fix their compensation and tenure and delegate thereto, or to the administrative officers and faculty of the institutions under its control, such part of the authority and duties vested by statute in the board, and shall formulate and establish such rules, outline such policies and prescribe such procedures therefor, all as may be desired or determined by the board as recorded in their minutes.

[S13, §2682-h; C24, 27, 31, 35, 39, §**3924;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.12]

262.13 Security officers at institutions as peace officers.

The board may authorize any institution under its control to commission one or more of its employees as special security officers. Special security officers shall have the powers, privileges, and immunities of regular peace officers when acting in the interests of the institution by which they are employed. The board shall provide as rapidly as practicable for the adequate training of such special security officers at the Iowa law enforcement academy or in an equivalent training program, unless they have already received such training.

[C71, 73, 75, 77, 79, 81, §262.13]

262.14 Loans — conditions — other investments.

The board may invest funds belonging to the institutions, subject to the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed sixty-five percent of the cash value of the land, exclusive of buildings.

2. Each such loan if for a sum more than one-fourth of the value of the farm shall be on the basis of stipulated annual principal reductions.

3. Any portion of the funds may be invested by the board. In the investment of the funds, the board shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in their own affairs as provided in chapter 633, division XX, part 4, subpart C.

The board shall give appropriate consideration to those facts and circumstances that the board knows or should know are relevant to the particular investment involved, including the role the investment plays in the total value of the board's funds.

For the purposes of this subsection, appropriate consideration includes, but is not limited to, a determination by the board that the particular investment is reasonably designed to further the purposes prescribed by law to the board, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment and consideration of the following factors as they relate to the funds of the board:

a. The composition of the funds of the board with regard to diversification.

b. The liquidity and current return of the investments relative to the anticipated cash flow requirements.

c. The projected return of the investments relative to the funding objectives of the board.

The board shall have a written investment policy, the goal of which is to provide for the finan-

cial health of the institutions governed by the board. The board shall establish investment practices that preserve principal, provide for liquidity sufficient for anticipated needs, and maintain purchasing power of investable assets of the board and its institutions. The policy shall also include a list of authorized investments, maturity guidelines, procedures for selecting and approving investment managers and other investment professionals as described in section 11.2, subsection 2, and provisions for regular and frequent oversight of investment decisions by the board, including audit. The board shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an institution governed by the board. The investment policy shall cover investments of endowment and nonendowment funds.

Consistent with this subsection, investments made under this subsection shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state.

4. Any gift accepted by the Iowa state board of regents for the use and benefit of any institution under its control may be invested in securities designated by the donor, but whenever such gifts are accepted and the money invested according to the request of the said donor, neither the state, the Iowa state board of regents, nor any member thereof, shall be liable therefor or on account thereof.

5. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by the board and be at all times open to inspection.

6. All loans made under the provisions of this section shall have an interest rate of not less than three and one-half percent per annum.

1. [C51, §1018; R60, §1938; C73, §1599; C97, §2638; S13, §2682-s; C24, 27, 31, 35, 39, §**3926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

2. [S13, §2682-s; C24, 27, 31, 35, 39, §**3926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

3. [R60, §1938; C73, §1599, 1617; C97, §2638, 2666; C24, 27, 31, 35, 39, §**3926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

4. [C31, 35, 39, §**3926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

5. [S13, §2682-s; C24, 27, 31, 35, 39, §**3926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

6. [C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.14]

85 Acts, ch 190, §4; 85 Acts, ch 227, §8; 92 Acts, ch 1156, §10; 94 Acts, ch 1001, §4; 99 Acts, ch 125, §103, 109

1999 amendment to subsection 3 is effective July 1, 2000; 99 Acts, ch 125, §109

262.15 Foreclosures and collections.

The board shall have charge of the foreclosure of all mortgages and of all collections from delinquent debtors to said institutions. All actions shall be in the name of the state board of regents, for the use and benefit of the appropriate institution.

[SS15, §2682-t; C24, 27, 31, 35, 39, §**3927;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.15]

262.16 Satisfaction of mortgages.

When loans are paid, the board shall release mortgages securing the same as follows:

1. By a satisfaction piece signed and acknowledged by the treasurer of the institution to which the loan belongs, which shall be recorded in the office of the recorder of the county where said mortgage is of record; or

2. By entering a satisfaction thereof on the margin of the record of said mortgage, dated, and signed by the treasurer of the institution to which the loan belongs.

[SS15, §2682-t; C24, 27, 31, 35, 39, §**3928;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.16]

262.17 Bidding in property.

In case of a sale upon execution, the premises may be bid off in the name of the board of regents, for the benefit of the institution to which the loan belongs.

[SS15, §2682-t; C24, 27, 31, 35, 39, §**3929;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.17]

262.18 Deeds in trust.

Deeds for premises so acquired shall be held for the benefit of the appropriate institution and such lands shall be subject to lease or sale the same as other lands.

[SS15, §2682-t; C24, 27, 31, 35, 39, §**3930;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.18]

262.19 Actions not barred.

No lapse of time shall be a bar to any action to recover on any loan made on behalf of any institution.

[C97, §2637; C24, 27, 31, 35, 39, §**3931;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.19]

262.20 Business offices — visitation.

A business office shall be maintained at each of the institutions of higher learning, with such organizations, powers and duties as the board may prescribe and delegate.

[S13, §2682-k; C24, 27, 31, 35, 39, §**3932;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.20]

262.21 Annuity contracts.

At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for

any of its employees, which annuity contracts are issued by a nonprofit corporation issuing retirement annuities exclusively for educational institutions and their employees or are purchased from any company the employee chooses that is authorized to do business in this state or through an Iowa-licensed salesperson that the employee selects, on a group or individual basis, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. As used in this section, unless the context otherwise requires, *"annuity contract"* includes any custodial account which meets the requirements of section 403(b)(7) of the Internal Revenue Code, as defined in section 422.3.

Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall submit a letter of intent to the company being replaced, to the commissioner of insurance, and to the agent's or representative's own company at least thirty days prior to any action. Each required letter of intent shall be sent by registered mail. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract.

[C75, 77, 79, 81, §262.21]

86 Acts, ch 1213, §4; 91 Acts, ch 40, §2; 94 Acts, ch 1183, §62

262.22 Director's report.

The director of revenue and finance shall include in the director's report to the governor the amount paid for services and expenses of officers and employees of the board of regents and to whom paid.

[S13, §2682-q; C24, 27, 31, 35, 39, §**3934;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.22]

262.23 Duties of treasurer.

The treasurer of each of said institutions shall:

1. Receive all appropriations made by the general assembly for said institution, and all other funds from all other sources, belonging to said institution.

2. Pay out said funds on order of the board of regents, or of such committee or official as it designates, on bills duly audited in accordance with the rules prescribed by said board.

3. Retain all bills, so paid by the treasurer, with receipts for their payment as vouchers.

4. Keep an accurate account of all revenue and expenditures of said institution, so that the receipts and disbursements of each of its several departments shall be apparent at all times.

5. Annually, and at such other times as the board may require, report to it said receipts and disbursements in detail.

[R60, §1739, 1937; C73, §1593, 1614; C97, §2637, 2654; C24, 27, 31, 35, 39, §**3935;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.23]

262.24 Reports of executive officers.

The executive officer of each of said institutions shall, on or before the first day of August of each even-numbered year, make a report to the board, setting forth such observations and recommendations as in the executive officer's judgment are for the benefit of the institution, and also the executive officer's recommendations of a budget for the several colleges and departments of the institution, in detail, and estimates of the amount of funds required therefor for the ensuing biennium.

[R60, §1939, 2149, 2161; C73, §1600, 1601, 1677, 1694; C97, §2641, 2717, 2725; S13, §2641, 2717; C24, 27, 31, 35, 39, §**3936;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.24]

262.25 Reports of secretarial officers.

The secretarial officer shall, for the institution of which the officer acts as secretary, on or before August 1 of each year, report to the board in such detail and form as it may prescribe:

1. The funds available each fiscal year from all sources for the erection, equipment, improvement, and repair of buildings.

2. Interest on endowment and other funds, tuition, state appropriations, laboratory and janitor fees, donations, rents, and income from all sources affecting the annual income of the support funds of said institution.

3. How the funds so received were expended, giving under separate heads the cost of instruction, administration, maintenance and equipment of departments, and the general expense of the institution.

4. The number of professors, instructors, fellows, and tutors, and the number of students enrolled in each course during each year, stating separately the number of students attending short courses.

5. The amount of unexpended balances of departments remaining in the hands of the treasurer, and the amounts undrawn from the state treasury on June 30 of each year.

The report for the Iowa State University of science and technology shall also show the receipts of the experiment station from all sources for each fiscal year, and how the same were expended.

[S13, §2682-b; C24, 27, 31, 35, 39, §**3937;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.25]

262.25A Purchase of automobiles.

1. Institutions under the control of the state board of regents shall purchase only new automobiles which have at least the fuel economy required for purchase of new automobiles by the state fleet administrator under section 18.115, subsection 4. This subsection does not apply to automobiles purchased for law enforcement purposes.

2. A motor vehicle purchased by the institutions shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

3. Of all new passenger vehicles and light pickup trucks purchased by or under the direction of the state board of regents, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

a. A flexible fuel which is either of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of processed soybean oil and diesel fuel. At least twenty percent of the fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

89 Acts, ch 297, §4; 91 Acts, ch 254, §15; 93 Acts, ch 26, §4; 94 Acts, ch 1119, §26; 94 Acts, ch 1199, §65; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

262.25B Purchase of bio-based hydraulic fluids, greases, and other industrial lubricants.

The state board of regents and institutions under the control of the board purchasing hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing bio-based hydraulic fluids, greases, and other industrial lubricants as provided in section 18.22.

98 Acts, ch 1082, §5; 2000 Acts, ch 1109, §5

262.26 Report of board.

The board shall, biennially, at the time provided by law, report to the governor and the legislature such facts, observations, and conclusions respecting each of such institutions as in the judgment of the board should be considered by the legislature. Such report shall contain an itemized account of the receipts and expenditures of the board, and also the reports made to the board by the executive officers of the several institutions or a summary thereof, and shall submit budgets for biennial appropriations deemed necessary and proper to be made for the support of the several institutions and for the extraordinary and special expenditures for buildings, betterments, and other improvements.

[R60, §1939; C73, §1600, 1601; C97, §2641, 2680; S13, §2641, 2680, 2682-u; C24, 27, 31, 35, 39, §**3938;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.26]

262.27 Colonel of cadets — governor's award.

The commandant and instructor of military science and tactics at each of the institutions for higher learning is given the rank of colonel of cadets, and the governor shall issue such commission upon the request of the president of such institution.

The governor of Iowa is hereby authorized to annually confer an appropriate award to any outstanding reserve officer training corps cadet or cadets at each university. Such award shall be on behalf of the people of the state of Iowa.

[S13, §2644-c; C24, 27, 31, 35, 39, §**3939;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.27]

262.28 Appropriations — monthly installments.

All appropriations made payable annually to each of the institutions under the control of the board of regents shall be paid in twelve equal monthly installments on the last day of each month on order of said board.

[S13, §2682-y; C24, 27, 31, 35, 39, §**3940;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.28]

262.29 Expenses — filing and audit.

All claims for the actual necessary expenses of the board and of its committees, offices, agencies and employees shall be filed with and allowed by the director of revenue and finance in the same manner as may now or hereafter be required in the case of claims for similar expenses by state officers.

[S13, §2682-1; C24, 27, 31, 35, 39, §**3941;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.29]

262.30 Contracts for training teachers.

The board of directors of any school district in the state of Iowa may enter into contract with the state board of regents for furnishing instruction to pupils of such school district, and for training teachers for the schools of the state in such particular lines of demonstration and instruction as are deemed necessary for the efficiency of the University of Northern Iowa, state University of Iowa, and Iowa State University of science and technology as training schools for teachers.

[C24, 27, 31, 35, 39, §**3942;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.30]

262.31 Payment.

The contract for such instruction shall authorize the payment for such service furnished the school district or for such service furnished the state, the amount to be agreed upon by the state board of regents and the board of the school district thus co-operating.

[C24, 27, 31, 35, 39, §**3943;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.31]

262.32 Contract — time limit.

Such contracts shall be in writing and shall extend over a period of not to exceed two years, and a copy thereof shall be filed in the office of the administrator of the area education agency.

[C24, 27, 31, 35, 39, §**3944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.32]

262.33 Fire protection contracts.

The state board of regents shall have power to enter into contracts with the governing body of any city or other municipal corporation for the protection from fire of any property under the control of the board, located in any such municipal corporation or in territory contiguous thereto, upon such terms as may be agreed upon.

[C31, 35, §3944-d1; C39, §**3944.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.33]

262.33A Fire and environmental safety — report — expenditures.

It is the intent of the general assembly that each institution of higher education under the control of the state board of regents shall, in consultation with the state fire marshal, identify and correct all critical fire and environmental safety deficiencies. The state fire marshal shall report annually to the joint subcommittee on education appropriations. The report shall include, but is not limited to, the identified deficiencies in fire and environmental safety at the institutions, and plans for correction of the deficiencies and for compliance with this section. Commencing July 1, 1993, each institution under the control of the state board of regents shall expend annually for fire safety and deferred maintenance at least the amount budgeted for these purposes for the fiscal year beginning July 1, 1992, in addition to any moneys appropriated from the general fund for these purposes in succeeding years.

93 Acts, ch 179, §23

262.34 Improvements — advertisement for bids — disclosures.

When the estimated cost of construction, repairs, or improvement of buildings or grounds under charge of the state board of regents exceeds twenty-five thousand dollars, the board shall advertise for bids for the contemplated improvement or construction and shall let the work to the lowest responsible bidder. However, if in the judgment of the board bids received are not acceptable, the board may reject all bids and proceed with the construction, repair, or improvement by a method as the board may determine. All plans and specifications for repairs or construction, together with bids on the plans or specifications, shall be filed by the board and be open for public inspection. All bids submitted under this section shall be accompanied by a deposit of money, a certified check or a credit union certified share draft in an amount as the board may prescribe.

A bidder awarded a contract shall disclose the names of all subcontractors, who will work on the project being bid, within forty-eight hours after the award of the contract. If a subcontractor named by a bidder awarded a contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

[C24, 27, 31, 35, 39, §**3945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.34; 81 Acts, ch 28, §6]

84 Acts, ch 1055, §5; 90 Acts, ch 1161, §2

262.34A Bid requests.

The state board of regents shall request bids and proposals for materials, products, supplies, provisions, and other needed articles to be purchased at public expense, from Iowa state industries as defined in section 904.802, subsection 2, when the articles are available in the requested quantity and at comparable prices and quality.

92 Acts, ch 1246, §38

262.34B Student fee committee.

1. A student fee committee composed of five students and five university employees shall be established at each of the universities governed by the board as identified in section 262.7, subsections 1 through 3. The five student members of the student fee committee of each university shall be appointed by the recognized student government organization of each university. The five university employees shall be appointed by the president of the university.

2. The student fee committee shall consider any proposed student activity changes at the university and shall make recommendations concerning student activity fee changes to the president of the affected university for review no later than April 15 of the year which includes the subsequent academic period in which the proposed fee change will take effect. The student fee committee shall provide a copy of its recommendations to the recognized student government organizations at each university and those organizations may review the recommendations and provide comment to the president of the university and the state board of regents. The president of the university shall transmit the recommendations of the student fee committee and the president's endorsement or recommendation to the state board of regents for consideration. The president of the university shall transmit a copy of the president's endorsement or recommendation to the recognized student government organizations for the university.

3. The state board of regents shall make the final decision on student activity fee changes. The state board of regents shall forward a copy of the committee's recommendations, the president's endorsement or recommendation, the recognized student government organization's comments, and its decision regarding student activity fee changes to the chairpersons and ranking members of the joint education appropriations subcommittee.

4. This section does not apply to fees charged for purposes of acquisition or construction of self-liquidating and revenue-producing buildings and facilities under sections 262.35 through 262.42, 262.44 through 262.53, and 262.55 through 262.66; or acquiring, purchasing, leasing, or constructing buildings and facilities under chapter 262A.

92 Acts, ch 1246, §39

DORMITORIES

262.35 Dormitories at state educational institutions.

The state board of regents is authorized to:

1. Erect from time to time at any of the institutions under its control such dormitories as may be required for the good of the institutions.

2. Rent the rooms in such dormitories to the students, officers, guests, and employees of said institutions at such rates as will insure a reasonable return upon the investment.

3. Exercise full control and complete management over such dormitories.

[C27, 31, 35, §3945-a1; C39, §**3945.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.35]

262.36 Purchase or condemnation of property.

The erection of such dormitories is a public necessity and said board is vested with full power to purchase or condemn at said institutions, or convenient thereto, all real estate necessary to carry out the powers herein granted.

[C27, 31, 35, §3945-a2; C39, §**3945.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.36]

262.37 Title to property.

The title to all real estate so acquired and the improvements erected thereon shall be taken and held in the name of the state.

[C27, 31, 35, §3945-a3; C39, §**3945.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.37]

262.38 Borrowing money and mortgaging property.

In carrying out the above powers, said board may:

1. Borrow money.

2. Mortgage any real estate so acquired and the improvements erected thereon in order to secure necessary loans.

3. Pledge the rents, profits, and income received from any such property for the discharge of mortgages so executed.

[C27, 31, 35, §3945-a4; C39, §**3945.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.38]

262.39 Nature of obligation — discharge.

No obligation created hereunder shall ever be or become a charge against the state of Iowa but all such obligations, including principal and interest, shall be payable solely:

1. From the net rents, profits, and income arising from the property so pledged or mortgaged,

2. From the net rents, profits, and income which has not been pledged for other purposes arising from any other dormitory or like improvement under the control and management of said board, or

3. From the income derived from gifts and bequests made to the institutions under the control of said board for dormitory purposes.

[C27, 31, 35, §3945-a5; C39, §**3945.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.39]

262.40 Limitation on discharging obligations.

In discharging obligations under section 262.39 the dormitories at each of said institutions shall be considered as a unit and the rents, profits, and income available for dormitory purposes at one institution shall not be used to discharge obligations created for dormitories at another institution.

[C27, 31, 35, §3945-a6; C39, §**3945.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.40]

262.41 Exemption from taxation.

All obligations created hereunder shall be exempt from taxation.

[C27, 31, 35, §3945-a7; C39, §**3945.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.41]

262.42 Limitation on funds.

No state funds shall be loaned or used for this purpose. This shall not apply to funds derived from the net earnings of dormitories now or hereafter owned by the state.

[C27, 31, 35, §3945-a8; C39, §**3945.8;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.42]

TUITION TO LOCAL SCHOOLS

262.43 Students residing on state-owned land.

The state board of regents shall pay to the local school boards the tuition payments and transportation costs, as otherwise authorized by statutes for the elementary or high school education of students residing on land owned by the state and under the control of the state board of regents. Such payments for the three institutions of higher learning, the state University of Iowa, the Iowa State University of science and technology and the University of Northern Iowa, shall be made from the funds of the respective institutions other than state appropriations, and for the two noncollegiate institutions, the Iowa braille and sight saving school and the state school for the deaf, the payments and costs shall be paid from moneys appropriated to the state board of regents.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §262.43]

91 Acts, ch 267, §236

SELF-LIQUIDATING FACILITIES
OTHER THAN DORMITORIES

262.44 Areas set aside for improvement.

The state board of regents is authorized to:

1. Set aside and use portions of the respective campuses of the institutions of higher education under its control, namely, the state university of Iowa, the Iowa state university of science and technology, and the university of northern Iowa, as the board determines are suitable for the acquisition or construction of self-liquidating and revenue producing buildings and facilities which the board deems necessary for the students and suitable for the purposes for which the institutions were established including without limitation: Student unions, recreational buildings, auditoriums, stadiums, field houses, athletic buildings and areas, parking structures and areas, electric, heating, sewage treatment and communication utilities, research equipment and additions to or alterations of existing buildings or structures.

2. Acquire by any lawful means additional land deemed by the board to be desirable and suitable for any or all of the aforesaid purposes.

3. Construct, equip, furnish, maintain, operate, manage and control any or all of the buildings, structures, facilities, areas, additions or improvements hereinbefore enumerated.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.44]

86 Acts, ch 1246, §126; 87 Acts, ch 233, §466, 467

262.45 Purchase or condemnation of real estate.

The erection of the buildings, improvements and facilities for the educational institutions of higher learning in this state is a public necessity and the board is vested with full power to purchase or condemn at said institutions, or convenient thereto, all real estate necessary to carry out the powers herein granted.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.45]

262.46 Title in name of state.

The title to all real estate so acquired and the improvements erected thereon shall be taken and held in the name of the state.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.46]

262.47 Fees and charges from students.

When in the opinion of the board of regents, any of the buildings, structures, facilities, property, improvements, equipment, additions or alterations as above authorized are deemed necessary by said board for the comfort, convenience and welfare of the student body as a whole, or for any specified class or part thereof, the board of regents shall have authority to charge and collect, from all students in attendance at the university, college or institution, or from any specified class or part thereof for which such facilities are so deemed necessary, fees and charges for the use and availability of such buildings, facilities, improvements and for the services and benefits made available therefrom. The fees and charges if established shall be applied to the costs of acquisition, construction, maintenance and financing of such improvements.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.47]

262.48 Borrowing money and pledge of revenue.

In carrying out the above powers said board may:

1. Borrow money on the credit of the income and revenues to be derived from the operation or use of the building, structure, facility, area or improvement and from fees or charges made by said board to students for whom such facilities are made available and to issue notes, bonds, or other evidence of indebtedness in anticipation of the collection of such income, revenues, fees and charges.

2. Mortgage any real estate so acquired and the improvements erected thereon in order to secure necessary loans.

3. Pledge the rents, profits and income received from any such property for the discharge of the indebtedness.

4. Pledge the proceeds of all fees and charges to students attending the institution for the use or availability of such buildings, structures, areas or facilities for the discharge of the indebtedness.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.48]

262.49 No obligation against state.

No obligation created hereunder shall ever be or become a charge against the state of Iowa but all such obligations, including principal and interest, shall be payable solely:

1. From the net rents, profits and income arising from the property so pledged or mortgaged,

2. From the net rents, profits, and income which has not been pledged for other purposes arising from any similar building, facility, area or improvement under the control and management of said board,

3. From the fees or charges established by said board for students attending the institution for the use or availability of the building, structure, area, facility or improvement for which the obligation was incurred, or

4. From the income derived from gifts and bequests made to the institutions under the control of said board for such purposes.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.49]

262.50 Prohibited use of funds.

In discharging the obligations under section 262.49 the buildings, structures, areas, facilities and improvements at each of said institutions shall be considered as a unit and the rents, profits and other income available for such purposes at one institution shall not be used to discharge obligations created for similar purposes at another institution.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.50]

262.51 Tax exemption.

All obligations created hereunder shall be exempt from taxation, together with the interest thereon.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.51]

262.52 No state funds loaned.

No state funds shall be loaned for this purpose. This shall not apply to funds derived from the net earnings of such buildings, structures, areas and facilities now or hereafter owned by the state or to funds received from student fees or charges.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.52]

262.53 Construction of statutes.

This division shall not be construed to repeal, modify or amend any law of this state now in force, but shall be deemed as supplemental thereto, nor shall it prevent the making of state appropriations, in whole or in part, for any of the purposes of this division.

[C62, 66, 71, 73, 75, 77, 79, 81, §262.53]

COMPUTER SALES

262.54 Computer sales.

Sales, by an institution under the control of the board of regents, of computer equipment, computer software, and computer supplies to students and faculty at the institution are retail sales under chapter 422, division IV.

90 Acts, ch 1272, §67

SELF-LIQUIDATING DORMITORIES

262.55 Definitions.

The following words or terms, as used in this division, shall have the respective meanings as stated:

1. *"Board"* shall mean the state board of regents.

2. *"Bonds or notes"* shall mean revenue bonds or revenue notes which are payable solely and only from net rents, profits and income derived from the operation of residence halls, dormitories, facilities therefor and additions thereto.

3. *"Institution"* or *"institutions"* shall mean the state university of Iowa, the Iowa state university of science and technology and the university of northern Iowa.

4. *"Project"* shall mean the acquisition by purchase, lease or construction of buildings for use as student residence halls and dormitories, including dining and other incidental facilities therefor, and additions to such buildings, the reconstruction, completion, equipment, improvement, repair or remodeling of residence halls, dormitories, or additions thereto or facilities therefor, and the acquisition of property therefor of every kind and description, whether real, personal or mixed, by gift, purchase, lease, condemnation or otherwise and the improvement of the same.

[C66, 71, 73, 75, 77, 79, 81, §262.55]

262.56 Authorization — contracts — title.

Subject to and in accordance with the provisions of this division the state board of regents is hereby authorized to undertake and carry out any project as hereinbefore defined at the state University of Iowa, Iowa State University of science and technology and the University of Northern Iowa and to operate, control, maintain and manage student residence halls and dormitories, including dining and other incidental facilities, and additions to

such buildings at each of said institutions. All contracts for the construction, reconstruction, completion, equipment, improvement, repair or remodeling of any buildings, additions or facilities shall be let in accordance with the provisions of section 262.34. The title to all real estate acquired under the provisions of this division and the improvements erected thereon shall be taken and held in the name of the state of Iowa. The board is authorized to rent the rooms in such residence halls and dormitories to the students, officers, guests and employees of said institutions at such rates, fees or rentals as will provide a reasonable return upon the investment, but which will in any event produce net rents, profits and income sufficient to insure the payment of the principal of and interest on all bonds or notes issued to pay any part of the cost of any project and refunding bonds or notes issued pursuant to the provisions of this division.

[C66, 71, 73, 75, 77, 79, 81, §262.56]

262.57 Bonds or notes.

To pay all or any part of the cost of carrying out any project at any institution the board is authorized to borrow money and to issue and sell negotiable bonds or notes and to refund and refinance bonds or notes heretofore issued or as may be hereafter issued for any project or for refunding purposes at a lower rate, the same rate or a higher rate or rates of interest and from time to time as often as the board shall find it to be advisable and necessary so to do. Such bonds or notes may be sold by said board at public sale in the manner prescribed by chapter 75 but if the board shall find it to be advantageous and in the public interest to do so, such bonds or notes may be sold by the board at private sale without published notice of any kind and without regard to the requirements of chapter 75 in such manner and upon such terms as may be prescribed by the resolution authorizing the same, but such bonds or notes shall in any event be sold upon terms of not less than par plus accrued interest. Bonds or notes issued to refund other bonds or notes heretofore or hereafter issued by the board for residence hall or dormitory purposes at any institution, including dining or other facilities and additions, or heretofore or hereafter issued for refunding purposes, may either be sold in the manner hereinbefore specified and the proceeds thereof applied to the payment of the obligations being refunded, or the refunding bonds or notes may be exchanged for and in payment and discharge of the obligations being refunded, and a finding by the board in the resolution authorizing the issuance of such refunding bonds or notes that the bonds or notes being refunded were issued for a purpose specified in this division and constitute binding obligations of the board shall be conclusive and may be relied upon by any holder of any refunding bond or note issued under the provisions of this division. The refunding bonds or notes may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds or notes may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds or notes may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds or other obligations to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds or notes, except that the principal amount of the refunding bonds or notes may exceed the principal amount of the bonds or notes to be refunded to the extent necessary to pay any premium due on the call of the bonds or notes to be refunded or to fund interest in arrears or about to become due.

All bonds or notes issued under the provision of this division shall be payable solely and only from and shall be secured by an irrevocable pledge of a sufficient portion of (1) the net rents, profits and income derived from the operation of residence halls, dormitories, dining or other incidental facilities and additions, including necessary real and personal property, acquired or improved in whole or in part with the proceeds of such bonds or notes, regardless of the manner of such acquisition or improvement, and (2) the net rents, profits and income not pledged for other purposes derived from the operation of any other residence halls or dormitories, including dining or other incidental facilities and additions, at the particular institution. All bonds or notes issued under the provisions of this division shall have all the qualities of negotiable instruments under the laws of this state.

[C66, 71, 73, 75, 77, 79, 81, §262.57]

262.58 Rates and terms of bonds or notes.

Such bonds or notes may bear such date or dates, may bear interest at such rate or rates, payable semiannually, may mature at such time or times, may be in such form, carry such registration privileges, may be payable at such place or places, may be subject to such terms of redemption prior to maturity with or without premium, if so stated on the face thereof, and may contain such terms and covenants all as may be provided by the resolution of the board authorizing the issuance of the bonds or notes. In addition to the estimated cost of construction, the cost of the project shall be deemed to include interest upon the bonds or notes during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, and engineering, administrative and legal expenses. Such bonds or notes shall be executed by the president of the state board of regents and attested by the secretary thereof and the coupons thereto attached shall be executed with the original or facsimile signatures of said president and secretary. Any bonds or

notes bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes, notwithstanding that before delivery thereof any or all such persons whose signatures appear thereon shall have ceased to be such officers. Each such bond or note shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from the net rents, profits and income derived from the operation of residence halls or dormitories, including dining and other incidental facilities, at such institution as hereinbefore provided, and that it does not constitute a charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision. The issuance of such bonds or notes shall be recorded in the office of the treasurer of the institution on behalf of which the same are issued, and a certificate by such treasurer to this effect shall be printed on the back of each such bond or note.

[C66, 71, 73, 75, 77, 79, 81, §262.58]

262.59 Refunding.

Upon the determination by the state board of regents to undertake and carry out any project or to refund outstanding bonds or notes, said board shall adopt a resolution describing generally the contemplated project and setting forth the estimated cost thereof, or describing the obligations to be refunded, fixing the amount of bonds or notes to be issued, the maturity or maturities, the interest rate or rates and all details in respect thereof. Such resolution shall contain such covenants as may be determined by the board as to the issuance of additional bonds or notes that may thereafter be issued payable from the net rents, profits and income of the residence halls or dormitories, the amendment or modification of the resolution authorizing the issuance of any bonds or notes, the manner, terms and conditions and the amount or percentage of assenting bonds or notes necessary to effectuate such amendment or modification, and such other covenants as may be deemed necessary or desirable. In the discretion of the board any bonds or notes issued under the terms of this division may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the boundaries of the state of Iowa, but no such trust indenture shall convey or mortgage the buildings or facilities or any part thereof. The provisions of this division and of any resolution or other proceedings authorizing the issuance of bonds or notes and providing for the establishment and maintenance of adequate rates, fees or rentals and the application of the proceeds thereof shall constitute a contract with the holders of such bonds or notes.

[C66, 71, 73, 75, 77, 79, 81, §262.59]

262.60 Rates, fees and rentals — pledge.

Whenever bonds or notes are issued by the state board of regents, it shall be the duty of said board to establish, impose and collect rates, fees or rentals for the use of and services provided by the residence halls and dormitories, including dining and other incidental facilities therefor, at the institution on behalf of which such bonds or notes are issued, and to adjust such rates, fees or rentals from time to time, in order to always provide net amounts sufficient to pay the principal of and interest on such bonds or notes as the same become due and to maintain a reserve therefor, and said board is authorized to pledge a sufficient amount of the net rents, profits and income derived from the operation of residence halls and dormitories, including dining and other facilities therefor, at such institution for this purpose. Rates, fees or rentals collected at one institution shall not be used to discharge bonds or notes issued for or on account of another institution. All bonds or notes issued under the terms of this division shall be exempt from taxation by the state of Iowa and the interest thereon shall be exempt from the state income tax.

[C66, 71, 73, 75, 77, 79, 81, §262.60]

262.61 Accounts.

A certified copy of each resolution providing for the issuance of bonds or notes under this division shall be filed with the treasurer of the institution on behalf of which the bonds or notes are issued and it shall be the duty of said treasurer to keep and maintain separate accounts for each issue of bonds or notes in accordance with the covenants and directions set out in the resolution providing for the issuance thereof. All rates, fees or rentals collected for the use of and services provided by the residence halls and dormitories, including dining and other incidental facilities therefor, at each institution shall be held in trust by the treasurer thereof, separate and apart from all other funds, to be used solely and only for the purposes specified in this division and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds or notes. It shall be the duty of the treasurer of each institution to disburse funds from the proper account for the payment of the principal of and interest on the bonds or notes in accordance with the directions and covenants of the resolution authorizing the issuance thereof.

If the amount of bonds or notes issued under this chapter exceeds the actual costs of the projects for which the bonds or notes were issued, the amount of the difference shall be used to pay the principal and interest due on bonds or notes issued under this chapter.

[C66, 71, 73, 75, 77, 79, 81, §262.61]

87 Acts, ch 233, §468

262.62 No obligation against state.

Under no circumstances shall any bonds or notes issued under the terms of this division be or become or be construed to constitute a charge against the state of Iowa within the purview of any constitutional or statutory limitation or provision. No taxes, appropriations or other funds of the state of Iowa may be pledged for or used to pay such bonds or notes or the interest thereon but any such bonds or notes shall be payable solely and only as to both principal and interest from the net rents, profits and income derived from the operation of residence halls and dormitories, including dining and other incidental facilities therefor, at the institutions of higher learning under the control of the state board of regents as hereinbefore provided, and the sole remedy for any breach or default of the terms of any such bonds or notes or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by this division and the terms of the resolution under which such bonds or notes are issued.

[C66, 71, 73, 75, 77, 79, 81, §262.62]

262.63 Who may invest.

All banks, trust companies, building and loan associations, savings and loan associations, investment companies and other persons carrying on an investment business, all insurance companies, insurance associations and other persons carrying on an insurance business and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or notes issued pursuant to this division; provided, however, that nothing contained in this section may be construed as relieving any persons from any duty of exercising reasonable care in selecting securities for purchase or investment.

[C66, 71, 73, 75, 77, 79, 81, §262.63]

262.64 Federal or other aid accepted.

The state board of regents is authorized to apply for and accept federal aid or nonfederal gifts or grants of funds and to use the same to pay all or any part of the cost of carrying out any project at any institution under the terms of this division or to pay any bonds and interest thereon issued for any of the purposes specified in this division.

[C66, 71, 73, 75, 77, 79, 81, §262.64]

262.64A Reports to general assembly.

The state board of regents shall determine, in consultation with the legislative fiscal bureau, the financial information to be included in line item budget information for projects funded by the issuance of bonds or notes under this chapter and shall submit the line item budget information to the general assembly as requested. The state board of regents shall submit quarterly reports to the general assembly concerning the projects funded by the issuance of bonds or notes under this chapter as follows:

1. Identification of both undercharges and overcharges for line items of projects.
2. Identification of contracts in which any line item for a project exceeds the adopted budget for that line item by ten percent or more.
3. Identification of complaints received by an institution regarding the construction of a project.

If the state board of regents approves a change in the amount of the line item of a budget for a project, the change shall be transmitted to the appropriations committees of the house of representatives and senate, while the general assembly is in session, and to the legislative council, when the general assembly is not in session, for review.

86 Acts, ch 1246, §127

262.65 Alternative method.

This division shall be construed as providing an alternative and independent method for carrying out any project at any institution of higher learning under the control of the state board of regents, for the issuance and sale or exchange of bonds or notes in connection therewith and for refunding bonds or notes pertinent thereto, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, whether under section 73A.12 or otherwise, and no other or further proceeding in respect to the issuance or sale or exchange of bonds or notes under this division, shall be required except such as are prescribed by this division, any provisions of other statutes of the state to the contrary notwithstanding.

[C66, 71, 73, 75, 77, 79, 81, §262.65]

262.66 Prior action legalized.

All rights heretofore acquired in connection with the financing of any project at any institution are hereby preserved and all acts and proceedings taken by the board preliminary to and in connection with the authorization and issuance of any previously issued and outstanding notes or other obligations for any project are hereby legalized, validated and confirmed and said notes or obligations are hereby declared to be legal and to constitute valid and binding obligations of the board according to their terms and payable solely and only from the sources referred to therein.

[C66, 71, 73, 75, 77, 79, 81, §262.66]

EASEMENTS

262.67 Approval of executive council.

With the approval of the executive council, the board is hereby authorized to grant easements for rights of way over, across, and under the surface of public lands under its jurisdiction when in its judgment such easements are desirable and will benefit the state of Iowa.

[C62, §262.55; C66, 71, 73, 75, 77, 79, 81, §262.67]

SPEED LIMITS

262.68 Speed limit on institutional grounds.

The maximum speed limit of all vehicles on institutional roads at institutions under the control of the state board of regents shall be forty-five miles per hour. All driving shall be confined to driveways designated by the state board. Whenever the state board shall determine that the speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of its institutional roads, said board shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such places of congestion or other parts of its institutional roads. Any person violating the aforementioned speed limits shall be guilty of a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §262.68]

262.69 Traffic control and parking.

The state board of regents may make such rules as it deems necessary and proper to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on the property of any institution under its control. The rules may provide for the use of institutional roads, driveways, and grounds, registration of vehicles and bicycles, the designation of parking areas, the erection and maintenance of signs designating prohibitions or restrictions, the installation and maintenance of parking control devices, and assessment, enforcement, and collection of reasonable sanctions for the violation of the rules.

Any rules made pursuant to this section may be enforced under procedures adopted by the board for each institution under its control. Sanctions may be imposed upon students, faculty and staff for violation of the rules, including, but not limited to, a reasonable monetary sanction which may be deducted from student deposits and faculty or staff salaries or other funds in the possession of the institution, or added to student tuition bills. The rules made pursuant to this section may also be enforced by the impoundment of vehicles and bicycles parked in violation of the rules, and a reasonable fee may be charged for the cost of impoundment and storage, prior to the release of the vehicles and bicycles to their owners. Each institution under the control of the board shall establish procedures for the determination of controversies in connection with imposition of sanctions. The procedures shall require giving notice of the violation and the sanction involved and provide an opportunity for an administrative hearing. Judicial review of the administrative ruling may be sought in accordance with the terms of the Iowa administrative procedure Act.

Notwithstanding the provisions of chapter 17A, a proceeding conducted by the state board of regents or an institution governed by the state board of regents to determine the validity of an assessment of a violation of traffic control and parking rules is not a contested case as defined in section 17A.2, subsection 5.

[C73, 75, 77, 79, 81, §262.69; 82 Acts, ch 1141, §1]

MENTAL HEALTH PROGRAMS

262.70 Education, prevention, and research programs in mental health and mental retardation.

The division of mental health and developmental disabilities of the department of human services may contract with the board of regents or any institution under the board's jurisdiction to establish and maintain programs of education, prevention, and research in the fields of mental health and mental retardation. The board may delegate responsibility for these programs to the state psychiatric hospital, the university hospital, or any other appropriate entity under the board's jurisdiction.

[81 Acts, ch 78, §20, 46]
94 Acts, ch 1170, §51

EARLY DEVELOPMENT EDUCATION

262.71 Center for early development education.

The board of regents shall develop a center for early development education at one of the regents' institutions specified in section 262.7, subsections 1 through 3. The center's programs shall be conducted in a laboratory school setting to serve as a model for early childhood education. The programs shall include, but not be limited to, programs designed to accommodate the needs of at-risk children. The teacher education programs at all three state universities shall cooperate in developing the center and its programs. The center's programs shall take a holistic approach and the center shall, in developing its programs, consult with representatives from each of the following

agencies, institutions, or groups:
1. The university of northern Iowa.
2. Iowa state university.
3. The university of Iowa.
4. The division of child and family services of the department of human services.
5. The department of public health.
6. The department of human services.
7. An early childhood development specialist from an area education agency.
8. A parent of a child in a head start program.
9. The department of education.
10. The child development coordinating council.

88 Acts, ch 1114, §3; 91 Acts, ch 109, §7

262.72 through 262.74 Reserved.

TEACHER EDUCATION PROGRAMS — INCENTIVES

262.75 Incentives for cooperating teachers.

A cooperating teacher incentive program is established to encourage experienced teachers to serve as cooperating teachers for student teachers enrolled in the institutions of higher education under the control of the board. An individual who submits evidence to an institution that the individual has satisfactorily served as a cooperating teacher for a student teacher from any of the institutions of higher education under the control of the board for the duration of the student teaching experience shall receive from the institution either a monetary recompense or a reduction in tuition for graduate hours of coursework equivalent to the value of the monetary recompense, rounded to the nearest whole credit hour. If, because of a policy adopted by the board of directors employing the teacher, the amount of the monetary recompense is not made available to the teacher for the teacher's own personal use or the salary paid to the cooperating teacher by the employing board is correspondingly reduced, the institution shall grant the teacher the reduction in tuition pursuant to this section in lieu of the monetary recompense.

In lieu of the payment of monetary recompense to a cooperating teacher, the cooperating teacher may direct that the monetary recompense be paid by the institution directly into a scholarship fund which has been established jointly by the board of directors of the school district that employs the teacher and the local teachers' association. In such cases, the cooperating teacher shall receive neither monetary recompense nor any reduction in tuition at the institution.

88 Acts, ch 1266, §4; 95 Acts, ch 173, §1

262.76 and 262.77 Reserved.

AGRICULTURAL HEALTH AND SAFETY

262.78 Center for agricultural health and safety.

1. The board of regents shall establish a center for agricultural health and safety at the university of Iowa. The center shall be a joint venture by the university of Iowa and Iowa state university of science and technology. The center shall establish farm health and safety programs designed to reduce the incidence of disabilities suffered by persons engaged in agriculture which results from disease or injury. The university of Iowa is primarily responsible for the management of agricultural health and injury programs at the center. Iowa state university of science and technology is primarily responsible for the management of the agricultural safety programs of the center.

2. The center shall cooperate with the center for rural health and primary care, established under section 135.107, the center for health effects of environmental contamination established pursuant to section 263.17, and the department of agriculture and land stewardship. The agencies shall coordinate programs to the extent practicable.

3. The president of the university of Iowa, in consultation with the president of Iowa state university of science and technology, shall employ a full-time director of the center. The center may employ staff to carry out the center's purpose. The director shall coordinate the agricultural health and safety programs of the center. The director shall regularly meet and consult with the advisory committee to the center for rural health and primary care. The director shall provide the board of regents with relevant information regarding the center.

4. The center may solicit, accept, and administer moneys contributed to the center by any source, and may enter into contracts with public or private agencies in order to carry out its purposes.

5. The center shall cooperate with public and private entities to provide support to programs emphasizing agricultural health, safety, and rehabilitation for farm families.

6. The center shall submit an annual report of the activities of the center to the governor, the secretary of the senate and the chief clerk of the house of representatives by January 15 of each year.

90 Acts, ch 1207, §3

262.79 and 262.80 Reserved.

REGENTS' MINORITY AND WOMEN EDUCATORS ENHANCEMENT

262.81 Legislative intent.

The general assembly recognizes that educational programs designed to enhance the interrelation and cooperation among cultural, racial,

and ethnic groups in society require the contribution and active participation of all ethnic and racial groups. The general assembly also recognizes that failure to include minority representation at the faculty level at the state universities contributes to cultural, racial, and ethnic isolation of minority students and does not reflect the realities of a multicultural and diverse society. Therefore, the *"Regents' Minority and Women Educators Enhancement"* program is established to assist in the recruitment and retention of faculty that more adequately represents the diverse cultural, racial, and ethnic makeup of society and to improve the education of all students.

89 Acts, ch 319, §61

262.82 Regents' minority and women educators enhancement program.

The board of regents shall establish a program to recruit minority educators to faculty positions in the universities under the board's control. The program shall include, but is not limited to, the creation of faculty positions in all areas of academic pursuit.

The board of regents shall also establish a program to create faculty opportunities for women educators at the universities under the board's control. The program shall include, but is not limited to, the creation of faculty positions in targeted shortage areas. The board of regents shall also develop and implement, in consultation with appropriate faculty representatives, tenure, promotion, and hiring policies that recognize the unique needs of faculty members who are principal caregivers to dependents.

As used in this section, *"minority educator"* means an educator who is a minority person as defined in section 261.102.

89 Acts, ch 319, §62

262.83 through 262.90 Reserved.

COLLEGE-BOUND PROGRAM

262.91 Legislative intent.

The general assembly recognizes that universities must provide an environment that enables all students to have an equal opportunity to succeed. The general assembly also recognizes that, because of inequalities in educational preparation, economic factors, and social circumstances, not all young Iowans have the same degree of access to Iowa's higher education system. The general assembly further acknowledges that an early intervention system using public school districts, community agencies, and other state institutions can be useful in preparing young students to succeed in college. Therefore, the *"College-bound"* program is established to ensure that the state's universities and students' local communities become involved early in a student's life by promoting and informing students about the opportunities in higher education, so that lack of adequate personal resources is not a barrier to attending college for young Iowans.

89 Acts, ch 319, §63

262.92 College-bound program.

1. The board of regents shall establish or contract to establish college-bound programs to provide Iowa minority students with information and experiences relating to opportunities offered at the regents' universities. Programs developed may include, but are not limited to, the following elements:

a. Reinforcement of efforts to attract undergraduate students from age groups currently served by traditional methods of outreach which use high school and community college services.

b. Extension of traditional student recruitment methods which are designed to encourage minority students in grades seven through twelve to pursue postsecondary academic courses of study.

c. Identification, at each of the regents' universities, of courses of study to be targeted for the recruitment of minority students.

d. Offerings at the regents' universities of innovative programs, which are experience oriented, for families with minority children.

2. The board of regents shall establish a voucher program for students in grades seven through twelve. Vouchers may be obtained by any qualified secondary student at any regents' university upon completion of a college-bound program provided under subsection 1. Students may receive one voucher for each program. One or more vouchers entitle a student to priority over other persons applying for grants under the Iowa minority academic grants for economic success program established in section 261.101. Vouchers shall be submitted with the grant application within one year after a student graduates from high school at any higher education institution which offers grants under the Iowa minority academic grants for economic success program. Vouchers earned can only be used by the person who participated in the college-bound voucher program and are not transferable. Vouchers issued by a university under this program shall be signed by the president of the university.

3. The board of regents shall adopt rules to establish program guidelines for the universities under the board's control and for the administration and coordination of program efforts. Rules adopted shall include methods of recording data relating to voucher recipients and making the data available to the college student aid commission.

89 Acts, ch 319, §64

262.93 Reports to general assembly.

The college student aid commission and the state board of regents each shall submit, by January 1 of each year, a report on the progress and implementation of the programs which they administer under sections 261.102 through 261.105, 262.82, and 262.92. The reports shall include, but are not limited to, the numbers of students participating in the programs and allocation of funds appropriated for the programs.

89 Acts, ch 319, §65

REPORTS

262.94 through 262.99 Reserved.

INNOVATIVE SCHOOL CALENDAR PILOT PROJECT

262.100 Innovative school calendar pilot program — school for the deaf.

The state board of regents may establish a three-year pilot program to evaluate the benefits of establishing an innovative school calendar for the school for the deaf. If the board establishes a pilot program in accordance with this section, the board shall provide for the administration of valid and reliable standardized assessments to demonstrate the program's effect on student achievement. Any findings and recommendations resulting from a pilot program established in accordance with this section shall be submitted to the chairpersons and ranking members of the senate and house standing committees on education and the joint appropriations subcommittee on education by December 15, 2005. The report shall include a listing of the savings, goals and outcomes, and the effect of the innovative school calendar on student achievement and the school's educational program. This section is repealed effective June 30, 2006.

2002 Acts, ch 1171, §86
NEW section

CHAPTER 262A

UNIVERSITY BUILDINGS, FACILITIES AND SERVICES — REVENUE BONDS

262A.1 Declaration of insufficient state revenue.
262A.2 Definitions.
262A.3 Five-year program and two-year bond proposal submitted each year.
262A.4 Authorization of general assembly and governor.
262A.5 Borrowing money and issuing bonds.
262A.6 Form and condition of bonds.
262A.6A Iowa college super savings plan.
262A.7 Resolution of board and covenants undertaken.
262A.8 Student fees to pay bonds.
262A.9 Bond fund account.
262A.10 Bonds not state obligation.
262A.11 Bonds as security for investments.
262A.12 Application for gifts, loans or grants.
262A.13 Reports to general assembly.
262A.14 Alternative and independent method.

262A.1 Declaration of insufficient state revenue.

The general assembly hereby determines that the annual revenues of the state are insufficient to finance the immediate building requirements and other facilities and utilities services requirements of the institutions of higher learning under the jurisdiction of the state board of regents and in order to provide these buildings, facilities and utilities services when they are needed, it is necessary to authorize the issuance of revenue bonds by the state board of regents, subject to the restrictions and limitations hereinafter set forth. It is the intent of the general assembly that revenue bonds issued for academic and administrative buildings and facilities and utilities services shall supplement and not supplant legislative appropriations for the same or similar purposes.

[C71, 73, 75, 77, 79, 81, §262A.1]

262A.2 Definitions.

The following words or terms, as used in this chapter, shall have the respective meanings as stated:

1. *"Board"* shall mean the state board of regents.

2. *"Bonds"* shall mean revenue bonds which are payable solely and only from student fees and charges and institutional income received by the institution at which the project is being undertaken.

3. *"Buildings and facilities"* shall mean those academic buildings and other facilities used primarily for instructional and research purposes, including libraries, and such other administrative and service buildings and facilities as are deemed necessary by the board to provide supporting services to the instructional and research programs and activities of the institutions, including, with-

out limiting the generality of the foregoing, administrative offices, facilities for business services, student services and extension and continuing education services, off-street parking areas and structures incidental to other buildings and facilities which are not primarily for parking purposes, garages, and storage and warehouse facilities, or any combination thereof. This phrase shall also include works and facilities deemed necessary by the board for furnishing utilities services to any buildings or structures operated by the institutions, including, without limiting the generality of the foregoing, water, electric, gas, communications, sewer and heating facilities, together with all necessary structures, buildings, tunnels, lines, reservoirs, mains, filters, pipes, sewers, boilers, generators, fixtures, wires, poles, equipment, treatment facilities and all other appurtenances in connection therewith, or any combination of the foregoing.

4. *"Institution"* or *"institutions"* shall mean the state university of Iowa, the Iowa state university of science and technology, the university of northern Iowa, and any other institution of higher learning under the jurisdiction of the state board of regents which offers a college program of four years or more, including any such institution the creation of which is hereafter authorized by the general assembly or which is placed under the jurisdiction of said board.

5. *"Institutional income"* shall mean income received by an institution from sources other than *(a)* student fees and charges, *(b)* rates, fees, rentals or charges imposed and collected under the provisions of (1) sections 262.35 through 262.42, (2) sections 262.44 through 262.53, and (3) sections 262.55 through 262.66, *(c)* state appropriations, and *(d) "hospital income"*, as that term is defined in subsection 4 of section 263A.1.

6. *"Project"* shall mean the acquisition by gift, purchase, lease or construction of buildings and facilities which are deemed necessary by the board for the proper performance of the instructional, research and service functions of the institutions, and additions to buildings and facilities, the reconstruction, completion, equipment, improvement, repair or remodeling of buildings and facilities, including the demolition of existing buildings and facilities which are to be replaced, the acquisition of air rights and the construction of projects thereon, and the acquisition of property of every kind and description, whether real, personal or mixed, for buildings and facilities by gift, purchase, lease, condemnation or otherwise and the improvement of the same, or any combination of the foregoing.

7. *"Student fees and charges"* shall mean all tuitions, fees and charges for general or special purposes levied against and collected from students attending the institutions except rates, fees, rentals or charges imposed and collected under the provisions of *(a)* sections 262.35 through 262.42, *(b)* sections 262.44 through 262.53, and *(c)* sections 262.55 through 262.66.

[C71, 73, 75, 77, 79, 81, §262A.2]

262A.3 Five-year program and two-year bond proposal submitted each year.

The board shall prepare and submit to the general assembly for approval or rejection a proposed five-year building program for each institution, including an estimate of the maximum amount of bonds which the board expects to issue under the provisions of this chapter during each year of the ensuing biennium. The program and estimate shall be submitted no later than seven days after the convening of each regular annual session of the general assembly. The building program shall contain a list of the buildings and facilities which the board deems necessary to further the educational objectives of the institutions. This list shall be revised annually, but no project shall be eliminated from the list when bonds have previously been issued by the board to pay the cost of the project. Each list shall contain an estimate of the cost of each of the buildings and facilities referred to in the list. If the general assembly rejects or fails to approve any proposed five-year building program, this action or inaction shall not affect the status or legality of any project previously or subsequently authorized by the general assembly as provided in section 262A.4.

[C71, 73, 75, 77, 79, 81, §262A.3]

91 Acts, ch 268, §609

262A.4 Authorization of general assembly and governor.

Subject to and in accordance with the provisions of this chapter, the state board of regents after authorization by a constitutional majority of each house of the general assembly and approval by the governor may undertake and carry out any project as defined in this chapter at the institutions now or hereafter under the jurisdiction of the board. The state board of regents is authorized to operate, control, maintain, and manage buildings and facilities and additions to such buildings and facilities at each of said institutions. All contracts for the construction, reconstruction, completion, equipment, improvement, repair or remodeling of any buildings, additions, or facilities shall be let in accordance with the provisions of section 262.34. The title to all real estate acquired under the provisions of this chapter and the improvements erected thereon shall be taken and held in the name of the state of Iowa.

[C71, 73, 75, 77, 79, 81, §262A.4]

262A.5 Borrowing money and issuing bonds.

The board is authorized to borrow money under this chapter, and the board may issue and sell negotiable bonds to pay all or any part of the cost of carrying out any project at any institution and may refund and refinance bonds issued for any

project or for refunding purposes at the same rate or at a higher or lower rate or rates of interest. Bonds issued under the provisions of this chapter shall be sold by said board at public sale on the basis of sealed proposals received pursuant to a notice specifying the time and place of sale and the amount of bonds to be sold which shall be published at least once not less than seven days prior to the date of sale in a newspaper published in the state of Iowa and having a general circulation in said state. The provisions of chapter 75 shall not apply to bonds issued under authority contained in this chapter, but such bonds shall be sold upon terms of not less than par plus accrued interest. Bonds issued to refund other bonds issued under the provisions of this chapter may either be sold in the manner hereinbefore specified and the proceeds thereof applied to the payment of the obligations being refunded, or the refunding bonds may be exchanged for and in payment and discharge of the obligations being refunded. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding bonds or other obligations to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds, except that the principal amount of the refunding bonds may exceed the principal amount of the bonds to be refunded to the extent necessary to pay any premium due on the call of the bonds to be refunded or to fund interest in arrears or which is to become due.

All bonds issued under the provisions of this chapter shall be payable solely and only from and shall be secured by an irrevocable pledge of a sufficient portion of the student fees and charges and institutional income received by the particular institution. All bonds issued under the provisions of this chapter shall have all the qualities of a negotiable investment security under the laws of this state.

[C71, 73, 75, 77, 79, 81, §262A.5]

86 Acts, ch 1246, §128

262A.6 Form and condition of bonds.

Such bonds may bear such date or dates, may bear interest at such rate or rates, payable semiannually, may mature at such time or times, may be in such form and denominations, may carry such registration privileges, may be payable at such place or places, may be subject to such terms of redemption prior to maturity with or without premium, if so stated on the face thereof, and may contain such terms and covenants, including the establishment of reserves, all as may be provided by the resolution of the board authorizing the issuance of the bonds. In addition to the estimated cost of construction, including site costs, the cost of the project may include interest upon the bonds during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, engineering, architectural, administrative and legal expenses and provision for contingencies. Such bonds shall be executed by the president of the state board of regents and attested by the executive secretary, secretary or other official thereof performing the duties of secretary, and the coupons thereto attached shall be executed with the original or facsimile signatures of said president, executive secretary, secretary or other official; provided, however, that the facsimile signature of either of such officers executing such bonds may be imprinted on the face of the bonds in lieu of the manual signature of such officer, but at least one of the signatures appearing on the face of each bond shall be a manual signature. Any bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes, notwithstanding that before delivery thereof any or all such persons whose signatures appear thereon shall have ceased to be such officers. Each such bond shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from the student fees and charges and institutional income received by such institution as hereinbefore provided, and that it does not constitute a debt of or charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision. The issuance of such bonds shall be recorded in the office of the treasurer of the institution on behalf of which the same are issued, and a certificate by such treasurer to this effect shall be printed on the back of each such bond.

[C71, 73, 75, 77, 79, 81, §262A.6]

262A.6A Iowa college super savings plan.

1. The board shall issue bonds in an amount not exceeding fifty percent of the amount of bonds authorized pursuant to section 262A.4 by the Seventy-fifth General Assembly during the 1994 regular session* in the form of capital appreciation bonds as provided in this section rather than the form prescribed in sections 262A.5 and 262A.6. The capital appreciation bonds shall be designed to be marketed primarily to Iowans to facilitate savings for future higher education costs.

2. Bonds issued under this section shall be sold by the board at private sale without published notice of any kind or the taking of competitive bids in a manner and upon terms as may be provided in the resolution of the board authorizing the issuance of the bonds. Chapter 75 does not apply to bonds issued under this section, but the bonds shall be sold upon terms of not less than ninety-seven percent of par plus accrued interest. Bonds issued to refund other bonds issued under this sec-

tion may either be sold at public or private sale in the manner specified in this section and the proceeds applied to the payment of the obligations being refunded, or the refunding bonds may be exchanged for and in payment and discharge of the obligations being refunded. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. An issue or series of refunding bonds may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of the outstanding bonds or other obligations to be refinanced and may be issued for the purpose of refunding a like or greater principal amount of bonds, except that the principal amount of the refunding bonds may exceed the principal amount of the bonds to be refunded to the extent necessary to pay any premium due on the call of the bonds to be refunded or to fund interest in arrears or which is to become due.

Bonds issued under this section are payable solely and only from and shall be secured by an irrevocable pledge of a sufficient portion of the student fees and charges and institutional income received by the particular institution. Bonds issued under this section have all the qualities of a negotiable investment security under the laws of this state.

3. The bonds may bear a date or dates, may bear interest at a rate or rates, payable at a time or times, may mature at a time or times, may be in a form and denominations, may carry registration privileges, may be payable at a place or places, may be subject to terms of redemption prior to maturity with or without premium, if so stated on their face, and may contain terms and covenants, including the establishment of reserves, all as may be provided by the resolution of the board authorizing the issuance of the bonds. In addition to the estimated cost of construction, including site costs, the cost of the project may include interest upon the bonds during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, engineering, architectural, administrative and legal expenses and provision for contingencies. The bonds shall be executed by the president of the state board of regents and attested by the executive secretary, secretary or other official of the state board performing the duties of secretary, and the coupons attached to the bonds shall be executed with the original or facsimile signatures of the president, executive secretary, secretary or other official. The facsimile signatures of the officers executing the bonds may be imprinted on the face of the bonds in lieu of the manual signature of the officer, but at least one of the signatures appearing on the face of each bond shall be a manual signature. Bonds bearing the signatures of officers in office on the date of the signing are valid and binding for all purposes, notwithstanding that before delivery any or all of the persons whose signatures appear have ceased to be officers. Each bond shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from the student fees and charges and institutional income received by the institution, and that it does not constitute a debt of or charge against the state of Iowa within the meaning or application of a constitutional or statutory limitation or provision. The issuance of these bonds shall be recorded in the office of the treasurer of the institution on behalf of which the bonds are issued, and a certificate by the treasurer to this effect shall be printed on the back of each bond.

4. In negotiating a private sale of the bonds under this section the board shall assign preference to a syndicate of underwriters which is led by an Iowa domiciled underwriting firm to facilitate selling the marketing of the bonds to Iowans within the plan for the bonds. The plan shall include:

a. Provisions for advertisements in Iowa newspapers which precede, by at least two weeks, the date the bonds will go on sale to the public.

b. The advertisements shall include the date the bonds will go on sale and a list of offices where investors may purchase the bonds.

c. The bond issue shall be structured so that at least fifty percent of the bonds are sold at a price to the initial purchaser, not including an underwriter or bond house, of one thousand dollars or less. The board shall make a report of sale to the general assembly within ninety days of sale date. The report shall specify the terms and conditions of the sale as well as the placement of the bonds by denomination and by county.

88 Acts, ch 1261, §3; 90 Acts, ch 1271, §1001; 91 Acts, ch 97, §37; 94 Acts, ch 1084, §1

*See 94 Acts, ch 1195

Legislative intent; 88 Acts, ch 1261, §1

262A.7 Resolution of board and covenants undertaken.

Upon the determination by the state board of regents to undertake and carry out any project or to refund outstanding bonds, said board shall adopt a resolution describing generally the contemplated project and setting forth the estimated cost thereof, or describing the obligations to be refunded, fixing the amount of bonds to be issued, the maturity or maturities, the interest rate or rates and all details in respect thereof. Such resolution shall contain such covenants as may be determined by the board as to the issuance of additional bonds that may thereafter be issued payable from the student fees and charges and institutional income received by the particular institution, the amendment or modification of the resolution authorizing the issuance of any bonds, the manner, terms, and conditions and the amount or percentage of assenting bonds necessary to effectuate such amendment or modification, and such

other covenants as may be deemed necessary or desirable. In the discretion of the board any bonds issued under the terms of this chapter may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the boundaries of the state of Iowa, but no such trust indenture shall convey or mortgage the buildings and facilities or any part thereof. The provisions of this chapter and of any resolution or other proceedings authorizing the issuance of bonds and providing for the establishment and maintenance of adequate student fees and charges and the application of the proceeds thereof, together with institutional income, shall constitute a contract with the holders of such bonds.

[C71, 73, 75, 77, 79, 81, §262A.7]

262A.8 Student fees to pay bonds.

Whenever bonds are issued by the state board of regents, it shall be the duty of said board to establish, impose, and collect student fees and charges at the institution on behalf of which such bonds are issued, and to adjust such student fees and charges from time to time, in order always to provide amounts which, together with the institutional income, will be sufficient to pay the principal of and interest on such bonds as the same become due and to maintain a reserve therefor, and said board is authorized to pledge a sufficient amount of the student fees and charges and institutional income received by such institution for this purpose. Student fees and charges and institutional income received by one institution shall not be used to discharge bonds issued for or on account of another institution. All bonds issued under the terms of this chapter shall be exempt from taxation by the state of Iowa and the interest thereon shall be exempt from the state income tax.

[C71, 73, 75, 77, 79, 81, §262A.8]

262A.9 Bond fund account.

A certified copy of each resolution providing for the issuance of bonds under this chapter shall be filed with the treasurer of the institution on behalf of which the bonds are issued and it shall be the duty of said treasurer to keep and maintain separate accounts for each issue of bonds in accordance with the covenants and directions set out in the resolution providing for the issuance thereof. A sufficient portion of the student fees and charges and institutional income received by each institution shall be held in trust by the treasurer thereof, separate and apart from all other funds, to be used solely and only for the purposes specified in this chapter and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds. It shall be the duty of the treasurer of each institution to disburse funds from the proper account for the payment of the principal of and interest on the bonds in accordance with the directions and covenants of the resolution authorizing the issuance thereof.

If the amount of bonds issued under this chapter exceeds the actual costs of the projects for which bonds were issued, the amount of the difference shall be used to pay the principal and interest due on bonds issued under this chapter.

[C71, 73, 75, 77, 79, 81, §262A.9]

87 Acts, ch 233, §469

262A.10 Bonds not state obligation.

Under no circumstances shall any bonds issued under the terms of this chapter be or become or be construed to constitute a debt of or a charge against the state of Iowa within the purview of any constitutional or statutory limitation or provision. No taxes, appropriations, or other funds of the state of Iowa may be pledged for or used to pay such bonds or the interest thereon but any such bonds shall be payable solely and only as to both principal and interest from the student fees and charges and institutional income received by the institutions of higher learning under the control of the state board of regents as provided in this chapter, and the sole remedy for any breach or default of the terms of any such bonds or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action, or mandamus to enforce and compel performance of the duties required by this chapter and the terms of the resolution under which such bonds are issued.

[C71, 73, 75, 77, 79, 81, §262A.10]

262A.11 Bonds as security for investments.

All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued pursuant to this chapter; provided, however, that nothing contained in this section may be construed as relieving any persons from any duty of exercising reasonable care in selecting securities for purchase or investment.

[C71, 73, 75, 77, 79, 81, §262A.11]

262A.12 Application for gifts, loans or grants.

The state board of regents is authorized to apply for and accept federal or nonfederal gifts, loans, or grants of funds and to use the same to pay all or any part of the cost of carrying out any project at any institution under the terms of this chapter or to use the same, together with student fees and

charges and institutional income, for the payment of debt service on bonds issued and to be issued by the board pursuant to authority contained in this chapter, in such manner as may be provided in the resolution authorizing the issuance of the bonds, which grants of funds or other aid shall be considered to constitute and may be commingled with student fees and charges and institutional income and may, together with such student fees and charges and institutional income, be pledged by the board in accordance with the provisions of this chapter and the bond resolution to the payment of debt service on bonds issued by the board under the authority contained in this chapter.

[C71, 73, 75, 77, 79, 81, §262A.12]

262A.13 Reports to general assembly.

The state board of regents shall determine, in consultation with the legislative fiscal bureau, the financial information to be included in line item budget information for projects funded by the issuance of bonds or notes under this chapter and shall submit the line item budget information to the general assembly as requested. The state board of regents shall submit quarterly reports to the general assembly concerning the projects funded by the issuance of bonds or notes under this chapter as follows:

1. Identification of both undercharges and overcharges for line items of projects.

2. Identification of contracts in which any line item for a project exceeds the adopted budget for that line item by ten percent or more.

3. Identification of complaints received by an institution regarding the construction of a project.

If the state board of regents approves a change in the amount of the line item of a budget for a project, the change shall be transmitted to the appropriations committees of the house of representatives and senate, while the general assembly is in session, and to the legislative council, when the general assembly is not in session, for review.

86 Acts, ch 1246, §129

262A.14 Alternative and independent method.

This chapter shall be construed as providing an alternative and independent method for carrying out any project at any institution of higher learning under the control of the state board of regents, for the issuance and sale or exchange of bonds in connection therewith and for refunding bonds pertinent thereto, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, whether under section 73A.12 or otherwise, and no other or further proceedings in respect to the issuance or sale or exchange of bonds under this chapter shall be required except such as are prescribed by this chapter, any provisions of other statutes of the state to the contrary notwithstanding.

[C71, 73, 75, 77, 79, 81, §262A.13]

C87, §262A.14

CHAPTER 262B

UNIVERSITY-BASED RESEARCH AND ECONOMIC DEVELOPMENT

262B.1 Title.
262B.2 Legislative intent.
262B.3 Establishment of consortium.
262B.4 Duties of the consortium.
262B.5 Regents and department of economic development.

262B.1 Title.

This chapter shall be known and may be cited as the *"University-Based Research and Economic Development Act"*.

88 Acts, ch 1268, §9

262B.2 Legislative intent.

It is the intent of the general assembly to provide support for mechanisms for encouraging the coordination of pure and applied research at the state board of regents institutions. The purpose is to maximize and promote the economic benefit which may derive from research. This is to be done by increased coordination with the Iowa department of economic development and encouragement of the transfer of research results to the private sector.

88 Acts, ch 1268, §10

262B.3 Establishment of consortium.

The board of regents or the universities under its jurisdiction shall establish consortiums for the purpose of carrying out the intent of this chapter. The majority of consortium members shall be from the university community and the balance of members shall be from private industry. The

members of the consortium shall be appointed by the president of the convening university and will serve at the pleasure of the president.

88 Acts, ch 1268, §11

262B.4 Duties of the consortium.

1. Each consortium shall assist the university in efforts to maximize the economic benefits outlined in section 262B.2. More specifically, it shall assist the university by making recommendations for:

a. The development of strategies and materials useful in marketing university resources to out-of-state firms interested in an Iowa site.

b. Matching university resources with the needs of existing Iowa firms.

c. Evaluation of university research for commercial potential.

d. The development of a plan that will improve private sector access to the university and the transfer of technology from the university to the private sector.

2. In order to carry out its objectives the consortium shall perform, but is not limited to, the following tasks:

a. Receive and review selected research synopses.

b. Disseminate information on research activities of the university.

c. Identify research needs of existing Iowa businesses and recommend ways in which the university can meet these needs.

d. On a case-by-case basis, suggest business and financial tactics useful in realizing the commercial potential of university research projects.

e. Provide applied technical referral services, if appropriate, including but not limited to the following duties:

(1) To determine and evaluate the research or applied technology needs of businesses and farms requesting assistance.

(2) To recommend technology transfer strategies to farms for more efficient production of agricultural commodities, or to businesses for developing and testing new products, adapting new technologies to manufacturing processes or methods, conducting marketing analyses of new products or processes, and identifying potential financing on new technology-based products or manufacturing processes.

(3) To refer businesses and farmers to universities, community colleges, small business development centers, other private businesses, and other research and technology transfer activities and programs which are beneficial to the development of new products and the application of technology.

88 Acts, ch 1268, §12; 89 Acts, ch 258, §22

262B.5 Regents and department of economic development.

The state board of regents and the Iowa department of economic development shall enter into an agreement under chapter 28E to coordinate and facilitate the activities of the consortiums. The state board of regents and the Iowa department of economic development shall report annually to the governor and the general assembly concerning the activities of the consortiums.

88 Acts, ch 1268, §13

CHAPTER 263

UNIVERSITY OF IOWA

263.1 Objects — departments.
263.2 Degrees.
263.3 Cabinet of natural history.
263.4 Homeopathic materia medica and therapeutics.
263.5 Institute of child behavior and development.
263.6 Management.
263.7 State hygienic laboratory — investigations.
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CENTER FOR DISABILITIES AND DEVELOPMENT

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263.13 Gifts accepted.
263.14 through 263.16 Reserved.

CENTER FOR HEALTH EFFECTS OF ENVIRONMENTAL CONTAMINATION

263.17 Center for health effects of environmental contamination.

263.1 Objects — departments.

The university of Iowa shall never be under the control of any religious denomination. Its object shall be to provide the best and most efficient

means of imparting to men and women, upon equal terms, a liberal education and thorough knowledge of the different branches of literature and the arts and sciences, with their varied applications. It shall include colleges of liberal arts, law, medicine, and such other colleges and departments, with such courses of instruction and elective studies as the state board of regents may determine from time to time. If a teachers training course is established by the board it shall include the subject of physical education. Instruction in the liberal arts college shall begin, so far as practicable, at the points where the same is completed in high schools.

[C51, §1020; R60, §1927, 1930, 1933; C73, §1585, 1586, 1589; C97, §2640; C24, 27, 31, 35, 39, §**3946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.1]

263.2 Degrees.

No one shall be admitted to courses of instruction in the university who has not completed the elementary instruction in such branches as are taught in the common schools throughout the state. Graduates shall receive degrees or diplomas, or other evidences of distinction such as are usually conferred and granted by universities and are authorized by the state board of regents.

[R60, §1933; C73, §1585, 1589; C97, §2640; C24, 27, 31, 35, 39, §**3947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.2]

263.3 Cabinet of natural history.

For the purpose of supplying a cabinet of natural history, all geological and mineralogical specimens which are collected by the state geologists, or by others appointed by the state to investigate its natural history and physical resources, shall belong to and be the property of the university, under the charge of the professors of those departments.

[R60, §1931, 1935; C73, §1597, 1598; C97, §2639; C24, 27, 31, 35, 39, §**3948;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.3]

263.4 Homeopathic materia medica and therapeutics.

The state board of regents is hereby authorized and directed to establish and maintain a department of homeopathic materia medica and therapeutics in the college of medicine of the state university of Iowa, with suitable and sufficient hours and rooms for said department. The use of the university homeopathic hospital shall be left to the discretion of the board.

[S13, §2640-a; C24, 27, 31, 35, 39, §**3949;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.4]

263.5 Institute of child behavior and development.

The state board of regents is hereby authorized to establish and maintain at Iowa City as an integral part of the state University of Iowa the institute of child behavior and development, having as its objects the investigation of the best scientific methods of conserving and developing the normal child, the dissemination of the information acquired by such investigation, and the training of students for work in such fields.

[C24, 27, 31, 35, 39, §**3950;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.5]

263.6 Management.

The management and control of such institute shall be vested in a director appointed by the said board of regents and an advisory board of seven members to be appointed by the president of the university from the faculty of the graduate college of said university.

[C24, 27, 31, 35, 39, §**3951;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.6]

263.7 State hygienic laboratory — investigations.

The state hygienic laboratory shall be a permanent part of the state university of Iowa. It shall make or cause to be made microbiological and chemical examinations and other necessary investigations by both laboratory and field work in the determination of the causes of disease, shall suggest methods of overcoming and preventing the recurrence of the disease, and shall evaluate environmental effects and scientific needs, whenever requested to do so by any state agency, state institution, or local board of health when the investigation or evaluation is necessary in the interest of environmental quality and public health and for the purpose of preventing epidemics of disease.

[S13, §2575-a8; SS15, §2575-a7; C24, 27, 31, 35, 39, §**3953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.7]

263.8 Reports — tests.

Charges may be assessed for transportation of specimens and cost of examination. Reports of epidemiological examinations and investigations shall be sent to the responsible agency.

In addition to its regular work, the laboratory shall perform without charge all bacteriological, serological, and epidemiological examinations and investigations which may be required by the Iowa department of public health and said department shall establish rules therefor. The laboratory shall also provide, those laboratory, scientific field measurement, and environmental quality services which, by contract, are requested by the other agencies of government.

The laboratory is authorized to perform such other laboratory determinations as may be requested by any state institution, citizen, school, municipality or local board of health, and the laboratory is authorized to charge fees covering transportation of samples and the costs of examinations

performed upon their request.

[S13, §2575-e8; SS15, §2575-a7,-a9; C24, 27, 31, 35, 39, §**3953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.8]

Duties of department of public health, §135.11

263.8A International center for talented and gifted education.

The state board of regents shall establish and maintain at Iowa City as an integral part of the state university of Iowa the international center for talented and gifted education. The international center shall provide programs to assist classroom teachers to teach gifted and talented students in regular classrooms, provide programs to enhance the learning experiences of gifted and talented students, serve as a center for national and international symposiums and policy forums for enhancing the teaching of gifted and talented students, and undertake other appropriate activities to enhance the programs of the center, including, but not limited to, coordinating and working with the world council for gifted and talented children, incorporated.

An international center endowment fund is established at the state university of Iowa and gifts and grants to the international center and investment earnings and returns on the endowment fund shall be deposited in the fund and may be expended by the state university of Iowa for the purposes for which the international center was established.

88 Acts, ch 1284, §44; 96 Acts, ch 1184, §3

263.8B Interest earnings.

If the interest earned on moneys accumulated by campus organizations at the university of Iowa is not available for expenditure by those respective campus organizations, the university of Iowa shall allocate that interest to campus improvements that are of benefit to students and have been accepted by the student government or to the student financial aid office to be used for the work-study program.

89 Acts, ch 319, §67

263.8C Advanced placement summer program.

An advanced placement summer program is established at the state university of Iowa for purposes of training advanced placement instructors at the secondary level and of providing intensive course work for secondary students. The state university of Iowa shall be responsible for the development of appropriate curricula, course offerings, provision of qualified instructors, and the selection of participants for the program. If funds are appropriated for the program, those funds shall be used to pay for the cost of providing instructors, counselors, room and board for students and teachers attending the program, materials, and for the cost of the development of a summer advanced placement exam. If funds are appropriated and those funds are not sufficient to meet program participation demands, the university shall give priority to the needs of students or teachers from schools which do not have advanced placement programs.

91 Acts, ch 115, §1

CENTER FOR
DISABILITIES AND DEVELOPMENT

263.9 Establishment and objectives.

The state board of regents is hereby authorized to establish and maintain in reasonable proximity to Iowa City and in conjunction with the state university of Iowa and the university hospitals and clinics, a center for disabilities and development having as its objects the education and treatment of children with severe disabilities. The center shall be conducted in conjunction with the activities of the university of Iowa children's hospital. Insofar as is practicable, the facilities of the university children's hospital shall be utilized.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.9]

96 Acts, ch 1129, §72; 2001 Acts, ch 181, §17; 2002 Acts, ch 1050, §28

Section amended

263.10 Persons admitted.

Every resident of the state who is not more than twenty-one years of age, who has such severe disabilities as to be unable to acquire an education in the common schools, and every such person who is twenty-one and under thirty-five years of age who has the consent of the state board of regents, shall be entitled to receive an education, care, and training in the university of Iowa hospitals and clinics center for disabilities and development, and nonresidents similarly situated may be entitled to an education and care at the center upon such terms as may be fixed by the state board of regents. The fee for nonresidents shall be not less than the average expense of resident pupils and shall be paid in advance. Residents and persons under the care and control of a director of a division of the department of human services who have severe disabilities may be transferred to the center upon such terms as may be agreed upon by the state board of regents and the director.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.10]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §73; 2001 Acts, ch 181, §18; 2002 Acts, ch 1050, §29

Section amended

263.11 Definition.

The term *"severe disabilities"* shall be interpreted for the purpose of this division as referring to persons who meet both of the following requirements:

1. Persons who are educable but have severe physical and educational disabilities as a result of cerebral palsy, muscular dystrophy, spina bifida, arthritis, poliomyelitis, or other severe physically disabling conditions.

2. Persons who are not eligible for admission to the schools already established for persons with mental retardation or epilepsy or persons who are deaf or blind.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.11]

84 Acts, ch 1219, §12; 96 Acts, ch 1129, §74

263.12 Payment by counties.

The provisions of sections 270.4 to 270.8, inclusive, are hereby made applicable to the university of Iowa hospitals and clinics' center for disabilities and development.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.12]

2001 Acts, ch 181, §19

263.13 Gifts accepted.

The state board of regents is authorized to accept, for the benefit of the university of Iowa hospitals and clinics center for disabilities and development, gifts, devises, or bequests of property, real or personal, including grants from the federal government. The state board of regents may exercise such powers with reference to the management, sale, disposition, investment, or control of property so given, devised, or bequeathed as may be deemed essential to its preservation and the purposes for which made. No contribution or grant shall be received or accepted if any condition is attached as to its use or administration other than it be used for aid to the center as provided in this division.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §263.13]

2001 Acts, ch 181, §20; 2002 Acts, ch 1050, §30

Section amended

263.14 through 263.16 Reserved.

CENTER FOR HEALTH EFFECTS OF ENVIRONMENTAL CONTAMINATION

263.17 Center for health effects of environmental contamination.

1. The state board of regents shall establish and maintain at Iowa City as an integral part of the state university of Iowa the center for health effects of environmental contamination, having as its object the determination of the levels of environmental contamination which can be specifically associated with human health effects.

2. *a.* The center shall be a cooperative effort of representatives of the following organizations:

(1) The state university of Iowa department of preventive medicine and environmental health.

(2) The department of pediatrics of the university of Iowa college of medicine.

(3) The state hygienic laboratory.

(4) The institute of agricultural medicine.

(5) The Iowa cancer center.

(6) The department of civil and environmental engineering.

(7) Appropriate clinical and basic science departments.

(8) The college of law.

(9) The college of liberal arts and sciences.

(10) The Iowa department of public health.

(11) The department of natural resources.

(12) The department of agriculture and land stewardship.

b. The active participation of the national cancer institute, the agency for toxic substances and disease registries, the national center for disease control, the United States environmental protection agency, and the United States geological survey, shall also be sought and encouraged.

3. The center may:

a. Assemble all pertinent laboratory data on the presence and concentration of contaminants in soil, air, water, and food, and develop a data retrieval system to allow the findings to be easily accessed by exposed populations.

b. Make use of data from the existing cancer and birth defect statewide recording systems and develop similar recording systems for specific organ diseases which are suspected to be caused by exposure to environmental toxins.

c. Develop registries of persons known to be exposed to environmental hazards so that the health status of these persons may be examined over time.

d. Develop highly sensitive biomedical assays which may be used in exposed persons to determine early evidence of adverse health effects.

e. Perform epidemiologic studies to relate occurrence of a disease to contaminant exposure and to ensure that other factors known to cause the disease in question can be ruled out.

f. Foster relationships and ensure the exchange of information with other teaching institutions or laboratories in the state which are concerned with the many forms of environmental contamination.

g. Implement programs of professional education and training of medical students, physicians, nurses, scientists, and technicians in the causes and prevention of environmentally induced disease.

h. Implement public education programs to inform persons of research results and the significance of the studies.

i. Respond as requested to any branch of government for consultation in the drafting of laws and regulations to reduce contamination of the environment.

4. An advisory committee consisting of one

representative of each of the organizations enumerated in subsection 2, paragraph *"a"*, is established. The advisory committee shall:

a. Employ, as a state employee, a full-time director to operate the center. The director shall coordinate the efforts of the heads of each of the major divisions of laboratory analysis, epidemiology and biostatistics, biomedical assays, and exposure modeling and shall also coordinate the efforts of professional and support staff in the operation of the center.

b. Submit an annual report of the activities of the center to the legislative council of the general assembly by January 15 of each year.

5. The center shall maintain the confidentiality of any information obtained from existing registries and from participants in research programs. Specific research projects involving human subjects shall be approved by the state university of Iowa institutional review board.

6. The center may solicit, accept, and administer moneys appropriated to the center by a public or private agency.

7. The center shall cooperate with the center for rural health and primary care, established under section 135.107, the center for agricultural health and safety established under section 262.78, and the department of agriculture and land stewardship. The agencies shall coordinate programs to the extent practicable.

87 Acts, ch 225, §228; 88 Acts, ch 1169, §3; 90 Acts, ch 1207, §4; 2000 Acts, ch 1058, §31; 2001 Acts, ch 74, §19

CHAPTER 263A

MEDICAL AND HOSPITAL BUILDINGS AT UNIVERSITY OF IOWA

Authorization for issuance of bonds by state board of regents in an amount not exceeding one hundred million dollars; use of bond proceeds; exception to limitation on amount of bonds; 2002 Acts, ch 1155

263A.1 Definitions.
263A.2 Authorization of general assembly and governor.
263A.3 Bonds or notes issued.
263A.4 Bonds or notes provisions.
263A.5 Resolution adopted — terms and conditions of bonds or notes.
263A.6 Rates, fees and charges for services.
263A.7 Accounts of all funds separate.
263A.8 No obligation of the state on bonds or notes.
263A.9 Investment in bonds or notes by financial institutions.
263A.10 Gifts, loans or grants accepted.
263A.11 Reports to general assembly.
263A.12 Provisions independent of any other statute.
263A.13 Hospital reports to general assembly.

263A.1 Definitions.

The following words or terms, as used in this chapter, shall have the respective meanings as stated:

1. *"Board"* shall mean the state board of regents.

2. *"Bonds or notes"* shall mean revenue bonds or revenue notes which are payable solely and only from hospital income.

3. *"Buildings and facilities"* shall mean buildings to be used primarily for service, clinical instructional and clinical research purposes in the field of medicine with particular emphasis on the family practice of medicine and such other facilities as are deemed necessary by the board to support and carry out the service, instructional, and research objectives of the hospitals, medical clinics, and medical service laboratories of the institution, including, without limiting the generality of the foregoing, hospital buildings, clinic buildings, laboratory buildings, clinical staff facilities, building for housing interns, resident physicians and nurses, and medical record and film storage buildings, or any combination thereof.

4. *"Hospital income"* shall mean the income and funds received by the hospitals, medical service clinics, and medical service laboratories of the state University of Iowa, including the proceeds of rates, fees, and charges for services rendered by said hospitals, clinics, and laboratories, but excluding state appropriations to the institution.

5. *"Institution"* shall mean the state university of Iowa.

6. *"Project"* shall mean the acquisition by gift, purchase, lease, or construction of buildings and facilities and additions to such buildings and facilities, the reconstruction, completion, equipment, improvement, repair, or remodeling of buildings and facilities, including the demolition of existing buildings and facilities which are to be replaced,

and the acquisition of property of every kind and description, whether real, personal or mixed, for buildings and facilities by gift, purchase, lease, condemnation, or otherwise and the improvement of the same or any combination of the foregoing.

[C71, 73, 75, 77, 79, 81, §263A.1]

263A.2 Authorization of general assembly and governor.

Subject to and in accordance with the provisions of this chapter, the state board of regents after authorization by a constitutional majority of the general assembly and approval by the governor may undertake and carry out any project as defined in this chapter at the state university of Iowa. The state board of regents is authorized to operate, control, maintain, and manage buildings and facilities and additions to such buildings and facilities at said institution. All contracts for the construction, reconstruction, completion, equipment, improvement, repair, or remodeling of any buildings, additions, or facilities shall be let in accordance with the provisions of section 262.34. The title to all real estate acquired under the provisions of this chapter and the improvements erected thereon shall be taken and held in the name of the state of Iowa.

[C71, 73, 75, 77, 79, 81, §263A.2]

2002 Acts, ch 1119, §37

Section amended

263A.3 Bonds or notes issued.

The board is authorized to borrow money and to issue and sell negotiable bonds or notes to pay all or any part of the cost of carrying out any project at the institution and to refund and refinance bonds or notes issued for any project or for refunding purposes at the same rate or at a lower rate. Such bonds or notes shall be sold by the board at public sale on the basis of sealed proposals received pursuant to a notice specifying the time and place of sale and the amount of bonds to be sold which shall be published at least once not less than seven days prior to the date of sale in a newspaper published in the state of Iowa and having a general circulation in the state. The provisions of chapter 75 shall not apply to bonds or notes issued under authority contained in this chapter, but such bonds or notes shall be sold upon terms of not less than par plus accrued interest. Bonds or notes issued to refund other bonds or notes issued under the provisions of this chapter may either be sold in the manner specified in this chapter and the proceeds thereof applied to the payment of the obligations being refunded, or the refunding bonds or notes may be exchanged for and in payment and discharge of the obligations being refunded. The refunding bonds or notes may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds or notes may be exchanged in part or sold in parts in installments at different times or at one time. The refunding bonds or notes may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, or other obligations to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds or notes, except that the principal amount of the refunding bonds or notes may exceed the principal amount of the bonds or notes to be refunded to the extent necessary to pay any premium due on the call of the bonds or notes to be refunded or to fund interest in arrears or about to become due.

All bonds or notes issued under the provisions of this chapter shall be payable solely and only from and shall be secured by an irrevocable pledge of a sufficient portion of the hospital income of the institution. All bonds or notes issued under the provisions of this chapter shall have all the qualities of negotiable instruments under the laws of this state.

[C71, 73, 75, 77, 79, 81, §263A.3]

263A.4 Bonds or notes provisions.

Such bonds or notes may bear such date or dates, may bear interest at such rate or rates, payable semiannually, may mature at such time or times, may be in such form and denominations, carry such registration privileges, may be payable at such place or places, may be subject to such terms of redemption prior to maturity with or without premium, if so stated on the face thereof, and may contain such terms and covenants, including the establishment of reserves, all as may be provided by the resolution of the board authorizing the issuance of the bonds or notes. In addition to the estimated cost of construction, including site costs, the cost of the project may include interest upon the bonds or notes during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, engineering, architectural, administrative, and legal expenses and provision for contingencies. Such bonds or notes shall be executed by the president of the state board of regents and attested by the executive secretary, secretary, or other official thereof performing the duties of secretary, and the coupons thereto attached shall be executed with the original or facsimile signatures of said president, executive secretary, secretary, or other official; provided, however, that the facsimile signature of either of such officers executing such bonds may be imprinted on the face of the bonds in lieu of the manual signature of such officer, but at least one of the signatures appearing on the face of each bond shall be a manual signature. Any bonds or notes bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes, notwithstanding that before delivery thereof any or all such persons whose signatures appear thereon

shall have ceased to be such officers. Each such bond or note shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from hospital income received by such institution as provided in this chapter, and that it does not constitute a debt of or charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision. The issuance of such bonds or notes shall be recorded in the office of the treasurer of the institution, and a certificate by such treasurer to this effect shall be printed on the back of each such bond or note.

[C71, 73, 75, 77, 79, 81, §263A.4]

263A.5 Resolution adopted — terms and conditions of bonds or notes.

Upon the determination by the state board of regents to undertake and carry out any project or to refund outstanding bonds or notes, said board shall adopt a resolution describing generally the contemplated project and setting forth the estimated cost thereof, or describing the obligations to be refunded, fixing the amount of bonds or notes to be issued, the maturity or maturities, the interest rate or rates, and all details in respect thereof. Such resolution shall contain such covenants as may be determined by the board as to the issuance of additional bonds or notes that may thereafter be issued payable from the hospital income received by the institution, the amendment or modification of the resolution authorizing the issuance of any bonds or notes, the manner, terms, and conditions and the amount or percentage of assenting bonds or notes necessary to effectuate such amendment or modification, and such other covenants as may be deemed necessary or desirable. In the discretion of the board, any bonds or notes issued under the terms of this chapter may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the boundaries of the state of Iowa, but no such trust indenture shall convey or mortgage the buildings and facilities or any part thereof. The provisions of this chapter and of any resolution or other proceedings authorizing the issuance of bonds or notes and providing for the establishment and maintenance of adequate rates, fees, and charges for services rendered by the hospitals, medical clinics, and medical laboratories of the institution and the application of the proceeds thereof, together with other hospital income, shall constitute a contract with the holders of such bonds or notes.

[C71, 73, 75, 77, 79, 81, §263A.5]

263A.6 Rates, fees and charges for services.

Whenever bonds or notes are issued by the state board of regents, it shall be the duty of said board to establish, impose, and collect rates, fees, and charges for services rendered by the hospitals, medical clinics, and medical laboratories of the institution and to adjust such rates, fees, and charges from time to time, in order to always provide amounts which, together with other hospital income, will be sufficient to pay the principal of and interest on such bonds or notes as the same become due and to maintain a reserve therefor, and said board is authorized to pledge a sufficient amount of the hospital income received by such institution for this purpose. All bonds or notes issued under the terms of this chapter shall be exempt from taxation by the state of Iowa and the interest thereon shall be exempt from the state income tax.

[C71, 73, 75, 77, 79, 81, §263A.6]

263A.7 Accounts of all funds separate.

A certified copy of each resolution providing for the issuance of bonds or notes under this chapter shall be filed with the treasurer of the institution and it shall be the duty of said treasurer to keep and maintain separate accounts for each issue of bonds or notes in accordance with the covenants and directions set out in the resolution providing for the issuance thereof. A sufficient portion of the hospital income received by the institution shall be held in trust by the treasurer thereof, separate and apart from all other funds, to be used solely and only for the purposes specified in this chapter and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds or notes. It shall be the duty of the treasurer of the institution to disburse funds from the proper account for the payment of the principal of and interest on the bonds or notes in accordance with the directions and covenants of the resolution authorizing the issuance thereof.

If the amount of bonds or notes issued under this chapter exceeds the actual costs of the projects for which the bonds or notes were issued, the amount of the difference shall be used to pay the principal and interest due on bonds or notes issued under this chapter.

[C71, 73, 75, 77, 79, 81, §263A.7]
87 Acts, ch 233, §470

263A.8 No obligation of the state on bonds or notes.

Under no circumstances shall any bonds or notes issued under the terms of this chapter be or become or be construed to constitute a debt of or a charge against the state of Iowa within the purview of any constitutional or statutory limitation or provision. No taxes, or other funds of the state of Iowa appropriated to the institution may be pledged for or used to pay such bonds or notes or the interest thereon but any such bonds or notes shall be payable solely and only as to both principal and interest from the hospital income received by the institution as hereinbefore provided, and

the sole remedy for any breach or default of the terms of any such bonds or notes or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action, or mandamus to enforce and compel performance of the duties required by this chapter and the terms of the resolution under which such bonds or notes are issued.

[C71, 73, 75, 77, 79, 81, §263A.8]

263A.9 Investment in bonds or notes by financial institutions.

All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or notes issued pursuant to this chapter; provided, however, that nothing contained in this section may be construed as relieving any persons from any duty of exercising reasonable care in selecting securities for purchase or investment.

[C71, 73, 75, 77, 79, 81, §263A.9]

263A.10 Gifts, loans or grants accepted.

The state board of regents is authorized to apply for and accept federal or nonfederal gifts, loans, or grants of funds and to use the same to pay all or any part of the cost of carrying out any project at the institution under the terms of this chapter or to pay any bonds or notes and interest thereon issued for any of the purposes specified in this chapter.

[C71, 73, 75, 77, 79, 81, §263A.10]

263A.11 Reports to general assembly.

The state board of regents shall determine, in consultation with the legislative fiscal bureau, the financial information to be included in line item budget information for projects funded by the issuance of bonds or notes under this chapter and shall submit the line item budget information to the general assembly as requested. The state board of regents shall submit quarterly reports to the general assembly concerning the projects funded by the issuance of bonds or notes under this chapter as follows:

1. Identification of both undercharges and overcharges for line items of projects.

2. Identification of contracts in which any line item for a project exceeds the adopted budget for that line item by ten percent or more.

3. Identification of complaints received by an institution regarding the construction of a project.

If the state board of regents approves a change in the amount of the line item of a budget for a project, the change shall be transmitted to the appropriations committees of the house of representatives and senate, while the general assembly is in session, and to the legislative council, when the general assembly is not in session, for review.

86 Acts, ch 1246, §130

263A.12 Provisions independent of any other statute.

This chapter shall be construed as providing an alternative and independent method for carrying out any project related to the medical school and any project related to the hospital at the institution, for the issuance and sale or exchange of bonds or notes in connection therewith, and for refunding bonds or notes pertinent thereto, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, whether under section 73A.12 or otherwise, and no other or further proceedings in respect to the issuance or sale or exchange of bonds or notes under this chapter shall be required except such as are prescribed by this chapter, any provisions of other statutes of the state to the contrary notwithstanding.

[C71, 73, 75, 77, 79, 81, §263A.11]

C87, §263A.12

263A.13 Hospital reports to general assembly.

The university of Iowa hospitals and clinics shall compile and transmit to the general assembly the following information by December 15 of each fiscal year:

1. Revenue from all income sources, by source, including but not limited to state appropriations, other state funds, tuition income, patient charges, payments from political subdivisions, interest income, and gifts, and grants from public and private sources.

2. Expenditures by program and revenue source.

3. Net revenue over spending from hospital operations, including the method used to calculate the results.

The legislative fiscal bureau shall develop forms for collecting the information required in this subparagraph.

89 Acts, ch 319, §68

See also §255.24 and 255.24A

CHAPTER 263B

STATE ARCHAEOLOGIST

263B.1 Appointment.
263B.2 Duties.
263B.3 Agreements with federal departments.
263B.4 Definitions.
263B.5 State department of transportation contracts.
263B.6 Federal funds.
263B.7 Ancient remains.
263B.8 Cemetery for ancient remains.
263B.9 Authority to deny permission to disinter human remains.
263B.10 Confidentiality of archaeological locations and information.

263B.1 Appointment.

The state board of regents shall appoint a state archaeologist, who shall be a member of the faculty of the department of anthropology of the state university of Iowa.

[C62, 66, 71, 73, 75, 77, 79, 81, §305A.1]
C93, §263B.1

263B.2 Duties.

The state archaeologist shall have the primary responsibility for the discovery, location and excavation of archaeological sites and for the recovery, restoration and preservation of archaeological remains in and for the state of Iowa, and shall coordinate all such activities through co-operation with the state department of transportation, the department of natural resources, and other state agencies concerned with archaeological salvage or the products thereof. The state archaeologist may publish educational and scientific reports relating to the responsibilities and duties of the office.

[C62, 66, 71, 73, 75, 77, 79, 81, §305A.2]
C93, §263B.2

263B.3 Agreements with federal departments.

The state archaeologist is authorized to enter agreements and co-operative efforts with the United States commissioner of public roads, the United States departments of commerce, interior, agriculture and defense, and any other federal or state agencies concerned with archaeological salvage or the preservation of antiquities.

[C62, 66, 71, 73, 75, 77, 79, 81, §305A.3]
C93, §263B.3

263B.4 Definitions.

As used in sections 263B.5 and 263B.6:

1. *"Historical objects"* means archaeological and paleontological objects, including all ruins, sites, buildings, artifacts, fossils, or other objects of antiquity that have state and national significance from an historical or scientific standpoint for the inspiration and benefit of the people of the United States.

2. *"Salvage"* means the salvage of historical objects.

3. *"Appropriate authority"* means the federal or state authorities concerned with the preservation and study of historical objects.

[C66, 71, 73, 75, 77, 79, 81, §305A.4]
C93, §263B.4

263B.5 State department of transportation contracts.

1. The state department of transportation in letting contracts for road construction shall take action to see that historical objects will not be needlessly destroyed or if such destruction cannot be avoided reasonable action shall be taken to obtain all information concerning such objects prior to destruction. If it should appear that the proposed construction will result in the destruction of historical objects and it is determined by the appropriate authority that such objects cannot be reasonably removed or otherwise preserved, consideration shall be given to possible alternate locations of the highway.

2. If during the course of construction, historical objects are encountered, the appropriate authority shall be notified immediately and steps taken to excavate and preserve the objects if practicable or if preservation is impracticable, to permit the appropriate authority to obtain and record data relative thereto.

3. Agreements may be entered into with the appropriate authority to pay from federal highway funds the reasonable cost of salvage work. Extra work orders may be issued to the contractor where necessary and extra work orders may be issued in cases within the meaning of *"subsurface or lateral conditions"* or *"unknown physical conditions"* where such terms are used in the standard contract forms. Payment for salvage work shall be limited to that performed within the roadway prism and any location designated as a source of material. If the contractor's operations are delayed because of salvage work such contractor shall be entitled to an appropriate extension of the contract time. If practicable, the operations shall be rescheduled to avoid the section where the his-

torical material is, until the removal of it.

4. The cost of exploratory work prior to construction shall be borne by the appropriate authority. Costs of excavation of historical objects or recordation of data may be paid by the federal highway funds. Excavation costs may include costs of protecting and preservation during removal from the site but shall not include the expense of shipping historical objects from the site.

[C66, 71, 73, 75, 77, 79, 81, §305A.5]
C93, §263B.5

263B.6 Federal funds.

Where federal funds are available to the state under federal statutes providing for archaeological and paleontological salvage, they shall be collected and credited as provided in section 307.44.

[C66, 71, 73, 75, 77, 79, 81, §305A.6]
C93, §263B.6

263B.7 Ancient remains.

The state archaeologist has the primary responsibility for investigating, preserving, and reinterring discoveries of ancient human remains. For the purposes of this section, ancient human remains are those remains found within the state which are more than one hundred fifty years old. The state archaeologist shall make arrangements for the services of a forensic osteologist in studying and interpreting ancient burials and may designate other qualified archaeologists to assist the state archaeologist in recovering physical and cultural information about the ancient burials. The state archaeologist shall file with the Iowa department of public health a written report containing both physical and cultural information regarding the remains at the conclusion of each investigation.

[C77, 79, 81, §305A.7]
91 Acts, ch 97, §41
C93, §263B.7

263B.8 Cemetery for ancient remains.

The state archaeologist shall establish, with the approval of the executive council, a cemetery on existing state lands for the reburial of ancient human remains found in the state. The cemetery shall not be open to the public. The state archaeologist in co-operation with the department of natural resources shall be responsible for co-ordinating interment in the cemetery.

[C77, 79, 81, §305A.8]
C93, §263B.8

263B.9 Authority to deny permission to disinter human remains.

The state archaeologist shall have the authority to deny permission to disinter human remains that the state archaeologist determines have state and national significance from an historical or scientific standpoint for the inspiration and benefit of the people of the United States.

[C79, 81, §305A.9]
C93, §263B.9

263B.10 Confidentiality of archaeological locations and information.

The state archaeologist shall comply with the requirements of section 22.7, subsection 20, regarding information pertaining to the nature and location of archaeological resources or sites. The state archaeologist shall consult with other public officers serving as lawful custodians of archaeological information to determine whether the information should be confidential or be released.

86 Acts, ch 1228, §2
C87, §305A.10
C93, §263B.10

CHAPTER 264

PERPETUATION OF COLLEGE CREDITS

264.1 Mandatory transfer of record of credits.
264.2 Central depository.
264.3 Duty of depository.
264.4 Transcripts.
264.5 Fees.
264.6 Penalty.
264.7 Records of prior defunct institutions.

264.1 Mandatory transfer of record of credits.

The trustees or officers of any institution of higher learning, whether incorporated or not, upon going out of existence or ceasing to function as an educational institution must transfer to the office of the registrar of the state university of Iowa complete records of all grades attained by its students.

[C35, §3953-e1; C39, §**3953.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §264.1]

264.2 Central depository.

The office of the registrar of the state university

is hereby designated the central depository for the scholastic records of those educational institutions in this state which may hereafter cease to exist.

[C35, §3953-e2; C39, §**3953.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §264.2]

264.3 Duty of depository.

The office of the registrar of the state university shall proceed to collect the scholastic records of those educational institutions which may become extinct, and the registrar shall have the supervision, care, custody, and control of said records.

[C35, §3953-e3; C39, §**3953.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §264.3]

264.4 Transcripts.

The registrar of the state university shall prepare transcripts of such scholastic records and when requested to do so the registrar must furnish a copy of the said transcript to a former student. Whenever such transcript is made and after it has been compared with the original it shall be certified by the registrar of the state university, and thereafter it shall be considered and accepted as evidence for all purposes the same as the original would be.

[C35, §3953-e4; C39, §**3953.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §264.4]

264.5 Fees.

For the preparation of each of such transcripts the state university may charge a nominal fee, not to exceed five dollars, to compensate the institution for the actual labor of recording the credits, preparing a transcript, postage, etc.

[C35, §3953-e5; C39, §**3953.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §264.5]

264.6 Penalty.

The members of the board of trustees and the officers of an institution of higher learning who do not file, in accordance with the provisions of this chapter, the record of grades in the office of the registrar of the state university within twelve months after the said institution has been closed or has ceased to function as an educational institution, shall be guilty of a simple misdemeanor.

[C35, §3953-e6; C39, §**3953.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §264.6]

264.7 Records of prior defunct institutions.

The office of the registrar of the state university is hereby designated the central depository for the records of any institution of higher learning which prior to the passage of this chapter may have ceased to exist, provided the custodian of the said records or former officials of the institution may wish to take advantage of the provisions of this chapter.

[C35, §3953-e7; C39, §**3953.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §264.7]

CHAPTER 265

LABORATORY SCHOOLS

265.1 Authority.
265.2 Buildings and facilities.
265.3 Financing.
265.4 Purposes.
265.5 Allocations to debt retirement fund.
265.6 State aid applicable.
265.7 Debt limit provisions not applicable.

265.1 Authority.

The state board of regents is authorized to establish and operate elementary and secondary laboratory schools at the institutions of higher education under its control. For the purpose of this chapter, laboratory school shall mean a school operated by an educational institution for the purpose of instructing students, training teachers, and advancing teaching methods.

[C66, 71, 73, 75, 77, 79, 81, §265.1]

265.2 Buildings and facilities.

Existing buildings and facilities now used for said purposes together with any additions to or alterations thereof and any new structures and facilities therefor, as the board shall determine to be suitable and authorize for said purposes, shall be set aside as the area on the respective campuses constituting the laboratory school for all purposes of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §265.2]

265.3 Financing.

A laboratory school at each institution where so established shall constitute a self-liquidating improvement unit to the extent funds are not appropriated by the general assembly and shall qualify for and may be financed as such under the provisions of sections 262.44 through 262.53.

[C66, 71, 73, 75, 77, 79, 81, §265.3]

265.4 Purposes.

For the purposes of this chapter, the state board of regents and the board of directors of any school district in the state of Iowa may enter into contracts for the laboratory schools to furnish instruction to the pupils of such school district and to train teachers on an agreed basis for tuition and other compensation to be paid by the school district. Such contracts shall be in writing and may extend for any stipulated period not to exceed fifteen years. During the agreed period, such contracts shall be obligatory on both the school district and the state board of regents.

[C66, 71, 73, 75, 77, 79, 81, §265.4]

265.5 Allocations to debt retirement fund.

The state board of regents may out of funds appropriated or otherwise available for the operation of the institution at which the laboratory school is located allocate an annual payment to the debt retirement fund for the buildings, areas, and facilities used by the institution for the laboratory school until such time as said improvement is fully paid. The board of regents may pledge said annual allotment together with the tuition received from school districts and all other income received from the operation of said laboratory school as security for the mortgage, bonds, or other debt by which said laboratory school is financed as authorized herein.

[C66, 71, 73, 75, 77, 79, 81, §265.5]

265.6 State aid applicable.

If the state board of regents has established a laboratory school, it shall receive state aid pursuant to chapters 256B and 257 for each pupil enrolled in the laboratory school in the same amount as the public school district in which the pupil resides would receive aid for that pupil and shall transmit the amount received to the institution of higher education at which the laboratory school has been established. If the board of a school district terminates a contract with the state board of regents for attendance of pupils in a laboratory school, the school district shall inform the department of management of the number of these pupils who are enrolled in the district on the third Friday of the following September. The department of management shall pay to the school district, from funds appropriated in section 257.16, an amount equal to the amount of state aid paid for each pupil in that school district for that school year in payments made as provided in section 257.16.

[C66, 71, 73, 75, 77, 79, 81, §265.6; 82 Acts, ch 1011, §1]

89 Acts, ch 135, §56; 92 Acts, ch 1230, §9

265.7 Debt limit provisions not applicable.

The obligations of any school district on any contract between it and the state board of regents entered into pursuant to this chapter shall be payable only out of current receipts from taxes, tuition or other income available therefor each year, and shall not constitute a debt for the purposes of any statutory or constitutional provision limiting the obligations said school district may incur.

[C71, 73, 75, 77, 79, 81, §265.7]

CHAPTER 266

IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

DIVISION I

GENERAL PROVISIONS

266.1 Grants accepted.
266.2 Courses of study.
266.3 Investigation of mineral resources.
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266.31 Meat export research center established — director — assistants — salaries.
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DIVISION V

IOWA FIRE SERVICE INSTITUTE

266.40 through 266.46 Repealed by 2000 Acts, ch 1117, §30.

DIVISION I

GENERAL PROVISIONS

266.1 Grants accepted.

Legislative assent is given to the purposes of the various congressional grants to the state for the endowment and support of an Iowa state university of science and technology, and an agricultural experiment station as a department thereof, upon the terms, conditions, and restrictions contained in all Acts of Congress relating thereto, and the state assumes the duties, obligations, and responsibilities thereby imposed. All moneys appropriated by the state because of the obligations thus assumed, and all funds arising from said congressional grants, shall be invested or expended in accordance with the provision of such grant, for the use and support of said university of science and technology located at Ames.

[R60, §1714; C73, §1604; C97, §2645; C24, 27, 31, 35, 39, §**4031;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.1]

266.2 Courses of study.

There shall be adopted and taught at said university of science and technology practical courses of study, embracing in their leading branches such as relate to agriculture and mechanic arts, mines and mining, and ceramics, and such other branches as are best calculated to educate thoroughly the agricultural and industrial classes in the several pursuits and professions of life, including military tactics. If a teachers training course is established it shall include the subject of physical education.

[R60, §1728; C73, §1621; C97, §2648; S13, §2674-d; C24, 27, 31, 35, 39, §**4032;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.2]

266.3 Investigation of mineral resources.

The said university of science and technology shall provide, as a part of its engineering experiment station work, for the investigation of clays, cement materials, fuels, and other mineral resources of the state with especial reference to their economic uses, and for the publication and dissemination of information useful to such industries, and for the testing of the products thereof.

[S13, §2674-e; C24, 27, 31, 35, 39, §**4033;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.3]

266.4 Co-operative agricultural extension work.

The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of an Act of Congress approved May 8, 1914, providing for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the Act of Congress approved July 2, 1862, and amendments thereto.

[SS15, §2682-y1; C24, 27, 31, 35, 39, §**4034;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.4]

266.5 State agency.

The state board of regents is hereby authorized and empowered to receive the grants of money appropriated under said Act and to organize and conduct agricultural and home economics extension work, which shall be carried on in connection with the Iowa state university of science and technology in accordance with the terms and conditions expressed in the Act of Congress aforesaid.

[SS15, §2682-y1; C24, 27, 31, 35, 39, §**4035;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.5]

266.6 Purnell Act.

The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of the congressional Act approved February 24, 1925, commonly known as the Purnell Act; and that, in accordance with the requirements thereof, the state agrees to devote the moneys thus received to the more complete endowment and maintenance of the agricultural experiment station of the Iowa state university of science and technolo-

gy as provided in said Act.

[C27, 31, 35, §4035-b1; C39, §**4035.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.6]

266.7 Receiving agent.

The treasurer of the Iowa State University of science and technology is hereby authorized and empowered to receive the grants of money appropriated under the said Act.

[C27, 31, 35, §4035-b2; C39, §**4035.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.7]

266.8 Hazardous waste research program.

1. A hazardous waste technical research and assistance program is created at Iowa state university of science and technology. The program shall be administered by the center for industrial research and service which shall coordinate with and use the services of the civil engineering department or other university departments at Iowa state university for the purposes set forth in this section.

2. The center for industrial research and service may seek and receive grants, donations, gifts, bequests, or other moneys from public and private sources to be used for the purposes set forth in this section.

3. The hazardous waste technical research and assistance program is created specifically for and authorized to do all of the following, upon the request of a business, firm, or corporation located within Iowa or the state or a political subdivision of the state:

a. Conduct research into new techniques, methods, and applications for the proper and safe treatment or disposal of hazardous wastes.

b. Provide advice and consultation on the proper, safe, and cost-effective methods, techniques, and applications for the treatment, storage, or disposal of hazardous wastes.

c. Provide other technical or financial assistance to aid in the proper, safe, and cost-effective treatment or disposal of hazardous wastes.

4. In carrying out its responsibilities under this section, the hazardous waste technical research and assistance program shall give priority to providing research and assistance on hazardous waste sites which impair the future economic development of a particular area including but not limited to the development of infrastructure, highways, sewers, industrial sites, educational facilities, and other assets essential for the development of a city.

5. The center for industrial research and service shall report to the general assembly annually on receipt and disbursement of funds and activities conducted by the hazardous waste technical research and assistance program pursuant to this section.

6. This section shall not be construed to do any of the following:

a. Relieve any person receiving assistance under this section of any duties or liabilities otherwise created or imposed upon the person by law.

b. Transfer to the state, Iowa state university of science and technology, or any employee of the state or the university, any duty or liability otherwise imposed by law on a person receiving assistance under this section.

c. Create any liability to the state, Iowa state university of science and technology, or any employee of the state or the university for any act or omission arising from the providing of assistance or advice in cleaning up, handling, or disposal of hazardous waste. However, an individual may be liable if the act or omission results from intentional wrongdoing or gross negligence.

86 Acts, ch 1229, §2

266.9 through 266.18 Reserved.

266.19 Renewable fuel — assistance.

The university shall cooperate in assisting renewable fuel production facilities supporting livestock operations managed by persons receiving assistance pursuant to the value-added agricultural products and processes financial assistance program established in section 15E.111.

94 Acts, ch 1119, §27

266.20 Interest earnings.

If the interest earned on moneys accumulated by campus organizations at the Iowa state university of science and technology is not available for expenditure by those respective campus organizations, the Iowa state university of science and technology shall allocate that interest to campus improvements that are of benefit to students and have been accepted by the student government or to the student financial aid office to be used for the work-study program.

89 Acts, ch 319, §70

266.21 to 266.23 Reserved.

DIVISION II

HOG-CHOLERA SERUM LABORATORY

266.24 Directors — assistants — salary.

The state board of regents is hereby authorized to maintain at Ames, in connection with the Iowa state university of science and technology, a laboratory for the manufacture and distribution of hog-cholera serum, toxines, vaccines, and biological products and for such other work as the said state board of regents may, from time to time, deem advisable in the veterinary college, and to provide the necessary equipment therefor. The president of said university shall appoint the director of said laboratory and such assistants as are

deemed necessary to efficiently carry on said work; and the president shall, with the approval of said board, fix the salaries of said assistants.

[SS15, §2538-w; C24, 27, 31, 35, 39, §**4042;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.24]

General regulations, chapter 166

266.25 Sale of serum.

The director of said laboratory may, when an emergency is declared to exist by the state board of regents, furnish said serum to any person, together with specific instructions for the use of same, at the approximate cost of manufacture, and such cost shall be stated on the package. The director of the serum laboratory is authorized to purchase serum or other biological products which the director deems reliable, and the director may sell the same at approximate cost in the same manner as products of the laboratory are sold.

[SS15, §2538-w1; C24, 27, 31, 35, 39, §**4043;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.25]

266.26 Receipts — how deposited — expenses.

The director shall deposit all funds with the treasurer of the Iowa state university of science and technology, which treasurer shall be responsible on the treasurer's bond for the same. Upon receipt of said moneys, the said treasurer shall issue duplicate receipts therefor, one of which the treasurer shall deliver to the director and the other to the secretary of the state board of regents. Said moneys shall be kept by said treasurer in a separate fund to be known as the serum fund; and the treasurer shall pay out from said fund, as other university funds are expended, but only for expenses directly connected with the maintenance and development of said laboratory and for grounds and buildings. Said grounds and buildings shall be used, when so authorized by the board of regents, for any purpose in connection with the study, control, or treatment of animal diseases.

[SS15, §2538-w2; C24, 27, 31, 35, 39, §**4044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.26]

DIVISION III

CAPPER-KETCHAM ACT

266.27 Act accepted.

The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of the congressional Act approved May 22, 1928, commonly known as the Capper-Ketcham Act. [45 Stat. L. 711; 7 U.S.C. § 341 et seq.]

[C31, 35, §4044-c1; C39, §**4044.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.27]

266.28 Receipt of funds — work authorized.

The Iowa state board of regents is hereby authorized and empowered to receive the grants of money appropriated under the said Act; and to organize and conduct agricultural extension work which shall be carried on in connection with the Iowa state university of science and technology, in accordance with the terms and conditions expressed in the Act of Congress aforesaid.

[C31, 35, §4044-c2; C39, §**4044.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §266.28]

266.29 and 266.30 Reserved.

DIVISION IV

RESEARCH AND EXTENSION SERVICES

266.31 Meat export research center established — director — assistants — salaries.

The state board of regents shall maintain at Ames, in connection with the agricultural experiment station at Iowa state university of science and technology, a meat export research center. The center shall research technological, economic, and other factors involved in improving the performance of Iowa products in the meat export market with emphasis on the manufacture of value added meat products. The objectives of the center are:

1. To develop innovative meat processing technology to expand and support the export of meat products from Iowa;
2. To provide information to assist in assessing demand characteristics of international and domestic markets for meat and manufactured meat products;
3. To evaluate alternatives to help decision makers develop public policy concerning international and domestic trade in commodities resulting from livestock production and manufacturing of animal products;
4. To provide a center to enhance the exchange of information relative to technology, policy considerations and strategy supporting the export of animal products.

The president of the university shall appoint the director of the center and assistants as are deemed necessary to carry on the work of the center. The president shall fix the salaries of the director and assistants with the approval of the board.

84 Acts, ch 1315, §13

266.32 Acceptance of private funds.

The state board of regents may accept grants of money from private sources for use in maintaining the meat export research center.

84 Acts, ch 1315, §14

266.33 Horticultural research.

The Iowa agricultural experiment station at Iowa state university of science and technology shall conduct horticultural research to identify and improve fruits and vegetables which can be effectively grown in Iowa to provide more diversity for Iowa agriculture. The experiment station shall investigate production, marketing, and management techniques, adaptability, and horticultural potential of the fruits and vegetables for both processing and for fresh market sale.

84 Acts, ch 1315, §16

266.34 State extension fruit specialist.

The Iowa cooperative extension service in agriculture and home economics shall employ a state extension fruit specialist to provide leadership in the development of a broader array of educational materials and field staff training. The materials on training should provide, in popular and practical terms, the available research at Iowa state university of science and technology and elsewhere that will enable area and county extension services to expand their efforts with existing and potential fruit growers for marketing in or outside of this state.

84 Acts, ch 1315, §18

266.35 Crop research.

The agricultural experiment station at Iowa state university of science and technology shall conduct research to identify crops, other than corn and soybeans, which can be effectively grown in Iowa either alone or in multiple cropping schemes to provide more diversity for Iowa agriculture. The experiment station shall investigate production and management techniques, adaptability, feasibility, marketability, and agronomic potential of the alternate crops.

84 Acts, ch 1315, §21

266.36 Financial management services.

The Iowa cooperative extension service in agriculture and home economics shall accelerate the development of computer software and field staff training to increase the extension service's ability to offer financial management and counseling services to individual farm operators and to increase the analysis and understanding of financial management, marketing and related subjects among farm operators.

84 Acts, ch 1315, §27

266.37 Use of corrections department institutional facilities and resources.

Iowa state university of science and technology shall use resources, including property, facilities, labor, and services, connected with institutions listed in section 904.102, under the authority of the Iowa department of corrections, to the extent practicable, for research, development, and testing of technological, horticultural, biological, and economic factors involved in improving the performance of Iowa agricultural products. However, use by the university is subject to the approval of the director of the department of corrections.

87 Acts, ch 139, §3

266.38 Soil test interpretation.

The Iowa cooperative extension service in agriculture and home economics shall develop and publish material on the interpretation of the results of soil tests. The material shall also feature the danger to groundwater quality from the overuse of fertilizers and pesticides. The material shall be available from the service at cost and any person providing soil tests for agricultural or horticultural purposes shall provide the material to the customer with the soil test results.

87 Acts, ch 225, §229

266.39 Leopold center for sustainable agriculture.

1. For the purposes of this section, *"sustainable agriculture"* means the appropriate use of crop and livestock systems and agricultural inputs supporting those activities which maintain economic and social viability while preserving the high productivity and quality of Iowa's land.

2. The Leopold center for sustainable agriculture is established in the Iowa agricultural and home economics experiment station at Iowa state university of science and technology. The center shall conduct and sponsor research to identify and reduce negative environmental and socio-economic impacts of agricultural practices. The center also shall research and assist in developing emerging alternative practices that are consistent with a sustainable agriculture. The center shall develop in association with the Iowa cooperative extension service in agriculture and home economics an educational framework to inform the agricultural community and the general public of its findings.

3. An advisory board is established consisting of the following members:

a. Three persons from Iowa state university of science and technology, appointed by its president.

b. Two persons from the state university of Iowa, appointed by its president.

c. Two persons from the university of northern Iowa, appointed by its president.

d. Two representatives of private colleges and universities within the state, to be nominated by the Iowa association of independent colleges and universities, and appointed by the Iowa coordinating council for post-high school education.

e. One representative of the department of agriculture and land stewardship, appointed by the secretary of agriculture.

f. One representative of the department of natural resources, appointed by the director.

g. One man and one woman, actively engaged in agricultural production, appointed by the state soil conservation committee.

h. Four persons actively engaged in agriculture who are appointed by the titular head of each of the following agricultural organizations:

(1) The Iowa farm bureau federation.

(2) The Iowa farmers union.

(3) The practical farmers of Iowa.

(4) The agribusiness association of Iowa.

The terms of the members shall begin and end as provided in section 69.19 and any vacancy shall be filled by the original appointing authority. The terms shall be for four years and shall be staggered as determined by the president of Iowa state university of science and technology. The members appointed by the titular heads of agricultural organizations shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties, but shall not be entitled to per diem compensation as authorized under section 7E.6.

4. The Iowa agricultural and home economics experiment station shall employ a director for the center, who shall be appointed by the president of Iowa state university of science and technology. The director of the center shall employ the necessary research and support staff. The director and staff shall be employees of Iowa state university of science and technology. No more than five hundred thousand dollars of the funds received from the agriculture management account annually shall be expended by the center for the salaries and benefits of the employees of the center, including the salary and benefits of the director. The remainder of the funds received from the agriculture management account shall be used to sponsor research grants and projects on a competitive basis from Iowa colleges and universities and private nonprofit agencies and foundations. The center may also solicit additional grants and funding from public and private nonprofit agencies and foundations.

The director shall prepare an annual report.

5. The board shall provide the president of Iowa state university of science and technology with a list of three candidates from which the director shall be selected. The board shall provide an additional list of three candidates if requested by the president. The board shall advise the director in the development of a budget, on the policies and procedures of the center, in the funding of research grant proposals, and regarding program planning and review.

87 Acts, ch 225, §230; 99 Acts, ch 91, §1, 2

266.39A Agricultural research.

Iowa state university of science and technology shall conduct continuing agricultural research to provide information about environmental and social impacts of agricultural research on the small or family farm and information about population trends and impact of the trends on Iowa agriculture, in addition to research that may include the categories specified in section 266.39B, subsection 2. The research shall include an agricultural land tenure study conducted every five years to determine the ownership of farmland, and to analyze ownership trends, using the categories of land ownership defined in chapter 9H. The study shall be conducted on the basis of regions established by the university. A region shall be composed of not more than twenty-three contiguous counties.

89 Acts, ch 319, §71; 92 Acts, ch 1080, §1

266.39B Research grants.

1. A comprehensive agricultural research program is established at the Leopold center for sustainable agriculture at Iowa state university of science and technology to provide financial assistance for agricultural research within Iowa. The Leopold center shall establish a grant program for projects designated by the general assembly and other projects deemed necessary for the betterment of agriculture within the state. All funds from the program shall be available to public and private entities in Iowa on a competitive grant basis. Approved research proposals shall meet all of the following criteria:

a. The research shall assist Iowa in maintaining productive soil, viable communities, and farms with incomes sufficient to support a family.

b. The research shall enhance the profitability of farmers.

c. The research shall lead to farming which enhances and preserves Iowa's environment.

2. The research grants shall include:

a. Long-term and basic research with preference given to projects which have no traditional funding sources or require a long period of time to produce positive or negative results.

b. Emergency response research with preference given to projects which relate to issues expected to address problems occurring within the next five years, which relate to problems that could have substantial social and economic costs, or which offer research opportunities that may be lost if a delay occurs.

c. Grants available for matching federal or private funds for projects which are a necessary component of other grants or will produce the highest ratio of outside funds to state funds.

d. Crop and livestock research relating to the growth, processing, or marketing of agricultural output, the enhancement of the quality of crops, the lowering of the costs of production, or the avoidance of contamination to food, water, or soil.

e. Alternative crop research to enhance the opportunity for self-employment, to promote site-appropriate crops, to assist the state in becoming more self-sufficient in food and energy resources, to grow, process, and market new crops, or to develop the infrastructure to support new crops.

f. Research dissemination which will expand the knowledge of potential producers, or will collect, create, or disseminate agricultural knowledge, which will encourage the exchange of agriculturally related information among researchers, or which will provide access to farmers to information resources related to agriculture.

g. Agriculture health and safety research to identify, investigate, and increase awareness of agriculture safety problems, develop practical solutions to agriculture safety problems, develop ways to increase awareness and use of safety practices and devices, to improve medical professionals' ability to diagnose farm-related problems, or to reduce the accident and mortality rate in the agricultural industry.

89 Acts, ch 319, §72

266.39C The Iowa energy center.

1. The Iowa energy center is established at Iowa state university of science and technology. The center shall strive to increase energy efficiency in all areas of Iowa energy use. The center shall serve as a model for state efforts to decrease dependence on imported fuels and to decrease reliance on energy production from nonrenewable, resource-depleting fuels. The center shall conduct and sponsor research on energy efficiency and conservation that will improve the environmental, social, and economic well-being of Iowans, minimize the environmental impact of existing energy production and consumption, and reduce the need to add new power plants.

The center shall assist Iowans in assessing technology related to energy efficiency and alternative energy production systems and shall support educational and demonstration programs that encourage implementation of energy efficiency and alternative energy production systems.

The center shall also conduct and sponsor research to develop alternative energy systems that are based upon renewable sources and that will reduce the negative environmental and economic impact of energy production systems.

2. An advisory council is established consisting of the following members:

a. One person from Iowa state university of science and technology, appointed by its president.

b. One person from the university of Iowa, appointed by its president.

c. One person from the university of northern Iowa, appointed by its president.

d. One representative of private colleges and universities within the state, to be nominated by the Iowa association of independent colleges and universities, and appointed by the Iowa coordinating council for post-high school education.

e. One representative of community colleges, appointed by the state board for community colleges.

f. One representative of the department of natural resources, appointed by the director.

g. One representative of the state department of transportation, appointed by the director.

h. One representative of the office of consumer advocate, appointed by the consumer advocate.

i. One representative of the utilities board, appointed by the utilities board.

j. One representative of the rural electric cooperatives, appointed by the governing body of the Iowa association of electric cooperatives.

k. One representative of municipal utilities, appointed by the governing body of the Iowa association of municipal utilities.

l. Two representatives from investor-owned utilities, one representing gas utilities, appointed by the Iowa utility association, and one representing electric utilities, appointed by the Iowa utility association.

The terms of the members shall begin and end as provided in section 69.19 and any vacancy shall be filled by the original appointing authority. The terms shall be for four years and shall be staggered as determined by the president of Iowa state university of science and technology.

3. Iowa state university of science and technology shall employ a director for the center, who shall be appointed by the president of Iowa state university of science and technology. The director of the center shall employ necessary research and support staff. The director and staff shall be employees of Iowa state university of science and technology. No more than seven hundred thousand dollars of the funds made available by appropriation from state revenues in any one year shall be expended by the center for the salaries and benefits of the employees of the center, including the salary and benefits of the director. The limit on expenditures for salaries and benefits shall be adjusted annually by a percentage equal to the average percentage salary adjustment approved annually by the state board of regents for professional and scientific employees at Iowa state university of science and technology. The remainder of the funds appropriated from state funds shall be used to sponsor research grants and projects submitted on a competitive basis by Iowa colleges and universities and private nonprofit agencies and foundations. The center may also solicit additional grants and funding from public and private nonprofit agencies and foundations.

The director shall prepare an annual report.

4. The advisory council shall provide the president of Iowa state university of science and technology with a list of three candidates from which the director shall be selected. The council shall provide an additional list of three candidates if requested by the president. The council shall advise the director in the development of a budget, on the policies and procedures of the center, in the funding of research grant proposals, and regarding program planning and review.

5. The Iowa energy center shall develop a pro-

gram to provide assistance to rural residents for energy efficiency efforts.

6. The Iowa energy center shall cooperate with the state board of education in developing a curriculum which promotes energy efficiency and conservation.

90 Acts, ch 1252, §17; 91 Acts, ch 253, §13; 2000 Acts, ch 1223, §30; 2002 Acts, ch 1109, §1, 2; 2002 Acts, ch 1162, §38

See also §476.10A, 476.46
Subsection 2, paragraph f amended
Subsection 3 amended
Subsection 6 stricken and former subsection 7 renumbered as 6

266.39D Livestock producers assistance program.

Iowa state university shall establish and administer a livestock producers assistance program to provide on-site assistance to persons involved in livestock production in order to increase the efficiency, productivity, and profitability of their operations. The program, to every extent practicable, shall be supported by nonstate moneys. The university shall submit a report to the legislative fiscal bureau by November 1 of each year, if the university expects that state moneys may be required to support the program during the subsequent state fiscal year. The report shall include all expected sources of revenues and the amounts expected to be contributed by these sources for the subsequent state fiscal year.

94 Acts, ch 1198, §44

266.39E Beginning farmer center.

1. A beginning farmer center is established as a part of the Iowa cooperative extension service in agriculture and home economics at Iowa state university of science and technology to assist individuals beginning farming operations. The center shall also assist in facilitating the transition of farming operations from established farmers to beginning farmers, including by matching purchasers and sellers of agricultural land, creating and maintaining an information base inventorying land and facilities available for acquisition, and developing models to increase the number of family farming operations in this state. The objectives of the beginning farmer center shall include, but are not limited to, the following:

a. To provide the coordination of education programs and services for beginning farmer efforts statewide.

b. To assess needs of beginning farmers and retiring farmers in order to identify program and service opportunities.

c. To develop, coordinate, and deliver statewide through the Iowa cooperative extension service in agriculture and home economics, and other entities as appropriate, targeted education to beginning farmers and retiring farm families.

2. Programs and services provided by the beginning farmer center shall include, but are not limited to, the development of skills and knowledge in financial management and planning, legal issues, tax laws, technical production and management, leadership, sustainable agriculture, human health, the environment, and leadership.

3. The beginning farmer center shall submit to the general assembly, annually on or before January 15, a report that includes but is not limited to recommendations for methods by which more individuals may be encouraged to enter agriculture.

94 Acts, ch 1193, §22

266.39F Sale of dairy breeding research farm.

1. Immediately after May 2, 2002, Iowa state university of science and technology shall develop a plan to sell, at market value, the one thousand one hundred-acre tract of land within the city limits of Ankeny, commonly referred to as the Iowa state university dairy breeding research farm. The plan shall include the sale of substantial portions of the tract as soon as practical, and the sale of all of the tract within a commercially reasonable time. Prior to implementing the plan, the university shall submit the plan to the state board of regents for review and approval. The sale shall be handled in a manner that is the most financially beneficial to the university. Appraisals conducted by the university of the value of any portion of the tract shall be made available to the public immediately following the sale of that portion of the tract.

2. The proceeds from the sale of the property as provided in subsection 1 are appropriated and shall be retained by Iowa state university of science and technology for use in establishing a new dairy research and dairy teaching facility or for the university's plant sciences institute.

The provisions of section 262.9, subsection 7, and section 262.10, shall not apply to the sale of any portion of land to be sold in accordance with this section or to the use of the proceeds from the sale of the land.

3. By December 15 annually, the state board of regents shall submit a report of the activities and costs of the sale of any property in accordance with subsection 1, including but not limited to the use of any proceeds from the sale of the property and the environmental cleanup costs for any proposed sale in accordance with this section, to the general assembly in accordance with section 7A.11A, and to the legislative fiscal bureau, until such time as the sale of the property is complete and the proceeds have been expended by the university, at which time the state board of regents shall submit

a final report on the sale of the property and use of the proceeds to the general assembly in accordance with section 7A.11A and to the legislative fiscal bureau.

2002 Acts, ch 1143, §2, 3

Legislative findings and purpose; 2002 Acts, ch 1143, §1

NEW section

DIVISION V

IOWA FIRE SERVICE INSTITUTE

266.40 through 266.46 Repealed by 2000 Acts, ch 1117, § 30. See chapter 100B.

CHAPTER 267

LIVESTOCK HEALTH ADVISORY COUNCIL

267.1 Definitions.
267.2 Livestock health advisory council.
267.3 Terms and vacancies.
267.4 Supplies and services.
267.5 Duties and objectives of council.
267.6 Iowa administrative procedure Act.
267.7 Other funds.
267.8 Livestock disease research fund.

267.1 Definitions.

As used in this chapter,

1. *"Iowa state university"* means the Iowa state university of science and technology.

2. *"Livestock"* means swine, sheep, poultry, cattle, ostriches, rheas, or emus.

3. *"Producer"* means a person engaged in the business of producing livestock for profit.

[C79, 81, §267.1]

95 Acts, ch 43, §10

267.2 Livestock health advisory council.

There is a livestock health advisory council, referred to in this chapter as the council. The council shall consist of:

1. Three cattle producers appointed by the Iowa cattlemen's association, one of whom shall serve an initial term of one year, and one of whom shall serve an initial term of two years.

2. Three swine producers appointed by the Iowa pork producers association, one of whom shall serve an initial term of one year.

3. One sheep producer appointed by the Iowa sheep producers association who shall serve an initial term of one year.

4. One poultry producer appointed by the Iowa poultry association who shall serve an initial term of two years.

5. One milk producer appointed by the Iowa state dairy association who shall serve an initial term of two years; and

6. One practicing veterinarian appointed by the Iowa veterinary medical association.

[C79, 81, §267.2]

267.3 Terms and vacancies.

Except as provided in section 267.2, each member shall be appointed for a three-year term beginning on July 1 of the year of appointment. No member shall serve more than two terms, including any portion of a term served pursuant to the filling of a vacancy. Vacancies shall be filled by the appropriate organization in the same manner as appointing full-term members.

[C79, 81, §267.3]

267.4 Supplies and services.

The department of agriculture and land stewardship shall furnish the council with a meeting place and all articles, supplies, and services necessary to enable the council to perform its duties.

[C79, 81, §267.4]

267.5 Duties and objectives of council.

The livestock health advisory council shall:

1. Elect a chairperson and such other officers as it deems advisable. Officers of the council shall serve for terms of one year. No member may serve in any one office for more than two terms.

2. Hold a meeting twice each year with the Iowa state university college of veterinary medicine. Hold other meetings as the council may determine necessary, or as required by section 267.6. No action taken by the council shall be valid unless agreed to by a majority of the council members.

3. Make recommendations to the Iowa state university college of veterinary medicine concerning the application of funds appropriated to the college of veterinary medicine. The Iowa state university college of veterinary medicine shall not expend any of the funds appropriated by this chapter until the recommendation of the council concerning that appropriation is adopted or sixty days following the effective date of the appropriation, whichever is earlier.

4. File an annual report with the secretary of agriculture.

[C79, 81, §267.5]
92 Acts, ch 1246, §40

267.6 Iowa administrative procedure Act.
The provisions of chapter 17A shall not apply to the council or any actions taken by it, except that any recommendations adopted by the council pursuant to section 267.5, subsection 3, and any rules adopted by the council shall be adopted, amended, or repealed only after compliance with the provisions of sections 17A.4, 17A.5, and 17A.6.
[C79, 81, §267.6]

267.7 Other funds.
In addition to the funds appropriated to it by this chapter, the Iowa state university college of veterinary medicine may accept grants, gifts, matching funds, or any other funds for research into the diseases of livestock from any source, public or private.
[C77, §266.20; C79, 81, §267.7]

267.8 Livestock disease research fund.
There is created in the office of the treasurer of state a fund to be known as the livestock disease research fund. Any balance in said fund on June 30 of each fiscal year shall revert to the general fund.
93 Acts, ch 179, §24

CHAPTER 268

UNIVERSITY OF NORTHERN IOWA

268.1 Official designation.
268.2 Courses offered and responsibility of university.
268.3 Interest earnings.
268.4 Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.
268.5 Iowa academy of science appropriation limitations.

268.1 Official designation.
The state university at Cedar Falls shall be officially designated and known as the *"University of Northern Iowa"*.
[C97, §2675; S13, §2675; C24, 27, 31, 35, 39, §**4063;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §268.1]

268.2 Courses offered and responsibility of university.
The university shall offer undergraduate and graduate courses of instruction, conduct research and provide extension and other public services in areas of its competence to facilitate the social, cultural and economic development of Iowa. Its primary responsibility shall be to prepare teachers and other educational personnel for schools, colleges, and universities and to carry out research and provide consultative and other services for the improvement of education throughout the state. In addition, it shall conduct programs of instruction, research and service in the liberal and vocational arts and sciences and offer such other educational programs as the state board of regents may from time to time approve.
[C97, §2677; C24, 27, 31, 35, 39, §**4064;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §268.2]

268.3 Interest earnings.
If the interest earned on moneys accumulated by campus organizations at the university of northern Iowa is not available for expenditure by those respective campus organizations, the university of northern Iowa shall allocate that interest to campus improvements that are of benefit to students and have been accepted by the student government or to the student financial aid office to be used for the work-study program.
89 Acts, ch 319, §73

268.4 Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.
1. The Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances is established at the university of northern Iowa. The university of northern Iowa, in cooperation with the department of natural resources, shall develop and implement a program which provides the following:
a. Information regarding the safe use and economic management of solid waste and hazardous substances to small businesses which generate the substances.
b. Dissemination of information to public and private agencies regarding state and federal solid waste and hazardous substances regulations, and assistance in achieving compliance with the regulations.
c. Advice and consultation in the proper storage, handling, treatment, reuse, recycling, and

disposal methods of solid waste and hazardous substances.

d. Identification of the advantages of proper substance management relative to liability and operational costs of a particular small business.

e. Assistance in the providing of capital formation in order to comply with state and federal regulations.

2. *a.* An advisory committee to the center is established, consisting of a representative of each of the following organizations:

(1) The Iowa department of economic development.

(2) The small business development commission.

(3) The university of northern Iowa.

(4) The state university of Iowa.

(5) Iowa state university of science and technology.

(6) The department of natural resources.

b. The active participation of representatives of small businesses in the state shall also be sought and encouraged.

3. Information obtained or compiled by the center shall be disseminated directly to the Iowa department of economic development, the small business development centers, and other public and private agencies with interest in the safe and economic management of solid waste and hazardous substances.

4. The center may solicit, accept, and administer moneys appropriated to the center by a public or private agency.

5. This section does not do any of the following:

a. Relieve a person receiving assistance under this section of any duties or liabilities otherwise created or imposed upon the person by law.

b. Transfer to the state, the university of northern Iowa, or an employee of the state or the university, a duty or liability otherwise imposed by law on a person receiving assistance under this section.

c. Create a liability to the state, the university of northern Iowa, or an employee of the state or the university for an act or omission arising from the providing of assistance or advice in cleaning up, handling, or disposal of hazardous waste. However, an individual may be liable if the act or omission results from intentional wrongdoing or gross negligence.

87 Acts, ch 225, §403; 89 Acts, ch 77, §1

See also §455B.484(11)

268.5 Iowa academy of science appropriation limitations.

The university shall use no more than twenty percent of the funds allocated to the university for the Iowa academy of science for administrative purposes for the Iowa academy of science or for publication of the Iowa academy of science journal. The university shall expend the remainder of the moneys appropriated for research projects and studies awarded by the Iowa academy of science. The Iowa academy of science shall permit all grant recipients to publish the results of the recipients' research projects and studies in the Iowa academy of science journal at no cost to the grant recipient.

91 Acts, ch 267, §238

CHAPTER 269

BRAILLE AND SIGHT SAVING SCHOOL

No merger with school for the deaf
until requirements met, §270.10
Transportation payments, §270.9

269.1 Admission.
269.2 Expenses — residence of indigents.

269.1 Admission.

Any resident of the state under twenty-one years of age who has a visual disability too severe to acquire a satisfactory education in a regular educational environment shall be entitled to an education in the Iowa braille and sight saving school at the expense of the state. Nonresidents also may be admitted to the Iowa braille and sight saving school if their presence would not be prejudicial to the interests of residents, upon such terms as may be fixed by the state board of regents.

[R60, §2147, 2148; C73, §1672, 1680; C97, §2715; S13, §2715; C24, 27, 31, 35, 39, §**4066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §269.1]

94 Acts, ch 1091, §21

Governed by board of regents, §262.7

269.2 Expenses — residence of indigents.

The provisions of sections 270.4 to 270.8, inclusive, are hereby made applicable to the Iowa braille and sight saving school.

[C73, §1678; C97, §2716; C24, 27, 31, 35, 39, §**4067;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §269.2]

CHAPTER 270

SCHOOL FOR THE DEAF

270.1 Superintendent.
270.2 Labor of pupils. Repealed by 94 Acts, ch 1091, §25.
270.3 Admission.
270.4 Clothing, prescriptions, and transportation.
270.5 Certification to director of revenue and finance.
270.6 Certification to auditor — collection.
270.7 Payment by county.
270.8 Residence during vacation.
270.9 School for deaf and sight saving school.
270.10 Merger requirements.

270.1 Superintendent.

The superintendent of the school for the deaf shall be a trained and experienced educator of the deaf. The superintendent's salary may include residence in the institution, but no such allowance shall be made except by express contract in advance.

[C97, §2723; S13, §2727-3a; C24, 27, 31, 35, 39, §**4068;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §270.1]

Governed by board of regents, §262.7

270.2 Labor of pupils. Repealed by 94 Acts, ch 1091, § 25.

270.3 Admission.

Any resident of the state less than twenty-one years of age, who has a hearing loss which is too severe to acquire an education in the public schools is eligible to attend the school for the deaf. Nonresidents similarly situated may be admitted to an education therein upon such terms as may be fixed by the state board of regents. The fee for nonresidents shall be not less than the average expense of resident pupils and shall be paid in advance.

[R60, §2156, 2160; C73, §1688, 1689; C97, §2724; S13, §2724; C24, 27, 31, 35, 39, §**4070;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §270.3]

270.4 Clothing, prescriptions, and transportation.

The superintendent shall provide students, who would otherwise be without, with clothing, prescription refills, or transportation, and shall bill the student's parent or guardian, if the student is a minor, or the student if the student has attained the age of majority, for any clothing, prescription refills, or transportation provided. The bill shall be presumptive evidence in all courts.

[C73, §1695; C97, §2726; S13, §2726; C24, 27, 31, 35, 39, §**4071;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §270.4]

94 Acts, ch 1091, §22

270.5 Certification to director of revenue and finance.

The superintendent shall, on the first days of June and December of each year, certify to the director of revenue and finance the amounts due from counties pursuant to sections 270.4 and 270.6, and the director of revenue and finance shall credit the amounts due to the general fund of the state, and charge the amount to the proper county.

[C73, §1695; C97, §2726; S13, §2726; C24, 27, 31, 35, 39, §**4072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §270.5]

91 Acts, ch 267, §521

270.6 Certification to auditor — collection.

The superintendent shall, at the time of sending certificate to the director of revenue and finance, send a duplicate copy to the auditor of the county of the pupil's residence, who shall, when ordered by the board of supervisors, proceed to collect the same by action if necessary, in the name of the county, and when so collected, shall pay the same into the county treasury.

[C73, §1695; C97, §2726; S13, §2726; C24, 27, 31, 35, 39, §**4073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §270.6]

270.7 Payment by county.

The county auditor shall, upon receipt of the certificate, pass it to the credit of the state, and issue a notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which shall be filed by the treasurer as authority for making the transfer, and the county treasurer shall include the amount in the next remittance of state taxes to the treasurer of state, designating the fund to which it belongs.

If a county fails to pay these bills within sixty days from the date of certificate from the superintendent, the director of revenue and finance shall charge the delinquent county a penalty of three-fourths of one percent per month on and after sixty days from the date of certificate until paid. The

penalties shall be credited to the general fund of the state.

[C73, §1695; C97, §2726; S13, §2726; C24, 27, 31, 35, 39, §**4074;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §270.7]

83 Acts, ch 123, §106, 209

Method for payment for prescription drug costs for fiscal years beginning July 1, 2000, July 1, 2001, and July 1, 2002; 2000 Acts, ch 1223, §16; 2001 Acts, ch 181, §11; 2002 Acts, ch 1171, §84

270.8 Residence during vacation.

The residence of indigent or homeless children may, by order of the state board of regents, be continued during vacation months.

[S13, §2727-a; C24, 27, 31, 35, 39, §**4075;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §270.8]

270.9 School for deaf and sight saving school.

Funds appropriated to the school for the deaf and the Iowa braille and sight saving school for payments to the parents or guardians of pupils in either institution shall be expended as follows:

1. Transportation reimbursement at a rate established annually by the state board of regents to the parents or guardians of children who do not reside in the institution, but are transported to the institution on a daily basis.

2. Transportation reimbursement at a rate established annually by the state board of regents to the parents or guardians for transportation from the institution to the residence of the parent or guardian and return to the institution for children who reside in the institution.

[C77, 79, 81, §270.9]

86 Acts, ch 1246, §131

270.10 Merger requirements.

The state board of regents shall not merge the school for the deaf at Council Bluffs with the Iowa braille and sight saving school at Vinton or close either of those institutions until all of the following requirements have been met:

1. The department of management has presented to the general assembly a comprehensive plan, program, and fiscal analysis of the existing circumstances and the circumstances which would prevail upon the proposed merger or closing, together with data which would support the contention that the merger or closing will be more efficient and effective than continuation of the existing facilities. The analysis shall include a detailed study of the educational implications of the merger or closing, the impact on the students, and the opinions and research of nationally recognized experts in the field of the education of visually impaired and deaf students. The comprehensive plan shall further include a study relating to the programming, fiscal consequences, and political implications which would result if either a merger or an agreement under chapter 28E should be implemented between the school for the deaf in Council Bluffs and comparable state programs in the state of Nebraska.

2. The general assembly has studied the plans, programs, and fiscal analysis and has reviewed their impact on the programs.

3. The general assembly has enacted legislation authorizing either the closing or the merger to take effect not sooner than two years after the enactment of the legislation.

86 Acts, ch 1246, §132

CHAPTER 271

OAKDALE CAMPUS

271.1 Designation.
271.2 Purposes.
271.3 Governance.
271.4 Patient treatment.
271.5 Care of patients — professional services.
271.6 Integrated treatment of university hospital patients.

271.1 Designation.

The state hospital located at Oakdale shall be known as the Oakdale campus.

[S13, §2727-a75; C24, 27, 31, 35, 39, §**3385;** C46, §220.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §271.1]

271.2 Purposes.

The Oakdale campus shall be primarily devoted to health related research, education, and service programs, including experimental health care delivery models. To the extent that Oakdale campus resources are not required to meet the primary purposes, its resources shall be devoted to meeting other related needs of the state University of Iowa.

[S13, §2727-a75; C24, 27, 31, 35, 39, §**3386;** C46, §220.2; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §271.2]

271.3 Governance.

The state board of regents shall have full power to manage, control, and govern the Oakdale cam-

pus in the same manner as other institutions under its control.

[C66, 71, 73, 75, §271.20; C77, 79, 81, §271.3]

271.4 Patient treatment.

Oakdale campus authorities may provide for treatment of such patients as they deem advisable and for which facilities and services are available. Except for patients admitted who are patients referred from the university hospitals, the Oakdale campus shall collect from the patients or a person liable for such support, such reasonable charges for care, service and treatment as may be fixed by the state board of regents. Earnings shall be deposited with the treasurer of the state University of Iowa for the use and benefit of the Oakdale campus and to supplement any other sources of income. Patient treatment and care on the Oakdale campus shall be provided by the faculty of the health science colleges of the state University of Iowa, staff of the university hospital, and professional and other staff as may be employed by the Oakdale campus.

[C66, 71, 73, 75, §271.3, 271.17(3); C77, 79, 81, §271.4]

271.5 Care of patients — professional services.

Physicians and dentists who care for patients on the Oakdale campus may charge for their professional services under such rules and plans as may be approved by the state board of regents.

[C66, 71, 73, 75, §271.18; C77, 79, 81, §271.5]

271.6 Integrated treatment of university hospital patients.

The authorities of the Oakdale campus may authorize patients for admission to the hospital on the Oakdale campus who are referred from the university hospitals and who shall retain the same status, classification, and authorization for care which they had at the university hospitals. Patients referred from the university hospitals to the Oakdale campus shall be deemed to be patients of the university hospitals. Chapters 255 and 255A and operating policies of the university hospitals shall apply to the patients and to the payment for their care the same as the provisions apply to patients who are treated on the premises of the university hospitals.

[C66, 71, 73, 75, §271.17; C77, 79, 81, §271.6]
87 Acts, ch 233, §473

SUBTITLE 5

EDUCATIONAL DEVELOPMENT AND PROFESSIONAL REGULATION

CHAPTER 272

EDUCATIONAL EXAMINERS BOARD

272.1 Definitions.
272.2 Board of examiners created.
272.3 Membership.
272.4 Terms of office.
272.5 Compensation of board, executive director.
272.6 Qualifications for practitioners. Repealed by 2002 Acts, ch 1128, §3.
272.7 Validity of license.
272.8 License to applicants from other states or countries.
272.9 Continuity of certificates and licenses.
272.9A Administrative licenses.
272.10 Fees.
272.11 Expenditures and refunds.
272.12 Para-educator certificates.
272.13 Hearing procedures — confidentiality.
272.14 Appointment of administrative law judges.
272.15 through 272.19 Reserved.
272.20 National certification.
272.21 through 272.24 Reserved.
272.25 Rules for practitioner preparation programs.
272.26 Reserved.
272.27 Student teaching.
272.28 Mentoring and induction requirement.
272.29 and 272.30 Reserved.
272.31 Coaching authorization.
272.32 Reserved.
272.33 Evaluator license.
272.34 Elementary licenses. Repealed by 94 Acts, ch 1126, §2.

272.1 Definitions.

1. *"Administrator"* means a person who is licensed to coordinate, supervise, or direct an educational program or the activities of other practitioners.

2. *"Board"* means the board of educational examiners.

3. *"Certificate"* means limited recognition to perform instruction and instruction-related duties in school, other than those duties for which practitioners are licensed. A certificate is nonexclusive recognition and does not confer the exclusive authority of a license.

4. *"Department"* means the state department of education.

5. *"License"* means the authority that is given to allow a person to legally serve as a practitioner, a school, an institution, or a course of study to legally offer professional development programs, other than those programs offered by practitioner preparation schools, institutions, courses of study, or area education agencies. A license is the exclusive authority to perform these functions.

6. *"Para-educator"* means a person who is certified to assist a teacher in the performance of instructional tasks to support and assist classroom instruction and related school activities.

7. *"Practitioner"* means an administrator, teacher, or other licensed professional who does not hold or receive a license from a professional licensing board other than the board of educational examiners and who provides educational assistance to students.

8. *"Practitioner preparation program"* means a program approved by the state board of education which prepares a person to obtain a license as a practitioner.

9. *"Principal"* means a licensed member of a school's instructional staff who serves as an instructional leader, coordinates the process and substance of educational and instructional programs, coordinates the budget of the school, provides formative evaluation for all practitioners and other persons in the school, recommends or has effective authority to appoint, assign, promote, or transfer personnel in a school building, implements the local school board's policy in a manner consistent with professional practice and ethics, and assists in the development and supervision of a school's student activities program.

10. *"Professional development program"* means a course or program which is offered by a person or agency for the purpose of providing continuing education for the renewal or upgrading of a practitioner's license.

11. *"School"* means a school under section 280.2, a community college, an area education agency, and a school operated by a state agency for special purposes.

12. *"School service personnel"* means those persons holding a practitioner's license who provide support services for a student enrolled in school or to practitioners employed in a school.

13. *"Student"* means a person who is enrolled

in a course of study at a school or practitioner preparation program, or who is receiving direct or indirect assistance from a practitioner.

14. *"Superintendent"* means an administrator who promotes, demotes, transfers, assigns, or evaluates practitioners or other personnel, and carries out the policies of a governing board in a manner consistent with professional practice and ethics.

15. *"Teacher"* means a licensed member of a school's instructional staff who diagnoses, prescribes, evaluates, and directs student learning in a manner which is consistent with professional practice and school objectives, shares responsibility for the development of an instructional program and any coordinating activities, evaluates or assesses student progress before and after instruction, and who uses the student evaluation or assessment information to promote additional student learning.

[C97, §2628; C24, 27, 31, 35, 39, §**3858;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §260.1]

89 Acts, ch 265, §1; 90 Acts, ch 1249, §4

C93, §272.1

98 Acts, ch 1216, §22; 2000 Acts, ch 1098, §2, 3

For future amendments to subsection 11 effective July 1, 2003, see 2002 Acts, ch 1047, §10, 20

272.2 Board of examiners created.

The board of educational examiners is created to exercise the exclusive authority to:

1. *a.* License practitioners who do not hold or receive a license from another professional licensing board. Licensing authority includes the authority to establish criteria for the licenses; establish issuance and renewal requirements; create application and renewal forms; create licenses that authorize different instructional functions or specialties; develop a code of professional rights and responsibilities, practices, and ethics, which shall, among other things, address the failure of a practitioner to fulfill contractual obligations under section 279.13; and develop any other classifications, distinctions, and procedures which may be necessary to exercise licensing duties. In addressing the failure of a practitioner to fulfill contractual obligations, the board shall consider factors beyond the practitioner's control.

b. Notwithstanding section 272.28, subsection 1, a teacher shall be licensed in accordance with rules adopted pursuant to chapter 272, Code 2001, if the teacher successfully completes a beginning teacher mentoring program approved pursuant to chapter 256E, Code 2001, on or before June 30, 2002, or is employed by a school district that does not offer a beginning teacher mentoring and induction program approved in accordance with this chapter during the school year beginning July 1, 2001.

2. Establish, collect, and refund fees for a license.

3. Enter into reciprocity agreements with other equivalent state boards or a national certification board to provide for licensing of applicants from other states or nations.

4. Enforce rules adopted by the board through revocation or suspension of a license, or by other disciplinary action against a practitioner or professional development program licensed by the board of educational examiners. The board shall designate who may or shall initiate a licensee disciplinary investigation and a licensee disciplinary proceeding, and who shall prosecute a disciplinary proceeding and under what conditions, and shall state the procedures for review by the board of findings of fact if a majority of the board does not hear the disciplinary proceeding. However, in a case alleging failure of a practitioner to fulfill contractual obligations, the person who files a complaint with the board, or the complainant's designee, shall represent the complainant in a disciplinary hearing conducted in accordance with this chapter.

5. Apply for and receive federal or other funds on behalf of the state for purposes related to its duties.

6. Evaluate and conduct studies of board standards.

7. Hire an executive director, legal counsel, and other personnel and control the personnel administration of persons employed by the board.

8. Hear appeals regarding application, renewal, suspension, or revocation of a license. Board action is final agency action for purposes of chapter 17A.

9. Establish standards for the determination of whether an applicant is qualified to perform the duties required for a given license.

10. Issue statements of professional recognition to school service personnel who are licensed by another professional licensing board.

11. Make recommendations to the state board of education concerning standards for the approval of professional development programs.

12. Establish, under chapter 17A, rules necessary to carry out board duties, and establish a budget request.

13. Adopt rules to provide for nontraditional preparation options for licensing persons who hold a bachelor's degree from an accredited college or university, who do not meet other requirements for licensure.

14. Adopt rules to determine whether an applicant is qualified to perform the duties for which a license is sought. The rules shall include all of the following:

a. The board may deny a license to or revoke the license of a person upon the board's finding by a preponderance of evidence that either the person has been convicted of a crime or that there has been a founded report of child abuse against the person. Rules adopted in accordance with this paragraph shall provide that in determining whether a person should be denied a license or

that a practitioner's license should be revoked, the board shall consider the nature and seriousness of the founded abuse or crime in relation to the position sought, the time elapsed since the crime was committed, the degree of rehabilitation which has taken place since the incidence of founded abuse or the commission of the crime, the likelihood that the person will commit the same abuse or crime again, and the number of founded abuses committed or criminal convictions by the person involved.

b. Notwithstanding paragraph *"a"*, the rules shall require the board to disqualify an applicant for a license or to revoke the license of a person for any of the following reasons:

(1) The person entered a plea of guilty to, or has been found guilty of, any of the following offenses established pursuant to Iowa law or offenses of a similar nature established under the laws of any other state or of the United States, or any other country, whether or not a sentence is imposed:

(a) Any of the following forcible felonies included in section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping.

(b) Any of the following sexual abuse offenses, as provided in chapter 709, involving a child:

(i) First, second, or third degree sexual abuse committed on or with a person who is under the age of eighteen years.

(ii) Lascivious acts with a child.

(iii) Detention in a brothel.

(iv) Assault with intent to commit sexual abuse.

(v) Indecent contact with a child.

(vi) Sexual exploitation by a counselor.

(vii) Lascivious conduct with a minor.

(c) Incest involving a child under section 726.2.

(d) Dissemination and exhibition of obscene material to minors under section 728.2.

(e) Telephone dissemination of obscene material to minors under section 728.15.

(2) The applicant is less than twenty-one years of age except as provided in section 272.31, subsection 1, paragraph *"e"*. However, a student enrolled in a practitioner preparation program who meets board requirements for a temporary, limited-purpose license who is seeking to teach as part of a practicum or internship may be less than twenty-one years of age.

(3) The applicant's application is fraudulent.

(4) The applicant's license or certification from another state is suspended or revoked.

(5) The applicant fails to meet board standards for application for an initial or renewed license.

c. Qualifications or criteria for the granting or revocation of a license or the determination of an individual's professional standing shall not include membership or nonmembership in any teachers' organization.

d. An applicant for a license or certificate under this chapter shall demonstrate that the requirements of the license or certificate have been met and the burden of proof shall be on the applicant.

15. Adopt rules that require specificity in written complaints that are filed by individuals who have personal knowledge of an alleged violation and which are accepted by the board, provide that the jurisdictional requirements as set by the board in administrative rule are met on the face of the complaint before initiating an investigation of allegations, provide that any investigation be limited to the allegations contained on the face of the complaint, provide for an adequate interval between the receipt of a complaint and public notice of the complaint, permit parties to a complaint to mutually agree to a resolution of the complaint filed with the board, allow the respondent the right to review any investigative report upon a finding of probable cause for further action by the board, require that the conduct providing the basis for the complaint occurred within three years of discovery of the event by the complainant unless good cause can be shown for an extension of this limitation, and require complaints to be resolved within one hundred eighty days unless good cause can be shown for an extension of this limitation.

16. *a.* Administer the Praxis II examination for knowledge of pedagogies and for not more than one content area to each individual who is applying for a provisional license prior to issuance of the license.

b. Examination fees for the examination required under this subsection shall be paid from moneys appropriated to the board for this purpose. Costs incurred for additional content area examinations shall be paid by the applicant.

c. This subsection is repealed effective June 30, 2003.

[C97, §2629; S13, §2629; C24, 27, 31, §3863; C35, §3858-e1; C39, §**3858.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §260.2]

86 Acts, ch 1245, §1442; 89 Acts, ch 265, §2; 90 Acts, ch 1249, §5, 6

C93, §272.2

96 Acts, ch 1189, §1; 96 Acts, ch 1215, §46; 2001 Acts, ch 103, §1; 2001 Acts, ch 161, §15, 16; 2001 Acts, ch 177, §13, 15; 2002 Acts, ch 1084, §1; 2002 Acts, ch 1128, §1

Subsection 4 amended

Subsection 14 stricken and rewritten

272.3 Membership.

The board of educational examiners consists of eleven members. Two must be members of the general public and the remaining nine must be licensed practitioners. One of the public members shall also be the director of the department of education, or the director's designee. The other public member shall be a person who does not hold a practitioner's license, but has a demonstrated in-

terest in education. The nine practitioners shall be selected from the following areas and specialties of the teaching profession:

1. Elementary teachers.
2. Secondary teachers.
3. Special education or other similar teachers.
4. Counselors or other special purpose practitioners.
5. Community college faculty members.
6. Administrators.
7. School service personnel.

A majority of the licensed practitioner members shall be nonadministrative practitioners. Four of the members shall be administrators. Membership of the board shall comply with the requirements of sections 69.16 and 69.16A. A quorum of the board shall consist of six members. The director of the department of education shall serve as the chairperson of the board. Members, except for the director of the department of education, shall be appointed by the governor and the appointments are subject to confirmation by the senate.

[C97, §2634; S13, §2634-a; SS15, §2634-a; C24, 27, 31, 35, 39, §**3859;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §260.3]

85 Acts, ch 212, §22; 86 Acts, ch 1245, §1443; 89 Acts, ch 265, §3

C93, §272.3

Confirmation, see §2.32

For future amendment striking subsection 5 effective July 1, 2003, see 2002 Acts, ch 1047, §11, 20

272.4 Terms of office.

Members, except for the director of the department of education, shall be appointed to serve staggered terms of four years. A member shall not serve more than two consecutive terms, except for the director of the department of education, who shall serve until the director's term of office expires. A member of the board, except for the two public members, shall hold a valid practitioner's license during the member's term of office. A vacancy exists when any of the following occur:

1. A nonpublic member's license expires, is suspended, or is revoked.
2. A nonpublic member retires or terminates employment as a practitioner.
3. A member dies, resigns, is removed from office, or is otherwise physically unable to perform the duties of office.
4. A member's term of office expires.

Terms of office for regular appointments shall begin and end as provided in section 69.19. Terms of office for members appointed to fill vacancies shall begin on the date of appointment and end as provided in section 69.19. Members may be removed for cause by a state court with competent jurisdiction after notice and opportunity for hearing. The board may remove a member for three consecutive absences or for cause.

89 Acts, ch 265, §4

CS89, §260.4

92 Acts, ch 1212, §25

C93, §272.4

272.5 Compensation of board, executive director.

Members shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties and may be entitled to per diem compensation as authorized under section 7E.6. For duties performed during an ordinary school day by a member who is employed by a school corporation or state university, the member shall also receive regular compensation from the school or university. However, the member shall reimburse the school or university in the amount of the per diem compensation received.

The board of educational examiners shall set the salary of the executive director within the range established for the position by the general assembly.

[C35, §3872-e1; C39, §**3872.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §260.5]

89 Acts, ch 265, §5; 90 Acts, ch 1249, §7

C93, §272.5

272.6 Qualifications for practitioners. Repealed by 2002 Acts, ch 1128, § 3.

272.7 Validity of license.

A license issued under board authority is valid for the period of time for which it is issued, unless the license is suspended or revoked. A license issued by the board is valid until the last day of the practitioner's birth month in the year in which the license expires. No permanent licenses shall be issued. A person employed as a practitioner shall hold a valid license with an endorsement for the type of service for which the person is employed. This section does not limit the duties or powers of a school board to select or discharge practitioners or to terminate practitioners' contracts. A professional development program, except for a program offered by a practitioner preparation institution or area education agency and approved by the state board of education, must possess a valid license for the types of programs offered.

The executive director of the board may grant or deny license applications, applications for renewal of a license, and suspension or revocation of a license. A denial of an application for a license, the denial of an application for renewal, or a suspension or revocation of a license may be appealed by the practitioner to the board.

The board may issue emergency renewal or temporary, limited-purpose licenses upon petition by a current or former practitioner. An emergency re-

newal or a temporary, limited-purpose license may be issued for a period not to exceed two years, if a petitioner demonstrates, to the satisfaction of the board, good cause for failure to comply with board requirements for a regular license and provides evidence that the petitioner will comply with board requirements within the period of the emergency or temporary license. Under exceptional circumstances, an emergency license may be renewed by the board for one additional year. A previously unlicensed person is not eligible for an emergency or temporary license, except that a student who is enrolled in a licensed practitioner preparation program may be issued a temporary, limited-purpose license, without payment of a fee, as part of a practicum or internship program.

[S13, §2630-b, 2734-e; C24, 27, 31, §3878; C35, §3872-e3, -e4, -e5, 3878; C39, §**3872.03, 3872.04, 3872.05, 3878;** C46, 50, 54, 58, 62, 66, 71, 73, §260.7, 260.8, 260.9, 260.17, 260.18; C75, 77, 79, §260.7, 260.8, 260.9, 260.17; C81, §260.7]

89 Acts, ch 265, §7

C93, §272.7

94 Acts, ch 1126, §1; 2000 Acts, ch 1070, §1

Continuation of validity of community college instructors' licenses, which expire between March 29, 2002, and July 1, 2003, until July 1, 2003; 2002 Acts, ch 1047, §19, 21

272.8 License to applicants from other states or countries.

The board may issue a license to an applicant from another state or country if the applicant files evidence of the possession of the required or equivalent requirements with the board. The executive director of the board may, subject to board approval, enter into reciprocity agreements with another state or country for the licensing of practitioners on an equitable basis of mutual exchange, when the action is in conformity with law.

Practitioner preparation and professional development programs offered in this state by out-of-state institutions must be approved by the board in order to fulfill requirements for licensure or renewal of a license by an applicant.

85 Acts, ch 217, §1

CS85, §260.8

89 Acts, ch 265, §8

C93, §272.8

272.9 Continuity of certificates and licenses.

A certificate which was issued by the board of educational examiners to a practitioner before July 1, 1989, continues to be in force as long as the certificate complies with the rules and statutes in effect on July 1, 1989. Requirements for the renewal of licenses, under this chapter, do not apply retroactively to renewal of certificates. However, this section does not limit the duties or powers of a school board to select or discharge practitioners or to terminate practitioners' contracts.

A practitioner who holds a certificate issued before July 1, 1989, shall, upon application and payment of a fee, be granted a license which will permit the practitioner to perform the same duties and functions as the practitioner was entitled to perform with the certificate held at the time of application. A practitioner shall be permitted to convert a permanent certificate to a term certificate, after July 1, 1989, without payment of a fee.

A professional development program provided by a school district and approved by the state board of education before July 1, 1989, shall be permitted to continue until the term, for which the program was approved, expires.

[C75, 77, 79, 81, §260.9]

83 Acts, ch 59, §1; 86 Acts, ch 1245, §1445; 87 Acts, ch 17, §7; 89 Acts, ch 265, §9

C93, §272.9

272.9A Administrative licenses.

The board of educational examiners shall adopt rules relating to professional development programs for individuals licensed or certificated as administrators of schools after July 1, 1985. Successful completion of a professional development program is required every five years before the license is renewed by the board.

90 Acts, ch 1249, §8

C91, §260.9A

C93, §272.9A

272.10 Fees.

It is the intent of the general assembly that licensing fees established by the board of educational examiners be sufficient to finance the activities of the board under this chapter.

Licensing fees are payable to the treasurer of state and shall be deposited with the executive director of the board. The executive director shall deposit the fees with the treasurer of state and the fees shall be credited to the general fund of the state. The executive director shall keep an accurate and detailed account of fees received and paid to the treasurer of state.

[S13, §2634-f1; C24, 27, 31, §3867; C35, §3872-e6; C39, §**3872.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §260.10]

86 Acts, ch 1245, §1446; 89 Acts, ch 265, §11

C93, §272.10

Use of funds received from increase in fees after July 1, 1997, for purposes related to board of educational examiners duties for fiscal years beginning July 1, 2000, July 1, 2001, and July 1, 2002; 2000 Acts, ch 1223, §7; 2001 Acts, ch 181, §7; 2002 Acts, ch 1171, §80

272.11 Expenditures and refunds.

Expenditures and refunds made by the board under this chapter shall be certified by the executive director of the board to the director of revenue and finance, and if found correct, the director of revenue and finance shall approve the expenditures and refunds and draw warrants upon the treasurer of state from the funds appropriated for that purpose.

[C97, §2631; S13, §2634-g; C24, 27, 31, §3868; C35, §3872-e7, -e8; C39, §**3872.07, 3872.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §260.11, 260.12; C81, §260.11]

86 Acts, ch 1245, §1447; 89 Acts, ch 265, §12
C93, §272.11

272.12 Para-educator certificates.

The board of educational examiners shall adopt rules pursuant to chapter 17A relating to a voluntary certification system for para-educators. The rules shall specify rights, responsibilities, levels, and qualifications for the certificate. Applicants shall be disqualified for any reason specified in section 272.2, subsection 14, or in administrative rule. Notwithstanding section 272.2, subsection 14, paragraph *"b"*, subparagraph (2), the board may issue a para-educator certificate to a person who is at least eighteen years of age. A person holding a para-educator certificate shall not perform the duties of a licensed practitioner. A certificate issued pursuant to this chapter shall not be considered a teacher or administrator license for any purpose specified by law, including the purposes specified under this chapter or chapter 279.

98 Acts, ch 1216, §23; 2000 Acts, ch 1098, §5; 2000 Acts, ch 1223, §31; 2002 Acts, ch 1128, §2
Section amended

272.13 Hearing procedures — confidentiality.

Hearings before the board shall be conducted in the same manner as contested cases under chapter 17A. The board may subpoena books, papers, records, and any other real evidence necessary for the board to decide whether it should institute a contested case hearing. At the hearing the board may administer oaths and issue subpoenas to compel the attendance of witnesses and the production of other evidence. Subpoenas may be issued by the board to a party to a hearing, if the party demonstrates that the evidence or witnesses' testimony is relevant and material to the hearing. Service of process and subpoenas for board hearings shall be conducted in accordance with the law applicable to the service of process and subpoenas in civil actions.

Witnesses subpoenaed to appear before the board shall be reimbursed for mileage and necessary expenses and shall receive per diem compensation by the board, unless the witness is an employee of the state or a political subdivision, in which case the witness shall receive reimbursement only for mileage and necessary expenses.

All complaint files, investigation files, other investigation reports, and other investigative information in the possession of the board or its employees or agents, which relate to licensee discipline, are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of the board or its employees or agents which relates to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. A final written decision and finding of fact of the board in a disciplinary proceeding is a public record.

89 Acts, ch 265, §13
CS89, §260.13
C93, §272.13
2000 Acts, ch 1199, §1

272.14 Appointment of administrative law judges.

The board shall maintain a list of qualified persons who are experienced in the educational system of this state to serve as administrative law judges when a hearing is requested under section 279.24. When requested under section 279.24, the board shall submit a list of five qualified administrative law judges to the parties. The parties shall select one of the five qualified persons to conduct the hearing as provided in section 279.24. The hearing shall be held pursuant to the provisions of chapter 17A relating to contested cases. The full costs of the hearing shall be shared equally by the parties.

90 Acts, ch 1249, §9
C91, §260.14
C93, §272.14

272.15 through 272.19 Reserved.

272.20 National certification.

The board of educational examiners shall review the standards for teacher's certificates adopted by the national board for professional teaching standards, a nonprofit corporation created as a result of recommendations of the task force on teaching as a profession of the Carnegie forum on education and the economy. In those cases in which the standards required by the national board for an Iowa endorsement or license meet or exceed the requirements contained in rules adopted under this chapter for that endorsement or license, the board of educational examiners shall issue endorsements or licenses to holders of certificates issued by the national board who request the endorsement or license.

91 Acts, ch 51, §1
CS91, §260.20
C93, §272.20

272.21 through 272.24 Reserved.

272.25 Rules for practitioner preparation programs.

Not later than January 1, 1991, the state board of education shall adopt rules pursuant to chapter 17A to implement the following for approved practitioner preparation programs:

1. A requirement that each student admitted to an approved practitioner preparation program must participate in field experiences that include both observation and participation in teaching activities in a variety of school settings. These field experiences shall comprise a total of at least fifty hours in duration, at least ten hours of which shall occur prior to a student's acceptance in an approved practitioner preparation program. The student teaching experience shall be a minimum of twelve weeks in duration during the student's final year of the practitioner preparation program.

2. A requirement that faculty members in professional education maintain an ongoing involvement in activities in elementary, middle, or secondary schools. The activities shall include at least forty hours of team teaching during a period not exceeding five years in duration at the elementary, middle, or secondary level.

3. A requirement that the program include instruction in skills and strategies to be used in classroom management of individuals, and of small and large groups, under varying conditions; skills for communicating and working constructively with pupils, teachers, administrators, and parents; and skills for understanding the role of the board of education and the functions of other education agencies in the state. The requirement shall be based upon recommendations of the department of education after consultation with teacher education faculty members in colleges and universities.

4. A requirement that prescribes minimum experiences and responsibilities to be accomplished during the student teaching experience by the student teacher and by the cooperating teacher based upon recommendations of the department of education after consultation with teacher education faculty members in colleges and universities. The student teaching experience shall consist of interactive experiences involving the college or university personnel, the student teacher, the cooperating teacher, and administrative personnel from the cooperating teacher's school district.

5. A requirement that each approved practitioner preparation or professional development institution annually offer a workshop of at least one day in duration for prospective cooperating teachers. The workshop shall define the objectives of the student teaching experience, review the responsibilities of the cooperating teacher, and provide the cooperating teacher other information and assistance the institution deems necessary.

6. A requirement that practitioner preparation students receive instruction in the use of electronic technology for classroom and instructional purposes.

7. A requirement that approved practitioner preparation institutions annually solicit the views of the education community regarding the institution's practitioner preparation programs.

8. A requirement that an approved practitioner preparation institution submit evidence that the college or department of education is communicating with other colleges or departments in the institution so that practitioner preparation students may integrate teaching methodology with subject matter areas of specialization.

9. A requirement that an approved practitioner preparation program submit evidence that the evaluation of the performance of a student teacher is a cooperative process that involves both the faculty member supervising the student teacher and the cooperating teacher. The rules shall require that each institution develop a written evaluation procedure for use by the cooperating teacher and a form for evaluating student teachers, and require that a copy of the completed form be included in the student teacher's permanent record.

88 Acts, ch 1266, §3
C89, §260.25
89 Acts, ch 265, §14
C93, §272.25
99 Acts, ch 191, §2

272.26 Reserved.

272.27 Student teaching.

If the rules adopted by the board of educational examiners for issuance of any type or class of license require an applicant to complete work in student teaching, an accredited college or university located within the state of Iowa and states conterminous with Iowa may offer a program or programs of teacher education approved by the director of the department of education or the appropriate authority in states conterminous with Iowa by entering into a written contract with any accredited school district or private school, under terms and conditions as agreed upon by the contracting parties. Students actually teaching in a school district under the terms of such a contract are entitled to the same protection, under section 670.8, as is afforded by that section to officers and employees of the school district, during the time they are so assigned.

90 Acts, ch 1249, §10
C91, §260.27
C93, §272.27

272.28 Mentoring and induction requirement.

1. Effective July 1, 2003, requirements for teacher licensure beyond a provisional license shall include successful completion of a beginning teacher mentoring and induction program ap-

proved by the state board of education.

2. A teacher from an accredited nonpublic school or another state or country is exempt from the requirement of subsection 1 if the teacher can document three years of successful teaching experience within the past five years and meet or exceed the requirements contained in rules adopted under this chapter for endorsement and licensure.

2001 Acts, ch 161, §17

272.29 and 272.30 Reserved.

272.31 Coaching authorization.

1. The minimum requirements for the board to award a coaching authorization to an applicant are:

a. Successful completion of one semester credit hour or ten contact hours in a course relating to knowledge and understanding of the structure and function of the human body in relation to physical activity.

b. Successful completion of one semester credit hour or ten contact hours in a course relating to knowledge and understanding of human growth and development of children and youth in relation to physical activity.

c. Successful completion of two semester credit hours or twenty contact hours in a course relating to knowledge and understanding of the prevention and care of athletic injuries and medical and safety problems relating to physical activity.

d. Successful completion of one semester credit hour or ten contact hours relating to knowledge and understanding of the techniques and theory of coaching interscholastic athletics.

e. Attainment of at least eighteen years of age.

2. The board of educational examiners shall adopt rules under chapter 17A for coaching authorizations including, but not limited to, approval of courses, validity and expiration, fees, and suspension and revocation of authorizations. The state board of education shall work with institutions of higher education, private colleges and universities, community colleges, and area education agencies to ensure that the courses required under subsection 1 are offered throughout the state at convenient times and at a reasonable cost.

84 Acts, ch 1296, §3
C85, §260.31
86 Acts, ch 1245, §1452; 89 Acts, ch 265, §15, 16; 90 Acts, ch 1249, §11
C93, §272.31
97 Acts, ch 32, §1

272.32 Reserved.

272.33 Evaluator license.

In addition to licenses required under rules adopted pursuant to this chapter, an individual employed as an administrator, supervisor, school service person, or teacher by a school district, area education agency, or community college, who conducts evaluations of the performance of individuals holding licenses under this chapter, shall possess an evaluator license or an evaluator endorsement appearing on a teaching or administrative license. Individuals employed in community colleges who do not directly supervise licensed teaching faculty are exempt from this section.

The board of educational examiners shall adopt rules establishing requirements for an evaluator license or an evaluator endorsement including but not limited to renewal requirements, fees, and suspension and revocation of evaluator licenses or endorsements. An approved program shall include provisions for determining that an applicant for an evaluator license or endorsement has satisfactorily completed the program. The state board of education shall work with institutions of higher education under the state board of regents, private colleges and universities, community colleges, and area education agencies to ensure that the courses required under subsection 1 are offered throughout the state at convenient times and at reasonable cost. The requirements shall include completion of a program approved by the state board of education as follows:

1. For evaluation of teachers, the development of skills including but not limited to analysis of lesson plans, classroom observation, analysis of data, performance improvement strategies, and communication skills.

2. For evaluation of licensed employees other than teachers, the development of skills including but not limited to communication skills, analysis of employee performance, analysis of data, and performance improvement strategies.

An evaluator license is valid for a period of five years and is renewable upon meeting renewal requirements established by the board of educational examiners. The holder of a license with an evaluator endorsement must complete evaluation coursework as part of license renewal requirements. The board of educational examiners shall develop renewal requirements for holders of evaluator endorsements. To be eligible for an evaluator license or evaluator endorsement, an individual must hold either a teacher's license or administrative license issued by the board of educational examiners. An individual possessing a permanent teaching license which remains in force shall be issued an evaluator license.

86 Acts, ch 1245, §1453
C87, §260.33
89 Acts, ch 265, §17; 90 Acts, ch 1253, §120, 121
C93, §272.33
93 Acts, ch 82, §9; 96 Acts, ch 1087, §1

For future amendments to and repeal of this section effective July 1, 2003, see 2001 Acts, ch 161, §21; 2002 Acts, ch 1047, §12, 20; 2002 Acts, ch 1152, §21, 26

272.34 Elementary licenses. Repealed by 94 Acts, ch 1126, § 2.

CHAPTER 272A

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

272A.1 Interstate agreement.
272A.2 Designated state official.
272A.3 Contracts on file.

272A.1 Interstate agreement.

The interstate agreement on qualification of educational personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I — PURPOSE, FINDINGS, AND POLICY

1. The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of co-operation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interest of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of co-operation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this agreement can increase the availability of educational personnel.

ARTICLE II — DEFINITIONS

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

1. *"Educational personnel"* means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

2. *"Designated state official"* means the education official of a state selected by that state to negotiate and enter into, on behalf of that state, contracts pursuant to this agreement.

3. *"Accept",* or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

4. *"State"* means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

5. *"Originating state"* means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to article III of this agreement.

6. *"Receiving state"* means a state (and the subdivisions thereof) which accepts educational personnel in accordance with the terms of a contract made pursuant to article III of this agreement.

ARTICLE III — INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS

1. The designated state official of a party state may make one or more contracts on behalf of that state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which the official finds that there are programs of education, licensure standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in the official's state.

2. Any such contract shall provide for:

a. Its duration.

b. The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

c. Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

d. Any other necessary matters.

3. No contract made pursuant to this agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

5. The license or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any license or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a license or other qualifying document initially granted or approved in the receiving state.

6. A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

ARTICLE IV — APPROVED AND ACCEPTED PROGRAMS

1. Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

2. To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in applicable contract.

ARTICLE V — INTERSTATE CO-OPERATION

The party states agree that:

1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to article III of this agreement.

2. They will facilitate and strengthen co-operation in interstate certification and other elements of educational personnel qualification and for this purpose shall co-operate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

ARTICLE VI — AGREEMENT EVALUATION

The designated state officials of any party states may meet from time to time as a group to evaluate programs under the agreement, and to formulate recommendations for changes.

ARTICLE VII — OTHER ARRANGEMENTS

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

ARTICLE VIII — EFFECT AND WITHDRAWAL

1. This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

2. Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

3. No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

ARTICLE IX — CONSTRUCTION AND SEVERABILITY

This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

[C75, 77, 79, 81, §284.1]
90 Acts, ch 1249, §14
C93, §272A.1

272A.2 Designated state official.

The designated state official for this state, within the meaning of article II, paragraph 2, of the interstate agreement on qualification of educational personnel as set forth in section 272A.1, shall be the executive director of the board of educational examiners. The executive director shall enter into contracts pursuant to article III of the agreement only with the approval of the specific text thereof by the board of educational examiners.

[C75, 77, 79, 81, §284.2]
85 Acts, ch 212, §21; 90 Acts, ch 1249, §15
C93, §272A.2

272A.3 Contracts on file.

True copies of all contracts made on behalf of this state pursuant to the interstate agreement on qualification of educational personnel shall be kept on file by the board of educational examiners and in the office of the secretary of state. The board of educational examiners shall publish all such contracts in convenient form. The board of educational examiners may adopt rules pursuant to this chapter.

[C75, 77, 79, 81, §284.3]
90 Acts, ch 1249, §16
C93, §272A.3

CHAPTER 272B

EDUCATION COMPACT

272B.1 Compact for education.
272B.2 Education commission of the states.
272B.3 Filing bylaws.

272B.1 Compact for education.

The compact for education is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I — PURPOSE AND POLICY

1. It is the purpose of this compact to:

a. Establish and maintain close co-operation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the state and local levels.

b. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

c. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

d. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

2. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

3. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

ARTICLE II — STATE DEFINED

As used in this compact, *"state"* means a state, territory or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

ARTICLE III — THE COMMISSION

1. The education commission of the states, hereinafter called *"the commission"*, is hereby established. The commission shall consist of seven members representing each party state.* One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide.

If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations or professional educators or persons concerned with educational administration.

2. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to article IV and adoption of the annual report pursuant to article III, paragraph 10.

3. The commission shall have a seal.

4. The commission shall elect annually, from among its members, a chairperson, who shall be a governor, a vice chairperson and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

5. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

6. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

7. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph 6 of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

8. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

9. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

10. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

ARTICLE IV — POWERS

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the

types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

ARTICLE V — CO-OPERATION WITH FEDERAL GOVERNMENT

1. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

2. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

ARTICLE VI — COMMITTEES

1. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee shall consist of governors, one-fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows:

Sixteen for one year and sixteen for two years. The chairperson, vice chairperson, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regular ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two-term limitation.

2. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

3. The commission may establish such additional committees as its bylaws may provide.

ARTICLE VII — FINANCE

1. The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

2. The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

3. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to article III, paragraph 7, of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to article III, paragraph 7 thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

5. The accounts of the commission shall be

open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

6. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII — ELIGIBLE PARTIES — ENTRY INTO AND WITHDRAWAL

1. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term *"governor"*, as used in this compact, shall mean the closest equivalent official of such jurisdiction.

2. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

3. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX — CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

[C75, 77, 79, 81, §272B.1]

*See §272B.2

272B.2 Education commission of the states.

Article III, paragraph 1, of the compact notwithstanding, the members of the education commission of the states representing this state consist of the governor, two nonlegislative members appointed by the governor, two members of the senate appointed by the majority leader of the senate, and two members of the house of representatives appointed by the speaker of the house of representatives. The members shall serve four-year terms. Nonlegislative members shall serve on the education commission of the states without compensation, but shall receive their actual and necessary expenses and travel. Legislative members shall receive actual and necessary expenses and travel pursuant to sections 2.10 and 2.12. Vacancies on the commission shall be filled for the unexpired portion of the term in the same manner as the original appointments. If a member ceases to be a member of the general assembly, the member shall no longer serve as a member of the education commission of the states.

[C75, 77, 79, 81, §272B.2]

86 Acts, ch 1245, §2033

272B.3 Filing bylaws.

Pursuant to article III, paragraph 9, of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the governor.

[C75, 77, 79, 81, §272B.3]

CHAPTER 272C

CONTINUING EDUCATION AND REGULATION — PROFESSIONAL AND OCCUPATIONAL

Identifying and reporting of dependent adult abuse to be included in continuing education; see §235B.16

272C.1 Definitions.
272C.2 Continuing education required.
272C.2A Continuing education minimum requirements — barbering and cosmetology arts and sciences.
272C.3 Authority of licensing boards.
272C.4 Duties of board.
272C.5 Licensee disciplinary procedure — rulemaking delegation.
272C.6 Hearings — power of subpoena — decisions.
272C.7 Executive secretary and personnel.
272C.8 Immunities.
272C.9 Duties of licensees.
272C.10 Rules for revocation or suspension of license.

272C.1 Definitions.

1. *"Continuing education"* means that education which is obtained by a professional or occupational licensee in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge. This education may be obtained through formal or informal education practices, self-study, research, and participation in professional, technical, and occupational societies, and by other similar means as authorized by the board.

2. *"Disciplinary proceeding"* means any proceeding under the authority of a licensing board pursuant to which licensee discipline may be imposed.

3. *"Inactive licensee re-entry"* means that process a former or inactive professional or occupational licensee pursues to again be capable of actively and competently practicing as a professional or occupational licensee.

4. *"Licensee discipline"* means any sanction a licensing board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional or occupational care.

5. The term *"licensing"* and its derivations include the terms *"registration"* and *"certification"* and their derivations.

6. *"Licensing board"* or *"board"* includes the following boards:

a. The state board of engineering and land surveying examiners, created pursuant to chapter 542B.

b. The board of examiners of shorthand reporters created pursuant to article 3 of chapter 602.

c. The Iowa accountancy examining board, created pursuant to chapter 542.

d. The Iowa real estate commission, created pursuant to chapter 543B.

e. The board of architectural examiners, created pursuant to chapter 544A.

f. The Iowa board of landscape architectural examiners, created pursuant to chapter 544B.

g. The board of barber examiners, created pursuant to chapter 147.

h. The board of chiropractic examiners, created pursuant to chapter 147.

i. The board of cosmetology arts and sciences examiners, created pursuant to chapter 147.

j. The board of dental examiners, created pursuant to chapter 147.

k. The board of mortuary science examiners, created pursuant to chapter 147.

l. The board of medical examiners, created pursuant to chapter 147.

m. The board of physician assistant examiners, created pursuant to chapter 148C.

n. The board of nursing, created pursuant to chapter 147.

o. The board of examiners for nursing home administrators, created pursuant to chapter 155.

p. The board of optometry examiners, created pursuant to chapter 147.

q. The board of pharmacy examiners, created pursuant to chapter 147.

r. The board of physical and occupational therapy examiners, created pursuant to chapter 147.

s. The board of podiatry examiners, created pursuant to chapter 147.

t. The board of psychology examiners, created pursuant to chapter 147.

u. The board of speech pathology and audiology examiners, created pursuant to chapter 147.

v. The board for the licensing and regulation of hearing aid dealers, created pursuant to chapter 154A.

w. The board of veterinary medicine, created pursuant to chapter 169.

x. The director of the department of natural resources in certifying water treatment operators as provided in sections 455B.211 through 455B.224.

y. Any professional or occupational licensing board created after January 1, 1978.

z. The commissioner of insurance in licensing insurance producers pursuant to chapter 522B, except those producers authorized to sell only credit insurance or crop insurance.

aa. The state board of respiratory care in licensing respiratory care practitioners pursuant to chapter 152B.

ab. The board of examiners for athletic training in licensing athletic trainers pursuant to chapter 152D.

ac. The board of examiners for massage therapy in licensing massage therapists pursuant to chapter 152C.

7. *"Malpractice"* means any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a licensee in the course of practice of the licensee's occupation or profession, pursuant to this chapter.

8. *"Peer review"* means evaluation of professional services rendered by a professional practitioner.

9. *"Peer review committee"* means one or more persons acting in a peer review capacity pursuant to this chapter.

[C79, 81, §258A.1]

83 Acts, ch 186, §10063, 10201; 84 Acts, ch 1067, §26; 87 Acts, ch 165, §3; 88 Acts, ch 1134, §61; 88 Acts, ch 1225, §25; 89 Acts, ch 83, §36; 90 Acts, ch 1193, §8; 92 Acts, ch 1205, §23

C93, §272C.1

94 Acts, ch 1132, §32; 96 Acts, ch 1036, §40; 98 Acts, ch 1053, §41, 42; 2001 Acts, ch 16, §1, 37; 2001 Acts, ch 55, §25, 38

2001 amendment to subsection 6, paragraph c, is effective July 1, 2002; 2001 Acts, ch 55, §35

Subsection 6, paragraph c amended

272C.2 Continuing education required.

1. Each licensing board shall require and issue rules for continuing education requirements as a

condition to license renewal.

2. The rules shall create continuing education requirements at a minimum level prescribed by each licensing board. These boards may also establish continuing education programs to assist a licensee in meeting such continuing education requirements. Such rules shall also:

a. Give due attention to the effect of continuing education requirements on interstate and international practice.

b. Place the responsibility for arrangement of financing of continuing education on the licensee, while allowing the board to receive any other available funds or resources that aid in supporting a continuing education program.

c. Attempt to express continuing education requirements in terms of uniform and widely recognized measurement units.

d. Establish guidelines, including guidelines in regard to the monitoring of licensee participation, for the approval of continuing education programs that qualify under the continuing education requirements prescribed.

e. Not be implemented for the purpose of limiting the size of the profession or occupation.

f. Define the status of active and inactive licensure and establish appropriate guidelines for inactive licensee re-entry.

g. Be promulgated solely for the purpose of assuring a continued maintenance of skills and knowledge by a professional or occupational licensee directly related and commensurate with the current level of competency of the licensee's profession or occupation.

3. The state board of engineering and land surveyors, the board of architectural examiners, the board of landscape architectural examiners, and the department of natural resources shall cooperate with each other and with persons who typically offer continuing education courses for design professionals to make available energy efficiency related continuing education courses, and to encourage interdisciplinary cooperation and education concerning available energy efficiency strategies for employment in the state's construction industry.

4. A person licensed to practice an occupation or profession in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person is a resident of another state or district having a continuing education requirement for the occupation or profession and meets all requirements of that state or district for practice therein, or for periods that the person is a government employee working in the person's licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the appropriate board of examiners.

5. A person licensed to sell real estate in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person is a resident of another state or district having a continuing education requirement for the occupation or profession and meets all requirements of that state or district for practice therein, if the state or district accords the same privilege to Iowa residents, or for periods that the person is a government employee working in the person's licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the appropriate board of examiners.

[C79, 81, §258A.2]
89 Acts, ch 292, §5; 90 Acts, ch 1252, §16
C93, §272C.2

272C.2A Continuing education minimum requirements — barbering and cosmetology arts and sciences.

The board of barber examiners and the board of cosmetology arts and sciences examiners, created pursuant to chapter 147, shall each require, as a condition of license renewal, a minimum of six hours of continuing education in the two years immediately prior to a licensee's license renewal. The board of cosmetology arts and sciences examiners may notify cosmetology arts and sciences licensees on a quarterly basis regarding continuing education opportunities.

88 Acts, ch 1274, §40
C89, §258A.2A
92 Acts, ch 1205, §24
C93, §272C.2A

272C.3 Authority of licensing boards.

1. Notwithstanding any other provision of this chapter, each licensing board shall have the powers to:

a. Administer and enforce the laws and administrative rules provided for in this chapter and any other statute to which the licensing board is subject;

b. Adopt and enforce administrative rules which provide for the partial re-examination of the professional licensing examinations given by each licensing board;

c. Review or investigate, or both, upon written complaint or upon its own motion pursuant to other evidence received by the board, alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline;

d. Determine in any case whether an investigation, or further investigation, or a disciplinary proceeding is warranted. Notwithstanding the provisions of chapter 17A, a determination by a licensing board that an investigation is not warranted or that an investigation should be closed without initiating a disciplinary proceeding is not

subject to judicial review pursuant to section 17A.19;

e. Initiate and prosecute disciplinary proceedings;

f. Impose licensee discipline;

g. Petition the district court for enforcement of its authority with respect to licensees or with respect to other persons violating the laws which the board is charged with administering;

h. Register or establish and register peer review committees;

i. Refer to a registered peer review committee for investigation, review, and report to the board, any complaint or other evidence of an act or omission which the board reasonably believes to constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction;

j. Determine and administer the renewal of licenses for periods not exceeding three years.

k. Establish a licensee review committee for the purpose of evaluating and monitoring licensees who self-report physical or mental impairments to the board. The board shall adopt rules for the establishment and administration of the committee, including but not limited to establishment of the criteria for eligibility for referral to the committee and the grounds for disciplinary action for noncompliance with committee decisions. Information in the possession of the board or the licensee review committee, under this paragraph, shall be subject to the confidentiality requirements of section 272C.6. Referral of a licensee by the board to a licensee review committee shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. A licensee who violates section 272C.10 or the rules of the board while under review by the licensee review committee shall be referred to the board for appropriate action.

2. Each licensing board may impose one or more of the following as licensee discipline:

a. Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151, 155, 507B, or 522B, as applicable, or upon any other grounds specifically provided for in this chapter for revocation of the license of a licensee subject to the jurisdiction of that board, or upon failure of the licensee to comply with a decision of the board imposing licensee discipline;

b. Revoke, or suspend either until further order of the board or for a specified period, the privilege of a licensee to engage in one or more specified procedures, methods, or acts incident to the practice of the profession, if pursuant to hearing or stipulated or agreed settlement the board finds that because of a lack of education or experience, or because of negligence, or careless acts or omissions, or because of one or more intentional acts or omissions, the licensee has demonstrated a lack of qualifications which are necessary to assure the residents of this state a high standard of professional and occupational care;

c. Impose a period of probation under specified conditions, whether or not in conjunction with other sanctions;

d. Require additional professional education or training, or re-examination, or any combination, as a condition precedent to the reinstatement of a license or of any privilege incident thereto, or as a condition precedent to the termination of any suspension;

e. Impose civil penalties by rule, if the rule specifies which offenses or acts are subject to civil penalties. The amount of civil penalty shall be in the discretion of the board, but shall not exceed one thousand dollars. Failure to comply with the imposition of a civil penalty may be grounds for further license discipline;

f. Issue a citation and warning respecting licensee behavior which is subject to the imposition of other sanctions by the board.

3. The powers conferred by this section upon a licensing board shall be in addition to powers specified elsewhere in the Code. The powers of any other person specified elsewhere in the Code shall not limit the powers of a licensing board conferred by this section, nor shall the powers of such other person be deemed limited by the provisions of this section.

4. Nothing contained in this section shall be construed to prohibit informal stipulation and settlement by a board and a licensee of any matter involving licensee discipline. However, licensee discipline shall not be agreed to or imposed except pursuant to a written decision which specifies the sanction and which is entered by the board and filed.

All health care boards shall file written decisions which specify the sanction entered by the board with the Iowa department of public health which shall be available to the public upon request. All nonhealth-care boards shall have on file the written and specified decisions and sanctions entered by the board and shall be available to the public upon request.

[C79, 81, §258A.3]

83 Acts, ch 186, §10064, 10201; 84 Acts, ch 1056, §1; 84 Acts, ch 1067, §27; 86 Acts, ch 1245, §1880; 90 Acts, ch 1086, §16

C93, §272C.3

95 Acts, ch 72, §1; 2000 Acts, ch 1008, §10; 2001 Acts, ch 16, §2, 37; 2001 Acts, ch 55, §26, 38; 2002 Acts, ch 1108, §26; 2002 Acts, ch 1119, §149

Civil penalty for real estate brokers and salespersons; §543B.48

2001 amendment to subsection 2, paragraph a, takes effect July 1, 2002;

2001 Acts, ch 55, §38
See Code editor's note to §8.55 at the end of Vol IV
Subsection 1, paragraph d amended
Subsection 2, paragraph a amended

272C.4 Duties of board.

Each licensing board shall have the following duties in addition to other duties specified by this chapter or elsewhere in the Code:

1. Establish procedures by which complaints which relate to licensure or to licensee discipline shall be received and reviewed by the board;

2. Establish procedures by which disputes between licensees and clients which result in judgments or settlements in or of malpractice claims or actions shall be investigated by the board;

3. Establish procedures by which any recommendation taken by a peer review committee shall be reported to and reviewed by the board if a peer review committee is established;

4. Establish procedures for registration with the board of peer review committees if a peer review committee is established;

5. Define by rule those recommendations of peer review committees which shall constitute disciplinary recommendations which must be reported to the board if a peer review committee is established;

6. Define by rule acts or omissions which are grounds for revocation or suspension of a license under section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151, 155, 507B or 522B, as applicable, and to define by rule acts or omissions which constitute negligence, careless acts or omissions within the meaning of section 272C.3, subsection 2, paragraph *"b"*, which licensees are required to report to the board pursuant to section 272C.9, subsection 2;

7. Establish the procedures by which licensees shall report those acts or omissions specified by the board pursuant to subsection 6;

8. Give written notice to another licensing board or to a hospital licensing agency if evidence received by the board either alleges or constitutes reasonable cause to believe the existence of an act or omission which is subject to discipline by that other board or agency;

9. Require each health care licensing board to file with the Iowa department of public health a copy of each decision of the board imposing licensee discipline. Each nonhealth-care board shall have on file a copy of each decision of the board imposing licensee discipline which copy shall be properly dated and shall be in simple language and in the most concise form consistent with clearness and comprehensiveness of subject matter.

10. Establish procedures consistent with the provisions of section 261.121, subsection 2, and sections 261.122 through 261.127 by which, in the board's discretion, a license shall be suspended, denied, or revoked, or other disciplinary action imposed, with regard to a licensee subject to the board's jurisdiction who has defaulted on a repayment or service obligation under any federal or state educational loan or service-conditional scholarship program. Notwithstanding any other provision to the contrary, each board shall defer to the federal or state program's determination of default upon certification by the program of such a default on the part of a licensee, and shall remove the suspension, grant the license, or stay the revocation or other disciplinary action taken if the federal or state program certifies that the defaulting licensee has agreed to fulfill the licensee's obligation, or is complying with an approved repayment plan. Licensure sanctions shall be reinstated upon certification that a defaulting licensee has failed to comply with the repayment or service requirements, as determined by the federal or state program. The provisions of this subsection relating to board authority to act in response to notification of default shall apply not only to a licensing board, as defined in section 272C.1, but also to any other licensing board or authority regulating a license authorized by the laws of this state.

Insurance carriers which insure professional and occupational licensees for acts or omissions that constitute negligence, careless acts, or omissions in the practice of a profession or occupation shall file reports with the appropriate licensing board. The reports shall include information pertaining to claims against a licensee which may affect the licensee as defined by rule, involving an insured of the insurer.

[C79, 81, §258A.4]

83 Acts, ch 186, §10065, 10201; 84 Acts, ch 1067, §28; 90 Acts, ch 1086, §17

C93, §272C.4

97 Acts, ch 203, §16; 98 Acts, ch 1119, §8; 2000 Acts, ch 1008, §11; 2001 Acts, ch 16, §3, 37; 2001 Acts, ch 55, §27, 38; 2002 Acts, ch 1057, §1; 2002 Acts, ch 1111, §1; 2002 Acts, ch 1119, §150

2001 amendment to subsection 6 is effective July 1, 2002; 2001 Acts, ch 55, §38
See Code editor's note to §8.55 at the end of Vol IV
Subsection 6 amended
NEW subsection 10
Unnumbered paragraph 2 amended

272C.5 Licensee disciplinary procedure — rulemaking delegation.

1. Each licensing board may establish by rule licensee disciplinary procedures. Each licensing board may impose licensee discipline under these procedures.

2. Rules promulgated under subsection 1 of this section:

a. Shall comply with the provisions of chapter 17A.

b. Shall designate who may or shall initiate a licensee disciplinary investigation and a licensee disciplinary proceeding, and who shall prosecute a disciplinary proceeding and under what condi-

tions, and shall state the procedures for review by the licensing board of findings of fact if a majority of the licensing board does not hear the disciplinary proceeding.

c. Shall state whether the procedures are an alternative to or an addition to the procedures stated in sections 147.58 through 147.71, 148.6 through 148.9, 152.10, 152.11, 153.33, 154A.23, 542.11, 542B.22, 543B.35, 543B.36, and 544B.16.

d. Shall specify methods by which the final decisions of the board relating to disciplinary proceedings shall be published.

[C79, 81, §258A.5]

87 Acts, ch 215, §45

C93, §272C.5

2000 Acts, ch 1008, §12; 2001 Acts, ch 55, §28, 38; 2002 Acts, ch 1108, §27

See Code editor's note to §8.55 at the end of Vol IV

2001 amendment to subsection 2, paragraph c, is effective July 1, 2002; 2001 Acts, ch 55, §38

Subsection 2, paragraph c amended

272C.6 Hearings — power of subpoena — decisions.

1. Disciplinary hearings held pursuant to this chapter shall be heard by the board sitting as the hearing panel, or by a panel of not less than three board members who are licensed in the profession, or by a panel of not less than three members appointed pursuant to subsection 2. Notwithstanding chapters 17A and 21 a disciplinary hearing shall be open to the public at the discretion of the licensee.

2. When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice of a profession when holding disciplinary hearings, a licensing board may appoint licensees not having a conflict of interest to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

3. The presiding officer of a hearing panel may issue subpoenas pursuant to rules of the board on behalf of the board or on behalf of the licensee. A licensee may have subpoenas issued on the licensee's behalf. A subpoena issued under the authority of a licensing board may compel the attendance of witnesses and the production of professional records, books, papers, correspondence and other records, whether or not privileged or confidential under law, which are deemed necessary as evidence in connection with a disciplinary proceeding.

Nothing in this subsection shall be deemed to enable a licensing board to compel an attorney of the licensee, or stenographer or confidential clerk of the attorney, to disclose any information when privileged against disclosure by section 622.10. In the event of a refusal to obey a subpoena, the licensing board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena, and if the person fails to obey the order of the court the person may be found guilty of contempt of court. The presiding officer of a hearing panel may also administer oaths and affirmations, take or order that depositions be taken, and pursuant to rules of the board, grant immunity to a witness from disciplinary proceedings initiated either by the board or by other state agencies which might otherwise result from the testimony to be given by the witness to the panel.

4. In order to assure a free flow of information for accomplishing the purposes of this section, and notwithstanding section 622.10, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of a licensing board or peer review committee acting under the authority of a licensing board or its employees or agents which relates to licensee discipline are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee and the boards, their employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of a licensing board or its employees or agents which relates to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the coordinated licensure information system provided for in the nurse licensure compact contained in section 152E.1, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of a licensing board or its employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. However, a final written decision and finding of fact of a licensing board in a disciplinary proceeding, including a decision referred to in section 272C.3, subsection 4, is a public record.

Pursuant to the provisions of section 17A.19, subsection 6, a licensing board upon an appeal by the licensee of the decision by the licensing board, shall transmit the entire record of the contested case to the reviewing court.

Notwithstanding the provisions of section 17A.19, subsection 6, if a waiver of privilege has been involuntary and evidence has been received at a disciplinary hearing, the court shall order withheld the identity of the individual whose privilege was waived.

5. Licensee discipline shall not be imposed except upon the affirmative vote of a majority of the licensing board.

6. A board created pursuant to chapter 147, 154A, 155, 169, 542, 542B, 543B, 543D, 544A, or 544B may charge a fee not to exceed seventy-five dollars for conducting a disciplinary hearing pur-

suant to this chapter which results in disciplinary action taken against the licensee by the board, and in addition to the fee, may recover from a licensee the costs for the following procedures and associated personnel:

a. Transcript.

b. Witness fees and expenses.

c. Depositions.

d. Medical examination fees incurred relating to a person licensed under chapter 147, 154A, 155, or 169.

The department of agriculture and land stewardship, the department of commerce, and the Iowa department of public health shall each adopt rules pursuant to chapter 17A which provide for the allocation of fees and costs collected pursuant to this section to the board under its jurisdiction collecting the fees and costs. The fees and costs shall be considered repayment receipts as defined in section 8.2.

[C79, 81, §258A.6; 82 Acts, ch 1005, §8]

86 Acts, ch 1211, §15; 92 Acts, ch 1125, §1

C93, §272C.6

2000 Acts, ch 1008, §13; 2001 Acts, ch 55, §29, 38

2001 amendment to subsection 6 is effective July 1, 2002; 2001 Acts, ch 55, §38

Subsection 6, unnumbered paragraph 1 amended

272C.7 Executive secretary and personnel.

1. As an alternative to authority contained elsewhere in this chapter, a licensing board may employ within the limits of available funds an executive secretary, one or more inspectors, and such clerical personnel as may be necessary for the administration of the duties of the board. Employees of the board shall be employed subject to chapter 19A. The qualifications of the executive secretary shall be determined by the board.

2. All employees of a licensing board shall be reimbursed subject to the rules of the director of revenue and finance for their expenses incurred in the performance of official duties. All reimbursements shall constitute costs of sustaining the board.

3. Licensees appointed to serve on a hearing panel pursuant to section 272C.6, subsection 2, shall be compensated at the rate specified in section 7E.6 for each day of actual duty, and shall be reimbursed for actual expenses reasonably incurred in the performance of duties.

4. Salaries, per diem, and expenses incurred in the performance of official duties of the board or its employees shall be paid from funds appropriated by the general assembly.

[C79, 81, §258A.7]

90 Acts, ch 1256, §43

C93, §272C.7

272C.8 Immunities.

1. A person shall not be civilly liable as a result of the person's acts, omissions or decisions in good faith as a member of a licensing board or as an employee or agent in connection with the person's duties.

2. A person shall not be civilly liable as a result of filing a report or complaint with a licensing board or peer review committee, or for the disclosure to a licensing board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of a health care board. However, such immunity from civil liability shall not apply if such act is done with malice.

3. A person shall not be dismissed from employment, and shall not be discriminated against by an employer because the person filed a complaint with a licensing board or peer review committee, or because the person participated as a member, agent or employee of a licensing board or peer review committee, or presented testimony or other evidence to a licensing board or peer review committee.

Any employer who violates the terms of this section shall be liable to any person aggrieved for actual and punitive damages plus reasonable attorney fees.

[C79, 81, §258A.8]

C93, §272C.8

272C.9 Duties of licensees.

1. Each licensee of a licensing board, as a condition of licensure, is under a duty to submit to a physical or mental examination when directed in writing by the board for cause. All objections shall be waived as to the admissibility of the examining physician's testimony or reports on the grounds of privileged communications. The medical testimony or report shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board, or one commenced in district court for revocation of the licensee's privileges. The licensing board, upon probable cause, shall have the authority to order physical or mental examination, and upon refusal of the licensee to submit to the examination the licensing board may order that the allegations pursuant to which the order of physical or mental examination was made shall be taken to be established.

2. A licensee has a continuing duty to report to the licensing board by whom the person is licensed those acts or omissions specified by rule of the board pursuant to section 272C.4, subsection 6, when committed by another person licensed by the same licensing board. This subsection does not apply to licensees under chapter 542 when the observations are a result of participation in programs of practice review, peer review and quality review conducted by professional organizations of certified public accountants, for educational pur-

poses and approved by the accountancy examining board.

3. A licensee shall have a continuing duty and obligation, as a condition of licensure, to report to the licensing board by which the licensee is licensed every adverse judgment in a professional or occupational malpractice action to which the licensee is a party, and every settlement of a claim against the licensee alleging malpractice.

4. A licensee who willfully fails to comply with subsection 2 or 3 of this section commits a violation of this chapter for which licensee discipline may be imposed.

[C79, 81, §258A.9; 81 Acts, ch 84, §1]

C93, §272C.9

2001 Acts, ch 55, §30, 38

2001 amendment to subsection 2 is effective July 1, 2002; 2001 Acts, ch 55, §38

Subsection 2 amended

272C.10 Rules for revocation or suspension of license.

A licensing board established after January 1, 1978 and pursuant to the provisions of this chapter shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this chapter.

[C79, 81, §258A.10]

C93, §272C.10

CHAPTER 272D

HIGHER EDUCATION STRATEGIC PLANNING COUNCIL

Repealed effective July 1, 1995,
by 94 Acts, ch 1193, §37

SUBTITLE 6

SCHOOL DISTRICTS

CHAPTER 273

AREA EDUCATION AGENCIES

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SUBCHAPTER I

GENERAL PROVISIONS

273.1 Intent.

It is the intent of the general assembly to provide an effective, efficient, and economical means of identifying and serving children from under five years of age through grade twelve who require special education and any other children requiring special education as defined in section 256B.2; to provide for media services and other programs and services for pupils in grades kindergarten through twelve and children requiring special education as defined in section 256B.2; to provide a method of financing the programs and services; and to avoid a duplication of programs and services provided by any other school corporation in the state; and to provide services to school districts under a contract with those school districts.

[C75, 77, 79, 81, §273.1]
87 Acts, ch 224, §44

273.2 Area education agencies established — powers — services and programs.

1. There are established throughout the state fifteen area education agencies, each of which is governed by an area education agency board of directors. The boundaries of an area education agency shall not divide a school district. The director of the department of education shall change boundaries of area education agencies to take into account mergers of local school districts and changes in boundaries of local school districts, when necessary to maintain the policy of this chapter that a local school district shall not be a part of more than one area education agency.

2. An area education agency established under this chapter is a body politic as a school corporation for the purpose of exercising powers granted under this chapter, and may sue and be sued. An area education agency may hold property and execute lease-purchase agreements pursuant to section 273.3, subsection 7, and if the lease exceeds ten years or the purchase price of the property to be acquired pursuant to a lease-purchase agreement exceeds twenty-five thousand dollars, the area education agency shall conduct a public hearing on the proposed lease-purchase agreement and receive approval from the area education agency board of directors and the director of the department of education before entering into the agreement.

3. The area education agency board shall furnish educational services and programs as provided in sections 273.1 to 273.9 and chapter 256B to the pupils enrolled in public or nonpublic schools located within its boundaries which are on

the list of accredited schools pursuant to section 256.11. The programs and services provided shall be at least commensurate with programs and services existing on July 1, 1974. The programs and services provided to pupils enrolled in nonpublic schools shall be comparable to programs and services provided to pupils enrolled in public schools within constitutional guidelines.

4. The area education agency board shall provide for special education services and media services for the local school districts in the area and shall encourage and assist school districts in the area to establish programs for gifted and talented children. The board shall assist in facilitating interlibrary loans of materials between school districts and other libraries. Each area education agency shall include as a member of its media center advisory committee a library service area trustee or library service area staff member, who is appointed to the committee by the commission of libraries.

5. The area education agency board may provide for the following programs and services to local school districts, and at the request of local school districts to providers of child development services who have received grants under chapter 256A from the child development coordinating council, within the limits of funds available:

a. In-service training programs for employees of school districts and area education agencies, provided at the time programs and services are established they do not duplicate programs and services available in that area from the universities under the state board of regents and from other universities and four-year institutions of higher education in Iowa. The in-service training programs shall include but are not limited to regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

b. Educational data processing pursuant to section 256.9, subsection 11.

c. Research, demonstration projects and models, and educational planning for children under five years of age through grade twelve and children requiring special education as defined in section 256B.2 as approved by the state board of education.

d. Auxiliary services for nonpublic school pupils as provided in section 256.12. However, if auxiliary services are provided their funding shall be based on the type of service provided.

e. Other educational programs and services for children under five years through grade twelve and children requiring special education as defined in section 256B.2 and for employees of school districts and area education agencies as approved by the state board of education.

6. The board of directors of an area education agency shall not establish programs and services which duplicate programs and services which are or may be provided by the community colleges under the provisions of chapter 260C. An area education agency shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

[C66, 71, 73, §280A.25(3); C75, 77, 79, 81, §273.2, 280A.25(3); 82 Acts, ch 1006, §1, 2, ch 1136, §1]

84 Acts, ch 1103, §1; 85 Acts, ch 195, §30; 86 Acts, ch 1245, §1457; 87 Acts, ch 115, §39; 89 Acts, ch 135, §57; 95 Acts, ch 182, §20; 2001 Acts, ch 158, §23

273.3 Duties and powers of area education agency board.

The board in carrying out the provisions of section 273.2 shall:

1. Determine the policies of the area education agency for providing programs and services.

2. Be authorized to receive and expend money for providing programs and services as provided in sections 273.1 to 273.9, and chapters 256B and 257. All costs incurred in providing the programs and services, including administrative costs, shall be paid from funds received pursuant to sections 273.1 to 273.9 and chapters 256B and 257.

3. Provide data and prepare reports as directed by the director of the department of education.

4. Provide for advisory committees as deemed necessary.

5. Be authorized, subject to rules of the state board of education, to provide directly or by contractual arrangement with public or private agencies for special education programs and services, media services, and educational programs and services requested by the local boards of education as provided in this chapter, including but not limited to contracts for the area education agency to provide programs or services to the local school districts and contracts for local school districts, other educational agencies, and public and private agencies to provide programs and services to the local school districts in the area education agency in lieu of the area education agency providing the services. Contracts may be made with public or private agencies located outside the state if the programs and services comply with the rules of the state board. Rules adopted by the state board of education shall be consistent with rules, adopted by the board of educational examiners, relating to licensing of practitioners.

6. Area education agencies may cooperate and contract between themselves and with other public agencies to provide special education programs and services, media services, and educational services to schools and children residing within their respective areas. Area education agencies may provide print and nonprint materials to public and private colleges and universities that have teacher education programs approved by the state

board of education.

7. Be authorized to lease, subject to the approval of the director of the department of education and to receive by gift and operate and maintain facilities and buildings necessary to provide authorized programs and services. However, a lease for less than ten years and with an annual cost of less than twenty-five thousand dollars does not require the approval of the director. If a lease requires approval, the director shall not approve the lease until the director is satisfied by investigation that public school corporations within the area do not have suitable facilities available.

8. Be authorized, subject to the approval of the director of the department of education, to enter into agreements for the joint use of personnel, buildings, facilities, supplies, and equipment with school corporations as deemed necessary to provide authorized programs and services.

9. Be authorized to make application for, accept, and expend state and federal funds that are available for programs of educational benefit approved by the director of the department of education, and cooperate with the department in the manner provided in federal-state plans or department rules in the effectuation and administration of programs approved by the director, or approved by other educational agencies, which agencies have been approved as state educational authorities.

10. Be authorized to perform all other acts necessary to carry out the provisions and intent of this chapter.

11. Employ personnel to carry out the functions of the area education agency which shall include the employment of an administrator who shall possess a license issued under chapter 272. The administrator shall be employed pursuant to section 279.20 and sections 279.23, 279.24 and 279.25. The salary for an area education agency administrator shall be established by the board based upon the previous experience and education of the administrator. Section 279.13 applies to the area education agency board and to all teachers employed by the area education agency. Sections 279.23, 279.24 and 279.25 apply to the area education board and to all administrators employed by the area education agency.

12. Prepare an annual budget estimating income and expenditures for programs and services as provided in sections 273.1 to 273.9 and chapter 256B within the limits of funds provided under section 256B.9 and chapter 257. The board shall give notice of a public hearing on the proposed budget by publication in an official county newspaper in each county in the territory of the area education agency in which the principal place of business of a school district that is a part of the area education agency is located. The notice shall specify the date, which shall be not later than March 1 of each year, the time, and the location of the public hearing. The proposed budget as approved by the board shall then be submitted to the state board of education, on forms provided by the department, no later than March 15 preceding the next fiscal year for approval. The state board shall review the proposed budget of each area education agency and shall before April 1, either grant approval or return the budget without approval with comments of the state board included. An unapproved budget shall be resubmitted to the state board for final approval not later than April 15. For the fiscal year beginning July 1, 1999, and each succeeding fiscal year, the state board shall give final approval only to budgets submitted by area education agencies accredited by the state board or that have been given conditional accreditation by the state board.

13. Be authorized to pay, out of funds available to the board reasonable annual dues to an Iowa association of school boards. Membership shall be limited to those duly elected members of the area education agency board.

14. At the request of an employee through contractual agreement the board may purchase group or individual annuity contracts for employees, which annuity contracts are issued by a nonprofit corporation issuing retirement annuities exclusively for educational institutions and their employees or are purchased from any company the employee chooses that is authorized to do business in this state or through an Iowa-licensed salesperson that the employee selects, on a group or individual basis, for retirement or other purposes. The board may make payroll deductions for the purpose of paying the entire premium due, and to become due, in accordance with the terms of the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. As used in this section, unless the context otherwise requires, *"annuity contract"* includes any custodial account which meets the requirements of section 403(b)(7) of the Internal Revenue Code, as defined in section 422.3.

15. Be authorized to establish and pay all or any part of the cost of group health insurance plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the area education agency, from funds available to the board.

16. Meet at least annually with the members of the boards of directors of the merged areas in which the area education agency is located to discuss co-ordination of programs and services and other matters of mutual interest to the boards.

17. Be authorized to issue warrants and anticipatory warrants pursuant to chapter 74. The applicable rate of interest shall be determined pursuant to sections 74A.2, 74A.3, and 74A.7. This subsection shall not be construed to authorize a

board to levy a tax.

18. Be authorized to issue school credit cards allowing area education agency employees to pay for the actual and necessary expenses incurred in the performance of work-related duties.

19. Pursuant to rules adopted by the state board of education, be authorized to charge user fees for certain materials and services that are not required by law or by rules of the state board of education and are specifically requested by a school district or accredited nonpublic school.

20. Be authorized to purchase equipment as provided in section 279.48.

21. Be authorized to sell, lease, or dispose of, in whole or in part, property belonging to the area education agency. Before the area education agency may sell property belonging to the agency, the board of directors shall comply with the requirements set forth in section 297.22. Before the board of directors of an area education agency may lease property belonging to the agency, the board shall obtain the approval of the director of the department of education.

22. Meet annually with the members of the boards of directors of the school districts located within its boundaries if requested by the school district boards.

[C51, §417; R60, §648, 2074; C73, §771, 1776; C97, §2742, 2831, 2832; S13, §2742, 2831, 2832; SS15, §2734-b; C24, 27, 31, 35, 39, §**4122, 4456 – 4458, 5232 – 5234;** C46, §273.4, 301.12 – 301.14, 340.13 – 340.15; C50, 54, 58, 62, §273.12, 273.13; C66, §273.12, 273.13, 273.22; C71, 73, §273.12, 273.13, 273.22, 273.24; C75, 77, 79, 81, §273.3; 81 Acts, ch 87, §1; 82 Acts, ch 1080, §1, ch 1136, §2, 3]

83 Acts, ch 2, §1; 84 Acts, ch 1010, §2; 84 Acts, ch 1315, §34; 85 Acts, ch 138, §2, 3; 85 Acts, ch 212, §21; 86 Acts, ch 1213, §5; 86 Acts, ch 1245, §1458; 86 Acts, ch 1246, §133; 87 Acts, ch 115, §40; 87 Acts, ch 233, §474, 475; 89 Acts, ch 135, §58; 89 Acts, ch 265, §34; 92 Acts, ch 1050, §1; 92 Acts, ch 1227, §17; 94 Acts, ch 1089, §1; 94 Acts, ch 1175, §5; 94 Acts, ch 1183, §63; 96 Acts, ch 1215, §47, 48; 97 Acts, ch 184, §2

273.4 Duties of administrator.

Under direction of the board of directors of the area education agency, the administrator of the area education agency shall, in addition to other duties:

1. Co-operate with boards of directors of local school districts of the area education agency in considering and developing plans for the improvement of the educational programs and services in the area education agency.

2. When requested, provide such other assistance as possible to school districts of the area education agency for the general improvement of their educational programs and operations.

3. Submit program plans each year to the department of education, for approval by the director of the department, to reflect the needs of the area education agency for media services as provided in section 273.6.

[C51, §1148; R60, §2066 – 2068, 2071, 2073; C73, §1766 – 1768, 1770, 1772, 1774, 1775; C97, §2734 – 2740; S13, §2734-f, -l, -m, -p, 2738, 2739; SS15, §2734-b, -c; C24, 27, 31, 35, 39, §**4106;** C46, §271.11; C50, 54, 58, 62, 66, 71, 73, §273.18; C75, 77, 79, 81, §273.4]

86 Acts, ch 1245, §1459

273.5 Special education.

There shall be established a division of special education of the area education agency which shall provide for special education programs and services to the local school districts. The division of special education shall be headed by a director of special education who meets certification standards of the department of education. The director of special education shall have the responsibility for implementation of state regulations and guidelines relating to special education programs and services. The director of special education shall have the following powers and duties:

1. Properly identify children requiring special education.

2. Insure that each child requiring special education in the area receives an appropriate special education program or service.

3. Assign appropriate weights for each child requiring special education programs or services as provided in section 256B.9.

4. Supervise special education support personnel.

5. Provide each school district within the area served and the department of education with a special education weighted enrollment count, including the additional enrollment because of special education for December 1 of each year.

6. Submit to the department of education special education instructional and support program plans and applications, subject to criteria listed in chapter 256B and this chapter, for approval by February 15 of each year for the school year commencing the following July 1.

7. Co-ordinate the special education program within the area served.

[C75, 77, 79, 81, §273.5]

89 Acts, ch 135, §59

273.6 Media centers.

1. The media centers required under section 273.2 shall contain:

a. A materials lending library, consisting of print and nonprint materials.

b. A professional library.

c. A curriculum laboratory, including textbooks and correlated print and audiovisual materials.

d. Capability for production of media-oriented instructional materials.

e. Qualified media personnel.

f. Appropriate physical facilities.

g. Other materials and equipment deemed necessary by the department.

2. Program plans submitted by the area education agency to the department of education for approval by the state board of media centers under this subsection shall include all of the following:

a. Evidence that the services proposed are based upon an analysis of the needs of the local school districts in the area.

b. Description of the manner in which the services of the area education agency media center will be co-ordinated with other agencies and programs providing educational media.

c. Description of the means for delivery of circulation materials.

d. Evidence that the media center fulfills the requirements of subsection 1.

[C75, 77, 79, 81, §273.6]

273.7 Additional services.

If sixty percent of the number of local school boards located in an area education agency, or if local school boards representing sixty percent of the enrollment in the school districts located in the agency, request in writing to the area education agency board that an additional service be provided them, for pupils in grades kindergarten through twelve or children requiring special education as defined in section 256B.2 or for employees or board members of school districts or area education agencies, the area education agency board shall arrange for the service to be provided to all school districts in the area within the financial capabilities of the area education agency.

[C75, 77, 79, 81, §273.7]

273.7A Services to school districts.

The board of an area education agency may provide services to school districts located in the area education agency under contract with the school districts. These services may include, but are not limited to, superintendency services, personnel services, business management services, specialized maintenance services, and transportation services. In addition, the board of the area education agency may provide for furnishing expensive and specialized equipment for school districts. School districts shall pay to area education agencies the cost of providing the services.

The board of an area education agency may also provide services authorized to be performed by area education agencies to other area education agencies in this state and to provide a method of payment for these services.

87 Acts, ch 224, §45

273.8 Area education agency board of directors.

1. *Board of directors.* The board of directors of an area education agency shall consist of not less than five nor more than nine members, each a resident of and elected in the manner provided in this section from a director district that is approximately equal in population to the other director districts in the area education agency. Each director shall serve a three-year term which commences at the organization meeting.

2. *Election of directors.* The board of directors of the area education agency shall be elected at director district conventions attended by members of the boards of directors of the local school districts located within the director district. The member of the area education agency board to be elected at the director district convention may be a member of a local school district board of directors and shall be an elector and a resident of the director district, other than school district employees.

The director district conventions shall be called and the locations of the conventions shall be determined by the area education agency administrator. Annually the director district conventions shall be held within two weeks following the regular school election. Notice of the time, date and place of a director district convention shall be published by the area education agency administrator at least forty-five days prior to the day of the district conventions in at least one newspaper of general circulation in the director district. The cost of publication shall be paid by the area education agency.

The board of each separate school district which is located entirely or partially inside an area education agency director district shall cast a vote for director of the area education agency board based upon the ratio that the population of the school district, or portion of the school district, in the director district bears to the total population in the director district. The population of each school district or portion shall be determined by the department of education.

Vacancies, as defined in section 277.29, in the membership of the area education agency board shall be filled for the unexpired portion of the term at a special director district convention called and conducted in the manner provided in this subsection for regular director district conventions.

A candidate for election to the area education agency board shall file a statement of candidacy with the area education agency secretary at least ten days prior to the date of the director district convention, on forms prescribed by the department of education. The statement of candidacy shall include the candidate's name, address and school district. The list of candidates shall be sent by the secretary of the area education agency by ordinary mail to the presidents of the boards of directors of all school districts within the director district immediately following the last day for filing the statement of candidacy. However, if no candidate files with the area education agency sec-

retary by the deadline, an eligible elector who is present at the director district convention may be nominated at the convention by a delegate from a board of directors of a school district located within the director district. Delegates to director district conventions shall not be bound by a school board or any school board member to pledge their votes to any candidate prior to the date of the convention.

3. *Organization.* The board of directors of each area education agency shall meet and organize at the first regular meeting in October of each year at a suitable place designated by the president. Directors whose terms commence at the organization meeting shall qualify by taking the oath of office required by section 277.28 at or before the organization meeting.

The provisions of section 260C.12 relating to organization, officers, appointment of secretary and treasurer, and meetings of the merged area board apply to the area education agency board.

4. *Quorum.* A majority of the members of the board of directors of the area education agency shall constitute a quorum.

5. *Change in directors.* The board of an area education agency may change the number of directors on the board and shall make corresponding changes in the boundaries of director districts. Changes shall be completed not later than July 1 of a fiscal year for the director district conventions to be held the following September.

6. *Boundary line changes.* To the extent possible the board shall provide that changes in the boundary lines of director districts of area education agencies shall not lengthen or diminish the term of office of a director of an area education agency board. Initial terms of office shall be set by the board so that as nearly as possible the terms of one-third of the members expire annually.

7. *Census changes.* The board of the area education agency shall redraw boundary lines of director districts in the area education agency after each census to compensate for changes in population if changes in population have taken place.

Where feasible, boundary lines of director districts shall coincide with the boundary lines of school districts and the boundary lines of election precincts established pursuant to sections 49.3 to 49.6.

[C97, §2833; C24, 27, 31, 35, 39, §**4119, 4121;** C46, §273.1, 273.3; C50, 54, 58, 62, §273.4, 273.5, 273.9, 273.10; C66, 71, 73, §273.4, 273.5, 273.9, 273.10, 280A.23(2); C75, 77, §273.8, 280A.23(2); C79, 81, §273.8, 280A.28, 280A.29; 82 Acts, ch 1088, §1, ch 1136, §4 – 6]

84 Acts, ch 1219, §13, 14; 85 Acts, ch 138, §4

273.9 Funding.

1. School districts shall pay for the programs and services provided through the area education agency and shall include expenditures for the programs and services in their budgets, in accordance with this section.

2. School districts shall pay the costs of special education instructional programs with the moneys available to the districts for each child requiring special education, by application of the special education weighting plan in section 256B.9. Special education instructional programs shall be provided at the local level if practicable, or otherwise by contractual arrangements with the area education agency board as provided in section 273.3, subsection 5, but in each case the total money available through section 256B.9 and chapter 257 because of weighted enrollment for each child requiring special education instruction shall be made available to the district or agency which provides the special education instructional program to the child, subject to adjustments for transportation or other costs which may be paid by the school district in which the child is enrolled. Each district shall co-operate with its area education agency to provide an appropriate special education instructional program for each child who requires special education instruction, as identified and counted within the certification by the area director of special education or as identified by the area director of special education subsequent to the certification, and shall not provide a special education instructional program to a child who has not been so identified and counted within the certification or identified subsequent to the certification.

3. The costs of special education support services provided through the area education agency shall be funded as provided in chapter 257. Special education support services shall not be funded until the program plans submitted by the special education directors of each area education agency as required by section 273.5 are modified as necessary and approved by the director of the department of education according to the criteria and limitations of chapters 256B and 257.

4. The costs of media services provided through the area education agency shall not be funded until the program plans submitted by the administrators of each area education agency as required by section 273.4 are modified as necessary and approved by the director of the department of education according to the criteria of section 273.6.

The state board of education shall adopt rules under chapter 17A relating to the approval of program plans under this section.

[C51, §417; R60, §648, 2074; C73, §771, 1776; C97, §2742, 2831, 2832; S13, §2742, 2831, 2832; SS15, §2734-b; C24, 27, 31, 35, 39, §**4456 – 4458, 5232 – 5234;** C46, §301.12 – 301.14, 340.13 – 340.15; C50, 54, 58, 62, 66, 71, 73, §273.13; C75, 77, 79, 81, §273.9]

86 Acts, ch 1245, §1460; 89 Acts, ch 135, §60; 91 Acts, ch 97, §38

273.10 Accreditation of area education programs.

1. The department of education shall develop, in consultation with the area education agencies, and establish an accreditation process for area education agencies by July 1, 1997. At a minimum, the accreditation process shall consist of the following:

a. The timely submission by an area education agency of information required by the department on forms provided by the department.

b. The use of an accreditation team appointed by the director of the department of education to conduct an evaluation, including an on-site visit of each area education agency. The team shall include, but is not limited to, department staff members, representatives from the school districts served by the area education agency being evaluated, area education agency staff members from area education agencies other than the area education agency that conducts the programs being evaluated for accreditation, and other team members with expertise as deemed appropriate by the director.

2. Prior to a visit to an area education agency, the accreditation team shall have access to that area education agency's program audit report filed with the department. After a visit to an area education agency, the accreditation team shall determine whether the accreditation standards for a program have been met and shall make a report to the director and the state board, together with a recommendation as to whether the programs of the area education agency should receive initial accreditation or remain accredited. The accreditation team shall report strengths and weaknesses, if any, for each accreditation standard and shall advise the area education agency of available resources and technical assistance to further enhance the strengths and improve areas of weakness. An area education agency may respond to the accreditation team's report.

3. The state board of education shall determine whether a program of an area education agency shall receive initial accreditation or shall remain accredited. Approval of area education agency programs by the state board shall be based upon the recommendation of the director of the department of education after a study of the factual and evaluative evidence on record about each area education agency program in terms of the accreditation standards adopted by the state board.

Approval, if granted, shall be for a term of five years. However, the state board may grant conditional approval for a term of less than five years if conditions warrant.

4. If the state board of education determines that an area education agency's program does not meet accreditation standards, the director of the department of education, in cooperation with the board of directors of the area education agency, shall establish a remediation plan prescribing the procedures that must be taken to correct deficiencies in meeting the program standards, and shall establish a deadline date for correction of the deficiencies. The remediation plan is subject to the approval of the state board.

5. The area education agency program shall remain accredited during the implementation of the remediation plan. The accreditation team shall visit the area education agency and shall determine whether the deficiencies in the standards for the program have been corrected and shall make a report and recommendation to the director and the state board of education. The state board shall review the report and recommendation and shall determine whether the deficiencies in the program have been corrected.

6. If the deficiencies in an area education program have not been corrected, the agency board shall take one of the following actions within sixty days from removal of accreditation:

a. Merge the deficient program with a program from another accredited area education agency.

b. Contract with another area education agency or other public educational institution for purposes of program delivery.

The rules developed by the state board of education for the accreditation process shall include provisions for removal of accreditation, including provisions for proper notice to the administrator of the area education agency, each member of the board of directors of the area education agency, and the superintendents and administrators of the schools of the districts served by the area education agency.

96 Acts, ch 1215, §49; 2001 Acts, ch 114, §1

273.11 Standards for accrediting area education programs.

1. The state board of education shall develop standards and rules for the accreditation of area education agencies by July 1, 1997. Standards shall be general in nature, but at a minimum shall identify requirements addressing the services provided by each division, as well as identifying indicators of quality that will permit area education agencies, school districts, the department of education, and the general public to judge accurately the effectiveness of area education agency services.

2. Standards developed shall include, but are not limited to, the following:

a. Support for school-community planning, including a means of assessing needs, establishing shared direction and implementing program plans and reporting progress.

b. Professional development programs that respond to current needs.

c. Support for curriculum development, instruction, and assessment for reading, language

arts, math and science, using research-based methodologies.

d. Special education compliance and support.

e. Management services, including financial reporting and purchasing as requested and funded by local districts.

f. Support for instructional media services that supplement and support local district media centers and services.

g. Support for school technology planning and staff development for implementing instructional technologies.

h. A program and services evaluation and reporting system.

i. Support for school district libraries in accordance with section 273.2, subsection 4.

96 Acts, ch 1215, §50; 2001 Acts, ch 158, §24

273.12 Funds — use restricted.

Funds generated for educational services shall not be expended by an area education agency for the purpose of assisting either a public employer or employee organization in collective bargaining negotiations under chapter 20 if the public employer is a school district, or the employee organization consists of employees of a school district, located within the boundaries of the area education agency.

[C79, 81, §273.12]

89 Acts, ch 135, §61; 91 Acts, ch 97, §39

273.13 Administrative expenditures.

During the budget year beginning July 1, 1989, and the three succeeding budget years, the board of directors of an area education agency in which the administrative expenditures as a percent of the area education agency's operating fund for a base year exceed five percent shall reduce its administrative expenditures to five percent of the area education agency's operating fund. During each of the four years, the board of directors shall reduce administrative expenditures by twenty-five percent of the reduction in administrative expenditure required by this section. Thereafter, the administrative expenditures shall not exceed five percent of the operating fund. Annually, the board of directors shall certify to the department of education the amounts of the area education agency's expenditures and its operating fund. For the purposes of this section, *"base year"* and *"budget year"* mean the same as defined in section 442.6, Code 1989, and section 257.2, and *"administrative expenditures"* means expenditures for executive administration.

86 Acts, ch 1226, §19; 88 Acts, ch 1158, §55; 89 Acts, ch 135, §62

273.14 through 273.19 Reserved.

SUBCHAPTER II

REORGANIZATION OR DISSOLUTION

273.20 Definitions.

When used in this subchapter, unless the context otherwise requires:

1. *"Affected area education agency"* or *"affected agency"* means an area education agency whose board of directors is contemplating or engaged in reorganization efforts in accordance with this subchapter.

2. *"Affected board"* means the board of directors of an area education agency that is contemplating or engaged in reorganization efforts in accordance with this subchapter.

3. *"Department"* means the department of education.

4. *"State board"* means the state board of education.

2001 Acts, ch 114, §2

273.21 Voluntary reorganization.

1. Two or more area education agencies may voluntarily reorganize under this subchapter if the area education agencies are contiguous, a majority of the members of each of the affected boards approve the reorganization, and the reorganization plan submitted to the state board pursuant to subsection 3 is approved by the state board.

2. If twenty percent or more of the school districts within an affected area education agency file a petition by March 1 with the affected area education agency board to consider reorganization, the affected board shall consider the request and vote on the petition. If a majority of the affected board members vote to study the reorganization of the affected area education agency, the affected board shall immediately begin the study to consider reorganization effective by July 1 of the next year.

3. The affected boards contemplating a voluntary reorganization shall do the following:

a. Develop detailed studies of the facilities, property, services, staffing necessities, equipment, programs, and other capabilities available in each of the affected area education agencies for the purpose of providing for the reorganization of the area education agencies in order to effect more economical operation and the attainment of higher standards of educational services for the schools.

b. Survey the school districts within the affected area education agencies to determine the districts' current and future programs and services, professional development, and technology needs.

c. Consult with the officials of school districts within the affected area and other citizens and periodically hold public hearings during the development of a plan for reorganization, as well as a public hearing on the final plan to be submitted to the department.

d. Consult with the director of the department of education in the development of surveys and plans. The director of the department of education shall provide assistance and advice to the affected area education agency boards as requested.

e. Develop a reorganization plan that demonstrates improved efficiency and effectiveness of programs to meet accreditation standards, includes a preliminary budget for reorganized areas, documents public comment from the public hearings held pursuant to paragraph *"c"*, and provides for a board of directors, and the number of members that the board shall consist of, in accordance with section 273.8.

f. Set forth the assets and liabilities of the affected area education agencies, which shall become the responsibility of the board of directors of the newly formed area education agency on the effective date of the reorganization.

g. Transmit the completed plan to the state board by November 1. Plans received by the state board after November 1 shall be considered for area education agency reorganization taking effect no sooner than July 1 after the next succeeding fiscal year.

4. The state board shall review the reorganization plan and shall, prior to February 1, either approve the plan or return the plan with the state board's recommendations. An unapproved plan may be resubmitted with modifications to the department not later than February 10. An approved plan shall take effect on July 1 of the fiscal year following the date of approval by the state board, except that plans submitted to the state board after November 1 shall take effect no sooner than July 1 after the next succeeding fiscal year.

2001 Acts, ch 114, §3; 2002 Acts, ch 1029, §1, 2, 8

Subsection 3, paragraph g amended
Subsection 4 amended

273.22 Contracts of new area education agency.

1. The terms of employment of the administrator and staff of affected area education agencies for the school year beginning with the effective date of the formation of the new area education agency shall not be affected by the formation of the new area education agency, except in accordance with the provisions of sections 279.15 through 279.18, and 279.24, and the authority and responsibility to offer new contracts or to continue, modify, or terminate existing contracts pursuant to sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24 for the school year beginning with the effective date of the reorganization shall be transferred from the boards of the existing area education agencies to the board of the new area education agency following approval of the reorganization plan by the state board as provided in section 273.21, subsection 4.

2. The collective bargaining agreement of the area education agency with the largest basic enrollment, as defined in section 257.6, for the year prior to the year the reorganization is effective, shall serve as the base agreement in the new area education agency and the employees of the other area education agencies involved in the formation of the new area education agency shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contracts for the following years without further action by the public employment relations board. If only one collective bargaining agreement is in effect among the area education agencies that are party to the reorganization, that agreement shall serve as the base agreement, and the employees of the other agencies involved in the formation of the new area education agency shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contracts for the following years without further action by the public employment relations board. The board of the newly formed area education agency, using the base agreement as its existing contract, shall bargain with the combined employees of the affected agencies for the school year that begins on the effective date of the reorganization. The bargaining shall be completed by the dates specified in section 20.17 prior to the school year in which the reorganization becomes effective or within one hundred eighty days after the organization of the new board, whichever is later. If a bargaining agreement was already concluded by the board and employees of the affected agency with the contract serving as the base agreement for the school year beginning with the effective date of the reorganization, that agreement shall be void. However, if the base agreement contains multiyear provisions affecting school years subsequent to the effective year of the reorganization, the base agreement shall remain in effect as specified in the agreement.

The provisions of the base agreement shall apply to the offering of new contracts or continuation, modification, or termination of existing contracts as provided in subsection 1.

3. The terms of a contract between the board of directors of a school district and the board of directors of an affected area education agency shall be carried out by the school board and the board of directors of the newly formed area education agency except as provided in this section.

4. The board of directors of a school district that is under a contract with an affected area education agency may petition the boards of directors of the affected area education agencies for release from the contract. If the petition receives a majority of the votes cast by the members of the boards of the affected area education agencies, the petition is approved and the contract shall be terminated on the effective date of the area education agency reorganization.

5. The board of directors of a school district

that is contiguous to a newly reorganized area education agency may petition the board of directors of their current area education agency and the newly reorganized area education agency to join the newly reorganized area education agency. If both area education agency boards approve the petition, the reorganization shall take effect in accordance with the dates established under section 273.21, subsection 4. A school district may appeal to the state board the decision of an area education agency board to deny the school district's petition.

6. The board of directors of a school district that is within a newly reorganized area education agency and whose school district was contiguous to another area education agency prior to the reorganization may petition the board of directors of the newly reorganized area education agency and the contiguous area education agency to join that area education agency. If both area education agency boards approve the petition, the reorganization shall take effect in accordance with the dates established under section 273.21, subsection 4. A school district may appeal to the state board the decision of an area education agency board to deny the school district's petition.

7. Not later than fifteen days after the state board notifies an area education agency of its approval of the area education agency's reorganization plan or dissolution proposal, the area education agency shall notify the school districts located within the area education agency boundaries, the school districts and area education agencies that are contiguous to its boundaries, and any other school district under contract with the area education agency, of the state board's approval of the plan or proposal. A petition to join an area education agency or for release from a contract with an area education agency, in accordance with subsections 4 through 6, shall be filed not later than sixty days after the state board approves a reorganization plan or dissolution proposal in accordance with this chapter.

2001 Acts, ch 114, §4; 2001 Acts, ch 176, §36, 37; 2002 Acts, ch 1029, §3, 4, 8

Subsections 1, 2, 5, and 6 amended
NEW subsection 7

273.23 Initial board.

1. A petition filed under section 273.21 shall state the number of directors on the initial board which shall be either seven or nine directors. The petition shall specify the number of directors to be retained from each area, and those numbers shall be proportionate to the populations of the agencies. If the proportionate balance of directors among the affected agencies specified in the plan is affected by school districts petitioning to be excluded from the reorganization, or if the proposal specified in the plan does not comply with the requirement for proportionate representation, the state board shall modify the proposal. However, all area education agencies affected shall retain at least one member.

2. Prior to the organization meeting of the board of directors of the newly formed area education agency, the boards of the former area education agencies shall designate directors to be retained as members to serve on the initial board of the newly formed area education agency. A vacancy occurs if an insufficient number of former board members reside within the newly formed area education agency's boundaries or if an insufficient number of former board members are willing to serve on the board of the newly formed area education agency. Vacancies, as defined in section 277.29, in the membership of the newly formed area education agency board shall be filled for the unexpired portion of the term at a special director district convention called and conducted in the manner provided in section 273.8 for regular director district conventions.

3. Prior to the effective date of the reorganization, the initial board shall call a director district convention under the provisions of section 273.8, subsection 2, for the purpose of electing a board for the reorganized area education agency. The new board shall have control of the employment of all personnel for the newly formed area education agency for the ensuing school year. Following the organization of the new board, the board shall have authority to establish policy, enter into contracts, and complete such planning and take such action as is essential for the efficient management of the newly formed area education agency.

4. The initial board of the newly formed district shall appoint an acting administrator and an acting board secretary. The appointment of the acting administrator shall not be subject to the continuing contract provisions of sections 279.20, 279.23, and 279.24.

5. The initial board of the newly formed agency shall prepare an annual budget estimating income and expenditures for programs and services as provided in sections 273.1 through 273.9 and chapter 256B within the limits of funds provided under section 256B.9 and chapter 257. The board shall give notice of a public hearing on the proposed budget by publication in an official county newspaper in each county in the territory of the area education agency in which the principal place of business of a school district that is a part of the area education agency is located. The notice shall specify the date, which shall not be later than March 1, the time, and the location of the public hearing. The proposed budget as approved by the board shall be submitted to the state board, on forms provided by the department, no later than March 15 for approval. The state board shall review the proposed budget of the newly formed area education agency and shall, before April 1, either grant approval or return the budget without approval with comments of the state board included. An unapproved budget shall be resubmitted to the state board for final approval not lat-

er than April 15. The state board shall give final approval only to budgets submitted by area education agencies accredited by the state board or that have been given conditional accreditation by the state board.

6. For the school year beginning on the effective date of an area education agency reorganization as provided in this subchapter, the media services cost per pupil as determined under section 257.37 for all districts in a newly formed area education agency for the budget year shall be the highest amount of media services cost per pupil for any of the affected area education agencies.

7. For the school year beginning on the effective date of an area education agency reorganization as provided in this subchapter, the educational services cost per pupil as determined under section 257.37 for all districts in a newly formed area education agency for the budget year shall be the highest amount of educational services cost per pupil for any of the affected area education agencies.

8. For the school year beginning on the effective date of an area education agency reorganization as provided in this subchapter, the special education support services cost per pupil shall be based upon the combined base year budgets for special education support services of the area education agencies that reorganized to form the newly formed area education agency, divided by the total of the weighted enrollment for special education support services in the reorganized area education agency for the base year plus the allowable growth amount per pupil for special education support services for the budget year as calculated in section 257.8.

9. Within one year of the effective date of the reorganization, a newly formed area education agency shall meet the accreditation requirements set forth in section 273.10, and the standards set forth in section 273.11. The newly formed area education agency shall be considered accredited for purposes of budget approval by the state board pursuant to section 273.3. The state board shall inform the newly formed area education agency of the accreditation on-site visit schedule.

10. The special education support cost per pupil, the media cost per pupil, and the educational services cost per pupil for a school district petitioning into an area education agency shall be the special education support cost per pupil, media cost per pupil, and educational services cost per pupil of the area education agency into which it petitions if the petition is approved.

11. Unless the reorganization of an area education agency takes effect less than two years before the taking of the next federal decennial census, a newly formed area education agency shall, within one year of the effective date of the reorganization, redraw the boundary lines of director districts in the area education agency if a petition filed by a school district to join the newly formed area education agency, or for release from the newly formed area education agency, in accordance with section 273.22, subsections 4 through 6, was approved. Until the boundaries are redrawn, the boundaries for the newly formed area education agency shall be as provided in the reorganization plan approved by the state board in accordance with section 273.21.

2001 Acts, ch 114, §5; 2002 Acts, ch 1029, §5 – 8
Subsection 2 amended
Subsection 8, unnumbered paragraph 1 amended and unnumbered paragraph 2 renumbered as subsection 9
NEW subsections 10 and 11

273.24 Commission to dissolve area education agency.

1. As an alternative to area education agency reorganization prescribed in this subchapter, the board of directors of an area education agency may establish an area education agency dissolution commission to prepare a proposal of dissolution of the area education agency and attachment of all of the area education agency to one or more contiguous area education agencies and to include in the proposal a division of the assets and liabilities of the dissolving area education agency. If twenty percent or more of the school districts within an area education agency file a petition by March 1 with the area education agency board to consider dissolving, the area education agency board shall consider the request and vote on the petition. If a majority of the board members vote to study dissolving the area education agency, the agency board shall immediately begin a study to consider such action effective by July 1 of the next calendar year, or the area education agency board may establish a dissolution commission.

2. An area education agency dissolution commission established by the board of directors of an area education agency shall consist of a minimum of seven members appointed by the board of directors of the area education agency for a term of office ending either with a report to the board that no proposal can be approved or on the date of the vote on the proposal. Members of the dissolution commission must be board members of school districts within the area served, not more than three of whom may be members of the board of directors of the area education agency. Members shall be appointed from throughout the area served and should represent the various school districts present in the area served.

3. Members of the dissolution commission shall serve without compensation and may be appointed to a subsequent commission. A vacancy on the commission shall be filled in the same manner as the original appointment was made.

4. The board of the area education agency shall certify to the department of education that a commission has been formed, the names and addresses of commission members, and that the com-

mission members represent the various geographic areas and socioeconomic elements present in the school districts that the area serves.

2001 Acts, ch 114, §6

273.25 Dissolution commission meetings.

The commission shall hold an organizational meeting not more than fifteen days after its appointment and shall elect a chairperson and vice chairperson from its membership. Thereafter the commission may meet as often as deemed necessary upon the call of the chairperson or a majority of the commission members.

The commission shall request statements from contiguous area education agencies outlining each agency's willingness to accept attachments of the affected area education agency to the contiguous agencies and what conditions, if any, the contiguous agency recommends. The commission shall meet with boards of contiguous area education agencies and with boards of directors of the affected school districts to the extent possible in drawing up the dissolution proposal. The commission may seek assistance from the department of education.

2001 Acts, ch 114, §7

273.26 Dissolution proposal.

Not later than one year following the date of the organizational meeting of the commission, the commission shall send a copy of its dissolution proposal to the affected area education agency board or shall inform the affected area education agency board that it cannot agree upon a dissolution proposal. The commission shall also send a copy of the dissolution proposal by certified mail to the boards of directors of all school districts and other area education agencies affected. If the board of a school district or the board of an area education agency affected by the dissolution proposal objects to the proposal, either board shall send its objections in writing to the commission within ten days following receipt of the dissolution proposal. The commission may consider the objections and may modify the dissolution proposal. If the dissolution proposal is modified, the commission shall notify by certified mail the boards of directors of all area education agencies to which an area of the affected area education agency will be attached and shall notify by certified mail the board of directors of all school districts in the affected area education agencies.

If the commission cannot agree upon a dissolution proposal prior to the expiration of its term, the affected area education agency board may appoint a new commission.

2001 Acts, ch 114, §8

273.27 Hearing — vote — state board approval.

1. Within ten days following the filing of the dissolution proposal with the affected area education agency board, the affected board shall fix a date for a hearing on the proposal which shall not be more than sixty days after the dissolution petition was filed with the affected board. The affected board shall publish notice of the date, time, and location of the hearing at least ten days prior to the date of the hearing by one publication in a newspaper in general circulation in the area. The notice shall include the contents of the dissolution proposal. Representatives of school districts in the area served may present evidence and arguments at the hearing. The president of the affected board shall preside at the hearing. The affected board shall review testimony from the hearing and shall adopt or amend and adopt the dissolution proposal.

The affected board shall notify by certified mail the boards of directors of all school districts in the affected area education agency and the contiguous area education agencies to which the districts of the affected area education agency will be attached and the director of the department of education of the contents of the dissolution proposal adopted by the affected board.

2. Within thirty days of the hearing, the affected board shall call a director district convention, which shall include the boards of directors in the area served by the area education agencies to which an area of the affected area education agency will be attached under the dissolution proposal, for the purpose of voting on the dissolution proposal.

3. If the dissolution proposal is approved by a majority of all directors voting on the proposal, the proposal shall be forwarded to the state board by November 1. The state board shall review the dissolution plan proposal and shall, prior to January 1, either grant approval for the proposal or return the proposal with recommendations. An unapproved proposal may be resubmitted with modifications to the state board not later than February 1. A proposal shall take effect on July 1 of the fiscal year following the date of approval by the state board.

2001 Acts, ch 114, §9

CHAPTER 274

SCHOOL DISTRICTS IN GENERAL

274.1 Powers and jurisdiction.
274.2 General applicability.
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274.4 Record of reorganization filed.
274.5 Action to test reorganization.
274.6 Names.
274.7 Directors.
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274.37 Boundaries changed by action of boards — buildings constructed.
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NATIONAL DEFENSE PROJECTS

274.39 Sale of land to government.
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274.42 Adjusting of district boundaries.
274.43 Relinquishing funds.
274.44 Determination final.
274.45 Expense audited and paid.
274.46 Repealed by 74 Acts, ch 1087, §27.

274.1 Powers and jurisdiction.

Each school district shall continue a body politic as a school corporation, unless changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained.

[C51, §1108; R60, §2022, 2026; C73, §1713, 1716; C97, §2743; C24, 27, 31, 35, 39, §**4123;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.1]

Right to bid under execution sale, §569.2

274.2 General applicability.

The provisions of law relative to common schools shall apply alike to all districts, except when otherwise clearly stated, and the powers given to one form of corporation, or to a board in one kind of corporation, shall be exercised by the other in the same manner, as nearly as practicable. But school boards shall not incur original indebtedness by the issuance of bonds until authorized by the voters of the school corporation.

[C97, §2823; C24, 27, 31, 35, §4190; C39, §**4123.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.2]

Vote required to authorize bonds, §75.1

274.3 Repealed by 70 Acts, ch 1025, § 23.

274.4 Record of reorganization filed.

When an election on the proposition of organizing, reorganizing, enlarging, or changing the boundaries of any school corporation, or on the proposition of dissolving a school district, carries by the required statutory margin, or the boundary lines of contiguous school corporations are changed by the concurrent action of the respective boards of directors, the secretary of the school corporation shall file a written description of the new boundaries of the school corporation in the office of the county auditor of each county in which any portion of the school corporation lies.

[C24, 27, 31, 35, §4193; C39, §**4123.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.4]

274.5 Action to test reorganization.

No action shall be brought questioning the legality of the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state unless brought within six months after the date of the filing of said written description in the office of said county auditor or county auditors. When the said period of limitations shall have passed, it shall be conclusively presumed that all acts and proceedings taken with reference to the said organization, reorganization, enlargement or change in boundaries were legally taken for every purpose whatsoever and that a de jure school corporation exists.

[C24, 27, 31, 35, §4192; C39, §**4123.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.5]

274.6 Names.

School corporations shall be designated as follows: The independent school district of (naming city, township, or village, and if there are two or more districts therein, including some appropriate name or number), in the county of (naming county), state of Iowa; or, the consolidated school district of (some appropriate name or number), in the county of (naming county), state of Iowa; or, the community school district of (some appropriate name), in the county (or counties) of (naming county or counties), state of Iowa; or, the (some ap-

propriate name) community school district, in the county (or counties) of (naming county or counties), state of Iowa.

[C51, §1108; R60, §2026; C73, §1716; C97, §2744; S13, §2744; C24, 27, 31, 35, 39, §**4124;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.6]

274.7 Directors.

The affairs of each school corporation shall be conducted by a board of directors, the members of which in all community or independent school districts shall be chosen for a term of three years.

[C97, §2745; C24, 27, 31, 35, 39, §**4125;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.7]

School officers, §39.24

274.8 to 274.12 Repealed by 67 Acts, ch 239, § 1.

274.13 Attaching territory to adjoining corporation.

In any case where, by reason of natural obstacles, any portion of the inhabitants of any school corporation in the opinion of the area education agency administrator cannot with reasonable facility attend school in their own corporation, the area education agency administrator shall, by a written order, in duplicate, attach the part thus affected to an adjoining school corporation, the board of the same consenting thereto, one copy of which order shall be at once transmitted to the secretary of each corporation affected thereby, who shall record the same and make the proper designation on the plat of the corporation. Township or county lines shall not be a bar to the operation of this section.

[C73, §1797; C97, §2791; C24, 27, 31, 35, 39, §**4131;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.13]

274.14 Restoration.

When the natural obstacles by reason of which territory has been set off by the area education agency administrator from one school district and attached to another in the same or an adjoining county, as provided in section 274.13, have been removed, such territory may, upon the concurrence of the respective boards, be restored to the school district from which set off and shall be so restored by said boards upon the written application of two-thirds of the electors residing upon the territory so set off together with the concurrence of the area education agency administrator and the board of the school district from which such territory was originally set off by the said administrator.

[C24, 27, 31, 35, 39, §**4132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.14]

274.15 Repealed by 67 Acts, ch 239, § 1.

274.16 to 274.34 Repealed by 53 Acts, ch 117, § 36.

274.35 and 274.36 Repealed by 67 Acts, ch 239, § 1.

274.37 Boundaries changed by action of boards — buildings constructed.

The boundary lines of contiguous school corporations may be changed by the concurrent action of the respective boards of directors at their regular meetings in July, or at special meetings called for that purpose. Such concurrent action shall be subject to the approval of the area education agency board but such concurrent action shall stand approved if the said board does not disapprove such concurrent action within thirty days following receipt of notice thereof. The corporation from which territory is detached shall, after the change, contain not less than four government sections of land.

The boards in the respective districts, the boundaries of which have been changed under this section, complete in all respects except for the passage of time prior to the effective date of the change, and when the right of appeal of the change has expired, may enter into joint contracts for the construction of buildings for the benefit of the corporations whose boundaries have been changed, using funds accumulated under the physical plant and equipment levy in section 298.2. The district in which the building is to be located may use any funds authorized in accordance with chapter 75. This section does not permit the changed districts to expend any funds jointly which they are not entitled to expend acting individually.

[C62, 66, 71, 73, 75, 77, 79, 81, §274.37]

89 Acts, ch 135, §63

274.38 Study of boundary changes requested.

Any school board may request a study and recommendations of the department of education relative to the adjustment of boundary lines and the recommendations of the department of education shall be submitted to those districts involved within sixty days after the request for such study and recommendations is made but such recommendations shall be advisory only and shall not be binding on the local districts.

[C62, 66, 71, 73, 75, 77, 79, 81, §274.38]

NATIONAL DEFENSE PROJECTS

274.39 Sale of land to government.

Whenever the federal government, or any agency or department thereof shall have heretofore located or shall hereafter locate in any county an ordnance plant or other project which may be deemed desirable for the development of the national defense or for the purpose of flood control,

and for the purpose of so locating such plant or project shall have heretofore determined, or shall hereafter determine, that real property and improvements thereon owned by school districts is required, the board of directors of such school districts by resolution is hereby authorized to sell and convey such property at a price and upon terms as may be agreed upon, any such instruments of conveyance to be executed on behalf of such school districts by the president of such district.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.39]

274.40 Vesting of powers to convey.

Whenever a majority of the directors of any school district affected as in section 274.39 have moved from such district and have ceased to be residents thereof thereby creating vacancies on the school board and reducing it to less than a quorum, the powers vested by said section in the board of directors shall vest in the area education agency board and the instrument of conveyance shall be executed on behalf of such school district by the president of the area education agency board until an election is called pursuant to chapter 277.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.40]

274.41 Application of proceeds of sale.

The proceeds of the sale of the property of a school district under the authority granted in sections 274.39 and 274.40 shall be deposited with the treasurer of the county and applied so far as necessary to the payment of the outstanding indebtedness of such school district.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.41]

274.42 Adjusting of district boundaries.

If the federal government, or any agency or department of the federal government locates a project which is desirable for the development of the national defense or for the purpose of flood control, and for the purpose of locating the project determines that certain real property making up a portion of a school district is required, the director of the department of education may by resolution adjust the boundaries of school districts in which the federally owned property is located and the boundaries of adjoining school districts so as to effectively provide for the schooling of children residing within all of the districts. A copy of the resolution shall be promptly filed with the board of directors of the adjoining school district or districts and with the board of directors of the school district in which the federally owned property is located unless the board has been reduced below a quorum in the manner contemplated in section 274.40, in which event the resolution shall be posted in two public places within the altered district.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.42]

85 Acts, ch 212, §21; 86 Acts, ch 1245, §1461

274.43 Relinquishing funds.

The officers of the altered district shall relinquish to the proper officers of such adjoining district or districts all funds, claims for taxes, credits, and such other personal property in such a manner as the director of the department of education shall direct, which said funds, credits, and personal property shall become the property of such adjoining district or districts as enlarged, to be used as the boards of directors of such districts may direct.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.43]

85 Acts, ch 212, §21

274.44 Determination final.

The determination of the director of the department of education in such matters shall be final.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.44]

85 Acts, ch 212, §21

274.45 Expense audited and paid.

The expense of the director of the department of education in respect to the carrying out of the provisions of sections 274.42 to 274.44, shall be paid from funds appropriated to the department of education.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §274.45]

85 Acts, ch 212, §21

274.46 Repealed by 74 Acts, ch 1087, § 27.

CHAPTER 275

REORGANIZATION OF SCHOOL DISTRICTS

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DISSOLUTION OF DISTRICTS

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275.1 Declaration of policy — surveys — definitions.

It is the policy of the state to encourage economical and efficient school districts which will ensure an equal educational opportunity to all children of the state. All areas of the state shall be in school districts maintaining kindergarten and twelve grades. If a school district ceases to maintain kindergarten and twelve grades except as otherwise provided in section 28E.9, 256.13, 280.15, 282.7, subsection 1 or subsections 1 and 3, or section 282.8, it shall reorganize within six months or the state board shall attach the school district not maintaining kindergarten and twelve grades to one or more adjacent districts. Voluntary reorganizations under this chapter shall be commenced only if the affected school districts are contiguous or marginally adjacent to one another. A reorganized district shall meet the requirements of section 275.3.

If a district is attached, division of assets and liabilities shall be made as provided in sections 275.29 to 275.31. The area education agency boards shall develop detailed studies and surveys of the school districts within the area education agency and all adjacent territory for the purpose of providing for reorganization of school districts in order to effect more economical operation and the attainment of higher standards of education in the schools. The plans shall be revised periodically to reflect reorganizations which may have taken place in the area education agency and adjacent territory.

As used in this chapter unless the context otherwise requires:

1. *"Eligible elector"* means eligible elector as defined in section 39.3, subsection 6.

2. *"Initial board"* means the board of a newly reorganized district that is selected pursuant to section 275.25 or 275.41 and functions until the organizational meeting following the fourth regular school election held after the effective date of the reorganization.

3. *"Marginally adjacent district"* or *"marginally adjacent territory"* means a district or territory which is separated from a second district or territory by property which is part of a third school district which completely surrounds one of the two districts.

4. *"Registered voter"* means registered voter as defined in section 39.3, subsection 11.

5. *"Regular board"* means the board of a reorganized district that begins to function at the organizational meeting following the fourth regular school election held after the effective date of the school reorganization, and is comprised of mem-

bers who were elected to the current terms or were appointed to replace members who were elected.

6. *"School districts affected"* means the school districts named in the reorganization petition whether a school district is affected in whole or in part.

[C97, §2798; SS15, §2794-a; C24, 27, 31, 35, 39, §**4152, 4154;** C46, 50, §274.37, 275.1, 276.1; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.1; 82 Acts, ch 1113, §1]

83 Acts, ch 31, §2; 84 Acts, ch 1078, §1; 85 Acts, ch 212, §7; 88 Acts, ch 1263, §2; 92 Acts, ch 1246, §41, 42; 93 Acts, ch 160, §3; 94 Acts, ch 1023, §100; 94 Acts, ch 1169, §65

275.2 Scope of surveys.

The scope of the studies and surveys shall include the following matters in the various districts in the area education agency and all districts adjacent to the area education agency: the adequacy of the educational program, pupil enrollment, property valuations, existing buildings and equipment, natural community areas, road conditions, transportation, economic factors, individual attention given to the needs of students, the opportunity of students to participate in a wide variety of activities related to the total development of the student, and other matters that may bear on educational programs meeting minimum standards required by law. The plans shall also include suggested alternate plans that incorporate the school districts in the area education agency into reorganized districts that meet the enrollment standards specified in section 275.3 and may include alternate plans proposed by school districts for sharing programs under section 28E.9, 256.13, 280.15, 282.7, or 282.10 as an alternative to school reorganization.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.2]

84 Acts, ch 1078, §2; 93 Acts, ch 160, §4

275.3 Minimum size.

No new school district shall be planned by an area education agency board nor shall any proposal for creation or enlargement of any school district be approved by an area education agency board or submitted to electors unless there reside within the proposed limits of such district at least three hundred persons of school age who were enrolled in public schools in the preceding school year. Provided, however, that the director of the department of education shall have authority to grant permission to an area education agency board to approve the formation or enlargement of a school district containing a lower school enrollment than required in this section on the written request of such area education agency board if such request is accompanied by evidence tending to show that sparsity of population, natural barriers or other good reason makes it impracticable to meet the school enrollment requirement.

[R60, §2105; C73, §1800, 1801; C97, §2794; SS15, §2794, 2794-a; C24, 27, 31, 35, 39, §**4143, 4161, 4173;** C46, 50, §274.25, 275.3, 276.8, 276.20; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.3]

85 Acts, ch 212, §21

275.4 Studies, surveys, and plans.

In developing studies and surveys the area education agency board shall consult with the officials of school districts in the area and other citizens, and shall from time to time hold public hearings, and may employ such research and other assistance as it may determine reasonably necessary in order to properly carry on its survey and prepare definite plans of reorganization.

In addition, the area education agency board shall consult with the director of the department of education in the development of surveys and plans. The director of the department of education shall provide assistance to the area education agency boards as requested and shall advise the area education agency boards concerning plans of contiguous area education agencies and the reorganization policies adopted by the state board of education.

Completed plans shall be transmitted by the area education agency board to the director of the department of education.

[C24, 27, 31, 35, 39, §**4158;** C46, 50, §275.1 – 275.3, 276.5; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.4]

84 Acts, ch 1078, §3; 85 Acts, ch 212, §21; 92 Acts, ch 1246, §43

275.5 Proposals for merger or consolidation.

A proposal for merger, consolidation, or boundary change of local school districts shall first be submitted to the area education agency board following the procedure prescribed in this chapter. Following receipt of a petition pursuant to section 275.12, the area education agency board shall review its plans and determine whether the petition complies with the plans which had been adopted by the board. If the petition does not comply with the plans which had been adopted by the board, the board shall conduct further surveys pursuant to section 275.4 prior to the date set for the hearing upon the petition. If further surveys have been conducted by the board, the board shall present the results of the further surveys at the hearing upon the petition.

[C97, §2793; S13, §2793; SS15, §2794-a; C24, 27, 31, 35, 39, §**4133, 4173;** C46, 50, §274.16, 274.20, 275.1, 275.3, 275.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.5]

84 Acts, ch 1078, §4

275.6 Progressive program.

It is the intent of this chapter that the area education agency board shall carry on the program of

reorganization progressively and shall, insofar as is possible, authorize submission of proposals to the electors as they are developed and approved.

[R60, §2097, 2105; C73, §1800, 1801; S13, §2820-e, -f; SS15, §2794-a; C24, 27, 31, 35, 39, §**4141, 4188;** C46, 50, §274.23, 275.8, 276.35; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.6]

275.7 Budget.

The area education agency board shall include in the budget submitted each year such sums as it deems necessary to carry on its reorganization work under this chapter.

[SS15, §2794-a; C24, 27, 31, 35, 39, §**4139, 4177;** C46, 50, §274.21, 275.9, 276.24; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.7]

275.8 Cooperation of department of education — planning joint districts.

Planning of joint districts shall be conducted in the same manner as planning for single districts, except as provided in this section. Studies and surveys relating to the planning of joint districts shall be filed with the area education agency in which one of the districts is located which has the greatest taxable property base. In the case of controversy over the planning of joint districts, the matter shall be submitted to the director of the department of education. Judicial review of the director's decision may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of that Act, petitions for judicial review must be filed within thirty days after the decision of the director. *"Joint districts"* means districts that lie in two or more adjacent area education agencies.

For purposes of this chapter the planning of joint districts is defined to include all of the following acts:

1. Preparation of a written joint plan in which contiguous territory in two or more area education agencies is considered as a part of a potential school district in the area education agency on behalf of which such plan is filed with the department of education by the area education agency board.

2. Adoption of the written joint plan at a joint session of the several area education agency boards in whose areas the territory is situated. A quorum of each of the boards is necessary to transact business. Votes shall be taken in the manner prescribed in section 275.16.

3. Filing said plan with the department of education.

For purposes of subsection 1 hereof, joint planning shall be evidenced by filing the following items with the department of education:

a. A plat of the entire area of such potential district.

b. A statement of the number of pupils residing within the area of said potential district enrolled in public schools in the preceding school year.

c. A statement of the assessed valuation of taxable property located within such potential district.

d. An affidavit signed on behalf of each of said boards of directors of area education agencies by a member of such board stating the boundaries as shown on such plat have been agreed upon by the respective boards as a part of the overall plan of school district reorganization of each such school.

[C46, 50, §275.10, 276.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.8]

84 Acts, ch 1078, §5; 86 Acts, ch 1245, §1462; 2001 Acts, ch 24, §43, 44

275.9 Methods of effectuating reorganization plans.

When any school district is enlarged, reorganized, or changes its boundaries pursuant to the plans hereinabove provided for, such enlargement, reorganization, or boundary change shall be accomplished by the method hereinafter provided.

The provisions of sections 275.1 to 275.5, relating to studies, surveys, hearings and adoption of plans shall constitute a mandatory prerequisite to the effectuation of any proposal for district boundary change. It shall be the mandatory duty of the area education agency board to dismiss the petition if the above provisions are not complied with fully.

[C46, 50, §275.11; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.9]

275.10 Repealed by 57 Acts, ch 129, § 2.

275.11 Proposals involving two or more districts.

Subject to the approval of the area education agency board, contiguous or marginally adjacent territory located in two or more school districts may be united into a single district in the manner provided in sections 275.12 to 275.22.

[SS15, §2794-a; C24, 27, 31, 35, 39, §**4166;** C46, 50, §276.13; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.11]

92 Acts, ch 1246, §44

275.12 Petition — method of election.

1. A petition describing the boundaries, or accurately describing the area included therein by legal descriptions, of the proposed district, which boundaries or area described shall conform to plans developed or the petition shall request change of the plan, shall be filed with the area education agency administrator of the area education agency in which the greatest number of registered voters reside. However, the area education agency administrator shall not accept a petition if any of the school districts affected have approved the issuance of general obligation bonds at an election

pursuant to section 296.6 during the preceding six-month period. The petition shall be signed by eligible electors residing in each existing school district or portion affected equal in number to at least twenty percent of the number of registered voters in the school district or portion affected, or four hundred eligible electors, whichever is the smaller number.

2. The petition filed under subsection 1 shall also state the name of the proposed school district and the number of directors which may be either five or seven and the method of election of the school directors of the proposed district. The method of election of the directors shall be one of the following optional plans:

a. Election at large from the entire district by the electors of the entire district.

b. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents of the director district but who shall be elected by the vote of the electors of the entire school district. The boundaries of the director districts and the area and population included within each district shall be such as justice, equity, and the interests of the people may require. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election. Insofar as may be practicable, the boundaries of the districts shall follow established political or natural geographical divisions.

c. Election of not more than one-half of the total number of school directors at large from the entire district and the remaining directors from and as residents of designated single-member or multimember director districts into which the entire school district shall be divided on the basis of population for each director. In such case, all directors shall be elected by the electors of the entire school district. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

d. Division of the entire school district into designated geographical single director or multi-director subdistricts on the basis of population for each director, to be known as director districts, each of which director districts shall be represented on the school board by one or more directors who shall be residents of the director district and who shall be elected by the voters of the director district. Place of voting in the director districts shall be designated by the commissioner of elections. Changes in the boundaries of director districts shall not be made during a period commencing sixty days prior to the date of the annual school election.

e. In districts having seven directors, election of three directors at large by the electors of the entire district, one at each annual school election, and election of the remaining directors as residents of and by the electors of individual geographic subdistricts established on the basis of population and identified as director districts. Boundaries of the subdistricts shall follow precinct boundaries, insofar as practicable, and shall not be changed less than sixty days prior to the annual school election.

3. If the petition proposes the division of the school district into director districts, the boundaries of the proposed director districts shall not be drawn until the question is approved by the voters. If the question is approved by the voters, the directors of the new school district shall draw the boundaries of the director districts according to the standards described in section 275.23A, subsection 1. Following adoption by the school board, the plan shall be submitted to the state commissioner of elections for approval.

4. The area education agency board in reviewing the petition as provided in sections 275.15 and 275.16 shall review the proposed method of election of school directors and may change or amend the plan in any manner, including to specify a different method of electing school directors as may be required by law, justice, equity, and the interest of the people. In the action, the area education agency board shall follow the same procedure as is required by sections 275.15 and 275.16 for other action on the petition by the area education agency board.

5. The petition may also include a provision that the voter-approved physical plant and equipment levy provided in section 298.2 will be voted upon at the election conducted under section 275.18.

[R60, §2097, 2105; C73, §1800, 1801, 1811; C97, §2794, 2799; S13, §2793, 2820-e, -f; SS15, §2793, 2794, 2794-a; C24, 27, 31, 35, 39, §**4133, 4134, 4141, 4153, 4155, 4174;** C46, 50, §274.16, 274.17, 274.23, 274.38, 276.2, 276.21; C54, 58, 62, §275.10, 275.12; C66, 71, 73, 75, 77, 79, 81, §275.12]

83 Acts, ch 53, §1; 83 Acts, ch 91, §1; 84 Acts, ch 1078, §6 – 8; 86 Acts, ch 1226, §1; 89 Acts, ch 135, §64; 93 Acts, ch 160, §5; 94 Acts, ch 1179, §16; 95 Acts, ch 49, §5; 2001 Acts, ch 56, §12; 2002 Acts, ch 1134, §81, 115

2002 amendments to subsections 3 and 4 take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsections 3 and 4 amended

275.13 Affidavit — presumption.

Such petition shall be accompanied by an affidavit showing the number of registered voters living in each affected district or portion thereof described in the petition and signed by a registered voter residing in the territory, and if parts of the territory described in the petition are situated in different area education agencies, the affidavit

shall show separately as to each agency, the number of registered voters in the part of the agency included in the territory described. The affidavit shall be taken as true unless objections to it are filed on or before the time fixed for filing objections as provided in section 275.14 hereof.

[C24, 27, 31, 35, 39, §**4156;** C46, 50, §276.3; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.13]

94 Acts, ch 1169, §64

275.14 Objection — time of filing — notice.

Within ten days after the petition is filed, the area education agency administrator shall fix a final date for filing objections to the petition which shall be not more than sixty days after the petition is filed and shall fix the date for a hearing on the objections to the petition. Objections shall be filed in the office of the administrator who shall give notice at least ten days prior to the final day for filing objections, by one publication in a newspaper published within the territory described in the petition, or if none is published in the territory, in a newspaper published in the county where the petition is filed, and of general circulation in the territory described. The notice shall also list the date, time, and location for the hearing on the petition as provided in section 275.15. The cost of publication shall be assessed to each district whose territory is involved in the ratio that the number of pupils in basic enrollment for the budget year, as defined in section 257.6 in each district bears to the total number of pupils in basic enrollment for the budget year in the total area involved. Objections shall be in writing in the form of an affidavit and may be made by any person residing or owning land within the territory described in the petition, or who would be injuriously affected by the change petitioned for and shall be on file not later than twelve o'clock noon of the final day fixed for filing objections.

Objection forms shall be prescribed by the department of education and may be obtained from the area education agency administrator. Objection forms that request that property be removed from a proposed district shall include the correct legal description of the property to be removed.

[SS15, §2794-a; C24, 27, 31, 35, 39, §**4157, 4166, 4170;** C46, 50, §276.4, 276.6, 276.17; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.14]

85 Acts, ch 221, §1; 89 Acts, ch 135, §65

275.15 Hearing — decision — publication — appeal.

At the hearing, which shall be held within ten days of the final date set for filing objections, interested parties, both petitioners and objectors, may present evidence and arguments, and the area education agency board shall review the matter on its merits and within ten days after the conclusion of any hearing, shall rule on the objections and shall enter an order fixing the boundaries for the proposed school corporation as will in its judgment be for the best interests of all parties concerned, having due regard for the welfare of adjoining districts, or dismiss the petition.

The area education agency board, when entering the order fixing the boundaries, shall consider all available evidence including, but not limited to, information presented by the petitioners, all objections requesting territory exclusion, reorganization studies and plans, geographical patterns evidenced by students using open enrollment to attend school in another district pursuant to section 282.18, potential travel distances required of students, and geographic configuration of the proposed district. The exclusion of territory shall represent a balance between the rights of the objectors and the welfare of the reorganized district.

If the petition is not dismissed and the board determines that additional information is required in order to fix boundary lines of the proposed school corporation, the board may continue the hearing for no more than thirty days. The date of the continued hearing shall be announced at the original meeting. Additional objections in the form required in section 275.14 may be considered if filed with the administrator within five days, not including Saturdays, Sundays, or holidays, after the date of the original board hearing. If the hearing is continued, the area education agency administrator may conduct one or more meetings with the boards of directors of the affected districts. Notice of any such meeting must be given at least forty-eight hours in advance by the area education agency administrator in the manner provided in section 21.4. The area education agency board may request that the administrator make alternative recommendations regarding the boundary lines of the proposed school corporation. The area education agency board shall make a decision on the boundary lines within ten days following the conclusion of the continued hearing.

The administrator shall at once publish the decision in the same newspaper in which the original notice was published. Within twenty days after the publication, the decision rendered by the area education agency board may be appealed to the district court in the county involved by any school district affected. For purposes of appeal, only those school districts who filed reorganization petitions are school districts affected. An appeal from a decision of an area education agency board or joint area education agency boards under section 275.4, 275.16, or this section is subject to appeal procedures under this chapter and is not subject to appeal under chapter 290.

[C24, 27, 31, 35, 39, §**4158 – 4160;** C46, 50, §276.5 – 276.7; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.15]

84 Acts, ch 1078, §9; 85 Acts, ch 221, §2; 86 Acts, ch 1226, §2; 86 Acts, ch 1239, §1; 93 Acts, ch 160, §6

275.16 Hearing when territory in different area education agencies.

If the territory described in the petition for the proposed corporation lies in more than one area education agency, the agency administrator with whom the petition is filed shall fix the time and place for a hearing and call a joint meeting of the members of all the agency boards in which territory of the proposed school corporation lies, to act as a single board for the hearing of the objections, and a majority of members of each of the agency boards of the different agencies in which any part of the proposed corporation lies, constitutes a quorum. The president of the board of directors of the area education agency in which the petition has been filed, or a member of the board designated by the president, shall preside at the joint meeting. The joint boards acting as a single board shall determine whether the petition conforms to plans or, if the petition requests a change in plans, whether a change should be made, and may change the plans of any or all the area education agency boards affected by the petition. The joint board shall determine and fix boundaries for the proposed corporation as provided in section 275.15 or dismiss the petition. The joint board may continue the hearing as provided in section 275.15.

Votes of each member of an area education agency board in attendance shall be weighted so that the total number of votes eligible to be cast by members of each board in attendance shall be equal. However, if the joint boards cast a tie vote and are unable to agree to a decision fixing the boundaries for the proposed school corporation or to a decision to dismiss the petition, the time during which actions must be taken under section 275.15 shall be extended from ten days to fifteen days after the conclusion of the hearing under section 275.15, and the joint board shall reconvene not less than ten and not more than fifteen days after the conclusion of the hearing. At the hearing the joint board shall reconsider its action and if a tie vote is again cast it is a decision granting the petition and changing the plans of any and all of the agency boards affected by the petition and fixing the boundaries for the proposed school corporation. The agency administrator shall at once publish the decision in the same newspaper in which the original notice was published.

In case a controversy arises from such meeting, the area education agency board or boards or any school district aggrieved may bring the controversy to the department of education, as provided in section 275.8, within twenty days from the publication of this order, and if said controversy is taken to the department of education, a ten-day notice in writing shall be given to all agency boards and school districts affected or portions thereof. The department shall have the authority to affirm the action of the joint boards, to vacate, to dismiss all proceedings or to make such modification of the action of the joint boards as in their judgment would serve the best interest of all the agencies. Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review must be filed within thirty days after the decision of the department of education.

[C24, 27, 31, 35, 39, §**4162;** C46, 50, §276.9; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.16]

84 Acts, ch 1078, §10; 85 Acts, ch 212, §24; 85 Acts, ch 221, §3; 86 Acts, ch 1237, §17

275.17 Filing a petition.

If an area education agency board does not approve the change in boundaries of school districts in accordance with a petition, a petition describing the identical or similar boundaries shall not be filed for a period of six months following the date of the hearing or the vote of the board, whichever is later.

[C79, 81, §275.17]

83 Acts, ch 91, §2

275.18 Special election called — time.

When the boundaries of the territory to be included in a proposed school corporation and the number and method of the election of the school directors of the proposed school corporation have been determined as provided in this chapter, the area education agency administrator with whom the petition is filed shall give written notice of the proposed date of the election to the county commissioner of elections of the county in the proposed school corporation which has the greatest taxable base. The proposed date shall be as soon as possible pursuant to section 39.2, subsections 1 and 2, and section 47.6, subsections 1 and 2, but not later than November 30 of the calendar year prior to the calendar year in which the reorganization will take effect.

The county commissioner of elections shall give notice of the election by one publication in the same newspaper in which previous notices have been published regarding the proposed school reorganization, and in addition, if more than one county is involved, by one publication in a legal newspaper in each county other than that of the first publication. The publication shall be not less than four nor more than twenty days prior to the election. If the decision published pursuant to section 275.15 or 275.16 includes a description of the proposed school corporation and a description of the director districts, if any, the notice for election and the ballot do not need to include these descriptions. Notice for an election shall not be published until the expiration of time for appeal, which shall be the same as that provided in section 275.15 or 275.16, whichever is applicable; and if there is an appeal, not until the appeal has been disposed of.

The area education agency administrator shall

furnish to the commissioner a map of the proposed reorganized area which must be approved by the commissioner as suitable for posting. The map shall be displayed prominently in at least four places within the voting precinct, and inside each voting booth, or on the left-hand side inside the curtain of each voting machine.

[R60, §2097, 2105; C73, §1800, 1801; C97, §2794; SS15, §2794, 2794-a; C24, 27, 31, 35, 39, §**4142, 4164;** C46, 50, §274.24, 275.4, 276.11; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.18]

83 Acts, ch 53, §2; 85 Acts, ch 221, §4; 98 Acts, ch 1123, §12

275.19 Repealed by 73 Acts, ch 136, § 401.

275.20 Separate vote in existing districts.

The voters shall vote separately in each existing school district affected and voters residing in the entire existing district are eligible to vote upon the proposition to create a new school corporation and the proposition to levy the voter-approved physical plant and equipment levy under section 298.2, if the petition included a provision for a vote to authorize the levy. If a proposition receives a majority of the votes cast in each of at least seventy-five percent of the districts, and also a majority of the total number of votes cast in all of the districts, the proposition is carried.

[R60, §2097, 2105; C73, §1800, 1801; C97, §2794; SS15, §2794, 2794-a; C24, 27, 31, 35, §4142, 4166, 4167, 4191; C39, §**4142, 4144.1, 4166, 4167;** C46, 50, §274.24, 274.27, 276.13; C54, §275.20, 275.21; C58, 62, 66, 71, 73, 75, 77, 79, 81, §275.20]

89 Acts, ch 135, §66

275.21 Repealed by 57 Acts, ch 129, § 6.

275.22 Canvass and return.

The precinct election officials shall count the ballots, and make return to and deposit the ballots with the county commissioner of elections, who shall enter the return of record in the commissioner's office. The election tally lists, including absentee ballots, shall be listed by individual school district. The county commissioner of elections shall certify the results of the election to the area education agency administrator. If the majority of the votes cast by the registered voters is in favor of the proposition, as provided in section 275.20, a new school corporation shall be organized. If the majority of votes cast is opposed to the proposition, a new petition describing the identical or similar boundaries shall not be filed for at least six months from the date of the election. If territory is excluded from the reorganized district, action pursuant to section 274.37 shall be taken prior to the effective date of reorganization. The secretary of the new school corporation shall file a written description of the boundaries as provided in section 274.4.

[S13, §2820-f; SS15, §2794-a; C24, 27, 31, 35, 39, §**4144, 4169;** C46, 50, §274.26, 275.5, 275.7, 276.16; C54, 58, 62, 66, 71, 73, 75, §275.23; C77, 79, 81, §275.22]

83 Acts, ch 91, §3; 93 Acts, ch 160, §7; 95 Acts, ch 67, §53

275.23 Frequency of change.

A school district which is enlarged, reorganized, or changes its boundaries under sections 275.12 to 275.22, shall not file a petition under section 275.12 for the purpose of reducing the area served or changing the boundaries to exclude areas encompassed by the enlargement, reorganization, or boundary changes for a period of five years following the effective date of the enlargement, reorganization, or boundary change unless the action is approved by the director of the department of education.

[C77, 79, 81, §275.23]

86 Acts, ch 1245, §1463

275.23A Redistricting following federal decennial census.

1. School districts which have directors who represent director districts as provided in section 275.12, subsection 2, paragraphs *"b"*, *"c"*, *"d"*, and *"e"*, shall be divided into director districts according to the following standards:

a. All director district boundaries shall follow the boundaries of areas for which official population figures are available from the most recent federal decennial census and, wherever possible, shall follow precinct boundaries.

b. To the extent possible in order to comply with paragraph *"a"*, all director districts shall be as nearly equal as practicable to the ideal population for the districts as determined by dividing the number of districts to be established into the population of the school district.

c. All districts shall be composed of contiguous territory as compact as practicable unless the school district is composed of marginally adjacent territory. A school district which is composed of marginally adjacent territory shall have director districts composed of contiguous territory to the extent practicable.

d. Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

e. Cities shall not be divided into two or more districts unless the population of the city is greater than the ideal size of a director district. Cities shall be divided into the smallest number of director districts possible.

2. Following each federal decennial census the school board shall determine whether the existing director district boundaries meet the standards in subsection 1 according to the most recent federal

decennial census. In addition to the authority granted to voters to change the number of directors or method of election as provided in sections 275.35, 275.36, and 278.1, the board of directors of a school district may, following a federal decennial census, by resolution and in accordance with this section, authorize a change in the method of election as set forth in section 275.12, subsection 2, or a change to either five or seven directors after the board conducts a hearing on the resolution. If the board proposes to change the number of directors from seven to five directors, the resolution shall include a plan for reducing the number of directors. If the board proposes to increase the number of directors to seven directors, two directors shall be added according to the procedure described in section 277.23, subsection 2. If necessary, the board of directors shall redraw the director district boundaries. The director district boundaries shall be described in the resolution adopted by the school board. The resolution shall be adopted no earlier than November 15 of the year immediately following the year in which the federal decennial census is taken nor later than May 15 of the second year immediately following the year in which the federal decennial census is taken. A copy of the plan shall be filed with the area education agency administrator of the area education agency in which the school's electors reside. If the board does not provide for an election as provided in sections 275.35, 275.36, and 278.1 and adopts a resolution to change the number of directors or method of election in accordance with this subsection, the district shall change the number of directors or method of election as provided unless, within twenty-eight days following the action of the board, the secretary of the board receives a petition containing the required number of signatures, asking that an election be called to approve or disapprove the action of the board in adopting the resolution. The petition must be signed by eligible electors equal in number to not less than one hundred or thirty percent of the number of voters at the last preceding regular school election, whichever is greater. The board shall either rescind its action or direct the county commissioner of elections to submit the question to the registered voters of the school district at the next following regular school election or a special election. If a majority of those voting on the question at the election favors disapproval of the action of the board, the district shall not change the number of directors or method of election. If a majority of those voting on the question does not favor disapproval of the action, the board shall certify the results of the election to the department of management and the district shall change the number of directors or method of election as provided in this subsection. At the expiration of the twenty-eight-day period, if no petition is filed, the board shall certify its action to the department of management and the district shall change the number of directors or method of election as provided in this subsection.

3. The school board shall notify the state commissioner of elections and the county commissioner of elections of each county in which a portion of the school district is located when the boundaries of director districts are changed. The notices of changes submitted to the state commissioner shall be postmarked no later than the deadline for adoption of the resolution under subsection 2. The board shall provide the commissioners with maps showing the new boundaries and shall also certify to the state commissioner the populations of the new director districts as determined under the latest federal decennial census. If, following a federal decennial census a school district elects not to redraw director districts under this section, the school board shall so certify to the state commissioner of elections, and the school board shall also certify to the state commissioner the populations of the retained director districts as determined under the latest federal decennial census. If the state commissioner determines that a district board has failed to make the required changes by the dates specified by this section, the state commissioner of elections shall make or cause to be made the necessary changes as soon as possible. The state commissioner shall assess any expenses incurred to the school district. The state commissioner of elections may request the services of personnel of and materials available to the legislative service bureau to assist the state commissioner in making any required boundary changes.

4. If more than one incumbent director resides in a redrawn director district, the terms of office of the affected directors expire at the organizational meeting of the board of directors following the next regular school election following the adoption of the redrawn districts.

5. The boundary changes under this section take effect July 1 following their adoption for the next regular school election.

6. Section 275.9 and sections 275.14 through 275.23 do not apply to changes in director district boundaries made under this section.

83 Acts, ch 77, §3, 4; 89 Acts, ch 296, §24; 90 Acts, ch 1233, §9; 92 Acts, ch 1246, §45; 94 Acts, ch 1179, §17, 18; 95 Acts, ch 189, §18; 2002 Acts, ch 1024, §1, 3; 2002 Acts, ch 1140, §16, 46

See Code editor's note to §8.55 at the end of Vol IV

Subsection 2 amended

275.24 Effective date of change.

When a school district is enlarged, reorganized, or changes its boundary pursuant to sections 275.12 to 275.22, the change shall take effect on July 1 following the date of the reorganization election held pursuant to section 275.18 if the election was held by the prior November 30. Otherwise the change shall take effect on July 1 one year later.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.24]
83 Acts, ch 53, §3

275.25 Election of directors.

1. If the proposition to establish a new school district carries under the method provided in this chapter, the area education agency administrator with whom the petition was filed shall give written notice of a proposed date for a special election for directors of the newly formed school district to the commissioner of elections of the county in the district involved in the reorganization which has the greatest taxable base. The proposed date shall be as soon as possible pursuant to section 39.2, subsections 1 and 2, and section 47.6, subsections 1 and 2, but not later than the third Tuesday in January of the calendar year in which the reorganization takes effect. The election shall be conducted as provided in section 277.3, and nomination petitions shall be filed pursuant to section 277.4, except as otherwise provided in this subsection. Nomination petitions shall be filed with the secretary of the board of the existing school district in which the candidate resides not less than twenty-eight days before the date set for the special school election. The secretary of the board, or the secretary's designee, shall be present in the secretary's office until five p.m. on the final day to file the nomination papers. The nomination papers shall be delivered to the commissioner no later than five p.m. on the twenty-seventh day before the election.

If the special election is held in conjunction with the regular school election, the filing deadlines for the regular school election apply.

2. The number of directors of a school district is either five or seven as provided in section 275.12. In school districts that include a city of fifteen thousand or more population as shown by the most recent decennial federal census, the board shall consist of seven members elected in the manner provided in subsection 3. If it becomes necessary to increase the membership of a board, two directors shall be added according to the procedure described in section 277.23.

The county board of supervisors shall canvass the votes and the county commissioner of elections shall report the results to the area education agency administrator who shall notify the persons who are elected directors.

3. The directors who are elected and qualify to serve shall serve until their successors are elected and qualify. At the special election, the newly elected director receiving the most votes shall be elected to serve until the director's successor qualifies after the fourth regular school election date occurring after the effective date of the reorganization; the two newly elected directors receiving the next largest number of votes shall be elected to serve until the directors' successors qualify after the third regular school election date occurring after the effective date of the reorganization; and the two newly elected directors receiving the next largest number of votes shall be elected to serve until the directors' successors qualify after the second regular school election date occurring after the effective date of the reorganization. However, in districts that include all or a part of a city of fifteen thousand or more population and in districts in which the proposition to establish a new corporation provides for the election of seven directors, the three newly elected directors receiving the most votes shall be elected to serve until the directors' successors qualify after the fourth regular school election date occurring after the effective date of the reorganization.

4. The board of the newly formed district shall organize within fifteen days after the special election upon the call of the area education agency administrator. The new board shall have control of the employment of personnel for the newly formed district for the next following school year under section 275.33. Following the first organizational meeting of the board of the newly formed district, the board may establish policy, organize curriculum, enter into contracts, complete planning, and take action as necessary for the efficient management of the newly formed community school district.

5. Section 49.8, subsection 4 does not permit a director to remain on the board of a school district after the effective date of a boundary change which places the director's residence outside the boundaries of the district. Vacancies caused by this occurrence on a board shall be filled in the manner provided in sections 279.6 and 279.7.

6. The board of the newly formed district shall appoint an acting superintendent and an acting board secretary. The appointment of the acting superintendent shall not be subject to the continuing contract provisions of sections 279.20, 279.23, and 279.24.

[R60, §2099, 2100, 2106; C73, §1801; C97, §2795; S13, §2820-f; SS15, §2794-a; C24, §4144, 4145, 4148; C27, 31, 35, §4144-a1, 4145, 4148; C39, §**4144.2, 4144.3, 4145, 4148;** C46, 50, §274.28 – 274.30, 275.5, 276.18; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.25]

83 Acts, ch 53, §4; 85 Acts, ch 221, §5; 86 Acts, ch 1239, §2; 88 Acts, ch 1038, §1; 93 Acts, ch 143, §43; 2002 Acts, ch 1134, §82, 115

2002 amendment to subsection 1, unnumbered paragraph 1, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1, unnumbered paragraph 1 amended

275.26 Payment of expenses.

If a district is established or changes its boundaries it shall pay all expenses incurred by the area education agency administrator and the area education agency board in connection with the proceedings. The county commissioner of elections shall assess the costs of the election against the

district as provided in section 47.3. If the proposition is dismissed or defeated at the election all expenses shall be apportioned among the several districts in proportion to the assessed valuation of property therein.

If the proposed district or boundary change embraces territory in more than one area education agency such expenses shall be certified to and, if necessary, apportioned among the several districts by the joint agency board. If in only one agency the certification shall be made by the agency administrator.

The respective boards to which such expenses are certified shall audit and order the same paid from the general fund. In the event of failure of any board to so audit and pay the expenses certified to it, the area education agency administrator shall certify the expenses to the county auditor in the same manner as is provided for tuition claims in section 282.21 and the funds shall be transferred by the county treasurer from the debtor district to the agency board for payment of said expenses.

[S13, §2820-h; C24, 27, 31, 35, 39, §**4147, 4172;** C46, 50, §274.32, 275.6, 276.19; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.26]

275.27 Community school districts — part of area education agency.

School districts created or enlarged under this chapter are community school districts and are part of the area education agency in which the greatest number of registered voters of the district reside at the time of the special election called for in section 275.18, and sections of the Code applicable to the common schools generally are applicable to these districts in addition to the powers and privileges conferred by this chapter. If a school district, created or enlarged under this chapter and assigned to an area education agency under this section, can demonstrate that students in the district were utilizing a service or program prior to the formation of the new or enlarged district that is unavailable from the area education agency to which the new or enlarged district is assigned, the district may be reassigned to the area education agency which formerly provided the service or program, upon an affirmative majority vote of the boards of the affected area education agencies to permit the change.

[C73, §1715; C97, §2802; S13, §2802; SS15, §2794-a; C24, 27, 31, 35, 39, §**4136;** C46, 50, §274.18; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.27]

84 Acts, ch 1078, §11; 91 Acts, ch 44, §1; 95 Acts, ch 49, §6

275.28 Plan of division of assets and liabilities.

In addition to setting up the territory to comprise the reorganized districts, a reorganization petition may provide for a division of assets and liabilities of the old districts between reorganized districts. If no provision is made in the petition for division of assets and liabilities, or if territory is excluded from the reorganized district by the petition or by the area education agency board of directors, the division shall be made under the provisions of sections 275.29 to 275.31.

[C46, 50, §275.7; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.28]

93 Acts, ch 160, §8

275.29 Division of assets and liabilities after reorganization.

Between July 1 and July 20, the board of directors of the newly formed school district shall meet with the boards of the school districts affected by the organization of the new school corporation, including the boards of districts receiving territory of the school districts affected, for the purpose of reaching joint agreement on an equitable division of the assets of the several school corporations or parts of school corporations and an equitable distribution of the liabilities of the affected corporations or parts of corporations. In addition, if outstanding bonds are in existence in any district, the initial board of directors of the newly formed school district shall meet with the boards of all school districts affected prior to April 15 prior to the school year the reorganization is effective to determine the distribution of the bonded indebtedness between the districts so that the newly formed district may certify its budget under the procedures specified in chapter 24. The boards shall consider the mandatory levy required in section 76.2 and shall assure the satisfaction of outstanding obligations of each affected school corporation. If the petition includes plans for the distribution of the bonded indebtedness, the exclusion of territory from the reorganized district does not require action pursuant to this section.

[C73, §1715; C97, §2802; S13, §2802, 2820-g; C24, 27, 31, 35, 39, §**4137;** C46, 50, §274.19; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.29]

84 Acts, ch 1078, §12; 85 Acts, ch 221, §6; 93 Acts, ch 1, §6; 93 Acts, ch 160, §9

275.30 Arbitration.

If the boards cannot agree on such division and distribution, the matters on which they differ shall be decided by disinterested arbitrators, one selected by the initial board of directors of the newly formed district, one by each of the boards of directors of the school districts affected, and one selected jointly by the boards of directors of contiguous districts receiving territory of the school district affected. If the number of arbitrators selected is even, a disinterested arbitrator shall be added by the area education agency administrator. The decision of the arbitrators shall be made in writing and filed with the secretary of the new corporation, and a party to the proceedings may appeal

the decision to the district court by serving notice on the secretary of the new corporation within twenty days after the decision is filed. The appeal shall be tried in equity and a decree entered determining the entire matter, including the levy, collection, and distribution of any necessary taxes.

[C73, §1715; C97, §2802; S13, §2802, 2820-g; C24, 27, 31, 35, 39, §**4138;** C46, 50, §274.20; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.30]

93 Acts, ch 160, §10

275.31 Taxes and appropriation to effect equalization.

If necessary to equalize the division and distribution, the board or boards may provide for the levy of additional taxes, which shall be sufficient to satisfy the mandatory levy required in section 76.2 or other liabilities of the districts, upon the property of a corporation or part of a corporation and for the distribution of the tax revenues so as to effect equalization. When the board or boards are considering the equalization levy, the division and distribution shall not impair the security for outstanding obligations of each affected corporation. Any owner of bonds of an affected corporation may bring suit in equity for adjustment of the division and distribution in compliance with this section. If the property tax levy for the amount estimated and certified to apply on principal and interest on lawful bonded indebtedness for a newly formed community school district is greater than the property tax levy for the amount estimated and certified to apply on principal and interest in the year preceding the reorganization or dissolution for a school district that is a party to the reorganization or dissolution, that had a certified enrollment of less than six hundred for the year prior to the reorganization or dissolution, and that approved the reorganization or dissolution prior to July 1, 1989, the board of the newly formed district shall inform the department of management. The department of management shall pay debt service aid to the newly formed district in an amount that reduces the rate of the property tax levy for lawful bonded indebtedness in the portion of the newly formed district where the new rate is higher, to the rate that was levied in that portion of the district during the year preceding the reorganization or dissolution.

For the school year beginning July 1, 1987, and succeeding school years, there is appropriated from the general fund of the state to the department of management an amount sufficient to pay the debt service aid under this section. Debt service aid shall be paid in the manner provided in section 257.16.

Not later than May 1 of each year, the department of management shall inform the board of the newly formed school district the amount of debt service aid that the district will receive and the rate of the property tax levy for the amount estimated and certified to apply on principal and interest on lawful bonded indebtedness in the portion of the newly formed district where the new rate would have been higher, and for the remainder of the newly formed district. The department of management shall notify the county auditor of each applicable county of the amount, in dollars and cents per thousand dollars of assessed valuation, of the property tax levy in each portion of each applicable newly formed school district in the county for the amount estimated and certified to apply on principal and interest on lawful bonded indebtedness, and the boundaries of the portions within the newly formed district for which the levies shall be made. The county auditor shall spread the applicable property tax levy for each portion of a school district over all taxable property in that portion of the district.

[S13, §2820-g; SS15, §2794-a; C24, 27, 31, 35, 39, §**4139, 4175;** C46, 50, §274.21, 276.22; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.31]

85 Acts, ch 221, §7; 86 Acts, ch 1226, §3; 89 Acts, ch 135, §67; 92 Acts, ch 1163, §62

275.32 School buildings — tax levy. Repealed by 93 Acts, ch 160, § 18. See § 279.39.

275.33 Contracts of new district.

1. The terms of employment of superintendents, principals, and teachers, for the school year following the effective date of the formation of the new district shall not be affected by the formation of the new district, except in accordance with the provisions of sections 279.15 to 279.18 and 279.24 and the authority and responsibility to offer new contracts or to continue, modify, or terminate existing contracts pursuant to sections 279.12, 279.13, 279.15 to 279.21, 279.23, and 279.24 for the school year beginning with the effective date of the reorganization shall be transferred from the boards of the existing districts to the board of the new district on the third Tuesday of January prior to the school year the reorganization is effective.

2. The collective bargaining agreement of the district with the largest basic enrollment for the year prior to the reorganization, as defined in section 257.6, in the new district shall serve as the base agreement and the employees of the other districts involved in the formation of the new district shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contracts for the following years without further action by the public employment relations board. If only one collective bargaining agreement is in effect among the districts which are party to the reorganization, then that agreement shall serve as the base agreement, and the employees of the other districts involved in the formation of the new district shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contracts for the following years

without further action by the public employment relations board. The board of the newly formed district, using the base agreement as its existing contract, shall bargain with the combined employees of the existing districts for the school year beginning with the effective date of the reorganization. The bargaining shall be completed by the dates specified in section 20.17 prior to the school year in which the reorganization becomes effective or within one hundred eighty days after the organization of the new board, whichever is later. If a bargaining agreement was already concluded by the board and employees of the existing district with the contract serving as the base agreement for the school year beginning with the effective date of the reorganization, that agreement shall be void. However, if the base agreement contains multiyear provisions affecting school years subsequent to the effective date of the reorganization, the base agreement shall remain in effect as specified in the agreement.

The provisions of the base agreement shall apply to the offering of new contracts, or continuation, modification, or termination of existing contracts as provided in subsection 1 of this section.

[S13, §2820-f; C24, 27, 31, 35, 39, §**4146;** C46, 50, §274.31; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §275.33]

85 Acts, ch 221, §8; 86 Acts, ch 1239, §3; 89 Acts, ch 135, §68; 93 Acts, ch 1, §7, 14; 93 Acts, ch 160, §11

275.34 Repealed by 74 Acts, ch 1090, § 211.

275.35 Change in number of directors — change in method of elections.

Any existing or hereafter created or enlarged school district may change the number of directors to either five or seven and may also change its method of election of school directors to any method authorized by section 275.12 by submission of a proposal, stating the proposed new method of election, by the school board of such district to the electors at any regular or special school election. The school board shall notify the county commissioner of elections who shall publish notice of the election in the manner provided in section 49.53. The election shall be conducted pursuant to chapters 39 to 53 by the county commissioner of elections. Such proposal shall be adopted if it is approved by a majority of the votes cast on the proposition.

If the proposal adopted by the voters requires the establishment of or change in director district boundaries, the school board shall draw the necessary boundaries within forty days after the date of the election. The boundaries shall be drawn according to the requirements of section 275.23A. Following adoption by the school board, the plan shall be submitted to the state commissioner of elections for approval.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §275.35]

2002 Acts, ch 1134, §83, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

275.36 Submission of change to electors.

If a petition for a change in the number of directors or in the method of election of school directors is filed with the school board of a school district pursuant to the requirements of section 278.2, the school board shall submit such proposition to the voters at the regular school election or a special election held not later than February 1. The petition shall be accompanied by an affidavit as required by section 275.13. If a proposition for a change in the number of directors or in the method of election of school directors submitted to the voters under this section is rejected, it shall not be resubmitted to the voters of the district in substantially the same form within the next three years; if it is approved, no other proposal may be submitted to the voters of the district under this section within the next six years.

If the proposal adopted by the voters requires the establishment of or a change in director district boundaries pursuant to section 275.12, subsection 2, paragraph *"b"*, *"c"*, *"d"*, or *"e"*, the school board shall draw the necessary boundaries within forty days after the date of the election. The boundaries shall be drawn according to the requirements of section 275.23A. Following adoption by the school board, the plan shall be submitted to the state commissioner of elections for approval. The new boundaries shall become effective on July 1 following approval.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §275.36]

93 Acts, ch 143, §44; 2002 Acts, ch 1134, §84, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

275.37 Increase in number of directors.

At the next succeeding annual school election in a district where the number of directors has been increased from five to seven, and directors are elected at large, there shall be elected a director to succeed each incumbent director whose term is expiring in that year, and two additional directors. Upon organizing as required by section 279.1, the newly elected director who received the fewest votes in the election shall be assigned a term of either one year or two years if necessary in order that as nearly as possible one-third of the members of the board shall be elected each year. If some or all directors are elected from director districts, the board shall assign terms appropriate for the method of election used by the district.

[C58, 62, 66, 71, 73, §275.37, 275.38; C75, 77, 79, 81, §275.37]

2002 Acts, ch 1134, §85, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

275.37A Decrease in number of directors.

1. A change from seven to five directors shall be effected in a district at the first regular school election after authorization by the voters in the following manner:

a. If at the first election in the district there are three terms expiring, one director shall be elected. At the second election in that district, if two terms are expiring, two directors shall be elected. At the third election in that district, if there are two terms expiring, two directors shall be elected.

b. If at the first election there are two terms expiring, no directors shall be elected. At the second election in that district, if two terms are expiring, two directors shall be elected. At the third election in that district, if there are three terms expiring, three directors shall be elected, two for three years and one for one year. The newly elected director who received the fewest votes in the election shall be assigned a term of one year.

c. If at the first election there are two terms expiring, no directors shall be elected. At the second election in that district, if three terms are expiring, three directors shall be elected, two for three years and one for two years. The newly elected director who received the fewest votes in the election shall be assigned a term of two years. At the third election in that district, if there are two terms expiring, two directors shall be elected.

2. If some or all of the directors are elected from director districts, the board shall devise a plan to reduce the number of members so that as nearly as possible one-third of the members of the board shall be elected each year and so that each district will be continuously represented.

2002 Acts, ch 1134, §86, 115

Section takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW section

275.38 Implementing changed method of election.

If change in the method of election of school directors is approved at a regular or special school election, the directors who were serving unexpired terms or were elected concurrently with approval of the change of method shall serve out the terms for which they were elected. If the plan adopted is that described in section 275.12, subsection 2, paragraph *"b," "c," "d,"* or *"e,"* the board shall at the earliest practicable time designate the districts from which residents are to be elected as school directors at each of the next three succeeding annual school elections, arranging so far as possible for elections of directors as residents of the respective districts to coincide with the expiration of terms of incumbent members residing in those districts. If an increase in the size of the board from five to seven members is approved concurrently with the change in method of election of directors, the board shall make the necessary adjustment in the manner prescribed in section 275.37, as well as providing for implementation of the districting plan under this section.

[C75, 77, 79, 81, §275.38]

275.39 Excluded territory included in new petition.

Territory described in the petition of a proposed reorganization which has been set out of the proposed reorganization by the area education agency board or the joint boards and in the event of an appeal, after the decision of the director of the department of education or the courts, may be included in any new petition for reorganization.

[C62, 66, 71, 73, 75, 77, 79, 81, §275.39]

86 Acts, ch 1245, §1464

275.40 Repealed by 74 Acts, ch 1172, § 133.

275.41 Alternative method for director elections — temporary appointments.

1. As an alternative to the method specified in section 275.25 for electing directors in a newly formed community school district, the procedure specified in this section may be used and if used, the petition filed under section 275.12 shall state the number of directors on the initial board. If two districts are named in the petition, either five or seven directors shall serve on the initial board. If three or more districts are named in the petition, either seven or nine directors shall serve on the initial board. The petition shall specify the number of directors to be retained from each district, and those numbers shall be proportionate to the populations of the districts. If the exclusion of territory from a reorganization affects the proportionate balance of directors among the affected districts specified in the petition, or if the proposal specified in the petition does not comply with the requirement for proportionate representation, the area education board shall modify the proposal. However, all districts affected shall retain at least one member.

2. Prior to the organization meeting of the newly formed district, the boards of the former districts shall designate directors to be retained as members to serve on the initial board, and if the total number of directors determined under subsection 1 is an even number, that number of directors shall function and may within five days of the organizational meeting appoint one additional director by unanimous vote with all directors voting. Otherwise, the board shall function until a special election can be held to elect an additional director. The procedure for calling the special election shall be the procedure specified in section 275.25. If there is an insufficient number of board members eligible to be retained from a former school district, the board of the former school district may appoint members to fill the vacancies. A vacancy occurs if there is an insufficient number of former

board members who reside in the newly formed district or if there is an insufficient number who are willing to serve on the board of the newly formed district.

3. Prior to the effective date of the reorganization, the initial board shall approve a plan that commences at the second regular school election held after the effective date of the merger and is completed at the fourth regular school election held after the effective date of the merger, to replace the initial board with the regular board. If the petition specifies a number of directors on the regular board to be different from the number of directors on the initial board, the plan shall provide that the number specified in the petition for the regular board is in place by the time the regular board is formed. The plan shall provide that as nearly as possible one-third of the members of the board shall be elected each year, and if a special election was held to elect a member to create an odd number of members on the board, the term of that member shall end at the organizational meeting following the fourth regular school election held after the effective date.

4. The board of the newly formed district shall organize within forty-five days after the approval of the merger upon the call of the area education agency administrator. The new board shall have control of the employment of all personnel for the newly formed district for the ensuing school year. Following the organization of the new board the board shall have authority to establish policy, organize curriculum, enter into contracts and complete such planning and take such action as is essential for the efficient management of the newly formed community school district.

5. The board of the newly formed district shall appoint an acting superintendent and an acting board secretary. The appointment of the acting superintendent shall not be subject to the continuing contract provision of sections 279.20, 279.23, and 279.24.

Section 49.8, subsection 4, shall not permit a director to remain on the board of a school district after the effective date of a boundary change which places the director's residence outside the boundaries of the district. Vacancies so caused on any board shall be filled in the manner provided in sections 279.6 and 279.7.

[C62, 66, 71, 73, 75, 77, §275.25; C79, 81, §275.41]

83 Acts, ch 53, §5; 85 Acts, ch 221, §9; 93 Acts, ch 160, §12, 13

275.42 to 275.50 Reserved.

DISSOLUTION OF DISTRICTS

275.51 Dissolution commission.

As an alternative to school district reorganization prescribed in this chapter, the board of directors of a school district may establish a school district dissolution commission to prepare a proposal of dissolution of the school district and attachment of all of the school district to one or more contiguous school districts and to include in the proposal a division of the assets and liabilities of the dissolving school district. A school district dissolution commission shall be established by the board of directors of a school district if a dissolution proposal has been prepared by eligible electors who reside within the district. The proposal must contain the names of the proposed members of the commission and be accompanied by a petition which has been signed by eligible electors residing in the school district equal in number to at least twenty percent of the registered voters in the school district.

The dissolution commission shall consist of seven members appointed by the board for a term of office ending either with a report to the board that no proposal can be approved or on the date of the election on the proposal. Members of the dissolution commission must be eligible electors who reside in the school district, not more than three of whom may be members of the board of directors of the school district. Members shall be appointed from throughout the school district and should represent the various socioeconomic factors present in the school district.

Members of the dissolution commission shall serve without compensation and may be appointed to a subsequent commission. A vacancy on the commission shall be filled in the same manner as the original appointment was made.

The board of the school district shall certify to the area education agency board that a commission has been formed, the names and addresses of commission members, and that the commission members represent the various geographic areas and socioeconomic factors present in the district.

[C81, §275.51]

88 Acts, ch 1263, §3; 93 Acts, ch 160, §14; 94 Acts, ch 1175, §6; 95 Acts, ch 49, §7; 2001 Acts, ch 56, §13

275.52 Meetings.

The commission shall hold an organizational meeting not more than fifteen days after its appointment and shall elect a chairperson and vice chairperson from its membership. Thereafter the commission may meet as often as deemed necessary upon the call of the chairperson or a majority of the commission members.

The commission shall request statements from contiguous school districts outlining each district's willingness to accept attachments of the affected school district to the contiguous districts and what conditions, if any, the contiguous school district recommends. The commission shall meet with boards of contiguous school districts and with residents of the affected school district to the ex-

tent possible in drawing up the dissolution proposal. The commission may seek assistance from the area education agency and the department of education.

[C81, §275.52]

275.53 Dissolution proposal.

The commission shall send a copy of its dissolution proposal or shall inform the board that it cannot agree upon a dissolution proposal not later than one year following the date of the organizational meeting of the commission. The commission shall also send a copy of the dissolution proposal by registered mail to the boards of directors of all school districts to which area of the affected school district will be attached. If the board of a district to which area of the affected school district will be attached objects to the attachment, within ten days following receipt of the dissolution proposal the board shall send its objections in writing to the commission. The commission may consider the objections and may modify the dissolution proposal. If the dissolution proposal is modified, the commission shall notify by registered mail the boards of directors of all school districts to which area of the affected school district will be attached.

If the commission cannot agree upon a dissolution proposal prior to the expiration of its term, the board may appoint a new commission.

[C81, §275.53]

275.54 Hearing.

Within ten days following the filing of the dissolution proposal with the board, the board shall fix a date for a hearing on the proposal which shall not be more than sixty days after the dissolution petition was filed with the board. The board shall publish notice of the date, time, and location of the hearing at least ten days prior to the date of the hearing by one publication in a newspaper in general circulation in the district. The notice shall include the content of the dissolution proposal. A person residing or owning land in the school district may present evidence and arguments at the hearing. The president of the board shall preside at the hearing. The board shall review testimony from the hearing and shall adopt or amend and adopt the dissolution proposal. The board shall notify by registered mail the boards of directors of all school districts to which area of the affected school district will be attached and the director of the department of education of the contents of the dissolution proposal adopted by the board. If the board of a district to which area of the affected school district will be attached objects to the attachment, that portion of the dissolution proposal will not be included in the proposal voted upon under section 275.55 and the director of the department of education shall attach the area to a contiguous school district. If the board of a district to which area of the affected school district will be attached objects to the division of assets and liabilities contained in the dissolution proposal, section 275.30 applies for the division of assets and liabilities to that district.

If a dissolution proposal adopted by a board contains provisions that ninety-five percent or more of the taxable valuation of the dissolving district would be assumed and attached to a single school district, the dissolving school district shall cease further proceedings to dissolve and shall comply with reorganization procedures specified in this chapter.

[C81, §275.54]

86 Acts, ch 1245, §1465

275.55 Election.

The board of the school district shall call a special election to be held not later than forty days following the date of the final hearing on the dissolution proposal. The special election may be held at the same time as the regular school election. The proposition submitted to the voters residing in the school district at the special election shall describe each separate area to be attached to a contiguous school district and shall name the school district to which it will be attached. In addition to the description, a map may be included in the summary of the question on the ballot.

The board shall give written notice of the proposed date of the election to the county commissioner of elections. The proposed date shall be pursuant to section 39.2, subsections 1 and 2 and section 47.6, subsections 1 and 2. The county commissioner of elections shall give notice of the election by one publication in the same newspaper in which the previous notice was published about the hearing, which publication shall not be less than four nor more than twenty days prior to the election.

The proposition shall be adopted if a majority of the electors voting on the proposition approve its adoption.

The attachment is effective July 1 following its approval. If the dissolution proposal is for the dissolution of a school district with a certified enrollment of fewer than six hundred, the territory located in the school district that dissolved is eligible, if approved by the director of the department of education, for a reduction in the foundation property tax levy under section 257.3, subsection 1. If the director approves a reduction in the foundation property tax levy as provided in this section, the director shall notify the director of the department of management of the reduction.

[C81, §275.55]

88 Acts, ch 1263, §4; 89 Acts, ch 135, §69; 2002 Acts, ch 1134, §87, 115

2002 amendment to unnumbered paragraph 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 amended

275.55A Attendance in other district.

A student enrolled in ninth, tenth, or eleventh grade during the school year preceding the effective date of a dissolution proposal, who was a resident of the school district that dissolved, may enroll in a school district to which territory of the school district that dissolved was attached until the student's graduation from high school, unless the student was expelled or suspended from school and the conditions of expulsion or suspension have not been met. The student under expulsion or suspension shall not be enrolled until the board of directors of the school district to which territory of the dissolved school district was attached approves, by majority vote, the enrollment of the student. Notwithstanding section 282.24, the district of residence of the student, determined in the dissolution proposal, shall pay tuition to the school district selected by the student in an amount not to exceed the district cost per pupil of the district of residence and the school district selected by the student shall accept that tuition payment and enroll the student.

88 Acts, ch 1263, §5; 95 Acts, ch 218, §26

275.56 Increasing enrollment.

If the enrollment of a school district increases or is expected to increase because an adjacent district has dissolved or is expected to dissolve, the board of directors of the school district shall determine whether there is a need to hire additional licensed or unlicensed employees. If the board of directors determines that there is a need to hire additional employees, the board shall determine the nature and number of the necessary new positions. Individuals who were employees of the dissolved district may apply for the new positions. The board shall hire those applicants who were employees of the dissolved district whenever the applicant is licensed for the new position or, in the case of unlicensed personnel, is otherwise qualified. If two employees of the dissolved district apply for a single licensed position, the applicant who is best qualified in the opinion of the board shall be hired. The board is not required to hire applicants who were employees of the dissolved district if the district has been dissolved for one or more school years. Applicants who are re-employed under this section shall maintain in the re-employing district vacation, salary or alternatively placement on a salary schedule based on the employee's years of experience, sick leave, and completion of probationary status as defined by section 279.19.

[C81, §275.56]

89 Acts, ch 265, §40

275.57 Changing director district boundaries following dissolution.

1. If a school district accepting attachments of a dissolved district is currently divided into director districts as provided in section 275.12, subsection 2, paragraph *"b"*, *"c"*, *"d"*, or *"e"*, the board of directors of the district shall draft a proposal to incorporate the newly received territory into existing contiguous director districts. If the attached territory is contiguous to more than one director district, the board may divide the territory and attach it to more than one director district. If necessary to comply with the population equality standards prescribed in section 275.23A, the board shall redraw the boundaries of all director districts according to the standards provided in section 275.23A, subsection 1, paragraphs *"a"*, *"c"*, and *"d"*.

2. A public hearing on the proposed changes to director districts shall be held no later than May 15 following the dissolution. Not less than ten nor more than twenty days before the public hearing, the board shall publish notice of the time and place of the hearing.

3. The final plan for the assignment of attached lands and any other boundary changes made shall be adopted by resolution of the board. The resolution shall contain a legal description of the new director district boundaries and a map of the director district boundaries changed by the resolution. A copy of the resolution shall be filed with the county commissioners of elections of each county in which a portion of the school district is located. The resolution shall also be filed with the state commissioner of elections not later than June 15. The boundary changes shall take effect upon approval by the state commissioner of elections for the next regular school election, but not later than July 1.

2002 Acts, ch 1134, §88, 115

Section takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

NEW section

275.58 Reserved.

275.59 Early retirement following school reorganization or dissolution. Repealed by 92 Acts, ch 1246, § 60.

CHAPTER 276

COMMUNITY EDUCATION

276.1 Title.
276.2 Purpose.
276.3 Definitions.
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276.5 Local director.
276.6 State advisory council. Repealed by 86 Acts, ch 1245, §1499A.
276.7 Duties of state council. Repealed by 86 Acts, ch 1245, §1499A.
276.8 Duties of district-wide advisory council.
276.9 Duties of local advisory council.
276.10 Establishment of program.
276.11 Funding of community education concept.
276.12 Use of special tax levy.

276.1 Title.

Sections 276.1 to 276.11 of this chapter shall be known and may be cited as the *"Iowa Community Education Act"*.

[C79, 81, §276.1]

276.2 Purpose.

It is the purpose of this chapter to provide educational, recreational, cultural, and other community services and programs through the establishment of the concept of community education with the community school serving as the center for such activity. In co-operation with other community agencies and groups, it is the purpose of the community education Act to mobilize community resources to solve identified community concerns and to promote a more efficient and expanded use of existing school buildings and equipment, to provide leadership in working with other entities, to mobilize the human and financial resources of a community, and to provide a wide range of opportunities for all socioeconomic, ethnic, and age groups. A related purpose of this chapter is to develop a sense of community in which the citizenry co-operates with the school and community agencies and groups to resolve their school and community concerns and to recognize that the schools belong to the people, and that as the entity located in every neighborhood, the schools are available for use by the community day and night, year-round or any time when the programming will not interfere with the elementary and secondary program.

[C79, 81, §276.2]

276.3 Definitions.

As used in sections 276.1 to 276.11 unless the context otherwise requires:

1. *"Board"* means the local board of directors of school districts.

2. *"Community"* means the area located within the boundaries of the local school district.

3. *"Community education"* means a life-long education process concerning itself with every facet that affects the well-being of all citizens within a given community. It extends the role of the school from one of teaching children through an elementary and secondary program to one of providing for citizen participation in identifying the wants, needs, and concerns of the neighborhood community and co-ordinating all educational, recreational, and cultural opportunities within the community with community education being the catalyst for providing for citizen participation in the development and implementation of programs toward the goal of improving the entire community.

Community education energizes people to strive for the achievement of determined goals and stimulates capable persons to assume leadership responsibilities. It welcomes and works with all groups, it draws no lines. It is the one institution in the entire community that has the opportunity to reach all people and groups and to gain their co-operation.

4. *"Community school"* means any elementary or secondary school.

5. *"Department"* means the department of education.

6. *"Director"* means the local community school director who assumes responsibility for making the process function effectively.

7. *"District-wide advisory council"* means a broadly representative group of persons selected from the entire school district with at least one representative from each of the local advisory councils after they are formed. At least one member of the council shall be a representative from the local public recreation department or agency, if one exists.

8. *"Local advisory council"* means a broadly representative group of persons living within the attendance boundaries of an individual neighborhood school.

9. *"State consultant"* means the state community education consultant.

[C79, 81, §276.3]
86 Acts, ch 1245, §1466

276.4 State consultant.

The state consultant of community education

shall serve district and local advisory councils in accordance with rules promulgated by the director of the department of education and in compliance with Pub. L. No. 93-380.

[C79, 81, §276.4]

85 Acts, ch 212, §21

276.5 Local director.

The local community education director shall:

1. Serve as staff person to district-wide and local advisory councils.
2. Promote, publicize, and interpret the community education programs to the schools and community.
3. Facilitate community needs and resources after adequate assessment.
4. Seek ideas, promote people involvement in the process, and open lines of communication and co-ordination.
5. Stimulate planning to meet needs.
6. Schedule community-use hours available in school-plant facilities and related equipment and co-ordinate such use with building principals or designated representatives.
7. Prepare the community education budget in concert and with approval of the district-wide advisory council, and administer the budget after final approval by the board of directors.

[C79, 81, §276.5]

276.6 State advisory council. Repealed by 86 Acts, ch 1245, § 1499A.

276.7 Duties of state council. Repealed by 86 Acts, ch 1245, § 1499A.

276.8 Duties of district-wide advisory council.

The district-wide advisory council shall:

1. Provide guidance to local advisory councils, training and orientation for community persons, evaluation and assessment of needs and delivery systems for school districts.
2. Develop a "sense of total community" and promote democratic thinking and action.
3. Promote meaningful involvement of total community in the identifying, prioritizing, and resolving of school-community concerns.
4. Serve as an advocate of community education and foster community co-operation.
5. Provide an annual budget recommendation and annual report to the local board of education.
6. Mobilize available human and financial resources of the community to meet needs, interests, and concerns of people in the total community.
7. Make school facilities and resources available to all age groups from the total community, day and night, year round.
8. Facilitate the assessment of community-wide needs with the understanding that local advisory councils will manage their own assessments of needs.
9. Provide support and act as a resource group for local advisory councils and the community education director.
10. Help plan and recommend a community education budget for approval by the local board of education.
11. Recommend to the board, regulations, guidelines, and fees, if any, for facility usage.
12. Define short and long-range community education goals and objectives.
13. Communicate through inquiring, informing, suggesting, recommending and evaluating community education for the community.
14. Co-operate with other agencies and organizations including the community colleges and institutions under the control of the state board of regents toward common goals.
15. Perform the functions of the local advisory council in the event that the board determines that the size of the district does not warrant the establishment of a local advisory council.

[C79, 81, §276.8]

276.9 Duties of local advisory council.

The local advisory council shall:

1. Determine needs and priorities and provide programs to serve the needs of the community located within the attendance boundaries of an individual school.
2. Provide programming which is available to any community resident.
3. Promote meaningful involvement of the total neighborhood community in its identification and resolution of school and community concerns.
4. Mobilize available human and financial resources of the community to meet the wants and needs in that neighborhood community.
5. Use existing programs and community resources for delivery of services whenever feasible.
6. Use funds as allocated by district-wide advisory council after budget approval by board.
7. Evaluate the success of programs in meeting needs, interests, and concerns and in resolving responsible needs and concerns.

[C79, 81, §276.9]

276.10 Establishment of program.

1. The board of directors of a local school district may establish a community education program for schools in the district and provide for the general supervision of the program. Financial support for the program shall be provided from funds raised pursuant to chapter 300 and from any private funds and any federal funds made available for the purpose of implementing this chapter. The program which recognizes that the schools belong to the people and which shall be centered in the schools may include but shall not be limited to the use of the school facilities day and night, year round including weekends and regular school

vacation periods for educational, recreational, cultural, and other community services and programs for all age, ethnic, and socioeconomic groups residing in the community.

2. If a community education program is established, the board shall appoint a community education director who shall have professional training in the field of community education, recreation, or comparable experience.

3. Upon establishment of a community education program, the board shall provide for the selection of a district-wide advisory council which shall be responsible to the board and shall cooperate with and assist the board and the local community education director. The board shall also provide for the selection of local advisory councils.

4. The board shall receive an annual report and budget recommendation from the district-wide advisory council and may request supplementary reports as needed.

5. The school districts may cooperate with community colleges, institutions under the control of the state board of regents, and area education agencies in providing community education programs.

6. The board may use opportunities available under Public Law 93-380.

7. The board may approve cooperation and pooling of funds with other school districts.

[C79, 81, §276.10]

90 Acts, ch 1253, §121

276.11 Funding of community education concept.

Residents of the affected school district shall determine if community education will function in their community by providing for funding pursuant to chapter 300.

[C79, 81, §276.11]

276.12 Use of special tax levy.

If the voters of a school district have approved the levying of a tax pursuant to section 300.2 prior to July 7, 1978, moneys collected pursuant to the voted tax levy after said date may be used for community education programs.

[C79, 81, §276.12]

CHAPTER 277

SCHOOL ELECTIONS

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277.28 Oath required.
277.29 Vacancies.
277.30 Vacancies filled by election.
277.31 Surrendering office.
277.32 Penalties.
277.33 Transferred to §277.3.
277.34 Repealed by 73 Acts, ch 136, §401.

277.1 Regular election.

The regular election shall be held annually on the second Tuesday in September in each school district for the election of officers of the district and merged area and for the purpose of submitting to the voters any matter authorized by law.

[C51, §1111, 1114; R60, §2027, 2030, 2031; C73, §1717 – 1719; C97, §2746, 2751; C24, §4194, 4211; C27, §4194, 4211, 4216-b1; C31, 35, §4216-c1; C39, §**4216.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.1]

83 Acts, ch 101, §63

277.2 Special election.

The board of directors in a school corporation may call a special election at which the voters shall have the powers exercised at the regular election with reference to the sale of school property and the application to be made of the proceeds, the authorization of seven members on the board of directors, the authorization to establish or change the boundaries of director districts, and the authorization of a voter-approved physical plant and equipment levy or indebtedness, as provided by law.

[C97, §2750; S13, §2750; C24, 27, §4197; C31, 35, §4216-c2; C39, §**4216.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.2]

89 Acts, ch 135, §70

277.3 Election laws applicable.

The provisions of chapters 39 to 53 shall apply to the conduct of all school elections and the school elections shall be conducted by the county commissioner of elections, except as otherwise specifically provided in this chapter.

[C97, §2754; S13, §2754; C24, 27, §4204; C31, 35, §4216-c33; C39, §**4216.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §277.33; C77, 79, 81, §277.3]

277.4 Nominations required.

Nomination papers for all candidates for election to office in each school district shall be filed with the secretary of the school board not more than sixty-four days, nor less than forty days before the election. Nomination petitions shall be filed not later than five p.m. on the last day for filing. If the school board secretary is not readily available during normal office hours, the secretary may designate a full-time employee of the school district who is ordinarily available to accept nomination papers under this section. On the final date for filing nomination papers the office of the school secretary shall remain open until five p.m.

Each candidate shall be nominated by petition. If the candidate is running for a seat in the district which is voted for at-large, the petition must be signed by at least ten eligible electors, or a number of eligible electors equal in number to not less than one percent of the registered voters of the school district, whichever is more. If the candidate is running for a seat which is voted for only by the voters of a director district, the petition must be signed by at least ten eligible electors of the director district or a number of eligible electors equal in number to not less than one percent of the registered voters in the director district, whichever is more. A petition filed under this section shall not be required to have more than one hundred signatures.

Signers of nomination petitions shall include their addresses and the date of signing, and must reside in the same director district as the candidate if directors are elected by the voters of a director district, rather than at-large. A person may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office. The petition shall be filed with the affidavit of the candidate being nominated, stating the candidate's name, place of residence, that such person is a candidate and is eligible for the office the candidate seeks, and that if elected the candidate will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

The secretary of the school board shall accept the petition for filing if on its face it appears to have the requisite number of signatures and if it is timely filed. The secretary of the school board shall note upon each petition and affidavit accepted for filing the date and time that the petition was filed. The secretary of the school board shall deliver all nomination petitions, together with the complete text of any public measure being submitted by the board to the electorate, to the county commissioner of elections not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed.

Any person on whose behalf nomination petitions have been filed under this section may withdraw as a candidate by filing a signed statement to that effect with the secretary at any time prior to five o'clock p.m. on the thirty-fifth day before the election.

[S13, §2754; C24, §4201; C27, §4201, 4216-b4, -b5; C31, 35, §4216-c4; C39, §**4216.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.4]

87 Acts, ch 221, §32; 88 Acts, ch 1119, §32; 89 Acts, ch 136, §63; 90 Acts, ch 1238, §35; 93 Acts, ch 143, §45; 94 Acts, ch 1180, §42; 95 Acts, ch 189, §19; 97 Acts, ch 170, §84; 98 Acts, ch 1052, §6

277.5 Objections to nominations.

Objections to the legal sufficiency of a nomination petition or to the eligibility of a candidate may be filed by any person who would have the right to vote for a candidate for the office in question. The objection must be filed with the secretary of the school board at least thirty-five days before the day of the school election. When objections are filed notice shall forthwith be given to the candidate affected, addressed to the candidate's place of residence as given on the candidate's affidavit, stating that objections have been made to the legal sufficiency of the petition or to the eligibility of the candidate, and also stating the time and place the objections will be considered.

Objections shall be considered not later than two working days following the receipt of the objections by the president of the school board, the secretary of the school board, and one additional member of the school board chosen by ballot. If objections have been filed to the nominations of either of those school officials, that official shall not pass on the objection. The official's place shall be filled by a member of the school board against whom no objection exists. The replacement shall be chosen by ballot.

88 Acts, ch 1119, §33; 94 Acts, ch 1180, §43

277.6 Territory outside county.

If there is within a school corporation any territory not within the limits of the county whose county commissioner of elections is responsible under section 47.2 for conducting that school corporation's elections, the commissioner may divide the territory which lies outside the county but within the school district into additional precincts, or may attach the various parts thereof to contiguous precincts within the responsible commissioner's county in accordance with section 49.3, and as will best serve the convenience of the electors of said territory in voting on school matters.

[C24, §4205, 4207; C27, §4205, 4207, 4216-b2; C31, 35, §4216-c6; C39, §**4216.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.6]

277.7 Petitions for public measures.

A petition filed with the school board to request an election on a public measure shall be examined before it is accepted for filing. If the petition appears valid on its face it shall be accepted for filing. If it lacks the required number of signatures it shall be returned to the petitioners.

Petitions which have been accepted for filing are valid unless written objections are filed. Objections must be filed with the secretary of the school board within five working days after the petition was filed. The objection process in section 277.5 shall be followed for objections filed pursuant to this section.

94 Acts, ch 1180, §44

277.8 through 277.19 Repealed by 73 Acts, ch 136, § 401.

277.20 Canvassing returns.

On the next Friday after the regular school election, the county board of supervisors shall canvass the returns made to the county commissioner of elections from the several precinct polling places and the absentee ballot counting board, ascertain the result of the voting with regard to every matter voted upon and cause a record to be made thereof as required by section 50.24. Special elections held in school districts shall be canvassed at the time and in the manner required by that section. The board shall declare the results of the voting for members of boards of directors of school corporations nominated pursuant to section 277.4, and the commissioner shall at once issue a certificate of election to each person declared elected. The board shall also declare the results of the voting on any public question submitted to the voters of a single school district, and the commissioner shall certify the result as required by section 50.27.

The abstracts of the votes cast for members of the board of directors of any merged area, and of the votes cast on any public question submitted to the voters of any merged area, shall be promptly certified by the commissioner to the county commissioner of elections who is responsible under section 47.2 for conducting the elections held for that merged area.

[C97, §2756; S13, §2756; C24, §4210; C27, §4210, 4211-b6; C31, 35, §4216-c20; C39, §**4216.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.20]

277.21 Repealed by 73 Acts, ch 136, § 401.

277.22 Contested elections.

School elections may be contested as provided by law for the contesting of other elections.

[C24, 27, §4209; C31, 35, §4216-c22; C39, §**4216.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.22]

Contesting elections, chapter 57 et seq.

277.23 Directors — number — change.

1. In any district including all of a city of fifteen thousand or more population and in any district in which the voters, or the board as provided in section 275.23A, subsection 2, have authorized seven directors, the board shall consist of seven members; in all other districts the board shall consist of five members.

2. A change from five to seven directors shall be effected in a district at the first regular election after authorization by the voters or the board, or when a district becomes wholly or in part within a city of fifteen thousand population or more in the manner described in section 275.37.

[C51, §1112; R60, §2031, 2035, 2075; C73, §1720, 1721, 1808; C97, §2752, 2754; S13, §2752, 2754; C24, §4198, 4212; C27, §4198, 4211-b3, -b5; C31, 35, §4216-c23; C39, §**4216.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.23]

2002 Acts, ch 1024, §2, 3; 2002 Acts, ch 1134, §89, 115

2002 amendments requiring seven directors in districts including cities of fifteen thousand or more, and relating to the manner of changing from five to seven directors, take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

For text of section effective from March 21, 2002, to January 1, 2003, see 2002 Acts, ch 1024, §2

See Code editor's note to §8.55 at the end of Vol IV

Section amended

277.24 Repealed by 70 Acts, ch 1025, § 40.

277.25 Directors in new districts.

At the first election in newly organized districts the directors shall be elected as follows:

1. In districts having three directors, one director shall be elected for one year, one for two years, and one for three years.

2. In districts having five directors, two shall be elected for one year, two for two years, and one for three years.

3. In districts having seven directors, two shall be elected for one year, two for two years, and three for three years.

[C73, §1802; C97, §2754; S13, §2754; C24, 27, §4199; C31, 35, §4216-c25; C39, §**4216.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.25]

277.26 Repealed by 75 Acts, ch 81, § 154.

277.27 Qualification.

A member of the board shall, at the time of election or appointment, be an eligible elector of the corporation or subdistrict. Notwithstanding any contrary provision of the Code, a member of the board of directors of a school district shall not receive compensation directly from the school board unless the compensation is for part-time or temporary employment and does not exceed the limitation set forth in section 279.7A.

[C97, §2748; C24, 27, §4213; C31, 35, §4216-c27; C39, §**4216.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.27]

87 Acts, ch 224, §46; 88 Acts, ch 1038, §2; 2001 Acts, ch 53, §1

277.28 Oath required.

Each director elected at a regular district or director district election shall qualify by taking the oath of office on or before the time set for the organization meeting of the board and the election and qualification entered of record by the secretary. The oath may be administered by any qualified member of the board or the secretary of the board and may be taken in substantially the following form:

"Do you solemnly swear that you will support the Constitution of the United States and the Constitution of the state of Iowa and that you will faithfully and impartially to the best of your ability discharge the duties of the office of . . . . . (naming the office) in . . . . . (naming the district) as now or hereafter required by law?"

If the oath of office is taken elsewhere than in the presence of the board in session it may be administered by any officer listed in sections 63A.1 and 63A.2 and shall be subscribed to by the person taking it in substantially the following form:

"I, ... , do solemnly swear that I will support the Constitution of the United States and the Constitution of the state of Iowa and that I will faithfully and impartially to the best of my ability discharge the duties of the office of . . . . . (naming the office) in . . . . . (naming the district) as now or hereafter required by law."

Such oath shall be properly verified by the administering officer and filed with the secretary of the board.

[C51, §1113, 1120; R60, §2032, 2079; C73, §1752, 1790; C97, §2758; S13, §2758; C24, 27, §4214; C31, 35, §4216-c28; C39, §**4216.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.28]

88 Acts, ch 1038, §3

277.29 Vacancies.

Failure to elect at the proper election or to appoint within the time fixed by law or the failure of the officer elected or appointed to qualify within the time prescribed by law; the incumbent ceasing for any reason to be a resident of the district or removing residence from the subdistrict; the resignation or death of incumbent or of the officer-elect; the removal of the incumbent from, or forfeiture of, the office, or the decision of a competent tribunal declaring the office vacant; the conviction of incumbent of a felony, as defined in section 701.7, or of any public offense involving the violation of the incumbent's oath of office, shall constitute a vacancy.

[C31, 35, §4216-c29; C39, §**4216.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.29]

86 Acts, ch 1112, §10; 86 Acts, ch 1238, §12

277.30 Vacancies filled by election.

When vacancies are to be filled by election, the provisions of section 69.12 shall control.

[C73, §1802; C97, §2754; S13, §2754; C24, 27, §4199; C31, 35, §4216-c30; C39, §**4216.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.30]

277.31 Surrendering office.

Each school officer or member of the board upon the termination of the officer or member's term of office shall immediately surrender to the successor all books, papers, and moneys pertaining or belonging to the office, taking a receipt therefor.

[R60, §2080; C73, §1791; C97, §2770; C24, 27, §4215; C31, 35, §4216-c31; C39, §**4216.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.31]

277.32 Penalties.

Any school officer willfully violating any law relative to common schools, or willfully failing or refusing to perform any duty imposed by law, shall forfeit and pay into the treasury of the particular school corporation in which the violation occurs the sum of twenty-five dollars, action to recover which shall be brought in the name of the proper school corporation, and be applied to the use of the schools therein.

[C51, §1137; R60, §2047, 2081; C73, §1746, 1786; C97, §2822; C24, 27, §4216; C31, 35, §4216-c32; C39, §**4216.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §277.32]

277.33 Transferred to § 277.3.

277.34 Repealed by 73 Acts, ch 136, § 401.

CHAPTER 278

POWERS OF ELECTORS

278.1 Enumeration.
278.2 Submission of proposition.
278.3 Power given electors not to limit directors' power.

278.1 Enumeration.

The voters at the regular election shall have power to:

1. Direct a change of textbooks regularly adopted.

2. Direct the sale, lease, or other disposition of any schoolhouse or site or other property belonging to the corporation, and the application to be made of the proceeds thereof, provided, however, that nothing herein shall be construed to prevent the sale, lease, exchange, gift or grant and acceptance of any interest in real or other property by the board of directors without an election to the extent authorized in section 297.22.

3. Determine upon additional branches that shall be taught.

4. Instruct the board that school buildings may or may not be used for meetings of public interest.

5. Direct the transfer of any surplus in the debt service fund, physical plant and equipment levy fund, capital projects funds, or public education and recreation levy fund to the general fund.

6. Authorize the board to obtain, at the expense of the corporation, roads for proper access to its schoolhouses.

7. Authorize a change to either five or seven directors. The proposition for the change shall specify the number of directors to be elected, and which of the methods of election authorized by section 275.12, subsection 2, is to be used if the change is approved by the voters.

8. Authorize a change in the method of conducting elections or in the number of directors as provided in sections 275.35 and 275.36. If a proposition submitted to the voters under this subsection or subsection 7 is rejected, it may not be resubmitted to the voters of the district in substantially the same form within the next three years; if it is approved, no other proposal may be submitted to the voters of the district under this subsection or subsection 7 within the next six years. The establishment or abandonment of director districts or a change in the boundaries of director districts shall be implemented as prescribed in section 275.37.

9. Change the name of the school district, without affecting its corporate existence, rights, or obligations, and subject to the requirements of section 274.6.

The board may, with approval of sixty percent of the voters, voting in a regular or special election in the school district, make extended time contracts not to exceed twenty years in duration for rental of buildings to supplement existing schoolhouse facilities; and where it is deemed advisable for buildings to be constructed or placed on real estate owned by the school district, these contracts may include lease-purchase option agreements, the amounts to be paid out of the physical plant and equipment levy fund.

Before entering into a rental or lease-purchase option contract, authorized by the electors, the board shall first adopt plans and specifications for a building or buildings which it considers suitable for the intended use and also adopt a form of rental or lease-purchase option contract. The board shall then invite bids thereon, by advertisement published once each week for two consecutive weeks, in a newspaper published in the county in which the building or buildings are to be located, and the rental or lease-purchase option contract shall be awarded to the lowest responsible bidder, but the board may reject any and all bids and advertise for new bids.

[C51, §1115; R60, §2028, 2033; C73, §1717, 1807; C97, §2749; C24, 27, 31, 35, 39, §**4217;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §278.1]

89 Acts, ch 135, §71, 72; 94 Acts, ch 1029, §16, 17; 97 Acts, ch 170, §85; 2002 Acts, ch 1134, §90, 115

2002 amendment to subsection 8 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 8 amended

278.2 Submission of proposition.

The board may, and upon the written request of one hundred eligible electors or a number of electors which equals thirty percent of the number of electors who voted in the last regular school board election, whichever number is greater, shall, direct the county commissioner of elections to provide in the notice of the regular election for the submission of any proposition authorized by law to the voters. When the board has directed the commissioner to submit to the voters a proposition authorized by section 278.1, subsection 7 or 8, it shall not thereafter direct the commissioner to submit at the same election any other proposition under either of those subsections.

Petitions filed under this section shall be filed

with the secretary of the school board at least seventy-five days before the date of the annual school election, if the question is to be included on the ballot at that election. The petition shall include the signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

[R60, §2028; C97, §2749; C24, 27, 31, 35, 39, §**4218;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §278.2]

89 Acts, ch 30, §1; 89 Acts, ch 136, §64; 90 Acts, ch 1238, §36

278.3 Power given electors not to limit directors' power.

The power vested in the electors by section 278.1 shall not affect or limit the power granted to the board of directors of a school district in section 297.7, subsection 2, and the authority granted in said subsection shall be construed as independent of the power vested in the electors by section 278.1.

[C75, 77, 79, 81, §278.3]

CHAPTER 279

DIRECTORS — POWERS AND DUTIES

For student search restrictions, see chapter 808A
Optional waiver of satisfaction and performance bonds; §12.44

279.1 Organization.
279.2 Special meetings.
279.3 Appointment of secretary and treasurer.
279.4 Quorum.
279.5 Temporary officers.
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279.7 Vacancies filled by special election — qualification — tenure.
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279.35 Publication of proceedings.
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279.38A Membership in other organizations.
279.39 School buildings.
279.40 Sick leave.
279.41 Schoolhouses and sites sold — funds.
279.42 Gifts to schools.
279.43 Optional funding of asbestos removal or encapsulation. Repealed effective July 1, 1991, by 89 Acts, ch 135, §136.
279.44 Energy audits.
279.45 Administrative expenditures.
279.46 Retirement incentives — tax.
279.47 Telecommunications — participation by school districts in data base development.
279.48 Equipment purchase.
279.49 Child care programs.
279.50 Human growth and development instruction.
279.51 Programs for at-risk children.
279.52 Optional funding of asbestos projects.
279.53 Additional enrichment amount for asbestos projects. Repealed by 2000 Acts, ch 1072, §3.
279.54 School district income surtax. Repealed by 2000 Acts, ch 1072, §3.
279.55 Teacher exchange program.
279.56 Board participation.
279.57 Period of exchange.
279.58 School dress code policies.
279.59 Access by associations.

279.1 Organization.

The board of directors of each school corporation shall meet and organize at the first regular meeting after the canvass for the regular school election at some suitable place to be designated by the secretary. Notice of the place and hour of the meeting shall be given by the secretary to each member and member-elect of the board.

Such organization shall be effected by the election of a president from the members of the board, who shall be entitled to vote as a member.

[C51, §1119; R60, §2036; C73, §1721, 1722; C97, §2757; SS15, §2757; C24, 27, 31, 35, 39, §**4220;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.1]

87 Acts, ch 224, §47; 90 Acts, ch 1238, §37

279.2 Special meetings.

Such special meetings may be held as may be determined by the board, or called by the president, or by the secretary upon the written request of a majority of the members of the board, upon notice specifying the time and place, delivered to each member in person, or by registered letter, but attendance shall be a waiver of notice.

[C51, §1121; R60, §2036; C73, §1722; C97, §2757; SS15, §2757; C24, 27, 31, 35, 39, §**4221;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.2]

279.3 Appointment of secretary and treasurer.

The board shall appoint a secretary who shall not be a teacher employed by the board but may be another employee of the board. The board shall also appoint a treasurer who may be another employee of the board. However, the board may appoint one person to serve as the secretary and the treasurer.

These officers shall be appointed from outside the membership of the board for terms of one year beginning with the date of appointment, and the appointment and qualification shall be entered of record in the minutes of the secretary. They shall qualify within ten days following appointment by taking the oath of office in the manner required by section 277.28 and filing a bond as required by section 291.2 and shall hold office until their successors are appointed and qualified.

[C51, §1119; R60, §2035; C73, §1721; C97, §2757; SS15, §2757; C24, 27, 31, 35, 39, §**4222;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.3; 82 Acts, ch 1012, §1]

85 Acts, ch 28, §1; 2001 Acts, ch 47, §1

279.4 Quorum.

A majority of the board of directors of any school corporation shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

[C51, §1120; R60, §2037, 2038, 2079; C73, §1730, 1738; C97, §2758, 2771, 2772; S13, §2758, 2771, 2772; C24, 27, 31, 35, 39, §**4223;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.4]

279.5 Temporary officers.

The board shall appoint a temporary president or secretary, in the absence of the regular officers.

[C51, §1120; R60, §2037, 2038, 2079; C73, §1730, 1738; C97, §2758, 2771, 2772; S13, §2758, 2771, 2772; C24, §4223; C27, 31, 35, §4223-a1; C39, §**4223.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.5]

279.6 Vacancies — qualification — tenure.

Vacancies occurring among the officers or members of a school board shall be filled by the board by appointment. A person so appointed to fill a vacancy in an elective office shall hold office until a successor is elected and qualified pursuant to section 69.12. A person appointed to fill a vacancy in an appointive office shall hold such office for the residue of the unexpired term and until a successor is appointed and qualified. Any person so appointed shall qualify within ten days thereafter in the manner required by section 277.28.

A vacancy shall be filled at the next regular school election if a member of a school board resigns from the board not later than forty-five days before the election and the notice of resignation specifies an effective date at the beginning of the next term of office for elective school officials. The president of the board shall declare the office vacant as of the date of the next organizational meeting. Nomination papers shall be received for the unexpired term of the resigning member. The person elected at the next regular school election to fill the vacancy shall take office at the same time and place as the other elected school board members.

[C51, §1120; R60, §2037, 2038, 2079; C73, §1730, 1738; C97, §2758, 2771, 2772; S13, §2758, 2771, 2772; C24, §4223; C27, 31, 35, §4223-a2; C39, §**4223.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.6]

2002 Acts, ch 1134, §91, 115

2002 amendment to unnumbered paragraph 2 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 2 amended

279.7 Vacancies filled by special election — qualification — tenure.

If a vacancy or vacancies occur among the elective officers or members of a school board and the remaining members of the board have not filled the vacancy within thirty days after the vacancy occurs, or when the board is reduced below a quorum, the secretary of the board, or if there is no secretary, the area education agency administrator, shall call a special election in the district, subdistrict, or subdistricts, as the case may be, to fill the vacancy or vacancies. The county commission-

er of elections shall publish the notices required by law for special elections, and the election shall be held not sooner than thirty days nor later than forty days after the thirtieth day following the occurrence of the vacancy. If the secretary fails for more than three days to call an election, the administrator shall call it.

Any appointment by the board to fill any vacancy in an elective office on or after the day notice has been given for a special election to fill such vacancy as provided herein shall be null and void.

In any case of a special election as provided herein to fill a vacancy occurring among the elective officers or members of a school board before the expiration of a full term, the person so elected shall qualify within ten days thereafter in the manner required by section 277.28 and shall hold office for the residue of the unexpired term and until a successor is elected, or appointed, and qualified.

Nomination petitions shall be filed in the manner provided in section 277.4, except that the petitions shall be filed not less than twenty-five days before the date set for the election.

[C51, §1120; R60, §2037, 2038, 2079; C73, §1730, 1738; C97, §2758, 2771, 2772; S13, §2758, 2771, 2772; C24, §4223; C27, 31, 35, §4223-b1; C39, §**4223.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.7]

87 Acts, ch 48, §1; 89 Acts, ch 136, §65; 93 Acts, ch 67, §1

279.7A Interest in public contracts prohibited — exceptions.

A member of the board of directors of a school corporation shall not have an interest, direct or indirect, in a contract for the purchase of goods, including materials and profits, and the performance of services for the director's school corporation. A contract entered into in violation of this section is void. This section does not apply to contracts for the purchase of goods or services which benefit a director, or to compensation for part-time or temporary employment which benefits a director, if the benefit to the director does not exceed two thousand five hundred dollars in a fiscal year, and contracts made by a school board, upon competitive bid in writing, publicly invited and opened.

90 Acts, ch 1209, §2; 91 Acts, ch 258, §40; 2000 Acts, ch 1187, §1; 2001 Acts, ch 53, §2

279.8 General rules — bonds of employees.

The board shall make rules for its own government and that of the directors, officers, employees, teachers and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation, and shall aid in the enforcement of the rules, and require the performance of duties imposed by law and the rules. The board shall include in its rules provisions regulating the loading and unloading of pupils from a school bus stopped on the highway during a period of reduced highway visibility caused by fog, snow or other weather conditions. The board shall have the authority to include in its rules provisions allowing school corporation employees to use school credit cards to pay for the actual and necessary expenses incurred in the performance of work-related duties.

Employees of a school corporation maintaining a high school who have the custody of funds belonging to the corporation or funds derived from extracurricular activities and other sources in the conduct of their duties, shall be required to furnish suitable bond indemnifying the corporation or any activity group connected with the school against loss, and employees who have the custody of property belonging to the corporation or any activity group connected with the school may be required to furnish such bond. Said bond or bonds may be in such form and penalty as the board may approve and the premiums on same shall be paid from the general fund of the corporation.

[R60, §2037; C97, §2772; S13, §2772; C24, 27, 31, 35, 39, §**4224;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.8]

84 Acts, ch 1315, §35

279.8A Traffic and parking.

The board may make necessary rules to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on school grounds. The rules may provide for the use of institutional roads, driveways, and grounds; registration of vehicles and bicycles; the designation of parking areas; the erection and maintenance of signs designating prohibitions or restrictions; the installation and maintenance of parking control devices; and assessment, enforcement, and collection of reasonable penalties for the violation of the rules.

Rules made under this section may be enforced under procedures adopted by the board. Penalties may be imposed for violation of the rules, including, but not limited to, a reasonable monetary penalty. The rules made under this section may also be enforced by the impoundment of vehicles and bicycles for violation of the rules. The board shall establish procedures for the determination of controversies in connection with the imposition of penalties. The procedures must require giving notice of the violation and the penalty prescribed and providing the opportunity for an administrative hearing.

The board may contract with a city or county to enforce rules made under this section by ordinance of the city or county, and shall consult with local government transportation officials to ensure that rules made pursuant to this section are not in conflict with city or county parking and traffic ordinances.

96 Acts, ch 1219, §70

279.9 Use of tobacco, alcoholic beverages, or controlled substances.

The rules shall prohibit the use of tobacco and the use or possession of alcoholic liquor, wine, or beer or any controlled substance as defined in section 124.101, subsection 5, by any student of the schools and the board may suspend or expel a student for a violation of a rule under this section.

[S13, §2772; C24, 27, 31, 35, 39, §**4225;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.9]

94 Acts, ch 1131, §2

279.9A Information sharing.

The rules referred to in section 279.9 shall provide that upon the request of school officials of a school to which the student seeks to transfer or has transferred, school officials of the sending school shall provide an accurate record of any suspension or expulsion actions taken, and the basis for those actions taken, against the student under sections 279.9, 280.19A, 282.3, 282.4, and 282.5. The designated representative shall disclose this information only to those school employees whose duties require them to be involved with the student. For purposes of this section, *"school employees"* means persons employed by a nonpublic school or school district, or any area education agency staff member who provides services to a school or school district.

94 Acts, ch 1131, §3

279.9B Reports to juvenile authorities.

The rules adopted under section 279.8 shall require, once school officials have been notified by a juvenile court officer that a student attending the school is under supervision or has been placed on probation, that school officials shall notify the juvenile court of each unexcused absence or suspension or expulsion of the student.

97 Acts, ch 126, §37

279.10 School year — beginning date — exceptions — pilot programs.

1. The school year shall begin on the first day of July and each regularly established elementary and secondary school shall begin no sooner than a day during the calendar week in which the first day of September falls but no later than the first Monday in December. However, if the first day of September falls on a Sunday, school may begin on a day during the calendar week which immediately precedes the first day of September. School shall continue for at least one hundred eighty days, except as provided in subsection 3, and may be maintained during the entire calendar year. However, if the board of directors of a district extends the school calendar because inclement weather caused the district to temporarily close school during the regular school calendar, the district may excuse a graduating senior who has met district or school requirements for graduation from attendance during the extended school calendar. A school corporation may begin employment of personnel for in-service training and development purposes before the date to begin elementary and secondary school.

2. The board of directors shall hold a public hearing on any proposal prior to submitting it to the department of education for approval.

3. The board of directors of a school district may request approval from the department of education for a pilot program for an innovative school year. The number of days per year that school is in session may be more or less than those specified in subsection 1, but the innovative school year shall provide for an equivalent number of total hours that school is in session.

The board shall file a request for approval with the department not later than November 1 of the preceding school year. The request shall include a listing of the savings and goals to be attained under the innovative school year subject to rules adopted by the department under chapter 17A. The department shall notify the districts of the approval or denial of pilot programs not later than the next following January 15.

A request to continue an innovative school year pilot project after its initial year also shall include an evaluation of the savings and impacts on the educational program in the district.

Participation in a pilot project shall not modify provisions of a master contract negotiated between a school district and a certified bargaining unit pursuant to chapter 20 unless mutually agreed upon.

4. The director of the department of education may grant a request made by a board of directors of a school district stating its desire to commence classes for regularly established elementary and secondary schools prior to the earliest starting date specified in subsection 1. A request shall be based upon the determination that a starting date on or after the earliest starting date specified in subsection 1 would have a significant negative educational impact.

[R60, §2023, 2037; C73, §1724, 1727; C97, §2773; S13, §2773; C24, 27, 31, 35, 39, §**4226;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.10]

83 Acts, ch 17, §1, 3, 4; 85 Acts, ch 6, §1, 2; 86 Acts, ch 1245, §1467; 88 Acts, ch 1087, §1; 88 Acts, ch 1259, §1; 90 Acts, ch 1272, §68; 94 Acts, ch 1020, §1

279.11 Number of schools — attendance — terms.

The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond

the time required by law.

[R60, §2023, 2037; C73, §1724, 1727; C97, §2773; S13, §2773; C24, 27, 31, 35, 39, §**4227;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.11]

279.12 Contracts — teachers — insurance — educational leave.

The board shall carry into effect any instruction from the regular election upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law, and may establish and pay all or any part thereof from school district funds the cost of group health insurance plans, nonprofit group hospital service plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the school district, but the board may authorize any subdirector to employ teachers for the school in the subdirector's subdistrict; but no such employment by a subdirector shall authorize a contract, the entire period of which is wholly beyond the subdirector's term of office.

The board may enter into an agreement pursuant to chapter 28E with another school district or an area education agency for the purpose of jointly procuring a group health insurance plan, nonprofit group hospital service plan, nonprofit group medical service plan, or group life insurance plan for the benefit of the districts or agencies which are parties to the agreement. Such plan may include a cafeteria plan as defined in 26 C.F.R. § 1.125-2T. An agreement entered into pursuant to this paragraph shall not be construed to establish a multiple employer welfare arrangement as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40.

The board may approve a policy for educational leave for licensed school employees and for reimbursement for tuition paid by licensed school employees for courses approved by the board. For the purpose of this section, *"educational leave"* means a leave granted to an employee for the purpose of study including study in areas outside of a teacher's area of specialization, travel, or other reasons deemed by the board to be of value to the school system.

[C73, §1723, 1757; C97, §2778; SS15, §2778; C24, 27, 31, 35, 39, §**4228;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.12]

89 Acts, ch 265, §40; 95 Acts, ch 22, §1

For future amendment to this section, effective July 1, 2003, see 2002 Acts, ch 1047, §13, 20

279.13 Contracts with teachers — automatic continuation.

1. Contracts with teachers, which for the purpose of this section means all licensed employees of a school district and nurses employed by the board, excluding superintendents, assistant superintendents, principals, and assistant principals, shall be in writing and shall state the number of contract days, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract may include employment for a term not exceeding the ensuing school year, except as otherwise authorized.

The contract is invalid if the teacher is under contract with another board of directors to teach during the same time period until a release from the other contract is achieved. The contract shall be signed by the president of the board, or by the superintendent if the board has adopted a policy authorizing the superintendent to sign teaching contracts, when tendered, and after it is signed by the teacher, the contract shall be filed with the secretary of the board before the teacher enters into performance under the contract.

2. The contract shall remain in force and effect for the period stated in the contract and shall be automatically continued for equivalent periods except as modified or terminated by mutual agreement of the board of directors and the teacher or as terminated in accordance with the provisions specified in this chapter. A contract shall not be offered by the employing board to a teacher under its jurisdiction prior to March 15 of any year. A teacher who has not accepted a contract for the ensuing school year tendered by the employing board may resign effective at the end of the current school year by filing a written resignation with the secretary of the board. The resignation must be filed not later than the last day of the current school year or the date specified by the employing board for return of the contract, whichever date occurs first. However, a teacher shall not be required to return a contract to the board or to resign less than twenty-one days after the contract has been offered.

3. If the provisions of a contract executed or automatically renewed under this section conflict with a collective bargaining agreement negotiated under chapter 20 and effective when the contract is executed or renewed, the provisions of the collective bargaining agreement shall prevail.

[R60, §2055; C73, §1757; C97, §2778; SS15, §2778; C24, 27, 31, 35, 39, §**4229;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.13]

89 Acts, ch 265, §40; 2001 Acts, ch 159, §10

For future amendments to this section effective July 1, 2003, see 2002 Acts, ch 1047, §14, 20

279.14 Evaluation criteria and procedures.

1. The board shall establish evaluation criteria and shall implement evaluation procedures. If an exclusive bargaining representative has been certified, the board shall negotiate in good faith with respect to evaluation procedures pursuant to chapter 20.

2. The determination of standards of performance expected of school district personnel shall

be reserved as an exclusive management right of the school board and shall not be subject to mandatory negotiations under chapter 20. Notwithstanding chapter 20, objections to the procedures, use, or content of an evaluation in a teacher termination proceeding brought before the school board in a hearing held in accordance with section 279.16 or 279.27 shall not be subject to the grievance procedures negotiated in accordance with chapter 20. A school district shall not be obligated to process any evaluation grievance after service of a notice and recommendation to terminate an individual's continuing teaching contract in accordance with chapter 279.

[C77, 79, 81, §279.14]

98 Acts, ch 1215, §41; 98 Acts, ch 1216, §24

279.14A Practitioner performance improvement program.

1. The department of education shall establish and implement a voluntary practitioner performance improvement program that shall provide technical assistance to teachers and administrators from each public school district and area education agency. Individuals under contract with a school district may receive technical assistance in accordance with this subsection. The department shall consult with the Iowa state education association, the Iowa association of school boards, the school administrators of Iowa, the professional educators of Iowa, and, as practicable, other entities providing similar programs, in developing the program. At a minimum, the program shall provide administrators with training, including but not limited to, seminars and written materials, relating to the areas of employment policies and procedures, employment documentation, performance evaluations, corrective performance techniques, discipline, termination, and support by qualified individuals for implementation of the program. The program shall not be used to provide consultation or assistance on specific employment situations. Training received by an administrator in accordance with this section shall apply toward an administrator's evaluator approval renewal.

2. The department shall submit an annual report to the chairpersons and ranking members of the house and senate standing education committees summarizing program activities and describing the department's plans for improving or changing the program.

98 Acts, ch 1215, §42; 98 Acts, ch 1216, §25

279.15 Notice of termination — request for hearing.

1. The superintendent or the superintendent's designee shall notify the teacher not later than April 30 that the superintendent will recommend in writing to the board at a regular or special meeting of the board, held not later than May 15, that the teacher's continuing contract be terminated effective at the end of the current school year. However, if the district is subject to reorganization under chapter 275, the notification shall not occur until after the first organizational meeting of the board of the newly formed district.

2. Notification of recommendation of termination of a teacher's contract shall be in writing and shall be personally delivered to the teacher, or mailed by certified mail. The notification shall be complete when received by the teacher. The notification and the recommendation to terminate shall contain a short and plain statement of the reasons, which shall be for just cause, why the recommendation is being made. The notification shall be given at or before the time the recommendation is given to the board.

As a part of the termination proceedings, the teacher's complete personnel file of employment by that board shall be available to the teacher, which file shall contain a record of all periodic evaluations between the teacher and appropriate supervisors.

Within five days of the receipt of the written notice that the superintendent is recommending termination of the contract, the teacher may request, in writing to the secretary of the board, a private hearing with the board. The private hearing shall not be subject to chapter 21 and shall be held no sooner than ten days and no later than twenty days following the receipt of the request unless the parties otherwise agree. The secretary of the board shall notify the teacher in writing of the date, time, and location of the private hearing, and at least five days before the hearing shall also furnish to the teacher any documentation which may be presented to the board at the private hearing and a list of persons who may address the board in support of the superintendent's recommendation at the private hearing. At least three days before the hearing, the teacher shall provide any documentation the teacher expects to present at the private hearing, along with the names of any persons who may address the board on behalf of the teacher. This exchange of information shall be at the time specified unless otherwise agreed.

[R60, §2055; C73, §1757; C97, §2778; SS15, §2778; C24, 27, 31, 35, 39, §**4229;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.13; C77, 79, 81, §279.15]

86 Acts, ch 1239, §4; 91 Acts, ch 174, §7; 92 Acts, ch 1227, §18

279.16 Private hearing — decision — record.

1. The participants at the private hearing shall be at least a majority of the members of the board, their legal representatives, if any, the superintendent, the superintendent's designated representatives, if any, the teacher's immediate supervisor, the teacher, the teacher's representatives, if any, and the witnesses for the parties. The evidence at the private hearing shall be limited to the specific reasons stated in the superintendent's

notice of recommendation of termination. No participant in the hearing shall be liable for any damages to any person if any statement at the hearing is determined to be erroneous as long as the statement was made in good faith. The superintendent shall present evidence and argument on all issues involved and the teacher may cross-examine, respond and present evidence and argument in the teacher's behalf relevant to all issues involved. Evidence may be by stipulation of the parties and informal settlement may be made by stipulation, consent, or default or by any other method agreed upon by the parties in writing. The board shall employ a certified shorthand reporter to keep a record of the private hearing. The proceedings or any part thereof shall be transcribed at the request of either party with the expense of transcription charged to the requesting party.

2. The presiding officer of the board may administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction. The board shall cause subpoenas to be issued for such witnesses and the production of such books and papers as either the board or the teacher may designate. The subpoenas shall be signed by the presiding officer of the board.

3. In case a witness is duly subpoenaed and refuses to attend, or in case a witness appears and refuses to testify or to produce required books or papers, the board shall, in writing, report such refusal to the district court of the county in which the administrative office of the school district is located, and the court shall proceed with the person or witness as though the refusal had occurred in a proceeding legally pending before the court.

4. The board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, but it shall hold the hearing in such manner as is best suited to ascertain and conserve the substantial rights of the parties. Process and procedure under sections 279.13 to 279.19 shall be as summary as reasonably may be.

5. At the conclusion of the private hearing, the superintendent and the teacher may file written briefs and arguments with the board within three days or such other time as may be agreed upon.

6. If the teacher fails to timely request a private hearing or does not appear at the private hearing, the board may proceed and make a determination upon the superintendent's recommendation. If the teacher fails to timely file a request for a private hearing, the determination shall be not later than May 31. If the teacher fails to appear at the private hearing, the determination shall be not later than five days after the scheduled date for the private hearing. The board shall convene in open session and by roll call vote determine the termination or continuance of the teacher's contract and, if the board votes to continue the teacher's contract, whether to suspend the teacher with or without pay for a period specified by the board.

7. Within five days after the private hearing, the board shall, in executive session, meet to make a final decision upon the recommendation and the evidence as herein provided. The board shall also consider any written brief and arguments submitted by the superintendent and the teacher.

8. The record for a private hearing shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All findings and exceptions.

f. Any decision, opinion, or conclusion by the board.

g. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

9. The decision of the board shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts and supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

10. When the board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the teacher's contract and, if the board votes to continue the teacher's contract, whether to suspend the teacher with or without pay for a period specified by the board. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 22. The secretary of the board shall immediately mail notice of the board's action to the teacher.

[C77, 79, 81, §279.16]

92 Acts, ch 1008, §1; 92 Acts, ch 1227, §19; 2001 Acts, ch 62, §1

279.17 Appeal by teacher to adjudicator.

If the teacher is no longer a probationary teacher, the teacher may, within ten days, appeal the determination of the board to an adjudicator by filing a notice of appeal with the secretary of the board. The notice of appeal shall contain a concise statement of the action which is the subject of the appeal, the particular board action appealed from, the grounds on which relief is sought and the relief sought.

Within five days following receipt by the secretary of the notice of appeal, the board or the board's legal representative, if any, and the teacher or the teacher's representative, if any, may select an adjudicator who resides within the boundaries of the merged area in which the school district is located.

If an adjudicator cannot be mutually agreed upon within the five-day period, the secretary shall notify the chairperson of the public employment relations board by transmitting the notice of appeal, and the chairperson of the public employment relations board shall within five days provide a list of five adjudicators to the parties. Within three days from receipt of the list of adjudicators, the parties shall select an adjudicator by alternately removing a name from the list until only one name remains. The person whose name remains shall be the adjudicator. The parties shall determine by lot which party shall remove the first name from the list submitted by the chairperson of the public employment relations board. The secretary of the board shall inform the chairperson of the public employee relations board of the name of the adjudicator selected.

If the teacher does not timely request an appeal to an adjudicator the decision, opinion, or conclusion of the board shall become final and binding.

Within thirty days after filing the notice of appeal, or within further time allowed by the adjudicator, the board shall transmit to the adjudicator the original or a certified copy of the entire record of the private hearing which may be the subject of the petition. By stipulation of the parties to review the proceedings, the record of the case may be shortened. The adjudicator may require or permit subsequent corrections or additions to the shortened record.

The record certified and filed by the board shall be the record upon which the appeal shall be heard and no additional evidence shall be heard by the adjudicator. In such appeal to the adjudicator, especially when considering the credibility of witnesses, the adjudicator shall give weight to the fact findings of the board; but shall not be bound by them.

Before the date set for hearing a petition for review of board action, which shall be within ten days after receipt of the record unless otherwise agreed or unless the adjudicator orders additional evidence be taken before the board, application may be made to the adjudicator for leave to present evidence in addition to that found in the record of the case. If it is shown to the adjudicator that the additional evidence is material and that there were good reasons for failure to present it in the private hearing before the board, the adjudicator may order that the additional evidence be taken before the board upon conditions determined by the adjudicator. The board may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions, with the adjudicator and mail copies of the new findings or decisions to the teacher.

The adjudicator may affirm board action or remand to the board for further proceedings. The adjudicator shall reverse, modify, or grant any appropriate relief from the board action if substantial rights of the teacher have been prejudiced because the board action is:

1. In violation of a board rule or policy or contract; or
2. Unsupported by a preponderance of the competent evidence in the record made before the board when that record is viewed as a whole; or
3. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

The adjudicator shall, within fifteen days after the hearing, make a decision and shall give a copy of the decision to the teacher and the secretary of the board. The decision of the adjudicator shall become the final and binding decision of the board unless either party within ten days notifies the secretary of the board that the decision is rejected. The board may reject the decision by majority vote, by roll call, in open meeting and entered into the minutes of the meeting. The board shall immediately notify the teacher of its decision by certified mail. The teacher may reject the adjudicator's decision by notifying the board's secretary in writing within ten days of the filing of such decision.

All costs of the adjudicator shall be shared equally by the teacher and the board.

[C77, 79, 81, §279.17]

279.18 Appeal by either party to court.

If either party rejects the adjudicator's decision, the rejecting party shall, within thirty days of the initial filing of such decision, appeal to the district court of the county in which the administrative office of the school district is located. The notice of appeal shall be immediately mailed by certified mail to the other party. The adjudicator shall transmit to the reviewing court the original or a certified copy of the entire record which may be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the shortened record.

In proceedings for judicial review of the adjudicator's decision, the court shall not hear any further evidence but shall hear the case upon the certified record. In such judicial review, especially when considering the credibility of witnesses, the court shall give weight to the fact findings of the board; but shall not be bound by them. The court may affirm the adjudicator's decision or remand to the adjudicator or the board for further proceedings upon conditions determined by the court. The court shall reverse, modify, or grant any other appropriate relief from the board decision or the adjudicator's decision equitable or legal and including declaratory relief if substantial rights of the petitioner have been prejudiced because the action is:

1. In violation of constitutional or statutory

provisions; or

2. In excess of the statutory authority of the board or the adjudicator; or

3. In violation of a board rule or policy or contract; or

4. Made upon unlawful procedure; or

5. Affected by other error of law; or

6. Unsupported by a preponderance of the competent evidence in the record made before the board and the adjudicator when that record is viewed as a whole; or

7. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

An aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the district court by appeal to the supreme court. The appeal shall be taken as in other civil cases, although the appeal may be taken regardless of the amount involved.

[C77, 79, 81, §279.18]

For future amendments to this section effective July 1, 2003, see 2002 Acts, ch 1047, §15, 20

279.19 Probationary period.

The first three consecutive years of employment of a teacher in the same school district are a probationary period. However, if the teacher has successfully completed a probationary period of employment for another school district located in Iowa, the probationary period in the current district of employment shall not exceed one year. A board of directors may waive the probationary period for any teacher who previously has served a probationary period in another school district and the board may extend the probationary period for an additional year with the consent of the teacher.

In the case of the termination of a probationary teacher's contract, the provisions of sections 279.15 and 279.16 shall apply. However, if the probationary teacher is a beginning teacher who fails to demonstrate competence in the Iowa teaching standards in accordance with chapter 284, the provisions of sections 279.17 and 279.18 shall also apply.

The board's decision shall be final and binding unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the teacher or an alleged violation of public employee rights of the teacher under section 20.10.

Notwithstanding any provision to the contrary, the grievance procedures of section 20.18 relating to job performance or job retention shall not apply to a teacher during the first two years of the teacher's probationary period. However, this paragraph shall not apply to a teacher who has successfully completed a probationary period in a school district in Iowa.

[C77, 79, 81, §279.19]

98 Acts, ch 1215, §43; 98 Acts, ch 1216, §26, 41; 2001 Acts, ch 161, §18; 2002 Acts, ch 1152, §5

1998 amendment to unnumbered paragraph 1 does not apply to teachers employed by school districts prior to July 1, 1998; 98 Acts, ch 1216, §41

Unnumbered paragraph 2 amended

279.19A Extracurricular contracts.

1. School districts employing individuals to coach interscholastic athletic sports shall issue a separate extracurricular contract for each of these sports. An extracurricular contract offered under this section shall be separate from the contract issued under section 279.13. Wages for employees who coach these sports shall be paid pursuant to established or negotiated supplemental pay schedules. An extracurricular contract shall be in writing, and shall state the number of contract days for that sport, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract shall be for a single school year.

2. An extracurricular contract shall be continued automatically in force and effect for equivalent periods, except as modified or terminated by mutual agreement of the board of directors and the employee, or terminated in accordance with this section. An extracurricular contract shall initially be offered by the employing board to an individual on the same date that contracts are offered to teachers under section 279.13. An extracurricular contract may be terminated at the end of a school year pursuant to sections 279.15 through 279.19. If the school district offers an extracurricular contract for a sport for the subsequent school year to an employee who is currently performing under an extracurricular contract for that sport, and the employee does not wish to accept the extracurricular contract for the subsequent year, the employee may resign from the extracurricular contract within twenty-one days after it has been received.

Section 279.13, subsection 3, applies to this section.

3. The board of directors of a school district may require an employee who has resigned from an extracurricular contract to accept, as a condition of employment under section 279.13, the extracurricular contract for no longer than one additional school year if all the following conditions apply:

a. The employee has accepted a teaching contract issued by the board pursuant to section 279.13 for the subsequent school year.

b. The board of directors has made a good faith effort to fill the coaching position with a licensed or authorized replacement.

c. The position has not been filled by June 1 of the year in which the employee resigned the extracurricular contract.

4. As a condition of employment under section 279.13, the board of directors of a school district may require an employee who has been issued a teaching contract pursuant to section 279.13 to accept an extracurricular contract for which the employee is licensed, or may require as a condition of

employment that an applicant for a teaching contract under section 279.13 accept an extracurricular contract if all of the following conditions apply:

a. The individual who held the coaching position during the year has not been issued a teaching contract by the board pursuant to section 279.13 for the subsequent school year, or has been terminated from the extracurricular contract.

b. The board of directors has made a good faith effort to fill the coaching position with a licensed or authorized replacement.

c. The position has not been filled by June 1 of the year in which the vacancy occurred for the interscholastic athletic sport.

5. Within seven days following June 1 of that year, the board shall notify the employee in writing if the board intends to require the employee to accept an extracurricular contract for the subsequent school year under subsection 3 or 4. If the employee believes that the board did not make a good faith effort to fill the position the employee may appeal the decision by notifying the board in writing within ten days after receiving the notification.

The appeal shall state why the employee believes that the board did not make a good faith effort to fill the position. If the parties are unable to informally resolve the dispute, the parties shall attempt to agree upon an alternative means of resolving the dispute.

If the dispute is not resolved by mutual agreement, either party may appeal to the district court.

6. Subsections 3, 4, and 5 do not apply if the terms of a collective bargaining agreement provide otherwise.

7. An extracurricular contract may be terminated prior to the expiration of that contract pursuant to section 279.27.

8. A termination proceeding of an extracurricular contract either by the board pursuant to subsection 2 or pursuant to section 279.27 does not affect a contract issued pursuant to section 279.13.

A termination of a contract entered into pursuant to section 279.13, or a resignation from that contract by the teacher, constitutes an automatic termination or resignation of the extracurricular contract in effect between the same teacher and the employing school board.

9. For the purposes of this section, *"good faith effort"* includes advertising for the position in an appropriate publication, interviewing applicants, and giving serious consideration to those licensed or authorized, and otherwise qualified, applicants who apply.

84 Acts, ch 1296, §1; 85 Acts, ch 74, §1 – 3; 89 Acts, ch 265, §40; 90 Acts, ch 1182, §3, 7

For future amendment to this section effective July 1, 2003, see 2002 Acts, ch 1047, §16, 20

279.19B Coaching endorsement and authorization.

The board of directors of a school district may employ for head coach of any interscholastic athletic activities or for assistant coach of any interscholastic athletic activity, an individual who possesses a coaching authorization issued by the board of educational examiners or possesses a teaching license with a coaching endorsement issued pursuant to chapter 272. However, a board of directors of a school district shall consider applicants with qualifications described below, in the following order of priority:

1. A qualified individual who possesses a valid teaching license with a proper coaching endorsement.

2. A qualified individual who possesses a coaching authorization issued by the board of educational examiners.

Qualifications are to be determined by the board of directors or their designee on a case-by-case basis.

An individual who has been issued a coaching authorization or who possesses a teaching license with a coaching endorsement but is not issued a teaching contract under section 279.13 and who is employed by the board of directors of a school district serves at the pleasure of the board of directors and is not subject to sections 279.13 through 279.19, and 279.27. Subsection 1 of section 279.19A applies to coaching authorizations.

84 Acts, ch 1296, §2; 85 Acts, ch 49, §1; 88 Acts, ch 1284, §46; 89 Acts, ch 265, §35, 42; 93 Acts, ch 66, §1, 2

For future amendment to this section effective July 1, 2003, see 2002 Acts, ch 1047, §17, 20

279.20 Superintendent — term.

The board of directors of a school district may employ a superintendent of schools for a term of not to exceed three years. However, the board's initial contract with a superintendent shall not exceed one year if the board is obligated to pay a former superintendent under an unexpired contract. The superintendent shall be the executive officer of the board and have such powers and duties as may be prescribed by rules adopted by the board or by law. Boards of directors may jointly exercise the powers conferred by this section.

[R60, §2037; C73, §1726; C97, §2776; SS15, §2778; C24, 27, 31, 35, 39, §**4230;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.14; C77, 79, 81, §279.20]

87 Acts, ch 224, §48

279.21 Principals.

The board of directors of a school district may employ principals, under the provisions of section 279.23. A principal shall hold a current valid principal's certificate. Notwithstanding the provisions of section 279.23, after serving at least nine months, a principal may be employed for a term of not to exceed two years.

The principal, under the supervision of the superintendent of the school district and pursuant to rules and policies of the board of directors of the

school district, shall be responsible for administration and operation of the attendance center to which the principal is assigned.

The principal shall, pursuant to the policies adopted by the board of directors of the school district, be responsible for the planning, management, operation, and evaluation of the educational program offered at the attendance center to which the principal is assigned and shall submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the attendance center. The principal shall perform such other duties as may be assigned by the superintendent.

For purposes of this section and sections 279.23, 279.23A, 279.24, and 279.25, the term *"principal"* includes school principals, associate principals, and assistant principals.

[C77, 79, 81, §279.21]

93 Acts, ch 32, §1

279.22 Residence of employees.

The board shall not adopt rules under section 279.8 which require its employees to reside within the boundaries of the school district.

[C81, §279.22]

279.23 Continuing contract for administrators.

Contracts with administrators shall be in writing and shall contain all of the following:

1. The term of employment which for all administrators except for superintendents may be a term of up to two years. Superintendents may be employed under section 279.20 for a term not to exceed three years.

2. The length of time during the school year services are to be performed.

3. The compensation per week of five consecutive days or month of four consecutive weeks.

4. A statement that the contract is invalid if the administrator is under contract with another board of directors in this state covering the same period of time, until such contract shall have been released or terminated by its provisions.

5. Such other matters as may be agreed upon.

The contract shall be signed by the president and the administrator and shall be filed with the secretary of the board before the administrator enters upon performance of the contract. A contract shall not be tendered by an employing board to an administrator under its jurisdiction prior to March 15. A contract shall not be required to be signed by the administrator and returned to the board in less than twenty-one days after being tendered.

Except as otherwise specifically provided, an administrator's contract shall be governed by the provisions of this section and sections 279.23A, 279.24, and 279.25 and not by section 279.13. For purposes of this section and sections 279.23A, 279.24, and 279.25, the term *"administrator"* includes school superintendents, assistant superintendents, educational directors employed by school districts for grades kindergarten through twelve, educational directors employed by area education agencies under chapter 273, principals, assistant principals, other certified school supervisors employed by school districts for grades kindergarten through twelve as defined under section 20.4, and other certified school supervisors employed by area education agencies under chapter 273.

[C77, 79, 81, §279.23]

87 Acts, ch 94, §1; 93 Acts, ch 32, §2

279.23A Evaluation criteria and procedures.

The board shall establish written evaluation criteria and shall establish and annually implement evaluation procedures. The board shall also establish written job descriptions for all supervisory positions.

87 Acts, ch 94, §2

279.24 Contract with administrators — automatic continuation or termination.

1. An administrator's contract shall remain in force and effect for the period stated in the contract. The contract shall be automatically continued in force and effect for additional one-year periods beyond the end of its original term, except and until the contract is modified or terminated by mutual agreement of the board of directors and the administrator, or until terminated as provided by this section.

2. If the board of directors is considering termination of an administrator's contract, prior to any formal action, the board may arrange to meet in closed session, in accordance with the provisions of section 21.5, with the administrator and the administrator's representative. The board shall review the administrator's evaluation, review the reasons for nonrenewal, and give the administrator an opportunity to respond. If, following the closed session, the board of directors and the administrator are unable to mutually agree to a modification or termination of the administrator's contract, or the board of directors and the administrator are unable to mutually agree to enter into a one-year nonrenewable contract, the board of directors shall follow the procedures in this section.

3. An administrator may file a written resignation with the secretary of the school board on or before May 1 of each year or the date specified by the school board for return of the contract, whichever date occurs first.

4. Administrators employed in a school district for less than two consecutive years are probationary administrators. However, a school board may waive the probationary period for any admin-

istrator who has previously served a probationary period in another school district and the school board may extend the probationary period for an additional year with the consent of the administrator. If a school board determines that it should terminate a probationary administrator's contract, the school board shall notify the administrator not later than May 15 that the contract will not be renewed beyond the current year. The notice shall be in writing by letter, personally delivered, or mailed by certified mail. The notification shall be complete when received by the administrator. Within ten days after receiving the notice, the administrator may request a private conference with the school board to discuss the reasons for termination. The school board's decision to terminate a probationary administrator's contract shall be final unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the administrator.

5. The school board may, by majority vote of the membership of the school board, cause the contract of an administrator to be terminated. If the school board determines that it should consider the termination of a nonprobationary administrator's contract, the following procedure shall apply:

a. On or before May 15, the administrator shall be notified in writing by a letter personally delivered or mailed by certified mail that the school board has voted to consider termination of the contract. The notification shall be complete when received by the administrator.

b. The notice shall state the specific reasons to be used by the school board for considering termination which for all administrators except superintendents shall be for just cause.

c. Within five days after receipt of the written notice that the school board has voted to consider termination of the contract, the administrator may request in writing to the secretary of the school board that the notification be forwarded to the board of educational examiners along with a request that the board of educational examiners submit a list of five qualified administrative law judges to the parties. Within three days from receipt of the list the parties shall select an administrative law judge by alternately removing a name from the list until only one name remains. The person whose name remains shall be the administrative law judge. The parties shall determine by lot which party shall remove the first name from the list. The hearing shall be held no sooner than ten days and not later than thirty days following the administrator's request unless the parties otherwise agree. If the administrator does not request a hearing, the school board, not later than May 31, may determine the continuance or discontinuance of the contract and, if the board determines to continue the administrator's contract, whether to suspend the administrator with or without pay for a period specified by the board. School board action shall be by majority roll call vote entered on the minutes of the meeting. Notice of school board action shall be personally delivered or mailed to the administrator.

d. The administrative law judge selected shall notify the secretary of the school board and the administrator in writing concerning the date, time, and location of the hearing. The school board may be represented by a legal representative, if any, and the administrator shall appear and may be represented by counsel or by representative, if any. A transcript or recording shall be made of the proceedings at the hearing. A school board member or administrator is not liable for any damage to an administrator or school board member if a statement made at the hearing is determined to be erroneous as long as the statement was made in good faith.

e. The administrative law judge shall, within ten days following the date of the hearing, make a proposed decision as to whether or not the administrator should be dismissed, and shall give a copy of the proposed decision to the administrator and the school board. Findings of fact shall be prepared by the administrative law judge. The proposed decision of the administrative law judge shall become the final decision of the school board unless within ten days after the filing of the decision the administrator files a written notice of appeal with the school board, or the school board on its own motion determines to review the decision.

f. If the administrator appeals to the school board, or if the school board determines on its own motion to review the proposed decision of the administrative law judge, a private hearing shall be held before the school board within five days after the petition for review, or motion for review, has been made or at such other time as the parties agree. The private hearing is not subject to chapter 21. The school board may hear the case de novo upon the record as submitted before the administrative law judge. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the school board, an opportunity shall be afforded to each party to file exceptions, present briefs, and present oral arguments to the school board which is to render the final decision. The secretary of the school board shall give the administrator written notice of the time, place, and date of the hearing. The school board shall meet within five days after the hearing to determine the question of continuance or discontinuance of the contract and, if the board determines to continue the administrator's contract, whether to suspend the administrator with or without pay for a period specified by the board. The school board shall make findings of fact which shall be based solely on the evidence in the record and on matters officially noticed in the record.

g. The decision of the school board shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accom-

panied by a concise and explicit statement of the underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

h. When the school board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the administrator's contract and, if the board votes to continue the administrator's contract, whether to suspend the administrator with or without pay for a period specified by the board. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 22. The secretary of the school board shall immediately personally deliver or mail notice of the school board's action to the administrator.

i. The administrator may within thirty days after notification by the school board of discontinuance of the contract appeal to the district court of the county in which the administrative office of the school district is located.

6. The court may affirm the school board's action. The court shall reverse, modify, or grant any other appropriate relief from the school board's action, equitable or legal, and including declaratory relief, if substantial rights of the administrator have been prejudiced because the school board's action is any of the following:

a. In violation of constitutional or statutory provisions.

b. In excess of the statutory authority of the school board.

c. In violation of school board policy or rule.

d. Made upon unlawful procedure.

e. Affected by other error of law.

f. Unsupported by a preponderance of the evidence in the record made before the school board when that record is reviewed as a whole.

g. Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

[C77, 79, 81, §279.24]

87 Acts, ch 39, §1; 88 Acts, ch 1109, §21; 90 Acts, ch 1249, §13; 92 Acts, ch 1009, §1; 92 Acts, ch 1227, §20; 93 Acts, ch 32, §3, 4; 2001 Acts, ch 62, §2

279.25 Discharge of administrator.

An administrator may be discharged at any time during the contract year for just cause. The administrator shall be notified in writing that the board has voted to consider termination of the administrator's contract and the applicable procedures of section 279.24 shall apply.

[C77, 79, 81, §279.25]

279.26 Lease arrangements.

The board of directors of a local school district for which a voter-approved physical plant and equipment levy has been voted pursuant to section 298.2, may enter into a rental or lease arrangement, consistent with the purposes for which the voter-approved physical plant and equipment levy has been voted, for a period not exceeding ten years and not exceeding the period for which the voter-approved physical plant and equipment levy has been authorized by the voters.

[C75, §279.23; C77, 79, 81, §279.26]

89 Acts, ch 135, §73

279.27 Discharge of teacher.

A teacher may be discharged at any time during the contract year for just cause. The superintendent or the superintendent's designee, shall notify the teacher immediately that the superintendent will recommend in writing to the board at a regular or special meeting of the board held not more than fifteen days after notification has been given to the teacher that the teacher's continuing contract be terminated effective immediately following a decision of the board. The procedure for dismissal shall be as provided in sections 279.15(2) and 279.16 to 279.19. The superintendent may suspend a teacher under this section pending hearing and determination by the board.

[C73, §1734; C97, §2782; C24, 27, 31, 35, 39, §**4237;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.24; C77, 79, 81, §279.27]

279.28 Insurance — supplies — textbooks.

The board of directors may provide and pay out of the general fund to insure school property a sum as necessary, and may purchase dictionaries, library books, including books for the purpose of teaching vocal music, maps, charts, and apparatus for the use of the schools as deemed necessary by the board of directors for each school building under its charge; and may furnish schoolbooks to indigent children when they are likely to be deprived of the proper benefits of the school unless so aided.

[C73, §1729; C97, §2783; S13, §2783; C24, 27, 31, 35, 39, §**4238;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.25; C77, 79, 81, §279.28]

89 Acts, ch 83, §38

279.29 Claims — investments.

The board shall audit and allow all just claims against the corporation, and no order shall be drawn upon the treasury until the claim therefor has been audited and allowed. In any district in which the board consists of five or more members, an audit made by one or more members of the board designated by the board or by a certified public accountant employed by the board, and certified to the board by such member or members of the board or by such accountant, shall satisfy the requirements of this section with respect to the audit of a claim.

Pending audit and allowance of claims under this section, the board shall invest moneys of the corporation to the extent practicable, and the

board may provide for the joint investment of moneys with one or more school corporations pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

[C51, §1146, 1149; R60, §2037, 2038; C73, §1732, 1733, 1738, 1813; C97, §2780; S13, §2780; C24, 27, 31, 35, 39, §**4239;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.26; C77, 79, 81, §279.29]

86 Acts, ch 1226, §4; 92 Acts, ch 1156, §11

Exceptions, §11.21

279.30 Exceptions.

Each warrant must be made payable to the person entitled to receive the money. The board of directors of a school district or an area education agency may by resolution authorize the secretary or administrator, in the case of an area education agency, to issue warrants when the board of directors is not in session in payment of freight, drayage, express, postage, printing, water, light, and telephone rents, but only upon verified bills filed with the secretary or administrator, and for the payment of salaries pursuant to the terms of a written contract, and the secretary or administrator shall either deliver in person or mail the warrants to the payees. In addition, the board of directors may by resolution authorize the secretary or administrator, upon approval of the president of the board, to issue warrants when the board of directors is not in session, but only upon verified bills filed with the secretary or administrator, and the secretary or administrator shall either deliver in person or mail the warrants to the payees. Each warrant must be made payable only to the person performing the service or presenting the verified bill, and must state the purpose for which the warrant is issued. All bills and salaries for which warrants are issued prior to audit and allowance by the board must be passed upon by the board of directors at the next meeting and be entered in the regular minutes of the secretary.

[C35, §4239-g1; C39, §**4239.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.27; C77, 79, 81, §279.30]

92 Acts, ch 1187, §4

279.31 Settlement with treasurer.

The board shall from time to time examine the accounts of the treasurer and make settlements with the treasurer.

[C51, §1146, 1149; R60, §2037, 2038; C73, §1732, 1733, 1738, 1813; C97, §2780; S13, §2780; C24, §4239; C27, 31, 35, §4239-a1; C39, §**4239.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.28; C77, 79, 81, §279.31]

279.32 Compensation of officers.

The board shall fix the compensation to be paid the secretary. No member of the board shall receive compensation for official services. The board may pay a school treasurer a reasonable compensation.

Actual and necessary expenses, including travel, incurred by the board or individual members thereof in the performance of official duties may be paid or reimbursed.

[C51, §1146, 1149; R60, §2037, 2038; C73, §1732, 1733, 1738, 1813; C97, §2780; S13, §2780; C24, §4239; C27, 31, 35, §4239-a3; C39, §**4239.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.29; C77, 79, 81, §279.32]

279.33 Annual settlements.

At a regular or special meeting held on or after August 31 and prior to the organizational meeting held after the regular school election, the board of each school corporation shall meet, examine the books of and settle with the secretary and treasurer for the year ending on the preceding June 30, and transact other business as necessary. The treasurer at the time of settlement shall furnish the board with a sworn statement from each depository showing the balance then on deposit in the depository. If the secretary or treasurer fails to make proper reports for the settlement, the board shall take action to obtain the balance information.

[SS15, §2757; C24, 27, 31, 35, 39, §**4240;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.30; C77, 79, 81, §279.33]

83 Acts, ch 185, §4, 62; 2001 Acts, ch 47, §2

279.34 Motor vehicles required to operate on ethanol-blended gasoline.

A motor vehicle purchased by or used under the direction of the board of directors to provide services to a school corporation shall not, on or after January 1, 1993, operate on gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

91 Acts, ch 254, §16; 93 Acts, ch 26, §5

279.35 Publication of proceedings.

The proceedings of each regular, adjourned, or special meeting of the board, including the schedule of bills allowed, shall be published after the adjournment of the meeting in the manner provided in this section and section 279.36, and the publication of the schedule of the bills allowed shall include a list of claims allowed, including salary claims for services performed. The schedule of bills allowed may be published on a once monthly basis in lieu of publication with the proceedings of each meeting of the board. The list of claims allowed shall include the name of the person or firm making the claim, the purpose of the claim, and

the amount of the claim. However, salaries paid to individuals regularly employed by the district shall only be published annually and the publication shall include the total amount of the annual salary of each employee. The secretary shall furnish a copy of the proceedings to be published within two weeks following the adjournment of the meeting.

[C27, 31, 35, §4242-b1; C39, §**4242.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.33; C77, 79, 81, §279.35]

83 Acts, ch 185, §6, 62; 87 Acts, ch 224, §49

279.36 Publication procedures and fee.

The requirements of section 279.35 are satisfied by publication in at least one newspaper published in the district or, if there is none, in at least one newspaper having general circulation within the district.

For the fiscal year beginning July 1, 1987, the fee for publications required under section 279.35 shall not exceed three-fifths of the legal publication fee provided by statute for the publication of legal notices. For the fiscal year beginning July 1, 1988, the fee for the publications shall not exceed three-fourths of that legal publication fee. For the fiscal year beginning July 1, 1989, and each fiscal year thereafter, the fee for the publications shall be the legal publication fee provided by statute.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.34; C77, 79, 81, §279.36]

87 Acts, ch 224, §50

Publication of legal notices; §618.11

279.37 Employment of counsel.

A school corporation may employ an attorney to represent the school corporation as necessary for the proper conduct of the legal affairs of the school corporation.

[R60, §2040; C73, §1740; C97, §2759; C24, 27, 31, 35, 39, §**4245;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §279.35; C77, 79, 81, §279.37]

279.38 Membership in association of school boards.

Boards of directors of school corporations may pay, out of funds available to them, reasonable annual dues to the Iowa association of school boards. The financial condition and transactions of the Iowa association of school boards shall be audited in the same manner as school corporations as provided in section 11.6. In addition, annually the Iowa association of school boards shall publish a listing of the school districts and the annual dues paid by each and shall publish an accounting of all moneys expended for expenses incurred by and salaries paid to legislative representatives and lobbyists of the association.

Membership in such an Iowa association of school boards shall be limited to those duly elected members of the boards of directors of local school corporations.

[C71, 73, 75, §279.37; C77, 79, 81, §279.38]

83 Acts, ch 185, §7, 62; 89 Acts, ch 264, §7

279.38A Membership in other organizations.

Duly elected members of boards of directors and designated administrators of school corporations may join, including the payment of dues, and participate in local, regional, and national organizations which directly relate to the functions of the board of directors.

93 Acts, ch 117, §3

279.39 School buildings.

The board of any school corporation shall establish attendance centers and provide suitable buildings for each school in the district and may at the regular or a special meeting call a special election to submit to the registered voters of the district the question of voting a tax or authorizing the board to issue bonds, or both.

93 Acts, ch 160, §15; 95 Acts, ch 67, §53

279.40 Sick leave.

Public school employees are granted leave of absence for medically related disability with full pay in the following minimum amounts:

1. The first year of employment . . 10 days.
2. The second year of employment 11 days.
3. The third year of employment . . 12 days.
4. The fourth year of employment 13 days.
5. The fifth year of employment . . 14 days.
6. The sixth and subsequent years of employment . . . . . 15 days.

The above amounts shall apply only to consecutive years of employment in the same school district and unused portions shall be cumulative to at least a total of ninety days. The school board shall, in each instance, require such reasonable evidence as it may desire confirming the necessity for such leave of absence.

Nothing in this section shall be construed as limiting the right of a school board to grant more time than the days herein specified.

Cumulation of sick leave under this section shall not be affected or terminated due to the organization or dissolution of a community school district or districts which include all or the portion of the district which employed the particular public school employee for the school year previous to the organization or dissolution, if the employee is employed by one of the community school districts for the first school year following its organization or dissolution.

Any amounts due an employee under this sec-

tion shall be reduced by benefits payable under sections 85.33 and 85.34, subsection 1.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §279.40]

279.41 Schoolhouses and sites sold — funds.

Moneys received from the condemnation, sale, or other disposition for public purposes of schoolhouses, school sites, or both schoolhouses and school sites, shall be deposited in the physical plant and equipment levy fund and may without a vote of the electorate be used for the purchase of school sites or the erection or repair of schoolhouses, or both, as ordered by the board of directors of the school district.

[C62, 66, 71, 73, 75, 77, 79, 81, §279.41]

94 Acts, ch 1029, §18

279.42 Gifts to schools.

The board of directors of a school district which receives funds through gifts, devises, and bequests shall deposit these funds in a trust and agency fund and use them in accordance with the terms of the gift, devise, or bequest.

[C66, 71, 73, 75, 77, 79, 81, §279.42]

94 Acts, ch 1029, §19

See also §565.6

279.43 Optional funding of asbestos removal or encapsulation. Repealed effective July 1, 1991, by 89 Acts, ch 135, § 136. See § 279.52.

279.44 Energy audits.

Between July 1, 1986 and June 30, 1991, and on a staggered annual basis each five years thereafter, the board of directors of each school district shall file with the department of natural resources, on forms prescribed by the department of natural resources, the results of an energy audit of the buildings owned and leased by the school district. The energy audit shall be conducted under rules adopted by the department of natural resources pursuant to chapter 17A. The department of natural resources may waive the requirement for the initial and subsequent energy audits for school districts that submit evidence that energy audits were conducted prior to January 1, 1987 and energy consumption for the district is at an adjusted statewide average or below.

This section takes effect only if funds have been made available to a school district or community college to pay the costs of the energy audit.

86 Acts, ch 1167, §1; 90 Acts, ch 1253, §120

279.45 Administrative expenditures.

For the budget year beginning July 1, 1989, and each of the following three budget years, the board of directors of a school district in which the administrative expenditures as a percent of the school district's operating fund for a base year exceed five percent, shall reduce its administrative expenditures so that they are one-half percent less as a percent of the school district's operating fund than they were for the base year. However, a school district is not required to reduce its administrative expenditures below five percent of its operating fund. Thereafter, a school district shall not increase the percent of its administrative expenditures compared to its operating fund. Annually, the board of directors shall certify to the department of education the amounts of the school district's administrative expenditures and its operating fund. For the purposes of this section, *"base year"* and *"budget year"* mean the same as defined in section 442.6, Code 1989, and section 257.2, and *"administrative expenditures"* means expenditures for executive administration.

86 Acts, ch 1226, §5; 88 Acts, ch 1158, §56; 89 Acts, ch 135, §74

279.46 Retirement incentives — tax.

The board of directors of a school district may adopt a program for payment of a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging its employees to retire before the normal retirement date as defined in chapter 97B. The program is available only to employees who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the next following June 30. The age at which employees shall be designated eligible for the program shall be at the discretion of the board. An employee retiring under this section may apply for a retirement allowance under chapter 97B or chapter 294. The board may include in the district management levy an amount to pay the total estimated accumulated cost to the school district of the health or medical insurance coverage, bonus, or other incentives for employees within the age range of fifty-five to sixty-five years of age who retire under this section.

87 Acts, ch 224, §51; 89 Acts, ch 135, §75; 92 Acts, ch 1220, §1; 98 Acts, ch 1216, §27, 43; 2002 Acts, ch 1152, §6

1998 amendment applies retroactively to retirement incentive programs in existence after December 31, 1997; 98 Acts, ch 1216, §43

Section amended

279.47 Telecommunications — participation by school districts in data base development.

The board of directors of each school district utilizing telecommunications as an instructional tool shall participate in procedures adopted by the state board of education under section 256.7, subsection 9.

87 Acts, ch 207, §2

Grants for staff development programs to assist teachers and administrators in use of telecommunications as instructional tool; 87 Acts, ch 207, §5

279.48 Equipment purchase.

1. The board of directors of a school corporation may purchase equipment, and may negotiate and enter into a loan agreement and issue a note to pay for the equipment subject to the following terms and procedures:

a. The note must mature within five years, or the useful life of the equipment, whichever is less.

b. The note may bear interest at a rate to be determined by the board of directors in the manner provided in section 74A.3, subsection 1. Chapter 75 is not applicable.

c. The board of directors shall provide for the form of the agreement and note.

d. Principal and interest on the note must be payable from budgeted receipts in the debt service fund for each year of a period of up to five years.

2. The total of scheduled annual payments of principal or interest due and payable from current budgeted receipts or future budgeted receipts with respect to all loan agreements authorized under this section or section 285.10, subsection 7, paragraph *"b"*, must not exceed ten percent of the last authorized budget of the school corporation.

3. Before entering into a loan agreement for an equipment purchase, the school corporation must publish a notice, including a statement of the amount and purpose of the agreement, at least once in a newspaper of general circulation within the school corporation at least ten days before the meeting at which the loan agreement is to be approved.

94 Acts, ch 1175, §7

279.49 Child care programs.

1. For the purposes of this section unless the context otherwise requires, *"child care program"* means child care that is not licensed or approved by the department of human services under chapter 237A except as provided under this section.

2. The board of directors of a school corporation may operate or contract for the operation of a program to provide child care to children not enrolled in school or to students enrolled in kindergarten through grade six before and after school, or to both. Programs operated or contracted by a board shall either meet standards for child care programs adopted by the state board of education or shall be licensed by the department of human services under chapter 237A as a child care center. A program operated by a board under contract which is not located on property owned or leased by the board must be licensed by the department of human services.

3. The person employed to be responsible for a program operated or contracted by a board that is not licensed by the department of human services shall be an appropriately licensed teacher under chapter 272 or shall meet other standards adopted by the state board of education.

4. The facilities housing a program operated under this section shall comply with standards adopted by the state fire marshal for school buildings under chapter 100. In addition, if a program involves children who are younger than school age, the facilities housing those children shall meet the fire safety standards which would apply to that age of child in a child care facility licensed by the department of human services.

5. The board may establish a fee for the cost of participation in a child care program authorized under this section. The fee shall be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed upon fee. The board may require the parent or guardian to furnish transportation of the child.

6. The board may utilize or make application for program subsidies from any existing child care funding streams.

7. The components of programs established under this section for child care shall include, but are not limited to, parental involvement in program design and direction, activities designed to further children's physical, mental, and emotional development, and a parental education component to educate parents about the physical, mental, and emotional development of children.

85 Acts, ch 173, §26; 89 Acts, ch 206, §10; 89 Acts, ch 265, §40; 92 Acts, ch 1212, §27; 94 Acts, ch 1175, §8; 99 Acts, ch 192, §33

279.50 Human growth and development instruction.

1. Each school board shall provide instruction in kindergarten which gives attention to experiences relating to life skills and human growth and development as required in section 256.11.

Each school board shall provide instruction in human growth and development including instruction regarding human sexuality, self-esteem, stress management, interpersonal relationships, domestic abuse, and acquired immune deficiency syndrome as required in section 256.11, in grades one through twelve. Each school board shall annually provide to a parent or guardian of any pupil enrolled in the school district, information about the human growth and development curriculum used in the pupil's grade level and the procedure for inspecting the instructional materials prior to their use in the classroom. A pupil shall not be required to take instruction in human growth and development if the pupil's parent or guardian files with the appropriate principal a written request that the pupil be excused from the instruction. Notification that the written request may be made shall be included in the information provided by the school district.

Each school board or community college which offers general adult education classes or courses

shall periodically offer an instructional program in parenting skills and in human growth and development for parents, guardians, prospective biological and adoptive parents, and foster parents.

2. Each area education agency shall periodically offer a staff development program for teachers who provide instruction in human growth and development.

3. The department of education shall identify and disseminate information about early intervention programs for students who are at the greatest risk of suffering from the problem of dropping out of school, substance abuse, adolescent pregnancy, or suicide.

88 Acts, ch 1018, §3, 5, 6; 90 Acts, ch 1253, §121; 91 Acts, ch 218, §19

279.51 Programs for at-risk children.

1. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 2000, and each succeeding fiscal year, the sum of twelve million five hundred sixty thousand dollars.

The moneys shall be allocated as follows:

a. Two hundred seventy-five thousand dollars of the funds appropriated shall be allocated to the area education agencies to assist school districts in developing program plans and budgets under this section and to assist school districts in meeting other responsibilities in early childhood education.

b. For the fiscal year beginning July 1, 1998, and for each succeeding fiscal year, eight million five hundred ten thousand dollars of the funds appropriated shall be allocated to the child development coordinating council established in chapter 256A for the purposes set out in subsection 2 of this section and section 256A.3.

c. For the fiscal year beginning July 1, 1996, and for each fiscal year thereafter, three million five hundred thousand dollars of the funds appropriated shall be allocated as grants to school districts that have elementary schools that demonstrate the greatest need for programs for at-risk students with preference given to innovative programs for the early elementary school years. School districts receiving grants under this paragraph shall at a minimum provide activities and materials designed to encourage children's self-esteem, provide role modeling and mentoring techniques in social competence and social skills, and discourage inappropriate drug use. The grant allocations made in this paragraph may be renewed for additional periods of time. Of the amount allocated under this paragraph for each fiscal year, seventy-five thousand dollars shall be allocated to school districts which have an actual student population of ten thousand or less and have an actual non-English speaking student population which represents greater than five percent of the total actual student population for grants to elementary schools in those districts.

d. Notwithstanding section 256A.3, subsection 6, of the amount appropriated in this subsection for the fiscal year beginning July 1, 1996, and for each succeeding fiscal year, two and one-fourth percent may be used for administrative costs. Any reduction of an allocation under this subsection as necessary to fund the provisions of this paragraph shall be made from the allocation in paragraph *"b"*.

2. Funds allocated under subsection 1, paragraph *"b"*, shall be used by the child development coordinating council for the following:

a. To continue funding for programs previously funded by grants awarded under section 256A.3 and to provide additional grants under section 256A.3. The council shall seek to provide grants on the basis of the location within the state of children meeting at-risk definitions.

b. At the discretion of the child development coordinating council, award grants for the following:

(1) To school districts to establish programs for three-year-old, four-year-old, and five-year-old at-risk children which are a combination of preschool and full-day kindergarten.

(2) To provide grants to provide educational support services to parents of at-risk children age birth through three years.

3. The department shall seek assistance from foundations and public and private agencies in the evaluation of the programs funded under this section, and in the provision of support to school districts in developing and implementing the programs funded under this section.

4. The state board of education shall adopt rules under chapter 17A for the administration of this section.

89 Acts, ch 135, §76; 90 Acts, ch 1272, §69, 70; 91 Acts, ch 267, §239, 240; 92 Acts, ch 1227, §21; 94 Acts, ch 1199, §47 – 49; 95 Acts, ch 209, §14; 96 Acts, ch 1186, §23; 96 Acts, ch 1219, §7 – 10; 97 Acts, ch 209, §17, 18; 98 Acts, ch 1133, §1; 98 Acts, ch 1215, §44; 98 Acts, ch 1223, §24, 25; 99 Acts, ch 192, §33; 99 Acts, ch 195, §11, 12; 2000 Acts, ch 1058, §32; 2000 Acts, ch 1198, §2 – 4, 6

279.52 Optional funding of asbestos projects.

The board of directors may pay the actual cost of an asbestos project from any funds in the general fund of the district, funds received from the physical plant and equipment levy, or moneys obtained through a federal asbestos loan program, to be repaid from any of the funds specified in this section over a three-year period.

For the purpose of this section, *"cost of an asbestos project"* includes the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans and recordkeeping requirements relating to the presence of asbestos in school build-

ings of the district and its removal or encapsulation.

89 Acts, ch 135, §77; 2000 Acts, ch 1072, §1; 2000 Acts, ch 1232, §64

279.53 Additional enrichment amount for asbestos projects. Repealed by 2000 Acts, ch 1072, § 3.

279.54 School district income surtax. Repealed by 2000 Acts, ch 1072, § 3.

279.55 Teacher exchange program.

If funds are appropriated by the general assembly, an Iowa teacher exchange program is established to permit school districts to exchange licensed instructional personnel with other districts in order to promote the exchange and enhancement of instructional methods and materials and encourage the educational development of Iowa's teachers.

91 Acts, ch 84, §3

For future amendments to this section effective July 1, 2003, see 2002 Acts, ch 1047, §18, 20

279.56 Board participation.

If funds are appropriated by the general assembly, the board of directors of a school district may obtain permission to participate in the teacher exchange program by making application in writing to the department of education, on forms provided by the department, by November 1 of the school year preceding the year that the district wishes to participate. Each district participating in the program shall prescribe standards and procedures explaining the district's expectations and requirements for each participating teacher. The district's standards and procedures shall also prescribe the method and form by which teachers within the district may apply to the board for permission to participate in the program. Each participating district shall continue to compensate the program participant at the same rate that the participant would be compensated if the participant had continued the participant's instructional or other duties within the home district. Each participating district shall report to the department the number and performance of exchange teachers from other districts that are included in the district's instructional staff during the relevant periods during the school year. The department shall summarize the information and include it in the report submitted under section 256.9, subsection 28.

Each participating teacher shall submit a report of the teacher's experiences in the exchange program to the teacher's employing district at the conclusion of the exchange period.

91 Acts, ch 84, §4

279.57 Period of exchange.

Teachers may be exchanged for one quarter, one semester, or one school year under the program. Expenses incurred by a teacher participant may be reimbursed by application to the department of education. Reimbursable expenses shall include, but are not limited to, mileage for travel to and from the new school district and the teacher's residence, the cost incurred for meals consumed as a result of travel to and from the new school district and the teacher's residence, the difference between the cost for living quarters incurred by the teacher in the teacher's district of residence and the cost for similar quarters in the new district, and cost of additional educational materials required to be provided by instructional personnel in the new district.

91 Acts, ch 84, §5

279.58 School dress code policies.

1. The general assembly finds and declares that the students and the administrative and instructional staffs of Iowa's public schools have the right to be safe and secure at school. Gang-related apparel worn at school draws attention away from the school's learning environment and directs it toward thoughts or expressions of violence, bigotry, hate, and abuse.

2. The board of directors of a school district may adopt, for the district or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff in the school environment or for the appropriate discipline and operation of the school. Adoption and enforcement of a dress code policy is not a violation of section 280.22.

95 Acts, ch 191, §20

279.59 Access by associations.

The board of directors of a school district shall provide not-for-profit, professional education associations that offer membership to teachers or administrators equal access to teacher or administrator mailboxes for distribution of professional literature.

2001 Acts, ch 159, §11

CHAPTER 280

UNIFORM SCHOOL REQUIREMENTS

For student search restrictions, see chapter 808A

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280.1 Title.

This chapter may be known and shall be cited as the *"Uniform School Requirements"* chapter.

[C75, 77, 79, 81, §280.1]

280.2 Definitions.

The term *"public school"* means any school directly supported in whole or in part by taxation. The term *"nonpublic school"* means any other school which is accredited or which uses licensed practitioners as instructors.

[C24, 27, 31, 35, 39, §**4251;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §280.2]

91 Acts, ch 200, §1

280.3 Duties of board.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall prescribe the minimum educational program and an attendance policy which shall require each child to attend school for at least one hundred forty-eight days, to be met by attendance for at least thirty-seven days each school quarter, for the schools under their jurisdictions. The minimum educational program shall be the curriculum set forth in section 256.11, except as otherwise provided by law. The board of directors of a public school district shall not allow discrimination in any educational program on the basis of race, color, creed, sex, marital status or place of national origin.

A nonpublic school which is unable to meet the minimum educational program may request an exemption from the state board of education. The authorities in charge of the nonpublic school shall file with the director of the department of education the names and locations of all schools desiring to be exempted and the names, ages, and post office addresses of all pupils of compulsory school age who are enrolled. The director, subject to the approval of the state board, may exempt the nonpublic school from compliance with the minimum educational program for two school years. When the exemption has once been granted, renewal of the exemption for each succeeding school year may be conditioned by the director, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles of American government, of the pupils of compulsory school age exempted in the preceding year. Proof of achievement shall be determined on the basis of tests or other means of evaluation prescribed by the director of the department of education with the ap-

proval of the state board of education. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the director by April 15 of the school year preceding the school year for which the applicants desire exemption. This section shall not apply to schools eligible for exemption under section 299.24.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall establish and maintain attendance centers based upon the needs of the school age pupils enrolled in the school district or nonpublic school. Public school kindergarten programs shall and public and nonpublic school prekindergarten programs may be provided. In addition, the board of directors or governing authority may include in the educational program of any school such additional courses, subjects, or activities which it deems fit the needs of the pupils.

[C75, 77, 79, 81, §280.3]

85 Acts, ch 212, §21, 22; 89 Acts, ch 210, §7; 91 Acts, ch 200, §2

280.3A Accredited nonpublic school child care programs.

Authorities in charge of accredited nonpublic schools may operate or contract for the operation of child care programs, as defined in section 279.49, subsection 1. The provisions of section 279.49 as they relate to child care programs of a school corporation and its board of directors apply to the child care programs of the accredited nonpublic school and the authority in charge.

94 Acts, ch 1175, §9; 99 Acts, ch 192, §33

280.4 Limited English proficiency — weighting.

1. The medium of instruction in all secular subjects taught in both public and nonpublic schools shall be the English language, except when the use of a foreign language is deemed appropriate in the teaching of any subject or when the student is limited English proficient. When the student is limited English proficient, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in English as a second language or transitional bilingual instruction until the student is fully English proficient or demonstrates a functional ability to speak, read, write, and understand the English language. As used in this section, *"limited English proficient"* means a student's language background is in a language other than English, and the student's proficiency in English is such that the probability of the student's academic success in an English-only classroom is below that of an academically successful peer with an English language background. *"Fully English proficient"* means a student who is able to read, understand, write, and speak the English language and to use English to ask questions, to understand teachers and reading materials, to test ideas, and to challenge what is being asked in the classroom.

2. The department of education shall adopt rules relating to the identification of limited English proficient students who require special instruction under this section and to application procedures for funds available under this section.

3. In order to provide funds for the excess costs of instruction of limited English proficient students above the costs of instruction of pupils in a regular curriculum, students identified as limited English proficient shall be assigned an additional weighting of twenty-two hundredths, and that weighting shall be included in the weighted enrollment of the school district of residence for a period not exceeding three years. However, the school budget review committee may grant supplemental aid or modified allowable growth to a school district to continue funding a program for students after the expiration of the three-year period.

[C24, 27, 31, 35, 39, §**4254;** C46, 50, 54, 58, 62, 66, 71, 73, §280.5; C75, 77, 79, 81, §280.4; 82 Acts, ch 1260, §48]

87 Acts, ch 224, §52; 89 Acts, ch 135, §80; 91 Acts, ch 193, §2; 93 Acts, ch 127, §3; 2002 Acts, ch 1114, §1

Subsection 3 amended

280.5 Display of United States flag and Iowa state flag.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall provide and maintain a suitable flagstaff on each school site under its control, and the United States flag and the Iowa state flag shall be raised on all school days when weather conditions are suitable.

[S13, §2804-a, -b; C24, 27, 31, 35, 39, §**4253;** C46, 50, 54, 58, 62, 66, 71, 73, §280.4; C75, 77, 79, 81, §280.5]

95 Acts, ch 1, §4

Display of flags on public buildings, §1B.3

280.6 Religious books.

Religious books such as the Bible, the Torah, and the Koran shall not be excluded from any public school or institution in the state, nor shall any child be required to read such religious books contrary to the wishes of the child's parent or guardian.

[R60, §2119; C73, §1764; C97, §2805; C24, 27, 31, 35, 39, §**4258;** C46, 50, 54, 58, 62, 66, 71, 73, §280.9; C75, 77, 79, 81, §280.6]

280.7 Dental clinics.

Boards of directors in all public school districts may establish and maintain dental clinics for children and offer courses of instruction on mouth hygiene. The boards may employ such legally quali-

fied dentists and dental hygienists as may be necessary to accomplish the purpose of this section. The cost of the dental clinic shall be paid from the general fund.

[C24, 27, 31, 35, 39, §**4260;** C46, 50, 54, 58, 62, 66, 71, 73, §280.11; C75, 77, 79, 81, §280.7]

280.8 Special education.

The board of directors of each public school district shall make adequate educational provisions for each resident child requiring special education appropriate to the nature and severity of the child's disability pursuant to rules promulgated by the department under the provisions of chapters 256B and 273.

[C71, 73, §280.22; C75, 77, 79, 81, §280.8]

96 Acts, ch 1129, §75

280.9 Career education.

The board of directors of each local public school district and the authorities in charge of each nonpublic school shall incorporate into the educational program, in accordance with section 256.7, subsection 21, paragraph *"a"*, the total concept of career education to enable students to become familiar with the values of a work-oriented society. Curricular and cocurricular teaching-learning experiences from the prekindergarten level through grade twelve shall be provided for all students currently enrolled in order to develop an understanding that employment may be meaningful and satisfying. However, career education does not mean a separate vocational-technical program is required. A vocational-technical program includes units or partial units in subjects which have as their purpose to equip students with marketable skills.

Essential elements in career education shall include, but not be limited to:

1. Awareness of self in relation to others and the needs of society.

2. Exploration of employment opportunities and experience in personal decision making.

3. Experiences which will help students to integrate work values and work skills into their lives.

[C75, 77, 79, 81, §280.9]

2001 Acts, ch 159, §12

280.9A History and government required — voter registration.

1. The board of directors of each local public school district and the authorities in charge of each nonpublic school shall require that all students in grades nine through twelve complete, as a condition of graduation, instruction in American history and the governments of Iowa and the United States, including instruction in voting statutes and procedures, voter registration requirements, the use of paper ballots and voting machines in the election process, and the method of acquiring and casting an absentee ballot.

2. At least twice during each school year, the board of directors of each local public school district operating a high school and the authorities in charge of each accredited nonpublic school operating a high school shall offer the opportunity to register to vote to each student who is at least seventeen and one-half years of age, as required by section 48A.23.

88 Acts, ch 1129, §1; 90 Acts, ch 1238, §38; 94 Acts, ch 1169, §57

280.9B Violence prevention curriculum.

The department of education shall develop a statewide violence prevention program based on law-related education. The department shall contract with a law-related education agency that serves the state and provides a comprehensive plan to develop violence prevention curricula for grades kindergarten through twelve, provide training to teachers and school administrators on violence prevention, and develop school-community partnerships for violence prevention.

94 Acts, ch 1172, §29

280.10 Eye-protective devices.

Every student and teacher in any public or nonpublic school shall wear industrial quality eye-protective devices at all times while participating, and while in a room or other enclosed area where others are participating, in any phase or activity of a course which may subject the student or teacher to the risk or hazard of eye injury from the materials or processes used in any of the following courses:

1. Vocational or industrial arts shops or laboratories involving experience with any of the following:

a. Hot molten metals.

b. Milling, sawing, turning, shaping, cutting, grinding or stamping of any solid materials.

c. Heat treatment, tempering or kiln firing of any metal or other materials.

d. Gas or electric arc welding.

e. Repair or servicing of any vehicle while in the shop.

f. Caustic or explosive materials.

2. Chemical or combined chemical-physical laboratories involving caustic or explosive chemicals or hot liquids or solids when risk is involved. Visitors to such shops and laboratories shall be furnished with and required to wear the necessary safety devices while such programs are in progress.

It shall be the duty of the teacher or other person supervising the students in said courses to see that the above requirements are complied with. Any student failing to comply with such requirements may be temporarily suspended from participation in the course and the registration of a student for the course may be canceled for willful, flagrant or repeated failure to observe the above re-

quirements.

The board of directors of each local public school district and the authorities in charge of each nonpublic school shall provide the safety devices required herein. Such devices may be paid for from the general fund, but the board may require students and teachers to pay for the safety devices and shall make them available to students and teachers at no more than the actual cost to the district or school.

"Industrial quality eye-protective devices", as used in this section, means devices meeting American National Standard, Practice for Occupational and Educational Eye and Face Protection promulgated by the American National Standards Institute, Inc.

[C66, 71, 73, §280.20; C75, 77, 79, 81, §280.10]

280.11 Ear-protective devices.

1. Every student and teacher in any public or nonpublic school shall wear industrial quality ear-protective devices while the student or teacher is participating in any phase or activity of a course which may subject the student or teacher to the risk or hazard of hearing loss from noise in processes or procedures used in vocational or industrial arts shops or laboratories involving experiences with any of the following:

a. Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials.

b. Kiln firing of any metal or other materials.

c. Electric arc welding.

d. Repair or servicing of any vehicle while in shop.

e. Static tests, maintenance or repair of internal combustion engines.

f. Letter press, paper folders, monotype.

2. It shall be the duty of the teacher or other person supervising the students in said courses to see that the above requirements are complied with. Any student failing to comply with such requirements may be temporarily suspended from participation in the course and the registration of a student for the course may be canceled for willful, flagrant or repeated failure to observe the above requirements.

3. The board of directors of each local public school district and the authorities in charge of each nonpublic school shall provide the safety devices required in this section. Such devices may be paid for from the general fund, but the board may require students and teachers to pay for the safety devices and shall make them available to students and teachers at no more than the actual cost to the district or school.

4. *a. "Industrial quality ear-protective devices"*, as used in this section, means devices meeting the American National Standard for Measurement of the Real-Ear Attenuation of Ear Protectors at Threshold promulgated by the American National Standards Institute, Inc.

b. "Noise" as used in this section, means a noise level that meets or exceeds damage-risk criteria established by the present federal standard for occupational noise exposure, Occupational Safety and Health Standards.

[C75, 77, 79, 81, §280.11]

99 Acts, ch 96, §28

280.12 School improvement advisory committee.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall do the following:

1. Appoint a school improvement advisory committee to make recommendations to the board or authorities. The advisory committee shall consist of members representing students, parents, teachers, administrators, and representatives from the local community, which may include representatives of business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership shall have balanced representation with regard to race, gender, national origin, and disability.

2. Utilize the recommendations from the school improvement advisory committee to determine the following:

a. Major educational needs.

b. Student learning goals.

c. Long-range and annual improvement goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement.

d. Desired levels of student performance.

e. Progress toward meeting the goals set out in paragraphs *"b"* through *"d"*.

[C75, 77, 79, 81, §280.12]

85 Acts, ch 212, §8; 2001 Acts, ch 159, §13

280.13 Requirements for interscholastic athletic contests and competitions.

A public school shall not participate in or allow students representing a public school to participate in any extracurricular interscholastic athletic contest or competition which is sponsored or administered by an organization as defined in this section, unless the organization is registered with the department of education, files financial statements with the department in the form and at the intervals prescribed by the director of the department of education, and is in compliance with rules which the state board of education adopts for the proper administration, supervision, operation, adoption of eligibility requirements, and scheduling of extracurricular interscholastic athletic contests and competitions and the organizations. For the purposes of this section *"organization"* means a corporation, association, or organization which has as one of its primary purposes the sponsoring or administration of extracurricular interscholastic athletic contests or competitions, but does not

include an agency of this state, a public or private school or school board, or an athletic conference or other association whose interscholastic contests or competitions do not include more than twenty-four schools.

[C66, 71, 73, §257.25(10); C75, 77, 79, 81, §280.13]

85 Acts, ch 212, §24; 86 Acts, ch 1245, §1468; 93 Acts, ch 101, §204

280.13A Sharing interscholastic activities.

If a school district or nonpublic school does not provide an interscholastic activity for its students, the board of directors of that school district or the authorities in charge of the nonpublic school may complete an agreement with another school district or nonpublic school to provide for the eligibility of its students in interscholastic activities provided by that other school district or nonpublic school. A copy of each agreement completed under this section shall be filed with the appropriate organization as organization is defined in section 280.13 not later than April 30 of the school year preceding the school year in which the agreement takes effect, unless an exception is granted by the organization for good cause. An agreement completed under this section shall be deemed approved unless denied by the governing organization within ten days after its receipt. A governing organization shall determine whether an agreement would substantially prejudice the interscholastic activities of other schools. An agreement denied by a governing organization under this section may be appealed to the state board of education under chapter 290.

For the purpose of this section, *"substantial prejudice"* includes, but is not limited to, situations where shared interscholastic activities may result in an unfair domination of an interscholastic activity or substantial disruption of activity classifications and management.

It is not necessary that school districts that are parties to an agreement under this section must be engaged in sharing academic programming and receiving supplementary weighting under section 257.11.

87 Acts, ch 224, §53; 88 Acts, ch 1134, §62; 89 Acts, ch 135, §81; 2002 Acts, ch 1129, §3

Unnumbered paragraph 1 amended

280.13B Taping and broadcast fees restricted.

The Iowa high school athletic association or its successor organization, and the Iowa girls high school athletic union or its successor organization, shall not assess a charge for the videotape retransmission of a high school athletic tournament contest or event if the videotape retransmission does not occur earlier than twenty-four hours after the starting time of the live athletic contest or event.

96 Acts, ch 1190, §1

280.14 School requirements.

The board or governing authority of each school or school district subject to the provisions of this chapter shall establish and maintain adequate administration, school staffing, personnel assignment policies, teacher qualifications, certification requirements, facilities, equipment, grounds, graduation requirements, instructional requirements, instructional materials, maintenance procedures and policies on extracurricular activities. In addition the board or governing authority of each school or school district shall provide such principals as it finds necessary to provide effective supervision and administration for each school and its faculty and student body. An individual who is employed or contracted as a superintendent by a school or school district may also serve as an elementary principal in the same school or school district.

[C66, 71, 73, §257.25(11, 15); C75, 77, 79, 81, §280.14]

93 Acts, ch 4, §2

280.15 Joint employment and sharing.

1. Two or more public school districts may jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment and facilities. Classes made available to students in the manner provided in this section shall be considered as complying with the requirements of section 275.1 relating to the maintenance of kindergarten and twelve grades by a school district. If students attend classes in another school district under this section under an agreement that provides for whole grade sharing, the boards of directors of districts entering into these agreements shall provide for sharing the costs and expenses as provided in sections 282.10 through 282.12. If a district that has entered into a whole grade sharing agreement determines that a need exists to hire additional employees because of the whole grade sharing agreement, the district shall determine the nature and number of the necessary new positions. The district terminating employees as a result of a whole grade sharing agreement shall notify any other district, which is a party to the agreement, of the names and addresses of those terminated. Individuals who were employed by a district that entered into a whole grade sharing agreement and who were terminated as a result of the agreement shall be notified that the new positions exist and that they may apply for the new positions. The board shall offer the new position to an applicant from among those who were terminated as a result of the agreement if the applicant is licensed for the new position or, in the case of unlicensed personnel, is otherwise qualified. If two or more individuals from among those terminated

as a result of the agreement apply for a single position, the applicant who is best qualified in the opinion of the board shall be offered the new position. However, the board is not required to offer a new position to applicants who were among those who were terminated as a result of the agreement beyond two school years. An employee who accrued benefits before a whole grade sharing agreement resulted in the employee's termination shall not, as a result of reemployment under this section, forfeit accrued vacation, accrued sick leave, longevity, completion of probationary status as defined by section 279.19, or salary or placement on a salary schedule based upon the employee's years of experience.

2. When a special education personnel pooling agreement, which has been entered into between an area education agency and a public school district pursuant to section 273.5, is terminated, the public school district shall assume the contractual obligations for any teachers assigned to the district under the agreement. Teachers, for whom the contractual obligations are assumed by a district, shall be given credit for completion of any probationary status under section 279.19, be placed on the salary schedule and retain all leaves, benefits, and seniority rights accumulated as if the teacher had been originally employed under the agreement which exists between the public school district and the district's collective bargaining unit, consistent with the teacher's education and experience.

A teacher who is employed under a pooling agreement and assigned to special education facilities that are separate from and not part of local school district facilities shall, if the teacher's employment terminates upon termination of the pooling agreement, be offered any teaching position that is similar to the position previously held by the teacher under the pooling agreement, which is vacant in any of the local school districts which participated in the pooling agreement, provided that the teacher possesses the appropriate license for the position. Teachers employed by a local school district under this paragraph shall have the same rights, privileges, and protection as teachers whose contractual obligations are assumed by a district to which the teacher previously had been assigned under a special education personnel pooling agreement.

[C66, 71, 73, §257.25(16); C75, 77, 79, 81, §280.15]

85 Acts, ch 212, §9; 87 Acts, ch 224, §54; 90 Acts, ch 1219, §1; 91 Acts, ch 117, §1; 94 Acts, ch 1083, §1

See also §256.12

280.16 Open enrollment. Repealed by 88 Acts, ch 1113, § 2 and 89 Acts, ch 12, § 3. See § 282.18.

280.17 Procedures for handling child abuse reports.

The board of directors of a public school and the authorities in control of a nonpublic school shall prescribe procedures, in accordance with the guidelines contained in the model policy developed by the department of education in consultation with the department of human services, and adopted by the department of education pursuant to chapter 17A, for the handling of reports of child abuse, as defined in section 232.68, subsection 2, paragraph *"a"*, *"c"*, or *"e"*, alleged to have been committed by an employee or agent of the public or nonpublic school.

85 Acts, ch 173, §27; 98 Acts, ch 1100, §36

280.17A Procedures for handling dangerous weapons.

The board of directors of a public school and the authorities in control of a nonpublic school shall prescribe procedures requiring school officials to report to local law enforcement agencies any dangerous weapon, as defined in section 702.7, possessed on school premises in violation of school policy or state law.

95 Acts, ch 191, §21

280.17B Students suspended or expelled for possession of dangerous weapons.

The board of directors of a public school and the authorities in control of a nonpublic school shall prescribe procedures for continued school involvement with a student who is suspended or expelled for possession of a dangerous weapon, as defined in section 702.7, on school premises in violation of state law and for the reintegration of the student into the school following the suspension or expulsion.

95 Acts, ch 191, §22

280.18 Student achievement goals. Repealed by 2001 Acts, ch 159, § 18.

280.19 Plans for at-risk children.

The board of directors of each public school district shall incorporate, into the kindergarten admissions program, criteria and procedures for identification and integration of at-risk children and their developmental needs. This incorporation shall be part of the comprehensive school improvement plan developed and implemented in accordance with section 256.7, subsection 21, paragraphs *"a"* and *"c"*.

88 Acts, ch 1114, §4; 2001 Acts, ch 159, §14

280.19A Alternative options education programs — disclosure of records.

By January 15, 1995, each school district shall adopt a plan to provide alternative options education programs to students who are either at risk of dropping out or have dropped out. An alternative

options education program may be provided in a district, through a sharing agreement with a school in a contiguous district, or through an area-wide program available at the community college serving the merged area in which the school district is located. Each area education agency shall provide assistance in establishing a plan to provide alternative education options to students attending a public school in a district served by the agency.

If a district has not adopted a plan as required in this section and implemented the plan by January 15, 1996, the area education agency serving the district shall assist the district with developing a plan and an alternative options education program for the pupil. When a plan is developed, the district shall be responsible for the operation of the program and shall reimburse the area education agency for the actual costs incurred by the area education agency under this section.

Notwithstanding section 22.7, subsection 1, records kept regarding a student who has participated in a program under this section shall be requested by school officials of a public or nonpublic receiving school in which the student seeks to enroll, and shall be provided by the sending school. A school official who receives information under this section shall disclose this information only to those school officials and employees whose duties require them to be involved with the student. A school official or employee who discloses information received under this section in violation of this paragraph shall be subject to disciplinary action, including but not limited to reprimand, suspension, or termination. *"School officials and employees"* means those officials and persons employed by a nonpublic school or public school district, and area education agency staff members who provide services to schools or school districts.

90 Acts, ch 1271, §1102; 94 Acts, ch 1131, §4; 94 Acts, ch 1172, §30

Minimum hours of instruction requirement adopted by state board of education not applicable to alternative programs; 90 Acts, ch 1271, §1104

280.20 Vocational agriculture education.

It is the intent of the general assembly to encourage the public secondary schools to develop comprehensive programs for vocational education in agriculture technology to meet the diverse needs of Iowa's students and to ensure an adequate supply of trained and skilled individuals in all phases of the agriculture industry. The board of directors of each public school district may develop, as part of the curriculum in grades nine through twelve, programs for vocational education in agriculture technology.

It is also the intent of the general assembly to encourage the development of programs for vocational education in agriculture technology which are structured on a twelve-month basis and which include the following:

1. Provision for twelve-month extended contracts to permit entrepreneurial agricultural experience, summer program planning, and record-keeping.

Supervision and accountability of vocational agriculture teachers employed for extended contracts are the responsibility of the local school board.

2. Submission of an annual summer program by each vocational agriculture instructor, employed on an extended contract basis.

3. The following reports shall be made available to the council for agricultural education upon request:

a. A summary of summer activities completed for each vocational agriculture instructor employed on an extended contract.

b. A summary of supervised agricultural experience programs conducted during the year in vocational agriculture.

4. Provision for instructional supervision for agricultural occupational experience programs.

88 Acts, ch 1264, §2

280.21 Corporal punishment — burden of proof.

1. An employee of an accredited public school district, accredited nonpublic school, or area education agency shall not inflict, or cause to be inflicted, corporal punishment upon a student. For purposes of this section, *"corporal punishment"* means the intentional physical punishment of a student. An employee's physical contact with the body of a student shall not be considered corporal punishment if it is reasonable and necessary under the circumstances and is not designed or intended to cause pain or if the employee uses reasonable force, as defined under section 704.1, for the protection of the employee, the student, or other students; to obtain the possession of a weapon or other dangerous object within a student's control; or for the protection of property. The department of education shall adopt rules to implement this section.

2. A school employee who, in the reasonable course of the employee's employment responsibilities, comes into physical contact with a student shall be granted immunity from any civil or criminal liability which might otherwise be incurred or imposed as a result of such physical contact, if the physical contact is reasonable under the circumstances and involves the following:

a. Encouraging, supporting, or disciplining the student.

b. Protecting the employee, the student, or other students.

c. Obtaining possession of a weapon or other dangerous object within a student's control.

d. Protecting employee, student, or school property.

e. Quelling a disturbance or preventing an act threatening physical harm to any person.

f. Removing a disruptive student from class or

any area of the school premises, or from school-sponsored activities off school premises.

g. Preventing a student from the self-infliction of harm.

h. Self-defense.

i. Any other legitimate educational activity.

3. To prevail in a civil action alleging a violation of this section the party bringing the action shall prove the violation by clear and convincing evidence. Any school employee determined in a civil action to have been wrongfully accused under this section shall be awarded reasonable monetary damages, in light of the circumstances involved, against the party bringing the action.

89 Acts, ch 71, §1; 90 Acts, ch 1218, §1; 94 Acts, ch 1131, §5; 98 Acts, ch 1195, §1

280.21A Leave — episode of violence.

1. A school employee who, in the course of employment, suffers a personal injury causing temporary total disability, or a permanent partial or total disability, resulting from an episode of violence toward that employee, for which workers' compensation under chapter 85 is payable, shall be entitled to receive workers' compensation, which the district shall supplement in order for the employee to receive full salary and benefits for the shortest of the following periods:

a. One year from the date of the disability.

b. The period during which the employee is disabled and incapable of employment.

During the period described in paragraph *"a"* or *"b"*, the school employee shall not be required to use accumulated sick leave or vacation.

2. The school district may require the employee, as a condition of receiving benefits under this section, to provide a signed statement that justifies the use of this leave and, if medical attention is required, a certificate from a licensed physician that states the nature and duration of the leave.

3. For purposes of this section, *"school employee"* means a person employed by a nonpublic school or school district, or any area education agency staff member who provides services to a school or school district.

94 Acts, ch 1131, §6

280.21B Expulsion — weapons in school.

The board of directors of a school district and the authorities in charge of a nonpublic school which receives services supported by federal funds shall expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school or knowingly possessed a weapon at a school under the jurisdiction of the board or the authorities. However, the superintendent or chief administering officer of a school or school district may modify expulsion requirements on a case-by-case basis. This section shall not be construed to prevent the board of directors of a school district or the authorities in charge of a nonpublic school that have expelled a student from the student's regular school setting from providing educational services to the student in an alternative setting. If both this section and section 282.4 apply, this section takes precedence over section 282.4. For purposes of this section, *"weapon"* means a firearm as defined in 18 U.S.C. § 921. This section shall be construed in a manner consistent with the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

95 Acts, ch 191, §23

280.22 Student exercise of free expression.

1. Except as limited by this section, students of the public schools have the right to exercise freedom of speech, including the right of expression in official school publications.

2. Students shall not express, publish, or distribute any of the following:

a. Materials which are obscene.

b. Materials which are libelous or slanderous under chapter 659.

c. Materials which encourage students to do any of the following:

(1) Commit unlawful acts.

(2) Violate lawful school regulations.

(3) Cause the material and substantial disruption of the orderly operation of the school.

3. There shall be no prior restraint of material prepared for official school publications except when the material violates this section.

4. Each board of directors of a public school shall adopt rules in the form of a written publications code, which shall include reasonable provisions for the time, place, and manner of conducting such activities within its jurisdiction. The board shall make the code available to the students and their parents.

5. Student editors of official school publications shall assign and edit the news, editorial, and feature content of their publications subject to the limitations of this section. Journalism advisers of students producing official school publications shall supervise the production of the student staff, to maintain professional standards of English and journalism, and to comply with this section.

6. Any expression made by students in the exercise of free speech, including student expression in official school publications, shall not be deemed to be an expression of school policy, and the public school district and school employees or officials shall not be liable in any civil or criminal action for any student expression made or published by students, unless the school employees or officials have interfered with or altered the content of the student speech or expression, and then only to the extent of the interference or alteration of the speech or expression.

7. *"Official school publications"* means material produced by students in the journalism, newspaper, yearbook, or writing classes and distrib-

uted to the student body either free or for a fee.

8. This section does not prohibit a board of directors of a public school from adopting otherwise valid rules relating to oral communications by students upon the premises of each school.

89 Acts, ch 155, §1

280.23 Student health services.

The board of directors of each public school district and the authorities in charge of each nonpublic school shall not require nonadministrative personnel to perform any special health services or intrusive nonemergency medical services for students unless the nonadministrative personnel are licensed or otherwise qualified and have consented to perform the services.

92 Acts, ch 1033, §1

280.24 Procedures for reporting drug or alcohol possession or use.

The board of directors of each public school and the authorities in charge of each accredited nonpublic school shall prescribe procedures to report any use or possession of alcoholic liquor, wine, or beer or any controlled substance on school premises to local law enforcement agencies, if the use or possession is in violation of school policy or state law. The procedures may include a provision which does not require a report when the school officials have determined that a school at-risk or other student assistance program would be jeopardized if a student self reports.

97 Acts, ch 126, §38

280.25 Information sharing — interagency agreements.

1. The board of directors of each public school and the authorities in charge of each accredited nonpublic school shall adopt a policy and the superintendent of each public school shall adopt rules which provide that the school district or school may share information contained within a student's permanent record pursuant to an interagency agreement with state and local agencies that are part of the juvenile justice system. These agencies include, but are not limited to, juvenile court services, the department of human services, and local law enforcement authorities. The disclosure of information shall be directly related to the juvenile justice system's ability to effectively serve, prior to adjudication, the student whose records are being released.

2. The purpose of the agreement shall be to reduce juvenile crime by promoting cooperation and collaboration and the sharing of appropriate information among the parties in a joint effort to improve school safety, reduce alcohol and illegal drug use, reduce truancy, reduce in-school and out-of-school suspensions, and to support alternatives to in-school and out-of-school suspensions and expulsions which provide structured and well-supervised educational programs supplemented by coordinated and appropriate services designed to correct behaviors that lead to truancy, suspension, and expulsions and to support students in successfully completing their education.

3. Information shared under the agreement shall be used solely for determining the programs and services appropriate to the needs of the juvenile or the juvenile's family, or coordinating the delivery of programs and services to the juvenile or the juvenile's family.

4. Information shared by the school district or school under the agreement is not admissible in any court proceedings which take place prior to a disposition hearing, unless written consent is obtained from a student's parent, guardian, or legal or actual custodian.

5. Information shared by another party to the agreement with a school district or school pursuant to an interagency agreement shall not be used as a basis for a school disciplinary action against a student.

6. The interagency agreement shall provide, and each signatory agency to the agreement shall certify in the agreement, that confidential information shared among the parties to the agreement shall remain confidential and shall not be shared with any other person, school, school district, or agency, unless otherwise provided by law.

7. Juvenile court social records may be disclosed in accordance with section 232.147, subsection 7.

8. A school or school district entering into an interagency agreement under this section shall adopt a policy implementing the provisions of the interagency agreement. The policy shall include, but not be limited to, the provisions of the interagency agreement and the procedures to be used by the school or school district to share information from the student's permanent record with participating agencies. The policy shall be published in the student handbook.

97 Acts, ch 126, §39; 2000 Acts, ch 1123, §4

280.26 Intervention in altercations.

1. An employee of an accredited public school district, accredited nonpublic school, or area education agency may intervene in a fight or physical struggle occurring among students or between students and nonstudents that takes place in the presence of the school employee in a school building, on school premises, or at any school function or school-sponsored activity regardless of its location. The degree and force of the intervention may be as reasonably necessary, in the opinion of the school employee, to restore order and protect the safety of the individuals involved in the altercation and others in the vicinity of the altercation.

2. A person who is not an employee of an accredited public school district, accredited nonpublic school, or area education agency may intervene in a fight or physical struggle occurring among

students, or between students and nonstudents, that takes place in the presence of the nonemployee in a school building, on school premises, or at any school function or school-sponsored activity regardless of its location. The intervention may occur in the absence of an employee of an accredited public school district, accredited nonpublic school, or area education agency, or at the request of such an employee, utilizing the degree and force of intervention reasonably necessary to restore order and protect the safety of the individuals involved in the altercation and others in the vicinity of the altercation. However, a person who intervenes in the absence of an employee of an accredited public school district, accredited nonpublic school, or area education agency shall report the intervention and all relevant information regarding the situation as soon as reasonably possible to such an employee.

3. An employee of an accredited public school district, accredited nonpublic school, or area education agency who intervenes in a fight or physical struggle pursuant to subsection 1 shall be awarded reasonable monetary damages against a party bringing a civil action alleging a violation of this section, if it is determined in the action that the employee has been wrongfully accused. A nonemployee of an accredited public school district, accredited nonpublic school, or area education agency who intervenes in a fight or physical struggle pursuant to subsection 2 shall be limited to the recovery of reasonable attorney fees and court costs, if it is determined in a civil action alleging a violation of this section that the nonemployee has been wrongfully accused.

98 Acts, ch 1195, §2

280.27 Reporting violence — immunity.

An employee of a school district, an accredited nonpublic school, or an area education agency who participates in good faith and acts reasonably in the making of a report to, or investigation by, an appropriate person or agency regarding violence, threats of violence, or other inappropriate activity against a school employee or student in a school building, on school grounds, or at a school-sponsored function shall be immune from civil or criminal liability relating to such action, as well as for participating in any administrative or judicial proceeding resulting from or relating to the report or investigation.

2000 Acts, ch 1162, §1

See §613.21

CHAPTER 280A

MERGED AREAS — COMMUNITY COLLEGES

Transferred to chapter 260C

CHAPTER 280B

IOWA INDUSTRIAL NEW JOBS TRAINING ACT

Transferred to chapter 260E

CHAPTER 280C

IOWA SMALL BUSINESS NEW JOBS TRAINING ACT

Transferred to chapter 260F

CHAPTER 281

EDUCATION OF CHILDREN REQUIRING SPECIAL EDUCATION

Transferred to chapter 256B

CHAPTER 282

SCHOOL ATTENDANCE AND TUITION

282.1 School age — nonresidents.
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282.1 School age — nonresidents.

Persons between five and twenty-one years of age are of school age. A board may establish and maintain evening schools or an educational program under section 282.1A for residents of the corporation regardless of age and for which no tuition need be charged. Nonresident children shall be charged the maximum tuition rate as determined in section 282.24, subsection 1, with the exception that those residing temporarily in a school corporation may attend school in the corporation upon terms prescribed by the board, and boards discontinuing grades under section 282.7, subsection 1 or subsections 1 and 3, shall be charged tuition as provided in section 282.24, subsection 2.

For purposes of this section, *"resident"* means a child who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions:

1. Is in the district for the purpose of making a home and not solely for school purposes.

2. Meets the definitional requirements of the term *"homeless individual"* under 42 U.S.C. § 11302(a) and (c).

3. Lives in a juvenile detention center, foster care facility, or residential facility in the district.

[C73, §1795; C97, §2804; C24, 27, 31, 35, 39, §**4268;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.1]

83 Acts, ch 31, §3; 88 Acts, ch 1263, §6; 89 Acts, ch 210, §8; 92 Acts, ch 1130, §1

Evening schools, §288.1

282.1A Extended school programs.

1. A board of directors of a public school district may, subject to the approval of the department of education, provide an extended school program for residents of the district who are over the maximum school age established in section 282.1, who do not possess a high school diploma or a high school equivalency diploma under chapter 259A, and who are currently enrolled in an education program in the district. The educational program may be separate from or integrated into the regular school program. Residents attending the program shall be included in the district's basic enrollment and shall attend on a tuition-free basis. A district may also provide services to nonresidents under this section, and those persons shall be charged a sufficient tuition fee to cover the cost of the instruction received by the person as provided in section 282.6.

2. A district which wishes to provide an extended school program, in addition to meeting any requirements set by the department, shall establish all of the following prior to obtaining approval for the program:

a. There is an identified presence of resident persons who are over the maximum established school age, who do not possess a high school diploma or a high school equivalency diploma under chapter 259A.

b. The provision of services to these additional persons will not substantially interfere with the educational programming provided to students of school age.

c. The provision of services will not require additional or new facilities to meet the needs of the identified populations.

3. The department shall make recommendations for, and the state board of education shall

adopt, rules which provide for the administration of extended school programs.

92 Acts, ch 1130, §2

Calculation of basic enrollment, §257.6

282.2 Offsetting tax.

The parent or guardian whose child or ward attends school in a district of which the parent or guardian is not a resident shall be allowed to deduct the amount of school tax paid by the parent or guardian in said district from the amount of tuition required to be paid.

[C97, §2804; C24, 27, 31, 35, 39, §**4269;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.2]

88 Acts, ch 1158, §59

282.3 Admission and exclusion of pupils.

1. The board may exclude from school children under the age of six years when in its judgment such children are not sufficiently mature to be benefited by regular instruction, or any child who is found to be physically or mentally unable to attend school under section 299.5, or whose presence in school has been found to be injurious to the health of other pupils, or is efficiently taught for the scholastic year at a state institution. However, the board shall provide special education programs and services under chapters 256B, 257, and 273 for all children requiring special education.

2. The conditions of admission to public schools for work in the year immediately preceding the first grade and in the first grade shall be as follows:

A child under the age of six years on the fifteenth of September of the current school year shall not be admitted to a public school unless the board of directors of the school has adopted and put into effect courses of study for the school year immediately preceding the first grade, approved by the department of education, and has employed a practitioner or practitioners for this work with standards of training approved by the board of educational examiners.

No child shall be admitted to school work for the year immediately preceding the first grade unless the child is five years of age on or before the fifteenth of September of the current school year.

No child shall be admitted to the first grade unless the child is six years of age on or before the fifteenth of September of the current school year; except that a child under six years of age who has been admitted to school work for the year immediately preceding the first grade under conditions approved by the department of education, or who has demonstrated the possession of sufficient ability to profit by first-grade work on the basis of tests or other means of evaluation recommended or approved by the department of education, may be admitted to first grade at any time before December 31.

3. Nothing herein provided shall prohibit a school board from requiring the attainment of a greater age than the age requirements herein set forth.

[C97, §2782; C24, 27, 31, 35, 39, §**4270;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.3]

89 Acts, ch 135, §85; 89 Acts, ch 210, §9; 89 Acts, ch 265, §36

282.4 Suspension — expulsion.

1. The board may, by a majority vote, expel any student from school for a violation of the regulations or rules established by the board, or when the presence of the student is detrimental to the best interests of the school. The board may confer upon any teacher, principal, or superintendent the power temporarily to suspend a student, notice of the suspension being at once given in writing to the president of the board.

2. A student who commits an assault, as defined under section 708.1, against a school employee in a school building, on school grounds, or at a school-sponsored function shall be suspended for a time to be determined by the principal. Notice of the suspension shall be immediately sent to the president of the board. By special meeting or at the next regularly scheduled board meeting, the board shall review the suspension and decide whether to hold a disciplinary hearing to determine whether or not to order further sanctions against the student, which may include expelling the student. In making its decision, the board shall consider the best interests of the school district, which shall include what is best to protect and ensure the safety of the school employees and students from the student committing the assault.

A student shall not be suspended or expelled pursuant to this section if the suspension or expulsion would violate the federal Individuals with Disabilities Education Act.

3. Notwithstanding section 282.6, if a student has been expelled or suspended from school and has not met the conditions of the expulsion or suspension, the student shall not be permitted to enroll in a school district until the board of directors of the school district approves, by a majority vote, the enrollment of the student.

[C73, §1735, 1756; C97, §2782; C24, 27, 31, 35, 39, §**4271;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.4]

89 Acts, ch 210, §10; 94 Acts, ch 1131, §7; 94 Acts, ch 1199, §66; 95 Acts, ch 218, §27; 96 Acts, ch 1215, §51

282.5 Readmission of student.

When a student is suspended by a teacher, principal, or superintendent, pursuant to section 282.4, the student may be readmitted by the teacher, principal, or superintendent when the conditions of the suspension have been met, but when expelled by the board the student may be readmitted only by the board or in the manner prescribed by the board.

[R60, §2054; C73, §1735, 1756; C97, §2782; C24, 27, 31, 35, 39, §**4272;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.5]

94 Acts, ch 1091, §23; 95 Acts, ch 218, §28; 96 Acts, ch 1215, §52

282.6 Tuition.

Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years and to resident veterans as defined in section 35.1, as many months after becoming twenty-one years of age as they have spent in the armed forces of the United States before they became twenty-one, provided, however, fees may be charged covering instructional costs for a summer school or drivers education program. The board of education may, in a hardship case, exempt a student from payment of the above fees. Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by the person.

This section shall not apply to tuition authorized by chapter 260C.

For purposes of this section, *"resident"* means a person who is physically present in a district, whose residence has not been established in another district by operation of law, and who meets any of the following conditions:

1. Is in the district for the purpose of making a home and not solely for school purposes.

2. Meets the definitional requirements of the term *"homeless individual"* under 42 U.S.C. § 11302(a) and (c).

3. Lives in a residential correctional facility in the district.

[C73, §1724, 1727; C97, §2773; S13, §2773; C24, 27, 31, 35, 39, §**4273;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.6]

89 Acts, ch 210, §11; 92 Acts, ch 1135, §2; 99 Acts, ch 180, §14

282.7 Attending in another corporation — payment.

1. The board of directors of a school district by record action may discontinue any or all of grades seven through twelve and negotiate an agreement for attendance of the pupils enrolled in those grades in the schools of one or more contiguous school districts having accredited school systems. If the board designates more than one contiguous district for attendance of its pupils, the board shall draw boundary lines within the school district for determining the school districts of attendance of the pupils. The portion of a district so designated shall be contiguous to the accredited school district designated for attendance. Only entire grades may be discontinued under this subsection and if a grade is discontinued, all higher grades in that district shall also be discontinued. A school district that has discontinued one or more grades under this subsection has complied with the requirements of section 275.1 relating to the maintenance of kindergarten and twelve grades. A pupil who graduates from another school district under this subsection shall receive a diploma from the receiving district. The boards of directors entering into an agreement under this section shall provide for sharing the costs and expenses as provided in sections 282.10 through 282.12. The agreement shall provide for transportation and authority and liability of the affected boards.

2. If the vocational program offered by a school district does not meet the state board of vocational education's standards for program approval, the district shall be granted one year to meet the standards for approval. If a district chooses to waive the one-year grace period, or the district fails to meet the approval standards after one year, the director of the board of vocational education shall delegate the authority to the regional planning board established pursuant to section 258.16 to direct the district to contract with another school district or a merged area school which has an approved program, for the provision of vocational education for students of the district. The district that has waived the one-year grace period or has failed to meet the approval standards shall pay to the district or merged area school that has an approved program an amount equal to the percent of the school day in which a pupil is receiving vocational education in the approved program times the district cost per pupil of the district of residence of the pupil. The regional planning board established pursuant to section 258.16 shall contract with an approved program for delivery of vocational education in the district which has failed to meet the approval standards or has waived the one-year grace period. Transportation to and from the approved program shall be provided by the school district that has waived the one-year grace period or has failed to meet approval standards. Reasonable effort shall be made to conduct the approved program at an attendance center in the district that has failed to meet the approval standards or has waived the one-year grace period.

3. Notwithstanding sections 28E.9 and 282.8, a school district may negotiate an agreement under subsection 1 for attendance of its pupils in a school district located in a contiguous state subject to a reciprocal agreement by the two state boards in the manner provided in this subsection. Prior to negotiating an agreement with the school district in the contiguous state, the board of directors shall file a written request with the state board of education for a determination whether the school district in the contiguous state meets requirements substantially similar to those required for accredited or approved school districts in this state and the school district receives or has available services equivalent to those that would be

provided in this state by an area education agency. The school district shall also obtain approval by the department of education of the sharing proposal, before the agreement becomes effective. Six months before making the request for approval, the district shall request a feasibility study from the department of education. If the state board of this state and the corresponding state board in the contiguous state agree that the school districts of their respective states meet substantially similar requirements and have substantially similar services available to the school district, and if the Iowa department of education approves the proposed contract, the two state boards may sign a reciprocal agreement for attendance of their pupils in the school district of the other state, subject to the agreement signed between the boards of directors of the two districts. A school district that negotiates an agreement with a school district in a contiguous state under this subsection is not eligible for supplementary weighting under section 257.11 as a result of that agreement.

[C51, §1143; R60, §2024; C73, §1793; C97, §2803; C24, 27, 31, 35, 39, §**4274;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.7]

83 Acts, ch 31, §4, 5; 85 Acts, ch 212, §13; 86 Acts, ch 1245, §1484; 87 Acts, ch 224, §59; 88 Acts, ch 1263, §7; 89 Acts, ch 135, §86; 89 Acts, ch 278, §7

282.8 Attending school outside state.

The boards of directors of school districts located near the state boundaries may designate schools of equivalent standing across the state line for attendance of both elementary and high school pupils when the public school in the adjoining state is nearer than any appropriate public school in a pupil's district of residence or in Iowa. Distance shall be measured by the nearest traveled public road. Arrangements shall be subject to reciprocal agreements made between the chief state school officers of the respective states. Notwithstanding section 282.1, arrangements between districts pursuant to the reciprocal agreements made under this section shall establish tuition and transportation fees in an amount acceptable to the affected boards, but the tuition and transportation fees shall not be less than the lower average cost per pupil for the previous school year of the two affected school districts. For the purpose of this section average cost per pupil for the previous school year is determined by dividing the district's operating expenditures for the previous school year by the number of children enrolled in the district on the third Friday of September of the previous school year. A person attending school in another state shall continue to be treated as a pupil of the district of residence in the apportionment of the current school fund and the payment of state aid.

[C31, 35, §4274-c1, -c2, 4275; C39, §**4274.01, 4274.02, 4275;** C46, §282.8, 282.9, 282.17; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.8, 282.17; 81 Acts, ch 89, §1]

87 Acts, ch 4, §1

282.9 Reserved.

282.10 Whole grade sharing.

1. Whole grade sharing is a procedure used by school districts whereby all or a substantial portion of the pupils in any grade in two or more school districts share an educational program for all or a substantial portion of a school day under a written agreement pursuant to section 256.13, 280.15, or 282.7, subsection 1 or subsections 1 and 3. Whole grade sharing may either be one-way or two-way sharing.

2. One-way whole grade sharing occurs when a school district sends pupils to one or more other school districts for instruction and does not receive a substantial number of pupils from those districts in return.

3. Two-way whole grade sharing occurs when a school district sends pupils to one or more other school districts for instruction and receives a substantial number of pupils from those school districts in return.

4. A whole grade sharing agreement shall be signed by the boards of the districts involved in the agreement not later than February 1 of the school year preceding the school year for which the agreement is to take effect.

87 Acts, ch 224, §60; 88 Acts, ch 1263, §8

282.11 Procedure.

Not less than ninety days prior to signing a whole grade sharing agreement whereby all or a substantial portion of the pupils in a grade in the district will attend school in another district, the board of directors of each school district that is negotiating, extending, or renewing a sharing agreement, shall publicly announce its intent to negotiate a sharing agreement under section 21.4, subsection 1. Within thirty days of the board's public notice, a petition may be filed with the department of education requesting that a feasibility study be completed. The petition shall be signed by twenty percent of the eligible electors in the district. The director of the department of education may determine that a feasibility study conducted by the board satisfies the request, provided that the study conforms with the criteria contained in section 256.9.

Not less than thirty days prior to signing a whole grade sharing agreement whereby all or a substantial portion of the pupils in a grade in the district will attend school in another district, the board of directors of each school district that is a party to a proposed sharing agreement shall hold a public hearing at which the proposed agreement is described, and at which the parent or guardian of an affected pupil and certificated employees of the school district shall have an opportunity to

comment on the proposed agreement. Within the thirty-day period prior to the signing of the agreement, the parent or guardian of an affected pupil may request the board of directors to send the pupil to another contiguous school district. For the purposes of this section, *"affected pupils"* are those who under the whole grade sharing agreement are attending or scheduled to attend the school district specified in the agreement, other than the district of residence, during the term of the agreement. The request shall be based upon one of the following:

1. That the agreement will not meet the educational program needs of the pupil.

2. That adequate consideration was not given to geographical factors.

The board shall allow or disallow the request prior to the signing of the agreement, or the request shall be deemed granted. If the board disallows the request, the board shall indicate the reasons why the request is disallowed and shall notify the parent or guardian that the decision of the board may be appealed as provided in this section.

If the board disallows the request of a parent or guardian of an affected pupil, the parent or guardian, not later than March 1, may appeal the sending of that pupil to the school district specified in the agreement, to the state board of education. The basis for the appeal shall be the same as the basis for the request to the board. An appeal shall specify a contiguous school district to which the parent or guardian wishes to send the affected pupil. If the parent or guardian appeals, the standard of review of the appeal is a preponderance of evidence that the parent's or guardian's hardship outweighs the benefits and integrity of the sharing agreement. The state board may require the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, or may deny the appeal by the parent or guardian. If the state board requires the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, the tuition shall be equal to the tuition established in the sharing agreement. The decision of the state board is binding on the boards of directors of the school districts affected, except that the decision of the state board may be appealed by either party to the district court.

87 Acts, ch 224, §61; 88 Acts, ch 1263, §10; 93 Acts, ch 160, §16

282.12 Funding.

1. An agreement for whole grade sharing shall establish a method for determination of costs, if any, associated with the sharing agreement.

2. For one-way sharing, the sending district shall pay no less than one-half of the district cost per pupil of the sending district.

3. For two-way sharing, the costs shall be determined by mutual agreement of the boards.

4. The number of pupils participating in a whole grade sharing agreement shall be determined on the third Friday of September and third Friday of February of each year.

87 Acts, ch 224, §62

282.13 through 282.16 Reserved.

282.17 High school outside home district. Repealed by 83 Acts, ch 31, § 8.

282.18 Open enrollment.

1. It is the goal of the general assembly to permit a wide range of educational choices for children enrolled in schools in this state and to maximize ability to use those choices. It is therefore the intent that this section be construed broadly to maximize parental choice and access to educational opportunities which are not available to children because of where they live.

For the school year commencing July 1, 1989, and each succeeding school year, a parent or guardian residing in a school district may enroll the parent's or guardian's child in a public school in another school district in the manner provided in this section.

2. By January 1 of the preceding school year, the parent or guardian shall send notification to the district of residence and the receiving district, on forms prescribed by the department of education, that the parent or guardian intends to enroll the parent's or guardian's child in a public school in another school district. If a parent or guardian fails to file a notification that the parent intends to enroll the parent's or guardian's child in a public school in another district by the deadline of January 1 of the previous year, and one of the criteria defined in subsection 4 exists for the failure to meet the deadline or if the request is to enroll a child in kindergarten in a public school in another district, the parent or guardian shall be permitted to enroll the child in the other district in the same manner as if the deadline had been met.

The board of the receiving district shall enroll the pupil in a school in the receiving district for the following school year unless the receiving district does not have classroom space for the pupil. If the request is granted, the board shall transmit a copy of the form to the parent or guardian and the school district of residence within five days after board action, but not later than March 1 of the preceding school year. The parent or guardian may withdraw the request at any time prior to the start of the school year. A denial of a request by the board of a receiving district is not subject to appeal.

3. In all districts involved with voluntary or court-ordered desegregation, minority and nonminority pupil ratios shall be maintained according to the desegregation plan or order. The superintendent of a district subject to voluntary or court-ordered desegregation may deny a request for

transfer under this section if the superintendent finds that enrollment or release of a pupil will adversely affect the district's implementation of the desegregation order or plan, unless the transfer is requested by a pupil whose sibling is already participating in open enrollment to another district. If a transfer request would facilitate a voluntary or court-ordered desegregation plan, the district shall give priority to granting the request over other requests.

A parent or guardian, whose request has been denied because of a desegregation order or plan, may appeal the decision of the superintendent to the board of the district in which the request was denied. The board may either uphold or overturn the superintendent's decision. A decision of the board to uphold the denial of the request is subject to appeal to the district court in the county in which the primary business office of the district is located.

4. *a.* After January 1 of the preceding school year and until the third Friday in September of that calendar year, the parent or guardian shall send notification to the district of residence and the receiving district, on forms prescribed by the department of education, that good cause, as defined in paragraph *"b"*, exists for failure to meet the January 1 deadline. The board of the receiving district shall take action to approve the request if good cause exists. If the request is granted, the board shall transmit a copy of the form to the parent or guardian and the school district of residence within five days after board action. A denial of a request by the board of a receiving district is not subject to appeal.

b. For purposes of this section, *"good cause"* means a change in a child's residence due to a change in family residence, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship or custody proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, a change in the status of a child's resident district such as removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school, the failure of negotiations for a whole-grade sharing, reorganization, dissolution agreement or the rejection of a current whole-grade sharing agreement, or reorganization plan. If the good cause relates to a change in status of a child's school district of residence, however, action by a parent or guardian must be taken to file the notification within forty-five days of the last board action or within thirty days of the certification of the election, whichever is applicable to the circumstances.

c. If a resident district believes that a receiving district is unreasonable in approving applications submitted in accordance with this subsection, the resident district may request that the department review and take appropriate action.

5. Open enrollment applications filed after January 1 of the preceding school year that do not qualify for good cause as provided in subsection 4 shall be subject to the approval of the board of the resident district and the board of the receiving district. The parent or guardian shall send notification to the district of residence and the receiving district that the parent or guardian seeks to enroll the parent's or guardian's child in the receiving district. A decision of either board to deny an application filed under this subsection involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address is subject to appeal under section 290.1. The state board shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children.

6. A request under this section is for a period of not less than one year. If the request is for more than one year and the parent or guardian desires to have the pupil enroll in a different district, the parent or guardian may petition the current receiving district by January 1 of the previous school year for permission to enroll the pupil in a different district for a period of not less than one year. Upon receipt of such a request, the current receiving district board may act on the request to transfer to the other school district at the next regularly scheduled board meeting after the receipt of the request. The new receiving district shall enroll the pupil in a school in the district unless there is insufficient classroom space in the district or unless enrollment of the pupil would adversely affect the court-ordered or voluntary desegregation plan of the district. A denial of a request to change district enrollment within the approved period is not subject to appeal. However, a pupil who has been in attendance in another district under this section may return to the district of residence and enroll at any time, once the parent or guardian has notified the district of residence and the receiving district in writing of the decision to enroll the pupil in the district of residence.

7. A pupil participating in open enrollment shall be counted, for state school foundation aid purposes, in the pupil's district of residence. A pupil's residence, for purposes of this section, means a residence under section 282.1. The board of directors of the district of residence shall pay to the receiving district the state cost per pupil for the previous school year, plus any moneys received for the pupil as a result of the non-English speaking weighting under section 280.4, subsection 3, for the previous school year multiplied by the state cost per pupil for the previous year. The district of residence shall also transmit the phase III moneys allocated to the district for the previous year for the full-time equivalent attendance of the pupil, who is the subject of the request, to the receiving district specified in the request for transfer. If the

pupil participating in open enrollment is also an eligible pupil under chapter 261C, the receiving district shall pay the tuition reimbursement amount to an eligible postsecondary institution as provided in section 261C.6.

8. If a request filed under this section is for a child requiring special education under chapter 256B, the request to transfer to the other district shall only be granted if the receiving district maintains a special education instructional program which is appropriate to meet the child's educational needs and the enrollment of the child in the receiving district's program would not cause the size of the class in that special education instructional program in the receiving district to exceed the maximum class size in rules adopted by the state board of education for that program. For children requiring special education, the board of directors of the district of residence shall pay to the receiving district the actual costs incurred in providing the appropriate special education.

9. If a parent or guardian of a child, who is participating in open enrollment under this section, moves to a different school district during the course of either district's academic year, the child's first district of residence shall be responsible for payment of the cost per pupil plus weightings or special education costs to the receiving school district for the balance of the school year in which the move took place. The new district of residence shall be responsible for the payments during succeeding years.

If a request to transfer is due to a change in family residence, change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, and the child, who is the subject of the request, is not currently using any provision of open enrollment, the parent or guardian of the child shall have the option to have the child remain in the child's original district of residence under open enrollment with no interruption in the child's educational program. If a parent or guardian exercises this option, the child's new district of residence is not required to pay the amount calculated in subsection 7, until the start of the first full year of enrollment of the child.

Quarterly payments shall be made to the receiving district.

If the transfer of a pupil from one district to another results in a transfer from one area education agency to another, the sending district shall forward a copy of the request to the sending district's area education agency. The receiving district shall forward a copy of the request to the receiving district's area education agency. Any moneys received by the area education agency of the sending district for the pupil who is the subject of the request shall be forwarded to the receiving district's area education agency.

A district of residence may apply to the school budget review committee if a student was not included in the resident district's enrollment count during the fall of the year preceding the student's transfer under open enrollment.

10. Notwithstanding section 285.1 relating to transportation of nonresident pupils, the parent or guardian is responsible for transporting the pupil without reimbursement to and from a point on a regular school bus route of the receiving district. However, a receiving district may send school vehicles into the district of residence of the pupil using the open enrollment option under this section, for the purpose of transporting the pupil to and from school in the receiving district, if the boards of both the sending and receiving districts agree to this arrangement. If the pupil meets the economic eligibility requirements established by the department and state board of education, the sending district is responsible for providing transportation or paying the pro rata cost of the transportation to a parent or guardian for transporting the pupil to and from a point on a regular school bus route of a contiguous receiving district unless the cost of providing transportation or the pro rata cost of the transportation to a parent or guardian exceeds the average transportation cost per pupil transported for the previous school year in the district. If the cost exceeds the average transportation cost per pupil transported for the previous school year, the sending district shall only be responsible for that average per pupil amount. A sending district which provides transportation for a pupil to a contiguous receiving district under this subsection may withhold from the district cost per pupil amount, that is to be paid to the receiving district, an amount which represents the average or pro rata cost per pupil for transportation, whichever is less.

11. Every school district shall adopt a policy which defines the term *"insufficient classroom space"* for that district.

12. The board of directors of a school district subject to voluntary or court-ordered desegregation shall develop a policy for implementation of open enrollment in the district. The policy shall contain objective criteria for determining when a request would adversely impact the desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan.

13. A pupil who participates in open enrollment for purposes of attending a grade in grades ten through twelve in a school district other than the district of residence is ineligible to participate in interscholastic athletic contests and athletic competitions during the pupil's first ninety school days of enrollment in the district except that the pupil may participate immediately in an interscholastic sport if the district of residence and the other school district jointly participate in the

sport, if the sport in which the pupil wishes to participate is not offered in the district of residence, if the pupil chooses to use open enrollment to attend school in another school district because the district in which the student previously attended school was dissolved and merged with one or more contiguous school districts under section 256.11, subsection 12, if the pupil participates in open enrollment because the pupil's district of residence has entered into a whole grade sharing agreement with another district for the pupil's grade, or if the parent or guardian of the pupil participating in open enrollment is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services. A pupil who has paid tuition and attended school, or has attended school pursuant to a mutual agreement between the two districts, in a district other than the pupil's district of residence for at least one school year prior to March 10, 1989, is also eligible to participate immediately in interscholastic athletic contests and athletic competitions under this section, but only as a member of a team from the district that pupil had attended. For purposes of this subsection, *"school days of enrollment"* do not include enrollment in summer school.

14. If a pupil, for whom a request to transfer has been filed with a district, has been suspended or expelled in the district, the pupil shall not be permitted to transfer until the pupil has been reinstated in the sending district. Once the pupil has been reinstated, however, the pupil shall be permitted to transfer in the same manner as if the pupil had not been suspended or expelled by the sending district. If a pupil, for whom a request to transfer has been filed with a district, is expelled in the district, the pupil shall be permitted to transfer to a receiving district under this section if the pupil applies for and is reinstated in the sending district. However, if the pupil applies for reinstatement but is not reinstated in the sending district, the receiving district may deny the request to transfer. The decision of the receiving district is not subject to appeal.

15. If a request under this section is for transfer to a laboratory school, as described in chapter 265, the student, who is the subject of the request, shall not be included in the basic enrollment of the student's district of residence, and the laboratory school shall report the enrollment of the student directly to the department of education, unless the number of students from the district attending the laboratory school during the current school year, as a result of open enrollment under this section, exceeds the number of students enrolled in the laboratory school from that district during the 1989-1990 school year. If the number of students enrolled in the laboratory school from a district during the current year exceeds the number of students enrolled from that district during the 1989-1990 school year, those students who represent the difference between the current and the 1988-1989 school year enrollment figures shall be included in the basic enrollment of the students' districts of residence and the districts shall retain any moneys received as a result of the inclusion of the student in the district enrollment. The total number of students enrolled at a laboratory school during a school year shall not exceed six hundred seventy students. The regents institution operating the laboratory school and the board of directors of the school district in the community in which the regents institution is located shall develop a student transfer policy designed to protect and promote the quality and integrity of the teacher education program at the laboratory school, the viability of the education program of the local school district in which the regents institution is located, and to indicate the order in which and reasons why requests to transfer to a laboratory school shall be considered. A laboratory school may deny a request for transfer under the policy. A denial of a request to transfer under this paragraph is not subject to appeal under section 290.1.

16. An application for open enrollment may be granted at any time with approval of the resident and receiving districts.

17. The director of the department of education shall recommend rules to the state board of education for the orderly implementation of this section. The state board shall adopt rules as needed for the implementation of this section.

88 Acts, ch 1113, §1; 89 Acts, ch 12, §1; 89 Acts, ch 319, §81; 90 Acts, ch 1182, §1, 5; 90 Acts, ch 1233, §10; 91 Acts, ch 97, §62; 91 Acts, ch 202, §1; 92 Acts, ch 1135, §3 – 5; 92 Acts, ch 1163, §64; 93 Acts, ch 149, §1; 94 Acts, ch 1091, §24; 94 Acts, ch 1131, §8; 94 Acts, ch 1175, §10; 96 Acts, ch 1157, §1 – 3; 97 Acts, ch 23, §31, 32; 2002 Acts, ch 1129, §4; 2002 Acts, ch 1140, §17 – 23

Subsections 2 and 3 amended
Subsections 4 and 5 stricken and rewritten
Subsections 6, 7, and 14 amended
Subsection 16 stricken and rewritten
Subsection 18 stricken

282.19 Child living in foster care facility.

A child who is living in a licensed child foster care facility as defined in section 237.1, or in a facility that provides residential treatment as *"facility"* is defined in section 125.2, which is located in a school district other than the school district in which the child resided before receiving foster care may enroll in and attend an accredited school in the school district in which the child is living. The instructional costs for students who do not require special education shall be paid as provided in section 282.31, subsection 1, paragraph *"b"* or for students who require special education shall be paid as provided in section 282.31, subsections 2 or 3.

[C24, 27, 31, 35, §4283; C39, §**4275.1, 4283, 4283.01;** C46, 50, 54, 58, 62, §282.18, 282.22,

282.23; C66, 71, 73, 75, 77, 79, 81, §282.18, 282.22, 282.23, 282.25; 81 Acts, ch 90, §1]

85 Acts, ch 212, §21; 86 Acts, ch 1244, §34; 86 Acts, ch 1245, §1485; 87 Acts, ch 233, §480; 89 Acts, ch 319, §74

282.20 Tuition fees — payment.

The school corporation in which the student resides shall pay from the general fund to the secretary of the corporation in which the student is permitted to enroll, a tuition fee as prescribed in section 282.24.

It shall be unlawful for any school district to rebate to any pupils or their parents, directly or indirectly, any portion of the tuition collected or to be collected or to authorize or permit such pupils to receive at the expense of the district, directly or indirectly, any special compensation, benefit, privilege, or other thing of value that is not and cannot legally be made available to all other pupils enrolled in its schools. Any superintendent or board members responsible for such unlawful act shall each be personally liable to a fine of not to exceed one hundred dollars. Action to recover such penalty or action to enjoin such unlawful act may be instituted by the board of any school district or by a taxpayer in any school district.

On or before February 15 and June 15 of each year the secretary of the creditor district shall deliver to the secretary of the debtor district an itemized statement of such tuition fees.

[SS15, §2733-1a; C24, 27, 31, 35, 39, §**4277;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.20]

83 Acts, ch 31, §6

282.21 Collection of tuition fees.

If payment is not made, the board of the creditor corporation shall file with the auditor of the county of the pupil's residence a statement certified by its president specifying the amount due for tuition, and the time for which the same is claimed. The auditor shall transmit to the county treasurer an order directing the county treasurer to transfer the amount of such account from the funds of the debtor corporation to the creditor corporation, and the county treasurer shall pay the same accordingly.

[SS15, §2733-1a; C24, 27, 31, 35, 39, §**4278;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §282.21]

282.22 and 282.23 Repealed by 81 Acts, ch 90, § 2. See § 282.19.

282.24 Tuition fees established.

1. The maximum tuition fee that may be charged for elementary and high school students residing within another school district or corporation except students attending school in another district under section 282.7, subsection 1, or subsections 1 and 3, is the district cost per pupil of the receiving district as computed in section 257.10.

A school corporation which owns facilities used as attendance centers for students shall maintain an itemized statement of the appraised value of all buildings owned by the school corporation. Beginning July 1, 1976, the appraisal shall be updated at least one time every five years.

The director of the department of education shall, after July 1 but before September 1 of each year, notify every school in the state, affected by this section, what the computed maximum tuition rate shall be for the ensuing year.

This subsection does not prevent the corporation or district in which the student resides from paying a tuition in excess of the maximum computed tuition rates, if the actual per pupil cost of the preceding year so warrants, but the receiving district or corporation shall not demand more than the maximum rate.

2. For the purpose of this section, high school means a school which commences with either grade nine or grade ten as determined by the board of directors of the district, and junior high school means the remaining grades commencing with grade seven.

[C35, §4233-e3; C39, §**4233.3;** C46, §279.18; C50, 54, 58, 62, 66, 71, 73, 75, §279.18, 282.24; C77, 79, 81, §282.24]

83 Acts, ch 31, §7; 85 Acts, ch 212, §21; 87 Acts, ch 224, §63; 88 Acts, ch 1263, §9; 89 Acts, ch 135, §87

282.25 Repealed by 81 Acts, ch 90, § 2. See § 282.19.

282.26 High school students attending advanced courses.

The board of any community college may, by mutual agreement with any college or university, permit any specially qualified high school student to attend advanced courses of academic instruction at the college or university.

The state board of regents and the state board of education may by rule permit such students to attend any institution of higher learning under their jurisdiction. Credit earned in any such course at a college or university may be applied toward credit for high school graduation. Public school funds shall not be expended for payment of tuition or other costs for such attendance at a college or university, unless the payment is expressly permitted or required by law.

The foregoing provisions shall also apply to colleges and universities in adjacent states when the institutions are located nearer to the homes or schools of the school district than the closest college or university within the state.

[C66, 71, 73, 75, 77, 79, 81, §282.26]

90 Acts, ch 1233, §11; 90 Acts, ch 1253, §89

282.27 Children living in psychiatric hospitals or institutions — payment.

The public school district in which is located a psychiatric unit of a hospital licensed under chapter 135B or a psychiatric medical institution for children licensed under chapter 135H, which is not operated by the state, shall be responsible for the provision of educational services to children residing in the unit or institution. Children residing in the unit or institution shall be included in the basic enrollment of their districts of residence, as defined in section 282.31, subsection 4.

The board of directors of each district of residence shall pay to the school district in which is located such psychiatric unit or institution, for the provision of educational services to the child, a portion of the district of residence's district cost per pupil for each of such children based upon the proportion that the time each child is provided educational services while in such unit or institution is to the total time for which the child is provided educational services during a normal school year.

92 Acts, ch 1230, §10

282.28 Children at Eldora and Toledo.

Annually, the area education agency in which the state training school and the Iowa juvenile home are located and the department of human services on behalf of the training school and juvenile home shall submit an annual joint application by January 1 for the next succeeding school year to the department of education describing the proposed special education instructional and support programs and service improvements for the training school and juvenile home. The department of education shall review and approve or modify the program and proposed budget by February 1 and shall notify the department of revenue and finance, the area education agency, and the department of human services of the approved budget amount. The moneys for the approved budget shall supplement and not supplant moneys equal to the moneys expended for education for the fiscal year beginning July 1, 1986, by the department of human services. The moneys for the approved budget shall be used to ensure that the training school and juvenile home comply with appropriate administrative rules relating to special education adopted by the department of education. Beginning with the fiscal year commencing July 1, 1990, and ending June 30, 1991, and in succeeding years, the department of revenue and finance shall pay the approved budget amount for an area education agency in monthly installments beginning on September 15 and ending on June 15 of the next succeeding school year. The installments shall be as nearly equal as possible as determined by the department of management, taking into consideration the relative budget and cash position of the state's resources. The department of revenue and finance shall transfer the approved budget amount for an area education agency from the moneys appropriated under section 257.16 and make the payment to the area education agency.

The area education agency shall submit an accounting to the department of education by August 1 following the school year for the actual costs of the special education programs and services provided at the training school and juvenile home. The department shall review and approve or modify the accounting by September 1 and shall notify the department of revenue and finance of the approved accounting amount. The department of revenue and finance shall adjust the September payment to the area education agency for the next fiscal year by the difference between the amount of the proposed budget paid to the area education agency and the amount of the actual costs as reflected in the area education agency's accounting. Any amount paid by the department of revenue and finance shall be deducted monthly from the state foundation aid paid under section 257.16 during that fiscal year to all school districts in the state. The portion of the total amount of the approved accounting amount that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year.

87 Acts, ch 233, §481; 90 Acts, ch 1272, §71; 92 Acts, ch 1163, §65

282.29 Children placed by district court.

Notwithstanding section 282.31, subsection 1, a child who has been identified as requiring special education, who has been placed in a facility or home by the district court, and for whom parental rights have been terminated by the district court, shall be provided special education programs and services on the same basis as the programs and services are provided for children requiring special education who are residents of the school district in which the child has been placed. The special education instructional costs shall be paid as provided in section 282.31, subsection 2 or 3.

87 Acts, ch 233, §482

282.30 Special programs.

1. *a.* An area education agency shall provide or make provision for an appropriate educational program for each child living in the following types of facilities located within its boundaries:

(1) An approved or licensed shelter care home, as defined in section 232.2, subsection 34.

(2) An approved juvenile detention home, as defined in section 232.2, subsection 32.

b. The area education agency shall provide the educational program by any one of, but not limited to, the following:

(1) Providing for the enrollment of the child in the district of residence of the child, subject to the

approval of the district in which the child is living.

(2) Cooperating with the district of residence of the child and obtaining the course of study and textbooks of the child for use in the special facility into which the child has been placed.

(3) Providing for the enrollment of the child in the district in which the child is living, subject to the approval of the district in which the child is living.

c. An area education agency shall not provide educational services to a facility specified in paragraph *"a"* unless the facility makes a request for educational services to the area education agency by either of the following dates:

(1) December 1 of the school year prior to the beginning of the school year for which the services are being requested.

(2) Ninety days prior to the beginning of the time for which the services are being requested if the facility is a newly established facility.

2. The area education agency where the child is living, the school district of residence, the other appropriate area education agency or agencies, and other appropriate agencies involved with the care or placement of the child shall cooperate with the school district where the child is living in sharing educational information, textbooks, curriculum, assignments, and materials in order to plan and to provide for the appropriate education of the child living in such facility specified in subsection 1.

87 Acts, ch 233, §483; 2000 Acts, ch 1121, §1, 2

282.31 Funding for special programs.

1. *a.* A child who lives in a facility pursuant to section 282.30, subsection 1, paragraph *"a"*, and who is not enrolled in the educational program of the district of residence of the child, shall receive appropriate educational services. The area education agency shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the department of revenue and finance and the area education agency of its action by February 1. The department of revenue and finance shall pay the approved budget amount for an area education agency in monthly installments beginning September 15 and ending June 15 of the next succeeding school year. The installments shall be as nearly equal as possible as determined by the department of management, taking into consideration the relative budget and cash position of the state's resources. The department of revenue and finance shall transfer the approved budget amount for an area education agency from the moneys appropriated under section 257.16 and make the payment to the area education agency. The area education agency shall submit an accounting for the actual cost of the program to the department of education by August 1 of the following school year. The department shall review and approve or modify all expenditures incurred in compliance with the guidelines pursuant to section 256.7, subsection 10, and shall notify the department of revenue and finance of the approved accounting amount. The approved accounting amount shall be compared with any amounts paid by the department of revenue and finance to the area education agency and any differences added to or subtracted from the October payment made under this paragraph for the next school year. Any amount paid by the department of revenue and finance shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved budget that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year in which the deduction is made.

b. A child who lives in a facility or home pursuant to section 282.19, and who does not require special education and who is not enrolled in the educational program of the district of residence of the child, shall be included in the basic enrollment of the school district in which the facility or home is located.

However, on June 30 of a school year, if the board of directors of a school district determines that the number of children under this paragraph who were counted in the basic enrollment of the school district on the third Friday of September of that school year is fewer than the sum of the number of months all children were enrolled in the school district under this paragraph during the school year divided by nine, the secretary of the school district may submit a claim to the department of education by August 1 following the school year for an amount equal to the district cost per pupil of the district for the previous school year multiplied by the difference between the number of children counted and the number of children calculated by the number of months of enrollment. The amount of the claim shall be paid by the department of revenue and finance to the school district by October 1. The department of revenue and finance shall transfer the total amount of the approved claim of a school district from the moneys appropriated under section 257.16 and the amount paid shall be deducted monthly from the state foundation aid paid to all school districts in the state during the remainder of the subsequent fiscal year in the manner provided in paragraph *"a"*.

2. *a.* The actual special education instructional costs incurred for a child who lives in a facility pursuant to section 282.19 or for a child who is placed in a facility or home pursuant to section 282.29, who requires special education and who is not enrolled in the educational program of the dis-

trict of residence of the child but who receives an educational program from the district in which the facility or home is located, shall be paid by the district of residence of the child to the district in which the facility or home is located, and the costs shall include the cost of transportation.

b. A child shall not be denied special education programs and services because of a dispute over the determination of district of residence of the child. The director of the department of education shall determine the district of residence when a dispute arises regarding the determination of the district of residence for a child who requires special education pursuant to this subsection.

3. The actual special education instructional costs, including transportation, for a child who requires special education shall be paid by the department of revenue and finance to the school district in which the facility or home is located, only when a district of residence cannot be determined, and the child was not included in the weighted enrollment of any district pursuant to section 256B.9, and the payment pursuant to subsection 2, paragraph *"a"*, was not made by any district. The district shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the district by February 1. The district shall submit a claim by August 1 following the school year for the actual cost of the program. The department shall review and approve or modify the claim and shall notify the department of revenue and finance of the approved claim amount by September 1. The total amount of the approved claim shall be paid by the department of revenue and finance to the school district by October 1. The total amount paid by the department of revenue and finance shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved claims that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for the budget year in which the deduction is made. The department of revenue and finance shall transfer the total amount of the approved claims from moneys appropriated under section 257.16 for payment to the school district.

4. For purposes of this section, *"district of residence"* means the school district in which the parent or legal guardian of the child resides or the district in which the district court is located if the district court is the guardian of the child.

5. Programs may be provided during the summer and funded under this section if the school district or area education agency determines a valid educational reason to do so.

87 Acts, ch 233, §484; 88 Acts, ch 1284, §48; 90 Acts, ch 1272, §72; 92 Acts, ch 1163, §66; 95 Acts, ch 214, §6, 7

282.32 Appeal.

An area education agency or local school district may appeal a decision made pursuant to section 282.28 or 282.31 to the state board of education. The decision of the state board is final.

87 Acts, ch 233, §485

CHAPTER 283

ACCEPTANCE AND DISTRIBUTION OF FEDERAL FUNDS

283.1 Federal funds accepted.
283.2 Transferred to §18.15.

283.1 Federal funds accepted.

The director of the department of education is the *"state educational authority"* for the purpose of accepting and administering funds appropriated by Congress for educational purposes and the funds shall be deposited with the treasurer of state and disbursed through the department of revenue and finance on vouchers audited as provided by law. When state matching funds are required as a condition to the acceptance of federal funds, the director of the department of education may make expenditures for matching only from funds provided by the legislature for that purpose. However, when federal funds may be matched with expenditures from funds appropriated for the general operation of the department of education, this may be done with the approval of the legislative council.

[C39, §**4283.02 – 4283.08, 4283.10;** C46, 50, 54, 58, §283.1 – 283.7, 283.9; C62, 66, 71, 73, 75, 77, 79, 81, §283.1]

84 Acts, ch 1067, §29; 86 Acts, ch 1245, §1487

283.2 Transferred to § 18.15.

CHAPTER 283A

SCHOOL MEAL PROGRAMS

283A.1 Definitions.
283A.2 School lunch and breakfast programs.
283A.3 Expenditure of federal funds.
283A.4 Administration of program.
283A.5 Accounts, records, reports, and operations.
283A.6 Repealed by 73 Acts, ch 10, §7.
283A.7 Federal benefits accepted.
283A.8 Use of school meal facilities by senior citizens.
283A.9 Building for school meal facility.
283A.10 School breakfast or lunch in nonpublic schools.

283A.1 Definitions.

For the purpose of this chapter:

1. *"Nutritionally adequate meal"* means a lunch or breakfast which meets the guidelines established by the department of education.

2. *"School"* means a public school of high school grade or under.

3. *"School board"* means a board of school directors regularly elected by the registered voters of a school corporation or district of the state of Iowa.

4. *"School breakfast or lunch program"* means a program under which breakfasts or lunches are served by any public school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §283A.1]
90 Acts, ch 1152, §2; 94 Acts, ch 1169, §58; 94 Acts, ch 1193, §23

283A.2 School lunch and breakfast programs.

1. School boards may use gifts, funds disbursed to them under the provisions of this chapter, funds received from sale of school breakfasts or lunches, and any other funds legally available for the purpose of operating a school breakfast or lunch program.

2. A school district shall operate or provide for the operation of lunch programs at all attendance centers in the district. A school district may operate or provide for the operation of school breakfast programs at all attendance centers in the district, or provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program. The programs shall provide students with nutritionally adequate meals and shall be operated in compliance with the rules of the state board of education and pertinent federal law and regulation. The school lunch program shall be provided for all students in each district who attend public school four or more hours each school day and wish to participate in a school lunch program. School districts may provide school breakfast and lunch programs for other students.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §283A.2]
90 Acts, ch 1152, §3; 94 Acts, ch 1193, §24, 36, 38; 99 Acts, ch 147, §1, 2; 2000 Acts, ch 1223, §32; 2002 Acts, ch 1140, §24, 25

Subsection 2, paragraph a amended and redesignated as an unnumbered paragraph
Subsection 2, paragraphs b and c stricken

283A.3 Expenditure of federal funds.

The director of the department of education shall accept and direct the disbursement of funds appropriated by any Act of Congress and appropriated to the state of Iowa for use in connection with school breakfast or lunch programs. The director shall deposit the funds with the treasurer of the state of Iowa, who shall make disbursements upon the direction of the director.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §283A.3]
85 Acts, ch 212, §21; 94 Acts, ch 1193, §25

283A.4 Administration of program.

The director of the department of education may enter into agreements with any agency of the federal government, with any school board, or with any other agency or person, adopt rules, employ personnel, and take other action as the director may deem necessary to provide for the establishment, maintenance, operation, and expansion of any school breakfast or lunch program, and to direct the disbursement of federal and state funds, in accordance with any applicable provisions of federal or state law. The director may give technical advice and assistance to any school board in connection with the establishment and operation of any school breakfast or lunch program and may assist in training personnel engaged in the operation of the program. The director of the department of education and any school board may accept any gift for use in connection with any school breakfast or lunch program.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §283A.4]
85 Acts, ch 212, §21, 22; 94 Acts, ch 1193, §26

283A.5 Accounts, records, reports, and operations.

The director of the department of education shall adopt rules for the keeping of accounts and records and the making of reports by or under the supervision of school boards. The accounts and records shall at all times be available for inspection and audit by authorized officials and shall be preserved for such period of time, not in excess of five years, as the director may lawfully prescribe. The director shall conduct or cause to be conducted such audits and inspections with respect to school breakfast or lunch programs as may be necessary to determine whether its agreement with school boards and rules adopted pursuant to this chapter are being complied with, and to insure that school breakfast or lunch programs are effectively administered and nutritionally adequate meals are served.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §283A.5]

85 Acts, ch 212, §21; 90 Acts, ch 1152, §4; 94 Acts, ch 1193, §27

283A.6 Repealed by 73 Acts, ch 10, § 7.

283A.7 Federal benefits accepted.

The provisions of the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751 – 1785, and the benefit of all funds appropriated under the Acts, are accepted by the state of Iowa.

[C71, 73, 75, 77, 79, 81, §283A.7]

94 Acts, ch 1193, §28

283A.8 Use of school meal facilities by senior citizens.

Boards of directors of school corporations may authorize the use by senior citizen organizations of school meal facilities subject to reasonable rules and regulations of the board. Such use shall not interfere with the use of the facilities for public school purposes. The board may charge for such use an amount not to exceed the cost to the district.

[C71, 73, 75, 77, 79, 81, §283A.8]

94 Acts, ch 1193, §29

283A.9 Building for school meal facility.

School districts may purchase, erect, or otherwise acquire a building for use as a school meal facility, and equip a building for that use, and pay for the acquisition or equipping from funds available in the physical plant and equipment levy fund, subject to the terms of section 298.2.

[C75, 77, 79, 81, §283A.9]

89 Acts, ch 135, §91; 94 Acts, ch 1029, §20; 94 Acts, ch 1193, §30

283A.10 School breakfast or lunch in nonpublic schools.

The authorities in charge of nonpublic schools may operate or provide for the operation of school breakfast or lunch programs in schools under their jurisdiction and may use funds appropriated to them by the general assembly, gifts, funds received from sale of school breakfasts or lunches under such programs, and any other funds available to the nonpublic school. However, school breakfast or lunch programs shall not be required in nonpublic schools. The department of education shall direct the disbursement of state funds to nonpublic schools for school breakfast or lunch programs in the same manner as state funds are disbursed to public schools. If a nonpublic school receives state funds for the operation of a school breakfast or lunch program, meals served under the program shall be nutritionally adequate meals, as defined in section 283A.1.

[C75, 77, 79, 81, §283A.10]

90 Acts, ch 1152, §5; 94 Acts, ch 1193, §31

CHAPTER 284

TEACHER PERFORMANCE, COMPENSATION, AND CAREER DEVELOPMENT

Legislative intent; 2001 Acts, ch 161, §1

284.1 Student achievement and teacher quality program.
284.2 Definitions.
284.3 Iowa teaching standards.
284.4 Participation.
284.5 Beginning teacher mentoring and induction program.
284.6 Teacher career development.
284.7 Iowa teacher career path.
284.8 Performance review requirements for teachers.
284.9 Review panel.
284.10 Evaluator training program.
284.11 Pilot program for team-based variable pay for student achievement.
284.12 Reports — rules.
284.13 State program allocation.

284.1 Student achievement and teacher quality program.

A student achievement and teacher quality program is established to promote high student achievement. The program shall consist of the following four major elements:

1. Mentoring and induction programs that provide support for beginning teachers in accordance with section 284.5.

2. Career paths with compensation levels that strengthen Iowa's ability to recruit and retain teachers.

3. Professional development designed to directly support best teaching practices.

4. Team-based variable pay that provides additional compensation when student performance improves.

2001 Acts, ch 161, §2

284.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Beginning teacher"* means an individual serving under an initial provisional license, issued by the board of educational examiners under chapter 272, who is assuming a position as a classroom teacher. For purposes of the beginning teacher mentoring and induction program created pursuant to section 284.5, *"beginning teacher"* also includes preschool teachers who are licensed by the board of educational examiners under chapter 272 and are employed by a school district or area education agency.

2. *"Classroom teacher"* means an individual who holds a valid practitioner's license and who is employed under a contract issued by a board of directors under section 279.13 to provide classroom instruction to students, or as a preschool teacher.

3. *"Comprehensive evaluation"* means a summative evaluation of a beginning teacher conducted by an evaluator for purposes of determining a beginning teacher's level of competency relative to the Iowa teaching standards and for recommendation for licensure based upon models developed pursuant to section 256.9, subsection 50, and to determine whether the teacher's practice meets the school district expectations for a career teacher.

4. *"Department"* means the department of education.

5. *"Director"* means the director of the department of education.

6. *"Evaluator"* means an administrator or other practitioner who successfully completes an evaluator training program pursuant to section 284.10.

7. *"Intensive assistance"* means the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed twelve months.

8. *"Mentor"* means an individual employed by a school district or area education agency as a classroom teacher or a retired teacher who holds a valid license issued under chapter 272. The individual must have a record of four years of successful teaching practice, must be employed on a nonprobationary basis, and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers.

9. *"Performance review"* means a summative evaluation of a teacher other than a beginning teacher and used to determine whether the teacher's practice meets school district expectations and the Iowa teaching standards, and to determine whether the teacher's practice meets school district expectations for career advancement in accordance with section 284.7.

10. *"School board"* means the board of directors of a school district or a collaboration of boards of directors of school districts.

11. *"State board"* means the state board of education.

12. *"Teacher"* means an individual holding a practitioner's license issued under chapter 272, who is employed in a nonadministrative position as a teacher, librarian, media specialist, preschool teacher, or counselor by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position. *"Teacher"* includes a licensed individual employed on a less than full-time basis by a school district through a contract between the school district and an institution of higher education with a practitioner preparation program in which the licensed teacher is enrolled.

2001 Acts, ch 161, §3; 2002 Acts, ch 1152, §7, 8

Subsections 1 – 3 amended

NEW subsection 7 and former subsection 7 amended and renumbered as 8

NEW subsection 9 and former subsections 8 – 10 renumbered as 10 – 12

Subsection 12 amended

284.3 Iowa teaching standards.

1. For purposes of this chapter and for developing teacher evaluation criteria under chapter 279, the Iowa teaching standards are as follows:

a. Demonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals.

b. Demonstrates competence in content knowledge appropriate to the teaching position.

c. Demonstrates competence in planning and preparing for instruction.

d. Uses strategies to deliver instruction that meets the multiple learning needs of students.

e. Uses a variety of methods to monitor stu-

dent learning.

f. Demonstrates competence in classroom management.

g. Engages in professional growth.

h. Fulfills professional responsibilities established by the school district.

2. A school board shall provide for the following:

a. By July 1, 2002, for purposes of comprehensive evaluations for beginning teachers required to allow beginning teachers to progress to career teachers, standards and criteria that are the Iowa teaching standards specified in subsection 1 and the model criteria for the Iowa teaching standards developed by the department in accordance with section 256.9, subsection 50. These standards and criteria shall be set forth in an instrument provided by the department. The comprehensive evaluation and instrument are not subject to negotiations or grievance procedures pursuant to chapter 20 or determinations made by the board of directors under section 279.14. A local school board and its certified bargaining representative may negotiate, pursuant to chapter 20, evaluation and grievance procedures for beginning teachers that are not in conflict with this chapter. If, in accordance with section 279.19, a beginning teacher appeals the determination of a school board to an adjudicator under section 279.17, the adjudicator selected shall have successfully completed training related to the Iowa teacher standards, the model criteria adopted by the state board of education in accordance with subsection 3, as enacted by this Act, and any additional training required under rules adopted by the public employment relations board in cooperation with the state board of education.

b. By July 1, 2004, for purposes of performance reviews for teachers other than beginning teachers, evaluations that contain, at a minimum, the Iowa teaching standards specified in subsection 1, as well as the model criteria for the Iowa teaching standards developed by the department in accordance with section 256.9, subsection 50. A local school board and its certified bargaining representative may negotiate, pursuant to chapter 20, additional teaching standards and criteria. A local school board and its certified bargaining representative may negotiate, pursuant to chapter 20, evaluation and grievance procedures for teachers other than beginning teachers that are not in conflict with this chapter.

3. The state board shall adopt by rule pursuant to chapter 17A the model criteria developed by the department in accordance with section 256.9, subsection 50.

2001 Acts, ch 161, §4; 2002 Acts, ch 1152, §9, 10
Subsection 2 stricken and rewritten
NEW subsection 3

284.4 Participation.

1. A school district is eligible to receive moneys appropriated for purposes specified in this chapter if the school board applies to the department to participate in the student achievement and teacher quality program and submits a written statement declaring the school district's willingness to do all of the following:

a. Commit and expend local moneys to improve student achievement and teacher quality.

b. Implement a beginning teacher mentoring and induction program as provided in this chapter.

c. Provide, beginning in the fourth year of participation, the equivalent of two additional contract days, outside of instruction time, than were provided in the school year preceding the first year of participation, to provide additional time for teacher career development that aligns with student learning and teacher development needs, including the integration of technology into curriculum development, in order to achieve attendance center and district-wide student achievement goals outlined in the district comprehensive school improvement plan. School districts are encouraged to develop strategies for restructuring the school calendar to provide for the most effective professional development, evaluate their current career development alignment with their student achievement goals and research-based instructional strategies, and implement district career development plans. A school district that provides the equivalent of ten or more contract days for career development is exempt from this paragraph.

d. Adopt a teacher career development program in accordance with this chapter.

e. Adopt a teacher evaluation plan that, at minimum, requires a performance review of teachers in the participating district at least once every three years based upon the Iowa teaching standards and individual career development plans, and requires administrators to complete evaluator training in accordance with section 284.10.

f. Adopt teacher career paths based upon demonstrated knowledge and skills in accordance with this chapter.

g. Adopt a team-based variable pay plan that rewards attendance center success upon the implementation of a statewide variable pay plan.

2. By July 1, 2002, each school district shall participate in the student achievement and teacher quality program if the general assembly appropriates moneys for purposes of the student achievement and teacher quality program established pursuant to this chapter.

2001 Acts, ch 161, §5; 2001 Acts, ch 177, §3, 15; 2002 Acts, ch 1152, §11, 12
Subsection 1, paragraphs c and e amended
Subsection 2 amended

284.5 Beginning teacher mentoring and induction program.

1. A beginning teacher mentoring and induction program is created to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of classroom teachers.

2. The state board shall adopt rules to administer this section.

3. Each school district and area education agency shall provide a beginning teacher mentoring and induction program for all classroom teachers who are beginning teachers by the school year beginning July 1, 2002, and notwithstanding section 284.4, subsection 1, a school district and an area education agency shall be eligible to receive moneys under section 284.13, subsection 1, paragraph *"c"*, for the fiscal year beginning July 1, 2002, and ending June 30, 2003, to establish a beginning teacher mentoring and induction program in accordance with this section.

4. Each participating school district and area education agency shall develop an initial beginning teacher mentoring and induction plan. A school district shall include its plan in the school district's comprehensive school improvement plan submitted pursuant to section 256.7, subsection 21. The beginning teacher mentoring and induction plan shall, at a minimum, provide for a two-year sequence of induction program content and activities to support the Iowa teaching standards and beginning teacher professional and personal needs; mentor training that includes, at a minimum, skills of classroom demonstration and coaching, and district expectations for beginning teacher competence on Iowa teaching standards; placement of mentors and beginning teachers; the process for dissolving mentor and beginning teacher partnerships; district organizational support for release time for mentors and beginning teachers to plan, provide demonstration of classroom practices, observe teaching, and provide feedback; structure for mentor selection and assignment of mentors to beginning teachers; a district facilitator; and program evaluation.

5. A beginning teacher shall be informed by the school district or the area education agency, prior to the beginning teacher's participation in a mentoring and induction program, of the criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district or area education agency.

6. Upon completion of the program, the beginning teacher shall be comprehensively evaluated to determine if the teacher meets expectations to move to the career level. The school district or area education agency that employs the beginning teacher shall recommend for an educational license a beginning teacher who is determined through a comprehensive evaluation to demonstrate competence in the Iowa teaching standards. A school district or area education agency may offer a beginning teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district determines that the teacher is likely to successfully complete the mentoring and induction program by the end of the third year of eligibility. A teacher granted a third year of eligibility shall develop a teacher's mentoring and induction program plan in accordance with this chapter and shall undergo a comprehensive evaluation at the end of the third year. The board of educational examiners shall grant a one-year extension of the beginning teacher's provisional license upon notification by the school district that the teacher will participate in a third year of the school district's program.

7. If a beginning teacher who is participating in a mentoring and induction program leaves the employ of a participating school district or area education agency prior to completion of the program, the participating school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in the program prior to the subsequent hiring.

8. If the general assembly appropriates moneys for purposes of this section, a school district or area education agency is eligible to receive state assistance for up to two years under this section for each teacher the school district or area education agency employs who was formerly employed in an accredited nonpublic school or in another state as a first-year teacher. The school district or area education agency employing the teacher shall determine the conditions and requirements of a teacher participating in a program in accordance with this subsection. The school district or area education agency that employs the teacher shall recommend the teacher for an educational license if the teacher, through a comprehensive evaluation, is determined to demonstrate competence in the Iowa teaching standards.

2001 Acts, ch 161, §6; 2001 Acts, ch 177, §4, 15; 2002 Acts, ch 1152, §13

Section amended

284.6 Teacher career development.

1. The department shall coordinate a statewide network of career development for Iowa teachers. A participating school district or career development provider that offers a career development program in accordance with section 256.9, subsection 50, shall demonstrate that the program contains the following:

a. Support that meets the career development needs of individual teachers and is aligned with the Iowa teaching standards.

b. Research-based instructional strategies

aligned with the school district's student achievement needs and the long-range improvement goals established by the district.

c. Instructional improvement components including student achievement data, analysis, theory, classroom demonstration and practice, technology integration, observation, reflection, and peer coaching.

d. An evaluation component that documents the improvement in instructional practice and the effect on student learning.

2. The department shall identify models of career development practices that produce evidence of the link between teacher training and improved student learning.

3. A participating school district shall incorporate a district career development plan into the district's comprehensive school improvement plan submitted to the department in accordance with section 256.7, subsection 21. The district career development plan shall include a description of the means by which the school district will provide access to all teachers in the district to career development programs or offerings that meet the requirements of subsection 1. The plan shall align all career development with the school district's long-range student learning goals and the Iowa teaching standards. The plan shall indicate the school district's approved career development provider or providers.

4. In cooperation with the teacher's evaluator, the career teacher employed by a participating school district shall develop an individual teacher career development plan. The evaluator shall consult with the teacher's supervisor on the development of the individual teacher career development plan. The purpose of the plan is to promote individual and group career development. The individual plan shall be based, at minimum, on the needs of the teacher, the Iowa teaching standards, and the student achievement goals of the attendance center and the school district as outlined in the comprehensive school improvement plan.

5. The teacher's evaluator shall annually meet with the teacher to review progress in meeting the goals in the teacher's individual plan. The teacher shall present to the evaluator evidence of progress. The purpose of the meeting shall be to review the teacher's progress in meeting career development goals in the plan and to review collaborative work with other staff on student achievement goals and to modify as necessary the teacher's individual plan to reflect the individual teacher's and the school district's needs and the individual's progress in meeting the goals in the plan. The teacher's supervisor shall review, modify, or accept modifications made to the teacher's individual plan.

6. School districts, a consortium of school districts, area education agencies, higher education institutions, and other public or private entities including professional associations may be approved by the state board to provide teacher career development. The career development program or offering shall, at minimum, meet the requirements of subsection 1. The state board shall adopt rules for the approval of career development providers and standards for the district career development plan.

2001 Acts, ch 161, §7; 2002 Acts, ch 1152, §14

Subsection 4 amended, divided, and renumbered as subsections 4 and 5, and former subsection 5 renumbered as 6

284.7 Iowa teacher career path.

To promote continuous improvement in Iowa's quality teaching workforce and to give Iowa teachers the opportunity for career recognition that reflects the various roles teachers play as educational leaders, an Iowa teacher career path is established for teachers employed by participating school districts. A participating school district shall use funding allocated under section 284.13, subsection 1, paragraph *"g"*, to raise teacher salaries to meet the requirements of this section. The Iowa teacher career path and salary minimums are as follows:

1. Effective July 1, 2001, the following career path levels are established and shall be implemented in accordance with this chapter:

a. Beginning teacher.

(1) A beginning teacher is a teacher who meets the following requirements:

(a) Has successfully completed an approved practitioner preparation program as defined in section 272.1.

(b) Holds a provisional teacher license issued by the board of educational examiners.

(c) Participates in the beginning teacher mentoring and induction program as provided in this chapter.

(2) The participating district shall increase the district's minimum salary for a first-year beginning teacher by at least one thousand five hundred dollars per year above the minimum salary paid to a first-year beginning teacher in the previous year unless the minimum salary for a first-year beginning teacher exceeds twenty-eight thousand dollars.

b. Career teacher.

(1) A career teacher is a teacher who meets the following requirements:

(a) Has successfully completed the beginning teacher mentoring and induction program and has successfully completed a comprehensive evaluation as provided in this chapter.

(b) Is reviewed by the school district as demonstrating the competencies of a career teacher.

(c) Holds a valid license issued by the board of educational examiners.

(d) Participates in teacher career development as set forth in this chapter and demonstrates continuous improvement in teaching.

(2) The participating district shall provide a two thousand dollar difference between the aver-

age beginning teacher salary and the minimum career teacher salary, unless the school district has a minimum career teacher salary that exceeds thirty thousand dollars.

2. It is the intent of the general assembly to establish and require the implementation of and provide for the implementation of the following additional career path levels:

a. Career II teacher.

(1) A career II teacher is a teacher who meets the requirements of subsection 1, paragraph *"b"*, has met the requirements established by the school district that employs the teacher, and is evaluated by the school district as demonstrating the competencies of a career II teacher. The teacher shall have successfully completed a comprehensive evaluation in order to be classified as a career II teacher.

(2) It is the intent of the general assembly that the participating district shall establish a minimum salary for a career II teacher that is at least five thousand dollars greater than the minimum career teacher salary. It is further intended that the district shall adopt a plan that facilitates the transition of a career teacher to a career II level.

b. Advanced teacher.

(1) An advanced teacher is a teacher who meets the following requirements:

(a) Receives the recommendation of the review panel that the teacher possesses superior teaching skills and that the teacher should be classified as an advanced teacher.

(b) Holds a valid license from the board of educational examiners.

(c) Participates in teacher career development as outlined in this chapter and demonstrates continuous improvement in teaching.

(d) Possesses the skills and qualifications to assume leadership roles.

(2) It is the intent of the general assembly that the participating district shall establish a minimum salary for an advanced teacher that is at least thirteen thousand five hundred dollars greater than the minimum career teacher salary. In conjunction with the development of the review panel pursuant to section 284.9, the department shall make recommendations to the general assembly by January 1, 2002, regarding the appropriate district-to-district recognition for advanced teachers and methods that facilitate the transition of a teacher to the advanced level.

3. A teacher shall be promoted one level at a time and a teacher promoted to the next career level shall remain at that level for at least one year before requesting promotion to the next career level.

4. If a comprehensive evaluation for a teacher is conducted in the fifth year of the teacher's status at the career level, and indicates that the teacher's practice no longer meets the standards for that level, a comprehensive evaluation shall be conducted in the next following school year. If the comprehensive evaluation establishes that the teacher's practice fails to meet the standards for that level, the teacher shall be ineligible for any additional pay increase other than a cost-of-living increase.

5. A teacher employed in a participating district shall not receive less compensation in that participating district than the teacher received in the school year preceding participation, as set forth in section 284.4 due to implementation of this chapter. A teacher who achieves national board for professional teaching standards certification and meets the requirements of section 256.44 shall continue to receive the award as specified in section 256.44 in addition to the compensation set forth in this section.

6. *a.* For the school year beginning July 1, 2002, and ending June 30, 2003, if the licensed employees of a school district or area education agency receiving funds pursuant to section 284.13, subsection 1, paragraph *"g"* or *"h"*, for purposes of this section, are organized under chapter 20 for collective bargaining purposes, the board of directors and the certified bargaining representative for the licensed employees shall mutually agree upon a formula for distributing the funds among the teachers employed by the school district or area education agency. However, the school district must comply with the salary minimums provided for in this section. The parties shall follow the negotiation and bargaining procedures specified in chapter 20 except that if the parties reach an impasse, neither impasse procedures agreed to by the parties nor sections 20.20 through 20.22 shall apply and the funds shall be paid as provided in paragraph *"b"*. Negotiations under this section are subject to the scope of negotiations specified in section 20.9. If a board of directors and the certified bargaining representative for licensed employees have not reached mutual agreement by July 15, 2002, for the distribution of funds received pursuant to section 284.13, subsection 1, paragraph *"g"* or *"h"*, paragraph *"b"* of this subsection shall apply.

b. If, once the minimum salary requirements of section 284.7 have been met by the school district or area education agency, and the school district or area education agency receiving funds pursuant to section 284.13, subsection 1, paragraph *"g"* or *"h"*, for purposes of this section, and the certified bargaining representative for the licensed employees have not reached an agreement for distribution of the funds remaining, in accordance with paragraph *"a"*, the board of directors shall divide the funds remaining among full-time teachers employed by the district or area education agency whose regular compensation is equal to or greater than the minimum career teacher salary specified in this section. The payment amount for teachers employed on less than a full-time basis shall be prorated.

c. If the licensed employees of a school district

or area education agency are not organized for collective bargaining purposes, the board of directors shall determine the method of distribution of such funds.

2001 Acts, ch 161, §8; 2001 Acts, ch 177, §5, 6, 15; 2002 Acts, ch 1152, §15, 16

Minimum teacher salary requirements for the fiscal year beginning July 1, 2002, and ending June 30, 2003; 2002 Acts, ch 1152, §22

Subsection 2, unnumbered paragraph 1 amended

Subsection 6, paragraph a amended

284.8 Performance review requirements for teachers.

1. A participating school district shall review a teacher's performance at least once every three years for purposes of assisting teachers in making continuous improvement, documenting continued competence in the Iowa teaching standards, identifying teachers in need of improvement, or to determine whether the teacher's practice meets school district expectations for career advancement in accordance with section 284.7. The review shall include, at minimum, classroom observation of the teacher, the teacher's progress, and implementation of the teacher's individual career development plan; shall include supporting documentation from other evaluators, teachers, parents, and students; and may include video portfolios as evidence of teaching practices.

2. If a supervisor or an evaluator determines, at any time, as a result of a teacher's performance that the teacher is not meeting district expectations under the Iowa teaching standards specified in section 284.3, subsection 1, paragraphs *"a"* through *"g"*, the model criteria for the Iowa teaching standards developed by the department in accordance with section 256.9, subsection 50, or any other standards or criteria established in the collective bargaining agreement, the evaluator shall, at the direction of the teacher's supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are not subject to negotiation or grievance procedures established pursuant to chapter 20. By July 1, 2004, all school districts must be prepared to offer an intensive assistance program.

3. If a teacher is denied advancement to the career II or advanced teacher level based upon a performance review, the teacher may appeal the decision to an adjudicator under the process established under section 279.17. However, the decision of the adjudicator is final.

2001 Acts, ch 161, §9; 2002 Acts, ch 1152, §17

Section stricken and rewritten

284.9 Review panel.

1. A career II teacher seeking to receive an advanced designation shall submit a portfolio of work evidence aligned with the Iowa teaching standards to a review panel established in accordance with subsection 2. A majority of the evidence in the portfolio shall be classroom-based. The review panel shall evaluate the career II teacher's portfolio to determine whether the teacher demonstrates superior teaching skills and shall make a recommendation to the board of educational examiners whether or not the teacher shall receive an advanced designation. The standards for recommendation include, but are not limited to, meeting the Iowa teaching standards at an advanced level.

2. The department shall establish up to five regional review panels consisting of five members per panel. Each panel shall include, at a minimum, a nationally board-certified teacher and a school district administrator. Panel members shall be appointed by the director and shall possess the knowledge necessary to determine the quality of the evidence submitted in an applicant's portfolio. Panel members shall serve staggered three-year terms and may be reappointed to a second term. The department shall provide support and evaluation training for panel members and convene panels as needed. Panel members shall be reimbursed for mileage expenses incurred while engaged in the performance of official duties and shall receive per diem compensation by the department.

3. To assure fairness and consistency in the evaluation process, the review panels may perform random audits of the comprehensive evaluations conducted by evaluators throughout the state, and may randomly review performance-based evaluation models developed by school districts in accordance with section 284.3, subsection 2. The review of the evaluation models shall ensure that the model is at least equivalent to the state models developed pursuant to section 256.9, subsection 50.

4. A teacher who does not receive a recommendation from a review panel may appeal that denial to an administrative law judge located in the department of inspections and appeals. The state shall not be liable for a teacher's attorney fees, costs, or damages that may result from an appeal of a review panel's decision. The state board shall adopt rules to administer this section.

2001 Acts, ch 161, §10; 2001 Acts, ch 177, §7, 15

284.10 Evaluator training program.

1. The department shall establish an evaluator training program to improve the skills of school district evaluators in making employment decisions, making recommendations for licensure, and moving teachers through a career path as established under this chapter. The department shall consult with persons representing teachers, national board-certified teachers, administrators, school boards, higher education institutions with approved practitioner and administrator preparation programs, and with persons from the private sector knowledgeable in employment evaluation

and evaluator training in order to develop standards and requirements for the program. Evaluator training programs offered pursuant to this chapter may be provided by a public or private entity. The department shall distribute a list of evaluator training program providers to each school district.

2. An administrator licensed under chapter 272 who conducts evaluations of teachers for purposes of this chapter shall complete the evaluator training program. A practitioner licensed under chapter 272 who is not an administrator may enroll in the evaluator training program. Enrollment preference shall be given to administrators. Upon successful completion, the provider shall certify that the administrator or other practitioner is qualified to conduct evaluations for employment, make recommendations for licensure, and make recommendations that a teacher is qualified to advance from one career path level to the next career path level pursuant to this chapter. Certification is for a period of five years and may be renewed.

3. Effective until July 1, 2004, a school district shall be paid, from moneys allocated pursuant to section 284.13, subsection 1, paragraph *"d"*, the amount of one thousand dollars for each individual who is licensed as a practitioner under chapter 272 on or after July 1, 2001, and who has been certified in accordance with this section. The district shall compensate the practitioner who achieves certification not less than one thousand dollars. By October 1 annually, the school district shall notify the department of education of the number of individuals who have achieved certification in accordance with this section, and shall submit any documentation requested by the department.

4. By July 1, 2003, a higher education institution approved by the state board to provide an administrator preparation program shall incorporate the evaluator training program into the program offered by the institution.

5. Beginning July 1, 2003, the board of educational examiners shall require certification as a condition of issuing or renewing an administrator's license.

6. By July 1, 2005, the director shall develop and implement an evaluator training certification renewal program for administrators and other practitioners who need to renew a certificate issued pursuant to this section.

2001 Acts, ch 161, §11, 25; 2001 Acts, ch 177, §8, 15; 2002 Acts, ch 1152, §18

Subsections 4 – 6 amended

284.11 Pilot program for team-based variable pay for student achievement.

1. It is the intent of the general assembly to create a statewide team-based variable pay program to reward individual attendance centers for improvement in student achievement. A pilot program is established to give Iowa school districts with one or more participating attendance centers the opportunity to explore and demonstrate successful methods to implement team-based variable pay. The department shall develop and administer the pilot program. Each school district approved by the department to participate in the pilot program shall administer valid and reliable standardized assessments at the beginning and end of the school year to demonstrate growth in student achievement.

2. All licensed practitioners employed at a participating attendance center that has demonstrated improvement in student achievement shall share in cash awards paid from moneys received by a school district pursuant to section 284.13, subsection 1. The school district is encouraged to extend cash awards to other staff employed at the attendance center.*

3. The principal, with the participation of a team of licensed practitioners appointed by the principal, at each participating attendance center within a school district shall annually submit district attendance center student performance goals to the school board for approval. The attendance center goals must be aligned with the school improvement goals for the district developed in accordance with section 256.7, subsection 21. The district shall determine the designation of an attendance center for purposes of this section. The attendance center student performance goals may differ from attendance center to attendance center and may contain goals and indicators in addition to the comprehensive school improvement plan. An attendance center shall demonstrate student achievement through the use of multiple measures that are valid and reliable.

4. Each participating district shall create its own design for a team-based pay plan linked to the district's comprehensive school improvement plan. The plan must include attendance center student performance goals, student performance levels, multiple indicators to determine progress toward attendance center goals, and a system for providing financial rewards. The team-based pay plan shall be approved by the local board.

5. Each district team-based pay plan shall be reviewed by the department. The department shall include a review of the locally established goals, targeted levels of improvement, assessment strategies, and financial reward system.

6. A district electing to initiate a team-based variable pay plan according to this section during the school year beginning July 1, 2001, shall notify the department of its election in writing no later than August 1, 2001. The department shall certify the school district plan by October 1, 2001.

7. The district team-based pay plan shall specify how the funding received by the district for purposes of this section is to be awarded to eligible staff in attendance centers that meet or exceed their goals. The district shall provide all attendance centers equal access to the available funds.

Moneys shall be released by the department to the district only upon certification by the school board that an attendance center has met or exceeded its goals.

8. Moneys received for purposes of this section shall not be used for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20.

2001 Acts, ch 161, §12; 2001 Acts, ch 177, §9, 10, 15

*The amendment in 2001 Acts, ch 177, §9, does not accurately reflect the language in subsection 2 as enacted in 2001 Acts, ch 161, §12; corrective legislation is pending

284.12 Reports — rules.

1. The department shall annually report the statewide progress on the following:

a. Student achievement scores in mathematics and reading at the fourth and eighth grade levels on a district-by-district basis as reported to the local communities pursuant to section 256.7, subsection 21, paragraph *"c"*.

b. Evaluator training program.

c. Team-based variable pay for student achievement.

d. Changes and improvements in the evaluation of teachers under the Iowa teaching standards.

2. The report shall be made available to the chairpersons and ranking members of the senate and house committees on education, the legislative education accountability and oversight committee, the deans of the colleges of education at approved practitioner preparation institutions in this state, the state board, the governor, and school districts by January 1. School districts shall provide information as required by the department for the compilation of the report and for accounting and auditing purposes.

3. Subject to an appropriation of sufficient funds by the general assembly, the department shall provide for a comprehensive independent evaluation of all components of the student achievement and teacher quality program and shall submit the results of the evaluation in the report submitted pursuant to subsection 2 by January 1, 2007.

4. The board of educational examiners shall compile statistical information from the results of the examinations administered pursuant to section 272.2, subsection 16. The information compiled shall identify the practitioner preparation programs from which the applicants graduated, but shall not identify applicants individually. The statistical information compiled by the board pursuant to this subsection is a public record. The board shall submit a review of the statistical information to the chairpersons and ranking members of the senate and house committees on education and the state board by December 1, 2003.

5. In developing administrative rules for consideration by the state board, the department shall consult with persons representing teachers, administrators, school boards, approved practitioner preparation institutions, other appropriate education stakeholders, and the legislative education accountability and oversight committee.

2001 Acts, ch 161, §13; 2001 Acts, ch 177, §11, 15

284.13 State program allocation.

1. For each fiscal year in which moneys are appropriated by the general assembly for purposes of the student achievement and teacher quality program, the moneys shall be allocated as follows in the following priority order:

a. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, the department shall reserve up to one million dollars of any moneys appropriated for purposes of this chapter. For each fiscal year in which moneys are appropriated by the general assembly for purposes of team-based variable pay pursuant to section 284.11, the amount of moneys allocated to school districts shall be in the proportion that the basic enrollment of a school district bears to the sum of the basic enrollments of all participating school districts for the budget year. However, the per pupil amount distributed to a school district under the pilot program shall not exceed one hundred dollars.

b. For the fiscal year beginning July 1, 2002, and ending June 30, 2003, to the department of education, the amount of one million four hundred thousand dollars for the issuance of national board certification awards in accordance with section 256.44.

c. For the fiscal year beginning July 1, 2002, and succeeding fiscal years, an amount up to four million one hundred thousand dollars for first-year and second-year beginning teachers, to the department of education for distribution to school districts for purposes of the beginning teacher mentoring and induction programs. A school district shall receive one thousand three hundred dollars per beginning teacher participating in the program. If the funds appropriated for the program are insufficient to pay mentors and school districts as provided in this paragraph, the department shall prorate the amount distributed to school districts based upon the amount appropriated. Moneys received by a school district pursuant to this paragraph shall be expended to provide each mentor with an award of five hundred dollars per semester, at a minimum, for participation in the school district's beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district.

d. For the fiscal year beginning July 1, 2002, and ending June 30, 2003, up to one million seven

hundred thousand dollars to the department of education for purposes of establishing the evaluator training program, including but not limited to the development of criteria models; an evaluation process; the training of providers; development of a provider approval process; training materials and costs; for payment to practitioners under section 284.10, subsection 3, and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district; and for subsidies to school districts for training costs. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes.

e. For the fiscal year beginning July 1, 2002, and ending June 30, 2003, up to fifty thousand dollars to the department of education for purposes of implementing the career development program requirements of section 284.6, and the review panel requirements of section 284.9. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes.

f. For each fiscal year in the fiscal period beginning July 1, 2001, and ending June 30, 2003, up to five hundred thousand dollars to the board of educational examiners for the fees and costs incurred in administering the Praxis II examination in accordance with section 272.2.

g. For each fiscal year in which funds are appropriated for purposes of this chapter, the moneys remaining after distribution as provided in paragraphs *"a"* through *"f"* and *"h"* shall be allocated to school districts in accordance with the following formula:

(1) Fifty percent of the allocation shall be in the proportion that the basic enrollment of a school district bears to the sum of the basic enrollments of all school districts in the state for the budget year.

(2) Fifty percent of the allocation shall be based upon the proportion that the number of full-time equivalent teachers employed by a school district bears to the sum of the number of full-time equivalent teachers who are employed by all school districts in the state for the base year.

h. From moneys available under paragraph *"g"*, the department shall allocate to area education agencies an amount per classroom teacher employed by an area education agency that is approximately equivalent to the average per teacher amount allocated to the districts. The average per teacher amount shall be calculated by dividing the total number of classroom teachers employed by school districts and the classroom teachers employed by area education agencies into the total amount of moneys available under paragraph *"g"*.

2. A school district that is unable to meet the provisions of section 284.7, subsection 1, with funds allocated pursuant to subsection 1, paragraph *"g"*, may request a waiver from the department to use funds appropriated under chapter 256D to meet the provisions of section 284.7, subsection 1, if the difference between the funds allocated to the school district pursuant to subsection 1, paragraph *"g"*, and the amount required to comply with section 284.7, subsection 1, is not less than ten thousand dollars. The department shall consider the average class size of the school district, the school district's actual unspent balance from the preceding year, and the school district's current financial position.

3. If a school district does not choose to participate in the student achievement and teacher quality program during the school year beginning July 1, 2001, the amount of moneys to be allocated to the school district pursuant to subsection 1, paragraph *"g"*, shall be held for the school district by the department until June 30, 2003, or until the school district participates in the program, whichever occurs earlier. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30, 2002, shall not revert but shall be available for expenditure for the following fiscal year for the purposes of this chapter.

4. Moneys received by a school district under this chapter are miscellaneous income for purposes of chapter 257 or are considered encumbered. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section.

2001 Acts, ch 177, §12, 15; 2002 Acts, ch 1152, §19, 20

Subsection 1, paragraphs b – e amended
Subsection 1, paragraph g, unnumbered paragraph 1 amended

CHAPTER 285

STATE AID FOR TRANSPORTATION

285.1 When entitled to state aid.
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285.16 "Nonpublic school" defined.

285.1 When entitled to state aid.

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

c. Children attending prekindergarten programs offered or sponsored by the district or nonpublic school and approved by the department of education or department of human services may be provided transportation services. However, transportation services provided nonpublic school children are not eligible for reimbursement under this chapter.

d. Districts are not required to maintain seating space on school buses for students who are otherwise to be provided transportation under this subsection if the students do not or will not regularly utilize the district's transportation service for extended periods during the school year. The student, or the student's parent or legal guardian if the student is less than eighteen years of age, shall be notified by the district before transportation services may be suspended, and the suspension may continue until the student, or the student's parent or legal guardian, notifies the district that regular student ridership will continue.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the governing authority of the nonpublic school in the case of nonpublic schools.

Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12.

2. Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

3. In a district where transportation by school bus is impracticable, where necessary to implement a whole grade sharing agreement under section 282.10, or where school bus service is not available, the board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. Except as provided in section 285.3, the parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident district in an amount equal to eighty dollars plus seventy-five percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the department of education.

However, a parent or guardian shall not receive reimbursement for furnishing transportation for more than three family members who attend elementary school and one family member who attends high school.

4. In all districts where unsatisfactory roads or other conditions make it advisable, the board at its discretion may require the parents or guardians of public and nonpublic school pupils to furnish transportation for their children up to two miles to connect with vehicles of transportation. The parents or guardians shall be reimbursed for such transportation by the boards of the resident districts at the rate of twenty-eight cents per mile per day, one way, per family for the distance from the pupil's residence to the bus route.

5. Where transportation by school bus is impracticable or not available or other existing conditions warrant it, arrangements may be made for use of common carriers according to uniform standards established by the director of the department of education and at a cost based upon the actual cost of service and approved by the board.

6. When the school designated for attendance of pupils is engaged in the transportation of pupils, the sending or designating school shall use these facilities and pay the pro rata cost of transportation except that a district sending pupils to another school may make other arrangements when it can be shown that such arrangements will be more efficient and economical than to use facilities of the receiving school, providing such arrangements are approved by the board of the area education agency.

7. If a local board closes either elementary or high school facilities and is approved by the board of the area education agency to operate its own transportation equipment, the full cost of transportation shall be paid by the board for all pupils

living beyond the statutory walking distance from the school designated for attendance.

8. Transportation service may be suspended upon any day or days, due to inclemency of the weather, conditions of roads, or the existence of other conditions, by the board of the school district operating the buses, when in their judgment it is deemed advisable and when the school or schools are closed to all children.

9. Distance to school or to a bus route shall in all cases be measured on the public highway only and over the most passable and safest route as determined by the area education agency board, starting in the roadway opposite the private entrance to the residence of the pupil and ending in the roadway opposite the entrance to the school grounds or designated point on bus route.

10. The board in any district providing transportation for nonresident pupils shall collect the pro rata cost of transportation from the district of pupil's residence for all properly designated pupils so transported.

11. Boards in districts operating buses may transport nonresident pupils who attend public school, kindergarten through junior college, who are not entitled to free transportation provided they collect the pro rata cost of transportation from the parents.

12. The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school buses. It shall include one-seventh of the original net cost of the bus and other items as determined and approved by the director of the department of education but no part of the capital outlay cost for school buses and transportation equipment for which the school district is reimbursed from state funds or that portion of the cost of the operation of a school bus used in transporting pupils to and from extra-curricular activities shall be included in determining the pro rata cost. In a district where, because of unusual conditions, the cost of transportation is in excess of the actual operating cost of the bus route used to furnish transportation to nonresident pupils, the board of the local district may charge a cost equal to the cost of other schools supplying such service to that area, upon receiving approval of the director of the department of education.

13. When a local board fails to pay transportation costs due to another school for transportation service rendered, the board of the creditor corporation shall file a sworn statement with the area education agency board specifying the amount due. The agency board shall check such claim and if the claim is valid shall certify to the county auditor. The auditor shall transmit to the county treasurer an order directing the county treasurer to transfer the amount of such claim from the funds of the debtor corporation to the creditor corporation and the treasurer shall pay the same accordingly.

14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils under this section. The public school district providing transportation to a nonpublic school pupil shall determine the days on which bus service is provided, which shall be based upon the days for which bus service is provided to public school pupils, and the public school district shall determine bus schedules and routes. In the case of nonpublic school pupils the term *"school designated for attendance"* means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

15. If the nonpublic school designated for attendance is located within the public school district in which the pupil is a resident, the pupil shall be transported to the nonpublic school designated for attendance as provided in this section.

16. *a.* If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence, the pupil may be transported by the district of residence to a public school or other location within the district of the pupil's residence. A public school district in which a nonpublic school is located may establish school bus collection locations within its district from which nonresident nonpublic school pupils may be transported to and from a nonpublic school located in the district. If a pupil receives such transportation, the district of the pupil's residence shall be relieved of any requirement to provide transportation.

b. As an alternative to paragraph *"a"* of this subsection, subject to section 285.9, subsection 3, where practicable, and at the option of the public school district in which a nonpublic school pupil resides, the school district may transport a nonpublic school pupil to a nonpublic school located outside the boundary lines of the public school district if the nonpublic school is located in a school district contiguous to the school district which is transporting the nonpublic school pupils, or may contract with the contiguous public school district in which a nonpublic school is located for the contiguous school district to transport the nonpublic school pupils to the nonpublic school of attendance within the boundary lines of the contiguous school district.

c. If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence and the district of residence meets the requirements of subsections 14 to 16 of this section by using subsection 17, paragraph *"c",* of this section and the district in which the nonpublic school is located is contiguous to the district of the pupil's residence and is willing to provide transportation under subsection 17, paragraph *"a"* or *"b",* of this section, the district in which the nonpublic school is located may provide transportation services, subject to section 285.9, subsection 3, and may make

the claim for reimbursement under section 285.2. The district in which the nonpublic school is located shall notify the district of the pupil's residence that it is making the claim for reimbursement, and the district of the pupil's residence shall be relieved of the requirement for providing transportation and shall not make a claim for reimbursement for those nonpublic school pupils for which a claim is filed by the district in which the nonpublic school is located.

17. The public school district may meet the requirements of subsections 14 to 16 by any of the following:

a. Transportation in a school bus operated by a public school district.

b. Contracting with private parties as provided in section 285.5. However, contracts shall not provide payment in excess of the average per pupil transportation costs of the school district for that year.

c. Utilizing the transportation reimbursement provision of subsection 3.

d. Contracting with a contiguous public school district to transport resident nonpublic school pupils the entire distance from the nonpublic pupil's residence to the nonpublic school located in the contiguous public school district or from the boundary line of the public school district to the nonpublic school.

18. The director of the department of education may review all transportation arrangements to see that they meet all legal and established uniform standard requirements.

19. Transportation authorized by this chapter is exempt from all laws of this state regulating common carriers.

20. Transportation for which the pro rata cost or other charge is collected shall not be provided outside the state of Iowa except in accordance with rules adopted by the department of education in accordance with chapter 17A. The rules shall take into account any applicable federal requirements.

21. Boards in districts operating buses may in their discretion transport senior citizens, children, persons with disabilities, and other persons and groups, who are not otherwise entitled to free transportation, and shall collect the pro rata cost of transportation. Transportation under this subsection shall not be provided when the school bus is being used to transport pupils to or from school unless the board determines that such transportation is desirable and will not interfere with or delay the transportation of pupils.

22. Notwithstanding subsection 1, paragraph *"a"*, a parent or guardian of an elementary pupil entitled to transportation pursuant to subsection 1, may request that a child care facility be designated for purposes of subsection 9 rather than the residence of the pupil. The request shall be submitted for a period of time of at least one semester and may not be submitted more than twice during a school year.

[S13, §2794-b, -c, -d, -e; SS15, §2794-a, -g; C24, 27, 31, §4179 – 4181, 4184, 4186; C35, §4179 – 4181, 4184, 4186, 4233-e5; C39, §**4179 – 4181, 4184, 4186, 4233.5;** C46, §276.26, 276.28, 276.29, 276.32, 276.34, 279.20, 285.1, 285.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.1]

85 Acts, ch 212, §21; 86 Acts, ch 1246, §135; 87 Acts, ch 6, §1; 87 Acts, ch 115, §42; 87 Acts, ch 233, §488; 88 Acts, ch 1263, §11; 93 Acts, ch 127, §4; 94 Acts, ch 1060, §1, 2; 95 Acts, ch 209, §15; 96 Acts, ch 1129, §113; 99 Acts, ch 192, §33

Open enrollment provisions require parent or guardian to pay cost of transporting pupil to receiving district's regular school bus route; §282.18

285.2 Payment of claims for nonpublic school pupil transportation.

Boards of directors of school districts shall be required to provide transportation services to nonpublic school pupils as provided in section 285.1 when the general assembly appropriates funds to the department of education for the payment of claims for transportation costs submitted by the school district.

There is appropriated from the general fund of the state to the department of education funds sufficient to pay the approved claims of public school districts for transportation services to nonpublic school pupils as provided in this section. The portion of the amount appropriated for approved claims under section 285.1, subsection 3, shall be determined under section 285.3.

The costs of providing transportation to nonpublic school pupils as provided in section 285.1 shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a local school district for transporting nonpublic school pupils shall not affect district cost limitations of chapter 257. The reimbursements provided in this section are miscellaneous income as defined in section 257.2.

Claims for reimbursement shall be made to the department of education by the public school district providing transportation or transportation reimbursement during a school year on a form prescribed by the department, and the claim shall state the services provided and the actual costs incurred. A claim shall not exceed the average transportation costs of the district per pupil transported except as otherwise provided. If transportation is provided under section 285.1, subsection 3, the amount of a claim shall be determined under section 285.3 regardless of the average transportation costs of the district per pupil transported.

Claims shall be accompanied by an affidavit of an officer of the public school district affirming the accuracy of the claim. By February 1 and on or about June 15 of each year, the department shall certify to the department of revenue and finance the amounts of approved claims to be paid, and the

department of revenue and finance shall draw warrants payable to school districts which have established claims. Claims shall be allowed where practical, and at the option of the public school district of the pupil's residence, subject to approval by the area education agency of the pupil's residence, under section 285.9, subsection 3, the public school district of the pupil's residence may transport a pupil to a school located in a contiguous public school district outside the boundary lines of the public school district of the pupil's residence. The public school district of the pupil's residence may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupils to the school of attendance within the boundary lines of the contiguous public school district. The public school district in which the pupil resides may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupil from the pupil's residence or from designated school bus collection locations to the school located within the boundary lines of the contiguous public school district, subject to the approval of the area education agency of the pupil's residence. The public school district of the pupil's residence may utilize the reimbursement provisions of section 285.1, subsection 3.

[C75, 77, 79, 81, §285.2]

84 Acts, ch 1302, §19; 86 Acts, ch 1246, §136, 137; 89 Acts, ch 135, §92; 94 Acts, ch 1181, §14, 18; 95 Acts, ch 214, §10, 11

285.3 Parental reimbursement for nonpublic school pupil transportation.

1. A parent or legal guardian of a student attending an accredited nonpublic school, who furnishes transportation for the student pursuant to section 285.1, subsection 17, paragraph *"c"*, and who meets the requirements of subsection 2 of this section, is entitled to reimbursement equal to an amount calculated under the provisions of section 285.1, subsection 3. In addition, a parent or guardian who transports one or more family members more than four miles to their nonpublic school of attendance shall be entitled to one supplemental mileage payment per family, per claim period, equal to thirteen percent of the parental reimbursement for the claim period rounded to the nearest whole dollar.

2. To qualify for parental reimbursement under subsection 1, a parent or guardian of a student attending an accredited nonpublic school who furnishes transportation for the student in accordance with this section, shall submit a notice of nonpublic school attendance to the resident public school district, notifying the district that the student is enrolled in and will attend an accredited nonpublic school during the period for which parental reimbursement is being requested. The notice shall be filed with the resident public school district not later than December 1 for the first semester claim and May 1 for the second semester claim each year. The notice shall include the parent's name and address, the name, age, and grade level of the student, and the name of the nonpublic school and its location. The resident public school district shall submit claims for reimbursement to the department of education on behalf of the parent or guardian if the parent or guardian meets the requirements of this section.

87 Acts, ch 6, §2; 2002 Acts, ch 1140, §26

Section stricken and rewritten

285.4 Pupils sent to another district.

When a board closes its elementary school facilities for lack of pupils or by action of the board, it shall, if there is a school bus service available in the area, designate for attendance the school operating the buses, provided the board of such school is willing to receive them and the facilities and curricular offerings are adequate. The board of the district where the pupils reside may with the approval of the area education agency board, subject to legal limitations and established uniform standards, designate another rural school and provide their own transportation if the transportation costs will be less than to use the established bus service.

All designations must be submitted to the area education agency board on or before July 15, for review and approval. The agency board shall after due investigation alter or change designations to make them conform to legal requirements and established uniform standards for making designations and for locating and establishing bus routes. After designations are made, they will remain the same from year to year except that on or before July 15, of each year, the rural board or parents may petition the agency board for a change of designation to another school. Appeals from the decision of the agency board on designations may be made by either the parents or board to the director of the department of education as provided in section 285.12 and section 285.13.

[C35, §4274-e1, -e3, -e4, -e6; C39, §**4274.03, 4274.05, 4274.06, 4274.08;** C46, §282.10, 282.12, 282.13, 282.15, 285.4; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.4]

85 Acts, ch 212, §21

285.5 Contracts for transportation.

1. Contracts for school bus service with private parties shall be in writing and be for the transportation of children who attend public school and children who attend nonpublic school. Such contracts shall define the route, the length of time, service contracted for, the compensation, the vehicle to be used. The contract shall prescribe the duties of the contractor and driver of the vehicles and shall provide that every person in charge of a vehicle conveying children to and from school shall be at all times subject to any rules said board shall

adopt for the protection of the children, or to govern the conduct of the persons in charge of said conveyance. Contracts may be made for a period not to exceed three years.

The contract shall provide that the contractor will sell the equipment to the board should the contractor desire to terminate the contract, provided the board should desire to purchase said equipment, the price of the equipment to be determined by an appraisal board composed of one person appointed by the school board, one appointed by the owner of the equipment, and a third selected by these two.

2. The contractor shall operate the vehicle or provide a driver who must be approved by the board. The contractor and driver shall be subject to all laws and prescribed standards for school bus drivers. Failure to comply shall constitute grounds for dismissal of the driver or cancellation of the contract if the board so desires.

3. All vehicles of transportation provided by contractor shall be inspected, approved and certified before being put into operation.

4. All contracts may be terminated by either party on a ninety-day notice.

5. The director of the department of education shall prepare a uniform contract containing provisions not in conflict with this chapter which shall be used by all schools in contracting for transportation service.

6. All contractors shall carry liability insurance in amounts and kind as provided in the official contract.

7. All contracts for transportation service and for drivers of school-owned and operated buses shall be made with someone outside the board except where no other transportation service is available, a board member may transport the member's own children.

8. Private buses other than common carriers not used exclusively in transportation of pupils while under contract to a school district shall meet all requirements for school-owned buses, as to construction and operation.

9. All bus drivers for school-owned equipment shall be under contract with the board. The director of the department of education shall prepare a uniform contract containing provision not in conflict with this chapter which shall be used by all school boards in contracting with drivers of school-owned vehicles.

[SS15, §2794-a; C24, 27, 31, 35, 39, §**4182, 4183;** C46, §276.30, 276.31; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.5]

85 Acts, ch 212, §21

285.6 Personnel — expenses.

The director of the department of education shall employ the necessary qualified personnel to implement this chapter. The appropriation provided by this chapter may be expended in part for the direction and supervision provided by the chapter which shall include salaries and all necessary traveling expense incurred by personnel in the performance of their official duties.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.6]

85 Acts, ch 212, §22; 86 Acts, ch 1245, §1488

285.7 Repealed by 67 Acts, ch 356, § 28.

285.8 Powers and duties of department.

The powers and duties of the department shall be to:

1. Exercise general supervision over the school transportation system in the state.

2. Review and establish the location of bus routes which are located in more than one area education agency when the area education agency boards of the affected area education agencies after formal action do not approve.

3. Establish uniform standards for locating and operating bus routes and for the protection of the health and safety of pupils transported.

4. Inspect or cause to be inspected all vehicles used as school buses to transport school children to determine if such vehicles meet all legal and established standards of construction and can be operated with safety, comfort, and economy. When it is determined that further use of such vehicles is dangerous to the pupils transported and to the safety and welfare of the traveling public, the department of education shall order such vehicle to be withdrawn from further use on a specified date. School buses which do not conform to the requirements of the department of education may be issued a temporary certificate of operation provided that such school buses can be operated with safety, and provided further that no such certificate shall be issued for a period in excess of one year. All equipment can be required to be altered, or safety equipment added in order to make vehicles reasonably safe for operation. New buses after initial inspection and approval shall be issued a seal of inspection. After each annual inspection a seal of inspection and approval shall be issued. Said seals shall be mounted on the lower right hand corner of the windshield.

5. Aid in the enforcement of the motor vehicle laws relating to the transportation of school children.

6. Prescribe uniform standards and regulations:

a. For the efficient operation and maintenance of school transportation equipment and for the protection of the health and safety of children transported.

b. For locating and establishing bus routes.

c. For procedures and requirements in making designations.

d. For standard of safety in construction of school transportation equipment.

e. For procedures for purchase of buses.

f. For qualification of school bus drivers.

g. As deemed necessary for the efficient administration of this chapter.

7. Review all transportation arrangements when deemed necessary and shall disapprove any arrangements that are not in conformity with the law and established standards and require the same to be altered or changed so that they do conform.

8. Conduct schools of instruction for transportation personnel as needed or requested.

9. Establish a fee for conducting school bus inspections in accordance with subsection 4 and issuing school bus driver authorizations in accordance with section 321.376, which shall not exceed the budgeted cost for conducting inspections and administering authorizations.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.8]

85 Acts, ch 212, §24; 2002 Acts, ch 1140, §27
NEW subsection 9

285.9 Powers and duties of area boards.

The powers and duties of the respective area education agency boards shall be to:

1. Enforce all laws and all rules and regulations of the department of education relating to transportation.

2. Review and approve all transportation arrangements between districts in the agency and in all districts in the agency not operating high schools. If such transportation arrangements, designations, and contracts are not in conformity to law or established uniform standards for the locating and operating of bus routes, the agency board shall, after receiving all facts, make such alterations or changes as necessary to make the arrangements, designations, and contracts conform to the legal and established requirements and shall notify local board of such action.

3. Approve all bus routes outside the boundary of the district of the school operating buses.

4. When a local board fails to make designations and other necessary arrangements for transportation as required by law, the agency board shall, after due notice to the local board, make necessary arrangements in conformity with law and established requirements. Notice shall be given to the local board of the arrangements as made. The arrangements shall be binding on the local board which shall pay the costs for service as arranged.

[C35, §4274-e1, -e2; C39, §**4274.03, 4274.04;** C46, §282.10, 282.11, 285.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.9]

285.10 Powers and duties of local boards.

The powers and duties of the local school boards shall be to:

1. Provide transportation for each resident pupil who attends public school, and each resident pupil who attends a nonpublic school, and who is entitled to transportation under the laws of this state.

2. Establish, maintain, and operate bus routes for the transportation of pupils so as to provide for the economical and efficient operation thereof without duplication of facilities, and to properly safeguard the health and safety of the pupils transported.

3. Purchase or lease buses and other transportation facilities, and maintain same, and to enter into contracts for transportation subject to any provisions of law affecting same.

4. Employ such drivers and other employees as may be necessary and prescribe their qualifications and adopt rules for their conduct.

5. Exercise any and all powers and duties relating to transportation of pupils enjoined upon them by law.

6. Shall purchase liability insurance and other insurance coverage which the board deems advisable to insure the school district, its officers, employees, and agents against liability incurred as a result of operating school buses, including but not limited to liability to pupils or other persons lawfully transported. Section 670.7 shall apply to such insurance. However, the board of directors in its discretion shall determine the insurance coverages and limits, and the school district and directors shall not be liable as a result of any such discretionary decision.

7. When a school qualifies to purchase buses, they may be purchased as follows:

a. From funds available in the general fund or in the physical plant and equipment levy fund.

b. May purchase buses and enter into contracts to pay for such buses over a five-year period as follows: one-fourth of the cost when the bus is delivered and the balance in equal annual installments, plus simple interest due. The interest rate shall be the lowest rate available and shall not exceed the rate in effect under section 74A.2. The bus shall serve as security for balance due. Competitive bids on comparable equipment shall be requested on all school bus body and chassis purchases and shall be based upon minimum construction standards established by the department of education. Separate body and chassis bids shall be requested unless the bus is constructed as an integral unit, inseparable as to body and chassis, by the manufacturer or is a used or demonstrator bus.

8. Boards in school districts which have sufficient resident pupils they are required to transport to warrant the purchase of transportation equipment may purchase buses needed to provide the transportation.

9. In the discretion of the board, furnish a school bus and services of a qualified driver to an organization of, or sponsoring activities for, senior citizens, children, persons with disabilities, or other persons and groups in this state. The board

shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver except when the bus is used for transporting pupils to and from extracurricular activities sponsored by the school. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils.

10. In the discretion of the board furnish a school bus and services of a qualified driver for transportation of persons other than pupils to activities in which pupils from the school are participants or are attending the activity or for which the school is a sponsor. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.10]

92 Acts, ch 1187, §5; 93 Acts, ch 127, §5; 94 Acts, ch 1029, §21; 96 Acts, ch 1129, §113

285.11 Bus routes — basis of operation.

The establishment and operation of bus routes and the contracting for transportation shall be based upon the following considerations:

1. Each bus route shall be planned and adjusted to utilize the normal seating capacity of each bus insofar as it is possible to do so.

2. Each bus route shall serve only those pupils living in those areas where transportation by bus is the most economical method for providing adequate transportation facilities.

3. A route shall not be extended for the purpose of accommodating pupils whose homes are nearer another bus route.

4. Special contracts for transportation of pupils entitled to transportation shall be entered into only when it is more economical to make such special provision than to provide same by regular bus route, or when by reason of physical or mental disability of the pupil such pupil cannot be transported with safety by bus.

5. The boards shall take advantage of all tax exemptions on fuel, equipment, and of such other economies as are available.

6. The use of school buses shall be restricted to transporting pupils to and from school and to and from extracurricular activities sponsored by the school when such extracurricular activity is under the direction of a qualified member of the faculty and a part of the regular school program and to transporting other persons to the extent permitted by section 285.1, subsection 1, and section 285.10, subsections 9 and 10. School employees of districts operating buses may be transported to and from school and approved activities which they are required to attend as a result of their responsibilities. Provided, however, nothing in this subsection shall prohibit the use of school buses in transporting a school teacher going to and from the teacher's school when such school is on an established school bus route and such teacher makes arrangements with the district operating such school bus.

7. No bus shall leave the public highway to receive or discharge pupils unless their safety is enhanced thereby, or the private road is maintained in the same manner as a public roadway.

8. Bus routes shall be established only to give service to properly designated pupils.

9. Bus drivers for school buses must present a certificate of physical fitness each year before being permitted to operate any vehicles transporting children to and from school.

[C39, §**4179.1;** C46, §276.27, 285.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.11]

90 Acts, ch 1230, §4; 96 Acts, ch 1129, §113

285.12 Disputes — hearings and appeals.

In the event of a disagreement between a school patron and the board of the school district, the patron if dissatisfied with the decision of the district board, may appeal to the area education agency board, notifying the secretary of the district in writing within ten days of the decision of the board and by filing an affidavit of appeal with the agency board within the ten-day period. The affidavit of appeal shall include the reasons for the appeal and points at issue. The secretary of the local board on receiving notice of appeal shall certify all papers to the agency board which shall hear the appeal within ten days of the receipt of the papers and decide it within three days of the conclusion of the hearing and shall immediately notify all parties of its decision. Either party may appeal the decision of the agency board to the director of the department of education by notifying the opposite party and the agency administrator in writing within five days after receipt of notice of the decision of the agency board and by filing with the director of the department of education an affidavit of appeal, reasons for appeal, and the facts involved in the disagreement within five days after receipt of notice of the decision of the agency board. The agency administrator shall, within ten days of receipt of the notice, file with the director all records and papers pertaining to the case, including action of the agency board. The director shall hear the appeal within fifteen days of the filing of the records in the director's office, notifying all parties and the agency administrator of the date and time of hearing. The director shall notify all parties of the decision and return all papers with a copy of the decision to the agency administrator. The decision of the director shall be subject to judicial review in accordance with chapter 17A. Pending final order made by the director, upon any appeal prosecuted to such director, the order of the agency board from which the appeal is taken shall be operative and be in full force and effect.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81,

§285.12]

85 Acts, ch 212, §21 – 23; 2001 Acts, ch 159, §15; 2002 Acts, ch 1140, §28

Section amended

285.13 Disagreements between boards.

In the event of a disagreement between the board of a school district and the board of an area education agency, the board of the school district may appeal to the director of the department of education and the procedure and times provided for in section 285.12 shall prevail in any such case. The decision of the director shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.13]

85 Acts, ch 212, §21

285.14 Nonstandard buses — penalties.

Any person who operates or permits to be operated as a school bus to transport pupils, any vehicle which does not comply with the requirements provided by law or by the rules and regulations of the department of education, or for which there is not a valid temporary certificate for operation, shall be guilty of a simple misdemeanor.

A vehicle used for an approved driver education course in which the driver education teacher transports driver education students from their residences for street or highway driving is not a school bus.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.14]

285.15 Forfeiture of reimbursement rights.

The failure of any local district to comply with the provisions of this chapter or any other laws relating to the transportation of pupils, or any rules made by the department of education under this chapter or the final decisions of the area education agency board, or the final decisions of the department of education shall during the period such failure to comply existed forfeit the rights to collect transportation costs from school or parents while operating in such illegal manner. Any superintendent, board, or board member who knowingly operates or permits to be operated any school bus transporting public school pupils in violation of any school transportation law shall be deemed guilty of a simple misdemeanor.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §285.15]

285.16 "Nonpublic school" defined.

As used in this chapter, *"nonpublic school"* means those nonpublic schools accredited by the department of education as provided in section 256.11 and nonpublic institutions which comply with state board of education standards for providing special education programs.

[C79, 81, §285.16]

87 Acts, ch 115, §43

CHAPTER 286

SUPPLEMENTARY AID TO SCHOOL DISTRICTS

Repealed by 67 Acts, ch 356, §25

CHAPTER 286A

STATE FUNDING FOR AREA SCHOOLS (NOW COMMUNITY COLLEGES)

Transferred to chapter 260D; repealed by 96 Acts, ch 1215, §59, 62; see chapter 260C

CHAPTER 287

SOCIETIES AND FRATERNITIES

287.1 Secret societies and fraternities.
287.2 Enforcement.
287.3 Suspension or dismissal.
287.4 Repealed by 76 Acts, ch 1245(4), §525.

287.1 Secret societies and fraternities.
It shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary, or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join, or become a member of, any fraternity or society wholly or partially formed from the membership of pupils attending any such schools, or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the directors of such schools.
[S13, §2782-a; C24, 27, 31, 35, 39, §**4284;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §287.1]

287.2 Enforcement.
The directors of all schools shall enforce the provisions of section 287.1 and shall have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of section 287.1.
[S13, §2782-b; C24, 27, 31, 35, 39, §**4285;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §287.2]

287.3 Suspension or dismissal.
The directors of such schools shall have full power and authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend or dismiss any pupil or pupils of such schools therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such directors, or a majority of them, such pupil or pupils are guilty of violating any of the provisions of section 287.1, or are guilty of violating any rule, rules, or regulations adopted by such directors for the purpose of governing such schools or enforcing said section.
[S13, §2782-c; C24, 27, 31, 35, 39, §**4286;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §287.3]

287.4 Repealed by 76 Acts, ch 1245(4), § 525.

CHAPTER 288

EVENING SCHOOLS

288.1 Evening schools authorized.
288.2 When establishment mandatory.
288.3 Who admitted.

288.1 Evening schools authorized.
The board of any school district may establish and maintain public evening schools as a branch of the public schools when deemed advisable for the public convenience and welfare.
[C24, 27, 31, 35, 39, §**4288;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §288.1]
Additional provision, §282.1

288.2 When establishment mandatory.
When ten or more persons over sixteen years of age residing in any school district shall, in writing, express a desire for instruction in the common branches at an evening school, the school board shall establish and maintain an evening school for such instruction for not less than two hours each evening for at least two evenings each week during the period of not less than three months of each school year.
[C24, 27, 31, 35, 39, §**4289;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §288.2]

288.3 Who admitted.
Such evening school shall be available to all persons over sixteen years of age who for any cause are unable to attend the public day schools of such school district.
[C24, 27, 31, 35, 39, §**4290;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §288.3]

CHAPTER 289

PART-TIME SCHOOLS

289.1 Authorization.
289.2 Support.
289.3 Standards — time of instruction.
289.4 District reimbursed.
289.5 Powers of state board for vocational education.
289.6 Violations.
289.7 Enforcement.

289.1 Authorization.

The board of directors in any school district situated in whole or in part in any city having a population of twelve thousand or over, in which there shall reside or be employed, or both, fifteen or more children over fourteen years of age and under sixteen years of age, who are not in regular attendance in a full-time day school and who have not graduated from a four-year approved high school, shall establish and maintain part-time schools, departments, or classes for such children. In districts situated in whole or in part in cities having less than twelve thousand population, the board may establish and maintain such schools. When such part-time schools have been established, all persons having custody of such children shall cause them to attend the same.

[C24, 27, 31, 35, 39, §**4291;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §289.1]

289.2 Support.

The board of directors may raise and expend money for the support of such part-time schools, departments, or classes in the same manner in which it is authorized to raise and expend funds for other school purposes.

[C24, 27, 31, 35, 39, §**4292;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §289.2]

289.3 Standards — time of instruction.

Such part-time schools, departments, or classes, for the attendance of children over fourteen and under sixteen years of age, shall be organized in accordance with standards established by the state board for vocational education, and shall provide for not less than eight hours of instruction per week during the length of term for which public schools are established in the district. Such part-time schools, departments, or classes shall be held between the hours of eight o'clock a.m. and six o'clock p.m.

[C24, 27, 31, 35, 39, §**4293;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §289.3]

Board for vocational education, chapter 258

289.4 District reimbursed.

Whenever any such part-time school or class shall have been approved by the state board for vocational education, the board of directors shall be entitled to reimbursement on account of expenditure made for the salaries of teachers in such part-time schools, departments, or classes from any federal and state funds appropriated in aid of vocational education, as provided in the statutes governing such appropriations.

[C24, 27, 31, 35, 39, §**4294;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §289.4]

289.5 Powers of state board for vocational education.

The state board for vocational education is hereby authorized to fix standards for the establishment of part-time schools, departments, or classes; to fix the requirements of teachers, and to approve courses of study for such part-time schools, departments, or classes.

[C24, 27, 31, 35, 39, §**4295;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §289.5]

289.6 Violations.

When such part-time school shall have been established, any parent or person in charge of such minor as defined in this chapter who shall violate the provisions of this chapter, shall be guilty of a simple misdemeanor, or any person unlawfully employing any such minor shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §**4296;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §289.6]

289.7 Enforcement.

The enforcement of this chapter shall rest with the school board in the district in which such part-time school, department, or class shall have been established, and the department of education through its inspectors and the state board for vocational education through its supervisors of vocational education, in conjunction with the area education agency administrator, are empowered to require enforcement of the same on the part of school boards.

[C24, 27, 31, 35, 39, §**4297;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §289.7]

CHAPTER 290

APPEAL FROM DECISIONS OF BOARDS OF DIRECTORS

290.1 Appeal to state board.
290.2 Notice — transcript — hearing.
290.3 Hearing — shorthand reporter — decision.
290.4 Witnesses — fees — collection.
290.5 Decision of state board — rules for appeals.
290.6 Money judgment.

290.1 Appeal to state board.

An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, or a decision or order of a board of directors under section 282.18, subsection 5, may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education; the basis of the proceedings shall be an affidavit filed with the state board by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner.

[R60, §2133 – 2135; C73, §1829 – 1831; C97, §2818; C24, 27, 31, 35, 39, §**4298;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §290.1]

87 Acts, ch 224, §64; 88 Acts, ch 1263, §12; 89 Acts, ch 12, §4; 2002 Acts, ch 1140, §29

Section amended

290.2 Notice — transcript — hearing.

The state board of education shall, within five days after the filing of such affidavit, notify the secretary of the proper school corporation in writing of the taking of such appeal, who shall, within ten days after being thus notified, file with the state board a complete certified transcript of the record and proceedings relating to the decision appealed from. Thereupon, the state board shall notify in writing all persons adversely interested of the time when and place where the matter of appeal will be heard.

[R60, §2136, 2137; C73, §1832 – 1834; C97, §2819; C24, 27, 31, 35, 39, §**4299;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §290.2]

290.3 Hearing — shorthand reporter — decision.

At the time fixed for the hearing, it shall hear testimony for either party, and may cause the same to be taken down and transcribed by a shorthand reporter, whose fees shall be fixed by the state board and be taxed as a part of the costs in the case, and it shall make such decision as may be just and equitable, which shall be final unless appealed from as hereinafter provided.

[C97, §2819; C24, 27, 31, 35, 39, §**4300;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §290.3]

290.4 Witnesses — fees — collection.

The state board of education in all matters triable before it shall have power to issue subpoenas for witnesses, which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the general fund of the proper school corporation, upon the certificate of the state board to and warrant of the secretary upon the treasurer; but if the board is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, it shall enter such findings in the record, and tax all costs to the party responsible therefor. A transcript thereof shall be filed in the office of the clerk of the district court and a judgment entered thereon by the clerk, which shall be collected as other judgments.

[C97, §2821; C24, 27, 31, 35, 39, §**4301;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §290.4]

Contempts, chapter 665
Fees for serving subpoenas, §331.655(1c)
Witness fees and mileage; §622.69 et seq.

290.5 Decision of state board — rules for appeals.

The decision of the state board shall be final. The state board may adopt rules of procedure for hearing appeals which shall include the power to delegate the actual hearing of the appeal to the director of the department of education or the director's designee, and members of the director's staff designated by the director. The record of appeal so heard shall be available to the state board and the decision recommended by the director of the department of education or the designated administrative law judge shall be approved by the state board in the manner provided in section 256.7, subsection 6.

[R60, §2139; C73, §1835; C97, §2820; C24, 27, 31, 35, 39, §**4302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §290.5]

85 Acts, ch 212, §21 – 23; 89 Acts, ch 210, §12

290.6 Money judgment.

Nothing in this chapter shall be so construed as to authorize the state board of education to render

judgment for money; neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved.

[R60, §2140; C73, §1836; C97, §2820; C24, 27, 31, 35, 39, §**4303;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §290.6]

CHAPTER 291

PRESIDENT, SECRETARY, AND TREASURER OF BOARD

291.1 President — duties.
291.2 Bonds of secretary and treasurer.
291.3 Cost of bond.
291.4 Oath.
291.5 Action on bond.
291.6 Duties of secretary.
291.7 Monthly receipts, disbursements, and balances.
291.8 Warrants.
291.9 School census. Repealed by 86 Acts, ch 1016, §8.
291.10 Reports by secretary.
291.11 Officers reported.
291.12 Duties of treasurer — payment of warrants.
291.13 General and schoolhouse funds. Repealed by 94 Acts, ch 1029, §32, effective July 1, 1995.
291.14 Financial statement.
291.15 Annual report. Repealed by 92 Acts, ch 1187, §11.

291.1 President — duties.

The president of the board of directors shall preside at all of its meetings, sign all contracts made by the board, and appear in behalf of the corporation in all actions brought by or against it, unless individually a party, in which case this duty shall be performed by the secretary. The president or the president's designee shall sign, using an original or facsimile signature, all school district warrants drawn as provided by law. The board of directors, by resolution, may designate an individual, who shall not be the secretary, to sign warrants on behalf of the president.

[C51, §1122, 1123, 1125; R60, §2039, 2040; C73, §1739, 1740; C97, §2759; C24, 27, 31, 35, 39, §**4304;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.1]

94 Acts, ch 1175, §11

291.2 Bonds of secretary and treasurer.

The secretary and treasurer, within ten days after appointment and before entering upon the duties of the office, shall execute to the school corporation a surety bond in an amount sufficient to cover current operations as determined by the board. All such bonds shall be continued to the faithful discharge of the duties of the office. The amount and sufficiency of all surety bonds shall be determined and approved by the board and shall be filed with the president. The cost of the surety bond shall be paid by the school corporation. If a single person serves as secretary and treasurer, pursuant to section 279.3 or 260C.12, only one bond is necessary for that person. The secretary and treasurer may give bond under a single bond covering other employees of the district.

[C51, §1144; R60, §2037; C73, §1731; C97, §2760; C24, 27, 31, 35, 39, §**4305;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.2; 82 Acts, ch 1012, §2, ch 1086, §2]

93 Acts, ch 127, §6

291.3 Cost of bond.

If the bond of an association or corporation as surety is furnished, the reasonable cost of such bond may be paid by the school corporation.

[C27, 31, 35, §4305-a1; C39, §**4305.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.3]

291.4 Oath.

Each shall take the oath required of civil officers, which shall be endorsed upon the bond, and shall complete the qualification within ten days.

[C97, §2760; C24, 27, 31, 35, 39, §**4306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.4]

Oath of office, §63.10

291.5 Action on bond.

In case of a breach of the bond, the president shall bring action thereon in the name of the school corporation.

[C51, §1144; R60, §2037; C73, §1731; C97, §2760; C24, 27, 31, 35, 39, §**4307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.5]

291.6 Duties of secretary.

The secretary shall:

1. *Preservation of records*. File and preserve copies of all reports made and all papers transmitted pertaining to the business of the corporation.

2. *Minutes.* Keep a complete record of all the proceedings of the meetings of the board and of all regular or special elections in the corporation in separate books.

3. *Account with treasurer.* Keep an accurate, separate account of each fund with the treasurer, charge the treasurer with all warrants and drafts drawn in the treasurer's favor, and credit the treasurer with all orders drawn on each fund.

4. *Claims.* Keep an accurate account of all expenses incurred by the corporation, and present the same to the board for audit and payment.

[C51, §1126, 1128; R60, §2041, 2042; C73, §1741, 1743; C97, §2761; S13, §2761; C24, 27, 31, 35, 39, §**4308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.6]

291.7 Monthly receipts, disbursements, and balances.

The secretary of each district shall file monthly with the board of directors a complete statement of all receipts and disbursements from the various funds during the preceding month, and also the balance remaining on hand in the various funds at the close of the period covered by the statement, which monthly statements shall be open to public inspection.

[S13, §2761; C24, 27, 31, 35, 39, §**4309;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.7]

93 Acts, ch 127, §7

291.8 Warrants.

The secretary shall draw each order on the treasurer, specify the fund on which it is drawn and the use for which the money is appropriated; countersign using an original or facsimile signature and keep a register of the order, showing the number, date, to whom drawn, the fund upon which it is drawn, the purpose and the amount; and at each regular annual meeting furnish the board with a copy of the register.

[C51, §1122, 1123, 1126; R60, §2039, 2041, 2061; C73, §1739, 1741, 1782; C97, §2762; S13, §2762; C24, 27, 31, 35, 39, §**4310;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.8]

94 Acts, ch 1175, §12

291.9 School census. Repealed by 86 Acts, ch 1016, § 8.

291.10 Reports by secretary.

The school district shall file an annual report with the director of the department of education on forms prepared for that purpose.

[C51, §1127; R60, §2046; C73, §1744, 1745; C97, §2765; S13, §2765; C24, 27, 31, 35, 39, §**4313;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.10]

84 Acts, ch 1219, §17; 85 Acts, ch 212, §21, 22; 86 Acts, ch 1016, §4, 5; 92 Acts, ch 1187, §6

291.11 Officers reported.

The secretary shall report to the director of the department of education, the county auditor, and county treasurer the name and post-office address of the president, treasurer and secretary of the board as soon as practicable after the qualification of each.

[C73, §1736; C97, §2766; C24, 27, 31, 35, 39, §**4314;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.11]

85 Acts, ch 212, §21

291.12 Duties of treasurer — payment of warrants.

The treasurer shall receive all moneys belonging to the corporation, pay the same out only upon the order of the president countersigned by the secretary, keeping an accurate account of all receipts and expenditures in a book provided for that purpose. The treasurer shall register all orders drawn and reported to the treasurer by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose and amount.

[C51, §1138 – 1140; R60, §2048 – 2050; C73, §1747 – 1750; C97, §2768; S13, §2768; C24, 27, 31, 35, 39, §**4316;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.12]

291.13 General and schoolhouse funds. Repealed by 94 Acts, ch 1029, § 32, effective July 1, 1995. See chapter 298A.

291.14 Financial statement.

The treasurer shall render a statement of the finances of the corporation whenever required by the board, and the treasurer's books shall always be open for inspection.

[C51, §1141; R60, §2051; C73, §1751; C97, §2769; S13, §2769; C24, 27, 31, 35, 39, §**4320;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §291.14]

291.15 Annual report. Repealed by 92 Acts, ch 1187, § 11.

CHAPTER 292

SCHOOL INFRASTRUCTURE PROGRAM

292.1 Definitions.
292.2 School infrastructure program.
292.3 Rules.

292.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Capacity per pupil"* means the sum of a school district's property tax infrastructure capacity per pupil and the sales tax capacity per pupil.

2. *"Committee"* means the school budget review committee established in section 257.30.

3. *"Department"* means the department of education established in section 256.1.

4. *"Fund"* means the school infrastructure fund created in section 12.82.

5. *"Local match percentage"* means a percentage equivalent to either of the following, whichever is less:

a. Fifty percent.

b. The quotient of a school district's capacity per pupil divided by the capacity per pupil of the school district at the fortieth percentile, multiplied by fifty percent, except that the percentage in this paragraph shall not be less than twenty percent.

6. *"Program"* means the school infrastructure program established in section 292.2.

7. *"Property tax infrastructure capacity per pupil"* means the sum of a school district's levies under sections 298.2 and 298.18 when the levies are imposed to the maximum extent allowable under law in the budget year divided by the school district's basic enrollment for the budget year.

8. *"Sales tax capacity per pupil"* means the estimated amount of revenues that a school district receives or would receive if a local sales and services tax for school infrastructure is imposed at one percent pursuant to section 422E.2, divided by the school district's basic enrollment for the budget year. For the budget year beginning July 1, 2000, the school district's actual enrollment shall be used in the calculation in place of the school district's basic enrollment for the budget year.

9. *"School infrastructure"* means activities initiated on or after July 1, 2000, as authorized in section 296.1 but does not include those activities related to stadiums, bus barns, a home or homes of a teacher or superintendent, procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

2000 Acts, ch 1174, §26

Contingent appropriation of funds for deposit in certain school district accounts within local sales and service tax fund under §422B.10, subsection 1, if treasurer of state determines that appropriation will not affect tax exempt status of outstanding bonds under this section; letter to Code editor from treasurer of state stating that appropriation of funds is consistent with use of tax exempt proceeds and should proceed as authorized by general assembly and governor; 2002 Acts, 2nd Ex, ch 1003, §193, 194, 213

292.2 School infrastructure program.

1. *a.* The department shall establish and administer a school infrastructure program to provide financial assistance in the form of grants to school districts with school infrastructure needs.

b. The department of education, in consultation with the department of management, shall annually compute the property tax infrastructure capacity per pupil for each school district in the state.

c. The department of education, in consultation with the department of revenue and finance and the legislative fiscal bureau, shall annually calculate the estimated sales and services tax for school infrastructure, if imposed at one percent, that is or would be received by each school district in the state pursuant to section 422E.3. These calculations shall be made on a total tax and on a tax per pupil basis for each school district.

d. The department of education, in consultation with the department of revenue and finance and the department of management, shall annually compute capacity per pupil and the local match percentage for each school district in the state. The calculations shall be released not later than September 1 of each year.

2. *a.* A school district's local match requirement is equivalent to the total investment of a project multiplied by the school district's local match percentage. A school district may submit an application to the department for financial assistance under the program if the school district meets the district's local match requirement through one or more of the following sources:

(1) The issuance of bonds pursuant to section 298.18.

(2) Local sales and services tax moneys received pursuant to section 422E.3.

(3) A physical plant and equipment levy under chapter 298.

(4) Other moneys locally obtained by the school district excluding other state or federal grant moneys.

b. If the project is in collaboration with other public or private entities, the school district shall be eligible to apply for only the school district's portion of the project. As such, state or federal grants received by the other entities cannot be used toward the local match requirement under paragraph *"a"*, subparagraph (4).

c. A school district may submit an application for a project which includes activities at more than one attendance center. However, if the activities relate to new construction, the project shall only relate to one attendance center.

d. A school district may submit an application for conditional approval to the department for financial assistance under the program if the school district submits a plan for securing the school district's local match requirement under paragraph *"a"*. If a school district does not meet the local match requirement of paragraph *"a"* within nine months of receiving conditional approval from the department, the application for financial assistance shall be denied by the department and the financial assistance shall be carried forward to be made available under the allocation provided under subsection 4, paragraph *"d"*, for the next avail-

able grant cycle.

e. For the fiscal year beginning July 1, 2000, applications shall be submitted to the department by March 1, 2001. For the fiscal year beginning July 1, 2001, and every fiscal year thereafter, applications shall be submitted to the department by October 15 of each year.

f. For the fiscal year beginning July 1, 2000, the department shall notify all approved applicants by May 1, 2001, regarding the approval of the application. For the fiscal year beginning July 1, 2001, and every fiscal year thereafter, the department shall notify all approved applicants by December 15 of each year regarding the approval of the application.

g. An applicant which is not successful in obtaining financial assistance under the program may reapply for financial assistance in succeeding years.

3. The application shall include, but shall not be limited to, the following information:

a. The total capital investment of the project.

b. The amount and percentage of moneys which the school district will be providing for the project.

c. The infrastructure needs of the school district, especially the fire and health safety needs of the school district, and including the extent to which the project would allow the school district to meet the infrastructure needs of the school district on a long-term basis.

d. The financial assistance needed by the school district based upon the capacity per pupil.

e. Any previous efforts by the school district to secure infrastructure funding from federal, state, or local resources, including any funding received for any project under the Iowa demonstration construction grant program. The previous efforts shall be evaluated on a case-by-case basis.

f. Evidence that the school district meets or will meet the local match requirement in subsection 2, paragraph *"a"*.

g. The nature of the proposed project and its relationship to improving educational opportunities for the students.

h. Evidence that the school district has reorganized on or after July 1, 2000, or that the school district has initiated a resolution to reorganize by July 1, 2004, or entered into an innovative collaboration with another school district or school districts.

i. Evidence that the school district receives sales and services tax for school infrastructure funding under section 422E.3.

4. A school district shall not receive more than one grant under the program. The financial assistance shall be in the form of grants and shall be allocated in the following manner:

a. Twenty-five percent of the financial assistance each year shall be awarded to school districts with an enrollment of one thousand one hundred ninety-nine students or less.

b. Twenty-five percent of the financial assistance each year shall be awarded to school districts with an enrollment of more than one thousand one hundred ninety-nine students but not more than four thousand seven hundred fifty students.

c. Twenty-five percent of the financial assistance each year shall be awarded to school districts with an enrollment of more than four thousand seven hundred fifty students.

d. Twenty-five percent of the financial assistance each year, any financial assistance not awarded under paragraphs *"a"* through *"c"*, and financial assistance not awarded in previous fiscal years shall be awarded to school districts with any size enrollment.

5. A district shall receive the lesser of one million dollars of financial assistance under the program, or the total capital investment of the project minus the local match requirement. The program shall provide grants in an amount of not more than ten million dollars during the fiscal year beginning July 1, 2000, not more than twenty million dollars during the fiscal year beginning July 1, 2001, and not more than twenty million dollars during the fiscal year beginning July 1, 2002. If the amount of grants awarded in a fiscal year is less than the maximum amount provided for grants for that fiscal year in this subsection, the amount of the difference shall be carried forward to subsequent fiscal years for purposes of providing grants under the program and the maximum amount of grants for each fiscal year, as provided in this subsection, shall be adjusted accordingly.

6. The school budget review committee shall review all applications for financial assistance under the program and make recommendations regarding the applications to the department. The department shall make the final determination on grant awards. The school budget review committee shall base the recommendations on the criteria established pursuant to subsections 3 and 7.

7. The department shall form a task force to review applications for financial assistance and provide recommendations to the school budget review committee. The task force shall include, at a minimum, representatives from the kindergarten through grade twelve education community, the state fire marshal, and individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, shall establish the parameters and the details of the criteria for awarding grants based on the information listed in subsection 3, including greater priority to the following:

a. A school district with a lower capacity per pupil.

b. A school district whose plans address specific occupant safety issues.

c. A school district reorganizing or collaborating as described in subsection 3, paragraph *"h"*.

d. A school district for which a sales and ser-

vices tax for school infrastructure has not been imposed pursuant to section 422E.2 or a school district receiving minimal revenues under section 422E.3 when the total enrollment of the school district is considered.

8. An applicant receiving financial assistance under the program shall submit a progress report to the department of education as requested by the department which shall include a description of the activities under the project, the status of the implementation of the project, and any other information required by the department.

9. If a school district receives financial assistance under the vision Iowa program created under section 15F.302 pursuant to a joint application submitted under section 15F.302, subsection 3, the school district shall not be eligible to receive financial assistance under the school infrastructure program.

10. A school district located in whole or in part in a county which has imposed the maximum rate of sales and services tax for school infrastructure pursuant to section 422E.2 and has sales and services tax for school infrastructure revenue of more than the statewide average of sales tax capacity per pupil, as defined in section 292.1, subsection 8, shall not be eligible for financial assistance under the program. For purposes of this subsection, an individual school district's sales tax capacity per pupil is the estimated total sales and services tax for infrastructure revenue to be actually received by the school district divided by the school district's enrollment as specified in section 292.1, subsection 8.

2000 Acts, ch 1174, §27; 2002 Acts, ch 1129, §5
Subsection 1, paragraph d amended

292.3 Rules.

The department shall adopt rules, pursuant to chapter 17A, necessary for administering the school infrastructure program and fund.

2000 Acts, ch 1174, §28

CHAPTER 293

STANDARDIZATION AND STATE AID

Repealed by 67 Acts, ch 239, §4

CHAPTER 294

TEACHERS

294.1 Qualifications — compensation prohibited.
294.2 Authorization for teaching recognized. Repealed by 89 Acts, ch 265, §43.
294.3 State aid and tuition.
294.4 Daily register.
294.5 Reports.
294.6 and 294.7 Repealed by 63 Acts, ch 176, §1.

PENSION AND ANNUITY RETIREMENT SYSTEM

294.8 Pension system.
294.9 Fund.
294.10 Management.
294.10A Pickup of teacher assessments.
294.10B Rights not transferable or subject to legal process — exceptions.
294.11 Termination resolution adopted.
294.12 Pension fund held for survivors upon termination.
294.13 General fund replacements.
294.14 Estimate of funds needed — levy.
294.15 Retirement allowance — teachers who retired before July 4, 1953. Repealed by 96 Acts, ch 1215, §59.
294.16 Annuity contracts.

294.1 Qualifications — compensation prohibited.

No person shall be employed as a teacher in a common school without having a certificate issued by some officer duly authorized by law.

No compensation shall be recovered by a teacher for services rendered while without such certificate.

[R60, §2062; C73, §1758; C97, §2788; C24, 27, 31, 35, 39, §**4336;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.1]

294.2 Authorization for teaching recognized. Repealed by 89 Acts, ch 265, § 43. See § 272.9.

294.3 State aid and tuition.

A school shall not be deprived of its right to be

approved for state aid or approved for tuition by reason of the employment of any practitioner as authorized under section 272.9.

[C24, 27, 31, 35, 39, §**4338;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.3]

89 Acts, ch 265, §37

294.4 Daily register.

Each teacher shall keep a daily register which shall correctly exhibit the name or number of the school, the district and county in which it is located, the day of the week, month, year, and the name, age, and attendance of each scholar, and the branches taught; and when scholars reside in different districts separate registers shall be kept for each district, and a certified copy of the register shall, immediately at the close of the school, be filed by the teacher in the office of the secretary of the board.

[R60, §2062; C73, §1759, 1760; C97, §2789; C24, 27, 31, 35, 39, §**4339;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.4]

294.5 Reports.

The teacher shall file with the school superintendent and the director of the department of education such reports and in such manner as may be required.

[C97, §2789; C24, 27, 31, 35, 39, §**4340;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.5]

85 Acts, ch 212, §21

294.6 and 294.7 Repealed by 63 Acts, ch 176, § 1.

PENSION AND ANNUITY RETIREMENT SYSTEM

294.8 Pension system.

Any school district located in whole or in part within a city having a population of twenty-five thousand one hundred or more may establish a pension and annuity retirement system for the public school teachers of such district provided said system, in cities having a population less than seventy-five thousand, be ratified by a vote of the people at a general election.

[C24, 27, 31, 35, 39, §**4345;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.8]

294.9 Fund.

The fund for such retirement system shall be created from the following sources:

1. From the proceeds of an assessment of teachers in the school district not exceeding one percent of their salaries in a given school year, or such greater percentage as the board of directors of such school district may authorize and a majority of such teachers shall, at the time of such authorization by the board, agree to pay.

2. From the proceeds of an annual tax levy.

3. From the interest on any permanent fund which may be created by gift, bequest, or otherwise.

[C24, 27, 31, 35, 39, §**4346;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.9]

294.10 Management.

The board of directors of the school district shall constitute the board of trustees and shall formulate the plan of the retirement; and shall make all necessary rules and regulations for the operation of said retirement system.

[C24, 27, 31, 35, 39, §**4347;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.10]

294.10A Pickup of teacher assessments.

1. Notwithstanding section 294.9 or other provisions of this chapter, for federal income tax purposes beginning January 1 following the submission by a board of trustees of an application to the federal internal revenue service requesting qualification of a plan in accordance with the requirements of the Internal Revenue Code, as defined in section 422.3, and for state income tax purposes beginning January 1, 1999, or January 1 following an application for qualification, whichever is later, teacher assessments required under section 294.9 which are picked up by an employing school district shall be considered employer contributions for federal and state income tax purposes, and each employing school district establishing a pension and annuity retirement system pursuant to this chapter shall pick up the teacher assessments to be made under section 294.9 by its employees commencing on the applicable date on which the assessments shall be considered employer contributions for income tax purposes under this subsection. Each employing school district shall pick up these teacher assessments by reducing the salary of each of the teachers covered by this chapter by the amount which each teacher is required to contribute through assessments under section 294.9 and shall pay to the board of trustees the amount picked up in lieu of the teacher assessments for recording and deposit in the fund.

2. Teacher assessments picked up by each employing school district under subsection 1 shall be treated as employer contributions for federal and state income tax purposes only and for all other purposes of this chapter shall be treated as teacher assessments and deemed part of the teacher's wages or salary.

94 Acts, ch 1183, §64; 95 Acts, ch 67, §22; 98 Acts, ch 1174, §3, 6

294.10B Rights not transferable or subject to legal process — exceptions.

The right of any person to any future payment under a pension and annuity retirement system established in this chapter shall not be transferable or assignable, at law or in equity, and shall not

be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law, except for the purposes of enforcing child, spousal, or medical support obligations, or marital property orders. For the purposes of enforcing child, spousal, or medical support obligations, the garnishment or attachment of or the execution against benefits due a person under such a retirement system shall not exceed the amount specified in 15 U.S.C. § 1673(b).

96 Acts, ch 1187, §79

294.11 Termination resolution adopted.

Any school district which has in operation the pension and annuity retirement system created pursuant to sections 294.8 to 294.10 may terminate such system by the adoption by the board of directors of such district, of a resolution declaring such system terminated as of a date specified therein.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.11]

294.12 Pension fund held for survivors upon termination.

In the event of such termination, all assessments of teachers shall cease upon such date of termination, or upon such earlier date as may be prescribed in such resolution, and no additional taxes shall be levied or assessed for the operation of such system, save as in section 294.13. All undisposed of funds and accumulations derived from the operation of said system, including the proceeds, when collected, of any annual tax heretofore levied for the operation of said system, and including the proceeds of any annual tax levied hereafter pursuant to the provisions of section 294.13, shall constitute a retirement liquidation fund. Such liquidation fund shall be held for the benefit of those surviving beneficiaries under such system as of said date of termination, and of members of such system as of date of termination. There shall be set aside from such retirement liquidation fund an amount sufficient to provide for the payment of all surviving beneficiaries who shall be entitled to receive benefits under such system as of said date of termination, providing an actuarial computation has been made of the amount required to meet such benefit payments, providing the amount in the retirement liquidation fund is sufficient for this purpose, and the amount set aside shall be used for no other purpose than for the payment of claims to such beneficiaries. Any amount in excess of the actuarial equivalent of the sum required to pay such benefit payments shall be apportioned to persons who were as of the effective date of the termination of the system, members of such system, in proportion to the amount which the accumulated contribution of each such person bears to the total funds of such retirement system subject to such apportionment. Any member of such system as of the date of termination thereof, may, in lieu of receiving the cash refund of the member's share of the liquidation fund, elect to come under the coverage of any new pension and annuity retirement system established by the district, to which the member is eligible, with credits toward future benefits in consideration of the member's prior contributions and length of service, and may direct the transfer of the amount payable to the member to the assets of the new pension and annuity retirement system. In any case where the board of directors of a school district including a teachers retirement system established under the provisions of section 294.8, whose members were not under coverage of the Iowa old-age and survivors' insurance system prior to May 1, 1953, the board of directors may authorize the payment from funds in excess of the actuarial amount estimated as required for the payment of benefits to persons entitled to them, and for the purpose of obtaining retroactive social security coverage from January 1, 1951, until the effective date of federal coverage of Iowa public employees as provided by chapter 97C. Each surviving beneficiary entitled to receive retirement benefits of the date of termination of the system will be entitled to receive retirement benefits at the time and in the amount in effect with respect to such beneficiary immediately prior to the date of termination.

In any school district which has pursuant to section 294.11 terminated a previously existing pension and annuity retirement system and has after actuarial computation established a retirement reserve fund pursuant to this section in order to pay to surviving beneficiaries entitled to receive retirement benefits at date of termination of said system in the amount in effect with respect to such beneficiaries immediately prior to the date of termination, the board of directors may authorize each and every payment to each surviving beneficiary falling due subsequent to June 30, 1971, to be increased by an amount to be determined by the board such increased payments to be paid from the retirement reserve fund according to an actuarial computation thereof plus such additional amounts transferred from the general fund as may be required. In order to provide the additional amounts required from the general fund for such increased payments, the board of directors may annually at the meeting at which it estimates the amount required for the general fund in accordance with section 298.1 estimate such additional amount as an actuarial computation shall show is necessary from the general fund for the payment of such increased benefits for the current school year; provided the amount estimated and certified to be transferred from the general fund to the retirement reserve fund shall not exceed one and four-tenths cents per thousand dollars of the assessed valuation of the taxable property of the

school corporation. The board of supervisors shall in accordance with the provisions of section 298.8 levy the taxes necessary to raise the amount estimated by the board of directors as above provided and certified to the board of supervisors. Upon the death of the last beneficiary to survive, any balance remaining in said retirement reserve fund shall be transferred to the general fund of said school district.

Notwithstanding the provisions of this section, the plan provisions of a pension and annuity retirement system of a school district established under this chapter regarding the determination and distribution of benefits upon termination of the retirement system shall be effective if the school district has received a favorable determination letter from the federal internal revenue service as to the qualified status of such retirement system under applicable provisions of the Internal Revenue Code.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.12]

98 Acts, ch 1183, §109

294.13 General fund replacements.

The board of directors of said district shall each year at the meeting at which it estimates the amount required for the general fund, in accordance with the provisions of section 298.1, estimate the additional amount, if any, necessary to provide the required annual payments to surviving beneficiaries, which amount shall be levied by the board of supervisors in accordance with the provisions of section 298.8. Upon the death of the last beneficiary to survive, any balance remaining in said fund, including any undisposed of accumulations, shall be transferred to the general fund of said school district.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.13]

294.14 Estimate of funds needed — levy.

The board of directors of said district shall annually, for a period of five years after the effective date of the termination of its pension system, at the meeting at which it estimates the amount required for the general fund, in accordance with the provisions of section 298.1, estimate the additional amount if any necessary to pay to participants in the pension system who are not entitled to receive benefits under such system at the date of termination thereof, one-fifth of the amount paid into said pension fund by such participants therein, without interest, which amount shall be levied by the board of supervisors, in accordance with provisions of section 298.8 and, in addition thereto, the board of directors of said district shall each year at the meeting at which it estimates the amount required for the general fund, in accordance with the provisions of section 298.1, estimate the additional amount, if any, necessary to provide the required annual payments to surviving beneficiaries of said pension system, as defined in section 294.12, which amount shall be levied by the board of supervisors, in accordance with the provisions of section 298.8. Upon the death of the last beneficiary, as defined in section 294.12, to survive, any balance remaining in said fund, including any undisposed of accumulations, shall be transferred to the general fund of said school district.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §294.14]

294.15 Retirement allowance — teachers who retired before July 4, 1953. Repealed by 96 Acts, ch 1215, § 59.

294.16 Annuity contracts.

At the request of an employee through contractual agreement a school district may purchase group or individual annuity contracts for employees, which annuity contracts are issued by a nonprofit corporation issuing retirement annuities exclusively for educational institutions and their employees or are purchased from any company the employee chooses that is authorized to do business in this state or through an Iowa-licensed salesperson that the employee selects, on a group or individual basis, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. As used in this section, unless the context otherwise requires, *"annuity contract"* includes any custodial account which meets the requirements of section 403(b)(7) of the Internal Revenue Code, as defined in section 422.3.

[C66, 71, 73, 75, 77, 79, 81, §294.16]

86 Acts, ch 1213, §7; 88 Acts, ch 1112, §701; 94 Acts, ch 1183, §65

CHAPTER 294A

EDUCATIONAL EXCELLENCE PROGRAM — TEACHERS

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DIVISION I

EDUCATIONAL EXCELLENCE PROGRAM

294A.1 Educational excellence program.

The purpose of this chapter is to promote excellence in education. In order to maintain and advance the educational excellence in the state of Iowa, this chapter establishes the Iowa educational excellence program. The program shall consist of three major phases addressing the following:

1. Phase I — The recruitment of quality teachers.
2. Phase II — The retention of quality teachers.
3. Phase III — The enhancement of the quality and effectiveness of teachers through the utilization of performance pay.

87 Acts, ch 224, §1

294A.2 Definitions.

For the purposes of this chapter:

1. *"Certified enrollment in a school district"* for the school years beginning July 1, 1987, July 1, 1988, and July 1, 1989, means that district's basic enrollment for the budget year beginning July 1, 1987, as defined in section 442.4, Code 1989. For each school year thereafter, certified enrollment in a school district means that district's basic enrollment for the budget year as defined in section 442.4, Code 1989, or section 257.2.

2. *"Enrollment served"* for the fiscal years beginning July 1, 1987, July 1, 1988, and July 1, 1989, means that area education agency's enrollment served for the budget year beginning July 1, 1987. For each school year thereafter, enrollment served means that area education agency's enrollment served for the budget year. Enrollment served shall be determined under section 257.37.

3. *"General training requirements"* means requirements prescribed by a board of directors that provide for the acquisition of additional semester hours of graduate credit from an institution of higher education approved by the state board of education or the completion of staff development activities licensed by the board of educational examiners, except for programs developed by practitioner preparation institutions and area education agencies, for renewal of licenses issued under chapter 272.

4. *"Specialized training requirements"* means requirements prescribed by a board of directors to meet specific needs of the school district identified by the board of directors that provide for the acquisition of clearly defined skills through formal or informal education that are beyond the requirements necessary for initial licensing under chapter 272.

5. *"Teacher"* means an individual holding a practitioner's license issued under chapter 272, or a letter of authorization or statement of professional recognition issued by the board of educational examiners, who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

"Teacher" includes a licensed individual employed on less than a full-time basis by a school district through a contract between the school district and an institution of higher education with a practitioner preparation program in which the licensed teacher is enrolled in any practitioner preparation program.

6. *"Teacher's regular compensation"* means the annual salary specified in a teacher's contract pursuant to the salary schedule adopted by the board of directors or negotiated under chapter 20. It does not include pay earned by a teacher for performance of additional noninstructional duties and does not include the costs of the employer's share of fringe benefits.

87 Acts, ch 224, §2; 88 Acts, ch 1266, §6; 89 Acts, ch 135, §96; 89 Acts, ch 265, §38; 90 Acts, ch 1249, §17, 18; 95 Acts, ch 4, §1

294A.3 Educational excellence fund.

An educational excellence fund is established in the office of treasurer of state to be administered by the department of education. Moneys appropriated by the general assembly for deposit in the fund shall be paid to school districts and area education agencies pursuant to the requirements of this chapter and shall be expended only to pay for increases in the regular compensation of teachers and other salary increases for teachers, to pay the costs of the employer's share of federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the salary increases, and to pay costs associated with providing specialized or general training. Moneys received by school districts and area education agencies shall not be used for pay earned by a teacher for performance of additional noninstructional duties.

If moneys are appropriated by the general assembly to the fund for distribution under this chapter the moneys shall be allocated by the department so that the allocations of moneys for phases I and II are made prior to the allocation of moneys for phase III.

87 Acts, ch 224, §3

DIVISION II

PHASE I

294A.4 Goal.

The goal of phase I is to provide for establishment of pay plans incorporating sufficient annual compensation to attract quality teachers to Iowa's public school system. This is accomplished by increasing the minimum salary. A beginning salary which is competitive with salaries paid to other professionals will provide incentive for top quality individuals to enter the teaching profession.

87 Acts, ch 224, §4

294A.5 Minimum salary supplement.

1. For the school year beginning July 1, 1998, and succeeding school years, the minimum annual salary paid to a full-time teacher as regular compensation shall be twenty-three thousand dollars.

2. The minimum salary supplement shall be the sum of the following, as applicable:

a. For the school year beginning July 1, 1998, for phase I, each school district and area education agency shall certify to the department of education by the third Friday in September the names of all teachers employed by the district or area education agency whose regular compensation is less than twenty-three thousand dollars per year for that year and the amounts needed as minimum salary supplements. The minimum salary supplement for each eligible teacher is the total of the difference between twenty-three thousand dollars and the teacher's regular compensation plus the amount required to pay the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the additional salary moneys. However, for purposes of this paragraph, a teacher's regular compensation for the school year beginning July 1, 1998, shall not be lower than eighteen thousand dollars.

b. The total minimum salary supplement paid to a school district under phase I for the school year beginning July 1, 1997.

3. The board of directors shall report the salaries of teachers employed on less than a full-time equivalent basis, and the amount of minimum salary supplement shall be prorated.

87 Acts, ch 224, §5; 98 Acts, ch 1216, §33

294A.6 Payments.

For the school year beginning July 1, 1998, the department of education shall notify the department of revenue and finance of the total minimum salary supplement, as described in section 294A.5, subsection 2, paragraphs *"a"* and *"b"*, to be paid to each school district and area education agency under phase I and the department of revenue and finance shall make the payments. For school years after the school year beginning July 1, 2001, if a

school district or area education agency reduces the number of its full-time equivalent teachers in the base year below the number employed during the school year beginning July 1, 1998, the department of revenue and finance shall reduce the total minimum salary supplement payable to that school district or area education agency in the budget year so that the amount paid is equal to the ratio of the number of full-time equivalent teachers employed in the school district or area education agency for the base year divided by the number of full-time equivalent teachers employed in the school district or area education agency for the school year beginning July 1, 1998, and multiplying that fraction by the total minimum salary supplement paid to that school district or area education agency for the school year beginning July 1, 1998. For purposes of this section, "base year" and "budget year" mean the same as defined in section 257.2.

If the moneys allocated for phase I for a school year exceed the moneys required to pay the total minimum salary supplements to all school districts and area education agencies, the board of directors of a school district that has employed one or more additional teachers as a result of a whole grade sharing agreement completed under section 282.7 may request approval from the department of education for additional funding for its minimum salary supplement for that school year and succeeding school years if the other school district or districts that are parties to the sharing agreement have correspondingly reduced their number of teachers. If the department of education approves the payment of the additional salary supplement to a district, the department shall certify to the department of revenue and finance that the additional payment be made. The payment shall be equal to the amount of the difference between eighteen thousand dollars and the teacher's regular compensation, plus the amount required to make the payments on the additional salary moneys for the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294. If the phase I moneys remaining are insufficient to pay the entire amount approved by the department of education, the department of revenue and finance shall prorate the payments to school districts.

87 Acts, ch 224, §6; 89 Acts, ch 5, §1; 98 Acts, ch 1216, §34; 2002 Acts, ch 1129, §6

Unnumbered paragraph 1 amended

294A.7 Reserved.

DIVISION III

PHASE II

294A.8 Goal.

The goal of phase II is to keep Iowa's best educators in the profession and assist in their development by providing general salary increases.

87 Acts, ch 224, §7

294A.9 Phase II program.

Phase II is established to improve the salaries of teachers. For each fiscal year beginning on or after July 1, 1992, the per pupil amount upon which the phase II moneys are based is equal to the per pupil allocation plus supplemental allocations for the immediately preceding fiscal year.

The department of education shall certify the amounts of the allocations for each school district and area education agency to the department of revenue and finance and the department of revenue and finance shall make the payments to school districts and area education agencies.

If a school district has discontinued grades under section 282.7, subsection 1, or students attend school in another school district, under an agreement with the board of the other school district, the board of directors of the district of residence either shall transmit the phase II moneys allocated to the district for those students based upon the full-time equivalent attendance of those students to the board of the school district of attendance of the students or shall transmit to the board of the school district of attendance of the students a portion of the phase II moneys allocated to the district of residence based upon an agreement between the board of the resident district and the board of the district of attendance.

If a school district uses teachers under a contract between the district and the area education agency in which the district is located, the school district shall transmit to the employing area education agency a portion of its phase II allocation based upon the portion that the salaries of teachers employed by the area education agency and assigned to the school district for a school year bears to the total teacher salaries paid in the district for that school year, including the salaries of the teachers employed by the area education agency.

If the school district or area education agency is organized under chapter 20 for collective bargaining purposes, the board of directors and certified bargaining representative for the licensed employees shall mutually agree upon a formula for distributing the phase II allocation among the teachers. For the school year beginning July 1, 1987 only, the parties shall follow the procedures

specified in chapter 20 except that if the parties reach an impasse, neither impasse procedures agreed to by the parties nor sections 20.20 through 20.22 shall apply and the phase II allocation shall be divided as provided in section 294A.10. Negotiations under this section are subject to the scope of negotiations specified in section 20.9. If a board of directors and certified bargaining representative for licensed employees have not reached mutual agreement by July 15, 1987 for the distribution of the phase II payment, section 294A.10 will apply.

If the school district or area education agency is not organized for collective bargaining purposes, the board of directors shall determine the method of distribution.

87 Acts, ch 224, §8; 89 Acts, ch 135, §97; 89 Acts, ch 265, §40; 92 Acts, ch 1135, §6; 92 Acts, ch 1227, §23

294A.10 Failure to agree on distribution.

For the school year beginning July 1, 1987 only, if the board of directors and certified bargaining representative for the licensed employees have not reached agreement under section 294A.9, the board of directors shall divide the payment among the teachers employed by the district or area education agency as follows:

1. All full-time teachers whose regular compensation is equal to or more than the minimum salary for phase I will receive an equal amount from the phase II allocation.

2. A teacher who will receive a minimum salary supplement under section 294A.5 will receive moneys equal to the difference between the amount from the phase II allocation and the minimum salary supplement paid to that teacher.

3. The amount from the phase II allocation will be prorated for a teacher employed on less than a full-time basis.

4. An amount from the phase II allocation includes the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the additional salary.

87 Acts, ch 224, §9; 89 Acts, ch 265, §40

294A.11 Reports. Repealed by 89 Acts, ch 135, § 136.

DIVISION IV

PHASE III

294A.12 Goal.

The goal of phase III is to enhance the quality, effectiveness, and performance of Iowa's teachers by promoting teacher excellence. This will be accomplished through the development of performance-based pay plans and supplemental pay plans requiring additional instructional work assignments which may include specialized training or differential training, or both.

It is the intent of the general assembly that school districts and area education agencies incorporate into their planning for performance-based pay plans and supplemental pay plans, implementation of recommendations from recently issued national and state reports relating to the requirements of the educational system for meeting future educational needs, especially as they relate to the preparation, working conditions, and responsibilities of teachers, including but not limited to assistance to new teachers, development of teachers as instructional leaders in their schools and school districts, using teachers for evaluation and diagnosis of other teachers' techniques, and the implementation of sabbatical leaves. It is also the intent of the general assembly that a performance-based pay plan and supplemental pay plan submitted by a district include a parent involvement policy designed to increase student achievement and self-esteem by bringing home and school into closer relationship and that provides methods by which parents and teachers may cooperate intelligently in the education of children. It is further the intent of the general assembly that real and fundamental change in the educational system must emerge from the school site if the education system is to remain relevant and that plans funded in this program must be an integral part of a comprehensive school district or area education agency effort toward meeting identified district or agency goals or needs.

87 Acts, ch 224, §11; 90 Acts, ch 1141, §1; 93 Acts, ch 105, §1

294A.13 Phase III program.

For the school year beginning July 1, 1987, and succeeding school years, each school district and area education agency that meets the requirements of this division is eligible to receive moneys for the implementation under phase III of a performance-based pay plan or supplemental pay plan, or a combination of the two.

87 Acts, ch 224, §12; 96 Acts, ch 1034, §17

294A.14 Phase III payments.

For each fiscal year, the department shall allocate the remainder of the moneys appropriated by the general assembly to the fund for phase III, subject to section 294A.18. If fifty million dollars is allocated for phase III, the payments for an approved plan for a school district shall be equal to the product of a district's certified enrollment and ninety-eight dollars and sixty-three cents, and for an area education agency shall be equal to the product of an area education agency's enrollment served and four dollars and sixty cents. If the moneys allocated for phase III are either greater than or less than fifty million dollars, the department of

education shall adjust the amount for each student in certified enrollment and each student in enrollment served based upon the amount allocated for phase III.

If a school district has discontinued grades under section 282.7, subsection 1, or students attend school in another school district, under an agreement with the board of the other school district, the board of directors of the district of residence either shall transmit the phase III moneys allocated to the district for those students based upon the full-time equivalent attendance of those students to the board of the school district of attendance of the students or shall transmit to the board of the school district of attendance of the students a portion of the phase III moneys allocated to the district of residence based upon an agreement between the board of the resident district and the board of the district of attendance.

A plan shall be developed using the procedure specified under section 294A.15. The plan shall provide for the establishment of a performance-based pay plan, a supplemental pay plan, a combination of the two pay plans, or comprehensive school transformation programs, and shall include a budget for the cost of implementing the plan. In addition to the costs of providing additional salary for teachers and the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, and payments on the additional salary, the budget may include costs associated with providing specialized or general training. Moneys received under phase III shall not be used to employ additional employees of a school district, except that phase III moneys may be used to employ substitute teachers, part-time teachers, and other employees needed to implement plans that provide innovative staffing patterns, or require that a teacher employed on a full-time basis be absent from the classroom for specified periods for fulfilling other instructional duties or to participate on a peer review team or in peer coaching efforts. However, all teachers employed are eligible to receive additional salary under an approved plan.

For the purpose of this section, a performance-based pay plan shall provide for salary increases for teachers who demonstrate superior performance in completing assigned duties. The plan shall include the method used to determine superior performance of a teacher. For school districts, the plan may include assessments of teaching performance, assessments of student performance, assessments of other characteristics associated with effective teaching, or a combination of these criteria.

For school districts, a performance-based pay plan may provide for additional salary for individual teachers, for teachers assigned to a specific discipline, or for all teachers assigned to an attendance center. For area education agencies, a performance-based pay plan may provide for additional salary for individual teachers, for additional salary for all teachers assigned to a specific discipline within an area education agency, or for additional salary for individual teachers assigned to a multidisciplinary team within an area education agency. If the plan provides additional salary for all teachers assigned to an attendance center, specific discipline, or multidisciplinary team, the receipt of additional salary by those teachers shall be determined on the basis of whether that attendance center, specific discipline, or multidisciplinary team meets specific objectives adopted for that attendance center, specific discipline, or multidisciplinary team. For school districts, the objectives may include, but are not limited to, decreasing the dropout rate, increasing the attendance rate, or accelerating the achievement growth of students enrolled in that attendance center through the use of learning techniques that may include, but are not limited to, reading instruction in phonics or whole language techniques.

If a performance-based pay plan provides additional salary for individual teachers:

1. The plan may provide for salary moneys in addition to the existing salary schedule of the school district or area education agency and may require the participation by the teacher in specialized training requirements.

2. The plan may provide for salary moneys by replacing the existing salary schedule or as an option to the existing salary schedule and may include specialized training requirements, general training requirements, and experience requirements.

A supplemental pay plan may provide for supplementing the costs of vocational agriculture programs as provided in section 294A.17.

For the purpose of this section, a supplemental pay plan in a school district shall provide for the payment of additional salary to teachers who participate in either additional instructional work assignments or specialized training during the regular school day or during an extended school day, school week, or school year. A supplemental pay plan in an area education agency shall provide for the payment of additional salary to teachers who participate in either additional work assignments or improvement of instruction activities with school districts during the regular school day or during an extended school day, school week, or school year.

For school districts, additional instructional work assignments may include but are not limited to general curriculum planning and development, vertical articulation of curriculum, horizontal curriculum coordination, development of educational measurement practices for the school district, participation in assessment activities leading to certification by the national board for professional teaching standards, attendance at workshops and

other programs for service as cooperating teachers for student teachers, development of plans for assisting beginning teachers during their first year of teaching, attendance at summer staff development programs, development of staff development programs for other teachers to be presented during the school year, participation in family support programs, development of programs which provide instruction in conflict resolution and mediation techniques for staff and students, development of anger management instructional programs for students, and other plans locally determined in the manner specified in section 294A.15 and approved by the department of education under section 294A.16 that are of equal importance or more appropriately meet the educational needs of the school district.

For area education agencies, additional instructional work assignments may include but are not limited to providing assistance and support to school districts in general curriculum planning and development, providing assistance to school districts in vertical articulation of curriculum and horizontal curriculum coordination, development of educational measurement practices for school districts in the area education agency, development of plans for assisting beginning teachers during their first year of teaching, attendance or instruction at summer staff development programs, development of staff development programs for school district teachers to be presented during the school year, participation in family support programs, development of staff development programs which provide instruction in conflict resolution and mediation techniques, assisting school district teachers in the development of anger management instructional programs for students, and other plans determined in the manner specified in section 294A.15 and approved by the department of education under section 294A.16 that are of equal importance or more appropriately meet the educational needs of the area education agency.

Any summer school program, for which the teacher's salary is paid or supplemented under a supplemental pay plan, shall be open to nonpublic school students in the manner provided in section 256.12.

For purposes of this section, *"comprehensive school transformation"* means activities which focus on the improvement of student achievement and the attainment of student achievement goals under section 256.7, subsection 21, and section 280.12. A comprehensive school transformation plan submitted by a school district shall demonstrate the manner in which the components of the plan are integrated with a school's student achievement goals. Components of the plan may include, but are not limited to, providing salary increases to teachers who implement site-based shared decision making, building-based goal-oriented compensation mechanism, or approved innovative educational programs; who focus on student outcomes; who direct accountability for student achievement or accountability for organizational success; and who work to foster relationships between a school and businesses or public agencies which provide health and social services.

87 Acts, ch 224, §13; 88 Acts, ch 1266, §7; 88 Acts, ch 1284, §49; 89 Acts, ch 5, §2; 89 Acts, ch 135, §98; 90 Acts, ch 1141, §2, 3; 92 Acts, ch 1135, §7; 92 Acts, ch 1158, §6; 92 Acts, ch 1227, §24, 25; 93 Acts, ch 101, §205; 93 Acts, ch 105, §2; 93 Acts, ch 179, §25; 94 Acts, ch 1172, §31; 2001 Acts, ch 161, §19; 2002 Acts, ch 1119, §38

Unnumbered paragraph 12 amended

294A.15 Development of plan.

The board of directors of a school district desiring to receive moneys under phase III shall appoint a committee consisting of representatives of school administrators, teachers, parents, and other individuals interested in the public schools of the school district to develop a proposal for distribution of phase III moneys to be submitted to the board of directors. The board of directors of an area education agency desiring to receive moneys under phase III shall appoint a committee of similar membership to develop a proposal. If the school district or area education agency is organized under chapter 20 for collective bargaining purposes, the board shall provide that one of the teacher members of the committee is an individual selected by the certified bargaining representative for licensed employees of the district or area education agency. The proposal developed by the committee shall be submitted to the board of directors of the school district or area education agency for consideration by the board in developing a plan. For the school year beginning July 1, 1987, if the school district or area education agency is organized for collective bargaining purposes under chapter 20, the portions of the proposed plan that are within the scope of negotiations specified in section 20.9 require the mutual agreement by January 1, 1988 of both the board of directors of the school district or area education agency and the certified bargaining representative for the licensed employees. In succeeding years, if the school district or area education agency is organized for collective bargaining purposes, the portions of the proposed plan that are within the scope of the negotiations specified in section 20.9 are subject to chapter 20.

Effective July 1, 1989, a plan adopted by the board of directors of a school district or area education agency may include as a part of the plan a proposal that expands a performance-based pay plan or a supplemental pay plan, or a combination of the two pay plans, that meets the criteria listed in section 294A.14 and was in effect in the school district or area education agency prior to July 1, 1987. The budget for the plan submitted to the department of education shall include both the general

fund moneys, which must be equal to those used prior to July 1, 1987, and the phase III moneys which expand the activity, and is for programs that would meet the criteria listed in section 294A.14.

Nothing in this chapter shall be construed to expand or restrict the scope of negotiations in section 20.9.

87 Acts, ch 224, §14; 89 Acts, ch 5, §3; 89 Acts, ch 265, §40

294A.16 Plan — moneys.

A plan adopted by the board of directors of a school district or area education agency shall be submitted to the department of education not later than May 31 of a school year for that school year for a school district, and not later than June 15 of a school year for that school year for an area education agency. Amendments to multiple year plans may be submitted annually.

If a school district uses teachers under a contract between the district and the area education agency in which the district is located and both the school district and the area education agency have approved phase III plans, the school district shall transmit to the employing area education agency a portion of its phase III moneys based upon the portion that the salaries of teachers employed by the area education agency and assigned to the school district for the school year bears to the total teacher salaries paid in the district for that school year, including the salaries of the teachers employed by the area education agency. If the area education agency has an approved phase III plan and the school district does not, the department of management shall transmit phase III moneys to the area education agency for those teachers from the phase III money that would have been paid to the school district if the school district had had an approved phase III plan using the formula that would have been used if the school district had had an approved phase III plan.

The department of education shall review each plan and its budget and notify the department of management of the names of school districts and area education agencies with approved plans. In considering the approval of a plan submitted by a school district, the department shall give emphasis to plans which include a comprehensive school transformation plan or which include a component which is part of a statewide systemic school transformation initiative. In considering the approval of a plan submitted by an area education agency, the department shall give emphasis to plans which are integrated with and supportive of the comprehensive school transformation plans submitted by the school districts within the area education agency.

Any of the phase III moneys remaining in the district or area education agency account at the end of the fiscal year shall remain available for expenditure for purposes of this division by the school district or area education agency in succeeding fiscal years.

Any moneys allocated for an approved phase III plan and any interest accrued on the moneys are miscellaneous income for purposes of chapter 257, shall not be commingled with state aid payments made under sections 257.16 and 257.35 to a school district or area education agency, and shall be accounted for by the school district or area education agency separately from state aid payment accounts.

87 Acts, ch 224, §15; 89 Acts, ch 5, §4 – 6; 90 Acts, ch 1141, §4; 92 Acts, ch 1135, §8; 92 Acts, ch 1163, §67; 92 Acts, ch 1227, §26; 93 Acts, ch 101, §206; 2002 Acts, ch 1129, §7

Unnumbered paragraphs 4 and 5 amended

294A.17 Vocational agriculture.

A supplemental pay plan that provides for supplementing the costs of vocational agriculture programs may provide for increasing teacher salary costs for twelve month contracts for vocational agriculture teachers.

87 Acts, ch 224, §16

See also §280.20

294A.18 Determination of phase III allocation.

On February 1, 1988, the governor shall certify to the department of education the amount of money available for allocation under phase III. If pursuant to any provision of law, the governor certifies an amount lower than the allocation that would otherwise be made under this chapter, the department of education shall, if necessary, adjust the amount for each student in certified enrollment and each student in enrollment served which are included in approved plans pursuant to section 294A.14 and shall review the budgets of the approved plans.

87 Acts, ch 224, §17

294A.19 Reports — limit on charging.

Each school district and area education agency receiving moneys for phase III during a school year shall file a report with the department of education. School district reports shall be filed by July 1 of the next following school year, and area education agency reports shall be filed by September 1 of the next following school year. The report shall describe the plan, its objectives, its implementation, the expenditures made under the plan including the salary increases paid to each eligible employee, and the extent to which its objectives were attained. The report may include any proposed amendments to the plan for the next following school year.

Annually, by November 1, the department shall summarize the information contained in the phase III reports filed by the school districts and area education agencies. The summary shall con-

tain information including the numbers of districts and area education agencies that have implemented a performance-based pay plan, a supplemental pay plan, a combination of a performance-based and supplemental pay plan, and the number of districts and area education agencies that have established comprehensive school transformation programs. The summary shall highlight and briefly describe innovative and successful uses of phase III funds that have had a positive effect on student achievement within the district as measured by means of a widely recognized educational assessment tool or test. The department, in conjunction with the legislative fiscal bureau, shall identify additional items to be reported. Copies of the annual summary shall be submitted to each school district, the general assembly, and the legislative fiscal bureau by December 1.

School districts and area education agencies shall not charge other school districts or area education agencies for plans or information about innovative phase III plans that they have developed.

87 Acts, ch 224, §18; 89 Acts, ch 5, §7; 89 Acts, ch 319, §75; 98 Acts, ch 1215, §46

294A.20 Reversion of moneys.

Any portion of moneys appropriated to the educational excellence trust fund and allocated to phase III under section 294A.3 for a fiscal year not expended by school districts and area education agencies during that fiscal year reverts to the general fund of the state as provided in section 8.33.

87 Acts, ch 224, §19

Exception; see §294A.16

DIVISION V

GENERAL PROVISIONS

294A.21 Rules.

The state board of education shall adopt rules under chapter 17A for the administration of this chapter.

87 Acts, ch 224, §20

294A.22 Payments.

Payments for each phase of the educational excellence program shall be made by the department of revenue and finance on a monthly basis commencing on October 15 and ending on June 15 of each fiscal year, taking into consideration the relative budget and cash position of the state resources. The payments shall be separate from state aid payments made pursuant to sections 257.16 and 257.35. The payments made under this section to a school district or area education agency may be combined and a separate accounting of the amount paid for each program shall be included.

Any payments made to school districts or area education agencies under this chapter are miscellaneous income for purposes of chapter 257.

Payments made to a teacher by a school district or area education agency under this chapter are wages for the purposes of chapter 91A except for payments made under an approved phase III plan where a modified payment plan has either been mutually agreed upon by the board of directors and the certified bargaining representative for certificated employees or for a district that is not organized for collective bargaining purposes where a modified payment plan is adopted by the board.

87 Acts, ch 224, §21; 89 Acts, ch 5, §8, 9; 89 Acts, ch 135, §100

294A.23 Multiple salary payments.

The salary increases that may be granted to a teacher under phase III are in addition to any salary increases granted to a teacher under phase I or phase II.

87 Acts, ch 224, §22

294A.24 Collective bargaining. Repealed by 89 Acts, ch 135, § 136.

294A.25 Appropriation.

1. For the fiscal year beginning July 1, 2000, and for each succeeding year, there is appropriated from the general fund of the state to the department of education the amount of eighty million eight hundred ninety-one thousand three hundred thirty-six dollars to be used to improve teacher salaries. The moneys shall be distributed as provided in this section.

2. The amount of one hundred fifteen thousand five hundred dollars to be paid to the department of human services for distribution to its licensed classroom teachers at institutions under the control of the department of human services for payments for phase II based upon the average student yearly enrollment at each institution as determined by the department of human services.

3. The amount of ninety-four thousand six hundred dollars to be paid to the state board of regents for distribution to licensed classroom teachers at the Iowa braille and sight saving school and the Iowa school for the deaf for payments of minimum salary supplements for phase I and payments for phase II based upon the average yearly enrollment at each school as determined by the state board of regents.

4. Commencing with the fiscal year beginning July 1, 1988, the amount of one hundred thousand dollars to be paid to the department of education for distribution to the tribal council of the Sac and Fox Indian settlement located on land held in trust by the secretary of the interior of the United States. Moneys allocated under this subsection shall be used for the purposes specified in section 256.30.

5. For the fiscal year beginning July 1, 2001,

and ending June 30, 2002, the amount of fifty thousand dollars to be paid to the department of education for participation in a state and national project, the national assessment of education progress, to determine the academic achievement of Iowa students in math, reading, science, United States history, or geography.

6. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, to the department of education from phase III moneys, the amount of seventy-five thousand dollars to administer the ambassador to education position in accordance with section 256.45.

7. For the fiscal year beginning July 1, 1990, and succeeding fiscal years, the remainder of moneys appropriated in subsection 1 to the department of education shall be deposited in the educational excellence fund to be allocated in an amount to meet the minimum salary requirements of this chapter for phase I, in an amount to meet the requirements for phase II, and the remainder of the appropriation for phase III.

8. Commencing with the fiscal year beginning July 1, 1997, the amount of two hundred thirty thousand dollars for a kindergarten to grade twelve management information system from additional funds transferred from phase I to phase III.

9. For the fiscal year beginning July 1, 2000, and for each succeeding fiscal year, the amount of one hundred seventy thousand dollars to the state board of regents for distribution in the amount of sixty-eight thousand dollars to the Iowa braille and sight saving school and in the amount of one hundred two thousand dollars to the Iowa state school for the deaf from phase III moneys.

10. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, to the department of education from phase III moneys the amount of forty-seven thousand dollars for the Iowa mathematics and science coalition.

87 Acts, ch 233, §491; 88 Acts, ch 1284, §50; 89 Acts, ch 135, §101, 102; 89 Acts, ch 265, §40; 90 Acts, ch 1272, §73; 92 Acts, ch 1227, §27; 92 Acts, ch 1246, §49; 93 Acts, ch 179, §26 – 28, 34; 94 Acts, ch 1023, §101; 94 Acts, ch 1193, §32; 95 Acts, ch 209, §2; 95 Acts, ch 218, §29; 96 Acts, ch 1215, §53; 97 Acts, ch 212, §30, 31; 98 Acts, ch 1215, §50 – 52; 98 Acts, ch 1216, §35, 36; 99 Acts, ch 205, §42, 43; 2000 Acts, ch 1214, §27, 58; 2000 Acts, ch 1223, §33, 34; 2000 Acts, ch 1232, §18; 2001 Acts, ch 181, §21 – 24

CHAPTER 295

SCHOOL IMPROVEMENT TECHNOLOGY PROGRAM

Repealed by its own terms effective July 1, 2001;
96 Acts, ch 1086, §5

CHAPTER 296

INDEBTEDNESS OF SCHOOL CORPORATIONS

296.1 Indebtedness authorized.
296.2 Petition for election.
296.3 Election called.
296.4 Notice — ballots.
296.5 Repealed by 75 Acts, ch 81, §154.
296.6 Bonds.
296.7 Indebtedness for insurance authorized — tax levy.

296.1 Indebtedness authorized.

Subject to the approval of the voters thereof, school districts are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to defray the cost of purchasing, building, furnishing, reconstructing, repairing, improving or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, teachers' or superintendent's home or homes, and procuring a site or sites therefor, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field, and for any one or more of such purposes. Taxes for the payment of said bonds shall be levied in accordance with chapter 76, and said bonds shall mature within a period not exceeding twenty years from date of issue, shall bear interest at a rate or rates not exceeding that permitted by chapter 74A and shall be of such form as the board of directors of such school district shall by resolution provide, but the aggregate indebtedness of any school district shall not exceed five percent of the actual value of the

taxable property within said school district, as ascertained by the last preceding state and county tax lists.

[S13, §2820-d1; C24, 27, 31, 35, 39, §**4353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §296.1]

296.2 Petition for election.

Before indebtedness can be contracted in excess of one and one-quarter percent of the assessed value of the taxable property, a petition signed by eligible electors equal in number to twenty-five percent of those voting at the last election of school officials shall be filed with the president of the board of directors, asking that an election be called, stating the amount of bonds proposed to be issued and the purpose or purposes for which the indebtedness is to be created, and that the purpose or purposes cannot be accomplished within the limit of one and one-quarter percent of the valuation. The petition may request the calling of an election on one or more propositions and a proposition may include one or more purposes.

[S13, §2820-d2; C24, 27, 31, 35, 39, §**4354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §296.2]

83 Acts, ch 90, §18; 95 Acts, ch 189, §20

296.3 Election called.

Within ten days of receipt of a petition filed under section 296.2, the president of the board of directors shall call a meeting of the board. The meeting shall be held within thirty days after the petition was received. At the meeting, the board shall call the election, fixing the time of the election, which may be at the time and place of holding the regular school election. However, if the board determines by unanimous vote that the proposition or propositions requested by a petition to be submitted at an election are grossly unrealistic or contrary to the needs of the school district, no election shall be called. If more than one petition has been received by the time the board meets to consider the petition triggering the meeting, the board shall act upon the petitions in the order they were received at the meeting called to consider the initial petition. The decision of the board may be appealed to the state board of education as provided in chapter 290. The president shall notify the county commissioner of elections of the time of the election.

[S13, §2820-d3; C24, 27, 31, 35, 39, §**4355;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §296.3; 81 Acts, ch 91, §1]

83 Acts, ch 90, §19; 85 Acts, ch 67, §33; 2002 Acts, ch 1134, §92, 115

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

296.4 Notice — ballots.

Notice of the election shall be given by the county commissioner of elections by publication in accordance with section 49.53. The county commissioner of elections shall conduct the election pursuant to the provisions of chapters 39 to 53 and certify the results to the board of directors.

[S13, §2820-d3; C24, 27, 31, 35, 39, §**4356;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §296.4]

Form of ballot, §49.43 et seq.; also §331.305

296.5 Repealed by 75 Acts, ch 81, § 154.

296.6 Bonds.

If the vote in favor of the issuance of such bonds is equal to at least sixty percent of the total vote cast for and against said proposition at said election, the board of directors shall issue the same and make provision for payment thereof.

[S13, §2820-d4; C24, 27, 31, 35, 39, §**4358;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §296.6]

Vote required to authorize bonds, §75.1

296.7 Indebtedness for insurance authorized — tax levy.

1. A school district or community college corporation may contract indebtedness and issue general obligation bonds or enter into insurance agreements obligating the school district or corporation to make payments beyond its current budget year for one or more of the following mechanisms to protect the school district or corporation from tort liability, loss of property, environmental hazards, or any other risk associated with the operation of the school district or corporation:

a. To procure or provide for a policy of insurance.

b. To provide a self-insurance program.

c. To establish and maintain a local government risk pool.

However, this subsection does not apply to an insurance program described in subsection 3.

2. For purposes of subsection 1, an employee benefit plan which includes a specific or aggregate excess loss coverage or a program that self-insures only a per-employee or per-family deductible for each year and which transfers the risk remaining beyond this deductible is not a self-insurance program, but is instead an insurance program. As used in this section, an *"employee benefit plan"* includes, but is not limited to benefits for hospital and surgical, medical expense, major medical, dental, prescription drug, disability, or life insurance costs or benefits.

3. A school district, providing an insurance program as described in subsection 2, shall not contract indebtedness and issue general obligation bonds or enter into insurance agreements obligating the school district to make payments beyond its current budget year for that employee benefit plan. A school district may, however, apply to the school budget review committee for relief if necessitated by the expenses in the school district's insurance program as described in subsection 2.

4. Taxes may be levied in excess of any limitation imposed by statute for payment of one or more of the following authorized by subsection 1:

a. Principal, premium, or interest on bonds.

b. Premium on an insurance policy, including a stop loss or reinsurance policy, except as limited by subsection 3.

c. Costs of a self-insurance program.

d. Costs of a local government risk pool.

e. Amounts payable under an insurance agreement.

However, for a school district, a tax levied under this section shall be included in the district management levy under section 298.4.

5. A self-insurance program or local government risk pool authorized by subsection 1 is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

6. Notwithstanding the other provisions of this section or any other statute, the tax levy authorized by this section shall not be used to pay the costs of employee benefits, including, but not limited to costs for hospital and surgical, medical expense, major medical, dental, prescription drug, disability, or life insurance benefits.

7. If the board by resolution restricts the use of money in a fund as a reserve for uninsured liability or a self-insurance program, the use shall be restricted and unavailable for any other purpose until the board removes the restriction. The removal is not effective until all obligations of the restricted fund have been satisfied, or the next fiscal year, whichever occurs later.

86 Acts, ch 1211, §18; 89 Acts, ch 135, §103; 90 Acts, ch 1234, §1; 90 Acts, ch 1253, §121

CHAPTER 297

SCHOOLHOUSES AND SCHOOLHOUSE SITES

297.1 Location.
297.2 Ten-acre limitation.
297.3 Thirty-acre limitation.
297.4 Vacancy notification.
297.5 Tax. Repealed effective July 1, 1991, by 89 Acts, ch 135, §136.
297.6 Condemnation.
297.7 Construction, renovation and repair of school buildings — review of plans — aviation programs.
297.8 Emergency repairs.
297.9 Use for other than school purposes.
297.10 Compensation.
297.11 Use forbidden.
297.12 Renting schoolroom.
297.13 Fence around schoolhouse sites.
297.14 Barbed wire.
297.15 Reversion of schoolhouse site.
297.16 Appraisers.
297.17 Notice.
297.18 Appraisement.
297.19 Public sale.
297.20 Sale of improvements.
297.21 Sale of unnecessary schoolhouse sites. Repealed by 97 Acts, ch 184, §7.

SALE OR LEASE OF PROPERTY

297.22 Power to sell, lease, or dispose of property — tax.
297.23 Advertisement for bids. Repealed by 97 Acts, ch 184, §7.
297.24 Acceptance of bids. Repealed by 97 Acts, ch 184, §7.
297.25 Rule of construction.

MINING CAMP SCHOOLS

297.26 Sale by department.
297.27 Preference to owner of tract.
297.28 Appraisers.
297.29 Report filed.
297.30 Public sale.
297.31 Improvements.
297.32 Equipment and supplies.
297.33 and 297.34 Reserved.

LOAN AGREEMENTS

297.35 Continuation of loan agreement.
297.36 Loan agreements.

297.1 Location.

The board of each school district may fix the site for each schoolhouse, which shall be upon some public highway already established or procured by such board and not in any public park, and except in cities and villages, not less than thirty rods from the residence of any landowner who objects thereto.

In fixing such site, the board shall take into consideration the number of scholars residing in the

various portions of the school district and the geographical location and convenience of any proposed site.

[R60, §2037; C73, §1724, 1825, 1826; C97, §2773, 2814; S13, §2773, 2814; C24, 27, 31, 35, 39, §**4359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.1]

297.2 Ten-acre limitation.

Except as hereinafter provided, any school district may take and hold so much real estate as may be required for such site, for the location or construction thereon of schoolhouses, and the convenient use thereof, but not to exceed ten acres exclusive of public highway.

[C73, §1825; C97, §2814; S13, §2814; C24, 27, 31, 35, 39, §**4360;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.2]

297.3 Thirty-acre limitation.

Any school district, including a city or village, may take and hold an area equal to two blocks exclusive of the street or highway, for a schoolhouse site, and not exceeding thirty acres for school playground, stadium, or field house, or other purposes for each such site.

[C97, §2814; S13, §2814; C24, 27, 31, 35, 39, §**4361;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.3]

297.4 Vacancy notification.

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

[82 Acts, ch 1148, §2]

297.5 Tax. Repealed effective July 1, 1991, by 89 Acts, ch 135, § 136. See § 298.2, 298.3.

297.6 Condemnation.

If the owner of real estate desired for any purpose for which any school may be authorized to take and hold real estate refuses to convey the same, or is dead or unknown or cannot be found, or if in the judgment of the board of directors of the corporation they cannot agree with such owner as to the price to be paid therefor, such real estate may be taken under condemnation proceedings in accordance with the provisions of chapter 6B.

[C73, §1827; C97, §2815; C24, 27, 31, 35, 39, §**4364;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.6]

297.7 Construction, renovation and repair of school buildings — review of plans — aviation programs.

1. Sections 73A.2 and 73A.18 are applicable to the construction and repair of school buildings.

2. Any other law to the contrary notwithstanding, the board of directors of a school district may acquire by purchase, lease, or other arrangement real estate located within or adjoining the boundaries of a municipal airport, and may take title, leasehold, or other interest, subject to a right of purchase or repurchase by the city owning or controlling the municipal airport. The city may purchase, repurchase, or repossess such real estate and the improvements constructed on the real estate upon terms and conditions as agreed to by the board of directors and the city council. The board of directors of any such school district may construct a technical school on the real estate to carry on vocational instruction in aviation mechanics and other aviation programs upon compliance with conditions and limitations otherwise provided by law.

[R60, §2037; C73, §1723; C97, §2779; C24, 27, 31, 35, 39, §**4370;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.7; 81 Acts, ch 28, §7, ch 91, §2]

84 Acts, ch 1036, §1; 2002 Acts, ch 1140, §30

Subsection 1 amended

297.8 Emergency repairs.

When emergency repairs costing more than twenty-five thousand dollars are necessary in order to prevent the closing of any school, the provisions of the law with reference to advertising for bids shall not apply, and in that event the board may contract for such emergency repairs without advertising for bids. However, before such emergency repairs can be made to any schoolhouse, it shall be necessary to procure a certificate from the area education agency administrator that such emergency repairs are necessary to prevent the closing of the school.

[C31, 35, §4370-c1; C39, §**4370.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.8; 81 Acts, ch 28, §8]

See §297.7

297.9 Use for other than school purposes.

The board of directors of any school district may authorize the use of any schoolhouse and its grounds within such district for the purpose of meetings of granges, lodges, agricultural societies, and similar societies, for parent-teacher associations, for community recreational activities, community education programs, election purposes, other meetings of public interest, public forums and similar community purposes; provided that such use shall in no way interfere with school activities; such use to be for such compensation and upon such terms and conditions as may be fixed by said board for the proper protection of the schoolhouse and the property belonging therein, includ-

ing that of pupils, except that in the case of community education programs, any compensation necessary for programs provided specifically by community education and not those provided through community education by other agencies or organizations shall be compensated from the funding provided for community education programs.

[C24, 27, 31, 35, 39, §**4371;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.9]

Schoolhouses as polling places, §49.24
Use by county conservation board, §350.8

297.10 Compensation.

Any compensation for such use shall be paid into the general fund and be expended in the upkeep and repair of such school property, and in purchasing supplies therefor.

[C24, 27, 31, 35, 39, §**4372;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.10]

297.11 Use forbidden.

If at any time the voters of such district at a regular election forbid such use of any such schoolhouse or grounds, the board shall not thereafter permit such use until the said action of such voters shall have been rescinded by the voters at a regular election, or at a special election called for that purpose.

[C24, 27, 31, 35, 39, §**4373;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.11]

297.12 Renting schoolroom.

The board may, when necessary, rent a room and employ a teacher, where there are ten children for whose accommodation there is no schoolhouse.

[C73, §1725; C97, §2774; C24, 27, 31, 35, 39, §**4374;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.12]

297.13 Fence around schoolhouse sites.

Each board of directors in school districts where the school grounds adjoin cultivated or improved lands shall build and maintain a lawful fence between said grounds and cultivated or improved lands, and the owner of lands adjoining any such site shall have the right to connect the fence on the owner's land with the fence around the school grounds, but the owner shall not be liable to contribute to the maintenance of such fence.

[S13, §2745-a, -b; C24, 27, 31, 35, 39, §**4377;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.13]

Lawful fence, §359A.18

297.14 Barbed wire.

No fence provided for in section 297.13 shall be constructed of barbed wire, nor shall any barbed wire fence be placed within ten feet of any school grounds. Any person violating the provisions of this section shall be guilty of a simple misdemeanor.

[C97, §2817; C24, 27, 31, 35, 39, §**4378;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.14]

297.15 Reversion of schoolhouse site.

Any real estate, owned by a school district, containing less than two acres, situated wholly outside of a city, and not adjacent thereto, and heretofore used as a schoolhouse site shall revert to the then owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time hereinafter prescribed, pay the value thereof to such school district.

Any such schoolhouse site containing two or more acres shall be subject to the law as otherwise provided.

[C73, §1828; C97, §2816; S13, §2816; C24, 27, 31, 35, 39, §**4379;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.15]

297.16 Appraisers.

In case the school district and said owner of the tract from which such school site was taken, do not agree as to the value of such site, the chief judge of the judicial district of the county in which the greater part of such school district is situated, shall, on the written application of either party, appoint three disinterested voters of the county from the list of persons eligible to serve as compensation commissioners to appraise the site.

[C97, §2816; S13, §2816; C24, 27, 31, 35, 39, §**4380;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.16]

297.17 Notice.

The county sheriff shall give notice to both parties of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court.

[C24, 27, 31, 35, 39, §**4381;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.17]

Time and manner of service, R.C.P. 1.302 – 1.315

297.18 Appraisement.

Such appraisers shall inspect the premises and, at the time and place designated in the notice, appraise said site in writing, which appraisement, after being duly verified, shall be filed with the county sheriff.

[C24, 27, 31, 35, 39, §**4382;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.18]

297.19 Public sale.

If the owner of the tract from which said site was taken fails to pay the amount of such appraisement to such school district within twenty days after the filing of same with the county sheriff, the school district may sell said site to any other person at the appraised value, or may sell the same at public sale to the highest bidder.

[C24, 27, 31, 35, 39, §**4383;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.19]

297.20 Sale of improvements.

If there are improvements on said site, the improvements may, at the request of either party, be appraised and sold separately.

[C97, §2816; S13, §2816; C24, 27, 31, 35, 39, §**4384;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.20]

297.21 Sale of unnecessary schoolhouse sites. Repealed by 97 Acts, ch 184, § 7.

SALE OR LEASE OF PROPERTY

297.22 Power to sell, lease, or dispose of property — tax.

1. The board of directors of a school district may sell, lease, or dispose of, in whole or in part, a schoolhouse, site, or other property belonging to the district. If the real property contains less than two acres, is located outside of a city, is not adjacent to a city, and was previously used as a schoolhouse site, the procedure contained in sections 297.15 through 297.20 shall be followed in lieu of this section.

Proceeds from the sale or disposition of real property shall be placed in the physical plant and equipment levy fund. Proceeds from the sale or disposition of property other than real property shall be placed in the general fund. Proceeds from the lease of real or other property shall be placed in the general fund.

Before the board of directors may sell, lease for a period in excess of one year, or dispose of any property belonging to the school, the board shall hold a public hearing on the proposal. The board shall set forth its proposal in a resolution and shall publish notice of the time and the place of the public hearing on the resolution. The notice shall also describe the property. A locally known address for real property may be substituted for a legal description of real property contained in the resolution. Notice of the time and place of the public hearing shall be published at least once not less than ten days but not more than twenty days prior to the date of the hearing in a newspaper of general circulation in the district. After the public hearing, the board may make a final determination on the proposal contained in the resolution.

However, property having a value of not more than five thousand dollars, other than real property, may be disposed of by any procedure which is adopted by the board and each sale shall be published by at least one insertion each week for two consecutive weeks in a newspaper having general circulation in the district.

2. The board of directors of a school district may sell, lease, exchange, give, or grant, and accept any interest in real property to, with, or from a county, municipal corporation, school district, township, or area education agency if the real property is within the jurisdiction of both the grantor and grantee.

The board of directors of a school district may lease a portion of an existing school building in which the remaining portion of the building will be used for school purposes for a period of not to exceed five years. The lease may be renewed at the option of the board. The notice and public hearing requirements of subsection 1 of this section do not apply to the lease of a portion of an existing school building. A school district shall pay out of the revenue from a lease to the state of Iowa, and to the city, school district and any other political subdivision authorized to levy taxes, an amount as determined by this section. The amount shall be determined by applying the annual tax rate of the taxing district to the assessed value of the portion of the building leased, prorated for the term of the lease during the appropriate taxing period. The provisions of this section relating to the payment of property tax because of leases shall only apply to leases to private, for-profit entities which lease a portion of a school building for a period of thirty or more consecutive days.

3. The provisions in subsections 1 and 2 relating to the sale, lease, or disposition of school district property do not apply to student-constructed buildings and the property on which student-constructed buildings are located. The board of directors of a school district may sell, lease, or dispose of a student-constructed building and the property on which the student-constructed building is located, and may purchase sites for the erection of additional structures, by any procedure which is adopted by the board.

[C27, 31, 35, §4385-a1; C39, §**4385.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.22; 81 Acts, ch 93, §1 – 4]

85 Acts, ch 8, §1; 86 Acts, ch 1223, §1 – 3; 90 Acts, ch 1018, §1; 94 Acts, ch 1029, §22; 94 Acts, ch 1089, §2; 97 Acts, ch 184, §3; 98 Acts, ch 1100, §37

Sale for defense projects, §274.39 – 274.41

297.23 Advertisement for bids. Repealed by 97 Acts, ch 184, § 7.

297.24 Acceptance of bids. Repealed by 97 Acts, ch 184, § 7.

297.25 Rule of construction.

Section 297.22 shall be construed as independent of the power vested in the electors by section 278.1, and as additional to such power.

[C27, 31, 35, §4385-a4; C39, §**4385.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.25]

97 Acts, ch 184, §4

MINING CAMP SCHOOLS

297.26 Sale by department.

Any school building or any school site, the title of which is vested in the state of Iowa by reason of it having been provided by state mining camp funds for schools in mining camps, shall be sold by the department when the director of the department of education determines it is no longer needed for school purposes.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.26]

86 Acts, ch 1238, §55, 56, 58; 86 Acts, ch 1245, §1489, 1984

297.27 Preference to owner of tract.

When the buildings or sites are sold, the owners of the tract from which the same was originally taken shall have first option on the purchase of the same.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.27]

86 Acts, ch 1245, §1985

297.28 Appraisers.

If the department and the owner of the tract from which the school site was taken do not agree as to the value of such site or building, the chief judge of the judicial district of the county in which the greater part of such school site is situated shall, on the written application of either party, appoint three disinterested voters of the county from the list of compensation commissioners to appraise such site. The county sheriff shall give notice to both parties of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of an action in the district court.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.28]

86 Acts, ch 1245, §1986

297.29 Report filed.

Such appraisers shall inspect the premises and at the time and place designated in the notice, appraise such site or building in writing, which appraisement, after being duly verified, shall be filed with the sheriff.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.29]

297.30 Public sale.

If the owner of the tract from which said site was taken fails to pay the amount of such appraisement to such executive council within thirty days after the filing of the same with the sheriff, the executive council may sell said site or building to any other person at the appraised value, or may sell the same at public sale to the highest bidder and the proceeds of such sale are to be added to the permanent school fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.30]

297.31 Improvements.

If there are improvements on said site the same may at the request of either party be appraised and sold separately.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.31]

297.32 Equipment and supplies.

If there is any school equipment, supplies, or other usable school materials, such as desks, blackboards, playground equipment, or the like, in or on said buildings or grounds, the director of the department of education may remove the same and divert their use to other public school districts.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §297.32]

85 Acts, ch 212, §21

297.33 and 297.34 Reserved.

LOAN AGREEMENTS

297.35 Continuation of loan agreement.

A loan agreement between a school district and a bank, investment banker, trust company, insurance company, or insurance group that was made under section 297.36, Code 1989, prior to July 1, 1991, in order to make immediately available proceeds of the schoolhouse tax approved by the voters prior to July 1, 1991, and the levy of taxes to pay principal and interest thereafter, shall continue in effect for the duration of the loan agreement.

89 Acts, ch 135, §104

297.36 Loan agreements.

In order to make immediately available proceeds of the voter-approved physical plant and equipment levy which has been approved by the voters as provided in section 298.2, the board of directors may, with or without notice, borrow money and enter into loan agreements in anticipation of the collection of the tax with a bank, investment banker, trust company, insurance company, or insurance group.

By resolution, the board shall provide for an annual levy which is within the limits of the voter-approved physical plant and equipment levy to pay for the amount of the principal and interest due each year until maturity. The board shall file a certified copy of the resolution with the auditor of each county in which the district is located. The filing of the resolution with the auditor makes it the duty of the auditor to annually levy the amount certified for collection until funds are real-

ized to repay the loan and interest on the loan in full.

The loan must mature within the period of time authorized by the voters and shall bear interest at a rate which does not exceed the limits under chapter 74A. A loan agreement entered into pursuant to this section shall be in a form as the board of directors shall by resolution provide and the loan shall be payable as to both principal and interest from the proceeds of the annual levy of the voter-approved physical plant and equipment levy, or so much thereof as will be sufficient to pay the loan and interest on the loan.

The proceeds of a loan must be deposited in the physical plant and equipment levy fund. Warrants paid from this fund must be for purposes authorized for the voter-approved physical plant and equipment levy.

This section does not limit the authority of the board of directors to levy the full amount of the voter-approved physical plant and equipment levy, but if and to whatever extent the tax is levied in any year in excess of the amount of principal and interest falling due in that year under a loan agreement, the first available proceeds, to an amount sufficient to meet maturing installments of principal and interest under the loan agreement, shall be paid into the debt service fund for the loan before the taxes are otherwise made available to the school corporation for other school purposes, and the amount required to be annually set aside to pay principal of and interest on the money borrowed under the loan agreement constitutes a first charge upon the proceeds of the voter-approved physical plant and equipment levy, which tax shall be pledged to pay the loan and the interest on the loan.

This section is supplemental and in addition to existing statutory authority to finance the purposes specified in section 298.2 for the physical plant and equipment levy, and for the borrowing of money and execution of loan agreements in connection with that section, and is not subject to any other law. The fact that a school corporation may have previously borrowed money and entered into loan agreements under authority of this section does not prevent the school corporation from borrowing additional money and entering into further loan agreements if the aggregate of the amount payable under all of the loan agreements does not exceed the proceeds of the voter-approved physical plant and equipment levy.

83 Acts, ch 185, §8, 62; 89 Acts, ch 135, §105; 94 Acts, ch 1029, §23

CHAPTER 298

SCHOOL TAXES AND BONDS

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298.1 School taxes.

The board of each school district shall estimate the amount of the proposed expenditures and proposed receipts for the general school purposes at a time and in a manner to effectuate the provisions of chapter 257 and sections 256B.9 and 256B.11. Compliance with chapter 24 shall be observed.

[C51, §1152; R60, §2033, 2034, 2037, 2038, 2044, 2088; C73, §1777, 1778; C97, §2806; S13, §2806; SS15, §2794-a; C24, 27, 31, 35, 39, §**4386;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.1]

89 Acts, ch 135, §106

298.2 Imposition of physical plant and equipment levy.

1. A physical plant and equipment levy of not exceeding one dollar and sixty-seven cents per thousand dollars of assessed valuation in the district is established except as otherwise provided in this subsection. The physical plant and equip-

ment levy consists of the regular physical plant and equipment levy of not exceeding thirty-three cents per thousand dollars of assessed valuation in the district and a voter-approved physical plant and equipment levy of not exceeding one dollar and thirty-four cents per thousand dollars of assessed valuation in the district. However, the voter-approved physical plant and equipment levy may consist of a combination of a physical plant and equipment property tax levy and a physical plant and equipment income surtax as provided in subsection 4 with the maximum amount levied and imposed limited to an amount that could be raised by a one dollar and thirty-four cent property tax levy. The levy limitations of this subsection are subject to subsection 6.

2. If the electors of a school district have authorized a voter-approved physical plant and equipment levy not exceeding sixty-seven cents per thousand dollars of assessed valuation in the district prior to July 1, 1997, the levy shall continue for the period authorized under the voter-approved levy, and the maximum levy that can be authorized by the electors under the voter-approved levy on or after July 1, 1997, under this section, is an additional sixty-seven cents for a period to coincide with the period for which the initial physical plant and equipment levy in the district was approved.

3. The board of directors of a school district may certify for levy by April 15 of a school year a tax on all taxable property in the school district for the regular physical plant and equipment levy.

4. The board may, and upon the written request of not less than one hundred eligible electors or thirty percent of the number of eligible electors voting at the last regular school election, whichever is greater, shall, direct the county commissioner of elections to provide for submitting the proposition of levying the voter-approved physical plant and equipment levy for a period of time authorized by the voters in the notice of election, not to exceed ten years, in the notice of the regular school election. The proposition is adopted if a majority of those voting on the proposition at the election approves it. The voter-approved physical plant and equipment levy shall be funded either by a physical plant and equipment property tax or by a combination of a physical plant and equipment property tax and a physical plant and equipment income surtax, as determined by the board. However, if the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes. Subject to the limitations of section 298.14, if the board uses a combination of a physical plant and equipment property tax and a physical plant and equipment surtax, for each fiscal year the board shall determine the percent of income surtax to be imposed expressed as full percentage points, not to exceed twenty percent.

If a combination of a property tax and income surtax is used, by April 15 of the previous school year, the board shall certify the percent of the income surtax to be imposed and the amount to be raised to the department of management and the department of management shall establish the rate of the property tax and income surtax for the school year. The physical plant and equipment property tax and income surtax shall be levied or imposed, collected, and paid to the school district in the manner provided for the instructional support program in sections 257.21 through 257.26.

5. The proposition to levy the voter-approved physical plant and equipment levy is not affected by a change in the boundaries of the school district, except as otherwise provided in this section. If each school district involved in a school reorganization under chapter 275 has adopted the voter-approved physical plant and equipment levy or the sixty-seven and one-half cents per thousand dollars of assessed value schoolhouse levy under section 278.1, subsection 7, Code 1989, prior to July 1, 1991, and if the voters have not voted upon the proposition to levy the voter-approved physical plant and equipment levy in the reorganized district, the existing voter-approved physical plant and equipment levy or the existing schoolhouse levy, as applicable, is in effect for the reorganized district for the least amount and the shortest time for which it is in effect in any of the districts.

Authorized levies for the period of time approved are not affected as a result of a failure of a proposition proposed to expand the purposes for which the funds may be expended.

6. If the board of directors of a school district in which the voters have authorized the schoolhouse tax prior to July 1, 1991, has entered into a rental or lease arrangement under section 279.26, Code 1989, or has entered into a loan agreement under section 297.36, Code 1989, the levy shall continue for the period authorized and the maximum levy that can be authorized under the voter-approved physical plant and equipment levy is reduced by the rate of the schoolhouse tax.

89 Acts, ch 135, §107; 92 Acts, ch 1187, §7; 93 Acts, ch 1, §9, 10; 97 Acts, ch 182, §1, 2

Limit on total surtax, §298.14

298.3 Revenues from the levies.

The revenue from the regular and voter-approved physical plant and equipment levies shall be placed in the physical plant and equipment levy fund and expended only for the following purposes:

1. The purchase and improvement of grounds. For the purpose of this subsection:

a. "Purchase of grounds" includes the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental to the property acquisition.

b. "Improvement of grounds" includes grading,

landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements, as defined in section 384.37.

2. The construction of schoolhouses or buildings and opening roads to schoolhouses or buildings.

3. The purchase of buildings and the purchase, lease, or lease-purchase of a single unit of equipment or technology exceeding five hundred dollars in value.

4. The payment of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.

5. Procuring or acquisition of library facilities.

6. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and additions to existing schoolhouses.

For the purpose of this subsection, *"repairing"* means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance; and *"reconstructing"* means rebuilding or restoring as an entity a thing which was lost or destroyed.

7. Expenditures for energy conservation.

8. The rental of facilities under chapter 28E.

9. Purchase of transportation equipment for transporting students.

10. Lease-purchase option agreements for school buildings and for equipment exceeding in value five thousand dollars per single unit.

11. Equipment purchases for recreational purposes.

12. Payments to a municipality or other entity as required under section 403.19, subsection 2.

Interest earned on money in the physical plant and equipment levy fund may be expended for a purpose listed in this section.

Unencumbered funds collected prior to July 1, 1991, from the levy previously authorized under section 297.5, Code 1991, may be expended for the purposes listed in this section.

Revenue from the regular and voter-approved physical plant and equipment levies shall not be expended for school district employee salaries or travel expenses, supplies, printing costs or media services, or for any other purpose not expressly authorized in this section.

89 Acts, ch 135, §108; 92 Acts, ch 1187, §8, 9; 94 Acts, ch 1029, §24, 25; 94 Acts, ch 1141, §1, 2; 94 Acts, ch 1175, §14; 97 Acts, ch 182, §3; 2000 Acts, ch 1054, §1, 3; 2002 Acts, ch 1118, §1

Subsection 12 applies to property taxes due and owing on or after July 1, 2000; 2000 Acts, ch 1054, §3

Subsection 3 amended

298.4 District management levy.

The board of directors of a school district may certify for levy by April 15 of a school year, a tax on all taxable property in the school district for a district management levy. The revenue from the tax levied in this section shall be placed in the district management levy fund of the school district. The district management levy shall be expended only for the following purposes:

1. To pay the cost of unemployment benefits as provided in section 96.31.

2. To pay the costs of liability insurance and the costs of a judgment or settlement relating to liability together with interest accruing on the judgment or settlement to the expected date of payment.

3. To pay the costs of insurance agreements under section 296.7.

4. To pay the costs of a judgment under section 298.16.

5. To pay the cost of early retirement benefits to employees under section 279.46.

Unencumbered funds collected from the levies authorized in sections 96.31, 279.46, and 296.7 prior to July 1, 1991, may be expended for the purposes listed in subsections 1, 3, and 5.

89 Acts, ch 135, §109; 90 Acts, ch 1168, §41; 92 Acts, ch 1187, §10; 93 Acts, ch 1, §11; 94 Acts, ch 1029, §26, 27

298.5 Taxes estimated.

School corporations containing territory in adjoining counties may vote and estimate all taxes for school purposes in dollars and cents per thousand dollars of assessed value.

[C97, §2806; S13, §2806; C24, 27, 31, 35, 39, §**4389;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.5]

298.6 Repealed by 70 Acts, ch 1025, § 57.

298.7 Contract for use of library — tax levy.

1. The board of directors of a school corporation in which there is no free public library may contract with a free public library for the free use of the library by the residents of the school district, and pay the library the amount agreed upon for the use of the library as provided by law. During the existence of the contract, the board shall certify annually a tax sufficient to pay the library the consideration agreed upon, not exceeding twenty cents per thousand dollars of assessed value of the taxable property of the district. During the existence of the contract, the school corporation is re-

lieved from the requirement that the school treasurer withhold funds for library purposes. This section does not apply in townships where a contract for other library facilities is in existence.

2. However, if a school district which is qualified to contract for library services under subsection 1 levies a tax not to exceed twenty cents per thousand dollars of assessed valuation of the taxable property for school library purposes in the fiscal year before a reorganization involving the district, the tax levy shall remain valid for succeeding fiscal years, and shall be levied and collected against the taxable property of the former district which is part of the reorganized district for school library purposes. The contract and the tax levy may be discontinued by a petition signed by eligible electors residing in the former district. The petition requesting the discontinuance must be signed by no fewer than one hundred eligible electors or thirty percent of the number voting at the last preceding school election in the former district, whichever is greater. The petition must be filed with the secretary of the board of directors of the school district at least seventy-five days before the next regular school election. The proposal to discontinue the levy shall be deemed adopted if the vote in favor of the discontinuance is equal to at least a majority of the total vote cast on the proposal by the electors of the former school district.

[S13, §2806; C24, 27, 31, 35, 39, §**4391;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.7]

84 Acts, ch 1288, §1; 93 Acts, ch 74, §1

298.8 Levy by board of supervisors.

The board of supervisors shall at the time of levying taxes for county purposes levy the taxes necessary to raise the various funds authorized by law and certified to it by law, but if the amount certified for any such fund is in excess of the amount authorized by law, it shall levy only so much thereof as is authorized by law.

[R60, §2059; C73, §1779, 1780; C97, §2807; SS15, §1303; C24, 27, 31, 35, 39, §**4393;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.8]

298.9 Special levies.

If the voter-approved physical plant and equipment levy, consisting solely of a physical plant and equipment property tax levy, is voted at a special election and certified to the board of supervisors after the regular levy is made, the board shall at its next regular meeting levy the tax and cause it to be entered upon the tax list to be collected as other school taxes. If the certification is filed prior to May 1, the annual levy shall begin with the tax levy of the year of filing. If the certification is filed after May 1 in a year, the levy shall begin with the levy of the fiscal year succeeding the year of the filing of the certification.

[C97, §2807; SS15, §1303; C24, 27, 31, 35, 39, §**4394;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.9]

89 Acts, ch 135, §110; 95 Acts, ch 67, §23; 96 Acts, ch 1215, §54

298.10 Levy for cash reserve.

The board of directors of a school district may certify for levy by April 15 of a school year, a tax on all taxable property in the school district in order to raise an amount for a necessary cash reserve for a school district's general fund. The amount raised for a necessary cash reserve does not increase a school district's authorized expenditures as defined in section 257.7.

[81 Acts, ch 94, §1, 18; 82 Acts, ch 1128, §1, 5]

89 Acts, ch 135, §111; 93 Acts, ch 1, §12

298.11 Apportionment of school funds.

The county auditor shall, on the first Monday in April and the first Monday in October of each year, apportion the school tax, together with rents on unsold school lands to which the county is entitled as shown in notice from the director of revenue and finance, and all other money in the hands of the county treasurer belonging in common to the schools of the county and not included in a previous apportionment, among the corporations in the county in the manner provided by law.

The county auditor shall immediately notify the county treasurer of such apportionment and of the amount due thereby to each corporation.

The county treasurer shall thereupon give notice to the president of each corporation, and shall pay out such apportionment moneys in the same manner that the county treasurer is authorized to pay other school moneys to the treasurers of the several school districts.

[R60, §1966, 2060, 2061; C73, §1781, 1782, 1841; C97, §2808; S13, §2808; C24, 27, 31, 35, 39, §**4396;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.11]

86 Acts, ch 1016, §6

298.12 Repealed by 80 Acts, ch 1013, § 7.

298.13 Direct deposit of tax revenue.

Before the fifteenth day of each month, the county treasurer shall send the amount collected for each fund through the last day of the preceding month for direct deposit into the depository and account designated by the school board. The county treasurer shall send a notice to the secretary of the school board stating the amount deposited, the date, the amount to be credited to each fund according to the budget, and the source of revenue.

[C73, §1784, 1785; C97, §2810; C24, 27, 31, 35, 39, §**4398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §298.13; 81 Acts, ch 117, §1210; 82 Acts, ch 1195, §1]

298.14 School district income surtaxes.

For each fiscal year, the cumulative total of the percents of surtax approved by the board of directors of a school district and collected by the department of revenue and finance under sections 257.21, 257.29, and 298.2, and the enrichment surtax under section 442.15, Code 1989, and an income surtax collected by a political subdivision under chapter 422D, shall not exceed twenty percent.

A school district income surtax fund is created in the office of treasurer of state. Income surtaxes collected by the department of revenue and finance under sections 257.21, 257.29, and 298.2 and section 442.15, Code 1989, shall be deposited in the school district income surtax fund to the credit of each school district. A separate accounting of each surtax, by school district, shall be maintained.

The director of revenue and finance shall draw warrants in payment of the surtaxes collected in each school district. Warrants shall be payable in two installments to be paid on approximately the first day of December and the first day of February following collection of the taxes and shall be delivered to the respective school districts.

89 Acts, ch 135, §112; 92 Acts, ch 1226, §1; 2000 Acts, ch 1072, §2

See also §422D.2 for limit on total surtax

298.15 Payment of judgment.

When a judgment shall be obtained against a school corporation, its board shall order the payment thereof out of the proper fund by an order on the treasurer, not in excess, however, of the funds available for that purpose.

[R60, §2095; C73, §1787; C97, §2811; C24, 27, 31, 35, 39, §**4400;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.15]

298.16 Judgment tax.

If the proper fund is not sufficient, then, unless its board has provided by the issuance of bonds for raising the amount necessary to pay a judgment, the cost of the judgment shall be included in the district management levy.

[R60, §2095; C73, §1787; C97, §2811; C24, 27, 31, 35, 39, §**4401;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.16]

89 Acts, ch 135, §113

298.17 Judgment levy. Repealed by 89 Acts, ch 135, § 136. See § 298.16.

298.18 Bond tax — election — leasing buildings.

The board of each school corporation shall, when estimating and certifying the amount of money required for general purposes, estimate and certify to the board of supervisors of the proper county for the debt service fund the amount required to pay interest due or that may become due for the fiscal year beginning July 1, thereafter upon lawful bonded indebtedness, and in addition thereto such amount as the board may deem necessary to apply on the principal.

The amount estimated and certified to apply on principal and interest for any one year shall not exceed two dollars and seventy cents per thousand dollars of the assessed valuation of the taxable property of the school corporation except as hereinafter provided.

For the sole purpose of computing the amount of bonds which may be issued as a result of the application of any limitation referred to in this section, all interest on the bonds in excess of that accruing in the first twelve months may be excluded from the first annual levy of taxes, so that the need for including more than one year's interest in the first annual levy of taxes to pay the bonds and interest shall not operate to further restrict the amount of bonds which may be issued, and in certifying the annual levies to the county auditor or auditors such first annual levy of taxes shall be sufficient to pay all principal of and interest on said bonds becoming due prior to the next succeeding annual levy and the full amount of such first annual levy shall be entered for collection by said auditor or auditors, as provided in chapter 76.

The amount estimated and certified to apply on principal and interest for any one year may exceed two dollars and seventy cents per thousand dollars of assessed value by the amount approved by the voters of the school corporation, but not exceeding four dollars and five cents per thousand of the assessed value of the taxable property within any school corporation, provided that the registered voters of such school corporation have first approved such increased amount at a special election, which may be held at the same time as the regular school election. The proposition submitted to the voters at such special election shall be in substantially the following form:

Shall the board of directors of the . . . . . (insert name of school corporation) in the County of . . . . . , State of Iowa, be authorized to levy annually a tax exceeding two dollars and seventy cents per thousand dollars, but not exceeding . . . . dollars and . . . . . cents per thousand dollars of the assessed value of the taxable property within said school corporation to pay the principal of and interest on bonded indebtedness of said school corporation, it being understood that the approval of this proposition shall not limit the source of payment of the bonds and interest but shall only operate to restrict the amount of bonds which may be issued?

Notice of the election shall be given by the county commissioner of elections according to section 49.53. The election shall be held on a date not less than four nor more than twenty days after the

last publication of the notice. At such election the ballot used for the submission of said proposition shall be in substantially the form for submitting special questions at general elections. The county commissioner of elections shall conduct the election pursuant to the provisions of chapters 39 to 53 and certify the results to the board of directors. Such proposition shall not be deemed carried or adopted unless the vote in favor of such proposition is equal to at least sixty percent of the total vote cast for and against said proposition at said election. Whenever such a proposition has been approved by the voters of a school corporation as hereinbefore provided, no further approval of the voters of such school corporation shall be required as a result of any subsequent change in the boundaries of such school corporation.

The voted tax levy referred to herein shall not limit the source of payment of bonds and interest but shall only restrict the amount of bonds which may be issued.

The ability of a school corporation to exceed two dollars and seventy cents per thousand dollars of assessed value to service principal and interest payments on bonded indebtedness is limited and conferred only to those school corporations engaged in the administration of elementary and secondary education.

Provided further that if a school corporation leases a building or property, which has been used as a junior college by such corporation, to a community college, the annual amounts certified as herein provided by such leasing school corporation for payment of interest and principal due on lawful bonded indebtedness incurred by such leasing school corporation for purchasing, building, furnishing, reconstructing, repairing, improving or remodeling the building leased or acquiring or adding to the site of such property leased, to the extent of the respective annual rent the school corporation will receive under such lease, shall not be considered as a part of the total amount estimated and certified for the purposes of determining if such amount exceeds any limitation contained in this section.

[C73, §1823; C97, §2813; S13, §2813; C24, 27, 31, 35, 39, §**4403;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.18]

90 Acts, ch 1253, §109; 94 Acts, ch 1029, §28; 2001 Acts, ch 56, §14

298.18A Levy adjustment.

If, in the opinion of the board of a school corporation, after having originally estimated and certified the amount required to pay interest and principal due upon bonded indebtedness incurred before July 1, 1995, an adjustment in the amount certified in excess of that previously levied by the resolution authorizing issuance of the bonds becomes necessary in anticipation of future projected revenue shortfalls resulting from a machinery and equipment-related taxable valuation decrease from the valuation as of January 1, 1994, an adjustment shall be permitted subject to the following limitations:

1. An adjustment shall be permitted only in a district in which machinery and equipment valuation exceeds twenty percent of total taxable valuation as of January 1, 1994.

2. The adjustment shall not result in a total amount levied in excess of the two dollar and seventy cent per thousand dollars of assessed valuation limit provided in section 298.18. An adjustment in excess of the two dollar and seventy cent per thousand dollars of assessed valuation limit shall be subject to the special election provisions for increases of up to four dollars and five cents per thousand dollars of assessed valuation provisions of section 298.18.

3. The amount of the adjustment, when added to the amount originally estimated and certified, for any one year, shall not exceed the least of:

a. The amount required to pay interest and principal due upon bonded indebtedness for the three-year period beginning on the date of the adjustment.

b. One hundred twenty-five percent of the amount originally estimated and certified.

c. One hundred ten percent of the total district levies for the fiscal year preceding the fiscal year in which the adjustment is to be added.

4. The amount of the adjustment plus the amount of state replacement moneys received under section 427B.19A which is attributable to the amount of the adjustment, when added to the amount originally estimated and certified, shall not result in the levying of an amount over the life of the issue in excess of the amount necessary for principal and interest repayment.

5. Amounts collected pursuant to this section shall be deposited in a separate debt service account distinct from the account established to hold principal and interest revenues resulting from the original levy.

6. An adjustment shall not be permitted which results in extending a levy beyond the earlier of the following:

a. Ten years from the original date of certification of the amount required to pay interest and principal.

b. June 30, 2007.

96 Acts, ch 1179, §1

298.19 Levy.

The board of supervisors of the county to which the certificate is addressed within the contemplation of section 298.18 shall levy the necessary tax to raise the amount estimated, or so much thereof as may be lawful and within the limitation of said section which levy shall be made as other taxes for school purposes.

[S13, §2813-a; C24, 27, 31, 35, 39, §**4404;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.19]

298.20 Funding or refunding bonds.

For the purpose of providing for the payment of any indebtedness of any school corporation represented by judgments or bonds, the board of directors of such school corporation, at any time or times, may provide by resolution for the issuance of bonds of such school corporation, to be known as funding or refunding bonds. The proceeds derived from the public or private sale of such funding or refunding bonds shall be applied in payment of such indebtedness; or the funding bonds or refunding bonds may be issued in exchange for the evidences of such indebtedness, par for par.

[S13, §2812-c; C24, 27, 31, 35, 39, §**4405;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.20]

90 Acts, ch 1272, §74

298.21 School bonds.

The board of directors of any school corporation when authorized by the voters at the regular election or at a special election called for that purpose, may issue the negotiable, interest-bearing school bonds of said corporation for borrowing money for any or all of the following purposes:

1. To acquire sites for school purposes.
2. To erect, complete, or improve buildings authorized for school purposes.
3. To acquire equipment for schools, sites, and buildings.

[S13, §2812-d; C24, 27, 31, 35, 39, §**4406;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.21]

Vote required to authorize bonds, §75.1

298.22 Form — rate of interest — where registered.

All of said bonds shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the action of the board providing therefor; shall run not more than twenty years, and may be sooner paid if so nominated in the bond; bear a rate of interest not exceeding that permitted by chapter 74A, payable semiannually; be signed by the president and countersigned by the secretary of the board of directors; and shall not be disposed of for less than par value, nor issued for other purposes than this chapter provides.

All of said bonds, when issued, shall be delivered to the secretary of the board of directors, who shall register them in a book to be kept for that purpose, and shall deliver them when they have been properly countersigned.

The expenses of engraving and printing of bonds may be paid out of the general fund.

[S13, SS15, §2812-e; C24, 27, 31, 35, 39, §**4407;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.22]

Form of county bonds, §331.446
Legalizing Act, 77 Acts, ch 97, §7

298.23 Redemption.

Whenever the amount in the hands of the treasurer, belonging to the funds set aside to pay bonds, is sufficient to redeem one or more of the bonds which by their terms are subject to redemption, the treasurer shall give the owner of said bonds thirty days' written notice of the readiness of the district to pay and the amount it desires to pay. If not presented for payment or redemption within thirty days after the date of such notice, the interest on such bonds shall cease and the amount due thereon shall be set aside for its payment whenever it is presented.

[S13, §2812-f; C24, 27, 31, 35, 39, §**4408;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.23]

298.24 Record of bond buyers.

All redemptions shall be made in the order of their numbers. The treasurer shall keep a record of the parties to whom the bonds are sold, together with their post-office addresses, and notice mailed to the address as shown by such record shall be sufficient.

[S13, §2812-f; C24, 27, 31, 35, 39, §**4409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §298.24]

CHAPTER 298A

SCHOOL DISTRICT FUND STRUCTURE

298A.1 Effective date.
298A.2 General fund.
298A.3 District management levy fund.
298A.4 Physical plant and equipment levy fund.
298A.5 Schoolhouse tax levy fund.
298A.6 Public education and recreation levy fund.
298A.7 Library levy fund.
298A.8 Student activity fund.
298A.9 Capital project funds.
298A.10 Debt service fund.
298A.11 School nutrition fund.
298A.12 Child care fund.
298A.13 Trust or agency funds.
298A.14 Other funds.

298A.1 Effective date.
This chapter establishes the fund structure which shall be used by school districts commencing with the school budget year which begins on July 1, 1995.
94 Acts, ch 1029, §1

298A.2 General fund.
All moneys received by a school corporation from taxes and other sources must be accounted for in the general fund, except moneys required by law to be accounted for in another fund.
94 Acts, ch 1029, §2

298A.3 District management levy fund.
The district management levy fund is a special revenue fund. A district management levy fund must be established in any school corporation which levies the tax authorized under section 298.4.
94 Acts, ch 1029, §3

298A.4 Physical plant and equipment levy fund.
The physical plant and equipment levy fund is a special revenue fund. A physical plant and equipment levy fund must be established in any school corporation which levies the tax authorized, whether regular or voter-approved, under section 298.2.
94 Acts, ch 1029, §4

298A.5 Schoolhouse tax levy fund.
The schoolhouse tax levy fund is a special revenue fund. A schoolhouse tax levy fund must be established in any school corporation which levies the tax which was authorized by section 278.1, subsection 7, Code 1989. This fund shall continue in existence until all tax has been collected and all moneys have been expended for the purposes originally authorized by the electors.
94 Acts, ch 1029, §5

298A.6 Public education and recreation levy fund.
The public education and recreation levy fund is a special revenue fund. A public education and recreation levy fund must be established in any school corporation which levies the tax authorized under section 300.2 or which receives revenue from a chapter 28E agreement authorized under section 300.1.
94 Acts, ch 1029, §6

298A.7 Library levy fund.
The library levy fund is a special revenue fund. A library levy fund must be established in any school corporation which levies the tax authorized under section 298.7.
94 Acts, ch 1029, §7

298A.8 Student activity fund.
The student activity fund is a special revenue fund. A student activity fund must be established in any school corporation receiving money from student-related activities such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys in this fund shall be used to support only the cocurricular program defined in department of education administrative rules.
94 Acts, ch 1029, §8

298A.9 Capital project funds.
A capital project fund must be established in any school corporation which issues bonds or other authorized indebtedness for capital projects or which initiates a capital project, or which receives grants or other funds for capital projects. Boards are authorized to establish more than one capital project fund as necessary. Any balance remaining in a capital project fund after the capital project is completed may be retained for future capital projects in accordance with the original purpose of the bond issue or voter-approved levy; or may be transferred, by board resolution, to the debt service fund, the physical plant and equipment levy fund, or other fund from which the surplus originated; or transferred to the general fund in accordance with section 278.1, subsection 5.
94 Acts, ch 1029, §9

298A.10 Debt service fund.
A debt service fund must be established in any school corporation which issues bonds or other authorized indebtedness. The debt service fund shall be used to pay interest as it becomes due and the amount necessary to pay the principal when due on bonds or other authorized indebtedness issued by the district, and to make payments required under a loan, lease-purchase agreement, or other evidence of indebtedness authorized by this Code. Moneys available to service this debt and received from other sources shall be transferred to the debt service fund and the payment of the debt shall be made from this fund. Funds remaining in the debt service fund after payment of all outstanding debt in accordance with the original purpose of the indebtedness may be transferred by board resolution to the physical plant and equipment levy fund or transferred to the general fund in accordance with section 278.1, subsection 5.
94 Acts, ch 1029, §10

298A.11 School nutrition fund.
A school nutrition fund is an enterprise fund. A school nutrition fund must be established in any school corporation receiving moneys from the

school meal program authorized under chapter 283A.

94 Acts, ch 1029, §11; 95 Acts, ch 67, §24

298A.12 Child care fund.

A child care fund is an enterprise fund. A child care fund must be established in any school corporation receiving moneys from the child care program authorized under section 279.49.

94 Acts, ch 1029, §12; 99 Acts, ch 192, §33

298A.13 Trust or agency funds.

Trust or agency funds shall be established by any school corporation to account for gifts it receives to be used for a particular purpose or to account for money and property received and administered by the district as trustee or custodian or in the capacity of an agent. Boards may establish trust and agency funds as necessary.

94 Acts, ch 1029, §13

298A.14 Other funds.

A school corporation may establish other funds in accordance with generally accepted accounting principles and may certify other taxes to be levied for the funds as provided by state law. The status of each fund must be included in the annual report. The treasurer shall keep a separate account for each fund, and shall not pay an order that fails to state the fund upon which it is drawn and the specific use to which it is to be applied.

94 Acts, ch 1029, §14

CHAPTER 299

COMPULSORY EDUCATION

299.1 Attendance requirements.
299.1A Compulsory attendance age.
299.1B Failure to attend — loss of driver's license.
299.2 Exceptions.
299.3 Reports from accredited nonpublic schools.
299.4 Reports as to private instruction.
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299.9 Truants — rules for punishment.
299.10 Truancy officers — appointment.
299.11 Duties of truancy officer.
299.12 Violation of attendance policy — attendance cooperation meeting — agreement — family investment program.
299.13 Civil enforcement.
299.14 Discharge from truant school. Repealed by 91 Acts, ch 200, §31.
299.15 Reports by school officers and employees.
299.16 Failure to attend — report.
299.17 Repealed by 72 Acts, ch 1065, §1.
299.18 Education of certain children who are deaf, blind, or have severe disabilities.
299.19 Proceeding against parent.
299.20 Order.
299.21 Contempt.
299.22 When deaf and blind children excused.
299.23 Agent of state board of regents.
299.24 Religious groups exempted from school standards.

299.1 Attendance requirements.

Except as provided in section 299.2, the parent, guardian, or legal or actual custodian of a child who is of compulsory attendance age, shall cause the child to attend some public school, an accredited nonpublic school, or competent private instruction in accordance with the provisions of chapter 299A, during a school year, as defined under section 279.10. The board of directors of a public school district or the governing body of an accredited nonpublic school shall set the number of days of required attendance for the schools under its control.

The board of directors of a public or the governing body of an accredited nonpublic school may, by resolution, require attendance for the entire time when the schools are in session in any school year and adopt a policy or rules relating to the reasons considered to be valid or acceptable excuses for absence from school.

[S13, §2823-a; C24, 27, 31, 35, 39, §**4410;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.1]

83 Acts, ch 17, §2, 4; 85 Acts, ch 6, §3; 88 Acts, ch 1087, §2; 88 Acts, ch 1259, §2, 3; 89 Acts, ch 265, §41; 91 Acts, ch 200, §3

299.1A Compulsory attendance age.

A child who has reached the age of six and is under sixteen years of age by September 15 is of compulsory attendance age. However, if a child en-

rolled in a school district or accredited nonpublic school reaches the age of sixteen on or after September 15, the child remains of compulsory age until the end of the regular school calendar.

91 Acts, ch 200, §4; 2001 Acts, ch 110, §1

299.1B Failure to attend — loss of driver's license.

A person who does not attend a public school, an accredited nonpublic school, competent private instruction in accordance with the provisions of chapter 299A, an alternative school, adult education classes, or who is not employed at least twenty hours per week shall not receive a motor vehicle operator's license until age eighteen. A person under age eighteen who has been issued a motor vehicle operator's license who does not attend a public school, an accredited nonpublic school, competent private instruction in accordance with the provisions of chapter 299A, an alternative school, or adult education classes, shall surrender the license and be issued a temporary restricted license under section 321.215.

94 Acts, ch 1172, §32

299.2 Exceptions.

Section 299.1 shall not apply to any child:

1. Who has completed the requirements for graduation in an accredited school or has obtained a high school equivalency diploma under chapter 259A.
2. Who is excused for sufficient reason by any court of record or judge.
3. While attending religious services or receiving religious instructions.
4. Who is attending a private college preparatory school accredited or probationally accredited under section 256.11, subsection 13.
5. Who has been excused under section 299.22.
6. Who is exempted under section 299.24.

[S13, §2823-a; C24, 27, 31, 35, 39, §**4411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.2]

86 Acts, ch 1245, §1490; 91 Acts, ch 200, §5

299.3 Reports from accredited nonpublic schools.

Within ten days from receipt of notice from the secretary of the school district within which an accredited nonpublic school is conducted, the principal of the accredited nonpublic school shall, once during each school year, and at any time when requested in individual cases, furnish to the secretary of the public school district, within which the accredited nonpublic school is located, a certificate and report in duplicate on forms provided by the public school district of the names and ages of each pupil of the accredited nonpublic school who is of compulsory attendance age and the grade level of each pupil, during the preceding year and from the time of the last preceding report to the time at which a report is required. In addition, the report shall identify all students of compulsory attendance age who were truant as defined by law or school policy and the number of days of truancy for the period covered by the report, and children who dropped out, withdrew from enrollment, or transferred to another Iowa school and the date their attendance ceased at the accredited nonpublic school. The secretary shall retain one of the reports and file the other with the secretary of the area education agency.

[S13, §2823-b; C24, 27, 31, 35, 39, §**4412;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.3]

91 Acts, ch 200, §6; 93 Acts, ch 101, §207

299.4 Reports as to private instruction.

The parent, guardian, or legal custodian of a child who is of compulsory attendance age, who places the child under competent private instruction under either section 299A.2 or 299A.3, not in an accredited school or a home school assistance program operated by a public or accredited nonpublic school, shall furnish a report in duplicate on forms provided by the public school district, to the district by the earliest starting date specified in section 279.10, subsection 1. The secretary shall retain and file one copy and forward the other copy to the district's area education agency. The report shall state the name and age of the child, the period of time during which the child has been or will be under competent private instruction for the year, an outline of the course of study, texts used, and the name and address of the instructor. The parent, guardian, or legal custodian of a child, who is placing the child under competent private instruction for the first time, shall also provide the district with evidence that the child has had the immunizations required under section 139A.8. The term *"outline of course of study"* shall include subjects covered, lesson plans, and time spent on the areas of study.

[S13, §2823-b; C24, 27, 31, 35, 39, §**4413;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.4]

88 Acts, ch 1259, §4; 91 Acts, ch 200, §7; 92 Acts, ch 1135, §9; 2000 Acts, ch 1066, §45

299.5 Proof of mental or physical condition.

The parent, guardian, or legal or actual custodian of a child who is of compulsory attendance age, who is physically or mentally unable to attend school, or whose presence in school would be injurious to the health of other pupils, shall furnish proofs by certificate under sections 256B.6 and 256B.7 as to the physical or mental condition of the child.

[S13, §2823-b; C24, 27, 31, 35, 39, §**4414;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.5]

88 Acts, ch 1259, §5; 91 Acts, ch 200, §8

299.5A Mediation.

If a child is truant as defined in section 299.8, school officers shall attempt to find the cause for

the child's absence and use every means available to the school to assure that the child does attend. For a child who has completed educational requirements through the sixth grade, the means may include but are not limited to the use of an attendance cooperation process which substantially conforms with the provisions of section 299.12. If the parent, guardian, or legal or actual custodian, or child refuses to accept the school's attempt to assure the child's attendance or the school's attempt to assure the child's attendance is otherwise unsuccessful, the truancy officer shall refer the matter to the county attorney for mediation or prosecution.

If the matter is referred for mediation, the county attorney shall cause a notice of the referral to be sent to the parent, guardian, or legal or actual custodian and designate a person to serve as mediator in the matter. If mediation services are available in the community, those services may be used as the designated mediation service. If mediation services are not available in the community, mediation shall be provided by the county attorney or the county attorney's designee. The mediator shall contact the school, the parent, guardian, or legal or actual custodian, and any other person the mediator deems appropriate in the matter and arrange meeting dates and times for discussion of the child's nonattendance. The mediator shall attempt to ascertain the cause of the child's nonattendance, attempt to cause the parties to arrive at an agreement relative to the child's attendance, and initiate referrals to any agencies or counseling that the mediator believes to be appropriate under the circumstances.

If the parties reach an agreement, the agreement shall be reduced to writing and signed by a school officer, parent, guardian, or legal or actual custodian, and the child. The mediator, the school, and the parent, guardian, or legal or actual custodian shall each receive a copy of the agreement, which shall set forth the settlement of the issues and future responsibilities of each party.

The school district shall be responsible for monitoring any agreements arrived at through mediation. If a parent, guardian, or legal or actual custodian refuses to engage in mediation or violates a term of the agreement, the matter shall be rereferred to the county attorney for prosecution under section 299.6. The county attorney's office or the mediation service shall require the parent, guardian, or legal or actual custodian and the school to pay a fee to help defray the administrative cost of mediation services. The county attorney's office or the mediation service shall establish a sliding scale of fees to be charged parents, guardians, and legal or actual custodians based upon ability to pay. A parent, guardian, or legal or actual custodian shall not be denied the services of a mediator solely because of inability to pay the fee.

The mediator may refer a truant to the juvenile court if mediation breaks down without an agreement being reached.

91 Acts, ch 200, §9; 94 Acts, ch 1172, §33; 97 Acts, ch 174, §2

299.6 Violations — community service or fine or imprisonment — waiver.

Any person who violates a mediation agreement under section 299.5A, who is referred for prosecution under section 299.5A and is convicted of a violation of any of the provisions of sections 299.1 through 299.5, who violates any of the provisions of sections 299.1 through 299.5, or who refuses to participate in mediation under section 299.5A, for a first offense, is guilty of a simple misdemeanor.

A first offense conviction is punishable by imprisonment not exceeding ten days or a fine not exceeding one hundred dollars. The court may order the person to perform not more than forty hours of unpaid community service instead of any fine or imprisonment. A person convicted of a second violation is guilty of a serious misdemeanor.

A second offense conviction is punishable by imprisonment not exceeding twenty days or a fine not exceeding five hundred dollars, or both a fine and imprisonment. The court may order the person to perform unpaid community service instead of any fine or imprisonment.

A third or subsequent offense is a serious misdemeanor and a conviction is punishable by imprisonment not exceeding thirty days or a fine not exceeding one thousand dollars, or both a fine and imprisonment. The court may order the person to perform unpaid community service instead of any fine or imprisonment.

If community service is imposed as part of a sentencing order, the court may require that part or all of the service be performed for a public school district or nonpublic school if the court finds that service in the school is appropriate under the circumstances.

If a parent, guardian, or legal or actual custodian of a child who is truant, has made reasonable efforts to comply with the provisions of sections 299.1 through 299.5, but is unable to cause the child to attend school, the parent, guardian, or legal or actual custodian may file an affidavit listing the reasonable efforts made by the parent, guardian, or legal or actual custodian to cause the child's attendance and the parent, guardian, or legal or actual custodian shall not be criminally liable for the child's nonattendance.

If a child's parent, guardian, or legal or actual custodian who is found guilty and is subject to a penalty as provided in this section has been subject to a sanction under section 239B.2A as a result of the child's truancy, the court may waive the penalty under this section.

[S13, §2823-a; C24, 27, 31, 35, 39, §**4415;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.6]

88 Acts, ch 1259, §6; 91 Acts, ch 200, §10; 97 Acts, ch 174, §3

299.6A Civil penalty — distribution of funds.

1. In lieu of a criminal proceeding under section 299.6, a county attorney may bring a civil action against a parent, guardian, or legal or actual custodian of a child who is of compulsory attendance age, has not completed educational requirements, and is truant, if the parent, guardian, or legal or actual custodian has failed to cause the child to attend a public school, an accredited nonpublic school, or competent private instruction in the manner provided in this chapter. If the court finds that the parent, guardian, or legal or actual custodian has failed to cause the child to attend as required in this section, the court shall assess a civil penalty of not less than one hundred but not more than one thousand dollars, for each violation established. However, if the court finds that the parent, guardian, or legal or actual custodian of the child has been subject to sanction under section 239B.2A as a result of the child's truancy, the court may waive the civil penalty under this section.

2. Funds received from civil penalties assessed pursuant to this section shall be paid to the school district of residence or school district of enrollment, if open enrolled, of the person against whom the court assessed the penalty. The school district shall use moneys received under this subsection to support programs for students who meet the definition of at-risk children adopted by the department of education.

97 Acts, ch 174, §4

299.7 Custody of records.

All such certificates, reports, and proofs shall be filed and preserved in the office of the secretary of the school corporation as a part of the records of the office, and the secretary shall furnish certified copies thereof to any person requesting the same.

[S13, §2823-b, -c; C24, 27, 31, 35, 39, §**4416;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.7]

299.8 "Truant" defined.

Any child of compulsory attendance age who fails to attend school as provided in this chapter, or as required by the school board's or school governing body's attendance policy, or who fails to attend competent private instruction under chapter 299A, without reasonable excuse for the absence, shall be deemed to be a truant. A finding that a child is truant, however, shall not by itself mean that the child is a child in need of assistance within the meaning of chapter 232 and shall not be the sole basis for a child in need of assistance petition.

[S13, §2823-e; C24, 27, 31, 35, 39, §**4417;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.8]

91 Acts, ch 200, §11

299.9 Truants — rules for punishment.

The board of directors of a public school district or the authorities in charge of an accredited nonpublic school shall prescribe reasonable rules for the punishment of truants.

[S13, §2823-d, -h; C24, 27, 31, 35, 39, §**4418;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.9]

91 Acts, ch 200, §12

299.10 Truancy officers — appointment.

The board of each school district may appoint a truancy officer. The board of each school district, which does not appoint a truancy officer for the district, shall designate a suitable person to collect information on the numbers of children in the district who are truant.

The board may appoint a member of the police force, marshal, teacher, school official, or other suitable person to serve as the district truancy officer.

[S13, §2823-e; C24, 27, 31, 35, 39, §**4419;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.10]

91 Acts, ch 200, §13

299.11 Duties of truancy officer.

The truancy officer may take into custody without warrant any apparently truant child and place the child in the charge of the school principal, or the principal's designee, designated by the board of directors of the school district in which the child resides, or of any nonpublic school designated by the parent, guardian, or legal or actual custodian; but if it is other than a public school, the instruction and maintenance of the child shall be without expense to the school district. If a child is taken into custody under this section, the truancy officer shall make every reasonable attempt to immediately notify the parent, guardian, or legal or actual custodian of the child's location.

The truancy officer shall promptly institute proceedings against any person violating any of the provisions of sections 299.1 through 299.5A.

[S13, §2823-e, -f; C24, 27, 31, 35, 39, §**4420;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.11]

91 Acts, ch 200, §14

299.12 Violation of attendance policy — attendance cooperation meeting — agreement — family investment program.

1. For the purposes of this section, *"school truancy officer"* means a truancy officer appointed under section 299.10 or any other person designated by a public school board or a governing body of an accredited nonpublic school to administer provisions of this section.

2. This section is not applicable to a child who is receiving competent private instruction in accordance with the requirements of chapter 299A. If a child is not in compliance with the attendance requirements established under section 299.1, and has not completed educational requirements through the sixth grade, and the school has used every means available to assure the child does at-

tend, the school truancy officer shall contact the child's parent, guardian, or legal or actual custodian to participate in an attendance cooperation meeting. The parties to the attendance cooperation meeting may include the child and shall include the child's parent, guardian, or legal or actual custodian and the school truancy officer. If the child is a member of a family receiving assistance under the family investment program, the department of human services shall be notified and shall make the contacts for participation in the attendance cooperation meeting in lieu of the school truancy officer. For a child who is a member of a family receiving assistance under the family investment program, the attendance cooperation meeting shall include the child's parent or specified relative whose needs are included in the child's assistance grant and a representative of the department of human services. The school truancy officer or the representative of the department of human services contacting the participants in the attendance cooperation meeting may invite other school officials, a designee of the juvenile court, the county attorney or the county attorney's designee, or other persons deemed appropriate to participate in the attendance cooperation meeting.

3. The purpose of the attendance cooperation meeting is for the parties participating in the meeting to attempt to ascertain the cause of the child's nonattendance, to cause the parties to arrive at an agreement relative to addressing the child's attendance, and to initiate referrals to any services or counseling that the parties believe to be appropriate under the circumstances. The terms agreed to shall be reduced to writing in an attendance cooperation agreement and signed by the parties to the agreement. Each party signing the agreement shall receive a copy of the agreement, which shall set forth the cause identified for the child's nonattendance and future responsibilities of each party.

4. If the parties to an attendance cooperation meeting determine that a monitor would improve compliance with the attendance cooperation agreement, the parties may designate a person to monitor the agreement. The monitor shall be a designee of the public school board or governing body of the accredited nonpublic school, or a designee of the department of human services, if the department made the contacts for the attendance cooperation meeting. The monitor may be a volunteer if the volunteer is approved by all parties to the agreement and receives a written authorization for access to confidential information and for performing monitor activities from the child's parent, guardian, or custodian. A monitor shall contact parties to the attendance cooperation agreement on a periodic basis as appropriate to monitor performance of the agreement.

5. If the parties fail to enter into an attendance cooperation agreement, or the child's parent, guardian, or custodian acting as a party violates a term of the attendance cooperation agreement or fails to participate in an attendance cooperation meeting, the child shall be deemed to be truant.

6. *a.* If a child deemed to be truant under this section is a member of a family receiving family investment program assistance under chapter 239B and has not completed the sixth grade, the school truancy officer shall provide notification to the department of human services. An initial and any subsequent notification shall be made in writing. The form of the notification shall be mutually determined by the departments of human services and education.

b. Notwithstanding any other provision of this chapter to the contrary, unless prohibited by federal law, a school truancy officer may release information to the department of human services and may receive information from the department of human services regarding a child described in paragraph *"a"*. In addition, the school truancy officer may utilize other sources available to the officer as necessary to verify whether a child is a member of a family receiving family investment program assistance. Release of information under this section shall be limited to the minimum access to information necessary to achieve the purposes of this section.

7. A public school board or governing body of an accredited nonpublic school shall exercise the authority granted under this section as a means of increasing and ensuring school attendance of young children, as education is a critical element in the success of individuals and good attendance habits should be developed and reinforced at an early age.

97 Acts, ch 41, §32; 97 Acts, ch 174, §5, 7

299.13 Civil enforcement.

A person shall not disseminate or redisseminate information shared with the person pursuant to section 239B.2A, 299.5A, or 299.12, unless specifically authorized to do so by section 217.30, 239B.2A, 299.5A, or 299.12. Unless a prohibited dissemination or redissemination of information is subject to injunction or sanction under other state or federal law, an action for judicial enforcement may be brought in accordance with this section. An aggrieved person, the attorney general, or a county attorney may seek judicial enforcement of the requirements of this section in an action brought against the public school or accredited nonpublic school or any other person who has been granted access to information pursuant to section 239B.2A, 299.5A, or 299.12. Suits to enforce this section shall be brought in the district court for the county in which the information was disseminated or redisseminated. Upon a finding by a preponderance of the evidence that a person has violated this section, the court shall issue an injunction punishable by civil contempt ordering the person in violation of this section to comply

with the requirements of, and to refrain from any violations of section 239B.2A, 299.5A, or 299.12 with respect to the dissemination or redissemination of information shared with the person pursuant to section 239B.2A, 299.5A, or 299.12.

97 Acts, ch 174, §6

299.14 Discharge from truant school.
Repealed by 91 Acts, ch 200, § 31.

299.15 Reports by school officers and employees.

All school officers and employees shall promptly report to the secretary of the school corporation any violations of the truancy law of which they have knowledge, and the secretary shall inform the president of the board of directors who shall, if necessary, call a meeting of the board to take such action thereon as the facts justify.

[S13, §2823-g; C24, 27, 31, 35, 39, §**4424;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.15]

299.16 Failure to attend — report.

School officers shall ascertain the number of children who are of compulsory attendance age, in their respective districts, the number of those children who are truant under section 299.8 or who have accumulated fifteen unexcused absences during a three-year period, and so far as possible the cause of the failure to attend. School officers shall, until July 1, 1999, biennially report this information to the department of education on forms provided by the department. The department shall attach a summary of the reports, an analysis of the data, and policy recommendations based on the data analysis, along with the department's annual report under section 256.9, subsection 28.

[S13, §2823-i; C24, 27, 31, 35, 39, §**4425;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.16]

88 Acts, ch 1134, §65; 91 Acts, ch 200, §15

299.17 Repealed by 72 Acts, ch 1065, § 1.

299.18 Education of certain children who are deaf, blind, or have severe disabilities.

Children who are of compulsory attendance age and who are so deaf or blind or have such severe disabilities so as to be unable to obtain an education in the public or accredited nonpublic schools shall be sent to the appropriate state-operated school, or shall receive appropriate special education under chapter 256B, unless exempted, and any person having such a child under the person's control or custody shall see that the child attends the state-operated school or special education program during the scholastic year.

[S13, §2718-c; C24, 27, 31, 35, 39, §**4427;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.18]

91 Acts, ch 200, §16; 96 Acts, ch 1129, §76

299.19 Proceeding against parent.

Upon the failure of a person having the custody and control of a child who is blind, deaf, or has severe disabilities to require the child's attendance as provided in section 299.18, the state board of regents may make application to the district court or the juvenile court of the county in which the person resides for an order requiring the person to compel the attendance of the child at the proper state-operated school.

[S13, §2718-d, -e; C24, 27, 31, 35, 39, §**4428;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.19]

91 Acts, ch 200, §17; 96 Acts, ch 1129, §77

299.20 Order.

Upon the filing of the application mentioned in section 299.19, the time of hearing shall be determined by the juvenile court or the district court. If, upon hearing, the court determines that the person required to appear has the custody and control of a child who should be required to attend a state-operated school under section 299.18, the court shall make an order requiring the person to keep the child in attendance at the state-operated school.

[C24, 27, 31, 35, 39, §**4429;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.20]

91 Acts, ch 200, §18

299.21 Contempt.

A failure to comply with the order of the court shall subject the person against whom the order is made to punishment the same as in ordinary contempt cases.

[C24, 27, 31, 35, 39, §**4430;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.21]

Contempts, chapter 665

299.22 When deaf and blind children excused.

Attendance at the state-operated school may be excused when the superintendent of the state-operated school certifies that an interdisciplinary staffing team has determined, pursuant to the requirements of chapter 256B, that the child is efficiently taught for the scholastic year in an accredited nonpublic or other school devoted to the instruction, by a private tutor, in the public schools, or is shown to be physically or mentally unable to attend school under section 299.5.

[S13, §2718-f; C24, 27, 31, 35, 39, §**4431;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.22]

91 Acts, ch 200, §19

299.23 Agent of state board of regents.

The state board of regents may employ an agent to aid in the enforcement of law relative to the education of deaf and blind children. The agent shall seek out children who should be in attendance at the state schools but who are not, and require such attendance. The agent shall institute proceedings against persons who violate the provisions of said

law. The agent shall be allowed compensation at a rate fixed by the board of regents, and necessary traveling and hotel expenses while away from home in the performance of duty.

[C24, 27, 31, 35, 39, §**4432;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §299.23]

299.24 Religious groups exempted from school standards.

When members or representatives of a local congregation of a recognized church or religious denomination established for ten years or more within the state of Iowa prior to July 1, 1967, which professes principles or tenets that differ substantially from the objectives, goals, and philosophy of education embodied in standards set forth in section 256.11, and rules adopted in implementation thereof, file with the director of the department of education proof of the existence of such conflicting tenets or principles, together with a list of the names, ages, and post-office addresses of all persons of compulsory school age desiring to be exempted from the compulsory education law and the educational standards law, whose parents or guardians are members of the congregation or religious denomination, the director, subject to the approval of the state board of education, may exempt the members of the congregation or religious denomination from compliance with any or all requirements of the compulsory education law and the educational standards law for two school years. When the exemption has once been granted, renewal of such exemptions for each succeeding school year may be conditioned by the director, with the approval of the board, upon proof of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, and an understanding of United States history, history of Iowa, and the principles of American government, by persons of compulsory school age exempted in the preceding year, which shall be determined on the basis of tests or other means of evaluation selected by the director with the approval of the state board. The testing or evaluation, if required, shall be accomplished prior to submission of the request for renewal of the exemption. Renewal requests shall be filed with the director on or before April 15 of the school year preceding the school year for which the applicants desire exemption.

[C71, 73, 75, 77, 79, 81, §299.24]

85 Acts, ch 212, §21, 22; 89 Acts, ch 296, §26

CHAPTER 299A

PRIVATE INSTRUCTION

299A.1 Private instruction.
299A.2 Competent private instruction by licensed practitioner.
299A.3 Private instruction by nonlicensed person.
299A.4 Annual achievement evaluations — requirements and procedure.
299A.5 Reporting of evaluation results.
299A.6 Failure to make adequate progress.
299A.7 Notice to parents — remediation.
299A.8 Dual enrollment.
299A.9 Children requiring special education.
299A.10 Rulemaking.

299A.1 Private instruction.

The parent, guardian, or legal custodian of a child of compulsory attendance age who places the child under private instruction shall provide, unless otherwise exempted, competent private instruction in accordance with this chapter. A parent, guardian, or legal custodian of a child of compulsory attendance age who places the child under private instruction which is not competent private instruction, or otherwise fails to comply with the requirements of this chapter, is subject to the provisions of sections 299.1 through 299.4 and the penalties provided in section 299.6.

For purposes of this chapter, *"competent private instruction"* means private instruction provided on a daily basis for at least one hundred forty-eight days during a school year, to be met by attendance for at least thirty-seven days each school quarter, by or under the supervision of a licensed practitioner in the manner provided under section 299A.2, or other person under section 299A.3, which results in the student making adequate progress.

For purposes of this chapter and chapter 299, *"private instruction"* means instruction using a plan and a course of study in a setting other than a public or organized accredited nonpublic school.

91 Acts, ch 200, §20

299A.2 Competent private instruction by licensed practitioner.

If a licensed practitioner provides competent instruction to a child of compulsory attendance age, the practitioner shall possess a valid license or certificate which has been issued by the state board of educational examiners under chapter 272 and

which is appropriate to the ages and grade levels of the children to be taught. Competent private instruction may include, but is not limited to, a home school assistance program which provides instruction or instructional supervision offered through an accredited nonpublic school or public school district by a teacher, who is employed by the accredited nonpublic school or public school district, who assists and supervises a parent, guardian, or legal custodian in providing instruction to a child. If competent private instruction is provided through a public school district, the child shall be enrolled and included in the basic enrollment of the school district as provided in section 257.6. Sections 299A.3 through 299A.7 do not apply to competent private instruction provided by a licensed practitioner under this section. However, the reporting requirement contained in section 299A.3, subsection 1, shall apply to competent private instruction provided by licensed practitioners that is not part of a home school assistance program offered through an accredited nonpublic school or public school district.

91 Acts, ch 200, §21; 92 Acts, ch 1135, §10; 92 Acts, ch 1247, §48

299A.3 Private instruction by nonlicensed person.

A parent, guardian, or legal custodian of a child of compulsory attendance age providing competent private instruction to the child shall meet all of the following requirements:

1. Complete and send, in a timely manner, the report required under section 299.4 to the school district of residence of the child.

2. Ensure that the child under the parent's, guardian's, or legal custodian's instruction is evaluated annually to determine whether the child is making adequate progress, as defined in section 299A.6.

3. Ensure that the results of the child's annual evaluation are reported to the school district of residence of the child and to the department of education by a date not later than June 30 of each year in which the child is under private instruction.

91 Acts, ch 200, §22

299A.4 Annual achievement evaluations — requirements and procedure.

1. Each child of compulsory attendance age who is receiving competent private instruction shall either be evaluated annually by May 1, using a nationally recognized standardized achievement evaluation or other assessment tool developed or recognized by the department of education and chosen by the child's parent, guardian, or legal custodian from a list of approved evaluations or assessment tools provided by the department of education or be evaluated annually in the manner provided in subsection 7. The department shall provide information on the cost of and the administration time required for each of the approved evaluations. The department shall provide, as part of approval procedures for evaluations to be used under this section, a mechanism which permits the introduction and approval of new or alternate methods of educational assessment which meet the requirements of this chapter.

2. A child, who is seven years of age and is receiving competent private instruction or who is placed under competent private instruction for the first time, shall be administered an evaluation for purposes of obtaining educational baseline data.

3. The director of the department of education, or the director's designee, which may include a school district or an area education agency, shall conduct the evaluations required under subsections 1 and 2 for children under competent private instruction. Evaluation shall occur at a time and a place to be determined by the person responsible for conducting the evaluation. Persons conducting the evaluations shall make every reasonable effort to conduct the evaluations at times and places which are convenient for the parent, guardian, or legal custodian.

4. The parent, guardian, or legal custodian of a child receiving competent private instruction may be present when the child is evaluated, but only if both the parent, guardian, or legal custodian and the child are under the supervision of the evaluation administrator.

5. The conducting of evaluations shall include, but is not limited to, purchasing of evaluation materials, giving the evaluations, scoring and interpreting the evaluations, and reporting the evaluation results.

6. Except when a child has been enrolled in a public school district under section 299A.8, the parent, guardian, or legal custodian of the child being evaluated shall reimburse the entity conducting the evaluation for no more than the actual cost of evaluation required by this chapter. However, the parent, guardian, or legal custodian is not required to reimburse the evaluating entity for costs incurred as a result of evaluation under section 299A.9.

7. In lieu of annual achievement evaluations, a parent, guardian, or legal custodian of a child may submit, as evidence of adequate academic progress, all of the following:

a. A book of lesson plans, a diary, or other written record indicating the subjects taught and activities in which the child has been engaged.

b. A portfolio of the child's work, including but not limited to, an outline of the curriculum used by the child, copies of homework completed in conjunction with the curriculum and instruction, and copies of evaluations completed by the child which have been produced by the parent, guardian, or legal custodian.

c. Completed assessment evaluations, other

than the annual achievement evaluation, if assessment evaluations are administered to a pupil as part of the competent private instruction by the parent, guardian, or legal custodian.

If a parent, guardian, or legal custodian submits evidence under this section, the information shall be reviewed by a qualified, licensed, Iowa practitioner selected as the evaluator by the parent, guardian, or legal custodian and approved by the superintendent of the local school district or the superintendent's designee. The evaluator shall prepare a report based on a review of the child's work submitted, which shall include an assessment of the child's achievement or academic progress levels, and submit a copy of the report to the child's parent, guardian, or legal custodian, the school district of residence of the child, and the department of education. If the evidence demonstrates, in the evaluator's opinion, that the child is achieving adequate progress, the report shall create a presumption that the child is making adequate progress.

91 Acts, ch 200, §23; 92 Acts, ch 1163, §68

299A.5 Reporting of evaluation results.

The results of evaluations administered to children of compulsory attendance age who are under competent private instruction shall be reported by the evaluation administrator to the child's parent, guardian, or legal custodian, the school district of residence of the child, and the department of education. Personally identifiable information relating to or contained in the evaluation scores is confidential and shall not be released without the prior consent of the child's parent, guardian, or custodian except as otherwise permitted by law.

91 Acts, ch 200, §24; 92 Acts, ch 1163, §69

299A.6 Failure to make adequate progress.

If the results of evaluations, administered to a child of compulsory attendance age who is under competent private instruction, indicate that the student has failed to make adequate progress, the parent, guardian, or legal custodian shall cause the child to attend an accredited public or nonpublic school at the beginning of the next school year unless, before the beginning of the next school year, the child retakes a different form of the same evaluation, or another evaluation from the approved list of tests or assessment tools recognized by the department of education, and the results indicate that adequate progress has been made, the child has demonstrated adequate performance in the opinion of an evaluator and documented in a report under section 299A.4, subsection 7, or the director of the department of education, or the director's designee, grants approval for competent private instruction to continue under a plan for remediation.

A child who is required to attend an accredited public or nonpublic school under this section shall continue attendance at an accredited public or nonpublic school until the child achieves adequate progress.

For purposes of this chapter, *"adequate progress"* means, for children in all grade levels of competent private instruction, evaluation scores which are above the thirtieth percentile, nationally normed, in each of the areas of reading, mathematics, and language arts, and which indicate either that the child has made six months' progress from the previous evaluation results or that the child is at or above grade level for the child's age. For children in grade levels six and above, *"adequate progress"* also means that the child has achieved evaluation scores in both science and social studies which are above the thirtieth percentile, nationally normed, and which either indicate that the child has made six months' progress from the previous evaluation results or that the child is at or above grade level for the child's age.

91 Acts, ch 200, §25; 91 Acts, ch 258, §41; 92 Acts, ch 1135, §11

299A.7 Notice to parents — remediation.

If a child is placed under competent private instruction and the child fails to make adequate progress under competent private instruction, the director of the department of education, or the director's designee, shall notify the parent, guardian, or custodian of the child that the child is required to attend an accredited public or nonpublic school, unless approval for competent private instruction under a remediation plan is granted. The director, or the director's designee, may provisionally approve continued competent private instruction under an approved remediation plan designed to improve instruction for up to one year.

91 Acts, ch 200, §26

299A.8 Dual enrollment.

If a parent, guardian, or legal custodian of a child who is receiving competent private instruction under this chapter or a child over compulsory age who is receiving private instruction submits a request, the child shall also be registered in a public school for dual enrollment purposes. If the child is enrolled in a public school district for dual enrollment purposes, the child shall be permitted to participate in any academic activities in the district and shall also be permitted to participate on the same basis as public school children in any extracurricular activities available to children in the child's grade or group, and the parent, guardian, or legal custodian shall not be required to pay the costs of any annual evaluation under this chapter. If the child is enrolled for dual enrollment purposes, the child shall be included in the public school's basic enrollment under section 257.6. A pupil who is participating only in extracurricular activities shall be counted under section 257.6, subsection 1, paragraph *"f"*. A pupil enrolled in

grades nine through twelve under this section shall be counted in the same manner as a shared-time pupil under section 257.6, subsection 1, paragraph *"c"*.

91 Acts, ch 200, §27; 92 Acts, ch 1163, §70; 92 Acts, ch 1247, §49; 2001 Acts, ch 159, §16; 2001 Acts, ch 176, §38

299A.9 Children requiring special education.

A child of compulsory attendance age who is identified as requiring special education under chapter 256B is eligible for placement under competent private instruction with prior approval of the placement by the director of special education of the area education agency of the child's district of residence.

A child who has been placed under competent private instruction, whose performance indicates that the child may require special education, shall be referred for evaluation under chapter 256B and the rules of the state board of education. Evaluation shall occur at a time and a place to be determined by the person responsible for conducting the evaluation. Persons conducting the evaluations shall make every reasonable effort to conduct the evaluations at times and places which are convenient for the parent, guardian, or legal custodian.

91 Acts, ch 200, §28

299A.10 Rulemaking.

The department of education shall develop and recommend and the state board shall adopt rules to implement this chapter.

91 Acts, ch 200, §29

CHAPTER 300

EDUCATIONAL AND RECREATIONAL TAX

300.1 Public recreation.
300.2 Tax levy.
300.3 Discontinuance of levy.
300.4 Community education.

300.1 Public recreation.

Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and grounds of the district. The board may co-operate under chapter 28E with a public agency having the custody and management of public parks or public buildings and grounds, and with a private agency having custody and management of buildings or grounds open to the public, located within the school district, and may provide for the supervision and instruction necessary to carry on public educational and recreational activities in the parks, buildings, and grounds located within the district.

[S13, §2823-u; C24, 27, 31, 35, 39, §**4433;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §300.1; 81 Acts, ch 95, §2]

300.2 Tax levy.

The board of directors of a school district may, and upon receipt of a petition signed by eligible electors equal in number to at least twenty-five percent of the number of voters at the last preceding school election, shall, direct the county commissioner of elections to submit to the registered voters of the school district the question of whether to levy a tax of not to exceed thirteen and one-half cents per thousand dollars of assessed valuation for public educational and recreational activities authorized under this chapter. If at the time of filing the petition, it is more than three months until the next regular school election, the board of directors shall submit the question at a special election within sixty days. Otherwise, the question shall be submitted at the next regular school election.

If a majority of the votes cast upon the proposition is in favor of the proposition, the board shall certify the amount required for a fiscal year to the county board of supervisors by April 15 of the preceding fiscal year. The board of supervisors shall levy the amount certified. The amount shall be placed in the public education and recreation levy fund of the district and shall be used only for the purposes specified in this chapter.

The proposition to levy the public recreation and playground tax is not affected by a change in the boundaries of a school district, except as otherwise provided in this section. If each district involved in school reorganization under chapter 275 has adopted the public recreation and playground tax, and if the voters have not voted upon the proposition to levy the public recreation and playground tax in the reorganized district, the existing public

recreation and playground tax shall be in effect for the reorganized district for the least amount that has been approved in any of the districts and until discontinued pursuant to section 300.3.

[S13, §2823-u1, -u2; C24, 27, 31, 35, 39, §**4434, 4435;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §300.2, 300.3; 81 Acts, ch 95, §3]

93 Acts, ch 1, §13; 93 Acts, ch 160, §17; 94 Acts, ch 1029, §29; 95 Acts, ch 67, §53

300.3 Discontinuance of levy.

Once approved at an election, the authority of the board to levy and collect the tax under section 300.2 shall continue until the board votes to rescind the levy and collection of the tax or the voters of the school district by majority vote order the discontinuance of the levy and collection of the tax. The tax shall be discontinued in the manner provided in this section or in the manner provided for imposition of the tax in section 300.2.

[S13, §2823-u4, -u5; C24, 27, 31, 35, 39, §**4437, 4438;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §300.5, 300.6; 81 Acts, ch 95, §4]

300.4 Community education.

The tax levied under sections 300.2 and 300.3 may also be used for community education purposes under chapter 276.

[81 Acts, ch 95, §5]

CHAPTER 301

TEXTBOOKS

DISTRICT UNIFORMITY

301.1 Adoption — purchase and sale — accredited nonpublic school pupil textbook services.
301.2 Custodian — bond.
301.3 Annual settlement by board of directors.
301.4 Payment from general fund.
301.5 Purchase — exchange.
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301.7 Bids — advertisement. Repealed by 89 Acts, ch 214, §9.
301.8 Awarding contract. Repealed by 94 Acts, ch 1175, §18.
301.9 Repealed by 70 Acts, ch 1025, §63.
301.10 Textbook suppliers.
301.11 Bond.

COUNTY UNIFORMITY

301.12 to 301.14 Repealed by 47 Acts, ch 147, §21.
301.15 to 301.18 Repealed by 70 Acts, ch 1025, §64 – 67.
301.19 and 301.20 Repealed by 74 Acts, ch 1172, §133.
301.21 to 301.23 Repealed by 70 Acts, ch 1025, §68 – 70.

FREE TEXTBOOKS

301.24 Petition — election.
301.25 Loaning books.
301.26 General regulations.
301.27 Discontinuance of loaning.
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301.29 "Nonpublic school" defined. Repealed by 2002 Acts, ch 1140, §44.
301.30 Payment of claims for nonpublic school pupil textbook services. Repealed by 2002 Acts, ch 1140, §44.

DISTRICT UNIFORMITY

301.1 Adoption — purchase and sale — accredited nonpublic school pupil textbook services.

1. The board of directors of each and every school district is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, loan such textbooks to such pupils free, or rent them to such pupils at such reasonable fee as the board shall fix, and said money so received shall be returned to the general fund.

2. Textbooks adopted and purchased by a school district shall, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools. If the general assembly appropriates moneys for purposes of making textbooks available to accredited nonpublic school pupils, the department of education shall ascertain the amount available to a school district

for the purchase of nonsectarian, nonreligious textbooks for pupils attending accredited nonpublic schools. The amount shall be in the proportion that the basic enrollment of a participating accredited nonpublic school bears to the sum of the basic enrollments of all participating accredited nonpublic schools in the state for the budget year. For purposes of this section, a *"participating accredited nonpublic school"* means an accredited nonpublic school that submits a written request on behalf of the school's pupils in accordance with this subsection, and that certifies its actual enrollment to the department of education by October 1, annually. By October 15, annually, the department of education shall certify to the director of revenue and finance the annual amount to be paid to each school district, and the director of revenue and finance shall draw warrants payable to school districts in accordance with this subsection. For purposes of this subsection, an accredited nonpublic school's enrollment count shall include only students who are residents of Iowa. The costs of providing textbooks to accredited nonpublic school pupils as provided in this subsection shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous income. Textbook expenditures made in accordance with this subsection shall be kept on file in the school district.

3. As used in subsection 2, *"textbooks"* means books and loose-leaf or bound manuals, systems of reusable instructional materials or combinations of books and supplementary instructional materials which convey information to the student or otherwise contribute to the learning process, or electronic textbooks, including but not limited to computer software, applications using computer-assisted instruction, interactive videodisc, and other computer courseware and magnetic media.

[C97, §2824; C24, 27, 31, 35, 39, §**4446;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.1]

93 Acts, ch 63, §1; 96 Acts, ch 1113, §1; 2002 Acts, ch 1140, §31

Section amended

301.2 Custodian — bond.

The books and supplies so purchased shall be under the charge of the board, who may select one or more persons within the county to keep said books and supplies as the depository agent of the board under such rules and regulations as the board shall adopt. The board shall require of each person so appointed a bond in such sum as may seem to the board to be desirable, the reasonable cost of which, if a bond of an association or corporation as surety is furnished, shall be paid by the district. The board shall adopt rules and regulations to provide that no textbook in any branch determined by the board to be taught in the schools under its charge, shall be sold or rented by such depository agent to the pupils in such schools as a textbook other than those textbooks authorized by said board for use by the pupils in such schools; to provide that no such textbook shall be sold or rented by such depository agent at a price or fee higher than that fixed by the said board; and to provide such other measures not in conflict with law as are necessary properly to govern said depository agents and safeguard the said books and moneys.

[C97, §2824; C24, 27, 31, 35, 39, §**4447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.2]

301.3 Annual settlement by board of directors.

At the close of each school year the board of directors in each school district shall cause a complete settlement to be made with each depository agent. A complete inventory of the textbooks on hand, with a statement itemized to show the expenses authorized and paid by the board, and the amount of money collected from each such depository agent during the year from the sale or rental of textbooks, shall be made in duplicate, signed by the secretary of the board and the depository agent and one copy filed with the secretary and one with the depository agent.

[C39, §**4447.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.3]

301.4 Payment from general fund.

All the books and other supplies purchased under the provisions of this chapter shall be paid for out of the general fund.

[C97, §2825; C24, 27, 31, 35, 39, §**4448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.4]

301.5 Purchase — exchange.

In the purchasing of textbooks it shall be the duty of the board of directors to take into consideration the books then in use in the respective districts, and they may buy such additional number of said books as may from time to time become necessary to supply their schools, and they may arrange on equitable terms for exchange of books in use for new books adopted.

[C97, §2826; C24, 27, 31, 35, 39, §**4449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.5]

301.6 Suit on bond.

If at any time the publishers of such books as shall have been adopted by any board of directors shall neglect or refuse to furnish such books when ordered by said board in accordance with the provisions of this chapter, at the very lowest price, either contract or wholesale, that such books are furnished any other district or state board, then said board of directors may and it is hereby made their duty to bring suit upon the bond given them by the contracting publisher.

[C97, §2827; C24, 27, 31, 35, 39, §**4450;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.6]

301.7 Bids — advertisement. Repealed by 89 Acts, ch 214, § 9.

301.8 Awarding contract. Repealed by 94 Acts, ch 1175, § 18.

301.9 Repealed by 70 Acts, ch 1025, § 63.

301.10 Textbook suppliers.

A person or firm desiring to furnish books or supplies under this chapter shall do all of the following:

1. Make available samples of all textbooks accompanied by lists giving the lowest wholesale and contract prices for the textbooks.

2. If requested by the department of education, make available a machine-readable version of a textbook purchased by a school district to the department in the best available format for electronic braille translation.

[C97, §2830; C24, 27, 31, 35, 39, §**4454;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.10]

93 Acts, ch 59, §2; 94 Acts, ch 1175, §15

301.11 Bond.

The board of directors shall require any person or persons with whom they contract for furnishing any books or supplies to enter into a good and sufficient bond, in such sum and with such conditions and sureties as may be required by such board of directors for the faithful performance of any such contract. Bonds of surety companies duly authorized under the laws of Iowa shall be accepted.

[C97, §2830; C24, 27, 31, 35, 39, §**4455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.11]

COUNTY UNIFORMITY

301.12 to 301.14 Repealed by 47 Acts, ch 147, § 21.

301.15 to 301.18 Repealed by 70 Acts, ch 1025, § 64 – 67.

301.19 and 301.20 Repealed by 74 Acts, ch 1172, § 133.

301.21 to 301.23 Repealed by 70 Acts, ch 1025, § 68 – 70.

FREE TEXTBOOKS

301.24 Petition — election.

Whenever a petition signed by eligible electors residing in the school district equal in number to at least ten percent of the registered voters in the school district, to be determined by the school board of any school district, shall be filed with the secretary thirty days or more before the regular election, asking that the question of providing free textbooks for the use of pupils in the public schools thereof be submitted to the voters at the next regular election, the secretary shall cause notice of such proposition to be given in the notice of such election.

[C97, §2836; C24, 27, 31, 35, 39, §**4464;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.24]

2001 Acts, ch 56, §15

301.25 Loaning books.

If, at such election, a majority of the legal voters present and voting by ballot thereon shall authorize the board of directors of said school district to loan textbooks to the pupils free of charge, then the board shall procure such books as shall be needed, in the manner provided by law for the purchase of textbooks, and loan them to the pupils.

[C97, §2837; C24, 27, 31, 35, 39, §**4465;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.25]

301.26 General regulations.

The board shall hold pupils responsible for any damage to, loss of, or failure to return any such books, and shall adopt such rules and regulations as may be reasonable and necessary for the keeping and preservation thereof. Any pupil shall be allowed to purchase any textbook used in the school at cost. No pupil already supplied with textbooks shall be supplied with others without charge until needed.

[C97, §2837; C24, 27, 31, 35, 39, §**4466;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.26]

301.27 Discontinuance of loaning.

The electors may, at any election called as provided in section 301.24, direct the board to discontinue the loaning of textbooks to pupils.

[C97, §2837; C24, 27, 31, 35, 39, §**4467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.27]

301.28 Officers and teachers as agents for books and supplies.

It shall be unlawful for any school director, officer, area education director or teacher to act as agent for any school textbooks or school supplies during such term of office or employment, and any school director, officer, area education director or teacher, who shall act as agent or dealer in school textbooks or school supplies, during the term of such office or employment, shall be deemed guilty of a serious misdemeanor.

[C97, §2834; C24, 27, 31, 35, 39, §**4468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §301.28]

301.29 "Nonpublic school" defined. Repealed by 2002 Acts, ch 1140, § 44.

301.30 Payment of claims for nonpublic school pupil textbook services. Repealed by 2002 Acts, ch 1140, § 44. See § 301.1.

CHAPTER 301A

COMPUTER INITIATIVE — EDUCATIONAL TECHNOLOGY CONSORTIUM

Chapter repealed by its own terms effective
June 30, 1997; 93 Acts, ch 162, §8

CHAPTER 302

SCHOOL FUNDS

Transferred to chapter 257B

SUBTITLE 7

CULTURAL AFFAIRS

CHAPTER 303

DEPARTMENT OF CULTURAL AFFAIRS

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SUBCHAPTER I

ADMINISTRATION OF DEPARTMENT

303.1 Department of cultural affairs.

1. The department of cultural affairs is created. The department is under the control of a director who shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The salary of the director shall be set by the governor within a range set by the general assembly.

2. The department has primary responsibility for development of the state's interest in the areas of the arts, history, and other cultural matters. In fulfilling this responsibility, the department will be advised and assisted by the state historical society and its board of trustees, and the Iowa arts council.

The department shall:

a. Develop a comprehensive, co-ordinated, and efficient policy to preserve, research, interpret, and promote to the public an awareness and understanding of local, state, and regional history.

b. Stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation in them.

c. Implement tourism-related art and history projects as directed by the general assembly.

d. Design a comprehensive, statewide, long-range plan with the assistance of the Iowa arts council to develop the arts in Iowa. The department is designated as the state agency for carrying out the plan.

e. Encourage the use of volunteers throughout its divisions, especially for purposes of restoring books and manuscripts.

3. The department shall consist of the following:

a. Historical division.

b. Arts division.

c. Other divisions created by rule.

d. Administrative section.

4. The director may create, combine, eliminate, alter or reorganize the organization of the department by rule.

5. The department by rule may establish advisory groups necessary for the receipt of federal funds or grants or the administration of any of the department's programs.

6. The divisions shall be administered by administrators who shall be appointed by the director and serve at the director's pleasure. The administrators shall:

a. Organize the activities of the division.

b. Submit a biennial report to the governor on the activities and an evaluation of the division and its programs and policies.

c. Control all property of the division.

d. Perform other duties imposed by law.

86 Acts, ch 1245, §1301
C87, §303.1
87 Acts, ch 211, §3; 90 Acts, ch 1065, §1; 91 Acts, ch 120, §1; 91 Acts, ch 157, §9; 93 Acts, ch 48, §48; 98 Acts, ch 1215, §53
Confirmation, see §2.32

303.1A Director's duties.

The duties of the director shall include, but are not limited to, the following:

1. Adopt rules that are necessary for the effective administration of the department.

2. Direct and administer the programs and services of the department.

3. Prepare the departmental budget request by September first of each year on the forms furnished, and including the information required by the department of management.

4. Accept, receive, and administer grants or other funds or gifts from public or private agencies including the federal government for the various divisions and the department.

5. Appoint and approve the technical, professional, secretarial, and clerical staff necessary to accomplish the purposes of the department subject to chapter 19A.

6. Administer the Iowa cultural trust as provided in chapter 303A and do all of the following:

a. Develop and adopt by rule criteria for the issuance of trust fund credits by measuring the efforts of qualified organizations, as defined in section 303A.3, to increase their endowment or other resources for the promotion of the arts, history, or the sciences and humanities in Iowa. If the director determines that the organizations have increased the amount of their endowment and other resources, the director shall certify the amount of increase in the form of trust fund credits to the treasurer, who shall deposit in the Iowa cultural

trust fund, from moneys received for purposes of the trust fund as provided in section 303A.4, subsection 2, an amount equal to the trust fund credits. If the amount of the trust fund credits issued by the director exceeds the amount of moneys available to be deposited in the trust fund as provided in section 303A.4, subsection 2, the outstanding trust fund credits shall not expire but shall be available to draw down additional moneys which become available to be deposited in the trust fund as provided in section 303A.4, subsection 2.

b. Develop and implement, in accordance with chapter 303A, a grant application process for grants issued to qualified organizations as defined in section 303A.3.

c. Develop and adopt by rule criteria for the approval of Iowa cultural trust grants. The criteria shall include, but shall not be limited to, the future stability and sustainability of a qualified organization.

d. Compile, in consultation with the Iowa arts council and the state historical society of Iowa, a list of grant applications recommended for funding in accordance with the amount available for distribution as provided in section 303A.6, subsection 3. The list of recommended grant applications shall be submitted to the Iowa cultural trust board of trustees for approval.

e. Monitor the allocation and use of grant moneys by qualified organizations to determine whether moneys are used in accordance with the provisions of this subsection and chapter 303A. The director shall annually submit the director's findings and recommendations in a report to the Iowa cultural trust board of trustees prior to final board action in approving grants for the next succeeding fiscal year.

The director may appoint a member of the staff to be acting director who shall have the powers delegated by the director in the director's absence. The director may delegate the powers and duties of that office to the administrators.

86 Acts, ch 1245, §1302; 87 Acts, ch 211, §4; 93 Acts, ch 48, §49; 2002 Acts, ch 1115, §1

NEW subsection 6

303.2 Division responsibilities.

1. The administrative services section shall provide administrative, accounting, public relations and clerical services for the department, report to the director and perform other duties assigned to it by the director.

2. The historical division shall:

a. Administer and care for historical sites under the authority of the division, and maintain collections within these buildings.

Except for the state board of regents, a state agency which owns, manages, or administers a historical site must enter into an agreement with the department of cultural affairs under chapter 28E to insure the proper management, maintenance, and development of the site. For the purposes of this section, *"historical site"* is defined as any district, site, building, or structure listed on the national register of historic sites or identified as eligible for such status by the state historic preservation officer or that is identified according to established criteria by the state historic preservation officer as significant in national, state, and local history, architecture, engineering, archaeology, or culture.

b. Encourage and assist local county and state organizations and museums devoted to historical purposes.

c. Develop standards and criteria for the acquisition of historic properties and for the preservation, restoration, maintenance, operation, and interpretation of properties under the jurisdiction of the division. The administrator of the division shall serve as the state historic preservation officer, certified by the governor, pursuant to federal requirements.

d. Administer the state archives and records program in accordance with sections 303.12 through 303.15, and 304.6.

e. Identify and document historic properties.

f. Prepare and maintain a state register of historic places, including those listed on the national register of historic places.

g. Conduct historic preservation activities pursuant to federal and state requirements.

h. Publish matters of historical value to the public, and pursue historical, architectural, and archaeological research and development which may include but are not limited to continuing surveys, excavation, scientific recording, interpretation, and publication of the historical, architectural, archaeological, and cultural sites, buildings, and structures in the state.

i. Buy or receive by other means historical materials including, but not limited to, artifacts, art, books, manuscripts, and images. Such materials are not personal property under section 18.12 and shall be received and cared for under the rules of the department. The historical division may sell or otherwise dispose of those materials according to the rules of the department and be credited for any revenues credited by the disposal less the costs incurred.

j. Administer the historical resource development program established in section 303.16.

k. Administer, preserve, and interpret the battle flag collection assembled by the state in consultation and coordination with the commission of veterans affairs and the department of general services. A portion of the battle flag collection shall be on display at the state capitol and the state historical building at all times, unless on loan approved by the department of cultural affairs.

3. The arts division shall:

a. Make surveys as deemed advisable of existing artistic and cultural programs and activities

within the state, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts.

b. Administer the program of agreements for indemnification by the state in the event of loss of or damage to special exhibit items established by sections 304A.21 through 304A.30.

c. Submit a report to the governor and to the general assembly not later than ten calendar days following the commencement of each first session of the general assembly concerning the studies undertaken during the biennium and recommending legislation and other action as necessary for the implementation and enforcement of this subsection and subchapter VI of this chapter.

86 Acts, ch 1238, §52; 86 Acts, ch 1245, §1303
C87, §303.2
87 Acts, ch 211, §5; 90 Acts, ch 1065, §2; 90 Acts, ch 1097, §1; 91 Acts, ch 157, §10; 92 Acts, ch 1246, §51; 93 Acts, ch 48, §50, 51; 98 Acts, ch 1017, §2; 2001 Acts, ch 86, §1; 2002 Acts, ch 1119, §39
Subsection 2, paragraph k amended

303.2A Intradepartmental advisory council. Repealed by 93 Acts, ch 48, § 55.

303.3 Cultural grant programs.

1. The department shall establish a grant program for cities and nonprofit, tax-exempt community organizations for the development of community programs that provide local jobs for Iowa residents and also promote Iowa's historic, ethnic, and cultural heritages through the development of festivals, music, drama, cultural programs, or tourist attractions. A city or nonprofit, tax-exempt community organization may submit an application to the department for review. The department shall establish criteria for the review and approval of grant applications. The amount of a grant shall not exceed fifty percent of the cost of the community program. Each application shall include information demonstrating that the city or nonprofit, tax-exempt community organization will provide matching funds of fifty percent of the cost of the program. The matching funds requirement may be met by substituting in-kind services, based on the value of the services, for actual dollars.

2. The department shall establish a grant program which provides general operating budget support to major, multidisciplined cultural organizations which demonstrate cultural and managerial excellence on a continuing basis to the citizens of Iowa. Applicant organizations must be incorporated under chapter 504A, be exempt from federal taxation, and not be attached or affiliated with an educational institution. Eligible organizations shall be operated on a year-round basis and employ at least one full-time, paid professional staff member. The department shall establish criteria for review and approval of grant applications. Criteria established shall include, but are not limited to, a matching funds requirement. The matching funds requirement shall permit an applicant to meet the matching requirement by demonstrating that the applicant's budget contains funds, other than state and federal funds, in excess of the grant award.

3. Notwithstanding section 8.33, moneys committed to grantees under this section that remain unencumbered or unobligated on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for the purposes of subsection 2.

90 Acts, ch 1272, §77; 91 Acts, ch 120, §2; 97 Acts, ch 212, §32

303.3A Arts and cultural conferences and caucuses.

1. For the purposes of this section, the following definitions apply:

a. *"Arts"* means music, dance, theater, opera and music theater, visual arts, literature, design arts, media arts, and folk and traditional arts.

b. *"Culture"* or *"cultural"* means programs and activities which explore past and present human experience.

c. *"Department"* means the department of cultural affairs.

d. *"Enhancement"* means programs that allow arts and cultural organizations to improve or enhance the quality of programs currently offered, and increase and support professional and student artists and arts educators.

e. *"Outreach"* means programs that increase rural access to cultural resources, social awareness, cultural diversity, and which serve special populations.

2. The department shall administer regional conferences and a statewide caucus on arts and cultural enhancement. The purpose of the conferences and caucus is to encourage the development of the arts and culture in the state by identifying opportunities for programs involving education, outreach, and enhancement; by reviewing possible changes in enhancement program policies, programs, and funding; and by making recommendations to the department regarding funding allocations and priorities for arts and cultural enhancement.

3. Every four years beginning in June 2001, the department shall convene a statewide caucus on arts and cultural enhancement.

a. Prior to the statewide caucus, the department shall make arrangements to hold a conference in each of several regions of the state as determined by the Iowa arts council. The department shall promote attendance of interested persons at each conference. A designee of the department shall serve as temporary chairperson until persons attending the conference elect a chairperson. The department shall provide persons attending the conference with current information regard-

ing cultural programs and expenditures. Persons attending the conference shall identify opportunities for programs in the areas of education, outreach, and enhancement, and make recommendations in the form of a resolution. The persons attending the conference shall elect six persons from among the attendees to serve as regional, voting delegates to the statewide caucus. The conference attendees shall elect a chairperson from among the six representatives. Other interested persons are encouraged to attend the statewide caucus as nonvoting attendees.

b. The department shall charge a reasonable fee for attendance at the statewide caucus on arts and cultural enhancement.

c. A designee of the department shall call the statewide caucus to order and serve as temporary chairperson until persons attending the caucus elect a chairperson. Persons attending the caucus shall discuss the recommendations of the regional conferences and decide upon recommendations to be made to the department and the general assembly. Elected chairpersons of the regional conferences shall meet with representatives of the department and present the recommendations of the caucus.

98 Acts, ch 1215, §54

SUBCHAPTER II

HISTORICAL DIVISION

303.4 State historical society of Iowa — board of trustees.

1. A state historical society board of trustees is established consisting of twelve members selected as follows:

a. Three members shall be elected by the members of the state historical society according to rules established by the board of trustees.

b. The governor shall appoint one member from each of the state's congressional districts.

c. The governor shall appoint four members from the state at large, at least one of whom shall be on the faculty of a college or university in the state engaged in a discipline related to the activities of the historical society.

2. The term of office of members of the board of trustees is three years commencing and ending as provided in section 69.19. The terms of office of the governor's appointees are staggered terms of three years each, so that three members are appointed each year.

[C73, §1885, 1901; C97, §2858, 2883; S13, §2881-a; C24, 27, 31, 35, §4512 – 4514, 4543; C39, §**4541.01, 4541.02, 4543;** C46, 50, 54, 58, 62, 66, 71, 73, §303.1, 303.2, 304.2; C75, 77, 79, 81, §303.1; 82 Acts, ch 1238, §2]

86 Acts, ch 1245, §1305

C87, §303.4

89 Acts, ch 78, §1; 93 Acts, ch 18, §1

303.5 Powers and duties of state historical society administrator.

The state historical society administrator may:

1. Make and sign any agreements and perform any acts which are necessary, desirable, or proper to carry out the purpose of the division.

2. Request and obtain assistance and data from any department, division, board, bureau, commission, or agency of the state.

3. Accept any federal funds granted, by act of Congress or by executive order, for all or any purposes of this subchapter.

89 Acts, ch 78, §2

303.6 Officers — meetings.

The state historical society board of trustees shall annually elect a chairperson and vice chairperson from its membership. The board shall meet as often as deemed necessary, upon the call of the chairperson, or at the request of a majority of the members of the board.

Members of the board are entitled to be reimbursed for actual expenses while engaged in their official duties. Members may also be eligible for compensation as provided in section 7E.6.

[C75, 77, 79, 81, §303.2; 82 Acts, ch 1238, §3]

86 Acts, ch 1245, §1306

C87, §303.6

Compensation; see §303.2, Code 1985, and §7E.6(1)

303.7 Membership in state historical society.

1. The state historical society board of trustees shall recommend to the director rules for membership of the general public in the state historical society, including rules relating to membership fees. Members shall be persons who indicate an interest in the history, progress, and development of the state and who pay the prescribed fee. The members of the state historical society may meet at least one time per year to further the understanding of the history of this state. The members of the society shall not determine policy for the department of cultural affairs but may advise the director and perform functions to stimulate interest in the history of this state among the general public. The society may perform other activities related to history which are not contrary to this chapter.

2. As used in this chapter, *"state historical society"* means the state historical society of Iowa, an agency of the state which is part of the department of cultural affairs. It does not mean or include any private entity.

3. Unless designated otherwise, a gift, bequest, devise, endowment, or grant to or application for membership in the state historical society shall be presumed to be to or in the state historical society of Iowa.

4. Notwithstanding section 633.63, the board may enter into agreements authorizing nonprofit foundations acting solely for the support of the

state historical society to administer its membership program and funds.

[C73, §1902; C97, §2884; C24, 27, 31, 35, 39, §**4544;** C46, 50, 54, 58, 62, 66, 71, 73, §304.3; C75, 77, 79, 81, §303.3, 303.4; 82 Acts, ch 1238, §5]

C83, §303.4

86 Acts, ch 1245, §1307

C87, §303.7

89 Acts, ch 78, §3

303.8 Powers and duties of board and division.

1. The state historical society board of trustees shall:

a. Recommend to the state historical society a comprehensive, coordinated, and efficient policy to preserve, research, interpret, and promote to the public an awareness and understanding of local, state, and regional history.

b. Make recommendations to the division administrator on historically related matters.

c. Review and recommend to the director or the director's designee policy decisions regarding the division.

d. Recommend to the state historic preservation officer for approval the state preservation plan.

e. Perform other functions prescribed by law to further historically related matters in the state.

2. The department shall:

a. Have authority to acquire by fee simple title historic properties by gift, purchase, devise, or bequest; preserve, restore, transfer, and administer historic properties; and charge reasonable admission to historic properties.

b. Maintain research centers in Des Moines and Iowa City.

[C73, §1902; C97, §2858, 2884; S13, §2881-a; C24, 27, 31, 35, §4515 – 4517, 4544; C39, §**4541.03, 4544;** C46, 50, 54, 58, 62, 66, 71, 73, §303.3, 304.3; C75, 77, 79, 81, §303.4, 303.5; 82 Acts, ch 1238, §7]

C83, §303.6

86 Acts, ch 1245, §1309

C87, §303.8

89 Acts, ch 78, §4

303.9 Funds received by department.

1. All funds received by the department, including but not limited to gifts, endowments, funds from the sale of memberships in the state historical society, funds from the sale of mementos and other items relating to Iowa history as authorized under subsection 2, interest generated by the life membership trust fund, and fees, shall be credited to the account of the department and are appropriated to the department to be invested or used for programs and purposes under the authority of the department. Interest earned on funds credited to the department, except funds appropriated to the department from the general fund of the state, shall be credited to the department. Section 8.33 does not apply to funds credited to the department under this section.

2. The department may sell mementos and other items relating to Iowa history and historic sites on the premises of property under control of the department and at the state capitol. Notwithstanding sections 18.12 and 18.16, the department may directly and independently enter into rental and lease agreements with private vendors for the purpose of selling mementos. All fees and income produced by the sales and rental or lease agreements shall be credited to the account of the department. The mementos and other items sold by the department or vendors under this subsection are exempt from section 18.6. The department is not a retailer under chapter 422 and the sale of such mementos and other items by the department is not a retail sale under chapter 422 and is exempt from the sales tax.

3. Notwithstanding section 633.63, the board may authorize nonprofit foundations acting solely for the support of the state historical society of Iowa to accept and administer trusts deemed by the board to be beneficial to the division's operations. The board and the foundation may act as trustees in such instances.

[C75, 77, 79, 81, §303.9; 81 Acts, ch 10, §11; 82 Acts, ch 1238, §8]

86 Acts, ch 1244, §36; 88 Acts, ch 1284, §8; 89 Acts, ch 78, §5

303.9A Iowa heritage fund.

1. An Iowa heritage fund is created in the state treasury to be administered by the state historical society board of trustees. The fund shall consist of all moneys allocated to the fund by the treasurer of state.

2. Moneys in the fund shall be used in accordance with the following:

a. Ninety percent shall be retained by the state historical society and used to maintain and expand Iowa's history curriculum, to provide teacher training in Iowa history, and to support museum exhibits, historic sites, and adult education programs.

b. Five percent shall be retained by the state historical society to be used for start-up costs for the one hundred seventy-fifth and two hundredth anniversaries of Iowa statehood.

c. Five percent shall be retained by the state historical society to be used for the promotion of the sale of the Iowa heritage registration plate issued under section 321.34.

96 Acts, ch 1088, §2; 2001 Acts, ch 144, §1

303.10 Acceptance and use of money grants.

All federal grants to and the federal receipts of the agencies receiving funds under this chapter are appropriated for the purpose set forth in the federal grants or receipts.

[C75, 77, 79, 81, §303.10]

303.11 Gifts.

The division may accept gifts and bequests which shall be used in accordance with the desires of the donor if expressed. Funds contained in an endowment fund for either the department of history and archives or the state historical society existing on July 1, 1974, remain an endowment of the division. Gifts shall be accepted only on behalf of the division, and gifts to a part, branch, or section of the division are presumed to be gifts to the division.

If publication of a book is financed by the endowment fund, this chapter does not prevent the return of moneys from sales of the book to the endowment fund.

[C24, 27, 31, 35, §4526, 4527; C39, §**4541.07, 4541.08;** C46, 50, 54, 58, 62, §303.7, 303.8; C66, 71, 73, §303.7, 303.8, 304.13; C75, 77, 79, 81, §303.11; 82 Acts, ch 1238, §9]

86 Acts, ch 1244, §37; 89 Acts, ch 78, §6

303.12 Archives.

"Archives" means documents, books, papers, photographs, sound recordings, electronic records, or similar material produced or received pursuant to law in connection with official government business, which no longer have administrative, legal, or fiscal value to the office having present custody of them, and which have been appraised by the state archivist as having sufficient historical, research, or informational value to warrant permanent preservation. The state archivist is the custodian of archives which have been transferred and delivered to the state archives of Iowa. County, municipal, and local government archives are not included in the state archives of Iowa unless they are voluntarily transferred to the custody of the state archivist with the written consent of the state archivist and are physically delivered to the state archives of Iowa. The state archivist shall prescribe rules for the systematic arrangement of archives as to the proper labeling to indicate the contents and order of filing and the archives must be labeled before the archives may be transferred to the state archivist's custody.

[SS15, §2881-p; C24, 27, 31, 35, §4528; C39, §**4541.09;** C46, 50, 54, 58, 62, 66, 71, 73, §303.9; C75, 77, 79, 81, §303.12; 82 Acts, ch 1238, §10]

86 Acts, ch 1245, §1310; 89 Acts, ch 78, §7; 95 Acts, ch 29, §1

303.13 Transfer of archives.

The state executive and administrative departments, officers or offices, councils, boards, bureaus, and commissions shall deliver to the state archives of Iowa and transfer to the custody of the state archivist all archives as defined in section 303.12, in accordance with the retention schedules in the records management manual. Before transferring and delivering archives, the office of present custody shall file with the state archivist a classified list of the archives being transferred in detail as the state archivist prescribes. If the state archivist, on receipt of the list, and after consultation with the chief executive of the office filing the classified list or with a representative designated by the executive, finds that, according to the records management manual, certain classifications of the records listed are not of sufficient historical, legal, or informational value to justify permanent preservation, the state archivist shall not accept or retain the material in the state archives.

[SS15, §2881-q, -r; C24, 27, 31, 35, §4529; C39, §**4541.10;** C46, 50, 54, 58, 62, 66, 71, 73, §303.10; C75, 77, 79, 81, §303.13; 82 Acts, ch 1238, §11]

86 Acts, ch 1245, §1311; 89 Acts, ch 78, §8; 95 Acts, ch 29, §2

303.14 Removal of original.

After archives have been received by the state archivist, they shall not be removed from the state archivist's custody without the state archivist's consent except in obedience to a subpoena of a court of record or a written order of the state executive council.

The state archivist is not required to preserve permanently vouchers, claims, canceled or redeemed state warrants, or duplicate warrant registers of the department of revenue and finance and the treasurer of state, but may, after microfilming, destroy by burning or shredding any warrants having no historical value, that have been in the state archivist's custody for a period of one year, and may destroy by burning or shredding any vouchers, claims, and duplicate warrant registers which have been in the state archivist's custody for a period of one year. A properly authenticated reproduction of a microfilmed record is admissible in evidence in a court in this state.

[SS15, §2881-q, -r, -t; C24, 27, 31, 35, §4529, 4530; C39, §**4541.10, 4541.11;** C46, 50, 54, 58, 62, 66, 71, 73, §303.10, 303.11; C75, 77, 79, 81, §303.14; 82 Acts, ch 1238, §12]

86 Acts, ch 1245, §1312; 89 Acts, ch 78, §9

303.15 Certified copies — fees.

Upon request of a person, the state archivist shall make a certified copy of any document, manuscript, or record contained in the archives or in the custody of the state archivist unless reproduction is inappropriate because of legal, curatorial, or physical considerations. If a copy is properly authenticated it has the same legal effect as though certified by the officer from whose office it was obtained or by the secretary of state. The copy may be made in writing, or by a suitable photographic process. The state archivist shall charge and collect for copies the fees allowed by law to the official in whose office the document originates for certified copies. The state archivist shall charge a person requesting a search of census records for the purpose of determining genealogy the actual cost of performing the search.

[SS15, §2881-t; C24, 27, 31, 35, §4531; C39, §**4541.12;** C46, 50, 54, 58, 62, 66, 71, 73, §303.12; C75, 77, 79, 81, §303.15; 82 Acts, ch 1238, §13]

86 Acts, ch 1245, §1313; 89 Acts, ch 78, §10; 95 Acts, ch 29, §3

303.16 Historical resource development program.

1. The historical division shall administer a program of grants and loans for historical resource development throughout the state, subject to funds for such grants and loans being made available through the appropriations process or otherwise provided by law.

2. The purpose of the historical resource development program is to preserve, conserve, interpret, and enhance historical resources that will encourage and support the economic and cultural health and development of the state and the communities in which the resources are located. For this purpose, the division may make grants and loans as otherwise provided by law with funds as may be made available by applicable law.

3. The following persons are eligible to receive historical resource grants and loans:

a. County and city governments.

b. Nonprofit corporations.

c. Private corporations and businesses.

d. Individuals.

e. State agencies.

f. Governments and traditional tribal societies of recognized resident American Indian tribes in Iowa.

g. Other units of government.

4. Grants and loans may be made for the following purposes:

a. Acquisition and development of historical resources.

b. Preservation and conservation of historical resources.

c. Interpretation of historical resources.

d. Professional training and educational programs on the acquisition, development, preservation, conservation, and interpretation of historical resources.

5. Grants and loans shall be awarded in each of the following categories:

a. Museums.

b. Documentary collections.

c. Historic preservation.

Not less than twenty percent and not more than sixty percent of the program's funds appropriated in one fiscal year shall be allocated to any single category.

6. Grants and loans are subject to the following restrictions:

a. Not more than twenty percent of the total grant moneys combined shall be given to or received by state agencies and institutions, or their representatives or agents.

b. A portion of the applicant's operating expenses may be used as a cash match or in-kind match as specified by the division's rules.

c. Grant or loan funds shall not be used to support public relations or marketing expenses.

d. Not more than one hundred thousand dollars or twenty percent of the annual appropriation, whichever is more, shall be granted and loaned to recipients within a single county in any given grant cycle.

e. Not more than one hundred thousand dollars or ten percent of the annual appropriation, whichever is more, shall be granted and loaned to any single recipient or its agent within a single fiscal year.

f. Grants under this program may be given only after review and recommendation by the state historical society board of trustees. The division may contract with lending institutions chartered in this state to act as agents for the administration of loans under the program, in which case, the lending institution may have the right of final approval of loans, subject to the division's administrative rules. If the division does not contract with a lending institution, loans may be made only after review and recommendation by the state historical society board of trustees.

g. The division shall not award grants or loans to be used for goods or services obtained outside the state, unless the proposed recipient demonstrates that it is neither feasible nor prudent to obtain the goods or services within the state.

h. Grant or loan funds shall not be awarded to a city or county government for a project in the historic preservation category unless the city or county government has been approved as a certified local government by the state historic preservation officer.

7. For each dollar of grant funds the following recipients must provide the following matching cash and in-kind resources:

a. All units of government and nonprofit corporations, fifty cents, of which at least twenty-five cents must be in cash.

b. For other private corporations and businesses, one dollar of which at least seventy-five cents must be in cash.

c. For individuals, seventy-five cents of which at least fifty cents must be in cash.

8. The division may use ten percent of the annual appropriation to the division, but in no event more than seventy-five thousand dollars for administration of the grant and loan program.

9. *a.* The division may establish a historical resource grant and loan fund composed of any money appropriated by the general assembly for that purpose, funds allocated pursuant to section 455A.19, and of any other moneys available to and obtained or accepted by the division from the federal government or private sources for placement in that fund. Each loan made under this section shall be for a period not to exceed ten years, shall bear interest at a rate determined by the state his-

torical board, and shall be repayable to the revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect. The interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. Applicants are eligible for not more than one hundred thousand dollars in loans outstanding at any time under this program. A single lending institution contracting with the division pursuant to this section shall not hold more than five hundred thousand dollars worth of outstanding loans under the program.

Any applicant, who is otherwise eligible, who receives a direct or indirect appropriation from the general assembly for a project or portion of a project is ineligible for a historical resources development grant for that same project during the fiscal year for which the appropriation is made. For purposes of this paragraph, *"project"* includes any related activities, including, but not limited to, construction, restoration, supplies, equipment, consulting, or other services.

b. The division may:

(1) Contract and adopt administrative rules necessary to carry out the provisions of this section, but the division shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

(2) Authorize payment from the historical resource grant and loan fund, from fees and from any income received by investments of money in the fund for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

10. *a.* The general assembly finds that the country school that served Iowa's educational needs for much of its history offered a unique opportunity to students and communities, providing for multigenerational attendance, high educational performance, a safe environment, a focus for community support, and a caring, attentive environment.

b. A country schools historical resource preservation grant program is therefore established to be administered by the historical division for the preservation of one-room and two-room buildings once used as country schools. In developing grant approval criteria, the division shall place a priority on the educational uses planned for the country school building, which may include, but are not limited to, historical interpretation and use as a teaching museum or as an operational classroom accessible to a school district or accredited nonpublic school for provisional instructional purposes.

c. Notwithstanding any other provision of this section, the amount of a grant shall not exceed twenty-five thousand dollars and applicants shall match grant funding on a dollar-for-dollar basis, of which at least one-half of the local match must be in cash.

86 Acts, ch 1238, §54; 86 Acts, ch 1245, §1314; 87 Acts, ch 17, §8; 89 Acts, ch 78, §11, 12; 89 Acts, ch 236, §12 – 14; 89 Acts, ch 319, §79; 90 Acts, ch 1097, §2 – 8; 91 Acts, ch 73, §1 – 7; 99 Acts, ch 205, §44

303.17 Terrace Hill commission. Repealed by 93 Acts, ch 48, § 55. See § 18.8A.

303.18 Loan for exhibits. Repealed by 96 Acts, ch 1034, § 70 and 96 Acts, ch 1215, § 56.

303.19 Reserved.

SUBCHAPTER III

HISTORICAL PRESERVATION DISTRICTS

303.20 Definitions.

As used in this subchapter of this chapter, unless the context otherwise requires:

1. *"Area of historical significance"* means contiguous pieces of property of no greater area than one hundred sixty acres under diverse ownership which:

a. Are significant in American history, architecture, archaeology and culture, and

b. Possess integrity of location, design, setting, materials, skill, feeling and association, and

c. Are associated with events that have been a significant contribution to the broad patterns of our history, or

d. Are associated with the lives of persons significant in our past, or

e. Embody the distinctive characteristics of a type; period; method of construction; represent the work of a master; possess high artistic values; represent a significant and distinguishable entity whose components may lack individual distinction.

f. Have yielded, or may be likely to yield, information important in prehistory or history.

2. *"Commission"* is the five-person body, elected by the registered voters in the historical preservation district from persons living in the district for the purpose of administering this subchapter of this chapter.

3. *"District"* means a historical preservation district established under this subchapter of this chapter.

4. *"Department"* means the department of cultural affairs.

5. *"Exterior features"* means the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of an outdoor advertising sign, *"exterior features"* means the style, material, size

and location of the sign.

6. *"Property owner"* means an individual or corporation who is the owner of real estate for taxation purposes.

[C77, 79, 81, §303.20; 82 Acts, ch 1238, §14]
86 Acts, ch 1245, §1315; 95 Acts, ch 67, §53

303.21 Petition.

Not less than ten percent of the eligible voters in an area of asserted historical significance may petition the department for a referendum for the establishment of a district.

The petition shall contain a description of the property suggested for inclusion in the district and the reasons justifying the creation of the district.

[C77, 79, 81, §303.21; 82 Acts, ch 1238, §15]
2001 Acts, ch 24, §45

303.22 Action by department.

The department shall hold a hearing not less than thirty days or more than sixty days after the petition is received. The department shall publish notice of the hearing, at a reasonable time before the hearing is to take place, and shall post notice of the hearing in a reasonable number of places within the suggested district. The cost of notification shall be paid by the persons who petition for the establishment of a district.

At the hearing the department shall hear interested persons, accept written presentations, and shall determine whether the suggested district is an area of historical significance which may properly be established as a historical preservation district pursuant to the provisions of this subchapter of this chapter. The department may determine the boundaries which shall be established for the district. The department shall not include property which is not included in the suggested district unless the owner of the property is given an opportunity to be heard.

The department, if it determines that the suggested district meets the criteria for establishment as a historical preservation district, shall indicate the owners of the property and residents included and shall forward a list of owners and residents to the county commissioner of elections.

If the department determines that the suggested district does not meet the criteria for establishment as a historical preservation district, it shall so notify the petitioners.

[C77, 79, 81, §303.22; 82 Acts, ch 1238, §16]

303.23 Referendum.

Within thirty days after the receipt of the list of owners of property and residents within the suggested historical preservation district, the department shall fix a date not more than forty-five days from the receipt of the petition seeking a referendum on the question of establishment of a historical preservation district. The department, after consultation with the county commissioner of elections, shall specify the polling place within the suggested district that will best serve the convenience of the voters and shall appoint from residents of the proposed district three judges and two clerks of election.

[C77, 79, 81, §303.23; 82 Acts, ch 1238, §17]

303.24 Notice.

The department, after consultation with the county commissioner of elections, shall post notice of the referendum in a reasonable number of places within the suggested district a reasonable time before it is to take place. The notice shall state the purpose of the referendum, a description of the district, the date of the referendum, the location of the polling place, and the hours when the polls will open and close.

[C77, 79, 81, §303.24; 82 Acts, ch 1238, §18]

303.25 Voting.

A person shall be qualified to vote at the referendum if such person is a registered voter of the area embraced by the proposed historic district.

An historic preservation district is established if a majority of the persons voting at the referendum votes in favor of its establishment.

[C77, 79, 81, §303.25]
94 Acts, ch 1169, §64

303.26 Commission.

At the same time the referendum is held, an election shall be held for the commission. Each voter at the referendum may write upon the ballot the names of not more than five persons who are eligible voters within the district to be members of the commission.

The five persons receiving the highest number of votes shall constitute the commission. In the event one of the five receiving the highest number of votes elects not to serve on the commission, the person receiving the next highest number of votes shall serve.

Of the initial commission the person receiving the highest number of votes shall receive a five-year term of office, the next highest a four-year term, the next highest a three-year term, the next highest a two-year term, and the fifth highest a one-year term. Thereafter, an election shall be held annually in the district to elect a member to a five-year term as each term expires.

Vacancies in the commission occurring between elections shall be filled by the remaining members of the commission by majority vote. Should a majority of those voting vote not to establish the district, the election shall be void.

[C77, 79, 81, §303.26]

303.27 Controls.

After the establishment of a district, an exterior portion of any building, exterior fixture, or other exterior structure, or any above-ground utility

structure or any type of outdoor advertising sign shall not be erected, altered, restored, moved or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the commission.

[C77, 79, 81, §303.27]

303.28 Interior.

The commission shall not consider or attempt to control the interior arrangement of any building in the district.

[C77, 79, 81, §303.28]

303.29 Use of structures.

No change in the use of any structure or property within a designated historical district shall be permitted until after an application for a certificate of appropriateness has been submitted to and approved by the commission. For purposes of this section *"use"* means the legal enjoyment of property that consists in its employment, exercise, or practice.

[C77, 79, 81, §303.29]

303.30 Procedures.

Prior to issuance or denial of a certificate of appropriateness the commission shall take such action as may reasonably be required to inform persons likely to be materially affected by the application, and shall give the applicant and such persons an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. The commission shall vote upon any application for a certificate of appropriateness within sixty days after its submission to the commission.

If the commission determines that the proposed construction, reconstruction, alteration, restoration, moving, demolition, or the change in use is appropriate, it shall forthwith approve such application and shall issue to the applicant a certificate of appropriateness.

If the commission determines that the proposed construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs or natural features, or the proposed change in use would be incongruous with the historical, architectural, archaeological or cultural aspects of the district, a certificate of appropriateness shall not be issued, and the commission shall place upon its records the reasons for such determination and shall notify the applicant of such determination, furnishing the applicant an attested copy of its reasons and its recommendations, if any, as appearing in the records of the commission.

The commission may approve the application in any case where a person would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness was issued. Any applicant aggrieved by a determination of the commission may appeal to the district court for the county in which the land concerned is located within sixty days of the commission's action.

[C77, 79, 81, §303.30]

303.31 Action by commission.

The commission shall take action to enjoin any attempts to construct, reconstruct, alter, restore, move, or demolish any exterior feature, or to change the use of the property within the district without a certificate of appropriateness.

[C77, 79, 81, §303.31]

303.32 Ordinary maintenance and repair.

Nothing in this subchapter of this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior feature in a district which does not involve a change in design, material or outer appearance, nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which is required by public safety because of an unsafe or dangerous condition.

[C77, 79, 81, §303.32]

303.33 Termination of district.

Two years after the establishment of a district, a referendum for the termination of the district shall be held if ten percent of the eligible voters in the district so request. If the registered voters, by a majority of those voting, favor termination, sections 303.20 through 303.32 will no longer have any effect on the property formerly included in the district.

If an election is held to terminate a district under this section and such attempt fails, another referendum for termination of the district in question shall not take place for a period of two years.

[C77, 79, 81, §303.33]

95 Acts, ch 67, §53; 96 Acts, ch 1034, §18

303.34 Areas of historical significance.

The provisions of sections 303.20 to 303.33 do not apply within the limits of a city. However, in order for a city to designate an area which is deemed to merit preservation as an area of historical significance, the following shall apply:

1. An area of historical significance shall be proposed by the governing body of the city on its own motion or upon the receipt by the governing body of a petition signed by residents of the city. The city shall submit a description of the proposed area of historical significance or the petition describing the proposed area, if the proposed area is a result of the receipt of a petition, to the historical division which shall determine if the proposed area meets the criteria in subsection 2 and may make recommendations concerning the proposed area. Any recommendations made by the division shall be made available by the city to the public for

viewing during normal working hours at a city government place of public access.

2. A city shall not designate an area as an area of historical significance unless it contains contiguous pieces of property under diverse ownership which meets the criteria specified in section 303.20, subsection 1, paragraphs *"a"* to *"f"*.

3. A city may provide by ordinance for the establishment of a commission to deal with matters involving areas of historical significance but shall provide by ordinance for such commission upon the enactment of the ordinance designating an area as an area of historical significance as required in subsection 4. Upon the establishment of the commission the city shall provide by ordinance for the method of appointment, the number, and terms, of members of the commission and for the duties and powers of the commission. The commission shall contain not less than three members. The members of the commission shall be appointed with due regard to proper representation of residents and property owners of the city and their relevant fields of knowledge including but not limited to history, urban planning, architecture, archaeology, law, and sociology. At least one resident of each designated area of historical significance shall be appointed to the commission. Cities with a population of more than fifty thousand shall not appoint more than one-third of the members to the commission of an area of historical significance that are members of a city zoning commission appointed pursuant to chapter 414. The commission shall have the power to approve or deny applications for proposed alterations to exterior features within an area designated as an area of historical significance. An aggrieved party may appeal the commission's action to the governing body of the city. If not satisfied by the decision of the governing body, the party may appeal within sixty days of the governing body's decision to the district court for the county in which the designated area is located. On appeal the governing body or the district court as the case may be shall consider whether the commission has exercised its powers and followed the guidelines established by the law and ordinance, and whether the commission's action was patently arbitrary or capricious.

4. An area shall be designated an area of historical significance upon enactment of an ordinance of the city. Before the ordinance or an amendment to it is enacted, the governing body of the city shall submit the ordinance or amendment to the historical division for its review and recommendations.

[C81, §303.34; 82 Acts, ch 1238, §19]
89 Acts, ch 145, §1; 92 Acts, ch 1204, §7

303.35 to 303.40 Reserved.

SUBCHAPTER IV

LAND USE DISTRICTS

303.41 Eligibility and purpose.

A land use district shall not be created under this subchapter unless it is an area of contiguous territory encompassing twenty thousand acres or more of predominately rural and agricultural land owned by a single entity which has within its general boundaries at least seven platted villages which are not incorporated as municipalities at the time the district is organized. The eligible electors may create a land use district to conserve the distinctive historical and cultural character and peculiar suitability of the area for particular uses with a view to conserving the value of all existing and proposed structures and land and to preserve the quality of life of those citizens residing within the boundaries of the contiguous area by preserving its historical and cultural quality.

83 Acts, ch 108, §1

303.42 Petition.

Eligible electors residing within the limits of a proposed land use district equal in number to at least ten percent or more of the registered voters residing within the limits of a proposed land use district may file a petition in the office of the county auditor of the county in which the proposed land use district, or its major portion, is located, requesting that there be submitted to the registered voters of the proposed district the question of whether the territory within the boundaries of the proposed district shall be organized as a land use district under this subchapter. The petition shall be addressed to the board of supervisors of the county where it is filed and shall set forth the following:

1. An intelligible description of the boundaries of the territory to be embraced in the district.
2. The name of the proposed district.
3. That the territory to be embraced in the district has a distinctive historical and cultural character which might be preserved by the establishment of the district.
4. That the public welfare will be promoted by the establishment of the district.
5. The signatures of the petitioners.

83 Acts, ch 108, §2; 2001 Acts, ch 56, §16

303.43 Jurisdiction — decisions — records.

The board of supervisors of the county in which the proposed land use district, or its major portion, is located has jurisdiction of the proceedings on the petition as provided in this subchapter and the decision of a majority of the members of that board is necessary for adoption. All orders of the board made under this subchapter shall be spread at length upon the records of the proceedings of the board of supervisors, but need not be published.

83 Acts, ch 108, §3

303.44 Date and notice of hearing.

The board of supervisors to whom the petition is addressed, at its next regular, special, or adjourned meeting, shall set the time and place when it will meet for a hearing upon the petition, and direct the county auditor in whose office the petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and prayer of the petition, by publication of a notice once each week for two consecutive weeks in some newspaper of general circulation published in the proposed district. The last publication shall not be less than twenty days prior to the date set for the hearing of the petition. If no such newspaper is published in the proposed district, then notice shall be by posting at least five copies of the notice in the proposed district at least twenty days before the hearing. Proof of giving notice shall be made by affidavit of the publisher or affidavit of the person who posted the notices, and the proof shall be on file with the county auditor at the time the hearing begins. The notice of hearing shall be directed to all persons it may concern, and shall state the following:

1. That a petition has been filed with the county auditor of that county for establishment of a proposed land use district and the name of the proposed district.

2. An intelligible description of the boundaries of the territory to be embraced in the district.

3. The date, hour, and place where the petition will come on for hearing before the board of supervisors of the named county.

4. That the board of supervisors will fix and determine the boundaries of the proposed district as described in the petition, and at the hearing all interested persons shall have an opportunity to be heard regarding the location and boundaries of the proposed district and to make suggestions regarding it.

83 Acts, ch 108, §4

303.45 Hearing of petition and order.

The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 303.44 and shall continue the hearing in session, with adjournments from day to day, if necessary, until completed, without being required to give any further notice of it. Proof of the residence and qualification of the petitioners as eligible electors shall be made by affidavit or otherwise as the board may direct. The board shall consider the boundaries of the proposed land use district, whether they shall be as described in the petition or otherwise, and for that purpose may alter and amend the petition and limit or change the boundaries of the proposed district as stated in the petition. The boundaries of a proposed district shall not be changed to include property not included in the original petition and published notice until the owner of that property is given notice as on the original hearing. All persons in the proposed district shall have an opportunity to be heard regarding the location and boundaries of the proposed district and to make suggestions regarding them. The board of supervisors, after hearing the statements, evidence, and suggestions made and offered at the hearing, shall enter an order fixing the boundaries of the proposed district and directing that an election be held for the purpose of submitting to the registered voters residing within the boundaries of the proposed district the question of organization and establishment of the proposed land use district as determined by the board of supervisors. The order shall fix a date for the election not more than sixty days after the date of the order, establish voting precincts within the proposed district and define their boundaries, and specify the polling places which in the board's judgment will best serve the convenience of the voters, and shall appoint from residents of the proposed district three judges and two clerks of election for each voting precinct established.

83 Acts, ch 108, §5; 2001 Acts, ch 56, §17

303.46 Notice of election.

In its order for the election the board of supervisors shall direct the county auditor to cause notice of the election to be given by posting at least five copies of the notice in public places in the proposed district at least twenty days before the date of election and by publication of the notice once each week for three consecutive weeks in some newspaper of general circulation published in the proposed district, or, if no such newspaper is published within the proposed district, then in such a newspaper published in the county in which the major part of the proposed district is located. The last publication is to be at least twenty days prior to the date of election. The notice shall state the time and place of holding the election and the hours when the polls will be open and closed, the purpose of the election, with the name of the proposed district and a description of its boundaries, and shall set forth briefly the limits of each voting precinct and the location of the polling places. Proof of posting and publication shall be made in the manner provided in section 303.44 and filed with the county auditor.

83 Acts, ch 108, §6

303.47 Election.

Each registered voter residing within the proposed district may cast a ballot at the election and a person shall not vote in any precinct but that of the person's residence. Ballots at the election shall be in substantially the following form:

For Land Use District . . . . . .
Against Land Use District . . . . . .

The election shall be conducted in the manner provided by law for general elections and the ballots so cast shall be issued, received, returned, and canvassed in the same manner and by the same officers, in the county whose board of supervisors is vested with jurisdiction of the proceedings, as provided by law in the case of ballots cast for county officers, except as modified by this subchapter. The board of supervisors shall cause a statement of the result of the election to be spread upon the records of the county auditor. If a majority of the votes cast upon the question of incorporation of the proposed district is in favor of the proposed district, the proposed district becomes an organized district under this subchapter.

83 Acts, ch 108, §7; 2001 Acts, ch 56, §18

303.48 Expenses and costs of election.

All expenses incurred in carrying out sections 303.41 through 303.47, including the costs of the election, as determined by the board of supervisors, shall be paid by the county whose board is vested with jurisdiction of the proceedings.

83 Acts, ch 108, §8

303.49 Election of trustees — terms — vacancies.

1. If the proposition to establish a land use district carries, a special election shall be called by the board of supervisors of the county which conducted the election to form the district. This special election shall be held within the newly created district at a single polling place designated by the county auditor not more than ninety days after the organization of the land use district. The election shall be held for the purpose of electing the initial seven members of the board of trustees of the land use district. The county auditor shall cause notice of the election to be posted and published, and shall perform all other acts with reference to the election, and conduct it in like manner, as nearly as may be, as provided in this subchapter for the election on the question of establishing the district. Each trustee must be a United States citizen not less than eighteen years of age and a resident of the district. Each registered voter at the election may write in upon the ballot the names of not more than seven persons whom the voter desires for trustees and may cast not more than one vote for each of the seven persons. The seven persons receiving the highest number of votes cast shall constitute the first board of trustees of the district.

2. Following the initial special election, an annual election shall be held at a single polling place within the district designated by the county auditor for the purpose of electing a trustee to replace a trustee whose term will expire. The board of trustees, in consultation with the county auditor, shall select the election date. The county auditor shall perform all other acts with reference to the election and conduct it in like manner, as nearly as may be, as provided in chapters 45 and 49. Each registered voter at the election may vote for one person whom the voter desires as a trustee for each expiring term. The term of office for each trustee elected shall be three years.

3. Vacancies in the office of trustee of a land use district may be filled by the remaining members of the board of trustees for the period extending to the next annual election at which time the registered voters of the district shall elect a new trustee to fill the vacancy for the unexpired term. Expenses incurred in carrying out the annual elections of trustees shall be paid for by the land use district.

4. When the initial board of trustees is elected under this section the trustees shall be ranked in the order of votes received from highest to lowest. Any ties shall be resolved by a random method. The last ranked trustee shall receive an initial term expiring at the next annual election for trustees, the sixth and fifth ranked trustees receive an initial term expiring one year later, the fourth ranked trustee receives an initial term expiring two years after that election, the third and second ranked trustees receive initial terms expiring three years after that election, and the first ranked trustee shall receive an initial term expiring four years after that election.

83 Acts, ch 108, §9; 85 Acts, ch 161, §1; 94 Acts, ch 1169, §64; 97 Acts, ch 83, §1

303.50 Trustee's bond.

Each trustee shall, before entering upon the duties of office, execute a bond payable to the district, with security to be approved by the board of supervisors which had jurisdiction of the petition for establishment of the district, in a form and amount as that board of supervisors may determine, and file the bond with the county auditor of that county.

83 Acts, ch 108, §10

303.51 Land use district to be a body corporate.

A land use district organized under this subchapter is a body corporate and politic, with the name and style under which it was organized, and by that name and style may sue and be sued, contract and be contracted with, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter it, and exercise all the powers conferred in this chapter.

The courts of this state shall take judicial notice of the existence of a land use district organized under this subchapter.

83 Acts, ch 108, §11

303.52 Board of trustees — powers and duties.

1. The trustees elected under this subchapter constitute the board of trustees for the district, which is the corporate authority of the district, and shall exercise all the powers and manage and control all the affairs of the district. A majority of the board of trustees is a quorum, but a smaller number may adjourn from day to day. The board of trustees may elect a president, vice president, clerk, and a treasurer from their own number and, from without their own number, employees of the district. The compensation of members of the board of trustees is fixed not to exceed ten dollars per day, or any part of a day, for each day the board is actually in session and ten dollars per day when not in session but employed on board service, and twenty cents for every mile traveled in going to and from sessions of the board and in going to and from the place of performing board service. Members of the board shall not receive compensation for more than sixty days of session and board service each year.

2. The board of trustees shall formulate and administer a land use plan which includes all ordinances, resolutions, rules, and regulations necessary for the proper administration of the land use district. The land use plan shall be created for the primary purpose of regulating and restricting, where deemed necessary, the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land in a manner which would maintain or enhance the distinctive historical and cultural character of the district. The ordinances, resolutions, rules, and regulations shall not apply to any tillable farmland, pastureland, timber pasture or forestland located within the district except to structures of an advertising or commercial nature located on the land.

3. The board of trustees shall provide for the manner in which the land use plan shall be established and enforced and amended, supplemented, or changed. However, a plan shall not become effective until after a public hearing on it, at which parties in interest and citizens of the district shall have an opportunity to be heard. At least fifteen days notice of the time and place of the hearing shall be published in a newspaper of general circulation within the district giving the time, date, and location of the public hearing.

4. The board of trustees shall appoint an administrative officer authorized to enforce the resolutions or ordinances adopted by the board of trustees. The board of trustees may pay the administrative officer the compensation it deems fit from the funds of the district.

83 Acts, ch 108, §12; 85 Acts, ch 161, §2

303.52A Inclusion or exclusion of land.

If at least sixty percent of the registered voters of a land area petition the board of supervisors for inclusion in or exclusion from a land use district, the board shall review the petition and determine if the petition contains a sufficient number of registered voters residing in the affected land area and, if the petition is sufficient, submit it to the board of trustees of the land use district. The land area to be included in or excluded from the land use district must be contiguous to the land use district. If two thirds of the membership of the board of trustees vote in favor of the petition, the petition shall be granted and the land area included in or excluded from the district.

85 Acts, ch 161, §3; 2001 Acts, ch 56, §19

303.53 Changes and amendments.

The land use plan, once established, may be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against a change signed by the owners of twenty percent or more either of the area included in the proposed change, or of the immediately adjacent area and within five hundred feet of the boundaries, the amendment shall not become effective except by the favorable vote of at least eighty percent of all of the members of the board of trustees.

83 Acts, ch 108, §13

303.54 Board of adjustment.

The board of trustees of the district shall provide for the appointment of a board of adjustment, shall provide that the board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the land use plan which are in harmony with its general purpose and intent and in accordance with the general or specific rules of the plan, and provide that a property owner aggrieved by the action of the board of trustees in the adoption of the land use plan may petition the board of adjustment directly to modify regulations and restrictions as applied to those property owners.

83 Acts, ch 108, §14

303.55 Membership — term — compensation.

The board of adjustment shall consist of five members, all of whom shall reside within the district, each to be appointed for a term of five years. For the initial board one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members are removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of a member whose term becomes vacant. The compensation for the members of the board of adjustment is the same as for the members of the board of trustees.

83 Acts, ch 108, §15; 85 Acts, ch 161, §4

303.56 Rules.

The board of adjustment shall adopt rules in accordance with any regulation or ordinance adopted by the board of trustees pursuant to this subchapter. Meetings of the board of adjustment shall be held at the call of the chairperson and at other times as the board determines. The chairperson, or the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

83 Acts, ch 108, §16

303.57 Appeals to board of adjustment.

Appeals to the board of adjustment may be taken by any person aggrieved or affected by the land use plan or by a decision of the administrative officer. The appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the administrative officer and the board of adjustment a notice of appeal specifying the grounds of the appeal.

83 Acts, ch 108, §17; 85 Acts, ch 161, §5

303.58 Powers of board.

The board of adjustment may:

1. Hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or of any ordinance adopted pursuant to it.

2. Hear and decide special exceptions to the terms of the ordinance upon which the board is required to pass under the ordinance.

3. Authorize upon appeal, in specific cases, a variance from the terms of the land use plan which are not contrary to the public interest, where owing to special conditions a literal enforcement of the plan would result in unnecessary hardship, and so that the spirit of the plan shall be observed and substantial justice done.

83 Acts, ch 108, §18

303.59 Powers on appeal.

In exercising its powers the board may, in conformity with this subchapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make the order, requirement, decision, or determination as should be made, and to that end have all the powers of the administrative officer of the board.

83 Acts, ch 108, §19; 85 Acts, ch 161, §6

303.60 Vote required.

The concurring vote of three members of the board is necessary to reverse an order, requirement, decision, or determination, or to decide in favor of the applicant on a matter upon which it is required to pass under an ordinance or to effect a variation in the land use plan.

83 Acts, ch 108, §20

303.61 Petition to court.

Any persons, jointly or severally, aggrieved by a decision of the board of adjustment under this subchapter, or any taxpayer, may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

83 Acts, ch 108, §21

303.62 Review by court.

Upon the presentation of a petition, the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board of adjustment prescribing the time within which a return must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ does not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

83 Acts, ch 108, §22

303.63 Trial to court.

If upon the hearing, which shall be tried de novo, it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as it directs and report the evidence to the court with findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it appears to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

83 Acts, ch 108, §23

303.64 Precedence.

All issues in any proceedings under sections 303.41 through 303.63 have preference over all other civil actions and proceedings.

83 Acts, ch 108, §24

303.65 Restraining order.

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or

maintained, or a building, structure, or land is used in violation of this subchapter or of an ordinance or other regulation made under this subchapter, the board of trustees, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate the violation, to prevent the occupancy of the building, structure, or land, or to prevent any illegal act, conduct, business, or use in, or about the premises.

83 Acts, ch 108, §25

303.66 Taxes — power to levy — tax sales.

The board of trustees of a land use district organized under this subchapter may by ordinance levy annually for the purpose of paying the administrative costs of the district, a tax upon real property within the territorial limits of the land use district not exceeding twenty-seven cents per thousand dollars of the adjusted taxable valuation of the property for the preceding fiscal year. The tax shall not be levied on any tillable farmland, pastureland, timber pasture or forestland located within the district.

Taxes levied by the board shall be certified on or before the first day of March to the county auditor of each county where any of the property included within the territorial limits of the land use district is located, and shall be placed upon the tax list for the current year, and the county treasurer shall collect the taxes in the same manner as other taxes, and when delinquent they shall draw the same interest and penalties. All taxes so levied and collected shall be paid over to the treasurer of the district.

Sales for delinquent taxes owing to a land use district shall be made at the same time and in the same manner as sales are made for other taxes, and all provisions of the law of this state relating to the sale of property for delinquent taxes are applicable, so far as may be, to such sales.

83 Acts, ch 108, §26

303.67 Records and disbursements.

The clerk of each land use district shall keep a record of all the proceedings and actions of the trustees. The treasurer shall receive, collect, and disburse all moneys belonging to the district, and no claim shall be paid or disbursement made until it has been duly audited by the board of trustees.

83 Acts, ch 108, §27

303.68 Conflict with other regulations.

If the regulations made under this subchapter impose higher standards than are required in any other statute or local ordinance or regulation, the regulations made under this subchapter govern. If any other statute or local ordinance or regulation imposes higher standards than are required by the regulations made under authority of this subchapter, that statute or ordinance or regulation governs. If a regulation proposed or made under this subchapter relates to a structure, building, dam, obstruction, deposit, or excavation in or on the flood plains of a river or stream, prior approval of the department of natural resources is required to establish, amend, supplement, change, or modify the regulation or to grant a variation or exception from it.

83 Acts, ch 108, §28

303.69 through 303.74 Reserved.

SUBCHAPTER V

PUBLIC BROADCASTING DIVISION

303.75 through 303.85 Repealed by 93 Acts, ch 48, § 55. See § 256.80 et seq.

SUBCHAPTER VI

ARTS DIVISION

303.86 Arts council.

The Iowa arts council is created as an advisory council, consisting of fifteen members, appointed by the governor from among citizens of Iowa who are recognized for their interest or experience in connection with the performing and fine arts. In making appointments, due consideration shall be given to the recommendations made by representative civic, educational, and professional associations and groups concerned with or engaged in the production or presentation of the performing and fine arts.

The term of office of each member of the Iowa arts council is three years. The governor shall designate a chairperson and a vice chairperson from the members of the council to serve at the pleasure of the governor. All vacancies shall be filled for the balance of any unexpired term in the same manner as original appointments. The members of the council shall not receive compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the council. Members may also be eligible for compensation as provided in section 7E.6.

86 Acts, ch 1245, §1325; 2002 Acts, ch 1119, §151
Section amended

303.87 Duties of council.

The arts council shall:

1. Advise the director with respect to policies, programs, and procedures for carrying out the administrator's functions, duties, or responsibilities.

2. Review programs to be supported and make recommendations on the programs to the director.

86 Acts, ch 1245, §1326; 90 Acts, ch 1065, §3; 91

Acts, ch 157, §11

303.88 Administrator's powers and authority.

The arts division administrator may:

1. Make and sign any agreements and perform any acts which are necessary, desirable, or proper to carry out the purpose of the division.

2. Request and obtain assistance and data from any department, division, board, bureau, commission, or agency of the state.

3. Accept any federal funds granted, by Act of Congress or by executive order, for all or any purposes of this subchapter, and receive and disburse as the official agent of the state any funds made available by the national endowment for the arts.

4. Accept gifts, contributions, endowments, bequests, or other moneys available for all or any of the purposes of the division. Interest earned on the gifts, contributions, endowments, bequests, or other moneys accepted under this subsection shall be credited to the fund or funds to which the gifts, contributions, endowments, bequests, or other moneys have been deposited, and is available for all or any of the purposes of the division.

86 Acts, ch 1245, §1327; 88 Acts, ch 1158, §60

303.89 State poet laureate designated — nominating committee.

1. A state poet laureate nominating committee is created. At the request of the governor, the executive director of humanities Iowa and the executive director of the Iowa arts council shall each appoint three persons who reside in this state to a poet laureate nominating committee. At its initial meeting held at the call of the executive directors of humanities Iowa and the Iowa arts council, the state poet laureate nominating committee shall elect a chairperson and vice chairperson from among its members and adopt rules of procedure. The members of the state poet laureate nominating committee shall be invited to serve without compensation for their services. The nominating committee is charged with considering the diversity of the people and poetry of Iowa.

2. If more than one meeting is required, the state poet laureate nominating committee shall meet at the call of the chairperson or as determined by the nominating committee and select a list of three nominees, along with biographical and professional information and supporting representative material, who are residents of Iowa and who, based on their poetic accomplishments, deserve recognition as the state poet laureate. The list of nominees shall be transmitted to the governor. The governor may select the state poet laureate from the list of nominees for a two-year term of office. The state poet laureate is an honorary state office and the incumbent is entitled to no compensation as a result of the appointment.

99 Acts, ch 161, §1

303.90 Fund created and transfer of moneys. Repealed by 91 Acts, ch 157, § 13.

SUBCHAPTER VII

LIBRARY DIVISION

303.91 through 303.94 Repealed by 93 Acts, ch 48, § 55. See § 256.50 et seq.

CHAPTER 303A

IOWA CULTURAL TRUST

303A.1 Short title.
303A.2 Legislative findings.
303A.3 Definitions.
303A.4 Iowa cultural trust and trust fund.
303A.5 Board of trustees.
303A.6 Board of trustees — powers and duties.
303A.7 Iowa cultural trust grant account.

303A.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Cultural Trust Act"*.

2002 Acts, ch 1115, §2
NEW section

303A.2 Legislative findings.

The general assembly finds and declares that cultural organizations generate millions of dollars in economic activity in Iowa; attract people to live and work in Iowa's communities; contribute to a revitalization of those communities; are a magnet for tourists; train minds for the creative economy jobs of the future; and build social capital. However, these organizations are often undercapitalized. Therefore, to bring financial stability to these organizations through fluctuating economic conditions, it is the intent of the general assembly that

a public trust be established the income from which may be made available to supplement the operating budgets of nonprofit cultural organizations that meet certain criteria, including a commitment to strategies to attain long-term financial stability and sustainability. It is further the intent of the general assembly that income from the public trust may be used initially for a statewide educational program to assist cultural organizations in endowment development.

2002 Acts, ch 1115, §3
NEW section

303A.3 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Board"* means the board of trustees of the Iowa cultural trust created in section 303A.5.
2. *"Department"* means the department of cultural affairs created in section 303.1.
3. *"Director"* means the director of the department of cultural affairs.
4. *"Grant account"* means the Iowa cultural trust grant account created in section 303A.7.
5. *"Qualified organization"* means a tax-exempt, nonprofit organization whose primary mission is to promote the arts, history, or the sciences and humanities in Iowa.
6. *"Trust fund"* means the Iowa cultural trust fund created in section 303A.4.

2002 Acts, ch 1115, §4
NEW section

303A.4 Iowa cultural trust and trust fund.

1. The Iowa cultural trust is created as a public body corporate organized for the purposes, with the powers, and subject to the restrictions, set forth in this chapter.
2. An Iowa cultural trust fund is created in the office of the treasurer of state for the purpose of receiving moneys appropriated by the general assembly and any other moneys available to the trust fund due to the issuance of trust fund credits by the director as provided in section 303.1A, subsection 6.
3. The trust fund may also receive any devise, gift, bequest, donation, or federal or other grant from any person, firm, partnership, or corporation. Any assets received by the trust fund from federal or private sources shall at all times be preserved, invested, and expended solely for the purposes of the trust fund and shall be held in trust as provided for in this section. No property rights in the assets received by the trust fund from federal or private sources shall exist in favor of the state.
4. The treasurer of state shall act as custodian of the fund, shall invest moneys in the trust fund, and shall transfer the interest attributable to the investment of trust fund moneys to the grant account created in section 303A.7. The trust fund's principal shall not be used or accessed by the department or the board for any purpose.
5. Notwithstanding section 8.33, moneys remaining in the trust fund at the end of the fiscal year shall be retained in the trust fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the trust fund shall be credited to the trust fund.

2002 Acts, ch 1115, §5
NEW section

303A.5 Board of trustees.

1. A board of trustees of the Iowa cultural trust is created. The general responsibility for the proper operation of the trust is vested in the board of trustees, which shall consist of thirteen members as follows:

a. Nine public members, five of whom shall be appointed by the governor, subject to confirmation by the senate. The majority leader of the senate, the minority leader of the senate, the speaker of the house, and the minority leader of the house of representatives shall each appoint one public member. A public member of the board appointed in accordance with this section shall not also serve concurrently as a member of the state historical society board of trustees or the Iowa state arts council.

b. Four ex officio, nonvoting members, consisting of the treasurer of state or the treasurer's designee, the director of the department of cultural affairs or the director's designee, the chairperson of the state historical society board of trustees elected pursuant to section 303.6, and the chairperson of the Iowa arts council designated pursuant to section 303.86.

2. Members appointed by the general assembly shall be appointed to two-year terms. The public members appointed by the governor shall serve five-year staggered terms beginning and ending as provided in section 69.19. Vacancies on the board shall be filled for the unexpired portion of the term in the same manner as the original appointments.
3. Members appointed by the governor are subject to the requirements of sections 69.16, 69.16A, and 69.19.
4. Public members shall serve without compensation, but shall be reimbursed for all actual and necessary expenses they incur through service on the board.
5. The board shall elect a chairperson and vice chairperson from among its membership. The board shall meet at the call of its chairperson or upon written request of a majority of its voting members. Five voting members constitute a quorum. The concurrence of a majority of the voting members of a board is required to take any action relating to its duties.
6. The board shall be located for administrative purposes within the department. The department, subject to approval by the board, shall adopt

administrative rules pursuant to chapter 17A necessary to administer the income derived from the Iowa cultural trust fund and to perform specific powers and duties as provided in section 303A.6. The director shall budget funds to pay the expenses of the board and administer this chapter.

2002 Acts, ch 1115, §6
Governor's initial appointments to board; 2002 Acts, ch 1115, §9
NEW section

303A.6 Board of trustees — powers and duties.

The board shall do any or all of the following:

1. Enter into agreements with any qualified organization, the state, or any federal or other state agency, or other entity as required to administer this chapter.

2. Approve or disapprove the grants recommended for approval by the director, in consultation with the Iowa arts council and the state historical society of Iowa, in accordance with section 303.1A, subsection 6, paragraph *"c"*. The board may delete any recommendation, but shall not add to or otherwise amend the list of recommended grants.

3. Upon approving a grant, the board shall certify to the treasurer of state the amount of financial assistance payable from the trust account to the qualified organization whose grant application is approved.

4. Determine, in consultation with the treasurer of state, the amount of investment income attributable to the trust fund that will be available for distribution as grants to qualified organizations.

5. Accept any devise, gift, bequest, donation, or federal or other grant from any person, firm, partnership, or corporation, which the treasurer of state shall deposit into the trust fund.

2002 Acts, ch 1115, §7
NEW section

303A.7 Iowa cultural trust grant account.

1. An Iowa cultural trust grant account is created in the office of the treasurer of state under the control of the board to receive interest attributable to the investment of trust fund moneys as required by section 303A.4, subsection 4. The moneys in the grant account are appropriated to the board for purposes of the Iowa cultural trust created in section 303A.4. Moneys in the grant account shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes of the Iowa cultural trust. The treasurer of state shall act as custodian of the grant account and disburse moneys contained in the grant account as directed by the board. The board shall make expenditures from the grant account consistent with the purposes of the Iowa cultural trust.

2. Moneys in the grant account are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the grant account shall be credited to the grant account.

3. For the fiscal period beginning July 1, 2003, and ending June 30, 2005, the board may use moneys in the grant account for a statewide educational program to promote participation in, expanded support of, and local endowment building for, Iowa nonprofit arts, history, and sciences and humanities organizations.

2002 Acts, ch 1115, §8; 2002 Acts, ch 1175, §82
NEW section

CHAPTER 303B

REGIONAL LIBRARY SYSTEM

Repealed by 93 Acts, ch 48, §56; see §256.60 et seq.

CHAPTER 303C

ARTS AND CULTURAL ENHANCEMENT AND ENDOWMENT

Repealed by 98 Acts, ch 1215, §57; see §303.3A

CHAPTER 304

STATE FORMS AND RECORDS

304.1 Citation.
304.2 Definitions.
304.3 Commission created — duties.
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304.1 Citation.

This chapter shall be known and may be cited as the *"Records Management Act"*.

[C75, 77, 79, 81, §304.1]

304.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agency"* means any executive department, office, commission, board or other unit of state government except as otherwise provided by law.
2. *"Commission"* means the state records commission created by this chapter.
3. *"Designee"* means a person or position appointed by the head of an agency listed in section 304.3 for a period of at least two years to regularly represent that agency in the activities of the commission.
4. *"Form"* means a document containing information, printed or reproduced by whatever means, with blank areas for the entry of additional information.
5. *"Forms management"* means a comprehensive control program which is designed and implemented to provide standards for the analysis, creation, design, procurement and storage of all forms in state government, and to assure that those forms are designed, produced and distributed economically and efficiently.
6. *"Record"* means a document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made, produced, executed or received pursuant to law in connection with the transaction of official business of state government. "Record" does not include library and museum material made or acquired and preserved solely for reference or exhibition purposes, miscellaneous papers or correspondence without official significance, extra copies of documents preserved only for convenience of reference, and stocks of publications and processed documents.
7. *"Records management"* means a program designed to provide economy and efficiency in the creation, organization, maintenance, use and disposition of records to assure that needless records will not be created or retained and to assure that valuable records will be preserved.

[C75, 77, 79, 81, §304.2]
84 Acts, ch 1093, §1

304.3 Commission created — duties.

There is created a state records commission. The commission shall consist of the following or their designees:

1. The secretary of state.
2. The director of the department of cultural affairs, who shall act as secretary of the commission.
3. The treasurer of state.
4. The director of revenue and finance.
5. The director of the department of management.
6. The state librarian.
7. The auditor of state.
8. The director of the department of general services.
9. The director of the information technology department.

The commission shall annually elect its chairperson. The commission shall determine what records have no administrative, legal, fiscal, research or historical value and should be disposed of or destroyed. The commission shall also establish a forms management program. The decisions of the commission shall be made by a majority vote of the entire membership.

[C75, 77, 79, 81, §304.3; 82 Acts, ch 1238, §20]
84 Acts, ch 1093, §2; 88 Acts, ch 1158, §61, 62; 98 Acts, ch 1017, §3; 2000 Acts, ch 1141, §14, 19

304.4 Expenses.

Members of the commission shall serve without compensation but may receive their actual expenses incurred in the performance of their duties.

[C75, 77, 79, 81, §304.4]

304.5 Meetings.

The commission shall have its offices at the seat of government but may hold meetings in other locations. It shall meet quarterly and at the call of the chairperson.

[C75, 77, 79, 81, §304.5]

304.6 Administration — powers and duties.

The primary agency responsible for providing administrative personnel and services for the commission is the department of cultural affairs. The purchase, rental or lease of equipment and supplies for record storage or preservation by agencies is subject to the approval of the commis-

sion except as otherwise provided by law. The commission shall review all record storage systems and installations of agencies and recommend any changes necessary to assure maximum efficiency and economic use of equipment and procedures, including but not limited to, the type of equipment, methods and procedures for filing and retrieval of records, and the location of equipment. The commission has the authority to examine all forms, records and other papers in the possession, constructive possession, or control of state agencies for the purpose of carrying out the goals of this chapter. The commission shall annually review the effectiveness of the forms management program and the forms management practices of individual state agencies, and maintain records that indicate dollar savings and the number of forms eliminated, simplified, or standardized through forms management. The commission shall review forms and may reject forms that are not neutral in regard to gender, race, religion, or national origin or that request information on gender, race, religion, or national origin when there is an inadequate state interest in obtaining that information for the purpose of that form. The commission shall file an annual report on the forms management program with the general assembly and the governor. The commission shall perform any act necessary and proper to carry out its duties.

[C75, 77, 79, 81, §304.6]

84 Acts, ch 1093, §3; 98 Acts, ch 1017, §4

304.7 Rules.

The commission shall adopt rules in accordance with the provisions of chapter 17A which are necessary for the exercise of the powers and duties granted by this chapter. The rules shall provide for:

1. Procedures to promote the economical and efficient management of records and to insure the maintenance and security of records deemed appropriate for preservation.
2. Public records policies for an electronic repository for mandated agency reports.
3. Procedures and standards for the efficient and economical utilization of space, equipment, and supplies needed for the purpose of creating, maintaining, storing and servicing records.
4. Standards for the selective retention of records of continuing value.
5. Procedures for compiling and submitting to the commission lists and schedules of records proposed for disposal.
6. Procedures for the physical destruction of records proposed for disposal.
7. Standards for the reproduction of records.
8. Procedures to assign state form numbers to all forms and maintain an index of all forms.
9. Standards for the design and printing specifications for forms.
10. Procedures for the process of approval for all requests for forms prior to the printing of forms.
11. Procedures to promote the economical and efficient management of forms and to insure that forms are not created nor reproduced unnecessarily.
12. Procedures to assist, train, and instruct state agencies and their internal records and forms management representatives in forms management techniques and provide direct assistance to new state agencies as they are created.

In carrying out its duties under this chapter, the commission shall develop a records management manual within one year of July 1, 1974. The records management manual shall be made available to agencies subject to the provisions of this chapter and shall contain the rules and regulations required by this chapter, such other information as is necessary, and shall provide for implementing the provisions of this chapter. The commission may contract for services required to develop the records management manual. The records management manual shall be revised and updated periodically to reflect decisions made by the commission.

[C75, 77, 79, 81, §304.7]

84 Acts, ch 1093, §4; 2000 Acts, ch 1141, §15, 19

304.8 Disposal prohibited.

After July 1, 1975, no records shall be disposed of by any agency unless prior approval of the commission is obtained or has been previously granted or disposal is provided for in the records management manual.

[C75, 77, 79, 81, §304.8]

304.9 Lists of records.

The head of each agency shall submit to the commission lists of the records in the agency's custody. The head of each agency shall also submit a schedule proposing the length of time each record should be retained for administrative, legal or fiscal purposes.

[C75, 77, 79, 81, §304.9]

304.10 State archivist of the historical division of the department of cultural affairs — duties to commission.

All lists and schedules submitted to the commission shall be referred to the state archivist of the historical division of the department of cultural affairs, who shall determine whether the records proposed for disposal have value to other agencies of the state or have research or historical value. The state archivist shall submit the lists and schedules with recommendations in writing to the commission and the final disposition of the records shall be according to the orders of the commission.

[C75, 77, 79, 81, §304.10; 82 Acts, ch 1238, §21]

98 Acts, ch 1017, §5

304.11 Termination of state agency.

Upon the termination of any state agency whose functions have not been transferred to another agency, the records of the agency shall be disposed of according to the provisions of the state records management manual.

[C75, 77, 79, 81, §304.11]

304.12 Emergency preparations.

The commission shall establish a system for the protection and preservation of records essential for the continuity or establishment of governmental functions in the event of an emergency arising from enemy action or natural disaster. The commission shall:

1. Determine what records are essential for emergency government operations through consultation with all state agencies.

2. Determine what records are essential for postemergency government operations, and provide for their protection and preservation.

3. Establish the manner in which essential records for emergency and postemergency government operations shall be preserved to insure emergency use.

4. Provide for security storage or relocation of essential state records in the event of an emergency arising from enemy attack or natural disaster.

[C75, 77, 79, 81, §304.12]

304.13 Duplicates.

The commission may make or cause to be made preservation duplicates of records and may designate as duplicates existing copies of initial state records. A preservation duplicate record shall be durable, accurate, complete and clear and shall be made by means designated by the commission.

A preservation duplicate record shall have the same force and effect for all purposes as the original record whether or not the original record is in existence. A transcript, exemplification or certified copy of a preservation duplicate record shall be deemed for all purposes to be a transcript, exemplification or certified copy of the original record.

The commission shall review all duplicating and microfilming systems and installations of agencies subject to this chapter and recommend any changes necessary to assure maximum efficiency and economic use of equipment and procedures, including but not necessarily limited to, the type of equipment, type of storage files, methods and procedures for keeping duplicate records and the location of equipment. The commission may establish centralized duplicating or microfilming facilities if it deems it in the best interest of the state. Agencies subject to this chapter shall consult with and receive approval of the commission prior to the purchase of any duplicating or microfilming equipment or files to be used for storage of records.

[C75, 77, 79, 81, §304.13]

304.13A Electronic records.

1. An agency which produces or makes available for public inspection written reports or newsletters on and after July 1, 2001, shall maintain such report or newsletter in an electronic form, giving consideration to the standards for electronic records recommended by the information technology department. Such agency, by itself, or with the assistance of the information technology department, shall also make the report or newsletter accessible to the public through the internet as provided in subsection 2 and through other electronic means.

2. A copy of all agency reports or newsletters maintained pursuant to subsection 1 shall be located at an internet site maintained by the information technology department in consultation with the state librarian, and all such reports or newsletters shall be placed on electronic media. The state librarian shall provide for the distribution of such copies to a public library in this state requesting such copy.

For purposes of this section, *"public library"* means a city library, a library service area as provided in chapter 256, or a library district as provided in chapter 336.

3. It is the intent of the general assembly that this section be interpreted to reduce, to the greatest extent possible, printed copies of agency reports while protecting the public's right to have access to such reports. It is the intent of the general assembly that the distribution of a printed mandatory report be used only when it is the most efficient and cost-effective method for providing public access to such report. It is the intent of the general assembly that agency reports subject to this section be made available, to the greatest extent possible, to the public by electronic means.

4. The commission, in consultation with the information technology department, shall make recommendations to the governor and the general assembly for the continued reduction of printed reports throughout state government in a manner that protects the public's right to access such reports.

2000 Acts, ch 1141, §16, 19; 2001 Acts, ch 158, §25; 2001 Acts, ch 189, §11; 2002 Acts, ch 1050, §63 – 65

Legislative intent regarding agencies' compliance with this section; process to maximize and monitor reduction of printed copies of agency publications; annual report to general assembly; 2002 Acts, 2nd Ex, ch 1003, §26, 35

2001 amendments to subsection 1 and subsection 2, unnumbered paragraph 1, reenacted

304.14 Agency program.

The head of each agency shall establish and maintain a program for the economical and efficient management of the records and forms of the agency. The program shall:

1. Provide for effective controls over the cre-

ation, maintenance, and use of records and forms in the conduct of current business.

2. Provide for co-operation with the secretary of the commission in applying standards, procedures, and techniques to improve the management of records and forms, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value.

3. Provide for compliance with this chapter and the rules adopted by the commission.

4. Provide for the designation of an agency records and forms coordinator who shall assist the agency in the content requirements of the forms design process and in the development of the agency's forms management program.

5. Report to the commission before the last Wednesday in December of each year those forms and records which have been created or discontinued in the past year, or provide a list of forms and records currently being used by the agency.

[C75, 77, 79, 81, §304.14]

84 Acts, ch 1093, §5

304.15 Records state property.

All official records of this state are the property of the state and shall not be mutilated, destroyed, removed or disposed of, except as provided by law or by rule.

[C75, 77, 79, 81, §304.15]

304.16 Liability precluded.

No member of the commission or head of an agency shall be held liable for damages or loss, or civil or criminal liability, because of the destruction of public records pursuant to the provisions of this chapter or any other law authorizing their destruction.

[C75, 77, 79, 81, §304.16]

304.17 Exemption — duty of department of transportation and board of regents.

The state department of transportation and the agencies and institutions under the control of the state board of regents are exempt from the records management manual and the provisions of this chapter. However, the state department of transportation and the state board of regents shall adopt rules for their employees, agencies, and institutions which are consistent with the objectives of this chapter. The rules shall be approved by the state records commission and be subject to the provisions of chapter 17A.

[C75, 77, 79, 81, §304.17]

304.18 Approval of forms required.

Effective January 1, 1986, a state agency shall not use a form unless the form has been approved under the forms management program.

84 Acts, ch 1093, §6

CHAPTER 304A

FINE ARTS PROJECTS AND INDEMNIFICATION FOR SPECIAL EXHIBITS

DIVISION I

IOWA STATE ARTS COUNCIL

304A.1 through 304A.7 Repealed by 86 Acts, ch 1245, §1340.

DIVISION II

FINE ARTS PROJECTS IN STATE BUILDINGS

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304A.9 Consultation.
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INDEMNIFICATION FOR SPECIAL EXHIBIT ITEMS LOST OR DAMAGED

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DIVISION I

IOWA STATE ARTS COUNCIL

304A.1 through 304A.7 Repealed by 86 Acts, ch 1245, § 1340. See § 303.86 et seq.

DIVISION II

FINE ARTS PROJECTS IN STATE BUILDINGS

304A.8 Definitions.

When used in this division:

1. *"State building"* means any permanent structure, wholly or partially enclosed, which is intended to provide offices, laboratories, workshops, courtrooms, hearing and meeting rooms, storage space and other facilities for carrying on the functions of a state agency, including the board of regents; or auditoriums, meeting rooms, classrooms and other educational facilities; eating or sleeping facilities, medical or dental facilities, libraries and museums which are intended for the use or accommodation of the general public or state employees; together with all grounds and appurtenant structures and facilities; provided, however, it shall not mean maintenance sheds, separate garages, cellhouses or other secure sleeping facilities for prisoners, or buildings used solely as storage or warehouse facilities.

2. *"Fine arts"* means sculpture, fountains, bas-reliefs, mosaics, frescoes, wall hangings, crafts, photography, pictures or other enhancements to be integrated into the total environment of the building or complex of buildings. *"Fine arts"* does not include the incidental ornamental detail of functional structural elements, or hardware and other accessories.

3. *"Principal user"* means the designated person or entity having principal administrative responsibility for the actual utilization of a proposed state building.

[C79, 81, §304A.8]
86 Acts, ch 1245, §1333

304A.9 Consultation.

Whenever a state building is to be constructed, the contracting officer or principal user shall, at the time of engaging or directing an architect to prepare plans and specifications for the building, contact the arts division of the department of cultural affairs, which shall have authority to ensure that the fine arts elements will be integrated within, on, or about the total environment of such construction. Notwithstanding this section and sections 304A.11 and 304A.12, if the state building is under the control of the state board of regents the work on the fine arts element shall be administered by the state board of regents in consultation with the arts division.

[C79, 81, §304A.9]
86 Acts, ch 1245, §1334

304A.10 Cost of fine arts — percentage.

The total estimated cost of the fine arts elements included in a plan and specifications for a state building or group of state buildings in accordance with the purposes of this division shall in no case be less than one-half of one percent of the total estimated cost of such building or group of buildings. This percentage allocation shall not be diminished by professional fees. By September 1 annually, the contracting officer or principal user shall submit to the department of cultural affairs the total amount of state financial assistance expended in accordance with this section during the previous fiscal year. If deemed in the best interests of the citizens, funds allocated for the acquisition of fine arts may be accumulated over more than one appropriation or fiscal period or combined to complete significant projects, however, this sentence does not authorize interproject transfers. The total estimated cost of the fine arts elements included in a plan and specifications for a state building or group of state buildings in accordance with this section shall be included by the department of cultural affairs in calculating the amount of state financial assistance for the arts for purposes of national ranking surveys. By January 1 annually, the department of cultural affairs shall submit a summary of the total amount of state financial assistance expended in accordance with this section and for which state buildings the assistance was expended.

[C79, 81, §304A.10]
86 Acts, ch 1245, §1335; 98 Acts, ch 1215, §55

304A.11 Cooperating parties.

The arts division shall administer, in consultation with the contracting officer, the principal user and the building architect, all matters relating to the selection of the fine arts elements to be included or purchased for a state building as authorized by section 304A.10.

[C79, 81, §304A.11]
86 Acts, ch 1245, §1336

304A.12 Separate contract.

Contracts for the fine arts elements shall be executed within the limits of the actual costs as determined by section 304A.10. Funds shall be transferred to the arts division for administration of the program. All expenses related to the acquisition of the fine arts elements shall be contracted for separately by the arts division with the funds allocated for these purposes.

[C79, 81, §304A.12]
86 Acts, ch 1245, §1337

304A.13 Competition of artists.

Selection of fine arts works may be made by pub-

lic competition of artists. Preference shall be given to the selection of works produced, created or otherwise made by living or deceased Iowa artists. Competitive bidding shall be used where applicable.

[C79, 81, §304A.13]

304A.14 Title in state.

Title to all works of art acquired rests with the principal user or contracting agency in the name of the state. The principal user or contracting agency and the arts division upon agreement may loan works of art between state-owned buildings whenever in their judgment the loan will be to the benefit of the citizens of this state. However, all such works shall be returned to the principal user or the contracting agency at its request.

[C79, 81, §304A.14]

86 Acts, ch 1245, §1338

304A.15 to 304A.20 Reserved.

DIVISION III

INDEMNIFICATION FOR SPECIAL EXHIBIT ITEMS LOST OR DAMAGED

304A.21 Definitions.

When used in this division, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the arts division of the department of cultural affairs.
2. *"Council"* means the Iowa state arts council.
3. *"Department"* means the department of general services.
4. *"Indemnity agreement"* means an agreement authorized by section 304A.22.
5. *"Nonprofit organization"* means a corporation organized under former chapter 504 or chapter 504A or which holds a permit or certificate under former chapter 504 or chapter 504A to do business or conduct affairs in this state.

84 Acts, ch 1073, §2; 89 Acts, ch 76, §6

304A.22 Agreements to indemnify against loss of or damage to special exhibit items.

1. The administrator, after receiving the advice and recommendations of the council, may make agreements on behalf of the state to indemnify against loss of or damage to eligible special exhibit items of public educational, cultural, artistic, historical or scientific significance borrowed by nonprofit organizations or governmental entities as provided in this division.
2. The administrator, after consultation with the council, shall adopt rules for the administration of this division.

84 Acts, ch 1073, §3; 87 Acts, ch 204, §1

304A.23 Items eligible for indemnity agreements.

1. Except as provided in subsection 2, the following items are eligible for inclusion in an indemnity agreement if they are of public educational, cultural, artistic, historical or scientific significance and constitute a portion of a special exhibition having an estimated aggregate fair market value of at least two hundred fifty thousand dollars:

a. Works of art, including tapestries, paintings, sculpture, folk art, graphics and craft arts.

b. Manuscripts, rare documents, books and other printed or published material.

c. Photographs, motion pictures, video tapes and audio tapes.

d. Other artifacts.

2. Items which are eligible for a federal indemnity agreement under the Arts and Artifacts Indemnity Act, 20 U.S.C. sec. 971 to 977, and regulations under that Act, are not eligible for inclusion in a state indemnity agreement.

84 Acts, ch 1073, §4

304A.24 Applications.

A nonprofit organization or governmental entity desiring to obtain an indemnification agreement for special exhibit items it proposes to borrow may submit an application to the administrator. The application shall:

1. Describe each item to be covered by the indemnity agreement, including the estimated value of the item.
2. Show evidence that the items are eligible under section 304A.23.
3. Set forth policies, procedures, techniques and methods with respect to preparations for and the conduct of the exhibition, including arrangements for transportation of the items.

84 Acts, ch 1073, §5; 87 Acts, ch 204, §2

304A.25 Review and determination as to qualification for indemnity coverage.

1. Every application received by the administrator shall be submitted to the department of general services which shall review the application and determine whether the applicant qualifies for indemnity coverage under this division. The criteria for qualification shall be prescribed by rule of the department of general services and shall include but are not limited to:

a. Physical security of the applicant's exhibition facilities and of the means of transportation of the items.

b. Experience and qualifications of the applicant's director, curator, registrar, or other staff.

c. Eligibility of the applicant's exhibition facilities for commercial insurance coverage of art objects and artifacts exhibited there.

d. Availability of proper equipment to protect art objects and artifacts from damage from extremes of temperature or humidity or exposure to

glare, dust, or corrosion.

2. The department may consult with experts as necessary to carry out its duties under this section.

3. If the department of general services is not staffed for risk management, the department shall utilize the services of a consultant in carrying out the department's duties under this chapter.

84 Acts, ch 1073, §6; 89 Acts, ch 76, §7

304A.26 Review and determination as to eligibility and estimated value of items.

1. If the department of general services determines that the applicant qualifies for indemnity coverage, the administrator shall review and determine the validity of other portions of the application, including the eligibility of items for which coverage by an indemnity agreement is sought and the estimated value of those items.

2. The administrator may order an appraisal of the items by an independent appraiser at the expense of the applicant.

3. The council shall designate a committee of experts to advise the administrator in determining the eligibility and estimated value of the items. The administrator shall not approve an estimated value without the approval of the committee.

84 Acts, ch 1073, §7

304A.27 Approval — terms.

If the administrator determines that the application meets all requirements for approval, the administrator shall approve the application and on behalf of the state enter into an indemnity agreement with the lender and the applicant whereby the state becomes liable to indemnify against loss of or damage to the items specified in the agreement. The agreement shall cover the specified items from the time they leave the premises of the lender, or other place designated in writing by the lender, until the time the items are returned to the premises of the lender or other designated place.

84 Acts, ch 1073, §8

304A.28 Limitations.

1. Coverage under this division shall extend only to loss or damage in excess of the first two thousand dollars in connection with a single exhibition.

2. Indemnity agreements entered into by the administrator for a single exhibition or for any single location shall not exceed a total coverage for loss or damage of five million dollars, and all indemnity agreements entered into by the administrator shall not exceed an aggregate coverage for loss or damage of ten million dollars at any one time. The agreements, together with the claims paid to date, shall not exceed ten million dollars at any one time.

84 Acts, ch 1073, §9; 87 Acts, ch 204, §3; 90 Acts, ch 1072, §1

304A.29 Claims.

1. Claims for losses covered by indemnity agreements under this division shall be submitted to the department of general services which shall review the claims. If the department determines that the loss is covered by the agreement, the department shall certify the validity of the claim and authorize payment of the amount of loss, less any deductible portion, to the lender.

2. The department shall prescribe rules providing for prompt adjustment of valid claims. The rules shall include provisions for the employment of consultants and for the arbitration of issues relating to the dollar value of damages involving less than total loss or destruction of covered items.

3. The authorization for payment shall be forwarded to the director of revenue and finance, who shall issue a warrant for payment of the claim from the state general fund out of any funds not otherwise appropriated.

84 Acts, ch 1073, §10; 89 Acts, ch 76, §8

304A.30 Annual report.

The administrator shall report annually to the legislature concerning:

1. Claims, if any, actually paid pursuant to this division, during the preceding fiscal year.

2. Claims pending as of the close of the preceding fiscal year.

3. The aggregate face value of indemnity agreements entered into which are outstanding at the close of the preceding fiscal year.

84 Acts, ch 1073, §11

CHAPTER 305

RESERVED

CHAPTER 305A

STATE ARCHAEOLOGIST

Transferred to chapter 263B

CHAPTER 305B

MUSEUM PROPERTY

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305B.1 Short title.

This chapter may be cited as the *"Museum Property Act"*.

88 Acts, ch 1117, §1

305B.2 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Claimant"* means a person who files a notice of intent to preserve an interest in property on loan to a museum as provided in section 305B.8.

2. *"Claimant's address"* means the most recent address as shown on a notice of intent to preserve an interest in property on loan to a museum, or notice of change of address, which notice is on file with the museum.

3. *"Lender"* means a person whose name appears on the records of the museum as the person legally entitled to property held or owing by the museum.

4. *"Lender's address"* means the most recent address as shown on the museum's records pertaining to the property on loan from the lender.

5. *"Loan"* means a deposit of property not accompanied by a transfer of title to the property.

6. *"Museum"* means an institution located in Iowa operated by a nonprofit corporation or a public agency, primarily for educational, scientific, historic preservation, or aesthetic purposes, which owns, borrows, cares for, exhibits, studies, archives, or catalogs property. *"Museum"* includes, but is not limited to, historical societies, historic sites or landmarks, parks, monuments, and libraries.

7. *"Property"* means a tangible object, animate or inanimate, under a museum's care which has intrinsic historic, artistic, scientific, or cultural value.

8. *"Undocumented property"* means property in the possession of a museum for which the museum cannot determine by reference to the museum's records the property's owner.

88 Acts, ch 1117, §2

305B.3 Basic notice requirement.

1. *Contents.* In addition to any other information prescribed for a particular notice, all notices given pursuant to this chapter shall contain the following information:

a. Lender's name, or claimant's name, as appropriate.

b. Lender's last known address, or claimant's last known address, as appropriate.

c. Brief description of the property on loan.

d. Date of the loan, if known.

e. Name of the museum.

f. Name, address, and telephone number of the appropriate person or office to be contacted regarding the property.

2. *Mailed notice.* All notices given by a mu-

seum pursuant to this chapter shall be mailed to the lender's, and any claimant's, last known address by restricted certified mail, as defined in section 618.15. Notice is deemed given if the museum receives proof of receipt within thirty days of mailing the notice.

3. *Published notice.* If the museum does not know the identity of the lender, or does not have an address for the lender, or if proof of receipt is not received by the museum within thirty days of mailing a notice under subsection 2, notice is deemed given if the museum publishes notice at least once a week for three consecutive weeks in a newspaper of general circulation in both of the following:

a. The county in which the museum is located.

b. The county of the lender's or claimant's address, if any.

88 Acts, ch 1117, §3

305B.4 Conservation or disposal of loaned property.

1. Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to or dispose of property on loan to the museum without the lender's or claimant's permission, or formal notice, if immediate action is required to protect the property on loan or other property in the custody of the museum or if the property on loan is a hazard to the health and safety of the public or the museum staff and if any of the following apply:

a. The museum is unable to reach the lender or claimant at the lender's or claimant's last known address or phone number if action is to be taken within more than three days but less than one week from the time the museum determined action was necessary.

b. The museum is unable to reach the lender or claimant at the lender's or claimant's last known phone number prior to taking action if the action is to be taken within three days or less from the time the museum determined action was necessary.

c. The lender or claimant does not respond or will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

2. If a museum applies conservation measures to or disposes of property under this section, or with the agreement of the lender and claimants unless the agreement provides otherwise, the museum:

a. Has a lien on the property and on the proceeds of any disposition of the property for the costs incurred by the museum.

b. Is not liable for injury to or loss of the property if the museum:

(1) Had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum or that the property on loan was a hazard to the health and safety of the public or the museum staff.

(2) Exercised reasonable care in the choice and application of conservation measures.

88 Acts, ch 1117, §4

305B.5 Notice of injury or loss.

A museum shall give a lender or claimant prompt notice of any known injury to or loss of property on loan. The department of cultural affairs shall adopt by rule a form for notice of injury or loss, no later than January 1, 1989, and shall distribute the rule and form to all identified museums in Iowa within sixty days after adoption of the rule. The notice shall be mailed to the lender's or claimant's last known address in event of injury or loss of property on loan to the museum. Published notice of injury or loss of undocumented property shall not be required.

88 Acts, ch 1117, §5

305B.6 Notice of intent to terminate loan — acquiring title to loaned property.

1. A museum may acquire title to loaned property pursuant to this section. A museum may give notice of termination of a loan of property at any time if either of the following apply:

a. The property was loaned to the museum for an indefinite term.

b. The property was loaned to the museum for a specified term, and that term has expired.

2. If the lender or claimant does not respond to the notice of termination provided under subsection 1 within one year by filing a notice of intent to preserve an interest in property on loan, the museum acquires title to the property.

3. A notice of intent to terminate a loan must include a statement containing substantially the following information:

"The records of (name of museum) indicate that you have property on loan to it. The institution wishes to terminate the loan. You must contact the institution, establish your ownership of the property pursuant to section 305B.8, and make arrangements to collect the property. If you fail to do so promptly, you will be considered to have donated the property to the institution."

88 Acts, ch 1117, §6

305B.7 Acquiring title to undocumented property.

1. A museum may acquire title to undocumented property held by a museum for seven years or longer with no valid claim or written contact by any person, all verifiable through the museum's written records, by giving notice of acquisition of title to undocumented property.

2. If a lender or claimant does not respond to the notice provided in subsection 1 within three years by filing a notice of intent to retain an interest in property on loan, the museum's title to

the property becomes uncontestable under section 305B.9.

3. A notice of acquisition of title must include a statement containing substantially the following information:

"The records of (name of museum) fail to indicate the owner of record of certain property in its possession. The museum intends to acquire title to the below described property: (general description of the property). If you claim ownership or other legal interest in this property you must contact the institution, establish your ownership of the property pursuant to section 305B.8, and make arrangements to collect the property. If you fail to do so promptly, you will be considered to have waived any claim you may have had to the property."

88 Acts, ch 1117, §7

305B.8 Notice of intent to preserve an interest in property — requirements — form — disclosure.

1. A notice of intent to preserve an interest in property on loan to a museum filed pursuant to this chapter shall be in writing and contain all of the following information:

a. A description of the property adequate to enable the museum to identify the property.

b. Documentation sufficient to establish the claimant as owner of the property.

c. A statement attesting to the truth, to the best of the signer's knowledge, of all information included in or with the notice.

d. The signature, under penalty of perjury, of the claimant or a person authorized to act on behalf of the claimant.

2. The museum need not retain a notice which does not meet the requirements set forth in subsection 1. If, however, the museum does not intend to retain a notice for this reason, the museum shall promptly notify the claimant at the address given on the notice that the museum believes the notice is ineffective to preserve an interest, and the reasons for the insufficiency. The fact that a museum retains a notice under section 305B.12 does not mean that the museum accepts the sufficiency or accuracy of the notice or that the notice is effective to preserve an interest in property on loan to the museum.

3. The department of cultural affairs shall adopt by rule a form for notice of intent to preserve an interest in property on loan to a museum. The form shall satisfy the requirements of subsection 1 and shall notify the claimant of the rights and procedures to preserve an interest in museum property. The form shall also facilitate recordkeeping and record retrieval by a museum. At a minimum the form shall provide a place for recording evidence of receipt of a notice by a museum, including the date of receipt, signature of the person receiving the notice, and the date on which a copy of the receipt is returned to the claimant.

88 Acts, ch 1117, §8

305B.9 Limitations on actions against museums.

1. An action shall not be brought against a museum for damages because of injury to or loss of property loaned to the museum more than three years from the date the museum gives the lender or claimant notice of the injury or loss or ten years from the date of the injury or loss, whichever occurs earlier.

2. An action shall not be brought against a museum to recover property on loan more than one year from the date the museum gives the lender or claimant notice of its intent to terminate the loan or notice of acquisition of title to undocumented property.

3. An action shall not be brought against a museum to recover property on loan more than seven years from the date of the last written contact between the lender or claimant and the museum as evidenced by the museum's records.

4. A lender or claimant is considered to have donated loaned property to the museum if the lender fails to file an action to recover the property on loan to the museum within the periods specified in subsections 1 through 3.

5. A person who purchases property from a museum acquires good title to the property if the museum represents that it has acquired title to the property pursuant to subsection 4.

6. Notwithstanding subsections 3 and 4, a lender or claimant who was not given notice as provided in this chapter that the museum intended to terminate a loan, as provided in section 305B.6, and who proves that the museum received an adequate notice of intent to preserve an interest in loaned property, which satisfies all of the requirements of section 305B.8, within the seven years immediately preceding the filing of an action to recover the property, may recover the property or, if the property has been disposed of, the reasonable value of the property at the time it was disposed of plus interest at the legal rate.

7. A museum is not liable at any time, in the absence of a court order, for returning property to the original lender, even if a claimant other than the lender has filed a notice of intent to preserve an interest in property. If persons claim competing interests in property in the possession of a museum, the burden is upon the claimants to prove their interest in an action in equity initiated by a claimant. A museum is not liable at any time for returning property to an uncontested claimant who produced reasonable proof of ownership pursuant to section 305B.8.

88 Acts, ch 1117, §9

305B.10 Museum obligations.

In order to take title pursuant to this chapter a museum has the following obligations to a lender

or claimant:

1. The museum shall retain all written records regarding the property for at least three years from the date of taking title pursuant to this chapter.

2. The museum shall keep written records on all loaned property acquired pursuant to section 305B.6. Records shall contain the following information:

a. Lender's name, address, and phone number.

b. Claimant's name, address, and phone number.

c. The nature and terms of the loan.

d. The beginning date of the loan period, if known.

3. A museum accepting a loan of property on or after January 1, 1989, shall inform the lender in writing at the time of the loan of the provisions of this chapter. A copy of the form notice prescribed in section 305B.8, or a citation to this chapter, is adequate for this purpose.

4. The museum is responsible for notifying a lender or claimant of the museum's change of address or dissolution.

88 Acts, ch 1117, §10

305B.11 Required museum recordkeeping.

On or after January 1, 1989, a museum shall at minimum maintain and retain the following records, either originals or accurate copies, for a period of not less than twenty-five years:

1. A notice of intent to preserve an interest in property.

2. The loan agreement, if any, and a receipt or ledger for property on loan.

3. A receipt or ledger for property delivered to an owner or claimant.

4. Records containing the following information, as available, for property in the museum's possession:

a. Lender's name, address, and phone number.

b. Claimant's name, address, and phone number.

c. Donor's name, address, and phone number.

d. Seller's name, address, and phone number.

e. The nature and terms of the transaction (loan for specified term, loan for unspecified term, donation, purchase, etc.).

f. The beginning date of the loan period or transaction date.

The department of cultural affairs may by rule determine the minimum form and substance of recordkeeping by museums with regard to museum property to implement this chapter.

88 Acts, ch 1117, §11

305B.12 Lender obligations to museum.

1. The lender or claimant of property on loan to a museum shall notify the museum of a change of address or change in ownership of the property. Failure to notify the museum of these changes may result in the lender's or claimant's loss of rights in the property.

2. The lender or claimant of property on loan to a museum may file with the museum a notice of intent to preserve an interest in the property as provided for in section 305B.8. The filing of a notice of intent to preserve an interest in property on loan to a museum does not validate or make enforceable any claim which would be extinguished under the terms of a written agreement, or which would otherwise be invalid or unenforceable.

88 Acts, ch 1117, §12

305B.13 Retroactive applicability.

1. Sections 305B.1 through 305B.8 are retroactively applicable to all property in the possession of a museum within the state on or after January 1, 1988.

2. Section 305B.9 is effective July 1, 1989, and when effective is retroactively applicable to all property in the possession of the museum before July 1, 1989, and is prospectively applicable to all property in the possession of the museum on or after July 1, 1989, for which a claim is filed on or after July 1, 1989.

88 Acts, ch 1117, §13

TITLE VIII

TRANSPORTATION

SUBTITLE 1

HIGHWAYS AND WATERWAYS

CHAPTER 306

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306.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agency"* means any governmental body which exercises jurisdiction over any road as provided in section 306.4.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"Department"* means the state department of transportation.

[C75, 77, 79, 81, §306.2]

2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

306.3 Definition throughout Code.

As used in this chapter or in any chapter of the Code relating to highways:

1. *"Area service"* or *"area service system"* means those secondary roads that are not part of the farm-to-market road system.

2. *"County conservation parkways"* or *"county conservation parkway system"* means those parkways located wholly within the boundaries of county lands operated as parks, forests, or public access areas.

3. *"Farm-to-market roads"* or *"farm-to-market road system"* means those county jurisdiction intracounty and intercounty roads which serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market roads and area service roads, and includes those secondary roads which are federal aid eligible. The farm-to-market road system shall not exceed thirty-five thousand miles.

4. *"Interstate roads"* or *"interstate road system"* means those roads and streets of the primary road system that are designated by the secretary of the United States department of transportation as the national system of interstate and defense highways in Iowa.

5. *"Municipal street system"* means those streets within municipalities that are not primary roads.

6. *"Primary roads"* or *"primary road system"* means those roads and streets both inside and outside the boundaries of municipalities which are under department jurisdiction.

7. *"Public road right-of-way"* means an area of land, the right to possession of which is secured or reserved by the state or a governmental subdivision for roadway purposes. The right-of-way for all secondary roads is sixty-six feet in width, unless otherwise specified by the county board of supervisors of the respective counties.

8. *"Road"* or *"street"* means the entire width between property lines through private property or the designated width through public property of every way or place of whatever nature if any part of such way or place is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

9. *"Secondary roads"* or *"secondary road system"* means those roads under county jurisdiction.

10. *"State park, state institution, and other state land road system"* consists of those roads and streets wholly within the boundaries of state lands operated as parks, or on which institutions or other state governmental agencies are located.

[C24, 27, §4636; C31, 35, §4644-c2; C39, §**4644.02;** C46, 50, §309.2; C54, 58, 62, 66, §306.2; C71, 73, 75, 77, 79, 81, §306.3]

92 Acts, ch 1153, §1; 98 Acts, ch 1075, §1

306.4 Jurisdiction of systems.

The jurisdiction and control over the roads and streets of the state are vested as follows:

1. Jurisdiction and control over the primary roads shall be vested in the department.

2. Jurisdiction and control over the secondary roads shall be vested in the county board of supervisors of the respective counties.

3. Jurisdiction and control over the municipal street system shall be vested in the governing bodies of each municipality; except that the department and the municipal governing body shall exercise concurrent jurisdiction over the municipal extensions of primary roads in all municipalities. When concurrent jurisdiction is exercised, the department shall consult with the municipal governing body as to the kind and type of construction, reconstruction, repair, and maintenance and the two parties shall enter into agreements with each other as to the division of costs thereof.

When the two parties cannot initially come to agreement as to the division of costs under this subsection, they shall contract with an organization in this state to provide mediation services. The costs of the mediation services shall be equally allocated between the two parties. If after submitting to mediation the parties still cannot come to agreement as to the division of costs, the mediator shall sign a statement that the parties did not reach an agreement, and the parties shall then submit the matter for binding arbitration to a mutually agreed-upon third party. If the parties cannot agree upon a third-party arbitrator, they shall submit the matter to an arbitrator selected under the rules of the American arbitration association.

4. Jurisdiction and control over the roads and streets in any state park, state institution or other state land shall be vested in the board, commission, or agency in control of such park, institution, or other state land; except that:

a. The department and the controlling agency shall have concurrent jurisdiction over any road which is an extension of a primary road and which both enters and exits from the state land at separate points. The department may expend the moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such

agreement the jurisdiction and control of such road shall remain in the department.

b. The board of supervisors of any county and the controlling state agency shall have concurrent jurisdiction over any road which is an extension of a secondary road and which both enters and exits from the state land at separate points. The board of supervisors of any county may expend the moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such road shall remain in the board of supervisors of the county.

5. Jurisdiction and control over parkways within county parks and conservation areas shall be vested in the county conservation boards within their respective counties; except that:

a. The department and the county conservation board shall have concurrent jurisdiction over an extension of a primary road which both enters and exits from a county park or other county conservation area at separate points. The department may expend moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the department.

b. The board of supervisors of any county and the county conservation board shall have concurrent jurisdiction over an extension of a secondary road which both enters and exits from a county park or other county conservation area at separate points. The board of supervisors of any county may expend moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the board of supervisors of the county.

[C51, §514; R60, §819; C73, §920; C97, §1482; C24, 27, §4560, 4635 – 4677, 4780 – 4812; C31, 35, §4560, 4644-c1; C39, §**4560, 4644.01;** C46, 50, §309.1; C54, 58, 62, 66, §306.3; C71, 73, 75, 77, 79, 81, §306.4]

89 Acts, ch 134, §1

306.5 Continuity of farm-to-market road system in municipalities, parks, and institutions.

The farm-to-market road system shall be a continuous interconnected system and provision shall be made for continuity by the designation of extensions within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of such extensions of the system shall be included in the total mileage of the farm-to-market road system.

[C71, 73, 75, 77, 79, 81, §306.5]

98 Acts, ch 1075, §2

306.6 Farm-to-market review board.

A farm-to-market review board is created. Members shall be appointed by the Iowa county engineers association. This board shall select a chairperson from among its members by majority vote of the total membership.

The farm-to-market review board shall review any and all farm-to-market system modification proposals. The farm-to-market review board shall make final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

[C71, 73, 75, 77, 79, 81, §306.6; 81 Acts, ch 97, §1]

86 Acts, ch 1245, §2034; 87 Acts, ch 43, §6; 90 Acts, ch 1223, §25; 95 Acts, ch 3, §1; 98 Acts, ch 1075, §3

306.6A Farm-to-market road system modifications.

1. Modifications to the existing farm-to-market road system and designation of farm-to-market routes on new alignment shall be accomplished in accordance with procedural rules adopted by the farm-to-market review board, subject to the following procedures:

a. Counties shall initiate system modifications by submitting a resolution from the board of supervisors to the department.

b. The department shall submit the resolution to the farm-to-market review board and provide additional material as requested by the board.

c. Upon receipt of a county's resolution requesting a farm-to-market system modification, the farm-to-market review board shall review the proposed system modification and shall consider, but not be limited to consideration of, the following factors:

(1) Intracounty and intercounty continuity of systems.

(2) Properly integrated systems.

(3) Existing and potential traffic.

(4) Land use.

(5) Location.

(6) Equitable distribution of farm-to-market mileage among the counties.

2. Upon completion of the review process, the farm-to-market review board may do any of the

following:

a. Approve the requested modifications to the farm-to-market road system and submit the modifications to the department for processing.

b. Deny the requested modifications.

c. Request additional information for further review.

98 Acts, ch 1075, §4

306.7 Functions changed or new roads added. Repealed by 98 Acts, ch 1075, § 17. See § 306.6A.

306.8 Transfer of jurisdiction.

Prior to a change in jurisdiction of a road or street, the unit of government having jurisdiction shall either place the road or street and any structures on the road or street in good repair or provide for the transfer of money to the appropriate jurisdiction in an amount sufficient for the repairs to the road or street and any structures on the road or street.

Transfers of the jurisdiction and control of roads and streets may take place if agreements are entered into between the jurisdictions of government involved in the transfer of such roads and streets.

[C71, §306.8; C73, 75, 77, §306.8, 313.2; C79, 81, §306.8]

98 Acts, ch 1075, §5

306.9 Diagonal roads — restoring and improving existing roads.

It is the policy of the state of Iowa that relocation of primary highways through cultivated land shall be avoided to the maximum extent possible. When the volume of traffic for which the road is designed or other conditions, including designation as part of the network of commercial and industrial highways, require relocation, diagonal routes shall be avoided if feasible and prudent alternatives consistent with efficient movement of traffic exist.

The improvement of two-lane roads shall utilize the existing right-of-way unless alignment or other conditions, including designation as part of the network of commercial and industrial highways, make changes imperative, and when a two-lane road is expanded to a four-lane road, the normal procedure shall be that the additional right-of-way be contiguous to the existing right-of-way unless relocated for compelling reasons, including the need to provide efficient movement of traffic on the network of commercial and industrial highways. This policy does not apply to a highway project for which the corridor has been approved by the state department of transportation and the corridor has been finalized by September 1, 1977.

It is the policy of the state of Iowa that in constructing primary highways designed with four-lane divided roadways, access controls shall be limited to the minimum level necessary, as determined by the department, to ensure the safe and efficient movement of traffic or to comply with federal aid requirements.

Unless otherwise required by the federal law or regulation, it is also the policy of this state that road use tax fund moneys shall be used to rehabilitate or reconstruct existing roads, streets, and bridges using substantially existing right-of-way. This paragraph does not apply where additional right-of-way is needed for the construction or completion of designated interstate or city routes and highway bypasses or highways designated as part of the network of commercial and industrial highways.

[C79, 81, §306.9; 81 Acts 2d Ex, ch 2, §1]

83 Acts, ch 198, §14; 89 Acts, ch 134, §2; 98 Acts, ch 1075, §6

306.10 Power to establish, alter or vacate.

In the construction, improvement, operation or maintenance of any highway, or highway system, the agency which has control and jurisdiction over such highway or highway system, shall have power, on its own motion, to alter or vacate and close any such highway or railroad crossing thereon, and to establish new highways or railroad crossing thereon which are or are intended to become a part of the highway system over which said agency has jurisdiction and control.

[C73, §937, 954; C97, §1496, 1509; S13, §1509; C24, §4577, 4593, 4732; C27, 31, §4577, 4593, 4755-b27, 4755-d2; C35, §4577, 4593, 4631-e1, 4755-b27, 4755-d2; C39, §**4577, 4593, 4631.1, 4755.23, 4755.37;** C46, 50, §306.18, 306.34, 308.2, 313.25, 313.46; C54, 58, 62, 66, §306.4; C71, 73, 75, 77, 79, 81, §306.10]

306.11 Hearing — place — date.

In proceeding to the vacation and closing of a road, part thereof, or railroad crossing, the agency in control of the road, or road system, shall fix a date for a hearing on the vacation and closing in the county where the road, or part thereof, or crossing, is located, and if located in more than one county, then in a county in which any part of the road or crossing is located. If the road to be vacated or changed is a secondary road located in more than one county, the boards of supervisors of the counties, acting jointly, shall fix a date for a hearing on the vacation or change in either or any of the counties where the road, or part thereof, is located. If the proposed vacation is of part of a road right-of-way held by easement and will not change the existing traveled portion of the road or deny access to the road by adjoining landowners, a hearing is not required.

[C31, 35, §4755-d2, 4755-d3; C39, §**4755.37, 4755.38;** C46, 50, §313.46, 313.47; C54, 58, 62, 66, §306.5; C71, 73, 75, 77, 79, 81, §306.11]

2000 Acts, ch 1074, §1; 2000 Acts, ch 1232, §65

306.12 Notice — service.

Notice of the hearing under section 306.11 shall be published in a newspaper of general circulation in the county or counties where the road is located, not less than four nor more than twenty days prior to the date of hearing. The agency which is holding the hearing shall notify all adjoining property owners, all utility companies whose facilities adjoin the road right-of-way or are on the road right-of-way, and the department, boards of supervisors, or agency in control of affected state lands, of the time and place of the hearing, by certified mail.

[SS15, §1527-r7; C24, 27, §4621; C31, 35, §4621, 4755-d4; C39, §**4621, 4755.39;** C46, 50, §306.62, 313.48; C54, 58, 62, 66, §306.6; C71, 73, 75, 77, 79, 81, §306.12]

92 Acts, ch 1049, §1; 94 Acts, ch 1013, §1; 95 Acts, ch 54, §1; 2000 Acts, ch 1074, §2

306.13 Notice — requirements.

Said notice shall state the time and place of such hearing, the location of the particular road, or part thereof, or crossing, the vacation and closing of which is to be considered, and such other data as may be deemed pertinent.

[C31, 35, §4755-d5; C39, §**4755.40;** C46, 50, §313.49; C54, 58, 62, 66, §306.7; C71, 73, 75, 77, 79, 81, §306.13]

306.14 Objections — claims for damages.

The department, the board of supervisors, or the agency in control of affected state lands and any interested person, may appear and be heard at the hearing. Any person owning land abutting on a road proposed to be vacated and closed, shall have the right to file, in writing, a claim for damages at any time on or before the date fixed for hearing. However, for purposes of this chapter, if an occupied homestead is not located on the abutting land and if the vacating and closing of the road will not landlock the abutting land, a person shall not have a right to claim damages.

[C31, 35, §4755-d6; C39, §**4755.41;** C46, 50, §313.50; C54, 58, 62, 66, §306.8; C71, 73, 75, 77, 79, 81, §306.14]

94 Acts, ch 1013, §2

306.15 Purchase and sale of property.

If as to any one or more properties affected by the proposed vacation and closing of a secondary road, it appears to the board of supervisors to be in the interest of economy or public welfare, the board may purchase or condemn, by proceeding as this chapter provides, the entire properties, and make payment for them. After the road has been vacated and closed the board shall sell the properties at the best attainable price.

[C31, 35, §4755-d7; C39, §**4755.42;** C46, 50, §313.51; C54, 58, 62, 66, §306.9; C71, 73, 75, 77, 79, 81, §306.15]

83 Acts, ch 123, §107, 209

306.16 Final order.

After the hearing, the agency which instituted the proceedings and conducted the hearing shall enter an order either dismissing the proceedings, or vacating and closing the road, part thereof, or crossing, in which event it shall determine and state in the order the amount of the damages allowed to each claimant. The order thus entered shall be final except as to the amount of the damages unless the order is rescinded as provided in section 306.17. A copy of the order shall be filed with the county auditor of the county or counties in which the road, part thereof, or crossing, is located and with the department and the agency in control of any affected state land.

[C31, 35, §4755-d7; C39, §**4755.42;** C46, 50, §313.51; C54, 58, 62, 66, §306.10; C71, 73, 75, 77, 79, 81, §306.16]

306.17 Appeal.

Notwithstanding the terms of the Iowa administrative procedure Act, any claimant for damages may, by serving, within twenty days after the order has been issued, a written notice upon the agency which instituted and conducted the proceedings, appeal as to the amount of damages, to the district court of the county in which the land is located, in the manner and form prescribed in chapter 6B with reference to appeals from condemnation, and the proceedings shall thereafter conform to the applicable provisions of that chapter. If, in the opinion of the agency, the damages as finally determined on appeal are excessive, the agency may rescind its order vacating and closing the road, part thereof, or crossing, and the right-of-way shall remain under the jurisdiction of the agency. If the order is rescinded at any time after an appeal is taken, the agency shall pay reasonable attorney fees incurred by the claimant as taxed by the court.

[R60, §873; C73, §959; C97, §1513; C24, 27, §4597; C31, 35, §4597, 4755-d8; C39, §**4597, 4755.43;** C46, 50, §306.38, 313.52; C54, 58, 62, 66, §306.11; C71, 73, 75, 77, 79, 81, §306.17]

306.18 Establishment.

In the establishment of any road, the agency in control of such road or road system need not cause a hearing to be held thereon or notice to be published thereof, but may do so.

[C51, §535, 536; R60, §840, 841; C73, §934; C97, §1493; C24, 27, 31, 35, 39, §**4573;** C46, 50, §306.14; C54, 58, 62, 66, §306.12; C71, 73, 75, 77, 79, 81, §306.18]

306.19 Right-of-way — access — notice.

1. In the maintenance, relocation, establishment, or improvement of any road, including the

extension of such road within cities, the agency having jurisdiction and control of such road shall have authority to purchase or to institute and maintain proceedings for the condemnation of the necessary right-of-way therefor. Such agency shall likewise have power to purchase or institute and maintain proceedings for the condemnation of land necessary for highway drainage, or land containing gravel or other suitable material for the improvement or maintenance of highways, together with the necessary road access or right of access thereto.

2. Whenever the agency condemns or purchases property access rights or alters by lengthening any existing driveway to a road from abutting property, except during the time required for construction and maintenance of the road or highway, the agency shall:

a. Compensate the owner for any diminution in the market value of the property by the denial or alteration by lengthening the driveway. In computing the diminution in value, no consideration shall be given to the additional maintenance expense for maintaining the additional length of driveway, but in lieu thereof, both in condemnation proceedings or negotiated purchases, the agency shall pay to the owner the sum of twenty dollars for every lineal foot of additional length of driveway located on the owner's property. This payment shall represent just compensation to the property owner for the additional driveway maintenance caused by reason of the highway or road project.

b. If in the opinion of the agency it would be more economical to purchase the entire tract of the property owner than to provide and pay the maintenance expense required under the provisions of this section, proceed with the acquisition of the entire tract of land; or

c. If mutually agreeable, move buildings from an existing location to a location requiring an equal or lesser length of driveway and provide an adequate driveway to a public road.

3. None of the foregoing requirements shall prohibit the property owner and the agency from entering into a mutually acceptable agreement for the replacement, relocation, construction, or maintenance of any alternate driveway on the owner's property. Compensation for any property rights taken in the establishment of any alternative temporary or permanent access shall be paid as in any other purchase or condemnation of property.

4. Proceedings for the condemnation of land for any highway shall be under the provisions of chapter 6A and chapter 6B. Provided that, in the condemnation of right-of-way for secondary roads that is contiguous to existing road right-of-way for the maintenance, safety improvement, or upgrade of the existing secondary road, the board of supervisors may proceed as provided in sections 306.28 to 306.37.

5. *a.* The department may notify a city or county that a road under the jurisdiction or control of the department will be established, improved, relocated, or maintained and that the department may need to acquire additional right-of-way or property rights within an area described by the department. The notice shall include a depiction of the area on a map provided by the city, county, or the department. This notice shall be valid for a period of three years from the date of notification to the city or county and may be refiled by the department every three years. Within seven days of filing the notice, the department shall publish in a newspaper of public record a description and map of the area and a description of the potential restrictions applied to the city or county with respect to the granting of building permits, approving of subdivision plats, or zoning changes within the area.

b. The city or county shall notify the department of an application for a building permit for construction valued at twenty-five thousand dollars or more, of the submission of a subdivision plat, or of a proposed zoning change within the area at least thirty days prior to granting the proposed building permit, approving the subdivision plat, or changing the zoning.

c. If the department, within the thirty-day period, notifies the city or county that the department is proceeding to acquire all or part of the property or property rights affecting the area, the city or county shall not issue the building permit, approve the subdivision plat, or change the zoning. The department may apply to the city or county for an extension of the thirty-day period. After a public hearing on the matter, the city or county may grant an additional sixty-day extension of the period.

d. The department shall begin the process of acquiring property or property rights from affected persons within ten days of the department's written notification of intent to the city or county.

6. If the agency determines that it is necessary to relocate a utility facility, the agency shall have the authority to institute and maintain proceedings on behalf of the owner of the utility facility for the condemnation of replacement property rights. The replacement property rights shall be equal in substance to the existing rights of the owner of the utility facility, except that the replacement property rights shall be for a width and location deemed appropriate and necessary for the needs of the owner of the utility facility, as determined by the agency and the owner of the facility. The replacement property rights of the owner of the utility facility shall be subordinate to the rights of the agency only to the extent necessary for the construction and maintenance of the designated road. Within a reasonable time after completion of the relocation, all previously owned property rights of the owner of the utility facility no longer required for operation and maintenance of the utility facili-

ty shall be released or conveyed to the appropriate parties. The authority of the agency under this subsection may only be exercised upon execution of a relocation agreement between the agency and the owner of the utility facility. For purposes of this subsection, *"utility facility"* means an electric, gas, water, steam power, or materials transmission or distribution system; a transportation system; a communications system, including cable television; and fixtures, equipment, or other property associated with the operation, maintenance, or repair of the system. A utility facility may be publicly, privately, or cooperatively owned.

7. For the purposes of this section, the term *"driveway"* shall mean a way of ingress and egress located entirely on private property, consisting of a lane or passageway leading from a residence to a public roadway or highway.

[C24, §4732; C27, 31, 35, §4755-b27; C39, §**4658, 4683.23, 4755.23;** C46, 50, §309.64, 310.23, 313.25; C54, 58, 62, 66, §306.13; C71, 73, 75, 77, 79, 81, §306.19]

91 Acts, ch 114, §1; 94 Acts, ch 1030, §1; 95 Acts, ch 135, §2; 96 Acts, ch 1126, §1; 99 Acts, ch 171, §26, 27, 42; 2001 Acts, ch 32, §1

1999 amendments to subsections 3 and 4 apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

306.20 Cemeteries.

No road shall be established through any cemetery or burying ground without the consent of all the parties affected by the same.

[C51, §525; R60, §830; C73, §925; C97, §1487; SS15, §1527-r4; C24, §4566, 4732; C27, 31, 35, §4566, 4755-b27; C39, §**4566, 4755.23;** C46, 50, §306.7, 313.25; C54, 58, 62, 66, §306.14; C71, 73, 75, 77, 79, 81, §306.20]

306.21 Plans, plats and field notes filed.

All road plans, plats and field notes and true and accurate diagrams of water, sewage and electric power lines for rural subdivisions shall be filed with and approved by the board of supervisors and the county engineer before the subdivision is laid out or recorded. Such plans shall be clearly designated as "completed", "partially completed" or "proposed" with a statement of the portion completed and the expected date of full completion. If such road plans are not approved as provided in this section such roads shall not become the part of any road system as defined in this chapter.

[C51, §533, 550; R60, §838, 855; C73, §933, 949; C97, §1492, 1504; C24, 27, §4571, 4589; C31, 35, §4571, 4589, 4755-c1; C39, §**4571, 4589, 4619, 4686.24, 4755.24;** C46, 50, §306.12, 306.30, 306.60, 310.24, 313.26; C54, 58, 62, 66, §306.15; C71, 73, 75, 77, 79, 81, §306.21]

90 Acts, ch 1236, §43

306.22 Sale of unused right-of-way.

When title to any tract of land has been or may be acquired for the construction or improvement of any highway, and when in the judgment of the agency in control of the highway, the tract will not be used in connection with or for the improvement, maintenance, or use of the highway, the agency in control of the highway may sell the tract for cash.

The department may contract for the sale of any tract of land subject to the following terms and conditions:

1. The discounted present market value of the contract offer, including the cash down payment, shall exceed one hundred ten percent of the highest cash offer submitted for the tract if a cash offer is received. The discount rate shall be the rate of interest stated in the contract.

2. The cash down payment shall be equal to or in excess of five percent of the total purchase price.

3. The term of the contract shall not exceed ten years.

4. The rate of interest stated in the contract shall not be less than the prevailing rate of interest charged on contract land sales by sellers in the county or general area in which the tract of land is located.

5. The department shall advertise for cash bids and contract offers before accepting a contract offer.

6. The appraised value of property sold under a land contract sale shall be at least five thousand dollars.

7. Any tract of land sold on contract shall be listed on the tax rolls by and taxed to the contract purchaser, as provided in chapters 428 and 443; assessed and valued as provided in chapter 441; taxes levied as provided in chapter 444; collected as provided in chapter 445; and subject to tax sale, redemption, and apportionment of taxes as provided in chapters 446 to 449. The contract purchaser shall discharge and pay all taxes.

If any tract of land is sold, the sale shall be subject to the right of a utility association, company, or corporation to continue in possession of a right-of-way in use at the time of the sale.

[C35, §4755-f1; C39, §**4755.44;** C46, 50, §313.53; C54, 58, 62, 66, §306.16; C71, 73, 75, 77, 79, 81, §306.22]

86 Acts, ch 1245, §1987; 92 Acts, ch 1163, §71

306.23 Notice — preference of sale.

1. The agency in control of a tract, parcel, or piece of land, or part thereof, which is unused right-of-way shall send by certified mail to the last known address of the present owner of adjacent land from which the tract, parcel, piece of land, or part thereof, was originally purchased or condemned for highway purposes, and to the person who owned the land at the time it was purchased or condemned for highway purposes, notice of the agency's intent to sell the land, the name and address of any other person to whom a notice was

sent, and the fair market value of the real property based upon an appraisal by an independent appraiser.

2. The notice shall give an opportunity to the present owner of adjacent property and to the person who owned the land at the time it was purchased or condemned for highway purposes to be heard and make offers within sixty days of the date the notice is mailed for the tract, parcel, or piece of land to be sold. An offer which equals or exceeds in amount any other offer received and which equals or exceeds the fair market value of the property shall be given preference by the agency in control of the land. If no offers are received within sixty days or if no offer equals or exceeds the fair market value of the land, the agency shall transfer the land for a public purpose or proceed with the sale of the property.

3. For the purposes of this section, *"public purpose"* means the transfer to a state agency or a city, county, or other political subdivision for a public purpose.

[C35, §4755-f2; C39, §**4755.45;** C46, 50, §313.54; C54, 58, 62, 66, §306.17; C71, 73, 75, 77, 79, 81, §306.23; 81 Acts, ch 98, §1; 82 Acts, ch 1104, §7]

87 Acts, ch 35, §1; 97 Acts, ch 149, §2, 3

306.24 Conditions.

Any sale of land as herein authorized shall be upon the conditions that the tract, parcel, or piece of land so sold shall not be used in any manner so as to interfere with the use of the highway by the public, or to endanger public safety in the use of the highway, or to the material damage of the adjacent owner.

[C35, §4755-f3; C39, §**4755.46;** C46, 50, §313.55; C54, 58, 62, 66, §306.18; C71, 73, 75, 77, 79, 81, §306.24]

306.25 Execution of conveyance.

If a sale of land in connection with a primary road, state park road, or institutional road has been authorized as provided in this chapter, written conveyances containing the conditions as prescribed by the controlling state agency shall be made in the name of the state and signed by the governor and secretary of state, with the great seal of the state of Iowa attached. If a sale of land in connection with a secondary road has been authorized by the board of supervisors as provided in this chapter, written conveyances containing the provisions prescribed by the board of supervisors shall be made in the name of the county and signed by the chairperson of the board of supervisors and the county auditor.

[C35, §4755-f4; C39, §**4755.47;** C46, 50, §313.56; C54, 58, 62, 66, §306.19; C71, 73, 75, 77, 79, 81, §306.25]

92 Acts, ch 1163, §72

306.26 Payment of damages and right-of-way cost — proceeds of sale.

Damages allowed on account of the vacation of any highway and costs incident thereto, right-of-way or land purchased or condemned for or on account of any highway and costs incident thereto, and the funds received from the sale or rental of any highway right-of-way or land, shall be paid from or credited to, as the case may be, the road fund or funds applicable to said highway or highway system.

[C51, §546; R60, §851; C73, §946; C97, §1501; C24, 27, §4586; C31, 35, §4586, 4755-d8, -f5; C39, §**4586, 4755.43, 4755.48;** C46, 50, §306.27, 313.52, 313.57; C54, 58, 62, 66, §306.20; C71, 73, 75, 77, 79, 81, §306.26]

CHANGES IN ROADS, STREAMS, OR DRY RUNS

306.27 Changes for safety, economy, and utility.

The state department of transportation as to primary roads and the boards of supervisors as to secondary roads on their own motion may change the course of any part of any road or stream, watercourse, or dry run and may pond water in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or to straighten a road, or to cut off dangerous corners, turns or intersections on the highway, or to widen a road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse, or dry run upon the highway. The department and the board of supervisors shall conduct their proceedings in the manner and form prescribed in chapter 6B, except that the board of supervisors may use the form prescribed in sections 306.28 to 306.37 for the condemnation of right-of-way that is contiguous to existing road right-of-way and necessary for the maintenance, safety improvement, or upgrade of the existing secondary road. Changes are subject to chapter 455B and chapter 459, subchapters II and III.

[C97, §427; SS15, §1527-r1; C24, 27, 31, 35, 39, §**4607;** C46, 50, §306.48; C54, 58, 62, 66, §306.21; C71, 73, 75, 77, 79, 81, §306.27]

83 Acts, ch 101, §66; 87 Acts, ch 61, §1; 99 Acts, ch 171, §28, 42

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

306.28 Appraisers.

If the board is unable, by agreement with the owner, to acquire the necessary right-of-way to effect such change, a compensation commission shall be selected pursuant to section 6B.4, to appraise the damages consequent on the taking of the right-of-way.

[SS15, §1527-r1, -r2; C24, 27, 31, 35, 39, §**4610;** C46, 50, §306.51; C54, 58, 62, 66, §306.22; C71, 73,

75, 77, 79, 81, §306.28]
99 Acts, ch 171, §29, 42
1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

306.29 Notice.

The county auditor shall cause the following notice to be served on the individual owner of each tract or parcel of land to be taken for such right-of-way, as shown by the transfer books in the office of such county auditor, and upon each person owning or holding a mortgage, or lease, upon such land as shown by the county records, and upon the actual occupant of such land if other than the owner thereof:

To whom it may concern: Notice is given that the board of supervisors of . . . . . county, Iowa, propose to condemn for road purposes the following described real estate in said county: (Here describe the right-of-way, and the tract or tracts from which such right-of-way will be taken.) The damages caused by said condemnation will be assessed by a compensation commission appointed as provided by law for the purpose of appraising the damages. All parties interested are further notified that the compensation commission will, when duly appointed, proceed to appraise the damages, will report the appraisement to the board of supervisors and that the board will pass thereon as provided by law, and that at all such times and places you may be present. You are further notified that at the hearing before the supervisors you may file objections to the use of the land for road purposes and that all such objections not so made will be deemed waived.

. . . . . .
County Auditor.

[SS15, §1527-r2, -r3, -r6; C24, 27, 31, 35, 39, §**4611;** C46, 50, §306.52; C54, 58, 62, 66, §306.23; C71, 73, 75, 77, 79, 81, §306.29]
99 Acts, ch 171, §30, 42
1999 amendment to unnumbered paragraph 2 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

306.30 Service of notice.

Owners, occupants, and mortgagees of record who are residents of the county shall be personally served in the manner in which and for the time original notices in the district court are required to be served.

Owners and mortgagees of record who do not reside in the county and owners and mortgagees of record who do reside in the county when the officer returns that they cannot be found in the county, shall be served by publishing the notice as provided in section 331.305 and also by mailing by certified mail a copy of the notice to the owner and mortgagee of record addressed to the owner's and mortgagee of record's last known address, and the county auditor shall furnish to the board of supervisors the county auditor's affidavit that the notice has been sent, which affidavit shall be conclusive evidence of the mailing of the notice.

Personal service outside the county but within the state shall take the place of service by publication.

No service need be had on one who has exercised the right to select an appraiser.

[SS15, §1527-r2, -r3; C24, 27, 31, 35, 39, §**4612;** C46, 50, §306.53; C54, 58, 62, 66, §306.24; C71, 73, 75, 77, 79, 81, §306.30]
87 Acts, ch 43, §7
Time and manner of service, R.C.P. 1.302 – 1.315

306.31 Assessment.

The appraisers shall forthwith proceed to the assessment of damages and shall make written report of the damages to the board of supervisors.

[SS15, §1527-r2; C24, 27, 31, 35, 39, §**4613;** C46, 50, §306.54; C54, 58, 62, 66, §306.25; C71, 73, 75, 77, 79, 81, §306.31]
99 Acts, ch 171, §31, 42
1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

306.32 Hearing — adjournment.

The board shall proceed to a hearing on the objections or assessment of damages of any owner, mortgagee of record, and the actual occupant of such land if any of whom it has acquired jurisdiction, or if there be owners, mortgagee of record, and the actual occupant of such land if any over whom jurisdiction has not been acquired, the board may adjourn such hearing until a date when jurisdiction will be complete as to all owners.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4614;** C46, 50, §306.55; C54, 58, 62, 66, §306.26; C71, 73, 75, 77, 79, 81, §306.32]

306.33 Hearing on objections.

The board shall, at the final hearing, first pass on the objections to the proposed change. If objections be sustained the proceedings shall be dismissed unless the board finds that the objections may be avoided by a change of plans, and to this end an adjournment may be ordered, if necessary, in order to secure service on additional parties.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4615;** C46, 50, §306.56; C54, 58, 62, 66, §306.27; C71, 73, 75, 77, 79, 81, §306.33]

306.34 Hearing on claims for damages.

When objections to the proposed change are overruled, the board shall proceed to determine the damages to be awarded to each claimant. If

the damages finally awarded are, in the opinion of the board, excessive, the proceedings shall be dismissed; if not excessive, the board may, by proper order, establish such proposed change.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4616;** C46, 50, §306.57; C54, 58, 62, 66, §306.28; C71, 73, 75, 77, 79, 81, §306.34]

306.35 Appeals.

Claimants for damages may appeal to the district court from the award of damages in the manner and time for taking appeals from the orders establishing highways generally.

[C97, §428; SS15, §1527-r3; C24, 27, 31, 35, 39, §**4617;** C46, 50, §306.58; C54, 58, 62, 66, §306.29; C71, 73, 75, 77, 79, 81, §306.35]

306.36 Damages on appeal — rescission of order.

If the damages as finally determined on appeal be, in the opinion of the board, excessive, the board may rescind its order establishing such change.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4618;** C46, 50, §306.59; C54, 58, 62, 66, §306.30; C71, 73, 75, 77, 79, 81, §306.36]

306.37 Tender of damages.

No appeal from an award of damages shall delay the prosecution of the work when the amount of the award is tendered in writing to the claimant and such tender is kept good. An order to the auditor to issue warrants to claimants for damages shall constitute a valid tender, if funds are available to promptly meet such warrants. Acceptance of the amount of such tender bars an appeal. Should possession of the condemned premises be taken pending appeal and the final award be not paid, the county shall be liable for all damages caused during such possession.

[SS15, §1527-r3; C24, 27, 31, 35, 39, §**4620;** C46, 50, §306.61; C54, 58, 62, 66, §306.31; C71, 73, 75, 77, 79, 81, §306.37]

GENERAL PROVISIONS

306.38 Rental of acquired property pending use.

In the event that land acquired for improvement of any highway is not immediately needed for such improvement, the agency in control of said highway may rent such land or buildings thereon to responsible persons for a cash rental consistent with the fair market value of similar property. The said agency may employ a local real estate firm for management and collection of rentals or may do so directly through its own personnel. The commission or service charge of such real estate company shall be paid out of such rentals.

[C62, 66, §306.32; C71, 73, 75, 77, 79, 81, §306.38]

306.39 Flooding highways — federal water resources projects.

The agency which has control and jurisdiction over any highway or highway system which may be affected by a federal water resources project may grant, sell, exchange, or convey to the United States of America, the perpetual right, power, privilege and easement to overflow, flood, and submerge all of the portion of easements for highway purposes under the control and jurisdiction of such agency.

[C66, §306.33; C71, 73, 75, 77, 79, 81, §306.39]

306.40 Easements conveyed.

If an easement authorized under section 306.39 is conveyed in connection with a primary road, state park road, or institutional road, written conveyances containing the conditions as prescribed by the controlling state agency shall be made in the name of the state and signed by the governor and secretary of state, with the seal of the state of Iowa attached. If the easement is conveyed in connection with a secondary road, written conveyances containing the provisions prescribed by the board of supervisors shall be made in the name of the county and signed by the chairperson of the board and the county auditor.

[C66, §306.34; C71, 73, 75, 77, 79, 81, §306.40]
92 Acts, ch 1163, §73

306.41 Temporary closing for construction.

The agency having jurisdiction and control over any highway in the state, or the chief engineer of said agency when delegated by such agency, may temporarily close sections of a highway by formal resolution entered upon the minutes of such agency when reasonably necessary because of construction, reconstruction, maintenance or natural disaster and shall cause to be erected "road closed" signs and partial or total barricades in the roadway at each end of the closed highway section and on the closed highway where that highway is intersected by other highways if such intersection remains open. Any numbered road closed for over forty-eight hours shall have a designated detour route. The agency having jurisdiction over a section of highway closed in accordance with the provisions of this section, or the persons or contractors employed to carry out the construction, reconstruction, or maintenance of the closed section of highway, shall not be liable for any damages to any vehicle that enters the closed section of highway or the contents of such vehicle or for any injuries to any person that enters the closed section of highway, unless the damages are caused by gross negligence of the agency or contractor.

Nothing herein shall be construed to prohibit or deny any person from gaining lawful access to the person's property or residence, nor shall it change or limit liability to such persons.

[C71, 73, 75, 77, 79, 81, §306.41]

306.42 Transfer of rights-of-way.

1. This section is intended to vest all documents of title in road right-of-way in the jurisdiction responsible for the road. This section establishes a simple method to transfer road rights-of-way by quitclaim deed and to authorize the use of available descriptions, plats, maps or engineering drawings to effect such transfers and to provide an orderly method by which such transfers may be filed, indexed and recorded.

2. The department shall transfer by quitclaim deed to the county or to the city having jurisdiction over a road, all of the state's legal or equitable title and interest in right-of-way for the road or street and may transfer any adjacent unused right-of-way or land in excess of that needed as right-of-way. The deed shall be executed by the director of the department. However, if the department owns any adjacent unused right-of-way in excess of that needed as right-of-way which is located outside the incorporated limits of a city and is suitable for purposes specified in section 350.4, subsection 2, the department may, at the request of the county and the county conservation board, transfer the property by quitclaim deed to the county for the use and benefit of the county conservation board.

3. The county or the city shall transfer by quitclaim deed to the state department of transportation when having jurisdiction over a road, all of the county's or the city's legal or equitable title and interest in rights-of-way for the road and may transfer any adjacent unused right-of-way or land in excess of that needed as right-of-way. The deed shall be executed by the chairperson of the board of supervisors by order of the board for county roads and by the mayor or city manager by order of the city council for city streets.

4. Transfers under this section shall be subject to the right of a utility, association, company or corporation to continue in possession of a right-of-way in use at the time of the transfer. Transfers shall be subject to rights of ingress and egress whether excepted, reserved or granted by the transferring authority to land or to owners of land adjacent to the right-of-way. Transfers shall include an index of parcels transferred by the character of the instrument or proceeding, the grantor and grantee, and date of the last instrument or proceeding acquiring rights to each parcel. Transfers shall locate the right-of-way by quarter-quarter section, township and range or if so acquired, by lot, block and subdivision. The transferring jurisdiction shall transmit to the receiving jurisdiction all available original documents of title or a certified true copy if the right-of-way was acquired by condemnation or the original deed is lost. Transfers shall be recorded and indexed in the county in which the land is located.

5. Notwithstanding chapter 542B and sections 6A.20, 306.22, 354.13, 354.15, and 364.7, legal descriptions, plats, maps, or engineering drawings used to describe transfers of right-of-way shall, where available, be descriptions, plats, maps, or engineering drawings of record and shall be incorporated by reference to the title instrument or proceedings. If a part but not all of the land acquired by a single conveyance or condemnation is being transferred, the description of that part to be transferred shall be abstracted from the present legal description, plat, map, or engineering drawing of record.

6. Notwithstanding any other provision of the Code, for transfers of roads and streets made after May 1, 1987, neither the transferring jurisdiction or the receiving jurisdiction shall be held liable for any claim or damage for any act or omission relating to the design, construction, or maintenance of the road or street that occurred prior to the effective date of the transfer. This paragraph shall apply to all transfers pursuant to this chapter or section 313.2.

[C79, 81, S81, §306.42; 81 Acts, ch 99, §1, ch 117, §1044]

86 Acts, ch 1245, §1902; 87 Acts, ch 232, §18; 90 Acts, ch 1236, §44

306.43 Jurisdictional transfer limits. Repealed by 98 Acts, ch 1075, § 17.

306.44 Study of road systems.

Transfers not executed as of April 1, 1981 shall be void unless mutually agreed upon by the parties involved. The department shall conduct a study to determine the size of the primary road systems, and the department in conjunction with the county boards of supervisors or the supervisors' designee shall conduct a study to determine the size of the secondary road systems and provide the general assembly with alternative primary and secondary road systems prior to February 1, 1982 for its review. The general assembly may approve a method for classifying the primary and secondary road systems.

[81 Acts, ch 96, §1]

306.45 Easements on highway rights-of-way.

The department may grant easements across land under its jurisdiction if the department determines that the easement will not adversely affect the construction and maintenance of the highway system. Written conveyances containing any easement conditions prescribed by the department shall be made in the name of the state and signed by the governor and the secretary of state, with the seal of the state of Iowa affixed.

98 Acts, ch 1075, §18

306.46 through 306.49 Reserved.

SOIL AND WATER CONSERVATION IMPACT

306.50 Construction program notice.

The appropriate highway authority shall provide copies of its annual construction program to the soil and water conservation district commissioners' office in each county. The soil and water conservation district commissioners' office shall review the construction program submitted by each highway authority to determine those projects which may impact upon soil erosion and water diversion or retention.

85 Acts, ch 106, §2; 87 Acts, ch 23, §7

306.51 Soil erosion impact.

The soil and water conservation district commissioners shall, within thirty days after receipt of the construction program, notify the appropriate highway authority of the projects which will impact upon soil erosion and water drainage and request that the appropriate highway authority notify them of the date, time, and place for holding the design hearing on preliminary plans.

85 Acts, ch 106, §3; 87 Acts, ch 23, §8

306.52 Review of plans.

Upon examining the preliminary plans on a road project, the soil and water conservation district commissioners may review each road project for which a drainage structure is required. The soil and water conservation commissioners shall ascertain whether or not the proposed erosion control or runoff control structure is suitable to reduce the velocity of runoff, reduce gully erosion, or provide for sedimentation or other improvement that would enhance soil conservation. The soil and water conservation commissioners shall also ascertain whether any other aspect of the road construction will affect soil and water conservation.

85 Acts, ch 106, §4; 87 Acts, ch 23, §9

306.53 Submission of recommendations — contribution to cost.

The soil and water conservation district commissioners shall submit their findings and recommendations to the appropriate highway authority not later than twenty days following examination of the construction plans.

The appropriate highway authority shall respond to the soil and water conservation district commissioners and indicate its agreement to the suggested installation or its rejection of the proposal.

Where feasible and cost-sharing funds are available, the soil and water conservation district may contribute in part or in its entirety to any additional cost for the erosion control structure.

85 Acts, ch 106, §5; 87 Acts, ch 23, §10

306.54 Reporting.

If the proposal is rejected, the appropriate highway authority shall provide a written report documenting the reason for the rejection to the soil and water conservation district commissioners and the state department of transportation. The state department of transportation shall submit a written report to the general assembly not later than March 1 of each year. The report shall contain only a list of those highway projects where a disagreement exists between the department and the soil and water conservation district commissioners and the reasons for rejecting the recommendations of the soil and water conservation district commissioners. The report shall be filed with the secretary of the senate and the chief clerk of the house of representatives.

85 Acts, ch 106, §6; 87 Acts, ch 23, §11

CHAPTER 306A

CONTROLLED-ACCESS HIGHWAYS

306A.1 Declaration of policy.
306A.2 Definition of a controlled-access facility.
306A.3 Authority to establish controlled-access facilities — utility accommodation policy.
306A.4 Design of controlled-access facility.
306A.5 Acquisition of property and property rights.
306A.6 New and existing facilities — grade-crossing eliminations.
306A.7 Authority of local units to consent.
306A.8 Local service roads.
306A.9 Repealed by 65 Acts, ch 259, §1.

RELOCATION OF UTILITY FACILITIES

306A.10 Notice to relocate — costs paid.
306A.11 What costs included.
306A.12 Limitation on reimbursement.
306A.13 Definition.

306A.1 Declaration of policy.

The legislature hereby finds, determines, and declares that this chapter is necessary for the immediate preservation of the public peace, health, and safety, and for the promotion of the general welfare.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §306A.1]

306A.2 Definition of a controlled-access facility.

For the purposes of this chapter, a controlled-access facility is defined as a highway or street especially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways open to use by all customary forms of street and highway traffic or they may be parkways from which trucks, buses, and other commercial vehicles shall be excluded.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §306A.2]

306A.3 Authority to establish controlled-access facilities — utility accommodation policy.

Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, acting alone or in cooperation with each other or with any federal, state, or local agency or any other state having authority to participate in the construction and maintenance of highways, are authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use if traffic conditions, present or future, will justify special facilities; provided, that within a city such authority shall be subject to municipal consent as may be provided by law. In addition to the specific powers granted in this chapter, cities and highway authorities shall have any additional authority vested in them relative to highways or streets within their respective jurisdictions. Cities and highway authorities may regulate, restrict, or prohibit the use of controlled-access facilities by various classes of vehicles or traffic in a manner consistent with section 306A.2.

The department shall adopt rules, pursuant to chapter 17A, embodying a utility accommodation policy which imposes reasonable restrictions on placements occurring on or after the effective date of the rules, on primary road rights-of-way. The rules may require utilities to give notice to the department prior to installation of a utility system on a primary road right-of-way and obtain prior permission from the department for the proposed installation. The rules shall recognize emergency situations and the need for immediate installation of service extensions subject to the standards adopted by the department and the utilities board. The rules shall be no less stringent than the standards adopted by the utilities board pursuant to chapters 478, 479, 479A, and 479B. This paragraph shall not be construed as granting the department authority which has been expressly granted to the utilities board to determine the route of utility installations. If the department requires a utility company permit, the department shall be required to act upon the permit application within thirty days of its filing. In cases of federal-aid highway projects on nonprimary highways, the local authority with jurisdiction over the highway and the department shall comply with all federal regulations and statutes regarding utility accommodation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §306A.3]
91 Acts, ch 147, §1; 95 Acts, ch 192, §2

306A.4 Design of controlled-access facility.

Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, are authorized to so design any controlled-access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended. In this connection such cities and highway authorities are authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and other devices. No person shall have any right of ingress or egress to, from, or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §306A.4]

306A.5 Acquisition of property and property rights.

For the purposes of this chapter, cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, may acquire private or public property rights for controlled-access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. All property rights acquired under this chapter shall be in fee simple. In connection with the acquisition of property or property rights for a controlled-access facility or portion of, or service road in connection with a controlled-access facility, the cities and highway authorities, in their discretion, may acquire an entire lot, block, or tract of land, if by so doing the in-

terests of the public will be best served, even though the entire lot, block, or tract is not immediately needed for the right of way proper.

No access rights to any highway shall be acquired by any authority having jurisdiction and control over the highways of this state by adverse possession or prescriptive right. No action heretofore or hereafter taken by any such authority shall form the basis for any claim of adverse possession of, or prescriptive right to any access rights by any such authority.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §306A.5]
89 Acts, ch 83, §39

306A.6 New and existing facilities — grade-crossing eliminations.

Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306 may designate and establish an existing street or highway as included within a controlled-access facility. The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing state and county roads, and city or village streets, by grade separation or service road, or by closing off such roads and streets at the right of way boundary line of such controlled-access facility, the provisions of sections 306.11 to 306.17 shall apply and govern the procedure for the closing of such road or street and the method of ascertaining damages sustained by any person as a consequence of such closing, provided, however, that the highway authority desiring the closing of such road or street shall conduct the hearing and carry out the procedure therefor and pay any damages, including any allowed on appeal, as a consequence thereof, any law to the contrary notwithstanding, and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade. No city or village street, county or state highway, or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the highway authority in the state, county, city or village having jurisdiction over such controlled-access facility. Such consent and approval shall be given only if the public interest shall be served thereby.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §306A.6]

306A.7 Authority of local units to consent.

Cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306 are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §306A.7]

306A.8 Local service roads.

In connection with the development of any controlled-access facility cities and highway authorities having jurisdiction and control over the highways of the state, as provided by chapter 306, are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities under the terms of this chapter, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §306A.8]

306A.9 Repealed by 65 Acts, ch 259, § 1. See § 321.366.

RELOCATION OF UTILITY FACILITIES

306A.10 Notice to relocate — costs paid.

Whenever the state department of transportation, city or county determines that relocation or removal of any utility facility now located in, over, along, or under any highway or street, is necessitated by the construction of a project on routes of the national system of interstate and defense highways including extensions within cities or on streets or highways resulting from interstate substitutions in a qualified metropolitan area under title 23, U.S.C., the utility owning or operating the facility shall relocate or remove the same in accordance with statutory notice. The costs of relocation or removal, including the costs of installation in a new location, shall be ascertained by the authority having jurisdiction over the project or as determined in condemnation proceedings for such purposes and may be paid from participating federal aid or other funds.

[C62, 66, 71, 73, 75, 77, 79, 81, §306A.10]
83 Acts, ch 198, §15

306A.11 What costs included.

Cost of relocation or removal shall include the entire amount paid by such utility properly attributable to such relocation or removal except the cost of land or any rights or interest in land, after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

[C62, 66, 71, 73, 75, 77, 79, 81, §306A.11]

306A.12 Limitation on reimbursement.

A reimbursement shall not be made for any relocation or removal of facilities under this chapter unless funds to be provided by federal aid amount to at least eighty-five percent of each reimbursement payment.

[C62, 66, 71, 73, 75, 77, 79, 81, §306A.12]

83 Acts, ch 198, §16

306A.13 Definition.

The term *"utility"* shall include all privately, publicly, municipally or co-operatively owned systems for supplying water, sewer, electric lights, street lights and traffic lights, gas, power, telegraph, telephone, transit, pipeline, heating plants, railroads and bridges, or the like service to the public or any part thereof if such system be authorized by law to use the streets or highways for the location of its facilities.

[C62, 66, 71, 73, 75, 77, 79, 81, §306A.13]

CHAPTER 306B

OUTDOOR ADVERTISING ALONG INTERSTATE HIGHWAYS

306B.1 Definitions.
306B.2 Advertising prohibited — exceptions.
306B.3 Rules.
306B.4 Purchase of existing signs.
306B.5 Removal after notice.
306B.6 Misdemeanor.
306B.7 Federal agreements.
306B.8 Funds accepted.

306B.1 Definitions.

As used in this chapter:

1. *"Advertising device"* includes any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other device designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from the traveled portion of any highway of the interstate system in this state.

2. *"Department"* means the state department of transportation.

3. *"Interstate system"* means the system of highways as defined in Title 23 U.S.C. 103, subsection *"e"* or amendments thereto.

4. *"National policy"* means the provisions relating to control of advertising devices adjacent to the interstate system contained in Title 23 U.S.C. 131 or amendments thereto and the national standards promulgated pursuant to such provisions.

[C66, 71, 73, 75, 77, 79, 81, §306B.1]

306B.2 Advertising prohibited — exceptions.

No advertising device shall be erected or maintained within six hundred sixty feet of the edge of the right of way of the interstate system except the following:

1. Directional or other official signs or notices that are erected by public officers or agencies and required or authorized by law.

2. Advertising devices in compliance with national policy and rules promulgated by the department which indicate the sale or lease of the property upon which such devices are located or which advertise activities being conducted on the property where the devices are located providing said rules promulgated by the said department shall not be more restrictive than required to conform to the national standards as set forth in Title 23, United States Code.

3. Advertising devices in compliance with national policy and rules promulgated by the department which are designed to give information in the specific interest of the traveling public.

4. Advertising devices which are located in commercial or industrial zones traversed by segments of the interstate system within the boundaries of incorporated municipalities as such boundaries existed September 21, 1959, where the use of property adjacent to the interstate system is subject to municipal regulation and control, or other areas where the land on September 21, 1959, was clearly established by law for industrial or commercial purposes.

[C66, 71, 73, 75, 77, 79, 81, §306B.2]

97 Acts, ch 104, §1

For 2002 amendment to subsection 4 effective July 1, 2004, see 2002 Acts, ch 1070, §1, 2

306B.3 Rules.

The department shall promulgate and enforce rules consistent with the safety of the traveling public and in compliance with national policy governing the erection, maintenance, and frequency of advertising devices within six hundred sixty feet of the edge of the right of way of the interstate system which are authorized by this chapter and which are outside of commercial and industrial zones designated in section 306B.2, subsection 4.

[C66, 71, 73, 75, 77, 79, 81, §306B.3]

306B.4 Purchase of existing signs.

The department shall acquire by purchase, gift, or condemnation all advertising devices existing on May 21, 1965, which violate the provisions of this chapter or which fail to conform to rules promulgated by the said department under this chapter and all rights and interests of all persons in and to such devices; except that in instances involving any authorized device which fails to conform to rules, the said department shall give notice to the owner of the device and to the owner of the land on which the device is located and shall give the owner and landowner time to conform to such rules as provided in section 306B.5 before proceeding as directed in this section. The provisions of chapters 6A and 6B shall be applicable to any such condemnation and the said department shall have the right to take immediate possession of and remove such devices under the procedures of section 6B.25.

[C66, 71, 73, 75, 77, 79, 81, §306B.4]

306B.5 Removal after notice.

Any advertising device erected or maintained adjacent to any interstate system after May 21, 1965 in violation of this chapter or the rules promulgated by the department, is a public nuisance and may be removed by the department upon thirty days' notice, by certified mail, to the owner of the advertising device and to the owner of the land on which the advertising device is located. The notice shall require such owners to remove the advertising device if it is prohibited or to cause it to conform to this chapter or rules promulgated by the department if it is not prohibited.

1. If the owner of the advertising device or the landowner fails to act within thirty days as required in the notice, the advertising device shall be deemed to be forfeited and the department may enter upon the land and remove the advertising device. Such entry after notice, shall not be deemed a trespass and the department may be aided by injunction to abate the nuisance and to insure peaceful entry.

2. The cost of removal, including fees, costs and expenses which arise out of an action brought by the department to insure peaceful entry and removal, may be assessed against the owner of the advertising device. If the owner of the advertising device fails to pay the fees, costs, or expenses within thirty days after assessment, the department may commence an action to collect the fees, costs, or expenses, which when collected shall be paid into the *"highway beautification fund"*.

[C66, 71, 73, 75, 77, 79, 81, §306B.5]

83 Acts, ch 186, §10067, 10201

306B.6 Misdemeanor.

Whoever erects or maintains an advertising device in violation of this chapter or in violation of rules and regulations promulgated by the department under this chapter shall be guilty of a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §306B.6]

306B.7 Federal agreements.

The department may enter into agreements with the secretary of commerce of the United States concerning the erection, maintenance, regulation, location, frequency and related matters of advertising devices permitted under this chapter.

[C66, 71, 73, 75, 77, 79, 81, §306B.7]

306B.8 Funds accepted.

The department may accept any allotment of funds by the United States or any department or agency thereof appropriated under Title 23 U.S.C. or amendments thereto to accomplish the purposes of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §306B.8]

CHAPTER 306C

JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL

DIVISION I

JUNKYARD BEAUTIFICATION

306C.1 Definitions.
306C.2 Junkyards prohibited — exceptions.
306C.3 Junkyards lawfully in existence.
306C.4 Requirements as to screening.
306C.5 Acquisition of land for screening or removal.
306C.6 Nuisance — injunction.
306C.7 Interpretation.
306C.8 Agreements with the United States authorized.
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DIVISION II

BILLBOARD CONTROL

306C.10 Definitions.
306C.11 Advertising prohibited.
306C.12 None visible from highway.
306C.13 Control by department of transportation.
306C.14 Existing signs — six-year limit.
306C.15 Acquisition of signs.
306C.16 Compensation.
306C.17 Condemnation.
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306C.20 Bonus funds agreements.
306C.21 Information centers and rest areas.
306C.22 Political signs.
306C.23 Special event signs.
306C.24 Compensation for sign removal.

DIVISION I

JUNKYARD BEAUTIFICATION

306C.1 Definitions.

For the purposes of this division unless the context otherwise requires:

1. *"Department"* means the state department of transportation.

2. *"Interstate highway"* includes *"interstate road"* and *"interstate system"* and means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

3. *"Junk"* means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts of automobiles, or iron, steel, or other old or scrap ferrous or nonferrous material.

4. *"Junkyard"* means an establishment or place of business which is maintained, operated, or used primarily for storing, keeping, buying, or selling junk; and the term includes garbage dumps, sanitary fills, and automobile graveyards.

5. *"Primary highway"* means the federal aid primary system.

[C73, 75, 77, 79, 81, §306C.1]

306C.2 Junkyards prohibited — exceptions.

A person shall not establish, operate, or maintain a junkyard, any portion of which is within one thousand feet of the nearest edge of the right of way of any interstate or primary highway, except:

1. Those which are screened by natural objects, plantings, fences, or other appropriate means obscuring them from view from the main-traveled portion of the highway.

2. Those located within areas which are zoned for industrial use under authority of law.

3. Those located within unzoned industrial areas which areas shall be determined from actual land uses and defined by regulations to be promulgated by the department under the provisions of chapter 17A in accordance with the standards, criteria, and rules and regulations promulgated under authority of Title 23, United States Code.

4. Those which are not visible from the main-traveled portion of the highway.

[C73, 75, 77, 79, 81, §306C.2]

306C.3 Junkyards lawfully in existence.

Any junkyard located outside a zoned or unzoned industrial area lawfully in existence on July 1, 1972, which is within one thousand feet of the nearest edge of the right of way and visible from the main-traveled portion of any highway on the interstate or primary system shall be screened, if feasible, by the department or the owner under rules and direction of the department, at locations on the highway right of way or in areas acquired for such purposes outside the right of way in order to obscure the junkyard from the main-traveled way of such highways.

[C73, 75, 77, 79, 81, §306C.3]

306C.4 Requirements as to screening.

The department may adopt rules pursuant to chapter 17A governing the location, planting, construction, and maintenance of screening or fencing required by this chapter including materials to be used. However, such rules shall be in accordance with the standards, criteria and rules promulgated under authority of Title 23, United States Code.

[C73, 75, 77, 79, 81, §306C.4]

306C.5 Acquisition of land for screening or removal.

When the department determines that it is in the best interests of the state, it may acquire by gift, purchase, exchange, or condemnation, as provided by law, such property or rights or interests in property as may be necessary to provide adequate screening for junkyards. When the department determines that the topography of the land adjoining the highway will not permit adequate screening, or screening would not be economically feasible, the department may acquire such property or rights or interests in property as may be necessary to secure the relocation, removal, or disposal of the junkyard, and shall pay the cost of such relocation, removal, or disposal, with federal participation. However, no plan for relocation, removal, or disposal which qualifies for federal participation shall be undertaken unless the department has received notification from the federal government that the federal share to be paid is immediately available for that purpose.

[C73, 75, 77, 79, 81, §306C.5]

306C.6 Nuisance — injunction.

Any junkyard which does not conform to the requirements of this division and which is not ex-

cepted under section 306C.2 or 306C.3, is a public nuisance. The department may apply for an injunction to abate any nuisance arising from a violation of the provisions of this division or rules adopted pursuant to this division.

[C73, 75, 77, 79, 81, §306C.6]

306C.7 Interpretation.

Nothing in this chapter shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution, which are more restrictive than the provisions of this division.

[C73, 75, 77, 79, 81, §306C.7]

306C.8 Agreements with the United States authorized.

The department may enter into agreements with the United States secretary of transportation as provided by Title 23, United States Code, relating to control of junkyards in areas adjacent to the interstate and primary systems, and take action in the name of the state to comply with the terms of such agreements.

[C73, 75, 77, 79, 81, §306C.8]

306C.9 Compensation.

Nothing in this division shall be construed as permitting the taking of private property or the restriction of the reasonable and existing uses of such property without just compensation and in accordance with the provisions of chapter 6B and Title 23, United States Code.

[C73, 75, 77, 79, 81, §306C.9]

DIVISION II

BILLBOARD CONTROL

306C.10 Definitions.

For the purposes of this division, unless the context otherwise requires:

1. *"Adjacent area"* means an area which is contiguous to and within six hundred sixty feet of the nearest edge of the right of way of any interstate, freeway primary, or primary highway.

2. *"Advertising device"* includes any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other device designed, intended, or used to advertise or give information in the nature of advertising, and having the capacity of being visible from the traveled portion of any interstate or primary highway.

3. *"Bonus interstate highways"* includes all interstate highways except those interstate highways adjacent to areas excepted from control under chapter 306B by authority of section 306B.2, subsection 4.

4. *"Commercial or industrial activities"* means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

a. Outdoor advertising structures.

b. Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce.

c. Activities in operation less than three months per year.

d. Activities conducted in a building principally used as a residence.

e. Railroad tracks and minor spurs.

f. Activities outside of adjacent areas, as defined by this division and section 306B.5.

g. Activities which have been used in defining and delineating an unzoned area but which have since been discontinued or abandoned.

h. Residential housing developments.

i. Manufactured home communities or mobile home parks.

j. Institutions of learning.

k. State, county and charitable institutions.

l. State and county conservation and recreation areas, public parks, forests, playgrounds, or other areas of historic interest or areas designated as scenic beautification areas under section 313.67.

5. *"Commercial or industrial zone"* means those areas zoned commercial or industrial under authority of a law, regulation, or ordinance of this state, its subdivisions, or a municipality.

6. *"Department"* means the state department of transportation.

7. *"Erect"* means to construct, reconstruct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish; however, it shall not include any of the foregoing activities when performed incidental to the customary maintenance of an advertising device.

8. *"Freeway primary highway"* means those primary highways which have been constructed as a fully controlled access facility with no access to the facility except at established interchanges.

9. *"Information center"* means a site, either with or without structures or buildings, established and maintained at a rest area for the purpose of providing "information of specific interest to the traveling public", as that phrase is defined in section 306C.11, subsection 5.

10. *"Interstate highway"* includes *"interstate road"* and *"interstate system"* and means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

11. *"Maintain"* means to cause to remain in a state of good repair but does not include reconstruction.

12. *"Main-traveled way"* means the portion of the roadway for movement of vehicles on which through traffic is carried exclusive of shoulders

and auxiliary lanes. In the case of a divided highway, the main-traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways, or parking areas.

13. *"Political sign"* means an outdoor sign of a temporary nature, not larger than thirty-two square feet in surface area, erected for the purpose of soliciting votes or support for or in opposition to any candidate or any political party under whose designation any candidate is seeking nomination or election or any public question on the ballot in an election held under the laws of this state.

14. *"Primary highways"* includes the entire primary system as officially designated, or as may hereafter be so designated, by the department.

15. *"Reconstruction"* means any repair to the extent of sixty percent or more of the replacement cost of the structure, excluding buildings.

16. *"Rest area"* means an area or site established and maintained under authority of section 313.67 within the right of way of an interstate, freeway primary, or primary highway under supervision and control of the department for the safety, recreation, and convenience of the traveling public.

17. *"Right of way"* means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

18. *"Special event sign"* means a temporary advertising device, not larger than thirty-two square feet in area, erected for the purpose of notifying the public of noncommercial community events including but not limited to fairs, centennials, festivals, and celebrations open to the general public and sponsored or approved by a city, county, or school district.

19. *"Structure"* means any sign supporting device including but not limited to buildings.

20. *"Unzoned commercial or industrial area"* means those areas not zoned by state or local law, regulation, or ordinance, which are occupied by one or more commercial or industrial activities, and the land along the interstate highways and primary highways for a distance of seven hundred fifty feet immediately adjacent to the activities. All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities and shall be parallel to the edge of pavement of the highway. Measurements shall not be from the property line of the activities unless that property line coincides with the limits of the activities. Unzoned commercial or industrial areas shall not include land on the opposite side of the highway from the commercial or industrial activities.

21. *"Visible"* means capable of being read or comprehended without visual aid by a person of normal visual acuity.

[C73, 75, 77, 79, 81, §306C.10]
2001 Acts, ch 153, §16

306C.11 Advertising prohibited.

Subject to the provisions made in section 306C.13 regarding control of bonus interstate highways and section 306D.4 regarding scenic highways or byways, an advertising device shall not be erected or maintained within any adjacent area, or on the right-of-way of any primary highway, except the following:

1. Advertising devices concerning the sale or lease of property upon which they are located.

2. Advertising devices concerning activities conducted on the property on which they are located, nor shall the property upon which they are located be construed to mean located upon any contiguous area having inconsistent use, size, shape, or ownership.

3. *a.* Advertising devices within the adjacent area located in commercial or industrial zones or in unzoned commercial or industrial areas in compliance with the regulatory standards of this division and rules promulgated by the department.

b. The rules shall be consistent with national standards promulgated pursuant to 23 U.S.C. § 131 and shall include at least the following:

(1) Provision for a fee schedule to cover the direct and indirect costs related to issuing permits and control of outdoor advertising.

(2) Specific permit requirements.

(3) Criteria for on-premise signs.

(4) Provisions specifying the measurement of required spacing.

(5) Provisions specifying conforming sign configurations.

4. Official and directional signs and notices which shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, recreational attractions and municipal recognition signs, which shall conform with rules promulgated by the department, provided that such rules shall be consistent with national standards promulgated pursuant to 23 U.S.C. § 131(c).

5. Signs, displays, and devices giving specific information of interest to the traveling public, shall be erected by the department and maintained within the right-of-way in the areas, and at appropriate distances from interchanges on the interstate system and freeway primary highways as shall conform with the rules adopted by the department. The rules shall be consistent with national standards promulgated from time to time or as permitted by the appropriate authority of the federal government pursuant to 23 U.S.C. § 131(f) except as provided in this section. The rules shall include but are not limited to the following:

a. Criteria for eligibility for signing.

b. Criteria for limiting or excluding businesses that maintain advertising devices that do not conform to the requirements of chapter 306B, this di-

vision, or other statutes or administrative rules regulating outdoor advertising.

c. Provisions for a fee schedule to cover the direct and indirect costs of sign erection and maintenance and related administrative costs.

d. Provisions for specifying the maximum distance to eligible businesses.

e. Provisions specifying the maximum number of signs permitted per panel and per interchange.

f. Provisions for determining what businesses are signed when there are more applicants than the maximum number of signs permitted.

g. Provisions for removing signs when businesses cease to meet minimum requirements for participation and related costs.

For purposes of this division, *"specific information of interest to the traveling public"* means only information about public places for camping, lodging, eating, and motor fuel and associated services, including trade names which have telephone facilities available when the public place is open for business and businesses engaged in selling motor vehicle fuel which have free air for tire inflation and restroom facilities available when the public place is open for business.

Business signs supplied to the department by commercial vendors shall be on panels, with dimensional and material specifications established by the department. A business sign included under the provisions of this section shall not be posted unless it is in compliance with these specifications. The commercial vendor shall pay to the department a fee based upon the schedule adopted under this subsection for each business sign supplied for posting. Upon furnishing the business signs to the department and payment of all fees, the department shall post the business signs on eligible specific information panels. Faded signs shall be replaced and the commercial vendor charged for the cost of replacement based upon the fee schedule adopted. There is created in the office of the treasurer of state a fund to be known as the *"highway beautification fund"* and all funds received for the posting on specific information panels shall be deposited in the *"highway beautification fund"*. Information on motor fuel and associated services may include vehicle service and repair where the same is available.

6. The publication title of a newspaper on a delivery receptacle attached to a mailbox or mailbox support.

[C73, 75, 77, 79, 81, §306C.11; 82 Acts, ch 1240, §1]

90 Acts, ch 1183, §1, 2; 95 Acts, ch 135, §3; 97 Acts, ch 104, §2; 98 Acts, ch 1075, §19

306C.12 None visible from highway.

An advertising device shall not be constructed or reconstructed beyond the adjacent area in unincorporated areas of the state if it is visible from the main-traveled way of any interstate or primary highway except for advertising devices permitted in section 306C.11, subsections 1 and 2, and municipal recognition signs erected by any city. Any advertising device permitted beyond an adjacent area in unincorporated areas of the state shall be subject to the applicable permit provisions of section 306C.18.

[C73, 75, 77, 79, 81, §306C.12]

306C.13 Control by department of transportation.

The department shall control the erection and maintenance of advertising devices authorized by section 306C.11, subsection 3, in accord with the following criteria, except that in the case of bonus interstate highways the department shall maintain the controls required under chapter 306B or the controls required by this division, whichever controls are stricter:

1. Advertising devices located within the adjacent area of interstate highways and freeway primary highways shall not be erected or maintained closer to another advertising device facing in the same direction than five hundred feet outside of cities, and within two hundred fifty feet if inside of cities. An advertising device may not be located within two hundred fifty feet of an interchange, or rest area. The measurement shall be from the nearest widening constructed for the purpose of acceleration or deceleration of traffic movement to or from the main-traveled way to the advertising device.

2. Advertising devices located within the adjacent area of primary highways shall not be erected or maintained closer to another advertising device facing in the same direction than one hundred feet if inside the corporate limits of a municipality. No advertising device, other than as excepted or permitted by subsections 4, 5, or 6 of this section, shall be located within the triangular area formed by the line connecting two points each fifty feet back from the point where the street right of way lines of the main-traveled way and the intersecting street meet, or would meet, if extended.

3. Advertising devices located within the adjacent area of primary highways shall not be erected or maintained closer to another advertising device facing in the same direction than three hundred feet if outside the corporate limits of a municipality. No advertising device, other than those excepted or permitted by subsections 4, 5, or 6 of this section, shall be located within the triangular area formed by a line connecting two points each one hundred feet back from the point where the street right-of-way lines of the main-traveled way and the intersecting street meet, or would meet, if extended.

4. The distance spacing measurements fixed by subsections 2 and 3 of this section shall not apply to advertising devices which are separated by a building in such a manner that only one advertising device located within the minimum spacing

distance is visible from a highway at any one time.

5. Within a triangular area, as defined by subsections 2 and 3 of this section, occupied by a building or structure, no advertising device shall be erected or maintained closer to the intersection than the building or structure itself, except that a wall advertising device may be attached to said building or structure not to protrude more than twelve inches.

6. Official and directional signs and notices and advertising devices concerning the sale or lease of the property or activities conducted upon the property as specified in 23 U.S.C. § 131(c) shall not be taken into consideration in determining compliance with spacing requirements.

7. The minimum distance between two advertising devices facing the same direction shall apply without regard to the side of the highway on which the advertising devices may be located and shall be measured along the center line of the highway between points directly opposite the advertising devices.

8. Advertising devices shall not be erected, maintained, or illuminated:

a. In a manner to obscure or otherwise physically interfere with an official traffic sign, signal, or device, or to obstruct or physically interfere with any driver's view of approaching, merging, or intersecting traffic.

b. Unless effectively shielded to prevent light from being directed at any portion of the traveled highway with such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle.

c. Which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, except those giving public service information such as, but not limited to time, date, temperature, weather, news and similar information.

d. Which imitate or resemble an official sign or signal or device or which are erected or maintained within or closer than three hundred feet from scenic areas, as defined and determined by the department, or which are located or maintained upon trees, or painted or drawn upon rocks or natural features, or which are structurally unsafe or in substantial disrepair.

e. Which exceed one thousand two hundred square feet in area or in the case of a back-to-back or V-type advertising device, with a maximum of two facings per advertising device, seven hundred fifty square feet in area, including border and trim but excluding base or apron, support, and other structural members.

f. Which do not comply with all applicable state or local laws, regulations and ordinances, including but not limited to zoning, building, and sign codes as locally interpreted and applied and enforced, or which violate chapter 319; however, nothing in this division shall prevent or restrict county or local zoning authorities from making a determination of customary use concerning size, lighting, and spacing of advertising devices in zoned commercial or industrial adjacent areas, and such determinations will be accepted in lieu of the standards of this division. The provisions of this division shall not prevent or restrict county or local zoning authorities within their respective jurisdictions from establishing standards imposing controls stricter than those required by this division.

g. The standards contained in this section pertaining to size, lighting, and spacing shall not apply to advertising devices erected or maintained within six hundred sixty feet of the right of way of those portions of the interstate highway system exempted from control under chapter 306B by authority of section 306B.2, subsection 4, nor to advertising devices erected and maintained within adjacent areas along primary highways within zoned and unzoned commercial and industrial areas, unless said advertising devices were erected subsequent to July 1, 1972.

[C73, 75, 77, 79, 81, §306C.13]

306C.14 Existing signs — six-year limit.

Any advertising device lawfully in existence in an adjacent area on July 1, 1972, which does not conform with the provisions of this division, shall be required to be brought into conformity or removed within six years after July 1, 1972. Any advertising device lawfully erected after said date which subsequently becomes nonconforming, shall be required to be brought into conformity or removed within five years after the date the nonconformity occurs. However, no advertising device shall be acquired or be required to be removed pursuant to this division unless the department has received notification from the federal government that the federal share of "just compensation" to be paid is immediately available to contribute to the cost of acquisition or removal; this requirement shall not apply to the acquisition or removal of advertising devices for which no federal share is payable.

[C73, 75, 77, 79, 81, §306C.14]

306C.15 Acquisition of signs.

The department shall acquire by purchase, gift, or condemnation, and shall pay "just compensation" upon the removal of any of the following advertising devices which are not in conformity with the provisions of this division:

1. Advertising devices lawfully in existence on July 1, 1972.

2. Advertising devices lawfully in existence on land adjoining any highway made an interstate, freeway primary, or primary highway after July 1, 1972.

3. Advertising devices lawfully erected on or after July 1, 1972, but which subsequently become nonconforming.

4. Any advertising device erected on the mistaken or negligent advice of any official or employ-

ee of the state of Iowa as to the interpretation, effect, or operation of this division, chapter 306B, or rules promulgated by the department.

[C73, 75, 77, 79, 81, §306C.15]

306C.16 Compensation.

Compensation required by section 306C.15 or 306C.24 shall be paid for the following:

1. The taking from the owner of such advertising device of all right, title, leasehold, and interest in such advertising device.

2. The taking from the owner of real property on which an advertising device is located, of the right to erect and maintain such advertising devices upon that real property.

[C73, 75, 77, 79, 81, §306C.16]

89 Acts, ch 317, §24

306C.17 Condemnation.

The provisions of chapters 6A and 6B shall be applicable to any such condemnation commenced pursuant to this division, and the department may take immediate possession of and remove such advertising devices under the procedures of section 6B.25.

[C73, 75, 77, 79, 81, §306C.17]

306C.18 Permit required.

The owner of every advertising device regulated by this chapter, except signs and advertising devices excepted by section 306C.11, subsections 1, 2 and 5, shall be required to make application to the department for a permit.

1. The application for a permit shall be on a form provided by the department and shall contain the name and address of the owner of the advertising device and the name and address of the owner of the real property on which it is located; the date of its erection; a description of its location; its dimensions; and such other information required by the department, together with a permit fee as provided in this section or rule adopted by the department.

2. After July 1, 1972, no new advertising device for which an application for a permit is required may be erected without first obtaining a permit from the department, except in the case of advertising devices lawfully in existence in areas adjacent to any highway made an interstate, freeway primary, or primary highway after July 1, 1972. The owner shall be required to make application for a permit as provided for in this section within thirty days after the date the said highway acquired said designation.

3. Upon receipt of an application containing all the required information in due form and properly executed together with the fee required, the department shall issue a permit to be affixed to the advertising device if the advertising device will not violate any provision of this division or chapter 306B, or any rule promulgated by the department, provided that in the case of advertising devices to be acquired pursuant to section 306C.15, a provisional permit shall be issued.

4. The fee for both types of permits for calendar years 1997 and 1998 shall be one hundred dollars for the initial fee and fifteen dollars for each annual renewal for signs up to three hundred seventy-five square feet in area, twenty-five dollars for each annual renewal for signs at least three hundred seventy-six, but not more than nine hundred ninety-nine, square feet in area, and fifty dollars for each annual renewal for signs one thousand square feet or more in area. Beginning January 1, 1999, fees shall be as determined by rule by the department. The fees collected for the above permits shall be credited to a special account entitled the "highway beautification fund" and all salaries and expenses incurred in administering this chapter shall be paid from this fund or from specific appropriations for this purpose, except that surveillance of, and removal of, advertising devices performed by regular maintenance personnel are not to be charged against the account.

[C73, 75, 77, 79, 81, §306C.18]

91 Acts, ch 176, §1; 96 Acts, ch 1218, §34; 97 Acts, ch 104, §3

306C.19 Removal after notice.

Any advertising device erected or maintained after July 1, 1972, in violation of this division or the rules promulgated by the department, is a public nuisance and may be removed by the department upon thirty days' notice, by certified mail, to the owner of the advertising device and to the owner of the land on which the advertising device is located. The notice shall require such owners to remove the advertising device if it is prohibited, or to cause it to conform to this division or rules promulgated by the department if it is not prohibited.

1. If the owner of the advertising device or the landowner fails to act within thirty days as required in the notice, the advertising device shall be deemed to be forfeited and the department may enter upon the land and remove the advertising device. Such entry after notice, shall not be deemed a trespass and the department may be aided by injunction to abate the nuisance and to insure peaceful entry.

2. The cost of removal, including fees, costs and expenses which arise out of an action brought by the department to insure peaceful entry and removal, may be assessed against the owner of the advertising device. If the owner of the advertising device fails to pay the fees, costs, or expenses within thirty days after assessment, the department may commence an action to collect the fees, costs, or expenses, which when collected shall be paid into the *"highway beautification fund"*.

[C73, 75, 77, 79, 81, §306C.19]

83 Acts, ch 186, §10068, 10201

306C.20 Bonus funds agreements.

The department shall enter into agreements with the duly constituted federal authorities in order to secure for the state all bonus federal funds allotted and appropriations to the state and to avoid loss or reduction, under Title 23, section 131, of the United States Code, of federal aid funds apportioned or to be apportioned to the state under Title 23, section 104 of the United States Code. The department may accept funds from whatever source, including any allotment of funds by the United States, or any of its departments or agencies, appropriated to carry out the purposes of Title 23, section 131 of the United States Code. The department shall take such steps as may be necessary to obtain from the United States or any of its departments or agencies, funds allotted and appropriated for the purpose of paying the federal share of just compensation to be paid to advertising device owners and owners of the real property under the terms of this chapter and Title 23, section 131, paragraph "g" of the United States Code. All moneys received pursuant to the provisions of this chapter shall be deposited in the *"highway beautification fund"*.

[C73, 75, 77, 79, 81, §306C.20]

306C.21 Information centers and rest areas.

The department may establish or enter into agreements with private persons, firms, or corporations for the establishment of information centers in rest areas on the interstate, freeway primary, and primary highways, subject to the approval of the appropriate authority of the federal government. After January 1, 1997, private persons, firms, or corporations entering into an agreement with the department under this section shall not develop, establish, or own any commercial business located on land adjacent to the rest area which is subject to the agreement.

An interstate rest area shall be located entirely on the interstate right-of-way, including, but not limited to, all entrance and exit ramps, all rest area buildings including information centers, and all parking facilities. Department money and resources shall not be used for any other type of interstate rest area. Whenever an interstate rest area is reconstructed, the area available for parking shall be equal to or more than the area available for parking prior to the reconstruction.

[C73, 75, 77, 79, 81, §306C.21]
97 Acts, ch 76, §1

306C.22 Political signs.

It shall be lawful to place political signs on private property with permission of the owner or person in charge of the property at any time during the period beginning forty-five days before the date of the election to which the signs pertain and ending on the day of the election, even if such placement would otherwise be a violation of this chapter. This section shall not be construed to authorize placement of any political sign at any location where it may, because of its size, location, content or coloring constitute a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, by detracting from the visibility of any traffic-control device or by being confused with an authorized traffic-control device. The exemption from provisions of this chapter granted by this section for political signs shall expire on the seventh day following the date of the election to which the signs pertain. A municipal corporation shall adopt no ordinance which prohibits the placement of political signs on private property as permitted by this section during the period beginning twenty-one days before the date of the election to which the signs pertain, nor requires removal of the political signs so placed less than seven days after the date of that election.

[C77, 79, 81, §306C.22]

306C.23 Special event signs.

It is lawful to place a special event sign on private property with permission of the owner or person in charge of the property at any time during the period beginning sixty days prior to the date of the special event to which the sign pertains and ending on the day of the special event. Special event signs shall be removed not later than twenty-four hours following the end of the special event. This section does not authorize placement of a special event sign at a location where it may, because of its size, location, content, coloring, or lighting, constitute a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, by detracting from the visibility of a traffic-control device or by being confused with an authorized traffic-control device.

[C81, §306C.23]
92 Acts, ch 1100, §1

306C.24 Compensation for sign removal.

1. *Definition.* As used in this section, *"off-premises advertising device"* means an advertising device which does not qualify as an *"on-premises sign"* under rules adopted by the department pursuant to chapter 17A.

2. *Just compensation required.* Political subdivisions of this state shall not remove, take, alter, or cause to be removed, taken, or altered a lawfully erected off-premises advertising device without paying just compensation in cash to the owner of the advertising device and to the owner of the real property on which the advertising device is located, as provided in section 306C.16. The department shall not remove, take, alter or cause to be removed, taken, or altered a lawfully erected off-premises advertising device subject to control under chapter 306B or 306C without paying just compensation when required under 23 U.S.C. § 131(g) to the owner of the advertising device and

to the owner of the real property on which the advertising device is located, as provided in section 306C.16. For the department, the sole intent of this section is to comply with 23 U.S.C. § 131(g) and it is not the intent of this section to, in any manner, relinquish any powers of the department relating to the control and removal of advertising devices under police power.

3. *Exceptions.* This section does not apply to the removal, taking, or altering of an off-premises advertising device under any of the following conditions:

a. The device is unlawfully erected or is being maintained in violation of the provisions of section 306C.13, subsection 8, or section 306C.18.

b. The device has been abandoned or not used for a period of at least six months.

4. *Department authorization.* If required by 23 U.S.C. § 131(g), the department may acquire through purchase or condemnation and shall pay just compensation as provided in section 306C.16 for off-premises advertising devices removed after July 1, 1989, through amortization by an ordinance of a political subdivision enacted prior to July 1, 1989. Notwithstanding the requirements of section 306C.14, the department may first pay just compensation from the highway beautification fund and then claim reimbursement for the federal share of the payment from the federal government.

5. *Savings clause.* If any provision of this section which relates to the department is inconsistent or conflicts with, or is not required by, 23 U.S.C. § 131 to avoid the loss of federal funds, the provision shall be suspended but only to the extent necessary to eliminate the inconsistency, conflict, or requirement. If any part of this section is found to be invalid or unconstitutional, such judgment shall not affect the validity of the section as a whole or any provision or part of the section not found to be invalid or unconstitutional.

89 Acts, ch 317, §25

CHAPTER 306D

SCENIC ROUTES

306D.1 Statement of purpose — intent.
306D.2 Statewide scenic highways program — objectives and agency duties.
306D.3 Plan recommendations and pilot projects.
306D.4 Scenic highway advertising.

306D.1 Statement of purpose — intent.

1. The general assembly finds that:

a. The state offers numerous regions through which people can drive for the pleasure of viewing unusually scenic and interesting landscapes; however, routes to and through these areas have not been adequately identified for Iowans and state visitors.

b. Among those things that attract motorists to the state's landscape are agricultural lands, forests, river basins, distinctive landforms, interesting architecture, metropolitan areas, small rural towns, and historic sites.

c. The landscape qualities of unusually scenic routes throughout the state have not been protected from visual and resource deterioration particularly along routes which pass near the state's nationally significant areas such as the bluffs of the Mississippi and Missouri rivers, the Amana colonies, the Herbert Hoover national historic site, federal reservoirs, communities surrounding the state's natural lakes, the Des Moines river greenbelt, the great river road, and many others.

d. A principal goal of economic development in this state is to increase the influence which travel and tourism have on the state's economic expansion.

e. Iowans and visitors should be encouraged to travel to and through unusually scenic areas of the state.

f. A program should be established, following a statewide plan, to identify and promote highways and secondary routes which pass through unusually scenic landscapes and to protect and enhance the scenic qualities of the landscape through which these routes pass.

2. In addition to other goals for the program, it is the intention of the general assembly that the scenic highways program be coordinated with the state's open space program.*

87 Acts, ch 175, §1

*Open space program, chapter 465A

306D.2 Statewide scenic highways program — objectives and agency duties.

1. The department of transportation shall prepare a statewide, long-range plan for the protection, enhancement, and identification of highways and secondary roads which pass through unusually scenic areas of the state as identified in section 306D.1. The department of natural resources, department of economic development, and depart-

ment of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies having jurisdiction over land in the state shall be encouraged to assist in preparing the plan. The plan shall be coordinated with the state's open space plan if a state open space plan has been approved by the general assembly. The plan shall include, but is not limited to, the following elements:

a. Preparation of a statewide inventory of scenic routes and ranking of relative uniqueness for each route. The degree to which these routes suffer from negative visual intrusions shall be documented.

b. Recommended techniques for preserving and enhancing the scenic qualities associated with each route.

c. Forecasts of significant changes in traffic volumes and environmental, social, and economic impacts if scenic routes are publicly identified and promoted as tourism attractions.

d. Recommended techniques for incorporating scenic highway routes in state and local tourism development and marketing programs.

e. Landscape management needs including maintenance, rehabilitation, and improvements to scenic areas.

f. Funding levels needed to accomplish the statewide scenic highway program.

g. Recommendations of how federal and state transportation programs can be modified or developed to assist the state's scenic highway program.

2. The preparation of the plan is subject to an appropriation by the general assembly for that purpose. The plan shall be submitted to the general assembly by January 15, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state agencies, federal agencies, and private organizations with interests in scenic highways. The comments shall be submitted to the general assembly.

87 Acts, ch 175, §2

306D.3 Plan recommendations and pilot projects.

1. The department's recommendations to the general assembly shall include proposed legislation for the state to acquire and protect scenic landscapes along public roads and highways.

2. Before January 1, 1989, the department shall identify four pilot scenic highway routes across two or more counties each for trial promotion in the state's tourism marketing program.

87 Acts, ch 175, §3

306D.4 Scenic highway advertising.

The state department of transportation shall have the authority to adopt rules to control the erection of new advertising devices on a highway designated as a scenic highway or scenic byway in order to comply with federal requirements concerning the implementation of a scenic byways program.

95 Acts, ch 135, §4

CHAPTER 307

DEPARTMENT OF TRANSPORTATION (DOT)

Department includes Iowa railway finance authority; §7E.7, chapter 327I

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307.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Director"* means the director of transportation or the director's designee.
2. *"Department"* means the state department of transportation.
3. *"Commission"* means the state transportation commission.

[C75, 77, 79, 81, §307.1; 81 Acts, ch 22, §2]
86 Acts, ch 1245, §1903

307.2 Department of transportation.

There is created a state department of transportation which shall be responsible for the planning, development, regulation and improvement of transportation in the state as provided by law.

[C75, 77, 79, 81, §307.2]

307.3 Transportation commission.

There is created a state transportation commission which shall consist of seven members, not more than four of whom shall be from the same political party. The governor shall appoint the members of the state transportation commission for a term of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate.

The commission shall meet in May of each year for the purpose of electing one of its members as chairperson.

[SS15, §1527-s; C24, 27, 31, 35, 39, §**4622, 4623;** C46, 50, 54, 58, 62, 66, 71, 73, §307.1, 307.2; C75, 77, 79, 81, §307.3]
83 Acts, ch 101, §67
Confirmation, see §2.32

307.4 Conflict of interest.

A person shall not serve as a member of the state transportation commission who has an interest in a contract or job of work or material or the profits thereof or service to be performed for the department. Any member of the state transportation commission who accepts employment with or acquires any stock, bonds, or other interest in any company or corporation doing business with the department shall be disqualified from remaining a member of the state transportation commission.

[C75, 77, 79, 81, §307.4]

307.5 Vacancies on commission.

Any vacancy shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

In the event the governor fails to make an appointment to fill a vacancy or fails to submit the appointment to the senate for confirmation as required by section 2.32, the senate may make the appointment prior to adjournment of the general assembly.

[SS15, §1527-s; C24, 27, 31, 35, 39, §**4624;** C46, 50, 54, 58, 62, 66, 71, 73, §307.3; C75, 77, 79, 81, §307.5]

307.6 Compensation — commission members.

Each member of the commission shall be compensated as provided in section 7E.6.

[SS15, §1527-s1; C24, 27, 31, 35, 39, §**4625;** C46, 50, 54, 58, 62, 66, 71, 73, §307.4; C75, 77, 79, 81, §307.6]
86 Acts, ch 1245, §1904

307.7 Commission meetings.

The commission shall meet at the call of the chairperson or when any four members of the commission file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the commission. A majority of the commission members shall constitute a quorum.

[C75, 77, 79, 81, §307.7]

307.8 Expenses.

Members of the commission, the director, and other employees of the department shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the department shall be subject to the budget requirements of chapter 8.

[C75, 77, 79, 81, §307.8]

307.9 Removal from office.

Any member of the commission may be removed for any of the causes and in the manner provided in chapter 66 and such removal shall not be in lieu of any other punishment that may be prescribed by the laws of this state.

[C75, 77, 79, 81, §307.9]

307.10 Duties of commission.

The commission shall:

1. Develop and coordinate a comprehensive transportation policy for the state not later than January 1, 1975, which shall be submitted to the general assembly for its approval, and develop a comprehensive transportation plan by January 1, 1976, to be submitted to the governor and the general assembly, and to update the transportation policy and plan annually.

2. Promote the coordinated and efficient use of all available modes of transportation for the benefit of the state and its citizens including, but not limited to, the designation and development of multimodal public transfer facilities if carriers or other private businesses fail to develop such facilities.

3. Identify the needs for city, county and regional transportation facilities and services in the state and develop programs appropriate to meet these needs.

4. Identify methods of improving transportation safety in the state and develop programs appropriate to meet these needs.

5. Approve or amend and approve the budget of the department prepared by the director, prior to submission of the budget to the governor and the general assembly.

6. Consider the energy and environmental issues in transportation development.

7. Enter into such contracts and agreements as provided in this chapter.

8. Promote the efforts of political subdivisions in developing energy efficient public transit systems including bus and rail systems.

9. Promote the development of rural bus systems.

10. Develop and implement a bus system subsidization program.

11. Act as a resource and referral source for van poolers in the state.

12. Conduct a comprehensive transportation planning study to examine pedestrian accessibility in new commercial development.

13. Establish transit accessibility impact guidelines by July 1, 1992, to be used in evaluating proposals for the construction or acquisition of publicly financed facilities.

14. Develop statistical measures to ascertain the impact of public transit systems on the minimization of motor vehicle accidents and reduction in fuel utilization by July 1, 1992, and the impact of public transit systems on the reduction of hazardous emissions of mobile sources, as identified pursuant to Title II of the federal Clean Air Act of 1990, Pub. L. No. 101-549, by July 1, 1993.

15. By July 1, 1992, create a statewide transit services marketing steering committee which includes providers, consumer advocates, and public relations representatives. The committee shall develop criteria for the evaluation of the adequacy and public awareness of transit service delivery by January 1, 1993.

16. Approve all rules prior to their adoption by the director pursuant to section 307.12, subsection 9.

[C75, 77, 79, 81, §307.10; 82 Acts, ch 1199, §92, 93, 96]

83 Acts, ch 9, §1, 8; 84 Acts, ch 1231, §1; 86 Acts, ch 1245, §1905, 1906; 91 Acts, ch 253, §14; 92 Acts, ch 1065, §1

See also §307A.2

307.11 Director of transportation — qualifications — salary.

The governor shall appoint a director of transportation, subject to confirmation by the senate, who shall serve at the pleasure of the governor and who shall not be a member of the commission. The director shall not hold any other office under the laws of the United States or of this or any other state or hold any other position for profit. The director shall not engage in any occupation, business, or profession interfering with or inconsistent with the director's duties, serve on or under a committee of a political party, or contribute to the campaign fund of any person or political party. The director shall be appointed on the basis of executive and administrative abilities and shall devote full time to the duties of the position.

The director shall receive a salary as fixed by the governor within a salary range set by the general assembly.

[C75, 77, 79, 81, §307.11]

86 Acts, ch 1245, §1907, 1908

Confirmation; see §2.32

307.12 Duties of the director.

The director shall:

1. Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department.

2. Employ personnel as necessary to carry out the duties and responsibilities of the department, consistent with chapter 19A.

3. Assist the commission in developing state transportation policy and a state transportation plan.

4. Establish temporary advisory boards of a size the director deems appropriate to advise the department.

5. Prepare a budget for the department, subject to the approval of the commission, and prepare reports required by law.

6. Appoint the deputy director of transportation and the administrators of the department.

7. Review and submit legislative proposals necessary to maintain current state transportation laws.

8. Enter into reciprocal agreements relating to motor vehicle inspections with authorized officials of any other state, subject to approval by the commission. The director may exempt or impose requirements upon nonresident motor vehicles consistent with those imposed upon vehicles of Iowa

residents operated in other states.

9. Adopt rules in accordance with chapter 17A as the director deems necessary for the administration of the department and the exercise of the director's and department's powers and duties.

10. Reorganize the administration of the department as needed to increase administrative efficiency.

11. Provide for the receipt or disbursement of federal funds allocated to the state and its political subdivisions for transportation purposes.

12. Include in the department's annual budget all estimated federal funds to be received or allocated to the department.

13. Adopt, after consultation with the department of natural resources and the department of public safety, rules relating to enforcement of the rules regarding transportation of hazardous wastes adopted by the department of natural resources. The department and the division of the Iowa state patrol of the department of public safety shall carry out the enforcement of the rules.

14. Prepare and submit a report to the general assembly on or before January 15 of each fiscal year describing the prior fiscal year's highway construction program, actual expenditures of the program, and contractual obligations of the program.

15. Administer chapter 327J.

If in the interest of the state, the director may allow a subsistence expense to an employee under the supervision of the department's administrator for highways for continuous stay in one location while on duty away from established headquarters and place of domicile for a period not to exceed forty-five days; and allow automobile expenses in accordance with section 18.117, for moving an employee and the employee's family from place of present domicile to new domicile, and actual transportation expense for moving of household goods. The household goods for which transportation expense is allowed shall not include pets or animals.

[C75, 77, 79, 81, §307.12]

86 Acts, ch 1245, §1909; 91 Acts, ch 268, §510; 92 Acts, ch 1210, §1; 98 Acts, ch 1074, §19

307.13 Reassignment of personnel.

The director may reassign personnel within the department among the various divisions of the department in order to properly co-ordinate the work of the divisions and perform the duties and responsibilities of the department efficiently and economically.

However, any employee so transferred or transferred from one employment system to another either administratively or legislatively, shall not be considered to be a probationary employee simply because of this action.

[C75, 77, 79, 81, §307.13]

307.14 Official Iowa map.

The department shall publish a map of the state of Iowa. At the request of a citizen of a particular city or town, the department shall add the city or town to the existing map of Iowa and identify the main road leading into the city or town if the city or town meets two or more of the following criteria:

1. Has a zip coded post office in the city or town.

2. Has a population of twenty-five or more.

3. Has a building on the national register of historic places in the city or town.

4. Has an association with a public recreation area managed by the department of natural resources in the city or town.

5. Has a high school, grade school, private school, church, or cemetery in the city or town.

6. Has a retail business in the city or town.

7. Has an annual festival or celebration.

91 Acts, ch 139, §1, 2

307.15 through 307.19 Repealed by 86 Acts, ch 1245, § 1969.

307.20 Biodiesel fuel revolving fund.

1. A biodiesel fuel revolving fund is created in the state treasury. The biodiesel fuel revolving fund shall be administered by the department and shall consist of moneys received from the sale of EPAct credits banked by the department on April 19, 2001, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the department for deposit in the fund. Moneys in the fund are appropriated to and shall be used by the department for the purchase of biodiesel fuel for use in department vehicles. The department shall submit an annual report not later than January 31 to the members of the general assembly and the legislative fiscal bureau, of the expenditures made from the fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the fund shall be credited to the fund.

2. A department motor vehicle operating on biodiesel fuel shall be affixed with a brightly visible sticker that notifies the traveling public that the motor vehicle uses biodiesel fuel.

3. For purposes of this section the following definitions apply:

a. "Biodiesel fuel" means soydiesel fuel as defined in section 159A.2.

b. "EPAct credit" means a credit issued pursuant to the federal Energy Policy Act (EPAct), 42 U.S.C. § 13201 et seq.

2001 Acts, ch 52, §1, 3

307.21 Administrative services.

The department's administrator of administrative services shall:

1. Provide for the proper maintenance and protection of the grounds, buildings and equipment of the department, in cooperation with the department of general services.

2. Establish, supervise and maintain a system of centralized electronic data processing for the department, in cooperation with the department of general services.

3. Assist the director in preparing the departmental budget.

4. *a.* Provide centralized purchasing services for the department, in cooperation with the department of general services. The administrator shall, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners, and shall purchase these items in accordance with the schedule established in section 18.18. However, the administrator need not purchase garbage can liners in accordance with the schedule if the liners are utilized by a facility approved by the environmental protection commission created under section 455A.6, for purposes of recycling. For purposes of this subsection, *"recycled content"* means that the content of the product contains a minimum of thirty percent postconsumer material.

b. The administrator shall do all of the following:

(1) Purchase and use recycled printing and writing paper in accordance with the schedule established in section 18.18.

(2) Establish a wastepaper recycling program by January 1, 1990, in accordance with recommendations made by the department of natural resources and the requirements of section 18.20.

(3) Require in accordance with section 18.6 product content statements and compliance with requirements regarding procurement specifications.

(4) Comply with the requirements for the purchase of lubricating oils, industrial oils, greases, and hydraulic fluids as established pursuant to section 18.22.

c. The department shall report to the general assembly by February 1 of each year, the following:

(1) A listing of plastic products which are regularly purchased by the board for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the department, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

d. A motor vehicle purchased by the administrator shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

5. Of all new passenger vehicles and light pickup trucks purchased by the administrator, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

a. A flexible fuel which is either of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of processed soybean oil and diesel fuel. At least twenty percent of the fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

6. The administrator shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, *"packing material"* means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

7. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in cooperation with the department of personnel and provide personnel services, including but not limited to training, safety education and employee counseling.

8. Assist the director in coordinating the responsibilities and duties of the various divisions within the department.

9. Carry out all other general administrative duties for the department.

10. Perform such other duties and responsibi-

lities as may be assigned by the director.

The administrator of administrative services may purchase items from the department of general services and may cooperate with the director of general services by providing centralized purchasing services for the department of general services.

[C75, 77, 79, 81, §307.21]

86 Acts, ch 1245, §1910, 1911; 88 Acts, ch 1185, §3; 89 Acts, ch 272, §24; 90 Acts, ch 1237, §4; 91 Acts, ch 97, §42; 91 Acts, ch 254, §18; 92 Acts, ch 1095, §3; 93 Acts, ch 26, §6; 93 Acts, ch 176, §40; 94 Acts, ch 1119, §28; 95 Acts, ch 44, §3; 95 Acts, ch 62, §4; 98 Acts, ch 1082, §6; 99 Acts, ch 114, §17; 99 Acts, ch 121, §10; 2000 Acts, ch 1109, §6

307.22 Planning and research.

The department's administrator of planning and research shall:

1. Assist the director in planning all modes of transportation in order to develop an integrated transportation system providing adequate transportation services for all citizens of the state.

2. Develop and maintain transportation statistical data for the department.

3. Assist the director in establishing, analyzing and evaluating alternative transportation policies for the state.

4. Co-ordinate planning and research duties and responsibilities with the planning functions carried on by other administrators of the department.

5. Conduct a study of the road and bridge facilities in state parks, state institutions, state fairgrounds, and on community college property. The study shall evaluate the construction and maintenance needs and projected needs based upon estimated growth for each type of facility to provide a quadrennially updated standard upon which to allocate funds appropriated for the purposes of this subsection.

6. Prepare, adopt, and cause to be published the results of a study of secondary roads in the state. The study shall be designed to investigate present deficiencies and future twenty-year maintenance and construction needs of the roads. The study shall be referred to as the *"quadrennial need study"* for the purposes of this chapter, chapter 307A, and chapter 312. The department shall report the results of the study to the general assembly by July 1, 2002, and the study results shall take effect July 1, 2003.

7. Annually recalculate the construction and maintenance needs of roads under the jurisdiction of each county to take into account the needs of a road whose jurisdiction has been transferred from the department to a county or from a county to the department during the previous year. The recalculation shall be reported by January 1 of the year following the transfer and shall take effect the following July 1 for the purposes of allocating moneys under sections 312.3 and 312.5.

8. Perform such other planning functions as may be assigned by the director.

The functions of planning and research do not include the detailed design of highways or other modal transportation facilities, but are restricted to the needs of this state for multimodal transportation systems.

[C75, 77, 79, 81, §307.22]

86 Acts, ch 1245, §1912, 1913; 2002 Acts, ch 1063, §6, 16

NEW subsections 5 – 7 and former subsection 5 renumbered as 8

307.23 General counsel.

The general counsel shall be a special assistant attorney general appointed by the attorney general who shall act as the attorney for the department and the general counsel shall have the following duties and responsibilities:

Act as legal advisor to the commission and the director, and provide all legal services for the department.

The attorney general shall appoint additional assistant attorneys general as the director deems necessary to carry out the duties assigned to the office of the general counsel. The salary of the general counsel shall be fixed by the director, subject to the approval of the attorney general. The director shall provide and furnish a suitable office for the general counsel upon request of the attorney general.

[SS15, §1527-s, -s2; C24, 27, §307.8; C31, 35, §4630, 4630-c1; C39, §**4630, 4630.1;** C46, 50, 54, 58, 62, 66, 71, 73, §307.8, 307.9; C75, 77, 79, 81, §307.23]

86 Acts, ch 1245, §1914, 1915

307.24 Administration of highways.

The department's administrator of highways is responsible for the planning, design, construction, and maintenance of the state primary highways and shall administer chapters 306 to 320 and 327I and perform other duties as assigned by the director. The administration of highways shall be organized to provide administration for urban systems, for secondary roads, and other categories of administration as necessary.

[C75, 77, 79, 81, §307.24]

86 Acts, ch 1245, §1916

307.25 Aeronautics and public transit.

The department's administrator for aeronautics and public transit shall:

1. Advise and assist the director in the development of aeronautics, including but not limited to the location of air terminals, accessibility of air terminals by other modes of public transportation, protective zoning provisions considering safety factors, noise, and air pollution, facilities for private and commercial aircraft, air freight facilities and such other physical and technical aspects as may be necessary to meet present and future

needs.

2. Advise and assist the director in the study of local and regional transportation of goods and people including intracity and intercity bus systems, dial-a-bus facilities, rural and urban bus and taxi systems, the collection of data from these systems, feasibility study of increased government subsidy assistance and determination of the allocation of such subsidies to each mass transportation system, such other physical and technical aspects which may be necessary to meet present and future needs and apply for, accept and expend federal, state or private funds for the improvement of mass transit.

3. Advise and assist the director to study and develop highway transport economics to assure availability and productivity of highway transport services.

4. Administer chapters 328, 329, and 330.

5. Perform other duties and responsibilities as assigned by the director.

[C75, 77, 79, 81, §307.25]

86 Acts, ch 1245, §1917 – 1919; 90 Acts, ch 1233, §12; 98 Acts, ch 1100, §38

307.26 Rail and water.

The department's administrator for rail and water shall:

1. Advise and assist the director in conducting research on the basic railroad problems and identify the present capability of the existing railroads in order to determine the present obligation of the railroads to provide acceptable levels of public service.

2. Advise and assist the director in the development of rail transportation systems for expansion of passenger and freight services.

3. Advise and assist the director in developing programs in anticipation of railroad abandonment, including:

a. Development and evaluation of programs which will encourage improvement of rail freight and the upgrading of rail lines in order to improve freight service.

b. Development of alternative modes of transportation to areas and communities which lose rail service.

c. Advise the director when it may appear in the best interest of the state to assume the role of advocate in railroad abandonments and railroad rate schedules.

4. Develop and maintain a federal-state relationship of programs relating to railroad safety enforcement, track standards, rail equipment, operating rules and transportation of hazardous materials.

5. Advise and assist the director in the conduct of research on railroad-highway grade crossings and encourage and develop a safety program in order to reduce injuries or fatalities including, but not limited to, the following:

a. The implementation of a program of constructing rumble strips at grade crossings on selected hard surface roads.

b. The establishment of standards for warning devices for particularly hazardous crossings or for classes of crossings on highways, which standards are designed to reduce injuries, fatalities and property damage. Such standards shall regulate the use of warning devices and signs which shall be in addition to the requirements of section 327G.2. Implementation of such standards shall be the responsibility of the government agency or department or political subdivision having jurisdiction and control of the highway and such implementation shall be deemed adequate for the purposes of railroad grade crossing protection. The department, or the political subdivision having jurisdiction, may direct the installation of temporary protection while awaiting installation of permanent protection. A railroad crossing shall not be found to be particularly hazardous for any purpose unless the department has determined it to be particularly hazardous.

c. The development and adoption of classifications of crossings on public highways based upon their characteristics, conditions, and hazards, and standards for warning devices, signals, and signs of each crossing classification. The department shall recommend a schedule for implementation of the standards to the government agency, department, or political subdivision having jurisdiction of the highway and shall provide an annual report to the general assembly on the development and adoption of classifications and standards under this paragraph and their implementation, including information about financing installation of warning devices, signals, and signs. The department shall not be liable for the development or adoption of the classifications or standards. A government agency, department, or political subdivision shall not be liable for failure to implement the standards. A crossing warning or improvement installed or maintained pursuant to standards adopted by the department under this paragraph shall be deemed an adequate and appropriate warning for the crossing.

6. Apply for, accept, and expend federal, state or private funds for the improvement of rail transportation.

7. Advise and assist the director on studies for co-ordination of railway service with that of other transportation modes.

8. Advise and assist the director with studies of regulatory changes deemed necessary to effectuate economical and efficient railroad service.

9. Advise and assist the director regarding agreements with railroad corporations for the restoration, conservation or improvement of railroad as defined in section 327D.2, subsection 3, on such terms, conditions, rates, rentals, or subsidy levels as may be in the best interest of the state. The commission may enter into contracts and agreements

which are binding only to the extent that appropriations have been or may subsequently be made by the legislature to effectuate the purposes of this subsection.

10. Administer chapters 327C through 327H.

11. Perform such other duties and responsibilities as may be assigned by the director and the commission.

12. Advise and assist in the establishment and development of railroad districts upon request.

13. Conduct innovative experimental programs relating to rail transportation problems within the state.

14. Enter the role of "applicant" pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976, United States Public Law 94-210, and take such actions as are necessary to accomplish this role.

15. Identify those segments of railroad trackage which, if improved, may provide increased transportation services for the citizens of this state. The department shall develop and implement programs to encourage the improvement of rail freight services on such railroad trackage.

16. Promote river transportation and coordinate river programs with other transportation modes.

17. Advise and assist the director in the development of river transportation and port facilities in the state.

[C75, 77, §307.26, 327H.19; C79, 81, §307.26]

86 Acts, ch 1245, §1920, 1921; 90 Acts, ch 1233, §13; 94 Acts, ch 1199, §50

307.27 Motor vehicles.

The department's administrator of motor vehicles shall:

1. Administer and supervise the registration of motor vehicles pursuant to chapter 321.

2. Administer and supervise the licensing of motor vehicle manufacturers, distributors and dealers pursuant to chapter 322.

3. Administer the inspection of motor vehicles pursuant to chapter 321.

4. Administer motor vehicle registration reciprocity pursuant to chapter 326.

5. Administer the provisions of chapters 321A, 321E, 321F, and 321J relating to motor vehicle financial responsibility, the implied consent law, the movement of vehicles of excessive size and weight and the leasing and renting of vehicles.

6. Administer the regulation of motor vehicle franchisers pursuant to chapter 322A.

7. Administer the regulation of motor carriers pursuant to chapter 325A.

8. Administer the registration of interstate commerce commission authority of motor carriers pursuant to chapter 327B.

[C75, 77, 79, 81, §307.27]

86 Acts, ch 1220, §27; 86 Acts, ch 1245, §1922; 90 Acts, ch 1233, §14; 98 Acts, ch 1100, §39, 40

307.28 Prorating departmental costs.

The director shall, with the approval of the commission, prorate the costs of the department which will be expended for highways and such costs shall be paid from money appropriated from the road use tax fund. Prorated costs payable from the road use tax fund shall be based upon that portion of the department's duties related to the construction, maintenance, and supervision of the public highways within the state or for the payment of bonds issued for the construction of public highways and the payment of interest on such bonds. The general assembly shall appropriate from the general fund of the state the remaining necessary departmental costs.

[C75, 77, 79, 81, §307.28]

307.29 Collection of delinquent railway taxes — compromise. Repealed by 89 Acts, ch 4, § 3.

307.30 Federal tax compliance.

The department shall adopt rules under chapter 17A to provide for certification of federal heavy vehicle use tax collections required by the Surface Transportation Assistance Act of 1982.

83 Acts, ch 9, §2, 8

307.31 Repair of out-of-state commercial motor vehicles — permits. Repealed by 2001 Acts, ch 132, § 23. See § 321.56.

307.32 through 307.34 Reserved.

307.35 Inspectors to perform several functions.

The department shall institute a program to combine inspection functions where feasible and to train construction inspectors to perform several inspection functions to reduce the number of construction inspectors employed by the department and the number of construction inspectors required for each construction project.

[81 Acts 2d Ex, ch 2, §2]

307.36 Project needs — retention of property.

It is the intent of the general assembly that not later than July 1, 1992, the state department of transportation shall dispose of all right-of-way owned by the department and not needed for projects. In determining need, the department shall consider both its five-year program requirements and its long-range, statewide corridor development needs, including the development of the network of commercial and industrial highways. The department may also act to preserve right-of-way for improvements to the network of commercial and industrial highways by acquiring options, easements, rights of first refusal, or other property interests less than fee title. In determining

need based upon long-range, statewide corridor development, the department shall give careful consideration to economically depressed urban areas not served directly by the national system of interstate and defense highways.

83 Acts, ch 114, §1; 89 Acts, ch 134, §3

307.37 Motor vehicle fraud and odometer law enforcement.

The department shall investigate and prosecute violators of the laws concerning motor vehicle fraud including, but not limited to, the state and federal odometer law. The department shall refer available evidence concerning a possible violation of the laws concerning motor vehicle fraud including, but not limited to, section 321.71 or the federal odometer law or a rule or order issued under section 321.71 or the federal odometer law, to the attorney general. The attorney general, with or without the referral, may institute appropriate criminal proceedings or may direct the case to the appropriate county attorney to institute appropriate criminal proceedings. The attorney general may use those funds available to the department of justice for this purpose and law enforcement agencies may be reimbursed for expenses incurred in the enforcement of those laws, rules, or orders with the approval of the attorney general.

84 Acts, ch 1305, §45; 88 Acts, ch 1089, §1

307.38 Public transit loan. Repealed by 99 Acts, ch 114, § 54.

307.39 Maintenance facilities. Repealed by 92 Acts, ch 1238, § 43.

307.40 Copies of contracts to legislative fiscal bureau.

The department shall give a copy of each contract for construction or reconstruction of roads, streets, or bridges entered into by the department in which the contract price is for five million dollars or more to the legislative fiscal bureau.

88 Acts, ch 1278, §26

307.41 and 307.42 Reserved.

307.43 Federal donations.

If the government of the United States provides for free distribution among the states of machinery or other equipment suitable for use in road improvement, the director may receive and receipt for the machinery and equipment, and take action to secure to the state the benefit of any such tenders by the federal authorities. The director may make an apportionment of the machinery or other equipment among the counties of the state which in the director's judgment will best facilitate work in progress or contemplated by the counties, but the title and right of possession of the property received from the federal government is at all times in the director for the use and benefit of the state.

86 Acts, ch 1245, §1924

307.44 Use of federal moneys — cooperation.

If funds are allotted or appropriated by the government of the United States for the improvement of transportation facilities and services in this state, the department may cooperate with the government of the United States, and any agency or department thereof, in the planning, acquisition, contract letting, construction, improvement, maintenance, and operation of transportation facilities and services in this state; may comply with the federal statutes and rules; and may cooperate with the federal government in the expenditure of the federal funds.

In order to avoid delays, payment for the street and highway projects or improvements constructed in cooperation with the federal government may be advanced from the primary road fund.

86 Acts, ch 1244, §39; 93 Acts, ch 87, §2

307.45 State-owned lands — assessment.

Cities and counties may assess the cost of a public improvement against the state when the improvement benefits property owned by the state and under the jurisdiction and control of the department's administrator of highways. The director shall pay from the primary road fund the portion of the cost of the improvement which would be legally assessable against the land if privately owned.

Assessments against property under the jurisdiction of the department's administrator of highways shall be made in the same manner as those made against private property, except that the city or county making the assessment shall cause a copy of the public notice of hearing to be mailed to the director by certified mail.

Assessments against property owned by the state and not under the jurisdiction and control of the department's administrator of highways shall be made in the same manner as those made against private property and payment shall be made by the executive council from any funds of the state not otherwise appropriated.

However, an assessment in excess of sixty thousand dollars in effect on or after December 1, 1990, is not valid unless it is provided for or contained within a capital appropriation by the general assembly.

86 Acts, ch 1244, §40; 91 Acts, ch 268, §511

307.46 Use of reversions.

1. Notwithstanding the provisions of section 8.33 or any other provision of law to the contrary, if on June 30 of a fiscal year a balance of an operational appropriation remains unexpended or unencumbered, not more than fifty percent of the balance may be encumbered by the department and

used as provided in this section and the remaining balance shall be deposited in the fund from which the money was appropriated. The department shall not encumber an amount in excess of five hundred thousand dollars under this section in any fiscal year. Moneys encumbered under this section shall be used by the department during the succeeding fiscal year for employee training and for technology enhancement. Moneys which are encumbered under this section but not used shall revert to the fund from which the money was appropriated on June 30 of the succeeding fiscal year.

2. On or before June 30 of the fiscal year following the fiscal year in which funds were encumbered under this section, the department shall report to the joint transportation, infrastructure, and capitals appropriations subcommittee, the legislative fiscal bureau, the department of management, and the legislative fiscal and oversight committees of the legislative council detailing how the moneys were expended. Moneys shall not be encumbered under this section from an appropriation which received a transfer from another appropriation pursuant to section 8.39.

3. For purposes of this section, *"operational appropriation"* means an appropriation from the road use tax fund or primary road fund providing for salaries, support, maintenance, and miscellaneous purposes.

99 Acts, ch 120, §1, 5

307.47 Materials and equipment revolving fund — annual purchase report.

1. The highway materials and equipment revolving fund is created from moneys appropriated out of the primary road fund. From this fund shall be paid all costs for materials and supplies, inventoried stock supplies, maintenance and operational costs of equipment, and equipment replacements incurred in the operation of centralized purchasing under the supervision of the department's administrator of highways. Direct salaries and expenses properly chargeable to direct salaries shall be paid from the fund. For each month the director shall render a statement to each unit under the supervision of the administrator of highways for the actual cost of materials and supplies, operational and maintenance costs of equipment, and equipment depreciation used. The expense shall be paid by the administrator of highways in the same manner as other interdepartmental billings are paid and when the expense is paid by the administrator of highways, the sum paid shall be credited to the highway materials and equipment revolving fund.

2. If surplus accrues to the revolving fund in excess of one hundred thousand dollars for which there is no anticipated need or use, the governor shall order that surplus reverted to the primary road fund.

3. When the units under the supervision of the administrator of highways share equipment with other administrative units of the department, the director shall prorate the costs of the equipment among the administrative units using the equipment.

4. The department shall present a purchase report to the legislative fiscal bureau prior to the beginning of each regular annual session of the general assembly. The report shall cover all equipment and vehicle purchases through the highway materials and equipment revolving fund during the preceding fiscal year.

86 Acts, ch 1244, §41; 88 Acts, ch 1278, §27

307.48 Longevity pay.

An employee of the department who was hired by the state highway commission on or before June 30, 1971, is entitled to longevity pay. An employee eligible for longevity pay under this section whose employment is terminated on or after July 1, 1971, if reemployed by the department, forfeits any right the employee may have had to longevity pay.

An employee under the supervision of the department's administrator of highways who became an employee of the state department of transportation on July 1, 1974, retains all rights to longevity pay so long as the employee continues employment with the department.

86 Acts, ch 1245, §1925; 88 Acts, ch 1158, §63

307.49 Contract bids.

A bidder awarded a contract with the department shall disclose the names of all subcontractors, who will work on the project being bid or who the bidder anticipates will work on the project being bid, within forty-eight hours after the award of the contract. If a subcontractor named by a bidder awarded a contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost. If a subcontractor is added by a bidder awarded a contract, the bidder shall disclose the name of the new subcontractor.

The department shall issue electronic project bid notices for distribution to the targeted small business web page located at the department of economic development. The notices shall be provided to the targeted small business marketing manager forty-eight hours prior to the issuance of all project bid notices. The notices shall contain a description of the project, a point of contact for each project, and any subcontract goals included in the bid.

90 Acts, ch 1161, §3; 98 Acts, ch 1212, §5

CHAPTER 307A

TRANSPORTATION COMMISSION

307A.1 Definitions.
307A.2 Duties.
307A.3 Federal donations. Repealed by 86 Acts, ch 1245, §1969.
307A.4 Federal appropriations. Repealed by 86 Acts, ch 1245, §1969.
307A.5 State-owned lands — assessment. Repealed by 86 Acts, ch 1245, §1969.
307A.6 Repealed by 76 Acts, ch 1176, §6.
307A.7 Materials and equipment revolving fund. Repealed by 86 Acts, ch 1245, §1969.
307A.8 Longevity pay prohibited. Repealed by 86 Acts, ch 1245, §1969.

307A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the state transportation commission of the state department of transportation.

2. *"Department"* means the state department of transportation.

[C75, 77, 79, 81, §307A.1]

307A.2 Duties.

Said commission shall:

1. Devise and adopt standard plans of highway construction and furnish the same to the counties and provide information to the counties on the maintenance practices and policies of the department.

2. Furnish information and instruction to, answer inquiries of, and advise with, highway officers on matters of highway construction and maintenance and the reasonable cost thereof.

3. Reserved.

4. Make surveys, plans, and estimates of cost, for the elimination of danger at railroad crossings on highways, and confer with local and railroad officials with reference to elimination of the danger.

5. Assist the board of supervisors and the department general counsel in the defense of suits wherein infringement of patents, relative to highway construction, is alleged.

6. Make surveys for the improvement of highways upon or adjacent to state property when requested by the board or department in control of said lands.

7. Record all important operations of said commission and, at the time provided by law, report the same to the governor.

8. Incur no expense to the state by sending out road lecturers.

9. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, other than railroad signals or crossing lights, located adjacent to a primary road and within three hundred feet of a railroad crossing at grade, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of trains or in observing signs erected for the purpose of giving warning of such railroad crossing.

10. Order the removal or alteration of any lights or light-reflecting devices, whether on public or private property, located adjacent to a primary road and within three hundred feet of an intersection with another primary road, which in any way interfere with the vision of or may be confusing to a person operating a motor vehicle on such highway in observing the approach of other vehicles or signs erected for the purpose of giving warning of such intersection.

11. Construct, reconstruct, improve, and maintain state institutional roads and state park roads, which are part of the state park, state institution, and other state land road system as defined in section 306.3, and bridges on such roads, roads located on state fairgrounds as defined in chapter 173, and the roads and bridges located on community college property as defined in chapter 260C, upon the request of the state board, department, or commission which has jurisdiction over such roads. This shall be done in such manner as may be agreed upon by the state transportation commission and the state board, department, or commission which has jurisdiction. The commission may contract with any county or municipality for the construction, reconstruction, improvement, or maintenance of such roads and bridges. Any state park road which is an extension of either a primary or secondary highway which both enters and exits from a state park at separate points shall be constructed, reconstructed, improved, and maintained as provided in section 306.4. Funds allocated from the road use tax fund for the purposes of this subsection shall be apportioned in the ratio that the needs of the state institutional roads and bridges, park roads and bridges, or community college roads and bridges bear to the total needs of these facilities based upon the most recent qua-

drennial park and institution need study.

12. Prepare, adopt, and cause to be published a long-range program for the primary road system, in conjunction with the state transportation plan adopted by the commission. Such program shall be prepared for a period of at least five years and shall be revised, brought up to date, and republished at least once every year in order to have a continuing five-year program. The program shall include, insofar as such estimates can be made, an estimate of the money expected to become available during the period covered by the program and a statement of the construction, maintenance, and other work planned to be performed during such period. The commission shall conduct periodic reinspections of the primary roads in order to revise, from time to time, its estimates of future needs to conform to the physical and service conditions of the primary roads. The commission shall annually cause to be published a sufficiency rating report showing the relative conditions of the primary roads. Before the last day of December of each year, the commission shall adopt and cause to be published from its long-range program, a plan of improvements to be accomplished during the next calendar year. However, in years when the federal government is reauthorizing federal highway funding, the commission shall not be required to adopt and publish the annual plan of improvements to be accomplished until at least ninety days from the enactment of the new federal funding formula. This annual program shall list definite projects in order of urgency and shall include a reasonable year's work with the funds estimated to be available. The annual program shall be final and followed by the commission in the next year except that deviations may be made in case of disaster or other unforeseen emergencies or difficulties. The relative urgency of the proposed improvements shall be determined by a consideration of the physical condition, safety, and service characteristics of the various primary roads.

13. The criteria used by the commission for allocating funds as a result of any long-range planning process shall be adopted in accordance with the provisions of chapter 17A. The commission shall adopt such rules and regulations in accordance with the provisions of chapter 17A as it may deem necessary to transact its business and for the administration and exercise of its powers and duties.

14. Identify, within the primary road system, a network of commercial and industrial highways in accordance with section 313.2A. The improvement of this network shall be considered in the development of the long-range program and plan of improvements under this section.

[C97, §1532; S13, §1532; SS15, §1527-s1, -s2; C24, 27, 31, 35, 39, §**4626, 4631, 4632, 4633;** C46, 50, 54, 58, §307.5, 308.1, 308.3, 308.4; C62, 66, 71, 73, §307.5; C75, 77, 79, 81, §307A.2]

84 Acts, ch 1043, §1; 86 Acts, ch 1245, §1926; 88 Acts, ch 1019, §1; 89 Acts, ch 134, §4; 90 Acts, ch 1253, §120; 92 Acts, ch 1100, §2; 96 Acts, ch 1064, §1; 96 Acts, ch 1126, §2; 98 Acts, ch 1075, §7; 2002 Acts, ch 1063, §7, 8, 16

See also §307.10

Time of filing report and period covered, §7A.9

Subsection 11 amended

Subsections 14 and 14A stricken and former subsection 15 renumbered as 14

307A.3 Federal donations. Repealed by 86 Acts, ch 1245, § 1969. See § 307.43.

307A.4 Federal appropriations. Repealed by 86 Acts, ch 1245, § 1969. See § 307.44.

307A.5 State-owned lands — assessment. Repealed by 86 Acts, ch 1245, § 1969. See § 307.45.

307A.6 Repealed by 76 Acts, ch 1176, § 6.

307A.7 Materials and equipment revolving fund. Repealed by 86 Acts, ch 1245, § 1969. See § 307.47.

307A.8 Longevity pay prohibited. Repealed by 86 Acts, ch 1245, § 1969. See § 307.48.

CHAPTER 307B

RAILWAY FINANCE AUTHORITY

Transferred to chapter 327I

CHAPTER 307C

MISSOURI RIVER BARGE COMPACT

307C.1 Missouri river barge compact.
307C.2 Jurisdiction and control.
307C.3 Duties of the state department of transportation.
307C.4 Liberal interpretation.
307C.5 No conflict of local functions.

307C.1 Missouri river barge compact.

The Missouri river interstate barge compact is enacted into law and entered into with all other states which legally join in the compact in substantially the following form:

COMPACT BETWEEN IOWA, KANSAS, MISSOURI AND NEBRASKA FOR THE DEVELOPMENT OF THE MISSOURI RIVER FOR BARGE TRAFFIC

ARTICLE I

The purposes of this compact are to provide for planning for the most efficient use of the waters of the Missouri river, to increase the amount of barge traffic on that segment of the Missouri river below Sioux City, Iowa, to take necessary steps to develop the Missouri river and its banks to handle more barge traffic than is presently handled, to encourage barge use on that segment of the Missouri river for transporting bulk goods, especially farm commodities, to insure that the intended increase in barge traffic does not impose unacceptable damage on the Missouri river in all its various uses, including agriculture, wildlife management, and recreational opportunities, to consider the effects of diversion of the waters of the Missouri river on navigation, and to promote joint action between the compact parties to accomplish these purposes. The purposes of the compact do not include lobbying activities against user fees for barge traffic and such activities under this compact are prohibited.

ARTICLE II

It is the responsibility of the four states to accomplish the purposes in Article I through the official in each state charged with the duty of administering the public waters and to collect and correlate through those officials the data necessary for the proper administration of the compact. Those officials may, by unanimous action, adopt rules and regulations to accomplish the purposes of this compact.

ARTICLE III

The states of Iowa, Missouri, Kansas, and Nebraska agree that within a reasonable time they shall fulfill the obligations of this compact and that each shall authorize the proper official or agency in its state to take the necessary steps to promote barge use and develop the Missouri river as it flows between and within the compact states for additional barge traffic.

ARTICLE IV

This compact does not limit the powers granted in any other act to enter into interstate or other agreements relating to the Missouri river flowing between and within the compact states, alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions, or impair or affect any rights, powers, or jurisdiction of the United States, or those acting by or under its authority, in, over, and to those waters of the Missouri river. Adoption of this compact by the general assembly shall not require the signatory states to adopt any legislation or to appropriate funds for its implementation.

ARTICLE V

Other states having an interest in the promotion of barge traffic on the Missouri river can join in this compact by unanimous consent of the member states.

Any member state can withdraw at any time by appropriate action of its legislature.

84 Acts, ch 1257, §1

307C.2 Jurisdiction and control.

The state department of transportation has jurisdiction and authority to implement the Missouri river barge compact.

84 Acts, ch 1257, §2

307C.3 Duties of the state department of transportation.

The state department of transportation shall, with the cooperation of the Iowa department of economic development, the department of natural

resources, and the member states' officials or agencies, take the necessary steps to achieve the purposes set forth in this chapter.

84 Acts, ch 1257, §3

307C.4 Liberal interpretation.

This compact shall be liberally construed so as to effectuate its purposes. The compact is severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability of the compact to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability of it to any government, agency, person or circumstance shall not be affected. If this compact is held to be contrary to the constitution of any state participating in the compact, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

84 Acts, ch 1257, §4

307C.5 No conflict of local functions.

The Missouri river barge compact does not supersede or limit the functions, powers, duties and discretions of counties, townships, school districts, cities, levee districts, drainage districts, levee and drainage districts, or any other governmental subdivisions or of their governing officials.

84 Acts, ch 1257, §5

CHAPTER 307D

IOWA HIGHWAY RESEARCH BOARD

Repealed by 92 Acts, ch 1238, §44

CHAPTER 308

MISSISSIPPI RIVER PARKWAY

308.1 Planning commission.
308.2 Assent to federal Act.
308.3 Definitions.
308.4 Transportation commission duties.
308.5 Jurisdiction and control.
308.6 Transferring jurisdiction.
308.7 Duties of department of natural resources.
308.8 Agreements authorized.
308.9 Establishing locations for the highway.

308.1 Planning commission.

The Mississippi parkway planning commission shall be composed of ten members appointed by the governor, five members to be appointed for two-year terms beginning July 1, 1959, and five members to be appointed for four-year terms beginning July 1, 1959. In addition to the above members there shall be seven advisory ex officio members who shall be as follows: One member from the state transportation commission, one member from the natural resource commission, one member from the Iowa state soil conservation commission, one member from the state historical society of Iowa, one member from the faculty of the landscape architectural division of the Iowa State University of science and technology, one member from the Iowa economic development board, and one member from the environmental protection commission. Members and ex officio members shall serve without pay, but the actual and necessary expenses of members and ex officio members may be paid if the commission so orders and if the commission has funds available for that purpose.

[C62, 66, 71, 73, 75, 77, 79, 81, §308.1; 82 Acts, ch 1199, §61, 96]

308.2 Assent to federal Act.

The general assembly of the state of Iowa hereby declares that the intent of this chapter is to assent to any Act of the United States Congress authorizing the development of any national parkway located wholly or partly within the state of Iowa, to the full extent that is necessary to secure any benefits under such Act, provided that the hunting of migratory game birds and other game and fishing shall not be prohibited or otherwise restricted by the United States government or any of its designated agencies in control of said project, and to authorize the appropriate state boards, commissions, departments and the governing bodies of counties, cities and villages and especially the state transportation commission to cooperate

in the planning and development of all national parkways that may be proposed for development in Iowa, with any agency or department of the government of the United States in which is vested the necessary authority to construct or otherwise develop such national parkways. Whenever authority shall exist for the planning and development of any national parkway, of which any portion shall be located in the state of Iowa, it shall be the duty of the state transportation commission to make such investigations and studies in cooperation with the appropriate federal agency, and such state boards, commissions, and departments as shall have an interest in such parkway development, to the extent that shall be desirable and necessary in order to provide that the state shall secure all advantages that may accrue through such parkway development and that the interests of the counties, cities, and villages along the route shall be served.

[C62, 66, 71, 73, 75, 77, 79, 81, §308.2]
98 Acts, ch 1199, §1, 27; 98 Acts, ch 1223, §30

308.3 Definitions.

As used in this chapter:

1. *"Conservation area"* means land in which the state department of transportation or the department of natural resources has acquired rights, other than that land necessary for a right of way.

2. *"Great river road"* means a scenic and recreational highway consisting of a designated system of roads and streets along the Mississippi river in this state.

3. *"National parkway"* has the same meaning as defined in Public Law 93-87, first session, Ninety-third Congress of the United States.

4. *"Right of way"* means land area dedicated to public use for a highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

5. *"A scenic and recreational highway"* means a public highway designated to allow enjoyment of aesthetic and scenic views, points of historical, archaeological and scientific interest, state parks and other recreational areas and includes both the right of way and conservation area.

6. *"Scenic easement"* means a servitude which is acquired by gift, purchase, exchange or condemnation and is designed to permit land to remain in private ownership for its normal agricultural, residential or other use and, at the same time, to restrict and control the future use of the land for the purpose of preserving, restoring or enhancing the natural and historic beauty of the land subject to the scenic easement.

7. *"Secretary", "parkway", "scenic landscape", "sightly or safety easement", "access", "parkway road", "parkway development", "frontage"* and other similar terms have the same meaning as defined in any Act of the Congress of the United States related to a national parkway.

[C62, 66, 71, 73, 75, 77, 79, 81, §308.3]
86 Acts, ch 1245, §1928

308.4 Transportation commission duties.

1. The state transportation commission shall make such investigations, surveys, studies and plans in connection with any proposed national parkway or parkway development as it shall deem necessary or desirable to determine if the proposed development is under the terms of the Act of the United States Congress applicable to such parkway or any regulations under such Act and is advantageous to the state. Such parkway development may be any portion of the proposed parkway which is proposed to be constructed as a project under such Act.

2. The state transportation commission, with the co-operation of the department of natural resources, shall plan, designate, and establish the exact routing of the great river road, utilizing the general guidelines established in Title 23, United States Code.

3. The director of transportation, with the cooperation of the department of natural resources, shall:

a. Acquire all rights in land necessary for reconstruction or relocation of any portions of the great river road where reconstruction or relocation is imperative for the safety of the traveling public, or where the condition or location of existing segments of the highway is not in keeping with the intent of this chapter. Acquisitions of such rights in land shall be by gift, purchase, exchange, or by instituting and maintaining proceedings for condemnation. Gift, purchase, exchange, and condemnation include acquisition of a scenic easement. A scenic easement acquired under this chapter constitutes an easement both at law and in equity, and all legal and equitable remedies, including prohibitory and mandatory injunctions, are available to protect and enforce the state's interest in such scenic easements. A scenic easement acquired under this chapter is deemed to be appurtenant to the roadway to which it is adjacent or from which it is visible. The duties created by a scenic easement acquired under this chapter are binding upon and enforceable against the original owner of the land subject to the scenic easement and the original owner's heirs, successors, and assigns in perpetuity, unless the instrument creating the scenic easement expressly provides for a lesser duration. A court shall not declare a scenic easement acquired under this chapter to have been extinguished or to have become unenforceable by virtue of changed conditions or frustration of purpose.

b. Accept and administer state, federal, and any other public or private funds made available for the acquisition of rights in land and for the

planning and construction or reconstruction of any segment of the great river road, and state and federal funds for the maintenance of that part of the great river road constituting the right of way.

[C62, 66, 71, 73, 75, 77, 79, 81, §308.4; 81 Acts, ch 14, §23]

83 Acts, ch 198, §17; 85 Acts, ch 108, §1; 86 Acts, ch 1245, §1929; 86 Acts, ch 1246, §28

308.5 Jurisdiction and control.

Jurisdiction and control of the great river road is vested as provided in section 306.4.

[C75, 77, 79, 81, §308.5]

85 Acts, ch 108, §2

308.6 Transferring jurisdiction.

The director of transportation, with the concurrence of the department of natural resources, shall transfer jurisdiction of any adjacent conservation area to the department of natural resources upon completion of a new segment of the great river road.

[C75, 77, 79, 81, §308.6]

86 Acts, ch 1245, §1930

308.7 Duties of department of natural resources.

The department of natural resources, with the co-operation of the director of transportation, shall:

1. Control the conservation area acquired by the director of transportation.
2. Protect all scenic easements.
3. Maintain, improve, and beautify according to plans made under section 308.4, subsection 2, all conservation areas, including the establishment of off-road-vehicle trails, equestrian trails and hiking paths.
4. Accept and administer state, federal and any other public or private funds made available for the maintenance, improvement and beautification of conservation areas.

[C75, 77, 79, 81, §308.7]

86 Acts, ch 1245, §1931

308.8 Agreements authorized.

The director of transportation and the department of natural resources may enter into agreements with the United States secretary of transportation, as provided under the United States Code, Title 23 relating to the scenic and recreational highway system, and with any other agency and jurisdiction, and take action in the name of the state to comply with the terms of any agreement.

[C75, 77, 79, 81, §308.8]

86 Acts, ch 1245, §1932

308.9 Establishing locations for the highway.

1. When, as a result of its investigations and studies, the state transportation commission, in cooperation with the department of natural resources, finds that there may be a need in the future for the development and construction or reconstruction of segments of the great river road, and when the state transportation commission determines that in order to prevent conflicting costly economic development on areas of lands to be available for the great river road when needed for future development, there is need to establish and to inform the public of the approximate location and widths of new or improved segments of the great river road to be needed, the state transportation commission may proceed to establish the location and the approximate widths in the manner provided in this section.

The state transportation commission shall give notice and hold a public hearing on the matter in a convenient place in the area to be affected by the proposed improvement of the great river road. The state transportation commission shall consider and evaluate the testimony presented at the public hearing and shall make a study and prepare a map showing the location of the proposed new or reconstructed segment of the great river road and the approximate widths of right of way needed. The map shall show the existing roadway and the property lines and record owners of lands to be needed. The approval of the map shall be recorded by reference in the state transportation commission's minutes, and a notice of the action and a copy of the map showing the lands or interest in the lands needed in any county shall be filed in the office of the county recorder of that county. Notice of the action and of the filing shall be published once in a newspaper of general circulation in the county, and within sixty days following the filing, notice of the filing shall be served by registered mail on the owners of record on the date of filing. Using the same procedures for approval, notice and publications, and notice to the affected record owners, the state transportation commission may amend the map.

2. After such location is established, within the area of the great river road as shown on the map or in such proximity to it as to result in consequential damages when the rights in land for the great river road are acquired, a person shall not erect or move in any additional structure or rebuild, alter or add to any existing structure, without giving to the state transportation commission by registered mail sixty days' notice of such contemplated construction, alteration, or addition describing the same. However, this prohibition and requirement shall not apply to any normal or emergency repairs or replacements which are necessary to maintain an existing structure of a facility in approximately its previously existing functioning condition. When the rights in land for a

segment of the great river road are acquired, damages shall not be allowed for any construction, alterations, or additions in violation of this subsection.

3. Without limiting any authority otherwise existing, rights in land needed for the great river road may be acquired at any time by the state, the county, or the municipality in which such segment of the great river road is located. If an owner's contiguous land is acquired to an extent which is less than the total amount shown on the map as needed, consequential damages to the land not acquired shall be allowed as found to exist.

[C62, 66, 71, 73, §308.5; C75, 77, 79, 81, §308.9]
88 Acts, ch 1158, §64; 98 Acts, ch 1075, §8

CHAPTER 308A

RECREATIONAL BIKEWAYS

308A.1 Department of natural resources and transportation commissions to co-operate.
308A.2 Funds.
308A.3 Certain elevated structures prohibited — exception.

308A.1 Department of natural resources and transportation commissions to co-operate.

The department of natural resources, in consultation with the state transportation commission, is hereby authorized to establish recreational bikeways within this state for the use, enjoyment, and participation of the public in nonmotorized bicycling. The routes established for such bikeways shall be designed to maximize the safety of cyclists and motorists and may utilize secondary roads when the normal flow of motor vehicle traffic will not be hindered, as well as other infrequently traveled roads, streets, parkways, and appropriate thoroughfares. Such bikeways shall be routed, wherever possible, to allow the enjoyment of scenic views and points of historical interest, and may connect state parks and other recreational areas throughout the state.

Bikeway routes shall be clearly marked with appropriate signs to guide cyclists and to alert motorists. Such signs shall be placed at intervals and designed in such form as prescribed by the department of natural resources in consultation with the state transportation commission.

The department of natural resources is hereby authorized to co-operate with county conservation boards, boards of supervisors, city councils, or any private organizations interested in the establishment of bikeways, and may consult with such groups in the planning of appropriate bikeway routes and related activities.

[C71, 73, 75, 77, 79, 81, §308A.1]

308A.2 Funds.

The department of natural resources may accept in the name of the state funds contributed by such groups; and such funds shall be used exclusively in the establishment of bikeways as herein provided. Additional funds as may be necessary in purchasing signs and otherwise carrying out the provisions of this chapter may be expended by the department of natural resources if authorized by the general assembly pursuant to appropriations for such purposes; and the department shall be authorized to accept and expend federal funds made available for the purposes of aiding in the implementation of this chapter.

[C71, 73, 75, 77, 79, 81, §308A.2]

308A.3 Certain elevated structures prohibited — exception.

Bikeways and walkways approved as either incidental features of highway construction projects primarily for motor vehicular traffic or as an independent bikeway or walkway construction project constructed pursuant to the Highway Act of 1973, 23 U.S.C. 217, shall not be constructed as elevated structures joining private buildings or so constructed to provide elevated access or egress facilities to private buildings unless the following condition is met:

That portion of project funds necessary to obtain federal funds is provided by private parties benefited by the facilities.

[C77, 79, 81, §308A.3]

CHAPTER 309

SECONDARY ROADS

Subject to reciprocal resident bidder preference in §73A.21

SECONDARY ROAD AND BRIDGE SYSTEMS IN GENERAL

309.1 Definitions.
309.2 Repealed by 51 Acts, ch 103, §22.
309.3 Secondary bridge system.
309.4 to 309.6 Repealed by 57 Acts, ch 139, §1.
309.7 Repealed by 81 Acts, ch 117, §1097.
309.8 and 309.9 Repealed by 81 Acts, ch 117, §1097.
309.10 Use of farm-to-market road fund.
309.11 Systems abolished. Repealed by 98 Acts, ch 1075, §17.
309.12 Construction of terms.
309.13 to 309.15 Repealed by 57 Acts, ch 139, §1.
309.16 Duty of department.

COUNTY ENGINEER

309.17 Engineer — term.
309.18 Compensation.
309.19 Adjacent counties joining in employment.
309.20 Engineers — itemized account.
309.21 Supervision of construction and maintenance work.

CONSTRUCTION PROGRAM

309.22 Construction project — progress report by engineer.
309.23 Review by department and operation of program.
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SECONDARY ROAD AND BRIDGE SYSTEMS
IN GENERAL

309.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Bridge"* includes any structure including supports, erected over a depression or an obstruction, such as water, a highway, or railway. A bridge has a track or passageway for carrying traffic or other moving loads and has an opening measured along the center of the roadway of more than twenty feet. The measurement shall be between the inside faces of abutments, the inside faces of the exterior walls of multiple box culverts, the spring lines of arches, and the horizontal measurement of circular or elliptical structures.

a. The length of a bridge is the overall measurement from back to back of backwalls and abutments measured along the center of the roadway.

b. Multiple pipes, where the distance between openings is less than half the smaller contiguous opening, may be included as a bridge, provided the pipes meet the other definitional requirements for bridges in this subsection.

3. *"Culvert"* includes any structure not classified as a bridge which provides an opening under any roadway, except that this term does not include tile crossing the road, or intakes thereto, where the tile are a part of a tile line or system designed to aid subsurface drainage.

4. *"Department"* means the state department of transportation.

5. *"Fiscal year"* means the period of twelve months beginning on July 1 and ending on June 30.

[C75, 77, 79, 81, §309.1]

84 Acts, ch 1102, §2; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §40, 200, 201

NEW subsections 2 and 3 and former subsections 2 and 3 renumbered as 4 and 5

309.2 Repealed by 51 Acts, ch 103, § 22.

309.3 Secondary bridge system.

The secondary bridge system of a county shall embrace all bridges and culverts on secondary roads as defined in section 306.3.

[C24, 27, §4664, 4665; C31, 35, §4644-c3; C39, §**4644.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.3]

98 Acts, ch 1075, §9

309.4 to 309.6 Repealed by 57 Acts, ch 139, § 1.

309.7 Repealed by 81 Acts, ch 117, § 1097.

309.8 and 309.9 Repealed by 81 Acts, ch 117, § 1097.

309.10 Use of farm-to-market road fund.

Notwithstanding section 310.4, if the board of supervisors of a county does not plan to utilize its farm-to-market road fund allocation for the succeeding fiscal year for farm-to-market projects, the board may annually, by stipulation in the secondary road construction program and secondary road budget submitted to the department in accordance with sections 309.22 and 309.93, determine an amount of the unobligated portion of its allocation, up to a maximum of fifty percent of its anticipated total annual allocation, for the construction and reconstruction of local secondary roads. However, moneys from the farm-to-market road fund shall not be so used if the moneys are needed to match federal funds available for farm-to-market road projects.

A county shall not use farm-to-market road funds as described in this section unless the total funds that the county transferred or provided during the prior fiscal year pursuant to section 331.429, subsection 1, paragraphs *"a"*, *"b"*, *"d"*, and *"e"*, are at least seventy-five percent of the sum of the following:

1. From the general fund of the county, the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county.

2. From the rural services fund of the county, the dollar equivalent of a tax of three dollars and three-eighths of a cent per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county.

[C81, S81, §309.10; 81 Acts, ch 117, §1045]

83 Acts, ch 123, §108, 208, 209; 84 Acts, ch 1102, §3; 84 Acts, ch 1178, §4; 90 Acts, ch 1267, §29; 91 Acts, ch 258, §42

309.11 Systems abolished. Repealed by 98 Acts, ch 1075, § 17.

309.12 Construction of terms.

The classification of county road funds into *"secondary road construction funds"* and *"secondary road maintenance funds"* is hereby abolished. Wherever in any statute the words, *"secondary road construction fund"* or *"secondary road maintenance fund"* appear, they shall be construed to mean, *"secondary road fund"*.

[C24, 27, §4635, 4797; C31, 35, §4644-c13; C39, §**4644.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.12]

309.13 to 309.15 Repealed by 57 Acts, ch 139, § 1.

309.16 Duty of department.

The department shall when requested by the board of supervisors advise with said board as to the manner of constructing and maintaining the secondary roads.

[C31, 35, §4644-c18; C39, §**4644.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.16]

COUNTY ENGINEER

309.17 Engineer — term.

The board of supervisors shall employ one or more registered civil engineers who shall be known as county engineers. The board shall fix their term of employment which shall not exceed three years, but the tenure of office may be terminated at any time by the board.

[C24, 27, §4641; C31, 35, §4644-c19; C39, §**4644.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.17]

309.18 Compensation.

The board shall fix the compensation of the engineers.

Said engineers shall, in the performance of their duties, work under the directions of said board and shall give bonds for the faithful performance of their duties in a sum not less than two thousand nor more than five thousand dollars, to be approved by the board.

[C24, 27, §4641; C31, 35, §4644-c20, -c21; C39, §**4644.18, 4644.19;** C46, 50, 54, 58, 62, 66, §309.18, 309.19; C71, 73, 75, 77, 79, 81, §309.18]

83 Acts, ch 123, §109, 209

309.19 Adjacent counties joining in employment.

The boards of supervisors of two or more adjacent counties may enter into an agreement to jointly employ a county engineer, employ professional and clerical assistants for the engineer, and to provide such services as can be carried on jointly and will operate to their mutual benefit. Such agreement shall be written and entered in their respective minutes. The engineer employed under such agreement shall be the official county engineer for each of the respective boards and shall be employed for such term of years as shall be determined by the boards but in no event longer than the period of time the mutual agreement between the boards is to be in effect. The written agreement shall provide for the determination of the cost of such joint program and the manner of allocation of the cost to each board for inclusion in the respective budgets. The boards by mutual agreement shall designate one board to make payments for salaries and other costs of the joint program. The board shall be reimbursed by the other board or boards in accordance with the joint agreement. The provisions of chapter 28E shall be applicable to this section.

[C71, 73, 75, 77, 79, 81, §309.19]

309.20 Engineers — itemized account.

County engineers and their assistants shall file an itemized and verified account with the board of supervisors for the reimbursement of all expenses incurred. Mileage may be claimed as provided in section 70A.9.

[C24, 27, §4642; C31, 35, §4644-c22; C39, §**4644.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.20]

309.21 Supervision of construction and maintenance work.

All construction and maintenance work shall be performed under the direct and immediate supervision of the county engineer who shall be deemed responsible for the efficient, economical and good-faith performance of said work.

[C31, 35, §4644-c23; C39, §**4644.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.21]

CONSTRUCTION PROGRAM

309.22 Construction project — progress report by engineer.

On or before the fifteenth day of April of each year the board of supervisors, with the assistance of the county engineer, shall, subject to the approval of the department, adopt a secondary road construction program which shall include a project accomplishment list for the next fiscal year, and a project priority list for the succeeding four fiscal years based upon the construction funds, local secondary and farm-to-market, estimated to be available for the period. Subject to departmental approval, any project on the approved priority list may be advanced to and constructed in the accomplishment year and the project accomplishment list may be revised due to unforeseen conditions.

After the close of each fiscal year, and not later than September 15, the county engineer shall submit an annual report to the department. The annual report shall include a statement of the progress made toward the completion of each project contained in the approved project accomplishment list on which work was accomplished, a statement of the total amount expended on each project during the year, and a statement of what portion of the work on each project was done on contract and the amount expended on each contract for each project.

[C31, 35, §4644-c24; C39, §**4644.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.22]

84 Acts, ch 1102, §4

309.23 Review by department and operation of program.

The secondary road construction program is subject to review by the department under section 309.94 and subject to program operation requirements under section 309.96, subsection 2.

84 Acts, ch 1102, §5

309.24 Uniform and unified plan required.

Said program or project shall be planned on the basis of one general, uniform, and unified plan for the complete and permanent construction of the roads embraced therein as to bridge, culvert, tile, and grading or other improvements.

[C31, 35, §4644-c26; C39, §**4644.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.24]

309.25 Material considerations for farm-to-market roads.

In planning and in adopting said program or project by the board of supervisors, said board and the county engineer shall give due and careful consideration, (1) to the location of primary roads, and of roads heretofore improved as county roads, (2) to the market centers and main roads leading thereto, and (3) to rural mail and school bus routes, it being the intent of this chapter that said program or project will, when finally executed, afford the highest possible systematic, intracounty and intercounty connections of all roads of the county.

[C31, 35, §4644-c27; C39, §**4644.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.25]

Farm-to-market roads, chapter 310

309.26 Provisional selection of roads.

The board after due consultation with the county engineer, shall first select in a provisional way the roads which they then consider advisable to embrace in said program, and direct said engineer to make a reconnaissance survey and estimate of all said roads, or of such part thereof as, in view of the public necessity and convenience, present the most urgent need and necessity for early construction.

[C24, 27, §4643; C31, 35, §4644-c28; C39, §**4644.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.26]

309.27 Report of engineer.

In addition to the foregoing, the engineer, when so ordered by the board, shall make written report to the board and shall designate therein in their order of importance the roads which, in the engineer's judgment, are most urgently in need of construction.

[C24, 27, §4643; C31, 35, §4644-c29; C39, §**4644.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.27]

309.28 Recommendations.

The engineer may in the engineer's report recommend that certain definitely described roads or parts thereof be omitted from the provisional program or project, or that certain definitely described roads or parts thereof be added thereto, and in such case the engineer shall clearly enter on the report the reasons therefor.

[C31, 35, §4644-c30; C39, §**4644.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.28]

309.29 Map required.

A map of the county showing the location of the proposed program or project shall accompany the report of the engineer.

[C24, 27, §4644; C31, 35, §4644-c31; C39, §**4644.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.29]

309.30 Additional estimates.

Additional reconnaissance surveys and estimates may be ordered by the board when it deems the same necessary or advisable.

[C31, 35, §4644-c32; C39, §**4644.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.30]

309.31 to 309.33 Repealed by 57 Acts, ch 139, § 1.

309.34 Record required.

After the construction program or project is finally determined, the county auditor shall record the same at length in a county road book.

[C24, 27, §4646; C31, 35, §4644-c36; C39, §**4644.34;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.34]

309.35 When surveys required.

Before proceeding to the construction of any road or roads included in the secondary road construction program where the grading, exclusive of bridges and culverts, is estimated to cost over ten thousand dollars per mile, the county engineer shall cause detailed surveys and plans for the road or roads to be prepared.

[C24, 27, §4643; C31, 35, §4644-c37; C39, §**4644.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.35]

2001 Acts, ch 32, §2

309.36 Nature of survey.

The engineer's survey shall be on the basis of the permanent improvement of said roads, as to bridge, culvert, tile, and road work.

[C24, 27, §4644; C31, 35, §4644-c38; C39, §**4644.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.36]

309.37 Details of survey.

Said survey shall show:

1. A division into sections of all of the roads embraced in said provisional program, a designation of each section by some appropriate number, name, or letter, the starting point and terminus of each section, and the mileage of each section.

2. An accurate plan and profile of the roads surveyed, showing (*a*) cuts and fills, (*b*) outline of grades, (*c*) all existing permanent bridges, culverts and grades, and (*d*) proper bench marks on each bridge and culvert.

3. The drainage, both surface and subdrainage, necessary to prepare said roads for complete construction.

4. The location of all lines of tile and size thereof.

5. All necessary bridges and culverts, their length, height, and width and foundation soundings.

6. An estimate of the watershed having relation to each bridge and culvert.

7. An estimate of the construction cost of said roads on the basis of permanent bridges, culverts, tile, and road work.

[C24, 27, §4644; C31, 35, §4644-c39; C39, §**4644.37;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.37]

309.38 Existing surveys.

The engineer may adopt any existing survey of any road or part thereof which is embraced in said program or project, provided such existing survey substantially complies, or is made to comply, with the requirements of this chapter.

[C31, 35, §4644-c40; C39, §**4644.38;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.38]

309.39 Contracts and specifications.

The various contracts for the carrying out of said construction program or project in the most efficient, practicable and economical manner shall, as far as possible, be accompanied by standard specifications, and no traveled roadway shall be less than twenty-two feet from shoulder to shoulder.

[C31, 35, §4644-c41; C39, §**4644.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.39]

309.40 Advertisement and letting.

All contracts for road or bridge construction work and materials for which the engineer's estimate exceeds fifty thousand dollars, except surfacing materials obtained from local pits or quarries, shall be advertised and let at a public letting.

[C24, 27, §4647; C31, 35, §4644-c42; C39, §**4644.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.40]

91 Acts, ch 53, §1

309.40A Emergency highway and bridge projects.

Notwithstanding section 309.40, a county may contract for the emergency repair, restoration, or reconstruction of a highway or bridge under the county's jurisdiction without advertising for bids if all of the following conditions are met:

1. The emergency was caused by an unforeseen event causing the failure of a highway, bridge, or other highway structure so that the highway is unserviceable, or where immediate action is necessary to prevent further damage or loss.

2. The county solicits written bids from three or more contractors engaged in the type of work needed.

3. The necessary work can be done for less than one hundred thousand dollars.

4. If possible, the county notifies the appropriate Iowa highway contractors' associations of the proposed work.

2001 Acts, ch 32, §3

309.41 Optional advertisement and letting.

Contracts not embraced within the provisions of section 309.40 or 309.40A shall be either advertised and let at a public letting; or, where the cost does not exceed the engineer's estimate, let through informal bid procedure by contacting at least three qualified bidders prior to letting the contract. The informal bids received together with a statement setting forth the reasons for use of the informal procedure and bid acceptance shall be entered in the minutes of the board of supervisors meeting at which such action was taken.

Nothing contained in this section shall be deemed to prohibit the board of supervisors from purchasing material and using county equipment and regularly employed county road personnel on a project within their capability as determined by the county engineer.

[C24, 27, §4648; C31, 35, §4644-c43; C39, §**4644.41;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.41]

2002 Acts, ch 1119, §41

Unnumbered paragraph 1 amended

309.42 Review of road, bridge or culvert contracts. Repealed by 99 Acts, ch 13, § 28, 29.

309.43 Record of bids.

All bids received shall be publicly opened, at the time and place specified in the advertisement, and shall be recorded in detail, in the road book, by the county auditor; and the county engineer shall in all instances of day labor, private or public contracts, file a detailed cost accounting sheet with the county auditor; said book and cost sheets shall at all times be open to public inspection.

[C24, 27, §4649; C31, 35, §4644-c45; C39, §**4644.43;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.43]

309.44 Repealed by 49 Acts, ch 125, § 8. See § 314.7.

309.45 Repealed by 49 Acts, ch 125, § 6. See § 314.5.

ANTICIPATION OF FUNDS

309.46 Construction fund anticipated.
The board before issuing anticipatory certificates shall seek the advice of the department and issue said certificates to an amount not exceeding fifty percent of the estimated funds which will accrue to the secondary road fund during any stated period of from one to two years.
[C31, 35, §4644-c48; C39, §**4644.46;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.46]

309.47 Anticipatory resolution.
Such certificates shall be authorized by a duly adopted resolution which shall specify:
1. The secondary road funds, specifying the year or years, which are to be anticipated.
2. The amount of certificates authorized.
3. The denomination of each certificate.
4. The rate of interest which each certificate shall bear which shall not exceed that permitted by chapter 74A, payable annually.
5. The authorization of the chairperson of the board of supervisors and of the county auditor, respectively, to sign and countersign such certificates.
[C31, 35, §4644-c49; C39, §**4644.47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.47]

309.48 Recitals.
Each certificate shall recite:
1. The annual accruing secondary road funds (naming the year) of which the certificate is anticipatory.
2. That said certificate shall be payable on or before December 31 of said year.
3. That said certificate is payable solely from said accruing secondary road funds.
[C31, 35, §4644-c50; C39, §**4644.48;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.48]

309.49 Consecutive numbering and payment.
The series of certificates which anticipate the accruing of funds during a given year shall be numbered consecutively and paid in the order of said numbering.
[C31, 35, §4644-c51; C39, §**4644.49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.49]

309.50 Execution.
Upon the signing of each of said certificates by the chairperson of the board, said certificates shall be delivered to the county auditor, who shall countersign the same, charge the county treasurer with the amount thereof, and deliver the same to such latter officer, who shall be responsible therefor on the county treasurer's bond.
[C31, 35, §4644-c52; C39, §**4644.50;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.50]

309.51 Taxation.
Said certificates shall be exempt from taxation.
[C31, 35, §4644-c53; C39, §**4644.51;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.51]

309.52 Duty of treasurer.
The treasurer shall sell the certificates in accordance with chapter 75, or if unable to sell the certificates for par plus accrued interest, the treasurer may apply the certificates at par plus accrued interest in payment of any warrants duly authorized and issued for secondary road work.
[C31, 35, §4644-c54; C39, §**4644.52;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.52]
83 Acts, ch 123, §110, 209

309.53 Registration of certificate holders.
The county treasurer shall enter on a record to be kept by the county treasurer the name and post-office address of all persons to whom any of said certificates are issued, with a particular designation of the certificates delivered to each person.
[C31, 35, §4644-c55; C39, §**4644.53;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.53]

309.54 Registration of new holder.
Any subsequent holder may present certificates to the county treasurer and cause the subsequent holder's name and post-office address to be entered in lieu of that of such former holder.
[C31, 35, §4644-c56; C39, §**4644.54;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.54]

309.55 Terminating interest.
When the accruing funds in the hands of the county treasurer, for a year covered by anticipatory certificates, are sufficient to pay the first retirable certificate or certificates, the county treasurer shall, by mail, as shown by the county treasurer's records, promptly notify the holder of such certificate of such fact, and ten days from and after the mailing of such letter all interest on such certificates shall cease.
[C31, 35, §4644-c57; C39, §**4644.55;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.55]
98 Acts, ch 1107, §3

MISCELLANEOUS PROVISIONS

309.56 Project plans. Repealed by 99 Acts, ch 13, § 28, 29.

309.57 Area service classification.

The county board of supervisors, after consultation with the county engineer, and for purposes of specifying levels of maintenance effort and access, may classify the area service system into three classifications termed area service "A", area service "B", and area service "C". The area service "A" classification shall be maintained in conformance with applicable statutes. Area service "B" classification roads may have a lesser level of maintenance as specified by the county board of supervisors, after consultation with the county engineer. Area service "C" classification roads may have restricted access and a minimal level of maintenance as specified by the county board of supervisors after consultation with the county engineer.

Roads within area service "B" and "C" classifications shall have appropriate signs, conforming to the Iowa state sign manual, installed and maintained by the county at all access points to roads on this system from other public roads, to adequately warn the public they are entering a section of road which has a lesser level of maintenance effort than other public roads. In addition, area service "C" classification roads shall adequately warn the public that access is limited.

Roads may only be classified as area service "C" by ordinance or resolution upon petition signed by all landowners adjoining the road. The ordinance or resolution shall specify the level of maintenance effort and the persons who will have access rights to the road. The county shall only allow access to the road to the owner, lessee, or person in lawful possession of any adjoining land, or the agent or employee of the owner, lessee, or person in lawful possession, or to any peace officer, magistrate, or public employee whose duty it is to supervise the use or perform maintenance of the road. Access to the road shall be restricted by means of a gate or other barrier.

Notwithstanding section 716.7, subsection 4, entering or remaining upon an area service "C" classification road without justification after being notified or requested to abstain from entering or to remove or vacate the road by any person lawfully allowed access shall be a trespass as defined in section 716.7.

A road with an area service "C" classification shall retain the classification until such time as a petition for reclassification is submitted to the board of supervisors. The petition shall be signed by one or more adjoining landowners. The board of supervisors shall approve or deny the request for reclassification within sixty days of receipt of the petition.

The county and officers, agents, and employees of the county are not liable for injury to any person or for damage to any vehicle or equipment, or contents of any vehicle or equipment, which occurs proximately as a result of the maintenance of a road which is classified as area service "B" or "C" if the road has been maintained to the level required for roads classified as area service "B" or "C".

[S81, §309.57; 81 Acts, ch 100, §1]
96 Acts, ch 1103, §1; 2002 Acts, ch 1063, §10
Unnumbered paragraph 5 amended

309.58 Action on bond — limitation.

No provision in a contract shall be valid which seeks to limit the time to less than five years in which an action may be brought upon the bond covering concrete work nor to less than one year upon the bond covering other work.

[S13, §1527-s18; C24, 27, 31, 35, 39, §**4652;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.58]

309.59 Repealed by 49 Acts, ch 125, § 4. See § 314.3.

309.60 Repealed by 49 Acts, ch 125, § 5. See § 314.4.

309.61 Advance payment of payrolls.

The board of supervisors may authorize the county auditor to draw warrants for the amount of payrolls for labor furnished under the day labor system, when said payrolls are certified to by the engineer in charge of the work. Said bills shall be passed on by the board at the first meeting following said payment.

[SS15, §1527-s11; C24, 27, 31, 35, 39, §**4655;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.61]

309.62 Repealed by 49 Acts, ch 125, § 9. See § 314.8.

309.63 Gravel beds.

The board of supervisors of any county may, within the limits of such county and without the limits of any city, purchase or condemn any lands for the purpose of obtaining gravel or other suitable material with which to improve the secondary highways of such county, including a sufficient roadway to such land by the most reasonable route, or the board may purchase such material outside the limits of their county, and in either case pay for the same out of the secondary road funds.

[S13, §4024-i; C24, 27, 31, 35, 39, §**4657;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.63]

309.64 Repealed by 51 Acts, ch 103, § 22. See § 306.13.

309.65 Sale of gravel bed property.

Notwithstanding section 309.66, after notice as

provided in section 331.305 and a public hearing, the board of supervisors may sell all or part of the property acquired for gravel and other highway improvement materials if the property has been owned by the county for more than five years and the board finds that the property to be sold is not needed for highway improvement purposes or the property is not suitable for those purposes.

88 Acts, ch 1254, §1

309.66 Use of gravel beds.

The board of supervisors may permit private parties or municipal corporations to take materials from such acquired lands in order to improve any street or highway in the county, but it shall be a serious misdemeanor for any person to use or for the board of supervisors to dispose of any such material for any purpose other than for the improvement of such streets or highways.

[S13, §2024-i1, -i2; C24, 27, 31, 35, 39, §**4659;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.66]

309.67 Duties of county board of supervisors and the county engineer.

The county board of supervisors is charged with the duty of establishing policies and providing adequate funds to properly maintain the secondary road system. The county engineer, pursuant to section 309.21 and board policy, shall adopt such methods and recommend such personnel and equipment necessary to maintain continuously, in the best condition practicable, the entire mileage of said system.

[S13, §1527-s15; C24, 27, 31, 35, §4660; C39, §**4660, 4778;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.67]

Duty to remove obstruction, chapter 319

309.68 Intercounty highways.

Boards of supervisors of adjoining counties in this state shall:

1. Make proper connections between roads which cross county lines and which afford continuous lines of travel.

2. Adopt plans and specifications for road, bridge, and culvert construction, reconstruction, and repairs upon highways along and across county boundary lines, and make an equitable division between counties of the cost and work attending the execution of the plans and specifications.

3. Make joint agreements for the location, construction, and maintenance of roads under their jurisdiction wholly within one county to provide road access to lands in an adjoining county, when the location provides the most economical and practical method of providing road access. The expense of constructing and maintaining the road shall be equitably shared by the counties in a proportion as the boards may determine.

[C24, 27, 31, 35, 39, §**4661;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.68; 82 Acts, ch 1110, §3]

309.69 Enforcement of duty.

If the boards are unable to agree and one of the boards appeals to the department, the department shall notify the auditors of the interested counties that it will, on a day not less than ten days hence, at a named time and place within any of the interested counties, hold a hearing to determine all matters relating to any anticipated duty. At the hearing the department shall fully investigate all questions pertaining to the disputed matters, and shall, as soon as practicable, certify its decision to the different boards, which decision shall be final, and the boards shall forthwith comply with the order in the same manner as though the work was located wholly within the county.

[C24, 27, 31, 35, 39, §**4662;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.69; 82 Acts, ch 1110, §4]

309.70 and 309.71 Repealed by 82 Acts, ch 1110, § 12.

309.72 Repealed by 49 Acts, ch 125, § 11. See § 314.10.

309.73 Repealed by 81 Acts, ch 117, § 1097. See § 331.441(2)*"b"*(2).

309.74 Width of bridges and culverts.

All culverts shall have a clear width of roadway of at least twenty feet. Bridges shall have a clear width of roadway of at least sixteen feet.

[C51, §517; R60, §822; C73, §1001; C97, §1572; S13, §1527-s7; C24, 27, 31, 35, 39, §**4667;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.74]

309.75 Definitions. Repealed by 2002 Acts, ch 1119, § 110. See § 309.1.

309.76 to 309.78 Repealed by 63 Acts, ch 186, § 1 – 3.

309.79 Bridge specifications.

Standard specifications for all bridges and culverts, railroad overhead crossings, or subways, shall be furnished without cost to the counties and railroad companies by the department, and work shall be done in accordance therewith.

[SS15, §1527-s11; C24, 27, 31, 35, 39, §**4671;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.79]

309.80 Repealed by 82 Acts, ch 1110, § 12. See § 309.42.

309.81 Record of plans.

Before beginning the construction of a perma-

nent bridge or culvert by day labor or by contract, the plans, specifications, estimate of drainage area, estimates of costs, and specific designation of the location of the bridge or culvert shall be filed in the county engineer's office by the engineer.

[SS15, §1527-s11; C24, 27, 31, 35, 39, §**4673;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.81]

309.82 Record of final cost.

On completion of a bridge or culvert, a detailed statement of cost, and of additions or alterations to the plans shall be filed by the engineer, all of which shall be retained in the county engineer's office as permanent records.

[SS15, §1527-s11; C24, 27, 31, 35, 39, §**4674;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.82]

94 Acts, ch 1173, §13

309.83 Repealed by 78 Acts, ch 1108, § 24.

309.84 Repealed by 82 Acts, ch 1104, § 61.

309.85 to 309.88 Repealed by 81 Acts, ch 117, § 1097.

309.89 Repealed by 81 Acts, ch 117, § 1097. See § 331.441(2c).

309.90 Repealed by 49 Acts, ch 125, § 12. See § 314.11.

309.91 Repealed by 81 Acts, ch 117, § 1097.

309.92 Repealed by 49 Acts, ch 125, § 3. See § 314.2.

COUNTY SECONDARY ROAD BUDGETS

309.93 Itemized statement.

On or before April 15 of each year, the board of supervisors, with the assistance of the county engineer, shall adopt and submit to the department for approval the county secondary road budget for the next fiscal year. The budget shall include an itemized statement of:

1. Estimated revenues to be raised by property taxation for secondary road purposes.
2. Estimated revenues to be received from the state road use tax fund.
3. Estimated revenues from all other sources for secondary road purposes.
4. The proposed expenditures from the road fund during the next fiscal year. The estimates of proposed expenditures shall be itemized and classified in a manner prescribed by the department.
5. The actual expenditures for the preceding two fiscal years and the estimated expenditures for the current fiscal year. These shall be itemized and classified in the same manner as proposed expenditures.
6. The cash balance of the road fund at the end of the preceding fiscal year, an estimate of the cash balance at the end of the current fiscal year, and an estimate of the cash balance at the end of the next fiscal year.
7. A detailed cost accounting of all instances in the previous fiscal year of the use of day labor or public or private contracts for construction, reconstruction, or improvement projects on either the farm-to-market or secondary road system, in the manner prescribed by rule of the department under section 314.1A. The statement shall also include the costs of purchasing, leasing, or renting construction or maintenance equipment and an accounting of the use of such equipment for construction, reconstruction, or improvement projects on either the farm-to-market or secondary road system during the previous fiscal year.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §309.93]

84 Acts, ch 1102, §6; 2001 Acts, ch 32, §4, 14

Subsection 7 is effective July 1, 2002; 2001 Acts, ch 32, §14

NEW subsection 7

309.94 Review by department.

The department shall approve or disapprove the budget adopted by the board of supervisors. If the budget is not approved, the department shall state the reasons for disapproval when the budget is returned to the county. The department shall act upon a budget and return the budget to the county not later than June 1. Upon disapproval of any proposed expenditure in a budget, the county may submit a revised budget to the department for approval. The department shall act upon the revised budget within thirty days.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §309.94]

84 Acts, ch 1102, §7

309.95 Amendments.

The budget shall be binding except that should bona fide unforeseen conditions arise, the board of supervisors may amend such budget during the year for which it was adopted. Such amendments shall be submitted to the department for approval with a statement of the reasons necessitating the amendment. The department shall approve or disapprove such amendments in the same manner as original budget estimates except that the department shall act upon and return such amendments within thirty days after their receipt by the department. The department acting upon budget amendments is directed to approve only such amendments as are actually necessitated by unforeseen conditions.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §309.95]

309.96 Operation of budgeted program.

1. No county shall expend from the secondary

road fund an amount in excess of the total amount of the budget or amended budget as adopted by the board of supervisors, whether such budget is approved or disapproved by the department. In order to permit any county to adjust its secondary road income to changed needs that may occur after the budget has been approved by the department the expenditures for any individual item within the budget may exceed by not more than ten percent the amount budgeted for that item without department approval or the submission of an amended budget, provided, however, that the expenditures for one or more other individual items are less than budgeted and the total expenditures from the secondary road fund do not exceed the total secondary road budget.

2. In the event that a county secondary road budget or amended budget thereto is disapproved by the department, the county may elect either to revise such budget or amended budget so as to receive approval or the county may elect to operate with such disapproved budget or amended budget. In the event the county secondary road budget is disapproved in whole or in part, within twenty days after receipt of the department's report, the board of supervisors shall cause to be published in the official newspapers of the county, notice of a public hearing to be held within ten days of said publication, on the department's recommendations, and at said hearing the board of supervisors shall amend or adopt their original budget.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §309.96]

309.97 Construction of law.

Nothing in sections 309.93 to 309.96 shall contravene or affect the provisions of chapter 24.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §309.97]

CHAPTER 310

FARM-TO-MARKET ROADS

Subject to reciprocal resident bidder preference in §73A.21

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310.27 Period of allocation — reversion — temporary transfers.
310.28 Engineering and other expense.
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310.31 Repealed by 49 Acts, ch 122, §14.
310.32 Repealed by 75 Acts, ch 167, §15.
310.33 Repealed by 47 Acts, ch 162, §4.
310.34 Secondary road research fund.
310.35 Use of fund.
310.36 Report to governor.

310.1 Definitions.

As used in this chapter, the following words, terms or phrases shall be construed or defined as follows:

1. *"County's allotment of road use tax fund"* or *"allotment of road use tax fund"* means that part of the road use tax fund allotted to any county by the treasurer of state from the portion of the state road use tax fund which the treasurer has credited to the secondary road fund of the counties.

2. *"Federal aid"* or *"federal aid secondary road fund"* shall mean funds allotted to the state of Iowa by the federal government to aid in the construction of secondary roads and which funds must be matched with funds under the control of the department.

3. *"Department"* means the state department of transportation.

[C39, §**4686.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.1]

83 Acts, ch 123, §111, 209

310.2 Supervisors agreement.

The county board of supervisors of any county is empowered, on behalf of the county, to enter into any arrangement or agreement with or required by the duly constituted federal or state authorities in order to secure the full co-operation of the government of the United States and of the state of Iowa, and the benefit of all present and future federal or state allotments in aid of secondary road construction, reconstruction or improvement.

[C39, §**4686.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.2]

310.3 Funds.

There is hereby created a fund which shall be known as the farm-to-market road fund which shall be made up as follows:

1. All federal aid secondary road funds received by the state.
2. All road use tax funds by law credited to the farm-to-market road fund.
3. All other funds which may, under the provisions of this chapter or any other law, be credited or appropriated for the use of the farm-to-market road fund.

[C39, §**4686.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.3]

Allocation of funds, §312.2

310.4 Use of fund.

Said farm-to-market road fund is hereby appropriated for and shall be used in the establishment, construction, reconstruction or improvement of the farm-to-market road system, including the drainage, grading, surfacing, resurfacing, construction of bridges and culverts, the elimination, protection, or improvement of railroad crossings, the acquiring of additional right of way and all other expenses incurred in the construction, reconstruction or improvement of said farm-to-market road system under this chapter.

[C39, §**4686.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.4]

310.5 Repealed by 49 Acts, ch 122, § 11. See § 312.5.

310.6 Accounts by department.

The department shall keep accounts in relation to the farm-to-market road fund and each county's allotment thereof, crediting each fund with all amounts by law creditable thereto, and charging each with all duly and finally approved vouchers for claims properly chargeable thereto.

[C39, §**4686.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.6]

310.7 Treasurer's monthly statement.

The account of the farm-to-market road fund, kept by the director of revenue and finance and the state treasurer, shall deal with said funds as a single fund with all credits thereto and disbursements therefrom.

[C39, §**4686.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.7]

See treasurer's report to department of transportation, §312.4

310.8 Quarterly statement to county engineer.

The department shall, quarterly, advise each county engineer of the condition of said county's allotment of the farm-to-market road fund. Said statement shall show the balance in said county's allotment at the beginning of said period, the amount or amounts allotted to said county during said period, the amount disbursed from said county's allotment during said period, and the balance in said county's allotment at the end of the said period. Said statement shall also show the estimated outstanding obligations against the said county's allotment at the date of said statement.

[C39, §**4686.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.8]

310.9 Projects authorized by department.

Before authorizing for letting any farm-to-market road project, the department shall satisfy itself that the county engineer's office in that county is organized, equipped and financed to discharge satisfactorily the duties required in this chapter.

[C39, §**4686.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.9; 82 Acts, ch 1110, §6]

310.10 Farm-to-market road system defined.

The farm-to-market road system means the farm-to-market road system as defined in section 306.3.

[C39, §**4686.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.10]

89 Acts, ch 293, §8; 98 Acts, ch 1075, §10

310.11 Participating county — funds reserved.

Any county having complied with the provisions of this chapter may by its board of supervisors submit to the department for its approval project statements for the construction, reconstruction, or improvement of farm-to-market roads.

[C39, §**4686.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.11]

310.12 Repealed by 49 Acts, ch 127, § 5.

310.13 Surveys, plans and estimates.

The county engineer shall make or cause to be made, the surveys, plans and estimates for any project, and submit them to the board of supervisors for approval and the department for authorization for letting. The construction work on a proj-

ect shall be done in accordance with the plans, except insofar as they are modified to meet unforeseen or better understood conditions.

[C39, §**4686.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.13; 82 Acts, ch 1110, §7]

310.14 Bids — department or county supervisors.

When the plans and specifications for any farm-to-market funded project are filed with and authorized for letting by the department, it shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids and make a recommendation to award or reject a contract. The recommendation to award a contract shall be submitted to the board of supervisors of the county in which the project is located for its approval and award of contract. Upon receiving the approval of the county board on the recommended contract award, the department shall take final action to concur in the award of the contract. For a project without federal funds the above procedure may be reversed and the county board may be authorized to advertise for bids, and, subject to concurrence by the department, award a contract for the construction work.

[C39, §**4686.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.14; 82 Acts, ch 1110, §8]

See §314.2

310.15 Repealed by 49 Acts, ch 125, § 2. See § 314.1.

310.16 Claims charged to county allotment.

All claims for improving farm-to-market roads hereunder shall be paid from the farm-to-market road fund and charged to the allotment of said fund for the county in which said project is located.

[C39, §**4686.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.16]

310.17 Repealed by 49 Acts, ch 125, § 4. See § 314.3.

310.18 Partial payments during construction.

Partial payments may be made on work in progress, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect in the work. The board of supervisors, the county engineer, or the department may approve claims. Approval may be evidenced by the signature of the county engineer or chairperson of the board or department, or a majority of the members of the board or department, on the individual claims or on the abstract of a number of claims with the individual claims attached to the abstract.

[C39, §**4686.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.18]

97 Acts, ch 104, §4

310.19 Supervision and inspection of work.

The county engineer is charged with the duty of supervision, inspection and direction of the work of construction of farm-to-market road projects under this chapter. In this capacity, the county engineer is responsible for the efficient, economical, and good-faith performance of the work.

[C39, §**4686.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.19; 82 Acts, ch 1110, §9]

310.20 Supervisors resolution to state treasurer.

Any county may, in any year, by resolution of its board of supervisors, make available for improvement or construction of farm-to-market roads within the county any portion of its allotment of road use tax funds. Upon certification of such a resolution, the state treasurer shall place in the county's allotment of the farm-to-market road fund the amount authorized by such resolution.

[C39, §**4686.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.20]

310.21 Repealed by 49 Acts, ch 125, § 6. See § 314.5.

310.22 Right of way — how acquired.

Right of way for farm-to-market road projects under this chapter shall be acquired by the county in accordance with chapter 306 and chapter 316.

[C39, §**4686.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.22; 82 Acts, ch 1110, §10]

310.23 and 310.24 Repealed by 51 Acts, ch 103, § 22. See § 306.13 and 306.15.

310.25 Repealed by 49 Acts, ch 125, § 7. See § 314.6.

310.26 Repealed by 49 Acts, ch 127, § 5. See § 312.7.

310.27 Period of allocation — reversion — temporary transfers.

The farm-to-market road fund allotted to any county as provided in this chapter shall remain available for expenditure in said county for three years after the close of the fiscal year during which said sums respectively were allocated. Any sum remaining unexpended at the end of the period during which it is available for expenditure, shall be reapportioned among all the counties as provided in section 312.5 for original allocations.

For the purposes of this section, any sums of the farm-to-market road fund allotted to any county shall be presumed to have been *"expended"* when

a contract has been awarded obligating the sums. When projects and their estimated costs, which are proposed to be funded from the farm-to-market road fund, are submitted to the department for approval, the department shall estimate the total funding necessary and the period during which claims for the projects will be filed. After anticipating the funding necessary for approved projects, the department may temporarily allocate additional moneys from the farm-to-market road fund for use in any other farm-to-market projects. However, a county shall not be temporarily allocated funds for projects in excess of the county's anticipated farm-to-market road fund allocation for the current fiscal year plus the four succeeding fiscal years.

If in the judgment of the department the anticipated claims against the primary road fund for any month are in excess of moneys available, a temporary transfer for highway construction costs may be made from the farm-to-market road fund to the primary road fund providing there will remain in the transferring fund a sufficient balance to meet the anticipated obligations. All transfers shall be repaid from the primary road fund to the farm-to-market road fund within sixty days from the date of the transfer. A transfer shall be made only with the approval of the director of management and shall comply with the director of management's rules relating to the transfer of funds. Similar transfers may be made by the department from the primary road fund to the farm-to-market road fund and these transfers shall be subject to the same terms and conditions that transfers from the farm-to-market road fund to the primary road fund are subject.

[C39, §**4686.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.27]

85 Acts, ch 83, §1; 86 Acts, ch 1058, §1

310.28 Engineering and other expense.

Engineering, inspection and administration expense in connection with any farm-to-market road project may be paid from said county's allotment of the farm-to-market road fund. Any such expense incurred by the department may in the first instance be advanced out of the primary road fund, said amounts later being reimbursed to said funds out of the farm-to-market road fund.

Provided, that no part of the salary or expense of the county engineer, any member of the county board of supervisors, any member of the department, the chief engineer, or any department head or district engineer of the department shall be paid out of the farm-to-market road fund.

[C39, §**4686.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.28]

310.29 Maintenance by county.

Any farm-to-market road constructed under this chapter shall be maintained by the county. If any county fails to satisfactorily maintain any road that is part of the federal aid secondary system, the department shall give the board of supervisors notice of that fact. If within sixty days after receipt of notice the highway has not been placed in proper condition of maintenance the department may withhold authorization for letting of any project using farm-to-market funds until a proper condition of maintenance has been restored.

[C39, §**4686.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.29; 82 Acts, ch 1110, §11]

310.30 Repealed by 49 Acts, ch 127, § 5.

310.31 Repealed by 49 Acts, ch 122, § 14.

310.32 Repealed by 75 Acts, ch 167, § 15.

310.33 Repealed by 47 Acts, ch 162, § 4.

310.34 Secondary road research fund.

Notwithstanding any law to the contrary, the department is hereby authorized to set aside each year not to exceed one and one-half percent of the receipts in the farm-to-market road fund in a fund to be known as the secondary road research fund.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.34]

310.35 Use of fund.

The secondary road research fund shall be used by the department solely for the purpose of financing engineering studies and research projects which have as their objective the more efficient use of funds and materials that are available for the construction and maintenance of secondary roads, including bridges and culverts located thereon.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.35]

310.36 Report to governor.

The research projects and engineering studies authorized shall be conducted in co-operation with the county engineers. On or before January 31 each year the department shall file a report with the governor, state transportation commission, county engineers, chief clerk of the house of representatives, and secretary of the senate showing the work accomplished and projects undertaken under section 310.35.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §310.36]

86 Acts, ch 1245, §1933

Annual report, §7A.9

CHAPTER 311

SECONDARY ROAD ASSESSMENT DISTRICTS

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311.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §311.1 transferred to §311.1A

311.1A Power to establish.

In order to provide for improvements such as grading, draining, bridging, aggregate surfacing, paving, or resurfacing of secondary roads, the board of supervisors may, on petition, establish secondary road assessment districts.

[C24, 27, 31, 35, 39, §**4746;** C46, §311.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.1]

85 Acts, ch 143, §1

C2001, §311.1A

311.2 Width of district.

Any such secondary road assessment district shall be not more than one-half mile wide on each side of the road or roads to be improved by said district.

[C24, 27, 31, 35, 39, §**4746;** C46, §311.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.2]

311.3 Amount of assessment.

Special assessments in the aggregate amount of not less than fifty percent of the total estimated cost of improvement of a road included in a secondary road assessment district project shall be apportioned and levied on the lands included in the secondary road assessment district.

[C24, 27, 31, 35, 39, §**4753;** C46, §311.10; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.3]

85 Acts, ch 143, §2

311.4 County line road.

When it is desired to improve a secondary road on a county line, as a secondary road assessment district project, the board of supervisors of any county may establish an assessment district in its county, and levy and collect special assessments for the payment of that portion of the estimated cost of the project assessable against lands in that county. Each county shall pay its share of the cost of the project as provided in this chapter, in the same manner as though the project were located wholly within that county.

[C24, 27, 31, 35, 39, §**4746;** C46, §311.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.4]

85 Acts, ch 143, §3

311.5 Project in city.

A road or street which is a continuation of a secondary road within a city and which the county board desires to improve, may by resolution of the county board and concurrence by the council of the city be improved as a secondary road assessment district project or part of a project as provided in this chapter. The lands within the city abutting on or adjacent to the street or road may be included within the secondary road assessment district and assessed for the improvement upon the same basis and in the same manner as though the lands were located outside of a city.

[C24, §4754; C27, 31, 35, §4745-a1; C39,

§**4745.1;** C46, §311.2; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.5]
85 Acts, ch 143, §4

311.6 Petition — information required.
The petition for a secondary road assessment district proposing to establish the district shall intelligibly describe the road or roads proposed to be improved, the nature of the proposed improvement, the percentage of the estimated cost of improving the road proposed to be assessed against the property in the district and the lands proposed to be included in the district.
The petition shall be signed by fifty percent of the owners of the lands within the proposed district, or by fifty percent of the owners of the land within the proposed district who reside within the county.
[C24, 27, 31, 35, 39, §**4746;** C46, §311.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.6]
85 Acts, ch 143, §5

311.7 Improvement by private funds.
The owner or a group of owners of not less than seventy-five percent of the lands adjacent to, or abutting upon any secondary road may, on or before October 1 of any year, petition the board of supervisors of their county for the improvement of the road, and for the assessment of not less than fifty percent, or a greater portion as provided in the petition, of the cost of the improvement, to the lands adjacent to, or abutting upon the road. When the petition has been filed, the board of supervisors shall review the project proposed by the petition and may accept or reject the proposed project. If the board of supervisors accepts the petition, the board shall include the project in the secondary road construction program of the county and establish a priority for the completion of the project.
The board of supervisors shall proceed with the construction and completion of the project in accordance with its assigned priority and under the same procedure as is prescribed generally for the improvement of secondary roads by assessment, and shall establish a special secondary road assessment district and assess against the lands included in the district not less than fifty percent, or a greater portion as provided in the petition, of the engineer's estimated cost of the improvements of the road included in the project against all the lands adjacent to or abutting upon the road.
However, if the owners of all the lands included in any special secondary road assessment district under this section, subscribe and deposit with the county treasurer an amount not less than fifty percent, or a greater portion as provided in the petition, of the engineer's estimated cost of the improvement of the road included in the project, the board of supervisors shall not establish the special assessment district, but shall accept the donations in lieu of an assessment, and shall otherwise proceed to the improvement of the road.
The total expenditure of secondary road funds of the county in any year for or on account of special secondary road assessment district projects on local secondary roads under this section shall not exceed the total secondary road funds legally expendable for construction on local secondary roads in the county in the year.
Upon the completion of the road, and the satisfaction of all claims in relation to the road, any balance then remaining of the funds provided by the sponsors shall be returned to them according to their respective interests, providing all guarantees made by the sponsors have been fulfilled.
[C24, 27, 31, 35, 39, §**4747, 4753;** C46, §311.4, 311.10; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.7]
83 Acts, ch 123, §112, 209; 85 Acts, ch 143, §6; 86 Acts, ch 1024, §1

311.8 County engineer's report.
Upon the filing of the petition with the county engineer proposing the establishment of a secondary road assessment district, the county engineer shall prepare a report on the proposed district, which report shall include:
1. An estimate of the cost of the improvement proposed on the road included in the proposed district.
2. A plat of said proposed district which plat shall show the road or roads proposed to be improved, the various tracts and parcels of real estate included in said proposed district, and the ownership of such lands.
3. An approximately equitable apportionment of not less than fifty percent of the estimated cost of the improvement among the tracts and parcels of real estate included in the proposed district.
4. A statement whether all of the secondary roads to be improved in the proposed secondary road assessment district project have been built to permanent grade and properly drained.
5. Any information the county engineer may deem pertinent.
[C24, 27, 31, 35, 39, §**4746, 4748;** C46, §311.3, 311.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §311.8; 81 Acts, ch 117, §1211]
85 Acts, ch 143, §7

311.9 Publicly owned real estate.
In making said apportionment, real estate owned by the state, county or any city, shall be treated as other real estate, but no other publicly owned real estate shall be included. In apportioning benefits to real estate owned by a city, the county or the state, no consideration shall be given to the buildings thereon.
[C24, §4707; C27, 31, 35, §4753-a1; C39, §**4753.01;** C46, §311.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.9]

311.10 Estimate and apportionment — presumption.

Said estimated cost shall carry the presumption, in the absence of a contrary showing, that the same correctly represents the probable cost of said project as nearly as can be determined in advance of the actual doing and completion of the work. Said apportionment shall carry the presumption, in the absence of a contrary showing, that the same is fair, just, equitable, and in proportion to the benefits and not in excess thereof.

[C24, §4707; C27, 31, 35, §4753-a1; C39, §**4753.01;** C46, §311.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.10]

311.11 Hearing — notice.

The board of supervisors shall fix a time for hearing on the proposal for the establishment of the secondary road assessment district and on the apportionment of not less than fifty percent of the estimated cost of the proposed improvement, and shall cause the county engineer to publish notice of the hearing. The notice shall state:

1. The time and place of hearing,
2. The road or roads proposed to be improved,
3. The type of surfacing proposed,
4. The estimated cost of the proposed improvement,
5. A description of the lands lying within said proposed district,
6. The ownership of said lands as shown by the transfer books in the auditor's office,
7. A statement of the amount apportioned to each tract or parcel of real estate as shown by the engineer's report,
8. That at said hearing the amount apportioned to any tract or parcel of land may be increased or decreased without further notice,
9. That all objections to the establishment of the district, to the apportionment report, or to the proceedings relating to the district or report must be specifically made in writing and filed with the county engineer on or before noon of the day set for the hearing, and
10. That a failure to make and file such objections will be deemed a conclusive waiver of all such objections.

[C24, §4707, 4750, 4751; C27, 31, 35, §4750, 4751, 4753-a1; C39, §**4750, 4751, 4753.01;** C46, §311.7, 311.8, 311.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §311.11; 81 Acts, ch 117, §1212]
85 Acts, ch 143, §8

311.12 Publication of notice.

The notice shall be published as provided in section 331.305 in the county as near as practicable to the district. Proof of the publication shall be made by the publisher by affidavit filed with the county engineer.

[C24, §4707; C27, 31, 35, §4753-a1; C39, §**4753.01;** C46, §311.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §311.12; 81 Acts, ch 117, §1213]
87 Acts, ch 43, §8

311.13 Errors in notice or apportionment report.

Any omission or error in said apportionment report or notice with respect to any tract or parcel of real estate or the description thereof, or the name of the owner, or the amount of the assessment apportioned thereto, shall work no loss of jurisdiction on the part of the board over such proceeding. Such omission or error shall only affect the particular tract of real estate or person in question. If, before or after the board has entered its final order in the establishment of the said district or in the apportionment proceedings such omission or error is discovered, the board shall fix a time for a hearing as to such party or real estate and shall cause service of notice to be made upon them, either by publication as in this chapter provided, or by personal service in the time and manner required for service of original notices in the district court. After such hearing the board shall proceed as to such person or land as though such omission or error had not occurred.

[C24, §4707; C27, 31, 35, §4753-a1; C39, §**4753.01;** C46, §311.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.13]

311.14 Appearance.

The appearance of any interested party, either in writing or personally, or by authorized agent, before the board of supervisors at any stage of the pending proceedings for a secondary road assessment district shall be deemed a full appearance. Only interested parties shall have the right to appear in such proceedings. All persons so appearing shall state for whom they appear. The clerk of the board shall make definite entry accordingly in the minutes of the board.

[C24, §4707; C27, 31, 35, §4753-a1; C39, §**4753.01;** C46, §311.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.14]

311.15 Hearing — adjournment — order.

Hearings on the proposed establishment of said district may be adjourned from time to time without loss of jurisdiction by the board. On final hearing the board shall proceed to a determination of said matters. It may reject, approve, or modify and approve said proposal. The board may exclude lands from the district or may add lands thereto or otherwise modify the proposal.

Should the proposal be approved in whole or in part, the board shall establish such district. The order of the board establishing such district shall state the road or roads to be improved, the type of improvement, and the lands included in said district. Said order shall be final. No lands shall thereafter be added to or excluded from said district.

[C24, §4709; C27, 31, 35, §4753-a2; C39, §**4753.02;** C46, §311.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.15]

311.16 Final hearing — assessment levied.

On final hearing the board shall hear and determine all objections filed. The board may increase, diminish, annul, or affirm the apportionment made in said report, or any part thereof, as may appear to the board to be just and equitable.

On the final determination the board shall levy the assessments and all installments thereof upon the real estate within the district as finally established. The entire amount of the assessment shall be then due and payable, and bear interest at a rate not exceeding that permitted by chapter 74A commencing twenty days from the date of the levy, and shall be collected at the succeeding September semiannual payment of ordinary taxes.

[C24, §4710; C27, 31, 35, §4753-a3; C39, §**4753.03;** C46, §311.13; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.16]

311.17 Assessments over one hundred dollars — waiver.

1. If an owner other than the state or a county or city, of any tracts of land on which the assessment is more than one hundred dollars, shall, within twenty days from the date of the assessment, agree in writing filed in the office of the county auditor, that in consideration of the owner having the right to pay the assessment in installments, the owner will not make any objection of illegality or irregularity as to the assessment upon the real estate, and will pay the assessment plus interest, the assessment shall be payable in ten equal installments. The first installment shall be payable on the date of the agreement. The other installments shall be paid annually at the same time and in the same manner as the September semiannual payment of ordinary taxes with interest accruing as provided in section 384.65, subsection 3. The rate of interest shall be as established by the board, but not exceeding that permitted by chapter 74A.

2. An owner of land who has used the ten-year option may at any time discharge the assessment by paying the balance then due on all unpaid installments, with interest on the entire amount of the unpaid installments to the following December 1.

[C24, §4710; C27, 31, 35, §4753-a3; C39, §**4753.03;** C46, §311.13; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.17]

98 Acts, ch 1107, §4

311.18 Assessment delinquent — interest.

The assessed taxes shall become delinquent from October 1 after their maturity including those instances when the last day of September is a Saturday or Sunday, shall bear the same interest, and be attended with the same rights and remedies for collection, as ordinary taxes.

[C24, §4710; C27, 31, 35, §4753-a3; C39, §**4753.03;** C46, §311.13; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.18]

92 Acts, ch 1016, §3; 98 Acts, ch 1107, §5

311.19 Assessment one hundred dollars or less.

Assessments of one hundred dollars or less against any tract of land, and assessments against lands owned by the state, county or city, shall be due and payable from the date of levy by the board of supervisors, or in the case of any appeal, from the date of final confirmation of the levy by the court.

In case of assessments on lands owned by the county, the assessments shall be paid from the county treasury. In case of assessments on lands owned by the state, the assessments shall be paid out of any funds in the state treasury not otherwise appropriated. In case of assessments on lands owned by a city, the assessments shall be paid from any available city fund.

[C24, §4710; C27, 31, 35, §4753-a3; C39, §**4753.03;** C46, §311.13; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.19]

83 Acts, ch 123, §113, 209; 98 Acts, ch 1107, §6

311.20 Variation between estimated and actual cost.

Any variation between the engineer's estimated cost and the actual cost of a secondary road assessment district project shall in no way affect the validity of the assessment. It is the intent of this chapter that the assessment shall be based on the estimated cost and not on the actual cost.

[C24, §4711; C27, 31, 35, §4753-a4; C39, §**4753.04;** C46, §311.14; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.20]

311.21 Procedures.

The preparation and approval of plans and specifications, the advertising for bids, the award and approval of contract, the supervision and inspection of construction work, and the approval and payment of claims on any secondary road assessment district project, shall be conducted in the manner provided in the laws for secondary road construction work generally.

[C24, 27, 31, 35, 39, §**4749, 4752;** C46, §311.6, 311.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.21]

311.22 Road graded and drained.

Any such secondary road shall be built to permanent grade and drained in a manner approved by the county engineer before being surfaced, as provided in this chapter.

[C27, 31, 35, 39, §**4746;** C46, §311.3; C50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §311.22]

311.23 Payment of construction costs.

The total cost of any secondary road assessment district project shall in the first instance be paid out of the county treasury. Any assessments which are paid in cash and in anticipation of which assessments no certificates have been issued, shall be transferred to the county treasury.

If no special assessment certificates are issued and sold on account of any particular secondary road assessment district, the special assessments on lands included in that district, and the interest on the assessments when collected, shall be transferred to the secondary road fund of the county. If certificates are issued and sold in anticipation of the special assessments levied on a district, the proceeds of the certificates shall be credited to the county treasury. In that event, the special assessments in anticipation of which certificates have been issued, and the interest on the assessments shall, when collected, be used to retire the certificates.

[C24, 27, 31, 35, 39, §**4752;** C46, §311.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.23]

83 Acts, ch 123, §114, 209

311.24 Appeal from assessment.

Any owner of land in a secondary road assessment district may appeal to the district court from the order of the board of supervisors in levying the assessment against the owner's real estate, by filing with the county engineer within fifteen days of the date of the levy, a bond conditioned to pay all costs in case the appeal is not sustained, and a written notice of appeal where the owner shall, with particularity, point out the specific objection which the owner desires to lodge against the levy. The appeal has precedence over all other business pending before the court except criminal matters. The appeal shall be heard as in equity. The court may raise or lower the assessment in question and make an equitable assessment in the judgment of the court. The clerk of the district court shall, upon the entry of the final order of the court, certify the final order to the county engineer. The board of supervisors shall adjust the assessments to comply with the final order of the court.

[C24, §4713; C27, 31, 35, §4753-a5; C39, §**4753.05;** C46, §311.15; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §311.24; 81 Acts, ch 117, §1214]

311.25 Appeal docketed.

When an appeal is taken, the county engineer shall make a transcript of the notice of appeal and appeal bond and transmit them to the district court. The appellant shall, within twenty days after perfection of the appeal, docket the appeal and file a petition setting forth the order or decision of the board of supervisors appealed from, and the appellant's specific objections. A failure to comply with either of these requirements is a conclusive waiver of the appeal and the court shall dismiss the petition. Appellee need not file answer, but may do so.

[C24, §4714; C27, 31, 35, §4753-a6; C39, §**4753.06;** C46, §311.16; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §311.25; 81 Acts, ch 117, §1215]

311.26 Assessments certified to county treasurer.

When the board of supervisors has entered its final order as to the amounts of all special assessments on a given improvement, the county engineer shall at once certify a list of the assessments and a list of real estate upon which each assessment has been levied, with the specific designation of the district embracing the real estate, to the county treasurer, who shall enter each assessment on the tax books and continue the entry until the assessment is paid.

Each special assessment and all installments of the special assessments are a lien upon the real estate upon which levied from the date of the certificate by the county engineer to the same extent and in the same manner as taxes levied for state and county purposes. Changes in the amount of a special assessment by reason of a ruling of the district court on appeals shall be likewise certified and the county treasurer shall make the proper correction on the books.

[C24, §4715; C27, 31, 35, §4753-a7; C39, §**4753.07;** C46, §311.17; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §311.26; 81 Acts, ch 117, §1216]

311.27 Each district separate unit.

Each assessment district shall be considered a unit and all funds received by the county treasurer for or on behalf of such unit shall be carried as a distinct and separate account and under the same specific name as that used by the board in establishing such unit.

[C24, §4716; C27, 31, 35, §4753-a8; C39, §**4753.08;** C46, §311.18; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.27]

311.28 Certificates anticipating assessments.

In order to render immediately available that amount of the estimated cost of an improvement which has been specially assessed, the board may issue road certificates in the name of the county in an aggregate amount not exceeding the then unpaid amount of the special assessment levied in the district. Each issue of certificates shall be under, and in accordance with, a duly adopted resolution of the board which shall recite all of the following:

1. The name or designation of the road district on account of which the certificates are issued.
2. That a stated amount has been specially assessed against the lands within the district.
3. That a stated amount of the aggregate spe-

cial assessment has not yet been paid.

4. That it is necessary to render the unpaid amount immediately available.

5. The number of road certificates authorized and the specific amount of each certificate.

6. The specific numbering or designation of the certificates.

7. The rate of interest which each certificate shall bear from date, not exceeding that permitted by chapter 74A.

8. The fact that the certificates are payable solely from the proceeds of the special assessments which have been levied on the lands within the districts.

9. That each certificate shall be payable on or before January 1 of the first year following the maturity of the last installment of the special assessments, and that interest on the certificate shall be paid annually.

10. The authorization to the chairperson of the board, and to the county treasurer, to sign and countersign each of the certificates.

[C24, §4717; C27, 31, 35, §4753-a9; C39, §**4753.09;** C46, §311.19; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §311.28; 81 Acts, ch 117, §1217]

311.29 Sale of certificates.

Upon the signing of each of the certificates by the chairperson of the board, the certificates shall be delivered to the county treasurer, who shall countersign them and who shall be responsible for them on the treasurer's bond. The treasurer may apply the certificates in payment of warrants duly authorized and issued for improving the roads within the district, or the treasurer may sell the certificates for the best attainable price and for not less than par, plus accrued interest. The certificates shall be retired in the order of their numbering.

[C24, §4717; C27, 31, 35, §4753-a9; C39, §**4753.09;** C46, §311.19; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §311.29; 81 Acts, ch 117, §1218]

83 Acts, ch 123, §115, 209; 85 Acts, ch 143, §9

311.30 Certificates registered — payment.

The county treasurer shall, in connection with the road account for said district, enter the name and post-office address of all persons to whom any of said certificates are issued, with a particular designation of the certificates delivered to each person. Any subsequent holder may present the certificate to the county treasurer and cause the subsequent holder's name and post-office address to be entered in lieu of that of such former holder. Whenever the fund for such particular district has money to pay the first retirable certificate or certificates, the county treasurer shall, by mail, as shown by the county treasurer's records, promptly notify the holder of such certificate of such fact and that from and after ten days after the mailing of such letter all interest on such certificates will cease.

[C24, §4717; C27, 31, 35, §4753-a9; C39, §**4753.09;** C46, §311.19; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §311.30]

311.31 Previous assessments not invalidated. Repealed by 87 Acts, ch 115, § 83.

311.32 Administration and maintenance of roads.

Any road established by petition and any road improved by petition under this chapter shall be administered and maintained by the county under chapters 306, 309, 314, 317, and 319. However, the fact that right-of-way is donated by property owners for the establishment of a road or a portion of the cost of a road improvement is paid by property owners under this chapter, does not preclude the board of supervisors from exercising its responsibility over these roads as secondary roads.

86 Acts, ch 1024, §2

CHAPTER 312

ROAD USE TAX FUND

312.1 Fund created.
312.2 Allocations from fund.
312.2A Allocations for trails. Repealed by 96 Acts, ch 1218, §70.
312.3 Apportionment to counties and cities.
312.3A Street research fund.
312.3B Iowa county engineers association service bureau support fund.
312.3C Secondary road fund distribution advisory committee.
312.4 Treasurer's report to the department of transportation.
312.5 Division of farm-to-market road funds.
312.6 Limitation on use of funds.
312.7 Balance maintained in fund.
312.8 Amana colonies.
312.9 Fund not for personnel expense.
312.10 Repealed by 78 Acts, ch 1108, §24.
312.11 Accounts of expenditures.
312.12 Program submitted. Repealed by 98 Acts, ch 1080, §11.
312.13 Repealed by 73 Acts, ch 205, §2.
312.14 Cities to submit report.
312.15 When funds not allocated.
312.16 Definitions.

312.1 Fund created.

There is hereby created, in the state treasury, a road use tax fund. Said road use tax fund shall embrace and include:

1. All the net proceeds of the registration of motor vehicles under chapter 321.

2. All the net proceeds of the motor vehicle fuel tax or license fees under chapter 452A.

3. Revenue derived from the excise tax imposed upon the rental of automobiles, under chapter 422C, as provided by section 422C.5.

4. To the extent provided in section 423.24, subsection 1, paragraph *"b"*, from revenue derived from the use tax, under chapter 423 on motor vehicles, trailers, and motor vehicle accessories and equipment.

5. Any other funds which may by law be credited to the road use tax fund.

Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the road use tax fund and the funds to which moneys from the road use tax fund are credited shall be credited to the road use tax fund.

[C50, §308A.1; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §312.1; 82 Acts, ch 1100, §17]

88 Acts, ch 1019, §2; 89 Acts, ch 293, §9; 90 Acts, ch 1235, §7; 92 Acts, ch 1006, §1; 92 Acts, 2nd Ex, ch 1001, §203

See §321.145, 423.24

312.2 Allocations from fund.

The treasurer of the state shall, on the first day of each month, credit all road use tax funds which have been received by the treasurer, to the primary road fund, the secondary road fund of the counties, the farm-to-market road fund, and the street construction fund of cities in the following manner and amounts:

1. To the primary road fund, forty-seven and one-half percent.

2. To the secondary road fund of the counties, twenty-four and one-half percent.

3. To the farm-to-market road fund, eight percent.

4. To the street construction fund of the cities, twenty percent.

5. The treasurer of state shall before making the above allotments credit annually to the highway grade crossing safety fund the sum of seven hundred thousand dollars, credit annually from the road use tax fund the sum of nine hundred thousand dollars to the highway railroad grade crossing surface repair fund, credit monthly to the primary road fund the dollars yielded from an allotment of sixty-five hundredths of one percent of all road use tax funds for the express purpose of carrying out subsection 11 of section 307A.2, section 313.4, subsection 2, and section 307.45, and credit annually to the primary road fund the sum of five hundred thousand dollars to be used for paying expenses incurred by the state department of transportation other than expenses incurred for extensions of primary roads in cities. All unobligated funds provided by this subsection, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any biennium. The cost of each highway railroad grade crossing repair project shall be allocated in the following manner:

a. Twenty percent of the project cost shall be paid by the railroad company.

b. Twenty percent of the project cost shall be paid by the highway authority having jurisdiction of the road crossing the railroad.

c. Sixty percent of the project cost shall be paid from the highway railroad grade crossing surface repair fund.

6. The treasurer of state shall before making the allotments provided for in this section credit monthly to the state department of transportation funds sufficient in amount to pay the costs of purchasing certificate of title and registration forms, and supplies and materials and for the cost of prison labor used in manufacturing motor vehicle registration plates, decalcomania emblems, and validation stickers at the prison industries.

7. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of seven million one hundred thousand dollars.

8. The treasurer of state, before making any allotments to counties under this section, shall reduce the allotment to a county for the secondary road fund by the amount by which the total funds that the county transferred or provided during the prior fiscal year under section 331.429, subsection 1, paragraphs *"a"*, *"b"*, *"d"*, and *"e"*, are less than seventy-five percent of the sum of the following:

a. From the general fund of the county, the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county.

b. From the rural services fund of the county, the dollar equivalent of a tax of three dollars and three-eighths of a cent per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county.

Funds remaining in the secondary road fund of the counties due to a reduction of allocations to counties for failure to maintain a minimum local tax effort shall be reallocated to counties that are not reduced under this subsection pursuant to the allocation provisions of section 312.3, subsection 1, based upon the needs and area of the county. Information necessary to make allocations under this subsection shall be provided by the state de-

partment of transportation or the director of the department of management upon request by the treasurer of state.

9. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred fifty thousand dollars from the road use tax fund.

10. The treasurer of state, before making the other allotments provided for in this section, shall credit annually to the primary road fund from the road use tax fund the sum of four million four hundred thousand dollars and to the farm-to-market road fund from the road use tax fund the sum of one million five hundred thousand dollars for partial compensation of allowing trucks to operate on the roads of this state as provided in section 321.463.

11. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred thousand dollars from the road use tax fund.

12. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the revitalize Iowa's sound economy fund, created under section 315.2, the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 452A.3 except aviation gasoline, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

13. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the secondary road fund the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 452A.3, except aviation gasoline, the amount of excise tax collected from nine-twentieths cent per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from nine-twentieths cent per gallon.

14. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the general fund of the state from revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph *"b"*, an amount equal to one-twentieth of eighty percent of the revenue from the operation of section 423.7.

There is appropriated from the general fund of the state for each fiscal year to the state department of transportation the amount of revenues credited to the general fund of the state during the fiscal year under this subsection to be used for purposes of public transit assistance under chapter 324A.

15. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the state department of transportation for county, city and state traffic safety improvement projects an amount equal to one-half of one percent of moneys credited to the road use tax fund.

16. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the motorcycle rider education fund established in section 321.180B, an amount equal to one dollar per year of license validity for each issued or renewed driver's license which is valid for the operation of a motorcycle. Moneys credited to the motorcycle rider education fund under this subsection shall be taken from moneys credited to the road use tax fund under section 423.24.

17. *a.* The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, shall credit from the road use tax fund two million dollars to the county bridge construction fund, which is hereby created. Moneys credited to the county bridge construction fund shall be allocated to counties by the department for bridge construction, reconstruction, replacement, or realignment based on needs in accordance with rules adopted by the department.

b. The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, shall credit from the road use tax fund five hundred thousand dollars to the city bridge construction fund, which is hereby created. Moneys credited to the city bridge construction fund shall be allocated to cities by the department for bridge construction and reconstruction based on needs in accordance with rules adopted by the department.

18. The treasurer of state, before making the allotments provided for in this section, shall credit annually from the road use tax fund to the state department of transportation the sum of six hundred fifty thousand dollars for the purpose of providing county treasurers with automation and telecommunications equipment and support for vehicle registration and titling and driver licensing. Notwithstanding section 8.33, unobligated funds credited under this subsection remaining on June 30 of the fiscal year shall not revert but shall remain available for expenditure for purposes of this subsection in subsequent fiscal years.

[C50, §308A.2, 422.62; C54, 58, 62, 66, §312.2, 422.62; C71, 73, §312.2, 422.69(2); C75, 77, 79, 81, S81, §312.2; 81 Acts, ch 117, §1046]

83 Acts, ch 123, §116, 208, 209; 83 Acts, ch 198,

§18, 19, 20; 84 Acts, ch 1178, §5; 84 Acts, ch 1305, §46; 84 Acts, ch 1309, §10; 85 Acts, ch 231, §1; 87 Acts, ch 115, §47; 87 Acts, ch 206, §1; 87 Acts, ch 232, §19, 20; 88 Acts, ch 1019, §3, 4; 88 Acts, ch 1089, §2; 88 Acts, ch 1134, §66; 88 Acts, ch 1205, §1; 88 Acts, ch 1278, §28 – 30; 89 Acts, ch 246, §1, 2; 89 Acts, ch 293, §10 – 13; 90 Acts, ch 1230, §5; 90 Acts, ch 1267, §30; 91 Acts, ch 258, §43; 91 Acts, ch 260, §1223, 1224; 91 Acts, ch 264, §906; 91 Acts, ch 268, §512, 513; 92 Acts, ch 1212, §28; 92 Acts, ch 1238, §26; 93 Acts, ch 131, §10, 11; 93 Acts, ch 180, §75; 94 Acts, ch 1023, §102; 94 Acts, ch 1107, §50; 96 Acts, ch 1218, §36; 98 Acts, ch 1073, §9; 98 Acts, ch 1075, §11; 98 Acts, ch 1212, §6; 99 Acts, ch 114, §18; 2001 Acts, ch 180, §5

Legislative intent that moneys directed to be deposited in road use tax fund under §312.1 not be used for loans, grants, or other financial assistance for passenger rail service; 2000 Acts, ch 1168, §4

For future amendment to subsection 14, effective July 1, 2004, see 2002 Acts, 2nd Ex, ch 1002, §3, 4

312.2A Allocations for trails. Repealed by 96 Acts, ch 1218, § 70.

312.3 Apportionment to counties and cities.

The treasurer of state shall, on the first day of each month:

1. Apportion among the counties in the ratio that the needs of the secondary roads of each county bear to the total needs of the secondary roads of the state for each fiscal year based upon the total needs of secondary roads of the state as shown in the latest quadrennial need study report developed by the state department of transportation, and which is on record at the department, seventy percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties, and apportion among the counties in the ratio that the area of each county bears to the total area of the state, thirty percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties.

For the purposes of this subsection, *"latest quadrennial need study report"* includes the annual recalculation of construction and maintenance needs of roads whose jurisdiction has been transferred from the department to a county or from a county to the department during the previous year as recalculated pursuant to section 307.22, subsection 7.

2. Apportion among the cities of the state, in the ratio which the population of each city, as shown by the latest available federal census, bears to the total population of all such cities in the state, the percentage of the road use tax funds which is credited to the street fund of the cities, and shall remit to the city clerk of each such city the amount so apportioned to such city. A city may have one special federal census taken each decade, and the population figure thus obtained shall be used in apportioning amounts under this subsection beginning the calendar year following the year in which the special census is certified by the secretary of state.

3. In any case where a city has been incorporated since the latest available federal census the mayor and council shall certify to the state treasurer the actual population of such incorporated city as of the date of incorporation and its apportionment of funds under this section shall be based upon such certification until the next federal census enumeration. Any community which has dissolved its corporation shall not receive any apportionment of funds under this certificate for any period after said corporation has been dissolved.

4. In any case where a city has annexed any territory since the last available federal census or special federal census, the mayor and council shall certify to the treasurer of state the actual population of such annexed territory as determined by the last certified federal census of said territory and the apportionment of funds under this section shall be based upon the population of said city as modified by the certification of the population of the annexed territory until the next federal or special federal census enumeration.

5. In any case where two or more cities have consolidated, the apportionment of funds under this section shall be based upon the population of the city resulting from said consolidation and shall be determined by combining the population of all cities involved in the consolidation as determined by the last available federal or special federal census enumeration for said consolidating city.

[C50, §308A.3; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §312.3; 81 Acts, 2nd Ex, ch 2, §3]

84 Acts, ch 1219, §18; 90 Acts, ch 1267, §31; 91 Acts, ch 258, §44; 92 Acts, ch 1100, §3; 92 Acts, ch 1238, §27, 46; 94 Acts, ch 1023, §103; 2002 Acts, ch 1063, §9, 16

See §310.1

Subsection 1, unnumbered paragraph 2 amended

312.3A Street research fund.

Prior to the allocation to the cities under section 312.3, subsection 2, the department is authorized to set aside each year two hundred thousand dollars from the street construction fund of the cities in a fund to be known as the street research fund. The street research fund shall be used by the department solely for the purpose of financing engineering studies and research projects which have as their objective the more efficient use of funds and materials that are available for the construction and maintenance of city streets, including city street bridges and culverts. The research projects and engineering studies authorized shall be conducted in cooperation with the city engineers. On or before January 31 each year the department shall file a report with the governor, state transportation commission, city engineers, chief clerk of the house of representatives, and secretary of

the senate showing the work accomplished and projects undertaken under this section.

89 Acts, ch 293, §14

312.3B Iowa county engineers association service bureau support fund.

Prior to the allocation to the counties under section 312.3, subsection 1, the department is authorized to set aside each year twenty-five hundredths of one percent from the secondary road fund for deposit in a fund to be known as the Iowa county engineers association service bureau support fund. The Iowa county engineers association service bureau support fund shall be used by the department solely for the purpose of supporting the Iowa county engineers association service bureau. Unobligated funds remaining in the Iowa county engineers association service bureau support fund on June 30 of the fiscal year shall revert to the secondary road fund. On or before January 31 of each year, the Iowa county engineers association service bureau shall file a report with the governor, state transportation commission, county engineers, chief clerk of the house of representatives, and secretary of the senate showing the activity accomplished under this section.

2002 Acts, ch 1063, §11, 16

NEW section

312.3C Secondary road fund distribution advisory committee.

A secondary road fund distribution advisory committee is established to consider methodologies for distribution of moneys in the secondary road fund and farm-to-market road fund. The committee shall be comprised of representatives appointed by the president of the Iowa county engineers association, the president of the Iowa county supervisors association, and the department. The committee shall recommend to the general assembly, for the general assembly's consideration and adoption, one or more alternative methodologies for distribution of moneys in the secondary road fund and the farm-to-market road fund.

2002 Acts, ch 1063, §12, 16

NEW section

312.4 Treasurer's report to the department of transportation.

The treasurer of state shall, each month, certify to the department:

1. The amount which the treasurer has received and credited to the road use tax fund from each source of revenue creditable to the said road use tax fund.

2. The amount of the road use tax fund which the treasurer has credited to (*a*) the primary road fund, (*b*) the secondary road fund of the counties, (*c*) the farm-to-market road fund, and (*d*) the street fund of the cities.

3. The amount of the federal aid primary and urban funds which the treasurer has received from the federal government and credited to the primary road fund.

4. The amount of federal aid secondary road funds which the treasurer has received from the federal government and credited to the farm-to-market road fund.

5. The amount of the road use tax fund which has been credited to carry out the provisions of section 307A.2, subsection 11, section 313.4, subsection 2, and section 307.45.

[C24, §4693; C27, 31, 35, §4755-b7; C39, §**4686.07, 4755.07;** C46, §310.7, 313.7; C50, §308A.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §312.4]

312.5 Division of farm-to-market road funds.

1. The road use tax funds credited to the farm-to-market road fund and federal aid secondary road funds received by the state by the treasurer of state are hereby divided as follows, and are to be known respectively as:

a. Need allotment farm-to-market road funds, seventy percent; and

b. Area allotment farm-to-market road funds, thirty percent.

2. All farm-to-market road funds, except funds which under section 310.20 come from any county's allotment of the road use tax funds, shall be allotted among the counties by the department.

3. Area allotment farm-to-market road funds shall be allotted among all the counties of the state in the ratio that the area of each county bears to the total area of the whole state.

4. Need allotment farm-to-market road funds shall be allotted among the counties in the ratio that the needs of the farm-to-market roads in each county bear to the total needs of the farm-to-market roads in the state for each fiscal year based upon the total needs of the farm-to-market roads in the state as shown in the latest quadrennial need study report developed by the state department of transportation, and which is on record at the department.

"Latest quadrennial need study report" includes the annual recalculation of construction and maintenance needs of roads whose jurisdiction has been transferred from the department to a county or from a county to the department during the prior year as recalculated pursuant to section 307.22, subsection 7.

[C39, §**4686.05;** C46, §310.5; C50, §308A.5; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §312.5]

84 Acts, ch 1219, §19; 90 Acts, ch 1267, §32; 91 Acts, ch 258, §45; 92 Acts, ch 1100, §4; 92 Acts, ch 1238, §28, 46; 2002 Acts, ch 1063, §13, 16

Subsection 4, unnumbered paragraph 2 amended

312.6 Limitation on use of funds.

Funds received by municipal corporations from the road use tax fund shall be used for any purpose

relating to the construction, maintenance, and supervision of the public streets.

[C39, §**4686.21, 4686.25;** C46, §310.21, 310.25; C50, §308A.6; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §312.6]

312.7 Balance maintained in fund.

The treasurer of state shall maintain in the road use tax fund in the state treasury, of the funds collected as provided in chapter 321 or as said chapter may be amended, a cash balance sufficient, when added to the cash balance of receipts in the road use tax fund from other sources, to pay the anticipated expenditures from the road use tax fund for the ensuing month.

When necessary to restore the balance in the road use tax fund in the state treasury, the treasurer of state shall draw upon the treasurer of each county of the state in proportion to the amounts in their possession, respectively, of the funds collected under the provisions of chapter 321 or as said chapter may be amended, and credited to the road use tax fund, a sum sufficient in the aggregate to restore the cash balance in the road use tax fund. Such drafts shall be honored by the treasurer of each county upon presentation.

[C24, 27, 31, 35, §4772, 5003; C39, §**4686.26, 4772, 5010.03;** C46, §310.26, 316.17, 321.147; C50, §308A.7; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §312.7]

312.8 Amana colonies.

Where a tract of land is owned by a corporation organized under the provisions of chapter 490 with assets of the value of one million dollars or more, and having one or more platted villages located within the territorial limits of said tract of land, all of the territory within the plats of said villages with their addition or subdivisions shall, for the purposes of this chapter, be deemed to be one incorporated city. All funds to become due to said villages so consolidated shall be paid to the county auditor of the county in which said tract of land and said villages are situated. Said fund shall, thereupon, be administered and expended by the county board of supervisors of said county for the construction, reconstruction, repair, and maintenance of roads and streets within the plats of such villages in the same manner and with the same powers and duties as city councils in cities. In the event the population of such villages shall not have been separately enumerated in the federal census, then said county board of supervisors shall cause a census of said villages to be taken as soon as may be after this chapter becomes effective, which census shall be used in lieu of the federal census provided for in section 312.3, subsection 2.

All payments made under this section prior to July 4, 1961, are hereby legalized.

[C50, §308A.8; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §312.8]

90 Acts, ch 1205, §10

312.9 Fund not for personnel expense.

Moneys credited to the road use tax fund shall not be appropriated for the payment of salaries, support, or maintenance of any personnel in the department of public safety.

[81 Acts 2d Ex, ch 2, §4]

312.10 Repealed by 78 Acts, ch 1108, § 24.

312.11 Accounts of expenditures.

Each city shall keep accounts showing the amount spent on street construction and reconstruction on extensions of rural systems and city streets. The amount spent shall be shown on the annual street report required by section 312.14.

[C62, 66, 71, 73, 75, 77, 79, 81, §312.11]

98 Acts, ch 1075, §12

312.12 Program submitted. Repealed by 98 Acts, ch 1080, § 11.

312.13 Repealed by 73 Acts, ch 205, § 2.

312.14 Cities to submit report.

Cities in the state which receive allotments of funds from road use tax funds shall prepare and deliver on or before September 30 each year to the department an annual report showing all street receipts and expenditures for the city for the previous fiscal year. The report shall include a detailed cost accounting of all instances of the use of day labor or public or private contracts for construction, reconstruction, or improvement projects on the municipal street system during the previous fiscal year, in the manner prescribed by rule of the department under section 314.1A. The report shall also include the costs of purchasing, leasing, or renting construction or maintenance equipment and an accounting of the use of such equipment for construction, reconstruction, or improvement projects on the municipal street system during the previous fiscal year.

[C62, 66, 71, 73, 75, 77, 79, 81, §312.14]

90 Acts, ch 1121, §2; 2001 Acts, ch 32, §5, 14

2001 amendments to this section are effective July 1, 2002; 2001 Acts, ch 32, §14

Section amended

312.15 When funds not allocated.

Funds shall not be allocated to any city until such city shall have complied with the provisions of sections 312.11 and 312.14.

If a city has not complied with the provisions of section 312.14, the treasurer of state shall withhold funds allocated to the city until the city complies. If a city has not complied with the provisions of section 312.14 by December 31 following the date the report was required, funds shall not be al-

located to the city until the city has complied and all funds withheld under this paragraph shall revert to the street construction fund of the cities.

The department shall notify the treasurer of state if any city fails to comply with the provisions of sections 312.11 and 312.14.

[C62, 66, 71, 73, 75, 77, 79, 81, §312.15]
90 Acts, ch 1121, §3; 98 Acts, ch 1080, §1

312.16 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the state department of transportation.

2. *"Fiscal year"* means the period of twelve months beginning on July 1 and ending on June 30.

[C75, 77, 79, 81, §312.16]
89 Acts, ch 293, §15

CHAPTER 313

PRIMARY ROADS

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313.1 Federal and state co-operation.

The department is empowered on behalf of the state to enter into any arrangement or contract with and required by the duly constituted federal authorities, in order to secure the full co-operation of the government of the United States, and the benefit of all present and future federal allotments in aid of highway construction, reconstruction, improvement or maintenance. The good faith of the state is hereby pledged to cause to be made available each year, sufficient funds to equal the total of any sums now or hereafter apportioned to the state for road purposes by the United States government for such year, and to maintain the roads constructed with said funds.

[C24, §4688; C27, 31, 35, §4755-b1; C39, §**4755.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.1]

313.2 "Road systems" defined — roadside parks.

The roads and streets of the state are, for the

purpose of this chapter, those roads and streets established under chapter 306.

Whenever the board of supervisors of a county and the department mutually determine that a portion of a highway under the jurisdiction of either party should be transferred to the jurisdiction of the other party, the board and department may enter into an agreement to effect such transfer. Such agreement may provide that each party may undertake or share responsibility for improving said road with the costs of such improvement to be borne entirely by either the county or the department or equitably divided between the two jurisdictions. All such improvements shall be completed and all actual costs thereof paid or reimbursed prior to the time transfer of the road is made. In carrying out such agreement, the board of supervisors may expend secondary road funds of the county and the department may expend primary road funds.

However, prior to entering into the agreement, a notice of intent to execute such agreement shall be published in a newspaper of general circulation within the county and the cost of such notice shall be jointly borne by the department and the board of supervisors. If one hundred or more residents of the county request by petition or in writing that a hearing be held in regard to such agreement within ten days after the publication of the notice, the board of supervisors and the department shall hold such a hearing not more than seven days after receiving the petition or written instrument, and based upon evidence presented at such hearing shall re-examine the merits of executing such agreement and make a decision in regard to it.

The department may, for the purpose of affording access to cities or state parks, or for the purpose of shortening the direct line of travel on important routes, or to effect connections with interstate roads at the state line, add such road or roads to the primary system.

The department, either alone or in co-operation with any county, shall have the authority to utilize any land acquired incidental to the acquisition of land for highway right of way and to also accept by gift, lands not exceeding two acres in area for roadside parks and parking areas. The department may furnish necessary maintenance. The department shall also have authority to accept by gift, equipment or other installations incidental to the use of said parks and parking areas. Said parks and parking areas shall be a part of the primary road system and the department may at its discretion sell or otherwise dispose of said lands.

Reasonable maintenance and surveillance of rest area sites and buildings located thereon shall be provided by employees of the department within the limits of appropriations provided for such purpose.

[C24, §4689; C27, 31, 35, §4755-b2; C39, §**4755.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.2]

88 Acts, ch 1072, §1; 98 Acts, ch 1075, §13

313.2A Commercial and industrial highways.

1. *Purpose.* It is the purpose of this section to enhance opportunities for the development and diversification of the state's economy through the identification and improvement of a network of commercial and industrial highways. The network shall consist of interconnected routes which provide long distance route continuity. The purpose of this highway network shall be to improve the flow of commerce; to make travel more convenient, safe, and efficient; and to better connect Iowa with regional, national, and international markets. The commission shall concentrate a major portion of its annual construction budget on this network of commercial and industrial highways. In order to ensure the greatest possible availability of funds for the improvement of the network, primary highway funds shall not be spent beyond continuing maintenance for improvements to route segments that will be bypassed by the relocation of portions of the commercial and industrial highway network.

2. *Network selection.* The commission shall identify, within the primary road system, a network of commercial and industrial highways. The commission shall consider all of the following factors in the identification of this network:

a. The connection by the most direct routes feasible of major urban areas and regions of the state to each other and to the national system of interstate and defense highways and priority routes in adjacent states.

b. The existence of high volumes of total traffic and commercial traffic.

c. Long distance traffic movements.

d. Area coverage and balance of spacing with service to major growth centers within the state.

e. Metropolitan area bypasses consistent with metropolitan or regional area plans established through cooperation by the department and local officials.

The network of commercial and industrial highways shall not exceed two thousand five hundred miles including municipal extensions of these highways.

3. *Standards.* The department shall establish standards pertaining to the specific location, design, and access control for each segment of the commercial and industrial highways.

4. *Network development.* In establishing priorities for improvement projects, the department shall take into consideration the following additional criteria: urban area bypasses that improve urban or regional accessibility or improve corridor travel; projects consistent with regional or metropolitan transportation plans established through cooperation by the department and local

officials; and the willingness of local officials to provide financial or other assistance for the development of projects.

89 Acts, ch 134, §5; 90 Acts, ch 1267, §34, 35; 91 Acts, ch 268, §514, 515

313.3 Primary road fund.

There is hereby created a primary road fund which shall include and embrace:

1. All road use tax funds which are by law credited to the primary road fund.

2. All federal aid primary and urban road funds received by the state.

3. All other funds which may by law be credited to the primary road fund.

4. All revenue accrued or accruing to the state of Iowa on or after January 26, 1949, from the sale of public lands within the state, under Acts of Congress approved March 3, 1845, supplemental to the Act for the admission of the states of Iowa and Florida into the Union, chapters 75 and 76 (Fifth Statutes, pages 788 and 790), shall be placed in the primary road fund.

Unless otherwise provided, the primary road fund is hereby appropriated for highway construction.

[C24, §4690; C27, 31, 35, §4755-b3; C39, §**4755.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.3]

Allocation of funds, §312.2

313.4 Disbursement of fund.

1. Said primary road fund is hereby appropriated for and shall be used in the establishment, construction and maintenance of the primary road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination or improvement of railroad crossings, the acquiring of additional right-of-way, all other expense incurred in the construction and maintenance of said primary road system and the maintenance and housing of the department.

The department may expend moneys from the fund for dust control on a secondary road or municipal street within a municipal street system when there is a notable increase in traffic on the secondary road or municipal street due to closure of a road by the department for purposes of establishing, constructing, or maintaining a primary road.

2. Such fund is also appropriated and shall be used for the construction, reconstruction, improvement and maintenance of state institutional roads and state park roads and bridges on such roads and roads and bridges on community college property as provided in subsection 11 of section 307A.2, for restoration of secondary roads used as primary road detours and for compensation of counties for such use, for restoration of municipal streets so used and for compensation of cities for such use, and for the payments required in section 307.45.

3. There is appropriated from funds appropriated to the department which would otherwise revert to the primary road fund pursuant to the provisions of the Act appropriating the funds or chapter 8, an amount sufficient to pay the increase in salaries, which increase is not otherwise provided for by the general assembly in an appropriation bill, resulting from the annual review of the merit pay plan as provided in subsection 2 of section 19A.9. The appropriation herein provided shall be in effect from the effective date of the revised pay plan to the end of the fiscal biennium in which it becomes effective.

4. Such fund is appropriated and shall be used by the department to provide energy and for the operation and maintenance of those primary road freeway lighting systems within the corporate boundaries of cities including energy and maintenance costs associated with interchange conflict lighting on existing and future freeway and expressway segments constructed to interstate standards.

The costs of serving freeway lighting for each utility providing the service shall be determined by the utilities division of the department of commerce, and rates for such service shall be no higher than necessary to recover these costs. Funds received under the provisions of this subsection shall be used solely for the operation and maintenance of a freeway lighting system.

5. During the fiscal year beginning July 1, 1990, and ending June 30, 1991, and each subsequent fiscal year, the department shall spend from the primary road fund an amount of not less than thirty million dollars for the network of commercial and industrial highways.

[C24, §4690; C27, 31, 35, §4755-b4; C39, §**4755.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.4]

88 Acts, ch 1019, §6; 90 Acts, ch 1253, §120; 92 Acts, ch 1163, §74; 92 Acts, ch 1238, §29; 99 Acts, ch 118, §1; 2000 Acts, ch 1017, §1

313.5 Biennial appropriation — budget.

The department shall submit to the department of management, as provided by chapter 8, a detailed estimate of the amount required by the department during each succeeding biennium for the support of the department and for engineering and administration of highway work and maintenance of the primary road system. Such estimate shall be in the same general form and detail as is required by chapter 8 and said chapter shall apply to the budgeting, appropriation, and expenditure of funds in the primary road fund in the same manner as such chapter applies to other departments. However, the amount of contracts for bituminous resurfacing, bridge painting and repair, pavement and shoulder repair, agreements with cities for maintenance on primary road extensions and agreements with counties, cities, and institutions for maintenance on state park, state institution,

and other state land roads need not be included in the amount appropriated for maintenance.

The provisions of chapter 8 shall apply except that the provisions of section 8.39 shall not apply to funds appropriated to the department under section 313.4, however, the first paragraph of section 8.39 shall apply to appropriations for support of the department and for engineering and administration of highway work and maintenance of the primary road system.

Any contingent fund appropriated to the department from the primary road fund shall be subject to the following conditions:

1. A written statement from the department of management shall be obtained, recommending expenditures from the fund for the purposes requested by the department.

2. The department of management and the governor shall determine that the expenditures contemplated are in the best interest of the state, and that the purpose or project for which funds are requested was not presented to the general assembly by way of a bill and which failed to become enacted into law.

[C39, §**4755.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.5]

313.6 Accounts and records required.

The department shall keep accounts in relation to the primary road fund, crediting said fund with all amounts by law creditable thereto and charging said fund with the amount of all duly and finally approved vouchers for claims properly chargeable thereto.

[C24, §4692; C27, 31, 35, §4755-b6; C39, §**4755.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.6]

313.7 Monthly certification of funds.

The account of the primary road fund kept by the department of revenue and finance and the state treasurer shall show the amount of the primary road fund with all credits thereto and disbursements therefrom.

[C24, §4693; C27, 31, 35, §4755-b7; C39, §**4755.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.7]

313.8 Improvement of primary system.

The department shall proceed to the improvement of the primary road system as rapidly as funds become available therefor until the entire mileage of the primary road system is built to established grade, bridged and surfaced with pavement or other surface suited to the traffic on such road. Improvements shall be made and carried out in such manner as to equalize the condition of the primary roads and accessibility for commercial and industrial economic development purposes, as nearly as possible, in all sections of the state.

[C27, 31, 35, §4755-b8; C39, §**4755.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.8]

88 Acts, ch 1019, §7

313.9 Surveys, plans, and specifications.

Before proceeding with the improvement of any primary road, the department shall cause suitable surveys, plans and specifications for said proposed work to be prepared and filed in its office, and the work shall be done in accordance therewith, except insofar as the same may be modified to meet unforeseen or better understood conditions, and no such modification shall be deemed an invalidating matter.

[C24, §4699; C27, 31, 35, §4755-b9; C39, §**4755.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.9]

313.10 Bids — advertising.

As soon as the approved plans and specifications for any primary road construction project are filed with the department, the department shall, if the estimated cost exceeds one thousand dollars, proceed to advertise for bids for the construction of the improvement.

The department may contract for the emergency repair, restoration, or reconstruction of a highway or bridge without advertising for bids if all of the following conditions are met:

1. The emergency was caused by an unforeseen event causing the failure of a highway, bridge, or other highway structure so that the highway is unserviceable, or where immediate action is necessary to prevent further damage or loss.

2. The department solicits written bids from three or more contractors engaged in the type of work needed.

3. The necessary work can be done for less than five hundred thousand dollars.

4. If possible, the department notifies the appropriate Iowa highway contractors' associations of the proposed work.

[C24, §4700; C27, 31, 35, §4755-b10; C39, §**4755.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.10]

2001 Acts, ch 32, §6

See §314.2

313.11 Bids — specialized construction.

The department may contract for specialized construction work for beam straightening, beam replacement, and beam repair on bridges, without advertising for bids as required under section 313.10, if all of the following conditions are met:

1. The work is of a specialized type in which fewer than five contractors engage.

2. The department solicits written bids from all available contractors engaged in the specialized type of work.

3. The work can be done for less than forty

thousand dollars.
90 Acts, ch 1137, §1

313.12 Supervision and inspection.
The department is expressly charged with the duty of supervision, inspection and direction of the work of construction of primary roads on behalf of the state, and of supervising the expenditure of all funds paid on account of such work by the state or the county on the primary system and it shall do and perform all other matters and things necessary to the faithful completion of the work herein authorized.
[C24, §4701; C27, 31, 35, §4755-b12; C39, §**4755.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.12]

313.13 Engineers — bonds.
All engineers having responsible charge of any improvements, shall give bonds for the faithful performance of their duties and for like accounting for all property entrusted to their custody. All bonds given by such engineers in the employ of the department shall be deemed to embrace any and all improvements of which they may be in charge.
[C24, §4701; C27, 31, 35, §4755-b13; C39, §**4755.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.13]

313.14 Claims.
All claims for improving and maintaining the primary road system shall be paid from the primary road fund.
[C24, §4702; C27, 31, 35, §4755-b14; C39, §**4755.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.14]

313.15 Repealed by 49 Acts, ch 125, § 4. See § 314.3.

313.16 Payment of awards or judgments.
There is hereby appropriated from the primary road fund to the department a sum sufficient for the purpose of paying any award or judgment to a claimant under chapters 25 and 669 on a claim arising out of activities of the department when such an award cannot be charged to a current appropriation.
[C71, 73, 75, 77, 79, 81, §313.16]

313.17 Contingent fund.
The state treasurer is hereby directed to set aside from the primary road fund the sum of five hundred thousand dollars to be known as the primary road contingent fund.
[C24, §4703; C27, 31, 35, §4755-b17; C39, §**4755.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.17]

313.18 Use of contingent fund.
When claims for labor, freight, or other items which must be paid promptly are presented to the said department for payment, the said department may direct that warrants in payment of said claims be drawn on said primary road contingent fund. Such warrants when so drawn and signed by the director of revenue and finance, shall be honored by the treasurer of state for payment from said contingent fund. The primary road contingent fund shall be reimbursed for expenditures made by the state department of transportation from the fund to which the expenditure should be properly charged.
[C24, §4704; C27, 31, 35, §4755-b18; C39, §**4755.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.18]

313.19 Audit of contingent claims.
The claims in payment of which warrants are drawn on the primary road contingent fund, shall be audited in the usual manner prescribed by law and shall have noted thereon that warrants in payment thereof have been drawn on the said contingent fund. After the final audit of such claims, the director of revenue and finance shall draw warrants therefor payable to the treasurer of state and forward the same to the department for record. When such warrants have been recorded in the office of the said department, they shall be forwarded to the state treasurer who shall redeem the same, charge them to the proper fund and credit the primary road contingent fund with the amount thereof.
[C24, §4705; C27, 31, 35, §4755-b19; C39, §**4755.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.19]

313.20 Auditor — appointment — bond — duties.
The director of revenue and finance shall appoint the auditor of the department who shall give bond in the sum of fifty thousand dollars for the faithful performance of the auditor's duties. The premium on said bond shall be paid by the department from the primary road fund. Said auditor shall check and audit all claims against the department before such claims are approved by the department, and shall keep all records and accounts relating to the expenditures of the department. The auditor shall, in the checking and auditing of claims against the department, and keeping the records and accounts of the department, be under the direction and supervision of the director of revenue and finance, and act as an agent of said director. The department shall furnish said auditor with such help and assistants as may be necessary to properly perform the duties herein specified. The said auditor may be removed by the director of revenue and finance.
[C24, §4706; C27, 31, 35, §4755-b20; C39, §**4755.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.20]

313.21 Primary extension improvements in cities.

The department, upon consultation with the council, may construct, reconstruct, improve, and maintain extensions of the primary road system within any city, including the construction, reconstruction, and improvement of storm sewers and electrical traffic control devices reasonably incident and necessary thereto. However, the improvement, exclusive of storm sewers, shall not exceed in width that of the primary road system and the amount of funds expended in any one year shall not exceed thirty-five percent of the primary road construction fund.

The department shall consult with the council to consider the proposed improvement in its relationship to municipal improvements such as sewers, water lines, sidewalks, and other public improvements, and the establishment or reestablishment of street grades. The location of the primary road extensions and the location, design, and degree of access control for improvements to them shall be determined by the department.

[C24, §4731; C27, 31, 35, §4755-b26; C39, §**4755.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.21]

89 Acts, ch 134, §6

See §313.36

313.22 Paving of whole street by department.

Any city and the department may enter into an agreement with respect to any project for the paving of any portion of a primary road extension, and for the construction, reconstruction, and improvement of storm sewers and electrical traffic control devices reasonably incident and necessary thereto, within such city. Said agreement shall specify that the city shall pay for that portion of the cost of said project which is not payable out of primary road funds, and may authorize the department to advertise for bids, let contracts, and supervise the construction of that portion of said project to be paid for by the city. Such agreement shall be a valid and binding obligation on the parties thereto.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.22]

313.23 Reimbursement by city.

Payment for the work, including the city's portion thereof, may in the first instance be made out of the primary road fund. Upon completion of the project, the city shall reimburse the department for the amount so advanced out of the primary road fund, including the city's portion of the engineering and inspection costs.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.23]

313.24 Separated cities.

The department shall designate the street or streets which shall constitute the primary road extensions in any city of the state, which city is separated from the remainder of the state by a river more than five hundred feet in width from bank to bank. The laws of this state relating to the construction, reconstruction or maintenance of the extensions of primary roads in cities, and to the purchase or condemnation of right of way therefor, and to the expenditure of primary road funds thereon, shall apply to the roads or streets designated hereunder, the same as though said community were not so separated from the rest of the state.

[C39, §**4755.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.24]

313.25 Repealed by 51 Acts, ch 103, § 22. See § 306.4, 306.13, 306.14.

313.26 Repealed by 51 Acts, ch 103, § 22. See § 306.15.

313.27 Bridges, viaducts, etc., on municipal primary extensions.

The department may construct or aid in the construction, and may maintain bridges, viaducts, and railroad grade crossing eliminations on primary road extensions in cities.

[C31, 35, §4755-d1; C39, §**4755.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.27]

See §313.36

313.28 Temporary primary road detours.

When the department, for the purpose of establishing, constructing or maintaining any primary road, determines that any secondary road or portion thereof is necessary for a detour or haul road, the department, after consultation with the county board of supervisors having jurisdiction of the route, shall by order temporarily designate the secondary road or portion thereof as a temporary primary road detour or as a temporary primary road haul road, and the department shall maintain the same as a primary road until it shall revoke the temporary designation order. Prior to use of a secondary road as a primary haul road or detour, the department shall designate a representative to inspect the secondary road with the county engineer to determine and note the condition of the road.

Prior to revoking the designation, the department shall:

1. Restore the secondary road or portion thereof to as good condition as it was prior to its designation as a temporary primary road, or

2. Determine such amount as will adequately compensate the county exercising exclusive or concurrent jurisdiction over the secondary road or portion thereof for excessive traffic upon the secondary road or portion thereof during the period of its designation as a temporary primary road. The

department shall certify the amount determined to the director of revenue and finance. The director of revenue and finance shall credit the amount to the county.

3. If on examination of the route, it is determined that the road can be restored to its original condition only by reconstruction, the department shall cause plans to be drawn, award the necessary contracts for work and proceed to reconstruct and make payments for in the same manner as is prescribed for primary construction projects.

[C71, 73, 75, 77, 79, 81, §313.28]
83 Acts, ch 123, §117, 209

313.29 Detours located in city.

When the temporary primary road detour or temporary primary road haul road, or any portion thereof, is located within the corporate limits of a city, then as to the portion so located, the provisions of section 313.28 as to consultation, designation, restoration and payment by the department shall apply in like manner to the benefit of the city, and credits thereunder shall be made to the general fund of the city. A city may designate the county engineer or city engineer to inspect such street so used jointly with the representative of the department.

[C71, 73, 75, 77, 79, 81, §313.29]

313.30 to 313.34 Reserved.

313.35 Repealed by 49 Acts, ch 125, § 7. See § 314.6.

313.36 Maintenance — limitation in cities.

Primary roads shall be maintained by the department and the cost thereof paid out of the primary road fund. Extensions of primary roads in cities may be maintained by the department and the cost thereof paid out of the primary road fund.

The total amount of funds expended in any one year on extensions of primary roads in cities shall not exceed thirty-five percent of the primary road fund.

[C24, §4736; C27, 31, 35, §4775-b29; C39, §**4755.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.36]
See also §306.10 and 313.21

313.37 Road equipment.

The department is authorized to purchase road material or road machinery required in the improvement or maintenance of the primary roads, after receiving competitive bids, and to pay for the same out of the primary road fund, and is directed to purchase, rent or lease any machinery or other articles necessary for the use and most economical operation of the field engineering work, the testing of materials, the preparation of plans, and for all allied purposes, in order to enable the department to carry out the provisions of this chapter.

[C24, §4738; C27, 31, 35, §4755-b30; C39, §**4755.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.37]

313.38 to 313.40 Repealed by 51 Acts, ch 107, § 9.

313.41 Repealed by 51 Acts, ch 165, § 26. See § 420.41.

313.42 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the state transportation commission.

2. *"Department"* means the state department of transportation.

[C75, 77, 79, 81, §313.42]
89 Acts, ch 134, §7

MARKINGS FOR MUNICIPALITIES

313.43 Lateral or detour routes in cities.

Any city located on the primary road system and in which the primary road extension as officially designated does not pass through the main part or business district of such city, may designate and mark a lateral or detour route in order to facilitate such primary road traffic as may desire to get into and out of such business district.

[C31, 35, §4755-c2; C39, §**4755.34;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.43]

313.44 Standard markings required.

Such lateral or detour routes shall be marked with standard markings adopted by the department therefor, which markings shall clearly indicate that such lateral route is not the official primary road extension but is in fact a lateral or detour extending to the business district.

[C31, 35, §4755-c3; C39, §**4755.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.44]

313.45 Cost.

The cost of such markings shall be without expense to the state.

[C31, 35, §4755-c4; C39, §**4755.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.45]

313.46 to 313.52 Repealed by 51 Acts, ch 103, § 22. See § 306.4 to 306.11 and 306.20.

313.53 to 313.57 Repealed by 51 Acts, ch 103, § 22. See § 306.16 to 306.20.

313.58 Repealed by 78 Acts, ch 1108, § 24.

INTERSTATE BRIDGES — GIFT OR PURCHASE

313.59 Gift of bridge to state — acceptance.

Should the owner of any bridge, for highway traffic, over the Mississippi river or the Missouri river, on the boundary of the state of Iowa, and which bridge is a connecting link between a primary road or primary road extension in a city of this state and a corresponding road or extension thereof in an adjoining state, offer to give such bridge and approaches thereto, or any part thereof, to the state, the department is hereby authorized, in its discretion, to accept such offer in the name of the state of Iowa, and to enter into written agreements evidencing such acceptance.

[C46, §313.28; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.59]

313.60 Indebtedness paid.

When all outstanding indebtedness or other obligations against such bridge and approaches thereto have been paid and discharged the department shall accept transfer of title thereof to the state and is thereafter authorized to take possession of, operate and maintain such bridge and approaches, or any part thereof, free of tolls, as a part of the primary road system.

[C46, §313.29; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.60]

313.61 Taxes forgiven.

Any such bridge and approaches, which has been offered to the department and with respect to which the department has entered into a written agreement accepting such offer, shall after the date of such agreement, be free from state and local property and income taxes in this state.

[C46, §313.30; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.61]

313.62 Department authority.

The authority herein given to the department to enter into agreements for, accept, take over, operate and maintain such bridges may be exercised by the said department independently or in co-operation with other governmental agencies within this state or in adjoining states.

[C46, §313.31; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.62]

313.63 Action by adjoining state.

The department shall not enter into an agreement of acceptance until the adjoining state enters into an agreement to accept ownership of that portion of the bridge being within the adjoining state.

[C46, §313.32; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.63]

87 Acts, ch 232, §21

313.64 Financial statement annually.

Should the department accept the offer of any bridge over a boundary stream and enter into a written agreement in relation thereto as provided in sections 313.59 to 313.65, the owner or operator of such bridge shall thereafter and until all indebtedness or other obligations against such bridge have been paid and discharged annually file with the department a sworn statement of its financial condition. Such statement shall show funds on hand and indebtedness at the beginning and end of the year, receipts, disbursements, indebtedness retired during the year and any other information required by the department to show the true and complete condition of the finances with respect to such bridge and approaches thereto.

The annual budget of authorized operating and other expenditures for or on behalf of such bridge and approaches shall be approved by the department before becoming effective. Expenditures during the year shall not exceed the approved budget unless an increase in the annual budget be likewise approved by the department.

[C46, §313.33; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.64]

313.65 Approval of taxing bodies.

Before any bridge owned by any individual or private corporation shall be accepted by the department under the provisions of sections 313.59 to 313.64, the said proposal and acceptance shall first be approved by the following tax levying and tax certifying bodies located in the said tax district: The board of supervisors, the city councils and the school board or boards.

[C46, §313.34; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.65]

313.66 Mississippi bridges purchased.

1. The department may purchase one-half of any bridge and its approaches for highway traffic over the Mississippi river on the boundary of the state and which is in receivership and is a connecting link between a primary road or primary road extension in a city of the state and a corresponding road or extension thereof in an adjoining state, providing proper approval is granted by the court having jurisdiction of such receivership.

2. The department is authorized to make payment for any such bridge and its approaches from the primary road fund provided however, that in no event shall the amount of such payment be more than one hundred thousand dollars for any one bridge and approaches thereto, and provided further that such purchase shall not be completed or payment made therefor until the adjoining state shall either have purchased or agreed to purchase ownership of the remaining one-half of said bridge and approaches, and agrees to pay the costs of repairing or maintaining such portion of the

bridge and all approaches.

3. The department, after the purchase of any such bridge, is authorized to take possession thereof and maintain such portion of the bridge and its approaches thereto free of tolls as a part of the primary road system.

4. Before the purchase of any such bridge shall be completed by the department under the provisions of this section, the purchase thereof shall first be approved by the following tax levying and tax certifying bodies located in said district: The board of supervisors, the city councils, and the school board or boards.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §313.66]

313.67 Scenic and improvement fund.

There is hereby created a primary road scenic and improvement fund which shall include and embrace all funds hereafter credited thereto. Said fund shall be administered by the department and shall be used for the construction, reconstruction, improvement and maintenance of roadside safety rest areas and scenic beautification areas along the primary roads of the state including the acquisition of such property and property rights needed to accomplish said purposes. Part or all of said fund may be used to match federal allotments made available to the state of Iowa for the purposes provided in this section and to this end, the department is empowered on behalf of the state to enter into any agreements or contracts with the duly constituted federal authorities in order to secure the benefit of all present and future federal allotments.

[C66, 71, 73, 75, 77, 79, 81, §313.67]

CHAPTER 313A

INTERSTATE BRIDGES

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313A.1 Definitions.

The following words or terms, as used in this chapter, shall have the respective meanings as stated:

1. *"Acquisition by purchase, gift, or condemnation"* as used in this chapter shall mean acquisition by the department, whether such terms "purchase, gift, or condemnation" are used singularly or in sequence.

2. *"Construct, constructing, construction or constructed"* shall include the completion, reconstruction, remodeling, repair, or improvement of any existing toll bridge or any partially constructed interstate bridge, as well as the construction of any new toll bridge.

3. *"Department"* shall mean the state department of transportation.

4. *"Federal bridge commission"* shall mean any bridge commission organized and operating pursuant to an Act of the Congress of the United States, even though such Act of Congress may declare the bridge commission not to be an agency of

the federal government.

5. *"Toll bridge"* shall mean an interstate bridge constructed, purchased or acquired under the provisions of this chapter, upon which tolls are charged, together with all appurtenances, additions, alterations, improvements, and replacements thereof, and the approaches thereto, and all lands and interests therein used therefor, and buildings and improvements thereon.

[C71, 73, 75, 77, 79, 81, §313A.1]

313A.2 Bridge to be controlled by department.

The department shall have full charge of the construction and acquisition of all toll bridges constructed or acquired under the provisions of this chapter, the operation and maintenance thereof and the imposition and collection of tolls and charges for the use thereof. The department shall have full charge of the design of all toll bridges constructed under the provisions of this chapter. The department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department shall advertise for bids for the construction, reconstruction, improvement, repair or remodeling of any toll bridge by publication of a notice once each week for at least two consecutive weeks in a newspaper published and having a general circulation throughout the state of Iowa, the first publication to appear at least fifteen days prior to the date set for receiving bids. The department shall have the power to accept such offer or offers, propositions or bids, and enter into such contract or contracts as it shall deem to be to the best interest of the state.

[C71, 73, 75, 77, 79, 81, §313A.2]

313A.3 Toll bridges constructed over boundary rivers.

The department is hereby authorized to establish and construct toll bridges upon any public highway, together with approaches thereto, wherever it is considered necessary or advantageous and practical for crossing any navigable river between this state and an adjoining state. The necessity or advantage and practicality of any toll bridge shall be determined by the department. To obtain information for the consideration of the department upon the construction of any toll bridge or any other matter pertaining thereto, any officer or employee of the state, upon the request of the department, shall make reasonable examination, investigation, survey, or reconnaissance to determine material facts pertaining thereto and shall report such findings to the department. The cost thereof shall be borne by the department or office conducting it from funds provided for its functions.

[C71, 73, 75, 77, 79, 81, §313A.3]

313A.4 Investigation of feasibility.

The department is hereby authorized to enter into agreements with any federal bridge commission or any county or city of this state, and with an adjoining state or county, city, or town thereof, for the purpose of implementing an investigation of the feasibility of any toll bridge project for the bridging of a navigable river forming a portion of the boundary of this state and such adjoining state. The department may use any funds available for the purposes of this section. Such agreements may provide that in the event any such project is determined to be feasible and adopted, any advancement of funds by any state, county or city may be reimbursed out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived from such project.

[C71, 73, 75, 77, 79, 81, §313A.4]

313A.5 Acquiring existing bridge — bonds.

Whenever the department deems it necessary or advantageous and practical, it may acquire by gift, purchase, or condemnation any interstate bridge which connects with or may be connected with the public highways and the approaches thereto, except that the department may not condemn an existing interstate bridge used for interstate highway traffic and combined highway and railway traffic and presently owned by a municipality, or a person, firm, or corporation engaged in interstate commerce. The department may also acquire by gift or purchase two or more existing interstate bridges and any partially constructed interstate bridge, all located within ten miles of each other, complete the partially constructed bridge and dismantle the bridge which it is designed to replace. In connection with the acquisition of any such bridge, bridges, or partially constructed bridge, the department and any federal bridge commission or any city, county, or other political subdivision of the state are authorized to do all acts and things as in this chapter are provided for the establishing and constructing of toll bridges and operating, financing, and maintaining such bridges insofar as such powers and requirements are applicable to the acquisition of any toll bridge and its operation, financing, and maintenance. In so doing, they shall act in the same manner and under the same procedures as provided for establishing, constructing, operating, financing, and maintaining toll bridges insofar as such manner and procedures are applicable. Without limiting the generality of the above provisions, the department is hereby authorized to cause surveys to be made to determine the propriety of acquiring any such bridge and the rights of way necessary therefor, and other facilities necessary to carry out the provisions hereof; to issue, sell, redeem bonds or issue and exchange bonds with present holders of outstanding bonds of bridges being acquired under the provisions of this chapter and deposit and

pay out of the proceeds of the bonds for the financing thereof, to impose, collect, deposit, and expend tolls therefrom; to secure and remit financial and other assistance in connection with the purchase thereof; and to carry insurance thereon.

[C71, 73, 75, 77, 79, 81, §313A.5]

313A.6 Rules adopted — financial statements.

The department, its officials, and all state officials are hereby authorized to perform such acts and make such agreements consistent with the law which are necessary and desirable in connection with the duties and powers conferred upon them regarding the construction, maintenance, and operation and insurance of toll bridges or the safeguarding of the funds and revenues required for such construction and the payment of the indebtedness incurred therefor. The department shall adopt such rules and regulations in accordance with the provisions of chapter 17A as it may deem necessary for the administration and exercise of its powers and duties granted by this chapter, and shall prepare annual financial statements regarding the operation of such toll bridges which shall be made available for inspection by the public and by the holders of revenue bonds issued by the department under the provisions of this chapter at all reasonable times.

[C71, 73, 75, 77, 79, 81, §313A.6]

313A.7 Resolution of public interest and necessity — revenue bonds.

Whenever the department deems it to be in the best interest of the primary highway system that any new toll bridge be constructed upon any public highway and across any navigable river between this state and an adjoining state, the department shall adopt a resolution declaring that the public interest and necessity require the construction of such toll bridge and authorizing the issuance of revenue bonds in an amount sufficient for the purpose of obtaining funds for such construction. The issuance of bonds as provided in this chapter for the construction, purchase, or acquisition of more than one toll bridge may, at the discretion of the department, be included in the same authority and issue or issues of bonds, and the department is hereby authorized to pledge the gross revenues derived from the operation of any such toll bridge under its control and jurisdiction to pay the principal of and interest on bonds issued to pay the cost of purchasing, acquiring, or constructing any such toll bridge financed under the provisions of this chapter. The department is hereby granted wide discretion, in connection with the financing of the cost of any toll bridge, to pledge the gross revenues of a single toll bridge for the payment of bonds and interest thereon issued to pay the cost of such bridge and to pledge the gross revenues of two or more toll bridges to pay bonds issued to pay the cost of one or more toll bridges and interest thereon as long as the several bridges included herein are not more than ten miles apart.

In addition, if the department in its discretion determines that the construction of a toll bridge cannot be financed entirely through revenue bonds and that the construction of such toll bridge is necessary, the department may advance funds from the primary highway fund to pay for that part of the construction cost, including the cost of approaches and all incidental costs, which is not paid out of the proceeds of revenue bonds. However, said funds advanced from the primary highway fund shall be used only to pay the construction cost, including the cost of approaches and all incidental costs, with respect to that part of the bridge which is or will be located within the state of Iowa. After all revenue bonds and interest thereon issued and sold pursuant to this chapter and payable from the tolls and revenues of said bridge have been fully paid and redeemed or funds sufficient to pay said bonds and interest, including premium, if any, have been set aside and pledged for that purpose, then such amount advanced from the primary road fund shall be repaid to the primary road fund from the tolls and revenues of said bridge before said bridge is made a toll free bridge under the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §313A.7]

313A.8 Right of way secured.

Whenever the department shall authorize the construction of any toll bridge, the department is empowered to secure rights of way therefor and for approaches thereto by gift or purchase or by condemnation in the manner provided by law for the taking of private property for public purposes.

[C71, 73, 75, 77, 79, 81, §313A.8]

313A.9 Consent to cross state property.

The right of way is hereby given, dedicated, and set apart upon which to locate, construct, and maintain toll bridges or approaches thereto or other highway crossings, and transportation facilities thereof or thereto, through, over or across any of the lands which are now or may be the property of this state, including highways; and through, over, or across the streets, alleys, lanes, and roads within any city, county, or other political subdivision of the state. If any property belonging to any city, county or other political subdivision of the state is required to be taken for the construction of any such bridge or approach thereto or should any such property be injured or damaged by such construction, such compensation therefor as may be proper or necessary and as shall be agreed upon may be paid by the department to the particular county, city or other political subdivision of the state owning such property, or condemnation proceedings may be brought for the determination of such compensation.

[C71, 73, 75, 77, 79, 81, §313A.9]

313A.10 Resolution precedent to action.

Before the department shall proceed with any action to secure right of way or with the construction of any toll bridge under the provisions of this chapter, it shall first pass a resolution finding that public interest and necessity require the acquisition of right of way for and the construction of such toll bridge. Such resolution shall be conclusive evidence of the public necessity of such construction and that such property is necessary therefor. To aid the department in determining the public interest, a public hearing shall be held in the county or counties of this state in which any portion of a bridge is proposed to be located. Notice of such hearing shall be published at least once in a newspaper published and having a general circulation in the county or counties where such bridge is proposed to be located, not less than twenty days prior to the date of the hearing. When it becomes necessary for the department to condemn any real estate to be used in connection with any such bridge, or to condemn any existing bridge, such condemnation shall be carried out in a manner consistent with the provisions of chapters 6A and 6B. In eminent domain proceedings to acquire property for any of the purposes of this chapter, any bridge, real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, firm, private, public or municipal corporation, county, city, district or any political subdivision of the state, may be condemned and taken, and the acquisition and use thereof as herein provided for the same public use or purpose to which such property has been so appropriated or dedicated, or for any other public use or purpose, shall be deemed a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which such property has already been appropriated or dedicated, and any condemnation award may be paid from the proceeds of revenue bonds issued under the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §313A.10]

313A.11 Payment from available funds.

If the department determines that any toll bridge should be constructed or acquired under its authority, all costs thereof, including land, right of way, surveying, engineering, construction, legal and administrative expenses, and fees of any fiscal adviser, shall be paid out of any funds available for payment of the cost of the bridge.

[C71, 73, 75, 77, 79, 81, §313A.11]

313A.12 Revenue bonds.

The department is hereby authorized and empowered to issue revenue bonds for the acquisition, purchase or construction of any interstate bridge. Any and all bonds issued by the department for the acquisition, purchase, or construction of any interstate bridge under the authority of this chapter shall be issued in the name of the department and shall constitute obligations only of the department, shall be identified by some appropriate name, and shall contain a recital on the face thereof that the payment or redemption of said bonds and the payment of the interest thereon are secured by a direct charge and lien upon the tolls and other revenues of any nature whatever received from the operation of the particular bridge for the acquisition, purchase, or construction of which the bonds are issued and of such other bridge or bridges as may have been pledged therefor, and that neither the payment of the principal or any part thereof nor of the interest thereon or any part thereof constitutes a debt, liability, or obligation of the state of Iowa. When it is determined by the department to be in the best public interest, any bonds issued under the provisions of this chapter may be refunded and refinanced at a lower rate, the same rate or a higher rate or rates of interest and from time to time as often as the department shall find it to be advisable and necessary so to do. Bonds issued to refund other bonds theretofore issued by the department under the provisions of this chapter may either be sold in the manner hereinafter provided and the proceeds thereof applied to the payment of the bonds being refunded, or the refunding bonds may be exchanged for and in payment and discharge of the bonds being refunded. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time. The refunding bonds may be sold at any time on, before, or after the maturity of any of the outstanding bonds to be refinanced thereby and may be issued for the purpose of refunding a like or greater principal amount of bonds, except that the principal amount of the refunding bonds may exceed the principal amount of the bonds to be refunded to the extent necessary to pay any premium due on the call of the bonds to be refunded or to fund interest in arrears or about to become due. The gross revenues of any toll bridge pledged to the payment of the bonds being refunded, together with the unpledged gross revenues of any other toll bridges located within ten miles of said bridge, may be pledged by the department to pay the principal of and interest on the refunding bonds and to create and maintain reserves therefor.

The department is empowered to receive and accept funds from the state of Iowa or the federal government or any other state upon a co-operative or other basis for the acquisition, purchase, or construction of any interstate bridge authorized under the provisions of this chapter and is empowered to enter into such agreements with the state of Iowa or any other state or the federal govern-

ment as may be required for the securing of such funds.

The department is authorized and empowered to spend from annual primary road fund receipts sufficient moneys to pay the cost of operation, maintenance, insurance, collection of tolls and accounting therefor and all other charges incidental to the operation and maintenance of any toll bridge administered under the provisions of this chapter. However, said annual primary road fund receipts shall be used only to pay such costs and charges with respect to that part of the bridge which is located within the state of Iowa.

The department may also issue its revenue bonds to pay all or any part of the cost of acquiring two or more existing interstate bridges and any partially constructed interstate bridge, all located within ten miles of each other, of completing the partially constructed bridge and of dismantling the bridge which it is designed to replace, and to impose and collect tolls on all of such bridges and to pledge the revenues derived therefrom to the payment of the bonds issued to finance such project. The department may also issue its revenue bonds to pay all or any part of the cost of reconstructing, completing, improving, repairing, or remodeling any interstate bridge or partially constructed bridge, impose and collect tolls, and pledge the bridge revenues to the payment of said bonds.

[C71, 73, 75, 77, 79, 81, §313A.12]

313A.13 Sale and exchange or retirement of bonds.

The revenue bonds may be issued and sold or exchanged by the department from time to time and in such amounts as it deems necessary to provide sufficient funds for the acquisition, purchase, or construction of any such bridge and to pay interest on bonds issued for the construction of any toll bridge during the period of actual construction and for six months after completion thereof. The department is hereby authorized to adopt all necessary resolutions prescribing the form, conditions, and denominations of the bonds, the maturity dates therefor, and the interest rate or rates which the bonds shall bear. All bonds of the same issue need not bear the same interest rate. Principal and interest of the bonds shall be payable at such place or places within or without the state of Iowa as determined by the department, and the bonds may contain provisions for registration as to principal or interest, or both. Interest shall be payable at such times as determined by the department and the bonds shall mature at such times and in such amounts as the department prescribes. The department may provide for the retirement of the bonds at any time prior to maturity, and in such manner and upon payment of such premiums as it may determine in the resolution providing for the issuance of the bonds. All such bonds and any coupons attached thereto shall be signed by such officials of the department as the department may direct. Successive issues of such bonds within the limits of the original authorization shall have equal preference with respect to the payment of the principal thereof and the payment of interest thereon. The department may fix different maturity dates, serially or otherwise, for successive issues under any one original authorization. All bonds issued under the provisions of this chapter shall have all the qualities of negotiable instruments under the laws of the state of Iowa. All bonds issued and sold hereunder shall be sold to the highest and best bidder on the basis of sealed proposals received pursuant to a notice specifying the time and place of sale and the amount of bonds to be sold which shall be published at least once not less than seven days prior to the sale in a newspaper published in the state of Iowa and having a general circulation in said state. None of the provisions of chapter 75 shall apply to bonds issued under the provisions of this chapter but such bonds shall be sold upon terms of not less than par plus accrued interest. The department may reject any or all bids received at the public sale and may thereafter sell the bonds at private sale on such terms and conditions as it deems most advantageous to its own interests, but not at a price below that of the best bid received at the advertised sale. The department may enter into contracts and borrow money through the sale of bonds of the same character as those herein authorized, from the United States or any agency thereof, upon such conditions and terms as may be agreed to and the bonds shall be subject to all the provisions of this chapter, except that any bonds issued hereunder to the United States or any agency thereof need not first be offered at public sale. The department may also provide for the private sale of bonds issued under the provisions of this chapter to the state treasurer of Iowa upon such terms and conditions as may be agreed upon, and in such event said bonds need not first be offered at public sale. Temporary or interim bonds, certificates, or receipts, of any denomination, and with or without coupons attached, signed by such official as the department may direct, may be issued and delivered until the definitive bonds are executed and available for delivery.

[C71, 73, 75, 77, 79, 81, §313A.13]

313A.14 Proceeds in trust fund.

The proceeds from the sale of all bonds authorized and issued under the provisions of this chapter shall be deposited by the department in a fund designated as the construction fund of the particular interstate bridge or bridges for which such bonds were issued and sold, which fund shall not be a state fund and shall at all times be kept segregated and set apart from all other funds and in trust for the purposes herein set out. Such proceeds shall be paid out or disbursed solely for the

acquisition, purchase, or construction of such interstate bridge or bridges and expenses incident thereto, the acquisition of the necessary lands and easements therefor and the payment of interest on such bonds during the period of actual construction and for a period of six months thereafter, only as the need therefor shall arise and the department may agree with the purchaser of said bonds upon any conditions or limitations restricting the disbursement of such funds that may be deemed advisable, for the purpose of assuring the proper application of such funds. All moneys in such fund and not required to meet current construction costs of the interstate bridge or bridges for which such bonds were issued and sold, and all funds constituting surplus revenues which are not immediately needed for the particular object or purpose to which they must be applied or are pledged may be invested in obligations issued or guaranteed by the United States or by any person controlled by or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; provided, however, that the department may provide in the proceedings authorizing the issuance of said bonds that the investment of such moneys shall be made only in particular bonds and obligations within the classifications eligible for such investment and such provisions shall thereupon be binding upon the department and all officials having anything to do with such investment. Any surplus which may exist in said construction fund shall be applied to the retirement of bonds issued for the acquisition, purchase, or construction of any such interstate bridge by purchase or call and, in the event such bonds cannot be purchased at a price satisfactory to the department and are not by their terms callable prior to maturity, such surplus shall be paid into the fund applicable to the payment of principal and interest of said bonds and shall be used for that purpose. The proceedings authorizing the issuance of bonds may provide limitations and conditions upon the time and manner of applying such surplus to the purchase and call of outstanding bonds and the terms upon which they shall be purchased or called and such limitations and conditions shall be followed and observed in the application and use of such surplus. All bonds so retired by purchase or call shall be immediately canceled.

[C71, 73, 75, 77, 79, 81, §313A.14]

313A.15 Toll revenue fund.

All tolls or other revenues received from the operation of any toll bridge acquired, purchased, or constructed with the proceeds of bonds issued and sold hereunder shall be deposited by the department to the credit of a special trust fund to be designated as the toll revenue fund of the particular toll bridge or toll bridges producing such tolls or revenue, which fund shall be a trust fund and shall at all times be kept segregated and set apart from all other funds.

[C71, 73, 75, 77, 79, 81, §313A.15]

313A.16 Funds transferred to place of payment.

From the money so deposited in each separate construction fund as hereinabove provided, at the direction of the department there shall be transferred to the place or places of payment named in said bonds such sums as may be required to pay the interest as it becomes due on all bonds issued and outstanding for the construction of such particular toll bridge or toll bridges during the period of actual construction and during the period of six months immediately thereafter. The department shall thereafter transfer from each separate toll revenue fund to the place or places of payment named in the bonds for which said revenues have been pledged such sums as may be required to pay the interest on said bonds and redeem the principal thereof as such interest and principal become due. All funds so transferred for the payment of principal of or interest on bonds issued for any particular toll bridge or toll bridges shall be segregated and applied solely for the payment of said principal or interest. The proceedings authorizing the issuance of the bonds may provide for the setting up of a reserve fund or funds out of the tolls and other revenues not needed for the payment of principal and interest, as the same currently matures and for the preservation and continuance of such fund in a manner to be provided therein, and such proceedings may also require the immediate application of all surplus moneys in such toll revenue fund to the retirement of such bonds prior to maturity, by call or purchase, in such manner and upon such terms and the payment of such premiums as may be deemed advisable in the judgment of the department. The moneys remaining in each separate toll revenue fund after providing the amount required for the payment of principal of and interest on bonds as hereinabove provided, shall be held and applied as provided in the proceedings authorizing the issuance of said bonds. In the event the proceedings authorizing the issuance of said bonds do not require surplus revenues to be held or applied in any particular manner, they shall be allocated and used for such other purposes incidental to the construction, operation, and maintenance of any toll bridge as the department may determine and as permitted under sections 313A.7 and 313A.12.

[C71, 73, 75, 77, 79, 81, §313A.16]

313A.17 Warrants for payment.

Warrants for payments to be made on account of such bonds shall be drawn by the department on duly approved vouchers. Moneys required to meet the costs of purchase or construction and all expenses and costs incidental to the acquisition, purchase, or construction of any particular interstate

bridge or to meet the costs of operating, maintaining, and repairing the same, shall be paid by the department from the proper fund therefor upon duly approved vouchers. All interest received or earned on money deposited in each and every fund herein provided for shall be credited to and become a part of the particular fund upon which said interest accrues.

[C71, 73, 75, 77, 79, 81, §313A.17]

313A.18 Depositaries or paying agents.

The department may provide in the proceedings authorizing the issuance of bonds or may otherwise agree with the purchasers of bonds regarding the deposit of all moneys constituting the construction fund and the toll revenue fund and provide for the deposit of such money at such times and with such depositaries or paying agents and upon the furnishing of such security as may meet with the approval of the purchasers of such bonds.

[C71, 73, 75, 77, 79, 81, §313A.18]

313A.19 Expenses of department.

Notwithstanding any provision contained in this chapter, the proceeds received from the sale of bonds and the tolls or other revenues received from the operation of any toll bridge may be used to defray any expenses incurred by the department in connection with and incidental to the issuance and sale of bonds for the acquisition, purchase, or construction of any such toll bridge including expenses for the preparation of surveys and estimates, legal, fiscal and administrative expenses, and the making of such inspections and examinations as may be required by the purchasers of such bonds; provided, that the proceedings authorizing the issuance of such bonds may contain appropriate provisions governing the use and application of said bond proceeds and toll or other revenues for the purposes herein specified.

[C71, 73, 75, 77, 79, 81, §313A.19]

313A.20 No diminution of duties while bonds outstanding.

While any bonds issued by the department remain outstanding, the powers, duties or existence of the department or of any other official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. The holder of any bond may by mandamus or other appropriate proceeding require and compel the performance of any of the duties imposed upon any state department, official, or employee or imposed upon the department or its officers, agents, and employees in connection with the acquisition, purchase, construction, maintenance, operation, and insurance of any bridge and in connection with the collection, deposit, investment, application, and disbursement of all tolls and other revenues derived from the operation and use of any bridge and in connection with the deposit, investment, and disbursement of the proceeds received from the issuance of bonds; provided, that the enumeration of such rights and remedies herein shall not be deemed to exclude the exercise or prosecution of any other rights or remedies by the holders of such bonds.

[C71, 73, 75, 77, 79, 81, §313A.20]

313A.21 Insurance or indemnity bond.

When any toll bridge authorized hereunder is being built by the department it may carry or cause to be carried such an amount of insurance or indemnity bond or bonds as protection against loss or damage as it may deem proper. The department is hereby further empowered to carry such an amount of insurance to cover any accident or destruction in part or in whole to any toll bridge. All moneys collected on any indemnity bond or insurance policy as the result of any damage or injury to any such toll bridge shall be used for the purpose of repairing or rebuilding of any such toll bridge as long as there are revenue bonds against any such structure outstanding and unredeemed. The department is also empowered to carry insurance or indemnity bonds insuring against the loss of tolls or other revenues to be derived from any such toll bridge by reason of any interruption in the use of such toll bridge from any cause whatever, and the proceeds of such insurance or indemnity bonds shall be paid into the fund into which the tolls and other revenues of the bridge thus insured are required to be paid and shall be applied to the same purposes and in the same manner as other moneys in the said fund. Such insurance or indemnity bonds may be in an amount equal to the probable tolls and other revenues to be received from the operation of such toll bridge during any period of time that may be determined upon by the department and fixed in its discretion, and be paid for out of the toll revenue fund as may be specified in said proceedings. The department may provide in the proceedings authorizing the issuance of bonds for the carrying of insurance as authorized by this chapter and the purchase and carrying of insurance as authorized by this chapter shall thereupon be obligatory upon the department and be paid for out of the toll revenue fund as may be specified in said proceedings.

[C71, 73, 75, 77, 79, 81, §313A.21]

313A.22 Toll charges fixed by department.

The department is hereby empowered to fix the rates of toll and other charges for all interstate bridges acquired, purchased, or constructed under the terms of this chapter. Toll charges so fixed may be changed from time to time as conditions may warrant. The department in establishing toll charges shall give due consideration to the amount required annually to pay the principal of and interest on bonds payable from the revenues

thereof. The tolls and charges shall be at all times fixed at rates sufficient to pay the bonds and interest as they mature, together with the creation and maintenance of bond reserve funds and other funds as established in the proceedings authorizing the issuance of the bonds, for any particular toll bridge. The amounts required to pay the principal of and interest on bonds shall constitute a charge and lien on all such tolls and other revenues and interest thereon and sinking funds created therefrom received from the use and operation of said toll bridge, and the department is hereby authorized to pledge a sufficient amount of said tolls and revenues for the payment of bonds issued under the provisions of this chapter and interest thereon and to create and maintain a reserve therefor. Such tolls and revenues, together with the interest earned thereon, shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose as long as such bonds or any of them are outstanding and unpaid.

[C71, 73, 75, 77, 79, 81, §313A.22]

313A.23 Political subdivision may aid.

Whenever a proposed interstate bridge is to be acquired, purchased or constructed, any city, county, or other political subdivision located in relation to such facility so as to benefit directly or indirectly thereby, may, either jointly or separately, at the request of the department advance or contribute money, rights of way, labor, materials, and other property toward the expense of acquiring, purchasing or constructing the bridge, and for preliminary surveys and the preparation of plans and estimates of cost therefor and other preliminary expenses. Any such city, county, or other political subdivision may, either jointly or separately, at the request of the department advance or contribute money for the purpose of guaranteeing the payment of interest or principal on the bonds issued by the department to finance the bridge. Appropriations for such purposes may be made from any funds available, including county road funds received from or credited by the state, or funds obtained by excess tax levies made pursuant to law or the issuance of general obligation bonds for this purpose. Money or property so advanced or contributed may be immediately transferred or delivered to the department to be used for the purpose for which contribution was made. The department may enter into an agreement with a city, county, or other political subdivision to repay any money or the value of a right of way, labor, materials or other property so advanced or contributed. The department may make such repayment to a city, county, or other political subdivision and reimburse the state for any expenditures made by it in connection with the bridge out of tolls and other revenues for the use of the bridge.

[C71, 73, 75, 77, 79, 81, §313A.23]

313A.24 Sale of excess land to political subdivisions.

If the department deems that any land, including improvements thereon, is no longer required for toll bridge purposes and that it is in the public interest, it may negotiate for the sale of such land to the state or to any city, county, or other political subdivision or municipal corporation of the state. The department shall certify the agreement for the sale to the state executive council, with a description of the land and the terms of the sale and the state executive council may execute the deed and deliver it to the grantee.

[C71, 73, 75, 77, 79, 81, §313A.24]

313A.25 Sale to public.

If the department is of the opinion that any land, including improvements thereon, is no longer required for toll bridge purposes, it may be offered for sale upon publication of a notice once each week for two consecutive weeks in a newspaper published and having a general circulation throughout the state of Iowa, specifying the time and place fixed for the receipt of bids.

[C71, 73, 75, 77, 79, 81, §313A.25]

313A.26 Acceptance or rejection of bids.

The department may reject all such bids if the highest bid does not equal the reasonable fair market value of the real property, plus the value of the improvements thereon, computed on the basis of the reproduction value less depreciation. The department may accept the highest and best bid, and certify the agreement for the sale to the state executive council, with a description of the land and the terms of the sale and the state executive council shall execute the deed and deliver it to the grantee.

[C71, 73, 75, 77, 79, 81, §313A.26]

313A.27 Franchises for use of bridge.

If the department deems it consistent with the use and operation of any toll bridge, the department may grant franchises to persons, firms, associations, private or municipal corporations, the United States government or any agency thereof, to use any portion of the property of any toll bridge, including approaches thereto, for the construction and maintenance of water pipes, flumes, gas pipes, telephone, telegraph and electric light and power lines and conduits, trams or railways, and any other such facilities in the manner of granting franchises on state highways.

[C71, 73, 75, 77, 79, 81, §313A.27]

313A.28 Deposit of proceeds.

Any moneys received pursuant to the provisions of sections 313A.24 through 313A.27 shall be deposited by the department into the separate and proper trust fund established for the bridge.

[C71, 73, 75, 77, 79, 81, §313A.28]

313A.29 Tolls imposed for improving other bridges.

The department shall have the right to impose and reimpose tolls for pedestrian or vehicular traffic over any interstate bridges under its control and jurisdiction for the purpose of paying the cost of reconstructing and improving existing bridges and their approaches, purchasing existing bridges, and constructing new bridges and approaches, provided that any such existing bridge or new bridge is located within ten miles of the bridge on which tolls are so imposed or reimposed, to pay interest on and create a sinking fund for the retirement of revenue bonds issued for the account of such projects and to pay any and all costs and expenses incurred by the department in connection with and incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and to establish the required interest reserves for and during the estimated construction period and for six months thereafter.

[C71, 73, 75, 77, 79, 81, §313A.29]

313A.30 Bridges as part of primary roads.

The bridges herein provided for may be incorporated into the primary road system as toll free bridges whenever the costs of the construction of the bridges and the approaches thereto and the reconstruction and improvement of existing bridges and approaches thereto, including all incidental costs, have been paid and when all revenue bonds and interest thereon issued and sold pursuant to this chapter and payable from the tolls and revenues thereof shall have been fully paid and redeemed or funds sufficient to pay said bonds and interest, including premium, if any, have been set aside and pledged for that purpose. However, tolls may again be imposed as provided in section 313A.29.

[C71, 73, 75, 77, 79, 81, §313A.30]

313A.31 Revenue bonds.

The department shall have the power and is hereby authorized by resolution to issue, sell, or pledge its revenue bonds in an amount sufficient to provide funds to pay all or any part of the costs of construction of a new bridge and approaches thereto and the reconstruction, improvement, and maintaining of an existing bridge and approaches thereto, including all costs of survey, acquisition of right of way, engineering, legal, fiscal and incidental expenses, to pay the interest due thereon during the period beginning with the date of issue of the bonds and ending at the expiration of six months after the first imposition and collection of tolls from the users of said bridges, and all costs incidental to the issuance and sale of the bonds.

Except as may be otherwise specifically provided by statute, all of the other provisions of this chapter shall govern the issuance and sale of revenue bonds issued under this section, the execution thereof, the disbursement of the proceeds of issuance thereof, the interest rate or rates thereon, their form, terms, conditions, covenants, negotiability, denominations, maturity date or dates, the creation of special funds or accounts safeguarding and providing for the payment of the principal thereof and interest thereon, and their manner of redemption and retirement.

Such bonds shall include a covenant that the payment of the principal thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other gross revenues received from the operation of said toll bridges and from any interest which may be earned from the deposit or investment of any such revenues.

The tolls and charges shall be at all times fixed at rates sufficient to pay the bonds and interest as they mature, together with the creation and maintenance of bond reserve funds and other funds as established in the proceedings authorizing the issuance of the bonds.

[C71, 73, 75, 77, 79, 81, §313A.31]

313A.32 Operation and control of bridge.

The department is hereby authorized to operate and to assume the full control of said toll bridges and each portion thereof whether within or without the borders of the state of Iowa, with full power to impose and collect tolls from the users of such bridges for the purpose of providing revenues at least sufficient to pay the cost and incidental expenses of construction and acquisition of said bridges and approaches in both states in which located and for the payment of the principal of and interest on its revenue bonds as authorized by this chapter.

[C71, 73, 75, 77, 79, 81, §313A.32]

313A.33 No obligation of state.

Under no circumstances shall any bonds issued under the terms of this chapter be or become or be construed to constitute a debt of or charge against the state of Iowa within the purview of any constitutional or statutory limitation or provision. No taxes, appropriations or other funds of the state of Iowa may be pledged for or used to pay such bonds or the interest thereon, but any such bonds shall be payable solely and only as to both principal and interest from the tolls and revenues derived from the operation of any toll bridge or toll bridges acquired, purchased, or constructed under this chapter, and the sole remedy for any breach or default of the terms of any such bonds or proceedings for their issuance shall be a proceeding either in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by this chapter and the terms of the resolution under which such bonds are issued.

[C71, 73, 75, 77, 79, 81, §313A.33]

313A.34 Agreements with other states.

The director of transportation may, subject to the approval of the state transportation commission, enter into such agreement or agreements with other state highway commissions and the governmental agencies or subdivisions of the state of Iowa or other states and with federal bridge commissions as they shall find necessary or convenient to carry out the purposes of this chapter, and is authorized to do any and all acts contained in such agreement or agreements that are necessary or convenient to carry out the purposes of this chapter. Such agreements may include, but shall not be restricted to, the following provisions:

1. A provision that the department shall assume and have complete responsibility for the operation of such bridges and approaches thereto, and with full power to impose and collect all toll charges from the users of such bridges and to disburse the revenue derived therefrom for the payment of principal and interest on any revenue bonds herein provided for and to carry out the purposes of this chapter.

2. A provision that the department shall provide for the issuance, sale, exchange or pledge, and payment of revenue bonds payable solely from the revenues derived from the imposition and collection of tolls upon such toll bridges.

3. A provision that the department, after consultation with the other governmental agencies or subdivisions who are parties to such agreements, shall fix and revise the classifications and amounts of tolls to be charged and collected from the users of the toll bridges, with the further provision that such toll charges shall be removed after all costs of planning, designing, and construction of such toll bridges and approaches thereto and all incidental costs shall have been paid, and all of said revenue bonds, and interest thereon, issued pursuant to this chapter shall have been fully paid and redeemed or funds sufficient therefor have been set aside and pledged for that purpose.

4. A provision that all acts pertaining to the design and construction of such toll bridges may be done and performed by the department and that any and all contracts for the construction of such toll bridges shall be awarded in the name of the department.

5. A provision that the state of Iowa and adjoining state and all governmental agencies or subdivisions party to such agreement shall be reimbursed out of the proceeds of the sale of such bonds or out of tolls and revenues as herein allowed for any advances they may have made or expenses they may have incurred for any of the purposes for which said revenue bonds may be issued, after duly verified itemized statements of such advances and expenses have been submitted to and been approved by all parties to such agreement.

6. A provision for the division of ownership with the adjoining state and for a proportional division of the maintenance costs of the bridge when all outstanding indebtedness or other obligations payable from the revenues of the bridge have been paid.

[C71, 73, 75, 77, 79, 81, §313A.34]
87 Acts, ch 232, §22

313A.35 Repealed by 81 Acts, ch 117, § 1097. See § 331.305, 331.441(2c), 331.442(1 – 4).

313A.36 Purposes of powers granted.

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state of Iowa, for the increase of their commerce and prosperity and for the improvement of their health and living conditions, and as the acquisition, construction, operation, and maintenance by the department of the projects herein defined will constitute the performance of essential governmental functions, the department shall not be required to pay any taxes or assessments upon such projects or upon any property acquired or used by the department under the provisions of this chapter or upon the income from such projects, and the bonds issued under the provisions of this chapter, their transfer and the income therefrom including any profit made on the sale thereof shall at all times be free from taxation by or within the state of Iowa.

[C71, 73, 75, 77, 79, 81, §313A.36]

313A.37 Failure to pay toll — penalty.

Any person who uses any toll bridge and fails or refuses to pay the toll provided therefor shall be guilty of a simple misdemeanor.

[C71, 73, 75, 77, 79, 81, §313A.37]

313A.38 Independent of any other law.

This chapter shall be construed as providing an alternative and independent method for the acquisition, purchase, or construction of interstate bridges, for the issuance and sale or exchange of bonds in connection therewith and for refunding bonds pertinent thereto, and for the imposition, collection, and application of the proceeds of tolls and charges for the use of interstate bridges, without reference to any other statute, and shall not be construed as an amendment of or subject to the provisions of any other law, and no publication of any notice, and no other or further proceeding in respect to the issuance or sale or exchange of bonds under this chapter shall be required except such as are prescribed by this chapter, any provisions of other statutes of the state to the contrary notwithstanding.

[C71, 73, 75, 77, 79, 81, §313A.38]

313A.39 Construction.

This chapter, being necessary for the public

safety and welfare, shall be liberally construed to effectuate the purposes thereof.

[C71, 73, 75, 77, 79, 81, §313A.39]

CHAPTER 314

ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

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314.1 Bidding procedures — basis for awarding contracts.

1. The agency having charge of the receipt of bids and the award of contracts for the construction, reconstruction, improvement, or repair or maintenance of a highway, bridge, or culvert may require, for any highway, bridge, or culvert contract letting, that each bidder file with the agency a statement showing the bidder's financial standing, equipment, and experience in the execution of like or similar work. The statements shall be on standard forms prepared by the department and shall be filed with the agency prior to the letting at which the bidder expects to bid. The agency may, in advance of the letting, notify the bidder as to the amount and the nature of the work for which the bidder is deemed qualified to bid. A bidder who is prequalified under this subsection by the department shall be deemed qualified for a highway, bridge, or culvert contract letting by any other agency and shall submit proof of the prequalification in a manner determined by the department if required to do so by the agency.

2. Notwithstanding any other provision of law to the contrary, a public improvement that involves the construction, reconstruction, or improvement of a highway, bridge, or culvert and that has a cost in excess of the applicable threshold in section 73A.18, 262.34, 297.7, 309.40, 310.14, 313.10, or 384.96, as modified by the bid threshold subcommittee pursuant to section 314.1B, shall be advertised and let for bid, except such public improvements that involve emergency work pursuant to section 309.40A, 313.10, 384.95, or 384.103, subsection 2. However, a public improvement that has an estimated total cost to a city in excess of a threshold of fifty thousand dollars, as modified by the bid threshold subcommittee pursuant to section 314.1B, and that involves the construction, reconstruction, or improvement of a highway, bridge, or culvert that is under the jurisdiction of a city with a population of more than fifty thousand, shall be advertised and let for bid.

3. In the award of contracts for the construction, reconstruction, improvement, or repair or maintenance of a highway, bridge, or culvert, the agency having charge of awarding such contracts shall give due consideration not only to the prices bid but also to the mechanical or other equipment and the financial responsibility and experience in the performance of like or similar contracts. The agency may reject any or all bids. The agency may readvertise and relet the project without conducting an additional public hearing if no substantial changes are made to the project's plans or specifications. The agency may let by private contract or build by day labor, at a cost not in excess of the lowest bid received.

Upon the completion of any contract or project on either the farm-to-market or secondary road

system, the county engineer shall file with the county auditor a statement showing the total cost thereof with certificate that the work has been done in accordance with the plans and specifications. Upon completion of a contract or project on the municipal street system, the city public works department or city engineer shall file with the city clerk a statement showing the total cost of the contract or project with a certificate that the work has been done in accordance with the plans and specifications. All contracts shall be in writing and shall be secured by a bond for the faithful performance thereof as provided by law.

[S13, §1527-s18; C24, §4651, 4700; C27, 31, 35, §4644-c41, 4651, 4755-b11; C39, §**4644.39, 4651, 4686.15, 4755.11;** C46, §309.57, 310.15, 313.11; C50, §308A.10, 309.39; C54, §309.39, 314.1; C58, 62, 66, 71, 73, 75, 77, 79, 81, §314.1]

2001 Acts, ch 32, §7, 14

Displaced city or county employees; offers of other employment; 2001 Acts, ch 32, §13, 14

2001 amendments designating unnumbered paragraph 1 as subsection 1, adding subsection 2, and amending and redesignating unnumbered paragraph 2 as subsection 3 are effective July 1, 2002; 2001 Acts, ch 32, §14

Former unnumbered paragraph 1 designated as subsection 1

NEW subsection 2

Former unnumbered paragraph 2 amended, divided, and redesignated as subsection 3

314.1A Detailed cost accountings by cities and counties — rules.

The department shall adopt rules prescribing the manner by which cities and counties shall provide a detailed cost accounting under section 309.93 or 312.14, of all instances of the use of day labor or public or private contracts for construction, reconstruction, or improvement projects on highways within their jurisdiction. The rules shall include definitions concerning types of projects and uniform requirements and definitions that cities and counties shall use in determining costs for such projects. The department shall establish an advisory committee composed of representatives of public sector agencies, private sector contractor organizations, and certified public employee collective bargaining organizations to make recommendations for such rules.

2001 Acts, ch 32, §8

314.1B Bid threshold subcommittee — adjustments — notice.

1. The director of the department shall appoint, from the members of the advisory committee established under section 314.1A, a bid threshold subcommittee. The subcommittee shall consist of seven members, three of whom shall be representatives of local public sector agencies, three of whom shall be representatives of private sector contractor organizations, and with the remaining member being the director or the director's designee, who shall serve as chairperson of the subcommittee. A vacancy in the membership of the subcommittee shall be filled by the director.

2. *a.* The subcommittee shall review the competitive bid thresholds applicable to city and county highway, bridge, and culvert projects. The subcommittee shall review price adjustments for all types of city and county highway, bridge, and culvert construction, reconstruction, and improvement projects, based on changes in the construction price index from the preceding year. Upon completion of the review the subcommittee may make adjustments in the applicable bid thresholds for types of work based on the price adjustments.

b. A bid threshold shall not be adjusted to an amount that is less than the bid threshold applicable to a city or county on July 1, 2002, as provided in section 73A.18, 309.40, 310.14, 314.1, or 384.96. An adjusted bid threshold shall take effect as provided in subsection 3, and shall remain in effect until a new adjusted bid threshold is established and becomes effective as provided in this section.

3. The subcommittee shall meet to conduct the review and make the adjustments described in this section on or before August 1 of every other year, or of every year if determined necessary by the subcommittee, with the first meeting occurring on or before August 1, 2002. By September 1 of each year in which the subcommittee makes adjustments in the bid thresholds, the director shall cause an advisory notice to be published in the Iowa administrative bulletin and in a newspaper of general circulation in this state, stating the adjusted bid thresholds to be in effect on January 1 of the following year, as established by the subcommittee under this section.

2001 Acts, ch 32, §9, 14

Section is effective July 1, 2002; 2001 Acts, ch 32, §14

NEW section

314.2 Interest in contract prohibited.

No state or county official or employee, elective or appointive shall be directly or indirectly interested in any contract for the construction, reconstruction, improvement or maintenance of any highway, bridge or culvert, or the furnishing of materials therefor. The letting of a contract in violation of the foregoing provisions shall invalidate the contract and such violation shall be a complete defense to any action to recover any consideration due or earned under the contract at the time of its termination.

[S13, §1527-s15; C24, §4685, 4700; C27, 31, 35, §4685, 4755-b10; C39, §**4685, 4686.14, 4755.10;** C46, §309.92, 310.14, 313.10; C50, §308A.11; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.2]

314.3 Claims — approval and payment.

All claims for construction, reconstruction, improvement, repair, or maintenance on any highway shall be itemized on voucher forms prepared for that purpose, certified to by the claimants and by the engineer in charge, and then forwarded to the agency in control of that highway for final audit and approval. Claims payable from the farm-

to-market road fund shall be approved by both the board of supervisors and the department. Upon approval by the department of vouchers which are payable from the farm-to-market road fund, or from the primary road fund, as the case may be, such vouchers shall be forwarded to the director of revenue and finance, who shall draw warrants therefor and said warrants shall be paid by the treasurer of the state from the farm-to-market road fund or from the primary road fund, as the case may be.

If the engineer makes such certificate or a member of the agency approves such claim when said work has not been done in accordance with the plans and specifications, and said work be not promptly made good without additional cost, the engineer or member shall be liable on the person's bond for the amount of such claim.

[SS15, §1527-s10; C24, §4653, 4702; C27, 31, 35, §4653, 4755-b15; C39, §**4653, 4686.17, 4755.15;** C46, §309.59, 310.17, 313.15; C50, §308A.12; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.3]

314.4 Partial payments.

Partial payments may be made on highway contract work during the progress thereof, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect therein. The approval of any claim by the agency in control of the work, or highway on which the work is located, may be evidenced by the signature of the chairperson of said agency, or of a majority of the members of said agency, on the individual claims or on the abstract of a number of claims with the individual claims attached to said abstract.

[SS15, §1527-s10; C24, §4654, 4702; C27, 31, 35, §4654, 4755-b16; C39, §**4654, 4755.16;** C46, §309.60, 313.16; C50, §308A.13; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.4]

314.5 Extensions in certain cities.

The agency in control of a secondary road, subject to approval of the council, may eliminate danger at railroad crossings and construct, reconstruct, improve, repair, and maintain any road or street which is an extension of the secondary road within a city. However, this authority does not apply to the extensions of secondary roads located in cities over twenty-five hundred population, where the houses or business houses average less than two hundred feet apart.

The phrase *"subject to the approval of the council"* as it appears in this section, shall be construed as authorizing the council to consider said proposed improvement only in its relationship to municipal improvements such as sewers, water lines, establishing grades, change of established street grades, sidewalks and other public improvements. The locations of such road extensions shall be determined by the agency in control of such road or road system.

[C31, 35, §4644-c47; C39, §**4644.45, 4686.21;** C46, §309.45, 310.21; C50, §308A.14; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.5]

89 Acts, ch 134, §8

314.6 Highways along city limits.

Whenever any public highway located along the corporate line of any city is an extension of a farm-to-market road, or of a primary road, it may be included in the farm-to-market road system or the primary road system, as the case may be, and may be constructed, reconstructed, improved, repaired, and maintained as a part of said road system.

[C24, §4735; C27, 31, 35, §4755-b28; C39, §**4686.25, 4755.26;** C46, §310.25, 313.35; C50, §308A.15; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.6]

314.7 Trees — ingress or egress — drainage.

Officers, employees, and contractors in charge of improvement or maintenance work on any highway shall not cut down or injure any tree growing by the wayside which does not materially obstruct the highway, or tile drains, or interfere with the improvement or maintenance of the road, and which stands in front of any city lot, farmyard orchard or feed lot, or any ground reserved for any public use. Nor shall they destroy or injure reasonable ingress or egress to any property, or turn the natural drainage of the surface water to the injury of adjoining owners. It shall be their duty to use strict diligence in draining the surface water from the public road in its natural channel. To this end they may enter upon the adjoining lands for the purpose of removing from such natural channel obstructions that impede the flow of such water.

[C24, 27, §4791; C31, 35, §4644-c46; C39, §**4644.44;** C46, §309.44; C50, §308A.16; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.7]

314.8 Government markers preserved.

1. If it is necessary in grading a highway to make a cut that will disturb, or fill that will cover up, a government or other established corner or land monument, the engineer in charge of the project shall establish permanent witness corners or monuments, and make a record of the same, that show the distance and direction the witness corner is from the corner disturbed or covered up. When the construction work is completed the engineer shall permanently reestablish the corner or monument.

2. If the duties in subsection 1 are not performed, the agency in control of the highway on which a project described in subsection 1 has been or is being completed shall pay the costs of restoring the original position of the established corner or land monument.

[S13, §1527-s7; C24, 27, 31, 35, 39, §**4656;** C46,

§309.62; C50, §308A.17; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.8]

2002 Acts, ch 1063, §14
Section amended

314.9 Entering private property.

The agency in control of a highway may after thirty days' written notice by restricted certified mail addressed to the owner and also to the occupant, enter upon private property for the purpose of making surveys, soundings, drillings, appraisals, and examinations as the agency deems appropriate or necessary to determine the advisability or practicability of locating and constructing a highway on the property or for the purpose of determining whether gravel or other material exists on the property of suitable quality and in sufficient quantity to warrant the purchase or condemnation of the property. The entry shall not be deemed a trespass, and the agency may be aided by injunction to insure peaceful entry. The agency shall pay actual damages caused by the entry, surveys, soundings, drillings, appraisals, or examinations.

Any damage caused by the entry, surveys, soundings, drillings, appraisals, or examinations shall be determined by agreement or in the manner provided for the award of damages in condemnation of the property for highway purposes. Soundings or drillings shall not be done within one hundred fifty feet of the dwelling house or within fifty feet of other buildings without written consent of the owner.

[C27, 31, 35, §4658-a1; C39, §**4658.1;** C46, §309.65; C50, §308A.18; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.9]

96 Acts, ch 1126, §3

314.10 State-line highways.

The agency in control of any highway or bridge bordering on or crossing a state line is authorized to confer and agree with the agency or official of such border state, or subdivision of such state, having control of such highway or bridge relative to the interstate connection, the plans for the improvement, and maintenance, the division of work and the apportionment of cost of such highway or bridge.

[S13, §1570-a; SS15, §1527-s3; C24, 27, 31, 35, 39, §**4663;** C46, §309.72; C50, §308A.19; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.10]

314.11 Use of bridges by utility companies.

Telephone, telegraph, electric transmission and pipe lines may be permitted to use any highway bridge on or across a state line on such terms and conditions as the agency or officials jointly constructing, maintaining or operating such bridge may jointly determine. No discrimination shall be made in the use of such bridge as between such utilities. Joint use of telephone, telegraph, electric transmission or pipe lines may not be required. No grant to any public utility to use such bridge shall in any way interfere with the use of such bridge by the public for highway purposes.

[S13, §424-e; C24, 27, 31, 35, 39, §**4683;** C46, §309.90; C50, §308A.20; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §314.11]

314.12 Borrow pits — topsoil preserved.

In the award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the agency having charge of awarding such contracts shall require that when fill dirt, soil or other materials are to be removed from borrow pits acquired by title or easement, whether by agreement or condemnation, for use in the project, adequate provision shall be made for the restoration of the borrow pit area, either by removal and replacement of a minimum of eight inches of topsoil, or by fertilizing, mulching, reseeding or other appropriate measures to provide vegetative cover or prevent erosion, except where a lake or subwater table conditions are designed, or where the area is zoned for commercial, industrial, or residential use, or where the borrow is in locations of white oak, sand, loess or undrainable clays. When the borrow pit is acquired by easement, the restoration method shall be determined by agreement with the landowner.

[C71, 73, 75, 77, 79, 81, §314.12]

314.12A Preservation of topsoil in highway construction.

In the award of contracts for the construction, reconstruction, improvement, and repair, except for minor maintenance, of a highway, the state department of transportation shall require that when fill dirt, soil, or other materials are to be removed from an area acquired by title or easement, whether by agreement or condemnation, for use in the project, adequate provision shall be made for the salvage of topsoil from the area for use in the restoration of the specified critical areas of the project by replacement of salvaged topsoil, by fertilizing and mulching if necessary, or by other appropriate measures to provide vegetative cover to prevent erosion, including filling or covering the area with compost, except where a lake or subwater table conditions exist, where deep loess is present, or where outside ditch bottoms and backslopes are present in rock cut areas. This section shall not apply to borrow pits covered by section 314.12.

2002 Acts, ch 1103, §1
NEW section

314.13 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agency"* means any governmental body which exercises jurisdiction over any road as pro-

vided by law.

2. *"Committee"* means the integrated roadside vegetation management technical advisory committee created in section 314.22.

3. *"Coordinator"* means the integrated roadside vegetation management coordinator.

4. *"Department"* means the state department of transportation.

5. *"Highway"* or *"street"* means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

[C75, 77, 79, 81, §314.13]

89 Acts, ch 246, §3; 2001 Acts, ch 32, §10

314.14 Contracts set aside for disadvantaged business enterprises.

1. *Definitions.* As used in this section:

a. "Disadvantaged business enterprise" means a small business concern which meets either of the following:

(1) Is at least fifty-one percent owned by one or more socially and economically disadvantaged individuals.

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

b. "Small business concern" means a business which is independently owned and operated and which is not dominant in its field of operation.

c. "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or who are lawfully admitted permanent residents and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or any other minority or individuals found to be disadvantaged by the United States small business administration. However, the department may also determine, on a case-by-case basis, that an individual who is not a member of one of the enumerated groups is socially and economically disadvantaged. A rebuttable presumption exists that individuals in the following groups are socially and economically disadvantaged:

(1) *"Black Americans"* which includes persons having origins in any of the black racial groups of Africa.

(2) *"Hispanic Americans"* which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(3) *"Native Americans"* which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

(4) *"Asian-Pacific Americans"* which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the United States Trust Territories of the Pacific, and the Northern Marianas.

(5) *"Asian-Indian Americans"* which includes persons whose origins are from India, Pakistan, and Bangladesh.

d. "Prequalified" means that the disadvantaged business enterprise is currently approved by the department as a disadvantaged business enterprise, is a recognized contractor engaged in the class of work provided for in the plans and specifications, possesses sufficient resources to complete the work, and is able to furnish a performance bond for one hundred percent of the contract.

2. *Set-aside.* Notwithstanding section 314.1, there may be set aside for bidding by prequalified disadvantaged business enterprises a percentage of the total annual dollar amount of public contracts let by the department. The annual dollar amount set aside for bidding by prequalified disadvantaged business enterprises shall not exceed ten percent of the total dollar amount of federal aid highway construction contracts let by the department and federal aid transit dollars administered by the department. The director may estimate the set-aside amount at the beginning of each fiscal year and a suit shall not be brought by any party as a result of this estimate. Set-aside contracts will be awarded to the lowest responsible prequalified disadvantaged business enterprise. This section shall not be construed as limiting the department's right to refuse any or all disadvantaged business enterprise bids.

84 Acts, ch 1229, §1

This section is repealed at such time as section 105(f) of the Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 96 Stat. 2100, expires pursuant to its own terms or by an act of Congress; 84 Acts, ch 1229, §2

314.15 Disadvantaged business enterprises — rules.

The department of transportation shall promulgate rules establishing affirmative action requirements to encourage and increase participation of disadvantaged individuals in business enterprises in all federal aid projects made available by and through the department.

90 Acts, ch 1161, §4

314.16 Interstate 80 — route designation.

The interstate which runs from Council Bluffs on the western border through Des Moines to Davenport on the eastern border shall be known as interstate 80. The state transportation commission shall be prohibited from changing the route of interstate 80 as designated on January 1, 1992.

92 Acts, ch 1010, §1

314.17 Mowing on interstates and primary highways.

On or after January 1, 2003, the department shall not mow roadside vegetation on the rights-of-way or medians on any primary or interstate highway. Mowing shall be permitted as follows:

1. On rights-of-way which include drainage ditch areas.

2. On rights-of-way within three miles of the corporate limits of a city.

3. To promote native species of vegetation or other long-lived and adaptable vegetation.

4. For establishing control of damaging insect populations, noxious weeds, and invader plant species.

5. For visibility and safety reasons.

98 Acts, ch 1212, §7

314.18 Reserved.

314.19 Reseeding open ditches.

The department shall have the topsoil of each open ditch along the side of a highway reseeded with prairie grass seed and the seed of other adapted grass and legumes including native grass species after the construction, reconstruction, improvement, repair, or maintenance of a highway whenever feasible.

84 Acts, ch 1114, §1

314.20 Utility easements on highway right-of-way.

The department shall develop an accommodation plan for the longitudinal utility use of freeway right-of-way, in consultation with the utilities board. The plan shall be consistent with the rules of the federal highway administration of the United States department of transportation and shall be submitted to the federal highway administration for its approval by January 1, 1989. In developing the plan, the department shall provide for extended payment and lease agreements to provide continuous funding for the living roadway trust fund. The plan shall provide for charges for the use of the right-of-way and all moneys collected shall be credited to the living roadway trust fund established under section 314.21.

88 Acts, ch 1019, §9; 89 Acts, ch 246, §4

Use of moneys in fund for other projects; §314.21

314.21 Living roadway trust fund.

1. The living roadway trust fund is created in the office of the treasurer of state. The moneys in this fund shall be used exclusively for the development and implementation of integrated roadside vegetation plans. Except as provided in subsections 2 and 3, the moneys shall only be expended for areas on or adjacent to road, street, and highway right-of-ways. The state department of transportation in consultation with the department of natural resources shall establish standards relating to the type of projects available for assistance. For the fiscal period beginning July 1, 1988, and ending March 31, 1990, the moneys in the fund shall be expended as follows: fifty-six percent on state department of transportation projects; thirty percent on county projects; and fourteen percent on city projects.

A city or county which has a project which qualifies for the use of these funds shall submit a request for the funds to the state department of transportation. A city or county may, at its option, apply moneys allocated for use on city or county projects under this subsection toward qualifying projects on the primary system. The state department of transportation in consultation with the department of natural resources shall determine which projects qualify for the funds and which projects shall be funded if the requests for the funds exceed the availability of the funds. In ranking applications for funds, the department shall consider the proportion of political subdivision matching funds to be provided, if any, and the proportion of private contributions to be provided, if any. In considering the proportion of political subdivision matching funds provided, the department shall consider only those moneys which are in addition to those which the political subdivision has historically provided toward such projects. Funds allocated to the cities, the counties, and the department which are not programmed by the end of each fiscal year shall be available for redistribution to any eligible applicant regardless of the original allocation of funds. Such funds shall be awarded for eligible projects based upon their merit in meeting the program objectives established by the department under section 314.22. The department shall submit a report of all projects funded in the previous fiscal year to the governor and to the general assembly on January 15 of each year.

Beginning April 1, 1990, the moneys in the living roadway trust fund shall be allocated between the state, counties, and cities in the same proportion that the road use tax funds are allocated under section 312.2, subsections 1, 2, 3, and 4. However, after April 1, 1990, a city or county shall not be eligible to receive moneys from the living roadway trust fund unless the city or county has an integrated roadside vegetation management plan in place consistent with the objectives in section 314.22.

2. *a.* The department may authorize projects which provide grants or loans to local governments and organizations which are developing community entryway enhancement and other planting demonstration projects. Planning, public education, installation, and initial maintenance planning and development may be determined by the department to be eligible activities for funding under this paragraph. Projects approved under this paragraph require a local match or contribution toward the overall project cost.

b. The department may authorize projects which provide grants or loans to local governments for the purchase of specialized equipment and special staff training for the establishment of alternative forms of roadside vegetation. Projects approved under this paragraph require a local

match or contribution toward the overall project cost.

c. The department, in order to create greater visual effect, shall investigate alternatives for concentrating plantings at strategic locations to gain a greater visual impact and appeal as well as stronger scenic value. Equal attention shall be given to providing safe and effective habitats for wildlife which can coexist with highways.

d. The department may authorize projects which provide grants or loans to local jurisdictions for increased protection through the use of easements, fee title acquisition, covenants, zoning ordinances, or other provisions for protection of vegetation and desirable environment adjacent to the right-of-way. Off-right-of-way projects shall emphasize vegetation protection or enhancement, scenic and wildlife values, erosion control and enhancement of vegetation management projects within the right-of-ways.

3. *a.* Moneys allocated to the state under subsection 1 shall be expended as follows:

(1) Fifty thousand dollars annually to the department for the services of the integrated roadside vegetation management coordinator and support.

(2) One hundred thousand dollars annually for education programs, research and demonstration projects, and vegetation inventories and strategies, under section 314.22, subsections 5, 6, and 8.

(3) All remaining moneys for the gateways program under section 314.22, subsection 7.

b. Moneys allocated to the counties under subsection 1 shall be expended as follows:

(1) For the fiscal year beginning July 1, 1995, and ending June 30, 1996, and each subsequent fiscal year, seventy-five thousand dollars to the university of northern Iowa to maintain the position of the state roadside specialist and to continue its integrated roadside vegetation management program providing research, education, training, and technical assistance.

(2) All remaining money for grants or loans under subsection 2, paragraph *"a"*.

c. Moneys allocated to the cities shall be expended for grants or loans under subsection 2, paragraph *"a"*.

88 Acts, ch 1019, §5; 89 Acts, ch 246, §5; 89 Acts, ch 317, §28; 91 Acts, ch 268, §516; 93 Acts, ch 169, §16; 95 Acts, ch 220, §26

314.22 Integrated roadside vegetation management.

1. *Objectives.* It is declared to be in the general public welfare of Iowa and a highway purpose for the vegetation of Iowa's roadsides to be preserved, planted, and maintained to be safe, visually interesting, ecologically integrated, and useful for many purposes. The state department of transportation shall provide an integrated roadside vegetation management plan and program which shall be designed to accomplish all of the following:

a. Maintain a safe travel environment.

b. Serve a variety of public purposes including erosion control, wildlife habitat, climate control, scenic qualities, weed control, utility easements, recreation uses, and sustenance of water quality.

c. Be based on a systematic assessment of conditions existing in roadsides, preservation of valuable vegetation and habitats in the area, and the adoption of a comprehensive plan and strategies for cost-effective maintenance and vegetation planting.

d. Emphasize the establishment of adaptable and long-lived vegetation, often native species, matched to the unique environment found in and adjacent to the roadside.

e. Incorporate integrated management practices for the long-term control of damaging insect populations, weeds, and invader plant species.

f. Build upon a public education program allowing input from adjacent landowners and the general public.

g. Accelerate efforts toward increasing and expanding the effectiveness of plantings to reduce wind-induced and water-induced soil erosion and to increase deposition of snow in desired locations.

h. Incorporate integrated roadside vegetation management with other state agency planning and program activities including the recreation trails program, scenic highways, open space, and tourism development efforts. Agencies should annually report their progress in this area to the general assembly.

2. *Counties may adopt plans.* A county may adopt an integrated roadside vegetation management plan consistent with the integrated roadside vegetation management plan adopted by the department under subsection 1.

3. *Integrated roadside vegetation management technical advisory committee.*

a. The director of the department shall appoint members to an integrated roadside vegetation management technical advisory committee which is created to provide advice on the development and implementation of a statewide integrated roadside vegetation management plan and program and related projects. The department shall report annually in January to the general assembly regarding its activities and those of the committee. Activities of the committee may include, but are not limited to, providing advice and assistance in the following areas:

(1) Research efforts.

(2) Demonstration projects.

(3) Education and orientation efforts for property owners, public officials, and the general public.

(4) Activities of the integrated roadside vegetation management coordinator for integrated roadside vegetation management.

(5) Reviewing applications for funding assistance.

(6) Securing funding for research and demonstrations.

(7) Determining needs for revising the state weed law and other applicable Code sections.

(8) Liaison with the Iowa state association of counties, the Iowa league of cities, and other organizations for integrated roadside vegetation management purposes.

b. The director may appoint any number of persons to the committee but, at a minimum, the committee shall consist of all of the following:

(1) One member representing the utility industry.

(2) One member from the Iowa academy of sciences.

(3) One member representing county government.

(4) One member representing city government.

(5) Two members representing the private sector including community interest groups.

(6) One member representing soil conservation interests.

(7) One member representing the department of natural resources.

(8) One member representing county conservation boards.

Members of the committee shall serve without compensation, but may be reimbursed for allowable expenses from the living roadway trust fund created under section 314.21. No more than a simple majority of the members of the committee shall be of the same gender as provided in section 69.16A. The director of the department shall appoint the chair of the committee and shall establish a minimum schedule of meetings for the committee.

4. *Integrated roadside vegetation management coordinator.* The integrated roadside vegetation management coordinator shall administer the department's integrated roadside vegetation management plan and program. The department may create the position of integrated roadside vegetation management coordinator within the department or may contract for the services of the coordinator. The duties of the coordinator include, but are not limited to, the following:

a. Conducting education and awareness programs.

b. Providing technical advice to the department and the department of natural resources, counties, and cities.

c. Conducting demonstration projects.

d. Coordinating inventory and implementation activities.

e. Providing assistance to local community-based groups for undertaking community entryway projects.

f. Being a clearinghouse for information from Iowa projects as well as from other states.

g. Periodically distributing information related to integrated roadside vegetation management.

h. General coordination of research efforts.

i. Other duties assigned by the director of transportation.

5. *Education programs.* The department shall develop educational programs and provide educational materials for the general public, landowners, governmental employees, and board members as part of its program for integrated roadside vegetation management. The educational program shall provide all of the following:

a. The development of public service announcements and television programs about the importance of roadside vegetation in Iowa.

b. The expansion of existing training sessions and educational curriculum materials for county weed commissioners, government contract sprayers, maintenance staff, and others to include coverage of integrated roadside management topics such as basic plant species identification, vegetation preservation, vegetation inventory techniques, vegetation management and planning procedures, planting techniques, maintenance, communication, and public relations. County and municipal engineers, public works staffs, planning and zoning representatives, parks and habitat managers, and others should be encouraged to participate.

c. The conducting of statewide and regional conferences and seminars about integrated roadside vegetation management, community entryways, scenic values of land adjoining roadsides, and other topics relating to roadside vegetation.

d. The preparation, display, and distribution of a variety of public relations material, in order to better inform and educate the traveling public on roadside vegetation management activities. The public relations material shall inform motorists of a variety of roadside vegetation issues including all of the following:

(1) Benefits of various types of roadside vegetation.

(2) Long-term results expected from planting and maintenance practices.

(3) Purposes for short-term disturbances in the roadside landscapes.

(4) Interesting aspects of the Iowa landscape and individual landscape regions.

(5) Other aspects relating to wildlife and soil erosion.

e. Preparation and distribution of educational material designed to inform adjoining property owners, farm operators, and others of the importance of roadside vegetation and their responsibilities of proper stewardship of that vegetation resource.

6. *Research and demonstration projects.* The department, as part of its plan to provide integrated roadside vegetation management, shall conduct research and feasibility studies including

demonstration projects of different kinds at a variety of locations around the state. The research and feasibility studies may be conducted in, but are not limited to, any of the following areas:

a. Cost effectiveness or comparison of planting, establishing and maintaining alternative or warm-season, native grass and forb roadside vegetation and traditional cool-season nonnative vegetation.

b. Identification of the relationship that roadsides and roadside vegetation have to maintaining water quality, through drainage wells, sediment and pollutant collection and filtration, and other means.

c. Impacts of burning as an alternative vegetation management tool on all categories of roads.

d. Techniques for more quickly establishing erosion control and permanent vegetative cover on recently disturbed ground as well as interplanting native species in existing vegetative cover.

e. Effectiveness of techniques for reduced or selected use of herbicides to control weeds.

f. Identification of cross section and slope steepness design standards which provide for motorist safety as well as for improved establishment, maintenance, and replacement of different types of vegetation.

g. Identification of a uniform inventory and assessment technique which could be used by many counties in establishing integrated roadside management programs.

h. Equipment innovations for seeding and harvesting grasses in difficult terrain settings, roadway ditches, and fore-slopes and back-slopes.

i. Identification of the perceptions of motorists and landowners to various types of roadside vegetation and configuration of plantings.

j. Market or economic feasibility studies for native seed, forb, and woody plant production and propagation.

k. Impacts of vegetation modifications on increasing or decreasing wildlife populations in rural and urban areas.

l. Effects of vegetation on the number and location of wildlife road-kills in rural and urban areas.

m. Costs to the public for improper off-site resource management adjacent to roadsides.

n. Advantages, disadvantages, and techniques of establishing pedestrian access adjacent to highways and their impacts on vegetation management.

o. Identification of alternative techniques for snow catchment on farmland adjacent to roadsides.

7. *Gateways program.* The department shall develop a gateways program to provide meaningful visual impacts including major new plantings at the important highway entry points to the state and its communities. Substantial and distinctive plantings shall also be designed and installed at these points. Creative and artistic design solutions shall be sought for these improvements. Communications about these projects shall be provided to local groups in order to build community involvement, support, and understanding of their importance. Consideration shall be given to a requirement that gateways projects produce a local match or contribution toward the overall project cost.

8. *Vegetation inventories and strategies.*

a. The department shall coordinate and compile integrated roadside vegetation inventories, classification systems, plans, and implementation strategies for roadsides. Areas of increased program and project emphasis may include, but are not limited to, all of the following:

(1) Additional development and funding of state gateways projects.

(2) Accelerated replacement of dead and unhealthy plants with native and hardy trees and shrubs.

(3) Special interest plantings at selected highly visible locations along primary and interstate highways.

(4) Pilot and demonstration projects.

(5) Additional snow and erosion control plantings.

(6) Welcome center and rest area plantings with native and aesthetically interesting species to create mini-arboretums around the state.

b. The department shall coordinate and compile a reconnaissance of lands to develop an inventory of sites having the potential of being harvested for native grass, forb, and woody plant material seed and growing stock. Highway right-of-ways, parks and recreation areas, converted railroad right-of-ways, state board of regents' property, lands owned by counties, and other types of public property shall be surveyed and documented for seed source potential. Sites volunteered by private organizations may also be included in the inventory. Inventory information shall be made available to state agencies' staffs, county engineers, county conservation board directors, and others.

89 Acts, ch 246, §6; 95 Acts, ch 3, §2

314.23 Environmental protection.

It is declared to be in the general public welfare of Iowa and a highway purpose that highway maintenance, construction, reconstruction, and repair shall protect and preserve, by not causing unnecessary destruction, the natural or historic heritage of the state. In order to provide for the protection and preservation, the following shall be accomplished in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, and highways:

1. *Woodlands.* Woodland removed shall be replaced by plantings as close as possible to the initial site, or by acquisition of an equal amount of woodland in the general vicinity for public ownership and preservation, or by other mitigation

deemed to be comparable to the woodland removed, including, but not limited to, the improvement, development, or preservation of woodland under public ownership.

2. *Wetlands*. Wetland removed shall be replaced by acquisition of wetland, in the same general vicinity if possible, for public ownership and preservation, or by other mitigation deemed to be comparable to the wetland removed, including, but not limited to, the improvement, development, or preservation of wetland under public ownership.

3. *Public parks*. Highways, streets, and roads constructed on or through publicly owned lands comprising parks, preserves, or recreation areas, shall be located and designed, in consultation with the public entity owning the land, so as to blend aesthetically with the areas and to minimize noise. When land is taken from the areas for highway construction and if, in consultation with the public entity owning the land, mitigation is deemed necessary, the land shall be replaced by an equal or greater amount for public use, or by other mitigation, undertaken in consultation with the public entity owning the land, and deemed to be appropriate to the amount of land taken, including, but not limited to, the improvement, development, or preservation of the areas.

4. *Prime agricultural lands*. Topsoil removed may be utilized for landscaping and other necessary construction. Excess topsoil shall be made available to the former landowner or other landowners whose land was purchased for the construction or others, and if not acquired by one of these parties, it may be disposed.

89 Acts, ch 311, §26

314.24 Natural and historic preservation.

Cities, counties, and the department shall to the extent practicable preserve and protect the natural and historic heritage of the state in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, or highways. Destruction or damage to natural areas, including but not limited to prime agricultural land, parks, preserves, woodlands, wetlands, recreation areas, greenbelts, historical sites, or archaeological sites shall be avoided, if reasonable alternatives are available for the location of roads, streets, or highways at no significantly greater cost. In implementing this section, cities, counties, and the department shall make a diligent effort to identify and examine the comparative cost of utilizing alternative locations for roads, streets, or highways.

89 Acts, ch 317, §30

314.25 Green space provided.

The department shall use the property owned by it in the city of Council Bluffs which is bounded by Broadway, Seventh street, Kanesville boulevard, and Sixth street, exclusively for green space, and, if sold by the department, the department shall sell the property with the restricted covenant that the property shall be used exclusively for green space or else revert to the department.

89 Acts, ch 317, §29

314.26 Schwengel Bridge.

The interstate 80 bridge crossing the Mississippi river between the states of Iowa and Illinois shall be known as the "Schwengel Bridge" in honor of Fred Schwengel, who served for five terms as a member of the general assembly of the state of Iowa and was elected to the Congress of the United States in 1954, 1956, 1958, 1960, 1962, 1966, 1968, and 1970.

93 Acts, ch 133, §1

314.27 Refreshments at rest areas on certain holidays.

1. As used in this section, unless the context otherwise requires:

a. "Free refreshments" means water, coffee, cookies, any nonintoxicating, noncarbonated beverage which is not already bottled or canned, doughnuts, or baked dessert goods dispensed by a nonprofit organization, provided that the refreshments are furnished to motorists by a nonprofit organization without charge.

b. "Holiday periods" means the Memorial Day and Labor Day weekends, commencing at noon on the preceding Friday and ending at midnight between the Monday and Tuesday of the holiday weekend, and the period surrounding Independence Day, commencing at noon on July 1 and ending at midnight between July 6 and July 7.

2. Nonprofit organizations shall be allowed to provide free refreshments to motorists and to accept, without active solicitation, voluntary donations from motorists during holiday periods at rest areas, as defined in section 306C.10, subject to approval by the department. The department shall approve or disapprove applications by nonprofit organizations, and notify those nonprofit organizations, at least sixty days prior to the holiday period.

3. The department shall adopt rules governing the provision of refreshments at rest areas in accordance with this section.

95 Acts, ch 18, §1

314.28 Keep Iowa beautiful fund.

A keep Iowa beautiful fund is created in the office of the treasurer of state. The fund is composed of moneys appropriated or available to and obtained or accepted by the treasurer of state for deposit in the fund. The fund shall include moneys credited to the fund as provided in section 422.12A. All interest earned on moneys in the fund shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

Moneys in the fund are subject to appropriation by the general assembly annually for the purposes

of educating and encouraging Iowans to take greater responsibility for improving their community environment and enhancing the beauty of the state through litter prevention, improving waste management and recycling efforts, and beautification projects.

The department may authorize payment of moneys appropriated from the fund to the department upon approval of an application from a private or public organization. The applicant shall submit a plan for litter prevention, improving waste management and recycling efforts, or a beautification project along with its application. The department shall establish standards relating to the type of projects available for assistance.

2001 Acts, ch 160, §1

Section 422.12A, providing income tax checkoff revenue source for the fund, and this section apply retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 160, §3

CHAPTER 315

REVITALIZE IOWA'S SOUND ECONOMY FUND

(RISE fund)

315.1 Definitions.
315.2 Revitalize Iowa's sound economy fund.
315.3 Use of fund.
315.4 Allocation of fund.
315.5 Administration of fund.
315.6 Funding of projects.
315.7 Monthly certification of funds.
315.8 Accounts and records required.
315.9 Project development.
315.10 Rules.
315.11 Additional factors and requirements.

315.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the state department of transportation.

2. *"Fund"* or *"RISE fund"* means the revitalize Iowa's sound economy fund.

85 Acts, ch 231, §2

315.2 Revitalize Iowa's sound economy fund.

A revitalize Iowa's sound economy fund is created, which includes:

1. All motor fuel and special fuel excise taxes credited by law to the RISE fund.

2. All other funds by law credited to the RISE fund.

85 Acts, ch 231, §3

315.3 Use of fund.

1. The fund is appropriated for and shall be used in the establishment, construction, improvement and maintenance of roads and streets which promote economic development in the state by having any of the following effects:

a. Improving or maintaining highway access to specific development sites, including existing and future industrial locations.

b. Improving or maintaining highway access between urban centers or between urban centers and the interstate road system as defined in section 306.3.

c. Improving or maintaining highway access to economically depressed areas of the state.

d. Improving or maintaining highway access to points of shipment or processing of products.

e. Improving or maintaining highway access to trucking terminals and places of embarkation or shipment by other transportation modes.

f. Improving or maintaining highway access to scenic, recreational, historic and cultural sites or other locations identified as tourist attractions.

2. The fund is also appropriated and shall be used for the reimbursement or payment to cities or counties of all or part of the interest and principal on general obligation bonds issued by cities or counties for the purpose of financing approved road and street projects meeting the requirements of subsection 1.

3. *a.* If the state transportation commission receives and files a letter from the director of transportation certifying that federal funding is not forthcoming due to the failure of the United States Congress to pass and the president of the United States to approve legislation providing long-term federal transportation funding to the state of Iowa, the commission may authorize the temporary transfer of funds from the RISE fund to the primary road fund. Transferred funds shall be repaid to the RISE fund within three months of transfer.

b. If the state transportation commission receives and files a letter from the director of transportation certifying that the cash flow funding of the department may be inadequate to meet anticipated road construction costs, the commission may authorize the temporary transfer of funds

from the RISE fund to the primary road fund. Funds transferred under this paragraph shall be repaid to the RISE fund within six months of transfer.

c. The commission shall manage the RISE fund to ensure that funds will be available to meet contract obligations on approved RISE projects.

85 Acts, ch 231, §4; 88 Acts, ch 1019, §10; 98 Acts, ch 1001, §1, 2; 2001 Acts, ch 180, §6

315.4 Allocation of fund.

Moneys credited to the RISE fund shall be allocated as follows:

1. Twenty thirty-firsts for deposit in the primary road fund for the use of the department on primary road projects exclusively for highways which are identified under section 307A.2 as being part of the network of commercial and industrial highways.

2. One thirty-first for the use of counties on secondary road projects.

3. Ten thirty-firsts for the use of cities on city street projects.

Commencing June 30, 1990, all uncommitted moneys in the RISE fund on June 30 of each year which are allocated under this section for the use of counties on secondary road projects shall be credited to the secondary road fund.

85 Acts, ch 231, §5; 89 Acts, ch 293, §16; 92 Acts, ch 1238, §30

315.5 Administration of fund.

Qualifying road and street projects shall be selected by the state transportation commission for full or partial financing from the fund after consultation with organizations representing interests of counties and cities. Counties and cities may make application for qualifying road and street projects with the department. In ranking applications for funds, the department shall, in addition to effects listed in section 315.3, subsection 1, consider the proportion of political subdivision matching funds to be provided, if any, the proportion of private contributions to be provided, if any, the total number of jobs to be created, the level of need, the impact of the proposed project on the economy of the area affected, and the factors and requirements in section 315.11. The proportion of funding shall be determined by the department or, in the case of cooperative projects, by agreement between the department and the city councils of participating cities, or boards of supervisors of participating counties, or other participating public agencies or private parties.

85 Acts, ch 231, §6; 86 Acts, ch 1245, §1934; 88 Acts, ch 1257, §2

315.6 Funding of projects.

Qualifying projects may be funded as follows:

1. Primary road and state park road projects may be financed entirely by the fund, or by combining money from the fund with money from the primary road fund, federal aid primary funds received by the state, money from cities or counties raised through the sale of general obligation bonds of the cities or counties, other city or county revenues, or money from participating private parties.

2. Secondary road, state park road, and county conservation parkway projects may be funded entirely by the fund or by combining money from the fund with money from the county's portion of road use tax funds, federal aid secondary funds, other county revenues, money raised through the sale of general obligation bonds of the county, or money from participating private parties.

3. City street and state park road projects may be funded entirely by the fund, or by combining money from the fund with money from the city's portion of road use tax funds, federal aid urban system funds, other municipal revenues, money raised through the sale of general obligation bonds of the city, or money from participating private parties.

A county or city may, at its option, apply moneys allocated for use on secondary road or city street projects under section 315.4, subsection 2 or 3, toward qualifying primary road, state park road, and county conservation parkway projects.

85 Acts, ch 231, §7; 87 Acts, ch 172, §1

315.7 Monthly certification of funds.

The account of the fund shall be kept by the director of revenue and finance and the treasurer of state and shall show the amount of the fund including all credits to the fund and disbursements. The director of revenue and finance shall report monthly to the department an account of the fund including all credits and disbursements. Upon certification by the department in accordance with rules adopted by the director of revenue and finance, the director of revenue and finance shall issue warrants for disbursements from the fund.

85 Acts, ch 231, §8

315.8 Accounts and records required.

The department shall keep accounts in relation to the allocation of moneys to the fund including all amounts credited to the fund and all amounts of duly and finally approved vouchers for claims chargeable to the fund. The department shall also keep accounts in relation to agreements with counties and cities for the reimbursement of interest and principal costs for general obligation bonds of counties or cities issued for the purpose of financing road or street projects under this chapter.

85 Acts, ch 231, §9

315.9 Project development.

The department shall be responsible for the development of qualifying projects under this chapter in the same manner as prescribed for primary road system improvements under chapter 313, in-

cluding surveys, plans, specifications, bids, contracts, supervision and inspection. The department may delegate responsibility for project development to another participating governmental unit.

85 Acts, ch 231, §10

315.10 Rules.

The department shall adopt rules pursuant to chapter 17A as necessary for the administration of this chapter.

85 Acts, ch 231, §11

315.11 Additional factors and requirements.

In addition to other effects and factors to be considered under section 315.5, for applications submitted after July 1, 1988, the following factors and requirements shall be considered or applied:

1. The impact of the proposed project on other businesses in competition with the business being considered for assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

2. The economic impact to the state of the proposed project. In measuring the economic impact the department shall award more points for the following:

a. A project which has a greater consistency with the state strategic plan.*

b. A business with a greater percentage of sales out-of-state or of import substitution.

c. A business with a higher proportion of in-state suppliers.

d. A project which would provide greater diversification of the state economy.

e. A business with fewer in-state competitors.

f. A potential for future job growth.

g. A project which is not a retail operation.

3. The quality of jobs to be provided. Jobs that have a higher wage scale, have a lower turnover rate, are full-time, or are career-type positions are considered higher in quality. Businesses that have wage scales substantially below that of existing Iowa businesses in that area should be rated as providing the lowest quality of jobs and should therefore be given the lowest ranking for providing such assistance.

4. If the business has a record of violations of the law over a period of time that tends to show a consistent pattern, the business shall be given the lowest ranking for providing assistance. The department shall make a good faith effort to compile this information.

5. If a business has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, the business shall make a good faith effort to hire the workers of the merged or acquired company.

6. To be eligible for assistance a business shall provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.

7. All known required environmental permits must be granted and regulations met before moneys are released.

88 Acts, ch 1257, §3

*See §15.104(1)

CHAPTER 316

RELOCATION OF PERSONS DISPLACED BY HIGHWAYS

316.1 Definitions.
316.2 Effect on acquisitions and condemnations.
316.3 Declaration of policy — authorization — divisibility of application.
316.4 Moving and related expenses.
316.5 Replacement housing for homeowner.
316.6 Replacement housing for tenants and certain others.
316.7 Relocation assistance advisory services.
316.8 Housing replacement by the displacing agency.
316.9 Rules.
316.10 Applicable to other than federal-aid highways. Repealed by 89 Acts, ch 20, §21.
316.11 Acquisitions by other state agencies and political subdivisions. Repealed by 89 Acts, ch 20, §21.
316.12 Payments to displaced persons not to be considered as income.
316.13 Administration.
316.14 Funding.
316.15 Federal grants — payment of right-of-way and relocation assistance benefits.

316.1 Definitions.

As used in this chapter the term:

1. *"Administrative rules"* means all rules subject to the provisions of chapter 17A.

2. *"Business"* means any lawful activity, excepting a farm operation, conducted primarily:

a. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

b. For the sale of services to the public;

c. By a nonprofit organization; or

d. Solely for the purposes of section 316.4, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the above activities are conducted.

3. *"Comparable replacement dwelling"* means any single family residential unit that is all of the following:

a. Decent, safe, and sanitary.

b. Adequate in size to accommodate the occupants.

c. Within the financial means of the displaced person.

d. Functionally equivalent to the displaced person's dwelling.

e. In an area not subject to unreasonably adverse environmental conditions.

f. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

4. *"Department"* means the state department of transportation.

5. *"Displaced person"* means:

a. A person who moves from real property or moves the person's personal property from real property in any of the following circumstances:

(1) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, the real property in whole or in part for a program or project undertaken with federal financial assistance.

(2) The person moved or moved the person's personal property from real property on which the person is either a residential tenant or conducts a small business, a farm operation, or a business as defined in subsection 2, paragraph *"d"*, as a direct result of rehabilitation or demolition for a program or project undertaken with federal financial assistance in a case in which the head of the displacing agency determines that the displacement is permanent.

(3) As a direct result of a written notice of intent to acquire by condemnation, the initiation of negotiations for, or the acquisition of, the real property in whole or in part by the state of Iowa or by an entity or person conferred the right to condemn private property.

b. For purposes of section 316.4, subsections 1 and 2, and section 316.7, a person who moves from real property, or moves the person's personal property from real property in any of the following circumstances:

(1) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, other real property in whole or in part if the person conducts a business or farm operation on the other real property for a program or project undertaken with federal financial assistance.

(2) As a direct result of rehabilitation or demolition of other real property on which the person conducts a business or a farm operation for a program or project undertaken with federal financial assistance in a case in which the head of the displacing agency determines that the displacement is permanent.

(3) As a direct result of a written notice of intent to acquire by condemnation, the initiation of negotiations for, or the acquisition of, other real property in whole or in part by the state of Iowa or by an entity or person conferred the right to condemn private property if the person conducts a business or farm operation on the other real property.

c. The term *"displaced person"* does not include any of the following:

(1) A person who has been determined to be either in unlawful occupancy of the real property or who has occupied the real property for the purpose of obtaining assistance under this chapter.

(2) A person, other than the person who was the occupant of the real property at the time it was acquired, who occupies the real property on a rental basis for a short term or a period subject to termination when the real property is needed for the program or project.

(3) An owner-occupant who voluntarily sells the owner-occupant's property, after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached the state agency will not acquire the property.

(4) A person who retains the right of use and occupancy of the real property for life following its acquisition by a state agency.

6. *"Displacing agency"* means the state or a state agency carrying out a program or project, or any person carrying out a program or project with federal financial assistance, which causes a person to be a displaced person.

7. *"Farm operation"* means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing

materially to the operator's support.

8. *"Federal financial assistance"* means a grant, loan, or contribution provided by the United States; however, *"federal financial assistance"* does not include any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

9. *"Federal Uniform Relocation Act"* means the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV, Pub. L. No. 100-17.

10. *"Mortgage"* means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of this state, together with the credit instruments, if any, secured thereby.

11. *"Person"* means any individual, partnership, corporation, or association.

12. *"State agency"* means any of the following:

a. A department, agency, or instrumentality of the state or of a political subdivision of the state.

b. A department, agency, or instrumentality of two or more political subdivisions of the state, or states.

c. A person who has the authority to acquire property by eminent domain under state law.

[C71, 73, 75, 77, 79, 81, §316.1]

89 Acts, ch 20, §1 – 5; 99 Acts, ch 171, §32, 42

1999 amendment to subsection 5 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

316.2 Effect on acquisitions and condemnations.

1. The provisions of this chapter shall not affect the validity of any property acquisitions by purchase or condemnation.

2. Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of this chapter.

3. A payment made or to be made under the authority granted in this chapter shall be for compensating or reimbursing the displaced person or owner of real property in accordance with the requirements of the federal Uniform Relocation Act and this chapter and the payments shall not for any purpose be deemed or considered compensation for real property acquired or compensation for damages to remaining property.

Payments authorized to be made by the federal Uniform Relocation Act and this chapter shall be made as relocation payments, and in order to prevent unjust enrichment or a duplication of payments to any condemnee in any condemnation proceeding or appeal from any condemnation proceeding, an allowance shall not be made in determining just compensation in a condemnation proceeding for any damages, for any item of damage, or any cost, which is authorized to be paid as a relocation payment.

Moving cost payments and allowances for personal property which is damaged or destroyed or reduced in value by an acquisition of property authorized under section 6B.14 or any other provision of the Code under the powers of eminent domain on projects where relocation assistance payments are paid under this chapter shall be those payments and allowances authorized by this chapter and shall not be made or included as part of an award of damages in any condemnation proceeding or appeal from any condemnation proceeding.

[C71, §316.8; C73, 75, 77, 79, 81, §316.2]

89 Acts, ch 20, §6

316.3 Declaration of policy — authorization — divisibility of application.

1. The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of federally assisted programs or projects in order that the persons shall not suffer disproportionate injuries as a result of programs or projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on the persons. The general assembly declares that relocation assistance for persons displaced by programs and projects is a necessary and essential part of the programs and projects. This chapter shall be known and may be cited as the *"Relocation Assistance Law."*

2. If a displacing agency subject to the provisions of the federal Uniform Relocation Act, or if another entity required or electing to provide any of the programs or payments authorized by this chapter, undertakes a project which results in the acquisition of real property or in a person being displaced from the person's home, business, or farm, the displacing agency or other entity may provide relocation assistance, and make relocation payments to the displaced person and do the other acts and follow the procedures and practices as may be necessary to comply with the provisions of the federal Uniform Relocation Act and this chapter. Displacing agencies may provide all or a part of the program and payments authorized under this chapter to persons displaced by any program or project regardless of the funding source. However, to the extent a program or a payment is provided, the program or payment shall be provided on a uniform basis to all displaced persons.

3. If a provision, clause, or phrase of this chapter, or application of this chapter to a person or circumstance is adjudged invalid by any court of competent jurisdiction, the judgment shall not invalidate the remainder of the chapter, and the application of the chapter to other persons or circum-

stances shall not be affected by the adjudication.

[C73, 75, 77, 79, 81, §316.3]

89 Acts, ch 20, §7

316.4 Moving and related expenses.

1. If a program or project undertaken by a displacing agency will result in the displacement of a person, the displacing agency shall make a payment to the displaced person, upon proper application as approved by the displacing agency, for actual reasonable and necessary expenses incurred in moving the person, the person's family, business, farm operation, or other personal property subject to rules and limits established by the department. The payment may also provide for actual direct losses of tangible personal property, purchase of substitute personal property, business reestablishment expenses, storage expenses, and expenses incurred in searching for a replacement business or farm.

2. A displaced person eligible for payments under subsection 1, who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1, may receive a moving expense and dislocation allowance determined according to a schedule established by the department.

3. A displaced person, as defined in section 316.1, subsection 2, paragraph *"a"*, eligible for payments under subsection 1, who is displaced from the person's place of business or farm operation and who is eligible, may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1. The payment shall consist of a fixed payment in an amount to be determined according to criteria established by the department. A person whose sole business at the displaced dwelling is the rental of the real property does not qualify for a payment under this subsection.

[C71, §316.3; C73, 75, 77, 79, 81, §316.4]

89 Acts, ch 20, §8

316.5 Replacement housing for homeowner.

1. In addition to payments otherwise authorized by this chapter, the displacing agency shall make an additional payment to a displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than one hundred eighty days immediately prior to the initiation of negotiations for the acquisition of the property. All determinations to carry out this section shall be made in accordance with administrative rules adopted by the department. The additional payment shall include the following elements:

a. The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

b. The amount, if any, which will compensate the displaced person for any increased interest costs and other debt service costs which the displaced person is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of the dwelling.

c. Actual, reasonable, and necessary expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of a replacement dwelling, but not including prepaid expenses.

2. The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which the person receives final payment from the displacing agency of all costs of the acquired dwelling, or on the date on which the obligation of the displacing agency under section 316.8 is met, whichever is the later, except that the displacing agency may extend the eligibility period for good cause. If the period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of the applicable date.

[C71, §316.4(1), 316.5; C73, 75, 77, 79, 81, §316.5]

89 Acts, ch 20, §9

316.6 Replacement housing for tenants and certain others.

In addition to amounts otherwise authorized by this chapter, the displacing agency shall make a payment to or for a displaced person, displaced from a dwelling, not eligible to receive a payment under section 316.5, which dwelling was actually and lawfully occupied by the displaced person for not less than ninety days immediately prior to the initiation of negotiations for acquisition of the dwelling, or as a result of the written order of the displacing agency to vacate the real property. All determinations to carry out this section shall be made in accordance with administrative rules adopted by the department. The displaced person may elect either of the following:

1. The amount necessary to enable the displaced person to lease or rent a comparable replacement dwelling. At the discretion of the displacing agency, a payment under this subsection may be made in periodic installments. Computations of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account the person's income.

2. The amount necessary to enable the person

to make a down payment, including incidental expenses described in section 316.5, subsection 1, paragraph *"c"*, on the purchase of a decent, safe, and sanitary dwelling. The person may, at the discretion of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection 1, except that, in the case of a displaced homeowner who has owned and occupied the displaced dwelling for at least ninety days but not more than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of the dwelling, the payment shall not exceed the payment the person would otherwise have received under section 316.5, subsection 1, had the person owned and occupied the displaced dwelling for one hundred and eighty days immediately prior to the initiation of the negotiations.

[C71, §316.4(2), 316.5; C73, 75, 77, 79, 81, §316.6]

89 Acts, ch 20, §10

316.7 Relocation assistance advisory services.

1. A displacing agency shall ensure that relocation assistance advisory services are made available to all persons displaced by the displacing agency. If the displacing agency determines that a person occupying property adjacent to the real property where the displacing activity occurs, is caused substantial economic injury as a result of the displacing activity, the displacing agency may offer the person relocation assistance advisory services.

2. The displacing agency shall co-operate to the maximum extent feasible with federal, state, or local agencies to ensure that the displaced persons receive the maximum assistance available to them.

3. Each relocation assistance advisory program required by subsection 1 shall include such measures, facilities, or services as may be necessary or appropriate in order to comply with the provisions of the federal Uniform Relocation Act and this chapter.

4. The displacing agency shall provide other advisory services to displaced persons in order to minimize hardships to the displaced persons in adjusting to relocation.

5. The displacing agency shall co-ordinate relocation activities with project work, and other planned or proposed governmental actions or displacing activities in the community or nearby areas which may affect the carrying out of relocation assistance programs.

[C71, §316.2; C73, 75, 77, 79, 81, §316.7]

89 Acts, ch 20, §11

316.8 Housing replacement by the displacing agency.

1. If a project cannot proceed on a timely basis because comparable replacement dwellings are not available, and the displacing agency determines that such dwellings cannot otherwise be made available, the displacing agency may take such action as is necessary or appropriate to provide the dwellings by use of funds authorized for the program or project. The displacing agency may let contracts for the construction of the dwellings, approve plans and specifications for the building of the dwellings, and supervise, inspect, and approve the dwellings once constructed in order that the dwellings so constructed comply with the terms and conditions of this chapter. The displacing agency may under this section exceed the maximum amounts which may be paid under sections 316.5 and 316.6 on a case-by-case basis for good cause as determined in accordance with administrative rules adopted by the department.

2. A person shall not be required to move from the person's dwelling on or after July 1, 1971, on account of any program or project, unless the displacing agency is satisfied that a comparable replacement dwelling is available to the person.

[C73, 75, 77, 79, 81, §316.8]

89 Acts, ch 20, §12

316.9 Rules.

The department shall make administrative rules necessary to effect the provisions of this chapter and to assure:

1. Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV, Pub. L. No. 100-17.

2. The payments authorized by this chapter are fair and reasonable and as uniform as practicable.

3. A displaced person who makes proper application for a payment authorized by this chapter is paid promptly after a move or, in hardship cases, is paid in advance.

4. A person aggrieved by a determination as to eligibility for assistance or a payment authorized by this chapter, or the amount of a payment, upon application may have the matter reviewed. Rules governing reviews shall provide for a prompt one-step uncomplicated fact-finding process. Such a review is an appeal of an agency action as defined in section 17A.2, subsection 2, and is not a contested case. The decision rendered shall be the displacing agency's final agency action.

All rules shall be subject to the provisions of chapter 17A.

[C71, 73, 75, 77, 79, 81, §316.9]

88 Acts, ch 1209, §1; 89 Acts, ch 20, §13

316.10 Applicable to other than federal-aid highways. Repealed by 89 Acts, ch 20, § 21.

316.11 Acquisitions by other state agencies and political subdivisions. Repealed by 89 Acts, ch 20, § 21.

316.12 Payments to displaced persons not to be considered as income.

Except for any federal or state law providing low-income housing assistance, a payment received by a displaced person under this chapter shall not be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any federal or state law or for the purposes of chapter 422.

[C73, 75, 77, 79, 81, §316.12]
89 Acts, ch 20, §14

316.13 Administration.

In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the displacing agency may enter into contracts with any individual, firm, association, or corporation for services in connection with the programs, or may carry out its functions through any governmental agency, political subdivision, or instrumentality having an established organization for conducting relocation assistance programs. If practicable, the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities shall be used.

[C73, 75, 77, 79, 81, §316.13]
89 Acts, ch 20, §15

316.14 Funding.

Funds appropriated or otherwise available to any state agency for a program or project shall also be available to carry out the provisions of this chapter.

Payments and expenditures under this chapter for highway projects are incident to and arise out of the construction, maintenance, and supervision of public highways and streets, and, in the case of any federal-aid highway project, may be made by the department from the primary road fund and funds made available by the federal government for the purpose of carrying out this chapter. Payments made under this chapter may be made from the primary road fund in case of a primary road project only, and in other cases may be made from appropriate funds under the control of a political subdivision.

[C71, §316.6; C73, 75, 77, 79, 81, §316.14]
83 Acts, ch 123, §118, 209; 89 Acts, ch 20, §16

316.15 Federal grants — payment of right-of-way and relocation assistance benefits.

The department may do all things necessary to carry out the provisions of this chapter and to secure federal grants to make the payments required by this chapter, but the absence of federal aid to make such payments shall not discharge the obligation to make the payments. The department is authorized to pay all right-of-way and relocation assistance benefits in the full amount authorized by federal standards and rules. In order to avoid delays, payment for such benefits made in cooperation with the federal government may be advanced from the primary road fund.

[C71, §316.7; C73, 75, 77, 79, 81, §316.15]
87 Acts, ch 232, §23

CHAPTER 317

WEEDS

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317.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §317.1 transferred to §317.1A

317.1A Noxious weeds.

The following weeds are hereby declared to be noxious and shall be divided into two classes, namely:

1. Primary noxious weeds, which shall include quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), Canada thistle (Cirsium arvense), bull thistle (Cirsium lanceolatum), European morning glory or field bindweed (Convolvulus arvensis), horse nettle (Solanum carolinense), leafy spurge (Euphorbia esula), perennial pepper-grass (Lepidium draba), Russian knapweed (Centaurea repens), buckthorn (Rhamnus, not to include Rhamnus frangula), and all other species of thistles belonging in genera of Cirsium and Carduus.

2. Secondary noxious weeds, which shall include butterprint (Abutilon theophrasti) annual, cocklebur (Xanthium commune) annual, wild mustard (Brassica arvensis) annual, wild carrot (Daucus carota) biennial, buckhorn (Plantago lanceolata) perennial, sheep sorrel (Rumex acetosella) perennial, sour dock (Rumex crispus) perennial, smooth dock (Rumex altissimus) perennial, poison hemlock (Conium maculatum), multiflora rose (Rosa multiflora), wild sunflower (wild strain of Helianthus annus L.) annual, puncture vine (Tribulus terrestris) annual, teasel (Dipsacus) biennial, and shattercane (Sorghum bicolor) annual.

The multiflora rose (Rosa multiflora) shall not be considered a secondary noxious weed when cultivated for or used as understock for cultivated roses or as ornamental shrubs in gardens, or in any county whose board of supervisors has by resolution declared it not to be a noxious weed. Shattercane (Sorghum bicolor) shall not be considered a secondary noxious weed when cultivated or in any county whose board of supervisors has by resolution declared it not to be a noxious weed.

[S13, §1565-b; C24, 27, 31, 35, §4818; C39, §**4829.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.1]

85 Acts, ch 171, §1; 2000 Acts, ch 1154, §20

C2001, §317.1A

See also §199.1

317.2 State botanist.

The secretary of agriculture shall appoint as state botanist the head of the botany and plant pathology section of the Iowa agricultural experiment station whose duty shall be to co-operate in developing a constructive weed eradication program.

[C39, §**4829.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.2]

317.3 Weed commissioner — standards for noxious weed control.

The board of supervisors of each county may annually appoint a county weed commissioner who may be a person otherwise employed by the county and who passes minimum standards established by the department of agriculture and land stewardship for noxious weed identification and the recognized methods for noxious weed control and elimination. The county weed commissioner's appointment shall be effective as of March 1 and shall continue for a term at the discretion of the board of supervisors unless the commissioner is removed from office as provided for by law. The county weed commissioner may, with the approval of the board of supervisors, require that commercial applicators and their appropriate employees pass the same standards for noxious weed identification as established by the department of agriculture and land stewardship. The name and address of the person appointed as county weed commissioner shall be certified to the county auditor and to the secretary of agriculture within ten days of the appointment. The board of supervisors shall fix the compensation of the county weed commissioner and deputies. In addition to compensation, the commissioner and deputies shall be paid their necessary travel expenses. At the discretion of the board of supervisors, the weed commissioner shall attend a seminar or school conducted or approved by the department of agriculture and land stewardship relating to the identification, control, and elimination of noxious weeds.

The board of supervisors shall prescribe the time of year the weed commissioner shall perform the powers and duties of county weed commissioner under this chapter which may be during that time of year when noxious weeds can effectively be killed. Compensation shall be for the period of actual work only although a weed commissioner assigned other duties not related to weed eradication may receive an annual salary. The board of supervisors shall likewise determine whether employment shall be by hour, day or month and the rate of pay for the employment time.

[S13, §1565-c, -d, -f; C24, 27, §4817; C31, 35, §4817, 4817-d1; C39, §**4829.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.3]

83 Acts, ch 123, §119, 209; 85 Acts, ch 160, §1; 94 Acts, ch 1173, §14

317.4 Direction and control.

As used in this chapter, *"commissioner"* means the county weed commissioner or the commissioner's deputy within each county. Each commission-

er, subject to direction and control by the county board of supervisors, shall supervise the control and destruction of all noxious weeds in the county, including those growing within the limits of cities, within the confines of abandoned cemeteries, and along streets and highways unless otherwise provided. A commissioner shall notify the department of public safety of the location of marijuana plants found growing on public or private property. A commissioner may enter upon any land in the county at any time for the performance of the commissioner's duties, and shall hire the labor and equipment necessary subject to the approval of the board of supervisors.

[S13, §1565-c, -d, -f; C24, 27, 31, 35, §4817; C39, §**4829.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §317.4; 81 Acts, ch 117, §1047]

83 Acts, ch 123, §120, 209; 90 Acts, ch 1179, §2

317.5 Weeds in abandoned cemeteries.

The commissioner shall control the weeds growing in abandoned cemeteries in the county as needed. Spraying for control of weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §317.5]

89 Acts, ch 246, §7

317.6 Entering land to destroy weeds — notice.

In case of a substantial failure by the owner or person in possession or control of any land to comply with any order of destruction pursuant to the provisions of this chapter, the county weed commissioner, the weed commissioner's deputies and employees acting under the weed commissioner's direction shall have full power and authority to enter upon any land within their county for the purpose of destroying noxious weeds. Such entry may be made without the consent of the landowner or person in possession or control of the land but actual work of destruction shall not be commenced until five days after the service of a notice in writing on the landowner and on the person in possession or in control of the land. The notice shall state the facts as to failure of compliance with the county program of weed destruction order or orders made by the board of supervisors and shall be served in the same manner as an original notice except as hereinafter provided. The notice may be served by the weed commissioner, the weed commissioner's deputies or any person designated in writing by the weed commissioner and filed in the office of the county auditor. Provided, however, that service on persons living temporarily or permanently outside of the county may be made by sending the written notice of noncompliance by certified mail to said person at the last known address to be ascertained, if necessary, from the last tax list in the county treasurer's office. Where any person, firm or corporation owning land within the county has filed a written instrument in the office of the county auditor designating the name and address of its agent, the notice herein provided may be served on that agent. In computing time hereunder it shall be from the date of service as evidenced on the return or if made by certified mail, from the date of mailing as evidenced by the certified mail book at the post office where mailed.

[S13, §1565-c, -d, -f; C24, §4817; C27, 31, 35, §4817, 4823-b1; C39, §**4829.05, 4829.06;** C46, §317.5, 317.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.6]

317.7 Report to board.

Each weed commissioner shall for the territory under the commissioner's jurisdiction on or before the first day of November of each year make a written report to the board of supervisors. Said report shall state:

1. The name and location of all primary noxious weeds, and any new weed which appears to be a serious pest.
2. A detailed statement of the treatment used, and future plans, for eradication of weeds on each infested tract on which the commissioner has attempted to exterminate weeds, together with the costs and results obtained.
3. A summary of the weed situation within the jurisdiction, together with suggestions and recommendations which may be proper and useful, a copy of which shall be forwarded to the state secretary of agriculture.

[S13, §1565-c, -d, -f; C24, 27, 31, 35, §4817; C39, §**4829.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.7]

317.8 Duty of secretary of agriculture or secretary's designee.

The secretary of agriculture or the secretary's designee is vested with the following duties, powers and responsibilities:

1. The secretary or the secretary's designee shall serve as state weed commissioner, and shall co-operate with all boards of supervisors and weed commissioners, and shall furnish blank forms for reports made by the supervisors and commissioners.
2. The secretary or the secretary's designee may, upon recommendation of the state botanist, temporarily declare noxious any new weed appearing in the state which possesses the characteristics of a serious pest.
3. The secretary or the secretary's designee shall aid the supervisors in the interpretation of the weed law, and make suggestions to promote extermination of noxious weeds.
4. The secretary or the secretary's designee shall aid the supervisors in enforcement of the weed law as it applies to all state lands, state parks and primary roads, and may impose a maximum penalty of a ten dollar fine for each day, up to ten days, that the state agency in control of land

fails to comply with an order for destruction of weeds made pursuant to this chapter.

[S13, §1565-c, -d, -f; C24, 27, 31, 35, §4817; C39, §**4829.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.8]

85 Acts, ch 171, §2; 87 Acts, ch 115, §48

317.9 Duty of board to enforce.

The responsibility for the enforcement of the provisions of this chapter shall be vested in the board of supervisors as to all farm lands, railroad lands, abandoned cemeteries, state lands and state parks, primary and secondary roads; roads, streets and other lands within cities unless otherwise provided.

[S13, §1565-c, -d, -f; C24, 27, 31, 35, §4817; C39, §**4829.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.9]

317.10 Duty of owner or tenant.

Each owner and each person in the possession or control of any lands shall cut, burn, or otherwise destroy, in whatever manner may be prescribed by the board of supervisors, all noxious weeds thereon as defined in this chapter at such times in each year and in such manner as shall be prescribed in the program of weed destruction order or orders made by the board of supervisors, and shall keep said lands free from such growth of any other weeds, as shall render the streets or highways adjoining said land unsafe for public travel.

[SS15, §1565-a; C24, 27, 31, 35, §4819; C39, §**4829.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.10]

317.11 Weeds on roads — harvesting of grass.

The county boards of supervisors and the state department of transportation shall control noxious weeds growing on the roads under their jurisdiction. Spraying for control of noxious weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the noxious weeds.

Nothing under this chapter shall prevent the landowner from harvesting, in proper season, the grass grown on the road along the landowner's land except for vegetation maintained for highway purposes as part of an integrated roadside vegetation management plan which is consistent with the objectives in section 314.22.

[S13, §1565-c, -d, -f; SS15, §1565-a; C24, 27, 31, 35, §4817, 4819; C39, §**4829.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.11]

89 Acts, ch 246, §8

317.12 Weeds on railroad or public lands and gravel pits.

All noxious weeds on railroad lands, public lands and within incorporated cities shall be treated in such manner, approved by the board of supervisors, as shall prevent seed production and either destroy or prevent the spread of noxious weeds to adjoining lands. Gravel pits infested with noxious weeds shall not be used as sources of gravel for public highways without previous treatment approved by board of supervisors.

[S13, §1565-c, -d, -f; SS15, §1565-a; C24, 27, 31, 35, §4817, 4819; C39, §**4829.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.12]

317.13 Program of control.

The board of supervisors of each county may each year, upon recommendation of the county weed commissioner by resolution prescribe and order a program of weed control for purposes of complying with all sections of this chapter. The county board of supervisors of each county may also by adopting an integrated roadside vegetation management plan prescribe and order a program of weed control for purposes of complying with all sections of this chapter. The program for weed control ordered or adopted by the county board of supervisors shall provide that spraying for control of weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

The program of weed control shall include a program of permits for the burning, mowing, or spraying of roadsides by private individuals. The county board of supervisors shall allow only that burning, mowing, or spraying of roadsides by private individuals that is consistent with the adopted integrated roadside vegetation management plan. This paragraph applies only to those roadside areas of a county which are included in an integrated roadside vegetation management plan.

[S13, §1565-c, -d; C24, 27, 31, 35, §4821; C39, §**4829.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.13]

85 Acts, ch 171, §3; 89 Acts, ch 246, §9; 90 Acts, ch 1267, §36

317.14 Notice of program.

Notice of any order made pursuant to section 317.13 shall be given by one publication in the official newspapers of the county and shall be directed to all property owners.

Said notice shall state:

1. The time for destruction.
2. The manner of destruction, if other than cutting above the surface of the ground.
3. That unless said order is complied with the weed commissioner shall cause said weeds to be destroyed and the cost thereof will be taxed against the real estate on which the noxious weeds are destroyed.

[S13, §1565-c, -d; C24, 27, 31, 35, §4822; C39, §**4829.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.14]

317.15 Loss or damage to crops.

The loss or damage to crops or property incurred by reason of such destruction shall be borne by the titleholder of said real estate, unless said real estate shall be sold under contract whereby possession has been delivered to the purchaser, in which event such purchaser shall bear such loss or damage, excepting where a contract has been entered into providing a different adjustment for such loss or damage.

[S13, §1565-c, -d; C24, 27, 31, 35, §4822; C39, §**4829.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.15]

317.16 Failure to comply.

In case of a substantial failure to comply by the date prescribed in any order of destruction of weeds made pursuant to this chapter, the weed commissioner or the deputies may, subsequent to the time after service of the notice provided for in section 317.6 enter upon the land and cause the weeds to be destroyed, or may impose a maximum penalty of a ten dollar fine for each day, up to ten days, that the owner or person in control of the land fails to comply. If a penalty is imposed and the owner or person in control of the land fails to comply, the weed commissioner shall cause the weeds to be destroyed. If the weed commissioner enters the land and causes the weeds to be destroyed, the actual cost and expense of cutting, burning or otherwise destroying the weeds, along with the cost of serving notice and special meetings or proceedings, if any, shall be paid by the county and, together with the additional assessment to apply toward costs of supervision and administration, be recovered by an assessment against the tract of real estate on which the weeds were growing, as provided in section 317.21. Any fine imposed shall be recovered by a similar assessment.

[S13, §1565-c, -d; C24, 27, 31, 35, §4823; C39, §**4829.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.16]

83 Acts, ch 123, §121, 209; 85 Acts, ch 171, §4

317.17 Additional noxious weeds.

The board of supervisors shall order the weed commissioner, or commissioners, to destroy or cause to be destroyed any new weeds declared to be noxious by the secretary of agriculture, the cost of which shall be borne by the county.

[C39, §**4829.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.17]

317.18 Order for weed control on roads.

The board of supervisors may order all noxious weeds, within the right-of-way of all roads under county jurisdiction to be cut, burned, or otherwise controlled to prevent seed production, either upon its own motion or upon receipt of written notice requesting the action from any residents of the township in which the roads are located, or any person regularly using the roads. The order shall be consistent with the county integrated roadside vegetation management plan, if the county has adopted such a plan, and the order shall define the roads along which noxious weeds are required to be cut, burned, or otherwise controlled and shall require the weeds to be cut, burned, or otherwise controlled within fifteen days after the publication of the order in the official newspapers of the county or as prescribed in the county's integrated roadside vegetation management plan. The order shall provide that spraying for control of noxious weeds shall be limited to those circumstances when it is not practical to mow or otherwise control the weeds.

[C39, §**4829.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.18]

83 Acts, ch 123, §122, 209; 85 Acts, ch 171, §5; 89 Acts, ch 246, §10; 98 Acts, ch 1075, §14

317.19 Road clearing appropriation.

The board of supervisors may appropriate moneys to be used for the purposes of cutting, burning, or otherwise controlling weeds or brush within the right-of-way of roads under county jurisdiction in time to prevent reseeding or in a manner consistent with the county's roadside vegetation management plan, if the county has adopted such a plan. The moneys appropriated shall not be spent on spraying for control of weeds except in those circumstances when it is not practical to mow or otherwise control the weeds.

The board of supervisors may purchase or hire necessary equipment or contract with the adjoining landowner to carry out this section.

83 Acts, ch 123, §123, 209; 84 Acts, ch 1219, §20; 85 Acts, ch 171, §6; 89 Acts, ch 246, §11; 98 Acts, ch 1075, §15

317.20 Equipment and materials — use on private property.

The board of supervisors may appropriate moneys for the purpose of purchasing weed eradicating equipment and materials to carry out the duties of the commissioner for use on all lands in the county, public or private, and for the payment of the necessary expenses and compensation of the commissioner, and the commissioner's deputies, if any. When equipment or materials so purchased are used on private property within the corporate limits of cities by the commissioner, the cost of materials used and an amount to be fixed by the board of supervisors for the use of the equipment shall be returned by the county treasurer upon the collection of the special assessment taxed against the property. In the certification to the county treasurer by the county auditor this apportionment shall be designated along with the special tax assessed under section 317.21. The equipment and its use are subject to the authorization and direc-

tion of the county board of supervisors.

83 Acts, ch 123, §124, 209

317.21 Cost of weed destruction.

When the commissioner destroys any weeds under the authority of section 317.16, after failure of the landowner responsible to destroy such weeds pursuant to the order of the board of supervisors, the cost of the destruction shall be assessed against the land and collected from the landowner responsible in the following manner:

1. Annually, after the weed commissioner has completed the program of destruction of weeds by reason of noncompliance by persons responsible for the destruction, the board of supervisors shall determine as to each tract of real estate the actual cost of labor and materials used by the commissioner in cutting, burning, or otherwise destroying the weeds, the cost of serving notice, and of special meetings or proceedings, if any. To the total of all sums expended, the board shall add an amount equal to twenty-five percent of that total to compensate for the cost of supervision and administration and assess the resulting sum against the tract of real estate by a special tax, which shall be certified to the county auditor and county treasurer by the clerk of the board of supervisors, and shall be placed upon the tax books, and collected, with interest after delinquent, in the same manner as other unpaid taxes. The tax shall be due on March 1 after assessment, and shall be delinquent from April 1 after due, including those instances when the last day of March is a Saturday or Sunday. When collected, the moneys shall be paid into the fund from which the costs were originally paid.

2. Before making any such assessment, the board of supervisors shall prepare a plat or schedule showing the several lots, tracts of land or parcels of ground to be assessed which shall be in accord with the assessor's records and the amount proposed to be assessed against each of the same for destroying or controlling weeds during the fiscal year.

3. Such board shall thereupon fix a time for the hearing on such proposed assessments, which time shall not be later than December 15 of the year, and at least twenty days prior to the time thus fixed for such hearing shall give notice thereof to all concerned that such plat or schedule is on file, and that the amounts as shown therein will be assessed against the several lots, tracts of land or parcels of ground described in said plat or schedule at the time fixed for such hearing, unless objection is made thereto. Notice of such hearing shall be given by one publication in official county newspapers in the county in which the property to be assessed is situated; or by posting a copy of such notice on the premises affected and by mailing a copy by certified mail to the last known address of the person owning or controlling said premises. At such time and place the owner of said premises or anyone liable to pay such assessment, may appear with the same rights given by law before boards of review, in reference to assessments for general taxation.

[S13, §1565-c, -d; C24, 27, §4824, 4825; C31, 35, §4824, 4825, 4825-c1, -c2; C39, §**4829.19;** C46, §317.20; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.21]

85 Acts, ch 171, §7; 92 Acts, ch 1016, §4; 98 Acts, ch 1107, §7

317.22 Duty of highway maintenance personnel.

All officers directly responsible for the care of public highways shall make a complaint to the weed commissioners or board of supervisors, if it appears that the provisions of this chapter may not be complied with in time to prevent the blooming and maturity of noxious weeds or the unlawful growth of weeds or marijuana, whether in the streets or highways for which they are responsible or upon lands adjacent to the same.

[S13, §1565-c, -e; C24, 27, 31, 35, §4826; C39, §**4829.20;** C46, §317.21; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.22]

90 Acts, ch 1179, §3

317.23 Duty of county attorney.

It shall be the duty of the county attorney upon complaint of any citizen that any officer charged with the enforcement of the provisions of this chapter has neglected or failed to perform the officer's duty, to enforce the performance of such duty.

[C24, 27, 31, 35, §4828; C39, §**4829.21;** C46, §317.22; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.23]

317.24 Punishment of officer.

Any officer referred to in this chapter who neglects or fails to perform the duties incumbent upon the officer under the provisions of this chapter shall be guilty of a simple misdemeanor.

[S13, §1565-i; C24, 27, 31, 35, §4829; C39, §**4829.22;** C46, §317.23; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §317.24]

317.25 Teasel, multiflora rose, and purple loosestrife prohibited — exceptions.

A person shall not import, sell, offer for sale, or distribute teasel (Dipsacus) biennial, the multiflora rose (Rosa multiflora), purple loosestrife (Lythrum salicaria), purple loosestrife (Lythrum virgatum), or seeds of them in any form in this state. However, this section does not prohibit the sale, offer for sale, or distribution of the multiflora rose (Rosa multiflora) used for understock for either cultivated roses or ornamental shrubs in gardens. Any person violating the provisions of this section is subject to a fine of not exceeding one hundred dollars.

[C75, 77, 79, 81, §317.25]

89 Acts, ch 193, §1; 90 Acts, ch 1111, §1; 91 Acts,

ch 5, §1; 91 Acts, ch 258, §46; 2001 Acts, ch 91, §1; 2002 Acts, ch 1050, §31
Section amended

317.26 Alternative remediation practices.

The director of the department of natural resources, in cooperation with the secretary of agriculture and county conservation boards or the board of supervisors, shall develop and implement projects which utilize alternative practices in the remediation of noxious weeds and other vegetation within highway rights-of-way.

87 Acts, ch 225, §231

CHAPTER 318

HEDGES ALONG HIGHWAYS

Repealed by 78 Acts, ch 1108, §24

CHAPTER 319

OBSTRUCTIONS IN HIGHWAYS

319.1 Removal.
319.2 Fences and electric transmission poles.
319.3 Notice.
319.4 Refusal to remove.
319.5 New lines.
319.6 Cost of removal — liability.
319.7 Duty of road officers.
319.8 Nuisance.
319.9 Injunction to restrain obstructions.
319.10 Billboards and signs.
319.11 Enforcement.
319.12 Billboards, reflectors, and signs prohibited.
319.13 Right and duty to remove.
319.14 Permit required.
319.15 Definition.

319.1 Removal.

The department and the board of supervisors shall cause all obstructions in highways, under their respective jurisdictions, to be removed.

[C51, §594; R60, §905; C73, §993; C97, §1560; S13, §1527-s17, 1560; C24, 27, 31, 35, 39, §**4834;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.1]

319.2 Fences and electric transmission poles.

Poles used for telephone, telegraph, or other transmission purposes, shall not be removed until notice, in writing, of not less than thirty days, has been given to the owner or company operating such lines, or in the event the owner or company has been unable to remove such poles within such thirty-day period due to storm or other act of God, then such poles shall not be removed until the owner or company shall have had a reasonable time thereafter to remove such poles, and in case of fences, notice in writing of not less than thirty days has been given to the owner, occupant, or agent of the land enclosed by said fence, unless such poles or fences constitute an immediate and dangerous hazard to persons or property lawfully using the right of way.

[C51, §594; R60, §905; C73, §993; C97, §1560; S13, §1527-s17, 1560; C24, 27, 31, 35, 39, §**4835;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.2]

319.3 Notice.

Said notice shall, with reasonable certainty, specify the line to which such fences or poles shall be removed, and shall be served in the same manner that original notices are required to be served.

[S13, §1527-s17; C24, 27, 31, 35, 39, §**4836;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.3]
Manner of service, R.C.P. 1.302 – 1.315

319.4 Refusal to remove.

All such fences and poles shall, within the time named, be removed to such line on the highway as the state highway engineer or county engineer may designate, as the case may be. If there be no county engineer, the board of supervisors, in case of secondary roads, shall designate said line. If not so removed, the public authorities may forthwith remove them.

[S13, §1527; C24, 27, 31, 35, 39, §**4837;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.4]

319.5 New lines.

New lines, or parts of lines hereafter constructed, shall, in case of secondary roads, be located by the county engineer upon written application filed

with the county auditor, and in case of primary roads, by the state highway engineer upon written application filed with the department, and shall thereafter be removable according to the provisions of this chapter. If there be no county engineer, the board of supervisors, in case of secondary roads, shall designate said location.

[S13, §1527-s17; C24, 27, 31, 35, 39, §**4838;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.5]

319.6 Cost of removal — liability.

Any removal made in compliance with the foregoing sections shall be at the expense of the owners of said fences or poles. All removals shall be without liability on the part of any officer ordering or effecting such removal.

[S13, §1527-s17; C24, 27, 31, 35, 39, §**4839;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.6]

319.7 Duty of road officers.

It shall be the duty of all officers responsible for the care of public highways, outside cities, to remove from the traveled portion and shoulders of the highways within their several jurisdictions, all open ditches, water breaks, and like obstructions, and to employ labor for this purpose in the same manner as for the repair of highways.

[S13, §1560-b, -e; C24, 27, 31, 35, 39, §**4840;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.7]

319.8 Nuisance.

Any person, partnership or corporation who makes, or causes to be made, any obstruction mentioned in section 319.7, in such traveled way, and any officer responsible for the care of such highway who knowingly fails to remove said obstructions, shall be deemed to have created a public nuisance and be punished accordingly.

[S13, §1560-a, -c; C24, 27, 31, 35, 39, §**4841;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.8]

Nuisances in general, chapter 657

319.9 Injunction to restrain obstructions.

The department, and the board of supervisors may, as to roads under their respective jurisdictions, maintain suits in equity aided by injunction to restrain obstruction in such highways, and, in such actions, may cause the legal boundary lines of such highway to be adjudicated provided all interested parties are impleaded.

[C24, 27, 31, 35, 39, §**4842;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.9]

319.10 Billboards and signs.

Billboards and advertising signs, whether on public or private property, which so obstruct the view of any portion of a public highway or of a railway track as to render dangerous the use of a public highway are public nuisances and may be abated, and the person or persons responsible for the erection and maintenance may be punished, as provided in the chapter on nuisances.

[C24, 27, 31, 35, 39, §**4844;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.10]

Nuisances in general, chapter 657

319.11 Enforcement.

Boards of supervisors and county attorneys as to secondary roads, and the department and the department general counsel as to primary roads, shall enforce section 319.10 by appropriate civil or criminal proceeding or by both such proceedings.

[C24, 27, 31, 35, 39, §**4845;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.11]

319.12 Billboards, reflectors, and signs prohibited.

No billboard, advertising sign or device, fence other than right of way boundary fence, or other obstruction except signs or devices authorized by law or approved by the highway authorities shall be placed or erected upon the right of way of any public highway, nor shall any vehicle be abandoned upon the right of way of any public highway.

Except for official traffic-control devices as defined by section 321.1, subsection 46, no person shall place, erect, or attach any red reflector, or any object or other device which shall cause a red reflectorized effect, within the boundary lines of the public highways so as to be visible to passing motorists.

[C24, 27, 31, 35, 39, §**4846;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.12]

319.13 Right and duty to remove.

If the following constitute an immediate and dangerous hazard, all billboards, advertising signs or devices, fences other than right of way boundary fences, or any temporary obstruction, including abandoned vehicles except signs or devices authorized by law or approved by the highway authorities, placed or erected upon the right of way of any public highway shall without notice or liability in damages be removable and the costs thereof assessed against:

1. The owner of any billboard, advertising sign or device so removed.
2. The vehicle owner in the case of abandoned vehicles.
3. The abutting property in the case of fences other than right of way line fences and other temporary obstructions placed by the owner of or tenant on said property.
4. The owner or person responsible for placement of all other obstructions.

Any such obstruction not constituting an immediate and dangerous hazard shall be removed without liability after forty-eight hour notice served in the same manner in which an original notice is served, or in writing by certified mail, or in any other manner reasonably calculated to apprise the person responsible for the obstruction

that the obstruction will be removed at the expense of such person after the notice is given.

Such removal and assessment of cost in the case of primary roads shall be by the department and in the case of secondary roads by the board of supervisors.

Upon removal of the obstruction, the highway authority may immediately send a statement of the cost of removal to the person responsible for the obstruction. If within ten days after sending the statement the cost is not paid, the highway authority may institute proceeding in the district court system to collect the cost of removal.

[C24, 27, 31, 35, 39, §**4847;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §319.13]

319.14 Permit required.

A person shall not excavate, fill, or make a physical change within the right-of-way of a public road or highway without obtaining a permit from the highway authority having jurisdiction of the public road or highway. Work performed under the permit shall be performed in conformity with the specifications prescribed by the highway authority. If the excavation, fill, or physical change within the right-of-way of a public road or highway does not conform to the specifications that accompany the permit the person shall be notified to make such conforming changes. If after twenty days the changes have not been made, the public road or highway authority may make the necessary changes and immediately send a statement of the cost to the responsible person. If within thirty days after sending the statement the cost is not paid, the highway authority may institute proceedings in the district court to collect the cost of correction. Except as provided in section 306A.3, utility companies are exempted from the provisions of this section.

[C75, 77, 79, 81, §319.14]

91 Acts, ch 147, §2

319.15 Definition.

As used in this chapter, unless the context otherwise requires, *"department"* means the state department of transportation.

[C75, 77, 79, 81, §319.15]

CHAPTER 320

USE OF HIGHWAYS FOR SIDEWALKS, SERVICE MAINS OR CATTLEWAYS

320.1 Construction of sidewalks in certain school districts.
320.2 Assessment of costs.
320.3 Repairs.
320.4 Water and gas mains, sidewalks, and cattleways.
320.5 Term of grant.
320.6 Conditions — damages.
320.7 Failure to maintain.
320.8 Penalty.

320.1 Construction of sidewalks in certain school districts.

Where an independent or community school district has within its limits a city of one hundred twenty-five thousand population or more, and has a schoolhouse located outside the city limits of such city and outside the limits of any city, the board of supervisors of the county in which such school district is located shall upon the filing of a petition signed by the owners of at least seventy-five percent of the property which will be assessed, order the construction or reconstruction of a permanent sidewalk not less than four feet in width along the highway adjacent to the property described and leading to such schoolhouse.

[C27, 31, 35, §4857-b1; C39, §**4857.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §320.1]

320.2 Assessment of costs.

Said work shall be undertaken and consummated and the cost thereof assessed to the abutting property in the manner and method and with the same effect as provided for the construction of sidewalks and the assessment of the costs thereof against benefited property by city councils within the limits of a city.

[C27, 31, 35, §4857-b2; C39, §**4857.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §320.2]

320.3 Repairs.

After the construction of such sidewalk the board of supervisors shall keep the same in repair and assess and certify the cost thereof in the same manner and to the same extent in which like repairs are assessed and certified by city councils.

[C27, 31, 35, §4857-b3; C39, §**4857.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §320.3]

320.4 Water and gas mains, sidewalks, and cattleways.

The state department of transportation in case of primary roads, and the board of supervisors in case of secondary roads, on written application designating the particular highway and part of the highway, the use of which is desired, may grant permission:

1. To lay gas mains in highways outside cities to local municipal distributing plants or companies, but not to pipeline companies. This section shall not apply to or include pipeline companies required to obtain a license from the utilities division of the department of commerce.
2. To construct and maintain cattleways over or under such highways.
3. To construct sidewalks on and along such highways.
4. To lay water mains in, under, or along highways.

[C97, §1524; S13, §1527-e; SS15, §1527-b; C24, 27, 31, 35, 39, §**4858;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §320.4]

Legalizing Act for water mains laid prior to July 1, 1979; see §589.29

320.5 Term of grant.

A grant made under section 320.4 shall be on such reasonable conditions as the state department of transportation or the board of supervisors may exact, and on such conditions as the general assembly may prescribe.

[C97, §1524; S13, §1527-e; C24, 27, 31, 35, 39, §**4859;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §320.5]

2001 Acts, ch 32, §11

320.6 Conditions — damages.

Such mains, pipes, and cattleways shall be so erected and maintained as not to interfere with public travel or with the future improvement of the highway. The owner of such mains, pipes, and cattleways shall be responsible for all damages arising from the laying, maintenance, or erection of the same or from the same not being kept in a proper state of repair.

The location of such mains or pipes shall be changed, on reasonable notice, when such change shall be necessary in the improvement or maintenance of the highway.

[C97, §1524; S13, §1527-e; SS15, §1527-b; C24, 27, 31, 35, 39, §**4860;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §320.6]

320.7 Failure to maintain.

Failure of the grantee to comply with the terms of the grant shall be ground for forfeiture of the grant.

[C24, 27, 31, 35, 39, §**4861;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §320.7]

320.8 Penalty.

Failure to comply with any of the conditions of said grant, whether made such by statute or by agreement, or the laying of any such mains, or the constructing of any such cattleways, without having secured the grant of permission as provided by law shall be deemed a simple misdemeanor. It shall be the duty of the state department of transportation and of the board of supervisors, as regards the highways under their respective jurisdictions, to enforce the provisions of this section and the laws relating thereto.

[S13, §1527-d; C24, 27, 31, 35, 39, §**4862;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §320.8]

SUBTITLE 2

VEHICLES

CHAPTER 321

MOTOR VEHICLES AND LAW OF THE ROAD

Surcharge imposed on certificate fees under §321.20, 321.20A, 321.23, 321.42, 321.46, 321.47, 321.48, 321.50, and 321.52; see §321.52A
Fines doubled for moving traffic violations occurring in road work zones; §805.8A, subsection 14, paragraph i

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321.198 Military service exception.
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321.282 Violations. Repealed by 86 Acts, ch 1220, §48.

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321.289 Speed signs — duty to install.
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321.366 Acts prohibited on fully controlled-access facilities.
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321.389 Reflector requirement.
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321.391 Approval of reflectors. Repealed by 97 Acts, ch 108, §49.
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321.397 Lamps on bicycles.
321.398 Lamps on other vehicles and equipment.
321.399 to 321.401 Repealed by 75 Acts, ch 182, §1.
321.402 Spot lamps.
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321.404 Signal lamps and signal devices.
321.404A Light-restricting devices prohibited.
321.405 Self-illumination.
321.406 Cowl lamps.
321.407 Courtesy lamps. Repealed by 89 Acts, ch 296, §96.
321.408 Back-up lamps.
321.409 Mandatory lighting equipment.
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321.417 Single-beam road-lighting equipment.
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321.419 Number of driving lamps required or permitted.
321.420 Number of lamps lighted.
321.421 Special restrictions on lamps.
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321.424 Sale of lights — approval. Repealed by 97 Acts, ch 108, §49.
321.425 to 321.427 Repealed by 55 Acts, ch 166, §1.
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321.429 Revocation of certificate. Repealed by 97 Acts, ch 108, §49.

BRAKES, HITCHES, AND SWAY CONTROL

321.430 Brake, hitch and control requirements.
321.431 Performance ability.

MISCELLANEOUS EQUIPMENT

321.432 Horns and warning devices.
321.433 Sirens, whistles, and bells prohibited.
321.434 Bicycle sirens or whistles.
321.435 Repealed by 78 Acts, ch 1113, §47.
321.436 Mufflers, prevention of noise.
321.437 Mirrors.
321.438 Windshields and windows.
321.439 Windshield wipers.
321.440 Restrictions as to tire equipment.
321.441 Metal tires prohibited.
321.442 Projections on wheels.
321.443 Exceptions.
321.444 Safety glass.
321.445 Safety belts and safety harnesses — use required.
321.446 Child restraint devices.
321.447 Trucks to carry flares and reflective devices. Repealed by 87 Acts, ch 170, §20.
321.448 Display of flares or reflective devices. Repealed by 87 Acts, ch 170, §20.
321.449 Motor carrier safety rules.
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SIZE, WEIGHT, AND LOAD

321.452 Scope and effect.
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321.456 Height of vehicles — permits — exemption.
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321.461 Trailers and towed vehicles.
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321.463 Maximum gross weight — exceptions — penalties.
321.464 Investigation as to safety.
321.465 Weighing vehicles and removal of excess.
321.466 Increased loading capacity — reregistration.
321.467 Retractable axles.
321.468 through 321.470 Repealed by 67 Acts, ch 285, §1.
321.471 Local authorities may restrict.
321.472 Signs posted.
321.473 Limiting trucks — rubbish vehicles.
321.474 Department may restrict.
321.475 Liability for damage — rules.
321.476 Weighing vehicles by department.
321.477 Employees as peace officers — maximum age.
321.478 Bond.
321.479 Badge of authority.
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321.482 Violations — simple misdemeanors unless otherwise provided.
321.483 Penalty for class "D" felony.
321.484 Offenses by owners.
321.485 Notice to appear — promise to appear.
321.486 Authorized bond forms.
321.487 Violation of promise to appear.
321.488 Procedure not exclusive.
321.489 Record inadmissible in a civil action.
321.490 Conviction not to affect credibility.
321.491 Convictions and recommendations for suspension to be reported.
321.492 Peace officers' authority.
321.492A Quotas on citations prohibited.

CIVIL LIABILITY

321.493 Liability for damages.
321.494 Guest statute. Repealed by 84 Acts, ch 1219, §41.
321.495 to 321.497 Repealed by 67 Acts, ch 405, §13.

ACTIONS AGAINST NONRESIDENTS

321.498 Legal effect of use and operation.
321.499 "Person" defined.
321.500 Original notice — form.
321.501 Manner of service.
321.502 Notification to nonresident — form.
321.503 Repealed by 57 Acts, ch 267, §39.
321.504 Optional notification.
321.505 Proof of service.
321.506 Actual service within this state.
321.507 Venue of actions.
321.508 Continuances.
321.509 Duty of director.
321.510 Expenses and attorney fees.
321.511 Dismissal — effect.
321.512 Action against insurance.
321.513 Nonresident traffic violator compact.
321.514 to 321.554 Reserved.

HABITUAL OFFENDER

321.555 Habitual offender defined.
321.556 Notice and hearing — findings and order.
321.557 through 321.559 Repealed by 95 Acts, ch 143, §13.
321.560 Period of revocation — temporary restricted licenses.
321.561 Punishment for violation.
321.562 Rule of construction.

GENERAL PROVISIONS

321.1 Definitions of words and phrases.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. *"Agricultural hazardous material"* means a hazardous material, other than hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil conditioner, or fuel. *"Agricultural hazardous material"* is limited to material in class 3, 8, or 9, division 2.1, 2.2, 5.1, or 6.1, or an ORM-D material as defined in 49 C.F.R. § 171.8.

1A. *"Alcohol concentration"* means the number of grams of alcohol per any of the following:

a. One hundred milliliters of blood.

b. Two hundred ten liters of breath.

c. Sixty-seven milliliters of urine.

2. *"Alcoholic beverage"* includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

3. *"Alley"* means a thoroughfare laid out, established, and platted as such, by constituted authority.

4. *"All-terrain vehicle"* means a motor vehicle designed to travel on three or more wheels and designed primarily for off-road recreational use but not including farm tractors or equipment, construction equipment, forestry vehicles, or lawn and grounds maintenance vehicles.

5. *"Ambulance"* means a motor vehicle which is equipped with life support systems and used to transport sick and injured persons who require emergency medical care to medical facilities.

6. *"Authorized emergency vehicle"* means vehicles of the fire department, police vehicles, ambulances, and emergency vehicles owned by the United States, this state, any subdivision of this state, or any municipality of this state, and privately owned vehicles as are designated or authorized by the director of transportation under section 321.451.

7. *"Business district"* means the territory con-

tiguous to and including a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.

8. *"Chauffeur"* means a person who operates a motor vehicle, including a school bus, in the transportation of persons for wages, compensation, or hire, or a person who operates a truck tractor, road tractor, or a motor truck which has a gross vehicle weight rating exceeding sixteen thousand pounds. A person is not a chauffeur when the operation of the motor vehicle, other than a truck tractor, by the owner or operator is occasional and merely incidental to the owner's or operator's principal business.

A person is not a chauffeur when the operation is by a volunteer fire fighter operating fire apparatus, or is by a volunteer ambulance or rescue squad attendant operating ambulance or rescue squad apparatus. If a volunteer fire fighter or ambulance or rescue squad operator receives nominal compensation not based upon the value of the services performed, the fire fighter or operator shall be considered to be receiving no compensation and classified as a volunteer.

If authorized to transport inmates, probationers, parolees, or work releasees by the director of the Iowa department of corrections or the director's designee, an employee of the Iowa department of corrections or a district department of correctional services is not a chauffeur when transporting the inmates, probationers, parolees, or work releasees.

A farmer or the farmer's hired help is not a chauffeur when operating a truck, other than a truck tractor, owned by the farmer and used exclusively in connection with the transportation of the farmer's own products or property.

If authorized to transport patients or clients by the director of the department of human services or the director's designee, an employee of the department of human services is not a chauffeur when transporting the patients or clients in an automobile.

A person is not a chauffeur when the operation is by a home care aide in the course of the home care aide's duties.

If authorized to transport students or clients by the superintendent of the Iowa braille and sight saving school or of the Iowa school for the deaf, or the superintendent's respective designee, an employee of the Iowa braille and sight saving school or the Iowa school for the deaf is not a chauffeur when transporting the students or clients.

9. *"Combination"* or *"combination of vehicles"* shall be construed to mean a group consisting of two or more motor vehicles, or a group consisting of a motor vehicle and one or more trailers, semitrailers or vehicles, which are coupled or fastened together for the purpose of being moved on the highways as a unit.

10. *a. "Combined gross weight"* means the gross weight of a combination of vehicles.

b. "Gross combination weight rating" means the combined gross vehicle weight ratings for each vehicle in a combination of vehicles. In the absence of a weight specified by the manufacturer for a towed vehicle, the gross vehicle weight rating of the towed vehicle is its gross weight.

11. For purposes of administering and enforcing the commercial driver's license provisions:

a. "Commercial driver" means the operator of a commercial motor vehicle.

b. "Commercial driver's license" means a driver's license valid for the operation of a commercial motor vehicle.

c. "Commercial driver's license information system" means the national information system established to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

d. "Commercial motor carrier" means a person responsible for the safe operation of a commercial motor vehicle.

e. "Commercial motor vehicle" means a motor vehicle or combination of vehicles used to transport passengers or property if any of the following apply:

(1) The combination of vehicles has a gross combination weight rating of twenty-six thousand one or more pounds provided the towed vehicle or vehicles have a gross weight rating or gross combination weight rating of ten thousand one or more pounds.

(2) The motor vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(3) The motor vehicle is designed to transport sixteen or more persons, including the operator, or is of a size and design to transport sixteen or more persons, including the operator, but is redesigned or modified to transport less than sixteen persons with disabilities.

(4) The motor vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

f. "Foreign jurisdiction" means a jurisdiction outside the fifty United States, the District of Columbia, and Canada.

g. "Nonresident commercial driver's license" means a commercial driver's license issued to a person who is not a resident of the United States or Canada.

h. "Tank vehicle" means a commercial motor vehicle that is designed to transport liquid or gaseous materials within a tank having a rated capacity of one thousand one or more gallons that is either permanently or temporarily attached to the vehicle or chassis.

12. *"Commercial vehicle"* means a vehicle or combination of vehicles designed principally to transport passengers or property of any kind if any of the following apply:

a. The vehicle or any combination of vehicles

has a gross weight or combined gross weight of ten thousand one or more pounds.

b. The vehicle or any combination of vehicles has a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds.

c. The vehicle is designed to transport sixteen or more persons, including the driver.

d. The vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

13. *"Component part"* means any part of a vehicle, other than a tire, having a component part number.

14. *"Component part number"* means the vehicle identification derivative consisting of numerical and alphabetical designations affixed to a component part by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the component part.

15. *"Conviction"* means a final conviction or an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court.

15A. *"Crane"* means a machine for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

16. *"Crosswalk"* means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

17. *"Dealer"* means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

18. *"Demolisher"* means any agency or person whose business is to convert a vehicle to junk, processed scrap, or scrap metal, or otherwise to wreck or dismantle vehicles.

19. *"Department"* means the state department of transportation. *"Commission"* means the state transportation commission.

20. *"Director"* means the director of the state department of transportation or the director's designee.

20A. *"Driver's license"* means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to a temporary restricted or temporary license and an instruction, chauffeur's instruction, commercial driver's instruction, or temporary permit.

For purposes of license suspension, revocation, bar, disqualification, cancellation, or denial under this chapter and chapters 321A, 321C, and 321J, *"driver's license"* includes any privilege to operate a motor vehicle.

20B. *"Electric personal assistive mobility device"* means a self-balancing device powered by an electric propulsion system that averages seven hundred fifty watts, has two nontandem wheels, and is designed to transport one person, with a maximum speed on a paved level surface of less than twenty miles per hour. The maximum speed shall be calculated based on operation of the device by a person who weighs one hundred seventy pounds when the device is powered solely by the electric propulsion system.

21. *"Endorsement"* means an authorization to a person's driver's license required to permit the person to operate certain types of motor vehicles or to transport certain types or quantities of hazardous materials.

22. *"Essential parts"* mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

23. *"Established place of business"* means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer's or manufacturer's books and records are kept and a large share of the dealer's or manufacturer's business is transacted.

24. *"Farm tractor"* means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

24A. *"Fence-line feeder"* means a vehicle used exclusively for the mixing and dispensing of nutrients to bovine animals at a feedlot.

24B. *"Financial liability coverage"* means any of the following:

a. An owner's policy of liability insurance which is issued by an insurance carrier authorized to do business in Iowa to or for the benefit of the person named in the policy as insured, and insuring the person named as insured and any person using an insured motor vehicle with the express or implied permission of the named insured against loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of an insured motor vehicle within the United States of America or Canada, but subject to minimum limits, exclusive of interest and costs, in the amounts specified in section 321A.21 or specified in another provision of the Code, whichever is greater.

b. A bond filed with the department pursuant to section 321A.24.

c. A valid statement issued by the treasurer of state pursuant to section 321A.25 attesting to the filing of a certificate of deposit with the treasurer of state.

d. A valid certificate of self-insurance issued by the department pursuant to section 321A.34.

25. *"Fire vehicle"* means a motor vehicle which is equipped with pumps, tanks, hoses, nozzles, ladders, generators, or other fire apparatus used

to transport fire personnel, fight fires, and respond to emergencies.

26. *"Foreign vehicle"* means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

27. The linear measure of the plot of ground upon which the building is located abutting upon the highway shall be deemed *"frontage occupied by the building"*, and the phrase *"frontage on such highway for a distance of three hundred feet or more"* shall mean the total frontage on both sides of the highway for such distance.

28. *"Garage"* means every place of business where motor vehicles are received for housing, storage, or repair for compensation.

28A. *"Grain cart"* means a vehicle with a nonsteerable single or tandem axle designed to move grain.

29. *a. "Gross weight"* means the empty weight of a vehicle plus the maximum load to be carried by the vehicle. The maximum load to be carried by a passenger-carrying vehicle shall be determined by multiplying one hundred fifty pounds by the number of passenger seats carried by such vehicle.

b. "Unladen weight" means the weight of a vehicle or vehicle combination without load.

c. "Gross vehicle weight rating" means the weight specified by the manufacturer as the loaded weight of a single vehicle.

30. *"Guaranteed arrest bond certificate"* means any printed, unexpired certificate issued by an automobile club or association to any of its members, or any printed, unexpired certificate issued by an insurance company authorized to write automobile liability insurance within this state, which said certificate is signed by such member or insured and contains a printed statement that such automobile club, association, or insurance company and a surety company which is doing business in this state under the provisions of section 515.48, subsection 2, guarantee the appearance of the person whose signature appears on the certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed two hundred dollars. If such insurance company is itself qualified under the provisions of section 515.48, subsection 2, then it may be its own surety. Bail in this form shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law.

31. *"Hazardous material"* means a substance or material which has been determined by the United States secretary of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

32. *"Implement of husbandry"* means a vehicle or special mobile equipment manufactured, designed, or reconstructed for agricultural purposes and, except for incidental uses, exclusively used in the conduct of agricultural operations. *"Implements of husbandry"* includes all-terrain vehicles operated in compliance with section 321.234A, fence-line feeders, and vehicles used exclusively for the application of organic or inorganic plant food materials, organic agricultural limestone, or agricultural chemicals. To be considered an implement of husbandry, a self-propelled implement of husbandry must be operated at speeds of thirty-five miles per hour or less. *"Reconstructed"* as used in this subsection means materially altered from the original construction by the removal, addition, or substitution of essential parts, new or used.

A vehicle covered under this subsection, if it otherwise qualifies, may be operated as special mobile equipment and under such circumstances this subsection shall not be applicable to such vehicle, and such vehicle shall not be required to comply with sections 321.384 through 321.423, when such vehicle is moved during daylight hours; however, the provisions of section 321.383 shall remain applicable to such vehicle.

33. *"Intersection"* means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

34. *"Laned highway"* means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

35. *"Light delivery truck," "panel delivery truck"* or *"pickup"* means any motor vehicle designed to carry merchandise or freight of any kind, not to exceed two thousand pounds.

36. *"Local authorities"* means every county, municipal, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

36A. *"Low-speed vehicle"* means a motor vehicle manufactured in compliance with the national highway and traffic safety administration standards for low-speed vehicles in 49 C.F.R. § 571.500. A low-speed vehicle which is in compliance with the equipment requirements in 49 C.F.R. § 571.500 shall be deemed to be in compliance with all equipment requirements of this chapter.

36B. *"Manufactured home"* is a factory-built structure constructed under authority of 42 U.S.C. § 5403, which is required by federal law to display a seal from the United States department of housing and urban development, and was constructed on or after June 15, 1976.

36C. *a. "Manufactured or mobile home"* means any vehicle without motive power used or

so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

b. "Travel trailer" means a vehicle without motive power used, manufactured, or constructed to permit its use as a conveyance upon the public streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to eight feet six inches in width and its overall length shall not exceed forty feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the vehicle is used in this state as a place of human habitation for more than ninety consecutive days in one location it shall be classed as a manufactured or mobile home regardless of the size limitations provided in this paragraph.

c. "Fifth-wheel travel trailer" means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed forty feet.

d. "Motor home" means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in subparagraphs (1), (4), or (5) of this paragraph, of the following permanently installed systems which meet American national standards institute and national fire protection association standards in effect on the date of manufacture:

(1) Cooking facilities.

(2) Ice box or mechanical refrigerator.

(3) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.

(4) Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.

(5) Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.

(6) A one hundred ten – one hundred fifteen volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

37. *"Manufacturer"* means every person engaged in the business of fabricating or assembling vehicles of a type required to be registered. It does not include a person who converts, modifies, or alters a completed motor vehicle manufactured by another person. It includes a person who uses a completed motor vehicle manufactured by another person to construct a class "B" motor home as defined in section 321.124.

"Completed motor vehicle" means a motor vehicle which does not require any additional manufacturing operations to perform its intended function except the addition of readily attachable equipment, components, or minor finishing operations.

"Final stage manufacturer" means a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle. A final stage manufacturer shall furnish to the department a document which identifies that the vehicle was incomplete prior to that manufacturing operation. The identification shall include the name of the incomplete vehicle manufacturer, the date of manufacture, and the vehicle identification number to ascertain that the document applies to a particular incomplete vehicle.

"Incomplete vehicle" means an assemblage, as a minimum, consisting of a frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be a part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable equipment, components, or minor finishing operations.

38. *"Metal tire"* means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

39. Reserved.

40. *a. "Motorcycle"* means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground including a motor scooter but excluding a tractor and a motorized bicycle.

b. "Motorized bicycle" or *"motor bicycle"* means a motor vehicle having a saddle or a seat for the use of a rider and designed to travel on not more than three wheels in contact with the ground, with an engine having a displacement no greater than fifty cubic centimeters and not capable of operating at a speed in excess of thirty miles per hour on level ground unassisted by human power.

c. "Bicycle" means a device having two wheels and having at least one saddle or seat for the use of a rider which is propelled by human power.

41. *"Motor truck"* means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over nine persons as passengers.

42. *a. "Motor vehicle"* means a vehicle which is self-propelled, but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires and are not operated upon rails.

b. "Used motor vehicle" or *"secondhand motor vehicle"* or *"used car"* means a motor vehicle of a type subject to registration under the laws of this state which has been sold *"at retail"* as defined in chapter 322 and previously registered in this or any other state.

c. "New motor vehicle or new car" means a motor vehicle subject to registration which has not been sold "at retail" as defined in chapter 322.

d. "Car" or *"automobile"* means a motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

43. Reserved.

44. *"Multipurpose vehicle"* means a motor vehicle designed to carry not more than ten people, and constructed either on a truck chassis or with special features for occasional off-road operation.

45. *"Nonresident"* means every person who is not a resident of this state.

46. *"Official traffic-control devices"* means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

47. *"Official traffic-control signal"* means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

48. *"Operator"* or *"driver"* means every person who is in actual physical control of a motor vehicle upon a highway.

49. *"Owner"* means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of a security agreement with an immediate right of possession vested in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

50. *"Peace officer"* means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 801.4.

51. *"Pedestrian"* means any person afoot.

52. *"Person"* means every natural person, firm, copartnership, association, or corporation. Where the term "person" is used in connection with the registration of a motor vehicle, it shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesperson, or otherwise.

53. *"Pneumatic tire"* means every tire in which compressed air is designed to support the load.

54. *"Private road"* or *"driveway"* means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

54A. *"Product identification number"* or the acronym PIN means a group of unique numerical or alphabetical designations assigned to a complete fence-line feeder, grain cart, or tank wagon by the manufacturer or by the department and affixed to the vehicle, pursuant to rules adopted by the department, as a means of identifying the vehicle or the year of manufacture.

54B. *"Proof of financial liability coverage card"* means either a liability insurance card issued under section 321.20B, a bond insurance card issued under section 321A.24, a security insurance card issued under section 321A.25, or a self-insurance card issued under section 321A.34.

55. *"Railroad"* means a carrier of persons or property upon cars operated upon stationary rails.

56. *"Railroad corporation"* means any corporation organized under the laws of this state or any other state for the purpose of operating the railroad within this state.

57. *"Railroad sign"* or *"signal"* means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

58. *"Railroad train"* means an engine or locomotive with or without cars coupled thereto, operated upon rails.

59. *"Reconstructed vehicle"* means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

60. *"Registration year"* means the period of twelve consecutive months beginning on the first day of the month following the month of the birth of the owner of the vehicle for vehicles registered by the county treasurer and the calendar year for vehicles registered by the department or motor trucks and truck tractors with a combined gross weight exceeding five tons which are registered by the county treasurer.

61. *"Remanufactured vehicle"* means every vehicle of a type required to be registered and having a gross vehicle weight rating of at least thirty thousand pounds that has been disassembled, resulting in the total separation of the major integral parts and which has been reassembled with those parts being replaced with new or rebuilt parts. In every instance, a new diesel engine and all new tires shall be installed and shall carry manufacturers' warranties.

Every vehicle shall include, but not be limited to, new or rebuilt component parts consisting of steering gear, clutch, transmission, differential, engine radiator, engine fan hub, engine starter, alternator, air compressor, and cab. For purposes of this subsection, *"rebuilt"* means the replacement of any element of a component part which appears to limit the serviceability of the part. A minimum of twenty thousand dollars shall be expended on each vehicle and the expense must be verifiable by invoices, work orders, or other documentation as required by the department.

The department may establish equipment requirements and a vehicle inspection procedure for remanufactured vehicles. The department may establish a fee for the inspection of remanufactured vehicles not to exceed one hundred dollars for each vehicle inspected.

62. *"Rescue vehicle"* means a motor vehicle which is equipped with rescue, fire, or life support equipment used to assist and rescue persons in emergencies or support emergency personnel in the performance of their duties.

63. *"Residence district"* means the territory within a city contiguous to and including a highway, not comprising a business, suburban, or school district, where forty percent or more of the frontage on such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business.

63A. *"Retractable axle"* means an axle designed with the capability of manipulation or adjustment of the weight on the axle.

64. *"Right-of-way"* means the privilege of the immediate use of the highway.

64A. *"Road tractor"* means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

65. *"Roadway"* means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

66. *"Road work zone"* means the portion of a highway which is identified by posted or moving signs as the site of construction, maintenance, survey, or utility work. The zone starts upon meeting the first sign identifying the zone and continues until a posted or moving sign indicates that the work zone has ended.

67. *"Rural residence district"* means an unincorporated area established by a county board of supervisors which is contiguous to and including a secondary highway, not comprising a business district, where forty percent or more of the frontage of the highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business. For purposes of this subsection, farm houses and farm buildings are not to be considered.

68. *"Safety zone"* means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

68A. *"Salvage pool"* means the business of selling at auction wrecked or salvage vehicles, as defined in section 321.52.

69. *"School bus"* means every vehicle operated for the transportation of children to or from school, except vehicles which are:

a. Privately owned and not operated for compensation;

b. Used exclusively in the transportation of the children in the immediate family of the driver;

c. Operated by a municipally or privately owned urban transit company or a regional transit system as defined in section 324A.1 for the transportation of children as part of or in addition to their regularly scheduled service; or

d. Designed to carry not more than nine persons as passengers, either school owned or privately owned, which are used to transport pupils to activity events in which the pupils are participants or used to transport pupils to their homes in case of illness or other emergency situations. The vehicles operated under the provisions of this paragraph shall be operated by employees of the school district who are specifically approved by the local superintendent of schools for the assignment.

70. *"School district"* means the territory contiguous to and including a highway for a distance of two hundred feet in either direction from a schoolhouse in a city.

71. *"Semitrailer"* means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Wherever the word *"trailer"* is used in this chapter, same shall be construed to also include *"semitrailer"*.

A *"semitrailer"* shall be considered in this chapter separately from its power unit.

72. *"Sidewalk"* means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

73. *"Solid tire"* means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

74. *"Specially constructed vehicle"* means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

75. *"Special mobile equipment"* means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including road construction or maintenance machinery and ditch-digging apparatus. This description does not exclude other vehicles which are within the general terms of this subsection.

76. *"Special truck"* means a motor truck or truck tractor not used for hire with a gross weight registration of six through thirty-two tons used by a person engaged in farming to transport commodities produced only by the owner, or to transport commodities purchased by the owner for use in the owner's own farming operation or occasional use for charitable purposes. *"Special truck"* also means a motor truck or truck tractor not used for hire with a gross weight registration of six through thirty-two tons used by a person engaged in farming who assists another person engaged in farming through an exchange of services. A *"special truck"* does not include a truck tractor oper-

ated more than fifteen thousand miles annually.

77. *"Stinger-steered automobile transporter"* means any vehicle combination designed and used specifically for the transport of assembled highway vehicles, recreational vehicles, or boats in which the fifth wheel is located on a drop frame located below and behind the rearmost axle of the power unit.

78. *"Street"* or *"highway"* means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

79. *"Suburban district"* means all other parts of a city not included in the business, school, or residence districts.

80. *"Tandem axle"* means any two or more consecutive axles whose centers are more than forty inches but not more than ninety-six inches apart.

80A. *"Tank wagon"* means a vehicle designed to carry liquid animal or human excrement.

81. *"Through (or thru) highway"* means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter or such entrances are controlled by a peace officer or traffic-control signal. The term *"arterial"* is synonymous with *"through"* or *"thru"* when applied to highways of this state.

82. *"Tourist attraction"* means a business, activity, service, or site where a major portion of the product or service provided is tourist oriented.

83. *"Tourist-oriented directional sign"* means a sign providing identification and directional information for a tourist attraction.

83A. *"Towing or recovery vehicle"* means a motor vehicle equipped with booms, winches, slings, or wheel lifts used to tow, recover, or transport other motor vehicles.

83B. *"Tracked implement of husbandry"* means a fence-line feeder, grain cart, or tank wagon that is mounted on a chassis attached to a pair of tracks that transfer the weight of the implement to the ground or the roadway surface.

84. *"Traffic"* means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

85. *"Trailer"* means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

86. *"Trailer coach"* means either a trailer or semitrailer designed for carrying persons.

87. *"Transporter"* means a person engaged in the business of delivering vehicles of a type required to be registered or titled in this state who has received authority to make delivery as specified by rules adopted by the department.

88. *"Truck tractor"* means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

89. *"Used vehicle parts dealer"* means a person engaged in the business of selling bodies, parts of bodies, frames, or component parts of used vehicles subject to registration under this chapter.

90. *"Vehicle"* means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. *"Vehicle"* does not include:

a. Any device moved by human power.

b. Any device used exclusively upon stationary rails or tracks.

c. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.

d. Any steering axle, dolly, auxiliary axle, or other integral part of another vehicle which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

91. *"Vehicle identification number"* or the initials VIN mean the numerical and alphabetical designations affixed to a vehicle or a component part of a vehicle by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the vehicle.

92. *"Vehicle rebuilder"* means a person engaged in the business of rebuilding or restoring to operating condition vehicles subject to registration under this chapter, which have been damaged or wrecked.

93. *"Vehicle salvager"* means a person engaged in the business of scrapping vehicles, dismantling or storing wrecked or damaged vehicles or selling reusable parts of vehicles or storing vehicles not currently registered which vehicles are subject to registration under this chapter.

94. *"Where a vehicle is kept"* shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if said owner is a nonresident of the state.

[S13, §1571-m1, -m20; C24, 27, §4863, 5030, 13012; C31, 35, §4863, 4960-d1, 5030, 13012; C39, §**5000.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.1; 81 Acts, ch 101, §1; 81 Acts 2d Ex, ch 2, §5; 82 Acts, ch 1056, §1, ch 1122, §1, ch 1254, §1]

82 Acts, ch 1062, §1, 2, 38; 83 Acts, ch 9, §3, 8; 83 Acts, ch 24, §1, 12; 84 Acts, ch 1219, §21; 84 Acts, ch 1252, §1; 84 Acts, ch 1292, §2; 85 Acts, ch 21, §41; 85 Acts, ch 35, §1, 2; 85 Acts, ch 37, §1; 85 Acts, ch 40, §1; 86 Acts, ch 1056, §1; 86 Acts, ch 1071, §1; 86 Acts, ch 1210, §1, 2; 86 Acts, ch 1237, §19; 86 Acts, ch 1238, §13; 87 Acts, ch 170, §2 – 4; 87 Acts,

ch 186, §1, 2; 87 Acts, ch 189, §1; 88 Acts, ch 1047, §1; 88 Acts, ch 1083, §1, 2; 89 Acts, ch 34, §1; 89 Acts, ch 83, §40, 41; 89 Acts, ch 118, §1; 90 Acts, ch 1183, §3; 90 Acts, ch 1230, §6 – 14; 91 Acts, ch 56, §1; 91 Acts, ch 219, §14; 92 Acts, ch 1048, §1; 92 Acts, ch 1104, §1; 92 Acts, ch 1175, §19, 28; 93 Acts, ch 114, §1; 93 Acts, ch 139, §7; 94 Acts, ch 1087, §1; 95 Acts, ch 10, §1; 95 Acts, ch 55, §1, 2; 95 Acts, ch 56, §1; 95 Acts, ch 118, §1, 2; 96 Acts, ch 1005, §1; 96 Acts, ch 1129, §113; 97 Acts, ch 100, §1; 97 Acts, ch 104, §5; 97 Acts, ch 108, §1, 2; 97 Acts, ch 139, §1, 17, 18; 97 Acts, ch 148, §7, 9; 98 Acts, ch 1073, §1 – 4; 98 Acts, ch 1075, §20; 98 Acts, ch 1121, §8; 99 Acts, ch 13, §1 – 3, 29; 99 Acts, ch 108, §1 – 3; 99 Acts, ch 188, §1; 2000 Acts, ch 1005, §1; 2000 Acts, ch 1016, §1; 2000 Acts, ch 1025, §1, 6; 2000 Acts, ch 1133, §1; 2001 Acts, ch 32, §15; 2001 Acts, ch 132, §1; 2001 Acts, ch 153, §15, 17; 2001 Acts, ch 176, §80; 2002 Acts, ch 1063, §17, 18

NEW subsection 20B

Subsection 40, paragraph b amended

321.1A Presumption of residency.

For purposes of this chapter there is a rebuttable presumption that a natural person is a resident of this state if any of the following elements exist:

1. The person has filed for a homestead tax exemption on property in this state.
2. The person is a veteran who has filed for a military tax exemption on property in this state.
3. The person is registered to vote in this state.
4. The person enrolls the person's child to be educated in a public elementary or secondary school in this state.
5. The person is receiving public assistance from this state.
6. The person resides or has continuously remained in this state for a period exceeding thirty days except for infrequent or brief absences.
7. The person has accepted employment or engages in any trade, profession, or occupation within this state, except as provided in section 321.55.

"Resident" does not include a person who is attending a college or university in this state, if the person has a domicile in another state and has a valid driver's license issued by the state of domicile. *"Resident"* also does not include members of the armed forces that are stationed in Iowa, providing that their vehicles are properly registered in their state of residency.

A corporation, association, partnership, company, firm, or other aggregation of individuals whose principal place of business is located within this state is a resident of this state.

83 Acts, ch 125, §1; 90 Acts, ch 1230, §15; 98 Acts, ch 1073, §9

321.2 Department.

The state department of transportation shall administer and enforce the provisions of this chapter.

The division of the Iowa state patrol of the department of public safety shall enforce the provisions of this chapter relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses, and to see that proper safety rules are observed.

The state department of transportation and the department of public safety shall cooperate to insure the proper and adequate enforcement of the provisions of this chapter.

[C24, 27, 31, 35, §4863; C39, §**5000.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.2]

98 Acts, ch 1074, §20

321.3 Powers and duties of director.

The director is hereby vested with the power and is charged with the duty of observing, administering, and enforcing the provisions of this chapter.

[C39, §**5000.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.3]

321.4 Rules.

The commissioner of public safety is authorized to adopt and promulgate administrative rules governing procedures as may be necessary to carry out the provisions of this chapter; and to carry out any other laws the enforcement of which is vested in the department of public safety.

[C24, 27, 31, 35, §5004; C39, §**5000.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.4]

321.5 Duty to obey.

All local officials charged with the administration and enforcement of this chapter shall be governed in their official acts by the rules promulgated by the department.

[C24, 27, 31, 35, §5005; C39, §**5000.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.5]

321.6 Reciprocal enforcement — patrol beats.

There shall be reciprocal co-operation between the members of the department, the state department of public safety and local authorities in the enforcing of local and state traffic laws and in making inspections, although this section shall not be construed to give the state department of public safety any right to establish regular patrol beats inside municipal limits unless requested for a special occasion or emergency by the mayor of such city or the sheriff of the county.

[C24, 27, 31, 35, §5017; C39, §**5000.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.6]

321.7 Seal of department.

The department may adopt an official seal.

[C39, §**5000.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.7]

321.8 Director to prescribe forms.

The director shall prescribe and provide suit-

able forms of applications, registration cards, certificates of title and all other forms requisite or deemed necessary to carry out the provisions of this chapter and any other laws, the enforcement and administration of which are vested in the department except manufacturer's or importer's certificates. Manufacturer's and importer's certificates shall be provided by the manufacturer or importer and be in the form prescribed by the department.

[C39, §**5000.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.8]

83 Acts, ch 41, §1

321.9 Authority to administer oaths.

Officers and employees of the department designated by the director are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee.

[C39, §**5000.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.9]

321.10 Certified copies of records.

The director and officers of the department designated by the director are authorized to prepare under the seal of the department and provide upon request a certified copy of any record of the department, charging a fee of fifty cents for each document so authenticated, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original and shall be considered to be true and accurate unless shown otherwise by an objecting party.

Any records or certified copies of records prepared pursuant to this section and any certified abstract, or a copy of a certified abstract, of the operating record of a driver or a motor vehicle owner prepared pursuant to chapter 321, 321A, or 321J, shall be received in evidence if determined to be relevant, in any court, preliminary hearing, grand jury proceeding, civil proceeding, administrative hearing, or forfeiture proceeding in the same manner and with the same force and effect as if the director or the director's designee had testified in person.

[C39, §**5000.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.10]

98 Acts, ch 1075, §21

321.11 Records of department.

1. All records of the department, other than those made confidential or not permitted to be open in accordance with 18 U.S.C. § 2721 et seq., adopted as of a specific date by rule of the department, shall be open to public inspection during office hours.

2. Notwithstanding subsection 1, personal information shall not be disclosed to a requestor, except as provided in 18 U.S.C. § 2721, unless the person whose personal information is requested has provided express written consent allowing disclosure of the person's personal information. As used in this section, *"personal information"* means information that identifies a person, including a person's photograph, social security number, driver's license number, name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status or a person's zip code.

3. Notwithstanding other provisions of this section to the contrary, the department shall not release personal information to a person, other than to an officer or employee of a law enforcement agency, an employee of a federal or state agency or political subdivision in the performance of the employee's official duties, a contract employee of the department of inspections and appeals in the conduct of an investigation, or a licensed private investigation agency or a licensed security service or a licensed employee of either, if the information is requested by the presentation of a registration plate number. In addition, an officer or employee of a law enforcement agency may release the name, address, and telephone number of a motor vehicle registrant to a person requesting the information by the presentation of a registration plate number if the officer or employee of the law enforcement agency believes that the release of the information is necessary in the performance of the officer's or employee's duties.

4. The department shall not release personal information that is in the form of a person's photograph or digital image or a digital reproduction of a person's photograph to a person other than an officer or employee of a law enforcement agency, an employee of a federal or state agency or political subdivision in the performance of the employee's official duties, a contract employee of the department of inspections and appeals in the conduct of an investigation, or a licensed private investigation agency or a licensed security service or a licensed employee of either, regardless of whether a person has provided express written consent to disclosure of the information. The department may collect reasonable fees for copies of records or other services provided pursuant to this section or section 22.3, 321.10, or 622.46.

[C39, §**5000.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.11]

96 Acts, ch 1102, §1, 3; 97 Acts, ch 108, §3; 98 Acts, ch 1035, §1; 99 Acts, ch 198, §4; 2000 Acts, ch 1133, §2, 18; 2001 Acts, ch 90, §1

321.12 Destruction of records.

1. The director may destroy any records of the department which have been maintained on file for three years which the director deems obsolete and of no further service in carrying out the powers and duties of the department, except as otherwise provided in this section.

2. Operating records relating to a person who

has been issued a commercial driver's license shall be maintained on file in accordance with rules adopted by the department.

3. The following records may be destroyed according to the following requirements:

a. Records concerning suspensions authorized under section 321.210, subsection 1, paragraph *"g"*, and section 321.210A may be destroyed six months after the suspension is terminated and the requirements of section 321.191 have been satisfied.

b. Records concerning suspensions and surrender of licenses or registrations required under section 321A.31 for failing to maintain proof of financial responsibility, as defined in section 321A.1, may be destroyed six months after the requirements of sections 321.191 and 321A.29 have been satisfied.

4. The director shall not destroy any operating records pertaining to arrests or convictions for operating while intoxicated, in violation of section 321J.2 or operating records pertaining to revocations for violations of section 321J.2A, except that a conviction or revocation under section 321J.2 or 321J.2A shall be deleted from the operating records twelve years after the date of conviction or the effective date of revocation.

[C39, §**5000.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.12]

90 Acts, ch 1230, §16; 94 Acts, ch 1164, §1, 2; 95 Acts, ch 48, §2; 95 Acts, ch 55, §3; 97 Acts, ch 177, §1; 98 Acts, ch 1138, §1, 37

321.13 Authority to grant or refuse applications.

The department shall examine and determine the genuineness, regularity, and legality of every application made to the department, and may investigate or require additional information. The department may reject any application if not satisfied of the genuineness, regularity, or legality of the application or the truth of any statement made within the application, or for any other reason, when authorized by law. The department may retain possession of any record or document until the investigation of the application is completed if it appears that the record or document is fictitious or unlawfully or erroneously issued and shall not return the record or document if it is determined to be fictitious or unlawfully or erroneously issued.

[C39, §**5000.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.13]

95 Acts, ch 118, §3

321.14 Seizure of documents and plates.

The department is hereby authorized to take possession of any registration card, certificate of title, permit, or registration plate, certificate of inspection or any inspection document or form, upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued.

[C39, §**5000.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.14]

321.15 Publication of law.

The department shall issue such parts of this chapter in pamphlet form, together with such rules, instructions, and explanatory matter as may seem advisable. Copies of such pamphlet shall be given as wide distribution as the department shall determine and a supply shall be furnished each county treasurer.

[C24, 27, 31, 35, §5018; C39, §**5000.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.15]

321.16 Giving of notices.

When the department is authorized or required to give notice under this chapter or any other law regulating the operation of vehicles, unless a different method of giving notice is expressly prescribed, notice shall be given either by personal delivery to the person to be so notified or by personal service in the manner of original notice by rule of civil procedure 1.305(1), or by first class mail addressed to the person at the address shown in the records of the department, notwithstanding chapter 17A. The department shall adopt rules regarding the giving of notice by first class mail, the updating of addresses in department records, and the development of affidavits verifying the mailing of notices under this chapter and chapter 321J. A person's refusal to accept or a claim of failure to receive a notice of revocation, suspension, or bar mailed by first class mail to the person's last known address shall not be a defense to a charge of driving while suspended, revoked, denied, or barred.

Proof of the giving of notice by personal service may be made by the certificate of any officer or employee of the department or affidavit of any person over eighteen years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.

[C39, §**5000.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.16]

85 Acts, ch 121, §1; 2001 Acts, ch 32, §41

REGISTRATION, CERTIFICATE OF TITLE, AND PROOF OF SECURITY AGAINST FINANCIAL LIABILITY

321.17 Misdemeanor to violate registration provisions.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph *"b"*, for any person to drive or move or for an owner knowingly to permit to be driven or moved upon the highway a vehicle of a

type required to be registered under this chapter which is not registered, or for which the appropriate fee has not been paid, except as provided in section 321.109, subsection 3.

[C24, 27, 31, 35, §5085; C39, §**5001.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.17]

96 Acts, ch 1152, §1; 2001 Acts, ch 176, §49, 59

321.18 Vehicles subject to registration — exception.

Every motor vehicle, trailer, and semitrailer when driven or moved upon a highway shall be subject to the registration provisions of this chapter except:

1. Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, or nonresidents as contemplated by section 321.53 and chapter 326, or under a temporary registration permit issued by the department as hereinafter authorized.

2. Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

3. Any implement of husbandry.

4. Any special mobile equipment as herein defined.

5. Any vehicle which is used exclusively for interplant purposes, in the operation of an industrial or manufacturing plant, consisting of a single unit comprising a group of buildings separated by streets, alleys, or railroad tracks, and which vehicle is used solely to transport materials from one part of the plant to another or from an adjacent railroad track to the plant and in so doing incidentally using said streets or alleys for not more than one thousand feet.

6. Any vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

7. Any school bus in this state used exclusively for the transportation of pupils to and from school or a school function or for the purposes provided in section 285.1, subsection 1, and section 285.10, subsection 9, or used exclusively for the transportation of children enrolled in a federal head start program. Upon application the department shall, without charge, issue a registration certificate and shall also issue registration plates which shall have imprinted thereon the words "Private School Bus" and a distinguishing number assigned to the applicant. Such plates shall be attached to the front and rear of each bus exempt from registration under this subsection.

8. Any mobile home or manufactured home.

[C24, 27, 31, 35, §4864; C39, §**5001.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.18; 82 Acts, ch 1251, §4]

95 Acts, ch 118, §4; 99 Acts, ch 188, §2; 2001 Acts, ch 153, §17

321.18A Records of implements of husbandry.

A person selling at retail new implements of husbandry with a retail list price in excess of five thousand dollars upon which the manufacturer has affixed a vehicle identification number, shall maintain for ten years a record of the number, the name and address of the purchaser, and the date of sale.

91 Acts, ch 97, §43

Formerly codified at §321.100; see that section in Code 1991

321.19 Exemptions — distinguishing plates — definitions of urban transit company and regional transit system.

1. All vehicles owned or leased for a period of sixty days or more by the government and used in the transaction of official business by the representatives of foreign governments or by officers, boards, or departments of the government of the United States, and by the state, counties, municipalities and other political subdivisions of the state including vehicles used by an urban transit company operated by a municipality or a regional transit system, and self-propelling vehicles used neither for the conveyance of persons for hire, pleasure, or business nor for the transportation of freight other than those used by an urban transit company operated by a municipality or a regional transit system, all fire trucks, providing they are not owned and operated for a pecuniary profit, and authorized emergency vehicles used only in disaster relief owned and operated by an organization not operated for pecuniary profit, are exempted from the payment of the fees imposed by this chapter, except as provided for urban transit companies in subsection 2, but are not exempt from the penalties provided in this chapter.

The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates except plates on Iowa state patrol vehicles shall bear the word "official" and the department shall keep a separate record. Registration plates issued for Iowa state patrol vehicles, except unmarked patrol vehicles, shall bear two red stars on a yellow background, one before and one following the registration number on the plate, which registration number shall be the officer's badge number. Registration plates issued for county sheriff's patrol vehicles shall display one seven-pointed gold star followed by the letter "S" and the call number of the vehicle. However, the director of general services or the director of transportation may order the issuance of regular registration plates for any exempted vehicle used by peace officers in the enforcement of the law, persons enforcing chapter 124 and other laws relating to controlled substances, persons in the department of justice, the alcoholic beverages division of the department of commerce, disease investigators of the Iowa department of public health, the department of inspections and appeals, and the

department of revenue and finance, who are regularly assigned to conduct investigations which cannot reasonably be conducted with a vehicle displaying "official" state registration plates, persons in the lottery division of the department of revenue and finance whose regularly assigned duties relating to security or the carrying of lottery tickets cannot reasonably be conducted with a vehicle displaying "official" registration plates, and persons in the department of economic development who are regularly assigned duties relating to existing industry expansion or business attraction. For purposes of sale of exempted vehicles, the exempted governmental body, upon the sale of the exempted vehicle, may issue for in-transit purposes a pasteboard card bearing the words "Vehicle in Transit", the name of the official body from which the vehicle was purchased, together with the date of the purchase plainly marked in at least one-inch letters, and other information required by the department. The in-transit card is valid for use only within forty-eight hours after the purchase date as indicated on the bill of sale which shall be carried by the driver.

2. *"Urban transit company"* means any person, firm, corporation, company, or municipality which operates buses or trolley cars or both, primarily upon the streets of cities over well-defined routes between certain termini, for the transportation of passengers for a uniform fare, and which accepts for passengers all who present themselves for transportation without discrimination up to the limit of the capacity of each vehicle. Included are street railways, plants, equipment, property, and rights, used and useful in the transportation of passengers. Motor carriers and interurbans subject to the jurisdiction of the state department of transportation, and taxicabs, are not included.

The department, in accordance with subsection 1, shall furnish distinguishing plates for vehicles used by urban transit companies operated by a municipality. No other provision of law providing for the payment of taxes, registration, or license fees for vehicles shall be applicable to any bus, car, or vehicle for the transportation of passengers owned and operated by any urban transit company.

Chapter 326 is not applicable to urban transit companies or systems.

3. *"Regional transit system"* means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

[C24, 27, 31, 35, §4867, 4922; C39, §**5001.03;** C46, 50, 54, 58, 62, §321.19; C66, 71, 73, §321.19, 386C.1 – 386C.3; C75, 77, 79, 81, §321.19]

83 Acts, ch 40, §1; 84 Acts, ch 1253, §1 – 3; 85 Acts, ch 67, §34; 85 Acts, ch 115, §2; 86 Acts, ch 1042, §10; 92 Acts, ch 1244, §41; 95 Acts, ch 118, §5; 96 Acts, ch 1034, §19; 96 Acts, ch 1066, §1; 96 Acts, ch 1211, §33; 97 Acts, ch 104, §6; 97 Acts, ch 158, §1; 98 Acts, ch 1028, §1; 98 Acts, ch 1074, §21; 99 Acts, ch 141, §37

See also §18.115, 321.170

321.20 Application for registration and certificate of title.

Except as provided in this chapter, an owner of a vehicle subject to registration shall make application to the county treasurer, of the county of the owner's residence, or if a nonresident to the county treasurer of the county where the primary users of the vehicle are located, or if a lessor of the vehicle pursuant to chapter 321F which vehicle has a gross vehicle weight of less than ten thousand pounds, to the county treasurer of the county of the lessee's residence, for the registration and issuance of a certificate of title for the vehicle upon the appropriate form furnished by the department. However, upon the transfer of ownership, the owner of a vehicle subject to the proportional registration provisions of chapter 326 shall make application for registration and issuance of a certificate of title to either the department or the appropriate county treasurer. The application shall be accompanied by a fee of ten dollars, and shall bear the owner's signature written with pen and ink. A nonresident owner of two or more vehicles subject to registration may make application for registration and issuance of a certificate of title for all vehicles subject to registration to the county treasurer of the county where the primary user of any of the vehicles is located. The owner of a mobile home or of a manufactured home shall make application for a certificate of title under this section. The application shall contain:

1. The full legal name; social security number or, if the owner does not have a social security number but has a passport, the passport number; driver's license number, whether the license was issued by this state, another state, another country, or is an international driver's license; date of birth; bona fide residence; and mailing address of the owner and of the lessee if the vehicle is being leased. If the owner or lessee is a firm, association, or corporation, the application shall contain the business address and federal employer identification number of the owner or lessee. Up to three owners' names may be listed on the application. Information relating to the lessee of a vehicle shall

not be required on an application for registration and a certificate of title for a vehicle with a gross vehicle weight rating of ten thousand pounds or more.

2. A description of the vehicle including, insofar as the specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, the type of motor fuel used, the serial number of the vehicle, manufacturer's identification number, the engine or other number of the vehicle and whether new or used and if a new vehicle the date of sale by the manufacturer or dealer to the person intending to operate such vehicle. If the vehicle is a new low-speed vehicle, the manufacturer's or importer's certificate required to accompany the application under subsection 4 shall certify that the vehicle was manufactured in compliance with the national highway and traffic safety administration standards for low-speed vehicles in 49 C.F.R. § 571.500.

3. Such further information as may reasonably be required by the department.

4. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest. When such application refers to a new vehicle, it shall be accompanied by a manufacturer's or importer's certificate duly assigned as provided in section 321.45.

5. The amount of tax to be paid under section 423.7.

6. If the vehicle is owned by a nonresident but is subject to issuance of an Iowa certificate of title or registration, the application shall also contain the full legal name; social security number, or, if the primary user does not have a social security number but has a passport, the passport number; driver's license number, whether the license was issued by this state, another state, another country, or is an international driver's license; date of birth; bona fide residence; and mailing address of the primary user of the vehicle. If the primary user is a firm, association, or corporation, the application shall contain the business address and federal employer identification number of the primary user. The primary user's name and address shall not be printed on the registration receipt or the certificate of title.

Notwithstanding contrary provisions of this chapter or chapter 326 regarding titling and registration by means other than electronic means, the department may develop and implement a program to test the feasibility of electronic applications, titling, registering, and electronic funds transfer for vehicles traveling in interstate commerce in order to improve the efficiency and timeliness of the processes and to reduce costs for all parties involved.

The department shall adopt rules on the method for providing signatures for applications made by electronic means.

[S13, SS15, §1571-m2; C24, 27, 31, 35, §4869, 5008, 5009; C39, §**5001.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.20; 82 Acts, ch 1251, §5]

84 Acts, ch 1305, §47; 87 Acts, ch 46, §1; 87 Acts, ch 108, §1; 95 Acts, ch 194, §1, 12; 97 Acts, ch 104, §7; 98 Acts, ch 1073, §9; 99 Acts, ch 8, §1; 99 Acts, ch 188, §3; 2000 Acts, ch 1005, §2; 2000 Acts, ch 1016, §39 – 41, 47; 2000 Acts, ch 1134, §1; 2001 Acts, ch 153, §17

Surcharge imposed; §321.52A

321.20A Certificate of title — commercial vehicles.

1. Notwithstanding other provisions of this chapter, the owner of a commercial vehicle subject to the proportional registration provisions of chapter 326 may make application to the department or the appropriate county treasurer for a certificate of title. The application for certificate of title shall be made within thirty days of purchase or transfer and shall be accompanied by a ten dollar title fee and the appropriate use tax. The department or the county treasurer shall deliver the certificate of title to the owner if no security interest or encumbrance appears on the certificate or to the person holding the first security interest or encumbrance shown on the certificate of title.

2. An owner of a commercial vehicle subject to the proportional registration provisions of chapter 326 who has a fleet of more than fifty commercial vehicles and who is issued a certificate of title under this section shall not be subject to registration fees until the commercial vehicle is driven or moved upon the highways. The registration fee due shall be prorated for the remaining unexpired months of the registration year. Ownership of the commercial vehicle shall not be transferred until registration fees have been paid to the department.

95 Acts, ch 118, §6; 96 Acts, ch 1089, §1; 96 Acts, ch 1152, §2; 2000 Acts, ch 1016, §2; 2001 Acts, ch 132, §2

Surcharge imposed, §321.52A

321.20B Proof of security against liability — driving without liability coverage.

1. Notwithstanding chapter 321A, which requires certain persons to maintain proof of financial responsibility, a person shall not drive a motor vehicle on the highways of this state unless financial liability coverage, as defined in section 321.1, subsection 24B, is in effect for the motor vehicle and unless the driver has in the motor vehicle the proof of financial liability coverage card issued for the motor vehicle, or if the vehicle is registered in another state, other evidence that financial liability coverage is in effect for the motor vehicle.

It shall be conclusively presumed that a motor vehicle driven upon a parking lot which is available to the public without charge or which is available to customers or invitees of a business or facility without charge was driven on the highways of

this state in order to enter the parking lot, and this section shall be applicable to such a motor vehicle. As used in this section, *"parking lot"* includes access roads, drives, lanes, aisles, entrances, and exits to and from a parking lot described in this paragraph.

This subsection does not apply to the operator of a motor vehicle owned by or leased to the United States, this state or another state, or any political subdivision of this state or of another state, or to a motor vehicle which is subject to section 325A.6 or 327B.6.

2. *a.* An insurance company transacting business in this state shall issue to its insured owners of motor vehicles registered in this state a financial liability coverage card for each motor vehicle insured. Each financial liability coverage card shall identify the registration number or vehicle identification number of the motor vehicle insured and shall indicate the expiration date of the applicable insurance coverage. The financial liability coverage card shall also contain the name and address of the insurer or the name of the insurer and the name and address of the insurance agency, the name of the insured, and an emergency telephone number of the insurer or emergency telephone number of the insurance agency.

b. The insurance division and the department, as appropriate, shall adopt rules regarding the contents of a financial liability coverage card to be issued pursuant to this section. Notwithstanding the provisions of this section, a fleet owner is not required to maintain in each vehicle a financial liability coverage card with the individual registration number or the vehicle identification number of the vehicle included on the card. Such fleet owner shall be required to maintain a financial liability coverage card in each vehicle in the fleet including information deemed appropriate by the commissioner of insurance or the director, as applicable.

3. If the financial liability coverage for a motor vehicle which is registered in this state is canceled or terminated effective prior to the expiration date indicated on the financial liability coverage card issued for the vehicle, the person to whom the financial liability coverage card was issued shall destroy the card.

4. *a.* If a peace officer stops a motor vehicle registered in this state and the driver is unable to provide proof of financial liability coverage, the peace officer shall do one of the following:

(1) Issue a warning memorandum to the driver.

(2) Issue a citation to the driver. If a citation is issued, the citation shall be issued under this subparagraph unless the driver has been previously charged and cited for a violation of subsection 1. A citation which is issued and subsequently dismissed shall be disregarded for purposes of determining if the driver has been previously charged and cited.

(3) Issue a citation and remove the motor vehicle's license plates and registration receipt. Upon removing the license plates and registration receipt, the peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered. The motor vehicle may be driven for a time period of up to forty-eight hours after receiving the citation solely for the purpose of removing the motor vehicle from the highways of this state, unless the driver's operating privileges are otherwise suspended.

After receiving the citation, the driver shall keep the citation in the motor vehicle at all times while driving the motor vehicle as provided in this subparagraph, as proof of the driver's privilege to drive the motor vehicle for such limited time and purpose.

(4) (a) Issue a citation, remove the motor vehicle's license plates and registration receipt, and impound the motor vehicle. The peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered.

(b) A motor vehicle which is impounded may be claimed by a person if the owner provides proof of financial liability coverage and proof of payment of any applicable fine and the costs of towing and storage for the motor vehicle. If the motor vehicle is not claimed within thirty days after impoundment, the motor vehicle may be treated as an abandoned vehicle pursuant to section 321.89.

(c) The holder of a security interest in a motor vehicle which is impounded pursuant to this subparagraph shall be notified of the impoundment within seventy-two hours of the impoundment of the motor vehicle and shall have the right to claim the motor vehicle upon the payment of all fees. However, if the value of the vehicle is less than the security interest, all fees shall be divided equally between the lienholder and the political subdivision impounding the vehicle.

b. An owner or driver of a motor vehicle who is charged with a violation of subsection 1 and issued a citation under paragraph *"a"*, subparagraph (3) or (4), is subject to the following:

(1) An owner or driver who produces to the clerk of court, within thirty days of the issuance of the citation under paragraph *"a"*, or prior to the date of the individual's court appearance as indicated on the citation, whichever is earlier, proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or, if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited, in the same manner as if the

motor vehicle were owned by the driver, shall be given a receipt indicating that such proof was provided and be subject to one of the following:

(a) If the person was cited pursuant to paragraph *"a"*, subparagraph (3), the owner or driver shall provide a copy of the receipt to the county treasurer of the county in which the motor vehicle is registered and the owner shall be assessed a fifteen dollar administrative fee by the county treasurer who shall issue new license plates and registration to the person after payment of the fee.

(b) If the person was cited pursuant to paragraph *"a"*, subparagraph (4), the owner or driver, after the owner provides proof of financial liability coverage to the clerk of court, may claim the motor vehicle after such person pays any applicable fine and the costs of towing and storage for the motor vehicle, and the owner or driver provides a copy of the receipt and the owner pays to the county treasurer of the county in which the motor vehicle is registered a fifteen dollar administrative fee, and the county treasurer shall issue new license plates and registration to the person.

(2) An owner or driver who is charged with a violation of subsection 1 and is unable to show that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited may do either of the following:

(a) Sign an admission of violation on the citation and remit to the clerk of court a scheduled fine as provided in section 805.8A, subsection 14, paragraph *"f"*, for a violation of subsection 1. Upon payment of the fine to the clerk of court of the county where the citation was issued, payment of a fifteen dollar administrative fee to the county treasurer of the county in which the motor vehicle is registered, and providing proof of payment of any applicable fine and proof of financial liability coverages to the county treasurer of the county in which the motor vehicle is registered, the treasurer shall issue new license plates and registration to the owner.

(b) Request an appearance before the court on the matter. If the matter goes before the court, and the owner or driver is found guilty of a violation of subsection 1, the court may impose a fine as provided in section 805.8A, subsection 14, paragraph *"f"*, for a violation of subsection 1, or the court may order the person to perform unpaid community service instead of the fine. Upon the payment of the fine or the entry of the order for unpaid community service, the person shall provide proof of payment or entry of such order and the county treasurer of the county in which the motor vehicle is registered shall issue new license plates and registration to the owner upon the owner providing proof of financial liability coverage and paying a fifteen dollar administrative fee to the county treasurer.

c. An owner or driver cited for a violation of subsection 1, who produces to the clerk of court within thirty days of the issuance of the citation proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, shall not be convicted of such violation and the citation issued shall be dismissed.

5. If the motor vehicle is not registered in this state and the driver is a nonresident, the peace officer shall do one of the following:

a. Issue a warning memorandum to the driver.

b. Issue a citation. An owner or driver who produces to the clerk of court within thirty days of the issuance of the citation, or prior to the date of the individual's court appearance as indicated on the citation, whichever is earlier, proof that the financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that proof was provided, and the citation issued shall be dismissed.

6. This section does not apply to a snowmobile or all-terrain vehicle or to a motor vehicle identified in section 321.18, subsections 1 through 6, and subsection 8.

7. This section does not apply to a lienholder who has a security interest in a motor vehicle subject to the registration requirements of this chapter, so long as such lienholder maintains financial liability coverage for any motor vehicle driven or moved by the lienholder in which the lienholder has an interest.

8. This section does not apply to a motor vehicle owned by a motor vehicle dealer or wholesaler licensed pursuant to chapter 322.

9. The director of transportation and the commissioner of insurance shall adopt rules pursuant to chapter 17A to administer this section.

97 Acts, ch 139, §2, 17, 18; 98 Acts, ch 1100, §41; 98 Acts, ch 1121, §1 – 4, 8, 9; 99 Acts, ch 110, §1; 99 Acts, ch 114, §19; 2001 Acts, ch 32, §16; 2002 Acts, ch 1050, §32

Subsection 4, paragraph b, subparagraph (2), subparagraph subdivisions (a) and (b) amended

321.21 Special mobile equipment plates. Repealed by 99 Acts, ch 13, § 28, 29; 2000 Acts, ch 1154, § 46, 50.

321.22 Urban and regional transit equipment certificates and plates.

1. An urban transit company or system having a franchise to operate in any city and any regional transit system may make application to the department, upon forms furnished by the department, for a certificate containing a distinguishing number and for one or more pairs of transit bus plates to be attached to the front and rear of buses owned or operated by the transit company or system.

2. The department shall issue to the applicant a certificate, or certificates, containing, but not limited to, the applicant's name and address, the distinguishing number assigned to the applicant, and such other information deemed necessary by the department for proper identification of the buses.

3. The department shall issue transit bus registration plates as applied for, which shall be imprinted with the words "Transit Bus" and the distinguishing number assigned to the applicant. The department shall issue the certificates and plates without fee.

[C66, 71, 73, 75, 77, 79, 81, §321.22]

84 Acts, ch 1253, §4; 85 Acts, ch 195, §31; 92 Acts, ch 1244, §42

321.23 Titles to specially constructed and foreign vehicles.

1. If the vehicle to be registered is a specially constructed, reconstructed, remanufactured, or foreign vehicle, such fact shall be stated in the application. A fee of ten dollars shall be paid by the person making the application upon issuance of a certificate of title by the county treasurer. With reference to every specially constructed or reconstructed motor vehicle subject to registration the application shall be accompanied by a statement from the department authorizing the motor vehicle to be titled and registered in this state. The department shall cause a physical inspection to be made of all specially constructed or reconstructed motor vehicles, upon application for a certificate of title by the owner, to determine whether the motor vehicle complies with the definition of specially constructed motor vehicle or reconstructed motor vehicle in this chapter and to determine that the integral component parts are properly identified and that the rightful ownership is established before issuing the owner the authority to have the motor vehicle registered and titled. The purpose of the physical inspection under this section is not to determine whether the motor vehicle is in a condition safe to operate. With reference to every foreign vehicle which has been registered outside of this state, the owner shall surrender to the treasurer all registration plates, registration cards, and certificates of title, or, if the vehicle to be registered is from a nontitle state, the evidence of foreign registration and ownership as may be prescribed by the department except as provided in subsection 2.

2. Where in the course of operation of a vehicle registered in another state it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender but shall submit for inspection said evidence of such foreign registration and the treasurer upon a proper showing shall register said vehicle in this state but shall not issue a certificate of title for such vehicle.

3. In the event an applicant for registration of a foreign vehicle for which a certificate of title has been issued is able to furnish evidence of being the registered owner of the vehicle to the county treasurer of the owner's residence, although unable to surrender such certificate of title, the county treasurer may issue a registration receipt and plates upon receipt of the required registration fee but shall not issue a certificate of title thereto. Upon surrender of the certificate of title from the foreign state, the county treasurer shall issue a certificate of title to the owner, or person entitled thereto, of such vehicle as provided in this chapter. The owner of a vehicle registered under this subsection shall not be required to obtain a certificate of title in this state and may transfer ownership of the vehicle to a motor vehicle dealer licensed under chapter 322 if, at the time of the transfer, the certificate of title is held by a secured party and the dealer has forwarded to the secured party the sum necessary to discharge the security interest pursuant to section 321.48, subsection 1.

4. A vehicle which does not meet the equipment requirements of this chapter due to the particular use for which it is designed or intended, may be registered by the department upon payment of appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition. A person is not required to have a certificate of title to register a vehicle under this subsection. If the owner elects to have a certificate of title issued for the vehicle, a fee of ten dollars shall be paid by the person making the application upon issuance of a certificate of title. If the department's inspection reveals that the vehicle may be safely operated only under certain conditions or on certain types of roadways, the department may restrict the registration to limit operation of the vehicle to the appropriate conditions or roadways. This subsection does not apply to snowmobiles as defined in section 321G.1. Section 321.382 does not apply to a vehicle registered under this subsection which is operated exclusively by a person with a disability who has obtained a persons with disabilities parking permit as provided in section 321L.2, if the persons with disabilities parking permit is carried in or on the vehicle and shown to a peace officer on request.

[C39, §**5001.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.23]

83 Acts, ch 9, §4, 8; 84 Acts, ch 1305, §48; 88 Acts, ch 1158, §65; 89 Acts, ch 247, §3; 96 Acts, ch 1171, §1; 97 Acts, ch 70, §2; 98 Acts, ch 1073, §5; 99 Acts, ch 13, §4

Surcharge imposed; §321.52A

321.24 Issuance of registration and certificate of title.

1. Upon receipt of the application for title and payment of the required fees for a motor vehicle, trailer, or semitrailer, the county treasurer or the department shall, when satisfied as to the application's genuineness and regularity, and, in the case

of a mobile home or manufactured home, that taxes are not owing under chapter 435, issue a certificate of title and, except for a mobile home or manufactured home, a registration receipt, and shall file the application, the manufacturer's or importer's certificate, the certificate of title, or other evidence of ownership, as prescribed by the department. The registration receipt shall be delivered to the owner and shall contain upon its face the date issued, the name and address of the owner, the registration number assigned to the vehicle, the amount of the fee paid, the amount of tax paid pursuant to section 423.7, the type of fuel used, and a description of the vehicle as determined by the department, and upon the reverse side a form for notice of transfer of the vehicle. The name and address of any lessee of the vehicle shall not be printed on the registration receipt or certificate of title. Up to three owners may be listed on the registration receipt and certificate of title.

2. The county treasurer shall maintain in the county record system information contained on the registration receipt. The information shall be accessible by registration number and shall be open for public inspection during reasonable business hours. Copies the department requires shall be sent to the department in the manner and at the time the department directs.

3. The certificate of title shall contain upon its face the identical information required upon the face of the registration receipt. In addition, the certificate of title shall contain a statement of the owner's title, the title number assigned to the owner or owners of the vehicle, the amount of tax paid pursuant to section 423.7, the name and address of the previous owner, and a statement of all security interests and encumbrances as shown in the application, upon the vehicle described, including the nature of the security interest, date of notation, and name and address of the secured party.

4. If the prior certificate of title is from another state and indicates that the vehicle was rebuilt, the new certificate of title shall contain the designation of "REBUILT" stamped or printed on its face together with the name of the state issuing the prior title. The designation of "REBUILT" and the name of the other state shall be retained on all subsequent Iowa certificates of title for the vehicle. If the prior certificate of title is from another state and indicates that the vehicle was rebuilt, the registration receipt shall contain the designation of "REBUILT" stamped and printed on its face. The stamped designation of "REBUILT" shall be located on the center of the right side of the registration receipt in black letters no bigger than sixteen point type. The designation shall be retained on the face of all subsequent registration receipts for the vehicle.

5. If the prior certificate of title is from another state and indicates that the vehicle was junked, an Iowa junking certificate shall be issued according to section 321.52, subsections 2 and 3. If the prior certificate of title from another state indicates that the vehicle is salvaged and not rebuilt or is a salvage certificate of title, an Iowa salvage certificate of title shall be issued and a "SALVAGE" designation shall be retained on all subsequent Iowa certificates of title and registration receipts for the vehicle, except as provided under section 321.52, subsection 4, paragraph *"b"*. The department may require that subsequent Iowa certificates of title retain other states' designations which indicate that a vehicle had incurred prior damage. The department shall determine the manner in which other states' rebuilt, salvage, or other designations are to be indicated on Iowa titles.

6. If the prior certificate of title is from another state and indicates that the vehicle was returned to the manufacturer pursuant to a law of another state similar to chapter 322G, the new registration receipt and certificate of title, and all subsequent registration receipts and certificates of title issued for the vehicle, shall contain a designation indicating the vehicle was returned to the manufacturer. The department shall determine the manner in which other states' designations are to be indicated on Iowa registration receipts and certificates of title. The department may determine that a "REBUILT" or "SALVAGE" designation supersedes the designation required by this subsection and include the "REBUILT" or "SALVAGE" designation on the registration receipt and certificate of title in lieu of the designation required by this subsection.

7. The certificate shall bear the seal of the county treasurer or of the department, and the signature of the county treasurer, the deputy county treasurer, or the department director or deputy designee. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty by the owner, for reassignments by a dealer licensed in this state or in another state if the state in which the dealer is licensed permits Iowa licensed dealers to similarly reassign certificates of title. Attached to the certificate of title shall be an application for a new certificate of title by the transferee as provided in this chapter. However, titles for mobile homes or manufactured homes shall not be reassigned by licensed dealers. All certificates of title shall be typewritten or printed by other mechanical means. Notwithstanding section 321.1, subsection 17, as used in this paragraph *"dealer"* means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered under this chapter.

8. The original certificate of title shall be delivered to the owner if no security interest or encumbrance appears on the certificate. Otherwise the certificate of title shall be delivered by the county treasurer or the department to the person holding the first security interest or encumbrance as shown in the certificate.

9. The county treasurer or the department

shall maintain in the county or department records system information contained on the certificate of title. The information shall be accessible by title certificate number for a period of three years from the date of notification of cancellation of title or that a new title has been issued as provided in this chapter. Copies the department requires shall be sent to the department in the manner and at the time the department directs. The department shall designate a uniform system of title numbers to indicate the county of issuance.

10. A vehicle shall be registered for the registration year. A vehicle registered for the first time in this state shall be registered for the remaining unexpired months of the registration year and pay a registration fee prorated for the remaining unexpired months of the registration year. Except for a vehicle registered under chapter 326, a vehicle registered for the first time during the eleventh month of the owner's registration year may be registered for the remaining unexpired months of the registration year as provided in this paragraph or for the remaining unexpired months of the registration year and for the next registration year, upon payment of the applicable registration fees.

11. If the county treasurer or department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, or a junking certificate has been issued for the vehicle but a certificate of title will not be reissued under section 321.52, subsection 3, and the vehicle qualifies as an antique vehicle under section 321.115, subsection 1, the county treasurer or department may register the vehicle but shall as a condition of issuing a certificate of title and registration receipt, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the current value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

[C24, 27, 31, 35, §4873; C39, §**5001.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.24; 82 Acts, ch 1251, §8]

82 Acts, ch 1062, §3, 38; 87 Acts, ch 108, §2; 87 Acts, ch 130, §1; 88 Acts, ch 1089, §3; 89 Acts, ch 185, §1; 90 Acts, ch 1116, §1; 91 Acts, ch 142, §1; 92 Acts, ch 1104, §2; 94 Acts, ch 1199, §77; 95 Acts, ch 45, §1; 99 Acts, ch 188, §4; 2000 Acts, ch 1016, §42, 47; 2000 Acts, ch 1028, §1, 4; 2000 Acts, ch 1047, §1, 4; 2001 Acts, ch 153, §17

Certain trailers exempt, see §321.123

321.25 Application for registration and title — cards attached.

A vehicle may be operated upon the highways of this state without registration plates for a period of forty-five days after the date of delivery of the vehicle to the purchaser from a dealer if a card bearing the words "registration applied for" is attached on the rear of the vehicle. The card shall have plainly stamped or stenciled the registration number of the dealer from whom the vehicle was purchased and the date of delivery of the vehicle. In addition, a dealer licensed to sell new motor vehicles may attach the card to a new motor vehicle delivered by the dealer to the purchaser even if the vehicle was purchased from an out-of-state dealer and the card shall bear the registration number of the dealer that delivered the vehicle. A dealer shall not issue a card to a person known to the dealer to be in possession of registration plates which may be attached to the vehicle. A dealer shall not issue a card unless an application for registration and certificate of title has been made by the purchaser and a receipt issued to the purchaser of the vehicle showing the fee paid by the person making the application. Dealers' records shall indicate the agency to which the fee is sent and the date the fee is sent. The dealer shall forward the application by the purchaser to the county treasurer or state office within thirty calendar days from the date of delivery of the vehicle. However, if the vehicle is subject to a security interest and has been offered for sale pursuant to section 321.48, subsection 1, the dealer shall forward the application by the purchaser to the county treasurer or state office within thirty calendar days from the date of the delivery of the vehicle to the purchaser.

The department shall, upon request by any dealer, furnish "registration applied for" cards free of charge. Only cards furnished by the department shall be used. Only one card shall be issued in accordance with this subsection for each vehicle purchased.

[S13, §1571-m10; C24, 27, 31, 35, §4880; C39, §**5001.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75,

§321.25; C77, §321.25 – 321.27; C79, 81, §321.25]
83 Acts, ch 82, §1; 93 Acts, ch 47, §1; 97 Acts, ch 108, §4; 99 Acts, ch 13, §5; 2000 Acts, ch 1016, §3
For applicable scheduled fine, see §805.8A, subsection 2, paragraph c

321.26 Multiple registration periods and adjustments.

1. There are established twelve registration periods for the registration of vehicles by the county treasurer. Each registration period shall commence on the first day of each calendar month following the month of the birth of the owner of the vehicle and end on the last day of the twelfth month.

2. The county treasurer may adjust the renewal or expiration date of vehicles when deemed necessary to equalize the number of vehicles registered in each twelve-month period or for the administrative efficiency of the county treasurer's office. The adjustment shall be accomplished by delivery of a written notice to the vehicle owner of the adjustment and allowance of a credit for the remaining months of the unused portion of the registration fee, rounded to the nearest whole dollar, which amount shall be deducted from the annual registration fee due at the time of registration. Upon receipt of the notification the owner shall, within thirty days, surrender the registration card and registration plates to the county treasurer of the county where the vehicle is registered, except that the registration plates shall not be surrendered if validation stickers or other emblems are used to designate the month and year of expiration of registration. Upon payment of the annual registration fee, less the credit allowed for the remaining months of the unused portion of the registration fee, the county treasurer shall issue a new registration card and registration plates, validation stickers, or emblems which indicate the month and year of expiration of registration.

3. Vehicles subject to registration which are owned by a person other than a natural person shall be registered for a registration year as determined by the county treasurer.

82 Acts, ch 1062, §34, 38; 83 Acts, ch 24, §8, 12

321.27 Implementation of twelve-month registration period. Repealed by 97 Acts, ch 108, § 49.

321.28 Failure to register.

The treasurer shall withhold the registration of any vehicle the owner of which shall have failed to register the same under the provisions of this chapter, for any previous period or periods for which it appears that registration should have been made, until the fee for such previous period or periods shall be paid.

[C24, 27, 31, 35, §4870; C39, §**5001.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.28]

321.29 Renewal not permitted.

Any vehicle once registered in the state and by removal no longer subject to registration in this state, shall upon being returned to this state and subject to registration be again registered in accordance with section 321.20.

[C24, 27, 31, 35, §4876; C39, §**5001.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.29]

321.30 Grounds for refusing registration or title.

The department or the county treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.

2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.

3. That the department or the county treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.

4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

5. That the required fee has not been paid except as provided in section 321.48.

6. That the required use tax has not been paid.

7. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer's or importer's certificate duly assigned.

8. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.

9. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23.

10. In the case of a mobile home or manufactured home, that taxes are owing under chapter 435 for a previous year.

11. In the case of a mobile home or manufactured home converted from real estate, real estate taxes which are delinquent.

12. If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.

13. The department or the county treasurer

knows that an applicant for renewal of a registration has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information received pursuant to section 421.17. An applicant may contest this action by requesting a contested case proceeding from the agency that referred the debt for collection pursuant to section 421.17. This subsection shall apply only to a renewal of registration and shall not apply to the issuance of an original registration or to the issuance of a certificate of title.

14. The department or the county treasurer shall refuse registration of a vehicle if the applicant is under the age of eighteen years, unless the applicant has an Iowa driver's license or the application is being made by more than one applicant and one of the applicants is at least eighteen years of age.

The department or the county treasurer shall also refuse registration of a vehicle if the applicant for registration of the vehicle has failed to pay the required registration fees of any vehicle owned or previously owned when the registration fee was required to be paid by the applicant, and for which vehicle the registration was suspended or revoked under section 321.101, subsection 1, paragraph *"d"*, or section 321.101A, until the fees are paid together with any accrued penalties.

[C39, §**5001.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.30; 82 Acts, ch 1164, §1, ch 1251, §9]

85 Acts, ch 98, §3; 87 Acts, ch 108, §3 – 5; 95 Acts, ch 55, §4; 95 Acts, ch 194, §2, 12; 99 Acts, ch 188, §5; 2000 Acts, ch 1016, §4, 5; 2001 Acts, ch 153, §17

321.31 Records system.

A state and county records system shall be maintained in the following manner:

1. *State records system*. The department shall install and maintain a records system which shall contain the name and address of the vehicle owner, current and previous registration number, vehicle identification number, make, model, style, date of purchase, registration certificate number, maximum gross weight, weight, list price or value of the vehicle as fixed by the department, fees paid and date of payment. The records system shall also contain a record of the certificate of title including such information as the department deems necessary. The information to be kept in the records system shall be entered within forty-eight hours after receipt insofar as is practical. The records system shall constitute the permanent record of ownership of each vehicle titled under the laws of this state.

The department may make photostatic, microfilm, or other photographic copies of certificates of title, registration receipts, or other records, reports or documents which are required to be retained by the department. When copies have been made, the department may destroy the original records in such manner as prescribed by the director. The photostatic, microfilm, or other photographic copies, when no longer of use, may be destroyed in the manner prescribed by the director, subject to the approval of the state records commission. Photostatic, microfilm, or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the copies of records. Records of vehicle certificates of title may be destroyed seven years after the date of issue.

The director shall maintain a records system of delinquent accounts owed to the state using information provided through the computerized data bank established in section 421.17. The department and county treasurers shall use the information maintained in the records system to determine if applicants for renewal of registration have delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state as provided pursuant to section 421.17. The director and the director of revenue and finance shall establish procedures for updating the delinquent accounts records to add and remove accounts, as applicable.

2. *County records system*. Each county treasurer's office shall maintain a county records system for vehicle registration and certificate of title documents. The records system shall consist of information from the certificate of title including the notation and cancellation of security interests, and information from the registration receipt. The information shall be maintained in a manner approved by the department.

Records of vehicle certificates of title for vehicles that are delinquent for five or more consecutive years may be destroyed by the county treasurer. Automated files, optical disks, microfiche records, and photostatic, microfilm or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the records.

[S13, §1571-m2; C24, 27, 31, 35, §5010; C39, §**5001.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.31]

89 Acts, ch 185, §2; 95 Acts, ch 194, §3, 12

321.32 Registration card carried and exhibited.

A vehicle's registration card shall at all times be carried in the vehicle to which it refers and shall be shown to any peace officer upon the officer's request.

[S13, §1571-m11; C24, 27, 31, 35, §4879; C39, §**5001.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.32]

91 Acts, ch 27, §1

For applicable scheduled fine, see §805.8A, subsection 2, paragraph a

321.33 Exception.

The provisions requiring that a registration card be carried in the vehicle to which it refers shall not apply when such card is used for the purpose of making application for renewal of registration or upon a transfer of registration of said vehicle.

[C39, §**5001.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.33]

321.34 Plates or validation sticker furnished — retained by owner — special plates.

1. *Plates issued.* The county treasurer upon receiving application, accompanied by proper fee, for registration of a vehicle shall issue to the owner one registration plate for a motorcycle, motorized bicycle, truck tractor, trailer, or semitrailer and two registration plates for every other motor vehicle. The registration plates, including special registration plates, shall be assigned to the owner of a vehicle. When the owner of a registered vehicle transfers or assigns ownership of the vehicle to another person, the owner shall remove the registration plates from the vehicle. The owner shall forward the plates to the county treasurer where the vehicle is registered or the owner may have the plates assigned to another vehicle within thirty days after transfer, upon payment of the fees required by law. The owner shall immediately affix registration plates retained by the owner to another vehicle owned or acquired by the owner, providing the owner complies with section 321.46. The department shall adopt rules providing for the assignment of registration plates to the transferee of a vehicle for which a credit is allowed under section 321.46, subsection 6.

2. *Validation stickers.* In lieu of issuing new registration plates each registration year for a vehicle renewing registration, the department may reassign the registration plates previously issued to the vehicle and may adopt and prescribe an annual validation sticker indicating payment of registration fees. The department shall issue one validation sticker for each set of registration plates. The sticker shall specify the month and year of expiration of the registration plates. The sticker shall be displayed only on the rear registration plate, except that the sticker shall be displayed on the front registration plate of a truck-tractor.

The state department of transportation shall adopt rules to provide for the placement of the motor vehicle registration validation sticker.

3. *Radio operators plates.* The owner of an automobile, light delivery truck, panel delivery truck, motorcycle, trailer, or pickup who holds an amateur radio license issued by the federal communications commission may, upon written application to the county treasurer accompanied by a fee of five dollars, order special registration plates bearing the call letters authorized the radio station covered by the person's amateur radio license. When received by the county treasurer, such special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. Not more than one set of special registration plates may be issued to an applicant. Said fee shall be in addition to and not in lieu of the fee for regular registration plates. Special registration plates must be surrendered upon expiration of the owner's amateur radio license and the owner shall thereupon be entitled to the owner's regular registration plates. The county treasurer shall validate special plates in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

4. *Multiyear plates.* In lieu of issuing annual registration plates for trailers, semitrailers, motor trucks, and truck tractors, the department may issue a multiyear registration plate for a three-year period or a permanent registration plate for trailers and semitrailers licensed under chapter 326, and a permanent registration plate for motor trucks and truck tractors licensed under chapter 326, upon payment of the appropriate registration fee. Payment of fees for trailers and semitrailers for a permanent registration plate shall, at the option of the registrant, be made at five-year intervals or on an annual basis. Fees from three-year and five-year payments shall not be reduced or prorated. Payment of fees for motor trucks and truck tractors shall be made on an annual basis.

5. *Personalized registration plates.*

a. Upon application and the payment of a fee of twenty-five dollars, the director may issue to the owner of a motor vehicle registered in this state or a trailer or travel trailer registered in this state, personalized registration plates marked with up to seven initials, letters, or combination of numerals and letters requested by the owner. However, personalized registration plates for motorcycles and motorized bicycles shall be marked with no more than six initials, letters, or combinations of numerals and letters. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for issuance of the personalized registration plates shall be in addition to the regular annual registration fee.

b. The county treasurer shall validate personalized registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee. A person renewing a personalized registration plate within one month following the time requirements under section 321.40 may renew the personalized plate without paying the additional registration fee under paragraph *"a"* but shall pay the five-dollar fee in addition to the regular registration fee

and any penalties subject to regular registration plate holders for late renewal.

c. The fees collected by the director under this section shall be paid to the treasurer of state and credited by the treasurer of state as provided in section 321.145.

6. *Sample vehicle registration plates.* Vehicle registration plates displaying the general design of regular registration plates, with the word "sample" displayed on the plate, may be furnished to any person upon payment of a fee of three dollars, except that such plates may be furnished to governmental agencies without cost. Sample registration plates shall not be attached to a vehicle moved on the highways of this state.

7. *Collegiate plates.*

a. Upon application and payment of the proper fees, the director may issue to the owner of a motor vehicle, trailer, or travel trailer registered in this state, collegiate registration plates. Upon receipt of the collegiate registration plates, the applicant shall surrender the regular registration plates to the county treasurer.

b. Collegiate registration plates shall be designed for each of the three state universities. The collegiate registration plates shall be designated as follows:

(1) The letters "ISU" followed by a four-digit number all in cardinal on a gold background for Iowa state university of science and technology.

(2) The letters "UNI" followed by a four-digit number all in purple on a gold background for the university of northern Iowa.

(3) The letters "UI" followed by a four-digit number all in black on a gold background for the state university of Iowa.

(4) In lieu of the letter number designation provided under subparagraphs (1) through (3), the collegiate registration plates may be designated in the manner provided for personalized registration plates under subsection 5, paragraph *"a"*, in the colors designated for the respective universities under subparagraphs (1) through (3).

c. The fees for a collegiate registration plate are as follows:

(1) A registration fee of twenty-five dollars.

(2) A special collegiate registration fee of twenty-five dollars.

These fees are in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited by the treasurer of state to the road use tax fund. Notwithstanding section 423.24 and prior to the revenues being credited to the road use tax fund under section 423.24, subsection 1, paragraph *"b"*, the treasurer of state shall credit monthly from those revenues respectively, to Iowa state university of science and technology, the university of northern Iowa, and the state university of Iowa, the amount of the special collegiate registration fees collected in the previous month for collegiate registration plates designed for the university. The moneys credited are appropriated to the respective universities to be used for scholarships for students attending the universities.

d. The county treasurer shall validate collegiate registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee.

e. A collegiate registration plate shall not be issued if its combination of alphanumeric characters are identical to those contained on a current personalized registration plate issued under subsection 5. However, the owner of a motor vehicle who has a personalized registration plate issued for the motor vehicle may, after proper application and payment of fees, be issued a collegiate registration plate containing the same alphanumeric characters as those on the personalized plate. Upon receipt of the collegiate registration plates, the owner shall surrender the personalized registration plates to the county treasurer.

8. *Congressional medal of honor plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, motorcycle, trailer, or pickup who has been awarded the congressional medal of honor may, upon written application to the department, order special registration plates which shall be red, white, and blue in color and shall bear an emblem of the congressional medal of honor and an identifying number. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates under this subsection. The application is subject to approval by the department and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The special plates are subject to an annual registration fee of fifteen dollars. The department shall validate the special plates in the same manner as regular registration plates are validated under this section. The department shall not issue special registration plates until service organizations in the state have furnished the department either the special dies or the cost of the special dies necessary for the manufacture of the special registration plate.

The surviving spouse of a person who was issued special plates under this subsection may continue to use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the fifteen dollar annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

8A. *Ex-prisoner of war special plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, motorcycle, trailer, or

pickup who was a prisoner of war during the Second World War at any time between December 7, 1941, and December 31, 1946, the Korean Conflict at any time between June 25, 1950, and January 31, 1955, or the Vietnam Conflict at any time between August 5, 1964, and June 30, 1973, all dates inclusive, may, upon written application to the department, order only one set of special registration plates with an ex-prisoner of war processed emblem. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was a prisoner of war as described in this subsection. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

9. *Leased vehicles.* Registration plates under this section, including disabled veteran plates specified in section 321.105, may be issued to the lessee of a motor vehicle if the lessee provides evidence of a lease for a period of more than sixty days and if the lessee complies with the requirements, under this section, for issuance of the specific registration plates.

10. *Fire fighter plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer who is a current or former member of a paid or volunteer fire department, may upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa fire fighters' associations, which plates signify that the applicant is a current or former member of a paid or volunteer fire department. The application shall be approved by the department, in consultation with representatives designated by the Iowa fire fighters' associations, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates shall be twenty-five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

10A. *Emergency medical services plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer who is a current member of a paid or volunteer emergency medical services agency may, upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa emergency medical services association, which plates signify that the applicant is a current member of a paid or volunteer emergency medical services agency. The application shall be approved by the department, in consultation with representatives designated by the Iowa emergency medical services association, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates shall be twenty-five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

11. *Natural resources plates.*

a. Upon application and payment of the proper fees, the director may issue natural resources plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Natural resources plates shall be designed by the department in cooperation with the department of natural resources which design shall include on the plate the name of the county where the vehicle is registered.

c. The special natural resources fee for letter number designated natural resources plates is thirty-five dollars. The fee for personalized natural resources plates is forty-five dollars which shall be paid in addition to the special natural resources fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph *"b"*, the treasurer of state shall credit monthly from those revenues to the Iowa resources enhancement and protection fund created pursuant to section 455A.18, the amount of the special natural resources fees collected in the previous month for the natural resources plates.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the spe-

cial registration plates in the same manner as regular registration plates are validated under this section. The annual special natural resources fee for letter number designated plates is ten dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized natural resources plates is five dollars which shall be paid in addition to the annual special natural resources fee and the regular annual registration fee. The annual special natural resources fee shall be credited as provided under paragraph *"c"*.

11A. *Love our kids plates.*

a. Upon application and payment of the proper fees, the director may issue "love our kids" plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Love our kids plates shall be designed by the department in cooperation with the Iowa department of public health.

c. The special fee for letter number designated love our kids plates is thirty-five dollars. The fee for personalized love our kids plates is twenty-five dollars, which shall be paid in addition to the special love our kids fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph *"b"*, the treasurer of state shall transfer monthly from those revenues to the Iowa department of public health the amount of the special fees collected in the previous month for the love our kids plates. Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special love our kids fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee for personalized love our kids plates is five dollars, which shall be paid in addition to the annual special love our kids fee and the regular annual registration fee. The annual love our kids fee shall be credited as provided under paragraph *"c"*.

11B. *Motorcycle rider education plates.*

a. Upon application and payment of the proper fees, the director may issue "motorcycle rider education" plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Motorcycle rider education plates shall be designed by the department.

c. The special fee for letter number designated motorcycle rider education plates is thirty-five dollars. The fee for personalized motorcycle rider education plates is twenty-five dollars, which shall be paid in addition to the special motorcycle rider education fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph *"b"*, the treasurer of state shall transfer monthly from those revenues to the department for use in accordance with section 321.180B, subsection 6, the amount of the special fees collected in the previous month for the motorcycle rider education plates.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special motorcycle rider education fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee for personalized motorcycle rider education plates is five dollars, which shall be paid in addition to the annual special motorcycle rider education fee and the regular annual registration fee. The annual motorcycle rider education fee shall be credited as provided under paragraph *"c"*.

12. *Special registration plates — general provisions.*

a. The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck, pickup, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer may, upon written application to the department, order special registration plates with a distinguishing processed emblem as authorized by this section or as approved by the department. The fee for the issuance of special registration plates is twenty-five dollars for each vehicle, unless otherwise provided by this section, which fee is in addition to the regular annual registration fee. The county treasurer shall validate special registration plates with a distinguishing processed emblem in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

b. Upon receipt of a special registration plate with a distinguishing processed emblem as authorized by this section or as approved by the department, the applicant shall surrender the regular registration plates to the county treasurer. An ap-

plicant no longer eligible for a special registration plate shall surrender the special vehicle registration plates to the county treasurer for issuance of regular registration plates.

c. An applicant may, upon payment of the additional fee for a personalized plate as provided in subsection 5, obtain a personalized special registration plate with a processed emblem. Personalized plates authorized by this section with the processed emblem shall be limited to no more than five initials, letters, or combinations of numerals and letters.

d. A special registration plate issued for a motorcycle or motorized bicycle under this section shall be designated in the manner provided for personalized registration plates under subsection 5, paragraph *"a"*.

12A. *Special registration plates — armed forces services.* An owner of a vehicle referred to in subsection 12 who applies for any type of special registration plates associated with service in the United States armed forces shall be issued one set of the special registration plates at no charge, but shall be subject to the annual registration fee of fifteen dollars, if all of the following conditions are met:

a. The owner is eligible for, but has relinquished to the department or the county treasurer or has not been issued, congressional medal of honor, ex-prisoner of war, or legion of merit special registration plates under this section, or disabled veteran registration plates under section 321.105.

b. The owner provides the appropriate information regarding the owner's eligibility for any of the special registration plates described in paragraph *"a"*, and regarding the owner's eligibility for the special registration plates for which the owner has applied, as required by the department.

A disabled veteran shall be exempt from payment of the fifteen dollar annual registration fee as provided in section 321.105.

Upon the death of the vehicle owner entitled to the special registration plates, the special registration plates shall be surrendered to the department or the county treasurer.

13. *New special registration plates — department review.*

a. Any person may submit a request to the department to recommend a new special registration plate with a processed emblem. The request shall provide a proposed design for the processed emblem, the purpose of the special registration plate with the processed emblem, any eligibility requirements for purchase or receipt of the special registration plate with the processed emblem, and evidence there is sufficient interest in the special registration plate with the processed emblem to pay implementation costs. The department shall consider the request and make a recommendation based upon criteria established by the department which shall include consideration of the information included in the request, the number of special registration plates with processed emblems currently authorized, and any other relevant factors.

b. If a request for a proposed special registration plate with a processed emblem meets the criteria established by the department, the department shall, in consultation with the persons seeking the special registration plate with the processed emblem, approve a recommended design for the processed emblem, and propose eligibility requirements for the special registration plate with the processed emblem.

c. The department shall adopt rules pursuant to chapter 17A regarding the approval and issuance of special registration plates.

d. A state agency may submit a request to the department recommending a special registration plate. The alternate fee for letter number designated plates is thirty-five dollars with a ten dollar annual special renewal fee. The fee for personalized plates is twenty-five dollars which is in addition to the alternative fee of thirty-five dollars with an annual personalized plate renewal fee of five dollars which is in addition to the special renewal fee of ten dollars. The alternate fees are in addition to the regular annual registration fee. The alternate fees collected under this paragraph shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24 and prior to the crediting of the revenues to the road use tax fund under section 423.24, subsection 1, paragraph *"b"*, the treasurer of state shall credit monthly the amount of the alternate fees collected in the previous month to the state agency that recommended the special registration plate.

14. *Persons with disabilities special plates.* An owner referred to in subsection 12 or an owner of a trailer used to transport a wheelchair who is a person with a disability, or who is the parent or guardian of a child who resides with the parent or guardian owner and who is a person with a disability, as defined in section 321L.1, may, upon written application to the department, order special registration plates with a persons with disabilities processed emblem designed by the department bearing the international symbol of accessibility. The special registration plates with a persons with disabilities processed emblem shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148, 149, 150, or 150A, a physician assistant licensed under chapter 148C, an advanced registered nurse practitioner licensed under chapter 152, or a chiropractor licensed under chapter 151, written on the physician's, physician assistant's, nurse practitioner's, or chiropractor's stationery, stating the nature of the applicant's or the applicant's child's disability and such additional information as required by rules adopted by the department, including proof of residency of a child who is a person with a disability. If the application is approved by the department, the special regis-

tration plates with a persons with disabilities processed emblem shall be issued to the applicant. There shall be no fee in addition to the regular annual registration fee for the special registration plates with a persons with disabilities processed emblem. The authorization for special registration plates with a persons with disabilities processed emblem shall not be renewed without the applicant furnishing evidence to the department that the owner of the vehicle or the owner's child is still a person with a disability as defined in section 321L.1. An owner who has a child who is a person with a disability shall provide satisfactory evidence to the department that the child with a disability continues to reside with the owner. The registration plates with a persons with disabilities processed emblem shall be surrendered in exchange for regular registration plates as provided in subsection 12 when the owner of the vehicle or the owner's child no longer qualifies as a person with a disability as defined in section 321L.1 or when the owner's child who is a person with a disability no longer resides with the owner.

15. *Legion of merit special plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck, motorcycle, trailer, or pickup who has been awarded the legion of merit may, upon written application to the department and presentation of satisfactory proof of the award of the legion of merit as established by the Congress of the United States, order special registration plates with a legion of merit processed emblem. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was awarded the legion of merit. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

16. *National guard special plates.* An owner referred to in subsection 12 who is a member of the national guard, as defined in chapter 29A, may, upon written application to the department, order special registration plates with a national guard processed emblem with the emblem designed by the department in cooperation with the adjutant general which emblem signifies that the applicant is a member of the national guard. The application shall be approved by the department in consultation with the adjutant general. Special registration plates with a national guard processed emblem shall be surrendered, as provided in subsection 12, in exchange for regular registration plates upon termination of the owner's membership in the active national guard.

17. *Pearl Harbor special plates.* An owner referred to in subsection 12 who was at Pearl Harbor, Hawaii, as a member of the armed services of the United States on December 7, 1941, may, upon written application to the department, order special registration plates with a Pearl Harbor processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department.

18. *Purple heart special plates.* An owner referred to in subsection 12 who was awarded a purple heart medal by the United States government for wounds received in military or naval combat against an armed enemy of the United States may, upon written application to the department and presentation of satisfactory proof of the award of the purple heart medal, order special registration plates with a purple heart processed emblem. The design of the emblem shall include a representation of a purple heart medal and ribbon. The application is subject to approval by the department in consultation with the adjutant general.

19. *United States armed forces retired special plates.* An owner referred to in subsection 12 who is a retired member of the United States armed forces may, upon written application to the department and upon presentation of satisfactory proof of membership, order special registration plates with a United States armed forces retired processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department. For purposes of this subsection, a person is considered to be retired if the person is recognized by the United States armed forces as retired from the United States armed forces.

20. *Silver or bronze star plates.* An owner referred to in subsection 12 who was awarded a silver or a bronze star by the United States government, may, upon written application to the department and presentation of satisfactory proof of the award of the silver or bronze star, order special registration plates with a silver or bronze star processed emblem. The emblem shall be designed by the department in consultation with the adjutant general.

21. *Iowa heritage special plates.*

a. An owner referred to in subsection 12 may, upon written application to the department, order special registration plates with an Iowa heritage emblem. The emblem shall contain a picture of the American gothic house and the words "Iowa Heri-

tage" and shall be designed by the department in consultation with the state historical society of Iowa.

b. The special Iowa heritage fee for letter number designated plates is thirty-five dollars. The special fee for personalized Iowa heritage plates is twenty-five dollars which shall be paid in addition to the special fee of thirty-five dollars. The annual special Iowa heritage fee is ten dollars for letter number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee.

c. The special fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph *"b"*, the treasurer of state shall credit monthly to the Iowa heritage fund created under section 303.9A the amount of the special fees collected in the previous month for the Iowa heritage plates.

22. *Education plates.*

a. An owner referred to in subsection 12, upon written application to the department, may order special registration plates with an education emblem. The education emblem shall be designed by the department in cooperation with the department of education.

b. The special school transportation fee for letter number designated education plates is thirty-five dollars. The fee for personalized education plates is twenty-five dollars, which shall be paid in addition to the special school transportation fee of thirty-five dollars. The annual special school transportation fee is ten dollars for letter number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph *"b"*, the treasurer of state shall transfer monthly from those revenues to the school budget review committee in accordance with section 257.31, subsection 17, the amount of the special school transportation fees collected in the previous month for the education plates.

[SS15, §1571-m5; C24, 27, 31, 35, §4874; C39, §**5001.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.34]

82 Acts, ch 1032, §2, 4; 82 Acts, ch 1062, §4, 38; 84 Acts, ch 1027, §1; 84 Acts, ch 1250, §1; 84 Acts, ch 1305, §49; 85 Acts, ch 67, §35; 85 Acts, ch 87, §1; 86 Acts, ch 1182, §1; 86 Acts, ch 1225, §1; 87 Acts, ch 77, §1; 88 Acts, ch 1215, §1 – 4; 88 Acts, ch 1222, §1; 89 Acts, ch 17, §1; 89 Acts, ch 27, §1; 89 Acts, ch 247, §4; 89 Acts, ch 296, §27; 89 Acts, ch 317, §31; 90 Acts, ch 1128, §1; 90 Acts, ch 1151, §1; 91 Acts, ch 49, §1, 2; 91 Acts, ch 58, §1; 91 Acts, ch 259, §3; 92 Acts, ch 1175, §29; 92 Acts, 2nd Ex, ch 1001, §204, 205; 93 Acts, ch 2, §1; 94 Acts, ch 1104, §1; 95 Acts, ch 118, §7 – 9, 40; 96 Acts, ch 1065, §1; 96 Acts, ch 1088, §3, 4, 8; 96 Acts, ch 1171, §2; 96 Acts, ch 1219, §21 – 24; 97 Acts, ch 2, §1, 2; 97 Acts, ch 70, §3, 15; 97 Acts, ch 104, §8 – 10; 97 Acts, ch 108, §5; 97 Acts, ch 123, §1; 97 Acts, ch 212, §33; 98 Acts, ch 1079, §1 – 3; 99 Acts, ch 7, §1 – 9; 99 Acts, ch 114, §20; 99 Acts, ch 141, §38; 99 Acts, ch 180, §15; 2000 Acts, ch 1154, §21; 2000 Acts, ch 1157, §1; 2000 Acts, ch 1206, §1; 2001 Acts, ch 24, §73, 74; 2001 Acts, ch 32, §17; 2001 Acts, ch 144, §2, 3; 2002 Acts, ch 1119, §42

Veterans license fee fund, see §35A.11

For applicable scheduled fines, see §805.8A, subsection 2, paragraph a

Subsection 12A, unnumbered paragraph 1 amended

321.35 Plates — reflective material — bidding procedures.

All motor vehicle registration plates shall be treated with a reflective material according to specifications proposed by the director and approved by the commission.

The department shall not enter into any contract requiring an expenditure of at least five hundred thousand dollars for the manufacture of motor vehicle registration plates to be reissued to owners under this chapter unless competitive bidding procedures as provided in chapter 18 are followed.

[C62, 66, 71, 73, 75, 77, 79, 81, §321.35]

95 Acts, ch 118, §10

321.36 Repealed by 77 Acts, ch 103, § 64.

321.37 Display of plates.

1. Registration plates issued for a motor vehicle other than a motorcycle, motorized bicycle or a truck tractor shall be attached to the motor vehicle, one in the front and the other in the rear. The registration plate issued for a motorcycle or other vehicle required to be registered hereunder shall be attached to the rear of the vehicle. The registration plate issued for a truck tractor shall be attached to the front of the truck tractor. The special plate issued to a dealer shall be attached on the rear of the vehicle when operated on the highways of this state.

2. Registration plates issued for a motor vehicle which is model year 1948 or older, and reconstructed or specially constructed vehicles built to resemble a model year 1948 vehicle or older, other than a truck registered for more than five tons, motorcycle, or truck tractor, may display one registration plate on the rear of the vehicle if the other registration plate issued to the vehicle is carried in

the vehicle at all times when the vehicle is operated on a public highway.

3. It is unlawful for the owner of a vehicle to place any frame around or over the registration plate which does not permit full view of all numerals and letters printed on the registration plate.

[S13, §1571-m11; C24, 27, 31, 35, §4877; C39, §**5001.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.37]

84 Acts, ch 1305, §50; 90 Acts, ch 1233, §16; 97 Acts, ch 104, §11

For applicable scheduled fine, see §805.8A, subsection 2, paragraph a

321.38 Plates, method of attaching — imitations prohibited.

Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible. An imitation plate or plates imitating or purporting to imitate the official registration plate of any other state or territory of the United States or of any foreign government shall not be fastened to the vehicle.

[S13, §1571-m11; C24, 27, 31, 35, §4877; C39, §**5001.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.38]

85 Acts, ch 195, §32

For applicable scheduled fine, see §805.8A, subsection 2, paragraph a

321.39 Expiration of registration.

Except as provided in this chapter every vehicle registration, registration card, and registration plate shall expire as follows:

1. For vehicles registered under chapter 326 and any motor truck, truck tractor, or road tractor registered for a combined gross weight exceeding five tons, at midnight on the last day of December of each year.

2. For vehicles registered by the county treasurer, at midnight on the last day of the registration year.

3. For vehicles on which the first installment of an annual fee has been paid, at midnight on the last day of June; for vehicles on which the second installment of an annual fee has been paid, at midnight on the last day of December.

4. For vehicles registered without payment of fees as provided in section 321.19, when designated by the department.

Registration for every vehicle registered by the county treasurer shall expire upon transfer of ownership.

[S13, §1571-m16; C24, 27, 31, 35, §4868; C39, §**5001.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.39]

82 Acts, ch 1062, §5, 38; 89 Acts, ch 83, §42

321.40 Application for renewal — notification — reasons for refusal.

Application for renewal of a vehicle registration shall be made on or after the first day of the month prior to the month of expiration of registration and up to and including the last day of the month following the month of expiration of registration. The registration shall be renewed upon payment of the appropriate registration fee. Application for renewal for a vehicle registered under chapter 326 shall be made on or after the first day of the month of expiration of registration and up to and including the last day of the month following the month of expiration of registration.

On or before the fifteenth day of the eleventh month of a vehicle's registration year, the department shall create an electronic file and the county treasurer shall send a statement of fees due to the appropriate owner of record. After the department has generated the electronic file used to produce statements for a registration month, and before the fifteenth day of the month following expiration of a vehicle's registration year, the department shall create a subsequent electronic file and the county treasurer shall send a statement of fees due to the appropriate owner of record for any vehicle subsequently registered for that registration month. The statement shall be mailed or electronically transmitted to the most current address of record, showing information sufficient to identify the vehicle and a listing of the various fees as appropriate. Failure to receive a statement shall have no effect upon the accrual of penalty at the appropriate date.

Registration receipts issued for renewals shall have the word "renewal" imprinted thereon and, if the owner making a renewal application has been issued a certificate of title, the title number shall appear on the registration receipt. All registration receipts for renewals shall be typewritten or printed by other mechanical means. The applicant shall receive a registration receipt.

The county treasurer shall refuse to renew the registration of a vehicle registered to a person when notified by the department through the distributed teleprocessing network that the person has not paid restitution as defined under section 910.1, subsection 4, to a clerk of the court located within the state. Each clerk of court shall, on a daily basis, notify the department through the Iowa court information system of the full name and social security number of all persons who owe delinquent restitution and whose restitution obligation has been satisfied or canceled. This paragraph does not apply to the transfer of a registration or the issuance of a new registration.

The county treasurer shall refuse to renew the registration of a vehicle registered to the applicant for renewal of registration if the applicant has failed to pay any local vehicle taxes due in that county on that vehicle or any other vehicle owned or previously owned by the applicant until such lo-

cal vehicle taxes are paid.

The county treasurer shall refuse to renew the registration of a vehicle registered to the applicant if the county treasurer knows that the applicant has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information provided pursuant to section 421.17. An applicant may contest this action by requesting a contested case proceeding from the agency that referred the debt for collection pursuant to section 421.17.

When application is made for the renewal of a motor vehicle registration on or after December 1, 1982, the person in whose name the registration is recorded shall notify the county treasurer of the type of fuel used by the vehicle if the type of fuel used is different from that which is shown on the registration receipt. If a motor vehicle registration indicates that the vehicle uses or may use a special fuel as defined in chapter 452A the county treasurer shall issue a special fuel user identification sticker. The person who owns or controls the vehicle shall affix the sticker in a prominent place on the vehicle adjacent to the place where the special fuel is delivered into the motor vehicle fuel supply tank.

[S13, §1571-m6; C24, 27, 31, 35, §4875; C39, §**5001.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.40; 82 Acts, ch 1218, §1]

82 Acts, ch 1062, §6, 7, 38; 85 Acts, ch 32, §78; 85 Acts, ch 77, §1; 85 Acts, ch 87, §2; 95 Acts, ch 57, §1; 95 Acts, ch 169, §1, 10; 95 Acts, ch 194, §4, 12; 97 Acts, ch 104, §12, 61; 2000 Acts, ch 1028, §2, 4; 2002 Acts, ch 1043, §1

Unnumbered paragraph 2 amended

321.41 Change of address or name or fuel type.

1. Whenever any person after making application for or obtaining the registration of a vehicle shall move from the address named in the application or shown upon a registration card such person shall within ten days thereafter notify the county treasurer of the county in which the registration of said vehicle is of record, in writing of the person's old and new addresses.

2. Whenever the name of any person who has made application for or obtained the registration of a vehicle is thereafter legally changed such person shall within ten days notify the county treasurer of the county in which the title of said vehicle is of record, of such former and new name.

3. A person who has registered a vehicle in a county, other than the county designated on the vehicle registration plate, may apply to the county treasurer where the vehicle is registered for new registration plates upon payment of a fee of five dollars and the return of the former county registration plates.

4. When a motor vehicle is modified to use a different fuel type or to use more than one fuel type the person in whose name the vehicle is registered shall within thirty days notify the county treasurer of the county in which the registration of the vehicle is of record of the new fuel type or alternative fuel types. The county treasurer shall make the record of such changes available to the department of revenue and finance. If the vehicle uses or may use a special fuel the county treasurer shall issue a special fuel identification sticker.

[C39, §**5001.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.41; 82 Acts, ch 1218, §2]

For applicable scheduled fine, see §805.8A, subsection 2, paragraph a

321.42 Lost or damaged certificates, cards, and plates — replacements.

1. If a registration card, plate, or pair of plates is lost or becomes illegible, the owner shall immediately apply for replacement. The fee for a replacement registration card shall be three dollars. The fee for a replacement plate or pair of plates shall be five dollars. When the owner has furnished information required by the department and paid the proper fee, a duplicate, substitute, or new registration card, plate, or pair of plates may be issued.

2. *a.* If a certificate of title is lost or destroyed, the owner or lienholder shall apply for a replacement copy of the original certificate of title. The owner or lienholder of a motor vehicle may also apply for a replacement copy of the original certificate of title upon surrender of the original certificate of title with the application. The application shall be made to the department or county treasurer who issued the original certificate of title. The application shall be signed by the owner or lienholder and accompanied by a fee of ten dollars.

b. After five days, the department or county treasurer shall issue a replacement copy to the applicant at the applicant's most recent address, however, the five-day waiting period does not apply to an applicant who has surrendered the original certificate of title to the department or county treasurer. The replacement copy shall be clearly marked "replacement" and shall include notation of liens or encumbrances. When a replacement copy has been issued, the previous certificate is void.

c. If a security interest noted on the face of an original certificate of title was released by the lienholder on a separate form pursuant to section 321.50, subsection 4, and the signature of the lienholder, or the person executing the release on behalf of the lienholder, is notarized, but the lienholder has not delivered the original certificate to the appropriate party as provided in section 321.50, subsection 4, the owner may apply for and receive a replacement certificate of title without the released security interest noted thereon. The lienholder shall return the original certificate of title to the department or to the treasurer of the county where the title was issued.

d. A new purchaser or transferee is entitled to receive an original title upon presenting the assigned replacement copy to the treasurer of the county where the new purchaser or transferee resides. At the time of purchase, a purchaser may require the seller to indemnify the purchaser and all future purchasers of the vehicle against any loss which may be suffered due to claims on the original certificate. A person recovering an original certificate of title for which a replacement has been issued shall surrender the original certificate to the county treasurer or the department.

3. If a county treasurer mails vehicle registration documents which become lost or are damaged in transit through the United States postal service, the person to whom the documents were being sent may apply for reissuance without cost. The application shall be made with the county treasurer who originally issued the documents not less than twenty days from the date the documents were placed with the United States postal service. If the original documents are received after reissuance of duplicates, the original documents shall be surrendered to the county treasurer within five days of the time they are received.

[SS15, §1571-m5; C24, 27, 31, 35, §4886; C39, §**5001.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §321.42; 81 Acts, ch 102, §1]

84 Acts, ch 1305, §51; 85 Acts, ch 209, §1; 99 Acts, ch 13, §6; 2000 Acts, ch 1016, §43, 47

Surcharge imposed; §321.52A

321.43 New identifying numbers.

The department may assign a distinguishing number to a vehicle when the serial number on the vehicle is destroyed or obliterated and issue to the owner a special plate bearing the distinguishing number which shall be affixed to the vehicle in a position to be determined by the director. The vehicle shall be registered and titled under the distinguishing number in lieu of the former serial number.

[C27, 31, 35, §5083-b4; C39, §**5001.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.43]

84 Acts, ch 1067, §31

321.44 Rules governing change of engines, drivetrain assemblies and related parts.

The director shall adopt and enforce rules governing registration and titling of motor vehicles as deemed necessary by the director and compatible with the public interest with respect to the change or substitution of engines, drivetrain assemblies or related parts in any motor vehicle.

[C39, §**5001.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.44]

88 Acts, ch 1278, §32

321.44A Voluntary contribution — anatomical gift public awareness and transplantation fund — amount retained by county treasurer.

For each application for registration or renewal, the county treasurer or the department shall request through use of a written form, and, if the application is made in person, through verbal communication, that an applicant make a voluntary contribution of one dollar or more to the anatomical gift public awareness and transplantation fund established pursuant to section 142C.15. One hundred percent of the moneys collected by the county and one hundred percent of the moneys collected by the department in the form of contributions shall be remitted to the treasurer of state for deposit in the fund to be used for the purposes specified for the fund. However, up to five percent of the moneys collected by the county may be retained by the county treasurer for deposit in the general fund of the county. The director shall adopt rules to administer this section.

96 Acts, ch 1076, §3; 97 Acts, ch 121, §1; 98 Acts, ch 1107, §8

TRANSFERS OF TITLE OR INTEREST

321.45 Title must be transferred with vehicle.

1. No manufacturer, importer, dealer or other person shall sell or otherwise dispose of a new vehicle subject to registration under the provisions of this chapter to a dealer to be used by such dealer for purposes of display and lease or resale without delivering to such dealer a manufacturer's or importer's certificate duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof; nor shall such dealer purchase or acquire a new vehicle that is subject to registration without obtaining from the seller thereof such manufacturer's or importer's certificate. In addition to the assignments stated herein, such manufacturer's or importer's certificate shall contain thereon the identification and description of the vehicle delivered and the name and address of the dealer to whom said vehicle was originally sold over the signature of an authorized official of the manufacturer or importer who made the original delivery.

For each new mobile home, manufactured home, travel trailer and camping trailer said manufacturer's or importer's certificate shall also contain thereon the exterior length and exterior width of said vehicle not including any area occupied by any hitching device, and the manufacturer's shipping weight.

Completed motor vehicles, other than class "B" motor homes, which are converted, modified or altered shall retain the identity and model year of the original manufacturer of the vehicle. Motor homes and all other motor vehicles manufactured

from chassis or incomplete motor vehicles manufactured by another may have the identity and model year assigned by the final manufacturer.

2. No person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title issued or assigned to the person for such vehicle or by virtue of a manufacturer's or importer's certificate delivered to the person for such vehicle; nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration except in case of:

a. The perfection of a lien or security interest by notation on the certificate of title as provided in section 321.50, or

b. The perfection of a security interest in new or used vehicles held as inventory for sale as provided in Uniform Commercial Code, chapter 554, Article 9, or

c. A dispute between a buyer and the selling dealer who has failed to deliver or procure the certificate of title as promised, or

d. Except for the purposes of section 321.493. Except in the above enumerated cases, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in accordance with the provisions of this chapter.

3. Upon the transfer of any registered vehicle, the owner, except as otherwise provided in this chapter, shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens and encumbrances thereon, and the owner shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle except as otherwise provided in this chapter. The owner shall indicate to the transferee the name of the county in which the vehicle was last registered and the registration expiration date.

4. After acquiring a used mobile home or manufactured home to be titled in Iowa, a manufactured or mobile home retailer, as defined in section 322B.2 shall within thirty days apply for and obtain from the county treasurer of the retailer's county of residence a new certificate of title for the mobile home or manufactured home. In the event that there is a prior lien or encumbrance to be released, as required by section 321.50, subsection 4, the thirty-day time period in this subsection does not begin to run until the lien or encumbrance is released.

[S13, §1571-m9; C24, 27, 31, 35, §4961; C39, §**5002.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.45; 82 Acts, ch 1251, §10]

87 Acts, ch 130, §2; 88 Acts, ch 1215, §5; 95 Acts, ch 57, §2; 99 Acts, ch 188, §6, 7; 2000 Acts, ch 1085, §1; 2001 Acts, ch 153, §17; 2002 Acts, ch 1119, §43

For applicable scheduled fines, see §805.8A, subsection 2, paragraph c

Subsection 4 amended

321.46 New title and registration upon transfer of ownership — credit.

1. The transferee shall within thirty calendar days after purchase or transfer apply for and obtain from the county treasurer of the person's residence, or if a nonresident, the county treasurer of the county where the primary users of the vehicle are located or the county where all other vehicles owned by the nonresident are registered, a new registration and a new certificate of title for the vehicle except as provided in section 321.25, 321.48, or 322G.12. The transferee shall present with the application the certificate of title endorsed and assigned by the previous owner and shall indicate the name of the county in which the vehicle was last registered and the registration expiration date. Unless the transferee is a manufacturer obtaining a new certificate of title pursuant to section 322G.12, the transferee shall be required to list a driver's license number.

2. Upon filing the application for a new registration and a new title, the applicant shall pay a title fee of ten dollars and a registration fee prorated for the remaining unexpired months of the registration year. A manufacturer applying for a certificate of title pursuant to section 322G.12 shall pay a title fee of two dollars. However, a title fee shall not be charged to a manufactured or mobile home retailer applying for a certificate of title for a used mobile home or manufactured home, titled in Iowa, as required under section 321.45, subsection 4. The county treasurer, if satisfied of the genuineness and regularity of the application, and in the case of a mobile home or manufactured home, that taxes are not owing under chapter 435, and that applicant has complied with all the requirements of this chapter, shall issue a new certificate of title and, except for a mobile home, manufactured home, or a vehicle returned to and accepted by a manufacturer as described in section 322G.12, a registration card to the purchaser or transferee, shall cancel the prior registration for the vehicle, and shall forward the necessary copies to the department on the date of issuance, as prescribed in section 321.24. Mobile homes or manufactured homes titled under chapter 448 that have been subject under section 446.18 to a public bidder sale in a county shall be titled in the county's name, with no fee, and the county treasurer shall issue the title.

3. The applicant shall be entitled to a credit for that portion of the registration fee of the vehicle sold, traded, or junked which had not expired prior to the transfer of ownership of the vehicle. The

registration fee for the new registration for the vehicle acquired shall be reduced by the amount of the credit. The credit shall be computed on the basis of the number of months remaining in the registration year, rounded to the nearest whole dollar. The credit shall be subject to the following limitations:

a. The credit shall be claimed within thirty days from the date the vehicle for which credit is granted was sold, transferred, or junked. After thirty days, all credits shall be disallowed.

b. Any credit granted to the owner of a vehicle which has been sold, traded, or junked may only be claimed by that person toward the registration fee for another vehicle purchased and the credit may not be sold, transferred, or assigned to any other person.

c. When the amount of the credit is computed to be an amount of less than ten dollars, a credit shall be disallowed.

d. To claim a credit for the unexpired registration fee on a junked vehicle, the county treasurer shall disallow any claim for credit unless the owner presents a junking certificate or other evidence as required by the department to the county treasurer.

e. A credit shall not be allowed to any person who has made claim to receive a refund under section 321.126.

f. The credit shall only be allowed if the owner provides the copy of the registration receipt to the county treasurer.

g. If the credit allowed exceeds the amount of the registration fee for the vehicle acquired, the owner may claim a refund under section 321.126, subsection 6, for the balance of the credit.

h. The credit shall be computed on the unexpired number of months computed from the date of purchase of the vehicle acquired.

4. If the registration fee upon application is delinquent, the applicant shall be required to pay the delinquent fee from the first day the registration fee was due prorated to the month of application for new title.

5. The seller or transferor may file an affidavit on forms prescribed and provided by the department with the county treasurer of the county where the vehicle is registered certifying the sale or transfer of ownership of the vehicle and the assignment and delivery of the certificate of title for the vehicle. Upon receipt of the affidavit the county treasurer shall file the affidavit with the copy of the registration receipt for the vehicle on file in the treasurer's office and on that day the treasurer shall forward copies of the affidavit to the department and to the county treasurer of the county of residence of the purchaser or transferee. Upon filing the affidavit it shall be presumed that the seller or transferor has assigned and delivered the certificate of title for the vehicle.

6. An applicant for a new registration for a vehicle transferred to the applicant by a spouse, parent or child of the applicant, or by operation of law upon inheritance, devise or bequest, from the applicant's spouse, parent or child, or by a former spouse pursuant to a decree of dissolution of marriage, is entitled to a credit to be applied to the registration fee for the transferred vehicle. A credit shall not be allowed unless the vehicle to which the credit applies is registered within the time specified under subsection 1. The credit shall be computed on the basis of the number of unexpired months remaining in the registration year of the former owner computed from the date the vehicle was transferred, computed to the nearest whole dollar. The credit may exceed the amount of the registration fee for the transferred vehicle. When the amount of the credit is computed to be an amount of less than ten dollars, the credit shall be disallowed. The credit shall not be sold, transferred, or assigned to any other person.

7. If a motor vehicle is leased and the lessee purchases the vehicle upon termination of the lease, the lessor shall, upon claim by the lessee with the lessor within fifteen days of the purchase, assign the registration fee credit and registration plates for the leased motor vehicle to the lessee. Credit shall be applied as provided in subsection 3.

[S13, §1571-m9; C24, 27, 31, 35, §4962; C39, §**5002.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.46; 82 Acts, ch 1251, §11]

82 Acts, ch 1062, §8, 38; 83 Acts, ch 24, §2, 3, 4, 12; 83 Acts, ch 82, §2; 84 Acts, ch 1305, §52; 85 Acts, ch 87, §3; 87 Acts, ch 130, §3; 88 Acts, ch 1215, §6; 90 Acts, ch 1154, §1 – 5; 91 Acts, ch 191, §6; 93 Acts, ch 87, §3; 98 Acts, ch 1073, §9; 99 Acts, ch 188, §8; 2000 Acts, ch 1016, §6; 2000 Acts, ch 1047, §2, 4; 2001 Acts, ch 153, §17, 18; 2002 Acts, ch 1119, §44

Surcharge imposed; §321.52A
For applicable scheduled fines, see §805.8A, subsection 2, paragraph c
Subsection 2 amended

321.46A Change from proportional registration — credit.

An owner changing a vehicle's registration from proportional registration under chapter 326 to registration under this chapter shall be entitled to a credit on the vehicle's registration fees under this chapter. The credit shall be allowed when the owner surrenders to the county treasurer proof of proportional registration provided by the department. The amount of the credit shall be calculated based on the unexpired complete calendar months remaining in the registration year from the date the application is filed with the county treasurer.

87 Acts, ch 108, §6

321.47 Transfers by operation of law.

If ownership of a vehicle is transferred by operation of law upon inheritance, devise or bequest, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure or execution sale, abandoned vehicle sale, or when the engine of a motor

vehicle is replaced by another engine, or a vehicle is sold or transferred to satisfy an artisan's lien as provided in chapter 577, a landlord's lien as provided in chapter 570, a storage lien as provided in chapter 579, a judgment in an action for abandonment of a manufactured or mobile home as provided in chapter 555B, or repossession is had upon default in performance of the terms of a security agreement, the county treasurer in the transferee's county of residence, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof to the county treasurer of ownership and right of possession to the vehicle and upon payment of a fee of ten dollars and the presentation of an application for registration and certificate of title, may issue to the applicant a registration card for the vehicle and a certificate of title to the vehicle. A person entitled to ownership of a vehicle under a decree of dissolution shall surrender a reproduction of a certified copy of the dissolution and upon fulfilling the other requirements of this chapter is entitled to a certificate of title and registration receipt issued in the person's name.

The persons entitled under the laws of descent and distribution of an intestate's property to the possession and ownership of a vehicle owned in whole or in part by a decedent, upon filing an affidavit stating the name and date of death of the decedent, the right to possession and ownership of the persons filing the affidavit, and that there has been no administration of the decedent's estate, which instrument shall also contain an agreement to indemnify creditors of the decedent who would be entitled to levy execution upon the motor vehicle to the extent of the value of the motor vehicle, are entitled upon fulfilling the other requirements of this chapter, to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to it. If a decedent dies testate, and either the will is not probated or is admitted to probate without administration, the persons entitled to the possession and ownership of a vehicle owned in whole or in part by the decedent may file an affidavit and, upon fulfilling the other requirements of this chapter, are entitled to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to the vehicle. The affidavit shall contain the same information and indemnity agreement as is required in cases of intestacy pursuant to this section. A requirement of chapter 450 or 451 shall not be considered satisfied by the filing of the affidavit provided for in this section. If, from the records in the office of the county treasurer, there appear to be any liens on the vehicle, the certificate of title shall contain a statement of the liens unless the application is accompanied by proper evidence of their satisfaction or extinction. Evidence of extinction may consist of, but is not limited to, an affidavit of the applicant stating that a security interest was foreclosed as provided in chapter 554, article 9, part 6.

Whenever ownership of a vehicle is transferred under the provisions of this section the registration plates shall be removed and forwarded to the county treasurer of the county where the vehicle is registered or to the department if the vehicle is owned by a nonresident. Upon transfer the vehicle shall not be operated upon the highways of this state until the person entitled to possession of the vehicle applies for and obtains registration for the vehicle.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph *"b"*.

[S13, §1571-m9; C24, 27, 31, 35, §4963; C39, §**5002.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.47]

84 Acts, ch 1243, §1; 84 Acts, ch 1305, §53; 91 Acts, ch 119, §1; 93 Acts, ch 154, §2; 95 Acts, ch 118, §11; 99 Acts, ch 83, §2; 2000 Acts, ch 1149, §165, 187; 2000 Acts, ch 1203, §2; 2001 Acts, ch 137, §5; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

Surcharge imposed; §321.52A

321.48 Vehicles acquired for resale.

1. When the transferee of a vehicle is a dealer who holds the vehicle for resale and operates the vehicle only for purposes incident to a resale and displays a dealer plate on the vehicle or does not drive such vehicle or permit it to be driven upon the highways, such transferee shall not be required to obtain a new registration or a new certificate of title but upon transferring title or interest to another person shall execute and acknowledge an assignment and warranty of title upon the certificate of title assigned to the person and deliver the same to the person to whom such transfer is made.

A dealer licensed pursuant to chapter 322 or chapter 322C who has acquired a vehicle for resale which is subject to a security interest as provided in section 321.50 and who has forwarded to the secured party the sum necessary to discharge the security interest may offer the vehicle for sale prior to the receipt from the county treasurer of the certificate of title for the vehicle with the lien discharged for a period of not more than thirty days from the date the vehicle was acquired and the provisions of section 321.104, subsection 2, shall not apply.

2. A foreign registered vehicle purchased or otherwise acquired by a dealer for the purpose of resale shall be issued a certificate of title for the vehicle by the county treasurer of the dealer's residence upon proper application as provided in this chapter and upon payment of a fee of five dollars and the dealer is exempt from the payment of any and all registration fees for the vehicle. The application for certificate of title shall be made within fifteen days after the vehicle comes within the

border of the state. However, a dealer acquiring a vehicle registered in another state which permits Iowa dealers to reassign that state's certificates of title shall not be required to obtain a new registration or a new certificate of title and upon transferring title or interest to another person shall execute an assignment upon the certificate of title for the vehicle to the person to whom the transfer is made and deliver the assigned certificate of title to the person.

3. In a transaction in which a vehicle is traded to a dealer as defined in chapter 322 or chapter 322C toward the purchase price of another vehicle and each vehicle is owned in whole or in part by the same person, the person acquiring the vehicle from the dealer shall be entitled to a credit under section 321.46.

4. Nothing in this section shall be construed to prohibit a dealer from obtaining a new certificate of title or new registration in the same manner as other purchasers.

[C24, 27, 31, 35, §4965; C39, §**5002.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.48]

82 Acts, ch 1062, §9, 38; 83 Acts, ch 82, §3; 84 Acts, ch 1169, §1; 84 Acts, ch 1305, §54; 88 Acts, ch 1215, §7; 90 Acts, ch 1116, §2; 99 Acts, ch 13, §7

Surcharge imposed; §321.52A

For applicable scheduled fines, see §805.8A, subsection 2, paragraph c

321.49 Time limit — penalty — power of attorney.

1. Except as provided in section 321.52, if an application for transfer of registration and certificate of title is not submitted to the county treasurer of the residence of the transferee within thirty days of the date of assignment or transfer of title, or within thirty days of the date of delivery to the purchaser if the vehicle is subject to a security interest and was offered for sale pursuant to section 321.48, subsection 1, a penalty of ten dollars shall accrue against the applicant, and no registration card or certificate of title shall be issued to the applicant for the vehicle until the penalty is paid.

2. Certificates of title to vehicles may be assigned by an attorney in fact of the owner under a power of attorney appointed and so empowered on forms provided by the department. Such power of attorney shall be filed by the transferee with the application for title.

3. A manufactured or mobile home retailer who acquires a used mobile home or manufactured home, titled in Iowa, and who does not apply for and obtain a certificate of title from the county treasurer of the manufactured or mobile home retailer's county of residence within thirty days of the date of acquisition, as required under section 321.45, subsection 4, is subject to a penalty of ten dollars. A certificate of title shall not be issued to the manufactured or mobile home retailer until the penalty is paid.

[C24, 27, 31, 35, §4966; C39, §**5002.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.49]

85 Acts, ch 209, §2; 87 Acts, ch 130, §4; 93 Acts, ch 47, §2; 99 Acts, ch 13, §8; 99 Acts, ch 188, §9; 2000 Acts, ch 1154, §22; 2001 Acts, ch 153, §17, 18; 2002 Acts, ch 1119, §45

Subsection 3 amended

321.50 Security interest provisions.

1. A security interest in a vehicle subject to registration under the laws of this state or a mobile home or manufactured home, except trailers whose empty weight is two thousand pounds or less, and except new or used vehicles held by a dealer or manufacturer as inventory for sale, is perfected by the delivery to the county treasurer of the county where the certificate of title was issued or, in the case of a new certificate, to the county treasurer where the certificate will be issued, of an application for certificate of title which lists the security interest, or an application for notation of security interest signed by the owner, or by one owner of a vehicle owned jointly by more than one person, or a certificate of title from another jurisdiction which shows the security interest, and a fee of five dollars for each security interest shown. Up to three security interests may be perfected against a vehicle and shown on an Iowa certificate of title. If the owner or secured party is in possession of the certificate of title, it must also be delivered at this time in order to perfect the security interest. If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of perfection is determined by section 554.9303. Delivery as provided in this subsection is an indication of a security interest on a certificate of title for purposes of chapter 554.

2. Upon receipt of the application and the required fee, the county treasurer shall notify the holder of the certificate of title to deliver to the county treasurer, within five days from the receipt of notice, the certificate of title to permit notation of the security interest. If the holder of the certificate of title shall fail to deliver it within the said five days, the holder shall be liable to anyone harmed by the holder's failure.

3. Upon receipt of the application, the certificate of title, if any, and the required fee, the county treasurer shall note such security interest, and the date thereof, on the certificate over the signature of such officer or deputy and the seal of office. The county treasurer shall also note such security interest and the date thereof in the county records system. The county treasurer shall then mail the certificate of title to the first secured party as shown thereon.

4. When a security interest is discharged, the holder shall note a cancellation of same on the face of the certificate of title over the holder's signature, and deliver the certificate of title to the county treasurer where title was issued. The county treasurer shall immediately note the can-

cellation of the security interest on the face of the certificate of title and in the county records system. The county treasurer shall on the same day deliver the certificate of title to the then first secured party or, if there is no such person, to the person as directed by the owner, in writing, on a form prescribed by the department or, if there is no person designated, then to the owner. The cancellation of the security interest shall be noted on the certificate of title by the county treasurer without charge. The holder of a security interest discharged by payment who fails to release the security interest within fifteen days after being requested in writing to do so shall forfeit to the person making the payment the sum of twenty-five dollars.

If a lien has been released by the lienholder but has not been sent to the county of record for clearance of the lien, any county may note the release on the face of the title and shall notify the county of record that the lien has been released as of the specified date, and shall make entry upon the computer system. Notification to the county of record shall be made by an automated statewide system, or by sending a photocopy of the released title to the county of record.

When a security interest is discharged, the lienholder shall note the cancellation of the security interest on the face of the title and may note the cancellation of the security interest on a form prescribed by the department and deliver a copy of the form in lieu of the title to the department or to the treasurer of the county in which the title was issued. The department or county treasurer shall note the release of the security interest upon the statewide computer system and the county's records. A copy of the form, if used, shall be attached to the title by the lienholder and shall be evidence of the release of the security interest. The lienholder shall deliver the title to the first lienholder, or if there is no such person, to the person as designated by the owner, or if there is no such person designated, to the owner.

5. The Uniform Commercial Code, chapter 554, Article 9, shall apply to all transactions intended to create a security interest in vehicles except as provided in this chapter.

6. Any person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest, except new or used vehicles held by a dealer or manufacturer as inventory for sale, who purports to have a security interest in such vehicle shall, within thirty days from the receipt of the certificate of title, deliver such certificate of title to the county treasurer of the county where it was issued to note such security interest and, if such person fails to do so, the person's purported security interest in the vehicle shall be void and unenforceable and such person shall forthwith deliver the certificate of title to the county treasurer of the county where it was issued. If no security interest has been filed for notation on the certificate of title, the certificate shall be mailed by the treasurer to the owner of the vehicle. For purposes of determining the commencement date of the thirty-day period provided by this subsection, it shall be presumed that the purported security interest holder received the certificate of title on the date of the creation of the holder's purported security interest in the vehicle or the date of the issuance of the certificate of title, whichever is the latter. Any person collecting a fee from the owner of the vehicle for the purpose of perfecting a security interest in such vehicle who does not cause such security interest to be noted on the certificate of title by the county treasurer shall remit such fee to the department of revenue and finance of this state.

7. Upon request of any person, the county treasurer shall issue a certificate showing whether there are, on the date and hour stated therein, any security interests noted on a particular vehicle's certificate of title, and the name and address of each secured party whose security interest is noted thereon. The uniform fee for a written certificate shall be two dollars if the request for the certificate is on a form conforming to standards prescribed by the secretary of state; otherwise, three dollars. Upon request and payment of the appropriate fee, the county treasurer shall furnish a certified copy of any security interest notations for a uniform fee of one dollar per page.

[C24, 27, 31, 35, §4967; C39, §**5002.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.50]

83 Acts, ch 5, §3, 5; 84 Acts, ch 1305, §55; 89 Acts, ch 260, §3; 92 Acts, ch 1175, §30; 97 Acts, ch 108, §6; 99 Acts, ch 13, §9; 99 Acts, ch 188, §10; 2000 Acts, ch 1016, §7, 44, 47; 2000 Acts, ch 1149, §166, 187; 2001 Acts, ch 153, §17

Surcharge imposed; §321.52A

321.51 Terminal rental adjustment clause — vehicle leases that are not sales or security interests.

An agreement involving the leasing of a motor vehicle or trailer does not create a sale or security interest solely because the agreement provides for an increase or decrease adjustment in the rental price of the motor vehicle or trailer based upon the amount realized upon sale or other disposition of the motor vehicle or trailer following the termination of the lease.

94 Acts, ch 1052, §1

321.52 Out-of-state sales — junked, dismantled, wrecked, or salvage vehicles.

1. When a vehicle is sold outside the state for purposes other than for junk the owner, dealer or otherwise, shall detach the registration plates and registration card and shall indicate on the reverse side of such registration card the name and address of the foreign purchaser or transferee over

the person's signature. The owner shall surrender the registration plates and registration card to the county treasurer, unless the registration plates are properly attached to another vehicle, who shall cancel the records and shall destroy the registration plates and forward the registration card to the department. The department shall make a notation on the records of the out-of-state sale, and, after a reasonable period, may destroy the files to that particular vehicle. The department is not authorized to make a refund of license fees on a vehicle sold out of state unless it receives the registration card completed as provided in this section.

2. The purchaser or transferee of a motor vehicle for which a certificate of title is issued which is sold for scrap or junk shall surrender the certificate of title, properly endorsed and signed by the previous owner, to the county treasurer of the county of residence of the transferee, and shall apply for a junking certificate from the county treasurer, within thirty days after assignment of the certificate of title. The county treasurer shall issue to such person without fee a junking certificate. A junking certificate shall authorize the holder to possess, transport, or transfer by endorsement the ownership of the junked vehicle. A certificate of title shall not again be issued for the vehicle subsequent to the issuance of a junking certificate except as provided in subsection 3. The county treasurer shall cancel the record of the vehicle. The junking certificate shall be printed on the registration receipt form and shall be imprinted with the words "junking certificate", as prescribed by the department. A space for transfer by endorsement shall be on the reverse side of the junking certificate. A separate form for the notation of the transfer of component parts shall be attached to the junking certificate when the certificate is issued.

3. When a vehicle for which a certificate of title is issued is junked or dismantled by the owner, the owner shall detach the registration plates and surrender the plates to the county treasurer, unless the plates are properly assigned to another vehicle. The owner shall also surrender the certificate of title to the county treasurer. Upon surrendering the certificate of title and application for junking certificate, the county treasurer shall issue to the person, without fee, a junking certificate, which shall authorize the holder to possess, transport or transfer ownership of the junked vehicle by endorsement of the junking certificate. The county treasurer shall hold the surrendered certificate of title, registration receipt, application for junking certificate, and, if applicable, the registration plates for a period of fourteen days following the issuance of a junking certificate under this subsection. Within the fourteen-day period the person who was issued the junking certificate and to whom the vehicle was titled or assigned may surrender to the county treasurer the junking certificate, and upon the person's payment of appropriate fees and taxes and payment of any credit for registration fees received by the person for the vehicle under section 321.46, subsection 3, the county treasurer shall issue to the person a certificate of title for the vehicle. After the expiration of the fourteen-day period, a county treasurer shall not issue a certificate of title for a junked vehicle for which a junking certificate is issued. The county treasurer shall cancel the record of the vehicle and forward the certificate of title to the department.

However, upon application the department upon a showing of good cause may issue a certificate of title after the fourteen-day period for a junked vehicle for which a junking certificate has been issued. For purposes of this subsection, *"good cause"* means that the junking certificate was obtained by mistake or inadvertence. If a person's application to the department is denied, the person may make application for a certificate of title under the bonding procedure as provided in section 321.24, if the vehicle qualifies as an antique vehicle under section 321.115, subsection 1, or the person may seek judicial review as provided under sections 17A.19 and 17A.20.

4. *a.* A vehicle rebuilder or a person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered in this state, upon acquisition of a wrecked or salvage vehicle, shall surrender the certificate of title or manufacturer's or importer's statement of origin properly assigned, together with an application for a salvage certificate of title, to the county treasurer of the county of residence of the purchaser or transferee within thirty days after the date of assignment of the certificate of title for the wrecked or salvage motor vehicle. This subsection applies only to vehicles with a fair market value of five hundred dollars or more, based on the value before the vehicle became wrecked or salvage. Upon payment of a fee of two dollars, the county treasurer shall issue a salvage certificate of title which shall bear the word "SALVAGE" stamped or printed on the face of the title in a manner prescribed by the department. A salvage certificate of title may be assigned to an educational institution, a new motor vehicle dealer licensed under chapter 322, a person engaged in the business of purchasing bodies, parts of bodies, frames or component parts of vehicles for sale as scrap metal, a salvage pool, or an authorized vehicle recycler licensed under chapter 321H. An authorized vehicle recycler licensed under chapter 321H or a new motor vehicle dealer licensed under chapter 322 may assign a salvage certificate of title to any person. A vehicle on which ownership has transferred to an insurer of the vehicle as a result of a settlement with the owner of the vehicle arising out of damage to, or unrecovered theft of, the vehicle shall be deemed to be a wrecked or salvage vehicle and the insurer shall comply with this subsection to obtain a sal-

vage certificate of title within thirty days after the date of assignment of the certificate of title of the vehicle.

b. When a wrecked or salvage vehicle has been repaired, the owner may apply for a regular certificate of title by paying the appropriate fees and surrendering the salvage certificate of title and a properly executed salvage theft examination certificate. The county treasurer shall issue a regular certificate of title which shall bear a designation stamped or printed on the face of the title and stamped and printed on the registration receipt indicating that the vehicle was previously titled on a salvage certificate of title in a form approved by the department. This designation shall be included on every Iowa certificate of title and registration receipt issued thereafter for the vehicle. The stamped designation shall be in black and shall be in letters no bigger than sixteen point type and located on the center of the right side of the registration receipt. However, if ownership of a stolen vehicle has been transferred to an insurer organized under the laws of this state or admitted to do business in this state, or if the transfer was the result of a settlement with the owner of the vehicle arising from damage to or the unrecovered theft of the vehicle, and if the insurer certifies to the county treasurer on a form approved by the department that the insurance company has received one or more written estimates which state that the retail cost of repairs including labor, parts, and other materials of all damage to the vehicle is less than three thousand dollars, the county treasurer shall issue to the insurance company the regular certificate of title and registration receipt without this designation.

c. A salvage theft examination shall be made by a peace officer who has been specially certified and recertified when required by the Iowa law enforcement academy to do salvage theft examinations. The Iowa law enforcement academy shall determine standards for training and certification, conduct training, and may approve alternative training programs which satisfy the academy's standards for training and certification. The owner of the salvage vehicle shall make the vehicle available for examination at a time and location designated by the peace officer doing the examination. The owner may obtain a permit to drive the vehicle to and from the examination location by submitting a repair affidavit to the agency performing the examination stating that the vehicle is reasonably safe for operation and listing the repairs which have been made to the vehicle. The owner must be present for the examination and have available for inspection the salvage title, bills of sale for all essential parts changed, and the repair affidavit. The examination shall be for the purposes of determining whether the vehicle or repair components have been stolen. The examination is not a safety inspection and a signed salvage theft examination certificate shall not be construed by any court of law to be a certification that the vehicle is safe to be operated. There shall be no cause of action against the peace officer or the agency conducting the examination or the county treasurer for failure to discover or note safety defects. If the vehicle passes the theft examination, the peace officer shall indicate that the vehicle passed examination on the salvage theft examination certificate. The permit and salvage theft examination certificate shall be on controlled forms prescribed and furnished by the department. The owner shall pay a fee of thirty dollars upon completion of the examination. The agency performing the examinations shall retain twenty dollars of the fee and shall pay five dollars of the fee to the department and five dollars of the fee to the treasurer of state for deposit in the general fund of the state. Moneys deposited to the general fund under this paragraph are subject to the requirements of section 8.60 and shall be used by the Iowa law enforcement academy to provide for the special training, certification, and recertification of officers as required by this subsection.

The state department of transportation shall adopt rules in accordance with chapter 17A to carry out this section.

d. For purposes of this subsection a *"wrecked or salvage vehicle"* means a damaged motor vehicle subject to registration and having a gross vehicle weight rating of less than thirty thousand pounds, for which the cost of repair exceeds fifty percent of the fair market value of the vehicle, as determined in accordance with rules adopted by the department, before it became damaged.

[C24, 27, 31, 35, §4887; C39, §**5002.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.52; 81 Acts, ch 102, §3]

84 Acts, ch 1169, §2; 84 Acts, ch 1305, §56; 85 Acts, ch 67, §36; 85 Acts, ch 209, §3; 88 Acts, ch 1089, §4 – 6; 88 Acts, ch 1215, §8 – 10; 89 Acts, ch 185, §3; 89 Acts, ch 296, §28; 91 Acts, ch 142, §2, 3; 91 Acts, ch 260, §1225, 1226; 92 Acts, ch 1104, §3; 93 Acts, ch 131, §12; 94 Acts, ch 1107, §51; 95 Acts, ch 45, §2, 3; 97 Acts, ch 108, §7; 97 Acts, ch 121, §2; 2000 Acts, ch 1016, §8, 9

Surcharge imposed; §321.52A

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c

321.52A Certificate of title surcharge — allocation of moneys.

1. In addition to the fee required for the issuance of a certificate of title under section 321.20, 321.20A, 321.23, 321.42, 321.46, 321.47, 321.48, 321.50, or 321.52, a surcharge of five dollars shall be required. Of each surcharge collected under those sections, the county treasurer shall remit five dollars to the office of treasurer of state for deposit as set forth in subsection 2.

2. For the fiscal year beginning July 1, 2002, through the fiscal year beginning July 1, 2006, the treasurer of state shall deposit twenty percent of the moneys received under subsection 1 in the

waste tire management fund and deposit the remainder in the road use tax fund. For the fiscal year beginning July 1, 2007, and each subsequent fiscal year, the treasurer of state shall deposit the entire amount of moneys received under subsection 1 in the road use tax fund.

91 Acts, ch 267, §607; 95 Acts, ch 118, §12; 96 Acts, ch 1117, §1; 2001 Acts, ch 188, §25; 2002 Acts, ch 1121, §1

Road use tax fund, see §312.1
Waste tire management fund, see §455D.11C
Subsection 2 amended

PERMITS TO NONRESIDENT OWNERS

321.53 Nonresident owners of passenger vehicles and trucks.

A nonresident owner, except as provided in sections 321.54 and 321.55, of a private passenger motor vehicle, not operated for hire, may operate or permit the operation of such vehicle within this state without registering such vehicle in, or paying any fees to, this state subject to the condition that such vehicle at all times when operated in this state is duly registered in, and displays upon it a valid registration plate or plates issued for such vehicle in the place of residence of such owner. A nonresident who leases a vehicle from a resident owner shall not be considered a nonresident owner of such vehicle for the purpose of exemption under this section. This section shall be operative to the extent that under the laws of the foreign country, state, territory, or federal district of such nonresident owner's residence like exemptions and privileges are granted to vehicles registered under the laws, and owned by residents, of this state. A truck, truck tractor, trailer or semitrailer owned by a nonresident and operated on Iowa highways must have displayed upon it a valid registration plate or plates and a valid registration certificate, card, or other official evidence of its allowable weight in the state, district or county in which it is registered.

[S13, §1571-m16; C24, 27, 31, 35, §4865; C39, §**5003.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.53]

321.54 Registration and financial liability coverage required of certain nonresident carriers.

1. Nonresident owners of foreign vehicles operated within this state for the intrastate transportation of persons or property for compensation or for the intrastate transportation of merchandise shall register and maintain financial liability coverage as required under section 321.20B for each vehicle and pay the same fees required for like vehicles owned by residents of this state.

2. The term *"intrastate transportation"* as used herein shall mean the transportation for compensation of persons or property originating at any point or place in the state of Iowa and destined to any other point or place in said state irrespective of the route or highway or highways traversed, including the crossing of any state line of the state of Iowa, or the ticket or bill of lading issued and used for such transportation.

[C39, §**5003.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.54]

97 Acts, ch 139, §3, 17, 18; 98 Acts, ch 1121, §8

For applicable scheduled fines, see §805.8A, subsection 13, paragraph a

321.55 Registration and financial liability coverage required for certain vehicles owned or operated by nonresidents.

1. A nonresident owner or operator engaged in remunerative employment within the state or carrying on business within the state and owning or operating a motor vehicle, trailer, or semitrailer within the state shall register and maintain financial liability coverage as required under section 321.20B for each vehicle and pay the same fees for registration as are paid for like vehicles owned by residents of this state. However, this paragraph does not apply to a person commuting from the person's residence in another state or whose employment is seasonal or temporary, not exceeding ninety days.

2. A nonresident owner of a motor vehicle operated within the state by a resident of the state shall register the vehicle and shall maintain financial liability coverage as required under section 321.20B for the vehicle. The nonresident owner shall pay the same fees for registration as are paid for like vehicles owned by residents of this state. However, registration under this paragraph is not required for vehicles being operated by residents temporarily, not exceeding ninety days. It is unlawful for a resident to operate within the state an unregistered motor vehicle required to be registered under this paragraph.

[C39, §**5003.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.55]

83 Acts, ch 58, §1; 97 Acts, ch 139, §4, 17, 18; 98 Acts, ch 1121, §8

For applicable scheduled fine, see §805.8A, subsection 2, paragraph b

321.56 Repair of out-of-state commercial motor vehicles — permits.

1. The operator of a commercial motor vehicle which is not registered within the state as required pursuant to this chapter or chapter 326 or which does not have an interstate fuel permit, as required under chapter 452A, may enter the state and travel to a commercial vehicle dealer or repair facility and exit the state if all of the following circumstances apply:

a. If the commercial motor vehicle is entering the state solely for the purposes of maintenance and repair to the commercial motor vehicle and is exiting the state after having completed vehicle maintenance or repair.

b. If the operator has obtained a temporary

entry or exit permit from the department.

c. If the commercial motor vehicle is unladen.

2. The department shall provide a temporary entry and exit permit to a commercial motor vehicle operator which authorizes the operator to enter and exit the state as allowed under this section. Any operator of a commercial motor vehicle who has in the operator's possession the permit allowing entry into the state and exit from the state shall not be charged with a registration violation under this chapter or chapter 326 or with a motor vehicle fuel tax violation under chapter 452A, except for violations of section 452A.74A.

3. For purposes of this section *"commercial motor vehicle"* means as defined in section 321.1, subsection 11, paragraph *"e"*, subparagraph (2).

2001 Acts, ch 132, §3; 2002 Acts, ch 1119, §46
Subsection 1, unnumbered paragraph 1 amended

SPECIAL PLATES TO MANUFACTURERS, TRANSPORTERS, AND DEALERS

321.57 Operation under special plates.

1. A dealer owning any vehicle of a type otherwise required to be registered under this chapter may operate or move the vehicle upon the highways solely for purposes of transporting, testing, demonstrating, or selling the vehicle without registering the vehicle, upon condition that the vehicle display in the manner prescribed in sections 321.37 and 321.38 a special plate issued to the owner as provided in sections 321.58 to 321.62. Additionally, a new car dealer or a used car dealer may operate or move upon the highways a new or used car or trailer owned by the dealer for either private or business purposes without registering it if the new or used car or trailer is in the dealer's inventory and is continuously offered for sale at retail, and there is displayed on it a special plate issued to the dealer as provided in sections 321.58 to 321.62.

2. In addition, while a service customer is having the customer's own vehicle serviced or repaired by the dealer, the service customer of the dealer may operate upon the highways a motor vehicle owned by the dealer, except a motor truck or truck tractor, upon which there is displayed a special plate issued to the dealer, provided all of the requirements of this section are complied with.

3. Also a transporter may operate or move any vehicle of like type upon the highways solely for the purpose of delivery upon likewise displaying thereon like plates issued to the transporter as provided in these sections.

4. The provisions of this section and sections 321.58 to 321.62 shall not apply to any vehicles offered for hire, work or service vehicles owned by a transporter or dealer.

5. Manufactured or mobile home retailers licensed under chapter 322B may transport and deliver mobile homes or manufactured homes in their inventory upon the highways of this state with a special plate displayed on the mobile home or manufactured home as provided in sections 321.58 to 321.62.

6. A dealer licensed as a wholesaler for a new motor vehicle model under chapter 322 may operate a new motor vehicle of that model, owned by the wholesaler, upon the highway when there is displayed on the vehicle a special plate issued to the wholesaler as provided in sections 321.58 through 321.62 and when operated solely for the purposes of demonstration, show, or exhibition.

[SS15, §1571-m14; C24, 27, 31, 35, §4888, 4894, 4895; C39, §**5004.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.57; 82 Acts, ch 1251, §12]

92 Acts, ch 1175, §1; 97 Acts, ch 139, §5, 17; 98 Acts, ch 1121, §5, 9; 99 Acts, ch 188, §11; 2001 Acts, ch 153, §17, 18; 2002 Acts, ch 1063, §19; 2002 Acts, ch 1119, §47
For applicable scheduled fine, see §805.8A, subsection 2, paragraph c
See Code editor's note to §8.55 at the end of Vol IV
Subsections 1, 2, 4, and 5 amended

321.58 Application.

All dealers, transporters, new motor vehicle wholesalers licensed under chapter 322, and manufactured or mobile home retailers licensed under chapter 322B, upon payment of a fee of seventy dollars for two years, one hundred forty dollars for four years, or two hundred ten dollars for six years, may make application to the department upon the appropriate form for a certificate containing a general distinguishing number and for one or more special plates as appropriate to various types of vehicles subject to registration. The applicant shall also submit proof of the applicant's status as a bona fide transporter, new motor vehicle wholesaler licensed under chapter 322, manufactured or mobile home retailer licensed under chapter 322B, or dealer, as reasonably required by the department. Dealers in new vehicles shall furnish satisfactory evidence of a valid franchise with the manufacturer of the vehicles authorizing the dealership.

[SS15, §1571-m14; C24, 27, 31, 35, §4888; C39, §**5004.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.58; 82 Acts, ch 1251, §13]

92 Acts, ch 1175, §2; 2000 Acts, ch 1016, §10; 2001 Acts, ch 153, §18; 2002 Acts, ch 1063, §20; 2002 Acts, ch 1119, §48
See Code editor's note to §8.55 at the end of Vol IV
Section amended

321.59 Issuance of certificate.

The department, upon granting any such application, shall issue to the applicant a certificate containing the applicant's name and address and the general distinguishing number assigned to the applicant.

[SS15, §1571-m14; C24, 27, 31, 35, §4890, 4891; C39, §**5004.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.59]

321.60 Issuance of special plates.

The department shall also issue special plates as applied for, which shall display the general distinguishing number assigned to the applicant. Each plate so issued shall also contain a number or symbol identifying the plate and distinguishing it from every other plate bearing the same general distinguishing number. The fee for each special plate is forty dollars for two years, eighty dollars for four years, or one hundred twenty dollars for six years.

Special plates may be validated in the same manner as regular registration plates under this chapter.

[SS15, §1571-m14; C24, 27, 31, 35, §4892; C39, §**5004.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.60]

84 Acts, ch 1305, §57; 92 Acts, ch 1175, §3

321.61 Expiration of special plates.

A special plate shall expire at midnight on the last day of the last month of the dealer's license expiration period, and upon application and payment of the fee the department shall validate the special plate in the same manner as regular registration plates.

[S13, §1571-m16; C24, 27, 31, 35, §4868; C39, §**5004.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.61]

92 Acts, ch 1175, §4

321.62 Records required.

Every transporter or dealer shall keep a written record of the vehicles upon which such special plates are used, which record shall be open to inspection by any police officer or any officer or employee of the department.

[C39, §**5004.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.62]

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c

321.63 Different places of business.

If a transporter or dealer has an established place of business in more than one city, the transporter or dealer shall secure a separate and distinct certificate of registration and number plates for each such place of business.

[SS15, §1571-m14; C24, 27, 31, 35, §4889; C39, §**5004.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.63]

321.64 Implementation of multiyear licensing and issuance of special plates. Repealed by 98 Acts, ch 1075, § 32.

321.65 Garage record.

Every person or corporation operating a public garage shall keep for public inspection a record of the registration number and engine or factory serial number of every motor vehicle offered for sale or taken in for repairs in said garage.

[C24, 27, §4988 – 4990; C31, 35, §4990-c1; C39, §**5004.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.65]

321.66 Duty to hold vehicles.

The proprietor of a garage and the proprietor's employees upon discovering that the engine number of a motor vehicle has been altered or obliterated shall immediately notify some member of the department or peace officer of the county in which the garage is located, and hold said vehicle for a period of twenty-four hours or until investigation shall have been made by such peace officer.

[C24, 27, 31, 35, §4991; C39, §**5004.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.66]

USED MOTOR VEHICLES

321.67 Certificate of title must be executed.

1. No person, except as provided in sections 321.23 and 321.45 shall sell or otherwise dispose of a registered vehicle or a vehicle subject to registration without delivering to the purchaser or transferee thereof a certificate of title with such assignment thereon as may be necessary to show title in the purchaser.

2. No person shall purchase or otherwise acquire or bring into this state a registered vehicle or a vehicle subject to registration without obtaining a certificate of title thereto except for temporary use or as provided in sections 321.23 and 321.45.

[C24, 27, 31, 35, §4898; C39, §**5005.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.67]

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c

321.68 Sale in bulk.

It shall be unlawful for any dealer in this state to sell and transfer the dealer's stock of used motor vehicles in bulk unless the dealer complies with the following requirements:

1. The vendor shall file with the county treasurer and the department, duplicate inventories of all used motor vehicles proposed to be transferred, giving the factory number, last registration number, if any, and description of each such used motor vehicle and the name and address of proposed vendee, with a certification signed by both the vendee and the vendor that the certificates of title pertaining to all the used motor vehicles listed on the inventory have been duly assigned to the vendee as prescribed in this chapter.

2. The vendee shall, if the vendee has not already secured a dealer's registration, immediately secure such registration from the department.

Upon the completion of such requirements the department shall certify to the county treasurer that such used motor vehicles are, from and after

a date to be set by the department, the property of the vendee.

[C24, 27, 31, 35, §4899; C39, §**5005.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.68]

321.69 Damage disclosure statement.

1. A certificate of title shall not be issued for a motor vehicle unless a damage disclosure statement has been made by the transferor of the vehicle and is furnished with the application for certificate of title. A damage disclosure statement must be provided by the transferor to the transferee in a transfer of ownership of a motor vehicle. The new certificate of title and registration receipt shall state on the face of the title the total cumulative dollar amount of damage reported by owners prior to the owner listed on the front of the title.

2. The damage disclosure statement required by this section shall, at a minimum, state the total retail dollar amount of all damage to the vehicle during the period of the transferor's ownership of the vehicle and whether the transferor knows if the vehicle was titled as a salvage or flood vehicle in this or any other state prior to the transferor's ownership of the vehicle. For the purposes of this section, *"damage"* refers to damage to the vehicle caused by fire, vandalism, collision, weather, falling objects, submersion in water, or flood, where the cost of repair is five thousand dollars or more per incident, but does not include normal wear and tear, glass damage, mechanical repairs or electrical repairs that have not been caused by fire, vandalism, collision, weather, falling objects, submersion in water, or flood. *"Damage"* does not include the cost of repairing, replacing, or reinstalling tires, lights, batteries, windshields, windows, a sound system, or an inflatable restraint system. A determination of the amount of damage to a vehicle shall be based on estimates of the retail cost of repairing the vehicle, including labor, parts, and other materials, if the vehicle has not been repaired or on the actual retail cost of repair, including labor, parts, and other materials, if the vehicle has been repaired. Only individual incidents in which the retail cost of repairs is five thousand dollars or more are required to be disclosed by this section. If the vehicle has incurred damage of five thousand dollars or more per incident in more than one incident, the damage amounts must be combined and disclosed as the total of all separate incidents.

3. The damage disclosure statement shall be provided by the transferor to the transferee at or before the time of sale. However, if the transferor has a salvage certificate of title for the vehicle, the transferor is not required to disclose under this section the total retail cost of repairs to the vehicle during the period of the transferor's ownership of the vehicle. If the transferor is not a resident of this state the transferee shall not be required to submit a damage disclosure statement from the transferor with the transferee's application for title unless the state of the transferor's residence requires a damage disclosure statement. However, the transferee shall submit a damage disclosure statement with the transferee's application for title indicating whether a salvage or rebuilt title had ever existed for the vehicle, whether the vehicle had incurred prior damage of five thousand dollars or more per incident, and the year, make, and vehicle identification number of the motor vehicle. The transferee shall not be required to indicate whether the vehicle had incurred prior damage of five thousand dollars or more per incident under this subsection if the transferor's certificate of title is from another state and if it indicates that the vehicle is salvaged and not rebuilt or is another state's salvage certificate of title.

4. A lessee who has executed a lease as defined in section 321F.1 shall provide a damage disclosure statement to the lessor at the termination of the lease. The damage disclosure statement shall be made on a separate disclosure document and shall state the total dollar amount of all damage to the vehicle which occurred during the term of the lease. The lessee's damage disclosure statement shall not be submitted with the application for title, but the lessor shall retain the lessee's damage disclosure statement for five years following the date of the statement.

5. The department shall retain each damage disclosure statement received and copies shall be available to the public and the attorney general upon request.

6. Authorized vehicle recyclers licensed under chapter 321H and motor vehicle dealers licensed under chapter 322 shall maintain copies of all damage disclosure statements where the recycler or dealer is either the transferor or the transferee for five years following the date of the statement. The copies shall be made available to the department or the attorney general upon request.

7. The damage disclosure statements shall be made on the back of the certificate of title if the title is available to the transferor at the time of sale. If the title is not available at the time of sale or if the face of the transferor's Iowa title contains no indication that the vehicle was previously salvaged or titled as salvaged or rebuilt and the transferor knows or reasonably should know that the vehicle was previously salvaged or titled as salvaged or rebuilt in another state, the transferor shall make the disclosure on a separate disclosure document. The damage disclosure statement forms shall be as approved by the department. The treasurer shall not accept a damage disclosure statement and issue a title unless the back of the title or separate disclosure document has been fully completed and signed and dated by the transferee and the transferor, if applicable.

In addition to the information required in sub-

section 2, a separate disclosure document shall state whether the vehicle's certificate of title indicates the existence of damage prior to the period of the transferor's ownership of the vehicle, and the amount of that damage if the transferor knows or reasonably should know of the prior damage, and whether the vehicle was titled as a salvage vehicle during the period of the transferor's ownership of the vehicle.

8. A person, authorized vehicle recycler licensed under chapter 321H, or motor vehicle dealer licensed under chapter 322 shall not be liable to a subsequent owner of a vehicle because a prior owner or lessee gave a false or inaccurate damage disclosure statement or failed to disclose that the vehicle had previously been damaged and repaired or had been titled on a salvage or rebuilt certificate of title unless the person, recycler, or dealer knew or reasonably should have known that the prior owner or lessee gave a false or inaccurate damage disclosure statement or failed to disclose that the vehicle had been damaged and repaired or had been titled on a salvage or rebuilt certificate of title.

9. This section does not apply to new motor vehicles with a true mileage, as defined in section 321.71, of one thousand miles or less, motor trucks and truck tractors with a gross vehicle weight rating of sixteen thousand pounds or more, vehicles more than nine model years old, motorcycles, motorized bicycles, and special mobile equipment. The section does apply to motor homes.

10. A person who knowingly makes a false damage disclosure statement commits a fraudulent practice. Failure of a person, authorized vehicle recycler licensed under chapter 321H, or motor vehicle dealer licensed under chapter 322, to comply with any duty imposed by this section constitutes a violation of section 714.16, subsection 2, paragraph *"a"*.

11. The department shall adopt rules as necessary to implement this section.

92 Acts, ch 1104, §4; 95 Acts, ch 45, §4, 5; 96 Acts, ch 1152, §3; 97 Acts, ch 108, §8; 98 Acts, ch 1034, §1; 2002 Acts, ch 1063, §21

Subsection 7, NEW unnumbered paragraph 2

321.70 Dealer vehicles.

A dealer registered under this chapter shall not be required to register any vehicle owned by the dealer which is being held for sale or trade, provided the registration fee was not delinquent at the time the vehicle was acquired by the dealer. When a dealer ceases to hold any vehicle for sale or trade or the vehicle otherwise becomes subject to registration under this chapter the registration fee and delinquent registration fee, if any, shall be due for the registration year.

[C24, 27, 31, 35, §4901; C39, §**5005.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.70]

82 Acts, ch 1062, §11, 38

321.71 Odometer requirements.

1. For the purposes of this section the following words and phrases shall have the meanings respectively ascribed to them:

a. "Intent and purpose of this section" is and shall mean to achieve the end that odometers of motor vehicles shall at all times correctly show the true mileage that the motor vehicle has been driven.

b. "True mileage" is the actual mileage the motor vehicle has been driven.

2. No person shall knowingly tamper with, adjust, alter, change, set back, disconnect or fail to connect the odometer of any motor vehicle, or cause any of the foregoing to occur to an odometer of a motor vehicle, so as to reflect a lower mileage than the true mileage driven by the motor vehicle.

3. No person shall conspire with any other person to evade the intent and purpose of this section.

4. No person shall with the intent to defraud operate a motor vehicle on any street or highway knowing that the odometer of the motor vehicle is disconnected or nonfunctional.

5. No person shall advertise for sale, sell, use or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage.

6. In the event any odometer is repaired or replaced, the reading of the repaired or replaced odometer shall be set at the reading of the odometer repaired or replaced immediately prior to repair or replacement, but where the odometer is incapable of registering the same mileage the odometer shall be adjusted to read zero and any adjustment made in accordance with the provisions of this subsection shall not be deemed a violation of any provision of this section.

7. A certificate of title shall not be issued for a motor vehicle less than ten model years old which is equipped with an odometer by the manufacturer, unless an odometer statement which is in compliance with federal law and regulations has been made by the transferor of the vehicle and is furnished with the application for certificate of title. The new certificate of title shall record on its face the odometer reading and the word "actual" if the true mileage is known. If the odometer reading is not the true mileage or the true mileage is unknown, the words "not actual" shall be recorded. If the odometer reading is greater than the odometer can mechanically count, the words "exceeds the mechanical limits" shall be recorded. However, a certificate of title may be issued for a motor vehicle to a person who moves into this state if the person acquired ownership of the motor vehicle prior to moving to this state. This subsection does not apply to motor vehicles having a gross vehicle weight rating of more than sixteen thousand pounds.

8. Any person who knowingly makes or delivers a false odometer statement as required by sub-

section 7 shall be guilty of a violation of this section.

9. An Iowa licensed motor vehicle dealer shall not have in possession as inventory for sale a used motor vehicle acquired by the dealer after the tenth model year prior to the current registration year, for which the dealer does not possess an odometer statement by the transferor which is in compliance with federal law and regulations unless a certificate of title has been issued for the vehicle in the name of the dealer. Transfer of a new motor vehicle with an ownership document which is a manufacturer's statement of origin requires an odometer statement only when transferred at retail.

10. A transferee of a motor vehicle reassigning the certificate of title to such motor vehicle pursuant to the provisions of section 321.48, subsection 1, shall not be guilty of a violation of this section if such transferee has in the transferee's possession an odometer statement by the transferor which is in compliance with federal law and regulations and if the transferee has no knowledge that the statement is false and that the transferee has no knowledge that the odometer does not reflect the true mileage of such motor vehicle.

11. The department may adopt rules which shall be in compliance with the federal Truth in Mileage Act of 1986, Pub. L. No. 99-579.

12. Any person who violates this section commits a fraudulent practice.

[C73, 75, 77, 79, 81, §321.71]

84 Acts, ch 1243, §2, 3; 84 Acts, ch 1305, §58; 90 Acts, ch 1131, §1, 2; 98 Acts, ch 1100, §43

321.71A Nonoperative air bags.

A person shall not install or reinstall for compensation, distribute, or sell a nonoperative air bag that is part of an inflatable restraint system for a motor vehicle if the person knows that the air bag is nonoperative. A violation of this section is an aggravated misdemeanor punishable by confinement for up to one year and a fine of at least five hundred dollars but not more than five thousand dollars.

For purposes of this section, *"nonoperative air bag"* includes an air bag that has been previously deployed, is nonfunctional, or is otherwise defective. *"Nonoperative air bag"* also includes anything that is inserted, or is intended to be inserted, in place of an air bag, which would prohibit an inflatable restraint system from functioning properly.

2001 Acts, ch 94, §1

SPECIAL ANTITHEFT LAW

321.72 Report of stolen and recovered motor vehicles.

Every peace officer upon receiving reliable information that any vehicle registered under this chapter has been stolen shall immediately report the theft to the department unless prior thereto information has been received of the recovery of the vehicle. Any officer upon receiving information that any vehicle, which the officer has previously reported as stolen, has been recovered, shall immediately report the fact of the recovery to the law enforcement agency which originated the theft report and to the department.

[C27, 31, 35, §13417-a1; C39, §**5006.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.72; 81 Acts, ch 103, §1]

321.73 Reports by owners.

The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the department of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement.

Every owner or other person who has given any such notice must notify the department of a recovery of such vehicle.

[C39, §**5006.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.73]

321.74 Action by department.

The department upon receiving a report of a stolen or embezzled vehicle as hereinbefore provided shall file and appropriately index the same and shall immediately suspend the registration of the vehicle so reported and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle has been recovered.

[C39, §**5006.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.74]

321.75 Repealed by 77 Acts, ch 103, § 63.

321.76 and 321.77 Repealed by 76 Acts, ch 1245(4), § 525. See § 714.1 and 714.7.

321.78 Injuring or tampering with vehicle.

Any person who either individually or in association with one or more other persons willfully injures or tampers with any vehicle or breaks or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a simple misdemeanor.

[C39, §**5006.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.78]

321.79 Intent to injure.

Any person who with intent to commit any malicious mischief, injury, or other crime climbs into or upon a vehicle whether it is in motion or at rest or

with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended is guilty of a simple misdemeanor.

[C39, §**5006.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.79]

321.80 Repealed by 76 Acts, ch 1245(4), § 525. See § 321.92(2).

321.81 Presumptive evidence.

Whoever shall conceal, barter, sell, possess or dispose of any vehicle or component part which has been stolen, or shall disguise, alter, or change such vehicle or component part or the vehicle identification number or component part number thereof, or remove or change the registration plate thereon, or do any act designed to prevent identification of such vehicle or component part, shall be presumed to have knowledge that such vehicle or component part had been stolen.

[C24, 27, 31, 35, §5093; C39, §**5006.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.81]

321.82 and 321.83 Repealed by 76 Acts, ch 1245(4), § 525. See § 714.1.

321.84 Seizure of vehicles.

It shall be the duty of any peace officer who finds a vehicle or component part, the vehicle identification number or component part number of which has been altered, defaced, or tampered with, and who has reasonable cause to believe that the possessor of the vehicle or component part wrongfully holds it, to forthwith seize it, either with or without warrant, and deliver it to the sheriff of the county in which it is seized.

[C27, 31, 35, §5083-b1; C39, §**5006.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.84]

321.85 Stolen vehicles or component parts.

When a vehicle or component part is seized under section 321.84 or is stolen or embezzled, and is not claimed by the owner before the date on which the person charged with its stealing or embezzling is convicted, the officer having the vehicle or component part in the officer's custody shall, on that date by certified mail, notify the department that the officer has the vehicle or component part in the officer's possession, giving a full and complete description of it, including all vehicle identification numbers and component part numbers. If there is a dispute regarding a claim for the vehicle or component part, the agency holding the vehicle or component part shall conduct an evidentiary hearing to adjudicate the claim.

[C24, §12222; C27, 31, 35, §5083-b2, 12222; C39, §**5006.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.85]

85 Acts, ch 64, §1

321.86 Notice by director.

The director shall, if the owner appears of record in the director's office, notify the owner of the fact that the vehicle or component part is in the custody of the officer, and if not of record in the director's office, the director shall mail the description to the county treasurer of each county.

[C24, 27, 31, 35, §12223; C39, §**5006.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.86]

321.87 Delivery to owner.

If, within forty days thereafter, the owner of the vehicle or component part appears and properly identifies it, the officer having the vehicle or component part in custody shall deliver it to such owner upon payment by the owner of the costs incurred incident to the apprehension of the vehicle or component part and the location of the owner.

[C24, §12224; C27, 31, 35, §5083-b3, 12224; C39, §**5006.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.87]

321.88 Failure of owner to claim.

If the owner does not appear within forty days, the motor vehicle shall be deemed abandoned and the officer having possession of the motor vehicle shall proceed as provided in section 321.89, subsections 3 and 4.

[C24, §12225; C27, 31, 35, §5083-b3, 12225; C39, §**5006.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.88]

321.89 Abandoned vehicles.

1. *Definitions.* As used in this section and sections 321.90 and 321.91 unless the context otherwise requires:

a. "Abandoned vehicle" means any of the following:

(1) A vehicle that has been left unattended on public property for more than twenty-four hours and lacks current registration plates or two or more wheels or other parts which renders the vehicle totally inoperable.

(2) A vehicle that has remained illegally on public property for more than twenty-four hours.

(3) A vehicle that has been unlawfully parked on private property or has been placed on private property without the consent of the owner or person in control of the property for more than twenty-four hours.

(4) A vehicle that has been legally impounded by order of a police authority and has not been reclaimed for a period of ten days. However, a police authority may declare the vehicle abandoned within the ten-day period by commencing the notification process in subsection 3.

(5) Any vehicle parked on the highway deter-

mined by a police authority to create a hazard to other vehicle traffic.

(6) A vehicle that has been impounded pursuant to section 321J.4B by order of the court and whose owner has not paid the impoundment fees after notification by the person or agency responsible for carrying out the impoundment order.

b. "Demolisher" means any city or public agency organized for the disposal of solid waste, or any person whose business it is to convert a vehicle to junk, processed scrap, or scrap metal, or otherwise to wreck or dismantle vehicles.

c. "Police authority" means the Iowa state patrol, any law enforcement agency of a county or city, or any special security officer employed by the state board of regents under section 262.13.

2. *Authority to take possession of abandoned vehicles.* A police authority, upon the authority's own initiative or upon the request of any other authority having the duties of control of highways or traffic, shall take into custody an abandoned vehicle on public property and may take into custody an abandoned vehicle on private property. A police authority taking into custody an abandoned vehicle which has been determined to create a traffic hazard shall report the reasons constituting the hazard in writing to the appropriate authority having duties of control of the highway. The police authority may employ its own personnel, equipment, and facilities, or hire a private entity, equipment, and facilities for the purpose of removing, preserving, storing, or disposing of abandoned vehicles. If a police authority employs a private entity to dispose of abandoned vehicles, the police authority shall provide the private entity with the names and addresses of the registered owners, all lienholders of record, and any other known claimant to the vehicle or the personal property found in the vehicle. The owners, lienholders, or other claimants of the abandoned vehicle shall not have a cause of action against a private entity for action taken under this section, if the private entity provides notice as required by subsection 3, paragraph *"a"*, to those persons whose names were provided by the police authority.

3. *Notification of owner, lienholders, and other claimants.*

a. A police authority or private entity which takes into custody an abandoned vehicle shall notify, within twenty days, by certified mail, the last known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle, addressed to their last known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall describe the year, make, model, and serial number of the vehicle, describe the personal property found in the vehicle, set forth the location of the facility where the vehicle is being held, and inform the persons receiving the notice of their right to reclaim the vehicle and personal property within ten days after the effective date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody and upon payment of the costs of notice required pursuant to this subsection. The notice shall also state that the failure of the owner, lienholders, or claimants to exercise their right to reclaim the vehicle or personal property within the time provided shall be deemed a waiver by the owner, lienholders, and claimants of all right, title, claim, and interest in the vehicle or personal property and that failure to reclaim the vehicle or personal property is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher and to disposal of the personal property by sale or destruction. The notice shall state that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or property by the police authority or private entity or of the assessment of fees and charges provided by this section may ask for an evidentiary hearing before the police authority to contest those matters. If the persons receiving the notice do not ask for a hearing or exercise their right to reclaim the vehicle or personal property within the ten-day reclaiming period, the owner, lienholders, or claimants shall no longer have any right, title, claim, or interest in or to the vehicle or the personal property. A court in any case in law or equity shall not recognize any right, title, claim, or interest of the owner, lienholders, or claimants, after the expiration of the ten-day reclaiming period.

b. If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice under this section. The published notice may contain multiple listings of abandoned vehicles and personal property but shall be published within the same time requirements and contain the same information as prescribed for mailed notice in paragraph *"a"*.

c. The owner, lienholders, or claimants may, by written request delivered to the police authority or private entity prior to the expiration of the ten-day reclaiming period, obtain an additional five days within which the vehicle or personal property may be reclaimed.

4. *Auction of abandoned vehicles.* If an abandoned vehicle has not been reclaimed as provided for in subsection 3, the police authority or private entity shall make a determination as to whether or not the vehicle shall be sold for use upon the highways. If the vehicle is not sold for use upon the highways, it shall be sold for junk, or demolished and sold as scrap. The police authority or

private entity shall sell the vehicle at public auction. Notwithstanding any other provision of this section, a police authority or private entity, which has taken into possession any abandoned vehicle which lacks an engine, two or more wheels, another part which renders the vehicle totally inoperable, or which has a fair market value of less than five hundred dollars as determined by the police authority or private entity, may dispose of the vehicle to a demolisher for junk without public auction after complying with the notification procedures in subsection 3. The purchaser of the vehicle takes title free and clear of all liens and claims of ownership, shall receive a sales receipt from the police authority or private entity, and is entitled to register the vehicle and receive a certificate of title if sold for use upon the highways. If the vehicle is sold or disposed of to a demolisher for junk, the demolisher shall make application for a junking certificate to the county treasurer within thirty days of purchase and shall surrender the sales receipt in lieu of the certificate of title.

From the proceeds of the sale of an abandoned vehicle the police authority, if the police authority did not hire a private entity, shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing which resulted from placing the abandoned vehicle in custody, all notice and publication costs incurred pursuant to subsection 3, the cost of inspection, and any other costs incurred except costs of bookkeeping and other administrative costs. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for ninety days, and shall then be deposited in the road use tax fund. The costs to police authorities of auction, towing, preserving, storage, and all notice and publication costs, and all other costs which result from placing abandoned vehicles in custody, whenever the proceeds from a sale of the abandoned vehicles are insufficient to meet these expenses and costs, shall be paid from the road use tax fund and are the obligation of the last owner or owners, jointly and severally.

The director of transportation shall establish by rule a claims procedure to be followed by police authorities in obtaining expenses and costs from the fund. If a private entity has been hired, the police authority may file a claim with the department for reimbursement of towing fees which shall be paid from the road use tax fund.

[C73, 75, 77, 79, 81, §321.89]

84 Acts, ch 1305, §59; 85 Acts, ch 64, §2; 87 Acts, ch 123, §1; 88 Acts, ch 1158, §66; 92 Acts, ch 1238, §31; 95 Acts, ch 48, §3; 95 Acts, ch 118, §13; 96 Acts, ch 1126, §4; 98 Acts, ch 1074, §22; 2000 Acts, ch 1016, §11

321.90 Disposal of abandoned motor vehicles.

1. *Garagekeepers and abandoned motor vehicles.* Any motor vehicle left in a garage operated for commercial purposes after the period for which the vehicle was to remain on the premises shall, after notice by certified mail to the last known registered owner of the vehicle addressed to the owner's last known address of record to reclaim the vehicle within ten days of the date of the notice, be deemed an abandoned motor vehicle unless reclaimed by the owner within such ten-day period or the owner notifies the garagekeeper in writing within such period of time that such vehicle is not an abandoned motor vehicle and shall be reported by the garagekeeper to the police authority. If the identity or address of the last registered owner of the motor vehicle cannot be determined, the vehicle shall be deemed an abandoned motor vehicle on the eleventh day after the period for which the vehicle was to remain on the premises unless reclaimed by the owner within the ten-day period or the owner notifies the garagekeeper in writing within such period of time that such vehicle is not an abandoned motor vehicle and shall be reported by the garagekeeper to the police authority. All abandoned motor vehicles left in garages may be taken into custody by a police authority upon the request of the garagekeeper and sold in accordance with the procedures set forth in section 321.89, subsection 4, unless the motor vehicle is reclaimed. The proceeds of the sale shall be first applied to the garagekeeper's charges for towing and storage, and any surplus proceeds shall be distributed in accordance with section 321.89, subsection 4. Nothing in this section shall be construed to impair any lien of a garagekeeper under the laws of this state, or the right of a garagekeeper to foreclose the garagekeeper's lien, provided that a garagekeeper shall be deemed to have abandoned the garagekeeper's artisan lien when such vehicle is taken into custody by the police authority. For the purposes of this section "garagekeeper" means any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of motor vehicles.

2. *Disposal to demolisher.*

a. Any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed and is thereby unable to transfer title to the motor vehicle, may apply to the police authority of the jurisdiction in which the motor vehicle is situated for authority to sell, give away, or otherwise dispose of the motor vehicle to a demolisher.

b. The application shall set out the name and address of the applicant, and the year, make, model, and serial number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment, or a statement that the title of the motor vehicle is lost or de-

stroyed, or the reasons for the defect of title in the owner. The applicant shall execute an affidavit stating that the facts alleged are true and that no material fact has been withheld. An order for disposal obtained pursuant to section 555B.8, subsection 3, satisfies the application requirements of this paragraph.

c. If the police authority finds that the application is executed in proper form, and shows that the motor vehicle has been abandoned upon the property of the applicant, or if it shows that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the police authority shall follow appropriate notification procedures as set forth in section 321.89, subsection 3, except that in the case of an order for disposal obtained pursuant to section 555B.8, subsection 3, no notification is required.

d. If the abandoned motor vehicle is not reclaimed in accordance with section 321.89, subsection 3, or no lienholder objects to the disposal in the case of an owner-applicant, the police authority shall give the applicant a certificate of authority allowing the applicant to obtain a junking certificate for the motor vehicle. The applicant shall make application for a junking certificate to the county treasurer within fifteen days of purchase and surrender the certificate of authority in lieu of the certificate of title. The demolisher shall accept the junking certificate in lieu of the certificate of title to the motor vehicle.

e. Notwithstanding any other provisions of this section and sections 321.89 and 321.91, any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed, may dispose of such motor vehicle to a demolisher for junk without a title and without the notification procedures of section 321.89, subsection 3, if the motor vehicle lacks an engine or two or more wheels or other structural part which renders the vehicle totally inoperable. The police authority shall give the applicant a certificate of authority. The owner shall apply to the county treasurer for a junking certificate within fifteen days of purchase and shall surrender the certificate of authority in lieu of the certificate of title.

f. The owner of an abandoned motor vehicle and all lienholders shall no longer have any right, title, claim, or interest in or to the motor vehicle; and no court in any case in law or equity shall recognize any right, title, claim, or interest of any owner or lienholders after the disposal of the motor vehicle to a demolisher.

g. Any proceeds from the sale of an abandoned motor vehicle to a demolisher under this section, by one other than the owner of the vehicle, except the sale of a vehicle pursuant to an order for disposal obtained pursuant to section 555B.8, subsection 3, shall first be applied to that person's expenses in effecting the sale, including storage, towing, and disposal charges, and any surplus shall be distributed in accordance with section 321.89, subsection 4. The proceeds from the sale of a vehicle disposed of pursuant to section 555B.8, subsection 3, shall be distributed in accordance with section 555B.9.

3. *Duties of demolishers.*

a. Any demolisher who purchases or otherwise acquires an abandoned motor vehicle for junk under the provisions of this section shall junk, scrap, wreck, dismantle, or demolish such motor vehicle. A demolisher shall not junk, scrap, wreck, dismantle, or demolish a vehicle until the demolisher has obtained the junking certificate issued for the vehicle.

b. A demolisher shall keep an accurate and complete record of all motor vehicles purchased or received by the demolisher in the course of the demolisher's business. These records shall contain the name and address of the person from whom each motor vehicle was purchased or received and the date when the purchases or receipts occurred. The records shall be open for inspection by any police authority at any time during normal business hours. Any record required by this section shall be kept by the demolisher for at least one year after the transaction to which it applies.

[C73, 75, 77, 79, 81, §321.90]

88 Acts, ch 1138, §12 – 14; 95 Acts, ch 118, §14, 15

321.91 Limitation on liability — penalty for abandonment.

1. No person, firm, corporation, unit of government, garagekeeper or police authority upon whose property an abandoned vehicle is found or who disposes of such abandoned vehicle in accordance with sections 321.89 and 321.90 shall be liable for damages by reason of the removal, sale, or disposal of such vehicle.

2. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph *"b"*.

[C73, 75, 77, 79, 81, §321.91]

2000 Acts, ch 1203, §3; 2001 Acts, ch 137, §5

321.92 Altering or changing numbers.

1. *Fraudulent intent.* No person shall with fraudulent intent, deface, destroy, or alter the vehicle identification number or component part number or other distinguishing number or identification mark of a vehicle or component part, including a rebuilt identification, nor shall a person place or stamp a serial, engine, or other number or mark upon a vehicle or component part, except one assigned thereto by the department. A violation of this provision is a felony punishable as provided in section 321.483.

This subsection does not prohibit the restoration of an original vehicle identification number,

component part number, or other number or mark when the restoration is made by the department, nor prevent a manufacturer from placing, in the ordinary course of business, numbers or marks upon vehicles or component parts.

2. *Vehicles without identification numbers.* A person who knowingly buys, receives, disposes of, sells, offers for sale, or has in the person's possession a vehicle, or a component part of a vehicle, from which the vehicle identification number, rebuilt identification, or component part number has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of the vehicle or component part is guilty of a simple misdemeanor.

[SS15, §1571-m12a; C24, 27, 31, 35, §5080; C39, §**5006.09, 5006.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §321.80, 321.92; C79, 81, §321.92]

88 Acts, ch 1089, §7

Similar provisions, §714.8(5)

321.93 Defense.

Under a charge of possessing a vehicle or component part, the vehicle identification number or component part number of which is defaced, altered, or tampered with, it shall be a complete defense that the accused at the time of such possession had in the accused's possession a certificate of title from the officer whose duty it is to register vehicles and component parts in the state in which the vehicle or component part is registered, showing good and sufficient reason why numbers are defaced, changed, or tampered with, the original vehicle identification number or component part number, and the ownership of the vehicle or component part.

[C24, 27, 31, 35, §5083; C39, §**5006.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.93]

321.94 Test to determine true number.

Where it appears that a vehicle identification number or component part number has been altered, defaced or tampered with, any peace officer, or any other person acting under a peace officer's direction, may apply any recognized process or test to the part containing the number for the purpose of determining the true number.

[C27, 31, 35, §5083-b5; C39, §**5006.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.94; 81 Acts, ch 103, §2]

321.95 Right of inspection.

Peace officers shall have the authority to inspect any vehicle or component part in possession of a vehicle rebuilder, vehicle salvager, used vehicle parts dealer or any person licensed under chapter 322, or found upon the public highway or in any public garage, enclosure or property in which vehicles or component parts are kept for sale, storage, hire or repair and for that purpose may enter any such public garage, enclosure or property. Every vehicle rebuilder, vehicle salvager, used vehicle parts dealer, or any person licensed under chapter 322, or a person having used engines or transmissions which are component parts for sale shall keep an accurate and complete record of all vehicles demolished and of such component parts purchased or received for resale as component parts in the course of business. These records shall contain the name and address of the person from whom each such vehicle or component part was purchased or received and the date when the purchase or receipt occurred or the junking certificate if required for the vehicle. These records shall be open for inspection by any peace officer at any time during normal business hours. Records required by this section shall be kept for at least three years after the transaction which they record.

[C27, 31, 35, §5083-b6; C39, §**5006.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.95]

321.96 Prohibited plates — certificates.

A person shall not display or cause or permit to be displayed, or have in the person's possession, a vehicle identification number or component part number except as provided in this chapter, or a canceled, revoked, altered, or fictitious registration number plates, registration receipt, or certificate of title, as the same are respectively provided for in this chapter.

[C24, 27, 31, 35, §5084; C39, §**5006.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.96]

90 Acts, ch 1230, §17

OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION

321.97 Fraudulent applications.

Any person who fraudulently uses a false or fictitious name in any application for the registration of, or certificate of title to, a vehicle or knowingly makes a false statement or knowingly conceals a material fact or otherwise commits a fraud in any such application is guilty of a fraudulent practice.

[S13, §1571-m26; C24, 27, 31, 35, §5088; C39, §**5007.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.97]

321.98 Operation without registration.

A person shall not operate, and an owner shall not knowingly permit to be operated upon any highway any vehicle required to be registered and titled hereunder unless there shall be attached thereto and displayed thereon when and as required by this chapter a valid registration card and registration plate or plates issued therefor for the current registration year and unless a certificate of title has been issued for such vehicle except as otherwise expressly permitted in this chapter.

Any violation of this section is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph *"b"*.

[C24, 27, 31, 35, §5085; C39, §**5007.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.98]

2001 Acts, ch 176, §50, 59

321.99 Fraudulent use of registration.

A person shall not knowingly lend to another a registration card, registration plate, special plate, or permit issued to the person if the other person desiring to borrow the card, plate, or permit would not be entitled to the use of it. A person shall not knowingly permit the use of a registration card, registration plate, special plate, or permit issued to the person by one not entitled to it, nor shall a person knowingly display upon a vehicle a registration card, registration plate, special plate, or permit not issued for that vehicle under this chapter. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph *"d"*.

[SS15, §1571-m12a; C24, 27, 31, 35, §4878, 5080; C39, §**5007.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.99]

83 Acts, ch 125, §2; 86 Acts, ch 1055, §1; 2000 Acts, ch 1203, §4; 2001 Acts, ch 137, §5

321.100 False evidences of registration.

It is a fraudulent practice for any person to commit any of the following acts:

1. To alter with a fraudulent intent any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer.

2. To forge or counterfeit any such document or plate.

3. To hold or use any such document or plate knowing the same to have been so altered, forged, or falsified.

4. To hold or use any certificate of title, manufacturer's or importer's certificate, registration card, registration plate, manufacturer's vehicle identification plate, or permit issued by the department or county treasurer, for any vehicle to which such document or plate is not legally assigned.

5. To transfer in any manner or to offer to transfer in any manner a certificate of title, manufacturer's or importer's certificate to any vehicle on which a salvage certificate of title or junking certificate is required under section 321.52, with knowledge or reason to believe that the certificate will be used for a vehicle other than the vehicle for which the certificate is issued. *"Transfer"* for the purposes of this subsection means to sell, exchange, change possession or ownership or convey in any manner.

[SS15, §1571-m12a; C24, 27, 31, 35, §5080; C39, §**5007.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.100]

91 Acts, ch 97, §44

321.101 Suspension or revocation of registration or cancellation of certificate of title by department.

1. The department is hereby authorized to suspend or revoke the registration of a vehicle, registration card, registration plate, or any nonresident or other permit in any of the following events:

a. When the department is satisfied that such registration card, plate, or permit was fraudulently or erroneously issued.

b. When the department determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

c. When a registered vehicle has been dismantled or wrecked.

d. When the department determines that the required fee has not been paid and the fee is not paid upon reasonable notice and demand.

e. When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.

f. When the department determines that the owner has committed any offense under this chapter involving the registration card, plate, or permit to be suspended or revoked.

g. When the department is so authorized under any other provision of law.

h. If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.

2. The department shall cancel a certificate of title that appears to have been improperly issued or fraudulently obtained or, in the case of a mobile home or manufactured home, if taxes were owing under chapter 435 at the time the certificate was issued and have not been paid. However, before the certificate to a mobile home or manufactured home for which taxes were owing can be canceled, notice and opportunity to pay the taxes must be given to the person to whom the certificate was issued. Upon cancellation of any certificate of title the department shall notify the county treasurer who issued it, who shall enter the cancellation upon the records. The department shall also notify the person to whom the certificate of title was issued, as well as any lienholders appearing on the certificate of title, of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted on the certificate of title.

3. Notice of suspension or revocation of the registration of a vehicle, registration card, registration plate, or any nonresident or other permit under the terms of this section shall be by personal delivery of the notice to the person to be so notified

or by certified mail addressed to the person at the person's address as shown on the registration record. A return acknowledgment is not necessary to prove such latter service.

If a vehicle, for which the registration has been suspended or revoked pursuant to subsection 1, paragraph *"d"*, or section 321.101A, is transferred to a bona fide purchaser for value without actual knowledge of such suspension or revocation, then the vehicle shall be deemed to be registered and the provisions of sections 321.28 and 321.30, subsections 4 and 5, shall not be applicable to such vehicle for the failure of the previous owner to pay the required fees.

[C24, 27, 31, 35, §5090; C39, §**5007.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.101; 82 Acts, ch 1251, §14]

95 Acts, ch 55, §5; 99 Acts, ch 188, §12; 2000 Acts, ch 1016, §12; 2001 Acts, ch 153, §17

321.101A Revocation of registration by county treasurer.

The county treasurer may revoke the registration and registration plates of a vehicle if the registration fees are paid by check and the check is not honored by the payer's financial institution upon reasonable notice and demand. The owner of the vehicle or person in possession of the registration and registration plates for the vehicle shall immediately return the revoked registration and registration plates to the appropriate county treasurer's office.

2000 Acts, ch 1016, §13

321.102 Suspending or revoking special registration.

The department is also authorized to suspend or revoke a certificate or the special plates issued to a manufacturer, transporter, or dealer upon determining that any said person is not lawfully entitled thereto or has made or knowingly permitted any illegal use of such plates or has committed fraud in the registration of vehicles or failed to give notices of transfer when and as required by this chapter.

[C39, §**5007.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.102]

321.103 Owner to return evidences of registration and title.

Whenever the department as authorized hereunder cancels, suspends, or revokes the registration of a vehicle, or certificate of title, or registration card, or registration plate or plates, or any nonresident or other permit or the registration of any dealer, the owner or person in possession of the same shall immediately return the evidences of registration, certificate of title, or plates so canceled, suspended, or revoked to the department.

[C39, §**5007.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.103]

321.104 Penal offenses against title law.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph *"c"*, for any person to commit any of the following acts:

1. To operate any motor vehicle upon the highways upon which the certificate of title has been canceled, or while a certificate of registration of a motor vehicle is suspended or revoked.

2. For a dealer, or a person acting on behalf of a dealer to acquire, purchase, hold or display for sale a motor vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title, or assignments thereof, unless otherwise provided in this chapter.

3. To fail to surrender a certificate of title, registration card, or registration plates upon cancellation, suspension, or revocation of the certificate or registration by the department and notice as prescribed in this chapter.

4. To sell, offer for sale, or transfer a motor vehicle, trailer, or semitrailer, except as provided in section 321.47 or 321.48, without obtaining a certificate of title in the name of the seller or transferor or without delivering to the purchaser or transferee a certificate of title or a manufacturer's or importer's certificate duly assigned to the purchaser or transferee as provided in this chapter.

5. To violate any of the other provisions of this chapter or any lawful rules adopted pursuant to this chapter.

6. For a manufactured or mobile home retailer to sell or transfer a mobile home or manufactured home without delivering to the purchaser or transferee a certificate of title or a manufacturer's or importer's certificate properly assigned to the purchaser, or to transfer a mobile home or manufactured home without disclosing to the purchaser the owner of the mobile home or manufactured home in a manner prescribed by the department pursuant to rules, or to fail to apply for and obtain a certificate of title for a used mobile home or manufactured home, titled in Iowa, acquired by the manufactured or mobile home retailer within thirty days from the date of acquisition as required under section 321.45, subsection 4.

[S13, §1571-m24; C24, 27, 31, 35, §5086; C39, §**5007.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.104; 82 Acts, ch 1251, §15]

85 Acts, ch 195, §33; 86 Acts, ch 1237, §20; 87 Acts, ch 130, §5; 97 Acts, ch 108, §9; 99 Acts, ch 188, §13; 2000 Acts, ch 1154, §23; 2000 Acts, ch 1203, §5; 2001 Acts, ch 137, §5; 2001 Acts, ch 153, §17; 2002 Acts, ch 1119, §49

Subsection 6 amended

REGISTRATION FEES

Local vehicle tax; see chapter 422B

321.105 Annual fee required.

An annual registration fee shall be paid for each vehicle operated upon the public highways of this state unless the vehicle is specifically exempted under this chapter. If a vehicle, which has been registered for the current registration year, is transferred during the registration year, the transferee shall reregister the vehicle as provided in section 321.46.

The registration fee shall be paid to the county treasurer at the same time the application is made for the registration or reregistration of the motor vehicle or trailer. An owner may, when applying for registration or reregistration of a motor vehicle or trailer, request that the plates be mailed to the owner's post-office address. The owner's request shall be accompanied by a mailing fee as determined annually by the director in consultation with the Iowa county treasurers association.

Upon application by a financial institution, as defined in section 422.61, and approval of the application by the county treasurer, the county treasurer in any county may authorize the financial institution to receive applications for renewal of vehicle registrations and payment of the registration fees. The registration fees shall be delivered to the county treasurer at the time the county treasurer has processed the vehicle registration application. Registration fees received with vehicle registration applications shall be designated as public funds only upon receipt of such funds by the county treasurer from the financial institution.

In addition to the payment of an annual registration fee for each trailer and semitrailer to be issued an annual registration plate, an additional registration fee may be paid for a period of two or four subsequent registration years.

Seriously disabled veterans who have been provided with an automobile or other vehicle by the United States government under the provisions of sections 1901 to 1903, Title 38 of the United States Code, 38 U.S.C. § 1901 et seq. (1970), shall be exempt from payment of any automobile registration fee provided in this chapter, and shall be provided, without fee, with a registration plate. The disabled veteran, to be able to claim the above benefit, must be a resident of the state of Iowa. The disabled veteran may obtain a special or personalized plate under section 321.34 by paying the difference between the fee for a regular registration plate and the fee for the special or personalized registration plate.

[SS15, §1571-m7; C24, 27, 31, 35, §4904; C39, §**5008.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.105]

82 Acts, ch 1062, §12, 38; 83 Acts, ch 123, §125, 209; 86 Acts, ch 1182, §2; 95 Acts, ch 118, §16; 97 Acts, ch 108, §10; 97 Acts, ch 121, §3; 2000 Acts, ch 1216, §4

Collection of mobile home tax, §435.24

321.106 Registration for fractional part of year.

1. When a vehicle is registered under chapter 326 or a motor truck, truck tractor, or road tractor is registered for a combined gross weight exceeding five tons and there is no delinquency and the registration is made in February or succeeding months through November, the registration fee shall be prorated for the remaining unexpired months of the registration year. A fee shall not be required for the month of December for a vehicle registered on a calendar year basis on which there is no delinquency. However, except for a vehicle registered under chapter 326, when such a vehicle is registered in November, the vehicle may be registered for the remaining unexpired months of the registration year or for the remaining unexpired months of the registration year and for the next registration year, upon payment of the applicable registration fees.

2. When a vehicle is registered on a birth month basis and there is no delinquency and the registration is made in the month after the beginning of the registration year or succeeding months, the registration fee shall be prorated for the remaining unexpired months of the registration year. A fee shall not be required for the month of the owner's birthday for a vehicle on which there is no delinquency. However, when a vehicle registered on a birth month basis is registered during the eleventh month of the registration year, the vehicle may be registered for the remaining unexpired months of the registration year or for the remaining unexpired months of the registration year and for the next registration year, upon payment of the applicable registration fees.

3. If a fee computed under this section contains a fractional part of a dollar, the fee shall be computed to the nearest whole dollar. A fee computed under this section shall not be less than five dollars. The fee so computed shall be deemed to be the annual registration fee for the remainder of the registration year.

4. A reduction in the registration fee shall not be allowed by the department until the applicant files satisfactory evidence to prove that there is no delinquency in registration.

[SS15, §1571-m7; C24, 27, 31, 35, §4905; C39, §**5008.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.106]

82 Acts, ch 1062, §13, 38; 83 Acts, ch 24, §5, 12; 2000 Acts, ch 1028, §3, 4

321.107 Sworn statement. Repealed by 82 Acts, ch 1062, § 37, 38. See § 321.106.

321.108 Perjury. Repealed by 83 Acts, ch 24, § 11, 12.

321.109 Motor vehicle fee — transit fee.

1. The annual fee for all motor vehicles including vehicles designated by manufacturers as station wagons, and 1993 and subsequent model years for multipurpose vehicles, except motor trucks, motor homes, ambulances, hearses, motorcycles, motor bicycles, and 1992 and older model years for multipurpose vehicles, shall be equal to one percent of the value as fixed by the department plus forty cents for each one hundred pounds or fraction thereof of weight of vehicle, as fixed by the department. The weight of a motor vehicle, fixed by the department for registration purposes, shall include the weight of a battery, heater, bumpers, spare tire, and wheel. Provided, however, that for any new vehicle purchased in this state by a nonresident for removal to the nonresident's state of residence the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of ten dollars shall be paid. And provided, however, that for any used vehicle held by a registered dealer and not currently registered in this state, or for any vehicle held by an individual and currently registered in this state, when purchased in this state by a nonresident for removal to the nonresident's state of residence, the purchaser may make application to the county treasurer in the county of purchase for a transit plate for which a fee of three dollars shall be paid. The county treasurer shall issue a nontransferable certificate of registration for which no refund shall be allowed; and the transit plates shall be void thirty days after issuance. Such purchaser may apply for a certificate of title by surrendering the manufacturer's or importer's certificate or certificate of title, duly assigned as provided in this chapter. In this event, the treasurer in the county of purchase shall, when satisfied with the genuineness and regularity of the application, and upon payment of a fee of ten dollars, issue a certificate of title in the name and address of the nonresident purchaser delivering the same to the person entitled to the title as provided in this chapter. The provisions of this subsection relating to multipurpose vehicles are effective January 1, 1993, for all 1993 and subsequent model years. The annual registration fee for multipurpose vehicles that are 1992 model years and older shall be in accordance with section 321.124.

The annual registration fee for a multipurpose vehicle with permanently installed equipment manufactured for and necessary to assist a person with a disability who is either the owner or a member of the owner's household in entry and exit of the vehicle or for a multipurpose vehicle if the vehicle's owner or a member of the vehicle owner's household uses a wheelchair as the only means of mobility shall be sixty dollars. For purposes of this unnumbered paragraph, *"uses a wheelchair"* does not include use of a wheelchair due to a temporary injury or medical condition.

2. Dealers may, in addition to other provisions of this section, purchase from the department in-transit stickers, for which a fee of two dollars per sticker shall be paid at time of purchase. One such sticker shall be displayed on each vehicle purchased from a dealer by a nonresident for removal to the state of the nonresident's residence, and one such sticker shall also be displayed on each vehicle not currently registered in Iowa and purchased by an Iowa dealer for removal to the dealer's place of business in this state. The stickers shall be void fifteen days after issuance by the selling dealer. Each sticker shall contain the following information:

a. The words **"in-transit"** in bold type.

b. The dealer's license number.

c. The date issued.

d. The purchaser's name and address.

e. The word **"Iowa"** in bold type.

f. The words "good for fifteen days after the date of issuance".

g. Other information the director requires.

This information shall be on the gummed side of the sticker and the sticker shall be made of a type of material which is self-destructive when the sticker is removed. The sales invoice verifying the sale shall be in the possession of the driver of the vehicle in transit and shall be signed by the owner or an authorized individual of the issuing dealership.

Motor vehicles brought into the state on a transit sticker for the purpose of installation of special equipment may also be subject to the provisions of this subsection.

3. The owner of an unregistered motor vehicle or motor vehicle for which the registration is delinquent may make application to the county treasurer of the county of residence or, if the unregistered or delinquent motor vehicle is purchased by a nonresident of the state, to the county treasurer in the county of purchase, for a temporary thirty-day permit for a fee of twenty-five dollars. The permit shall authorize the motor vehicle to be driven or towed upon the highway, but shall not authorize a motor truck or truck tractor to haul or tow a load. The permit fee shall not be considered a registration fee or exempt the owner from payment of all other fees, registration fees, and penalties due. If the registration fee for the motor vehicle is delinquent, the registration fee and penalty shall continue to accrue until paid. The permit fee shall not be prorated, refunded, or used as credit as provided under section 321.46. The permit shall be displayed in the upper left-hand corner of the rear window of all motor vehicles, except motorcycles. Permits issued for a motorcycle shall be attached to the rear of the motorcycle.

[C24, 27, 31, 35, §4908; C39, §**5008.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.109]

84 Acts, ch 1305, §60; 88 Acts, ch 1007, §1; 92

Acts, ch 1019, §1, 8; 92 Acts, ch 1222, §1; 92 Acts, ch 1232, §401, 412; 93 Acts, ch 165, §1; 96 Acts, ch 1129, §113; 96 Acts, ch 1152, §4

321.110 Rejecting fractional dollars.

When the registration fee, computed according to section 321.109, subsection 1, totals a fraction over a certain number of dollars the fee shall be arrived at by computing to the nearest even dollar.

[C27, 31, 35, §4908-a1; C39, §**5008.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.110]

321.111 Conversion of car — effect.

Any motor vehicle originally registered as a passenger car and thereafter converted into a truck with a loading capacity of less than one thousand pounds, shall be registered as a passenger car.

[C35, §4908-g1; C39, §**5008.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.111]

321.112 Minimum motor vehicle fee.

No motor vehicle, except as provided in sections 321.115 and 321.117 shall be registered for a registration year for less than ten dollars.

[C24, 27, 31, 35, §4909; C39, §**5008.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.112]

82 Acts, ch 1062, §14, 38

321.113 Automatic reduction.

1. The registration fee for a motor vehicle shall not be automatically reduced under this section unless the registration fee is based on the value and weight of the motor vehicle as provided in section 321.109, subsection 1.

2. If a motor vehicle is more than five model years old, the part of the registration fee that is based on the value of the vehicle shall be seventy-five percent of the rate as fixed when the motor vehicle was new.

3. If a motor vehicle is more than six model years old, the part of the registration fee that is based on the value of the vehicle shall be fifty percent of the rate as fixed when the motor vehicle was new.

4. If a 1994 model year or newer motor vehicle is nine model years old or older the registration fee is thirty-five dollars. For purposes of determining the portion of the registration fee under this subsection that is based upon the value of the motor vehicle, sixty percent of the registration fee is attributable to the value of the vehicle.

5. *a.* If a 1993 model year or older motor vehicle has been titled in the same person's name since the vehicle was new or the title to the vehicle was transferred prior to January 1, 2002, the part of the registration fee that is based on the value of the vehicle shall be ten percent of the rate as fixed when the motor vehicle was new.

b. If the title of a 1993 model year or older motor vehicle is transferred to a new owner or if such a motor vehicle is brought into the state on or after January 1, 2002, the registration fee shall not be based on the weight and list price of the motor vehicle, but shall be as follows:

(1) For a motor vehicle that is model year 1969 or older: . . . . . $ 16.00

(2) For a motor vehicle that is model year 1970 through 1989: . . . . . $ 23.00

(3) For a motor vehicle that is model year 1990 through 1993: . . . . . $ 27.00

For purposes of determining the portion of the registration fee under this paragraph *"b"* that is based upon the value of the motor vehicle, sixty percent of the registration fee is attributable to the value of the vehicle.

[SS15, §1571-m7; C24, 27, 31, 35, §4910; C39, §**5008.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.113]

82 Acts, ch 1062, §15, 38; 2001 Acts, ch 132, §4, 24; 2001 Acts, ch 176, §65

2001 amendments take effect January 1, 2002; 2001 Acts, ch 132, §24

321.114 Proof of registration. Repealed by 82 Acts, ch 1062, § 37, 38.

321.115 Antique vehicles — model year plates permitted.

1. A motor vehicle twenty-five years old or older, whose owner desires to use the motor vehicle exclusively for exhibition or educational purposes at state or county fairs, or other places where the motor vehicle may be exhibited for entertainment or educational purposes, shall be given a registration for a registration fee of five dollars per annum permitting the driving of the motor vehicle upon the public roads to and from state and county fairs or other places of entertainment or education for exhibition or educational purposes and to and from service stations for the purpose of receiving necessary maintenance.

2. The sale of a motor vehicle twenty years old or older which is primarily of value as a collector's item and not as transportation is not subject to chapter 322 and any person may sell such a vehicle at retail or wholesale without a license as required under chapter 322.

3. The owner of a motor vehicle which is registered under subsection 1, may display a registration plate from or representing the model year of the motor vehicle, furnished by the person, in lieu of a current and valid Iowa registration plate issued to the vehicle, provided that any replaced current and valid Iowa registration plate and the registration card issued to the vehicle are simultaneously carried within the vehicle and are available for inspection to any peace officer upon the officer's request.

4. Truck tractors and semitrailers used in combination for exhibition and educational pur-

poses as described in subsection 1 may be registered, exhibited, and driven according to the provisions of subsection 1. Subsection 3 shall not apply to vehicles registered in accordance with this subsection.

5. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph *"b"*.

[C35, §4911-f1; C39, §**5008.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.115]

85 Acts, ch 101, §1; 88 Acts, ch 1204, §1; 92 Acts, ch 1175, §31; 97 Acts, ch 104, §13; 2000 Acts, ch 1203, §6; 2001 Acts, ch 137, §5

321.116 Electric automobiles.

For an electric motor vehicle the annual fee is twenty-five dollars. However, if an electric motor vehicle is more than five model years old, the annual registration fee is fifteen dollars. This section does not apply to low-speed vehicles that are electric.

[C27, 31, 35, §4911-b1; C39, §**5008.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.116]

82 Acts, ch 1062, §16, 38; 84 Acts, ch 1067, §32; 2000 Acts, ch 1005, §3

321.117 Motorcycle, ambulance, and hearse fees.

For all motorcycles the annual fee shall be twenty dollars. For all motorized bicycles the annual fee shall be seven dollars. When the motorcycle is more than five model years old, the annual registration fee shall be ten dollars. The annual registration fee for ambulances and hearses shall be fifty dollars. Passenger car plates shall be issued for ambulances and hearses.

[C24, 27, 31, 35, §4912; C39, §**5008.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.117]

82 Acts, ch 1062, §17, 38; 84 Acts, ch 1305, §61

321.118 Corn shellers and feed grinders. Repealed by 91 Acts, ch 56, § 2.

321.119 Church buses.

For motor vehicles designed to carry nine passengers or more which are owned and used exclusively by a church or religious organization to transport passengers to and from activities of or sponsored by the church or religious organization and not operated for rent or hire for purposes unrelated to the activities of the church or religious organization, the annual fee shall be twenty-five dollars.

[C81, §321.119]

84 Acts, ch 1305, §62

321.120 Trucks with solid rubber tires. Repealed by 97 Acts, ch 108, § 49.

321.121 Special trucks for farm use.

The registration fee for a special truck shall be eighty dollars for a gross weight of six tons, one hundred dollars for a gross weight of seven tons, one hundred twenty dollars for a gross weight of eight tons, and in addition, fifteen dollars for each ton over eight tons and not exceeding eighteen tons. The registration fee for a special truck with a gross weight registration exceeding eighteen tons but not exceeding nineteen tons shall be three hundred twenty-five dollars and for a gross weight registration exceeding nineteen tons but not exceeding twenty tons the registration fee shall be three hundred seventy-five dollars. The additional registration fee for a special truck for a gross weight registration in excess of twenty tons is twenty-five dollars for each ton over twenty tons and not exceeding thirty-two tons.

A person convicted of or found by audit to be using a motor vehicle registered as a special truck for any purpose other than permitted by section 321.1, subsection 76, shall, in addition to any other penalty imposed by law, be required to pay regular motor vehicle registration fees upon such motor vehicle.

[C71, 73, 75, 77, 79, 81, §321.121; 81 Acts 2d Ex, ch 2, §6]

82 Acts, ch 1062, §18, 38; 86 Acts, ch 1210, §3

321.122 Trucks, truck tractors, road tractors, and semitrailers — fees.

1. The annual registration fee for truck tractors, road tractors, and motor trucks, except motor trucks registered as special trucks, shall be based on the combined gross weight of the vehicle or combination of vehicles. All trucks, truck tractors, or road tractors shall be registered for a gross weight equal to or in excess of the unladen weight of the vehicle or combination of vehicles. The annual registration fee for such vehicles or combination of vehicles, except special trucks, shall be:

a. For a combined gross weight of three tons or less sixty-five dollars and a vehicle which is more than ten model years old fifty-five dollars and a vehicle which is more than thirteen model years old forty-five dollars and a vehicle which is more than fifteen years old thirty-five dollars.

b. For a combined gross weight exceeding three tons, the annual registration fee shall be as set forth in the following schedule:

For a combined gross weight exceeding:	And not exceeding:	The annual registration fee shall be:
3 Tons	4 Tons	$ 80
4 Tons	5 Tons	$ 90
5 Tons	6 Tons	$ 105
6 Tons	7 Tons	$ 130
7 Tons	8 Tons	$ 165
8 Tons	9 Tons	$ 200
9 Tons	10 Tons	$ 235
10 Tons	11 Tons	$ 270
11 Tons	12 Tons	$ 305
12 Tons	13 Tons	$ 340
13 Tons	14 Tons	$ 375
14 Tons	15 Tons	$ 445
15 Tons	16 Tons	$ 485
16 Tons	17 Tons	$ 525
17 Tons	18 Tons	$ 565
18 Tons	19 Tons	$ 610
19 Tons	20 Tons	$ 675
20 Tons	21 Tons	$ 715
21 Tons	22 Tons	$ 755
22 Tons	23 Tons	$ 795
23 Tons	24 Tons	$ 835
24 Tons	25 Tons	$ 965
25 Tons	26 Tons	$ 1,010
26 Tons	27 Tons	$ 1,060
27 Tons	28 Tons	$ 1,105
28 Tons	29 Tons	$ 1,150
29 Tons	30 Tons	$ 1,200
30 Tons	31 Tons	$ 1,245
31 Tons	32 Tons	$ 1,295
32 Tons	33 Tons	$ 1,340
33 Tons	34 Tons	$ 1,415
34 Tons	35 Tons	$ 1,465
35 Tons	36 Tons	$ 1,510
36 Tons	37 Tons	$ 1,555
37 Tons	38 Tons	$ 1,605
38 Tons	39 Tons	$ 1,650
39 Tons	40 Tons	$ 1,695

c. For a combined gross weight exceeding forty tons, the annual registration fee shall be one thousand six hundred ninety-five dollars plus eighty dollars for each ton over forty tons.

2. *a.* For semitrailers the annual registration fee is ten dollars which shall not be reduced or prorated under chapter 326.

b. For trailers and semitrailers licensed under chapter 326, the annual registration fee for the permanent registration plate shall be ten dollars which shall not be reduced or prorated under chapter 326. The registration fees for a permanent registration plate shall, at the option of the registrant, be remitted to the department at five-year intervals or on an annual basis.

3. For truck tractors or road tractors equipped with two or more solid rubber tires, the annual registration fee shall be the fee for truck tractors or road tractors with pneumatic tires and of the same combined gross weight, plus twenty-five percent thereof.

4. This section shall not apply to a rubber-tired farm tractor not operated for hire upon the public highways.

[C31, 35, §4919-d1; C39, §**5008.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.122]

82 Acts, ch 1062, §19, 38; 86 Acts, ch 1182, §3; 86 Acts, ch 1210, §4; 88 Acts, ch 1019, §11, 12; 90 Acts, ch 1233, §17; 95 Acts, ch 118, §17

321.123 Trailers.

All trailers except farm trailers, mobile homes, and manufactured homes, unless otherwise provided in this section, are subject to a registration fee of ten dollars. Trailers for which the empty weight is two thousand pounds or less are exempt from the certificate of title and lien provisions of this chapter. Fees collected under this section shall not be reduced or prorated under chapter 326.

1. Travel trailers and fifth-wheel travel trailers, except those in manufacturer's or dealer's stock, shall be subject to an annual fee of twenty cents per square foot of floor space computed on the exterior overall measurements, but excluding three feet occupied by any trailer hitch as provided by and certified to by the owner, to the nearest whole dollar, which amount shall not be prorated or refunded; except the annual fee for travel trailers of any type, when registered in Iowa for the first time or when removed from a manufacturer's or dealer's stock, shall be prorated on a monthly basis. It is further provided the annual fee thus computed shall be limited to seventy-five percent of the full fee after the vehicle is more than six model years old.

A travel trailer may be stored under section 321.134, provided the travel trailer is not used for human habitation for any period during storage and is not moved upon the highways of the state. A travel trailer stored under section 321.134 is not subject to a manufactured or mobile home tax assessed under chapter 435.

2. Motor trucks or truck tractors pulling trailers or semitrailers shall be registered for the combined gross weight of the motor truck or truck tractor and trailer or semitrailer, except that:

a. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person engaged in farming to transport commodities produced by the owner, or to transport commodities or livestock purchased by the owner for use in the owner's own farming operation or used by any person to transport horses shall not be subject to registration for the gross weight of such trailer or semitrailer provided the combined gross weight does not exceed twelve tons, plus the tolerance provided for in section 321.466.

b. Motor trucks registered for six tons or less not used for hire, pulling trailers or semitrailers used by a person in the person's own operations shall not be subject to registration for the gross

weight of such trailer or semitrailer provided the combined gross weight does not exceed eight tons, plus the tolerance provided for in section 321.466.

[C24, 27, 31, 35, §4920; C39, §**5008.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.123; 82 Acts, ch 1251, §16 – 18]

82 Acts, ch 1062, §20, 38; 84 Acts, ch 1305, §63; 89 Acts, ch 296, §29; 95 Acts, ch 118, §18; 96 Acts, ch 1152, §5, 6; 99 Acts, ch 188, §14; 2000 Acts, ch 1016, §14; 2001 Acts, ch 153, §15, 17; 2001 Acts, ch 176, §80

321.124 Motor homes and multipurpose vehicles — fees.

1. Motor homes are classified as follows:

a. Class A motor home means a truck chassis or special chassis upon which is built a driver's compartment and an entire body which provides temporary living quarters. A class A motor home shall also mean a passenger carrying bus which has been registered at least five times as a motor truck and which has been converted, modified, or altered to provide temporary living quarters.

b. Class B motor home means a completed van-type vehicle which has been converted, modified, constructed, or altered to provide temporary living quarters.

c. Class C motor home means an incomplete vehicle upon which is permanently attached a body designed to provide temporary living quarters.

2. Class A motor homes and class C motor homes are exempt from the provisions of section 322.5, subsection 2, except that a motor vehicle dealer showing class A motor homes and class C motor homes shall apply for a temporary permit upon forms and for such time as provided in section 322.5, subsection 2, and the department may issue the temporary permit upon payment of the fee provided therein.

3. The annual registration fee for motor homes and 1992 and older model years for multipurpose vehicles is as follows:

a. For class A motor homes with a list price of eighty thousand dollars or more as certified to the department by the manufacturer, four hundred dollars for registration each year through five model years and three hundred dollars for each succeeding registration.

b. For class A motor homes with a list price of forty thousand dollars or more but less than eighty thousand dollars as certified to the department by the manufacturer, two hundred dollars for registration each year through five model years and one hundred fifty dollars for each succeeding registration.

c. For class A motor homes with a list price of twenty thousand dollars or more but less than forty thousand dollars as certified to the department by the manufacturer, one hundred forty dollars for the first five registrations and one hundred five dollars for each succeeding registration.

d. For class A motor homes with a list price of less than twenty thousand dollars as certified to the department by the manufacturer, one hundred twenty dollars for registration each year through five model years and eighty-five dollars for each succeeding registration.

e. For a class A motor home which is a passenger-carrying bus which has been registered at least five times as a motor truck and which has been converted, modified, or altered to provide temporary living quarters, ninety dollars for registration each year through ten model years and sixty-five dollars for each succeeding registration. In computing the number of registrations, the registrations shall be cumulative beginning with the registration of the class A motor home as a motor truck prior to its conversion, modification, or alteration to provide temporary living quarters.

f. For class B motor homes, ninety dollars for registration each year through five model years and sixty-five dollars for each succeeding registration.

g. For class C motor homes, one hundred ten dollars for registration each year through five model years and eighty dollars for each succeeding registration.

h. For multipurpose vehicles in accordance with the following:

(1) Two hundred dollars for registration for the first and second model years.

(2) One hundred seventy-five dollars for registration for the third and fourth model years.

(3) One hundred fifty dollars for registration for the fifth model year.

(4) Seventy-five dollars for registration for the sixth model year.

(5) Fifty-five dollars for registration for each succeeding model year.

(6) The annual registration fee for a multipurpose vehicle with permanently installed equipment manufactured for and necessary to assist a person with a disability who is either the owner or a member of the owner's household in entry and exit of the vehicle or for a multipurpose vehicle if the vehicle's owner or a member of the vehicle owner's household uses a wheelchair as the only means of mobility shall be sixty dollars. For purposes of this subparagraph, *"uses a wheelchair"* does not include use of a wheelchair due to a temporary injury or medical condition.

The registration fees required by this lettered paragraph are applicable to all 1992 and older model years for multipurpose vehicles beginning January 1, 1993. The registration fees for multipurpose vehicles that are 1993 and subsequent model years shall be in accordance with section 321.109.

For purposes of determining that portion of the annual registration fee which is based upon the value of the multipurpose vehicle, sixty percent of

the annual fee is attributable to the value of the vehicle.

[C81, §321.124]

82 Acts, ch 1062, §21, 38; 83 Acts, ch 75, §1, 2; 92 Acts, ch 1019, §2, 8; 92 Acts, ch 1222, §2; 92 Acts, ch 1232, §402, 412; 93 Acts, ch 165, §2; 96 Acts, ch 1129, §113

321.125 Effect of exemption.

The exemption of a motor vehicle from a registration fee shall not exempt the operator of such vehicle from the performance of any other duty imposed on the operator by this chapter.

[C24, 27, 31, 35, §4923; C39, §**5008.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.125]

321.126 Refunds of fees.

Refunds of unexpired vehicle registration fees shall be allowed in accordance with this section, except that no refund shall be allowed and paid if the unused portion of the fee is less than ten dollars. Subsections 1 and 2 do not apply to motor vehicles registered by the county treasurer. The refunds shall be made as follows:

1. If the motor vehicle is destroyed by fire or accident, or junked and its identity as a motor vehicle entirely eliminated, the owner in whose name the motor vehicle was registered at the time of destruction or dismantling shall return the plates to the department and within thirty days thereafter make a statement of such destruction or dismantling and make claim for refund. With reference to the destruction or dismantling of a vehicle, no refund shall be allowed unless a junking certificate has been issued, as provided in section 321.52.

2. If the motor vehicle is stolen, the owner shall give notice of the theft to the department within five days. If the motor vehicle is not recovered by the owner thirty days prior to the end of the current registration year, the owner shall make a statement of the theft and make claim for refund.

3. If the motor vehicle is placed in storage by the owner upon the owner's entry into the military service of the United States, the owner shall return the plates to the county treasurer or the department and make a statement regarding the storage and military service and make claim for refund. Whenever the owner of a motor vehicle so placed in storage desires to again register the vehicle, the county treasurer or department shall compute and collect the fees for registration for the registration year commencing in the month the vehicle is removed from storage.

4. If the motor vehicle is registered by the county treasurer during the current registration year and the owner or lessee registers the vehicle for proportional registration under chapter 326, the owner of the registered vehicle shall surrender the registration plates to the county treasurer and may file a claim for refund. In lieu of a refund, a credit for the registration fees paid to the county treasurer may be applied by the department to the owner or lessee's proportional registration fees upon the surrender of the county plates and registration.

5. A refund for trailers and semitrailers issued a multiyear registration plate shall be paid by the department upon application.

6. If a vehicle is sold or junked, the owner in whose name the vehicle was registered may make claim to the county treasurer or department for a refund of the sold or junked vehicle's registration fee. Also if the owner of a vehicle receives a vehicle registration fee credit under section 321.46, subsection 3, and the credit allowed exceeds the amount of the registration fee for the vehicle acquired, the owner may claim a refund for the balance of the credit. The refund is subject to the following limitations:

a. If a vehicle registration fee credit has not been received by the owner of the vehicle under section 321.46, subsection 3, the refund shall be computed on the basis of the number of unexpired months remaining in the registration year at the time the vehicle was sold or junked. The refund shall be rounded to the nearest whole dollar. Section 321.127, subsection 1, does not apply.

b. The refund shall only be allowed if the owner provides a copy of the registration receipt for the vehicle sold or junked.

c. The refund shall only be allowed if the owner makes claim for the refund within six months after the date of the vehicle's sale, trade, or junking.

d. This subsection does not apply to vehicles registered under chapter 326.

7. Notwithstanding any provision of this section to the contrary, there shall be no refund of proportional registration fees unless the state which issued the base plate for the vehicle allows such refund. If an owner subject to proportional registration leases the vehicle for which the refund is sought, the claim shall be filed in the names of both the lessee and the lessor and the refund payment made payable to both the lessor and the lessee. The term "owner" for purposes of this section shall include a person in whom is vested right of possession or control of a vehicle which is subject to a lease, contract, or other legal arrangement vesting right of possession or control in addition to the term as defined in section 321.1, subsection 49.

[C24, 27, 31, 35, §4924; C39, §**5008.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.126]

82 Acts, ch 1062, §22, 23, 38; 85 Acts, ch 87, §4, 5; 87 Acts, ch 108, §7; 90 Acts, ch 1154, §6 – 11; 92 Acts, ch 1073, §3; 95 Acts, ch 118, §19, 40

321.127 Payment of refund.

1. The refund of the registration fee for motor vehicles shall be computed on the basis of the number of unexpired months remaining in the registration year from date of filing of the claim for

refund with the county treasurer, computed to the nearest dollar.

2. The department, unless reasonable grounds exist for delay, shall make refund on or before the last day of the month following the month in which the claim is filed with the department.

3. For trailers or semitrailers issued a multiyear registration plate a refund shall be paid equal to the annual fee for twelve months times the remaining number of complete registration years.

4. Refunds for motor vehicles registered for proportional registration under chapter 326 shall be paid on the basis of unexpired complete calendar months remaining in the registration year from the date the claim for refund, license plate, and registration receipt are received by the department.

[C24, 27, 31, 35, §4924; C39, §**5008.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.127; 81 Acts, ch 104, §1]

82 Acts, ch 1062, §24, 38; 85 Acts, ch 87, §6; 87 Acts, ch 108, §8; 2002 Acts, ch 1063, §22

Subsection 4 amended

321.128 Payment authorized.

The department may make the payments under sections 321.126 and 321.127, when sufficient proof of such destruction by accident, or the junking and entire elimination of identity as a motor vehicle, theft, or storage by an owner entering the military service of the United States in time of war, is properly certified, approved by the county treasurer, and filed with the department.

[C24, 27, 31, 35, §4925; C39, §**5008.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.128]

83 Acts, ch 24, §10, 12

321.129 Repealed by 77 Acts, ch 60, § 25.

321.130 Fees in lieu of taxes.

The registration fees imposed by this chapter upon private passenger motor vehicles or semitrailers are in lieu of all state and local taxes, except local vehicle taxes, to which motor vehicles or semitrailers are subject.

[S13, §1571-m8; C24, 27, 31, 35, §4927; C39, §**5008.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.130]

85 Acts, ch 32, §79; 89 Acts, ch 296, §30

321.131 Lien of fee.

All registration or other fees provided for in this chapter shall be and continue a lien against the vehicle for which said fees are payable unless otherwise provided in this section until such time as they are paid as provided by law, with any accrued penalties. The county treasurer may perfect a security interest in a vehicle for the amount of such fees by noting the lien upon the certificate of title for the vehicle as provided in section 321.50. If the lien is not perfected as provided in this section, the lien shall not be valid against a bona fide purchaser of the vehicle without actual notice to the purchaser.

[S13, §1571-m21; SS15, §1571-m7; C24, 27, 31, 35, §4928; C39, §**5008.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.131]

321.132 When lien attaches.

The lien of the original registration fee attaches, at the time the fee is first payable, as provided by law, and the lien of all renewals of registration attach on the first day of each succeeding registration year.

[C24, 27, 31, 35, §4929; C39, §**5008.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.132]

82 Acts, ch 1062, §25, 38

PENALTIES, COSTS, AND COLLECTIONS

321.133 Methods of collection.

The collection of all fees and penalties may be enforced against any vehicle or they may be collected by suit against the owner who shall remain personally liable therefor until such time as the transfer thereof shall be reported to the county treasurer and the department or until such time as said vehicle ceases to be in use and all fees and penalties to such date shall be paid.

[S13, §1571-m21; C24, 27, 31, 35, §4930; C39, §**5009.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.133]

321.134 Monthly penalty.

1. On the first day of the second month following the beginning of each registration year a penalty of five percent of the annual registration fee shall be added to the registration fees not paid by that date and an additional penalty of five percent shall be added the first day of each succeeding month, until the fee is paid. A penalty shall not be less than five dollars. If the owner of a vehicle surrenders the registration plates for a vehicle prior to the plates becoming delinquent, to the county treasurer of the county where the vehicle is registered, or to the department if the vehicle is registered under chapter 326, the owner may register the vehicle any time thereafter upon payment of the registration fee for the registration year without penalty. The penalty on vehicles registered under chapter 326 shall accrue February 1 of each year. To avoid a penalty or an additional penalty in the case of a delinquent registration, if the last calendar day of a month falls on Saturday, Sunday, or a holiday, the payment deadline is extended to include the first business day of the following month. However, an electronic payment must be initiated by midnight on the last day of the month preceding the delinquent date.

2. The annual registration fee for trucks, truck

tractors, and road tractors, as provided in sections 321.121 and 321.122, may be payable in two equal semiannual installments if the annual registration fee exceeds the registration fee for a vehicle with a gross weight exceeding five tons. The penalties provided in subsection 1 shall be computed on the amount of the first installment only and on the first day of the seventh month of the registration period the same rate of penalty shall apply to the second installment, until the fee is paid. Semiannual installments do not apply to commercial vehicles, as defined under section 326.2, subject to proportional registration, with a base state other than the state of Iowa, as defined in section 326.2, subsection 1. The penalty on vehicles registered under chapter 326 accrues August 1 of each year except as provided in section 326.6.

3. If a penalty applies to a vehicle registration fee provided for in sections 321.121 and 321.122, the same penalty shall be assessed on the fees collected to increase the registered gross weight of the vehicle, if the increased gross weight is requested within forty-five days from the date the delinquent vehicle is registered for the current registration period.

4. Notwithstanding subsections 1 through 3, if a vehicle registration is delinquent for twenty-four months or more, a flat penalty and fee shall be assessed for the delinquent period in addition to the current registration fee. The flat penalty and fee shall be one hundred fifty percent of the current annual registration fee.

[SS15, §1571-m7; C24, 27, 31, 35, §4931; C39, §**5009.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.134]

82 Acts, ch 1062, §26, 38; 83 Acts, ch 24, §6, 12; 89 Acts, ch 185, §4; 90 Acts, ch 1230, §18; 2002 Acts, ch 1043, §2

Subsection 1 amended

321.135 When fees delinquent.

Except as otherwise provided, delinquencies begin and penalties accrue the first of the month following the purchase of a new vehicle, and thirty days following the date a vehicle is brought into the state.

[C24, 27, 31, 35, §4932; C39, §**5009.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.135]

84 Acts, ch 1219, §22; 85 Acts, ch 209, §4

321.136 to 321.144 Repealed by 80 Acts, ch 1094, § 51.

FUNDS

321.145 Disposition of moneys and fees.

Except for fines, forfeitures, court costs, and the collection fees retained by the county treasurer pursuant to section 321.152, moneys and motor vehicle license fees collected under this chapter shall be credited by the treasurer of state to the road use tax fund.

[SS15, §1571-m32; C24, 27, 31, 35, §4999; C39, §**5010.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.145]

90 Acts, ch 1230, §19

Road use tax fund, §312.1

321.146 Repealed by 77 Acts, ch 60, § 25.

321.147 Repealed by 49 Acts, ch 122, § 17. See § 312.7.

321.148 Monthly estimate.

The department shall, on the first day of each month, furnish an estimate in writing to the treasurer of state of the amount of expenditures to be made by the department during that month.

[C31, 35, §5003-c1; C39, §**5010.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.148]

321.149 Blanks.

The department shall not later than November 15 of each year prepare and furnish the treasurer of each county all blank books, blank forms, and all supplies required for the administration of this chapter, including applications for registration and transfer of vehicles, quintuple receipts, and original remittance sheets to be used in remitting fees to the department, in such form as the department may prescribe. Contracts for the blank books, blank forms, and supplies shall be awarded by the state printing administrator to persons, firms, partnerships, or corporations engaged in the business of printing in Iowa unless, or through them, the persons, firms, partnerships or corporations cannot provide the required printing set forth in this section. In lieu of purchasing under competitive bids the state printing administrator shall have authority to arrange with the director of the department of corrections to furnish the supplies as can be made in the state institutions.

[S13, §1571-m2; C24, 27, 31, 35, §5006; C39, §**5010.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.149]

82 Acts, ch 1062, §27, 38; 83 Acts, ch 96, §157, 159; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40

321.150 Time limit.

Blanks or forms for listing used motor vehicles shall be placed in the hands of county treasurers not later than December 15 of any year.

[C24, 27, 31, 35, §5007; C39, §**5010.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.150]

321.151 Duty and liability of treasurer.

The county treasurer shall collect the registration fee and penalties on each vehicle registered by the county treasurer and shall be responsible on the county treasurer's bond for such amount. The county treasurer shall remit such amount to the

treasurer of state as provided in this chapter. Fees collected pursuant to participation in county issuance of driver's licenses under chapter 321M shall be governed by the provisions of that chapter.

[C24, 27, 31, 35, §5011; C39, §**5010.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.151]

98 Acts, ch 1073, §12; 98 Acts, ch 1143, §18, 26

321.152 Fee for county.

A county treasurer may retain for deposit in the county general fund the following:

1. Four percent of the total collection for each annual or semiannual vehicle registration and each duplicate registration card or plate issued.
2. Two dollars and fifty cents from each fee collected for certificates of title.
3. Forty percent of all fees collected for certified copies of certificates of title.
4. Sixty percent of all fees collected for notation of security interests.

The moneys retained shall be deducted, and reported to the department when the county treasurer transfers the money collected under this chapter. However, a deduction is not lawful unless the county treasurer has complied with sections 321.24 and 321.153.

This section does not apply to fees collected or retained by a county treasurer pursuant to participation in county issuance of driver's licenses under chapter 321M.

[C24, 27, 31, 35, §5012; C39, §**5010.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.152]

83 Acts, ch 123, §126, 209; 84 Acts, ch 1305, §64; 91 Acts, ch 267, §608; 92 Acts, ch 1238, §32; 98 Acts, ch 1073, §12; 98 Acts, ch 1143, §19, 26

321.153 Treasurer's report to department.

The county treasurer on the tenth day of each month shall certify under county seal to the department, on forms furnished by it, a full and complete statement of all fees and penalties received by the county treasurer during the preceding calendar month and shall remit all moneys not retained for deposit under section 321.152 to the treasurer of state.

The distributed teleprocessing network shall be used in the collection, receipting, accounting, and reporting of any fee collected through the registration renewal or title process, with sufficient time and financial resources provided for implementation.

This section does not apply to fees collected or retained by a county treasurer pursuant to participation in county issuance of driver's licenses under chapter 321M.

[C24, 27, 31, 35, §5013; C39, §**5010.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.153]

89 Acts, ch 185, §5; 92 Acts, ch 1073, §4; 92 Acts, ch 1238, §33; 98 Acts, ch 1073, §12; 98 Acts, ch 1143, §20, 26

321.154 Reports by department.

The department, immediately upon receiving said report, shall also report to the treasurer of state the amount so collected by such county treasurer.

[C24, 27, 31, 35, §5014; C39, §**5010.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.154]

321.155 Duty of treasurer of state.

The treasurer of state shall keep proper books of account for the purposes specified herein and shall report to the department each remittance from the county treasurer, when said remittance is received.

[C24, 27, 31, 35, §5015; C39, §**5010.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.155]

321.156 Audit by department.

The department shall check and audit all fees and penalties collected, and shall effect a settlement with the county treasurer annually.

[C24, 27, 31, 35, §5016; C39, §**5010.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.156]

VALUE AND WEIGHT OF VEHICLES

321.157 Schedule of prices and weights.

1. A manufacturer or importer of a motor vehicle sold or offered for sale in this state, either by the manufacturer, importer, distributor, dealer, or any other person, shall file in the office of the department a sworn statement showing the various models manufactured by the manufacturer, importer, distributor, dealer, or other person, and the retail list price and weight of each model concurrently with a public announcement of such prices or concurrently with notification of such prices to dealers licensed to sell such motor vehicles under chapter 322, whichever comes first. The manufacturer, importer, distributor, dealer, or other person shall also make the same report on subsequent new models manufactured.

2. In lieu of filing the sworn statement required under subsection 1, a manufacturer or importer of a motor vehicle sold or offered for sale in this state may electronically provide the information required in subsection 1 to the department, or, if the manufacturer or importer provides the required information to a third-party vendor, the manufacturer or importer shall make the required information available to the department through the third-party vendor.

[C24, 27, 31, 35, §4968; C39, §**5011.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.157]

2000 Acts, ch 1016, §45, 47

321.158 Registration dependent on schedule.

No motor vehicle shall be registered in this state

unless the manufacturer thereof has furnished to the department the sworn statement herein provided, giving the list price and weight of the model of the motor vehicle that is offered for registration, except as provided in section 321.159.

[C24, 27, 31, 35, §4970; C39, §**5011.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.158]

321.159 Exceptional cases.

The department shall have the power to fix the registration fee on all makes and models of motor vehicles which are not now being furnished or upon which the statement from the factory cannot be obtained.

For a current year model of a motor vehicle for which the manufacturer or importer of the motor vehicle has not provided the weight and list price, the department shall set the annual registration fee at ten dollars greater than the annual registration fee for the previous year model. Once the manufacturer or importer provides the required information, the information shall be used to set the registration or registration renewal fee for the succeeding registration or registration renewal time for the motor vehicle.

[C24, 27, 31, 35, §4971; C39, §**5011.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.159]

92 Acts, ch 1222, §3; 2000 Acts, ch 1016, §46, 47

321.160 Department to prepare statement.

The department shall prepare, annually, a statement showing all the different makes and models of motor vehicles previously registered in the department, and all the different makes and models of motor vehicles, statements of which have been filed in the office by the manufacturers as heretofore provided, together with the retail list price and weight of the same.

Copies of the statement shall be furnished each county treasurer and additional copies may be sold by the department to other persons, at a price to be set by the department, covering the approximate cost of same and service involved. All funds received shall be forwarded by the department to the treasurer of state.

[C24, 27, 31, 35, §4972; C39, §**5011.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.160]

321.161 Department to fix values and weight.

The department shall annually, and at such other times as new makes or models of motor vehicles are offered for sale or sold in this state, fix the value and weight of each of the different makes and models of motor vehicles which are sold or offered for sale within the state. The value and weight as fixed by the department shall, on 1975 and subsequent year model motor vehicles, be based on the original certification as provided in section 321.157.

[C24, 27, 31, 35, §4973; C39, §**5011.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.161]

321.162 Method of fixing value and weight.

The value shall be fixed at the next even one hundred dollars above the retail list price f.o.b. the factory, and the weight shall be fixed at the next even one hundred pounds above the manufacturer's shipping weight or the actual weight of the vehicle fully equipped.

[C24, 27, 31, 35, §4974; C39, §**5011.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.162]

PLATES AND SUPPLIES

321.163 Repealed by 71 Acts, ch 84, § 99.

321.164 Repealed by 72 Acts, ch 1019, § 7.

321.165 Manufacture by state.

The director shall have authority to arrange with the director of the department of corrections to furnish such supplies as may be made at the state institutions.

[C24, 27, 31, 35, §4977; C39, §**5012.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.165]

83 Acts, ch 96, §157, 159

321.166 Vehicle plate specifications.

Vehicle registration plates shall conform to the following specifications:

1. Registration plates shall be of metal and of a size not to exceed six inches by twelve inches, except that the size of plates issued for use on motorized bicycles, motorcycles, motorcycle trailers, and trailers with an empty weight of two thousand pounds or less shall be established by the department.

Trailers with empty weights of two thousand pounds or less may, upon request, be licensed with regular-sized license plates.

2. Every registration plate or pair of plates shall display a registration plate number which shall consist of alphabetical or numerical characters or a combination thereof and the name of this state, which may be abbreviated. Every registration plate issued by the county treasurer shall display the name of the county, including any plate issued pursuant to section 321.34, except Pearl Harbor and purple heart registration plates issued prior to January 1, 1997, and collegiate, fire fighter, and congressional medal of honor registration plates. Special truck registration plates shall display the word "special".

3. The registration plate number shall be displayed in characters which shall not exceed a height of four inches nor a stroke width exceeding five-eighths of an inch. Special plates issued to dealers shall display the alphabetical character

"D", which shall be of the same size as the characters in the registration plate. The registration plate number issued for motorized bicycles, motorcycles, trailers with an empty weight of two thousand pounds or less, and motorcycle trailers shall be a size prescribed by the department.

4. The registration plate number, except on motorized bicycle, motorcycle, motorcycle trailer, and trailers with an empty weight of two thousand pounds or less shall be of sufficient size to be readable from a distance of one hundred feet during daylight.

5. There shall be a marked contrast between the color of the registration plates and the data which is required to be displayed on the registration plates. When a new series of registration plates is issued to replace a current series, the new registration plates shall be of a distinctively different color from the series which is replaced, except for collegiate registration plates issued under section 321.34, subsection 7.

6. Registration plates issued to a disabled veteran under the provisions of section 321.105 shall display the alphabetical characters "DV" which shall precede the registration plate number. The plates may also display a persons with disabilities parking sticker if issued to the disabled veteran by the department under section 321L.2.

7. The year and month of expiration of registration, which may be abbreviated, shall be displayed on vehicle registration plates issued by the county treasurer. A distinctive emblem or validation sticker may be prescribed by the department to designate the year and month of expiration. The year and month of expiration shall not be required to be displayed on plates issued under section 321.19.

8. The owner of a trailer with an empty weight of two thousand pounds or less shall receive registration plates for the trailer smaller than plates regularly issued for automobiles pursuant to rules adopted by the department in accordance with this section unless the owner requests regular-sized plates.

9. Special registration plates issued pursuant to section 321.34 beginning January 1, 1997, other than congressional medal of honor, collegiate, fire fighter, and natural resources registration plates, shall be consistent with the design and color of regular registration plates but shall provide a space on a portion of the plate for the purpose of allowing the placement of a distinguishing processed emblem. Special registration plates shall also comply with the requirements for regular registration plates as provided in this section to the extent the requirements are consistent with the section authorizing a particular special vehicle registration plate.

10. If the department reissues a new registration plate design for a special registration plate under section 321.34, all persons who have purchased or obtained the special registration plates shall not be required to pay the issuance fee.

[S13, §1571-m12, -m13; C24, 27, 31, 35, §4978; C39, §**5001.19, 5001.20, 5012.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §321.35, 321.36, 321.166; C79, 81, §321.166]

82 Acts, ch 1032, §3, 4; 82 Acts, ch 1062, §28, 29, 36, 38; 83 Acts, ch 24, §7, 12; 86 Acts, ch 1225, §2; 88 Acts, ch 1215, §11; 89 Acts, ch 247, §5; 92 Acts, ch 1026, §1; 94 Acts, ch 1028, §1 – 4; 95 Acts, ch 118, §20, 40; 96 Acts, ch 1088, §5, 6; 96 Acts, ch 1152, §7, 8; 96 Acts, ch 1171, §3; 96 Acts, ch 1219, §25; 97 Acts, ch 70, §4; 97 Acts, ch 104, §14, 15; 99 Acts, ch 13, §10, 29

321.167 Delivery of plates, stickers, and emblems.

The department, upon requisition by the county treasurer, shall provide vehicle registration plates, validation stickers, and emblems as required for the administration of this chapter. Vehicle registration plates and validation stickers shall be provided to the county treasurer in numerical sequence.

[C24, 27, 31, 35, §4979; C39, §**5012.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.167]

82 Acts, ch 1062, §30, 38

321.168 Additional deliveries.

Thereafter, during the year, the department, upon requisition of the county treasurer, shall deliver additional number plates.

[C24, 27, 31, 35, §4980; C39, §**5012.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.168]

321.169 Account of plates.

The department shall keep an accurate record of all number plates issued to each county, and shall also keep a record showing the assignment thereof by the county treasurer to motor vehicles.

[C24, 27, 31, 35, §4981; C39, §**5012.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.169]

321.170 Plates for exempt vehicles.

The department shall furnish, on application, free of charge, distinguishing plates for motor vehicles exempted from a registration fee and shall keep a separate record thereof.

[C24, 27, 31, 35, §4982; C39, §**5012.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.170]

See also §18.115, 321.19

321.171 Title of plates.

All number plates issued shall be and remain the property of the state.

[C24, 27, 31, 35, §4983; C39, §**5012.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.171]

321.172 Repealed by 63 Acts, ch 190, § 2.

321.173 When fees returnable.

Whenever any application to the department is accompanied by any fee as required by law and such application is refused or rejected said fee shall be returned to said applicant.

Whenever the department through error collects any fee not required to be paid hereunder the same shall be refunded, from the refund account, to the person paying the same upon application therefor made within six months after the date of such payment.

[C39, §**5012.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.173]

DRIVER'S LICENSES

321.174 Operators licensed — operation of commercial motor vehicles.

1. A person, except those expressly exempted, shall not operate any motor vehicle upon a highway in this state unless the person has a driver's license issued by the department valid for the vehicle's operation.

2. A person operating a commercial motor vehicle shall not have more than one driver's license. A nonresident may operate a commercial motor vehicle in Iowa if the nonresident has been issued a license by another state, a nonresident commercial driver's license, or a driver's license issued by a foreign jurisdiction which the federal highway administration has determined to be issued in conformity with the federal commercial driver testing and licensing standards, if the license, commercial driver's license, or driver's license is valid for the vehicle operated. A person who operates a commercial motor vehicle upon the highways of this state without having been issued a driver's license valid for the vehicle operated commits a simple misdemeanor.

3. A licensee shall have the licensee's driver's license in immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a judicial magistrate, district associate judge, district judge, peace officer, or examiner of the department. However, a person charged with violating this subsection shall not be convicted if the person produces in court, within a reasonable time, a driver's license issued to that person and valid for the vehicle operated at the time of the person's arrest or at the time the person was charged with a violation of this section.

[C31, 35, §4960-d2, -d29; C39, §**5013.01, 5013.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.174, 321.190; C77, 79, §321.174, 321.189; C81, §321.174]

90 Acts, ch 1230, §20; 98 Acts, ch 1073, §9

For applicable scheduled fines, see §805.8A, subsection 4, paragraph c

321.174A Operation of motor vehicle with expired license.

A person shall not operate a motor vehicle upon a highway in this state with an expired driver's license.

97 Acts, ch 108, §11; 98 Acts, ch 1073, §9

For applicable scheduled fine, see §805.8A, subsection 4, paragraph a

321.175 Chauffeurs exempted as operators. Repealed by 90 Acts, ch 1230, § 97.

321.176 Persons exempt from driver's licensing requirements.

The following persons are exempt from driver's licensing requirements:

1. Any person while operating a military motor vehicle in the service of the armed forces of the United States.

2. Any person while operating a farm tractor or implement of husbandry to or from the home farm buildings to any adjacent or nearby farmland for the exclusive purpose of conducting farm operations.

3. A nonresident operating a motor vehicle within the legal scope of the nonresident's home state or country license except a nonresident may operate a commercial motor vehicle only in compliance with section 321.174.

[C31, 35, §4960-d3, -d4; C39, §**5013.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.176; 81 Acts, ch 105, §1, 2]

90 Acts, ch 1230, §21; 98 Acts, ch 1073, §11

321.176A Persons exempt from commercial driver's license requirements.

The following operators are exempt from the commercial driver's license requirements:

1. A farmer or a person working for a farmer while operating a commercial motor vehicle owned by the farmer within one hundred fifty air miles of the farmer's farm to transport the farmer's own agricultural products, farm machinery, or farm supplies to or from the farm. The exemption provided in this subsection shall apply to farmers who assist each other through an exchange of services and shall include operation of a commercial motor vehicle between the farms of the farmers who are exchanging services.

2. A fire fighter while operating a fire vehicle for a volunteer or paid fire organization or a peace officer, as defined in section 801.4, while operating a commercial motor vehicle for a law enforcement agency, under conditions necessary to preserve life or property or to execute related governmental functions.

3. Military personnel while on active duty and operating equipment owned or operated by the United States department of defense.

4. A person while operating a motor home solely for personal or family use.

5. A person operating a motor vehicle with a gross vehicle weight rating of less than twenty-six

thousand one pounds towing a travel trailer or fifth-wheel travel trailer solely for personal or family use.

6. A person exempted by rules adopted by the department pursuant to section 321.176B.

7. A home care aide operating a motor vehicle in the course of the home care aide's duties.

90 Acts, ch 1230, §22; 92 Acts, ch 1175, §20; 93 Acts, ch 139, §8; 96 Acts, ch 1152, §9

321.176B Persons exempt by rule from commercial driver's license requirements.

If after July 1, 1990, federal law or federal regulations are changed to allow exemptions from commercial driver's license requirements for suppliers of agricultural inputs or their employees while delivering these products to their customers, the department shall immediately, pursuant to chapter 17A, adopt rules which allow these exemptions from the commercial driver's license requirements.

90 Acts, ch 1230, §23

321.177 Persons not to be licensed.

The department shall not issue a driver's license:

1. To any person who is under the age of eighteen years except as provided in section 321.180B. However, the department may issue a driver's license to certain minors as provided in section 321.178 or 321.194, or a driver's license restricted to motorized bicycles as provided in section 321.189.

2. To any person holding any other driver's license.

3. To any person whose driver's license or driving privilege is suspended or revoked.

4. To any person who is a chronic alcoholic, or is addicted to the use of an illegal narcotic drug.

5. To any person who has previously been adjudged to be incompetent by reason of mental illness and who has not at the time of application been restored to competency by the methods provided by law.

6. To any person who fails to pass an examination required by this chapter.

7. To any person when the director has good cause to believe the person by reason of physical or mental disability would not be able to operate a motor vehicle safely.

8. To any person to operate a commercial motor vehicle unless the person is eighteen years of age or older and the person qualifies under federal and state law to be issued a commercial driver's license in this state.

9. To any person, as a chauffeur, who is under the age of eighteen.

10. To any person who has a delinquent account owed to the state according to records provided to the state department of transportation by the department of revenue and finance pursuant to section 421.17, unless the person provides to the state department of transportation evidence of approval for issuance from the department of revenue and finance. The department of revenue and finance shall approve issuance if the applicant has made arrangements for payment of the debt with the agency, which is owed or is collecting the debt, to the satisfaction of the agency. This subsection is only applicable to those persons who are applying for issuance of a license in a county which is participating in the driver's license indebtedness clearance pilot project.

[C31, 35, §4960-d5 – 4960-d9; C39, §**5013.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.177]

85 Acts, ch 195, §34; 90 Acts, ch 1230, §24; 95 Acts, ch 194, §5; 98 Acts, ch 1073, §9; 98 Acts, ch 1112, §1, 14, 16

For provisions establishing a driver's license indebtedness clearance pilot project effective May 19, 1997, see 97 Acts, ch 153, §2, 4

321.178 Driver education — restricted license — reciprocity.

1. *Approved course.* An approved driver education course as programmed by the department shall consist of at least thirty clock hours of classroom instruction, of which no more than one hundred eighty minutes shall be provided to a student in a single day, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. Classroom instruction shall include all of the following:

a. A minimum of four hours of instruction concerning substance abuse.

b. A minimum of twenty minutes of instruction concerning railroad crossing safety.

c. Instruction relating to becoming an organ donor under the uniform anatomical gift Act.

To be qualified as a classroom driver education instructor, a person shall have satisfied the educational requirements for a teaching license at the elementary or secondary level and hold a valid license to teach driver education in the public schools of this state.

Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a nonpublic school in the district an approved course in driver education. The courses may be offered at sites other than at the public school, including nonpublic school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved

course in driver education or an approved course in motorcycle education may, upon proof of such fact, be excused from any field test which the student would otherwise be required to take in demonstrating the student's ability to operate a motor vehicle. A student shall not be excused from any field test if a parent, guardian, or instructor requests that a test be administered. Street or highway driving instruction may be provided by a person qualified as a classroom driver education instructor or a person certified by the department and authorized by the board of educational examiners. A person shall not be required to hold a current Iowa teacher or administrator license at the elementary or secondary level or to have satisfied the educational requirements for an Iowa teacher license at the elementary or secondary level in order to be certified by the department or authorized by the board of educational examiners to provide street or highway driving instruction. A final field test prior to a student's completion of an approved course shall be administered by a person qualified as a classroom driver education instructor. The department shall adopt rules pursuant to chapter 17A to provide for certification of persons qualified to provide street or highway driving instruction. The board of educational examiners shall adopt rules pursuant to chapter 17A to provide for authorization of persons certified by the department to provide street or highway driving instruction.

"Student", for purposes of this section, means a person between the ages of fourteen years and twenty-one years who satisfies the preliminary licensing requirements of the department.

Any person who successfully completes an approved driver education course at a private or commercial driver education school licensed by the department shall likewise be eligible for a driver's license as provided in section 321.180B or 321.194.

2. *Restricted license.*

a. A person between sixteen and eighteen years of age who is not in attendance at school or who is in attendance in a public or private school where an approved driver's education course is not offered or available, may be issued a restricted license only for travel to and from work or to transport dependents to and from temporary care facilities, if necessary for the person to maintain the person's present employment, without having completed an approved driver's education course. The restricted license shall be issued by the department only upon confirmation of the person's employment and need for a restricted license to travel to and from work or to transport dependents to and from temporary care facilities if necessary to maintain the person's employment and upon receipt of a written statement from the public or private school that an approved course in driver's education was not offered or available to the person, if applicable. The employer shall notify the department if the employment of the person is terminated before the person attains the age of eighteen. The person shall not have a restricted license revoked or suspended upon reentering school prior to age eighteen if the student enrolls in and completes the classroom portion of an approved driver's education course as soon as a course is available.

b. The department may suspend a restricted license issued under this section upon receiving a record of the person's conviction for one violation and shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways, other than parking violations as defined in section 321.210. After revoking a license under this section the department shall not grant an application for a new license or permit until the expiration of one year or until the person attains the age of eighteen whichever is the longer period.

3. *Driver's license reciprocity.*

a. The department may issue a class C or M driver's license to a person who is sixteen or seventeen years of age and who is a current resident of the state, but who has been driving as a resident of another state for at least one year prior to residency within the state.

b. The following criteria must be met prior to issuance of a driver's license pursuant to this subsection:

(1) The minor must reside with a parent or guardian.

(2) The minor must have driven under a valid driver's license for at least one year in the prior state of residence. Six months of the one year computation may include driving with an instruction permit.

(3) The minor must have had no moving traffic violations on the minor's driving record.

(4) The minor must pass the written and driving skills tests as required by the department, but is not required to have taken a driver's education class.

[C66, §321.177; C71, 73, 75, 77, 79, 81, §321.178; 82 Acts, ch 1215, §1, 2, ch 1248, §1]

84 Acts, ch 1022, §3; 86 Acts, ch 1220, §28; 89 Acts, ch 266, §1; 90 Acts, ch 1230, §25; 91 Acts, ch 128, §1, 2; 92 Acts, ch 1163, §75; 92 Acts, ch 1231, §44; 94 Acts, ch 1102, §1; 98 Acts, ch 1112, §2, 14, 16; 99 Acts, ch 13, §11; 2000 Acts, ch 1133, §3; 2001 Acts, ch 33, §1; 2002 Acts, ch 1140, §32, 33

Driver education courses to include instruction relating to energy efficiency and safety; 90 Acts, ch 1252, §54

Department of public health to cooperate to provide materials and information relating to becoming an organ donor; 94 Acts, ch 1102, §3

Subsection 1, unnumbered paragraphs 1 and 3 – 5 amended

321.179 County treasurers — issuance of motor vehicle licenses. Repealed by 98 Acts, ch 1143, § 22. See chapter 321M.

321.180 Instruction permits.

1. *a.* A person who is at least eighteen years of age and who, except for the person's lack of instruction in operating a motor vehicle, would be qualified to obtain a driver's license, shall, upon meeting the requirements of section 321.186 other than a driving demonstration, and upon paying the required fee, be issued an instruction permit by the department. Subject to the limitations in this subsection, an instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to operate a motor vehicle, other than a commercial motor vehicle or as a chauffeur or a motor vehicle with a gross vehicle weight rating of sixteen thousand one or more pounds, upon the highways for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance. If the applicant for an instruction permit holds a driver's license issued in this state valid for the operation of a motorized bicycle or a motorcycle, the instruction permit shall be valid for such operation without the need of an accompanying person.

A permittee shall not be penalized for failing to have the instruction permit in immediate possession if the permittee produces in court, within a reasonable time, an instruction permit issued to the permittee and valid at the time of the permittee's arrest or at the time the permittee was charged with failure to have the permit in the permittee's immediate possession.

b. Except as otherwise provided, a permittee who is eighteen years of age or older must be accompanied by a person issued a driver's license valid for the vehicle operated who is a member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age, and who is actually occupying a seat beside the driver.

However, if the permittee is operating a motorcycle in accordance with this section or section 321.180B, the accompanying person must be within audible and visual communications distance from the permittee and be accompanying the permittee on or in a different motor vehicle. Only one permittee shall be under the immediate supervision of an accompanying qualified person.

2. A person who holds a class A, B, C, or D driver's license, upon meeting each of the following requirements, shall be eligible to apply for a commercial driver's instruction permit valid for the operation of a commercial motor vehicle when the permittee is accompanied by a person properly licensed to operate a commercial motor vehicle and actually occupying a seat beside the permittee. An applicant must be at least eighteen years of age and qualified to obtain a valid commercial driver's license including the requirements of section 321.188 other than the knowledge examination and driving skills tests. The commercial driver's instruction permit shall be valid for a period not to exceed six months. A commercial driver's instruction permit may be renewed only once in any two-year period. If the applicant for a commercial driver's instruction permit holds a driver's license issued in this state valid for the operation of a commercial or noncommercial vehicle, the commercial driver's instruction permit shall be valid for such operation without the need of an accompanying person.

3. A person, upon meeting each of the following requirements, shall be eligible to apply for a chauffeur's instruction permit valid for the operation of a motor vehicle, other than a commercial motor vehicle, as a chauffeur when the permittee is accompanied by a person, possessing a valid class D driver's license or commercial driver's license valid for the operation of the motor vehicle and the accompanying person is actually occupying a seat beside the permittee. An applicant must be at least eighteen years of age, otherwise qualified to obtain a class D driver's license, and must meet the requirements of section 321.186 other than a driving demonstration. The chauffeur's instruction permit shall be valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance and shall be returned to the department upon issuance of a class D driver's license or commercial driver's license. If the applicant for a chauffeur's instruction permit holds a driver's license issued under this chapter, the chauffeur's instruction permit shall be valid in the same manner as the driver's license would be for the operation of motor vehicles without the need of an accompanying person.

4. The instruction permit, chauffeur's instruction permit, and commercial driver's instruction permit are subject to suspension or revocation for the same reasons and in the same manner as suspension or revocation of a driver's license.

5. A motorcycle instruction permit issued under this section is not renewable.

[C31, 35, §4960-d23; C39, §**5013.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.180]

88 Acts, ch 1134, §67; 89 Acts, ch 265, §39; 90 Acts, ch 1230, §26; 98 Acts, ch 1073, §9; 98 Acts, ch 1112, §3, 4, 14, 16

Fee, §321.191

For applicable scheduled violation and fine, see §805.8A, subsection 4, paragraph a

321.180A Special instruction permit.

1. Notwithstanding other provisions of this chapter, a person with a physical disability, who is not suffering from a convulsive disorder and who can provide a favorable medical report, whose license renewal has been denied under section 321.177, subsection 6 or 7, or whose driver's li-

cense has been suspended under section 321.210, subsection 1, paragraph *"c"*, upon meeting the requirements of section 321.186, other than a driving demonstration or the person's limitations which caused the denial under section 321.177, subsection 6 or 7, or suspension under section 321.210, subsection 1, paragraph *"c"*, and upon paying the fee required in section 321.191, shall be issued a special instruction permit by the department. Upon issuance of the permit the denial or suspension shall be stayed and the stay shall remain in effect as long as the permit is valid.

2. *a.* A special instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to operate a noncommercial motor vehicle upon the highways for a period of six months from the date of issuance. However, the permittee must be accompanied by a person who is at least twenty-one years of age, who has been issued a driver's license valid for the vehicle being operated, and who is actually occupying a seat beside the permittee.

b. A permittee shall not be penalized for failing to have the permit in immediate possession if the permittee produces in court, within a reasonable time, the special instruction permit issued to the permittee which was valid at the time of the permittee's arrest.

3. The permittee may apply for a driver's license if thirty days have elapsed since issuance of the special instruction permit. The department shall issue a driver's license if the permittee is qualified, passes all required tests, including a driving test, and pays the required fees. If the person has not obtained a driver's license before expiration of the person's special instruction permit, the person's former denial or suspension under section 321.177, subsection 6 or 7, or section 321.210, subsection 1, paragraph *"c"*, upon service of notice by the department, shall be reinstated. A permit shall be reissued for one additional six-month period if a permittee continues to meet the qualifications of subsection 1 and has incurred no motor vehicle violations.

90 Acts, ch 1230, §27; 96 Acts, ch 1129, §78; 98 Acts, ch 1073, §9

321.180B Graduated driver's licenses for persons aged fourteen through seventeen.

Persons under age eighteen shall not be issued a license or permit to operate a motor vehicle except under the provisions of this section. However, the department may issue restricted and special driver's licenses to certain minors as provided in sections 321.178 and 321.194, and driver's licenses restricted to motorized bicycles as provided in section 321.189. A license or permit shall not be issued under this section or section 321.178 or 321.194 without the consent of a parent or guardian. An additional consent is required each time a license or permit is issued under this section or section 321.178 or 321.194. The consent must be signed by at least one parent or guardian on an affidavit form provided by the department.

1. *Instruction permit.* The department may issue an instruction permit to an applicant between the ages of fourteen and eighteen years if the applicant meets the requirements of sections 321.184 and 321.186, other than a driving demonstration, and pays the required fee. An instruction permit issued under this section shall be valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance. A motorcycle instruction permit issued under this section is not renewable.

Subject to the limitations in this subsection, an instruction permit entitles the permittee, while having the permit in the permittee's immediate possession, to operate a motor vehicle other than a commercial motor vehicle or as a chauffeur or a motor vehicle with a gross vehicle weight rating of sixteen thousand one or more pounds upon the highways.

Except as otherwise provided, a permittee who is less than eighteen years of age and who is operating a motor vehicle must be accompanied by a person issued a driver's license valid for the vehicle operated who is the parent or guardian of the permittee, member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver. A permittee shall not operate a motor vehicle if the number of passengers in the motor vehicle exceeds the number of passenger safety belts in the motor vehicle. If the applicant for an instruction permit holds a driver's license issued in this state valid for the operation of a motorized bicycle or a motorcycle, the instruction permit shall be valid for such operation without the requirement of an accompanying person.

However, if the permittee is operating a motorcycle in accordance with this section, the accompanying person must be within audible and visual communications distance from the permittee and be accompanying the permittee on or in a different motor vehicle. Only one permittee shall be under the immediate supervision of an accompanying qualified person.

A permittee shall not be penalized for failing to have the instruction permit in the permittee's immediate possession if the permittee produces in court, within a reasonable time, an instruction permit issued to the permittee and valid at the time of the permittee's arrest or at the time the permittee was charged with failure to have the permit in the permittee's immediate possession.

2. *Intermediate license.* The department may issue an intermediate driver's license to a person sixteen or seventeen years of age who possesses an instruction permit issued under subsection 1 or a comparable instruction permit issued by another state for a minimum of six months immediately preceding application, and who presents an affidavit signed by a parent or guardian on a form to be provided by the department that the permittee has accumulated a total of twenty hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the permittee's parent, guardian, instructor, a person certified by the department, or a person at least twenty-five years of age who had written permission from a parent or guardian to accompany the permittee, and whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and conviction free continuously for, the six-month period immediately preceding the application for an intermediate license. An applicant for an intermediate license must meet the requirements of section 321.186, including satisfactory completion of driver education as required in section 321.178, and payment of the required license fee before an intermediate license will be issued. A person issued an intermediate license must limit the number of passengers in the motor vehicle when the intermediate licensee is operating the motor vehicle to the number of passenger safety belts.

Except as otherwise provided, a person issued an intermediate license under this subsection who is operating a motor vehicle between the hours of twelve-thirty a.m. and five a.m. must be accompanied by a person issued a driver's license valid for the vehicle operated who is the parent or guardian of the permittee, a member of the permittee's immediate family if the family member is at least twenty-one years of age, an approved driver education instructor, a prospective driver education instructor who is enrolled in a practitioner preparation program with a safety education program approved by the state board of education, or a person at least twenty-five years of age if written permission is granted by the parent or guardian, and who is actually occupying a seat beside the driver. However, a licensee may operate a vehicle to and from school-related extracurricular activities and work without an accompanying driver between the hours of twelve-thirty a.m. and five a.m. if such licensee possesses a waiver on a form to be provided by the department. An accompanying driver is not required between the hours of five a.m. and twelve-thirty a.m.

3. *Remedial driver improvement action or suspension of permit or intermediate license.* A person who has been issued an instruction permit or an intermediate license under this section, upon conviction of a moving traffic violation or involvement in a motor vehicle accident which occurred during the term of the instruction permit or intermediate license, shall be subject to remedial driver improvement action or suspension of the permit or license. A person possessing an instruction permit who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued an intermediate license until the person has completed the remedial driver improvement action and has been accident and conviction free continuously for the six-month period immediately preceding the application for the intermediate license. A person possessing an intermediate license who has been convicted of a moving traffic violation or has been involved in an accident shall not be issued a full driver's license until the person has completed the remedial driver improvement action and has been accident and conviction free continuously for the twelve-month period immediately preceding the application for a full driver's license.

4. *Full driver's license.* A full driver's license may be issued to a person seventeen years of age who possesses an intermediate license issued under subsection 2 or a comparable intermediate license issued by another state for a minimum of twelve months immediately preceding application, and who presents an affidavit signed by a parent or guardian on a form to be provided by the department that the intermediate licensee has accumulated a total of ten hours of street or highway driving of which two hours were conducted after sunset and before sunrise and the street or highway driving was with the licensee's parent, guardian, instructor, a person certified by the department, or a person at least twenty-five years of age who had written permission from a parent or guardian to accompany the licensee, whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has been accident and conviction free continuously for, the twelve-month period immediately preceding the application for a full driver's license, and who has paid the required fee.

5. *Class M license education requirements.* A person under the age of eighteen applying for an intermediate or full driver's license valid for the operation of a motorcycle shall be required to successfully complete a motorcycle education course either approved and established by the department of transportation or from a private or commercial driver education school licensed by the department of transportation before the class M license will be issued. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction minus moneys received by the school district under subsection 6.

6. *Motorcycle rider education fund.* The motorcycle rider education fund is established in the office of the treasurer of state. The moneys credited to the fund are appropriated to the state department of transportation to be used to establish

new motorcycle rider education courses and reimburse sponsors of motorcycle rider education courses for the costs of providing motorcycle rider education courses approved and established by the department. The department shall adopt rules under chapter 17A providing for the distribution of moneys to sponsors of motorcycle rider education courses based upon the cost of providing the education courses.

7. *Rules.* The department may adopt rules pursuant to chapter 17A to administer this section.

98 Acts, ch 1112, §5, 14, 16; 99 Acts, ch 13, §12, 13; 99 Acts, ch 128, §1 – 3

For applicable scheduled fine, see §805.8A, subsection 4, paragraph a

321.181 Temporary permit.

The department may issue a temporary permit to an applicant for a driver's license permitting the applicant to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's privilege to receive the driver's license. The permit must be in the applicant's immediate possession while operating a motor vehicle. The temporary permit shall be invalid and returned to the department when the applicant's license is issued or when the license is denied.

[C39, §**5013.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.181]

90 Acts, ch 1230, §28; 96 Acts, ch 1152, §10; 98 Acts, ch 1073, §9

321.182 Application.

Every applicant for a driver's license shall do all of the following:

1. *a.* Make application on a form provided by the department which shall include the applicant's full name, signature, current mailing address, current residential address, date of birth, social security number, and physical description including sex, height, and eye color. The application may contain other information the department may require by rule. Pursuant to procedures established by the department and for an applicant who is a foreign national temporarily present in this state, the department may waive the requirement that the application include the applicant's social security number.

b. A licensee shall notify the department when the licensee's mailing address changes and provide the new address within thirty days of obtaining the new address. The application provided by the department shall include a statement for the applicant to sign that acknowledges the applicant's knowledge of the requirement to notify the department of a mailing address change. The penalty under section 321.482 shall not apply to a licensee's failure to notify the department of such an address change.

2. Surrender all other driver's licenses and nonoperator's identification cards.

3. Certify that the applicant has no other driver's license and certify that the applicant is a resident of this state as provided in section 321.1A. However, certification of residency is not required for an applicant for a nonresident commercial driver's license who is a foreign national temporarily present in this state, as determined by the department.

4. Certify that the applicant is not currently subject to suspension, revocation, or cancellation of any driver's license and has committed no offense and has not acted in a manner which either alone or with previous actions or offenses could result in suspension, revocation, or cancellation of any driver's license.

[C31, 35, §4960-d12; C39, §**5013.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.182]

90 Acts, ch 1230, §29; 95 Acts, ch 118, §21; 98 Acts, ch 1073, §9, 10; 2001 Acts, ch 32, §42; 2002 Acts, ch 1063, §23, 55

Voter registration, see §48A.18
Subsections 1 and 3 amended

321.183 Contents of application. Repealed by 90 Acts, ch 1230, § 97. See § 321.182.

321.184 Applications of unmarried minors.

1. *Consent required.* The application of an unmarried person under the age of eighteen years for a driver's license shall contain the verified consent and confirmation of the applicant's birthday by either parent of the applicant, the guardian of the applicant, or a person having custody of the applicant under chapter 600A. Officers and employees of the department may administer the oaths without charge.

2. *Withdrawal of consent.* The person who provided the signed consent under subsection 1 may withdraw that consent at any time. The withdrawal of consent shall be in writing, signed and verified. The department, upon receipt of the withdrawal of consent, shall cancel the applicant's driver's license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required in this chapter. This subsection does not apply if the licensee or permittee has attained the age of eighteen years or is married.

[C31, 35, §4960-d13; C39, §**5013.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.184; 82 Acts, ch 1248, §2]

84 Acts, ch 1219, §23; 86 Acts, ch 1048, §1; 90 Acts, ch 1230, §30; 98 Acts, ch 1073, §9

321.185 Death of person signing application — effect.

The department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until

such time as a new application, duly signed and verified, is made as required by this chapter. This provision shall not apply in the event the minor has attained the age of eighteen years.

[C39, §**5013.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.185]

321.186 Examination of new or incompetent operators.

The department may examine every new applicant for a driver's license or any person holding a valid driver's license when the department has reason to believe that the person may be physically or mentally incompetent to operate a motor vehicle, or whose driving record appears to the department to justify the examination. The department shall make every effort to accommodate a functionally illiterate applicant when the applicant is taking a knowledge test. The department shall make every effort to have an examiner conduct the commercial driver's license driving skills tests at other locations in this state where skills may be adequately tested when requested by a person representing ten or more drivers requiring driving skills testing.

The department shall make every effort to accommodate a commercial driver's license applicant's need to arrange an appointment for a driving skills test at an established test site other than where the applicant passed the required knowledge test. The department shall report to the governor and the general assembly on any problems, extraordinary costs and recommendations regarding the appointment scheduling process.

The examination shall include a screening of the applicant's eyesight, a test of the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, a test of the applicant's knowledge of the traffic laws of this state, an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle and other physical and mental examinations as the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways. However, an applicant for a new driver's license other than a commercial driver's license need not pass a vision test administered by the department if the applicant files with the department a vision report in accordance with section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department.

A physician licensed under chapter 148, 150, or 150A, or an optometrist licensed under chapter 154, may report to the department the identity of a person who has been diagnosed as having a physical or mental condition which would render the person physically or mentally incompetent to operate a motor vehicle in a safe manner. The physician or optometrist shall make reasonable efforts to notify the person who is the subject of the report, in writing. The written notification shall state the nature of the disclosure and the reason for the disclosure. A physician or optometrist making a report under this section shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report. A physician or optometrist has no duty to make a report or to warn third parties with regard to any knowledge concerning a person's mental or physical competency to operate a motor vehicle in a safe manner. Any report received by the department from a physician or optometrist under this section shall be kept confidential. Information regulated by chapter 141A shall be subject to the confidentiality provisions and remedies of that chapter.

[C31, 35, §4960-d14; C39, §**5013.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.186]

90 Acts, ch 1230, §31; 92 Acts, ch 1175, §32; 98 Acts, ch 1029, §1; 98 Acts, ch 1073, §9; 99 Acts, ch 181, §16; 2002 Acts, ch 1032, §1

Unnumbered paragraph 1 amended

321.186A Vision report in lieu of vision test.

1. An applicant for a new or renewed driver's license other than a commercial driver's license need not take a vision test administered by the department if the applicant files with the department a vision report signed by a licensed vision specialist in accordance with this section.

2. An applicant for such a new or renewed driver's license who fails a vision test administered by the department may subsequently be issued the driver's license without need of passing a department administered vision test, if the applicant files with the department a vision report from a licensed vision specialist in accordance with this section.

3. The vision report shall state the visual acuity level of the applicant as measured by the vision specialist and shall be in the form and include other information as required by rule of the department. A vision report is valid only if the visual acuity level of the applicant has been measured by the licensed vision specialist within thirty days before the application for the new or renewed driver's license.

4. As used in this section, a *"licensed vision specialist"* means a physician licensed under chapter 148, 150, or 150A, or an optometrist licensed under chapter 154.

90 Acts, ch 1230, §32; 98 Acts, ch 1073, §9

321.187 Examiners.

1. The department shall examine applicants for driver's licenses. Examiners of the department shall wear an identifying badge and uniform provided by the department.

2. The department may by rule designate community colleges to administer the driving skills test required for a commercial driver's license pro-

vided that all of the following occur:

a. The driving skills test is the same as that which would otherwise be administered by the state.

b. The examiner contractually agrees to comply with the requirements of 49 C.F.R. § 383.75 as adopted by rule by the department.

[C31, 35, §4960-d17; C39, §**5013.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.187]

90 Acts, ch 1230, §33; 98 Acts, ch 1073, §10; 99 Acts, ch 96, §29

321.188 Commercial driver's license requirements.

1. Before the department issues, renews, or upgrades a commercial driver's license and in addition to the requirements of section 321.182, the license applicant shall do all of the following:

a. Certify whether the applicant is subject to and meets applicable driver qualifications of 49 C.F.R. part 391 as adopted by rule by the department.

b. Certify the applicant is not subject to any commercial driver's license disqualification and has committed no offense and has not acted in a manner which either alone or with previous actions or offenses could result in commercial driver's license disqualification.

c. Successfully pass knowledge tests and driving skills tests which the department shall require by rule. The rules adopted shall substantially comply with the federal minimum testing and licensing requirements in 49 C.F.R. part 383, subparts E, G, and H as adopted by rule by the department. Except as required under 49 C.F.R. part 383, subpart E, G, or H, a commercial driver's license is renewable without a driving skills test within one year after its expiration date.

d. Certify the vehicle to be operated in the driving skills tests represents the largest class of vehicle the applicant will operate on the highway.

e. Certify that the applicant is a resident of Iowa or a resident of a foreign jurisdiction.

2. An applicant for a commercial driver's license may substitute for a driving skills test the applicant's operating record and previous passage of a driving skills test or the applicant's operating record and previous driving experience if all of the following conditions exist:

a. The applicant is currently licensed to operate a commercial motor vehicle.

b. The applicant certifies that during the two years immediately preceding application all of the following apply:

(1) The applicant has not held driver's licenses valid for the operation of commercial motor vehicles from more than one state simultaneously.

(2) The applicant has not had any convictions which are federal commercial driver's license disqualifying offenses under 49 C.F.R. § 383.51 as adopted by rule by the department while operating any type of vehicle.

(3) The applicant has not committed a traffic violation, other than a parking violation, arising in connection with a traffic accident.

(4) No record of an accident exists for which the applicant was convicted of a moving traffic violation.

(5) The applicant has not had any driver's license suspended, revoked, or canceled.

c. The applicant provides evidence of and certifies that the applicant is employed in a job requiring operation of a commercial motor vehicle and the applicant has done one of the following:

(1) Has previously passed a driving skills test given by this state or its designee in a motor vehicle representative of the class of motor vehicle the applicant will operate.

(2) Has operated during the two-year period immediately preceding the application a motor vehicle representative of the class of motor vehicle the applicant will operate.

3. An applicant for a hazardous material endorsement must pass a knowledge test as required under 49 C.F.R. § 383.121 as adopted by rule by the department to obtain or retain the endorsement. However, an applicant for license issuance who was previously issued a commercial driver's license from another state may retain the hazardous material endorsement from the previously issued license if the applicant successfully passed the endorsement test within the preceding twenty-four months.

4. The department shall check the applicant's driving record as maintained by the applicant's current licensing state, the national commercial driver's license information system, and the national driver register to determine whether the applicant qualifies to be issued a commercial driver's license. The department shall notify the national commercial driver's license information system of the issuance, renewal, or upgrade of a commercial driver's license.

5. A resident of this state holding a commercial driver's license issued by a former state of residence in conformity with the federal commercial driver testing and licensing standards shall not be required to take a knowledge or driving skills test prior to issuance of a commercial driver's license in this state, except a basic Iowa rules of the road knowledge test and, when applicable, motorcycle operator knowledge and driving skills tests. The commercial driver's license issued by this state shall be valid for operation of the same class of vehicles with the same endorsements and restrictions as in the former state of licensure. However, a person with a hazardous materials endorsement must comply with subsection 3.

90 Acts, ch 1230, §34; 92 Acts, ch 1175, §21; 98 Acts, ch 1073, §9, 10; 99 Acts, ch 96, §30 – 32; 2000 Acts, ch 1133, §4

321.189 Driver's license — content.

1. *Classification and issuance.* Upon payment of the required fee, the department shall issue to every qualified applicant a driver's license. Driver's licenses shall be classified as follows:

a. Class A — Valid for the operation of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds, and also valid for the operation of vehicles with lower gross combination weight ratings and other vehicles except motorcycles.

b. Class B — Valid for the operation of a vehicle with a gross vehicle weight rating of twenty-six thousand one or more pounds or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towing vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds and the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating of less than ten thousand one pounds, and also valid for the operation of vehicles with lower gross vehicle weight ratings or gross combination weight ratings except motorcycles.

c. Class C — Valid for the operation of a vehicle, other than a motorcycle, or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds provided the towing vehicle has a gross vehicle weight rating of less than twenty-six thousand one pounds and each towed vehicle has a gross vehicle weight rating of less than ten thousand one pounds, or a combination of vehicles with a gross vehicle weight rating or gross combination weight rating of less than twenty-six thousand one pounds and also valid for the operation of any vehicle, other than a motorcycle, for which the operator is exempt from commercial driver's license requirements under section 321.176A.

d. Class D — Valid for the operation of a motor vehicle as a chauffeur.

e. Class M — Valid for the operation of a motorcycle.

A driver's license may be issued for more than one class. Class A and B driver's licenses shall only be issued as commercial driver's licenses. Class C and M driver's licenses may be issued as commercial driver's licenses. A driver's license is not valid for the operation of a vehicle requiring an endorsement unless the driver's license is endorsed for the vehicle. A class D driver's license is also valid as a noncommercial class C driver's license. The holder of a commercial driver's license is not required to obtain a class D driver's license to operate a motor vehicle as a chauffeur. When necessary, the department shall by rule create additional classes or modify existing classes of driver's licenses, however, the rule shall be temporary and if within sixty days after the next regular session of the general assembly convenes the general assembly has not made corresponding changes in this chapter, the temporary classification or modification shall be nullified.

2. *Content of license.*

a. Appearing on the driver's license shall be a distinguishing number assigned to the licensee; the licensee's full name, date of birth, sex, and residence address; a colored photograph; a physical description of the licensee; the name of the state; the dates of issuance and expiration; and the usual signature of the licensee. The license shall identify the class of vehicle the licensee may operate and the applicable endorsements and restrictions which the department shall require by rule.

b. A commercial driver's license shall include the licensee's address as required under federal regulations, and the words "commercial driver's license" or "CDL" shall appear prominently on the face of the license. If the applicant is a nonresident, the license must conspicuously display the word "nonresident".

c. The department shall assign an applicant for a driver's license a distinguishing driver's license number other than the applicant's social security number, unless the applicant requests that the applicant's social security number be so assigned.

d. The license may contain other information as required under the department's rules.

3. *Replacement.* If prior to the renewal date, a person desires to obtain a driver's license in the form authorized by this section, a license may be issued as a voluntary replacement upon payment of the required fee as set by the department by rule. A person shall return a driver's license and be issued a new license when the first license contains inaccurate information upon payment of the required fee as set by the department by rule.

4. *Symbols.* Upon the request of a licensee, the department shall indicate on the license the presence of a medical condition, that the licensee is a donor under the uniform anatomical gift law, or that the licensee has in effect a medical advance directive. For purposes of this subsection, a medical advance directive includes, but is not limited to, a valid durable power of attorney for health care as defined in section 144B.1. The license may contain such other information as the department may require by rule.

5. *Tamperproofing.* The department shall issue a driver's license by a method or process which prevents as nearly as possible the alteration, reproduction, or superimposition of a photograph on the license without ready detection.

6. *Licenses issued to persons under age twenty-one.* A driver's license issued to a person under eighteen years of age shall contain the same information as any other driver's license except that the words "under eighteen" shall appear promi-

nently on the face of the license. A driver's license issued to a person eighteen years of age or older but less than twenty-one years of age shall contain the same information as any other driver's license except that the words "under twenty-one" shall appear prominently on the face of the license. Upon attaining the age of eighteen or upon attaining the age of twenty-one, and upon payment of a one dollar fee, the person shall be entitled to a new driver's license or nonoperator's identification card for the unexpired months of the driver's license or card. An instruction permit or intermediate license issued under section 321.180B, subsection 1 or 2, shall include a distinctive color bar. An intermediate license issued under section 321.180B, subsection 2, shall include the words "intermediate license" printed prominently on the face of the license.

7. *Motorized bicycle.*

a. The department may issue a driver's license valid only for operation of a motorized bicycle to a person fourteen years of age or older who has passed a vision test or who files a vision report as provided in section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department and who passes a written examination on the rules of the road. A person under the age of sixteen applying for a driver's license valid only for operation of a motorized bicycle shall also be required to successfully complete a motorized bicycle education course approved and established by the department or successfully complete an approved motorized bicycle education course at a private or commercial driver education school licensed by the department. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction. A driver's license valid only for operation of a motorized bicycle entitles the licensee to operate a motorized bicycle upon the highway while having the license in the licensee's immediate possession. The license is valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance, subject to termination or cancellation as provided in this section.

b. A driver's license valid only for operation of a motorized bicycle shall be canceled upon a conviction for a moving traffic violation and reapplication may be made thirty days after the date of cancellation. The cancellation of the license upon conviction for a moving traffic violation shall not result in requiring the applicant to maintain proof of financial responsibility under section 321A.17, unless the conviction would otherwise result in a suspension or revocation of a person's driver's license.

c. As used in this section, *"moving traffic violation"* does not include a parking violation as defined in section 321.210 or a violation of a section of the Code or municipal ordinance pertaining to standards to be maintained for motor vehicle equipment except sections 321.430 and 321.431, or except a municipal ordinance pertaining to motor vehicle brake requirements as applicable to motorized bicycles.

d. The holder of any class of driver's license may operate a motorized bicycle.

[C31, 35, §4960-d19, -d20, -d22, -d28; C39, §**5013.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.189; C77, 79, 81, §321.189; 81 Acts, ch 107, §1, 2]

84 Acts, ch 1022, §4; 84 Acts, ch 1292, §3; 87 Acts, ch 167, §1; 87 Acts, ch 206, §2, 3; 90 Acts, ch 1230, §35; 92 Acts, ch 1175, §22, 23; 93 Acts, ch 164, §1; 94 Acts, ch 1102, §2; 95 Acts, ch 67, §25; 95 Acts, ch 95, §1; 95 Acts, ch 118, §22; 96 Acts, ch 1017, §1 – 3; 97 Acts, ch 74, §1; 98 Acts, ch 1073, §9; 98 Acts, ch 1112, §6, 7, 14, 16; 99 Acts, ch 13, §14; 2001 Acts, ch 90, §2; 2001 Acts, ch 132, §5; 2001 Acts, ch 180, §7

Fee, see §321.191

321.189A Driver's license for undercover law enforcement officers — fee — penalties.

1. The department may issue undercover driver's licenses to certified peace officers employed by a local authority or by the state or federal law enforcement officers for use in the line of duty when a fictitious identity is necessary. The department, in cooperation with the commissioner of public safety, shall adopt rules pursuant to chapter 17A regarding the issuance, use, and cancellation of licenses issued pursuant to this section.

2. A license issued pursuant to this section shall only be issued to a certified peace officer or federal law enforcement officer, who is qualified to obtain the class of license sought, at the request of the law enforcement agency employing the officer for official use when the officer is involved in duty in which a fictitious identity is necessary. An officer issued a license pursuant to this section shall surrender the license when the license is no longer needed.

3. *a.* A license issued pursuant to this section shall only be used in the line of duty when it is necessary for the officer holding the license to assume a fictitious identity. An officer issued a license pursuant to this section shall report as soon as practical to the law enforcement agency employing the officer any traffic citation issued to the officer while using the officer's fictitious identity.

b. An officer using a license issued under this section shall not be prosecuted for a public offense under this chapter if the offense was committed in the line of duty and was necessary to protect the identity of the officer. However, this paragraph shall not apply to a violation of subsection 4, paragraph *"a"*.

4. *a.* An officer who provides the department false information for the purposes of obtaining a license under this section commits a class "D" felony.

b. An officer who displays or uses a license issued pursuant to this section during the commis-

sion or attempted commission of a public offense other than a public offense referred to in subsection 3 or who knowingly permits another person to use the license issued under this section commits a class "D" felony.

c. An officer who displays or uses a license issued pursuant to this section in any manner which is not a public offense but which is not authorized under this section or who knowingly fails or refuses to surrender the license upon demand by the department commits an aggravated misdemeanor.

5. The fee for issuing a license under this section shall be the same as for licenses issued pursuant to section 321.189.

6. The department shall keep as confidential public records under section 22.7, all records regarding licenses issued under this section.

97 Acts, ch 92, §2; 98 Acts, ch 1073, §10

321.190 Issuance of nonoperator's identification cards — fee.

1. *Application for and contents of card.*

a. The department shall, upon application and payment of the required fee, issue to an applicant a nonoperator's identification card. To be valid the card shall bear a distinguishing number assigned to the card holder, the full name, date of birth, sex, residence address, a physical description and a colored photograph of the card holder, the usual signature of the card holder, and such other information as the department may require by rule. An applicant for a nonoperator's identification card shall apply for the card in the manner provided in section 321.182, subsections 1 through 3. The card shall be issued to the applicant at the time of application pursuant to procedures established by rule.

b. The department shall not issue a card to a person holding a driver's license. However, a card may be issued to a person holding a temporary permit under section 321.181. The card shall be identical in form to a driver's license issued under section 321.189 except the word "nonoperator" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person under eighteen years of age shall contain the same information as any other nonoperator's identification card except that the words "under eighteen" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person eighteen years of age or older but under twenty-one years of age shall contain the same information as any other nonoperator's identification card except that the words "under twenty-one" shall appear prominently on the face of the card.

c. The department shall use a process or processes for issuance of a nonoperator's identification card, that prevent, as nearly as possible, the opportunity for alteration or reproduction of, and the superimposition of a photograph on the nonoperator's identification card without ready detection.

d. The fee for a nonoperator's identification card shall be five dollars and the card shall be valid for a period of five years from the date of issuance. A nonoperator's identification card shall be issued without expiration to anyone age seventy or over. If an applicant for a nonoperator's identification card is a foreign national who is temporarily present in this state, the nonoperator's identification card shall be issued only for the length of time the foreign national is authorized to be present as determined by the department, not to exceed two years. An issuance fee shall not be charged for a person whose driver's license or driving privilege has been suspended under section 321.210, subsection 1, paragraph *"c"*.

The nonoperator's identification card fees shall be transmitted by the department to the treasurer of state who shall credit the fees to the road use tax fund.

2. *Cancellation.* The department shall cancel a person's nonoperator's identification card upon determining the person was not entitled to be issued the card, did not provide correct information, committed fraud in applying for the card, or unlawfully used a nonoperator's identification card.

[C77, 79, 81, §321.190]

84 Acts, ch 1305, §65; 89 Acts, ch 317, §32; 90 Acts, ch 1230, §36, 37; 96 Acts, ch 1090, §2; 96 Acts, ch 1152, §11; 97 Acts, ch 74, §2; 98 Acts, ch 1073, §9; 2001 Acts, ch 132, §6; 2002 Acts, ch 1063, §24

Voter registration, see §48A.18

Pilot project for waiving or refunding of fees; 2000 Acts, ch 1216, §5

Subsection 1, paragraphs a and d amended

321.191 Fees for driver's licenses.

1. *Instruction permits.* The fee for an instruction permit, other than a special instruction permit, chauffeur's instruction permit, or commercial driver's instruction permit, is six dollars. The fee for a special instruction permit is ten dollars. The fee for a chauffeur's instruction permit or commercial driver's instruction permit is twelve dollars.

2. *Noncommercial driver's licenses.* The fee for a noncommercial driver's license, other than a class D driver's license or any type of instruction permit, is four dollars per year of license validity.

3. *Licenses for chauffeurs.* The fee for a noncommercial class D driver's license is eight dollars per year of license validity.

4. *Commercial driver's licenses.* The fee for a commercial driver's license, other than an instruction permit, for the operation of a commercial motor vehicle is eight dollars per year of license validity.

5. *Licenses valid for motorcycles.* An additional fee of one dollar per year of license validity is required to issue a license valid to operate a motorcycle.

6. *Special minors' licenses.* Notwithstanding subsection 2, the fee for a driver's license issued to a minor under section 321.194 or a restricted license issued to a minor under section 321.178, subsection 2, is eight dollars.

7. *Endorsements and removal of air brake restrictions.* The fee for a double/triple trailer endorsement, tank vehicle endorsement, and hazardous materials endorsement is five dollars for each endorsement. The fee for a passenger endorsement is ten dollars. The fee for removal of an air brake restriction on a commercial driver's license is ten dollars. Fees imposed under this subsection for endorsements or removal of restrictions are valid for the period of the license. Upon renewal of a commercial driver's license no fee is payable for retaining endorsements or the removal of the air brake restriction for those endorsements or restrictions which do not require the taking of either a knowledge or a driving skills test for renewal.

8. *Driver's license reinstatements.* The fee for reinstatement of a driver's license shall be twenty dollars for a license which is, after notice and opportunity for hearing, canceled, suspended, revoked, or barred. However, reinstatement of the privilege suspended under section 321.210, subsection 1, paragraph *"c"*, shall be without fee. The fee for reinstatement of the privilege to operate a commercial motor vehicle after a period of disqualification shall be twenty dollars.

9. *Upgrading a license class privilege — fee adjustment.* If an applicant wishes to upgrade a license class privilege, the fee charged shall be prorated on full-year fee increments of the new license in accordance with rules adopted by the department. The expiration date of the new license shall be the expiration date of the currently held driver's license. The fee for a commercial driver's license endorsement, the removal of an air brake restriction, or a commercial driver's license instruction permit shall not be prorated.

As used in this subsection *"to upgrade a license class privilege"* means to add any privilege to a valid driver's license. The addition of a privilege includes converting from a noncommercial to a commercial license, converting from a noncommercial class C to a class D license, converting an instruction permit to a class license, adding any privilege to a section 321.189, subsection 7, license, adding an instruction permit privilege, adding a section 321.189, subsection 7, license to an instruction permit, and adding any privilege relating to a driver's license issued to a minor under section 321.194 or section 321.178, subsection 2.

[C31, 35, §4960-d26; C39, §**5013.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.191; 82 Acts, ch 1160, §1, ch 1167, §1]

84 Acts, ch 1305, §66; 86 Acts, ch 1220, §29; 87 Acts, ch 167, §2; 87 Acts, ch 206, §4; 90 Acts, ch 1230, §38; 96 Acts, ch 1152, §12; 98 Acts, ch 1073, §9, 10; 2002 Acts, ch 1063, §25 – 27

Pilot project for waiving or refunding of fees; 2000 Acts, ch 1216, §5

Subsections 2 – 4 amended

Subsection 7 stricken and former subsections 8 – 10 renumbered as 7 – 9

Subsection 7 amended

321.192 Disposal of fees. Repealed by 90 Acts, ch 1230, § 97. See § 321.145.

321.193 Restrictions on licenses — penalty.

As provided by rule, the department may impose restrictions suitable to the licensee's driving ability with respect to the type of motor vehicle or special mechanical control devices required on a motor vehicle which the licensee may operate or other restrictions applicable to the licensee as the department may determine to be appropriate.

The department may set forth restrictions upon the driver's license.

The department may suspend or revoke the driver's license upon receiving satisfactory evidence of any violation of the license's restrictions.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph *"a"*, for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to that person under this section.

[C39, §**5013.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.193]

90 Acts, ch 1230, §39; 92 Acts, ch 1175, §33; 98 Acts, ch 1073, §9, 12; 2001 Acts, ch 176, §51, 59

321.194 Special minors' licenses.

1. *Driver's license issued for travel to and from school.* Upon certification of a special need by the school board, superintendent of the applicant's school, or principal, if authorized by the superintendent, the department may issue a class C or M driver's license to a person between the ages of fourteen and eighteen years whose driving privileges have not been suspended, revoked, or barred under this chapter or chapter 321J during, and who has not been convicted of a moving traffic violation or involved in a motor vehicle accident for, the six-month period immediately preceding the application for the special minor's license and who has successfully completed an approved driver education course. However, the completion of a course is not required if the applicant demonstrates to the satisfaction of the department that completion of the course would impose a hardship upon the applicant. The department shall adopt rules defining the term *"hardship"* and establish procedures for the demonstration and determination of when completion of the course would impose a hardship upon an applicant.

a. The driver's license entitles the holder, while having the license in immediate possession, to operate a motor vehicle other than a commercial

motor vehicle or as a chauffeur:

(1) During the hours of 6 a.m. to 10 p.m. over the most direct and accessible route between the licensee's residence and schools of enrollment and between schools of enrollment for the purpose of attending duly scheduled courses of instruction and extracurricular activities within the school district.

(2) At any time when the licensee is accompanied in accordance with section 321.180B, subsection 1.

b. Each application shall be accompanied by a statement from the school board, superintendent, or principal, if authorized by the superintendent, of the applicant's school. The statement shall be upon a form provided by the department. The school board, superintendent, or principal, if authorized by the superintendent, shall certify that a need exists for the license and that the board, superintendent, or principal authorized by the superintendent is not responsible for actions of the applicant which pertain to the use of the driver's license. Upon receipt of a statement of necessity, the department shall issue the driver's license. The fact that the applicant resides at a distance less than one mile from the applicant's school of enrollment is prima facie evidence of the nonexistence of necessity for the issuance of a license. The school board shall develop and adopt a policy establishing the criteria that shall be used by a school district administrator to approve or deny certification that a need exists for a license. The student may appeal to the school board the decision of a school district administrator to deny certification. The decision of the school board is final. The driver's license shall not be issued for purposes of attending a public school in a school district other than either of the following:

(1) The district of residence of the parent or guardian of the student.

(2) A district which is contiguous to the district of residence of the parent or guardian of the student, if the student is enrolled in the public school which is not the school district of residence because of open enrollment under section 282.18 or as a result of an election by the student's district of residence to enter into one or more sharing agreements pursuant to the procedures in chapter 282.

2. *Suspension and revocation.* A driver's license issued under this section is subject to suspension or revocation for the same reasons and in the same manner as suspension or revocation of any other driver's license. The department may also suspend a driver's license issued under this section upon receiving satisfactory evidence that the licensee has violated the restrictions of the license or has been involved in one or more accidents chargeable to the licensee. The department may suspend a driver's license issued under this section upon receiving a record of the licensee's conviction for one violation. The department shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways other than parking violations as defined in section 321.210. After a person licensed under this section receives two or more convictions which require revocation of the person's license under this section, the department shall not grant an application for a new driver's license until the expiration of one year.

[C31, 35, §4960-d5; C39, §**5013.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.194; 82 Acts, ch 1248, §3]

83 Acts, ch 49, §1, 4; 83 Acts, ch 101, §68; 84 Acts, ch 1022, §5; 84 Acts, ch 1219, §24; 89 Acts, ch 266, §2; 90 Acts, ch 1230, §40; 98 Acts, ch 1073, §9; 98 Acts, ch 1112, §8, 14, 16; 2001 Acts, ch 159, §17

For applicable scheduled fine, see §805.8A, subsection 4, paragraph a

321.195 Duplicate driver's licenses and nonoperator's identification cards.

If a driver's license or nonoperator's identification card issued under this chapter is lost or destroyed, the person to whom the license or card was issued may, upon payment of a fee of three dollars for a driver's license or nonoperator's identification card, obtain a duplicate, or substitute, upon furnishing proof satisfactory to the department that the driver's license or nonoperator's identification card has been lost or destroyed. A fee of one dollar shall be charged for the voluntary replacement of a driver's license or nonoperator's identification card.

[C31, 35, §4960-d27; C39, §**5013.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.195]

89 Acts, ch 317, §33; 91 Acts, ch 27, §2; 98 Acts, ch 1073, §9, 10

321.196 Expiration of license — renewal.

1. Except as otherwise provided, a driver's license, other than an instruction permit, chauffeur's instruction permit, or commercial driver's instruction permit issued under section 321.180, expires five years from the licensee's birthday anniversary occurring in the year of issuance if the licensee is between the ages of seventeen years eleven months and seventy years on the date of issuance of the license. If the licensee is under the age of seventeen years eleven months or age seventy or over, the license is effective for a period of two years from the licensee's birthday anniversary occurring in the year of issuance. A licensee whose license is restricted due to vision or other physical deficiencies may be required to renew the license every two years. If a licensee is a foreign national who is temporarily present in this state, the license shall be issued only for the length of time the foreign national is authorized to be present as determined by the department, not to exceed two years.

2. Except as required in section 321.188, and except for a motorcycle instruction permit issued in accordance with section 321.180 or 321.180B, a driver's license is renewable without written examination or penalty within a period of sixty days after its expiration date and without a driving test within a period of one year after its expiration date. A person shall not be considered to be driving with an invalid license during a period of sixty days following the license expiration date. However, for a license renewed within the sixty-day period, the date of issuance shall be considered to be the previous birthday anniversary on which it expired.

3. For the purposes of this section, the birthday anniversary of a person born on February 29 shall be deemed to occur on March 1.

4. The department in its discretion may authorize the renewal of a valid driver's license other than a commercial driver's license upon application without an examination provided that the applicant satisfactorily passes a vision test as prescribed by the department or files a vision report in accordance with section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department. An application for renewal of a driver's license shall include a statement for the applicant to sign that acknowledges the applicant's knowledge of the requirement to notify the department of a mailing address change under section 321.182, subsection 1.

5. A resident of Iowa holding a valid driver's license who is temporarily absent from the state or incapacitated, may, at the time for renewal of such license, apply to the department for a temporary extension of the license. The department upon receipt of the application shall, upon a showing of good cause, issue a temporary extension of the driver's license for a period not to exceed six months.

[C31, 35, §4960-d15, -d30; C39, §**5013.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.196]

84 Acts, ch 1219, §25; 85 Acts, ch 195, §35; 86 Acts, ch 1220, §30; 87 Acts, ch 167, §3; 89 Acts, ch 296, §31; 90 Acts, ch 1230, §41; 93 Acts, ch 51, §1; 98 Acts, ch 1073, §9; 98 Acts, ch 1112, §9, 14, 16; 2000 Acts, ch 1133, §5; 2001 Acts, ch 32, §43; 2001 Acts, ch 180, §8; 2002 Acts, ch 1063, §28

Section amended

321.197 Expiration of chauffeur's licenses — replacement by commercial driver's license. Repealed effective July 1, 1994, by its own terms per amendment in 90 Acts, ch 1230, § 42.

321.198 Military service exception.

The effective date of a valid driver's license to the extent that it permits the operation of a motor vehicle other than a commercial motor vehicle and other than as a chauffeur, issued under the laws of this state, held by any person at the time of entering the military service of the United States or of the state of Iowa notwithstanding the expiration of the license according to its terms, is hereby extended without fee until six months following the initial separation from active duty of the person from the military service, provided the person is not suffering from physical disabilities which impair the person's competency as an operator and provided further that the licensee shall upon demand of any peace officer furnish satisfactory evidence of the person's military service. However, a person entitled to the benefits of this section, charged with operating a motor vehicle without an operator's license, shall not be convicted if the person produces in court, within a reasonable time, a valid driver's license previously issued to that person along with evidence of the person's military service as above mentioned.

The department is authorized to renew any driver's license falling within the provisions and limitations of the preceding paragraph, without examination, upon application and payment of fee made within six months following separation from the military service.

The provisions of this section shall also apply to the spouse and children or ward of such military personnel when such spouse, children or ward are living with the above described military personnel outside of the state of Iowa and provided that such extension of license does not exceed five years.

A person whose period of validity of the person's driver's license is extended under this section may file an application in accordance with rules adopted by the department to have the person's record of issuance of a driver's license retained in the department's record system during the period for which the driver's license remains valid. If a person has had the record of issuance of the person's driver's license removed from the department's records, the person shall have the person's record of driver's license issuance reentered by the department upon request if the request is accompanied by a letter from the applicable person's commanding officer verifying the military service.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.198]

87 Acts, ch 167, §5; 87 Acts, ch 170, §5; 90 Acts, ch 1230, §43, 44; 98 Acts, ch 1073, §9

321.199 Driver's license records.

The department shall file every application for a license received by it and shall maintain suitable indexes containing, in alphabetical order, all of the following:

1. All applications denied and the reasons for the denial.

2. All applications granted.

3. The name of every licensee who has been disqualified from operating a commercial motor vehicle or whose license has been suspended, re-

voked, or canceled by the department and after each name a note on the reasons for the action.

[C31, 35, §4960-d18; C39, §**5013.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.199]

90 Acts, ch 1230, §45; 98 Acts, ch 1073, §9

321.200 Conviction and accident file.

The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which the licensee has been involved shall be readily ascertainable and available for the consideration of the department upon any application for renewal of license and at other suitable times.

[C39, §**5013.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.200]

CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES

321.201 Cancellation and return of license — prohibition from issuance of commercial driver's license for false information.

1. The department may cancel a driver's license upon determination of any of the following:

a. That the licensee was not entitled to the issuance of the license.

b. That the licensee failed to give required or correct information or committed fraud in making the application.

Upon cancellation, the licensee shall immediately return the license to the department.

2. Upon cancellation of a commercial driver's license for providing false information or committing fraud in the application, the applicant shall not operate a commercial motor vehicle in this state and shall not be issued a license valid to operate a commercial motor vehicle for a period of sixty days.

[C31, 35, §4960-d33; C39, §**5014.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.201]

90 Acts, ch 1230, §46; 98 Acts, ch 1073, §9

321.202 Surrender of license. Repealed by 90 Acts, ch 1230, § 97. See § 321.201.

321.203 Suspending privileges of nonresidents.

A nonresident's privilege to operate a motor vehicle on a highway in this state is subject to suspension or revocation for the same reasons and in the same manner as suspension or revocation of a resident's driver's license and is also subject to suspension as provided in section 321.513.

[C31, 35, §4960-d37; C39, §**5014.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.203]

90 Acts, ch 1230, §47

321.204 Certification of conviction — notification of commercial driver's license disqualification.

1. The department is authorized, upon receiving a record of the conviction in this state of a nonresident operator of a motor vehicle for any offense under the motor vehicle laws of this state, to forward a certified written or electronic record of the conviction to the motor vehicle administrator in the licensing state.

2. The department shall notify the commercial driver's license information system and the commercial motor vehicle administrator in the licensing state, if applicable, of the disqualification of a commercial driver within ten days of any of the following:

a. The disqualification of the commercial driver under section 321.208 if the disqualification is for sixty days or more.

b. The suspension or revocation of a commercial driver's license if the suspension or revocation is for sixty days or more.

c. The cancellation of a commercial driver's license.

[C31, 35, §4960-d41; C39, §**5014.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.204]

90 Acts, ch 1230, §48

321.205 Conviction or administrative decision in another jurisdiction.

The department is authorized to suspend or revoke the driver's license of a resident of this state upon receiving notice of the conviction of the resident in another state for an offense which, if committed in this state, would be grounds for the suspension or revocation of the license or upon receiving notice of a final administrative decision in another state that the resident has acted in a manner which would be grounds for suspension or revocation of the license in this state.

[C31, 35, §4960-d39; C39, §**5014.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.205]

90 Acts, ch 1230, §49; 93 Acts, ch 16, §3; 93 Acts, ch 87, §4; 96 Acts, ch 1218, §58; 98 Acts, ch 1073, §9

321.206 Surrender of license — duty of court.

If a person is convicted in court of an offense for which this chapter requires mandatory revocation of the person's driver's license or, if the person's license is a commercial driver's license and the conviction disqualifies the person from operating a commercial motor vehicle, the court shall require the person to surrender the driver's license held by the person and the court shall forward the license together with a record of the conviction to the department as provided in section 321.491.

[C31, 35, §4960-d32; C39, §**5014.06;** C46, 50, 54,

58, 62, 66, 71, 73, 75, 77, 79, 81, §321.206]
90 Acts, ch 1230, §50; 98 Acts, ch 1073, §9

321.207 Record forwarded. Repealed by 90 Acts, ch 1230, § 97. See § 321.206.

321.208 Commercial driver's license disqualification — replacement driver's license — temporary license.

1. A person is disqualified from operating a commercial motor vehicle for one year upon a conviction or final administrative decision that the person while operating a commercial motor vehicle has committed any of the following acts or offenses in any state or foreign jurisdiction:

a. Operating a commercial motor vehicle while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances.

b. Operating a commercial motor vehicle with an alcohol concentration, as defined in section 321J.1, of 0.04 or more.

c. Refusal to submit to chemical testing required under chapter 321J.

d. Failure to stop and render aid at the scene of an accident involving the person's vehicle.

e. A felony or aggravated misdemeanor involving the use of a commercial motor vehicle other than an offense involving manufacturing, distributing, or dispensing a controlled substance.

f. Operating a commercial motor vehicle while any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

However, a person is disqualified for three years if the act or offense occurred while the person was operating a commercial motor vehicle transporting hazardous material of a type or quantity requiring vehicle placarding.

2. A person is disqualified for life if convicted or found to have committed two or more of the above acts or offenses arising out of two or more separate incidents. However, a disqualification for life is subject to a reduction to a ten-year disqualification as provided in 49 C.F.R. § 383.51 as adopted by rule by the department.

3. A person is disqualified from operating a commercial motor vehicle for the person's life upon a conviction that the person used a commercial motor vehicle in the commission of a felony or aggravated misdemeanor involving the manufacturing, distributing, or dispensing of a controlled substance as defined in section 124.101.

4. A person is disqualified from operating a commercial motor vehicle if the person receives convictions for committing within any three-year period two or more of the following offenses while operating a commercial motor vehicle:

a. Speeding fifteen miles per hour or more over the legal speed limit.

b. Reckless driving.

c. Any violation of the traffic laws, except a parking violation or a vehicle weight violation, which arises in connection with a fatal traffic accident.

d. Operating a commercial motor vehicle when not issued a driver's license valid for the vehicle operated.

e. Operating a commercial motor vehicle upon a highway when disqualified.

f. Operating a commercial motor vehicle upon a highway without immediate possession of a driver's license valid for the vehicle operated.

g. Following another motor vehicle too closely.

h. Improper lane changes in violation of section 321.306.

The period of disqualification under this subsection shall be sixty days for two offenses within any three-year period and one hundred twenty days for three offenses within any three-year period.

5. A person is disqualified from operating a commercial motor vehicle when the person's driving privilege is suspended or revoked.

6. A person is disqualified from operating a commercial motor vehicle:

a. For ninety days upon conviction for the first violation of an out-of-service order; for one year, upon conviction for a second violation of an out-of-service order in separate incidents within a ten-year period; and for not less than three and not more than five years upon conviction for a third or subsequent violation of an out-of-service order in separate incidents within a ten-year period.

b. For one year upon conviction for the first violation and for not less than three years and not more than five years upon conviction for a second or subsequent violation of an out-of-service order while transporting hazardous materials required to be placarded, or while operating a commercial motor vehicle designed to transport more than fifteen passengers including the driver.

7. A person is disqualified from operating a commercial motor vehicle if the person is convicted of a first, second, or third railroad crossing at grade violation as follows:

a. A person is disqualified from operating a commercial motor vehicle for sixty days if the person is convicted of a first railroad crossing at grade violation under section 321.341 or 321.343 and the violation occurred while the person was operating a commercial motor vehicle.

b. A person is disqualified from operating a commercial motor vehicle for one hundred twenty days if the person is convicted of a second railroad crossing at grade violation under section 321.341 or 321.343, the violation occurred while the person was operating a commercial motor vehicle, and the violation occurred within three years after a first such violation.

c. A person is disqualified from operating a commercial motor vehicle for one year if the person is convicted of a third or subsequent railroad crossing at grade violation under section 321.341

or 321.343, the violation occurred while the person was operating a commercial motor vehicle, and the violation occurred within three years after a first such violation.

8. Upon receiving a record of a person's disqualifying conviction, administrative decision, suspension, or revocation, the department shall, by rule, without preliminary hearing and upon thirty days' advance notice, disqualify the person from operating a commercial motor vehicle upon a highway.

9. A person is disqualified from operating a commercial motor vehicle if the person either refuses to submit to chemical testing required under chapter 321J or submits to chemical testing and the results show an alcohol concentration as defined in section 321J.1 of 0.04 or more. The department, upon receipt of the peace officer's certification, subject to penalty for perjury, that the peace officer had reasonable grounds to believe the person to have been operating a commercial motor vehicle with an alcohol concentration of 0.04 or more and that the person refused to submit to the chemical testing or submitted to chemical testing and the results show an alcohol concentration as defined in section 321J.1 of 0.04 or more, shall, without preliminary hearing and upon thirty days' advance notice, disqualify the person from operating a commercial motor vehicle upon a highway.

The effective date of disqualification shall be thirty days after notification. Immediate notice of disqualification may be served on a person operating a commercial motor vehicle who refused to submit to a test or whose test results indicate an alcohol concentration of 0.04 or more by the peace officer administering the chemical test or, notwithstanding chapter 17A, the department may notify the person by first class mail. If immediate notice is served, the peace officer shall take the commercial driver's license or permit of the driver, if issued within the state, and issue a temporary commercial driver's license effective for only thirty days. The peace officer shall immediately send the person's commercial driver's license to the department in addition to the officer's certification required by this subsection.

10. Upon notice, the disqualified person shall surrender the person's commercial driver's license to the department and the department may issue a driver's license valid only to operate a noncommercial motor vehicle upon payment of a one dollar fee. The department shall notify the commercial driver's license information system of the disqualification if required to do so under section 321.204.

11. Notwithstanding the Iowa administrative procedure Act, the filing of a petition for judicial review shall stay the disqualification pending the determination by the district court.

12. The department may reinstate a qualified person's privilege to operate a commercial motor vehicle after a period of disqualification and after payment of required fees.

13. As used in this section, the terms *"acts"*, *"actions"*, and *"offenses"* mean acts, actions, or offenses which occur on or after July 1, 1990.

[C39, §**5014.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79,81, §321.208]

90 Acts, ch 1230, §51; 92 Acts, ch 1175, §24 – 26; 95 Acts, ch 55, §6; 96 Acts, ch 1152, §13; 98 Acts, ch 1073, §9; 99 Acts, ch 96, §33; 2000 Acts, ch 1133, §6; 2001 Acts, ch 32, §44; 2001 Acts, ch 132, §7; 2002 Acts, ch 1063, §29

Subsection 7, paragraphs a – c amended

321.208A Operation in violation of out-of-service order — penalty.

A person required to hold a commercial driver's license to operate a commercial motor vehicle shall not operate a commercial motor vehicle on the highways of this state in violation of an out-of-service order issued by a peace officer for a violation of the out-of-service rules adopted by the department. An employer shall not allow an employee to drive a commercial motor vehicle in violation of such out-of-service order. A person who violates this section shall be subject to a scheduled fine of one hundred dollars under section 805.8A, subsection 13, paragraph *"c"*.

90 Acts, ch 1230, §52; 95 Acts, ch 55, §7; 97 Acts, ch 108, §12; 98 Acts, ch 1178, §1; 2001 Acts, ch 137, §5

321.209 Mandatory revocation.

The department, upon thirty days' notice and without preliminary hearing, shall revoke the license or operating privilege of an operator upon receiving a record of the operator's conviction for any of the following offenses, when such conviction has become final:

1. Manslaughter resulting from the operation of a motor vehicle.

2. A felony if during the commission of the felony a motor vehicle is used.

3. Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another.

4. Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles.

5. Conviction, or forfeiture of bail not vacated, upon two charges of reckless driving.

6. Conviction of drag racing.

7. Eluding or attempting to elude a law enforcement vehicle as provided in section 321.279.

[C31, 35, §4960-d33, 5027-d1; C39, §**5014.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.209; 82 Acts, ch 1167, §2]

83 Acts, ch 125, §3; 86 Acts, ch 1220, §31; 90 Acts, ch 1230, §53; 93 Acts, ch 16, §4; 96 Acts, ch

1152, §14; 96 Acts, ch 1218, §59

321.210 Suspension.

1. The department is authorized to establish rules providing for the suspension of the license of an operator upon thirty days' notice and without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

a. Is an habitually reckless or negligent driver of a motor vehicle.

b. Is an habitual violator of the traffic laws.

c. Is physically or mentally incapable of safely operating a motor vehicle.

d. Has permitted an unlawful or fraudulent use of the license.

e. Has committed an offense or acted in a manner in another state or foreign jurisdiction which in this state would be grounds for suspension or revocation.

f. Has committed a serious violation of the motor vehicle laws of this state.

g. Is subject to a license suspension under section 321.513.

Prior to a suspension taking effect under paragraph *"a"*, *"b"*, *"c"*, *"d"*, *"e"*, or *"f"*, the licensee shall have received thirty days' advance notice of the effective date of the suspension. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, the filing of a petition for judicial review shall, except for suspensions under paragraph *"c"*, operate to stay the suspension pending the determination by the district court.

2. In determining suspension the department shall not consider the following:

a. Violation of motor vehicle equipment standards if repairs are made within seventy-two hours of the violation and satisfactory evidence of repair is immediately sent to the department.

b. Violations of requirements to install and use safety belts, safety harnesses, and child restraint devices under sections 321.445 and 321.446.

c. Parking violations, meaning violation of a local authority parking ordinance or violation of sections 321L.4, 321.366, subsection 6, and 321.354 through 321.361 except section 321.354, subsection 1.

d. The first two speeding violations within any twelve-month period of ten miles per hour or less over the legal speed limit in speed zones having a legal speed limit between thirty-four miles per hour and fifty-six miles per hour.

[C31, 35, §4960-d35; C39, §**5014.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.210; 82 Acts, ch 1100, §18, 19]

84 Acts, ch 1016, §2; 84 Acts, ch 1022, §1; 86 Acts, ch 1009, §1; 86 Acts, ch 1220, §32; 87 Acts, ch 120, §1; 87 Acts, ch 167, §6; 89 Acts, ch 247, §6; 90 Acts, ch 1230, §54; 96 Acts, ch 1152, §15; 97 Acts, ch 23, §33; 97 Acts, ch 104, §16

321.210A Suspension for failure to pay fine, penalty, surcharge, or court costs.

The department shall suspend the driver's license of a person who, upon conviction of violating a law regulating the operation of a motor vehicle, has failed to pay the criminal fine or penalty, surcharge, or court costs, as follows:

1. Upon the failure of a person to timely pay the fine, penalty, surcharge, or court costs the clerk of the district court shall notify the person by regular mail that if the fine, penalty, surcharge, or court costs remain unpaid after sixty days from the date of mailing, the clerk will notify the department of the failure for purposes of instituting suspension procedures.

2. Upon the failure of a person to pay the fine, penalty, surcharge, or court costs within sixty days' notice by the clerk of the district court as provided in subsection 1, the clerk shall report the failure to the department.

3. Upon receipt of a report of a failure to pay the fine, penalty, surcharge, or court costs from the clerk of the district court, the department shall in accordance with its rules, suspend the person's driver's license until the fine, penalty, surcharge, or court costs are paid, unless the person proves to the satisfaction of the department that the person cannot pay the fine, penalty, surcharge, or court costs.

85 Acts, ch 197, §3; 86 Acts, ch 1019, §1; 98 Acts, ch 1073, §9

321.210B Nonrenewal or suspension for failure to pay indebtedness owed to the state.

The department shall suspend or refuse to renew the driver's license of a person who has a delinquent account owed to the state according to records provided by the department of revenue and finance pursuant to section 421.17. A license shall be suspended or shall not be renewed until such time as the department of revenue and finance notifies the state department of transportation that the licensee has made arrangements for payment of the debt with the agency which is owed or is collecting the debt. This section is only applicable to those persons residing in a county which is participating in the driver's license indebtedness clearance pilot project.

95 Acts, ch 194, §6; 97 Acts, ch 153, §1; 98 Acts, ch 1073, §9

For provisions establishing a driver's license indebtedness clearance pilot project effective May 19, 1997, see 97 Acts, ch 153, §2, 4

321.210C Probation period.

A person whose driver's license or operating privileges have been suspended, revoked, or barred under chapter 321 for a conviction of a moving traffic violation, or suspended, revoked, or barred under section 321.205 or section 321.210, subsection 1, paragraph *"e"*, or chapter 321J, must

satisfactorily complete a twelve-month probation period beginning immediately after the end of the period of suspension, revocation, or bar. Upon conviction of a moving traffic violation which occurred during the probation period, the department may suspend the driver's license or operating privileges for an additional period equal in duration to the original period of suspension, revocation, or bar, or for one year, whichever is the shorter period.

98 Acts, ch 1112, §10, 14, 16

321.210D Vehicular homicide suspension — termination upon revocation of license — reopening of suspension.

1. If a trial information or indictment is filed charging a person with the offense of homicide by vehicle under section 707.6A, subsection 1 or 2, the clerk of the district court shall, upon the filing of the information or indictment, forward notice to the department including the name and address of the party charged, the registration number of the vehicle involved, if known, the nature of the offense, and the date of the filing of the indictment or information.

2. Upon receiving notice from the clerk of the district court that an indictment or information has been filed charging an operator with homicide by vehicle under section 707.6A, subsection 1 or 2, the department shall notify the person that the person's driver's license will be suspended effective ten days from the date of issuance of the notice. The department shall adopt rules relating to the suspension of the license of an operator pursuant to this section which shall include, but are not limited to, procedures for the surrender of the person's license to the department upon the effective date of the suspension.

3. If a person whose driver's license has been suspended pursuant to this section is not convicted of the charge of homicide by vehicle under section 707.6A, subsection 1 or 2, upon record entry of disposition of the charge, the clerk of the district court shall forward a notice including the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense charged by indictment or information, the date of the filing of the indictment or information, and of the disposition of the charge to the department. Upon receipt of the notice from the clerk, the department shall automatically rescind the suspension and reinstate the person's driver's license without payment of any charge or penalty.

4. Upon receiving a record of conviction under section 321.206, for a violation of section 707.6A, subsection 1 or 2, and upon revocation of the person's license or operating privileges under section 321.209, the suspension under subsection 2 shall automatically terminate in favor of the revocation.

98 Acts, ch 1073, §12; 98 Acts, ch 1088, §1; 2000 Acts, ch 1133, §7

321.211 Notice and hearing — appropriation.

Upon suspending the license of a person as authorized, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing before the department of inspections and appeals as early as practical within thirty days after receipt of the request. The hearing shall be held by telephone conference unless the licensee and the department of inspections and appeals agree to hold the hearing in the county in which the licensee resides or in some other county. Upon the hearing the department of inspections and appeals may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon the hearing and issuance of a recommendation by the department of inspections and appeals, the state department of transportation shall either rescind its order of suspension or for good cause may extend the suspension of the license or revoke the license. This section does not preclude the director from attempting to effect an informal settlement under chapter 17A.

There is appropriated each year from the road use tax fund to the department of transportation two hundred twenty-five thousand dollars or as much thereof as is necessary to be used to pay the cost of notice and personal delivery of service, as necessary to meet the notice requirement of this section. The department shall adopt rules governing the payment of the cost of personal delivery of service. The reinstatement fees collected under section 321.191 shall be deposited in the road use tax fund in the manner provided in section 321.145, as reimbursement for the costs of notice under this section.

A peace officer stopping a person for whom a notice of a suspension or revocation has been issued or to whom a notice of a hearing has been sent under the provisions of this section may personally serve such notice upon forms approved by the department to satisfy the notice requirements of this section. The peace officer may confiscate the driver's license of such person if the license has been revoked or has been suspended subsequent to a hearing and the person has not forwarded the driver's license to the department as required.

[C31, 35, §4960-d36; C39, §**5014.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.211; 81 Acts, ch 14, §24]

83 Acts, ch 198, §21; 86 Acts, ch 1246, §29; 89 Acts, ch 273, §1; 89 Acts, ch 317, §34; 90 Acts, ch 1230, §55; 90 Acts, ch 1267, §37; 92 Acts, ch 1238, §34; 98 Acts, ch 1073, §9

321.211A Appeal of extended suspension or revocation.

Notwithstanding any provision of law to the contrary, if a person was not served with notice of a suspension or revocation under section 321.16, or section 321J.9, subsection 4, or section 321J.12, subsection 3, the person may appeal to the department an extension of the period of suspension or revocation based upon a conviction under section 321.218 or 321J.21. At the hearing on the appeal, the sole issue shall be whether the department failed to send notice of the underlying suspension or revocation to the person at the address contained in the department's records. If the department determines it failed to send such notice, the department shall rescind the extended suspension or revocation resulting from the conviction and send notice of the department's determination to the court that rendered the conviction. Upon receipt of the notice, the court shall enter an order exonerating the person of the conviction and ordering that the record of the conviction be expunged by the clerk of the district court.

2001 Acts, ch 32, §45

321.212 Period of suspension or revocation — surrender of license.

1. *a.* Except as provided in section 321.210A or 321.513 the department shall not suspend a license for a period of more than one year, except that a license suspended because of incompetency to drive a motor vehicle shall be suspended until the department receives satisfactory evidence that the former holder is competent to operate a motor vehicle and a refusal to reinstate constitutes a denial of license within section 321.215; upon revoking a license the department shall not grant an application for a new license until the expiration of one year after the revocation, unless another period is specified by law.

A suspension under section 321.210, subsection 1, paragraph *"d"*, for a violation of section 321.216B shall not exceed six months. As soon as practicable after the period of suspension has expired, but not later than six months after the date of expiration, the department shall expunge information regarding the suspension from the person's driving record.

b. The department shall not revoke a license under the provisions of subsection 5 of section 321.209 for more than thirty days nor less than five days as recommended by the trial court.

c. The department shall revoke a license for six months for a first offense under the provisions of section 321.209, subsection 6, where the violation charged did not result in a personal injury or damage to property.

d. The department shall revoke a driver's license according to an order issued pursuant to section 901.5, subsection 10, for one hundred eighty days. If the person has not been issued a driver's license, the issuance of a driver's license shall be delayed for one hundred eighty days after the person is first eligible. If the person's operating privileges have been suspended or revoked at the time the person is convicted, the one-hundred-eighty-day revocation period shall not begin until all other suspensions or revocations have terminated.

2. The department upon suspending or revoking a driver's license shall require that the license be surrendered to and be retained by the department. At the end of the period of suspension the license surrendered shall be reissued to the licensee upon payment of the reinstatement fee under section 321.191. At the end of a period of revocation the licensee must apply for a new driver's license.

[C31, 35, §4960-d40, -d42, -d45; C39, §**5014.12, 5014.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.212, 321.213; 82 Acts, ch 1167, §3]

85 Acts, ch 197, §4; 90 Acts, ch 1230, §56; 93 Acts, ch 16, §5; 93 Acts, ch 164, §2; 96 Acts, ch 1218, §60; 98 Acts, ch 1073, §9

321.213 License suspensions or revocations due to violations by juvenile drivers.

Upon the entering of a dispositional order suspending or revoking the driver's license or operating privileges of the juvenile under section 232.52, subsection 2, paragraph *"a"*, the clerk of the juvenile court shall forward a copy of the adjudication and the dispositional order to the department. Notwithstanding section 232.55, a final adjudication in a juvenile court that the child violated a provision of this chapter or chapter 321A or 321J constitutes a final conviction for purposes of section 321.189, subsection 7, paragraph *"b"*, and sections 321.193, 321.194, 321.200, 321.209, 321.210, 321.215, 321.555, 321A.17, 321J.2, 321J.3, and 321J.4.

[82 Acts, ch 1070, §1]

C83, §321.213

86 Acts, ch 1220, §33; 89 Acts, ch 296, §32; 90 Acts, ch 1230, §57; 93 Acts, ch 16, §6; 93 Acts, ch 87, §6; 95 Acts, ch 55, §8; 96 Acts, ch 1218, §61; 98 Acts, ch 1073, §9

321.213A License suspension for juveniles adjudicated delinquent for certain drug or alcohol offenses.

Upon the entering of a dispositional order under section 232.52, subsection 2, paragraph *"a"*, the clerk of the juvenile court shall forward a copy of the adjudication and the dispositional order suspending or revoking the driver's license or operating privileges of the juvenile to the department. The department shall suspend the license or operating privilege of the child for one year. The child may receive a temporary restricted license, if eligible, as provided in section 321.215.

94 Acts, ch 1172, §34; 95 Acts, ch 55, §9; 96 Acts, ch 1034, §20; 96 Acts, ch 1218, §62; 98 Acts, ch 1073, §9; 2001 Acts, ch 132, §8

321.213B Suspension for failure to attend.

The department shall establish procedures by rule for suspending the license of a juvenile who is in violation of section 299.1B or issuing the juvenile a temporary restricted license under section 321.215 if the juvenile is employed at least twenty hours per week.

94 Acts, ch 1172, §35; 96 Acts, ch 1152, §16

321.214 No operation under foreign license. Repealed by 90 Acts, ch 1230, § 97.

321.215 Temporary restricted license.

1. The department, on application, may issue a temporary restricted license to a person whose noncommercial driver's license is suspended or revoked under this chapter, allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by any of the following:

a. The person's full-time or part-time employment.

b. The person's continuing health care or the continuing health care of another who is dependent upon the person.

c. The person's continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion.

d. The person's substance abuse treatment.

e. The person's court-ordered community service responsibilities.

However, a temporary restricted license shall not be issued to a person whose license is revoked pursuant to a court order issued under section 901.5, subsection 10, or under section 321.209, subsections 1 through 5 or subsection 7, or to a juvenile whose license has been suspended or revoked pursuant to a dispositional order under section 232.52, subsection 2, paragraph *"a"*, for a violation of chapter 124 or 453B, or section 126.3. A temporary restricted license may be issued to a person whose license is revoked under section 321.209, subsection 6, only if the person has no previous drag racing convictions. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

2. Upon conviction and the suspension or revocation of a person's noncommercial driver's license under section 321.209, subsection 5 or 6; section 321.210; 321.210A; or 321.513; or upon revocation pursuant to a court order issued under section 901.5, subsection 10; or upon the denial of issuance of a noncommercial driver's license under section 321.560, based solely on offenses enumerated in section 321.555, subsection 1, paragraph *"c"*, or section 321.555, subsection 2; or a juvenile, whose license has been suspended or revoked pursuant to a dispositional order under section 232.52, subsection 2, paragraph *"a"*, for a violation of chapter 124 or 453B, or section 126.3, a person may petition the district court having jurisdiction over the residence of the person for a temporary restricted license to operate a motor vehicle for the limited purpose or purposes specified in subsection 1. The petition shall include a current certified copy of the petitioner's official driving record issued by the department. The application may be granted only if all of the following criteria are satisfied:

a. The temporary restricted license is requested only for a case of extreme hardship or compelling circumstances where alternative means of transportation do not exist.

b. The license applicant has not made an application for a temporary restricted license in any district court in the state which was denied.

c. The temporary restricted license is restricted to the limited purpose or purposes specified in subsection 1 at times specified in the license.

d. Proof of financial responsibility is established as defined in chapter 321A. However, such proof is not required if the driver's license was suspended under section 321.210A or 321.513 or revoked pursuant to a court order issued under section 901.5, subsection 10.

If the district court determines that a temporary restricted license is necessary, the court shall order the department to issue a temporary restricted license to the applicant. The court shall forward a record of each application for a temporary restricted license to the department, together with the results of the disposition of the request by the court.

3. The temporary restricted license shall be canceled upon conviction of a moving traffic violation or upon a violation of a term of the license. A *"moving traffic violation"* does not include a parking violation as defined in section 321.210.

4. The temporary restricted license is not valid to operate a commercial motor vehicle if a commercial driver's license is required for the person's operation of the commercial motor vehicle.

[C31, 35, §4960-d43, -d44; C39, §**5014.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.215]

84 Acts, ch 1022, §6; 84 Acts, ch 1219, §26; 90 Acts, ch 1230, §58; 93 Acts, ch 16, §7 – 9; 95 Acts, ch 55, §10; 95 Acts, ch 143, §1; 96 Acts, ch 1152, §17; 96 Acts, ch 1218, §63 – 65; 98 Acts, ch 1073, §9; 2000 Acts, ch 1133, §8 – 10; 2001 Acts, ch 132, §9; 2002 Acts, ch 1050, §33

Subsection 2, unnumbered paragraph 1 amended

LICENSES AND NONOPERATOR'S IDENTIFICATION CARDS — VIOLATIONS

321.216 Unlawful use of license or nonoperator's identification card — penalty.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph *"b"*, for any person:

1. To display or cause or permit to be displayed or have in the person's possession a canceled, revoked, suspended, fictitious, or fraudulently altered driver's license or nonoperator's identification card.

2. To lend that person's driver's license or nonoperator's identification card to another person or knowingly permit the use of the license by another.

3. To display or represent as one's own a driver's license or nonoperator's identification card not issued to that person.

4. To fail or refuse to surrender to the department upon its lawful demand a driver's license or nonoperator's identification card which has been suspended, revoked, or canceled.

5. To permit an unlawful use of a driver's license or nonoperator's identification card issued to that person.

[C31, 35, §4960-d46, -d52; C39, §**5015.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.216]

89 Acts, ch 84, §1; 90 Acts, ch 1230, §59; 96 Acts, ch 1090, §3; 98 Acts, ch 1073, §9; 2001 Acts, ch 176, §52, 59

321.216A Falsifying driver's licenses, nonoperator's identification cards, or forms.

It is a serious misdemeanor for a person to do any of the following:

1. Make a driver's license, a nonoperator's vehicle identification card, or a blank driver's license form if the person has no authority or right to make the license, card, or form.

2. Obtain, possess, or have in the person's control or on the person's premises, driver's license or nonoperator's identification card forms.

3. Obtain, possess, or have in the person's control or on the person's premises, a driver's license or a nonoperator's identification card, or blank driver's license or nonoperator's identification card form, which has been made by a person having no authority or right to make the license, card, or form.

4. Use a false or fictitious name in any application for a driver's license or nonoperator's identification card or to knowingly make a false statement or knowingly conceal a material fact or otherwise commit fraud on an application.

89 Acts, ch 84, §2; 96 Acts, ch 1090, §4; 98 Acts, ch 1073, §9, 10

321.216B Use of driver's license or nonoperator's identification card by underage person to obtain alcohol.

A person who is under the age of twenty-one, who alters or displays or has in the person's possession a fictitious or fraudulently altered driver's license or nonoperator's identification card and who uses the license to violate or attempt to violate section 123.47, commits a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph *"c"*. The court shall forward a copy of the conviction to the department.

93 Acts, ch 164, §3; 96 Acts, ch 1090, §5; 97 Acts, ch 126, §40; 98 Acts, ch 1073, §9; 98 Acts, ch 1100, §45; 2001 Acts, ch 176, §53, 59

Legislative intent regarding effect on insurance rates; 93 Acts, ch 164, §6

321.216C Use of driver's license or nonoperator's identification card by underage person to obtain cigarettes or tobacco products.

A person who is under the age of eighteen, who alters or displays or has in the person's possession a fictitious or fraudulently altered driver's license or nonoperator's identification card and who uses the license or card to violate or attempt to violate section 453A.2, subsection 2, commits a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph *"c"*. The court shall forward a copy of the conviction to the department.

2000 Acts, ch 1105, §1; 2001 Acts, ch 176, §54, 59

321.217 Perjury.

Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed, is guilty of a class "D" felony.

[C31, 35, §4960-d47; C39, §**5015.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.217]

Perjury, §720.2

321.218 Operating without valid driver's license or when disqualified — penalties.

1. A person whose driver's license or operating privilege has been denied, canceled, suspended, or revoked as provided in this chapter or as provided in section 252J.8 or section 901.5, subsection 10, and who operates a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked, commits a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars nor more than one thousand five hundred dollars.

2. The sentence imposed under this section shall not be suspended by the court, notwithstanding section 907.3 or any other statute.

3. The department, upon receiving the record of the conviction of a person under this section

upon a charge of operating a motor vehicle while the license of the person is suspended or revoked, shall, except for licenses suspended under section 252J.8, 321.210, subsection 1, paragraph *"c"*, section 321.210A, 321.210B, or 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new driver's license to the person during the additional period.

If the department receives a record of a conviction of a person under this section but the person's driving record does not indicate what the original grounds of suspension were, the period of suspension under this subsection shall be for a period not to exceed six months.

4. A person who operates a commercial motor vehicle upon the highways of this state when disqualified from operating the commercial motor vehicle under section 321.208 commits a serious misdemeanor if a commercial driver's license is required for the person to operate the commercial motor vehicle.

5. The department, upon receiving the record of a conviction of a person under this section upon a charge of operating a commercial motor vehicle while the person is disqualified shall extend the period of disqualification for an additional like period.

[C31, 35, §4960-d34, -d51; C39, §**5015.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.218; 82 Acts, ch 1167, §4]

84 Acts, ch 1142, §1; 85 Acts, ch 195, §36; 86 Acts, ch 1220, §34; 89 Acts, ch 83, §43; 90 Acts, ch 1230, §60; 93 Acts, ch 164, §4; 95 Acts, ch 48, §4; 96 Acts, ch 1090, §6, 7; 97 Acts, ch 104, §17; 98 Acts, ch 1073, §9; 99 Acts, ch 153, §2

321.218A Civil penalty — disposition — reinstatement.

When the department suspends, revokes, or bars a person's driver's license or nonresident operating privilege for a conviction under this chapter, the department shall assess the person a civil penalty of two hundred dollars. However, for persons age nineteen or under, the civil penalty assessed shall be fifty dollars. The civil penalty does not apply to a suspension issued for a violation of section 321.180B. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in the juvenile detention home fund created in section 232.142. A temporary restricted license shall not be issued or a driver's license or nonresident operating privilege reinstated until the civil penalty has been paid.

97 Acts, ch 190, §1; 98 Acts, ch 1073, §9; 98 Acts, ch 1112, §11, 16; 2001 Acts, ch 191, §42

321.219 Permitting unauthorized minor to drive.

A person shall not cause or knowingly permit the person's child or ward under the age of eighteen years to drive a motor vehicle upon any highway when the minor is not authorized under this chapter.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph *"c"*.

[C31, 35, §4960-d48; C39, §**5015.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.219]

2000 Acts, ch 1203, §7; 2001 Acts, ch 137, §5; 2002 Acts, ch 1119, §152

Unnumbered paragraph 1 amended

321.220 Permitting unauthorized person to drive.

A person shall not knowingly authorize or permit a motor vehicle owned by the person or under the person's control to be driven upon a highway by a person who is not issued a driver's license valid for the vehicle's operation.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 4, paragraph *"c"*.

[C31, 35, §4960-d50; C39, §**5015.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.220]

90 Acts, ch 1230, §61; 98 Acts, ch 1073, §9; 2000 Acts, ch 1203, §8; 2001 Acts, ch 137, §5

321.221 Employing unlicensed chauffeur.

A person shall not employ as a chauffeur of a motor vehicle a person not then holding a class D driver's license or a commercial driver's license as provided in this chapter.

[C31, 35, §4960-d49; C39, §**5015.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.221]

90 Acts, ch 1230, §62

321.222 Renting motor vehicle to another.

No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident, then duly licensed under the laws of the state or country of residence except a nonresident whose home state or country does not require that an operator be licensed.

[C39, §**5015.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.222]

321.223 Driver's license inspection for motor vehicle rental.

A person shall not rent a motor vehicle to another person without inspecting the driver's license of the person to whom the vehicle is to be rented and doing all of the following:

1. A comparison and verification of the signature on the driver's license with the signature of such person written in the inspecting person's presence.

2. A comparison and verification of the person to whom the motor vehicle is to be rented with the photograph and other identification information on the person's driver's license.

3. A determination that the driver's license of the person to whom the vehicle is to be rented is valid for operating the vehicle to be rented.

[C39, §**5015.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.223]

90 Acts, ch 1230, §63; 98 Acts, ch 1073, §9

321.224 Record kept.

Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of the latter person and the date and place when and where the license was issued. The record shall be open to inspection by any peace officer as defined in section 801.4, subsection 11, paragraphs *"a", "b", "c"* and *"h"* or employee of the department.

[C39, §**5015.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.224; 81 Acts, ch 103, §3]

HOURS OF OPERATION

321.225 Maximum mechanical operation. Repealed by 87 Acts, ch 170, § 20. See § 321.449.

321.226 Maximum operation by employee. Repealed by 87 Acts, ch 170, § 20. See § 321.449.

321.227 Violations. Repealed by 87 Acts, ch 170, § 20.

OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

321.228 Provisions refer to highways — exceptions.

The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.

2. The provisions of sections 321.261 to 321.273, and sections 321.277 and 321.280 shall apply upon highways and elsewhere throughout the state.

[C39, §**5017.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.228]

86 Acts, ch 1220, §35; 98 Acts, ch 1178, §2

321.229 Obedience to peace officers.

No person shall willfully fail or refuse to comply with any lawful order or direction of any peace officer invested by law with authority to direct, control, or regulate traffic.

[S13, §1571-m18; C24, 27, 31, 35, §5064; C39, §**5017.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.229]

For applicable scheduled fine, see §805.8A, subsection 14, paragraph a

321.230 Public officers not exempt.

The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

[C39, §**5017.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.230]

321.231 Authorized emergency vehicles and police bicycles.

1. The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected perpetrator of a felony or in response to an incident dangerous to the public or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section.

2. The driver of any authorized emergency vehicle, may:

a. Park or stand an authorized emergency vehicle, irrespective of the provisions of this chapter.

b. Disregard laws or regulations governing direction of movement for the minimum distance necessary before an alternative route that conforms to the traffic laws and regulations is available.

3. The driver of a fire department vehicle, police vehicle, or ambulance, or a peace officer riding a police bicycle in the line of duty may do any of the following:

a. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.

b. Exceed the maximum speed limits so long as the driver does not endanger life or property.

4. The exemptions granted to an authorized emergency vehicle under subsection 2 and for a fire department vehicle, police vehicle, or ambulance as provided in subsection 3 shall apply only when such vehicle is making use of an audible signaling device meeting the requirements of section 321.433 or a visual signaling device, except that use of an audible or visual signaling device shall not be required when exercising the exemption granted under subsection 3, paragraph *"b"* of this section when the vehicle is operated by a peace officer, pursuing a suspected violator of the speed restrictions imposed by or pursuant to this chapter, for the purpose of determining the speed of travel of such suspected violator.

5. The foregoing provisions shall not relieve the driver of an authorized emergency vehicle or the rider of a police bicycle from the duty to drive or ride with due regard for the safety of all persons, nor shall such provisions protect the driver or rider from the consequences of the driver's or rider's reckless disregard for the safety of others.

[C39, §**5017.04, 5017.05, 5023.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §321.231, 321.232, 321.296; C77, 79, 81, §321.231]

97 Acts, ch 71, §1; 98 Acts, ch 1080, §2; 98 Acts, ch 1100, §46

For applicable scheduled fines, see §805.8A, subsection 11, paragraph a

321.232 Radar jamming devices — penalty.

1. A person shall not sell, operate or possess a radar jamming device, except as otherwise provided in this section, when the device is in a vehicle operated on the highways of this state or the device is held for sale in this state.

2. This section does not apply to radar speed measuring devices purchased by, held for purchase for, or operated by peace officers using the devices in their official duties.

3. A radar jamming device may be seized by a peace officer subject to forfeiture as provided by chapter 809 or 809A.

4. For the purposes of this section *"radar jamming device"* means any mechanism designed or used to transmit radio waves in the electromagnetic wave spectrum to interfere with the reception of those emitted from a device used by peace officers of this state to measure the speed of motor vehicles on the highways of this state and which is not designed for two-way transmission and cannot transmit in plain language.

[81 Acts, ch 109, §1]

96 Acts, ch 1133, §41

For applicable scheduled fines, see §805.8A, subsection 14, paragraph g

321.233 Road workers exempted.

This chapter, except sections 321.277 and 321.280, does not apply to persons and motor vehicles and other equipment while actually engaged in work upon the surface of a highway officially closed to traffic but does apply to such persons and vehicles when traveling to or from such work. The minimum speed restriction of section 321.285, subsection 6, and the provisions of sections 321.297, 321.298, and 321.323 do not apply to road workers operating maintenance equipment on behalf of any state or local authority while engaged in road maintenance, road blading, snow and ice control and removal, and granular resurfacing work on a highway, whether or not the highway is closed to traffic.

[C39, §**5017.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.233; 82 Acts, ch 1154, §1]

85 Acts, ch 167, §1; 86 Acts, ch 1220, §36; 90 Acts, ch 1230, §64; 97 Acts, ch 104, §18

321.234 Bicycles, animals, or animal-drawn vehicles.

1. A person riding an animal or driving an animal drawing a vehicle upon a roadway is subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application.

2. A person, including a peace officer, riding a bicycle on the highway is subject to the provisions of this chapter and has all the rights and duties under this chapter applicable to the driver of a vehicle, except those provisions of this chapter which by their nature can have no application or those provisions for which specific exceptions have been set forth regarding police bicycles.

3. A person propelling a bicycle on the highway shall not ride other than upon or astride a permanent and regular seat attached to the bicycle.

4. A person shall not use a bicycle on the highway to carry more persons at one time than the number of persons for which the bicycle is designed and equipped.

5. This section does not apply to the use of a bicycle in a parade authorized by proper permit from local authorities.

[C39, §**5017.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.234]

85 Acts, ch 40, §2; 97 Acts, ch 71, §2

For applicable scheduled fines, see §805.8A, subsection 9

321.234A All-terrain vehicles — highway use.

1. All-terrain vehicles shall be operated on a highway only between sunrise and sunset and only when the operation on the highway is incidental to the vehicle's use for agricultural purposes. A person operating an all-terrain vehicle on a highway shall have a valid driver's license and the vehicle shall be operated at speeds of thirty-five miles per hour or less.

2. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 3, paragraph *"f"*.

85 Acts, ch 35, §3; 90 Acts, ch 1230, §65; 98 Acts, ch 1073, §9; 99 Acts, ch 108, §4; 2000 Acts, ch 1203, §9; 2001 Acts, ch 137, §5; 2002 Acts, ch 1001, §1

Section stricken and rewritten

321.235 Provisions uniform.

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

[C39, §**5017.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.235]

Iowa state patrol, see chapter 80

321.235A Electric personal assistive mobility devices.

An electric personal assistive mobility device may be operated by a person at least sixteen years of age on sidewalks and bikeways in accordance with this section.

1. None of the following are required for operation of an electric personal assistive mobility device:

a. Licensure or registration of the electric personal assistive mobility device under this chapter.

b. Possession of a driver's license or permit by the operator of the electric personal assistive mobility device.

c. Proof of financial responsibility.

2. A person operating an electric personal assistive mobility device on a sidewalk or bikeway shall do all of the following:

a. Yield the right-of-way to pedestrians and human-powered devices.

b. Give an audible signal before overtaking and passing a pedestrian or human-powered device.

3. A person shall not operate an electric personal assistive mobility device at the times specified in section 321.384 unless the person or the electric personal assistive mobility device is equipped with a headlight visible from the front of the electric personal assistive mobility device and at least one red reflector visible from the rear of the electric personal assistive mobility device.

4. Violations of this section are punishable as a scheduled violation under section 805.8A, subsection 9A.

2002 Acts, ch 1063, §30
NEW section

POWERS OF LOCAL AUTHORITIES

321.236 Powers of local authorities.

Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, however the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles.

Parking meter, snow route, and overtime parking violations which are denied shall be charged and proceed before a court the same as other traffic violations. Filing fees and court costs shall be assessed as provided in section 602.8106, subsection 1 and section 805.6, subsection 1, paragraph *"a"* for parking violation cases. Parking violations which are admitted:

a. May be charged and collected upon a simple notice of a fine payable to the city clerk or clerk of the district court, if authorized by ordinance. The fine shall not exceed five dollars except for snow route parking violations in which case the fine shall not exceed twenty-five dollars. The fine may be increased up to ten dollars if the parking violation is not paid within thirty days of the date upon which the violation occurred, if authorized by ordinance. Violations of section 321L.4, subsection 2, may be charged and collected upon a simple notice of a one hundred dollar fine payable to the city clerk or clerk of the district court, if authorized by ordinance. No costs or other charges shall be assessed. All fines collected by a city pursuant to this paragraph shall be retained by the city and all fines collected by a county pursuant to this paragraph shall be retained by the county.

b. Notwithstanding any such ordinance, may be prosecuted under the provisions of sections 805.7 to 805.13 or as any other traffic violation.

c. If the local authority regulating the standing or parking of vehicles under this subsection is located in a county where the renewal of registration of a vehicle shall be refused for unpaid restitution under section 321.40, the simple notice of fine under paragraph *"a"* shall contain the following statement:

"FAILURE TO PAY RESTITUTION OWED BY YOU CAN BE GROUNDS FOR REFUSING TO RENEW YOUR MOTOR VEHICLE'S REGISTRATION."

This paragraph does not invalidate forms for notice of parking violations in existence prior to July 1, 1980. Existing forms may be used until supplies are exhausted.

2. Regulating traffic by means of police officers or traffic-control signals.

3. Regulating or prohibiting processions or assemblages on the highways.

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

5. Regulating the speed of vehicles in public parks.

6. Designating any highway as a through highway and requiring that all vehicles stop or yield the right of way before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.

7. Licensing and regulating the operation of vehicles offered to the public for hire and used principally in intracity operation.

8. Restricting the use of highways as authorized in sections 321.471 to 321.473.

9. Regulating or prohibiting the turning of vehicles at and between intersections.

10. Regulating the operation of bicycles and requiring the registration and licensing of the same, including the requirement of a registration

fee. However, the regulations shall not conflict with the provisions of section 321.234.

11. Establishing speed limits in public alleys and providing the penalty for violation thereof.

12. Designating highways or portions of highways as snow routes. When conditions of snow or ice exist on the traffic surface of a designated snow route, it is unlawful for the driver of a vehicle to impede or block traffic if the driving wheels of the vehicle are not equipped with snow tires, tire chains, or a nonslip differential.

A person charged with impeding or blocking traffic for lack of snow tires, chains, or nonslip differential shall have the charge dismissed upon a showing to the court that the person's motor vehicle was equipped with snow tires, chains, or a nonslip differential.

13. Establishing a rural residence district. The board of supervisors of a county with respect to highways under its jurisdiction may establish, by ordinance or resolution, rural residence districts and may, by ordinance or resolution, regulate the speed and parking of vehicles within the rural residence district consistent with sections 321.239, 321.285, and 321.293. Before establishing a rural residence district, the board of supervisors shall hold a public hearing on the proposal, notice of which shall be published in a newspaper having a general circulation in the area where the proposed district is located at least twenty days before the date of hearing. The notice shall state the time and place of the hearing, the proposed location of the district, and other data considered pertinent by the board of supervisors.

14. Regulating or prohibiting the operation of electric personal assistive mobility devices authorized pursuant to section 321.235A.

[S13, §1571-m18, -m20; C24, 27, 31, 35, §4992, 4995, 4997; C39, §**5018.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.236; 82 Acts, ch 1111, §1]

85 Acts, ch 40, §3; 86 Acts, ch 1056, §2; 86 Acts, ch 1238, §14; 90 Acts, ch 1102, §1; 90 Acts, ch 1151, §2; 90 Acts, ch 1170, §2, 3; 92 Acts, ch 1122, §1; 95 Acts, ch 169, §2; 97 Acts, ch 108, §13; 97 Acts, ch 147, §1; 2002 Acts, ch 1063, §31

For fines applicable to offenses charged as scheduled violations, see §805.8A

NEW subsection 14

321.237 Signs — requirement — notice.

A traffic ordinance or regulation enacted under subsection 4, 5, 6, 8, 12 or 13 of section 321.236 shall not be effective until signs, giving notice of such local traffic regulations as specified in the department manual on uniform traffic-control devices, are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate and shall be erected at the expense of the local authority.

When a city has adopted an ordinance as authorized in section 321.236, subsection 12, or an ordinance which prohibits standing or parking of vehicles upon a street or streets during any time when snow-removal operations are in progress and before such operations have resulted in the removal or clearance of snow from such street or streets, signs as specified in the above manual, posted as hereinabove provided shall be deemed sufficient notice of the existence of such restrictions.

[C39, §**5018.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.237]

86 Acts, ch 1056, §3

321.238 Motor vehicle inspection — test drive conditions. Repealed by 84 Acts, ch 1305, § 73.

321.239 Counties may restrict parking of vehicles.

1. The county board of supervisors may adopt, amend, or repeal traffic ordinances to regulate or prohibit the standing or parking of vehicles within the right of way of any highway under its jurisdiction.

2. Any person violating a traffic ordinance adopted under this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed twenty-five dollars, or be imprisoned not to exceed seven days in the county jail. The form and style of the information shall be in the name of the county and as against the person in violation of the traffic ordinance.

[C73, 75, 77, 79, 81, §321.239]

For fines applicable to offenses charged as scheduled violations, see §805.8A, subsection 1, paragraph a

321.240 Altering center of gravity of vehicle. Repealed by 96 Acts, ch 1152, § 26.

321.241 to 321.246 Repealed by 71 Acts, ch 183, § 7.

321.247 Golf cart operation on city streets.

Incorporated areas may, upon approval of their governing body, allow the operation of golf carts on city streets by persons possessing a valid driver's license. However, a golf cart shall not be operated upon a city street which is a primary road extension through the city but shall be allowed to cross a city street which is a primary road extension through the city. The golf carts shall be equipped with a slow moving vehicle sign and a bicycle safety flag and operate on the streets only from sunrise to sunset. Golf carts operated on city streets shall be equipped with adequate brakes and shall meet any other safety requirements imposed by the governing body. Golf carts are not subject to the registration provisions of this chapter.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsec-

tion 3, paragraph *"f"*.

[82 Acts, ch 1041, §1]

90 Acts, ch 1230, §66; 98 Acts, ch 1073, §9; 2000 Acts, ch 1203, §10; 2001 Acts, ch 137, §5

321.248 Parks and cemeteries.

Local authorities may by general rule, ordinance, or regulation exclude vehicles from any cemetery or ground used for the burial of the dead, or exclude vehicles used solely or principally for commercial purposes, from any park or part of a park system where such general rule, ordinance, or regulation is applicable equally and generally to all other vehicles used for the same purpose, if, at the entrance, or at each entrance if there be more than one, to such cemetery or park from which vehicles are so excluded, there shall have been posted a sign plainly legible from the middle of the public highway on which such cemetery or park opens, plainly indicating such exclusion and prohibition.

[S13, §1571-m20; C24, 27, 31, 35, §4994; C39, §**5018.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.248]

321.249 School zones.

Cities and counties shall have the power to establish school zones and provide for the stopping of all motor vehicles approaching the school zones, when movable stop signs have been placed in the streets in the cities and highways in counties at the limits of the zones, notwithstanding the provisions of any statute to the contrary. All traffic-control devices provided for school zones shall conform to specifications included in the manual of traffic-control devices adopted by the department, except the provision prohibiting the use of portable or part-time stop signs.

[C31, 35, §4997-d1; C39, §**5018.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.249]

97 Acts, ch 108, §14

321.250 Discriminations.

When the local authorities of other states shall, by the adoption of rules and regulations or otherwise, prohibit motor vehicles registered under the laws of this state from operating upon highways in any subdivision of such other state, the local authorities of this state may, by ordinance or otherwise, require the motor vehicles of the subdivisions of such other state while operating by their own power in this state to be registered under the laws of this state.

[C24, 27, 31, 35, §4998; C39, §**5018.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.250]

321.251 Rights of owners of real property — manufactured home communities or mobile home parks.

1. This chapter shall not be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

2. *a.* The owner of real property upon which a manufactured home community or mobile home park is located may elect to have the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority where the real property is located, apply to the real property and any persons located on the real property by granting authority to any peace officer to enforce the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority as well as any regulations or conditions imposed on the real property pursuant to subsection 1. An election made pursuant to this subsection shall not create a higher priority for the enforcement of traffic laws on real property upon which a manufactured or mobile home is located than exists for the enforcement of traffic laws on public property.

b. A written notice of election shall be filed with the designated officials of the local authority whose ordinances, rules, or regulations will govern the vehicular traffic. The appropriate officials shall be the city clerk and chief of police of the city in which the real property is located and the county sheriff and the county recorder of the county in which the real property is located. The notice shall include the legal description of the real property, the street address, if any, and the date and time when the owner wishes the election to become effective. The notice shall be signed by every titleholder of the real property and acknowledged by a notary public.

c. An election shall terminate fourteen days following the filing of a written notice of withdrawal with the designated officials of the local authority whose ordinances, rules, or regulations will govern.

d. For purposes of this subsection, *"titleholder of real property"* means the person or entity whose name appears on the documents of title filed in the official county records as the owner of the real property upon which a manufactured home community or mobile home park is located.

3. The titleholder of real property under subsection 2 may elect to waive the right to have the vehicular traffic provisions of this chapter, or the ordinances, rules, or regulations of the local authority where the real property is located, apply to the real property and any persons located on the real property, by recording a waiver with the county recorder of each county in which the property is located. The waiver shall include the legal description of the real property and shall bind the titleholder of the real property and any successors in interest. The waiver may only be rescinded if

each law enforcement jurisdiction, in which the titleholder of real property wishes to obtain the benefit of this section, consents to the rescission of the waiver through adoption of a resolution.

[C39, §**5018.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.251]

91 Acts, ch 91, §1; 92 Acts, ch 1068, §1; 93 Acts, ch 109, §2; 2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

321.252 Department to adopt sign manual.

The department shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway and transportation officials.

The department shall include in its manual of traffic-control devices, specifications for a uniform system of highway signs for the purpose of guiding traffic to organized off-highway permanent camps, and camp areas, operated by recognized and established civic, religious, and nonprofit charitable organizations and to for-profit campgrounds and ski areas. The department shall purchase, install, and maintain the signs upon the prepayment of the costs by the organization or owner.

The department shall also establish criteria for guiding traffic on all fully controlled-access, divided, multilaned highways including interstate highways to each tourist attraction which is located within thirty miles of the highway and receives fifteen thousand or more visitors annually. Nothing in this unnumbered paragraph shall be construed to prohibit the department from erecting signs to guide traffic on these highways to tourist attractions which are located more than thirty miles from the highway or which receive fewer than fifteen thousand visitors annually.

The department shall establish, by rule, in cooperation with a tourist signing committee, the standards for tourist-oriented directional signs and shall annually review the list of attractions for which signing is in place. The rules shall conform to national standards for tourist-oriented directional signs adopted under 23 U.S.C. § 131(q) and to the manual of uniform traffic control devices. The tourist signing committee shall be made up of the directors or their designees of the departments of economic development, agriculture and land stewardship, natural resources, cultural affairs, and transportation, the chairperson or the chairperson's designee of the Iowa travel council, and a member of the outdoor advertising association of Iowa. The director or the director's designee of the department of economic development shall be the chairperson of the committee. The department of transportation shall be responsible for calling and setting the date of the meetings of the committee which meetings shall be based upon the amount of activity relating to signs. However, the committee shall meet at least once a month. However, a tourist attraction is not subject to a minimum number of visitors annually to qualify for tourist-oriented directional signing. The rules shall not be applicable to directional signs relating to historic sites on land owned or managed by state agencies, as provided in section 321.253A. The rules shall include but are not limited to the following:

1. Criteria for eligibility for signing.
2. Criteria for limiting or excluding businesses, activities, services, and sites that maintain signs that do not conform to the requirements of chapter 306B, chapter 306C, division II, or other statutes or administrative rules regulating outdoor advertising.
3. Provisions for a fee schedule to cover the direct and indirect costs of sign manufacture, erection, and maintenance, and related administrative costs.
4. Provisions specifying maximum distances to eligible businesses, activities, services, and sites. Tourist-oriented directional signs may be placed on highways within the maximum travel distance that have the greatest traffic count per day, if sufficient space is available. If an adjacent landowner complains to the department about the placement of a tourist-oriented directional sign, the department shall attempt to reach an agreement with the landowner for relocating the sign. If possible, the sign shall be relocated from the place of objection. If the sign must be located on an objectionable place, it shall be located on the least objectionable place possible.
5. Provisions for trailblazing to facilities that are not on the crossroad. Appropriate trailblazing shall be installed over the most desirable routes on lesser traveled primary highways, secondary roads, and city streets leading to the tourist attraction.
6. Criteria for determining when to permit advance signing.
7. Provisions specifying conditions under which the time of operation of a business, activity, service, or site is shown.
8. Provisions for masking or removing signs during off seasons for businesses, activities, services, and sites operated on a seasonal basis. Faded signs shall be replaced and the commercial vendor charged for the cost of replacement based upon the fee schedule adopted.
9. Provisions specifying the maximum number of signs permitted per intersection.
10. Provisions for determining what businesses, activities, services, or sites are signed when there are more applicants than the maximum number of signs permitted.

11. Provisions for removing signs when businesses, activities, services, or sites cease to meet minimum requirements for participation and related costs.

Local authorities shall adhere to the specifications for such signs as established by the department, and shall purchase, install, and maintain such signs in their respective jurisdictions upon prepayment by the organization of the cost of such purchase, installation, and maintenance. The department shall include in its manual of traffic-control devices specifications for a uniform system of traffic-control devices in legally established school zones.

[C24, 27, §4627; C31, 35, §4627, 5079-d7; C39, §**5019.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.252]

86 Acts, ch 1060, §1, 2; 90 Acts, ch 1183, §4

321.253 Department to erect signs.

The department shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all primary highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic. Whenever practical, said devices or signs shall be purchased from the director of the Iowa department of corrections.

The department shall post signs informing motorists that the scheduled fine for committing a moving traffic violation in a road work zone is doubled.

[C24, 27, §4627; C31, 35, §4627, 5079-d7; C39, §**5019.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.253]

83 Acts, ch 96, §157, 159, 160; 93 Acts, ch 114, §2; 97 Acts, ch 104, §19

Analogous provisions, §321.345

321.253A Directional signs relating to historic sites on land owned or managed by state agencies.

1. The department shall place and maintain directional signs upon primary highways which provide information about historic sites which are located on land owned or managed by an agency as defined in section 17A.2. The signs shall conform to the manual of uniform traffic devices. However, the directional signs are not subject to requirements applicable to tourist-oriented directional signs.

2. Upon request by a city or county in which a historic site is located on land owned or managed by an agency, the department shall distribute a directional sign as provided in this section to the city or county for erection upon roads or streets within their jurisdictions.

3. The location of the historic site shall be memorialized on transportation maps of the state published under the direction of the department and generally made available to the public. However, if it is not reasonable and feasible to display specific historic sites on the state transportation map, the department shall consult with the agency managing the historic site.

4. The department shall not erect, maintain, or distribute a directional sign or include on a transportation map information about a historic site located on land owned or managed by an agency if the department receives an objection by the agency.

90 Acts, ch 1183, §5

321.253B Metric signs restricted.

The department shall not place a sign relating to a speed limit, distance, or measurement on a highway if the sign establishes the speed limit, distance, or measurement solely by using the metric system, unless specifically required by federal law.

95 Acts, ch 118, §23

321.254 Local authorities restricted.

No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the department except by the latter's permission.

[C39, §**5019.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.254]

321.255 Local traffic-control devices.

Local authorities in their respective jurisdiction shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

[C39, §**5019.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.255]

321.256 Obedience to official traffic-control devices.

No driver of a vehicle shall disobey the instructions of any official traffic-control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a peace officer subject to the exceptions granted the driver of an authorized emergency vehicle.

[C39, §**5019.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.256]

For applicable scheduled fine, see §805.8A, subsection 8

321.257 Official traffic control signal.

1. For the purposes of this section *"stop at the official traffic control signal"* means stopping at the first opportunity at either the clearly marked stop line or before entering the crosswalk or before entering the intersection.

2. Official traffic control signals consisting of colored lights or colored lighted arrows shall regu-

late vehicle and pedestrian traffic in the following manner:

a. A *"steady circular red"* light means vehicular traffic shall stop. Vehicular traffic shall remain standing until a signal to proceed is shown or vehicular traffic, unless prohibited by a sign, may cautiously enter the intersection to make a right turn from the right lane of traffic or a left turn from a one-way street to a one-way street from the left lane of traffic on a one-way street onto the leftmost lane of traffic on a one-way street. Turns made under this paragraph shall be made in a manner that does not interfere with other vehicular or pedestrian traffic lawfully using the intersection. Pedestrian traffic facing a steady circular red light shall not enter the roadway unless the pedestrian can safely cross the roadway without interfering with any vehicular traffic.

b. A *"steady circular yellow"* or *"steady yellow arrow"* light means vehicular traffic is warned that the related green movement is being terminated and vehicular traffic shall no longer proceed into the intersection and shall stop. If the stop cannot be made in safety, a vehicle may be driven cautiously through the intersection. Pedestrian traffic is warned that there is insufficient time to cross the intersection and any pedestrian starting to cross the roadway shall yield the right of way to all vehicles.

c. A *"steady circular green"* light means vehicular traffic may proceed straight, turn right or turn left through the intersection unless otherwise specifically prohibited. Vehicular traffic shall yield the right of way to other vehicular and pedestrian traffic lawfully within the intersection.

d. A *"steady green arrow"* light shown alone or with another official traffic control signal means vehicular traffic may cautiously enter the intersection and proceed in the direction indicated by the arrow. Vehicular traffic shall yield the right of way to other vehicles and pedestrians lawfully within the intersection.

e. A *"flashing circular red"* light means vehicular traffic shall stop and after stopping may proceed cautiously through the intersection yielding to all vehicles not required to stop or yield which are within the intersection or approaching so closely as to constitute a hazard, but then may proceed.

f. A *"flashing yellow"* light means vehicular traffic shall proceed through the intersection or past such signal with caution.

g. A *"don't walk"* light is a pedestrian signal which means that pedestrian traffic facing the illuminated pedestrian signal shall not start to cross the roadway in the direction of the pedestrian signal, and pedestrian traffic in the crossing shall proceed to a safety zone.

h. A *"walk"* light is a pedestrian signal which means that pedestrian traffic facing the illuminated pedestrian signal may proceed to cross the roadway in the direction of the pedestrian signal and shall be given the right of way by drivers of all vehicles.

[C39, §**5019.06, 5019.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §321.257, 321.258; C79, 81, §321.257]

For applicable scheduled fines, see §805.8A, subsection 7, paragraph a, and subsection 9

321.258 Arrangement of lights on official traffic control signals.

1. Colored lights placed on a vertical official traffic control signal face shall be arranged from the top to the bottom in the following order when used: Circular red, circular yellow, circular green, straight through yellow arrow, straight through green arrow, left turn yellow arrow, left turn green arrow, right turn yellow arrow, and right turn green arrow.

2. Colored lights placed on a horizontal official traffic control signal face shall be arranged from the left to the right in the following order when used: Circular red, circular yellow, left turn yellow arrow, left turn green arrow, circular green, straight through yellow arrow, straight through green arrow, right turn yellow arrow, and right turn green arrow.

[C79, 81, §321.258]

321.259 Unauthorized signs, signals or markings.

No person shall place, maintain, or display upon or in view of any highway any sign, signal, marking, or device which purports to be or is an imitation of or resembles an official parking sign, curb or other marking, traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, if such sign, signal, marking, or device has not been authorized by the department and local authorities with reference to streets and highways under their jurisdiction and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information of a type that cannot be mistaken for official signs.

Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

[C39, §**5019.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.259]

321.260 Interference with devices, signs, or signals — unlawful possession.

1. *a.* A person who willfully and intentionally,

without lawful authority, attempts to or in fact alters, defaces, injures, knocks down, or removes an official traffic-control device, an authorized warning sign or signal or barricade, whether temporary or permanent, a railroad sign or signal, an inscription, shield, or insignia on any of such devices, signs, signals, or barricades, or any other part thereof, shall, upon conviction, be guilty of a simple misdemeanor and shall be required to make restitution to the affected jurisdiction. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars.

b. A person who is convicted under paragraph *"a"* of an act relating to a stop sign or a yield sign may be required to complete community service in addition to making restitution to the affected jurisdiction.

2. It shall be unlawful for any person to have in the person's possession any official traffic-control device except by legal right or authority. Any person convicted of unauthorized possession of any official traffic-control device shall upon conviction be guilty of a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars.

[C39, §**5019.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.260]

90 Acts, ch 1064, §1; 91 Acts, ch 131, §1; 99 Acts, ch 153, §3, 4

ACCIDENTS

321.261 Death or personal injuries.

1. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close as possible and if able, shall then return to and remain at the scene of the accident in accordance with section 321.263. Every such stop shall be made without obstructing traffic more than is necessary.

2. Any person failing to stop or to comply with the requirements in subsection 1 of this section, in the event of an accident resulting in an injury to any person is guilty upon conviction of a serious misdemeanor.

3. A person failing to stop or to comply with the requirements in subsection 1, in the event of an accident resulting in the death of a person, is guilty upon conviction of an aggravated misdemeanor.

4. The director shall revoke the driver's license of a person convicted of a violation of this section.

[S13, §1571-m23; C24, 27, 31, 35, §5072, 5074; C39, §**5020.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.261; 81 Acts, ch 103, §4]

90 Acts, ch 1230, §67; 98 Acts, ch 1073, §9

321.262 Damage to vehicle.

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until the driver has fulfilled the requirements of section 321.263. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor and punished as provided in section 321.482.

[S13, §1571-m23; C24, 27, 31, 35, §5079; C39, §**5020.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.262]

321.263 Information and aid — leaving scene of accident.

1. The driver of a vehicle involved in an accident resulting in injury to or death of a person or damage to a vehicle which is driven or attended by a person shall give the driver's name, address, and the registration number of the vehicle the driver is driving and shall upon request and if available exhibit the driver's driver's license to the person struck, the driver or occupant of, or the person attending the vehicle involved in the accident and shall render to a person injured in the accident reasonable assistance, including the transporting or arranging for the transporting of the person for medical treatment if it is apparent that medical treatment is necessary or if transportation for medical treatment is requested by the injured person.

2. If the accident causes the death of a person, all surviving drivers shall remain at the scene of the accident except to seek necessary aid or to report the accident to law enforcement authorities. Before leaving the scene of the fatal accident, each surviving driver shall leave the surviving driver's driver's license, automobile registration receipt, or other identification data at the scene of the accident. After leaving the scene of the accident, a surviving driver shall promptly report the accident to law enforcement authorities, and shall immediately return to the scene of the accident or inform the law enforcement authorities where the surviving driver can be located.

[S13, §1571-m23; C24, 27, 31, 35, §5072, 5079; C39, §**5020.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.263]

90 Acts, ch 1230, §68; 98 Acts, ch 1073, §9

321.264 Striking unattended vehicle.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and

notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

[C24, 27, 31, 35, §5079; C39, §**5020.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.264]

321.265 Striking fixtures upon a highway.

The driver of a vehicle involved in an accident resulting in damage to property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner, a peace officer, or person in charge of the damaged property of the damage and shall inform the person of the driver's name and address and the registration number of the vehicle causing the damage and shall, upon request and if available, exhibit the driver's license of the driver of the vehicle and shall report the accident when and as required in section 321.266.

[C24, 27, 31, 35, §5079; C39, §**5020.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.265]

90 Acts, ch 1230, §69; 98 Acts, ch 1073, §6

321.266 Reporting accidents.

1. The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication give notice of such accident to the sheriff of the county in which said accident occurred, or the nearest office of the Iowa state patrol, or to any other peace officer as near as practicable to the place where the accident occurred.

2. The driver of a vehicle involved in an accident resulting in injury to or death of any person, or total property damage to an apparent extent of one thousand dollars or more shall, within seventy-two hours after the accident, forward a written report of the accident to the department. However, such report is not required when the accident is investigated by a law enforcement agency.

3. Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in subsections 1 to 3 of this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, forward a written report of such accident to the department.

4. Notwithstanding section 455B.386, a carrier transporting hazardous material upon a public highway in this state, in the case of an accident involving the transportation of the hazardous material, shall immediately notify the police radio broadcasting system established pursuant to section 693.1 or shall notify a peace officer of the county or city in which the accident occurs. When a local law enforcement agency is informed of the accident, the agency shall notify the Iowa state patrol and the state department of transportation office of motor vehicle enforcement. A person who violates a provision of this subsection is guilty of a serious misdemeanor.

[S13, §1571-m23; C24, §5073, 5075, 5104; C27, 31, 35, §5073, 5075, 5105-a35, 5105-c21; C39, §**5020.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.266; 81 Acts, ch 103, §5]

87 Acts, ch 170, §6; 97 Acts, ch 72, §1; 97 Acts, ch 108, §15; 98 Acts, ch 1074, §23; 2002 Acts, ch 1063, §32

Subsection 2 amended

321.267 Supplemental reports.

The department may require any driver of a vehicle involved in an accident of which report must be made as provided in section 321.266 to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department.

[C39, §**5020.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.267]

321.268 Driver unable to report.

Whenever the driver of a vehicle is physically incapable of making a required accident report and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made said report.

[C39, §**5020.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.268]

321.269 Accident report forms.

The department shall prepare and upon request supply to police departments, coroners, sheriffs, and other suitable agencies or individuals, forms for accident reports required hereunder, which reports shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, condition then existing, and the persons and vehicles involved.

Every required accident report shall be made on a form approved by the department if said form is available.

[C39, §**5020.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.269]

321.270 Repealed by 59 Acts, ch 258, § 14.

321.271 Reports confidential — without prejudice — exceptions.

All accident reports filed by a driver of a vehicle involved in an accident as required under section 321.266 shall be in writing. The report shall be

without prejudice to the individual so reporting and shall be for the confidential use of the department, except that upon the request of any person involved in the accident, the person's insurance company or its agent, or the attorney for such person, the department shall disclose the identity and address of other persons involved in the accident and may disclose the name of the insurance companies with whom the other persons have liability insurance. The department, upon written request of the person making the report, shall provide the person with a copy of that person's report. The written report filed with the department shall not be admissible in or used in evidence in any civil or criminal case arising out of the facts on which the report is based.

All written reports filed by a law enforcement officer as required under section 321.266 shall be made available to any party to an accident, the party's insurance company or its agent, the party's attorney, the federal motor carrier safety administration, or the attorney general, on written request to the department and the payment of a fee of four dollars for each copy. If a copy of an investigating officer's report of a motor vehicle accident filed with the department is retained by the law enforcement agency of the officer who filed the report, a copy shall be made available to any party to the accident, the party's insurance company or its agent, the party's attorney, the federal motor carrier safety administration, or the attorney general, on written request and the payment of a fee. However, the attorney general and the federal motor carrier safety administration shall not be required by the department or the law enforcement agency to pay a fee for a copy of a report filed by a law enforcement or investigating officer.

[C39, §**5020.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.271; 81 Acts, ch 14, §25]

83 Acts, ch 72, §1; 90 Acts, ch 1054, §1, 2; 98 Acts, ch 1073, §7; 2001 Acts, ch 32, §18

321.272 Tabulation of reports.

The department shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

[C39, §**5020.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.272]

321.273 City may require reports.

Any incorporated city or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report herein required to be filed with the department. All such reports shall be for the confidential use of the city department and subject to the provisions of section 321.271.

[C39, §**5020.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.273]

321.274 Accidents in cities over 15,000.

Repealed by 98 Acts, ch 1178, § 16.

OPERATION OF MOTORCYCLES AND MOTORIZED BICYCLES

321.275 Operation of motorcycles and motorized bicycles.

1. *General.* The motor vehicle laws apply to the operators of motorcycles and motorized bicycles to the extent practically applicable.

2. *Riders.*

a. Motorized bicycles. A person operating a motorized bicycle on the highways shall not carry any other person on the vehicle.

b. Motorcycles. A person shall not operate or ride a motorcycle on the highways with another person on the motorcycle unless the motorcycle is designed to carry more than one person. The additional passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear of the operator. The motorcycle shall be equipped with footrests for the passenger unless the passenger is riding in a sidecar or enclosed cab. The motorcycle operator shall not carry any person nor shall any other person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

3. *Sitting position.* A person operating a motorcycle or motorized bicycle shall ride only upon the vehicle's permanent and regular attached seat. Every person riding upon the vehicle shall be sitting astride the seat, facing forward with one leg on either side of the vehicle.

4. *Use of traffic lanes.* Persons shall not operate motorcycles or motorized bicycles more than two abreast in a single lane. Except for persons operating such vehicles two abreast, a motor vehicle shall not be operated in a manner depriving a motorcycle or motorized bicycle operator of the full use of a lane. A motorcycle or motorized bicycle shall not be operated between lanes of traffic or between adjacent lines or rows of vehicles. The operator of a motorcycle or motorized bicycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken unless the vehicle being overtaken is a motorcycle or motorized bicycle.

5. *Headlights on.* A person shall not operate a 1977 or later model year motorcycle or any model year motorized bicycle upon the highways without displaying at least one lighted headlamp of the type described in section 321.409. However, this subsection is subject to the exceptions with respect to parked vehicles as provided in this chapter.

6. *Packages.* The operator of a motorcycle or motorized bicycle shall not carry any package,

bundle, or other article which prevents the operator from keeping both hands on the handlebars.

7. *Parades*. The provisions of this section do not apply to motorcycles or motorized bicycles when used in a parade authorized by proper permit from local authorities.

8. *Bicycle safety flags required on motorized bicycles*. When operated on a highway, a motorized bicycle shall have a bicycle safety flag which extends not less than five feet above the ground attached to the rear of the motorized bicycle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches, and be Day-Glo in color.

[C71, 73, 75, 77, 79, 81, §321.275]

89 Acts, ch 184, §1; 98 Acts, ch 1075, §22; 98 Acts, ch 1178, §3

For applicable scheduled fines, see §805.8A, subsection 6, paragraph b, and subsection 9

CRIMINAL OFFENSES

321.276 Repealed by 47 Acts, ch 172, § 35.

321.277 Reckless driving.

Any person who drives any vehicle in such manner as to indicate either a willful or a wanton disregard for the safety of persons or property is guilty of reckless driving.

Every person convicted of reckless driving shall be guilty of a simple misdemeanor.

[C73, §4071; C97, §5039; S13, §1571-m19; C24, 27, 31, 35, §5028; C39, §**5022.04, 5022.05;** C46, 50, 54, 58, 62, §321.283, 321.284; C66, 71, 73, §321.283; C75, 77, 79, 81, §321.277]

321.277A Careless driving.

A person commits careless driving if the person intentionally operates a motor vehicle on a public road or highway in any one of the following ways:

1. Creates or causes unnecessary tire squealing, skidding, or sliding upon acceleration or stopping.

2. Simulates a temporary race.

3. Causes any wheel or wheels to unnecessarily lose contact with the ground.

4. Causes the vehicle to unnecessarily turn abruptly or sway.

97 Acts, ch 147, §2

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b

321.278 Drag racing prohibited.

No person shall engage in any motor vehicle speed contest or exhibition of speed on any street or highway of this state and no person shall aid or abet any motor vehicle speed contest or speed exhibition on any street or highway of this state, except that a passenger shall not be considered as aiding and abetting. Motor vehicle speed contest or exhibition of speed are defined as one or more persons competing in speed in excess of the applicable speed limit in vehicles on the public streets or highways.

Any person who violates the provisions of this section shall be guilty of a simple misdemeanor.

[C66, 71, 73, §321.284; C75, 77, 79, 81, §321.278]

321.279 Eluding or attempting to elude pursuing law enforcement vehicle.

1. The driver of a motor vehicle commits a serious misdemeanor if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle driven by a uniformed peace officer after being given a visual and audible signal to stop. The signal given by the peace officer shall be by flashing red light, or by flashing red and blue lights, and siren. For purposes of this section, *"peace officer"* means those officers designated under section 801.4, subsection 11, paragraphs *"a"*, *"b"*, *"c"*, *"g"*, and *"h"*.

2. The driver of a motor vehicle commits an aggravated misdemeanor if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section and in doing so exceeds the speed limit by twenty-five miles per hour or more.

3. The driver of a motor vehicle commits a class "D" felony if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section, and in doing so exceeds the speed limit by twenty-five miles per hour or more, and if any of the following occurs:

a. The driver is participating in a public offense, as defined in section 702.13, that is a felony.

b. The driver is in violation of section 321J.2 or 124.401.

c. The offense results in bodily injury to a person other than the driver.

[C81, §321.279]

94 Acts, ch 1069, §1; 99 Acts, ch 31, §1; 2002 Acts, ch 1119, §153

Subsection 1 amended

321.280 Assaults and homicide.

A conviction of the violation of any of the provisions of this chapter shall not be a bar to a prosecution for an assault or for a homicide committed by any person in operating motor vehicles.

[S13, §1571-m30; C24, 27, 31, 35, §5091; C39, §**5022.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.280]

321.281 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of 13/100 or more (OWI). Repealed by 86 Acts, ch 1220, § 47. See § 321J.2, 321J.3, 321J.4, 321J.20.

321.282 Violations. Repealed by 86 Acts, ch 1220, § 48. See § 321J.21.

321.283 Court-ordered drinking drivers course or substance abuse services — revocation — temporary driving permit — penalty. Repealed by 86 Acts, ch 1220, § 49. See § 321J.22.

321.284 Open containers in motor vehicles — drivers.

A driver of a motor vehicle upon a public street or highway shall not possess in the passenger area of the motor vehicle an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage. *"Passenger area"* means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. An open or unsealed receptacle containing an alcoholic beverage may be transported in the trunk of the motor vehicle. An unsealed receptacle containing an alcoholic beverage may be transported behind the last upright seat of the motor vehicle if the motor vehicle does not have a trunk. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph *"e"*.

95 Acts, ch 48, §5; 98 Acts, ch 1100, §47; 98 Acts, ch 1204, §3; 99 Acts, ch 77, §1; 2001 Acts, ch 137, §5

321.284A Open containers in motor vehicles — passengers.

1. A passenger in a motor vehicle upon a public street or highway shall not possess in the passenger area of the motor vehicle an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage. *"Passenger area"* means the area of a motor vehicle designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. An open or unsealed receptacle containing an alcoholic beverage may be transported in the trunk of the motor vehicle. An unsealed receptacle containing an alcoholic beverage may be transported behind the last upright seat of the motor vehicle if the motor vehicle does not have a trunk.

2. This section does not apply to a passenger being transported in a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or a passenger being transported in the living quarters of a motor home, manufactured or mobile home, travel trailer, or fifth-wheel travel trailer.

3. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph *"e"*.

4. The department shall not include a conviction for a violation of this section on the individual driving record of the person committing the violation and the conviction shall not be considered by the department in any proceeding for suspension, revocation, barring, or denying of the person's driver's license or upon any application for renewal of driving privileges.

99 Acts, ch 77, §2; 2001 Acts, ch 137, §5; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

SPEED RESTRICTIONS

321.285 Speed restrictions.

Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other conditions then existing, and no person shall drive any vehicle upon a highway at a speed greater than will permit the person to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said highway will observe the law.

The following shall be the lawful speed except as provided by this section, or except as posted pursuant to sections 262.68, 321.236, subsection 5, section 321.288, subsection 6, sections 321.289, 321.290, 321.293, 321.295, and 461A.36, and any speed in excess thereof shall be unlawful:

1. Twenty miles per hour in any business district.

2. Twenty-five miles per hour in any residence or school district.

3. Forty-five miles per hour in any suburban district. Each school district as defined in subsection 70 of section 321.1 shall be marked by distinctive signs as provided by the current manual of uniform traffic control devices adopted by the department and placed on the highway at the limits of such school district.

4. Notwithstanding any other speed restrictions, the speed limit for all vehicular traffic shall be fifty-five miles per hour.

5. Reasonable and proper, but not greater than fifty-five miles per hour at any time between sunrise and sunset, and not greater than fifty miles per hour at any time between sunset and sunrise, on secondary roads unless such roads are surfaced with concrete or asphalt or a combination of both,

in which case the speed limits shall be the same as provided in subsection 4 of this section. When the board of supervisors of any county shall determine upon the basis of an engineering and traffic investigation that the speed limit on any secondary road is greater than is reasonable and proper under the conditions found to exist at any intersection or other place or upon any part of a secondary road, the board shall determine and declare a reasonable and proper speed limit at the intersection or other part of the secondary road. The speed limits as determined by the board of supervisors shall be effective when appropriate signs giving notice of the speed limits are erected by the board of supervisors at the intersection or other place or part of the highway.

6. Notwithstanding any other speed restrictions, the speed limit for all vehicular traffic on fully controlled-access, divided, multilaned highways including the national system of interstate highways is sixty-five miles per hour. The department may establish a speed limit of sixty-five miles per hour on certain divided, multilaned highways. However, the department or cities with the approval of the department may establish a lower speed limit upon such highways located within the corporate limits of a city. For the purposes of this subsection, a fully controlled-access highway is a highway that gives preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections. A minimum speed may be established by the department on the highways referred to in this subsection if warranted by engineering and traffic investigations.

It is further provided that any kind of vehicle, implement, or conveyance incapable of attaining and maintaining a speed of forty miles per hour shall be prohibited from using the interstate system.

[S13, §1571-m19, -m20; C24, 27, 31, 35, §5029, 5030; C39, §**5023.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.285]

87 Acts, ch 120, §2; 93 Acts, ch 47, §3 – 7; 94 Acts, ch 1173, §15; 96 Acts, ch 1126, §5; 96 Acts, ch 1191, §1

Speed limits at regents institutions, see §262.68
For applicable scheduled fines, see §805.8A, subsections 5 and 10

321.286 Truck speed limits. Repealed by 93 Acts, ch 47, § 14. See § 321.285.

321.287 Bus speed limits. Repealed by 93 Acts, ch 47, § 14. See § 321.285.

321.288 Control of vehicle — reduced speed.

A person operating a motor vehicle shall have the vehicle under control at all times and shall reduce the speed to a reasonable and proper rate:

1. When approaching and passing a person walking in the traveled portion of the public highway.

2. When approaching and passing an animal which is being led, ridden, or driven upon a public highway.

3. When approaching and traversing a crossing or intersection of public highways, or a bridge, sharp turn, curve, or steep descent, in a public highway.

4. When approaching and passing an emergency warning device displayed in accordance with rules adopted under section 321.449, or an emergency vehicle displaying a revolving or flashing light.

5. When approaching and passing a slow moving vehicle displaying a reflective device or alternative reflective device as provided by section 321.383.

6. When approaching and passing through a sign-posted road work zone upon the public highway.

[S13, §1571-m18; C24, 27, 31, 35, §5031; C39, §**5023.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.288]

85 Acts, ch 167, §2; 87 Acts, ch 170, §7; 89 Acts, ch 296, §33; 97 Acts, ch 104, §20; 99 Acts, ch 102, §1

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.289 Speed signs — duty to install.

The department shall furnish and place on primary roads or on extensions of primary roads within any city suitable standard signs showing the points at which the rate of speed changes and the maximum rate of speed in the district which the vehicle is entering. On all other main highways the city shall furnish and erect suitable signs giving similar information to traffic on such highways.

[S13, §1571-m20; C24, §5030; C27, 31, 35, §5030-b2; C39, §**5023.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.289]

321.290 Special restrictions.

Whenever the department shall determine upon the basis of an engineering and traffic investigation that any speed limit hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the primary road system or upon any part of a primary road extension, said department shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the highway.

Whenever the council in any city shall determine upon the basis of an engineering and traffic investigation that any speed limit hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any in-

tersection or other place or upon any part of the city street system, except primary road extensions, said council shall determine and adopt by ordinance such higher or lower speed limit as it deems reasonable and safe thereat. Such speed limit shall be effective when proper and appropriate signs giving notice thereof are erected at such intersections or other place or part of the street.

[C39, §**5023.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.290]

321.291 Information or notice.

In every charge of violation of section 321.285 the information, and also the notice to appear, shall specify the speed at which the defendant is alleged to have driven and the speed limit applicable within the district or at the location.

[C39, §**5023.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.291]

93 Acts, ch 47, §8; 94 Acts, ch 1023, §104

321.292 Civil action unaffected.

The foregoing provisions of section 321.285 shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of an accident.

[C39, §**5023.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.292]

93 Acts, ch 47, §9

321.293 Local authorities may alter limits.

Local authorities in their respective jurisdiction may in their discretion subject to the approval of the department authorize by ordinance higher speeds than those stated in section 321.285 upon through highways or upon highways or portions thereof where stop or yield signs have been erected at the entrances thereto provided signs are erected giving notice of the authorized speed, but local authorities shall not have authority to authorize by ordinance a speed in excess of fifty-five miles per hour. If local authorities fail to authorize by ordinance higher speeds than those stated in section 321.285 upon through highways or upon highways or portions thereof where stop signs have been erected at the entrances thereto, the department may recommend, upon the basis of an engineering and traffic investigation, to the local authorities that the speed limit be increased. If local authorities fail to increase the speed limit upon said recommendation of the department, said department shall declare a reasonable and safe speed limit which shall be effective when appropriate signs are erected giving notice thereof.

[C39, §**5023.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.293]

321.294 Minimum speed regulation.

A person shall not drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law. Peace officers are hereby authorized to enforce this provision by directions to drivers, and in the event of apparent willful disobedience to this provision and refusal to comply with direction of an officer in accordance herewith the continued slow operation by a driver shall be a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 8.

[C31, 35, §5021-c1; C39, §**5023.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.294]

2000 Acts, ch 1203, §11; 2001 Acts, ch 137, §5

See also §321.382

321.295 Limitation on bridge or elevated structures.

No person shall drive a vehicle on any public bridge or elevated structure at a speed which is greater than the maximum speed permitted under this chapter on the street or highway at a point where said street or highway joins said bridge or elevated structure, provided that if the maximum speed permitted on said street or highway differs from the maximum speed on any other street or highway joining said bridge or elevated structure, then the lowest of said speeds shall be the maximum speed limit on said bridge or elevated structure, subject to the following:

The department upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this chapter, the department shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of two hundred feet before each end of such structure.

No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

Upon the trial of any person charged with driving a vehicle at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, proof of such determination of the maximum speed by said department and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

[C39, §**5023.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.295]

For applicable scheduled fine, see §805.8A, subsection 5, paragraph e

321.296 Repealed by 76 Acts, ch 1165, § 37.

DRIVING ON RIGHT SIDE OF ROADWAY — OVERTAKING AND PASSING

321.297 Driving on right-hand side of roadway — exceptions.

1. A vehicle shall be driven upon the right half of the roadway upon all roadways of sufficient width, except as follows:

a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement.

b. When an obstruction exists making it necessary to drive to the left of the center of the roadway, provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway within such distance as to constitute an immediate hazard.

c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon.

d. Upon a roadway restricted to one-way traffic.

2. Any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic upon all roadways, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection, an alley, private road or driveway.

3. A vehicle shall not be driven upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection 1, paragraph *"b"*. This subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway.

[S13, §1571-m18; C24, 27, 31, 35, §5019; C39, §**5024.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.297]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.298 Meeting and turning to right.

Except as otherwise provided in section 321.297, vehicles or persons on horseback meeting each other on any roadway shall yield one-half of the roadway by turning to the right.

[R60, §908; C73, §1000; C97, §1569; S13, §1569; C24, 27, 31, 35, §5020; C39, §**5024.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.298]

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

321.299 Overtaking a vehicle.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of the overtaken vehicle until completely passed by the overtaking vehicle.

[S13, §1569, 1571-m18; C24, 27, 31, 35, §5021, 5022; C39, §**5024.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.299]

89 Acts, ch 296, §34

Passing on right, §321.302

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.300 Failure to recognize signal. Repealed by 92 Acts, ch 1175, § 42.

321.301 Burden of proof. Repealed by 92 Acts, ch 1175, § 42.

321.302 Overtaking on the right.

1. The driver of a vehicle may overtake and pass upon the right of another vehicle which is making or about to make a left turn.

2. The driver of a vehicle may overtake and, allowing sufficient clearance, pass another vehicle proceeding in the same direction either upon the left or upon the right on a roadway with unobstructed pavement of sufficient width for four or more lines of moving traffic when such movement can be made in safety. No person shall drive off the pavement or upon the shoulder of the roadway in overtaking or passing on the right.

3. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 6, paragraph *"d"*.

[C39, §**5024.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.302]

2000 Acts, ch 1203, §12; 2001 Acts, ch 137, §5

321.303 Limitations on overtaking on the left.

A vehicle shall not be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be complete-

ly made without interfering with the safe operation of a vehicle approaching from the opposite direction or a vehicle overtaken. The overtaking vehicle shall return to the right-hand side of the roadway before coming within three hundred feet of a vehicle approaching from the opposite direction when traveling on a roadway having a legal speed limit in excess of thirty miles per hour, and the overtaking vehicle shall return to the right-hand side of the roadway before coming within one hundred feet of a vehicle approaching from the opposite direction when traveling on a roadway having a legal speed limit of thirty miles per hour or less.

[C39, §**5024.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.303]

83 Acts, ch 125, §4

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.304 Prohibited passing.

No vehicle shall, in overtaking and passing another vehicle or at any other time, be driven to the left side of the roadway under the following conditions:

1. When approaching the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed for a distance of approximately seven hundred feet.

2. When approaching within one hundred feet of any narrow bridge, viaduct, or tunnel, when so signposted, or when approaching within one hundred feet of or traversing any intersection or railroad grade crossing.

3. Where official signs are in place directing that traffic keep to the right or a distinctive center line or off-center line is marked, which distinctive line also so directs traffic as declared in the sign manual adopted by the department of transportation.

[C35, §5024-e1; C39, §**5024.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.304]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c, and subsection 8

321.305 One-way roadways and rotary traffic islands.

1. Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

2. A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

[C39, §**5024.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.305]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.306 Roadways laned for traffic.

Whenever any roadway has been divided into three or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

Official signs may be erected directing slow-moving traffic to use a designated lane or allocating specified lanes to traffic moving in the same direction and drivers of vehicles shall obey the directions of every such sign.

Vehicles moving in a lane designated for slow-moving traffic shall yield the right of way to vehicles moving in the same direction in a lane not so designated when such lanes merge to form a single lane.

A portion of a highway provided with a lane for slow-moving vehicles does not become a roadway marked for three lanes of traffic.

[C39, §**5024.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.306]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.307 Following too closely.

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

[C39, §**5024.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.307]

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

321.308 Motor trucks and towed vehicles — distance requirements.

The driver of any motor truck, or of a motor vehicle drawing another vehicle, when traveling upon a roadway, outside of a business or residence district shall not follow within three hundred feet of another motor truck, or of a motor vehicle drawing another vehicle. The provisions of this section shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks.

[C31, 35, §5067-d9; C39, §**5024.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.308]

See §321.309 for convoys or caravans

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

321.309 Towing — convoys.

1. A person shall not pull or tow by motor vehicle, for hire, another motor vehicle over any highway outside the limits of any incorporated city, except in case of temporary movement of a disabled motor vehicle to the place where repairs

will be made, unless the person has complied with the provisions of sections 321.57 and 321.58. Provided, however, if the person is a nonresident of the state of Iowa and has complied with the laws of the state of that person's residence governing licensing and registration as a transporter of motor vehicles, the person shall not be required to pay the fee provided in section 321.58 but only to submit proof of the person's status as a bona fide manufacturer or transporter as may reasonably be required by the department.

2. A person pulling or towing by motor vehicle another motor vehicle in convoy or caravan shall maintain a distance of at least five hundred feet between the units of the convoy or caravan.

[C31, 35, §5067-d9; C39, §**5024.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.309]

83 Acts, ch 101, §69; 97 Acts, ch 108, §16

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a

321.310 Towing four-wheeled trailers.

1. A motor vehicle shall not tow a four-wheeled trailer with a steering axle, or more than one trailer or semitrailer, or both in combination. However, this section does not apply to a motor home, multipurpose vehicle, motor truck, truck tractor or road tractor nor to a farm tractor towing a four-wheeled trailer, nor to a farm tractor or motor vehicle towing implements of husbandry, nor to a wagon box trailer used by a farmer in transporting produce, farm products or supplies hauled to and from market.

2. Any four-wheeled trailer towed by a truck tractor or road tractor shall be registered under the semitrailer provisions of section 321.122, provided, however, that the provisions of this section shall not be applicable to motor vehicles drawing wagon box trailers used by a farmer in transporting produce, farm products or supplies hauled to and from market.

[C39, §**5024.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.310]

84 Acts, ch 1226, §1

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a

TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

321.311 Turning at intersections.

1. The driver of a vehicle intending to turn at an intersection shall do so as follows:

a. Both the approach for a right turn and right turn shall be made as close as practical to the right-hand curb or edge of the roadway.

b. Approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and after entering the intersection the left turn shall be made so as to depart from the intersection to the right of the center line of the roadway being entered.

c. Approach for a left turn from a two-way street into a one-way street shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection. A left turn from a one-way street into two-way street shall be made by passing to the right of the center line of the street being entered upon leaving the intersection.

2. Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

[S13, §1571-m18; C24, 27, 31, 35, §5033; C39, §**5025.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.311]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.312 Turning on curve or crest of grade.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade or hill, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

[C39, §**5025.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.312]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.313 Starting parked vehicle.

No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

[C39, §**5025.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.313]

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

321.314 When signal required.

No person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by such movement or after giving an appropriate signal in the manner hereinafter provided in the event any other vehicle may be affected by such movement.

[S13, §1571-m18; C24, 27, 31, 35, §5032; C39, §**5025.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.314]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.315 Signal continuous.

A signal of intention to turn right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before

turning when the speed limit is forty-five miles per hour or less and a continuous signal during not less than the last three hundred feet when the speed limit is in excess of forty-five miles per hour.

[C39, §**5025.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.315]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b

321.316 Stopping.

No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

[S13, §1571-m18; C24, 27, 31, 35, §5032; C39, §**5025.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.316]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b

321.317 Signals by hand and arm or signal device.

1. The signals required under the provisions of this chapter may be given either by means of the hand and arm as provided in section 321.318, or by a mechanical or electrical directional signal device or light conforming to the provisions of this chapter.

2. Directional signal devices shall be designed with a white, yellow or amber lamp or lamps to be displayed on the front of vehicles and with a lamp or lamps of red, yellow or amber to be displayed on the rear of vehicles. Such devices shall be capable of clearly indicating any intention to turn either to the right or to the left and shall be visible and understandable during both daylight and darkness from a distance of at least one hundred feet from the front and rear of a vehicle equipped therewith.

3. It is unlawful for any person to sell or offer for sale or operate on the highways of the state any vehicle subject to registration under the provisions of this chapter which has never been registered in this or any other state prior to January 1, 1954, unless the vehicle is equipped with a directional signal device of a type in compliance with the provisions of subsection 2. Motorcycles, motorized bicycles, and semitrailers and trailers less than forty inches in width are exempt from the provisions of this section.

4. When a vehicle is equipped with a directional signal device, such device shall at all times be maintained in good working condition. No directional signal device shall project a glaring or dazzling light. All directional signal devices shall be self-illuminated when in use while other lamps on the vehicle are lighted.

5. Whenever any vehicle or combination of vehicles is disabled or for other reason may present a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing, the operator then may display on the vehicle or combination of vehicles four directional signals of a type complying with the provisions of this section relating to directional signal devices in simultaneous operation.

[S13, §1571-m18; C24, 27, 31, 35, §5032; C39, §**5025.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.317]

87 Acts, ch 170, §8; 97 Acts, ch 108, §17, 18

For applicable scheduled fines, see §805.8A, subsection 3, paragraph a

321.318 Method of giving hand and arm signals.

All signals herein required which may be given by hand and arm shall when so given be given from the left side of the vehicle and the following manner and interpretation thereof is suggested:

1. Left turn — Hand and arm extended horizontally.

2. Right turn — Hand and arm extended upward.

3. Stop or decrease of speed — Hand and arm extended downward.

[C39, §**5025.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.318]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b

RIGHT-OF-WAY

321.319 Entering intersections from different highways.

When two vehicles enter an intersection from different highways or public streets at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

The foregoing rule is modified at through highways and otherwise as hereinafter stated in this chapter.

[S13, §1571-m18; C24, 27, 31, 35, §5035; C39, §**5026.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.319]

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

321.320 Left turns — yielding.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right of way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard, then said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn.

[S13, §1571-m18; C24, 27, 31, 35, §5035; C39, §**5026.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.320]

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

321.321 Entering through highways.

The driver of a vehicle shall stop or yield as required by this chapter at the entrance to a through highway and shall yield the right of way to other vehicles which have entered the intersection from said through highway or which are approaching so

closely on said through highway as to constitute a hazard, but said driver having so yielded may proceed cautiously and with due care enter said through highway.

[C27, §5079-b2, -b3; C31, 35, §5079-b2, -b3, -d2, -d3; C39, §**5026.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.321]

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

321.322 Vehicles entering stop or yield intersection.

1. The driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at the first opportunity at either the clearly marked stop line or before entering the crosswalk or before entering the intersection or at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. Before proceeding, the driver shall yield the right of way to any vehicle on the intersecting roadway which has entered the intersection or which is approaching so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection.

2. The driver of a vehicle approaching a yield sign shall slow to a speed reasonable for the existing conditions and, if required for safety, shall stop at the first opportunity at either the clearly marked stop line or before entering the crosswalk or before entering the intersection or at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After slowing or stopping, the driver shall yield the right of way to any vehicle on the intersecting roadway which has entered the intersection or which is approaching so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection.

[C27, §5079-b2, -b3; C31, 35, §5079-b2, -b3, -d2, -d3; C39, §**5026.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.322]

For applicable scheduled fines, see §805.8A, subsection 8

321.323 Moving vehicle backward on highway.

A person shall not cause a vehicle to be moved in a backward direction on a highway unless and until the vehicle can be backed with reasonable safety, and shall yield the right of way to any approaching vehicle on the highway or an intersecting highway which is so close as to constitute an immediate hazard.

[C66, 71, 73, 75, 77, 79, 81, §321.323]

89 Acts, ch 296, §35

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.323A Approaching certain stationary vehicles.

1. The operator of a motor vehicle approaching a stationary authorized emergency vehicle that is displaying flashing yellow, amber, white, red, or red and blue lights shall approach the authorized emergency vehicle with due caution and shall proceed in one of the following manners, absent any other direction by a peace officer:

a. Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions.

b. If a lane change under paragraph *"a"* would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

2. The operator of a motor vehicle approaching a stationary towing or recovery vehicle, or a stationary highway maintenance vehicle, that is displaying flashing yellow, amber, or red lights shall approach the vehicle with due caution and shall proceed in one of the following manners, absent any other direction by a peace officer:

a. Make a lane change into a lane not adjacent to the towing, recovery, or highway maintenance vehicle if possible in the existing safety and traffic conditions.

b. If a lane change under paragraph *"a"* would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

2002 Acts, ch 1013, §1

For applicable scheduled fines, see §805.8A, subsection 11, paragraph b

NEW section

321.324 Operation on approach of emergency vehicles.

Upon the immediate approach of an authorized emergency vehicle with any lamp or device displaying a red light or red and blue lights, or an authorized emergency vehicle of a fire department displaying a blue light, or when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right hand edge or curb of the highway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. For the purposes of this section, *"red light"* or *"blue light"* means a light or lighting device that, when illuminated, will exhibit a solid flashing or strobing red or blue light.

Upon the approach of an authorized emergency vehicle, as above stated, the driver of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

This section shall not operate to relieve the driver of an authorized emergency vehicle from the

duty to drive with due regard for the safety of all persons using the highway.

[C39, §**5026.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.324]

2000 Acts, ch 1045, §1

See also §321.231

For applicable scheduled fines, see §805.8A, subsection 11, paragraph b

321.324A Funeral processions.

1. For purposes of this section, *"funeral procession"* means a procession of motor vehicles accompanying the body of a deceased person during daylight hours which is being escorted by a vehicle continually displaying its emergency signal lamps flashing simultaneously and using lighted head lamps and identifying flags, and keeping all other motor vehicles with lighted head lamps in close formation.

2. Upon the immediate approach of a funeral procession, the driver of every other vehicle, except an authorized emergency vehicle, shall yield the right-of-way. An operator of a motor vehicle which is part of a funeral procession shall not be charged with violating traffic rules and regulations relating to traffic signals and devices while participating in the procession unless the operation is reckless.

3. The funeral home in charge of the funeral procession is liable only in connection with the procession for any negligent, reckless, or intentional act by the funeral home or any employee or agent of the funeral home that results in any death, personal injury or property damage suffered during a funeral procession.

94 Acts, ch 1139, §1

PEDESTRIANS' RIGHTS AND DUTIES

321.325 Pedestrians subject to signals.

Pedestrians shall be subject to traffic-control signals at intersections as heretofore declared in this chapter, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in sections 321.327 to 321.331.

[C39, §**5027.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.325]

For applicable scheduled fine, see §805.8A, subsection 9

321.326 Pedestrians on left.

Pedestrians shall at all times when walking on or along a highway, walk on the left side of such highway.

[C39, §**5027.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.326]

For applicable scheduled fine, see §805.8A, subsection 9

321.327 Pedestrians' right-of-way.

Where traffic-control signals are not in place or in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this chapter.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 7, paragraph *"b"*.

[C39, §**5027.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.327]

2000 Acts, ch 1203, §13; 2001 Acts, ch 137, §5

321.328 Crossing at other than crosswalk.

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway except that cities may restrict such a crossing by ordinance.

2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

3. Where traffic-control signals are in operation at any place not an intersection pedestrians shall not cross at any place except in a marked crosswalk.

[C39, §**5027.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.328]

For applicable scheduled fines, see §805.8A, subsection 9

321.329 Duty of driver — pedestrians crossing or working on highways.

1. Notwithstanding the provisions of section 321.328 every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise due care upon observing any child or any confused or incapacitated person upon a roadway.

2. Every driver of a vehicle shall yield the right-of-way to pedestrian workers engaged in maintenance or construction work on a highway whenever the driver is notified of the presence of such workers by a flagman or a warning sign.

[C39, §**5027.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.329]

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

321.330 Use of crosswalks.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

[C39, §**5027.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.330]

321.331 Pedestrians soliciting rides.

1. No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle.

2. Nothing in this section or this chapter shall

be construed so as to prevent any pedestrian from standing on that portion of the highway or roadway, not ordinarily used for vehicular traffic, for the purpose of soliciting a ride from the driver of any vehicle.

[C39, §**5027.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.331]

For applicable scheduled fines, see §805.8A, subsection 9

321.332 White canes restricted to blind persons.

For the purpose of guarding against accidents in traffic on the public thoroughfares, it shall be unlawful for any person except persons wholly or partially blind to carry or use on the streets, highways, and public places of the state any white canes or walking sticks which are white in color or white tipped with red.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.332]

For applicable scheduled fine, see §805.8A, subsection 9

321.333 Duty of drivers.

Any driver of a vehicle or operator of a motor-driven vehicle who approaches or comes in contact with a person wholly or partially blind carrying a cane or walking stick white in color or white tipped with red, or being led by a guide dog wearing a harness and walking on either side of or slightly in front of said blind person, shall immediately come to a complete stop, and take such precautions as may be necessary to avoid accident or injury to the person carrying a cane or walking stick white in color or white tipped with red or being led by a guide dog.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.333]

For applicable scheduled fine, see §805.8A, subsection 7, paragraph b

321.334 Penalties.

Any person who shall carry a cane or walking stick such as prescribed in section 321.332 contrary to the provisions hereof, or who shall fail to heed the approach of a person lawfully so carrying a cane or walking stick white in color or white tipped with red, or being led by a guide dog, or who shall fail to immediately come to a complete stop, and take such precautions against accident or injury to such person, shall be fined not less than one dollar nor more than one hundred dollars for each offense.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.334]

321.335 to 321.339 Repealed by 75 Acts, ch 170, § 33.

321.340 Driving through safety zone.

No vehicle shall at any time be driven through or within a safety zone.

[C39, §**5028.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.340]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

SPECIAL STOPS REQUIRED

321.341 Obedience to signal of train.

1. When a person driving a vehicle approaches a railroad grade crossing and warning is given by automatic signal, crossing gates, a flag person, or otherwise of the immediate approach of a train, the driver of the vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail and shall not proceed until the driver can do so safely.

2. The driver of a vehicle shall stop and remain standing and not traverse such a grade crossing when a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a train.

[C39, §**5029.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.341]

87 Acts, ch 170, §9

For applicable scheduled fines, see §805.8A, subsection 14, paragraph h

321.342 Stop at certain railroad crossings — posting warning.

1. The driver of any vehicle approaching a railroad grade crossing across which traffic is regulated by a stop sign, a railroad sign directing traffic to stop or an official traffic control signal displaying a flashing red or steady circular red colored light shall stop prior to crossing the railroad at the first opportunity at either the clearly marked stop line or at a point near the crossing where the driver has a clear view of the approaching railroad traffic.

2. The department, city or county shall be required to post the standard sign as prescribed by the manual on uniform traffic-control devices adopted by the department pursuant to section 321.252 in advance of each railroad grade crossing to warn the motorist that the motorist is approaching a railroad grade crossing. Upon properly posting all railroad grade crossings within its jurisdiction and upon implementing the standards established in accordance with section 307.26, the department, city, or county shall not have any other affirmative duty to warn a motor vehicle operator approaching or at the railroad grade crossing.

[C39, §**5029.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.342]

For applicable scheduled fines, see §805.8A, subsection 14, paragraph h

321.343 Certain vehicles must stop.

1. The driver of a motor vehicle carrying passengers for hire, a school bus, or a vehicle carrying hazardous material and required to stop before crossing a railroad track by motor carrier safety rules adopted under section 321.449, before crossing at grade any track of a railroad, shall stop the

vehicle within fifty feet but not less than fifteen feet from the nearest rail. While stopped, the driver shall listen and look in both directions for an approaching train, and for signals indicating the approach of a train, and shall not proceed until the driver can do so safely.

2. The driver of a commercial motor vehicle shall comply with all of the following provisions that apply to the driver:

a. If the driver is not always required to stop at a railroad crossing, slow down when approaching the crossing and check that the railroad tracks are clear of an approaching train before proceeding.

b. If the driver is not always required to stop at a railroad crossing, stop before reaching the crossing if the railroad tracks are not clear.

c. Refrain from proceeding through a railroad crossing if sufficient space is not available to drive completely through the crossing without stopping.

d. Obey a traffic-control device or the directions of an enforcement official at a railroad crossing.

e. Have sufficient undercarriage clearance before negotiating a railroad crossing.

3. No stop need be made at a crossing where a peace officer or a traffic-control device directs traffic to proceed. No stop need be made at a crossing designated by an "exempt" sign. An "exempt" sign shall be posted only where the tracks have been partially removed on either side of the roadway.

[C27, 31, 35, §5105-a33; C39, §**5029.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.343; 82 Acts, ch 1200, §1]

87 Acts, ch 170, §10; 2001 Acts, ch 132, §10

For applicable scheduled fines, see §805.8A, subsection 14, paragraph h

321.344 Heavy equipment at crossing.

1. No person shall operate or move any caterpillar tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of six or less miles per hour or a vertical body or load clearance of less than nine inches above the level surface of a roadway upon or across any tracks at a railroad grade crossing without first complying with this section.

2. Notice of any such intended crossing shall be given to a superintendent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

3. Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than ten feet nor more than fifty feet from the nearest rail of such railway and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

4. No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

[C39, §**5029.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.344]

For applicable scheduled fines, see §805.8A, subsection 14, paragraph h

321.344A Reported violations for failure to stop at a railroad crossing.

The employee of a railroad who observes a violation of section 321.341, 321.342, 321.343, or 321.344 may prepare a written report on a form provided by the department of public safety indicating that a violation has occurred. The railroad employee may deliver the report not more than seventy-two hours after the violation occurred to a peace officer of the state or a peace officer of the county or municipality in which the violation occurred. The report shall state the time and the location at which the violation occurred and shall include the registration plate number and a description of the vehicle involved in the violation.

A peace officer may initiate an investigation not more than seven calendar days after receiving a report of a violation pursuant to this section. The peace officer may request that the owner of the vehicle supply information identifying the driver of the vehicle in accordance with section 321.484. If from the investigation, the peace officer is able to identify the driver of the vehicle and has reasonable cause to believe a violation has occurred, the peace officer shall prepare a uniform traffic citation for the violation and shall serve it personally or by certified mail on the driver of the vehicle.

92 Acts, ch 1152, §1

321.344B Immediate safety threat — penalty.

A violation of section 321.341, 321.342, 321.343, or 321.344 which creates an immediate threat to the safety of a person or property is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph *"h"*.

2000 Acts, ch 1134, §2; 2001 Acts, ch 137, §5

321.345 Stop or yield at highways.

The department, based on an engineering study, with reference to primary highways, and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs or yield signs, in accordance with specifications established by the department at specified entrances to the highway or may designate any intersection as a stop intersection or as a yield intersection and erect like signs at one or more entrances to such intersection.

[C27, §5079-b3, -b4; C31, 35, §5079-b3, -b4, -d3, -d4; C39, §**5029.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.345]

Analogous provision, §321.253

321.346 Cost of signs.

The cost of the signs on primary highways shall be paid out of the primary road fund. The cost of

the signs on secondary roads shall be paid by the county.

[C27, §5079-b4; C31, 35, §5079-b4, -d4; C39, §**5029.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.346]

83 Acts, ch 123, §128, 209

321.347 Exceptions.

Provided that at intersections of such through highways with boulevards or heavy traffic streets in cities, the council, subject to the approval of the department, may determine that the through highway traffic shall come to a stop, or may erect traffic-control signals, or may adopt such other means of handling the traffic as may be deemed practical and proper.

[C31, 35, §5079-c1; C39, §**5029.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.347]

321.348 Limitations on cities.

It shall be unlawful for any city to close or obstruct any street or highway which is used as the extension of a primary road within such city, except at times of fires or for the purpose of doing construction or repair work on such street or highway, or for other reasons with the consent of the department, and it shall also be unlawful for any city to erect or cause to be erected or maintained any traffic sign or signal inconsistent with the provisions of this chapter.

[C31, 35, §5079-c2; C39, §**5029.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.348]

321.349 Exceptions.

The provisions of sections 321.347 and 321.348 as concerns the erection and maintenance of "stop" and "go" signals shall not apply to cities with a population of four thousand or over where said signals are situated within business districts of said city.

[C31, 35, §5079-c3; C39, §**5029.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.349]

321.350 Primary roads as through highways.

Primary roads, and extensions of primary roads within cities are hereby designated as through highways.

[C27, 31, 35, §5079-b1; C39, §**5029.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.350]

321.351 Repealed by 57 Acts, ch 139, § 1.

321.352 Additional signs — cost.

The county board of supervisors shall, at places deemed by them unusually dangerous on the local county roads, furnish and erect suitable warning signs. The cost of the signs shall be paid by the county.

[C31, 35, §5079-d5; C39, §**5029.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.352]

83 Acts, ch 123, §129, 209

321.353 Stop before crossing sidewalk — right-of-way.

1. The driver of a vehicle emerging from a private roadway, alley, driveway, or building shall stop such vehicle immediately prior to driving onto the sidewalk area and thereafter the driver shall proceed into the sidewalk area only when the driver can do so without danger to pedestrian traffic and the driver shall yield the right-of-way to any vehicular traffic on the street into which the driver's vehicle is entering.

2. The driver of a vehicle about to enter or cross a highway from a private road or driveway shall stop such vehicle immediately prior to driving on said highway and shall yield the right-of-way to all vehicles approaching on said highway.

[S13, §1571-m18; C24, 27, 31, 35, §5035; C39, §**5026.05, 5029.13;** C46, §321.323, 321.353; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.353]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

STOPPING, STANDING, AND PARKING

321.354 Stopping on traveled way.

Upon any highway outside of a business district, rural residence district or residence district a person shall not stop, park, or leave standing a vehicle, whether attended or unattended:

1. Upon the paved part of the highway when it is practical to stop, park, or leave the vehicle off that part of the highway, however, a clear and unobstructed width of at least twenty feet of the paved part of the highway opposite the standing vehicle shall be left for the free passage of other vehicles. As used in this subsection, *"paved highway"* includes an asphalt surfaced highway.

2. Upon the main traveled part of a highway other than a paved highway when it is practical to stop, park, or leave the vehicle off that part of the highway. However, a clear and unobstructed width of that part of the highway opposite the standing vehicle shall be left to allow for the free passage of other vehicles.

A clear view of the stopped vehicle shall be available from a distance of two hundred feet in each direction upon the highway. However, school buses may stop on the highway for receiving and discharging pupils and all other vehicles shall stop for school buses which are stopped to receive or discharge pupils, as provided in section 321.372. This section does not apply to a vehicle making a turn as provided in section 321.311. This section also does not apply to the stopping or parking of a maintenance vehicle operated by a highway authority on the main traveled way of any roadway when necessary to the function being performed and when early warning devices are properly displayed.

[C24, 27, 31, 35, §5066; C39, §**5030.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.354]

84 Acts, ch 1022, §2; 86 Acts, ch 1056, §4; 98 Acts, ch 1075, §23

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.355 Disabled vehicle.

Section 321.354 shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

[C39, §**5030.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.355]

321.356 Officers authorized to remove.

Whenever any peace officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of sections 321.354 and 321.355 such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or improved or main traveled part of such highway.

[C39, §**5030.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.356]

321.357 Removed from bridge.

Whenever any peace officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

[C39, §**5030.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.357]

321.358 Stopping, standing or parking.

No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk, except a bicycle may stop, stand, or park on a sidewalk if not prohibited by a local jurisdiction.
2. In front of a public or private driveway.
3. Within an intersection.
4. Within five feet of a fire hydrant.
5. On a crosswalk.
6. Within ten feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway.
7. Between a safety zone and the adjacent curb or within ten feet of points on the curb immediately opposite the ends of a safety zone, unless any city indicates a different length by signs or markings.
8. Within fifty feet of the nearest rail of a railroad crossing, except when parked parallel with such rail and not exhibiting a red light.
9. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly signposted.
10. Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.
11. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
12. Upon any bridge or other elevated structure upon a highway outside of cities or within a highway tunnel.
13. At any place where official signs prohibit stopping or parking.
14. Upon any street within the corporate limits of a city when the same is prohibited by a general ordinance of uniform application relating to removal of snow or ice from the streets.
15. In front of a curb cut or ramp which is located on public or private property in a manner which blocks access to the curb cut or ramp.

[S13, §1571-m18; C24, 27, 31, 35, §5057, 5058, 5060; C39, §**5030.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.358]

85 Acts, ch 40, §4; 89 Acts, ch 247, §7

For fines applicable to offenses charged as scheduled violations, see §805.8A, subsection 1, paragraph a

321.359 Moving other vehicle.

No person shall move a vehicle not owned by such person into any such prohibited area or away from a curb such distance as is unlawful.

[C39, §**5030.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.359]

321.360 Theaters, hotels and auditoriums.

A space of not to exceed fifty feet is hereby reserved at the side of the street in front of any theater, auditorium, hotel having more than twenty-five sleeping rooms, or other buildings where large assemblages of people are being held, within which space, when clearly marked as such, no motor vehicle shall be left standing, parked, or stopped except in taking on or discharging passengers or freight, and then only for such length of time as is necessary for such purpose.

[S13, §1571-m18; C24, 27, 31, 35, §5059; C39, §**5030.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.360]

For applicable scheduled fine, see §805.8A, subsection 1, paragraph a

321.361 Additional parking regulations.

1. Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.
2. Local authorities may by ordinance permit

parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

3. Local authorities may by ordinance permit angle or center parking on any roadway under their jurisdiction.

[S13, §1571-m18; C24, 27, 31, 35, §4997, 5056; C39, §**5030.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.361]

For fines applicable to offenses charged as scheduled violations, see §805.8A, subsection 1, paragraph a

MISCELLANEOUS RULES

321.362 Unattended motor vehicle.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, or when standing upon any perceptible grade without effectively setting the brake thereon and turning the front wheels to the curb or side of the highway.

[S13, §1571-m18; C24, 27, 31, 35, §5038; C39, §**5031.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.362]

For applicable scheduled fine, see §805.8A, subsection 1, paragraph a

321.363 Obstruction to driver's view.

1. No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

2. No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

[C39, §**5031.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.363]

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b

321.364 Preventing contamination of food by hazardous material.

Food intended for human consumption shall not be shipped in a vehicle or container which has been used to transport a hazardous material unless the vehicle or container has been purged of any hazardous material or the transportation is made in a manner that prevents any contact between the food and the hazardous material.

[S13, §1571-m18; C24, 27, 31, 35, §5031, 5043; C39, §**5031.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.364]

87 Acts, ch 170, §11

For applicable scheduled fine, see §805.8A, subsection 13, paragraph c

321.365 Coasting prohibited.

The driver of a motor vehicle shall not drive with the source of motive power disengaged from the driving wheels except when disengagement is necessary to stop or to shift gears.

[C39, §**5031.04, 5031.05;** C46, 50, 54, 58, 62, §321.365, 321.366; C66, 71, 73, 75, 77, 79, 81, §321.365]

87 Acts, ch 170, §12

For applicable scheduled fine, see §805.8A, subsection 6, paragraph b

321.366 Acts prohibited on fully controlled-access facilities.

It is unlawful for a person, except a person operating highway maintenance equipment or an authorized emergency vehicle, to do any of the following on a fully controlled-access facility:

1. Drive a vehicle over, upon, or across a curb, central dividing section, or other separation or dividing line.

2. Make a left turn or a semicircular or U-turn at a maintenance cross-over where an official sign prohibits the turn.

3. Drive a vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation, section, or line.

4. Drive a vehicle into the facility from a local service road.

5. Stop, park, or leave standing a vehicle, whether attended or unattended, upon the paved portion.

6. Stop, park, or leave standing a vehicle, whether attended or unattended, upon the shoulders, or the right of way except at designated rest areas or in case of an emergency or other dire necessity.

For the purpose of this section, fully controlled-access facility is a highway which gives preference to through traffic by providing access connections at interchanges with selected public roads only and by prohibiting crossings at grade or direct access at driveway connections.

Violations of this section are punishable as a scheduled violation under section 805.8A, subsection 6, paragraph *"d"*.

[C58, 62, §306A.9; C66, 71, 73, 75, 77, 79, 81, §321.366]

84 Acts, ch 1022, §8; 84 Acts, ch 1219, §27; 2000 Acts, ch 1203, §14; 2001 Acts, ch 137, §5

321.367 Following fire apparatus.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

[C39, §**5031.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.367]

For applicable scheduled fine, see §805.8A, subsection 11, paragraph a

321.368 Crossing fire hose.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track, to be

used at any fire or alarm of fire, without the consent of the fire department official in command.

[C39, §**5031.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.368]

For applicable scheduled fine, see §805.8A, subsection 11, paragraph a

321.369 Putting debris on highway.

A person shall not throw or deposit upon a highway any glass bottle, glass, nails, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris. A person shall not throw or deposit upon a highway a substance likely to injure any person, animal, or vehicle upon the highway. A person who violates this section or section 321.370 commits a misdemeanor punishable as a scheduled violation under section 805.8A, subsection 14, paragraph *"d"*.

[S13, §4808-a, -b; C24, 27, 31, 35, §13118; C39, §**5031.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.369]

97 Acts, ch 147, §3; 2001 Acts, ch 137, §5

See §455B.363

321.370 Removing injurious material.

Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material and other material as defined in section 321.369 shall immediately remove the same or cause it to be removed.

[C39, §**5031.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.370]

For applicable scheduled fines, see §805.8A, subsection 14, paragraph d

321.371 Clearing up wrecks.

Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

[C39, §**5031.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.371]

SCHOOL BUSES

321.372 Discharging pupils — regulations.

1. The driver of a school bus used to transport children to and from a public or private school shall, when stopping to receive or discharge pupils, turn on flashing warning lamps at a distance of not less than three hundred feet nor more than five hundred feet from the point where the pupils are to be received or discharged from the bus if the speed limit at that point is forty-five miles per hour or greater and shall turn on flashing warning lamps at a distance of not less than one hundred fifty feet from the point where the pupils are to be received or discharged from the bus if the speed limit at that point is less than forty-five miles per hour. At the point of receiving or discharging pupils the driver of the bus shall bring the bus to a stop, turn off the amber flashing warning lamps, turn on the red flashing warning lamps, and extend the stop arm. After receiving or discharging pupils, the bus driver shall turn off all flashing warning lamps, retract the stop arm and proceed on the route. Except to the extent that reduced visibility is caused by fog, snow, or other weather conditions, a school bus shall not stop to receive or discharge pupils unless there is at least three hundred feet of unobstructed vision in each direction. However, the driver of a school bus is not required to use flashing warning lamps and the stop arm when receiving or discharging pupils at a designated loading and unloading zone at a school attendance center or at extracurricular or educational activity locations where students exiting the bus do not have to cross the street or highway.

If a school district contracts with an urban transit system to transport children to and from a public or private school, the school bus which is provided by the urban transit system shall not be required to be equipped with flashing warning lights and a stop arm. If the school bus provided by an urban transit system is equipped with flashing warning lights and a stop arm, the driver of the school bus shall use the flashing warning light and stop arm as required by law.

A school bus, when operating on a highway with four or more lanes shall not stop to load or unload pupils who must cross the highway, except at designated stops where pupils who must cross the highway may do so at points where there are official traffic control devices or police officers.

A school bus shall, while carrying passengers, have its headlights turned on.

2. All pupils shall be received and discharged from the right front entrance of every school bus and if said pupils must cross the highway, they shall be required to pass in front of the bus, look in both directions, and proceed to cross the highway only on signal from the bus driver.

3. The driver of a vehicle, including the driver of a vehicle operating on a private road or driveway, when meeting a school bus with flashing amber warning lamps shall reduce the vehicle's speed to not more than twenty miles per hour, and shall bring the vehicle to a complete stop when the school bus stops and the stop signal arm is extended. The vehicle shall remain stopped until the stop signal arm is retracted after which time the driver may proceed with due caution.

The driver of a vehicle, including the driver of a vehicle operating on a private road or driveway, overtaking a school bus shall not pass a school bus when red or amber warning signal lights are flashing. The driver shall bring the vehicle to a complete stop no closer than fifteen feet from the school bus when it is stopped and the stop arm is extended, and the vehicle shall remain stopped until the stop arm is retracted and the school bus resumes motion.

4. The driver of a vehicle upon a highway providing two or more lanes in each direction need not

stop upon meeting a school bus which is traveling in the opposite direction even though the school bus is stopped.

[C31, 35, §5079-c8, -c10, -c11; C39, §**5032.01, 5032.03;** C46, §321.372, 321.374; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.372; 81 Acts, ch 108, §2, 3]

91 Acts, ch 70, §1; 95 Acts, ch 118, §24

For applicable scheduled fines, see §805.8A, subsection 10

321.372A Prompt investigation of reported violation of failing to obey school bus warning devices.

The driver of a school bus who observes a violation of section 321.372, subsection 3, may prepare a written report on a form provided by the department of public safety indicating that a violation has occurred. The school bus driver or a school official may deliver the report not more than seventy-two hours after the violation occurred to a peace officer of the state or a peace officer of the county or municipality in which the violation occurred. The report shall state the time and the location at which the violation occurred and shall include the registration plate number and a description of the vehicle involved in the violation.

Not more than seven calendar days after receiving a report of a violation of section 321.372, subsection 3, from a school bus driver or a school official, the peace officer shall initiate an investigation of the reported violation and contact the owner of the motor vehicle involved in the reported violation and request that the owner supply information identifying the driver in accordance with section 321.484. If, from the investigation, the peace officer is able to identify the driver and has reasonable cause to believe a violation of section 321.372, subsection 3, has occurred, the peace officer shall prepare a uniform traffic citation for the violation and shall serve it personally or by certified mail to the driver of the vehicle.

88 Acts, ch 1203, §1; 90 Acts, ch 1101, §1

321.373 Required construction — rules adopted.

1. Every school bus except private passenger vehicles used as school buses shall be constructed and equipped to meet safety standards prescribed in rules adopted by the state board of education. Such rules shall conform to safety standards set forth in federal laws and regulations and shall conform, insofar as practicable, to the minimum standards for school buses recommended by the national conference on school transportation administered by the national commission on safety education and published by the national education association.

2. Rules prescribed for school buses shall provide standards for structural strength, materials, and insulation of the school bus body; color; seat and aisle arrangement; dimension and construction of service door; control of the front door or doors; emergency door and its location and construction; windows; roof ventilators; heaters; location, filling, and draining of the fuel tank; bumpers and how they shall be attached to the bus; lettering and identification of the bus; stop signal arm; warning lights and flashing lights.

3. The rules prescribed for school buses shall include special rules for passenger automobiles, and other vehicles designed to carry eight or fewer pupils, when used as school buses.

4. Every school bus shall be equipped with a comfortable seat for each child.

5. Vehicles owned by private parties and used as school buses shall have reversed or covered the words "school bus" wherever they appear on the vehicle when the vehicle is not in use as a school bus. It shall be unlawful to operate flashing stop warning signals on such privately owned vehicles except as provided in section 321.372.

6. No vehicle except a school bus shall be operated on a public highway if the vehicle is painted the color known as national school bus glossy yellow. A school bus which has been permanently converted for a purpose other than transporting pupils to or from school shall be painted a color other than national school bus glossy yellow, and shall have the "school bus" signs, stop arm, and the special signal lamps removed.

7. A school bus may be equipped with a white flashing strobe light mounted on the roof of the bus to afford optimum visibility during periods of inclement weather. The light shall be installed and operated in accordance with rules promulgated by the department of education. Each new school bus put into initial service after January 1, 1977, shall be equipped with such a light.

[C31, 35, §5079-c9, -c10, -c11; C39, §**5032.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.373]

97 Acts, ch 108, §19

321.374 Inspection — seal of approval.

No vehicle shall be put into service as a school bus until it is given an original inspection to determine if it meets all legal and established uniform standards of construction for the protection of the health and safety of children to be transported. Vehicles which are approved shall be issued a seal of approval by the director of the department of education. All vehicles used as school buses shall be given a safety inspection at least once a year. Buses passing the inspection shall be issued an inspection seal of approval by the director of the department of education. The seal of original inspection and the annual seal of inspection shall be affixed to the lower right hand corner of the windshield.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.374]

92 Acts, ch 1082, §1, 2

321.375 School bus drivers — qualifications — grounds for suspension.

1. A driver of a school bus must meet all of the following requirements:

a. Be at least eighteen years of age.

b. Be physically and mentally competent.

c. Not possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported.

d. Have an annual physical examination and meet all established requirements for physical fitness.

2. Any of the following shall constitute grounds for a school bus driver's immediate suspension from duties, pending a termination hearing by the board of directors of a public school district or the authorities in charge in a nonpublic school:

a. Use of nonprescription controlled substances or alcoholic beverages during working hours.

b. Operating a school bus while under the influence of nonprescription controlled substances or alcoholic beverages.

c. Fraud in the procurement or renewal of a school bus driver's authorization to operate a school bus.

d. The commission of or conviction for a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability, or if the offense includes sexual involvement with a minor student with the intent to commit acts and practices proscribed under sections 709.2 through 709.4, section 709.8, and sections 725.1 through 725.3, or is a violation of the rules of the department of education adopted to implement section 280.17.

[C31, 35, §4960-d10; C39, §**5032.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.375]

89 Acts, ch 210, §13; 90 Acts, ch 1230, §70; 93 Acts, ch 127, §8; 2002 Acts, ch 1140, §35

For 2002 amendment to subsection 1, paragraph d, effective July 1, 2003, see 2002 Acts, ch 1140, §34, 48

Subsection 2, paragraph c amended

321.376 License — authorization — instruction requirement.

1. The driver of a school bus shall hold a driver's license issued by the department of transportation valid for the operation of the school bus and a certificate of qualification* for operation of a commercial motor vehicle issued by a physician licensed pursuant to chapter 148 or 150A, physician's assistant, advanced registered nurse practitioner, or chiropractor or any other person identified by federal and state law as authorized to perform physical examinations, and shall successfully complete an approved course of instruction in accordance with subsection 2. A person holding a temporary restricted license issued under chapter 321J shall be prohibited from operating a school bus. The department of education shall revoke or refuse to issue an authorization to operate a school bus to any person who, after notice and opportunity for hearing, is determined to have committed any of the acts proscribed under section 321.375, subsection 2. The department of education shall recommend, and the state board of education shall adopt under chapter 17A, rules and procedures for issuing and revoking authorization to operate a school bus in this state. Rules and procedures adopted shall include, but are not limited to, provisions for the revocation of, or refusal to issue, authorization to persons who are determined to have committed any of the acts proscribed under section 321.375, subsection 2.

2. A person applying for employment or employed as a school bus driver shall successfully complete a department of education approved course of instruction for school bus drivers before or within the first six months of employment and at least every twenty-four months thereafter. If an employee fails to provide an employer with a certificate of completion of the required school bus driver's course, the driver's employer shall report the failure to the department of education and the employee's authorization to operate a school bus shall be revoked. The department of education shall send notice of the revocation to both the employee and the employer. A person whose school bus authorization has been revoked under this section shall not be issued another authorization until certification of the completion of an approved school bus driver's course is received by the department of education.

[C39, §**5032.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.376]

89 Acts, ch 222, §1; 90 Acts, ch 1230, §71; 91 Acts, ch 201, §1; 92 Acts, ch 1163, §76; 93 Acts, ch 127, §9; 2002 Acts, ch 1140, §36

*Requirement under §321.375 for school bus drivers to possess certificates of qualification takes effect July 1, 2003; 2002 Acts, ch 1140, §34, 48

Section amended

321.377 Regional transit system transportation.

A vehicle operated by a regional transit system as defined in section 324A.1 may only provide school transportation services pursuant to rules adopted by the state department of transportation in consultation with the department of education.

99 Acts, ch 13, §15

321.378 Applicability.

The provisions of sections 321.372 to 321.380, shall apply to all public and nonpublic schools where children are transported to and from school.

[C39, §**5032.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.378]

321.379 Violations.

No school board, individual, or organization shall purchase, construct, or contract for use, to transport pupils to or from school, any school bus

which does not comply with the minimum requirements of section 321.373 and any individual, or any member or officer of such board or organization who authorizes, the purchase, construction, or contract for any such bus not complying with these minimum requirements shall be guilty of a misdemeanor punishable as provided in section 321.482.

[C31, 35, §5079-c9, -c10, -c11; C39, §**5032.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.379]

321.380 Enforcement.

It shall be the duty of all peace officers and of the Iowa state patrol to enforce the provisions of sections 321.372 to 321.379.

[C39, §**5032.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.380]

98 Acts, ch 1074, §24

SAFETY STANDARDS

321.381 Movement of unsafe or improperly equipped vehicles.

It is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 3, paragraph *"f"*, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped with one or more unsafe tires or which is equipped in any manner in violation of this chapter.

[C39, §**5033.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.381]

2000 Acts, ch 1203, §15; 2001 Acts, ch 137, §5

321.381A Operation of low-speed vehicles.

A low-speed vehicle shall not be operated on a street with a posted speed limit greater than thirty-five miles per hour. This section shall not prohibit a low-speed vehicle from crossing a street with a posted speed limit greater than thirty-five miles per hour.

2000 Acts, ch 1005, §4

For applicable scheduled fine, see §805.8A, subsection 3, paragraph f

321.382 Upgrade pulls — minimum speed.

A motor vehicle or combination of vehicles, which cannot proceed up a three percent grade, on dry concrete pavement, at a minimum speed of twenty miles per hour, shall not be operated upon the highways of this state.

[C39, §**5033.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.382]

83 Acts, ch 101, §70

For applicable scheduled fine, see §805.8A, subsection 3, paragraph c

321.383 Exceptions — slow vehicles identified.

1. This chapter with respect to equipment on vehicles does not apply to implements of husbandry, road machinery, or bulk spreaders and other fertilizer and chemical equipment defined as special mobile equipment, except as made applicable in this section. However, the movement of implements of husbandry on a roadway is subject to safety rules adopted by the department. The safety rules shall prohibit the movement of any power unit towing more than one implement of husbandry from the manufacturer to the retail seller, from the retail seller to the farm purchaser, or from the manufacturer to the farm purchaser.

2. When operated on a highway in this state at a speed of thirty-five miles per hour or less, every farm tractor, or tractor with towed equipment, self-propelled implement of husbandry, road construction or maintenance vehicle, road grader, horse-drawn vehicle, or any other vehicle principally designed for use off the highway and any such tractor, implement, vehicle, or grader when manufactured for sale or sold at retail after December 31, 1971, shall be identified with a reflective device in accordance with the standards of the American society of agricultural engineers; however, this provision shall not apply to such vehicles when traveling in an escorted parade. If a person operating a vehicle drawn by a horse or mule objects to using a reflective device that complies with the standards of the American society of agricultural engineers for religious reasons, the vehicle may be identified by an alternative reflective device that is in compliance with rules adopted by the department. The reflective device or alternative reflective device shall be visible from the rear. A vehicle other than those specified in this section shall not display a reflective device or an alternative reflective device. On vehicles operating at speeds above thirty-five miles per hour, the reflective device or alternative reflective device shall be removed or hidden from view.

3. Garbage collection vehicles, when operated on the streets or highways of this state at speeds of thirty-five miles per hour or less, may display a reflective device that complies with the standards of the American society of agricultural engineers. At speeds in excess of thirty-five miles per hour the device shall not be visible.

Any person who violates any provision of this section shall be fined as provided in section 805.8A, subsection 3, paragraph *"d"*.

[C39, §**5033.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.383; 82 Acts, ch 1254, §2]

87 Acts, ch 186, §3; 96 Acts, ch 1152, §18; 97 Acts, ch 108, §20; 98 Acts, ch 1080, §3; 99 Acts, ch

102, §2; 99 Acts, ch 108, §5; 2001 Acts, ch 137, §5
See also §321.423(6)

LIGHTING EQUIPMENT

321.384 When lighted lamps required.

1. Every motor vehicle upon a highway within the state, at any time from sunset to sunrise, and at such other times when conditions such as fog, snow, sleet, or rain provide insufficient lighting to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead, shall display lighted head lamps as provided in section 321.415, subject to exceptions with respect to parked vehicles as hereinafter stated.

2. Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in subsection 1 of this section upon a straight level unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

[S13, §1571-m17; C24, 27, 31, 35, §5044; C39, §**5033.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.384]
For applicable scheduled fine, see §805.8A, subsection 3, paragraph d

321.385 Head lamps on motor vehicles.

Every motor vehicle other than a motorcycle or motorized bicycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this chapter.

[S13, §1571-m17; C24, 27, 31, 35, §5044; C39, §**5033.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.385]
For applicable scheduled fine, see §805.8A, subsection 3, paragraph d

321.385A Citation for unlighted headlamp or rear lamp.

A citation issued for failure to have head lamps as required under section 321.385 shall first provide for a seventy-two hour period within which the person charged with the violation shall replace or repair the headlamp. If the person complies with the directive to replace or repair the headlamp within the allotted time period, the citation shall be expunged. If the person fails to comply within the allotted time period, the citation shall be processed in the same manner as other citations. A citation issued under this section shall include a written notice of replacement or repair which shall indicate the date of replacement or repair and the manner in which the replacement or repair occurred and which shall be returned to the issuing authority within the seventy-two hour time period.

A citation issued for failure to have rear lamps as required under section 321.387 or a rear registration plate light as required under section 321.388 shall first provide for a seventy-two hour period within which the person charged with the violation shall replace or repair the lamps or light. If the person complies with the directive to replace or repair the lamps or light within the allotted time period, the citation shall be expunged. If the person fails to comply within the allotted time period, the citation shall be processed in the same manner as other citations.

92 Acts, ch 1175, §34

321.386 Head lamps on motorcycles and motorized bicycles.

Every motorcycle and motorized bicycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this chapter.

[S13, §1571-m17; C24, 27, 31, 35, §5047; C39, §**5033.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.386]
For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.387 Rear lamps.

Every motor vehicle and every vehicle which is being drawn at the end of a train of vehicles shall be equipped with a lighted rear lamp or lamps, exhibiting a red light plainly visible from a distance of five hundred feet to the rear. All lamps and lighting equipment originally manufactured on a motor vehicle shall be kept in working condition or shall be replaced with equivalent equipment.

[S13, §1571-m17; C24, 27, 31, 35, §5045, 5046; C39, §**5033.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.387]
92 Acts, ch 1175, §35
For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.388 Illuminating plates.

Either the rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. When the rear registration plate is illuminated by an electric lamp other than the required rear lamp, the two lamps shall be turned on or off only by the same control switch at all times when head lamps are lighted.

[S13, §1571-m17; C24, 27, 31, 35, §5045; C39, §**5033.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.388]
85 Acts, ch 195, §38
For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.389 Reflector requirement.

Every new motor vehicle, trailer, or semitrailer hereafter sold and every commercial vehicle hereafter operated on a highway shall also carry at the rear, either as a part of the rear lamp or separately, a red reflector meeting the requirements of this

chapter.

[C39, §**5033.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.389]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.390 Reflector requirements.

Whenever a red reflector is required or permitted to be used in substitution of lamps upon a vehicle under any one of the provisions of this chapter, such reflector shall be mounted upon the vehicle at a height not to exceed forty-two inches nor less than twenty inches above the ground upon which the vehicle stands, and every such reflector shall be so designed and maintained as to be visible at night from all distances within three hundred feet to fifty feet from such vehicle, except that on a commercial vehicle the reflector shall be visible from all distances within five hundred feet to fifty feet from such vehicle when directly in front of a motor vehicle displaying lawfully lighted head lamps as provided in section 321.409.

[C31, 35, §4863; C39, §**5033.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.390]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.391 Approval of reflectors. Repealed by 97 Acts, ch 108, § 49.

321.392 Clearance and identification lights.

Every motor truck, and every trailer or semitrailer of over three thousand pounds gross weight, shall be equipped with the following lighting devices and reflectors in addition to other requirements of this chapter, and such devices shall be lighted at the times mentioned in section 321.384.

1. Every motor truck, whatever its size shall have the following:

On each side, one reflector, at or near the rear; and

On the rear, two reflectors, one at each side.

2. Every motor truck, eighty inches or more in width shall have the following in addition to the requirements of subsection 1:

a. If thirty feet or less in over-all length —

On the front, two clearance lamps, one at each side; and

On the rear, two clearance lamps, one at each side.

b. If more than thirty feet in overall length —

On the front, two clearance lamps, one at each side;

On each side, two side-marker lamps, one at or near the front, and one at or near the rear, and an additional reflector at or near the front; and

On the rear, two clearance lamps, one at each side.

3. Every truck tractor or road tractor shall have the following:

On the front, two clearance lamps, one at each side if the tractor cab is as wide as, or wider than, the widest part of the vehicle or vehicles towed;

On each side, one side-marker lamp at or near the front; and

On the rear, one tail lamp.

4. Every trailer or semitrailer having a gross weight in excess of three thousand pounds shall have the following:

On the front, two clearance lamps, one at each side, if the trailer is wider in its widest part than the cab of the vehicle towing it;

On each side, one side-marker lamp at or near the rear; two reflectors, one at or near the front and one at or near the rear; and

On the rear, two clearance lamps, one at each side; one stop light; one tail lamp; and two reflectors, one at each side.

5. Every motor truck or combination of motor truck and trailer having a length in excess of thirty feet or a width in excess of eighty inches shall be equipped with three identification lights on both front and rear. Each such group shall be evenly spaced not less than six nor more than twelve inches apart along a horizontal line near the top of the vehicle.

[C31, 35, §5044-d1, -d2, 5105-c19; C39, §**5034.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.392]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.393 Color and mounting.

1. A lighting device or reflector, when mounted on or near the front of a motor truck or trailer, except a school bus, shall not display any other color than white, yellow, or amber.

2. No lighting device or reflector, when mounted on or near the rear of any motor truck or trailer, shall display any other color than red, except that the stop light may be red, yellow, or amber.

3. Clearance lamps shall be mounted on the permanent structure of the vehicle in such manner as to indicate the extreme width of the vehicle or its load.

4. The provisions of this section shall not prohibit the use of a lighting device or reflector displaying an amber light when such lighting device or reflector is mounted on a motor truck, trailer, tractor, or motor grader owned by the state, or any political subdivision of the state, or any municipality therein, while such equipment is being used for snow removal, sanding, maintenance, or repair of the public streets or highways.

[C39, §**5034.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.393]

89 Acts, ch 83, §44

For applicable scheduled fines, see §805.8A, subsection 3, paragraph a

321.394 Lamp or flag on projecting load.

Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the ex-

treme rear end of the load, at the times specified in section 321.384, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than sixteen inches square.

[C39, §**5034.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.394]

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a

321.395 Lamps on parked vehicles.

Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent to the roadway, outside of a business district whether attended or unattended during the times mentioned in section 321.384, such vehicle shall be equipped with one or more lamps which shall exhibit a white or amber light on the roadway side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance or resolution that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or object within a distance of five hundred feet upon such highway. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

[C24, 27, 31, 35, §5054; C39, §**5034.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.395]

98 Acts, ch 1178, §4

For applicable scheduled fine, see §805.8A, subsection 6, paragraph c

321.396 Exception.

Section 321.395 shall not apply when an accident extinguishes said light and renders a vehicle incapable of use, and when the person in control of the vehicle erects, at the earliest opportunity after the accident, such proper light at or near the vehicle as will give warning of the presence of said vehicle.

[C24, 27, 31, 35, §5055; C39, §**5034.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.396]

321.397 Lamps on bicycles.

Every bicycle shall be equipped with a lamp on the front exhibiting a white light, at the times specified in section 321.384, visible from a distance of at least three hundred feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of three hundred feet to the rear; except that a red reflector may be used in lieu of a rear light. A peace officer riding a police bicycle is not required to use either front or rear lamps if duty so requires.

[C31, 35, §5045-d1; C39, §**5034.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.397]

97 Acts, ch 71, §3; 97 Acts, ch 108, §21

For applicable scheduled fine, see §805.8A, subsection 9

321.398 Lamps on other vehicles and equipment.

All vehicles, including animal-drawn vehicles and including those referred to in section 321.383 not hereinbefore specifically required to be equipped with lamps, shall at the times specified in section 321.384 be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and, except for animal-drawn vehicles, with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear. Animal-drawn vehicles shall be equipped with a flashing amber light visible from a distance of five hundred feet to the rear of the vehicle during the time specified in section 321.384.

[C31, 35, §5045-d1; C39, §**5034.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.398]

For applicable scheduled fines, see §805.8A, subsection 3, paragraph d

321.399 to 321.401 Repealed by 75 Acts, ch 182, § 1.

321.402 Spot lamps.

Any motor vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle.

[C24, 27, 31, 35, §5051; C39, §**5034.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.402]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d

321.403 Auxiliary driving lamps.

Any motor vehicle may be equipped with not to exceed three auxiliary driving lamps mounted on the front at a height not less than twelve inches nor more than forty-two inches above the level surface upon which the vehicle stands, and every such auxiliary driving lamp or lamps shall meet the requirements and limitations set forth in this chapter.

[C24, 27, 31, 35, §5050; C39, §**5034.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.403]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d

321.404 Signal lamps and signal devices.

Every motor vehicle shall be equipped with a signal lamp or signal device which is so constructed and located on the vehicle as to give a signal of intention to stop, which shall be red or yellow in color, which signal shall be plainly visible and understandable in normal sunlight and at night from a distance of one hundred feet to the rear but shall not project a glaring or dazzling light.

[C39, §**5034.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.404]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d

321.404A Light-restricting devices prohibited.

1. A person shall not operate a motor vehicle, motorcycle, or motorized bicycle on the highways of this state if it is equipped with a device that restricts the light output of a head lamp required under section 321.385 or 321.386, a rear lamp required under section 321.387, a signal lamp or signal device required under section 321.404, or a directional signal device as described in section 321.317.

2. A person who violates this section shall be subject to a scheduled fine under section 805.8A, subsection 3, paragraph *"c"*.

99 Acts, ch 13, §16; 2001 Acts, ch 137, §5

321.405 Self-illumination.

All mechanical signal devices shall be self-illuminated when in use at the times mentioned in section 321.384.

[C39, §**5034.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.405]

321.406 Cowl lamps.

Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

[C24, 27, 31, 35, §5050; C39, §**5034.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.406]

321.407 Courtesy lamps. Repealed by 89 Acts, ch 296, § 96.

321.408 Back-up lamps.

Any motor vehicle may be equipped with a back-up lamp either separately or in combination with another lamp; except that no such back-up lamp shall be continuously lighted when the motor vehicle is in forward motion.

[C24, 27, 31, 35, §5050; C39, §**5034.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.408]

321.409 Mandatory lighting equipment.

Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motorized bicycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and the lamps may, in addition, be so arranged that selection can be made automatically, subject to the following limitations:

1. There shall be an uppermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least three hundred fifty feet ahead for all conditions.

2. There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead. On a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

3. Every new motor vehicle, other than a motorcycle or motorized bicycle which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. The indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle.

[C24, 27, 31, 35, §5049, 5052; C39, §**5034.18 – 5034.22;** C46, 50, 54, §321.409 – 321.413; C58, 62, 66, 71, 73, 75, 77, 79, 81, §321.409]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d

321.410 to 321.414 Repealed by 55 Acts, ch 166, § 1.

321.415 Required usage of lighting devices.

1. Whenever a motor vehicle is being operated on a roadway or shoulder during the times specified in section 321.384, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

a. Whenever a driver of a vehicle approaches an oncoming vehicle within one thousand feet, the driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in section 321.409, subsection 2, shall be deemed to avoid glare at all times, regardless of road contour and loading.

b. Whenever the driver of a vehicle follows another vehicle within four hundred feet to the rear, except when engaged in the act of overtaking and passing, the driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in section 321.409, subsection 1.

2. The provisions of subsection 1, paragraphs *"a"* and *"b"*, do not apply to motorcycles or motorized bicycles being operated between sunrise and sunset.

[C39, §**5034.23 – 5034.25;** C46, 50, 54, §321.414 – 321.416; C58, 62, 66, 71, 73, 75, 77, 79, 81, §321.415]

92 Acts, ch 1175, §36

For applicable scheduled fines, see §805.8A, subsection 3, paragraph d

321.416 Repealed by 55 Acts, ch 166, § 1.

321.417 Single-beam road-lighting equipment.

Head lamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted on motor vehicles manufactured and sold prior to July 1, 1938, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet.

[C24, 27, 31, 35, §5049; C39, §**5034.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.417]

321.418 Alternate road-lighting equipment.

Any motor vehicle may be operated under the conditions specified in section 321.384 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in sections 321.409 and 321.415, or section 321.417, provided, however, that at no time shall it be operated at a speed in excess of twenty miles per hour.

[C39, §**5034.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.418]

321.419 Number of driving lamps required or permitted.

At all times specified in section 321.384 at least two lighted lamps, except where one only is permitted, shall be displayed, one on each side at the front of every motor vehicle except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

[C39, §**5034.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.419]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d

321.420 Number of lamps lighted.

Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than three hundred candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

[C39, §**5034.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.420]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d

321.421 Special restrictions on lamps.

Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, or auxiliary driving lamps which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 3, paragraph *"d"*.

[C39, §**5034.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.421]

2000 Acts, ch 1203, §16; 2001 Acts, ch 137, §5

321.422 Red light in front.

No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying or reflecting a red light visible from directly in front thereof. This section shall not apply to authorized emergency vehicles, or school buses and vehicles as provided in section 321.423, subsection 6. No person shall display any color of light other than red on the rear of any vehicle, except that stop lights and directional signals may be red, yellow, or amber.

[C39, §**5034.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.422]

See also §321.383

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.423 Flashing lights.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Emergency medical care provider" means as defined in section 147A.1.

b. "Fire department" means a paid or volunteer fire protection service provided by a benefited fire district under chapter 357B or by a county, municipality or township, or a private corporate organization that has a valid contract to provide fire protection service for a benefited fire district, county, municipality, township or governmental agency.

c. "Member" means a person who is a member in good standing of a fire department or a person who is an emergency medical care provider employed by an ambulance, rescue, or first response service.

2. *Prohibited lights.* A flashing light on or in a motor vehicle is prohibited except as follows:

a. On an authorized emergency vehicle.

b. On a vehicle as a means of indicating a right or left turn, a mechanical failure, or an emergency stop or intent to stop.

c. On a motor vehicle used by a rural mail carrier when stopping or stopped on or near a highway in the process of delivering mail, if such a light is any shade of color between white and amber and if it is mounted as a dome light on the roof of the vehicle.

d. On a vehicle being operated under an excess size permit issued under chapter 321E.

e. A flashing blue light on a vehicle upon which a blue light is permitted pursuant to subsection 3 of this section.

f. A flashing white light is permitted on a vehicle pursuant to subsection 7.

g. A white flashing strobe light mounted on a school bus as permitted under section 321.373, subsection 7.

3. *Blue light.* A blue light shall not be used on any vehicle except for the following:

a. A vehicle owned or exclusively operated by a fire department.

b. A vehicle authorized by the chief of the fire department if the vehicle is owned by a member of the fire department, the request for authorization is made by the member on forms provided by the department, and necessity for authorization is demonstrated in the request.

c. An authorized emergency vehicle, other than a vehicle described in paragraph *"a"* or *"b"*, if the blue light is positioned on the passenger side of the vehicle and is used in conjunction with a red light positioned on the driver side of the vehicle.

A person shall not use only a blue light on a vehicle unless the vehicle meets the requirements of paragraph *"a"* or *"b"*.

4. *Expiration of authority.* The authorization shall expire at midnight on the thirty-first day of December five years from the year in which it was issued, or when the vehicle is no longer owned by the member, or when the member has ceased to be an active member of the fire department or of an ambulance, rescue, or first response service, or when the member has used the blue or white light beyond the scope of its authorized use. A person issued an authorization under subsection 3, paragraph *"b"*, shall return the authorization to the fire chief upon expiration or upon a determination by the fire chief or the department that the authorization should be revoked.

5. *When used.* The certificate of authorization shall be carried at all times with the certificate of registration of the authorized vehicle and the operator of the vehicle shall not illuminate the blue or white light except in any of the following circumstances:

a. When the member is en route to the scene of a fire or is responding to an emergency in the line of duty requiring the services of the member.

b. When the authorized vehicle is transporting a person requiring emergency care.

c. When the authorized vehicle is at the scene of an emergency.

d. The use of the blue or white light in or on a private motor vehicle shall be for identification purposes only.

6. *Amber flashing light.* A farm tractor, farm tractor with towed equipment, self-propelled implement of husbandry, road construction or maintenance vehicle, road grader, or other vehicle principally designed for use off the highway which, when operated on a primary or secondary road, is operated at a speed of thirty-five miles an hour or less, shall be equipped with and display an amber flashing light visible from the rear at any time from sunset to sunrise. If the amber flashing light is obstructed by the towed equipment, the towed equipment shall also be equipped with and display an amber flashing light as required under this subsection. All vehicles specified in this subsection which are manufactured for sale or sold in this state shall be equipped with an amber flashing light in accordance with the standards of the American society of agricultural engineers.

7. *Flashing white light.* Except as provided in section 321.373, subsection 7, and subsection 2, paragraph *"c"* of this section, a flashing white light shall only be used on a vehicle in the following circumstances:

a. On a vehicle owned or exclusively operated by an ambulance, rescue, or first response service.

b. On a vehicle authorized by the director of public health when all of the following apply:

(1) The vehicle is owned by a member of an ambulance, rescue, or first response service.

(2) The request for authorization is made by the member on forms provided by the Iowa department of public health.

(3) Necessity for authorization is demonstrated in the request.

(4) The head of an ambulance, rescue, or first response service certifies that the member is in good standing and recommends that the authorization be granted.

c. On an authorized emergency vehicle.

The Iowa department of public health shall adopt rules to establish issuance standards, including allowing local emergency medical service providers to issue certificates of authorization, and shall adopt rules to establish certificate of authorization revocation procedures.

[C39, §**5034.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.423]

85 Acts, ch 37, §2; 90 Acts, ch 1225, §1 – 7; 91 Acts, ch 131, §2 – 4; 94 Acts, ch 1087, §2; 95 Acts, ch 41, §25; 95 Acts, ch 118, §25; 96 Acts, ch 1034, §21 – 23; 97 Acts, ch 108, §22; 2000 Acts, ch 1045, §2, 3; 2001 Acts, ch 32, §19

See also §321.383

For applicable scheduled fines, see §805.8A, subsection 3, paragraph d

321.424 Sale of lights — approval. Repealed by 97 Acts, ch 108, § 49.

321.425 to 321.427 Repealed by 55 Acts, ch 166, § 1.

321.428 Approval by director. Repealed by 97 Acts, ch 108, § 49.

321.429 Revocation of certificate. Repealed by 97 Acts, ch 108, § 49.

BRAKES, HITCHES, AND SWAY CONTROL

321.430 Brake, hitch and control requirements.

1. Every motor vehicle, other than a motorcycle, or motorized bicycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

2. Every motorcycle and motorized bicycle, when operated upon a highway, shall be equipped with at least one brake, which may be operated by hand or foot.

3. Every trailer or semitrailer of a gross weight of three thousand pounds or more, and every trailer coach or travel trailer of a gross weight of three thousand pounds or more intended for use for human habitation, when operated on the highways of this state, shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, and so designed as to be applied by the driver of the towing motor vehicle from its cab, or with self-actuating brakes, and weight equalizing hitch with a sway control. Every semitrailer, travel trailer, or trailer coach of a gross weight of three thousand pounds or more shall be equipped with a separate, auxiliary means of applying the brakes on the semitrailer, travel trailer, or trailer coach from the cab of the towing vehicle. Trailers or semitrailers with a truck or truck tractor need only comply with the brake requirements.

4. Except as otherwise provided in this chapter, every new motor vehicle, trailer, or semitrailer hereafter sold in this state and operated upon the highways shall be equipped with service brakes upon all wheels of every such vehicle with the following exceptions:

a. Any motorcycle or motorized bicycle.

b. Any trailer or semitrailer of less than three thousand pounds gross weight need not be equipped with brakes.

c. Trucks and truck tractors equipped with three or more axles and manufactured before July 25, 1980, need not have brakes on the front wheels, except that such vehicles equipped with two or more front axles shall be equipped with brakes on at least one of the axles; however, the service brakes of the vehicle shall comply with the performance requirements of section 321.431.

d. Only such brakes on the vehicle or vehicles being towed in a driveaway-towaway operation need be operative as may be necessary to insure compliance by the combination of vehicles with the performance requirements of section 321.431. The term *"driveaway-towaway"* operation as used in this subsection means any operation in which any motor vehicle or motor vehicles, new or used, constitute the commodity being transported, when one set or more of wheels of any such motor vehicle or motor vehicles are on the roadway during the course of transportation, whether or not any such motor vehicle furnishes the motive power.

[S13, §1571-m17; C24, 27, 31, 35, §5039; C39, §**5034.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.430]

88 Acts, ch 1044, §1; 97 Acts, ch 108, §24

For applicable scheduled fine, see §805.8A, subsection 3, paragraph e

321.431 Performance ability.

1. The service brakes upon any motor vehicle or combination of motor vehicles, when upon dry asphalt or concrete pavement surface free from loose material where the grade does not exceed one percent, when traveling twenty miles an hour shall be adequate:

a. To stop such vehicle or vehicles having a gross weight of less than five thousand pounds within a distance of thirty feet.

b. To stop such vehicle or vehicles having a gross weight in excess of five thousand pounds within a distance of forty-five feet.

2. Under the above conditions the hand brake shall be adequate to hold such vehicle or vehicles stationary on any grade upon which operated.

3. Under the above conditions the service brakes upon a motor vehicle equipped with two-wheel brakes only, and when permitted hereunder, shall be adequate to stop the vehicle within a distance of forty-five feet and the hand brake adequate to stop the vehicle within a distance of fifty-five feet.

4. All braking distances specified in this section shall apply to all vehicles mentioned, whether such vehicles are not loaded or are loaded to the maximum capacity permitted under this chapter.

5. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

[S13, §1571-m17; C24, 27, 31, 35, §5039; C39, §**5034.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.431]

MISCELLANEOUS EQUIPMENT

321.432 Horns and warning devices.

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with the horn but shall not otherwise use such horn when upon a highway.

[S13, §1571-m17; C24, 27, 31, 35, §5040, 5041; C39, §**5034.41;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.432]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.433 Sirens, whistles, and bells prohibited.

A vehicle shall not be equipped with and a person shall not use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section. It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet, but the siren, whistle, or bell shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the driver of the vehicle shall sound the siren, whistle, or bell when necessary to warn pedestrians and other drivers of the approach of the vehicle.

[C39, §**5034.42;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.433]

98 Acts, ch 1080, §4

For applicable scheduled fine, see §805.8A, subsection 3, paragraph d

321.434 Bicycle sirens or whistles.

A bicycle shall not be equipped with and a person shall not use upon a bicycle any siren or whistle. This section shall not apply to bicycles ridden by peace officers in the line of duty.

[C39, §**5034.43;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.434]

97 Acts, ch 71, §4

For applicable scheduled fine, see §805.8A, subsection 9

321.435 Repealed by 78 Acts, ch 1113, § 47.

321.436 Mufflers, prevention of noise.

Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cutout, by-pass or similar device upon a motor vehicle on a highway.

[S13, §1571-m18; C24, 27, 31, 35, §5061 – 5063; C39, §**5034.45;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.436]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.437 Mirrors.

1. Every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle. Any motor vehicle so loaded, or towing another vehicle in such manner, as to obstruct the view in a rear view mirror located in the driver's compartment shall be equipped with a side mirror so located that the view to the rear will not be obstructed however when such vehicle is not loaded or towing another vehicle the side mirrors shall be retracted or removed. All van or van type motor vehicles shall be equipped with outside mirrors of unit magnification, each with not less than nineteen point five square inches of reflective surface, installed with stable supports on both sides of the vehicle, located so as to provide the driver a view to the rear along both sides of the vehicle, and adjustable in both the horizontal and vertical directions to view the rearward scene.

2. Notwithstanding this chapter or chapter 321E, a combination of vehicles coupled together which is used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickups, boats, and recreational chassis, may permanently attach a convex-type mirror on either or both of the vertical supports, forward of the steering axle of the power unit, provided that the mirror shall not extend beyond the limit of any other rearview mirror on the vehicle.

[C31, 35, §5105-c20; C39, §**5034.46;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.437]

86 Acts, ch 1210, §5

For applicable scheduled fines, see §805.8A, subsection 3, paragraph b, and subsection 12, paragraph b

321.438 Windshields and windows.

1. A person shall not drive a motor vehicle equipped with a windshield, sidewings, or side or rear windows which do not permit clear vision.

2. A person shall not operate on the highway a motor vehicle equipped with a front windshield, a side window to the immediate right or left of the driver, or a side-wing forward of and to the left or right of the driver which is excessively dark or reflective so that it is difficult for a person outside the motor vehicle to see into the motor vehicle through the windshield, window, or sidewing. The department shall adopt rules establishing a minimum measurable standard of transparency which shall apply to violations of this subsection.

3. Every motor vehicle except a motorcycle, or a vehicle included in the provisions of section 321.383 or section 321.115 shall be equipped with

a windshield in accordance with section 321.444.

[C39, §**5034.47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.438]

83 Acts, ch 125, §5

For applicable scheduled fine, see §805.8A, subsection 3, paragraph c

321.439 Windshield wipers.

The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

[C39, §**5034.48;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.439]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.440 Restrictions as to tire equipment.

1. Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery. Any pneumatic tire on a vehicle shall be considered unsafe if it has:

a. Any part of the ply or cord exposed;

b. Any bump, bulge or separation;

c. A tread design depth of less than one-sixteenth of an inch measured in any two or more adjacent tread grooves, exclusive of tie bars or, for those tires with tread wear indicators, worn to the level of the tread wear indicators in any two tread grooves;

d. A marking "not for highway use", "for racing purposes only", "unsafe for highway use";

e. Tread or sidewall cracks, cuts or snags deep enough to expose the body cord;

f. Such other conditions as may be reasonably demonstrated to render it unsafe;

g. Been regrooved or recut below the original tread design depth, excepting special tires which have extra under tread rubber and are identified as such, or if a pneumatic tire was originally designed without grooves or tread.

2. A vehicle, except an implement of husbandry, equipped with either solid rubber or pneumatic tires shall not be operated where the weight per inch of tire width is greater than five hundred seventy-five pounds per inch of tire width based on the tire width rating, except on a steering axle, in which case six hundred pounds per inch of tire width is permitted based on the tire width rating.

[C31, 35, §5065-c1; C39, §**5034.49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.440]

97 Acts, ch 100, §2, 3, 12

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.441 Metal tires prohibited.

No person shall operate or move on a paved highway any motor vehicle, trailer, or semitrailer having any metal tire or metal track in contact with the roadway.

[C24, 27, 31, 35, §4918, 4919; C39, §**5034.50;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.441]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.442 Projections on wheels.

No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberances of any material other than rubber which projects beyond the tread of the traction surface of the tire except that it shall be permissible to use:

1. Farm machinery with tires having protuberances which will not injure the highway.

2. Tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

3. Pneumatic tires with inserted ice grips or tire studs projecting not more than one-sixteenth inch beyond the tread of the traction surface of the tire upon any vehicle from November 1 of each year to April 1 of the following year, except that a school bus and fire department emergency apparatus may use such tires at any time.

[S13, §1571-1a; C24, 27, 31, 35, §5068, 5070; C39, §**5034.51;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.442]

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.443 Exceptions.

The department and local authorities in their respective jurisdictions shall review any application for a special permit and may, with good cause being shown, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this chapter.

[C24, 27, 31, 35, §5069; C39, §**5034.52;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.443]

321.444 Safety glass.

1. No person shall sell any new motor vehicle nor shall any motor vehicle, manufactured since July 1, 1935, be registered, or operated unless such vehicle is equipped with safety glass wherever glass is used in doors, windows, and windshields. Replacements of glass in doors, windows, or windshields shall be of safety glass.

2. *"Safety glass"* means any product composed of glass, so manufactured, fabricated, or treated as substantially to prevent shattering and flying of the glass when struck or broken. Safety glass and glazing materials shall comply with federal motor vehicle safety standard number 205 as published in 49 C.F.R. § 571.205.

[C35, §4991-f1, -f4; C39, §**5034.53, 5034.54, 5034.55;** C46, 50, 54, 58, 62, §321.444, 321.445, 321.446; C66, 71, 73, 75, 77, 79, 81, §321.444]

97 Acts, ch 108, §25; 98 Acts, ch 1080, §5

For applicable scheduled fine, see §805.8A, subsection 3, paragraph a

321.445 Safety belts and safety harnesses — use required.

1. Except for motorcycles or motorized bicycles, 1966 model year or newer motor vehicles subject to registration in Iowa shall be equipped with safety belts and safety harnesses which conform with federal motor vehicle safety standard numbers 209 and 210 as published in 49 C.F.R. § 571.209 – 571.210 and with prior federal motor vehicle safety standards for seat belt assemblies and seat belt assembly anchorages applicable for the motor vehicle's model year.

2. The driver and front seat occupants of a type of motor vehicle which is subject to registration in Iowa, except a motorcycle or a motorized bicycle, shall each wear a properly adjusted and fastened safety belt or safety harness any time the vehicle is in forward motion on a street or highway in this state except that a child under six years of age shall be secured as required under section 321.446.

This subsection does not apply to:

a. The driver or front seat occupants of a motor vehicle which is not required to be equipped with safety belts or safety harnesses.

b. The driver and front seat occupants of a motor vehicle who are actively engaged in work which requires them to alight from and reenter the vehicle at frequent intervals, providing the vehicle does not exceed twenty-five miles per hour between stops.

c. The driver of a motor vehicle while performing duties as a rural letter carrier for the United States postal service. This exemption applies only between the first delivery point after leaving the post office and the last delivery point before returning to the post office.

d. Passengers on a bus.

e. A person possessing a written certification from a health care provider licensed under chapter 148, 150, 150A, or 151 on a form provided by the department that the person is unable to wear a safety belt or safety harness due to physical or medical reasons. The certification shall specify the time period for which the exemption applies. The time period shall not exceed twelve months, at which time a new certification may be issued unless the certifying health care provider is from a United States military facility, in which case the certificate may specify a longer period of time or a permanent exemption.

f. Front seat occupants of an authorized emergency vehicle while they are being transported in an emergency. However, this exemption does not apply to the driver of the authorized emergency vehicle.

The department, in cooperation with the department of public safety and the department of education, shall establish educational programs to foster compliance with the safety belt and safety harness usage requirements of this subsection.

3. The driver and front seat passengers may be each charged separately for improperly used or nonused equipment under subsection 2. The owner of the motor vehicle may be charged for equipment violations under subsection 1.

4. *a.* The nonuse of a safety belt or safety harness by a person is not admissible or material as evidence in a civil action brought for damages in a cause of action arising prior to July 1, 1986.

b. In a cause of action arising on or after July 1, 1986, brought to recover damages arising out of the ownership or operation of a motor vehicle, the failure to wear a safety belt or safety harness in violation of this section shall not be considered evidence of comparative fault under section 668.3, subsection 1. However, except as provided in section 321.446, subsection 6, the failure to wear a safety belt or safety harness in violation of this section may be admitted to mitigate damages, but only under the following circumstances:

(1) Parties seeking to introduce evidence of the failure to wear a safety belt or safety harness in violation of this section must first introduce substantial evidence that the failure to wear a safety belt or safety harness contributed to the injury or injuries claimed by the plaintiff.

(2) If the evidence supports such a finding, the trier of fact may find that the plaintiff's failure to wear a safety belt or safety harness in violation of this section contributed to the plaintiff's claimed injury or injuries, and may reduce the amount of plaintiff's recovery by an amount not to exceed five percent of the damages awarded after any reductions for comparative fault.

5. The department shall adopt rules pursuant to chapter 17A providing exceptions from application of subsections 1 and 2 for front seats and front seat passengers of motor vehicles owned, leased, rented, or primarily used by persons with physical disabilities who use collapsible wheelchairs.

[C66, 71, 73, 75, 77, 79, 81, §321.445]

84 Acts, ch 1016, §3; 86 Acts, ch 1009, §2; 86 Acts, ch 1211, §43; 87 Acts, ch 120, §5; 92 Acts, ch 1175, §37; 96 Acts, ch 1129, §79; 97 Acts, ch 104, §21; 97 Acts, ch 108, §26; 98 Acts, ch 1080, §6, 7; 2002 Acts, ch 1119, §50

For applicable scheduled fines, see §805.8A, subsection 14, paragraph c

Subsection 2, unnumbered paragraph 3 stricken

321.446 Child restraint devices.

1. A child under three years of age who is being transported in a motor vehicle subject to registration, except a school bus or motorcycle, shall be secured during transit by a child restraint system which meets federal motor vehicle safety standards, and the system shall be used in accordance with the manufacturer's instructions.

2. A child at least three years of age but under six years of age who is being transported in a motor vehicle subject to registration, except a school bus or motorcycle, shall be secured during transit

by either a child restraint system that meets federal motor vehicle safety standards and is used in accordance with the manufacturer's instructions, or by a safety belt or safety harness of a type approved under section 321.445.

3. This section does not apply to peace officers acting on official duty. This section also does not apply to the transportation of children in 1965 model year or older vehicles, authorized emergency vehicles, buses, or motor homes, except when a child is transported in a motor home's passenger seat situated directly to the driver's right. This section does not apply to the transportation of a child who has been certified by a physician licensed under chapter 148, 150, or 150A as having a medical, physical, or mental condition that prevents or makes inadvisable securing the child in a child restraint system, safety belt, or safety harness.

4. The operator who violates subsection 1 or 2 is guilty of a misdemeanor and subject only to the penalty provisions of section 805.8A, subsection 14, paragraph *"c"*.

5. A person who is first charged for a violation of subsection 1 and who has not purchased or otherwise acquired a child restraint system shall not be convicted if the person produces in court, within a reasonable time, proof that the person has purchased or otherwise acquired a child restraint system which meets federal motor vehicle safety standards.

6. Failure to use a child restraint system, safety belts, or safety harnesses as required by this section does not constitute negligence nor is the failure admissible as evidence in a civil action.

84 Acts, ch 1016, §1; 86 Acts, ch 1069, §1; 2000 Acts, ch 1133, §11; 2001 Acts, ch 132, §11; 2001 Acts, ch 137, §5

321.447 Trucks to carry flares and reflective devices. Repealed by 87 Acts, ch 170, § 20. See § 321.449.

321.448 Display of flares or reflective devices. Repealed by 87 Acts, ch 170, § 20. See § 321.449.

321.449 Motor carrier safety rules.

1. A person shall not operate a commercial vehicle on the highways of this state except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal motor carrier safety regulations promulgated under United States Code, Title 49, and found in 49 C.F.R. § 390-399 and adopted under chapter 17A.

The department shall also adopt rules concerning hours of service for drivers of vehicles operated for hire and designed to transport seven or more persons, including the driver. The rules shall not apply to vehicles offered to the public for hire that are used principally in intracity operation and that are regulated by local authorities pursuant to section 321.236.

2. Rules adopted under this section concerning driver qualifications, hours of service, and recordkeeping requirements do not apply to the operators of public utility trucks, trucks hauling gravel, construction trucks and equipment, trucks moving implements of husbandry, and special trucks, other than a truck tractor, operating intrastate. Except as otherwise provided in this section, trucks for hire on construction projects are not exempt from this section.

3. Rules adopted under this section concerning driver age qualifications do not apply to drivers for private and for-hire motor carriers which operate solely intrastate except when the vehicle being driven is transporting a hazardous material in a quantity which requires placarding. The minimum age for the exempted intrastate operations is eighteen years of age.

4. Notwithstanding other provisions of this section, rules adopted under this section for drivers of commercial vehicles shall not apply to a driver of a commercial vehicle who is engaged exclusively in intrastate commerce, when the commercial vehicle's gross vehicle weight rating is twenty-six thousand pounds or less, unless the vehicle is used to transport hazardous materials requiring a placard or if the vehicle is designed to transport more than fifteen passengers, including the driver. For the purpose of complying with the hours of service recordkeeping requirements under 49 C.F.R. § 395.1(e)(5), a driver's report of daily beginning and ending on-duty time submitted to the motor carrier at the end of each work week shall be considered acceptable motor carrier time records. In addition, rules adopted under this section shall not apply to a driver for a farm operation as defined in section 352.2, or for an agricultural interest when the commercial vehicle is operated between the farm as defined in section 352.2 and another farm, between the farm and a market for farm products, or between the farm and an agribusiness location. A driver or a driver-salesperson for a private carrier, who is not for hire and who is engaged exclusively in intrastate commerce, may drive twelve hours, be on duty sixteen hours in a twenty-four hour period and be on duty seventy hours in seven consecutive days or eighty hours in eight consecutive days. For-hire drivers who are engaged exclusively in intrastate commerce and who operate trucks and truck-tractors exclusively for the movement of construction materials and equipment to and from construction projects may also drive twelve hours, be on duty sixteen hours in a twenty-four-hour period, and be on duty seventy hours in seven consecutive days or eighty hours in eight consecutive days. A driver-salesperson means as defined in 49 C.F.R. § 395.2, as adopted by the department by rule.

5. *a.* Notwithstanding other provisions of this

section, rules adopted under this section concerning physical and medical qualifications for drivers of commercial vehicles engaged in intrastate commerce shall not be construed as disqualifying any individual who was employed as a driver of commercial vehicles engaged in intrastate commerce whose physical or medical condition existed prior to July 29, 1996.

b. Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for a driver shall not apply to a farmer or a farmer's hired help when operating a vehicle owned by the farmer while it is being used in connection with the intrastate transportation of fertilizers and chemicals used in the farmer's crop production.

c. Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for a driver shall not apply to a farmer or a farmer's hired help when operating a vehicle owned by the farmer while it is being used in connection with the intrastate transportation of agricultural commodities or feed.

6. Notwithstanding other provisions of this section, rules adopted under this section shall not impose any requirements which impose any restrictions upon a person operating an implement of husbandry or pickup to transport fertilizers and pesticides in that person's agricultural operations.

7. Rules adopted under this section concerning periodic inspections shall not apply to special trucks as defined in section 321.1, subsection 76, and registered under section 321.121.

8. Rules adopted under this section shall not apply to vehicles used in combination provided the gross vehicle weight rating of the towing unit is ten thousand pounds or less and the gross combination weight rating is twenty-six thousand pounds or less.

[C39, §**5034.58;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.449]

87 Acts, ch 170, §13; 88 Acts, ch 1083, §3 – 7; 88 Acts, ch 1278, §50; 92 Acts, ch 1175, §38; 93 Acts, ch 47, §15; 95 Acts, ch 171, §1; 96 Acts, ch 1063, §1; 99 Acts, ch 13, §17, 29; 99 Acts, ch 96, §34; 2000 Acts, ch 1134, §3; 2001 Acts, ch 132, §12

For applicable scheduled fines, see §805.8A, subsection 13, paragraph b

321.450 Hazardous materials transportation regulations.

1. A person shall not transport or have transported or shipped within this state any hazardous material except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal hazardous materials regulations adopted under United States Code, Title 49, and found in 49 C.F.R. § 107, 171 to 173, 177, 178, and 180.

2. Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for drivers of commercial vehicles engaged in intrastate commerce shall not be construed as disqualifying any individual who was employed as a driver of commercial vehicles engaged in intrastate commerce, and whose physical or medical condition existed, prior to July 29, 1996.

3. Notwithstanding other provisions of this section, or the age requirements under section 321.449, the age requirements under section 321.449 and the rules adopted under this section pertaining to compliance with regulations adopted under United States Code, Title 49, and found in 49 C.F.R. § 177.804, shall not apply to retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products, and pesticides to farm customers within a one-hundred-mile radius of their retail place of business.

4. Notwithstanding other provisions of this section, rules adopted under this section shall not apply to a farmer or employees of a farmer when transporting an agricultural hazardous material between the sites in the farmer's agricultural operations unless the material is being transported on the interstate highway system. As used in this subsection, *"farmer"* means a person engaged in the production or raising of crops, poultry, or livestock; *"farmer"* does not include a person who is a commercial applicator of agricultural chemicals or fertilizers.

5. Notwithstanding other provisions of this section to the contrary, a driver who is engaged exclusively in intrastate commerce and who operates a truck or truck-tractor exclusively for the movement of refined oil products may drive twelve hours, be on duty sixteen hours in a twenty-four-hour period, and be on duty seventy hours in seven consecutive days, or eighty hours in eight consecutive days.

[C39, §**5034.59;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.450]

87 Acts, ch 170, §14; 88 Acts, ch 1083, §8; 89 Acts, ch 70, §1, 2; 89 Acts, ch 186, §1; 91 Acts, ch 127, §1; 97 Acts, ch 108, §27, 28; 98 Acts, ch 1178, §5, 17; 2001 Acts, ch 32, §20

For applicable scheduled fines, see §805.8A, subsection 13, paragraph c

321.451 Emergency vehicles — certificate of designation.

1. The director or the director's designee may designate a privately owned vehicle as an authorized emergency vehicle and issue a certificate of designation for the vehicle, upon written request being made on forms provided by the department and showing necessity for the designation. A certificate of designation may be issued for the following privately owned vehicles:

a. An ambulance or fire or rescue vehicle.

b. A state or county medical examiner vehicle.

c. A vehicle owned by a sheriff or full-time paid deputy sheriff if the authorized emergency vehicle designation is requested by the sheriff.

d. A vehicle owned by a chief of police or any officer of the police department if the authorized emergency vehicle designation is requested by the chief of police.

e. A vehicle owned by a chief of a full-time paid fire department if the authorized emergency vehicle designation is requested by the chief of the fire department.

2. The application for a certificate of designation must include the name and occupation of the owner of the vehicle, vehicle identification information, a description of the vehicle's equipment, a description of the use of the vehicle when its red light is flashing, and a photograph showing a side view of the vehicle.

3. The certificate of designation shall at all times be carried with the registration receipt for the vehicle to which the certificate refers. The certificate may be revoked by the director upon a showing of abuse.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.451]

85 Acts, ch 37, §3; 2000 Acts, ch 1133, §12

SIZE, WEIGHT, AND LOAD

321.452 Scope and effect.

Except for offenses punishable under the provisions of section 321.463 it is a misdemeanor, punishable as provided in section 321.482, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this chapter.

[C39, §**5035.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.452]

321.453 Exceptions.

The provisions of this chapter governing size, weight, and load, and the permit requirements of chapter 321E do not apply to fire apparatus; road maintenance equipment owned by, under lease to, or used in the performance of a contract with any state or local authority; or to implements of husbandry moved or moving upon a highway, except for those implements of husbandry moved or moving on any portion of the interstate and except as provided in sections 321.463, 321.471, and 321.474. A vehicle, carrying an implement of husbandry, which is exempted from the permit requirements under this section shall be equipped with an amber flashing light visible from the rear. If the amber flashing light is obstructed by the loaded implement, the loaded implement shall also be equipped with and display an amber flashing light. The vehicle shall also be equipped with warning flags on that portion of the vehicle which protrudes into oncoming traffic, and shall only operate from thirty minutes prior to sunrise to thirty minutes following sunset.

[C39, §**5035.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.453; 82 Acts, ch 1154, §3, ch 1254, §3]

86 Acts, ch 1210, §6; 87 Acts, ch 186, §4; 94 Acts, ch 1087, §3; 94 Acts, ch 1198, §45; 98 Acts, ch 1003, §1; 98 Acts, ch 1223, §26; 99 Acts, ch 13, §18; 99 Acts, ch 108, §6

321.454 Width of vehicles.

The total outside width of a vehicle or the load on the vehicle shall not exceed eight feet six inches. This limitation on the total outside width of a vehicle or the load on the vehicle does not include safety equipment on a vehicle or incidental appurtenances or retracted awnings on motor homes, travel trailers, or fifth-wheel travel trailers if the incidental appurtenance or retracted awning is less than six inches in width. However, if hay, straw, or stover is moved on an implement of husbandry and the total width of load of the implement of husbandry exceeds eight feet six inches, the implement of husbandry is not subject to the permit requirements of chapter 321E. If hay, straw, or stover is moved on any other vehicle subject to registration, the moves are subject to the permit requirements for transporting loads exceeding eight feet six inches in width as required under chapter 321E.

[C24, §5067, 5104; C27, §5067, 5105-a32; C31, 35, §5067, 5105-a32, 5105-c18; C39, §**5035.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.454]

83 Acts, ch 9, §5, 8; 87 Acts, ch 186, §5; 87 Acts, ch 189, §2; 94 Acts, ch 1087, §4, 5; 95 Acts, ch 67, §26; 2000 Acts, ch 1016, §15

For applicable scheduled fines, see §805.8A, subsection 12, paragraph c

321.455 Projecting loads on passenger vehicles.

No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof. Passengers shall not ride on any part of any vehicle unless it is expressly designed either for passenger use or designed for carrying livestock, merchandise, or freight.

[C31, 35, §5067-d1; C39, §**5035.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.455]

For applicable scheduled fines, see §805.8A, subsection 12, paragraph c

321.456 Height of vehicles — permits — exemption.

A vehicle unladen or with load shall not exceed a height of thirteen feet, six inches, except by permit as provided in this section. However, a vehicle

or combination of vehicles coupled together and used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, or recreational vehicle chassis may operate without a permit provided that the height of the vehicle or vehicles coupled together does not exceed fourteen feet. This section shall not be construed to require any railroad or public authorities to provide sufficient vertical clearance to permit the operation of such vehicle upon the highways of this state. Any damage to highways, highway or railroad structures or underpasses caused by the height of any vehicle provided for by this section shall be borne by the operator or owner of the vehicle. Vehicles unladen or with load exceeding a height of thirteen feet, six inches but not exceeding fourteen feet may be operated with a permit issued by the department or jurisdictional local authorities. The permits shall be issued annually for a fee of twenty-five dollars and subject to rules adopted by the department. The state or a political subdivision shall not be liable for damage to any vehicle or its cargo if changes in vertical clearance of a structure are made subsequent to the issuance of a permit during the term of the permit.

[C31, 35, §5067-d2; C39, §**5035.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.456]

86 Acts, ch 1182, §4; 97 Acts, ch 100, §4

For applicable scheduled fines, see §805.8A, subsection 12, paragraph c

321.457 Maximum length.

1. A combination of four vehicles is not allowed on the highways of this state, except for power units saddle mounted on other power units which shall be restricted to a maximum overall length of seventy-five feet.

2. The maximum length of any motor vehicle or combination of vehicles operated on the highways of this state is as follows:

a. A single truck, unladen or with load, shall not have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

When determining the overall length of a single truck, the following shall be excluded:

(1) Cargo extending not more than three feet beyond the front bumper and not more than four feet beyond the rear bumper when transporting motor vehicles, boats, and chassis.

(2) An unladen cargo carrying device extending no greater than twenty-four inches from the rear of the bed of the truck.

(3) A cargo carrying device with load.

b. A single bus shall not have an overall length, inclusive of front and rear bumpers, in excess of forty-five feet, except that buses constructed so as to contain a flexible part allowing articulation shall not exceed sixty-one feet.

c. A manufactured or mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided that the manufactured or mobile home and its towing unit are not in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck, or "pickup" is not a motor truck. A portable livestock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that the vehicle or combination of vehicles drawing the loading chute is not in excess of the legal length provided for such vehicles or combinations.

d. A combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, other than a truck tractor, shall not have an overall length, inclusive of front and rear bumpers, in excess of seventy feet.

e. A motor vehicle or combination of vehicles may be operated upon the highways of this state, irrespective of the length and weight limitations imposed by the laws of this state, if the motor vehicle or combination of vehicles is operated within the corporate limits of a city abutting a border of this state and such operations have been approved by ordinance of the city council and if the length and weight of the motor vehicle or combination of vehicles is in conformity with the laws relating to length and weight of the abutting state. If a city council has authorized such operation upon highways within the corporate limits, then the limit of travel for such motor vehicles or combination of vehicles within the state is extended to the commercial zones as described by federal regulations concerning interstate commerce, 49 C.F.R. § 1048.101, and to the interstate system as provided in 23 U.S.C. § 127 and 49 U.S.C. § 31112(c), as amended by Pub. L. No. 104-59.

f. A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of fifty-three feet when operating in a truck tractor-semitrailer combination exclusive of retractable extensions used to support the load. However, when a trailer or semitrailer is used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, recreational vehicle chassis, or boats, the load carried on the trailer or semitrailer may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper of the trailer or semitrailer. A lowboy semitrailer, laden or unladen, which is designed and exclusively used for the transportation of construction equipment shall not have an overall length in excess of fifty-seven feet when used in a truck tractor-semitrailer combination.

g. A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of twenty-eight feet six inches when operating in a truck tractor-semitrailer-trailer combination or truck tractor-semitrailer-semitrailer combination. When the semitrailers in a truck tractor-semitrailer-semitrailer combination are connected by a rigid frame extension including a fifth-wheel connection point attached to the rear frame

of the first semitrailer, the length of the frame extension shall not be included when determining the overall length of the first semitrailer.

h. Power units designed to carry cargo, when used in combination with a trailer or semitrailer shall not exceed sixty-five feet in overall length for the combination exclusive of retractable extensions used to support the load. However, if a combination of vehicles is used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, recreational vehicle chassis, or boats, the load may extend up to three feet beyond the front bumper of the power unit and up to four feet beyond the rear bumper of the trailer or semitrailer.

i. A stinger-steered automobile transporter shall not have an overall length exceeding seventy-five feet, exclusive of retractable extensions used to support the load and all other devices or appurtenances related to the safe and efficient operation of the vehicle, except that the load may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper.

j. A motor home shall not have an overall length, excluding front and rear bumpers and safety equipment, in excess of forty-five feet.

k. A combination of two vehicles coupled together, one of which is a motor home, shall not have an overall length in excess of sixty-five feet.

l. A combination of two vehicles coupled together, one of which is a travel trailer or fifth-wheel travel trailer, shall not have an overall length in excess of sixty-five feet.

3. Fire fighting apparatus and vehicles operated during daylight hours when transporting poles, pipe, machinery, or other objects of a structural nature which cannot be readily disassembled when required for emergency repair of public service facilities or properties are not subject to the limitations on overall length of vehicles and combinations of vehicles imposed under this section. However, for operation during nighttime hours, these vehicles and the load being transported shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps at the extreme ends of the projecting load to clearly mark the dimensions of the load. A member of the Iowa state patrol shall also be notified prior to the operation of the vehicle.

[C31, 35, §5067-d4; C39, §**5035.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.457; 82 Acts, ch 1056, §2, 3]

83 Acts, ch 9, §6, 7, 8; 83 Acts, ch 116, §2; 84 Acts, ch 1077, §1; 87 Acts, ch 186, §6 – 10; 88 Acts, ch 1208, §1; 89 Acts, ch 34, §2 – 5; 91 Acts, ch 31, §1, 2; 93 Acts, ch 87, §7; 94 Acts, ch 1087, §6, 7; 94 Acts, ch 1199, §78; 96 Acts, ch 1004, §1; 96 Acts, ch 1089, §2, 3; 96 Acts, ch 1219, §26; 98 Acts, ch 1074, §25; 98 Acts, ch 1075, §24; 2000 Acts, ch 1016, §16, 29; 2001 Acts, ch 32, §21, 22; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

For applicable scheduled fines, see §805.8A, subsection 12, paragraph c

321.458 Loading beyond front.

The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle if it is equipped with such a bumper.

[C39, §**5035.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.458]

For applicable scheduled fine, see §805.8A, subsection 12, paragraph c

321.459 Dual axle requirement.

Axles of a motor vehicle, trailer, or semitrailer which are less than forty inches apart center to center shall be considered as a single axle for the purpose of determining permissible gross weight under section 321.463.

[C31, 35, §5067-d3; C39, §**5035.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.459]

321.460 Spilling loads on highways.

A vehicle shall not be driven or moved on any highway by any person unless such vehicle is so constructed or loaded or the load securely covered as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping or its load covering from dropping from the vehicle, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway. The provisions of this section shall not apply to vehicles loaded with hay or stover or the products listed in section 321.466, subsections 5 and 6.

[C39, §**5035.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.460]

For applicable scheduled fine, see §805.8A, subsection 13, paragraph c

321.461 Trailers and towed vehicles.

1. When one vehicle is towing another the drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered.

2. If the towing vehicle is a motor truck and the towed vehicle is a single trailer with a single point of articulation at the hitch connection, the drawbar or other connection shall not exceed twenty-one feet. The length of the drawbar or other connection shall be measured from the centerline of the hitch assembly on the towing vehicle to the front of the body of the towed vehicle. A vehicle which has a drawbar or other connection which measures between fifteen and twenty-one feet in length shall have at least one yellow reflector visible on each vertical face of the drawbar or other

connection, located near the midpoint between the towing and the towed vehicle. A vehicle which has a drawbar or other connection which measures between fifteen and twenty-one feet in length shall have affixed to the rear of the towed vehicle a sign indicating that the vehicle is a towed vehicle.

[C39, §**5035.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.461]

91 Acts, ch 31, §3

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a

321.462 Drawbars and safety chains.

When one vehicle is towing or pulling another vehicle the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and shall be fastened to the frame of the towing vehicle in such manner as to prevent sidesway, and in addition to such principal connection there shall be a safety chain which shall be so fastened as to be capable of holding the towed vehicle should the principal connection for any reason fail.

[C39, §**5035.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.462]

88 Acts, ch 1278, §33; 97 Acts, ch 108, §29

For applicable scheduled fines, see §805.8A, subsection 12, paragraph a

321.463 Maximum gross weight — exceptions — penalties.

1. An axle may be divided into two or more parts, except that all parts in the same vertical transverse plane shall be considered as one axle.

2. The gross weight on any one axle of a vehicle, or of a combination of vehicles, operated on the highways of this state, shall not exceed twenty thousand pounds on an axle equipped with pneumatic tires, and shall not exceed fourteen thousand pounds on an axle equipped with solid rubber tires. The gross weight on any tandem axle of a vehicle, or any combination of vehicles, shall not exceed thirty-four thousand pounds on an axle equipped with pneumatic tires. This subsection does not apply to implements of husbandry.

3. Notwithstanding other provisions of this chapter to the contrary, indivisible loads operating under the permit requirements of sections 321E.7, 321E.8, 321E.9, and 321E.29A shall be allowed a maximum of twenty thousand pounds per axle.

4. *a.* Self-propelled implements of husbandry used exclusively for the application of organic or inorganic plant food materials, agricultural limestone, or agricultural chemicals shall be operated in compliance with this section.

b. (1) Notwithstanding any provision of this section to the contrary, the weight on any one axle of a fence-line feeder, grain cart, or tank wagon operated on the highways of this state shall not exceed twenty-four thousand pounds from February 1 through May 31 or twenty-eight thousand pounds from June 1 through January 31, provided, however, that the maximum gross vehicle weight of the fence-line feeder, grain cart, or tank wagon shall not exceed ninety-six thousand pounds.

Notwithstanding any provision of this section to the contrary, a tracked implement of husbandry operated on the highways of this state shall not have a maximum gross weight in excess of ninety-six thousand pounds.

A fence-line feeder, grain cart, tank wagon, or tracked implement of husbandry shall comply with the other provisions of this section and chapter when operated over a bridge in this state. A local authority may issue a special permit, based on a statewide standard developed by the department, allowing the operation over a bridge within its jurisdiction of a fence-line feeder, grain cart, tank wagon, or tracked implement of husbandry with a weight in excess of the weights allowed under this chapter.

(2) For purposes of this paragraph *"b"*, *"highway"* does not include a bridge.

For purposes of this paragraph *"b"*, *"fence-line feeder, grain cart, or tank wagon"* means all of the following:

(a) A fence-line feeder, grain cart, or tank wagon manufactured on or after July 1, 2001.

(b) After July 1, 2005, any fence-line feeder, grain cart, or tank wagon.

The year of manufacture of a fence-line feeder, grain cart, or tank wagon manufactured on or after July 1, 2001, shall be permanently made a part of the identification plate on the vehicle. Fraudulently altering or defacing or attempting to fraudulently alter or deface the year of manufacture or other product identification number on a fence-line feeder, grain cart, or tank wagon is a violation of section 321.92.

5. *a.* The maximum gross weight allowed to be carried on a vehicle or combination of vehicles on highways which are part of the interstate system is as follows:

MAXIMUM GROSS WEIGHT TABLE — INTERSTATE HIGHWAYS

Distance in feet	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000	34,000				
8	34,000	34,000				
8'1"	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	48,500			
11		44,000	49,500			
12		45,000	50,000			
13		45,500	50,500	56,000		
14		46,500	51,500	57,000		
15		47,000	52,000	57,500		
16		48,000	52,500	58,000		
17		48,500	53,500	58,500	64,000	
18		49,500	54,000	59,000	65,000	
19		50,000	54,500	60,000	65,500	
20		51,000	55,500	60,500	66,000	71,500
21		51,500	56,000	61,000	66,500	72,500
22		52,500	56,500	61,500	67,000	73,000
23		53,000	57,500	62,500	68,000	73,500
24		54,000	58,000	63,000	68,500	74,000
25		54,500	58,500	63,500	69,000	74,500
26		55,500	59,500	64,000	69,500	75,000
27		56,000	60,000	65,000	70,000	76,000
28		57,000	60,500	65,500	71,000	76,500
29		57,500	61,500	66,000	71,500	77,000
30		58,500	62,000	66,500	72,000	77,500
31		59,000	62,500	67,500	72,500	78,000
32		60,000	63,500	68,000	73,000	78,500
33			64,000	68,500	74,000	79,500
34			64,500	69,500	74,500	80,000
35			65,500	70,000	75,000	
36			68,000	70,500	75,500	
37			68,000	71,000	76,000	
38			68,000	72,000	77,000	
39			68,000	72,500	77,500	
40			68,500	73,000	78,000	
41			69,500	73,500	78,500	
42			70,000	74,000	79,000	
43			70,500	75,000	80,000	
44			71,500	75,500		
45			72,000	76,000		
46			72,500	76,500		
47			73,500	77,500		
48			74,000	78,000		
49			74,500	78,500		
50			75,500	79,000		
51			76,000	80,000		
52			76,500			
53			77,500			
54			78,000			
55			78,500			
56			79,500			
57			80,000			

b. The maximum gross weight allowed to be carried on a vehicle or combination of vehicles on noninterstate highways is as follows:

NONINTERSTATE HIGHWAYS — MAXIMUM GROSS WEIGHT TABLE

Distance in feet	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000	34,000				
8	34,000	34,000				
8'1"	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	45,000			
11		44,000	46,000			
12		45,000	47,000			
13		45,500	48,000	48,500		
14		46,500	49,000	49,500		
15		47,000	50,000	50,500		
16		48,000	51,000	51,500		
17		48,500	52,000	52,500	54,000	
18		49,500	53,000	53,500	55,000	
19		50,000	54,500	54,500	56,000	
20		51,000	55,500	55,500	57,000	
21		51,500	56,000	56,500	58,000	
22		52,500	56,500	57,500	59,000	
23		53,000	57,500	58,500	60,000	
24		54,000	58,000	59,500	61,000	
25		54,500	58,500	60,500	62,000	
26		55,500	59,500	61,500	63,000	
27		56,000	60,000	62,500	64,000	
28		57,000	60,500	63,500	65,000	
29		57,500	61,500	64,500	66,000	
30		58,500	62,000	65,500	67,000	
31		59,000	62,500	66,500	68,000	
32		60,000	63,500	67,500	69,000	
33			64,000	68,500	70,000	
34			64,500	69,500	71,000	
35			65,500	70,000	72,000	
36			68,000	70,500	73,000	
37			68,000	71,000	74,000	
38			68,000	72,000	75,000	
39			68,000	72,500	76,000	
40			68,500	73,000	77,000	
41			69,500	73,500	78,000	78,000
42			70,000	74,000	79,000	79,000
43			70,500	75,000	80,000	80,000
44			71,500	75,500		
45			72,000	76,000		
46			72,500	76,500		
47			73,500	77,500		
48			74,000	78,000		
49			74,500	78,500		
50			75,500	79,000		
51			76,000	80,000		
52			76,500			
53			77,500			
54			78,000			
55			78,500			
56			79,500			
57			80,000			

c. The maximum gross weight allowed to be carried on a livestock or construction vehicle on noninterstate highways is as follows:

NONINTERSTATE HIGHWAYS
MAXIMUM GROSS WEIGHT TABLE
LIVESTOCK OR CONSTRUCTION VEHICLE

Distance in feet	6 Axles	7 Axles
44	80,500	80,500
45	81,000	81,500
46	81,500	82,500
47	82,000	83,500
48	83,000	84,000
49	83,500	85,000
50	84,000	86,000
51	84,500	87,000
52	85,000	88,000
53	86,000	88,500
54	86,500	89,500
55	87,000	90,500
56	87,500	91,500
57	88,000	92,000
58	89,000	93,000
59	89,500	94,000
60	90,000	95,000
61		95,500*
62		96,000*

Notwithstanding any provision of this section to the contrary, the maximum gross weight allowed to be carried on a noninterstate highway by a livestock vehicle with five axles, a minimum distance in feet between the centers of the first and fifth axles of sixty-one feet, and a minimum distance between the two rear axles of at least eight feet and one inch is eighty-six thousand pounds.

d. For the purposes of the maximum gross weight tables in paragraphs *"a"*, *"b"*, and *"c"*, distance in feet is the measured distance in feet between the centers of the extreme axles of any group of axles, rounded to the nearest whole foot.

e. The maximum gross weight allowed to be carried on a tracked implement of husbandry when operated on a noninterstate highway bridge is as follows:

NONINTERSTATE HIGHWAY BRIDGES
MAXIMUM GROSS WEIGHT TABLE
TRACKED IMPLEMENTS OF HUSBANDRY

Length of Track in Feet	Weight in Pounds
4	34,000
5	34,000
6	34,000
7	34,000
8	42,000
9	42,500
10	45,000
11	46,000
12	47,000
13	48,500
14	49,500
15	50,500
16	51,500
17	54,000
18	55,000
19	56,000
20	57,000
21	58,000
22	59,000
23	60,000
24	61,000
25	62,000
26	63,000
27	64,000
28	65,000
29	66,000
30	67,000
31	68,000
32	69,000
33	70,000
34	71,000
35	72,000
36	73,000
37	74,000
38	75,000
39	76,000
40	77,000
41	78,000
42	79,000
43	80,000

"Length of track in feet" means the length of track on one side of the tracked implement of husbandry which is in contact with the ground or roadway surface.

6. The weight on any one axle, including a tandem axle, of a vehicle which is transporting livestock on highways not part of the interstate system may exceed the legal maximum weight given in this chapter providing that the gross weight on any particular group of axles on such vehicle does not exceed the gross weight allowable under this chapter for such groups of axles.

7. The weight on any one axle, including a tandem axle, of a vehicle which is transporting raw materials from a designated borrow site to a construction project or transporting raw materials from a construction project, and which is operating on a highway that is not part of the interstate system and along a route of travel approved by the department or the appropriate local authority, may exceed the legal maximum weight otherwise allowed under this chapter by ten percent if the gross weight on any particular group of axles on the vehicle does not exceed the gross weight allowed under this chapter for that group of axles. If the vehicle exceeds the ten percent tolerance allowed under this subsection, the fine shall be computed on the difference between the actual weight and the ten percent tolerance weight allowed for the axle or tandem axle.

8. A vehicle or combination of vehicles transporting materials to or from a construction project or commercial plant site may operate under the maximum gross weight table for interstate highways in subsection 5, paragraph *"a"*, if the route is approved by the department or appropriate local authority. Route approval is not required if the vehicle or combination of vehicles transporting materials to or from a construction project or commercial plant site complies with the maximum gross weight table for noninterstate highways in subsection 5, paragraph *"c"*.

9. A vehicle designed to tow wrecked or disabled vehicles shall be exempt from the weight limitations in this section while the vehicle is towing a wrecked or disabled vehicle.

10. *a.* A person who operates a vehicle in violation of this section, and an owner, or any other person, employing or otherwise directing the operator of a vehicle, who requires or knowingly permits the operation of a vehicle in violation of this section shall be fined according to the following schedule:

AXLE, TANDEM AXLE, AND GROUP OF AXLES WEIGHT VIOLATIONS

Pounds Overloaded	Amount of Fine
Up to and including 1,000 pounds	$12
Over 1,000 pounds up to and including 2,000 pounds	$22
Over 2,000 pounds up to and including 3,000 pounds	$155
Over 3,000 pounds up to and including 4,000 pounds	$240
Over 4,000 pounds up to and including 5,000 pounds	$375
Over 5,000 pounds up to and including 6,000 pounds	$585
Over 6,000 pounds up to and including 7,000 pounds	$850
Over 7,000 pounds up to and including 8,000 pounds	$950
Over 8,000 pounds up to and including 9,000 pounds	$1,050
Over 9,000 pounds up to and including 10,000 pounds	$1,150
Over 10,000 pounds up to and including 11,000 pounds	$1,300
Over 11,000 pounds up to and including 12,000 pounds	$1,400
Over 12,000 pounds up to and including 13,000 pounds	$1,500
Over 13,000 pounds up to and including 14,000 pounds	$1,600
Over 14,000 pounds up to and including 15,000 pounds	$1,700
Over 15,000 pounds up to and including 16,000 pounds	$1,800
Over 16,000 pounds up to and including 17,000 pounds	$1,900
Over 17,000 pounds up to and including 18,000 pounds	$2,000
Over 18,000 pounds up to and including 19,000 pounds	$2,100
Over 19,000 pounds up to and including 20,000 pounds	$2,200
Over 20,000 pounds	$2,200 plus ten cents per pound in excess of 20,000 pounds

b. Fines for gross weight violations for vehicles or combinations of vehicles shall be assessed at one-half of the fine rate schedule for axle, tandem axle, and groups of axles weight violations.

c. Except as otherwise provided, the amount of the fine to be assessed shall be computed on the difference between the actual weight and the maximum legal weight specified in this section.

d. The schedule of fines may be assessed in addition to any other penalties provided for in this chapter.

11. Overloads on axles and tandem axles and overloads on groups of axles or on an entire vehicle or combination of vehicles shall be considered as separate violations of the provisions of this section.

12. A person who issues or executes, or causes to be issued or executed, a bill of lading, manifest, or shipping document of any kind which states a false weight of the cargo set forth on such bill, manifest, or document, which is less than the actual weight of the cargo, shall, upon conviction, be guilty of a simple misdemeanor.

[C24, 27, 31, 35, §5065; C39, §**5035.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.463; 81 Acts, ch 110, §1, ch 111]

89 Acts, ch 200, §1, 2; 92 Acts, ch 1238, §35; 94 Acts, ch 1199, §79; 95 Acts, ch 118, §26; 96 Acts, ch 1089, §4; 97 Acts, ch 100, §5, 12; 97 Acts, ch 104, §22; 98 Acts, ch 1103, §2; 98 Acts, ch 1178, §6, 7; 99 Acts, ch 108, §7; 2000 Acts, ch 1016, §17; 2000 Acts, ch 1040, §1; 2001 Acts, ch 32, §23 – 25; 2002 Acts, ch 1063, §33, 55

For applicable scheduled fines, see §805.8A, subsection 12, paragraph e

*Maximum allowable gross weights for livestock or construction vehicles which apply to distances of 61 and 62 feet between extreme axles were listed in error as applying to vehicles with six axles in 2001 Code; table corrected editorially

Subsection 5, paragraph c, NEW unnumbered paragraph 2

321.464 Investigation as to safety.

The director upon registering any vehicle under the laws of this state which vehicle is designed and used primarily for the transportation of property or for the transportation of ten or more persons, may require such information and may make such investigation or test as necessary to enable the director to determine whether such vehicle may safely be operated upon the highways in compliance with all the provisions of this chapter. The director shall register every such vehicle for a permissible gross weight not exceeding the limitations set forth in this chapter. Every such vehicle shall meet the following requirements:

1. It shall be equipped with brakes as required in sections 321.430 and 321.431.

2. Every motor vehicle to be operated outside of business and residence districts shall have motive power adequate to propel at a reasonable speed such vehicle and any load thereon or to be drawn thereby.

[C39, §**5035.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.464]

321.465 Weighing vehicles and removal of excess.

Any peace officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same either by means of portable or stationary scales and may require that such vehicle be driven to the nearest public scales.

If an officer upon weighing a vehicle and load determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable place until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit as permitted under this chapter. All material so unloaded shall be cared for by the owner or operator of the vehicle at the risk of the owner or operator. The owner or operator of an overweight vehicle, designed to transport solid waste and domiciled within the state, which is transporting solid waste, shall not be required to unload any portion of the load, if the load is indivisible, in a place other than a facility which is permitted to handle solid waste disposal, processing, or recycling. For purposes of this section *"solid waste"* means waste which is acceptable at a local sanitary landfill and the solid waste shall be considered to be an indivisible load.

A driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a weighing, or who fails or refuses when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with this section, is guilty of a simple misdemeanor.

Upon weighing a vehicle and load, as above provided, if such load is a sealed load, the weight officer shall issue a certificate setting forth the weights as determined by the weight officer and the seal number or numbers, if requested by the operator.

[C31, 35, §4921-d1; C39, §**5035.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.465]

83 Acts, ch 101, §71; 92 Acts, ch 1170, §1; 94 Acts, ch 1087, §8

321.466 Increased loading capacity — reregistration.

1. An increased gross weight registration may be obtained for any vehicle by payment of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is registered.

2. During or after the seventh month of a current registration year, the owner of a motor truck, truck tractor, road tractor, semitrailer or trailer may, if the owner's operation has not resulted in a conviction or action pending under this section, increase the gross weight of the vehicle to a higher gross weight classification by payment of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the fee for the gross weight at which it is registered, multiplied by the number of unexpired months of the registration year.

3. Upon conversion of a truck to a truck tractor or a truck tractor to a truck, an increased gross weight registration of the proper type may be obtained for the vehicle by payment, except as provided in section 321.106, of one-twelfth of the difference between the annual fee for the higher gross weight and the amount of the annual fee for

the gross weight at which the vehicle is registered, multiplied by the number of unexpired months of the registration year from the date of the conversion.

4. The registered gross weight of a vehicle or combination of vehicles may also be increased by installing and using an auxiliary axle or axles, and the combined registered gross weight of the vehicle and auxiliary axle or axles shall determine the total registered gross weight. An auxiliary axle shall not be used to convert a single axle to a tandem axle unless equipped with a device to equalize the load carried by the single axle and the auxiliary axle when in tandem and when in motion or when standing, and the load transmitted to the highway by either the single axle or the auxiliary axle shall not exceed that permitted for a single axle, nor shall the load transmitted to the highway when in tandem and when in motion or when standing, exceed that permitted for a tandem axle.

5. It shall be unlawful for any person to operate a motor truck, trailer, truck tractor, road tractor, semitrailer or combination thereof, or any such vehicle equipped with a transferable auxiliary axle or axles, on the public highways with a gross weight exceeding that for which it is registered by more than five percent of the gross weight for which it is registered, provided, however, that any vehicle or vehicle combination referred to herein, while carrying a load of raw farm products, soil fertilizers, including ground limestone, raw dairy products or livestock, live poultry, eggs, may be operated with a gross weight of twenty-five percent in excess of the gross weight for which it is registered.

6. For the purposes of this section cracked or ground soy beans, sargo, corn, wheat, rye, oats or other grain shall be deemed to be raw farm products, provided that such products are being directly delivered to a farm, from the place where the whole grain had been delivered from a farm for the purpose of cracking or grinding and immediate delivery to the farm to which such cracked or ground products are being delivered.

7. The truck operator shall have in the truck operator's possession a receipt showing place of processing on the return trip.

[C24, 27, §4921; C31, 35, §4921-c1, -c2; C39, §**5035.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.466; 81 Acts, ch 110, §2]

82 Acts, ch 1062, §31, 32, 38; 90 Acts, ch 1233, §18

For applicable scheduled fines, see §805.8A, subsection 12, paragraph d

321.467 Retractable axles.

A vehicle which is a model year 1999 or later vehicle shall not operate on a highway of this state with a retractable axle unless the weight on the retractable axle can only be adjusted by means of a manual device located on the vehicle that is not accessible to the operator of the vehicle during operation of the vehicle. However, the controls for raising and lowering the retractable axle may be accessible to the operator of the vehicle while the vehicle is in operation.

97 Acts, ch 100, §6

321.468 through 321.470 Repealed by 67 Acts, ch 285, § 1. See substitute, chapter 321E.

321.471 Local authorities may restrict.

1. Local authorities with respect to a highway under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon the highway or impose restrictions as to the weight of vehicles to be operated upon the highway for a total period of not to exceed ninety days in any one calendar year, whenever the highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles on the highway is prohibited or the permissible weights reduced. The ordinance or resolution shall not apply to implements of husbandry as defined in section 321.1, implements of husbandry loaded on hauling units for transporting the implements to locations for repair, or fire apparatus and road maintenance equipment owned by, under lease to, or used in the performance of a contract with a state or local authority.

A person who violates the provisions of the ordinance or resolution shall, upon conviction or a plea of guilty, be subject to a fine determined by dividing the difference between the actual weight and the maximum weight established by the ordinance or resolution by one hundred, and multiplying the quotient by two dollars. Local authorities may issue special permits during periods the restrictions are in effect to permit limited operation of vehicles upon specified routes with loads in excess of any restrictions imposed under this subsection, but not in excess of load restrictions imposed by any other provision of this chapter, and the authorities shall issue the permits upon a showing that there is a need to move to market farm produce of the type subject to rapid spoilage or loss of value or to move to any farm feeds or fuel for home heating purposes.

2. *a.* Upon a finding that a bridge or culvert does not meet established standards set forth by state and federal authorities, local authorities may by ordinance or resolution impose limitations for an indefinite period of time on the weight of vehicles upon bridges or culverts located on highways under their sole jurisdiction. The limitations shall be effective when signs giving notice of the limitations are erected. The ordinance or resolution shall not apply to implements of husbandry loaded on hauling units for transporting the implements to locations for purposes of repair or to fire apparatus or road maintenance equipment owned by, under lease to, or used in the performance of a contract with a state or local authority.

b. A person who violates the ordinance or resolution shall, upon conviction or a guilty plea, be subject to a fine determined by dividing the difference between the actual weight of the vehicle and the maximum weight allowed by the ordinance or resolution by one hundred and multiplying the quotient by two dollars. Local authorities may issue or approve special permits allowing the operation over a bridge or culvert of vehicles with weights in excess of restrictions imposed under the ordinance or resolution, but not in excess of load restrictions imposed by any other provision of this chapter. The local authority shall issue such a permit for not to exceed eight weeks upon a showing of agricultural hardship. The operator of a vehicle which is the subject of a permit issued under this paragraph shall carry the permit while operating the vehicle and shall show the permit to any peace officer upon request.

[C24, 27, §4996; C31, 35, §4686-c1, 4996; C39, §**5035.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.471]

87 Acts, ch 162, §1; 99 Acts, ch 108, §8; 99 Acts, ch 208, §52, 53

321.472 Signs posted.

The local authority enacting any ordinance or resolution authorized under section 321.471 shall erect and maintain signs designating the ordinance or resolution at each end of that portion of any highway or at the location of any bridge or culvert affected thereby, and the ordinance or resolution shall not be effective unless and until the signs are erected and maintained.

[C31, 35, §4686-c1; C39, §**5035.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.472]

87 Acts, ch 162, §2

321.473 Limiting trucks — rubbish vehicles.

Local authorities with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

The department may issue annual special permits for the operation of compacted rubbish vehicles and vehicles which transport compacted rubbish from a rubbish collection point to a landfill area, exceeding the weight limitation of section 321.463, but not exceeding a rear axle gross weight for two-axle vehicles of twenty-two thousand pounds for the period commencing July 1, 1978 and ending June 30, 1986 and twenty thousand pounds commencing July 1, 1986 and thereafter, and for tandem axle vehicles or transferable auxiliary axle vehicles not exceeding a gross weight on the rear axles of thirty-six thousand pounds. Annual special permits for the operation on secondary roads shall be approved by the county engineer. Annual special permits for a particular vehicle shall not be issued by the department unless prior approval is given by the county engineer of the county in which the vehicle will be operated. Annual special permits for operation on primary roads shall be approved by the state department of transportation. Compacted rubbish vehicles and vehicles which transport compacted rubbish from a rubbish collection point to a landfill area operated pursuant to an annual special permit shall be operated only over routes designated by the local authority. Annual special permits for a particular vehicle shall not be issued by the department unless approved by the local authority responsible for the roads over which the vehicle will be operated. Annual special permits approved by the issuing authority shall be issued upon payment of an annual fee, in addition to other registration fees imposed, of one hundred dollars to be paid to the department for all nongovernmental vehicles.

Any person who violates the provisions of the ordinance or resolution shall, upon conviction or a plea of guilty, be subject to a fine determined by dividing the difference between the actual weight and the maximum weight established by the ordinance or resolution by one hundred, and multiplying the quotient by two dollars. The fine for violation of a special permit issued pursuant to this section shall be based upon the difference between the actual weight of the vehicle and load and the maximum weight allowed by the permit in accordance with section 321.463.

Local authorities may issue special permits, during periods such restrictions are in effect, to permit limited operation of vehicles upon specified routes with loads in excess of any restrictions imposed under this section, but not in excess of load restrictions imposed by any other provision of this chapter, and such authorities shall issue such permits upon a showing that there is a need to move to market farm produce or to move to any farm, feeds or fuel for home heating purposes.

[C39, §**5035.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.473]

83 Acts, ch 131, §1; 98 Acts, ch 1178, §8

321.474 Department may restrict.

The department shall have authority, as granted to local authorities, to determine by resolution and to impose restrictions as to the weight of vehicles, except implements of husbandry as defined in section 321.1, implements of husbandry loaded on hauling units for transporting the implements to locations for repair, and fire apparatus and road maintenance equipment owned by, under lease to, or used in the performance of a contract with a state or local authority, operated upon

any highway under the jurisdiction of the department for a definite period of time not to exceed twelve months. The restrictions shall be effective when signs giving notice of the restrictions and the expiration date of the restrictions are erected upon the affected highway or portion of highway.

Upon a finding that a bridge or culvert does not meet established standards set forth by state and federal authorities, the department may impose, by resolution, restrictions for an indefinite period of time on the weight of vehicles operated upon bridges or culverts located on highways under its jurisdiction. The restrictions shall be effective when signs giving notice of the restrictions are erected. The restrictions shall not apply to implements of husbandry loaded on hauling units for transporting the implements to locations for purposes of repair or to fire apparatus or road maintenance equipment owned by, under lease to, or used in the performance of a contract with a state or local authority.

For the purposes of restrictions imposed under this section, a triple axle is any group of three or more consecutive axles where the centers of any consecutive axles are more than forty inches apart and where the centers of the extreme axles are more than eighty-four inches apart but not more than one hundred sixty-eight inches apart. Where triple axle restrictions are imposed, the signs erected by the department shall give notice of the restrictions.

Any person who violates a restriction imposed by resolution pursuant to this section, upon conviction or a plea of guilty, is subject to a fine determined by dividing the difference between the actual weight of the vehicle and the maximum weight allowed by the restriction by one hundred and multiplying the quotient by two dollars. The department may issue special permits, during periods the restrictions are in effect, to permit limited operation of vehicles upon specified routes with loads in excess of any restrictions imposed under this section, but not in excess of load restrictions imposed by this chapter. The department shall issue a special permit for not to exceed eight weeks upon a showing of agricultural hardship. The department shall issue special permits to trucks moving farm produce, which decays or loses its value if not speedily put to its intended use, to market upon a showing to the department that there is a requirement for trucking the produce, or to trucks moving any farm feeds or fuel necessary for home heating purposes. The operator of a vehicle which is the subject of a permit issued under this paragraph shall carry the permit while operating the vehicle and shall show the permit to any peace officer upon request.

[C24, 27, 31, 35, §5066; C39, §**5035.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.474; 81 Acts, ch 110, §3]

99 Acts, ch 108, §9, 10; 99 Acts, ch 208, §54, 55

321.475 Liability for damage — rules.

Any person driving any vehicle, object, or contrivance upon any highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving, or moving of such vehicle, object, or contrivance, or as a result of operation, driving, or moving any vehicle, object, or contrivance weighing in excess of the maximum weight in this chapter but authorized by a special permit issued as provided in this chapter.

Whenever such driver is not the owner of such vehicle, object, or contrivance, but is so operating, driving, or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage. Such damage may be recovered in a civil action brought by the authorities in control of such highway or highway structure.

The department shall adopt rules pursuant to chapter 17A, stating the department's policy for recovery of damages to highways or highway structures pursuant to this section. The policy shall exclude from recoverable damages the costs of traffic control at the scene of an accident.

[C39, §**5035.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.475]

91 Acts, ch 67, §1

321.476 Weighing vehicles by department.

Authority is hereby given to the department to stop any motor vehicle or trailer on the highways for the purposes of weighing and inspection, to weigh and inspect the same and to enforce the provisions of the motor vehicle laws relating to the registration, size, weight, and load of motor vehicles and trailers.

Authority is also hereby granted to subject to weighing and inspection, vehicles which have moved from a highway onto private property under circumstances which indicate that the load of the vehicle, if any, is substantially the same as the load which the vehicle carried before moving onto the private property.

Any person who prevents or in any manner obstructs an officer attempting to carry out the provisions of this section is guilty of a simple misdemeanor.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.476]

321.477 Employees as peace officers — maximum age.

The department may designate by resolution certain of its employees upon each of whom there is hereby conferred the authority of a peace officer to control and direct traffic and weigh vehicles, and to make arrests for violations of the motor vehicle laws relating to the operating authority, registration, size, weight, and load of motor vehicles and trailers and registration of a motor carrier's

interstate transportation service with the department. The maximum age for a person employed as a peace officer pursuant to this section is sixty-five years of age.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.477]

98 Acts, ch 1183, §110

321.478 Bond.

Prior to entering upon the discharge of the employee's duties as such peace officer, each of said designated employees shall furnish to the department a surety bond to the state in the sum of five hundred dollars, conditioned upon the faithful discharge of the peace officer's duties.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.478]

321.479 Badge of authority.

The department shall supply each of said employees so designated with a badge of authority, bearing a serial number, which shall be conspicuously displayed by the employee while in the performance of the employee's duties as such peace officer.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.479]

321.480 Limitation on expense.

For the purposes of sections 321.476 to 321.481 and the enforcement of the provisions of the motor vehicle laws relating to the size, weight, and load of motor vehicles and trailers the department is hereby authorized to expend from the primary road fund only the amount appropriated for each biennium.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.480]

321.481 No impairment of other authority.

Nothing in sections 321.476 to 321.480 shall be so construed as to limit or impair the authority or duties of other peace officers in the enforcement of the motor vehicle laws or any portion thereof.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.481]

CRIMINAL RESPONSIBILITY

321.482 Violations — simple misdemeanors unless otherwise provided.

It is a simple misdemeanor for a person to do an act forbidden or to fail to perform an act required by this chapter unless the violation is by this chapter or other law of this state declared to be a serious or aggravated misdemeanor or a felony. Chapter 232 has no application in the prosecution of offenses committed in violation of this chapter which are simple misdemeanors.

[S13, §1569, 1571-2a, -m21, -m22, -m26, -m27, -m29, 4808-b; SS15, §1571-m12a; C24, §4903, 5081, 5089, 13119; C27, §4903, 5055-b4, 5081, 5089, 13119; C31, §4686-c2, 4903, 5055-b4, 5079-d6, 5081, 5089, 13119; C35, §4686-c2, 4903, 4991-f5, 5024-e3, 5055-b4, 5067-e2, 5079-d6, 5081, 5089, 13119; C39, §**5036.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.482]

84 Acts, ch 1067, §33

321.483 Penalty for class "D" felony.

Any person who is convicted of a violation of any of the provisions of this chapter herein declared to constitute a felony, and for which another punishment is not otherwise provided, shall be guilty of a class "D" felony.

[C24, 27, 31, 35, §5081; C39, §**5036.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.483]

321.484 Offenses by owners.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

The owner of a vehicle shall not be held responsible for a violation of a provision regulating the stopping, standing, or parking of a vehicle, whether the provision is contained in this chapter, or chapter 321L, or an ordinance or other regulation or rule, if the owner establishes that at the time of the violation the vehicle was in the custody of an identified person other than the owner pursuant to a lease as defined in chapter 321F or pursuant to a rental agreement as defined in section 516D.3. The furnishing to the clerk of the district court where the charge is pending of a copy of the lease prescribed by section 321F.6 or rental agreement that was in effect for the vehicle at the time of the alleged violation shall be prima facie evidence that the vehicle was in the custody of an identified person other than the owner within the meaning of this paragraph, and the charge against the owner shall be dismissed. The clerk of the district court then shall cause a uniform citation and complaint to be issued against the lessee or renter of the vehicle, and the citation shall be served upon the defendant by ordinary mail directed to the defendant at the address shown in the lease or rental agreement.

If a peace officer as defined in section 801.4 has reasonable cause to believe the driver of a motor vehicle has violated sections 321.261, 321.262, 321.264, 321.341, 321.342, 321.343, 321.344, or 321.372, the officer may request any owner of the motor vehicle to supply information identifying the driver. When requested, the owner of the vehicle shall identify the driver to the best of the owner's ability. However, the owner of the vehicle is not required to supply identification information to the officer if the owner believes the infor-

mation is self-incriminating.

[C24, 27, 31, 35, §5085; C39, §**5037.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.484; 81 Acts, ch 49, §3; 82 Acts, ch 1144, §1]

89 Acts, ch 247, §8; 92 Acts, ch 1152, §2; 95 Acts, ch 118, §27; 96 Acts, ch 1034, §24; 2000 Acts, ch 1061, §1

321.485 Notice to appear — promise to appear.

1. Whenever a peace officer has reasonable cause to believe that a person has violated any provision of this chapter punishable as a simple, serious, or aggravated misdemeanor, such officer may:

a. Immediately arrest such person and take the person before a magistrate; or

b. Without arresting the person, either

(1) Prepare a written citation to appear in court containing the name and address of such person, the driver's license number, if any, the registration number, if any, of the person's vehicle, the offense charged, and the time and place the person shall appear in court; or

(2) Prepare a memorandum of the alleged traffic violation containing the name and address of such person, the registration number, if any, of the person's vehicle, the offense alleged to have been committed, and such other information as may be prescribed by the commissioner of public safety with the concurrence of the director of transportation.

2. If the officer prepares either a citation or a memorandum as provided in this section, the alleged offender shall be requested to sign it. If the person signs, the person may be released without arrest. In case a citation is issued, the signing shall constitute a written promise to appear as stated in the citation. A copy of the citation shall be presented to the person named therein. If a memorandum is prepared, the original shall be retained by the officer, and a copy shall be sent to the department, and a copy shall be presented to the person named therein.

3. For preparing the summons or memorandum referred to in this section, there shall be charged to the person named in the summons or memorandum, upon conviction, a fee of two dollars. The fee shall be assessed as part of the court costs.

4. The number of copies and the form of the citations and memorandums authorized by this section shall be as prescribed by the commissioner of public safety with the concurrence of the director of transportation.

5. This section shall not apply to a traffic offense which must be charged upon a uniform citation and complaint as provided in section 805.6.

[C24, 27, 31, 35, §5082; C39, §**5037.02, 5037.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §321.485, 321.486; C79, 81, §321.485]

83 Acts, ch 123, §130, 209; 90 Acts, ch 1230, §72; 98 Acts, ch 1073, §9

321.486 Authorized bond forms.

When bond or bail is required under section 811.2 to guarantee appearance for any offense charged under this chapter, the following nonexclusive forms shall be permitted subject to the following limitations:

1. A current guaranteed arrest bond certificate as defined in section 321.1, subsection 30 shall be considered sufficient surety if the defendant is charged with an offense where the penalty does not exceed two hundred dollars.

2. A valid credit card, as defined in section 537.1301, subsection 16, may be used and is sufficient surety when the defendant is charged with a scheduled offense under section 805.8A, 805.8B, or 805.8C. The defendant may use a credit card for bail purposes only in accordance with rules of the department of public safety adopted pursuant to chapter 17A.

[C39, §**5037.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.486]

83 Acts, ch 101, §72; 2001 Acts, ch 137, §5

321.487 Violation of promise to appear.

Any person willfully violating a citation to appear in court given as provided in this chapter, is guilty of a misdemeanor, punishable as provided in section 321.482 regardless of the disposition of the charge upon which the person was cited. Venue shall be in the county where the defendant was to appear or in the county where the person resides.

An appearance in response to such citation may be made either in person or by counsel.

[C39, §**5037.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.487]

321.488 Procedure not exclusive.

The foregoing provisions of this chapter shall govern all peace officers in making arrests without a warrant for violations of this chapter for offenses committed in their presence, but the procedure prescribed herein shall not be exclusive of any other method prescribed by law for the arrest and prosecution of a person.

[C39, §**5037.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.488]

321.489 Record inadmissible in a civil action.

No record of the conviction of any person for any violation of this chapter shall be admissible as evidence in any court in any civil action.

[C39, §**5037.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.489]

321.490 Conviction not to affect credibility.

The conviction of a person upon a charge of vio-

lating any provision of this chapter or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

[C39, §**5037.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.490]

321.491 Convictions and recommendations for suspension to be reported.

Every district judge, district associate judge, and judicial magistrate shall keep a full record of every case in which a person is charged with any violation of this chapter or of any other law regulating the operation of vehicles on highways.

Within ten days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this chapter or other law regulating the operation of vehicles on highways every magistrate of the court or clerk of the district court of record in which the conviction occurred or bail was forfeited shall prepare and immediately forward to the department an abstract of the record of the case. The abstract of the record of the case must be certified by the person preparing it to be true and correct. A certified abstract of the record of the case prepared for the department shall only be available to the public from the department. A noncertified record of conviction or forfeiture of bail shall be available to the public from the judicial branch. The clerk of the district court shall collect a fee of fifty cents for each noncertified copy of any record of conviction or forfeiture of bail furnished to any requestor except the department or other local, state, or federal government entity. Moneys collected under this section shall be transferred to the department as a repayment receipt, as defined in section 8.2, to enhance the efficiency of the department to process records and information between the department and the Iowa court information system. Notwithstanding any other provision in this section or chapter 22, the judicial branch shall be the provider of public electronic access to the clerk's records of convictions and forfeitures of bail through the Iowa court information system and shall, if all such records are provided monthly to a vendor, collect a fee from such vendor for the period beginning on July 1, 1997, and ending on June 30, 1999, which is the greater of three thousand dollars per month or the actual direct cost of providing the records. On and after July 1, 1999, if all such records are provided monthly to a vendor, the judicial branch shall collect a fee from such vendor which is the greater of ten thousand dollars per month or the actual direct cost of providing the records.

The abstract must be made upon a form furnished by the department or by copying a uniform citation and complaint or by using an electronic process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the citation, and must include the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether the bail was forfeited, the amount of the fine or forfeiture, and any court recommendation, if any, that the person's driver's license be suspended. The department shall consider and act upon the recommendation.

Every clerk of a court of record shall also forward a like report to the department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

The failure, refusal, or neglect of an officer to comply with the requirements of this section shall constitute misconduct in office and shall be ground for removal from office.

All abstracts received by the department under this section shall be open to public inspection during reasonable business hours.

[S13, §1571-m23; C24, 27, 31, 35, §5076 – 5078; C39, §**5037.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.491]

90 Acts, ch 1230, §73; 93 Acts, ch 16, §10; 94 Acts, ch 1074, §2; 96 Acts, ch 1218, §66; 97 Acts, ch 104, §23; 98 Acts, ch 1047, §68; 98 Acts, ch 1073, §9; 98 Acts, ch 1178, §9; 99 Acts, ch 96, §35; 99 Acts, ch 207, §13

321.492 Peace officers' authority.

A peace officer is authorized to stop a vehicle to require exhibition of the driver's license of the driver, to serve a summons or memorandum of traffic violation, to inspect the condition of the vehicle, to inspect the vehicle with reference to size, weight, cargo, log book, bills of lading or other manifest of employment, tires, and safety equipment, or to inspect the registration certificate, the compensation certificate, travel order, or permit of the vehicle.

A peace officer having probable cause to stop a vehicle may require exhibition of the proof of financial liability coverage card issued for the vehicle if the vehicle is a motor vehicle registered in this state.

All peace officers as defined in section 801.4, subsection 11, paragraphs *"a", "b", "c",* and *"h"* may, having reasonable grounds that equipment violations exist, conduct spot inspections.

The department may designate employees under the supervision of the department's administrator of motor vehicles to conduct spot inspections.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.492]

84 Acts, ch 1305, §69; 86 Acts, ch 1245, §1936; 97 Acts, ch 139, §6, 7, 17, 18; 98 Acts, ch 1073, §8, 9; 98 Acts, ch 1100, §48; 98 Acts, ch 1121, §8

321.492A Quotas on citations prohibited.

A political subdivision or agency of the state shall not order, mandate, require, or in any other

manner, directly or indirectly, suggest to a peace officer employed by the political subdivision or agency that the peace officer shall issue a certain number of traffic citations, police citations, memorandums of traffic violations, or memorandums of faulty equipment on a daily, weekly, monthly, quarterly, or yearly basis.

85 Acts, ch 226, §1; 96 Acts, ch 1034, §25

CIVIL LIABILITY

321.493 Liability for damages.

1. *a.* Subject to paragraph *"b"*, in all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage. For purposes of this subsection, *"owner"* means the person to whom the certificate of title for the vehicle has been issued or assigned or to whom a manufacturer's or importer's certificate of origin for the vehicle has been delivered or assigned. However, if the vehicle is leased, *"owner"* means the person to whom the vehicle is leased, not the person to whom the certificate of title for the vehicle has been issued or assigned or to whom the manufacturer's or importer's certificate of origin for the vehicle has been delivered or assigned. For purposes of this subsection, *"leased"* means the transfer of the possession or right to possession of a vehicle to a lessee for a valuable consideration for a continuous period of twelve months or more, pursuant to a written agreement.

b. The owner of a vehicle with a gross vehicle weight rating of seven thousand five hundred pounds or more who rents the vehicle for less than a year under an agreement which requires an insurance policy covering at least the minimum levels of financial responsibility prescribed by law, shall not be deemed to be the owner of the vehicle for the purpose of determining financial responsibility for the operation of the vehicle or for the acts of the operator in connection with the vehicle's operation.

2. A person who has made a bona fide sale or transfer of the person's right, title, or interest in or to a motor vehicle and who has delivered possession of the motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of the motor vehicle by another, but the purchaser or transferee to whom possession was delivered shall be deemed the owner. The provisions of subsection 2 of section 321.45 shall not apply in determining, for the purpose of fixing liability under this subsection, whether such sale or transfer was made.

[C24, 27, 31, 35, §4964, 5026; C39, §**5002.07, 5037.09;** C46, 50, 54, 58, 62, §321.51, 321.493; C66, 71, 73, 75, 77, 79, 81, §321.493]

95 Acts, ch 136, §1; 97 Acts, ch 108, §30

Exemption from execution denied, §627.7

321.494 Guest statute. Repealed by 84 Acts, ch 1219, § 41.

321.495 to 321.497 Repealed by 67 Acts, ch 405, § 13.

ACTIONS AGAINST NONRESIDENTS

321.498 Legal effect of use and operation.

The acceptance by any nonresident of this state of the privileges extended by the laws of this state to nonresident operators or owners of operating a motor vehicle, or having the same operated, within this state shall be deemed:

1. An agreement by the nonresident that the nonresident shall be subject to the jurisdiction of the district court of this state over all civil actions and proceedings against the nonresident for damages to person or property growing or arising out of such use and operation, and

2. An appointment by such nonresident of the director of this state as the nonresident's lawful attorney upon whom may be served all original notices of suit pertaining to such actions and proceedings, and

3. An agreement by such nonresident that any original notice of suit so served shall be of the same legal force and validity as if personally served on the nonresident in this state.

4. The term *"nonresident"* shall include any person who was, at the time of the accident or event, a resident of the state of Iowa but who removed from the state before the commencement of such action or proceedings.

[C31, 35, §5079-d11; C39, §**5038.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.498]

321.499 "Person" defined.

The term *"person"*, as used in section 321.498 shall mean:

1. The owner of the vehicle whether it is being used and operated personally by said owner, or by the owner's agent.

2. An agent using and operating the vehicle for the agent's principal.

3. Any person who is in charge of the vehicle and of the use and operation thereof with the express or implied consent of the owner.

[C31, 35, §5079-d12; C39, §**5038.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.499]

See also §321.1(52)

321.500 Original notice — form.

The original notice of suit filed with the director of transportation against a nonresident shall be in form and substance the same as provided in rule of civil procedure 1.1901, form 2, Iowa court rules.

[C31, 35, §5079-d13; C39, §**5038.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.500]

83 Acts, ch 101, §73; 2002 Acts, ch 1119, §106

Section amended

321.501 Manner of service.

Plaintiff in any such action shall cause the original notice of suit to be served as follows:

1. By filing a copy of said original notice of suit with said director, together with a fee of two dollars, and

2. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the director, by restricted certified mail addressed to the defendant at the defendant's last known residence or place of abode, a notification of the said filing with the director.

[C31, 35, §5079-d14; C39, §**5038.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.501]

321.502 Notification to nonresident — form.

The notification, provided for in section 321.501, shall be in substantially the following form, to wit:

To . . . . . (Here insert the name of each defendant and the defendant's residence or last known place of abode as definitely as known.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the . . . . . day of . . . . . , ... , with the director of transportation of the state of Iowa.

Dated at . . . . . , Iowa, this . . . . . day of . . . . . , ...

. . . . . .
Plaintiff.
By . . . . . .
Attorney for plaintiff.

[C31, 35, §5079-d15; C39, §**5038.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.502]

2001 Acts, ch 24, §46

321.503 Repealed by 57 Acts, ch 267, § 39.

321.504 Optional notification.

In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

[C31, 35, §5079-d17; C39, §**5038.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.504]

321.505 Proof of service.

Proof of the filing of a copy of said original notice of suit with the director, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

[C31, 35, §5079-d18; C39, §**5038.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.505]

321.506 Actual service within this state.

The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form and under the conditions provided for service on residents.

[C31, 35, §5079-d19; C39, §**5038.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.506]

321.507 Venue of actions.

Actions against nonresidents as contemplated by this law may be brought in the county of which plaintiff is a resident, or in the county in which the injury was received, or damage done.

[C31, 35, §5079-d20; C39, §**5038.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.507]

321.508 Continuances.

The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the nonresident defendant reasonable opportunity to defend said action.

[C31, 35, §5079-d21; C39, §**5038.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.508]

321.509 Duty of director.

The director shall keep a record of all notices of suit filed with the director, shall not permit said filed notices to be taken from the director's office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which the person is defendant.

[C31, 35, §5079-d22; C39, §**5038.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.509]

321.510 Expenses and attorney fees.

If judgment is rendered against the plaintiff, upon the trial of said action, said judgment shall include the reasonable expenses incurred by the defendant and the defendant's attorney in appearing to and defending against said action, provided that in the judgment of the trial court said action was commenced maliciously or without probable cause.

[C31, 35, §5079-d23; C39, §**5038.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.510]

321.511 Dismissal — effect.

The dismissal of an action after the nonresident

has entered a general appearance under the substituted service herein authorized, shall bar the recommencement of the same action against the same defendant unless said recommenced action is accompanied by actual personal service of the original notice of suit on said defendant in this state.

[C31, 35, §5079-d24; C39, §**5038.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.511]

321.512 Action against insurance.

Any contract insuring the liability of a nonresident motorist in Iowa shall, in the event of the death of said nonresident, be considered an asset of the nonresident's estate having a situs in Iowa in any civil action arising out of a motor vehicle accident in which said nonresident may be liable.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321.512]

321.513 Nonresident traffic violator compact.

1. *Authority to compact.* The director may enter into nonresident violator compacts with other jurisdictions. The compacts shall contain in substantially the same form the following provisions:

a. Definitions. For purposes of the nonresident violator compact, unless the context requires otherwise:

(1) *"Citation"* means a summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(2) *"Collateral"* means cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) *"Court"* means a court of law or traffic tribunal.

(4) *"Driver's license"* means a license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) *"Home jurisdiction"* means the jurisdiction that issued the driver's license of the traffic violator.

(6) *"Issuing jurisdiction"* means the jurisdiction in which the traffic citation was issued to the motorist.

(7) *"Jurisdiction"* means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) *"Motorist"* means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) *"Personal recognizance"* means an agreement by a motorist made at the time of issuance of the traffic citation that the motorist will comply with the terms of that traffic citation.

(10) *"Police officer"* means a peace officer as defined in section 801.4 authorized by the party jurisdiction to issue a citation for a traffic violation.

(11) *"Terms of the citation"* means those options expressly stated upon the citation.

b. Procedure for issuing jurisdiction.

(1) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, except as provided in subparagraph (2) of this paragraph, require the motorist to post collateral to secure appearance, if the officer receives the motorist's signed personal recognizance that the motorist will comply with the terms of the citation.

(2) Unless prohibited by law, personal recognizance is acceptable. If mandatory appearance is required by law, the appearance must take place immediately following issuance of the citation.

(3) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued, and that licensing authority shall transmit the information contained in the report to the licensing authority in the home jurisdiction of the motorist.

(4) The licensing authority of the issuing jurisdiction shall not suspend for failure to comply with the terms of a traffic citation the driving privilege of a motorist for whom a report has been transmitted.

(5) The licensing authority of the issuing jurisdiction shall not transmit a report on a violation if the date of transmission is more than six months after the date the traffic citation was issued.

(6) The licensing authority of the issuing jurisdiction shall not transmit a report on a violation where the date of issuance of the citation predates the most recent effective date of entry for the two jurisdictions.

c. Procedure for home jurisdiction. Upon receipt of a report of a failure to comply, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards shall be accorded.

d. Exceptions. The provisions of the nonresident violator compact do not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

e. Additional provisions. The nonresident violator compact may contain other provisions the director reasonably determines are necessary or appropriate for inclusion in the compact.

2. *Rules.* The department may adopt rules pursuant to chapter 17A as necessary to carry out the provisions of this section.

3. *Enforcement.* The agencies and officers of this state and its political subdivisions shall en-

force the nonresident violator compacts and shall do all things appropriate to accomplish their purpose and intent.

[C81, §321.513]

86 Acts, ch 1245, §1937

321.514 to 321.554 Reserved.

HABITUAL OFFENDER

321.555 Habitual offender defined.

As used in this division, *"habitual offender"* means any person who has accumulated convictions for separate and distinct offenses described in subsection 1, 2, or 3, committed after July 1, 1974, for which final convictions have been rendered, as follows:

1. Three or more of the following offenses, either singularly or in combination, within a six-year period:

a. Manslaughter resulting from the operation of a motor vehicle.

b. Operating a motor vehicle in violation of section 321J.2 or its predecessor statute.

c. Driving a motor vehicle while the person's driver's license is suspended, denied, revoked, or barred.

d. Perjury or the making of a false affidavit or statement under oath to the department of public safety.

e. An offense punishable as a felony under the motor vehicle laws of Iowa or any felony in the commission of which a motor vehicle is used.

f. Failure to stop and leave information or to render aid as required by sections 321.261 and 321.263.

g. Eluding or attempting to elude a pursuing law enforcement vehicle in violation of section 321.279.

h. Serious injury by a vehicle in violation of section 707.6A, subsection 4.

2. Six or more of any separate and distinct offenses within a two-year period in the operation of a motor vehicle, which are required to be reported to the department by section 321.491 or chapter 321C, except equipment violations, parking violations as defined in section 321.210, violations of registration laws, violations of sections 321.445 and 321.446, operating a vehicle with an expired license or permit, failure to appear, weights and measures violations and speeding violations of less than fifteen miles per hour over the legal speed limit.

3. The offenses included in subsections 1 and 2 shall be deemed to include offenses under any valid town, city or county ordinance paralleling and substantially conforming to the provisions of the Code concerning such offenses.

[C75, 77, 79, 81, §321.555; 82 Acts, ch 1167, §10]

84 Acts, ch 1016, §4; 84 Acts, ch 1022, §9; 86 Acts, ch 1009, §3; 86 Acts, ch 1220, §37; 89 Acts, ch 296, §36; 90 Acts, ch 1230, §74 – 76; 93 Acts, ch 87, §8; 97 Acts, ch 104, §24; 97 Acts, ch 177, §2; 98 Acts, ch 1073, §9

321.556 Notice and hearing — findings and order.

1. If, upon review of the record of convictions of any person, the department determines that the person appears to be a habitual offender, the department shall immediately notify the person in writing and afford the licensee an opportunity for a hearing. Notwithstanding chapter 17A, the notice shall meet the requirements of section 321.16 and shall be served in the manner provided in that section. Service of notice on any nonresident of this state may be made in the same manner as provided in sections 321.498 through 321.506. A peace officer stopping a person for whom a notice has been issued under this section may personally serve the notice upon forms approved by the department to satisfy the notice requirements of this section. A peace officer may confiscate the driver's license of a person if the license has been revoked or has been suspended subsequent to a hearing and the person has not forwarded the driver's license to the department as required.

2. The hearing shall be conducted as provided in section 17A.12 before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing shall be recorded and its scope shall be limited to the issue of whether the person notified is a habitual offender.

3. An abstract certified by the director of transportation may be admitted as evidence as provided in section 622.43, at the hearing, and shall be prima facie evidence that the person named in the abstract was duly convicted by the court in which the conviction or holding was made of each offense shown by the abstract. If the person named in the abstract denies conviction of any of the relevant convictions contained in the abstract, the person shall have the burden of proving that the conviction is untrue. For purposes of this subsection, a conviction is relevant if it is for one of the offenses listed in section 321.555.

4. If the department finds that the person is not the same person named in the abstract, or otherwise concludes that the person is not a habitual offender as provided in section 321.555, the department shall issue a decision dismissing the proceedings. If the department's findings and conclusions are that the person is a habitual offender, the department shall issue an order prohibiting the person from operating a motor vehicle on the highways of this state for the period specified in section 321.560. If a person is found to be a habitual offender, the person shall surrender all licenses

or permits to operate a motor vehicle in this state to the department. A person who is found to be a habitual offender may be assessed a fee by the department to cover the costs of the habitual offender proceedings. Fees assessed shall be paid before the person may be issued a license or permit to operate a motor vehicle in this state.

[C75, 77, 79, 81, §321.556]

95 Acts, ch 143, §2; 98 Acts, ch 1073, §9; 2000 Acts, ch 1133, §13; 2001 Acts, ch 32, §46

321.557 through 321.559 Repealed by 95 Acts, ch 143, § 13. See § 321.556.

321.560 Period of revocation — temporary restricted licenses.

1. A license to operate a motor vehicle in this state shall not be issued to any person declared to be a habitual offender under section 321.555, subsection 1, for a period of not less than two years nor more than six years from the date of the final decision of the department under section 17A.19 or the date on which the district court upholds the final decision of the department, whichever occurs later.

a. A temporary restricted license may be issued pursuant to section 321.215, subsection 2, to a person declared to be a habitual offender under section 321.555, subsection 1, paragraph *"c"*.

b. A temporary restricted license may be issued pursuant to section 321J.4, subsection 9, to a person declared to be a habitual offender due to a combination of the offenses listed under section 321.555, subsection 1, paragraphs *"b"* and *"c"*.

2. A license to operate a motor vehicle in this state shall not be issued to any person declared to be a habitual offender under section 321.555, subsection 2, for a period of one year from the date of the final decision of the department under section 17A.19 or the date on which the district court upholds the final decision of the department, whichever occurs later.

3. The department shall adopt rules under chapter 17A that establish a point system which shall be used to determine the period for which a person who is declared to be a habitual offender under section 321.555, subsection 1, shall not be issued a license.

4. A person who is determined to be a habitual offender while the person's license is already revoked for being a habitual offender under section 321.555 shall not be issued a license to operate a motor vehicle in this state for a period of not less than two years nor more than six years. The revocation period may commence either on the date of the final decision of the department under section 17A.19 or the date on which the district court upholds the final decision of the department, whichever occurs later, or on the date the previous revocation expires.

[C75, 77, 79, 81, §321.560]

95 Acts, ch 143, §3; 96 Acts, ch 1034, §26; 97 Acts, ch 108, §31; 2000 Acts, ch 1138, §2; 2001 Acts, ch 132, §13; 2002 Acts, ch 1119, §154

Subsection 1, paragraph b amended

321.561 Punishment for violation.

It shall be unlawful for any person found to be a habitual offender to operate any motor vehicle in this state during the period of time specified in section 321.560 except for a habitual offender who has been granted a temporary restricted license pursuant to section 321.215, subsection 2. A person violating this section commits an aggravated misdemeanor.

[C75, 77, 79, 81, §321.561]

87 Acts, ch 34, §1; 95 Acts, ch 143, §4; 96 Acts, ch 1034, §27; 2001 Acts, ch 132, §14

321.562 Rule of construction.

Nothing in this division shall be construed as amending, modifying, or repealing any existing law of this state or any ordinance of any political subdivision relating to the operation of motor vehicles, the licensing of persons to operate motor vehicles, or providing penalties for the violation thereof.

[C75, 77, 79, 81, §321.562]

CHAPTER 321A

MOTOR VEHICLE FINANCIAL RESPONSIBILITY

For sanctions related to driving a motor vehicle without financial liability coverage, see §321.20B

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WORDS AND PHRASES DEFINED

321A.1 Definitions.

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. *County system. "Book", "list", "record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *Department. "Department"* means the state department of transportation.

3. *Judgment.* A judgment which has become final by expiration without appeal during the time within which an appeal might have been perfected, or a judgment if an appeal from the judgment has been perfected, which has not been stayed by the execution, filing and approval of a bond as provided in rule of appellate procedure 6.7(1), or a judgment which has become final by affirmation on appeal, rendered by a court of competent jurisdiction of a state or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of a motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of a person, or for damages because of injury to or destruction of property, including the loss of use of property, or upon a cause of action on an agreement of settlement for such damages.

4. *License.* A driver's license as defined in section 321.1 issued under the laws of this state.

5. *Motor vehicle. "Motor vehicle"* means every vehicle which is self-propelled but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term *"car"* or *"automobile"* shall be synonymous with the term *"motor vehicle"*.

6. *Nonresident.* Every person who is not a resident of this state.

7. *Nonresident operating privilege.* The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by the nonresident of a motor vehicle, or the use of a motor vehicle owned by the nonresident, in this state.

8. *Operator.* A person who is in actual physical control of a motor vehicle whether or not that person has a driver's license as required under the laws of this state.

9. *Owner. "Owner"* means a person who holds the legal title of a motor vehicle; however, if the motor vehicle is the subject of a security agreement with a right of possession in the debtor, the debtor shall be deemed the owner for purposes of this chapter or if the motor vehicle is leased as defined in section 321.493, the lessee shall be deemed the owner for purposes of this chapter.

10. *Person.* Every natural person, firm, copartnership, association, or corporation.

11. *Proof of financial responsibility.* Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of the proof, arising out of the ownership, maintenance, or use of a motor vehicle, in amounts as follows: With respect to accidents occurring on or after January 1, 1981, and prior to January 1, 1983, the amount of fifteen thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to the limit for one person, the amount of thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and the amount of ten thousand dollars because of injury to or destruction of property of others in any one accident; and with respect to accidents occurring on or after January 1, 1983, the amount of twenty thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to the limit for one person, the amount of forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and the amount of fifteen thousand dollars because of injury to or destruction of property of others in any one accident.

12. *Registration.* Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

13. *State.* Any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.1]

83 Acts, ch 101, §74; 90 Acts, ch 1230, §77; 92 Acts, ch 1175, §39; 95 Acts, ch 136, §2; 98 Acts, ch 1073, §9; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

ADMINISTRATION

321A.2 Department to administer chapter — judicial review.

1. The department shall administer and enforce the provisions of this chapter and may make rules necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the department under the provisions of sections 321A.4 to 321A.11.

The hearings shall be held before the department as early as practicable within not to exceed twenty days after receipt of the request in the county in which the requesting person resides unless the department and the requesting person agree that the hearing may be held in some other county. Upon hearing the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require an examination under oath of the person requesting the hearing.

2. Judicial review of the actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.2]

88 Acts, ch 1278, §34; 92 Acts, ch 1175, §43

321A.3 Abstract of operating record — fees to be charged and disposition of fees.

1. The department shall upon request furnish any person a certified abstract of the operating record of a person subject to chapter 321, 321J, or this chapter. The abstract shall also fully designate the motor vehicles, if any, registered in the name of the person. If there is no record of a conviction of the person having violated any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the department shall so certify. A fee of five dollars and fifty cents shall be paid for each abstract except for state, county, or city officials, court officials, public transit officials, or other officials of a political subdivision of the state. The department shall transfer the moneys collected under this section to the treasurer of state who shall credit to the general fund all moneys collected.

2. A sheriff may provide an abstract of the operating record of a person to the person or an individual authorized by the person. The sheriff shall charge a fee of five dollars and fifty cents for each abstract which the sheriff shall transfer to the department quarterly. The sheriff may charge an additional fee sufficient to cover costs incurred by the sheriff in producing the abstract.

3. The abstracts are not admissible as evidence in an action for damages or criminal proceedings arising out of a motor vehicle accident.

4. The abstract of operating record provided under this section shall designate which speeding violations occurring on or after July 1, 1986, but before May 12, 1987, are for violations of ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour. For speeding violations occurring on or after May 12, 1987, the abstract provided under this section shall designate which speeding violations are for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour.

5. The department may permit any person to view the operating record of a person subject to chapter 321 or this chapter through one of the department's computer terminals or through a computer printout generated by the department. The department shall not require a fee for a person to view their own operating record, but the department shall impose a fee of one dollar for each of the first five operating records viewed within a calendar day and two dollars for each additional operat-

ing record viewed within the calendar day.

6. Fees under subsections 1 and 5 may be paid by credit cards, as defined in section 537.1301, subsection 16, approved for that purpose by the department of transportation. The department shall enter into agreements with financial institutions extending credit through the use of credit cards to ensure payment of the fees. The department shall adopt rules pursuant to chapter 17A to implement the provisions of this subsection.

7. Notwithstanding chapter 22 or any other law of this state, except as provided in subsection 5, the department shall not make available a certified operating record in a manner which would result in a fee of less than that provided under subsection 1. Should the department make available certified copies of abstracts of operating records on magnetic tape or on disk or through electronic data transfer, the five dollar and fifty cent fee under subsection 1 applies to each abstract supplied, and an additional access fee may be charged for each abstract supplied through electronic data transfer.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.3; 81 Acts, ch 14, §26]

83 Acts, ch 80, §1; 87 Acts, ch 120, §6; 88 Acts, ch 1158, §67; 88 Acts, ch 1214, §1; 88 Acts, ch 1278, §35 – 39; 89 Acts, ch 296, §37; 89 Acts, ch 317, §35; 90 Acts, ch 1267, §38; 92 Acts, ch 1175, §43; 93 Acts, ch 169, §19; 99 Acts, ch 207, §14

321A.3A Abstract fee fund. Repealed by 90 Acts, ch 1267, § 45.

SECURITY FOLLOWING ACCIDENT

321A.4 Effect of failure to report accidents.

The department shall suspend the license or any nonresident's operating privilege of any person who willfully fails, refuses, or neglects to make reports of a traffic accident as required by the laws of this state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.4]

92 Acts, ch 1175, §43

321A.5 Security required following accident — exceptions.

1. The department shall, immediately or within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death or damage to the property of any one person in excess of one thousand dollars, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in the accident, and if the operator is a nonresident the privilege of operating a motor vehicle within this state, and if the owner is a nonresident the privilege of the use within this state of any motor vehicle owned by the owner, unless the operator or owner or both shall deposit security in a sum which shall be sufficient in the judgment of the department to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against the operator or owner; provided notice of the suspension shall be sent by the department to the operator and owner not less than ten days prior to the effective date of the suspension and shall state the amount required as security.

2. This section shall not apply under the conditions stated in section 321A.6 or to any of the following:

a. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

b. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to the operator's operation of motor vehicles not owned by the operator;

c. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance policy or bonds; or

d. To such owner if such owner is at the time of such accident qualified as a self-insurer under section 321A.34, or to any such operator operating such motor vehicle for such self-insurer.

3. A policy or bond is not effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if the motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, the policy or bond is not effective under this section unless the insurance company or surety company if not authorized to do business in this state executes a power of attorney authorizing the department to accept service on its behalf of notice or process in any action upon the policy or bond arising out of the accident. However, with respect to accidents occurring on or after January 1, 1981, and before January 1, 1983, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than fifteen thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, to a limit of not less than thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident; and with respect to accidents occurring on or after January 1, 1983, every such policy or bond is

subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, to a limit of not less than forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than fifteen thousand dollars because of injury to or destruction of property of others in any one accident.

Upon receipt of a report of a motor vehicle accident and information that an automobile liability policy or surety bond meeting the requirements of this chapter was in effect at the time of this accident covering liability for damages resulting from such accident, the department shall forward by regular mail to the insurance carrier or surety carrier which issued such policy or bond a copy of such information concerning insurance or bond coverage, and it shall be presumed that such policy or bond was in effect and provided coverage to both the operator and the owner of the motor vehicle involved in such accident unless the insurance carrier or surety carrier shall notify the department otherwise within fifteen days from the mailing of such information to such carrier; provided, however, that in the event the department shall later ascertain that erroneous information had been given the department in respect to the insurance or bond coverage of the operator or owner of a motor vehicle involved in such accident, the department shall take such action as the department is otherwise authorized to do under this chapter within sixty days after the receipt by the department of correct information with respect to such coverage.

[C31, 35, §5079-c4; C39, §**5021.01;** C46, §321.275; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.5; 81 Acts, ch 103, §8]

92 Acts, ch 1175, §43; 97 Acts, ch 72, §2

321A.6 Exceptions to requirement of security.

The requirements as to security and suspension in section 321A.5 shall not apply:

1. To the operator or the owner of a motor vehicle involved in any accident wherein no injury or damage was caused to the person or property of anyone other than such operator or owner.

2. To the operator or the owner of a motor vehicle if at the time of the accident the vehicle was stopped, standing, or parked, whether attended or unattended, except that the requirements of this chapter shall apply in the event the department determines that any such stopping, standing, or parking of the vehicle was illegal or that the vehicle was not equipped with lighted lamps or illuminating devices or flags when and as required by the laws of this state and that any such violation contributed to the accident.

3. To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without the owner's permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission.

4. If, prior to the date that the department would otherwise suspend license and registration or nonresident's operating privilege under section 321A.5, there shall be filed with the department evidence satisfactory to the department that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a warrant for confession of judgment, payable when and in such installments as the parties have agreed to, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident; provided, however, in the event there shall be any default in the payment of any installment under any confession of judgment, then, upon notice of such default, the department shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in said confession of judgment has been paid; and provided, further, that in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the department shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until:

a. Such person deposits and thereafter maintains security as required under section 321A.5 in such amount as the department may then determine; or

b. Twelve months after such security was required, provided the department has not been notified that an action upon such an agreement has been instituted in a court in this state within one year after such security was required.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.6]

92 Acts, ch 1175, §43

321A.7 Duration of suspension.

The license and registration and nonresident's operating privilege suspended as provided in section 321A.5 shall remain so suspended and shall not be renewed nor shall any such license or registration be issued to such person until:

1. Such person shall deposit or there shall be deposited on the person's behalf the security required under section 321A.5; or

2. Twelve months after such accident, provided the department has not been notified by any party to the action or an attorney for any party that an action for damages arising out of such acci-

dent has been instituted within one year from the date of the accident; or

3. Evidence satisfactory to the department has been filed with the department of a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged written agreement, in accordance with section 321A.6, subsection 4; provided, however, in the event there shall be any default in the payment of any installment under any confession of judgment, then, upon notice of such default, the department shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in said confession of judgment has been paid; and provided, further, that in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the department shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until

a. Such person deposits and thereafter maintains security as required under section 321A.5 in such amount as the department may then determine, or

b. Twelve months after such security was required, provided the department has not been notified by any party to the action or an attorney for any party that an action upon such an agreement has been instituted in a court in this state within one year after such security was required.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.7]

92 Acts, ch 1175, §43

321A.8 Application to unlicensed drivers and unregistered motor vehicles.

In case the operator or the owner of a motor vehicle involved in an accident within this state has no license or registration, the operator or owner shall not be allowed a license or registration until the operator or owner has complied with the requirements of sections 321A.4 to 321A.11 to the same extent that would be necessary if, at the time of the accident, the operator or owner had held a license and registration.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.8]

321A.9 Form and amount of security.

1. The security required under sections 321A.4 to 321A.11 shall be in such form and in such amount as the department may require but in no case in excess of the limits specified in section 321A.5 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the department or state treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

2. The department may reduce the amount of security ordered in any case within six months after the date of the accident if, in the department's judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or the depositor's personal representative forthwith, notwithstanding the provisions of section 321A.10.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.9]

92 Acts, ch 1175, §43

321A.10 Custody, disposition, and return of security.

Security deposited in compliance with the requirements of sections 321A.4 to 321A.11 shall be placed by the department in the custody of the state treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subsection 3 of section 321A.7, and such deposit or any balance thereof shall be returned to the depositor or the depositor's personal representative when evidence satisfactory to the department has been filed with the department that there has been a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged agreement, in accordance with subsection 4 of section 321A.6, or whenever, after the expiration of one year from the date of the accident, or within one year after the date of deposit of any security under subsection 3 of section 321A.7, the department shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.10]

92 Acts, ch 1175, §43

321A.11 Matters not to be evidence in civil suits.

Neither the report required by section 321A.4, the action taken by the department pursuant to sections 321A.4 to 321A.10 and this section, the findings, if any, of the department upon which action is based, nor the security filed as provided in

said sections shall be referred to in any way, or be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.11]

92 Acts, ch 1175, §43

PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

321A.12 Courts to report nonpayment of judgments.

1. Whenever any person fails within sixty days to satisfy any judgment, it shall be the duty of the clerk of the district court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the department immediately after the expiration of the sixty days and upon written request of the judgment creditor, a certified copy of such judgment.

2. If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.12]

92 Acts, ch 1175, §43; 99 Acts, ch 144, §5

321A.13 Suspension for nonpayment of judgments — exceptions.

1. The department upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 321A.16.

2. If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the department, in the department's discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 321A.16, provided the judgment debtor furnishes proof of financial responsibility.

3. Any person whose license, registration, or nonresident's operating privilege has been suspended or is about to be suspended or shall become subject to suspension under the provisions of sections 321A.12 to 321A.29 may be relieved from the effect of such judgment as hereinbefore prescribed in said sections by filing with the department an affidavit stating that at the time of the accident upon which such judgment has been rendered the affiant was insured, that the insurer is liable to pay such judgment, and the reason, if known, why such insurance company has not paid such judgment. Such a person shall also file the original policy of insurance or a certified copy thereof, if available, and such other documents as the department may require to show that the loss, injury, or damage for which such judgment was rendered, was covered by such policy of insurance. If the department is satisfied from such papers that such insurer was authorized to issue such policy of insurance at the time and place of issuing such policy and that such insurer is liable to pay such judgment, at least to the extent and for the amounts required in this chapter, the department shall not suspend such license or registration or nonresident's operating privilege, or if already suspended shall reinstate them.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.13]

92 Acts, ch 1175, §43

321A.14 Suspension to continue until judgments paid and proof given.

A license, registration, and nonresident's operating privilege shall remain suspended under section 321A.13, and shall not be renewed, nor shall any such license or registration be subsequently issued in the name of the person, including any person not previously licensed, until every judgment is satisfied in full or to the extent hereinafter provided, or until evidence is provided, to the satisfaction of the department, that the judgment has not been renewed and is no longer enforceable. A person whose license, registration, or nonresident's operating privilege was suspended under section 321A.13 must provide proof to the department of financial responsibility subject to the exemptions stated in sections 321A.13 and 321A.16 prior to obtaining a license, registration, or nonresident's operating privilege.

[C31, 35, §5079-c4; C39, §**5021.01;** C46, §321.275; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.14]

87 Acts, ch 14, §1; 2001 Acts, ch 132, §15

321A.15 Payments sufficient to satisfy requirements.

1. *a.* Judgments referred to in this chapter and rendered upon claims arising from accidents occurring on or after January 1, 1981, and before January 1, 1983, shall, for the purpose of this chapter only, be deemed satisfied when the following occur:

(1) When fifteen thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident.

(2) When, subject to the limit of fifteen thou-

sand dollars because of bodily injury to or death of one person, the sum of thirty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident.

(3) When ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

b. Judgments referred to in this chapter and rendered upon claims arising from accidents occurring on or after January 1, 1983, shall, for the purpose of this chapter only, be deemed satisfied when the following occur:

(1) When twenty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident.

(2) When, subject to the limit of twenty thousand dollars because of bodily injury to or death of one person, the sum of forty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident.

(3) When fifteen thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

2. Provided, however, payments made in settlements of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

[C31, 35, §5079-c4; C39, §**5021.02;** C46, §321.276; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.15]

321A.16 Installment payment of judgments — default.

1. A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

2. The department shall not suspend a license, registration, or nonresident's operating privilege, and shall restore any license, registration, or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

3. In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the department shall forthwith suspend the license, registration, or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter.

[C31, 35, §5079-c4; C39, §**5021.02;** C46, §321.276; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.16]

92 Acts, ch 1175, §43

321A.17 Proof required upon certain convictions.

1. Whenever the department, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail or revokes the license of any person pursuant to chapter 321J, the department shall also suspend the registration for all motor vehicles registered in the name of the person, except that the department shall not suspend the registration, unless otherwise required by law, if the person has previously given or immediately gives and thereafter maintains proof of financial responsibility with respect to all motor vehicles registered by the person.

2. Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under the motor vehicle laws of this state and not then unless and until the person shall give and thereafter maintain proof of financial responsibility.

3. If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, or for operating an unregistered motor vehicle upon the highways, no license shall be thereafter issued to such person and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person until the person shall give and thereafter maintain proof of financial responsibility.

4. An individual applying for a driver's license following a period of suspension or revocation pursuant to a dispositional order issued under section 232.52, subsection 2, paragraph *"a"*, or under section 321.180B, section 321.210, subsection 1, paragraph *"d"*, or section 321.210A, 321.213A, 321.213B, 321.216B, or 321.513, following a period of suspension under section 321.194, or following a period of revocation pursuant to a court order issued under section 901.5, subsection 10, or under section 321J.2A, is not required to maintain proof of financial responsibility under this section.

5. This section does not apply to a commercial driver's licensee who is merely disqualified from operating a commercial motor vehicle under sec-

tion 321.208 if the licensee's driver's license is not suspended or revoked.

6. This section does not apply to an individual whose administrative license suspension under section 321.210D has been rescinded and who is otherwise under no obligation to furnish proof of financial responsibility.

7. This section does not apply to an individual whose administrative license revocation has been rescinded under section 321J.13, and who is otherwise under no obligation to furnish proof of financial responsibility.

8. This section does not apply to an individual whose privilege to operate a motor vehicle has been suspended or revoked when the period of suspension or revocation has ended and the individual provides evidence satisfactory to the department that the individual has established residency in another state. The individual may not apply for an Iowa driver's license for two years from the effective date of the person's last suspension or revocation unless proof of financial responsibility is filed with the department, as required by this section.

[C31, 35, §5079-c5, -c6; C39, §**5021.03, 5021.04;** C46, §321.277, 321.278; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.17; 82 Acts, ch 1167, §11]

85 Acts, ch 197, §5; 86 Acts, ch 1220, §38; 89 Acts, ch 266, §3; 90 Acts, ch 1230, §78; 92 Acts, ch 1175, §43; 93 Acts, ch 16, §11; 93 Acts, ch 164, §5; 94 Acts, ch 1172, §36; 95 Acts, ch 48, §6; 95 Acts, ch 55, §11; 96 Acts, ch 1218, §67; 98 Acts, ch 1073, §9; 98 Acts, ch 1088, §2; 98 Acts, ch 1112, §12; 99 Acts, ch 13, §19, 29; 2002 Acts, ch 1063, §34, 35

Subsection 4 stricken and former subsections 5 – 8 renumbered as 4 – 7

NEW subsection 8

321A.18 Alternate methods of giving proof.

Proof of financial responsibility when required under this chapter may be given by filing any of the following:

1. A certificate of insurance as provided in section 321A.19 or section 321A.20.

2. A bond as provided in section 321A.24.

3. A statement issued by the treasurer of state attesting to the filing of a certificate of deposit with the treasurer of state as provided in section 321A.25.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.18]

2000 Acts, ch 1025, §2, 6

321A.19 Certificate of insurance as proof.

1. Proof of financial responsibility may be furnished by filing with the department the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

2. No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.19]

92 Acts, ch 1175, §43

321A.20 Certificate furnished by nonresident as proof.

1. The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle, or motor vehicles, described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms with the provisions of this chapter, and the department shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

a. Said insurance carrier shall execute a power of attorney authorizing the department to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.

b. Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

2. If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the department shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.20]

92 Acts, ch 1175, §43

321A.21 "Motor vehicle liability policy" defined.

1. A *"motor vehicle liability policy"* as said term is used in this chapter shall mean an owner's or an operator's policy of liability insurance, certified as provided in section 321A.19 or section 321A.20 as proof of financial responsibility, and issued, except as otherwise provided in section 321A.20, by an insurance carrier duly authorized

to transact business in this state, to or for the benefit of the person named therein as insured.

2. Such owner's policy of liability insurance:

a. Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

b. Shall insure the person named in the policy and any other person, as insured, using the motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: With respect to all accidents which occur on or after January 1, 1981, and before January 1, 1983, fifteen thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident; and with respect to all accidents which occur on or after January 1, 1983, twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and fifteen thousand dollars because of injury to or destruction of property of others in any one accident.

3. Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon the person by law for damages arising out of the use by the person of any motor vehicle not owned by the person, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

4. Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

5. Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

6. Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

a. The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on the insured's behalf and no violation of said policy shall defeat or void said policy.

b. The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

c. The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in paragraph *"b"* of subsection 2 of this section.

d. The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the chapter shall constitute the entire contract between the parties.

7. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term *"motor vehicle liability policy"* shall apply only to that part of the coverage which is required by this section.

8. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

9. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

10. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

11. Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.21]

321A.22 Notice of cancellation or termination of certified policy.

When an insurance carrier has certified a motor vehicle liability policy under section 321A.19 or section 321A.20, the insurance so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the department, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.22]

92 Acts, ch 1175, §43

321A.23 Chapter not to affect other policies.

1. This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

2. This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on the insured's behalf of motor vehicles not owned by the insured.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.23]

321A.24 Bond as proof.

1. *a.* Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties each owning real estate within this state, and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge or clerk of the district court, and which bond shall be conditioned for payment of the amounts specified in section 321A.1, subsection 11.

b. The bond shall be filed with the department and is not cancelable except after ten days' written notice to the department. The director shall issue to the person filing the bond a bond insurance card for each motor vehicle registered by the person in the state. The bond insurance card shall state the name and address of the person and the motor vehicle registration number of the vehicle for which the card is issued.

c. The bond constitutes a lien in favor of the state upon the real estate so scheduled of any surety, which lien exists in favor of any holder of a final judgment against the person who has filed the bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damage because of injury to or destruction of property, including the loss of use of the property, resulting from the ownership, maintenance, use, or operation of a motor vehicle after the bond was filed, upon the filing of notice to that effect by the department in the office of the proper clerk of the district court of the county where the real estate is located. An individual surety scheduling real estate security shall furnish satisfactory evidence of title to the property and the nature and extent of all encumbrances on the property and the value of the surety's interest in the property, in the manner the judge or clerk of the district court approving the bond requires. The notice filed by the department shall contain, in addition to any other matters deemed by the department to be pertinent, a legal description of the real estate scheduled, the name of the holder of the record title, the amount for which it stands as security, and the name of the person in whose behalf proof is so being made. Upon the filing of the notice the clerk of the district court shall retain the notice as part of the records of the court and enter upon the encumbrance book the date and hour of filing, the name of the surety, the name of the record titleholder, the description of the real estate, and the further notation that a lien is charged on the real estate pursuant to the filed notice. From and after the entry of the notice upon the encumbrance book all persons are charged with notice of it.

d. If the bond is canceled, the person who filed the bond shall surrender to the director all bond insurance cards issued to the person.

2. If such a judgment, rendered against the principal on such bond shall not be satisfied within sixty days after it has become final, the judgment creditor may, for the judgment creditor's own use and benefit and at the judgment creditor's sole expense, bring an action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. An action to foreclose any lien upon real estate scheduled by any surety under the provisions of this chapter shall be by equitable proceeding in the same manner as is provided for the foreclosure of real estate mortgages.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.24]

92 Acts, ch 1175, §43; 97 Acts, ch 139, §8, 17, 18; 98 Acts, ch 1121, §8

321A.25 Certificate of deposit as proof.

1. Proof of financial responsibility may be evidenced by the statement of the treasurer of state that the person named in the statement has filed

with the treasurer of state fifty-five thousand dollars in the form of an endorsed certificate of deposit made payable jointly to the person and the treasurer of state. The certificate of deposit shall be obtained from an Iowa financial institution in the amount of fifty-five thousand dollars plus any early withdrawal penalty fee. The treasurer of state shall promptly notify the director of transportation of the name and address of the person to whom the statement has been issued. Upon receipt of the notification, the director of transportation shall issue to the person a security insurance card for each motor vehicle registered in this state by the person. The security insurance card shall state the name and address of the person and the registration number of the motor vehicle for which the card is issued. The treasurer of state shall not accept a certificate of deposit and issue a statement for it and the department shall not accept the statement unless accompanied by evidence that there are no unsatisfied judgments of any character against the person in the county where the person resides.

2. Such certificate of deposit shall be held by the treasurer of state to satisfy, in accordance with this chapter, any execution on a judgment issued against the person filing the certificate of deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use of property, resulting from the ownership, maintenance, use, or operation of a motor vehicle after the certificate of deposit was filed. A certificate of deposit so filed shall not be subject to attachment or execution unless the attachment or execution arises out of a suit for damages as previously provided in this subsection.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.25]

92 Acts, ch 1175, §43; 97 Acts, ch 139, §9, 17; 2000 Acts, ch 1025, §3, 6

321A.26 Owner may give proof for others.

Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the department shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided or has qualified as a self-insurer under section 321A.34. The department shall designate the restrictions imposed by this section on the face of such person's license.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.26]

92 Acts, ch 1175, §43

321A.27 Substitution of proof.

The department shall consent to the cancellation of a bond or certificate of insurance or the department shall direct and the treasurer of state shall return a certificate of deposit to the person entitled to the certificate of deposit upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.27]

92 Acts, ch 1175, §43; 2000 Acts, ch 1025, §4, 6

321A.28 Other proof may be required.

Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the department shall for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration or the nonresident's operating privilege pending the filing of such other proof.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.28]

92 Acts, ch 1175, §43

321A.29 Duration of proof — when proof may be canceled or returned.

1. The department shall upon request consent to the immediate cancellation of a bond or certificate of insurance, or the department shall direct and the treasurer of state shall return to the person entitled thereto a certificate of deposit filed pursuant to this chapter as proof of financial responsibility, or the department shall waive the requirement of filing proof, in any of the following events:

a. At any time after two years from the date such proof was required when, during the two-year period preceding the request, the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration, or nonresident's operating privilege of the person by or for whom such proof was furnished.

b. In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle.

c. In the event the person who has given proof surrenders the person's license and registration to the department.

2. The department shall not consent to the cancellation of a bond or the return of a certificate of deposit in the event an action for damages upon a liability covered by such proof is then pending or a judgment upon any such liability is unsatisfied, or in the event the person who has filed such bond or such certificate of deposit has within one year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the

applicant as to the nonexistence of such facts, or that the applicant has been released from all of the applicant's liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

3. If a person whose proof has been canceled or returned under subsection 1, paragraph *"c"*, applies for a license or registration within a period of two years from the date proof was originally required, such application shall be refused unless the applicant reestablishes proof for the remainder of the two-year period.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.29]

92 Acts, ch 1175, §43; 2000 Acts, ch 1025, §5, 6

VIOLATIONS OF CHAPTER — PENALTIES

321A.30 Transfer of registration to defeat purpose of chapter prohibited.

This chapter shall not prevent the owner of a motor vehicle, the registration of which has been suspended hereunder, from effecting a bona fide sale of such motor vehicle to another person whose rights or privileges are not suspended under this chapter nor prevent the registration of such motor vehicle by such transferee. This chapter shall not in any wise affect the rights of any secured party or lessor of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.30]

321A.31 Surrender of license and registration.

Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the department shall immediately return the person's license and registration to the department. If any person shall fail to return to the department the license or registration as provided herein, the department shall forthwith direct any peace officer to secure possession thereof and to return the same to the department.

[C31, 35, §5079-c4; C39, §**5021.01;** C46, §321.275; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.31]

92 Acts, ch 1175, §43

321A.32 Other violations — penalties.

1. Any person whose license or registration or nonresident's operating privilege has been suspended, denied, or revoked under this chapter or continues to remain suspended or revoked under this chapter, and who, during such suspension, denial, or revocation, or during such continuing suspension or continuing revocation, drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this chapter, shall be guilty of a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars nor more than one thousand five hundred dollars.

2. Any person willfully failing to return license or registration as required in section 321A.31 shall be guilty of a simple misdemeanor.

3. A person who forges or, without authority, signs a notice provided for under section 321A.5 that a policy or bond is in effect, or any evidence of financial responsibility, or any evidence of financial liability coverage as defined in section 321.1, or who files or offers for filing any such notice or evidence knowing or having reason to believe that it is forged or signed without authority, is guilty of a serious misdemeanor.

4. Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be guilty of a serious misdemeanor.

[C31, 35, §5079-c7; C39, §**5021.05;** C46, §321.279; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.32]

84 Acts, ch 1142, §2; 97 Acts, ch 139, §10, 17, 18; 98 Acts, ch 1121, §8; 99 Acts, ch 153, §5

321A.32A Civil penalty — disposition — reinstatement.

When the department suspends, revokes, or bars a person's driver's license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. However, for persons age nineteen or under, the civil penalty assessed shall be fifty dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in the juvenile detention home fund created in section 232.142. A temporary restricted license shall not be issued or a driver's license or nonresident operating privilege reinstated until the civil penalty has been paid.

97 Acts, ch 190, §2; 98 Acts, ch 1073, §9; 2001 Acts, ch 191, §43

GENERAL PROVISIONS

321A.33 Exceptions.

This chapter does not apply to any motor vehicle owned by the United States, this state, or any political subdivision of this state or to any operator, except for section 321A.4, while on official duty operating such motor vehicle. This chapter does not apply, except for sections 321A.4 and 321A.26,

to any motor vehicle which is subject to section 325A.6 or 327B.6.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.33; 82 Acts, ch 1150, §1]

98 Acts, ch 1100, §49

321A.34 Self-insurers.

1. Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in subsection 2 of this section.

2. The department may, upon the application of such a person, issue a certificate of self-insurance if the department is satisfied that the person has and will continue to have the ability to pay judgments obtained against the person for damages arising out of the ownership, maintenance, or use of any vehicle owned by the person. A person issued a certificate of self-insurance pursuant to this section shall maintain a financial liability coverage card as provided in section 321.20B, subsection 2, paragraph *"b"*.

3. Upon not less than five days' notice and a hearing pursuant to the notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay a judgment for damages arising out of the ownership, maintenance, or use of any vehicle owned by the self-insurer within thirty days after the judgment becomes final constitutes a reasonable ground for the cancellation of a certificate of self-insurance. Upon the cancellation of a certificate of self-insurance, the person who was issued the certificate shall surrender to the director all self-insurance cards issued to the person.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.34]

92 Acts, ch 1175, §43; 97 Acts, ch 139, §11, 17

321A.35 Past application of chapter. Repealed by 90 Acts, ch 1230, § 97.

321A.36 Chapter not to prevent other process.

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.36]

321A.37 Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.37]

321A.38 Title of chapter.

This chapter may be cited as the *"Motor Vehicle Financial and Safety Responsibility Act"*.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.38]

321A.39 Liability insurance — statement.

Whenever any dealer licensed under chapter 322 sells a motor vehicle at retail and the transaction does not include the sale of liability insurance coverage which will protect the purchaser under the Iowa motor vehicle financial and safety responsibility Act the purchase order or invoice evidencing the transaction shall contain a statement in the following form:

I understand that liability insurance coverage which would protect me under the Iowa Motor Vehicle Financial and Safety Responsibility Act IS NOT INCLUDED in my purchase of the herein described motor vehicle. I have received a copy of this statement.

. . . . . .
(Purchaser's signature)

The seller shall print or stamp said statement on the purchase order or invoice in distinctive color ink and with clearly visible letters. Said statement shall be signed by the purchaser in the space provided therein on or before the date of delivery of the motor vehicle described in the purchase order or invoice and a copy thereof shall be given to the purchaser by the seller.

No civil liability shall arise on account of the failure of any person to comply with the provisions of this section.

Any person violating any provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §321A.39]

CHAPTER 321B

INTOXICATED DRIVERS
(Implied consent law)

Repealed by 86 Acts, ch 1220, §50
See chapter 321J

CHAPTER 321C

INTERSTATE DRIVERS LICENSE COMPACTS

321C.1 Power to enter into compact — terms.
321C.2 Enforcement.

321C.1 Power to enter into compact — terms.

The director of transportation may enter into drivers license compacts with other jurisdictions in substantially the following form.

The contracting states agree:

ARTICLE I — FINDINGS AND DECLARATION OF POLICY

a. The party states find that:

1. The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

2. Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

3. The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

b. It is the policy of each of the party states to:

1. Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

2. Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II — DEFINITIONS

As used in this compact:

a. *"State"* means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

b. *"Home state"* means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

c. *"Conviction"* means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III — REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV — EFFECT OF CONVICTION

a. The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

1. Manslaughter or negligent homicide resulting from the operation of a motor vehicle;
2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;
3. Any felony in the commission of which a motor vehicle is used;
4. Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

b. As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

c. If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision *"a"* of this article, such party state shall construe the denominations and descriptions appearing in subdivision *"a"* hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V — APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

1. The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.
2. The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.
3. The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI — APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

ARTICLE VII — COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

a. The head of the licensing authority of each party state shall be the administrator of this compact for that state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

b. The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII — ENTRY INTO FORCE AND WITHDRAWAL

a. This compact shall enter into force and become effective as to any state when it has enacted the same into law.

b. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX — CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable.

[C66, 71, 73, 75, 77, 79, 81, §321C.1]
86 Acts, ch 1245, §1938

321C.2 Enforcement.

The agencies and officers of this state and its subdivisions and municipalities shall enforce this compact and do all things appropriate to effect its purpose and intent which may be within their respective jurisdictions.

[C66, 71, 73, 75, 77, 79, 81, §321C.2]

CHAPTER 321D

VEHICLE EQUIPMENT COMPACTS

321D.1 Power to enter into compact — terms.
321D.2 Enforcement.

321D.1 Power to enter into compact — terms.

The director of transportation may enter into vehicle equipment safety compacts with other jurisdictions in substantially the following form.

The contracting states agree:

ARTICLE I — FINDINGS AND PURPOSES

a. The party states find that:

1. Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

2. There is a vital need for the development of greater interjurisdictional co-operation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

b. The purposes of this compact are to:

1. Promote uniformity in regulation of and standards for equipment.

2. Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

3. To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision *"a"* of this article.

c. It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II — DEFINITIONS

As used in this compact:

a. *"Vehicle"* means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

b. *"State"* means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

c. *"Equipment"* means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III — THE COMMISSION

a. There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which the commissioner represents. If authorized by the laws of the commissioner's party state, a commissioner may provide for the discharge of the commissioner's duties and the performance of the commissioner's functions on the commission, either for the duration of the commissioner's membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of the alternate's identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

b. The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

c. The commission shall have a seal.

d. The commission shall elect annually, from among its members, a chairperson, a vice chairperson and a treasurer. The commission may appoint an executive director and fix the executive director's duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve

as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

e. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

f. The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the commission shall be eligible for social security coverage in respect of old-age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

g. The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

h. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

i. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

j. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

k. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV — RESEARCH AND TESTING

The commission shall have power to:

a. Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

b. Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

c. Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

d. Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or co-ordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V — VEHICULAR EQUIPMENT

a. In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

b. Following the hearing or hearings provided for in subdivision *"a"* of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

c. Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

d. The commission shall send prompt notice of its action in issuing any rule, regulation or code

pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

e. If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

f. Except as otherwise specifically provided in or pursuant to subdivisions *"e"* and *"g"* of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

g. The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI — FINANCE

a. The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

b. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: One-third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

c. The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III *"h"* of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III *"h"* hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

d. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

e. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

f. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII — CONFLICT OF INTEREST

a. The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

b. Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to the contractor's

control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII — ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may co-operate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX — ENTRY INTO FORCE AND WITHDRAWAL

a. This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

b. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

[C66, 71, 73, 75, 77, 79, 81, §321D.1]
86 Acts, ch 1245, §1939

321D.2 Enforcement.

The agencies and officers of this state and its subdivisions and municipalities shall enforce this compact and do all things appropriate to effect its purpose and intent which may be within their respective jurisdictions.

[C66, 71, 73, 75, 77, 79, 81, §321D.2]

CHAPTER 321E

VEHICLES OF EXCESSIVE SIZE AND WEIGHT

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321E.1 Permits by department and local authorities.

The department and local authorities may in their discretion and upon application and with good cause being shown issue permits for the movement of construction machinery or asphalt repavers being temporarily moved on streets, roads or highways and for vehicles with indivisible loads which exceed the maximum dimensions and weights specified in sections 321.452 to 321.466, but not to exceed the limitations imposed in sections 321E.1 to 321E.15 except as provided in section 321E.29. Vehicles permitted to transport indivisible loads may exceed the width and length limitations specified in sections 321.454 and 321.457 for the purpose of picking up an indivis-

ible load or returning from delivery of the indivisible load. Permits issued may be single-trip, multi-trip, or annual permits. Permits shall be in writing and shall be carried in the cab of the vehicle for which the permit has been issued and shall be available for inspection at all times. The vehicle and load for which the permit has been issued shall be open to inspection by a peace officer or an authorized agent of a permit granting authority. When in the judgment of the issuing authority in cities and counties the movement of a vehicle with an indivisible load or construction machinery which exceeds the maximum dimensions and weights will be unduly hazardous to public safety or will cause undue damage to streets, avenues, boulevards, thoroughfares, highways, curbs, sidewalks, trees, or other public or private property, the permit shall be denied and the reasons for denial endorsed on the application. Permits shall designate the days when and routes upon which loads and construction machinery may be moved within a county on other than primary roads.

Local authorities may allow persons requesting permits under this chapter to do so by means of a telephone or facsimile machine, authorizing payment for the permits to be made upon receipt of an invoice sent to the persons by the local authorities.

[C31, 35, §5067-d7, -d8; C39, §**5035.16, 5035.18, 5035.19;** C46, 50, 54, 58, 62, 66, §321.467, 321.469, 321.470; C71, 73, 75, 77, 79, 81, §321E.1]

83 Acts, ch 116, §3; 85 Acts, ch 257, §20; 94 Acts, ch 1087, §9, 10; 96 Acts, ch 1089, §5; 96 Acts, ch 1152, §19

321E.2 Permit-issuing authorities.

Annual, multi-trip, and single-trip permits shall be issued by the authority responsible for the maintenance of the system of highways or streets. However, the department may issue permits on primary road extensions in cities in conjunction with movements on the rural primary road system. The department may issue an all-system permit under section 321E.8 which is valid for movements on all highways or streets under the jurisdiction of either the state or those local authorities which have indicated in writing to the department those streets or highways for which an all-system permit is not valid.

At the request of a local authority, the department shall issue annual, multi-trip, and single-trip permits that are under the jurisdiction of the local authority.

[C71, 73, 75, 77, 79, 81, §321E.2]

86 Acts, ch 1210, §7; 94 Acts, ch 1087, §11; 96 Acts, ch 1089, §6

321E.3 Repealed by 79 Acts, ch 73, § 6. See § 321E.8.

321E.4 to 321E.6 Repealed by 79 Acts, ch 73, § 6.

321E.7 Load limits per axle.

1. The gross weight on any axle of any vehicle or combination of vehicles traveling under a permit issued in accordance with the provisions of this chapter shall not exceed the maximum axle load prescribed in section 321.463; except that cranes being temporarily moved on streets, roads, or highways may have a gross weight of twenty-four thousand pounds on any single axle; and construction machinery being temporarily moved on streets, roads, or highways may have a gross weight of thirty-six thousand pounds on any single axle equipped with a minimum size twenty-six point five-inch by twenty-five-inch flotation pneumatic tires and a maximum gross weight of twenty thousand pounds on any single axle equipped with minimum size eighteen-inch by twenty-five-inch flotation pneumatic tires, with the department authorized to adopt rules to permit the use of tire sizes and weights within the minimum and maximum specifications provided in this section, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of one hundred twenty-six thousand pounds; and except that a manufacturer of machinery or equipment manufactured or assembled in Iowa may be granted a permit for the movement of such machinery or equipment mounted on pneumatic tires with axle loads exceeding the maximum axle load prescribed in section 321.463 for distances not to exceed twenty-five miles at a speed not greater than twenty miles per hour. The movement of such machinery or equipment shall be over a specified route between the place of assembly or manufacture and a storage area, shipping point, proving ground, experimental area, weighing station, or another manufacturing plant.

2. Special mobile equipment, as defined in section 321.1, subsection 75, is not subject to the requirements for distance in feet between the extremes of any group of axles or the extreme axles of the vehicle or combination of vehicles as required by this chapter when being moved upon the highways if the operator has a permit issued under this chapter.

[C31, 35, §5067-d7, -d8; C39, §**5035.16;** C46, 50, 54, 58, 62, 66, §321.467; C71, 73, 75, 77, 79, 81, §321E.7]

83 Acts, ch 116, §4; 96 Acts, ch 1089, §7, 8; 96 Acts, ch 1152, §20; 97 Acts, ch 100, §7

321E.8 Annual permits.

Subject to the discretion and judgment provided for in section 321E.1, annual permits shall be issued in accordance with the following provisions:

1. Vehicles with indivisible loads, or mobile homes including appurtenances, having an overall width not to exceed sixteen feet zero inches, an overall length not to exceed one hundred twenty

feet zero inches, an overall height not to exceed fifteen feet five inches, and a total gross weight not to exceed eighty thousand pounds, may be moved as follows:

a. Vehicles with indivisible loads, or mobile homes including appurtenances, having an overall width not to exceed twelve feet five inches, an overall length not to exceed one hundred twenty feet zero inches, and an overall height not to exceed thirteen feet ten inches may be moved for unlimited distances without route approval from the permitting authority.

b. Vehicles with indivisible loads, or mobile homes including appurtenances, having an overall width not to exceed fourteen feet six inches, an overall length not to exceed one hundred twenty feet zero inches, and an overall height not to exceed fifteen feet five inches may be moved on the interstate highway system and primary highways with more than one lane traveling in each direction for unlimited distances and no more than fifty miles from the point of origin on all other highways without route approval from the permit issuing authority.

c. All other vehicles with indivisible loads operating under this subsection shall obtain route approval from the permitting authority.

d. Vehicles with indivisible loads may operate under an all-systems permit in compliance with paragraph *"a"*, *"b"*, or *"c"*.

2. Vehicles with indivisible loads, or mobile homes including appurtenances, having an overall width not to exceed thirteen feet five inches and an overall length not to exceed one hundred twenty feet zero inches may be moved on highways specified by the permitting authority for unlimited distances if the height of the vehicle and load does not exceed fifteen feet five inches and the total gross weight of the vehicle does not exceed one hundred fifty-six thousand pounds. The vehicle owner or operator shall verify with the permitting authority prior to movement of the load that highway conditions have not changed so as to prohibit movement of the vehicle. Any cost to repair damage to highways or highway structures shall be borne by the owner or operator of the vehicle causing the damage. Permitted vehicles under this subsection shall not be allowed to travel on any portion of the interstate highway system. Vehicles with indivisible loads operating under the permit provisions of this subsection may operate under the permit provisions of subsection 1 provided the vehicle and load comply with the limitations described in subsection 1.

[C31, 35, §5067-d7, -d8; C39, §**5035.16;** C46, 50, 54, 58, 62, 66, §321.467; C71, 73, 75, 77, 79, §321E.3, 321E.8; C81, §321E.8; 82 Acts, ch 1075, §1]

88 Acts, ch 1208, §2; 91 Acts, ch 133, §1; 92 Acts, ch 1173, §1; 97 Acts, ch 100, §8; 97 Acts, ch 104, §25; 99 Acts, ch 13, §20, 29; 2001 Acts, ch 32, §26, 27; 2002 Acts, ch 1063, §36, 55

Section amended

321E.9 Single-trip permits.

Subject to the discretion and judgment provided for in section 321E.1, single-trip permits, which may include a round trip to and from a job or delivery site, shall be issued in accordance with the following provisions:

1. Vehicles with indivisible loads having an overall width not to exceed forty feet, zero inches, an overall length not to exceed one hundred twenty feet, zero inches, or a total gross weight not to exceed one hundred thousand pounds may be moved, provided the gross weight on any one axle shall not exceed the maximum prescribed in section 321.463, pursuant to rules adopted pursuant to chapter 17A. The height of the vehicles and loads shall be limited only to height limitations of underpasses, bridges, power lines and other established height restrictions on the specified route.

2. Vehicles with indivisible loads exceeding the width, length, and total gross weight provided in subsection 1, may be moved in special or emergency situations, provided the permitting authority has reviewed the route and has approved the movement of the vehicle and load. The issuing authority may impose any special restrictions as deemed necessary on movements or exempt movements from the restrictions of section 321E.11 by permit under this subsection.

3. Cranes, exceeding the maximum gross weight on any axle as prescribed in section 321.463, but not exceeding twenty-four thousand pounds, may be moved in accordance with rules adopted pursuant to chapter 17A.

[C39, §**5035.18;** C46, 50, 54, 58, 62, 66, §321.469; C71, 73, 75, 77, 79, 81, §321E.9]

91 Acts, ch 133, §2; 94 Acts, ch 1087, §12; 96 Acts, ch 1152, §21; 97 Acts, ch 100, §9; 97 Acts, ch 104, §26, 27

321E.9A Multi-trip permits.

Subject to the discretion and judgment provided for in section 321E.1, a multi-trip permit shall be issued for operation of vehicles, in accordance with the following:

1. Vehicles with indivisible loads having an overall length not to exceed one hundred twenty feet, an overall width not to exceed sixteen feet, and of any height may be moved on highways specified by the permitting authority, provided the gross weight on any one axle shall not exceed the maximum prescribed in section 321.463 and the total gross weight is not greater than one hundred fifty-six thousand pounds.

2. Vehicles or combinations of vehicles consisting of construction machinery not exceeding the height, length, and width limitations of this section being temporarily moved on highways with a

maximum total gross weight limitation and a single axle weight limitation in accordance with section 321E.7 may be moved.

3. The department shall adopt rules pursuant to chapter 17A governing the issuance of permits under this section.

96 Acts, ch 1089, §9; 97 Acts, ch 100, §10

321E.10 Truck trailers manufactured in Iowa.

The department or local authorities may upon application issue annual trip permits for the movement of truck trailers manufactured or assembled in this state that exceed the maximum length specified in section 321.457 and the maximum width specified in section 321.454. Movement of the truck trailers shall be solely for the purpose of delivery or transfer from the point of manufacture or assembly to another point of manufacture or assembly within the state or to a point outside the state, shall be only on roadways of twenty-four feet or more in width or on four-lane highways, shall be on the most direct route necessary for such movement, and shall display the special plates designated in section 321.57. All truck trailers under permit for such movement shall not contain freight or additional load. A vehicle or combination of two or more vehicles inclusive of front and rear bumpers, including towing units, involved in the movement of truck trailers shall not exceed an overall width of ten feet. Vehicles or combinations shall be distinctly marked on both the front and rear of the unit in a manner the director of transportation designates to indicate that the vehicles or combinations are being moved for delivery or transfer purposes only.

Permits issued under the provisions of this section shall be in writing and shall be carried in the cabs of the vehicles for which the permits have been issued and shall be available for inspection at all times. The vehicles for which the permits have been issued shall be open to inspection by any peace officer or to any authorized agent of any permit granting authority.

[C31, 35, §5067-d7, -d8; C39, §**5035.16;** C46, 50, 54, 58, 62, 66, §321.467; C71, 73, 75, 77, 79, 81, §321E.10]

83 Acts, ch 116, §5; 92 Acts, ch 1100, §5

321E.11 Daylight movement only — exceptions — holidays.

Movements by permit in accordance with this chapter shall be permitted only during the hours from thirty minutes prior to sunrise to thirty minutes following sunset unless the issuing authority determines that the movement can be better accomplished at another period of time because of traffic volume conditions or the vehicle subject to the permit has an overall length not to exceed one hundred feet, an overall width not to exceed eleven feet, and an overall height not to exceed fourteen feet, four inches, and the permit requires the vehicle to operate only on those highways designated by the department. Additional safety lighting and escorts may be required for movement at night.

Except as provided in section 321.457, no movement by permit shall be permitted on holidays, after twelve o'clock noon on days preceding holidays and holiday weekends, or special events when abnormally high traffic volumes can be expected. Such restrictions shall not be applicable to urban transit systems as defined in section 321.19, subsection 2. For the purposes of this chapter, holidays shall include Memorial Day, Independence Day, and Labor Day.

[C71, 73, 75, 77, 79, 81, §321E.11]

94 Acts, ch 1087, §13; 95 Acts, ch 67, §27; 95 Acts, ch 118, §28; 97 Acts, ch 104, §28

321E.12 Registration must be consistent.

A vehicle traveling under permit shall be properly registered for the gross weight of the vehicle and load. A person owning special mobile equipment may use a transport vehicle registered for the gross weight of the transport without a load. Vehicles, while being used for the transportation of buildings, except mobile homes and factory-built structures, may be registered for the combined gross weight of the vehicle and load on a single-trip basis. The fee is five cents per ton exceeding the weight registered under section 321.122 per mile of travel. Fees shall not be prorated for fractions of miles. This provision does not exempt these vehicles from any other provision of this chapter.

[C71, 73, 75, 77, 79, 81, §321E.12; 82 Acts, ch 1143, §1]

99 Acts, ch 13, §21, 29

321E.13 Financial responsibility.

Prior to the issuance of any permit, the applicant for a permit shall be required to file proof of financial responsibility or to post a bond with the issuing authority. The amount of the bond shall be determined by the issuing authority and shall be used as security for repair or replacement of official signs, signals, and roadway foundations, surfaces, or structures which may be damaged or destroyed during the movement of a vehicle and load operating under the permit. The duration of the bond shall be determined by the issuing authority for a period not to exceed one year.

[C71, 73, 75, 77, 79, 81, §321E.13]

321E.14 Fees for permits.

The department or local authorities issuing permits shall charge a fee of twenty-five dollars for an annual permit issued under section 321E.8, subsection 1, a fee of three hundred dollars for an annual permit issued under section 321E.8, subsection 2, a fee of two hundred dollars for a multi-trip permit, and a fee of ten dollars for a single-trip permit, and shall determine charges for special

permits issued pursuant to section 321E.29 by rules adopted pursuant to chapter 17A. Fees for the movement of buildings, parts of buildings, or unusual vehicles or loads may be increased to cover the costs of inspections by the issuing authority. A fee not to exceed two hundred fifty dollars per day or a prorated fraction of that fee per person and car for escort service may be charged when requested or when required under this chapter. Proration of escort fees between state and local authorities when more than one governmental authority provides or is required to provide escort for a movement during the period of a day shall be determined by rule under section 321E.15. The department and local authorities may charge a permit applicant for the cost of trimming trees and removal and replacement of natural obstructions or official signs and signals or other public or private property required to be removed during the movement of a vehicle and load. In addition to the fees provided in this section, the annual fee for a permit for special mobile equipment, as defined in section 321.1, subsection 75, operated pursuant to section 321E.7, subsection 2, with a combined gross weight up to and including eighty thousand pounds shall be twenty-five dollars and for a combined gross weight exceeding eighty thousand pounds, fifty dollars.

The annual fee for an all-system permit is one hundred twenty dollars which shall be deposited in the road use tax fund.

[C71, 73, 75, 77, 79, 81, §321E.14]

83 Acts, ch 116, §6; 86 Acts, ch 1210, §8; 87 Acts, ch 186, §11; 91 Acts, ch 133, §3; 96 Acts, ch 1089, §10; 97 Acts, ch 23, §34; 97 Acts, ch 100, §11; 2001 Acts, ch 32, §28; 2002 Acts, ch 1063, §37

Section amended

321E.15 Rules made available.

The department may adopt and make available upon request to interested parties printed rules and regulations necessary for the movement by permit of vehicles and indivisible loads under the provisions of this chapter. No rule or regulation shall be adopted without prior notice to city and county officials and without a hearing on the proposed rule or regulation. All rules and regulations adopted shall have due regard for the safety of the traveling public and the protection of the highway surfaces and structures. Rules and regulations for permit travel on the interstate system shall be consistent with the federal requirements for the system.

[C71, 73, 75, 77, 79, 81, §321E.15]

321E.16 Violations — penalties.

A person who violates a provision of a permit issued pursuant to this chapter or rules adopted under section 321E.15, other than a provision relating to weight, shall be subject to a scheduled fine under section 805.8A, subsection 12, paragraph *"f"*. The fine for violation of the weight allowed by a permit shall be based upon the difference between the actual weight of the vehicle and load and the maximum allowable by permit in accordance with section 321.463. If a vehicle with an indivisible load traveling under permit is found to be in violation of weight limitations, the vehicle operator shall be allowed a reasonable amount of time to remove any ice, mud, snow, and other weight attributable to climatic conditions accumulated along the route prior to application of the penalties prescribed in section 321.463.

[C71, 73, 75, 77, 79, 81, §321E.16]

83 Acts, ch 116, §7; 90 Acts, ch 1099, §1; 90 Acts, ch 1233, §19; 96 Acts, ch 1090, §8; 2001 Acts, ch 137, §5

321E.17 Five or more violations.

Proof of imposition of penalties on five or more occasions for violation of sections 321.454, 321.456, 321.457, 321.463, or 321E.16 or any combination of penalties for violation of said sections totaling five or more incurred during any twelve-month period with respect to the operation of one or more vehicles by any one permit holder, whether operated personally or through agents, servants, or employees of the permit holder shall constitute prima facie evidence that the permit holder has willfully operated or caused to be operated a vehicle or vehicles in violation of this chapter.

[C71, 73, 75, 77, 79, 81, §321E.17]

321E.18 Overall operations considered.

In any proceeding brought under this chapter, the issuing authority shall consider evidence relating to the character and gravity of the violations and the extent of the operations of any vehicles by or on behalf of the permit holder upon the public highways of this state, which did not involve any violations.

[C71, 73, 75, 77, 79, 81, §321E.18]

321E.19 Permit suspended, changed, or revoked.

Upon complaint by local authorities or on the department's own initiative and after notice and hearing before one or more members of the permit issuing body in the case of local authorities or the department of inspections and appeals for permits issued by the state department of transportation, permit privileges under this chapter may be suspended, changed, or revoked in whole or in part by the issuing authority for willful failure to comply with a provision of this chapter, a rule adopted under this chapter, or a term, condition, or limitation of the permit.

[C71, 73, 75, 77, 79, 81, §321E.19]

83 Acts, ch 116, §8; 89 Acts, ch 273, §2

321E.20 Suspension period.

Whenever the issuing authority finds from the evidence adduced at hearing that a permit holder has willfully operated or caused to be operated a vehicle or vehicles in violation of this chapter, the authority may enter an order suspending, modifying, or revoking the permit in whole or in part at its discretion for a period not to exceed one hundred eighty days. If the issuing authority finds in a subsequent proceeding within twelve months from the date of the initial suspension, modification, or revocation that a permit holder has again willfully operated in violation of this chapter, the issuing authority shall order suspension, modification, or revocation of permit privileges in whole or in part for a period not to exceed two years.

[C71, 73, 75, 77, 79, 81, §321E.20]
83 Acts, ch 116, §9

321E.21 Process on nonresidents.

Any person using and operating a vehicle over the highways of this state who is a nonresident of this state or at the time a cause for hearing arises under this chapter is a resident of the state but subsequently becomes a nonresident of this state, shall be deemed to have appointed the secretary of state of the state of Iowa to be the person's lawful attorney. Any legal processes in any proceeding brought against the person under this chapter shall be served on the secretary of state. The use and operation by the person shall be signification of the person's agreement that any such process against the person which is so served shall be of the same legal force and validity as though served upon the person personally.

[C71, 73, 75, 77, 79, 81, §321E.21]

321E.22 Service of process.

Service of such process shall be made by serving a copy upon or filing a copy in the office of the secretary of state. The service shall be sufficient service upon the person if notice of the service and a copy of the process are within ten days sent by registered mail by the department general counsel to the permit holder at the last known address of said permit holder. An affidavit of compliance therewith of the department general counsel shall be appended to the summons. The issuing authority may order such continuances as may be necessary to afford the permit holder reasonable opportunity to defend the action. The secretary of state shall keep a record of all such processes which shall show the day and hour of such service.

[C71, 73, 75, 77, 79, 81, §321E.22]

321E.23 Failure to receive copy of process.

When a final order is entered against any permit holder who did not receive notice of service and a copy of the process by registered mail, the permit holder shall within six months after the entry of the order appear before the issuing authority and file a verified statement showing that the permit holder did not receive such notice of service and the copy of the process. The permit holder shall further show that the permit holder has a good and substantial defense to the action and may appear and answer the allegations made against the permit holder. Thereupon, the proceedings may be had as if the permit holder had appeared in due time and no order had been entered. If it appears at the hearing that the order ought not to have been entered, the order may be set aside, altered, or amended as shall appear just; otherwise it shall be ordered to stand affirmed against such permit holder.

[C71, 73, 75, 77, 79, 81, §321E.23]

321E.24 Warning device on long loads.

Any vehicle and load which exceed the limits provided in section 321.457 and in excess of a length of seventy-five feet shall carry a warning device clearly visible to a motorist approaching from the rear for a distance of five hundred feet.

[C71, 73, 75, 77, 79, 81, §321E.24]
83 Acts, ch 116, §10

321E.25 Use of highways of interstate system.

Use of the national system of interstate and defense highways under the provisions of this chapter shall be restricted by regulation and other appropriate action of the department in such a manner as to not be in conflict with the applicable provisions of section 127, Title 23, United States Code.

[C71, 73, 75, 77, 79, 81, §321E.25]

321E.26 Driver of escort vehicle — license required. Repealed by 97 Acts, ch 104, § 60. See § 321E.34.

321E.27 Definition.

As used in this chapter, unless the context otherwise requires, *"department"* means the state department of transportation.

[C75, 77, 79, 81, §321E.27]

321E.28 Permits for manufactured or mobile homes or factory-built structures.

The department and local authorities may, upon application and with good cause shown, issue single-trip, multi-trip, or annual permits for the movement of manufactured or mobile homes or factory-built structures of widths including appurtenances exceeding twelve feet five inches subject to the following conditions:

1. Permits shall be issued only when the movement can be safely accomplished without causing unnecessary traffic congestion.

2. Permits issued under this section shall

specify the route over which the manufactured or mobile home or factory-built structure shall be moved, and wherever possible, the department and local authorities shall specify highways having a roadway at least twenty-four feet in width.

3. Single-trip permits may be issued by the department or local authorities contingent upon favorable road and weather conditions.

4. A permit may be issued to allow the movement of a manufactured or mobile home or factory-built structure on a fully controlled-access, divided, multilaned highway.

For the purposes of this section, *"factory-built structure"* means a structure which is wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a building site and which is temporarily moved on its own axles.

[C77, 79, 81, §321E.28; 81 Acts, ch 112, §1]

83 Acts, ch 74, §1; 88 Acts, ch 1208, §3; 91 Acts, ch 133, §4; 92 Acts, ch 1100, §6; 96 Acts, ch 1089, §11; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

321E.29 Excess size divisible load permits.

Vehicles or a combination of vehicles with divisible loads in excess of the width, length, or height requirements of chapter 321 may be moved on the highways of this state if the department or issuing authority determines there is a special or emergency situation which warrants the issuance of a special permit. The combined gross weight or gross weight on any one axle or group of axles may exceed the limits established in section 321.463, subject to the limits and routes established by the issuing authority. Permits may be issued for vehicles with divisible loads of hay, straw or stover without a finding of special or emergency situations, if the movement meets the requirements of this chapter.

[C79, 81, §321E.29]

321E.29A Raw milk transporters.

The department or a local authority may issue annual permits authorizing a raw milk transporter to transport by motor truck raw milk to or from a milk plant, receiving station, or transfer station. The combined gross weight or gross weight on any axle or groups of axles of the motor truck shall not exceed the limits established under section 321.463. The issuing authority may specify weight limits or routes for each raw milk transporter or establish weight limits or routes under section 321E.8.

98 Acts, ch 1103, §1

321E.30 Verification of mobile home permit to county treasurer. Repealed by 96 Acts, ch 1152, § 26.

321E.31 Permit for moving certain manufactured or mobile homes.

All manufactured or mobile homes moved in this state which are registered in another state shall only be moved on the highways with a permit issued under sections 321E.8 and 321E.28.

[82 Acts, ch 1251, §19]

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

321E.32 Movement of structures.

The weight limits on axles used for the movement of physical structures and buildings shall be subject to the same weight limits which are placed on all other axles. However, when physical structures or buildings are moved and the axles under the load are five feet or more apart, each axle shall be considered a separate axle in determining the axle weight limitations provided by law.

88 Acts, ch 1208, §4

321E.33 Oversize permit agreement.

The director of transportation may, subject to the approval of the transportation commission, enter into agreements on behalf of this state with authorized representatives of other states concerning the movement of vehicles of excess size and weight. The director of transportation may enter into and the state department of transportation may become a member of an agreement allowing other states to issue permits authorizing the movement of vehicles of excess size and weight on state primary roads, collect established permit fees on behalf of the department, and exchange appropriate information. The director of transportation may adopt rules pursuant to chapter 17A to implement an agreement.

Copies of any agreement shall be filed with the secretary of the senate and the chief clerk of the house.

88 Acts, ch 1208, §5

321E.34 Escort requirements.

1. An operator of an escort vehicle, serving as an escort in the movement of vehicles and loads of excess size and weight under permits required by this chapter shall have a driver's license as defined in section 321.1 valid for the operation of the escort vehicle.

2. Vehicles under permit, the width of which, including any load, exceeds that prescribed in section 321.454 but does not exceed fourteen feet six inches including appurtenances, may be moved on two-lane highways of this state without an escort if the highway being traversed has a minimum lane width of twelve feet and a sufficient shoulder width and if an amber revolving light or strobe light is displayed on the power unit and on the rear extremity of the vehicle or load. In addition, vehicles moving under permit, including any load, with an overall width not exceeding sixteen feet six inches may be moved on an interstate or four-lane highway of this state without an escort if an

amber revolving light or strobe light is displayed on the power unit and on the rear extremity of the vehicle or load.

3. The department shall adopt rules pursuant to chapter 17A for all escort requirements other than those exempted in subsection 2. The rules shall include escorting requirements for annual permits, single-trip permits, multi-trip permits, special or emergency situations, length, height, and weight.

97 Acts, ch 104, §29; 98 Acts, ch 1073, §9

CHAPTER 321F

LEASING AND RENTING OF VEHICLES

321F.1 Definitions.
321F.2 License required.
321F.3 Application.
321F.4 Fees and expiration.
321F.4A Implementation of multiyear licensing. Repealed by 98 Acts, ch 1075, §32.
321F.5 Denial or suspension of license.
321F.6 Financial responsibility — lease.
321F.7 Certificate carried in vehicle. Repealed by 95 Acts, ch 118, §38.
321F.8 Registration of vehicle required.
321F.9 Option to purchase — dealer's license.
321F.10 Department employees.
321F.11 Rules adopted — deposit of fees.
321F.12 Penalty.

321F.1 Definitions.

When used in this chapter, unless the context requires otherwise:

1. *"Business"* means the business of leasing motor vehicles for use by others for compensation.

2. *"Director"* means the director of transportation or the director's designee.

3. *"Evidence of financial responsibility"* means:

a. A certificate of an insurance carrier certifying that the lessor under a lease is insured against liability for a judgment in the amount of fifty thousand dollars for personal injury to one individual and in an aggregate amount of one hundred thousand dollars for personal injuries to all individuals involved in a single accident, and in the amount of ten thousand dollars for property damage, resulting from any such single accident in which a motor vehicle under a lease is involved; or

b. A bond executed by a surety company authorized to do business in this state providing for the payment of judgments, against a lessor under a lease, within the limits set forth in paragraph *"a"* of this subsection.

4. *"Judgment"* means any judgment which shall have become final.

5. *"Lease"* means a written agreement providing for the leasing of a motor vehicle for a period of more than sixty days.

6. *"Licensee"* means a person licensed under the provisions of this chapter to engage in business.

7. *"Motor vehicle"* means every vehicle which is self-propelled and subject to registration under the laws of this state.

8. *"Person"* means an individual, partnership, corporation, association, or other business entity.

[C71, 73, 75, 77, 79, 81, §321F.1]

321F.2 License required.

No person shall engage in business in this state without first having obtained a license as provided in this chapter.

[C71, 73, 75, 77, 79, 81, §321F.2]

321F.3 Application.

The application for a license to engage in business in this state shall be filed with the director and shall provide such information relating to applicant's business as the director may require.

[C71, 73, 75, 77, 79, 81, §321F.3]

321F.4 Fees and expiration.

1. The license fee for a license to engage in the business of leasing vehicles in this state is thirty dollars for a two-year license, sixty dollars for a four-year license, and ninety dollars for a six-year license, to be paid at the time the application for a license is filed. If the application is denied, the amount of the fee shall be refunded to the applicant.

2. A license is valid for two years, four years, or six years and expires on the last day of the last month of the two-year, four-year, or six-year period, as applicable. A licensee shall have the month of expiration and the month after the month of expiration to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license application and pay the required fee.

[C71, 73, 75, 77, 79, 81, §321F.4]

92 Acts, ch 1175, §6; 2000 Acts, ch 1016, §18

321F.4A Implementation of multiyear licensing. Repealed by 98 Acts, ch 1075, § 32.

321F.5 Denial or suspension of license.
A license shall be denied if the applicant has engaged in business in this state within one year prior to the date of application without first having obtained a license as provided in this chapter, or has violated any rules and regulations of the director adopted for the administration of this chapter.
The license of any licensee who shall have violated any provision of this chapter or any rules and regulations of the director adopted for the administration of this chapter shall be suspended and such license shall not be renewed nor shall a new license be issued to such licensee within one year after the date of suspension of the license; provided that the suspension of a license shall not invalidate any lease entered into by lessor prior to suspension and the parties to the lease shall have the authority and remain liable to perform their respective obligations under such leases.
[C71, 73, 75, 77, 79, 81, §321F.5]

321F.6 Financial responsibility — lease.
The lessee shall carry in the vehicle being leased, evidence of financial responsibility as required by this chapter and a copy of the lease, setting forth the name and address of the lessee, period of the lease, and other information as the director may require. The lease shall be shown to any peace officer upon request.
[C71, 73, 75, 77, 79, 81, §321F.6]
92 Acts, ch 1175, §8; 95 Acts, ch 118, §29

321F.7 Certificate carried in vehicle. Repealed by 95 Acts, ch 118, § 38. See § 321F.6.

321F.8 Registration of vehicle required.
All motor vehicles which are primarily garaged or located in this state and which are the subject of a lease shall be registered in this state. This section shall not be construed to exempt any motor vehicle from registration which is otherwise subject to registration under the provisions of chapter 321, provided, however, that the provisions of this section shall not apply to motor vehicles in fleets whose registrations are apportioned under the provisions of section 326.2.
[C71, 73, 75, 77, 79, 81, §321F.8]

321F.9 Option to purchase — dealer's license.
Any person engaged in business in this state shall not enter into any agreement for the use of a motor vehicle under the terms of which such person grants to another an option to purchase such motor vehicle without first having obtained a motor vehicle dealer's license under the provisions of chapter 322, and all sales of motor vehicles under such options shall be subject to sales or use taxes imposed under the provisions of chapters 422 and 423. Nothing contained in this section shall require such person to have a place of business as provided by section 322.6, subsection 8.
[C71, 73, 75, 77, 79, 81, §321F.9]

321F.10 Department employees.
Section 322.1, as it pertains to employees and the expenditure of funds shall apply to the provisions of this chapter.
[C71, 73, 75, 77, 79, 81, §321F.10]

321F.11 Rules adopted — deposit of fees.
The director shall adopt rules for the purpose of administering this chapter. All fees and funds accruing from the administration of this chapter shall be remitted to the treasurer of state monthly and deposited in the road use tax fund.
[C71, 73, 75, 77, 79, 81, §321F.11]

321F.12 Penalty.
Any person violating any provision of this chapter shall be guilty of a simple misdemeanor.
[C71, 73, 75, 77, 79, 81, §321F.12]

CHAPTER 321G

SNOWMOBILES AND ALL-TERRAIN VEHICLES

321G.1 Definitions.
321G.2 Rules.
321G.3 Registration and numbering required.
321G.4 Registration with county recorder — fee.
321G.5 Display of identification numbers.
321G.6 Registration — renewal — transfer.
321G.7 Fees remitted to commission — appropriation.
321G.8 Exempt vehicles.
321G.9 Operation on roadways and highways.
321G.10 Accident reports.
321G.11 Mufflers required.
321G.12 Head lamp — tail lamp — brakes.
321G.13 Unlawful operation.
321G.14 Penalty.
321G.15 Operation pending registration.
321G.16 Special events.
321G.17 Violation of "stop" signal.
321G.18 Negligence.
321G.19 Rented snowmobiles and all-terrain vehicles.
321G.20 Minors under twelve.

321G.21 Manufacturer, distributor or dealer — special registration.
321G.22 Limitation of liability by public bodies and adjoining owners.
321G.23 Course of instruction.
321G.24 Safety certificate — fee.
321G.25 Stopping and inspecting — warnings.
321G.26 Termination of use.
321G.27 Writing fees.
321G.28 Consistent local laws — special local rules.
321G.29 Owner's certificate of title — in general.
321G.30 Fees — duplicates.
321G.31 Transfer or repossession of snowmobile or all-terrain vehicle by operation of law.
321G.32 Security interest — perfection and titles — fee.
321G.33 Vehicle identification number.

321G.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"All-terrain vehicle"* means a motorized flotation-tire vehicle with not less than three low pressure tires, but not more than six low pressure tires, or a two-wheeled off-road motorcycle, that is limited in engine displacement to less than eight hundred cubic centimeters and in total dry weight to less than seven hundred fifty pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

Two-wheeled off-road motorcycles shall be considered all-terrain vehicles only for the purpose of titling and registration. An operator of a two-wheeled off-road motorcycle is exempt from the safety instruction and certification program requirements of sections 321G.23 and 321G.24.

2. *"'A' scale"* means the physical scale marked "A" graduated in decibels on a sound level meter which meets the requirements of the American national standards institute, incorporated, publication S1.4-1961, general purpose sound level meters.

3. *"Commission"* means the natural resource commission of the department.

4. *"Dealer"* means a person engaged in the business of buying, selling, or exchanging all-terrain vehicles or snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

5. *"Department"* means the department of natural resources.

6. *"Established place of business"* means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer's or manufacturer's business is primarily transacted.

7. *"Manufacturer"* means a person engaged in the business of constructing or assembling all-terrain vehicles or snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.

8. *"Measurable snow"* means one-tenth of one inch of snow.

9. *"Nonambulatory person"* means an individual with paralysis of the lower half of the body with the involvement of both legs, usually caused by disease of or injury to the spinal cord, or caused by the loss of both legs or the loss of a part of both legs.

10. *"Operate"* means to ride in or on, other than as a passenger, use, or control the operation of an all-terrain vehicle or snowmobile in any manner, whether or not the all-terrain vehicle or snowmobile is moving.

11. *"Operator"* means a person who operates or is in actual physical control of an all-terrain vehicle or snowmobile.

12. *"Owner"* means a person, other than a lienholder, having the property right in or title to an all-terrain vehicle or snowmobile. The term includes a person entitled to the use or possession of an all-terrain vehicle or snowmobile subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

13. *"Person"* means an individual, partnership, firm, corporation, association, and the state, its agencies, and political subdivisions.

14. *"Public land"* means land owned by the federal government, the state, or political subdivisions of the state and land acquired or developed for public recreation pursuant to section 321G.7.

15. *"Railroad right-of-way"* shall mean the full width of property owned, leased or subject to easement for railroad purposes and shall not be limited to those areas on which tracks are located.

16. *"Roadway"* means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

17. *"Safety certificate"* means an all-terrain vehicle or snowmobile safety certificate issued by the commission to a qualified applicant who is twelve years of age or more.

18. *"Snowmobile"* means a motorized vehicle weighing less than one thousand pounds which uses sled-type runners or skis, endless belt-type tread, or any combination of runners, skis, or tread, and is designed for travel on snow or ice.

19. *"Special event"* means an organized race, exhibition, or demonstration of limited duration which is conducted according to a prearranged

schedule and in which general public interest is manifested.

20. *"Street"* or *"highway"* means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular travel, except in public areas in which the boundary shall be thirty-three feet each side of the center line of the roadway.

[C71, 73, 75, 77, 79, 81, §321G.1; 81 Acts, ch 113, §2]

86 Acts, ch 1245, §1877, 1883; 89 Acts, ch 244, §1 – 3; 91 Acts, ch 236, §1; 95 Acts, ch 177, §1; 97 Acts, ch 148, §8, 9; 99 Acts, ch 113, §1; 2002 Acts, ch 1027, §1

Subsection 1, unnumbered paragraph 2 amended

321G.2 Rules.

The commission may adopt rules for the following purposes:

1. Registration and titling of all-terrain vehicles and snowmobiles.

2. Use of all-terrain vehicles and snowmobiles as far as game and fish resources or habitats are affected.

3. Use of all-terrain vehicles and snowmobiles on public lands under the jurisdiction of the commission.

4. Use of all-terrain vehicles and snowmobiles on any waters of the state under the jurisdiction of the commission, while the waters are frozen.

5. Establish a program of grants, subgrants, and contracts to be administered by the department for the development and delivery of certified courses of instruction for the safe use and operation of all-terrain vehicles and snowmobiles by political subdivisions and incorporated private organizations.

6. Issuance of safety certificates.

7. Issuance of competition registrations and the participation of all-terrain vehicles and snowmobiles so registered in special events.

The director of transportation may adopt rules not inconsistent with this chapter regulating the use of all-terrain vehicles and snowmobiles on streets and highways. Cities may designate streets under the jurisdiction of cities within their respective corporate limits which may be used for snowmobiling and the sport of driving all-terrain vehicles.

In adopting the rules, consideration shall be given to the need to protect the environment and the public health, safety, and welfare; to protect private property, public parks, and other public lands; to protect wildlife and wildlife habitat; and to promote uniformity of rules relating to the use, operation, and equipment of all-terrain vehicles and snowmobiles. The rules shall be in conformance with chapter 17A.

[C71, 73, 75, 77, 79, 81, §321G.2]

86 Acts, ch 1031, §1; 89 Acts, ch 244, §4; 2002 Acts, ch 1027, §2

Subsection 1 amended

321G.3 Registration and numbering required.

1. Each all-terrain vehicle and snowmobile used on public land or ice of this state shall be currently registered and numbered. A person shall not operate, maintain, or give permission for the operation or maintenance of an all-terrain vehicle or snowmobile on public land or ice unless the all-terrain vehicle or snowmobile is numbered in accordance with this chapter, or in accordance with applicable federal laws, or in accordance with an approved numbering system of another state, and unless the identifying number set forth in the registration is displayed as prescribed by rules of the commission.

2. A registration number shall be assigned, without payment of fee, to all-terrain vehicles and snowmobiles owned by the state of Iowa or its political subdivisions upon application for the number, and the assigned registration number shall be displayed on the all-terrain vehicle or snowmobile as required under section 321G.5. A registration number and certificate shall be assigned, without payment of fee, to an all-terrain vehicle or snowmobile which is exempt from registration but is being titled. A decal displaying an audit number shall not be issued and the registration shall not expire while the all-terrain vehicle or snowmobile is exempt. The application for registration shall indicate the reason for exemption from the fee. The registration certificate shall indicate the reason for exemption.

[C71, 73, 75, 77, 79, 81, §321G.3]

86 Acts, ch 1031, §2; 89 Acts, ch 244, §5; 2002 Acts, ch 1027, §3

For applicable scheduled fines, see §805.8B, subsection 2, paragraph a

Section amended

321G.4 Registration with county recorder — fee.

The owner of each all-terrain vehicle or snowmobile required to be numbered shall register it every two years with the county recorder of the county in which the owner resides or, if the owner is a nonresident, the owner shall register it in the county in which the all-terrain vehicle or snowmobile is principally used. The commission has supervisory responsibility over the registration of all-terrain vehicles and snowmobiles and shall provide each county recorder with registration forms and certificates and shall allocate identification numbers to each county.

The owner of the all-terrain vehicle or snowmobile shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the all-terrain vehicle or snowmobile and shall be accompanied by a fee of twenty-five dollars and a writing fee. An all-terrain vehicle or a snowmobile shall not be

registered by the county recorder until the county recorder is presented with receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the all-terrain vehicle or snowmobile or that the owner is exempt from paying the tax. However, an owner of an all-terrain vehicle, except an all-terrain vehicle purchased new on or after January 1, 1990, may apply for registration without proof of sales or use tax paid until one year after January 1, 1990. An all-terrain vehicle or snowmobile that has an expired registration certificate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the all-terrain vehicle or snowmobile and the name and address of the owner. The registration certificate shall be carried either in the all-terrain vehicle or snowmobile or on the person of the operator of the machine when in use. The operator of an all-terrain vehicle or snowmobile shall exhibit the registration certificate to a peace officer upon request, to a person injured in an accident involving an all-terrain vehicle or snowmobile, or to the owner or operator of another all-terrain vehicle or snowmobile or the owner of personal or real property when the all-terrain vehicle or snowmobile is involved in a collision or accident of any nature with another all-terrain vehicle or snowmobile or the property of another person or to the property owner or tenant when the all-terrain vehicle or snowmobile is being operated on private property without permission from the property owner or tenant.

If an all-terrain vehicle or snowmobile is placed in storage, the owner shall return the current registration certificate to the county recorder with an affidavit stating that the all-terrain vehicle or snowmobile is placed in storage and the effective date of storage. The county recorder shall notify the commission of each all-terrain vehicle or snowmobile placed in storage. When the owner of a stored all-terrain vehicle or snowmobile desires to renew the registration, the owner shall make application to the county recorder and pay the registration and writing fees without penalty. A refund of the registration fee shall not be allowed for a stored all-terrain vehicle or snowmobile.

[C71, 73, 75, 77, 79, 81, §321G.4; 81 Acts, ch 113, §3]

86 Acts, ch 1235, §1; 89 Acts, ch 244, §6; 99 Acts, ch 113, §2; 99 Acts, ch 114, §21

321G.5 Display of identification numbers.

The owner shall display the identification number on an all-terrain vehicle or snowmobile in the manner prescribed by the rules of the commission.

[C71, 73, 75, 77, 79, 81, §321G.5]

86 Acts, ch 1031, §3; 89 Acts, ch 244, §7; 2002 Acts, ch 1027, §4

For applicable scheduled fine, see §805.8B, subsection 2, paragraph e

Section stricken and rewritten

321G.6 Registration — renewal — transfer.

Every all-terrain vehicle or snowmobile registration certificate and number issued expires at midnight December 31, and renewals expire every two years thereafter unless sooner terminated or discontinued in accordance with this chapter. After the first day of September each even-numbered year, an unregistered all-terrain vehicle or snowmobile and renewals may be registered for the subsequent biennium beginning January 1. An all-terrain vehicle or snowmobile registered between January 1 and September 1 of even-numbered years shall be registered for a fee of twelve dollars and fifty cents for the remainder of the registration period.

After the first day of September in even-numbered years an unregistered all-terrain vehicle or snowmobile may be registered for the remainder of the current registration period and for the subsequent registration period in one transaction. The fee shall be five dollars for the remainder of the current period, in addition to the registration fee of twenty-five dollars for an all-terrain vehicle and twenty-five dollars for a snowmobile for the subsequent biennium beginning January 1, and a writing fee. Registration certificates and numbers may be renewed upon application of the owner in the same manner as provided in securing the original registration. The all-terrain vehicle or snowmobile registration fee is in lieu of personal property tax for each year of the registration.

An expired all-terrain vehicle or snowmobile registration may be renewed for the same fee as if the owner is securing the original registration plus a penalty of five dollars and a writing fee.

All all-terrain vehicles used on public land must be registered within six months following January 1, 1990, unless otherwise exempt.

When a person, after registering an all-terrain vehicle or snowmobile, moves from the address shown on the registration certificate, the person shall, within ten days, notify the county recorder in writing of the move and the person's new address.

Upon the transfer of ownership of an all-terrain vehicle or snowmobile, the owner shall complete the form on the back of the title, if any, and regis-

tration, if any, and deliver both to the purchaser or transferee when the all-terrain vehicle or snowmobile is delivered. If the all-terrain vehicle or snowmobile is not titled, the owner shall complete the form on the back of the current registration certificate and shall deliver the certificate to the purchaser or transferee at the time of delivering the all-terrain vehicle or snowmobile. If the all-terrain vehicle or snowmobile has not been titled and has not been registered, the owner shall deliver an affidavit for an unregistered and untitled all-terrain vehicle or snowmobile to the purchaser or transferee. The purchaser or transferee shall, within thirty days of transfer, file a new application form with the county recorder with a fee of one dollar and the writing fee, and a transfer of number shall be awarded in the same manner as provided in an original registration. If the purchaser or transferee does not file a new application form within thirty days of transfer, the transfer of number shall be awarded upon payment of all applicable fees plus a penalty of five dollars.

All registrations must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer.

Duplicate registrations may be issued upon application therefor and the payment of the same fees collected for the transfer of registrations.

A motorcycle, as defined in section 321.1, subsection 40, paragraph *"a"*, may be registered as an all-terrain vehicle as provided in this section. A motorcycle registered as an all-terrain vehicle may participate in all programs established for all-terrain vehicles under this chapter except for the safety instruction and certification program.

[C71, 73, 75, 77, 79, 81, S81, §321G.6; 81 Acts, ch 113, §4, 5]

86 Acts, ch 1031, §4; 86 Acts, ch 1235, §2; 89 Acts, ch 244, §8 – 11; 91 Acts, ch 236, §2; 97 Acts, ch 148, §6, 9; 99 Acts, ch 113, §3; 2000 Acts, ch 1019, §1; 2002 Acts, ch 1027, §5

Unnumbered paragraph 6 amended

321G.7 Fees remitted to commission — appropriation.

Within ten days after the end of each month, a county recorder shall remit to the commission the all-terrain vehicle and snowmobile fees collected by the recorder during the previous month. Before January 10 of odd-numbered years, a recorder shall remit unused license forms from the previous biennium to the commission.

The department shall remit the fees to the treasurer of state, who shall place the money in a special conservation fund. The money is appropriated to the department for the all-terrain vehicle and snowmobile programs of the state. All-terrain vehicle fees shall be used only for all-terrain vehicle programs and snowmobile fees shall be used only for snowmobile programs. Joint programs shall be supported from both types of fees on a usage basis. The all-terrain vehicle and snowmobile programs shall include grants, subgrants, contracts, or cost-sharing of all-terrain vehicle and snowmobile programs with political subdivisions or incorporated private organizations or both in accordance with rules adopted by the commission. All all-terrain vehicle programs using cost-sharing, grants, subgrants, or contracts shall establish and implement a safety instruction program either singly or in cooperation with other all-terrain vehicle programs. At least fifty percent of the special fund shall be available for political subdivisions or incorporated private organizations or both. Moneys from the special fund not used by the political subdivisions or incorporated private organizations or both shall remain in the all-terrain vehicle or snowmobile accounts. The department may use funds from these accounts for the administration of the all-terrain vehicle and snowmobile programs.

[C71, 73, 75, 77, 79, 81, S81, §321G.7; 81 Acts, ch 113, §6]

89 Acts, ch 102, §2; 89 Acts, ch 244, §12

321G.8 Exempt vehicles.

Registration shall not be required for the following described all-terrain vehicles and snowmobiles:

1. All-terrain vehicles and snowmobiles owned and used by the United States, another state, or a political subdivision of another state.

2. All-terrain vehicles and snowmobiles registered in a country other than the United States used within this state for not more than twenty consecutive days.

3. All-terrain vehicles and snowmobiles covered by a valid license of another state and which have not been within this state for more than twenty consecutive days.

4. All-terrain vehicles and snowmobiles not registered or licensed in another state or country being used in this state while engaged in a special event and not remaining in the state for a period of more than ten days.

5. All-terrain vehicles used in accordance with section 321.234A.

6. Snowmobiles and all-terrain vehicles used exclusively as farm implements.

[C71, 73, 75, 77, 79, 81, §321G.8]

89 Acts, ch 244, §13; 2002 Acts, ch 1027, §6

NEW subsection 6

321G.9 Operation on roadways and highways.

A person shall not operate an all-terrain vehicle or snowmobile upon roadways or highways, as defined in section 321.1, except as provided in section 321.234A and this chapter.

1. An all-terrain vehicle or snowmobile shall not be operated at any time within the right of way of any interstate highway or freeway within this state except under either of the following circumstances:

a. As provided in section 321.234A.

b. When using an underpass located on an interstate highway or freeway if all of the following apply:

(1) The underpass has been abandoned and is no longer being used by motor vehicles or trains.

(2) Use of the underpass is the only alternative to the use of a traveled roadway.

(3) Notwithstanding the provisions of chapter 321, use of the underpass does not conflict with any rules or regulations adopted by a federal governmental entity or this state or a political subdivision of this state.

2. An all-terrain vehicle or snowmobile may make a direct crossing of a street or highway provided:

a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; and

b. The all-terrain vehicle or snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway; and

c. The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and

d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.

3. An all-terrain vehicle or snowmobile shall not be operated on public highways:

a. On the roadway portion of a highway and adjacent shoulder, or at least five feet on either side of the roadway, except as provided in subsection 4 of this section, and

b. On limited access highways and approaches, and

c. For racing any moving object, and

d. Abreast with one or more other all-terrain vehicles or snowmobiles on a city highway.

4. A registered all-terrain vehicle or snowmobile may be operated under the following conditions:

a. Upon city highways which have not been plowed during the snow season or on such highways as designated by the governing body of a municipality.

b. On that portion of county roadways that have not been plowed during the snow season or not maintained or utilized for the operation of conventional two-wheel drive motor vehicles.

c. On highways in an emergency during the period of time when and at locations where snow upon the roadway renders travel by conventional motor vehicles impractical.

d. On the roadways of that portion of county highways designated by the county board of supervisors for such use during a specified period. The county board of supervisors shall evaluate the traffic conditions on all county highways and designate roadways on which all-terrain vehicles or snowmobiles may be operated for the specified period without unduly interfering with or constituting an undue hazard to conventional motor vehicle traffic. Signs warning of the operation of all-terrain vehicles or snowmobiles on the roadway shall be placed and maintained on the portions of highway thus designated during the period specified for the operation.

e. On the roadway or shoulder when necessary to cross a bridge or culvert, or avoid an obstruction which makes it impossible to travel on the portion of the highway not intended for motor vehicles, if the snowmobile is brought to a complete stop before entering onto the roadway or shoulder and the driver yields the right of way to any approaching vehicle on the roadway.

f. All-terrain vehicles shall not be operated on snowmobile trails except where designated by the controlling authority and the primary snowmobile trail sponsor.

g. Snowmobiles shall not be operated on all-terrain vehicle trails except where designated by the controlling authority and the primary all-terrain vehicle trail sponsor.

5. The headlight and taillight shall be lighted during the operation on a public highway at any time from sunset to sunrise, and at such other times when conditions such as fog, snow, sleet or rain provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

6. *a.* An all-terrain vehicle or snowmobile shall not be operated on or across a public highway by a person under sixteen years of age who does not have in the person's possession a safety certificate issued to the person pursuant to this chapter.

b. A person twelve to fifteen years of age and possessing a valid safety certificate must be under the direct supervision of a parent, guardian, or another adult authorized by the parent or guardian, who is experienced in all-terrain vehicle or snowmobile operation, and who possesses a valid driver's license as defined in section 321.1, or a safety certificate issued under this chapter.

7. An all-terrain vehicle or snowmobile shall not be operated within the right of way of a primary highway between the hours of sunset and sunrise except on the right-hand side of the right of way and in the same direction as the motor vehicular traffic on the nearest lane of traveled portion of the right of way.

[C71, 73, 75, 77, 79, 81, §321G.9]

89 Acts, ch 244, §14 – 21; 90 Acts, ch 1230, §80; 92 Acts, ch 1168, §1; 98 Acts, ch 1073, §9

For applicable scheduled fines, see §805.8B, subsection 2, paragraph b

321G.10 Accident reports.

If an all-terrain vehicle or snowmobile is involved in an accident resulting in injury or death to anyone or property damage amounting to two hundred dollars or more, either the operator or someone acting for the operator shall immediately notify the county sheriff or another law enforce-

ment agency in the state. The operator shall file with the commission a report of the accident, within forty-eight hours, containing information as the commission may require.

[C71, 73, 75, 77, 79, 81, §321G.10; 81 Acts, ch 113, §7]

89 Acts, ch 244, §22

321G.11 Mufflers required.

1. An all-terrain vehicle or snowmobile shall not be operated without suitable and effective muffling devices which limit engine noise to not more than eighty-six decibels as measured on the "A" scale at a distance of fifty feet; and a snowmobile, manufactured after July 1, 1973, which is sold, offered for sale, or used in this state, except in an authorized special event, shall have a muffler system that limits engine noise to not more than eighty-two decibels as measured on the "A" scale at a distance of fifty feet.

2. The commission may adopt rules with respect to the inspection of all-terrain vehicles and snowmobiles and testing of their mufflers.

3. A separate placard shall be affixed, permanently and conspicuously, to any new snowmobile sold or offered for sale in this state that does not meet the muffler requirements as stated above. The placard shall designate each snowmobile which does not meet the muffler requirements.

4. A snowmobile manufactured after July 1, 1975, which is sold, offered for sale or used in this state, except in an authorized special event, shall have a muffler system that limits engine noise to not more than seventy-eight decibels as measured on the "A" scale at a distance of fifty feet.

[C71, 73, 75, 77, 79, 81, §321G.11]

89 Acts, ch 244, §23

For applicable scheduled fines, see §805.8B, subsection 2, paragraph b

321G.12 Head lamp — tail lamp — brakes.

Every all-terrain vehicle operated during the hours of darkness shall display a lighted head lamp and tail lamp. Every snowmobile shall be equipped with at least one head lamp and one tail lamp. Every all-terrain vehicle and snowmobile shall be equipped with brakes.

[C71, 73, 75, 77, 79, 81, §321G.12]

89 Acts, ch 244, §24; 98 Acts, ch 1080, §8

For applicable scheduled fines, see §805.8B, subsection 2, paragraph c

321G.13 Unlawful operation.

1. A person shall not drive or operate an all-terrain vehicle or snowmobile:

a. At a rate of speed greater than reasonable or proper under all existing circumstances.

b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.

c. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

d. Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

e. In any tree nursery or planting in a manner which damages or destroys growing stock.

f. On any public land, ice, or snow, in violation of official signs of the commission prohibiting such operation in the interest of safety for persons, property, or the environment. Any officer appointed by the commission may post an official sign in an emergency for the protection of persons, property, or the environment.

g. In or on any park or fish and game areas except on designated all-terrain vehicle or snowmobile trails.

h. Upon an operating railroad right-of-way. An all-terrain vehicle or snowmobile may be driven directly across a railroad right-of-way only at an established crossing and, notwithstanding any other provisions of law, may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic. This paragraph does not apply to a law enforcement officer or railroad employee in the lawful discharge of the officer's or employee's duties or to an employee of a utility with authority to enter upon the railroad right-of-way in the lawful performance of the employee's duties.

2. A person shall not operate or ride in an all-terrain vehicle or snowmobile with a firearm in the person's possession unless it is unloaded and enclosed in a carrying case. However, a nonambulatory person may carry an uncased and unloaded firearm while operating or riding an all-terrain vehicle or a snowmobile.

3. A person shall not operate an all-terrain vehicle while carrying a passenger.

4. A person shall not drive or operate a snowmobile on public land without a measurable snow cover.

[C71, 73, 75, 77, 79, 81, §321G.13; 81 Acts, ch 113, §8]

89 Acts, ch 244, §25, 26; 91 Acts, ch 236, §3; 99 Acts, ch 97, §1; 2002 Acts, ch 1001, §2; 2002 Acts, ch 1027, §7, 8

For applicable scheduled fines, see §805.8B, subsection 2, paragraph b

Former unnumbered paragraph 1 redesignated as subsection 1, unnumbered paragraph 1

Former subsections 1 – 8 renumbered as subsection 1, paragraphs a – h

Subsections 9 and 10 stricken

Former subsections 11 and 12 renumbered as subsections 2 and 3

NEW subsection 4

321G.14 Penalty.

Any person who shall violate any provision of this chapter or any regulation of the commission or director of transportation shall be guilty of a simple misdemeanor.

Chapter 232 shall have no application in the prosecution of offenses which are committed in

violation of this chapter, and which constitute simple misdemeanors.

[C71, 73, 75, 77, 79, 81, §321G.14]

321G.15 Operation pending registration.

The commission shall furnish snowmobile and all-terrain vehicle dealers with pasteboard cards bearing the words "registration applied for" and space for the date of purchase. An unregistered all-terrain vehicle or snowmobile sold by a dealer shall bear one of these cards which entitles the purchaser to operate it for ten days immediately following the purchase. The purchaser of a registered all-terrain vehicle or snowmobile may operate it for ten days immediately following the purchase, without having completed a transfer of registration. A snowmobile or all-terrain vehicle dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of a snowmobile or all-terrain vehicle.

[C73, 75, 77, 79, 81, §321G.15]

86 Acts, ch 1245, §1877; 89 Acts, ch 244, §27; 97 Acts, ch 148, §5, 9; 98 Acts, ch 1076, §1

321G.16 Special events.

The department may authorize the holding of organized special events as defined in this chapter within this state. The department shall adopt rules relating to the conduct of special events held under department permits and designating the equipment and facilities necessary for safe operation of all-terrain vehicles and snowmobiles or for the safety of operators, participants, and observers in the special events. A special event for all-terrain vehicles may include motorcycles upon payment of an entrance fee set by the organizer of the special event. The department may require that part of the motorcycle entrance fee be credited to pay costs of all-terrain vehicle programs authorized pursuant to section 321G.7. At least thirty days before the scheduled date of a special event in this state, an application shall be filed with the department for authorization to conduct the special event. The application shall set forth the date, time, and location of the proposed special event and any other information the department requires. The special event shall not be conducted without written authorization of the department. Copies of the rules shall be furnished by the department to any person making an application.

[C73, 75, 77, 79, 81, §321G.16]

89 Acts, ch 244, §28; 91 Acts, ch 236, §4

321G.17 Violation of "stop" signal.

A person, after having received a visual or audible signal from a peace officer to come to a stop, shall not operate an all-terrain vehicle or snowmobile in willful or wanton disregard of the signal or interfere with or endanger the officer or any other person or vehicle, or increase speed or attempt to flee or elude the officer.

[C73, 75, 77, 79, 81, §321G.17]

89 Acts, ch 244, §29

321G.18 Negligence.

The owner and operator of an all-terrain vehicle or snowmobile are liable for any injury or damage occasioned by the negligent operation of the all-terrain vehicle or snowmobile. The owner of an all-terrain vehicle or snowmobile shall be liable for any such injury or damage only if the owner was the operator of the all-terrain vehicle or snowmobile at the time the injury or damage occurred or if the operator had the owner's consent to operate the all-terrain vehicle or snowmobile at the time the injury or damage occurred.

[C73, 75, 77, 79, 81, §321G.18]

89 Acts, ch 244, §30; 98 Acts, ch 1074, §26; 2000 Acts, ch 1133, §14

321G.19 Rented snowmobiles and all-terrain vehicles.

1. The owner of a rented all-terrain vehicle or snowmobile shall keep a record of the name and address of each person renting the all-terrain vehicle or snowmobile, its identification number, the departure date and time, and the expected time of return. The records shall be preserved for six months.

2. The owner of an all-terrain vehicle or snowmobile operated for hire shall not permit the use or operation of a rented all-terrain vehicle or snowmobile unless it has been provided with all equipment required by this chapter or rules of the commission or the director of transportation, properly installed and in good working order.

[C73, 75, 77, 79, 81, §321G.19]

89 Acts, ch 244, §31

For applicable scheduled fines, see §805.8B, subsection 2, paragraph d

321G.20 Minors under twelve.

An owner or operator of a snowmobile shall not permit a person under twelve years of age to operate and a person less than twelve years of age shall not operate, a snowmobile except when accompanied on the same snowmobile by a responsible person of at least eighteen years of age who is experienced in snowmobile operation and who possesses a valid driver's license, as defined in section 321.1, or a safety certificate issued under this chapter.

A person under twelve years of age shall not operate an all-terrain vehicle on public lands unless the person is taking a prescribed safety training course under the direct supervision of a certified all-terrain vehicle safety instructor and a parent or guardian.

[C73, 75, 77, 79, 81, §321G.20]

89 Acts, ch 244, §32; 90 Acts, ch 1230, §81; 98 Acts, ch 1073, §9

321G.21 Manufacturer, distributor or dealer — special registration.

1. A manufacturer, distributor, or dealer owning any all-terrain vehicle or snowmobile required to be registered under this chapter may operate the all-terrain vehicle or snowmobile for purposes of transporting, testing, demonstrating, or selling it without the all-terrain vehicle or snowmobile being registered, except that a special identification number issued to the owner as provided in this chapter shall be displayed on the all-terrain vehicle or snowmobile. The special identification number shall not be used on an all-terrain vehicle or snowmobile offered for hire or for any work or service performed by a manufacturer, distributor, or dealer.

2. Any manufacturer, distributor or dealer may, upon payment of a fee of fifteen dollars, make application to the commission, upon forms prescribed by the commission, for a special registration certificate containing a general identification number and for one or more duplicate special registration certificates. The applicant shall submit reasonable proof of the applicant's status as a bona fide manufacturer, distributor or dealer as may be required by the commission.

3. The commission, upon granting an application, shall issue to the applicant a special registration certificate containing the applicant's name and address, the general identification number assigned to the applicant, the word "manufacturer", "dealer", or "distributor", and other information the commission prescribes. The manufacturer, distributor, or dealer shall have the assigned number printed upon or attached to a removable sign or signs which may be temporarily but firmly mounted or attached to the all-terrain vehicle or snowmobile being used. The display shall meet the requirements of this chapter and the rules of the commission.

4. The commission shall also issue duplicate special registration certificates which shall have displayed thereon the general identification number assigned to the applicant. Each duplicate registration certificate so issued shall contain a number or symbol identifying it from every other duplicate special registration certificate bearing the same general identification number. The fee for each additional duplicate special registration certificate shall be two dollars.

5. Each special registration certificate issued hereunder shall expire on December 31 of each year, and a new special registration certificate for the ensuing twelve months may be obtained upon application to the commission and payment of the fee provided by law.

6. Every manufacturer, distributor, or dealer shall keep a written record of the all-terrain vehicles and snowmobiles upon which special registration certificates are used, which record shall be open to inspection by any law enforcement officer or any officer or employee of the commission.

7. If a manufacturer, distributor, or dealer has an established place of business in more than one location, the manufacturer, distributor, or dealer shall secure a separate and distinct special registration certificate and general identification number for each place of business.

8. Dealers using special certificates under this chapter shall, before January 10 of each year, furnish the commission with a list of all used all-terrain vehicles and snowmobiles held by them for sale or trade, and upon which the registration fee for the current year has not been paid, giving the previous registration number, name of previous owner at the time the all-terrain vehicle or snowmobile was transferred to the dealer, and other information the commission requires.

9. If the purchaser or transferee of an all-terrain vehicle or snowmobile is a dealer who holds the same for resale and operates the all-terrain vehicle or snowmobile only for purposes incidental to a resale and displays the special dealer's certificate, or does not operate the all-terrain vehicle or snowmobile or permit it to be operated, the transferee is not required to obtain a new registration certificate but upon transferring title or interest to another person shall sign the reverse side of the title, if any, and the registration certificate of the all-terrain vehicle or snowmobile indicating the name and address of the new purchaser. A dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of an all-terrain vehicle or snowmobile. The recorder shall award a transfer of the registration number. If the registration has expired while in the dealer's possession, the purchaser may renew the registration for the same fee and writing fee as if the purchaser is securing the original registration.

10. When a dealer purchases or otherwise acquires an all-terrain vehicle or snowmobile registered in this state, the dealer shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of the previous owner, and the registration number of the all-terrain vehicle or snowmobile purchased or acquired. The original receipt shall be delivered to the previous owner and one copy shall be mailed or delivered by the dealer to the county recorder of the county in which the all-terrain vehicle or snowmobile is registered, and one copy shall be delivered to the commission within forty-eight hours.

11. Nothing in this section shall prohibit a dealer from obtaining a new registration and transfer of registration in the same manner as other purchasers.

[C73, 75, 77, 79, 81, §321G.21]

89 Acts, ch 244, §33; 2002 Acts, ch 1027, §9

Subsection 9 amended

321G.22 Limitation of liability by public bodies and adjoining owners.

The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the right of way of a public highway and their agents and employees owe no duty of care to keep the public lands, ditches, or land contiguous to a highway or roadway under the control of the state or a political subdivision safe for entry or use by persons operating an all-terrain vehicle or snowmobile, or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes, except in the case of willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the right of way of a public highway, and their agents and employees are not liable for actions taken to allow or facilitate the use of public lands, ditches, or land contiguous to a highway or roadway except in the case of a willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

This section does not create a duty of care or ground of liability on behalf of the state, its political subdivisions, or the owners or tenants of property adjoining public lands or the right of way of a public highway and their agents and employees for injury to persons or property in the operation of all-terrain vehicles or snowmobiles in a ditch or on land contiguous to a highway or roadway under the control of the state or a political subdivision. The state, its political subdivisions, and the owners or tenants of property adjoining public lands or the right of way of a public highway and their agents and employees are not liable for the operation of an all-terrain vehicle or snowmobile in violation of this chapter.

[C73, 75, 77, 79, 81, §321G.22]

86 Acts, ch 1070, §1; 89 Acts, ch 244, §34

321G.23 Course of instruction.

1. The commission shall provide, by rules adopted pursuant to section 321G.2, for the establishment of certified courses of instruction to be conducted throughout the state for the safe use and operation of all-terrain vehicles and snowmobiles. The curriculum shall include instruction in the lawful and safe use, operation, and equipping of all-terrain vehicles and snowmobiles consistent with this chapter and rules adopted by the commission and the director of transportation and other matters the commission deems pertinent for a qualified all-terrain vehicle or snowmobile operator.

2. The commission may certify any experienced, qualified operator to be an instructor of a class established under subsection 1. Each instructor shall be at least eighteen years of age.

3. Upon completion of the course of instruction, the commission shall provide for the administration of a written test to any student who wishes to qualify for a safety certificate.

4. The commission shall provide safety material relating to the operation of all-terrain vehicles and snowmobiles for the use of nonpublic or public elementary and secondary schools in this state.

[C75, 77, 79, 81, §321G.23]

89 Acts, ch 244, §35

321G.24 Safety certificate — fee.

1. A person under eighteen years of age shall not operate a snowmobile on public land or land purchased with snowmobile registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person's possession, unless the person is accompanied on the same snowmobile by a responsible person of at least eighteen years of age who is experienced in snowmobile operation and possesses a valid driver's license, as defined in section 321.1, or a safety certificate issued under this chapter. A person under eighteen years of age shall not operate an all-terrain vehicle on public land or land purchased with all-terrain vehicle registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person's possession.

2. Upon application and payment of a fee of three dollars, a qualified applicant shall be issued a safety certificate which is valid until the certificate is suspended or revoked for a violation of a provision of this chapter or a rule of the commission or the director of transportation. The application shall be made on forms issued by the commission and shall contain information as the commission may reasonably require.

3. Any person who is required to have a safety certificate under this chapter and who has completed a course of instruction established under section 321G.2, subsection 5, including the successful passage of an examination which includes a written test relating to such course of instruction, shall be considered qualified to apply for a safety certificate. The commission may waive the requirement of completing such course of instruction if such person successfully passes a written test based on such course of instruction.

4. The permit fees collected under this section shall be credited to the state conservation fund and shall be used for safety and educational programs.

5. A valid all-terrain vehicle or snowmobile safety certificate or license issued to a nonresident by a governmental authority of another state shall be considered a valid certificate or license in this state if the permit or license requirements of the governmental authority, excluding fees, are substantially the same as the requirements of this chapter as determined by the commission.

[C75, 77, 79, 81, §321G.24; 81 Acts, ch 113, §9]
89 Acts, ch 244, §36; 90 Acts, ch 1230, §82; 91 Acts, ch 236, §5; 98 Acts, ch 1073, §9

321G.25 Stopping and inspecting — warnings.

A peace officer may stop and inspect an all-terrain vehicle or snowmobile operated, parked, or stored on public streets, highways, public lands, or frozen waters of the state to determine if the all-terrain vehicle or snowmobile is registered, numbered, or equipped as required by this chapter and commission rules. The officer shall not inspect an area that is not essential to determine compliance with the requirements. If the officer determines that the all-terrain vehicle or snowmobile is not in compliance, the officer may issue a warning memorandum to the operator and forward a copy to the commission. The warning memorandum shall indicate the items found not in compliance and shall direct the owner or operator of the all-terrain vehicle or snowmobile to have the all-terrain vehicle or snowmobile in compliance and return a copy of the warning memorandum with the proof of compliance to the commission within fourteen days. If the proof of compliance is not provided within fourteen days, the owner or operator is in violation of this chapter.

[81 Acts, ch 113, §1]
89 Acts, ch 244, §37

321G.26 Termination of use.

A person who receives a warning memorandum for an all-terrain vehicle or snowmobile shall stop using the all-terrain vehicle or snowmobile as soon as possible and shall not operate it on public streets, highways, public lands, or frozen waters of the state until the all-terrain vehicle or snowmobile is in compliance.

[81 Acts, ch 113, §1]
89 Acts, ch 244, §38

321G.27 Writing fees.

The county recorder shall collect a writing fee of one dollar for an all-terrain vehicle or snowmobile registration.

[S81, §321G.27; 81 Acts, ch 113, §1]
89 Acts, ch 244, §39

321G.28 Consistent local laws — special local rules.

1. This chapter and other applicable laws of this state shall govern the operation, equipment, numbering, and all other matters relating to an all-terrain vehicle or snowmobile when the all-terrain vehicle or snowmobile is operated or maintained in this state. However, this chapter does not prevent the adoption of an ordinance or local law relating to the operation of or equipment of all-terrain vehicles or snowmobiles. The ordinances or local laws are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.

2. A subdivision of this state, after public notice by publication in a newspaper having a general circulation in the subdivision, may make formal application to the commission for special rules concerning the operation of all-terrain vehicles or snowmobiles within the territorial limits of the subdivision and shall provide the commission with the reasons the special rules are necessary.

3. The commission, upon application by local authorities and in conformity with this chapter, may make special rules concerning the operation of all-terrain vehicles or snowmobiles within the territorial limits of a subdivision of this state.

[S81, §321G.28; 81 Acts, ch 113, §1]
89 Acts, ch 244, §40

321G.29 Owner's certificate of title — in general.

1. The owner of a snowmobile acquired on or after January 1, 1998, or an all-terrain vehicle acquired on or after January 1, 2000, other than a snowmobile or all-terrain vehicle used exclusively as a farm implement, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the snowmobile or all-terrain vehicle. The owner of a snowmobile or all-terrain vehicle used exclusively as a farm implement may obtain a certificate of title. A person who owns a snowmobile or all-terrain vehicle that is not required to have a certificate of title may apply for and receive a certificate of title for the snowmobile or all-terrain vehicle and, subsequently, the snowmobile or all-terrain vehicle shall be subject to the requirements of this chapter as if the snowmobile or all-terrain vehicle were required to be titled. All snowmobiles or all-terrain vehicles that are titled shall be registered.

2. A certificate of title shall contain the information and shall be issued on a form the department prescribes.

3. An owner of a snowmobile or all-terrain vehicle shall apply to the county recorder for issuance of a certificate of title within thirty days after acquisition. The application shall be on forms the department prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the snowmobile or all-terrain vehicle or the fair market value if no sale immediately preceded the transfer and any additional information the department requires. If the application is made for a snowmobile or all-terrain vehicle last previously registered or titled in another state or

foreign country, the application shall contain this information and any other information the department requires.

4. If a dealer buys or acquires a snowmobile or all-terrain vehicle for resale, the dealer shall report the acquisition to the county recorder on forms provided by the department and may apply for and obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used snowmobile or all-terrain vehicle, the dealer may apply for a certificate of title in the dealer's name within thirty days. If a dealer buys or acquires a new snowmobile or all-terrain vehicle for resale, the dealer may apply for a certificate of title in the dealer's name.

5. A manufacturer or dealer shall not transfer ownership of a new snowmobile or new all-terrain vehicle without supplying the transferee with the manufacturer's or importer's certificate of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for a snowmobile or all-terrain vehicle by the department upon good cause shown by the owner.

6. A dealer transferring ownership of a snowmobile or all-terrain vehicle under this chapter shall assign the title to the new owner, or in the case of a new snowmobile or new all-terrain vehicle, assign the certificate of origin. Within fifteen days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain a record of any certificate of title which the county recorder issues and shall keep each certificate of title on record until the certificate of title has been inactive for five years. When issuing a title for a new snowmobile or new all-terrain vehicle, the county recorder shall obtain and keep on file the certificate of origin. When issuing a title and registration for a used snowmobile or all-terrain vehicle for which there is no title or registration, the county recorder shall obtain and keep on file the affidavit for the unregistered and untitled snowmobile or all-terrain vehicle.

8. Once titled, a person shall not sell or transfer ownership of a snowmobile or all-terrain vehicle without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire a snowmobile or all-terrain vehicle without obtaining a certificate of title for it in that person's name.

9. If the county recorder is not satisfied as to the ownership of the snowmobile or all-terrain vehicle or that there are no undisclosed security interests in the snowmobile or all-terrain vehicle, the county recorder may issue a certificate of title for the snowmobile or all-terrain vehicle but, as a condition of such issuance, may require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and also executed by a person authorized to conduct a surety business in this state. The form and amount of the bond shall be established by rule of the department. The bond shall be conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the snowmobile or all-terrain vehicle or person acquiring any security interest in the snowmobile or all-terrain vehicle, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title of the snowmobile or all-terrain vehicle or on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the snowmobile or all-terrain vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of three years or prior thereto if the snowmobile or all-terrain vehicle is no longer registered in this state and the certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

10. The county recorder shall transmit a copy of the certificate of title to the department, which shall be the central repository of title information for snowmobiles and all-terrain vehicles.

97 Acts, ch 148, §1, 9; 99 Acts, ch 113, §4; 2002 Acts, ch 1027, §10; 2002 Acts, ch 1113, §3

Subsections 1, 4, and 7 amended
NEW subsection 9 and former subsection 9 renumbered as 10

321G.30 Fees — duplicates.

1. The county recorder shall charge a ten dollar fee to issue a certificate of title, a transfer of title, a duplicate, or a corrected certificate of title.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying to the county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate.

3. The duplicate certificate of title shall be marked plainly "duplicate" across its face and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the department for cancellation.

5. Five dollars of the certificate of title fees collected under this section shall be remitted by the county recorder to the treasurer of state for depos-

it in the special conservation fund created under section 321G.7. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

97 Acts, ch 148, §2, 9

321G.31 Transfer or repossession of snowmobile or all-terrain vehicle by operation of law.

1. If ownership of a snowmobile or all-terrain vehicle is transferred by operation of law, such as by inheritance, order in bankruptcy, insolvency, replevin, or execution sale, the transferee, within thirty days after acquiring the right to possession of the snowmobile or all-terrain vehicle, shall mail or deliver to the county recorder satisfactory proof of ownership as the county recorder requires, together with an application for a new certificate of title, and the required fee.

2. If a lienholder repossesses a snowmobile or all-terrain vehicle by operation of law and holds it for resale, the lienholder shall secure a new certificate of title and shall pay the required fee.

97 Acts, ch 148, §3, 9; 99 Acts, ch 113, §5

321G.32 Security interest — perfection and titles — fee.

1. A security interest created in this state in a snowmobile or all-terrain vehicle is not perfected until the security interest is noted on the certificate of title.

a. To perfect the security interest, an application for security interest must be presented along with the original title. The county recorder shall note the security interest on the face of the title and on the copy in the recorder's office.

b. The application fee for a security interest is ten dollars. Five dollars of the fee shall be credited to the special conservation fund created under section 321G.7. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

2. The certificate of title shall be presented to the county recorder when the application for security interest or for assignment of the security interest is presented and a new or endorsed certificate of title shall be issued to the secured party with the name and address of the secured party upon it.

3. The secured party shall present the certificate of title to the county recorder when a release statement is filed and a new or endorsed certificate shall be issued to the owner.

97 Acts, ch 148, §4, 9; 99 Acts, ch 113, §6

321G.33 Vehicle identification number.

1. The department may assign a distinguishing number to an all-terrain vehicle or snowmobile when the serial number on the all-terrain vehicle or snowmobile is destroyed or obliterated and issue to the owner a special plate bearing the distinguishing number which shall be affixed to the all-terrain vehicle or snowmobile in a position to be determined by the department. The all-terrain vehicle or snowmobile shall be registered and titled under the distinguishing number in lieu of the former serial number. Every all-terrain vehicle or snowmobile shall have an identification number assigned and affixed as required by the department.

2. The commission shall adopt, by rule, the procedures for application and for issuance of an identification number for homebuilt all-terrain vehicles or snowmobiles.

3. A person shall not destroy, remove, alter, cover, or deface the manufacturer's vehicle identification number, the plate bearing it, or any vehicle identification number the department assigns to an all-terrain vehicle or snowmobile without the department's permission.

4. A person other than a manufacturer who constructs or rebuilds an all-terrain vehicle or snowmobile for which there is no legible identification number shall submit to the department an affidavit which describes the all-terrain vehicle or snowmobile. In cooperation with the county recorder, the department shall assign an identification number to the all-terrain vehicle or snowmobile. The applicant shall permanently affix the identification number to the all-terrain vehicle or snowmobile in a manner that such alteration, removal, or replacement of the identification number would be obvious.

2002 Acts, ch 1027, §11
NEW section

CHAPTER 321H

VEHICLE RECYCLERS

321H.1 Administration.
321H.2 Definitions.
321H.3 Prohibitions.
321H.4 License application and fees.
321H.4A Implementation of multiyear licensing. Repealed by 98 Acts, ch 1075, §32.
321H.5 Display of license.
321H.6 Denial, suspension or revocation of license.
321H.7 Fees.
321H.8 Penalties.

321H.1 Administration.

The administration of this chapter shall be vested in the director of the state department of transportation. The department may employ such employees as are necessary for the administration of this chapter, within applicable budget limitations.

[C79, 81, §321H.1]

321H.2 Definitions.

As used in this chapter and unless a different meaning appears from the context:

1. *"Authorized vehicle recycler"* means a person licensed to operate as a vehicle rebuilder, used vehicle parts dealer or vehicle salvager.
2. *"Department"* means the state department of transportation.
3. *"Extension"* means a place of business of an authorized vehicle recycler other than the principal place of business within the county of the principal place of business.
4. *"Person"* includes any individual, firm, corporation, copartnership, joint adventure, or association, and the plural as well as the singular number.
5. *"Selling"* includes bartering, exchanging, or otherwise dealing in.
6. *"Used vehicle parts dealer"* means a person engaged in the business of selling bodies, parts of bodies, frames or component parts of used vehicles subject to registration under chapter 321.
7. *"Vehicle"* means any vehicle as defined in chapter 321.
8. *"Vehicle rebuilder"* means a person engaged in the business of rebuilding or restoring to operating condition vehicles subject to registration under chapter 321, which have been damaged or wrecked.
9. *"Vehicle salvager"* means a person engaged in the business of scrapping, recycling, dismantling, or storing wrecked or damaged vehicles or selling reusable parts of vehicles or storing vehicles not currently registered which vehicles are subject to registration under chapter 321.
10. *"Wrecked or salvage vehicle"* means a damaged vehicle for which the cost of repair exceeds fifty percent of the fair market value of the vehicle before it became damaged.

[C79, 81, §321H.2]
97 Acts, ch 108, §32

321H.3 Prohibitions.

Except for educational institutions, people licensed as new vehicle dealers under chapter 322, people engaged in a hobby not for profit, people engaged in the business of purchasing bodies, parts of bodies, frames or component parts of vehicles only for sale as scrap metal or a person licensed under the provisions of this chapter as an authorized vehicle recycler, a person in this state shall not engage in the business of:

1. Selling or offering for sale used bodies, parts of bodies, frames, or component parts of more than six used vehicles subject to registration under chapter 321 in a calendar year; or
2. Wrecking or dismantling in a calendar year more than six vehicles or the parts of more than six vehicles subject to registration under chapter 321 for resale; or
3. Rebuilding or restoring for sale six or more wrecked or salvage vehicles subject to registration under chapter 321 in a calendar year; or
4. Storing vehicles not currently registered or storing damaged vehicles except where such storing of damaged vehicles is incidental to the primary purpose of the repair of motor vehicles for others, scrapping, disposing, salvaging or recycling more than six vehicles or parts of more than six vehicles subject to registration under chapter 321 in a calendar year.

[C79, 81, §321H.3]
88 Acts, ch 1089, §8; 97 Acts, ch 108, §33

321H.4 License application and fees.

1. Upon application and payment of a fee, a person may apply for a license to operate as an authorized vehicle recycler to engage in the business as one or more of the following:

a. A vehicle rebuilder.
b. A used vehicle parts dealer.
c. A vehicle salvager.

2. Application for a license as an authorized vehicle recycler shall be made to the department on forms provided by the department. The application shall be accompanied by a fee of seventy dollars for a two-year license, one hundred forty dollars for a four-year license, or two hundred ten dollars for a six-year license. The license shall be approved or disapproved within thirty days after application for the license. A license is valid for two years, four years, or six years and expires on the last day of the last month of the two-year, four-year, or six-year period, as applicable. A licensee shall have the month of expiration and the month after the month of expiration to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license application and pay the required fee. A separate license shall be obtained for each county in which an applicant conducts operations.

The applicant shall specify which business or businesses, as enumerated in subsection 1, the applicant is applying for a license to engage in. An applicant shall have or demonstrate that the applicant will have the facilities and equipment necessary to engage in the business or businesses for which the applicant is applying for a license. The license shall specify which business or businesses the applicant has been authorized to engage in.

3. Each licensee shall file with the department a supplemental statement form when the licensee's principal place of business, an extension or the

operation of business in the county is changed to differ from the information contained on the initial license application form within fifteen days after each operational change. The department shall notify each licensee of the approval of a change in license status. If a change in license status is approved by the department the licensee shall surrender the old license to the department together with a thirty-five dollar fee. The department shall issue a new license modified to reflect the principal place of business, each extension and the operations of the licensee.

[C79, 81, §321H.4]

92 Acts, ch 1104, §5; 92 Acts, ch 1175, §10; 2000 Acts, ch 1016, §19

321H.4A Implementation of multiyear licensing. Repealed by 98 Acts, ch 1075, § 32.

321H.5 Display of license.

A license issued under the provisions of this chapter shall specify the location of the principal place of business, each extension within the county of the principal place of business and the license shall be conspicuously displayed at the principal place of business except during periods when the license is surrendered for modifications.

[C79, 81, §321H.5]

321H.6 Denial, suspension or revocation of license.

The license of a person issued under the provisions of this chapter may be denied, revoked or suspended if the department finds that the licensee has:

1. Violated any provisions of this chapter; or
2. Made any material misrepresentation to the department in connection with an application for a license, junking certificate, salvage certificate, certificate of title or registration of a vehicle; or
3. Been convicted of a fraudulent practice in connection with selling or offering for sale vehicles or parts of vehicles subject to registration under chapter 321; or
4. Failed to maintain an established principal place of business in the county without notification to the department; or
5. Had a license issued under the provisions of this chapter denied, suspended or revoked within the previous three years; or
6. Been convicted of violation of any of sections 321.52, 321.71, 321.78, 321.92, 321.97, 321.98, 321.99, 321.100, or 714.16.

[C79, 81, §321H.6]

321H.7 Fees.

All fees of whatever character accruing from the administration of this chapter shall be accounted for and paid by the department into the state treasury monthly and shall be credited to the road use tax fund.

[C79, 81, §321H.7]

321H.8 Penalties.

A person convicted of violating a provision of this chapter is guilty of a serious misdemeanor.

[C81, §321H.8]

97 Acts, ch 108, §34

CHAPTER 321I

MOTOR VEHICLE SERVICE CONTRACTS

Transferred to chapter 516E; 2000 Acts, ch 1147, §15
Section 321I.9, Code 1999, repealed by 2000 Acts, ch 1147, §14

CHAPTER 321J

OPERATING WHILE INTOXICATED

1986 Iowa Acts, ch 1220 enactment of this chapter applies to any judicial or administrative action which arises due to a violation which occurs after July 1, 1986, and also applies to any judicial or administrative action which arose prior to July 1, 1986, due to a violation of a preceding Code section or implementing rule which was the same or substantially similar to a section in 1986 Iowa Acts, ch 1220, or an implementing rule, if the defendant or defendant's counsel requests that the action proceed under 1986 Iowa Acts, ch 1220.
References to actions which occurred previously under "this chapter" or "this section" include the preceding Code chapter or section which covers the same or substantially similar actions;
86 Acts, ch 1220, §51, 52.

321J.1 Definitions.
321J.1A Drunk driving public education campaign — pamphlets.
321J.2 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .10 or more (OWI).
321J.2A Persons under the age of twenty-one.
321J.2B Parental and school notification — persons under eighteen years of age.
321J.3 Substance abuse evaluation or treatment — rules.
321J.4 Revocation of license — ignition interlock devices — conditional temporary restricted license.
321J.4A Surrender of registration and plates. Repealed by 95 Acts, ch 48, §24.
321J.4B Motor vehicle impoundment or immobilization — penalty — liability of vehicle owner.
321J.5 Preliminary screening test.
321J.6 Implied consent to test.
321J.7 Dead or unconscious persons.
321J.8 Statement of officer.
321J.9 Refusal to submit — revocation.
321J.10 Tests pursuant to warrants.
321J.11 Taking sample for test.
321J.12 Test result revocation.
321J.13 Hearing on revocation — appeal.
321J.14 Judicial review.
321J.15 Evidence in any action.
321J.16 Proof of refusal admissible.
321J.17 Civil penalty — disposition — conditions for license reinstatement.
321J.18 Other evidence.
321J.19 Information relayed to other states.
321J.20 Temporary restricted license.
321J.21 Driving while license suspended, denied, revoked, or barred.
321J.22 Drinking drivers course.
321J.23 Legislative findings.
321J.24 Court-ordered visitation for offenders — immunity from liability.
321J.25 Youthful offender substance abuse awareness program.

321J.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Alcohol concentration"* means the number of grams of alcohol per any of the following:

a. One hundred milliliters of blood.

b. Two hundred ten liters of breath.

c. Sixty-seven milliliters of urine.

2. *"Alcoholic beverage"* includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

3. *"Arrest"* includes but is not limited to taking into custody pursuant to section 232.19.

4. *"Controlled substance"* means any drug, substance, or compound that is listed in section 124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound.

5. *"Department"* means the state department of transportation.

6. *"Director"* means the director of transportation or the director's designee.

7. *"Driver's license"* means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to a driver's, commercial driver's, temporary restricted, or temporary license and an instruction, chauffeur's instruction, commercial driver's instruction, or temporary permit.

8. *"Peace officer"* means:

a. A member of the Iowa state patrol.

b. A police officer under civil service as provided in chapter 400.

c. A sheriff.

d. A regular deputy sheriff who has had formal police training.

e. Any other law enforcement officer who has satisfactorily completed an approved course relating to motor vehicle operators under the influence of alcoholic beverages at the Iowa law enforcement academy or a law enforcement training program approved by the department of public safety.

9. *"Serious injury"* means a bodily injury

which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes protracted loss or impairment of the function of any bodily organ or major bodily member, or which causes the loss of any bodily member.

86 Acts, ch 1220, §1; 90 Acts, ch 1230, §83; 98 Acts, ch 1073, §9; 98 Acts, ch 1074, §27; 98 Acts, ch 1138, §10; 2001 Acts, ch 132, §16

321J.1A Drunk driving public education campaign — pamphlets.

1. The department of public safety, the governor's traffic safety bureau, the state department of transportation, the governor, and the attorney general shall cooperate in an ongoing public education campaign to inform the citizens of this state of the dangers and the specific legal consequences of driving drunk in this state. The entities shall use their best efforts to utilize all available opportunities for making public service announcements on television and radio broadcasts, and to obtain and utilize federal funds for highway safety and other grants in conducting the public education campaign.

2. The department shall publish pamphlets containing the criminal and administrative penalties for drunk driving, and related laws, rules, instructions, and explanatory matter. This information may be included in pamphlets containing information related to other motor vehicle laws, published pursuant to section 321.15. Copies of such pamphlets shall be given wide distribution, and a supply shall be made available to each county treasurer.

97 Acts, ch 177, §3

321J.2 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .10 or more (OWI).

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of .10 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

a. A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, the court may waive up to five hundred dollars of the fine when the defendant presents to the court at the end of the minimum period of ineligibility, a temporary restricted license issued pursuant to section 321J.20. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Revocation of the person's driver's license pursuant to section 321J.4, subsection 1, section 321J.9, or section 321J.12, which includes a minimum revocation period of one hundred eighty days, including a minimum period of ineligibility for a temporary restricted license of thirty days, and may involve a revocation period of one year.

(4) Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to subsection 3.

b. An aggravated misdemeanor for a second offense, and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, and assessed a fine of not less than one thousand five hundred dollars nor more than five thousand dollars.

c. A class "D" felony for a third offense and each subsequent offense, and shall be committed to the custody of the director of the department of corrections for an indeterminate term not to exceed five years, shall be confined for a mandatory minimum term of thirty days, and shall be assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars.

(1) If the court does not suspend a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph *"c"*, the person shall be assigned to a facility pursuant to section 904.513.

(2) If the court suspends a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph *"c"*, the court shall order the person to serve not less than thirty days nor more than one year in the county jail, and the person may be committed to treatment in the community under section 907.6.

3. *a.* Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a speci-

men of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

b. All persons convicted of an offense under subsection 2 shall be ordered, at the person's expense, to undergo, prior to sentencing, a substance abuse evaluation.

c. Where the program is available and is appropriate for the convicted person, a person convicted of an offense under subsection 2 shall be ordered to participate in a reality education substance abuse prevention program as provided in section 321J.24.

d. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license revocation under this chapter:

a. Any conviction or revocation deleted from motor vehicle operating records pursuant to section 321.12 shall not be considered as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the one defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1.

6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

7. *a.* This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

b. When charged with a violation of subsection 1, paragraph *"c"*, a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

c. The department of public safety shall adopt

nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances.

9. *a.* In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, *"emergency response"* means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph *"b"* or *"c"*, if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1, paragraph *"b"* or *"c"*.

86 Acts, ch 1220, §2; 87 Acts, ch 118, §4; 87 Acts, ch 215, §46; 90 Acts, ch 1233, §20; 90 Acts, ch 1251, §33; 97 Acts, ch 177, §4, 5; 98 Acts, ch 1073, §9; 98 Acts, ch 1100, §50; 98 Acts, ch 1138, §2, 3, 11 – 13, 37; 99 Acts, ch 96, §36; 2000 Acts, ch 1118, §1; 2000 Acts, ch 1135, §1; 2002 Acts, ch 1042, §1

For provisions relating to third offense OWI driver's license revocations and restoration of driving privileges, see 99 Acts, ch 153, §25

Subsection 2, paragraph c stricken and rewritten

321J.2A Persons under the age of twenty-one.

A person who is under the age of twenty-one shall not operate a motor vehicle while having an alcohol concentration, as defined under section 321J.1, of .02 or more. The driver's license or nonresident operating privilege of a person who is under the age of twenty-one and who operates a motor vehicle while having an alcohol concentration of .02 or more shall be revoked by the department for the period of time specified under section 321J.12. A revocation under this section shall not preclude a prosecution or conviction under any applicable criminal provisions of this chapter. However, if the person is convicted of a criminal offense under section 321J.2, the revocation imposed under this section shall be superseded by any revocation imposed as a result of the conviction.

In any proceeding regarding a revocation under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

95 Acts, ch 48, §7; 98 Acts, ch 1073, §9

321J.2B Parental and school notification — persons under eighteen years of age.

1. A peace officer shall make a reasonable effort to identify a person under the age of eighteen who violates section 321J.2 or 321J.2A and, if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of the violation, whether or not the person is taken into custody, unless the officer has reasonable grounds to believe that notification is not in the best interests of the person or will endanger that person.

2. The peace officer shall also make a reasonable effort to identify the elementary or secondary school which the person attends if the person is enrolled in elementary or secondary school and to notify the superintendent or the superintendent's designee of the school which the person attends, or the authorities in charge of the nonpublic school which the person attends, of the violation. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school, of the violation. A reasonable attempt to notify the person includes, but is not limited to, a telephone call or notice by first-class mail.

2000 Acts, ch 1138, §4

321J.3 Substance abuse evaluation or treatment — rules.

1. *a.* In addition to orders issued pursuant to section 321J.2, subsection 3, and section 321J.17, the court shall order any defendant convicted under section 321J.2 to follow the recommendations proposed in the substance abuse evaluation for ap-

propriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86.

b. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

c. The court may prescribe the length of time for the evaluation and treatment or it may request that the community college conducting the course for drinking drivers which the person is ordered to attend or the treatment program to which the person is committed immediately report to the court when the person has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

d. Upon successfully completing a course for drinking drivers or an ordered substance abuse treatment program, a court may place the person on probation for six months and as a condition of probation, the person shall attend a program providing posttreatment services relating to substance abuse as approved by the court.

e. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

f. A defendant who fails to carry out the order of the court shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

g. In addition to any other condition of probation, the person shall attend a program providing substance abuse prevention services or posttreatment services related to substance abuse as ordered by the court. The person shall report to the person's probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

2. *a.* Upon a second or subsequent offense in violation of section 321J.2, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in Iowa providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

b. The court may prescribe the length of time for the evaluation and treatment or it may request that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

c. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

3. The state department of transportation, in cooperation with the judicial branch, shall adopt rules, pursuant to the procedure in section 125.33, regarding the assignment of persons ordered under section 321J.17 to submit to substance abuse evaluation and treatment. The rules shall be applicable only to persons other than those committed to the custody of the director of the department of corrections under section 321J.2. The rules shall be consistent with the practices and procedures of the judicial branch in sentencing persons to substance abuse evaluation and treatment under section 321J.2. The rules shall include the requirement that the treatment programs utilized by a person pursuant to an order of the department meet the licensure standards of the division of substance abuse for the department of public health. The rules shall also include provisions for payment of costs by the offenders, including insurance reimbursement on behalf of offenders, or other forms of funding, and shall also address reporting requirements of the facility, consistent with the provisions of sections 125.84 and 125.86. The department shall be entitled to treatment information contained in reports to the department, notwithstanding any provision of chapter 125 that would restrict department access to treatment information and records.

86 Acts, ch 1220, §3; 87 Acts, ch 118, §5; 90 Acts, ch 1251, §34; 90 Acts, ch 1253, §120; 97 Acts, ch 177, §6, 7; 98 Acts, ch 1047, §28

321J.4 Revocation of license — ignition interlock devices — conditional temporary restricted license.

1. If a defendant is convicted of a violation of section 321J.2 and the defendant's driver's license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for one hundred eighty days if the defendant has had no previous conviction or revocation under this chapter. The defendant shall not be eligible for any tempo-

rary restricted license for at least thirty days after the effective date of the revocation if a test was obtained, and for at least ninety days if a test was refused. If the defendant is under the age of twenty-one, the defendant shall not be eligible for a temporary restricted license for at least sixty days after the effective date of revocation.

2. If a defendant is convicted of a violation of section 321J.2, and the defendant's driver's license or nonresident operating privilege has not already been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for two years if the defendant has had a previous conviction or revocation under this chapter. The defendant shall not be eligible for any temporary restricted license for one year after the effective date of revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

3. If the court defers judgment pursuant to section 907.3 for a violation of section 321J.2, and if the defendant's driver's license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12, or has not otherwise been revoked for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for a period of not less than thirty days nor more than ninety days. The defendant shall not be eligible for any temporary restricted license for at least thirty days after the effective date of the revocation if a test was obtained and for at least ninety days if a test was refused. If the defendant is under the age of twenty-one, the defendant shall not be eligible for a temporary restricted license for at least sixty days after the effective date of the revocation.

4. Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation. The court shall require the defendant to surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order for revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

5. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a personal injury, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a serious injury was sustained by any person other than the defendant and, if so, whether the defendant's conduct in violation of section 321J.2 caused the serious injury. If the court so determines, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of one year in addition to any other period of suspension or revocation. The defendant shall not be eligible for any temporary restricted license until the minimum period of ineligibility has expired under this section or section 321J.9, 321J.12, or 321J.20. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

6. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a death, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a death occurred and, if so, whether the defendant's conduct in violation of section 321J.2 caused the death. If the court so determines, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for any temporary restricted license for at least two years after the revocation. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

7. If a license or permit to operate a motor vehicle is revoked or denied under this section or section 321J.9 or 321J.12, the period of revocation or denial shall be the period provided for such a revocation or until the defendant reaches the age of eighteen whichever period is longer.

8. *a.* On a conviction for or as a condition of a deferred judgment for a violation of section 321J.2, the court may order the defendant to install ignition interlock devices of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the defendant which, without tampering or the intervention of another person, would prevent the defendant from operating the motor vehicle with an alcohol concentration greater than a level set by rule of the commissioner of public safety.

b. The commissioner of public safety shall adopt rules to approve certain ignition interlock devices and the means of installation of the devices, and shall establish the level of alcohol concentration beyond which an ignition interlock de-

vice will not allow operation of the motor vehicle in which it is installed.

c. The order to install ignition interlock devices shall remain in effect for a period of time as determined by the court which shall not exceed the maximum term of imprisonment which the court could have imposed according to the nature of the violation. While the order is in effect, the defendant shall not operate a motor vehicle which does not have an approved ignition interlock device installed.

d. If the defendant's driver's license or nonresident operating privilege has been revoked, the department shall not issue a temporary permit or a driver's license to the person without certification that approved ignition interlock devices have been installed in all motor vehicles owned or operated by the defendant while the order is in effect.

e. A defendant who fails within a reasonable time to comply with an order to install an approved ignition interlock device may be declared in contempt of court and punished accordingly.

f. A person who tampers with or circumvents an ignition interlock device installed under a court order while an order is in effect commits a serious misdemeanor.

9. *a.* A person whose noncommercial driver's license has either been revoked under this chapter, or revoked or suspended under chapter 321 solely for violations of this chapter, or who has been determined to be a habitual offender under chapter 321 based solely on violations of this chapter or on violations listed in section 321.560, subsection 1, paragraph *"b"*, and who is not eligible for a temporary restricted license under this chapter may petition the court upon the expiration of the minimum period of ineligibility for a temporary restricted license provided for under this section, section 321J.9, 321J.12, 321J.20, or 321.560, for an order to the department to require the department to issue a temporary restricted license to the person notwithstanding section 321.560.

b. The petition shall include a current certified copy of the petitioner's official driving record issued by the department.

c. Upon the filing of a petition for a temporary restricted license under this section, the clerk of the district court in the county where the violation that resulted in the revocation occurred shall send notice of the petition to the department and the prosecuting attorney. The department and the prosecuting attorney shall each be given an opportunity to respond to and request a hearing on the petition.

d. The court shall determine if the temporary restricted license is necessary for the person to maintain the person's present employment. However, a temporary restricted license shall not be ordered or issued for a violation of section 321J.2A or to a person under the age of twenty-one whose license is revoked under this section or section 321J.9 or 321J.12. If the court determines that the temporary restricted license is necessary for the person to maintain the person's present employment, and that the minimum period of ineligibility for receipt of a temporary license has expired, the court shall order the department to issue to the person a temporary restricted license conditioned upon the person's certification to the court of the installation of approved ignition interlock devices in all motor vehicles that it is necessary for the person to operate to maintain the person's present employment.

e. Section 321.561 does not apply to a person operating a motor vehicle in the manner permitted under this subsection.

f. If the person operates a motor vehicle which does not have an approved ignition interlock device or if the person tampers with or circumvents an ignition interlock device, in addition to other penalties provided, the person's temporary restricted license shall be revoked.

g. A person holding a temporary restricted license issued under this subsection shall not operate a commercial motor vehicle, as defined in section 321.1, on a highway if a commercial driver's license is required for the person to operate the commercial motor vehicle.

h. Notwithstanding any provision of this chapter to the contrary, the court may order the department to issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this subsection, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's noncommercial driver's license or nonresident operating privileges.

86 Acts, ch 1220, §4; 88 Acts, ch 1168, §1; 90 Acts, ch 1230, §84; 92 Acts, ch 1212, §29; 95 Acts, ch 48, §8 – 10; 95 Acts, ch 55, §12; 96 Acts, ch 1090, §9 – 11; 96 Acts, ch 1152, §22; 97 Acts, ch 177, §8 – 11; 98 Acts, ch 1073, §9, 12; 98 Acts, ch 1138, §4, 36, 37; 2000 Acts, ch 1133, §15; 2000 Acts, ch 1138, §3

For provisions relating to third offense OWI driver's license revocations and restoration of driving privileges, see 99 Acts, ch 153, §25

321J.4A Surrender of registration and plates. Repealed by 95 Acts, ch 48, § 24.

321J.4B Motor vehicle impoundment or immobilization — penalty — liability of vehicle owner.

1. For purposes of this section:

a. *"Immobilized"* means the installation of a device in a motor vehicle that completely prevents a motor vehicle from being operated, or the installation of an ignition interlock device of a type approved by the commissioner of public safety.

b. *"Impoundment"* means the process of seizure and confinement within an enclosed area of a motor vehicle, for the purpose of restricting access to the vehicle.

c. *"Owner"* means the registered titleholder of

a motor vehicle; except in the case where a rental or leasing agency is the registered titleholder, in which case the lessee of the vehicle shall be treated as the owner of the vehicle for purposes of this section.

2. A motor vehicle is subject to impoundment in the following circumstances:

a. If a person operates a vehicle in violation of section 321J.2, and if convicted for that conduct, the conviction would be a second or subsequent offense under section 321J.2.

b. If a person operates a vehicle while that person's driver's license or operating privilege has been suspended, denied, revoked, or barred due to a violation of section 321J.2.

The clerk of court shall send notice of a conviction of an offense for which the vehicle was impounded to the impounding authority upon conviction of the defendant for such offense.

Impoundment of the vehicle under this section may occur in addition to any criminal penalty imposed under chapter 321 or this chapter for the underlying criminal offense.

3. The motor vehicle operated by the person in the commission of any offense included in subsection 2 may be immediately impounded or immobilized in accordance with this section.

a. A person or agency taking possession of an impounded or immobilized motor vehicle shall do the following:

(1) Make an inventory of any property contained in the vehicle, according to the agency's inventory procedure. The agency responsible for the motor vehicle shall also deliver a copy of the inventory to the county attorney.

(2) Contact all rental or leasing agencies registered as owners of the vehicle, as well as any parties registered as holders of a secured interest in the vehicle, in accordance with subsection 12.

b. The county attorney shall file a copy of the inventory with the district court as part of each file related to criminal charges filed under this section.

4. An owner of a motor vehicle impounded or immobilized under this section, who knows of, should have known of, or gives consent to the operation of, the motor vehicle in violation of subsection 2, paragraph *"b"*, shall be:

a. Guilty of a simple misdemeanor, and

b. Jointly and severally liable for any damages caused by the person who operated the motor vehicle, subject to the provisions of chapter 668.

5. *a.* The following persons shall be entitled to immediate return of the motor vehicle without payment of costs associated with the impoundment or immobilization of the vehicle:

(1) The owner of the motor vehicle, if the person who operated the motor vehicle is not a co-owner of the motor vehicle.

(2) A motor vehicle rental or leasing agency that owns the vehicle.

(3) A person who owns the motor vehicle and who is charged but is not convicted of the violation of section 321.218, 321.561, 321A.32, 321J.2, or 321J.21, which resulted in the impoundment or immobilization of the motor vehicle under this section.

b. Upon conviction of the defendant for a violation of subsection 2, paragraph *"a"*, the court may order continued impoundment, or the immobilization, of the motor vehicle used in the commission of the offense, if the convicted person is the owner of the motor vehicle, and shall specify all of the following in the order:

(1) The motor vehicle that is subject to the order.

(2) The period of impoundment or immobilization.

(3) The person or agency responsible for carrying out the order requiring continued impoundment, or the immobilization, of the motor vehicle.

c. If the vehicle subject to the order is in the custody of a law enforcement agency, the court shall designate that agency as the responsible agency. If the vehicle is not in the custody of a law enforcement agency, the person or agency responsible for carrying out the order shall be any person deemed appropriate by the court, including but not limited to a law enforcement agency with jurisdiction over the area in which the residence of the vehicle owner is located. The person or agency responsible for carrying out the order shall determine whether the motor vehicle shall be impounded or immobilized.

d. The period of impoundment or immobilization of a motor vehicle under this section shall be the period of license revocation imposed upon the person convicted of the offense or one hundred eighty days, whichever period is longer. The impoundment or immobilization period shall commence on the day that the vehicle is first impounded or immobilized.

e. The clerk of the district court shall send a copy of the order to the department, the person convicted of the offense, the person or agency responsible for executing the order for impoundment or immobilization, and any holders of any security interests in the vehicle.

f. If the vehicle subject to the court order is not in the custody of a law enforcement agency, the person or agency designated in the order as the person or agency responsible for executing the order shall, upon receipt of the order, promptly locate the vehicle specified in the order, seize the motor vehicle and the license plates, and send or deliver the vehicle's license plates to the department.

If the vehicle is located at a place other than the place at which the court order is to be carried out, the person or agency responsible for executing the order shall arrange for the vehicle to be moved to the place of impoundment or immobilization. When the vehicle is found, is impounded or immobilized, and is at the place of impoundment or im-

mobilization, the person or agency responsible for executing the order shall notify the clerk of the date on which the order was executed. The clerk shall notify the department of the date on which the order was executed.

g. Upon receipt of a court order for continued impoundment or immobilization of the motor vehicle, the agency shall review the value of the vehicle in relation to the costs associated with the period of impoundment of the motor vehicle specified in the order. If the agency determines that the costs of impoundment of the motor vehicle exceed the actual wholesale value of the motor vehicle, the agency may treat the vehicle as an abandoned vehicle pursuant to section 321.89. If the agency elects to treat the motor vehicle as abandoned, the agency shall notify the registered owner of the motor vehicle that the vehicle shall be deemed abandoned and shall be sold in the manner provided in section 321.89 if payment of the total cost of impoundment is not received within twenty-one days of the mailing of the notice. The agency shall provide documentation regarding the valuation of the vehicle and the costs of impoundment. This paragraph shall not apply to vehicles that are immobilized pursuant to this section or if subsection 12, paragraph *"a"* or *"b"*, applies.

6. Upon conviction of the defendant for a second or subsequent violation of subsection 2, paragraph *"b"*, the court shall order, if the convicted person is the owner of the motor vehicle used in the commission of the offense, that that motor vehicle be seized and forfeited to the state pursuant to chapters 809 and 809A.

7. *a.* Upon receipt of a notice of conviction of the defendant for a violation of subsection 2, the impounding authority shall seize the motor vehicle's license plates and registration, and shall send or deliver them to the department.

b. The department shall destroy license plates received under this section and shall not authorize the release of the vehicle or the issuance of new license plates for the vehicle until the period of impoundment or immobilization has expired, and the fee and costs assessed under subsection 10 have been paid. The fee for issuance of new license plates and certificates of registration shall be the same as for the replacement of lost, mutilated, or destroyed license plates and certificates of registration.

8. *a.* Upon conviction for a violation of subsection 2, the court shall assess the defendant, in addition to any other penalty, a fee of one hundred dollars plus the cost of any expenses for towing, storage, and any other costs of impounding or immobilizing the motor vehicle, to be paid to the clerk of the district court.

b. The person or agency responsible for impoundment or immobilization under this section shall inform the court of the costs of towing, storage, and any other costs of impounding or immobilizing the motor vehicle. Upon payment of the fee and costs, the clerk shall forward a copy of the receipt to the department.

c. If a law enforcement agency impounds or immobilizes a motor vehicle, the amount of the fee and expenses deposited with the clerk shall be paid by the clerk to the law enforcement agency responsible for executing the order to reimburse the agency for costs incurred for impoundment or immobilization equipment and, if required, in sending officers to search for and locate the vehicle specified in the impoundment or immobilization order.

9. Operating a motor vehicle on a street or highway in this state in violation of an order of impoundment or immobilization is a serious misdemeanor. A motor vehicle which is subject to an order of impoundment or immobilization that is operated on a street or highway in this state in violation of the order shall be seized and forfeited to the state under chapters 809 and 809A.

10. Once the period of impoundment or immobilization has expired, the owner of the motor vehicle shall have thirty days to claim the motor vehicle and pay all fees and charges imposed under this section. If the owner or the owner's designee has not claimed the vehicle and paid all fees and charges imposed under this section within seven days from the date of expiration of the period, the clerk shall send written notification to the motor vehicle owner, at the owner's last known address, notifying the owner of the date of expiration of the period of impoundment or immobilization and of the period in which the motor vehicle must be claimed. If the motor vehicle owner fails to claim the motor vehicle and pay all fees and charges imposed within the thirty-day period, the motor vehicle shall be forfeited to the state under chapters 809 and 809A.

11. *a.* (1) During the period of impoundment or immobilization the owner of an impounded or immobilized vehicle shall not sell or transfer the title of the motor vehicle which is subject to the order of impoundment or immobilization.

(2) A person convicted of an offense under subsection 2, shall not purchase or register any motor vehicle during the period of impoundment, immobilization, or license revocation.

Violation of paragraph *"a"* is a serious misdemeanor.

b. If, during the period of impoundment or immobilization, the title to the motor vehicle which is the subject of the order is transferred by the foreclosure of a chattel mortgage, a sale upon execution, the cancellation of a conditional sales contract, or an order of a court, the court which enters the order that permits transfer of the title shall notify the department of the transfer of the title. The department shall enter notice of the transfer of the title to the motor vehicle in the previous owner's vehicle registration record.

12. Notwithstanding other requirements of this section:

a. Upon learning the address or phone number of a rental or leasing company which owns a motor vehicle impounded or immobilized under this section, the peace officer, county attorney, or attorney general shall immediately contact the company to inform the company that the vehicle is available for return to the company.

b. The holder of a security interest in a vehicle which is impounded or immobilized pursuant to this section or forfeited in the manner provided in chapters 809 and 809A shall be notified of the impoundment, immobilization, or forfeiture within seventy-two hours of the seizure of the vehicle and shall have the right to claim the motor vehicle without payment of any fees or surcharges unless the value of the vehicle exceeds the value of the security interest held by the creditor.

c. Any of the following persons may make application to the court for permission to operate a motor vehicle, which is impounded or immobilized pursuant to this section, during the period of impoundment or immobilization, if the applicant's driver's license or operating privilege has not been suspended, denied, revoked, or barred, and an ignition interlock device of a type approved by the commissioner of public safety is installed in the motor vehicle prior to operation:

(1) A person, other than the person who committed the offense which resulted in the impoundment or immobilization, who is not a member of the immediate family of the person who committed the offense but is a joint owner of the motor vehicle.

(2) A member of the immediate family of the person who committed the offense which resulted in the impoundment or immobilization, if the member demonstrates that the motor vehicle that is subject to the order for impoundment or immobilization is the only motor vehicle possessed by the family.

For purposes of this section, *"a member of the immediate family"* means a spouse, child, or parent of the person who committed the offense.

13. The impoundment, immobilization, or forfeiture of a motor vehicle under this chapter does not constitute loss of use of a motor vehicle for purposes of any contract of insurance.

95 Acts, ch 48, §11; 95 Acts, ch 143, §5; 96 Acts, ch 1133, §42, 43; 97 Acts, ch 177, §12; 98 Acts, ch 1073, §9

321J.5 Preliminary screening test.

1. When a peace officer has reasonable grounds to believe that either of the following have occurred, the peace officer may request that the operator provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose:

a. A motor vehicle operator may be violating or has violated section 321J.2 or 321J.2A.

b. The operator has been involved in a motor vehicle collision resulting in injury or death.

2. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made or whether to request a chemical test authorized in this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this chapter.

86 Acts, ch 1220, §5; 95 Acts, ch 48, §12

321J.6 Implied consent to test.

1. A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 or 321J.2A is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of a controlled substance or other drugs, subject to this section. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A, and if any of the following conditions exist:

a. A peace officer has lawfully placed the person under arrest for violation of section 321J.2.

b. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.

c. The person has refused to take a preliminary breath screening test provided by this chapter.

d. The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 321J.2.

e. The preliminary breath screening test was administered to a person operating a commercial motor vehicle as defined in section 321.1 and it indicated an alcohol concentration of 0.04 or more.

f. The preliminary breath screening test was administered and it indicated an alcohol concentration less than the level prohibited by section 321J.2, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

g. The preliminary breath screening test was administered and it indicated an alcohol concentration of .02 or more but less than .10 and the person is under the age of twenty-one.

2. The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested. Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and section 321J.9 applies. A refusal to submit to a

chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test. If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused or the arrest is made, whichever occurs first, a test is not required, and there shall be no revocation under section 321J.9.

3. Notwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a blood or urine test shall be required even after another type of test has been administered. Section 321J.9 applies to a refusal to submit to a chemical test of urine or blood requested under this subsection.

86 Acts, ch 1220, §6; 90 Acts, ch 1230, §85; 95 Acts, ch 48, §13, 14; 98 Acts, ch 1138, §14 – 16

321J.7 Dead or unconscious persons.

A person who is dead, unconscious, or otherwise in a condition rendering the person incapable of consent or refusal is deemed not to have withdrawn the consent provided by section 321J.6, and the test may be given if a licensed physician certifies in advance of the test that the person is dead, unconscious, or otherwise in a condition rendering that person incapable of consent or refusal. If the certification is oral, a written certification shall be completed by the physician within a reasonable time of the test.

86 Acts, ch 1220, §7; 97 Acts, ch 147, §4; 97 Acts, ch 177, §13

321J.8 Statement of officer.

A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

1. If the person refuses to submit to the test, the person's driver's license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.9.

2. If the person submits to the test and the results indicate the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2 or 321J.2A, the person's driver's license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.12.

3. If the person is operating a commercial motor vehicle as defined in section 321.1 and either refuses to submit to the test or submits to the test and the results indicate an alcohol concentration of 0.04 or more, the person is disqualified from operating a commercial motor vehicle for the applicable period under section 321.208 in addition to any revocation of the person's driver's license or nonresident operating privilege which may be applicable under this chapter.

This section does not apply in any case involving a person described in section 321J.7.

86 Acts, ch 1220, §8; 90 Acts, ch 1230, §86; 95 Acts, ch 48, §15; 98 Acts, ch 1073, §9; 98 Acts, ch 1138, §17

321J.9 Refusal to submit — revocation.

1. If a person refuses to submit to the chemical testing, a test shall not be given, but the department, upon the receipt of the peace officer's certification, subject to penalty for perjury, that the officer had reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321J.2 or 321J.2A, that specified conditions existed for chemical testing pursuant to section 321J.6, and that the person refused to submit to the chemical testing, shall revoke the person's driver's license and any nonresident operating privilege for the following periods of time:

a. One year if the person has no previous revocation under this chapter; and

b. Two years if the person has had a previous revocation under this chapter.

2. *a.* A person whose driver's license or nonresident operating privileges are revoked under subsection 1, paragraph *"a"*, shall not be eligible for a temporary restricted license for at least ninety days after the effective date of the revocation. A person whose driver's license or nonresident operating privileges are revoked under subsection 1, paragraph *"b"*, shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation.

b. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

3. If the person is a resident without a license or permit to operate a motor vehicle in this state, the department shall deny to the person the issuance of a license or permit for the same period a license or permit would be revoked, and deny issuance of a temporary restricted license for the same period of ineligibility for receipt of a temporary restricted license, subject to review as provided in this chapter.

4. The effective date of revocation shall be ten days after the department has mailed notice of revocation to the person by first class mail, notwithstanding chapter 17A. The peace officer who requested or directed the administration of a chemical test may, on behalf of the department, serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical

testing. If the peace officer serves immediate notice, the peace officer shall take the Iowa license or permit of the driver, if any, and issue a temporary license effective for ten days. The peace officer shall immediately send the person's license to the department along with the officer's certificate indicating the person's refusal to submit to chemical testing.

86 Acts, ch 1220, §9; 95 Acts, ch 48, §16; 97 Acts, ch 177, §14; 98 Acts, ch 1073, §9; 2001 Acts, ch 32, §47

321J.10 Tests pursuant to warrants.

1. Refusal to consent to a test under section 321J.6 does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 707.5 or 707.6A if all of the following grounds exist:

a. A traffic accident has resulted in a death or personal injury reasonably likely to cause death.

b. There are reasonable grounds to believe that one or more of the persons whose driving may have been the proximate cause of the accident was violating section 321J.2 at the time of the accident.

2. Search warrants may be issued under this section in full compliance with chapter 808 or they may be issued under subsection 3.

3. Notwithstanding section 808.3, the issuance of a search warrant under this section may be based upon sworn oral testimony communicated by telephone if the magistrate who is asked to issue the warrant is satisfied that the circumstances make it reasonable to dispense with a written affidavit. The following shall then apply:

a. When a caller applies for the issuance of a warrant under this section and the magistrate becomes aware of the purpose of the call, the magistrate shall place under oath the person applying for the warrant.

b. The person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the magistrate on a form that will be considered the original warrant. The magistrate may direct that the warrant be modified.

c. The oral application testimony shall set forth facts and information tending to establish the existence of the grounds for the warrant and shall describe with a reasonable degree of specificity the person or persons whose driving is believed to have been the proximate cause of the accident and from whom a specimen is to be withdrawn and the location where the withdrawal of the specimen or specimens is to take place.

d. If a voice recording device is available, the magistrate may record by means of that device all of the call after the magistrate becomes aware of the purpose of the call. Otherwise, the magistrate shall cause a stenographic or longhand memorandum to be made of the oral testimony of the person applying for the warrant.

e. If the magistrate is satisfied from the oral testimony that the grounds for the warrant exist or that there is probable cause to believe that they exist, the magistrate shall order the issuance of the warrant by directing the person applying for the warrant to sign the magistrate's name on the duplicate warrant. The magistrate shall immediately sign the original warrant and enter on its face the exact time when the issuance was ordered.

f. The person who executes the warrant shall enter the time of execution on the face of the duplicate warrant.

g. The magistrate shall cause any record of the call made by means of a voice recording device to be transcribed, shall certify the accuracy of the transcript, and shall file the transcript and the original record with the clerk. If a stenographic or longhand memorandum was made of the oral testimony of the person who applied for the warrant, the magistrate shall file a signed copy with the clerk.

h. The clerk of court shall maintain the original and duplicate warrants along with the record of the telephone call and any transcript or memorandum made of the call in a confidential file until a charge, if any, is filed.

4. *a.* Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 321J.11. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants.

b. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, the warrant may be executed as follows:

(1) If the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing, unless the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

(2) If the testimony in support of the warrant sets forth facts and information that the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a urine sample shall be collected in lieu of a blood sample, if the person is capable of giving a urine sample and the sample can be collected without the need to physically compel the execution of the warrant.

5. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine

not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment. Also, if the withdrawal of a specimen is so resisted or obstructed, sections 321J.9 and 321J.16 apply.

6. Nonsubstantive variances between the contents of the original and duplicate warrants shall not cause a warrant issued under subsection 3 of this section to be considered invalid.

7. Specimens obtained pursuant to warrants issued under this section are not subject to disposition under section 808.9 or chapter 809 or 809A.

8. Subsections 1 to 7 of this section do not apply where a test may be administered under section 321J.7.

9. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to search warrants or pursuant to section 321J.11.

86 Acts, ch 1220, §10; 90 Acts, ch 1233, §21; 96 Acts, ch 1133, §44; 98 Acts, ch 1138, §18

321J.11 Taking sample for test.

Only a licensed physician, licensed physician assistant as defined in section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration, or may take a specimen of a person's urine for the purpose of determining the presence of a controlled substance or other drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood.

The person may have an independent chemical test or tests administered at the person's own expense in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests administered at the direction of the peace officer shall be made available to the person.

86 Acts, ch 1220, §11; 88 Acts, ch 1225, §26; 98 Acts, ch 1138, §19

321J.12 Test result revocation.

1. Upon certification, subject to penalty for perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the test results indicated the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2, or a combination of alcohol and another drug in violation of section 321J.2, the department shall revoke the person's driver's license or nonresident operating privilege for the following periods of time:

a. One hundred eighty days if the person has had no revocation under this chapter.

b. One year if the person has had a previous revocation under this chapter.

2. A person whose driver's license or nonresident operating privileges have been revoked under subsection 1, paragraph *"a"*, shall not be eligible for any temporary restricted license for at least thirty days after the effective date of the revocation. If the person is under the age of twenty-one, the person shall not be eligible for a temporary restricted license for at least sixty days after the effective date of the revocation. A person whose license or privileges have been revoked under subsection 1, paragraph *"b"*, for one year shall not be eligible for any temporary restricted license for one year after the effective date of the revocation.

3. The effective date of the revocation shall be ten days after the department has mailed notice of revocation to the person by first class mail, notwithstanding chapter 17A. The peace officer who requested or directed the administration of the chemical test may, on behalf of the department, serve immediate notice of revocation on a person whose test results indicated the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2, or a combination of alcohol and another controlled substance or drug in violation of section 321J.2.

4. If the peace officer serves that immediate notice, the peace officer shall take the person's Iowa license or permit, if any, and issue a temporary license valid only for ten days. The peace officer shall immediately send the person's driver's license to the department along with the officer's certificate indicating that the test results indicated the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2.

5. Upon certification, subject to penalty of perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2A, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the test results indicated an alcohol concentration as defined in section 321J.1 of .02 or more but less than .10, the department shall revoke the person's driver's li-

cense or operating privilege for a period of sixty days if the person has had no previous revocation under this chapter, and for a period of ninety days if the person has had a previous revocation under this chapter.

6. The results of a chemical test may not be used as the basis for a revocation of a person's driver's license or nonresident operating privilege if the alcohol or drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test is not equal to or in excess of the level prohibited by section 321J.2 or 321J.2A.

86 Acts, ch 1220, §12; 95 Acts, ch 48, §17; 95 Acts, ch 143, §12; 96 Acts, ch 1090, §12; 97 Acts, ch 177, §15, 16; 98 Acts, ch 1073, §9; 98 Acts, ch 1138, §20; 2001 Acts, ch 32, §48

321J.13 Hearing on revocation — appeal.

1. Notice of revocation of a person's noncommercial driver's license or operating privilege served pursuant to section 321J.9 or 321J.12 shall include a form accompanied by a preaddressed envelope on which the person served may indicate by a checkmark if the person only wishes to request a temporary restricted license after the mandatory ineligibility period for issuance of a temporary restricted license has ended, or if the person wishes a hearing to contest the revocation. The form shall clearly state on its face that the form must be completed and returned within ten days of receipt or the person's right to a hearing to contest the revocation is foreclosed. The form shall also be accompanied by a statement of the operation of and the person's rights under this chapter.

2. The department shall grant the person an opportunity to be heard within forty-five days of receipt of a request for a hearing if the request is made not later than ten days after receipt of notice of revocation served pursuant to section 321J.9 or 321J.12. The hearing shall be before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing may be recorded and its scope shall be limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A and one or more of the following:

a. Whether the person refused to submit to the test or tests.

b. Whether a test was administered and the test results indicated an alcohol concentration equal to or in excess of the level prohibited under section 321J.2 or 321J.2A.

c. Whether a test was administered and the test results indicated the presence of alcohol, a controlled substance or other drug, or a combination of alcohol and another drug, in violation of section 321J.2.

3. After the hearing the department shall order that the revocation be either rescinded or sustained. Upon receipt of the decision of the department to sustain a revocation, the person contesting the revocation has ten days to file a request for review of the decision by the director. The director or the director's designee shall review the decision within thirty days and shall either rescind or sustain the revocation or order a new hearing. If the director orders a new hearing, the department shall grant the person a new hearing within twenty days of the director's order.

4. The department shall stay the revocation of a person's driver's license or operating privilege for the period that the person is contesting the revocation under this section or section 321J.14 if it is shown to the satisfaction of the department that the new evidence is material and that there were valid reasons for failure to present it in the contested case proceeding before the department. However, a stay shall not be granted for violations of section 321J.2A.

5. If the department fails to comply with the time limitations of this section regarding granting a hearing, review by the director or the director's designee, or granting a new hearing, and if the request for a hearing or review by the director was properly made under this section, the revocation of the driver's license or operating privilege of the person who made the request for a hearing or review shall be rescinded. This subsection shall not apply in those cases in which a continuance to the hearing has been granted at the request of either the person who requested the hearing or the peace officer who requested or administered the chemical test.

6. *a.* The department shall grant a request for a hearing to rescind the revocation if the person whose motor vehicle license or operating privilege has been or is being revoked under section 321J.9 or 321J.12 submits a petition containing information relating to the discovery of new evidence that provides grounds for recision of the revocation.

b. The person shall prevail at the hearing if, in the criminal action on the charge of violation of section 321J.2 or 321J.2A resulting from the same circumstances that resulted in the administrative revocation being challenged, the court held one of the following:

(1) That the peace officer did not have reasonable grounds to believe that a violation of section 321J.2 or 321J.2A had occurred to support a request for or to administer a chemical test.

(2) That the chemical test was otherwise inadmissible or invalid.

c. Such a holding by the court in the criminal action is binding on the department, and the department shall rescind the revocation.

86 Acts, ch 1220, §13; 87 Acts, ch 148, §1; 88

Acts, ch 1109, §23; 88 Acts, ch 1214, §2; 89 Acts, ch 83, §46; 95 Acts, ch 48, §18; 97 Acts, ch 104, §30, 31; 98 Acts, ch 1073, §9; 98 Acts, ch 1138, §21; 99 Acts, ch 13, §22, 29; 2000 Acts, ch 1133, §16

321J.14 Judicial review.

Judicial review of an action of the department may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of that chapter, a petition for judicial review may be filed in the district court in the county where the alleged events occurred or in the county in which the administrative hearing was held.

86 Acts, ch 1220, §14

321J.15 Evidence in any action.

Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a motor vehicle in violation of section 321J.2 or 321J.2A, evidence of the alcohol concentration or the presence of a controlled substance or other drugs in the person's body substances at the time of the act alleged as shown by a chemical analysis of the person's blood, breath, or urine is admissible. If it is established at trial that an analysis of a breath specimen was performed by a certified operator using a device intended to determine alcohol concentration and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence.

86 Acts, ch 1220, §15; 95 Acts, ch 48, §19; 98 Acts, ch 1138, §22

321J.16 Proof of refusal admissible.

If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A.

86 Acts, ch 1220, §16; 95 Acts, ch 48, §20

321J.17 Civil penalty — disposition — conditions for license reinstatement.

1. If the department revokes a person's driver's license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit one-half of the money in the separate fund established in section 915.94 and one-half of the money in the general fund of the state. A temporary restricted license shall not be issued unless an ignition interlock device has been installed pursuant to section 321J.4 and the civil penalty has been paid. A driver's license or nonresident operating privilege shall not be reinstated unless proof of deinstallation of an ignition interlock device installed pursuant to section 321J.4 has been submitted to the department and the civil penalty has been paid.

2. If the department or a court orders the revocation of a person's driver's license or nonresident operating privilege under this chapter, the department or court shall also order the person, at the person's own expense, to do the following:

a. Enroll, attend, and satisfactorily complete a course for drinking drivers, as provided in section 321J.22.

b. Submit to evaluation and treatment or rehabilitation services.

The court or department may request that the community college or substance abuse treatment providers licensed under chapter 125 conducting the course for drinking drivers that the person is ordered to attend immediately report to the court or department that the person has successfully completed the course for drinking drivers. The court or department may request that the treatment program which the person attends periodically report on the defendant's attendance and participation in the program, as well as the status of treatment or rehabilitation.

A driver's license or nonresident operating privilege shall not be reinstated until proof of completion of the requirements of this subsection is presented to the department.

3. The department shall also require certification of installation of an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by any person seeking reinstatement following a second or subsequent conviction for a violation of section 321J.2, unless such a person has previously received a temporary restricted license as authorized by this chapter. The requirement for the installation of an approved ignition interlock device shall be for one year unless a different time period is required by statute.

86 Acts, ch 1220, §17; 87 Acts, ch 232, §24; 87 Acts, ch 234, §113; 89 Acts, ch 317, §37; 91 Acts, ch 258, §50; 93 Acts, ch 110, §1; 95 Acts, ch 143, §6; 97 Acts, ch 177, §17; 98 Acts, ch 1073, §9; 98 Acts, ch 1075, §25; 98 Acts, ch 1090, §67, 84; 2000 Acts, ch 1118, §2; 2002 Acts, ch 1119, §155

Subsection 2, unnumbered paragraph 2 amended

321J.18 Other evidence.

This chapter does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motor vehicle.

86 Acts, ch 1220, §18; 98 Acts, ch 1138, §23

321J.19 Information relayed to other states.

When it has been finally determined under this chapter that a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the department shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which the person has a license.

86 Acts, ch 1220, §19

321J.20 Temporary restricted license.

1. The department may, on application, issue a temporary restricted license to a person whose noncommercial driver's license is revoked under this chapter allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment, continuing health care or the continuing health care of another who is dependent upon the person, continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion, substance abuse treatment, and court-ordered community service responsibilities if the person's driver's license has not been revoked previously under section 321J.4, 321J.9, or 321J.12 and if any of the following apply:

a. The person's noncommercial driver's license is revoked under section 321J.4 and the minimum period of ineligibility for issuance of a temporary restricted license has expired. This subsection shall not apply to a revocation ordered under section 321J.4 resulting from a plea or verdict of guilty of a violation of section 321J.2 that involved a death.

b. The person's noncommercial driver's license is revoked under section 321J.9 and the person has entered a plea of guilty on a charge of a violation of section 321J.2 which arose from the same set of circumstances which resulted in the person's driver's license revocation under section 321J.9 and the guilty plea is not withdrawn at the time of or after application for the temporary restricted license, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

c. The person's noncommercial driver's license is revoked under section 321J.12, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

However, a temporary restricted license may be issued if the person's noncommercial driver's license is revoked under section 321J.9, and the revocation is a second revocation under this chapter, and the first three hundred sixty-five days of the revocation have expired.

2. This section does not apply to a person whose license was revoked under section 321J.2A or section 321J.4, subsection 4 or 6, or to a person whose license is suspended or revoked for another reason.

3. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

4. A person holding a temporary restricted license issued by the department under this section shall not operate a commercial motor vehicle on a highway if a commercial driver's license is required for the person's operation of the commercial motor vehicle.

5. A person holding a temporary license issued by the department under this chapter shall be prohibited from operating a school bus.

6. Following certain minimum periods of ineligibility, a temporary restricted license under this section shall not be issued until such time as the applicant installs an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the applicant, in accordance with section 321J.4. Installation of an ignition interlock device under this section shall be required for the period of time for which the temporary restricted license is issued.

7. Notwithstanding any provision of this chapter to the contrary, the department may issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this section, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's driver's license or nonresident operating privileges.

86 Acts, ch 1220, §20; 90 Acts, ch 1230, §87, 88; 95 Acts, ch 48, §21; 95 Acts, ch 143, §7; 97 Acts, ch 177, §18 – 20; 98 Acts, ch 1073, §9, 12; 98 Acts, ch 1138, §5, 36, 37; 2000 Acts, ch 1133, §17

321J.21 Driving while license suspended, denied, revoked, or barred.

1. A person whose driver's license or nonresident operating privilege has been suspended, denied, revoked, or barred due to a violation of this chapter and who drives a motor vehicle while the license or privilege is suspended, denied, revoked, or barred commits a serious misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of one thousand dollars.

2. In addition to the fine, the department, upon receiving the record of the conviction of a person under this section upon a charge of driving a motor vehicle while the license of the person was suspended, denied, revoked, or barred shall extend the period of suspension, denial, revocation, or bar for an additional like period, and the department shall not issue a new license during the addi-

tional period.

86 Acts, ch 1220, §21; 97 Acts, ch 177, §21; 98 Acts, ch 1073, §9; 99 Acts, ch 153, §6

See §321.555 – 321.562 for penalties applicable to habitual offenders

321J.22 Drinking drivers course.

1. As used in this section, unless the context otherwise requires:

a. "Course for drinking drivers" means an approved course designed to inform the offender about drinking and driving and encourage the offender to assess the offender's own drinking and driving behavior in order to select practical alternatives.

b. "Satisfactory completion of a course" means receiving at the completion of a course a grade from the course instructor of "C" or "2.0," or better.

2. *a.* The course provided according to this section shall be offered on a regular basis at each community college as defined in section 260C.2, or by substance abuse treatment programs licensed under chapter 125. However, a community college shall not be required to offer the course if a substance abuse treatment program licensed under chapter 125 offers the course within the merged area served by the community college.

b. Enrollment in the courses is not limited to persons ordered to enroll, attend, and successfully complete the course required under sections 321J.2 and 321J.17, subsection 2. However, any person under age eighteen who is required to attend the courses for violation of section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under chapter 125.

c. The course required by this section shall be:

(1) Taught by a community college under the supervision of the department of education or by a substance abuse treatment program licensed under chapter 125.

(2) Approved by the department of education, in consultation with the community colleges and substance abuse treatment programs licensed under chapter 125.

d. The department of education shall establish reasonable fees to defray the expense of obtaining classroom space, instructor salaries, and class materials for courses offered both by community colleges and by substance abuse treatment programs licensed under chapter 125, and for administrative expenses incurred by the department of education in implementing subsection 5.

e. A person shall not be denied enrollment in a course by reason of the person's indigency.

3. An employer shall not discharge a person from employment solely for the reason of work absence to attend a course required by this section. Any employer who violates this section is liable for damages which include but are not limited to actual damages, court costs, and reasonable attorney fees. The person may also petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment.

4. The department of education and substance abuse treatment programs licensed under chapter 125 shall prepare for their respective courses a list of the locations of the courses taught under this section, the dates and times taught, the procedure for enrollment, and the schedule of course fees. The list shall be kept current and a copy of the list shall be sent to each court having jurisdiction over offenses provided in this chapter.

5. The department of education and substance abuse treatment programs licensed under chapter 125 shall maintain enrollment, attendance, successful and nonsuccessful completion data for their respective courses on the persons ordered to enroll, attend, and successfully complete a course for drinking drivers. This data shall be forwarded to the court by both the department of education and substance abuse treatment programs licensed under chapter 125.

86 Acts, ch 1220, §22; 90 Acts, ch 1253, §120; 97 Acts, ch 177, §22; 2000 Acts, ch 1138, §5; 2002 Acts, ch 1140, §37; 2002 Acts, 2nd Ex, ch 1003, §240, 262

Subsection 2, paragraph d amended

321J.23 Legislative findings.

The general assembly finds and declares as follows:

1. Drivers often do not realize the consequences of drinking alcohol or using other drugs, and driving a motor vehicle.

2. Prompt intervention is needed to protect society, including drivers, from death or serious long-term injury.

3. The conviction of a driver for operating while intoxicated identifies that person as a risk to the health and safety of others, as well as to the intoxicated driver.

4. Close observation of the effects on others of alcohol and drug use by an intoxicated driver convicted of operating while intoxicated may have a marked effect on recidivism and should therefore be encouraged by the courts.

5. The reality education substance abuse prevention program provides guidelines for the operation of an intensive program to discourage recidivism.

92 Acts, ch 1231, §45

321J.24 Court-ordered visitation for offenders — immunity from liability.

1. As used in this section, unless the context otherwise requires:

a. "Appropriate victim" means a victim whose condition demonstrates the results of a motor vehicle accident involving intoxicated drivers without being excessively traumatic to the participant, as determined by the tour supervisor.

b. "Participant" means a person who is ordered by the court to participate in the reality edu-

cation substance abuse prevention program.

c. "Program" means the reality education substance abuse prevention program.

d. "Program coordinator" means a person appointed by the court to coordinate the person's participation in the program.

e. "Tour supervisor" means a person selected by a participant's program coordinator to supervise a tour.

2. A reality education substance abuse prevention program is established in those judicial districts where the chief judge of the judicial district authorizes participation in the program. Upon a conviction or adjudication for a violation of section 321J.2, or the entry of a deferred judgment concerning a violation of section 321J.2, the court or juvenile court may order participation in the reality education substance abuse prevention program as a term and condition of probation or disposition in addition to any other term or condition of probation or disposition required or authorized by law. The court or juvenile court shall require the defendant or delinquent child to abstain from consuming any controlled substance, alcoholic liquor, wine, or beer while participating in the program.

3. The court or juvenile court shall consult with the defendant or delinquent child and the defendant's or delinquent child's attorney, if any, and may consult with any other person, including but not limited to the defendant's or delinquent child's parents or other family members, to determine if the defendant or delinquent child is suitable for participation in the program, if the program will be educational and meaningful to the defendant or delinquent child, and if any physical, emotional, mental, or other reasons exist which indicate that the program would be inappropriate or would cause any injury to the defendant or delinquent child.

4. The court or juvenile court may appoint a program coordinator, to coordinate all tours and select appropriate tour supervisors for each tour. The program coordinator shall monitor compliance by contacting each tour supervisor following the completion of a tour.

5. The court or juvenile court may include a requirement for a supervised educational tour by the defendant or delinquent child to any or all of the following:

a. A hospital or other emergency medical care facility which regularly receives victims of motor vehicle accidents, to observe treatment of appropriate victims of motor vehicle accidents involving intoxicated drivers, under the supervision of a registered nurse, physician, paramedic, or emergency medical technician.

b. A facility for the treatment of chemical substance abuse as defined in section 125.2, under the supervision of appropriately licensed medical personnel.

c. If approved by the state or county medical examiner, a morgue or a similar facility to receive appropriate educational material and instruction concerning damage caused by the consumption of alcohol or other drugs, under the supervision of the county medical examiner or deputy medical examiner.

However, the court or juvenile court shall not order the defendant or delinquent child to participate in a supervised education tour of a hospital or other facility specified in this subsection, unless the hospital or facility agrees to participate in the program.

6. Prior to a tour, the program coordinator shall explain and discuss the experiences which may be encountered during the tour to the participant. If the program coordinator determines at any time before or during a tour that the tour may be traumatic or otherwise inappropriate for the participant, the program coordinator shall terminate the tour without prejudice to the participant.

7. The court or juvenile court may order a personal conference after the tours with the participant, the participant's attorney, if any, and any other persons if available and deemed necessary by the court or juvenile court, to discuss the experiences of the participant in the program and how those experiences may impact the participant's conduct. The court or juvenile court may order the participant to write a report or letter concerning the participant's experiences in the program.

8. Tour supervisors and facilities toured during the program are not liable for any civil damages resulting from injury to the participant, or civil damages caused by the participant during or from any activities related to a tour, except for willful or grossly negligent acts intended to, or reasonably expected to result in, such injury or damage.

9. The chief judge of the judicial district shall determine fees to be paid by participants in the program. The judicial branch shall use the fees to pay all costs associated with the program. The court shall either require the participant to pay the fee in order to participate in the program, or may waive the fee or collect a lesser amount upon a showing of cause.

92 Acts, ch 1231, §46; 97 Acts, ch 177, §23, 24; 98 Acts, ch 1047, §29

321J.25 Youthful offender substance abuse awareness program.

1. As used in this section, unless the context otherwise requires:

a. "Participant" means a person whose driver's license or operating privilege has been revoked for a violation of section 321J.2A.

b. "Program" means a substance abuse awareness program provided under a contract entered into between the provider and the commission on substance abuse of the Iowa department of public health under chapter 125.

c. "Program coordinator" means a person as-

signed the duty to coordinate a participant's activities in a program by the program provider.

2. A substance abuse awareness program is established in each of the regions established by the commission on substance abuse. The program shall consist of an insight class and a substance abuse evaluation, which shall be attended by the participant, to discuss issues related to the potential consequences of substance abuse. The parent or parents of the participant shall also be encouraged to participate in the program. The program provider shall consult with the participant or the parents of the participant in the program to determine the timing and appropriate level of participation for the participant and any participation by the participant's parents. The program may also include a supervised educational tour by the participant to any or all of the following:

a. A hospital or other emergency medical care facility which regularly receives victims of motor vehicle accidents, to observe treatment of appropriate victims of motor vehicle accidents involving intoxicated drivers, under the supervision of a registered nurse, physician, paramedic, or emergency medical technician.

b. A facility for the treatment of chemical substance abuse as defined in section 125.2, under the supervision of appropriately licensed medical personnel.

c. If approved by the state or county medical examiner, a morgue or a similar facility to receive appropriate educational material and instruction concerning damage caused by the consumption of alcohol or other drugs, under the supervision of the county medical examiner or deputy medical examiner.

3. If the program includes a tour, the program coordinator shall explain and discuss the experiences which may be encountered during the tour to the participant. If the program coordinator determines at any time before or during a tour that the tour may be traumatic or otherwise inappropriate for the participant, the program coordinator shall terminate the tour without prejudice to the participant.

4. Upon the revocation of the driver's license or operating privileges of a person who is fourteen years of age or older for a violation of section 321J.2A, if the person has had no previous revocations under either section 321J.2 or section 321J.2A, a person may participate in the substance abuse awareness program. The state department of transportation shall notify a potential program participant of the possibility and potential benefits of attending a program and shall notify a potential program participant of the availability of programs which exist in the area in which the person resides. The state department of transportation shall consult with the Iowa department of public health to determine what programs are available in various areas of the state.

5. Program providers and facilities toured during the program are not liable for any civil damages resulting from injury to the participant, or civil damages caused by the participant during or from any activities related to a tour, except for willful or grossly negligent acts intended to, or reasonably expected to result in, such injury or damage.

6. The program provider shall determine fees to be paid by participants in the program. The program fees shall be paid on a sliding scale, based upon the ability of a participant and a participant's family to pay the fees, and shall not exceed one hundred dollars per participant. The program provider shall use the fees to pay all costs associated with the program.

95 Acts, ch 143, §8; 97 Acts, ch 177, §25; 98 Acts, ch 1073, §9

CHAPTER 321K

VEHICLE ROADBLOCKS

321K.1 Roadblocks conducted by law enforcement agencies.

321K.1 Roadblocks conducted by law enforcement agencies.

1. The law enforcement agencies of this state may conduct emergency vehicle roadblocks in response to immediate threats to the health, safety, and welfare of the public; and otherwise may conduct routine vehicle roadblocks only as provided in this section. Routine vehicle roadblocks may be conducted to enforce compliance with the law regarding any of the following:

a. The licensing of operators of motor vehicles.

b. The registration of motor vehicles.

c. The safety equipment required on motor vehicles.

d. The provisions of chapters 481A and 483A.

2. Any routine vehicle roadblock conducted under this section shall meet the following requirements:

a. The location of the roadblock, the time during which the roadblock will be conducted, and the procedure to be used while conducting the roadblock, shall be determined by policymaking administrative officers of the law enforcement agency.

b. The roadblock location shall be selected for its safety and visibility to oncoming motorists, and adequate advance warning signs, illuminated at night or under conditions of poor visibility, shall be erected to provide timely information to approaching motorists of the roadblock and its nature.

c. There shall be uniformed officers and marked official vehicles of the law enforcement agency or agencies involved, in sufficient quantity and visibility to demonstrate the official nature of the roadblock.

d. The selection of motor vehicles to be stopped shall not be arbitrary.

e. The roadblock shall be conducted to assure the safety of and to minimize the inconvenience of the motorists involved.

86 Acts, ch 1220, §23

CHAPTER 321L

PARKING FOR PERSONS WITH DISABILITIES

Issuance of persons with disabilities identification devices by certain county treasurers; see chapter 321M
Reissuance of removable windshield placards on January 1, 2001, and every four years thereafter; 96 Acts, ch 1171, §17

321L.1 Definitions.
321L.2 Persons with disabilities parking permits — application and issuance.
321L.2A Wheelchair parking cone.
321L.3 Return of persons with disabilities parking permits.
321L.4 Persons with disabilities parking — display and use of parking permit and persons with disabilities identification designation.
321L.5 Persons with disabilities parking spaces — location and requirements — review committees.
321L.6 Persons with disabilities parking sign.
321L.7 Penalty for failing to provide persons with disabilities parking spaces and signs.
321L.8 Persons with disabilities parking permits and parking — rules.
321L.9 Reciprocity.
321L.10 Reissuance of hanging devices. Repealed by 96 Acts, ch 1171, §15.

321L.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Business district"* means that territory defined by city ordinance as required under section 321L.5.

2. *"Department"* means the state department of transportation.

3. *"Director"* means the director of transportation.

4. *"Lifelong disability"* means a disability described under subsection 8 which has been determined to be permanent by a person authorized to provide the statement of disability required by section 321L.2.

5. *"Persons with disabilities parking permit"* means a permit bearing the international symbol of accessibility issued by the department which allows the holder to park in a persons with disabilities parking space, and includes the following:

a. A persons with disabilities registration plate issued to or for a person with a disability under section 321.34, subsection 14.

b. A persons with disabilities parking sticker affixed to a registration plate issued to a disabled veteran under section 321.166, subsection 6, or to an operator under section 321.34.

c. A persons with disabilities removable windshield placard which is a two-sided placard for hanging from the rearview mirror when the motor vehicle is parked in a persons with disabilities parking space.

6. *"Persons with disabilities parking sign"* means a sign which bears the international symbol of accessibility that meets the requirements under section 321L.6.

7. *"Persons with disabilities parking space"* means a parking space, including the access aisle, designated for use by only motor vehicles displaying a persons with disabilities parking permit that meets the requirements of sections 321L.5 and 321L.6.

8. *"Person with a disability"* means a person with a disability that limits or impairs the person's

ability to walk. A person shall be considered a person with a disability for purposes of this chapter under the following circumstances:

a. The person cannot walk two hundred feet without stopping to rest.

b. The person cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device.

c. The person is restricted by lung disease to such an extent that the person's forced expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest.

d. The person uses portable oxygen.

e. The person has a cardiac condition to the extent that the person's functional limitations are classified in severity as class III or class IV according to standards set by the American heart association.

f. The person is severely limited in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.

89 Acts, ch 247, §9; 90 Acts, ch 1151, §3, 4; 96 Acts, ch 1171, §4, 5; 97 Acts, ch 23, §35; 97 Acts, ch 70, §6 – 8

321L.2 Persons with disabilities parking permits — application and issuance.

1. *a.* A resident of the state with a disability desiring a persons with disabilities parking permit shall apply to the department upon an application form furnished by the department providing the applicant's name, address, date of birth, and social security number and shall also provide a statement from a physician licensed under chapter 148, 149, 150, or 150A, a physician assistant licensed under chapter 148C, an advanced registered nurse practitioner licensed under chapter 152, or a chiropractor licensed under chapter 151, or a physician, physician assistant, nurse practitioner, or chiropractor licensed to practice in a contiguous state, written on the physician's, physician assistant's, nurse practitioner's, or chiropractor's stationery, stating the nature of the applicant's disability and such additional information as required by rules adopted by the department under section 321L.8. If the person is applying for a temporary persons with disabilities parking permit, the physician's, physician assistant's, nurse practitioner's, or chiropractor's statement shall state the period of time during which the person is expected to be disabled and the period of time for which the permit should be issued, not to exceed six months.

A person with a disability may apply for one of the following persons with disabilities parking permits:

(1) Persons with disabilities registration plates. An applicant may order persons with disabilities registration plates pursuant to section 321.34. An applicant may order a persons with disabilities registration plate for a trailer used to transport a wheelchair pursuant to section 321.34 in addition to persons with disabilities registration plates ordered by the applicant for a motor vehicle used to tow such a trailer pursuant to section 321.34.

(2) Persons with disabilities parking sticker. An applicant who owns a motor vehicle for which the applicant has been issued registration plates under section 321.34 or registration plates as a seriously disabled veteran under section 321.105 may apply to the department for a persons with disabilities parking sticker to be affixed to the plates. The persons with disabilities parking stickers shall bear the international symbol of accessibility.

(3) Removable windshield placard. A person with a disability may apply for a temporary removable windshield placard which shall be valid for a period of up to six months or a nonexpiring removable windshield placard, as determined by the physician's, physician assistant's, nurse practitioner's, or chiropractor's statement under this subsection. A temporary removable windshield placard shall be renewed within thirty days of the date of expiration. Persons seeking temporary removable windshield placards shall be required to furnish evidence upon initial application that they have a temporary disability and, in addition, furnish evidence at subsequent intervals that they remain temporarily disabled. Temporary removable windshield placards shall be of a distinctively different color from nonexpiring removable windshield placards. A nonexpiring removable windshield placard shall state on the face of the placard that it is a nonexpiring placard. The department shall issue one additional removable windshield placard upon the request of a person with a disability.

b. The department may issue expiring removable windshield placards to the following:

(1) An organization which has a program for transporting persons with disabilities or elderly persons.

(2) A person in the business of transporting persons with disabilities or elderly persons.

One expiring removable windshield placard may be issued for each vehicle used by the organization or person for transporting persons with disabilities or elderly persons. A placard issued under this paragraph shall be renewed every four years from the date of issuance and shall be surrendered to the department if the organization or person is no longer providing the service for which the placard was issued. Notwithstanding section 321L.4, a person transporting persons with disabilities or elderly persons in a motor vehicle for which a placard has been issued under this paragraph may display the placard in the motor vehicle and may use a persons with disabilities parking

space while the motor vehicle is displaying the placard. A placard issued under this paragraph shall be of a distinctively different color from a placard issued under paragraph *"a"*.

c. A new removable windshield placard can be issued if the previously issued placard is reported lost, stolen, or damaged. The placard reported as being lost or stolen shall be invalidated by the department. A placard which is damaged shall be returned to the department and exchanged for a new placard in accordance with rules adopted by the department.

2. Any person providing false information with the intent to defraud on the application for a persons with disabilities parking permit used in establishing proof under subsection 1 is subject to a civil penalty of three hundred dollars which may be imposed by the department. A physician, physician assistant, nurse practitioner, or chiropractor who provides false information with the intent to defraud on the physician's, physician assistant's, nurse practitioner's, or chiropractor's statement used in establishing proof under subsection 1 is subject to a civil penalty of three hundred dollars which may be imposed by the department. In addition to the civil penalty, the department shall revoke the permit issued pursuant to this section.

3. The removable windshield placard shall contain the following information:

a. Each side of the placard shall include all of the following:

(1) The international symbol of access, which is at least three inches in height, centered on the placard, and is white on a blue shield.

(2) An identification number.

(3) A date of expiration, which shall be of sufficient size to be readable from outside the vehicle.

(4) The seal or other identification of the issuing authority.

b. One side of the placard shall contain all of the following information:

(1) A statement printed on it as follows: "Unauthorized use of this placard as indicated in Iowa Code chapter 321L may result in a fine, invalidation of the placard, or revocation of the right to use the placard. This placard shall be displayed only when the vehicle is parked in a persons with disabilities parking space or in a parking space not designated as a persons with disabilities parking space if a wheelchair parking cone is used pursuant to Iowa Code section 321L.2A."

(2) The return address and telephone number of the department.

(3) The signature of the person who has been issued the placard.

4. A removable windshield placard shall only be displayed when the vehicle is parked in a persons with disabilities parking space.

5. The shape and color of the removable windshield placard shall be changed and the placard shall be reissued every four years.

89 Acts, ch 247, §10; 90 Acts, ch 1151, §5; 90 Acts, ch 1267, §39; 95 Acts, ch 118, §30; 96 Acts, ch 1088, §7; 96 Acts, ch 1171, §6, 7; 97 Acts, ch 70, §9 – 13, 15; 97 Acts, ch 123, §2 – 4; 2000 Acts, ch 1206, §2, 3

Validity of persons with disabilities windshield placards issued prior to July 1, 2000; 2000 Acts, ch 1206, §7

321L.2A Wheelchair parking cone.

1. A person issued a persons with disabilities parking permit under section 321L.2 who uses a wheelchair due to a disability that renders the person permanently unable to walk may park in a persons with disabilities parking space, or a parking space not designated as a persons with disabilities parking space, and reserve up to an eight foot space adjacent to the motor vehicle for the purpose of exiting and entering the motor vehicle if all of the following conditions are met:

a. The person places a wheelchair parking cone within eight feet of the motor vehicle's entry.

b. The person displays the persons with disabilities parking permit in the motor vehicle as described in section 321L.4.

c. The motor vehicle and the wheelchair parking cone do not obstruct an aisle, street, or roadway so that other vehicles are unable to pass through the aisle, street, or roadway.

d. The parking space is provided by the state, a political subdivision of the state, or an entity providing nonresidential parking.

e. The person carries in the motor vehicle a copy of the statement from a physician, physician's assistant, advanced registered nurse practitioner, or chiropractor which accompanied the person's application for persons with disabilities registration plates under section 321.34 or other persons with disabilities parking permit under section 321L.2 and which indicates the person is permanently unable to walk. The person shall show the copy of the statement to any peace officer upon request.

2. A person issued a persons with disabilities parking permit who does not comply with the requirements of subsection 1 when using a wheelchair parking cone commits a misdemeanor punishable by a scheduled fine under section 805.8A, subsection 1, paragraph *"b"*.

3. A person shall not interfere with a wheelchair parking cone properly placed under subsection 1. A violation of this subsection is a misdemeanor punishable by a scheduled fine under section 805.8A, subsection 1, paragraph *"c"*.

4. The department, upon the request of a person issued a persons with disabilities parking permit under section 321L.2 who uses a wheelchair, shall provide the person with a list of names and addresses of vendors who sell wheelchair parking cones bearing the international symbol of accessibility and the words "wheelchair parking space".

5. The department shall adopt rules as necessary to administer this section.

97 Acts, ch 70, §15; 97 Acts, ch 147, §5; 98 Acts, ch 1080, §9; 2000 Acts, ch 1206, §4; 2001 Acts, ch 137, §5

321L.3 Return of persons with disabilities parking permits.

Persons with disabilities parking permits shall be returned to the department upon the occurrence of any of the following:

1. The person to whom the persons with disabilities parking permit has been issued is deceased.

2. The person to whom the persons with disabilities parking permit has been issued has moved out of state.

3. A person has found or has in the person's possession a persons with disabilities parking permit that was not issued to that person.

4. The persons with disabilities parking permit has expired.

5. The persons with disabilities parking permit has been revoked.

6. The persons with disabilities parking permit reported lost or stolen is later found or retrieved after a subsequent persons with disabilities parking permit has been issued.

A person who fails to return the persons with disabilities parking permit and subsequently misuses the permit by illegally parking in a persons with disabilities parking space is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 1, paragraph *"c"*.

Persons with disabilities parking permits may be returned to the department as required by this section directly to the department, to a driver's license station, or to any law enforcement office.

89 Acts, ch 247, §11; 96 Acts, ch 1171, §8; 97 Acts, ch 70, §15; 98 Acts, ch 1073, §9; 2001 Acts, ch 176, §55, 59; 2002 Acts, ch 1050, §34

Unnumbered paragraph 3 amended

321L.4 Persons with disabilities parking — display and use of parking permit and persons with disabilities identification designation.

1. A persons with disabilities parking permit shall be displayed in a motor vehicle as a removable windshield placard or on a vehicle as a plate or sticker as provided in section 321L.2 when being used by a person with a disability, either as an operator or passenger. Each removable windshield placard shall be of uniform design and fabricated of durable material, suitable for display from within the passenger compartment of a motor vehicle, and readily transferable from one vehicle to another. The placard shall only be displayed when the motor vehicle is parked in a persons with disabilities parking space, except as provided in section 321L.2A.

2. The use of a persons with disabilities parking space, located on either public or private property as provided in sections 321L.5 and 321L.6, by an operator of a vehicle not displaying a persons with disabilities parking permit; by an operator of a vehicle displaying a persons with disabilities parking permit but not being used by a person issued a permit or being transported in accordance with section 321L.2, subsection 1, paragraph *"b"*; or by a vehicle in violation of the rules adopted by the department under section 321L.8, constitutes improper use of a persons with disabilities parking permit, which is a misdemeanor for which a scheduled fine shall be imposed upon the owner, operator, or lessee of the vehicle or the person to whom the persons with disabilities parking permit is issued. The scheduled fine for each violation shall be as established in section 805.8A, subsection 1, paragraph *"c"*. Proof of conviction of two or more violations involving improper use of a persons with disabilities parking permit is grounds for revocation by the court or the department of the holder's privilege to possess or use the persons with disabilities parking permit.

3. A peace officer as designated in section 801.4, subsection 11, shall have the authority to and shall enforce the provisions of this section on public and private property.

89 Acts, ch 247, §12; 92 Acts, ch 1122, §2; 96 Acts, ch 1171, §9; 97 Acts, ch 70, §14, 15; 97 Acts, ch 147, §6; 2000 Acts, ch 1206, §5; 2001 Acts, ch 137, §5

Replacement of "handicapped" signs, placards, and other devices in normal course of business; 97 Acts, ch 70, §17

321L.5 Persons with disabilities parking spaces — location and requirements — review committees.

1. Persons with disabilities parking spaces and access loading zones for persons with disabilities that serve a particular building shall be located on the shortest accessible route to the nearest accessible entrance to the building.

2. A persons with disabilities parking space designated after July 1, 1990, shall comply with the dimension requirements specified in rules adopted by the department of public safety and in effect when the spaces are designated. The department shall adopt accepted national standards for dimensions of persons with disabilities spaces, consistent with the requirements of federal law. However, these dimension requirements do not apply to parallel on-street parking spaces.

3. *a.* The state or a political subdivision of the state which provides off-street public parking facilities or an entity providing nonresidential parking in off-street public parking facilities shall provide not less than two percent of the total parking spaces in each parking facility as persons with disabilities parking spaces, rounded to the nearest whole number of persons with disabilities parking spaces. However, such parking facilities having

ten or more parking spaces shall set aside at least one persons with disabilities parking space.

b. An entity providing off-street nonresidential public parking facilities shall review the utilization of existing persons with disabilities parking spaces for a one-month period not less than once every twelve months. If upon review, the average occupancy rate for persons with disabilities parking spaces in a facility exceeds sixty percent during normal business hours, the entity shall provide additional persons with disabilities parking spaces as needed.

c. An entity providing off-street nonresidential parking as a lessor shall provide a persons with disabilities parking space to an individual requesting to lease a parking space, if that individual possesses a persons with disabilities parking permit issued in accordance with section 321L.2.

d. A new nonresidential facility in which construction has been completed on or after July 1, 1991, providing parking to the general public shall provide persons with disabilities parking spaces as stipulated below:

Total Parking Spaces in Lot	Required Minimum Number of Persons with Disabilities Parking Spaces
10 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	*
1001 and over	**

* 2 Percent of Total
** 20 Spaces Plus 1 for Each 100 Over 1000

e. Any other person may also set aside persons with disabilities parking spaces on the person's property provided each persons with disabilities parking space is clearly and prominently designated as a persons with disabilities parking space.

4. *a.* Cities which provide on-street parking areas within a business district shall by ordinance define and establish a business district or districts and shall designate not less than two percent of the total parking spaces within each business district as persons with disabilities parking spaces.

b. Upon petition by an individual possessing a persons with disabilities parking permit issued in accordance with section 321L.2, the city shall review utilization and location of existing persons with disabilities parking spaces for a one-month period but not more than once every twelve months. If, upon review, the average occupancy rate for persons with disabilities parking spaces exceeds sixty percent during normal business hours, the city shall provide additional persons with disabilities parking spaces as needed.

5. A persons with disabilities parking space located on a paved surface may be painted with a blue background upon which the international symbol of accessibility is painted in white or yellow paint. However, the blue background paint may be omitted. As used in this subsection, *"paved surface"* includes surfaces which are asphalt surfaced.

6. A persons with disabilities parking review committee may be established by the state and each political subdivision of the state which is required to provide persons with disabilities parking spaces in off-street public parking facilities according to subsection 3 and in political subdivisions required to provide persons with disabilities parking spaces for on-street parking within a business district according to subsection 4. The persons with disabilities parking review committee shall consist of five members who are persons with disabilities as defined in section 321L.1 and five members who are officials of the state or political subdivision. The persons with disabilities parking review committee shall have the discretion to increase or decrease the numbers of persons with disabilities parking spaces required by this section. A decision to change the numbers or location of persons with disabilities parking spaces shall be based upon the needs of the community, the percentage of use of the present persons with disabilities parking spaces, and the past experience of the state or political subdivision regarding persons with disabilities parking.

An individual may request the persons with disabilities parking review committee to review the amounts and locations of persons with disabilities parking spaces. The persons with disabilities parking review committee shall investigate each individual's request and shall act upon such request if the investigation substantiates the individual's complaint.

89 Acts, ch 247, §13; 90 Acts, ch 1151, §6 – 8; 94 Acts, ch 1015, §1; 94 Acts, ch 1107, §21; 96 Acts, ch 1171, §10, 11; 97 Acts, ch 70, §15; 98 Acts, ch 1080, §10

321L.6 Persons with disabilities parking sign.

A persons with disabilities parking sign shall be displayed designating the persons with disabilities parking space.

1. The persons with disabilities parking sign shall have a blue background and bear the international symbol of accessibility in white. If an entity who owns or leases real property in a city is required to provide persons with disabilities parking spaces, the city shall provide, upon request, the signs for the entity at cost. If an entity who owns or leases real property outside the corporate limits

of a city is required to provide persons with disabilities parking spaces, the county in which the property is located shall provide the signs for the entity at cost upon request.

2. The persons with disabilities parking sign shall be affixed vertically on another object so that it is readily visible to a driver of a motor vehicle approaching the persons with disabilities parking space. A persons with disabilities parking space designated only by the international symbol of accessibility being painted or otherwise placed horizontally on the parking space does not meet the requirements of this subsection.

89 Acts, ch 247, §14; 93 Acts, ch 169, §20; 97 Acts, ch 70, §15, 16; 97 Acts, ch 147, §7

Replacement of "handicapped" signs, placards, and other devices in normal course of business; 97 Acts, ch 70, §17

321L.7 Penalty for failing to provide persons with disabilities parking spaces and signs.

Failure to provide proper persons with disabilities parking spaces as provided in section 321L.5 or to properly display persons with disabilities parking signs as provided in section 321L.6 is a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 1, paragraph *"c"*.

89 Acts, ch 247, §15; 97 Acts, ch 70, §15; 2001 Acts, ch 176, §56, 59

Replacement of "handicapped" signs, placards, and other devices in normal course of business; 97 Acts, ch 70, §17

321L.8 Persons with disabilities parking permits and parking — rules.

1. The department, pursuant to chapter 17A, shall adopt rules:

a. Establishing procedures for applying to the department for issuance of persons with disabilities parking permits under this chapter.

b. Governing the manner in which persons with disabilities parking permits are to be displayed in or on motor vehicles.

c. Regarding enforcement of this chapter.

2. The department of public safety shall adopt rules pursuant to chapter 17A governing the manner in which persons with disabilities parking spaces are provided.

89 Acts, ch 247, §16; 96 Acts, ch 1171, §12; 97 Acts, ch 70, §15

321L.9 Reciprocity.

Persons with disabilities parking permits issued lawfully by other states and foreign governmental bodies or their political subdivisions shall be valid persons with disabilities parking permits for nonresidents traveling or visiting in this state.

89 Acts, ch 247, §17; 96 Acts, ch 1171, §13; 97 Acts, ch 70, §15

321L.10 Reissuance of hanging devices. Repealed by 96 Acts, ch 1171, § 15.

CHAPTER 321M

COUNTY ISSUANCE OF DRIVER'S LICENSES

321M.1 Definitions.
321M.2 Relation to other laws.
321M.3 Authorization to issue licenses.
321M.4 Termination of authorization — failure to meet standards.
321M.5 Agreement between the department and issuing counties.
321M.6 Certification of commercial driver's license issuance.
321M.7 Training.
321M.8 New or subsequent contracts — opt-out period. Repealed by 2002 Acts, ch 1032, §10.
321M.9 Financial responsibility.
321M.10 Supervisory authority of department.
321M.11 Good faith efforts required.

321M.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commercial driver's license"* means a driver's license valid for the operation of a commercial motor vehicle, as regulated by chapter 321.

2. *"County issuance"* means the system or process of issuing driver's licenses, nonoperator identification cards, and persons with disabilities identification devices, including all related testing, to the same extent that such items are issued by the department.

3. *"Department"* means the state department of transportation.

4. *"Digitized photolicensing equipment"* means the machines and related materials, obtained pursuant to contract, the use of which results in the on-site production of driver's licenses and nonoperator identification cards.

5. *"Driver's license"* means any license or per-

mit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to a driver's, commercial driver's, temporary restricted, or temporary license and an instruction, chauffeur's instruction, commercial driver's instruction, or temporary permit.

6. *"Issuing county"* means a county that is participating in county issuance.

7. *"Motor vehicle"* means a vehicle which is self-propelled, including but not limited to automobiles, cars, motor trucks, semitrailers, motorcycles, and similar vehicles regulated under chapter 321.

8. *"Nonoperator identification card"* means the card issued pursuant to section 321.190 that contains information pertaining to the personal characteristics of the applicant but does not convey to the person issued the card any operating privileges for any motor vehicle.

9. *"Persons with disabilities identification devices"* means those devices issued pursuant to chapter 321L.

98 Acts, ch 1073, §12; 98 Acts, ch 1143, §1, 26; 2001 Acts, ch 132, §17; 2002 Acts, ch 1032, §2
Section amended

321M.2 Relation to other laws.

Notwithstanding provisions of chapter 321 or 321L that grant sole authority to the department for the issuance of driver's licenses, nonoperator identification cards, and persons with disabilities identification devices, certain counties shall be authorized to issue driver's licenses, nonoperator identification cards, and persons with disabilities identification devices, according to the requirements of this chapter.

98 Acts, ch 1073, §12; 98 Acts, ch 1143, §2, 26

321M.3 Authorization to issue licenses.

Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Cass, Cedar, Cherokee, Chickasaw, Clarke, Clayton, Crawford, Dallas, Davis, Decatur, Delaware, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Mills, Mitchell, Monona, Monroe, Montgomery, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Tama, Taylor, Union, Van Buren, Warren, Washington, Wayne, Winnebago, Winneshiek, Worth, and Wright counties shall be authorized to issue driver's licenses, nonoperator identification cards, and persons with disabilities identification devices on a permanent basis, provided that such counties continue to meet the department's standards for issuance.

98 Acts, ch 1073, §12; 98 Acts, ch 1143, §3, 26; 2002 Acts, ch 1032, §3
Section stricken and rewritten

321M.4 Termination of authorization — failure to meet standards.

1. If a county is subject to termination of its county issuance authorization for failure to meet the department's standards for issuance, the county shall not issue driver's licenses, nonoperator identification cards, or persons with disabilities identification devices until the county has been reauthorized by the department.

2. The department is not obligated to provide service in a county for issuance of driver's licenses, nonoperator identification cards, or persons with disabilities identification devices if the county fails to meet the department's standards for issuance.

98 Acts, ch 1143, §4; 2002 Acts, ch 1032, §4
Section stricken and rewritten

321M.5 Agreement between the department and issuing counties.

1. The department and each county participating in county issuance shall execute an agreement pursuant to chapter 28E, detailing the relative responsibilities and liabilities of each party to the agreement.

2. The agreement required by subsection 1 shall specifically address the following issues, in addition to other issues that may be required by chapter 28E or that may otherwise be deemed necessary for inclusion in the agreement by the parties to the agreement:

a. Responsibility for collection of, and accounting for, any fees associated with the licensing process.

b. Oversight guidelines.

c. Performance standards.

d. Progressive discipline standards and measures, including appeals.

3. An addendum to such an agreement may be executed by the parties, in accordance with chapter 28E.

98 Acts, ch 1143, §5; 2002 Acts, ch 1032, §5
Subsection 2, paragraphs e and f stricken

321M.6 Certification of commercial driver's license issuance.

1. A county shall be authorized to issue commercial driver's licenses if certified to do so by the department.

2. The department shall certify the commercial driver's license issuance in a county authorized to issue licenses pursuant to section 321M.3 if all of the following conditions are met:

a. The driving skills test is the same as that which would otherwise be administered by the state.

b. The county examiner contractually agrees to comply with the requirements of 49 C.F.R. § 383.75, as adopted by rule by the department.

c. The department provides supervision over the issuance of commercial driver's licenses, including the administration of written and driving skills tests by the office of the county treasurer. However, the failure of the department to provide appropriate supervision shall not alone be used as a reason to deny certification.

d. The county otherwise complies with the procedures for issuance of commercial driver's licenses as provided in chapter 321.

3. If a county fails to meet the standards for certification under this section, and fails to correct deficiencies according to the department's operating standards, the county's right to issue commercial driver's licenses shall be terminated, and the county shall cease issuing commercial driver's licenses. Procedures and conditions for recertification shall be addressed in the operating standards for the department.

4. The department is not obligated to provide service in a county for issuance of commercial driver's licenses if the county fails to meet certification standards under this section.

98 Acts, ch 1143, §6; 99 Acts, ch 96, §37; 2002 Acts, ch 1032, §6, 7

Subsection 2, paragraph c amended
Subsection 4 amended

321M.7 Training.

1. The department shall provide a minimum of eight weeks of initial training for county personnel participating in county issuance. The maximum class size for this initial training shall be twenty people.

2. The department shall also provide individualized additional training for county personnel within each participating county office following initial training.

3. The department shall periodically offer continuing education and training opportunities to county personnel.

4. The department shall not segregate training sessions for county personnel and department employees.

5. New county personnel, including new county treasurers, who will participate in county issuance, shall complete the initial training session prior to engaging in any licensing activities. A county treasurer shall use best efforts to complete initial training as soon as possible. A county treasurer who does not make reasonable attempts to begin initial training within three months of taking office may be subject to having the county issuance program in that county placed on probation.

98 Acts, ch 1143, §7

321M.8 New or subsequent contracts — opt-out period. Repealed by 2002 Acts, ch 1032, § 10.

321M.9 Financial responsibility.

1. *Fees to counties.* Notwithstanding any other provision in the Code to the contrary, the county treasurer of any county authorized to issue driver's licenses under this chapter shall retain for deposit in the county general fund three dollars and seventy-five cents of fees received for each issuance or renewal of driver's licenses and nonoperator identification cards, but shall not retain any moneys for the issuance of any persons with disabilities identification devices. The county treasurer shall remit the balance of fees to the department.

2. *Digitized photolicensing equipment.*

a. The department shall pay for all digitized photolicensing equipment, including that used by the department and authorized for use by issuing counties under this subsection. Moneys from the road use tax fund shall be used, subject to appropriation by the general assembly, for payment of costs associated with the purchase or lease of digitized photolicensing equipment.

b. An issuing county shall be entitled to one set of digitized photolicensing equipment, unless the county was served at multiple sites by the department, in which case the county shall be entitled to two sets of digitized photolicensing equipment.

3. *Other equipment.* The department shall pay for all other equipment needed by a county to participate in county issuance, comparable to the equipment provided for issuance activities by a department itinerant team, with the exception of the following:

a. Office furniture.

b. Computer hardware needed to access department computer databases, facsimile machines used to transmit documents between the department and the county, and similar office equipment of a general nature that is not dedicated solely or primarily to the issuance process.

98 Acts, ch 1073, §12; 98 Acts, ch 1143, §9, 26; 2002 Acts, ch 1032, §8

Subsection 2, paragraph b amended

321M.10 Supervisory authority of department.

1. The department shall retain all supervisory authority over the county driver's license issuance program. The county treasurers and their employees shall be considered agents of the department when performing driver's licensing functions.

2. Approximately one supervisor shall be assigned from the department to every six issuance sites participating in county issuance.

3. Approximately one technical computer support employee shall be assigned from the department to every twenty-four counties participating in county issuance.

4. The department shall provide issuing counties access to computer databases at a level equal to that provided to comparable department em-

ployees.

5. The department may adopt rules pursuant to chapter 17A as necessary to administer this chapter. The department may also develop operating standards as necessary to administer this chapter. The department shall consult with the Iowa county treasurers association in developing operating standards and proposed rules.

98 Acts, ch 1073, §12; 98 Acts, ch 1143, §10, 26; 2002 Acts, ch 1032, §9

Subsection 1 amended

321M.11 Good faith efforts required.

The department and issuing counties shall use their best good faith efforts to work in cooperation in implementing and maintaining an effective system of county issuance.

The department and all persons involved with administration of this chapter, department procedures, and related administrative rules shall use their best good faith efforts to ensure that the application of the laws, rules, and procedures related to county issuance shall not be used to impede county issuance.

98 Acts, ch 1143, §11

CHAPTER 322

MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

Court action required for termination of installment contracts during military service; §29A.102, 29A.105
Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service; §29A.103, 29A.104

322.1 Administration.
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322.27 Manufacturer's license.
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322.35 Disclosure of manufacturer's suggested price for certain motor vehicles — penalty.
322.36 Motorcycle dealer business hours.

322.1 Administration.

The administration of this chapter shall be vested in the director of transportation. The department may employ such employees as are necessary for the administration of this chapter, provided the amount expended in any one year shall not exceed the revenue derived from the provisions of this chapter.

The director may enter into reciprocity agreements with the authorized representatives of any jurisdiction to exchange information on dealer activity in order to pursue legal action for violations.

[C39, §**5039.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.1]

92 Acts, ch 1175, §12

322.2 Definitions.

As used in this chapter and unless a different meaning appears from the context:

1. *"At retail"* means to dispose of a motor vehicle to a person who will devote it to a consumer use.

2. *"Completed motor vehicle"* means a motor vehicle which does not require any additional

manufacturing operations to perform its intended function except the addition of readily attachable equipment, components or minor finishing operations.

3. *"Department"* means the state department of transportation.

4. *"Distributor"* or *"wholesaler"* means a person, resident or nonresident, who in whole or part, sells or distributes motor vehicles to motor vehicle dealers, or who maintains distributor representatives.

5. *"Distributor branch"* means a branch office similarly maintained by a distributor or wholesaler for the same purposes.

6. *"Distributor representative"* means a representative similarly employed by a distributor, distributor branch or wholesaler.

7. *"Engaged in the business"* means doing any of the following acts for the purpose of the sale of motor vehicles at retail: acquiring, selling, exchanging, holding, offering, displaying, brokering, accepting on consignment, conducting a retail auction, or acting as an agent for the purpose of doing any of those acts. A person selling at retail more than six motor vehicles during a twelve-month period may be presumed to be engaged in the business.

8. *"Factory branch"* means a branch office maintained by a person who manufactures or assembles motor vehicles, for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or part, its representatives.

9. *"Factory representative"* means a representative employed by a person who manufactures or assembles motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers.

10. The *"holder"* of a retail installment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

11. *"Manufacturer"* means any person engaged in the business of fabricating or assembling motor vehicles. It does not include a person who converts, modifies, or alters a completed motor vehicle manufactured by another person. It includes a person who uses a completed motor vehicle manufactured by another person to construct a class "B" motor home as defined in section 321.124.

12. *"Motor vehicle"* means any self-propelled vehicle subject to registration under chapter 321.

13. *"Person"* includes any individual, firm, corporation, copartnership, joint adventure, or association, and the plural as well as the singular number.

14. *"Place of business"* means a designated location wherein proper and adequate facilities shall be maintained for displaying, reconditioning, and repairing either new or used cars.

15. *"Retail buyer"* or *"buyer"* means a person who buys a motor vehicle from a retail seller.

16. *"Retail installment contract"* or *"contract"* means an agreement, entered into in this state, pursuant to which the title to, the property in or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

17. *"Retail installment transaction"* means any sale evidenced by a retail installment contract between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from a retail seller at a time price payable in one or more installments.

18. *"Retail seller"* or *"seller"* means a person who sells a motor vehicle to a retail buyer.

19. *"Sales finance company"* means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term also includes a retail seller engaged, in whole or in part, in the business of creating and holding retail installment contracts. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

20. *"Selling"* includes bartering, exchanging, delivering, or otherwise dealing in.

21. *"Special equipment"* means equipment installed on a motor truck which, in combination with the motor truck on which the equipment is installed, constitutes a self-contained unit configured for a specific purpose. To constitute special equipment, a minimum of seven thousand five hundred dollars or twenty-five percent of the retail value of the motor truck, whichever is greater, must be expended in installing the equipment on the motor truck, including the cost of the equipment. *"Special equipment"* does not include equipment designed for the transportation of passengers.

22. *"Used motor vehicle"* or *"second-hand motor vehicle"* means any motor vehicle of a type subject to registration under the laws of this state which has been sold "at retail" as defined in this chapter and previously registered in this or any other state.

Nothing contained herein shall be construed to require the licensing or to apply to any bank, credit union or trust company in Iowa.

[C39, §**5039.02;** C46, 50, 54, 58, 62, 66, 71, 73,

75, 77, 79, 81, §322.2]

97 Acts, ch 108, §35; 2000 Acts, ch 1134, §4; 2001 Acts, ch 32, §29

322.3 Prohibited acts.

1. A person shall not engage in this state in the business of selling at retail new motor vehicles of any make or represent or advertise that the person is engaged or intends to engage in such business in this state unless the person is authorized to do so by a contract in writing with the manufacturer or distributor of such make of new motor vehicles and unless the department has licensed the person as a motor vehicle dealer in this state in motor vehicles of such make and has issued to the person a license in writing as provided in this chapter.

2. A person other than a licensed dealer in new motor vehicles shall not engage in this state in the business of selling at retail used motor vehicles or represent or advertise that the person is engaged or intends to engage in such business in this state unless and until the department has licensed the person as a used motor vehicle dealer in the state and has issued to the person a license in writing as provided in this chapter.

3. Subsections 1 and 2 shall not be construed to require the separate licensing of persons employed as salespersons of motor vehicles by a retail motor vehicle dealer. However, the department may promulgate reasonable rules as necessary for the proper identification of persons employed as salespersons.

4. A person who is engaged in the business of selling at retail motor vehicles shall not enter into any contract, agreement, or understanding, express or implied, with any manufacturer or distributor of any such motor vehicles that the person will sell, assign, or transfer any retail installment contracts arising from the retail installment sale of such motor vehicles only to a designated person or class of persons. A condition, agreement, or understanding between any manufacturer or distributor and a motor vehicle dealer in this state of this nature is hereby declared to be against the public policy of this state and to be unlawful and void.

5. A manufacturer or distributor of motor vehicles or any agent or representative of a manufacturer or distributor shall not terminate, threaten to terminate, or fail to renew any contract, agreement, or understanding for the sale of new motor vehicles to any motor vehicle dealer in this state without just, reasonable, and lawful cause or because the motor vehicle dealer failed to sell, assign, or transfer any retail installment contract arising from the retail sale of such motor vehicles or any one or more of them to a person or a class of persons designated by the manufacturer or distributor.

6. A person who is engaged in the business of selling at retail motor vehicles shall not make and enter into a retail installment contract unless the contract meets the following requirements:

a. Every retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution.

b. The contract shall comply with the Iowa consumer credit code, where applicable.

7. This section shall not be construed to require that a place of business as defined in this chapter shall be maintained by a person selling motor vehicles at retail solely for the purpose of disposing of motor vehicles acquired or repossessed by such person in exercise of powers or rights granted by lien or title-retention instruments or contracts given as security for loans or purchase money obligations.

8. A manufacturer or distributor of motor vehicles or agent or representative of a manufacturer or distributor shall not coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle or vehicles, parts, or accessories, or any other commodity or commodities which have not been ordered by the dealer.

9. A person licensed under this chapter shall not, either directly or through an agent, salesperson, or employee, engage in this state, or represent or advertise that the person is engaged or intends to engage in this state, in the business of buying or selling at retail new or used motor vehicles, other than mobile homes more than eight feet in width or more than thirty-two feet in length as defined in section 321.1, on the first day of the week, commonly known and designated as Sunday.

10. A manufacturer, distributor, or importer of motor vehicles or agent or representative of such manufacturer, distributor, or importer shall not require a motor vehicle dealer to submit to arbitration to resolve a controversy before the controversy arises. The parties may enter into a voluntary agreement to arbitrate a controversy after it arises. Such an agreement shall require that the arbitrator apply Iowa law in resolving the controversy. Either party may appeal a decision of an arbitrator to the district court on the grounds that the arbitrator failed to apply Iowa law.

11. A person who is engaged in the business of selling motor vehicles at retail shall not sell, offer for sale, display, represent, or advertise that the person intends to sell motor vehicles from a location other than the person's place of business, except as provided in section 322.5.

12. A person convicted of a fraudulent practice in connection with selling, bartering, or otherwise dealing in motor vehicles, in this state or any other state, shall not for a period of five years from the

date of conviction be an owner, salesperson, officer of a corporation, or dealer representative of a licensed motor vehicle dealer or represent themselves as an owner, salesperson, or dealer representative of a licensed motor vehicle dealer.

13. A manufacturer, distributor, or importer of motor vehicles or agent or representative of such manufacturer, distributor, or importer shall not reduce the amount of compensation for, or disallow a claim for, any of the following if twelve months or more have passed since the claim was submitted to the manufacturer, distributor, or importer or agent or representative thereof:

a. Warranty parts, repairs, or service supplied by a motor vehicle dealer.

b. Sales or leasing incentives provided to a motor vehicle dealer or to a customer of a motor vehicle dealer including, but not limited to, rebates and discounted interest rates.

The twelve-month limitation shall not apply if a court of competent jurisdiction in this state finds the claim was fraudulent.

14. A manufacturer or importer shall not directly or indirectly be licensed as, own an interest in, operate, or control a motor vehicle dealer. This subsection shall not prohibit any of the following:

a. A manufacturer or importer from being licensed as a motor vehicle dealer or owning an interest in, operating, or controlling a motor vehicle dealership for a period not to exceed one year to facilitate transfer of the motor vehicle dealership to a new owner if both of the following apply:

(1) The prior owner transferred the motor vehicle dealership to the manufacturer or importer.

(2) The motor vehicle dealership is continuously offered for sale by the manufacturer or importer upon reasonable terms and conditions.

b. A manufacturer or importer from temporarily owning an interest in a motor vehicle dealership for the purpose of enhancing opportunities for persons who lack the financial resources to purchase the motor vehicle dealership without such assistance. A manufacturer or importer may temporarily own an interest in a motor vehicle dealership pursuant to this paragraph only if the manufacturer or importer enters into a contract with a person pursuant to which all of the following apply:

(1) The person operates the motor vehicle dealership.

(2) The person has made a significant financial investment in the motor vehicle dealership and is subject to loss on such investment.

(3) The person has an ownership interest in the motor vehicle dealership.

(4) The person will acquire full ownership of the motor vehicle dealership within a reasonable time under reasonable conditions.

c. A manufacturer or importer from owning an interest in, operating, or controlling a person whose primary business is renting motor vehicles and who is licensed as a used motor vehicle dealer.

d. A manufacturer of motor homes, as defined in section 321.1, or a manufacturer of school buses, as defined in section 321.1, from owning an interest in, operating, or controlling a motor vehicle dealer of the motor homes or school buses manufactured by that manufacturer or from being licensed as a motor vehicle dealer only of the motor homes or school buses manufactured by that manufacturer.

e. A manufacturer from owning a minority interest in an entity that owns and operates motor vehicle dealers, licensed under this chapter or the laws of the jurisdiction in which they are located, of the line-make manufactured by the manufacturer if all of the motor vehicle dealers owned and operated by the entity in this state are motor vehicle dealers of only the line-make manufactured by the manufacturer and if, on January 1, 2000, there were not less than one and not more than three motor vehicle dealers of that line-make licensed under this chapter.

[C39, §**5039.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.3]

90 Acts, ch 1061, §1; 96 Acts, ch 1090, §13; 97 Acts, ch 108, §36; 98 Acts, ch 1075, §26; 99 Acts, ch 69, §1; 2000 Acts, ch 1003, §1; 2000 Acts, ch 1232, §66; 2001 Acts, ch 32, §30, 31, 40

322.4 Application for license.

Each person before engaging in this state in the business of selling at retail motor vehicles or representing or advertising that the person is engaged or intends to engage in such business in this state shall file in the office of the department an application for license as a motor vehicle dealer in the state in such form as the department may prescribe, duly verified by oath, which application shall include the following:

1. The name of the applicant and the applicant's principal place of business wherever situated.

a. If the applicant is an individual — the name or style under which the individual intends to engage in such business.

b. If the applicant is a copartnership — the name or style under which such copartnership intends to engage in such business and the name and post-office address of each partner.

c. If the applicant is a corporation — the state of incorporation and the name and post-office address of each officer and director thereof.

2. The make or makes of new motor vehicles, if any, which the applicant will offer for sale to retail in this state.

3. The location of each place of business within this state to be used by the applicant for the conduct of the applicant's business.

4. If the applicant is a party to any contract or agreement or understanding with any manufacturer or distributor of motor vehicles or is about to become a party to such a contract, agreement, or understanding, the applicant shall state the name

of each such manufacturer and distributor and the make or makes of new motor vehicles, if any, which are the subject matter of each such contract.

5. A statement of the previous history, record, and association of the applicant and if the applicant is a copartnership, of each partner thereof and if the applicant is a corporation, of each officer and director thereof, which statement shall be sufficient to establish to the department the reputation in business of the applicant.

6. A description of the general plan and method of doing business in this state, which the applicant will follow if the license applied for in such application is granted.

7. Before the issuance of a motor vehicle dealer's license to a dealer engaged in the sale of vehicles for which a certificate of title is required under chapter 321, the applicant shall furnish a surety bond executed by the applicant as principal and executed by a corporate surety company, licensed and qualified to do business within this state, which bond shall run to the state of Iowa, be in the amount of fifty thousand dollars and be conditioned upon the faithful compliance by the applicant as a dealer with all of the statutes of this state regulating or applicable to the business of a dealer in motor vehicles, and indemnifying any person who buys a motor vehicle from the dealer from any loss or damage occasioned by the failure of the dealer to comply with any of the provisions of chapter 321 and this chapter, including, but not limited to, the furnishing of a proper and valid certificate of title to the motor vehicle involved in a transaction. The bond shall also indemnify any motor vehicle purchaser from any loss or damage caused by the failure of the dealer to comply with the odometer requirements in section 321.71, regardless of whether the motor vehicle was purchased directly from the dealer. The bond shall be filed with the department prior to the issuance of a license. The aggregate liability of the surety, however, shall not exceed the amount of the bond.

8. Proof that the applicant has financial liability coverage as defined in section 321.1, except that such coverage shall be in limits of not less than one hundred thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars because of injury to or destruction of property of others in any one accident.

9. Such other information touching the business of the applicant as the department may require.

For the purpose of investigating the matters contained in such application the department may withhold the granting of a license for a period not exceeding thirty days.

[C39, §**5039.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.4]

90 Acts, ch 1057, §1; 94 Acts, ch 1199, §80; 97 Acts, ch 139, §12, 17

322.5 License fees — temporary permits.

1. The license fee for a motor vehicle dealer is the sum of seventy dollars for a two-year license, one hundred forty dollars for a four-year license, or two hundred ten dollars for a six-year license for the licensee's principal place of business in each city or township and an additional twenty dollars for two years, forty dollars for four years, or sixty dollars for six years for each car lot which is in the city or township in which the principal place of business is located and which is not adjacent to that place, to be paid to the department at the time a license is applied for. In case the application is denied, the department shall refund the amount of the fee to the applicant. For the purposes of this section *"adjacent"* means that the principal place of business and each additional lot are adjoining parcels of property.

For the purposes of this subsection, parcels of property shall be deemed to be adjacent if the parcels are only separated by an alley, street, or highway that is not a controlled-access facility.

2. *a.* In addition to selling motor vehicles at the motor vehicle dealer's principal place of business and at car lots, a motor vehicle dealer may do any of the following:

(1) Display new motor vehicles at fairs, vehicle shows, and vehicle exhibitions, upon application for and receipt of a temporary permit issued by the department.

(2) Display, offer for sale, and negotiate sales of new motor vehicles at county or district fairs, as described in chapter 174, vehicle shows, and vehicle exhibitions, upon application for and receipt of a temporary permit issued by the department. Such activities may only be conducted at fairs, vehicle shows, and vehicle exhibitions that are held in the county of the motor vehicle dealer's principal place of business. A sale of a motor vehicle by a motor vehicle dealer shall not be completed and an agreement for the sale of a motor vehicle shall not be signed at a fair, vehicle show, or vehicle exhibition. All such sales shall be consummated at the motor vehicle dealer's principal place of business.

b. An application for a temporary permit under this subsection shall be made upon a form provided by the department and shall be accompanied by a ten dollar permit fee. The department may issue a temporary permit for a period not to exceed fourteen days.

3. A motor vehicle dealer may also, upon receipt of a temporary permit approved by the department, display and sell classic cars only at county fairs, as defined in chapter 174, vehicle shows, and vehicle exhibitions which have been approved by the department for purposes of classic

car display and sale and the provisions of section 322.3, subsection 9, shall not be applicable. Application for a temporary permit shall be made on forms provided by the department and shall be accompanied by a ten dollar permit fee. A permit shall be issued for a single period of not to exceed five days. Not more than three permits may be issued to a motor vehicle dealer in any one calendar year. For purposes of this subsection, *"classic car"* means a motor vehicle fifteen years old or older but less than twenty years old which is primarily of value as a collector's item and not as transportation.

4. A nonresident motor vehicle dealer, who is authorized by a written contract with a manufacturer or distributor of new motor trucks to sell at retail such new motor trucks, may display motor trucks within this state at qualified events approved by the department. The dealer must obtain a temporary permit from the department. An application for a temporary permit shall be made upon a form provided by the department and shall be accompanied by a ten dollar permit fee. Permits shall be issued for a period not to exceed fourteen days. The department shall issue a temporary permit under this subsection only if the qualified event for which the permit is issued meets all of the following conditions:

a. The sale of motor vehicles is not allowed during the qualified event.

b. The qualified event is conducted in a controlled area and is not open to the public generally.

c. The qualified event generally promotes the motor truck industry.

d. The qualified event is conducted within the area of responsibility that is specified in the motor vehicle dealer's contract with the manufacturer or distributor.

A temporary permit shall not be issued under this subsection unless the state in which the nonresident motor vehicle dealer is licensed extends by reciprocity similar privileges to a motor vehicle dealer licensed by this state.

5. A manufacturer, distributor, or dealer may, upon receipt of a temporary permit approved by the department, display new ambulances, new fire vehicles, and new rescue vehicles for educational purposes only at vehicle shows and vehicle exhibitions conducted for the express purpose of educating fire and rescue personnel in new technology and techniques for fire fighting and rescue efforts. Application for temporary permits shall be made upon forms provided by the department and shall be accompanied by a ten-dollar permit fee. Permits shall be issued for a single show or exhibition, not to exceed five consecutive days.

A temporary permit shall not be issued under this subsection to a nonresident manufacturer, distributor, or dealer unless the state in which the nonresident manufacturer, distributor, or dealer is licensed extends by reciprocity similar privileges to a manufacturer, distributor, or dealer licensed by this state.

[C39, §**5039.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.5]

92 Acts, ch 1175, §13; 93 Acts, ch 45, §1, 2; 93 Acts, ch 174, §3, 4; 98 Acts, ch 1058, §1, 2; 99 Acts, ch 13, §23; 2001 Acts, ch 32, §32; 2002 Acts, ch 1063, §38

Controlled-access facility, §306A.2
Subsection 5, NEW unnumbered paragraph 2

322.6 Denial of license.

The department may deny the application of any person for a license as a motor vehicle dealer and refuse to issue a license to the person as such, if, after reasonable notice and a hearing, the department determines that such applicant:

1. Has made a material false statement in the application for the license; or

2. Has not complied with the provisions of this chapter or any rules or regulations promulgated by the department thereunder except as otherwise provided; or

3. Is of bad business repute; or

4. Has been guilty of a fraudulent act in connection with selling, bartering, or otherwise dealing in motor vehicles; or

5. Is about to engage in any practice in connection with the sale, barter, or otherwise dealing in motor vehicles, which is fraudulent or in violation of the law; or

6. Has entered into contract or agreement or is about to enter into a contract or agreement with any manufacturer or distributor of motor vehicles which is contrary to any provision of this chapter; or

7. Has a contract or agreement with any manufacturer or distributor of motor vehicles or is about to enter into a contract or agreement with any manufacturer or distributor of motor vehicles, who without just, reasonable, and lawful cause therefor, has terminated within ninety days from the date of application a contract or agreement with a motor vehicle dealer in any county of the state in which the applicant proposes to engage in business;

8. Does not have a place of business within the meaning of this chapter unless applicant is a person referred to in subsection 7 of section 322.3;

9. Has violated any of the provisions of sections 321.78, 321.81, 321.92, 321.97, 321.98, 321.99, 321.100, 539.4, 714.1 and 714.16; or

10. If it has been judicially determined that the licensee has intentionally violated any of the provisions of the Iowa consumer credit code, and the licensee continues to make consumer credit sales, consumer loans or consumer leases in violation of the Iowa consumer credit code.

It shall be sufficient cause for refusal or revocation of a license as a motor vehicle dealer in the case of a partnership or corporation if any member of the partnership or any officer or director of the corporation has committed any act or omission

which would be cause for refusing or revoking a license to such person as an individual.

In considering whether or not a contract or agreement between a motor vehicle dealer and a manufacturer or distributor of motor vehicles has been terminated by such manufacturer or distributor without just and reasonable cause therefor, the department shall take into consideration the circumstances existing at the time of such termination, including the amount of business transacted by the motor vehicle dealer pursuant to the contract or agreement and prior to such termination; the investment necessarily made and the obligation necessarily incurred by the motor vehicle dealer in the performance of the dealer's part of such contract; the permanency of such investment; the reasons for such termination by such manufacturer or distributor and the fact that it is injurious to the public welfare for the business of a motor vehicle dealer to be disrupted by termination of such contract without just and reasonable cause.

Whenever the department determines to deny the application of any person for a license as a motor vehicle dealer and refuses to issue a license to the person as such, the department shall enter a final order thereof with its findings relating thereto within thirty days from the date of the hearing thereon.

[C39, §**5039.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.6]

322.7 License of motor vehicle dealer.

1. If the department grants the application of any person for a license as a motor vehicle dealer, it shall evidence the granting thereof by a final order and shall issue to the person a license in such form as may be prescribed by the department, which license shall include the following:

a. The name of the person licensed.

b. If the applicant is an individual or a copartnership — the name or style under which the licensee will engage in such business and if a copartnership, the name and address of each partner.

c. The principal place of business of the licensee and location therein of each place wherein the licensee is licensed to carry on such business.

d. The make or makes of new motor vehicles which the licensee is licensed to sell.

2. The instrument evidencing the license or a certified copy thereof provided by the department shall be kept posted conspicuously in the principal office of the licensee and in each place of business maintained and operated by the applicant pursuant to the license in this state.

3. The license of a motor vehicle dealer is valid for a two-year, four-year, or six-year time period and expires unless revoked or suspended on the last day of the last month of the two-year, four-year, or six-year period, as applicable.

4. The motor vehicle dealer license provided for in this chapter shall be renewed upon application in the form and content prescribed by the department and upon payment of the required fee. A licensee shall have the month of expiration and the month after the month of expiration to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license application and pay the required fee.

[C39, §**5039.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.7]

92 Acts, ch 1175, §14; 2000 Acts, ch 1016, §20

322.7A Implementation of multiyear licensing. Repealed by 98 Acts, ch 1075, § 32.

322.8 Supplemental statements.

Each motor vehicle dealer licensee shall promptly file with the department from time to time during the period of the license, statements supplemental to the statements contained in the application for license whenever any change shall occur in the licensee's personnel or in the licensee's plan or method of doing business or in the location of the place or places of business, so that the statements made in the application do, after such change, properly disclose the licensee's status and method and plan of doing business. The supplemental statement shall be in the form prescribed by the department and shall disclose such information as would have been required by this chapter if such changes had occurred prior to the licensee making application for a license.

A supplemental statement shall include any change in the licensee's financial liability coverage.

If the department finds that the changes set forth in the supplemental statement do not violate the provisions of this chapter and it grants to the licensee the privilege of doing business in the manner set forth therein, it shall upon surrender to it of the license of the motor vehicle dealer, issue to the dealer a new license appropriate to the dealer's original application as modified by such supplemental statement.

[C39, §**5039.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.8]

97 Acts, ch 139, §13, 17

322.9 Revocation or suspension of license.

The department may revoke or suspend the license of a retail motor vehicle dealer if, after notice and hearing by the department of inspections and appeals, it finds that the licensee has been guilty of an act which would be a ground for the denial of a license under section 322.6.

The department may revoke or suspend the license of a retail motor vehicle dealer if, after notice and hearing by the department of inspections and appeals, it finds that the licensee has been convicted or has forfeited bail on three charges of:

1. Failing upon the sale or transfer of a vehicle to deliver to the purchaser or transferee of the vehicle sold or transferred, a manufacturer's or importer's certificate, or a certificate of title duly assigned, as provided in chapter 321.

2. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a manufacturer's or importer's certificate, or a certificate of title duly assigned as provided in chapter 321.

3. Failing upon the purchasing or otherwise acquiring of a vehicle to obtain a new certificate of title to such vehicle when and where required in chapter 321.

[C39, §**5039.09;** C46, §322.9; C50, 54, §322.9, 322.16; C58, 62, 66, 71, 73, 75, 77, 79, 81, §322.9]

85 Acts, ch 67, §38; 89 Acts, ch 273, §3

322.10 Judicial review.

Judicial review of actions of the department may be sought in accordance with the terms of the Iowa administrative procedure Act. The petitioner shall file with the clerk a bond for the use of the respondent, with sureties approved by such clerk and in an amount fixed by the clerk, provided in no case shall the bond be less than fifty dollars, conditioned that the petitioner shall perform the orders of the court.

[C39, §**5039.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.10]

322.11 Injunctions.

Whenever the department shall believe from evidence satisfactory to it that any person has or is now violating any provision of this chapter, the department may, in addition to any other remedy, bring an action in the name and on behalf of the state of Iowa against such person and any other person concerned in or in any way participating in or about to participate in practices or acts in violation of this chapter, to enjoin such person and said other person from continuing the same. In any such action, the department may apply for and on due showing be entitled to have issued the court's subpoena, requiring forthwith the appearance of any defendant, the defendant's agent and employees and the production of documents, books, and records as may appear necessary for the hearing of such petition to testify and give evidence concerning the acts or conduct or practices or things complained of in such application for injunction. In said action an order or judgment may be entered, awarding such preliminary or final injunctions as may be proper.

[C39, §**5039.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.11]

322.12 Motor vehicle dealers license fees.

All fees and funds of whatever character accruing from the administration of this chapter shall be accounted for and paid by the department into the state treasury monthly and shall be placed in the road use tax fund.

[C39, §**5039.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.12]

322.13 Rules.

1. The department shall have full authority to prescribe reasonable rules for the administration and enforcement of this chapter, in addition hereto and not inconsistent herewith. All rules shall be filed and entered by the department in its office in an indexed, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. Whenever a new rule or regulation is adopted by the department, a copy of the same shall be mailed by it to each licensee hereunder.

2. The department shall have power to prescribe the forms to be used in connection with the licensing of persons as herein provided.

[C39, §**5039.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.13]

322.14 Penalties.

1. A person who violates any of the provisions of this chapter for which a penalty is not specifically provided is guilty of a simple misdemeanor punishable by a fine of not less than two hundred fifty dollars nor more than one thousand five hundred dollars or by imprisonment not to exceed thirty days.

2. Notwithstanding subsection 1, if a provision of chapter 537 is applicable to a retail installment contract and a violation of that provision is subject to a penalty under chapter 537, that penalty shall apply in lieu of a penalty provided in this chapter.

[C39, §**5039.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.14]

97 Acts, ch 108, §37; 99 Acts, ch 13, §24

322.15 Liberal construction.

All provisions of this chapter shall be liberally construed to the end that the practice or commission of fraud in the sale, barter, or disposition of motor vehicles at retail in this state may be prohibited and prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of selling, bartering, or otherwise dealing in motor vehicles at retail in this state and reliable persons may be encouraged to engage in the business of selling, bartering, and otherwise dealing in motor vehicles at retail in this state.

[C39, §**5039.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §322.15]

322.16 Repealed by 55 Acts, ch 169, § 2. See § 322.9.

322.17 Copy of contract to buyer.

A copy of every retail installment contract shall be furnished to the buyer at the time of the execu-

tion of the contract. An acknowledgment by the buyer contained in the body of the retail installment contract of the delivery of a copy thereof shall be conclusive proof of delivery in any action or proceeding by or against any assignee of a retail installment contract.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §322.17]

322.18 Dual-interest insurance.

If dual-interest insurance on the motor vehicle is purchased by the holder it shall, within thirty days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the coverages. The buyer shall have the privilege of purchasing such insurance from an agent or broker of the buyer's own selection and of selecting an insurance company acceptable to the holder; but in such case the inclusion of the insurance premium in the retail installment contract shall be optional with the seller. If any insurance is canceled, unearned insurance premium refunds received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §322.18]

322.19 Finance charges — amount.

Notwithstanding the provisions of any other existing law, a retail installment transaction may include a finance charge not in excess of the following rates:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, an amount equivalent to one and three-fourths percent per month simple interest on the declining balance of the amount financed.

Class 2. Any new motor vehicle not in Class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, an amount equivalent to two percent per month simple interest on the declining balance of the amount financed.

Class 3. Any used motor vehicle not in Class 2 and designated by the manufacturer by a year model more than two years prior to the year in which the sale is made, an amount equivalent to two and one-fourth percent per month simple interest on the declining balance of the amount financed.

Amount financed shall be as defined in section 537.1301.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §322.19; 82 Acts, ch 1153, §1, 18(1)]

322.20 Extension of time.

Sections 537.2503 and 537.3402 notwithstanding, if the holder of a retail installment contract in connection with the purchase or sale of a vehicle, at the request of the buyer, renews the loan or extends the scheduled due date of all or any part of an installment or installments, the holder may restate the amount of installments and the time schedule for paying installments and collect for installments, subject to the renewal or extension, a finance charge on the outstanding declining balance of the amount financed for the period of the extension or renewal. The finance charge on a renewal or extension under this subsection shall not exceed the rate on the original retail installment contract as limited by section 322.19.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §322.20]
90 Acts, ch 1088, §1

322.21 Remaining balance on trade vehicle.

The extension of credit by a retail seller to a retail buyer, pursuant to a retail installment contract, of the amount actually paid or to be paid by the retail seller to discharge a purchase-money security interest, as provided in section 554.9103, on a motor vehicle traded in by the retail buyer shall not subject the retail seller to the provisions of chapter 536 or 536A.

99 Acts, ch 13, §25; 2000 Acts, ch 1149, §167, 187

322.22 Repealed by 74 Acts, ch 1250, § 9.117.

322.23 Complaints.

Any retail buyer having reason to believe that the provisions of this chapter relating to the buyer's installment contract have been violated may file with the department a written complaint setting forth the details of such alleged violation and the department, upon the receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee or other person relating to such specific complaint.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §322.23]

322.24 Hearing — subpoenas.

The state department of transportation and the department of inspections and appeals may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence in any matter over which the respective department has jurisdiction, control, or supervision pertaining to this chapter.

If a person refuses to obey a subpoena, to give testimony, or to produce evidence as required, a judge of the district court of the state of Iowa in and for Polk county may, upon application and proof of the refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the court, for the witness to appear before the respective department, to give testimony, and to pro-

duce evidence as required. Upon filing the order in the office of the clerk of the district court, the clerk shall issue process of subpoena as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §322.24]
89 Acts, ch 273, §4

322.25 Repealed by 73 Acts, ch 208, § 9.

322.26 Short title. Repealed by 86 Acts, ch 1237, § 46.

322.27 Manufacturer's license.

A manufacturer, except an alien manufacturer represented by an importer, shall not engage in business as a manufacturer in this state or employ, appoint, or maintain distributors or wholesalers or dealers, without a license as provided in this chapter. However, new motor vehicle dealers may wholesale motor vehicles without an additional license and used motor vehicle dealers may wholesale used motor vehicles without an additional license.

[C66, 71, 73, 75, 77, 79, 81, §322.27]
2000 Acts, ch 1154, §24

322.27A Wholesaler's license.

A person shall not engage in business as a wholesaler of motor vehicles in this state without a license as provided in this chapter.

Prior to the issuance of such license, the department, at a minimum, and in addition to any other information the department deems necessary to the application, shall require proof that the applicant has financial liability coverage as defined in section 321.1, except that such coverage shall be in limits of not less than one hundred thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars because of injury to or destruction of property of others in any one accident.

98 Acts, ch 1121, §6, 9

322.28 Distributor or wholesaler's license.

A distributor or wholesaler of new motor vehicles shall not sell or offer for sale a new motor vehicle at retail unless licensed as a new motor vehicle dealer. A licensed distributor or wholesaler of a new motor vehicle shall not register or title a new motor vehicle held for sale and shall transfer ownership of a new motor vehicle by assigning the manufacturer's statement of origin for the vehicle.

[C66, 71, 73, 75, 77, 79, 81, §322.28]
2001 Acts, ch 32, §33, 40

322.29 Issuance of license — fees.

1. Application for license shall be made to the department by a manufacturer, distributor, or wholesaler, in a form and containing information as the department requires and shall be accompanied by the required license fee. The license shall be granted or refused within thirty days after application, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which it is granted. A licensee shall have the month of December of the calendar year for which the license was granted and the following month of January to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license application and pay the required fee.

2. License fees for each calendar year, or part thereof, shall be as follows effective January 1, 1998:

a. For a motor vehicle manufacturer, thirty-five dollars.

b. For a new motor vehicle distributor or wholesaler, twenty dollars.

c. For a used motor vehicle distributor or wholesaler, ten dollars.

3. A license shall not be issued to a person as a distributor or wholesaler for a new motor vehicle model unless the distributor or wholesaler has written authorization from the manufacturer as a distributor or wholesaler of the motor vehicle model.

4. Upon payment of the license fee as provided in this section, a person who rebuilds new completed motor vehicles by fabricating, altering, adding, or replacing essential parts, components, or equipment for the purpose of building an ambulance, rescue vehicle, fire vehicle, or towing or recovery vehicle as defined in chapter 321 may be issued a license as a wholesaler of new motor vehicles of the make and model rebuilt without written authorization from the manufacturer.

5. Upon payment of the license fee as provided in this section, a person who installs cranes, hook loaders, buckets, aerial ladders, tanks, or special equipment on new completed motor trucks with a gross vehicle weight rating of fourteen thousand five hundred pounds or more may be issued a license as a wholesaler of new motor vehicles of the make and model on which the equipment is installed without written authorization from the manufacturer.

[C66, 71, 73, 75, 77, 79, 81, §322.29]
88 Acts, ch 1047, §2; 97 Acts, ch 108, §38; 2000 Acts, ch 1016, §21, 22; 2001 Acts, ch 32, §34

322.30 Display.

The licenses of manufacturers and distributors shall specify the location of the office and must be conspicuously displayed at such location. In case such location be changed, the department shall endorse the change of location on the license without charge if it be within the same municipality.

A change of location to another municipality shall require a new license.

[C66, 71, 73, 75, 77, 79, 81, §322.30]
2000 Acts, ch 1154, §25

322.31 Denial of license.

The department may deny the application of any person for a license as a manufacturer, distributor, or wholesaler, if after reasonable notice and a hearing the department determines that such applicant has violated any provision of this chapter and may revoke or suspend any such license that has been issued if the department shall determine after reasonable notice and a hearing that such licensee has violated any provision of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §322.31]
97 Acts, ch 108, §39

322.32 Construction of applicability to contracts.

Nothing in this chapter shall be construed to impair the obligations of a contract or to prevent a licensee hereunder from requiring performance of a written contract entered into with another licensee hereunder, nor shall the requirement of such performance constitute a violation of any of the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §322.32]

322.33 Applicability of the Iowa consumer credit code.

1. The provisions of the Iowa consumer credit code shall apply to a consumer credit sale in which a licensed motor vehicle dealer participates or engages, and any violation of that code shall be a violation of this chapter.

2. Article 2, parts 5 and 6, and article 3, sections 537.3203, 537.3206, 537.3209, 537.3304, 537.3305, and 537.3306 shall apply to any credit transaction as defined in section 537.1301, that is a retail installment transaction. For the purpose of applying provisions of the consumer credit code in those transactions, *"consumer credit sale"* shall include a sale for a business purpose.

3. A provision of the Iowa consumer credit code shall supersede a conflicting provision of this chapter.

[C75, 77, 79, 81, §322.33]

322.34 Reserved.

322.35 Disclosure of manufacturer's suggested price for certain motor vehicles — penalty.

1. A person shall not sell or offer for sale at retail a new car, multipurpose vehicle, or pickup, as those terms are defined in section 321.1, without a label securely affixed to the windshield or side window containing the manufacturer's clear and legible endorsement disclosing the following true and correct information:

a. The retail price of the vehicle suggested by the manufacturer.

b. The retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to the vehicle at the time of its delivery to the retail seller, which is not included within the price of the vehicle as stated pursuant to paragraph *"a"*.

c. The amount charged, if any, to the retail seller for the transportation of the vehicle to the location at which it is delivered to the retail seller.

d. The total of the amounts specified pursuant to paragraphs *"a"*, *"b"*, and *"c"*.

2. A person who violates this section commits a simple misdemeanor. Violation with respect to each vehicle constitutes a separate offense.

86 Acts, ch 1084, §1

322.36 Motorcycle dealer business hours.

A person in the business of selling motorcycles under chapter 322D is not required to maintain regular business hours at the dealer's principal place of business or other place of business.

97 Acts, ch 69, §1

CHAPTER 322A

MOTOR VEHICLE FRANCHISERS

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322A.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Additional motor vehicle dealership"* includes a facility providing manufacturer-authorized or distributor-authorized service or warranty work for motor vehicles, except motor homes, of a line-make in a community in which the same line-make is represented.

2. *"Community"* means the franchisee's area of responsibility as stipulated in the franchise.

3. *"Consumer care"* means to perform, for the public, necessary maintenance and repairs to motor vehicles.

4. *"Department"* means the state department of transportation.

5. *"Franchise"* means a contract between two or more persons when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchiser.

c. The franchisee, as an independent business, constitutes a component of franchiser's distribution system.

d. The operation of franchisee's business is substantially associated with the franchiser's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

e. The operation of the franchisee's business is substantially reliant on franchiser for the continued supply of motor vehicles, parts, and accessories.

6. *"Franchisee"* means a person who receives motor vehicles from the franchiser under a franchise and who offers and sells such motor vehicles to the general public.

7. *"Franchiser"* means a person who manufactures or distributes motor vehicles and who may enter into a franchise as hereinafter defined.

8. *"Motor vehicle"* means *"motor vehicles"* as defined in chapter 321 which are subject to registration pursuant to the provisions thereof.

9. *"Person"* means a sole proprietor, partnership, corporation, or any other form of business organization.

10. *"Substantially detrimental"* means that, by a preponderance of the evidence, the market share of the franchiser's motor vehicles in the community will be significantly reduced in comparison to the franchiser's historical market share in the community.

11. *"Termination or noncontinuance"* includes a reduction of the geographic area of a community.

[C71, 73, 75, 77, 79, 81, §322A.1; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1940; 91 Acts, ch 27, §3; 99 Acts, ch 69, §2; 2001 Acts, ch 32, §35, 40

322A.2 Discontinuing franchise.

Notwithstanding the terms, provisions or conditions of any agreement or franchise, no franchiser shall terminate or refuse to continue any franchise unless the franchiser has first established, in a hearing held under the provisions of this chapter, that:

1. The franchiser has good cause for termination or noncontinuance, and

2. Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the motor vehicle service formerly provided, or that the community cannot be reasonably expected to support such a dealership; provided, however, a franchiser may terminate a franchise for a particular line-make if the franchiser discontinues that line-make and a franchiser may terminate a franchise if the franchisee's license as a motor vehicle dealer is revoked pursuant to the provisions of chapter 322.

[C71, 73, 75, 77, 79, 81, §322A.2]

322A.3 New franchise.

In the event that a franchiser is permitted to terminate or not continue a franchise, and is further permitted not to enter into a franchise for the line-make in the community, no franchise shall thereafter be entered into for the sale of motor vehicles of that line-make in the community, unless the franchiser has first established, in a hearing held under the provisions of this chapter, that there has been a change of circumstances so that the community at that time can be reasonably expected to support the dealership.

[C71, 73, 75, 77, 79, 81, §322A.3]

322A.4 Additional franchise.

No franchiser shall enter into any franchise for the purpose of establishing an additional motor vehicle dealership in any community in which the same line-make is then represented, unless the franchiser has first established in a hearing held under the provisions of this chapter that there is good cause for such additional motor vehicle dealership under such franchise, and that it is in the public interest.

[C71, 73, 75, 77, 79, 81, §322A.4]

322A.5 Warranties.

Every franchiser and franchisee shall fulfill the terms of any express or implied warranty concerning the sale of a motor vehicle to the public of the line-make which is the subject of a contract or franchise agreement between the parties. If it is determined by the district court that either the franchiser or franchisee, or both, have violated an express or implied warranty, the court shall add to any award or relief granted an additional award for reasonable attorney fees and other necessary

expenses for maintaining the litigation.

[C71, 73, 75, 77, 79, 81, §322A.5]

322A.6 Application filed with the department.

If a franchiser seeks to terminate or not continue a franchise, or seeks to enter into a franchise establishing an additional motor vehicle dealership of the same line-make, the franchiser shall file an application with the department for permission to terminate or not continue the franchise, or for permission to enter into a franchise for additional representation of the same line-make in that community.

An applicant seeking permission to enter into a franchise for additional representation of the same line-make in a community shall deposit with the department at the time the application is filed, an amount of money to be determined by the department of inspections and appeals to pay the costs of the hearing.

[C71, 73, 75, 77, 79, 81, §322A.6; 81 Acts, ch 22, §22]

86 Acts, ch 1244, §42; 89 Acts, ch 273, §5

322A.7 Department of inspections and appeals to hold hearing.

Upon receiving an application, the department shall notify the department of inspections and appeals which shall enter an order fixing a time, which shall be within ninety days of the date of the order, and place of hearing, and shall send by certified or registered mail, with return receipt requested, a copy of the order to the franchisee whose franchise the franchiser seeks to terminate or not continue. If the application requests permission to establish an additional motor vehicle dealership, a copy of the order shall be sent to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of orders shall be addressed to the franchisee at the place where the business is conducted. The department of inspections and appeals may also give notice of the franchiser's application to any other parties deemed interested persons, the notice to be in the form and substance and given in the manner the department of inspections and appeals deems appropriate.

Any person who can show an interest in the application may become a party to the hearing, whether or not that person receives notice. However, a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise or in the establishment of an additional motor vehicle dealership.

[C71, 73, 75, 77, 79, 81, §322A.7; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1941

322A.8 Continuation.

If the department of inspections and appeals finds it desirable it may upon request continue the date of hearing for a period of ninety days, and may upon application, but not ex parte, continue the date of hearing for an additional period of ninety days.

[C71, 73, 75, 77, 79, 81, §322A.8; 81 Acts, ch 22, §22]

322A.9 Burden of proof.

Upon hearing, the franchiser shall have the burden of proof to establish that under the provisions of this chapter the franchiser should be granted permission to terminate or not continue the franchise, or to enter into a franchise establishing an additional motor vehicle dealership.

Nothing contained in this chapter shall be construed to require or authorize any investigation by the department of any matter before the department under this chapter. Upon hearing, the department of inspections and appeals shall hear the evidence introduced by the parties and shall make its decision solely upon the record so made.

[C71, 73, 75, 77, 79, 81, §322A.9; 81 Acts, ch 22, §22]

322A.10 Rules of evidence.

The rules of civil procedure relating to discovery and inspection shall apply to hearings held under the provisions of this chapter, and the department of inspections and appeals may issue orders to give effect to such rules.

In the event issues are raised which would involve violations of any state or federal antitrust or price-fixing law, all discovery and inspection proceedings which would be available under such issues in a state or federal court action shall be available to the parties to the hearing, and the department of inspections and appeals may issue orders to give effect to such proceedings.

Evidence which would be admissible under the issues in a state or federal court action is admissible in a hearing held by the department of inspections and appeals. The department of inspections and appeals shall apportion all costs between the parties.

[C71, 73, 75, 77, 79, 81, §322A.10; 81 Acts, ch 22, §22]

322A.11 Condition barring change in franchise.

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not be considered facts supporting a finding of good cause for the termination or noncontinuation of a franchise, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

1. The sole fact that franchiser desires further penetration of the market.
2. The change of ownership of the franchisee's

dealership or the change of executive management of the franchisee's dealership, unless the franchiser, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchiser's motor vehicles in the community and that good cause for the termination or noncontinuation of the franchise or for the establishment of an additional dealership otherwise exists.

3. The fact that the franchisee refused to purchase or accept delivery of any motor vehicle or vehicles, parts, accessories or any other commodity or service not ordered by the franchisee.

4. The fact that the dealership moved to another facility and location within the dealership's community which are equal to or superior to the dealership's former location and facility or the fact that the dealership added an additional line-make to the dealership if the dealership's facility is adequate to accommodate the additional line-make.

5. The fact that the dealership does not meet an index or standard established by the franchiser, unless the franchiser proves that the failure of the dealership to meet the index or standard will be substantially detrimental to the distribution of the franchiser's motor vehicles in the community and that good cause for the termination or noncontinuation of the franchise or for the establishment of an additional dealership otherwise exists.

[C71, 73, 75, 77, 79, 81, §322A.11]

98 Acts, ch 1075, §27; 2000 Acts, ch 1232, §26; 2001 Acts, ch 32, §36, 37, 40

322A.12 Sale or transfer of ownership.

1. Notwithstanding the terms, provisions, or conditions of an agreement or franchise, subject to the provisions of section 322A.11, subsection 2, in the event of the sale or transfer of ownership of a franchisee's dealership by sale or transfer of the business or by stock transfer or in the event of a change in the executive management of a franchisee's dealership, the franchiser shall give effect to the change in the franchise unless the transfer of the franchisee's license under chapter 322 is denied or the new owner is unable to obtain a license under that chapter.

2. Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the sale or transfer, or the proposed sale or transfer, of a franchisee's dealership, or the change or proposed change in the executive management of a franchisee's dealership shall not make applicable any right of first refusal of the franchiser.

[C71, 73, 75, 77, 79, 81, §322A.12]

2002 Acts, ch 1063, §39

Section amended

322A.13 Compulsory attendance at hearings.

The department of inspections and appeals may issue subpoenas, administer oaths, compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department of inspections and appeals may apply to the district court of the county wherein the hearing is being held for a court order enforcing this section.

[C71, 73, 75, 77, 79, 81, §322A.13; 81 Acts, ch 22, §22]

322A.14 License to dealer denied.

In the event that a franchiser enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this chapter, no license under chapter 322 shall be issued to that franchisee or proposed franchisee to engage in the business of selling motor vehicles manufactured or distributed by that franchiser.

[C71, 73, 75, 77, 79, 81, §322A.14]

322A.15 Guidelines.

In determining whether good cause has been established for terminating or not continuing a franchise, the department of inspections and appeals shall take into consideration the existing circumstances, including, but not limited to:

1. Amount of business transacted by the franchisee.

2. Investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise.

3. Permanency of the investment.

4. Whether it is injurious to the public welfare for the business of the franchisee to be disrupted.

5. Whether the franchisee has adequate motor vehicle service facilities, equipment, parts and qualified service personnel to reasonably provide consumer care for the motor vehicles sold at retail by the franchisee and any other motor vehicles of the same line-make.

6. Whether the franchisee refuses to honor warranties of the franchiser to be performed by the franchisee, provided that the franchiser reimburses the franchisee for such warranty work performed by the franchisee.

7. Except as provided in section 322A.11, failure by the franchisee to substantially comply with those requirements of the franchise which are determined by the department of inspections and appeals to be reasonable and material.

8. Except as provided in section 322A.11, bad faith by the franchisee in complying with those terms of the franchise which are determined by the department of inspections and appeals to be reasonable and material.

Good cause does not include a realignment, relocation, or reduction of dealerships.

[C71, 73, 75, 77, 79, 81, §322A.15; 81 Acts, ch 22, §22]

97 Acts, ch 108, §40

322A.16 Additional guidelines.

In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department of inspections and appeals shall take into consideration the existing circumstances, including, but not limited to:

1. Amount of business transacted by other franchisees of the same line-make in that community.
2. Investment necessarily made and obligations incurred by other franchisees of the same line-make, in that community, in the performance of their part of their franchises.
3. Permanency of the investment.
4. Effect on the retail motor vehicle business as a whole in that community.
5. Whether it is injurious to the public welfare for an additional franchise to be established.
6. Whether the franchisees of the same line-make in that community are providing adequate consumer care for the motor vehicles of the line-make which shall include the adequacy of motor vehicle service facilities, equipment, supply of parts and qualified service personnel.

[C71, 73, 75, 77, 79, 81, §322A.16; 81 Acts, ch 22, §22]

322A.17 Review.

A decision of the department of inspections and appeals is subject to review by the state department of transportation, whose decision is final agency action for the purpose of judicial review.

Judicial review of actions of the state department of transportation may be sought in the manner provided for in section 322.10.

[C71, 73, 75, 77, 79, 81, §322A.17; 81 Acts, ch 22, §22]

89 Acts, ch 273, §6

CHAPTER 322B

MANUFACTURED OR MOBILE HOME RETAILERS

Court action required for termination of installment contracts during military service; §29A.102, 29A.105
Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service; §29A.103, 29A.104

322B.1 Short title.
322B.2 Definitions.
322B.3 Manufactured or mobile home retailer license — procedure.
322B.4 License application and fees.
322B.5 Notification.
322B.6 Revocation, suspension, and denial of license.
322B.7 Rules.
322B.8 Unlawful practice.
322B.9 Manufactured home, mobile home, and modular home retail installment contract — finance charge.

322B.1 Short title.

This chapter may be cited as the *"Manufactured or Mobile Home Retailers Licensing Act"*.

[C81, §322B.1]

2001 Acts, ch 153, §1

322B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the state department of transportation.
2. *"Home"* means a manufactured home, mobile home, or modular home.
3. *"Manufactured home"* means a factory-built structure built under the authority of 42 U.S.C. § 5403, that is required by federal law to display a seal required by the United States department of housing and urban development, and was constructed on or after June 15, 1976.
4. *"Manufactured or mobile home distributor"* means a person who sells or distributes manufactured or mobile homes to manufactured or mobile home retailers.
5. *"Manufactured or mobile home manufacturer"* means a person engaged in the business of fabricating or assembling manufactured or mobile homes.
6. *"Manufactured or mobile home retailer"* means a person who, for a commission or other thing of value, sells, exchanges, or offers or attempts to negotiate a sale or exchange of an interest in a home or who is engaged wholly or in

part in the business of selling homes, whether or not the homes are owned by the retailer. *"Manufactured or mobile home retailer"* does not include any of the following:

a. A receiver, trustee, administrator, executor, guardian, attorney, or other person appointed by or acting under the judgment or order of a court to transfer an interest in a home.

b. A person transferring a home registered in the person's name and used for personal, family, or household purposes, if the transfer is an occasional sale and is not part of the business of the transferor.

c. A person who transfers an interest in a home only as an incident to engaging in the business of financing new or used homes.

d. A person who exclusively sells modular homes.

7. *"Mobile home"* means a structure, transportable in one or more sections, which exceeds eight feet in width and thirty-two feet in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to one or more utilities. A *"mobile home"* is not built to a mandatory building code, contains no state or federal seals, and was built before June 15, 1976.

8. *"Modular home"* means a factory-built structure which is manufactured to be used as a place of human habitation, is constructed to comply with the Iowa state building code for modular factory-built structures, and displays a seal issued by the state building code commissioner.

9. *"New home"* means a home that has not been sold at retail.

10. *"Preowned home"* means a home that has been previously sold at retail.

11. *"Retailer's inventory"* means homes offered for sale at the retailer's licensed address or at any mobile home park or land-leased community so long as the title of the home is in the retailer's name and the home is not being occupied.

12. *"Sell at retail"* means to sell a home to a person who will devote it to a consumer use.

[C81, §322B.2]

88 Acts, ch 1134, §68; 98 Acts, ch 1126, §1, 2; 99 Acts, ch 188, §15; 2001 Acts, ch 153, §2; 2001 Acts, ch 176, §66, 82

322B.3 Manufactured or mobile home retailer license — procedure.

1. *License application.* A manufactured or mobile home retailer shall file in the office of the department an application for license as a manufactured or mobile home retailer in the same manner as a motor vehicle dealer applicant under section 322.4 or as the department may prescribe. A manufactured or mobile home retailer license may be issued in the same manner as a motor vehicle dealer license pursuant to section 322.7.

2. *License fees.* The license fee for a manufactured or mobile home retailer is seventy dollars for a two-year license, one hundred forty dollars for a four-year license, or two hundred ten dollars for a six-year license. If the application is denied, the department shall refund the fee. Fees and funds accruing from the administration of this chapter shall be accounted for and paid by the department to the treasurer of state monthly for deposit in the road use tax fund of the state.

3. *Surety bond.* Before the issuance of a manufactured or mobile home retailer's license, an applicant for a license shall file with the department a surety bond executed by the applicant as principal and executed by a corporate surety company, licensed and qualified to do business within this state, which bond shall run to the state of Iowa, be in the amount of fifty thousand dollars, and be conditioned upon the faithful compliance by the applicant as a retailer with all of the statutes of this state regulating the business of the retailer and indemnifying any person dealing or transacting business with the retailer in connection with a manufactured or mobile home from a loss or damage occasioned by the failure of the retailer to comply with this chapter, including, but not limited to, the furnishing of a proper and valid document of title to the manufactured or mobile home involved in the transaction.

4. *Permits for fairs, shows, and exhibitions.* Manufactured or mobile home retailers, in addition to selling homes at their principal place of business and lots, may, upon receipt of a temporary permit approved by the department, display and offer new manufactured homes for sale and negotiate sales of new manufactured homes at fairs, shows, and exhibitions. Application for temporary permits shall be made upon forms provided by the department and shall be accompanied by a ten dollar permit fee. Temporary permits shall be issued for a period not to exceed fourteen days.

5. *Manufactured or mobile home hookups.* A manufactured or mobile home retailer or an employee of a manufactured or mobile home retailer may perform water, gas, electrical, and other utility service connections in a manufactured or mobile home space, or within ten feet of such space, located in a manufactured home community or mobile home park, and the retailer or an employee of the retailer may install a tiedown system on a manufactured or mobile home located in a manufactured home community or mobile home park. The connections are subject to inspection and approval by local building code officials and the manufactured or mobile home retailer shall pay the inspection fee, if any.

[C81, §322B.3; 82 Acts, ch 1009, §1]

92 Acts, ch 1175, §16; 98 Acts, ch 1075, §28; 98 Acts, ch 1126, §3, 4; 99 Acts, ch 114, §22; 2001 Acts, ch 32, §38; 2001 Acts, ch 153, §3

322B.4 License application and fees.

Upon application and payment of a thirty-five

dollar fee, a person may be licensed as a manufacturer or distributor of manufactured or mobile homes. The application shall be in the form and shall contain information as the department prescribes. The license shall be granted or refused within thirty days after application. The license expires, unless sooner revoked or suspended by the department, on December 31 of the calendar year for which the license was granted. A licensee shall have the month of December of the calendar year for which the license was granted and the following month of January to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license application and pay the required fee.

[C81, §322B.4]

98 Acts, ch 1126, §5; 2000 Acts, ch 1016, §23; 2001 Acts, ch 153, §4

322B.5 Notification.

The department shall notify the state building code commissioner of each license issued to a manufactured or mobile home retailer.

[C81, §322B.5]

2001 Acts, ch 153, §5

322B.6 Revocation, suspension, and denial of license.

The department may revoke, suspend, or refuse the license of a manufactured or mobile home retailer, manufactured or mobile home manufacturer, or manufactured or mobile home distributor, as applicable, if the department finds that the manufactured or mobile home retailer, manufacturer, or distributor is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.

2. Knowingly making misleading, deceptive, untrue or fraudulent representations in the business of a manufactured or mobile home retailer, manufacturer, or distributor or engaging in unethical conduct or practice harmful or detrimental to the public.

3. Conviction of a felony related to the business of a manufactured or mobile home retailer, manufacturer, or distributor. A copy of the record of conviction or plea of guilty shall be sufficient evidence for the purposes of this section.

4. Failing upon the sale or transfer of a manufactured or mobile home to deliver to the purchaser or transferee of the manufactured or mobile home sold or transferred, a manufacturer's or importer's certificate, or a certificate of title duly assigned, as provided in chapter 321.

5. Failing upon the purchasing or otherwise acquiring of a manufactured or mobile home to obtain a manufacturer's or importer's certificate, a new certificate of title, or a certificate of title duly assigned as provided in chapter 321.

6. Failing to apply for and obtain from a county treasurer a certificate of title for a used manufactured or mobile home, titled in Iowa, acquired by the retailer within thirty days from the date of acquisition, as required under section 321.45, subsection 4.

In accordance with chapters 10A and 17A, each person whose license or application is revoked, suspended, or refused shall be provided an opportunity for a hearing before the department of inspections and appeals.

[C81, §322B.6]

87 Acts, ch 130, §6; 89 Acts, ch 273, §7, 8; 98 Acts, ch 1126, §6 – 8; 99 Acts, ch 188, §16; 2001 Acts, ch 153, §6

322B.7 Rules.

1. The state department of transportation shall prescribe reasonable rules under chapter 17A for the administration and enforcement of this chapter.

2. The department shall prescribe forms to be used in connection with the licensing of persons under this chapter.

[C81, §322B.7]

322B.8 Unlawful practice.

It is unlawful for a person to engage in business as a manufactured or mobile home retailer, manufactured or mobile home manufacturer, or manufactured or mobile home distributor in this state without first acquiring and maintaining a license in accordance with this chapter. A person convicted of violating the provisions of this section is guilty of a serious misdemeanor.

[C81, §322B.8]

98 Acts, ch 1126, §9; 2001 Acts, ch 153, §7

322B.9 Manufactured home, mobile home, and modular home retail installment contract — finance charge.

A retail installment contract or agreement for the sale of a manufactured home, mobile home, or modular home may include a finance charge not in excess of an amount equivalent to one and three-fourths percent per month simple interest on the declining balance of the amount financed.

"Amount financed" shall be as defined in section 537.1301.

The limitations contained in this section do not apply in a transaction referred to in section 535.2, subsection 2. With respect to a consumer credit sale, as defined in section 537.1301, the limitations contained in this section supersede conflicting provisions of chapter 537, article 2, part 2.

[C79, §537.2602; C81, §322B.9; 82 Acts, ch 1153, §2, 18(1)]

2001 Acts, ch 153, §8

CHAPTER 322C

TRAVEL TRAILER DEALERS, MANUFACTURERS AND DISTRIBUTORS

Court action required for termination of installment contracts during military service; §29A.102, 29A.105
Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service; §29A.103, 29A.104

322C.1 Administration.
322C.2 Definitions.
322C.3 Prohibited acts — exception.
322C.4 Dealer's license application and fees.
322C.5 Display of license.
322C.6 Denial, suspension or revocation of license.
322C.7 Manufacturer's or distributor's license.
322C.8 Manufacturer's or distributor's representative. Repealed by 2000 Acts, ch 1154, §49.
322C.9 License application and fees.
322C.10 Fees.
322C.11 Penalties.
322C.12 Semitrailer or travel trailer retail installment contract — finance charges.

322C.1 Administration.

This chapter shall be administered by the director of transportation. The state department of transportation may employ persons necessary for the administration of this chapter.

[C81, §322C.1]

322C.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. To sell *"at retail"* means to sell a travel trailer to a person who will devote it to a consumer use.
2. *"Department"* means the state department of transportation.
3. *"Distributor"* means a person who sells or distributes travel trailers to travel trailer dealers either directly or through a representative employed by a distributor.
4. *"Fifth-wheel travel trailer"* means a type of travel trailer which is towed by a motor vehicle by a connecting device known as a fifth wheel. When used in this chapter, *"travel trailer"* includes a fifth-wheel travel trailer.
5. *"Manufacturer"* means a person engaged in the business of fabricating or assembling travel trailers of a type required to be registered.
6. *"New travel trailer"* means a travel trailer that has not been sold at retail.
7. *"Person"* includes any individual, partnership, corporation, association, fiduciary or other legal entity engaged in business, other than a unit or agency of government or governmental subdivision.
8. *"Place of business"* means a designated location where facilities are maintained for displaying, reconditioning and repairing either new or used travel trailers.
9. *"Sell"* includes barter, exchange and other methods of dealing.
10. *"Travel trailer"* means a vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and designed to permit the vehicle to be used as a place of human habitation by one or more persons. The vehicle may be up to eight feet six inches in width and its overall length shall not exceed forty feet.
11. *"Used travel trailer"* means a travel trailer which has been sold at retail and previously registered in this or any other state.

[C81, §322C.2]

2000 Acts, ch 1016, §24; 2002 Acts, ch 1119, §156

Subsection 4 stricken and former subsections 5 and 6 renumbered as 4 and 5

Subsection 7 stricken and former subsections 8 – 13 renumbered as 6 – 11

322C.3 Prohibited acts — exception.

1. A person shall not engage in this state in the business of selling at retail new travel trailers of any make, or represent or advertise that the person is engaged or intends to engage in such business in this state, unless the person is authorized by a contract in writing between that person and the manufacturer or distributor of that make of new travel trailers to sell the trailers in this state, and unless the department has issued to the person a license as a travel trailer dealer for the same make of travel trailer.
2. A person, other than a licensed travel trailer dealer in new travel trailers, shall not engage in the business of selling at retail used travel trailers or represent or advertise that the person is engaged or intends to engage in such business in this state unless the department has issued to the person a license as a used travel trailer dealer.
3. A person is not required to obtain a license as a travel trailer dealer if the person is disposing of a travel trailer acquired or repossessed, so long

as the person is exercising a power or right granted by a lien, title-retention instrument, or security agreement given as security for a loan or a purchase money obligation.

4. A travel trailer dealer shall not enter into a contract, agreement, or understanding, expressed or implied, with a manufacturer or distributor that the dealer will sell, assign, or transfer an agreement or contract arising from the retail installment sale of a travel trailer only to a designated person or class of persons. Any such condition, agreement or understanding between a manufacturer or distributor and a travel trailer dealer is against the public policy of this state and is unlawful and void.

5. A manufacturer or distributor of travel trailers or an agent or representative of the manufacturer or distributor, shall not refuse to renew a contract for a term of less than five years, and shall not terminate or threaten to terminate a contract, agreement or understanding for the sale of new travel trailers to a travel trailer dealer in this state without just, reasonable and lawful cause or because the travel trailer dealer failed to sell, assign or transfer a contract or agreement arising from the retail sale of a travel trailer to only a person or a class of persons designated by the manufacturer or distributor.

6. A travel trailer dealer shall not make and enter into a security agreement or other contract unless the agreement or contract meets the following requirements:

a. The security agreement or contract is in writing, is signed by both the buyer and the seller and is complete as to all essential provisions prior to the signing of the agreement or contract by the buyer except that, if delivery of the travel trailer is not made at the time of the execution of the agreement or contract, the identifying numbers of the travel trailer or similar information and the due date of the first installment may be inserted in the agreement or contract after its execution.

b. The agreement or contract complies with the Iowa consumer credit code, where applicable.

7. A manufacturer or distributor of travel trailers or an agent or representative of a manufacturer or distributor shall not coerce or attempt to coerce a travel trailer dealer to accept delivery of a travel trailer or travel trailer parts or accessories, or any other commodity which has not been ordered by the dealer.

8. Except under subsection 9 of this section, a person licensed under section 322C.4 shall not, either directly or through an agent, salesperson or employee, engage or represent or advertise that the person is engaged or intends to engage in this state, in the business of buying or selling new or used travel trailers on Sunday.

9. A travel trailer dealer may display new travel trailers at fairs, shows, and exhibitions on any day of the week as provided in this subsection. Travel trailer dealers, in addition to selling travel trailers at their principal place of business and lots, may, upon receipt of a temporary permit approved by the department, display and offer new travel trailers for sale and negotiate sales of new travel trailers at fairs, shows, and exhibitions. Application for temporary permits shall be made upon forms provided by the department and shall be accompanied by a ten dollar permit fee. Temporary permits shall be issued for a period not to exceed fourteen days.

[C81, §322C.3]

2001 Acts, ch 32, §39

322C.4 Dealer's license application and fees.

1. Upon application and payment of a fee, a person may be licensed as a travel trailer dealer. The fee is seventy dollars for a two-year license, one hundred forty dollars for a four-year license, or two hundred ten dollars for a six-year license. The person shall pay an additional fee of twenty dollars for two years, forty dollars for four years, or sixty dollars for six years for each travel trailer lot in addition to the principal place of business unless the lot is adjacent to the principal place of business. For purposes of this subsection, *"adjacent"* means that the principal place of business and each additional lot are adjoining parcels of property. The applicant shall file in the office of the department a verified application for license as a travel trailer dealer in the form the department prescribes, which shall include the following:

a. The name of the applicant and the applicant's principal place of business.

b. The name of the applicant's business and whether the applicant is an individual, partnership, corporation or other legal entity.

(1) If the applicant is a partnership the name under which the partnership intends to engage in business and the name and post-office address of each partner.

(2) If the applicant is a corporation, the state of incorporation and the name and post-office address of each officer and director.

c. The make or makes of new travel trailers, if any, which the applicant will offer for sale at retail in this state.

d. The location of each place of business within this state to be used by the applicant for the conduct of the business.

e. If the applicant is a party to a contract, agreement, or understanding with a manufacturer or distributor of travel trailers or is about to become a party to a contract, agreement, or understanding, the applicant shall state the name of each manufacturer and distributor and the make or makes of new travel trailers, if any, which are the subject matter of the contract, agreement, or understanding.

f. Other information concerning the business of the applicant the department reasonably re-

quires for administration of this chapter.

2. The license shall be granted or refused within thirty days after application. A license is valid for a two-year, four-year, or six-year period and expires, unless revoked or suspended by the department, on the last day of the last month of the two-year, four-year, or six-year period, as applicable. A licensee shall have the month of expiration and the month after the month of expiration to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license application and pay the required fee. A separate license shall be obtained for each county in which an applicant does business as a travel trailer dealer.

3. A licensee shall file with the department a supplemental statement when there is a change in an item of information required under paragraphs *"a"* to *"e"* of subsection 1, within fifteen days after the change. Upon filing a supplemental statement, the licensee shall surrender its license to the department together with a thirty-five-dollar fee. The department shall issue a new license modified to reflect the changes on the supplemental statement.

4. Before the issuance of a travel trailer dealer's license, the applicant shall furnish a surety bond executed by the applicant as principal and executed by a corporate surety company, licensed and qualified to do business within this state, which bond shall run to the state of Iowa, be in the amount of twenty-five thousand dollars and be conditioned upon the faithful compliance by the applicant as a dealer with all statutes of this state regulating or applicable to a travel trailer dealer, and shall indemnify any person dealing or transacting business with the dealer from loss or damage caused by the failure of the dealer to comply with the provisions of chapter 321 and this chapter, including the furnishing of a proper and valid certificate of title to a travel trailer, and that the bond shall be filed with the department prior to the issuance of the license. A person licensed under chapter 322, with the same name and location or locations, is not subject to the provisions of this subsection.

[C81, §322C.4]

92 Acts, ch 1175, §17, 18; 97 Acts, ch 108, §41; 98 Acts, ch 1075, §29; 2000 Acts, ch 1016, §25

322C.5 Display of license.

A license issued under section 322C.4 shall specify the location of the principal place of business and the location of each additional place of business, if any, for which the license is issued, and the license shall be conspicuously displayed at the principal place of business except during periods when the license is surrendered for modification.

[C81, §322C.5]

322C.6 Denial, suspension or revocation of license.

A license issued under section 322C.4 or 322C.9 may be denied, revoked, or suspended, after opportunity for a hearing before the department of inspections and appeals in accordance with chapters 10A and 17A, if it is determined that the licensee or applicant has done any of the following:

1. Violated a provision of this chapter.

2. Made a material misrepresentation to the department in connection with an application for a license, certificate of title or registration of a travel trailer or other vehicle.

3. Been convicted of a fraudulent practice in connection with selling or offering for sale vehicles or parts of vehicles subject to registration under chapter 321.

4. Failed to maintain an established principal place of business in the county.

5. Had a license issued under this chapter, chapter 321H or 322, suspended or revoked within the previous three years.

6. Been convicted of a violation of any provision of section 321.52, 321.78, 321.92, 321.97, 321.98, 321.99, 321.100 or 714.16.

7. Knowingly made misleading, deceptive, untrue or fraudulent representations in the business as a distributor of travel trailers or engaged in unethical conduct or practice harmful or detrimental to the public.

[C81, §322C.6]

89 Acts, ch 273, §9

322C.7 Manufacturer's or distributor's license.

A manufacturer or distributor of travel trailers shall not engage in business in this state without a license pursuant to this chapter.

[C81, §322C.7]

322C.8 Manufacturer's or distributor's representative. Repealed by 2000 Acts, ch 1154, § 49.

322C.9 License application and fees.

Upon application and payment of a thirty-five-dollar fee, a person may be licensed as a manufacturer or distributor of travel trailers. The application shall be in the form and shall contain information as the department prescribes. The license shall be granted or refused within thirty days after application. The license expires, unless sooner revoked or suspended by the department, on December 31 of the calendar year for which the license was granted. A licensee shall have the month of December of the calendar year for which the license was granted and the following month of January to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license ap-

plication and pay the required fee.

[C81, §322C.9]

2000 Acts, ch 1016, §26; 2000 Acts, ch 1154, §26

322C.10 Fees.

Fees accruing from the administration of this chapter shall be accounted for and paid by the department into the state treasury monthly and credited to the road use tax fund.

[C81, §322C.10]

322C.11 Penalties.

A person violating a provision of section 322C.3 or 322C.7 is guilty of a serious misdemeanor.

[C81, §322C.11]

2000 Acts, ch 1154, §27

322C.12 Semitrailer or travel trailer retail installment contract — finance charges.

A retail installment contract or agreement for the sale of a semitrailer or travel trailer may include a finance charge not in excess of the following rates:

Class 1. Any new semitrailer or travel trailer designated by the manufacturer by a year model not earlier than the year in which the sale is made, an amount equivalent to one and three-fourths percent per month simple interest on the declining balance of the amount financed.

Class 2. Any new semitrailer or travel trailer not in Class 1 and any used semitrailer designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, an amount equivalent to two percent per month simple interest on the declining balance of the amount financed.

Class 3. Any used semitrailer or travel trailer not in Class 2 and designated by the manufacturer by a year model more than two years prior to the year in which the sale is made, an amount equivalent to two and one-fourth percent per month simple interest on the declining balance of the amount financed.

Amount financed shall be as defined in section 537.1301.

The limitations contained in this section do not apply in a transaction referred to in section 535.2, subsection 2. With respect to a consumer credit sale, as defined in section 537.1301, the limitations contained in this section supersede conflicting provisions of chapter 537, article 2, part 2.

[C81, §322C.12; 82 Acts, ch 1153, §3, 18(1)]

This section was not enacted as a part of this chapter; 79 Acts, ch 128, §1

CHAPTER 322D

FARM IMPLEMENT, MOTORCYCLE, AND ALL-TERRAIN VEHICLE FRANCHISES

For provisions applicable to certain agricultural equipment dealership agreements, see chapter 322F, §322F.9

322D.1 Definitions.
322D.2 Franchisee's rights to payment.
322D.3 Exceptions.
322D.4 Franchiser failure to comply — civil penalty.
322D.5 Death of a franchisee or majority stockholder.
322D.6 Security interests not affected.
322D.7 Application — farm implement franchise agreements.
322D.8 Application — motorcycle franchise agreements.
322D.9 Application — all-terrain vehicles.

322D.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"All-terrain vehicle"* means the same as defined in section 321G.1.

2. *"Attachment"* means a machine or part of a machine designed to be used on and in conjunction with a farm implement, motorcycle, or all-terrain vehicle.

3. *"Farm implement"* means a machine designed or adapted and used exclusively for agricultural or horticultural operations or livestock raising.

4. *"Franchise"* means a contract between two or more persons when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The franchisee is granted the right to offer and sell farm implements, motorcycles, all-terrain vehicles, or related parts or attachments manufactured or distributed by the franchiser.

c. The franchisee, as an independent business, constitutes a component of the franchiser's distribution system.

d. The operation of the franchisee's business is substantially associated with the franchiser's trademark, service mark, trade name, advertis-

ing, or other commercial symbol designating the franchiser.

e. The operation of the franchisee's business is substantially reliant on the franchiser for the continued supply of farm implements, motorcycles, all-terrain vehicles, or related parts or attachments.

5. *"Franchisee"* means a person who receives farm implements, motorcycles, all-terrain vehicles, or related parts or attachments from the franchiser under a franchise and who offers and sells the farm implements, motorcycles, all-terrain vehicles, or related parts or attachments to the general public.

6. *"Franchiser"* means a person who manufactures, wholesales, or distributes farm implements, motorcycles, all-terrain vehicles, or related parts or attachments, and who enters into a franchise.

7. *"Motorcycle"* means a motor vehicle as defined in section 321.1 other than an all-terrain vehicle, which has a saddle or seat for the use of a rider and that is designed to travel on not more than two wheels in contact with the ground, but excluding a motorized bicycle as defined in section 321.1.

8. *"Net cost"* means the price the franchisee actually paid for the merchandise to the franchiser less any applicable trade, volume, cash or bonus discounts.

9. *"Net price"* means the price listed in the franchiser's price list in effect at the time the franchise is canceled, less any applicable trade, volume or cash discounts.

10. *"Person"* means a sole proprietor, partnership, corporation, or any other form of business organization.

84 Acts, ch 1087, §1; 85 Acts, ch 47, §1 – 4; 2002 Acts, ch 1011, §1 – 4

NEW subsection 1 and former subsections 1 – 9 renumbered as 2 – 10
Subsection 2 amended
Subsection 4, paragraphs b and e amended
Subsections 5 – 7 amended

322D.2 Franchisee's rights to payment.

1. A franchisee who enters into a written franchise with a franchiser to maintain a stock of farm implements, motorcycles, all-terrain vehicles, or related parts or attachments has the following rights to payment, at the option of the franchisee, if the franchise is terminated:

a. One hundred percent of the net cost of new unused complete farm implements, motorcycles, all-terrain vehicles, or related attachments, which were purchased from the franchiser. In addition, the franchisee shall have a right of payment for transportation charges on the farm implements, motorcycles, or all-terrain vehicles which have been paid by the franchisee.

b. Eighty-five percent of the net prices of any repair parts, including superseded parts, which were purchased from the franchiser and held by the franchisee on the date that the franchise terminated.

c. Five percent of the net prices of parts resold under paragraph *"b"* for handling, packing, and loading of the parts. However, this payment shall not be due to the franchisee if the franchiser elects to perform the handling, packing, and loading.

2. Upon receipt of the payments due under subsection 1, the franchiser is entitled to possession of and title to the farm implements, motorcycles, all-terrain vehicles, or related parts or attachments.

3. The cost of farm implements, motorcycles, all-terrain vehicles, or related attachments and the price of repair parts shall be determined by reference to the franchiser's price list or catalog in effect at the time of the franchise termination.

84 Acts, ch 1087, §2; 85 Acts, ch 26, §1; 85 Acts, ch 47, §5 – 7; 2002 Acts, ch 1011, §5

Section amended

322D.3 Exceptions.

This chapter does not require repurchase from a franchisee of:

1. A repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries.

2. A repair part which is in a broken or damaged package.

3. A single repair part which is priced as a set of two or more items.

4. A repair part which because of its condition is not resaleable as a new part without repackaging or reconditioning.

5. Any inventory for which the franchisee is unable to furnish evidence of title and ownership in the franchisee that is free and clear of all claims, liens and encumbrances to the satisfaction of the franchiser.

6. Any inventory which a franchisee desires to keep, provided the franchisee has a contractual right in the franchise agreement to do so.

7. A farm implement, motorcycle, or all-terrain vehicle which is not in new, unused, undamaged, or complete condition.

8. A repair part which is not in new, unused or undamaged condition.

9. A farm implement, motorcycle, or all-terrain vehicle which was purchased twenty-four months or more prior to the termination of the franchise.

10. Any inventory which was ordered by the franchisee on or after the date of notification of termination of the franchise.

11. Any inventory which was acquired by the franchisee from a source other than the franchiser with whom the franchise is being terminated.

12. A repair part not listed in the franchiser's current price list in effect on the date of notice of termination or classified as nonreturnable or obsolete by the franchiser as of the date of termination. However, this exception to the repurchase requirement applies only if the franchiser provided

the franchisee with an opportunity to return the exempted part prior to notice of termination of the franchise.

84 Acts, ch 1087, §3; 85 Acts, ch 47, §8; 85 Acts, ch 67, §39; 2002 Acts, ch 1011, §6

Subsections 7 and 9 amended

322D.4 Franchiser failure to comply — civil penalty.

In the event that any franchiser fails to make payment to the franchisee or the franchisee's heir or heirs as required by this chapter within sixty days after the inventory has been received by the franchiser, the franchiser is civilly liable for one hundred percent of the current net price of the inventory; transportation charges which have been paid by the franchisee; eighty-five percent of the current net price of repair parts; five percent of the current net price of repair parts to cover handling, packing and loading, if applicable; and attorney fees incurred by the franchisee or the franchisee's heir or heirs.

84 Acts, ch 1087, §4; 85 Acts, ch 47, §9

322D.5 Death of a franchisee or majority stockholder.

If the franchisee is a natural person, the rights under this chapter may be exercised by the heirs of the franchisee upon the death of the franchisee. If the franchisee is a business organization, the rights may be exercised by the heirs of a majority stockholder of the franchisee upon the death of the majority stockholder.

84 Acts, ch 1087, §5

322D.6 Security interests not affected.

The provisions of this chapter shall not be construed to affect, in any way, the existence or enforcement of any security interest which a supplier, any financial institution or any other person may have in the inventory of the retailer.

84 Acts, ch 1087, §6; 94 Acts, ch 1121, §1

322D.7 Application — farm implement franchise agreements.

This chapter applies until July 1, 1990, to all farm implement franchise agreements in effect before July 1, 1990, which have no expiration date and to all other such agreements entered into or renewed after April 12, 1985, but before July 1, 1990, which will expire after April 12, 1985. Any agreement in effect on April 12, 1985, which by its own terms will terminate on a subsequent date shall be governed by the law as it existed prior to April 12, 1985.

85 Acts, ch 26, §2; 90 Acts, ch 1077, §1

For provisions applicable on and after July 1, 1990, to agricultural equipment dealership agreements having no expiration date or entered into or renewed on or after July 1, 1990, see chapter 322F; §322F.9

322D.8 Application — motorcycle franchise agreements.

The rights under section 322D.2, subsection 1, apply to motorcycle franchise agreements in effect on July 1, 1985, which have no expiration date and are continuing agreements, and to those entered into or renewed after July 1, 1985, but only to motorcycles and motorcycle attachments and parts purchased after July 1, 1985.

85 Acts, ch 47, §10

322D.9 Application — all-terrain vehicles.

1. This chapter applies to a franchise for all-terrain vehicles only if chapter 322F does not apply to a dealership engaged in the retail sale of equipment designed to be principally used for agricultural operations under chapter 322F.

2. The rights under section 322D.2, subsection 1, shall apply to a franchise for all-terrain vehicles as follows:

a. All franchises in effect on July 1, 2002, that have no expiration date and are continuing franchises.

b. Franchises that have been executed or renewed on or after July 1, 2002, but only for all-terrain vehicles and related parts or attachments purchased on or after July 1, 2002.

2002 Acts, ch 1011, §7

NEW section

CHAPTER 322E

NEW MOTOR VEHICLE REPAIR OR REPLACEMENT

Repealed by 91 Acts,
ch 153, §16; see chapter 322G

CHAPTER 322F

AGRICULTURAL EQUIPMENT DEALERSHIP AGREEMENTS

For provisions applicable to certain farm implement
and all-terrain vehicle franchise agreements,
see chapter 322D, §322D.7

322F.1 Definitions.
322F.2 Notice of termination.
322F.3 Termination of agreement — repurchase of equipment.
322F.4 Security interests not affected.
322F.5 Death or incapacity of dealer.
322F.6 Assignees and successors in interest.
322F.7 Violations.
322F.8 Supplier liability.
322F.9 Applicability.

322F.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"All-terrain vehicle"* means the same as defined in section 321G.1.

2. *"Dealer"* or *"dealership"* means a person engaged in the retail sale of equipment, if the person sells equipment designed to be principally used for agricultural operations, including but not limited to livestock or crop production or horticulture.

3. *"Dealership agreement"* means an oral or written agreement, either express or implied, between a supplier and a dealer which provides that the dealer is granted the right to sell, distribute, or service the supplier's equipment, regardless of whether the equipment carries a trade name, trademark, service mark, logotype, advertisement, or other commercial symbol, and which provides evidence of a continuing commercial relationship between the supplier and the dealer.

4. *a.* *"Equipment"* means any of the following:

(1) A device or part of a device designed to be used for any purpose related to agriculture, including but not limited to livestock or crop production or horticulture. *"Equipment"* includes but is not limited to tractors, trailers, combines, tillage, planting, and cultivating implements, balers, and irrigation implements.

(2) All-terrain vehicles, as defined in section 321G.1.

b. For purposes of this chapter, attachments to equipment shall be deemed equipment.

c. Equipment does not include self-propelled machines designed primarily for the transportation of persons or property on a street or highway.

5. *"Good cause"* means a condition which occurs under any of the following circumstances:

a. The dealer fails to substantially comply with an essential and reasonable requirement imposed upon the dealer by the dealership agreement, but only if that requirement is also generally imposed upon similarly situated dealers.

b. The dealer has made a material misrepresentation or falsification of any record, contract, report, or other document which the dealer has submitted to the supplier.

c. The dealer transfers an interest in the dealership; a person with a substantial interest in the ownership or control of the dealership withdraws from the dealership, including an individual proprietor, partner, major shareholder, or manager; or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership. However, good cause does not exist if the supplier consents to an action described in this paragraph.

d. The dealer has filed a voluntary petition in bankruptcy.

e. An involuntary petition in bankruptcy has been filed against the dealership and has not been discharged within thirty days after the filing.

f. The dealership is subject to a closeout or sale of a substantial part of the dealership equipment or assets related to the equipment.

g. A dissolution or liquidation of dealership assets has commenced.

h. The dealer's principal place of business is relocated, unless the supplier consents to the change in location.

i. The dealer has defaulted under a security agreement, including but not limited to a chattel

mortgage, between the dealer and the supplier or any subsidiary or affiliate of the supplier.

j. A guarantee of the dealer's present or future obligations to the supplier is revoked or discontinued.

k. The dealer has failed to operate in the normal course of business for seven consecutive business days or has otherwise abandoned business operations.

l. The dealer has pleaded guilty to or has been convicted of a felony.

m. The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare, including but not limited to, misleading advertising, failing to provide reasonable service or replacement parts, or failing to honor warranty obligations.

n. The dealer consistently fails to comply with applicable state licensing requirements relating to the products and services represented on behalf of the supplier.

o. The dealer has inadequately represented the manufacturer's product relating to sales when compared to similarly situated dealers.

6. *"Net cost"* means the price the dealer paid to the supplier for the equipment, less applicable discounts.

7. *"Net price"* means the current price listed in the supplier's effective price list or catalog, less any applicable trade or cash discount.

8. *"Supplier"* means the manufacturer, wholesaler, or distributor of equipment sold by a dealer.

90 Acts, ch 1077, §2; 2002 Acts, ch 1011, §8, 9
NEW subsection 1 and former subsections 1 – 7 renumbered as 2 – 8
Subsections 2 and 4 amended

322F.2 Notice of termination.

1. A supplier shall terminate a dealership agreement by cancellation, nonrenewal, or a substantial change in competitive circumstances only upon good cause and upon at least ninety days' prior written notice delivered to the dealer by certified or registered mail. The notice must specify each deficiency constituting good cause for the action. The notice must also state that the dealer has sixty days to cure a specified deficiency. If the deficiency is cured within sixty days from the date that the notice is delivered, the notice is void. However, if the deficiency is based on a dealer's inadequate representation of a manufacturer's product relating to sales, as provided in section 322F.1, the notice must state that the dealer has eighteen months to cure the deficiency. If the deficiency based on inadequate representation of a manufacturer's product relating to sales is cured within eighteen months from the date that notice is delivered, the notice is void.

2. The supplier shall have the right to terminate immediately without notice in the event the action is for good cause as defined in section 322F.1, subsection 5, paragraphs *"b"* through *"m"*.

90 Acts, ch 1077, §3

322F.3 Termination of agreement — repurchase of equipment.

1. If a dealership agreement is terminated by cancellation or nonrenewal, the supplier must repurchase equipment and parts in the dealer's inventory and must repurchase special tools and computer hardware or software required for the dealership. The repurchase is subject to the following conditions:

a. The supplier must pay to the dealer or credit the dealer's account with one hundred percent of the net cost of all unused complete equipment including attachments. The equipment must be in new condition and purchased by the dealership from the supplier within twenty-four months preceding notification by either party of an intent to terminate the contract.

b. The supplier must pay to the dealer or credit the dealer's account with ninety percent of the net price for repair parts, including superseded parts listed in the price lists or catalogs in use by the supplier on the date of termination. The supplier shall also pay the dealer or credit the dealer's account with five percent of the net price on the date of termination on all parts returned for the dealer's handling, packing, and loading of the parts to be returned to the supplier. However, the supplier is not required to pay or credit the five percent if the supplier elects to perform the handling, packing, and loading.

c. The supplier shall pay to the dealer or credit the dealer's account with the amortized value of any specific computer hardware or software that the supplier required the dealer to purchase within the five years immediately preceding notification by either party of an intent to terminate the contract.

d. The supplier shall pay to the dealer or credit the dealer's account with the following amounts for special repair tools that were unique to the supplier's product line and that are in complete and resalable condition:

(1) Seventy-five percent of the net cost of special repair tools purchased within the three years immediately preceding notification by either party of an intent to terminate the contract.

(2) Fifty percent of the net cost of special repair tools purchased within the four to six years immediately preceding notification by either party of an intent to terminate the contract.

e. The supplier shall only be required to repurchase the items described in paragraphs *"c"* and *"d"* if the items are free and clear of all claims, liens, and encumbrances, to the satisfaction of the supplier.

2. Upon payment or allowance of a credit to the dealer's account as required in this section, the title to the repurchased equipment is transferred to the supplier making the repurchase, and the supplier may take immediate possession of the repurchased equipment.

3. The supplier must make payment or allow-

ance of a credit as required under this section not later than ninety days from the date that the supplier takes possession of the repurchased equipment.

4. This section does not require repurchase from the dealer of repair parts which have a limited storage life or are otherwise subject to deterioration, including but not limited to rubber items, gaskets, and batteries. This section also does not require repurchase from the dealer of parts in broken or damaged packages, single repair parts priced as a set of two or more items, or repair parts which because of their condition are not resalable as new parts without new packaging or reconditioning.

90 Acts, ch 1077, §4; 2001 Acts, ch 42, §1, 2

322F.4 Security interests not affected.

This chapter shall not be construed to affect the existence or enforcement of a security interest which any person, including a supplier or financial institution, may have in the inventory of the dealer.

90 Acts, ch 1077, §5; 94 Acts, ch 1121, §2

322F.5 Death or incapacity of dealer.

If a dealer or a majority shareholder of a corporation operating a dealership dies or is incapacitated, the rights under this chapter may be exercised as an option by the heirs at law if the dealer or shareholder died intestate, or by the executor under the terms of the dealer's or shareholder's will. If the heirs or the executor do not exercise this option within twelve months from the date of death of the dealer or shareholder, the supplier must repurchase the equipment as if the supplier had terminated the dealership agreement pursuant to section 322F.3. However, this section does not entitle an heir, executor, administrator, legatee, or devisee of a deceased dealer or majority shareholder to continue to operate the dealership without the consent of the supplier.

90 Acts, ch 1077, §6

322F.6 Assignees and successors in interest.

The obligations under this chapter apply to the supplier's assignee or successor in interest. A successor in interest includes, but is not limited to, a purchaser of assets or stock, a surviving corporation resulting from a merger or liquidation, a receiver, or a trustee of the supplier.

90 Acts, ch 1077, §7

322F.7 Violations.

A supplier violates this chapter if the supplier does any of the following:

1. Requires a dealer to accept delivery of equipment that the dealer has not ordered.

2. Requires a dealer to order or accept delivery of equipment with special features or accessories not included in the base price list of equipment as publicly advertised by the supplier.

3. Requires a dealer to enter into any agreement, whether written or oral, which amends or supplements an existing dealership agreement with the supplier, unless the supplementary or amendatory agreement is imposed on other similarly situated dealers.

4. Requires as a condition of renewal or extension of a dealership agreement that the dealer complete substantial renovation of the dealer's place of business, or acquire new or additional space to serve as the dealer's place of business, unless the supplier provides at least one year's written notice of the condition which states all grounds supporting the condition. The supplier must provide a reasonable time for the dealer to complete the renovation or acquisition.

5. Requires a dealer to refuse to purchase equipment distributed by another supplier.

6. Discriminates in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers. This subsection does not prevent the use of differentials which make only due allowance for costs related to the manufacture, sale, or delivery of equipment, or to methods or quantities of equipment sold or delivered.

7. Takes action terminating, canceling, failing to renew, or substantially changing the competitive circumstances intended by the dealership agreement due to the results of conditions beyond the dealer's control, including drought, flood, labor disputes, or economic recession. This subsection shall not apply if the dealer is in default of a security agreement in effect with the supplier.

90 Acts, ch 1077, §8

322F.8 Supplier liability.

1. A dealer may bring a legal action against a supplier for damages sustained by the dealer as a consequence of the supplier's violation of this chapter. A supplier violating this chapter shall compensate the dealer for damages sustained by the dealer as a consequence of the supplier's violation, together with the actual costs of the action, including reasonable attorneys' fees. The dealer may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or a substantial change of competitive circumstances. The remedies in this section are in addition to any other remedies permitted by law.

2. *a.* If the payment or allowance of equipment repurchased pursuant to section 322F.3 is not made as required, the amount due bears interest at the rate of one and one-half percent per month calculated from the date that the dealership agreement was terminated.

b. If upon termination of a dealership agreement by nonrenewal or cancellation, by a dealer or supplier, the supplier fails to make payment or

credit the account of the dealer as provided in this chapter, the supplier is liable in a civil action brought by the dealer for one hundred percent of the net costs of the equipment, plus interest as calculated pursuant to paragraph *"a"*, and ninety percent of the net price of repair parts, plus interest as calculated pursuant to paragraph *"a"*.

3. The requirements of this chapter supplement any agreement between a dealer and a supplier. The dealer may elect either to pursue contractual remedies under the dealership agreement or remedies provided under this chapter. An election by the dealer to pursue a remedy provided under this chapter does not bar the dealer from pursuing any other remedy under law or equity, including contractual remedies. This chapter does not affect rights of the supplier to charge back to the dealer's accounts amounts previously paid or credited as a discount to the dealer's purchase of goods, including equipment.

90 Acts, ch 1077, §9

322F.9 Applicability.

1. A term of a dealership agreement that is inconsistent with the terms of this chapter is void and unenforceable and does not waive any rights that are provided to a person by this chapter.

2. *a.* For all dealership agreements other than those for all-terrain vehicles, this chapter applies to those dealership agreements in effect that have no expiration date and all other agreements entered into or renewed on or after July 1, 1990. Any such dealership agreement in effect on June 30, 1990, which by its own terms will terminate on a subsequent date, shall be governed by the law as it existed prior to July 1, 1990.

b. For all dealership agreements for all-terrain vehicles, this chapter applies to those dealership agreements in effect that have no expiration date and all other such dealership agreements entered into or renewed on or after July 1, 2002. Any such dealership agreement in effect on July 1, 2002, which by its own terms will terminate on a subsequent date, shall be governed by the law as it existed prior to July 1, 2002.

90 Acts, ch 1077, §10; 2002 Acts, ch 1011, §10

Applicability of chapter 322D to farm implement and all-terrain vehicle franchise agreements; §322D.7, 322D.9

Section amended

CHAPTER 322G

DEFECTIVE MOTOR VEHICLES (LEMON LAW)

322G.1 Legislative intent.
322G.2 Definitions.
322G.3 Duties of manufacturer.
322G.4 Nonconformity of motor vehicles.
322G.5 Affirmative defenses.
322G.6 Informal dispute settlement procedures — operations and certification.
322G.7 Informal dispute settlement procedure — certification uniformity.
322G.8 Consumer remedies.
322G.9 Compliance and disciplinary action.
322G.10 Unfair or deceptive trade practice.
322G.11 Dealer liability.
322G.12 Resale of returned vehicles.
322G.13 Certain agreements void.
322G.14 Rulemaking authority.
322G.15 Applicability.

322G.1 Legislative intent.

The general assembly recognizes that a motor vehicle is a major consumer acquisition and that a defective motor vehicle undoubtedly creates a hardship for the consumer. The general assembly further recognizes that a duly franchised motor vehicle dealer is an authorized service agent of the manufacturer. It is the intent of the general assembly that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer within a specified period of time. It is further the intent of the general assembly to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the warranty provided for in this chapter. However, this chapter does not limit the rights or remedies which are otherwise available to a consumer under any other law.

91 Acts, ch 153, §1

322G.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Collateral charges"* means those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. For the purposes of this chapter, collateral charges include, but are not limited to, charges for manufacturer-installed or agent-installed items, earned finance charges, use taxes, and title charges.

2. *"Condition"* means a general problem that may be attributable to a defect in more than one part.

3. *"Consumer"* means the purchaser or lessee, other than for purposes of lease or resale, of a new or previously untitled motor vehicle, or any other person entitled by the terms of the warranty to enforce the obligations of the warranty during the duration of the lemon law rights period.

4. *"Days"* means calendar days.

5. *"Department"* means the attorney general.

6. *"Incidental charges"* means those reasonable costs incurred by the consumer, including, but not limited to, towing charges and the costs of obtaining alternative transportation, which are the direct result of the nonconformity or nonconformities which are the subject of the claim. Incidental charges do not include loss of use, loss of income, or personal injury claims.

7. *"Lease price"* means the aggregate of the following:

a. Lessor's actual purchase costs.

b. Collateral charges, if applicable.

c. Any fee paid to another to obtain the lease.

d. Any insurance or other costs expended by the lessor for the benefit of the lessee.

e. An amount equal to state and local use taxes, not otherwise included as collateral charges, paid by the lessor when the vehicle was initially purchased.

f. An amount equal to five percent of the lessor's actual purchase cost.

8. *"Lemon law rights period"* means the term of the manufacturer's written warranty, the period ending two years after the date of the original delivery of a motor vehicle to a consumer, or the first twenty-four thousand miles of operation attributable to a consumer, whichever expires first.

9. *"Lessee"* means any consumer who leases a motor vehicle for one year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to the motor vehicle.

10. *"Lessee cost"* means the aggregate of the deposit and rental payments previously paid to the lessor for the leased vehicle.

11. *"Lessor"* means a person who holds the title to a motor vehicle leased to a lessee under a written lease agreement or who holds the lessor's rights under the agreement.

12. *"Manufacturer"* means a person engaged in the business of constructing or assembling new motor vehicles or installing on previously assembled vehicle chassis special bodies or equipment which, when installed, form an integral part of the new motor vehicle, or a person engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing the new motor vehicles to new motor vehicle dealers.

13. *"Motor vehicle"* means a self-propelled vehicle purchased or leased in this state, except as provided in section 322G.15, and primarily designed for the transportation of persons or property over public streets and highways, but does not include mopeds, motorcycles, motor homes, or vehicles over ten thousand pounds gross vehicle weight rating.

14. *"Nonconformity"* means a defect, malfunction, or condition in a motor vehicle such that the vehicle fails to conform to the warranty, but does not include a defect, malfunction, or condition that results from an accident, abuse, neglect, modification, or alteration of the motor vehicle by persons other than the manufacturer or its authorized service agent.

15. *"Person"* means person as defined in section 714.16.

16. *"Program"* means an informal dispute settlement procedure established by a manufacturer which mediates and arbitrates motor vehicle warranty disputes arising in this state.

17. *"Purchase price"* means the cash price paid for the motor vehicle appearing in the sales agreement or contract, including any net allowance given for a trade-in vehicle.

18. *"Reasonable offset for use"* means the number of miles attributable to a consumer up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the first attempt to repair a nonconformity that is likely to cause death or serious bodily injury, or the twentieth cumulative day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first, multiplied by the purchase price of the vehicle, or in the event of a leased vehicle, the lessor's actual lease price plus an amount equal to two percent of the purchase price, and divided by one hundred twenty thousand.

19. *"Replacement motor vehicle"* means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, and as the motor vehicle to be replaced would have existed without the nonconformity at the time of original acquisition.

20. *"Substantially impair"* means to render the motor vehicle unfit, unreliable, or unsafe for warranted or ordinary use, or to significantly diminish the value of the motor vehicle.

21. *"Warranty"* means any written warranty issued by the manufacturer; or any affirmation of fact or promise made by the manufacturer, excluding statements made by the dealer, in connection with the sale or lease of a motor vehicle to a consumer, which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance.

91 Acts, ch 153, §2; 95 Acts, ch 45, §6

322G.3 Duties of manufacturer.

1. At the time of the consumer's purchase or lease of the vehicle, the manufacturer shall pro-

vide to the consumer a written statement that explains the consumer's rights and obligations under this chapter. The written statement shall be prepared by the attorney general and shall contain a telephone number that the consumer can use to obtain information from the attorney general regarding the rights and obligations provided under this chapter.

2. At the time of the consumer's purchase or lease of the vehicle, the manufacturer shall provide to the consumer the address and phone number for the zone, district, or regional office of the manufacturer for this state where a claim may be filed by the consumer. This information shall be provided to the consumer in a clear and conspicuous manner. Within thirty days of the introduction of a new model year for each make and model of motor vehicle sold in this state, the manufacturer shall notify the attorney general of such introduction. The manufacturer shall also inform the attorney general that a copy of the owner's manual and applicable written warranties shall be provided upon request and provide information as to where the request should be made. The manufacturer shall inform the attorney general where such a request should be directed and shall provide the copy of the owner's manual and applicable written warranties within five business days of a request by the attorney general.

3. A manufacturer or the authorized service agent of the manufacturer shall make repairs as necessary to conform the vehicle to the warranty if a motor vehicle does not conform to the warranty and the consumer reports the nonconformity to the manufacturer or authorized service agent during the lemon law rights period. Such repairs shall be made irrespective of whether they can be made prior to the expiration of the lemon law rights period.

4. A manufacturer or the authorized service agent of the manufacturer, shall provide to the consumer, each time the motor vehicle is returned after being examined or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the motor vehicle including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the motor vehicle was submitted for examination or repair, and the date when the repair or examination was completed.

5. Upon request from the consumer, the manufacturer, or the authorized service agent of the manufacturer, shall provide a copy of either or both of the following:

a. Any report or printout of any diagnostic computer operation compiled by the manufacturer or authorized service agent regarding an inspection or diagnosis of the motor vehicle.

b. A copy of any technical service bulletin issued by the manufacturer regarding the year and model of the motor vehicle as it pertains to any material, feature, component, or the performance of the motor vehicle.

91 Acts, ch 153, §3

322G.4 Nonconformity of motor vehicles.

1. After three attempts have been made to repair the same nonconformity that substantially impairs the motor vehicle, or after one attempt to repair a nonconformity that is likely to cause death or serious bodily injury, the consumer may give written notification, which shall be by certified or registered mail or by overnight service, to the manufacturer of the need to repair the nonconformity in order to allow the manufacturer a final attempt to cure the nonconformity. The manufacturer shall, within ten days after receipt of such notification, notify and provide the consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility and after delivery of the vehicle to the designated repair facility by the consumer, the manufacturer shall, within ten days, conform the motor vehicle to the warranty. If the manufacturer fails to notify and provide the consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.

After twenty or more cumulative days when the motor vehicle has been out of service by reason of repair of one or more nonconformities, the consumer may give written notification to the manufacturer which shall be by certified or registered mail or by overnight service. Commencing upon the date such notification is received, the manufacturer has ten cumulative days when the vehicle has been out of service by reason of repair of one or more nonconformities to conform the motor vehicle to the warranty.

2. If the manufacturer, or its authorized service agent, has not conformed the motor vehicle to the warranty by repairing or correcting one or more nonconformities that substantially impair the motor vehicle after a reasonable number of attempts, the manufacturer shall, within forty days of receipt of payment by the manufacturer of a reasonable offset for use by the consumer, replace the motor vehicle with a replacement motor vehicle acceptable to the consumer, or repurchase the motor vehicle from the consumer or lessor and refund to the consumer or lessor the full purchase or lease price, less a reasonable offset for use. The replacement or refund shall include payment of all collateral and reasonably incurred incidental charges. The consumer has an unconditional right to choose a refund rather than a replacement. If the consumer elects to receive a refund, and the refund exceeds the amount of the payment for a reasonable offset for use, the requirement that the consumer pay the reasonable offset for use in ad-

vance does not apply, and the manufacturer shall deduct that amount from the refund due to the consumer. If the consumer elects a replacement motor vehicle, the manufacturer shall provide the consumer a substitute motor vehicle to use until such time as the replacement vehicle is delivered to the consumer. At the time of the refund or replacement, the consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession of the original motor vehicle.

Refunds shall be made to the consumer and lienholder of record, if any, as their interests appear. If applicable, refunds shall be made to the lessor and lessee as follows: the lessee shall receive the lessee's cost less a reasonable offset for use, and the lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. If it is determined that the lessee is entitled to a refund pursuant to this chapter, the consumer's lease agreement with the lessor is terminated upon payment of the refund and no penalty for early termination shall be assessed. The department of revenue and finance shall refund to the manufacturer any use tax which the manufacturer refunded to the consumer, lessee, or lessor under this section, if the manufacturer provides to the department of revenue and finance a written request for a refund and evidence that the use tax was paid when the vehicle was purchased and that the manufacturer refunded the use tax to the consumer, lessee, or lessor.

3. It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if, during the lemon law rights period, any of the following occur:

a. The same nonconformity that substantially impairs the motor vehicle has been subject to examination or repair at least three times by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in subsection 1, and such nonconformity continues to exist.

b. A nonconformity that is likely to cause death or serious bodily injury has been subject to examination or repair at least one time by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in subsection 1, and such nonconformity continues to exist.

c. The motor vehicle has been out of service by reason of repair by the manufacturer, or its authorized service agent, of one or more nonconformities that substantially impair the motor vehicle for a cumulative total of thirty or more days, exclusive of down time for routine maintenance prescribed by the owner's manual. The thirty-day period may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster.

The terms of this subsection shall be extended for a period of up to two years after the date of the original delivery of a motor vehicle to a consumer, or the first twenty-four thousand miles of operation attributable to a consumer, whichever occurs first, if a nonconformity has been reported but has not been cured by the manufacturer, or its authorized service agent, before the expiration of the lemon law rights period.

4. A manufacturer, or its authorized service agent, shall not refuse to examine or repair any nonconformity for the purpose of avoiding liability under this chapter.

91 Acts, ch 153, §4

322G.5 Affirmative defenses.

Any of the following is an affirmative defense to a claim under this chapter:

1. The alleged nonconformity or nonconformities do not substantially impair the motor vehicle.

2. A nonconformity is the result of an accident, abuse, neglect, or unauthorized modification or alteration of the motor vehicle by a person other than the manufacturer or its authorized service agent.

3. The claim by the consumer was not filed in good faith.

4. Any other defense allowed by law which may be raised against the claim.

91 Acts, ch 153, §5

322G.6 Informal dispute settlement procedures — operations and certification.

1. At the time of the consumer's purchase or lease of the vehicle, a manufacturer who has established a program certified pursuant to this section shall, at a minimum, clearly and conspicuously disclose to the consumer in written materials accompanying the vehicle how and where to file a claim with the program.

2. A certified program shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the program. The manufacturer shall take all steps necessary to ensure that a certified program and its staff and decision makers are sufficiently insulated from the manufacturer so that the performance of the staff and the decisions of the decision makers are not influenced by the manufacturer. Such steps, at a minimum, shall ensure that the manufacturer does not make decisions on whether a consumer's dispute proceeds to the decision maker. Staff and decision makers of a certified program shall be trained in the provisions of this chapter and rules adopted under this chapter.

3. A certified program shall allow an oral presentation by a party, or by a party's employee, agent, or representative.

Within five days following the consumer's notification to the certified program of the dispute, the

program shall inform each party of their right to make an oral presentation.

Meetings of a certified program to hear and decide disputes shall be open to observers, including either party to the dispute, on reasonable and nondiscriminatory terms.

4. A certified program shall render a decision no later than sixty days from the day of the consumer's notification of the dispute, provided that a significant number of decisions are rendered within forty days. For the purposes of this section, notification is deemed to have occurred when a certified program has received the consumer's name and address; the current date and the date of the original delivery of the motor vehicle to a consumer; the year, make, model, and identification number of the motor vehicle; and a description of the nonconformity. If the consumer has not previously notified the manufacturer of the nonconformity, the sixty-day period is extended for an additional seven days.

5. A certified program shall, in rendering decisions, take into account the provisions of this chapter and all legal and equitable factors germane to a fair and just decision. The decision shall disclose to the consumer and the manufacturer the reasons for the decision, and the manufacturer's required actions, if applicable. If the decision is in favor of the consumer, the consumer shall have up to twenty-five days from the date of receipt of the certified program's decision to indicate acceptance of the decision. The decision shall prescribe a reasonable period of time, not to exceed thirty days from the date the consumer notifies the manufacturer of acceptance of the decision, within which the manufacturer must fulfill the terms of the decision. If the manufacturer has had a reasonable number of attempts to conform a motor vehicle to the warranty as set forth in section 322G.4, subsection 3, including a final attempt by the manufacturer to repair the motor vehicle, if undertaken as provided for in section 322G.4, subsection 1, and the consumer is entitled to a replacement vehicle or a refund under section 322G.4, subsection 2, the decision shall be limited to relief as allowed under section 322G.4, subsection 2. In an action brought by a consumer under this chapter, the decision of a certified program is admissible in evidence.

6. A certified program shall establish written procedures which explain operation of the certified program. Copies of the written procedures shall be made available to any person upon request and shall be sent to the consumer upon notification of the dispute.

7. A certified program shall retain all records for each dispute for at least four years after the final disposition of the dispute. A certified program shall have an independent audit conducted annually to determine whether the manufacturer and its performance and the program and its implementation are in compliance with this chapter. All records for each dispute shall be available for the audit. Such audit, upon completion, shall be forwarded to the attorney general.

8. Any manufacturer licensed to sell motor vehicles in this state may apply to the attorney general for certification of its program. A manufacturer seeking certification of its program in this state shall submit to the attorney general an application for certification on a form prescribed by the attorney general.

9. A program certified in this state or a program established by a manufacturer applying for certification in this state shall submit to the attorney general a copy of each settlement approved by the program or decision made by the decision maker within thirty days after the settlement is reached or the decision is rendered. The decision or settlement shall contain information prescribed by the attorney general.

10. The attorney general shall review the operations of any certified program at least once annually. The attorney general shall prepare annual and periodic reports evaluating the operation of certified programs serving consumers in this state or programs established by motor vehicle manufacturers applying for certification in this state. The reports shall indicate whether certification should be granted, renewed, denied, or revoked.

11. If a manufacturer has established a program which the attorney general has certified as substantially complying with the provisions of and the rules adopted under this chapter, and has informed the consumer how and where to file a claim with the program pursuant to subsection 1, the provisions of section 322G.4, subsection 2, do not apply to any consumer who has not first resorted to the program.

91 Acts, ch 153, §6

322G.7 Informal dispute settlement procedure — certification uniformity.

To facilitate uniform application, interpretation, and enforcement of this section and section 322G.6, and in implementing rules adopted pursuant to section 322G.14, the attorney general may cooperate with agencies that perform similar functions in any other states that enact these or similar sections. The cooperation authorized by this subsection may include any of the following:

1. Establishing a central depository for copies of all applications and accompanying materials submitted by manufacturers for certification, and all reports prepared, notices issued, and determinations made by the attorney general under section 322G.6.

2. Sharing and exchanging information, documents, and records pertaining to program operations.

3. Sharing personnel to perform joint reviews, surveys, and investigations of program operations.

4. Preparing joint reports evaluating program operations.

5. Granting joint certifications and certification renewals.

6. Issuing joint denials or revocations of certification.

7. Holding a joint administrative hearing.

8. Formulating, in accordance with chapter 17A, the administrative procedure Act, rules or proposed rules on matters such as guidelines, forms, statements of policy, interpretative opinions, and any other information necessary to implement section 322G.6.

91 Acts, ch 153, §7

322G.8 Consumer remedies.

1. If a consumer resorts to a manufacturer's certified program and a decision is not rendered within the time periods allowed in this chapter, or a manufacturer has no certified program and the consumer has notified the manufacturer pursuant to section 322G.4, subsection 1, the consumer may file an action in district court under this chapter within one year from the expiration of the lemon law rights period or an extension of the period pursuant to section 322G.4, subsection 3.

2. If a consumer resorts to a manufacturer's certified program and is not satisfied with the performance of the manufacturer as ordered in the decision, or the manufacturer does not perform as directed by the decision within the time period specified in the decision, the consumer may file an action in district court under this chapter within six months after the date prescribed in the decision by which the manufacturer must fulfill the terms of the decision. If the consumer declines to accept the decision of the manufacturer's certified program, the consumer may appeal the decision pursuant to subsection 4. For purposes of this subsection, *"not satisfied with the performance of the decision"* means, following the consumer's acceptance of the decision, the consumer indicates that the manufacturer failed to comply with the terms of the decision within the time specified in the decision or failed to cure the nonconformity within the time specified in the decision if further repairs were ordered.

3. In an action under either subsection 1 or 2, the court shall award a consumer who prevails the amount of any pecuniary loss, including relief the consumer is entitled to under section 322G.4, subsection 2, reasonable attorney's fees, and costs. In addition, if the court affirms the decision of the certified program, the court may award any additional amounts allowed under subsection 7.

4. A certified program's decision is final unless appealed by either party. A petition to the district court to appeal a decision must be made within fifty days after receipt of the decision or within twenty-five days from the date the consumer indicates acceptance of the decision to the manufacturer, whichever occurs first. Within seven days after the petition has been filed, the appealing party must send, by certified, registered, or express mail, a copy of the petition to the attorney general. If the attorney general receives no notice of the petition within sixty days after the manufacturer's receipt of a decision in favor of the consumer, and the consumer has indicated acceptance of the decision within the twenty-five days of receipt of the decision, but the manufacturer has neither complied with, nor petitioned to appeal the decision, the attorney general may apply to the court to impose a fine up to one thousand dollars per day against the manufacturer until the amount stands at twice the purchase price of the motor vehicle, unless the manufacturer provides clear and convincing evidence that the delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the attorney general shall initiate proceedings against the manufacturer for failure to pay the fine. The proceeds from the fine imposed shall be placed in the attorney general's motor vehicle fraud and odometer law enforcement fund for implementation and enforcement of this chapter.

5. If the manufacturer fails to comply with a decision which has been timely accepted by the consumer or fails to file a timely petition for appeal, the court shall affirm the board's decision upon application by the consumer.

6. An appeal of a decision by a certified program to the court by a consumer or a manufacturer shall be tried de novo, and may be based upon stipulated facts. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon for appeal.

7. If a decision of the certified program in favor of the consumer is affirmed or upheld by the court, recovery by the consumer shall include the pecuniary value of the award, including relief the consumer is entitled to under section 322G.4, subsection 2, attorney's fees incurred in obtaining confirmation of the award, and all costs and continuing damages in an amount of twenty-five dollars per day for all days beyond the twenty-five-day period following the manufacturer's receipt of the consumer's acceptance of the certified program's decision. If a court determines that a manufacturer filed a petition for appeal to be tried de novo in bad faith or brought such an appeal solely for the purpose of harassment, the court shall double, and may triple, the amount of the total award, after consideration of all circumstances.

8. Appellate review of a court decision in favor of the consumer may be conditioned upon payment by the manufacturer of the consumer's attorney's fees and giving security for costs and expenses resulting from the review period.

9. This chapter does not prohibit a consumer

from pursuing other rights or remedies under any other law.

91 Acts, ch 153, §8

322G.9 Compliance and disciplinary action.

The attorney general may enforce and ensure compliance with the provisions of this chapter and rules adopted pursuant to section 322G.14, may issue subpoenas requiring the attendance of witnesses and the production of evidence, and may petition any court having jurisdiction to compel compliance with the subpoenas. The attorney general may levy and collect an administrative fine in an amount not to exceed one thousand dollars for each violation against any manufacturer found to be in violation of this chapter or rules adopted pursuant to section 322G.14. A manufacturer may request a hearing pursuant to chapter 17A, the administrative procedure Act, if the manufacturer contests the fine levied against it. The proceeds from any fine levied and collected pursuant to this section shall be placed in the attorney general's motor vehicle fraud and odometer law enforcement fund for implementation and enforcement of this chapter.

91 Acts, ch 153, §9

322G.10 Unfair or deceptive trade practice.

A violation by a manufacturer of this chapter is an unfair or deceptive trade practice in violation of section 714.16, subsection 2, paragraph *"a"*.

91 Acts, ch 153, §10

322G.11 Dealer liability.

This chapter, except for the requirements of section 322G.12, does not impose any liability on a franchised motor vehicle dealer or create a cause of action by a consumer against a dealer. A dealer shall not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including but not limited to any refunds or vehicle replacements, incurred by the manufacturer pursuant to this chapter, in the absence of a finding by a court that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions. A manufacturer who is found by a court to have improperly charged back a dealer because of a violation of this section is liable to the injured dealer for full reimbursement plus reasonable costs and any attorney's fees.

91 Acts, ch 153, §11; 95 Acts, ch 45, §7

322G.12 Resale of returned vehicles.

A manufacturer who accepts the return of a motor vehicle pursuant to a settlement, determination, or decision under this chapter shall notify the state department of transportation, report the vehicle identification number of that motor vehicle within ten days after the acceptance, and obtain a new certificate of title for the vehicle in the manufacturer's name pursuant to section 321.46. In obtaining a new certificate of title, the manufacturer shall title the vehicle in the county of the transferor's residence and shall be exempt from the registration fee requirements of section 321.46. For purposes of chapter 423, a manufacturer's acceptance of the return of a motor vehicle, as described in this section, shall not be considered "use", as defined in section 423.1. The new certificate of title, and all subsequent registration receipts and certificates of title issued for the motor vehicle, shall contain a designation indicating that the motor vehicle was returned to the manufacturer pursuant to this chapter or a similar law of another state. The state department of transportation shall determine the manner in which the designation is to be indicated on registration receipts and certificates of title and may determine that a "REBUILT" or "SALVAGE" designation supersedes the designation required by this paragraph and include the "REBUILT" or "SALVAGE" designation on the registration receipt and certificate of title in lieu of the designation required by this paragraph.

A person shall not knowingly lease, sell, either at wholesale or retail, or transfer a title to a motor vehicle returned by reason of a settlement, determination, or decision pursuant to this chapter or a similar law of another state unless the nature of the nonconformity is clearly and conspicuously disclosed to the prospective transferee, lessee, or buyer. The attorney general shall prescribe by rule the form, content, and procedure pertaining to such a disclosure statement, recognizing the need of manufacturers to implement a uniform disclosure form. The manufacturer shall make a reasonable effort to ensure that such disclosure is made to the first subsequent retail buyer or lessee. For purposes of this section, *"settlement"* includes an agreement entered into between the manufacturer and the consumer that occurs after the thirtieth day following the manufacturer's receipt of the consumer's written notification pursuant to section 322G.4.

91 Acts, ch 153, §12; 95 Acts, ch 45, §8; 2000 Acts, ch 1047, §3, 4

322G.13 Certain agreements void.

Any agreement entered into by a consumer that waives, limits, or disclaims the rights set forth in this chapter is void as contrary to public policy.

91 Acts, ch 153, §13

322G.14 Rulemaking authority.

1. The attorney general shall adopt rules as necessary to implement this chapter.

2. In prescribing rules and forms under this chapter, the attorney general may cooperate with agencies that perform similar functions in other states with a view to effectuating the policy of this chapter to achieve maximum uniformity in the form and content of certification, regulation, and procedural evaluation of manufacturer-established programs, required recordkeeping, required reporting wherever practicable, and required notices to consumers.

91 Acts, ch 153, §14

322G.15 Applicability.

1. This chapter takes effect July 1, 1991, and applies to motor vehicles originally purchased or leased by consumers on or after that date.

2. This chapter applies to motor vehicles originally purchased or leased in this state and, except for section 322G.3, subsections 1 and 2, and section 322G.6, subsection 1, applies to motor vehicles originally purchased or leased in other states, if the consumer is a resident of this state at the time the consumer's rights are asserted under this chapter.

91 Acts, ch 153, §15; 95 Acts, ch 45, §9; 96 Acts, ch 1079, §10

CHAPTER 323

MOTOR FUEL AND SPECIAL FUEL

323.1 Definitions.
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323.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Dealer"* means a person, other than an employee of a distributor or franchiser, who operates, maintains or conducts a place of business from which motor fuel or special fuel is sold or offered for sale at retail to the ultimate consumer, and who holds a license, issued as provided in chapter 214, for each pump and meter operated upon the retail premises.

2. *"Dealer franchise"* means an agreement or contract, either written or oral, between a franchiser and a dealer or between a distributor and a dealer when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The dealer is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser or by the distributor.

c. The dealer's business is substantially reliant on the franchiser or distributor for the continued supply of motor fuel or special fuel.

3. *"Department"* means the department of inspections and appeals.

4. *"Distributor"* means distributor as defined in section 452A.2.

5. *"Distributor franchise"* means a written agreement or contract, either written or oral, between a franchiser and a distributor when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The distributor is granted the right to offer and sell motor fuel or special fuel that is imported, refined or distributed by the franchiser.

c. The distributor, as an independent business, constitutes a component of the franchiser's distribution system.

d. The distributor's business, or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially reliant on the franchiser for the continued supply of motor fuel or special fuel.

e. The distributor's business or a portion of it which is related to motor fuel or special fuel purchased from the franchiser is substantially associated with the franchiser's trademark, service mark, trade name, advertising or other commercial symbol designating the franchiser.

6. *"Franchiser"* means a person who is engaged in the importation, refining or distribution of motor fuel or special fuel and who has entered into a distributor franchise or a dealer franchise.

7. *"Motor fuel"* means motor fuel as defined in chapter 452A.

8. *"Retail premises"* means real estate either owned or leased by the dealer and used primarily for the sale at retail to the ultimate consumer of motor fuel or special fuel.

9. *"Retaliatory action"* means action contrary to the purpose or intent of this chapter and may include a refusal to continue to sell or lease, a reduction in the quality or quantity of services or products customarily available for sale or lease, a violation of privacy, or an inducement of others to retaliate.

10. *"Special fuel"* means special fuel as defined in chapter 452A.

[C75, 77, 79, 81, §323.1]

88 Acts, ch 1158, §68; 95 Acts, ch 155, §1; 96 Acts, ch 1034, §28

323.2 Discontinuing distributor franchise.

Notwithstanding the terms, provisions or conditions of any distributor franchise, a franchiser shall not terminate or refuse to renew a distributor franchise except as provided in this chapter. A franchiser shall not terminate or refuse to renew a distributor franchise unless the franchiser gives to the distributor thirty days' written notice of franchiser's intent to terminate or not renew. Notice shall be given by restricted certified mail, as defined in section 618.15. If a distributor, within thirty days after the date of delivery of the notice from the franchiser, applies to the department for a hearing under this chapter, the distributor franchise shall remain in effect pending a final order by the department. The application filed by the distributor shall state, under oath, that the distributor has not filed a petition in bankruptcy or been declared bankrupt within six months preceding the filing of the application, that the franchiser has not withdrawn entirely from the sale for resale of motor fuel and special fuel in this state, that there are no past due sums owing by the distributor to the franchiser, and that the distributor has not consented in writing to the termination or nonrenewal of the distributor franchise.

[C75, 77, 79, 81, §323.2]

95 Acts, ch 155, §2

323.3 Discontinuing dealer franchise.

Notwithstanding the terms, provisions, or conditions of any dealer franchise, a distributor or franchiser shall not terminate or refuse to renew a dealer franchise except as provided in this chapter. A distributor or franchiser shall not terminate or refuse to renew a dealer franchise unless the distributor or franchiser gives to the dealer thirty days' written notice of distributor's or franchiser's intent to terminate or not renew. Notice shall be given by restricted certified mail, as defined in section 618.15. If a dealer, within thirty days after the date of delivery of the notice from the distributor or franchiser, applies to the department for a hearing under this chapter, the dealer franchise shall remain in effect pending a final order by the department. The application filed by the dealer shall state, under oath, that the dealer's license, issued pursuant to chapter 214, for pumps and meters located on the retail premises occupied by the dealer has not been canceled, that the dealer has not filed a petition in bankruptcy or been declared bankrupt within six months preceding the filing of the application, that the franchiser or distributor has not withdrawn entirely from the sale for resale of motor fuel and special fuel in this state, that there are no past due sums owing by the dealer to the franchiser or distributor, and that the dealer has not consented in writing to the termination or nonrenewal of the dealer franchise.

[C75, 77, 79, 81, §323.3]

323.4 Continuance.

The department may continue the date of hearing for a period of thirty days, and may upon application, but not ex parte, continue the date of hearing for an additional period of thirty days.

[C75, 77, 79, 81, §323.4]

323.5 Burden of proof.

Upon hearing, if the department finds the statements contained in the application are true, then the franchiser or distributor that intends to terminate or not renew the distributor franchise or dealer franchise shall have the burden of proof to establish that the franchiser or distributor, as the case may be, has good cause for terminating or not renewing the franchise.

If the department finds the statements contained in the application are not true, the application shall be denied. Nothing contained in this chapter shall be construed to require or authorize any investigation by the department of any matter before the department under this chapter. Upon hearing the department shall hear the evidence introduced by the parties and shall make its decision solely upon the record made. If the department denies the termination or nonrenewal of the franchise, it may make such further order as may be necessary to require compliance with the terms of the franchise and to prevent retaliatory action.

[C75, 77, 79, 81, §323.5]

323.6 Conditions barring change in distributor franchise.

Notwithstanding the terms, provisions or conditions of a distributor franchise, the following shall not constitute good cause for the termination or refusal to renew a distributor franchise:

1. The sole fact that the franchiser desires further penetration of the market.

2. The change of executive management of the distributor, unless the franchiser, having the burden of proof, proves that the change of executive

management will be substantially detrimental to the distribution of the franchiser's motor fuels or special fuels in the area served by the distributor.

3. The sale or change of ownership of the distributor's business.

[C75, 77, 79, 81, §323.6]

95 Acts, ch 155, §3

323.7 Department's guidelines.

In determining whether good cause has been established for terminating or not renewing a distributor franchise or dealer franchise, the department shall take into consideration the existing circumstances, including, but not limited to:

1. Amount of business transacted by the distributor or dealer.

2. Investments made and obligations incurred by the distributor or dealer in performance of the franchise.

3. Permanency of the investment.

4. Whether it is injurious to the public welfare for the business of the distributor or dealer to be disrupted.

5. Ability of the distributor or dealer to timely pay financial obligations.

6. Whether the distributor or dealer has adequate equipment and qualified personnel to reasonably provide for the distribution and marketing of the motor fuel or special fuel sold to the distributor or dealer.

7. Except as provided in section 323.6, failure of the distributor to substantially comply with those requirements of the distributor franchise that are determined by the department to be reasonable and material.

8. Failure of the dealer to substantially comply with those requirements of the dealer franchise that are determined by the department to be reasonable and material.

[C75, 77, 79, 81, §323.7]

323.8 Compulsory attendance at hearings.

The department may issue subpoenas, administer oaths, compel the attendance of witnesses and production of books, papers, documents and other evidence. The department may apply to the district court of the county in which the hearing is to be held for a court order to enforce actions taken under this section.

[C75, 77, 79, 81, §323.8]

323.9 Violations.

Any person violating the provisions of this chapter is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §323.9]

323.10 Intent.

The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health, safety and general welfare of the people of this state and because methods and practices in the marketing and distribution of motor fuel and special fuel have impaired the availability to the public of the fuel and the services supplied by distributors and dealers who have entered into a franchise agreement with their respective suppliers.

[C75, 77, 79, 81, §323.10]

323.11 Hearing.

Upon receiving an application, the department shall order a hearing. The hearing shall be held within thirty days of receipt of the application and in accordance with the Iowa administrative procedure Act. The department shall notify the franchiser or distributor of the time and place of the hearing. The department may also give notice of the application to any other party the department deems an interested person. The notice shall be in the form and substance and given in the manner determined by the department.

Any person who can show an interest in the application may become a party to the hearing, whether or not the person receives notice; but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise.

[C75, 77, 79, 81, §323.11]

323.12 Appeal.

Appeal may be taken from the final order of the department by either the distributor, franchiser or dealer, to the district court of the county where the distributor or dealer either resides or maintains the principal place of business, within thirty days from the time the decision is filed with the department, by giving at least ten days' notice to the department to be served on its chairperson or secretary in the same manner as original notices are now served, and by filing with the clerk of court a bond for costs in the sum of not less than five hundred dollars. Appeal shall be taken in accordance with the provisions of the Iowa administrative procedure Act.

[C75, 77, 79, 81, §323.12]

323.13 Waiver.

Any provision of a dealer franchise or distributor franchise which is an attempted waiver of the benefits of this chapter shall be void and unenforceable.

[C75, 77, 79, 81, §323.13]

323.14 Death of franchisee — successor — penalty.

1. It is unlawful to include in any distributor franchise or dealer franchise agreement a term which provides for the termination of the franchise by the franchiser upon the death of the fran-

chisee if the franchisee, prior to the franchisee's death, designates a successor-in-interest in a form prescribed by and delivered to the franchiser. For the purposes of this section, "successor-in-interest" is restricted to either a surviving spouse or adult child of the franchisee who, at the time of the franchisee's death, is able to meet reasonable qualifications then being required of distributors or dealers by the franchiser.

2. The successor-in-interest designated as provided in subsection 1 shall have twenty-one days after the death of the franchisee to give written notice of an election to assume and operate the franchise. The notification shall contain such information regarding business experience and credit worthiness as is reasonably required by the franchiser. The successor-in-interest must offer to assume and commence operation of the franchise within ten days after the franchiser approves the assumption.

3. The franchise available to the successor-in-interest pursuant to this section shall be the same as that which existed in the name of the deceased franchisee at the time of the franchisee's death.

4. A franchisee may designate a primary and one alternate successor-in-interest. The alternate, if one is designated, has no rights under this section in the event of an exercise of rights by the primary successor-in-interest. If an alternate desires to assume and operate the franchise in the event the primary successor-in-interest fails to do so, the alternate must give notice of such election and otherwise comply with subsection 2.

5. Unless otherwise specifically provided in this section, actions to be performed by the franchiser or by the successor-in-interest under this section shall be performed within a reasonable time.

6. Following the death of a franchisee, and prior to the operation of the franchise by the successor-in-interest as provided in this section, the executor or administrator of the estate of the deceased franchisee may operate the franchise.

7. If the successor-in-interest assumes the franchise, the successor-in-interest shall account to the heirs or estate of the deceased franchisee for the value of personal property of the franchisee located at or related to the franchise.

8. If the successor-in-interest does not assume the franchise, the franchiser shall account to the heirs or the estate of the deceased franchisee for the value of branded products purchased directly from the franchiser.

9. A franchisee or successor-in-interest may commence a civil action to compel compliance by a franchiser with this section, or to obtain damages caused by a failure to comply with this section, or both, within two years after the date the franchiser fails to comply with the requirements of this section.

[81 Acts, ch 114, §1, 2]

CHAPTER 323A

PURCHASING FUEL FROM ALTERNATE SOURCES

323A.1 Definitions.
323A.2 Purchase from other source.
323A.3 Effective date.

323A.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Franchise"* means a contract between a refiner and a distributor, a refiner and a retailer, a distributor and another distributor, or a distributor and a retailer under which a refiner or distributor authorizes a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by the refiner or by a refiner which supplies motor fuel to the distributor which authorizes the use. *"Franchise"* includes any contract under which a retailer or distributor is permitted to occupy leased premises, which premises are to be used in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner or a refiner which supplies motor fuel to the distributor and permits the occupancy of the leased premises.

2. *"Franchisor"* means a refiner or distributor who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

3. *"Franchisee"* means a retailer or distributor who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

4. *"Motor fuel"* means gasoline or diesel fuel of a type distributed for use as a fuel in self-propelled

vehicles designed primarily for use on public streets, roads, and highways.

[C81, §323A.1]

323A.2 Purchase from other source.

1. The orderly flow of an adequate supply of motor fuel is declared to be essential to the economy and to the welfare of the people of this state. Therefore, in the public interest and notwithstanding the terms, provisions, or conditions of any franchise, a franchisee unable to obtain motor fuel from the franchisor may purchase the fuel from another available source, subject to subsections 2 to 5 and provided the franchisee has done all of the following:

a. At least forty-eight hours prior to entering into an agreement to purchase motor fuel from another source, the franchisee has requested delivery of motor fuel from the franchisor and the requested motor fuel has not been delivered and the franchisor has given the franchisee notice that the franchisor is unable to provide the requested motor fuel, or prior to entering into an agreement the franchisor has stated to the franchisee that the requested motor fuel will not be delivered. The request to the franchisor for delivery shall be for a type of fuel normally provided by the franchisor to the franchisee and for a quantity of fuel not exceeding the average amount sold by the franchisee in one week, based upon average weekly sales in the three months preceding the request, except that this provision shall not restrict a franchisee from purchasing ethanol blended gasoline from a source other than the franchisor or limit the quantity to be purchased when the franchisor does not normally supply the franchisee with ethanol blended gasoline.

b. The franchisee has requested and has been denied delivery of motor fuel sold or distributed under the trademark named in the franchise from a person other than franchisor.

c. The director of the department of natural resources determines that the franchisee has demonstrated that a special hardship exists in the community served by the franchisee relating to the public health, safety and welfare, as specified under the rules of the department of natural resources.

2. The quantity of motor fuel requested or purchased from another source including the source listed in subsection 1, paragraph *"b"*, shall not exceed the quantity requested from the franchisor.

3. At the time a franchisee enters into an agreement to purchase motor fuel from a source other than the franchisor, the franchisee shall inform the franchisor by the quickest available means.

4. If the franchisee sells motor fuel supplied from a source other than the franchisor, the franchisee shall prominently post a sign disclosing this fact to the public on each motor fuel pump used for dispensing the motor fuel. The size of the sign shall not be less than eight inches by ten inches and the letters on the sign shall be at least three inches in height.

5. A franchisee who sells motor fuel supplied from a source other than the franchisor shall also fully indemnify the franchisor against any claims asserted by a user on which the claimant prevails and in which the court determines that motor fuel not acquired from the franchisor was the proximate cause of the injury.

Purchases of motor fuel in accordance with this section are not good cause for termination of a franchise.

[C81, §323A.2]

89 Acts, ch 83, §47; 91 Acts, ch 87, §2

323A.3 Effective date.

The provisions of this chapter shall be applicable only to franchise agreements entered into or renewed after July 1, 1980.

[C81, §323A.3]

SUBTITLE 3

CARRIERS

CHAPTER 324

MOTOR FUEL TAX LAW

Transferred to chapter 452A

CHAPTER 324A

TRANSPORTATION PROGRAMS

This chapter not enacted as a part of this title; transferred from chapter 601J in Code 1993

324A.1 Definitions.
324A.2 Technical assistance.
324A.3 Fiscal and service plan.
324A.4 Federal, state, local and private aid — report.
324A.5 Coordination of transportation services.
324A.6 Public transit assistance moneys.

324A.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Department"* means the state department of transportation.

2. *"Federal aid"* means any federal grants, loans, or other federal assistance whether or not state or local funds are required to match or contribute toward the costs of the program for which the aid is available.

3. *"Private aid"* means any grants, loans, or other assistance available from nonprofit corporations, foundations, and all private or nongovernmental sources, whether or not state or local funds are required to match or contribute toward the costs of the program for which the aid is available.

4. *"Public transit system"* means an urban or regional transit system providing transit services accessible to the general public and receiving federal, state or local tax support.

5. *"Regional transit system"* means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor except as agreed upon by the county and the department. Each county, through the county board of supervisors, within the region shall be responsible for determining the service and funding within its own county. However, the administration and overhead support services for the regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members.

6. *"Transportation"* means the movement of individuals in a four or more wheeled motorized vehicle designed to carry passengers, including a car, van, or bus, between one geographic point and another geographic point. *"Transportation"* does not include emergency or incidental transportation or transportation conducted by the department of human services at its institutions.

7. *"Transportation disadvantaged persons"* means persons with physical or mental disabilities, persons who are determined by the department to be economically disadvantaged and other persons or groups determined by the department to be disadvantaged in terms of the transportation services that are available to them.

8. *"Urban transit system"* means a system designated by the department in which motor buses are operated primarily upon the streets of cities for the transportation of passengers who present themselves for transportation without discrimination up to the limit of the capacity of each motor bus. *"Urban transit system"* also includes motor buses operated upon the streets of adjoining cities, whether interstate or intrastate for the transportation of passengers without discrimination up to the limit of the capacity of each motor bus. A privately chartered bus service or interurban carrier subject to the jurisdiction of the state department of transportation is not an urban transit system.

[C77, 79, 81, §601J.1]
84 Acts, ch 1200, §1
C93, §324A.1
96 Acts, ch 1129, §80

324A.2 Technical assistance.

The department shall, at the request of a state agency, political subdivision, or public transit system or organization affected by this chapter, provide to them the following technical transportation assistance:

1. An evaluation of existing public transit systems, including but not limited to an evaluation of rolling stock, the costs of operation including the costs of fuel, maintenance and personnel and the development of common management and operating systems and procedures.

2. An analysis of existing urban and rural transit system services provided for transportation disadvantaged persons and the service needs of transportation disadvantaged persons, including an evaluation of specialized equipment required to meet the service needs of transportation disadvantaged persons.

[C77, 79, 81, §601J.2]
83 Acts, ch 60, §1; 84 Acts, ch 1200, §2
C93, §324A.2
2002 Acts, ch 1112, §1
Unnumbered paragraphs 2 and 3 stricken

324A.3 Fiscal and service plan.

The department shall at the request of a political subdivision, or public and private providers of transportation services affected by this chapter assist the providers in the development of a fiscal and service plan which may be used by them to coordinate and consolidate all forms of urban and rural transportation services except public school transportation, including but not limited to, the following:

1. Senior citizen transportation.
2. Head start transportation.
3. Services for persons with disabilities.
4. Cab companies.
5. Common carriers.
6. Transportation services provided by private nonprofit agencies to their clients or the general public.

[C77, 79, 81, §601J.3]
84 Acts, ch 1200, §3
C93, §324A.3
96 Acts, ch 1129, §81

324A.4 Federal, state, local and private aid — report.

1. The department shall compile and maintain current information on the use of federal, state, local, and private aid affecting urban and rural public transit programs. Public, private, and private nonprofit organizations applying for or receiving federal, state, or local aid for providing transit services shall annually report to the department the costs of their transportation programs, depicting funds used for public transit programs and such other information as the department may require prior to receiving any federal or state funds or any aid from a political subdivision of the state. The report shall list all of the funding sources of the organization along with the listing of funds expended by that organization during the preceding fiscal year. The department, in cooperation with the regional planning agencies as the responsible agency for annual updating the regional transit development programs, shall compile this information annually. A state agency or organization administering funds for transit services is required to submit all funding requests through the regional and state clearinghouse and the department. An organization, state agency, political subdivision, or public transit system, except public school transportation, receiving federal, state, or local aid to provide or contract for public transit services or transportation to the general public and specific client groups, must coordinate and consolidate funding and resulting service, to the maximum extent possible, with the urban or regional transit system.

2. Upon request, the department shall provide assistance to political subdivisions, state agencies, and organizations affected by this chapter for federal aid applications for urban and rural transit system program aid. The department, in cooperation with the regional planning agencies, shall maintain current information reflecting the amount of federal, state and local aid received by the public and private nonprofit organizations providing public transit services and the purpose for which the aid is received. The department shall annually prepare a report to be submitted to the general assembly, the department of management, and to the governor, prior to February 1 of each year, stating the receipts and disbursements made during the preceding fiscal year and the adequacy of programs financed by federal, state, local, and private aid in the state. The department shall analyze the programs financed and recommend methods of avoiding duplication and increasing the efficacy of programs financed. The department shall receive comments from the department of human services, department of elder affairs, and the officers and agents of the other affected state and local government units relative to the department's analysis. The department shall use the following criteria to adopt rules to determine compliance with and exceptions to subsection 1:

a. Elimination of duplicative and inefficient administrative costs, policies and management.

b. Utilization of resources for transportation services effectively and efficiently.

c. Elimination of duplicative and inefficient transportation services.

d. Development of transportation services which meet the needs of the general public and insure services adequate to the needs of transportation disadvantaged persons.

e. Protection of the rights of private enterprise public transit providers.

f. Coordination of planning for transportation services at the urban and regional level by all agencies or organizations receiving public funds that are purchasing or providing transportation services.

g. Management of equipment and facilities purchased with public funds so that efficient and routine maintenance and replacement is accomplished.

h. Training of transit management, drivers and maintenance personnel to provide safe, efficient, and economical transportation services.

Eligibility to receive or expend federal, state, or local funds for transportation services by all agencies or organizations purchasing or providing these services shall be contingent upon compliance with these criteria as determined by the department.

3. The department shall receive and distribute federal aid to public transit systems unless precluded by federal statute; however, the department shall not retain or redirect any portion of funds received by the department for a particular public transit system except that the department may redirect unused funds after a project is completed in order to prevent the lapse of funds. The department may designate the public transit systems as the direct recipients of federal aid.

[C77, 79, 81, §601J.4]
84 Acts, ch 1200, §4, 5; 91 Acts, ch 27, §5
C93, §324A.4
2002 Acts, ch 1112, §2, 3
Subsection 1 amended
Subsection 2, unnumbered paragraph 2 amended

324A.5 Coordination of transportation services.

The department of human services, department of elder affairs, and the officers and agents of other state and local governmental units shall assist the department in carrying out section 324A.4, subsections 1 and 2, insofar as the functions of these respective officers and departments are concerned with the health, welfare and safety of any recipient of transportation services.

1. Any agency or organization found to be in noncompliance with section 324A.4 shall be notified in writing by the department of those activities which are not in compliance. The notice shall also provide for a period of thirty days during which compliance with section 324A.4 can be accomplished without penalty or sanction.

2. If noncompliant activities continue after the period of thirty days, the department shall, in cooperation with the attorney general and the director of revenue and finance, initiate the following actions:

a. If the activities that are not in compliance with section 324A.4 are funded with state or federal funds which are administered by the state and can be used by agencies or organizations that are in compliance with section 324A.4, then upon notice by the department, the director of revenue and finance shall not permit the expenditure of ten percent of the funds during the fiscal year immediately following the notice, an additional twenty percent of funds during the following year, an additional thirty percent during the third year, and the remaining funds in the fourth year that the activities remain in noncompliance. Any funds retained by the director of revenue and finance shall be returned to the originating state agency for redistribution to agencies and organizations eligible to receive the funds for transportation purposes.

b. If the activities that are not in compliance with section 324A.4 are funded with state, federal or local funds which are not administered by the state or cannot be used by agencies and organizations that are in compliance with section 324A.4, then upon notice by the department, the attorney general shall file an action to enjoin agencies or organizations from expending funds for transportation purposes until and unless compliance with section 324A.4 is achieved. If federal funds are involved in such cases, then the attorney general shall notify the responsible federal agency of the actions and request its cooperation.

c. The department of inspections and appeals shall establish an appeal process pursuant to chapters 10A and 17A which allows those agencies or organizations determined to not be in compliance with this chapter an opportunity for a timely hearing before the department of inspections and appeals. A decision by the department of inspections and appeals is subject to review by the state department of transportation. The state department of transportation's decision is the final agency action. Judicial review of the action of the department may be sought in accordance with chapter 17A.

d. The department shall, in accordance with chapter 17A, adopt and enforce rules setting minimum standards for determination of compliance and certification. The rules and standards required by this section shall be formulated in consultation with all affected state agencies, local government units with professional and consumer groups affected, and shall be designed to further the accomplishment of the purposes of this chapter.

84 Acts, ch 1200, §6
C85, §601J.5
89 Acts, ch 273, §40; 90 Acts, ch 1233, §35
C93, §324A.5
2002 Acts, ch 1112, §4, 5
Subsection 1 stricken and former subsections 2 and 3 renumbered as 1 and 2
Subsection 2, paragraph c stricken and former paragraphs d and e redesignated as c and d

324A.6 Public transit assistance moneys.

1. Moneys appropriated for purposes of public transit assistance under this chapter shall be expended for providing assistance to public transit

for the development, improvement, and maintenance of public transit systems. Moneys received by the department by agreements, grants, gifts, or other means from individuals, companies or other business entities, or cities and counties for the purposes stated in this section shall be credited to the general fund of the state.

Moneys received by the department by agreements, grants, gifts, or other means and deposited into the state general fund as a result of this subsection are appropriated to the department for purposes of this subsection.

2. The department may enter into agreements with public transit systems, the United States government, cities, counties, business entities, or other persons for carrying out the purposes of this section.

3. The department may accept federal funds to carry out this section. Federal funds received under this section are appropriated for the purposes set forth in the federal grants.

4. Notwithstanding chapter 8, funds appropriated for public transit purposes to implement a state assistance plan shall be allocated in whole or in part to a public transit system prior to the time actual expenditures are incurred if the allocation is first approved by the department. A public transit system shall make application for advance allocations to the department specifically stating the reasons why an advance allocation is required and this allocation shall be included in the total to be audited.

84 Acts, ch 1151, §1
C85, §601J.6
86 Acts, ch 1245, §1968; 91 Acts, ch 260, §1249
C93, §324A.6
93 Acts, ch 131, §13; 94 Acts, ch 1107, §52

CHAPTER 325

CERTIFICATED CARRIERS

Repealed by 97 Acts, ch 104, §60, 61; see chapter 325A

CHAPTER 325A

MOTOR CARRIER AUTHORITY

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SUBCHAPTER 1

GENERAL PROVISIONS

325A.1 Definitions.

As used in this chapter:

1. *"Bulk liquid commodities"* means liquid commodities or compressed gases transported in a vehicle having a total cargo tank shell capacity of more than two thousand gallons.

2. *"Department"* means the state department of transportation.

3. *"Highway"* means a street, road, bridge, or thoroughfare of any kind in this state.

4. *"Interstate motor carrier number"* means a United States department of transportation number or motor carrier number issued by the federal highway administration.

5. *"Intrastate"* means a movement of property or passengers from one location to another within this state. *"Intrastate"* does not include transportation of property or passengers which is a furtherance of an interstate movement.

6. *"Motor carrier"* means a person defined in subsection 8, 9, or 10.

7. *"Motor carrier certificate"* means a certificate issued by the department to any person transporting passengers on any highway of this state for hire. This certificate is transferable.

8. *"Motor carrier of bulk liquid commodities"* means a person engaged in the transportation, for hire, of bulk liquid commodities upon a highway in this state.

9. *"Motor carrier of household goods"* means a person engaged in the transportation, for hire, of personal effects and property used or to be used in a dwelling, and includes the following:

a. Furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such establishment; except, this paragraph shall not be construed to include the stock-in-trade of any establishment, except when transported as an incident to the removal of the establishment from one location to another.

b. Articles including objects of art, displays, and exhibits, which because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.

10. *"Motor carrier of property"* means a person engaged in the transportation, for hire, of property by motor vehicle including a carrier transporting liquid commodities or compressed gases in a vehicle having a total cargo tank shell capacity of two thousand gallons or less.

11. *"Motor carrier permit"* means a permit issued by the department to any person operating any motor vehicle on any highway of this state to transport property for hire. A motor carrier permit is not transferable unless it was issued to a motor carrier of household goods.

12. *"Motor vehicle"* means an automobile, motor truck, truck tractor, road tractor, motor bus, or other self-propelled vehicle, or a trailer, semitrailer, or other device used in connection with the transportation of property or passengers. *"Motor vehicle"* does not include a motor vehicle owned by a school district or used exclusively in conveying school children to and from school or school activities.

13. *"Private carrier"* means a person who provides transportation of property or passengers by motor vehicle, is not a for-hire motor carrier, or transports commodities of which the person is the owner, lessee, or bailee and the transportation is a furtherance of the person's primary business or occupation.

14. *"Transportation for hire"* means all transportation of property or passengers made available by a person for compensation.

97 Acts, ch 104, §32, 61; 2001 Acts, ch 132, §18, 19

325A.2 Duties of department and local authorities.

1. The department shall do all of the following:

a. Prescribe and enforce safety and financial responsibility regulations for motor carriers and require the filing of reports regarding safety and financial responsibility.

b. Approve a tariff for motor carriers of household goods.

c. Issue, amend, suspend, or revoke motor carrier permits and certificates.

2. A local authority, as defined in section 321.1, shall not impose any regulations, including special registration or inspection requirements, upon the operation of motor carriers that are more restrictive than any of the provisions of this chapter, or section 321.449 or 321.450.

97 Acts, ch 104, §33, 61; 98 Acts, ch 1178, §10; 2000 Acts, ch 1016, §30

325A.3 Application and issuance of permit or certificate.

1. Upon the filing of an application by a motor carrier and compliance with the terms and conditions of this chapter, the department shall issue to the applicant a permit or certificate. The actual operation by a motor carrier of a motor vehicle shall not begin without the permit or certificate being issued by the department.

2. All applications shall be in writing and contain the following:

a. The name and tax identification number of the person making the application.

b. The applicant's principal place of business.

c. The type of permit or certificate being requested.

d. A signed statement agreeing to comply with all applicable safety regulations as prescribed by

the department.

e. A copy of all existing tariffs provided to the department for approval by motor carriers of household goods.

f. A financial statement completed by motor carriers of bulk liquid commodities or passengers from which the department can determine the financial fitness of the applicant to engage in the transport of bulk liquid commodities or passengers.

g. A verification of liability and property damage insurance coverage as required in section 325A.6, in a form prescribed by the department.

3. The provisions of subsection 2, paragraph *"f"*, and subsection 4 shall not apply to the transportation of dairy products.

4. Motor carriers of bulk liquid commodities or passengers shall complete a motor carrier safety education seminar provided by or approved by the department. This seminar must be completed within six months of the permit or certificate issuance.

5. A motor carrier shall keep a permit or certificate issued to the motor carrier under this section, or a copy of such permit or certificate, in the vehicle being operated by the motor carrier and shall show the permit or certificate, or copy thereof, to any peace officer upon request.

6. The department may deny issuance of a permit or certificate if the department determines that evidence exists showing that the motor carrier cannot comply with the requirements of this chapter or the rules adopted pursuant to this chapter, including safety regulations and financial fitness and insurance requirements.

97 Acts, ch 104, §34, 61; 2000 Acts, ch 1016, §27, 31, 32; 2001 Acts, ch 132, §20, 21

For applicable scheduled fines, see §805.8A, subsection 13, paragraph d

325A.3A Hearings.

A person whose application for a permit or certificate under this chapter has been denied, or whose permit or certificate has been suspended, may contest the decision under chapter 17A and in accordance with rules adopted by the department. The request for a hearing shall be in writing to the director of the division of motor carrier services, state department of transportation, at its office in the capital city's metropolitan area.

97 Acts, ch 104, §47, 61
CS97, §325A.16
2000 Acts, ch 1016, §36; 2000 Acts, ch 1232, §93
C2001, §325A.3A

325A.4 Fees.

1. The department shall charge the following fees:

a. One hundred fifty dollars for a new application.

b. One hundred fifty dollars for a reinstatement.

c. Twenty-five dollars to change an address or name.

d. Ten dollars for tariff updates.

e. One hundred fifty dollars to transfer a passenger certificate.

f. Twenty-five dollars for a duplicate permit or certificate.

2. Changes in ownership of motor carrier permits require a new application and the new application fee of one hundred fifty dollars shall be assessed.

3. The department shall collect a fee of two hundred dollars to cover the cost of the motor carrier safety education seminar.

97 Acts, ch 104, §35, 61

325A.5 Fees — credited to road use tax fund — seminar receipts.

All fees received for applications and permits or certificates under this chapter shall be remitted to the treasurer of state and credited to the road use tax fund. All fees collected for the motor carrier safety education seminar shall be considered a repayment receipt as defined in section 8.2, and shall be remitted to the department to be used to pay for the seminars.

97 Acts, ch 104, §36, 61

325A.6 Insurance.

All motor carriers subject to this chapter shall have minimum insurance coverage which meets the limits established in the federal motor carrier safety regulations in 49 C.F.R. ch. 387.

97 Acts, ch 104, §37, 61

325A.7 Charges.

All charges filed under the tariff by any motor carrier of household goods for any service shall be just, reasonable, and nondiscriminating and every unjust, unreasonable, or discriminating charge for such service or any part thereof is prohibited and declared unlawful.

97 Acts, ch 104, §38, 61

325A.8 Required marking.

1. The motor carrier shall attach distinctive markings or tags to each motor vehicle. If a motor vehicle has both an interstate and intrastate motor carrier number, only the interstate motor carrier number must be displayed.

2. If a motor carrier is renting a vehicle on a daily basis, a copy of the lease must be carried in the vehicle. Violation of this section is a scheduled violation subject to the fine provided in section 805.8A, subsection 13, paragraph *"d"*.

97 Acts, ch 104, §39, 61; 2001 Acts, ch 137, §5

325A.9 Advertising.

An advertisement to the general public concerning for-hire transportation must include the permit or motor carrier certificate number issued un-

der this chapter.
97 Acts, ch 104, §40, 61

325A.10 Rules for operation.
The department shall adopt rules pursuant to chapter 17A as necessary to govern and control the operation, maintenance, and inspection of vehicles covered by this chapter upon the highways.
97 Acts, ch 104, §41, 61

SUBCHAPTER 2

PASSENGER TRANSPORTATION

325A.11 Passenger transportation.
In addition to the requirements of subchapter 1, motor carriers of passengers and charter carriers shall comply with the requirements of this subchapter.
97 Acts, ch 104, §42, 61

325A.12 Definitions.
As used in this subchapter:
1. *"Car pool"* means transportation of a group of at least two riders in a motor vehicle having a seating capacity of not more than eight passengers between a rider's, owner's, or operator's residence or other designated location and a rider's, owner's, or operator's place of employment or other common destination of the group, if the motor vehicle is driven by one of the members of the group.
2. *"Charter"* means an agreement whereby the owner of a motor vehicle lets the motor vehicle to a group of persons as one party for a specified sum and for a specified act of transportation at a specified time and over an irregular route.
3. *"Charter carrier"* means a person engaged in the business of transporting the public by motor vehicle under charter. *"Charter carrier"* does not include any of the following:
a. Taxicabs with a seating capacity of not more than eight passengers, or persons having a license, contract, or franchise with an Iowa city to carry or transport passengers for hire while operating within the guidelines of the license, contract, or franchise.
b. A city engaged in the business of carrying or transporting passengers for hire over regular routes.
c. School bus operators when engaged in transportation involving any school activity.
d. A regular-route motor carrier of passengers.
4. *"Regional transit system"* means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor except as agreed upon by the county or the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared-ride basis shall not be construed to be a regional transit system.
5. *"Regular-route motor carrier of passengers"* means a person engaged in the for-hire transportation of passengers by motor vehicle over regular routes by scheduled service and available to the general public.
6. *"Van pool"* means transportation of a group of riders in a vehicle having a seating capacity of not less than eight passengers and not more than fifteen passengers between a rider's, owner's, or operator's residence or other designated location and a rider's, owner's, or operator's place of employment or other common destination of the group, if the vehicle is driven by one of the members of the group.
97 Acts, ch 104, §43, 61

325A.13 Certificate of convenience and necessity and regular-route passenger certificate.
1. It is unlawful for a charter carrier to transport passengers by motor vehicle for hire from any place in this state to another place in this state irrespective of the route or highway traversed, without first having obtained a charter passenger certificate from the department.
2. *a.* It is unlawful for a regular-route motor carrier of passengers to transport passengers for hire upon the highways of this state in intrastate commerce without first having obtained from the department a regular-route passenger certificate. The department shall issue a regular-route passenger certificate if the department finds that the applicant is fit, willing, and able.
b. In determining whether a regular-route motor carrier of passengers is fit, willing, and able, the department shall only consider the applicant's compliance with safety, financial fitness, and insurance requirements.
c. A regular-route passenger certificate authorizing the transportation of passengers includes the authority to transport newspapers, baggage of passengers, express packages, or mail in the same motor vehicle with passengers.
d. A regular-route motor carrier of passengers holding a regular-route passenger certificate may at any time commence scheduled service over any regular route from any point or place in this state to another place in this state irrespective of the route or highway traversed and may at any time discontinue any part of its regular-route service.
e. A regular-route motor carrier of passengers granted a certificate prior to January 1, 1998,

which authorized motor carrier passenger operations, may continue to provide motor carrier passenger service with all rights and privileges granted by a regular-route passenger certificate issued under this section.

f. A regular-route motor carrier of passengers shall not operate as a charter carrier in this state unless it possesses a charter passenger certificate.

g. A charter carrier shall not operate as a regular-route passenger carrier in this state unless it possesses a regular-route passenger certificate.

h. An Iowa urban transit system as defined in section 452A.57, subsection 6, may operate within the metropolitan area which it serves and between its service area and another city which is located not more than ten miles from its service area without obtaining a regular-route passenger certificate if the other city is not served by another motor carrier of passengers operating under a regular-route passenger certificate.

3. A motor carrier providing primarily passenger service for persons who are elderly, persons with disabilities, and other transportation-disadvantaged persons is exempt from the certification requirements of this section if it satisfies all of the following requirements:

a. The motor carrier is not a corporation organized for profit under the laws of Iowa or any other state or the motor carrier is a governmental organization.

b. The motor carrier received or receives operating funds from federal, state, or local government sources.

c. The motor carrier does not duplicate a transportation service provided by a motor carrier issued a regular-route passenger certificate.

4. A person operating a motor vehicle in a car pool or van pool is exempt from the requirement of this chapter.

5. Except for a person operating a car pool or van pool, each motor carrier exempt from the requirement for obtaining a certificate under this section shall obtain a nontransferable permit from the department. Such motor carriers shall comply with all safety, insurance, and other rules of the department pertaining to a publicly funded transit system.

97 Acts, ch 70, §15; 97 Acts, ch 104, §44, 61; 2000 Acts, ch 1016, §33 – 35

325A.14 Application for certificate. Repealed by 2000 Acts, ch 1016, § 38.

325A.15 Protests against applications. Repealed by 2000 Acts, ch 1016, § 38.

325A.16 Rules of procedure. Transferred to § 325A.3A; 2000 Acts, ch 1232, § 93.

325A.17 Uncontested case procedure. Repealed by 2000 Acts, ch 1016, § 38.

325A.18 Granting application — restrictions. Repealed by 2000 Acts, ch 1016, § 38.

325A.19 Expense of hearing. Repealed by 2000 Acts, ch 1016, § 38.

325A.20 Review — bond. Repealed by 2000 Acts, ch 1016, § 38.

325A.21 Transferability of regular-route certificate.

A regular-route passenger certificate shall not be sold, transferred, leased, or assigned without the approval of the department. The department shall approve the sale, transfer, lease, or assignment if the person obtaining or seeking to obtain ownership or control of a certificate is found to be fit, willing, and able to perform the service proposed. In determining the fitness of the person seeking transfer of the certificate, the department shall consider only the person's compliance with safety, financial fitness, and insurance requirements.

97 Acts, ch 104, §52, 61; 2000 Acts, ch 1016, §37

325A.22 Riding on outside part.

Passengers shall not ride on the running boards, fenders, or on any other outside part of passenger-carrying motor vehicles.

97 Acts, ch 104, §53, 61

SUBCHAPTER 3

SANCTIONS

325A.23 Suspension or revocation of permit or certificate.

The department may, in addition to other penalties, revoke or suspend the permit or certificate of a motor carrier for a violation of this chapter or a rule adopted under this chapter. For flagrant or persistent violations of safety or hazardous materials rules by the holder of a permit or certificate or the holder's agent, the department may suspend the permit or certificate of necessity until the rules adopted by the department are complied with, or the department may revoke the permit or certificate for continued noncompliance.

97 Acts, ch 104, §54, 61

325A.24 Scheduled fines — penalty.

A person who violates this chapter or a rule adopted pursuant to this chapter for which a penalty is not otherwise established, or who aids or abets a person in a failure to comply with this chapter or a rule adopted pursuant to this chapter, is subject to the fine provided in section 805.8A, subsection 13, paragraph *"e"*.

97 Acts, ch 104, §55, 61; 2001 Acts, ch 137, §5

SUBCHAPTER 4

TRANSITION PROVISIONS

325A.25 Certificates prior to January 1, 1998.

1. A certificate or permit, or both, which was issued under former chapter 325 before January 1, 1998, and which authorized a person to transport property in intrastate commerce by motor vehicle as a common carrier or contract carrier, or both, is void. However, to the extent a certificate or permit, or portion of a certificate or permit, authorized a person to transport household goods over irregular routes or passengers in intrastate commerce, this subsection does not apply.

2. A person who owned a certificate or permit, or both, that was a valid certificate or permit, or both, on December 31, 1997, is deemed to have a valid certificate or permit, unless the person's certificate or permit has been suspended, revoked, or transferred to another person as provided by law. A person deemed to have a valid certificate or permit under this subsection is not required to file an application pursuant to section 325A.3 to continue providing intrastate transportation, but rather, upon such person's compliance with the requirements of section 325A.3, subsection 2, the person is deemed to have a valid certificate or permit in force as required pursuant to section 325A.3, subsection 1, authorizing the person to transport property except household goods in intrastate commerce on the public highways, unless the person's certificate or permit is suspended, revoked, or transferred to another person as provided by law. Within a reasonable time after January 1, 1998, the department shall issue certificates or permits to all persons who are deemed to be qualified under this subsection.

97 Acts, ch 104, §56, 61

CHAPTER 326

REGISTRATION RECIPROCITY

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SINGLE CAB CARD

326.34 Definitions. Repealed by 84 Acts, ch 1174, §6.
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326.38 Rules. Repealed by 84 Acts, ch 1174, §6.
326.39 to 326.44 Reserved.

REGISTRATION IDENTIFICATION

326.45 Issuance — title obligation. Repealed by 2002 Acts, ch 1063, §54.
326.46 Temporary registration.

326.1 Policy.

It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the negotiation and execution

of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other jurisdictions with respect to vehicles registered in this and such other jurisdictions, thus contributing to the economic and social development and growth of this state.

[C71, 73, 75, 77, 79, 81, §326.1]

326.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Base state"* with respect to commercial vehicles subject to proportional registration means the state from which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled, or also in the case of a fleet vehicle the state to which allocated for registration under statutory requirements.

2. *"Broker"* for purposes of section 326.23 means any person who, as principal or agent, sells or offers for sale any transportation, or negotiates for, or claims for solicitation, advertisement, or otherwise to be one who sells, provides, furnishes, contracts, or arranges for such transportation. The term *"broker"* shall not include motor carriers and employees or agents thereof.

3. *"Commercial vehicle"* means any vehicle which is operated in interstate commerce or combined intrastate and interstate commerce and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

4. *"Compact miles"* means the total miles a fleet operates in this state and in all states with whom Iowa has an apportionment registration agreement and with whom the fleet owner has or will register vehicles on an apportioned registration basis.

5. *"Department"* means the department of transportation.

6. *"Director"* means the director of transportation or the director's designee.

7. *"Fleet"* means one or more commercial vehicles.

8. *"In-state miles"* means the mileage generated within this state by commercial vehicles in the fleet subject to proportional registration; except that, with respect to fleet vehicles based in Iowa, *"in-state miles"* shall also include all mileage traveled by such vehicles in states with whom Iowa has a proportional registration agreement but with whom the owner elects not to apportion registration fees and mileage traveled by such vehicles under reciprocity obtained by virtue of Iowa registration.

9. *"Jurisdiction"* means any county, state, territory, federal district, foreign country, or political subdivision thereof.

10. *"Preceding year"* means a period of twelve consecutive months fixed by the department, which period shall be within the sixteen months immediately preceding the commencement of the registration year for which proportional registration is sought.

11. *"Proportional registration"* or *"proration"* means division and distribution of registration fees imposed on commercial vehicles between two or more jurisdictions in accordance with a formula based on miles traveled by such vehicles.

12. *"Total fleet miles"* means the mileage generated by any truck or truck tractor which was part of a prorate fleet during the fiscal year period of September 1 through August 31 preceding the year for which proportional registration is sought. Total fleet mileage to be reported for any truck or truck tractor which was deleted from or added to the prorate fleet during the fiscal year reporting period shall be only those miles generated by such truck or truck tractor while the vehicle was part of the prorated fleet during such fiscal year reporting period. *"Total fleet miles"* in relation to trailers or semitrailers which are part of a prorate fleet means the mileage generated by the power units of the fleet; provided, however, that if such trailers or semitrailers were towed during the fiscal year reporting period by the power units which collectively were proportionally registered by the same fleet owner during the fiscal year reporting period as part of two or more fleets, *"total fleet miles"* in relation to such trailers or semitrailers means the total mileage generated by the several power fleets during the fiscal year reporting period even though some of the power units did not actually travel a portion of their total miles in contracting states where the proportional registration of such trailers or semitrailers is sought.

13. *"Trip"* for purposes of section 326.23 means:

a. A one-way movement from one point originating outside this state and destined to another point outside this state.

b. A round trip movement between two points within this state.

c. A round trip movement originating in this state or destined for a point within this state.

14. The words *"vehicle," "motor vehicle," "motor truck," "truck tractor," "road tractor," "trailer," "semitrailer," "trailer coach," "combination"* or *"combination of vehicles," "gross weight," "person," "owner," "nonresident," "street"* or *"highway,"* and *"auxiliary axle"* shall have the meanings ascribed in section 321.1.

[C71, 73, 75, 77, 79, 81, §326.2]

326.3 and 326.4 Repealed by 74 Acts, ch 1180, § 197.

326.5 Reciprocity agreements.

The director may enter into reciprocity agreements with the authorized representatives of any jurisdiction, exempting nonresidents of this state using the highways of this state from the registration requirements of chapter 321 and payment of

fees to this state, with conditions, restrictions, and privileges the director deems advisable.

[S13, §1571-m16; C24, 27, 31, 35, §4866; C39, §**5003.04;** C46, 50, 54, 58, §321.56; C62, 66, §326.2; C71, 73, 75, 77, 79, 81, §326.5]

86 Acts, ch 1245, §1948

326.6 Proportional registration of fleets.

The department may, pursuant to section 326.5, provide for proportional registration between this state and other jurisdictions of fleets of commercial vehicles owned by residents or nonresidents engaged in interstate commerce or simultaneously engaged in interstate and intrastate commerce.

1. The owners of fleets of commercial vehicles subject to proportional registration under apportionment agreements negotiated by the department shall file a sworn statement with the department which shall contain the following information and such other information as the department may require:

a. Total fleet miles for the preceding year.

b. In-state miles for the preceding year.

c. A description and identification of each vehicle which is part of the fleet for which proportional registration is sought.

2. The dollar amount of registration fees due this state for each fleet subject to proportional registration shall be computed as follows:

a. Divide total fleet miles during the preceding year into in-state miles during the preceding year to determine the percentage of total fleet mileage allocable to this state.

b. Determine the sum total amount necessary to register each and every vehicle in the fleet based on the annual registration fees prescribed in chapter 321.

c. Multiply the percentage obtained under paragraph *"a"* of this subsection by the sum total obtained under paragraph *"b"* of this subsection.

d. The product so obtained under paragraph *"c"* of this subsection shall be the amount payable by the owner for proportional registration of the fleet for the registration year. Payment of registration fees shall be made in accordance with section 321.134, subsection 2, or a fleet owner on a renewal registration may pay a fee equal to one-half of the applicable fee and post a surety bond, certificate of deposit, or letter of credit, equal to one-half of the applicable fee at the time of the first installment. Payment of the first installment entitles an owner to the issuance of full-year credentials. The second installment shall be paid by July 15. If the second installment is not paid by July 15, the department shall file claim against the security for payment of fees and penalties due and the owner shall not be entitled to elect the installment payment option for the following year. Excess surety moneys received shall be refunded minus a fifty dollar administration fee.

3. The department may negotiate apportionment agreements on either a vehicle or a dollar basis. In apportionment on a vehicle basis, a sufficient number of vehicles shall be registered to produce total fee payments not less than an amount obtained by applying the proportion of in-state fleet miles to total fleet miles to the fees which would otherwise be required for total fleet registration in this state.

[C71, 73, 75, 77, 79, 81, §326.6]

90 Acts, ch 1230, §89

326.7 Agreements on basis of compact miles.

Notwithstanding any other law to the contrary, and as an alternative to the procedure set out in section 326.6, the department may enter into agreements providing for proportional registration between this state and other jurisdictions of fleets of commercial vehicles owned by residents or nonresidents engaged in interstate commerce or simultaneously engaged in interstate and intrastate commerce on the basis of compact miles.

The Iowa prorate percent will be computed by dividing the Iowa miles by the compact miles as defined in section 326.2. If the composite percentage paid by the Iowa resident to each of the states a party to an apportioned registration agreement with Iowa for apportioned registrations is less than one hundred percent, the department will redetermine the registration fees due the state of Iowa to bring the composite percent to one hundred percent. If the composite percent paid by the nonresident fleet operator to each of the states a party to an apportioned registration agreement with Iowa for apportioned registration fees on vehicles base plated in Iowa is less than one hundred percent, the department will redetermine the registration fees due the state of Iowa to bring the composite percent to one hundred percent on such Iowa base plated vehicles.

[S13, §1571-m16; C24, 27, 31, 35, §4866; C39, §**5003.04;** C46, 50, 54, 58, §321.56; C62, 66, §326.2; C71, 73, 75, 77, 79, 81, §326.7]

326.8 Estimating mileage.

When in-state and total fleet or compact mileage cannot be computed for a particular fleet on the basis of actual operation during the preceding year, estimated mileage shall be accepted for the fleet's first prorate application. Estimated mileage shall be based on the proposed operation of the fleet during the entire year for which proportional registration is sought. The applicant shall substantiate the estimate by submitting details of the applicant's proposed operation including, but not limited to, type of operation, its location, routes, and frequency of operation.

[C71, 73, 75, 77, 79, 81, §326.8]

326.9 Individual vehicles not to be proportionally registered.

The registrations of individual vehicles shall not be subject to proportional registration with this state. The same fleet, consisting of the same vehicles in each state, shall be proportionally registered in each state with which the fleet is prorated; and every one of the vehicles shall be included in the fleet in each state. Failure to comply with these requirements shall constitute grounds for cancellation of proration privileges.

[C71, 73, 75, 77, 79, 81, §326.9]

326.10 Minimum fee. Repealed by 2002 Acts, ch 1063, § 54.

326.10A Payment by check.

The department shall accept payment of fees under this chapter by personal or corporate check. The fee shall be deemed to have been paid upon receipt of the check. If the check is not honored, all fees and penalties shall accumulate as if the fee was not paid. After appropriate warning from the department, the registration account shall be suspended, collection pursued, and the delinquent registration fees shall become a debt due the state of Iowa. After a dishonored check has been received from an applicant, payments submitted by the applicant during the following year must be made with guaranteed funds.

85 Acts, ch 61, §1; 2002 Acts, ch 1063, §40
Section amended

326.11 Subsequently acquired vehicles.

Vehicles acquired by a fleet owner after the commencement of the registration year and subsequently added to the fleet shall be prorated by applying the mileage percentage used in the original application for such fleet for such registration period to registration fees due under chapter 321. An application for registration shall be filed with the department pursuant to the provisions of chapter 321.

The director may issue temporary written authorization to carriers for vehicles acquired by a fleet owner and added to the fleet owner's prorate fleet after the beginning of the registration year. The temporary authority shall permit the operation of a commercial vehicle until permanent identification is issued, except that the temporary authority shall expire after ninety days.

[C71, 73, 75, 77, 79, 81, §326.11; 81 Acts, ch 115, §1]

89 Acts, ch 317, §38; 2002 Acts, ch 1063, §41
Unnumbered paragraph 1 amended

326.12 Vehicles deleted — registration transferred.

Fleet owners who delete commercial vehicles displaying Iowa base plates from the fleet after the commencement of the registration year shall be allowed to transfer registration credit to a replacement vehicle in accordance with this section. Iowa shall allow credit for non-Iowa based deleted vehicles only if the state designated by the fleet owner as the base state of the deleted vehicle permits transfer of registration credit to the replacement vehicle. Allowance of credit for deleted vehicles shall be subject to the following conditions:

1. The fee for reissuance or registration credentials or for transfer of credentials shall be seven dollars.

2. No deletion shall be made nor credit allowed toward registration of a replacement vehicle unless the vehicle to be removed from service has been sold, junked, repossessed, foreclosed by mechanic's lien, title transferred by operation of law, or cancellation or expiration of a lease arrangement. The deleted vehicle shall have been disposed of on or before the date the replacement vehicle was acquired or in the possession of the applicant.

3. If a leased vehicle is to be deleted from the fleet and unexpired registration fees applied to the replacement vehicle, the lessee shall refund any unexpired registration fees paid by the lessor to the lessee on the transferred vehicle.

4. Credit shall be given for unexpired months.

5. The registration of the vehicle being added to the fleet is not delinquent under chapter 321.

[C71, 73, 75, 77, 79, 81, §326.12]

2002 Acts, ch 1063, §42
Section amended

326.13 Information under oath.

The department shall require fleet owners to submit under oath any information deemed necessary to carry out the provisions of this chapter. Information furnished under this chapter shall be forwarded to the director of the department by each fleet owner no later than January 1 of the current registration year.

[S13, §1517-m16; C24, 27, 31, 35, §4866; C39, §**5003.04;** C46, 50, 54, 58, §321.56; C62, 66, §326.3; C71, 73, 75, 77, 79, 81, §326.13]

326.14 Plates and receipts — registration period and renewal — penalty.

1. The department shall issue a single registration plate and registration receipt for each vehicle pursuant to apportionment agreements or provisions authorized under this chapter. The registration period for a vehicle registered pursuant to this chapter is from January 1 through December 31 of each year.

2. An application for renewal of registration shall be postmarked or received in the office of motor carrier services of the department no later than January 31. A five percent late filing penalty shall be assessed to an application for renewal postmarked or received on or after February 1, with an additional five percent penalty assessed the first of each month thereafter until the ap-

plication is filed. The enforcement deadline for failure to display a registration plate and registration is March 15 at 12:01 a.m.

[C71, 73, 75, 77, 79, 81, §326.14]
2002 Acts, ch 1063, §43
Section amended

326.15 Refunds of registration fees.

The refund of registration fees paid for motor vehicles under this chapter is allowed, except that no refund shall be allowed and paid if the unused portion of the fee is less than ten dollars per vehicle. Refunds shall be made as follows:

1. If the motor vehicle is destroyed by fire or accident, or junked and its identity as a motor vehicle is entirely eliminated, the owner in whose name the motor vehicle was registered at the time of destruction or dismantling shall return the plates to the department and make a claim for refund. A refund is not allowed unless a junking certificate has been issued, as provided in section 321.52.

2. If the motor vehicle is removed from the apportioned fleet, the owner in whose name the motor vehicle was registered shall return the registration plate and registration receipt to the department and make a claim for refund. A refund shall not be allowed without documentation of the subsequent registration of the motor vehicle.

3. If the motor vehicle is stolen, the owner shall give notice of the theft to the department within five days. If the motor vehicle is not recovered by the owner before December 1 of the year for which the registration fee was paid, the owner shall make a statement of theft and make a claim for refund.

4. If as a result of an audit the motor vehicle registration fees are found to have been paid in error, the applicant shall be entitled to a refund.

A refund for trailers and semitrailers issued multiyear registration plates shall be paid by the department under the previously stated conditions.

Refunds of proportional registration fees are allowed only if the state which issued the base plate for the vehicle allows a similar refund to Iowa carriers. If the motor vehicle for which refund is sought is leased by the owner to an apportioned registrant, the claim shall be filed in the names of both the lessee and the lessor and the refund payment made payable to both the lessee and the lessor.

Refunds of proportional registration fees shall be paid on the basis of unexpired complete calendar months remaining from the date the claim for refund, the registration plate, and the registration receipt are postmarked or received by the department. Refunds for trailers and semitrailers issued a multiyear registration plate shall be paid on the basis of unexpired complete registration years remaining from the date the claim is filed.

[C71, 73, 75, 77, 79, 81, §326.15]
83 Acts, ch 161, §1; 2002 Acts, ch 1063, §44 – 47
Subsection 2 amended
Subsection 4 stricken
Former subsection 5 amended and renumbered as 4
Unnumbered paragraph 4 amended

326.16 Delinquent fees.

1. If the fees for proportional registration are not paid to each contracting jurisdiction entitled thereto on the basis of the proportional registration application and supporting documents filed with the department by the fleet owner within a reasonable amount of time as determined by the department, the department shall calculate late payment penalties. The fleet owner shall be notified by regular mail that fees and penalties are due and must be paid within thirty days of the invoice date. If fees and penalties are not received, the fleet owner shall be notified by certified mail that the owner's registration has been suspended.

2. A five percent late payment penalty shall be assessed if an invoice is not paid within thirty days of the invoice date or within thirty days of January 31 of the registration year, whichever is later, with an additional five percent penalty assessed the first of each month thereafter until all fees and penalties are paid. In addition, the fees due for registration in this state shall be a debt due to the state of Iowa.

[S13, §1571-m16; C24, 27, 31, 35, §4866; C39, §**5003.04;** C46, 50, 54, 58, §321.56; C62, 66, §326.3; C71, 73, 75, 77, 79, 81, §326.16]
2002 Acts, ch 1063, §48
Section amended

326.17 Iowa base plates.

Resident fleet owners shall be required to list Iowa as the base state for all commercial vehicles which qualify under the term *"base state"* as defined in this chapter, and Iowa base plates shall be displayed on all such commercial vehicles. Nonresident fleet owners subject to proportional registration shall display Iowa base plates if the commercial vehicle qualifies as an Iowa based vehicle as defined in this chapter.

[C71, 73, 75, 77, 79, 81, §326.17]

326.18 Nonresident fleet owner privileges.

When a nonresident fleet owner has registered vehicles on a prorated basis, the vehicles are fully registered insofar as interstate commerce is concerned. The privileges granted to a nonresident pursuant to this chapter permit the operation of a vehicle which is simultaneously engaged in interstate movements and intrastate commerce, provided that the owner has intrastate authority or rights granted by the department. The director may also enter into reciprocity agreements pursuant to section 326.5 to permit interstate and intrastate movement of vehicles registered on a prorated basis by a nonresident fleet owner, provided

the owner has intrastate authority granted by the department and the jurisdiction in which the nonresident is base plated grants the same privilege to an Iowa base plated vehicle. Each vehicle upon which an Iowa base plate is required to be displayed under this chapter is fully registered for both interstate commerce and intrastate commerce.

[S13, §1571-m16; C24, 27, 31, 35, §4866; C39, §**5003.04;** C46, 50, 54, 58, §321.56; C62, 66, §326.2; C71, 73, 75, 77, 79, 81, §326.18; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1949

326.19 Records preserved — audits.

A registrant whose application for apportioned registration has been accepted shall preserve the records upon which the registration is based for a period of three years after the close of the registration year. Upon request of the department, all fleet owners shall make all such records available to the department for audit as to accuracy of computation and payment. An audit shall be conducted at the office of the registrant during normal business hours. However, if circumstances dictate, the registrant may be required to present the records at the office of motor carrier services of the department. If the registrant's operational records are not located in the base state and it is necessary for the base state to send auditors to the location where the records are normally kept, the base state may require the registrant to reimburse the per diem and travel expenses incurred by the auditors in performing the audit. The department may enter into agreements with authorized agencies or other contracting jurisdictions for joint audits of any registrant.

[S13, §1571-m16; C24, 27, 31, 35, §4866; C39, §**5003.04;** C46, 50, 54, 58, §321.56; C62, 66, §326.4; C71, 73, 75, 77, 79, 81, §326.19]

2002 Acts, ch 1063, §49

Section amended

326.19A Failure to maintain records — penalty.

The department may assess a penalty in an amount equal to twenty percent of the amount calculated under section 326.6, subsection 2, paragraph *"b"*, if the audit of the apportioned fleet owner under section 326.19 confirms that the fleet owner has failed to maintain records on all of the following:

1. Verification of miles for the preceding year.
2. Jurisdictional percentages claimed pursuant to section 326.6, subsection 1.
3. Reciprocity agreements to which the department may be a party.

The department shall adopt rules specifying the records and other information required for an audit under section 326.19.

92 Acts, ch 1100, §7

326.20 Benefits extended to leased vehicles.

The department may, notwithstanding any provisions of the Code to the contrary, enter into reciprocity or proportional registration agreements which extend the benefits thereof to leased vehicles on the basis of the residence of the lessee.

[S13, §1571-m16; C24, 27, 31, 35, §4866; C39, §**5003.04;** C46, 50, 54, 58, §321.56; C62, 66, §326.6; C71, 73, 75, 77, 79, 81, §326.20]

326.21 Laws of other states — Iowa interests.

In the absence of an agreement with another jurisdiction, the department may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits, and privileges to be extended to vehicles or owners of vehicles properly registered or licensed in such other jurisdiction. The department shall consider the interests of the state of Iowa and the citizens thereof, the interests of the other jurisdictions and the citizens thereof, and the benefits which will accrue to the economy of the state of Iowa from the uninterrupted flow of commerce in declarations made under this section. Each declaration shall specify that the extent of exemptions, benefits, and privileges is subject to revision without notice upon adoption by the general assembly of legislation in conflict with the terms of any such declaration.

[C71, 73, 75, 77, 79, 81, §326.21]

326.22 Operational laws of Iowa applicable.

A nonresident registered vehicle is subject to all laws and rules governing the operation of such vehicle on the highways of this state. The registration plates, stickers, or other identification assigned and furnished to any vehicle for the current registration year by the state in which the vehicle is registered shall be displayed on the vehicle substantially as provided in chapter 321 for vehicles registered pursuant to the provisions of this chapter. In addition, a fee set by the department to cover actual cost shall be charged for each plate, sticker, or other identification furnished for each vehicle registered in accordance with the provisions of this section or extended reciprocity in accordance with the provisions of this section. A charge shall not be made for the initial registration receipt issued for each vehicle registered pursuant to an apportionment registration agreement. A fee set by the department to cover actual costs shall be charged for issuance of duplicate plates, stickers, other required identification, or registration receipts.

[S13, §1517-m16; C24, 27, 31, 35, §4866; C39, §**5003.04;** C46, 50, 54, 58, §321.56; C62, 66, §326.5; C71, 73, 75, 77, 79, 81, §326.22]

2002 Acts, ch 1063, §50

For applicable scheduled fines, see §805.8A, subsection 13, paragraph a
Section amended

326.23 Trip permits.

1. The owner of a commercial vehicle which is properly registered and licensed in some other jurisdiction and is to be operated occasionally on highways in this state, may in lieu of payment of the annual registration fee for such vehicle obtain a trip permit authorizing operation of the vehicle on the highways of this state in interstate commerce for a period of not to exceed seventy-two hours. The fee for the trip permit shall be ten dollars.

2. The department may enter into agreements with owners and operators of truck stops to permit the owners and operators of truck stops to issue trip permits subject to any conditions imposed by the department. In addition to the trip permit fee, the owner or operator of a truck stop may charge an issuance fee which shall be disclosed to the purchaser. For the purposes of this section, *"truck stop"* means any place of business which sells fuel normally used by trucks and which is open twenty-four hours per day.

[C66, §326.7; C71, 73, 75, §326.23, 326.24; C77, 79, 81, §326.23]

2002 Acts, ch 1063, §51

For applicable scheduled fines, see §805.8A, subsection 13, paragraph a
Subsection 2 amended

326.24 Repealed by 75 Acts, ch 173, § 12.

326.25 Applications — investigations.

The department shall examine and determine the genuineness, regularity, and legality of every application lawfully made pursuant to this chapter, and may in all cases make investigations as may be deemed necessary or require additional information. The department shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof of the truth of any statement contained therein, or for any other reason, when authorized by law. The department is hereby authorized to take possession of any indicia of proportional registration or reciprocity upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued.

The department may suspend or revoke the registration indicia of a vehicle registered on a prorated basis in any one of the following events:

1. When the department is satisfied that such registration indicia was issued upon fraudulent application. Bona fide errors shall be corrected within fifteen days after notification by the department.

2. When the department determines that the required fee has not been paid and same is not paid upon reasonable notice and demand.

3. When the registration indicia is knowingly displayed on a vehicle which is not in the prorate fleet of the registrant.

4. Upon a determination that the motor vehicle does not have financial liability coverage as required under section 321.20B.

[C71, 73, 75, 77, 79, 81, §326.25]

97 Acts, ch 139, §14, 17, 18; 98 Acts, ch 1121, §8

326.26 Forms.

The department shall prescribe and provide suitable forms of application, registration receipts, and all other forms requisite or deemed necessary to carry out the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §326.26]

326.27 Violations to negate agreements.

Operation of a commercial vehicle or vehicles in violation of the requirements of this chapter, the motor vehicle registration laws of this state, or the terms of any agreement negotiated by the department pursuant to this chapter may, after due notice and hearing, be grounds for denial of reciprocal or proportional registration privileges on the vehicle or vehicles of an owner so operated. Any owner denied such reciprocal or proportional registration privileges shall be subject to payment of full annual Iowa registration fees on any such vehicle operated on Iowa highways. In addition to denial of reciprocal or proportional registration privileges, it shall be a simple misdemeanor, unless such act is declared under Iowa law to be a felony, for any person to operate under reciprocity or proportional registration in violation of any requirements of this chapter.

[C66, §326.7; C71, 73, 75, 77, 79, 81, §326.27]

326.28 Copies of records — fee.

A fee shall be charged for copies of such records as may be provided from the office of the department or the director. Such fee shall be one dollar for the first page and fifty cents for each additional page of copy received at any one time.

[C71, 73, 75, 77, 79, 81, §326.28]

326.29 Fees to road use tax fund.

Fees collected by the department pursuant to this chapter shall be remitted to the treasurer of state for deposit in the road use tax fund except that fees collected for other states shall be placed in a special fund known as the *"reciprocity fund"*. The department, at least monthly, shall order the disbursement of such fees collected to the appropriate states. Interest earned on the *"reciprocity fund"* shall be retained by the state and shall be credited to the road use tax fund.

[C71, 73, 75, 77, 79, 81, §326.29]

326.30 Motor vehicle law applicable.
All provisions of chapter 321 insofar as applicable, are extended to include owners who register and title vehicles in this state on a proportional registration basis or who operate interstate on Iowa highways under reciprocity.
[C71, 73, 75, 77, 79, 81, §326.30]
87 Acts, ch 108, §9

326.31 Filing incorrect information — effect.
If the director has reason to believe that a fleet owner has filed incorrect information with the department, for the purpose of reducing the fleet owner's obligation for registration fees or fuel taxes, the director may revoke the apportioned registration privileges on all of the vehicles owned by the person. A person who has such privileges revoked shall be required to register all of the vehicles owned by the person with the appropriate county treasurer for a period of no less than one year and no more than five years thereafter. The department may use all reports pertaining to the registration fees and motor fuel taxes in ascertaining the accuracy of reports filed pertaining to registration fees and motor fuel taxes.
A person whose privileges are revoked may request an administrative hearing of said action in accordance with chapter 17A, and during the period pending the hearing the apportioned registration privileges shall be reinstated if the fleet owner posts security with the department in an amount sufficient to pay the full annual fees if an adverse decision is rendered at the hearing. At such hearing the fleet owner shall have the burden of proof as to the accuracy of any report filed by the fleet owner with the department. Judicial review of any decision reached at the administrative hearing may be sought in accordance with the terms of the Iowa administrative procedure Act.
[C71, 73, 75, 77, 79, 81, §326.31]
2002 Acts, ch 1063, §52
Section amended

326.32 Additional fees or restrictions by other states — effect.
If the laws of any other state or country impose any taxes, fees, charges, penalties, obligations, prohibitions, or limitations of any kind upon the vehicles of residents of Iowa, in addition to those imposed upon the vehicles of residents of such other state or country by the state of Iowa, the department may impose and collect fees and charges in the same amount and impose the same obligations, prohibitions, or limitations upon the owner or operator of a vehicle registered in such other state or country.
[C71, 73, 75, 77, 79, 81, §326.32]

326.33 Rules adopted.
The department shall promulgate rules pursuant to chapter 17A as necessary to carry out the provisions of this chapter.
[C71, 73, 75, 77, 79, 81, §326.33]

SINGLE CAB CARD

326.34 Definitions. Repealed by 84 Acts, ch 1174, § 6.

326.35 Election to carry single card. Repealed by 84 Acts, ch 1174, § 6.

326.36 Certificate of compliance. Repealed by 84 Acts, ch 1174, § 6.

326.37 Temporary permit. Repealed by 84 Acts, ch 1174, § 6.

326.38 Rules. Repealed by 84 Acts, ch 1174, § 6.

326.39 to 326.44 Reserved.

REGISTRATION IDENTIFICATION

326.45 Issuance — title obligation. Repealed by 2002 Acts, ch 1063, § 54.

326.46 Temporary registration.
The department may issue temporary registration for unregistered vehicles subject to registration under this chapter upon application by the owner and payment of a fee of ten dollars for each vehicle. The registration shall be valid for fifteen days and for one trip between specified points of origin and destination with intermediate points authorized by the department. Property or passengers shall not be transported while the vehicle is subject to temporary registration.
[C81, §326.46]

CHAPTER 327

TRUCK OPERATORS

Repealed by 97 Acts, ch 104, §60, 61; see chapter 325A

CHAPTER 327A

LIQUID TRANSPORT CARRIERS

Repealed by 97 Acts, ch 104, §60, 61; see chapter 325A

CHAPTER 327B

REGISTRATION OF CARRIER AUTHORITY

327B.1 Authority secured and registered.
327B.2 Enforcement.
327B.3 Fees — use.
327B.4 Private carriers exempt.
327B.5 Penalty.
327B.6 Insurance or bond.
327B.7 Reciprocity for exempt commodity base state registration system.

327B.1 Authority secured and registered.

1. It is unlawful for a carrier to perform an interstate transportation service for compensation upon the highways of this state without first registering the authority obtained from the interstate commerce commission or evidence that such authority is not required with the state department of transportation.

2. The department shall participate in the single state insurance registration program for regulated motor carriers as provided in 49 U.S.C. § 11506 and interstate commerce commission regulations.

3. Registration for carriers transporting commodities exempt from interstate commerce commission regulation shall be granted without hearing upon application and payment of a twenty-five-dollar filing fee and an annual one-dollar fee per vehicle.

4. The state department of transportation may execute reciprocity agreements with authorized representatives of any state exempting nonresidents from payment of fees as set forth in this chapter. The state department of transportation shall adopt rules pursuant to chapter 17A for the identification of vehicles operated under reciprocity agreements.

5. Fees may be subject to reduction or proration pursuant to sections 326.5 and 326.32.

[C66, 71, 73, 75, 77, 79, 81, §327B.1]

93 Acts, ch 174, §2; 95 Acts, ch 118, §31

For applicable scheduled fines, see §805.8A, subsection 13, paragraphs f and g

327B.2 Enforcement.

The state department of transportation may designate by resolution certain of its employees upon each of whom there is hereby conferred the authority of a peace officer to make arrests for violations of laws relating to the registration of a motor carrier's interstate transportation service with the state department of transportation.

[C66, 71, 73, 75, 77, 79, 81, §327B.2]

327B.3 Fees — use.

All fees paid under the provisions of this chapter shall be remitted to the treasurer of state and credited to the road use tax fund.

[C66, 71, 73, 75, 77, 79, 81, §327B.3]

327B.4 Private carriers exempt.

The provisions of this chapter shall not be construed to include private carriers.

[C66, 71, 73, 75, 77, 79, 81, §327B.4]

327B.5 Penalty.

Any person violating the provisions of this chapter shall, upon conviction, be subject to a fine of not more than one hundred dollars or imprisonment in the county jail for not more than thirty days.

[C77, 79, 81, §327B.5]

327B.6 Insurance or bond.

Registration under section 327B.1 shall not be granted until the exempt carrier has filed with the state department of transportation evidence of in-

surance or surety bond issued by an insurance carrier or bonding company authorized to do business in this state in a form prescribed by the department. The minimum limits of liability for each interstate motor carrier for hire subject to federal minimum limits of liability are those adopted under United States Code, Title 49, and prescribed in 49 C.F.R. § 387.3 and § 387.9 for motor carriers of property and in 49 C.F.R. § 387.27 and § 387.33 for motor carriers of passengers.

The insurance policy or surety bond shall bind the insurance company or bonding company to make compensation to claimants for the carrier's liability. The insurance policy or surety bond shall also provide that a person having a cause of action against the carrier may bring action directly upon the policy or bond when service cannot be obtained on the interstate carrier within this state.

Failure to keep insurance or bond in effect at all times shall cause the registration of the interstate carrier to be revoked.

[C81, §327B.6; 82 Acts, ch 1150, §8, 9]

90 Acts, ch 1226, §5; 95 Acts, ch 118, §32

327B.7 Reciprocity for exempt commodity base state registration system.

The department may enter into a reciprocity agreement on behalf of this state with authorized representatives of other states to become a member of an exempt commodity base state registration system for the registration, insurance verification, and fee collection for carriers hauling commodities exempt from interstate commerce commission authority.

95 Acts, ch 118, §33

CHAPTER 327C

SUPERVISION OF CARRIERS

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327C.36 Rights and remedies not exclusive.
327C.37 Accidents — investigations of — report.
327C.38 Annual reports from companies.
327C.39 Repealed by 78 Acts, ch 1110, §25.
327C.40 Reserved.
327C.41 Additional reports.
327C.42 Uniform accounts.
327C.43 Violations.

327C.1 Definition.

As used in this chapter, unless the context otherwise requires, *"department"* means the department of transportation.

[C75, §474.54; C77, 79, 81, §327C.1; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1958

327C.2 General jurisdiction of transportation department.

The department has general supervision of all railroads in the state, express companies, car companies, freight and freight-line companies, motor carriers, and any common carrier engaged in the transportation of passengers or freight. However, the provisions of this chapter regarding the supervision of carriers do not apply to regular route motor carriers of passengers or charter carriers, as defined under section 325A.12.

[C97, §2112; S13, §2120-n; C24, 27, 31, 35, 39, §**7874;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.10; C77, 79, 81, §327C.2]

86 Acts, ch 1161, §16; 98 Acts, ch 1100, §51

327C.3 Removal of interfering lights.

The department is hereby vested with authority to order the removal or alteration of any lights erected for illuminating purposes, whether on public or private property, when such lights interfere with the easy observation of railroad signals by those engaged in the operation of railroad trains or equipment.

[C39, §**7874.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.11; C77, 79, 81, §327C.3]

327C.4 Inspection — notice to repair.

The department shall inspect the condition of each railroad's rail track, and may inspect the condition of each railroad's rail facilities, equipment, rolling stock, operations and pertinent records at reasonable times and in a reasonable manner to insure proper operations. Employees of the department shall have proper identification which shall be displayed upon request. If found unsafe, the department shall immediately notify the railroad corporation whose duty it is to put the same in repair, which shall be done by it within such time as the department shall fix. If any corporation fails to perform this duty the department may forbid and prevent it from running trains over the defective portion while unsafe or may regulate the speed and operation of trains moving over the defective portion of the railroad. If the railroad corporation violates any requirement provided by the department, the railroad corporation shall be subject to a schedule "two" penalty for each day the repairs have not been made from the date the department set for repairs to be completed. The court may consider the willingness and ability of the railroad corporation to co-operate in removing the safety hazard. Notwithstanding the provisions of chapter 669, the state shall not be held liable for damages for any act or failure to act under the provisions of this section.

[C97, §2113; S13, §2113; C24, 27, 31, 35, 39, §**7875;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.12; C77, 79, 81, §327C.4]

93 Acts, ch 87, §9

327C.5 Schedule violations — penalties.

Violations of the provisions of chapters 327C to 327G, shall be punished as a schedule "one" penalty unless otherwise indicated. Violations of a continuing nature shall constitute a separate offense for each violation unless otherwise provided. The schedule of violations shall be:

1. *"Schedule one"* means a penalty of one hundred dollars per violation.

2. *"Schedule two"* means a penalty of not less than one hundred dollars nor more than five hundred dollars per violation.

3. *"Schedule three"* means a penalty of not less than five hundred dollars nor more than one thousand dollars per violation.

4. *"Schedule four"* means a penalty of not less than five hundred dollars nor more than five thousand dollars per violation.

5. *"Schedule five"* means a penalty of not less than five hundred dollars nor more than five thousand dollars for the first violation and not less than five thousand dollars nor more than ten thousand dollars for each subsequent violation.

[C79, 81, §327C.5]

327C.6 Changes in operation and improvements.

When, in the judgment of the department, any railroad corporation fails in any respect to comply with the laws of the state; or if any railroad corporation fails to operate its railroad and business in a reasonable and expedient manner which is safe and convenient to the public, the department may order such changes as it finds to be proper and shall serve an order upon such corporation. Nothing in this section or section 327C.4 shall be construed as to nullify responsibility or liability for damage to person or property by any railroad corporation.

[C97, §2113; S13, §2113; C24, 27, 31, 35, 39, §**7877;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.14; C77, 79, 81, §327C.6]

327C.7 Withdrawal of service.

It shall be unlawful for any railroad corporation owning or operating any railroad in this state, to withdraw agency service, unless it shall first have filed notice of its intention with the department and otherwise complied with the provisions of this section and sections 327C.8 and 327C.9. Upon the receipt of such notice the department shall specify a notice be published and the railroad corporation shall, at its own expense, cause such notice to be published at least fifteen days in advance of the action to discontinue such agency and shall file proof of publication with the department. The notice shall be in such form as prescribed by the department and shall be published in a newspaper published in the county in which the station is located. An alternative notice procedure giving comparable public notice by registered mail to affected shippers may be prescribed by the department according to rules promulgated under chapter 17A.

[C39, §**7877.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.15; C77, 79, 81, §327C.7]

327C.8 Objections — hearing.

A person directly affected by the proposed discontinuance of an agency may file written objections with the department stating the grounds for the objections, within fifteen days from the time of the publication of the notice as provided in section 327C.7. Upon the filing of objections the department shall request the department of inspections and appeals to hold a hearing, which shall be held within sixty days from the filing of the objections. Written notice of the time and place of the hearing

shall be mailed by the department of inspections and appeals to the railroad corporation and the person filing objections at least ten days prior to the date fixed for the hearing.

[C39, §**7877.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.16; C77, 79, 81, §327C.8; 81 Acts, ch 22, §22]
89 Acts, ch 273, §19

327C.9 Order of department.

Upon said hearing the department may prohibit the discontinuance of such agency or may make such other order as is warranted by the evidence produced at such hearing. But if no objections are filed the department may make an order permitting the railroad corporation to proceed with such discontinuance.

[C39, §**7877.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.17; C77, 79, 81, §327C.9; 81 Acts, ch 22, §22]

327C.10 Investigation and inquiry.

The department may investigate and inquire into the management of all common carriers subject to its jurisdiction. The department may obtain from the carriers full and complete information necessary to enable the department to perform its duties including the administration of railroad assistance agreements. The department may require the attendance and testimony of witnesses, and the production of all books, papers, tariff schedules, contracts, agreements, and documents, relating to any matter under investigation, and may inspect them; and may examine under oath or otherwise any officer, director, agent, or employee of a common carrier; and may issue subpoenas and enforce obedience to them.

[C97, §2115, 2133; C24, 27, 31, 35, 39, §**7878;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.18; C77, 79, 81, §327C.10; 81 Acts, ch 22, §22]
86 Acts, ch 1245, §1959

327C.11 Repealed by 78 Acts, ch 1110, § 25.

327C.12 Aid from courts.

The department or the department of inspections and appeals may invoke the aid of any court of record in the state in requiring the attendance and testimony of witnesses and the production of books, papers, tariff schedules, agreements, and other documents. If a person refuses to obey a subpoena or other process, a court having jurisdiction of the inquiry shall issue an order requiring any of the officers, agents, or employees of a carrier or other person to appear before either department and produce all books and papers required by the order and testify in relation to any matter under investigation.

[C97, §2133; C24, 27, 31, 35, 39, §**7879;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.20; C77, 79, 81, §327C.12; 81 Acts, ch 22, §22]
89 Acts, ch 273, §20
Contempts, chapter 665

327C.13 Hindering or obstructing department.

Any person who shall willfully obstruct the department in the performance of their duties, or who shall refuse to give any information within that person's possession that may be required by the department within the line of their duty, shall, upon conviction, be subject to a schedule "two" penalty.

[C97, §2115; C24, 27, 31, 35, 39, §**7880;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.21; C77, 79, 81, §327C.13; 81 Acts, ch 22, §22]
See §327C.5

327C.14 Cumulative remedies.

Nothing in this chapter or chapter 327D shall be construed to estop or hinder any persons from bringing action against any railway corporation for any violation of the laws of the state.

[C97, §2118; C24, 27, 31, 35, 39, §**7882;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.23; C77, 79, 81, §327C.14]

327C.15 Reserved.

327C.16 Mandatory injunction — contempt.

It shall be the duty of the court in which any such cause shall be pending to require the issue to be made up within twenty days after commencement of the action and to give the same precedence over other civil business. If the court shall find that such rule, regulation, or order is reasonable and just, and that in refusing compliance therewith said railway company is neglecting and omitting the performance of any public duty or obligation, the court shall decree a mandatory and perpetual injunction, compelling obedience to and compliance with such rule, order, or regulation by said railroad company or person, its officers, agents, servants and employees, and may grant such other relief as may be deemed just and proper. All violations of such decree shall render the company, persons, officers, agents, servants and employees who are in any manner instrumental in such violation, guilty of contempt of court, and the court may punish such contempt by a fine not exceeding one thousand dollars for each offense. Such decree shall continue and remain in effect and be enforced until the rule, order, or regulation shall be modified or vacated by the department.

[C97, §2119; S13, §2119; C24, 27, 31, 35, 39, §**7884;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.25; C77, 79, 81, §327C.16]

327C.17 Penalty.

If a railroad fails or refuses to comply with a rule

or order made by the state department of transportation or the department of inspections and appeals within the time specified, the railroad is, for each day of such failure, subject to a schedule "two" penalty.

[S13, §2119; C24, 27, 31, 35, 39, §**7885;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.26; C77, 79, 81, §327C.17; 81 Acts, ch 22, §22]

89 Acts, ch 273, §21

See §327C.5

327C.18 Time may be extended to test legality.

The time for the taking effect of any rule, order, or regulation affecting public rights, made by the department, may, in its discretion, be extended; and said extension of time may be granted for the purpose of testing the legality thereof, upon application by any such aggrieved railroad, showing reasonable grounds therefor, and that said application is made in good faith and not for the purpose of delay.

[S13, §2119; C24, 27, 31, 35, 39, §**7886;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.27; C77, 79, 81, §327C.18]

327C.19 Review.

A decision of the department of inspections and appeals is subject to review by the state department of transportation.

Judicial review of the actions of the state department of transportation may be sought in accordance with chapter 17A.

[S13, §2119; C24, 27, 31, 35, 39, §**7887;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.28; C77, 79, 81, §327C.19]

89 Acts, ch 273, §22

327C.20 Remitting penalty.

If a common carrier fails in a judicial review proceeding to secure a vacation of the order objected to, it may apply to the court in which the review proceeding is finally adjudicated for an order remitting the penalty which has accrued during the review proceeding. Upon a satisfactory showing that the petition for judicial review was filed in good faith and not for the purpose of delay, and that there were reasonable grounds to believe that the order was unreasonable or unjust or that the power of the department of transportation or the department of inspections and appeals to make the order was doubtful, the court may remit the penalty that has accrued during the review proceeding.

[S13, §2119; C24, 27, 31, 35, 39, §**7888;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.29; C77, 79, 81, §327C.20; 81 Acts, ch 22, §22]

89 Acts, ch 273, §23

327C.21 Costs — attorney's fees.

When a decree shall be entered against a railroad corporation or person under sections 327C.16 to 327C.20 the court shall render judgment for costs, and attorney's fees for counsel representing the state.

[C97, §2120; C24, 27, 31, 35, 39, §**7889;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.30; C77, 79, 81, §327C.21]

327C.22 Interstate freight rates.

The department shall exercise constant diligence to ascertain the rates, charges, rules, and practices of common carriers operating in this state, in relation to the transportation of freight in interstate business. When it shall ascertain from any source or have reasonable grounds to believe that the rates charged on such interstate business or the rules or practices in relation thereto discriminate unjustly against any of the citizens, industries, interests, or localities of the state, or place any of them at an unreasonable disadvantage as compared with those of other states, or are in violation of the laws of the United States regulating commerce, or in conflict with the rulings, orders, or regulations of the interstate commerce commission, the department shall take the necessary steps to prevent the continuance of such rates, rules, or practices.

[S13, §2120-a; C24, 27, 31, 35, 39, §**7890;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.31; C77, 79, 81, §327C.22]

327C.23 Application to interstate commerce commission.

When any common carrier has put in force any rates, rules, or practices in relation to interstate freight business, in violation of the laws of the United States regulating commerce, or of the orders, rules, or regulations of the interstate commerce commission, or shall unjustly discriminate against any of the citizens, industries, interests, or localities of the state, the department shall present the material facts involved in such violations or discrimination to the interstate commerce commission and seek relief therefrom, and, if deemed necessary or expedient, the department shall prosecute any charge growing out of such violation or discrimination, at the expense of the state, before the interstate commerce commission.

[S13, §2120-b; C24, 27, 31, 35, 39, §**7891;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.32; C77, 79, 81, §327C.23]

327C.24 Choice of remedies.

Any person claiming damages from a common carrier on account of any violation of the provisions of chapter 327D may either make complaint to the department, or may bring action on the person's behalf for the recovery of such damages; but the person shall not have the right to pursue both of said remedies at the same time.

[C97, §2131; C24, 27, 31, 35, 39, §**7892;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.33; C77, 79, 81,

§327C.24]

327C.25 Complaints.

A person may file with the department a petition setting forth any particular in which a common carrier has violated the law to which it is subject and the amount of damages sustained by reason of the violation. The department shall furnish a copy of the complaint to the carrier against which a complaint is filed. The department shall request the department of inspections and appeals to schedule a hearing in which the carrier shall answer the petition or satisfy the demands of the complaint. If the carrier fails to satisfy the complaint within the time fixed or there appears to be reasonable grounds for investigating the matters set forth in the petition, the department of inspections and appeals shall hear and determine the questions involved and make orders it finds proper. If the department of transportation has reason to believe that a carrier is violating any of the laws to which it is subject, the department may institute an investigation and request the department of inspections and appeals to conduct a hearing in relation to the matters as if a petition had been filed.

[C97, §2134; C24, 27, 31, 35, 39, §**7893;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.34; C77, 79, 81, §327C.25; 81 Acts, ch 22, §22]

89 Acts, ch 273, §24

327C.26 Reports.

When a hearing has been held before the department of inspections and appeals after notice, it shall make a report in writing setting forth the findings of fact and its conclusions together with its recommendations as to what reparation, if any, the offending carrier shall make to a party who has suffered damage. The findings of fact are prima facie evidence in all further legal proceedings of every fact found. All reports of hearings and investigations made by the department of inspections and appeals shall be entered of record and a copy furnished to the carrier against which the complaint was filed, to the party complaining, and to any other person having a direct interest in the matter. A reasonable fee not to exceed the actual duplication costs may be charged for the copies.

[C97, §2135; C24, 27, 31, 35, 39, §**7894;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.35; C77, 79, 81, §327C.26; 81 Acts, ch 22, §22]

89 Acts, ch 273, §25

327C.27 Orders — compliance.

When the department finds as the result of any investigation or hearing that a common carrier has violated or is violating any of the provisions of law to which it is subject, or that any complainant or other person has sustained damages by reason of such violation, the department shall order such carrier to cease such violation at once and shall fix a time within which it shall pay the amount of damage which has been found due to any person as a result of such violation.

[C97, §2136; C24, 27, 31, 35, 39, §**7895;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.36; C77, 79, 81, §327C.27; 81 Acts, ch 22, §22]

327C.28 Violation of order — petition — notice.

If a person violates or fails to obey a lawful order or requirement of the department of transportation or the department of inspections and appeals, the department of transportation or the department of inspections and appeals shall apply by petition in the name of the state against the person, to the district court, alleging the violation or failure to obey. The court shall hear and determine the matter set forth in the petition on reasonable notice to the person, to be fixed by the court and to be served in the same manner as an original notice for the commencement of action.

[C97, §2137; C24, 27, 31, 35, 39, §**7896;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.37; C77, 79, 81, §327C.28; 81 Acts, ch 22, §22]

89 Acts, ch 273, §26

Manner of service, R.C.P. 1.302 – 1.315

327C.29 Interested party may begin proceedings.

A person interested in enforcing an order or requirement of the department of transportation or the department of inspections and appeals, may file a petition against the violator, alleging the failure to comply with the order or requirement and asking for summary relief to the same extent and in the same manner as the department of transportation or the department of inspections and appeals may under section 327C.28, and the proceedings after the filing of the petition shall be the same as in section 327C.28.

[C97, §2137; C24, 27, 31, 35, 39, §**7897;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.38; C77, 79, 81, §327C.29; 81 Acts, ch 22, §22]

89 Acts, ch 273, §27

327C.30 Duty of department, general counsel and county attorney.

When any proceeding has been instituted under sections 327C.28 and 327C.29, the department general counsel shall prosecute the same, and the county attorney of the county in which such proceeding is pending shall render such assistance as the department general counsel may require.

[C97, §2137; C24, 27, 31, 35, 39, §**7898;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.39; C77, 79, 81, §327C.30; 81 Acts, ch 22, §22]

327C.31 Hearing in equity — injunction.

All such causes shall be in equity, and the order or report of the department in question shall be considered prima facie evidence. If the court shall find that the order or requirement in question is

lawful and has been violated, it shall issue an injunction or other proper process.

[C97, §2137; C24, 27, 31, 35, 39, §**7899;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.40; C77, 79, 81, §327C.31; 81 Acts, ch 22, §22]

327C.32 Repealed by 76 Acts, ch 1245(4), § 525.

327C.33 Appeal — effect.

An appeal to the supreme court shall not stay or supersede the order of the court or the execution of any writ or process thereon. When appeal is taken by the department, it shall not be required to give an appeal bond or security for costs.

[C97, §2137; C24, 27, 31, 35, 39, §**7901;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.42; C77, 79, 81, §327C.33; 81 Acts, ch 22, §22]

327C.34 Suits by the department.

When the department has reason to believe that any person has been guilty of unjust discrimination, the department shall cause action to be commenced against such person. Such action may be brought in the district court of any county through which the railway owned or operated by such person may extend.

[C97, §2149, 2150; C24, 27, 31, 35, 39, §**7902;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.43; C77, 79, 81, §327C.34; 81 Acts, ch 22, §22]

327C.35 Repealed by 78 Acts, ch 1110, § 25.

327C.36 Rights and remedies not exclusive.

Nothing in this chapter shall abridge any rights or remedies existing at common law or by statute, but shall be in addition to such remedies.

[C24, 27, 31, 35, 39, §**7904;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.45; C77, 79, 81, §327C.36]

327C.37 Accidents — investigations of — report.

Upon the occurrence of any serious accident upon any railroad within this state, which shall result in personal injury, or loss of life, the corporation operating the road upon which the accident occurred shall give immediate notice thereof to the department whose duty it shall be, if they deem it necessary, to investigate the same, and promptly report to the governor the extent of the personal injuries, or loss of life, and whether the same was the result of mismanagement or neglect of the corporation on whose line the injury or loss of life occurred; but such report shall not be evidence or referred to in any case in any court.

[S13, §2120-k; C24, 27, 31, 35, 39, §**7905;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.46; C77, 79, 81, §327C.37]

327C.38 Annual reports from companies.

The department shall require annual reports from all common carriers subject to the provisions of chapter 327D and prescribe the manner in which specific answers to all questions upon which it may need information shall be made.

[C73, §1280; C97, §2143; C24, 27, 31, 35, 39, §**7906;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.47; C77, 79, 81, §327C.38]

327C.39 Repealed by 78 Acts, ch 1110, § 25.

327C.40 Reserved.

327C.41 Additional reports.

The department may also require of any and all common carriers subject to the provisions of chapter 327D such other reports, and fix the time for filing the same, as in its judgment shall be necessary and reasonable, which reports shall be in such form, and concerning such subjects, and be from such sources as it shall direct, except as otherwise provided herein.

[C97, §2143; C24, 27, 31, 35, 39, §**7909;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.50; C77, 79, 81, §327C.41]

327C.42 Uniform accounts.

The department may prescribe uniformity and methods of keeping accounts, as near as may be, and fix a time when such regulations shall take effect.

[C97, §2143; C24, 27, 31, 35, 39, §**7910;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.51; C77, 79, 81, §327.42]

327C.43 Violations.

Any corporation, company, or individual owning or operating a railway within the state, neglecting or refusing to make the required reports by the date fixed by rule of the department, shall, upon conviction, be subject to a schedule "one" penalty for each and every day of delay in making the same after the date thus fixed.

[C73, §1281, 1282; C97, §2143; C24, 27, 31, 35, 39, §**7911;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.52; C77, 79, 81, §327C.43]

See §327C.5

CHAPTER 327D

REGULATION OF CARRIERS

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GENERAL PROVISIONS

327D.1 Applicability of chapter.

This chapter applies to intrastate transportation by for-hire common carriers of persons and property. However, this chapter does not apply to regular route motor carriers of passengers or charter carriers, as defined under section 325A.12.

[C97, §2122; C24, 27, 31, 35, 39, §**8036;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.1; C77, 79, 81, §327D.1]

83 Acts, ch 121, §3; 86 Acts, ch 1161, §17; 98 Acts, ch 1100, §52

327D.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Department"* means the state department of transportation.
2. *"Joint tariffs"* embraces joint rates, tolls, contracts, classifications and charges.
3. *"Railroad"* means the terminal facilities necessary in the transportation of persons and property and includes bridges, railroad right of way, trackage, switches and other appurtenances necessary for the operation of a railroad, whether owned, leased or operated under some other contractual agreement.
4. *"Railroad corporation"* means a railway corporation as defined in subsection 6.
5. *"Railway"* means a railroad as defined in subsection 3.
6. *"Railway corporation"* means all corporations, companies, or persons owning or operating any railroad or carrier in whole or in part within the state.
7. *"Rates"* means fares, tariffs, tolls, charges, and all classifications, contracts, practices and rules of common carriers relating to such rates.
8. *"Switching service"* means the shifting of a car between two points, both of which are within the industrial vicinity of an industry, a group of industries, a station, or a city, as such industrial vicinity may be defined by the department.
9. *"Transportation"* means all instrumentalities of shipment or carriage as well as services in connection with the actual transport.

[C97, §2122; SS15, §2125; C24, 27, 31, 35, 39, §**8037, 8082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.2, 479.48; C77, 79, 81, §327D.2; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1960

327D.3 Duty to furnish cars and transport freight.

Every railway corporation shall upon reasonable notice, and within a reasonable time, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and receive and transport such freight with all reasonable dispatch, and provide and keep suitable facilities for the receiving and handling thereof at any depot on the line of its road.

[C97, §2116; S13, §2116; C24, 27, 31, 35, 39, §**8038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.3; C77, 79, 81, §327D.3]

327D.4 Connections.

If a railroad corporation in this state refuses to connect by proper switches or tracks with the tracks of another railroad corporation or refuses to receive, transport, load, discharge, reload, or return cars furnished by another connecting railroad corporation, a petition requesting resolution of the dispute may be filed with the department. The department shall notify the department of inspections and appeals which shall hold a hearing on the dispute. Upon conclusion of the hearing, the department of inspections and appeals shall issue an order to resolve the dispute. The order may include the allocation of costs between the parties. The order is subject to review by the department which review shall be the final agency action.

[C97, §2113, 2116; S13, §2113, 2116; C24, 27, 31, 35, 39, §**7876, 8039;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §474.13, 479.4; C77, 79, 81, §327D.4; 81 Acts, ch 22, §22]

91 Acts, ch 27, §4

327D.5 Burden of proof.

In any action in court, or before the department, brought against a railroad corporation for the purpose of enforcing rights arising under the provisions of this and sections 327D.3 and 327D.4 the burden of proving that the provisions thereof have been complied with by such railroad corporation, shall be upon such railroad corporation.

[S13, §2116; C24, 27, 31, 35, 39, §**8041;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.6; C77, 79, 81, §327D.5]

327D.6 Reserved.

327D.7 Transporting persons or property for hire — limitation on liability.

A contract, receipt or rule shall not exempt any person engaged in transporting for hire from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt or rule been made except as may be provided for liability for property loss by order of the department.

[C73, §2184; C97, §3136; C24, 27, 31, 35, 39, §**8043;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.8; C77, 79, 81, §327D.7; 81 Acts, ch 22, §22]

327D.8 Preference prohibited — exception.

It shall be unlawful for any common carrier to

give any preference or advantage to, or entail any prejudice or disadvantage upon any particular person, company, firm, corporation, locality, or any class of business or traffic, by any rate, rule, regulation, or practice whatsoever. This provision shall not prevent any common carrier from giving preference as to time of shipping livestock, live poultry, uncured meats, fruits, vegetables, or other perishable property.

[C97, §2125; SS15, §2125; C24, 27, 31, 35, 39, §**8044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.9; C77, 79, 81, §327D.8]

327D.9 Interchange of traffic — switching and forwarding.

Common carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and switching of cars and property to and from their several lines, and to and from other lines and places connected therewith; and shall not discriminate in their accommodations, rates, and charges between such connecting lines. Any common carrier may be required to switch and transfer cars for another, for the purpose of being loaded or unloaded, upon such terms and conditions as may be ordered by the department.

[C97, §2125; SS15, §2125; C24, 27, 31, 35, 39, §**8045;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.10; C77, 79, 81, §327D.9; 81 Acts, ch 22, §22]

327D.10 Unjust discrimination — exceptions.

If any common carrier subject to the provisions of this chapter shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing a like and contemporaneous service in the transportation of a like kind of traffic, such common carrier shall be guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful; but this section shall not be construed as prohibiting a less rate per one hundred pounds in a carload lot than is charged, collected, or received for the same kind of freight in less than a carload lot.

[C97, §2124; C24, 27, 31, 35, 39, §**8046;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.11; C77, 79, 81, §327D.10]

327D.11 Reconsignment without charge.

Upon request of the consignee it shall be the duty of any common carrier of freight to reconsign, rebill, and reship from any place of destination within the state to any other place within the state any property in carload lots brought to said place of destination over its own or other line and treat the same in all respects as an original shipment between such places, provided the charges to first place of destination are paid or secured to the satisfaction of such corporation.

[S13, §2157-r; C24, 27, 31, 35, 39, §**8047;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.12; C77, 79, 81, §327D.11]

327D.12 Charges to be reasonable.

All rates and charges made for any service rendered or to be rendered in the transportation of passengers or property in this state, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just.

[C97, §2123; C24, 27, 31, 35, 39, §**8048;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.13; C77, 79, 81, §327D.12]

327D.13 Rates.

A common carrier subject to this chapter shall not charge more for the transportation of persons or property than a fair and just rate or charge.

A common carrier shall not:

1. Charge more for the transportation of persons or property for a shorter distance than for a longer distance in the same direction on the same route.

2. Charge more for a through rate than the aggregate of the intermediate rates.

However, upon application by a common carrier, the department may in special cases and after investigation prescribe the extent to which the carrier is relieved from compliance with this section.

[C97, §2126; C24, 27, 31, 35, 39, §**8049;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.14; C77, 79, 81, §327D.13; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1961

327D.14 Pooling contracts.

It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any contract, agreement, or combination with any other common carrier for the pooling of freight of different and competing railroads, or divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof without the approval of the department when determined to be in the public interest by the department; and in case of an agreement for the pooling of freights without such approval, each day of its continuance shall be a separate offense.

[C73, §1297 – 1299; C97, §2127; C24, 27, 31, 35, 39, §**8050;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.15; C77, 79, 81, §327D.14; 81 Acts, ch 22, §22]

327D.15 Continuous shipments.

It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any combination, contract or agreement, ex-

pressed or implied, to prevent, by change of time schedules, carriage in different cars, or, by other means or device, the carriage of freights from being continuous from place of shipment to the place of destination in the state; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this chapter.

[C97, §2129; C24, 27, 31, 35, 39, §**8051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.16; C77, 79, 81, §327D.15]

327D.16 Violations — treble damages.

In case any common carrier subject to the provisions of this chapter shall do, cause, or permit to be done anything herein prohibited or declared to be unlawful, or shall willfully fail to do anything in this chapter required to be done, it shall be liable to the person injured thereby for three times the amount of damages sustained in consequence, together with costs of suit, and a reasonable attorney's fee to be fixed by the court, on appeal or otherwise, which shall be taxed and collected as part of the costs in the case; but in all cases demand in writing shall be made of the carrier for the money damages sustained before action is brought for a recovery under this section, and no action shall be brought until the expiration of fifteen days after such demand.

[C97, §2130; C24, 27, 31, 35, 39, §**8052;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.17; C77, 79, 81, §327D.16]

327D.17 Criminal liability.

Except as otherwise specially provided for in this chapter, and unless relieved from the consequences of a violation of the law as provided herein, any common carrier subject to the provisions hereof, or, when such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party shall willfully do or cause to be done, or shall willfully suffer or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter, or thing, so directed or required by the provisions of this chapter to be done, not to be so done; or shall aid or abet any such omission or failure, or shall be guilty of any infraction of the provisions of this chapter, or shall aid or abet therein, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be subject to a schedule "four" penalty.

[C97, §2132; C24, 27, 31, 35, 39, §**8053;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.18; C77, 79, 81, §327D.17]

See §327C.5

327D.18 Reserved.

327D.19 Discrimination — prima facie evidence.

The provisions of the following subsections shall constitute prima facie evidence of undue and unjust discriminating rates, charges, accommodations, collections or receipts.

1. Charge, collect, or receive for the transportation of any passenger or freight of any description upon its railroad, for any distance within the state, a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation in the same direction of any passenger or like quantity of freight of the same class, over a greater distance of the same railway; or

2. Charge, collect, or receive at any point upon its road a higher rate of toll or compensation for receiving, handling, or delivering freight of the same class and quantity than it shall at the same time charge, collect, or receive at any other point upon the same railway; or

3. Charge, collect, or receive for the transportation of any passenger or freight of any description over its railway a greater amount as toll or compensation than shall at the same time be charged, collected, or received by it for the transportation of any passenger or like quantity of freight of the same class being transported in the same direction over any portion of the same railway of equal distance; or

4. Charge, collect, or receive from any person a higher or greater amount of toll or compensation than it shall at the same time charge, collect, or receive from any other person for receiving, handling, or delivering freight of the same class and like quantity at the same point upon its railway; or

5. Charge, collect, or receive from any person for the transportation of any freight upon its railway a higher or greater rate of toll or compensation than it shall at the same time charge, collect, or receive from any other person or persons for the transportation of the like quantity of freight of the same class being transported from the same point in the same direction over equal distances of the same railway; or

6. Charge, collect, or receive from any person for the use and transportation of any railway car or cars upon its railroad for any distance, a greater amount of toll or compensation than is at the same time charged, collected, or received from any other person for the use and transportation of any railway car of the same class or number, for a like pur-

pose, being transported in the same direction over a greater distance of the same railway; or

7. Charge, collect, or receive from any person for the use and transportation of any railway car upon its railway a higher or greater compensation in the aggregate than it shall, at the same time, charge, collect, or receive from any other person for the use and transportation of any railway car of the same class for a like purpose, being transported from the same original point in the same direction, over an equal distance of the same railway; or

8. Charge any undue or unjust discriminatory rates, charges, accommodations, collections or receipts whether made directly or indirectly by means of a rebate or other method.

[C97, §2145; S13, §2145; C24, 27, 31, 35, 39, §**8055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.20; C77, 79, 81, §327D.19]

327D.20 to 327D.26 Reserved.

327D.27 Penalty for discrimination.

Any corporation making any unjust discrimination as to freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling, or delivering freight, shall, upon conviction, be subject to a schedule "four" penalty; or shall be subject to the liability prescribed in section 327D.28, to be recovered as therein provided.

[C97, §2147; C24, 27, 31, 35, 39, §**8064;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.29; C77, 79, 81, §327D.27]

See §327C.5

327D.28 Penalty.

Any railway corporation making any unjust discrimination as to passenger or freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling, or delivering freight, shall, upon conviction, forfeit and pay to the state an amount within the limits of a schedule "five" penalty. Money collected shall be deposited in the general fund of the state.

[C97, §2148; C24, 27, 31, 35, 39, §**8065;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.30; C77, 79, 81, §327D.28]

See §327C.5

327D.29 Free or reduced freight rates permitted.

Nothing in this chapter shall apply to free or reduced rates for the transportation, storage or handling of:

1. Property for the United States, this state, or political subdivisions of this state.

2. Materials to be used by public authorities in constructing or maintaining public facilities.

3. Property for charitable purposes.

4. Property for exhibition at fairs or expositions.

5. Private property or goods for the family use of such employees as are entitled to free passenger transportation.

6. Private property in less than carload lots.

7. Coal.

8. Products transported to be recycled.

[C97, §2150; C24, 27, 31, 35, 39, §**8066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.31; C77, 79, 81, §327D.29]

327D.30 to 327D.39 Reserved.

JOINT RATES

327D.40 Authorization.

Sections 327D.1 to 327D.29 of this chapter shall not be construed to prohibit the making of rates by two or more railway companies for the transportation of property over two or more of their respective lines within the state; and a less charge by each of said companies for its portion of such joint shipment than it charges for a shipment for the same distance wholly over its own line within the state shall not be considered a violation of said chapter, and shall not render such company liable to any of the penalties thereof.

[C97, §2152; C24, 27, 31, 35, 39, §**8067;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.32; C77, 79, 81, §327D.40]

327D.41 Reserved.

327D.42 Connecting lines.

Every owner or consignor of freight to be transported by railway from any point within this state to any other point within this state shall have the right to require that the same shall be transported over two or more connecting lines of railway, to be transferred at the connecting point or points without change of car or cars if in carload lots, and with or without change of car or cars if in less than carload lots, whenever the distance from the place of shipment to destination, both being within this state, is less over two or more connecting lines of railway than it is over a single line of railway, or where the initial line does not reach the place of destination; and it shall be the duty, upon the request of any such owner or consignor of freight, made to the initial company, of such railway companies whose lines so connect, to transport the freight without change of car or cars if the shipment be in a carload lot or lots, and with change of car or cars if it be in less than carload lots, from the place of shipment to destination, whenever the distance from the place of shipment to destination, both being within this state, is less than the distance over a single line, or when the initial line does not reach the point of destination, for a reasonable joint through rate.

[C97, §2153; S13, §2153; C24, 27, 31, 35, 39,

§**8069;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.34; C77, 79, 81, §327D.42]

327D.43 Routing intrastate shipments.

It shall be the duty of every common carrier subject to the provisions of this chapter, when shipments are tendered for transportation between points in this state, to route such shipments from shipping point to point of destination over the cheapest available route between such points except in cases where the shipper, in shipping orders or bills of lading, specifically designates a particular route over which it is desired such shipments shall be moved.

[C31, 35, §8069-d1; C39, §**8069.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.35; C77, 79, 81, §327D.43]

327D.44 Reserved.

327D.45 Schedules of joint rates.

The department may order a schedule of joint through railway rates for such traffic and on such routes as in its judgment the fair and reasonable conduct of business requires.

[C97, §2155; S13, §2155; C24, 27, 31, 35, 39, §**8071;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.37; C77, 79, 81, §327D.45; 81 Acts, ch 22, §22]

327D.46 to 327D.52 Reserved.

327D.53 Division of joint rates.

Before the adoption of the rates, the department shall notify the railroad corporations interested in the schedule of joint rates fixed, and give them a reasonable time to agree upon a division of the charges provided. If the corporations fail to agree upon a division, and to notify the department of their agreement, the department shall, after a hearing conducted by the department of inspections and appeals, decide the rates, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by it is, in all controversies or actions between the railroad corporations interested, prima facie evidence of a just and reasonable division.

[C97, §2156; C24, 27, 31, 35, 39, §**8080;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.46; C77, 79, 81, §327D.53; 81 Acts, ch 22, §22]

89 Acts, ch 273, §28

327D.54 to 327D.64 Reserved.

RATE SCHEDULES

327D.65 Reserved.

327D.66 Rate schedules — filing and public access.

Every common carrier, except railway corporations, subject to the provisions of this chapter shall file with the department and shall print schedules showing the rates for the transportation within this state of persons and property from each point upon its route to all other points on the route and from all points upon its route to all points upon every other route leased, operated, or controlled by it; and from each point on its route or upon any route leased, operated, or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate have been established or ordered between any two points. If no joint rate over a through route has been established, the schedules of the several carriers in the through route shall show the separately established rates, applicable to the through transportation.

The schedules shall be plainly printed and a copy of often used schedules shall be kept by every carrier readily accessible to and for inspection by the public in every station and office of the carrier where passengers or property are received for transportation when the station or office is in the charge of an agent. A notice printed in bold type and stating that the often used schedules are on file with the agent and open to public inspection, and that the agent will assist any person to determine from the schedule any rate shall be posted by the carrier in public and conspicuous places in each station or office. The department shall, by rule, provide that adequate public access to schedules not often used be provided in a different manner.

Railway corporations shall maintain a copy of schedules and rates on file in the office of the carrier readily accessible to and for inspection by the public.

[C73, §1304; C97, §2128; C24, 27, 31, 35, 39, §**8083, 8085, 8087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.49, 479.51, 479.53; C77, 79, 81, §327D.66; 81 Acts, ch 22, §16]

89 Acts, ch 57, §1, 2

327D.67 Detailed requirements.

The schedules shall plainly state the places between which such property and persons will be carried, and, separately, all terminal charges, storage charges, refrigeration charges, and all other charges which the department may require to be stated, all privileges or facilities granted or allowed, and all rules which may in any way change, affect, or determine any part or the aggregate of such rates, or the value of the various services rendered to the passenger, shipper, or consignee.

The form of every schedule shall be prescribed by the department and shall conform, in the case of common carriers, as nearly as may be to the form prescribed by the interstate commerce com-

mission.

[C73, §1304; C97, §2128; C24, 27, 31, 35, 39, §**8084, 8088;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.50, 479.54; C77, 79, 81, §327D.67; 81 Acts, ch 22, §22]

327D.68 Reserved.

327D.69 Right to inspect.

Any or all of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person.

[C24, 27, 31, 35, 39, §**8086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.52; C77, 79, 81, §327D.69]

327D.70 and 327D.71 Reserved.

327D.72 Interstate commerce schedules.

When schedules and classifications required by the interstate commerce commission contain in whole or in part the information required by the provisions of this chapter, the posting and filing of a copy of such schedules and classifications with the interstate commerce commission shall be deemed a compliance with the filing requirements of this chapter insofar as such schedules and classifications contain the information required by this chapter, and any additional or different information may be posted and filed in a supplementary schedule.

[C24, 27, 31, 35, 39, §**8089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.55; C77, 79, 81, §327D.72; 81 Acts, ch 22, §22]

89 Acts, ch 57, §3

327D.73 Partial schedules.

In lieu of filing its often used schedule in each station or office, any common carrier may file with the department and keep posted at the stations or offices, schedules of the rates applicable at, to, and from the places where the stations or offices are located.

[C97, §2128; C24, 27, 31, 35, 39, §**8090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.56; C77, 79, 81, §327D.73; 81 Acts, ch 22, §17]

327D.74 Changes in schedules.

The department shall have power from time to time, in its discretion, to determine and prescribe by order such changes in the form of the schedules referred to in this chapter as it may find expedient, and to modify the requirements of any of its orders or rules in respect thereto.

[C97, §2128; C24, 27, 31, 35, 39, §**8091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.57; C77, 79, 81, §327D.74; 81 Acts, ch 22, §22]

327D.75 Joint tariff schedules.

The names of the several common carriers which are parties to any joint tariff shall be specified in the schedule showing the same. Unless otherwise ordered by the department, a schedule showing such joint tariff need be filed with the department by only one of the parties if there is also filed with the department, in such form as the department may require, a concurrence in such joint tariff by each of the other parties thereto.

[C97, §2128; C24, 27, 31, 35, 39, §**8092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.58; C77, 79, 81, §327D.75; 81 Acts, ch 22, §22]

327D.76 Reserved.

327D.77 Transportation prohibited.

No common carrier shall undertake to perform any service nor engage or participate in the transportation of persons or property between points within this state, until its schedule of rates shall have been filed and posted as herein provided.

[C24, 27, 31, 35, 39, §**8094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.60; C77, 79, 81, §327D.77]

327D.78 Change in rate.

Unless the department otherwise orders, no change shall be made by any common carrier in any rate, except after thirty days' notice to the department and to the public as herein provided. The department shall adopt rules to ensure public notice in any action instituted under this section.

[C97, §2128; C24, 27, 31, 35, 39, §**8095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.61; C77, 79, 81, §327D.78; 81 Acts, ch 22, §22]

327D.79 Notice of change.

Such notice shall be given by filing with the department new schedules or supplements stating plainly the change to be made in the schedule then in effect, and the time when the change will go into effect.

[C97, §2128; C24, 27, 31, 35, 39, §**8096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.62; C77, 79, 81, §327D.79; 81 Acts, ch 22, §22]

327D.80 Changes without notice.

The department, for good cause shown, may allow changes without requiring thirty days' notice by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published.

[C97, §2128; C24, 27, 31, 35, 39, §**8097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.63; C77, 79, 81, §327D.80; 81 Acts, ch 22, §22]

327D.81 Indicating change.

When any change is proposed in any rate, such proposed change shall be plainly indicated on the new schedule filed with the department, by some typographic character immediately preceding or following the item.

[C97, §2128; C24, 27, 31, 35, 39, §**8098;** C46, 50,

54, 58, 62, 66, 71, 73, 75, §479.64; C77, 79, 81, §327D.81; 81 Acts, ch 22, §22]

327D.82 Schedule charge mandatory — refunds and discrimination.

No common carrier, except as otherwise provided, shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of persons or property or for any service in connection therewith than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified except upon order of the courts or of the department as may be now or hereafter by law provided, nor extend to any shipper or person any privilege or facility in the transportation of passengers or property except such as are specified in such schedules.

[C97, §2128; C24, 27, 31, 35, 39, §**8099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.65; C77, 79, 81, §327D.82; 81 Acts, ch 22, §22]

327D.83 Rate hearing.

If a schedule is filed with the department stating a rate, the department may, either upon complaint or upon its own motion, request the department of inspections and appeals to conduct a hearing concerning the propriety of the rate.

[C24, 27, 31, 35, 39, §**8100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.66; C77, 79, 81, §327D.83; 81 Acts, ch 22, §22]

89 Acts, ch 273, §29

327D.84 Suspension of rates.

Pending the hearing and the decision thereon, such rate shall not go into effect; but the period of suspension of such rate shall not extend more than one hundred twenty days beyond the time when such rate would otherwise go into effect.

[C24, 27, 31, 35, 39, §**8101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.67; C77, 79, 81, §327D.84]

327D.85 Rate proposal — review.

At the hearing the department of inspections and appeals shall propose the rates on the schedule, in whole or in part, or others in lieu thereof, which the department of inspections and appeals finds are just and reasonable rates. The action of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

[C24, 27, 31, 35, 39, §**8102;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.68; C77, 79, 81, §327D.85; 81 Acts, ch 22, §22]

89 Acts, ch 273, §30

327D.86 When rates effective.

All such rates not so suspended shall, on the expiration of thirty days from the time of filing the same with the department or of such less time as the said department may grant, go into effect and be the established and effective rates, subject to the power of the department after a hearing had upon its own motion or upon complaint, as herein provided, to alter or modify the same.

[C24, 27, 31, 35, 39, §**8103;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.69; C77, 79, 81, §327D.86; 81 Acts, ch 22, §22]

327D.87 Posting and filing of revised schedules.

After such changes have been authorized by the department, copies of the new or revised schedules shall be posted or filed as provided in this chapter within such reasonable time as may be fixed by the department.

[C24, 27, 31, 35, 39, §**8104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.70; C77, 79, 81, §327D.87; 81 Acts, ch 22, §22]

327D.88 Reserved.

327D.89 Complaint of violation.

When a person complains to the department that the rate charged or published by a railway corporation, or the maximum rate fixed by law, is unreasonably high or discriminating, the department may investigate the matter, and request the department of inspections and appeals to conduct a hearing. The department of inspections and appeals shall give the parties notice of the time and place of the hearing.

[C97, §2139; C24, 27, 31, 35, 39, §**8106;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.72; C77, 79, 81, §327D.89; 81 Acts, ch 22, §22]

89 Acts, ch 273, §31

327D.90 Hearing — evidence.

At the time of the hearing the department of inspections and appeals shall receive any evidence and listen to any arguments presented by either party relevant to the matter under investigation, and the burden of proof is not upon the person making the complaint. The complainant shall add to the showing made at the hearing whatever information the complainant then has, or can obtain from any source. The department of inspections and appeals shall propose just and reasonable rates, which may be adopted in whole or in part or modified as the state department of transportation determines.

[C97, §2140; C24, 27, 31, 35, 39, §**8107;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.73; C77, 79, 81, §327D.90; 81 Acts, ch 22, §22]

89 Acts, ch 273, §32

327D.91 to 327D.101 Reserved.

LIVESTOCK

327D.102 Movement of livestock — burden of proof.

It is hereby made the duty of all common carriers of freight within this state to move cars of livestock at the highest practicable speed consistent with reasonable safety and the reasonable movement of its general traffic. The burden of proof that cars of livestock are so moved shall be upon the carrier, and proof that such cars were moved according to schedule or timetable shall not be prima facie evidence that they were moved at the highest practicable speed consistent with reasonable safety.

[S13, §2157-s; C24, 27, 31, 35, 39, §**8114;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.80; C77, 79, 81, §327D.102]

327D.103 to 327D.112 Reserved.

PASSENGER RATES

327D.113 Names of free pass beneficiaries reported.

Every common carrier of passengers within the provisions of this chapter shall, whenever so requested by the department, file with the department a sworn statement showing the names of all persons within this state holding, or to whom during the preceding year such carrier issued, furnished, or gave a free ticket, free pass, free transportation, or a discriminating reduced rate, except wage earners of common carriers in their ordinary employment and families of such wage earners, and disclosing such further information as will enable the department to determine whether the person to whom it was issued was within the exception of said provisions.

[S13, §2157-j; C24, 27, 31, 35, 39, §**8132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.98; C77, 79, 81, §327D.113]

327D.114 Passenger tickets — redemption.

Every railroad corporation shall redeem in whole or in part any unused passenger ticket at a rate equal to the transportation value of the unused portion. Any redemption shall be made not more than forty-five days from the date of the refund request.

[S13, §2128-a; C24, 27, 31, 35, 39, §**8133;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.99; C77, 79, 81, §327D.114]

327D.115 Reserved.

327D.116 Violations.

Any railroad company, corporation, person, or persons, who as common carriers shall sell or issue tickets as set forth in section 327D.114, and shall refuse or neglect to redeem the same, as by said section provided, within ten days of date of demand, shall forfeit and pay to the owner of such ticket the purchase price of said ticket, and the further sum of one hundred dollars.

[S13, §2128-c; C24, 27, 31, 35, 39, §**8135;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.101; C77, 79, 81, §327D.116]

327D.117 to 327D.126 Reserved.

WEIGHING BULK COMMODITIES

327D.127 Railroad track scales — weighing — fee.

Every railroad corporation operating within the state and having track scales shall maintain the scales in good order and of sufficient capacity to weigh carloads of bulk commodities transported over the railroad. The railroad shall weigh car lots of bulk commodities at the request of any owner, consignor, or consignee of such commodities, and furnish written certificates of the weights to the owner, consignor, or consignee. A reasonable charge may be made for such requested weighing.

[S13, §2157-l; C24, 27, 31, 35, 39, §**8137;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.103; C77, 79, 81, §327D.127]

327D.128 Weighing — disagreement.

If a railroad corporation and the owner, consignor, or consignee of car lots of bulk commodities cannot reach agreement relative to the weighing of the commodities, appeal may be made to the state department of transportation. The state department of transportation, after a hearing by the department of inspections and appeals, shall issue an order equitable to all parties including but not limited to allocation of costs and specification of the place and manner of weighing.

[C77, 79, 81, §327D.128; 81 Acts, ch 22, §22]
89 Acts, ch 273, §33

327D.129 Weight at destination.

Bulk commodities shall be weighed at the destination upon request of the consignee when there are track scales at the destination. If the destination is not equipped with track scales, the weighing shall be done at the nearest practicable point agreed to by both parties.

[S13, §2157-n; C24, 27, 31, 35, 39, §**8139;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.105; C77, 79, 81, §327D.129]

327D.130 Weighing commodities.

A scale ticket printed or stamped by automatic recorders pursuant to section 215.19, shall be furnished to the consignee. Settlement of freight

charges shall be based upon those weights, but weight shall not be warranted for any other commercial purpose unless so stated upon the face of the scale ticket.

[S13, §2157-o; C24, 27, 31, 35, 39, §**8140;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.106; C77, 79, 81, §327D.130]

327D.131 Prima facie evidence.

Certificates mentioned in sections 327D.127 to 327D.132 shall be prima facie evidence of the facts therein recited in any action arising between consignors and consignees and common carriers.

[S13, §2157-p; C24, 27, 31, 35, 39, §**8141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.107; C77, 79, 81, §327D.131]

327D.132 Violation — penalty.

Any common carrier operating in this state violating any of the provisions of sections 327D.127 to 327D.131 by neglecting or refusing to weigh cars or to furnish certificates of weights as therein provided shall, upon conviction, be subject to a schedule "one" penalty.

[S13, §2157-q; C24, 27, 31, 35, 39, §**8142;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.108; C77, 79, 81, §327D.132]

See §327C.5

327D.133 to 327D.159 Reserved.

ADJUSTMENT OF CLAIMS

327D.160 Rules.

The department shall prescribe, pursuant to chapter 17A, rules reasonably necessary for the orderly disposition of claims arising from loss or damage to property tendered for transportation.

[S13, §2074-c; C24, 27, 31, 35, 39, §**8150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.116; C77, 79, 81, §327D.160; 81 Acts, ch 22, §18]

327D.161 to 327D.172 Reserved.

TERMINATING CARRIER'S LIABILITY

327D.173 Notice of arrival of shipment.

All companies, corporations, or individuals that now, or hereafter, may own or operate any railroads, in whole or in part, in the state, and all persons, firms, or companies, and all associations of persons, whether incorporated or not, that shall do business as a common carrier upon any of the lines of railway in this state, shall be and remain liable as a common carrier upon all less than carload shipments until the consignee shall be notified of the arrival of the shipment and has reasonable time and opportunity to receive same.

[SS15, §2074-f; C24, 27, 31, 35, 39, §**8153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.119; C77, 79, 81, §327D.173]

327D.174 Notice prescribed.

A deposit in the United States post office or public mailing box of a written notice addressed to the consignee at the address given upon the bill of lading will constitute service of the notice required by section 327D.173, and forty-eight hours from the date of the mailing of such notice shall be a reasonable time in which to receive said shipment.

[SS15, §2074-f; C24, 27, 31, 35, 39, §**8154;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.120; C77, 79, 81, §327D.174]

327D.175 to 327D.185 Reserved.

NEGLIGENCE OF EMPLOYEES

327D.186 Liability for negligence of employees.

Every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corporation, in consequence of the neglect of the agents, or by any mismanagement of the engineers, or other employees thereof, and in consequence of the willful wrongs, whether of commission or omission, of such agents, engineers, or other employees, when such wrongs are in any manner connected with the use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding.

[C73, §1307; C97, §2071; S13, §2071; C24, 27, 31, 35, 39, §**8156;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.122; C77, 79, 81, §327D.186]

327D.187 Relief or indemnity contract.

No contract of insurance, relief, benefit, or indemnity in case of injury or death, entered into prior to the injury, between the person so injured and such corporation, or any other person or association acting for such corporation, and no acceptance of any such insurance, relief, benefit, or indemnity by the person injured, the person's surviving spouse, heirs, or legal representatives after the injury, from such corporation, person, or association, shall constitute any bar or defense to any cause of action brought under the provisions of section 327D.186; but nothing contained herein shall be construed to prevent or invalidate any settlement for damages between the parties subsequent to injuries received.

[S13, §2071; C24, 27, 31, 35, 39, §**8157;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.123; C77, 79, 81, §327D.187]

327D.188 Contributory and comparative negligence.

In all actions brought against any railway corporation to recover damages for the personal injury or death of any employee under or by virtue of any of the provisions of section 327D.186, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery; but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee.

[S13, §2071; C24, 27, 31, 35, 39, §**8158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.124; C77, 79, 81, §327D.188]

327D.189 Unallowable pleas.

No such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier or corporation of any statute enacted for the safety of employees contributed to the injury or death of such employee; nor shall it be any defense to such action that the employee who was injured or killed assumed the risks of the person's employment.

[S13, §2071; C24, 27, 31, 35, 39, §**8159;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.125; C77, 79, 81, §327D.189]

327D.190 Damages by fire.

Any corporation operating a railway shall be liable for all damages sustained by any person on account of loss of or injury to the person's property occasioned by fire set out or caused by the operation of such railway. Such damages may be recovered by the party injured in the manner set out in sections 327G.6 to 327G.8 and to the same extent, save as to double damages.

[C73, §1289; C97, §2056; C24, 27, 31, 35, 39, §**8160;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §479.126; C77, 79, 81, §327D.190]

327D.191 Reserved.

327D.192 Spot checks for hazardous cargo.

An employee under the supervision of the department's administrator for rail and water designated by the director of the department may conduct spot inspections of vehicles subject to registration which are owned or operated by a railroad corporation to determine whether a vehicle is used to transport products or property which may be a safety hazard for the operator of the vehicle subject to registration or any other employee of the railroad corporation who is transported in the vehicle.

[C77, 79, 81, §327D.192]

88 Acts, ch 1134, §71

327D.193 to 327D.199 Reserved.

327D.200 Inconsistency with federal law — railroads.

If any provision of this chapter is inconsistent or conflicts with federal laws, rules or regulations applicable to railway corporations subject to the jurisdiction of the federal interstate commerce commission, the department shall suspend the provision, but only to the extent necessary to eliminate the inconsistency or conflict.

83 Acts, ch 121, §4

327D.201 Railroad intrastate rates — rules.

The department may issue rules relating to the regulation of railroad intrastate rates, classifications, rules and practices in accordance with the standards and procedures of the federal interstate commerce commission applicable to rail carriers.

83 Acts, ch 121, §4

CHAPTER 327E

RAILWAY CORPORATIONS — POWERS

327E.1 Foreign railway companies.
327E.2 Sale or lease of railroad property.
327E.3 Motorbuses.

327E.1 Foreign railway companies.

Any railway corporation organized or created by or under the laws of any other state, owning and operating a line or lines of railroad in such state, may build its road or branches into this state, and shall possess all the powers and privileges, and be subject to the same liabilities, as like corporations organized and incorporated under the laws of this

state, if it shall file with the secretary of state a copy of its articles of incorporation, if incorporated under a general law of such state, or a certified copy of the statute incorporating it where the charter thereof was granted by statute.

Any such railway corporation may take and hold voluntary grants of real estate and other property as are made to it to aid in the construction, maintenance, and continued operation of its railway. However, all real estate so received shall be held only as long as the real estate is used for the construction, maintenance, and continued operation of a railway.

[C97, §2048; C24, 27, 31, 35, 39, §**7941;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §476.22; C77, 79, 81, §327E.1; 82 Acts, ch 1207, §1]

327E.2 Sale or lease of railroad property.

Any railway corporation may sell or lease its property and franchises to, or make joint running arrangements not in conflict with law with, any corporation owning or operating any connecting railway, and any corporation operating the railway of another shall be liable in the same manner and extent as though such railway belonged to it.

[C73, §1300; C97, §2066; C24, 27, 31, 35, 39, §**7942;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §476.23; C77, 79, 81, §327E.2]

327E.3 Motorbuses.

Any person operating a railroad in this state may own and operate any other common carrier subject to applicable state laws. Any such person may purchase and own capital stock and securities of a corporation organized for or engaged in the business of a common carrier.

[C31, 35, §7945-c1; C39, §**7945.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §476.27; C77, 79, 81, §327E.3]

CHAPTER 327F

CONSTRUCTION AND OPERATION OF RAILWAYS

327F.1 Crossing railway, canal or watercourse.
327F.2 Maintenance of bridges — damages.
327F.3 Catwalks and handrails.
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327F.1 Crossing railway, canal or watercourse.

Any railroad company may build its railway across, over, or under any other railway, canal or watercourse, when necessary, but shall not thereby unnecessarily impede travel, transportation or navigation. It shall be liable for all damages caused by such crossing.

[R60, §1325; C73, §1265; C97, §2020; C24, 27, 31, 35, 39, §**7946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.1; C77, 79, 81, §327F.1]

327F.2 Maintenance of bridges — damages.

Every railroad company shall build, maintain, and keep in good repair all bridges, abutments, or other construction necessary to enable it to cross over or under any canal, watercourse, other railway, public highway, or other way, except as otherwise provided by law, and shall be liable for all damages sustained by any person by reason of any neglect or violation of the provisions of this section.

[R60, §1326, 1327; C73, §1266, 1267; C97, §2021; C24, 27, 31, 35, 39, §**7947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.2; C77, 79, 81, §327F.2]

327F.3 Catwalks and handrails.

Any person operating a railroad in this state shall construct and maintain in good repair a catwalk and handrail on at least one side of every railway bridge and trestle which shall be constructed, or the structure of which is renovated in any manner, after January 1, 1976. The catwalk and handrail shall extend the length of the bridge or trestle.

[C77, 79, 81, §327F.3]

327F.4 Rights of riparian owners.

All owners or lessees of lands or lots situated upon the Iowa banks of the Mississippi or Missouri rivers upon which any business is carried on which is in any way connected with the navigation of either of said rivers, or to which such navigation is a proper or convenient adjunct, are authorized to construct and maintain in front of their property, piers, cribs, booms, and other proper and convenient erections and devices for the use of their respective pursuits, and the protection and harbor of rafts, logs, floats, and watercraft, in such manner as to create no material or unreasonable obstruction to the navigation of the stream, or to a similar use of adjoining property.

[C97, §2032; C24, 27, 31, 35, 39, §**7948;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.3; C77, 79, 81, §327F.4]

327F.5 Railroad on riparian land or lots.

No person or corporation shall construct or operate any railroad or other obstruction between the lots or lands referred to in section 327F.4 and either of said rivers, or upon the shore or margin thereof, unless the injury and damage to owners or lessees occasioned thereby shall be first ascertained and paid in the manner provided for taking private property for works of internal improvement.

[C97, §2033; C24, 27, 31, 35, 39, §**7949;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.4; C77, 79, 81, §327F.5]

Condemnation procedure, chapter 6B

327F.6 and 327F.7 Repealed by 78 Acts, ch 1110, § 25.

327F.8 Reserved.

327F.9 Repealed by 78 Acts, ch 1110, § 26.

327F.10 to 327F.12 Repealed by 78 Acts, ch 1110, § 25.

327F.13 Repealed by 78 Acts, ch 1110, § 26.

327F.14 Lights on track power cars.

Any person, firm, or corporation owning or operating a track power car in this state shall insure that such track power car is equipped with an electric headlight that will enable the operator to see an unlighted obstruction on the track at a distance of three hundred feet in clear weather. A track power car shall also be equipped with two rear electric red lights of such construction to be plainly visible during hours of darkness on a clear night at a distance of three hundred feet.

Such lights shall be in operation when the track power car is being operated.

These lighting requirements shall not be construed to penalize any person, firm or corporation if it can be shown that such lighting equipment was present in good and sufficient working order at the beginning of a trip and became disabled during the trip.

A violation of this section shall, upon conviction, be subject to a schedule "one" penalty.

[S13, §2083-g, -h; C24, 27, 31, 35, 39, §**7967, 7969, 7970;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.22, 477.24, 477.25; C77, §327F.14, 327F.16, 327F.17; C79, 81, §327F.14]

See §327C.5

327F.15 Repealed by 78 Acts, ch 1110, § 25.

327F.16 Repealed by 78 Acts, ch 1110, § 26.

327F.17 Repealed by 78 Acts, ch 1110, § 25.

327F.18 Standard caboose cars.

The provisions of sections 327F.19 and 327F.20 shall apply to any person while engaged as a common carrier in the transportation by rail.

[S13, §2083-i; C24, 27, 31, 35, 39, §**7971;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.26; C77, 79, 81, §327F.18]

327F.19 Minimum length — construction — equipment.

It shall be unlawful, except as otherwise provided in this chapter, for any such common carrier by railroad to use on its lines any caboose car or other car used for like purposes, unless such caboose or other car shall be at least twenty-four feet in length, exclusive of the platform, and equipped with two four-wheel trucks, and shall be provided with a door in each end thereof and an outside platform across each end of said car; each platform shall not be less than eighteen inches in width and shall be equipped with proper guard rails, and with grab irons and hand brakes, and steps for the safety of persons getting on and off said cars; said steps shall be equipped with a suitable rod, board, or other guard at each end and at the back thereof, properly designed to prevent slipping from said step. Such caboose or other car used for like purposes shall be provided with cupola, or side bay

windows, and necessary closets and windows. Each caboose car shall be equipped with an emergency air valve and air gauge, which shall be placed on inside of said car; but the provisions hereof shall not apply to work trains, transfer service, or emergencies not exceeding thirty-six hours.

[S13, §2083-j; C24, 27, 31, 35, 39, §**7972;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.27; C77, 79, 81, §327F.19]

327F.20 Violations.

Any common carrier as provided in section 327F.18 violating any of the provisions of section 327F.19 shall, upon conviction, be subject to a schedule "two" penalty.

[S13, §2083-m; C24, 27, 31, 35, 39, §**7973;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.28; C77, 79, 81, §327F.20]

See §327C.5

327F.21 to 327F.25 Reserved.

327F.26 Freight offices.

All railroads in the state shall establish and maintain operating offices at localities accessible and convenient to the public.

[C97, §2108; C24, 27, 31, 35, 39, §**7981;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.42; C77, 79, 81, §327F.26]

327F.27 Vegetation on right-of-way.

Every railroad corporation shall insure that vegetation on railroad property which is on or immediately adjacent to the roadbed be controlled so that it does not:

1. Become a fire hazard to track-carrying structures.
2. Obstruct visibility of railroad signs and signals.
3. Interfere with railroad employees performing normal trackside duties.
4. Prevent proper functioning of signal and communication lines.
5. Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Nothing in this section shall be construed to exempt a railroad corporation from carrying out noxious weed control programs as provided in chapter 317.

[S13, §2110-i; C24, 27, 31, 35, 39, §**7992;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.53; C77, 79, 81, §327F.27]

Weeds, chapter 317

327F.28 Violations.

Any failure to comply with the provisions of section 327F.27 shall, upon conviction, be subject to a schedule "one" penalty.

[S13, §2110-j; C24, 27, 31, 35, 39, §**7993;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.54; C77, 79, 81, §327F.28]

See §327C.5

327F.29 Enforcement.

It shall be the duty of the county attorneys in the respective counties to enforce the provisions of sections 327F.27 and 327F.28.

[S13, §2110-k; C24, 27, 31, 35, 39, §**7994;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.55; C77, 79, 81, §327F.29]

327F.30 Power to eject passenger.

Any conductor of a railway train carrying passengers shall have the right to refuse to permit any person, not in the custody of an officer, to enter any passenger car on the train in the conductor's charge, who shall be in a state of intoxication; and shall have the further right to eject from the train at any station, or at any regular stop, any person found in a state of intoxication or disturbing the peace and for that purpose may call to the conductor's aid any employee of the railway.

[S13, §2461-g; C24, 27, 31, 35, 39, §**7996;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §477.57; C77, 79, 81, §327F.30]

327F.31 Political subdivision ordinances.

An ordinance or resolution adopted by a political subdivision of this state which relates to the speed of a train in an area within the jurisdiction of the political subdivision is subject to approval by the state department of transportation. Any speed ordinance or resolution adopted by a political subdivision of the state prior to July 1, 1988, which has not been approved by the department shall be referred to the department by the political subdivision and shall be in full force and effect upon approval of the ordinance or resolution by the department. This subsection does not abrogate, modify, or alter any historical or contractual agreement between a political subdivision of the state and a railroad corporation in existence on July 1, 1975.

88 Acts, ch 1079, §1

327F.32 and 327F.33 Reserved.

327F.34 Windshields on power track cars.

All railroads shall be required to equip any regularly assigned section track power car used on its tracks with a transparent windshield sufficient in width and height to reasonably protect said employees; which windshield shall be of safety glass and shall be equipped with manually controlled windshield wiper which will remove rain, snow and sleet from the windshield while such power track car is in motion and tops of such material and construction to adequately provide reasonable protection for said employees from the in-

clement weather.

[C66, 71, 73, 75, §477.61; C77, 79, 81, §327F.34]

327F.35 Penalty.

Any railroad corporation found guilty of violating the provisions of section 327F.34 shall, upon conviction, be subject to a schedule "one" penalty.

[C66, 71, 73, 75, §477.62; C77, 79, 81, §327F.35]

See §327C.5

327F.36 Screen exhaust fire controls.

No locomotive or other rolling stock shall be operated unless it is equipped with proper deflector and screen exhaust fire controls and uses adequate devices to prevent the escape of blowing or burning materials or substances and is maintained in good working order to protect against the start and spread of fires along the right of way. A violation of this section shall, upon conviction, be subject to a schedule "one" penalty. The railroad corporation, and any officer, agent, lessee or independent contractor found guilty of a violation of this section, upon conviction, shall be subject to a schedule "one" penalty. In the event a right of way fire can be attributed to faulty screen exhaust fire control equipment, a local fire department may collect reasonable hourly charges, not to exceed a total of two hundred fifty dollars for each call from the railroad corporation.

[C71, 73, 75, §477.63; C77, 79, 81, §327F.36]

See §327C.5

327F.37 Sanitation and shelter. Repealed by 93 Acts, ch 180, § 59. See § 88.5(12).

327F.38 Provision of potable water. Repealed by 93 Acts, ch 180, § 59. See § 88.5(12).

327F.39 Transportation of railroad employees and equipment.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Department" means the state department of transportation.

b. "Director" means the director of transportation.

c. "Administrator" means the department's administrator for rail and water, or the administrator's designee.

d. "Motor vehicle" means a vehicle which is self-propelled and designed primarily for highway use, and which may or may not be equipped with retractably flanged wheels for operation on railroad tracks.

e. "Owner" means a person having the lawful use or control of a motor vehicle as holder of the legal title of the motor vehicle or under contract or lease or otherwise.

f. "Place of employment" means that location where one or more workers are actually performing the labor incident to their employment.

g. "Worker" means an individual employed for any period in work for which the individual is compensated, whether full-time or part-time.

2. *Compliance with regulations.* Motor vehicles, as defined in section 321.1, which are subject to registration and which are provided by a railroad company and used to transport railroad workers to and from their places of employment or during the course of their employment shall:

a. Meet all state and federal regulations pertaining to safe construction and maintenance of motor vehicles, including their coupling devices, lighting devices and reflectors, motor exhaust systems, rear-vision mirrors, service and parking brakes, steering mechanisms, tires, warning and signaling devices, and windshield wipers.

b. Meet all state and federal requirements for safety devices, first-aid kits, and sidewalls, canopies, tailgates, or other means of retaining freight safely.

c. Be operated in compliance with all state and federal regulations pertaining to driving, loading, carrying freight and employees, road warning devices, and the transportation of flammable material.

3. *Motor vehicle maintained in safe manner.* A motor vehicle provided by a railroad company and used to transport one or more workers to and from their places of employment or during the course of their employment shall be maintained in a safe manner at all times, whether or not used upon a public highway.

4. *Heating system.* The director shall adopt rules requiring a motor vehicle, as defined in section 321.1, which is subject to registration and which is provided by a railroad company and used to transport railroad workers to and from their places of employment or during the course of their employment to be provided with a safe heating system to maintain a reasonable comfort level in those spaces of the vehicle where the workers are required to ride.

5. *Rule violations.* When the administrator finds that a motor vehicle used to transport workers to and from their places of employment or during the course of their employment violates a rule adopted under this section, the administrator shall make, enter, and serve upon the owner of the motor vehicle an order as necessary to protect the safety of workers transported in the motor vehicle. The administrator may direct in the order, as a condition to the continued use of the motor vehicle for transporting workers to and from their places of employment or during the course of their employment, that additions, repairs, improvements, or changes be made and that safety devices and safeguards be furnished and used as required to satisfy the rules in the manner and within the time specified in the order. The order may also require that any driver of the motor vehicle satisfy the minimum standards for a driver under the rules.

6. *Penalty.* Violation by the owner of a motor vehicle of this section, a rule adopted under this section, or an order issued under subsection 5, or willful failure to comply with such an order is, upon conviction, subject to a schedule "one" penalty as provided under section 327C.5.

88 Acts, ch 1079, §2; 92 Acts, ch 1163, §80

CHAPTER 327G

FENCES, CROSSINGS, SWITCHES, PRIVATE BUILDINGS, SPUR TRACKS, AND REVERSION

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DIVISION I

FENCES, CROSSINGS, AND INTERLOCKING SWITCHES

327G.1 Definition.

As used in this division, unless the context otherwise requires, *"department"* means the state department of transportation.

[C75, §478.37; C77, 79, 81, §327G.1; 81 Acts, ch 22, §22]

86 Acts, ch 1245, §1962

327G.2 Crossings — signs.

Every corporation constructing or operating a railway shall make and construct at all points where such railway crosses any public road good, sufficient, and safe crossings and erect at such points, at a sufficient elevation from such road as to admit a free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railway, and warn persons of the necessity of looking out for trains. Any railway company neglecting or refusing to comply with the provisions of this section shall be liable for all damages sustained by reason

of such refusal or neglect, and it shall only be necessary, in order to recover, for the injured party to prove such neglect or refusal.

[R60, §1331; C73, §1288; C97, §2054; C24, 27, 31, 35, 39, §**8000;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.1; C77, 79, 81, §327G.2]

327G.3 Railway fences required.

All railway corporations owning or operating a line of railway within the state, shall construct, maintain, and keep in repair a fence on each side of the right of way, to prevent livestock getting upon the tracks.

[C97, §2057; S13, §2057; C24, 27, 31, 35, 39, §**8001;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.2; C77, 79, 81, §327G.3]

327G.4 Specifications.

All fences shall be not less than fifty-four inches high and may be of any of the following types:

1. Not less than five barbed wires, properly spaced.
2. Not less than three barbed wires above and not less than twenty-four inches of woven wire below.
3. Entirely of woven wire.
4. Five boards properly spaced.
5. Any other type which the fence viewers of any township through which it passes may determine as efficient as any of the above types.

Each of the above types shall be securely nailed to posts firmly set, not more than twenty feet apart for the first three types, nor more than eight feet apart for the fourth.

[C97, §2057; S13, §2057; C24, 27, 31, 35, 39, §**8003;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.4; C77, 79, 81, §327G.4]

327G.5 Hog-tight fences.

When any person owning land abutting on the right of way is maintaining a hog-tight fence on all sides thereof or any division of such land except along such right of way, the railway company owning such right of way shall, on written request of the landowner, make such right of way fence along such enclosed land hog-tight by the addition of barbed or woven wire or other equally efficient means.

[S13, §2057; C24, 27, 31, 35, 39, §**8004;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.5; C77, 79, 81, §327G.5]

327G.6 Failure to fence.

Any corporation operating a railway and failing to fence its right of way shall be liable to the owner of any stock killed or injured by reason of the want of such fence for the full amount of the damages sustained by the owner, unless it was occasioned by the willful act of such owner or the owner's agent; and to recover the same it shall only be necessary for the owner to prove the loss of or injury to the owner's property.

[C73, §1289; C97, §2055; C24, 27, 31, 35, 39, §**8005;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.6; C77, 79, 81, §327G.6]

327G.7 Double damages.

If such corporation fails or neglects to pay such damages within ninety days after notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, served upon any officer or station or ticket agent employed by said corporation in the county where such loss or injury occurred, such owner shall be entitled to recover from the corporation double the amount of damages actually sustained by the owner.

[C73, §1289; C97, §2055; C24, 27, 31, 35, 39, §**8006;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.7; C77, 79, 81, §327G.7]

327G.8 Laws and local regulations not applicable.

No law of the state or any local or police regulations of any county, township or city, relating to the restraint of domestic animals, or in relation to the fences of farmers or landowners, shall be applicable to railway rights of way, unless specifically so stated in such law and regulation.

[C73, §1289; C97, §2055; C24, 27, 31, 35, 39, §**8007;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.8; C77, 79, 81, §327G.8]

327G.9 Failure to fence — general penalty.

If the railroad corporation refuses or neglects to comply with any provision of this chapter relating to the fencing of the tracks, such railroad corporation shall, upon conviction, be subject to a schedule "two" penalty and every thirty days' continuance of such refusal or neglect shall constitute a separate and distinct offense.

[C97, §2058; C24, 27, 31, 35, 39, §**8009;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.10; C77, 79, 81, §327G.9]

See §327C.5

327G.10 Killing of stock — interpretative clause.

Nothing herein contained shall be construed to relieve the corporation from liability arising from the killing or maiming of livestock on said track or right of way by its negligence or that of its employees, nor shall anything in this chapter interfere with the right of open or private crossings, or with the right of persons to such crossings, nor in any way limit or qualify the liability of any corporation or person owning or operating a railway that fails to fence the same against livestock running at large for any stock injured or killed by reason of the want of such fence.

[C97, §2058; C24, 27, 31, 35, 39, §**8010;** C46, 50,

54, 58, 62, 66, 71, 73, 75, §478.11; C77, 79, 81, §327G.10]

327G.11 Private farm crossings.

When a person owns farmland on both sides of a railway, or when a railway runs parallel with a public highway thereby separating a farm from such highway, the corporation owning or operating the railway, on request of the owner of the farmland, shall construct and maintain a safe and adequate farm crossing or roadway across the railway and right-of-way at such reasonable place as the owner of the farmland may designate. A private farm crossing established or installed pursuant to this section shall be used solely for farming or agricultural purposes.

[R60, §1329; C73, §1268; C97, §2022; S13, §2022; C24, 27, 31, 35, 39, §**8011;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.12; C77, 79, 81, §327G.11]

90 Acts, ch 1184, §1

327G.12 Overhead, underground, or more than one crossing.

The owner of land may serve upon the railroad corporation a request in writing for more than one private crossing, or for an overhead or underground crossing, accompanied by a plat of the owner's land designating the location and character of crossing desired. If the railroad corporation refuses or neglects to comply within thirty days of a written request, the owner of the land may make written application to the department to determine the owner's rights. The department of inspections and appeals, after notice to the railroad corporation, shall hear the application and all objections to the application, and make an order which is reasonable and just, and if it requires the railroad company to construct any crossing or roadway, fix the time for compliance with the order and apportion the costs as appropriate. The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

[S13, §2022; C24, 27, 31, 35, 39, §**8012;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.13; C77, 79, 81, §327G.12; 81 Acts, ch 22, §22]

89 Acts, ch 273, §34

327G.13 Signals at road crossings.

A bell and a horn shall be placed on each locomotive engine operated on any railway, which horn shall be sounded at least one thousand feet before a road crossing is reached, and after the sounding of the horn the bell shall be rung continuously until the crossing is passed; but at street crossings within the limits of cities the sounding of the horn may be omitted, unless required by ordinance or resolution of the council thereof; and the company shall be liable for all damages which shall be sustained by any person by reason of such neglect.

[C97, §2072; C24, 27, 31, 35, 39, §**8018;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.19; C77, 79, 81, §327G.13]

327G.14 Violations.

Any officer or employee of any railway corporation violating any of the provisions of section 327G.13 shall, upon conviction, be subject to a schedule "two" penalty.

[C97, §2072; C24, 27, 31, 35, 39, §**8019;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.20; C77, 79, 81, §327G.14]

See §327C.5

327G.15 Railway and highway crossing at grade.

Wherever a railway track crosses or shall hereafter cross a highway, street or alley, the railway corporation owning such track and the department, in the case of primary highways, the board of supervisors of the county in which such crossing is located, in the case of secondary roads, or the council of the city, in the case of streets and alleys located within a city, may agree upon the location, manner, vacation, physical structure, characteristics and maintenance of the crossing and flasher lights or gate arm signals at the crossing and allocation of costs thereof. The department shall become a party to the agreement if grade crossing safety funds are to be used. Up to seventy-five percent of the maintenance cost of flasher lights or gate arm signals at the crossing and an unlimited portion of the cost of installing flasher lights or gate arm signals at the crossing may be paid from the grade crossing safety fund.

Notwithstanding other provisions of this section, maintenance of flasher lights or gate signals installed or ordered to be installed before July 1, 1973, shall be assumed wholly by the railroad corporation.

Payments from the grade crossing safety fund shall be made by the treasurer of state upon certification by the department that the terms of the agreement have been followed.

The department shall promulgate rules according to chapter 17A for processing claims to the grade crossing safety funds.

The provisions of this section shall not apply to the repair of the grade crossing surface.

[R60, §1321, 1322; C73, §1262, 1263; C97, §2017, 2018; §SS15, §2017; C24, 27, 31, 35, 39, §**8020, 8024, 8025;** C46, §478.21, 478.25, 478.26; C50, 54, 58, 62, 66, 71, 73, 75, §478.21; C77, 79, 81, §327G.15]

327G.16 Disagreement — application — notice.

If the persons specified in section 327G.15 cannot reach an agreement, either party may make written application to the department requesting

resolution of the disagreement. The department shall request the department of inspections and appeals to set a date for hearing. The department of inspections and appeals shall give ten days' written notice of the hearing date.

[SS15, §2017; C24, 27, 31, 35, 39, §**8021;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.22; C77, 79, 81, §327G.16; 81 Acts, ch 22, §19]

89 Acts, ch 273, §35

327G.17 Hearing — order.

The department of inspections and appeals shall hear the evidence of each party to the controversy and shall make an order, which may include, pursuant to chapters 6A and 6B, authority to condemn, resolving the controversy. The order shall include the portion of the expense to be paid by each party to the controversy. In determining what portion of the expense shall be paid by each party the department of inspections and appeals may consider the ratio of the benefits accruing to the railroad or the governmental unit or both, to the general public use and benefit.

The order of the department of inspections and appeals is subject to review by the state department of transportation. The decision of the state department of transportation is the final agency action.

[SS15, §2017; C24, 27, 31, 35, 39, §**8022;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.23; C77, 79, 81, §327G.17; 81 Acts, ch 22, §22]

89 Acts, ch 273, §36

327G.18 Railway company to hold in trust.

Any portion of the expense of making such crossing changes and alterations borne by any municipal corporation or township, the state or any person, shall forever be held in trust by such railroad corporation or its successors, and no part of such funds shall constitute any part of the value of its property on which it is entitled to receive a return.

[SS15, §2017; C24, 27, 31, 35, 39, §**8023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.24; C77, 79, 81, §327G.18]

327G.19 Grade crossing fund.

There is hereby created a fund which shall be known as the highway grade crossing safety fund and shall be made up of the amount allocated by the state treasurer from the road use tax fund.

[C62, 66, 71, 73, 75, §478.25; C77, 79, 81, §327G.19]

327G.20 Reserved.

327G.21 Condition after change — temporary ways.

When a railroad company changes, alters, or repairs a highway crossing, it shall upon completion of the work leave it free from obstructions to travel and in good condition. If travel will be obstructed while any alterations or repairs are being made, the railroad company shall provide safe and convenient temporary ways for the public to avoid or pass such obstructions.

[R60, §1321, 1324; C73, §1262, 1264; C97, §2017, 2019; SS15, §2017; C24, 27, 31, 35, 39, §**8026;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.27; C77, 79, 81, §327G.21]

327G.22 Railway crossings near Mississippi river.

When in the construction of a railway it becomes necessary to cross another railway near the shore of the Mississippi river, each shall be so constructed and maintained at the point of crossing that the respective roadbeds thereof shall be above high-water mark in such river; but where the crossing occurs within the limits of any city, the council may establish the crossing grade.

[C73, §1290; C97, §2059; C24, 27, 31, 35, 39, §**8027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.28; C77, 79, 81, §327G.22]

327G.23 Grade crossings.

The department shall have jurisdiction over all crossings at grade of railways within the state. Upon the application of any railway or upon its own motion, the said department may require the trains of any railway to stop at any crossing of such railway tracks at grade or said department may make such rules in relation to speed or other methods of operation at such grade crossings as in its judgment are necessary to protect the public safety.

[C24, 27, 31, 35, 39, §**8028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.29; C77, 79, 81, §327G.23]

327G.24 Removal of tracks from crossings.

Upon consummation of an abandonment of a railway line authorized under 49 U.S.C. § 10903 adopted as of a specific date by rule by the department, or upon interim use of railroad rights-of-way to establish appropriate trails pursuant to 16 U.S.C. § 1247(d) adopted as of a specific date by rule by the department, if the railway tracks adjacent to a crossing have been removed, but the railway tracks in the crossing have not been removed, the city, county, or other jurisdiction having authority over the highway, street, or alley containing the crossing may remove the tracks from the crossing. However, this section shall not be construed as reducing the obligation or liability of a railway corporation to remove the railway tracks from the crossing.

90 Acts, ch 1132, §1

327G.25 Closing of crossing for repair or upgrade.

A railway corporation shall not close a railway crossing to the traveling public for more than thirty days for the purpose of repairing or upgrading the crossing. A railway corporation violating this section shall, upon conviction, be subject to a schedule "one" penalty.

2000 Acts, ch 1134, §5

327G.26 and 327G.27 Repealed by 78 Acts, ch 1110, § 25.

327G.28 Compulsory establishment.

Whenever in the judgment of the department it is necessary for the public safety, said department may require the establishment of an interlocking system or other safety device at any railroad crossing, junction or drawbridge.

[C24, 27, 31, 35, 39, §**8035;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §478.36; C77, 79, 81, §327G.28]

327G.29 Grade crossing surface repair fund.

There is established a highway railroad grade crossing surface repair fund in the office of the treasurer of state. The department may credit to this fund:

1. Moneys appropriated to the department from the general fund of the state.
2. Moneys appropriated to the department from the road use tax fund or the primary road fund.
3. Available federal funds.
4. Moneys acquired by the department from any gift, grant, or contributions from any source.

Notwithstanding the provisions of section 8.33 unencumbered funds remaining in the highway railroad grade crossing surface repair fund at the close of each fiscal year ending on June 30 shall revert to the road use tax fund.

[C77, 79, 81, §327G.29]

327G.30 Adjustment of expense.

If a grade crossing surface of a railroad track and a highway, street, or alley shall require repairs or maintenance, the costs for the maintenance may be paid as provided in section 312.2, subsection 5.

If the railroad corporation and the jurisdiction having authority agree on the method of crossing maintenance and establish an agreement to each contribute costs as provided in section 312.2, subsection 5, a copy of the agreement shall be filed with the department which shall allocate an amount of the cost for the work if funds are available in the highway railroad grade crossing surface repair fund. The department shall make appropriate notification if the fund is exhausted in which case agreements shall not be made under this section until additional funds are available. The fund shall be administered by the department.

Upon completion of the agreed repair work, a statement of costs shall be filed with the department by the railroad corporation in a form and manner prescribed by the department. The department, upon approval of the statement, shall pay to the railroad corporation an amount of the cost of the work from the highway railroad grade crossing surface repair fund as provided in section 312.2, subsection 5. The owner of the track and the jurisdiction entering into the agreement shall each pay the cost as provided in section 312.2, subsection 5.

[C77, 79, 81, §327G.30]

83 Acts, ch 198, §22

327G.31 Disagreement resolved.

If a railroad corporation and the jurisdiction having authority cannot reach agreement on grade crossing surface repair and maintenance, either party may appeal to the department of inspections and appeals if prior to disagreement both parties have filed a statement with the state department of transportation to the effect that they have entered into negotiations on grade crossing surface repair and maintenance of a particular crossing. The department of inspections and appeals shall resolve the dispute in the manner provided in section 327G.16 and section 327G.17, except for the allocation of costs.

[C77, 79, 81, §327G.31; 81 Acts, ch 22, §22]

327G.32 Blocking highway crossing.

A railroad corporation or its employees shall not operate a train in such a manner as to prevent vehicular use of a highway, street, or alley for a period of time in excess of ten minutes except in any of the following circumstances:

1. When necessary to comply with signals affecting the safety of the movement of trains.
2. When necessary to avoid striking an object or person on the track.
3. When the train is disabled.
4. When necessary to comply with governmental safety regulations including, but not limited to speed ordinances and speed regulations.

An officer or employee of a railroad corporation violating a provision of this section is, upon conviction, subject to the penalty provided in section 327G.14. An employee is not guilty of a violation if the employee's action was necessary to comply with the direct order or instructions of a railroad corporation or its supervisors. Guilt is then with the railroad corporation.

Other portions of this section notwithstanding, a political subdivision may pass an ordinance regulating the length of time a specific crossing may be blocked if the political subdivision demonstrates that an ordinance is necessary for public safety or convenience. If an ordinance is passed,

the political subdivision shall, within thirty days of the effective date of the ordinance, notify the department and the railroad corporation using the crossing affected by the ordinance. The ordinance does not become effective unless the department and the railroad corporation are notified within thirty days. The ordinance becomes effective thirty days after notification unless a person files an objection to the ordinance with the department. If an objection is filed the department shall notify the department of inspections and appeals which shall hold a hearing. After a hearing by the department of inspections and appeals, the state department of transportation may disapprove the ordinance if public safety or convenience does not require the ordinance. The decision of the state department of transportation is final agency action. The ordinance approved by the political subdivision is prima facie evidence that the ordinance is adopted to preserve public safety or convenience.

The department of inspections and appeals when considering rebuttal evidence shall weigh the benefits accruing to the political subdivision as they affect the general public use compared to the burden placed on the railroad operation. Public safety or convenience may include, but is not limited to, high traffic density at a specific crossing of a main artery or interference with the flow of authorized emergency vehicles.

A resolution regulating the length of time a specific crossing may be blocked, which was adopted before July 1, 1989, is an ordinance for the purposes of this section.

[C77, 79, 81, §327G.32; 81 Acts, ch 22, §20, 22]
85 Acts, ch 195, §39; 89 Acts, ch 39, §4, 5; 89 Acts ch 273, §37

327G.33 to 327G.60 Reserved.

DIVISION II

PRIVATE BUILDINGS AND SPUR TRACKS

327G.61 Definitions.

As used in this division:

1. *"Department"* means the state department of transportation.

2. *"Spur track"* means a railroad track located wholly within the state connected to a main or branch line of a railroad and used to originate or terminate traffic at one or more industries or a railroad track not subject to the jurisdiction of the interstate commerce commission. A spur track shall not include a railroad line used to provide line-haul or intercity transportation.

[C75, §481.9; C77, 79, 81, §327G.61; 81 Acts, ch 22, §22]
86 Acts, ch 1245, §1963

327G.62 Controversies — hearing — order — review.

When a disagreement arises between a railroad corporation, its grantee, or its successor in interest, and the owner, lessee, or licensee of a building or other improvement, including trackage, used for receiving, storing, transporting, or manufacturing an article of commerce transported or to be transported, situated on a present or former railroad right-of-way or on land owned or controlled by the railroad corporation, its grantee, or its successor in interest, as to the terms and conditions on which the article is to be continued or removed, the railway corporation, its grantee, or its successor in interest, or the owner, lessee, or licensee may make written application to the department. The department shall notify the department of inspections and appeals which shall hear and determine the controversy and make an order which is just and equitable between the parties. That order is subject to review by the state department of transportation. The decision of the state department of transportation is final agency action.

[S13, §2110-l; C24, 27, 31, 35, 39, §**8169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.1; C77, 79, 81, §327G.62; 81 Acts, ch 22, §22; 82 Acts, ch 1207, §2]
86 Acts, ch 1245, §1964; 89 Acts, ch 273, §38

327G.63 Destruction of buildings.

In the event that any building referred to in section 327G.62, situated on the right of way or other land of a railroad company used for railway purposes, shall be injured or destroyed by the negligence of the railroad company, or the servants or agents thereof in the conduct of the business of such company, the railroad company causing such injury or destruction shall be liable therefor to the same extent as if such building used for said purposes was not situated on the right of way or other land of such railroad company used for railway purposes, any provision in any lease or contract to the contrary notwithstanding.

[S13, §2110-m; C24, 27, 31, 35, 39, §**8170;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.2; C77, 79, 81, §327G.63]

327G.64 Spur tracks.

1. Every railroad corporation may acquire, by condemnation or purchase, the necessary rights of way and may construct, connect, operate and maintain a reasonably adequate and suitable spur track if the construction and operation is not unsafe and is in the public interest.

2. Any party may make application to the department to require a railroad corporation to construct a spur track. The department shall consider the location, necessity and expense of such a track and other equitable considerations.

3. A railroad corporation or any other party may make application to the department for permission to discontinue service on or remove a spur

track. The department shall consider the location, necessity and expense of maintaining such track and other equitable considerations. The department may order the railroad company to discontinue service or remove the spur track, and may allocate the cost of removal between the parties in an equitable manner.

4. Any action commenced under the provisions of subsection 2 or 3 shall be completed within one year from the effective date of the department order. The department shall make a final determination of any action commenced under subsection 2 or 3 within one year from the date of the application.

[C24, 27, 31, 35, 39, §**8171;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.3; C77, 79, 81, §327G.64; 81 Acts, ch 22, §22]

327G.65 Cost of construction.

The railroad corporation may require the person primarily to be served to pay the legitimate cost and expense of acquiring, by condemnation or purchase, the necessary right-of-way for the spur track and of constructing it, as determined in separate items by the department. Except as provided in section 327G.66, the total cost as ascertained by the department shall be deposited with the railroad corporation before it is required to incur expense. If an agreement cannot be reached, the question shall be referred to the department which may, after a hearing conducted by the department of inspections and appeals, issue an order.

[C24, 27, 31, 35, 39, §**8172;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.4; C77, 79, 81, §327G.65; 81 Acts, ch 22, §22]

89 Acts, ch 273, §39

327G.66 Bond for construction.

When the total estimated cost has been ascertained by the department such person, firm, corporation, or association shall have the option to either deposit said amount with the railroad company or to file with such company its written election to build and construct such spur track accompanied by a good and sufficient surety company bond running to such railroad company and conditioned upon the construction of such spur track in a good and skillful manner according to plans and specifications furnished by such railroad company and approved by the department. If such person, firm, corporation, or association so elects to build such spur track it shall only be required to deposit with such railroad company the estimated cost of the necessary right of way for such spur track as ascertained by the department, and the total amount stated in such written election.

[C24, 27, 31, 35, 39, §**8173;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.5; C77, 79, 81, §327G.66]

327G.67 Costs in excess of deposit.

In any event before the railroad company shall be required to incur any expense whatever in the construction of such spur track the person, firm, corporation, or association primarily to be served thereby shall give the railroad company a bond to be approved by the department as to form, amount, and surety, securing the railroad company against loss on account of any expense incurred beyond the amount so deposited with the railroad company.

[C24, 27, 31, 35, 39, §**8174;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.6; C77, 79, 81, §327G.67]

327G.68 Failure of company to act.

In case of failure, neglect, or refusal of any railroad company to comply with any of the provisions of sections 327G.65 to 327G.67, the person, firm, corporation, or association primarily to be served thereby may file a complaint with the department setting forth the facts upon which such grievance is based. The said department after reasonable notice to the railroad company shall investigate and determine all matters in controversy and make such order as the facts in relation thereto will warrant. Any such order shall have the same force and effect as other orders made by said department in other proceedings within its jurisdiction and shall be enforced in the same manner.

[C24, 27, 31, 35, 39, §**8175;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.7; C77, 79, 81, §327G.68]

327G.69 Connections with original spurs.

Whenever such spur track is so connected with the main line, as provided in this chapter, at the expense of the owner of such proposed or existing mill, elevator, storehouse, dock, wharf, pier, manufacturing establishment, and any person, firm, corporation, or association shall desire a connection with such spur track, application therefor shall be made to the department, and such person, firm, corporation, or association shall be required to pay to the person, firm, corporation, or association that shall have paid or contributed to the primary cost and expense of acquiring the right of way for such original spur track, and of constructing the same, an equitable proportion thereof, to be determined by the department, upon such application and notice, to the persons, firms, corporations, or associations that have paid or contributed toward the original cost and expense of acquiring the right of way and constructing the same.

[C24, 27, 31, 35, 39, §**8176;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §481.8; C77, 79, 81, §327G.69]

327G.70 to 327G.75 Reserved.

DIVISION III

REVERSION TO OWNERS
UPON ABANDONMENT

327G.76 Time of reversion.

Railroad property rights which are extinguished upon cessation of service by the railroad divest when the railway finance authority or the railroad, having obtained authority to abandon the rail line, removes the track materials to the right-of-way. If the railway finance authority does not acquire the line and the railway company does not remove the track materials, the property rights which are extinguished upon cessation of service by the railroad divest one year after the railway obtains the final authorization necessary from the proper authority to remove the track materials.

[C24, 27, 31, 35, 39, §**7861;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.1; C77, 79, 81, §327G.76]

83 Acts, ch 121, §5

327G.77 Reversion of railroad right-of-way.

1. If a railroad easement is extinguished under section 327G.76, the property shall pass to the owners of the adjacent property at the time of abandonment. If there are different owners on either side, each owner will take to the center of the right-of-way. Section 614.24 which requires the filing of a verified claim does not apply to rights granted under this subsection.

2. An adjoining property owner may perfect title under subsection 1 by filing an affidavit of ownership with the county recorder. The affidavit shall include the name of the adjoining property owner, a description of the property, the present name of the railroad, the jurisdiction, docket number, and date of order authorizing the railroad to terminate service, and the approximate date the track materials on the right-of-way were removed. A copy of the affidavit must be mailed by the landowner by certified mail to the railroad. The landowner shall pay taxes on the right-of-way from the date the affidavit is filed.

3. Utility facilities located on abandoned railroad right-of-way shall remain on the right-of-way subject to payment by the utility of the fair market value of an easement for the facilities. The utility shall, within sixty days from the time the property is transferred from the railroad, extend a written offer to the landowner to purchase the easement at fair market value. The landowner shall accept or reject the utility's offer within sixty days from the time of receipt. If a disagreement arises between the parties concerning the price or other terms of the transaction, either party may make written application to a compensation commission as established pursuant to chapter 6B to resolve the disagreement. This application shall be made within sixty days from the time the landowner's response is served upon the utility. The compensation commission shall hear the controversy and make a final determination of the fair market value of the easement and the other terms of the transaction which were in dispute within ninety days after the application is filed. All correspondence shall be by certified mail.

[C73, §1260; C97, §2015; C24, 27, 31, 35, 39, §**7862;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.2; C77, 79, 81, §327G.77; 81 Acts, ch 22, §22]

83 Acts, ch 121, §6

327G.78 Sale of railroad property.

Subject to sections 327G.77 and 6A.16, when a railroad corporation, its trustee, or its successor in interest has interests in real property adjacent to a railroad right-of-way that are abandoned by order of the interstate commerce commission, reorganization court, bankruptcy court, or the department, or when a railroad corporation, its trustee, or its successor in interest seeks to sell its interests in that property under any other circumstance, the railroad corporation, its trustee, or its successor in interest shall extend a written offer to sell at a fair market value price to the persons holding leases, licenses, or permits upon those properties, allowing sixty days from the time of receipt for a written response. If a disagreement arises between the parties concerning the price or other terms of the sale transaction, either or both parties may make written application to the department to resolve the disagreement. The application shall be made within sixty days from the time an initial written response is served upon the railroad corporation, trustee, or successor in interest by the person wishing to purchase the property. The department shall notify the department of inspections and appeals which shall hear the controversy and make a final determination of the fair market value of the property and the other terms of the transaction which were in dispute, within ninety days after the application is filed. The determination is subject to review by the department and the department's decision is the final agency action. All correspondence shall be by certified mail.

The decision of the department is binding on the parties, except that a person who seeks to purchase the real property may withdraw the offer to purchase within thirty days of the decision of the department. If a withdrawal is made, the railroad corporation, trustee, or successor in interest may sell or dispose of the real property without further order of the department.

This section does not apply when a rail line is being sold for continued railroad use.

[82 Acts, ch 1207, §3]

83 Acts, ch 121, §7; 84 Acts, ch 1067, §34; 86 Acts, ch 1245, §1965; 93 Acts, ch 47, §16

327G.79 Valuing property in controversy.

The department of inspections and appeals' determination and order shall be just and equitable and in the case of the determination of the fair market value of the property, shall be based in part upon at least three independent appraisals prepared by certified appraisers. Each party shall select one appraiser and each appraisal shall be paid for by the party for whom the appraisal is prepared. The two appraisers shall select a third appraiser and the costs of this appraisal shall be divided equally between the parties. If the appraisers selected by the parties cannot agree on selection of a third appraiser, the state department of transportation shall appoint a third appraiser and the costs of this appraisal shall be divided equally between the parties.

The department of inspections and appeals' determination and order is final for the purpose of administrative review to the district court as provided in chapter 17A. The district court's scope of review shall be confined to whether there is substantial evidence to support the department of inspections and appeals' determination and order.

For purposes of this division, unless the context otherwise requires, *"department"* means the state department of transportation.

[82 Acts, ch 1207, §3]
86 Acts, ch 1245, §1966

327G.80 Reserved.

DIVISION IV

ACQUISITION OF RIGHT-OF-WAY

327G.81 Maintenance of improvements along rights of way.

A person, including a state agency or political subdivision of the state, who acquires a railroad right of way after July 1, 1979 for a purpose other than farming has all of the following responsibilities concerning that right of way:

1. Construction, maintenance and repair of the fence on each side of the property, however, this requirement may be waived by a written agreement with the adjoining landowner.
2. Private crossings as provided for in section 327G.11.
3. Drainage as delineated in chapter 468, subchapter V.
4. Overhead, underground or multiple crossings in accord with section 327G.12.
5. Weed control in accord with chapter 317.

This section does not absolve the property owners of other duties and responsibilities that they may be assigned as property owners by law. Subsection 1 does not apply to rights of way located on land within the corporate limits of a city except where the acquired right of way is contiguous to land assessed as agricultural land.

[C81, §327G.81]

CHAPTER 327H

TAX AID FOR RAILROADS

327H.1 to 327H.17 Repealed by 78 Acts, ch 1110, §25.
327H.18 Railroad assistance.
327H.19 Repealed by 78 Acts, ch 1110, §25.
327H.20 Assistance agreements.
327H.20A Railroad revolving loan fund.
327H.21 Federal funds.
327H.22 Repealed by 81 Acts, ch 116, §7.
327H.23 Repealed by 81 Acts, ch 117, §1097.
327H.24 Reversions — transfers — moneys to be repaid. Repealed by 94 Acts, ch 1107, §98.
327H.25 Energy policy council agreements.
327H.26 Definition.

327H.1 to 327H.17 Repealed by 78 Acts, ch 1110, § 25.

327H.18 Railroad assistance.

Moneys provided to the department for railroad assistance under this chapter shall be expended for providing assistance for the restoration, conservation, improvement, and construction of railroad main lines, branch lines, switching yards and sidings. However, not more than twenty percent of the funds appropriated to the department for railroad assistance from the general fund of the state in any fiscal year shall be used for restoration, conservation, improvement, and construction of railroad main lines, switching yards and sidings. Any moneys received by the department by agreements, grants, gifts, or other means from individuals, companies, business entities, cities, or counties for the purposes of this section shall be credited to the general fund of the state.

Moneys received by or reimbursements made to

the department pursuant to this section and sections 327I.7, subsection 14, and 327H.20 shall be deposited into the general fund of the state and all moneys received by the department by agreements, grants, gifts, or other means which were deposited into the state general fund as a result of this section are appropriated for state railroad assistance under this chapter. Moneys deposited into the general fund of the state pursuant to this section are subject to the requirements of section 8.60.

[C77, 79, 81, §327H.18; 81 Acts, ch 116, §1]

86 Acts, ch 1238, §16; 87 Acts, ch 17, §9; 91 Acts, ch 260, §1228; 93 Acts, ch 131, §14; 94 Acts, ch 1107, §53

327H.19 Repealed by 78 Acts, ch 1110, § 25.

327H.20 Assistance agreements.

The department may enter into agreements with railroad corporations, the United States government, cities, counties, and other persons for carrying out the purposes of this chapter. Agreements entered into between the department and railroad corporations under this section may require a railroad corporation to reimburse all or part of the costs paid from funds provided by the department from revenue derived from all railroad cars and traffic using the main line, branch line, switching yard or sidings defined in the agreement. An agreement which does not require the repayment of railroad assistance funds used for rehabilitation projects shall require the railroad corporation to establish and maintain a separate corporation account to which an amount equal to all or part of the costs paid from funds provided by the department shall be credited from revenue derived from all railroad cars and traffic using the main line, branch line, switching yard, or siding defined in the agreement. Credits to the corporation account by the railroad corporation may be used for the restoration, conservation, improvement, and construction of the railroad corporation's main line, branch lines, switching yards, and sidings within the state. The agreement shall stipulate the terms and conditions governing the use of credits to the corporation account as well as a penalty for the use of the account in a manner other than as provided in the agreement.

With the department's approval, a city may appropriate money from its general fund to the department. The department may agree to pay partial or total reimbursement to a city or county which appropriates money to the department. Money appropriated to the department from a city or county shall be used only as provided in section 327H.18 and within the city or county providing the money.

Moneys appropriated to the department by a city, county, or railroad district which are unexpended or unobligated following the expiration of an agreement shall be repaid to the city, county, or railroad district.

[C77, 79, 81, §327H.20, 327H.22; S81, §327H.20; 81 Acts, ch 116, §2, ch 117, §1049; 82 Acts, ch 1104, §9]

86 Acts, ch 1247, §12; 87 Acts, ch 115, §50; 88 Acts, ch 1211, §4; 94 Acts, ch 1107, §54

327H.20A Railroad revolving loan fund.

A railroad revolving loan fund is established in the office of the treasurer of state under the control of the department. Moneys in this fund shall be expended for loans to provide assistance for the restoration, conservation, improvement, and construction of railroad main lines, branch lines, switching yards, sidings, rail connections, intermodal yards, highway grade separations, and other railroad-related improvements. The department shall administer a program for the granting and administration of loans under this section. The department may enter into agreements with railroad corporations, the United States government, cities, counties, and other persons for carrying out the purposes of this section. Moneys received as loan repayments shall be credited to the railroad revolving loan fund. Notwithstanding section 8.33, moneys in the railroad revolving loan fund shall not revert to the general fund of the state but shall remain available indefinitely for expenditure under this section.

98 Acts, ch 1223, §39

Moneys in the railroad revolving loan fund may be used to erect close-clearance warning devices along railroad rights-of-way; 99 Acts, ch 120, §4

327H.21 Federal funds.

The department may accept federal funds to carry out the purposes of this chapter. All federal funds received under this section and all interest and earnings on federal funds received under this section are appropriated for the purposes set forth in the federal grants.

[C77, 79, 81, S81, §327H.21; 81 Acts, ch 116, §3]

94 Acts, ch 1107, §55

327H.22 Repealed by 81 Acts, ch 116, § 7. See § 327H.20.

327H.23 Repealed by 81 Acts, ch 117, § 1097.

327H.24 Reversions — transfers — moneys to be repaid. Repealed by 94 Acts, ch 1107, § 98.

327H.25 Energy policy council agreements.

All agreements for railroad assistance entered into by the energy policy council with railroads and other persons shall be carried out by the department.

[C77, 79, 81, S81, §327H.25; 81 Acts, ch 116, §5]

94 Acts, ch 1107, §56

327H.26 Definition.

As used in this chapter, unless the context otherwise requires, *"department"* means the state department of transportation.

[S81, §327H.26; 81 Acts, ch 116, §6]

CHAPTER 327I

RAILWAY FINANCE AUTHORITY

Authority included in department of transportation; §7E.7, chapter 307

327I.1 Short title.
327I.2 Declaration of necessity and purpose.
327I.3 Legislative findings.
327I.4 Definitions.
327I.5 Iowa railway finance authority.
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327I.1 Short title.

This chapter may be referred to and cited as the *"Iowa Railway Finance Authority Act"*.

[C81, §307B.1]
C93, §327I.1

327I.2 Declaration of necessity and purpose.

The purpose of this chapter is to benefit the citizens of Iowa by improving their general health, welfare and prosperity and insuring the economic and commercial development of the state and by promoting agricultural and industrial improvement. Access to adequate railway transportation facilities is essential to the economic welfare of the state. One purpose of this chapter is to preserve or provide for the citizens of Iowa those railway services now in existence or needed in the state which have a viable future but which for a variety of economic and legal reasons may not exist if the state does not provide the financing or other mechanisms referred to in this chapter. It is the intent of the chapter that any public ownership and control of railway facilities provided for in this chapter be transferred to private ownership as promptly as economically practicable subject to financing requirements. It is further intended that the authority created in this chapter be vested with all powers to enable it to accomplish the purposes of this chapter except the power to operate rolling stock.

It is the further intent of this chapter and of the general assembly that, in order to preserve rail competition and to provide for railway service in this state, the authority work primarily with railroad carriers already providing service in this state based upon their willingness and ability to meet these objectives.

[C81, §307B.2; 81 Acts 2nd Ex, ch 3, §2]
C93, §327I.2

327I.3 Legislative findings.

The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare, for the preservation and creation of employment, and for the promotion of the economy and of agricultural and industrial improvement, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There will exist a serious shortage of viable rail lines and railway facilities serving the urban, rural, agricultural and industrial communities of the state.

4. There exists a serious problem in this state

regarding the ability of agricultural producers to transport economically farm products to traditional markets because of the abandonment and possible abandonment of railway facilities within the state.

5. These conditions are making it more and more difficult for farmers and farm related businesses to survive in the present state of the economy thus threatening the very heart blood of Iowa.

6. One major cause of this condition has been recurrent shortages of funds in private channels and the high interest cost of borrowing.

7. These shortages have contributed to reductions in construction of new railway facilities, and have made the sale, purchase and repair of existing railway facilities a virtual impossibility in many parts of the state.

8. A stable supply of adequate funds for financing of railway facilities is required to encourage construction of railway facilities, the rehabilitation of existing facilities and to prevent the abandonment of others in an orderly and sustained manner and to reduce the problems described in this section.

9. It is necessary to create a railway finance authority to encourage the investment of private capital and stimulate the construction, rehabilitation and repair of railway facilities and to prevent the abandonment of others through the use of public financing, publicly assisted financing and other forms of public assistance.

10. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

[C81, §307B.3; 81 Acts 2nd Ex, ch 3, §3]
90 Acts, ch 1233, §15
C93, §327I.3

327I.4 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Authority"* means the Iowa railway finance authority created by this chapter.

2. *"Bond proceedings"* means the resolution, order, trust agreement, indenture, lease, and other agreements, and amendments, and supplements to the foregoing authorizing or providing for the terms and conditions applicable to or the provisions contained within, or providing for the security of, obligations issued pursuant to this chapter.

3. *"Bond service charges"* means principal, including mandatory sinking fund requirements for retirement of obligations, interest and redemption premium, if any, required to be paid by the authority on obligations.

4. *"Department"* means the Iowa department of transportation.

5. *"Financial assistance"* means direct loans and other loans, grants, and forms of assistance authorized under this chapter.

6. *"Governing board"* or *"board"* means the governing board of the authority created by section 327I.6.

7. *"Governmental action"* means any action by a governmental agency relating to the establishment, development, or operation of railway facilities that the governmental agency acting has authority to take or provide for the purpose under law, including, but not limited to, actions relating to contracts and agreements, zoning, building, permits, acquisition and disposition of property, public capital improvements, utility and transportation service, taxation, employee recruitment and training, and liaison and coordination with and among governmental agencies.

8. *"Governmental agency"* means the state or any state department, division, commission, institution, or authority; a municipal corporation, city, county, or township, or any agency thereof; any other political subdivision or public corporation; the United States or any agency thereof; any agency, commission, or authority established pursuant to an interstate compact or agreement; or any combination of the foregoing.

9. *"Obligations"* means bonds, notes or other evidence of debt, including interest coupons of the foregoing, issued under this chapter.

10. *"Person"* means an individual, firm, partnership, association, corporation or governmental agency, or any combination thereof.

11. *"Pledged receipts"* means the revenues and receipts received or to be received by the authority from the lease, operation or sale or disposition of railway facilities; from loan or other agreements relating to financial assistance; from grants, gifts or payments on guarantees made to the authority by any person; from accrued interest received from the sale of obligations; from income from the investment of special funds of the authority; from the revenues and receipts deposited in the special railroad facility fund; and from any other moneys which are available for the payment of bond service charges.

12. *"Project costs"* means any portion of the costs of railway rehabilitation, acquisition, construction, reconstruction, repair, alteration, improvement or extension of any railway facilities, providing, supplementing and relocating public capital facilities, studies, surveys, plans, specifications, architectural and engineering services, estimates of costs, legal, organizational, marketing or feasibility studies, and all other necessary and incidental expenses related to the foregoing, and reimbursement of any moneys advanced or applied by a governmental agency or other person for project costs. Project costs include, in connection with obligations, a principal and interest reserve together with interest on obligations to a date not later than six months subsequent to the estimated date of completion of the railway facilities that are the object of the financial assistance.

13. *"Public capital improvements"* means capi-

tal improvements or facilities including, but not limited to, railroad facilities and related ancillary facilities, that a governmental agency has authority to acquire, pay the costs of, own or maintain, or to do the foregoing by contract with other persons.

14. *"Railway facilities"* means land, structures, fixtures, buildings and equipment, except rolling stock, necessary or useful in providing railroad transportation services, including, but not limited to, roadbeds, track, trestle, depot, switching and signaling equipment and all necessary, useful and related equipment and appurtenances and all franchises, easements and other interests in land and rights of way necessary or convenient as a site or sites for any of the foregoing or any part of or combination of the foregoing.

[C81, §307B.4; 81 Acts 2nd Ex, ch 3, §4, 5]
C93, §327I.4
94 Acts, ch 1107, §57

327I.5 Iowa railway finance authority.

There is created an Iowa railway finance authority for the purpose of providing or providing for the financing of railway facilities and enhancing and continuing the operation of railway facilities as provided in this chapter.

[C81, §307B.5; 81 Acts 2nd Ex, ch 3, §6]
C93, §327I.5

327I.6 Governing board — staff.

1. The powers of the authority shall be vested in and exercised by a governing board consisting of five members appointed by the governor subject to confirmation by the senate.

2. The members of the governing board shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the board may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. A member of the board shall not also serve concurrently as a member of the state transportation commission or as an official or employee of the department.

3. Three members of the board constitute a quorum and the affirmative vote of at least three members is necessary for any recommendation made by the board. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to perform the functions and duties of the board.

4. Members of the board are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of their functions and duties as members and reimbursement for all actual and necessary expenses incurred in the performance of their functions and duties as members.

5. Meetings of the board shall be held at the call of the chairperson or when two members so request.

6. Members shall elect a chairperson and vice chairperson annually, and other officers as they determine. However, the director of the department shall be the secretary of the board.

7. The members of the board shall give bond as required for public officers in chapter 64.

8. The members of the board shall be subject to and be officials within the meaning of chapter 68B.

9. The director and staff of the department shall serve as the staff of the authority. The director of the department shall advise the board on matters relating to railroad transportation and carry out all directives from the board, and may employ professional expertise when not available on the department staff.

10. The attorney general's office shall provide legal services for the authority and the board unless a majority of the board deems outside counsel is required in a particular instance.

[C81, §307B.6; 82 Acts, ch 1100, §16]
86 Acts, ch 1245, §1927; 90 Acts, ch 1256, §45
C93, §327I.6
Confirmation, see §2.32

327I.7 Powers of the authority.

The authority shall have all powers necessary for the performance of its purposes and duties, including but not limited to, the power to:

1. Have perpetual succession as a public authority.

2. Adopt rules under chapter 17A for the regulation of its affairs and to carry out its duties and responsibilities. The authority is an agency as that term is defined in chapter 17A and is subject to the provisions of chapter 17A.

3. Sue and be sued in its own name.

4. Exercise the power of eminent domain.

5. Acquire railway facilities, whether located within Iowa or a contiguous state, directly or through an agent, by purchase, lease, lease-purchase, gift, devise or otherwise. The authority shall not submit a bid to acquire a railway facility if any railroad company or person is negotiating for the facility's purchase and if the railroad company's or person's offer exceeds the net salvage value set by the trustee by at least fifteen percent and the offer is for a segment which originates and terminates at the intersection of another railroad mainline or is for a segment which connects to a mainline if the facility is a branchline. However, even if a railroad company or person is negotiating for a facility's purchase, the authority may submit a bid for the acquisition of the railway facility upon approval of a resolution by the state transportation commission stating that the best interests of the state and the transportation needs thereof might not be served by the railroad company's or

person's offer or negotiation. However, the commission shall not adopt such a resolution if the competing railroad corporation or person files with the state department of transportation an enforceable undertaking to operate the facility for a period of five years after its purchase.

6. Determine the location of and select any railway facility to be provided financial assistance under this chapter and acquire, construct, reconstruct, renovate, rehabilitate, improve, extend, replace, maintain, repair and lease the facility, and to enter into contracts for any of these purposes.

7. Enter into contracts, including partnership agreements, with any person for the ownership, operation, management or use of a railway facility. Provisions shall be made in any contract or partnership agreement entered into by the authority that any additional jobs which may result from the ownership, operation, management, or use of a railway facility shall be offered, when practicable, to qualified former employees of the Milwaukee Road or Rock Island railroad companies.

8. Designate an agent to perform its powers under subsections 6 and 7.

9. The authority may sell or convey any of the railway facilities upon terms and considerations acceptable to the governing board.

10. Issue obligations for any of its purposes and refund the obligations, all as provided for in this chapter. However, the total principal amount of obligations outstanding at any one time shall not exceed two hundred million dollars.

11. Invest or deposit moneys of the authority, subject to an agreement with bondholders or noteholders, in a manner determined by the authority, notwithstanding chapter 12B or 12C.

12. Fix, revise, charge and collect rates, rents, fees and charges for the use of any railway facility or any portion of a facility that is owned or financially assisted by the authority alone or in any other association with any other person and contract with any person in respect to a facility.

13. Mortgage all or any portion of its railway facilities, whether then owned or thereafter acquired, in connection with the financing of the particular railway facility or any portion of the facility.

14. Extend financial assistance for the purpose of providing for project costs. Make interest-free loans for rehabilitation of railway tracks, roadbeds, or trestles to persons which have repaid in part the original loan from the authority which was made for the purpose of the acquisition or rehabilitation of railway tracks, roadbeds, or trestles. However, an interest-free loan to a person shall not exceed the amount repaid of the original loan made to that person and one-half of the amount of the interest-free loan repaid to the authority shall be credited to the general fund of the state.

15. Extend financial assistance to refund, retire, or refinance obligations, including obligations running to the federal government, mortgages or advances issued, made or given for the project cost of a railway facility which costs were incurred for railway facilities undertaken and completed prior to or after May 20, 1980, when the governing board finds that this financial assistance is in the public interest.

16. Have and alter a corporate seal.

17. Receive and accept from any person or governmental agency loans, guarantees or grants for or in aid of project costs and receive and accept grants, gifts and other contributions from any source.

18. Own a railway facility under this chapter alone, in partnership, or in any other association with any person if necessary or beneficial to preserve part of a railway system, upon the determination, after consultation with the department, that the railway facility is necessary or beneficial to the railway system, to be relinquished to nonauthority ownership or operation as soon as economically practicable.

19. Temporarily operate a railway facility under this chapter if sufficient need exists or there is an emergency situation as determined by a majority of the board.

20. Serve as a general or limited partner in a partnership formed to purchase, renovate, and operate a railway facility.

21. Enter into agreements with persons to develop, equip, furnish, or otherwise develop and operate railway facilities, and make provision in the agreements for railway facilities and governmental actions, as authorized by this chapter and other laws.

22. Enter into appropriate arrangements and agreements with a governmental agency for the taking or the providing by that governmental agency of a governmental action.

23. Acquire property interests subject to the limitations on purchases provided in subsection 5, in rail lines to ensure continued rail use and preserve abandoned rail lines for future railroad use.

[C81, §307B.7; 81 Acts 2nd Ex, ch 3, §7, 8]
83 Acts, ch 121, §1; 84 Acts, ch 1230, §3
C93, §327I.7
94 Acts, ch 1107, §58

327I.8 Duties of governing board.

The specific duties of the governing board shall be to:

1. Keep accurate records of all its proceedings and make them available to the public.

2. Exercise its powers and duties consistent with the policies and plans of the state transportation commission submitted by it to the general assembly as required under section 307.10, subsection 1.

3. Issue a public declaration before the issuance of bonds as to the need for and use of the proceeds from the issuance of bonds.

4. When issuing bonds, issue bonds the in-

terest of which will be tax exempt for federal income tax purposes, whenever possible.

5. Contract for services through the department when practicable.

6. Provide an economically designed and reproduced annual report to the members of the general assembly who request it containing information as directed by the legislative council.

7. Consult with the department of natural resources before taking any action that substantially affects wildlife habitat.

[C81, §307B.8; 81 Acts 2nd Ex, ch 3, §9, 10]
C93, §327I.8

327I.9 Obligations.

Except as provided in this chapter, all obligations are payable solely out of the pledged receipts as designated in the bond proceedings. Tax funds which the authority receives from a political subdivision of the state shall not be pledged for payment of the obligations. Except for those tax funds deposited in the general fund of the state as provided in section 327I.23, subsection 2, or other tax funds available pursuant to section 327I.26, the state shall not appropriate tax funds, directly or indirectly, to the authority for the purpose of payment of obligations of the authority. Obligations shall be authorized by resolution of the board and bond proceedings shall provide for the purpose of the obligations, the principal amount, the principal maturity or maturities, not exceeding twenty-five years from the date of issuance, the interest rate or rates or the maximum interest rate, the date of the obligations and the dates of payment of interest on them, their denomination, and the establishment within or without the state of a place or places of payment of bond service charges. As much as is practicable within the legal and fiscal limitations inherent in bond issuance, a portion of the bonds shall be issued in denominations of five thousand dollars and smaller, in order to allow smaller investors in the state to purchase the bonds.

The purpose of the obligations may be stated in the bond proceedings in terms describing the general purpose or purposes to be served.

The bond proceedings shall also provide, subject to other applicable bond proceedings, for the pledge of all or such part, as the authority may determine, of the pledged receipts to the payment of bond service charges, which pledges may be made either prior or subordinate to other expenses, claims or payments, and may be made to secure the obligations on a parity with obligations issued at other times, if and to the extent provided in the bond proceedings. The pledged receipts so pledged and received by the authority are immediately subject to the lien of the pledge without physical delivery or further act, and the pledge of the pledged receipts is effective and these moneys may be applied to the purposes for which pledged without necessity for an Act of appropriation. Every pledge and every covenant and agreement with respect to a pledge made in the bond proceedings may be extended to the benefit of the owners and holders of obligations authorized by this chapter, and to any trustee for owners and holders, for the further security of the payment of the bond service charges.

The authority shall issue a prospectus or official statement in connection with the offering of obligations. Obligations may be issued in coupon or in registered form, or both. Provision may be made for the registration of obligations with coupons attached as to principal alone or as to both principal and interest, their exchange for obligations so registered, and for the conversion or reconversion into obligations with coupons attached of any obligations registered as to both principal and interest, and for reasonable charges for registration, exchange, conversion and reconversion. Obligations may be sold at public or private sale at the price, in the manner, and at the time determined by the governing board. Chapter 75 and sections 73A.12 to 73A.16 do not apply to obligations issued under this chapter. All obligations are negotiable instruments.

The bond proceedings may contain additional provisions as to:

1. The redemption of obligations prior to maturity at the option of the authority at the price and under the terms and conditions provided in the bond proceedings.

2. Other terms of the obligation.

3. Limitations on the issuance of additional obligations.

4. The terms of any trust agreement or indenture securing the obligations or under which the obligations may be issued.

5. The deposit, investment and application of special funds and the safeguarding of moneys on hand or on deposit, without regard to chapter 12C, subject to this chapter, with respect to particular funds or moneys; provided that any bank or trust company which acts as depository of any moneys in the special funds may furnish indemnifying bonds or may pledge the securities as required by the authority.

6. The provisions of the bond proceedings which are binding upon the officer, board, commission, authority, agency, department or other person or body which has the authority under law to take actions as necessary to perform all or any part of the duty required by a provision.

7. Any provision which may be made in a trust agreement or indenture.

8. Additional agreements with the holders of the obligations, or the trustee for the holders, relating to the obligations or the security for the obligations.

Before the authority can incur an obligation for the acquisition or purchase of railway facilities under this chapter, the proceeds of which are to be

contributed, loaned, or otherwise provided to a partnership of which the authority is a partner, the other partners of the partnership must pledge to the partnership in the aggregate an amount equal to at least twenty percent of the amount of the obligations to be incurred for the acquisition or purchase.

[C81, §307B.8(4 – 6), 307B.9; 81 Acts 2nd Ex, ch 3, §11]

89 Acts, ch 4, §1; 90 Acts, ch 1168, §43

C93, §327I.9

94 Acts, ch 1107, §59

327I.10 Refunding of obligations.

The board may authorize and issue obligations for the refunding, including funding and retirement, and advance refunding with or without payment or redemption prior to maturity, of any obligations previously issued by the authority. These obligations may be issued in amounts sufficient for payment of the principal amount of the prior obligations, any redemption premiums on the prior obligations, principal maturities of any obligations maturing prior to the redemption of the remaining obligations on a parity with them, interest accrued or to accrue to the maturity date or dates of redemption of the obligations, and any project costs including expenses incurred or to be incurred in connection with this issuance, refunding, funding, and retirement. Subject to the bond proceedings, the portion of proceeds of the sale of obligations issued under this section to be applied to bond service charges on the prior obligations shall be credited to the appropriate account for those prior obligations. Obligations authorized under this section shall be deemed to be issued for those purposes for which the prior obligations were issued and are subject to the provisions of this chapter pertaining to other obligations. Obligations refunded shall not be considered to be outstanding for purposes of section 327I.7, subsection 10.

Refunding may be made without regard to whether or not the obligations to be refunded were issued in connection with the same railway facilities, separate railway facilities or for other purposes, and without regard to whether or not the obligations proposed to be refunded shall be payable on the same date or different dates or due serially or otherwise.

[C81, §307B.10; 81 Acts 2nd Ex, ch 3, §12]

C93, §327I.10

327I.11 Security for obligations.

Obligations may be additionally secured by a trust agreement or indenture between the authority and a corporate trustee which may be any trust company or bank having its principal place of business within the state. Any such agreement, indenture, mortgage, or deed of trust, or any combination thereof, may contain the resolution authorizing the issuance of the obligations, any provisions that may be contained in any bond proceedings, and other provisions which are customary or appropriate in an agreement or indenture of such type, including, but not limited to:

1. Maintenance of each pledge, trust agreement, indenture, or other instrument comprising part of the bond proceedings until the authority has fully paid the bond service charges on the obligations secured by the instrument, or provision for payment has been made.

2. In the event of default in any payments required to be made by the bond proceedings or any other agreement of the authority made as a part of the contract under which the obligations were issued, enforcement of the payments or agreement by mandamus, appointment of a receiver, suit in equity, action at law, or any combination of these.

3. The rights and remedies of the holders of obligations and of the trustee and provisions for protecting and enforcing them, including limitations on rights of individual holders of obligations.

4. The replacement of any obligations which become mutilated or are destroyed, lost, or stolen.

The principal of and interest on obligations shall be secured as provided in the bond proceedings by the pledge of pledged receipts and by assignment of leases or other contract rights of the authority, or any person acquiring, leasing, or operating railway facilities assisted under this chapter to third parties, which assignment may cover all or any part of the railway facilities from which the receipts may be derived, including, but not limited to, any enlargements of or additions to any of these railway facilities.

Each pledge shall continue in effect until the principal of and interest on the obligations has been fully paid or provision for the payment has been duly made pursuant to the bond proceedings.

[C81, §307B.11; 81 Acts 2nd Ex, ch 3, §13]

C93, §327I.11

327I.12 Payment of obligations — nonliability of state.

Obligations issued under this chapter, and judgments based on contract or tort arising from the activities of the authority or persons acting on its behalf, are not a debt or liability of the state or of any political subdivision within the meaning of any constitutional or statutory debt limitation and are not a pledge of the state's credit or taxing power within the meaning of any constitutional or statutory limitation or provision and no appropriation shall be made, directly or indirectly, by the state or any political subdivision of the state for the payment of the obligations or judgments or to fund any deficiency in any special funds, or for the indemnification of a person subject to a judgment arising from that person's actions on the authority's behalf. These obligations and judgments are special obligations of the authority payable solely and only from the sources and special funds pro-

vided in this chapter. Funds from the general fund of the state shall not be used to pay interest or principal on obligations of the authority in the event that receipts from the taxes available as provided in section 327I.23, subsection 2, and section 327I.26 are insufficient.

[C81, §307B.12; 81 Acts 2nd Ex, ch 3, §14]
C93, §327I.12
94 Acts, ch 1107, §60

327I.13 Remedies of holders of obligations.

1. The bond proceedings may provide that a holder of obligations or a trustee under the bond proceedings, except to the extent that the holder's rights are restricted by the bond proceedings, may by legal proceedings, protect and enforce any rights under the laws of this state or granted by the bond proceedings. These rights include the right to compel the performance of all duties of the authority required by this chapter or the bond proceedings; to enjoin unlawful activities; and in the event of default with respect to the payment of any bond service charges on any obligations or in the performance of any covenant or agreement on the part of the authority in the bond proceedings, to apply to a court to appoint a receiver to receive and administer the pledged receipts which are pledged to the payment of the bond service charges on these obligations or which are the subject of the covenant or agreement, with full power to pay and to provide for payment of bond service charges on these obligations and with powers accorded receivers in general equity cases, excluding any power to pledge additional revenues or receipts or other income or moneys of the authority or the state or governmental agencies of the state to the payment of the bond service charges; and if provided in the bond proceedings, the power to take possession of, mortgage, or cause the sale or otherwise dispose of any railway facilities.

Each duty of the authority and the authority's board, officers, and employees, and of each governmental agency and its officers, members, or employees, undertaken pursuant to the bond proceedings or any agreement or lease, lease-purchase agreement, or loan made under authority of this chapter, and in every agreement by or with the authority, is a duty of the authority, and of each board, officer, member or employee having authority to perform this duty, which may be specifically enjoined by the law resulting from an office, trust or station under chapter 661.

2. If the bond proceedings do not contain provisions authorized in subsection 1, if the authority defaults in the payment of principal or interest on obligations as they become due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the authority fails or refuses to comply with this chapter or defaults in any covenant or agreement in the bond proceedings made for the benefit of the holders of obligations, the holders of twenty-five percent in aggregate principal amount of obligations of the issue then outstanding by instrument filed in the office of the clerk of the county in which the principal office of the authority is located and proved or acknowledged in the same manner as a deed to be recorded may appoint a trustee to represent the holders of the obligations for the purposes provided in this section.

The trustee selected may, and upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of obligations then outstanding, shall:

a. Enforce all rights of the holders of the obligations including the right to require the authority to carry out its agreements with the holders and to perform its duties under this chapter.

b. Bring suit upon the obligations.

c. By action require the authority to account as if it were the trustee of an express trust for the holders.

d. By action enjoin any acts or things which are unlawful or in violation of the rights of the holders.

e. Declare all the obligations due and payable and, if all defaults are made good then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of obligations then outstanding, annul the declaration and its consequences. Before declaring the principal of obligations due and payable, the trustee shall first give thirty days notice in writing to the governor, to the authority, and to the attorney general of the state.

The trustee selected shall also have all powers necessary or appropriate for the exercise of functions specifically set forth or incident to the general representation of holders in the enforcement and protection of their rights.

3. The district court has jurisdiction of any action by the trustee on behalf of holders. The venue of the action shall be in the county in which the principal office of the authority is located.

[C81, §307B.13; 81 Acts 2nd Ex, ch 3, §15]
C93, §327I.13

327I.14 Authority as public instrumentality.

The authority is performing a public function on behalf of the state and is a public instrumentality of the state. Income of the authority and all properties owned by or leased to the authority are exempt from all taxation in the state of Iowa. This chapter does not exempt from taxation properties comprising railway facilities financially assisted under this chapter which are owned by persons other than the authority except those leased to the authority. However, properties owned by the authority which are leased or rented to a private person shall include as part of the rates, rents, fees or charges payable by that person a sum equal to the

amount of tax, determined by applying the tax rate of the taxing district to the assessed value of the property, which the state, county, city, school district or other political subdivision would receive if the property were owned by a private person, any other statute to the contrary notwithstanding. This sum shall be distributed to each taxing district based upon its tax equivalent. For purposes of arriving at that tax equivalent, the property shall be valued and assessed by the assessor in whose jurisdiction the property is located, in accordance with chapter 441, but the authority, the lessee or renter on behalf of the authority, and other persons as are authorized by chapter 441 shall be entitled to protest any assessment and take appeals in the same manner as any taxpayer. The valuations shall be included in any summation of valuations in the taxing district for all purposes known to the law. Income from this source shall be considered under the provisions of section 384.16, subsection 1, paragraph *"b"*.

[C81, §307B.14; 81 Acts 2nd Ex, ch 3, §16]
C93, §327I.14

327I.15 Powers not restricted — law complete in itself.

This chapter is not a restriction or limitation upon any powers which the authority or another governmental agency has under any laws of this state, but is cumulative to any such powers. No proceedings, referendum, notice or approval is required for the creation of the authority or the issuance of any obligations or any instrument as security except as provided in this chapter. However, nothing in this chapter deprives the state and its political subdivisions of their police powers over properties of the authority or impairs any power over the authority of any official or agency of the state and its political subdivisions which is otherwise provided by law.

[C81, §307B.15; 81 Acts 2nd Ex, ch 3, §17]
C93, §327I.15

327I.16 Limitation of liability.

The members of the board and persons acting in the board's behalf, while acting within the scope of their employment or agency, shall be employees of the state within the meaning of chapter 669 and the provisions, except section 669.11, of that chapter shall apply to such members and persons. Any awards to a claimant under chapter 669 resulting from actions involving the board or a person acting in the board's behalf shall be payable solely from funds of the authority and funds received from the state shall not be used to pay such awards.

[C81, §307B.16]
C93, §327I.16

327I.17 Exemption from construction and bidding requirements for public buildings.

A railway facility is not subject to any requirements relating to public buildings, structures, grounds, works or improvements imposed by any other law, except as determined by the governing board, or any other similar requirements which may be lawfully waived by this section and any requirement of competitive bidding or other restriction imposed on the procedure for awarding contracts for such purpose or the lease, sale, or other disposition of property of the authority is not applicable to any action taken under the provisions of this chapter.

[C81, §307B.17]
C93, §327I.17

327I.18 Liberal interpretation.

This chapter, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

[C81, §307B.18]
C93, §327I.18

327I.19 Governmental agencies.

A governmental agency may enter into an agreement with the authority, another governmental agency, or a person to be assisted under this chapter to take or provide for the purposes of this chapter any governmental action it is authorized to take or provide and to undertake on behalf and at the request of the authority any action which the authority and the agency are authorized to undertake. Governmental agencies of the state shall cooperate with and provide assistance to the director and the authority in the exercise of their functions under this chapter.

[81 Acts 2nd Ex, ch 3, §18]
C83, §307B.19
C93, §327I.19

327I.20 Bond anticipation notes.

The power to issue obligations under this chapter includes power to issue obligations in the form of bond anticipation notes and to renew these notes by the issuance of new notes, but the maximum maturity of these notes, including renewals, unless otherwise authorized by the general assembly, shall not exceed five years from the date of the issuance of the original notes. The holders of these notes or interest coupons of the notes have a right to be paid solely from the pledged receipts pledged to the payment of the bonds anticipated, or from the proceeds of those bonds or renewal notes, or both, as the authority provides in the bond proceedings authorizing the notes. The notes may be additionally secured by covenants of the authority to the effect that the authority will do those acts authorized by this chapter and necessary for the issuance of the bonds or renewal notes

in appropriate amount, and either exchange the bonds or renewal notes therefor, or apply the proceeds of the notes to the extent necessary, to make full payment of the principal of and interest on the notes at the time contemplated, as provided in the bond proceedings. For such purpose, the authority may issue bonds or renewal notes in a principal amount and upon terms as are authorized by this chapter and are necessary to provide funds to pay when required the principal of and interest on the outstanding notes, notwithstanding any limitations prescribed by this chapter, other than the limitation contained in section 327I.7, subsection 10. All provisions for and references to obligations in this chapter are applicable to notes authorized under this section to the extent not inconsistent with this section.

[81 Acts 2nd Ex, ch 3, §18]
C83, §307B.20
C93, §327I.20

327I.21 Investment in obligations.

All banks, trust companies, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business, all insurance companies, insurance associations and other persons carrying on an insurance business and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in obligations issued pursuant to this chapter. However, this section does not relieve any persons from a duty of exercising reasonable care in selecting securities for purchase or investment.

[81 Acts 2nd Ex, ch 3, §18]
C83, §307B.21
C93, §327I.21

327I.22 Notice.

The authority shall publish a notice of its intention to issue obligations in a newspaper published in and with general circulation in the state. The notice shall include a statement of the maximum amount of obligations proposed to be issued, and in general terms, what receipts will be pledged to pay bond service charges on the obligations. An action which questions the legality or validity of obligations or the power of the authority to issue the obligations or the effectiveness or validity of any proceedings adopted for the authorization or issuance of the obligations shall not be brought after sixty days from the date of publication of the notice.

[81 Acts 2nd Ex, ch 3, §18]
C83, §307B.22
C93, §327I.22

327I.23 Administration of moneys.

1. Moneys available, by appropriation or otherwise, to the authority for purposes of this chapter shall be administered by the authority and may be used to purchase or upgrade railroad right-of-way and trackage facilities or to purchase general or limited partnership interests in a partnership formed to purchase, upgrade, or operate railroad right-of-way and trackage facilities, to pay or secure obligations issued by the authority, to pay obligations, judgments, or debts for which the authority becomes liable in its capacity as a general partner, or for any other use authorized under this chapter. The moneys may also be used to purchase or upgrade railroad right-of-way and trackage facilities for the development of railroad passenger tourism.

2. Moneys received from repayment from heartland rail corporation as provided in 1983 Iowa Acts, chapter 198, section 32, as amended by 1987 Iowa Acts, chapter 232, section 28, and 1988 Iowa Acts, chapter 1211, section 6, shall be deposited in a separate account within the general fund of the state and are appropriated to the authority to be used by the authority only for debt service or rehabilitation on branch rail lines whose total projected traffic is at least fifty percent agricultural products.

[81 Acts 2nd Ex, ch 3, §19]
C83, §307B.23
84 Acts, ch 1289, §1; 85 Acts, ch 257, §19; 88 Acts, ch 1211, §1; 89 Acts, ch 4, §2; 89 Acts, ch 6, §1, 2; 90 Acts, ch 1168, §44; 91 Acts, ch 260, §1222
C93, §327I.23
93 Acts, ch 131, §15; 94 Acts, ch 1107, §61, 62

327I.24 Acquisition of abandoned right-of-way.

A railway corporation which has received authorization to abandon a rail line must offer the line to the authority for sale prior to removing the track materials. The corporation shall state a reasonable price for:

1. The corporation's right, title, and interest in the right-of-way, track materials, and rail facilities.

2. An exclusive, transferable, five-year option to purchase all of the corporation's right, title, and interest in the right-of-way, track materials, and rail facilities.

The authority may waive the requirements of this section.

The authority shall have thirty days in which to accept or decline the corporation's offer for all or any part of the rail line. If the authority fails to accept the offer within thirty days of the offer, the corporation may dispose of the property.

If the authority accepts all or any part of the offer, the corporation shall execute the proper documents upon delivery of the purchase price which shall not be later than ninety days from the date

of the offer.
83 Acts, ch 121, §2
CS83, §307B.24
C93, §327I.24

327I.25 Certification for receipt of use tax moneys.

The authority shall certify to the treasurer of state amounts of money necessary for payment of principal and interest by the authority on obligations issued on or after July 1, 1988, or to make payments on leases guaranteed by the authority on or after July 1, 1988. However, certification shall only be made under this section when there are insufficient moneys available to the authority for the payment of such principal and interest or the payment of such leases.

Certification shall only be made under this section for projects in which the authority has done all of the following:

1. Conducted a feasibility study, prior to agreeing to assist the project, which demonstrates that the proposed project has a reasonable potential to generate adequate revenues to be economically viable.

2. Obtained from participants in the project pledges to be received by the authority, which in combination with other moneys available to the authority, are sufficient to either retire obligations issued by the authority to assist the project or make all payments on leases guaranteed by the authority to assist the project, including a lien against the assets of the project and a lien against the assets of each participant in the project to the extent of that participant's pledged obligation.

88 Acts, ch 1211, §2
C89, §307B.25
C93, §327I.25
94 Acts, ch 1107, §63

327I.26 Appropriation to authority.

Notwithstanding section 423.24 and prior to the application of section 423.24, subsection 1, paragraph *"b"*, there shall be deposited into the general fund of the state and is appropriated to the authority from eighty percent of the revenues derived from the operation of section 423.7 the amounts certified by the authority under section 327I.25. However, the total amount deposited into the general fund and appropriated to the Iowa railway finance authority under this section shall not exceed two million dollars annually. Moneys appropriated to the Iowa railway finance authority under this section are appropriated only for the payment of principal and interest on obligations or the payment of leases guaranteed by the authority as provided under section 327I.25.

88 Acts, ch 1211, §3
C89, §307B.26
92 Acts, 2nd Ex, ch 1001, §202
C93, §327I.26
94 Acts, ch 1107, §64

CHAPTER 327J

PASSENGER RAIL SERVICE

327J.1 Definitions.
327J.2 Passenger rail service revolving fund.
327J.3 Administration.

327J.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"AMTRAK"* means the national railroad passenger corporation created under 45 U.S.C. § 541.

2. *"Department"* means the state department of transportation.

3. *"Director"* means the director of transportation.

4. *"Fund"* means the passenger rail service revolving fund created under section 327J.2.

5. *"Midwest regional rail system"* means the passenger rail system identified through a multistate planning effort in cooperation with AMTRAK.

92 Acts, ch 1210, §2; 2000 Acts, ch 1168, §1

327J.2 Passenger rail service revolving fund.

1. *Fund created.* The passenger rail service revolving fund is established as a separate fund in

the state treasury under the control of the department. Moneys deposited in the fund shall be administered by the director and shall be used to pay the costs associated with the initiation, operation, and maintenance of rail passenger service.

2. *Funding.* To achieve the purposes of this chapter, moneys shall be credited to the passenger rail service revolving fund by the treasurer of state from the following sources:

a. Private grants and gifts intended for these purposes.

b. Federal, state, and local grants and loans intended for these purposes.

3. *No reversion.* Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

92 Acts, ch 1210, §3

Legislative intent that moneys directed to be deposited in road use tax fund under §312.1 not be used for loans, grants, or other financial assistance for passenger rail service; 2000 Acts, ch 1168, §4

327J.3 Administration.

1. The director may expend moneys from the fund to pay the costs associated with the initiation, operation, and maintenance of rail passenger service. The director shall report by February 1 of each year to the legislative fiscal bureau concerning the status of the fund including anticipated expenditures for the following fiscal year.

2. The director may enter into agreements with AMTRAK and other states associated with the midwest regional rail system for the purpose of developing a rail passenger system serving the midwest, including service from Chicago, Illinois, to Omaha, Nebraska, through Iowa. The agreements may include any of the following:

a. Cost-sharing agreements associated with initiating service, capital costs, operating subsidies, and other costs necessary to develop and maintain service.

b. Joint powers agreements and other institutional arrangements associated with the administration, management, and operation of a midwest regional rail system.

3. The director shall enter into discussions with members of Iowa's congressional delegation to foster rail passenger service in this state and the midwest and to maximize the level of federal funding for the service, including funding for the midwest regional rail system.

4. The director may provide assistance and enter into agreements with cities along the proposed route of the midwest regional rail system or other passenger rail system serving the midwest to ensure that rail stations and terminals are designed and developed in accordance with the following objectives:

a. To meet safety and efficiency requirements outlined by AMTRAK and the federal railroad administration.

b. To aid intermodal transportation.

c. To encourage economic development.

5. The director shall report annually to the general assembly concerning the development and operation of the midwest regional rail system and the state's passenger rail service.

92 Acts, ch 1210, §4; 2000 Acts, ch 1168, §2

SUBTITLE 4

AVIATION

CHAPTER 328

AERONAUTICS

328.1 Definitions.
328.2 to 328.11 Repealed by 74 Acts, ch 1180, §197.
328.12 Duties and powers.
328.13 Co-operation with federal government. Repealed by 93 Acts, ch 87, §5.
328.14 Authority to receive federal moneys for the state and governmental subdivisions.
328.15 Contracts — law governing.
328.16 Disposition of federal funds.
328.17 and 328.18 Repealed by 74 Acts, ch 1180, §197.
328.19 Registration.
328.20 Registration of aircraft.
328.21 Aircraft registration fees.
328.22 Used aircraft. Repealed by 98 Acts, ch 1182, §7.
328.23 Credit on registration fees. Repealed by 88 Acts, ch 1063, §13.
328.24 Refunds of fees.
328.25 Fees in lieu of taxes.
328.26 Application for registration.
328.27 Issuance of certificates.
328.28 Operation under special certificate.
328.29 Application for special certificate — fee.
328.30 Issuance of special certificate.
328.31 Special certificates — inventory removals or additions. Repealed by 2002 Acts, ch 1112, §15.
328.32 Expiration of special certificate.
328.33 Records required.
328.34 Grounds for refusing, revoking or suspending certificates.
328.35 Exceptions to registration requirements.
328.36 Deposit and use of revenues.
328.37 Operations unlawful without certificate.
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328.39 Order of department — review.
328.40 Penalties.
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328.43 Transfer notice.
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328.47 Lien of fees.
328.48 Attachment of lien.
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328.50 Penalty on delinquent registration.
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328.52 Waiver.
328.53 Marking public aircraft.
328.54 Biennial report.
328.55 Inspections of governmental subdivision airports.
328.56 State aircraft pool and revolving fund. Repealed by 92 Acts, 2nd Ex, ch 1001, §507.
328.56A Staggered registration for aircraft — implementation.
328.57 Short title.

328.1 Definitions.

The following words, terms, and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

1. *"Aeronautics"* means transportation by aircraft, the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes, the design, establishment, construction, extension, operation, improvement, repair, or maintenance of landing areas, or other air navigation facilities, and air instruction.

2. *"Aeronautics instructor"* means any individual giving or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward.

3. *"Air carrier airport"* means an existing public airport regularly served by an air carrier, other than a supplemental air carrier, certificated by the civil aviation board under section 401 of the federal Aviation Act of 1958.

4. *"Aircraft"* means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air, for the purpose of transporting persons or property, or both.

5. *"Air instruction"* means the imparting of aeronautical information, by any aeronautics instructor, or in or by any air school or flying club.

6. *"Air navigation"* means the operation or navigation of aircraft in the air space over this state, or upon any landing area within this state.

7. *"Air navigation facility"* means any facility, other than one owned or controlled by the federal government, used, available for use, or designed for use, in aid of air navigation, including landing

areas, and any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

8. *"Airperson"* means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, aircraft appliances, or parachutes; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator. It shall not include individuals engaged in aeronautics as an employee of the United States or any state or foreign country and any individuals employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual.

9. *"Airport"* means any landing area used regularly by aircraft for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way, whether heretofore or hereafter established.

10. *"Air school"* means any person engaged in giving, or offering to give, instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, and who employs other persons for such purposes. It does not include any public school or university of this state, or any institution of higher learning duly accredited and approved for carrying on collegiate work.

11. *"Air taxi operator"* means an operator who engages in the air transportation of passengers, property, and mail by aircraft on public demand for compensation and does not directly or indirectly utilize aircraft with a capacity of more than thirty passengers or seventy-five hundred pounds maximum payload, unless exempted by the aeronautics and public transit administrator of the department.

12. *"Civil aircraft"* means any aircraft other than a public aircraft.

13. *a. "Commission"* means the state transportation commission of the state department of transportation.

b. "Department" means the state department of transportation.

c. "Director" means the director of transportation or the director's designee.

14. *"Commuter air carrier"* means an air taxi operator which operates not less than five round trips per week between two or more points and publishes flight schedules which specify the times, days of the week, and places between which such flights are performed or transports mail pursuant to a current contract with the United States postal service.

15. *"General aviation airport"* means any airport that is not an air carrier airport.

16. *"Governmental subdivision"* means any county or city of this state, and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate landing areas and other air navigation facilities.

17. *"Landing area"* means any locality, either of land or water, including intermediate landing fields, which is used or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo; it does not include any intermediate landing field established or maintained by the federal government as a part of any civil airway.

18. *"Operation for hire"* shall mean hire to the general public or members or classes thereof, and shall not include such operations as are incidental to the carrying on of the general business of an aircraft owner engaged in business other than aeronautics.

19. *"Operation of aircraft"* or *"operate aircraft"* means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft and shall embrace any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise).

20. *"Owner"* means a person owning or renting an aircraft, or having the exclusive use of an aircraft, for a period of more than thirty days.

21. *"Person"* means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

22. *"Public aircraft"* means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

23. The singular shall include the plural, and the plural the singular.

[C31, 35, §8338-c1; C39, §**8338.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.1]

88 Acts, ch 1063, §1

328.2 to 328.11 Repealed by 74 Acts, ch 1180, § 197.

328.12 Duties and powers.

The director in carrying out the director's duties relating to aeronautics shall:

1. *Promotion of aeronautics.* Encourage, fos-

ter, and assist in the general development and promotion of aeronautics in this state, and make disbursements from moneys available for such purposes.

2. *Rules.* Make reasonable rules, consistent with this chapter, as deemed by the director to be necessary and expedient for the administration and enforcement of this chapter, and amend the rules at any time.

3. *Filing of rules.* Keep on file at the office of the director, for public inspection, a copy of all the department's aeronautic rules with all amendments, and mail copies to all registered landing areas in this state.

4. *Technical services available.* So far as reasonably possible, make available the engineering, management consulting, and other technical services of the department, without charge, in connection with aeronautics.

5. *Intervention.* Participate, at the director's discretion, as party plaintiff or defendant, or as intervenor, complainant, or movant, on behalf of the state or any governmental subdivision or citizen of the state, in any proceeding having to do with aeronautics.

6. *Enforcement of aeronautics laws.* Enforce and assist in the enforcement of this chapter and of all rules issued pursuant to this chapter, and of all other laws of this state relating to aeronautics; and, in the aid of enforcement and within the scope of the director's duties, general powers of peace officers are conferred upon the director, and officers and employees of the department designated by the director to exercise such powers. The director, in the name of this state, may enforce this chapter and the rules issued pursuant to this chapter by injunction in the courts of this state.

7. *Use of existing facilities.* In the discharge of all functions prescribed by this chapter, to every feasible extent, use the facilities of other agencies of the state; and other state agencies are authorized and directed to make available to the director such facilities and services.

8. *Investigations and inquiries.* Hold investigations and inquiries.

a. The director or the director's designee when acting for and with the authority of the director, may hold investigations and inquiries concerning matters covered by this chapter and orders and rules of the department. In an investigation or inquiry, the person acting for the director may administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses, and the production of papers, books, and documents.

b. The reports of investigations or inquiries, or any part of them, shall not be admitted in evidence or used for any purpose in a civil suit growing out of a matter referred to in an investigation, inquiry, or report, except in criminal or other proceedings instituted in behalf of the director or this state under this chapter and other laws of this state relating to aeronautics.

9. *Authority to contract.* Enter into contracts necessary to the execution of the powers granted the director by this chapter.

10. *No exclusive rights granted.* Grant no exclusive right for the use of an airway, airport, landing area, or other air navigation facility under the director's jurisdiction.

11. *Sufficiency reports.* Issue sufficiency reports for all airports in the state, which are owned and operated by a governmental subdivision, based on the functional classification of those airports as set out in the department's transportation plan.

12. *Centralized purchasing agency.* Encourage governmental subdivisions to utilize the department's services as a centralized purchasing agency for items, including but not limited to airport and aeronautics equipment.

13. *Safety inspections.* Enter into agreements, at the director's discretion, and otherwise co-operate with federal authorities in the safety inspection of registered landing areas, and adopt safety standards for airports.

14. *Newsletter.* Have authority to publish and distribute by subscription a state aeronautics newsletter or magazine. The department may charge a reasonable fee for subscriptions to the newsletter or magazine.

15. *Commuter air carrier demonstration projects.* The department may encourage the development of commuter air carrier service in the state by:

a. Recommending routes between cities that may support such service.

b. Making available funding for demonstration projects from any federal funds made available to the state or from any state funds appropriated for such purposes.

c. Establishing specifications, operational requirements, terms and conditions under which demonstration projects will be participated in by the state.

[C35, §8338-f5, -f6, -f8, -f9, -f10, -f13; C39, §**8338.05, 8338.06, 8338.08, 8338.09, 8338.10, 8338.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.12]

86 Acts, ch 1245, §1967; 94 Acts, ch 1107, §65; 98 Acts, ch 1075, §30

328.13 Co-operation with federal government. Repealed by 93 Acts, ch 87, § 5. See § 307.44.

328.14 Authority to receive federal moneys for the state and governmental subdivisions.

1. The department shall act as agent for the state and shall upon request act as agent for a governmental subdivision which owns a general aviation or air carrier airport in accepting, receiving and receipting for all federal moneys provided that

the request is submitted to the department by March 1 of each year. The department when acting as agent shall contract for all airport projects in which planning, construction, acquisition or improvements include federal or state funds, and the political subdivision owning the airport shall select all consultants. The department shall not have jurisdiction over the operation or maintenance of the airport after completion of the project, except for those contractual stipulations agreed to by all parties prior to receipt of state funds.

2. The department shall include in the annual report made by the department to the governor a report of all federal moneys it accepts, receives and receipts for under the provisions of this section.

3. The department is the authorized agency of the state to receive and disburse federal funds for general aviation airports owned by political subdivisions of the state.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.14]

328.15 Contracts — law governing.

All contracts for the planning, acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the department, either as the agent of this state or of any governmental subdivision, shall be made pursuant to the laws of this state governing the making of like contracts; provided, however, that where such undertaking is financed wholly or partially with federal moneys, the department, as such agent, or the governmental subdivision acting for itself, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.15]

328.16 Disposition of federal funds.

All moneys accepted for disbursement by the department pursuant to section 328.14 shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be expended in accordance with federal laws and regulations and with this chapter. The department is authorized, whether acting for this state or as the agent of any of its governmental subdivisions, or when requested by the United States government or any agency or department thereof, to disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.16]

328.17 and 328.18 Repealed by 74 Acts, ch 1180, § 197.

328.19 Registration.

1. The department shall promulgate rules pursuant to the provisions of chapter 17A governing the issuance by the department of certificates of registration to all airports in this state which are open for use by the public and governing the annual renewal of those certificates. These rules shall require that an airport applying for a certificate of registration or for a renewal shall comply with minimum standards of safety as promulgated by the department, adopt safe air traffic patterns, and demonstrate that such air traffic patterns are safely co-ordinated with those of all existing airports and approved airport sites in its vicinity before the certificates of registration or certificate of renewal may be issued. Certificates of registration or renewal may be issued subject to any conditions the department deems necessary to carry out the purposes of this section. The department may, after notice and opportunity for hearing as provided in chapter 17A, revoke any certificate of registration or renewal, or may refuse to issue a renewal, when it determines:

a. That there has been an abandonment of the airport as such;

b. That there has been a failure to comply with the conditions of the registration or renewal thereof; or

c. That because of change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aeronautical purposes for which the registration or renewal was issued.

2. The department shall promulgate rules pursuant to the provisions of chapter 17A governing the issuance by the department of certificates of airport site approval. These rules shall provide that any person or governmental subdivision desiring or planning to construct or establish an airport shall obtain a certificate of site approval prior to acquisition of the site or prior to the construction or establishment of the airport. The department shall charge a reasonable fee, based on the cost of a safety inspection of the site approval application, for the issuance of a certificate of site approval, and shall issue such a certificate if it finds:

a. That the site is adequate for the proposed airport;

b. That such proposed airport, if constructed or established, will conform to minimum standards of safety as promulgated by the department; and

c. That safe air traffic patterns are established for the proposed airport which are safely co-ordinated with the traffic patterns of all existing air-

ports and approved airport sites in its vicinity.

3. A certificate of site approval shall remain in effect until a certificate of registration has been issued to an airport located on the approved site as provided in subsection 1, unless the department, after notice and opportunity for hearing, revokes the certificate of site approval upon a finding that:

a. There has been an abandonment of the site as an airport site;

b. There has been a failure within two years to develop the site as an airport, or to comply with the conditions of the approval; or

c. Because of change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted.

4. No certificate of site approval shall be required for the site of any existing airport.

5. In considering an application for approval of a proposed airport site or the issuance of an airport registration certificate under subsections 1 and 2, the department may, on its own motion or upon the request of an affected or interested person, hold a hearing as provided in chapter 17A.

[C31, 35, §8338-c2; C39, §**8338.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.19]

328.20 Registration of aircraft.

A civil aircraft owned either wholly or in part by persons residing in this state, or operated, or otherwise controlled within the boundaries of the state for a period of more than thirty days, unless specifically excepted under this chapter, shall be registered annually with the department, by the owner thereof.

The registration year begins on the first day of the calendar month in which the civil aircraft is registered for the first time in the state and ends on the last day of the twelfth month of the registration year.

For aircraft registered in this state before July 1, 1988, the registration year begins on the first day of the calendar month assigned by the department and ends on the last day of the twelfth month of the registration year.

[C31, 35, §8338-c2; C39, §**8338.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.20]

88 Acts, ch 1063, §2

Implementation of staggered registration; §328.56A

328.21 Aircraft registration fees.

An annual registration fee for each aircraft shall be paid to the department at the time of registration, to be computed as follows:

1. Unless otherwise provided in this section, for the first registration, a sum equal to one percent of the manufacturer's list price of the aircraft, not to exceed five thousand dollars.

2. The second year's registration fee is seventy-five hundredths of one percent of the manufacturer's list price of the aircraft; the third year's fee is fifty hundredths of one percent; and the fourth and subsequent year's fee is twenty-five hundredths of one percent. When an aircraft other than a new aircraft is registered in Iowa, the registration fee shall be based upon the number of years the aircraft was previously registered. However, an aircraft shall not be registered for a fee of less than thirty-five dollars or more than five thousand dollars.

3. The registration fee for an aircraft operated in scheduled interstate airline operation, owned by an Iowa person and operated part-time within this state shall be a fee of one hundred dollars. The application for registration shall be supported by such records as the department shall prescribe.

4. Should the department find and determine that no established manufacturer's list price exists for any such aircraft the department is hereby authorized and empowered to determine and fix the fair value of such aircraft which fair value shall be used in lieu of a manufacturers' list price in computing the registration fee for each such aircraft as otherwise provided by this section.

When the fee as so computed results in a fractional part of a dollar, it shall be computed to the nearest dollar.

5. An aircraft thirty years old or older, which is used exclusively for noncommercial purposes, shall be registered as an antique aircraft for a fee of thirty-five dollars.

6. An aircraft, unless exempt under section 328.35, which is not airworthy and is not in flying condition is not subject to registration fees if the owner of the aircraft submits information required by the department. Upon receipt of that information, the department shall issue a certificate that states that the registration fee has not been paid and that the aircraft shall not use the airports or the air space overlying the state until the fee has been paid.

7. The registration fee for a helicopter used exclusively as an air ambulance is one thousand dollars.

8. An aircraft owned and operated by an aviation business located at a publicly owned, public use airport and providing, under agreement with the governing body of the airport, a specified minimum level of aviation services to the general public, shall be registered for a fee of one hundred dollars.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.21]

88 Acts, ch 1063, §3 – 5; 90 Acts, ch 1063, §1 – 4; 98 Acts, ch 1182, §1 – 3; 2002 Acts, ch 1112, §6

Subsection 6 amended

328.22 Used aircraft. Repealed by 98 Acts, ch 1182, § 7.

328.23 Credit on registration fees. Repealed by 88 Acts, ch 1063, § 13.

328.24 Refunds of fees.

If, during the year for which an aircraft, except nonresident aircraft used for the application of herbicides and pesticides, was registered and the required fee paid the aircraft is destroyed by fire or accident or junked, and its identity as an aircraft entirely eliminated, or it is removed and continuously used beyond the boundaries of the state, then the owner in whose name it was registered at the time of destruction, dismantling, or removal from the state shall return the certificate of registration to the department within ten days and make affidavit of the destruction, dismantling, or removal and make claim for the refund. The refund shall be paid from the general fund of the state.

The registration fee for the unexpired portion of the year shall be refunded pro rata to the nearest full calendar month, except that a refund shall not be allowed if the unused portion of the fee is less than thirty-five dollars per aircraft.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.24]

88 Acts, ch 1063, §6; 94 Acts, ch 1107, §66

328.25 Fees in lieu of taxes.

The registration fees imposed by this chapter upon aircraft shall be in lieu of all taxes, general or local, except state sales or use tax, to which aircraft might otherwise be subject.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.25]

328.26 Application for registration.

Every application for registration pursuant to sections 328.19 and 328.20 shall be made upon such forms, and shall contain such information, as the department may prescribe, and every application shall be accompanied by the full amount of the registration fee.

When an aircraft is registered to a person for the first time the fee submitted to the department shall include the tax imposed by section 422.43 or section 423.2 or evidence of the exemption of the aircraft from the tax imposed under section 422.43 or 423.2.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.26]

88 Acts, ch 1205, §18; 96 Acts, ch 1152, §23; 98 Acts, ch 1182, §4

328.27 Issuance of certificates.

The department shall issue, upon receipt of proper application and fee for registration, a certificate of registration which shall be numbered and recorded by the department, shall state the name and address of the person to whom it is issued, shall be titled with the designation of the class of registrant covered, and shall contain other information as the department may prescribe including, in the case of aircraft, a description of the aircraft. A certificate of registration expires at midnight on the last day of the twelfth month of the registration year.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.27]

88 Acts, ch 1063, §7; 2002 Acts, ch 1112, §7

Section amended

328.28 Operation under special certificate.

1. A manufacturer or dealer owning an aircraft otherwise required to be registered under this chapter may operate the aircraft for purposes of transporting, testing, demonstrating, or selling the aircraft without registering the aircraft, upon condition that a special certificate be obtained by the owner as provided in this section and sections 328.29 through 328.33.

2. A transporter may operate an aircraft described in subsection 1 solely for the purpose of delivery upon obtaining a special certificate issued to the transporter as provided in this section and sections 328.29 through 328.33.

3. The provisions of this section and sections 328.29 through 328.33 shall not apply to aircraft owned by a manufacturer, transporter, or dealer which are used for hire or principally for transportation of persons and property, aside from the transporting of the aircraft itself, or testing or demonstrating thereof.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.28]

2002 Acts, ch 1112, §8

Section amended

328.29 Application for special certificate — fee.

A manufacturer, transporter, or dealer may, upon payment of a one hundred dollar fee, make application to the department upon such forms as the department may prescribe for a special certificate. The applicant shall also submit such reasonable proof of the applicant's status as a bona fide manufacturer, transporter, or dealer as the department may require. Dealers in new aircraft shall furnish satisfactory evidence of a valid franchise with the manufacturer or distributor of such aircraft authorizing such dealership.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.29]

90 Acts, ch 1063, §5; 2002 Acts, ch 1112, §9

Section amended

328.30 Issuance of special certificate.

The department upon granting an application shall issue to the applicant a special certificate containing the applicant's name, address, and other information as the department may prescribe.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81,

§328.30]

90 Acts, ch 1063, §6; 2002 Acts, ch 1112, §10
Section amended

328.31 Special certificates — inventory removals or additions. Repealed by 2002 Acts, ch 1112, § 15.

328.32 Expiration of special certificate.

A special certificate expires at midnight on June 30, and a new special certificate for the ensuing year may be obtained by the person to whom the expired special certificate was issued, upon application to the department and payment of the fee provided in section 328.29.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.32]

88 Acts, ch 1063, §8; 2002 Acts, ch 1112, §11
Section amended

328.33 Records required.

A manufacturer, transporter, or dealer shall keep a written record of the aircraft in the manufacturer's, transporter's, or dealer's inventory, which records shall be open to inspection of any peace officer, or any officer or employee of the department.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.33]

2002 Acts, ch 1112, §12
Section amended

328.34 Grounds for refusing, revoking or suspending certificates.

The department may refuse to issue, or may revoke or suspend a certificate of registration or special certificate for any one, or any combination, of the following reasons:

1. That the application contains any false or fraudulent material statement, or that the applicant has failed to furnish required information or reasonable additional information requested, or that the applicant is not entitled to registration of the aircraft under this chapter.

2. That the department has reasonable ground to believe that the aircraft is a stolen or embezzled aircraft, or that granting of registration would constitute a fraud against the rightful owner.

3. That the required fee has not been paid.

4. That the department has reasonable ground to believe that fraudulent use, against the state or any municipality or citizen thereof, is being made of such certificate of registration or special certificate.

5. That the person making application for, or holding, the certificate is not certificated or licensed by the government of the United States or any authorized agency thereof, pursuant to the laws of the United States or any rules or regulations promulgated thereunder, to do the acts for which the person has been, or seeks to be, registered as performing, or to perform, pursuant to the provisions of this chapter.

6. That the aircraft registered, or for which application for registration is made, is not certificated or licensed for operation by the government of the United States or any authorized agency thereof, pursuant to the laws of the United States or any rules or regulations promulgated thereunder.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.34]

328.35 Exceptions to registration requirements.

1. The provisions of sections 328.19 and 328.20 shall not apply to:

a. An aircraft which has been registered by a foreign country with which the United States has a reciprocal agreement covering the operations of registered aircraft.

b. An aircraft which is owned by a resident of this state but which is continuously located and operated beyond the boundaries of the state.

c. Any airport, landing area, or other air navigation facility owned or operated by the federal government within this state.

d. A lighter than air aircraft that is not engine driven.

e. An aircraft which is displayed in a museum.

f. An aircraft in the inventory of a manufacturer, transporter, or dealer who has a special certificate issued by the department and the special certificate is in effect.

2. No registration is required for an airport maintained for private use.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.35]

90 Acts, ch 1063, §8; 93 Acts, ch 87, §10, 11; 2000 Acts, ch 1168, §3; 2002 Acts, ch 1112, §13
Subsection 1, NEW paragraph f

328.36 Deposit and use of revenues.

All moneys received by the department pursuant to section 328.21 or other sections of this chapter and those moneys remaining after the cost of administering the aviation fuel tax fund as provided in section 452A.82 shall be deposited into the general fund of the state and shall be subject to the requirements of section 8.60.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.36]

88 Acts, ch 1205, §19; 91 Acts, ch 260, §1229; 93 Acts, ch 131, §16; 94 Acts, ch 1107, §67

328.37 Operations unlawful without certificate.

Except as provided in section 328.35, it is unlawful for a person to operate, or cause or authorize to be operated, a civil aircraft, airport, or landing area in this state, unless there has been issued for the aircraft or to the airport or landing area an ap-

propriate certificate of registration by the department and the certificate is in effect.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.37]

88 Acts, ch 1063, §9; 2002 Acts, ch 1112, §14
Section amended

328.38 Exhibition of certificates.

The certificate of registration or special certificate issued by the department or any agency of another state (unless the requirement therefor is excepted by the provisions of this chapter) shall, as to an airperson or aeronautics instructor, be kept in that person's personal possession whenever engaging in aeronautics; as to an aircraft be conspicuously displayed therein; as to a landing area be conspicuously displayed in the office of the person in charge thereof; as to an air school be conspicuously displayed in the principal office thereof; and as to a navigation facility be conspicuously displayed in the office of the person responsible for the operation thereof; and must be presented for inspection upon demand of any passenger, peace officer, authorized member, official, or employee of the department or any official, manager, or person in charge of any landing area in this state where landing is made.

[C31, 35, §8338-c3, -c5; C39, §**8338.16, 8338.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.38]

328.39 Order of department — review.

In any case where the department refuses to issue a certificate of registration or special certificate, or in any case where it shall issue any order requiring certain things to be done, or revoking or suspending any certificate, it shall set forth its reasons and shall state the requirements to be met before such certificate will be issued or such order will be modified or changed. Any order made by the department pursuant to the provisions of this chapter shall be served upon the interested persons by certified mail or in person.

Any order of the department or any refusal to issue, revocation or suspension of any certificate shall be subject to judicial review in accordance with chapter 17A.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.39]

328.40 Penalties.

Any person who violates any of the provisions of this chapter, or who makes any material false statement or representation in any application or statement filed with the department as required by this chapter or any of the rules and regulations issued pursuant thereto shall be guilty of a fraudulent practice.

[C31, 35, §8338-c8; C39, §**8338.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.40]
See §714.8(10)

328.41 Operating recklessly or while intoxicated.

It shall be unlawful for any person to operate an aircraft in the air space above this state or on the ground or water within this state, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air space above this state or on the ground or water within this state in a careless or reckless manner so as to endanger the life or property of another.

Any person who operates an aircraft in a careless or reckless manner in violation of the provisions of this section shall be guilty of a simple misdemeanor.

Any person who operates any aircraft, while in an intoxicated condition or under the influence of narcotic drugs in violation of this section, shall, upon conviction or a plea of guilty, be guilty of a serious misdemeanor for the first offense, be guilty of an aggravated misdemeanor for the second offense, and be guilty of a class "D" felony for a third offense.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.41]

328.42 Nonresident registration.

Nonresident owners of aircraft operated within this state for the intrastate transportation of persons or property for compensation or the furnishing of services for compensation or for the intrastate transportation of merchandise, shall register each such aircraft and pay the same fees therefor as is required with reference to like aircraft owned by residents of this state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.42]

328.43 Transfer notice.

Upon the transfer of ownership of any registered aircraft, the owner shall immediately give notice to the department upon the form on the reverse side of the certificate of registration, stating the date of such transfer, the name and post-office address with street number, if in a city, of the person to whom transferred, the number of the registration certificate and such other information as the department may require.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.43]

328.44 Application by new owner.

The purchaser of the aircraft shall join in the notice of transfer to the department and shall, at the same time, make application for a new certificate of registration.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.44]

328.45 New registration upon transfer.

The department, if satisfied of the genuineness and regularity of such transfer, shall register said

aircraft in the name of the transferee and issue a new certificate of registration as provided in this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.45]

328.46 Penalty for delay.

If a transfer of ownership of an aircraft subject to registration is not completed within thirty days of the actual change of possession, a penalty of five dollars shall accrue against the aircraft and a certificate of registration shall not be issued until the penalty is paid.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.46]

96 Acts, ch 1152, §24

328.47 Lien of fees.

All registration fees provided for in this chapter shall be and continue a lien against the aircraft for which said fees are payable until such time as they are paid as provided by law, with any accrued penalties.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.47]

328.48 Attachment of lien.

The lien of the original registration fee attaches at the time it is payable as provided by law and the liens of all renewals of registration attach on the first day of each registration year.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.48]

88 Acts, ch 1063, §10

328.49 Collection of fees.

The collection of all fees and penalties provided for in the chapter may be enforced against any aircraft or they may be collected by suit against the owner who shall remain personally liable therefor until such time as the transfer thereof shall be reported to the department or until such time as the identity of such aircraft as an aircraft has been entirely eliminated and all fees and penalties to such date shall be paid.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.49]

328.50 Penalty on delinquent registration.

On the first day of the second month following the end of an aircraft registration period, a penalty of five percent of the annual registration fee shall be added to a fee not paid by that date, and five percent of the annual registration fee shall be added to the fee on the first day of each following month that the fee remains unpaid; however, the penalty shall not be less than one dollar.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.50]

88 Acts, ch 1063, §11

328.51 Accrual of penalty.

Failure to register shall be considered delinquent and a penalty shall accrue the first day of the month following thirty days from the date of the purchase of a new aircraft or the date an aircraft is brought into the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.51]

90 Acts, ch 1063, §9; 96 Acts, ch 1152, §25

328.52 Waiver.

The department, if it finds that a delinquency in registration was excusable and upon making a record of such finding and the reasons for such delinquency, shall have the power to waive or reduce any of the penalties provided for delinquent registrations.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §328.52]

328.53 Marking public aircraft.

All aircraft owned by the state or a governmental subdivision of the state shall be marked to show ownership in a readily apparent manner. The department may promulgate regulations for marking such aircraft.

[C77, 79, 81, §328.53]

328.54 Biennial report.

The department shall publish biennially an airport directory which shall contain a listing of all airports in the state which are open to public use. The department may charge a reasonable fee based on the cost of publication and distribution to those persons receiving a copy of the directory.

[C77, 79, 81, §328.54]

328.55 Inspections of governmental subdivision airports.

All governmental subdivision airports shall be inspected by the department between July 1, 1976 and July 1, 1977 and shall have one year from the date of inspection to comply with the rules established by the department.

[C77, 79, 81, §328.55]

328.56 State aircraft pool and revolving fund. Repealed by 92 Acts, 2nd Ex, ch 1001, § 507.

328.56A Staggered registration for aircraft — implementation.

To implement the change from fiscal year registration to the registration system provided for in this chapter, aircraft registered after July 1, 1988, shall be registered as follows:

1. Aircraft shall be registered for the registra-

tion year as defined in this chapter. If the registration period is for a period of less than twelve months, the registration fee shall be prorated for the remaining unexpired months, except as provided in subsection 2.

2. The owner of an aircraft for which the registration year begins on August 1 may elect to register the aircraft for a period of one month or thirteen months. The owner of an aircraft for which the registration year begins on September 1 may elect to register the aircraft for a period of two months or fourteen months. The owner of an aircraft for which the registration year begins on October 1 may elect to register the aircraft for a period of three months or fifteen months.

88 Acts, ch 1063, §12

328.57 Short title.

This chapter may be cited as the *"State Aeronautics Act."*

[C46, §328.41; C50, 54, 58, 62, 66, 71, 73, 75, §328.53; C77, 79, 81, §328.57]

CHAPTER 329

AIRPORT ZONING

329.1 Definitions.
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329.1 Definitions.

The following words, terms, and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meaning herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

1. *"Airport"* means any area of land or water designed and set aside for the landing and take-off of aircraft and utilized, or to be utilized, in the interest of the public for such purposes.

2. *"Airport hazard"* means any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 C.F.R. sections 77.21, 77.23 and 77.25 as revised March 4, 1972, and which obstruct the air space required for the flight of aircraft and landing or take-off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

3. *"Airport hazard area"* means any area of land or water upon which an airport hazard might be established if not prevented as provided by this chapter.

4. *"Department"* means the state department of transportation.

5. *"Municipality"* means any county or city of this state.

6. *"Obstruction"* means any tangible, inanimate physical object, natural or artificial, protruding above the surface of the ground.

7. *"Person"* means any individual, firm, copartnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

8. *"Structure"* means any object constructed or installed by humans, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines, including the poles or other structures supporting the same.

9. *"Tree"* means any object of natural growth.

10. The singular shall include the plural, and the plural the singular.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.1]

329.2 Airport hazards contrary to public interest.

It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land and other persons in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared:

1. That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question.

2. That it is necessary in the interest of the public health, safety, and general welfare that the creation or establishment of airport hazards be prevented.

3. That this should be accomplished, to the extent legally possible, by proper exercise of the police power.

4. That the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which municipalities may raise and expend public funds, as an incident to the operation of airports, to acquire land or property interests therein.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.2]

See §657.2(8)

329.3 Zoning regulations — powers granted.

Every municipality having an airport hazard area within its territorial limits may adopt, administer, and enforce in the manner and upon the conditions prescribed by this chapter, zoning regulations for such airport hazard area, which regulations may divide such area into zones and, within such zones, specify the land uses permitted, and regulate and restrict, for the purpose of preventing airport hazards, the height to which structures and trees may be erected or permitted to grow.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.3]

329.4 Extra-territorial airport hazard areas.

When any airport hazard area appertaining to an airport owned or controlled by a municipality is located outside the territorial limits of said municipality:

1. *Ordinances.* The municipality owning or controlling the airport, and the municipality within which the airport hazard area is located, may by duly adopted ordinance adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area.

2. *Petition to district court.* If the municipality within which is located such airport hazard area has failed or refused, within sixty days after demand has been made upon it by any municipality owning or controlling the airport, to adopt reasonably adequate airport zoning regulations under section 329.3, or to join in adopting joint airport zoning regulations as authorized in subsection 1 of this section, the municipality owning or controlling the airport may, upon a resolution of necessity therefor duly adopted by its governing body, petition the district court of the county in which such airport hazard area or any part thereof is located, in the name of the municipality owning or controlling the affected airport, praying that zoning regulations be established for the airport hazard area in question.

3. *Petition — contents.* Such petition shall allege all essential facts showing the necessity for bringing such action, the relief sought including proposed zoning regulations, and the necessity therefor.

4. *Parties.* The parties defendant in such action shall be the municipality in which such airport hazard area is located, and all persons having an apparent or contingent interest in the property located within such area, who may be joined in said action generally as a class.

5. *Procedure.* The action shall be triable in equity and in accordance with general rules of civil procedure, except that such action shall have precedence over any other business of the court except criminal cases, and the court shall set said petition for hearing not less than sixty days nor more than one hundred twenty days from the date it is filed with the clerk of said court.

6. *Notice.* The original notice in such action shall be served upon the municipality in which such airport hazard area is located, and in the same manner as original notice of any other action but not less than thirty days prior to the date set for trial; and upon all other defendants by the publication of said notice in some newspaper or newspapers of general circulation within the area described in the petition, or as near thereto as possible, which publication shall be in the same manner as provided for the publication of other original notices, provided, however, that the last publication thereof shall be not less than thirty days prior to the date set for trial.

7. *Decree and modification.* Upon trial the court may enter decree establishing such zoning regulations as it shall find reasonable and necessary. The court having once taken jurisdiction of such matter shall retain continuing jurisdiction thereof for such subsequent modification as it may deem advisable, upon proper application of interested parties, and due showing made thereunder after such notice to possible adverse parties as the court shall prescribe.

8. *Appeal.* Any person or municipality adversely affected or aggrieved by any findings of the court may appeal therefrom as in other civil actions.

9. *Enforcement.* Following the entry of any final decree by the district court, and unless appeal has been taken therefrom, the zoning regulations established by such decree may be enforced, and violations thereof punished, as provided by section 329.14.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §329.4; 81 Acts, ch 117, §1050]

Service of notice, R.C.P. 1.302 – 1.315

329.5 Prevention of airport hazards.

Any municipality owning or controlling an airport may maintain actions in equity to restrain

and abate as nuisances the creation or establishment of airport hazards appertaining to said airport, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter for any area whether within or without the territorial limits of said municipality.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.5]

See §657.2(8)

329.6 Zoning powers.

If any municipality owning or controlling an airport adjacent to which there is an airport hazard area shall fail or refuse, within sixty days after demand made upon it by the department, to adopt reasonably adequate airport zoning regulations under section 329.3, or to proceed as provided in section 329.4, the department may petition the district court of the county in which such airport hazard area, or any part thereof, is located, in the name of the state, praying that zoning regulations be established for the airport hazard area in question, and the provisions of section 329.4, subsections 3 to 9, shall apply to such actions provided, however, that such municipality shall be joined as a party defendant in any such action.

The department may maintain actions in equity to restrain and abate as nuisances the creation or establishment of airport hazards appertaining to any airport within the state, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.6]

329.7 Relation to comprehensive zoning regulations.

Any municipality which adopts zoning ordinances under chapter 414 or chapter 335 may incorporate therein airport hazard area zoning regulations and administer and enforce them as provided in this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §329.7; 81 Acts, ch 117, §1051]

329.8 Conflicting regulations.

In the event of any conflict between any airport zoning regulations adopted or established under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.8]

329.9 Procedure for adopting zoning regulations — zoning commission.

In adopting, amending, and repealing airport zoning regulations under this chapter the governing body of a city shall follow the procedure in sections 414.4 and 414.6 and the board of supervisors of a county shall follow the procedure in sections 335.6 and 335.8. The commission so appointed shall be known as the airport zoning commission. The airport zoning commission shall consist of two members from each municipality selected by the governing body and one additional member to act as chairperson and to be selected by a majority vote of the members selected by the municipality. The terms of the members of the airport zoning commission shall be for six years excepting that when the board is first created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years. Members may be removed for cause by the appointing authority upon written charges after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which the member was selected.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §329.9; 81 Acts, ch 117, §1052]

329.10 Airport zoning requirements.

1. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not necessary to effectuate the purposes of this chapter.

2. *a.* Airport zoning regulations adopted under this chapter may require, at the municipality's expense, the removal, lowering, or other change or alteration of any structure or tree, or a change in use, not conforming to the regulations when adopted or amended.

b. Airport zoning regulations adopted under this chapter may require a property owner to permit the municipality at its own expense to install, operate, and maintain on the property markers and lights as necessary to indicate to operators of aircraft the presence of the airport hazard.

3. All such regulations may provide that a preexisting nonconforming structure, tree, or use, shall not be replaced, rebuilt, altered, allowed to grow higher, or replanted, so as to constitute a greater airport hazard than it was when the airport zoning regulations or amendments to the regulations were adopted.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.10]

90 Acts, ch 1022, §1

329.11 Variances.

Any person desiring to erect or increase the height of any structure, or to permit the growth of any tree, or otherwise use the person's property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations.

Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of the regulations and this chapter; provided, however, that any such variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter, including the reservation of the right of the municipality, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of the airport hazard.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.11]

329.12 Board of adjustment — creation — powers — duties.

The governing body of any municipality seeking to exercise powers under this chapter shall by ordinance provide for the appointment of a board of adjustment, as provided in section 414.7 for a city, or as provided in section 335.10 for a county. The board of adjustment has the same powers and duties, and its procedure and appeals are subject to the same provisions as established in sections 414.9 to 414.19 for a city, or sections 335.12 to 335.21 for a county.

The concurring vote of a majority of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any regulations adopted pursuant to this chapter or to effect any variance therefrom.

The board of adjustment shall consist of two members from each municipality, selected by the governing body thereof, and one additional member to act as chairperson and to be selected by a majority vote of the members selected by the municipality. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which said member was selected. The terms of the members of the board of adjustment shall be for five years, excepting that when the board shall first be created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §329.12; 81 Acts, ch 117, §1053]

329.13 Administration of airport zoning regulations.

All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency (which may be an agency created by such regulations), or by any official, board, or other existing agency of the municipality adopting the regulations, or of one or both of the municipalities which participated therein, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall not include any of the powers herein delegated to the board of adjustment.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.13]

329.14 Enforcement and remedies.

Each violation of this chapter or of any regulations, order, or rules promulgated pursuant to this chapter, shall constitute a simple misdemeanor and each day a violation continues to exist shall constitute a separate offense.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.14]

329.15 Short title.

This chapter shall be known and may be cited as the *"Airport Zoning Act."*

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.15]

CHAPTER 330

AIRPORTS

330.1 Definition.
330.2 Aviation hangar revolving loan fund.
330.3 Repealed by 72 Acts, ch 1088, §263.
330.4 Joint exercise of powers.
330.5 and 330.6 Repealed by 81 Acts, ch 117, §1097.
330.7 Repealed by 81 Acts, ch 117, §1097.
330.8 Repealed by 53 Acts, ch 149, §1.
330.9 Plans and specifications.
330.10 Repealed by 81 Acts, ch 117, §1097.
330.11 Repealed by 81 Acts, ch 117, §1097.
330.12 Repealed by 81 Acts, ch 117, §1097.
330.13 Federal aid.
330.14 Repealed by 81 Acts, ch 117, §1097.
330.15 Repealed by 81 Acts, ch 117, §1097.
330.16 Repealed by 82 Acts, ch 1104, §61.
330.17 Airport commission — election.
330.18 Notice of election.
330.19 Form of question.
330.20 Appointment of commission — terms.
330.21 Powers — funds.
330.22 Annual report — publishing.
330.23 No restriction on administrative agencies.
330.24 No restrictions on former commissions.

330.1 Definition.

The word *"airport"* as used in this chapter, shall include landing field, airdrome, aviation field, or other similar term used in connection with aerial traffic.

[C31, 35, §5903-c1; C39, §**5903.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.1]

330.2 Aviation hangar revolving loan fund.

An aviation hangar revolving loan fund is established in the office of the treasurer of state under the control of the state department of transportation. Moneys in the fund are appropriated for the purposes set forth in this section. Moneys in the fund shall be expended for loans to provide assistance for the design, construction, or improvement of hangars at general aviation airports in the state. The department shall adopt rules to administer a program for the granting and administration of loans under this section. The department may enter into agreements with general aviation airports for carrying out the purposes of this section. Moneys received as loan repayments shall be credited to the aviation hangar revolving loan fund. Notwithstanding section 8.33, moneys in the aviation hangar revolving loan fund shall not revert to any other fund but shall remain available indefinitely for expenditure under this section.

2000 Acts, ch 1225, §35, 39

330.3 Repealed by 72 Acts, ch 1088, § 263.

330.4 Joint exercise of powers.

Agreements between political subdivisions for joint exercise of any powers relating to airports may provide for the creation and establishment of a joint airport commission which, when so created or established, shall function in accordance with the provisions of sections 330.17 to 330.24 insofar as provided by said agreements.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.4]

330.5 and 330.6 Repealed by 81 Acts, ch 117, § 1097.

330.7 Repealed by 81 Acts, ch 117, § 1097. See § 331.441(2)*"c"*(5), 331.442.

330.8 Repealed by 53 Acts, ch 149, § 1.

330.9 Plans and specifications.

Before an airport is acquired by a city or county, the plans and specifications for it shall be submitted to the state department of transportation which shall require that they show the legal description and plat of the site, distance from the nearest post office and railroad station, location and type of highways, location and type of obstructions on and near the site, kind of soil and subsoil, costs and details of grading and draining, and location of proposed runways, hangars, buildings, and other structures.

The department shall issue approval of the plans and specifications if it finds that they are in substantial accord with the rules promulgated by the department or with the regulations of the federal aviation administration or other department of the federal government having general supervision of air navigation as it relates to plans and specifications for airports.

[C31, 35, §5903-c7; C39, §**5903.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.9]

83 Acts, ch 101, §75

330.10 Repealed by 81 Acts, ch 117, § 1097. See § 331.441(2)*"c"*(5), 331.442.

330.11 Repealed by 81 Acts, ch 117, § 1097. See § 331.302.

330.12 Repealed by 81 Acts, ch 117, § 1097. See § 331.212(2)*"d"*.

330.13 Federal aid.

Any subdivision of government is authorized to accept, receive, and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, and other air navigation facilities, and sites for airports and other navigation facilities, and to comply with the laws of the United States and any regulations for the expenditure of federal moneys upon airports and other air navigation facilities.

All preapplications for funds authorized to be received pursuant to this section by any governmental subdivision, commission, or authority, whether acting alone or jointly with another governmental or private entity, shall be approved by the state transportation commission prior to being submitted to any federal agency or department. Approval shall be based on criteria consistent with the Iowa aviation system plan. However, this paragraph does not apply to preapplications from airports which receive federal primary commercial service entitlement funds if the airport making the preapplication files a copy of the preapplication with the state department of transportation.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.13]

93 Acts, ch 87, §12

330.14 Repealed by 81 Acts, ch 117, § 1097. See § 331.461(1)*"a"*.

330.15 Repealed by 81 Acts, ch 117, § 1097.

330.16 Repealed by 82 Acts, ch 1104, § 61. See § 331.441(2)*"c"*(5), 331.446, 331.447.

330.17 Airport commission — election.

The council of any city or county which owns or acquires an airport may, and upon the council's receipt of a valid petition as provided in section 362.4, or receipt of a petition by the board of supervisors as provided in section 331.306 shall, at a regular city election or a general election if one is to be held within seventy-four days from the filing of the petition, or otherwise at a special election called for that purpose, submit to the voters the question as to whether the management and control of the airport shall be placed in an airport commission. If a majority of the voters favors placing the management and control of the airport in an airport commission, the commission shall be established as provided in this chapter.

The management and control of an airport by an airport commission may be ended in the same manner. If a majority of the voters does not favor continuing the management and control of the airport in an airport commission, the commission shall stand abolished sixty days from and after the date of the election, and the power to maintain and operate the airport shall revert to the city or county.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §330.17; 81 Acts, ch 117, §1054]

91 Acts, ch 129, §24

330.18 Notice of election.

Notice of the election shall be given by publication in a newspaper of general circulation in the city, subject to section 362.3 or in the county, subject to section 331.305.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §330.18; 81 Acts, ch 117, §1055]

330.19 Form of question.

The question to be submitted shall be in the following form:

Shall the City (or County) of ..... place (or continue) the management and control of its airport (or airports) in an Airport Commission?

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §330.19; 81 Acts, ch 117, §1056]

330.20 Appointment of commission — terms.

When a majority of the voters favors airport control and management by a commission, the governing body shall, within ten days, appoint an airport commission of three or five resident voters. The governing body shall by ordinance set the commencement dates of office and the length of the terms of office which shall be no more than six and no less than three years. The terms of the first appointees of a newly created commission shall be staggered by length of term and all subsequent appointments shall be for full terms. The governing body shall also provide for staggered terms of office for the appointees of commissions existing on July 1, 1991. Vacancies shall be filled as original appointments are made. Members of the airport commission shall serve without compensation. Each commissioner shall execute and furnish a bond in an amount fixed by the governing body and filed with the city clerk or county auditor. The commission shall elect from its own members a chairperson and a secretary who shall serve for a term as the commission shall determine.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.20]

83 Acts, ch 123, §131, 209; 91 Acts, ch 76, §1

330.21 Powers — funds.

The commission has all of the powers in relation to airports granted to cities and counties under state law, except powers to sell the airport. The commission shall annually certify the amount of tax within the limitations of state law to be levied for airport purposes, and upon certification the governing body may include all or a portion of the amount in its budget.

All funds derived from taxation or otherwise for airport purposes shall be under the full and absolute control of the commission for the purposes prescribed by law, and shall be deposited with the county treasurer or city clerk to the credit of the airport commission, and shall be disbursed only on the written warrants or orders of the airport commission, including the payment of all indebtedness arising from the acquisition and construction of airports and their maintenance, operation, and extension.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §330.21; 81 Acts, ch 117, §1057; 82 Acts, ch 1104, §10]

330.22 Annual report — publishing.

The airport commission shall immediately after the close of each municipal fiscal year, file with the city clerk or county auditor a detailed and audited written report of all money received and disbursed by the commission during said fiscal year, and shall publish a summary thereof in an official newspaper.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.22]

330.23 No restriction on administrative agencies.

This chapter does not prohibit a city from establishing an administrative agency pursuant to chapter 392 to manage and control all or part of its airport in lieu of an airport commission under this chapter. A city may abolish an airport commission

and provide for the management and control of its airport by an administrative agency.

Sections 330.17 through 330.20 do not apply to the abolition of an airport commission by a city pursuant to this section for the purpose of establishing an administrative agency pursuant to chapter 392 to manage and control all or part of its airport. The commission shall stand abolished sixty days from the date of the city council's final approval abolishing the airport commission pursuant to this section, unless the council designates a different effective date.

88 Acts, ch 1229, §1; 89 Acts, ch 182, §1

330.24 No restrictions on former commissions.

Nothing in sections 330.17 to 330.22 shall be interpreted as limiting or affecting airport commissions of cities in the above classification which have already been in existence and operation prior to January 1, 1941, under the provisions of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.24]

CHAPTER 330A

AVIATION AUTHORITIES

330A.1 Citation.
330A.2 Definitions.
330A.3 Creation.
330A.4 Committee. Repealed by 89 Acts, ch 182, §12.
330A.5 Board.
330A.6 Creation of an authority.
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330A.9 Purposes and powers — bonds and notes.
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330A.13 Acquisition of lands and property.
330A.14 Use of aviation facilities.
330A.15 Tax for purposes of an authority.
330A.16 Exemption from taxation.
330A.17 Statute complete and additional authority.
330A.18 Co-operation between municipalities and authorities.
330A.19 Eligibility as investments and security for public funds.
330A.20 Dissolution of an authority.
330A.21 Transition.

330A.1 Citation.

This chapter shall be known and may be cited as the *"Aviation Authority Act."*

[C71, 73, 75, 77, 79, 81, §330A.1]

330A.2 Definitions.

The following terms whenever used, or referred to, in this chapter shall have the following meanings, except in those instances where the context clearly indicates otherwise:

1. The term *"authority"* shall mean any aviation authority created pursuant to the provisions of this chapter.

2. The term *"aviation facilities"* shall mean and include airports, buildings, structures, terminal buildings, or space hangars, lands, warehouses, or other aviation facilities of any kind or nature, or any other facilities of any kind or nature related to or connected with said airports and other aviation facilities which an authority is authorized by law to construct, acquire, own, lease, or operate, including but not limited to parking facilities, restaurants, and related facilities together with all fixtures, equipment, and property, real or personal, tangible or intangible, necessary, appurtenant, or incidental thereto.

3. The term *"board"* shall mean the governing body of an authority.

4. The term *"federal government"* shall mean and include the United States of America, the president of the United States of America, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.

5. The term *"member municipality"* shall mean any municipality which shall join in the creation of an aviation authority as provided herein.

6. The term *"municipality"* shall mean any county or city of this state, and any political subdivision of any state whose borders are at any point conterminous with those of this state and whose laws shall permit the entry of and submission by such political subdivision to an authority created and operating pursuant to the provisions of this chapter.

7. The term *"person"* shall mean any individual, firm, partnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or similar representa-

tive thereof.

8. The term *"state"* shall mean the state of Iowa.

9. The term *"state government"* shall mean and include the state, the governor of the state, and any department thereof, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the state, exclusive of counties and cities.

[C71, 73, 75, 77, 79, 81, §330A.2]

330A.3 Creation.

One or more municipalities may provide by ordinance for the creation of an airport authority in the manner and for the purposes provided under this chapter. The authority shall be created by agreement adopted by ordinance between two or more municipalities, or by ordinance of a single municipality. An authority is a public instrumentality and public body corporate to be known as ". . . . . Airport Authority". An airport authority may exercise its jurisdiction, powers, and duties as set forth in this chapter. Provisions for the disposition of the authority's rights and properties in the event of dissolution of the authority shall be set forth in the agreement or ordinance creating the authority.

[C71, 73, 75, 77, 79, 81, §330A.3]

89 Acts, ch 182, §2

330A.4 Committee. Repealed by 89 Acts, ch 182, § 12.

330A.5 Board.

Each authority shall have a board of an odd number of three or more members and the board shall be the governing body of the authority exercising all of the rights, duties, and powers conferred by this chapter upon the authority. The board members shall be appointed by the governing bodies of the member municipalities. The number to be appointed by each municipality shall be provided for in the agreement or ordinance creating the authority. However, an elected official or full-time paid employee of a member municipality is not eligible for appointment to the board. Board members shall serve for terms of four years at the pleasure of the municipality appointing the members except members of the initial board shall determine their respective terms by lot so the terms of one-half of the members expire at the end of two years. The remaining initial terms shall expire at the end of four years. Each member of the board shall qualify by taking an oath to faithfully perform the duties of office. Within forty-five days after a vacancy occurs on the board by death, resignation, change of residence or removal of a member, or from any other cause, the successor of the member shall be appointed by the member municipality represented by the vacancy and shall serve until the term expires. The board shall, within ten days after its appointment, organize by electing a chairperson, a secretary, and a treasurer, each for a term of two years. The treasurer shall execute an adequate surety bond in a penal sum to be fixed by the authority, conditioned upon the faithful performance of the duties of office, the premium on which shall be paid by the authority. Board members and officers shall serve until their successors are duly elected and qualified. A salary shall not be paid to a board member; however, each board member shall be reimbursed for actual expenses incurred in the performance of the member's duties. All actions by an authority require the affirmative vote of a majority of the board of the authority.

[C71, 73, 75, 77, 79, 81, §330A.5]

89 Acts, ch 182, §3

330A.6 Creation of an authority.

1. Whenever the governing body of any municipality shall desire to participate in the creation of an authority it shall adopt a resolution signifying its intention to do so and shall publish said resolution at least one time in a newspaper of general circulation in such municipality giving notice of a hearing to be held on the question of the municipality's entry into such authority. Such resolution shall be published at least fourteen days prior to the date of hearing, and shall contain therein the following information:

a. Intention to join in the creation of an authority pursuant to the provisions of this chapter.

b. The names of other municipalities which have expressed their intention to join in the creation of the authority.

c. Number of board members to be appointed by the municipality.

d. Name of authority.

e. Place, date and time of hearing.

2. After the hearing, and if in the best interests of the municipality, the municipality shall enact an ordinance authorizing the creation of the authority.

[C71, 73, 75, 77, 79, 81, §330A.6]

89 Acts, ch 182, §4, 5

330A.7 Withdrawal.

1. One or more of the member municipalities may withdraw from the authority, except that a municipality shall not withdraw after any obligations have been incurred by the authority unless satisfactory provision has been made by the withdrawing municipality for the payment of its portion of the outstanding obligations. If an authority has been created pursuant to this chapter, a municipality which did not join in the original agreement may subsequently join the authority with the approval of the member municipalities.

2. A municipality wishing to withdraw from or to become a member of an existing authority shall signify its intention by resolution and shall publish the resolution at least one time in a newspaper

of general circulation in the municipality giving notice of a hearing to be held on the question of withdrawing or joining and its intention to withdraw or join. The resolution shall be published at least fourteen days prior to the date of the hearing. A withdrawing municipality shall state in the resolution how it intends to pay its portion of the outstanding obligations of the authority, if any. A joining municipality shall state in the resolution the information required in section 330A.6. A copy of the resolution shall be certified to the authority by the municipality at least fourteen days in advance of the hearing. The board shall by resolution indicate whether a satisfactory provision has been made for the payment of the outstanding obligations of the authority, as required under subsection 1. After the hearing and if the outstanding obligations of the authority have been adequately provided for by the municipality, the municipality may enact an ordinance to withdraw from or join the authority.

3. An application to withdraw or join shall be submitted to the authority and shall in all cases be executed by the proper officers of the withdrawing or incoming municipality under its municipal seal and accompanied by a certified copy of the authorizing ordinance, and shall be joined in by the proper officers of the governing body of the authority.

4. A municipality that joins initially or subsequently or withdraws shall file notice of such joining or withdrawal with the secretary of state and the county recorder in which such municipality is located. Upon its creation, the authority shall file with the secretary of state and with the county recorder wherein each municipality or part thereof is located a copy of the agreement creating the authority.

[C71, 73, 75, 77, 79, 81, §330A.7]
89 Acts, ch 182, §6

330A.8 Purposes and powers — general.

An authority is hereby granted the following rights and powers, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the powers enumerated in this chapter:

1. To sue and be sued in all courts.
2. To adopt, use, and alter at will a seal.
3. To acquire, hold, construct, improve, maintain, operate, own, and lease as lessor or lessee, aviation facilities, provided that no lease of the authority's property whose primary term is in excess of three years shall be entered by the authority until after publication of notice of the terms of the proposed lease once in the county in which said property is located, in the manner provided by section 618.14, together with the date, time, and place of a public hearing which shall be held not less than fourteen days thereafter, at which the authority will hear proponents for and objectors against the lease and may, thereafter, cause it to be executed.
4. To acquire, purchase, hold, own, operate, and lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of an authority and this chapter, and to sell, mortgage, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it.
5. To enter into and make leases, either as lessee or lessor, for such period or periods of time and under such terms and conditions as an authority shall determine. Such leases may be entered into for buildings, structures, or facilities constructed or acquired or to be constructed or acquired by an authority, or may be entered into for lands owned by an authority where the lessee of said lands agrees as a consideration for said lease to construct or acquire buildings, structures, or facilities on said lands which will become the property of an authority under such terms, rentals, and other conditions as the authority shall deem proper.
6. To acquire by purchase, lease, or otherwise, and to construct, improve, maintain, repair, and operate aviation facilities.
7. To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the services and facilities of aviation facilities, or any part thereof, at reasonable and uniform rates to be determined exclusively by an authority for the purposes of carrying out the provisions of this chapter.
8. To borrow money, make and issue negotiable bonds, certificates, refunding bonds, and other obligations (herein called *"bonds"*) and notes of an authority and to secure the payment of such bonds or any part thereof by a pledge of any or all of an authority's revenues, rates, fees, rentals, or other charges, and any other funds which it has a right to, or may hereafter have the right to pledge for such purposes (hereafter sometimes referred to as *"revenues"*), and to mortgage its property as security for the payment of such bonds; and in general, to provide for the security of said bonds and the rights and remedies of the holders thereof. Such bonds may be issued to finance either one or more or a combination of aviation facilities and the revenues of any one or more aviation facilities may, subject to any prior rights of bondholders, be pledged for any one or more or a combination of aviation facilities. Any revenues from existing aviation facilities theretofore constructed or acquired pursuant to this chapter or existing laws, or existing aviation facilities constructed or acquired by an authority from any source may be pledged for any one or more or a combination of aviation facilities financed under this chapter, regardless of whether or not such existing aviation facilities are then being improved or financed by the proceeds of the bonds to be issued to finance the one or more or the combination of aviation facilities for which such revenues of such existing

aviation facilities are to be pledged.

9. To make contracts of every kind and nature and to execute all instruments necessary or convenient for the carrying on of its business.

10. Without limitation of the foregoing, to borrow money and accept grants, contributions or loans from, and to enter into contracts, leases, or other transactions with, municipal, county, state, or federal government.

11. To have the power of eminent domain, such power to be exercised in the manner provided by law for municipal corporations of this state.

12. To pledge, hypothecate, or otherwise encumber all or any part of the revenues, rates, fees, rentals, or other charges or receipts of an authority as security for all or any of the obligations issued by an authority.

13. To pledge, mortgage, hypothecate, or otherwise encumber all or any part of the property, real or personal, of the authority as security for all or any of the obligations issued by an authority.

14. To employ technical experts necessary to assist an authority in carrying out or exercising any powers granted hereby, including but not limited to architects, engineers, attorneys, fiscal advisors, fiscal agents, investment bankers, and aviation consultants.

15. To do all acts and things necessary or convenient for the promotion of its business and the general welfare of an authority, in order to carry out the powers granted to it by this chapter or any other laws. An authority shall have no power at any time or in any manner to pledge the taxing power of the state or any political subdivision or agency thereof, nor shall any of the obligations issued by an authority be deemed to be an obligation of the state or any political subdivision or agency thereof secured by and payable from ad valorem taxes thereof, nor shall the state or any political subdivision or agency thereof be liable for the payment of principal of or interest on such obligations except from the special funds provided for in this chapter.

16. To designate employees upon whom are conferred all the powers of a peace officer as defined in section 801.4. The maximum age for a person designated as a peace officer pursuant to this subsection is sixty-five years of age.

[C71, 73, 75, 77, 79, 81, §330A.8]

89 Acts, ch 182, §7; 98 Acts, ch 1183, §111

330A.9 Purposes and powers — bonds and notes.

1. The bonds issued by an authority pursuant to this chapter shall be authorized by resolution of the board and shall be either term or serial bonds, shall bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding that permitted by chapter 74A payable semiannually, be in such denominations, be in such form, either coupon or fully registered, shall carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, within or without the state, be subject to such terms of redemption and be entitled to such priorities on the revenues, rates, fees, rentals, or other charges or receipts of the authority as the resolution or any subsequent resolution may provide. The bonds shall be executed either by manual or facsimile signature by the officers as an authority shall determine, provided that the bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to the bonds shall bear the facsimile signature or signatures of the officer or officers as shall be designated by an authority and the bonds shall have the seal of the authority, affixed, imprinted, reproduced, or lithographed thereon, all as may be prescribed in the resolution or resolutions. The bonds may be sold at public or private sale at the price or prices as the authority shall determine to be in the best interests of the authority. However, the net interest cost shall not exceed that permitted by chapter 74A. Pending the preparation of definitive bonds, interim certificates or temporary bonds may be issued to the purchaser or purchasers of the bonds, and may contain terms and conditions as the authority may determine.

2. An authority shall have the power, at any time and from time to time after the issuance of bonds shall have been authorized, to borrow money for the purposes for which the bonds are to be issued in anticipation of the receipt of the proceeds of the sale of the bonds and within the authorized maximum amount of the bond issue. Any loan shall be paid within three years after the date of the initial loan. Bond anticipation notes shall be issued for all moneys borrowed under this section, and the notes may be renewed from time to time, but all renewal notes shall mature within the time above limited for the payment of the initial loan. The notes shall be authorized by resolution of the board and shall be in such denomination or denominations, shall bear interest at such rate or rates not exceeding the maximum rate permitted by the resolution authorizing the issuance of the bonds, shall be in such form and shall be executed in such manner, all as the authority shall prescribe. The notes may be sold at public or private sale or, if the notes shall be renewal notes, they may be exchanged for notes then outstanding on such terms as the board shall determine. The board may, in its discretion, retire the notes from the revenues derived from its aviation facilities or from other moneys of the authority which are lawfully available or from a combination of each, in lieu of retiring them by means of bond proceeds. However, before the retirement of the notes by any means other than the issuance of bonds it shall amend or repeal the resolution authorizing the issuance of the bonds, in anticipation of the proceeds of the sale of which the notes were issued, so as to

reduce the authorized amount of the bond issue by the amount of the notes retired. The amendatory or repealing resolution takes effect upon its passage.

3. Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to:

a. The pledging of all or any part of the revenues, rates, fees, rentals, or other charges or receipts of an authority derived by an authority from all or any of its aviation facilities.

b. The construction, improvement, operation, extensions, enlargement, maintenance, repair, or lease of such aviation facilities and the duties of an authority with reference thereto.

c. Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the federal government or the state government or the county or any municipality therein, may be applied.

d. The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the aviation facilities of an authority, or any part thereof.

e. The setting aside of reserves or sinking funds or repair and replacement funds or other funds and the regulation and disposition thereof.

f. Limitations on the issuance of additional bonds.

g. The terms and provisions of any deed of trust, mortgage, or indenture securing the bonds or under which the same may be issued.

h. Any other or additional agreements with the holders of the bonds as are customary and proper and which in the judgment of an authority will make said bonds more marketable.

4. An authority may enter into any deeds of trust, mortgages, indentures, or other agreements, with any bank or trust company or any other lender within or without the state as security for such bonds, and may assign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of an authority thereunder. Such deeds of trust, mortgages, indentures, or other agreements, may contain such provisions as may be customary in such instruments, or, as an authority may authorize, including, but without limitation, provisions as to:

a. The construction, improvement, operation, leasing, maintenance, and repair of the aviation facilities and duties of an authority with reference thereto.

b. The application of funds and the safeguarding and investment of funds on hand or on deposit.

c. The appointment of consulting engineers or architects and approval thereof by the holders of the bonds.

d. The rights and remedies of said trustee and the holders of the bonds.

e. The terms and provisions of the bonds or the resolution authorizing the issuance of the same.

Any of the bonds issued pursuant to this chapter are, and are hereby declared to be, negotiable instruments, and shall have all the qualities and incidents of negotiable instruments.

[C71, 73, 75, 77, 79, 81, §330A.9]
93 Acts, ch 118, §1

330A.10 Funds of an authority.

Moneys of an authority shall be paid to the treasurer of the authority who shall not commingle said moneys with any other moneys, but shall deposit them in a separate account or accounts. The moneys in said accounts shall be paid out on check of the treasurer on requisition of the chairperson of the authority, or of such other person, or persons, as the authority may authorize to make such requisition. Notwithstanding the aforementioned provisions an authority is hereby authorized, and shall have the right, to deposit any of its rates, fees, rentals, or other charges, receipts or income with any bank or trust company within the state and to deposit the proceeds of any bonds issued hereunder with any bank or trust company within the state, all as may be provided in any agreement with the holders of bonds issued hereunder.

[C71, 73, 75, 77, 79, 81, §330A.10]

330A.11 Transfer of existing facilities to authority.

1. Any municipality, airport commission, authority, or person may, and they are hereby authorized to sell, lease, lend, grant, or convey to the authority, any aviation facilities or any part or parts thereof, or any interest in real or personal property, which are within or without geographical boundaries of one or more of the municipal members and which may be used by an authority in the construction, improvement, maintenance, leasing, or operation of any aviation facilities. Any municipality, airport commission, authority, or person is additionally authorized hereby to transfer, assign, and set over to an authority any contract or contracts which may have been awarded by said municipality, airport commission, authority, or person for the construction of aviation facilities not begun or, if begun, not completed.

2. The proposed action of an authority, and the proposed agreement to acquire, shall be approved by the governing body of the owner of the aviation facilities. Whenever the governing body of any municipality, airport commission, or authority, shall desire to sell, lease, lend, grant, or convey to the authority, any aviation facilities or any part or parts thereof, as aforesaid, it shall adopt a resolution signifying its intention to do so and shall publish said resolution at least one time in a newspaper of general circulation in said municipality and in a newspaper or newspapers, if necessary, of general circulation of the area served by said airport commission or authority giving notice of a hearing to be held on the question of said sale, lease, loan, grant, or conveyance. Such resolution shall be

published at least fourteen days prior to the date of hearing. After the hearing and if in the public interest, said municipality shall enact an ordinance authorizing said sale, lease, loan, grant, or conveyance and said airport commission or authority shall pass a resolution authorizing said sale, lease, loan, grant, or conveyance.

3. An owner, transferring existing facilities to an authority under the provisions of this section must notify the authority of and make provision in the transfer documents for, where necessary, existing rights, liens, securities, and rights of reentry belonging to the state and federal government.

4. This section, without reference to any other law, shall be deemed complete authority for the acquisition by agreement, of aviation facilities as defined in this chapter, any provision of other laws to the contrary notwithstanding, and no proceedings or other action shall be required except as herein prescribed.

[C71, 73, 75, 77, 79, 81, §330A.11]

330A.12 Award of contract.

All contracts entered into by an authority for the construction, reconstruction, and improvement of aviation facilities shall be entered into pursuant to and shall comply with chapter 73A. However, where an authority determines an emergency exists, it may enter into contracts obligating the authority for not in excess of twenty-five thousand dollars per emergency without regard to the requirements of chapter 73A and the authority may proceed with the necessary action as expeditiously as possible to the extent necessary to resolve such emergency.

[C71, 73, 75, 77, 79, 81, §330A.12]

330A.13 Acquisition of lands and property.

An authority shall have the power to acquire, within or without the geographical boundaries of the member municipalities, by purchase or eminent domain proceedings, either the fees or such rights, title, interest, or easement in such lands and property, including but not limited to air rights and avigation easements, as the authority may deem necessary for any of the purposes of this chapter. The right of eminent domain herein conferred shall be exercised by the authority in the manner provided by law, as though the authority were a municipal corporation.

[C71, 73, 75, 77, 79, 81, §330A.13]

330A.14 Use of aviation facilities.

The use of aviation facilities and the services and facilities thereof, by an authority and the operation of its business shall be subject to the rules and regulations, from time to time, adopted by the authority and applicable federal laws and regulations; provided, however, that an authority shall not be authorized to do anything which will impair the security of the holders of the obligations of the authority or violate any agreements with them or for their benefit.

[C71, 73, 75, 77, 79, 81, §330A.14]

330A.15 Tax for purposes of an authority.

The governing body of a municipality after joining an authority and after determination by the authority pursuant to planning studies may by ordinance provide for the assessment of an annual levy not to exceed twenty-seven cents per one thousand dollars of assessed value upon all the taxable property in such municipality for a period not to exceed forty years as shall be agreed by the member municipalities or for such longer time as any revenue bonds of an authority shall be outstanding or until such municipality withdraws from the authority, whichever is sooner. A county which is a member municipality may levy such tax only upon the property in the unincorporated area of such county. Such tax may be levied in excess of any tax limitation imposed by statute. Such ordinance shall be enacted only after publication of notice and hearing in the manner prescribed in section 330A.6. Upon such enactment, a copy thereof shall be certified to the authority. An authority shall have the power to enforce the collection of such levy by mandamus or other appropriate remedy and such levy shall be collected in the manner other taxes are collected and allocated and paid to the authority for the exclusive and proper use of the authority, including but not limited to the purchase of land, and the acquiring, establishing, constructing, enlarging, operating, and maintaining of aviation facilities. In addition to the purposes listed above, moneys in said fund may be pledged to the payment of the principal, interest, and redemption premium, if any, on bonds of the authority. Money paid to the authority pursuant to this section shall be deposited by the authority in a special trust fund to be called the "..... *Authority Capital Reserve Fund*". Member municipalities may, in addition, deposit money from current operating funds in the capital reserve fund pursuant to agreement for the purpose of providing initial funds to the authority to be used for funding studies, plans, and other expenses of an authority pending receipt of funds from the annual levy herein authorized. Any such money so deposited shall be considered a gift and is not repayable.

[C71, 73, 75, 77, 79, 81, §330A.15]

330A.16 Exemption from taxation.

The effectuation of the authorized purposes of an authority shall be in all respects for the benefit of the people of the state and the member municipalities, for the increase of their commerce and prosperity, and for the improvement of their welfare, health, and living conditions, and since an authority will be performing essential govern-

mental functions in effectuating such purposes, an authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property required or used by it for such purposes, or any rates, fees, rentals, receipts, or incomes at any time received by it, and the bonds issued by an authority, their transfer and the income therefrom (including any profits made on the sale thereof) shall at all times be free from taxation of any kind by the state, or any political subdivision or taxing agency or instrumentality thereof.

[C71, 73, 75, 77, 79, 81, §330A.16]

330A.17 Statute complete and additional authority.

The powers conferred by this chapter shall be in addition and supplemental to any other law and this chapter shall not be construed so as to repeal any other law, except to the extent of any conflict between the provisions of this chapter and the provisions of any other law, in which event the provisions of this chapter shall be controlling and shall, to the extent of any such conflict, supersede the provisions of any other law. This chapter is intended to and shall provide an alternative and complete method for the exercise of the powers granted by this chapter, and the aviation facilities authorized by this chapter may be constructed, acquired, or improved and bonds or other obligations issued pursuant to this chapter upon compliance with the provisions of this chapter without regard to or necessity for compliance with the limitations or restrictions contained in any other law. No approval of the registered voters or qualified freeholders of the state, or of any other political subdivision or taxing unit or agency thereof, or of the member municipalities shall be required for the issuance of any bonds by an authority pursuant to this chapter.

[C71, 73, 75, 77, 79, 81, §330A.17]

2001 Acts, ch 56, §20

330A.18 Co-operation between municipalities and authorities.

The effectuation of the authorized purposes of an authority being in all respects for the benefit of the people of the state and the member municipalities, each member municipality is hereby authorized to aid and co-operate with an authority in carrying out any authorized purposes of the authority. Each member municipality is hereby authorized to enter into co-operation agreements for the making of a loan, gift, grant, or contribution to the authority for the carrying out of its authorized purposes. Each member municipality is hereby further authorized to grant and convey to an authority real or personal property, of any kind or nature, or any interest therein, for the carrying out of its authorized purposes. Each member municipality is, further and additionally, authorized to covenant in any such co-operation agreement made pursuant to this section to pay all or any part of the costs of operation and maintenance of the aviation facilities of an authority from moneys derived from ad valorem taxation or from any other available funds of the municipality. Any such co-operation agreement may be made and entered into pursuant to this chapter for such time or times not exceeding forty years as shall be agreed by the parties thereto or for such longer time as any revenue bonds of an authority, including refundings thereof, remain outstanding and unpaid and may contain such other details, terms, provisions, and conditions as shall be agreed upon by the parties thereto. Any such co-operation agreement may be made and entered into for the benefit of the holders of any revenue bonds of an authority as well as the parties thereto and shall be enforceable in any court of competent jurisdiction by the holders of any such revenue bonds or of the coupons appertaining thereto.

[C71, 73, 75, 77, 79, 81, §330A.18]

330A.19 Eligibility as investments and security for public funds.

Notwithstanding the provisions of any other law or laws, all bonds issued by an authority pursuant to this chapter shall be and constitute legal investments for banks, savings banks, trustees, executors, and all other fiduciaries, and all such bonds shall be and constitute securities eligible for deposit for the securing of all state, municipal, and other public funds.

[C71, 73, 75, 77, 79, 81, §330A.19]

330A.20 Dissolution of an authority.

When an authority has fully discharged all of its debts and obligations or has arranged for the assumption of its debts and obligations by another public agency, it may be dissolved by unanimous consent of the member municipalities upon enactment of an ordinance to dissolve the authority by each member municipality. If all members withdraw from the authority, the authority is dissolved. When the business and affairs of an authority have been closed upon dissolution, that fact shall be certified by the chairperson of the board to the recorders of the counties in which the authority was situated and to the secretary of state.

89 Acts, ch 182, §8

330A.21 Transition.

For those authorities established prior to July 1, 1989, the terms of all board members in office shall expire on December 31, 1989. The provision for successor board members shall be by agreement of the member municipalities and in accordance with section 330A.5. Authorities in existence prior to July 1, 1989, remain in existence on or after July 1, 1989, except as provided in this chapter.

89 Acts, ch 182, §9

CHAPTER 330B

QUAD CITIES INTERSTATE METROPOLITAN AUTHORITY COMPACT

Transferred to chapter 28A

NOTES

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VOLUME III

CODE OF IOWA

2003

CONTAINING

ALL STATUTES OF A GENERAL AND PERMANENT NATURE

Including the Acts of a permanent nature
of the Seventy-ninth General Assembly, 2001, 2002

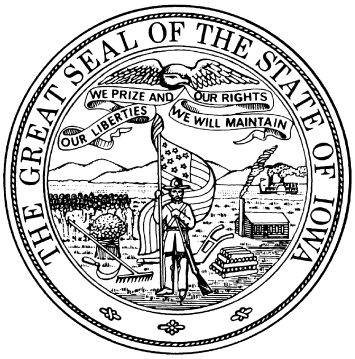

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2002

PREFACE TO 2003 IOWA CODE

The 2003 Iowa Code is published pursuant to Code chapter 2B. Its form is substantially the same as the 2001 Iowa Code, and it covers the permanent enactments of the 2001 and 2002 sessions of the Seventy-ninth General Assembly. The 2003 Code is published in four textual volumes and one Tables and Index volume. A Skeleton and Popular Name Index printed on colored paper appears at the end of each volume.

ARRANGEMENTS OF CODE TITLES, SUBTITLES, AND CHAPTERS. The Table of Contents on page v enumerates the titles and subtitles found in the Code, and each volume contains an Analysis by Titles, Subtitles, and Chapters for that volume.

EDITORIAL DECISIONS. If multiple amendments were enacted to a section or part of a section, all changes that are duplicative or otherwise do not appear to conflict are harmonized as required by Code section 4.11. It is generally assumed that a strike or repeal prevails over an amendment to the same material and does not create an irreconcilable conflict, and that the substitution of the correct title of an officer or department as authorized by law does not create a conflict. Code sections 4.4 through 4.11 provide guidance for codifying conflicting provisions. References to the Iowa court rules have been updated to reflect changes made in the 4th edition of that publication. Code section 2B.13 governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of the changes. At the end of Volume IV are Code Editor's Notes which explain the major editorial decisions relating to enactments of the 2002 session. The Code Editor's Notes relating to enactments of the 2001 session appear at the end of the 2001 Code Supplement.

HISTORIES. Bracketed material at the end of many Code sections traces the history of the subject matter of those sections up through 1982. Beginning with the 1985 Code, that form of section history was not updated. An amendment to or enactment of a section which occurred during or after the 1983 legislative session is indicated by the addition of an Acts citation at the end of the section. If a section is transferred to a new location, the section history will indicate the Code or Code Supplement in which the transfer took place.

CONSTITUTIONS. A codified version of the 1857 Constitution of the State of Iowa, as well as the original version, is included with the introductory material at the beginning of Volume I.

TABLES. The tables appear at the beginning of the index volume which is entitled "Tables and Index."

The editorial staff of the Iowa Code welcomes your comments and suggestions for improvements.

Dennis C. Prouty, Acting Director
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DESIGNATION OF GENERAL ASSEMBLY

CITATIONS

OFFICIAL STATUTES

2.2 Designation of general assembly.

Each regular session of the general assembly shall be designated by the year in which it convenes and by a number with a new consecutive number assigned with the session beginning in each odd-numbered year.

A special session of the general assembly shall be designated as an extraordinary session in the particular year of a numbered general assembly.

2B.17 Citations — official statutes.

1. The permanent and official printed versions of the Iowa Codes and Code Supplements published subsequent to the adjournment of the 1982 regular session of the Sixty-ninth General Assembly shall be known and may be cited as "Iowa Code chapter (or section) . . . . ", or "Iowa Code Supplement chapter (or section) . . . . ", inserting the appropriate chapter or section number. If the year of edition is needed, it may be inserted before or after the words "Iowa Code" or "Iowa Code Supplement". In Iowa publications, the word "Iowa" may be omitted if the meaning is clear.

2. The session laws of each general assembly shall be known as "Acts of the . . . . General Assembly, ... Session, Chapter (or File No.) . . . . , Section . . . . " (inserting the appropriate numbers) and shall be cited as " . . . . Iowa Acts, chapter . . . . , section . . . . " (inserting the appropriate year, chapter, and section number).

3. The official printed versions of the Iowa Code, Code Supplement, and session laws published under authority of the state are the only authoritative publications of the statutes of this state. No other publications of the statutes of the state shall be cited in the courts or in the reports or rules of the courts.

4. The Iowa administrative code and the Iowa administrative bulletin shall be cited as provided in section 17A.6.

5. The printed version of the Iowa administrative code is the permanent publication of administrative rules in this state and the Iowa administrative bulletin and the Iowa administrative code published pursuant to chapter 17A are the official publications of the administrative rules of this state, and are the only authoritative publications of the administrative rules of this state. Other publications of the administrative rules of this state shall not be cited in the courts or in the reports or rules of the courts.

Chapters of the Code are cited as whole numerals; as chapter 124 or chapter 124A.

Sections are cited as decimal numerals; as section 124.401 or section 124A.3. Occasionally, sections are divided into subsections as 1., 2., 3., etc.; subsections into paragraphs *a, b, c,* etc.; paragraphs into subparagraphs as (1), (2), (3), etc.; and subparagraphs into subparagraph subdivisions as (a), (b), (c), etc. Example: section 124.401, subsection 1, paragraph *"a"*, subparagraph (2), subparagraph subdivision (a). This may be abbreviated as 124.401(1)(*a*)(2)(a) or 124.401[1*a*(2)(a)].

ABBREVIATIONS

C51	Code of 1851
R60	Revision of 1860
C73	Code of 1873
C97	Code of 1897
S'02	Supplement of 1902
S'07	Supplement of 1907
S13	Supplement of 1913
SS15	Supplemental Supplement 1915
C24	Code of 1924
C27	Code of 1927
C31	Code of 1931
C35	Code of 1935
C39	Code of 1939
C46	Code of 1946
C50	Code of 1950
C54	Code of 1954
C58	Code of 1958
C62	Code of 1962
C66	Code of 1966
C71	Code of 1971
C73	Code of 1973
C75	Code of 1975
C77	Code of 1977
C79	Code of 1979
S79	Supplement of 1979
C81	Code of 1981
S81	Supplement of 1981
C83	Code of 1983
CS83	Supplement of 1983
C85	Code of 1985
CS85	Code Supplement of 1985
C87	Code of 1987
CS87	Code Supplement of 1987
C89	Code of 1989
CS89	Code Supplement of 1989
C91	Code of 1991
CS91	Code Supplement of 1991
C93	Code of 1993
CS93	Code Supplement of 1993
C95	Code of 1995
CS95	Code Supplement of 1995
C97	Code of 1997
CS97	Code Supplement of 1997
C99	Code of 1999
CS99	Code Supplement of 1999
C2001	Code of 2001
CS2001	Code Supplement of 2001
C2003	Code of 2003
GA	General Assembly
§ or Sec.	Section
Ch	Chapter
1st Ex	First Extra Session
2nd Ex	Second Extra Session
R (in tables)	Repealed
Vol	Volume
R.C.P.	Rules of Civil Procedure
R.Cr.P.	Rules of Criminal Procedure
R.App.P.	Rules of Appellate Procedure
Stat. L.	Statutes at Large (U. S.)
U.S.C.	United States Code
Pub. L. No.	Public Law Number (U. S.)
C.F.R.	Code of Federal Regulations (U. S.)

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DIVISION I

DEFINITIONS

331.101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Amendment"* means a revision or repeal of an existing ordinance or code of ordinances.

2. *"Auditor"* means the county auditor or a deputy auditor or employee designated by the county auditor.

3. *"Board"* means the board of supervisors of a county.

4. *"Book", "record",* and *"register"* include any mode of permanent recording including but not limited to, card files, microfilm or microfiche, electronic records and the like.

5. *"Charter"* means a formal document establishing the functions, powers, organization, structure, privileges, rights, and duties of county government not inconsistent with state law.

6. *"Clerk"* means the clerk of the district court or the clerk's designee.

7. *"Commission"* means a body of eligible elec-

tors authorized to study, review, analyze, and recommend an alternative form of county government.

8. *"County attorney"* means the county attorney or a deputy county attorney or assistant county attorney designated by the county attorney.

9. *"Measure"* means an ordinance, amendment, resolution, or motion.

10. *"Ordinance"* means a county law of a general and permanent nature.

11. *"Recorded vote"* means a record, roll call vote.

12. *"Recorder"* means the county recorder or a deputy recorder or employee designated by the county recorder.

13. *"Resolution"* or *"motion"* means a statement of policy or an order for action to be taken.

14. *"Sheriff"* means the county sheriff or a deputy sheriff designated by the sheriff.

15. *"State law"* includes the Constitution of the state of Iowa and state statutes.

16. *"Supervisor"* means a member of the board of supervisors.

17. *"Treasurer"* means the county treasurer or a deputy treasurer or employee designated by the county treasurer.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §343.13; S81, §331.101; 81 Acts, ch 117, §100]

88 Acts, ch 1229, §2; 90 Acts, ch 1233, §23

DIVISION II

ALTERNATIVE FORMS
OF COUNTY GOVERNMENT

PART 1

BOARD OF SUPERVISORS

331.201 Board membership — qualifications — term.

1. The board shall consist of three members unless the membership is increased to five as provided in section 331.203.

2. A supervisor must be a registered voter of the county or supervisor district of the county which the supervisor represents.

3. The office of supervisor is an elective office except that if a vacancy occurs on the board, a successor shall be appointed to the unexpired term as provided in chapter 69.

4. The term of office of a supervisor is four years unless a change in the supervisor district representation plan or in the number of supervisors on the board requires the election of one or two supervisors for an initial term of two years.

[R60, §303; C73, §294, 299; C97, §410; SS15, §410; C24, 27, 31, 35, 39, §**5106;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.1; S81, §331.201; 81 Acts, ch 117, §200]

94 Acts, ch 1169, §64

331.202 Reserved.

331.203 Membership increased — vote.

1. The board may by resolution, or shall upon petition of the number of eligible electors of the county as specified in section 331.306, submit to the registered voters of the county at a general election a proposition to increase the number of supervisors to five.

2. If a majority of the votes cast on the proposition is in favor of the increase to five members, the board shall be increased to five members effective on the first day in January which is not a Sunday or holiday following the next general election. The five-member board shall be elected according to the supervisor representation plan in effect in the county.

a. If plan "one" as defined in section 331.206 is in effect, two additional supervisors shall be elected at the next general election, one for a two-year term and one for a four-year term.

b. If plan "two" or plan "three" as defined in section 331.206 is in effect, the temporary county redistricting commission shall divide the county into five equal-population districts by December 15 of the year preceding the year of the next general election and at that general election, five board members shall be elected, two for initial terms of two years and three for four-year terms. The districts shall be drawn in the manner provided under sections 331.209 and 331.210. The terms of the three incumbent supervisors shall expire on the date that the five-member board becomes effective.

c. The length of term for which a person is a candidate and the date when the term begins shall be indicated on the ballot.

[R60, §303; C73, §294, 299; C97, §410; SS15, §410; C24, 27, 31, 35, 39, §**5107;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.2; S81, §331.203; 81 Acts, ch 117, §202; 82 Acts, ch 1091, §2, ch 1104, §29]

88 Acts, ch 1119, §35; 94 Acts, ch 1179, §19; 95 Acts, ch 67, §53

331.204 Membership reduced — vote — new members.

1. In a county having a five-member board, the board may by resolution, or shall upon petition of the number of eligible electors of the county as specified in section 331.306, submit to the registered voters of the county at a general election a proposition to reduce the number of supervisors to three.

2. If a majority of the votes cast on the proposition is in favor of the reduction to three members, the membership of the board shall remain at five until the first day in January which is not a Sunday or holiday following the next general election, at which time the terms of the five members shall expire.

3. At the next general election following the

one at which the proposition to reduce the membership of the board to three is approved, the membership of the board shall be elected according to the supervisor representation plan in effect in the county. If the supervisor representation plan includes equal-population districts, the districts shall be designated by December 15 of the year preceding the year of the next general election by the temporary county redistricting commission. The districts shall be drawn in the manner provided under sections 331.209 and 331.210. One member of the board shall be elected to a two-year term and the remaining two members shall be elected to four-year terms. The length of the term for which a person is a candidate and the date when the term begins shall be indicated on the ballot.

[C73, §299; C97, §410; SS15, §410; C24, 27, 31, 35, 39, §**5108 – 5110;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.3, 331.6, 331.7; S81, §331.204; 81 Acts, ch 117, §203; 82 Acts, ch 1091, §3, ch 1104, §30]

88 Acts, ch 1119, §36; 94 Acts, ch 1179, §20; 95 Acts, ch 67, §53

331.205 Petition and vote in certain counties — exception.

1. In a county where there is a city operating under the commission form of government with a population of more than seventy-five thousand, the petition to increase or reduce the number of members of the board must contain signatures of eligible electors residing inside the county and outside of the corporate limits of the city equal in number to at least ten percent of the registered voters residing within the county and outside of the corporate limits of the city and signatures of eligible electors residing within the city equal in number to at least ten percent of the registered voters residing within the city.

2. When the proposition to increase or reduce the membership of the board is voted upon, the registered voters of a city described in subsection 1 and the registered voters residing outside of the city shall vote on the proposition separately and a majority of the votes cast on the proposition by each of the two classes of registered voters must approve the proposition before it becomes effective.

[C35, §5108-e1, -e2; C39, §**5108.1, 5108.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.4, 331.5; S81, §331.205; 81 Acts, ch 117, §204]

95 Acts, ch 67, §53; 2001 Acts, ch 56, §21

331.206 Supervisor districts.

1. One of the following supervisor district representation plans shall be used for the election of supervisors:

a. Plan "one." Election at large without district residence requirements for the members.

b. Plan "two." Election at large but with equal-population district residence requirements for the members.

c. Plan "three." Election from single-member equal-population districts, in which the electors of each district shall elect one member who must reside in that district.

2. The plan used under subsection 1 shall be selected by the board or by a special election as provided in section 331.207. A plan selected by the board shall remain in effect for at least six years unless it is changed by a special election as provided in section 331.207.

A plan selected by the board shall become effective on the first day in January which is not a Sunday or holiday following the next general election, at which time the terms of the members expire and the terms of the members elected under the requirements of the new supervisor representation plan at the general election as specified in section 331.208, 331.209, or 331.210 shall commence.

[C97, §416; S13, §416; C24, 27, 31, 35, 39, §**5111;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.8; S81, §331.206; 81 Acts, ch 117, §205]

93 Acts, ch 143, §46

331.207 Special election — supervisor districts.

1. The board, upon petition of the number of eligible electors of the county as specified in section 331.306, shall call a special election to be held for the purpose of selecting one of the supervisor representation plans specified in section 331.206 under which the board of supervisors shall be elected.

2. The petition shall be filed with the county commissioner by June 1 of an odd-numbered year, subject to subsection 6. The special election shall be held within sixty days after the day the petition was received. Notice of the special election shall be published once each week for three successive weeks in an official newspaper of the county, shall state the representation plans to be submitted to the electors, and shall state the date of the special election which shall be held not less than five nor more than twenty days from the date of last publication.

3. The supervisor representation plans submitted at the special election shall be stated in substantially the following manner:

The individual members of the board of supervisors in ..... county, Iowa, shall be elected:

Plan "one." At large and without district residence requirements for the members.

Plan "two." At large but with equal-population district residence requirements for the members.

Plan "three." From single-member equal-population districts in which the electors of each district shall elect one member who must reside in that district.

4. If the plan adopted by a plurality of the ballots cast in the special election is not the supervisor representation plan currently in effect in the county, the terms of the county supervisors serving at the time of the special election shall continue until the first day in January which is not a Sunday or holiday following the next general election, at which time the terms of the members shall expire and the terms of the members elected under the requirements of the new supervisor representation plan at the general election as specified in section 331.208, 331.209, or 331.210 shall commence.

5. If the plan adopted by a plurality of the ballots cast in the special election represents a change from plan "one" to plan "two" or "three", or from plan "two" to plan "three", as each plan is defined in section 331.206, the temporary county redistricting commission shall divide the county into districts as provided in sections 331.209 and 331.210. The plan shall be completed not later than September 15 following the special election and shall be submitted to the state commissioner of elections. The plan shall become effective January 1.

6. A supervisor representation plan adopted at a special election shall remain in effect for at least six years.

[C97, §417; C24, 27, 31, 35, 39, §**5112;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.9; S81, §331.207; 81 Acts, ch 117, §206; 82 Acts, ch 1104, §31]

88 Acts, ch 1119, §37; 2002 Acts, ch 1134, §93, 94, 115

2002 amendments to subsection 2 and adding subsection 5 take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2 amended

NEW subsection 5 and former subsection 5 renumbered as 6

331.208 Plan "one" terms of office.

If plan "one" is selected pursuant to section 331.206 or 331.207, the board shall be elected as provided in this section.

1. In the primary and general elections, the number of supervisors, or candidates for the offices, which constitutes the board in the county, shall be elected by the registered voters of the county at large without district residence requirements.

2. In counties with three county supervisors, one person shall be elected as a member of the board for an initial term of two years and two persons shall be elected as members of the board for four years.

3. In counties with five supervisors, two persons shall be elected as members of the board for initial terms of two years and three persons shall be elected as members of the board for four years.

4. The determination as to whether a term of office shall be for two or four years shall be decided by lot before the primary election, and the results of the determination indicated on the ballot in the primary and general elections.

[C71, 73, 75, 77, 79, 81, §331.25; S81, §331.208; 81 Acts, ch 117, §207]

95 Acts, ch 67, §53

331.209 Plan "two" terms of office.

If plan "two" is selected pursuant to section 331.206 or 331.207, the board shall be elected as provided in this section.

1. Not later than ninety days after the redistricting of congressional and legislative districts becomes law, or October 15 of the year immediately following each year in which the federal decennial census is taken, whichever is later, the temporary county redistricting commission shall divide the county into a number of supervisor districts corresponding to the number of supervisors in the county. However, if the plan is selected pursuant to section 331.207, the temporary county redistricting commission shall divide the county before February 15 of the election year. The supervisor districts shall be drawn, to the extent applicable, in compliance with the redistricting standards provided for senatorial and representative districts in section 42.4, and if a supervisor redistricting plan is challenged in court, the requirement of justifying any variance in excess of one percent contained in section 42.4, subsection 1, paragraph *"c"* applies to the board. If the temporary county redistricting commission adopts a supervisor redistricting plan with a variance in excess of one percent, the board shall publish the justification for the variance in one or more official newspapers as provided in chapter 349 within ten days after the action is taken. If more than one incumbent supervisor resides in the same supervisor district after the districts have been redrawn following the federal decennial census, the terms of office of those supervisors shall expire on the first day of January that is not a Sunday or a holiday following the next general election.

2. Each supervisor must reside in a separate supervisor district but shall be elected by the electors of the county at large. Election ballots shall be prepared to specify the district which each candidate seeks to represent and each elector may cast a vote for one candidate from each district for which a supervisor is to be chosen in the general election.

3. At the primary and general elections the number of supervisors, or candidates for the offices, which constitute the board in the county shall be elected as provided in this section. Terms of supervisors shall be the same as provided in section 331.208.

4. Each temporary county redistricting commission shall notify the state commissioner of elections when the boundaries of supervisor districts are changed, shall provide a map delineating the new boundary lines, and shall certify to the

state commissioner of elections the populations of the new supervisor districts as determined under the latest federal decennial census. Upon failure of a temporary county redistricting commission to make the required changes by the dates specified by this section and sections 331.203 and 331.204 as determined by the state commissioner of elections, the state commissioner of elections shall make or cause to be made the necessary changes as soon as possible, and shall assess to the county the expenses incurred in so doing. The state commissioner of elections may request the services of personnel and materials available to the legislative service bureau to assist the state commissioner in making required changes in supervisor district boundaries which become the state commissioner's responsibility.

[C71, 73, 75, 77, 79, 81, §331.26; S81, §331.209; 81 Acts, ch 117, §208; 82 Acts, ch 1091, §4, 5]

89 Acts, ch 296, §38; 90 Acts, ch 1233, §24; 91 Acts, ch 190, §1; 94 Acts, ch 1179, §21, 22

331.210 Plan "three."

If plan "three" is selected pursuant to section 331.206 or 331.207, the supervisor districts shall be drawn and supervisors shall be elected as provided in section 331.209, except the boundaries of supervisor districts shall follow voting precinct lines and each member of the board and each candidate for the office shall be elected or nominated at the primary and general elections by only the electors of the district which that candidate seeks to represent.

[C71, 73, 75, 77, 79, 81, §331.27; S81, §331.210; 81 Acts, ch 117, §209]

331.210A Temporary county redistricting commission.

1. *Appointment of members.*

a. Not later than May 15 of each year ending in one, a temporary county redistricting commission shall be established as provided by this section for counties which have either plan "two" or plan "three" supervisor representation plans. If a county has either plan "two" or plan "three" supervisor representation plans and the number of members of the board is increased or decreased under section 331.203 or 331.204, the temporary county redistricting commission shall be established by May 15 of the year preceding the year of the next general election.

b. The board shall determine the size of the membership of the temporary county redistricting commission which may be three, five, or seven in number. The minimum number of members constituting a majority of the membership shall be appointed by the majority party members of the board. The remaining number of members of the temporary county redistricting commission shall be appointed by the minority party members of the board. If the members of the board are all members of one political party or if the minority members of the board are not all members of only one political party, the minority representation of the temporary county redistricting commission shall be appointed by the chair of the county central committee for the party, other than the party of the majority members of the board, which received the most votes in that county cast for its candidate for president of the United States or for governor at the last preceding general election, as the case may be. If that party's county central committee has no chair, the appointments shall be made by the chair of that party's state central committee.

c. A member of the county board of supervisors may be appointed as a member of the temporary county redistricting commission. No person shall be appointed to the temporary county redistricting commission who is not an eligible elector of the county at the time of appointment.

d. A vacancy on the temporary county redistricting commission shall be filled by the initial selecting authority within fifteen days after the vacancy occurs.

e. Members of the temporary county redistricting commission shall receive a per diem as specified by the board, travel expenses at the rate provided by section 70A.9, and reimbursement for other necessary expenses incurred in performing their duties.

f. Each of the appointing authorities shall certify to the county commissioner of elections the authority's appointment of a person to serve on the temporary county redistricting commission.

2. *Adoption of plans.*

a. The temporary county redistricting commission, upon appointment, shall acquire official census population data from the latest federal decennial census including the corresponding census maps and shall use that information in drawing and adopting the county's supervisor districting plan. The commission shall draw the plan, to the extent applicable, in accordance with section 42.4. If the county has a plan "three" supervisor representation plan, the temporary county redistricting commission shall also draw and adopt the county's corresponding precinct plan in accordance with sections 49.3, 49.4, and 49.6.

b. After the temporary county redistricting commission has finished its preliminary proposed county supervisor districting plan and corresponding precinct plan, if applicable, the commission shall at the earliest feasible time make available to the public all of the following information:

(1) Copies of the legal description of the plans.

(2) Maps illustrating the plans.

(3) A summary of the standards prescribed by law for development of the plans.

(4) A statement of the population of each district included in the plan, and the relative deviation of each district population from the ideal district population.

(5) A statement of the population of each pre-

cinct, if applicable.

c. Upon the completion of the county's preliminary proposed plans, the temporary county redistricting commission shall do all of the following:

(1) As expeditiously as possible, schedule and conduct at least one public hearing on the proposed plans.

(2) Allow members of the public to present alternative plans at the public hearing.

(3) Following the hearings, promptly prepare and make available to the public a report summarizing information and testimony received by the temporary county redistricting commission in the course of the hearings. The report shall include any comments and conclusions which its members deem appropriate regarding the information and testimony received at the hearings, or otherwise presented to the temporary county redistricting commission.

d. After the requirements of paragraphs *"a"* through *"c"* have been met, the temporary county redistricting commission shall adopt a supervisor district plan and corresponding precinct plan, if applicable, and shall submit the plan to the board of supervisors for their approval. Prior to adoption of a plan by the commission, any member of the temporary county redistricting commission may submit precinct or district plans to the commission for a vote, either independently or as an amendment to a plan presented by other members of the commission.

The board of supervisors shall review the plan submitted by the temporary county redistricting commission and shall approve or reject the plan. If the plan is rejected, the board shall give written reasons for the rejection of the plan and shall direct the commission to prepare a second plan. The board of supervisors may amend the second plan submitted for approval by the commission. Any amendment must be accompanied by a written statement declaring that the amendment is necessary to bring the submitted plan closer in conformity to the standards in section 42.4.

e. The plan approved by the board of supervisors shall be submitted to the state commissioner of elections for approval. If the plan does not meet the standards of section 42.4, the state commissioner shall reject the plan, and the board of supervisors shall direct the commission to prepare and adopt an acceptable plan.

If, after the initial proposed supervisor district plan or precinct plan has been submitted to the state commissioner for approval, it is necessary for the temporary county redistricting commission to make subsequent attempts at adopting an acceptable plan, the subsequent plans do not require public hearings.

3. *Open meetings and public records.* Chapters 21 and 22 shall apply to the temporary county redistricting commission.

4. *Termination.* The terms of the members of the temporary county redistricting commission shall expire twenty days following the date the county's supervisor district plan and corresponding precinct plan, if applicable, are approved or imposed by the state commissioner of elections under sections 49.7 and 331.209.

94 Acts, ch 1179, §23

331.211 Organization of the board.

1. The board, at its first meeting in each year, shall:

a. Organize by choosing one of its members as chairperson who shall preside at all of its meetings during the year. The board may also select a vice chairperson who shall serve during the absence of the chairperson.

b. Choose one of its members to be a member of the board of directors of the judicial district department of correctional services as provided in section 905.3, subsection 1, paragraph *"a"*.

2. The auditor shall serve as clerk to the board unless the board, with the consent of the auditor, appoints a permanent clerk. In the absence of the auditor, the auditor's designee as clerk, or the permanent clerk, the board may appoint a temporary clerk. The permanent or temporary clerk appointed by the board shall provide the auditor with all information necessary for the auditor to carry out the requirements of section 331.504.

[R60, §308, 312(1); C73, §300, 303(1); C97, §415, 422; SS15, §422; C24, 27, 31, 35, 39, §**5116, 5130;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.13, 332.3(1); S81, §331.211; 81 Acts, ch 117, §210]

86 Acts, ch 1004, §1

331.212 Quorum — majority vote required.

1. A majority of the members of the board constitutes a quorum to transact the official business of the county. If the board is equally divided on a question when less than the full membership is present, the question shall be continued until all of the members of the board are present.

2. The following actions of the board require the affirmative vote of a majority of its membership:

a. Levying of a tax.

b. Entering into a contract for the erection of a public building.

c. Making a settlement with a county officer.

d. Buying or selling real estate.

e. Designating a new site for a county building.

f. Changing the boundaries of a township.

g. Appropriating money to aid in the construction of a highway or a bridge.

h. Appointing or removing an officer from office.

[R60, §308, 313; C73, §297, 305; C97, §413, 440; C24, 27, §5117, 5121; C31, 35, §5903-c10, 5117, 5121; C39, §**5903.10, 5117, 5121;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.12, 331.14, 331.18; S81, §331.212; 81 Acts, ch 117, §211]

331.213 Meetings of the board.

1. The board shall hold its first meeting of each year on the first day in January which is not a Saturday, Sunday or holiday and shall hold all subsequent meetings of the year as scheduled by the board. All meetings of the board shall be scheduled and conducted in compliance with chapter 21.

2. If a quorum of the board fails to appear at a meeting, the clerk shall adjourn the meeting from day to day until a quorum is present.

[R60, §307, 309; C73, §296, 301; C97, §412, 420; S13, §412; C24, 27, 31, 35, 39, §**5118 – 5120;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.15 – 331.17; S81, §331.213; 81 Acts, ch 117, §212; 82 Acts, ch 1104, §32]

331.214 Vacancy of supervisor's office.

In addition to the circumstances which constitute a vacancy in office under section 69.2, the absence of a supervisor from the county for sixty consecutive days shall be treated as a resignation of the office. At its next meeting after the sixty-day absence, the board, by resolution adopted and included in its minutes, shall declare the absent supervisor's seat vacant.

[C73, §298; C97, §414; C24, 27, 31, 35, 39, §**5115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.12; S81, §331.214; 81 Acts, ch 117, §213]

331.215 Compensation and expenses.

1. The supervisors shall receive an annual salary or per diem compensation as determined under section 331.907. The annual salary or per diem shall be full payment for all services rendered to the county except for reimbursement for mileage and other expenses authorized in subsection 2.

2. A supervisor is entitled to reimbursement for mileage expenses incurred while engaged in the performance of official duties at the rate specified in section 70A.9. The total mileage expense for all supervisors in a county shall not exceed the product of the rate of mileage specified in section 70A.9 multiplied by the total number of supervisors in the county times ten thousand. The board may also authorize reimbursement for mileage and other actual expenses incurred by its members when attending an educational course, seminar, or school which is related to the performance of their official duties.

[R60, §317; C73, §3791; C97, §469; S13, §469; C24, 27, 31, 35, 39, §**5125, 5127, 5260;** C46, 50, 54, 58, 62, 66, §331.22, 331.24, 343.12; C71, 73, 75, 77, 79, 81, §331.22, 343.12; S81, §331.215; 81 Acts, ch 117, §214, 216]

331.216 Membership on appointive boards, committees and commissions.

Unless otherwise provided by state statute, a supervisor may serve as a member of any appointive board, commission, or committee of this state, a political subdivision of this state, or a nonprofit corporation or agency receiving county funds.

[C81, §331.28; S81, §331.216; 81 Acts, ch 117, §215]

331.217 to 331.230 Reserved.

PART 2

ALTERNATIVE FORMS

331.231 Alternative forms of county government.

The alternative forms of county government are as follows:

1. Board of supervisor form as provided in division II, part 1.
2. Board-elected executive form as provided in section 331.239.
3. Board-manager form as provided in section 331.241.
4. Charter government form as provided in section 331.246.
5. City-county consolidated form as provided in section 331.247.
6. Multicounty consolidated form as provided in section 331.253.
7. Community commonwealth form as provided in sections 331.260 through 331.263.

88 Acts, ch 1229, §3; 91 Acts, ch 256, §2, 3

331.232 Plan for an alternative form of government.

1. A charter to change a form of county government may be submitted to the electors of a county only by a commission established by resolution of the board upon petition of the number of eligible electors of the county equal to at least twenty-five percent of the votes cast in the county for the office of president of the United States or governor at the preceding general election or the signatures of at least ten thousand eligible electors of the county, whichever number is fewer.

2. The council of any city wishing to participate in a city-county consolidation charter commission must notify the board by resolution within thirty days of the creation of the commission pursuant to subsection 1. A city's participation in a city-county consolidation charter commission may be proposed by the city council adopting a resolution in favor of participation or by eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last regular city election petitioning the council to adopt a resolution in favor of participation. The council shall within ten days of the filing of a valid petition adopt such a resolution.

3. An alternative form of county government shall be submitted to the county electorate by the commission in the form of a charter or charter

amendment.

88 Acts, ch 1229, §4; 91 Acts, ch 256, §4

331.233 Appointment of commission members.

1. The members of a commission created to study the alternative forms of county government under division II, part 1, and sections 331.239, 331.241, 331.246, and 331.253, shall be appointed within forty-five days after the adoption of the resolution creating the commission as follows:

a. Two members shall be appointed by each of the following officers:

(1) County auditor.
(2) County recorder.
(3) County treasurer.
(4) County sheriff.
(5) County attorney.

b. Two members shall be appointed by each member of the board.

c. Two members shall be appointed by each state representative whose legislative district is located in the county if a majority of the constituents of that legislative district resides in the county. However, if a county does not have a state representative's legislative district which has a majority of a state representative's constituency residing in the county, the state representative having the largest plurality of constituents residing in the county shall appoint two members.

2. Only eligible electors of the county not holding a city, county, or state office shall be members of the commission. In counties having multiple state legislative districts, the districts shall be represented as equally as possible. The membership shall be bipartisan and gender balanced and each appointing authority under subsection 1 shall provide for representation of various age groups, racial minorities, economic groups, and representatives of identifiable geographically defined populations, all in reasonable relationship to the proportions in which these groups are present in the population of the commission area. A vacancy on the commission shall be filled by appointment in the same manner as the original appointment. The county auditor shall notify the appropriate appointing authority of a vacancy.

The legislative appointing authorities shall be considered one appointing authority for the purpose of complying with this subsection. The senior legislative appointing authority in terms of length of legislative service shall convene the legislative appointing authorities to consult for the purpose of complying with this subsection.

3. If at any time during the commission process, the commission adopts a resolution by majority vote to prepare a charter proposing city-county consolidation or the community commonwealth form, additional members shall be appointed to the commission in order to comply with section 331.233A. The life of the commission shall be extended up to six months after the appointment of the additional members.

88 Acts, ch 1229, §5; 91 Acts, ch 256, §5 – 7

331.233A Appointment of commission members — city-county consolidation or community commonwealth.

1. The members of a commission created to study city-county consolidation or the community commonwealth form shall be appointed within forty-five days after the adoption of a resolution creating the commission as follows:

a. One member shall be appointed by the city council of each city participating in the charter process.

b. One member shall be appointed by the board of each county participating in the charter process. The member must be a resident of the unincorporated area of the county.

c. One member shall be appointed by each state legislator whose legislative district is located in the commission area if a majority of the constituents of that legislative district resides in the commission area. However, if a commission area does not have a state legislative district which has a majority of its constituents residing in the commission area, the legislative district having the largest plurality of constituents residing in the commission area shall appoint one member.

d. An additional member shall be appointed by each city council and each county board for every twenty-five thousand residents in the participating city or unincorporated area of the county, whichever is applicable.

2. The commission members shall be appointed in compliance with section 331.233, subsection 2. A vacancy on the commission shall be filled by appointment in the same manner as the original appointment. The county auditor shall notify the appropriate appointing authority of a vacancy.

3. If at any time during the commission process, the commission adopts a resolution by majority vote to prepare a charter proposing an alternative form other than city-county consolidation or the community commonwealth form, the resolution shall be submitted to the board of supervisors of the participating county, and the board shall proceed pursuant to section 331.233. The life of the commission shall be extended up to six months after the appointment of the new members.

91 Acts, ch 256, §8

331.234 Organization and expenses.

1. Within thirty days after the appointment of the members of the commission, the county auditor shall give written notice of the date, time, and location of the first meeting of the commission. At the first meeting the commission shall organize by electing a chairperson, vice chairperson, and other officers as necessary. The commission shall adopt rules governing the conduct of its meetings, sub-

ject to chapter 21.

2. The members of the commission shall serve without compensation, but they are entitled to travel and other necessary expenses relating to their duties of office.

3. The board shall make available to the commission in-kind services such as office space, printing, supplies, and equipment and shall pay the other necessary expenses of the commission including compensation for secretarial, clerical, professional, and consultant services. The total annual expenses, not including the value of in-kind expenses, to be paid from public funds shall not exceed one hundred thousand dollars or an amount equal to thirty cents times the population of the commission area, according to the most recent certified federal census. The commission may employ staff as necessary.

4. The expenses of the commission may be paid from the general fund of the county or from any combination of public or private funds available for that purpose. The commission's annual expenses may exceed the amount in subsection 3 only if the excess is paid from private funds. If a proposed charter is submitted to the electorate, private funds donated to the commission may be used to promote passage of the proposed charter.

88 Acts, ch 1229, §6; 91 Acts, ch 256, §9

331.235 Commission procedures and reports.

1. Within sixty days after its organization, the commission shall hold at least one public hearing for the purpose of receiving information and material which will assist in the drafting of a charter. Notice of the date, time, and place of the hearing shall be given as provided in chapter 21.

2. Within nine months after the organization of the commission, the commission shall submit a preliminary report to the board, which report may include the text of the proposed charter. If a proposed charter is included in the preliminary report, the report shall also include an analysis of the fiscal impact of the proposed charter. Sufficient copies of the report shall be made available for distribution to residents of the county who request a copy. The commission shall hold at least one public hearing after submission of the preliminary report to obtain public comment.

3. Within twenty months after organization, the commission shall submit the final report to the board. If the commission recommends a charter including a form of government other than the existing form of government, the final report shall include the full text and an explanation of the proposed charter, an analysis of the fiscal impact of the proposed charter, any comments deemed desirable by the commission, and any minority reports. The final report may recommend no change to the existing form of government and that no charter be submitted to the electorate. The final report shall be made available to the residents of the county upon request. A summary of the final report shall be published in the official newspapers of the county.

4. The commission is dissolved on the date of the general election at which the proposed charter is submitted to the electorate. If a charter is not recommended, the commission is dissolved upon submission of its final report to the board.

88 Acts, ch 1229, §7; 91 Acts, ch 256, §10

331.236 Ballot requirements.

Unless otherwise provided, the question of adopting the proposed alternative form of government shall be submitted to the electors in substantially the following form:

Should the (charter or amendment) described below be adopted for (insert name of local government)?

The ballot must contain a brief description and summary of the proposed charter or amendment.

88 Acts, ch 1229, §8; 91 Acts, ch 256, §11

331.237 Referendum — effective date.

1. If a proposed charter for county government is received not less than five working days before the filing deadline for candidates for county offices specified in section 44.4 for the next general election, the board shall direct the county commissioner of elections to submit to the registered voters of the county at the next general election the question of whether the proposed charter shall be adopted. A summary of the proposed charter or amendment shall be published in the official county newspapers and in a newspaper of general circulation in each participating city, if applicable, at least ten but not more than twenty days before the date of the election. If a majority of the votes cast on the question is in favor of the proposal, the proposal is adopted.

2. If a proposed charter for county government is adopted:

a. The adopted charter shall take effect July 1 following the general election at which it is approved unless the charter provides a later effective date. If the adopted charter calls for a change in the form of government, officers to fill elective offices shall be elected in the general election in the even-numbered year following the adoption of the charter. Those county officers holding office at the time of the adoption of the charter shall continue in office until the general election in the even-numbered year following the adoption of the charter. If the charter provides that one or more elective offices are combined, the board of supervisors shall appoint one of the elective officers of the combined offices to serve until the general election in the even-numbered year. If the charter calls for the elimination of an elective office, that elective officer's term of office shall expire on the date the

adopted charter takes effect.

b. The adoption of the alternative form of county government does not alter any right or liability of the county in effect at the time of the election at which the charter was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All ordinances or resolutions in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted charter.

e. Upon the effective date of the adopted charter, the county shall adopt the alternative form by ordinance, and shall file a copy with the secretary of state, and maintain available copies for public inspection.

f. The former governing bodies shall continue to perform their duties until the new governing body is sworn into office, and shall assist the new governing body in planning the transition to the charter government.

3. If a charter is submitted to the electorate but is not adopted, another charter shall not be submitted to the electorate for two years. If a charter is adopted, it may be amended at any time. If a charter is adopted, a proposed charter for another alternative form of county government shall not be submitted to the electorate for six years.

88 Acts, ch 1229, §9; 91 Acts, ch 129, §25; 91 Acts, ch 256, §12 – 14; 94 Acts, ch 1180, §45, 46; 95 Acts, ch 67, §53

331.238 Limitations to alternative forms of county government.

1. A county may adopt or amend an alternative form of county government subject to the requirements and limitations provided in this section.

2. An alternative form of county government shall provide for the exercise of home rule power and authority not inconsistent with state law and may include provisions for any of the following:

a. A board of an odd number of members which may exceed the number of members specified in sections 331.201, 331.203, and 331.204.

b. A supervisor representation plan for the county which may differ from the supervisor representation plans as provided in division II, part 1.

c. The initial compensation for members of the board which, thereafter, shall be determined as provided in section 331.215.

d. The method of selecting officers of the board and fixing their terms of office which may differ from the requirements of sections 331.208 through 331.211.

e. Determining meetings of the board and rules of procedure which may differ from the requirements of section 331.213, except the meetings shall be scheduled and conducted in compliance with chapter 21.

f. The combining of duties of elected officials or the elimination of elected offices and the assumption of the duties of those offices by appointed officials.

g. The organization of county departments, agencies, or boards. The organization plan may provide for the abolition or consolidation of a board or a commission and the assumption of its powers and duties by the board of supervisors or another officer. This paragraph does not apply to the board of trustees of a county hospital.

h. In lieu of the election or appointment of township trustees, a method providing for the exercise of their powers and duties by the board of supervisors or other governing body of the county or another office.

i. Consolidating city-county government or government functions.

j. Consolidating county-county government or government functions.

This subsection does not apply to the board of trustees of a county hospital.

3. An alternative form of county government shall provide for the partisan election of its officers.

88 Acts, ch 1229, §10; 91 Acts, ch 256, §15 – 18

BOARD-ELECTED EXECUTIVE FORM

331.239 Board-elected executive form.

The board-elected executive form consists of an elected board of an odd number with staggered terms of office and one elected executive whose term shall be the same as that of a member of the board. If the administrative offices of the county, excluding the county executive, are appointive under the plan, the board shall have at least five members. The board shall have a chairperson who shall be elected by the members of the board from their own number for a term established by ordinance, and who shall vote as a member of the board. The elected executive may veto ordinances and resolutions, subject to an override by a two-thirds vote of the board.

88 Acts, ch 1229, §11

331.240 Duties of executive.

The executive shall:

1. Enforce laws, ordinances, and resolutions of the county.

2. Perform duties required by law, ordinance, or resolution of the county.

3. Administer affairs of the county government.

4. Carry out policies established by the board.

5. Recommend measures to the board.

6. Report to the board on the affairs and financial condition of the county government.

7. Execute bonds, notes, contracts, and written obligations of the board, subject to the approval of the board.

8. Report to the board as the board may re-

quire.

9. Attend board meetings and take part in discussion, but shall not vote.

10. Prepare and execute the budget adopted by the board.

11. Appoint, with the consent of the board, all members of county boards, except the executive may appoint without the consent of the board temporary advisory committees established by the executive.

12. Appoint and remove all employees.

88 Acts, ch 1229, §12

BOARD-MANAGER GOVERNMENT

331.241 Board-manager form.

The board-manager form consists of an elected board and a manager appointed by the board, who shall be the chief administrative officer of the county government. The board shall have staggered terms of office. The chairperson shall be elected by the members of the board from their own number for a term established by ordinance and shall vote as a member of the board. If the administrative offices of the county are appointive under the plan, the board shall have at least five members.

The manager shall be appointed by the board and removed only by a majority vote of the membership of the board. The manager shall be responsible to the board for the administration of all county government affairs placed in the manager's charge by law, ordinance, or resolution.

88 Acts, ch 1229, §13

331.242 Duties of manager.

The manager shall:

1. Enforce laws, ordinances, and resolutions.

2. Perform the duties required of the manager by law, ordinance, or resolution.

3. Administer the affairs of the county government.

4. Direct, supervise, and administer all departments, agencies, and offices of the county government unit except as otherwise provided by law or ordinance.

5. Carry out policies established by the board.

6. Prepare the board agenda.

7. Recommend measures to the board.

8. Report to the board on the affairs and financial condition of the county government.

9. Execute bonds, notes, contracts, and written obligations of the board, subject to the approval of the board.

10. Report to the board as the board may require.

11. Attend board meetings and take part in the discussion, but shall not vote.

12. Prepare and present the budget to the board for its approval and execute the budget adopted by the board.

13. Appoint, suspend, and remove all employees of the county government except as otherwise provided by law or ordinance.

14. Appoint members of temporary advisory committees.

88 Acts, ch 1229, §14

331.243 Employees of board-manager government.

1. Employees appointed by the manager or subordinates shall be administratively responsible to the manager.

2. The board or its members shall not dictate the appointment or removal of any employee appointed by the manager or any subordinate of the manager.

3. Except for the purpose of inquiry or investigation, the board or its members shall deal with the county employees who are subject to the direction and supervision of the manager solely through the manager, and the board or its members shall not give orders to an employee under the manager's direction or supervision.

88 Acts, ch 1229, §15

AMENDMENT TO COUNTY GOVERNMENT

331.244 Amendment to county government.

1. An amendment to county government organization shall only be made by submitting the question of amendment to the electors of the county government pursuant to section 331.236. To become effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question. An amendment approved by the electors becomes effective pursuant to section 331.237.

2. An amendment to a county government organization may be proposed by initiative upon petition of the number of eligible electors of the county equal to at least ten percent of the votes cast at the preceding election for the office of president of the United States or governor, or by resolution adopted by the governing body. The question on amendment of county government organization shall be submitted to the electors as soon as possible after the submission of a petition or adoption of a resolution, either at a general election or at a special election.

88 Acts, ch 1229, §16

331.245 Limitations on amendments to county government.

The electors of a county who have adopted an amendment to county government may not vote on the question of amending the county government for two years. An amendment shall not include an alternative form of county government.

88 Acts, ch 1229, §17

CHARTER FORM

331.246 Charter form of government.

The charter form of government shall be specified in a proposed charter written by a charter committee. The proposed charter shall establish an elected legislative body. The charter shall specify the number of members and term of office pursuant to section 331.238. If the administrative offices of the county, excluding an elected county executive, are appointive under the charter, the board shall have at least five members. The charter may establish legislative or administrative organizational structure. The charter may include the provisions necessary to permit an orderly transition to the charter form of government. However, the provisions shall be limited in scope consistent with the intent of, and in accordance with, section 331.238.

88 Acts, ch 1229, §18

CITY-COUNTY CONSOLIDATION

331.247 City-county consolidation form.

1. A county and one or more cities within the county may unite to form a single unit of local government in accordance with this part. If more than fifty percent of the population of a city resides within the affected county, it is a city within the county for the purposes of this section.

2. An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by a commission established under this chapter. A majority vote by the charter commission is required for the submission of an alternative form of government for a consolidated unit of local government. The charter commission submitting a consolidated form shall issue a final report and proposal.

3. An alternative form of government for a consolidated unit of local government does not need to include more than one city. A city shall not be included unless the city participates in the commission process, and a majority of the electors of the affected city voting approves the proposed charter for the consolidated government.

4. If an alternative form of government for a consolidated unit of local government is proposed, approval of the consolidation charter shall be a separate ballot issue from approval of the alternative form of government in those cities proposed to be included in the consolidation. The consolidation charter shall be effective in regard to a city government only if a majority of the voters of the city voting on the question voted for participation in the consolidation charter.

5. A city may join an existing city-county consolidated government by resolution of the city council or upon petition of eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last general election for the office of governor or president of the United States, whichever is fewer. Within fifteen days after receiving a valid petition, the city council of the petitioning city shall adopt a resolution in favor of participation and shall immediately forward the resolution to the legislative body of the city-county consolidated government. If a majority of the city-county consolidated legislative body approves the resolution, the question of joining the city-county consolidated government shall be submitted to the electorate of the petitioning city within sixty days after approval of the resolution.

88 Acts, ch 1229, §19; 91 Acts, ch 256, §19, 20

331.248 Charter of consolidation.

1. The charter commission proposing consolidation shall prepare, adopt, and submit to the voters a consolidation charter including an alternative form of government.

2. The consolidation charter shall:

a. Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service.

b. Provide for establishment of service areas, except that formation of a city-county consolidation government form shall not affect the assignment of electric utility service territories pursuant to chapter 476, and shall not affect the rights of a city to grant a franchise under chapter 364.

c. Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form.

d. Provide the official name of the consolidated unit of local government.

e. Provide for the transfer, reorganization, abolition, absorption, and adjustment of boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated government.

f. Include other provisions which the county charter commission and the city charter commission elect to include and which are not inconsistent with state law.

3. The charter may grant the legislative body of the consolidated government the authority to transfer, reorganize, and provide a method for adjusting the boundaries of the entities within the consolidated government.

88 Acts, ch 1229, §20; 91 Acts, ch 256, §21, 22

331.249 Effect of consolidation.

1. The consolidation of one or more cities and one or more counties shall create a unified government which includes a municipal corporation and a county. The consolidated unit shall have the separate status of a county and a city for all purposes and shall constitute two political subdivisions, a

consolidated city and a county, under combined governance. The consolidated unit shall retain one separate constitutional debt limitation with respect to its status as a city and a separate constitutional debt limitation with respect to its status as a county.

2. A consolidated unit of local government may include an area which is located in another county, but which is within the corporate boundaries of one of the consolidated cities. County services shall be provided in the extra-county area and taxes to fund those services shall be collected in the extra-county area by the consolidated government, to the extent permitted by the Constitution of the State of Iowa. In addition to the right to vote in the county of residence, electors residing in the extra-county area shall have the right to vote on any matter related to the consolidated unit of local government, including election of its officials.

If a city-county consolidation charter is proposed, within ninety days following the final report of the commission, a resident or property owner of the commission area proposed to be consolidated may bring an action in district court for declaratory judgment to determine the legality of the proposed charter and to otherwise declare the effect of the charter. The referendum on the proposed charter shall be stayed during pendency of the action and for such additional time during which the proposed charter or its enabling legislation does not conform to the Constitution or laws of the State of Iowa. If in its final judgment the court determines that the proposed charter fails to conform to the Constitution or laws of this state, the commission shall have a period of six months in which to revise and resubmit the proposed charter.

3. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to each city and the county comprising a consolidated local government.

88 Acts, ch 1229, §21; 91 Acts, ch 256, §23, 24

331.250 General powers of consolidated local governments.

The consolidation charter shall provide for the delivery of services to specified areas of the consolidated local government. The governing body of the consolidated government shall administer the provision of services in each of the designated service areas and shall have the authority to determine the boundaries of the service areas. For each service provided by the consolidated government, the consolidated government shall assume the same statutory rights, powers, and duties relating to the provision of the service as if the member city were itself providing the service to its citizens.

88 Acts, ch 1229, §22; 91 Acts, ch 256, §25

331.251 Rules, ordinances, and resolutions of consolidated unit.

Within two years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county and cities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments shall remain in effect until paid in full.

88 Acts, ch 1229, §23

331.252 Form of ballot — city-county consolidation.

The question of city-county consolidation shall be submitted to the electors in substantially the following form:

Should the corporate existence and governments of the county of . . . . . and the cities of . . . . . and . . . . . be consolidated into one joint city-county corporation government?

If section 331.247, subsection 4, applies, the following question shall be placed on the ballot of each participating city:

Should the (name of city or second county) participate in the consolidation charter?

The ballot must contain a brief description and summary of the proposed charter or amendment.

88 Acts, ch 1229, §24; 91 Acts, ch 256, §26

MULTICOUNTY CONSOLIDATION

331.253 Requirements for multicounty government consolidation.

1. Consolidation may be placed on the ballot only by a joint report by two or more counties.

2. A final report must contain a consolidation charter if multicounty consolidation is recommended. The consolidation charter must conform to the provisions and requirements in accordance with this part.

88 Acts, ch 1229, §25; 91 Acts, ch 256, §27

331.254 Charter of consolidation.

When multicounty consolidation is recommended, a petition must contain a consolidation charter which provides for:

1. Adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service.

2. Establishment of subordinate service districts.

3. The transfer or other disposition of property and other rights, claims, assets, and franchises of the counties consolidated under the charter.

4. The official name of the consolidated county.

5. The transfer, reorganization, abolition, absorption, and adjustment of boundaries of existing boards, subordinate service districts, local improvement districts, and agencies of the consolidated counties.

6. The retention of each county's geographic boundaries as the boundaries existed before consolidation.

7. The merger of the elective offices of each consolidating county with the election of new officers within sixty days after the effective date of the charter. The elections shall be conducted by the county commissioner of elections of each county. No primary election shall be held. Nominations shall be made pursuant to section 43.78 and chapters 44 and 45, as applicable, except that the filing deadline shall be forty days before the election.

8. The merger of the appointive offices of each consolidating county.

The consolidation charter may include other provisions that are not inconsistent with state law.

88 Acts, ch 1229, §26; 91 Acts, ch 256, §28, 29; 94 Acts, ch 1180, §47

331.255 Form of ballot — multicounty consolidation.

The question of multicounty consolidation shall be submitted to the electors in substantially the following form:

Should the consolidation charter described below be adopted for (name of applicable county)?

The ballot must contain a brief description and summary of the proposed charter.

88 Acts, ch 1229, §27; 91 Acts, ch 256, §30

331.256 Joining existing multicounty consolidated government.

A county may join an existing multicounty consolidated government by resolution of the board of supervisors or upon petition of eligible electors of the county equal in number to at least twenty-five percent of the persons who voted at the last general election for the office of governor or president of the United States, whichever is fewer. Within fifteen days after receiving a valid petition, the board of the petitioning county shall adopt a resolution in favor of participation and shall immediately forward the resolution to the legislative body of the multicounty consolidated government. If a majority of the multicounty consolidated board of supervisors approves the resolution, the question of joining the multicounty consolidated government shall be submitted to the electorate of the petitioning county within sixty days after approval of the resolution.

91 Acts, ch 256, §31

331.257 through 331.259 Reserved.

COMMUNITY COMMONWEALTH

331.260 Community commonwealth.

1. A county and one or more cities or townships within the county, a contiguous county, and a city or a township within a contiguous county may unite to establish an alternative form of local government for the purpose of making more efficient use of their resources by providing for the delivery of regional services.

2. A charter proposing a community commonwealth as an alternative form of government may be submitted to the voters only by a commission established under section 331.232. A majority vote by the commission is required for the submission of a charter proposing a community commonwealth as an alternative form of local government. The commission submitting a community commonwealth form of government shall issue a final report and proposal. If an alternative form of government for a community commonwealth form of local government is proposed, approval of the commonwealth charter shall be a separate ballot issue from approval of the alternative form of government in those cities proposed to be included in the commonwealth. The commonwealth charter shall be effective in regard to a city government only if a majority of the voters of the city voting on the question voted for participation in the commonwealth charter.

The question of forming a community commonwealth shall be submitted to the electorate in substantially the same form as provided in section 331.252.

91 Acts, ch 256, §32

331.261 Charter — community commonwealth.

The community commonwealth charter shall provide for the following:

1. The official name of the community commonwealth government.

2. An elective legislative body established in the manner provided for county boards of supervisors under sections 331.201 through 331.216 and section 331.238.

3. Appointment of a manager pursuant to sections 331.241 through 331.243.

4. Adjustment of existing bonded indebtedness and other obligations to the extent it relates to the delivery of services.

5. The transfer or other disposition of property and other rights, claims, assets, and franchises as they relate to the delivery of services.

6. The transfer, reorganization, abolition, ad-

justment, and absorption of existing boards, existing subordinate service districts, local improvement districts, and agencies of the participating county and cities.

7. A system of delivery of services to the entire community commonwealth pursuant to section 331.263.

8. A formula for the transfer of taxing authority from member cities to the community commonwealth governing body to fund the delivery of regional services.

9. The transfer into the community commonwealth of areawide services which had been provided by other boards, commissions, and local governments, except that formation of a community commonwealth shall not affect the assignment of electric utility service territories pursuant to chapter 476, and shall not affect the rights of a city to grant a franchise under chapter 364.

10. A process by which the governing body of the community commonwealth and the governing bodies of the member cities provide by mutual agreement for the delivery of specified services to the community commonwealth.

11. The partisan election of community commonwealth government officials.

The community commonwealth charter may include other provisions not inconsistent with state law.

91 Acts, ch 256, §33

331.262 Adoption of charter — effect.

1. As a political subdivision of the state, the community commonwealth unit of local government shall have the statutory and constitutional status of a county and of a city to the extent the community commonwealth governing body assumes the powers and duties of cities as those powers and duties relate to the delivery of services. For each service provided by the community commonwealth, the community commonwealth shall assume the same statutory rights, powers, and duties relating to the provision of the service as if the member city were itself providing the service to its citizens.

On its effective date, the community commonwealth charter operates to replace the existing county government structure. The governments of participating cities shall remain in existence to render those services not transferred to the community commonwealth government.

2. A city or county wishing to terminate its membership in the community commonwealth government must do so pursuant to the existing charter procedure under this chapter or chapter 372, whichever is applicable.

A city or county may join an existing community commonwealth government by resolution of the board or council, whichever is applicable, or upon petition of eligible electors of the city or county, whichever is applicable, equal in number to at least twenty-five percent of the persons who voted at the last general election for the office of governor or president of the United States, whichever is fewer. Within fifteen days after receiving a valid petition, the applicable governing body shall adopt a resolution in favor of participation and shall immediately forward the resolution to the governing body of the community commonwealth. If a majority of the community commonwealth governing body approves the resolution, the question of joining the community commonwealth shall be submitted to the electorate of the petitioning city or county within sixty days after approval of the resolution.

91 Acts, ch 256, §34

331.263 Service delivery.

1. The governing body of the community commonwealth government shall administer the provision of services in each of the designated service areas and shall have the authority to determine the boundaries of the service areas.

2. The governing body of the community commonwealth shall have the authority to levy county taxes and shall have the authority to levy city taxes to the extent the city tax levy authority is transferred by the charter to the community commonwealth. A city participating in the community commonwealth shall transfer a portion of the city's tax levy authorized under section 384.1 or 384.12, whichever is applicable, to the governing body of the community commonwealth. The maximum rates of taxes authorized to be levied under sections 384.1 and 384.12 by a city participating in the community commonwealth shall be reduced by an amount equal to the rates of the same or similar taxes levied in the city by the governing body of the community commonwealth.

91 Acts, ch 256, §35

331.264 through 331.300 Reserved.

DIVISION III

POWERS AND DUTIES OF A COUNTY

PART 1

GENERAL POWERS AND DUTIES

331.301 General powers and limitations.

1. A county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exer-

cise of an independent county power.

2. A power of a county is vested in the board, and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.

3. The enumeration of a specific power of a county, the repeal of a grant of power, or the failure to state a specific power does not limit or restrict the general grant of home rule power conferred by the Constitution and this section. A county may exercise its general powers subject only to limitations expressly imposed by a state law.

4. An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law.

5. A county shall substantially comply with a procedure established by a state law for exercising a county power unless a state law provides otherwise. If a procedure is not established by state law, a county may determine its own procedure for exercising the power.

6. A county shall not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

7. A county shall not levy a tax unless specifically authorized by a state statute.

8. A county is a body corporate for civil and political purposes and shall have a seal as provided in section 331.552, subsection 4.

9. Supervisors and other county officers may administer oaths and take affirmations as provided in chapter 63A.

10. A county may enter into leases or lease-purchase contracts for real or personal property in accordance with the following terms and procedures:

a. A county shall lease or lease-purchase property only for a term which does not exceed the economic life of the property, as determined by the board.

b. A lease or lease-purchase contract entered into by a county may contain provisions similar to those sometimes found in leases between private parties, including, but not limited to, the obligation of the lessee to pay any of the costs of operation or ownership of the leased property and the right to purchase the leased property.

c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A county enterprise is a separate entity under this subsection, whether it is governed by the board or another governing body.

d. The board must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a lease or a lease-purchase contract made payable from the debt service fund.

e. The board may authorize a lease or lease-purchase contract which is payable from the general fund and which would not cause the total of lease and lease-purchase payments of the county due from the general fund of the county in any future year for lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The board must follow substantially the authorization procedures of section 331.443 to authorize a lease or lease-purchase contract for personal property which is payable from the general fund. The board must follow substantially the authorization procedures of section 331.443 to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease-purchase contract does not exceed the following limits:

(a) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.

(b) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(c) Six hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(d) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(e) One million dollars in a county having a population of more than two hundred thousand.

However, if the principal amount of a lease or lease-purchase contract pursuant to this subparagraph is less than twenty-five thousand dollars, the board may authorize the lease or lease-purchase contract without following the authorization procedures of section 331.443.

(2) The board must follow the following procedures to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits set forth in subparagraph (1):

(a) The board must institute proceedings for entering into a lease or lease-purchase contract payable from the general fund by causing a notice of the meeting to discuss entering into the lease or lease-purchase contract, including a statement of the principal amount and purpose of the lease or lease-purchase and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the board hold a meeting

at which it is proposed to take action to enter into the lease or lease-purchase contract.

(b) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the lease or lease-purchase contract, a petition is filed with the auditor in the manner provided by section 331.306, asking that the question of entering into the lease or lease-purchase contract be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to enter into the lease or lease-purchase contract to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the lease or lease-purchase contract. However, for purposes of this subparagraph, the petition shall not require signatures in excess of one thousand persons. The question to be placed on the ballot shall be stated affirmatively in substantially the following manner: Shall the county of . . . . . enter into a lease or lease-purchase contract in an amount of $ . . . . . for the purpose of . . . . . ? Notice of the election and its conduct shall be in the manner provided in section 331.442, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into a lease or lease-purchase contract is approved at the election, the board may proceed and enter into the lease or lease-purchase contract.

f. The governing body may authorize a lease or lease-purchase contract payable from the net revenues of a county enterprise or combined county enterprise by following the authorization procedures of section 331.464.

g. A lease or lease-purchase contract to which a county is a party or in which a county has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

h. Property that is lease-purchased by a county is exempt under section 427.1, subsection 2.

i. A contract for construction by a private party of property to be leased or lease-purchased by a county is not a contract for a public improvement under section 331.341, subsection 1. However, if a lease-purchase contract is funded in advance by means of the lessor depositing moneys to be administered by a county, with the county's obligation to make rent payments commencing with its receipt of moneys, a contract for construction of the property in question awarded by the county is a public improvement and is subject to section 331.341, subsection 1.

11. A county may enter into insurance agreements obligating the county to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the county against tort liability, loss of property, or any other risk associated with the operation of the county. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

12. The board of supervisors may credit funds to a reserve for the purposes authorized by subsection 11 of this section; section 331.424, subsection 1, paragraph *"f"*; and section 331.441, subsection 2, paragraph *"b"*. Moneys credited to the reserve, and interest earned on such moneys, shall remain in the reserve until expended for purposes authorized by subsection 11 of this section; section 331.424, subsection 1, paragraph *"f"*; or section 331.441, subsection 2, paragraph *"b"*.

13. The board of supervisors may waive a tax penalty, interest, or costs related to the collection of a tax if the board finds that a clerical error resulted in the penalty, interest, or cost. This subsection does not apply to bonded special assessments without the approval of the affected taxing jurisdiction.

14. The county may establish a department of public works. The department shall be administered by the county engineer or other person appointed by the board of supervisors. In addition to other duties assigned by the board, the department shall provide technical assistance to political subdivisions in the county including special districts relating to their physical infrastructure and may provide managerial and administrative services for special districts and combined special districts.

15. *a.* A county may adopt and enforce an ordinance requiring the construction of a storm shelter at a manufactured home community or mobile home park which is constructed after July 1, 1999. In lieu of requiring construction of a storm shelter, a county may require a community or park owner to provide a plan for the evacuation of community or park residents to a safe place of shelter in times of severe weather including tornadoes and high winds if the county determines that a safe place of shelter is available within a reasonable distance of the manufactured home community or mobile home park for use by community or park residents. Each evacuation plan prepared pursuant to this subsection shall be filed with, and approved by, the local emergency management agency. If construction of a storm shelter is required, an ordinance adopted or enforced pursuant to this subsection shall not include any of the following requirements:

(1) That the size of the storm shelter be larger than the equivalent of seven square feet for each manufactured or mobile home space in the manufactured home community or mobile home park.

(2) That the storm shelter include a restroom if the shelter is used exclusively as a storm shelter.

(3) That the storm shelter exceed the construction specifications approved by a licensed professional engineer and presented by the owner of the manufactured home community or mobile home park.

(4) That the shelter be located any closer than one thousand three hundred twenty feet from any manufactured or mobile home in the manufactured home community or mobile home park.

b. For the purposes of this subsection:

(1) *"Manufactured home community"* means the same as land-leased community defined in sections 335.30A and 414.28A.

(2) *"Manufactured home community or mobile home park"* means a manufactured home community or mobile home park as defined in section 562B.7.

(3) *"Storm shelter"* means a single structure or multiple structures designed to provide persons with temporary protection from a storm.

[C51, §93; R60, §221; C73, §279; C97, §394; C24, 27, 31, 35, 39, §**5128;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.1; S81, §331.301; 81 Acts, ch 117, §300]

85 Acts, ch 156, §1; 86 Acts, ch 1211, §19; 87 Acts, ch 115, §51; 89 Acts, ch 101, §1; 92 Acts, ch 1138, §1; 92 Acts, ch 1204, §8; 95 Acts, ch 67, §53; 95 Acts, ch 206, §8, 12; 99 Acts, ch 186, §1; 2001 Acts, ch 143, §1; 2001 Acts, ch 153, §9, 16

331.302 County legislation.

1. The board shall exercise a power or perform a duty only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A county shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. The criminal penalty surcharge required by section 911.2 shall be added to a county fine and is not a part of the county's penalty.

3. The subject matter of an ordinance or amendment shall be generally described in its title.

4. An amendment to an ordinance or to a code of ordinances shall specifically repeal the ordinance or code, or the section, subsection, paragraph, or subpart to be amended, and shall set forth the ordinance, code, section, subsection, paragraph, or subpart as amended.

4A. *a.* A county may by ordinance adopt by reference any portion of the Code of Iowa in effect at the time of the adoption in the manner provided in section 380.8 for adoption of a proposed code of ordinances containing a proposed new ordinance or amendment, subject to the following limitations:

(1) The ordinance shall describe the subject matter and identify the portion of the Code of Iowa adopted by chapter, section, and subsection or other subpart, as applicable.

(2) A portion of the Code of Iowa may be adopted by reference only if the criminal penalty provided by the law adopted does not exceed thirty days imprisonment and a five hundred dollar fine.

(3) Amendments or other changes to those portions of the Code of Iowa which have been adopted by reference shall serve as an automatic modification of the applicable ordinance.

b. An ordinance which adopts by reference any portion of the Code of Iowa may provide that violations of the ordinance are county infractions and subject to the limitations of section 331.307.

5. A proposed ordinance or amendment shall be considered and voted on for passage at two meetings of the board prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than a majority of the supervisors.

However, if a summary of the proposed ordinance or amendment is published as provided in section 331.305 prior to its first consideration and copies are available at the time of publication at the office of the auditor, the ordinance or amendment shall be considered and voted on for passage at one meeting prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than a majority of the supervisors.

6. Passage of an ordinance, amendment, or resolution requires an affirmative vote of not less than a majority of the supervisors. Each supervisor's vote on an ordinance, amendment, or resolution shall be recorded.

7. A resolution becomes effective upon passage and an ordinance or amendment becomes a law when a summary of the ordinance or the complete text of the ordinance is published, unless a subsequent effective date is provided within the measure. As used in this subsection, *"summary"* shall mean a narrative description of the terms and conditions of an ordinance setting forth the main points of the ordinance in a manner calculated to inform the public in a clear and understandable manner the meaning of the ordinance and which shall provide the public with sufficient notice to conform to the desired conduct required by the ordinance. The description shall include the title of the ordinance, an accurate and intelligible abstract or synopsis of the essential elements of the ordinance, a statement that the description is a summary, the location and the normal business hours of the office where the ordinance may be inspected, when the ordinance becomes effective, and the full text of any provisions imposing fines, penalties, forfeitures, fees, or taxes. Legal descriptions of property set forth in ordinances shall be described in full, provided that maps or

charts may be substituted for legal descriptions when they contain sufficient detail to clearly define the area with which the ordinance is concerned. The narrative description shall be written in a clear and coherent manner and shall, to the extent possible, avoid the use of technical or legal terms not generally familiar to the public. When necessary to use technical or legal terms not generally familiar to the public, the narrative description shall include definitions of those terms.

8. The auditor shall promptly record each measure, publish a summary of all ordinances or a complete text of the ordinances and amendments as provided in section 331.305, authenticate all measures except motions with signature and certification as to time and manner of publication, if any, and maintain for public use copies of all effective ordinances and codes. A copy of the complete text of an ordinance or amendment shall also be available for distribution to the public at the office of the county auditor. The auditor's certification is presumptive evidence of the facts stated therein.

9. At least once every five years, the board shall compile a code of ordinances containing all of the county ordinances in effect.

If a proposed code of ordinances contains only existing ordinances edited and compiled without change in substance, the board may adopt the code by ordinance.

If a proposed code of ordinances contains a proposed new ordinance or amendment, the board shall hold a public hearing on the proposed code before adoption. The auditor shall publish notice of the hearing as provided in section 331.305. Copies of the proposed code of ordinances shall be available at the auditor's office and the notice shall so state. Within thirty days after the hearing, the board may adopt the proposed code of ordinances which becomes law upon publication of the ordinance adopting it. If the board substantially amends the proposed code of ordinances after a hearing, notice and hearing shall be repeated.

Ordinances and amendments which become effective after adoption of a code of ordinances may be compiled as a supplement to the code, and upon adoption of the supplement by resolution, become part of the code of ordinances.

An adopted code of ordinances is presumptive evidence of the passage, publication, and content of the ordinances therein as of the date of the auditor's certification of the ordinance adopting the code or supplement.

10. The compensation paid to a newspaper for a publication required by this section shall not exceed the fee provided in section 618.11. The compensation paid to a newspaper for publication of the complete text of an ordinance shall not exceed three-fourths of the fee provided in section 618.11.

11. The board may adopt the provisions of a statewide or nationally recognized standard code or portions of any such code by an ordinance which identifies the code by subject matter, source, and date, and incorporates the provisions either by reference or by setting them forth in full. The code or portion shall be adopted only after notice and hearing in the manner provided in subsection 9.

12. Immediately after the effective date of a measure establishing a zoning district, building lines, or fire limits, the auditor shall certify the measure and a plat showing the district, lines, or limits, to the recorder. The recorder shall record the measure and plat in the miscellaneous record or other book provided for special records, and shall index the record.

13. A measure voted upon is not invalid because a supervisor has a conflict of interest, unless the vote of the supervisor was decisive to passage of the measure. If a majority or unanimous vote of the board is required by statute, the majority or vote shall be computed on the basis of the number of supervisors not disqualified by reason of conflict of interest. However, a majority of all supervisors is required for a quorum. For the purposes of this subsection, the statement of a supervisor that the supervisor declines to vote by reason of conflict of interest is conclusive and shall be entered of record.

14. A valid measure adopted by a county prior to July 1, 1981, remains valid unless the measure is irreconcilable with a state law.

15. A county shall not provide a civil penalty in excess of five hundred dollars for the violation of an ordinance which is classified as a county infraction or if the infraction is a repeat offense, a civil penalty not to exceed seven hundred fifty dollars for each repeat offense. A county infraction is not punishable by imprisonment.

1. [C31, 35, §5903-c9; C39, §**5903.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.11; S81, §331.302(1); 81 Acts, ch 117, §301]

2. [C97, §1349; C24, 27, 31, 35, 39, §**5587, 7180;** C46, §361.7, 444.19; C50, 54, 58, §358A.26, 361.7, 444.19; C62, 66, 71, 73, 75, §332.30, 358A.26, 444.19; C77, 79, 81, §332.30, 332.51, 358A.26; S81, §331.302(2); 81 Acts, ch 117, §301]

3 – 5. [S81, §331.302(3 – 5); 81 Acts, ch 117, §301]

6. [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §329.9; S81, §331.302(6); 81 Acts, ch 117, §301]

7 – 10. [S81, §331.302(7 – 10); 81 Acts, ch 117, §301]

11. [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.25; S81, §331.302(11); 81 Acts, ch 117, §301]

12 – 14. [S81, §331.302(12 – 14); 81 Acts, ch 117, §301]

84 Acts, ch 1219, §30; 86 Acts, ch 1202, §3; 91 Acts, ch 145, §1, 2; 96 Acts, ch 1098, §1; 98 Acts, ch 1144, §1; 99 Acts, ch 153, §7, 8; 2000 Acts, ch 1203, §17, 18

331.303 General duties of the board.

The board shall:

1. Keep record books as follows:

a. A *"minute book"* which records all orders and decisions other than those relating to drainage districts. The minute book or a separate index book must contain an alphabetical index by subject matter categories of the proceedings shown by the minutes.

b. A *"warrant book"* which records each warrant drawn in the order of issuance by number, date, amount, and name of drawee, and refers to the order in the minute book authorizing its drawing. The board may authorize the auditor to issue checks in lieu of warrants. If the issuance of checks is authorized, the word "check" shall be substituted for the word "warrant" in those sections of this chapter and chapters 6B, 11, 35B, 336, 349, 350, 427B, and 468 in which the issuance of a check is authorized in lieu of a warrant.

c. A *"claim register"* which records all claims for money filed against the county. Claims shall be numbered consecutively in order of filing and entered alphabetically by the claimant's name. The claim register shall show the date of filing, the number of the claim and its general nature, and the action of the board on the claim including the fund against which it is allowed if it is allowed. The claims allowed at each meeting shall be listed in the minute book by claim number.

2. Maintain its records in accordance with chapter 22.

3. Act upon applications for cigarette tax permits in accordance with chapter 453A.

4. Act upon applications for liquor control licenses and retail beer permits in accordance with section 123.32.

5. Proceed upon a petition to establish an official county fair and pay tax funds to it in accordance with section 174.10.

6. Select official newspapers and cause official publications to be made in accordance with chapters 349 and 618.

7. Adopt rules relating to the labor of prisoners in the county jail in accordance with sections 356.16 to 356.19, and may establish the cost of board and provide for the transportation of certain prisoners in accordance with section 356.30.

8. Divide the county into townships, and proceed upon a petition to divide, dissolve or change the name of a township in accordance with chapter 359.

9. Approve the written investment policy for the county required under section 12B.10B.

10. Cause on-site inspections of pipeline construction projects as required in section 479.29, subsection 2, and the board may petition for rules as provided in that section.

11. Defend, save harmless, and indemnify its officers, employees, and agents against tort claims, and may settle the claims, in accordance with sections 670.8 and 670.9.

12. Perform other duties as required by law.

[R60, §318; C73, §308; C97, §442; C24, 27, 31, 35, 39, §**5122, 5123;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §331.19, 331.20; S81, §331.303; 81 Acts, ch 117, §302; 82 Acts, ch 1104, §33]

83 Acts, ch 186, §10069, 10201; 92 Acts, ch 1156, §13; 99 Acts, ch 204, §35; 2001 Acts, ch 45, §1; 2001 Acts, ch 176, §67

331.304 Procedural limitations on general county powers.

If a county proposes to exercise any of the following powers, it shall do so in accordance with the following limitations:

1. The power to act jointly with other political subdivisions or public or private agencies shall be exercised in accordance with chapter 28E or 28I or other applicable state law.

2. The power to authorize games of skill or chance at amusement concessions shall be exercised in accordance with section 99B.4.

3. The power to adopt, administer and enforce the state building code shall be exercised in accordance with chapter 103A. The power to adopt by ordinance, administer, and enforce a county building code, is subject to the following restrictions:

a. A county building code shall not apply within the incorporated area of a city except at the option of the city, and shall not apply within a city's two-mile limit referred to in section 414.23, to the extent that the city has adopted a building code within the two-mile limit.

b. A county building code shall not apply to farm houses or other farm buildings which are primarily adapted for use for agricultural purposes, while so used or under construction for that use.

4. A county shall not license elevator inspectors or regulate elevator facilities except as provided in section 89A.15.

5. The power to adopt airport zoning regulations applicable to airport hazard areas shall be exercised in accordance with chapter 329.

6. The power to adopt county zoning regulations shall be exercised in accordance with chapter 335.

7. The board may file a petition with the city development board as provided in section 368.11.

8. The power to take private property for public use shall only be exercised by counties for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon counties, and in accordance with chapters 6A and 6B. Section 306.19 is also applicable to condemnation of right-of-way for secondary roads. Sections 306.27 through 306.37 are applicable to the condemnation of right-of-way that is contiguous to existing road right-of-way and necessary for the maintenance, safety improvement, or upgrade of the existing secondary road.

9. The board, upon application, may grant permits for the display of fireworks as provided in section 727.2.

10. A county shall not adopt or enforce any ordinance imposing any registration or licensing system or registration or license fees for owner-

occupied mobile homes including the lots or lands upon which they are located. A county shall not adopt or enforce any ordinance imposing any registration or licensing system, or registration or license fees, or safety or sanitary standards for rental mobile homes unless similar registration or licensing system, or registration or license fees, or safety or sanitary standards are required for other rental properties intended for human habitation. This subsection does not preclude the investigation and abatement of a nuisance or the enforcement of a tiedown system, or the enforcement of any regulations of the state or local board of health if those regulations apply to other rental properties or to owner-occupied housing intended for human habitation.

11. A county shall not adopt or enforce any ordinance imposing any limitation on the amount of rent that can be charged for leasing private residential or commercial property. This subsection does not prevent the right of a county to manage and control residential property in which the county has a property interest.

1, 2. [S81, §331.304(1, 2); 81 Acts, ch 117, §303]

3. [C50, 54, 58, 62, §358A.3; C66, 71, 73, 75, 77, 79, 81, §332.3(22), 358A.3; S81, §331.304(3); 81 Acts, ch 117, §303]

4 – 7. [S81, §331.304(4 – 7); 81 Acts, ch 117, §303]

8. [S13, §1644-a, -e, 2024-f; C24, 27, 31, 35, 39, §**7806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §471.4; S81, §331.304(8); 81 Acts, ch 117, §303]

9. [S81, §331.304(9); 81 Acts, ch 117, §303]

86 Acts, ch 1245, §1116; 99 Acts, ch 171, §33, 42; 2000 Acts, ch 1083, §1

1999 amendment to subsection 8 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

331.304A Limitations on county legislation.

1. As used in this section:

a. "Aerobic structure", "animal", "animal feeding operation", "animal feeding operation structure", and *"manure"* mean the same as defined in section 459.102.

b. "County legislation" means any ordinance, motion, resolution, or amendment adopted by a county pursuant to section 331.302.

2. A county shall not adopt or enforce county legislation regulating a condition or activity occurring on land used for the production, care, feeding, or housing of animals unless the regulation of the production, care, feeding, or housing of animals is expressly authorized by state law. County legislation adopted in violation of this section is void and unenforceable and any enforcement activity conducted in violation of this section is void. A condition or activity occurring on land used for the production, care, feeding, or housing of animals includes but is not limited to the construction, operation, or management of an animal feeding operation, an animal feeding operation structure, or aerobic structure, and to the storage, handling, or application of manure or egg washwater.

98 Acts, ch 1209, §9, 53

331.305 Publication of notices.

Unless otherwise provided by state law, if notice of an election, hearing, or other official action is required by this chapter, the board shall publish the notice at least once, not less than four nor more than twenty days before the date of the election, hearing, or other action, in one or more newspapers which meet the requirements of section 618.14. Notice of an election shall also comply with section 49.53.

[R60, §312(23); C73, §303(24); C97, §423; SS15, §423; C24, 27, 31, 35, 39, §**5261;** C46, 50, 54, 58, §330.18, 345.1; C62, 66, §111A.6, 330.18, 345.1; C71, §111A.6, 313A.35, 330.18, 345.1; C73, §111A.6, 313A.35, 330.18, 345.1, 361.5; C75, 77, 79, §111A.6, 313A.35, 330.18, 332.3(13), 345.1, 361.5; C81, §111A.6, 313A.35, 330.18, 332.3(13), 345.1, 361.5, 444.9(2); S81, §331.305; 81 Acts, ch 117, §304]

331.306 Petitions of eligible electors.

If a petition of the voters is authorized by this chapter, the petition is valid if signed by eligible electors of the county equal in number to at least ten percent of the votes cast in the county for the office of president of the United States or governor at the preceding general election, unless otherwise provided by state law. The petition shall include the signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

Petitions authorized by this chapter shall be filed with the board of supervisors not later than eighty-two days before the date of the general election if the question is to be voted upon at the general election. If the petition is found to be valid, the board of supervisors shall, not later than sixty-nine days before the general election, notify the county commissioner of elections to submit the question to the registered voters at the general election.

A petition shall be examined before it is accepted for filing. If it appears valid on its face it shall be accepted for filing. If it lacks the required number of signatures it shall be returned to the petitioners.

Petitions which have been accepted for filing are valid unless written objections are filed. Objections must be filed with the county auditor within five working days after the petition was filed. The objection process in section 44.7 shall be followed for objections filed pursuant to this section.

[C73, §299; C97, §410; SS15, §410; C24, 27, 31, 35, 39, §**5107, 5108;** C46, 50, 54, §330.17, 331.2;

C58, 62, 66, §111A.2, 330.17, 331.2; C71, 73, 75, 77, 79, §111A.2, 330.17, 331.2, 331.9; C81, §111A.2, 174.10, 330.17, 331.2, 331.9; S81, §331.306; 81 Acts, ch 117, §305]

89 Acts, ch 136, §69; 94 Acts, ch 1180, §48; 95 Acts, ch 67, §53

331.307 County infractions.

1. A county infraction is a civil offense punishable by a civil penalty of not more than five hundred dollars for each violation or if the infraction is a repeat offense a civil penalty not to exceed seven hundred fifty dollars for each repeat offense.

2. A county by ordinance may provide that a violation of an ordinance is a county infraction.

3. A county shall not provide that a violation of an ordinance is a county infraction if the violation is a felony, an aggravated misdemeanor, or a serious misdemeanor under state law or if the violation is a simple misdemeanor under chapters 687 through 747.

4. An officer authorized by a county to enforce a county code or regulation may issue a civil citation to a person who commits a county infraction. The citation may be served by personal service as provided in rule of civil procedure 1.305, by certified mail addressed to the defendant at the defendant's last known mailing address, return receipt requested, or by publication in the manner as provided in rule of civil procedure 1.310 and subject to the conditions of rule of civil procedure 1.311. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the clerk of the district court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

a. The name and address of the defendant.

b. The name or description of the infraction attested to by the officer issuing the citation.

c. The location and time of the infraction.

d. The amount of civil penalty to be assessed or the alternate relief sought, or both.

e. The manner, location, and time in which the penalty may be paid.

f. The time and place of court appearance.

g. The penalty for failure to appear in court.

5. In proceedings before the court for a county infraction:

a. The matter shall be tried before a magistrate or district associate judge in the same manner as a small claim.

b. The county has the burden of proof that the county infraction occurred and that the defendant committed the infraction. The proof shall be by clear, satisfactory, and convincing evidence.

c. The court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the county and produce evidence or witnesses on the defendant's behalf.

d. The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.

e. The defendant may answer by admitting or denying the infraction.

f. If a county infraction is proven, the court shall enter judgment against the defendant. If the infraction is not proven, the court shall dismiss it.

6. Notwithstanding section 602.8106, subsection 3, penalties or forfeitures collected by the court for county infractions shall be remitted to the county in the same manner as fines and forfeitures are remitted to cities for criminal violations under section 602.8106. If the person named in the citation is served as provided in this section and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.

7. A person against whom judgment is entered, shall pay court costs and fees as in small claims under chapter 631. If the action is dismissed, the county is liable for the court costs and court fees. Where the action is disposed of without payment, or provision for assessment, of court costs, the clerk shall at once enter judgment for costs against the county.

8. Seeking a civil penalty as authorized in this section does not preclude a county from seeking alternative relief from the court in the same action.

9. When judgment has been entered against a defendant, the court may do any of the following:

a. Impose a civil penalty by entry of a personal judgment against the defendant.

b. Direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court.

c. Grant appropriate alternative relief ordering the defendant to abate or cease the violation.

d. Authorize the county to abate or correct the violation.

e. Order that the county's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

The magistrate or district associate judge shall have jurisdiction to assess or enter judgment for costs of abatement or correction in an amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to section 631.1, subsection 1, for magistrates and section 602.6306, subsection 2, for district associate judges. If the county seeks abatement or correction costs in excess of those amounts, the case shall be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appeal pursuant to section 631.13.

10. A defendant or the county may file a motion for a new trial or may appeal the decision of the magistrate or district associate judge to the district court. The procedure on appeal shall be the same as for a small claim pursuant to section 631.13. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but shall not be admissible or binding as to any future violation for the same or similar ordinance provision by the same defendant.

11. This section does not preclude a peace officer of a county from issuing a criminal citation for a violation of a county code or regulation if criminal penalties are also provided for the violation. Each day that a violation occurs or is permitted by the defendant to exist, constitutes a separate offense.

12. The issuance of a civil citation for a county infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

86 Acts, ch 1202, §4; 87 Acts, ch 99, §1 – 3; 89 Acts, ch 150, §1 – 4; 98 Acts, ch 1144, §2

331.308 Neglected animals.

A county may rescue, provide maintenance, or dispose of neglected livestock or another animal, as provided in chapters 717 and 717B.

94 Acts, ch 1103, §2

331.309 through 331.320 Reserved.

PART 2

DUTIES AND POWERS OF THE BOARD RELATING TO COUNTY AND TOWNSHIP OFFICERS AND EMPLOYEES

331.321 Appointments — removal.

1. The board shall appoint:

a. A veterans memorial commission in accordance with sections 37.9 to 37.15, when a proposition to erect a memorial building or monument has been approved by the voters.

b. A county conservation board in accordance with section 350.2, when a proposition to establish the board has been approved by the voters.

c. The members of the county board of health in accordance with section 137.4.

d. One member of the convention to elect the state fair board as provided in section 173.2, subsection 3.

e. A temporary board of community mental health center trustees in accordance with section 230A.4 when the board decides to establish a community mental health center, and members to fill vacancies in accordance with section 230A.6.

f. The members of the service area advisory board in accordance with section 217.43.

g. A county commission of veteran affairs in accordance with sections 35B.3 and 35B.4.

h. A general assistance director in accordance with section 252.26.

i. One or more county engineers in accordance with sections 309.17 to 309.19.

j. A weed commissioner in accordance with section 317.3.

k. A county medical examiner in accordance with section 331.801, and the board may provide facilities, deputy examiners, and other employees in accordance with that section.

l. Two members of the county compensation board in accordance with section 331.905.

m. Members of an airport zoning commission as provided in section 329.9, if the board adopts airport zoning under chapter 329.

n. Members of an airport commission in accordance with section 330.20 if a proposition to establish the commission has been approved by the voters.

o. Two members of the civil service commission for deputy sheriffs in accordance with section 341A.2 or 341A.3, and the board may remove the members in accordance with those sections.

p. A temporary board of hospital trustees in accordance with sections 347.9 and 347.10 if a proposition to establish a county hospital has been approved by the voters.

q. An initial board of hospital trustees in accordance with section 347A.1 if a hospital is established under chapter 347A.

r. A county zoning commission, an administrative officer, and a board of adjustment in accordance with sections 335.8 to 335.11, if the board adopts county zoning under chapter 335.

s. A board of library trustees in accordance with sections 336.4 and 336.5, if a proposition to establish a library district has been approved by the voters, or section 336.18 if a proposition to provide library service by contract has been approved by the voters.

t. Local representatives to serve with the city development board as provided in section 368.14.

u. Members of a city planning and zoning commission and board of adjustment when a city extends its zoning powers outside the city limits, in accordance with section 414.23.

v. A list of residents eligible to serve as a compensation commission in accordance with section 6B.4, in condemnation proceedings under chapter 6B.

w. Members of the county judicial magistrate appointing commission in accordance with section 602.6503.

x. A member of the judicial district department of corrections as provided in section 905.3, subsection 1, paragraph *"a"*.

y. Members of a county enterprise commission or joint county enterprise commission if the commission is approved by the voters as provided in

section 331.471.

z. Other officers and agencies as required by state law.

2. If the board proposes to appoint a county surveyor, it shall appoint a person qualified in accordance with chapter 542B and provide the surveyor with a suitable book in which to record field notes and plats.

3. Except as otherwise provided by state law, a person appointed as provided in subsection 1 may be removed by the board by written order. The order shall give the reasons and be filed in the office of the auditor, and a copy shall be sent by certified mail to the person removed who, upon request filed with the auditor within thirty days of the date of mailing the copy, shall be granted a public hearing before the board on all issues connected with the removal. The hearing shall be held within thirty days of the date the request is filed unless the person removed requests a later date.

4. A board or commission appointed by the board of supervisors shall notify the county auditor of the name and address of its clerk or secretary.

5. A supervisor serving on another county board or commission shall be paid only as a supervisor for a day which includes official service on both boards.

1. [S81, §331.321(1, 2); 81 Acts, ch 117, §320]

2. [C51, §208; R60, §418; C73, §375; C97, §539; C24, 27, 31, 35, 39, §**5487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §355.6; S81, §331.321(3); 81 Acts, ch 117, §320]

3. [C51, §411; R60, §642; C73, §766; C97, §298, 481, 491, 496, 510; S13, §496; SS15, §298, 481, 491, 510-b; C24, 27, 31, 35, 39, §**5240;** C46, 50, 54, 58, §341.3; C62, 66, 71, 73, 75, 77, 79, 81, §111A.2, 341.3; S81, §331.321(4); 81 Acts, ch 117, §320]

4. [S81, §331.321(5); 81 Acts, ch 117, §320]

5. [C39, §**3661.011;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §234.10; S81, §331.321(6); 81 Acts, ch 117, §320]

83 Acts, ch 186, §10070, 10201; 84 Acts, ch 1067, §35; 87 Acts, ch 227, §24; 88 Acts, ch 1161, §12; 90 Acts, ch 1236, §45; 92 Acts, ch 1139, §24; 92 Acts, ch 1212, §30; 93 Acts, ch 54, §10; 94 Acts, ch 1173, §16; 98 Acts, ch 1075, §16; 2000 Acts, ch 1011, §1; 2000 Acts, ch 1057, §1; 2001 Acts, ch 95, §1; 2001 Acts, 2nd Ex, ch 4, §8, 9

331.322 Duties relating to county and township officers.

The board shall:

1. Require and approve official bonds in accordance with chapter 64 and section 636.6, and pay the cost of certain officers' bonds as provided in section 64.11 and section 331.324, subsection 6.

2. Make temporary appointments in accordance with section 66.19, when an officer is suspended under chapter 66.

3. Fill vacancies in county offices in accordance with sections 69.8 to 69.14A, and make appointments in accordance with section 69.16 unless a special election is called pursuant to section 69.14A.

4. Provide suitable offices for the meetings of the county conservation board and the safekeeping of its records.

5. Furnish offices within the county for the sheriff, and at the county seat for the recorder, treasurer, auditor, county attorney, county surveyor or engineer, county assessor, and city assessor. The board shall furnish the officers with fuel, lights, and office supplies. However, the board is not required to furnish the county attorney with law books. The board shall not furnish an office also occupied by a practicing attorney to an officer other than the county attorney.

6. Review the final compensation schedule of the county compensation board and determine the final compensation schedule in accordance with section 331.907.

7. Provide necessary office facilities and the technical and clerical assistance requested by the county compensation board to accomplish the purposes of sections 331.905 and 331.907.

8. Provide the sheriff with county-owned automobiles or contract for privately owned automobiles as needed for the sheriff and deputies to perform their duties, the need to be determined by the board.

9. Provide the sheriff and the sheriff's full-time deputies with necessary uniforms and accessories in accordance with section 331.657.

10. Pay for the cost of board furnished prisoners in the sheriff's custody, as provided in section 331.658, appoint and pay salaries of assistants at the jails, furnish supplies, and inspect the jails.

11. Furnish necessary equipment and materials for the sheriff to carry out the provisions of section 690.2.

12. Install radio materials in the office of the sheriff as provided in section 693.4.

13. Provide for the examination of the accounts of an officer who neglects or refuses to report fees collected, if a report is required by state law. The expense of the examination shall be charged to the officer and collectible on the officer's bond.

14. Establish and pay compensation of township trustees and township clerk, as provided in sections 359.46 and 359.47.

15. Furnish quarters for meetings of the board of review of assessments.

16. Pay reasonable compensation to assistants for the jury commission established under chapter 607A.

1. [R60, §312; C73, §303; C97, §422; SS15, §422; C24, 27, 31, 35, 39, §**5130;** C46, 50, 54, 58, 62, 66, 71, §322.3(8); C73, 75, 77, 79, 81, §332.3(8), 332.43; S81, §331.322; 81 Acts, ch 117, §321]

2, 3. [S81, §331.322(2, 3); 81 Acts, ch 117, §321]

4. [C58, 62, 66, 71, 73, 75, 77, 79, 81, §111A.3; S81, §331.322(4); 81 Acts, ch 117, §321]

5. [C73, §3844; C97, §468; C24, 27, 31, 35, 39, §**5133, 5134;** C46, §332.9, 332.10, 405.12; C50, 54, 58, §332.9, 332.10, 405.12, 441.7; C62, §332.9, 332.10, 441.14; C66, 71, 73, 75, 77, 79, 81, §332.9, 332.10, 336A.9, 441.14; S81, §331.322(5); 81 Acts, ch 117, §321; 82 Acts, ch 1104, §34]

6. [C66, 71, 73, 75, §340.3; C77, 79, 81, §340A.6; S81, §331.322(6); 81 Acts, ch 117, §321]

7. [C77, 79, 81, §340A.5; S81, §331.322(7); 81 Acts, ch 117, §321]

8. [C31, 35, 39, §**5130;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §332.3(18); C77, 79, 81, §332.3(18), 332.35; S81, §331.322(8); 81 Acts, ch 117, §321]

9. [C66, 71, 73, §332.10; C75, 77, 79, §332.10, 337A.2; C81, §337A.2; S81, §331.322(9); 81 Acts, ch 117, §321]

10. [C51, §2536; R60, §4145; C73, §3788; C24, 27, §5197-d1; C31, 35, §5197-d1, -d2, -d3, -d5; C39, §**5191, 5197.01 – 5197.03, 5197.05;** C46, 50, 54, 58, 62, 66, 71, 73, §337.11, 338.1 – 338.3, 338.5; C75, 77, 79, 81, §338.1 – 338.3, 338.5; S81, §331.322(10); 81 Acts, ch 117, §321]

11. [C27, 31, 35, §13417-b2; C39, §**13417.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §749.3; C79, 81, §690.3; S81, §331.322(11); 81 Acts, ch 117, §321]

12. [C31, 35, §13417-d4; C39, §**13417.6;** C46, 50, 54, 58, §750.4; C62, 66, 71, 73, 75, 77, §750.4, 750.6; C79, 81, §693.4, 693.6; S81, §331.322(12); 81 Acts, ch 117, §321]

13. [C97, §548; C24, 27, 31, 35, 39, §**5253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §343.5; S81, §331.322(13); 81 Acts, ch 117, §321]

14. [C51, §2548; R60, §911, 4156; C73, §3808, 3809; C97, §590, 591; S13, §590, 591; C24, 27, 31, 35, 39, §**5571, 5572;** C46, 50, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.46, 359.47; S81, §331.322(14); 81 Acts, ch 117, §321]

15. [C46, 50, 54, 58, §405.17; C62, 66, 71, 73, 75, 77, 79, 81, §441.34; S81, §331.322(15); 81 Acts, ch 117, §321]

16. [C24, 27, 31, 35, 39, §**10858;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §608.11; S81, §331.322(16); 81 Acts, ch 117, §321]

83 Acts, ch 14, §3; 83 Acts, ch 186, §10071, 10201; 86 Acts, ch 1108, §1; 87 Acts, ch 227, §25; 88 Acts, ch 1161, §13; 89 Acts, ch 215, §5

331.323 Powers relating to county officers — combining duties.

1. A county may combine the duties of two or more of the following county officers and employees as provided in this subsection:

a. Sheriff
b. Treasurer
c. Recorder
d. Auditor
e. Medical examiner
f. General assistance director
g. County care facility administrator
h. Commission on veteran affairs
i. Director of social welfare
j. County assessor
k. County weed commissioner.

If a petition of electors equal in number to twenty-five percent of the votes cast for the county office receiving the greatest number of votes at the preceding general election is filed with the auditor no later than five working days before the filing deadline for candidates for county offices as specified in section 44.4 for the next general election, the board shall direct the commissioner of elections to call an election for the purpose of voting on the proposal. If the petition contains more than one proposal for combining duties, each proposal shall be listed on the ballot as a separate issue. If the majority of the votes cast is in favor of a proposal, the board shall take all steps necessary to combine the duties as specified in the petition.

The petition shall state the offices and positions to be combined and the offices or positions to be abolished. Offices and positions that have been combined may be subsequently separated by a petition and election in the same manner.

If an appointive officer or position is abolished, the term of office of the incumbent shall terminate one month from the day the proposal is approved. If an elective office is abolished, the incumbent shall hold office until the completion of the term for which elected, except that if a proposal is approved at a general election which fills the abolished office, the person elected shall not take office.

When the duties of an officer or employee are assigned to one or more elected officers, the board shall set the initial salary for each elected officer. Thereafter, the salary shall be determined as provided in section 331.907.

2. The board may:

a. Require additional security on an officer's bond, in accordance with sections 65.2 and 65.3, or hear a petition of the surety for release and require a new bond, in accordance with sections 65.4 to 65.8.

b. Require any county officer to make a report to it under oath on any subject connected with the duties of the office, and remove from office by majority vote an officer who refuses or neglects to make a report or give a bond required by the board within twenty days after the requirement is made known to the officer.

c. Compromise an unsatisfied judgment rendered in favor of the county against a county officer and the sureties on the officer's bond, if the county is satisfied that the full amount cannot be collected. The county may compromise with one or more of the sureties and release those sureties if the officer and each of the sureties on the officer's bond execute a written consent to the compromise and to the release of each of the sureties who agree to the compromise, and in the writing agree that

the compromise and release do not release any of the sureties who do not agree to the compromise. The written consent shall be filed with the auditor. If the judgment is based upon a default in county funds, the money received under the compromise shall be paid pro rata to the funds in proportion to the amount each fund was in default at the time the judgment was rendered.

d. Authorize a county officer to destroy records in the officer's possession which have been on file for more than ten years, and are not required to be kept as permanent records.

e. Enter into an agreement with one or more other counties to share the services of a county attorney, in accordance with section 331.753.

f. Provide that the county attorney be a full-time or part-time officer in accordance with section 331.752.

g. Establish the number of deputies, assistants, and clerks for the offices of auditor, treasurer, recorder, sheriff, and county attorney.

h. Exercise other powers authorized by state law.

1. [C62, 66, 71, 73, 75, 77, 79, 81, §332.17 – 332.22; S81, §331.323(1); 81 Acts, ch 117, §322]

2. a. [S81, §331.323(2); 81 Acts, ch 117, §322]

b. [R60, §312; C73, §303; C97, §422; SS15, §422; C24, 27, 31, 35, 39, §**5130(8, 9);** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.3(8, 9); S81, §331.323; 81 Acts, ch 117, §322]

c. [C97, §437 – 439; C24, 27, 31, 35, 39, §**5136 – 5138;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.12 – 332.14; S81, §331.323(2); 81 Acts, ch 117, §322]

d. [C24, 27, 31, 35, 39, §**5139;** C46, 50, §332.15; C54, 58, 62, 66, 71, §332.15, 343.13; C73, 75, 77, §110.9, 332.15, 335.11, 343.13; C79, 81, §110.16, 332.15, 335.11, 343.13; S81, §331.323; 81 Acts, ch 117, §322]

e, f. [S81, §331.323(2); 81 Acts, ch 117, §322]

g. [C97, §298, 303, 481, 491, 496, 510, 2734; S13, §303-a; SS15, §298, 481, 491, 510-b, 2734-b; C24, 27, 31, 35, 39, §**5238;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §341.1; S81, §331.323(2); 81 Acts, ch 117, §322]

h. [S81, §331.323(2); 81 Acts, ch 117, §322]

83 Acts, ch 186, §10072, 10073, 10201; 86 Acts, ch 1155, §3; 87 Acts, ch 115, §52; 87 Acts, ch 227, §26; 92 Acts, ch 1212, §31; 93 Acts, ch 143, §47

331.324 Duties and powers relating to county and township officers and employees.

1. The board shall:

a. Carry out the duties of a public employer to engage in collective bargaining in accordance with chapter 20.

b. Grant claims for mileage and expenses of officers and employees in accordance with sections 70A.9 to 70A.13 and section 331.215, subsection 2.

c. Provide workers' compensation benefits to officers and employees as required by chapter 85.

d. Provide occupational disease compensation to employees as required by chapter 85A.

e. Cooperate with the workers' compensation commissioner and comply with requirements imposed upon counties under chapters 86 and 87.

f. Comply with occupational safety and health standards as required by chapter 88.

g. Comply with wage payment requirements imposed upon counties under chapter 91A.

h. Comply with employment security requirements imposed upon counties under chapter 96.

i. Participate in the Iowa public employees' retirement system as required by chapter 97B.

j. Participate in the federal Social Security Act as required by chapter 97C.

k. Provide for support of the civil service commission for deputy sheriffs in accordance with section 341A.20.

l. Establish the compensation of deputies and assistants in accordance with section 331.904.

m. Provide a deferred compensation program for any employee, in accordance with section 509A.12.

n. Employ persons who are blind or partially blind and persons with physical disabilities in accordance with section 216C.2.

o. Fix the compensation for services of county and township officers and employees if not otherwise fixed by state law.

p. Perform other duties required by state law.

2. If the board wishes to participate in a program of interchange of employees, it shall do so in accordance with chapter 28D.

3. In exercising its power to resolve disputes with officers and employees, the board may arbitrate disputes in accordance with chapter 679B.

4. If the liability of a county officer or employee in the performance of official duties is not fully indemnified by insurance, the board shall pay a loss for which the officer or employee is found liable beyond the amount of insurance, and may compromise and settle any such claim.

5. If a board provides group insurance for county employees, it shall also provide the insurance to a full-time county extension office assistant employed in the county, if the county is reimbursed for the premium by the county extension district.

6. In carrying out the requirement of section 331.322, subsection 1, the board may purchase an individual or a blanket surety bond insuring the fidelity of county officers and county employees who are accountable for county funds or property subject to the minimum surety bond requirements of chapter 64. An elected county officer is deemed to have furnished surety if the officer is covered by a blanket bond purchased as provided in this subsection.

1. a – n. [S81, §331.324(1); 81 Acts, ch 117, §323]

o. [R60, §312; C73, §303; C97, §422; SS15,

§422; C24, 27, 31, 35, 39, §**5130;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.3(10); S81, §331.324(1); 81 Acts, ch 117, §323]

p. [S81, §331.324(1); 81 Acts, ch 117, §323]

2, 3. [S81, §331.324(2 – 4); 81 Acts, ch 117, §323]

4. [C73, 75, 77, 79, 81, §332.43; S81, §331.324(5); 81 Acts, ch 117, §323; 82 Acts, ch 1104, §35]

5. [C75, 77, 79, 81, §509A.7; 82 Acts, ch 1101, §1]

83 Acts, ch 14, §4; 83 Acts, ch 186, §10074, 10075, 10201; 94 Acts, ch 1173, §17; 96 Acts, ch 1129, §83; 98 Acts, ch 1061, §11

331.325 Control and maintenance of pioneer cemeteries — cemetery commission.

1. As used in this section, *"pioneer cemetery"* means a cemetery where there have been six or fewer burials in the preceding fifty years.

2. Each county board of supervisors may adopt an ordinance assuming jurisdiction and control of pioneer cemeteries in the county. The board shall exercise the powers and duties of township trustees relating to the maintenance and repair of cemeteries in the county as provided in sections 359.28 through 359.41 except that the board shall not certify a tax levy pursuant to section 359.30 or 359.33 and except that the maintenance and repair of all cemeteries under the jurisdiction of the county including pioneer cemeteries shall be paid from the county general fund. The maintenance and improvement program for a pioneer cemetery may include restoration and management of native prairie grasses and wildflowers.

3. In lieu of management of the cemeteries, the board of supervisors may create, by ordinance, a cemetery commission to assume jurisdiction and management of the pioneer cemeteries in the county. The ordinance shall delineate the number of commissioners, the appointing authority, the term of office, officers, employees, organizational matters, rules of procedure, compensation and expenses, and other matters deemed pertinent by the board. The board may delegate any power and duties relating to cemeteries which may otherwise be exercised by township trustees pursuant to sections 359.28 through 359.41 to the cemetery commission except the commission shall not certify a tax levy pursuant to section 359.30 or 359.33 and except that the expenses of the cemetery commission shall be paid from the county general fund.

4. Notwithstanding sections 359.30 and 359.33, the costs of management, repair, and maintenance of pioneer cemeteries shall be paid from the county general fund.

96 Acts, ch 1182, §1

331.326 through 331.340 Reserved.

PART 3

DUTIES AND POWERS OF THE BOARD RELATING TO COUNTY CONTRACTS

Subject to reciprocal resident bidder preference in §73A.21

331.341 Contracts.

1. When the estimated cost of a public improvement, other than improvements which may be paid for from the secondary road fund, exceeds the amount specified in section 309.40, the board shall follow the contract letting procedures provided for cities in sections 384.95 to 384.103. However, in following those sections the board shall substitute the word *"county"* for the word *"city"*, section 331.305 for section 362.3, shall consider *"governing body"* to mean the board, and shall exclude references to a city utility, utility board of trustees, or public utilities. As used in this section, *"public improvement"* means the same as defined in section 384.95 as modified by this subsection.

2. The board shall give preference to Iowa products and labor in accordance with chapter 73 and shall comply with bid and contract requirements in section 73.2.

3. Contracts for improvements which may be paid for from the secondary road fund shall be awarded in accordance with sections 309.40 to 309.43, 310.14, 314.1, 314.2, and other applicable state law.

4. If the contract price for a public improvement is fifteen thousand dollars or more, the board shall require a contractor's bond in accordance with chapter 573.

5. In exercising its power to contract for public improvements, the board may contract for the application of contract termination procedures in accordance with chapter 573A.

[C24, 27, 31, 35, 39, §**351, 5131, 5132;** C46, 50, 54, 62, 66, 71, 73, 75, §23.1, 332.7, 332.8; C77, 79, 81, §23.1, 332.7; S81, §331.341; 81 Acts, ch 117, §340]

94 Acts, ch 1173, §18; 95 Acts, ch 71, §2; 98 Acts, ch 1153, §1

Optional waiver; §12.44

331.342 Conflicts of interest in public contracts.

As used in this section, *"contract"* means a claim, account, or demand against or agreement with a county, express or implied, other than a contract to serve as an officer or employee of the county. However, contracts subject to section 314.2 are not subject to this section.

An officer or employee of a county shall not have an interest, direct or indirect, in a contract with that county. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

1. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

2. An employee of a bank or trust company, who serves as treasurer of a county.

3. Contracts made by a county upon competitive bid in writing, publicly invited and opened.

4. Contracts in which a county officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 8, or both, if the contracts are made by competitive bid, publicly invited and opened, and if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

5. The designation of official newspapers.

6. A contract in which a county officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract shall not be renewed.

7. A contract with volunteer fire fighters or civil defense volunteers.

8. A contract with a corporation in which a county officer or employee has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of the officer or employee.

9. A contract made by competitive bid, publicly invited and opened, in which a member of a county board, commission, or administrative agency has an interest, if the member is not authorized by law to participate in the awarding of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

10. Contracts not otherwise permitted by this section, for the purchase of goods or services by a county, which benefit a county officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of one thousand five hundred dollars in a fiscal year.

[S81, §331.342; 81 Acts, ch 117, §341]
90 Acts, ch 1209, §3, 4

331.343 to 331.360 Reserved.

PART 4

DUTIES AND POWERS OF THE BOARD RELATING TO COUNTY PROPERTY

331.361 County property.

1. Counties bounded by a body of water have concurrent jurisdiction over the entire body of water lying between them.

2. In disposing of an interest in real property by sale or exchange, by lease for a term of more than three years, or by gift, the following procedures shall be followed, except as otherwise provided by state law:

a. The board shall set forth its proposal in a resolution and shall publish notice of the time and place of a public hearing on the proposal, in accordance with section 331.305.

b. After the public hearing, the board may make a final determination on the proposal by resolution.

c. When unused highway right-of-way is not being sold or transferred to another governmental authority, the county shall comply with the requirements of section 306.23.

3. An interest in real property which is assessed for taxation as residential or commercial multifamily property may be disposed of through a public request for proposals process. A proposal submitted pursuant to this section shall state the housing use planned by the person submitting the proposal. The board shall publish the proposals in a notice of the time and place of a public hearing on the proposals, in accordance with section 331.305. After the public hearing, the board may choose by resolution from among the proposals submitted or may reject all proposals and submit a new request for proposals.

4. The board shall not dispose of real property by gift except for a public purpose, as determined by the board, in accordance with other state law. However, the board may dispose of real property for use in an Iowa homesteading program under section 16.14 for a nominal consideration.

5. The board shall:

a. Proceed upon a petition to establish a memorial hall or monument under chapter 37, as provided in that chapter.

b. Comply with section 103A.10, subsection 4, in the construction of new buildings.

c. Proceed upon a petition to, or with approval of the voters, establish a county public hospital under chapter 347 or sell or lease a county hospital for use as a private hospital or as a merged area hospital under chapter 145A or sell or lease a county hospital in conjunction with the establishment of a merged area hospital in accordance with procedures set out in chapter 347.

d. Bid for real property at a tax sale as required under section 446.19, and handle the property in accordance with section 446.31 and chapter 569.

e. Require the conduction of a life cycle cost analysis for county facilities in accordance with chapter 470.

f. Comply with chapter 216D if food service is provided in public buildings.

g. Comply with section 216C.9 if curbs and ramps are constructed.

h. Provide facilities for the district court in accordance with section 602.1303.

i. Perform other duties required by state law.

6. In exercising its power to manage county real property, the board may lease land for oil and gas exploration as provided in section 458A.21.

7. The board shall not lease, purchase, or construct a facility or building before considering the leasing of a vacant facility or building which is located in the county and owned by a public school corporation. The board may lease a facility or building owned by the public school corporation with an option to purchase the facility or building in compliance with section 297.22. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the board at least thirty days before the termination of the lease.

1. [C51, §95; R60, §223; C73, §280; C97, §395; C24, 27, 31, 35, 39, §**5129;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.2; S81, §331.361(1); 81 Acts, ch 117, §360]

2, 3. [C24, 27, 35, 39, §**5130;** C46, 50, 54, 58, 62, 66, §332.3; C71, 73, 75, 77, 79, §332.3, 569.8; C81, §332.3(13); S81, §331.361(2, 3); 81 Acts, ch 117, §360]

4. [C39, §**5130.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.5; S81, §331.361(4); 81 Acts, ch 117, §360]

5. [C24, 27, 31, 35, 39, §**487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.5; S81, §331.361(5); 81 Acts, ch 117, §360]

6. [S81, §331.361(6); 81 Acts, ch 117, §360]

7. [82 Acts, ch 1148, §3]

83 Acts, ch 186, §10076, 10201; 85 Acts, ch 185, §1; 87 Acts, ch 35, §2; 94 Acts, ch 1173, §19; 96 Acts, ch 1204, §30; 97 Acts, ch 184, §5

331.362 Roads and traffic.

1. A county has jurisdiction over secondary roads as provided in section 306.4, subsection 2, subsection 4, paragraph *"b"*, and subsection 5, paragraph *"b."*

2. The board shall exercise the county's jurisdiction over secondary roads in accordance with chapters 306, 309, 310, 314, and other applicable laws.

3. The board may establish secondary road assessment districts as provided in chapter 311.

4. If a county has land subject to section 312.8, the board shall administer road funds available under that section as prescribed in that section.

5. The board may enter into agreements with the department of transportation as provided in section 313.2.

6. The board shall provide for the control of noxious weeds in accordance with chapter 317.

7. The board shall cause the removal of obstructions on the secondary roads, in accordance with chapter 319.

8. The board shall proceed upon a petition to construct a sidewalk in accordance with sections 320.1 to 320.3. The board may grant permission to lay gas and water mains, construct and maintain cattleways, or construct sidewalks in connection with the secondary roads, in accordance with sections 320.4 to 320.8.

9. A county may regulate traffic on and use of the secondary roads, in accordance with sections 321.236 to 321.250, 321.254, 321.255, 321.285, subsection 5, sections 321.352, 321.471 to 321.473, and other applicable provisions of chapter 321, and sections 321G.9 and 327G.15.

[S81, §331.362; 81 Acts, ch 117, §361]

331.363 to 331.380 Reserved.

PART 5

DUTIES AND POWERS OF THE BOARD RELATING TO COUNTY SERVICES

331.381 Duties relating to services.

The board shall:

1. Proceed in response to a petition to establish a unified law enforcement district in accordance with sections 28E.21 to 28E.28A, or the board may proceed under those sections on its own motion.

2. Provide for emergency management planning in accordance with sections 29C.9 through 29C.13.

3. Proceed in response to a petition to establish a county conservation board in accordance with section 350.2.

4. Comply with chapter 222, including but not limited to sections 222.13, 222.14, and 222.59 to 222.82, in regard to the care of persons with mental retardation.

5. Comply with chapters 227, 229 and 230, including but not limited to sections 227.11, 227.14, 229.42, 230.25, 230.27, and 230.35, in regard to the care of persons with mental illness.

6. Audit and pay the burial expense for indigent veterans, as provided in section 35B.15.

7. Make determinations regarding emergency relief services in accordance with sections 251.5 and 251.6.

8. Administer general assistance for the poor in accordance with chapter 252.

9. Handle complaints seeking medical care for indigent persons and pay for the care in accordance with chapter 255.

10. Comply with chapters 269 and 270 in regard to the payment of costs for pupils at the Iowa braille and sight saving school and the school for the deaf.

11. Enforce the interstate library compact in accordance with sections 256.70 through 256.73.

12. Proceed in response to a petition to establish or end an airport commission in accordance with sections 330.17 to 330.20.

13. Proceed in response to a petition for a city hospital to become a county hospital in accordance with section 347.23.

14. Provide for the seizure, impoundment, and disposition of dogs in accordance with chapter 351.

15. Proceed in response to a petition to establish a county library district in accordance with sections 336.2 to 336.5, or a petition to provide library service by contract or to terminate the service under section 336.18.

16. Establish a sanitary disposal project in accordance with sections 455B.302, 455B.305, and 455B.306.

17. *a.* Furnish a place for the confinement of prisoners as required in section 903.4, and in accordance with chapter 356 or 356A.

b. Notwithstanding paragraph *"a"*, after consulting with and obtaining the approval of the chief judge of the judicial district, the board of a county with a population of less than fifteen thousand according to the 1990 census may enter into an agreement with a contiguous county to share costs and to provide space for the county's prisoners and space for the district court.

18. Perform other duties required by state law.

1 – 7. [S81, §331.381(1 – 7); 81 Acts, ch 117, §380]

8. [C51, §820, 825 – 827; R60, §1388, 1393 – 1395; C73, §1365, 1369 – 1371; C97, §2234, 2238 – 2240; S13, §2234; C24, 27, §5329, 5334 – 5336; C31, 35, §5329, 5334, 5334-c1, 5335, 5336; C39, §**3828.106, 3828.110 – 3828.113;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.34, 252.38 – 252.41; S81, §331.381(8); 81 Acts, ch 117, §380]

9. [C35, §2554-g9; C39, §**2554.09;** C46, 50, 54, 58, 62, §150.9; C66, 71, 73, 75, 77, 79, 81, §150.9, 150A.5; S81, §331.381(9); 81 Acts, ch 117, §380]

10 – 13. [S81, §331.381(10 – 13); 81 Acts, ch 117, §380]

14. [C97, §458; S13, §458; C24, 27, 31, 35, 39, §**5425;** C46, 50, 54, 58, §351.6; C62, 66, 71, 73, 75, 77, 79, 81, §332.3(21), 351.6; S81, §331.381(14); 81 Acts, ch 117, §380]

15. [S81, §331.381(15); 81 Acts, ch 117, §380]

16. [C62, 66, 71, 73, 75, 77, 79, §332.31; S81, §331.381(16); 81 Acts, ch 117, §380]

17, 18. [S81, §331.381(17, 18); 81 Acts, ch 117, §380]

83 Acts, ch 79, §3; 92 Acts, ch 1139, §25; 92 Acts, ch 1164, §1; 92 Acts, ch 1212, §32; 93 Acts, ch 48, §52; 94 Acts, ch 1173, §20; 96 Acts, ch 1129, §113

331.382 Powers and limitations relating to services.

1. The board may exercise the following powers in accordance with the sections designated, and may exercise these or similar powers under its home rule powers or other provisions of law:

a. Establishment of parks outside of cities as provided in section 461A.34.

b. Establishment of a water recreational area as provided in sections 461A.59 to 461A.78.

c. Establishment of a merged area hospital as provided in chapter 145A.

d. Acquisition and operation of a limestone quarry for the sale of agricultural lime, in accordance with chapter 353.

e. Provision of preliminary diagnostic evaluation before admissions to state mental health institutes as provided in sections 225C.14 through 225C.17.

f. Establishment of a community mental health center as provided in chapter 230A.

g. Establishment of a county care facility as provided in chapter 347B, and sections 135C.23 and 135C.24.

h. Provision of relocation programs and payments as provided in chapter 316.

i. Establishment of an airport commission as provided in sections 330.17 to 330.20.

j. Creation of an airport authority as provided in chapter 330A.

2. The power to establish reserve peace officers is subject to chapter 80D.

3. The power to legislate in regard to chemical substance abuse is subject to section 125.40.

4. The power to establish a county hospital is subject to the licensing requirements of chapter 135B and the power to establish a county health care facility is subject to the licensing requirements of chapter 135C.

5. The board shall not regulate, license, inspect, or collect license fees from food establishments or food and beverage vending machines except as provided in chapter 137F or from hotels except as provided in chapter 137C.

6. The power to operate juvenile detention and shelter care homes is subject to approval of the homes by the director of the department of human services or the director's designee, as provided in section 232.142.

7. If a law library is provided in the county courthouse, judges of the district court of the county shall supervise and control the law library.

8. The board is subject to chapter 161F, chapter 357 to 358, or chapter 468, subchapters I through III, subchapter IV, parts 1 and 2, or subchapter V, as applicable, in acting relative to a special district authorized under any of those chapters.

However, the board may assume and exercise the powers and duties of a governing body under chapter 357, 357A, 357B, 358 or chapter 468, subchapter III, if a governing body established under one of those chapters has insufficient membership to perform its powers and duties, and the board, upon petition of the number of property owners within a proposed district and filing of a bond as provided in section 357A.2, may establish a service district within the unincorporated area of the county and exercise within the district the powers and duties granted in chapter 357, 357A, 357B, 357C, 358, 359, 384, division IV or chapter 468, subchapter III.

9. The power to establish and administer an air pollution control program in lieu of state ad-

ministration is subject to sections 455B.144 and 455B.145.

1. a – f. [S81, §331.382(1); 81 Acts, ch 117, §381]

g. [C51, §828; R60, §1396; C73, §1372; C97, §2241; SS15, §2241; C24, 27, 31, 35, §5338; C39, §**3828.115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §253.1; S81, §331.382; 81 Acts, ch 117, §381]

h – j. [S81, §331.382(1); 81 Acts, ch 117, §381]

2 – 6. [S81, §331.382(2 – 6); 81 Acts, ch 117, §381]

7. [C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.6; S81, §331.382(7); 81 Acts, ch 117, §381]

8. [C77, 79, 81, §332.3(33); S81, §331.382(8); 81 Acts, ch 117, §381]

9. [S81, §331.382(9); 81 Acts, ch 117, §381]

83 Acts, ch 96, §157, 159; 83 Acts, ch 101, §76; 89 Acts, ch 20, §17; 98 Acts, ch 1162, §27, 30

Contracts to provide services to tax-exempt property; see §364.19

331.383 Duties and powers relating to elections.

The board shall ensure that the county commissioner of elections conducts primary, general, city, school, and special elections in accordance with applicable state law. The board shall canvass elections in accordance with sections 43.49 to 43.51, 43.60 to 43.62, 46.24, 50.13, 50.24 to 50.29, 50.44 to 50.47, 260C.39, 275.25, 277.20, 376.1, 376.7, and 376.9. The board shall prepare and deliver a list of persons nominated in accordance with section 43.55, provide for a recount in accordance with section 50.48, provide for election precincts in accordance with sections 49.3, 49.4, 49.6 to 49.8 and 49.11, pay election costs as provided in section 47.3, participate in election contests as provided in sections 62.1A and 62.9, and perform other election duties required by state law. The board may authorize additional precinct election officials as provided in section 51.1, provide for the use of a voting machine or electronic voting system as provided in sections 52.2, 52.3, 52.8, and 52.34, and exercise other election powers as provided by state law.

[S81, §331.383; 81 Acts, ch 117, §382; 82 Acts, ch 1104, §36]

331.384 Abatement of public health and safety hazards — special assessments.

1. A county may:

a. Require the abatement of a nuisance, public or private, in any reasonable manner.

b. Require the removal of diseased trees or dead wood, except on publicly owned property or right-of-way.

c. Require the removal, repair, or dismantling of an abandoned or dangerous building or structure.

d. Require the numbering of buildings.

e. Require connection to public drainage systems from abutting property when necessary for public health or safety.

f. Require the cutting or destruction of weeds or other growth which constitutes a health, safety, or fire hazard.

2. If the property owner does not perform an action required under this section within a reasonable time after notice, a county may perform the required action and assess the costs against the property for collection in the same manner as a property tax. Notice may be in the form of an ordinance or by certified mail to the property owner as shown by the records of the county auditor, and shall state the time within which action is required. However, in an emergency, a county may perform any action which may be required under this section without prior notice and assess the costs as provided in this section after notice to the property owner and hearing.

3. If any amount assessed against property under this section exceeds one hundred dollars, a county may permit the assessment to be paid in up to ten annual installments in the same manner and with the same interest rates provided for assessments against benefited property under chapter 384, division IV.

4. A special assessment levied pursuant to this section, including all interest and penalties, is a lien against the benefited property from the date of filing the schedule of assessments until the assessment is paid. A special assessment has equal precedence with ordinary taxes and is not divested by judicial sale.

5. The procedures for making and levying a special assessment pursuant to this section and for an appeal of the assessment are the same procedures as provided in sections 384.59 through 384.67 and sections 384.72 through 384.75, provided that the references in those sections to the council shall be to the board of supervisors and the references to the city shall be to the county.

90 Acts, ch 1197, §1; 96 Acts, ch 1204, §25

331.385 Powers relating to emergency services.

1. A county may, by resolution, assume the exercise of the powers and duties of township trustees relating to fire protection service and emergency medical service for any township located in the unincorporated area of the county.

2. The board of supervisors shall publish notice of the proposed resolution, and of a public hearing to be held on the proposed resolution, in a newspaper of general circulation in the county at least ten days but no more than twenty days before the date of the public hearing.

3. If, after notice and hearing, the resolution is adopted, the board of supervisors shall assume the exercise of the powers and duties of township trustees relating to fire protection service and emergency medical service as set forth in sections 359.42 through 359.45. All of the real and person-

al township property used to provide fire protection service or emergency medical service shall be transferred to the county. The county shall assume all of the outstanding obligations of the township relating to fire protection service or emergency medical service. If the township provides fire protection outside of the county's boundaries, the county shall continue to provide fire protection to this area for at least ninety days after adoption of the resolution.

4. Fire protection service and emergency medical service shall be paid from the emergency services fund of the county authorized in section 331.424C.

2000 Acts, ch 1117, §18

331.386 through 331.400 Reserved.

DIVISION IV

POWERS AND DUTIES OF THE BOARD RELATING TO COUNTY FINANCES

PART 1

GENERAL FINANCIAL POWERS AND DUTIES

Law enforcement officer training reimbursement; §384.15(7)

331.401 Duties relating to finances.

1. The board shall:

a. Audit expenses charged to the county for the annual examination by the auditor of state and approve or object to the expenses as provided in section 11.21.

b. Establish budgets for the farm-to-market road fund and the secondary road fund in accordance with sections 309.10 and 309.93 to 309.97.

c. Pay expenses of administration of juvenile justice, attributable to the county under section 232.141.

d. Provide for the expense of persons committed to the county jail or a regional detention facility in accordance with section 356.15.

e. Adopt resolutions authorizing the county assessor to provide forms for homestead exemption claimants as provided in section 425.2 and military service tax exemptions as provided in section 426A.14.

f. Examine and allow or disallow claims for homestead exemption in accordance with section 425.3 and claims for military service tax exemption in accordance with chapter 426A. The board, by a single resolution, may allow or disallow the exemptions recommended by the assessor.

g. Hear appeals relating to the agricultural land tax credit in accordance with section 426.6.

h. Order the suspension of property taxes of certain persons in accordance with section 427.9.

i. Approve or deny an application for a property tax exemption for impoundment structures, as provided in section 427.1, subsection 20.

j. Serve on the conference board as provided in section 441.2.

k. Levy taxes as certified to it by tax-certifying bodies in the county, in accordance with the statutes authorizing the levies and in accordance with chapter 24 and sections 444.1 to 444.8, and levy taxes as required in chapters 430A, 433, 434, 437, and 438.

l. Carry out duties in regard to the collection of taxes as provided in sections 445.16, 445.60, and 445.62.

m. Apportion taxes upon receipt of a petition, in accordance with sections 449.1A to 449.3.

n. Comply with chapters 12B and 12C in the management of public funds.

o. Allocate payments from flood control projects as provided in sections 161E.13 and 161E.14.

p. Examine and settle all accounts of the receipts and expenditures of the county and all claims against the county, except as otherwise provided by state law.

q. Require a local historical society to submit to it a proposed budget, including the amount of available funds and estimated expenditures, as a prerequisite to receiving funds. A local historical society receiving funds shall present to the board an annual report describing in detail its use of the funds received.

r. Perform other financial duties as required by state law.

2. The board shall not pay membership dues for a county officers association in this state other than the Iowa state association of counties or an organization affiliated with it. This subsection does not prohibit expenditures for organizations with which the Iowa state association or its affiliates are affiliated.

3. The board shall not pay bounties on crows, rattlesnakes, foxes, or wolves other than coyotes.

1. a – o. [S81, §331.401(1); 81 Acts, ch 117, §400]

p. [R60, §312; C73, §303; C97, §422; SS15, §422; C24, 27, 31, 35, 39, §**5130;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §332.3(5); S81, §331.401(1); 81 Acts, ch 117, §400]

r. [S81, §331.401(1); 81 Acts, ch 117, §400]

2. [C73, 75, 77, 79, 81, §332.3(27); S81, §331.401(2); 81 Acts, ch 117, §400]

3. [79, 81, §350.2; S81, §331.401(3); 81 Acts, ch 117, §400]

83 Acts, ch 123, §132 – 135, 209; 86 Acts, ch 1001, §18; 90 Acts, ch 1236, §46; 91 Acts, ch 191, §7; 2002 Acts, ch 1150, §1

Subsection 1, paragraph k amended

331.402 Powers relating to finances — limitations.

1. The payment of county obligations by anticipatory warrants is subject to chapters 74 and 74A and other applicable state law. Anticipatory warrants drawn on the secondary road fund are also subject to sections 309.46 to 309.55.

2. The board may:

a. Require a person who is not a part of county government but is receiving county funds to submit to audit by auditors chosen by the county. The person shall make available all pertinent records needed for the audit.

b. Enter into an agreement with the state department of human services for assistance in accordance with section 249A.12.

c. Levy within a township at a rate not to exceed the rate permitted under sections 359.30 and 359.33 for the care and maintenance of cemeteries, if the township officials fail to levy the tax as needed.

d. Authorize the county auditor to issue warrants for certain purposes as provided in section 331.506, subsection 3.

e. Authorize the auditor to issue checks in lieu of warrants. The checks shall be charged directly against a bank account controlled by the county treasurer.

f. Impose a hotel and motel tax in accordance with chapter 422A.

g. Order the suspension of property taxes or cancel and remit the taxes of certain persons as provided in sections 427.8 and 427.10.

h. Provide for a partial exemption from property taxation in accordance with chapter 427B.

i. Contract with certified public accountants to conduct the annual audit of the financial accounts and transactions of the county as provided in section 11.6.

3. A county may enter into loan agreements to borrow money for any public purpose in accordance with the following terms and procedures:

a. A loan agreement entered into by a county may contain provisions similar to those sometimes found in loan agreements between private parties, including, but not limited to, the issuance of notes to evidence its obligations.

b. A provision of a loan agreement which stipulates that a portion of the payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A county enterprise is a separate entity under this subsection, whether it is governed by the board or another governing body.

c. The board shall follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a loan agreement made payable from the debt service fund.

d. The board may authorize a loan agreement which is payable from the general fund and which would not cause the total of scheduled annual payments of principal or interest or both principal and interest of the county due from the general fund of the county in any future year with respect to all loan agreements in force on the date of the authorization to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The board shall follow substantially the authorization procedures of section 331.443 to authorize a loan agreement for personal property which is payable from the general fund. The board must follow substantially the authorization procedures of section 331.443 to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement does not exceed the following limits:

(a) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.

(b) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(c) Six hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(d) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(e) One million dollars in a county having a population of more than two hundred thousand.

(2) The board must follow the following procedures to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement exceeds the limits set forth in subparagraph (1):

(a) The board must institute proceedings for entering into a loan agreement payable from the general fund by causing a notice of the meeting to discuss entering into the loan agreement, including a statement of the principal amount and purpose of the loan agreement and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the board hold a meeting at which it is proposed to take action to enter into the loan agreement.

(b) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the loan agreement, a petition is filed with the auditor in the manner provided by section 331.306 asking that the question of entering into the loan agreement be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to enter into the loan agreement to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the loan agreement. However, for purposes of this subparagraph, the petition shall not require signatures in excess of one thousand persons. The question to be placed on the ballot shall be stated affirmatively in substantially the following manner: Shall the county of . . . . . enter into a loan agreement in amount of $ . . . . . for the purpose of . . . . . ? Notice of the election and its conduct shall be in the manner provided in section 331.442, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into the loan agreement is approved at an election, the board may proceed and enter into the loan agreement.

e. The governing body may authorize a loan agreement payable from the net revenues of a county enterprise or combined county enterprise by following the authorization procedures of section 331.464.

f. A loan agreement to which a county is a party or in which a county has a participatory interest is an obligation of a political subdivision of this state for the purpose of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

1. [S81, §331.402(1); 81 Acts, ch 117, §401]

2. a. [C77, 79, 81, §332.3(31); S81, §331.402(2); 81 Acts, ch 117, §401]

b. [S81, §331.402(2); 81 Acts, ch 117, §401]

c. [C77, 79, 81, §24.37(14), 332.3(30); S81, §331.402(2); 81 Acts, ch 117, §401]

d – g. [S81, §331.402(2); 81 Acts, ch 117, §401]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1123, §2; 87 Acts, ch 103, §1; 92 Acts, ch 1138, §2; 95 Acts, ch 67, §53; 2001 Acts, ch 45, §2

331.403 Annual financial report.

1. Not later than December 1 of each year on forms and pursuant to instructions prescribed by the department of management, a county shall prepare an annual financial report showing for each county fund the financial condition as of June 30 and the results of operations for the year then ended. Copies of the report shall be maintained as a public record at the auditor's office and shall be filed with the director of the department of management and with the auditor of state by December 1. A summary of the report, in a form prescribed by the director, shall be published by each county not later than December 1 of each year in one or more newspapers which meet the requirements of section 618.14.

2. Beginning with the fiscal year ending June 30, 1985, the annual financial report required in subsection 1 shall be prepared in conformity with generally accepted accounting principles.

3. A county that fails to meet the filing deadline imposed by this section shall have withheld from payments to be made to the county pursuant to chapter 405A an amount equal to five cents per capita until the financial report is filed.

83 Acts, ch 123, §2, 209; 86 Acts, ch 1245, §113; 97 Acts, ch 206, §14, 15, 24

331.404 County indemnification fund. Repealed by 86 Acts, ch 1246, § 775.

331.405 to 331.420 Reserved.

PART 2

COUNTY LEVIES, FUNDS, BUDGETS, AND EXPENDITURES

331.421 Definitions.

As used in this part, unless the context otherwise requires:

1. *"Basic levy"* means a levy authorized and limited by section 331.423 for general county services and rural county services.

2. *"Committee"* means the county finance committee established in chapter 333A.

3. *"Debt service"* means expenditures for servicing the county's debt.

4. *"Debt service levy"* means a levy authorized and limited by section 331.422, subsection 3.

5. *"Emergency services levy"* means a levy authorized and limited by section 331.424C.

6. *"Fiscal year"* means the period of twelve months beginning July 1 and ending on the following June 30.

7. *"General county services"* means the services which are primarily intended to benefit all residents of a county, including secondary road services, but excluding services financed by other statutory funds.

8. *"Rural county services"* means the services which are primarily intended to benefit those persons residing in the county outside of incorporated city areas, including secondary road services, but excluding services financed by other statutory funds.

9. *"Secondary road services"* means the services related to secondary road construction and maintenance, excluding debt service and services financed by other statutory funds.

10. *"Supplemental levy"* means a levy authorized and limited by section 331.424 for general county services and rural county services.

83 Acts, ch 123, §5, 209; 84 Acts, ch 1178, §6; 86 Acts, ch 1237, §21; 2000 Acts, ch 1117, §19

331.422 County property tax levies.

Subject to this section and sections 331.423 through 331.426 or as otherwise provided by state law, the board of each county shall certify property taxes annually at its March session to be levied for county purposes as follows:

1. Taxes for general county services shall be levied on all taxable property within the county.

2. Taxes for rural county services shall be levied on all taxable property not within incorporated areas of the county.

3. Taxes in the amount necessary for debt service shall be levied on all taxable property within

the county, except as otherwise provided by state law.

4. Other taxes shall be levied as provided by state law.

83 Acts, ch 123, §6, 209

331.423 Basic levies — maximums.

Annually, the board may certify basic levies, subject to the following limits:

1. For general county services, three dollars and fifty cents per thousand dollars of the assessed value of all taxable property in the county.

2. For rural county services, three dollars and ninety-five cents per thousand dollars of the assessed value of taxable property in the county outside of incorporated city areas.

83 Acts, ch 123, §7, 209; 86 Acts, ch 1237, §22

331.424 Supplemental levies.

To the extent that the basic levies are insufficient to meet the county's needs for the following services, the board may certify supplemental levies as follows:

1. For general county services, an amount sufficient to pay the charges for the following:

a. To the extent that the county is obligated by statute to pay the charges for:

(1) The costs of inpatient or outpatient substance abuse admission, commitment, transportation, care, and treatment at any of the following:

(a) The alcoholic treatment center at Oakdale. However, the county may require that an admission to the center shall be reported to the board by the center within five days as a condition of the payment of county funds for that admission.

(b) A state mental health institute, or a community-based public or private facility or service.

(2) Care of children admitted or committed to the Iowa juvenile home at Toledo.

(3) Clothing, transportation, medical, or other services provided persons attending the Iowa braille and sight saving school, the Iowa school for the deaf, or the university of Iowa hospitals and clinics' center for disabilities and development for children with severe disabilities at Iowa City, for which the county becomes obligated to pay pursuant to sections 263.12, 269.2, and 270.4 through 270.7.

b. Foster care and related services provided under court order to a child who is under the jurisdiction of the juvenile court, including court-ordered costs for a guardian ad litem under section 232.71C.

c. Elections, and voter registration pursuant to chapter 48A.

d. Employee benefits under chapters 96, 97B, and 97C, which are associated with salaries for general county services.

e. Joint county and city building authorities established under section 346.27, as provided in subsection 22 of that section.

f. Tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the county, costs of a self-insurance program, costs of a local government risk pool, and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

g. The maintenance and operation of the courts, including but not limited to the salary and expenses of the clerk of the district court and other employees of the clerk's office, and bailiffs, court costs if the prosecution fails or if the costs cannot be collected from the person liable, costs and expenses of prosecution under section 189A.17, salaries and expenses of juvenile court officers under chapter 602, court-ordered costs in domestic abuse cases under section 236.5, the county's expense for confinement of prisoners under chapter 356A, temporary assistance to the county attorney, county contributions to a retirement system for bailiffs, reimbursement for judicial magistrates under section 602.6501, claims filed under section 622.93, interpreters' fees under section 622B.7, uniform citation and complaint supplies under section 805.6, and costs of prosecution under section 815.13.

h. Court-ordered costs of conciliation procedures under section 598.16.

i. Establishment and maintenance of a joint county indigent defense fund pursuant to an agreement under section 28E.19.

j. The maintenance and operation of a local emergency management agency established pursuant to chapter 29C.

The board may require a public or private facility, as a condition of receiving payment from county funds for services it has provided, to furnish the board with a statement of the income, assets, and legal residence including township and county of each person who has received services from that facility for which payment has been made from county funds under paragraphs *"a"* and *"b"*. However, the facility shall not disclose to anyone the name or street or route address of a person receiving services for which commitment is not required, without first obtaining that person's written permission.

Parents or other persons may voluntarily reimburse the county or state for the reasonable cost of caring for a patient or an inmate in a county or state facility.

2. For rural county services, an amount sufficient to pay the charges for the following:

a. Employee benefits under chapters 96, 97B, and 97C, which are associated with salaries for rural county services.

b. An aviation authority under chapter 330A, to the extent that the county contributes to the authority under section 330A.15.

83 Acts, ch 123, §8, 209; 84 Acts, ch 1178, §7; 84 Acts, ch 1312, §8; 86 Acts, ch 1211, §20; 90 Acts, ch

1233, §25; 92 Acts, ch 1139, §26; 94 Acts, ch 1169, §59; 94 Acts, ch 1170, §52; 95 Acts, ch 206, §9, 12; 96 Acts, ch 1129, §84; 96 Acts, ch 1219, §102; 97 Acts, ch 35, §22, 25; 2001 Acts, ch 181, §25

331.424A County mental health, mental retardation, and developmental disabilities services fund.

1. For the purposes of this chapter, unless the context otherwise requires, *"services fund"* means the county mental health, mental retardation, and developmental disabilities services fund created in subsection 2. The county finance committee created in section 333A.2 shall consult with the mental health and developmental disabilities commission in adopting rules and prescribing forms for administering the services fund.

2. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, county revenues from taxes and other sources designated for mental health, mental retardation, and developmental disabilities services shall be credited to the mental health, mental retardation, and developmental disabilities services fund of the county. The board shall make appropriations from the fund for payment of services provided under the county management plan approved pursuant to section 331.439. The county may pay for the services in cooperation with other counties by pooling appropriations from the fund with other counties or through county regional entities including but not limited to the county's mental health and developmental disabilities regional planning council created pursuant to section 225C.18.

3. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, receipts from the state or federal government for such services shall be credited to the services fund, including moneys allotted to the county from the state payment made pursuant to section 331.439 and moneys allotted to the county for property tax relief pursuant to section 426B.1.

4. For the fiscal year beginning July 1, 1996, and for each subsequent fiscal year, the county shall certify a levy for payment of services. For each fiscal year, county revenues from taxes imposed by the county credited to the services fund shall not exceed an amount equal to the amount of base year expenditures for services as defined in section 331.438, less the amount of property tax relief to be received pursuant to section 426B.2, in the fiscal year for which the budget is certified. The county auditor and the board of supervisors shall reduce the amount of the levy certified for the services fund by the amount of property tax relief to be received. A levy certified under this section is not subject to the appeal provisions of section 331.426 or to any other provision in law authorizing a county to exceed, increase, or appeal a property tax levy limit.

5. Appropriations specifically authorized to be made from the mental health, mental retardation, and developmental disabilities services fund shall not be made from any other fund of the county.

95 Acts, ch 206, §10; 96 Acts, ch 1183, §33; 96 Acts, ch 1205, §1; 96 Acts, ch 1219, §103; 97 Acts, ch 198, §2; 2000 Acts, ch 1090, §1, 6; 2000 Acts, ch 1232, §5, 9, 10; 2001 Acts, ch 155, §1, 9 – 11; 2002 Acts, ch 1119, §157; 2002 Acts, ch 1146, §7

Reimbursement rate increase for purchase of service providers for fiscal years beginning on July 1 of 2000, 2001, and 2002; 2000 Acts, ch 1221, §3; 2001 Acts, ch 184, §2, 4, 15; 2001 Acts, ch 191, §34, 53; 2002 Acts, ch 1174, §2

2001 amendments striking subsection 6 and repeal of related transition provisions take effect May 21, 2001, and apply retroactively to April 13, 2000; 2001 Acts, ch 155, §11

Subsection 1 amended

Subsection 4 amended

331.424B Cemetery levy.

The board may levy annually a tax not to exceed six and three-fourths cents per thousand dollars of the assessed value of all taxable property in the county to repair and maintain all cemeteries under the jurisdiction of the board including pioneer cemeteries and to pay other expenses of the board or the cemetery commission as provided in section 331.325. The proceeds of the tax levy shall be credited to the county general fund.

96 Acts, ch 1182, §2; 2002 Acts, ch 1119, §158

Section amended

331.424C Emergency services fund.

A county that is providing fire protection service or emergency medical service to a township pursuant to section 331.385 shall establish an emergency services fund and may certify taxes not to exceed sixty and three-fourths cents per one thousand dollars of the assessed value of taxable property located in the township. The county has the authority to use a portion of the taxes levied and deposited in the fund for the purpose of accumulating moneys to carry out the purposes of section 359.43, subsection 3.

2000 Acts, ch 1117, §20

331.425 Additions to levies — special levy election.

The board may certify an addition to a levy in excess of the amounts otherwise permitted under sections 331.423, 331.424, and 331.426 if the proposition to certify an addition to a levy has been submitted at a special levy election and received a favorable majority of the votes cast on the proposition. A special levy election is subject to the following:

1. The election shall be held only if the board gives notice to the county commissioner of elections, not later than February 15, that the election is to be held.

2. The election shall be held on the second Tuesday in March and be conducted by the county commissioner of elections in accordance with the law.

3. The proposition to be submitted shall be

substantially in the following form:

Vote for only one of the following:
Shall the county of . . . . . levy an additional tax at a rate of $ . . . . . each year for . . . . . years beginning next July 1 in excess of the statutory limits otherwise applicable for the (general county services or rural county services) fund?

or

The county of . . . . . shall continue the (general county services or rural county services fund) under the maximum rate of $ . . . . . .

4. The canvass shall be held beginning at one o'clock on the second day which is not a holiday following the special levy election.

5. Notice of the proposed special levy election shall be published at least twice in a newspaper as specified in section 331.305 prior to the date of the special levy election. The first notice shall appear as early as practicable after the board has decided to seek a special levy.

83 Acts, ch 123, §9, 209

331.426 Additions to basic levies.

If a county has unusual circumstances, creating a need for additional property taxes for general county services or rural county services in excess of the amount that can be raised by the levies otherwise permitted under sections 331.423 through 331.425, the board may certify additions to each of the basic levies as follows:

1. The basis for justifying an additional property tax under this section must be one or more of the following:

a. An unusual increase in population as determined by the preceding certified federal census.

b. A natural disaster or other emergency.

c. Unusual problems relating to major new functions required by state law.

d. Unusual staffing problems.

e. Unusual need for additional moneys to permit continuance of a program which provides substantial benefit to county residents.

f. Unusual need for a new program which will provide substantial benefit to county residents, if the county establishes the need and the amount of necessary increased cost.

g. A reduced or unusually low growth rate in the property tax base of the county.

2. The public notice of a hearing on the county budget required by section 331.434, subsection 3, shall include the following additional information for the applicable class of services:

a. A statement that the accompanying budget summary requires a proposed basic property tax rate exceeding the maximum rate established by the general assembly.

b. A comparison of the proposed basic tax rate with the maximum basic tax rate, and the dollar amount of the difference between the proposed rate and the maximum rate.

c. A statement of the major reasons for the difference between the proposed basic tax rate and the maximum basic tax rate.

The information required by this subsection shall be published in a conspicuous form as prescribed by the committee.

83 Acts, ch 123, §10, 209

331.427 General fund.

1. Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under sections 9I.11, 101A.3, 101A.7, 123.36, 123.143, 142B.6, 176A.8, 321.105, 321.152, 321G.7, section 331.554, subsection 6, sections 341A.20, 364.3, 368.21, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 445.57, 453A.35, 458A.21, 483A.12, 533.24, 556B.1, 583.6, 602.8108, 904.908, and 906.17, and chapter 405A, and the following:

a. License fees for business establishments.

b. Moneys remitted by the clerk of the district court and received from a magistrate or district associate judge for fines and forfeited bail imposed pursuant to a violation of a county ordinance.

c. Other amounts in accordance with state law.

2. The board may make appropriations from the general fund for general county services, including but not limited to the following:

a. Expenses of a joint emergency management commission under chapter 29C.

b. Development, operation, and maintenance of memorial buildings or monuments under chapter 37.

c. Purchase of voting machines under chapter 52.

d. Expenses incurred by the county conservation board established under chapter 350, in carrying out its powers and duties.

e. Local health services. The county auditor shall keep a complete record of appropriations for local health services and shall issue warrants on them only on requisition of the local or district health board.

f. Expenses relating to county fairs, as provided in chapter 174.

g. Maintenance of a juvenile detention home under chapter 232.

h. Relief of veterans under chapter 35B.

i. Care and support of the poor under chapter 252.

j. Operation, maintenance, and management of a health center under chapter 346A.

k. For the use of a nonprofit historical society organized under chapter 504 or 504A, a city-owned historical project, or both.

l. Services listed in section 331.424, subsection 1, and section 331.554.

m. Closure and postclosure care of a sanitary

disposal project under section 455B.302.

3. Appropriations specifically authorized to be made from the general fund shall not be made from the rural services fund, but may be made from other sources.

83 Acts, ch 123, §11, 209; 84 Acts, ch 1107, §1; 84 Acts, ch 1206, §1; 85 Acts, ch 195, §40; 85 Acts, ch 201, §2; 89 Acts, ch 83, §48; 90 Acts, ch 1230, §90; 90 Acts, ch 1236, §47; 91 Acts, ch 191, §8; 92 Acts, ch 1139, §27; 94 Acts, ch 1074, §3; 95 Acts, ch 216, §37; 97 Acts, ch 158, §2; 2000 Acts, ch 1090, §2, 6; 2001 Acts, ch 155, §2, 9 – 11

2001 amendment striking subsection 2, paragraph n, and repeal of related transition provisions take effect May 21, 2001, and apply retroactively to April 13, 2000; 2001 Acts, ch 155, §11

331.428 Rural services fund.

1. Except as otherwise provided by state law, county revenues from taxes and other sources for rural county services shall be credited to the rural services fund of the county.

2. The board may make appropriations from the rural services fund for rural county services, including but not limited to the following:

a. Road clearing, weed eradication, and other expenses incurred under chapter 317.

b. Maintenance of a county library and library contracts under chapter 336.

c. Planning, operating, and maintaining sanitary disposal projects under chapter 455B.

d. Services listed under section 331.424, subsection 2.

3. Appropriations specifically authorized to be made from the rural services fund shall not be made from the general fund, but may be made from other sources.

83 Acts, ch 123, §12, 209

331.429 Secondary road fund.

1. Except as otherwise provided by state law, county revenues for secondary road services shall be credited to the secondary road fund, including the following:

a. Transfers from the general fund not to exceed in any year the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county multiplied by the ratio of current taxes actually collected and apportioned for the general basic levy to the total general basic levy for the current year, and an amount equivalent to the moneys derived by the general fund from military service tax credits under chapter 426A, manufactured or mobile home taxes under section 435.22, and delinquent taxes for prior years collected and apportioned to the general basic fund in the current year, multiplied by the ratio of sixteen and seven-eighths cents to three dollars and fifty cents.

b. Transfers from the rural services fund not to exceed in any year the dollar equivalent of a tax of three dollars and three-eighths cents per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county multiplied by the ratio of current taxes actually collected and apportioned for the rural services basic levy to the total rural services basic levy for the current year and an amount equivalent to the moneys derived by the rural services fund from military service tax credits under chapter 426A, manufactured or mobile home taxes under section 435.22, and delinquent taxes for prior years collected and apportioned to the rural services basic fund in the current year, multiplied by the ratio of three dollars and three-eighths cents to three dollars and ninety-five cents.

c. Moneys allotted to the county from the state road use tax fund.

d. Moneys provided by individuals from their own contributions for the improvement of any secondary road.

e. Other moneys dedicated to this fund by law including but not limited to sections 306.15, 309.52, 311.23, 311.29, and 313.28.

2. The board may make appropriations from the secondary road fund for the following secondary road services:

a. Construction and reconstruction of secondary roads and costs incident to the construction and reconstruction.

b. Maintenance and repair of secondary roads and costs incident to the maintenance and repair.

c. Payment of all or part of the cost of construction and maintenance of bridges in cities having a population of eight thousand or less and all or part of the cost of construction of roads which are located within cities of less than four hundred population and which lead to state parks.

d. Special drainage assessments levied on account of benefits to secondary roads.

e. Payment of interest and principal on bonds of the county issued for secondary roads, bridges, or culverts constructed by the county.

f. A legal obligation in connection with secondary roads and bridges, which obligation is required by law to be taken over and assumed by the county.

g. Secondary road equipment, materials, and supplies, and garages or sheds for their storage, repair, and servicing.

h. Assignment or designation of names or numbers to roads in the county and erection, construction, or maintenance of guideposts or signs at intersections of roads in the county.

i. The services provided under sections 306.15, 309.18, 309.52, 311.7, 311.23, 313A.23, 316.14, 468.43, 468.108, 468.341, and 468.342, or other state law relating to secondary roads.

83 Acts, ch 123, §13, 209; 84 Acts, ch 1178, §8 – 10; 87 Acts, ch 160, §1; 87 Acts, ch 169, §5; 88 Acts, ch 1250, §12; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

331.430 Debt service fund.

1. Except as otherwise provided by state law, county revenues from taxes and other sources for debt service shall be credited to the debt service fund of the county. However, moneys pledged or available to service general obligation bonds, and received from sources other than property taxes, shall be deposited in the fund from which the debt is to be retired.

2. The board may make appropriations from the debt service fund for the following debt service:

a. Judgments against the county, except those authorized by law to be paid from sources other than property tax.

b. Interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all general obligation bonds issued by the county.

c. Payments required to be made from the debt service fund under a lease or lease-purchase agreement.

For the purposes of this section, warrants issued by a county in anticipation of revenue, refunding or refinancing of such warrants, and judgments based on a default in payment of such warrants shall not be considered debt payable from the debt service fund.

3. A tax levied for the debt service fund is not invalid if it raises moneys in excess of those needed for a specific purpose. Only excess moneys remaining after retirement of all indebtedness payable from the debt service fund may be transferred from the fund to the fund most closely related to the project for which the indebtedness arose, or to the general fund, subject to the terms of the original bond issue. This subsection shall not be construed to give a county board of supervisors authority to increase the debt service levy for the purpose of creating excess moneys in the fund to be used for purposes other than those related to retirement of debt.

4. When the amount in the hands of the treasurer belonging to the debt service fund, after setting aside the sum required to pay interest maturing before the next levy, is sufficient to redeem one or more bonds which by their terms are subject to redemption, the treasurer shall notify the owner of the bonds. If the bonds are not presented for payment or redemption within thirty days after the date of notice, the interest on the bonds shall cease, and the amount due shall be set aside for payment when presented. Redemptions shall be made in the order of the bond numbers.

83 Acts, ch 123, §14, 209; 84 Acts, ch 1178, §11; 85 Acts, ch 156, §2; 97 Acts, ch 25, §1, 2

331.431 Additional funds.

A county may establish other funds in accordance with generally accepted accounting principles. Taxes may be levied for those funds as provided by state law. The condition and operations of each fund shall be included in the annual financial report required in section 331.403.

83 Acts, ch 123, §15, 209

331.432 Interfund transfers.

1. It is unlawful to make permanent transfers of money between the general fund and the rural services fund.

2. Moneys credited to the secondary road fund for the construction and maintenance of secondary roads shall not be transferred.

3. Except as authorized in section 331.477, transfers of moneys between the county mental health, mental retardation, and developmental disabilities services fund and any other fund are prohibited.

4. Other transfers, including transfers from the debt service fund made in accordance with section 331.430, and transfers from the general or rural services fund to the secondary road fund in accordance with section 331.429, subsection 1, paragraphs *"a"* and *"b"*, are not effective until authorized by resolution of the board.

5. The transfer of inactive funds is subject to section 24.21.

83 Acts, ch 123, §16, 209; 98 Acts, ch 1213, §1, 2

331.433 Estimates submitted by departments.

1. On or before January 15 of each year, each elective or appointive officer or board, except tax certifying boards as defined in section 24.2, subsection 2, having charge of a county office or department, shall prepare and submit to the auditor or other official designated by the board an estimate, itemized in the detail required by the board and consistent with existing county accounts, showing all of the following:

a. The proposed expenditures of the office or department for the next fiscal year.

b. An estimate of the revenues, except property taxes, to be collected for the county by the office during the next fiscal year.

2. On or before January 20 of each year, the auditor or other designated official shall compile the various office and department estimates and submit them to the board. In the preparation of the county budget the board may consult with any officer or department concerning the estimates and requests and may adjust the requests for any county office or department.

83 Acts, ch 123, §17, 209

331.434 County budget — notice and hearing — appropriations.

Annually, the board of each county, subject to sections 331.423 through 331.426 and other applicable state law, shall prepare and adopt a budget, certify taxes, and provide appropriations as follows:

1. The budget shall show the amount required

for each class of proposed expenditures, a comparison of the amounts proposed to be expended with the amounts expended for like purposes for the two preceding years, the revenues from sources other than property taxation, and the amount to be raised by property taxation, in the detail and form prescribed by the director of the department of management.

2. Not less than twenty days before the date that a budget must be certified under section 24.17 and not less than ten days before the date set for the hearing under subsection 3 of this section, the board shall file the budget with the auditor. The auditor shall make available a sufficient number of copies of the budget to meet the requests of taxpayers and organizations and have them available for distribution at the courthouse or other places designated by the board.

3. The board shall set a time and place for a public hearing on the budget before the final certification date and shall publish notice of the hearing not less than ten nor more than twenty days prior to the hearing in the county newspapers selected under chapter 349. A summary of the proposed budget, in the form prescribed by the director of the department of management, shall be included in the notice. Proof of publication shall be filed with and preserved by the auditor. A levy is not valid unless and until the notice is published and filed. The department of management shall prescribe the form for the public hearing notice for use by counties.

4. At the hearing, a resident or taxpayer of the county may present to the board objections to or arguments in favor of any part of the budget.

5. After the hearing, the board shall adopt by resolution a budget and certificate of taxes for the next fiscal year and shall direct the auditor to properly certify and file the budget and certificate of taxes as adopted. The board shall not adopt a tax in excess of the estimate published, except a tax which is approved by a vote of the people, and a greater tax than that adopted shall not be levied or collected. A county budget and certificate of taxes adopted for the following fiscal year becomes effective on the first day of that year.

6. The board shall appropriate, by resolution, the amounts deemed necessary for each of the different county officers and departments during the ensuing fiscal year. Increases or decreases in these appropriations do not require a budget amendment, but may be provided by resolution at a regular meeting of the board, as long as each class of proposed expenditures contained in the budget summary published under subsection 3 of this section is not increased. However, decreases in appropriations for a county officer or department of more than ten percent or five thousand dollars, whichever is greater, shall not be effective unless the board sets a time and place for a public hearing on the proposed decrease and publishes notice of the hearing not less than ten nor more than twenty days prior to the hearing in the county newspapers selected under chapter 349.

7. Taxes levied by a county whose budget is certified after March 15 shall be limited to the prior year's budget amount. However, this penalty may be waived by the director of the department of management if the county demonstrates that the March 15 deadline was missed because of circumstances beyond the control of the county.

83 Acts, ch 123, §18, 209; 86 Acts, ch 1245, §114; 91 Acts, ch 164, §1; 97 Acts, ch 206, §16, 17, 24

331.435 Budget amendment.

The board may amend the adopted county budget, subject to sections 331.423 through 331.426 and other applicable state law, to permit increases in any class of proposed expenditures contained in the budget summary published under section 331.434, subsection 3.

The board shall prepare and adopt a budget amendment in the same manner as the original budget, as provided in section 331.434, and the amendment is subject to protest as provided in section 331.436, except that the director of the department of management may by rule provide that amendments of certain types or up to certain amounts may be made without public hearing and without being subject to protest. A county budget for the ensuing fiscal year shall be amended by May 31 to allow time for a protest hearing to be held and a decision rendered before June 30. An amendment of a budget after May 31 which is properly appealed but without adequate time for hearing and decision before June 30 is void.

83 Acts, ch 123, §19, 209; 86 Acts, ch 1245, §20

331.436 Protest.

Protests to the adopted budget must be made in accordance with sections 24.27 through 24.32 as if the county were the municipality under those sections.

83 Acts, ch 123, §20, 209

331.437 Expenditures exceeding appropriations.

It is unlawful for a county official, the expenditures of whose office come under this part, to authorize the expenditure of a sum for the official's department larger than the amount which has been appropriated for that department by the board.

A county official in charge of a department or office who violates this law is guilty of a simple misdemeanor. The penalty in this section is in addition to the liability imposed in section 331.476.

83 Acts, ch 123, §21, 209

331.438 County mental health, mental retardation, and developmental disabilities services expenditures — joint state-county planning, implementing, and funding.

1. For the purposes of section 331.424A, this section, section 331.439, and chapter 426B, unless the context otherwise requires:

a. "Base year expenditures" means the amount selected by a county and reported to the county finance committee pursuant to this paragraph. The amount selected shall be equal to the amount of net expenditures made by the county for qualified mental health, mental retardation, and developmental disabilities services provided in one of the following:

(1) The actual amount reported to the state on October 15, 1994, for the fiscal year beginning July 1, 1993.

(2) The net expenditure amount contained in the county's final budget certified in accordance with chapter 24 for the fiscal year beginning July 1, 1995, and reported to the county finance committee.

b. "Per capita expenditure" means the amount derived from the sum of a county's expenditures for mental health, mental retardation, and developmental disabilities services for a fiscal year as reported to the department of human services pursuant to section 331.439, plus the state payment to the county and any payments made under section 426B.5 for that fiscal year, divided by the county's general population for that fiscal year.

c. "Qualified mental health, mental retardation, and developmental disabilities services" means the services specified on forms issued by the county finance committee following consultation with the mental health and developmental disabilities commission.

d. "State payment" means the payment made by the state to a county determined to be eligible for the payment in accordance with section 331.439.

2. *a.* A state payment to a county for a fiscal year shall consist of the sum of the state funding the county is eligible to receive from the property tax relief fund in accordance with section 426B.2 plus the county's portion of state funds appropriated for the allowed growth factor adjustment established by the general assembly under section 331.439, subsection 3.

b. A county's portion of the allowed growth factor adjustment appropriation for a fiscal year shall be determined based upon the county's proportion of the state's general population.

c. The department of human services shall provide for payment of the amount due a county for the county's allowed growth factor adjustment determined in accordance with this subsection. The director of human services shall authorize warrants payable to the county treasurer for the amounts due and the warrants shall be mailed in January of each year. The county treasurer shall credit the amount of the warrant to the county's services fund created under section 331.424A.

3. The state payment shall not include any expenditures for services that were provided but not reported in the county's base year expenditures or for any expenditures which were not included in the county management plan submitted by the county in accordance with section 331.439. A county's eligibility for state payment is subject to the provisions of section 331.439.

4. *a.* The mental health and developmental disabilities commission shall make recommendations and take actions for joint state and county planning, implementing, and funding of mental health, mental retardation, and developmental disabilities services, including but not limited to developing and implementing fiscal and accountability controls, establishing management plans, and ensuring that eligible persons have access to appropriate and cost-effective services.

b. The mental health and developmental disabilities commission shall do all of the following:

(1) Identify characteristics of the service system, including amounts expended, equity of funding among counties, funding sources, provider types, service availability, and equity of service availability among counties and among persons served.

(2) Assess the accuracy and uniformity of recordkeeping and reporting in the service system.

(3) Identify for each county the factors associated with inflationary growth of the service system.

(4) Identify opportunities for containing service system growth.

(5) Consider proposals for revising service system administrative rules.

(6) Consider provisions and adopt rules for counties to implement a single point of accountability to plan, budget, and monitor county expenditures for the service system. The provisions shall provide options for counties to implement the single point in collaboration with other counties.

(7) Develop criteria for annual county mental health, mental retardation, and developmental disabilities plans.

(8) Adopt administrative rules identifying qualified mental health, mental retardation, and developmental disabilities service expenditures for purposes of state payment pursuant to subsection 1.

(9) Adopt rules for the county single entry point and clinical assessment processes required under section 331.440 and other rules necessary for the implementation of county management plans and expenditure reports required for state payment pursuant to section 331.439.

(10) Consider recommendations to improve the programs and cost-effectiveness of state and

county contracting processes and procedures, including strategies for negotiations relating to managed care. The recommendations implemented by the commission for the state and county regarding managed care shall include but are not limited to standards for limiting excess costs and profits, and for restricting cost shifting under a managed care system.

(11) Provide input, when appropriate, to the director of human services in any decision involving administrative rules which were adopted by the department of human services pertaining to the mental illness, mental retardation, and developmental disabilities services administered by counties.

(12) Identify the fiscal impact of existing or proposed legislation and administrative rules on state and county expenditures.

(13) Adopt administrative rules providing statewide standards and a monitoring methodology to determine whether cost-effective individualized services are available as required pursuant to section 331.439, subsection 1, paragraph *"b"*.

(14) Consider recommendations for and adopt administrative rules establishing statewide minimum standards for services and other support required to be available to persons covered by a county management plan under section 331.439.

(15) Consider recommendations for measuring and improving the quality of state and county mental health, mental retardation, and developmental disabilities services and other support.

90 Acts, ch 1250, §2; 92 Acts, ch 1241, §75; 94 Acts, ch 1163, §2; 95 Acts, ch 120, §5, 7; 95 Acts, ch 206, §14; 96 Acts, ch 1183, §34 – 37; 96 Acts, ch 1205, §2; 97 Acts, ch 23, §36; 97 Acts, ch 198, §3; 98 Acts, ch 1213, §4, 5, 9 – 11; 99 Acts, ch 160, §7 – 10; 2000 Acts, ch 1090, §3, 6; 2001 Acts, ch 155, §3, 9 – 11; 2002 Acts, ch 1146, §8 – 11

Mental health and developmental disabilities commission, §225C.5

For specific exceptions to payments and expenditures provided under this section, see appropriations and other noncodified enactments in the annual Acts of the general assembly

2001 amendment striking subsection 1, paragraph a, unnumbered paragraph 2, and repeal of related transition provisions take effect May 21, 2001, and apply retroactively to April 13, 2000; 2001 Acts, ch 155, §11

Subsection 1, paragraph c amended

Subsection 4, paragraph a amended

Subsection 4, paragraph b stricken and former paragraph c amended and redesignated as b

331.439 Eligibility for state payment.

1. The state payment to eligible counties under this section shall be made as provided in sections 331.438 and 426B.2. A county is eligible for the state payment, as defined in section 331.438, for the fiscal year beginning July 1, 1996, and for subsequent fiscal years if the director of human services, in consultation with the mental health and developmental disabilities commission, determines for a specific fiscal year that all of the following conditions are met:

a. The county accurately reported by December 1 the county's expenditures for mental health, mental retardation, and developmental disabilities services for the previous fiscal year on forms prescribed by the department of human services.

b. The county developed and implemented a county management plan for the county's mental health, mental retardation, and developmental disabilities services in accordance with the provisions of this paragraph *"b"*. The plan shall comply with the administrative rules adopted for this purpose by the mental health and developmental disabilities commission and is subject to the approval of the director of human services in consultation with the commission. The plan shall include a description of the county's service management provision for mental health, mental retardation, and developmental disabilities services. For mental retardation and developmental disabilities service management, the plan shall describe the county's development and implementation of a managed system of cost-effective individualized services and shall comply with the provisions of paragraph *"d"*. The goal of this part of the plan shall be to assist the individuals served to be as independent, productive, and integrated into the community as possible. The service management provisions for mental health shall comply with the provisions of paragraph *"c"*. A county is subject to all of the following provisions in regard to the county's management plan and planning process:

(1) The county shall have in effect an approved policies and procedures manual for the county's services fund. The county management plan shall be defined in the manual. The manual submitted by the county as part of the county's management plan for the fiscal year beginning July 1, 2000, as approved by the director of human services, shall remain in effect, subject to amendment. An amendment to the manual shall be submitted to the department of human services at least forty-five days prior to the date of implementation. Prior to implementation of any amendment to the manual, the amendment must be approved by the director of human services in consultation with the mental health and developmental disabilities commission.

(2) For informational purposes, the county shall submit a management plan review to the department of human services by April 1 of each year. The annual review shall incorporate an analysis of the data associated with the services managed during the preceding fiscal year by the county or by a managed care entity on behalf of the county.

(3) For informational purposes, every three years the county shall submit to the department of human services a three-year strategic plan. The strategic plan shall describe how the county will proceed to attain the goals and objectives contained in the strategic plan for the duration of the plan. The three-year strategic plan shall be submitted by April 1, 2000, and by April 1 of every third year thereafter.

c. (1) For mental health service management,

the county may either directly implement a system of service management and contract with service providers, or contract with a private entity to manage the system, provided all requirements of this lettered paragraph are met by the private entity. The mental health service management shall incorporate a single entry point and clinical assessment process developed in accordance with the provisions of section 331.440.

(2) A managed care system for mental health proposed by a county shall include but is not limited to all of the following elements which shall be specified in administrative rules adopted by the mental health and developmental disabilities commission:

(a) The enrollment and eligibility process.

(b) The scope of services included.

(c) The method of plan administration.

(d) The process for managing utilization and access to services and other assistance.

(e) The quality assurance process.

(f) The risk management provisions and fiscal viability of the provisions, if the county contracts with a private managed care entity.

d. For mental retardation and developmental disabilities services management, the county must either develop and implement a managed system of care which addresses a full array of appropriate services and cost-effective delivery of services or contract with a state-approved managed care contractor or contractors. Any system or contract implemented under this paragraph shall incorporate a single entry point and clinical assessment process developed in accordance with the provisions of section 331.440. The elements of the county managed system of care shall be specified in rules developed by the department of human services in consultation with and adopted by the mental health and developmental disabilities commission.

2. The county management plan shall address the county's criteria for serving persons with chronic mental illness, including any rationale used for decision making regarding this population.

3. *a.* For the fiscal year beginning July 1, 1996, and succeeding fiscal years, the county's mental health, mental retardation, and developmental disabilities service expenditures for a fiscal year are limited to a fixed budget amount. The fixed budget amount shall be the amount identified in the county's management plan and budget for the fiscal year. The county shall be authorized an allowed growth factor adjustment as established by statute for services paid from the county's services fund under section 331.424A which is in accordance with the county's management plan and budget, implemented pursuant to this section. The statute establishing the allowed growth factor adjustment shall establish the adjustment for the fiscal year which commences two years from the beginning date of the fiscal year in progress at the time the statute is enacted.

b. Based upon information contained in county management plans and budgets and proposals made by representatives of counties, the mental health and developmental disabilities commission shall recommend an allowed growth factor adjustment to the governor by November 15 for the fiscal year which commences two years from the beginning date of the fiscal year in progress at the time the recommendation is made. The allowed growth factor adjustment shall address costs associated with new consumers of service, service cost inflation, and investments for economy and efficiency. In developing the service cost inflation recommendation, the commission shall consider the cost trends indicated by the gross expenditure amount reported in the expenditure reports submitted by counties pursuant to subsection 1, paragraph *"a"*. The governor shall consider the commission's recommendation in developing the governor's recommendation for an allowed growth factor adjustment for such fiscal year. The governor's recommendation shall be submitted at the time the governor's proposed budget for the succeeding fiscal year is submitted in accordance with chapter 8.

c. The amount of the appropriation required to fund the allowed growth factor adjustment for a fiscal year shall be calculated by applying the adjustment established by statute for that fiscal year to the sum of the following:

(1) The total amount of base year expenditures for all counties.

(2) The total amount of the appropriations for allowed growth factor adjustments made to all counties in all of the fiscal years prior to that fiscal year.

4. A county may provide assistance to service populations with disabilities to which the county has historically provided assistance but who are not included in the service management provisions required under subsection 1, subject to the availability of funding.

5. A county shall implement the county's management plan in a manner so as to provide adequate funding for the entire fiscal year by budgeting for ninety-nine percent of the funding anticipated to be available for the plan. A county may expend all of the funding anticipated to be available for the plan.

6. The director's approval of a county's mental health, mental retardation, and developmental disabilities services management plan shall not be construed to constitute certification of the county's budget.

7. A county shall annually report data concerning the services managed by the county. At a minimum, the data reported shall indicate the number of different individuals who utilized services in a fiscal year and the various types of services. Data reported under this subsection shall be submitted with the county's expenditure report

required under subsection 1, paragraph *"a"*.

8. A county's management plans submitted under this section shall provide for services to children from community mental health centers and other mental health service providers accredited under chapter 225C.

94 Acts, ch 1163, §3; 95 Acts, ch 206, §15; 96 Acts, ch 1205, §3, 11; 97 Acts, ch 169, §22 – 25; 97 Acts, ch 198, §4; 97 Acts, ch 206, §18, 24; 98 Acts, ch 1100, §53, 54; 98 Acts, ch 1181, §18, 20; 99 Acts, ch 160, §13 – 16; 2002 Acts, ch 1146, §12 – 17

Continuation of rules adopted by council on human services prior to July 1, 2002; 2002 Acts, ch 1146, §22

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, paragraph b, unnumbered paragraph 1 and subparagraph (1) amended

Subsection 1, paragraph c, subparagraph (2), unnumbered paragraph 1 amended

Subsection 1, paragraph d amended

Subsection 3, paragraph b amended

331.440 Mental health, mental retardation, and developmental disabilities services — single entry point process.

1. *a.* For the purposes of this section, unless the context otherwise requires, *"single entry point process"* means a single entry point process established by a county or consortium of counties for the delivery of mental health, mental retardation, and developmental disabilities services which are paid for in whole or in part by county funds. The single entry point process may include but is not limited to reviewing a person's eligibility for services, determining the appropriateness of the type, level, and duration of services, and performing periodic review of the person's continuing eligibility and need for services. Any recommendations developed concerning a person's plan of services shall be consistent with the person's unique strengths, circumstances, priorities, concerns, abilities, and capabilities. For those services funded under the medical assistance program, the single entry point process shall be used to assure that the person is aware of the appropriate service options available to the person.

b. The single entry point process may include a clinical assessment process to identify a person's service needs and to make recommendations regarding the person's plan for services. The clinical assessment process shall utilize qualified mental health professionals and qualified mental retardation professionals.

c. The single entry point and clinical assessment process shall include provision for the county's participation in a management information system developed in accordance with rules adopted pursuant to subsection 3.

2. The department of human services shall seek federal approval as necessary for the single entry point and clinical assessment processes to be eligible for federal financial participation under medical assistance. A county may implement the single entry point process as part of a consortium of counties and may implement the process beginning with the fiscal year ending June 30, 1995.

3. An application for services may be made through the single entry point process of a person's county of residence. However, if a person who is subject to a single entry point process has legal settlement in another county or the costs of services or other support provided to the person are the financial responsibility of the state, an authorization through the single entry point process shall be coordinated with the person's county of legal settlement or with the state, as applicable. The county of residence and county of legal settlement of a person subject to a single entry point process may mutually agree that the single entry point process functions shall be performed by the single entry point process of the person's county of legal settlement.

4. The mental health and developmental disabilities commission shall consider the recommendations of county representatives in adopting rules outlining standards and requirements for implementation of the single entry point and clinical assessment processes on the date required by subsection 2. The rules shall permit counties options in implementing the process based upon a county's consumer population and available service delivery system.

94 Acts, ch 1163, §4; 95 Acts, ch 206, §16; 96 Acts, ch 1183, §38; 2002 Acts, ch 1146, §18

Continuation of rules adopted by council on human services prior to July 1, 2002; 2002 Acts, ch 1146, §22

Subsection 4 amended

331.440A Adult mental health, mental retardation, and developmental disabilities services funding decategorization pilot project.

1. *Definitions.* For the purposes of this section, unless the context requires otherwise:

a. *"Department"* means the department of human services.

b. *"Pilot project areas"* means the pilot project created under this section involving the county or multicounty single entry point process administrative areas designated in accordance with this section.

c. *"Target population"* means any person who is a legal resident of a pilot project county and meets both of the following conditions:

(1) The person is eighteen years of age or older. However, a person who is more than sixty-four years of age who requires full-time nursing facility care shall not be included in the target population.

(2) The person is eligible for assistance under the pilot project county management plan approved under section 331.439.

2. *Purpose.* The purpose of the pilot project is to improve outcomes for service consumers by allowing pilot project counties to administer overall projected funding from state and federal sources together with other available funding, and by reducing or eliminating unnecessary barriers associated with funding sources, and thereby to cre-

atively meet the divergent, individual needs of service consumers in the community.

3. *Project established.* The department of human services shall establish a pilot project for decategorizing the public funding for adult mental health, mental retardation, and developmental disabilities services in accordance with this section. The pilot project shall include the three-county single entry point process administrative areas designated for decategorization planning under 1997 Iowa Acts, chapter 169, section 13, Washington county, and Webster county. Under the pilot project, a projected funding amount for a fiscal year shall be developed for each of the pilot project areas, from the funding sources designated in this section. The projected funding amount for a fiscal year, manner of payment, and other provisions of the pilot project shall be delineated in contracts between the department and the counties involved in the pilot project.

4. *County management plan.* The counties participating in the pilot project shall amend their county management plans approved under section 331.439 to be applicable to the period of the pilot project. Unless a change in federal or state funding provisions reduces the availability of funding, a pilot project county's management plan eligibility provisions shall not be more restrictive than the provisions in effect as of June 30, 1999. The amended county management plans shall address the service needs of the populations served under the funding sources included in the pilot project beginning with the applicable phase.

For purposes of determining the financial responsibility of a pilot project county, a legal resident includes anyone living in the county at the time services or other support are provided who is a member of the target population. A legal resident includes but is not limited to a person who is homeless or living in a homeless shelter. However, if an individual resides in a pilot project county as a result of placement or referral for services or other support by another county or another state, financial responsibility remains with the other county or other state.

5. *County responsibilities.*

a. A county participating in the pilot project is responsible to provide or pay for services and other support to appropriately address the needs of the target population attributable to that county. This responsibility includes accountability for clinical, administrative, and fiscal functions.

b. A pilot project area may choose among alternative approaches in administering services under the pilot project. The alternative approaches include but are not limited to any of the following:

(1) A case rate approach to purchase of services.

(2) A fee-for-service purchasing approach with an emphasis on flexible, creative services.

(3) A mixed model involving both case rate and fee-for-service approaches.

c. A pilot project area shall provide data and other reports as provided in the contract with the department.

d. Moneys received by a county under the pilot project shall be deposited in the county's services fund. Moneys received that remain unencumbered or unobligated at the close of the fiscal year shall remain available to be used to benefit the county's target population in the succeeding fiscal year.

e. Receipt and expenditures of moneys under the pilot project shall be subject to examination during the regular audit of the pilot project area counties performed in accordance with chapter 11.

6. *Funding — phases.* The department shall negotiate with the pilot project areas to identify the projected funding amount to be provided to the areas for a fiscal year. The projected funding amount shall be determined in accordance with a pilot project area's relative share of the statewide expenditures for services and other support paid by the funding sources included in the pilot project plus the related administrative expenses. Unless the commencement dates are delayed due to a determination by the oversight committee, the pilot project funding shall be implemented in two phases with the first phase to commence July 1, 2000, and the second phase to commence July 1, 2001, as provided in paragraph *"d"*. Both phases of the pilot project shall end December 31, 2003. The phases of the pilot project shall be implemented as follows:

a. In the first phase, the department and the pilot project areas shall negotiate the specific projected funding amounts to be provided to each area. The department and the pilot project areas shall provide any data or other information necessary to accurately develop the projected amounts. The funding amount for the first phase shall be determined by December 30, 1999.

b. In the first phase, the mental health services funding sources for the pilot project areas shall include but are not limited to all of the following:

(1) The state share of the costs of care in the state mental health institutes.

(2) The mental health portion of any federal grant funding administered through the United States department of health and human services.

(3) Federal social services block grant funding.

(4) State case funding.

(5) State funding for the purchase of local services for persons with mental illness where the client has no established county of legal settlement.

(6) State supplementary assistance funding.

(7) To the extent allowed by the federal government, the mental health portion of federal funding provided for vocational rehabilitation of individuals with disabilities.

c. In the first phase, the mental retardation and other developmental disabilities services funding sources for the pilot project areas shall in-

clude but are not limited to all of the following:

(1) State and federal medical assistance funding for home and community-based waiver services to persons with mental retardation.

(2) The state share of the costs of care in the state resource centers.

(3) State and federal medical assistance payments for intermediate care facilities for persons with mental retardation services.

(4) Federal social services block grant funding.

(5) State funding for the purchase of local services for persons with mental retardation and other developmental disabilities where the client has no established county of legal settlement.

(6) State supplementary assistance funding.

(7) To the extent allowed by the federal government, the mental retardation and other developmental disabilities portion of federal funding provided for vocational rehabilitation of persons with disabilities.

d. In the second phase, all other medical assistance funding for mental health services for the pilot project areas shall be incorporated into the annual projected funding amount. Implementation of the second phase shall be subject to enactment by the general assembly of an implementation authorization.

7. *Oversight committee.*

a. An oversight committee shall be established to provide general oversight of the pilot project and the risk pool and to perform the duties outlined in this subsection. The oversight committee shall consist of the following members:

(1) At least one service consumer, one service provider, and one county supervisor from each of the pilot project areas, designated by the governor.

(2) An individual designated by the governor.

(3) One individual designated by the division of medical services of the department of human services and one individual designated by the division of mental health and developmental disabilities of the department of human services.

(4) An individual designated by the legislative council. If the individual designated by the legislative council is a member of the general assembly, that member shall be a nonvoting member.

b. The oversight committee shall have the following duties and responsibilities:

(1) The oversight committee may make a determination that implementation by the department of human services of a significant funding provision such as the rehabilitation option for persons with chronic mental illness or a waiver under the medical assistance program or another good cause reason justifies delay of the implementation of the pilot project phases as provided in subsection 6. If such a determination is made, the department of human services and pilot project counties shall delay implementation of the pilot project phases until a date identified by the oversight committee.

(2) The oversight committee shall arrange for an independent evaluation of the pilot project in accordance with subsection 9.

(3) The oversight committee shall provide assistance to the pilot project counties, the department of human services, and other interested persons concerning implementation of the pilot project.

(4) The oversight committee shall perform functions for the risk pool in accordance with subsection 8.

8. *Risk pool.* In order to augment assistance from the risk pool of the property tax relief fund for which the pilot project counties may be eligible under section 426B.5, the pilot project administrative areas shall create and commit funding to a pilot project risk pool. The pilot project risk pool shall be used to cover unexpected costs resulting from an unanticipated event such as a legal settlement requirement or need for an exceptionally costly set of services or other support. Funding shall be committed on the basis of a percentage of the pilot project counties' overall budget for services under the counties' management plan with an annual maximum percentage for each area and an overall combined percentage maximum, as determined by the pilot project counties in consultation with the oversight committee. Expenditure of this risk pool funding shall be subject to authorization by the oversight committee.

9. *Outcomes and evaluation.*

a. In consultation with the oversight committee, the pilot project participants and the department shall agree on a set of outcomes and indicators to measure the effect of the pilot project upon the system of care in those counties. The department and pilot project areas shall annually report to the governor and general assembly by December 15 on the implementation status of the pilot project and the performance on the indicators. The report shall include any findings identified by the oversight committee.

b. The oversight committee shall arrange for an independent evaluation of the pilot project. The evaluation shall assess the quality of services as well as the cost-effectiveness of the pilot project. The evaluation shall include a focus on special populations such as persons who are homeless or who have multiple disabilities or service needs.

c. A final report concerning the pilot project shall be submitted by the department and the pilot project areas to the governor and general assembly. It is the intent of the general assembly to use that report to determine whether to continue the pilot project, revise it, terminate it, or implement the pilot project provisions or a similar approach statewide.

10. *Law — rules — implementation.*

a. If a provision of state law or administrative rule is in conflict with a provision of this section, the provision of this section shall prevail. State law and administrative rules governing the funding sources specified in this section are not appli-

cable to use of the funding by the pilot project counties.

b. The department shall amend the medical assistance state plan and apply for federal waivers as necessary to implement the provisions of this section.

c. The department shall amend its contract for managed behavioral health care under medical assistance as necessary to implement the second phase of the pilot project and for the medical assistance-eligible persons covered under that contract to instead be covered by the pilot project counties.

d. The pooling of funding sources and the provision of services under this pilot project and implementation of a risk pool as authorized in this section is not insurance and is not subject to regulation under chapters 505 through 523C.

e. The department of human services shall amend the state medical assistance plan, implement federal waivers, or take other actions as necessary for the pilot project areas to be able to draw federal funding for the start-up and other costs to implement the pilot project.

f. The department shall give consideration to implementing a rehabilitation option under the medical assistance program for persons with chronic mental illness.

g. The requirements of this section may be adapted as necessary to comply with federal law, regulation, or other requirements in order to assure federal financial participation in the pilot project.

99 Acts, ch 160, §1; 2000 Acts, ch 1112, §51, 54 – 56, 58

PART 3

GENERAL OBLIGATION BONDS

331.441 Definitions.

1. As used in this part, the use of the conjunctive *"and"* includes the disjunctive *"or"* and the use of the disjunctive *"or"* includes the conjunctive *"and,"* unless the context clearly indicates otherwise.

2. As used in this part, unless the context otherwise requires:

a. "General obligation bond" means a negotiable bond issued by a county and payable from the levy of ad valorem taxes on all taxable property within the county through its debt service fund which is required to be established by section 331.430.

b. "Essential county purpose" means any of the following:

(1) Voting machines or an electronic voting system.

(2) Bridges on highways or parts of highways which are located along the corporate limits of cities and are partly within and partly without the limits and are in whole or in part secondary roads.

(3) Sanitary disposal projects as defined in section 455B.301.

(4) Works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams, including the planning, acquisition, leasing, construction, reconstruction, extension, remodeling, improvement, repair, equipping, maintenance, and operation of the works and facilities.

(5) Public buildings, including the site or grounds of, and the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost does not exceed the following limits:

(a) Four hundred thousand dollars in a county having a population of twenty-five thousand or less.

(b) Five hundred thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(c) Six hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(d) Eight hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(e) One million dollars in a county having a population of more than two hundred thousand.

(6) Funding or refunding outstanding indebtedness if the outstanding indebtedness exceeds five thousand dollars on the first day of January, April, June or September in any year. However, a county shall not levy taxes to repay refunding bonds for bridges on property within cities.

(7) Enlargement and improvement of a county hospital acquired and operated under chapter 347A, subject to a maximum of two percent of the assessed value of the taxable property in the county. However, notice of the proposed bond issue shall be published once each week for two consecutive weeks and if, within twenty days following the date of the first publication, a petition requesting an election on the proposal and signed by eligible electors of the county equal in number to at least twenty percent of the votes cast at the preceding election for governor is filed with the county auditor, the proposal is subject to the election requirements in section 331.442, subsections 2, 3, and 4, for general county purpose bonds.

(8) The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

(9) The acquisition, restoration, or demolition of abandoned, dilapidated, or dangerous build-

ings, structures or properties or the abatement of a nuisance.

(10) The establishment or funding of programs to provide for or assist in providing for the acquisition, restoration, or demolition of housing, as part of a municipal housing project under chapter 403 or otherwise, or for other purposes as may be authorized under chapter 403A.

(11) The acquiring, developing, and improving of a geographic computer data base system suitable for automated mapping and facilities management.

(12) Funding the acquisition, construction, reconstruction, improvement, repair, or equipping of waterworks, water mains and extensions, ponds, reservoirs, capacity, wells, dams, pumping installations, real and personal property, or other facilities available or used for the storage, transportation, or utilization of water.

(a) The county board of supervisors may on its own motion or upon a written petition of a water supplier established under chapter 357A or 504A, direct the county auditor to establish a special service area tax district for the purpose of issuing general obligation bonds. The special service area tax district shall include only unincorporated portions of the county and shall be drawn according to engineering recommendations provided by the water supplier or the county engineer and, in addition, shall be drawn in order that an election provided for in subparagraph subdivision (b) can be administered. The county's debt service tax levy for the county general obligation bonds issued for the purposes set out in this subparagraph shall be levied only against taxable property within the county which is included within the boundaries of the special service area tax district. An owner of property not included within the boundaries of the special service area tax district may petition the board of supervisors to be included in the special service area tax district subsequent to its establishment.

(b) General obligation bonds for the purposes described in this subparagraph are subject to an election held in the manner provided in section 331.442, subsections 1 through 4, if not later than fifteen days following the action by the county board of supervisors, eligible electors file a petition with the county commissioner of elections asking that the question of issuing the bonds be submitted to the registered voters of the special service area tax district. The petition must be signed by eligible electors equal in number to at least five percent of the registered voters residing in the special service area tax district. If the petition is duly filed within the fifteen days, the board of supervisors shall either adopt a resolution declaring that the proposal to issue the bonds is abandoned, or direct the county commissioner of elections to call a special election within a special service area tax district upon the question of issuing the bonds.

(13) The acquisition, pursuant to a chapter 28E agreement, of a city convention center or veterans memorial auditorium, including the renovation, remodeling, reconstruction, expansion, improvement, or equipping of such a center or auditorium, provided that debt service funds shall not be derived from the division of taxes under section 403.19.

(14) The aiding of the planning, undertaking, and carrying out of urban renewal projects under the authority of chapter 403 and for the purposes set out in section 403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in section 331.442, subsection 5, without limitation on the amount of the bond issue or the population of the county, and the board shall include notice of the right of petition in the notice of proposed action required under section 331.443, subsection 2.

c. "General county purpose" means any of the following:

(1) A memorial building or monument to commemorate the service rendered by members of the armed services of the United States, including the acquisition of ground and the purchase, erection, construction, reconstruction, and equipment of the building or monument, to be managed by a commission as provided in chapter 37.

(2) Acquisition and development of land for a public museum, park, parkway, preserve, playground, or other recreation or conservation purpose to be managed by the county conservation board. The board may submit a proposition under this subparagraph only upon receipt of a petition from the county conservation board asking that bonds be issued for a specified amount.

(3) The building and maintenance of a bridge over state boundary line streams. The board shall submit a proposition under this subparagraph to an election upon receipt of a petition which is valid under section 331.306.

(4) Contributions of money to the state department of transportation to help finance the construction of toll bridges across navigable rivers constituting boundaries between the county and an adjoining state.

(5) An airport, including establishment, acquisition, equipment, improvement, or enlargement of the airport.

(6) A joint city-county building, established by contract between the county and its county seat city, including purchase, acquisition, ownership, and equipment of the county portion of the building.

(7) A county health center as defined in section 346A.1, including additions and facilities for the center and including the acquisition, reconstruction, completion, equipment, improvement, repair, and remodeling of the center, additions, or facilities. Bonds for the purpose specified in this subparagraph are exempt from taxation by the state and the interest on the bonds is exempt from

state income taxes.

(8) A county public hospital, including procuring a site and the erection, equipment, and maintenance of the hospital, and additions to the hospital, subject to the levy limits in section 347.7.

(9) Public buildings, including the site or grounds of, the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost exceeds the limits stated in subsection 2, paragraph *"b"*, subparagraph (5).

(10) The undertaking of any project jointly or in cooperation with any other governmental body which, if undertaken by the county alone, would be for a general county purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

(11) Any other purpose which is necessary for the operation of the county or the health and welfare of its citizens.

3. The *"cost"* of a project for an essential county purpose or general county purpose includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during the period or estimated period of construction and for twelve months thereafter or for twelve months after the acquisition date, and provisions for contingencies.

1, 2a. [S81, §331.441(1, 2a); 81 Acts, ch 117, §440]

2b(1). [S13, §1137-a14; C24, 27, 31, 35, 39, §**906;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §52.3; S81, §331.441(2b); 81 Acts, ch 117, §440]

b(2). [SS15, §1527-s3; C24, 27, 31, 35, 39, §**4666;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.73; S81, §331.441(2b); 81 Acts, ch 117, §440]

b(3). [C71, 73, 75, 77, 79, 81, §346.23; S81, §331.441(2b); 81 Acts, ch 117, §440]

b(4). [C79, 81, §332.52; S81, §331.441(2b); 81 Acts, ch 117, §440]

b(5). [C51, §114, 117; R60, §250, 253; C73, §309, 312; C97, §443, 448; SS15, §448; C24, 27, 31, 35, 39, §**5263, 5268;** C46, 50, 54, 58, 62, §345.4, 345.9; C66, 71, 73, 75, 77, §232.22, 345.4, 345.9; C79, 81, §232.142, 345.4, 345.9; S81, §331.441(2b); 81 Acts, ch 117, §440]

b(6). [C73, §289; C97, S13, §403; C24, 27, 31, 35, 39, §**5275, 5276;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §346.1, 346.2; S81, §331.441(2b); 81 Acts, ch 117, §440]

b(7). [C62, 66, 71, 73, 75, 77, 79, 81, §347A.7; S81, §331.441(2b); 81 Acts, ch 117, §440]

2c(1). [C24, 27, 31, 35, 39, §**488;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §37.6; S81, §331.441(2c); 81 Acts, ch 117, §440; 82 Acts, ch 1104, §45]

c(2). [C62, 66, 71, 73, 75, 77, 79, 81, §111A.6; S81, §331.441(2c); 81 Acts, ch 117, §440]

c(3). [S13, §424-b; C24, 27, 31, 35, 39, §**4682;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §309.89; S81, §331.441(2b); 81 Acts, ch 117, §440; 82 Acts, ch 1104, §44, 46]

c(4). [C71, 73, 75, 77, 79, 81, §313A.35; S81, §331.441(2c); 81 Acts, ch 117, §440]

c(5). [C31, 35, §5903-c6, -c8; C39, §**5903.06, 5903.08;** C46, 50, §330.8, 330.10, 330.16; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.7, 330.10, 330.16; S81, §331.441(2c); 81 Acts, ch 117, §440]

c(6). [C50, §368.58, 368.59; C54, 58, 62, 66, 71, 73, §368.20, 368.21; C75, 77, 79, 81, §346.26; S81, §331.441(2c); 81 Acts, ch 117, §440]

c(7). [C71, 73, 75, 77, 79, 81, §346A.3 – 346A.5; S81, §331.441(2c); 81 Acts, ch 117, §440]

c(8). [S13, §409-a, -b, -f; C24, 27, 31, 35, §5348 – 5351, 5354; C39, §**5348, 5348.1, 5349 – 5351, 5354;** C46, 50, 54, 58, §347.1 – 347.5, 347.8; C62, 66, 71, 73, 75, 77, 79, 81, §37.27, 347.1 – 347.5, 347.8; S81, §331.441(2c); 81 Acts, ch 117, §440]

c(9). [C51, §114, 117; R60, §250, 253; C73, §309, 312; C97, §443, 448; SS15, §448; C24, 27, 31, 35, 39, §**5263, 5268;** C46, 50, 54, 58, 62, §345.4, 345.9; C66, 71, 73, 75, 77, §232.22, 345.4, 345.9; C79, 81, §232.142, 345.4, 345.9; S81, §331.441(2c); 81 Acts, ch 117, §440]

c(10, 11). [S81, §331.441(2c); 81 Acts, ch 117, §440]

3. [S81, §331.441(3); 81 Acts, ch 117, §440]

83 Acts, ch 123, §136 – 139, 209; 86 Acts, ch 1211, §21; 87 Acts, ch 103, §2 – 4; 89 Acts, ch 189, §2; 90 Acts, ch 1255, §18; 92 Acts, ch 1102, §1; 92 Acts, ch 1138, §3; 93 Acts, ch 180, §76; 94 Acts, ch 1014, §1; 94 Acts, ch 1182, §5; 95 Acts, ch 67, §53; 96 Acts, ch 1204, §35; 2000 Acts, ch 1188, §1; 2001 Acts, ch 56, §22, 23

331.442 General county purpose bonds.

1. A county which proposes to carry out any general county purpose within or without its boundaries, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the costs of a project, shall do so in accordance with this part.

2. Before the board may institute proceedings for the issuance of bonds for a general county purpose, it shall call a county special election to vote upon the question of issuing the bonds. At the election the proposition shall be submitted in the following form:

Shall the county of . . . . . , state of Iowa, be authorized to . . . . . (state purpose of project) at a total cost not exceeding $ . . . . . and issue its general obligation bonds in an amount not exceeding $ . . . . . for that purpose?

3. Notice of the election shall be given by publication as specified in section 331.305. At the elec-

tion the ballot used for the submission of the proposition shall be in substantially the form for submitting special questions at general elections.

4. The proposition of issuing bonds for a general county purpose is not carried or adopted unless the vote in favor of the proposition is equal to at least sixty percent of the total vote cast for and against the proposition at the election. If the proposition of issuing the general county purpose bonds is approved by the voters, the board may proceed with the issuance of the bonds.

5. *a.* Notwithstanding subsection 2, a board, in lieu of calling an election, may institute proceedings for the issuance of bonds for a general county purpose by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds subject to the following limitations:

(1) In counties having a population of twenty thousand or less, in an amount of not more than fifty thousand dollars.

(2) In counties having a population of over twenty thousand and not over fifty thousand, in an amount of not more than one hundred thousand dollars.

(3) In counties having a population of over fifty thousand, in an amount of not more than one hundred fifty thousand dollars.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition is filed with the auditor in the manner provided by section 331.306 asking that the question of issuing the bonds be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in subsections 2, 3 and 4.

c. If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the board may proceed with the authorization and issuance of the bonds.

[C31, 35, §5903-c5; C39, §**5903.05;** C46, 50, §330.7; C54, 58, §330.7; C62, 66, §111A.6, 330.7; C71, 73, 75, 77, 79, 81, §111A.6, 313A.35, 330.7, 346A.3; S81, §331.442; 81 Acts, ch 117, §441; 82 Acts, ch 1104, §47]

95 Acts, ch 67, §53

331.443 Essential county purpose bonds.

1. A county which proposes to carry out an essential county purpose within or without its boundaries, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the cost of a project shall do so in accordance with this part.

2. Before the board may institute proceedings for the issuance of bonds for an essential county purpose, a notice of the proposed action, including a statement of the amount and purposes of the bonds, and the time and place of the meeting at which the board proposes to take action for the issuance of the bonds, shall be published as provided in section 331.305. At the meeting, the board shall receive oral or written objections from any resident or property owner of the county. After all objections have been received and considered, the board, at that meeting or a date to which it is adjourned, may take additional action for the issuance of the bonds or abandon the proposal to issue the bonds. Any resident or property owner of the county may appeal the decision of the board to take additional action to the district court of the county, within fifteen days after the additional action is taken, but the additional action of the board is final and conclusive unless the court finds that the board exceeded its authority. The provisions of this subsection with respect to notice, hearing, and appeal, are in lieu of any other law.

[S81, §331.443; 81 Acts, ch 117, §442]

331.444 Sale of bonds.

1. The board may sell general obligation bonds at public or private sale in the manner prescribed by chapter 75.

2. General obligation funding or refunding bonds issued for the purposes specified in section 331.441, subsection 2, paragraph *"b"*, subparagraph (7), may be exchanged for the evidences of the legal indebtedness being funded or refunded, or the funding or refunding bonds may be sold in the manner prescribed by chapter 75 and the proceeds applied to the payment of the indebtedness. Funding or refunding bonds may bear interest at the same rate as, or at a higher or lower rate or rates of interest than the indebtedness being funded or refunded.

[C24, 27, 31, 35, 39, §**5278;** C46, 50, 54, 58, 62, 66, §346.4; C71, 73, 75, 77, 79, 81, §346.4, 346A.3; S81, §331.444; 81 Acts, ch 117, §443]

331.445 Categories for general obligation bonds.

The board may issue general obligation bonds pursuant to a resolution adopted at a regular or special meeting by a majority of the total number of supervisors. Each subparagraph of section 331.441, subsection 2, paragraphs *"b"* and *"c"*, describes a separate category. Separate categories of essential county purposes and of general county purposes may be incorporated in a single notice of intention to institute proceedings for the issuance of bonds, or separate categories may be incorporated in separate notices, and after an opportunity has been provided for filing objections, or after a favorable election has been held, if required, the board may include in a single resolution and sell

as a single issue of bonds, any number or combination of essential county purposes or general county purposes. If an essential county purpose is combined with a general county purpose in a single notice of intention to institute proceedings to issue bonds, then the entire issue is subject to the election requirement in section 331.442.

[S81, §331.445; 81 Acts, ch 117, §444]

331.446 Form and execution — negotiability.

1. As provided by resolution of the board, general obligation bonds may:

a. Bear dates.

b. Bear interest at rates not exceeding any limitations imposed by chapter 74A.

c. Mature in one or more installments.

d. Be in either coupon or registered form.

e. Carry registration and conversion privileges.

f. Be payable as to principal and interest at times and places.

g. Be subject to terms of redemption prior to maturity with or without premium.

h. Be in one or more denominations.

i. Be designated with a brief reference to purpose, or if issued for a combination of purposes, be designated "county purpose bond".

j. Contain other provisions not in conflict with state law.

2. General obligation bonds shall be executed by the chairperson of the board and the auditor. If coupons are attached to the bonds, they shall be executed with the original or facsimile signature of the auditor. A general obligation bond is valid and binding if it bears the signatures of the officers in office on the date of the execution of the bonds, notwithstanding that any or all persons whose signatures appear have ceased to be such officers prior to the delivery of the bonds.

3. General obligation bonds issued pursuant to this part are negotiable instruments.

[C73, §289; C97, S13, §403; C24, 27, 31, 35, 39, §**5277;** C46, 50, 54, 58, 62, 66, §346.3; C71, 73, §345.16, 346.3, 346A.3; C75, 77, 79, 81, §330.16, 345.16, 346.3, 346A.3; S81, §331.446; 81 Acts, ch 117, §445]

331.447 Taxes to pay bonds.

1. Taxes for the payment of general obligation bonds shall be levied in accordance with chapter 76, and the bonds are payable from the levy of unlimited ad valorem taxes on all the taxable property within the county through its debt service fund required by section 331.430 except that:

a. The amount estimated and certified to apply on principal and interest for any one year shall not exceed the maximum rate of tax, if any, provided by this division for the purpose for which the bonds were issued. If general obligation bonds are issued for different categories, as provided in section 331.445, the maximum rate of levies, if any, for each purpose shall apply separately to that portion of the bond issue for that category and the resolution authorizing the bond issue shall clearly set forth the annual debt service requirements with respect to each purpose in sufficient detail to indicate compliance with the rate of tax levy, if any.

b. The amount estimated and certified to apply on principal and interest for any one year may only exceed the statutory rate of levy limit, if any, by the amount that the registered voters of the county have approved at a special election, which may be held at the same time as the general election and may be included in the proposition authorizing the issuance of bonds, if an election on the proposition is necessary, or may be submitted as a separate proposition at the same election or at a different election. Notice of the election shall be given as specified in section 331.305. If the proposition includes issuing bonds and increasing the levy limit, it shall be in substantially the following form:

Shall the county of . . . . . , state of Iowa, be authorized to . . . . . (here state purpose of project) at a total cost not exceeding $ . . . . . and issue its general obligation bonds in an amount not exceeding $ . . . . . for that purpose, and be authorized to levy annually a tax not exceeding . . . . . dollars and . . . . . cents per thousand dollars of the assessed value of the taxable property within the county to pay the principal of and interest on the bonds?

If the proposition includes only increasing the levy limit it shall be in substantially the following form:

Shall the county of . . . . . , state of Iowa, be authorized to levy annually a tax not exceeding . . . . . dollars and . . . . . cents per thousand dollars of the assessed value of the taxable property within the county to pay principal and interest on the bonded indebtedness of the county for the purpose of . . . . . ?

2. A statutory or voted tax levy limitation does not limit the source of payment of bonds and interest, but only restricts the amount of bonds which may be issued.

3. For the sole purpose of computing the amount of bonds which may be issued as the result of the application of a statutory or voted tax levy limitation, all interest on the bonds in excess of that accruing in the first twelve months may be excluded from the first annual levy of taxes, so that the need for including more than one year's interest on the first annual levy of taxes to pay the bonds and interest does not operate to further restrict the amount of bonds which may be issued, and in certifying the annual levies, the first annu-

al levy of taxes shall be sufficient to pay all principal of and interest on the bonds becoming due prior to the next succeeding annual levy and the full amount of the annual levy shall be entered for collection as provided in chapter 76.

[C66, §309.73; C71, 73, §309.73, 346A.3; C75, 77, 79, 81, §309.73, 330.16, 346A.3; S81, §331.447; 81 Acts, ch 117, §446; 82 Acts, ch 1104, §48]

83 Acts, ch 123, §140, 209; 95 Acts, ch 67, §53

331.448 Statute of limitation — powers — conflicts.

1. An action shall not be brought which questions the legality of general obligation bonds or the power of the county to issue the bonds or the effectiveness of any proceedings relating to the authorization and issuance of the bonds from and after sixty days from the time the bonds are ordered issued by the county.

2. The enumeration in this part of specified powers and functions is not a limitation of the powers of counties, but this part and the procedures prescribed for exercising the powers and functions enumerated in this part control in the event of a conflict with any other law.

[S81, §331.448; 81 Acts, ch 117, §447]

331.449 Prior projects preserved.

Projects and proceedings for the issuance of general obligation bonds commenced before July 1, 1981, may be consummated and completed as required or permitted by any statute amended or repealed by this Act* as though the repeal or amendment had not occurred, and the rights, duties, and interests following from such projects and proceedings remain valid and enforceable. Projects commenced prior to July 1, 1981, may be financed by the issuance of general obligation bonds under any such amended or repealed law or by the issuance of general obligation bonds under this part. For the purposes of this section, commencement of a project includes but is not limited to action taken by the board or an authorized officer to fix a date for a hearing in connection with any part of the project, and commencement of proceedings for the issuance of general obligation bonds includes but is not limited to action taken by the board to fix a date for either a hearing or a sale in connection with any part of the general obligation bonds, or to order any part thereof to be issued.

[S81, §331.449; 81 Acts, ch 117, §448]

*See 81 Acts, ch 117

331.450 to 331.460 Reserved.

PART 4

REVENUE BONDS

331.461 Definitions.

As used in this part, unless the context otherwise requires:

1. *"Combined county enterprise"* means two or more county enterprises combined and operated as a single enterprise.

2. *"County enterprise"* means any of the following:

a. Airports and airport systems.

b. Works and facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of the liquid and solid waste, sewage, and industrial waste of the county, including sanitary disposal projects as defined in section 455B.301 and sanitary sewage systems, and including the acquisition, establishment, construction, purchase, equipment, improvement, extension, operation, maintenance, reconstruction, and repair of the works and facilities within or without the limits of the county, and including works and facilities to be jointly used by the county and other political subdivisions.

c. Swimming pools and golf courses, including their acquisition, establishment, construction, purchase, equipment, improvement, extension, operation, maintenance, reconstruction, and repair.

d. The equipment, enlargement, and improvement of a county public hospital previously established and operating under chapter 347, including acquisition of the necessary lands, rights-of-way, and other property, subject to approval by the board of hospital trustees. However, notice of the proposed bond issue shall be published at least once each week for two consecutive weeks and if, within thirty days following the date of the first publication, a petition requesting an election on the proposal and signed by eligible electors of the county equal to at least twenty percent of the votes cast at the preceding election for governor is filed with the county auditor, the proposal is subject to the election requirements in section 331.442, subsections 2, 3, and 4, for general county purpose bonds. Bonds issued under this paragraph shall mature in not more than thirty years from date of issuance.

e. In a county with a population of less than one hundred fifty thousand, a county hospital established under chapter 37 or 347A, including its acquisition, construction, equipment, enlargement, and improvement, and including necessary lands, rights-of-way, and other property. However, bonds issued under this paragraph shall mature in not more than thirty years from date of issuance, and are subject to the notice and election requirements of bonds issued under paragraph *"d"*.

f. A waterworks or single benefited water district under section 357.35, including land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the waterworks or district.

g. Housing for persons who are elderly or per-

sons with physical disabilities.

3. *"Gross revenue"* means all income and receipts derived from the operation of a county enterprise or combined county enterprise.

4. *"Net revenues"* means gross revenues less operating expenses.

5. *"Operating expense"* means salaries, wages, cost of maintenance and operation, materials, supplies, insurance, and all other items normally included under recognized accounting practices, but does not include allowances for depreciation in the value of physical property.

6. *"Pledge order"* means a promise to pay out of the net revenues of a county enterprise or combined county enterprise, which is delivered to the contractors or other persons in payment of all or part of the cost of the project.

7. *"Project"* means the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, and equipping of all or part of a county enterprise or combined county enterprise within or without the boundaries of the county.

8. *"Rates"* means rates, fees, tolls, rentals, and charges for the use of or service provided by a county enterprise or combined county enterprise.

9. *"Revenue bond"* means a negotiable bond issued by a county and payable from the net revenues of a county enterprise or combined county enterprise.

[S81, §331.461; 81 Acts, ch 117, §460; 82 Acts, ch 1104, §49]

2a. [C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §330.14; S81, §331.461(1); 81 Acts, ch 117, §460]

b. [C35, §6066-f1, -f5, -f8; C39, §**6066.24 – 6066.32;** C46, 50, 54, 58, §394.1, 394.5 – 394.9; C62, 66, 71, 73, §394.1, 394.5 – 394.9, 394.12; C75, 77, §332.44; C79, 81, §332.44, 332.52; S81, §331.461(1); 81 Acts, ch 117, §460]

c. [C35, §6066-f1, 6066-f3, 6066-f6 – 6066-f8; C39, §**6066.24, 6066.26, 6066.29 – 6066.32;** C46, 50, 54, 58, 62, 66, §394.1, 394.3, 394.6 – 394.9; C71, 73, §394.1, 394.3, 394.6 – 394.9, 394.13; C75, 77, 79, 81, §332.44; S81, §331.461(1); 81 Acts, ch 117, §460]

d. [C73, 75, 77, 79, 81, §347.27; S81, §331.461(1); 81 Acts, ch 117, §460]

e. [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347A.1 – 347A.4; S81, §331.461(1); 81 Acts, ch 117, §460]

f. [C79, 81, §332.52; S81, §331.461(1); 81 Acts, ch 117, §460; 82 Acts, ch 1219, §2]

1, 3 – 9. [S81, §331.461(2 – 9); 81 Acts, ch 117, §460]

99 Acts, ch 76, §1, 2; 2001 Acts, ch 56, §24

331.462 County enterprises — combined county enterprises.

1. A county which proposes to establish, own, acquire by purchase, condemnation, or otherwise, lease, sell, construct, reconstruct, extend, remodel, improve, repair, equip, maintain and operate within or without its corporate limits a county enterprise or combined county enterprise financed by revenue bonds shall do so in accordance with this part.

2. If a combined county enterprise is dissolved, each county enterprise which was a part of the combined county enterprise shall continue in existence as a separate county enterprise until it is abandoned by the board.

3. A combined county enterprise may be established, but if there are obligations outstanding which by their terms are payable from the revenues of any county enterprise involved, the obligations shall be assumed by the board subject to all terms established at the time of the original issue, or refunded through the issuance of revenue bonds of the combined county enterprise as a part of the procedure for the establishment of the combined county enterprise, or funds sufficient to pay the principal of and all interest and premium, if any, on the outstanding obligations at and prior to maturity shall be set aside and pledged for that purpose. Revenues earmarked for payment of the obligations shall be handled by the board in the same manner as they were handled for the county enterprise involved. A county enterprise shall not be abandoned and a combined county enterprise shall not be dissolved so long as there are obligations outstanding which by their terms are payable from the revenues of the county enterprise or combined county enterprise unless funds sufficient to pay the principal of and all interest and premium, if any, on the outstanding obligations at and prior to maturity have been set aside and pledged for that purpose.

[S81, §331.462; 81 Acts, ch 117, §461]

331.463 Procedure for financing.

1. The board may carry out projects, borrow money, and issue revenue bonds and pledge orders to pay all or part of the cost of projects, the revenue bonds and pledge orders to be payable solely out of the net revenues of the county enterprise or combined county enterprise involved in the project. The cost of a project includes the construction contracts, interest upon the revenue bonds and pledge orders during the period or estimated period of construction and for twelve months thereafter, or for twelve months after the acquisition date, reserve funds as the board deems advisable in connection with the project and the issuance of revenue bonds and pledge orders, and the costs of engineering, architectural, technical and legal services, preliminary reports, surveys, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights of way, supervision, inspection, testing, publications, printing and sale of bonds and provisions for contingencies. The board may sell revenue bonds or pledge orders at public or private sale in the

manner prescribed by chapter 75 and may deliver revenue bonds and pledge orders to the contractors, sellers, and other persons furnishing materials and services constituting a part of the cost of the project in payment therefor.

The board may deliver its revenue bonds to the federal government or any agency thereof which has loaned the county money for sanitary or solid waste projects, water projects, or other projects, for which the government has a loan program.

2. The board may issue revenue bonds to refund revenue bonds, pledge orders, and other obligations which are by their terms payable from the net revenues of the same county enterprise or combined county enterprise, or from a county enterprise comprising a part of the combined county enterprise, at lower, the same, or higher rates of interest. A county may sell refunding revenue bonds at public or private sale in the manner prescribed by chapter 75 and apply the proceeds to the payment of the obligations being refunded, and may exchange refunding revenue bonds in payment and discharge of the obligations being refunded. The principal amount of refunding revenue bonds may exceed the principal amount of the obligations being refunded to the extent necessary to pay any premium due on the call of the obligations being refunded and to fund interest accrued and to accrue on the obligations being refunded.

3. The board may contract to pay not to exceed ninety-five percent of the engineer's estimated value of the acceptable work completed during the month to the contractor at the end of each month for work, material, or services. Payment may be made in warrants drawn on any fund from which payment for the work may be made. If such funds are depleted, anticipatory warrants may be issued bearing a rate of interest not exceeding that permitted by chapter 74A even if a collection of taxes or special assessments or income from the sale of bonds which have been authorized and are applicable to the public improvement takes place after the fiscal year in which the warrants are issued. If the board arranges for the private sale of anticipatory warrants, they may be sold and the proceeds used to pay the contractor. The warrants may also be used to pay other persons furnishing services constituting a part of the cost of the public improvement.

[S81, §331.463; 81 Acts, ch 117, §462; 82 Acts, ch 1104, §50]

331.464 Revenue bonds.

1. The board may issue revenue bonds pursuant to a resolution adopted at a regular or special meeting by a majority of the total number of members of the board.

2. Before the board institutes proceedings for the issuance of revenue bonds, it shall fix a time and place of meeting at which it proposes to take action, and give notice by publication in the manner directed in section 331.305. The notice must include a statement of the time and place of the meeting, the maximum amount of the proposed revenue bonds, the purpose for which the revenue bonds will be issued, and the county enterprise or combined county enterprise whose net revenues will be used to pay the revenue bonds and interest thereon. At the meeting the board shall receive oral or written objections from any resident or property owner of the county. After all objections have been received and considered, the board, at the meeting or a date to which it is adjourned, may take additional action for the issuance of the bonds or abandon the proposal to issue bonds. Any resident or property owner of the county may appeal a decision of the board to take additional action to the district court of the county within fifteen days after the additional action is taken, but the additional action of the board is final and conclusive unless the court finds that the board exceeded its authority. The provisions of this subsection with respect to notice, hearing, and appeal are in lieu of those contained in any other law.

3. Revenue bonds may bear dates, bear interest at rates not exceeding those permitted by chapter 74A, mature in one or more installments, be in either coupon or registered form, carry registration and conversion privileges, be payable as to principal and interest at times and places, be subject to terms of redemption prior to maturity with or without premium, and be in one or more denominations, all as provided by the resolution of the board authorizing their issuance. The resolution may also prescribe additional provisions, terms, conditions, and covenants which the board deems advisable, consistent with this part, including provisions for creating and maintaining reserve funds, the issuance of additional revenue bonds ranking on a parity with such revenue bonds and additional revenue bonds junior and subordinate to such revenue bonds, and that such revenue bonds shall rank on a parity with or be junior and subordinate to any revenue bonds which may be then outstanding. Revenue bonds are a contract between the county and holders and the resolution is a part of the contract.

4. Revenue bonds shall be executed by the chairperson of the board and the auditor. If coupons are attached to the revenue bonds, they shall be executed with the original or facsimile signature of the auditor. A revenue bond is valid and binding for all purposes if it bears the signatures of the officers in office on the date of the execution of the bonds notwithstanding that any or all persons whose signatures appear have ceased to be such officers prior to the delivery of the bonds. The issuance of revenue bonds shall be recorded in the office of the treasurer, and a certificate of the recording by the treasurer shall be printed on the back of each revenue bond.

5. Revenue bonds, pledge orders and warrants issued under this part are negotiable instruments.

6. The board may issue pledge orders pursuant to a resolution adopted by a majority of the total number of supervisors, at a regular or special meeting, ordering their issuance and delivery in payment for all or part of the cost of a project. Pledge orders may bear interest at rates not exceeding those permitted by chapter 74A.

7. The physical properties of a county enterprise or combined county enterprise shall not be pledged or mortgaged to secure the payment of revenue bonds or pledge orders or the interest thereon.

[S81, §331.464; 81 Acts, ch 117, §463]

331.465 Rates for proprietary functions.

1. The board may establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the county enterprise or combined county enterprise and, if revenue bonds or pledge orders are issued and outstanding under this part, shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the county enterprise or combined county enterprise, and to leave a balance of net revenues sufficient at all times to pay the principal of and interest on the revenue bonds and pledge orders as they become due and to maintain a reasonable reserve for the payment of the principal and interest, and a sufficient portion of net revenues shall be pledged for that purpose. Rates shall be established by ordinance. Rates or charges for the services of a county enterprise defined in section 331.461, subsection 2, paragraph *"b"*, if not paid as provided by ordinance, constitute a lien upon the premises served and may be certified to the county treasurer and collected in the same manner as taxes. The treasurer may charge five dollars for each lien certified as an administrative expense, which amount shall be added to the amount of the lien to be collected at the time of payment of the assessment from the payor and credited to the county general fund.

2. The board may:

a. By ordinance establish, impose, adjust and provide for the collection of charges for connection to a county enterprise or combined county enterprise.

b. Contract for the use of or services provided by a county enterprise or combined county enterprise with persons whose type or quantity of use or service is unusual.

c. Lease for a period not to exceed fifteen years all or part of a county enterprise or combined county enterprise, if the lease will not reduce the net revenues to be produced by the county enterprise or combined county enterprise.

d. Contract for a period not to exceed forty years with other governmental bodies for the use of or the services provided by the county enterprise or combined county enterprise on a wholesale basis.

e. Contract for a period not to exceed forty years with persons including but not limited to other governmental bodies for the purchase or sale of water.

[S81, §331.465; 81 Acts, ch 117, §464]
93 Acts, ch 73, §1

331.466 Records — accounts — funds.

1. The governing body of each county enterprise or combined county enterprise operated on a revenue producing basis shall maintain a proper system of books, records and accounts.

2. The gross revenues of each county enterprise or combined county enterprise shall be deposited with the treasurer and kept by the treasurer in a separate account apart from the other funds of the county and from each other. The treasurer shall apply the gross revenues of each county enterprise or combined county enterprise only as ordered by the board and in strict compliance with the orders, including the provisions, terms, conditions and covenants of any and all resolutions of the board pursuant to which revenue bonds or pledge orders are issued and outstanding.

[S81, §331.466; 81 Acts, ch 117, §465]

331.467 Pledge — payment — remedy.

1. The pledge of any net revenues of a county enterprise or combined county enterprise is valid and effective as to all persons including but not limited to other governmental bodies when it becomes valid and effective between the county and the holders of the revenue bonds or pledge orders.

2. Revenue bonds and pledge orders are payable both as to principal and interest solely out of the portion of the net revenues of the county enterprise or combined county enterprise pledged to their payment and are not a debt of or charge against the county within the meaning of any constitutional or statutory debt limitation provision.

3. The sole remedy for a breach or default of a term of a revenue bond or pledge order is a proceeding in law or in equity by suit, action, or mandamus to enforce and compel performance of the duties required by this part and of the terms of the resolution authorizing the issuance of the revenue bonds or pledge orders, or to obtain the appointment of a receiver to take possession of and operate the county enterprise or combined county enterprise, and to perform the duties required by this part and the terms of the resolution authorizing the issuance of the revenue bonds or pledge orders.

[S81, §331.467; 81 Acts, ch 117, §466]

331.468 Funds — payments.

1. If a county enterprise or combined county enterprise has on hand surplus funds, after mak-

ing all deposits into all funds required by the terms, covenants, conditions, and provisions of outstanding revenue bonds, pledge orders, and other obligations which are payable from the revenues of the county enterprise or combined county enterprise and after complying with all of the requirements, terms, covenants, conditions and provisions of the proceedings and resolutions pursuant to which revenue bonds, pledge orders, and other obligations are issued, the board may transfer the surplus funds to any other fund of the county in accordance with applicable law, provided that a transfer shall not be made if it conflicts with any of the requirements, terms, covenants, conditions, or provisions of any resolution authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the county enterprise or combined county enterprise which are then outstanding.

2. This part does not prohibit or prevent the board from using funds derived from the issuance of general obligation bonds, the levy of special assessments and the issuance of special assessment bonds, and any other source which may be properly used for such purpose, to pay a part of the cost of a project.

3. The county shall pay for the use of or the services provided by the county enterprise or combined county enterprise as any other customer, except that the county may pay for use or service at a reduced rate or receive free use or service so long as the county complies with the provisions, terms, conditions and covenants of all resolutions pursuant to which revenue bonds or pledge orders are issued and outstanding.

[S81, §331.468; 81 Acts, ch 117, §467]

331.469 Statute of limitation — powers — conflicts.

1. An action shall not be brought which questions the legality of revenue bonds, the power of the board to issue revenue bonds, or the effectiveness of any proceedings relating to the authorization and issuance of revenue bonds, from and after sixty days from the time the bonds are ordered issued by the board.

2. The enumeration in this part of specified powers and functions is not a limitation of the powers of counties, but this part and the procedures prescribed for exercising the powers and functions enumerated in this part control in the event of a conflict with any other law.

[S81, §331.469; 81 Acts, ch 117, §468]

331.470 Prior projects preserved.

Projects and proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations, commenced before July 1, 1981 may be completed as required or permitted by any statute amended or repealed by this Act*, as though the amendment or repeal had not occurred, and the rights, duties, and interests resulting from the projects and proceedings remain valid and enforceable. Projects commenced prior to July 1, 1981 may be financed by the issuance of revenue bonds, pledge orders, and other temporary obligations under any such amended or repealed law or by the issuance of revenue bonds and pledge orders under this part. For purposes of this section, commencement of a project includes but is not limited to action taken by the board or an authorized officer to fix a date for either a hearing or an election in connection with any part of the project, and commencement of proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations includes, but is not limited to, action taken by the board to fix a date for either a hearing or a sale in connection with any part of such revenue bonds, pledge orders, or other temporary obligations or to order any part thereof to be issued.

[S81, §331.470; 81 Acts, ch 117, §469]

*See 81 Acts, ch 117

331.471 County enterprise commissions.

1. As used in this section, *"commission"* means a commission established under this section to manage a county enterprise or combined county enterprise. Upon receipt of a valid petition as defined in section 331.306 requesting that a proposal for establishment or discontinuance of a commission be submitted to the voters, or upon its own motion, the board shall submit the proposal at the next general election or at an election which includes a proposal to establish, acquire, lease, or dispose of the county enterprise or combined county enterprise.

2. A proposal for the establishment of a county enterprise commission shall specify a commission of either three or five members. If a majority of those voting approves the proposal, the board shall proceed as proposed. If a majority of those voting does not approve the proposal, the same or a similar proposal shall not be submitted to the voters of the county and the board shall not establish a commission for the same purpose for at least four years from the date of the election at which the proposal was defeated.

3. If a proposal to discontinue a commission receives a favorable majority vote, the commission is dissolved at the time provided in the proposal and shall turn over to the board the management of the county enterprise or combined county enterprise and all property relating to it.

4. If a proposal to establish a commission receives a favorable majority vote, the commission is established at the time provided in the proposal. The board shall appoint the commission members, as provided in the proposal and this section. The board shall provide by resolution for staggered six-year terms for and shall set the compensation of commission members.

5. A commission member appointed to fill a vacancy occurring by reason other than the expiration of a term is appointed for the balance of the unexpired term.

6. The title of a commission shall be appropriate to the county enterprise or combined county enterprise administered by the commission. A commission may be a party to legal action. A commission may exercise all powers of the board in relation to the county enterprise or combined county enterprise it administers, with the following exceptions:

a. A commission shall not certify taxes to be levied, pass ordinances or amendments, or issue general obligation bonds.

b. The title to all property of a county enterprise or combined county enterprise shall be held in the name of the county, but the commission has all the powers and authorities of the board with respect to the acquisition by purchase, condemnation or otherwise, lease, sale or other disposition of the property, and the management, control and operation of the property, subject to the requirements, terms, covenants, conditions and provisions of any resolutions authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the county enterprise or combined county enterprise, and which are then outstanding.

c. A commission shall make to the board a detailed annual report, including a complete financial statement.

d. Immediately following a regular or special meeting of a commission, the secretary of the commission shall prepare a condensed statement of the proceedings of the commission and cause the statement to be published as provided in section 331.305. The statement shall include a list of all claims allowed, showing the name of the person or firm making the claim, the reason for the claim, and the amount of the claim. Salary claims must show the gross amount of the claim except that salaries paid to persons regularly employed by the commission, for services regularly performed by the persons shall be published once annually showing the gross amount of the salary. In counties having more than one hundred fifty thousand population the commission shall each month prepare in pamphlet form the statement required in this paragraph for the preceding month, and furnish copies to the public library, the daily and official newspapers of the county, the auditor, and to persons who apply at the office of the secretary, and the pamphlet shall constitute publication as required. Failure by the secretary to make publication is a simple misdemeanor.

7. A commission shall control tax revenues allocated to the county enterprise or combined county enterprise it administers and all moneys derived from the operation of the county enterprise or combined county enterprise, the sale of its property, interest on investments, or from any other source related to the county enterprise or combined county enterprise.

8. All moneys received by the commission shall be held by the county treasurer in a separate fund, with a separate account or accounts for each county enterprise or combined county enterprise. Moneys may be paid out of each account only at the direction of the appropriate commission.

9. A commission is subject to section 331.341, subsections 1, 2, 4 and 5, and section 331.342, in contracting for public improvements.

[S81, §331.471; 81 Acts, ch 117, §470]
83 Acts, ch 42, §1

331.472 to 331.475 Reserved.

PART 5

CURRENT AND NONCURRENT DEBT

331.476 Expenditures confined to receipts.

Except as otherwise provided in section 331.478, a county officer or employee shall not allow a claim, issue a warrant, or execute a contract which will result during a fiscal year in an expenditure from a county fund in excess of an amount equal to the collectible revenues in the fund for that fiscal year plus any unexpended balance in the fund from a previous year. A county officer or employee allowing a claim, issuing a warrant, or executing a contract in violation of this section is personally liable for the payment of the claim or warrant or the performance of the contract.

83 Acts, ch 123, §23, 209

331.477 Current debt authorized.

A debt payable from resources which will have accrued in a fund by the end of the fiscal year in which the debt is incurred may be authorized only by resolution of the board. The debt may take the form of:

1. Anticipatory warrants subject to chapter 74.
2. Loans from other county funds.
3. Other formal short-term debt instruments or obligations.

83 Acts, ch 123, §24, 209

331.478 Noncurrent debt authorized.

1. A county may contract indebtedness and issue bonds as otherwise provided by state law.

2. The board may by resolution authorize noncurrent debt as defined in subsection 3 which is payable from resources accruing after the end of the fiscal year in which the debt is incurred, in accordance with section 331.479, for any of the following purposes:

a. Expenditures for bridges or buildings destroyed by fire, flood, or other extraordinary casualty.

b. Expenditures incurred in the operation of the courts.

c. Expenditures for bridges which are made necessary by the construction of a public drainage improvement.

d. Expenditures for the benefit of a person entitled to receive assistance from public funds.

e. Expenditures authorized by vote of the electorate.

f. Contracts executed on the basis of the budget submitted as provided in section 309.93.

g. Expenditures authorized by supervisors acting in the capacity of trustees or directors of a drainage district or other special district.

h. Expenditures for land acquisition and capital improvements for county conservation purposes not to exceed in any year the monetary equivalent of a tax of six and three-fourths cents per thousand dollars of assessed value on all the taxable property in the county.

i. Expenditures for purposes for which counties may issue general obligation bonds without an election under state law.

3. Noncurrent debt authorized by subsection 2 may take any of the following forms:

a. Anticipatory warrants subject to chapter 74. Anticipatory warrants drawn on the secondary road fund are also subject to sections 309.46 through 309.55.

b. Advances from other funds.

c. Installment purchase contracts.

d. Other formal debt instruments or obligations other than bonds.

4. Noncurrent debt as defined in subsection 3 shall be retired from resources of the fund from which the expenditure was made for which the debt was incurred.

83 Acts, ch 123, §25, 209; 87 Acts, ch 161, §1

331.479 Other noncurrent debt issuance.

Before the board may institute proceedings for the incurrence of debt for the purposes listed in section 331.478, subsection 2, a notice of the proposed action, including a statement of the amount, purposes, and form of the debt, the proposed time of its liquidation, and the time and place of the meeting at which the board proposes to take action to authorize the debt, shall be published as provided in section 331.305. At the meeting, the board shall receive oral or written objections from any resident or property owner of the county. After all objections have been received and considered, the board, at that meeting or a date to which it is adjourned, may take additional action to authorize the debt or abandon the proposal.

83 Acts, ch 123, §26, 209

331.480 to 331.484 Reserved.

PART 6

SPECIAL ASSESSMENT DISTRICTS

331.485 Definitions.

As used in this part, unless the context otherwise requires:

1. *"Cost"* means cost as defined in section 384.37.

2. *"County special assessment district"* means the area of a county outside of cities within boundaries established by the board of supervisors for the purpose of assessment of the cost of a public improvement.

3. *"District"* means a joint special assessment district, and a county special assessment district.

4. *"Joint special assessment district"* means a district defined by a county and one or more other counties or one or more cities within the county or within an adjacent county pursuant to an agreement entered into by the county and one or more other counties or cities in accordance with chapter 28E and this part with respect to public improvements which the parties to the agreement determine benefit the property located in the cities and the designated area of the counties outside of cities, which are parties to the agreement.

5. *"Public improvement"* means public improvement as defined in section 384.37.

90 Acts, ch 1115, §1

331.486 Assessment of costs of public improvements.

A county may assess to property within a county special assessment district the cost of construction and repair of public improvements benefiting the district and may assess to property within a joint special assessment district the cost of construction and repair of public improvements benefiting the district. A county may construct and assess the cost of public improvements within a district in the same manner as a city may proceed under chapter 384, division IV, and chapter 384, division IV, applies to counties with respect to public improvements, the assessment of their costs, and the issuance of bonds for the public improvements. A county may contract for a public improvement benefiting a district under this part pursuant to chapter 331, division III, part 3.

90 Acts, ch 1115, §2; 92 Acts, ch 1073, §5

331.487 Special assessment bonds for public improvements.

A county may issue special assessment bonds in anticipation of the collection of special assessments for the cost of public improvements benefiting a district in the same manner as provided for cities under chapter 384, division IV.

90 Acts, ch 1115, §3

331.488 Joint agreements for public improvements.

An agreement entered into between a county

and a city or another county in accordance with chapter 28E with respect to a public improvement may include, but is not limited to, the following:

1. The sharing of the total cost of the public improvement among all parties to the agreement.

2. The amount of total assessments against private property within each city and within the area of each county outside a city included within the district.

3. The method of specially assessing and determining benefits.

4. The amount of funds, if any, to be contributed by each city and each county to the project other than special assessments.

5. The rates to be established and imposed upon property within the district to pay the expenses of operation and maintenance of the public improvements.

6. The reduction of the county's debt service tax levy rate against property within a city which is a party to the joint agreement.

90 Acts, ch 1115, §4

331.489 Rates and charges relating to public improvements.

A county which has created a district for a public improvement and, to the extent provided in the agreement creating a joint special assessment district, each county or city which is a party to the agreement, may establish, impose, adjust, and provide for the collection of rates and charges to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of a public improvement, against property within the district and, where appropriate, establish, impose, adjust, and provide for the collection of charges for connection to a public improvement. The rates and charges must be established by ordinance of the governing body of the county or the city imposing the rates or charges. The rates and charges established as provided in this section, if not paid as provided by the ordinance of the governing body, are a lien upon the premises served or benefited by the public improvement and may be certified to the county treasurer and collected in the same manner as property taxes.

90 Acts, ch 1115, §5; 93 Acts, ch 73, §2

331.490 Cities subject to debt service tax levy — rates.

1. If a county and city have entered into an agreement to create a joint special assessment district and issue county general obligation bonds to fund the costs of a public improvement benefiting that district, the county's debt service tax levy for the county general obligation bonds shall not be levied against property located in any city except a city which has entered into the agreement.

2. Counties and cities entering into an agreement for a joint special assessment district may provide in the agreement for a different rate of the county's debt service tax levy against property in areas of the county outside a city and property within the cities.

90 Acts, ch 1115, §6

331.491 Authority.

The authority of a county or a city under this part with respect to districts and the financing of public improvements is in addition to any other authority of a county or city to contract and levy special assessments and issue bonds to fund the costs.

90 Acts, ch 1115, §7

331.492 to 331.500 Reserved.

DIVISION V

COUNTY OFFICERS

PART 1

COUNTY AUDITOR

331.501 Office of county auditor.

1. The office of auditor is an elective office except that if a vacancy occurs in the office, a successor shall be appointed to the unexpired term as provided in chapter 69.

2. A person elected or appointed to the office of auditor shall qualify by taking the oath of office as provided in section 63.10 and giving bond as provided in section 64.8.

3. The term of office of the auditor is four years.

[C73, §589; C97, S13, §1072; C24, 27, 31, 35, 39, §**520;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.17; S81, §331.501; 81 Acts, ch 117, §500]

331.502 General duties.

The auditor shall:

1. Have general custody and control of the courthouse, subject to the direction of the board.

2. Provide, upon request and payment of the legal fee, a certified copy of any record or account kept in the auditor's office.

3. Keep the complete journals of the general assembly and the official register available for public inspection as provided in section 18.90.

4. Carry out duties relating to the administration of local governmental budgets as provided in chapter 24 and section 384.19.

5. Report the approval of the bond of a public officer approved by the auditor on behalf of the board as provided in section 64.21.

6. Have custody of the official bonds of county and township officers as provided in section 64.23.

7. Take temporary possession of the office and all official books and papers in the office of treasurer when a vacancy occurs and hold the office, books, and records until a successor qualifies as provided in section 69.3. The auditor shall also

serve temporarily as the recorder if a vacancy occurs in that office and, if there is no chief deputy assessor, act temporarily as the assessor as provided in section 441.8.

8. Serve as a member of an appointment board to fill a vacancy in the membership of the board as provided in section 69.8, subsection 4.

9. Submit annually to the Iowa department of public health the names and addresses of the clerk, or if there is no clerk, the secretary of the local boards of health in the county as provided in section 135.32.

10. Notify the chairperson of the county agricultural extension education council when the bond of the council treasurer has been filed as provided in section 176A.14.

11. Attest to anticipatory warrants issued by the board for the operation of a county limestone quarry as provided in section 353.7.

12. Carry out duties relating to the determination of legal settlement, collection of funds due the county, and support of persons with mental retardation as provided in sections 222.13, 222.50, 222.61 to 222.66, 222.69, and 222.74.

13. Collect the costs relating to the treatment and care of private patients at the state psychiatric hospital as provided in sections 225.23, 225.24, and 225.35.

14. Carry out duties relating to the hospitalization and support of persons with mental illness as provided in sections 229.42, 230.3, 230.11, 230.15, 230.21, 230.22, 230.25, and 230.26.

15. With acceptable sureties, approve the bonds of the members of a county commission of veteran affairs as provided in section 35B.6.

16. Issue warrants and maintain a book containing a record of persons receiving veteran assistance as provided in section 35B.10.

17. If the legal settlement of a poor person receiving financial assistance is in another county, notify the auditor of that county of the financial assistance as provided in section 252.22.

18. Notify the treasurer of funds due the state for the treatment of indigent persons at the university hospital as provided in section 255.26.

19. Make available to schools, voting machines or sample ballots for instructional purposes as provided in section 256.11, subsection 5.

20. Carry out duties relating to the collection and payment of funds for educating and supporting deaf students as provided in sections 270.6 and 270.7.

21. Order the treasurer to transfer tuition payments from the account of the debtor school corporation to the creditor school corporation as provided in section 282.21.

22. Order the treasurer to transfer transportation service fees from the account of the debtor school corporation to the creditor school corporation as provided in section 285.1, subsection 13.

23. Apportion school taxes, rents, and other money dedicated for public school purposes as provided in section 298.11.

24. Carry out duties relating to school lands and funds as provided in chapter 257B.

25. Carry out duties relating to the establishment, alteration, and vacation of public highways as provided in sections 306.21, 306.25, 306.29 to 306.31, 306.37, and 306.40.

26. Carry out duties relating to the establishment and maintenance of secondary roads as provided in chapter 309.

27. Collect costs incurred by the county weed commissioner as provided in section 317.21.

28. Maintain a file of certificates of appointment issued by county officers as provided in section 331.903.

29. Furnish information and statistics requested by the governor or the general assembly as provided in section 331.901, subsection 1.

30. Carry out duties relating to the organization, expansion, reduction, or dissolution of a rural water district as provided in chapter 357A.

31. Carry out duties related to posting financial information of a township as provided in sections 359.23 and 359.49.

32. Acknowledge the receipt of funds refunded by the state as provided in section 12B.18.

33. Be responsible for all public money collected or received by the auditor's office. The money shall be deposited in a bank approved by the board as provided in chapter 12C.

34. Carry out duties relating to the establishment and management of levee and drainage districts as provided in chapter 468, subchapter I, parts 1 to 5, subchapter II, parts 1, 3, and 6, subchapter III, and subchapter V.

35. Serve as a trustee for funds of a cemetery association as provided in sections 566.12 and 566.13.

36. Notify the state department of transportation of claims filed for improvements on public roads payable from the primary road fund as provided in section 573.24.

37. Certify to the clerk of the district court the names, addresses, and expiration date of the terms of office of persons appointed to the county judicial magistrate appointing commission as provided in section 602.6503.

38. Serve as an ex officio member of the jury commission as provided in section 607A.9.

39. Destroy outdated records as ordered by the board.

40. Carry out duties relating to the selection of jurors as provided in chapter 607A.

41. Designate newspapers in which official notices of the auditor's office shall be published as provided in section 618.7.

42. Carry out duties relating to lost property as provided in sections 556F.2, 556F.4, 556F.7, 556F.10, and 556F.16.

43. For payment of a permanent school fund mortgage, acknowledge satisfaction of the mortgage by execution of a written instrument refer-

ring to the mortgage as provided in section 655.1.

44. Receive and record in a book kept for that purpose, moneys recovered from a person willfully committing waste or trespass on real estate as provided in section 658.10.

45. Carry out other duties required by law and duties assigned pursuant to section 331.323 or 331.610.

1. [C73, §323; C97, §473; C24, 27, 31, 35, 39, §**5141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §333.1(8); S81, §331.502(1); 81 Acts, ch 117, §501]

2. [R60, C73, §320; C97, §470; C24, 27, 31, 35, 39, §**5141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §333.1(7); S81, §331.502(2); 81 Acts, ch 117, §501]

3 – 7. [S81, §331.502(3 – 7); 81 Acts, ch 117, §501]

8. [C97, §497; C24, 27, 31, 35, 39, §**5170;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §335.1; S81, §331.502(8); 81 Acts, ch 117, §501]

9 – 49. [S81, §331.502(9 – 52); 81 Acts, ch 117, §501; 82 Acts, ch 1104, §51, 52]

83 Acts, ch 101, §77; 83 Acts, ch 185, §29, 62; 83 Acts, ch 186, §10080 – 10083, 10201; 86 Acts, ch 1108, §2, 3; 86 Acts, ch 1155, §4; 87 Acts, ch 115, §53; 87 Acts, ch 227, §27; 88 Acts, ch 1158, §69; 88 Acts, ch 1262, §7; 93 Acts, ch 148, §1; 94 Acts, ch 1173, §21, 22; 96 Acts, ch 1129, §113; 98 Acts, ch 1107, §9; 2000 Acts, ch 1117, §21

331.503 General powers.

The auditor may:

1. Administer oaths and take affirmations on matters relating to the business of the office of auditor.

2. Subject to requirements of section 331.903, appoint and remove deputies, clerks and assistants. If a deputy auditor is not appointed and the requirements of office require the temporary employment of assistants, the auditor shall file a bill for the services with the board at its next meeting. The board shall allow reasonable compensation for the temporary appointees.

[C51, §411; R60, §642; C73, §766; C97, §481; SS15, §481; C24, 27, 31, 35, 39, §**5238, 5240, 5244;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §341.1, 341.3, 341.8; S81, §331.503; 81 Acts, ch 117, §502]

331.504 Duties as clerk to the board.

The auditor shall:

1. Record the proceedings of the board. The minutes of the board shall include a record of all actions taken and the complete text of the motions, resolutions, amendments, and ordinances adopted by the board. Upon the request of a supervisor present at a meeting, the minutes shall include a record of the vote of each supervisor on any question before the board.

2. Maintain the books and records required to be kept by the board under section 331.303.

3. Sign all orders issued by the board for the payment of money.

4. Record the reports of the treasurer of the receipts and disbursements of the county.

5. Maintain a file of all accounts acted upon by the board with the board's action on each account. If the board allows an expenditure from an account, the auditor shall indicate the amount of expenditure and the bill or claim for which the expenditure is allowed.

6. Furnish a copy of the proceedings of the board required to be published as provided in section 349.18.

7. Number each claim consecutively in the order of filing and enter the claim in the claim register alphabetically by the name of the claimant and including the date of filing, the number of the claim and its general nature, the action of the board, and if allowed, the fund from which the claim is paid. A record of the claims allowed at each session of the board shall be included in the minute book by reference to the numbers of the claims as entered in the claim register.

8. File for presentation to the board all unliquidated claims against the county and all claims for fees or compensation, except salaries fixed by state law. The claims, before being audited or paid, shall be itemized to clearly show the basis of the claim and whether for property sold or furnished for services rendered or for another purpose. An action shall not be brought against the county relating to a claim until the claim is filed as provided in this subsection and the payment refused or neglected.

[R60, §319; C73, §320, 2610, 3843; C97, §470, 1300, 3528; C24, 27, 31, 35, 39, §**5123, 5124, 5141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §333.1(1 – 6), 331.20, 331.21; S81, §331.504; 81 Acts, ch 117, §503]

83 Acts, ch 29, §1

331.505 Duties relating to elections.

The auditor shall:

1. Serve as county commissioner of elections as provided in chapter 47.

2. Conduct all elections held within the county.

3. Serve as a member of a board to hear and decide objections made to a certification of nomination as provided in section 44.7.

4. Serve as county commissioner of registration as provided in chapter 48A.

5. Serve as clerk of the election contest court as provided in chapter 62.

6. Record the orders of suspension and temporary appointment of county and township officers as provided in section 66.19.

[S81, §331.505; 81 Acts, ch 117, §504]

94 Acts, ch 1169, §60

331.506 Issuance of warrants.

1. *a.* Except as provided in subsections 2 and 3, the auditor shall prepare and sign a county warrant only after issuance of the warrant has been

approved by the board by recorded vote. Each warrant shall be numbered and the date, amount, number, name of the person to whom issued, and the purpose for which the warrant is issued shall be entered in the county system. Each warrant shall be made payable to the person performing the service or furnishing the supplies for which the warrant makes payment.

b. The auditor shall not issue a warrant to a drawee until the auditor has transmitted to the treasurer a list of the warrants to be issued. The list shall include the date, amount, and number of the warrant, name of the person to whom the warrant is issued, and the purpose for which the warrant is issued. The treasurer shall acknowledge receipt of the list by affixing the treasurer's signature at the bottom of the list and immediately returning the list to the auditor. The requirement that the treasurer sign to acknowledge receipt of the list is satisfied by use of a digital signature or other secure electronic signature if the county auditor and treasurer have complied with the applicable provisions of chapter 554D.

c. The warrant list signed by the treasurer shall be preserved by the auditor for at least two years. The requirement that the list be preserved is satisfied by preservation of the list in electronic form if the requirements of section 554D.113 are met.

d. The requirement that the county auditor sign a warrant is satisfied by use of a digital signature or other secure electronic signature if the county auditor has complied with the applicable provisions of chapter 554D.

e. In lieu of the auditor issuing a warrant to a drawee, the auditor may issue a warrant payment order to the county treasurer. Upon receipt of the warrant payment order, the treasurer may submit payment to the drawee through an electronic funds transfer system.

2. The auditor may issue warrants to pay the following claims against the county without prior approval of the board:

a. Witness fees and mileage for attendance before a grand jury, as certified by the county attorney and the foreman of the jury.

b. Witness fees and mileage in trials of criminal actions prosecuted under county ordinance, as certified by the county attorney.

c. Fees and costs payable to the clerk of the district court or other state officers or employees in connection with criminal and civil actions when due, as shown in the statement submitted by the clerk of court under section 602.8109.

d. Expenses of the grand jury, upon order of a district judge.

3. The board, by resolution, may authorize the auditor to issue warrants to make the following payments without prior approval of the board:

a. For fixed charges including, but not limited to, freight, express, postage, water, light, telephone service or contractual services, after a bill is filed with the auditor.

b. For salaries and payrolls if the compensation has been fixed or approved by the board. The salary or payroll shall be certified by the officer or supervisor under whose direction or supervision the compensation is earned.

4. The bills paid under subsections 2 and 3 shall be submitted to the board for review and approval at its next meeting following the payment. The action of the board shall be recorded in the minutes of the board.

5. An officer certifying an erroneous bill or claim against the county is liable on the officer's official bond for a loss to the county resulting from the error.

[R60, C73, §321; C97, §471; C24, 27, 31, 35, 39, §**5142 – 5147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §333.2 – 333.7; S81, §331.506; 81 Acts, ch 117, §505]

83 Acts, ch 29, §2; 83 Acts, ch 186, §10084, 10201; 85 Acts, ch 197, §6; 95 Acts, ch 57, §3; 2000 Acts, ch 1084, §1; 2000 Acts, ch 1232, §67

331.507 Collection of money and fees.

1. The auditor may collect or receive money due the county except when otherwise provided by law.

2. The auditor is entitled to collect the following fees:

a. For a transfer of property made in the transfer records, five dollars for each separate parcel of real estate described in a deed, or transfer of title certified by the clerk of the district court. However, the fee shall not exceed fifty dollars for a transfer of property which is described in one instrument of transfer.

(1) For the purposes of this paragraph, a parcel of real estate includes:

(a) For real estate located outside of the corporate limits of a city, all contiguous land lying within a numbered section.

(b) For real estate located within the corporate limits of a city, all contiguous land lying within a platted block or subdivision.

(2) Within a numbered section, platted block, or subdivision, land separated only by a public street, alley, or highway remains contiguous.

b. For indexing a change of name for each parcel of real estate owned in the county, five dollars.

3. Fees collected or received by the auditor shall be accounted for and paid into the county treasury as provided in section 331.902.

1. [C97, §473; C24, 27, 31, 35, 39, §**5149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §333.9; S81, §331.507(1); 81 Acts, ch 117, §506]

2a. [C73, §3797; C97, §478; C24, 27, 31, 35, 39, §**5155;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §333.15; S81, §331.507(2a – c); 81 Acts, ch 117, §506; 82 Acts, ch 1104, §53]

b. [S13, §4471-i; C24, 27, 31, 35, 39, §**12656;** C46, 50, 54, 58, 62, 66, 71, §674.12; C73, 75, 77, 79, 81, §674.14; S81, §331.507(2d); 81 Acts, ch 117, §506]

3. [S81, §331.507(3); 81 Acts, ch 117, §506]

4. [C97, §480; S13, §550-c; C24, 27, 31, 35, 39, §**5246, 5247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §342.2, 342.3; S81, §331.507(4); 81 Acts, ch 117, §506]

84 Acts, ch 1198, §1; 85 Acts, ch 97, §1; 85 Acts, ch 159, §1; 94 Acts, ch 1025, §2; 94 Acts, ch 1173, §23; 95 Acts, ch 67, §28; 98 Acts, ch 1032, §8

See also §674.14

331.508 Books and records.

The auditor shall keep the following books and records:

1. Election book for contested proceedings as provided in section 62.3.

2. Record of official bonds as provided in section 64.24.

3. Lost property book as provided in chapter 556F.

4. Account book and index of persons receiving mental health treatment as provided in section 230.26.

5. A record book of the names and addresses of persons receiving veteran assistance as provided in section 35B.10.

6. Record of fees as provided in section 331.902.

7. Benefited water district record book as provided in section 357.32.

8. Completed assessment rolls, schedules and book as provided in section 441.26.

9. Tax rate book as provided in section 444.6.

10. Real estate transfer book, index book, and plat book as provided in sections 558.60 to 558.67.

[C97, §480; S13, §498; C24, 27, 31, 35, 39, §**5246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §342.2; S81, §331.508; 81 Acts, ch 117, §507]

86 Acts, ch 1001, §19; 94 Acts, ch 1173, §24; 95 Acts, ch 49, §8; 97 Acts, ch 121, §4

331.509 Financial report. Repealed by 83 Acts, ch 123, § 206, 209. See § 331.403.

331.510 Reports by the auditor.

The auditor shall make:

1. A report to the governor of a vacancy, except by resignation, in the office of state representative or senator as provided in section 69.5.

2. A report to the secretary of state of the name, office, and term of office of each appointed or elected county officer within ten days of the officer's election or appointment and qualification.

3. An annual report not later than January 1 to the department of management of the valuation by class of property for each taxing district in the county on forms provided by the department of management. The valuations reported shall be those valuations used for determining the levy rates necessary to fund the budgets of the taxing districts for the following fiscal year.

4. An annual report not later than January 1 to the governing body of each taxing district in the county of the assessed valuations of taxable property in the taxing district as reported to the department of management.

[R60, §291; C73, §324; C97, §474; C24, 27, 31, 35, 39, §**5150;** C46, 50, 54, 58, 62, 66, 71, §333.10; C73, 75, 77, §333.10, 442.2; C79, 81, §333.10, 333.16; S81, §331.510; 81 Acts, ch 117, §509]

83 Acts, ch 123, §141, 209; 85 Acts, ch 21, §42; 85 Acts, ch 197, §7; 88 Acts, ch 1134, §72

331.511 Duties relating to platting.

The county auditor shall:

1. Record each plat as provided in section 354.18.

2. Record changes in names of platted streets as provided in section 354.26.

3. Record notations of errors or omissions on recorded plats as provided in section 354.24.

4. Record resurveyed plats as provided in section 354.25.

5. Provide for the platting of real estate which cannot otherwise be accurately assessed for taxation as provided in section 354.13.

6. Carry out other duties as provided by law.

[S81, §331.511; 81 Acts, ch 117, §510]

90 Acts, ch 1236, §48

331.512 Duties relating to taxation.

The auditor shall:

1. Include on the tax list:

a. The levy of county taxes authorized by the board as provided by law.

b. The levy of taxes to pay the principal and interest on bonds as provided in sections 76.2 and 76.3.

c. The levy of a mulct tax against the property of a person maintaining a nuisance as certified by the clerk of the district court as provided in section 99.28.

d. The costs of erecting, rebuilding, or repairing a fence under order of the fence viewers as provided in section 359A.6.

e. A levy against the property of a bee owner sufficient to pay the costs of disinfecting or destroying diseased bees as provided in section 160.8.

f. The levy for taxes for the county brucellosis and tuberculosis eradication fund as provided in section 165.18.

g. The levy of a tax for the operation of a community college as provided in section 260C.17.

h. The levy of a tax to pay the principal and interest under a loan agreement entered into by community college authorities as provided in section 260C.22.

i. The levy of community school taxes as pro-

vided by law.

j. The levy of a tax as certified by the board of trustees of a sanitary district as provided in section 358.18.

k. The levy of taxes certified by the board of trustees of a township as provided in chapters 359 and 360.

l. The levy of city taxes and assessments as certified by the city council as provided by law.

m. Other tax levies as provided by law.

2. Carry out duties relating to tax sales of property within special charter cities as provided in sections 420.220 to 420.229.

3. Carry out duties relating to the homestead tax credit and agricultural land tax credit as provided in chapters 425 and 426.

4. Prepare and certify to the county treasurer the total amount of dollars for military service tax credits claimed and allowed as provided under sections 426A.3 and 426A.11 through 426A.14.

5. Carry out duties relating to the preparation of the tax list as provided in sections 428.4, 441.17, 441.21, 443.2 to 443.9, and 443.21.

6. Carry out duties relating to the valuation and taxation of telegraph and telephone companies as provided in sections 433.8 to 433.10 including mapping requirements as provided in sections 433.14 and 433.15.

7. Transmit to other local government officials the order stating the length of the main track and the assessed value of each railway located within the county as provided in section 434.22.

8. Transmit to other local government officials the order stating the length of the electric transmission lines and the assessed value of the property of the electric transmission line companies located within the county as provided in section 437.10.

9. Carry out duties relating to the valuation and taxation of pipeline companies as provided in sections 438.14 to 438.16.

10. Furnish the assessor a plat book which is platted with the lands and lots within the assessment district as provided in section 441.29. The auditor, with the approval of the board of supervisors, may establish a permanent real estate index number system as provided in section 441.29.

11. Carry out duties relating to levy of school taxes as provided in chapter 257.

12. Carry out duties relating to the computation of tax rates as provided under chapter 444.

13. When an order of apportionment is made, correct the tax books or records in the auditor's possession as provided in section 449.4.

14. Carry out other duties as provided by law.

[S81, §331.512; 81 Acts, ch 117, §511]

83 Acts, ch 123, §142, 209; 89 Acts, ch 135, §115; 90 Acts, ch 1253, §110; 91 Acts, ch 191, §9; 94 Acts, ch 1078, §8; 94 Acts, ch 1173, §25; 2002 Acts, ch 1150, §2

Subsection 8 stricken and former subsections 9 – 15 renumbered as 8 – 14

331.513 to 331.550 Reserved.

PART 2

COUNTY TREASURER

331.551 Office of county treasurer.

1. The office of treasurer is an elective office except that if a vacancy occurs in the office, a successor shall be appointed to the unexpired term as provided in chapter 69.

2. A person elected or appointed to the office of treasurer shall qualify by taking the oath of office as provided in section 63.10 and give bond as provided in section 64.10.

3. The term of office of the treasurer is four years.

[C51, §96, 151, 239; R60, §224, 473; C73, §589; C97, S13, §1072; C24, 27, 31, 35, 39, §**520;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.17; S81, §331.551; 81 Acts, ch 117, §550]

331.552 General duties.

The treasurer shall:

1. Receive all money payable to the county unless otherwise provided by law.

2. Disburse money owed or payable by the county on warrants or checks drawn and signed by the auditor and sealed with the official county seal.

3. Keep a true account of all receipts and disbursements of the county, which account shall be available for inspection by the board at any reasonable time.

4. Keep the official county seal provided by the county. The official seal shall be an impression seal on the face of which shall appear the name of the county, the word "county" which may be abbreviated, the word "treasurer" which may be abbreviated, and the word "Iowa". The impression of the seal shall be placed on each motor vehicle certificate of title signed by the treasurer.

5. Account for, report, and pay into the state treasury any money, property, or securities received on behalf of the state as provided in sections 421.32 to 421.34.

6. Account for and report to the board the amount of swampland indemnity funds received from the treasurer of state under section 12.16.

7. Register and call tax anticipatory warrants issued for a memorial hospital as provided under section 37.30.

8. Serve on a nomination appeals commission to hear nomination objections filed with the county commissioner of elections as provided in section 44.7.

9. Keep on file the bond and oath of the auditor as provided in section 64.23.

10. Reserved.

11. Serve as treasurer of an area hospital located outside the corporate limits of a city as provided in section 145A.15.

12. Register and call anticipatory warrants related to the sale of limestone as provided in section 353.8.

13. Make transfer payments to the state for school expenses for blind and deaf children, support of persons with mental illness, and hospital care for the indigent as provided in sections 230.21, 255.26, 269.2, and 270.7.

14. Transfer funds to pay the expenses of creating or changing the boundaries of a school district as provided in section 275.26.

15. Transfer funds to pay tuition expenses owed by a debtor school district to a creditor school district as provided in section 282.21.

16. Pay to the treasurers of the school corporations located in the county the taxes and other moneys due as provided in section 298.11 and send amounts collected for each fund of a school corporation for direct deposit into the depository and account designated as provided in section 298.13.

17. Pay monthly to the treasurer of state proceeds of public lands sold and escheated estates as provided in section 257B.2 and pay annually on February 1 interest collected from public lands sold on credit as provided in section 257B.5.

18. Maintain a permanent school fund account and records of school funds received as provided in section 257B.31.

19. Carry out duties relating to the sale and redemption of anticipatory certificates for secondary road construction as provided in sections 309.50 to 309.55.

20. Carry out duties relating to the establishment of secondary road assessment districts as provided in chapter 311.

21. Carry out duties relating to the sale and redemption of county bonds as provided in division IV, parts 3 and 4.

22. Notify the chairperson of the county hospital board of trustees and pay to the hospital treasurer the tax revenue collected for the county hospital during the preceding month as provided in section 347A.1.

23. Collect a fee of ten dollars for issuing a tax sale certificate or a certificate of redemption from tax sale.

24. Carry out duties relating to the condemnation of property as provided in section 331.656, subsection 4.

25. Carry out duties relating to the funding of drainage districts as provided in chapter 468, subchapter I, parts 1 to 5, subchapter II, parts 1, 5, and 6, subchapter III, and subchapter IV, parts 1 and 2.

26. Collect and disburse funds for soil and water conservation districts as provided in sections 161A.33 and 161A.34.

27. Credit the remainder of funds received from a hotelkeeper's sale to satisfy a lien to the county general fund as provided in section 583.6.

28. Designate the newspapers in which the official notices of the treasurer's office are to be published as provided in section 618.7.

29. Send, before the fifteenth day of each month, the amount of tax revenue, special assessments, and other moneys collected for each tax-certifying or tax-levying public agency in the county for direct deposit into the depository or financial institution and account designated by the governing body of the public agency. The treasurer shall send notice to the chairperson or other designated officer of the public agency stating the amount deposited, the date, the amount to be credited to each fund according to the budget, and the source of revenue.

30. Carry out other duties as required by law and duties assigned pursuant to section 331.323.

31. Collect all penalties that have accrued prior to April 1, 1992, on unpaid taxes, as defined in section 445.1, and process them as interest.

32. File with the county auditor the name of a designated employee, if other than the first deputy treasurer, authorized to perform the duties of the treasurer during the absence or disability of the treasurer and the name of any employee authorized to sign, on behalf of the treasurer, any form, notice, or document requiring the signature of the treasurer.

33. Carry out duties relating to warrant lists provided by the county auditor pursuant to section 331.506, subsection 1.

1 – 3. [C51, §152; R60, §360; C73, §327; C97, §482; C24, 27, 31, 35, 39, §**5156;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §334.1; S81, §331.552(1 – 3); 81 Acts, ch 117, §551]

4. [C24, 27, 31, 35, 39, §**5157;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §334.2; S81, §331.552(4); 81 Acts, ch 117, §551]

5 – 15. [S81, §331.552(5 – 17); 81 Acts, ch 117, §551]

16. [S81, §331.552(18); 81 Acts, ch 117, §551; 82 Acts, ch 1195, §2]

17 – 20. [S81, §331.552(19 – 22); 81 Acts, ch 117, §551]

21. [C73, §290; C97, S13, §404; C24, 27, 31, 35, 39, §**5278 – 5282;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §346.4 – 346.8; S81, §331.552(23); 81 Acts, ch 117, §551]

22. [S81, §331.552(24); 81 Acts, ch 117, §551]

23. [C73, §3797; C97, §478; C24, 27, 31, 35, 39, §**5155;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §333.15; S81, §331.507(2b, c); 81 Acts, ch 117, §506, 82 Acts, ch 1104, §53, 54]

24 – 28 and 30. [S81, §331.552(25 – 33); 81 Acts, ch 117, §551; 82 Acts, ch 1104, §55]

83 Acts, ch 123, §143 – 146, 209; 83 Acts, ch 185, §31, 32, 62; 83 Acts, ch 186, §10088, 10089, 10201, 10204; 84 Acts, ch 1003, §1; 86 Acts, ch 1001, §20; 86 Acts, ch 1155, §5; 91 Acts, ch 191, §10; 92 Acts, ch 1016, §5; 94 Acts, ch 1173, §26; 95 Acts, ch 57, §4; 96 Acts, ch 1129, §113; 2000 Acts, ch 1084, §2; 2001 Acts, ch 45, §3

331.553 General powers.

The treasurer may:

1. Administer oaths and take affirmations as provided in sections 63A.2 and 421.21.

2. Subject to the requirements of section 331.903, appoint and remove deputies, clerks and assistants.

3. Require that payment be made by guaranteed funds for tax sale redemptions, issuance of plat clearances, issuance of tax clearances for mobile homes, payments of taxes or assessments made within the thirty days prior to the annual tax sale or any adjournment of the tax sale, and any other payment which is to be collected by the county treasurer. For the purposes of this subsection, *"guaranteed funds"* means cash, cashier's check, money order, travelers' check, or certified check.

4. Charge five dollars, as an administrative expense, for every rate, charge, rental, or special assessment certified as a lien to the treasurer for collection. This amount shall be added to the amount of the lien, collected at the time of payment from the payor, and credited to the county general fund.

5. Accept electronic transfers of funds in payment of moneys due to the county, including but not limited to credits and reimbursements received from the state, tax payments, and tax sale redemptions.

6. Require a payor or an agent of a payor to make payment by electronic transfer of the funds when the payment totals one hundred thousand dollars or more.

[C51, §411; R60, §642; C73, §766; C97, SS15, §491; C24, 27, 31, 35, 39, §**5238, 5240;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §341.1, 341.3; S81, §331.553; 81 Acts, ch 117, §552]

91 Acts, ch 191, §11; 95 Acts, ch 57, §5; 97 Acts, ch 121, §5; 2002 Acts, ch 1043, §3

For definitions applicable to subsection 3, see §445.1

Subsection 3 amended

331.554 Duties relating to warrants.

1. Upon receipt of a warrant, scrip, or other evidence of the county's indebtedness, the treasurer shall endorse on it the date of payment.

2. Reserved.

3. The treasurer shall enter into the county system the warrant number, date paid, and interest paid, if any.

4. The treasurer shall return the paid warrants to the auditor. The original warrant shall be preserved for at least two years. The requirement that the original warrant be preserved is satisfied by preservation of the warrant in electronic form if the requirements of section 554D.113 are met. The treasurer shall make monthly reports to show for each warrant the number, date, drawee's name, when paid, to whom paid, original amount, and interest.

5. *a.* When a warrant legally drawn on the county treasury is presented for payment and not paid because of a deficiency, the treasurer shall carry out duties relating to the endorsement and payment of interest on the amount of deficiency as provided in chapter 74.

b. In lieu of the requirements and procedures specified in sections 74.1, 74.2, and 74.3, when warrants other than anticipatory warrants are presented for payment and not paid for want of funds or are only partially paid, the treasurer may issue a warrant order for an amount equal to the unpaid warrants drawn on a fund. The warrant order shall be dated and include the fund name, amount, and the rate of interest established under section 74A.6. The warrant order shall be endorsed by the treasurer, "not paid for want of funds", and include the treasurer's signature. The treasurer shall keep a list of all warrants comprising a warrant order and shall submit a duplicate copy of the warrant order to the auditor. The procedures of sections 74.4 to 74.7 apply to warrant orders.

6. The amount of a check, other than a warrant, outstanding for more than one year shall be canceled, removed from the list of outstanding checks, deposited to the account on which the check was written, and credited as unclaimed fees and trusts. The treasurer shall maintain a list of the checks for one year after cancellation. A person may claim the amount of the canceled treasurer's check for a period of one year after cancellation upon proper proof of ownership by filing a claim with the county auditor.

7. A warrant outstanding for more than one year shall be canceled by the auditor and the amount of the warrant shall be credited to the fund upon which the warrant was drawn. A person may file a claim with the auditor for the amount of the canceled warrant within one year of the date of the cancellation, and upon showing of proper proof that the claim is true and unpaid, the auditor shall issue a warrant drawn upon the fund from which the original canceled warrant was drawn. This subsection does not apply to warrants issued upon drainage or levee district funds or any fund upon which the county treasurer has issued a warrant order or stamped a warrant for want of funds.

1. [R60, §2187; C73, §557; C97, §597; C24, 27, 31, 35, 39, §**5158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §334.3; S81, §331.554(1); 81 Acts, ch 117, §553]

2. [C51, §154, 490; R60, §362, 755; C73, §329; C97, §485; C24, 27, 31, 35, 39, §**5162;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §334.5; S81, §331.554(2); 81 Acts, ch 117, §553]

3. [C51, §155; R60, §363; C73, §330; C97, §486; C24, 27, 31, 35, 39, §**5163;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §334.6; S81, §331.554(3); 81 Acts, ch 117, §553]

4. [C51, §159, 160; R60, §365, 366; C73, §332,

333; C97, §488; C24, 27, 31, 35, 39, §**5164;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §334.7; S81, §331.554(4); 81 Acts, ch 117, §553]

5. [S81, §331.554(5); 81 Acts, ch 117, §553; 82 Acts, ch 1048, §1]

6. [C97, §456; C24, 27, 31, 35, 39, §**5169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §334.12; S81, §331.554(6); 81 Acts, ch 117, §553]

83 Acts, ch 65, §1, 2; 83 Acts, ch 123, §147, 209; 95 Acts, ch 57, §6, 7; 2000 Acts, ch 1084, §3, 4; 2000 Acts, ch 1232, §68; 2001 Acts, ch 45, §4

331.555 Fund management.

1. During each term of office, the treasurer shall keep a separate account of the taxes levied for state, county, school, highway, or other purposes and of all other funds created by law whether of regular, special, or temporary nature. The treasurer shall not pay out or use the money in a fund for any purpose except as specifically authorized by law. The treasurer shall be charged with the amount of tax or other funds collected or received by the treasurer and shall be credited with the amount of taxes or other funds disbursed from each account as authorized by law.

2. Except as provided in section 321.153, on or before the fifteenth day of each month, the treasurer shall prepare sworn statements of the amount of money held by the treasurer on the last day of the preceding month belonging to the state treasury and mail a copy of the statement and the remittance to the treasurer of state. Another copy of the statement shall be mailed to the director of revenue and finance. However, in lieu of mailing the remittance to the treasurer of state, the treasurer may deposit the remittance to the credit of the treasurer of state in an interest-bearing account in a bank in the county as designated by the treasurer of state.

3. If a treasurer fails to comply with the requirements of subsection 2, the treasurer shall forfeit for each failure a sum of not less than one hundred dollars nor more than five hundred dollars to be recovered in an action against the treasurer's bond brought in the name of the director of revenue and finance or the treasurer of state.

4. The treasurer shall make a complete settlement with the county semiannually and when the treasurer leaves office as provided in section 12B.7.

5. The treasurer shall maintain custody of all public moneys in the treasurer's possession and deposit or invest the moneys as provided in section 12B.10 and chapter 12C.

6. The treasurer shall keep all funds invested to the extent practicable and may invest the funds jointly with one or more counties, judicial district departments of correctional services, cities, city utilities, or rural water districts created under chapter 357A pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

[C51, §156, 161; R60, §364, 367, 799; C73, §331, 334, 914; C97, §487, 489, 1459; C24, 27, 31, 35, 39, §**5165, 5166, 5168;** C46, 50, 54, §334.8, 334.9 – 334.11; C58, 62, 66, 71, 73, 75, 77, 79, 81, §334.8, 334.9, 334.11; S81, §331.555; 81 Acts, ch 117, §554]

87 Acts, ch 105, §1; 88 Acts, ch 1084, §1; 90 Acts, ch 1233, §26; 92 Acts, ch 1156, §14; 95 Acts, ch 77, §1

331.556 Loss of funds — replacement. Repealed by 88 Acts, ch 1108, § 4.

331.557 Duties relating to motor vehicle registration.

The treasurer shall:

1. Issue, renew, and replace lost or damaged vehicle registration cards or plates and issue and transfer certificates of title for vehicles as provided in sections 321.17 to 321.52.

2. Collect, pay to the state, or refund registration fees as provided in sections 321.105 to 321.156.

3. Collect the use tax on vehicles subject to registration as provided in sections 423.6, 423.7, and 423.7A.

4. Carry out other duties as required by law.

[S81, §331.557; 81 Acts, ch 117, §556]

84 Acts, ch 1305, §72; 96 Acts, ch 1125, §1

331.557A Duties relating to issuance of driver's licenses.

The treasurer of any county participating in county issuance of driver's licenses under chapter 321M shall:

1. Issue, renew, and replace lost or damaged nonoperator identification cards and driver's licenses, including commercial driver's licenses, according to the provisions of chapter 321M.

2. Issue persons with disabilities parking permits under chapter 321L.

3. Collect fees associated with nonoperator identification cards and driver's licenses, including commercial driver's licenses, and pay to the state amounts in excess of the amount the treasurer is permitted to retain for deposit in the county general fund for license issuance.

4. Participate in voter registration according to the terms of chapter 48A, and submit completed voter registration forms to the state registrar of voters.

5. Attend initial training as required by chapter 321M, and participate in continuing education as offered by the state department of transportation.

6. Comply with the terms of any applicable agreements created pursuant to chapter 28E, and state department of transportation operating standards for license issuance.

98 Acts, ch 1073, §12; 98 Acts, ch 1143, §21, 26

331.558 Reports by the treasurer.

The treasurer shall make:

1. A monthly report to the secretary of the school board of the amount of taxes collected for each fund and other information as provided in section 298.13.

2. A monthly report to the department of transportation of the fees and penalties collected relating to the issuance of vehicle registrations and certificates of title as provided in section 321.153.

3. A report to the board of the fees collected during the preceding quarter as provided in section 331.902.

4. A monthly report to the auditor of the county warrants returned to the treasurer for payment as provided in section 331.554, subsection 4.

5. Other reports as required by law.

[C73, §3796; C97, §492; C24, 27, 31, 35, 39, §**5247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §342.3; S81, §331.558; 81 Acts, ch 117, §557; 82 Acts, ch 1195, §3]

94 Acts, ch 1025, §3

331.559 Duties relating to taxation.

The treasurer shall:

1. Determine and collect taxes on mobile homes as provided in sections 435.22 to 435.26.

2. Collect the tax levied for the county brucellosis and tuberculosis eradication fund as provided in section 165.18.

3. Collect the tax levied for the county agricultural extension education fund and pay it to the extension treasurer as provided in section 176A.12.

4. Collect the costs assessed by the secretary of agriculture relating to the treatment or destruction of agricultural or horticultural plants or products as provided in section 177A.17.

5. Collect the tax levied for the erection and equipping of community college facilities as provided in section 260C.22.

6. Collect the costs assessed against a property owner for the destruction or eradication of weeds as provided in sections 317.20 and 317.21.

7. Levy a tax sufficient to pay any deficiency in the assessments collected to pay the principal and interest on bonds issued by a benefited water district as provided in section 357.22.

8. Collect city taxes certified to the auditor as provided in section 384.2.

9. Send the amounts of each city's tax revenue and special assessments collected on its behalf for direct deposit into the depository and account designated as provided in section 384.11.

10. Accept a partial payment of the annual installment of a special assessment before its due date as provided in section 384.65, subsection 6.

11. Serve as an agent of the director of revenue and finance to collect state taxes as provided in section 422.71, subsection 5.

12. Carry out duties relating to the administration of the homestead tax credit as provided in sections 425.4, 425.5, 425.7, 425.9, 425.10 and 425.25.

13. Carry out duties relating to the administration of the agricultural land tax credit as provided in section 426.8.

14. Carry out duties relating to the administration of the military service tax credit as provided in sections 426A.3, 426A.5, 426A.8 and 426A.9.

15. Maintain a suspended tax list book as provided in section 427.12.

16. Collect taxes levied against the property of telephone and telegraph companies as provided in section 433.10.

17. Collect taxes levied against the property of railway companies as provided in section 434.22.

18. Carry out duties relating to the collection and expenditure of assessment expense funds as provided in section 441.16.

19. Apportion and collect the costs assessed by the district court against the board of review or any taxing body resulting from an appeal of property assessments as provided in section 441.40.

20. Carry out duties relating to the preparation and correction of the tax list as provided in chapter 443. After ten years from the date of receipt, the county treasurer may dispose of the tax list delivered to the county treasurer pursuant to chapter 443.

21. Carry out duties relating to the collection of property taxes as provided in chapter 445.

22. Carry out duties relating to the sale of parcels for delinquent taxes as provided in chapter 446.

23. Carry out duties relating to the redemption of parcels sold for delinquent taxes as provided in chapter 447.

24. Carry out duties relating to the issuance of a tax deed or certificate of title for parcels, as defined in section 445.1, sold for delinquent taxes as provided in chapter 448.

25. Correct tax books or records in accordance with an order of apportionment issued as provided in chapter 449.

26. Carry out other duties relating to taxation as provided by state law.

[S81, §331.559; 81 Acts, ch 117, §558; 82 Acts, ch 1104, §56, ch 1195, §4]

83 Acts, ch 123, §148, 149, 209; 84 Acts, ch 1003, §5; 90 Acts, ch 1253, §111; 91 Acts, ch 191, §12; 2001 Acts, ch 45, §5; 2002 Acts, ch 1043, §4

Subsection 20 amended

331.560 to 331.600 Reserved.

PART 3

COUNTY RECORDER

331.601 Office of county recorder.

1. The office of recorder is an elective office except that if a vacancy occurs in the office, a successor shall be appointed to the unexpired term as provided in chapter 69.

2. A person elected or appointed to the office of recorder shall qualify by taking the oath of office as provided in section 63.10 and giving bond as provided in section 64.8.

3. The term of office of the recorder is four years.

4. In counties in which the office of county recorder has been abolished, the board of supervisors shall reassign the duties of the county recorder who also serves as the county registrar pursuant to chapter 144.

[C51, §96, 239; R60, §224, 473; C73, §589; C97, §1072; S13, §1072; C24, 27, 31, 35, 39, §**520;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.17; S81, §331.601; 81 Acts, ch 117, §600]

95 Acts, ch 124, §9, 26

331.602 General duties.

The recorder shall:

1. Record all instruments presented to the recorder's office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law. The instruments presented for filing or recordation shall be legible and reproducible, and shall have typed or legibly printed on them the names of all signatories including the names of acknowledging officers and witnesses beneath the original signatures. Except as otherwise authorized by the recorder, the instruments shall be no larger than eight and one-half inches by fourteen inches and shall provide a space at the top of the instrument at least eight and one-half inches across the page by two inches in length, on which space shall be typed or legibly printed across the page on the bottom one-fourth inch of this space, the name, address, and telephone number of the individual who prepared the instrument and, immediately below the two inches of space, the tax statement information required in paragraph *"d"*. The remaining portion of this space shall be reserved for use by the county recorder.

a. However, if an instrument does not contain typed or printed names, the recorder shall accept the instrument for recordation or filing if it is accompanied by an affidavit, to be recorded with the instrument, correctly spelling in legible print or type the signatures appearing on the instrument.

b. The requirement of paragraph *"a"* does not apply to military discharges, military instruments, wills, court records, or to any other instrument dated before July 4, 1959.

c. Failure to print or type signatures as provided in this subsection does not invalidate the instrument.

d. A certificate of change of title or an instrument conveying an interest in real property, other than a mortgage, a mortgage release, or an assignment, shall contain the statement "Address tax statement:" which shall be filled out with the name of the taxpayer and a complete mailing address. Each instrument conveying an interest in real property shall contain this statement unless otherwise authorized by the county recorder.

2. Rerecord an instrument without fee upon presentation of the original instrument by the owner if an error is made in recording the instrument. The recorder shall also note on the new record a reference to the original record and on the original record a reference to the new record.

3. If an error is made in indexing an instrument, reindex the instrument without fee.

4. Reserved.

5. Compile a list of deeds recorded in the recorder's office after July 4, 1951, which are dated or acknowledged more than six months before the date of recording and forward a copy of the list each month to the inheritance tax division of the department of revenue and finance.

6. Carry out duties as a member of a nomination appeals commission as provided in section 44.7.

7. Carry out duties relating to the recordation of oil and gas leases as provided in sections 458A.22 and 458A.24.

8. Endorse on each notice of an unemployment contribution lien the day, hour, and minute that the lien is received from the department of workforce development, index the notice of lien, and record the lien as provided in section 96.14, subsection 3.

9. Carry out duties relating to the registration of vessels as provided in sections 462A.5, 462A.23, 462A.51, 462A.52, 462A.54, and 462A.55.

10. Carry out duties relating to the issuance of hunting, fishing, and fur harvester licenses as provided in sections 483A.10, 483A.12, 483A.13, 483A.14, 483A.15, and 483A.22.

11. Collect migratory game bird fees as provided in chapter 484A.

12. Record the orders and decisions of the fence viewers and index the record in the name of each adjoining owner of land affected by the order or decision as provided in section 359A.10. The recorder shall also note that a judgment has been rendered on an appeal of an order or decision of the fence viewers as provided in section 359A.24.

13. Record the articles of incorporation of farm aid associations as provided in section 176.5 for the fee specified in section 331.604.

14. Reserved.

15. Record without fee a sheriff's deed for land under foreclosure procedures as provided in sec-

tion 257B.35.

16. Issue snowmobile registrations as provided in sections 321G.4, 321G.6, and 321G.21.

17. Record the measure and plat of a zoning district, building line, or fire limit adopted by a city as provided in section 380.11.

18. Carry out duties relating to the platting of land as provided in chapter 354.

19. Submit monthly to the director of revenue and finance a report of the real property transfer tax received.

20. Carry out duties relating to the endorsement, indexing, and recording of income tax liens as provided in section 422.26.

21. Carry out duties relating to the taxation of real estate transfers as provided in chapter 428A.

22. Carry out duties relating to the recording and indexing of affidavits and claims affecting real estate as provided in section 448.17.

23. Forward to the director of revenue and finance a copy of any deed, bill of sale, or other transfer which shows that it is made or intended to take effect at or after the death of the person executing the instrument as provided in section 450.81.

24. Record papers, statements, and certificates relating to the condemnation of property as provided in section 6B.38, and carry out duties related to the filing of certain condemnation documents with the office of secretary of state.

25. Carry out duties relating to the recordation of articles of incorporation and other instruments for state banks as provided in chapter 524.

26. Carry out duties relating to the recordation of articles of incorporation and other instruments for credit unions as provided in chapter 533.

27. Carry out duties relating to the recordation of articles of incorporation and other instruments for savings and loan associations as provided in chapter 534.

28. Carry out duties relating to the filing of financing statements or instruments as provided in chapter 554, article 9, part 5.

29. Register the name and description of a farm as provided in sections 557.22 to 557.26.

30. Record a statement of claim provided in chapter 557C relating to mineral interests in coal.

31. Record conveyances and leases of agricultural land as provided in section 558.44.

32. Collect the recording fee and the auditor's transfer fee for real property being conveyed as provided in section 558.58.

33. Serve as a member of the jury commission to draw jurors as provided in section 607A.9.

34. Record and index a notice of title interest in land as provided in section 614.35.

35. Designate the newspapers in which the notices pertaining to the office of recorder shall be published as provided in section 618.7.

36. Record a conveyance of property presented by a commissioner appointed by the district court as provided in section 624.35.

37. Carry out duties relating to the indexing of name changes, and the recorder shall charge a fee for indexing as provided in section 331.604.

38. Report to the board the fees collected as provided in section 331.902.

39. Accept applications for passports.

40. Carry out other duties as provided by law and duties assigned pursuant to section 331.323.

1. [C51, §150; R60, §358; C73, §335; C97, S13, §494; C24, 27, 31, 35, 39, §**5171;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §335.2; S81, §331.602(1); 81 Acts, ch 117, §601]

2, 3. [S13, §494; C24, 27, 31, 35, 39, §**5172;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §335.3; S81, §331.602(2, 3); 81 Acts, ch 117, §601]

4. [C39, §**5176.1, 5176.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §335.12, 335.13; S81, §331.602(4); 81 Acts, ch 117, §601]

5. [C66, 71, 73, 75, 77, 79, 81, §335.16; S81, §331.602(5); 81 Acts, ch 117, §601]

6 – 44. [S81, §331.602(6 – 44); 81 Acts, ch 117, §601; 82 Acts, ch 1104, §57]

83 Acts, ch 101, §78; 85 Acts, ch 195, §41; 86 Acts, ch 1091, §1 – 3; 86 Acts, ch 1108, §4; 86 Acts, ch 1155, §6; 87 Acts, ch 30, §17; 88 Acts, ch 1046, §1; 90 Acts, ch 1081, §1; 90 Acts, ch 1205, §11; 90 Acts, ch 1236, §49; 91 Acts, ch 183, §1; 91 Acts, ch 211, §2; 92 Acts, ch 1073, §6 – 8; 92 Acts, ch 1163, §83; 94 Acts, ch 1023, §105; 94 Acts, ch 1025, §4; 94 Acts, ch 1055, §1; 95 Acts, ch 124, §10, 26; 95 Acts, ch 160, §1; 96 Acts, ch 1034, §29; 96 Acts, ch 1186, §23; 97 Acts, ch 23, §37; 97 Acts, ch 116, §1; 98 Acts, ch 1199, §2, 27; 98 Acts, ch 1223, §30; 99 Acts, ch 83, §3, 4, 11; 99 Acts, ch 171, §34, 42; 2000 Acts, ch 1085, §2; 2000 Acts, ch 1149, §168, 187; 2001 Acts, ch 44, §4, 5; 2001 Acts, ch 45, §6; 2002 Acts, ch 1113, §5

For future amendment striking subsection 13 effective July 1, 2005, see 2002 Acts, ch 1017, §4, 8

Subsection 4 stricken

331.603 General powers.

1. The recorder may administer oaths and take affirmations on matters relating to the business of the office of recorder as provided in section 63A.2.

2. Subject to the requirements of section 331.903, the recorder may appoint and remove deputies, assistants, and clerks.

3. The recorder may reproduce in miniature on a durable medium any instrument to be recorded. When a recorded instrument involves a release or assignment, the separate instrument filed acknowledging the release or assignment shall be reproduced. In lieu of marginal entries, the recorder shall make notations on both the index and the record of the original instrument. When an official record is produced in miniature, a security copy shall be reproduced at the same time and kept outside of the courthouse.

4. The recorder may, in lieu of maintaining

separate index books as required by law, prepare and maintain a combined index record or system which shall contain the same data and information as required to be kept in the separate index books.

1, 2. [C51, §411; R60, §642; C73, §766; C97, §496; S13, §496; C24, 27, 31, 35, 39, §**5238, 5240;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §341.1, 341.3; S81, §331.603; 81 Acts, ch 117, §602]

3, 4. [C54, 58, 62, 66, §343.13; C71, 73, 75, 77, 79, 81, §335.17, 343.13; S81, §331.603; 81 Acts, ch 117, §602]

2001 Acts, ch 44, §6

331.604 General recording and filing fee.

1. Except as otherwise provided by state law, subsection 2, or section 331.605, the recorder shall collect a fee of five dollars for each page or fraction of a page of an instrument which is filed or recorded in the recorder's office. If a page or fraction of a page contains more than one transaction, the recorder shall collect the fee for each transaction.

2. A county shall not be required to pay a fee to the recorder for filing or recording instruments.

[C51, §2534; R60, §4143; C73, §3792; C97, S13, §498; C24, 27, 31, 35, 39, §**5177;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §335.14; S81, §331.604; 81 Acts, ch 117, §603]

84 Acts, ch 1124, §1; 91 Acts, ch 191, §13; 92 Acts, ch 1005, §1; 92 Acts, ch 1212, §33

331.605 Other fees.

The recorder shall collect:

1. For the issuance of a registration or transfer for a vessel or boat:

a. A registration fee as provided in section 462A.5.

b. A writing fee as provided in section 462A.53.

c. A transfer and writing fee as provided in section 462A.44.

2. For issuance of hunting, fishing, and fur harvester licenses:

a. The fees specified in section 483A.1.

b. The writing fee as provided in section 483A.12.

3. A state migratory game bird fee as provided in section 483A.1.

4. For the issuance of snowmobile registrations, the fees specified in section 321G.4.

5. A county fee of four dollars for a certified copy of a birth record, death record, or marriage certificate.

6. For filing an application for the license to marry, thirty-five dollars, which includes payment for one certified copy of the original certificate of marriage, to be issued following filing of the original certificate of marriage, four dollars of which shall be retained by the county pursuant to subsection 5. For issuing an application for an order of the district court authorizing the validation of a license to marry before the expiration of three days from the date of issuance of the license, five dollars. The district court shall authorize the early validation of a marriage license without the payment of any fees imposed in this subsection upon showing that the applicant is unable to pay the fees.

7. Other fees as provided by law.

However, the county shall not be required to pay the fees required in this section.

[S81, §331.605; 81 Acts, ch 117, §604]

85 Acts, ch 159, §2; 92 Acts, ch 1005, §2; 95 Acts, ch 124, §11, 26; 96 Acts, ch 1034, §30; 98 Acts, ch 1020, §1, 2; 98 Acts, ch 1199, §3, 4, 27; 98 Acts, ch 1223, §30; 99 Acts, ch 96, §38; 99 Acts, ch 141, §39; 2000 Acts, ch 1140, §43, 49

331.605A Document management fee.

The recorder shall also collect a fee of one dollar for each recorded transaction for which a fee is paid pursuant to section 331.604 to be used exclusively for the purpose of preserving and maintaining public records. The treasurer, on behalf of the recorder, shall establish and maintain an interest-bearing account into which all moneys collected pursuant to this section shall be deposited. The recorder shall use the moneys deposited in the account to produce and maintain public records that meet archival standards, and to enhance the technological storage, retrieval, and transmission capabilities related to archival quality records. The recorder may cooperate with other entities, boards, and agencies to establish methods of records management, and participate in other joint ventures which further the purposes of this paragraph.

The fee collected pursuant to this section shall be used to accomplish the following purposes:

1. Preserve and maintain public records.

2. Assist counties in reducing record preservation costs.

3. Encourage and foster maximum access to public records maintained by county recorders at locations throughout the state.

4. Establish plans for anticipated and possible future needs, including the handling and preservation of vital statistics.

93 Acts, ch 151, §1; 94 Acts, ch 1138, §1; 2001 Acts, ch 44, §7

331.605B Fees collected — audit.

The recorder shall make available any information required by the county or state auditor concerning the fees collected under section 331.605A for the purposes of determining the amount of fees collected and the uses for which such fees are expended.

93 Acts, ch 151, §2

331.606 General filing requirements.

1. In addition to other requirements specified by law, the recorder shall note in the county system the date of filing of each instrument, the num-

ber and character of the instrument, and the name of each grantor and grantee named in the instrument. In numbering the instruments, the recorder may start with the number one immediately following the date of annual settlement with the board and continue to number them consecutively until the next annual settlement with the board or the recorder may start with number one on the first working day of the calendar year and continue to number the instruments consecutively until the last working day of the calendar year.

2. The recorder shall also note in the index the exact time of the filing of each instrument.

3. The county recorder may give the county sheriff the records filed under this chapter or chapter 695 of prior Codes* pertaining to the sale and registration of weapons or may dispose of those records if the sheriff does not wish to receive the records.

[S13, §498; C24, 27, 31, 35, 39, §**5178, 5246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §335.15, 342.23; S81, §331.606; 81 Acts, ch 117, §605]

90 Acts, ch 1021, §1; 96 Acts, ch 1015, §1; 97 Acts, ch 121, §6; 2001 Acts, ch 44, §8

*Chapter 695 was repealed by 76 Acts, ch 1245 (4), §526

331.606A Document content — use of social security number prohibited — exceptions.

The preparer of a document shall not include an individual's federal social security number in a document that is prepared for recording in the office of county recorder. This section does not apply to a preparer of a state or federal tax lien or a military separation or discharge record that is prepared for recording in the office of county recorder. If a military separation or discharge record is recorded in the office of the county recorder, the military separation or discharge record shall not be accessible through the internet.

2002 Acts, ch 1113, §4

NEW section

331.607 Books and records.

The recorder shall keep the following books and records:

1. A record for military discharges as provided in section 331.608.

2. An index of unemployment contribution liens as provided in section 96.14, subsection 3.

3. A record of fees as provided in section 331.902.

4. An index of income tax liens as provided in section 422.26.

5. A drainage plat book, index, and record book as provided in sections 468.624 and 468.625.

6. A register of the names and descriptions of farms as provided in section 557.22.

7. Index and records for instruments affecting real estate as provided under chapter 558.

8. An index and record of homesteads as provided in section 561.4.

9. A claimant's index and record for the notices of title interests in land as provided in section 614.35.

10. A book of copies of original entries which has been compared with the originals and certified as true copies of land records by the register of the United States land office as provided in section 622.44.

11. Other indexes and records as provided by law.

[S81, §331.607; 81 Acts, ch 117, §606]

94 Acts, ch 1055, §2; 97 Acts, ch 121, §7; 2001 Acts, ch 44, §9

331.608 Military personnel records.

1. The recorder shall maintain a record in which, upon request, the discharge of a veteran shall be recorded without charge.

2. If an official discharge was not issued or if the veteran was killed in action or died in service, the recorder shall record an official certificate, general or special order, letter, or telegram from a competent authority, including letters from the United States department of defense, the United States veterans administration, or other governmental office, which shows the termination of the veteran's service.

3. The recorder shall record without charge the commissions and warrants of veteran officers and noncommissioned officers, orders citing a veteran for bravery and meritorious action, and citations and bestowals of medals from the state, federal or foreign governments.

4. The recorder shall record without charge the discharge or other records of a deceased veteran which are presented on behalf of the deceased veteran by a veterans organization.

5. The recorder shall keep an alphabetical index referring to the name of the veteran whose discharge paper is recorded.

6. If a certified copy of a public record is required to perfect the claim of a veteran in service or honorably discharged or a claim of a dependent of the veteran, the certified copy shall be furnished by the custodian of the public record without charge.

7. If the recorder periodically publishes notice of the services provided to military persons and veterans under this section, the recorder shall pay the cost of the publication in the same manner as other expenses of the recorder's office.

8. As used in this section, *"veteran"* means a veteran as defined in section 35.1, who enlisted or was inducted from the county, resided at any time in the county, or is buried in the county.

[C24, 27, 31, 35, 39, §**5173 – 5175;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §335.4 – 335.10; S81, §331.608; 81 Acts, ch 117, §607]

92 Acts, ch 1140, §37; 99 Acts, ch 180, §16; 2001 Acts, ch 44, §10

331.609 Federal liens.

1. *a.* Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed or recorded in accordance with this section.

b. Notices of liens upon real property for obligations payable to the United States, and certificates and notices affecting the liens shall be recorded in the office of the recorder of the county in which the real property subject to a federal lien is situated.

c. Notices of federal liens upon tangible or intangible personal property for obligations payable to the United States and certificates and notices affecting the liens shall be filed or recorded as follows:

(1) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state.

(2) In all other cases, in the office of the recorder of the county where the person against whose interest the lien applies resides at the time of recording of the notice of lien.

2. Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States, or a designee of the secretary, or by any official or entity of the United States responsible for the filing or certification of any other lien, entitles them to be filed or recorded, and no other attestation, certification, or acknowledgment is necessary.

3. *a.* If a notice of federal lien, a refiling or rerecording of a notice of lien, or a notice of revocation of a certificate described in paragraph *"b"* is presented to the filing officer:

(1) If the filing officer is the secretary of state, the secretary shall cause the notice to be marked, held, and indexed in accordance with section 554.9519, as if the notice were a financing statement as provided in chapter 554, article 9, part 5.

(2) If the filing officer is a recorder, the recorder shall endorse on the notice the recorder's identification and the date and time of receipt and record it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total appearing on the notice of lien. The recorder may return the original instrument to the sender or dispose of the instrument if the sender does not wish the instrument returned. A document filed in the recorder's office before July 1, 1990, may be returned to the sender or disposed of if the sender does not wish to have the document returned and if there is an official copy of that document in the recorder's office.

b. If a certificate of release, nonattachment, discharge, or subordination of a lien is presented to the secretary of state for filing, the secretary shall:

(1) Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files.

(2) Cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

c. If a refiled notice of federal lien referred to in paragraph *"a"* or any of the certificates or notices referred to in paragraph *"b"* is presented for recording with a recorder, the recorder shall enter the refiled notice or the certificate with the date of recording in an alphabetical index and make a notation on the original record of a reference to the refiled notice or certificate.

d. Upon request of a person, the filing or recording officer shall issue a certificate showing whether there is on file or recorded, on the date and hour stated, a notice of federal lien or certificate or notice affecting the lien, filed or recorded on or after July 1, 1989, naming a particular person, and if a notice or certificate is on file or recorded, giving the date and hour of filing or recording of each notice or certificate. The fee for a certificate is six dollars. Upon request the filing or recording officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of five dollars per page.

4. The fee for filing or recording, and indexing each notice of lien or certificate or notice affecting the lien shall be as provided in section 331.604. The officer shall bill the internal revenue service or any other appropriate federal agency on a monthly basis for fees for documents filed or recorded by it.

5. Filing or recording officers with whom notices of federal tax liens, certificates, and notices affecting the liens have been filed or recorded on or before July 1, 1970, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1970" containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed or recorded on or before July 1, 1970, a certificate or notice affecting the lien shall be filed or recorded in the same office.

6. Filing or recording officers with whom notices of federal tax liens, certificates, and notices affecting the liens have been filed or recorded after July 1, 1970, and before July 1, 1989, shall, after July 1, 1989, continue to maintain a file labeled "federal tax lien notices filed after July 1, 1970, and before July 1, 1989" containing notices and certificates filed or recorded in numerical order of receipt. If a notice of lien was filed or recorded on or after July 1, 1970, and before July 1, 1989, a certificate or notice affecting the lien shall be filed or

recorded in the same office.

7. This section may be cited as the *"Uniform Federal Lien Registration Act"*.

[C24, 27, 31, 35, 39, §**5176;** C46, 50, 54, 58, 62, 66, §335.11; C71, 73, 75, 77, 79, 81, §335.18 – 335.23; S81, §331.609; 81 Acts, ch 117, §608]

88 Acts, ch 1275, §33; 89 Acts, ch 36, §1; 90 Acts, ch 1021, §2; 2000 Acts, ch 1149, §169, 187; 2001 Acts, ch 44, §11

331.610 Abolition of office of recorder — identification of office — place of filing.

If the office of county recorder is abolished in a county, the auditor of that county shall be referred to as the county auditor and recorder. After abolition of the office of county recorder, references in the Code requiring filing or recording of documents with the county recorder shall be deemed to require the filing in the office of the county auditor and recorder, and all duties of the abolished office of recorder shall be performed by the county auditor and recorder. However, the board of supervisors may direct that any of the duties of the abolished office of recorder prescribed in section 331.602, subsection 9, 10, 11, or 16, or section 331.605, subsection 1, 2, 3, or 4, shall be performed by other county officers or employees as provided in section 331.323.

93 Acts, ch 148, §2; 95 Acts, ch 38, §1

331.611 Vital statistics.

1. The recorder shall be the county registrar and carry out duties as provided in chapter 144.

2. The duties include, but are not limited to, the following:

a. Register and maintain certifications of birth as provided in sections 144.13 through 144.18, 144.45, and 144.46.

b. Register and maintain certifications of death as provided in sections 144.26 through 144.35, 144.45, and 144.46.

c. Issue and maintain marriage certificates as provided in sections 144.36, 144.45, and 144.46, and chapter 595.

95 Acts, ch 124, §12, 26

331.612 through 331.650 Reserved.

PART 4

COUNTY SHERIFF

Law enforcement officer training reimbursement; §384.15

331.651 Office of county sheriff.

1. The office of sheriff is an elective office. However, if a vacancy occurs in the office, the first deputy shall assume the office after qualifying as provided in this section. The first deputy shall hold the office until a successor is appointed or elected to the unexpired term as provided in chapter 69. If a sheriff is suspended from office, the district court may appoint a sheriff until a temporary appointment is made by the board as provided in section 66.19.

A person elected or appointed sheriff shall meet all the following qualifications:

a. Have no felony convictions.

b. Be age twenty-one or over at the time of assuming the office of sheriff.

c. Be a certified peace officer recognized by the Iowa law enforcement academy council under chapter 80B or complete the basic training course provided at the Iowa law enforcement academy's central training facility or a location other than the central training facility within one year of taking office. A person shall be deemed to have completed the basic training course if the person meets all course requirements except the physical training requirements.

2. A person elected or appointed to the office of sheriff shall qualify by taking the oath of office as provided in section 63.10 and give bond as provided in section 64.8.

3. The term of office of the sheriff is four years.

[C51, §96, 239; R60, §224, 473; C73, §589; C97, S13, §1072; C24, 27, 31, 35, 39, §**520;** C46, §39.17; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.17, 337.20; S81, §331.651; 81 Acts, ch 117, §650]

94 Acts, ch 1010, §1; 2002 Acts, ch 1134, §95, 115

2002 amendment to subsection 1, unnumbered paragraph 1, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1, unnumbered paragraph 1 amended

331.652 General powers of the sheriff.

1. The sheriff may call upon any person for assistance to:

a. Keep the peace or prevent the commitment of crime.

b. Arrest a person who is liable to arrest.

c. Execute a process of law.

2. The sheriff, when necessary, may summon the power of the county to carry out the responsibilities of office.

3. The sheriff may use the services of the department of public safety in the apprehension of criminals and detection of crime.

4. The sheriff, with the co-operation of the commissioner of public safety, may hold an annual conference and school of instruction for all peace officers within the county, including regularly organized reserve peace officers under the sheriff's jurisdiction, at which time instruction may be given in all matters relating to the duties of peace officers.

5. The sheriff may administer oaths and take affirmations on matters relating to the business of the office of sheriff as provided in section 63A.2.

6. The sheriff may serve a subpoena or order issued under authority of the department of revenue and finance as provided in section 421.22.

7. Subject to the requirements of chapter 341A and section 331.903, the sheriff may appoint and

remove deputies, assistants and clerks.

8. The sheriff may appoint one or more civil process servers, subject to the provisions of section 331.903.

a. A person appointed by the sheriff as a civil process server may, under the direction of the sheriff, execute and return all writs and other legal process issued to the sheriff by legal authority.

b. The court shall take judicial notice of a civil process server's signature.

c. All costs for service of writs and other legal process by a civil process server shall be collected in accordance with the provisions of section 331.655.

d. Civil process servers shall not be considered to be a sheriff or a deputy sheriff for purposes of this chapter or chapter 97B or 341A.

9. The sheriff may dispose of personal property under section 80.39.

1 – 4. [C51, §173; R60, §386; C73, §340; C97, §502; S13, §499-a; C24, 27, §5182; C31, 35, §5182, 5182-d1; C39, §**5182, 5182.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §337.1, 337.2; S81, §331.652(1 – 4); 81 Acts, ch 117, §651]

5, 6. [S81, §331.652(5, 6); 81 Acts, ch 117, §651]

7. [C51, §411, 415; R60, §642, 646; C73, §766, 769; C97, §510; SS15, §510-b; C24, 27, 31, 35, 39, §**5238, 5240;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §341.1, 341.3; S81, §331.652(7); 81 Acts, ch 117, §651]

2000 Acts, ch 1203, §19; 2002 Acts, ch 1022, §1
NEW subsection 8 and former subsection 8 renumbered as 9

331.653 General duties of the sheriff.

The sheriff shall:

1. Execute and return all writs and other legal process issued to the sheriff by legal authority. The sheriff shall execute and return any legal process in the sheriff's possession at the expiration of the sheriff's term of office and if a vacancy occurs in the office of sheriff, the sheriff's deputies shall execute and return the legal processes in their possession as if the sheriff had continued in office. The sheriff's successor or other officer authorized to discharge the duties of the office of sheriff may execute and return the legal processes on behalf of the outgoing sheriff and the sheriff's deputies, but the outgoing sheriff and the sheriff's deputies remain liable for the execution and return of the legal processes in their possession when the sheriff leaves office or the vacancy occurs.

2. Upon written order of the county attorney, make a special investigation of any alleged infraction of the law within the county and report the findings to the county attorney within a reasonable time. Upon completion of the investigation, the sheriff shall file with the auditor a detailed, sworn statement of the expenses of the investigation accompanied by the written order of the county attorney. The board shall audit and pay the reasonable and necessary expenses of the investigation.

3. Upon leaving office, deliver to the sheriff's successor and take the successor's receipt for all books and papers pertaining to the office except as provided in subsection 1, property attached and levied upon, and prisoners in the county jail. The receipt is sufficient indemnity to the outgoing sheriff.

4. Provide bailiff and other law enforcement service to the district judges, district associate judges, and associate juvenile judges, and judicial magistrates of the county upon request.

5. Serve as a member of the joint emergency management commission as provided in section 29C.9.

6. Enforce the provisions of chapter 718A relating to the desecration of flags and insignia.

7. Carry out duties relating to election contests as provided in sections 57.6, 62.4, and 62.19.

8. Carry out duties relating to the seizure and disposition of illegal oil and gas supplies as provided in section 458A.15.

9. Serve a notice or subpoena received from a board of arbitration as provided in section 679B.10.

10. Cooperate with the division of labor services of the department of workforce development in the enforcement of child labor laws as provided in section 92.22.

11. Carry out duties relating to the seizure and forfeiture of cigarettes, vehicles, and other property used in violation of cigarette tax laws as provided in section 453A.32.

12. Observe and inspect any licensed premise for gambling devices and report findings to the license-issuing authority as provided in section 99A.4.

13. Carry out duties relating to the issuance of permits for the possession, transportation, and detonation of explosive materials as provided in sections 101A.3, 101A.5, 101A.7, and 101A.8.

14. Seize fish and game taken, possessed, or transported in violation of the state fish and game laws as provided in section 481A.12.

15. Carry out duties relating to the enforcement of state liquor and beer laws as provided in sections 123.14, 123.117, and 123.118.

16. Reserved.

17. Enforce the payment of the manufactured or mobile home tax as provided in section 435.24.

18. Carry out duties relating to the reporting of persons injured in the commission of a crime, either as perpetrators or victims, as provided in sections 147.111 and 147.112.

19. Carry out duties relating to the enforcement of livestock transportation laws as provided in chapter 172B.

20. Investigate disputes in the ownership or custody of branded animals as provided in section 169A.10.

21. Reserved.

22. Reserved.

23. Carry out duties relating to the involun-

tary hospitalization of persons with mental illness as provided in sections 229.7 and 229.11.

24. Carry out duties relating to the assessment of reported child abuse cases and the protection of abused children as provided in section 232.71B.

25. Remove, upon court order, an indigent person to the county or state of the person's legal settlement as provided in section 252.18.

26. File a complaint upon receiving knowledge of an indigent person who is ill and may be improved, cured or advantageously treated by medical or surgical treatment or hospital care as provided in section 255.2.

27. Give notice of the time and place of making an appraisement of unneeded school land as provided in sections 297.17 and 297.28.

28. Cooperate with the department of transportation, the department of public safety, and other law enforcement agencies in the enforcement of local and state traffic laws and inspections as provided in sections 321.5 and 321.6.

29. Report the theft and recovery of a registered motor vehicle as provided in section 321.72.

30. Collect unpaid motor vehicle fees and penalties as provided in sections 321.133 to 321.135.

31. Reserved.

32. Enforce sections 321.372 to 321.379 relating to school buses.

33. Carry out duties relating to the enforcement of laws prohibiting the operation of a motor vehicle while under the influence of an alcoholic beverage as provided in chapter 321J.

34. Upon request, assist the department of revenue and finance and the state department of transportation in the enforcement of motor fuel tax laws as provided in section 452A.76.

35. Have charge of the county jails in the county and custody of the prisoners committed to the jails as provided in chapter 356.

36. Reserved.

37. Reserved.

38. Notify the department of natural resources of hazardous conditions of which the sheriff is notified as provided in section 455B.386.

39. Carry out duties relating to condemnation of private property as provided under chapter 6B.

40. Carry out duties relating to the removal and disposition of abandoned motor vehicles as provided in section 556B.1.

41. Carry out duties relating to the determination of what is included in a homestead as provided in section 561.8.

42. Carry out duties relating to liens for services of animals as provided in chapter 580.

43. Carry out duties relating to the service of notice on a jury commissioner or jury manager as provided in section 607A.44.

44. Reserved.

45. Designate the newspapers in which notices pertaining to the sheriff's office are published as provided in section 618.7.

46. Carry out duties relating to the execution of judgments and orders of the court as provided in chapter 626.

47. Add the amount of an advancement made by the holder of the sheriff's sale certificate to the execution, upon verification by the clerk as provided by section 629.3.

48. Upon appointment of the court, serve as a receiver of property of a judgment debtor as provided in sections 630.7 and 630.9.

49. Carry out duties relating to the attachment of property as provided in chapters 639, 640, and 641.

50. Carry out duties relating to garnishment under chapter 642.

51. Carry out duties relating to an action of replevin as provided in chapter 643.

52. Carry out orders of the court or a judge relating to the service or execution of a writ of habeas corpus as provided under chapter 663.

53. Carry out duties relating to the disposition of lost property as provided in chapter 556F.

54. Carry out orders of the court requiring the sheriff to take custody and deposit or deliver trust funds as provided in section 636.30.

55. Carry out legal processes directed by an appellate court as provided in section 625A.14.

56. Furnish the bureau of criminal identification with the criminal identification records and other information upon direction by the commissioner of public safety as provided in section 690.1.

57. Take the fingerprints of all persons specified under section 690.2 and forward the fingerprint records to the commissioner of public safety.

58. Report information on crimes committed and delinquent acts committed, which would be a serious or aggravated misdemeanor or felony if committed by an adult, and furnish disposition reports on persons arrested and juveniles taken into custody, for a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, and criminal complaints or information or juvenile delinquency petitions, alleging a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, filed in any court as provided in section 692.15.

59. Carry out duties relating to firearm training and the issuance and revocation of firearm permits as provided in chapter 724.

60. Accept custody of persons handed over to the sheriff by the department of public safety as provided in section 804.28.

61. Carry out duties relating to the forfeiture and judgment of bail as provided in section 811.6.

62. Resume custody of a defendant who is recommitted after bail by order of a magistrate as provided in section 811.7.

63. Carry out duties relating to the confinement of persons with mental illness or dangerous persons as provided in section 812.5.

64. Release a defendant in custody upon re-

ceipt of a certificate of release as provided in section 814.14.

65. Upon call of the governor or attorney general, render assistance in the enforcement of the law as provided in section 817.2.

65A. Carry out the duties imposed under sections 915.11 and 915.16.

66. Upon court order, take an accused person into custody from the warden of a penal institution and convey the person to the place of trial as provided in rule of criminal procedure 2.7.

67. Receive and detain a defendant transferred from another county under a change of venue as provided in rule of criminal procedure 2.11(10).

68. Carry out duties relating to the execution of a judgment for confinement or other execution as provided in rule of criminal procedure 2.26.

69. Carry out duties relating to the return of service in civil cases as provided in rule of civil procedure 1.308.

70. Serve a writ of certiorari as provided in rule of civil procedure 1.1407.

71. Carry out other duties required by law and duties assigned pursuant to section 331.323.

1. [C51, §170, 177; R60, §383, 390, 3264; C73, §337, 344, 346; C97, §499, 504, 506; S13, §499-b; C24, 27, 31, 35, 39, §**5183, 5188, 5190;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §337.3, 337.8, 337.10; S81, §331.653(1); 81 Acts, ch 117, §652]

2. [S13, §499-c; C24, 27, 31, 35, 39, §**5184;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §337.4; S81, §331.653(2); 81 Acts, ch 117, §652]

3. [C51, §178; R60, §391; C73, §345; C97, §505; C24, 27, 31, 35, 39, §**5189;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §337.9; S81, §331.653(3); 81 Acts, ch 117, §652]

4. [C51, §174; R60, §387; C73, §341; C97, §503; C24, 27, 31, 35, 39, §**5187;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §337.7; S81, §331.653(4); 81 Acts, ch 117, §652]

5 – 71. [S81, §331.653(5 – 71); 81 Acts, ch 117, §652]

83 Acts, ch 101, §79; 83 Acts, ch 186, §10090, 10091, 10201; 85 Acts, ch 67, §41; 86 Acts, ch 1108, §5; 86 Acts, ch 1121, §2; 86 Acts, ch 1155, §7; 86 Acts, ch 1220, §39; 87 Acts, ch 115, §54; 90 Acts, ch 1230, §91; 91 Acts, ch 191, §14; 92 Acts, ch 1139, §28; 94 Acts, ch 1103, §3; 94 Acts, ch 1173, §27; 95 Acts, ch 67, §29; 95 Acts, ch 191, §24; 96 Acts, ch 1111, §1; 96 Acts, ch 1129, §113; 96 Acts, ch 1186, §23; 97 Acts, ch 35, §23, 25; 97 Acts, ch 126, §41, 42; 98 Acts, ch 1090, §68, 84; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

331.654 Faithful discharge of duties — penalty for disobedience.

1. The provisions of section 331.652, subsections 1 and 2, and section 331.653, subsections 1 and 2, do not relieve a sheriff or deputy sheriff from the full and faithful discharge of all duties required of the officer by law.

2. The disobedience of a sheriff or deputy sheriff to the command of a legal process is a contempt of the court from which the process is issued and is punishable as provided in chapter 665. The sheriff or deputy sheriff is also liable to action by any person injured by the disobedience.

[C51, §171; R60, §384; C73, §338; C97, §500; S13, §499-d; C24, 27, 31, 35, 39, §**5185, 5186;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §337.5, 337.6; S81, §331.654; 81 Acts, ch 117, §653]

331.655 Fees — mileage — expenses.

1. The sheriff shall collect the following fees:

a. For serving a notice and returning it, for the first person served, fifteen dollars, and each additional person, fifteen dollars except the fee for serving additional persons in the same household shall be ten dollars for each additional service, or if the service of notice cannot be made or several attempts are necessary, the repayment of all necessary expenses actually incurred by the sheriff while attempting in good faith to serve the notice.

b. For each warrant served, twenty dollars, and the repayment of necessary expenses incurred in executing the warrant, as sworn to by the sheriff, or if service of the warrant cannot be made, the repayment of all necessary expenses actually incurred by the sheriff while attempting in good faith to serve the warrant.

c. For serving and returning a subpoena, for each person served, twenty dollars, and the necessary expenses incurred while serving subpoenas in criminal cases or cases relating to hospitalization of persons with mental illness.

d. For summoning a grand or trial jury, all necessary and actual expenses incurred by the sheriff.

e. For summoning a jury to assess the damages to the owners of lands taken for works of internal improvement, and attending them, one hundred dollars per day, and necessary expenses incurred. This subsection does not allow a sheriff to make separate charges for different assessments which can be made by the same jury and completed in one day of ten hours.

f. For serving an execution, attachment, order for the delivery of personal property, injunction, or any order of court, and returning it, fifteen dollars.

g. For making and executing a certificate or deed for lands sold on execution, or a bill of sale for personal property sold, thirty dollars.

h. For the time necessarily employed in making an inventory of personal property attached or levied upon, ten dollars per hour.

i. For a copy of any paper required by law, made by the sheriff, fifty cents.

j. Mileage at the rate specified in section 70A.9 in all cases required by law, going and returning. Mileage fees do not apply where provision is made for expenses, and both mileage and expenses shall not be allowed for the same services and for the same trip. If the sheriff transports one or more

persons by auto to a state institution or any other destination required by law or if one or more legal papers are served on the same trip, the sheriff is entitled to one mileage, the mileage cost of which shall be prorated to the persons transported or papers served. However, in serving original notices in civil cases and in serving and returning a subpoena, the sheriff shall be allowed mileage in each action where the original notice or subpoena is served, with a minimum mileage of one dollar for each service. The sheriff may refuse to serve any legal processes in civil cases until the fees and estimated mileage for service have been paid.

k. For attending sale of property, fifty dollars.

l. For conveying one or more persons to a state, county, or private institution by order of court or commission, necessary expenses for the sheriff and the person conveyed and fifteen dollars per hour for the time necessarily employed in going to and from the institution, the expenses and hourly rate to be charged and accounted for as fees. If the sheriff needs assistance in taking a person to an institution, the assistance shall be furnished at the expense of the county.

m. For serving a warrant for the seizure of intoxicating liquors, five dollars; for the removal and custody of the liquor, actual expenses; for the destruction of the liquor under the order of the court, five dollars and actual expenses; for posting and leaving notices in these cases, five dollars and actual expenses.

n. For posting a notice or advertisement, five dollars.

o. For delivering prisoners under a change of venue, the fee authorized under section 815.8.

2. The mileage fees allowed by law may be retained by the sheriff as an addition to the sheriff's annual salary. In counties having a population of one hundred thousand or more, the county may contract with the sheriff for the use of an automobile on a monthly basis in lieu of payment of mileage in the service of criminal processes.

3. The sheriff shall keep an accurate record of the fees collected in the county system, make a quarterly report of the fees collected to the board, and pay the fees belonging to the county into the county treasury as provided in section 331.902.

4. The sheriff shall deposit funds collected and held by the sheriff in an approved depository as provided in chapter 12C.

1. [C51, §2536; R60, §1570, 4145; C73, §3788, 3789, 3807; C97, S13, §511; C24, 27, 31, 35, 39, §**5191;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §337.11; S81, §331.655(1); 81 Acts, ch 117, §654]

2. [C24, §5192; C27, 31, 35, §5191-a1, 5192; C39, §**5191.2, 5192;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §337.13, 337.14; S81, §331.655(2); 81 Acts, ch 117, §654]

3. [C97, S13, §508; C24, 27, 31, 35, 39, §**5246, 5247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §342.2, 342.3; S81, §331.655(3); 81 Acts, ch 117, §654]

4. [S81, §331.655(4); 81 Acts, ch 117, §654]

83 Acts, ch 198, §23; 85 Acts, ch 118, §1; 88 Acts, ch 1133, §2; 90 Acts, ch 1230, §92; 96 Acts, ch 1129, §85; 97 Acts, ch 121, §8; 2001 Acts, ch 92, §1

331.656 Management of condemnation funds.

1. A sheriff receiving funds from a condemnation proceeding shall list the funds in detail in a book kept for that purpose. The sheriff shall pay the funds to the persons entitled to them upon final adjudication of a condemnation case. If the funds are held after final adjudication of the case until the end of the fiscal year, the funds shall be paid to the treasurer as provided in subsection 2.

2. Not later than July 1 of each year, the sheriff shall make a detailed report under oath of all funds received and in the sheriff's possession from condemnation proceedings which have been finally adjudicated. The report shall include the names of the parties to whom the funds belong, when the funds were received, and a description of the property condemned. The report shall be filed with the treasurer and the amount of the condemnation funds specified in the report shall be paid to the treasurer. The sheriff shall be given a detailed receipt for the funds.

3. If the sheriff possesses condemnation funds which have not been finally adjudicated, the sheriff shall prepare a detailed report of those funds, including the same information as required in subsection 2, which report shall be filed with the auditor for examination and audit by the board. When a sheriff's term of office expires, the sheriff shall pay the condemnation funds which are not finally adjudicated to the sheriff's successor. The outgoing sheriff shall receive a detailed receipt for the funds.

4. The treasurer shall keep a record of the condemnation funds received from the sheriff in a book kept for that purpose. The book shall include a list of the names of persons to whom the funds are due, a description of the property condemned, and the amount due for each property item. The treasurer shall pay the amount due to each person from the condemnation fund on warrants ordered by the board and issued by the auditor. The treasurer and the bond sureties of the treasurer are liable for the condemnation funds in the same manner as for other funds received by the treasurer in an official capacity.

5. The sheriff and the bond sureties of the sheriff are liable for the condemnation funds received by the sheriff until the funds are paid to the persons to which the funds are due, the treasurer, or the sheriff's successor as provided in this section.

[C24, 27, 31, 35, 39, §**5193 – 5197;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §337.15 – 337.19; S81, §331.656; 81 Acts, ch 117, §655]

331.657 Standard uniforms.

1. The sheriff and the full-time deputy sheriffs shall wear the standard uniform and display a standard badge of office when on duty except:

a. The sheriff may designate other apparel to be worn when the sheriff or a deputy sheriff is engaged in assignments involving special investigation, civil process, court duties, jail duties, and the handling of persons with mental illness.

b. A district court judge, district associate judge, or judicial magistrate may direct that deputy sheriffs who act as bailiffs dress in wearing apparel other than the standard uniform while the court is in session.

c. Special deputy sheriffs appointed by the sheriff are excluded from the requirements of this subsection.

2. The standard uniforms and accessories required by the sheriff for the proper outfitting of the sheriff and the sheriff's full-time deputies under this section shall be provided by the county. The uniforms and accessories issued to the sheriff and the sheriff's deputies remain the property of the county.

3. The colors and design of the standard uniform for the sheriffs and deputy sheriffs shall be designated by rule of the commissioner of public safety after consideration of the recommendations of the Iowa state association of sheriffs and deputy sheriffs. The uniform shall include standard shirts, shoulder patches, badges, nameplates, hats, trousers, neckties, jackets, socks, shoes and boots, and leather goods. The uniforms shall be readily distinguishable from the uniforms of other law enforcement agencies of the state. The rules shall allow for appropriate individual county designations on the uniforms. The rules shall be adopted and may be amended in compliance with chapter 17A.

[C66, 71, 73, §332.10; C75, 77, 79, §332.10, 337A.1, 337A.2, 337A.4, 337A.6; C81, §337A.1, 337A.2, 337A.4, 337A.6; S81, §331.657; 81 Acts, ch 117, §656]

96 Acts, ch 1129, §113; 98 Acts, ch 1137, §1

331.658 Care of prisoners.

1. The sheriff shall provide board and care for prisoners in the sheriff's custody in the county jail without personal compensation except for the sheriff's annual salary.

2. The county shall pay the costs of the board and care of the prisoners in the county jail, which costs, in the board's judgment, are necessary to enable the sheriff to carry out the sheriff's duties under this section. The board may determine the manner in which meals are provided for the prisoners.

3. The sheriff is accountable to the board for fees due or collected for boarding, lodging, and providing other services for prisoners in the sheriff's custody under the order of a federal court.

4. The sheriff shall allow access by the board at any reasonable time to the county jail and to supplies provided by the county for the purpose of inspecting the jail and determining whether the supplies are used for the purpose of boarding and caring for prisoners as provided in this section.

[C51, §2536; R60, §4145; C73, §3788; C24, 27, §5197-d1; C31, 35, §5197-d1 – 5197-d3, 5197-d9; C39, §**5191, 5197.01 – 5197.03, 5197.09;** C46, 50, 54, 58, 62, 66, 71, 73, §337.11, 338.1 – 338.3, 338.9; C75, 77, 79, 81, §338.1 – 338.3, 338.9; S81, §331.658; 81 Acts, ch 117, §657]

331.659 Prohibited actions.

1. A sheriff or a deputy sheriff shall not:

a. Appear in any court as an attorney or legal counsel for another party.

b. Make or prepare a writing, document or process to commence a legal action or proceeding.

c. Use a writing, document or process prepared by the sheriff or deputy sheriff in a legal action or proceeding. The document, writing, or process prepared or made by a sheriff or a deputy sheriff in violation of this subsection is void.

2. A sheriff or a deputy sheriff shall not be the purchaser, directly or indirectly, of property which is being sold by the sheriff or deputy sheriff under process of law. A purchase made in violation of this subsection is void.

[C51, §175, 176; R60, §388, 389; C73, §342, 343; C97, §546, 547; C24, 27, 31, 35, 39, §**5251, 5252;** C46, 50, 58, 62, 66, 71, 73, 75, 77, 79, 81, §343.3, 343.4; S81, §331.659; 81 Acts, ch 117, §658]

331.660 Appropriation — Indian settlement officer.

There is appropriated annually from the general fund of the state to the county of Tama the sum of twenty-five thousand dollars to be used by the county only for the payment of the salary and expenses of an additional deputy sheriff for the county. The principal duty of the deputy sheriff is to provide law enforcement on the Sac and Fox Indian settlement in the county of Tama. If possible, the deputy sheriff shall reside on the settlement. Additional funds necessary to pay the salary and expenses of the deputy sheriff shall be paid by the county of Tama. The state shall not be held liable for the performance or nonperformance of law enforcement duties pursuant to this section.

[C62, 66, 71, 73, 75, 77, 79, 81, §337.21; S81, §331.660; 81 Acts, ch 117, §659]

86 Acts, ch 1246, §712; 90 Acts, ch 1267, §41

331.661 Multicounty office.

1. Two or more county boards of supervisors may adopt resolutions proposing to share the services of a county sheriff. The resolutions shall also propose that the question of establishing the office of multicounty sheriff be submitted to the electorate of the counties proposing to share the services

of a county sheriff. The proposal is adopted in those counties where a majority of the electors voting approves the proposal.

2. The county sheriff shall be elected by a majority of the votes cast for the office of county sheriff in all of the counties which the county sheriff will serve. The election shall be conducted in accordance with section 47.2, subsection 2.

3. The office of multicounty sheriff is created effective on January 1 of the year following the next general election at which the county sheriff is elected as provided by this section and section 39.17.

91 Acts, ch 189, §1

331.662 to 331.700 Reserved.

PART 5

CLERK OF DISTRICT COURT

331.701 Office of the clerk of the district court. Repealed by 83 Acts, ch 186, § 10201, 10203.

331.702 General duties. Repealed by 83 Acts, ch 186, § 10201, 10203.

331.703 General powers. Repealed by 83 Acts, ch 186, § 10201, 10203.

331.704 Records and books. Repealed by 83 Acts, ch 186, § 10201, 10203.

331.705 Fees — collection and disposition. Repealed by 83 Acts, ch 186, § 10201, 10203.

331.706 to 331.750 Reserved.

PART 6

COUNTY ATTORNEY

331.751 Office of county attorney.

1. The office of county attorney is an elective office except that if a vacancy occurs in the office, a successor shall be appointed to the unexpired term as provided in chapter 69.

2. A person elected or appointed to the office of county attorney shall be a registered voter of the county, be admitted to the practice of law in the courts of this state as provided by law, qualify by taking the oath of office as provided in section 63.10, and give bond as provided in section 64.8. A person is not qualified for the office of county attorney while the person's license to practice law in this or any other state is suspended or revoked.

3. The term of office of the county attorney is four years.

[C51, §96, 239; R60, §224; C97, §1072; S13, §308-b, 1072; C24, 27, 31, 35, 39, §**520, 5179;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §39.17, 336.1; S81, §331.751; 81 Acts, ch 117, §750]

94 Acts, ch 1169, §64

331.752 Full-time or part-time attorney.

1. The board may provide that the county attorney is a full-time or part-time county officer in the manner provided in this section. A full-time county attorney shall refrain from the private practice of law.

2. The board may provide, by resolution, that the county attorney shall be a full-time county officer. The resolution shall include an effective date which shall not be less than sixty days from the date of adoption. However, if the county attorney or county attorney-elect objects to the full-time status, the effective date of the change to a full-time status shall be delayed until January 1 of the year following the next general election at which a county attorney is elected. The board shall not adopt a resolution changing the status of the county attorney between March 1 and the date of the general election of the year in which the county attorney is regularly elected as provided in section 39.17.

3. The board may change the status of a full-time county attorney to a part-time county attorney by following the same procedures as provided in subsection 2. If the incumbent county attorney objects to the change in status, the change shall be delayed until January 1 following the next election of a county attorney.

4. A resolution changing the full-time or part-time status of a county attorney may take effect at any time before the sixty days expire upon agreement of the board of supervisors and the affected county attorney or county attorney-elect.

5. The resolution changing the status of a county attorney shall state the initial annual salary to be paid to the county attorney when the full-time or part-time status is effective. The annual salary specified in the resolution shall remain effective until changed as provided in section 331.907. Except in counties having a population of more than two hundred thousand, the annual salary of a full-time county attorney shall be an amount which is between forty-five percent and one hundred percent of the annual salary received by a district court judge.

[C79, 81, §332.61 – 332.63; S81, §331.752; 81 Acts, ch 117, §751, 752]

88 Acts, ch 1267, §18; 94 Acts, ch 1173, §28

331.753 Multicounty office.

1. If two or more counties agree, pursuant to chapter 28E, to share the services of a county attorney, the county attorney shall be elected by a majority of the votes cast for the office of county attorney in all of the counties which the county at-

torney will serve as provided in the agreement. The election shall be conducted in accordance with section 47.2, subsection 2.

2. The effective date of the agreement shall be January 1 of the year following the next general election at which the county attorney is elected as provided by this section and section 39.17.

[C79, 81, §336.6; S81, §331.753; 81 Acts, ch 117, §753]

331.754 Absence or disqualification of county attorney and assistants.

1. In case of absence, sickness, or disability of the county attorney and the assistant county attorneys, the board of supervisors may appoint an attorney to act as county attorney. Upon application of the county attorney or the attorney general, the chief judge or the chief judge's designee may appoint an attorney to act temporarily as county attorney until the board has had sufficient time to appoint an acting county attorney. As an alternative, upon the application of the county attorney or the attorney general, the chief judge or the chief judge's designee may appoint the attorney general to temporarily act as county attorney if the attorney general consents to the appointment.

2. If the county attorney and all assistant county attorneys are disqualified because of a conflict of interest from performing duties and conducting official business in a juvenile, criminal, contempt, or commitment proceeding which requires the attention of the county attorney, the chief judge or the chief judge's designee, upon application by the county attorney or the attorney general certifying that there is a bona fide reason for the disqualification based upon a principle of law or court rule, may appoint an attorney to act as county attorney in the proceeding. As an alternative, upon application of the county attorney or attorney general certifying that there is a bona fide reason for the disqualification, the chief judge or the chief judge's designee may appoint the attorney general to act as county attorney in the proceeding if the attorney general consents to the appointment. If the attorney general does not consent to the appointment, the chief judge or the chief judge's designee may appoint an attorney designated by the attorney general.

3. Upon any application of the attorney general pursuant to subsection 1 or 2, the county attorney shall be given notice and shall be provided an opportunity to file an objection prior to the appointment of any attorney. This subsection shall not apply if giving notice would jeopardize a criminal investigation.

4. The board may appoint an attorney to act as county attorney in a civil proceeding if the county attorney and all assistant county attorneys are disqualified because of a conflict of interest from performing duties and conducting official business.

5. A temporary or acting county attorney has the same authority and is subject to the same responsibilities as a county attorney.

6. A temporary or acting county attorney shall receive a reasonable compensation as determined by the board for services rendered in proceedings before a judicial magistrate or rendered on behalf of a county officer or employee. If the proceedings are held before a district associate judge or a district judge, the judge shall determine a reasonable compensation for the temporary or acting county attorney. If the proceedings are held before an associate juvenile judge or a judicial hospitalization referee, the temporary or acting county attorney shall be compensated at a rate approved by the judge who appointed the associate juvenile judge or referee. The compensation shall be paid from funds to be appropriated to the office of county attorney by the board.

7. Notwithstanding subsections 1 through 6, upon request by a county attorney, the attorney general or an assistant attorney general may act as county attorney in a criminal proceeding, on behalf of the state, without appointment by the board, the chief judge, or the chief judge's designee.

[C97, §304; C24, §13675; C27, 31, 35, §5180-a1; C39, §**5180.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §336.3; S81, §331.754; 81 Acts, ch 117, §754]

88 Acts, ch 1066, §1; 92 Acts, ch 1124, §3; 2000 Acts, ch 1057, §2; 2002 Acts, ch 1052, §1

Section amended

331.755 Prohibited actions.

A county attorney shall not:

1. Accept a fee or reward from or on behalf of a person for services rendered in a prosecution or the conduct of official business.

2. Engage directly or indirectly as an attorney or an agent for a party other than the state or the county in an action or proceeding arising in the county which is based upon substantially the same facts as a prosecution or proceeding which has been commenced or prosecuted by the county attorney in the name of the state or the county. This prohibition also applies to the members of a law firm with which the county attorney is associated.

3. Receive assistance from another attorney who is interested in any civil action in which a recovery is asked based upon matters involved in a criminal prosecution commenced or prosecuted by the county attorney.

[C97, §305; C24, §13677; C27, 31, 35, §1580-a3; C39, §**5180.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §336.5; S81, §331.755; 81 Acts, ch 117, §755]

331.756 Duties of the county attorney.

The county attorney shall:

1. Diligently enforce or cause to be enforced in

the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.

3. Prosecute all preliminary hearings for charges triable upon indictment.

4. Prosecute misdemeanors under chapter 236. The county attorney shall prosecute other misdemeanors when not otherwise engaged in the performance of other official duties.

5. Enforce all forfeited bonds and recognizances and prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures accruing to the state, the county or a road district in the county, and all suits in the county against public service corporations which are brought in the name of the state. To assist in this duty, the county attorney may procure professional collection services provided by persons or organizations, including private attorneys, which are generally considered to have knowledge and special abilities which are not generally available to state or local government or may designate another county official or agency to assist with collection efforts.

If professional collection services are procured, the county attorney shall file with the clerk of the district court an indication of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of that obligation, including all fees and compensation retained by the collection service incident to the collection and not paid into the office of the clerk.

Before a county attorney designates another county official or agency to assist with collection of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures, the board of supervisors of the county must approve the designation.

All fines, penalties, court costs, fees, and restitution for court-appointed attorney fees ordered pursuant to section 815.9, including the expenses of a public defender which are delinquent as defined in section 602.8107 may be collected by the county attorney or the person procured or designated by the county attorney. In order to receive a percentage of the amounts collected pursuant to section 602.8107, the county attorney must file annually with the clerk of the district court on or before July 1 a notice of full commitment to collect delinquent obligations and must file on the first day of each month a list of the cases in which the county attorney or the person procured or designated by the county attorney is pursuing the collection of delinquent obligations. The annual notice shall contain a list of procedures which will be initiated by the county attorney. Amounts collected by the county attorney or the person procured or designated by the county attorney shall be distributed in accordance with section 602.8107.

6. Commence, prosecute, and defend all actions and proceedings in which a county officer, in the officer's official capacity, or the county is interested or a party.

7. Give advice or a written opinion, without compensation, to the board and other county officers and to school and township officers, when requested by an officer, upon any matters in which the state, county, school, or township is interested, or relating to the duty of the officer in any matters in which the state, county, school, or township may have an interest, but the county attorney shall not appear before the board at a hearing in which the state or county is not interested.

8. Attend the grand jury when necessary for the purpose of examining witnesses before it or giving it legal advice. The county attorney shall procure subpoenas or other process for witnesses and prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom the county attorney receives money in an official capacity and file a duplicate receipt with the county auditor.

10. Make reports relating to the duties and the administration of the county attorney's office to the governor when requested by the governor.

11. Cooperate with the auditor of state to secure correction of a financial irregularity as provided in section 11.15.

12. Submit reports as to the condition and operation of the county attorney's office when required by the attorney general as provided in section 13.2, subsection 8.

13. Reserved.

14. Hear and decide objections to a nomination filed with the county election commissioner as provided in section 44.7.

15. Review the report and recommendations of the ethics and campaign disclosure board and proceed to institute the recommended actions or advise the board that prosecution is not merited, as provided in sections 68B.32C and 68B.32D.

16. Prosecute or assist in the prosecution of actions to remove public officers from office as provided in section 66.11.

17. Institute legal proceedings against persons who violate laws administered by the division

of labor services of the department of workforce development as provided in section 91.11.

18. Investigate complaints and prosecute violations of child labor laws as provided in section 92.22.

19. Prosecute violations of employment security laws and rules as provided in section 96.17, subsection 2.

20. Assist, at the request of the director of revenue and finance, in the enforcement of cigar and tobacco tax laws as provided in sections 453A.32 and 453A.49.

21. Prosecute nuisances as provided in section 99.24.

22. Attend the hearing, interrogate witnesses, and advise a license-issuing authority relating to the revocation of a license for violation of gambling laws as provided in section 99A.7. The county attorney shall also represent the license-issuing authority in appeal proceedings taken under section 99A.6.

23. Represent the state fire marshal in legal proceedings as provided in section 100.20.

24. Prosecute, at the request of the director of the department of natural resources or an officer appointed by the director, violations of the state fish and game laws as provided in section 481A.35.

25. Assist the division of beer and liquor law enforcement in the enforcement of beer and liquor laws as provided in section 123.14. The county attorney shall also prosecute nuisances, forfeitures of abatement bonds, and foreclosures of the bonds as provided in sections 123.62 and 123.86.

26. Reserved.

27. Serve as attorney for the county health care facility administrator in matters relating to the administrator's service as a conservator or guardian for a resident of the health care facility as provided in section 135C.24.

28. Reserved.

29. At the request of the director of public health, commence legal action to enjoin the unlawful use of radiation-emitting equipment as provided in section 136C.5.

30. Reserved.

31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.

32. Assist the department of inspections and appeals in the enforcement of the Iowa food code and the Iowa hotel sanitation code as provided in sections 137F.19 and 137C.30.

33. Institute legal procedures on behalf of the state to prevent violations of the corporate or partnership farming laws as provided in section 9H.3.

34. Prosecute violations of the Iowa dairy industry laws as provided in section 179.11.

35. Prosecute persons who fail to file an annual or special report with the secretary of agriculture under the meat and poultry inspection Act as provided in section 189A.17.

36. Cooperate with the secretary of agriculture in the enforcement of label requirements for food packages as provided in section 191.7.

37. Prosecute violations of the Iowa commercial feed law as provided in section 198.13, subsection 3.

38. Cooperate with the secretary of agriculture in the enforcement of the agricultural seed laws as provided in section 199.14.

39. Prosecute violations of the Iowa fertilizer law as provided in section 200.18, subsection 4.

40. Prosecute violations of the Iowa drug, device, and cosmetic Act as requested by the board of pharmacy examiners as provided in section 126.7.

41. Provide the Iowa department of corrections with information relating to the background and criminal acts committed by each person sentenced to a state correctional institution from the county as provided in section 904.202.

42. Carry out duties relating to the commitment of a person with mental retardation as provided in section 222.18.

43. Proceed to collect, as requested by the county, the reasonable costs for the care, treatment, training, instruction, and support of a person with mental retardation from parents or other persons who are legally liable for the support of the person with mental retardation as provided in section 222.82.

44. At the direction of a district court judge, investigate the financial condition of a person under commitment proceedings to the state psychiatric hospital or those legally responsible for the person as provided in section 225.13.

45. Appear on behalf of the administrator of the division of mental health and developmental disabilities of the department of human services in support of an application to transfer a person with mental illness who becomes incorrigible and dangerous from a state hospital for persons with mental illness to the Iowa medical and classification center as provided in section 226.30.

46. Carry out duties relating to the hospitalization of persons for mental illness as provided in section 229.12.

47. Carry out duties relating to the collection of the costs for the care, treatment, and support of persons with mental illness as provided in sections 230.25 and 230.27.

48. Carry out duties relating to the care, guidance, and control of juveniles as provided in chapter 232.

49. Prosecute violations of law relating to the family investment program, medical assistance, and supplemental assistance as provided in sections 239B.15, 249.13, and 249A.14.

50. Commence legal proceedings to enforce the rights of children placed under foster care arrangements as provided in section 233A.11.

51. Commence legal proceedings, at the request of the superintendent of the Iowa juvenile home, to recover possession of a child as provided in section 233B.12.

52. Furnish, upon request of the governor, a

copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 914.5.

53. Carry out duties relating to the provision of medical and surgical treatment for an indigent person as provided in sections 255.7 and 255.8.

54. Commence legal proceedings to recover school funds as provided in section 257B.33.

55. At the request of the state geologist, commence legal proceedings to obtain a copy of the map of a mine or mine extension as provided in section 456.12.

56. Enforce, upon complaint, the performance of duties by officers charged with the responsibilities of controlling or eradicating noxious weeds as provided in section 317.23.

57. Commence legal proceedings to remove billboards and signs which constitute a public nuisance as provided in section 319.11.

58. Reserved.

59. Assist, upon request, the department of transportation's general counsel in the prosecution of violations of common carrier laws and regulations as provided in section 327C.30.

60. Enforce the control of vegetation on railroad property by the railroad corporations as provided in section 327F.29.

61. Appoint a member of the civil service commission for deputy sheriffs as provided in section 341A.2 or 341A.3.

62. Represent the civil service commission for deputy sheriffs in civil suits initiated by the commission for the proper enforcement of the civil service law as provided in section 341A.16.

63. Present to the grand jury at its next session a copy of the report filed by the division of corrections of the department of human services of its inspection of the jails in the county as provided in section 356.43.

64. Represent the township trustees in counties having a population of less than twenty-five thousand except when the interests of the trustees and the county are adverse as provided in section 359.18.

64A. Reserved.

64B. Make a written report to the department of inspections and appeals within fifteen days of the end of each calendar quarter of the amount of funds which were owed to the state for indigent defense services and which were recouped pursuant to subsection 5.

65. Represent the assessor and the board of review in legal proceedings relating to assessments as provided in section 441.41.

66. Represent the state in litigation relating to the inheritance tax if requested by the department of revenue and finance as provided in section 450.1.

67. Institute proceedings to enjoin persons from violating water treatment laws as provided in section 455B.224.

68. Conduct legal proceedings relating to the condemnation of private property as provided in section 6B.2.

69. Reserved.

70. Institute legal proceedings against violations of insurance laws as provided in sections 511.7 and 515.93.

71. Assist, as requested by the attorney general, with the enforcement of the Iowa competition law as provided in section 553.7.

72. Initiate proceedings to enforce provisions relating to the recordation of conveyances and leases of agricultural land as provided in section 558.44.

73. Reserved.

74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

75. Reserved.

76. Reserved.

77. Prosecute a complaint to establish paternity and compel support for a child as provided in section 600B.19.

78. Give to an accused person a copy of each report of the findings of the criminalistics laboratory in the investigation of an indictable criminal charge against the accused as provided in section 691.4.

79. Notify state and local governmental agencies issuing licenses or permits, of a person's conviction of obscenity laws relating to minors as provided in section 728.8.

80. In the case of appeal from the district court, furnish the attorney general with a copy of the notice of appeal and pertinent material from the district court proceedings as provided in section 814.8.

81. Certify fees and mileage payable to witnesses subpoenaed by the county attorney before the district court as provided in section 815.3.

82. Carry out duties relating to extradition of fugitive defendants as provided in chapter 818.

83. Advise the director of the judicial district department of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

83A. Carry out the duties imposed under sections 915.12 and 915.13.

84. Bring an action in the nature of quo warranto as provided in rule of civil procedure 1.1302.

85. Perform other duties required by law and duties assigned pursuant to section 331.323.

[C97, SS15, §301; C24, 27, 31, 35, 39, §**5180;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §336.2; S81, §331.756; 81 Acts, ch 117, §756; 82 Acts, ch 1021, §10, 12(1), ch 1100, §28, ch 1104, §59]

83 Acts, ch 96, §111, 112, 157, 159; 84 Acts, ch 1163, §2; 84 Acts, ch 1299, §9; 85 Acts, ch 195, §42; 86 Acts, ch 1001, §21; 86 Acts, ch 1112, §11; 86 Acts, ch 1155, §8; 86 Acts, ch 1238, §17; 86 Acts, ch 1245, §1117; 87 Acts, ch 30, §18; 87 Acts, ch 98, §4;

88 Acts, ch 1134, §73; 89 Acts, ch 197, §30; 90 Acts, ch 1165, §17; 92 Acts, ch 1242, §30, 31; 93 Acts, ch 97, §39; 93 Acts, ch 110, §2 – 4; 93 Acts, ch 142, §12; 93 Acts, ch 163, §32; 94 Acts, ch 1023, §106; 94 Acts, ch 1170, §53; 94 Acts, ch 1173, §29, 30; 95 Acts, ch 49, §9; 95 Acts, ch 143, §9; 95 Acts, ch 169, §3; 96 Acts, ch 1034, §31; 96 Acts, ch 1111, §2; 96 Acts, ch 1129, §113; 96 Acts, ch 1131, §1; 96 Acts, ch 1186, §23; 97 Acts, ch 41, §32; 98 Acts, ch 1090, §69, 84; 98 Acts, ch 1162, §28, 30; 2002 Acts, ch 1119, §159

Subsection 5 amended

331.757 Temporary and full-time assistants.

1. The county attorney may employ, with the approval of a judge of the district court, a temporary assistant to assist in the trial of a person charged with a felony. The temporary assistant shall be paid a reasonable compensation as determined by the board upon certification of the services rendered by the district judge before whom the defendant was tried.

2. The county attorney may appoint, with the approval of the board, an assistant county attorney to serve as a full-time prosecutor. A full-time prosecutor shall refrain from the private practice of law. The county attorney shall determine the compensation paid to a full-time prosecutor within the budget set for the county attorney's office by the board. Except in counties having a population of more than two hundred thousand, the annual salary of an assistant county attorney shall not exceed eighty-five percent of the maximum annual salary of a full-time county attorney.

[C97, §303; S13, §303-a; C24, 27, 31, 35, 39, §**5243;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §341.7; C77, 79, 81, §341.7, 341.9; S81, §331.757; 81 Acts, ch 117, §757]

83 Acts, ch 123, §150, 209; 88 Acts, ch 1267, §19

331.758 General powers.

The county attorney may:

1. Administer oaths and take affirmations as provided in section 63A.2.

2. Appoint and remove deputies, clerks and assistants subject to the requirements of sections 331.757 and 331.903.

[C97, §303; S13, §303-a; C24, 27, 31, 35, 39, §**5238, 5240;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §341.1, 341.3; S81, §331.758; 81 Acts, ch 117, §758]

331.759 Appointment of private legal counsel.

At any stage of legal proceedings in which a county attorney is authorized to represent a county officer acting in the officer's official capacity, the county attorney may apply to the court for permission to withdraw from representation of the officer for cause. If the court allows the county attorney to withdraw, it shall appoint an attorney to represent the county officer. The costs of representing a county officer acting in the officer's official capacity shall be paid from the court expense fund or the general fund of the county.

[S81, §331.759; 81 Acts, ch 119, §1]

331.760 to 331.774 Reserved.

PART 7

PUBLIC DEFENDER

331.775 Definitions. Repealed by 83 Acts, ch 186, § 10203, 10301, and 88 Acts, ch 1161, § 18, 21. See chapters 13B and 815.

331.776 Office of public defender. Repealed by 88 Acts, ch 1161, § 18, 21. See chapter 13B.

331.777 Powers and duties of a public defender. Repealed by 88 Acts, ch 1161, § 18, 21. See chapter 13B.

331.778 Court-appointed attorneys. Repealed by 83 Acts, ch 186, § 10201, 10203. See chapter 815.

331.779 to 331.800 Reserved.

PART 8

COUNTY MEDICAL EXAMINER

331.801 County medical examiner — appointment, qualifications and assistants.

1. A county medical examiner shall be appointed by the board for a two-year term. The term of office shall commence on the first day in January which is not a Sunday or holiday and continue for two years or until a successor is appointed and qualifies as provided in this section. A vacancy shall be filled by the board for the unexpired term.

2. To serve as a county medical examiner a person shall be licensed in this state as a doctor of medicine and surgery, a doctor of osteopathic medicine and surgery, or an osteopathic physician. The medical examiner shall be appointed by the board from lists of two or more names submitted by the medical society and the osteopathic society of the county in which the candidate resides. If names are not submitted by either society, the board may appoint any licensed physician, osteopathic physician and surgeon, or osteopathic physician of the county. If a qualified physician of the county will not serve, the board may appoint a physician from another county. If a county medical examiner is unable to serve in a particular case

or for a period of time, the medical examiner shall promptly notify the chairperson of the board who shall designate some other qualified physician to serve temporarily.

3. The board may provide laboratory facilities, deputy medical examiners, and other professional, technical and clerical assistance as required by the county medical examiner in the performance of official duties. However, the requirements shall be subject to prior approval by the state medical examiner.

1. [C62, 66, 71, 73, 75, 77, 79, 81, §339.1; S81, §331.801(1); 81 Acts, ch 117, §800, 805]

2. [C51, §201, 202; R60, §411, 412; C73, §367, 368; C97, §528, 529; C24, 27, 31, 35, 39, §**5217, 5218;** C46, 50, 54, 58, §339.21, 339.22; C62, 66, 71, 73, 75, 77, 79, 81, §339.2; S81, §331.801(2); 81 Acts, ch 117, §800]

3. [S13, §520; C24, 27, 31, 35, 39, §**5206;** C46, 50, 54, 58, §339.9; C62, 66, §339.8; C71, 73, 75, 77, 79, 81, §339.3; S81, §331.801(3); 81 Acts, ch 117, §800]

331.802 Deaths — reported and investigated.

1. A person's death which affects the public interest as specified in subsection 3 shall be reported to the county medical examiner or the state medical examiner by the physician in attendance, any law enforcement officer having knowledge of the death, the embalmer, or any other person present. The appropriate medical examiner shall notify the city or state law enforcement agency or sheriff and take charge of the body.

2. If a person's death affects the public interest, the county medical examiner shall conduct a preliminary investigation of the cause and manner of death, prepare a written report of the findings, promptly submit the full report to the state medical examiner on forms prescribed for that purpose, and submit a copy of the report to the county attorney. For each preliminary investigation and the preparation and submission of the required reports, the county medical examiner shall receive from the county of appointment a fee determined by the board plus the examiner's actual expenses. The fee and expenses paid by the county of appointment shall be reimbursed to the county of appointment by the county of the person's residence. However, if the person's death is caused by a defendant for whom a judgment of conviction and sentence is rendered under section 707.2, 707.3, 707.4, 707.5, or 707.6A, the county of the person's residence may recover from the defendant the fee and expenses. The fee and expenses of the county medical examiner who performs an autopsy or conducts an investigation of a person who dies after being brought into this state for emergency medical treatment by or at the direction of an out-of-state law enforcement officer or public authority shall be paid by the state. A claim for payment shall be filed with the Iowa department of public health. If moneys are not appropriated to the Iowa department of public health for the payment of autopsies under this subsection, claims for payment shall be forwarded to the state appeal board and, if authorized by the board, shall be paid out of moneys in the general fund of the state not otherwise appropriated.

3. A death affecting the public interest includes, but is not limited to, any of the following:

a. Violent death, including homicidal, suicidal, or accidental death.

b. Death caused by thermal, chemical, electrical, or radiation injury.

c. Death caused by criminal abortion including self-induced, or by sexual abuse.

d. Death related to disease thought to be virulent or contagious which may constitute a public hazard.

e. Death that has occurred unexpectedly or from an unexplained cause.

f. Death of a person confined in a prison, jail, or correctional institution.

g. Death of a person who was prediagnosed as a terminal or bedfast case who did not have a physician in attendance within the preceding thirty days; or death of a person who was admitted to and had received services from a hospice program as defined in section 135J.1, if a physician or registered nurse employed by the program was not in attendance within thirty days preceding death.

h. Death of a person if the body is not claimed by a relative or friend.

i. Death of a person if the identity of the deceased is unknown.

j. Death of a child under the age of two years if death results from an unknown cause or if the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death.

4. The county medical examiner shall conduct the investigation in the manner required by the state medical examiner and shall determine whether the public interest requires an autopsy or other special investigation. However, if the death occurred in the manner specified in subsection 3, paragraph *"j",* the county medical examiner shall order an autopsy, the expense of which shall be reimbursed by the Iowa department of public health. In determining the need for an autopsy, the county medical examiner may consider the request for an autopsy from a public official or private person, but the state medical examiner or the county attorney of the county where the death occurred may require an autopsy.

5. *a.* A person making an autopsy shall promptly file a complete record of the findings in the office of the state medical examiner and the county attorney of the county where death occurred and the county attorney of the county where any injury contributing to or causing the death was sustained.

b. A summary of the findings resulting from an autopsy of a child under the age of two years whose death occurred in the manner specified in subsection 3, paragraph *"j",* shall be transmitted immediately by the physician who performed the autopsy to the county medical examiner. The report shall be forwarded to the parent, guardian, or custodian of the child by the county medical examiner or a designee of the county medical examiner, or through the infant's attending physician. A copy of the autopsy report filed with the county attorney shall be available to the parents, guardian, or custodian upon request.

6. The report of an investigation made by the state medical examiner or a county medical examiner and the record and report of an autopsy made under this section or chapter 691, shall be received as evidence in any court or other proceedings, except that statements by witnesses or other persons and conclusions on extraneous matters included in the report are not admissible. The person preparing a report or record given in evidence may be subpoenaed as a witness in any civil or criminal case by any party to the cause. A copy of a record, photograph, laboratory finding, or record in the office of the state medical examiner or any medical examiner, when attested to by the state medical examiner or a staff member or the medical examiner in whose office the record, photograph, or finding is filed, shall be received as evidence in any court or other proceedings for any purpose for which the original could be received without proof of the official character of the person whose name is signed to it.

7. In case of a sudden, violent, or suspicious death after which the body is buried without an investigation or autopsy, the county medical examiner, upon being advised of the facts, shall notify the county attorney. The county attorney shall apply for a court order requiring the body to be exhumed in accordance with chapter 144. Upon receipt of the court order, an autopsy shall be performed by a medical examiner or by a pathologist designated by the medical examiner and the facts disclosed by the autopsy shall be communicated to the court ordering the disinterment for appropriate action.

8. Where donation of the remains of the deceased to a medical school or similar institution equipped with facilities to perform autopsies is provided by will or directed by the spouse, parents or children of full age, of the deceased, any autopsy under this section shall be performed at the direction of the school or institution, and in such a manner as to further the purpose of the donation, while serving the public interest.

1, 2. [C51, §186, 187, 202, 2539; R60, §396, 397, 412, 4148; C73, §352, 353, 368, 3799; C97, §515, 517, 526, 529, 531; C24, 27, 31, 35, 39, §**5200, 5202, 5214, 5218, 5237;** C46, 50, 54, 58, §339.3, 339.5, 339.17, 339.19, 339.22, 340.19; C62, 66, §339.5; C71, 73, 75, 77, 79, 81, §339.4; S81, §331.802(1, 2); 81 Acts, ch 117, §801]

3. [C51, §186; R60, §396; C73, §352; C24, 27, 31, 35, 39, §**5200, 5201;** C46, 50, 54, 58, §339.3, 339.4; C62, 66, §339.4; C71, 73, 75, 77, 79, 81, §339.6; S81, §331.802(3); 81 Acts, ch 117, §801]

4. [C71, 73, 75, 77, 79, 81, §339.7; S81, §331.802(4); 81 Acts, ch 117, §801]

5. [C51, §187, 188, 193; R60, §397, 398, 403; C73, §353, 354, 359; C97, §517, 518, 521; C24, 27, 31, 35, 39, §**5202, 5203, 5208;** C46, 50, 54, 58, §339.5, 339.6, 339.11; C62, 66, §339.6; C71, 73, 75, 77, 79, 81, §339.8; S81, §331.802(5); 81 Acts, ch 117, §801]

6. [C51, §190 – 192, 199; R60, §400 – 402, 409; C73, §356 – 358, 365; C97, S13, §520; C24, 27, 31, 35, 39, §**5205, 5206;** C46, 50, 54, 58, §339.8, 339.9; C62, 66, §339.9; C71, 73, 75, 77, 79, 81, §339.10; S81, §331.802(6); 81 Acts, ch 117, §801]

7. [C62, 66, §339.7; C71, 73, 75, 77, 79, 81, §339.14; S81, §331.802(7); 81 Acts, ch 117, §801]

8. [S81, §331.802(8); 81 Acts, ch 117, §801]

87 Acts, ch 69, §1; 96 Acts, ch 1139, §1; 98 Acts, ch 1024, §1; 99 Acts, ch 141, §40; 2002 Acts, ch 1098, §3

Subsection 3, paragraph g stricken and rewritten

331.803 Examination certificate — fee.

Upon application and payment of a fee determined by the board, the county medical examiner shall provide an examination certificate to the person requesting it and file a copy of the certificate in the medical examiner's office. The certificate is not required in the case of a stillborn infant if a physician was present at the stillbirth and the cause of the stillbirth, as certified by the attending physician as provided in chapter 144, does not require an investigation by a medical examiner.

[C62, 66, §339.12; C71, 73, 75, 77, 79, 81, §339.13; S81, §331.803; 81 Acts, ch 117, §802]

331.804 Disposition of body and other property.

1. After an investigation has been completed, including an autopsy if one is performed, the body shall be prepared for transportation. The body shall be transported by a funeral director, if chosen by a relative or friend of the deceased person, for burial or other appropriate disposition. A medical examiner shall not use influence in favor of a particular funeral director. However, if a person other than a funeral director assumes custody of a dead body, the person shall secure a burial-transit permit pursuant to section 144.32. If no one claims a body, it shall be disposed of as provided in chapter 142.

2. If no one is entitled by law to the property or money found on a deceased person, the property shall be deposited with the clerk of the district court who shall dispose of it as provided by law.

[C51, §200; R60, §410; C73, §366; C97, §527,

532, 533; C24, 27, 31, 35, 39, §**5215, 5216;** C46, 50, 54, 58, §339.19, 339.20; C62, 66, §339.10, 339.11; C71, 73, 75, 77, 79, 81, §339.11, 339.12; S81, §331.804; 81 Acts, ch 117, §803]

2002 Acts, ch 1098, §4
Subsection 1 amended

331.805 Prohibited actions — cremation permit — penalties.

1. When a death occurs in the manner specified in section 331.802, subsection 3, the body shall not be disturbed or removed from the position in which it is found without authorization from the county medical examiner or the state medical examiner except for the purpose of preserving the body from loss or destruction or permitting the passage of traffic on a highway, railroad or airport, or unless the failure to immediately remove the body might endanger life, safety, or health. A person who moves, disturbs, or conceals a body in violation of this subsection or chapter 691 is guilty of a simple misdemeanor.

2. It is unlawful to embalm a body when the embalmer has reason to believe death occurred in a manner specified in section 331.802, subsection 3, when there is evidence sufficient to arouse suspicion of crime in connection with the cause of death of the deceased, or where it is the duty of a medical examiner to view the body and investigate the death of the deceased person, until the permission of a county medical examiner has been obtained. When feasible, the body shall be released to the funeral director for embalming within twenty-four hours of death.

3. *a.* It is unlawful to cremate, bury, or send out of the state the body of a deceased person when death occurred in a manner specified in section 331.802, subsection 3, until a medical examiner certifies in writing that the examiner has viewed the body, has made personal inquiry into the cause and manner of death, and all necessary autopsy or postmortem examinations have been completed. However, the body of a deceased person may be sent out of state for the purpose of an autopsy or postmortem examination if the county medical examiner certifies in writing that the out-of-state autopsy or postmortem examination is necessary or, in the case of a death which is not of public interest as specified in section 331.802, subsection 3, if the attending physician certifies to the county medical examiner that the performance of the autopsy out of state is proper.

b. If the next of kin, guardian, or other person authorized to act on behalf of a deceased person has requested that the body of the deceased person be cremated, a permit for cremation must be obtained from a medical examiner. Cremation permits by the medical examiner must be made on the most current forms prepared at the direction of and approved by the state medical examiner, with copies forwarded to the state medical examiner's office. Costs for the cremation permit issued by a medical examiner shall not exceed seventy-five dollars. The costs shall be borne by the family, next of kin, guardian of the decedent, or other person.

4. A person who violates a provision of subsection 2 or 3 is guilty of a serious misdemeanor.

[C62, 66, §339.12; C71, 73, 75, 77, 79, 81, §339.9, 339.13; S81, §331.805; 81 Acts, ch 117, §804]

89 Acts, ch 81, §1; 96 Acts, ch 1148, §11; 2002 Acts, ch 1098, §5
Subsection 3, paragraph b amended

331.806 to 331.900 Reserved.

PART 9

MISCELLANEOUS PROVISIONS

331.901 General duties of county officers.

1. Except as otherwise provided by state law, a county officer shall furnish to the governor or either house of the general assembly, upon their request, any information which the officer possesses.

2. A county officer shall not appear as an agent, attorney, or solicitor for another person in a matter pending before the board.

3. If a county officer who is required to report the collection of fees to the board neglects or refuses to make the report, the board shall employ an expert accountant to examine the books, papers, and accounts of the delinquent officer and to make the required report. The expense of employing the expert accountant shall be charged to the delinquent officer and may be collected upon the official bond of the officer.

4. A county officer, deputy officer, or employee shall not take, purchase, receive in payment, or exchange a warrant, scrip, or other evidence of the county's indebtedness or demand against the county for an amount less than the amount expressed on the face of the warrant, scrip, or other evidence of indebtedness or demand, plus the accrued interest.

5. A county or township officer or employee shall not appropriate, give, or loan public funds to or in favor of an institution, school, association, or object which is under ecclesiastical or sectarian management or control.

6. All reports and forms required to be submitted by a county officer to a state officer or agency shall be submitted on standardized forms furnished by the state officer or agency. The state officers and agencies which receive reports and forms from county officers shall consult with the department of management, shall devise standardized reports and forms which will permit computer processing of the information submitted, and shall distribute the standardized reports and forms to the county officers.

7. A county officer, deputy officer, or employee who violates subsection 4 or 5 is guilty of a simple

misdemeanor.

1. [C97, §544; C24, 27, 31, 35, 39, §**5249;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §343.1; S81, §331.901(1); 81 Acts, ch 117, §900]

2. [C73, §326; C97, §545; C24, 27, 31, 35, 39, §**5250;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §343.2; S81, §331.901(2); 81 Acts, ch 117, §900]

3. [C97, §548; C24, 27, 31, 35, 39, §**5253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §343.5; S81, §331.901(3); 81 Acts, ch 117, §900]

4. [R60, §2186; C73, §556; C97, §596; C24, 27, 31, 35, 39, §**5255;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §343.7; S81, §331.901(4); 81 Acts, ch 117, §900]

5. [C73, §552; C97, §593; C24, 27, 31, 35, 39, §**5256;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §343.8; S81, §331.901(5); 81 Acts, ch 117, §900]

6. [C71, 73, 75, 77, 79, 81, §343.14; S81, §331.901(7); 81 Acts, ch 117, §900]

7. [R60, §2188; C73, §558; C97, §598; C24, 27, 31, 35, 39, §**5257;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §343.9; S81, §331.901(8); 81 Acts, ch 117, §900]

83 Acts, ch 123, §152, 209; 83 Acts, ch 186, §10096, 10201

331.902 Collection and disposition of fees.

1. Unless otherwise specifically provided by statute, the fees and other charges collected by the auditor, treasurer, recorder, and sheriff, and their deputies or employees, belong to the county.

2. Each elective officer specified in subsection 1 shall maintain a record in the county system of each fee and charge collected. The record shall show the date, amount, payor, and type of service, and, when the fee is for recording an instrument, the names of the parties to the instrument. The record of the fees collected shall be retained for three years after audit of the county pursuant to section 11.6.

3. Each elective officer specified in subsection 1 shall make a quarterly report to the board showing, by type, the fees collected during the preceding quarter. The officer shall pay at least quarterly to the county treasury the fees and charges collected, except for the county auditor's transfer fees, which shall be paid directly to the county treasurer by the county recorder. The officer shall receive a receipt and maintain a record of the date and amount of each payment into the county treasury. This subsection does not apply to the county treasurer if the county treasurer credits the fees daily to the county treasury and reports the receipts on the monthly report to the auditor and the board of supervisors.

4. When examining, settling, or verifying reports or accounts of fees or other monetary receipts of the county under section 331.401, subsection 1, paragraph *"p"*, this section, or chapter 12B, the cash on hand in the office of the county officer or employee subject to the settlement or examination need not be counted in the presence of, or by, the board of supervisors or other examining county officer. This section does not prohibit the actual counting of cash on hand in a county at the time of the examination or settlement if the examining authority requests the actual count.

[C51, §212; R60, §423, 431; C73, §3785, 3796; C97, §299, 480, 492, 495, 508; S13, §498, 508, 550-c; SS15, §479-a, 490-a, 495; C24, 27, 31, 35, 39, §**5245 – 5247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §342.1 – 342.3; S81, §331.902; 81 Acts, ch 117, §901; 82 Acts, ch 1073, §1]

83 Acts, ch 6, §1; 83 Acts, ch 186, §10097, 10201; 84 Acts, ch 1125, §1; 86 Acts, ch 1079, §1; 94 Acts, ch 1025, §1; 97 Acts, ch 121, §9; 2000 Acts, ch 1085, §3

331.903 Appointment of deputies, assistants and clerks.

1. The auditor, treasurer, recorder, sheriff, and county attorney may each appoint, with approval of the board, one or more deputies, assistants, or clerks for whose acts the principal officer is responsible. The number of deputies, assistants, and clerks for each office shall be determined by the board and the number and approval of each appointment shall be adopted by a resolution recorded in the minutes of the board.

2. When an appointment has been approved by the board, the principal officer making the appointment shall issue a written certificate of appointment which shall be filed and kept in the office of the auditor. A certificate of appointment may be revoked in writing by the principal officer making the appointment, which revocation shall also be filed and kept in the office of the auditor.

3. Each deputy officer shall give bond in an amount determined by the officer who has the authority to approve the bond of the deputy's principal officer, with sureties to be approved by that officer. Upon approval, the bond shall be filed and kept in the office of the auditor. Each deputy officer shall take the same oath as the deputy's principal officer which shall be endorsed on the certificate of appointment. The bond of a deputy sheriff shall be either a bond or liability policy as required by the sheriff with the approval of the board.

4. Each deputy officer, assistant and clerk shall perform the duties assigned by the principal officer making the appointment. During the absence or disability of the principal officer, the first deputy, or designee in those instances where there is no first deputy or in the absence or disability of the first deputy, shall perform the duties of the principal officer.

5. The auditor may also appoint temporary assistants as provided in section 331.503 and the county attorney may appoint temporary assistants or a full-time prosecutor as provided in section 331.757.

6. The maximum age for a person to be em-

ployed as a deputy sheriff appointed pursuant to this section is sixty-five years of age.

[C51, §411, 412, 415, 416; R60, §642, 643, 646, 647, 2069; C73, §766, 767, 769, 770, 1770; C97, §298, 303, 481, 491, 496, 510, 2734; S13, §303-a, 496; SS15, §298, 481, 491, 496, 510-b, 2734-b; C24, 27, §5238 – 5244; C31, 35, §5238 – 5241, 5241-d1, 5242 – 5244; C39, §**5238 – 5241, 5241.1, 5242 – 5244;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §341.1 – 341.8; C77, 79, 81, §341.1 – 341.9; S81, §331.903; 81 Acts, ch 117, §902]

83 Acts, ch 186, §10098, 10201; 86 Acts, ch 1061, §1; 94 Acts, ch 1173, §31; 98 Acts, ch 1183, §112

331.904 Salaries of deputies, assistants and clerks.

1. The annual salary of the first and second deputy officer of the office of auditor, treasurer, and recorder, and the deputy in charge of the motor vehicle registration and title division shall each be an amount not to exceed eighty percent of the annual salary of the deputy's principal officer. In offices where more than two deputies are required, each additional deputy shall be paid an amount not to exceed seventy-five percent of the principal officer's salary. The amount of the annual salary of each deputy shall be certified by the principal officer to the board and, if a deputy's salary does not exceed the limitations specified in this subsection, the board shall certify the salary to the auditor. The board shall not certify a deputy's salary which exceeds the limitations of this subsection.

2. Each deputy sheriff shall receive an annual base salary as follows:

a. The annual base salary of a first or second deputy sheriff shall not exceed eighty-five percent of the annual base salary of the sheriff.

b. The annual base salary of any other deputy sheriff shall not exceed the annual base salary of the first or second deputy sheriff.

c. The sheriff shall set the annual base salary of each deputy sheriff who is classified as exempt under the federal Fair Labor Standards Act of 1938, as amended, subject to the limitations specified in paragraphs *"a"* and *"b"*. The sheriff shall certify the annual base salaries of the exempt deputy sheriffs to the board and, if the limitations of paragraphs *"a"* and *"b"* are not exceeded, the board shall certify the annual base salaries to the county auditor.

d. The board shall set the annual base salaries of any deputy sheriffs who are not classified as exempt under the federal Fair Labor Standards Act of 1938, as amended. Upon certification by the sheriff, the board shall review, and may modify, the annual base salaries of the deputy sheriffs who are not classified as exempt. The annual base salaries set by the board are subject to the limitations specified in paragraphs *"a"* and *"b"*.

e. As used in this subsection, *"base salary"* means the basic compensation excluding overtime pay, longevity pay, shift differential pay, or other supplement pay and fringe benefits.

3. The annual salary of each assistant county attorney shall be determined by the county attorney within the budget set for the county attorney's office by the board. The salary of an assistant county attorney shall not exceed eighty-five percent of the maximum salary of a full-time county attorney. The county attorney shall inform the board of the full-time or part-time status of each assistant county attorney. In the case of a part-time assistant county attorney, the county attorney shall inform the board of the approximate number of hours per week the assistant county attorney shall devote to official duties.

4. The board shall determine the compensation of extra help and clerks appointed by the principal county officers.

5. The deputy officers, assistants, clerks, and other employees of the county are also entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties.

1. [C51, §417; R60, §648; C73, §771; C97, §298, 481, 491, 496; S13, §496; SS15, §298, 298-a, 481, 491; C24, 27, 31, 35, 39, §**5221, 5223, 5225, 5331;** C46, §340.2, 340.4, 340.6, 340.12; C50, 54, 58, 62, §340.2; C66, 71, 73, 75, 77, 79, 81, §340.4; S81, §331.904(1); 81 Acts, ch 117, §903]

2. [C51, §417; R60, §648; C73, §771; C97, §510; SS15, §510-b; C24, 27, 31, 35, 39, §**5227;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §340.8; S81, §331.904(2); 81 Acts, ch 117, §903]

3. [C97, §303; S13, §303-a; C24, 27, 31, 35, 39, §**5229;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §340.10; C77, 79, 81, §340.10, 341.9; S81, §331.904(3); 81 Acts, ch 117, §903]

4. [C51, §417; R60, §648; C73, §771; C97, §298, 481, 491, 496, 510; S13, §496; SS15, §298, 298-a, 481, 491, 510-b; C24, 27, 31, 35, 39, §**5221, 5223, 5225, 5227, 5331;** C46, §340.2, 340.4, 340.6, 340.8, 340.12; C50, 54, 58, 62, §340.2, 340.8; C66, 71, 73, 75, 77, 79, 81, §340.4, 340.8; S81, §331.904(4); 81 Acts, ch 117, §903]

5. [S81, §331.904(5); 81 Acts, ch 117, §903]

83 Acts, ch 34, §1; 83 Acts, ch 123, §153, 209; 83 Acts, ch 186, §10099, 10201; 85 Acts, ch 195, §43; 94 Acts, ch 1004, §1; 97 Acts, ch 142, §1

331.905 County compensation board.

1. There is created in each county a county compensation board which shall be composed of seven members who are residents of the county. The members of the county compensation board shall be selected as follows:

a. Two members shall be appointed by the board of supervisors.

b. One member shall be appointed by each of the following county officers: the county auditor, county attorney, county recorder, county treasurer, and county sheriff.

2. The members of the county compensation

board shall be appointed to four-year, staggered terms of office. The members of the county compensation board shall not be officers or employees of the state or a political subdivision of the state. A term shall be effective on the first of July of the year of appointment and a vacancy shall be filled for the unexpired term in the same manner as the original appointment.

3. The members of the county compensation board shall receive no compensation, but they shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

4. The county compensation board shall elect a chairperson and vice chairperson annually from among its membership. The county compensation board shall meet at the call of the chairperson or upon written request of a majority of its membership. The concurrence of a majority of the members of the county compensation board shall determine any matter relating to its duties.

5. The board of supervisors shall provide the necessary office facilities and the technical and clerical assistance requested by the county compensation board to carry out its duties.

6. The expenses of the county compensation board members, the salaries and expenses of any technical and clerical assistance, and the cost of providing any facilities shall be paid from the general fund of the county.

[C77, 79, 81, §340A.1, 340A.4, 340A.5, 340A.7; S81, §331.905; 81 Acts, ch 117, §904, 907; 82 Acts, ch 1104, §60]

87 Acts, ch 227, §28

331.906 Conventions — membership selection. Repealed by 87 Acts, ch 227, § 34.

331.907 Compensation schedule — preparation and adoption.

1. The annual compensation of the auditor, treasurer, recorder, sheriff, county attorney, and supervisors shall be determined as provided in this section. The county compensation board annually shall review the compensation paid to comparable officers in other counties of this state, other states, private enterprise, and the federal government. In setting the salary of the county sheriff, the county compensation board shall consider setting the sheriff's salary so that it is comparable to salaries paid to professional law enforcement administrators and command officers of the Iowa state patrol, the division of criminal investigation of the department of public safety, and city police agencies in this state. The county compensation board shall prepare a compensation schedule for the elective county officers for the succeeding fiscal year. A recommended compensation schedule requires a majority vote of the membership of the county compensation board.

2. At the public hearing held on the county budget as provided in section 331.434, the county compensation board shall submit its recommended compensation schedule for the next fiscal year to the board of supervisors for inclusion in the county budget. The board of supervisors shall review the recommended compensation schedule for the elected county officers and determine the final compensation schedule which shall not exceed the compensation schedule recommended by the county compensation board. In determining the final compensation schedule if the board of supervisors wishes to reduce the amount of the recommended compensation schedule, the amount of salary increase proposed for each elected county officer shall be reduced an equal percentage. A copy of the final compensation schedule shall be filed with the county budget at the office of the director of the department of management. The final compensation schedule takes effect on July 1 following its adoption by the board of supervisors.

3. The elected county officers are also entitled to receive their actual and necessary expenses incurred in performance of official duties of their respective offices.

4. In counties having two courthouses, a principal elected county officer and the principal officer's first deputy or assistant may agree in writing to a division of their annual salaries. The division shall not allow for payment to the elected officer and the first deputy or assistant which is greater than the sum of the two salaries otherwise authorized by law. Upon certification to the board by the elected officer involved, the board shall certify to the auditor the annual salaries certified by the elected officer.

1 – 3. [C51, §169, 211, 213, 2536; R60, §380, 381, 422, 424, 4145; C73, §3775, 3784, 3788, 3789, 3792, 3793, 3798; C97, §297, 308, 479, 490, 495, 509; S13, §297; SS15, §308, 479, 490, 490-a, 495, 510-a, -c; C24, 27, 31, 35, 39, §**5220, 5222, 5224, 5226, 5228, 5230;** C46, 50, 54, 58, 62, §340.1, 340.3, 340.5, 340.7, 340.9, 340.11; C66, 71, 73, 75, §340.1, 340.3, 340.7, 340.9; C77, 79, 81, §340.1, 340.7, 340.9, 340A.6; S81, §331.907(1 – 3); 81 Acts, ch 117, §906]

4. [C71, 73, 75, 77, 79, 81, §340.12; S81, §331.907(4); 81 Acts, ch 117, §906]

83 Acts, ch 123, §154, 209; 83 Acts, ch 186, §10100, 10201; 86 Acts, ch 1095, §1; 87 Acts, ch 227, §29; 98 Acts, ch 1074, §28

331.908 Motor vehicles required to operate on ethanol-blended gasoline.

A motor vehicle purchased or used by a county to provide county services shall not, on or after January 1, 1993, operate on gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an un-

marked vehicle used for purposes of providing law enforcement or security.

91 Acts, ch 254, §21; 93 Acts, ch 26, §7

331.909 Multidisciplinary community services teams.

1. A county or multicounty consortium of agencies providing health, counseling, economic assistance, education, law enforcement, or therapeutic services may establish a multidisciplinary team for the more effective planning and delivery of services to an individual or family under the following conditions:

a. The team complies with federal regulations regarding confidentiality.

b. The agencies comprising the team have written confidentiality standards.

c. The agencies comprising the team enter into an annual interagency agreement to comply with confidentiality standards specified in the agreement.

d. An agency initiating a multidisciplinary team obtains a signed agreement from an individual authorizing the team to share information concerning the individual or the individual's family on a confidential basis.

2. The activities of a multidisciplinary community services team shall not duplicate the activities of a multidisciplinary team for child abuse under section 235A.13, dependent adult abuse activities under section 235B.6, area education agency activities under section 294A.14, or child victim services provided under section 915.35.

3. A multidisciplinary community services team shall select a chairperson and other officers as deemed necessary by the members of the team. A multidisciplinary community services team is not a governmental body as defined in section 21.2 and is not subject to the provisions of chapter 21, relating to open meetings. Notwithstanding chapter 22, the confidentiality of information in the possession of a multidisciplinary team which is required by law to be confidential shall be maintained except as specifically provided by this section.

4. The members of a multidisciplinary community services team are expressly authorized to orally disclose personally identifying information to one another which is otherwise required by law to be confidential. Disclosure of confidential information other than oral information between team members under provisions of this section is expressly prohibited.

5. A member of a multidisciplinary community services team shall not use confidential information obtained from another team member except in the best interests of the subject of the confidential information and shall not disclose such information to another person except as otherwise authorized by law. A member of a multidisciplinary community services team who willfully uses or discloses confidential information in violation of this section commits a serious misdemeanor. Notwithstanding section 903.1, the penalty for a person convicted pursuant to this subsection is a fine of not more than five hundred dollars in the case of a first offense and not more than five thousand dollars in the case of each subsequent offense.

96 Acts, ch 1156, §1; 98 Acts, ch 1090, §70, 84

CHAPTER 332

POWERS AND DUTIES OF BOARD OF SUPERVISORS

Repealed by 81 Acts, ch 117, §1097

CHAPTER 333

COUNTY AUDITOR

Repealed by 81 Acts, ch 117, §1244

CHAPTER 333A

COUNTY FINANCE COMMITTEE

333A.1 Definition.
333A.2 County finance committee.
333A.3 Office — staff — compensation.
333A.4 Powers and duties of the committee.
333A.5 Additional duties. Repealed by 86 Acts, ch 1245, §123.
333A.6 Committee abolished. Repealed by 83 Acts, ch 123, §206, 209.

333A.1 Definition.
As used in this chapter, "committee" means the county finance committee.
[C81, §333A.1]

333A.2 County finance committee.
1. There is created a county finance committee consisting of eight members. The members of the committee shall be:
a. The auditor of state or a designee of the auditor of state.
b. Five elected county officials who are regularly involved in budget preparation. One county official shall be from a county with a population of less than eleven thousand five hundred, one from a county with a population of more than eleven thousand five hundred but not more than sixteen thousand, one from a county with a population of more than sixteen thousand but not more than twenty-two thousand five hundred, one from a county with a population of more than twenty-two thousand five hundred but not more than eighty thousand and one from a county with a population of more than eighty thousand. The governor shall select and appoint the county officials, subject to the approval of two-thirds of the members of the senate.
c. A certified public accountant experienced in governmental accounting selected and appointed by the governor with the approval of two-thirds of the members of the senate.
d. An operations research analyst experienced in cost effectiveness analysis of county services appointed by, and to serve at the pleasure of, the legislative council.
2. The members of the committee appointed by the governor are appointed for four-year terms except that of the initial appointments, two county official members shall be appointed to two-year terms. When a county official member no longer holds the office which qualified the official for appointment, the official shall no longer be a member of the committee. Any person appointed to fill a vacancy shall be appointed to serve the unexpired term. Any member is eligible for reappointment, but a member shall not be appointed to serve more than two four-year terms.
[C81, §333A.2]
86 Acts, ch 1245, §116

333A.3 Office — staff — compensation.
1. The committee is located for administrative purposes within the department of management. The director shall provide office space, staff assistance, and necessary supplies and equipment for the committee. The director shall budget funds to pay the compensation and expenses of the committee.
2. Each member is entitled to reimbursement for actual and necessary expenses incurred in the performance of committee duties. Each member, except officers and employees of the state and full-time elected county officials, is entitled to receive a per diem as specified in section 7E.6 for each day spent in the performance of committee duties.
3. The committee shall select its own officers and meet at the call of the director of the department of management or at the request of a majority of the committee.
[C81, §333A.3]
86 Acts, ch 1245, §117; 90 Acts, ch 1250, §3; 90 Acts, ch 1256, §46

333A.4 Powers and duties of the committee.
The committee shall:
1. Design budget forms required by section 331.434 and annual financial report forms required by section 331.403 for all county funds.
2. Establish guidelines for program budgeting and accounting and the preparation of capital improvement plans. It shall, where practicable, use recommendations of the national council on governmental accounting or its successor organization.
3. Review and comment on county budgets to county officials and provide assistance to enable counties to improve upon and use sound financial procedures.
4. Conduct studies of county revenues and expenditures.
5. Advise and make recommendations annually to the governor and the general assembly concerning county budgets and finance.
6. Promulgate its rules in compliance with chapter 17A.
[C81, §333A.4]
83 Acts, ch 123, §155, 209

333A.5 Additional duties. Repealed by 86 Acts, ch 1245, § 123.

333A.6 Committee abolished. Repealed by 83 Acts, ch 123, § 206, 209.

CHAPTER 334

COUNTY TREASURER

Repealed by 81 Acts, ch 117, §1244

CHAPTER 334A

COUNTY GOVERNMENT ASSISTANCE FUND

Repealed by 88 Acts, ch 1250, §22; see chapter 405A

CHAPTER 335

COUNTY ZONING

335.1 Where applicable.
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335.24 Conflict with other regulations.
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335.26 Reserved.
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335.30 Manufactured and modular homes.
335.30A Land-leased communities.
335.31 Elder family homes.
335.32 Homes for persons with physical disabilities.
335.33 Elder group homes.

335.1 Where applicable.

The provisions of this chapter shall be applicable to any county of the state at the option of the board of supervisors of any such county.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.1]

C93, §335.1

335.2 Farms exempt.

Except to the extent required to implement section 335.27, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. However, the ordinances may apply to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358A.2; 81 Acts, ch 117, §1070; 82 Acts, ch 1245, §16]

C93, §335.2

335.3 Powers.

Subject to section 335.2, the board of supervisors may by ordinance regulate and restrict the height, number of structures, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and may regulate, restrict, and prohibit the use for residential purposes of tents, trailers, and portable or potentially portable structures. However, such powers shall be exercised only with reference to land and structures located within the county but lying outside of the corporate limits of any city.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358A.3; 81 Acts, ch 117, §1071]

C93, §335.3

335.4 Areas and districts.

For any and all of said purposes the board of supervisors may divide the county, or any area or areas within the county, into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land. All such regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81,

§358A.4]
C93, §335.4

335.5 Objectives.

The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street or highway; to secure safety from fire, flood, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. However, provisions of this section relating to the objectives of energy conservation and access to solar energy shall not be construed as voiding any zoning regulation existing on July 1, 1981, or to require zoning in a county that did not have zoning prior to July 1, 1981.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358A.5; 81 Acts, ch 125, §1; 82 Acts, ch 1245, §17]
C93, §335.5

335.6 Procedure — hearings — notice.

The board of supervisors shall provide for the manner in which the regulations and restrictions and the boundaries of the districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, the regulation, restriction, or boundary shall not become effective until after a public hearing, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the hearing shall be published as provided in section 331.305. The notice shall state the location of the district affected by naming the township and section, and the boundaries of the district shall be expressed in terms of streets or roads if possible. The regulation, restriction, or boundary shall be adopted in compliance with section 331.302.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.6]
87 Acts, ch 31, §1; 87 Acts, ch 43, §12
C93, §335.6

335.7 Changes — protest.

The regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed. Notwithstanding section 335.4, as a part of an ordinance changing land from one zoning district to another zoning district or an ordinance approving a site development plan, a board of supervisors may impose conditions on a property owner which are in addition to existing regulations if the additional conditions have been agreed to in writing by the property owner before the public hearing required under this section or any adjournment of the hearing. The conditions must be reasonable and imposed to satisfy public needs which are directly caused by the requested change. In case, however, of a protest against the change signed by the owners of twenty percent or more either of the area included in the proposed change, or of the area immediately adjacent to the proposed change and within five hundred feet of the boundaries of the proposed change, the amendment shall not become effective except by the favorable vote of at least sixty percent of all of the members of the board of supervisors. The provisions of section 335.6 relative to public hearings and official notice shall apply equally to all changes or amendments.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.7]
85 Acts, ch 9, §1
C93, §335.7

335.8 Commission appointed.

In order to avail itself of the powers conferred by this chapter, the board of supervisors shall appoint a commission, a majority of whose members shall reside within the county but outside the corporate limits of any city, to be known as the county zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and the board of supervisors shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the board of supervisors amendments, supplements, changes or modifications. The zoning commission, with the approval of the board of supervisors, may contract with professional consultants, regional planning commissions, the Iowa department of economic development, or the federal government, for local planning assistance.

[C50, 54, 58, §358A.8; C62, 66, 71, 73, §358A.8, 373.21; C75, 77, 79, 81, §358A.8]
C93, §335.8

335.9 Administrative officer.

The board of supervisors shall appoint an administrative officer authorized to enforce the reso-

lutions or ordinances adopted by the board of supervisors. The administrative officer may be a person holding other public office in the county, or in a city or other governmental subdivision within the county, and the board of supervisors is authorized to pay to the officer compensation as it deems fit.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.9]

83 Acts, ch 123, §161, 209

C93, §335.9

335.10 Board of adjustment — review and remand.

The board of supervisors shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinances or regulations in harmony with its general purpose and intent and in accordance with the general or specific rules therein contained, and provide that any property owner aggrieved by the action of the board of supervisors in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners.

The board of supervisors may provide for its review of variances granted by the board of adjustment before their effective date. The board of supervisors may remand a decision to grant a variance to the board of adjustment for further study. If remanded, the effective date of the variance is delayed for thirty days from the date of the remand.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.10]

89 Acts, ch 55, §1

C93, §335.10

335.11 Membership of board.

The board of adjustment shall consist of five members, a majority of whom shall reside within the county but outside the corporate limits of any city, each to be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.11]

C93, §335.11

335.12 Rules.

The board shall adopt rules in accordance with the provisions of any regulation or ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.12]

C93, §335.12

335.13 Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.13]

C93, §335.13

335.14 Stay of proceedings.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.14]

C93, §335.14

335.15 Powers of board.

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, de-

cision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal, in specific cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.15]

C93, §335.15

335.16 Decision.

In exercising the above mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.16]

C93, §335.16

335.17 Vote required.

The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.17]

C93, §335.17

335.18 Petition to court.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.18]

C93, §335.18

335.19 Review by court.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.19]

C93, §335.19

335.20 Record advanced.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions hereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.20]

C93, §335.20

335.21 Trial to court.

If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with the referee's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.21]

C93, §335.21

335.22 Precedence.

All issues in any proceedings under the foregoing sections shall have preference over all other civil actions and proceedings.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.22]

C93, §335.22

335.23 Restraining order.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, con-

verted, or maintained; or any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the board of supervisors, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.23]

C93, §335.23

335.24 Conflict with other regulations.

If the regulations made under this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under this chapter govern. If any other statute or local ordinance or regulation requires a greater width or size of yards, courts or other open spaces, or requires a lower height of building or a less number of stories, or a greater percentage of lot to be left unoccupied, or imposes other higher standards than are required by the regulations made under this chapter, the other statute or local ordinance or regulation governs. If a regulation proposed or made under this chapter relates to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream, prior approval of the department of water, air and waste management is required to establish, amend, supplement, change, or modify the regulation or to grant any variation or exception from the regulation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358A.24; 82 Acts, ch 1199, §67, 96]

C93, §335.24

335.25 Zoning for family homes.

1. It is the intent of this section to assist in improving the quality of life of persons with a developmental disability or brain injury by integrating them into the mainstream of society by making available to them community residential opportunities in the residential areas of this state. In order to implement this intent, this section shall be liberally construed.

2. *a. "Brain injury"* means brain injury as defined in section 135.22.

b. "Developmental disability" means a disability of a person which has continued or can be expected to continue indefinitely and which is one of the following:

(1) Attributable to mental retardation, cerebral palsy, epilepsy, or autism.

(2) Attributable to any other condition found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation or requires treatment and services similar to those required for the persons.

(3) Attributable to dyslexia resulting from a disability described in either subparagraph (1) or (2).

(4) Attributable to a mental or nervous disorder.

c. "Family home" means a community-based residential home which is licensed as a residential care facility under chapter 135C or as a child foster care facility under chapter 237 to provide room and board, personal care, habilitation services, and supervision in a family environment exclusively for not more than eight persons with a developmental disability or brain injury and any necessary support personnel. However, family home does not mean an individual foster family home licensed under chapter 237.

d. "Permitted use" means a use by right which is authorized in all residential zoning districts.

e. "Residential" means regularly used by its occupants as a permanent place of abode, which is made one's home as opposed to one's place of business and which has housekeeping and cooking facilities for its occupants only.

3. Notwithstanding the optional provision in section 335.1 and any other provision of this chapter to the contrary, a county, county board of supervisors, or a county zoning commission shall consider a family home a residential use of property for the purposes of zoning and shall treat a family home as a permitted use in all residential zones or districts, including all single-family residential zones or districts, of the county. A county, county board of supervisors, or a county zoning commission shall not require that a family home, its owner, or operator obtain a conditional use permit, special use permit, special exception, or variance. However, new family homes owned or operated by public or private agencies shall be dispersed through the residential zones and districts and shall not be located within contiguous areas equivalent in size to city block areas. Section 135C.23, subsection 2, shall apply to all residents of a family home.

4. A restriction, reservation, condition, exception, or covenant in a subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property in a county which permits residential use of property but prohibits the use of property as a family home for persons with a developmental disability or brain injury, to the extent of the prohibition, is void as against the public policy of this state and shall not be given le-

gal or equitable effect.
83 Acts, ch 11, §1
CS83, §358A.25
C93, §335.25
93 Acts, ch 90, §2; 94 Acts, ch 1023, §107; 94 Acts, ch 1170, §8; 96 Acts, ch 1129, §113

335.26 Reserved.

335.27 Agricultural land preservation ordinance.

If a county adopts an agricultural land preservation ordinance under this chapter which subjects farmland to the same use restrictions provided in section 352.6 for agricultural areas, section 6B.3, subsection 1, paragraph f, and sections 352.10 to 352.12 shall apply to farms and farm operations which are subject to the agricultural land preservation ordinance.
[82 Acts, ch 1245, §15, 20]
C83, §358A.27
C93, §335.27

335.28 and 335.29 Reserved.

335.30 Manufactured and modular homes.

A county shall not adopt or enforce zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home. However, a zoning ordinance or regulation shall require that a manufactured home be located and installed according to the same standards, including but not limited to, a permanent foundation system, set-back, and minimum square footage which would apply to a site-built, single family dwelling on the same lot, and shall require that the home is assessed and taxed as a site-built dwelling. A zoning ordinance or other regulation shall not require a perimeter foundation system for a manufactured home which is incompatible with the structural design of the manufactured home structure. A county shall not require more than one permanent foundation system for a manufactured home. For purposes of this section, a permanent foundation may be a pier footing foundation system designed and constructed to be compatible with the structure and the conditions of the site. When units are located outside a manufactured home community or mobile home park, requirements may be imposed which ensure visual compatibility of the permanent foundation system with surrounding residential structures. As used in this section, *"manufactured home"* means a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C. § 5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. This section shall not be construed as abrogating a recorded restrictive covenant.

A county shall not adopt or enforce construction, building, or design ordinances, regulations, requirements, or restrictions which would mandate width standards greater than twenty-four feet, roof pitch, or other design standards for manufactured housing if the housing otherwise complies with 42 U.S.C. § 5403. A county shall not adopt or enforce zoning or subdivision regulations or other ordinances which mandate width standards for a single modular or manufactured home which is sited upon land otherwise zoned as agricultural land. However, this paragraph shall not prohibit a county from adopting and enforcing zoning regulations related to transportation, water, sewerage, or other land development.
84 Acts, ch 1238, §1
C85, §358A.30
C93, §335.30
93 Acts, ch 154, §3; 94 Acts, ch 1110, §1; 97 Acts, ch 86, §1; 2001 Acts, ch 153, §16

335.30A Land-leased communities.

A county shall not adopt or enforce zoning or subdivision regulations or other ordinances which disallow or make infeasible the plans and specifications of land-leased communities because the housing within the land-leased community will be manufactured housing.

"Land-leased community" means any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, or enclosure used or intended for use as part of the equipment of the land-leased community. The term *"land-leased community"* shall not be construed to include homes, buildings, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students. A manufactured home located in a land-leased community shall be taxed under section 435.22 as if the manufactured home were located in a mobile home park.
97 Acts, ch 86, §2; 98 Acts, ch 1107, §10, 33

335.31 Elder family homes.

A county board of supervisors or county zoning commission shall consider an elder family home a family home, as defined in section 335.25, for purposes of zoning, in accordance with section 231A.2, and may identify limitations regarding the proximity of one proposed elder family home to another.
91 Acts, ch 88, §3
CS91, §358A.31
C93, §335.31

335.32 Homes for persons with physical disabilities.

A county board of supervisors or county zoning commission shall consider a home for persons with physical disabilities a family home, as defined in section 335.25, for the purposes of zoning, in accordance with chapter 504C.

93 Acts, ch 90, §3; 94 Acts, ch 1023, §108

335.33 Elder group homes.

A county board of supervisors or county zoning commission shall consider an elder group home a family home, as defined in section 335.25, for purposes of zoning, in accordance with section 231B.2, and may establish limitations regarding the proximity of one proposed elder group home to another.

93 Acts, ch 72, §7

CHAPTER 336

LIBRARY DISTRICTS

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336.1 Reserved.

336.2 Library districts formed.

A library district may be established composed of one or more counties, one or more cities, or any combination of cities and counties.

Eligible electors residing within the proposed district in a number not less than five percent of those voting for president of the United States or governor, as the case may be, within the district at the last general election may petition the board of supervisors of the county, or the city council, for the establishment of the library district. The petition shall clearly designate the area to be included in the district.

The board of supervisors of each county and the city council of each city containing area within the proposed district shall submit the question to the registered voters within their respective counties and cities at the next general election. The petition shall be filed not less than eighty-two days before the election.

A library district shall be established if a majority of the electors voting on the question and residing in the proposed library district favor its establishment.

The result of the election within cities maintaining a free public library shall be considered separately, and no city shall be included within the library district unless a majority of its electors voting on the question favor its inclusion. In such cases the boundaries of an established district may vary from those of the proposed district.

After the establishment of a library district other areas may be included by mutual agreement of the board of trustees of the library district and the governing body of the area sought to be included.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.2]

C93, §336.2

95 Acts, ch 67, §53; 2001 Acts, ch 158, §26; 2002 Acts, ch 1134, §96, 115

2002 amendments to unnumbered paragraphs 3 – 5 take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraphs 3 – 5 amended

336.3 Gifts.

When a gift for library purposes is accepted by a county or city, its use for the library may be enforced against the board of supervisors or city council by the library board by an action of mandamus or by other proper action.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358B.3; 81 Acts, ch 117, §1072]

C93, §336.3

2001 Acts, ch 158, §27

336.4 Library trustees.

In any area in which a library district has been established in accordance with this chapter, a board of library trustees, consisting of five, seven, or nine electors of the library district, shall be appointed by the board of supervisors of any county or city comprising the library district. Membership on the library board shall be apportioned be-

tween the rural and city areas of the district in proportion to the population in each of such areas. In the event the library district is composed of two or more counties, two or more cities, or any combination of counties and cities, representation on the library board shall be equitably divided between or among the counties and cities in proportion to the population in each of the counties and cities.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.4]

C93, §336.4

2001 Acts, ch 158, §28

336.5 Terms.

Of said trustees so appointed on boards to consist of nine members, three shall hold office for two years, three for four years, and three for six years; on boards to consist of seven members, two shall hold office for two years, two for four years, and three for six years; and on boards to consist of five members, one shall hold office for two years, two for four years, and two for six years, from the first day of July following their appointment in each case. At their first meeting they shall cast lots for their respective terms, reporting the result of such lot to the board of supervisors. All subsequent appointments, whatever the size of the board, shall be for terms of six years each. Vacancies shall be filled for unexpired terms by the governing body of the taxing unit of the district represented by the retiring member.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.5]

C93, §336.5

336.6 Removal or absence of trustee.

The board of library trustees may declare the office of a trustee vacant by the trustee's removal from the library district or the trustee's unexplained absence from six consecutive regular meetings.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.6]

C93, §336.6

336.7 No compensation.

Members of said board shall receive no compensation for their services.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.7]

C93, §336.7

336.8 Powers.

Said board of library trustees shall have and exercise the following powers:

1. To meet and organize by the election of one of their number as president of the board, and by the election of a secretary and such other officers as the board may deem necessary.

2. To have charge, and supervision of the public library, its appurtenances and fixtures, and rooms containing the same, directing and controlling all the affairs of such library.

3. To employ a librarian, such assistants and employees as may be necessary for the proper management of said library, and fix their compensation; but, prior to such employment, the compensation of such librarian, assistants, and employees shall be fixed for the term of employment by a majority of the members of said board voting in favor thereof.

4. To remove such librarian, assistants, or employees by a vote of two-thirds of such board for misdemeanor, incompetency, or inattention to the duties of such employment.

5. To select and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, furniture, fixtures, stationery, and supplies for such library.

6. To authorize the use of such libraries by school corporations or by nonresidents of the area which is taxed to support such libraries and to fix charges therefor.

7. To make and adopt, amend, modify, or repeal bylaws, rules, and regulations, not inconsistent with law, for the care, use, government, and management of such library and the business of said board, fixing and enforcing penalties for the violation thereof.

8. To have exclusive control of the expenditures for library purposes as provided by law, and of the expenditures of all moneys available by gift or otherwise for the erection of library buildings. The board shall keep a record of its proceedings.

9. To accept gifts of any property, including trust funds; to take the title to said property in the name of said library; to execute deeds and bills of sale for the conveyance of said property; and to expend the funds received by them from such gifts, for the improvement of said library.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.8]

83 Acts, ch 123, §162, 209

C93, §336.8

336.9 Methods of service.

Library service shall be accomplished by one or more of the following methods in whole or in part:

1. By the establishment of depositories of books or other educational materials to be loaned at stated times and places.

2. By the transportation of books and other educational materials by conveyances for lending the same at stated times and places.

3. By the establishment of branch libraries for lending books and other educational materials.

4. By contracting for library service with a free public library of any city.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.9]

C93, §336.9

336.10 Library fund.

All moneys received and set apart for the maintenance of the library shall be deposited in the treasury of the county or city, as determined by the board of library trustees, and paid out upon warrants drawn by the county or city auditor upon requisition of the board of trustees, signed by its president and secretary.

Provided that where a free public library is maintained jointly by two or more counties or cities or any combination of counties and cities, the library trustees may elect a library treasurer, and it shall be the duty of the city and county treasurers to pay over to the library treasurer any and all library taxes that may be collected by them monthly.

The library treasurer shall be required to furnish a bond conditioned as provided by section 64.2 in an amount as agreed upon by the participating boards of supervisors and city councils and the cost shall be paid by the participating counties and cities.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358B.10; 81 Acts, ch 117, §1073]

83 Acts, ch 123, §163, 209

C93, §336.10

2001 Acts, ch 158, §29

336.11 Annual report.

The board of trustees shall, immediately after the close of each fiscal year, submit to the board of supervisors, and the city council, as appropriate, a report containing a statement of the condition of the library, the number of books added thereto, the number circulated, the number not returned or lost, the amount of fines collected, and the amount of money expended in the maintenance thereof during such year, together with such further information as it may deem important.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.11]

C93, §336.11

2001 Acts, ch 158, §30

336.12 Real estate acquired.

In any county or city in which a free library has been established, the board of library trustees may purchase real estate in the name of the county or city for the location of library buildings and branch libraries, and for the purpose of enlarging the grounds.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.12]

C93, §336.12

2001 Acts, ch 158, §31

336.13 Maintenance expense on proportionate basis.

The maintenance of a library established in accordance with this chapter shall be on the basis of each participating unit bearing its share of the total cost in proportion to its population as compared to the total population of the library district. The board of library trustees shall make an estimate of the amount necessary for the maintenance of the library, the sources of direct library revenue, and the amount to be contributed from taxes or other revenues by the participating city or county and hold a hearing on the estimate after notice of the hearing is published as provided in section 331.305 or section 362.3, as appropriate. On or before January 10 of each year, the board of library trustees shall transmit the estimate in dollars to the board of supervisors and to the cities participating in the district. The unincorporated area of each county in the library district shall be considered as a separate supporting unit. Each board of supervisors shall review the estimate and appropriate for library purposes its share in the county rural services fund budget. Each city council shall review the estimate for the city and appropriate for library purposes its share in the city general fund budget. Each participating city or county shall contribute its share from taxation or from other sources available for library purposes on an equitable basis. With approval of a city council, the county treasurer may withhold a reasonable portion of the taxes collected for a city to meet the city's contribution for library purposes and deliver a receipt to the city clerk for the amount withheld.

This section shall not affect the taxing authority provided under section 256.69.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §358B.13; 81 Acts, ch 117, §1074; 82 Acts, ch 1104, §13]

83 Acts, ch 123, §164, 209; 84 Acts, ch 1168, §1

C93, §336.13

2001 Acts, ch 158, §32

336.14 Not applicable to contract service.

The provisions of this chapter pertaining to the establishment of a library district shall not apply to any area receiving library service from any city library, unless the petition for a library district, in addition to the required signatures of electors, is signed by the governing body of the area receiving library service under contract.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.14]

C93, §336.14

2001 Acts, ch 158, §33

336.15 Existing contracts assumed.

Whenever a library district is established in accordance with this chapter, its board of trustees shall assume all the obligations of the existing contracts made by cities, townships, school corporations, or counties to receive library service from free public libraries.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81,

§358B.15]
C93, §336.15
2001 Acts, ch 158, §34

336.16 Withdrawal from district — termination.

A city may withdraw from the library district upon a majority vote in favor of withdrawal by the electorate of the city in an election held on a motion by the city council. The election shall be held simultaneously with a general or city election. Notice of a favorable vote to withdraw shall be sent by certified mail to the board of library trustees of the library district and the county auditor or city clerk, as appropriate, prior to January 10, and the withdrawal shall be effective on July 1.

A county may withdraw from the district after a majority of the voters of the unincorporated area of the county voting on the issue favor the withdrawal. The board of supervisors shall call for the election which shall be held at the next general election.

A city or county election shall not be called until a hearing has been held on the proposal to submit a proposition of withdrawal to an election. A hearing may be held only after public notice published as provided in section 362.3 in the case of a city or section 331.305 in the case of a county. A copy of the notice submitted for publication shall be mailed to the library on or before the date of publication. The proposal presented at the hearing must include a plan for continuing adequate library service with or without all participants and the respective allocated costs and levels of service shall be stated. At the hearing, any interested person shall be given a reasonable time to be heard, either for or against the withdrawal or the plan to accompany it.

A library district may be terminated if a majority of the electors of the unincorporated area of the county and the cities included in the library district voting on the issue favor the termination. The election shall be held upon motion of the board of supervisors and simultaneously with a general or other county election. If the vote favors termination, the termination shall be effective on the succeeding July 1.

An election for withdrawal from or termination of a library district shall not be held more than once each four years.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358B.16]
84 Acts, ch 1168, §2; 85 Acts, ch 125, §1
C93, §336.16
2001 Acts, ch 158, §35; 2002 Acts, ch 1119, §51; 2002 Acts, ch 1134, §97, 115
2002 amendment to unnumbered paragraph 4 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115
Unnumbered paragraphs 1 and 4 amended

336.17 Historical association.

If a local county historical association is formed in a county having a free public library, the trustees of the library may unite with the historical association and set apart the necessary room to care for articles which come into the possession of the association. The trustees may purchase necessary receptacles and materials for the preservation and protection of articles which are of a historical and educational nature.

[S13, §729-e; C24, 27, 31, 35, 39, §**5864;** C46, 50, 54, 58, 62, 66, 71, 73, §378.16; C75, 77, 79, 81, §358B.17]
83 Acts, ch 123, §165, 209
C93, §336.17

336.18 Contracts to use city library.

1. A school corporation, township, or library district may contract for the use by its residents of a city library. A contract by a county shall supersede all contracts by townships or school corporations within the county outside of cities.

2. *a.* Contracts shall provide for the amount to be contributed. They may, by mutual consent of the contracting parties, be terminated at any time. They may also be terminated by a majority of the voters represented by either of the contracting parties, voting on the question to terminate which shall be submitted by the governing body upon a written petition of eligible electors in a number not less than five percent of those who voted in the area for president of the United States or governor at the last general election.

b. The question may be submitted at any election provided by law which covers the area of the unit seeking to terminate the contract. The petition shall be presented to the governing body not less than ten days before the last day candidates may file nomination petitions for the election at which the question is to be submitted.

3. The board of trustees of any township which has entered into a contract shall at the April meeting levy a tax not exceeding six and three-fourths cents per thousand dollars of assessed valuation on all taxable property in the township to create a fund to fulfill its obligation under the contract.

4. *a.* Eligible electors of that part of any county outside of cities in a number of not less than twenty-five percent of those in the area who voted for president of the United States or governor at the last general election may petition the board of supervisors to submit the question of requiring the board to provide library service for them and their area by contract as provided by this section.

b. The board of supervisors shall submit the question to the voters of the county residing outside of cities at the next general election. The petition shall be filed not less than ten days before the last day candidates may file nomination petitions for the election at which the question is to be submitted.

c. If a majority of those voting upon the question favors it, the board of supervisors shall within thirty days appoint a board of library trustees

from residents of the petitioning area. Vacancies shall be filled by the board.

d. The board of trustees may contract with any library for library use or service for the benefit of the residents and area represented by it.

[S13, §592-a, 792-a; SS15, §422; C24, 27, 31, 35, 39, §**5859, 5861 – 5863;** C46, 50, 54, 58, 62, 66, 71, 73, §378.11, 378.13 – 378.15; C75, 77, 79, 81, S81, §358B.18; 81 Acts, ch 117, §1075]

83 Acts, ch 123, §166, 167, 209

C93, §336.18

2001 Acts, ch 56, §25, 26; 2001 Acts, ch 158, §36; 2002 Acts, ch 1134, §98, 99, 115

2002 amendments to subsections 2 and 4 take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2 amended

Subsection 4, paragraphs a – c amended

CHAPTER 336A

PUBLIC DEFENDER

Repealed by 81 Acts, ch 117, §1244

CHAPTER 336B

COURT-APPOINTED COUNSEL AND PUBLIC DEFENDERS

Repealed by 81 Acts, ch 117, §1244

CHAPTER 337

SHERIFF

Repealed by 81 Acts, ch 117, §1244

CHAPTER 337A

SHERIFFS' UNIFORMS

Repealed by 81 Acts, ch 117, §1244

CHAPTER 338

CARE OF PRISONERS BY SHERIFF

Repealed by 81 Acts, ch 117, §1244

CHAPTER 339

COUNTY MEDICAL EXAMINER

Repealed by 81 Acts, ch 117, §1244

CHAPTER 340

COMPENSATION OF COUNTY OFFICERS, DEPUTIES AND CLERKS

Repealed by 81 Acts, ch 117, §1244

CHAPTER 340A

COUNTY COMPENSATION BOARD

Repealed by 81 Acts, ch 117, §1244

CHAPTER 341

DEPUTY OFFICERS, ASSISTANTS, AND CLERKS

Repealed by 81 Acts, ch 117, §1244

CHAPTER 341A

CIVIL SERVICE FOR DEPUTY COUNTY SHERIFFS

341A.1 Definitions.
341A.2 Civil service commission.
341A.3 Combined civil service system.
341A.4 Statutory authority.
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341A.21 Misdemeanor.

341A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the civil service commission or a combined county civil service commission created pursuant to the provisions of this chapter.

2. *"Commissioner"* means a member of the commission defined in subsection 1.

3. *"County"* means a single county or several counties combined for the purposes enumerated in section 341A.3.

[C75, 77, 79, 81, §341A.1]

341A.2 Civil service commission.

Subject to the alternate plan enumerated in section 341A.3, there is created in each county a civil service commission composed of three members. Two members shall be appointed by the county board of supervisors and one member shall be appointed by the county attorney of each county. Appointees to the commission shall be residents of the county for at least two years immediately preceding appointment, and shall be electors. Terms of office shall be six years; however, the initial members of the commission shall be appointed as follows:

One of the members appointed by the board of supervisors shall serve for a period of two years while the other member shall serve for a period of six years and the board shall specify the term of each member so appointed. The member appointed by the county attorney shall serve for a period of four years.

Any member of the commission may be removed by the appointing authority for incompetence, dereliction of duty, malfeasance in office, or for other good cause; however, no member of the commission shall be removed until apprised in writing of the nature of the charges against the member and a hearing on such charges has been held before the board of supervisors. In the event a vacancy occurs in the commission for any reason other than expiration of the term, an appointment to fill the vacancy for the unexpired term shall be made in the same manner as the original appointment.

A majority vote of the membership of the commission shall be sufficient to transact the business of the commission. Not more than two commissioners shall be members of the same political party. Commissioners shall hold no elective or other appointive public office during their terms of appointment to the commission. Commissioners shall serve without compensation but shall be re-

imbursed for necessary expense and mileage incurred in the actual performance of their duties.

[C75, 77, 79, 81, §341A.2]
2000 Acts, ch 1057, §3

341A.3 Combined civil service system.

Any combination of counties in this state may, by resolution of the boards of supervisors in each county, establish a combined civil service system to serve such counties. The specific terms of the agreement regarding the operation of the combined civil service system, including the appointment of qualified commissioners, and any other matters pertinent to the operation of such system shall be contained in the resolutions adopted by the respective boards of supervisors of the participating counties. Counties participating in a combined civil service system need not be contiguous.

Appointment of commissioners in combined counties shall be by joint meeting of the boards of supervisors and county attorneys, respectively. Each group meeting jointly shall appoint one commissioner whose term shall be six years, except that initial terms shall be as provided in section 341A.2.

[C75, 77, 79, 81, §341A.3]
2000 Acts, ch 1057, §4

341A.4 Statutory authority.

If a county or combination of counties has a civil service commission, this commission shall serve as the commission established by this chapter and shall have all the powers and duties provided by this chapter.

If more than one civil service commission exists, the one from the county with the largest population shall serve as the commission under this chapter.

[C75, 77, 79, 81, §341A.4]

341A.5 Organization.

The commission shall hold an organizational meeting immediately after its establishment and shall elect one of its members as chairperson. The commission shall hold regular meetings at least once annually, and may hold additional meetings as may be required in the fulfillment of its responsibilities. All commission meetings shall be public meetings.

The commission shall appoint a personnel director who shall act as its secretary and such other personnel as may be necessary. The personnel director shall keep and preserve all records of the commission, including reports submitted to it and examinations held under its direction, advise the commission in all matters pertaining to the civil service system, and perform such other duties as the commission may prescribe. The commission may add the personnel director's duties to a presently employed county employee.

[C75, 77, 79, 81, §341A.5]
89 Acts, ch 187, §1

341A.6 Powers and duties.

The commission shall have the following powers and duties:

1. To adopt, and amend as necessary, rules pursuant to the provisions of this chapter, which shall specify the manner in which examinations are to be held and appointments, promotions, transfers, reinstatements, demotions, suspensions, and discharges are to be made. The rules may make such other provisions regarding personnel administration and practices as are necessary or desirable in carrying out the purposes of this chapter. The commission rules, and their amendments, shall be printed and made available without cost to the public.

2. To administer practical tests designed to determine the ability of persons examined to perform the duties of the position for which they are seeking appointment. Such tests shall be designed and prepared by the director of the Iowa law enforcement academy, shall be administered by each commission in a uniform manner prescribed by the director, and shall be consistent with standards established pursuant to chapter 80B governing standards for employment of Iowa law enforcement officers. Notice of such tests shall be posted in the office of the sheriff and the office of the board of supervisors not less than thirty days prior to giving such tests.

3. To conduct and prepare annual investigations and reports concerning the effectiveness of, and compliance with, the provisions of this chapter and the rules adopted by the commission, and pursuant thereto, to inspect all departments, offices, and positions of employment affected by this chapter. In making such investigations a commissioner or the personnel director may administer oaths, issue subpoenas and require the attendance of witnesses and the production of books, documents, and accounts pertaining to such investigation, and may also cause the deposition of witnesses to be taken as in civil actions in the district court.

4. To conduct informal hearings concerning matters contemplated by this chapter. The validity of any such hearing shall not be affected by the manner in which it is conducted, however, a majority of the commissioners shall affirm all orders, rules, and decisions made pursuant to such hearings.

5. To hear and determine appeals or complaints respecting the allocation of positions of employment, rejection of those persons certified to the sheriff for appointment, and such other matters as may be referred to the commission.

6. To arrange, compile, and administer competitive tests to determine the relative qualifications of persons seeking employment in any class of position and as a result thereof establish eligible

lists for the various classes of positions, and provide that persons discharged because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be re-employed. Notice of competitive tests to be given shall be published at least two weeks prior to holding the tests in a newspaper of general circulation in the county or counties in which a vacancy exists.

7. To certify to the county sheriff when a vacant position is to be filled, on written request, a list of the names of the persons passing the examination.

8. To keep such records as may be necessary for the proper administration of this chapter.

9. To classify deputy sheriffs and subdivide them into groups according to rank and grade which shall be based upon the duties and responsibilities of the deputy sheriffs.

10. To purchase all necessary supplies, enter into contracts, and do all things necessary to carry out the provisions of this chapter.

11. To keep records of the service of each employee in the classified service. These records shall contain facts and statements on all matters relating to the character and quality of the work done and the attitude of the individual to the work. All such service records and employee records shall be subject only to the inspection of the commission.

[C75, 77, 79, 81, §341A.6]

341A.7 Classifications.

The classified civil service positions covered by this chapter include persons actually serving as deputy sheriffs who are salaried pursuant to section 331.904, subsection 2, but do not include a chief deputy sheriff, two second deputy sheriffs in counties with a population of more than one hundred thousand, and four second deputy sheriffs in counties with a population of more than two hundred thousand. However, a chief deputy sheriff or second deputy sheriff who becomes a candidate for a partisan elective office for remuneration is subject to section 341A.18. A deputy sheriff serving with permanent rank under this chapter may be designated chief deputy sheriff or second deputy sheriff and retain that rank during the period of service as chief deputy sheriff or second deputy sheriff and shall, upon termination of the duties as chief deputy sheriff or second deputy sheriff, revert to the permanent rank.

If the positions of two second deputy sheriffs of a county were exempt from classified civil service coverage under this chapter based on the 1980 decennial census, the two second deputy positions shall remain exempt from classified civil service coverage under this chapter.

[C75, 77, 79, 81, S81, §341A.7; 81 Acts, ch 117, §1219]

90 Acts, ch 1119, §1; 91 Acts, ch 110, §1

341A.8 Bases of appointments and promotions.

All appointments to and promotions to classified civil service positions in the office of county sheriff shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examinations and impartial investigations, and no person in the classified civil service shall be reinstated in or transferred, suspended, or discharged from any such place, position, or employment contrary to the provisions of this chapter.

Whenever possible, vacancies shall be filled by promotion. Promotion shall be made from among deputy sheriffs qualified by competitive examination, training and experience to fill the vacancies and whose length of service entitles them to consideration. The commission shall for the purpose of certifying to the sheriff the list of deputy sheriffs eligible for promotion, rate the qualified deputy sheriffs on the basis of their service record, experience in the work, seniority, and military service ratings. Seniority shall be controlling only when other factors are equal. The names of not more than the ten highest on the list of ratings shall be certified. The certified eligible list for promotion shall hold preference for promotion until the beginning of a new examination, but in no case shall such preference continue longer than two years following the date of certification, after which said list shall be canceled and no promotion to such grade shall be made until a new list has been certified eligible for promotion. The sheriff shall appoint one of the ten certified persons.

[C75, 77, 79, 81, §341A.8]

341A.9 Appointment as of effective date.

All persons holding a position on August 15, 1973, which is deemed classified by section 341A.7 are eligible for a permanent appointment under civil service to the offices or positions currently held if they qualify for appointment pursuant to section 341A.8, and every such person shall be inducted permanently into civil service in the office or position of employment which the person then holds. The commission shall designate a permanent rank for those persons as chief deputy on August 15, 1973, and such persons shall be inducted permanently into civil service in that rank.

[C75, 77, 79, 81, §341A.9]

341A.10 Citizenship.

An applicant for any position under civil service shall be a citizen of the United States who can read and write the English language, and shall meet the minimum requirements of the Iowa law enforcement academy for a law enforcement officer.

[C75, 77, 79, 81, §341A.10]

341A.11 Probationary period — permanent status.

The tenure of every deputy sheriff holding an office or position of employment under the provisions of this chapter shall be conditional upon a probationary period. If the employee has successfully completed training at the Iowa law enforcement academy or a regional training facility certified by the director of the Iowa law enforcement academy prior to initial appointment as a deputy sheriff, the probationary period shall be for a period of up to nine months and shall commence with the date of initial appointment as a deputy sheriff. If the employee has not successfully completed training at the Iowa law enforcement academy or a regional training facility certified by the director of the Iowa law enforcement academy prior to initial appointment as a deputy sheriff, the probationary period shall commence with the date of initial employment as a deputy sheriff and shall continue for a period of up to nine months following the date of successful completion of training at the Iowa law enforcement academy or a regional training facility certified by the director of the Iowa law enforcement academy. During the probationary period, the appointee may be removed or discharged by the sheriff without the right of appeal to the commission. Each deputy sheriff who transfers from one jurisdiction to another shall be employed subject to a probationary period of up to nine months. After the probationary period, the deputy sheriff may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other privileges for any of the following reasons:

1. Incompetency, inefficiency, or inattention to or dereliction of duty.
2. Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public, or any other willful failure to properly conduct oneself, or any willful violation of the provisions of this chapter or the rules to be adopted hereunder.
3. Mental or physical unfitness for the position held.
4. Dishonest, disgraceful, or prejudicial conduct.
5. Drunkenness or habitual use of intoxicating liquor, or use of narcotics, or any other habit-forming drug, liquid, preparation or controlled substance.
6. Conviction of a felony or a misdemeanor involving moral turpitude.
7. Any other act or failure to act or to follow reasonable regulations prescribed by the sheriff which in the judgment of the commission is sufficient to show the offender to be unsuitable or unfit for employment.

[C75, 77, 79, 81, §341A.11]
98 Acts, ch 1124, §2

341A.12 Discipline — hearing.

No person in the classified civil service who has been permanently appointed or inducted into civil service under provisions of this chapter shall be removed, suspended, or demoted except for cause, and only upon written accusation of the county sheriff, which shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, or reduced in rank or grade may, within ten days after presentation to the person of the order of removal, suspension or reduction, appeal to the commission from such order. The commission shall, within two weeks from the filing of such appeal, hold a hearing thereon, and fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellant shall be entitled to appeal personally, produce evidence, and to have counsel. The finding and decision of the commission shall be certified to the sheriff, and shall be enforced and followed by the sheriff, but under no condition shall the employee who has appealed to the commission be permanently removed, suspended, or reduced in rank until such finding and decision of the commission is certified to the sheriff pursuant to the rules of civil procedure.

If the order of removal, suspension, or demotion is concurred in by a majority of the commission, the accused may appeal therefrom to the district court of the county where the accused resides. Such appeal shall be taken by serving upon the commission within thirty days after the entry of its order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to its order, be filed by the commission with the court. The commission shall, within ten days after the filing of the notice make, certify, and file such transcript with the court. The court shall proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the order of removal, suspension, or demotion made by the commission was made in good faith and for cause, and no appeal shall be taken except upon such grounds. The decision of the district court may be appealed to the supreme court.

[C75, 77, 79, 81, §341A.12]

341A.13 Vacant positions filled.

Whenever a position in the classified service is to be filled, the sheriff shall notify the commission of that fact, and the commission shall certify the names and addresses of the ten candidates standing highest on the eligibility list for the class or grade for the position to be filled. The sheriff shall appoint one of the ten persons so certified, and the appointment shall be deemed permanent.

[C75, 77, 79, 81, §341A.13]

341A.14 Payroll certified.

No treasurer, auditor, or other officer, or employee of any county subject to this chapter shall approve the payment of or be in any manner involved in paying, auditing, or approving salary, wage, or other compensation for services to any person subject to the provisions of this chapter, unless a payroll, estimate, or account for such salary, wage or other compensation containing the names of the persons to be paid, the amount to be paid to each person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission should be furnished on such payroll, bears the certificate of the civil service commission, or of its personnel director or other duly authorized agent. The certificate shall state that the persons named therein have been appointed or employed in compliance with the terms of this chapter and the rules of the commission, and that the payroll, estimate, or account is, insofar as known to the commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who, willfully or through culpable negligence, violates or fails to comply with this chapter or with the rules of the commission.

[C75, 77, 79, 81, §341A.14]

341A.15 Leave of absence.

Leave of absence, without pay, may be granted by any county sheriff to any person under civil service, however, the sheriff shall give notice of leave to the commission.

[C75, 77, 79, 81, §341A.15]

341A.16 Civil suits.

The commission shall initiate and conduct all civil suits necessary for the proper enforcement of this chapter and the rules of the commission. The commission shall be represented in such suits by the county attorney. In the case of the combined counties, any one or more of the county attorneys of such combined counties may be selected by the commission to represent it.

[C75, 77, 79, 81, §341A.16]

341A.17 Examination or registration right.

A commissioner or any other person shall not, in person or in co-operation with another, deceive or obstruct any person in respect to the person's right of examination or registration according to the commission rules, or falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered, or certified pursuant to this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined. A commissioner or other person shall not furnish any person with special or secret information for the purpose of improving or reducing the prospects or chances of any person who is or will be examined, registered, or certified, or persuade any other person, or permit or aid in any manner any other person to impersonate the person who is or will be examined, registered, or certified, in connection with any examination or registration of application or request to be examined or registered. The right of any person to an appointment or promotion shall not be withheld because of sex, color, creed, national origin, political affiliation or belief, nor shall any person be dismissed, demoted, or reduced in grade for such reason.

[C75, 77, 79, 81, §341A.17]

341A.18 Civil rights respected.

A person shall not be appointed or promoted to, or demoted or discharged from, any position subject to civil service, or in any way favored or discriminated against with respect to employment in the sheriff's office because of the person's political or religious opinions or affiliations or race or national origin or sex, or age.

A person holding a position subject to civil service shall not, during the person's scheduled working hours or when performing duties or when using county equipment or at any time on county property, take part in any way in soliciting any contribution for any political party or any person seeking political office, nor shall such employee engage in any political activity that will impair the employee's efficiency during working hours or cause the employee to be tardy or absent from work. The provisions of this section do not preclude any employee from holding any office for which no pay is received or any office for which only token pay is received.

A person shall not seek or attempt to use any political endorsement in connection with any appointment to a position subject to civil service.

A person shall not use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in the appointment to a position subject to civil service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

An employee shall not use the employee's official authority or influence for the purpose of interfering with an election or affecting the results thereof.

Any officer or employee subject to civil service who violates any of the provisions of this section shall be subject to suspension, dismissal, or demotion subject to the right of appeal herein.

All employees shall retain the right to vote as

they please and to express their opinions on all subjects.

An officer or employee subject to civil service and a chief deputy sheriff or second deputy sheriff, who becomes a candidate for a partisan elective office for remuneration, upon request, shall automatically be given a leave of absence without pay, commencing thirty days before the date of the primary election and continuing until the person is eliminated as a candidate or wins the primary, and commencing thirty days before the date of the general election and continuing until the person is eliminated as a candidate or wins the general election, and during the leave period shall not perform any duties connected with the office or position so held. The officer or employee subject to civil service, or chief deputy sheriff or second deputy sheriff, may, however, use accumulated paid vacation time for part or all of any leave of absence under this section. The county shall continue to provide health benefit coverages, and may continue to provide other fringe benefits, to any officer or employee subject to civil service, or to any chief deputy sheriff or second deputy sheriff during any leave of absence under this section.

[C75, 77, 79, 81, §341A.18]

90 Acts, ch 1119, §2; 2000 Acts, ch 1033, §1, 2

341A.19 Aid from all county officers and employees.

All officers and employees of each county shall aid in carrying out the provisions of this chapter. Rules as may, from time to time, be prescribed by the commission shall afford the commission, its members, and employees, all reasonable facilities and assistance in the inspection of books, documents, and accounts applying or in any way pertaining to all offices, places, positions, and employments subject to civil service. All officers and employees of a county shall produce books, documents, and accounts, and attend and testify, whenever required to do so by the commission or any commissioner.

[C75, 77, 79, 81, §341A.19]

341A.20 Budget.

The county board of supervisors of each county shall provide in the county budget for each fiscal year a sum equal to one-half of one percent of the preceding year's total payroll of those included under the jurisdiction and scope of this chapter. The funds so provided shall be used for the support of the commission. Any part of the funds not expended for the support of the commission during the fiscal year shall be returned to the county, or counties, according to the ratio of contribution, on the first day of January which is not a Saturday, Sunday, or holiday following the end of the fiscal year.

[C75, 77, 79, 81, §341A.20]

83 Acts, ch 123, §156, 209

341A.21 Misdemeanor.

Any person who willfully violates any of the provisions of this chapter shall be guilty of a simple misdemeanor. The district court shall have jurisdiction of all such offenses.

[C75, 77, 79, 81, §341A.21]

CHAPTER 342

COLLECTION AND ACCOUNTING OF FEES

Repealed by 81 Acts, ch 117, §1244

CHAPTER 343

GENERAL DUTIES OF COUNTY OFFICERS

Repealed by 81 Acts, ch 117, §1244

CHAPTER 344

COUNTY BUDGET

Repealed by 83 Acts, ch 123, §206, 209; see §331.433 – 331.440

CHAPTER 345

SUBMISSION OF QUESTIONS TO VOTERS

Repealed by 81 Acts, ch 117, §1097; 83 Acts, ch 123, §206, 209; see §331.441 – 331.449

CHAPTER 346

COUNTY BONDS

346.1 to 346.23 Repealed by 81 Acts, ch 117, §1097.
346.24 Limit on indebtedness for general purposes.
346.25 Repealed by 81 Acts, ch 117, §1097.

JOINT COUNTY AND CITY BUILDINGS

346.26 Repealed by 81 Acts, ch 117, §1097.
346.27 "Authority" for control of joint property.

346.1 to 346.23 Repealed by 81 Acts, ch 117, § 1097. See § 331.441 to 331.447.

346.24 Limit on indebtedness for general purposes.

No county or other political corporation shall become indebted for its general or ordinary purposes to an amount exceeding in the aggregate one and one-fourth percent of the actual value of the taxable property within the corporation. The value of property shall be ascertained by the last tax list previous to the incurring of the indebtedness. Indebtedness incurred by a county solely for poor relief purposes is not for its general or ordinary purposes.

[S13, §1306-b; C24, 27, 31, 35, 39, §**6238;** C46, 50, 54, 58, 62, 66, 71, 73, §407.1; C75, 77, 79, 81, §346.24]

346.25 Repealed by 81 Acts, ch 117, § 1097.

JOINT COUNTY AND CITY BUILDINGS

346.26 Repealed by 81 Acts, ch 117, § 1097. See § 331.441.

346.27 "Authority" for control of joint property.

1. Any joint building acquired, owned, erected, constructed, controlled, or occupied in accordance with the authorization contained in this section is declared to be acquired, owned, erected, constructed, controlled, or occupied for a public purpose and as a matter of public need.

2. Any county may join with its county seat to incorporate an *"Authority"* for the purpose of acquiring, constructing, demolishing, improving, enlarging, equipping, furnishing, repairing, maintaining, and operating a public building, and to acquire and prepare the necessary site, including demolition of any structures, for the joint use of the county and city or any school district which is within or is a part of the county or city.

3. The incorporation of an authority shall be accomplished by the adoption of articles of incorporation by the governing body of each incorporating unit. For adoption, the affirmative vote of a majority of the members of each governing body is required. The articles of incorporation shall be executed for and on behalf of each incorporating unit by the following officers:

a. For the county, by the chairperson of the board of supervisors.

b. For the city, by its mayor and city clerk.

4. The articles of incorporation shall set forth the name of the authority, the name of the incorporating units, the purpose for which the authority is created, the number, terms, and manner of selection of its officers including its governing body which shall be known as the *"commission"*, the powers and duties of the authority and of its officers, the date upon which the authority becomes effective, the name of the newspaper in which the articles of incorporation shall be published, and any other matters.

5. The authority shall be directed and governed by a board of commissioners of three members, one to be elected by the board of supervisors of the county from the area outside of the county seat, one to be elected by the council of the city from the area inside the city, and one to be elected by the joint action of the board of supervisors of the county and the council of the city, and if the governing bodies are unable to agree upon a choice for the third member within sixty days of the election of the first member, then the third member shall be appointed by the governor. The commissioners shall serve for six-year terms. Of the first appointees, the member appointed by the board of supervisors shall be for a term of two years, the member appointed by the city council shall be for a term of four years, and the member appointed by the joint action of the board and council shall be for a term of six years. The board of commissioners shall designate one of their number as chairperson, one as secretary, and one as treasurer, and shall adopt bylaws and rules of procedure and provide therein for regular meetings and for the proper safekeeping of its records. No commissioner shall receive any compensation in connection with services as commissioner. Each commissioner, however, shall be entitled to reimbursement for any necessary

expenditures in connection with the performance of the commissioner's duties.

6. The articles of incorporation shall be recorded in the office of the county recorder and filed with the secretary of state, and shall be published once in a newspaper designated in the articles of incorporation and having a general circulation within the county, and upon such recording and publication, the authority shall be deemed to come into existence.

7. Amendments may be made to the articles of incorporation if adopted by the governing body of each incorporating unit; provided that no amendment shall impair the obligation of any bond or other contract. Each amendment shall be adopted, executed, recorded and published in the same manner as specified for the original articles of incorporation.

8. Any incorporating unit may make donations of property, real or personal, including gratuitous lease, to the authority as deemed proper and appropriate in aiding the authority to effectuate its purposes.

9. The authority shall be a body corporate with power to sue and be sued in any court of this state, have a seal and alter the same at its pleasure, and make and execute contracts, leases, deeds, and other instruments necessary or convenient to the exercise of its powers. In addition, it shall have and exercise the following public and essential governmental powers and functions and all other powers incidental or necessary to carry out and effectuate its express powers:

a. To select, locate, and designate an area lying wholly within the territorial limits of the county seat of the county in which the authority is incorporated as the site to be acquired for the construction, alteration, enlargement, or improvement of a building. The site selected is subject to approval by a majority of the members of each governing body of the incorporating units.

b. To acquire in the corporate name of the authority the fee simple title to the real property located within the area by purchase, gift, devise, or by the exercise of the power of eminent domain, or to take possession of real estate by lease.

c. To demolish, repair, alter, or improve any building within the designated area, to construct a new building within the area and to furnish, equip, maintain, and operate the building.

d. To construct, repair, and install streets, sidewalks, sewers, water pipes, and other similar facilities and otherwise improve the site.

e. To make provisions for off-street parking facilities.

f. To operate, maintain, manage, and enter into contracts for the operation, maintenance, and management of buildings, and to provide rules for the operation, maintenance and management.

g. To employ and fix the compensation of technical, professional, and clerical assistance as necessary and expedient to accomplish the objects and purposes of the authority.

h. To lease all or any part of a building to the incorporating units for a period of time not to exceed fifty years, upon rental terms agreed upon between the authority and the incorporating units. The rentals specified shall be subject to increase by agreement of the incorporating units and the authority if necessary in order to provide funds to meet obligations.

i. To procure insurance of any and all kinds in connection with the building. The bidding procedures provided in section 73A.18 shall be utilized in the procurement of insurance.

j. To accept donations, contributions, capital grants, or gifts from individuals, associations, municipal and private corporations, and the United States, or any agency or instrumentality thereof, and to enter into agreements in connection therewith.

k. To borrow money and to issue and sell revenue bonds in an amount and with maturity dates not in excess of fifty years from date of issue, to provide funds for the purpose of acquiring, constructing, demolishing, improving, enlarging, equipping, furnishing, repairing, maintaining, and operating buildings, and to acquire and prepare sites, convenient therefor, and to pay all incidental costs and expenses, including, but not limited to architectural, engineering, legal, and financing expense and to refund and refinance revenue bonds as often as deemed advantageous by the board of commissioners.

l. The provisions of chapter 73A applicable to other municipalities are applicable to an authority.

10. After the incorporation of an authority, and before the sale of any issue of revenue bonds, except refunding bonds, the authority shall call an election to decide the question of whether the authority shall issue and sell revenue bonds. The ballot shall state the amount of the bonds and the purposes for which the authority is incorporated. Registered voters of the city and the unincorporated area of the county shall be entitled to vote on the question. The question may be submitted at a general election or at a special election. An affirmative vote of a majority of the votes cast on the question is required to authorize the issuance and sale of revenue bonds.

In addition to the notice required by section 49.53, a notice of the election shall be published once each week for at least two weeks in some newspaper published in the county stating the date of the election, the hours the polls will be open, and a copy of the question. The authority shall call this election with the concurrence of both incorporating units. The election shall be conducted by the commissioner in accordance with the provisions of chapters 49 and 50.

11. When the board of commissioners decides to issue bonds subject to the election requirement, it shall adopt a resolution describing the area to be

acquired, the nature of the existing improvements, the disposition to be made of the improvements, and a general description of any new buildings to be constructed.

12. The resolution shall set out the limit of the cost of the project, including the cost of acquiring and preparing the site, determine the period of usefulness and fix the amount of revenue bonds to be issued, the date or dates of maturity, the dates on which interest is payable, the sinking fund provisions, and all other details in connection with the bonds. The board shall determine and fix the rate of interest of any revenue bonds issued, in a resolution adopted by the board prior to the issuance. The resolution, trust agreement, or other contract entered into with the bondholders may contain covenants and restrictions concerning the issuance of additional revenue bonds as necessary or advisable for the assurance of the payment of the bonds authorized.

13. Bonds shall be issued in the name of the authority and are declared to have all the qualities and incidents of negotiable instruments under the laws of this state.

14. Bonds issued under this section may be issued as serial or term bonds, shall be of such denomination or denominations and form, including interest coupons to be attached, shall be payable at such place or places and bear such date as the board of commissioners fix by the resolution authorizing the bonds, shall mature within a period not to exceed fifty years, and may be redeemable prior to maturity with or without premium, at the option of the board of commissioners, upon terms and conditions the board shall fix by the resolution authorizing the issuance of bonds. The board of commissioners may provide for the registration of bonds in the name of the owner as to the principal alone or as to both principal and interest upon terms and conditions the board determines. All bonds issued by an authority shall be sold at a price so that the interest cost to the commission of the proceeds of the bonds shall not exceed that permitted by chapter 74A, payable semiannually, computed to maturity, and shall be sold in the manner and at the time the board of commissioners determines.

15. Bonds issued by an authority, and the interest thereon, shall be payable solely from the revenues derived from the operation, management, or use of the buildings acquired or to be acquired by the authority, which revenues shall include payments received under any leases or other contracts for the use of the buildings. Bonds shall recite that the principal and interest thereon are payable only from the revenues pledged, and shall state on their face that they are not an indebtedness of the authority or a claim against the property of the authority.

16. Bonds shall be executed in the name of the commission by the chairperson of the board of commissioners or by another officer of the commission as the board, by resolution, may direct, and be attested by the secretary, or by another officer of the commission as the board, by resolution, may direct, and shall be sealed with the commission's corporate seal. In case any officer whose signature appears on the bonds or coupons shall cease to be such officer before delivery of the bonds, the officer's signature shall be valid and sufficient for all purposes, the same as if the officer had remained in office until delivery.

17. In its discretion, the authority may issue refunding bonds to refund its bonds prior to their maturity, refund its outstanding matured bonds, refund matured coupons evidencing interest upon its outstanding bonds, refund interest at the coupon rate that has accrued upon its outstanding matured bonds, and refund its bonds which by their terms are subject to call or redemption before maturity. All bonds redeemed or purchased shall be canceled.

18. To secure the payment of revenue bonds and for the purpose of setting forth the covenants and undertakings of the authority in connection with the issuance of revenue bonds and the issuance of any additional revenue bonds payable from such revenue income to be derived from the operation, management, or use of the buildings acquired or to be acquired by the authority, the authority may execute and deliver a trust agreement except that no lien upon any physical property of the authority shall be created.

19. The resolution shall provide for the creation of a sinking fund account into which shall be payable from the revenues of the project, from month to month as such revenues are collected, the sums in excess of the cost of maintenance and operation of the project and the cost of administration of the authority, sufficient to comply with the covenants of the bond resolution and sufficient to pay the accruing interest and retire the bonds at maturity. The board of commissioners, in a resolution, may provide for other accounts as necessary for the sale of the bonds. Moneys in the accounts shall be applied in the manner provided by the resolution, the trust agreement, or other contract with the bondholders.

20. No such bonds shall constitute a debt of the authority or of any public body within the meaning of any statutory or constitutional limitation as to debt.

21. From and after the issuance of bonds the board of commissioners shall establish and fix rates, rentals, fees, and charges for the use of any and all buildings or space owned and operated by the authority, sufficient at all times to pay maintenance and operation costs and to pay the accruing interest and retire the bonds at maturity and to make all payments to all accounts created by any bond resolution and to comply with all covenants of any bond resolution.

22. When an incorporating unit enters into a lease with the authority, the governing body of the

incorporating unit shall provide by ordinance or resolution for the levy and collection of a direct annual tax sufficient to pay the annual rent payable under the lease as and when it becomes due and payable. The tax shall be levied and collected in like manner with the other taxes of the incorporating unit and shall be in addition to all other taxes authorized to be levied by that incorporating unit. This tax shall not be included within and shall be in addition to any statutory limitation of rate or amount for that incorporating unit. The fund realized from the tax levy shall be set aside for the payment of the annual rent and shall not be disbursed for any other purpose until the annual rental has been paid in full.

23. All leases, contracts, deeds of conveyance, bonds, or other instruments in writing on behalf of the authority, shall be executed in the name of the authority by the chairperson and secretary of the authority, or by other officers as the board of commissioners, by resolution, directs, and the seal of the authority shall be affixed.

24. All property owned by any authority shall be exempt from taxation by the state or any taxing unit of the state. However, any interest derived from bonds issued by the authority shall be subject to taxation.

25. When all bonds issued by an authority have been retired, the authority may convey the title to the property owned by the authority to the incorporating units in accordance with the provisions contained in the articles of incorporation. If articles of incorporation do not exist, the conveyance may be made in accordance with any agreement adopted by the respective governing bodies of the incorporating units and the authority.

The question of whether a conveyance shall be made shall be submitted to the registered voters of the city and the unincorporated area of the county. An affirmative vote equal to at least a majority of the total votes cast on the question shall be required to authorize the conveyance. If the question does not carry, the authority shall continue to operate, maintain, and manage the building under a lease arrangement with the incorporating units.

[C62, §368.50 – 368.53; C66, 71, 73, §368.54, 368.55, 368.57 – 368.71; C75, 77, 79, 81, §346.27]

95 Acts, ch 67, §53; 2002 Acts, ch 1134, §100, 101, 115

2002 amendments to subsections 10 and 25 take effect January 1, 2003, and apply to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsections 10 and 25 amended

CHAPTER 346A

COUNTY HEALTH CENTERS

346A.1 Definitions.
346A.2 Authorized in certain counties.
346A.3 to 346A.5 Repealed by 81 Acts, ch 117, §1097.

346A.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of supervisors of the county.

2. *"Health center"* means a building or buildings, together with necessary equipment, furnishings, facilities, accessories and appurtenances and the site or sites therefor used primarily for the purposes of providing centralized locations, at which a county may:

a. Provide those health, welfare and social services which such a county is presently or hereafter authorized or required by law to provide;

b. Lease space in such building or buildings to other public corporations, public agencies and private nonprofit agencies which provide health, welfare and social services.

3. *"Project"* means the acquisition by purchase or construction of health centers, additions thereto and facilities therefor, the reconstruction, completion, equipment, improvement, repair or remodeling of health centers, additions thereto and facilities therefor, and the acquisition of property therefor of every kind and description, whether real, personal or mixed, by gift, purchase, lease, condemnation or otherwise and the improvement of the property. *"Project"* also means the use of funds for the provision of health services by local boards of health pursuant to chapter 137 and the provision of health, welfare or social services which a county is permitted or required by law to provide.

[C71, 73, 75, 77, 79, 81, §346A.1; 82 Acts, ch 1156, §1]

83 Acts, ch 12, §1, 4

346A.2 Authorized in certain counties.

Counties may undertake and carry out any project as defined in section 346A.1, and the boards

may operate, control, maintain and manage health centers and additions to and facilities for health centers. The boards may appoint committees, groups, or operating boards as they deem necessary and advisable to facilitate the operation and management of health centers, additions and facilities. A board may lease space in any health center to other public corporations, public agencies and private nonprofit agencies engaged in furnishing health, welfare and social services which lease shall be on terms and conditions the board deems advisable. All contracts for the construction, reconstruction, completion, equipment, improvement, repair or remodeling of any buildings, additions or facilities shall be let in accordance with section 331.341, subsection 1.

[C71, 73, 75, 77, 79, 81, S81, §346A.2; 81 Acts, ch 117, §1060; 82 Acts, ch 1156, §2]

83 Acts, ch 12, §2, 4; 83 Acts, ch 123, §157, 209

346A.3 to 346A.5 Repealed by 81 Acts, ch 117, § 1097. See § 331.441 to 331.447.

CHAPTER 347

COUNTY HOSPITALS

347.1 and 347.2 Repealed by 81 Acts, ch 117, §1097.
347.3 to 347.6 Repealed by 81 Acts, ch 117, §1097.
347.7 Tax levies.
347.8 Repealed by 81 Acts, ch 117, §1097.
347.9 Trustees — appointment — terms of office.
347.10 Vacancies.
347.11 Organization — meetings — quorum.
347.12 Officers' duties — purchasing regulations.
347.13 Duties and powers.
347.14 Powers.
347.15 Pecuniary interest prohibited — exceptions. Repealed by 2001 Acts, ch 65, §2.
347.16 Treatment in county hospital — terms.
347.17 Accounts — collection.
347.18 Discrimination.
347.19 Compensation — expenses.
347.20 Municipal jurisdiction.
347.21 and 347.22 Repealed by 81 Acts, ch 117, §1097.
347.23 City hospital changed to county hospital.
347.23A Memorial hospital or county hospital payable from revenue bonds changed to county hospital.
347.24 Law applicable to other hospitals.
347.25 Election of trustees.
347.26 Health care facility in existing hospital.
347.27 Repealed by 81 Acts, ch 117, §1097.
347.28 Sale or lease of property.
347.29 Use of property.
347.30 Notice and hearing.
347.31 Community recreation facilities and programs.
347.32 Tax status.

347.1 and 347.2 Repealed by 81 Acts, ch 117, § 1097. See § 331.441(2).

347.3 to 347.6 Repealed by 81 Acts, ch 117, § 1097.

347.7 Tax levies.

If a county hospital is established, the board of supervisors, at the time of levying ordinary taxes, shall levy a tax at the rate voted not to exceed fifty-four cents per thousand dollars of assessed value in any one year for the erection and equipment of the hospital, and also a tax not to exceed twenty-seven cents per thousand dollars of value for the improvement, maintenance, and replacements of the hospital, as certified by the board of hospital trustees. However, in counties having a population of two hundred twenty-five thousand or over, the levy for taxes payable in the fiscal year beginning July 1, 2001, and for subsequent fiscal years, for improvements and maintenance of the hospital shall not exceed two dollars and five cents per thousand dollars of assessed value in any one year. The proceeds of the taxes constitute the county public hospital fund and the fund is subject to review by the board of supervisors in counties having a population of two hundred twenty-five thousand or over. However, the board of trustees of a county hospital, where funds are available in the county public hospital fund of the county which are unappropriated, may use the unappropriated funds for erecting and equipping hospital buildings and additions to the hospital buildings without authority from the voters of the county.

No levy shall be made for the improvement, maintenance, or replacements of the hospital until the hospital has been constructed, staffed, and receiving patients. If revenue bonds are issued and outstanding under section 331.461, subsection 2, paragraph *"d"*, the board may levy a tax to pay operating and maintenance expenses in lieu of the authority otherwise contained in this section not to exceed twenty-seven cents per thousand dollars of assessed value or not to exceed one dollar and twenty-one and one-half cents per thou-

sand dollars of assessed value for improvements and maintenance of the hospital in counties having a population of two hundred twenty-five thousand or over.

In addition to levies otherwise authorized by this section, the board of supervisors may levy a tax at the rate, not to exceed twenty-seven cents per thousand dollars of assessed value, necessary to raise the amount budgeted by the board of hospital trustees for support of ambulance service as authorized in section 347.14, subsection 14.

The tax levy authorized by this section for operation and maintenance of the hospital may be available in whole or in part to any county with or without a county hospital organized under this chapter, to be used to enhance rural health services in the county. However, the tax levied may be expended for enhancement of rural health care services only following a local planning process. The Iowa department of public health shall establish guidelines to be followed by counties in implementing the local planning process which shall require legal notice, public hearings, and a referendum in accordance with this section and section 347.30 prior to the authorization of any new levy or a change in the use of a levy. Enhancement of rural health services for which the tax levy pursuant to this section may be used includes but is not limited to emergency medical services, health care services shared with other hospitals, rural health clinics, and support for rural health care practitioners and public health services. When alternative use of funds from the tax levy authorized by this section is proposed in a county with a county hospital organized under this chapter, use of the funds shall be agreed upon by the elected board of trustees of the county hospital. When alternative use of funds from the tax levy authorized by this section is proposed in a county without a county hospital organized under this chapter, use of the funds shall be agreed upon by the board of supervisors and any publicly elected hospital board of trustees within the county prior to submission of the question to the voters. Moneys raised from a tax levied in accordance with this paragraph shall be designated and administered by the board of supervisors in a manner consistent with the purposes of the levy.

[S13, §409-b, -j; C24, 27, 31, 35, 39, §**5353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §347.7; 81 Acts, ch 117, §1061]

85 Acts, ch 185, §2; 89 Acts, ch 304, §704; 95 Acts, ch 159, §1, 2; 2001 Acts, ch 75, §1, 2

Additional levies; see §347.14(10)

347.8 Repealed by 81 Acts, ch 117, § 1097.

347.9 Trustees — appointment — terms of office.

When it has been determined by the voters of a county to establish a county public hospital, the board shall appoint seven trustees chosen from among the resident citizens of the county with reference to their fitness for office, and not more than four of the trustees shall be residents of the city at which the hospital is located. The trustees shall hold office until the following general election, at which time their successors shall be elected, two for a term of two years, two for four years, and three for six years, and they shall determine by lot their respective terms, and thereafter their successors shall be elected for regular terms of six years each. A person or spouse of a person with medical or special staff privileges in the county public hospital or who receives direct or indirect compensation in an amount greater than one thousand five hundred dollars in a calendar year from the county public hospital or direct or indirect compensation in an amount greater than one thousand five hundred dollars in a calendar year from a person contracting for services with the hospital shall not be eligible to serve as a trustee for that county public hospital. However, this section does not prohibit a licensed health care practitioner from serving as a hospital trustee if the practitioner's sole use of the county hospital is to provide health care service to an individual with mental retardation as defined in section 222.2.

[S13, §409-c; C24, 27, 31, 35, 39, §**5355;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347.9]

86 Acts, ch 1200, §3; 99 Acts, ch 36, §3; 2001 Acts, ch 65, §1

347.10 Vacancies.

Vacancies in the board of trustees may, until the next general election, be filled by appointment by the remaining members of the board of trustees or, if fewer than four trustees remain on the board, by the board of supervisors for the period until the vacancies are filled by election. If any board member is absent for four consecutive regular board meetings, without prior excuse, the member's position shall be declared vacant and filled as set out in this section.

[S13, §409-e; C24, 27, 31, 35, 39, §**5356;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347.10]

94 Acts, ch 1180, §49

347.11 Organization — meetings — quorum.

Said trustees shall qualify by taking the usual oath of office as provided in chapter 63, but no bond shall be required of them, except as hereafter provided, and organize by the election of one of their number as chairperson and one as secretary, and one as treasurer. The secretary and treasurer shall each file with the chairperson of the board a surety bond in such penal sum as the board of trustees may require and with sureties to be approved by the board for the use and benefit of the county public hospital. The reasonable cost of such bonds shall be paid from operating funds of the hospital. The secretary shall report to the

county auditor and treasurer the names of the chairperson, secretary and treasurer of the board of hospital trustees as soon as practicable after the qualification of each. Said board shall meet at least once each month. Four members of said board shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings.

[S13, §409-d; C24, 27, 31, 35, 39, §**5357;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347.11]

97 Acts, ch 170, §86

Oath of office, §63.10

347.12 Officers' duties — purchasing regulations.

The treasurer of the county hospital shall receive and disburse all funds. Warrants shall be drawn by the secretary and countersigned by the chairperson of the board after the claim has been certified by the board. However, the board may adopt purchasing regulations to govern the purchase of specified goods and services without the prior certification by the board. The purchasing regulations shall conform to generally accepted practices followed by public purchasing officers.

The treasurer of the county hospital shall keep an accurate account of all receipts and disbursements and shall register all orders drawn and reported to the treasurer by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose and amount.

The secretary of the hospital board of trustees shall file monthly on or before the thirtieth day of each month with such board a complete statement of all receipts and disbursements from all funds during the preceding month, and also the balance remaining on hand in such funds at the close of the period covered by said statement.

Before the fifteenth day of each month, the county treasurer shall give notice to the chairperson of the board of hospital trustees of the amount of revenue collected for each fund of the hospital to the first day of that month and the county treasurer shall pay the taxes to the treasurer of the hospital as provided in section 331.552, subsection 29.

[S13, §409-d; C24, 27, 31, 35, 39, §**5358;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347.12]

84 Acts, ch 1003, §6; 92 Acts, ch 1024, §2; 99 Acts, ch 36, §4

347.13 Duties and powers.

Said board of hospital trustees shall:

1. Purchase, condemn, or lease a site for such public hospital, and provide and equip suitable hospital buildings.

2. Cause plans and specifications to be made and adopted for all hospital buildings, and advertise for bids, as required by law for other county buildings, before making a contract for the construction of a building.

3. Procure equipment under bidding and contracting requirements prescribed by the board and procure supplies necessary for the operation of the hospital.

4. Have general supervision and care of such grounds and buildings.

5. Employ an administrator, and necessary assistants and employees, and fix their compensation.

6. Have control and supervision over the physicians, nurses, attendants, and patients in the hospital.

7. Provide a suitable room for detention and examination of persons brought before the commissioners of hospitalization of the county, if such hospital is located at the county seat.

8. Determine whether or not any applicant is indigent or tuberculous and entitled to free treatment therein, and to fix the price to be paid by other patients admitted to such hospital for their care and treatment therein.

9. Fix at its regular February meeting in each year, the amount necessary for the improvement and maintenance of the hospital and for support of ambulance service during the ensuing fiscal year, and cause the president and the secretary to certify the amount to the county auditor before March 1 of each year, subject to any limitation in section 347.7.

10. Make available to the board of supervisors a statement of all receipts and expenditures from the preceding fiscal year.

11. Accept property by gift, devise, bequest, or otherwise; and, if said board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of hospital trustees, and apply the proceeds thereof, or property received in exchange therefor, to the purposes enumerated in subsection 12 hereof or for equipment.

12. Submit to the voters at any regular or special election a proposition to sell or lease any sites and buildings, excepting those described in subsection 11 hereof, and upon such proposition being carried by a majority of the total number of votes cast at such election, may proceed to sell such property at either public or private sale, and apply the proceeds only for:

a. Retirement of bonds issued and outstanding in connection with the purchase of said property so sold;

b. Repairs or improvements to property owned or for the purchase or lease of equipment as the board of hospital trustees may determine.

13. When it is determined by said board that all or a part of the facilities acquired under the provisions of this chapter and operated as a tuberculosis sanatorium are no longer needed for the uses provided or permitted under this chapter, the board may lease to the county or any political subdivision thereof for any public purpose, such facilities or such part thereof as the board deems proper.

14. There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 349.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job classification and category, but not by listing names of individual employees. The names, addresses, salaries, and job classification of all employees paid in whole or in part from a tax levy shall be a public record and open to inspection at reasonable times as designated by the board of trustees.

[S13, §409-d, -g, -h, -j, -l, -m, -p, -r; C24, 27, 31, 35, 39, §**5359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §347.13; 81 Acts, ch 117, §1062, ch 120, §1]

84 Acts, ch 1201 §1, 2; 85 Acts, ch 185, §3; 99 Acts, ch 36, §5, 6

Powers under consolidation, §348.2

347.14 Powers.

The board of hospital trustees may:

1. Adopt bylaws and rules for its own guidance and for the government of the hospital.

2. Establish and maintain in connection with said hospital a training school for nurses.

3. Establish as a department in connection with said hospital a suitable building for the isolation and detention of persons afflicted with contagious diseases subject to quarantine.

4. Determine whether or not, and if so upon what terms, it will extend the privileges of the hospital to nonresidents of the county.

5. Adopt some suitable name other than county public hospital for hospitals either operating now, in process of construction, or to be established hereafter.

6. Operate said hospital as a tuberculosis sanatorium or provide as a department of such hospital suitable accommodation and means for the care of persons afflicted with tuberculosis.

7. Formulate rules and regulations for the government of tuberculous patients and for the protection of other patients, nurses, and attendants from infection.

8. In counties having a population of one hundred thirty-five thousand inhabitants or over, establish a psychiatric department in connection with the hospital to provide for admission of patients for observation, examination, diagnosis and treatment.

9. Procure and pay premiums on any and all insurance policies required for the prudent management of the hospital, including but not limited to public liability, professional malpractice liability, workers' compensation and vehicle liability. Said insurance may include as additional insureds the board of trustees and employees of the hospital. This subsection applies to all county hospitals whether organized under this chapter, chapter 347A, chapter 37, or otherwise established by law.

10. Certify levies for a tax in excess of any tax levy limit to meet its obligations to pay the premium costs on tort liability insurance, property insurance, workers' compensation insurance, and any other insurance that may be necessary for the prudent management and operation of the county public hospital, the costs of a self-insurance program, the costs of a local government risk pool, and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

11. Do all things necessary for the management, control and government of said hospital and exercise all the rights and duties pertaining to hospital trustees generally, including but not limited to authorizing delivery of any health care service, assisted or independent living service, or other ancillary service, unless such rights of hospital trustees generally are specifically denied by this chapter, or unless such duties are expressly charged by this chapter.

12. The said trustees may in their discretion establish a fund for depreciation as a separate fund. Said funds may be invested in United States government bonds and when so invested the accumulation of interest on the bonds so purchased shall be used for the purposes of said depreciation fund; such investment when so made shall remain in said United States government bonds until such time as in the judgment of the board of trustees it is deemed advisable to use said funds for hospital purposes.

13. Operate a health care facility as defined in section 135C.1 in conjunction with the hospital.

14. Purchase, lease, equip, maintain and operate an ambulance or ambulances to provide necessary and sufficient ambulance service or to contract for such vehicles, equipment, maintenance or service when such ambulance service is not otherwise available.

15. Submit to the voters at a regular or special election a proposition to sell or lease a county public hospital for use as a private hospital or as a merged area hospital under chapter 145A or to sell or lease a county hospital in conjunction with the establishment of a merged area hospital. The authorization of the board of hospital trustees submitting the proposition may, but is not required to, contain conditions which provide for maintaining hospital care within the county, for the retention of county public hospital employees and staff, and for the continuation of the board of trustees for the purpose of carrying out provisions of contracts. The property listed in section 347.13, subsection 11, may be included in the proposition, but the proceeds from the property shall be used for the purposes listed in section 347.13, subsection 12, or for the purpose of providing health care for residents of the county. Proceeds from the sale or lease of the county hospital or other assets of the board of trustees shall not be used for the prepayment of health care services for residents of the county with the purchaser or lessee of the county hospital

or to underwrite the sale or lease of the county hospital. The proposition submitted to the voters of the county shall not be set forth at length, but it shall be in substantially the following form:

"Shall the board of hospital trustees of ..... county, state of Iowa, be authorized to ..... (state authorization which may exclude the conditions) in accordance with the terms of authorization approved at the meeting of ..... (cite date) of the board of hospital trustees?"

If the proposition is approved by a majority of the total votes cast for and against the proposition at the election, the board of hospital trustees shall proceed to carry out the authorization granted.

16. Borrow moneys to be secured solely by hospital revenues for the purposes of improvement, maintenance, or replacement of the hospital or for hospital equipment.

[S13, §409-d, -k, -o, -q; C24, 27, 31, 35, 39, §**5360;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §347.14; 81 Acts, ch 78, §20, 47]

85 Acts, ch 185, §4; 91 Acts, ch 160, §11; 99 Acts, ch 36, §7, 8

347.15 Pecuniary interest prohibited — exceptions. Repealed by 2001 Acts, ch 65, § 2.

347.16 Treatment in county hospital — terms.

1. Any resident of a county in this state who is sick or injured shall be entitled to care and treatment in any public hospital established and maintained by that county under this chapter, so long as that person observes the rules of conduct prescribed by the board of hospital trustees. Each patient admitted under this subsection, or the person legally liable for that patient's support, shall pay to the board of hospital trustees reasonable compensation for that patient's care and treatment according to the rules established by the board, unless subsection 2 is applicable.

2. Free care and treatment shall be furnished in a county public hospital to any sick or injured person who fulfills the residency requirements under section 47.4, subsection 1, paragraph *"d"*, Code 1993, in the county maintaining the hospital, and who is indigent. The board of hospital trustees shall determine whether a person is indigent and entitled to free care under this subsection, or may delegate that determination to the general assistance director or the office of the department of human services in that county, subject to guidelines the board may adopt in conformity with applicable statutes.

3. Care and treatment may be furnished in a county public hospital to any sick or injured person who has legal settlement outside the county which maintains the hospital, subject to such policies and rules as the board of hospital trustees may adopt. If care and treatment is provided under this subsection to a person who is indigent, the county in which that person has legal settlement shall pay to the board of hospital trustees the fair and reasonable cost of the care and treatment provided by the county public hospital unless the cost of the indigent person's care and treatment is otherwise provided for. If care and treatment is provided to an indigent person under this subsection, the county public hospital furnishing the care and treatment shall immediately notify, by regular mail, the auditor of the county of legal settlement of the indigent person of the provision of care and treatment to the indigent person.

4. A county public hospital may, but shall not be required to, provide care and treatment for persons afflicted with tuberculosis. If treatment for tuberculosis is provided by a county public hospital, the provisions of this section shall be applicable to persons admitted to that hospital for such treatment.

[S13, §409-k; C24, 27, 31, 35, 39, §**5362;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347.16]

83 Acts, ch 96, §157, 159; 92 Acts, ch 1212, §34; 95 Acts, ch 49, §10; 95 Acts, ch 119, §3, 5

347.17 Accounts — collection.

It shall be the duty of the trustees either by themselves or through the superintendent to make collections of all accounts for hospital services rendered to persons other than indigent patients or patients entitled to free care as provided in section 347.16. Such account shall be payable on presentation to the person liable therefor of an itemized statement and if not paid or secured within sixty days after such presentation the said trustees shall proceed to enforce collections by such means as are necessary and are authorized to employ any person for that purpose, and if legal proceedings are required they may employ counsel, the employment in either event to be on such arrangement for compensation as the trustees deem appropriate, provided, however, that should the county attorney act as attorney for the board in any such legal proceedings the county attorney shall serve without additional compensation.

[C24, 27, 31, 35, 39, §**5363;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347.17]

347.18 Discrimination.

In the management of such hospital, no discrimination shall be made against the practitioners of any recognized school of medicine; and each patient shall have the right to employ at the patient's expense any physician of the patient's choice; and any such physician, when so employed by the patient, shall have exclusive charge of the care and treatment of the patient; and attending nurses shall be subject to the direction of such physician.

[S13, §409-n; C24, 27, 31, 35, 39, §**5364;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347.18]

Applicable to hospitals payable from revenue, §347A.5

347.19 Compensation — expenses.

No trustee shall receive any compensation for services performed under this chapter, but a trustee shall be reimbursed for any cash expenditures actually made for personal expenses incurred in the performance of duties. An itemized statement of such expenses, verified by the oath of each such trustee, shall be filed with the secretary, and the same shall only be allowed by an affirmative vote of all trustees present at the meeting of the board.

[S13, §409-d; C24, 27, 31, 35, 39, §**5365;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347.19]

347.20 Municipal jurisdiction.

When such hospital is located on land outside of, but adjacent to a city, the ordinances of such city relating to fire and police protection and control, sanitary regulations, and public utility service, shall be in force upon and over such hospital and grounds, and such city shall have jurisdiction to enforce such ordinances.

[S13, §409-i; C24, 27, 31, 35, 39, §**5366;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347.20]

347.21 and 347.22 Repealed by 81 Acts, ch 117, § 1097.

347.23 City hospital changed to county hospital.

Any hospital organized and existing as a city hospital may become a county hospital organized and managed as provided for in this chapter, upon a proposition for such purpose being submitted to and approved by a majority of the electors of both the city in which such hospital is located and of the county under whose management it is proposed that such hospital be placed, at any general or special election called for such purpose. The proposition shall be placed upon the ballot by the board of supervisors when requested by a petition signed by eligible electors of the county equal in number to five percent of the votes cast for president of the United States or governor, as the case may be, at the last general election. The proposition may be submitted at the next general election or at a special election called for that purpose. Upon the approval of the proposition the hospital, its assets and liabilities, will become the property of the county and this chapter will govern its future management. The question shall be submitted in substantially the following form: "Shall the municipal hospital of . . . . . , Iowa, be transferred to and become the property of, and be managed by the county of . . . . . , Iowa?"

For the purpose of computing whether or not said proposition is carried, the votes of the residents of the city in which said hospital is located shall be counted both for the purpose of ascertaining whether or not the proposition is carried within the city and also for the purpose of ascertaining whether or not the proposition is carried within the county.

[C62, 66, 71, 73, §347.23, 380.12; C75, 77, 79, 81, §347.23]

2001 Acts, ch 56, §27

347.23A Memorial hospital or county hospital payable from revenue bonds changed to county hospital.

1. A hospital established as a memorial hospital under chapter 37 or a county hospital supported by revenue bonds and organized under chapter 347A may become, in accordance with the provisions of this section, a county hospital organized and managed as provided for in this chapter. If the hospital is established by a city as a memorial hospital, the city must be located in the county which will own and manage the hospital. A proposition for the change must be submitted to and approved by a majority of the electors of the county which will own and manage the hospital as provided for in this chapter. In addition, if the hospital is a memorial hospital organized by a city under chapter 37, the proposition must also be approved by a majority of the electors of that city. The proposition may be submitted to the electors at any general or special election called by the county board of supervisors for this purpose.

2. The proposition shall be placed upon the ballot by the board of supervisors if requested by the hospital's board of trustees or governing commission and the request is endorsed by a petition for this purpose signed by eligible electors of the county equal in number to five percent of the votes cast for president of the United States or governor, as the case may be, at the last general election. Upon the approval of the proposition the hospital, its assets and liabilities, shall become the property of the county and this chapter shall govern its future management.

a. The question for a memorial hospital established by a city under chapter 37 shall be submitted in substantially the following form: "Shall the . . . . . hospital of . . . . . , Iowa, be transferred to and become the property of, and be managed by the county of . . . . . , Iowa, under provision of chapter 347 of the Code of Iowa?"

b. The question for a memorial hospital established by a county under chapter 37 or a county hospital supported by revenue bonds and organized under chapter 347A shall be submitted in substantially the following form: "Shall the . . . . . hospital of . . . . . , Iowa, organized and governed under chapter . . . . of the Code of Iowa be changed to be established and governed under chapter 347 of the Code of Iowa?"

3. For the purpose of computing whether or not the proposition is carried, if the hospital is a memorial hospital established by a city under the provisions of chapter 37, the votes of the residents

of that city shall be counted both for the purpose of ascertaining whether or not the proposition is carried within the city and also for the purpose of ascertaining whether or not the proposition is carried within the county.

94 Acts, ch 1135, §2; 2001 Acts, ch 56, §28

347.24 Law applicable to other hospitals.

Hospitals organized under chapter 37 or chapter 347A may be operated as provided for in this chapter in any way not clearly inconsistent with the specific provisions of their chapters.

[C62, 66, 71, 73, 75, 77, 79, 81, §347.24]

347.25 Election of trustees.

The election of hospital trustees whose offices are established by this chapter or chapter 145A or 347A shall take place at the general election on ballots which shall not reflect a nominee's political affiliation. Nomination shall be made by petition in accordance with chapter 45. The petition form shall be furnished by the county commissioner of elections, signed by fifty eligible electors of the county, and shall be filed with the county commissioner of elections. A plurality is sufficient to elect hospital trustees.

If any of the provisions of this section shall be in conflict with any of the laws of this state, then the provisions of this section shall prevail.

[C62, 66, 71, 73, 75, 77, 79, 81, §347.25]

85 Acts, ch 135, §1; 91 Acts, ch 129, §26

347.26 Health care facility in existing hospital.

In any county where there is a county hospital in existence, a health care facility as defined in section 135C.1 may be established to be operated in conjunction therewith, and all of the provisions of this chapter and all of the proceedings authorized thereby relating to hospital buildings and additions thereto, shall apply to erecting, equipping and procuring sites for such facilities and additions thereto, as well as for improvements, maintenance and replacements of such facilities.

[C62, 66, 71, 73, 75, 77, 79, 81, §347.26]

347.27 Repealed by 81 Acts, ch 117, § 1097. See § 331.461(1), 347.7.

347.28 Sale or lease of property.

A county or city hospital may lease or sell any of its property which is not needed for hospital purposes to any person, upon approval by the board of trustees.

[C75, 77, 79, 81, §347.28]

86 Acts, ch 1200, §4

347.29 Use of property.

A county or city hospital may use property received by gift, devise, bequest, or otherwise, or the proceeds from the sale of property, for the construction of facilities for lease or sale, upon approval by the board of trustees.

[C75, 77, 79, 81, §347.29]

86 Acts, ch 1200, §5

347.30 Notice and hearing.

A county or city hospital shall serve notice and hold a public hearing before selling or leasing any real property pursuant to sections 347.28 and 347.29. The notice shall definitely describe the property, indicate the date and location of the hearing, and shall be published by at least one insertion each week for two consecutive weeks in a newspaper having general circulation in the county where the property is located. The hearing shall not take place prior to two weeks after the second publication.

A county or city hospital shall serve notice before selling or leasing any personal property pursuant to sections 347.28 and 347.29. The notice shall definitely describe the property and shall be published by at least one insertion each week for two consecutive weeks in a newspaper having general circulation in the county where the property is located.

[C75, 77, 79, 81, §347.30]

86 Acts, ch 1200, §6; 99 Acts, ch 36, §9

347.31 Community recreation facilities and programs.

A county or city hospital may expend available funds for establishment and operation of facilities, programs, and services which provide health benefits to persons served by those facilities, programs, or services. Where appropriate, the county or city hospital shall enter into an agreement pursuant to chapter 28E.

86 Acts, ch 1072, §1

347.32 Tax status.

This chapter does not deprive any hospital of its tax exempt or nonprofit status except that portion of hospital property which is used for other than nonprofit, health-related purposes shall be subject to property tax as provided for in section 427.1, subsection 14.

86 Acts, ch 1200, §7

CHAPTER 347A

COUNTY HOSPITALS PAYABLE FROM REVENUE

See §347.14(9), 347.24

347A.1 Revenue bonds — trustees — administration.
347A.2 Repealed by 81 Acts, ch 117, §1097.
347A.3 Tax for maintenance and operation.
347A.4 Repealed by 81 Acts, ch 117, §1097.
347A.5 Discrimination prohibited.
347A.6 Collection of accounts.
347A.7 Repealed by 81 Acts, ch 117, §1097.
347A.8 Repealed by 81 Acts, ch 117, §1097.

347A.1 Revenue bonds — trustees — administration.

A county having a population less than one hundred fifty thousand may issue revenue bonds for a county hospital as provided in section 331.461, subsection 2, paragraph *"e"*. The administration and management of the hospital shall be vested in a board of hospital trustees consisting of five or seven members. Appointments for a five-member board shall be made by the board of supervisors from among the resident citizens of the county with reference to their fitness for office, and not more than two of the trustees shall be residents of the same township. Expansion from a five-member to a seven-member board of trustees shall occur only on approval of a majority of the five-member board of trustees. The five-member board of trustees shall appoint members to the additional vacancies; one appointee shall serve until the succeeding general election and the other appointee shall serve until the second succeeding general election at which times successors shall be elected.

The trustees shall hold office until the next succeeding election, at which time their successors shall be elected, two for a term of two years, two for a term of four years and one for a term of six years, and thereafter their successors shall be elected for regular terms of six years each. Vacancies in the board of trustees may be filled in the same manner as original appointments, to hold office until the vacancies are filled pursuant to section 69.12. The trustees shall qualify by taking the usual oath of office as provided in chapter 63, but no bond shall be required of them. The trustees shall receive no compensation but shall be reimbursed for all expenses incurred by them with the approval of the board of trustees in the performance of their duties. The board first appointed shall organize promptly following its appointment, and shall serve until successors are elected and qualified; thereafter no later than December 1 of each year the board shall reorganize by the appointment of a chairperson, secretary, and treasurer. The secretary and treasurer shall each file with the chairperson of the board a surety bond in the amount the board of trustees requires, with sureties to be approved by the board of trustees, for the use and benefit of the county hospital. The reasonable cost of the bonds shall be paid from the operating funds of the hospital. The secretary shall report to the county auditor and the county treasurer the names of the chairperson, secretary, and treasurer of the board as soon as practicable after the appointment of each.

The treasurer of the county hospital shall receive and disburse all funds. Warrants shall be drawn by the secretary and countersigned by the chairperson of the board after the claim has been certified by the board. However, the board may adopt purchasing regulations to govern the purchase of specified goods and services without the prior certification of the board. The purchasing regulations shall conform to generally accepted practices followed by purchasing officers. The treasurer of the county hospital shall keep an accurate account of all receipts and disbursements and shall register all orders drawn and reported by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose, and amount. The secretary of the board of trustees shall file with the board on or before the tenth day of each month, a complete statement of all receipts and disbursements from all funds during the preceding month, and also the balance remaining on hand in all funds at the close of the period covered by the statement. Before the fifteenth day of each month, the county treasurer shall give notice to the chairperson of the board of trustees of the amount of revenue collected for each fund of the hospital to the first day of that month and the county treasurer shall pay the taxes to the treasurer of the hospital as provided in section 331.552, subsection 29.

The board of hospital trustees may employ, fix the compensation of, and remove at pleasure professional, technical, and other employees as it deems necessary for the operation and maintenance of the hospital, and disbursement of funds for operation and maintenance shall be made upon order and approval of the board of hospital trustees. A county hospital may include a nurses home and nurses training school. The board of trustees

shall make all rules and regulations governing its meetings and the operation of the county hospital and shall fix charges for the services furnished so that the revenues will be at all times sufficient in the aggregate to provide for the payment of the interest on and principal of all revenue bonds issued and outstanding for the hospital, and for the payment of all operating and maintenance expenses of the hospital.

The board of hospital trustees may establish a fund for depreciation as a separate fund. Depreciation fund moneys may be invested in United States government bonds and the accumulation of interest on the bonds shall be used for the purposes of the depreciation fund. The moneys shall remain invested in the bonds until the board of hospital trustees determines the moneys shall be used for hospital purposes.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §347A.1; 81 Acts, ch 117, §1063]

84 Acts, ch 1003, §7; 90 Acts, ch 1118, §1; 92 Acts, ch 1024, §3; 97 Acts, ch 170, §87; 99 Acts, ch 36, §10

347A.2 Repealed by 81 Acts, ch 117, § 1097. See § 331.461(1).

347A.3 Tax for maintenance and operation.

If in any year, after payment of the accruing interest on and principal due of revenue bonds issued under chapter 331, division IV, part 4, and payable from the revenues derived from the operation of the county hospital, there is a balance of such revenues insufficient to pay the expenses of operation, maintenance, and funded depreciation of the hospital, the board of hospital trustees shall certify that fact as soon as ascertained to the board of supervisors of the county, and the board of supervisors shall make the amount of the deficiency for paying the expenses of operation, maintenance, and funded depreciation of the hospital available from other county funds or shall levy a tax not to exceed one dollar and eight cents per thousand dollars of assessed value in any one year on all the taxable property in the county in an amount sufficient for that purpose. However, general county funds or the proceeds of taxes shall not be used or applied to the payment of the interest on or principal of revenue bonds issued under chapter 331, division IV, part 4, but general county funds or proceeds of taxes may only be used and applied to pay expenses of operation, maintenance, and funded depreciation of the hospital which cannot be paid from available revenue derived from its operation.

A tax levied under this section for paying the expenses of operation, maintenance, and funded depreciation of a merged area hospital pursuant to the authority granted a merged area under section 145A.20, shall only be levied on the assessed value of property in that portion of a county which is part of the merged area, in accordance with the plan or merger established, approved, and implemented under sections 145A.3, 145A.4, 145A.5, and 145A.14.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347A.3; 81 Acts, ch 117, §1097; 82 Acts, ch 1104, §12]

85 Acts, ch 123, §13; 90 Acts, ch 1118, §2

347A.4 Repealed by 81 Acts, ch 117, § 1097.

347A.5 Discrimination prohibited.

The provisions of section 347.18 are made applicable to this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §347A.5]

347A.6 Collection of accounts.

It shall be the duty of the hospital trustees either by themselves or through the superintendent or similar person to make collections of all accounts for hospital services. Such account shall be payable on presentation to the person liable thereby of an itemized statement and if not paid or secured within sixty days after such presentation the said trustees shall proceed to enforce collections by such means as are necessary and are authorized to employ any person for that purpose and, if legal proceedings are required, may employ counsel, the employment in either event to be on such arrangement for compensation as the hospital trustees deem appropriate.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §347A.6]

347A.7 Repealed by 81 Acts, ch 117, § 1097. See § 331.441(2, 7).

347A.8 Repealed by 81 Acts, ch 117, § 1097.

CHAPTER 347B

COUNTY CARE FACILITIES

Exemption from hospital licenses, §135B.18
This chapter not enacted as a part of this title; transferred from chapter 253 in Code 1993
See §218.95 for provisions pertaining to construction of synonymous terms

347B.1 Definitions.
347B.2 Establishment — submission to vote.
347B.3 Annual published report.
347B.4 Reserved.
347B.5 Admission — labor required.
347B.6 Order for admission.
347B.7 Reserved.
347B.8 Visitation and inspection.
347B.9 Temporary admission.
347B.10 through 347B.13 Reserved.
347B.14 Effect of approval of plans.

347B.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1
Former §347B.1 transferred to §347B.2

347B.2 Establishment — submission to vote.

If the board of supervisors proposes to establish a county care facility under this chapter at a cost in excess of fifteen thousand dollars, it shall first submit the proposition to a vote of the people.

[C51, §828; R60, §1396; C73, §1372; C97, §2241; SS15, §2241; C24, 27, 31, 35, §5338; C39, §**3828.115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §253.1; 81 Acts, ch 117, §1041]

C93, §347B.1
C2001, §347B.2

347B.3 Annual published report.

The board of supervisors, prior to September 1 of each year, shall publish in the official papers of the county as part of its proceedings, a financial statement of the receipts of the county care facility, or county farm, itemizing them and stating their source, which report shall also set forth the total expenditures and the value of the property on hand on July 1 of the year for which the report is made and a comparison with the inventory of the previous year. The inventory need not specifically account by item for individual items of personal property valued at less than one hundred dollars.

[C24, 27, 31, 35, §5340; C39, §**3828.117;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §253.3; 81 Acts, ch 117, §1042]

89 Acts, ch 214, §1
C93, §347B.3

347B.4 Reserved.

347B.5 Admission — labor required.

The county care facility shall maintain a record of the name and age of each person admitted and the date of admission. The board may require of any resident of the county care facility, with approval of a physician, reasonable and moderate labor suited to the resident's age and bodily strength. Any income realized through the labor of residents, together with the receipts from operation of the county farm if one is maintained, shall be appropriated for use by the county care facility as the board of supervisors directs.

[C51, §835, 836; R60, §1403, 1404; C73, §1375, 1376; C97, §2244; S13, §2244; C24, 27, 31, 35, §5342; C39, §**3828.119;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §253.5; 81 Acts, ch 117, §1043]

C93, §347B.5

347B.6 Order for admission.

No person shall be admitted into the county care facility as a resident except upon order of the board of supervisors, which shall be issued only after the person seeking admission has received a preadmission physical examination by a physician. However, if the need for admission of the person to the county care facility is immediate and no physician is readily available to perform the examination, the board may order the person's admission pending an examination by a physician, any provisions of sections 135C.3 and 135C.4 to the contrary notwithstanding. When an admission is so ordered, the physical examination shall be completed within three days after the person's admission to the county care facility.

[C51, §837; R60, §1405; C73, §1377; C97, §2244; S13, §2244; C24, 27, 31, 35, §5343; C39, §**3828.120;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §253.6]

C93, §347B.6

347B.7 Reserved.

347B.8 Visitation and inspection.

The board shall cause the county care facility to be visited at least once a month by one of its body, who shall carefully examine the condition of the residents and the manner in which they are fed and clothed and otherwise provided for and treated, ascertain what labor they are required to perform, inspect the books and accounts of the administrator, and look into all matters pertaining to the county care facility and its residents, and report to the board.

[C51, §842; R60, §1410; C73, §1380; C97, §2246; S13, §2246; C24, 27, 31, 35, §5345; C39, §**3828.122;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §253.8]

C93, §347B.8

347B.9 Temporary admission.

The district court may order temporary admission of persons under its jurisdiction to the county care facility until other arrangements are made for care of such persons.

A judge, magistrate, or judicial hospitalization referee shall make all placements to a county care facility pursuant to section 135C.23.

[C75, 77, 79, 81, §253.9]

87 Acts, ch 190, §3

C93, §347B.9

347B.10 through 347B.13 Reserved.

347B.14 Effect of approval of plans.

When plans for construction or modification of a county care facility have been properly approved by the Iowa department of public health or other appropriate state agency, the facility constructed in accord with the plans so approved shall not for a period of at least ten years from completion of the construction or modification be considered deficient or ineligible for licensing by reason of failure to meet any regulation or standard established subsequent to approval of the construction and modification plans, unless a clear and present danger exists that would adversely affect the residents of the facility.

[C75, 77, 79, 81, §253.14]

C93, §347B.14

CHAPTER 348

CONSOLIDATION OF HOSPITAL SERVICE

Merged area hospitals; see chapter 145A

348.1 Consolidation and powers.
348.2 Consolidation — powers of trustees.
348.3 Discrimination prohibited.
348.4 Sale of property after consolidation.
348.5 Repealed by 72 Acts, ch 1088, §286.

348.1 Consolidation and powers.

The purpose of this chapter is to grant to hospital trustees additional powers, and to consolidate and combine under one management all of the public hospital service of the counties and cities coming within its provisions.

[C27, 31, 35, §5368-a1; C39, §**5368.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §348.1]

348.2 Consolidation — powers of trustees.

In all counties of the state having a population of one hundred thirty-five thousand inhabitants or over, and in which consolidation of hospital service has been completed as contemplated in this chapter, said board of hospital trustees shall:

1. Have general supervision and care of all grounds and buildings in said county and city occupied and used for public hospital purposes.

2. Have control and supervision over the physicians, nurses, attendants, and patients in all such hospitals.

3. Establish, maintain, and supervise, at a convenient place in such city located in said county, an emergency station for the treatment of emergency cases, including such venereal treatment as may be necessary for the protection of the public.

4. Establish, as early as funds are available, as a department in connection with said hospital, a suitable building or place for the isolation and detention of persons afflicted with contagious diseases subject to quarantine.

[C27, 31, 35, §5368-a2; C39, §**5368.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §348.2]

348.3 Discrimination prohibited.

In the management and control of hospitals coming within the provisions of this chapter, no distinction or discrimination shall be made between city and county patients.

[C27, 31, 35, §5368-a3; C39, §**5368.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §348.3]

348.4 Sale of property after consolidation.

In all cities located in counties in which both a public county and city hospital are being conducted under separate supervision and management, such cities are hereby authorized and directed, when consolidation is completed under this chapter and upon the recommendation of the board of hospital trustees, to sell the property now owned and used by such cities for hospital purposes, both real and personal, at public or private sale, the proceeds of such sale to be used, first, for the retirement and payment of any outstanding bonds issued in connection with the purchase of such hospital property, and the remainder, if any, shall be turned into the county public hospital fund.

[C27, 31, 35, §5368-a4; C39, §**5368.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §348.4]

348.5 Repealed by 72 Acts, ch 1088, § 286.

CHAPTER 349

OFFICIAL NEWSPAPERS

See also chapter 618

349.1 Time of selection.
349.2 Source of selection.
349.3 Number.
349.4 Application — contest.
349.5 Contest — verified statements.
349.6 Determination of contest — evidence.
349.7 Subscribers — how determined.
349.8 Tie lists.
349.9 Fraudulent lists.
349.10 New date fixed if all rejected.
349.11 Appeal.
349.12 Transcript.
349.13 Trial of appeal.
349.14 Publication pending contest — interest payable.
349.15 Division of compensation.
349.16 What published.
349.17 Official publication fee.
349.18 Supervisors' proceedings — each payee listed — publication.

349.1 Time of selection.

The board of supervisors shall, at the January session each year, select the newspapers in which the official proceedings shall be published for the ensuing year.

[R60, §314; C73, §307; C97, §441; SS15, §441; C24, 27, 31, 35, 39, §**5397;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.1]

349.2 Source of selection.

Such selection shall be from newspapers published, and having the largest number of bona fide yearly subscribers, within the county. When counties are divided into two divisions for district court purposes, each division shall be regarded as a county.

[C73, §307; C97, §441; SS15, §441; C24, 27, 31, 35, 39, §**5398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.2]

349.3 Number.

The number of such newspapers to be selected shall be as follows:

1. In counties having a population of less than fifteen thousand, two such newspapers, or one, if there be but one published therein.

2. In counties having a population of more than fifty thousand, divided into two divisions for court purposes, three such newspapers in each such division, not more than two of which shall be published in the same city.

3. In counties having a population of less than fifty thousand, divided into two divisions for court purposes, two such newspapers in each such division.

4. In all other counties, three such newspapers, not more than two of which shall be published in the same city.

[C73, §307; C97, §441; SS15, §441; C24, 27, 31, 35, 39, §**5399;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.3]

349.4 Application — contest.

Any publisher who desires that the publisher's newspaper be so selected may make written application therefor to the board of supervisors at any time prior to the making of the selection. If more applications are filed than there are newspapers to be selected, a contest shall exist.

[C24, 27, 31, 35, 39, §**5400;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.4]

349.5 Contest — verified statements.

In case of a contest, each applicant shall deposit with the county auditor, in a sealed envelope, a statement, verified by the applicant, showing the names of the applicant's bona fide yearly subscribers living within the county and the place at which each such subscriber receives such newspaper, and the manner of its delivery.

[C97, §441; SS15, §441; C24, 27, 31, 35, 39, §**5401;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.5]

349.6 Determination of contest — evidence.

The county auditor shall, on the direction of the board while it is in session, open said envelopes. The board may receive other evidence of circulation. In counties in which two newspapers are to be selected, the two newspapers showing the largest number of bona fide yearly subscribers living within the county shall be selected as such official newspapers. In counties in which three newspapers are to be selected, the three showing the largest number of such subscribers shall be selected except when such three newspapers are all published in the same city, in which case the two newspapers in such city having the largest lists of such subscribers and the newspaper having the next largest list of such subscribers and published outside such city, shall be selected as such official newspapers.

For purposes of this section, in counties where there are more newspapers than the number required for official county newspapers, newspapers under common ownership published in the same city, and having approximately the same subscriber list or offered for sale in or delivered to the same geographic area, shall be treated as one newspaper. Each such newspaper under common ownership should be considered eligible for publishing public notices, but such newspapers shall be treated as one newspaper for payment purposes to allow for flexibility in notice publication schedules.

[C97, §441; SS15, §441; C24, 27, 31, 35, 39, §**5402;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.6]

86 Acts, ch 1013, §1

349.7 Subscribers — how determined.

The board of supervisors shall determine the bona fide yearly subscribers of a newspaper within the county, as follows:

1. Those subscribers listed by the publisher whose papers are delivered, by or for the publisher, by mail or otherwise, upon an order or subscription for same by the subscriber, and in accordance with the postal laws and regulations, and who have been subscribers at least six consecutive months prior to date of application.

2. Those subscribers who have been subscribers at least six consecutive months before the date of application, whose papers are regularly delivered by carrier upon an order or subscription, or whose papers are purchased from the publisher for resale and delivery by independent carriers who have filed with the publisher a list of their subscribers.

[C39, §**5402.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.7]

86 Acts, ch 1183, §1

349.8 Tie lists.

When newspapers are, by equality of circulation, equally entitled to such selection, the board shall, in the presence of the contestants, determine the question by lot.

[C24, 27, 31, 35, 39, §**5403;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.8]

349.9 Fraudulent lists.

No newspaper shall be selected as an official newspaper when it is made to appear that the verified list deposited by the applicant contains the names of persons who are not bona fide subscribers within the county and that such names were knowingly and willfully entered on such list by the applicant, or at the applicant's instance, with intent to deceive the board.

[SS15, §441; C24, 27, 31, 35, 39, §**5404;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.9]

349.10 New date fixed if all rejected.

If all certified statements are rejected under the provisions of section 349.9, the board shall fix a new date for the selection of official newspapers and nothing herein shall be construed to prevent the applicants so rejected from filing new certified statements.

[SS15, §441; C24, 27, 31, 35, 39, §**5405;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.10]

349.11 Appeal.

Any applicant may, within twenty days after the selection of official newspapers, appeal to the district court from the decision of the board of supervisors as to the selection of any or all newspapers so selected by filing in the office of the county auditor a bond for costs, in a sum and with sureties to be approved by said auditor, and by serving upon each applicant, whose selection the appellant desires to contest, and the county auditor, a notice of appeal.

[SS15, §441; C24, 27, 31, 35, 39, §**5406;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.11]

Presumption of approval of bond, §636.10

349.12 Transcript.

The auditor shall forthwith file with the clerk of the district court a transcript of all the proceedings before the board, together with all papers filed in connection with said matter.

[SS15, §441; C24, 27, 31, 35, 39, §**5407;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.12]

349.13 Trial of appeal.

Said appeal shall be triable de novo as an equitable action without formal pleadings at any time after the expiration of twenty days following the filing of such transcript.

[SS15, §441; C24, 27, 31, 35, 39, §**5408;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.13]

Trial on appeal, §624.4

349.14 Publication pending contest — interest payable.

After the selection by the board of supervisors of official newspapers, no publisher shall receive pay for publishing official proceedings until the contest is finally determined, insofar as the publisher is concerned. After determination of the contest, payment for publications made during the contest shall include interest at the rate of one-half percent per month calculated from date of publication to the date of payment, less thirty days.

[C97, §441; SS15, §441; C24, 27, 31, 35, 39, §**5409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.14]

86 Acts, ch 1183, §2

349.15 Division of compensation.

If in any county the publishers of two or more newspapers, at least one of which by reason of its location and circulation is entitled to be selected as a county official newspaper, have entered into an agreement to publish the official proceedings or have united in a request to have their publication selected for such purposes, and such agreement or request has been filed with the board of supervisors prior to the naming of the official newspapers, the board of supervisors shall designate each of them a county official newspaper, but the combined compensation of the newspapers so requesting or agreeing, added to that of the other official newspaper or newspapers, if any, shall not exceed the combined compensation allowed by law to two official newspapers in counties having a population below fifteen thousand or to three official newspapers in counties having a population of fifteen thousand or more.

[SS15, §441; C24, 27, 31, 35, 39, §**5410;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.15]

349.16 What published.

There shall be published in each of said official newspapers at the expense of the county during the ensuing year:

1. The proceedings of the board of supervisors, excluding from the publication of said proceedings, its canvass of the various elections, as provided by law; witness fees of witnesses before the grand jury and in the district court in criminal cases.
2. The schedule of bills allowed by said board.
3. The reports of the county treasurer, including a schedule of the receipts and expenditures of the county and the current cash balance in each fund in the treasurer's office together with the total of warrants outstanding against each of said funds as shown by the warrant register in the auditor's office.
4. A synopsis of the expenditures of township trustees for road purposes as provided by law.

[R60, §313; C73, §304; C97, §441; SS15, §441; C24, 27, 31, 35, 39, §**5411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.16]

349.17 Official publication fee.

The cost of official publications provided for in section 349.16 shall not exceed the fee provided in section 618.11 for the publication of legal notices. An official publication shall not be printed in type smaller than six point.

[C73, §307; C97, §441; SS15, §441; C24, 27, 31, 35, 39, §**5412;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.17]

86 Acts, ch 1183, §3; 89 Acts, ch 214, §2

349.18 Supervisors' proceedings — each payee listed — publication.

All proceedings of each regular, adjourned, or special meeting of a board of supervisors, including the schedule of bills allowed, shall be published immediately after the adjournment of the meeting, and the publication of the schedule of the bills allowed shall include a list of all claims allowed, including salary claims for services performed, showing the name of the person or firm making the claim and the amount of the claim, except that names of persons receiving relief shall not be published and salaries paid to persons regularly employed by the county shall only be published annually showing the total amount of the annual salary. The county auditor shall furnish a copy of the proceedings to be published, within one week following the adjournment of the board.

[C27, 31, 35, §5412-a1; C39, §**5412.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §349.18]

83 Acts, ch 123, §158, 209; 84 Acts, ch 1069, §1

CHAPTER 350

COUNTY CONSERVATION BOARDS

This chapter not enacted as a part of this title; transferred from chapter 111A in Code 1993

350.1 Purposes.
350.2 Petition — board membership.
350.3 Meetings — records — annual report.
350.4 Powers and duties.
350.5 Regulations — penalty — officers.
350.6 Moneys — contracts — bonds.
350.7 Joint operations.
350.8 School property used.
350.9 Advice and assistance.
350.10 Statutes applicable.
350.11 County conservation boards created.
350.12 Iowa's county beautification program.

350.1 Purposes.

The purposes of this chapter are to create a county conservation board and to authorize counties to acquire, develop, maintain, and make available to the inhabitants of the county, public museums, parks, preserves, parkways, playgrounds, recreational centers, county forests, wildlife and other conservation areas, and to promote and preserve the health and general welfare of the people, to encourage the orderly development and conservation of natural resources, and to cultivate good citizenship by providing adequate programs of public recreation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §111A.1]
C93, §350.1

350.2 Petition — board membership.

Upon a petition to the board of supervisors which meets the requirements of section 331.306, the board shall submit to the voters at the next general election the question of whether a county conservation board shall be created as provided for in this chapter. If at the election the majority of votes favors the creation of a county conservation board, the board of supervisors within sixty days after the election shall create a county conservation board to consist of five bona fide residents of the county. The members first appointed shall hold office for the term of one, two, three, four, and five years respectively, as indicated and fixed by the board of supervisors. Thereafter, succeeding members shall be appointed for a term of five years, except that vacancies occurring otherwise than by expiration of term shall be filled by appointment for the unexpired term. When a member of the board, during the term of office, ceases to be a bona fide resident of the county, the member is disqualified as a member and the office becomes vacant. Members of the board shall be selected and appointed on the basis of their demonstrated interest in conservation matters, and shall serve without compensation, but may be paid their actual and necessary expenses incurred in the performance of their official duties. Members of the county conservation board may be removed for cause by the board of supervisors as provided in section 331.321, subsection 3, if the cause is malfeasance, nonfeasance, disability, or failure to participate in board activities as set forth by the rules of the conservation board.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §111A.2; 81 Acts, ch 117, §1012]
90 Acts, ch 1238, §34
C93, §350.2

350.3 Meetings — records — annual report.

Within thirty days after the appointment of members of the board, the board shall organize by selecting from its members a president and secretary and such other officers as are deemed necessary, who shall hold office for the calendar year in which elected and until their successors are selected and qualify. Three members of the board shall constitute a quorum for the transaction of business. The board shall hold regular monthly meetings. Special meetings may be called by the president, and shall be called on the request of a majority of members, as the necessity may require. The county conservation board shall have power to adopt bylaws, to adopt and use a common seal, and to enter into contracts. The county board of supervisors shall provide suitable offices for the meetings of the county conservation board and for the safekeeping of its records. Such records shall be subject to public inspection at all reasonable hours and under such regulations as the county conservation board may prescribe. The board shall annually make a full and complete report to the county board of supervisors of its transactions and operations for the preceding year. Such report shall contain a full statement of its receipts, disbursements, and the program of work for the period covered, and may include such recommendations as may be deemed advisable.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §111A.3]
86 Acts, ch 1245, §1879; 92 Acts, ch 1025, §1
C93, §350.3

350.4 Powers and duties.

The county conservation board shall have the custody, control and management of all real and personal property heretofore or hereafter acquired by the county for public museums, parks, preserves, parkways, playgrounds, recreation centers, county forests, county wildlife areas, and other county conservation and recreation purposes and is authorized and empowered:

1. To study and ascertain the county's museum, park, preserve, parkway, and recreation and other conservation facilities, the need for such facilities, and the extent to which such needs are being currently met, and to prepare and adopt a co-ordinated plan of areas and facilities to meet such needs.

2. To acquire in the name of the county by gift, purchase, lease, agreement, exchange, or otherwise, in fee or with conditions, suitable real estate within or without the territorial limits of the county for public museums, parks, preserves, parkways, playgrounds, recreation centers, forests, wildlife, and other conservation purposes and for participation in watershed, drainage, and flood control programs for the purpose of increasing the recreational resources of the county. The natural resource commission, the county board of supervisors, or the governing body of any city, upon request of the county conservation board, may transfer to the county conservation board for use as museums, parks, preserves, parkways, playgrounds, recreation centers, play fields, tennis courts, skating rinks, swimming pools, gymnasiums, rooms for arts and crafts, camps and meeting places, community forests, wildlife areas, and other recreational purposes, any land and buildings owned or controlled by the department of natural resources or the county or city and not devoted or dedicated to any other inconsistent public use. In acquiring or accepting land, due consideration shall be given to its scenic, historic, archaeologic, recreational, or other special features, and land shall not be acquired or accepted unless, in the opinion of the board, it is suitable or, in the case of exchange, is suitable and of substantially the same value as the property exchanged from the standpoint of its proposed use. An exchange of property approved by the county conservation board and the board of supervisors is not subject to section 331.361, subsection 2.

3. The county conservation board shall file with the natural resource commission all acquisitions or exchanges of land within one year.

4. To plan, develop, preserve, administer and maintain all such areas, places and facilities, and construct, reconstruct, alter and renew buildings and other structures, and equip and maintain the same.

5. To accept in the name of the county gifts, bequests, contributions and appropriations of money and other personal property for conservation purposes.

6. To employ and fix the compensation of a director who shall be responsible to the county conservation board for the carrying out of its policies. The director, subject to the approval of the board, may employ and fix the compensation of assistants and employees as necessary for carrying out this chapter.

7. To charge and collect reasonable fees for the use of the parks, facilities, privileges and conveniences as may be provided and for admission to amateur athletic contests, demonstrations and exhibits, and other noncommercial events. The board shall not allow the exclusive use of a park by one or more organizations.

8. To operate concessions or to lease concessions and to let out and rent privileges in or upon any property under its control upon such terms and conditions as are deemed by it to be in the public interest.

9. To participate in watershed projects of soil and water conservation districts and the federal government and in projects of drainage districts organized under the provisions of chapter 161F and chapter 468, subchapter I, parts 1 through 5, and subchapter II, parts 1, 5, and 6, for the purpose of increasing the recreational resources of the county.

Any agreement for such participation by or with a board of supervisors or trustees concerning drainage districts shall be in writing, shall be duly adopted by a resolution of the board of supervisors or trustees and shall be spread in its entirety upon the permanent records of the drainage district or districts affected.

10. To furnish suitable uniforms for the director and those employees as the director may designate to wear uniforms, when on official duty. The cost of the uniforms shall not exceed three hundred dollars per person in any year. The uniforms shall at all times remain the property of the county.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §111A.4; 81 Acts, ch 117, §1013]

84 Acts, ch 1097, §1; 86 Acts, ch 1097, §1, 86 Acts, ch 1245, §1867; 89 Acts, ch 191, §1; 89 Acts, ch 239, §1

C93, §350.4

350.5 Regulations — penalty — officers.

The county conservation board may make, alter, amend or repeal regulations for the protection, regulation, and control of all museums, parks, preserves, parkways, playgrounds, recreation centers, and other property under its control. The regulations shall not be contrary to, or inconsistent with, the laws of this state. The regulations shall not take effect until ten days after their adoption by the board and after their publication as provided in section 331.305 and after a copy of the regulations has been posted near each gate or

principal entrance to the public ground to which they apply. After the publication and posting, a person violating a provision of the regulations which are then in effect is guilty of a simple misdemeanor. The board may designate the director and those employees as the director may designate as police officers who shall have all the powers conferred by law on police officers, peace officers, or sheriffs in the enforcement of the laws of this state and the apprehension of violators upon all property under its control within and without the county. The board may grant the director and those employees of the board designated as police officers the authority to enforce the provisions of chapters 321G, 461A, 462A, 481A, and 483A on land not under the control of the board within the county.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §111A.5]

84 Acts, ch 1097, §2; 87 Acts, ch 43, §3; 88 Acts, ch 1193, §1; 89 Acts, ch 88, §1

C93, §350.5

See §462A.31

350.6 Moneys — contracts — bonds.

Upon request of the county conservation board, the board of supervisors shall establish a reserve for county conservation land acquisition and capital improvement projects. The board of supervisors may periodically credit an amount of money to the reserve. Moneys credited to the reserve shall remain in the reserve until expended for the projects upon warrants requisitioned by the county conservation board. The interest earned on moneys received from bequests and donations in the reserve account which are invested pursuant to section 12C.1 shall be credited to the reserve account.

Annually, the total amount of money credited to the reserve, plus moneys appropriated for conservation purposes from sources other than the reserve, shall not be less than the amount of gifts, contributions, and bequests of money, rent, licenses, fees, charges, and other revenues received by the county conservation board. However, moneys given, bequeathed, or contributed upon specified trusts shall be held, appropriated, and expended in accordance with the trust specified.

Grants provided by the natural resource commission from its county conservation board fund shall be expended solely for the purposes of carrying out the provisions of this chapter.

The county auditor shall keep a complete record of the appropriations and shall issue warrants on them only on requisition of the county conservation board. The county conservation board is subject to the contract letting procedures in section 331.341, subsections 1, 2, and 4. Upon request of the county conservation board, the board of supervisors may issue general county purpose bonds for the purposes in section 331.441, subsection 2, paragraph *"c"*, subparagraph (2), as provided in chapter 331, division IV, part 3.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §111A.6; 81 Acts, ch 28, §3, ch 117, §1014, 1015]

83 Acts, ch 123, §58, 209; 84 Acts, ch 1262, §5; 86 Acts, ch 1245, §1879; 88 Acts, ch 1216, §45

C93, §350.6

350.7 Joint operations.

Any county conservation board may cooperate with the federal government or the state government or any department or agency thereof to carry out the purposes and provisions of this chapter. Any county conservation board may also cooperate with a private, not-for-profit organization to carry out public projects and programs authorized under this chapter. Any county conservation board may join with any other county board or boards to carry out this chapter, and to that end may enter into agreement with each other and may do any and all things necessary or convenient to aid and cooperate in carrying out the chapter. Any city, village, or school district may aid and cooperate with any county conservation board or any combination of boards in equipping, operating, and maintaining museums, parks, preserves, parkways, playgrounds, recreation centers, and conservation areas, and for providing, conducting, and supervising programs of activities, and may appropriate money for such purposes. The natural resource commission, county engineer, county agricultural agent, and other county officials shall render assistance which does not interfere with their regular employment. The board of supervisors may be reimbursed to the credit of the proper fund from county conservation funds for actual expense of operation of county-owned equipment, use of county equipment operators, supplies, and materials of the county, or for the reasonable value for the use of county real estate made available for the use of the county conservation board.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §111A.7; 81 Acts, ch 117, §1016]

86 Acts, ch 1245, §1879

C93, §350.7

99 Acts, ch 48, §1

350.8 School property used.

The governing body of any school district may grant the use of any buildings, grounds, or equipment of the district to any county conservation board for the purpose of carrying out the provisions of this chapter whenever such use of the school buildings, grounds or equipment for such purposes will not interfere with the use of the buildings, grounds, and equipment for any purpose of the public school system.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §111A.8]

C93, §350.8

See §297.9

350.9 Advice and assistance.

The natural resource commission and the department of education shall advise with and may

assist any county or counties in carrying out the purposes of this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §111A.9]
86 Acts, ch 1245, §1879
C93, §350.9

350.10 Statutes applicable.

Sections 461A.35 through 461A.57 apply to all lands and waters under the control of a county conservation board, in the same manner as if the lands and waters were state parks, lands, or waters. As used in sections 461A.35 through 461A.57, *"natural resource commission"* includes a county conservation board, and *"director"* includes a county conservation board or its director, with respect to lands or waters under the control of a county conservation board. However, sections 461A.35 through 461A.57 may be modified or superseded by rules adopted as provided in section 350.5.

[C71, 73, 75, 77, 79, 81, §111A.10]
84 Acts, ch 1097, §3; 86 Acts, ch 1245, §1868
C93, §350.10

350.11 County conservation boards created.

Notwithstanding the referendum specified in section 350.2, the board of supervisors of any county in which a county conservation board has not been established as of January 1, 1989, shall create a county conservation board to become effective July 1, 1989. The membership of a county conservation board created pursuant to this section, shall be appointed during the month of January 1989, for the purposes of organizing, planning, and budgeting for the fiscal year beginning July 1, 1989. A county conservation board created as provided in this section shall become fully operational as of July 1, 1989.

88 Acts, ch 1193, §2
C89, §111A.11
C93, §350.11

350.12 Iowa's county beautification program.

1. A county conservation board may establish an Iowa's county beautification program to encourage the prevention and cleanup of litter in public areas of the county. The county conservation director shall prepare and implement the program which is designed to employ persons from fourteen years of age to eighteen years of age in a six-week summer program. The program may include public informational activities, but shall be directed primarily toward encouraging and facilitating involvement in litter prevention and cleanup. The program shall also include weekly instruction on safety in the workplace while employed with an Iowa's county beautification program. Financial assistance for an Iowa's county beautification program may be received through the county conservation account pursuant to section 455A.19. County matching funds shall not be required for eligibility for funding an Iowa's county beautification program.

2. A county conservation board shall coordinate its Iowa's county beautification program with the county engineer or director of the county secondary road department and with the district highway engineer of the state department of transportation. The respective county and state highway authorities, within time and budgetary limitations, shall cooperate with the county conservation board in implementing the litter program in regard to the rights-of-way of primary and secondary roads when requested by the county conservation board.

89 Acts, ch 236, §10
CS89, §111A.12
C93, §350.12

CHAPTER 351

DOGS AND OTHER ANIMALS

351.1 through 351.24 Repealed by 94 Acts, ch 1173, §42.
351.25 Dog as property.
351.26 Right and duty to kill untagged dog.
351.27 Right to kill tagged dog.
351.28 Liability for damages.
351.29 Construction clause.
351.30 to 351.32 Repealed by 67 Acts, ch 118, §9.
351.33 Rabies vaccination.
351.34 Condition for license. Repealed by 94 Acts, ch 1173, §42.
351.35 How and when.
351.36 Enforcement.
351.37 Dogs running at large — impoundment — disposition.
351.38 Owner's duty.
351.39 Confinement.
351.40 Quarantine.
351.41 Not a limitation on power of municipalities and counties.
351.42 Exempt dogs.
351.43 Penalty.

351.1 through 351.24 Repealed by 94 Acts, ch 1173, § 42.

351.25 Dog as property.
All dogs under six months of age, and all dogs over said age and wearing a collar with a valid rabies vaccination tag attached to the collar, shall be deemed property. Dogs not provided with a rabies vaccination tag shall not be deemed property.
[C24, 27, 31, 35, 39, §**5447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §351.25]
94 Acts, ch 1173, §32

351.26 Right and duty to kill untagged dog.
It shall be lawful for any person, and the duty of all peace officers within their respective jurisdictions unless such jurisdiction shall have otherwise provided for the seizure and impoundment of dogs, to kill any dog for which a rabies vaccination tag is required, when the dog is not wearing a collar with rabies vaccination tag attached.
[C24, 27, 31, 35, 39, §**5448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §351.26]
94 Acts, ch 1173, §33

351.27 Right to kill tagged dog.
It shall be lawful for any person to kill a dog, wearing a collar with a rabies vaccination tag attached, when the dog is caught in the act of worrying, chasing, maiming, or killing any domestic animal or fowl, or when such dog is attacking or attempting to bite a person.
[C73, §1485; C97, §2340; S13, §2340; C24, 27, 31, 35, 39, §**5449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §351.27]
94 Acts, ch 1173, §34

351.28 Liability for damages.
The owner of a dog shall be liable to an injured party for all damages done by the dog, when the dog is caught in the action of worrying, maiming, or killing a domestic animal, or the dog is attacking or attempting to bite a person, except when the party damaged is doing an unlawful act, directly contributing to the injury. This section does not apply to damage done by a dog affected with hydrophobia unless the owner of the dog had reasonable grounds to know that the dog was afflicted with hydrophobia and by reasonable effort might have prevented the injury.
[C73, §1485; C97, §2340; S13, §2340; C24, 27, 31, 35, 39, §**5450;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §351.28]
83 Acts, ch 117, §1

351.29 Construction clause.
A holding that one or more sections hereof are unconstitutional shall not be held to invalidate the remaining sections.
[C24, 27, 31, 35, 39, §**5451;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §351.29]

351.30 to 351.32 Repealed by 67 Acts, ch 118, § 9.

351.33 Rabies vaccination.
Every owner of a dog shall obtain a rabies vaccination for such animal. It shall be unlawful for any person to own or have a dog in the person's possession, six months of age or over, which has not been vaccinated against rabies. Dogs kept in kennels and not allowed to run at large shall not be subject to these vaccination requirements.
[C66, 71, 73, 75, 77, 79, 81, §351.33]

351.34 Condition for license. Repealed by 94 Acts, ch 1173, § 42.

351.35 How and when.
The rabies vaccination required by section 351.33 shall be an injection of antirabies vaccine approved by the state department of agriculture and land stewardship, and the frequency of revaccination necessary for approved vaccinations shall be as established by such department. The vaccine shall be administered by a licensed veterinarian and shall be given as approved by the state department of agriculture and land stewardship. The veterinarian shall issue a tag with the certificate of vaccination, and such tag shall at all times be attached to the collar of the dog.
[C66, 71, 73, 75, 77, 79, 81, §351.35]

351.36 Enforcement.
Local health and law enforcement officials shall enforce the provisions of sections 351.33 to 351.43 relating to vaccination and impoundment of dogs. Such public officials shall not be responsible for any accident or disease of a dog resulting from the enforcement of the provisions of said sections.
[C66, 71, 73, 75, 77, 79, 81, §351.36]

351.37 Dogs running at large — impoundment — disposition.
A dog shall be apprehended and impounded by a local board of health or law enforcement official if the dog is running at large and the dog is not wearing a valid rabies vaccination tag or a rabies vaccination certificate is not presented to the local board of health or law enforcement official.
The local board of health or law enforcement official shall provide written notice to the owner if the local board of health or law enforcement official can reasonably determine the owner's name and current address by accessing a tag or other device that is on or a part of the dog. The notice shall be sent within two days after the dog has been impounded. The notice shall provide that if the owner does not redeem the dog within seven days from the date that the notice is delivered, the dog may

be humanely destroyed or otherwise disposed of in accordance with law. For purposes of this section, notice is delivered when the local board of health or law enforcement official mails the notice which may be by regular mail. An owner may redeem a dog by having it immediately vaccinated and paying the cost of impoundment.

If the owner of the impounded dog fails to redeem the dog within seven days from the date of the delivery of the notice to the dog's owner as provided in this section, the dog may be disposed of in accordance with law. If the dog is destroyed, it must be destroyed by euthanasia as defined in section 162.2.

[C66, 71, 73, 75, 77, 79, 81, §351.37]
2002 Acts, ch 1130, §1
Section amended

351.38 Owner's duty.

It shall be the duty of the owner of any dog, cat or other animal which has bitten or attacked a person or any person having knowledge of such bite or attack to report this act to a local health or law enforcement official. It shall be the duty of physicians and veterinarians to report to the local board of health the existence of any animal known or suspected to be suffering from rabies.

[C66, 71, 73, 75, 77, 79, 81, §351.38]

351.39 Confinement.

If a local board of health receives information that an animal has bitten a person or that a dog or animal is suspected of having rabies, the board shall order the owner to confine such animal in the manner it directs. If the owner fails to confine such animal in the manner directed, the animal shall be apprehended and impounded by such board, and after ten days the board may humanely destroy the animal. If such animal is returned to its owner, the owner shall pay the cost of impoundment. This section shall not apply if a police service dog or a horse used by a law enforcement agency and acting in the performance of its duties has bitten a person.

[C66, 71, 73, 75, 77, 79, 81, §351.39]
2001 Acts, ch 19, §1; 2001 Acts, ch 176, §68

351.40 Quarantine.

If a local board of health believes rabies to be epidemic, or believes there is a threat of epidemic, in its jurisdiction, it may declare a quarantine in all or part of the area under its jurisdiction and such declaration shall be reported to the Iowa department of public health. During the period of quarantine, any person owning or having a dog in the person's possession in the quarantined area shall keep such animal securely enclosed or on a leash for the duration of the quarantine period.

[C66, 71, 73, 75, 77, 79, 81, §351.40]

351.41 Not a limitation on power of municipalities and counties.

This chapter does not limit the power of any city or county to prohibit dogs and other animals from running at large, whether or not they have been vaccinated for rabies, and does not limit the power of any city or county to provide additional measures for the restriction of dogs and other animals for the control of rabies and for other purposes.

[C66, 71, 73, 75, 77, 79, 81, S81, §351.41; 81 Acts, ch 117, §1065]

351.42 Exempt dogs.

Dogs that are under the control of the owner or handlers and which are in transit, or are to be exhibited shall be exempt from the vaccination provisions of these sections if they are within the state for less than thirty days. Dogs assigned to a research institution or a like facility shall be exempt from the provisions of sections 351.33 to 351.43.

[C66, 71, 73, 75, 77, 79, 81, §351.42]

351.43 Penalty.

Any person refusing to comply with the provisions of sections 351.33 to 351.42 or violating any of their provisions, shall be deemed guilty of a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §351.43]

CHAPTER 351A

DOGS FOR SCIENTIFIC RESEARCH

Transferred to chapter 145B

CHAPTER 352

COUNTY LAND PRESERVATION AND USE COMMISSIONS

Chapter does not invalidate ordinances existing on July 1, 1982,
or require adoption of zoning ordinance;
see 82 Acts, ch 1245, §20
This chapter not enacted as a part of this title;
transferred from chapter 176B in Code 1993

352.1 Purpose.
352.2 Definitions.
352.3 County land preservation and use commissions established.
352.4 County inventories.
352.5 County land preservation and use plan.
352.6 Creation or expansion of agricultural areas.
352.7 Duties of county board.
352.8 Requirement that description of agricultural areas be filed with the county.
352.9 Withdrawal.
352.10 Limitation on power of certain public agencies to impose public benefit assessments or special assessments.
352.11 Incentives for agricultural land preservation — payment of costs and fees in nuisance actions.
352.12 State regulation.
352.13 State interagency resource council. Repealed by 98 Acts, ch 1032, §10.

352.1 Purpose.

It is the intent of the general assembly and the policy of this state to provide for the orderly use and development of land and related natural resources in Iowa for residential, commercial, industrial, and recreational purposes, preserve private property rights, protect natural and historic resources and fragile ecosystems of this state including forests, wetlands, rivers, streams, lakes and their shorelines, aquifers, prairies, and recreational areas to promote the efficient use and conservation of energy resources, to promote the creation and maintenance of wildlife habitat, to consider the protection of soil from wind and water erosion and preserve the availability and use of agricultural land for agricultural production, through processes that emphasize the participation of citizens and local governments.

The general assembly recognizes the importance of preserving the state's finite supply of agricultural land. Conversion of farmland to urban development, and other nonfarm uses, reduces future food production capabilities and may ultimately undermine agriculture as a major economic activity in Iowa.

It is the intent of the general assembly to provide local citizens and local governments the means by which agricultural land may be protected from nonagricultural development pressures. This may be accomplished by the creation of county land preservation and use plans and policies, adoption of an agricultural land preservation ordinance, or establishment of agricultural areas in which substantial agricultural activities are encouraged, so that land inside these areas or subject to those ordinances is conserved for the production of food, fiber, and livestock, thus assuring the preservation of agriculture as a major factor in the economy of this state.

[C79, 81, §93A.1; 82 Acts, ch 1245, §2]
C87, §176B.1
C93, §352.1

352.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Agricultural area"* means an area meeting the qualifications of section 352.6 and designated under section 352.7.
2. *"County board"* means the county board of supervisors.
3. *"County commission"* means the county land preservation and use commission.
4. *"Farm"* means the land, buildings, and machinery used in the commercial production of farm products.
5. *"Farmland"* means those parcels of land suitable for the production of farm products.
6. *"Farm operation"* means a condition or activity which occurs on a farm in connection with the production of farm products and includes but is not limited to the raising, harvesting, drying, or storage of crops; the care or feeding of livestock; the handling or transportation of crops or livestock; the treatment or disposal of wastes resulting from livestock; the marketing of products at roadside stands or farm markets; the creation of noise, odor, dust, or fumes; the operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.
7. *"Farm products"* means those plants and animals and their products which are useful to people and includes but is not limited to forages

and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, fruits, vegetables, flowers, seeds, grasses, trees, fish, honey, and other similar products, or any other plant, animal, or plant or animal product which supplies people with food, feed, fiber, or fur.

8. *"Livestock"* means the same as defined in section 267.1.

9. *"Nuisance"* means a public or private nuisance as defined either by statute, administrative rule, ordinance, or the common law.

10. *"Nuisance action or proceeding"* means an action, claim, or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

[C79, 81, §93A.2; 82 Acts, ch 1245, §3]
C87, §176B.2
C93, §352.2
93 Acts, ch 146, §1, 2

352.3 County land preservation and use commissions established.

1. In each county a county land preservation and use commission is created composed of the following members:

a. One member appointed by and from the county agricultural extension council.

b. Two members appointed by the district soil and water conservation commissioners, one of whom must be a member of the district soil and water conservation board of commissioners and one must be a person who is not a commissioner, but is actively operating a farm in the county.

c. One member appointed by the board of supervisors from the residents of the county who may be a member of the board.

d. One member appointed by and from a convention of the mayors and councilpersons of the cities of the county. If a participating city contains fifty percent or more of the total population of the participating cities, that city may appoint the member appointed under this paragraph.

However, if a city contains more than fifty percent of the population of a county which has a population exceeding fifty thousand persons, that city shall not participate in the convention of mayors and councilpersons and the members appointed under paragraph *"d"* shall be one member appointed by and from the mayor and councilpersons of that city and one member appointed by and from the convention of mayors and councilpersons and the member appointed under paragraph *"c"* shall be a resident of the county engaged in actual farming operations appointed by the board of supervisors.

2. The county commission shall meet and organize by the election of a chairperson and vice chairperson from among its members by October 1, 1982. A majority of the members of the county commission constitutes a quorum. Concurrence of a quorum is required to determine any matter relating to its official duties.

3. The state agricultural extension service shall provide county commissions with technical, informational, and clerical assistance.

4. A vacancy in the county commission shall be filled in the same manner as the appointment of the member whose position is vacant. The term of a county commissioner is four years. However, in the initial appointments to the county commission, the members appointed under subsection 1, paragraphs *"a"* and *"b"* shall be appointed to terms of two years. Members may be appointed to succeed themselves.

[C79, 81, §93A.3(1, 2, 4); 82 Acts, ch 1245, §4]
C87, §176B.3
87 Acts, ch 23, §6
C93, §352.3

352.4 County inventories.

1. Each county commission shall compile a county land use inventory of the unincorporated areas of the county by July 1, 1984. The county inventories shall where adequate data is available contain at least the following:

a. The land available and used for agricultural purposes by soil suitability classifications or land capability classification, whichever is available.

b. The lands used for public facilities, which may include parks, recreation areas, schools, government buildings and historical sites.

c. The lands used for private open spaces, which may include woodlands, wetlands and water bodies.

d. The land used for each of the following uses: commercial, industrial including mineral extraction, residential and transportation.

e. The lands which have been converted from agricultural use to residential use, commercial or industrial use, or public facilities since 1960.

2. In addition to that provided under subsection 1, the county inventory shall also contain the land inside the boundaries of a city which is taxed as agricultural land.

3. The information required by subsection 1 shall be provided both in narrative and map form. The county commission shall provide a cartographic display which contrasts the county's present land use with the land use in the county in 1960 based on the best available information. The display need only show the areas in agriculture, private open spaces, public facilities, commercial, industrial, residential and transportation uses.

4. The state department of agriculture and land stewardship, department of management, department of natural resources, geological survey, state agricultural extension service, and the department of economic development shall, upon request, provide to each county commission any pertinent land use information available to assist in the compiling of the county land use inventories.

[C79, 81, §93A.4(9); 82 Acts, ch 1245, §5]
83 Acts, ch 101, §6; 83 Acts, ch 137, §26; 84 Acts, ch 1303, §22
C87, §176B.4
C93, §352.4

352.5 County land preservation and use plan.

1. By March 1, 1985, after at least one public hearing, a county commission shall propose to the county board a county land use plan for the unincorporated areas in the county, or it shall transmit to the county board the county land use inventory completed pursuant to section 352.4 together with a set of written findings on the following factors considered by the county commission:

a. Methods of preserving agricultural lands for agricultural production.

b. Methods of preserving and providing for recreational areas, forests, wetlands, streams, lakes and aquifers.

c. Methods of providing for housing, commercial, industrial, transportational and recreational needs.

d. Methods to promote the efficient use and conservation of energy resources.

e. Methods to promote the creation and maintenance of wildlife habitat.

f. Methods of implementing the plan, if adopted, including a formal countywide system to allow variances from the county plan that incorporates the examination of alternative land uses and a public hearing on such alternatives.

g. Methods of encouraging the voluntary formation of agricultural areas by the owners of farmland.

h. Methods of considering the platting of subdivisions and its effect upon the availability of farmland.

2. Upon receipt of the inventory and findings, the county board may direct the county commission to prepare a county land use plan for the consideration of the county board.

3. Upon receipt of a plan, the county board may rerefer the plan to the county commission for modification, reject the plan or adopt the plan either as originally submitted or as modified.

If the plan is approved by the county board, it shall be the land use policy of the county and shall be administered and enforced by the county in the unincorporated areas. The county commission shall review the county plan periodically for the purpose of considering amendments to it. If the commission proposes amendments to the plan, it shall forward the proposal to the county board which may rerefer the amendments to the commission for modification or reject or adopt the amendments.

4. Within thirty days after the completion of the county land use inventory compiled pursuant to section 352.4 or any county land use plan or set of written findings completed pursuant to this section, the county commission shall transmit one copy of each to the interagency resource council.

[C79, 81, §93A.3(3, 5, 6); 82 Acts, ch 1245, §6]
C83, §93A.5
84 Acts, ch 1303, §23
C87, §176B.5
C93, §352.5

352.6 Creation or expansion of agricultural areas.

An owner of farmland may submit a proposal to the county board for the creation or expansion of an agricultural area within the county. An agricultural area, at its creation, shall include at least three hundred acres of farmland; however, a smaller area may be created if the farmland is adjacent to farmland subject to an agricultural land preservation ordinance pursuant to section 335.27 or adjacent to land located within an existing agricultural area. The proposal shall include a description of the proposed area to be created or expanded, including its boundaries. The territory shall be as compact and as nearly adjacent as feasible. Land shall not be included in an agricultural area without the consent of the owner. Agricultural areas shall not exist within the corporate limits of a city. The county board may consult with the department of natural resources when creating or expanding an agricultural area contiguous to a location which is under the direct supervision of the department, including a state park, state preserve, state recreation area, or sovereign lake. Agricultural areas may be created in a county which has adopted zoning ordinances. Except as provided in this section, the use of the land in agricultural areas is limited to farm operations.

1. The following shall be permitted in an agricultural area:

a. Residences constructed for occupation by a person engaged in farming or in a family farm operation. Nonconforming preexisting residences may be continued in residential use.

b. Property of a telephone company, city utility as defined in section 390.1, public utility as defined in section 476.1, or pipeline company as defined in section 479.2.

2. The county board of supervisors may permit any use not listed in subsection 1 in an agricultural area only if it finds all of the following:

a. The use is not inconsistent with the purposes set forth in section 352.1.

b. The use does not interfere seriously with farm operations within the area.

c. The use does not materially alter the stability of the overall land use pattern in the area.

[82 Acts, ch 1245, §7]
C83, §93A.6
C87, §176B.6
C93, §352.6
93 Acts, ch 146, §3

352.7 Duties of county board.

1. Within thirty days of receipt of a proposal to create or expand an agricultural area which meets the statutory requirements, the county board shall provide notice of the proposal by publishing notice in a newspaper of general circulation in the county. Within forty-five days after receipt of the proposal, the county board shall hold a public hearing on the proposal.

2. Within sixty days after receipt, the county board shall adopt the proposal or any modification of the proposal it deems appropriate, unless to do so would be inconsistent with the purposes of this chapter.

[82 Acts, ch 1245, §8]
C83, §93A.7
C87, §176B.7
C93, §352.7
93 Acts, ch 146, §4

352.8 Requirement that description of agricultural areas be filed with the county.

Upon the creation or expansion of an agricultural area, its description shall be filed by the county board with the county auditor and placed on record with the recording officer in the county.

[82 Acts, ch 1245, §9]
C83, §93A.8
C87, §176B.8
C93, §352.8
93 Acts, ch 146, §5

352.9 Withdrawal.

At any time after three years from the date of creation of an agricultural area, an owner may withdraw from an agricultural area by filing with the county board a request for withdrawal containing a legal description of the land to be withdrawn and a statement of the reasons for the withdrawal. The county board shall, within sixty days of receipt of the request, approve or deny the request for withdrawal. At any time after six years from the date of creation of an agricultural area, an owner may withdraw from an agricultural area by filing with the county board a notice of withdrawal containing a legal description of the land to be withdrawn.

The board shall cause the description of that agricultural area filed with the county auditor and recording officer in the county to be modified to reflect any withdrawal. Withdrawal shall be effective on the date of recording. The agricultural area from which the land is withdrawn shall continue in existence even if smaller than three hundred acres after withdrawal.

[82 Acts, ch 1245, §10]
C83, §93A.9
C87, §176B.9
C93, §352.9
93 Acts, ch 146, §6

352.10 Limitation on power of certain public agencies to impose public benefit assessments or special assessments.

A political subdivision or a benefited district providing public services such as sewer, water, or lights or for nonfarm drainage shall not impose benefit assessments or special assessments on land used primarily for agricultural production within an agricultural area on the basis of frontage, acreage, or value, unless the benefit assessments or special assessments were imposed prior to the formation of the agricultural area, or unless the service is provided to the landowner on the same basis as others having the service.

[82 Acts, ch 1245, §11]
C83, §93A.10
C87, §176B.10
C93, §352.10

352.11 Incentives for agricultural land preservation — payment of costs and fees in nuisance actions.

1. *Nuisance restriction.*

a. A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation. This paragraph shall apply to a farm operation conducted within an agricultural area for six years following the exclusion of land within an agricultural area other than by withdrawal as provided in section 352.9.

b. Paragraph *"a"* does not apply to a nuisance which is the result of a farm operation determined to be in violation of a federal statute or regulation or state statute or rule. Paragraph *"a"* does not apply if the nuisance results from the negligent operation of the farm or farm operation. Paragraph *"a"* does not apply to actions or proceedings arising from injury or damage to a person or property caused by the farm or a farm operation before the creation of the agricultural area. Paragraph *"a"* does not affect or defeat the right of a person to recover damages for an injury or damage sustained by the person because of the pollution or change in condition of the waters of a stream, the overflowing of the person's land, or excessive soil erosion onto another person's land, unless the injury or damage is caused by an act of God.

c. A person shall not bring an action or proceeding based on a claim of nuisance arising from a farm operation unless the person proceeds with mediation as provided in chapter 654B.

d. If a defendant is a prevailing party in an action or proceeding based on a claim of nuisance and arising from a farm operation conducted on farmland within an agricultural area, the plaintiff shall pay court costs and reasonable attorney fees incurred by the defendant, if the court determines that the claim is frivolous.

2. *Water priority.* In the application for a per-

mit to divert, store, or withdraw water and in the allocation of available water resources under a water permit system, the department of natural resources shall give priority to the use of water resources by a farm or farm operation, exclusive of irrigation, located in an agricultural area over all other uses except the competing uses of water for ordinary household purposes.

[82 Acts, ch 1245, §12]
C83, §93A.11
83 Acts, ch 101, §7; 83 Acts, ch 137, §27
C87, §176B.11
C93, §352.11
93 Acts, ch 146, §7

352.12 State regulation.

In order to accomplish the purposes set forth in section 352.1, a rule adopted by a state agency after July 1, 1982 which would restrict or regulate farms or farm operations may contain standards which are less restrictive for farms or farm operations inside an agricultural area than for farms or farm operations outside such an area. A rule containing such a discrimination shall not for the fact of such discrimination alone be found or held to be unreasonable, arbitrary, capricious, beyond the authority delegated to the agency, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

[82 Acts, ch 1245, §13]
C83, §93A.12
C87, §176B.12
C93, §352.12

352.13 State interagency resource council. Repealed by 98 Acts, ch 1032, § 10.

CHAPTER 353

COUNTY LIMESTONE QUARRIES

This chapter not enacted as a part of this title; transferred from chapter 202 in Code 1993

353.1 Definitions.
353.1A Board may establish.
353.2 Equipment to operate.
353.3 Petition by farm owners.
353.4 Assessment lien.
353.5 Interest on installments.
353.6 Anticipatory warrants.
353.7 Contents of warrants.
353.8 Registration — call.
353.9 Price of lime.
353.10 Cost calculated.
353.11 Relief labor.

353.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1
See §189.1 for additional definitions applicable to chapter
Former §353.1 transferred to §353.1A

353.1A Board may establish.

The board of supervisors of any county where there is no privately owned quarry, or when a privately owned quarry is unable to supply limestone in the same amount and at the same price and terms, shall have the jurisdiction, power and authority, at any regular, special or adjourned session to establish, locate, acquire by purchase or lease for the county use, any limestone quarry not at that time being operated by private individuals, corporations or associations, suitable for agricultural purposes. Such quarry shall not be so established, located, acquired, or leased unless and until the board has determined by actual investigation that the county can produce by such method lime at less cost than lime of the same quality may be purchased by the county and delivered in the county from other sources.

[C39, §**3142.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.1]
C93, §353.1
C2001, §353.1A

353.2 Equipment to operate.

The board of supervisors shall have the authority and power to acquire such equipment as it shall deem necessary for the operation of any limestone quarry acquired for the production of agricultural lime.

[C39, §**3142.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.2]
C93, §353.2

353.3 Petition by farm owners.

When a petition signed by fifty or more owners of farms within the county requesting the board of supervisors to sell lime to them under this chapter

is filed with the board of supervisors, or when a petition signed by any number of owners of farms within the county requesting the board of supervisors to sell to them under this chapter an amount of lime aggregating not less than five thousand tons, is filed with the board of supervisors, said board may provide for and sell, under the provisions of this chapter, such lime as is requested to the said farm owners signing the petition and to any others requesting such sale of lime.

[C39, §**3142.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.3]

C93, §353.3

353.4 Assessment lien.

The board shall have full power and authority to quarry, pulverize and sell or to purchase and resell to said farm owners in their respective counties, limestone for their use on their farms and may either sell same for cash, or on application of any farm owner in the county, written notice having been first given to the mortgage or lien holder and consent of said lien holders having been obtained in writing, which consent shall be filed in the office of the county auditor, provide agricultural lime, and deliver same to farm of applicant, payment for same to be provided for by a special assessment tax levy against the real estate so benefited in the amount of the sales value and transportation of said agricultural lime, which assessment shall be payable at the option of the owner of the farm or the owner's legal heirs or assignees in its entirety on or before December 1 following the receipt of said lime or may be paid in five equal annual installments payable on October 1 of each succeeding year with the ordinary taxes until said special assessment is fully paid. The special assessment shall, by consent, be a lien prior to any lien or liens upon said real estate.

[C39, §**3142.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.4]

C93, §353.4

353.5 Interest on installments.

All unpaid installments of the special assessment tax levied against the property described in section 353.4 shall bear interest at a rate not exceeding that permitted by chapter 74A and all delinquent installments shall be subject to the same penalties as are now applied to delinquent general taxes.

[C39, §**3142.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.5]

C93, §353.5

353.6 Anticipatory warrants.

The board shall have the authority for the purpose of financing and carrying out the provisions of this chapter to issue anticipatory warrants drawn on the county, in denominations of one hundred dollars, five hundred dollars and one thousand dollars, which anticipatory warrants shall draw interest at a rate not exceeding that permitted by chapter 74A; and shall not be a general obligation on the county and be secured only by the special assessment tax levy as herein provided.

[C39, §**3142.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.6]

C93, §353.6

353.7 Contents of warrants.

All such anticipatory warrants shall be signed by the chairperson of the board of supervisors and attested by the county auditor with the auditor's official seal attached thereto, and dated as of the date of sale, and shall not be sold for less than par value. Said bonds may be drawn and sold from time to time as the need for funds to carry out the purpose of this chapter arises.

[C39, §**3142.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.7]

C93, §353.7

353.8 Registration — call.

All anticipatory warrants drawn under the provisions of this chapter, shall be numbered consecutively, and be registered in the office of the county treasurer and be subject to call in numerical order at any time when sufficient money derived from the sale of such limestone or the payment of a special assessment levied therefor, is in the hands of the county treasurer to retire any of said warrants together with accrued interest thereon.

[C39, §**3142.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.8]

C93, §353.8

353.9 Price of lime.

The cost price of this agricultural lime shall be fixed by the board of supervisors, at not less than the actual cost of production at the quarry with ten percent added to provide for the cost of and depreciation on the equipment used in the production of said agricultural lime, together with any cost in transportation of the lime from the quarry to the farm of applicant.

[C39, §**3142.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.9]

C93, §353.9

353.10 Cost calculated.

In calculating the cost price of the agricultural lime to the county as referred to in section 353.9, all elements of the cost of the operations, including the amortization of the purchase price of any quarries, lands, or equipment over the period during which any bonds, warrants or other obligations incurred by the county therefor shall mature, cost of all labor, proportionate and actual administrative overhead of county officials and other county executive employees in administering said chapter and conducting said business, repairs to plant

machinery and equipment, wages of all employees and all other costs of production shall be kept in a separate system of accounts, and all books and records with respect to the cost of said agricultural limestone and the methods of bookkeeping and all records in connection with the production, disposal and sale of said agricultural limestone shall be open to the inspection of the public at all times.

[C39, §**3142.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.10]

C93, §353.10

353.11 Relief labor.

The board is specifically authorized to use relief labor in the production of agricultural lime as provided for in this chapter, but shall pay the prevailing labor scale for that type of work, customary in that vicinity.

[C39, §**3142.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §202.11]

C93, §353.11

CHAPTER 354

PLATTING — DIVISION AND SUBDIVISION OF LAND

Standards for land surveys and plats, see also chapter 355

354.1 Statement of purpose.
354.2 Definitions.
354.3 Covenant of warranty.
354.4 Divisions requiring a plat of survey or acquisition plat.
354.5 Descriptions and conveyance according to plat of survey or acquisition plat.
354.6 Subdivision plats.
354.7 Conveyances by reference to official plat.
354.8 Review and approval by governing bodies.
354.9 Review of plats within two miles of a city.
354.10 Appeal of review or disapproval.
354.11 Attachments to subdivision plats.
354.12 Bonds to secure liens.
354.13 Auditor's plats and plats of survey.
354.14 Appeal of notice.
354.15 Review of auditor's plats.
354.16 Attachments to auditor's plats and plats of survey.
354.17 Costs and collection of costs.
354.18 Recording of plats.
354.19 Dedication of land.
354.20 Action to annul plats.
354.21 Limitation of actions on official plats.
354.22 Vacation of official plats.
354.23 Vacation of streets or other public lands.
354.24 Errors on recorded plats.
354.25 Survey and replat of official plats.
354.26 Corrections or changes to plats.
354.27 Noting the permanent real estate index number.

354.1 Statement of purpose.

It is the purpose of this chapter to provide for a balance between the review and regulation authority of governmental agencies concerning the division and subdivision of land and the rights of landowners. It is therefore determined to be in the public interest:

1. To provide for accurate, clear, and concise legal descriptions of real estate in order to prevent, wherever possible, land boundary disputes or real estate title problems.

2. To provide for a balance between the land use rights of individual landowners and the economic, social, and environmental concerns of the public when a city or county is developing or enforcing land use regulations.

3. To provide for statewide, uniform procedures and standards for the platting of land while allowing the widest possible latitude for cities and counties to establish and enforce ordinances regulating the division and use of land, within the scope of, but not limited to, chapters 331, 335, 364, 414, and this chapter. All documents presented for recording pursuant to this chapter shall comply with section 331.602, subsection 1.

4. To encourage orderly community development and provide for the regulation and control of the extension of public improvements, public services, and utilities, the improvement of land, and the design of subdivisions, consistent with an approved comprehensive plan or other specific community plans, if any.

90 Acts, ch 1236, §15
C91, §409A.1
C93, §354.1
2001 Acts, ch 44, §12

354.2 Definitions.

As used by this chapter, unless the context clearly indicates otherwise:

1. *"Acquisition plat"* means the graphical representation of the division of land or rights in land, created as the result of a conveyance or condemnation for right-of-way purposes by an agency of the

government or other persons having the power of eminent domain.

2. *"Aliquot part"* means a fractional part of a section within the United States public land survey system. Only the fractional parts one-half, one-quarter, one-half of one-quarter, or one-quarter of one-quarter shall be considered an aliquot part of a section.

3. *"Auditor's plat"* means a subdivision plat required by either the auditor or the assessor, prepared by a surveyor under the direction of the auditor.

4. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

5. *"Conveyance"* means an instrument filed with a recorder as evidence of the transfer of title to land, including any form of deed or contract.

6. *"Division"* means dividing a tract or parcel of land into two parcels of land by conveyance or for tax purposes. The conveyance of an easement, other than a public highway easement, shall not be considered a division for the purpose of this chapter.

7. *"Forty-acre aliquot part"* means one-quarter of one-quarter of a section.

8. *"Governing body"* means a city council or the board of supervisors, within whose jurisdiction the land is located, which has adopted ordinances regulating the division of land.

9. *"Government lot"* means a tract, within a section, which is normally described by a lot number as represented and identified on the township plat of the United States public land survey system.

10. *"Lot"* means a tract of land represented and identified by number or letter designation on an official plat.

11. *"Metes and bounds description"* means a description of land that uses distances and angles, uses distances and bearings, or describes the boundaries of the parcel by reference to physical features of the land.

12. *"Official plat"* means either an auditor's plat or a subdivision plat that meets the requirements of this chapter and has been filed for record in the offices of the recorder, auditor, and assessor.

13. *"Parcel"* means a part of a tract of land.

14. *"Permanent real estate index number"* means a unique number or combination of numbers assigned to a parcel of land pursuant to section 441.29.

15. *"Plat of survey"* means the graphical representation of a survey of one or more parcels of land, including a complete and accurate description of each parcel within the plat, prepared by a registered land surveyor.

16. *"Proprietor"* means a person who has a recorded interest in land, including a person selling or buying land pursuant to a contract, but excluding persons holding a mortgage, easement, or lien interest.

17. *"Subdivision"* means a tract of land divided into three or more lots.

18. *"Subdivision plat"* means the graphical representation of the subdivision of land, prepared by a registered land surveyor, having a number or letter designation for each lot within the plat and a succinct name or title that is unique for the county where the land is located.

19. *"Surveyor"* means a registered land surveyor who engages in the practice of land surveying pursuant to chapter 542B.

20. *"Tract"* means an aliquot part of a section, a lot within an official plat, or a government lot.

90 Acts, ch 1236, §16
C91, §409A.2
C93, §354.2
2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

354.3 Covenant of warranty.

The duty to file for record a plat as provided in sections 354.4 and 354.6 attaches as a covenant of warranty in all conveyances by a grantor who divides land against all assessments, costs, and damages paid, lost, or incurred by a grantee or person claiming under a grantee, in consequence of the omission on the part of the grantor to file the plat. A conveyance of land is deemed to be a warranty that the description contained in the conveyance is sufficiently certain and accurate for the purposes of assessment, taxation, and entry on the transfer books and plat books required to be kept by the auditor. The description contained in a conveyance shall be sufficiently certain and accurate for assessment and taxation purposes if it provides sufficient information to allow all the boundaries to be accurately determined and does not overlap with or create a gap between adjoining land descriptions.

A recorded conveyance in violation of this chapter may be entered on the transfer books of the auditor's office. The auditor shall notify the grantor and the grantee that the conveyance is in violation of this chapter and demand compliance as provided for in section 354.13.

90 Acts, ch 1236, §17
C91, §409A.3
C93, §354.3

354.4 Divisions requiring a plat of survey or acquisition plat.

1. The grantor of land which has been divided using a metes and bounds description shall have a plat of survey made of the division, except as provided for in subsection 3. The grantor or the surveyor shall contact the county auditor who, for the purpose of assessment and taxation, shall review the division to determine whether the survey shall include only the parcel being conveyed or both the parcel being conveyed and the remaining parcel.

The plat of survey shall be prepared in compliance with chapter 355 and shall be recorded. The plat shall be clearly marked by the surveyor as a plat of survey and shall include the following information for each parcel included in the survey:

a. A parcel letter or number designation approved by the auditor.

b. The names of the proprietors.

c. An accurate description of each parcel.

d. The total acreage of each parcel.

e. The acreage of any portion lying within a public right-of-way.

2. The auditor may note a permanent real estate index number upon each parcel shown on a plat of survey according to section 441.29 for real estate tax administration purposes. The surveyor shall not assign parcel letters or prepare a metes and bounds description for any parcel shown on a plat of survey unless the parcel was surveyed by the surveyor in compliance with chapter 355. Parcels within a plat of survey prepared pursuant to this section are subject to the regulations and ordinances of the governing body.

3. When land or rights in land are divided for right-of-way purposes by an agency of the government or other persons having the power of eminent domain and the description of the land or rights acquired is a metes and bounds description then an acquisition plat shall be made and attached to the description when the acquisition instrument is recorded. Acquisition plats shall be clearly marked as an acquisition plat and shall conform to the following:

a. Acquisition plats shall not be required to conform to the provisions of chapter 355.

b. The information shown on the plat shall be developed from instruments of record together with information developed by field measurements. The unadjusted error of field measurements shall not be greater than one in five thousand.

c. The plat shall be signed and dated by a surveyor, bear the surveyor's Iowa registration number and legible seal, and shall show a north arrow and bar scale.

d. The original drawing shall remain the property of the surveyor or the surveyor's agency and shall not be less than eight and one-half by eleven inches in size.

e. If the right-of-way on an acquisition plat is a portion of lots within an official plat, reference shall be made to both the lots and plat name. If the right-of-way acquisition plat is not within an official plat, reference shall be made to the government lot or quarter-quarter section and to the section, township, range, and county.

f. The plat shall indicate whether the monuments shown are existing monuments or monuments to be established. Monuments shall be established as necessary to construct or maintain the right-of-way project.

g. The acquisition plat shall identify the project for which the right-of-way was acquired and a parcel designation shall be assigned to each right-of-way parcel.

4. The acreage shown for each parcel included in a plat of survey or acquisition plat shall be to the nearest one-hundredth acre. If a parcel described as part of the United States public land survey system and not entirely within an official plat, lies within more than one forty-acre aliquot part of a section, the acreage shall be shown only for assessment and taxation purposes for each portion of the parcel that lies within each forty-acre aliquot part. The surveyor shall not be required to establish the location of the forty-acre aliquot line by survey but is required to use reasonable assumptions in determining its approximate location for assessment and taxation purposes.

5. Governmental agencies shall not be required to survey a remaining parcel when land is divided for right-of-way purposes and shall not be required to contact the auditor for approval of parcel designations shown on an acquisition plat.

90 Acts, ch 1236, §18
C91, §409A.4
91 Acts, ch 191, §15
C93, §354.4

354.5 Descriptions and conveyance according to plat of survey or acquisition plat.

1. A conveyance of a parcel shown on a recorded plat of survey shall describe the parcel by using the description provided on the plat of survey or by reference to the plat of survey, which reference shall include all of the following:

a. The parcel letter or number designation.

b. The document reference number of the recorded plat of survey.

c. The lot number or letter and name of the official plat, if the parcel lies within an official plat.

d. The section, township, and range number and reference to the aliquot part of the section, if the parcel lies outside of an official plat.

2. A conveyance of a parcel shown on a recorded acquisition plat shall describe the parcel by using the description provided on the acquisition instrument or by reference to the acquisition plat, which reference shall include all of the following:

a. The parcel designation and reference to the project for which the right-of-way was acquired.

b. The document reference number of the recorded acquisition plat.

c. The lot number or letter and name of the official plat, if the parcel lies within an official plat.

d. The section, township, and range number and reference to the aliquot part of the section, if the parcel lies outside of an official plat.

3. A description by reference to the recorded plat of survey, in compliance with subsection 1, is valid.

4. A description by reference to the recorded acquisition plat, in compliance with subsection 2, is valid.

5. A description by reference to a permanent real estate index number is valid for the purpose of assessment and taxation when a county has established a permanent real estate index number system pursuant to section 441.29.

90 Acts, ch 1236, §19
C91, §409A.5
91 Acts, ch 191, §16
C93, §354.5
2001 Acts, ch 44, §13, 14

354.6 Subdivision plats.

1. A subdivision plat shall be made when a tract of land is subdivided by repeated divisions or simultaneous division into three or more parcels, any of which are described by metes and bounds description for which no plat of survey is recorded. A subdivision plat is not required when land is divided by conveyance to a governmental agency for public improvements.

2. A subdivision plat shall have a succinct name or title that is unique, as approved by the auditor, for the county in which the plat lies. The plat shall include an accurate description of the land included in the subdivision and shall give reference to two section corners within the United States public land survey system in which the plat lies or, if the plat is a subdivision of any portion of an official plat, two established monuments within the official plat. Each lot within the plat shall be assigned a progressive number. Streets, alleys, parks, open areas, school property, other areas of public use, or areas within the plat that are set aside for future development shall be assigned a progressive letter and shall have the proposed use clearly designated. A strip of land shall not be reserved by the subdivider unless the land is of sufficient size and shape to be of practical use or service as determined by the governing body. Progressive block numbers or letters may be assigned to groups of lots separated from other lots by streets or other physical features of the land. The surveyor shall not assign lot numbers or letters to a lot shown within a subdivision plat unless the lot has been surveyed by the surveyor in compliance with chapter 355. The auditor may note a permanent real estate index number upon each lot within a subdivision plat. Sufficient information, including dimensions and angles or bearings, shall be shown on the plat to accurately establish the boundaries of each lot, street, and easement. Easements necessary for the orderly development of the land within the plat shall be shown and the purpose of the easement shall be clearly stated.

3. If a subdivision plat, described as part of the United States public land survey system and not entirely within an official plat, lies within more than one forty-acre aliquot part of a section, the acreage shall be shown only for assessment and taxation purposes for the portion of the subdivision that lies within each forty-acre aliquot part of the section. The area of the irregular lots within the plat shall be shown and may be expressed in either acres, to the nearest one-hundredth acre, or square feet, to the nearest ten square feet. The surveyor shall not be required to establish the location of a forty-acre aliquot line by survey but is required to use reasonable assumptions in determining its approximate location for assessment and taxation purposes.

90 Acts, ch 1236, §20
C91, §409A.6
C93, §354.6

354.7 Conveyances by reference to official plat.

A description of land by reference to lot number or letter designation and block, if block designations are shown on the plat, and the title or name of the official plat, is valid.

90 Acts, ch 1236, §21
C91, §409A.7
C93, §354.7

354.8 Review and approval by governing bodies.

A proposed subdivision plat lying within the jurisdiction of a governing body shall be submitted to that governing body for review and approval prior to recording. Governing bodies shall apply reasonable standards and conditions in accordance with applicable statutes and ordinances for the review and approval of subdivisions. The governing body, within sixty days of application for final approval of the subdivision plat, shall determine whether the subdivision conforms to its comprehensive plan and shall give consideration to the possible burden on public improvements and to a balance of interests between the proprietor, future purchasers, and the public interest in the subdivision when reviewing the proposed subdivision and when requiring the installation of public improvements in conjunction with approval of a subdivision. The governing body shall not issue final approval of a subdivision plat unless the subdivision plat conforms to sections 354.6, 354.11, and 355.8.

If the subdivision plat and all matters related to final approval of the subdivision plat conform to the standards and conditions established by the governing body, and conform to this chapter and chapter 355, the governing body, by resolution, shall approve the plat and certify the resolution which shall be recorded with the plat. The recorder shall refuse to accept a subdivision plat presented for recording without a resolution from each applicable governing body approving the subdivision plat or waiving the right to review.

A city may establish jurisdiction to review subdivisions or plats of survey outside its boundaries pursuant to the provisions of section 354.9. In the case of a city, the provisions of this section apply to the review by the city of both subdivision plats and

plats of survey.
90 Acts, ch 1236, §22
C91, §409A.8
C93, §354.8
2002 Acts, ch 1132, §1, 2, 11
Applicability of 2002 amendments; 2002 Acts, ch 1132, §11
Unnumbered paragraph 1 amended
NEW unnumbered paragraph 3

354.9 Review of plats within two miles of a city.

1. If a city, which has adopted ordinances regulating the division of land, desires to review subdivision plats or plats of survey for divisions or subdivisions outside the city's boundaries, then the city shall establish by ordinance specifically referring to the authority of this section, the area subject to the city's review and approval. The area of review may be identified by individual tracts, by describing the boundaries of the area, or by including all land within a certain distance of the city's boundaries, which shall not extend more than two miles distance from the city's boundaries. The ordinance establishing the area of review or modifying the area of review by a city, shall be recorded in the office of the recorder and filed with the county auditor.

2. If a subdivision lies in a county, which has adopted ordinances regulating the division of land, and also lies within the area of review established by a city pursuant to this section, then the subdivision plat or plat of survey for the division or subdivision shall be submitted to both the city and county for approval. The standards and conditions applied by a city or county for review and approval of the subdivision shall be the same standards and conditions used for review and approval of subdivisions within the city limits or shall be the standards and conditions for review and approval established by agreement of the city and county pursuant to chapter 28E. Either the city or county may, by resolution, waive its right to review the subdivision or waive the requirements of any of its standards or conditions for approval of subdivisions, and certify the resolution which shall be recorded with the plat.

3. If cities establish overlapping areas of review outside their boundaries, then the cities shall establish by agreement pursuant to chapter 28E reasonable standards and conditions for review of subdivisions within the overlapping area. If no agreement is recorded pursuant to chapter 28E then the city which is closest to the boundary of the subdivision shall have authority to review of the subdivision.

90 Acts, ch 1236, §23
C91, §409A.9
C93, §354.9
2002 Acts, ch 1132, §3, 11
Applicability of 2002 amendment; 2002 Acts, ch 1132, §11
Subsections 1 and 2 amended

354.10 Appeal of review or disapproval.

When application is made to a governing body for approval of a subdivision plat, the applicant or a second governing body, which also has jurisdiction for review, may be aggrieved by any of the following:

1. The requirements imposed by a governing body as a condition of approval.
2. The governing body exceeding the time for review established by ordinance.
3. The denial of the application.
4. Failure of the governing body to approve or reject a subdivision plat within sixty days from the date of application for final approval.

If the plat is disapproved by the governing body, such disapproval shall state how the proposed plat is objectionable. The applicant has the right to appeal, within twenty days, the failure of the governing body to issue final approval of the plat as provided in this section.

The applicant or the aggrieved governing body has the right to appeal to the district court within twenty days after the date of the denial of the application or the date of the receipt by the applicant of the requirements for approval of the subdivision. Notice of appeal shall be served on the governing body in the manner provided for the service of original notice pursuant to the rules of civil procedure. The appeal shall be tried de novo as an equitable proceeding and accorded a preference in assignment so as to assure its prompt disposition.

90 Acts, ch 1236, §24
C91, §409A.10
C93, §354.10

354.11 Attachments to subdivision plats.

A subdivision plat, other than an auditor's plat, that is presented to the recorder for recording shall conform to section 354.6 and shall not be accepted for recording unless accompanied by the following documents:

1. A statement by the proprietors and their spouses, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgment of deeds. The statement by the proprietors may also include a dedication to the public of all lands within the plat that are designated for streets, alleys, parks, open areas, school property, or other public use, if the dedication is approved by the governing body.

2. A statement from the mortgage holders or lienholders, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgment of deeds. An affidavit and bond as provided for in section 354.12, may be recorded in lieu of the consent of the mortgage or lienholder. When a mortgage or lienholder consents to the subdivision, a release of mortgage or lien shall be recorded for any areas conveyed to the governing body or dedicated to the

public.

3. An opinion by an attorney-at-law who has examined the abstract of title of the land being platted. The opinion shall state the names of the proprietors and holders of mortgages, liens, or other encumbrances on the land being platted and shall note the encumbrances, along with any bonds securing the encumbrances. Utility easements shall not be construed to be encumbrances for the purpose of this section.

4. A certified resolution by each governing body as required by section 354.8 either approving the subdivision or waiving the right to review.

5. A certificate of the treasurer that the land is free from certified taxes and certified special assessments or that the land is free from certified taxes and that the certified special assessments are secured by bond in compliance with section 354.12.

A subdivision plat which includes no land set apart for streets, alleys, parks, open areas, school property, or public use other than utility easements, shall be accompanied by the documents listed in subsections 1, 2, 3, and 4 and a certificate of the treasurer that the land is free from certified taxes other than certified special assessments.

90 Acts, ch 1236, §25
C91, §409A.11
C93, §354.11

354.12 Bonds to secure liens.

A bond in double the amount of the lien shall be secured and recorded if a lien exists on the land included in a subdivision plat and the required consent of the lienholder is not attached for one of the following reasons:

1. The lienholder cannot be found, in which case an affidavit by the proprietor stating that the lienholder could not be found shall be recorded with the bond.

2. The lienholder will not accept payment or cannot, because of the nature of the lien, accept payment in full of the lien, in which case an affidavit by the lienholder stating that payment of the lien was offered but refused shall be recorded with the bond.

The bond shall run to the county and be for the benefit of purchasers of lots within the plat and shall be conditioned for the payment and cancellation of the debt as soon as practicable and to hold harmless purchasers or their assigns and the governing body from the lien.

90 Acts, ch 1236, §26
C91, §409A.12
C93, §354.12

354.13 Auditor's plats and plats of survey.

If a tract is divided or subdivided in violation of section 354.4 or 354.6 or the descriptions of one or more parcels within a tract are not sufficiently certain and accurate for the purpose of assessment and taxation under the guidelines of section 354.3, the auditor shall notify the proprietors of the parcels within the tract for which no plat has been recorded as required by this chapter, and demand that a plat of survey or a subdivision plat be recorded as required by this chapter. Notice shall be served by mail and a certified copy of the notice shall be recorded. The auditor shall mail a copy of the notice to the applicable governing bodies. If the proprietors fail, within thirty days of the notice, to comply with the notice or file with the auditor a statement of intent to comply, the auditor shall contract with a surveyor to have a survey made of the property and have a plat of survey or an auditor's plat recorded as necessary to comply with this chapter. Upon receipt of a statement of intent to comply, the auditor may extend the time period for compliance.

90 Acts, ch 1236, §27
C91, §409A.13
C93, §354.13

354.14 Appeal of notice.

A proprietor aggrieved by a notice to plat by the auditor may appeal to the district court within twenty days after service of notice. Upon appeal, the auditor shall take no further action pending a decision of the district court. The appeal shall be tried de novo as an equitable proceeding.

90 Acts, ch 1236, §28
C91, §409A.14
C93, §354.14

354.15 Review of auditor's plats.

A proposed auditor's plat shall be filed with the applicable governing body which shall review the plat within the time specified by ordinance, and if it conforms to chapter 355, the governing body shall by resolution approve the plat and certify the resolution to be recorded with the plat. The governing body may state in the resolution whether the lots within the auditor's plat meet the standards and conditions established by ordinance for subdivision lots. The lots within a recorded auditor's plat and parcels within a recorded plat of survey prepared under section 354.13 are individually subject to local regulations and ordinances. Approval of an auditor's plat shall not impose any liability on a governing body to install or maintain public improvements or utilities within the plat. Approval of an auditor's plat by a governing body shall not constitute a waiver of ordinances requiring a subdivision plat.

90 Acts, ch 1236, §29
C91, §409A.15
C93, §354.15

354.16 Attachments to auditor's plats and plats of survey.

1. A plat of survey prepared pursuant to section 354.13 shall be accompanied by a certificate of the auditor that the plat of survey was prepared at

the direction of the auditor because the proprietors failed to file a plat.

2. An auditor's plat shall conform to section 354.6, but is exempt from section 354.11. An auditor's plat presented to the recorder for recording shall be accompanied by the following documents:

a. A certificate of the auditor that the auditor's plat was prepared at the direction of the auditor because the proprietors failed to file a plat, that the plat was prepared for assessment and taxation purposes, and that the recording of the plat does not constitute a dedication or impose any liability upon the state or governmental agency.

b. A certified resolution by the governing body, approving the plat or waiving the right to review.

c. A list for each lot within the plat of the proprietor's names, the area, expressed in acreage or square feet, the document reference number of the recorded conveyance to the proprietors, and the permanent real estate index number, where established.

d. A certificate of the auditor that no search was made at the time of the recording of the plat to determine the existence of any liens, mortgages, delinquent taxes, or special assessments, that no search was made, other than the records of the auditor's office, to establish title to the property within the plat, and that the lots within the plat are subject individually to the regulations and ordinances of the applicable governing body.

90 Acts, ch 1236, §30
C91, §409A.16
C93, §354.16
2002 Acts, ch 1113, §6
Subsection 2, paragraph c amended

354.17 Costs and collection of costs.

The surveyor shall present to the auditor a statement of the total cost of the surveying, platting, and recording of a plat prepared pursuant to section 354.13. The surveyor shall also present a statement of the part of the total cost to be assessed to each parcel included in the plat based on the time involved in establishing the boundaries of each parcel. The auditor shall certify to the treasurer an assessment for the platting costs against the lots within the plat which shall be collected in the same manner as general taxes, except that the board of supervisors, by resolution, may establish not more than ten equal annual installments and provide for interest on unpaid installments at a rate not to exceed that permitted by chapter 74A.

90 Acts, ch 1236, §31
C91, §409A.17
C93, §354.17

354.18 Recording of plats.

A plat of survey prepared pursuant to this chapter and a subdivision plat, with attachments, shall be recorded in the office of the county recorder, and an exact copy of the plat shall be filed in the offices of the county auditor and assessor. A replat of any part of an official plat pursuant to section 354.25, or a recorded subdivision plat of any part of an existing official plat shall supersede that part of the original official plat, including unused public utility easements.

The recorder shall examine each plat of survey and subdivision plat to determine whether the plat is clearly legible and whether the approval by the applicable governing body and the other attachments required by this chapter are presented with the plat. The recorder shall also keep a reproducible copy of the plat from which legible copies can be made. The recorder may specify the material and the size of the plat, not less than eight and one-half inches by eleven inches, that will be accepted for recording in order to comply with this section. The recorder shall not record a subdivision plat that violates this chapter.

90 Acts, ch 1236, §32
C91, §409A.18
C93, §354.18

354.19 Dedication of land.

An official plat which conforms to this chapter and has attached to the plat a dedication by the proprietors to the public and approval of the dedication by the governing body is equivalent to a deed in fee simple from the proprietors to the public of any land within the plat that is dedicated for street, alley, walkway, park, open area, school property, or other public use. An approved dedication of land for street purposes by the proprietors establishes an easement for public access, whether or not a deed has been recorded or the improvement of the street is complete, except when the resolution approving the plat specifically sets aside portions of the dedicated land as not being open for public access at the time of recording for public safety reasons. The recording of a subdivision plat shall dedicate to the public any utility, sewer, drainage, access, walkway, or other public easement shown on the plat.

The recording of an auditor's plat shall not serve to dedicate streets, alleys, parks, open areas, school property, public improvements, or utilities. The failure to show the existence of an easement or any public interest on the auditor's plat shall not remove or otherwise affect the interest.

90 Acts, ch 1236, §33
C91, §409A.19
C93, §354.19

354.20 Action to annul plats.

If a plat is filed and recorded in violation of this chapter, a governing body or a proprietor aggrieved by the violation, after filing written notice with the proprietors who joined in the acknowledgment of the plat or their successors in interest, may institute a suit in equity in the district court. The court may order the plat annulled except as

provided in section 354.21.
90 Acts, ch 1236, §34
C91, §409A.20
C93, §354.20

354.21 Limitation of actions on official plats.

An action shall not be maintained, at law or in equity, in any court, against a proprietor, based upon an omission of data shown on an official plat or upon an omission, error, or inconsistency in any of the documents required by this chapter unless the action is commenced within ten years after the date of recording of the official plat. Limitation of actions based on claims other than those provided for in this section shall be consistent with chapter 614.
90 Acts, ch 1236, §35
C91, §409A.21
C93, §354.21

354.22 Vacation of official plats.

The proprietors of lots within an official plat who wish to vacate any portion of the official plat shall file a petition for vacation with the governing body which would have jurisdiction to approve the plat at the time the petition is filed. After the petition has been filed, the governing body shall fix the time and place for public hearing on the petition. Written notice of the proposed vacation shall be served in the manner of original notices as provided in Iowa rules of civil procedure and be served upon proprietors and mortgagees within the official plat that are within three hundred feet of the area to be vacated. If a portion of the official plat adjoins a river or state-owned lake, the Iowa department of natural resources shall be served written notice of the proposed vacation. Notice of the proposed vacation shall be published twice, with fourteen days between publications, stating the date, time, and place of the hearing.

The official plat or portion of the official plat shall be vacated upon recording of all of the following documents:

1. An instrument signed, executed, and acknowledged by all the proprietors and mortgagees within the area of the official plat to be vacated, declaring the plat to be vacated. The instrument shall state the existing lot description for each proprietor along with an accurate description to be used to describe the land after the lots are vacated.
2. A resolution by the governing body approving the vacation and providing for the conveyance of those areas included in the vacation which were previously set aside or dedicated for public use.
3. A certificate of the auditor that the vacated part of the plat can be adequately described for assessment and taxation purposes without reference to the vacated lots.

No part of this section authorizes the closing or obstructing of public highways.

The vacation of a portion of an official plat shall not remove or otherwise affect a recorded restrictive covenant, protective covenant, building restriction, or use restriction. Recorded restrictions on the use of property within an official plat shall be modified or revoked by recording a consent to the modification or removal, signed and acknowledged by the proprietors and mortgagees within the official plat.
90 Acts, ch 1236, §36
C91, §409A.22
92 Acts, ch 1055, §1
C93, §354.22

354.23 Vacation of streets or other public lands.

A city or a county may vacate part of an official plat that had been conveyed to the city or county or dedicated to the public which is deemed by the governing body to be of no benefit to the public.

The city or county shall vacate by resolution following a public hearing or by ordinance and the vacating instrument shall be recorded. The city or county may convey the vacated property by deed or may convey the property to adjoining proprietors through the vacation instrument. If the vacating instrument is used to convey property then the instrument shall include a list of adjoining proprietors to whom the vacated property is being conveyed along with the corresponding description of each parcel being conveyed. A recorded vacation instrument which conforms to this section is equivalent to a deed of conveyance and the instrument shall be filed and indexed as a conveyance by the recorder and auditor.

A vacation instrument recorded pursuant to this section shall not operate to annul any part of an official plat except as provided for in section 354.22.
90 Acts, ch 1236, §37
C91, §409A.23
C93, §354.23

354.24 Errors on recorded plats.

If an error or omission in the data shown on a recorded plat is detected by subsequent examinations or revealed by retracing the lines shown on the plat, the original surveyor or two surveyors confirming the error through independent surveys shall record an affidavit confirming that the error or omission was made. The affidavit shall describe the nature and extent of the error or omission and also describe the corrections or additions to be made to the plat and note a document reference number of the recorded plat. The recorder shall note on the record of the plat the word "corrected", and note the document reference number of the recorded affidavit. A copy of the recorded affidavit shall be filed with the auditor and assessor. The affidavit shall raise a presumption from the date of recording that the purported facts stated in the affidavit are true, and after the lapse of three

years from the date of recording the presumption shall be conclusive.

90 Acts, ch 1236, §38
C91, §409A.24
C93, §354.24
2001 Acts, ch 44, §15

354.25 Survey and replat of official plats.

A survey of an official plat shall conform as nearly as possible to the original lot lines shown on the official plat. The surveyor may summon witnesses, administer oaths, and prepare affidavits and boundary line agreements as necessary in order to establish the location of property lines or lot lines. If a substantial error is discovered in an official plat or if it is found to be materially defective, a proprietor may petition the governing body which would have jurisdiction to approve the plat at the time the petition is filed for a replat of any part of the official plat. Notice of the proposed replat shall be served, in the manner of original notice as provided in Iowa rules of civil procedure, to the proprietors of record and holders of easements specifically recorded within the area to be replatted. The governing body has jurisdiction of the matter upon proof of publication of notice of the petition once each week for two weeks in a newspaper of general circulation within the area of the replat.

A replat of an official plat ordered by the governing body:

1. Shall be prepared by a surveyor pursuant to chapter 355 and recorded; and
2. Shall be exempt from the provisions of section 354.11; and
3. Shall have attached to the plat a statement by the surveyor that the replat is prepared at the direction of the governing body. The costs of the replat shall be presented to the auditor and assessed against the property included in the replat as provided for in section 354.17.

90 Acts, ch 1236, §39
C91, §409A.25
C93, §354.25

354.26 Corrections or changes to plats.

A vacation, correction, or replatting as provided for in this chapter shall be recorded and an exact copy shall be filed with the auditor and assessor. If a governing body changes the addresses or street names shown on an official plat, notice of the change shall note the name or other designation of each official plat affected and shall be filed with the recorder, auditor, and assessor. The recorder shall note the vacation, correction, or replatting on the index and record of the official plat or upon an attachment to the official plat for that purpose. The auditor shall make the proper changes on the plats required to be kept by the auditor.

90 Acts, ch 1236, §40
C91, §409A.26
C93, §354.26
2001 Acts, ch 44, §16

354.27 Noting the permanent real estate index number.

When a permanent real estate index number system has been established by a county pursuant to section 441.29, the auditor may note the permanent real estate index number on every conveyance.

90 Acts, ch 1236, §41
C91, §409A.27
C93, §354.27

CHAPTER 355

STANDARDS FOR LAND SURVEYING

Platting and subdivisions; see also chapter 354
This chapter not enacted as a part of this title; transferred from chapter 114A in Code 1993

355.1 Definitions.
355.2 Applicability.
355.3 Rules.
355.4 Boundary location.
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355.8 Plats for subdivisions.
355.9 Descriptions.
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355.11 United States public land survey corner certificate.
355.12 Indexing of survey documents by recorder.
355.13 Surveys authorized by the United States government.
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355.15 Reserved.

IOWA PLANE COORDINATE SYSTEM

355.16 Iowa plane coordinate system defined.
355.17 Designation of coordinate zones.
355.18 Identification of geographic locations.
355.19 Application of terms.

355.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Corner"* means a point at which two or more lines meet.

2. *"Division"* means dividing a tract or parcel of land into two parcels of land by conveyance or for tax purposes. The conveyance of an easement, other than a public highway easement, shall not be considered a division for the purpose of this chapter.

3. *"Government lot"* means a tract, within a section, which is normally described by a lot number as represented and identified on the township plat of the United States public land survey system.

4. *"Land surveying"* means surveying of land pursuant to chapter 542B.

5. *"Lot"* means a tract of land, generally a subdivision of a city or town block, represented and identified as a lot on a recorded plat.

6. *"Meander line"* means a traverse approximately along the margin of a body of water. A meander line provides data for computing areas and approximately locates the margin of the body of water. A meander line does not ordinarily determine or fix boundaries.

7. *"Monument"* means a physical structure which marks the location of a corner or other survey point.

8. *"Offset line"* means a supplementary traverse close to and approximately parallel with an irregular boundary line. An offset line provides data for computing areas and locates salient points on the irregular boundary line by measured distances referenced to the offset line.

9. *"Plat of survey"* means a graphical representation of a survey of one or more parcels of land, including a complete and accurate description of each parcel within the plat, prepared by a registered land surveyor.

10. *"Subdivision"* means a tract of land divided into three or more lots.

11. *"Subdivision plat"* means a graphical representation of the subdivision of land, prepared by a registered land surveyor, having a number or letter designation for each lot within the plat and a succinct name or title that is unique for the county where the land is located.

12. *"Surveyor"* means a registered land surveyor who engages in the practice of land surveying pursuant to chapter 542B.

90 Acts, ch 1236, §1
C91, §114A.1
C93, §355.1

355.2 Applicability.

This chapter applies to all agencies of the United States government, this state, or a political subdivision of this state and to all persons engaged in the practice of land surveying.

90 Acts, ch 1236, §2
C91, §114A.2
C93, §355.2

355.3 Rules.

Pursuant to chapter 542B, the engineering and land surveying examining board may adopt rules consistent with the rules prescribed by the Acts of Congress and the instructions of the United States Secretary of the Interior.

90 Acts, ch 1236, §3
C91, §114A.3
C93, §355.3

355.4 Boundary location.

The surveyor shall acquire data necessary to retrace record title boundaries, center lines, and other boundary line locations in accordance with the legal descriptions including applicable provisions of chapter 650. The surveyor shall analyze the data and make a careful determination of the position of the boundaries of the parcel or tract of land being surveyed. The surveyor shall make a field survey, locating and connecting monuments necessary for location of the parcel or tract and coordinate the facts of the survey with the analysis and legal description. The surveyor shall place monuments marking the corners of the parcel or tract unless monuments already exist at the corners.

90 Acts, ch 1236, §4
C91, §114A.4
C93, §355.4

355.5 Measurements.

1. Measurements shall be made with instruments and methods capable of attaining the required accuracy for the particular problem involved.

2. Measurements as placed on plats shall be in conformance with the capabilities of the instruments used.

3. In a closed traverse the sum of the measured angles shall agree with the theoretical sum by a difference not greater than thirty seconds times the square root of the number of angles.

4. Distances shall be shown in decimal feet in accordance with the definition of the international foot. Distance measurements shall refer to the horizontal plane.

90 Acts, ch 1236, §5
C91, §114A.5
C93, §355.5

355.6 Monumentation.

1. The surveyor shall confirm the prior establishment of control monuments at each controlling corner on the boundaries of the parcel or tract of land being surveyed. If no control monuments exist, the surveyor shall place the monuments. Control monuments shall be constructed of reasonably

permanent material solidly embedded in the ground and capable of being detected by commonly used magnetic or electronic equipment. The surveyor shall affix a cap of reasonably inert material bearing an embossed or stencil cut marking of the Iowa registration number of the surveyor to the top of each monument which the surveyor places.

2. Control monuments shall be placed at the following locations:

a. Each corner and angle point of each lot, block, or parcel of land surveyed.

b. Each point of intersection of the outer boundary of the survey with an existing or created right-of-way line of a street, railroad, or other way.

c. Each point of curve, tangency, reversed curve, or compounded curve on each right-of-way line established.

3. If the placement of a monument required by this chapter at the prescribed location is impractical, a reference monument shall be established near the prescribed location. If a point requiring monumentation has been previously monumented, the existence of the monument shall be confirmed by the surveyor.

4. At least a minimum number of two survey control monuments are required to be placed before the recording of a subdivision provided the surveyor includes in the surveyor's statement a declaration that additional monuments shall be placed before a date specified in the statement or within one year from the date the subdivision is recorded, whichever is earlier.

90 Acts, ch 1236, §6
C91, §114A.6
C93, §355.6

355.7 Plats of survey.

A plat of survey shall be made, showing information developed by the survey, for each land survey performed for the purpose of correcting boundaries, correcting descriptions of surveyed land, or for the division of land. Each plat of survey shall conform to the following provisions:

1. The original plat drawing shall remain the property of the surveyor.

2. The size of each plat sheet shall not be less than eight and one-half inches by eleven inches.

3. The scale of the plat drawing shall be clearly stated and graphically illustrated by a bar scale on every plat sheet.

4. An arrow indicating the northern direction shall be shown on each plat sheet.

5. The plat shall show that the survey is tied to a physically monumented land line which is identified by two United States public land survey system corners, or by two physically monumented corners of a recorded subdivision.

6. The plat shall show the lengths and bearings of the boundaries of the parcels surveyed. The course of each boundary line shown on the plat may be indicated by a direct bearing reference or by an angle between the boundary line and an intersecting line having a shown bearing, except when the boundary line has an irregular or constantly changing course, as along a body of water, or when a description of the boundary line is better achieved by measurements shown at points or intervals along a meander line or an offset line having a shown course. The bearings shall be referenced to a United States public land survey system land line, or recorded subdivision line. If the boundary lines show bearings, lengths, or locations which vary from those recorded in deeds, abutting plats, or other instruments of record, the following note shall be placed along the lines: "recorded as (show recorded bearing, length, or location)". Bearings and angles shown shall be given to at least the nearest minute of arc.

7. The plat shall show and identify all monuments necessary for the location of the parcel and shall indicate whether the monuments were found or placed.

8. If United States public land survey system corners control the land description, the corners shall be clearly identified on the plat including a description of the monumentation and shall indicate whether the monuments were found or placed.

9. Control monuments shall be adequately described and clearly identified on the plat and noted as found or placed. If additional monuments are to be placed subsequent to the recording of a subdivision as provided in section 355.6, the location of the additional monuments shall be shown on the plat.

10. Distance shall be shown in decimal feet in accordance with the definition of the international foot. Distance measurements shall refer to the horizontal plane.

11. Curve data shall be stated in terms of radius, central angle, and length of curve, and as otherwise specified by local ordinance. In all cases, the curve data must be shown for the line affected.

12. The unadjusted error of closure shall not be greater than one in five thousand for an individual parcel.

13. If any part of the surveyed land is bounded by an irregular line, that part shall be enclosed by a meander line or an offset line showing complete data with distances along all lines extending beyond the enclosure to the irregular boundary, and shown with as much certainty as can be determined or as "more or less", if variable. In all cases, the true boundary shall be clearly indicated on the plat.

14. The plat shall be captioned to show the date of the survey, and shall be accompanied by a description of the parcel.

15. The plat shall contain a statement by a surveyor that the work was done and the plat was prepared by the surveyor or under the surveyor's direct personal supervision, shall be signed and

dated by the surveyor, and shall bear the surveyor's Iowa registration number and legible seal.

90 Acts, ch 1236, §7
C91, §114A.7
C93, §355.7

355.8 Plats for subdivisions.

Subdivision plats shall conform to the following provisions where applicable:

1. The original plat drawing shall remain the property of the surveyor.

2. The size of each plat sheet shall not be less than eight and one-half inches by eleven inches.

3. If more than one sheet is used, each sheet shall display both the number of the sheet and the total number of sheets included in the plat, and clearly labeled match lines indicating where the other sheets adjoin. An index shall be provided to show the relationship between the sheets.

4. The scale of the plat drawing shall be clearly stated and graphically illustrated by a bar scale on every plat sheet.

5. Each subdivision plat shall be designated, by name or as otherwise prescribed, in bold letters inside the margin at the top of each plat sheet.

6. An arrow indicating the northern direction shall be shown on each plat sheet.

7. The plat shall show that the subdivision is tied to a physically monumented land line which is identified by two United States public land survey system corners, or by two physically monumented corners of a recorded subdivision.

8. The plat shall show the lengths and bearings of the boundaries of the tracts surveyed. The course of each boundary line shown on the plat may be indicated by a direct bearing reference or by an angle between the boundary line and an intersecting line having a shown bearing, except when the boundary line has an irregular or constantly changing course, as along a body of water, or when a description of the boundary line is better achieved by measurements shown at points or intervals along a meander line or an offset line having a shown course. The bearing shall be referenced to a United States public land survey system land line, or recorded subdivision line. If the boundary lines show bearings, lengths, or locations which vary from those recorded in deeds, abutting plats, or other instruments of record, the following note shall be placed along the lines: "recorded as (show recorded bearing, length, or location)". Bearings and angles shown shall be given to at least the nearest minute of arc.

9. The plat shall show and identify all monuments necessary for the location of the tracts and shall indicate whether the monuments were found or placed.

10. If United States public land survey system corners control the land description, the corners shall be clearly identified on the plat including a description of the monumentation and shall indicate whether the monuments were found or placed.

11. Control monuments shall be adequately described and clearly identified on the plat and noted as found or placed. If additional monuments are to be placed subsequent to the recording of a subdivision as provided in section 355.6, the location of the additional monuments shall be shown on the plat.

12. Survey data shall be shown to positively describe the bounds of every lot, block, street, easement, or other areas shown on the plat, and the boundaries of the surveyed lands.

13. Distances shall be shown in feet to at least the nearest one-tenth of a foot in accordance with the definition of the international foot. Distance measurements shall refer to the horizontal plane.

14. Curve data shall be stated in terms of radius, central angle, and length of curve. Unless otherwise specified by local ordinance, curve data for streets of uniform width need only be shown with reference to the center line and lots fronting on such curves need only show the chord bearing and distance of the part of the curve included in the lot boundary. Otherwise, the curve data shall be shown for the line affected.

15. The unadjusted error of closure shall not be greater than one in ten thousand for subdivision boundaries and shall not be greater than one in five thousand for an individual lot.

16. If part of the surveyed land is bounded by an irregular line, that part shall be enclosed by a meander line or an offset line showing complete data with distances along all lines extending beyond the enclosure to the irregular boundary, and shown with as much certainty as can be determined or as "more or less", if variable. In all cases, the true boundary shall be clearly indicated on the plat.

17. Interior excepted parcels shall be clearly indicated and labeled, "not a part of this survey (or subdivision)".

18. Adjoining properties shall be identified, and if the adjoining properties are a part of a recorded subdivision, the name of that subdivision shall be shown. If the survey is a subdivision of a portion of a previously recorded subdivision plat, sufficient ties shall be shown to controlling lines appearing on such plat to permit a comparison to be made.

19. The purpose of any easement shown on the plat shall be clearly stated.

20. The purpose of areas dedicated to the public shall be clearly indicated on the plat.

21. The plat shall be accompanied by a description of the land included in the subdivision and shall contain a statement by the surveyor that the work was done and the plat was prepared by the surveyor or under the surveyor's direct personal supervision and shall be signed and dated by

the surveyor and bear the surveyor's Iowa registration number and legible seal.

90 Acts, ch 1236, §8
C91, §114A.8
C93, §355.8

355.9 Descriptions.

A description defining land boundaries written for conveyance or other purposes shall be complete, providing definite and unequivocal identification of the property lines or boundaries. The description shall be sufficient to enable the description to be platted and retraced. The description shall commence at or relate to a physically monumented corner or boundary line of record.

1. If the land is located in a recorded subdivision, the description shall contain the number or other description of the lot, block, or other part of the subdivision, or shall describe the land by reference to a known corner of the lot, block, or other part.

2. If the land is not located in a recorded subdivision, the description shall identify the section, township, range, and county, and shall describe the land by reference to government lot, by quarter-quarter section, by quarter section, or by metes and bounds commencing with a corner marked and established in the United States public land survey system.

90 Acts, ch 1236, §9
C91, §114A.9
C93, §355.9

355.10 Record.

1. The surveyor shall record a plat and description with the county recorder no later than thirty days after signature on the plat by the surveyor if the survey was made for one of the following purposes:

a. To correct boundaries and descriptions of land.

b. For the division of land.

2. The plat and description shall show distinctly what piece of land was surveyed, the surveyor, and the date of the survey.

3. The thirty-day requirement shall not apply to subdivision plats.

90 Acts, ch 1236, §10
C91, §114A.10
C93, §355.10

355.11 United States public land survey corner certificate.

1. A United States public land survey corner certificate shall be prepared as part of any land surveying which includes the use of a United States public land survey system corner, having the status of a corner of a quarter-quarter section or larger aliquot part of a section, if one or more of the following conditions exist:

a. There is no certificate for the corner on file with the recorder of the county in which the corner is located.

b. The surveyor in responsible charge of the land surveying accepts a corner position which differs from that shown in the public records of the county in which the corner is located.

c. The corner monument is replaced or modified in any way.

d. The reference ties referred to in an existing public record are not correct.

2. The surveyor shall record the required certificate with the recorder and forward a copy to the county engineer of the county in which the corner is located within thirty days after completion of the surveying. The certificate shall comply with the following requirements:

a. The size of the sheet or sheets making up the certificate shall not be less than eight and one-half inches by eleven inches.

b. The identity of the corner, with reference to the United States public land survey system, shall be clearly indicated.

c. The certificate shall contain a narrative explaining the reason for preparing the certificate, the evidence and detailed procedures used in establishing the corner position, and the monumentation found or placed perpetuating the corner position including reference monumentation.

d. The certificate shall contain a plan-view site drawing depicting the relevant monuments, physical surroundings, and reference ties in sufficient detail to enable recovery of the corner.

e. The certificate shall contain at least three reference ties, measured to the nearest one-hundredth of a foot from the corner to durable physical objects near the corner, which are located so that the intersection of any two of the ties will yield a strong corner position recovery.

f. The certificate shall contain a statement by the surveyor that the work was done and the certificate was prepared by the surveyor or under the surveyor's direct personal supervision and shall be signed and dated by the surveyor and bear the surveyor's Iowa registration number and seal.

90 Acts, ch 1236, §11
C91, §114A.11
C93, §355.11

355.12 Indexing of survey documents by recorder.

The recorder shall index survey documents and United States public land corner certificates by township, range, and section number. If the survey is in a recorded subdivision, the recorder shall also index the document alphabetically by subdivision name.

90 Acts, ch 1236, §12
C91, §114A.12
C93, §355.12

355.13 Surveys authorized by the United States government.

1. A person employed in the execution of a survey authorized by the United States government may enter upon lands within this state for the purpose of exploring, triangulating, leveling, surveying, and doing any other work necessary to carry out the objects of laws relative to surveys, and may establish permanent station marks, and erect the necessary signals and temporary observatories, doing no unnecessary injury thereby.

2. If the parties interested cannot agree upon the amount to be paid for damages caused by entry upon lands pursuant to subsection 1, either of them may petition the district court in the county in which the land is situated and the district court shall appoint a time for a hearing. The district court shall order at least twenty days' notice to be given to all interested parties, and, with or without a view of the premises as the court may determine, hear the parties and their witnesses and assess damages.

3. The person entering upon land, pursuant to subsection 1, may tender to the injured party damages caused thereby, and if, in case of petition or complaint to the district court, the damages finally assessed do not exceed the amount tendered, the person entering shall recover costs. Otherwise, the prevailing party shall recover costs.

4. The costs to be allowed in cases taken pursuant to this section shall be the same as allowed according to the rules of the court and provisions of law relating to costs.

90 Acts, ch 1236, §13
C91, §114A.13
C93, §355.13

355.14 Federal surveys — defacement.

If a person willfully defaces, injures, or removes a signal, monument, building, or other property of the United States national geodetic survey, or the United States geological survey, constructed or used under the federal law, the person is subject to a civil penalty not exceeding fifty dollars for each offense, and is liable for damages sustained by the United States in consequence of the defacing, injury, or removal, to be recovered in a civil action in any court of competent jurisdiction.

90 Acts, ch 1236, §14
C91, §114A.14
C93, §355.14

355.15 Reserved.

IOWA PLANE COORDINATE SYSTEM

355.16 Iowa plane coordinate system defined.

As used in this section, and sections 355.17 through 355.19, unless the context otherwise requires, *"Iowa plane coordinate system"* or *"coordinate system"* means the system of plane coordinates established by the United States national ocean survey, or the United States national geodetic survey, or a successor agency, for defining and stating the geographic positions or locations of points on the surface of the earth within the state of Iowa.

93 Acts, ch 50, §1

355.17 Designation of coordinate zones.

The Iowa plane coordinate system is divided into two zones designated as follows:

1. *a.* The area now included in the following counties constitutes the north zone: Allamakee, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cerro Gordo, Cherokee, Chickasaw, Clay, Clayton, Crawford, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Greene, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Ida, Jackson, Jones, Kossuth, Linn, Lyon, Marshall, Mitchell, Monona, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, Story, Tama, Webster, Winnebago, Winneshiek, Woodbury, Worth, and Wright.

b. The coordinate system north zone is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitudes forty-two degrees, four minutes, and forty-three degrees, sixteen minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian ninety-three degrees, thirty minutes west of Greenwich, and the parallel forty-one degrees, thirty minutes north latitude. This origin is given the coordinates: x equals one million five hundred thousand meters exact and y equals one million meters exact.

2. *a.* The area now included in the following counties constitutes the south zone: Adair, Adams, Appanoose, Audubon, Cass, Cedar, Clarke, Clinton, Dallas, Davis, Decatur, Des Moines, Fremont, Guthrie, Harrison, Henry, Iowa, Jasper, Jefferson, Johnson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monroe, Montgomery, Muscatine, Page, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Shelby, Taylor, Union, Van Buren, Wapello, Warren, Washington, and Wayne.

b. The coordinate system south zone is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitudes forty degrees, thirty-seven minutes, and forty-one degrees, forty-seven minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian ninety-three degrees, thirty minutes west of Greenwich, and the parallel forty degrees, zero minutes north latitude. This origin is given the coordinates: x equals five hundred thousand

meters exact and y equals zero meters exact.

93 Acts, ch 50, §2; 93 Acts, ch 180, §78

355.18 Identification of geographic locations.

The plane coordinate values for a point on the earth's surface used to express the geographic position or location of the point in the appropriate zone of the coordinate system shall consist of two distances expressed in meters and decimals of a meter. One of these distances, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the United States national ocean survey, or the United States national geodetic survey, or a successor agency. Any monumented point may be used for establishing a survey connection to the coordinate system.

93 Acts, ch 50, §3

355.19 Application of terms.

The use of the term *"Iowa plane coordinate system north zone"* or *"Iowa plane coordinate system south zone"* on a map, report of survey, or other document shall be limited to coordinates based on the Iowa plane coordinate system as defined in this chapter.

93 Acts, ch 50, §4

CHAPTER 356

JAILS AND MUNICIPAL HOLDING FACILITIES

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356.44 Rules of sheriff.
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356.46 Time off for good behavior.
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356.48 Required test.
356.49 Jail report.
356.50 Private transportation of prisoners.

356.1 How used.

The jails in the several counties in the state shall be in charge of the respective sheriffs and used as prisons:

1. For the detention of persons charged with an offense and committed for trial or examination.

2. For the detention of persons who may be committed to secure their attendance as witnesses on the trial of a criminal cause.

3. For the confinement of persons under sentence, upon conviction for any offense, and of all other persons committed for any cause authorized by law.

4. For the confinement of persons subject to imprisonment under the ordinances of a city.

The provisions of this section extend to persons

detained or committed by authority of the courts of the United States as well as of this state.

[C51, §3103; R60, §5122; C73, §485, 4723; C97, §735, 5637; C24, 27, 31, 35, 39, §**5497, 5772;** C46, 50, §356.1, 368.40; C54, 58, 62, 66, 71, 73, §356.1, 368.15; C75, 77, 79, 81, §356.1]

356.2 Duty.

The sheriff shall have charge and custody of the prisoners in the jail or other prisons of the sheriff's county, and shall receive those lawfully committed, and keep them until discharged by law.

[C51, §172; R60, §385; C73, §339; C97, §501; C24, 27, 31, 35, 39, §**5498;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.2]

356.3 Minors separately confined.

Any sheriff, city marshal, or chief of police, having in the officer's care or custody any prisoner under the age of eighteen years, shall keep such prisoner separate and apart, and prevent communication by such prisoner with prisoners above that age, while such prisoners are not under the personal supervision of such officer, if suitable buildings or jails are provided for that purpose, unless such prisoner is likely to or does exercise an immoral influence over other minors with whom the prisoner may be imprisoned.

A person under the age of eighteen years prosecuted under chapter 232 and not waived to criminal court shall be confined in a jail only under the conditions provided in chapter 232.

Any officer having charge of prisoners who without just cause or excuse neglects or refuses to perform the duties imposed on the officer by this section may be suspended or removed from office therefor.

[C97, §5638; C24, 27, 31, 35, 39, §**5499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.3]

356.4 Separation of men and women.

All jails shall be equipped with separate cells for men and women. Men and women prisoners shall not be allowed in the same cell within a jail at the same time.

[C97, §5639; C24, 27, 31, 35, 39, §**5500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.4]

85 Acts, ch 21, §43

356.5 Keeper's duty.

The keeper of each jail shall:

1. See that the jail is kept in a clean and healthful condition.

2. Furnish each prisoner with necessary bedding, clothing, towels, fuel, and medical aid.

3. Serve each prisoner three times each day with an ample quantity of wholesome food.

4. Furnish each prisoner sufficient clean, fresh water for drinking purposes and for personal use.

5. Keep an accurate account of the items furnished each prisoner.

6. Keep a matron on the jail premises at all times during the incarceration of one or more female prisoners; keep either a jailer or matron on the premises at all times during the incarceration of one or more male prisoners, and make nighttime inspections while any prisoners are confined, or provide for incarceration in a jail which conforms to the provisions of this subsection.

[C51, §3104, 3108; R60, §5123, 5127; C73, §4724, 4727; C97, §5640, 5643; C24, 27, 31, 35, 39, §**5501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.5]

356.6 Sheriff's duty.

The sheriff must keep an accurate calendar of each prisoner committed to the sheriff's care, which shall contain the prisoner's name, place of abode, the day and hour of commitment and discharge, the cause and term of commitment, the authority that committed the prisoner, and a description of the prisoner, a statement of the prisoner's occupation, education, and general habits. When any prisoner is discharged, such calendar must show the day and hour when and the authority by which it took place, and if a person escapes, it must state particularly the time and manner thereof.

[C51, §3105; R60, §5124; C73, §4725; C97, §5641; C24, 27, 31, 35, 39, §**5502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.6]

356.7 Charge for room and board — enforcement procedures.

1. The county sheriff may charge a prisoner who is eighteen years of age or older and who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order for the room and board provided to the prisoner while in the custody of the county sheriff. Moneys collected by the sheriff under this section shall be credited to the county general fund and distributed as provided in this section. If a prisoner who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order fails to pay for the room and board, the sheriff may file a room and board reimbursement claim with the district court as provided in subsection 2. The county attorney may file the room and board reimbursement claim on behalf of the sheriff and the county. This section does not apply to prisoners who are paying for their room and board by court order pursuant to sections 356.26 through 356.35.

2. The sheriff or the county attorney, on behalf of the sheriff, may file a room and board reimbursement claim with the clerk of the district court which shall include all of the following information, if known:

a. The name, date of birth, and social security number of the person who is the subject of the claim.

b. The present address of the residence and principal place of business of the person named in the claim.

c. The criminal proceeding pursuant to which the claim is filed, including the name of the court, the title of the action, and the court's file number.

d. The name and office address of the sheriff or the name and office address of the county attorney who is filing the claim on behalf of the sheriff.

e. A statement that the notice is being filed pursuant to this section.

f. The amount of room and board charges the person owes.

g. If the sheriff wishes to have the amount of the claim for charges owed included within the amount of restitution determined to be owed by the person, a request that the amount owed be included within the order for payment of restitution by the person.

3. Upon receipt of a claim for room and board reimbursement, the court shall approve the claim in favor of the sheriff or the county for the amount owed by the prisoner as identified in the claim and any fees or charges associated with the filing or processing of the claim with the court. The sheriff may choose to enforce the claim in the manner provided in chapter 626. Once approved by the court, the claim for the amount owed by the person shall have the force and effect of a judgment for purposes of enforcement by the sheriff. However, irrespective of whether the judgment lien for the amount of the claim has been perfected, the claim shall not have priority over competing claims for child support obligations owed by the person.

4. This section does not limit the right of the sheriff to obtain any other remedy authorized by law.

5. Of the moneys collected and credited to the county general fund as provided in this section, sixty percent of the moneys collected shall be used for the following purposes:

a. Courthouse security equipment and law enforcement personnel costs.

b. Infrastructure improvements of a jail, including new or remodeling costs.

c. Infrastructure improvements of juvenile detention facilities, including new or remodeling costs.

The sheriff may submit a plan or recommendations to the county board of supervisors for the use of the funds as provided in this subsection or the sheriff and board may jointly develop a plan for the use of the funds. Subject to the requirements of this subsection, funds may be used in the manner set forth in an agreement entered into under chapter 28E.

The county board of supervisors shall review the plan or recommendations submitted by the sheriff during the normal budget process of the county.

96 Acts, ch 1081, §1; 96 Acts, ch 1219, §71; 97 Acts, ch 140, §1; 98 Acts, ch 1116, §1

356.8 Removal.

When a jail or any building contiguous or near thereto is on fire, and there is reason to apprehend that the prisoners therein may be injured thereby, the sheriff or keeper must remove such prisoners to some safe and convenient place, and there confine them so long as it may be necessary to avoid such danger.

[C51, §3109; R60, §5128; C73, §4728; C97, §5644; C24, 27, 31, 35, 39, §**5504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.8]

356.9 and 356.10 Repealed by 81 Acts, ch 59, § 3.

356.11 to 356.13 Repealed by 81 Acts, ch 59, § 3.

356.14 Refractory prisoners.

If any person confined in a jail is refractory or disorderly or willfully destroys or injures any part of the jail or of its contents, the sheriff may secure the person or cause the person to be kept in solitary confinement not more than ten days for any one offense, during which time the person may be fed minimum diet requirements as established by the Iowa department of corrections unless other food is necessary for the preservation of the person's health.

[C51, §3115; R60, §5134; C73, §4734; C97, §5650; C24, 27, 31, 35, 39, §**5510;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.14]

83 Acts, ch 96, §113, 159

356.15 Expenses.

All charges and expenses for the safekeeping and maintenance of prisoners shall be allowed by the board of supervisors, except those committed or detained by the authority of the courts of the United States, in which cases the United States must pay such expenses to the county, and those committed for violation of a city ordinance, in which case the city shall pay expenses to the county.

[C51, §3116; R60, §5135; C73, §485, 4735; C97, §735, 5651; C24, 27, 31, 35, 39, §**5511, 5772;** C46, 50, §356.15, 368.40; C54, 58, 62, 66, 71, 73, §356.15, 368.15; C75, 77, 79, 81, §356.15]

356.16 Hard labor.

Able-bodied persons over the age of sixteen, confined in any jail under the judgment of any tribunal authorized to imprison for the violation of any law, ordinance, bylaw or police regulation, may be required to labor during the whole or part of the time of their sentences, as hereinafter provided, and such tribunal, when passing final judgment of imprisonment, whether for nonpayment of fine or otherwise, shall have the power to and shall determine whether such imprisonment shall be at hard labor or not.

[C51, §3107; R60, §5126; C73, §4736; C97, §5652; S13, §5652; C24, 27, 31, 35, 39, §**5512;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.16]

356.17 Labor on public works.

Such labor may be on the streets or public roads, on or about public buildings or grounds, or at such other places in the county where confined, and during such reasonable time of the day as the person having charge of the prisoners may direct, not exceeding eight hours each day.

[C73, §4737; C97, §5653; C24, 27, 31, 35, 39, §**5513;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.17]

356.18 Supervision.

If the sentence be for the violation of any of the statutes of the state, the sheriff of the county shall superintend the performance of the labor, and furnish the tools and materials, if necessary, to work with, at the expense of the county in which the convict is confined, and such county shall be entitled to the convict's earnings.

[C51, §3107; R60, §5126; C73, §4738; C97, §5654; C24, 27, 31, 35, 39, §**5514;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.18]

356.19 Rules — labor not to be leased.

Such labor shall be performed in accordance with such rules as may be made by resolution of the board of supervisors, not inconsistent with the provisions of this chapter, and such labor shall not be leased.

[C97, §5654; C24, 27, 31, 35, 39, §**5515;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.19]

356.20 Violation of city ordinance.

When the imprisonment is under the judgment of any court, for the violation of any ordinance, the marshal or chief of police shall superintend the labor and furnish the tools and materials, if necessary, at the expense of the city requiring the labor, and the city shall be entitled to the earnings of its convicts.

[C73, §4739; C97, §5655; C24, 27, 31, 35, 39, §**5516;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.20]

356.21 Control and punishment.

The officer having charge of any prisoner may use such means as are necessary to prevent the prisoner's escape, and if the prisoner attempts to escape or if, being convicted, the prisoner refuses to labor, the officer having the prisoner in charge may, to secure the prisoner or cause the prisoner to labor, deal with the prisoner as with other disorderly or refractory prisoners. Such punishment shall be inflicted within the jail or jail enclosure, and the time of such solitary confinement shall not be considered as any part of the time for which the prisoner is sentenced.

[C73, §4740; C97, §5656; C24, 27, 31, 35, 39, §**5517;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.21]

356.22 Credit for labor.

For every day of labor performed by any convict under the provisions hereof, there shall be credited on any judgment for fine and costs against the convict the sum of one dollar and fifty cents.

[C73, §4741; C97, §5657; C24, 27, 31, 35, 39, §**5518;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.22]

356.23 Cruel treatment.

If any officer or other person treats any prisoner in a cruel or inhuman manner, the officer or other person shall be guilty of a serious misdemeanor.

[C73, §4742; C97, §5658; C24, 27, 31, 35, 39, §**5519;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.23]

356.24 Protecting prisoners.

The officer having a prisoner in charge shall protect the prisoner from insult and annoyance and communication with others while at labor, and in going to and returning from the same, and may use such means as are necessary and proper therefor.

[C73, §4743; C97, §5659; C24, 27, 31, 35, 39, §**5520;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.24]

356.25 Annoyance of prisoner.

Any person persisting in insulting or annoying or communicating with any prisoner, after being commanded by such officer to desist, shall be guilty of a simple misdemeanor.

[C73, §4743; C97, §5659; C24, 27, 31, 35, 39, §**5521;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §356.25]

356.26 Leaving jail for certain purposes — intermittent sentencing — in-home detention.

The district court may grant by appropriate order to any person sentenced to a county jail the privilege of a sentence to accommodate the work schedule of the person or the privilege of leaving the jail at necessary and reasonable hours for any of the following purposes:

1. Seeking employment.
2. Working at the person's employment.
3. Conducting the person's own business or other self-employed occupation, including housekeeping and attending to family needs.
4. Attendance at an educational institution.
5. Medical treatment.

All released prisoners shall remain, while absent from the jail, in the legal custody of the sheriff, and shall be subject, at any time, to being taken

into custody and returned to the jail.

The district court may also grant by order to any person held in a county jail the privilege of in-home detention if the county sheriff has certified to the court that the jail has an in-home detention program.

[C66, 71, 73, 75, 77, 79, 81, §356.26]

88 Acts, ch 1105, §1; 90 Acts, ch 1251, §36; 91 Acts, ch 267, §413; 92 Acts, ch 1071, §1

356.27 Privilege expressly granted.

Unless such privilege is expressly granted by the court, the prisoner is sentenced to ordinary confinement. Any prisoner may petition the court for such privilege at the time of sentencing or thereafter, and the court in its discretion may review the petition and make appropriate orders. The court may withdraw the privilege at any time by order entered with or without notice or hearing.

[C66, 71, 73, 75, 77, 79, 81, §356.27]

356.28 Employment.

The sheriff or any suitable person or agency designated by the court may endeavor to secure employment for unemployed prisoners granted privileges under sections 356.26 to 356.35.

[C66, 71, 73, 75, 77, 79, 81, §356.28]

356.29 Wages or salary collected by sheriff.

If a prisoner is employed for wages or salary the sheriff may collect the same or require the prisoner to turn over the wages or salary in full when received, and the sheriff shall deposit the same in a trust checking account and shall keep a ledger showing the status of the account of each prisoner. Such wages or salary are not subject to garnishment during the prisoner's term and shall be disbursed only as provided in sections 356.26 through 356.35.

[C66, 71, 73, 75, 77, 79, 81, §356.29]

84 Acts, ch 1144, §1

356.30 Prisoner to pay for board — limitations.

Every prisoner of a county jail under a sentence to accommodate the person's work schedule in accordance with section 356.26 is liable for the cost of the prisoner's board in the jail as fixed by the county board of supervisors. The sheriff shall charge the prisoner's account for the board and any meals provided in section 356.31. If the prisoner is gainfully self-employed the prisoner shall pay the sheriff for the board, in default of which the prisoner's privilege under this chapter is automatically forfeited. If necessarily absent from jail at a meal time, the prisoner shall at the prisoner's request be furnished with a lunch to carry to work. If the jail food is furnished directly, by the county, the sheriff shall account for and pay over the meal payments to the county treasurer. The county board of supervisors may by resolution provide that the county furnish or pay for the transportation of prisoners employed under sections 356.26 to 356.35 to and from the place of employment. However, the charges for board and meals under this section shall not exceed fifty percent of the wages or salaries of the prisoner, after deductions required by law, including deductions to satisfy any court-ordered child support obligations, earned during the period of time for which the charges are made.

[C66, 71, 73, 75, 77, 79, 81, §356.30]

84 Acts, ch 1144, §2; 88 Acts, ch 1105, §2

356.31 Application of wages.

By order of the court, the wages, salaries, or other income of employed prisoners shall be disbursed by the sheriff for the following purposes and in the order stated.

1. The meals of the prisoner.
2. Necessary travel expense to and from work including reimbursement for travel furnished by the county, and other incidental expenses of the prisoner.
3. Support of the prisoner's dependents, if any.
4. Payment, either in full or ratably, of the prisoner's obligations if acknowledged by the prisoner in writing or which have been reduced to judgment.
5. The balance, if any, to the prisoner upon the prisoner's release.

[C66, 71, 73, 75, 77, 79, 81, §356.31]

356.32 Employment in another county.

The court may by order authorize the sheriff to whom the prisoner is committed, to contract with a sheriff of another county, for the employment of the prisoner in the other's county, and while so employed to be in the other's custody, but in other respects to be and continue subject to the commitment.

[C66, 71, 73, 75, 77, 79, 81, §356.32]

356.33 Orders of courts.

District judges, district associate judges, and judicial magistrates, within their respective jurisdictional authority, may make all determinations and orders under sections 356.26 to 356.35.

If the prisoner was convicted in a court in another county, the district court in the county where the prisoner is jailed, at the request or the concurrence of the committing court, may make all determinations and orders under this section as might otherwise be made by the sentencing court after the prisoner is received at the jail.

[C66, 71, 73, 75, 77, 79, 81, §356.33]

356.34 Support of dependents.

The sheriff or any other suitable person or agency designated by the court shall, at the re-

quest of the court, investigate and report to the court the amount necessary for the support of the prisoner's dependents.

[C66, 71, 73, 75, 77, 79, 81, §356.34]

356.35 Suspension of privileges.

The sheriff may in the sheriff's discretion suspend the privilege provided the sheriff files with the court the next regular court day a statement of the reasons therefor. Unless the court acts to rescind its order, such suspension of the privileges may not exceed five days.

[C66, 71, 73, 75, 77, 79, 81, §356.35]

356.36 Jail standards.

The Iowa department of corrections, in consultation with the Iowa state sheriff's association, the Iowa association of chiefs of police and peace officers, the Iowa league of cities, and the Iowa board of supervisors association, shall draw up minimum standards for the regulation of jails, alternative jails, facilities established pursuant to chapter 356A and municipal holding facilities. When completed by the department, the standards shall be adopted as rules pursuant to chapter 17A.

The sole remedy for violation of a rule adopted pursuant to this section, is by a proceeding for compliance initiated by request to the Iowa department of corrections. A violation of a rule does not permit any civil action to recover damages against the state of Iowa, its departments, agents, or employees or any county, its agents or employees, or any city, its agents or employees.

[C66, 71, 73, 75, 77, 79, §356.37 – 356.43; C81, §356.36; 82 Acts, ch 1133, §1]

83 Acts, ch 96, §114, 159; 84 Acts, ch 1127, §1; 95 Acts, ch 3, §3

356.37 Confinement and detention report — design proposals.

The division of criminal and juvenile justice planning of the department of human rights, in consultation with the department of corrections, the Iowa county attorneys association, the Iowa state sheriff's association, the Iowa association of chiefs of police and peace officers, a statewide organization representing rural property taxpayers, the Iowa league of cities, and the Iowa board of supervisors association, shall prepare a report analyzing the confinement and detention needs of jails and facilities established pursuant to chapters 356 and 356A. The report for each type of jail or facility shall include but is not limited to an inventory of prisoner space, daily prisoner counts, options for detention of prisoners with mental illness or substance abuse service needs, and the compliance status under section 356.36 for each jail or facility. The report shall contain an inventory of recent jail or facility construction projects in which voters have approved the issuance of general obligation bonds, essential county purpose bonds, revenue bonds, or bonds issued pursuant to chapter 422B. The report shall be revised periodically as directed by the administrator of the division of criminal and juvenile justice planning. The first submission of the report shall include recommendations on offender data needed to estimate jail space needs in the next two, three, and five years, on a county, geographic region, and statewide basis, which may be based upon information submitted pursuant to section 356.49.

2002 Acts, ch 1051, §1, 2; 2002 Acts, ch 1175, §83

For text of section in effect from April 1, 2002, until July 1, 2002, see 2002 Acts, ch 1051, §1

NEW section

356.38 to 356.42 Repealed by 79 Acts, ch 53, § 6. See § 356.36.

356.43 Inspection — hearing — remedial action — report.

The Iowa department of corrections and its inspectors and agents shall make periodic inspections of each jail or municipal holding facility and all facilities established pursuant to chapter 356A, and officially notify the governing body of the political subdivision in writing to comply fully with section 356.36.

The Iowa department of corrections may order the governing body of a political subdivision to either correct violations found in the inspection of a jail or municipal holding facility within a designated period, or may prohibit the confinement of prisoners in the jail or municipal holding facility. If the governing body fails to comply with the order within the period designated, the Iowa department of corrections may schedule a hearing on the alleged violation. The department may subpoena witnesses, documents, and other information deemed necessary to determine the validity of the alleged violation. The department shall upon written request from the governing body of the political subdivision grant representatives of the political subdivision the right to appear before the department at the hearing. The representatives have the right to counsel and may produce witnesses and present statements, documents, and other information with respect to the alleged violation for consideration at the hearing.

The department after the hearing shall affirm, revoke, or modify the original order. If the order is upheld, the department may include a schedule for correction of the violations and designate the date by which each violation shall be corrected.

If the political subdivision does not comply with the order within the designated period, the department may petition the attorney general to institute proceedings to enjoin the political subdivision from confining prisoners in the jail or municipal holding facility and require the transfer of prisoners to a jail or municipal holding facility declared by the director to be suitable for confinement. The county or municipality from which

prisoners are transferred is liable for the cost of transfer and expenditures incurred in the confinement of prisoners in the jail or municipal holding facility to which transferred. Following inspection of any jail or municipal holding facility, a report of the inspection shall be filed with the director of the Iowa department of corrections. A copy of the report shall also be filed with the sheriff or chief of police, the governing body of the political subdivision, and one copy with the county attorney, which shall be presented at the next session of the grand jury of that county.

[C66, 71, 73, 75, 77, 79, 81, §356.43]

83 Acts, ch 96, §115, 159; 84 Acts, ch 1127, §2

356.44 Rules of sheriff.

The county sheriff shall formulate rules for the conduct and behavior of county jail prisoners. These rules may include provisions for county jail prisoners to do all necessary cleaning and upkeep of cells, compartments, dormitories and day rooms. Extra penalties may be provided for intentional damage of county jail property. Such rules and regulations shall be approved by a district judge from the district in which the county jail is located.

[C66, 71, 73, 75, 77, 79, 81, §356.44]

356.45 Expense at regional detention facility. Repealed by 83 Acts, ch 96, § 156, 159.

356.46 Time off for good behavior.

Every prisoner in the county jail may, upon the recommendation of the sheriff or person in charge of the detention of the prisoner, and at the discretion of the sentencing judge, receive a reduction of sentence in an amount to be determined by the judge, if:

1. No infraction of the rules of discipline of the county jail or of the laws of the state has been recorded against the prisoner since the beginning of the prisoner's incarceration; and

2. The prisoner has performed in a faithful manner the duties assigned to the prisoner.

[C73, 75, 77, 79, 81, §356.46]

83 Acts, ch 78, §1

356.47 Sentence suspended.

A judge who sentences a person to the county jail or other detention facility pursuant to this chapter, may suspend any part of such sentence and place such person on probation, upon such terms and conditions as the sentencing judge may direct, after such person has served that part of the person's sentence which was not suspended.

[C73, 75, 77, 79, 81, §356.47]

356.48 Required test.

A person confined to a jail, who bites another person, who causes an exchange of bodily fluids with another person, or who causes any bodily secretion to be cast upon another person, shall submit to the withdrawal of a bodily specimen for testing to determine if the person is infected with a contagious infectious disease. The bodily specimen to be taken shall be determined by the attending physician of that jail or the county medical examiner. The specimen taken shall be sent to the state hygienic laboratory at the state university at Iowa City or some other laboratory approved by the Iowa department of public health. If a person to be tested pursuant to this section refuses to submit to the withdrawal of a bodily specimen, application may be made by the sheriff or person in charge of the jail to the district court for an order compelling the person to submit to the withdrawal and, if infected, to available treatment. An order authorizing the withdrawal of a specimen for testing may be issued only by a district judge or district associate judge upon application by the sheriff or person in charge of the jail.

A person who fails to comply with an order issued pursuant to this section is guilty of a serious misdemeanor.

Personnel at the jail shall be notified if a person confined is found to have a contagious infectious disease.

The sheriff or person in charge of the jail shall take any appropriate measure to prevent the transmittal of a contagious infectious disease to other persons, including the segregation of a confined person who tests positive for acquired immune deficiency syndrome from other confined persons.

For purposes of this section, *"infectious disease"* means any infectious condition which if spread by contamination would place others at serious health risk.

87 Acts, ch 185, §2

356.49 Jail report.

A county sheriff shall file, on a monthly basis, a written report with the director of the department of corrections. The report shall include, but not be restricted to, the total number of men, women, and juveniles held in the jail for the reporting month. The director shall adopt and provide a uniform reporting form to be utilized by county sheriffs.

89 Acts, ch 159, §1

356.50 Private transportation of prisoners.

If a county sheriff contracts with a private person or entity for the transportation of prisoners to or from a county jail, the contract shall include provisions which require the following:

1. The private person or any officers or employees of the private person or private entity shall not have been convicted of any of the following:

a. A felony.

b. Within the three-year period immediately

preceding the date of the execution of the contract, a violation of the laws pertaining to operation of motor vehicles punishable as a serious misdemeanor or greater offense.

c. Domestic abuse assault in which bodily injury was inflicted or attempted to be inflicted.

d. A crime involving illegal manufacture, use, possession, sale, or an attempt to illegally manufacture, use, possess, or sell alcohol or a controlled substance or other drug.

2. The person or persons actually transporting the prisoners shall be trained and proficient in the safe use of firearms.

3. Any employees of a private entity which has entered into the contract for transportation of prisoners shall only possess and use security and restraint equipment, including any firearms, which has been issued by the private entity.

4. The person or persons actually transporting the prisoners shall be trained and proficient in appropriate transportation procedures.

5. The person or entity complies, within one year of publication, with any applicable standards for the transportation of prisoners promulgated by the American corrections association.

98 Acts, ch 1131, §2

CHAPTER 356A

COUNTY DETENTION FACILITIES

See also division IX of chapter 904

356A.1 County supervisors may act — county halfway houses.
356A.2 Contract.
356A.3 Alternative confinement of prisoners.
356A.4 Work release.
356A.5 Calendar kept.
356A.6 Transfer.
356A.7 Contract with another county.

356A.1 County supervisors may act — county halfway houses.

A county board of supervisors may, by majority vote, establish and maintain by lease, purchase, or contract with a public or private nonprofit agency or corporation, facilities where persons may be detained or confined pursuant to a court order as provided in section 356.1. The facilities may be in lieu of or in addition to the county jail. The board shall establish rules and regulations for the operation of each facility. A person detained or confined to such a facility shall be required to do all cleaning, upkeep, maintenance, minor repairs, and anything else necessary to properly maintain, operate, and preserve the facility. The sheriff shall not have charge or custody of a person detained or confined in such facility or transferred thereto. Such facility need not contain cells, cell blocks, or bars, if it is not necessary for the protection of the public, as determined by the board.

[C73, 75, 77, 79, 81, §356A.1]

356A.2 Contract.

If the board of supervisors contracts with a public or private nonprofit agency or corporation for the establishment and maintenance of such a facility, the contract shall state the charge per person per day to be paid by the county; that each facility shall insure the performance of the duties of the keeper as defined in section 356.5; the activities and service to be provided those detained or confined; the extent of security to be provided in the best interests of the community; the maximum number of persons that can be detained or committed at any one time; the number of employees to be provided by the contracting private nonprofit agency or corporation for the maintenance, supervision, control, and security of persons detained or confined in the facility; and any other matters deemed necessary by the supervisors. A contract shall be for a period not to exceed two years. The board of supervisors shall deliver a copy of the contract to each judicial officer of the district which includes that county.

[C73, 75, 77, 79, 81, §356A.2]

83 Acts, ch 186, §10101, 10201

356A.3 Alternative confinement of prisoners.

A district judge may sentence and commit a person to a facility established and maintained pursuant to section 356A.1 or 356A.2 instead of the county jail. A district judge may order the transfer of a person sentenced and committed to the county jail to such a facility upon the judge's own motion, the motion of the sentenced and committed person, or the motion of the sheriff. The original order of commitment or the order of transfer to the facility shall set forth the terms and conditions of the detention or commitment and that the detained or committed person shall abide by the terms and conditions of this chapter and the rules of the facil-

ity to which committed or transferred. The order shall be read to the detained, committed, or transferred person in open court. The committing court or a district judge may order a person who has been detained, committed, or transferred to such a facility to be transferred to the county jail if, upon hearing, the court determines the person has been refractory or disorderly, has willfully destroyed or injured any property in the facility, or has violated any of the terms and conditions of the order of detention, commitment, or transfer or the provisions of this chapter or the rules of the facility where the person was detained or committed. Any violations of the order of detention, commitment, or transfer shall further be punished as contempt of court pursuant to chapter 665. Section 719.4 is applicable to any person detained, committed, or transferred to a facility established and maintained pursuant to this chapter. The county or city to which the cause originally belonged is liable for the expense of the original detention, commitment, or transfer and the subsequent expenses of maintaining the person in the facility.

[C73, 75, 77, 79, 81, S81, §356A.3; 81 Acts, ch 117, §1067]

83 Acts, ch 123, §160, 209

356A.4 Work release.

A person detained, committed, or transferred to a facility established and maintained pursuant to sections 356A.1 or 356A.2, may further be released from such facility during necessary and reasonable hours, by court order, for the purposes stated in section 356.26. Such release and any wages earned shall be governed by the provisions of sections 356.27 to 356.35 except that during such time the released person shall not be in the legal custody of the sheriff; any wages earned shall be collected, managed, and dispensed by the person in charge of the facility and not the sheriff; and any wages earned shall first be applied to the reasonable cost of housing such person in the facility.

[C73, 75, 77, 79, 81, §356A.4]

See also division IX of chapter 904

356A.5 Calendar kept.

Any person sentenced, detained, committed, or transferred to a facility established and maintained pursuant to section 356A.1 or 356A.2 shall be discharged therefrom upon completion of the original term of detention or commitment. The person in charge of the facility shall keep a calendar as required in section 356.6.

[C73, 75, 77, 79, 81, S81, §356A.5; 81 Acts, ch 121, §2]

356A.6 Transfer.

A judicial officer of the district court may originally commit a person to the county jail to serve any part of the sentence pronounced, and thereafter the person may be transferred to a facility established and maintained pursuant to section 356A.1 or 356A.2.

[C73, 75, 77, 79, 81, §356A.6]

83 Acts, ch 186, §10102, 10201

356A.7 Contract with another county.

A county board of supervisors may contract with another county or a city maintaining a jail meeting the minimum standards for the regulation of jails established pursuant to section 356.36 for detention and commitment of persons pursuant to section 356.1. A person detained or confined in the jail shall be in the charge and custody of the governmental unit maintaining the jail. The cost of detention and confinement shall be levied and paid by the city or the county to which the cause originally belonged.

[C73, 75, 77, 79, 81, S81, §356A.7; 81 Acts, ch 117, §1068]

SUBTITLE 2

SPECIAL DISTRICTS

CHAPTER 357

WATER DISTRICTS

City annexation; arbitration; see §357A.21

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357.35 Merging existing districts.

357.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §357.1 transferred to §357.1A

357.1A Petition — limitation.

The board of supervisors of any county shall, on the petition of twenty-five percent or more of the eligible electors residing in any proposed benefited water district, grant a hearing relative to the establishment of the proposed water district. The petition shall set out the following and any other pertinent facts:

1. The need of a public water supply.
2. The approximate district to be served.
3. The approximate number of families in the district.
4. The proposed source of supply.
5. The type of service desired, whether domestic only or for fire protection and other uses.

The board of supervisors may, at its option, require a bond of the petitioners as provided in section 468.9.

A benefited water district located wholly within the corporate limits of a city is not subject to the provisions of this chapter.

Water services, other than water services provided as of April 1, 1987, shall not be provided within two miles of the limits of a city except as provided in this section.

A benefited water district established under this chapter may give notice of intent to provide water service to a new area within two miles of a city by submitting a water plan to the city. The plan is only required to indicate the area within two miles of the city which the benefited water district intends to serve. If the city fails to respond to the benefited water district's plan within ninety days of receipt of the plan, the benefited water district may provide service in the area designated in the plan. The city may inform the benefited water district within ninety days of receipt of the plan that the city requires additional time or information to study the question of providing water service outside the limits of the city. If additional time or information is required, the city shall respond to the benefited water district's plan within one hundred eighty days of receipt of the plan. In responding to the plan, the city may waive its right

to provide water service within the areas designated for service by the benefited water district, or the city may reserve the right to provide water service in some or all of the areas which the benefited water district intends to serve. If the city reserves the right to provide water service within some or all of the areas which the benefited water district intends to serve, the city shall provide service within four years of receipt of the plan. This section does not preclude a city from providing water service in an area which is annexed by the city.

[C24, 27, 31, 35, §5523; C39, §**5526.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.1]

87 Acts, ch 109, §1; 92 Acts, ch 1015, §1, 2; 92 Acts, ch 1204, §9

C2001, §357.1A

Former §357.1A transferred to §357.1B

357.1B Combined water and sanitary district.

1. Upon receipt of a petition having the required signatories as provided in section 357.1A or 358.2, the board of supervisors shall grant a hearing relative to the establishment of a proposed combined water and sanitary district. The petition shall include the information required in sections 357.1A and 358.2 for proposed water districts and sanitary districts. The board of supervisors of the county in which the proposed combined district or largest part of the proposed combined district is located, shall have jurisdiction of the proceedings on the petition and the decision of a majority of the members of that board of supervisors is necessary for adoption. The orders of the board of supervisors made pursuant to this chapter and chapter 358 relating to the proposed combined district shall be kept as official records, but the records need not be published under section 349.16. An existing district may petition the board of supervisors to establish a combined water and sanitary district after the approval of a majority of the district electorate.

2. The board of supervisors having jurisdiction to establish the proposed combined water and sanitary district may proceed with its establishment under this chapter or chapter 358 in the same manner as a benefited water district or a sanitary district is separately established under those chapters. The differences between this chapter and chapter 358 including, but not limited to, the membership of the board of trustees, per diem, and maximum annual per diem, or a power or duty relating to rents, fees, taxation, or bonded indebtedness shall be resolved as a part of the petition submitted to the board of supervisors. Before becoming effective, a change in the membership, per diem, maximum annual per diem, or a power or duty relating to rents, fees, the levy of a tax, or the issuance of bonds, or other differences specified on the petition shall be submitted for the approval of the district electorate. However, the number of members, per diem, maximum annual per diem, or differences in powers and duties included in a combined district shall not be inconsistent with this chapter or chapter 358.

3. For the purpose of establishing, operating, or dissolving a combined water and sanitary district under this chapter and chapter 358, the term *"benefited water district"* includes combined water and sanitary district where applicable.

4. Water services and a water service plan prepared by the combined district are subject to approval by an affected city as provided in section 357.1A.

92 Acts, ch 1204, §10

C93, §357.1A

C2001, §357.1B

357.2 Territory included.

The benefited water district may include part or all of any incorporated city or cities, together with or without contiguous or noncontiguous territory including cemeteries and all publicly owned land. The publicly owned property shall pay and bear its proportionate share of the cost and expense of the water system upon the same basis as privately owned property.

[C39, §**5526.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.2]

92 Acts, ch 1204, §11

357.3 Scope of assessment.

The special assessment hereinafter provided for may be used to cover the costs of installing all the necessary elements of a water system, for both production and distribution.

[C24, 27, 31, 35, §5522; C39, §**5526.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.3]

357.4 Public hearing.

When the board of supervisors receives a petition for the establishment of a benefited water district, a public hearing shall be held within thirty days of the presentation of the petition. Notice of the hearing shall be given publication as provided in section 331.305.

[C24, 27, 31, 35, §5523; C39, §**5526.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.4]

92 Acts, ch 1204, §12

357.5 Decision at hearing.

On the day fixed for such hearing, the board of supervisors shall by resolution establish the benefited water district or disallow the petition. For adequate reasons the board of supervisors may defer action on such petition for not to exceed ten days after the day first set for a hearing.

[C24, 27, 31, 35, §5523; C39, §**5526.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.5]

357.6 Examination by engineer.

When the board of supervisors shall have estab-

lished the benefited water district, they shall appoint a competent disinterested civil engineer and instruct the engineer to examine the proposed improvement, make preliminary designs in sufficient detail to make an accurate estimate of the cost of the proposed water system. The civil engineer shall also report as to the suitability of the proposed source of water supply.

[C39, §**5526.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.6]

357.7 Water source without district.

When in any proposed benefited water district, it is anticipated that the source of supply will be without the district, and not under its control, the board of supervisors shall instruct the engineer who is appointed to make the preliminary design and dummy assessment, to also obtain from the corporation or municipality which controls the proposed source of supply, a statement in writing, outlining the terms upon which water will be furnished to the district, or to the individuals within the district and on what terms in either case.

This preliminary proposal from the governing body of the source of supply shall be binding, and shall be in the nature of an option to purchase water by the district, or the individual within the same, if and when the proposed benefited water district shall have completed its construction, and is ready to use water. This proposal shall accompany and be a part of the engineer's preliminary report to the board of supervisors.

[C39, §**5526.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.7]

357.8 Plat.

The said engineer shall prepare a preliminary plat showing the proper design in general outline, the size and location of the water mains, the general location of hydrants, if such are included in said petition, valves and other appurtenances, and shall show the lots and parcels of land within the proposed district as they appear on the county auditor's plat books, together with the names of the owners and the amount which it is estimated that such lot or parcel will be assessed.

[C39, §**5526.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.8]

357.9 Compensation of engineer.

The compensation of such engineer on the preliminary investigation shall be determined by the board of supervisors and may be by percentage or per diem.

[C39, §**5526.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.9]

357.10 Filing of report and plat.

The engineer's report, together with the dummy plat showing the tentative design and assessment, shall be filed with the county auditor within thirty days of such engineer's appointment, unless for adequate reasons it is impossible for the engineer to do so, in which case the board of supervisors may extend the time therefor.

[C39, §**5526.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.10]

357.11 Hearing on report.

On receipt of the engineer's report, the board of supervisors shall give notice in the same manner as before, of a hearing on the engineer's tentative design and dummy plat. On the day set, or within ten days thereafter, the board of supervisors shall approve or disapprove the engineer's plan and proposed assessment. If it shall appear advisable, the board of supervisors may make changes in the design and assessment, as they appear on the dummy plat.

[C39, §**5526.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.11]

357.12 Election.

When the preliminary design and assessment have been approved by the board of supervisors, a date not more than thirty days after the approval shall be set for an election within the district to determine whether or not the proposed improvement shall be constructed and to choose candidates for the offices of trustee within the district. The proposal to approve or disapprove the improvement and the selection of candidates for trustees shall be presented at the same election. Notice of the election, including the time and place of holding the election, shall be given in the same manner as for the public hearing provided for in section 357.4. The vote shall be by ballot which shall state clearly the proposition to be voted upon, and any registered voter residing within the district at the time of the election may vote. The county commissioner of elections shall conduct elections held pursuant to this chapter, and the elections shall be conducted in accordance with chapter 49 where those procedures are not in conflict with this chapter. Precinct election officials shall be appointed to serve without pay, by the commissioner of elections, from among the registered voters of the district. The proposition shall be deemed to have carried if a majority of those voting on the proposition votes in favor of it.

[C24, 27, 31, 35, §5524; C39, §**5526.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.12]

92 Acts, ch 1204, §13; 94 Acts, ch 1169, §64

357.13 Trustees — qualification and terms.

1. At the initial election provided for in section 357.12, the names of the trustees shall be written by the voter on blank ballots without formal nomination and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district, one to

serve for one year, one for two years, and one for three years. The trustees and their successors shall give bond in the amount the board of supervisors may require, the premium of which shall be paid by the district which the trustees represent. Vacancies during a term may be filled by election, or by appointment by the board of supervisors, at the option of the remaining trustees. The trustees must be residents of the district. The term of succeeding trustees shall be for three years.

2. After the initial board of trustees is selected, a candidate for trustee shall be nominated by a personal affidavit of the candidate or by petition of at least ten eligible electors of the district and the candidate's affidavit, which shall be filed with the county commissioner of elections at least twenty-five days before the date of the election. The form of the candidate's affidavit shall be substantially the same as provided in section 45.3.

[C24, 27, 31, 35, §5524; C39, §**5526.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.13]

91 Acts, ch 111, §1; 92 Acts, ch 1204, §14

357.14 Bids for construction.

If the result of said election be in favor of said improvement, the board of supervisors shall instruct the engineer to complete the plans and specifications, ready for receiving bids for construction of the project, which the engineer shall do within thirty days of receiving notice to do so, unless for adequate reason the board shall extend the time.

When the completed plans and specifications are on file with the county auditor, the board of supervisors shall advertise for bids and shall publish a notice once each week for two consecutive weeks in some newspaper published in the county in which the improvement is to be constructed, setting forth the location and nature of the improvement and the date and place where bids will be received by the board. The last published notice to bidders shall be at least seven days before the time set for receiving bids. Bidders shall be required to submit certified checks or credit union certified share drafts for five percent of the amount of the bid.

[C24, 27, 31, 35, §5524; C39, §**5526.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.14]

84 Acts, ch 1055, §6

357.15 Inadequate assessment.

When bids have been received, if it is apparent that the final assessment will need to be increased more than ten percent over the preliminary assessment, the board of supervisors shall, at its option, reject bids and readvertise for bids as provided herein, or reject bids and revise the dummy assessment. If the dummy assessment is revised, another election shall be held within the district in the same manner and with the same notices as the first, except that the candidates for trustees shall not be voted for.

[C39, §**5526.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.15]

357.16 Second election.

If the majority of the votes cast at said second election be in favor of said improvement, the board of supervisors shall again advertise for bids in the same manner as before. If the bids at the second letting will not necessitate raising the second preliminary assessment more than ten percent, the board may let the contract to the lowest responsible bidder.

[C24, 27, 31, 35, §5524; C39, §**5526.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.16]

357.17 Bond of contractor.

The successful bidder, when awarded a contract, shall be required to give an approved surety bond for one hundred percent of the contract price, guaranteeing completion of the work in accordance with the plans and specifications, and for maintenance, including backfilling, for one year after the final acceptance of the work.

If the contractor shall fail to complete the work as provided in the contract, or shall abandon the same, or fail to proceed in a reasonable manner toward its final completion, the board may proceed against the contractor and surety as provided in sections 468.104 and 468.105.

[C39, §**5526.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.17]

357.18 Acceptance of work.

When in the opinion of the engineer in charge, the construction in any benefited water district has been completed in accordance with the plans, specifications, and contract, the engineer shall certify this fact to the board of supervisors, and recommend the acceptance of the work by the said board. The board of supervisors shall proceed in accordance with sections 468.101 and 468.102.

[C39, §**5526.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.18]

357.19 Completing assessment.

After the final acceptance of the work by the board of supervisors, the engineer shall complete the final assessment, which shall be made on all the property within the district, whether abutting or not, for an amount approximately ten percent greater than the total cost of the project. The assessment shall not exceed benefits conferred and shall take into consideration the location and value of the property assessed. Where a pipe in excess of six inches in diameter is used, the assessment against the abutting property shall be limited to the cost of a six-inch pipe, and the difference between the cost of the pipe used and a six-inch pipe shall be paid by a uniform assessment against all benefited property within the water district.

The final assessment on any lot or parcel of land shall not exceed the final preliminary assessment by more than ten percent, and shall in no case exceed twenty-five percent of the actual value of the property. The board of supervisors may alter an assessment to increase or decrease it within the limits outlined above, and must approve by resolution the final assessment as made.

[C24, 27, 31, 35, §5522; C39, §**5526.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.19]

357.20 Due date — bonds.

Assessments of less than one hundred dollars will come due at the first taxpaying date after the approval of the final assessment, and assessments of one hundred dollars or more may be paid in ten annual installments with interest on the unpaid balance at a rate not exceeding that permitted by chapter 74A. The board of supervisors shall issue bonds against the completed assessment in an amount equal to the total cost of the project, so that the amount of the assessment will be approximately ten percent greater than the amount of the bonds.

[C24, 27, 31, 35, §5522; C39, §**5526.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.20]

99 Acts, ch 83, §5

357.21 Substance of bonds.

Each of such bonds shall be numbered, and have printed upon its face that it is a benefited water district bond, stating the county and the number of the district for which it is issued, and the date of maturity; that it is in pursuance of a resolution of the board of supervisors, and that it is to be paid for only from special assessment theretofore levied and taxes levied as hereinafter provided for that purpose within the said district for which the bond is issued. The provisions of sections 468.76 and 468.78 shall govern the issuance of these bonds except that the contractor will not be paid anything on the work until its completion and final acceptance.

[C39, §**5526.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.21]

357.22 Lien of assessments — tax.

When the assessment has been completed and the bonds sold and the schedule of assessment shall be turned over to the county auditor, the installments due thereon shall be collected in the same manner as ordinary taxes and shall constitute a lien on the property against which they are made. If the treasurer does not receive sufficient funds to enable the treasurer to pay the interest and retire the bonds as they become due, the auditor shall levy an annual tax of eighty-one cents per thousand dollars of assessed value of all taxable property within the district to pay such deficiency, and the county treasurer shall apply the proceeds of such levy to the payment of the bonds and the interest on the same so long as the bonds are in arrears on either interest or principal.

[C24, 27, 31, 35, §5525; C39, §**5526.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.22]

357.23 Surplus.

The board of supervisors shall be required to levy the annual tax of eighty-one cents per thousand dollars of assessed value of taxable property so long as the bonds are in arrears.

[C39, §**5526.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.23]

357.24 Fee of engineer.

The fee for engineering services shall be fixed by the board of supervisors and the engineer may be paid either a percentage or a per diem, from proceeds of the bond sale or by cash from the contractor, if the contractor takes bonds in settlement for the contractor's work under the contract.

[C39, §**5526.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.24]

357.25 Management by trustees.

After the final acceptance of the work by the board of supervisors, the management of the utility shall automatically go to the three trustees previously appointed by the board of supervisors. The trustees of a benefited water district located in a county with a population of two hundred fifty thousand or less shall have power to levy an annual tax not to exceed thirteen and one-half cents per thousand dollars of assessed value of all taxable property in the district, for the maintenance of the system. However, the trustees of a benefited water district located in a county with a population of more than two hundred fifty thousand may levy an annual tax on the taxable value of all taxable property in the district in an amount as may be necessary for the maintenance of the system, with the approval of the board of supervisors. This levy shall be optional with the trustees. The trustees may purchase material and employ labor to properly maintain and operate the utility. The trustees shall be allowed necessary expenses in the discharge of their duties, but shall not receive any salary.

[C24, 27, 31, 35, §5526; C39, §**5526.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §357.25; 81 Acts, ch 123, §1]

357.26 Duties of trustees.

It is anticipated that this law will usually be utilized to finance a distribution system where the source of supply is without the district, and not under its control, and that individuals within the district will pay water rent to a municipality or corporation without the district. It is intended that the trustees may so operate the utility as will best serve the users, and they are expressly authorized to buy and sell water, to fix the rates to consumers

and make all contracts reasonable or necessary to accomplish the purpose of this chapter and to carry on all the operations incident to maintaining and operating said utility and to the procuring and furnishing of water to the consumers therein. If the development of a source of supply is within the means of the district, the trustees may install wells, tanks, meters and any other equipment properly pertaining to operate it.

[C39, §**5526.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.26]

357.27 Public property in district.

Whenever property of the state of Iowa, or any political subdivision thereof, shall be included either wholly or in part within such water district and shall own facilities which may be used as a part of such water system, the executive council, board of supervisors or city council, as the case may be, may permit such use of said facilities for such consideration and on such terms as may be agreed upon with the board of trustees.

[C39, §**5526.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.27]

357.28 Private mains — additional assessments.

Any person or persons within any water district, who may, after the initial installation of the improvement in any such district, desire to construct additional mains, and who have been assessed on the original assessment, may with the consent of the trustees, connect such lateral mains as they desire with the original system to serve property within the district which has been assessed, provided that the entire cost thereof shall be borne by the parties so interested.

The trustees shall have power to make additional assessments on unimproved lots or parcels of land within the district when said unimproved lots or parcels are improved and ready to receive the full benefits of the district. This additional assessment shall be determined and fixed by the trustees and shall not exceed the average assessment for improved property in said districts less the original assessment on said unimproved lots or parcels. Said assessments shall be paid to the county treasurer before service pipes are laid into said improvement. The assessment shall be put in the benefited water district fund of the district of which said lots or parcels are a part and shall be used by the county treasurer for the retirement of bonds and interest. When the bonds are all retired, the trustees shall be authorized to use said fund for maintenance purposes, changing size of mains, eliminating dead ends, or extending mains for the benefit of the district.

[C39, §**5526.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.28]

357.29 Subdistricts.

If the cost of the desired extensions will be as much as five thousand dollars, the interested parties may petition the board of supervisors to organize a subdistrict, and in such case the board shall proceed in the same manner as for a new district, and may take in territory not originally assessed.

The board of supervisors shall have power at any time to alter the boundaries of any district prior to the time of posting or publishing notice of the election within the district.

[C24, 27, 31, 35, §5522; C39, §**5526.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.29]

357.30 Additional territory.

When the district is under the control of trustees, they are empowered to deal with parties without the district who desire to be taken into the district or to obtain water from the district and determine the amount to be assessed against said district to be taken in or connected with. The trustees shall have power in such cases to make agreements for the district, and may, with the consent of the board of supervisors, alter the district boundaries to take in additional territory. No lot or parcel of land shall be put out of a district without the consent of the owner, after it has paid any assessment to the district.

[C24, 27, 31, 35, §5522; C39, §**5526.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.30]

357.31 Right of way.

The board of supervisors shall have power to condemn, in the same manner as provided for the condemnation of land, right of way through private property, sufficient for the construction and maintenance of water mains. The cost of such right of way shall constitute a part of the expense of the improvement and shall be covered by the special assessment.

[C39, §**5526.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.31]

357.32 Record book.

The board of supervisors shall provide a record book which shall be in the custody of the auditor, in which shall be kept a full and complete record of the proceedings relative to water districts, so arranged and indexed, as to enable any proceedings relative to any district to be readily examined.

[C24, 27, 31, 35, §5524; C39, §**5526.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.32]

357.33 Appeal procedure.

Any person aggrieved, may appeal from any final action of the board of supervisors in relation to any matter involving the person's rights, to the district court of the county in which the district is located. The procedure in such appeals shall be governed by the provisions of sections 468.84 to 468.99 provided that whenever in the above sec-

tions the words "drainage district" occur, the words "benefited water district" shall be substituted.

[C39, §**5526.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.33]

357.34 Conveyance of district to city.

Where a city is situated wholly or partly within a benefited water district or the source of supply for such benefited water district is a municipal water system, the board of supervisors having jurisdiction of said benefited water district, at the request of the trustees of said benefited water district, may, by proper resolution, convey unto said city any and all rights which said board of supervisors may have in and to said benefited water district. Said conveyance, however, shall not become effective until all existing obligations against said district have been completely and fully discharged and such conveyance accepted and confirmed by a resolution of the council of said city or of the board of waterworks trustees of said city if there be one, specially passed for such purpose.

Upon acceptance, the district, including the plant and distribution system, as well as all funds and credits shall become the property of said city and be operated and used by it to the same extent as if acquired under such provisions of law under which said city is then operating its waterworks. Also, the offices of the trustees as provided in this chapter shall be abolished upon acceptance by the city and their duties as such shall immediately cease.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §357.34]

357.35 Merging existing districts.

When the source of supply for a benefited district is obtained wholly or partly through another benefited district or if districts are supplied with their water from a common source, the board of supervisors having jurisdiction of those benefited districts, shall, upon ten days' written notice to the trustees, hold a hearing relative to the establishment of a single benefited water district with a boundary encompassing all the area within the subject districts. If the board finds the residents and property owners in the proposed district would be benefited, it may establish the single district by resolution. In the case of districts with outstanding warrants in excess of the anticipated revenues and cash balance within the district fund, an assessment shall be drawn up by the auditor for an amount approximately fifty-five percent of the total indebtedness of the district and the board of supervisors must approve by resolution the final assessment as made and cause bonds to be issued at approximately ten percent greater than the total indebtedness of the district in accordance with sections 357.20 and 357.21 except that the bonds shall be paid, approximately equally, from user charges and the assessment. In the case of districts with bonded indebtedness, a subarea of the new single district with a boundary identical to each indebted district shall be designated and taxed in accordance with sections 357.22 and 357.23. When all bonds have been retired, the subarea shall cease to exist. In the case of districts with a surplus cash balance, all funds and credits shall become the property of the single district and used by it to the same extent as if acquired under the provisions of section 357.26. Upon establishment of the single district by the board of supervisors, a resolution shall be passed either appointing three trustees or designating the board of supervisors as the trustees for the single district. The operation of the single district constitutes a county enterprise under section 331.461, subsection 2.

[82 Acts, ch 1219, §1]

CHAPTER 357A

RURAL WATER DISTRICTS

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357A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Auditor"* means the county auditor of a county in which a district has been incorporated and organized or is proposed to be incorporated and organized.

2. *"Board"* means the board of directors of a district, and *"director"* means a member of such board of directors.

3. *"Department"* means the department of natural resources.

4. *"District"* means a rural water district incorporated and organized pursuant to the provisions of this chapter.

5. *"Member"* means an owner of real property which is located within a district, the tenant of the real property, or another person acting for the owner with the owner's written consent.

6. *"Participating member"* means a member who has subscribed to and paid the established fee for at least one benefit unit in a district, in the manner provided by this chapter.

7. *"Supervisors"* means the board of supervisors of a county, or the board of supervisors of an adjacent county, in which a district has been incorporated and organized or is proposed to be incorporated and organized.

[C71, 73, 75, 77, 79, 81, §357A.1; 82 Acts, ch 1199, §62, 96]

91 Acts, ch 134, §1

357A.2 Petition — deposit — limitation.

A petition may at any time be filed with the auditor requesting the supervisors to incorporate and organize a district encompassing an area, not then included in any other district, in a county or in two or more adjacent counties for the purpose of providing an adequate supply of water for residents of the area who are not served by the water mains of any city water system.

There shall be filed with the petition a bond with sureties approved by the auditor, or a certified check, credit union certified share draft or cash in an amount sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established.

The petition shall be signed by the owners of at least thirty percent of all real property lying within the outside perimeter of the area designated for inclusion in the proposed district, and shall state:

1. The location of the area, describing such area to be served or specifying the area by an attached map.

2. The reasons a district is needed.

3. A new water service plan describing the cost feasibility and estimated construction schedules.

Water services, other than water services provided as of April 1, 1987, shall not be provided within two miles of the limits of a city by a rural water district incorporated under this chapter or chapter 504A except as provided in this section.

A rural water district incorporated under this chapter or chapter 504A may give notice of intent to provide water service to a new area within two miles of a city by submitting a water plan to the city. The plan is only required to indicate the area within two miles of the city which the rural water district intends to serve. If the city fails to respond to the rural water district's plan within ninety days of receipt of the plan, the rural water district may provide service in the area designated in the plan. The city may inform the rural water district within ninety days of receipt of the plan that the city requires additional time or information to study the question of providing water service outside the limits of the city. If additional time or information is required, the city shall respond to the rural water district's plan within one hundred eighty days of receipt of the plan. In responding to the plan, the city may waive its right to provide water service within the areas designated for service by the rural water district, or the city may reserve the right to provide water service in some or all of the areas which the rural water district intends to serve. If the city reserves the right to provide water service within some or all of the areas which the rural water district intends to serve, the city shall provide service within four years of receipt of the plan. This section does not preclude a city from providing water service in an area which is annexed by the city.

[C71, 73, 75, 77, 79, 81, §357A.2]

84 Acts, ch 1055, §7; 85 Acts, ch 67, §42; 87 Acts, ch 109, §2; 91 Acts, ch 134, §2, 3; 92 Acts, ch 1015, §3, 4; 95 Acts, ch 77, §2

357A.3 Hearing after filing with auditor.

When a petition for incorporation and organization of a district is filed with the auditor, the auditor shall so inform the supervisors who shall fix a time for a hearing thereon, not less than fifteen nor more than thirty days after the filing of the petition. The auditor shall prepare a notice as hereinafter required, which shall at least seven days before the date fixed for the hearing on the petition:

1. Be published in a newspaper of general circulation in the area to be incorporated.

2. Be transmitted, together with a copy of the original petition, to the supervisors.

[C71, 73, 75, 77, 79, 81, §357A.3]

91 Acts, ch 134, §4

357A.4 Notice.

The notice prepared by the auditor pursuant to section 357A.3 shall set forth:

1. The location of the area designated by the petitioners for incorporation in the proposed district, as described or shown by the original petition.

2. The time and place fixed by the supervisors for the hearing on the petition.

3. That all owners or tenants of real property within the boundaries described may appear and be heard.

4. That the proposed district, if incorporated, shall have no power or authority to levy any taxes whatsoever.

[C71, 73, 75, 77, 79, 81, §357A.4]
91 Acts, ch 134, §5

357A.5 Appearances.

At the hearing on the petition, any owner or tenant of real property within the boundaries of the area described in the petition may appear, in person or by a designated representative, and any representative of the department, a city, or an interested person may also appear, in favor of or in opposition to the incorporation and organization of the proposed district. The appearances may also be filed in writing prior to the time set for the hearing.

[C71, 73, 75, 77, 79, 81, §357A.5; 82 Acts, ch 1199, §63, 96]
91 Acts, ch 134, §6

357A.6 Findings — order.

After the hearing, the supervisors may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the supervisors do not find that the district is reasonably necessary, they shall dismiss the petition.

If the supervisors find that required notice of the hearing has been given and that the proposed district is reasonably necessary for the public health, convenience, and comfort of the residents, or may be of benefit in providing fire protection, they shall make an order establishing the district as a political subdivision, designating its boundary, and identifying it by name or number. The order shall be published in the same newspaper which published the notice of hearing. The supervisors shall prepare and preserve a complete record of the hearing on the petition and their findings and action.

[C71, 73, 75, 77, 79, 81, §357A.6]
91 Acts, ch 134, §7

357A.7 Meeting of members.

As a part of the order incorporating the district, the supervisors shall fix the time and place at which the members shall meet to select from their number a board of directors. Selection of the initial board shall be not later than thirty days after the hearing. The number of directors on the board, not to exceed nine, shall be determined by a majority vote of those members present. Any member elected a director who fails to become a participating member, within thirty days after entry in the minutes of the board of a declaration of availability of benefit units for subscription, shall forfeit the office of director.

[C71, 73, 75, 77, 79, 81, §357A.7]

357A.8 Bylaws submitted at special meeting.

Within thirty days after election of the original board, proposed bylaws shall be submitted for adoption at a special meeting of members of the district, written notice of which shall be mailed to each member. Members present at the special meeting may adopt or amend any of the proposed bylaws, and may propose and adopt alternative or additional bylaws. The bylaws may subsequently be amended at any annual or special meeting of the participating members of the district. However, the bylaws of each district shall provide:

1. For an annual meeting of participating members between January 1 and May 1 of each year following the year of incorporation of the district, and for the mailing of written notice of the time and place of each annual meeting to each participating member and publication of the notice in a newspaper of general circulation in the district not less than ten nor more than thirty days prior to each meeting.

2. That each participating member of the district shall be entitled to a single vote at all annual and special meetings of the district, regardless of the number of benefit units to which the member has subscribed.

[C71, 73, 75, 77, 79, 81, §357A.8]
95 Acts, ch 77, §3

357A.9 Members divided into classes.

The initial board of each district shall divide its members by lot into three classes of as nearly equal size as possible. The terms of the directors in the first, second, and third classes shall expire on the dates of the annual meetings in the first, second, and third years, respectively, following the year in which the district is incorporated, or as soon thereafter as their respective successors are elected and have qualified. At the annual meeting in each year after the year in which the district is incorporated, a director shall be elected to succeed each director whose term of office expires on that date, and each director so elected shall hold office for a term of three years and until a successor is elected and has qualified. Vacancies shall be filled by appointment by the remaining directors, for the unexpired term.

[C71, 73, 75, 77, 79, 81, §357A.9]

357A.10 Board meetings.

The board shall meet annually on the same day as, and immediately following, the annual meeting of participating members, and may meet at such other times as it may determine, or upon the call of the chairperson or any two directors. At the first meeting of the initial board following its election, and at each succeeding annual board meeting, the board shall elect a chairperson, vice chair-

person, secretary, and treasurer for the ensuing year.

[C71, 73, 75, 77, 79, 81, §357A.10]

357A.11 Board's powers and duties.

The board shall be the governing body of the district, and shall:

1. Adopt rules, regulations, and rate schedules in conformity with the provisions of this Act and the bylaws of the district as necessary for the conduct of the business of the district.

2. Maintain at its office a record of the district's proceedings, rules and regulations, and any decisions and orders made pursuant to the provisions of this chapter, and furnish copies thereof to the supervisors or the council upon request.

3. Employ, appoint, or retain attorneys, engineers, other professional and technical employees, and other personnel as necessary, and require and approve bonds of district employees. The board may enter into agreements pursuant to chapter 28E to provide professional or technical services under this subsection to other water districts, nonprofit corporations, or related associations.

4. Prior to each annual meeting of participating members:

a. Prepare an estimated budget for the coming year, and adjust water rates if necessary in order to produce the revenue required to fund the estimated budget, and make a report thereon at the annual meeting.

b. Have an audit made of the district's records and accounts, and make copies of the audit report available to all participating members attending the annual meeting and to any other participating member who so requests.

5. Have authority to acquire by gift, lease, purchase, or grant any property, real or personal, in fee or a lesser interest needed to achieve the purposes for which the district was incorporated, to acquire easements for water lines and reservoirs by condemnation proceedings, and to sell and convey property owned, but no longer needed, by the district. Condemnation proceedings shall not apply to existing wells, ponds or reservoirs.

6. Have authority to construct, operate, maintain, repair, and when necessary to enlarge or extend, such ponds, reservoirs, pipelines, wells, check dams, pumping installations, or other facilities for the storage, transportation, or utilization of water, and such appurtenant structures and equipment, as may be necessary or convenient to carry out the purposes for which the district was incorporated. A district may purchase its water supply from any source.

7. Have power to borrow from, co-operate with and enter into agreements as deemed necessary with any agency of the federal government, this state, or a county of this state, and to accept financial or other aid from any agency of the federal government. To evidence any indebtedness the obligations may be one or more bonds or notes and the obligations may be sold at private sale.

8. Have power to finance all or part of the cost of the construction or purchase of any project necessary to carry out the purposes for which the district is incorporated, or to refinance all or part of the original cost of any such project, and to evidence that financing by issuance of revenue bonds or notes which shall mature in a period not to exceed forty years from date of issuance, shall bear interest, or combined interest and insurance charges, at a rate not to exceed that permitted by chapter 74A, shall be payable only from revenue derived from sale of water by the district, and shall never become or be construed to be a debt against the state of Iowa or any of its political subdivisions other than the district issuing the bonds.

9. Finance all or part of the cost of the construction or purchase of a project necessary to carry out the purposes for which the district is incorporated or to refinance all or part of the original cost of that project, including, but not limited to, obligations originated by the district as a nonprofit corporation under chapter 504A and assumed by the district reorganized under this chapter. Financing or refinancing carried out under this subsection shall be in accordance with the terms and procedures set forth in the applicable provisions of sections 384.24A, 384.83 through 384.88, 384.92, and 384.93. References in these sections to a city shall be applicable to a rural water district operating under this chapter, and references in division V of chapter 384 to a city council shall be applicable to the board of directors of a rural water district. This subsection shall not create a lien against the property of a person who is not a rural water subscriber.

10. Have power to join the Iowa association of rural water districts, and pay out of funds available to the board, reasonable dues to the association. The financial condition and transactions of the Iowa association of rural water districts must be audited in the same manner as rural water districts.

11. Have authority to execute an agreement with a governmental entity, including a county, city, sanitary sewer district, or another district, for purposes of managing or administering the works, facilities, or waterways which are useful for the collection, disposal, or treatment of wastewater or sewage and which are located within the jurisdiction of the governmental entity or the district. The board may do what is necessary to carry out the agreement, including but not limited to any of the following:

a. Owning or acquiring by gift, lease, purchase, or grant any interest in real or personal property.

b. Constructing, operating, maintaining, repairing, improving, or equipping any of the works, facilities, or waterways.

c. Financing all or part of the cost of acquiring,

constructing, maintaining, repairing, improving, or equipping any works, facilities, or waterways, or refinancing all or part of the cost. The financing or refinancing shall be accomplished in accordance with the terms and procedures set forth in the applicable provisions of sections 384.24A, 384.83 through 384.88, 384.92, and 384.93. References in those sections to a city shall be applicable to a district and references in those sections to a governing body or a city council shall be applicable to the district's board.

12. Place all funds in investments to the extent practicable and may invest the funds jointly with one or more counties, judicial district departments of correctional services, cities, or city utilities pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

This chapter and chapter 384, as it applies to rural water districts, shall not be construed to mean that the real property of any rural water subscriber shall be used as security for any debts of a rural water district. However, the failure to pay water rates or charges by a subscriber may result in a lien being attached against the premises served upon certification to the county treasurer that the rate or charges are due.

[C71, 73, 75, 77, 79, 81, §357A.11]

90 Acts, ch 1255, §19, 20; 91 Acts, ch 134, §8 – 10; 93 Acts, ch 84, §1; 95 Acts, ch 77, §4; 98 Acts, ch 1167, §1; 2000 Acts, ch 1078, §1; 2001 Acts, ch 24, §47

357A.12 Plans, specifications, and procedures.

As soon as reasonably possible after incorporation of a district, the board shall file with the supervisors and the department copies of the plans and specifications for, and estimates of the cost of, any improvements authorized by this chapter which the board proposes to construct or acquire. The board shall determine a reasonable fee which each member shall pay for the privilege of utilizing the district's facilities, and which shall be known as a benefit unit. Benefit units may be classified. The board, by publication in a newspaper of general circulation in the district, shall generally describe the planned improvements, the area to be served and the fee members will be required to pay for each service connected to the water system.

The procedures for contract letting specified in sections 384.95 through 384.102 and as specified in section 384.103, subsection 2, shall apply to construction carried out pursuant to this chapter. References in those sections to a city shall be applicable to a rural water district operating under this chapter, and references to a city council shall be applicable to the board of directors of a rural water district.

[C71, 73, 75, 77, 79, 81, §357A.12; 82 Acts, ch 1199, §64, 96]

91 Acts, ch 134, §11

357A.13 Selling water.

If the capacity of the district's facilities permits, the district may sell water by contract to any city, other district, or other person, public or private, not within the boundaries of a district.

[C71, 73, 75, 77, 79, 81, §357A.13]

357A.14 Attaching to district — inclusion of city — merger.

1. An owner of real property outside a district which can be economically served by the facilities of the district, or thirty percent of the owners of all real property lying within the outside perimeter of a proposed addition, may petition to be attached to the district. The petition shall be filed with the auditor, and the auditor and supervisors shall notify the district that a petition has been received and proceed in a manner set forth in sections 357A.3 through 357A.6.

2. All or any part of an incorporated city may be included in the boundaries of any existing water district or water district being newly organized, provided the governing body of such city by resolution or ordinance gives, or has given, its consent.

3. Boards of any two or more districts may by concurrent action and by approval of the supervisors merge their districts into one. In case of merger the members of the boards of the merged districts may serve out the terms for which they were elected. The resulting district shall take over all the assets and legal liabilities of the water districts joining in the merger. Obligations of any district secured by the revenue of the systems operated by the district shall continue to be retired, or a sinking fund for such purpose created from revenue from the system operated over the same area by the resulting district in accordance with the laws under which the obligations were issued, until all obligations of the old district have been retired.

4. If there is a conflict between two or more districts concerning which district will serve an area, the supervisors of the county in which the disputed area is located shall, after a public hearing, determine which district can more adequately and economically provide service within the area.

[C71, 73, 75, 77, 79, 81, §357A.14]

91 Acts, ch 134, §12, 13; 93 Acts, ch 84, §2; 94 Acts, ch 1023, §109; 96 Acts, ch 1031, §1

357A.15 Taxing prohibited — refunds.

A district shall not have power to levy any taxes. The facilities constructed or otherwise acquired by a district, including but not limited to ponds, reservoirs, pipelines, wells, check dams, and pumping installations, the revenues obtained by the district from the sale of water, and the revenue bonds

or notes, or interest from the revenue bonds or notes, issued by a district shall not be taxable in any manner by the state or any of its political subdivisions.

A rural water district organized under chapter 504A shall receive a refund of sales or use taxes upon submitting an application to the department of revenue and finance for such refund of taxes imposed upon the gross receipts of all sales of building materials, supplies, or equipment sold to a contractor or used in the fulfillment of a written contract for the construction of facilities for such rural water district to the same extent as a rural water district organized under this chapter may obtain a refund under section 422.45, subsection 7.

[C71, 73, 75, 77, 79, 81, §357A.15]
98 Acts, ch 1161, §1; 2000 Acts, ch 1078, §2

357A.16 Detaching real property from district.

If it becomes apparent that any real property included within a district cannot economically or adequately be served by the facilities of the district, the owners of the real property may file with the auditor a petition to the supervisors requesting that the real property be detached from the district. The petition shall:

1. Describe by section, or fraction thereof, and by township and range, the real property which it is proposed to detach from the district.
2. State that the real property cannot economically or adequately be served by the facilities of the district, and that it is not feasible for the district to enlarge or extend its facilities so as to economically and adequately serve the real property.
3. Be signed by the owners of all the real property which it is desired to detach from the district.

[C71, 73, 75, 77, 79, 81, §357A.16]
91 Acts, ch 134, §14

357A.17 Inactive district dissolved.

A petition may be filed with the auditor requesting the supervisors to dissolve an inactive district. The petition shall:

1. State that the district owns no property of any kind exclusive of records, maps, plans, and files, and that all of its debts and obligations have been fully paid.
2. State that the board has not held a meeting for more than one year prior to the date of filing of the petition, that the district is not functioning, and will probably continue to be inoperative.
3. Be signed by three-fourths of the members of the district.

[C71, 73, 75, 77, 79, 81, §357A.17]

357A.18 Hearing.

Upon the filing with the auditor of a petition under either section 357A.16 or section 357A.17, the auditor shall so inform the supervisors who shall fix a time for consideration of the petition. The supervisors may, but shall not be required to, hold a hearing thereon. After consideration of the petition, and after the hearing if one is held, the supervisors shall ascertain whether:

1. The petition meets all of the requirements prescribed by section 357A.16 or section 357A.17 for either such petition.
2. It appears from all information available to the supervisors that each allegation included in the petition is factual.

If the supervisors' finding on each of the foregoing points is positive, it shall declare the real property described in the petition detached from the district, or declare the district dissolved, as the case may be. The supervisors shall notify the secretary of the district of its action, and the secretary shall amend the records of the district to show that the real property described in the petition has been detached from the district, or shall within thirty days deliver to the auditor all records, maps, plans, and files of the district dissolved.

[C71, 73, 75, 77, 79, 81, §357A.18]
91 Acts, ch 134, §15, 16

357A.19 Not exempt from other requirements.

This chapter does not exempt any district from the requirements of any other statute, whether enacted prior to or subsequent to July 1, 1970, under which the district is required to obtain the permission or approval of, or to notify, the department, the utilities division of the department of commerce, or any other agency of this state or of any of its political subdivisions prior to proceeding with construction, acquisition, operation, enlargement, extension, or alteration of any works or facilities which the district is authorized to undertake pursuant to this chapter.

[C71, 73, 75, 77, 79, 81, §357A.19; 82 Acts, ch 1199, §65, 96]

357A.20 Alternate operation by nonprofit corporation.

A nonprofit corporation incorporated under chapter 504A for the specific purpose of operating a rural water system may petition the supervisors for incorporation of a district, in the manner provided by section 357A.2. The signatures of the corporation's officers on the petition and a resolution adopted by the corporation's board of directors approving the petition shall suffice in lieu of signatures of owners of thirty percent of the real property in the proposed district, if the corporation presents evidence satisfactory to the supervisors that a sufficient number of members of the proposed district will subscribe to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition shall be as provided by this chapter.

In any district incorporated upon the petition of a nonprofit corporation, the following procedures shall apply:

1. After final approval of the petition by a board of supervisors, the secretary of the corporation shall file a notice with the secretary of state dissolving the nonprofit corporation in accordance with chapter 504A.

2. Upon filing of the notice, the nonprofit corporation shall cease to exist as a chapter 504A entity and all assets and liabilities of the nonprofit corporation become the assets and liabilities of the newly organized district without a need for any further meetings, voting, notice to creditors, or other actions by the members or board.

3. The officers and board of directors of the corporation shall be the officers and board of the district.

4. The applicable laws of the state and the articles of incorporation and bylaws of the corporation shall control the initial size and initial term of office of such officers and board, in lieu of sections 357A.7, 357A.9, and 357A.10.

5. The district shall bring its operation and structure in compliance with sections 357A.7 to 357A.10 at the first annual meeting of the participating members and board of directors.

[C71, 73, 75, 77, 79, 81, §357A.20]

91 Acts, ch 134, §17; 95 Acts, ch 77, §5

357A.21 Annexation of land by a city — arbitration.

A water district organized under chapter 357, 357A, 499, or 504A shall be fairly compensated for losses resulting from annexation. The governing body of a city or water utility and the board of directors or trustees of the water district may agree to terms which provide that the facilities owned by the water district and located within the city shall be retained by the water district for the purpose of transporting water to customers outside the city. If an agreement is not reached within ninety days, the issues may be submitted to arbitration. If submitted, an arbitrator shall be selected by a committee which includes one member of the governing body of the city or its designee, one member of the water district's board of directors or trustees or its designee, and a disinterested party selected by the other two members of the committee. A list of qualified arbitrators may be obtained from the American arbitration association or other recognized arbitration organization or association.

87 Acts, ch 109, §3; 88 Acts, ch 1172, §1; 92 Acts, ch 1015, §5

357A.22 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or other personnel of the board are not liable on the district's debts or obligations and a director, officer, employee, or volunteer of the board is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for any of the following:

1. A breach of the duty of loyalty to the district.

2. Acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law.

3. A transaction from which the person derives an improper personal benefit.

88 Acts, ch 1170, §2

357A.22A Rural fire protection program — liability.

A rural water district or rural water association incorporated under this chapter or chapter 504A shall establish a rural fire protection program which shall include, but is not limited to, providing access to designated soft-hose fill stations, providing annually or more often if necessary updated maps of soft-hose fill stations to all fire departments within the rural water service area, and sponsoring informational meetings for all fire departments and interested parties within the rural water service area for the purpose of reviewing locations of facilities, operational procedures, communication procedures and facilities, and procedures designed to coordinate efforts to enhance rural fire protection.

A rural water district or rural water association incorporated under this chapter or chapter 504A which provides water service to cities, benefited fire districts, or townships shall not be liable for a claim against the district or association for failure to provide or maintain fire hydrants, facilities, or an adequate supply of water or water pressure for fire protection purposes if the purpose of the hydrants, facilities, or water used is not for fire protection. Not later than July 1, 2006, the legislative council shall provide for a review of the liability exemption or limitation provided for rural water districts or rural water associations under this paragraph and assess its effect on the provision of fire protection in areas served by the rural water districts or rural water associations.

2001 Acts, ch 54, §1

357A.23 City sewer and water franchise authorized.

Notwithstanding section 364.2, subsection 4, paragraph *"a"*, for the purposes of obtaining or qualifying for federal funding, a city may grant a franchise to a rural water district incorporated under this chapter or chapter 504A, for a term of not more than forty years. In addition to the franchises listed in section 364.2, subsection 4, paragraph *"a"*, a city may grant a franchise to a rural water district incorporated under this chapter or chapter 504A, to erect, maintain, and operate plants and systems for sewer services. All provisions of section 364.2 shall otherwise apply to a franchise granted to a rural water district.

94 Acts, ch 1137, §1

357A.24 Detachment and attachment of areas between districts.

1. The boards of two or more districts, or the boards of any district and a rural water system organized under chapter 504A, may by concurrent action or agreement join in a petition to detach an area which is not being served by the facilities of one district or system for purposes of being attached to the other district or system. The concurrent action or agreement may include conditions placed on the effectiveness of the concurrent action or agreement as deemed appropriate by the boards of the districts.

2. The petition shall be filed with the auditor of the county in which the area to be detached is located. The petition shall include all of the following regarding the area which is the subject of the petition:

a. A description by section, or fraction thereof, and by township and range of the area, in the same manner as provided in section 357A.16.

b. A verification that the area is not being served by the facilities of any district.

c. A statement asserting that the area can be adequately and economically served by the facilities of the district proposing to attach the area.

3. Upon filing the petition, the auditor shall prepare for a hearing on the petition by following the same procedures as provided in section 357A.3. The notice of the hearing shall include all of the following:

a. The location of the area subject to the petition.

b. The time and place of the hearing as established by the supervisors for the county in which the area to be detached is located.

c. That all owners or tenants of real property within the boundaries of the area may appear and be heard.

4. After the hearing the supervisors shall order that the area subject to the petition be detached from one district and attached to the other district if the supervisors determine that all of the following have been satisfied:

a. The petition meets the requirements of this section.

b. The information included in the petition is accurate.

c. Notice required in this section has been provided.

d. The detachment and attachment is in the best interest of the residents of the area subject to the petition.

The order shall be published in the same newspaper which published the notice of the hearing.

5. This section does not preclude any procedure for detaching an area from or attaching an area to a district as otherwise provided by law, including this chapter.

98 Acts, ch 1167, §2; 99 Acts, ch 114, §23

CHAPTER 357B

FIRE DISTRICTS

357B.1 Benefited fire districts continued.
357B.2 Board of trustees.
357B.3 Powers of the board of trustees.
357B.4 Anticipation of tax.
357B.5 Dissolution of district.
357B.6 Use of federal revenue-sharing funds.
357B.7 Exchange of territory.
357B.8 Fire district including a city — budget payment or separate levy.
357B.9 to 357B.17 Repealed by 75 Acts, ch 194, §12.
357B.18 Detachment of land from district.

357B.1 Benefited fire districts continued.

A benefited fire district established under this chapter prior to July 1, 1975 shall provide fire protection within its boundaries until it is dissolved as provided in section 357B.5. A benefited fire district shall not be established nor shall the territorial boundaries of an established benefited fire district be enlarged after June 30, 1975 except as provided in section 357B.7.

[C77, 79, 81, §357B.1]

86 Acts, ch 1057, §1

357B.2 Board of trustees.

A benefited fire district shall be governed by a board of trustees consisting of three members who shall serve overlapping, three-year terms. Each trustee shall give bond in an amount to be determined by the board of supervisors, the premium for which shall be paid by the district of the trustee. The members of the board of trustees shall be appointed by the board of supervisors from among the registered voters of the district. Any vacancy on the board shall be filled by appointment by the

board of supervisors for the unexpired term. If a benefited fire district is located in more than one county, joint action of the boards of supervisors of the affected counties is required to appoint the members of the board of trustees, to determine the amount of bond, or to dissolve the district as provided in this chapter.

[C58, 62, 66, §357A.9, 357A.10; C71, 73, 75, §357B.9, 357B.10; C77, 79, 81, §357B.2; 82 Acts, ch 1046, §1]

98 Acts, ch 1123, §13

357B.3 Powers of the board of trustees.

1. The board of trustees may purchase, own, rent, or maintain fire apparatus or equipment within the state or outside the territorial jurisdiction and boundary limits of this state and provide housing for such apparatus or equipment. The board of trustees may contract with any public or private agency under chapter 28E for the purpose of providing fire protection under this chapter. The board of trustees may levy an annual tax not exceeding forty and one-half cents per thousand dollars of assessed value for the purpose of exercising the powers granted in this section. The board of trustees may purchase material and employ persons to provide for the maintenance and operation of the benefited fire district. The trustees shall be allowed reimbursement for any necessary expenses incurred in the performance of their duties, but they shall not receive any other compensation for their services.

2. If the levy authorized under subsection 1 is insufficient to provide the services authorized or required under this section, the trustees may levy an additional annual tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value of the taxable property in the benefited district to provide the services.

3. Of the levies authorized under subsections 1 and 2, the trustees may credit to a reserve account annually an amount not to exceed ten cents per thousand dollars of the assessed value of the taxable property in the township for the purchase or replacement of supplies and equipment required to carry out the services specified under this section. Notwithstanding section 12C.7, interest earned on moneys credited to the reserve account shall be credited to the reserve account.

[C58, 62, 66, §357A.11; C71, 73, 75, §357B.11; C77, 79, 81, §357B.3]

90 Acts, ch 1187, §1

357B.4 Anticipation of tax.

The board of trustees of a benefited fire district may anticipate the collection of taxes authorized under section 357B.3 and, for the purpose of providing fire protection, may issue bonds payable in not more than ten equal installments at an interest rate not exceeding that permitted by chapter 74A. The bonds shall be in such form and payable at such place as specified by resolution of the board of trustees. The provisions of sections 73A.12 to 73A.16 and chapter 384 shall apply to such bonds to the extent applicable.

[C58, 62, 66, §357A.12; C71, 73, 75, §357B.12; C77, 79, 81, §357B.4]

357B.5 Dissolution of district.

1. Upon petition of a number of registered voters residing in a district at least equal to thirty-five percent of the property taxpayers in the district, the board of supervisors may dissolve a benefited fire district and dispose of any remaining property, the proceeds of which shall first be applied against any outstanding obligation of the district. Any remaining balance shall be applied as a tax credit for the property owners of the district. However, except as provided in subsection 2, if all or a part of a district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the territory. The board of supervisors shall continue to levy an annual tax after the dissolution of a district, not to exceed forty and one-half cents per thousand dollars of assessed value of the taxable property of the district, until all outstanding obligations of the district are paid.

2. If a benefited fire district is dissolved that has been providing fire protection by contract, direct levy, or combination of both, to a city within the district for at least twenty years and the city's annual payments by contract or levy for the fire protection comprise seventy-five percent or more of the district's annual budget, the board of supervisors, in lieu of the disposal of property as provided in subsection 1, shall transfer to the city all of the district's real and personal property. The city shall assume all of the outstanding obligations of the district. If the district provides fire protection outside of the city's boundaries, the city shall continue to provide fire protection to this area until it is assigned to another fire protection district by the board of supervisors. If the city continues the fire protection outside its boundaries, the city shall certify to the board of supervisors the cost of providing this service, which shall be at the same rate as contained in the budget for property within the city, but not exceeding sixty and three-fourths cents per thousand dollars of assessed value of all taxable property in the area. The board of supervisors shall levy the amount of tax certified as provided in section 357B.3. The tax shall be collected and allocated in the same manner as other property taxes and paid to the city.

[C58, 62, 66, §357A.14; C71, 73, 75, §357B.14; C77, 79, 81, §357B.5]

89 Acts, ch 255, §1; 91 Acts, ch 111, §2; 99 Acts, ch 154, §1, 3

357B.6 Use of federal revenue-sharing funds.

The board of supervisors may appropriate federal revenue-sharing funds to aid in providing fire protection services and equipment jointly with any other public agency of this state to residents of such county. The board of supervisors may use federal revenue-sharing funds for providing other services and equipment for use of the residents of the county. The use of federal revenue-sharing funds shall be consistent with federal law and rules promulgated pursuant to such law.

[C77, 79, 81, §357B.6]

357B.7 Exchange of territory.

The trustees of a benefited fire district may exchange territory with the trustees of a township to provide fire protection services by agreement. The agreement shall provide for the satisfaction of any outstanding obligation to which the affected territory is subject, the disposition of property affected by the exchange, the effective date of the exchange, and any other matter deemed necessary to carry out the exchange. The agreement shall be filed with the county recorder and auditor of each county in which the exchanged property is located.

86 Acts, ch 1057, §2

357B.8 Fire district including a city — budget payment or separate levy.

1. A city that was part of a benefited fire district prior to the city's incorporation may continue to receive fire protection from the district under a contract or direct levy by the district. The annual amount paid by the city to the benefited fire district shall be included in the city's annual budget and shall be a part of the city's general fund tax levy.

2. *a.* In lieu of subsection 1, a benefited fire district that includes a city within the boundaries of the fire district may certify an annual tax levy not exceeding forty and one-half cents per thousand dollars of assessed valuation of the taxable property within the city for the purpose of fire protection.

b. If the levy authorized under paragraph *"a"* is insufficient to provide fire protection services, the benefited fire district may certify an additional annual tax levy not exceeding twenty and one-fourth cents per thousand dollars of assessed valuation of the taxable property within the city to provide fire protection services.

c. The benefited fire district shall certify the tax levy as provided in this subsection only after agreement granted by resolution of the city council. The amount of the tax rate levied under this subsection shall reduce by an equal amount the maximum tax levy authorized for the general fund of that city under section 384.1. If the district levies directly against property within a city to provide fire protection for that city, the city shall not be responsible for providing fire protection as provided in section 364.16, and shall have no liability for the method, manner, or means in which the district provides the fire protection.

89 Acts, ch 255, §2; 99 Acts, ch 154, §2, 3

357B.9 to 357B.17 Repealed by 75 Acts, ch 194, § 12.

357B.18 Detachment of land from district.

The trustees of a township, after notice and a public hearing, may withdraw the township or part of the township from a benefited fire district. Notice of the time, date and place of the hearing shall be published at least two weeks before the hearing in a newspaper having general circulation within the township. The notice shall also identify the area to be withdrawn. After the hearing on the proposed withdrawal, the township trustees, by majority vote, may withdraw the township or a part of the township from the benefited fire district. If the township trustees take final action to withdraw on or before March 1 of a fiscal year, the effective date of the withdrawal is the following July 1. However, if final action to withdraw is taken after March 1, the withdrawal is not effective until July 1 of the following calendar year. If bonds issued under section 357B.4 are outstanding at the time of withdrawal, the board of supervisors shall continue to levy an annual tax against the taxable property being withdrawn to pay its share of the outstanding obligation of the district relating to those bonds.

[S81, §357B.18; 81 Acts, ch 124, §1]

CHAPTER 357C

STREET LIGHTING DISTRICTS

357C.1 Definitions.
357C.1A Petition for public hearing.
357C.2 Limitation on area.
357C.3 Time of hearing — notice.
357C.4 Action by board.
357C.5 Engineer.
357C.6 Hearing on engineer's report.

357C.7 Election on proposed levy and candidates for trustees.
357C.8 Trustees — term and qualification.
357C.9 Trustees' powers.
357C.10 Bonds in anticipation of revenue.
357C.11 Dissolution of district.
357C.12 Adding property to district.
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357C.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §357C.1 transferred to §357C.1A

357C.1A Petition for public hearing.

The board of supervisors of any county shall, on the petition of twenty-five percent of the resident property owners in any proposed benefited street lighting district if the assessed valuation of the property owned by the petitioners represents at least twenty-five percent of the total assessed value of the proposed district, or the board of supervisors of any county with a population in excess of two hundred fifty thousand persons shall, on the petition of twenty-five percent of the resident property owners in any proposed benefited lighting district, hold a public hearing concerning the establishment of such proposed street lighting district. Such a petition shall include a statement containing the following:

1. The need for street lighting service.
2. The district to be served.
3. The approximate number of families in the district.
4. The proposed utility to provide the street lighting service.

The board of supervisors may require a bond of the petitioners conditioned for the payment of all costs and expenses incurred in the proceedings in case the street lighting district is not established.

[C71, 73, 75, 77, 79, 81, §357C.1]

C2001, §357.1A

357C.2 Limitation on area.

A benefited street lighting district may include all or portions of the unincorporated areas of one township and any unincorporated areas of adjoining townships or portions thereof. However, such district shall contain only such area wherein the benefits derived from such street lighting shall be ratably spread between those people and families to be served.

[C71, 73, 75, 77, 79, 81, §357C.2]

357C.3 Time of hearing — notice.

The public hearing shall be held within thirty days of the presentation of the petition. Notice of hearing shall be given by publication as provided in section 331.305.

[C71, 73, 75, 77, 79, 81, §357C.3]

87 Acts, ch 43, §9

357C.4 Action by board.

After the hearing, the board of supervisors may by resolution establish the benefited street lighting district or disallow the petition. The board of supervisors may defer action on such petition for not to exceed ten days after the day first set for a hearing.

[C71, 73, 75, 77, 79, 81, §357C.4]

357C.5 Engineer.

When the board of supervisors shall have established a benefited street lighting district, they shall appoint a competent disinterested civil engineer, who shall prepare a preliminary plat showing:

1. The proper design in general outline of the district.
2. The lots and parcels of land within the proposed district as they appear on the county auditor's plat books with the names of the owners.
3. The assessed valuation of said lots and parcels.

The compensation of such engineer on the preliminary investigation shall be determined by the board of supervisors. The engineer shall file a report with the county auditor within thirty days of the engineer's appointment. The board of supervisors may extend such time upon good cause shown.

[C71, 73, 75, 77, 79, 81, §357C.5]

357C.6 Hearing on engineer's report.

After the engineer's report is filed, the board of supervisors shall give notice in the same manner as for the original hearing, of a public hearing to be held concerning the engineer's preliminary plat. On the day set for such hearing, or within ten days thereafter, the board of supervisors shall approve or disapprove the preliminary plat. The board of supervisors may make changes in the boundaries as they appear on the engineer's report.

[C71, 73, 75, 77, 79, 81, §357C.6]

357C.7 Election on proposed levy and candidates for trustees.

When a preliminary plat has been approved by the board of supervisors, an election shall be held within the district within sixty days to approve or disapprove the levy of a tax of not more than fifty-four cents per thousand dollars of assessed value on all the taxable property within the district, and to choose candidates for the offices of trustees of the district. Notice of the election, including the time and place of holding the same, shall be given in the same manner as for the original public hearing as provided herein. The vote shall be by ballot which shall state clearly the proposition to be voted upon, and any registered voter residing within the district at the time of the election shall be entitled to vote. It shall not be mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but they shall be conducted in accordance with the provisions of chapter 49 where not in conflict with this chapter. Judges shall be appointed to serve without pay by the board of supervisors from among the registered voters of the district who will have charge of the election. The proposition shall be deemed to have carried if sixty percent of those voting thereon vote in favor of same.

[C71, 73, 75, 77, 79, 81, §357C.7]
94 Acts, ch 1169, §64

357C.8 Trustees — term and qualification.

At the election, the names of candidates for trustee shall be written in by the voters on blank ballots without formal nomination, and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district; one to serve for one year, one for two years, and one for three years. The trustees and their successors must be residents of the district and shall give bond in the amount which the board of supervisors may require, the premium of which shall be paid by the district the trustees represent. Vacancies may thereafter be filled by election, or by appointment by the board of supervisors. The term of succeeding trustees shall be for three years.

[C71, 73, 75, 77, 79, 81, §357C.8]
91 Acts, ch 111, §3

357C.9 Trustees' powers.

The trustees may purchase street lighting service and facilities and may levy an annual tax not to exceed fifty-four cents per thousand dollars of assessed value for the purpose of exercising the powers granted in this chapter. This levy shall be optional with the trustees, but no levy shall be made unless first approved by the voters as provided herein. The trustees may purchase material, employ labor, and may perform all other acts necessary to properly maintain and operate the benefited street lighting district. The trustees shall be allowed necessary expenses in the discharge of the duties, but shall not receive any salary.

[C71, 73, 75, 77, 79, 81, §357C.9]

357C.10 Bonds in anticipation of revenue.

Benefited street lighting districts may anticipate the collection of taxes by the levy herein provided, and to carry out the purposes of this chapter may issue bonds payable in not more than ten equal installments, with the rate of interest thereon not exceeding that permitted by chapter 74A. No indebtedness shall be incurred under this chapter until authorized by an election. Such election shall be held and notice given in the same manner as the election provided herein for the authorization of a tax levy, and the same sixty percent vote shall be necessary to authorize indebtedness. Both propositions may be submitted to the voters in the same election.

[C71, 73, 75, 77, 79, 81, §357C.10]

357C.11 Dissolution of district.

Upon petition of thirty-five percent of the resident eligible electors, the board of supervisors may dissolve a benefited street lighting district and dispose of any remaining property, proceeds of which shall first be applied against outstanding obligations and any balance shall be applied to tax credit of property owners of the district. However, if the district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the district. The board of supervisors shall continue to levy tax after dissolution of a district, of not to exceed fifty-four cents per thousand dollars of assessed value on all the taxable property of the district, until all outstanding obligations of the district are paid.

[C71, 73, 75, 77, 79, 81, §357C.11]
91 Acts, ch 111, §4

357C.12 Adding property to district.

The owner of any property in an unincorporated area immediately contiguous to the boundaries of any established benefited street lighting district may petition the board of supervisors to be included in the district. Upon receipt of such petition the board shall submit the request to a competent disinterested civil engineer to investigate the feasibility of adding such additional territory and to make a report to the board. If the board agrees that said property should be added to the district, the tax levy for the next year shall be applied to said property and on the first day of the said next year said property shall be considered a part of the district. If the benefited street lighting district lies in more than one county the joint action of the boards of supervisors shall be required to add additional territory.

[C71, 73, 75, 77, 79, 81, §357C.12]

357C.13 Determination of fee.

The owner of any property joining an established benefited street lighting district shall pay to the board of trustees of the district an initial fee to be computed as follows:

1. The board of trustees shall first determine fair market value of all property and improvements owned by the benefited street lighting district, less any indebtedness.

2. The board shall then determine the assessed value of all property in said district. This shall be divided into the value determined in subsection 1 of this section.

3. The board shall determine the assessed value of the property of each landowner joining the established district.

4. The result obtained in subsection 2 shall be multiplied by the result obtained in subsection 3. The result shall be the initial fee to be charged each landowner.

The initial fees paid to the district trustees shall be used to help defray the cost and maintenance of the district's street lighting service.

[C71, 73, 75, 77, 79, 81, §357C.13]

CHAPTER 357D

LAW ENFORCEMENT DISTRICTS

357D.1 Definitions.
357D.2 Petition for public hearing.
357D.3 Limitation on area.
357D.4 Time of hearing.
357D.5 Action by board.
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357D.7 Hearing on engineer's report.
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357D.9 Trustees — term and qualification.
357D.10 Trustees' powers.
357D.11 Bonds in anticipation of revenue.
357D.12 Dissolution of district.
357D.13 Incorporation of district land.
357D.14 Adding property to district.
357D.15 Determination of fee.

357D.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of supervisors of a county.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"District"* means a benefited law enforcement district.

4. *"Trustee"* means a trustee of a district.

[82 Acts, ch 1174, §1]

2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

357D.2 Petition for public hearing.

1. The board shall, on the petition of twenty-five percent of the resident property owners in a proposed district if the assessed valuation of the property owned by the petitioners represents at least twenty-five percent of the total assessed value of the proposed district, hold a public hearing concerning the establishment of a proposed district. The petition shall include a statement containing the following information:

a. The need for law enforcement service.

b. The district to be served.

c. The approximate number of families in the district.

d. The proposed personnel, equipment, and facilities to provide the law enforcement service.

2. The board of supervisors may require a bond of the petitioners conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not established.

[82 Acts, ch 1174, §2]

357D.3 Limitation on area.

A district may include all or parts of the unincorporated areas of one township and any unincorporated areas of adjoining townships or parts of adjoining townships, but shall not include property assessed as agricultural land, centrally assessed property, or manufacturing personal and real property. Except for property assessed as agricultural land, the owners of centrally assessed property or manufacturing property shall have the option to be included in the district.

[82 Acts, ch 1174, §3]

357D.4 Time of hearing.

The public hearing required in section 357D.2 shall be held within thirty days of the presentation of the petition. Notice of hearing shall be given by publication in two successive issues of any paper

of general circulation within the district. The last publication shall be not less than one week before the proposed hearing.

[82 Acts, ch 1174, §4]

357D.5 Action by board.

After, and within ten days of, the hearing, the board shall either establish the district by resolution or disallow the petition.

[82 Acts, ch 1174, §5]

357D.6 Engineer.

1. When the board establishes a district, the board shall appoint a competent disinterested civil engineer, who shall prepare a preliminary plat showing:

a. The proper design in general outline of the district.

b. The lots and parcels of land within the proposed district as they appear on the county auditor's plat books with the names of the owners.

c. The assessed valuation of the lots and parcels.

2. The compensation of the engineer on the preliminary investigation shall be determined by the board. The engineer shall file a report with the county auditor within thirty days of appointment. The board may extend the time upon good cause shown.

[82 Acts, ch 1174, §6]

357D.7 Hearing on engineer's report.

After the engineer's report is filed, the board shall give notice as provided in section 357D.4, of a public hearing to be held concerning the engineer's preliminary plat. After, and within ten days of, the hearing, the board shall approve or disapprove the preliminary plat. If the preliminary plat is disapproved, the board shall make changes in the boundaries as it deems necessary for board approval of the preliminary plat.

[82 Acts, ch 1174, §7]

357D.8 Election on proposed levy and candidates for trustees.

When a preliminary plat has been approved by the board, an election shall be held within the district within sixty days to approve or disapprove the levy of a tax of not more than one dollar per thousand dollars of assessed value on all the taxable property within the district and to choose candidates for the offices of trustees of the district. Notice of the election, including the time and place of holding the election, shall be given as provided in section 357D.4. The vote shall be by ballot which shall state clearly the proposition to be voted upon and any registered voter residing within the district at the time of the election may vote. It is not mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but the elections shall be conducted in accordance with chapter 49 where not in conflict with this chapter. Judges shall be appointed to serve without pay by the board from among the registered voters of the district to be in charge of the election. The proposition is approved if sixty percent of those voting on the proposition vote in favor of it.

[82 Acts, ch 1174, §8]

84 Acts, ch 1216, §1; 94 Acts, ch 1169, §64

357D.9 Trustees — term and qualification.

At the election, the names of up to three candidates for trustee shall be written in by the voters on blank ballots without formal nomination and the board shall appoint three from among the five receiving the highest number of votes as trustees for the district. One trustee shall be appointed to serve for one year, one for two years, and one for three years. The trustees and their successors must be residents of the district and shall give bond in the amount required by the board, the premium of which shall be paid by the district. Vacancies shall be filled by election, but if there are no candidates for a trustee office, the vacancy may be filled by appointment by the board. The term of succeeding trustees shall be three years.

[82 Acts, ch 1174, §9]

91 Acts, ch 111, §5

357D.10 Trustees' powers.

The trustees may provide law enforcement service and facilities and may certify for levy an annual tax as provided in section 357D.8. The trustees may purchase material, employ peace officers and other personnel, and may perform all other acts necessary to properly maintain and operate the district. The trustees are allowed necessary expenses in the discharge of their duties, but they shall not receive a salary.

[82 Acts, ch 1174, §10]

84 Acts, ch 1216, §2

357D.11 Bonds in anticipation of revenue.

A district may anticipate the collection of taxes by the levy authorized in this chapter, and to carry out the purposes of this chapter may issue bonds payable in not more than ten equal installments with the rate of interest not exceeding that permitted by chapter 74A. An indebtedness shall not be incurred under this chapter until authorized by an election. The election shall be held and notice given in the same manner as provided in section 357D.8, and the same sixty percent vote shall be necessary to authorize indebtedness. Both propositions may be submitted to the voters at the same election.

[82 Acts, ch 1174, §11]

357D.12 Dissolution of district.

Upon petition of thirty-five percent of the resident eligible electors, the board may dissolve a district and dispose of any remaining property, the proceeds of which shall first be applied against outstanding obligations and any balance shall be applied to tax credit of property owners of the district. However, if the district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the territory. The board shall continue to levy a tax after dissolution of a district, of not to exceed twenty-seven cents per thousand dollars of assessed value on all the taxable property of the district, until all outstanding obligations of the district are paid.

[82 Acts, ch 1174, §12]

91 Acts, ch 111, §6

357D.13 Incorporation of district land.

If part of a district is incorporated by a city and there are outstanding indebtedness obligations against the district, the city shall pay the outstanding obligations against the part of the district which is incorporated by the city.

[82 Acts, ch 1174, §13]

357D.14 Adding property to district.

The owner of any property in an unincorporated area contiguous to the boundaries of an established district may petition the board to be included in the district. Upon receipt of the petition, the board shall submit the request to a competent disinterested civil engineer to investigate the feasibility of adding the additional territory and to make a report to the board. If the board agrees that the property should be added to the district, the tax levy for the next year shall be applied to the property and on the first day of the next fiscal year the property shall become a part of the district. If the district lies in more than one county the joint action of the boards involved is required to add additional territory.

[82 Acts, ch 1174, §14]

357D.15 Determination of fee.

1. The owner of any property joining an established district shall pay to the trustees of the district an initial fee to be computed as follows:

a. The trustees shall first determine fair market value of all property and improvements owned by the district, less any indebtedness.

b. The board shall then determine the assessed value of all property in the district which is not assessed as agricultural land. This shall be divided into the value determined in paragraph *"a"*.

c. The board shall determine the assessed value of the property of each landowner joining the established district which is not assessed as agricultural land.

d. The result obtained in paragraph *"b"* shall be multiplied by the result obtained in paragraph *"c"*. The result shall be the initial fee to be charged each landowner.

2. The initial fees paid to the trustees shall be used to help defray the cost and maintenance of the district's law enforcement service.

[82 Acts, ch 1174, §15]

CHAPTER 357E

RECREATIONAL LAKE AND WATER QUALITY DISTRICTS

357E.1 Definitions.
357E.2 Incorporation.
357E.3 Petition for public hearing.
357E.4 Time of public hearing.
357E.5 Hearing of petition — action by board.
357E.6 Engineer.
357E.7 Hearing on engineer's report.
357E.8 Election on proposed levy and candidates for trustees.
357E.9 Trustees — term and qualification.
357E.10 Board of trustees — power.
357E.11 Bonds in anticipation of revenue.
357E.12 Dissolution of district.
357E.13 Adding property to a district.
357E.14 Determination of fee.

357E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of supervisors of a county, or the joint boards of supervisors of two or more counties, in which a district has been incorporated and organized or is proposed to be incorporated and organized.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"District"* means a benefited recreational lake district or a water quality district or a combined district incorporated and organized pursuant to this chapter.

4. *"Recreational facilities"* includes, but is not limited to, real and personal property, water, buildings, structures, or improvements including dams or other structures permitted or exempt from regulation under chapter 455B, and equipment useful and suitable for recreation programs, including those programs customarily identified with the term *"recreation"* such as public sports, games, pastimes, diversions, and amusement, on land or water and including community center houses, recreation grounds, recreation buildings, juvenile playgrounds, swimming pools, recreation centers, parks, lakes, and golf courses, and the acquisition of real estate for them.

5. *"Trustee"* means a member of the board of trustees of a district.

6. *"Water quality activities"* includes, but is not limited to, public information dissemination, creation or maintenance of grass waterways or wetlands, dredging, bank stabilization, water treatment, water monitoring, watershed protection, activities on lands outside the district which affect water quality within the district, and any other activity which will improve water quality of a stream, river, or lake.

88 Acts, ch 1194, §1; 2000 Acts, ch 1148, §1; 2000 Acts, ch 1181, §1, 2; 2002 Acts, ch 1119, §200, 201

357E.2 Incorporation.

1. If an area of contiguous territory is situated so that the acquisition, construction, reconstruction, enlargement, improvement, equipping, maintenance, and operation of recreation facilities for the residents of the territory will be conducive to the public health, comfort, convenience, water quality, or welfare, the area may be incorporated as a benefited recreational lake district as set forth in this chapter. The land to be included in a district must be contiguous to the recreational lake or to other residential, agricultural, or commercial property which is contiguous to the recreational lake.

2. If an area of contiguous territory is situated so that the performance of water quality activities, including the acquisition, construction, reconstruction, enlargement, improvement, equipping, maintenance, and operation of water quality facilities for the residents of the district will be conducive to the public health, comfort, convenience, water quality, or welfare, the area may be incorporated as a water quality district as provided in this chapter. The land to be included in a district must be contiguous to a stream, river, or lake, or to other property which, except for a public road or other public land, is contiguous to a stream, river, or lake. However, a water quality district shall not be established on open ditches or streams maintained by drainage districts or on streams or rivers where levees are maintained by levee or drainage districts. If a reach of a stream or river in a water quality district later becomes a drainage district facility or becomes levied by a drainage or levee district, the stream or river reach shall be removed from the jurisdiction of the water quality district and the adjacent parcels shall be removed from the water quality district.

3. If an area of contiguous territory is situated so that the specifications of subsections 1 and 2 are met, the area may be incorporated as a combined recreational facility and water quality district as provided in this chapter. If the trustees of a benefited recreational lake district wish to form a combined district or the trustees of a water quality district wish to form a combined district, the trustees may join with the petition required by section 357E.3 to the board of supervisors to proceed with the establishment of a combined district after following the same procedures as provided in this chapter for establishing a separate district.

88 Acts, ch 1194, §2; 96 Acts, ch 1032, §1; 2000 Acts, ch 1181, §3

357E.3 Petition for public hearing.

1. The supervisors shall, on the petition of twenty-five percent of the property owners of a proposed benefited recreational lake district if the assessed valuation of the property owned by the petitioners represents at least twenty-five percent of the total assessed value of the proposed district, hold a public hearing concerning the establishment of a proposed district. However, for a proposed water quality district, the petition shall contain signatures of the fewer of twenty-five property owners or twenty-five percent of the property owners of the proposed district. The petition shall include a statement containing the following information:

a. The need for the district.

b. A description of the district to be served.

c. The approximate number of families in the district.

2. The board of supervisors may require a bond of the petitioners conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not established.

88 Acts, ch 1194, §3; 89 Acts, ch 53, §1; 2000 Acts, ch 1181, §4

357E.4 Time of public hearing.

The public hearing required in section 357E.3 shall be held within thirty days of the presentation of the petition. Notice of hearing shall be given by publication as provided in section 331.305.

88 Acts, ch 1194, §4

357E.5 Hearing of petition — action by board.

At the public hearing required in section 357E.3, the board of supervisors may consider the

boundaries of a proposed district, whether the boundaries shall be as described in the petition or otherwise, and for that purpose may amend the petition and change the boundaries of the proposed district as stated in the petition. The supervisors may adjust the boundaries of a proposed district as needed to exclude land that has no reasonable likelihood of benefit from inclusion in the proposed district. However, the boundaries of a proposed district shall not be changed to incorporate property which is not included in the original petition.

After, and within ten days of, the hearing, the board of supervisors shall establish the district by resolution or disallow the petition.

88 Acts, ch 1194, §5

357E.6 Engineer.

1. When the board establishes a district, a competent disinterested civil engineer shall be appointed, who shall prepare a preliminary plat showing:

a. The proper design in general outline of the district.

b. The lots and parcels of land within the proposed district as they appear on the county auditor's plat books with the names of the owners.

c. The assessed valuations of the lots and parcels.

2. The compensation of the engineer on the preliminary investigation shall be determined by the board. The engineer shall file a report with the county auditor within thirty days of appointment. The board may extend the time upon good cause shown.

88 Acts, ch 1194, §6

357E.7 Hearing on engineer's report.

After the engineer's report is filed, the board shall give notice as provided in section 357E.4, of a public hearing to be held concerning the engineer's preliminary plat. After, and within ten days of, the hearing, the board shall approve or disapprove the preliminary plat. If the preliminary plat is disapproved, the board may make changes in the boundaries as deemed necessary for the board's approval of the preliminary plat.

88 Acts, ch 1194, §7

357E.8 Election on proposed levy and candidates for trustees.

When a preliminary plat has been approved by the board, an election shall be held within the district within sixty days to approve or disapprove the levy of a tax of not more than four dollars per thousand dollars of assessed value on all the taxable property within the benefited recreational lake district except property assessed as agricultural land, and to choose candidates for the offices of trustees of the district. However, for a water quality district, the tax levy shall not exceed twenty-five cents per thousand dollars of assessed value on all taxable property within the district and must be renewed by a similar election every eight years. The tax levy for a combined district shall not exceed four dollars per thousand dollars of assessed value on all of the taxable property within the district. A tax levy approved for the purposes of this chapter shall not be levied on property assessed as agricultural land. Notice of the election, including the time and place of holding the election, shall be given as provided in section 357E.4. The vote shall be by ballot which shall state clearly the proposition to be voted upon, and any registered voter residing within the district at the time of the election may vote. It is not mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but the elections shall be conducted in accordance with chapter 49 when not in conflict with this chapter. Judges shall be appointed by the board from among the registered voters of the district to be in charge of the election. The judges are not entitled to receive pay. The proposition is approved if a majority of those voting on the proposition vote in favor of it.

88 Acts, ch 1194, §8; 94 Acts, ch 1169, §64; 2000 Acts, ch 1181, §5

357E.9 Trustees — term and qualification.

At the election, the names of at least three candidates for trustee shall be written in by the voters on blank ballots without formal nomination and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district. One trustee shall be appointed to serve for one year, one for two years, and one for three years. The trustees shall give bond in the amount required by the board, the premium of which shall be paid by the district. The trustees must be residents of the district. Vacancies shall be filled by election, but if there are no candidates for a trustee office, the vacancy may be filled by appointment by the board. The terms of the succeeding trustees are for three years.

If the state owns at least four hundred acres of land contiguous to a lake within the district, the natural resource commission shall appoint two members of the board of trustees in addition to the three members provided in this section. The additional two members must be citizens of the state, not less than eighteen years of age, and property owners within the district. The two additional members have voting and other authority equal to the other members of the board and hold office at the pleasure of the natural resource commission.

88 Acts, ch 1194, §9; 91 Acts, ch 111, §7; 2001 Acts, ch 24, §48

357E.10 Board of trustees — power.

The trustees are the corporate authority of the district and shall manage and control the affairs,

property, and facilities of the district. The board of trustees shall elect a president, a clerk, and a treasurer from its membership. The trustees may certify for levy an annual tax as provided in section 357E.8. The trustees may construct, reconstruct, repair, maintain, or operate a dam or other recreational facilities or structures to create or maintain an artificial or natural lake or impoundment and may promote and improve water quality. For these purposes, the trustees may purchase material, employ personnel, acquire real estate and interests in real estate, and perform all other acts necessary to properly maintain and operate the district. The trustees are allowed necessary expenses in the discharge of their duties, but they shall not receive a salary.

88 Acts, ch 1194, §10; 96 Acts, ch 1032, §2

357E.11 Bonds in anticipation of revenue.

A district may anticipate the collection of taxes by the levy authorized in this chapter, and to carry out the purposes of this chapter may issue bonds payable in not more than twenty equal installments with the rate of interest not exceeding that permitted by chapter 74A. An indebtedness shall not be incurred under this chapter until authorized by an election. The election shall be held and notice given in the same manner as provided in section 357E.8, and the same majority vote is necessary to authorize indebtedness. Both propositions may be submitted to the voters at the same election.

88 Acts, ch 1194, §11

357E.12 Dissolution of district.

Upon petition of thirty-five percent of the resident eligible electors, the board may dissolve a district and dispose of any remaining property, the proceeds of which shall first be applied against outstanding obligations and any balance shall be applied to tax credits for property owners of the district. However, if the district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the territory. The board shall continue to levy a tax after dissolution of a district, in an amount necessary to pay all outstanding obligations of the district as they become due, until all outstanding obligations of the district are paid.

88 Acts, ch 1194, §12; 91 Acts, ch 111, §8

357E.13 Adding property to a district.

The owner of any property in an area immediately contiguous to the boundaries of an established district may petition the board to be included in the district. Upon receipt of the petition, the board shall submit the request to a competent disinterested civil engineer to investigate the feasibility of adding the additional territory and to make a report to the board. If the board agrees that the property should be added to the district, the tax levy for the next year shall be applied to the property and on the first day of the next fiscal year the property shall become part of the district. If the district lies in more than one county, the joint action of the boards involved is required to add additional property.

88 Acts, ch 1194, §13

357E.14 Determination of fee.

1. The owner of any property joining an established district shall pay to the trustees of the district an initial fee to be computed as follows:

a. The trustees shall first determine the fair market value of all property and improvements owned by the district, less any indebtedness.

b. The board shall then determine the assessed value of all property in the district. This shall be divided into the value determined in paragraph *"a"*.

c. The board shall determine the assessed value of the property of each landowner joining the established district.

d. The result obtained in paragraph *"b"* shall be multiplied by the result obtained in paragraph *"c"*. The result shall be the initial fee to be charged each landowner.

2. The initial fees paid to the trustees shall be used to help defray the cost and maintenance of the recreation district.

88 Acts, ch 1194, §14

CHAPTER 357F

EMERGENCY MEDICAL SERVICES DISTRICTS

357F.1 Definitions.
357F.2 Petition for public hearing.
357F.3 Limitation on area.
357F.4 Time of hearing.
357F.5 Action by board.
357F.6 Engineer.
357F.7 Hearing on engineer's report.
357F.8 Election on proposed levy and candidates for trustees.
357F.9 Trustees — term and qualification.
357F.10 Trustees' powers.
357F.11 Bonds in anticipation of revenue.
357F.12 Dissolution of district.
357F.13 Incorporation of district land.
357F.14 Adding property to district.
357F.15 Determination of fee.

357F.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the board of supervisors of a county.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"District"* means a benefited emergency medical services district.

4. *"Trustee"* means a trustee of a district.

92 Acts, ch 1226, §2; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

357F.2 Petition for public hearing.

1. The board shall, on the petition of twenty-five percent of the resident property owners in a proposed district if the assessed valuation of the property owned by the petitioners represents at least twenty-five percent of the total assessed value of the proposed district, hold a public hearing concerning the establishment of a proposed district. The petition shall include a statement containing the following information:

a. The need for emergency medical services.

b. The district to be served.

c. The approximate number of families in the district.

d. The proposed personnel, equipment, and facilities to provide the emergency medical services.

2. The board of supervisors may require a bond of the petitioners conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not established.

92 Acts, ch 1226, §3

357F.3 Limitation on area.

A district may include all or parts of the unincorporated areas of one township and any unincorporated areas of adjoining townships or parts of adjoining townships, but shall not include property assessed as agricultural land, or centrally assessed property.

92 Acts, ch 1226, §4

357F.4 Time of hearing.

The public hearing required in section 357F.2 shall be held within thirty days of the presentation of the petition. Notice of hearing shall be given by publication in two successive issues of any newspaper of general circulation within the district. The last publication shall be not less than one week before the proposed hearing.

92 Acts, ch 1226, §5; 94 Acts, ch 1023, §47

357F.5 Action by board.

After, and within ten days of, the hearing, the board shall either establish the district by resolution or disallow the petition.

92 Acts, ch 1226, §6

357F.6 Engineer.

1. When the board establishes a district, the board shall appoint a competent disinterested civil engineer, who shall prepare a preliminary plat showing:

a. The proper design in general outline of the district.

b. The lots and parcels of land within the proposed district as they appear on the county auditor's plat books with the names of the owners.

c. The assessed valuation of the lots and parcels.

2. The compensation of the engineer on the preliminary investigation shall be determined by the board. The engineer shall file a report with the county auditor within thirty days of appointment. The board may extend the time upon good cause shown.

92 Acts, ch 1226, §7

357F.7 Hearing on engineer's report.

After the engineer's report is filed, the board shall give notice, as provided in section 357F.4, of a public hearing to be held concerning the engineer's preliminary plat.

92 Acts, ch 1226, §8

357F.8 Election on proposed levy and candidates for trustees.

When a preliminary plat has been approved by the board, an election shall be held within the district within sixty days to approve or disapprove the levy of a tax of not more than one dollar per thousand dollars of assessed value on all the taxable property within the district and to choose candidates for the offices of trustees of the district. The ballot shall set out the reason for the tax and the amount needed. The tax shall be set to raise only the amount needed. Notice of the election, including the time and place of holding the election, shall be given as provided in section 357F.4. The vote shall be by ballot which shall state clearly the proposition to be voted upon and any registered voter residing within the district at the time of the election may vote. It is not mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but the elections shall be conducted in accordance with chapter 49 where not in conflict with this chapter. Judges shall be appointed to serve without pay by the board from among the registered voters of the district to be in charge of the election. The proposition is approved if sixty percent of those voting on the proposition vote in favor of it.

92 Acts, ch 1226, §9; 94 Acts, ch 1169, §64

357F.9 Trustees — term and qualification.

At the election, the names of up to three candi-

dates for trustee shall be written in by the voters on blank ballots without formal nomination and the board shall appoint three from among the five receiving the highest number of votes as trustees for the district. One trustee shall be appointed to serve for one year, one for two years, and one for three years. The trustees and their successors must be residents of the district and shall give bond in the amount required by the board, the premium of which shall be paid by the district. Vacancies shall be filled by election, but if there are no candidates for a trustee office, the vacancy may be filled by appointment by the board. The term of succeeding trustees shall be three years.

92 Acts, ch 1226, §10

357F.10 Trustees' powers.

The trustees may purchase, own, rent, or maintain emergency medical services apparatus or equipment within the state or outside the territorial jurisdiction and boundary limits of this state, provide housing for such apparatus and equipment, provide emergency medical service and facilities, and may certify for levy an annual tax as provided in section 357F.8. The trustees may purchase material, employ emergency medical service and other personnel, and may perform all other acts necessary to properly maintain and operate the district. The trustees may contract with any city or county or public or private agency under chapter 28E for the purpose of providing emergency medical services under this chapter. The trustees are allowed necessary expenses in the discharge of their duties, but they shall not receive a salary.

92 Acts, ch 1226, §11

357F.11 Bonds in anticipation of revenue.

A district may anticipate the collection of taxes by the levy authorized in this chapter, and to carry out the purposes of this chapter may issue bonds payable in not more than ten equal installments with the rate of interest not exceeding that permitted by chapter 74A. An indebtedness shall not be incurred under this chapter until authorized by an election. The election shall be held and notice given in the same manner as provided in section 357F.8, and the same sixty percent vote shall be necessary to authorize indebtedness. Both propositions may be submitted to the voters at the same election.

92 Acts, ch 1226, §12

357F.12 Dissolution of district.

Upon petition of thirty-five percent of the resident eligible electors, the board may dissolve a district and dispose of any remaining property, the proceeds of which shall first be applied against outstanding obligations and any balance shall be applied to tax credit of property owners of the district. However, if the district is annexed, the board of supervisors may transfer the remaining property and balance to the city which annexed the territory. The board shall continue to levy a tax after dissolution of a district, of not to exceed twenty-seven cents per thousand dollars of assessed value on all the taxable property of the district, until all outstanding obligations of the district are paid.

92 Acts, ch 1226, §13

357F.13 Incorporation of district land.

If part of a district is incorporated by a city and there are outstanding indebtedness obligations against the district, the city shall pay the outstanding obligations against the part of the district which is incorporated by the city.

92 Acts, ch 1226, §14

357F.14 Adding property to district.

The owner of any property in an unincorporated area contiguous to the boundaries of an established district may petition the board to be included in the district. Upon receipt of the petition, the board shall submit the request to a competent disinterested civil engineer to investigate the feasibility of adding the additional territory and to make a report to the board. If the board agrees that the property should be added to the district, the tax levy for the next year shall be applied to the property and on the first day of the next fiscal year the property shall become a part of the district. If the district lies in more than one county the joint action of the boards involved is required to add additional territory.

92 Acts, ch 1226, §15

357F.15 Determination of fee.

1. The owner of any property joining an established district shall pay to the trustees of the district an initial fee to be computed as follows:

a. The trustees shall first determine fair market value of all property and improvements owned by the district, less any indebtedness.

b. The board shall then determine the assessed value of all property in the district which is not assessed as agricultural land. This shall be divided into the value determined in paragraph *"a"*.

c. The board shall determine the assessed value of the property of each landowner joining the established district which is not assessed as agricultural land.

d. The result obtained in paragraph *"b"* shall be multiplied by the result obtained in paragraph *"c"*. The result shall be the initial fee to be charged each landowner.

2. The initial fees paid to the trustees shall be used to help defray the cost and maintenance of the district's emergency medical services.

92 Acts, ch 1226, §16

CHAPTER 357G

CITY EMERGENCY MEDICAL SERVICES DISTRICTS

357G.1 Definitions.
357G.2 Petition for public hearing.
357G.3 Limitation on area.
357G.4 Time of hearing.
357G.5 Action by council.
357G.6 Engineer.
357G.7 Hearing on engineer's report.
357G.8 Election on proposed levy and candidates for trustees.
357G.9 Trustees — term and qualification.
357G.10 Trustees' powers.
357G.11 Bonds in anticipation of revenue.
357G.12 Dissolution of district.
357G.13 Adding property to district.
357G.14 Determination of fee.

357G.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Council"* means the city council of a city.

3. *"District"* means a city emergency medical services district.

4. *"Trustee"* means a trustee of a district.

94 Acts, ch 1075, §1; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

357G.2 Petition for public hearing.

1. The council shall, on the petition of twenty-five percent of the resident property owners in a proposed district if the assessed valuation of the property owned by the petitioners represents at least twenty-five percent of the total assessed value of the proposed district, hold a public hearing concerning the establishment of a proposed district. The petition shall include a statement containing the following information:

a. The need for emergency medical services.

b. The district to be served.

c. The approximate number of families in the district.

d. The proposed personnel, equipment, and facilities to provide the emergency medical services.

2. The council may require a bond of the petitioners conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not established.

94 Acts, ch 1075, §2

357G.3 Limitation on area.

A district shall include all of the incorporated area of a city except property assessed as agricultural land, or centrally assessed property.

94 Acts, ch 1075, §3

357G.4 Time of hearing.

The public hearing required in section 357G.2 shall be held within thirty days of the presentation of the petition. Notice of hearing shall be given by publication in two successive issues of any newspaper of general circulation within the district. The last publication shall be not less than one week before the proposed hearing.

94 Acts, ch 1075, §4; 95 Acts, ch 67, §30

357G.5 Action by council.

After, and within ten days of, the hearing, the council shall either establish the district by resolution or disallow the petition.

94 Acts, ch 1075, §5

357G.6 Engineer.

1. When the council establishes a district, the council shall appoint a competent disinterested civil engineer, who shall prepare a preliminary plat showing:

a. The proper design in general outline of the district.

b. The lots and parcels of land within the proposed district as they appear on the city assessor's or county auditor's plat books with the names of the owners.

c. The assessed valuation of the lots and parcels.

2. The compensation of the engineer on the preliminary investigation shall be determined by the council. The engineer shall file a report with the city assessor within thirty days of appointment. The council may extend the time upon good cause shown.

94 Acts, ch 1075, §6

357G.7 Hearing on engineer's report.

After the engineer's report is filed, the council shall give notice, as provided in section 357G.4, of a public hearing to be held concerning the engineer's preliminary plat.

94 Acts, ch 1075, §7

357G.8 Election on proposed levy and candidates for trustees.

When a preliminary plat has been approved by the council, an election shall be held within the district within sixty days to approve or disapprove the levy of a tax of not more than one dollar per thousand dollars of assessed value on all the taxable property within the district and to choose candidates for the offices of trustees of the district. The ballot shall set out the reason for the tax and the amount needed. The tax shall be set to raise only the amount needed. Notice of the election, including the time and place of holding the election, shall be given as provided in section 357G.4. The vote shall be by ballot which shall state clearly the proposition to be voted upon and any registered voter residing within the district at the time of the election may vote. It is not mandatory for the county commissioner of elections to conduct elections held pursuant to this chapter, but the elections shall be conducted in accordance with chapter 49 where not in conflict with this chapter. Judges shall be appointed to serve without pay by the council from among the registered voters of the district to be in charge of the election. The proposition is approved if sixty percent of those voting on the proposition vote in favor of it.

94 Acts, ch 1075, §8; 95 Acts, ch 67, §53

357G.9 Trustees — term and qualification.

At the election, the names of up to three candidates for trustee shall be written in by the voters on blank ballots without formal nomination and the council shall appoint three from among the five receiving the highest number of votes as trustees for the district. One trustee shall be appointed to serve for one year, one for two years, and one for three years. The trustees and their successors must be residents of the district and shall give bond in the amount required by the council, the premium of which shall be paid by the district. Vacancies shall be filled by appointment by the council. The term of succeeding trustees shall be three years.

94 Acts, ch 1075, §9; 98 Acts, ch 1123, §14, 19

357G.10 Trustees' powers.

The trustees may purchase, own, rent, or maintain emergency medical services apparatus or equipment within the state or outside the territorial jurisdiction and boundary limits of this state, provide housing for such apparatus and equipment, provide emergency medical service and facilities, and may certify for levy an annual tax as provided in section 357G.8. The trustees may purchase material, employ emergency medical service and other personnel, and may perform all other acts necessary to properly maintain and operate the district. The trustees may contract with any other city or county or public or private agency under chapter 28E for the purpose of providing emergency medical services under this chapter. The trustees are allowed necessary expenses in the discharge of their duties, but they shall not receive a salary.

94 Acts, ch 1075, §10

357G.11 Bonds in anticipation of revenue.

A district may anticipate the collection of taxes by the levy authorized in this chapter, and to carry out the purposes of this chapter may issue bonds payable in not more than ten equal installments with the rate of interest not exceeding that permitted by chapter 74A. An indebtedness shall not be incurred under this chapter until authorized by an election. The election shall be held and notice given in the same manner as provided in section 357G.8, and the same sixty percent vote shall be necessary to authorize indebtedness. Both propositions may be submitted to the voters at the same election.

94 Acts, ch 1075, §11

357G.12 Dissolution of district.

Upon petition of thirty-five percent of the resident eligible electors, the council may dissolve a district and dispose of any remaining property, the proceeds of which shall first be applied against outstanding obligations and any balance shall be applied to tax credit of property owners of the district. The council shall continue to levy a tax after dissolution of a district, of not to exceed twenty-seven cents per thousand dollars of assessed value on all the taxable property of the district, until all outstanding obligations of the district are paid.

94 Acts, ch 1075, §12

357G.13 Adding property to district.

Any property in an unincorporated area contiguous to the boundaries of an established district which is annexed by the city shall be included in the district. The tax levy for the next year shall be applied to the property and on the first day of the next fiscal year, the property shall become a part of the district.

94 Acts, ch 1075, §13

357G.14 Determination of fee.

1. The owner of any property joining an established district shall pay to the trustees of the district an initial fee to be computed as follows:

a. The trustees shall first determine fair market value of all property and improvements owned by the district, less any indebtedness.

b. The council shall then determine the assessed value of all property in the district which is not assessed as agricultural land. This shall be divided into the value determined in paragraph *"a"*.

c. The council shall determine the assessed value of the property of each landowner joining the

established district which is not assessed as agricultural land.

d. The result obtained in paragraph *"b"* shall be multiplied by the result obtained in paragraph *"c"*. The result shall be the initial fee to be charged each landowner.

2. The initial fees paid to the trustees shall be used to help defray the cost and maintenance of the district's emergency medical services.

94 Acts, ch 1075, §14

CHAPTER 357H

RURAL IMPROVEMENT ZONES

357H.1 Rural improvement zones.
357H.2 Petition for public hearing.
357H.3 Time of public hearing.
357H.4 Hearing on petition — action by board.
357H.5 Election of candidates for trustees.
357H.6 Trustees — terms and qualifications.
357H.7 Board of trustees — power.
357H.8 Certificates, contracts, and other obligations — standby tax.
357H.9 Incremental property taxes.
357H.10 Dissolution of zone.

357H.1 Rural improvement zones.

1. The board of supervisors of a county with less than eighteen thousand five hundred residents, based upon the 1990 certified federal census, and with a private lake development shall designate an area surrounding the lake, if it is an unincorporated area of the county, a rural improvement zone upon receipt of a petition pursuant to section 357H.2, and upon the board's determination that the area is in need of improvements.

2. For purposes of this chapter, *"improvements"* means dredging, installation of erosion control measures, land acquisition, and related improvements, including soil conservation practices, within or outside of the boundaries of the zone.

For purposes of this chapter, *"board"* means the board of supervisors of the county.

97 Acts, ch 152, §1; 98 Acts, ch 1168, §1; 2000 Acts, ch 1190, §1

357H.2 Petition for public hearing.

1. The board shall, on the petition of twenty-five percent of the residents of a proposed rural improvement zone, if the assessed valuation of the property owned by the petitioners represents at least twenty-five percent of the total assessed value of the proposed zone, hold a public hearing concerning the establishment of a proposed zone. The petition shall include a statement containing the following information:

a. The need for the proposed zone.

b. A description of the boundaries of the proposed zone.

c. The approximate number of families in the proposed zone.

2. The board may require the petitioners to post a bond conditioned upon the payment of all costs and expenses incurred in the proceedings if the zone is not established.

97 Acts, ch 152, §2

357H.3 Time of public hearing.

The public hearing required in section 357H.2 shall be held within thirty days of the presentation of the petition. Notice of hearing shall be given by publication as provided in section 331.305.

97 Acts, ch 152, §3

357H.4 Hearing on petition — action by board.

At the public hearing required in section 357H.3, the board may consider the boundaries of a proposed rural improvement zone, whether the boundaries shall be as described in the petition or otherwise, and for that purpose may amend the petition and change the boundaries of the proposed zone as stated in the petition. The board may adjust the boundaries of a proposed zone as needed to exclude land that has no reasonable likelihood of benefit from inclusion in a rural improvement zone. However, the boundaries of a proposed zone shall not be changed to incorporate property which is not included in the original petition.

Within ten days after the hearing, the board shall establish the rural improvement zone by resolution or disallow the petition. However, the zone shall not include any area which is part of an urban renewal area under chapter 403.

97 Acts, ch 152, §4

357H.5 Election of candidates for trustees.

When a preliminary plat has been approved by the board, an election shall be held within the ru-

ral improvement zone within sixty days to choose candidates for the offices of trustees of the zone. Notice of the election shall be given as provided in section 357H.3.

97 Acts, ch 152, §5

357H.6 Trustees — terms and qualifications.

The election of trustees of a rural improvement zone shall take place at a special election on ballots which shall not reflect a nominee's political affiliation. Nomination shall be made by petition in accordance with chapter 45. The petition form shall be furnished by the county commissioner of elections, signed by eligible electors of the rural improvement zone equal in number to one percent of the vote cast within the zone for governor in the last previous general election, and shall be filed with the county commissioner of elections. A plurality shall be sufficient to elect the five trustees of the rural improvement zone, and no primary election for that office shall be held. At the original election, two trustees shall be elected for one year, two for two years, and one for three years. The terms of the succeeding trustees are for three years. The terms of the trustees shall begin immediately after their election and certification. The trustees must be residents of the zone. Vacancies on the board shall be filled by appointment by the remaining trustees.

97 Acts, ch 152, §6; 98 Acts, ch 1168, §2

357H.7 Board of trustees — power.

The trustees of a rural improvement zone elected pursuant to section 357H.6 shall constitute the board of trustees of the zone and shall manage and control the affairs, property, and facilities of the zone. The board of trustees shall elect a president, a clerk, and a treasurer from its membership. The trustees may authorize construction, reconstruction, or repair of improvements within the zone following procedures set out in section 331.341. For these purposes, the trustees may purchase material, employ personnel, acquire real estate and interests in real estate, and perform all other acts necessary to properly maintain and operate the zone. The trustees are allowed necessary expenses in the discharge of their duties, but they shall not receive salaries.

97 Acts, ch 152, §7

357H.8 Certificates, contracts, and other obligations — standby tax.

To provide funds for the payment of the costs of improvement projects and for the payment of other activities authorized pursuant to section 357H.7, the board of trustees may borrow money and issue and sell certificates or may enter into contracts or other obligations payable from a sufficient portion of the future receipts of tax revenue authorized pursuant to section 357H.9 and the standby tax in subsection 4 of this section. The receipts shall be pledged to the payment of principal of and interest on the certificates, contracts, or other obligations.

1. Certificates may be sold at public sale or at private sale at par, premium, or discount at the discretion of the board of trustees. Chapter 75 does not apply to the issuance of these certificates.

2. Certificates may be issued with respect to a single improvement project or multiple projects and may contain terms or conditions as the board of trustees may provide by resolution authorizing the issuance of the certificates. However, certificates shall not be issued after January 1, 2007, except to refund other certificates as provided in subsection 3.

3. Certificates issued to refund other certificates may be sold at public sale or at private sale as provided in this section with the proceeds from the sale to be used for the payment of the certificates being refunded. The refunding certificates may be exchanged in payment and discharge of the certificates being refunded, in installments at different times, or an entire issue or series at one time. Refunding certificates may be sold or exchanged at any time on, before, or after the maturity of the outstanding certificates to be refunded, may be issued for the purpose of refunding a like, greater, or lesser principal amount of certificates, and may bear a rate of interest higher or lower than, or equivalent to, the rate of interest on certificates being renewed or refunded.

4. To further secure the payment of the certificates, the board of trustees shall, by resolution, provide for the assessment of an annual levy of a standby tax upon all taxable property within the rural improvement zone. The rate of the standby tax shall be not less than fifty cents per thousand dollars of the assessed value of the taxable property and not more than two dollars and fifty cents per thousand dollars of the assessed value of the taxable property. A copy of the resolution shall be sent to the county auditor. The revenues from the standby tax shall be deposited in a special fund and shall be expended only for the payment of principal of and interest on the certificates issued as provided in this section, when the receipt of tax revenues pursuant to section 357H.9 is insufficient. If payments are necessary and made from the special fund, the amount of the payments shall be promptly repaid into the special fund from the first available payments received which are not required for the payment of principal of or interest on certificates due. No reserves may be built up in the special fund in anticipation of a projected default. The board of trustees shall adjust the annual standby tax levy for each year to reflect the amount of revenues in the special fund and the amount of principal and interest which is due in that year.

5. Before certificates, contracts, or other obligations are issued or entered into, the board of

trustees shall publish a notice of its intention, stating the amount, the purpose, and the improvement project or projects for which the certificates, contracts, or other obligations are to be issued or entered into. A person may, within fifteen days after the publication of the notice, appeal the decision of the board of trustees in proposing to issue the certificates or to enter into the contracts or other obligations to the district court in the county in which the rural improvement zone exists. The action of the board of trustees in determining to issue the certificates or to enter into the contracts or other obligations is final and conclusive unless the district court finds that the board of trustees has exceeded its legal authority. An action shall not be brought which questions the legality of the certificates, contracts, or other obligations, the power of the board of trustees to issue the certificates or to enter into the contracts or other obligations, the effectiveness of any proceedings relating to the authorization of the project, or the authorization and issuance of the certificates or entrance into the contracts or other obligations after fifteen days from the publication of the notice of intention to issue certificates or enter into contracts or other obligations.

6. The board of trustees shall determine if revenues are sufficient to secure the faithful performance of obligations.

97 Acts, ch 152, §8; 98 Acts, ch 1168, §3; 2000 Acts, ch 1190, §2

357H.9 Incremental property taxes.

The board of trustees shall provide by resolution that taxes levied on the taxable property in a rural improvement zone each year by or for the benefit of the state, city, county, school district, or other taxing district after the effective date of the resolution shall be divided as provided in section 403.19, subsections 1 and 2, in the same manner as if the taxable property in the rural improvement zone was taxable property in an urban renewal area and the resolution was an ordinance within the meaning of those subsections. The taxes received by the board of trustees shall be allocated to, and when collected be paid into, a special fund and may be irrevocably pledged by the trustees to pay the principal of and interest on the certificates, contracts, or other obligations approved by the board of trustees to finance or refinance, in whole or in part, an improvement project. As used in this section, *"taxes"* includes, but is not limited to, all levies on an ad valorem basis upon land or real property located in the rural improvement zone.

97 Acts, ch 152, §9; 98 Acts, ch 1168, §4

357H.10 Dissolution of zone.

The rural improvement zone shall be dissolved upon the adoption of a resolution of the board of trustees which specifies that all improvements have been made in the zone and all indebtedness has been paid. Upon dissolution of the zone, all assets shall be deeded to a nonprofit corporation whose members are property owners of the improvement zone.

97 Acts, ch 152, §10

CHAPTER 358

SANITARY DISTRICTS

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CONVEYANCE TO CITY

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358.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §358.1 transferred to §358.1A

358.1A Incorporation.

If an area of territory is so situated that the construction, maintenance, and operation of a trunk sewer system and of a plant or plants for the treatment of sewage and the maintenance of one or more outlets for the drainage of it, after having been so treated, will be conducive to the public health, comfort, convenience, or welfare, the area may be incorporated as a sanitary district in the manner set forth in this chapter. Areas of contiguous or noncontiguous territory may be incorporated in a sanitary district.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.1]

92 Acts, ch 1204, §15

C2001, §358.1A

Former §358.1A transferred to §358.1B

358.1B Combined water and sanitary district.

1. The board of supervisors of a county or major part of a county in which a proposed combined water and sanitary district will be located may proceed with the establishment, operation, or dissolution of a combined water and sanitary district as provided in section 357.1B.

2. For the purpose of establishing, operating, or dissolving a combined water and sanitary district under chapter 357 and this chapter, the term *"sanitary district"* includes combined water and sanitary district where applicable.

92 Acts, ch 1204, §16

C93, §358.1A

C2001, §358.1B

358.2 Petition — deposit.

Any twenty-five or more eligible electors resident within the limits of any proposed sanitary district may file a petition in the office of the county auditor of the county in which the proposed sanitary district, or the major portion thereof, is located, requesting that there be submitted to the registered voters of such proposed district the question whether the territory within the boundaries of such proposed district shall be organized as a sanitary district under this chapter. Such petition shall be addressed to the board of supervisors of the county wherein it is filed and shall set forth:

1. An intelligible description of the boundaries of the territory to be embraced in such district.

2. The name of such proposed sanitary district.

3. That the public health, comfort, convenience or welfare will be promoted by the establishment of such sanitary district.

4. The signatures of the petitioners.

No territory shall be included within more than one sanitary district organized under this chapter, and if any proposed sanitary district shall fail to receive a majority of votes cast at any election thereon as hereinafter provided, no petition shall be filed for establishment of such a sanitary district within one year from the date of such previous election.

There shall be filed with the petition a bond with sureties approved by the auditor, or a certified check, credit union certified share draft or cash in an amount sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established.

No preliminary expense shall be incurred before the establishment of the proposed sanitary district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of the bond, the board of supervisors shall require the filing of an additional security until the additional bond is filed in sufficient amount to cover the expense.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.2]

84 Acts, ch 1055, §8; 85 Acts, ch 67, §43; 95 Acts, ch 67, §53

358.3 Jurisdiction — decisions — records.

The board of supervisors of the county in which the proposed sanitary district, or the major portion thereof, is located shall have jurisdiction of the proceedings on said petition as herein provided, and the decision of a majority of the members of said board shall be necessary for adoption. All orders of the board made hereunder shall be spread at length upon the records of the proceedings of the board of supervisors, but need not be published under section 349.16.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.3]

358.4 Date and notice of hearing.

1. The board of supervisors to which the petition is addressed, at its next meeting, shall set the time and place for a hearing on the petition. The board shall direct the county auditor in whose office the petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and content of the petition, by publication of a notice as provided in section 331.305. Proof of giving the notice shall be made by affidavit of the publisher and the proof shall be on file with the county auditor at the time the hearing begins. The notice of hearing shall be directed to all persons it may concern, and shall state:

a. That a petition has been filed with the county auditor of the county, naming it, for establishment of a proposed sanitary district, and the name of the proposed district.

b. An intelligible description of the boundaries of the territory to be embraced in the district.

c. The date, hour, and the place where the petition will come on for hearing before the board of supervisors of the named county.

d. That the board of supervisors will fix and determine the boundaries of the proposed district as described in the petition or otherwise, and for that purpose may alter and amend the petition. At the hearing all interested persons shall have an opportunity to be heard on the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries.

2. For a district which does not include land within a city, copy of the notice shall also be sent by mail to each owner, without naming them, of each tract of land or lot within the proposed district as shown by the transfer books of the auditor's office. The mailings shall be to the last known mailing address unless there is on file an affidavit of the auditor or of a person designated by the board to make the necessary investigation, stating that a mailing address is not known and that diligent inquiry has been made to ascertain it. The copy of notice shall be mailed no less than twenty days before the day set for hearing and proof of service shall be by affidavit of the auditor. The proofs of service required by this subsection shall be on file at the time the hearing begins.

3. In lieu of the mailing to the last known address a person owning land affected by a proposed district may file with the county auditor an instrument in writing designating the address for the mailing. This designation when filed is effective for five years and applies to all proceedings under this chapter. The person making the designation may change the address in the same manner as the original designation is made.

4. In lieu of publication, personal service of the notice may be made upon an owner of land in the proposed district in the manner and for the time required for service of original notices in the district court. Proof of the service shall be on file with the auditor on the date of the hearing.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.4]

84 Acts, ch 1051, §1; 87 Acts, ch 43, §10

358.5 Hearing of petition and order.

The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 358.4 and shall continue the hearing in session, with adjournments from day to day, if necessary, until completed, without being required to give any further notice of the hearing. Proof of the residences and qualifications of the petitioners as eligible electors shall be made by affidavit or otherwise as the board may direct. The board may consider the boundaries of a proposed sanitary district, whether they shall be as described in the petition or otherwise, and for that purpose may alter and amend the petition and limit or change the boundaries of the proposed district as stated in the petition. The board shall adjust the boundaries of a proposed district as needed to exclude land that has no reasonable likelihood of benefit from inclusion in the proposed district. The boundaries of a proposed district shall not be changed to incorporate property not included in the original petition and published notice until the owner of the property is given notice of inclusion as on the original hearing. All persons in the proposed district shall have an opportunity to be heard regarding the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries. The board of supervisors, after hearing the statements, evidence and suggestions made and offered at the hearing, shall enter an order fixing and determining the limits and boundaries of the proposed district and directing that an election be held for the purpose of submitting to the registered voters residing within the boundaries of the proposed district the question of organization and establishment of the proposed sanitary district as determined by the board of supervisors. The order shall fix a date for the election not more than sixty days after the date of the order.

However, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in the proposed district, may file a written remonstrance against the proposed district at or before the time fixed for the hearing on the proposed district with the county auditor. If the remonstrance is filed, the board of supervisors shall discontinue all further proceedings on the proposed district and charge the costs incurred to date relating to the establishment of the proposed district.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81,

§358.5]
84 Acts, ch 1051, §2; 95 Acts, ch 67, §53; 98 Acts, ch 1139, §1

358.6 Notice of election.
In its order for the election the board of supervisors shall direct the county commissioner of elections of the county in which the petition is filed to cause notice of the election to be given at least thirty days before the date of election by publication of the notice as provided in section 331.305. The notice shall state the time and place of holding the election and the hours when the polls will open and close, the purpose of the election, with the name of the proposed sanitary district and a description of the boundaries of it, and shall set forth briefly the limits of each voting precinct and the location of the polling places. Proof of publication shall be made in the manner provided in section 358.4 and filed with the county auditor.
[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.6]
92 Acts, ch 1204, §17

358.7 Election.
Each registered voter resident within such proposed sanitary district shall have the right to cast a ballot at such election and no person shall vote in any precinct but that of the person's residence. Ballots at such election shall be in substantially the following form, to wit:

For Sanitary District ☐
Against Sanitary District ☐

The board of supervisors shall cause a statement of the result of such election to be spread upon the records of the county auditor. If a majority of the votes cast upon the question of incorporation of the proposed sanitary district shall be in favor of the proposed sanitary district, such proposed sanitary district shall thenceforth be deemed an organized sanitary district under this chapter and established as conducive to the public health, comfort, convenience, and welfare.
[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.7]
94 Acts, ch 1169, §64

358.8 Expenses and costs of election.
The election held pursuant to this chapter shall be conducted by the county commissioner of elections. All expenses incurred in carrying out the foregoing sections of this chapter, together with the costs of the election, as determined by the county commissioner of elections, shall be paid by those who will be benefited by the proposed sanitary district. If the district is not established, the expenses and costs shall be collected upon the bond or bonds of the petitioners.
[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.8]
92 Acts, ch 1204, §18

358.9 Selection of trustees — term of office.
At the election provided for in section 358.7, the names of candidates for trustee of the district shall be written by the voters on blank ballots without formal nomination, and the board of supervisors which had jurisdiction of the proceedings for establishment of the sanitary district, together with the board of supervisors of any other county in which any part of the district is located, shall appoint three trustees from among the five persons receiving the greatest number of votes as trustees of the district. One of the trustees shall be designated to serve a term expiring on the first day of January which is not a Sunday or legal holiday following the next general election, one to serve a term expiring on the first day of January which is not a Sunday or legal holiday two years later, and one to serve a term expiring on the first day of January which is not a Sunday or legal holiday four years later. Thereafter, each term shall be for a term of years established by the board of supervisors, not less than three years or more than six years. Successors to trustees shall be elected by special election or at a special meeting of the board of trustees called for that purpose. For each special election called after the initial election, a candidate for office of trustee shall be nominated by a personal affidavit of the candidate or by petition of at least ten eligible electors of the district and the candidate's personal affidavit, which shall be filed with the county commissioner of elections at least twenty-five days before the date of the election. The form of the candidate's affidavit shall be substantially the same as provided in section 45.3.

Vacancies in the office of trustee of a sanitary district shall be filled by the remaining members of the board for the period until a successor is chosen in the manner prescribed by this section or by section 69.12, whichever is applicable.

In lieu of a special election, successors to trustees shall be elected at a special meeting of the board of trustees called for that purpose. Upon its own motion, the board of trustees may, or upon petition of landowners owning more than fifty percent of the total land in the district, shall, call a special meeting of the residents of the district to elect successors to trustees of the board. Notice of the meeting shall be given at least ten days before the date of the meeting by publication of the notice in a newspaper of general circulation in the district. The notice shall state the date, times, and location of the meeting and that the meeting is called for the purpose of electing one or more trustees to the board.

If the petition to establish a sanitary district requests a board of trustees of five members, the board of supervisors shall select five trustees from among the seven persons receiving the highest

number of votes at the initial election. Two trustees shall be designated to serve a term expiring on the first day of January which is not a Sunday or legal holiday following the next general election, two trustees to serve a term expiring on the first day of January which is not a Sunday or legal holiday two years later, and one to serve a term expiring on the first day of January which is not a Sunday or holiday four years later. Thereafter, each term shall be for a term of years established by the board of supervisors, not less than three years or more than six years. Successors to a five-member board selected under this paragraph shall be chosen by election and after the initial election, a candidate for office of trustee shall be nominated by a personal affidavit of the candidate or by petition of at least ten eligible electors of the district and the candidate's personal affidavit, which shall be filed with the commissioner of county elections at least sixty-nine days before the date of the general election. The form of the candidate's affidavit shall be substantially as provided in section 45.3.

Upon request of a three-member board of trustees or petition of the number of eligible electors of the district equal to at least five percent of the residents of the district filed at least ninety days before the next general election, the board of supervisors shall provide for the election of a five-member board of trustees with staggered terms of office of not more than six years. The five-member board of trustees shall become effective on the first day of January which is not a Sunday or legal holiday after that general election. The board of trustees or a petition of the number of eligible electors of the district equal to at least five percent of the residents of the district may also request the board of supervisors to implement a plan to reduce the number of trustees from five to three. The board of supervisors shall allow incumbent trustees to serve their unexpired terms of office.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.9; 82 Acts, ch 1199, §66, 96]

84 Acts, ch 1009, §1; 84 Acts, ch 1051, §3; 85 Acts, ch 135, §2; 92 Acts, ch 1204, §19, 20; 93 Acts, ch 24, §1; 94 Acts, ch 1045, §1

358.10 Trustee's bond.

Each trustee shall, before entering upon the duties of office, execute a bond payable to the district, with security to be approved by the board of supervisors which had jurisdiction of the petition for establishment of the district, in such form and amount as said board of supervisors may determine, which bond shall be filed with the county auditor of said county.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.10]

358.11 Sanitary district to be a body corporate.

Each sanitary district organized under this chapter shall be a body corporate and politic, with the name and style under which it was organized, and by such name and style may sue and be sued, contract and be contracted with, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the same at pleasure, and exercise all the powers conferred in this chapter.

All courts of this state shall take judicial notice of the existence of sanitary districts organized hereunder.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.11]

358.12 Board of trustees — powers.

The trustees elected as provided in section 358.9 constitute a board of trustees for the district by which they are elected. The board of trustees is the corporate authority of the sanitary district and shall manage and control the affairs and property of the district. A majority of the board of trustees shall constitute a quorum, but a smaller number may adjourn from day to day. The board of trustees shall elect a president, a clerk, and a treasurer from its membership and may employ employees as necessary, who shall hold their employment during the pleasure of the board. The board shall prescribe the duties and fix the compensation of all employees of the sanitary district and the amount of bond to be filed by the treasurer of the district and by any employee for whom the board may require bond. The members of the board of trustees shall receive a per diem of forty dollars for attendance at a meeting of the board or while otherwise engaged in official duties, but the total per diem for each member shall not exceed two thousand four hundred dollars for a fiscal year. However, the board of trustees, by resolution, may establish for its members a lower rate of pay than is fixed by this section. The members of the board shall also be reimbursed for their travel and other necessary expenses incurred in performing their official duties. Travel expenses are reimbursable at the rate specified in section 70A.9.

The board of trustees may adopt the necessary ordinances, resolutions, rules and regulations for the proper management and conduct of the business of the board of trustees and the corporation and for carrying out the purposes for which the sanitary district is formed.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.12]

358.13 Ordinances — publication or posting — time of taking effect.

All ordinances, resolutions, orders, rules, and regulations adopted by the board take effect from

and after their adoption and publication. The publication shall be by one publication in a newspaper of general circulation in the district, by posting copies in three public places within the district, or by other steps necessary to inform the public.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.13]

87 Acts, ch 197, §1

358.14 Proof of ordinances.

All ordinances, resolutions, orders, rules and regulations, and the date when same became effective, may be proven by the certificate of the clerk, under the seal of the corporation, if one has been adopted, and when printed in book or pamphlet form and purporting to be published by the board of trustees such book or pamphlet shall be received as evidence of the passage and legal publication or posting thereof as of the dates mentioned therein, in all courts and places, without further proof.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.14]

358.15 Personal interest in contracts.

No trustee of such district shall be directly or indirectly interested in any contract, work, or business of the district, or in the sale of any article the expense, price, or consideration of which is paid by such district; nor in the purchase of any real estate or other property belonging to the district, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of said district; provided, that nothing herein shall be construed as prohibiting the selection of any person as trustee because of the person's ownership of real estate in the district or because the person is a taxpayer in the district.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.15]

358.16 Power to provide for sewage disposal.

The board of trustees of any sanitary district organized under this chapter shall have power to provide for the disposal of the sewage thereof, including the sewage and drainage of any city or village within the boundaries of such district; to acquire, lay out, locate, establish, construct, maintain, and operate one or more drains, conduits, treatment plants, disposal plants, pumping plants, works, ditches, channels, and outlets of such capacity and character as may be required for the treatment, carrying off, and disposal of the sewage and industrial wastes and other drainage incidental thereto of such district; to lay out, establish, construct, maintain, and operate all such adjuncts, additions, auxiliary improvements, and works as may be necessary or proper for accomplishment of the purposes intended, and to procure supplies of water for operating, diluting, and flushing purposes; to maintain, repair, change, enlarge, and add to such facilities, improvements, and works as may be necessary or proper to meet the future requirements for the purposes aforesaid; and, when necessary for such purposes, any such facilities, improvements, and works and the maintenance and operation thereof may extend beyond the limits of such district, and the rights and powers of said board of trustees in respect thereto shall be the same as if located within said district, provided, no taxes shall be levied upon any property outside of such district; and provided further, that the district shall be liable for all damages sustained beyond its limits in consequence of any work or improvement authorized hereunder.

The board of trustees, however, may upon such petition of property owners representing at least twenty-five percent of the valuation of property not included within the district as constituted which seeks benefit from the operation of such sanitary district, include such property and the area involved within the limits of such sanitary district, and such added areas shall be subject to the same taxation as other portions of the district.

Nothing contained herein shall be construed to authorize or empower such board of trustees to operate a system of waterworks for the purpose of furnishing water to the inhabitants of the district, or to construct, maintain, or operate local municipal sewerage facilities, or to deprive municipalities within the district of their powers to construct and operate sewers for local purposes within their limits.

The board of trustees of such sanitary district may, however, upon petition of the council or governing body of any incorporated city within the sanitary district, contract with such city to undertake the operation of local municipal sewage facilities as part of the functioning of the sanitary district and make an agreement with such municipality for the levying of additional sewer or sewage disposal taxes, which taxes shall be levied by the municipality as now provided by law.

The board of trustees may require connection to the sanitary sewer system established, maintained, or operated by the district from any adjacent property within the district, and require the installation of sanitary toilets or other sanitary sewage facilities and removal of other toilet and other sewage facilities on the property.

If the property owner does not perform an action required under the preceding paragraph within a reasonable time after notice and hearing, the board of trustees may perform the required action and assess the costs of the action against the property for collection in the same manner as a property tax. The notice shall state the nature of the action and the time within which the action is required to be performed by the property owner, state the date, time, and place where the property owner will be heard by the board of trustees for the purpose of stating why the intended action should

not be required, and shall be given by certified mail to the property owner as shown on the records of the county auditor not less than four nor more than twenty days before the date of the hearing.

However, in the event of an emergency when the delay of notice and hearing might cause serious loss or injury to persons or property within the district, the board of trustees may perform any action which may be required under this section without prior notice and hearing, and assess the cost as provided in this section, following notice to the property owner and hearing in the time and manner provided in the preceding paragraph. In that event the board of trustees shall, by resolution, make a finding of the necessity to institute emergency proceedings under this section, and shall procure a certificate from a competent registered professional engineer or architect certifying that emergency action is necessary.

If any amount assessed against property pursuant to this section will exceed one hundred dollars, the board of trustees may permit the assessment to be paid in up to ten annual installments, in the manner and with the same interest rates as provided for assessments against benefited property under chapter 384, division IV.

An assessment levied pursuant to this section, including all interest and penalties, is a lien against the property with respect to which action was taken from the date of filing the schedule of assessments until the assessment is paid. Assessments have equal precedence with ordinary taxes and are not divested by judicial sale.

The procedures for making and levying an assessment pursuant to this section and for an appeal of the assessment are the same procedures as provided in sections 384.59 through 384.67 and sections 384.72 through 384.75, except that any notice required in those sections to be published in a newspaper may be sent by certified mail to the owner of the property to be assessed as shown on the records of the county auditor in lieu of the publication. The references in those sections to the city council are applicable to the board of trustees.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.16]

87 Acts, ch 197, §2

358.17 Power to acquire and dispose of property.

Any sanitary district organized under this chapter may acquire by purchase, condemnation, or otherwise, any and all real and personal property, rights of way and privileges, either within or without its corporate limits, required for its corporate purposes. Condemnation proceedings shall be conducted in the same manner, as near as may be, as provided for condemnation by counties under the laws of Iowa. Said sanitary districts shall have power to sell, convey, or otherwise dispose of any of the properties belonging to them when no longer required for their purposes.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.17]

358.18 Taxes — power to levy — tax sales.

The board of trustees of any sanitary district organized under this chapter shall have the power by ordinance to levy annually for the purpose of paying the administrative costs of such district, or for the payment of deficiencies in special assessments, or for both, a tax upon property within the territorial limits of such sanitary district not exceeding fifty-four cents per thousand dollars of the adjusted taxable valuation of the property within such district for the preceding fiscal year.

All taxes thus levied by the board shall be certified by the clerk on or before March 1 to the county auditor of each county wherein any of the property included within the territorial limits of the sanitary district is located, and shall be placed upon the tax list for the current fiscal year by the auditor or auditors. The county treasurer, or treasurers, of more than one county, shall collect all taxes so levied in the same manner as other taxes, and when delinquent the taxes shall draw the same interest. All taxes levied and collected shall be paid over by the officer collecting the taxes to the treasurer of the sanitary district.

Sales for delinquent taxes owing to such sanitary district shall be made at the same time and in the same manner as such sales are made for other taxes, and all provisions of the law of this state relating to the sale of property for delinquent taxes shall be applicable, so far as may be, to such sales.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.18]

93 Acts, ch 73, §3

358.19 Records and disbursements.

The clerk of each sanitary district shall keep a record of all the proceedings and actions of the trustees. The treasurer shall receive, collect, and disburse all moneys belonging to the district, and no claim shall be paid or disbursement made until it has been duly audited by the board of trustees.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.19]

358.20 Rentals and charges.

Any sanitary district may by ordinance establish just and equitable rates, charges, or rentals for the utilities and services furnished by the district to be paid to the district by every person, firm, or corporation whose premises are served by a connection to the utilities and services directly or indirectly. The rates, charges, or rentals, as near as may be in the judgment of the board of trustees of the district, shall be equitable and in proportion to the services rendered and the cost of the services, and taking into consideration in the case of the premises the quantity of sewage produced thereby

and its concentration, strength, and pollution qualities. The board of trustees may change the rates, charges, or rentals from time to time as it may deem advisable, and by ordinance may provide for collection. The board may contract with any municipality within the district, whereby the municipality may collect or assist in collecting any of the rates, charges, or rentals, whether in conjunction with water rentals or otherwise, and the municipality may undertake the collection and render the service. The board of trustees may also contract pursuant to chapter 28E with one or more city utilities or combined utility systems, including city utilities established pursuant to chapter 388, for joint billing or collection, or both, of combined service accounts for sanitary district services and utility services, and the contracts may provide for the discontinuance of one or more of the sanitary district services or water utility services if a delinquency occurs in the payment of any charges billed under a combined service account. The rates, charges, or rentals, if not paid when due, shall constitute a lien upon the real property served by a connection. The lien shall have equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

Sewer rentals, charges, or rates may supplant or replace, in whole or in part, any monetary levy of taxes which may be, or have been, authorized by the board of trustees for any of the following purposes:

1. To meet interest and principal payments on bonds legally authorized for the financing of sanitary utilities in any manner.

2. To pay costs of the construction, maintenance, or repair of such sanitary facilities or utilities, including payments to be made under any contract between municipalities for either the joint use of sewerage or sewage facilities, or for the use by one municipality of all or a part of the sewerage or sewer system of another municipality.

When a sewer rental ordinance has been passed and put into effect, prior ordinances or resolutions providing for monetary levy of taxes against real and personal property for such purposes, or the portion thereof replaced, may be repealed.

[C31, 35, §6066-d7; C39, §**6066.21;** C46, 50, 54, 58, 62, 66, 71, 73, §358.20, 393.7; C75, 77, 79, 81, §358.20]

87 Acts, ch 197, §3; 92 Acts, ch 1047, §1; 97 Acts, ch 62, §1

358.21 Debt limit — borrowing — bonds — purposes.

Any sanitary district organized hereunder may borrow money for its corporate purposes, but shall not become indebted in any manner or for any purpose to an amount in the aggregate exceeding five percent on the value of the taxable property within such district, to be ascertained by the last state and county tax lists previous to the incurring of such indebtedness. Indebtedness within this constitutional limit shall not include the indebtedness of any other municipal corporation located wholly or partly within the boundaries of such sanitary district.

Subject only to this debt limitation, any such sanitary district organized hereunder shall have and it is hereby vested with all of the same powers to issue bonds, including both general obligation and revenue bonds, which cities now or may hereafter have under the laws of this state. In the application of such laws to this chapter, the words used in any such laws referring to municipal corporations or to cities shall be held to include sanitary districts organized under this chapter, the words "council" or "city council" shall be held to include the board of trustees of a sanitary district; the words "mayor" and "clerk" shall be held to include the president and clerk of any such board of trustees or sanitary district; and like construction shall be given to any other words in such laws where required to permit the exercise of such powers by sanitary districts.

Any and all bonds issued hereunder shall be signed by the president of the board of trustees and attested by the clerk, with the seal of the district, if any, affixed, and interest coupons attached thereto shall be attested by the signature of the clerk.

The proceeds of any bond issue made under the provisions of this section shall be used only for the purpose of acquiring, locating, laying out, establishing and construction of drainage facilities, conduits, treatment plants, pumping plants, works, ditches, channels and outlets of such capacity and character as may be required for the treatment, carrying off and disposal of the sewage and industrial wastes and other drainage incidental thereto of such district, or to repair, change, enlarge and add to such facilities as may be necessary or proper to meet the requirements present and future for the purposes aforesaid. Proceeds from such bond issue may also be used for the payment of special assessment deficiencies. Said bonds shall be payable in not more than forty annual installments and with interest at a rate not exceeding that permitted by chapter 74A, and shall be made payable at such place and be of such form as the board of trustees shall by resolution designate. Any sanitary district issuing bonds as authorized in this section is hereby granted authority to pledge the future avails of a tax levy to the payment of the principal and interest of such bonds after the same come due, and the power to impose and certify said levy is hereby granted to the trustees of sanitary districts organized under the provisions of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81,

§358.21]

358.22 Special assessments and connection fees.

The board of trustees of a sanitary district may provide for payment of all or any portion of the costs of acquiring, locating, laying out, constructing, reconstructing, repairing, changing, enlarging, or extending conduits, ditches, channels, outlets, drains, sewers, laterals, treatment plants, pumping plants, and other necessary adjuncts thereto, by assessing all, or any portion of the costs, on adjacent property according to the benefits derived. For the purposes of this chapter, the board of trustees may define *"adjacent property"* as all that included within a designated benefited district or districts to be fixed by the board, which may be all of the property located within the sanitary district or any lesser portion of that property. It is not a valid objection to a special assessment that the improvement for which the assessment is levied is outside the limits of the sanitary district, but a special assessment shall not be made upon property situated outside of the sanitary district. Special assessments pursuant to this section shall be in proportion to the special benefits conferred upon the property, and not in excess of the benefits, and an assessment shall not exceed twenty-five percent of the value of the property at the time of levy. The value of a property is the present fair market value of the property with the proposed public improvements completed. Payment of installments of a special assessment against property used and assessed as agricultural property shall be deferred upon the filing of a request by the owner in the same manner and under the same procedures as provided in chapter 384 for special assessments by cities.

The assessments may be made to extend over a period not to exceed fifteen years, payable in as nearly equal annual installments as practicable. A majority vote of the board of trustees is requisite and sufficient for any action required by the board of trustees under this section.

Subject to the limitations otherwise stated in this section, a sanitary district organized under this chapter has all of the powers to specially assess the costs of improvements described in this section, including the power to issue special assessment bonds, warrants, project notes, or other forms of interim financing obligations, which cities have under the laws of this state.

Subject to the limitations otherwise stated in this section, the board of trustees may establish one or more benefited districts and schedules of fees for the connection of property to the sanitary sewer facilities of a sanitary district. Each person whose property will be connected to the sanitary sewer facilities of a sanitary district shall pay a connection fee to the sanitary district, which may include the equitable cost of extending sanitary sewer service to the benefited district and reasonable interest from the date of construction to the date of payment. In establishing the benefited districts and establishing and implementing the schedules of fees, the board of trustees shall act in accordance with the powers granted to a city in section 384.38, subsection 3, and the procedures in that subsection. However, all fees collected under this paragraph shall be paid to the sanitary district and the moneys collected as fees shall be used only by the sanitary district to finance improvements or extensions to its sanitary sewer facilities, to reimburse the sanitary district for funds disbursed by its board of trustees to finance improvements or extensions to its sanitary sewer facilities, or to pay debt service on obligations issued to finance improvements or extensions to its sanitary sewer facilities. This paragraph does not apply when a sanitary district annexation plan or petition includes annexation of an area adjoining the district or a petition has not been presented for a sewer connection. Until the annexation becomes effective or the annexation plan or petition is abandoned, the state mandate contained in section 455B.172, subsections 3, 4, and 5, shall not apply unless the property owner requests to be connected to the sanitary district's sewer facilities and voluntarily pays the connection fee.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.22]

87 Acts, ch 197, §4; 93 Acts, ch 57, §1; 97 Acts, ch 62, §2

358.23 Appeal to district court.

Any person aggrieved by any proceeding had by the board of supervisors or by the board of trustees as herein provided in relation to any matter involving the person's rights not included under the provisions of section 358.22 may appeal to the district court of the county in which the proceedings were had. Such appeals shall be governed in all respects as is provided by pertinent sections under chapter 468, subchapter I, parts 1 to 5.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §358.23]

358.24 Contracts outside of district.

A sanitary district may enter into contracts with persons or firms outside its limits for the processing of sewage but the rate for processing shall not be less than that charged the inhabitants of the district.

A district entering into a contract may lay sewer lines in highways outside the district upon first obtaining the permission of the state department of transportation in the case of primary roads and the board of supervisors in case of secondary roads, on written application designating the particular highway and part thereof, the use of which is desired.

A sanitary district adjoining a border of the state and owning and operating a sewage disposal

plant, may contract with the governing body of any legal entity in an adjacent area in another state, to process the sewage from the area. The contract shall be subject to approval of the Iowa department of public health.

[C58, 62, 66, 71, 73, §393.10, 393.11, 393.13; C75, 77, 79, 81, §358.24]

358.25 Revenue bonds.

Sanitary districts incorporated under this chapter may exercise the powers granted to counties in sections 331.462 to 331.470, to issue revenue bonds for the purposes in section 331.461, subsection 2, paragraphs *"b"* and *"c"*.

[C35, §6066 – f1, f5, f8; C39, §**6066.24, 6066.28 – 6066.32;** C46, 50, 54, 58, 62, 66, §394.1, 394.5 – 394.9; C71, 73, §394.1, 394.5 – 394.9, 394.13; C75, 77, 79, 81, §332.44; S81, §358.25; 81 Acts, ch 117, §1069]

358.26 Annexation.

1. In a county which has more than seven thousand five hundred acres of natural lakes, the board of trustees may, or upon request of property owners representing twenty-five percent of the valuation of the property to be annexed shall, file a petition in the office of county auditor of the county in which the property to be annexed or the major part of the property is located, requesting that there be submitted to the voters of the existing district and the area to be annexed the question whether the territory proposed to be annexed should be annexed to the sanitary district. The property to be annexed must be located within the watershed of a natural lake or navigable water as defined in section 462A.2 in the existing district. The board of supervisors of the county in which the property to be annexed or the major part of the property is located shall have jurisdiction of the proceedings on the petition.

2. The petition shall be addressed to the board of supervisors of the county in which the property to be annexed or the major part of the property is located and shall include the following:

a. An intelligible description of the property to be annexed to the sanitary district.

b. A statement that the public health, comfort, convenience, or welfare will be promoted by the annexation of the property.

c. The signatures of the president and the clerk of the board of trustees.

98 Acts, ch 1139, §2

358.27 Hearing on annexation — date and notice.

1. The board of supervisors to which a petition filed pursuant to section 358.26 is addressed, at its next meeting, shall set the time and place for a public hearing on the petition. The board of supervisors shall direct the county auditor to give notice to interested persons of the pendency and content of the petition and of the public hearing by publication of a notice as provided in section 331.305. Proof of publication shall be filed with and preserved by the county auditor. The notice of the public hearing shall include the following information:

a. That a petition has been filed with the county auditor proposing to annex property to the district.

b. An intelligible description of the property to be annexed to the district.

c. The date, time, and place of the public hearing at which the petition shall be considered by the county board of supervisors.

d. That the county board of supervisors shall determine the property to be annexed as described in the petition or otherwise described and, for the purpose of describing the property, the county board of supervisors may alter and amend the petition.

2. A copy of the notice shall also be sent by mail to each owner of each tract of land within the area to be annexed as shown by the transfer books of the county auditor's office. The mailings shall be to the last known address unless there is on file an affidavit of the county auditor or of a person designated by the board of supervisors to make the necessary investigation, stating that an address is not known and that diligent inquiry has been made to ascertain the address. The copy of the notice shall be mailed not less than twenty days before the date of the public hearing and the proof of service shall be made by affidavit of the county auditor. The proof of service shall be on file at the commencement of the public hearing.

3. In lieu of the mailing to the last known address, a person owning land to be annexed may file with the county auditor a written instrument designating the owner's mailing address for annexation purposes. The designated address is effective for five years and applies to all annexation proceedings pursuant to sections 358.26 through 358.29.

4. In lieu of publication or notice by mail, personal service of the notice may be made upon an owner of land proposed for annexation in the same manner as required for the service of original notices in the district court.

98 Acts, ch 1139, §3

358.28 Annexation hearing.

The board of supervisors to whom a petition filed pursuant to section 358.26 is addressed shall preside at the public hearing provided for in section 358.27 and shall continue the hearing with adjournments from day to day until completed without giving further notice of the hearing. A representative of the sanitary district board of trustees shall attend the public hearing and be available to answer questions regarding the proposed annexation. The board of supervisors may consider the property to be annexed, whether the

property shall be described as provided in the petition or be otherwise described, and for the purpose of describing the property, may amend the petition by limiting or changing the property to be annexed as stated in the petition. The board of supervisors shall adjust the property to be annexed as needed to exclude land that has no reasonable likelihood of benefit from inclusion in the area to be annexed. The boundaries of the area to be annexed shall not be changed to incorporate property which is not included in the petition until the owner of the property is given notice of the proposed annexation as provided in section 358.27.

All persons in the district and in the area to be annexed shall have an opportunity to be heard regarding the proposed annexation and make suggestions regarding the property to be annexed. The board of supervisors, after hearing the statements, evidence, and suggestions at the public hearing, shall enter an order determining the property to be annexed and directing that the question of annexation be submitted at an election to the registered voters residing within the district and within the area to be annexed. The order shall fix a date for the election which shall be held not more than sixty days after the date of the order.

98 Acts, ch 1139, §4

358.29 Notice, election, and expenses — costs.

1. In the order for the election pursuant to section 358.28, the board of supervisors shall direct the county commissioner of elections to give notice of the election at least twenty days before the date of election by publication of the notice as provided in section 331.305. The notice shall state the time and place of the election, the hours when the polls will be open, the purpose of the election including a description of the property to be annexed, a brief description of the limits of each voting precinct, and the location of polling places. Proof of publication shall be made in the same manner as provided in section 358.27 and filed with the county auditor.

2. Each registered voter who resides within the sanitary district and each registered voter who resides in the area to be annexed shall have the right to cast a ballot at the election. A registered voter shall not vote in any precinct except the precinct in which the voter resides. The ballots at the election shall be in substantially the following form:

For annexation ☐
Against annexation ☐

3. The results of an election shall be noted on the records of the county auditor. If a majority of the votes cast on the question of annexation favors annexation, the property contained in the area to be annexed shall be included in the sanitary district.

4. An election held pursuant to this section shall be conducted by the county commissioner of elections. All expenses incurred in implementing sections 358.26 through 358.29, including the costs of an election as determined by the county commissioner of elections, shall be paid by the sanitary district.

98 Acts, ch 1139, §5

358.30 Annexation of land by a city — compensation.

A sanitary district shall be fairly compensated for losses resulting from annexation. The governing body of a city or city utility and the board of trustees of the sanitary district may agree to terms which provide that the facilities owned by the sanitary district and located within the city shall be retained by the sanitary district for the purpose of sanitary service to customers outside the city. If an agreement is not reached within ninety days, the issues may be submitted to arbitration. If submitted, an arbitrator shall be selected by a committee which includes one member of the governing body of the city or its designee, one member of the sanitary district's board of trustees or its designee, and a disinterested party selected by the other two members of the committee. A list of qualified arbitrators may be obtained from the American arbitration association or another recognized arbitration organization or association.

93 Acts, ch 57, §2

CONVEYANCE TO CITY

358.31 Petition filed.

A board of trustees of a sanitary district may, by resolution, authorize the filing of a petition in the office of the county auditor of the county in which the sanitary district or a major portion of it is located, requesting the conveyance and discontinuance of the sanitary district. The petition shall be addressed to the board of supervisors of the county where it is filed and must set forth:

1. The name of the sanitary district.

2. That the sanitary district lies wholly or partially within the corporate limits of a city, or the depository for the sanitary district is a municipal sanitary sewage system.

3. That the public health, comfort, convenience or welfare will be promoted by the conveyance and discontinuance of the sanitary district and the assumption of the duties, responsibilities and functions of the sanitary district by the city.

4. A statement that the city has agreed to assume the duties, responsibilities and functions of the sanitary district upon the conveyance and discontinuance. A copy of the agreement shall be attached to the petition.

5. A listing of the assets and liabilities of the sanitary district, including a complete statement

of indebtedness.

6. A copy of the resolution of the board of trustees of the sanitary district.

[C75, 77, 79, 81, §358.25; S81, §358.31]

358.32 Jurisdiction by board of supervisors.

The board of supervisors of the county in which the sanitary district or a major portion of it is located shall have jurisdiction of the proceedings on the petition, and the decision of a majority of the members of the board shall be necessary for approval of the petition for conveyance and discontinuance. Orders of the board made under this section shall be spread upon the records of the proceedings of the board of supervisors, and shall be filed with the county recorder but need not be published under section 349.16.

[C75, 77, 79, 81, §358.26; S81, §358.32]

358.33 Hearing on petition.

The board of supervisors to whom the petition is addressed, at its next regular meeting shall set the time and place when it shall meet for a hearing on the petition, and it shall direct the county auditor in whose office the petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and request of the petition for the conveyance and discontinuance by publication of a notice as provided in section 331.305. Proof of giving notice shall be made by affidavit of the publisher and shall be filed with the county auditor at the time the hearing begins.

[C75, 77, 79, 81, §358.27; S81, §358.33]

87 Acts, ch 43, §11

358.34 Notice.

The notice of hearing shall state the following:

1. That a petition has been filed with the county auditor of the county for the conveyance and discontinuance of the sanitary district.

2. An intelligible description of the boundaries of the sanitary district.

3. The date, hour and place where the petition will be heard before the board of supervisors of the county.

4. That the board of supervisors will hear all persons having an interest in the matter and that after the hearing, the board of supervisors will take action as is in the best interest of the sanitary district.

[C75, 77, 79, 81, §358.28; S81, §358.34]

358.35 Conducting hearing.

The board of supervisors to whom the petition is addressed shall preside at the hearing and shall continue the same in session with adjournments from day to day, if necessary, and until completed, without being required to give further notice. At the hearing, all persons interested in the matter of the conveyance and discontinuance of the sanitary district may appear and shall be heard, for and against the conveyance and discontinuance, and the board shall examine into the matter and the equitable distribution of the assets, and equitable distribution and assumption of the liabilities which have accrued during the time the sanitary district has been in existence. The board shall receive evidence on the question from the parties interested, and, after hearing and reviewing the statements, evidence, and suggestions made and offered at the hearing, if it finds that the sanitary district lies wholly or partially within the corporate limits of a city or that the depository of the district is a municipal sanitary sewage system, that the public health, comfort, convenience or welfare will be promoted by the conveyance and discontinuance of the sanitary district and the assumption of the duties, responsibilities and functions of the sanitary district by the city, and that the city has agreed to assume the duties, responsibilities and functions of the sanitary district, shall enter an order specifying the matter and specifying the equitable distribution of the assets, and the equitable distribution and assumption of the liabilities and responsibilities of the sanitary district and setting an effective date of the conveyance and discontinuance.

[C75, 77, 79, 81, §358.29; S81, §358.35]

358.36 Filing order of discontinuance.

When a sanitary district has been discontinued by order of the board of supervisors, as provided in this division, the order of the board of supervisors shall be filed in the office of the recorder in the county or counties in which the sanitary district is located. The agreement of the city in which the sanitary district is located and which has agreed to assume the duties, responsibilities and functions of the sanitary district shall also be filed along with, and as part of the order of the board of supervisors conveying and discontinuing the district.

[C75, 77, 79, 81, §358.30; S81, §358.36]

358.37 Pending rights or liabilities.

The assumption by the city shall not affect or impair any rights or liabilities then existing for or against either the sanitary district or the city, and they may be enforced as provided in this division.

[C75, 77, 79, 81, §358.31; S81, §358.37]

358.38 Indebtedness assumed.

The indebtedness of the sanitary district shall be assumed and paid by the city, and may be paid by a tax to be levied exclusively upon the property within the jurisdiction of the sanitary district as it existed prior to the conveyance and discontinuance, or by the issuance of such bonds as cities may issue for purchasing and acquiring any sanitary sewer system or sewage disposal works and facili-

ties or both.

[C75, 77, 79, 81, §358.32; S81, §358.38]

358.39 Claims prosecuted against city.

Suits to enforce claims or demands existing at the time of the conveyance, discontinuance and assumption may be prosecuted or brought against the city which assumes the obligations of the sanitary district, and judgments obtained shall be paid as provided in section 358.38 for the payment of the indebtedness.

[C75, 77, 79, 81, §358.33; S81, §358.39]

358.40 Dissolution.

1. After three years from the establishment of a sanitary sewer district, a petition may be filed in the office of the county auditor, addressed to the board of supervisors, signed by a majority of persons owning land in the district and who in aggregate own at least sixty percent of the land in the district. The petition shall include the above facts and recite each of the following:

a. That more than three years has passed since the date of the election which established the district.

b. That there are no bonds or other evidences of indebtedness outstanding against the district, or if there is indebtedness, the petition shall contain a plan of dissolution which makes adequate provisions for payment of the indebtedness.

c. That a construction contract has not been let or work done on any improvements in the district or if either has occurred, the petition shall contain a plan of dissolution which makes adequate provisions for payment of the contract price or for the work.

2. All costs and expenses of the district shall be assessed against the district before dissolution by the levy of an annual tax necessary to accomplish payment, but the levy shall not exceed the rate provided in this section.

3. The board shall examine the petition at its next meeting after its filing or within twenty days of the filing, whichever date is earlier. Within ten days of the meeting, the board shall publish notice of the petition and the date, time, and place of the meeting at which time the board proposes to take action on the petition. The notice shall be published in a newspaper of general circulation published in the district and, if no newspaper is published within the district, in a newspaper published in the county in which the major part of the district is located. At the board's meeting, or subsequent meetings as necessary, if the petition is found to comply with the requirements of this section and the board of trustees consents by majority vote, the board of supervisors may provide for payment as requested or modify the method of payment of costs and expenses.

4. If the board decides that dissolution is warranted for the best interest of the public, it shall publish a notice in a newspaper of general circulation published in the district or, if no newspaper is published in the district, in a newspaper published in the county in which the major part of the district is located and give notice by mail to all known claimants or creditors of the district that it will receive and adjudicate claims against the district for four months from the date the notice is published and shall levy an annual tax as necessary against all property in the district for the number of years required to pay all claims allowed. However, the annual tax levied under this subsection shall not exceed four dollars per thousand dollars of assessed valuation of the taxable property within the district at the time of dissolution. The levy shall be made in the same manner as provided in section 76.2. After the board makes a specific finding that all indebtedness, costs, and expenses have been paid or levies approved for their payment, the board shall dissolve the district by resolution entered upon its records. The dissolution order shall be noted by the auditor on the county records, showing the date when the dissolution became effective.

5. The records of a dissolved district including, but not limited to, copies of all engineering files and work undertaken by engineers of a dissolved district, shall be deposited with the county auditor of the county designated by the board. Any remaining balances shall be deposited in the general fund of the county designated by the board. All other assets of the dissolved district shall become, by dissolution, assets of the county.

6. An action shall not be commenced to contest action of the board of supervisors under this section in adjudicating claims, providing for the levy of a tax, or dissolving the district unless it is brought within thirty days of the entry of the dissolution order on the county record.

84 Acts, ch 1051, §4

CHAPTER 358A

COUNTY ZONING COMMISSION

Transferred to chapter 335

CHAPTER 358B

COUNTY LIBRARIES

Transferred to chapter 336

CHAPTER 358C

REAL ESTATE IMPROVEMENT DISTRICTS

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358C.1 Legislative findings — purpose — definitions.

1. The general assembly finds and declares as follows:

a. The economic health and development of Iowa communities is tied to opportunities for jobs in and near those communities and the availability of jobs is in part tied to the availability of affordable, decent housing in those communities.

b. A need exists for a program to assist developers and communities in increasing the availability of housing in Iowa communities.

c. A shortage of opportunities and means for developing local housing exists. It is in the best interest of the state and its citizens for infrastructure development which will lower the costs of developing housing.

d. The expansion of local housing is dependent upon the cost of providing the basic infrastructure necessary for a housing development. Providing this infrastructure is a public purpose for which the state may encourage the formation of real estate improvement districts for the purpose of providing water, sewer, roads, and other infrastructure.

2. As used in this chapter, unless the context otherwise requires:

a. *"Board"* means the board of trustees of a real estate improvement district.

b. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

c. *"Construction"* includes materials, labor, acts, operations, and services necessary to complete a public improvement.

d. *"Cost"* of a public improvement includes the cost of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, legal services, acquisition of land, consequential damages, easements, rights-of-way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for not more than twelve months thereafter, and printing and sale of bonds.

e. *"District"* means a real estate improvement district as created in this chapter.

f. *"Public improvement"* includes the principal structures, works, component parts, and accessories of the facilities or systems specified in section 358C.4.

g. *"Repair"* includes materials, labor, acts, operations, and services necessary for the reconstruction, reconstruction by widening, or resurfacing of a public improvement.

95 Acts, ch 200, §1; 96 Acts, ch 1204, §1; 2000 Acts, ch 1087, §1; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

358C.2 Pilot program established. Repealed by 96 Acts, ch 1204, § 12.

358C.3 Real estate improvement district created.

1. A majority of the owners having an interest in the real property within the limits of a proposed district may file a petition in the office of county auditor of the county in which the proposed district or major part of the proposed district is located, requesting that the question be submitted to the registered voters of the proposed district of whether the territory within the boundaries of the proposed district shall be organized as a real estate improvement district as provided in this chapter.

2. All of the owners having an interest in the real property within the limits of a proposed district may file a petition in the office of county auditor of the county in which the proposed district or a major part of the proposed district is located, requesting that the proposed district be organized as a real estate improvement district as provided in this chapter.

3. Only areas of contiguous territory may be incorporated within a district. The petition shall be addressed to the board of supervisors if all or part of the proposed district includes territory located outside the boundaries of a city, shall be submitted to the board of supervisors before it is filed with the county auditor, and shall set forth the following information:

a. The name of the district.

b. The district shall have perpetual existence.

c. The boundaries of the district.

d. The names and addresses of the owners of land in the proposed district.

e. The description of the tracts of land situated in the proposed district owned by those persons who may organize the district.

f. The names and descriptions of the real estate owned by the persons who do not join in the organization of the district, but who will be benefited by the district.

g. A listing of one or more of the district improvements specified in section 358C.4 which will be carried out by the district.

h. The owners of real estate in the proposed district that are unknown may also be set out in the petition as being unknown.

i. That the establishment of the proposed district will be conducive to the public health, comfort, convenience, and welfare.

4. The petition shall also state that the owners of real estate who are forming the proposed district are willing to pay the taxes which may be levied against all of the property in the proposed district and special assessments against the real property benefited which may be assessed against them to pay the costs necessary to carry out the purposes of the district.

5. The petition shall also state that the owners of real estate who are forming the proposed district waive any objections to a subsequent annexation by a city.

6. The petition shall propose the names of three or more trustees who shall be owners of real estate in the proposed district or the designees of owners of property in the proposed district, to serve as a board of trustees until their successors are elected and qualified if the district is organized. The board of trustees shall only carry out those purposes which are authorized in this chapter and listed in the petition. Each person proposed as a trustee shall disclose whether the person has any financial interest in any business which is or may be a developer or contractor for public improvements within the proposed real estate improvement district and the extent of the person's land ownership in the district, if any.

7. If the petition requests that the district be organized without an election, the petition shall contain the signatures of all known owners of property within the proposed district.

8. The petition shall be submitted to and approved by the city council before it is filed with the county auditor as provided in subsection 1. If a petition includes a proposed district located solely within the boundaries of a city, the petition is not subject to action by the board of supervisors except for the purpose of selecting the initial trustees and setting the election date to finally organize the district or the date to organize the district if no election is required.

9. A proposed district shall be created only from parcels of land within the boundaries of a city, on parcels of land, all or the major part of which is within two miles of the boundaries of a city, or on parcels of land from both locations.

95 Acts, ch 200, §3; 96 Acts, ch 1204, §2

358C.4 Public improvements authorized.

1. A district may acquire, construct, reconstruct, install, maintain, and repair any of the public improvements listed in subsection 2.

2. A public improvement includes the principal structures, works, component parts, and accessories of any of the following:

a. Underground gas, water, heating, sewer, telecommunications, and electrical connections located in streets for private property.

b. Sanitary, storm, and combined sewers.

c. Waterworks, water mains, and extensions.

d. Emergency warning systems.

e. Pedestrian underpasses or overpasses.

f. Drainage conduits, dikes, and levees for flood protection.

g. Public waterways, docks, and wharfs.

h. Public parks, playgrounds, and recreational facilities.

i. Clearing, stripping, grubbing, earthwork, erosion control, lot grading, street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing with oil and gravel or chloride.

j. Street lighting fixtures, connections, and fa-

cilities.

k. Sewage pumping stations.

l. Traffic control devices, fixtures, connections, and facilities.

m. Public roads, streets, and alleys.

95 Acts, ch 200, §4; 96 Acts, ch 1204, §3

358C.5 Date and notice of hearing.

1. The board of supervisors to which the petition is addressed, at its next meeting, shall set the time and place for a hearing on the petition. The board shall direct the county auditor in whose office the petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and content of the petition, by publication of a notice as provided in section 331.305. Proof of giving the notice shall be made by affidavit of the publisher and the proof shall be on file with the county auditor at the time the hearing begins. The notice of hearing shall be directed to all persons it may concern, and shall state:

a. That a petition has been filed with the county auditor of the county, naming it, for establishment of a proposed district, and the name of the proposed district.

b. An intelligible description of the boundaries of the territory to be embraced in the district.

c. The date, hour, and the place where the petition will be brought for hearing before the board of supervisors of the named county.

d. That the board of supervisors will fix and determine the boundaries of the proposed district as described in the petition or otherwise, and for that purpose may alter and amend the petition. At the hearing all interested persons shall have an opportunity to be heard on the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries.

e. That, in the case of a petition under section 358C.3, subsection 2, a property owner who was not known and who did not sign the petition and who does not object to the proposed district in writing prior to the hearing or in person at the hearing shall waive all objections to the organization of the proposed district.

2. For a district which does not include land within a city, copy of the notice shall also be sent by mail to each owner, without naming them, of each tract of land or lot within the proposed district as shown by the transfer books of the auditor's office. The mailings shall be to the last known mailing address unless there is on file an affidavit of the auditor or of a person designated by the board to make the necessary investigation, stating that a mailing address is not known and that diligent inquiry has been made to ascertain it. The copy of notice shall be mailed no less than twenty days before the day set for hearing and proof of service shall be by affidavit of the auditor. The proofs of service required by this subsection shall be on file at the time the hearing begins.

3. In lieu of the mailing to the last known address a person owning land affected by a proposed district may file with the county auditor an instrument in writing designating the address for the mailing. This designation when filed is effective for five years and applies to all proceedings under this chapter. The person making the designation may change the address in the same manner as the original designation is made.

4. In lieu of publication, personal service of the notice may be made upon an owner of land in the proposed district in the manner and for the time required for service of original notices in the district court. Proof of the service shall be on file with the auditor on the date of the hearing.

95 Acts, ch 200, §5

358C.6 Hearing of petition and order.

The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 358C.5 and shall continue the hearing in session, with adjournments from day to day, if necessary, until completed, without being required to give any further notice of the hearing. Proof of the residences and qualifications of the petitioners as registered voters shall be made by affidavit or otherwise as the board may direct. The board may consider the boundaries of a proposed district, whether the boundaries are described in the petition or otherwise, and for that purpose may alter and amend the petition and limit or change the boundaries of the proposed district as stated in the petition. The board shall adjust the boundaries of a proposed district as needed to exclude land that has no reasonable likelihood of benefit from inclusion in the proposed district. The boundaries of a proposed district shall not be changed to incorporate property not included in the original petition and published notice until the owner of the property is given notice of inclusion as on the original hearing. All persons in the proposed district shall have an opportunity to be heard regarding the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries, and the board of supervisors, after hearing the statements, evidence, and suggestions made and offered at the hearing, shall approve or reject the petition. If the petition is approved, the board shall enter an order fixing and determining the limits and boundaries of the proposed district and whether or not all present and future property owners within the district have waived any objections to the annexation by a city if the district has issued obligations or bonds for public improvement and the city assumes those obligations, and, if the petition was requested under section 358C.3, subsection 1, directing that an election be held for the purpose of submitting to the registered voters owning land within the boundaries of the proposed district the question of organization

and establishment of the proposed district as determined by the board of supervisors. The order shall fix a date for the election not more than sixty days after the date of the order. If the petition was requested under section 358C.3, subsection 2, the order shall fix a date for the organization of the district.

95 Acts, ch 200, §6

358C.7 Notice of election.

In its order for the election the board of supervisors shall direct the county commissioner of elections of the county in which the petition is filed to cause notice of the election to be given at least thirty days before the date of election by publication of the notice as provided in section 331.305. The notice shall state the time and place of holding the election and the hours when the polls will open and close, the purpose of the election, with the name of the proposed district and a description of the boundaries of the proposed district, and shall set forth briefly the limits of each voting precinct and the location of the polling places. Proof of publication shall be made in the manner provided in section 358C.5 and filed with the county auditor.

95 Acts, ch 200, §7

358C.8 Election.

1. Each registered voter resident within the proposed district shall have the right to cast a ballot at the election and a person shall not vote in any precinct but that of the person's residence. Ballots at the election shall be in substantially the following form, to wit:

For Real Estate Improvement District ☐
Against Real Estate Improvement District ☐

2. The board of supervisors shall cause a statement of the result of the election to be included in the records of the county auditor. If a majority of the votes cast upon the question of incorporation of the proposed district shall be in favor of the proposed district, the proposed district shall be deemed an organized real estate improvement district under this chapter and established as conducive to the public health, comfort, convenience, and welfare.

3. In the event the petition and order provide that any present or future owner of property within the district waives objection to annexation if the district has issued obligations or bonds for a public improvement and the annexing city assumes those obligations, the board of supervisors shall file a certified declaration of that provision and a legal description of all real estate in the district with the county recorder in each county in which the district is located.

95 Acts, ch 200, §8

358C.9 Expenses and costs of election.

The election held pursuant to this chapter shall be conducted by the county commissioner of elections. All expenses incurred in carrying out the preceding sections of this chapter, and the costs of the election, as determined by the county commissioner of elections, shall be paid by those who will be benefited by the proposed district. If the district is not established, the expenses and costs shall be collected upon the bonds of the petitioners.

95 Acts, ch 200, §9

358C.10 Selection of trustees — term of office.

1. The board of supervisors or city council which had jurisdiction of the proceedings for establishment of the district, together with the board of supervisors of any other county in which any part of the district is located, shall appoint three trustees from among those persons listed in the petition. The trustees shall serve an initial two-year term.

2. Vacancies in the office of trustee of a district shall be filled by the remaining members of the board for the period until a successor is chosen in the manner prescribed by this section or by section 69.12, whichever is applicable.

3. Successors to trustees shall be elected at a special meeting of the board of trustees called for that purpose. Upon its own motion, the board of trustees may, or upon petition of landowners owning more than fifty percent of the total land in the district, shall, call a special meeting of the residents of the district to elect successors to trustees of the board. Notice of the meeting shall be given at least ten days before the date of the meeting by publication of the notice in a newspaper of general circulation in the district. The notice shall state the date, times, and location of the meeting and that the meeting is called for the purpose of electing one or more trustees to the board.

4. A candidate to fill a vacancy or as a successor trustee shall disclose prior to selection as a trustee whether the person has any financial interest in any business which is or may be a developer or contractor for public improvements within the real estate improvement district and the extent of the person's land ownership in the district, if any.

95 Acts, ch 200, §10; 96 Acts, ch 1204, §4

358C.11 Trustee's bond.

Each trustee, before entering upon the duties of office, shall execute a bond payable to the district, with security to be approved by the board of supervisors which had jurisdiction of the petition for establishment of the district, in such form and amount as the board of supervisors may determine, which bond shall be filed with the county auditor of the county.

95 Acts, ch 200, §11

358C.12 Real estate improvement district to be a body corporate — eminent domain.

1. Each district organized under this chapter shall be a body corporate and politic, with the name and style under which it was organized, and by that name and style may sue and be sued, contract and be contracted with, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the same at pleasure, and exercise all the powers conferred in this chapter.

2. All courts of this state shall take judicial notice of the existence of real estate improvement districts organized under this chapter.

3. A district shall not own or hold land in excess of ten acres unless the land is actually used for a public purpose within three years of its acquisition. A district which owns or holds land in excess of ten acres for more than three years without devoting it to a public purpose as provided in this chapter shall divest itself of the land by public auction to the highest bidder.

4. A district may acquire by purchase, condemnation, or gift, real or personal property, right-of-way, and easement within or without its corporate limits necessary for its corporate purposes specified in section 358C.4.

5. If the board of trustees of the district decide to make a public improvement pursuant to this chapter which requires that private property be taken or damaged, the board may exercise the power of eminent domain. The procedure to condemn property shall be exercised in the manner provided in chapter 6B.

6. A district shall comply with all city building and use codes for owner-occupied residential housing and shall comply with all city design and construction standards for the public improvements authorized in section 358C.4.

7. A district shall not incorporate as a city if all or the major part of the district is within two miles of the boundaries of a city at the time the district is approved.

8. The provisions of chapters 21 and 22 applicable to cities, counties, and school districts apply to the district. The records of the district are subject to audit pursuant to section 11.6.

95 Acts, ch 200, §12

358C.13 Board of trustees — powers — prohibited actions.

1. The board of trustees is the corporate authority of the district and shall manage and control the affairs and property of the district. A majority of the board of trustees shall constitute a quorum, but a smaller number may adjourn from day to day. The board of trustees shall elect a president, a clerk, and a treasurer from its membership.

2. The board of trustees shall maintain the official records of the district, which shall include information regarding the service of any indebtedness of the district, including special assessment bonds. The board shall report annually on the progress of the district in retiring indebtedness.

3. The board of trustees may adopt the necessary ordinances, resolutions, and regulations for the proper management and conduct of the business of the board of trustees and the corporation and for carrying out the purposes for which the district is formed, including for the negotiation of short-term loans and the issuance of warrants.

4. The board of trustees shall provide public notice prior to each meeting of the board. The notice shall contain the agenda of the meeting which shall describe the proposed actions to be taken by the board at the meeting.

5. If the board of trustees wishes to expand its authority to carry out public improvements in addition to the public improvements listed in the board's original petition as provided in section 358C.4, the board shall submit a petition to the board of supervisors specifying the additional public improvements to be included within the authority of the district and requesting that the board of supervisors order an election as provided in section 358C.7 to approve or disapprove the amendment. If the petition includes public improvements as specified in section 358C.4, the board of supervisors shall order the election to be conducted as otherwise provided in this chapter. If the amendment is approved, the original petition is amended to include the additional public improvements.

6. The board of trustees of a district shall not purchase and resell electric service or establish and operate a gasworks or electric light and power plant and system.

7. The board of trustees shall not require or grant a franchise to any person pursuant to section 364.2, subsection 4.

8. The board of trustees shall not prohibit or restrict the construction of manufactured homes in a real estate improvement district. As used in this subsection, *"manufactured home"* has the same meaning as under section 435.1, subsection 3.

9. The board of trustees shall not enter into a contract for public improvements or other services with a board member or with any person owning more than twenty-five percent of the land of a real estate improvement district except as a result of competitive bidding.

95 Acts, ch 200, §13; 96 Acts, ch 1034, §32; 96 Acts, ch 1204, §5

358C.14 Taxes — power to levy — tax sales.

1. The board of trustees of a real estate improvement district shall have the power by ordinance to levy annually for the purpose of paying

the administrative costs of the district, or for the payment of deficiencies in special assessments, or for both, a tax upon property within the territorial limits of the district not exceeding fifty-four cents per thousand dollars of the adjusted taxable valuation of the property within the district for the preceding fiscal year.

2. All taxes thus levied by the board shall be certified by the clerk on or before March 1 to the county auditor of each county in which any of the property included within the territorial limits of the district is located, and shall be placed upon the tax list for the current fiscal year by the auditor. The county treasurer of more than one county shall collect all taxes so levied in the same manner as other taxes, and when delinquent the taxes shall draw the same interest. All taxes levied and collected shall be paid over by the officer collecting the taxes to the treasurer of the district.

3. Sales for delinquent taxes owing to the district shall be made at the same time and in the same manner as the sales are made for other taxes, and all provisions of the law of this state relating to the sale of property for delinquent taxes shall be applicable, so far as may be, to the sales.

95 Acts, ch 200, §14

358C.15 Rentals and charges.

1. A board of trustees may by ordinance establish equitable rates, charges, or rentals for the utilities and services furnished by the district to be paid to the district by every person, firm, or corporation whose premises are served by a connection to the utilities and services directly or indirectly. The rates, charges, or rentals, as near as may be in the judgment of the board of trustees, shall be equitable and in proportion to the services rendered and the cost of the services, and taking into consideration in the case of the premises the quantity of sewage or water produced or used and the concentration, strength, and pollution qualities of the sewage. The board of trustees may change the rates, charges, or rentals as it may deem advisable, and by ordinance may provide for collection. The board may contract with any municipality within the district, whereby the municipality may collect or assist in collecting any of the rates, charges, or rentals, whether in conjunction with water rentals or otherwise, and the municipality may undertake the collection and render the service. The rates, charges, or rentals, if not paid when due, shall constitute a lien upon the real property served by a connection. The lien shall have equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

2. Sewer rentals, charges, or rates may supplant or replace, in whole or in part, any monetary levy of taxes which may be, or have been, authorized by the board of trustees for any of the following purposes:

a. To meet interest and principal payments on bonds legally authorized for the financing of sanitary utilities in any manner.

b. To pay costs of the construction, maintenance, or repair of the facilities or utilities, including payments to be made under any contract between municipalities for either the joint use of water or sewage facilities, or for the use by one municipality of all or a part of the water or sewer system of another municipality.

95 Acts, ch 200, §15

358C.16 Debt limit — borrowing — bonds — purposes.

1. A district may borrow money for its corporate purposes, but shall not become indebted in any manner or for any purpose to an amount in the aggregate exceeding its constitutional debt limit of five percent on the value of the taxable property within the district, to be ascertained by the last state and county tax lists previous to the incurring of the indebtedness. Indebtedness within this constitutional limit shall not include the indebtedness of any other municipal corporation located wholly or partly within the boundaries of the district, special assessment bonds or obligations authorized under section 358C.17.

2. Subject only to this debt limitation, a district shall have the same powers to issue bonds, including both general obligation and revenue bonds, including the power to enter into short-term loans and issue warrants, which cities have under the laws of this state. In the application of the laws to this chapter, the words used in the laws referring to municipal corporations or to cities shall be held to include real estate improvement districts organized under this chapter; the words "council" or "city council" shall be held to include the board of trustees of a district; the words "mayor" and "clerk" shall be held to include the president and clerk of a board of trustees; and like construction shall be given to any other words in the laws where required to permit the exercise of the powers by real estate improvement districts.

3. All bonds issued shall be signed by the president of the board of trustees and attested by the clerk, with the seal of the district, if any, affixed, and interest coupons attached to the bonds shall be attested by the signature of the clerk.

4. The proceeds of any bond issue made under this section shall be used only for the cost of public improvements as specified in sections 358C.1 and 358C.4. Proceeds from the bond issue may also be used for the payment of special assessment deficiencies. The bonds shall be payable in not more than forty annual installments and with interest at a rate not exceeding that permitted by chapter 74A, and shall be made payable at the place and be of the form as the board of trustees shall by resolution designate. A district issuing bonds as authorized in this section is granted authority to pledge

the future avails of a tax levy to the payment of the principal and interest of the bonds after the same come due, and the power to impose and certify the levy is granted to the trustees of real estate improvement districts organized under this chapter.

95 Acts, ch 200, §16; 96 Acts, ch 1204, §6

358C.17 Special assessments.

1. The board of trustees of a real estate improvement district may provide for payment of all or any portion of the costs of a public improvement as specified in sections 358C.1 and 358C.4, by assessing all, or any portion of, the costs on adjacent property according to the benefits derived. For the purposes of this chapter, the board of trustees may define *"adjacent property"* as all that included within a designated benefited district to be fixed by the board, which may be all of the property located within the real estate improvement district or any lesser portion of that property. It is not a valid objection to a special assessment that the improvement for which the assessment is levied is outside the limits of the district, but a special assessment shall not be made upon property situated outside of the district. Special assessments pursuant to this section shall be in proportion to the special benefits conferred upon the property, and not in excess of the benefits. The value of a property is the present fair market value of the property with the proposed public improvements completed. Payment of installments of a special assessment against property shall be made in the same manner and under the same procedures as provided in chapter 384 for special assessments by cities. Notwithstanding the provisions of section 384.62, the combined assessments against any lot for public improvements included in the petition creating the real estate improvement district or as authorized in section 358C.4 shall not exceed the valuation of that lot as established by section 384.46.

2. The assessments may be made to extend over a period not to exceed fifteen years, payable in as nearly equal annual installments as practicable. A majority vote of the board of trustees is requisite and sufficient for any action required by the board of trustees under this section.

3. Subject to the limitations otherwise stated in this section, a district organized under this chapter has all of the powers to specially assess the costs of improvements described in this section, including the power to issue special assessment bonds, warrants, project notes, or other forms of interim financing obligations, which cities have under the laws of this state.

4. A special assessment under this section shall be recorded in the county in which the district is located for each lot in the district.

5. Notwithstanding section 384.65, subsection 5, a district shall have a lien on the benefited property only in the amount of special assessment installments that have come due but have not been paid. The district shall not have a lien for the total amount of the special assessment originally levied against the benefited property. A lien, including, but not limited to, a lien for a mortgage for the construction or the purchase of housing on property benefited by improvements and against which a special assessment is levied under this chapter, shall have precedence over a special assessment which has been levied by the district but is not due. A district's lien shall only be in the amount of installments whose due dates have passed without payment, along with all interest and penalties on the delinquent installments. The district's lien for delinquent installments, interest, and penalties shall have equal precedence with ordinary taxes and shall not be divested by judicial sale. Any remaining special assessment installments that have not become due shall not be divested by judicial sale and shall become a lien when the special assessment installments become due.

95 Acts, ch 200, §17; 96 Acts, ch 1034, §33; 96 Acts, ch 1204, §7, 8

358C.18 Additional territory.

1. The district may be enlarged and additional territory annexed to the district by either of the following methods:

a. By petitions signed by the owners of all the property to be annexed to the district. If a petition requesting annexation is presented to the trustees and approved by the trustees the change in the boundaries to include the additional area shall be certified by the clerk of the district to the county auditor in which the greater portion of the district is located and thereafter the district shall include the area thus annexed.

b. By a petition filed with the clerk of the district, signed by persons owning not less than fifty percent of the area to be annexed, but not signed by persons owning all the area requested to be annexed. On the filing of the petition, the trustees of the district shall fix a time and place for a hearing on the petition and give notice of the hearing, as provided in section 331.305, and by certified mail to the record owners of all persons owning land within the territory sought to be annexed, not less than ten days prior to the date of the hearing, if the address of the owners is known or can be ascertained by reasonable diligence by the trustees. At the hearing, any person owning property within the area proposed to be annexed or any person owning property or residing within the district may appear and be heard. If, after the hearing, the board of trustees determines that annexation of the additional area will be conducive to the public health, convenience, and welfare and will not be an undue burden on the district, the board of trustees may, by resolution, annex the additional area and fix the boundary which shall not include more than the area requested in the petition. A copy of the resolution shall be filed with the county audi-

tor of the county in which the largest portion of the district is located and thereafter the area included by the resolution shall be a part of the district.

2. All property, from and after it is annexed to the district, shall be subject to all taxes and other burdens levied by the district, regardless of when the obligation for which the taxes or assessments are levied was incurred.

95 Acts, ch 200, §18

358C.19 Annexation by a city.

When a city or real estate improvement district proposes that the district be annexed by the city, either wholly or partially, an owner of property in the district shall not object to the annexation if a city annexes all the territory within the boundaries of a real estate improvement district, the district shall merge with the city and the city shall succeed to all the property and property rights of every kind, contracts, and obligations, held by or belonging to the district, and the city shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. The city may assume and provide for the payment of the obligations of any bonds of the district by issuing general obligation, special assessment, or revenue refunding bonds which may be sold at public or private sale or exchanged for outstanding bonds. General obligation bonds of the city may be issued to refund special assessment and revenue obligations if the governing body of the city determines that it is in the best interest of the city. The refunding of these obligations shall constitute an essential corporate purpose under section 384.24. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city. Any special assessments which the district was authorized to levy, assess, relevy, or reassess, but which were not levied, assessed, relevied, or reassessed, at the time of the merger, for improvements made by the district or in the process of construction or contracted for may be levied, assessed, relevied, or reassessed by the annexing city to the same extent as the district may have levied or assessed but for the merger. However, this section does not authorize the annexing city to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but the city shall be bound by all findings or orders and assessments to the same extent as the district would be bound. Also, a district shall not levy any special assessments after the effective date of the annexation.

95 Acts, ch 200, §19

358C.20 Effective date of merger.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the district. However, if the validity of the ordinance annexing the territory is challenged by a court proceeding, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees of a district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during the period levy any special assessments after the effective date of annexation.

95 Acts, ch 200, §20

358C.21 Dissolution of district.

When a majority of the board of trustees of a district desire that the district be wholly dissolved, the trustees shall first propose a resolution declaring the advisability of the dissolution and setting out the terms and conditions of the dissolution, and also setting out the time and place when the board of trustees shall meet to consider the adoption of the resolution. Notice of the time and place when the resolution shall be set for consideration shall be published as provided in section 331.305, which publication shall contain the entire wording of the proposed resolution. If any part of the district lies within the area of the jurisdiction of a city, then the trustees shall mail a copy of the proposed resolution to the city on the date of first publication of the resolution. At the hearing the owners of property within the district, or a city if any part of the district lies within the city, may appear and make objections to the proposed resolution. If the owners representing a majority of the area of real estate within the district fail to sign and present to the board, on or prior to the hearing date, a written petition opposing the resolution, a majority of the board of trustees may pass the resolution and adopt the proposed dissolution. However, the resolution shall not be adopted if the district is obligated on any outstanding bonds, warrants, or other debts or obligations unless the holders of the bonds, warrants, or other debts or obligations all sign written consents to the dissolution prior to the adoption of the resolution of dissolution. If the petition opposing the resolution is signed by property owners representing a majority of the area of real estate within the district and presented to the board of trustees on or prior to the hearing date, the board of trustees shall not adopt the resolution. After the board of trustees has adopted the resolution of dissolution, the clerk of the district shall prepare and file a certified copy of the resolution of dissolution in the office of the county auditor where the original petition was filed. A district shall dissolve within ninety days following the merger of a district with a city.

95 Acts, ch 200, §21

358C.22 Detachment of land.

1. When a majority of the board of trustees of a district desires that any property within the district be detached from the district, the trustees shall first propose a resolution declaring the advisability of the detachment and setting out the

terms and conditions of the detachment and also setting out the time and place when the board of trustees will meet to consider the adoption of the resolution. Notice of the time and place when the resolution is set for consideration shall be published as provided in section 331.305, which publication shall contain the entire wording of the proposed resolution. If any part of the district lies within a city, then the trustees shall mail a copy of the proposed resolution to the city on the date of first publication of the resolution. At the hearing the owners of property within the district, or any city, may appear and make objections to the proposed resolution. If the owners representing a majority of the area of real estate within the district fail to sign and present to the board of trustees, on or prior to the hearing date, a written petition opposing the resolution, a majority of the board of trustees may pass the resolution and adopt the proposed detachment, except that the resolution shall not be adopted if the district is indebted on any outstanding bonds or warrants of the district unless the holders of the bonds and warrants all sign written consents to the detachment prior to the adoption of the resolution of detachment. If the petition opposing the resolution is signed by property owners representing a majority of the area of real estate within the district and presented to the board of trustees on or prior to the hearing date, the board of trustees shall not adopt the resolution. After the board of trustees has adopted the resolution of detachment, the clerk of the district shall prepare and file a certified copy of the resolution of detachment in the office of the county auditor where the original petition was filed, and the area detached shall become excluded and detached from the boundaries of the district.

2. The owner of a discrete tract of land which is part of a district but which is not connected to the main area of the district may petition the board of trustees of the district to have the property detached from the district. Following receipt of the petition, the board of trustees shall propose a resolution declaring the advisability of the detachment and setting out the terms and conditions of the detachment and setting out the time and place when the board of trustees will meet to consider the adoption of the resolution. Notice of the time and place for the consideration shall be published as provided in subsection 1. If any part of the district lies in whole or in part within a city, the board of trustees shall mail a copy of the proposed resolution to the municipality within five days after the date of first publication of the resolution. At the hearing for consideration of the resolution, the board of trustees shall determine if the tract of land proposed for detachment has all of the following characteristics:

a. Has an area of twenty-five acres or more.

b. Is undeveloped and predominantly devoted to agricultural uses.

c. Has no improvements or obligations placed upon it by the district and receives no current services from the district.

3. If the board of trustees by majority vote determines that the tract in question meets all of the conditions provided in subsection 2, paragraphs *"a"* through *"c"*, the resolution shall be adopted, except that the resolution shall not be adopted if the district is indebted on any outstanding bonds or warrants of the district unless the holders of the bonds and warrants all sign written consents to the detachment. After the board of trustees has adopted the resolution of detachment, the clerk of the district shall prepare and file a certified copy of the resolution of detachment in the office of the county auditor where the original petition was filed and the area detached shall become excluded and detached from the boundaries of the district.

95 Acts, ch 200, §22

358C.23 Chapter liberally construed.

The provisions of this chapter shall be liberally construed to facilitate the development of land for housing.

95 Acts, ch 200, §23

358C.24 Disclosure of special assessment.

A person interested in transferring real property located in a district, or a broker or salesperson acting on behalf of the person, shall disclose, in accordance with chapter 558A, that the property is located in a real estate improvement district and the amount of any special assessment under this chapter against the property.

96 Acts, ch 1204, §9

SUBTITLE 3

TOWNSHIPS

CHAPTER 359

TOWNSHIPS AND TOWNSHIP OFFICERS

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DIVISION, BOUNDARIES, AND CHANGE OF NAMES

359.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1
Former §359.1 transferred to §359.2

359.2 Division authorized.

The board of supervisors shall divide the county into townships, as convenience may require, defining the boundaries thereof, and may, from time to time, make such alterations in the number and boundaries of the townships as it may deem proper.

[C51, §219; R60, §441; C73, §379; C97, §551;

C24, 27, 31, 35, 39, §**5527;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.1]
C2001, §359.2

359.3 Boundaries conterminous with city.
Where the boundaries of any city have been changed, the board of supervisors of the county in which the same is situated shall have power to change the boundary lines of townships so as to make them conform to the boundaries of the city, and to make such other changes in township lines, and the number of townships, as it may deem necessary; but no action shall be taken affecting the boundaries or existing conditions of school districts.
[C97, §552; C24, 27, 31, 35, 39, §**5529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.3]

359.4 Record.
The description of the boundaries of each township, and all alterations in them, and of all new townships, shall be recorded in full in the records of the board of supervisors, and of the township.
[C51, §220; R60, §442; C73, §381; C97, §553; C24, 27, 31, 35, 39, §**5530;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.4]

359.5 Divisions where city included.
When any township has within its limits a city with a population exceeding fifteen hundred, the eligible electors of such township residing without the limits of such city may, at any regular session of the board of supervisors of the county, petition to have such township divided into two townships; the one to embrace the territory without, and the other the territory within such corporate limits.
[C73, §382; C97, §554; C24, 27, 31, 35, 39, §**5531;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.5]

359.6 Petition — remonstrance.
Such petition shall be accompanied by the affidavit of three eligible electors, to the effect that all the signatures to such petition are genuine, and that the signers thereof are all eligible electors of said township, residing outside said corporate limits. Remonstrances signed by such eligible electors may also be presented at the hearing before the board of supervisors hereinafter provided for, and if the same persons petition and remonstrate, they shall be counted on the remonstrance only.
[C73, §382; C97, §554; C24, 27, 31, 35, 39, §**5532;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.6]

359.7 Notice.
Notice of the time when the petition will be heard shall be given by publication as provided in section 331.305 before the hearing.
[C73, §383; C97, §555; S13, §555; C24, 27, 31, 35, 39, §**5533;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.7]
87 Acts, ch 43, §13

359.8 Division — effect.
If the petition is signed by a majority of the registered voters of the township residing without the corporate limits of the city, the board of supervisors shall divide the township into two townships, as petitioned; but, except for election purposes, including the appointment of precinct election officials rendered necessary by the change, the division shall not take effect until the first day of January following the next general election which is not a Sunday or a legal holiday.
[C73, §384; C97, §556; C24, 27, 31, 35, 39, §**5534;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.8]
89 Acts, ch 83, §49; 90 Acts, ch 1238, §39; 2001 Acts, ch 56, §29

359.9 Restoration to former township.
When the citizens of any township so set off desire to dissolve their township organization and return again to the township from which they were taken, they may do so by the same proceedings as provided for the division thereof, except that said petition shall be signed by a majority of the electors of both townships.
[C97, §556; C24, 27, 31, 35, 39, §**5535;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.9]

359.10 New township — first election.
When a new township is formed, in which township officers are to be elected, the board of supervisors shall call the first township election, to be held at such place as it may designate, on the day of the next general election. If at any time a new township has been created in a year in which no general election is held, the board may call a special election for the election of the township officers of the new township, who shall continue in office until their successors are elected and qualified.
[C51, §231; R60, §453; C73, §385; C97, §557; S13, §1074-a; C24, 27, 31, 35, 39, §**5536;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.10]

359.11 Officers to be elected.
At said election there shall be elected one trustee for a term of two years, one trustee for a term of three years, and one trustee for a term of four years, and other officers as provided by law.
[S13, §1074-a; C24, 27, 31, 35, 39, §**5537;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.11]

359.12 Order for election.
The county commissioner of elections shall issue an order for such first election, stating the time and place of the same, the officers to be elected, and any other business to be transacted; and no business not named in such order shall be transacted at such election.

[C51, §232; R60, §454; C73, §386; C97, §558; C24, 27, 31, 35, 39, §**5538;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.12]

359.13 Service and return.

Such order may be directed to any citizen of the same township, by name, and shall be served by posting copies thereof, in three of the most public places in the township, fifteen days before the day of the election; the original order shall be returned to the presiding officer of the election, to be returned to the clerk when elected, with a return thereon of the manner of service, verified by oath, if served by any other than an officer.

[C51, §233; R60, §455; C73, §387; C97, §559; C24, 27, 31, 35, 39, §**5539;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.13]

359.14 Changing name — petition — notice.

Eligible electors of a township wishing to change its name may petition the board of supervisors and, if it appears to the board that a majority of the eligible electors of the township are in favor of the change, the board shall cause notices, attested by the auditor, to be posted in three of the most public places of the township, for at least thirty days before the next regular session of the board. The notice shall state that a petition has been presented to the board by the eligible electors of the township, seeking a change of the name of the township and shall state the name sought in the petition, and that, unless those interested in the change of name appear at the next regular session of the board and show cause why the name shall not be changed, there will be an order made granting the change.

[C73, §412; C97, §580; C24, 27, 31, 35, 39, §**5540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.14]

90 Acts, ch 1168, §45

359.15 Hearing — order.

If, at the time fixed for the hearing of said petition, the board be satisfied that there is a majority in favor of such change of name, it shall make an order granting the same, which shall be attested by the auditor, and recorded in the office of the recorder of the county.

[C73, §413; C97, §581; C24, 27, 31, 35, 39, §**5541;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.15]

359.16 Petition dismissed.

If it appears to said board that a majority of the citizens of such township are opposed to such change, such petition shall be dismissed. The cost of the proceeding in all cases shall be taxed against the petitioners.

[C73, §414; C97, §582; C24, 27, 31, 35, 39, §**5542;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.16]

TRUSTEES

359.17 Trustees — duties — meetings.

The board of township trustees in each township shall consist of three registered voters of the township. However, in townships with a taxable valuation for property tax purposes of two hundred fifty million dollars or more, the board of township trustees shall consist of five registered voters of the township. The trustees shall act as fence viewers and shall perform other duties assigned them by law. The board of trustees shall meet not less than two times a year. At least one of the meetings shall be scheduled to meet the requirements of section 359.49.

[C51, §221, 224; R60, §443, 446; C73, §389, 393, 969; C97, §574, 1074, 1538; S13, §1074, 1528; C24, 27, 31, 35, 39, §**5543;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.17]

2000 Acts, ch 1113, §1, 3, 4; 2000 Acts, ch 1117, §22; 2001 Acts, ch 56, §30; 2002 Acts, ch 1134, §102, 115

Fences, chapter 359A

For provisions effective from April 19, 2000, until July 1, 2000, relating to consequences for a township's failure to timely certify property taxes, see 2000 Acts, ch 1113

For provisions effective July 1, 2000, relating to consequences for a township's failure to timely certify property taxes, see §359.49

2002 amendment takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Section amended

359.18 County attorney as counsel.

In counties having a population of less than twenty-five thousand, where the trustees institute, or are made parties to, litigation in connection with the performance of their duties, as provided in this chapter, the county attorney, as a part of the county attorney's official duties, shall appear in behalf of the township trustees, except in cases in which the interests of the county and those of the trustees are adverse.

[S13, §564; C24, 27, 31, 35, 39, §**5544;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.18]

359.19 Employment of counsel.

When litigation shall arise in any case not covered by section 359.18, involving the right or duty of township trustees with reference to any matter within their jurisdiction, and the trustees become or are made parties to such litigation, they shall have authority to employ attorneys in behalf of said township, and to levy the necessary tax to pay for their services, and to defray the expenses of such litigation.

[C97, §564; S13, §564; C24, 27, 31, 35, 39, §**5545;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.19]

CLERK

359.20 Clerk to keep record.

1. The township clerk shall keep a record of all the proceedings and orders of the trustees, and of all acts done by the township clerk, including the filing of certificates of official oaths having been taken before other officers, and perform such other acts as may be required by law.

2. Township records and documents, or accurate reproductions, shall be kept by the township clerk for at least five years except that:

a. Resolutions, board proceedings, records and documents, or accurate reproductions, relating to the issuance of public bonds or obligations shall be kept for at least eleven years following the final maturity of the bonds or obligations. Thereafter, such records, documents, and reproductions may be destroyed, preserving confidentiality as necessary.

b. Resolutions, board proceedings, records, and documents, or accurate reproductions, relating to real property transactions shall be maintained permanently.

[C51, §223, 226, 227; R60, §445, 448, 449; C73, §392, 395, 396; C97, §576; S13, §576; C24, 27, 31, 35, 39, §**5546;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.20]

2000 Acts, ch 1117, §23

359.21 Receipt and custody of funds.

1. Each township clerk shall receive, collect, and disburse, under the orders of the township trustees, all funds belonging to the township, including the cemetery fund. A claim shall not be paid until it has been audited by the trustees.

2. Before the fifteenth day of each month, the county treasurer shall notify the chairperson of the board of trustees of the amount collected for each fund to the first day of that month and shall pay that amount to the clerk as provided in section 331.552, subsection 29.

[S13, §576; C24, 27, 31, 35, 39, §**5547;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.21]

84 Acts, ch 1003, §8

Deposits in general, §12C.1

359.22 Notify auditor of elections. Repealed by 90 Acts, ch 1238, § 43.

359.23 Receipts and expenditures — annual statement.

Each township clerk shall prepare, on or before September 30 of each year, a statement in writing, showing all receipts of money and disbursements in the clerk's office for each separate tax levy authorized by law for the preceding fiscal year, showing the current public debt of the township, and showing the balance as of June 30 of all separate reserve accounts held by the township, which shall be certified as correct by the trustees of the township. The statement shall be in a form prescribed by the county finance committee in consultation with the department of management. Each township clerk shall send a copy of this written statement to the county auditor no later than seven days after the statement is certified by the trustees. The county auditor shall post the statement or a summary of the statement in a prominent place in the building where the auditor's office is located. The county treasurer shall withhold disbursement of township taxes until the statement is filed with the county auditor. The county auditor shall notify the county treasurer if taxes are to be withheld.

The county auditor may waive the requirement that a township send a copy of the written financial statement to the county auditor.

[C97, §578; SS15, §578; C24, 27, 31, 35, 39, §**5552;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.23]

2000 Acts, ch 1117, §24

359.24 Clerk and trustees abolished.

Where a city constitutes one or more civil townships the boundary lines of which coincide throughout with the boundary lines of the city, the offices of township clerk and trustee are abolished.

[C97, §560; S13, §560; C24, 27, 31, 35, 39, §**5553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.24]

359.25 Clerk and council to act.

The duties required by law of the township clerk in such cities shall be performed by the city clerk, and those required of the board of trustees shall be performed by the city council.

[C97, §561; C24, 27, 31, 35, 39, §**5554;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.25]

359.26 Transfer of funds.

The moneys and assets belonging to such civil township shall become the moneys and assets of the city in which said civil township is situated, and the township clerks shall turn such moneys and assets over to the city treasurer or clerk, to be disbursed by the city in the same manner and for the same purposes as required by law for the disposition of township funds, and such cities shall assume all liabilities of a civil township to which the provisions of this section apply.

[C97, §562; C24, 27, 31, 35, 39, §**5555;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.26]

359.27 Payment of funds.

County treasurers are hereby authorized to pay over to the treasurers or clerks of cities which come under the provisions of sections 359.24, 359.25 and 359.26 all funds which would other-

wise be paid over to the township clerks of such townships.

[C97, §563; C24, 27, 31, 35, 39, §**5556;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.27]

PUBLIC GROUNDS OR BUILDINGS

359.28 Condemnation.

The township trustees are hereby empowered to condemn, or purchase and pay for out of the general fund, or the specific fund voted for such purpose, and enter upon and take, any lands within the territorial limits of such township for the use of cemeteries, a community center or juvenile playgrounds, in the same manner as is now provided for cities. However, the board of supervisors or a cemetery commission appointed by the board of supervisors shall control and maintain pioneer cemeteries as defined in section 331.325.

[C97, §585; S13, §585; C24, 27, 31, 35, 39, §**5558;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.28]

96 Acts, ch 1182, §3

Procedure, chapter 6B

359.29 Gifts and donations.

Civil townships are hereby authorized and empowered to receive by gift, devise, or bequest, money or property for the purpose of establishing and maintaining libraries, township halls, cemeteries, or for any other public purpose. All such gifts, devises, or bequests shall be effectual only when accepted by resolution of the board of trustees of such township.

[S13, §585; C24, 27, 31, 35, 39, §**5559;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.29]

Township halls, chapter 360

359.30 Cemetery and park tax.

They shall, at the regular meeting in November, levy a tax sufficient to pay for any lands so condemned or purchased, or for the necessary improvement and maintenance of cemeteries thus established, and for the necessary improvement and the maintenance of public parks acquired by gift, devise, or bequest under section 359.29, or for the maintenance and improvement of cemeteries so established in adjoining townships, in case they deem such action advisable.

[C97, §586; SS15, §586; C24, 27, 31, 35, 39, §**5560;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.30]

359.31 Power and control.

They shall control any such cemeteries, or appoint trustees for the same, or sell the same to any private corporation for cemetery purposes.

[C97, §586; SS15, §586; C24, 27, 31, 35, 39, §**5561;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.31]

359.32 Sale of lots — gifts.

They shall have authority to provide for the sale of lots or portions thereof, in any cemetery under their control, and make rules in regard thereto, and may provide for perpetual upkeep by the establishment of a perpetual upkeep fund from the proceeds of sale of lots, and may accept gifts, devise or bequest, made to them for that purpose.

[C39, §**5561.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.32]

359.33 Tax for nonowned cemetery.

They may levy a tax not to exceed six and three-fourths cents per thousand dollars of assessed value of taxable property to improve and maintain any cemetery not owned by the township, provided the same is devoted to general public use.

[C97, §586; SS15, §586; C24, 27, 31, 35, 39, §**5562;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.33]

359.34 Scope of levy.

The levy authorized in sections 359.30 and 359.33 may be extended to property within the limits of any city so far as same is situated within the township, unless such city is already maintaining a cemetery, or has levied a tax in support thereof. The said tax may be so expended for the support and maintenance of any such cemetery after the same has been abandoned and is no longer used for the purpose of interring the dead.

[SS15, §586; C24, 27, 31, 35, 39, §**5563;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.34]

359.35 Cemetery funds — use.

Cemetery tax funds of a township may be used for the maintenance and support of cemeteries in adjoining counties and townships and in cities, if such cemeteries are utilized for burial purposes by the people of the township and, when any such cemetery has been so utilized for more than twenty-five years and has been maintained by township funds, the township trustees of the township where the cemetery is located shall continue to improve and maintain the same.

[C24, 27, 31, 35, 39, §**5564;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.35]

359.36 Joint boards.

A city council and the trustees of a township may join in the common purpose of improving, maintaining, and supporting a township cemetery. In such case the two official bodies shall constitute a joint cemetery board and shall have equal voting power.

[C24, 27, 31, 35, 39, §**5565;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.36]

359.37 Regulations.

The trustees, board of directors, or other officers

having the custody and control of any cemetery in this state, shall have power, subject to the bylaws and regulations of such cemetery, to enclose, improve, and adorn the ground of such cemetery; to construct avenues in the same; to erect proper buildings for the use of said cemetery; to prescribe rules for the improving or adorning the lots therein, or for the erection of monuments or other memorials of the dead upon such lots; and to prohibit any use, division, improvement or adornment of a lot which they may deem improper.

The trustees, after such land has been advertised for sealed bids by the trustees, shall have authority to sell and dispose of any lands or parcels of lands heretofore dedicated for cemetery purposes and which are no longer necessary for such purposes, for the reason that no burials are being made in such cemetery, provided that any portion of said cemetery in which burials have been made shall be kept and maintained by said trustees. The proceeds from such sales shall be deposited in the tax fund established in accordance with section 359.30, to be used for the purposes of that fund.

[C97, §587; SS15, §587; C24, 27, 31, 35, 39, §**5566;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.37]

359.38 Watchpersons appointed.

Such trustees, directors, or other officers may appoint as many day and night watchpersons of their grounds as they may think expedient, and such watchpersons, and also all their sextons, superintendents, gardeners, and agents, stationed upon or near said grounds are hereby authorized to take and subscribe to an oath of office as provided in section 63.10.

[C97, §589; C24, 27, 31, 35, 39, §**5567;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.38]

359.39 Ex officio police officers.

Upon the taking of such oath, such watchpersons, sextons, superintendents, gardeners, and agents shall have and exercise all powers of police officers within and adjacent to the cemetery grounds and each shall have power to arrest any and all persons engaged in violating the laws of this state, and to bring such person so offending before any judicial magistrate, to be dealt with according to law.

[C97, §589; C24, 27, 31, 35, 39, §**5568;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.39]

359.40 Cemeteries — plats — records.

Where there is located in any township one or more cemeteries, the owner of the same, or any party owning an interest therein, may cause the same to be surveyed, platted, and laid out into subdivisions and lots, numbering the same by progressive numbers, giving the length and breadth, also the location with reference to known or permanent monuments to be made. The plat shall accurately describe all the subdivisions of the tract of land used, or designed to be used as a cemetery, and shall be recorded in the office of the county recorder, and filed with and recorded by the township clerk, and preserved by the township clerk among the records of the office.

[C97, §583; C24, 27, 31, 35, 39, §**5569;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.40]

359.41 Conveyance of lots.

All conveyances of subdivisions or lots of a cemetery thus platted shall be by deed from the proper owner, which deed shall be recorded with the township clerk in a book kept for that purpose, for the recording of which the said clerk shall be entitled to a fee of fifty cents for each instrument recorded, to be paid by the party desiring the record made.

[C97, §584; C24, 27, 31, 35, 39, §**5570;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.41]

EMERGENCY SERVICES

359.42 Township fire protection service, emergency warning system, and emergency medical service.

The trustees of each township shall provide fire protection service for the township, exclusive of any part of the township within a benefited fire district and may provide emergency medical service. The trustees may purchase, own, rent, or maintain fire protection service or emergency medical service apparatus or equipment or both kinds of apparatus or equipment and provide housing for the equipment. The trustees of a township which is located within a county having a population of three hundred thousand or more may also establish and maintain an emergency warning system within the township. The trustees may contract with a public or private agency under chapter 28E for the purpose of providing any service or system required or authorized under this section.

[C31, 35, §5570-c1; C39, §**5570.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §359.42; 81 Acts, ch 117, §1076]

84 Acts, ch 1008, §1; 85 Acts, ch 205, §1; 95 Acts, ch 123, §1

359.43 Tax levy — supplemental levy — districts.

1. The township trustees may levy an annual tax not exceeding forty and one-half cents per thousand dollars of assessed value of the taxable property in the township, excluding property within a benefited fire district or within the corporate limits of a city, for the purpose of exercising the powers and duties specified in section 359.42. However, in a township having a fire protection service or emergency medical service agreement

or both service agreements with a special charter city having a paid fire department, the township trustees may levy an annual tax not exceeding fifty-four cents per thousand dollars of the assessed value of the taxable property for the services authorized or required under section 359.42 and in a township which is located within a county having a population of three hundred thousand or more, the township trustees may levy an annual tax not exceeding sixty-seven and one-half cents per thousand dollars of assessed value of taxable property for the services authorized or required under section 359.42.

2. If the levy authorized under subsection 1 is insufficient to provide the services authorized or required under section 359.42, the township trustees may levy an additional annual tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value of the taxable property in the township, excluding any property within the corporate limits of a city, to provide the services.

3. The township trustees may divide the township into tax districts for the purpose of providing the services authorized or required under section 359.42 and may levy a different tax rate in each district, but the tax levied in a tax district for the authorized or required services shall not exceed the tax levy limitations for that township as provided in this section.

4. Of the levies authorized under subsections 1 and 2, the township trustees may credit to a reserve account annually an amount not to exceed thirty cents per thousand dollars of the assessed value of the taxable property in the township for the purchase or replacement of supplies and equipment required to carry out the services specified under section 359.42. Notwithstanding section 12C.7, interest earned on moneys credited to the reserve account shall be credited to the reserve account.

5. Township taxes collected and disbursed by the county shall be apportioned by the clerk and paid into the separate accounts of the tax districts no later than May 31 and November 30 of each year.

[C31, 35, §5570-c2; C39, §**5570.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.43; 82 Acts, ch 1114, §1]

84 Acts, ch 1008, §2; 85 Acts, ch 205, §2; 89 Acts, ch 149, §1; 95 Acts, ch 123, §2; 95 Acts, ch 158, §1; 2000 Acts, ch 1117, §25

359.44 Repealed by 75 Acts, ch 194, § 12.

359.45 Anticipatory bonds.

Townships may anticipate the collection of taxes authorized by section 359.43 and for such purposes may direct the county board of supervisors to issue bonds under sections 331.441 to 331.449 relating to essential county purpose bonds except that the bonds are payable only from tax levies on property subject to the levy under section 359.43.

[C39, §**5570.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §359.45; 81 Acts, ch 117, §1077]

COMPENSATION

359.46 Compensation of township trustees.

1. A township trustee while engaged in official business shall be compensated at an hourly rate established by the county board of supervisors. However, the county board of supervisors may establish a minimum daily pay rate for the time spent by a township trustee attending a scheduled meeting of township trustees. The compensation shall be paid by the county except:

a. When the trustee is assessing damages done by trespassing animals, payment of the compensation shall be made in the same manner as other costs in such cases.

b. When the trustee is acting as a fence viewer or in a case where provision is made for payment from a source other than the general fund of the county.

2. In cases where their fees or compensation are not paid by the county, the trustees shall be paid by the party requiring their services. The trustees shall attach to the report of their proceedings a statement specifying their services, directing who shall pay the fees or compensation, and specifying the amount to be paid by each party. A party who makes advance payment for the services of the trustees may take legal action to recover the amount of the payment from the party who is directed to pay by the trustees unless the party entitled to recovery under this subsection is paid within ten days after a demand for reimbursement is made.

[C51, §2548; R60, §4156; C73, §3808; C97, §590; S13, §590; C24, 27, 31, 35, 39, §**5571;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.46]

83 Acts, ch 123, §168, 169, 209

359.47 Compensation of township clerk.

A township clerk while engaged in official business shall be compensated at the same rate as the pay rate of a township trustee of the same township.

[C51, §2548; R60, §909, 911; C73, §3809; C97, §591; S13, §591; C24, 27, 31, 35, 39, §**5572;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §359.47]

Compensation for handling township hall funds, §360.2

359.48 Repealed by 47 Acts, ch 240, § 50.

BUDGET

359.49 Township budget.

Annually, a township shall prepare and adopt a budget, and shall certify taxes as follows:

1. A budget must be prepared for at least the following fiscal year. A proposed budget must show estimates of the following:

a. Expenditures from each fund.

b. Income from sources other than property taxation.

c. Amount to be raised by property taxation, and the property tax rate expressed in dollars per one thousand dollars assessed valuation.

2. By January 15 of each year, each township fire department in the township shall provide to the board of trustees a proposed budget showing all revenues and all expenses for emergency services for the next fiscal year. By January 15 of each year, each township fire department, and each municipal fire department providing emergency services to a township, shall submit to the board of trustees a report detailing emergency services calls for the prior calendar year for the fire district and a copy of the fire report filed by the fire department with the state fire marshal's office. For purposes of this subsection, *"municipal"* means relating to a city, county, township, benefited fire district, or chapter 28E agency authorized by law to provide emergency services.

3. Not less than ten days before the date set for the regular meeting of the board at which objections and arguments on the budget will be heard, the clerk shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations.

4. The board of trustees shall transmit a copy of the proposed budget to the county auditor for posting.

5. The board of trustees shall set a time and place for a regular meeting before final certification of the budget, which meeting shall provide time for comments and objections to be heard on the proposed budget. The meeting shall be held no less than ten days and no more than twenty days after the proposed budget is posted by the county auditor. The county auditor shall certify to the clerk the date of posting.

6. At the meeting, any resident or taxpayer of the township may present to the board of trustees objections to any part of the budget for the following fiscal year or arguments in favor of any part of the budget.

7. After the meeting on the proposed budget, the board of trustees shall adopt by resolution a budget for at least the next fiscal year, and the clerk shall certify the necessary tax levy for the next fiscal year to the county auditor and the county board of supervisors by March 15. The tax levy certified may be less than but shall not be more than the amount estimated in the proposed budget submitted at the meeting. Two copies each of the detailed budget as adopted and of the certified tax levy must be transmitted to the county auditor by March 15.

8. A township that has entered into an agreement with a municipality to receive fire protection service or emergency medical service from the municipality may request that a portion of its taxes be paid directly to the municipality providing the fire protection service or emergency medical service. Each year, the township must note its request on the budget and must attach a copy of the emergency services agreement to each copy of the budget transmitted to the county auditor. The auditor shall direct the county treasurer as to what portion of the township taxes to disburse to the municipality providing the fire protection service or emergency medical service.

For purposes of this subsection, *"municipality"* means a city, county, township, benefited fire district, or agency formed under chapter 28E and authorized by law to provide emergency services.

9. Taxes from a township levy shall be collected but not disbursed by the county to a township until copies of the township budget are transmitted to the county auditor as required in subsection 7. If a township fails to certify property taxes by March 15, the amount of taxes collected by the county for the township shall be the amount collected for the township in the previous fiscal year to the extent that it does not exceed the applicable levy rate limits in this chapter. However, that amount may not exceed the amount the township could collect based on property assessments for the fiscal year for which the township failed to certify property taxes.

10. The township budget shall be prepared on forms, and pursuant to instructions, prescribed by the county finance committee in consultation with the department of management.

2000 Acts, ch 1117, §26; 2002 Acts, ch 1056, §1; 2002 Acts, ch 1175, §84

NEW subsection 8 and former subsections 8 and 9 renumbered as 9 and 10

359.50 Budget amendment.

1. A township budget as finally adopted for the following fiscal year becomes effective July 1. A township budget for the current fiscal year may be amended for any of the following purposes:

a. To permit the expenditure of unexpended, unencumbered cash balances on hand at the end of the preceding fiscal year which had not been anticipated in the budget.

b. To permit the expenditure of amounts anticipated to be available from sources other than property taxation, and which had not been anticipated in the budget.

2. A budget amendment must be prepared and adopted by May 31 of the current fiscal year.

2000 Acts, ch 1117, §27

359.51 Separate accounts.

A township shall keep separate accounts corresponding to the items in the township's adopted or amended budget. A township shall keep accounts which provide an accurate and detailed statement of all public funds collected, received, or expended

for any township purpose, by any township officer, employee, or other person, and which show the receipt, use, and disposition of all township property.

2000 Acts, ch 1117, §28

359.52 Disposal of property.

A township shall not dispose of an interest in personal property, or an interest in real property, by sale, lease, or gift, except in accordance with the following procedure:

1. The board of trustees shall set forth its proposal in a resolution and shall publish notice of the resolution and of a date, time, and place of a public hearing on the proposal. The notice shall be published in a newspaper published at least once weekly and having general circulation in the township or in the largest city in the township. The notice shall be published no less than ten days and no more than twenty days before the hearing.

2. After the public hearing, the trustees may make a final determination on the proposal by resolution.

3. A township shall not dispose of real property by gift except to a governmental body for a public purpose.

This section does not apply to the sale by a township of subdivisions or lots within a cemetery.

2000 Acts, ch 1117, §29

CHAPTER 359A

FENCES

This chapter not enacted as a part of this title; transferred from chapter 113 in Code 1993

359A.1 Definitions.
359A.1A Partition fences.
359A.2 Trimming and cutting back.
359A.3 Powers of fence viewers.
359A.4 Decision — deposit.
359A.5 Contribution postponed.
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359A.7 Service of notice on nonresidents.
359A.8 Orders.
359A.9 Notice.
359A.10 Entry and record of orders.
359A.11 Record conclusive.
359A.12 Division by agreement — record.
359A.13 Orders and agreements — effect.
359A.14 Lands in different townships.
359A.15 Fence on another's land.
359A.16 Right to build fence on line.
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359A.18 Lawful fence.
359A.19 Duty to maintain tight fences.
359A.20 Tight fence.
359A.21 Duty to keep fence tight.
359A.22 Controversies.
359A.23 Appeal.
359A.24 Certification of decree.
359A.25 Record kept — fees of clerk.

359A.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §359A.1 transferred to §359A.1A

359A.1A Partition fences.

The respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year.

[C51, §895, 900, 901; R60, §1526, 1531, 1532; C73, §1489, 1494, 1495; C97, §2355; C24, 27, 31, 35, 39, §**1829;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.1]

C93, §359A.1

C2001, §359A.1A

359A.2 Trimming and cutting back.

If said fence be hedge, the owner thereof shall trim or cut it back twice during each calendar year, the first time during the month of June and the last time during the month of September, to within five feet from the ground, unless such owners otherwise agree in writing to be filed with and recorded by the township clerk.

[C51, §900; R60, §1531; C73, §1494; C97, §2355; C24, 27, 31, 35, 39, §**1830;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.2]

C93, §359A.2

359A.3 Powers of fence viewers.

The fence viewers shall have power to determine any controversy arising under this chapter, upon giving five days' notice in writing to the opposite party or parties, prescribing the time and place of meeting to hear and determine the matter named in said notice. Upon request of any landowner, the fence viewers shall give such notice to all adjoining landowners liable for the erection,

maintenance, rebuilding, trimming, or cutting back, or repairing of a partition fence, or to pay for an existing hedge or fence.

[C51, §896, 898, 902, 909; R60, §1527, 1529, 1533, 1540; C73, §1490, 1492, 1496, 1503; C97, §2356; C24, 27, 31, 35, 39, §**1831;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.3]

C93, §359A.3

Trustees as fence viewers, §359.17

359A.4 Decision — deposit.

At said time and place the fence viewers shall meet and determine by written order the obligations, rights, and duties of the respective parties in such matter, and assign to each owner the part which the owner shall erect, maintain, rebuild, trim or cut back, or pay for, and fix the value thereof, and prescribe the time within which the same shall be completed or paid for, and, in case of repair, may specify the kind of repairs to be made. If the fence is not erected, rebuilt, or repaired within the time prescribed in the order, the fence viewers shall require the complaining landowner to deposit with the fence viewers a sum of money sufficient to pay for the erecting, rebuilding, trimming, cutting back or repairing such fence together with the fees of the fence viewers and costs. Such complaining landowner shall be reimbursed as soon as the taxes are collected as provided in section 359A.6.

[C51, §896, 898, 902, 909; R60, §1527, 1529, 1533, 1540; C73, §1490, 1492, 1496, 1503; C97, §2356; C24, 27, 31, 35, 39, §**1832;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.4]

C93, §359A.4

359A.5 Contribution postponed.

In case a landowner desires to erect a partition hedge or fence when the owner of the adjoining land is not liable to contribute thereto, the fence viewers may assign to each owner the part which the owner shall erect, maintain, rebuild, and repair, trim or cut back, by pursuing the method provided in sections 359A.3 and 359A.4; but the adjoining owner shall not be required to contribute thereto until the adjoining owner becomes liable so to do, as elsewhere in this chapter provided.

[C51, §901; R60, §1532; C73, §1495; C97, §2357; C24, 27, 31, 35, 39, §**1833;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.5]

C93, §359A.5

359A.6 Default — costs and fees collected as taxes.

If the erecting, rebuilding, or repairing of such fence be not completed within thirty days from and after the time fixed therefor in such order, the board of township trustees acting as fence viewers shall cause the fence to be erected, rebuilt and repaired, and the value thereof may be fixed by the fence viewers, and unless the sum so fixed, together with all fees of the fence viewers caused by such default, as taxed by them, is paid to the county treasurer, within ten days after the same is so ascertained; or when ordered to pay for an existing fence, and the value thereof is fixed by the fence viewers, and said sum, together with the fees of the fence viewers, as taxed by them, remains unpaid by the party in default for ten days, the fence viewers shall certify to the county auditor the full amount due from the party or parties in default, including all fees and costs taxed, together with a description of the real estate owned by the party or parties in default along or upon which the said fence exists, and the county auditor shall enter the same upon the tax list and the amount shall be collected as other taxes.

[C51, §897, 899, 902; R60, §1528, 1530, 1533; C73, §1491, 1493, 1496; C97, §2358; S13, §2358; C24, 27, 31, 35, 39, §**1834;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.6]

C93, §359A.6

Collection of taxes, chapter 445 et seq.
Fees of fence viewers, §359.46

359A.7 Service of notice on nonresidents.

The notice by the fence viewers provided for in this chapter may be served upon any owner nonresident of the county where the land is situated, by publication thereof, once each week, for two consecutive weeks in a newspaper printed in the county in which the land is situated, proof of which shall be made as in case of an original notice and filed with the fence viewers, and a copy delivered to the occupant of said land, or to any agent of the owner in charge of the same.

[C97, §2359; S13, §2359; C24, 27, 31, 35, 39, §**1835;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.7]

C93, §359A.7

Proof of publication, R.C.P. 1.314

359A.8 Orders.

All orders and decisions made by the fence viewers shall be in writing, signed by at least two of them, and filed with the township clerk.

[C97, §2360; C24, 27, 31, 35, 39, §**1836;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.8]

C93, §359A.8

359A.9 Notice.

All notices in this chapter required to be given shall be in writing, and return of service thereof made in the same manner as notices in actions before a judicial magistrate.

[C97, §2360; C24, 27, 31, 35, 39, §**1837;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.9]

C93, §359A.9

Service and return, R.C.P. 1.302 – 1.315

359A.10 Entry and record of orders.

Such orders, decisions, notices, and returns shall be entered of record at length by the town-

ship clerk, and a copy thereof certified by the township clerk to the county recorder, who shall record the same in the recorder's office in a book kept for that purpose, and index such record in the name of each adjoining owner as grantor to the other.

[C97, §2360; C24, 27, 31, 35, 39, §**1838;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.10]

C93, §359A.10

359A.11 Record conclusive.

The record in the recorder's office, unless modified, by appeal as hereinafter provided, shall be conclusive evidence of the matters therein stated, and such record or a certified copy thereof shall be competent evidence in all courts.

[C97, §2360; C24, 27, 31, 35, 39, §**1839;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.11]

C93, §359A.11

Appeal, §359A.23

359A.12 Division by agreement — record.

The several owners may, in writing, agree upon the portion of partition fences between their lands which shall be erected and maintained by each, which writing shall describe the lands and the parts of the fences so assigned, be signed and acknowledged by them, and filed and recorded in the office of the recorder of deeds of the county or counties in which they are situated.

[C51, §905; R60, §1536; C73, §1499; C97, §2361; C24, 27, 31, 35, 39, §**1840;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.12]

C93, §359A.12

359A.13 Orders and agreements — effect.

Any order made by the fence viewers, or any agreement in writing between adjoining landowners, when recorded in the office of the recorder of deeds, as in this chapter provided, shall bind the makers, their heirs, and subsequent grantees.

[C51, §905; R60, §1536; C73, §1499; C97, §2362; C24, 27, 31, 35, 39, §**1841;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.13]

C93, §359A.13

359A.14 Lands in different townships.

When the adjoining lands are situated in different townships in the same or different counties, the clerk of the township of the owner making the application shall select two trustees of the clerk's township as fence viewers, and the clerk of the other township one from that clerk's township, who shall possess, in such case, all the powers given to fence viewers in this chapter, but all orders, notices, and valuations and taxation of costs made by them must be recorded in both townships and in the office of the recorder of deeds of each county.

[C51, §906; R60, §1537; C73, §1500; C97, §2363; C24, 27, 31, 35, 39, §**1842;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.14]

C93, §359A.14

359A.15 Fence on another's land.

When a person has made a fence or other improvement on an enclosure, which is found to be on land of another, such person may enter upon the land of the other and remove the fence or other improvement and material, upon the first paying, or offering to pay, the other party for any damage to the soil which may be occasioned thereby, and the value of any timber used in said improvement taken from the land of such other party, if any; and if the parties cannot agree as to the damages, the fence viewers may determine them as in other cases; such removal shall be made as soon as practicable, but not so as to expose the crops of the other party.

[C51, §907, 908; R60, §1538, 1539; C73, §1501, 1502; C97, §2364; C24, 27, 31, 35, 39, §**1843;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.15]

C93, §359A.15

359A.16 Right to build fence on line.

A person building a fence may lay the same upon the line between the person and the adjacent owners, so that it may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on the owner's own land.

[C51, §910; R60, §1541; C73, §1504; C97, §2365; C24, 27, 31, 35, 39, §**1844;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.16]

C93, §359A.16

359A.17 Fence on one side of line.

The provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line.

[C51, §911; R60, §1542; C73, §1505; C97, §2366; C24, 27, 31, 35, 39, §**1845;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.17]

C93, §359A.17

359A.18 Lawful fence.

A lawful fence shall consist of:

1. Three rails of good substantial material fastened in or to good substantial posts not more than ten feet apart.

2. Three boards not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts not more than eight feet apart.

3. Three wires, barbed with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire, or of four wires, two thus barbed and two smooth, the wires to be firmly fastened to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to

be not more than fifty-four nor less than forty-eight inches in height.

4. Wire either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the ground, the top rail, wire, or board to be between forty-eight and fifty-four inches in height and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.

5. A fence consisting of four parallel, coated steel, smooth high-tensile wire which meets requirements adopted by the American society for testing and materials, including but not limited to requirements relating to the grade, tensile strength, elongation, dimensions, and tolerances of the wire. The wire must be firmly fastened to plastic, metal, or wooden posts securely planted in the earth. The posts shall not be more than two rods apart. The top wire shall be at least forty inches in height.

6. Any other kind of fence which the fence viewers consider to be equivalent to a lawful fence or which meets standards established by the department of agriculture and land stewardship by rule as equivalent to a lawful fence.

[R60, §1544, 1545; C73, §1507; C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1846;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.18]

85 Acts, ch 195, §11; 87 Acts, ch 17, §5

C93, §359A.18

94 Acts, ch 1061, §1; 2000 Acts, ch 1058, §33

Schoolyard fences, §297.14

359A.19 Duty to maintain tight fences.

All partition fences may be made tight by the party desiring it, and when that party's portion is so completed, and securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart, the adjoining property owner shall construct the adjoining owner's portion of the adjoining fence, in a lawful tight manner, same to be securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart.

[R60, §1545; C73, §1507; C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1847;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.19]

C93, §359A.19

359A.20 Tight fence.

All tight partition fences shall consist of:

1. Not less than twenty-six inches of substantial woven wire on the bottom, with three strands of barbed wire with not less than thirty-six barbs of at least two points to the rod, on top, the top wire to be not less than forty-eight inches, nor more than fifty-four inches high.

2. Good substantial woven wire not less than forty-eight inches nor more than fifty-four inches high with one barbed wire of not less than thirty-six barbs of two points to the rod, not more than four inches above said woven wire.

3. Any other kind of fence which the fence viewers consider to be equivalent to a tight partition fence or which meets standards established by the department of agriculture and land stewardship by rule as equivalent to a tight partition fence.

[C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1848;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.20]

85 Acts, ch 195, §12; 87 Acts, ch 17, §6

C93, §359A.20

359A.21 Duty to keep fence tight.

In case adjoining owners or occupants of land shall use the same for pasturing sheep or swine, each shall keep that one's share of the partition fence in such condition as shall restrain such sheep or swine.

[C73, §1507; C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1849;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.21]

C93, §359A.21

359A.22 Controversies.

Upon the application of either owner, after notice is given as prescribed in this chapter, the fence viewers shall determine all controversies arising under sections 359A.18 to 359A.21, inclusive, including the partition fences made sheep and swine tight.

[C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1850;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.22]

C93, §359A.22

Notice, §359A.3, 359A.7, 359A.9

359A.23 Appeal.

Any person affected by an order or decision of the fence viewers may appeal to the district court by filing with the clerk of said court a notice of appeal within twenty days after the rendition of the order or decision appealed from and filing an appeal bond in an amount approved by the township clerk. The township clerk, after recording the original papers, shall thereupon file them in the office of the clerk of the district court, certifying them to be such, and the clerk shall docket them, entitling the applicant or petitioner as plaintiff, and it shall stand for trial as other cases.

[C97, §2369; C24, 27, 31, 35, 39, §**1851;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.23]

C93, §359A.23

Presumption of approval, §636.10

359A.24 Certification of decree.

Upon the final determination of said appeal the clerk of the district court shall certify to the recorder of deeds the fact that a judgment has been entered upon such appeal, with the book and page of such judgment, and the recorder shall there-

upon enter on the recorder's record a notation that a judgment on appeal has been entered and that the same may be found in the office of the clerk of the district court, in the book and page designated in said certificate.

[C24, 27, 31, 35, 39, §**1852;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.24]

C93, §359A.24

359A.25 Record kept — fees of clerk.

The township clerk shall enter all matters herein required to be made of record in the clerk's record book, and shall receive ten cents for each one hundred words in entering of record and making certified copies of the matters herein provided for, and twenty-five cents additional for the clerk's certificate thereto when required, and shall also receive the costs of recording in the office of the recorder of deeds of any instrument required to be so recorded.

[C97, §2370; C24, 27, 31, 35, 39, §**1853;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.25]

C93, §359A.25

CHAPTER 360

TOWNSHIP HALLS

360.1 Election.
360.2 Tax.
360.3 Transfer of fund.
360.4 Location.
360.5 Construction.
360.6 Custodian.
360.7 Bond.
360.8 Tax for repairs.
360.9 Reversion of real estate — payment.

360.1 Election.

The trustees, on a petition of a majority of the resident freeholders of any civil township, shall request the county commissioner of elections to submit the question of building or acquiring by purchase, or acquiring by a lease with purchase option, a public hall to the electors thereof. The county commissioner shall conduct the election pursuant to the applicable provisions of chapters 39 to 53 and certify the result to the trustees. The form of the proposition shall be: "Shall the proposition to levy a tax of . . . . . cents per thousand dollars of assessed value for the erection of a public hall be adopted?" Notice of the election shall be given as provided by chapter 49.

[C97, §567; C24, 27, 31, 35, 39, §**5574;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §360.1]

Gifts and donations, §359.29

360.2 Tax.

If a majority of the votes cast are in favor of the tax, the trustees shall certify such fact to the board of supervisors, and they shall thereupon levy a tax not to exceed the rate voted and not to exceed twenty and one-fourth cents per thousand dollars of assessed value each year for a period not exceeding five years on the taxable property of the township, except that such five-year limitation shall not apply in case of a public hall acquired by a lease with a purchase option. When such tax is collected by the treasurer, it shall be paid to the township clerk; but said clerk shall not receive to exceed one percent for handling said money.

[C97, §568; C24, 27, 31, 35, 39, §**5575;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §360.2]

360.3 Transfer of fund.

When there are funds in the hands of a township clerk, raised under this chapter which are not desired for the purposes for which they were raised, the funds may be transferred to the general fund of a school district or districts pro rata in which the funds were raised, when a petition is presented to the trustees, signed by a majority of the registered voters of the township, as shown by the election register or registers of the last preceding primary or general election held in the township. The transfer of funds shall be made by the township clerk upon order of the trustees after the filing of the petition with the clerk.

[S13, §592-b; C24, 27, 31, 35, 39, §**5576;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §360.3]

83 Acts, ch 185, §33, 62; 95 Acts, ch 67, §53

360.4 Location.

Any public hall built under the provisions of this chapter shall be located by the township trustees so as to accommodate the greatest number of the resident taxpayers, and for such purpose the trustees may purchase land not to exceed in value five hundred dollars. They shall also have the power to join with the city authorities of any city within their borders and build and equip said building as a public hall or as a memorial building as provided in section 37.21 under such terms and conditions as may be mutually agreed upon.

[C97, §569; C24, 27, 31, 35, 39, §**5577;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §360.4]

360.5 Construction.

The township trustees or in case of joint ownership, in conjunction with the city authorities shall have charge of the building of such hall, shall receive bids, and shall let the building of the same to the lowest responsible bidder, and the township clerk shall pay out of the funds collected, only on the order of the trustees of said township for the township's share of the cost thereof.

[C97, §570; C24, 27, 31, 35, 39, §**5578;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §360.5]

360.6 Custodian.

The township clerk, under the direction of the trustees, shall be the custodian of the building, and the use thereof may be permitted by the township trustees to citizens of the township for any lawful purpose; and, for the purposes of this chapter, the township clerk is hereby clothed with all the powers and duties of a constable of the township, to maintain order within and about the premises, protect the property, and enforce orders of the township trustees with respect thereto. In case of joint ownership by the township and city, the duties herein enumerated shall devolve jointly upon the township trustees and the city authorities or they may purchase a building already built with the same limitations as in said section 360.4. A copy of this section shall be at all times kept posted in a conspicuous place in said hall.

[C97, §571; C24, 27, 31, 35, 39, §**5579;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §360.6]

360.7 Bond.

When a tax is voted as provided in this chapter, the township clerk shall, before drawing any of said tax from the treasury of the county, execute a bond, with penalty double the amount of said tax, which bond shall be approved by the board of supervisors.

[C97, §572; C24, 27, 31, 35, 39, §**5580;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §360.7]

360.8 Tax for repairs.

The trustees of any township where such building has been erected or acquired by purchase, lease with purchase option, or by gift are hereby authorized to certify to the board of supervisors that a tax of not exceeding in any one year, thirteen and one-half cents per thousand dollars of assessed value, on the taxable property of the township, should be levied, to be used in keeping such building in repair, to furnish same with necessary furniture, and provide for the care thereof. Provided, that in counties with a population of seventeen thousand to seventeen thousand two hundred fifty census 1960, where such buildings are of brick construction with at least one hundred thousand cubic feet of space, such tax may be twenty-seven cents per thousand dollars of assessed value on the taxable property. When such certificate is filed in the auditor's office, the board of supervisors shall levy such tax.

[C97, §573; C24, 27, 31, 35, 39, §**5581;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §360.8]

360.9 Reversion of real estate — payment.

Any real estate, including improvements thereon, situated wholly outside of a city, owned by a township and heretofore used for township purposes and which is no longer necessary for township purposes, shall revert to the present owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time hereinafter prescribed, pay the value thereof to the township clerk. In the event the township trustees and said owner of the tract from which such real property was taken do not agree as to the value of such property and improvements thereon, the township clerk shall, on written application of either party, appoint three disinterested residents of the township to appraise such property and improvements thereon.

The township clerk shall give notice to said trustees and said owner of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court. Such appraisers shall inspect the real estate and improvements and, at the time and place designated in the notice, appraise the same in writing, which appraisement, after being duly verified, shall be filed with the township clerk.

If the present owner of the tract from which said site was taken fails to pay the amount of such appraisement to such township within twenty days after the filing of same with the township clerk, the township trustees may sell said site, including any improvements thereon, to any person at the appraised value, or may sell the same at public auction for the best bid.

Any real estate, including improvements thereon, situated within a city, owned by a township and heretofore used for township purposes and which is no longer necessary for township purposes, may be sold by the township trustees at public auction for the best bid.

The township trustees in the case of joint ownership, in conjunction with any city authorities, shall not sell such real estate including improvements thereon unless the city authorities concur in such sale. The proceeds of such sale of jointly owned real estate including improvements located thereon shall be prorated between the township and the city on the basis of their respective contribution to the acquisition and maintenance of such property.

Sales at public auction contemplated herein shall be made only after the township trustees advertise for bids for such property. Such advertisement shall definitely describe said property and be

published by at least one insertion each week for two consecutive weeks in some newspaper having general circulation in the township.

The township trustee shall not, prior to two weeks after the said second publication, nor later than six months after said second publication, accept any bid. The township trustees may accept only the best bid received prior to acceptance. The township trustees may decline to sell if all the bids received are deemed inadequate.

Subject to the right of reversion to the present owner as above provided, the township trustees may sell, lease, exchange, give or grant and accept any interest in real property to, with or from any county, municipal corporation or school district if the real property is within the jurisdiction of both the grantor and grantee and the advertising and public auction requirements of this section shall not apply to any such transaction between the aforesaid local units of government.

[C71, 73, 75, 77, 79, 81, §360.9]

CHAPTER 361

WEATHER MODIFICATION

Repealed by 94 Acts, ch 1173, §42

SUBTITLE 4

CITIES

CHAPTER 362

DEFINITIONS AND MISCELLANEOUS PROVISIONS

362.1 Citation.
362.2 Definitions.
362.3 Publication of notices.
362.4 Petition of eligible electors.
362.5 Interest in public contract prohibited — exceptions.
362.6 Conflict of interest.
362.7 Prior measures valid.
362.8 Construction.
362.9 Application of city code.
362.10 Police officers and fire fighters.

362.1 Citation.

This chapter and chapters 364, 368, 372, 376, 380, 384, 388 and 392 may be cited as the *"City Code of Iowa"*.

[C75, 77, 79, 81, §362.1]

362.2 Definitions.

As used in the city code of Iowa, unless the context otherwise requires:

1. *"Administrative agency"* means an agency established by a city for any city purpose or for the administration of any city facility, as provided in chapter 392, except a board established to administer a municipal utility, a zoning commission and zoning board of adjustment, or any other agency which is controlled by state law. An administrative agency may be designated as a board, board of trustees, commission, or by another title. If an agency is advisory only, such a designation must be included in its title.

2. *"Amendment"* means a revision or repeal of an existing ordinance or code of ordinances.

3. *"Charter"* means the form of government selected by a city as provided in chapter 372.

4. *"City"* means a municipal corporation, but not including a county, township, school district, or any special-purpose district or authority. When used in relation to land area, "city" includes only the area within the city limits.

5. *"City code"* means the city code of Iowa.

6. *"City utility"* means all or part of a waterworks, gasworks, sanitary sewage system, storm water drainage system, electric light and power plant and system, heating plant, cable communication or television system, telephone or telecommunications systems or services offered separately or combined with any system or service specified in this subsection or authorized by other law, any of which are owned by a city, including all land, easements, rights of way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the utility.

7. *"Clerk"* means the recording and recordkeeping officer of a city regardless of title.

8. *"Council"* means the governing body of a city.

9. *"Council member"* means a member of a council, including an alderman.

10. *"Eligible elector"* means the same as it is defined in section 39.3, subsection 6.

11. *"Governmental body"* means the United States of America or an agency thereof, a state, a political subdivision of a state, a school corporation, a public authority, a public district, or any other public body.

12. *"May"* confers a power.

13. *"Measure"* means an ordinance, amendment, resolution, or motion.

14. *"Must"* states a requirement.

15. *"Officer"* means a natural person elected or appointed to a fixed term and exercising some portion of the power of a city.

16. *"Ordinance"* means a city law of a general and permanent nature.

17. *"Person"* means an individual, firm, partnership, domestic or foreign corporation, company, association or joint stock association, trust, or other legal entity, and includes a trustee, receiver, assignee, or similar representative thereof, but does not include a governmental body.

18. *"Property," "real property,"* and *"personal property"* have the same meaning as provided in section 4.1.

19. *"Recorded vote"* means a record, roll call vote.

20. *"Registered voter"* means the same as it is defined in section 39.3, subsection 11.

21. *"Resolution"* or *"motion"* means a council

statement of policy or a council order for action to be taken, but "motion" does not require a recorded vote.

22. *"Secretary"* of a utility board means the recording and record-keeping officer of the utility board regardless of title.

23. *"Shall"* imposes a duty.

[C50, §391A.1; C54, 58, 62, 66, 71, 73, §363A.2, 391A.1; C75, 77, 79, 81, §362.2]

90 Acts, ch 1206, §1; 93 Acts, ch 153, §1; 94 Acts, ch 1169, §65; 99 Acts, ch 63, §2, 8

1999 amendment to subsection 6 applies retroactively to July 1, 1993; validity of city elections after June 30, 1993, regarding offer of communications or telecommunications systems or services and actions of utilities board; city financing measures prior to January 1, 1999, not a violation; 99 Acts, ch 63, §8

362.3 Publication of notices.

Unless otherwise provided by state law:

1. If notice of an election, hearing, or other official action is required by the city code, the notice must be published at least once, not less than four nor more than twenty days before the date of the election, hearing, or other action.

2. A publication required by the city code must be in a newspaper published at least once weekly and having general circulation in the city. However, if the city has a population of two hundred or less, or in the case of ordinances and amendments to be published in a city in which no newspaper is published, a publication may be made by posting in three public places in the city which have been permanently designated by ordinance.

In the case of notices of elections, a city with a population of two hundred or less meets the publication requirement of this section by posting notices of elections in three public places which have been designated by ordinance.

[R60, §1133; C73, §492; C97, §686, 687; C24, 27, 31, 35, §5720, 5721, 5721-a1; C39, §**5720, 5721, 5721.1;** C46, 50, §366.7 – 366.9; C54, 58, 62, 66, 71, 73, §366.7; C75, 77, 79, 81, §362.3]

93 Acts, ch 143, §48; 94 Acts, ch 1180, §50

362.4 Petition of eligible electors.

If a petition of the voters is authorized by the city code, the petition is valid if signed by eligible electors of the city equal in number to ten percent of the persons who voted at the last preceding regular city election, but not less than ten persons, unless otherwise provided by state law. The petition shall include the signatures of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

The petition shall be examined before it is accepted for filing. If the petition appears valid on its face it shall be accepted for filing. If it lacks the required number of signatures it shall be returned to the petitioner.

Petitions which have been accepted for filing are valid unless written objections are filed with the city clerk within five working days after the petition is received. The objection process in section 44.8 shall be followed.

[C75, 77, 79, 81, §362.4]

89 Acts, ch 136, §70; 94 Acts, ch 1180, §51

362.5 Interest in public contract prohibited — exceptions.

When used in this section, *"contract"* means any claim, account, or demand against or agreement with a city, express or implied.

A city officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the officer's or employee's city. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

1. The payment of lawful compensation of a city officer or employee holding more than one city office or position, the holding of which is not incompatible with another public office or is not prohibited by law.

2. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

3. An employee of a bank or trust company, who serves as treasurer of a city.

4. Contracts made by a city, upon competitive bid in writing, publicly invited and opened.

5. Contracts in which a city officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 9, or both, if the contract is for professional services not customarily awarded by competitive bid, if the remuneration of employment will not be directly affected as a result of the contract, and if the duties of employment do not directly involve the procurement or preparation of any part of the contract.

6. The designation of an official newspaper.

7. A contract in which a city officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract may not be renewed.

8. Contracts with volunteer fire fighters or civil defense volunteers.

9. A contract with a corporation in which a city officer or employee has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of such officer or employee.

10. Contracts not otherwise permitted by this section, for the purchase of goods or services by a city having a population of more than two thousand five hundred, which benefit a city officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of one thousand five hundred dollars in a fiscal year.

11. Contracts not otherwise permitted by this section for the purchase of goods or services by a city having a population of two thousand five hundred or less, which benefit a city officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of two thousand five hundred dollars in a fiscal year.

12. Franchise agreements between a city and a utility and contracts entered into by a city for the provision of essential city utility services.

[R60, §1122; C73, §490; C97, §943; S13, §668, 879-q, 1056-a31; C24, 27, 31, 35, 39, §**5673, 6534, 6710;** C46, 50, §363.47, 416.58, 420.20; C54, 58, 62, 66, 71, 73, §368A.22; C75, 77, 79, 81, §362.5]

84 Acts, ch 1228, §1, 2; 87 Acts, ch 203, §1, 2; 88 Acts, ch 1246, §2, 3; 90 Acts, ch 1209, §5, 6; 91 Acts, ch 60, §1, 2; 92 Acts, ch 1036, §1

362.6 Conflict of interest.

A measure voted upon is not invalid by reason of conflict of interest in an officer of a city, unless the vote of the officer was decisive to passage of the measure. If a specific majority or unanimous vote of a municipal body is required by statute, the majority or vote must be computed on the basis of the number of officers not disqualified by reason of conflict of interest. However, a majority of all members is required for a quorum. For the purposes of this section, the statement of an officer that the officer declines to vote by reason of conflict of interest is conclusive and must be entered of record.

[C71, 73, §368A.25; C75, 77, 79, 81, §362.6]

362.7 Prior measures valid.

A valid measure adopted by a city prior to July 1, 1975, remains valid unless the measure is irreconcilable with the city code.

[C75, 77, 79, 81, §362.7]

362.8 Construction.

The city code, being necessary for the public safety and welfare, shall be liberally construed to effectuate its purposes.

[C75, 77, 79, 81, §362.8]

362.9 Application of city code.

The provisions of this chapter and chapters 364, 368, 372, 376, 380, 384, 388 and 392 are applicable to all cities.

[C75, 77, 79, 81, §362.9]

362.10 Police officers and fire fighters.

The maximum age for a police officer, marshal, or fire fighter employed for police duty or the duty of fighting fires is sixty-five years of age. This section shall not apply to volunteer fire fighters.

[C35, §6326-f6; C39, §**6326.08;** C46, 50, 54, 58, 62, §411.6; C66, 71, 73, 75, 77, 79, §410.6, 411.6; C81, §362.10]

98 Acts, ch 1183, §113

CHAPTER 363

MUNICIPAL ORGANIZATION AND OFFICERS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 363A

MAYOR-COUNCIL FORM OF MUNICIPAL GOVERNMENT

Repealed by 72 Acts, ch 1088, §199

CHAPTER 363B

COMMISSION FORM OF MUNICIPAL GOVERNMENT

Repealed by 72 Acts, ch 1088, §199

CHAPTER 363C

COUNCIL-MANAGER FORM OF MUNICIPAL GOVERNMENT BY ELECTION

Repealed by 72 Acts, ch 1088, §199

CHAPTER 363D

CITY MANAGER PROVIDED BY ORDINANCE

Repealed by 72 Acts, ch 1088, §199

CHAPTER 363E

COUNCIL-MANAGER-WARD FORM OF GOVERNMENT

Repealed by 72 Acts, ch 1088, §199

CHAPTER 364

POWERS AND DUTIES OF CITIES

364.1 Scope.
364.2 Vesting of power — franchises.
364.3 Limitation of powers.
364.4 Property and services outside of city — lease-purchase — insurance.
364.5 Joint action — Iowa league of cities — penalty.
364.6 Procedure.
364.7 Disposal of property.
364.8 Overpasses or underpasses.
364.9 Flood control — railway tracks.
364.10 Repealed by 76 Acts, ch 1164, §98.
364.11 Street construction by railways.
364.12 Responsibility for public places.
364.12A Condemnation of residential buildings — public purpose.
364.13 Installments.
364.13A Special assessments — lien and precedence.
364.13B Special assessments — procedures for levy.
364.14 Personal injuries.
364.15 Changing grade of streets.
364.16 Municipal fire protection.
364.17 City housing codes.
364.18 Federal aid.
364.19 Contracts to provide services to tax-exempt property.
364.20 Motor vehicles required to operate on ethanol-blended gasoline.
364.21 Use of vacant school property.
364.22 Municipal infractions.
364.22A Neglected animals.
364.23 Energy efficient lighting required.
364.24 Traffic light synchronization.
364.25 Retiree health care.

364.1 Scope.

A city may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent city power.

[C51, §664; R60, §1047, 1056, 1057, 1071 – 1073, 1095; C73, §454 – 456, 482, 524; C97, §680, 695, 947; C13, §695; C24, 27, 31, 35, 39, §**5714, 5738, 6720;** C46, 50, §366.1, 368.2, 420.31; C54, 58, 62, 66, 71, 73, §366.1, 368.2, 420.31; C75, 77, 79, 81, §364.1]

364.2 Vesting of power — franchises.

1. A power of a city is vested in the city council except as otherwise provided by a state law.

2. The enumeration of a specific power of a city does not limit or restrict the general grant of home rule power conferred by the Constitution. A city may exercise its general powers subject only to limitations expressly imposed by a state or city law.

3. An exercise of a city power is not inconsistent with a state law unless it is irreconcilable with the state law.

4. *a.* A city may grant to any person a franchise to erect, maintain, and operate plants and systems for electric light and power, heating, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city for a term of not more than twenty-

five years. When considering whether to grant, amend, extend, or renew a franchise, a city shall hold a public hearing on the question. Notice of the time and place of the hearing shall be published as provided in section 362.3. The franchise may be granted, amended, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted, amended, extended, or renewed.

b. Such an ordinance shall not become effective unless approved at an election. The proposal may be submitted by the council on its own motion to the voters at any city election. Upon receipt of a valid petition as defined in section 362.4 requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election or at a special election called for that purpose before the next regular city election. However, the city council may dispense with such election as to the grant, amendment, extension, or renewal of an electric light and power, heating, or gasworks franchise unless there is a valid petition requesting submission of the proposal to the voters, or the party seeking such franchise, grant, amendment, extension, or renewal requests an election. If a majority of those voting approves the proposal, the city may proceed as proposed. The complete text of the ordinance shall be included on the ballot if paper ballots are used. If an electronic voting system or voting machine is used, the proposal shall be stated on the ballot and the full text of the ordinance posted for the voters pursuant to section 52.25. All absentee voters shall receive the full text of the ordinance.

c. Notice of the election shall be given by publication as prescribed in section 49.53 in a newspaper of general circulation in the city.

d. The person asking for the granting, amending, extension, or renewal of a franchise shall pay the costs incurred in holding the election, including the costs of the notice. A franchise shall not be finally effective until an acceptance in writing has been filed with the council and payment of the costs has been made.

e. The franchise ordinance may regulate the conditions required and the manner of use of the streets and public grounds of the city, and it may, for the purpose of providing electrical, gas, heating, or water service, confer the power to appropriate and condemn private property upon the person franchised.

f. If a city franchise fee is assessed to customers of a franchise, the fee shall not be assessed to the city as a customer.

g. If a city grants more than one cable television franchise, the material terms and conditions of any additional franchise shall not give undue preference or advantage to the new franchisee. A city shall not grant a new franchise that does not include the same territory as that of the existing franchise. A new franchisee shall be given a reasonable period of time to build the new system throughout the territory.

[C51, §664; R60, §1047, 1056, 1057, 1090, 1094, 1095; C73, §454 – 456, 471, 473, 474, 517, 523, 524; C97, §695, 720 – 722, 775, 776; S13, §695, 720 – 722, 776; C24, 27, 31, 35, §5738, 5904, 5904-c1, 5905 – 5909, 6128, 6131 – 6134; C39, §**5738, 5904, 5904.1, 5905 – 5909, 6128, 6131 – 6134;** C46, 50, §368.1, 386.1 – 386.7, 397.2, 397.5 – 397.8; C54, 58, 62, 66, §368.2, 386.1 – 386.7, 388.5 – 388.9, 397.2, 397.5 – 397.8; C71, 73, §368.2, 386.1 – 386.7, 397.2, 397.5 – 397.8; C75, 77, 79, 81, §364.2]

83 Acts, ch 127, §5; 93 Acts, ch 143, §49; 98 Acts, ch 1123, §15; 98 Acts, ch 1148, §1, 9; 2001 Acts, ch 82, §1; 2001 Acts, ch 98, §1

364.3 Limitation of powers.

The following are limitations upon the powers of a city:

1. A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A city shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten percent of all fines collected by cities shall be deposited in the account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section 911.2 shall be added to a city fine and is not a part of the city's penalty.

3. A city may not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

4. A city may not levy a tax unless specifically authorized by a state law.

5. A city shall not adopt or enforce any ordinance imposing any registration or licensing system or registration or license fees for owner-occupied manufactured or mobile homes including the lots or lands upon which they are located. A city shall not adopt or enforce any ordinance imposing any registration or licensing system, or registration or license fees, or safety or sanitary standards for rental manufactured or mobile homes unless a similar registration or licensing system, or registration or license fees, or safety or sanitary standards are required for other rental properties intended for human habitation. This subsection does not preclude the investigation and abatement of a nuisance or the enforcement of a tiedown system, or the enforcement of any regulations of the state or local board of health if those regulations apply to other rental properties or to owner-occupied housing intended for human habitation.

6. A city shall not provide a civil penalty in excess of five hundred dollars for the violation of an ordinance which is classified as a municipal infraction or if the infraction is a repeat offense, a

civil penalty not to exceed seven hundred fifty dollars for each repeat offense. A municipal infraction is not punishable by imprisonment.

7. A city which operates a cable communications system shall manage the right-of-way on a competitively neutral and nondiscriminatory basis. Additionally, a city-operated cable communications system shall be required to pay the same fees and charges and comply with other requirements as may be imposed by the city by ordinance or by the terms of a franchise granted by the city, or as may otherwise be imposed by the city, upon any other cable provider. This subsection does not prohibit a city from making an equitable apportionment of franchise requirements between or among cable television providers, in order to eliminate duplication. This subsection shall not be construed to prohibit a city-operated cable communications system from making transfers of surplus as otherwise allowed or from making in-kind contributions as otherwise allowed.

8. *a.* A city may adopt and enforce an ordinance requiring the construction of a storm shelter at a manufactured home community or mobile home park which is constructed after July 1, 1999. In lieu of requiring construction of a storm shelter, a city may require a community or park owner to provide a plan for the evacuation of community or park residents to a safe place of shelter in times of severe weather including tornadoes and high winds if the city determines that a safe place of shelter is available within a reasonable distance of the manufactured home community or mobile home park for use by community or park residents. Each evacuation plan prepared pursuant to this subsection shall be filed with, and approved by, the local emergency management agency. If construction of a storm shelter is required, an ordinance adopted or enforced pursuant to this subsection shall not include any of the following requirements:

(1) That the size of the storm shelter be larger than the equivalent of seven square feet for each manufactured or mobile home space in the manufactured home community or mobile home park.

(2) That the storm shelter include a restroom if the shelter is used exclusively as a storm shelter.

(3) That the storm shelter exceed the construction specifications approved by a licensed professional engineer and presented by the owner of the manufactured home community or mobile home park.

(4) That the shelter be located any closer than one thousand three hundred twenty feet from any manufactured or mobile home in the community. However, this restriction shall not prohibit the adoption or enforcement of an ordinance that requires a minimum of one shelter to be located in a manufactured home community or mobile home park.

b. For the purposes of this subsection:

(1) *"Manufactured home community"* means the same as land-leased community defined in sections 335.30A and 414.28A.

(2) *"Mobile home park"* means a mobile home park as defined in section 562B.7.

(3) *"Storm shelter"* means a single structure or multiple structures designed to provide persons with temporary protection from a storm.

9. A city shall not adopt or enforce any ordinance imposing any limitation on the amount of rent that can be charged for leasing private residential or commercial property. This subsection does not prevent the right of a city to manage and control residential property in which the city has a property interest.

[R60, §1071 – 1073, 1095; C73, §482, 524; C97, §668, 680, 947; S13, §668; C24, 27, 31, 35, 39, §**5663, 5714, 6720;** C46, 50, §363.36, 366.1, 420.31; C54, 58, 62, §366.1, 368A.1(10), 420.31; C66, 71, 73, §366.1, 368.2, 368A.1(10), 420.31; C75, 77, 79, 81, §364.3]

83 Acts, ch 123, §171, 209; 84 Acts, ch 1219, §31; 85 Acts, ch 195, §44; 86 Acts, ch 1202, §1; 86 Acts, ch 1245, §1118; 94 Acts, ch 1074, §4; 98 Acts, ch 1144, §3; 99 Acts, ch 33, §1; 99 Acts, ch 153, §9; 99 Acts, ch 186, §2; 2000 Acts, ch 1083, §2; 2000 Acts, ch 1203, §20; 2001 Acts, ch 153, §10

364.4 Property and services outside of city — lease-purchase — insurance.

A city may:

1. Acquire, hold, and dispose of property outside the city in the same manner as within.

2. By contract, extend services to persons outside the city.

3. Enact and enforce ordinances relating to city property and city-extended services outside the city.

4. Enter into leases or lease-purchase contracts for real or personal property in accordance with the following terms and procedures:

a. A city shall lease or lease-purchase property only for a term which does not exceed the economic life of the property, as determined by the governing body.

b. A lease or lease-purchase contract entered into by a city may contain provisions similar to those sometimes found in leases between private parties, including, but not limited to, the obligation of the lessee to pay any of the costs of operation or ownership of the leased property and the right to purchase the leased property.

c. A provision of a lease or lease-purchase contract which stipulates that a portion of the rent payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A city utility or city enterprise is a separate entity under this subsection whether it is governed by the governing body of the city or another governing body.

d. The governing body must follow substantially the same authorization procedure required for the issuance of general obligation bonds issued

for the same purpose to authorize a lease or a lease-purchase contract made payable from the debt service fund.

e. The governing body may authorize a lease or lease-purchase contract which is payable from the general fund and which would not cause the total of annual lease or lease-purchase payments of the city due from the general fund of the city in any future year for lease or lease-purchase contracts in force on the date of the authorization, excluding payments to exercise purchase options or to pay the expenses of operation or ownership of the property, to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

(1) The governing body must follow substantially the authorization procedures of section 384.25 to authorize a lease or lease-purchase contract for personal property which is payable from the general fund. The governing body must follow substantially the authorization procedures of section 384.25 to authorize the lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease-purchase contract does not exceed the following limits:

(a) Four hundred thousand dollars in a city having a population of five thousand or less.

(b) Seven hundred thousand dollars in a city having a population of more than five thousand but not more than seventy-five thousand.

(c) One million dollars in a city having a population of more than seventy-five thousand.

(2) The governing body must follow the following procedures to authorize a lease or lease-purchase contract for real property which is payable from the general fund if the principal amount of the lease or lease-purchase contract exceeds the limits set forth in subparagraph (1):

(a) The governing body must institute proceedings to enter into a lease or lease-purchase contract payable from the general fund by causing a notice of the meeting to discuss entering into the lease or lease-purchase contract, including a statement of the principal amount and purpose of the lease or lease-purchase contract and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the governing body hold a meeting at which it is proposed to take action to enter into the lease or lease-purchase contract.

(b) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the lease or lease-purchase contract, a petition is filed with the clerk of the city in the manner provided by section 362.4, asking that the question of entering into the lease or lease-purchase contract be submitted to the registered voters of the city, the governing body shall either by resolution declare the proposal to enter into the lease or lease-purchase contract to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the lease or lease-purchase contract. However, for purposes of this subparagraph, the petition shall not require signatures in excess of one thousand persons. The question to be placed on the ballot shall be stated affirmatively in substantially the following manner: Shall the city of . . . . . enter into a lease or lease-purchase contract in amount of $ . . . . . for the purpose of . . . . . ? Notice of the election and its conduct shall be in the manner provided in section 384.26, subsections 2 through 4.

(c) If a petition is not filed or if a petition is filed and the proposition of entering into the lease or lease-purchase contract is approved at an election, the governing body may proceed and enter into the lease or lease-purchase contract.

f. The governing body may authorize a lease or lease-purchase contract payable from the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise by following the authorization procedures of section 384.83.

g. A lease or lease-purchase contract to which a city is a party or in which a city has a participatory interest is an obligation of a political subdivision of this state for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

h. Property that is lease-purchased by a city is exempt under section 427.1, subsection 2.

i. A contract for construction by a private party of property to be leased or lease-purchased by a city is not a contract for a public improvement under section 384.95, subsection 1, except for purposes of section 384.102. However, if a lease-purchase contract is funded in advance by means of the lessor depositing moneys to be administered by a city, with the city's obligations to make rent payments commencing with its receipt of moneys, a contract for construction of the property in question awarded by the city is subject to division VI of chapter 384.

5. Enter into insurance agreements obligating the city to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the city against tort liability, loss of property, or any other risk associated with the operation of the city. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements

of section 509A.14 and rules adopted pursuant to that section.

[SS15, §741-d, 741-g; C24, 27, 31, 35, 39, §**5773;** C46, §368.41, 368.42; C50, §368.42, 368.56; C54, 58, 62, 66, 71, 73, §368.18; C75, 77, 79, 81, §364.4]

85 Acts, ch 156, §3; 86 Acts, ch 1211, §22; 92 Acts, ch 1138, §4; 95 Acts, ch 67, §53

364.5 Joint action — Iowa league of cities — penalty.

A city or a board established to administer a city utility, in the exercise of any of its powers, may act jointly with any public or private agency as provided in chapter 28E.

The financial condition and the transactions of the Iowa league of cities shall be audited in the same manner as cities as provided in section 11.6.

It is unlawful for the Iowa league of cities to provide any form of aid to a political party or to the campaign of a candidate for political or public office. Any person violating or being an accessory to a violation of this section is guilty of a simple misdemeanor.

A city may enter into an agreement with the federal government acting through any of its authorized agencies, and may carry out provisions of the agreement as necessary to meet federal requirements to obtain the funds or co-operation of the federal government or its agencies for the planning, construction, rehabilitation, or extension of a public improvement.

[S13, §694-c; C24, 27, 31, 35, 39, §**5684;** C46, 50, §363.62; C54, 58, 62, 66, 71, 73, §363.43; C75, 77, 79, 81, §364.5]

89 Acts, ch 264, §8; 95 Acts, ch 3, §4

364.6 Procedure.

A city shall substantially comply with a procedure established by a state law for exercising a city power. If a procedure is not established by state law, a city may determine its own procedure for exercising the power.

[C66, 71, 73, §368.2; C75, 77, 79, 81, §364.6]

364.7 Disposal of property.

A city may not dispose of an interest in real property by sale, lease for a term of more than three years, or gift, except in accordance with the following procedure:

1. The council shall set forth its proposal in a resolution and shall publish notice as provided in section 362.3, of the resolution and of a date, time and place of a public hearing on the proposal.

2. After the public hearing, the council may make a final determination on the proposal by resolution.

3. A city may not dispose of real property by gift except to a governmental body for a public purpose. However, a city may dispose of real property for use in an Iowa homesteading program under section 16.14 for a nominal consideration, including but not limited to property in an urban renewal area.

[C73, §470; C97, §883, 1001; S13, §1056-a47; C24, 27, §6205, 6206, 6580, 6602, 6738, 6739; C31, 35, §6205, 6206, 6580, 6602, 6679-c1, 6738, 6739; C39, §**6205, 6206, 6580, 6602, 6679.1, 6738, 6739;** C46, 50, §390.6, 403.11, 403.12, 416.108, 416.131, 419.66, 420.49, 420.50; C54, 58, 62, 66, 71, 73, §368.35, 368.39, 390.6; C75, 77, 79, 81, §364.7]

364.8 Overpasses or underpasses.

A city may by ordinance require a railway company operating railway tracks on or across a city street to construct or reconstruct, and maintain, an overpass or underpass to permit the street to pass over or under the tracks, and may establish specifications for the construction or reconstruction of such an overpass or underpass, subject to the following:

1. The requirement may not be enforced until the Iowa state department of transportation approves the specifications for a construction or reconstruction, after examination and a determination that the overpass or underpass is necessary for public safety and convenience.

2. The council shall hold a hearing on the matter and shall give not less than twenty days' notice of the hearing to the railway companies involved, served in the same manner as an original notice.

3. A city may not require overpasses or underpasses of the same railway company to be constructed closer than on every fourth parallel street, nor require a company to construct or contribute to the construction of more than one overpass or underpass each year, nor require the construction of approaches longer than a total of eight hundred feet for a single overpass or underpass.

4. A city which requires construction or reconstruction of an overpass or underpass shall provide for appraisal and assessment of resulting damage to private property, and shall pay the damages assessed, all as provided in chapter 6B.

5. A city shall pay one half of all required maintenance costs, and may allocate costs between railway companies whose tracks are to be crossed by an overpass or underpass.

6. A city may enforce a requirement made as provided in this section by an action in mandamus, to be conducted and enforced as provided in section 327C.16 for actions brought by the state department of transportation. If the city prevails in the mandamus action, in addition to other remedies it may cause the required construction, reconstruction, or maintenance work to be done, and have judgment for the cost of the work against the companies.

[C97, §770 – 774; S13, §771, 773, 774; C24, 27, 31, 35, 39, §**5910 – 5913, 5916 – 5920, 5923 – 5925;** C46, 50, 54, 58, 62, 66, 71, 73, §387.1 – 387.4, 387.7 – 387.11, 387.14 – 387.16; C75, 77, 79, 81, §364.8]

364.9 Flood control — railway tracks.

A city may require a railway company to provide necessary structures, temporary and permanent, to carry its tracks during and after construction of a diverted channel for flood control purposes, subject to the following:

1. The city shall give notice to the railway company, served in the same manner as an original notice, stating:

a. The nature of the flood control project.

b. The place where the diverted channel will cross the company's right of way.

c. The specifications for construction of the diverted channel across the company's right of way.

d. Details of the city's requirement for the company to provide the necessary structures where the diverted channel crosses the right of way, including a designated period of time for construction, and a requirement that the construction be in a manner which does not interfere with the construction of the diverted channel or the free flow of water.

2. If the company does not comply with the requirement, the city may provide the necessary structures, and the railway is liable for the cost of the construction, in addition to its liability for assessment for special benefits as other property is assessed. The cost of the construction may be collected by the city from the company by court action.

[C24, 27, 31, 35, 39, §**6093 – 6095;** C46, 50, 54, 58, 62, 66, 71, 73, §395.15 – 395.17; C75, 77, 79, 81, §364.9]

364.10 Repealed by 76 Acts, ch 1164, § 98.

364.11 Street construction by railways.

All railway companies shall construct and repair all street improvements between the rails of their tracks, and one foot outside, at their own expense, unless by ordinance the railway is required to improve other portions of the street, and in that case the railway shall construct and repair the improvement of that part of the street specified by the ordinance, and the improvement or repair must be of the material and character ordered by the city, and must be done at the time the remainder of the improvement is constructed or repaired.

When an improvement is made, the company shall lay rail as required by the council, and shall then keep up to grade that part of the improvement they are required to construct or maintain.

If a railway fails or refuses to comply with the order of the council to construct or repair an improvement, the work may be done by the city and the expense shall then be assessed upon the property of the railway company, for collection in the same manner as a property tax. A tax assessed under this section shall also be a debt due from the railway, and may be collected in an action at law in the same manner as other debts.

[R60, §1068; C73, §478; C97, §834, 840; C13, §791-i; SS15, §840-r; C24, 27, 31, 35, 39, §**6052 – 6055;** C46, 50, 54, 58, 62, 66, 71, 73, §391.79 – 391.82; C75, 77, 79, 81, §364.11]

364.12 Responsibility for public places.

1. As used in this section, *"property owner"* means the contract purchaser if there is one of record, otherwise the record holder of legal title.

2. A city shall keep all public grounds, streets, sidewalks, alleys, bridges, culverts, overpasses, underpasses, grade crossing separations and approaches, public ways, squares, and commons open, in repair, and free from nuisance, with the following exceptions:

a. Public ways and grounds may be temporarily closed by resolution. Following notice as provided in section 362.3, public ways and grounds may be vacated by ordinance.

b. The abutting property owner is responsible for the removal of the natural accumulations of snow and ice from the sidewalks within a reasonable amount of time and may be liable for damages caused by the failure of the abutting property owner to use reasonable care in the removal of the snow or ice. If damages are to be awarded under this section against the abutting property owner, the claimant has the burden of proving the amount of the damages. To authorize recovery of more than a nominal amount, facts must exist and be shown by the evidence which afford a reasonable basis for measuring the amount of the claimant's actual damages, and the amount of actual damages shall not be determined by speculation, conjecture, or surmise. All legal or equitable defenses are available to the abutting property owner in an action brought pursuant to this paragraph. The city's general duty under this subsection does not include a duty to remove natural accumulations of snow or ice from the sidewalks. However, when the city is the abutting property owner it has the specific duty of the abutting property owner set forth in this paragraph.

c. The abutting property owner may be required by ordinance to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right-of-way.

d. A city may serve notice on the abutting property owner, by certified mail to the property owner as shown by the records of the county auditor, requiring the abutting property owner to repair, replace, or reconstruct sidewalks.

e. If the abutting property owner does not perform an action required under this subsection within a reasonable time, a city may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax. This power does not relieve

the abutting property owner of liability imposed under paragraph *"b"*.

f. A city has no duty under this subsection with respect to property that is required by law to be maintained by a railway company.

3. A city may:

a. Require the abatement of a nuisance, public or private, in any reasonable manner.

b. Require the removal of diseased trees or dead wood, except as stated in subsection 2, paragraph *"c"* of this section.

c. Require the removal, repair, or dismantling of a dangerous building or structure.

d. Require the numbering of buildings.

e. Require connection to public drainage systems from abutting property when necessary for public health or safety.

f. Require connection to public sewer systems from abutting property, and require installation of sanitary toilet facilities and removal of other toilet facilities on such property.

g. Require the cutting or destruction of weeds or other growth which constitutes a health, safety, or fire hazard.

h. If the property owner does not perform an action required under this subsection within a reasonable time after notice, a city may perform the required action and assess the costs against the property for collection in the same manner as a property tax. Notice may be in the form of an ordinance or by certified mail to the property owner as shown by the records of the county auditor, and shall state the time within which action is required. However, in an emergency a city may perform any action which may be required under this section without prior notice, and assess the costs as provided in this subsection, after notice to the property owner and hearing.

4. In addition to any other remedy provided by law, a city may also seek reimbursement for costs incurred in performing any act authorized by this section by a civil action for damages against a property owner. However, a city shall not seek reimbursement for costs incurred in performing an act if the same act has not been performed by the city on adjoining city-owned property. For the purposes of this subsection, a county acquiring property for delinquent taxes shall not be considered a property owner.

5. A city may cause, without prior determination and notice, the repair or replacement of public improvements including, but not limited to, sidewalks, water stop boxes, and driveway approaches if the property owner does all of the following:

a. Requests the repair and replacement of the public improvements specified in this subsection abutting the property owner's property located outside the lot and property lines and inside the curb lines.

b. Waives the requirement of a prior finding by the city council that the condition of the public improvements constitutes a nuisance and the requirement of prior notice.

c. Consents to the repair of the public improvements and the assessment of the cost of the repair to the abutting property.

6. If, in repairing and replacing improvements in the area between the lot or property lines and the curb lines pursuant to subsection 5, it becomes necessary for the city to repair or replace adjacent improvements in the area, the cost of repairing or replacing the adjacent public improvements may be assessed, with consent of the property owner, against the property which the public improvements abut.

7. A city may accumulate individual assessments for the repair and replacement of sidewalks, driveway approaches, water stop boxes, or similar improvements or for the abatement of nuisances, and may periodically certify the assessments to the county treasurer under one or more assessment schedules.

1. [C75, 77, 79, 81, §364.12(1)]

2. [R60, §1097; C73, §467, 527; C97, §753, 757, 780, 781; C24, 27, 31, 35, 39, §**5874, 5945, 5950, 5969;** C46, 50, §381.1, 389.12, 389.19, 389.38; C54, 58, 62, 66, §368.33, 381.1, 389.12, 389.38; C71, 73, §368.33, 381.1, 381.2, 389.12, 389.38; C75, 77, 79, 81, §364.12(2)]

3. [R60, §1057, 1058, 1070, 1096; C73, §456, 457, 480, 526; C97, §696, 698, 699, 709 – 712; S13, §696, 711, 713-b, 737; C24, 27, 31, 35, 39, §**5739, 5751, 5752, 5755, 5759, 5784 – 5786;** C46, §368.2, 368.14, 368.15, 368.18, 368.22 – 368.24, 368.44, 368.53 – 368.55; C50, §368.2, 368.14, 368.15, 368.18, 368.22 – 368.24, 368.44, 368.53 – 368.55, 368.62; C54, 58, 62, 66, 71, 73, §368.3, 368.4, 368.9, 368.26, 368.31; C75, 77, 79, 81, §364.12(3)]

84 Acts, ch 1002, §1; 89 Acts, ch 261, §1; 95 Acts, ch 58, §1

Nuisances in general, chapter 657

364.12A Condemnation of residential buildings — public purpose.

For the purposes of section 6A.4, subsection 6, a city may condemn a residential building found to be a public nuisance and take title to the property for the public purpose of disposing of the property under section 364.7 by conveying the property to a private individual for rehabilitation or for demolition and construction of housing.

96 Acts, ch 1204, §26

364.13 Installments.

If any amount assessed against property under section 364.12 will exceed one hundred dollars, a city may permit the assessment to be paid in up to ten annual installments, in the same manner and with the same interest rates provided for assessments against benefited property under chapter 384, division IV.

[C24, 27, 31, 35, 39, §**5784 – 5786;** C46, 50,

§368.53 – 368.55; C54, 58, §368.26; C62, 66, §368.26, 389.38; C71, 73, §368.3, 368.26, 389.38; C75, 77, 79, 81, §364.13]

364.13A Special assessments — lien and precedence.

A special assessment levied pursuant to section 364.11 or 364.12, including all interest, is a lien against the benefited property from the date of filing the schedule of assessments until the assessment is paid. Special assessments have equal precedence with ordinary taxes and are not divested by judicial sale.

83 Acts, ch 90, §20; 92 Acts, ch 1016, §6

364.13B Special assessments — procedures for levy.

The procedures for making and levying a special assessment pursuant to this chapter and for an appeal of the assessment are the same procedures as provided in sections 384.59 through 384.67 and sections 384.72 through 384.75.

83 Acts, ch 90, §20

364.14 Personal injuries.

When action is brought against a city for personal injuries alleged to have been caused by its negligence, the city may notify in writing any person by whose negligence it claims the injury was caused. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the city believes that the person notified is liable to it for any judgment rendered against the city, and asking the person to appear and defend. A judgment obtained in the suit is conclusive in any action by the city against any person so notified, as to the existence of the defect or other cause of the injury or damage, as to the liability of the city to the plaintiff in the first named action, and as to the amount of the damage or injury. A city may maintain an action against the person notified to recover the amount of the judgment together with all the expenses incurred by the city in the suit.

[C97, §1053; C24, 27, 31, 35, 39, §**6735;** C46, 50, §420.46; C54, 58, 62, 66, 71, 73, §368.34, 420.46; C75, 77, 79, 81, §364.14]

364.15 Changing grade of streets.

If a city has established the grade of a street or alley, and any person has made improvements on lots abutting the street or alley according to the established grade, and afterward the grade is altered in a manner to damage, injure, or diminish the value of the improved property, the city shall pay to the owner of the property the amount of such damage or injury.

If a city has opened a street or alley, and any person has made improvements on lots abutting the street or alley or uses such street or alley for ingress or egress, and afterward the street or alley is vacated causing damage or injury or loss of access, or diminishing the value of the improved property, the city shall pay to the owner of the property the amount of such damage or injury.

[C73, §469; C97, §785, 786; C24, 27, 31, 35, 39, §**5953, 5954;** C46, 50, 54, 58, 62, 66, 71, 73, §389.22, 389.23; C75, 77, 79, 81, §364.15]

364.16 Municipal fire protection.

Each city shall provide for the protection of life and property against fire and may establish, house, equip, staff, uniform, and maintain a fire department. A city may establish fire limits and may, consistent with code standards promulgated by nationally recognized fire prevention agencies, regulate the storage, handling, use, and transportation of all flammables, combustibles, and explosives within the corporate limits and inspect for and abate fire hazards. A city may provide conditions upon which the fire department will answer calls outside the corporate limits or the territorial jurisdiction and boundary limits of this state. A city has the same governmental immunity outside its corporate limits when providing fire protection as when operating within the corporate limits. Fire fighters operating equipment on calls outside the corporate limits are entitled to the benefits of chapter 410 or 411 when otherwise qualified.

[R60, §1058, 1096; C73, §457, 525; C97, §711, 716; S13, §711; C24, 27, §5760, 5766; C31, 35, §5760, 5766; C39, §**5760, 5766, 5766.1;** C46, 50, §368.23, 368.29, 368.30; C54, 58, 62, 66, 71, 73, §368.11; C77, 79, 81, §364.16]

92 Acts, ch 1163, §84

364.17 City housing codes.

1. A city with a population of fifteen thousand or more may adopt by ordinance the latest version of one of the following housing codes before January 1, 1981:

a. The uniform housing code promulgated by the international conference of building officials.

b. The housing code promulgated by the American public health association.

c. The basic housing code promulgated by the building officials conference of America.

d. The standard housing code promulgated by the southern building code congress international.

e. Housing quality standards promulgated by the United States department of housing and urban development for use in assisted housing programs.

2. Every city with a population of fifteen thousand or more which has not adopted another housing code under this section by January 1, 1981, is subject to and shall be considered to have adopted the uniform housing code promulgated by the International Conference of Building Officials, as

amended to January 1, 1980. A city which reaches a population of fifteen thousand, as determined after July 1, 1980, has six months after such determination to comply with this section.

3. A city which adopts or is subject to a housing code under this section shall adopt enforcement procedures, which shall include a program for regular rental inspections, rental inspections upon receipt of complaints, and certification of inspected rental housing, and may include but are not limited to the following:

a. A schedule of civil penalties or criminal fines for violations.

b. Authority for the issuance of orders requiring violations to be corrected within a reasonable time.

c. Authority for the issuance of citations pursuant to sections 805.1 to 805.5 upon a failure to satisfactorily remedy a violation.

d. Authority, if other methods have failed, for an officer to contract to have work done as necessary to remedy a violation, the cost of which shall be assessed to the violator and constitute a lien on the property until paid.

e. An escrow system for the deposit of rent which will be applied to the costs of correcting violations.

f. Mediation of disputes based upon alleged violations.

g. Injunctive procedures.

The enforcement procedures shall be designed to improve housing conditions rather than to displace persons from their homes.

h. Authority by ordinance to provide that no rent shall be recoverable by the owner or lessee of any dwelling which does not comply with the housing code adopted by the city until such time as the dwelling does comply with the housing code adopted by the city.

4. A city which is subject to the uniform housing code or which adopts another housing code under this section may provide reasonable variances for existing structures which cannot practicably meet the standards in the code but are not unsafe for habitation.

5. Cities may establish reasonable fees for inspection and enforcement procedures.

6. Cities with populations of less than fifteen thousand may comply with this section.

7. A city may adopt housing code provisions which are more stringent than those in the model housing code it adopts or to which it is subject under this section.

[C24, 27, 31, 35, 39, §**6327 – 6451;** C46, 50, 54, 58, 62, 66, §413.1 – 413.125; C71, 73, 75, 77, 79, §413.1 – 413.11, 413.13 – 413.125; C81, §364.17]

83 Acts, ch 101, §81

364.18 Federal aid.

Subject to applicable state or federal regulations in effect at the time of the city action, a city may accept contributions, grants, or other financial assistance from the state or federal government. Upon a finding of public purpose, the city may disburse the assistance to any person to be used for economic development projects, including but not limited to the purchase or improvement of land and buildings for residential, commercial, or industrial use.

83 Acts, ch 48, §1, 3

364.19 Contracts to provide services to tax-exempt property.

A city council or county board of supervisors may enter into a contract with a person whose property is totally or partially exempt from taxation under chapter 404, section 427.1, or section 427B.1, for the city or county to provide specified services to that person including but not limited to police protection, fire protection, street maintenance, and waste collection. The contract shall terminate as of the date previously exempt property becomes subject to taxation.

84 Acts, ch 1232, §1

364.20 Motor vehicles required to operate on ethanol-blended gasoline.

A motor vehicle purchased or used by a city to provide city services shall not, on or after January 1, 1993, operate on gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

91 Acts, ch 254, §22; 93 Acts, ch 26, §8

364.21 Use of vacant school property.

A city shall not lease, purchase, or construct a building before considering the leasing of a vacant facility or building owned by a local public school corporation. The city may lease a facility or building owned by a local public school corporation with an option to purchase the facility or building in compliance with section 297.22. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the city at least thirty days before the termination of the lease.

[82 Acts, ch 1148, §4]

97 Acts, ch 184, §6

364.22 Municipal infractions.

1. A municipal infraction is a civil offense punishable by a civil penalty of not more than five hundred dollars for each violation or if the infraction is a repeat offense, a civil penalty not to exceed seven hundred fifty dollars for each repeat offense.

However, notwithstanding section 364.3, a municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. § 403.8, by an industrial user may be punishable by a civil penalty of not more than one thousand dollars for each day a violation exists or continues.

A city may classify a municipal infraction, other than a violation arising from noncompliance with a pretreatment standard or requirement, as an environmental violation if the infraction is a violation of chapter 455B or 459, subchapters II and III, or a violation of a standard established by the city in consultation with the department of natural resources, or both. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain by a person, shall not be subject to an ordinance, the violation of which is classified as an environmental violation, unless the person is engaged in industrial production or manufacturing of grain products. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain by a person engaged in industrial production or manufacturing of grain products, shall not be subject to an ordinance, the violation of which is classified as an environmental violation, if the discharge occurs from September 15 to January 15. A municipal infraction which is classified an environmental violation is punishable by a civil penalty of not more than one thousand dollars for each occurrence. A person committing an environmental violation is not subject to a civil penalty, if all of the following conditions are satisfied:

a. The violation results solely from the person conducting an initial start-up, cleaning, repairing, performing scheduled maintenance, testing, or conducting a shutdown, of either equipment causing the violation or the equipment designed to reduce or eliminate the violation.

b. The person notifies the city of the violation within twenty-four hours from the time that the violation begins.

c. The violation does not continue in existence for more than eight hours.

A city shall not enforce this section against a person committing an environmental violation, until the city offers to participate in informal negotiations with the person. If the person accepts the offer, the city and the person shall participate in good faith negotiations to resolve issues alleged to be the basis for the violation.

2. A city by ordinance may provide that a violation of an ordinance is a municipal infraction.

3. A city shall not provide that a violation of an ordinance is a municipal infraction if the violation is a felony, an aggravated misdemeanor, or a serious misdemeanor under state law or if the violation is a simple misdemeanor under chapters 687 through 747.

4. An officer authorized by a city to enforce a city code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service as provided in rule of civil procedure 1.305, by certified mail addressed to the defendant at the defendant's last known mailing address, return receipt requested, or by publication in the manner as provided in rule of civil procedure 1.310 and subject to the conditions of rule of civil procedure 1.311. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the clerk of the district court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

a. The name and address of the defendant.

b. The name or description of the infraction attested to by the officer issuing the citation.

c. The location and time of the infraction.

d. The amount of civil penalty to be assessed or the alternate relief sought, or both.

e. The manner, location, and time in which the penalty may be paid.

f. The time and place of court appearance.

g. The penalty for failure to appear in court.

5. In municipal infraction proceedings:

a. The matter shall be tried before a magistrate, a district associate judge, or a district judge in the same manner as a small claim. The matter shall only be tried before a judge in district court if the total amount of civil penalties assessed exceeds the jurisdictional amount for small claims set forth in section 631.1.

b. The city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof shall be by clear, satisfactory, and convincing evidence.

c. The court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the city and produce evidence or witnesses on the defendant's behalf.

d. The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.

e. The defendant may answer by admitting or denying the infraction.

f. If a municipal infraction is proven the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss it.

6. All penalties or forfeitures collected by the court for municipal infractions shall be remitted to the city in the same manner as fines and forfeitures are remitted for criminal violations under section 602.8106. If the person named in the citation is served as provided in this section and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.

7. A person against whom judgment is entered, shall pay court costs and fees as in small claims under chapter 631. If the action is dis-

missed, the city is liable for the court costs and court fees. Where the action is disposed of without payment, or provision for assessment, of court costs, the clerk shall at once enter judgment for costs against the city.

8. Seeking a civil penalty as authorized in this section does not preclude a city from seeking alternative relief from the court in the same action.

9. When judgment has been entered against a defendant, the court may do any of the following:

a. Impose a civil penalty by entry of a personal judgment against the defendant.

b. Direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court.

c. Grant appropriate alternative relief ordering the defendant to abate or cease the violation.

d. Authorize the city to abate or correct the violation.

e. Order that the city's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

A magistrate or district associate judge shall have jurisdiction to assess or enter judgment for costs of abatement or correction in an amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to section 631.1, subsection 1, for magistrates and section 602.6306, subsection 2, for district associate judges. If the city seeks abatement or correction costs in excess of those amounts, and the matter is not before a judge in district court, the case shall be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appeal pursuant to section 631.13.

10. The defendant or the city may file a motion for a new trial or may appeal the decision of a magistrate, district associate judge, or a district judge to the district court. The procedure on appeal shall be the same as for a small claim pursuant to section 631.13. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but shall not be admissible or binding as to any future violation for the same or similar ordinance provision by the same defendant.

11. This section does not preclude a peace officer of a city from issuing a criminal citation for a violation of a city code or regulation if criminal penalties are also provided for the violation. Each day that a violation occurs or is permitted to exist by the defendant, constitutes a separate offense.

12. The issuance of a civil citation for a municipal infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

13. An action brought pursuant to this section for a municipal infraction which is an environmental violation does not preclude, and is in addition to, any other enforcement action which may be brought pursuant to chapter 455B, 455D, 455E, or 459, subchapters II, III, and VI.

14. A police department may dispose of personal property under section 80.39.

86 Acts, ch 1202, §2; 87 Acts, ch 99, §4 – 6; 89 Acts, ch 150, §5 – 8; 90 Acts, ch 1210, §1 – 5; 96 Acts, ch 1067, §1; 98 Acts, ch 1144, §4; 2000 Acts, ch 1203, §21

364.22A Neglected animals.

A city may rescue, provide maintenance, or dispose of neglected livestock or another animal, as provided in chapters 717 and 717B.

94 Acts, ch 1103, §4

364.23 Energy efficient lighting required.

All city-owned exterior flood lighting, including but not limited to street and security lighting but not including era or period lighting which has a minimum efficiency rating of fifty-eight lumens per watt and not including stadium or ball park lighting, shall be replaced, when worn-out, exclusively with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the utilities board within the utilities division of the department of commerce. In lieu of the requirements established for replacement lighting under this section, stadium or ball park lighting shall be replaced, when worn-out, with the most energy-efficient lighting available at the time of replacement which may include metal halide, high-pressure sodium, or other light sources which may be developed.

89 Acts, ch 297, §6; 91 Acts, ch 253, §16; 92 Acts, ch 1233, §3

364.24 Traffic light synchronization.

After July 1, 1992, all cities with more than three traffic lights within the corporate limits shall establish a traffic light synchronization program for energy efficiency in accordance with rules adopted by the state department of transportation. The state department of transportation shall adopt rules required by this section by July 1, 1990. This section does not require that a city replace lighting, which has not completed its useful life, in order to comply with the requirements of this section. However, all lighting shall be replaced, whether or not it has completed its useful life, by July 1, 2001.

89 Acts, ch 297, §7; 91 Acts, ch 253, §15

364.25 Retiree health care.

A city may provide health or medical insurance coverage or supplemental health or medical insurance coverage to retired employees of the city. A city providing health or medical insurance coverage pursuant to this section may establish such requirements or restrictions concerning the coverage provided as the city may adopt. If coverage is provided, the cost of the health or medical insurance coverage may be paid from moneys held in a trust and agency fund established pursuant to section 384.6, or out of an appropriation from the city general fund for this purpose.

2000 Acts, ch 1089, §1

CHAPTER 365

CIVIL SERVICE

Transferred to chapter 400

CHAPTER 365A

GROUP INSURANCE IN CITIES AND TOWNS

Transferred to chapter 509A

CHAPTER 366

ORDINANCES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 367

MAYORS' AND POLICE COURTS

Repealed by 72 Acts, ch 1124, §282

CHAPTER 368

CITY DEVELOPMENT

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DIVISION I

DEFINITIONS

368.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Adjoining"* means having a common boundary for not less than fifty feet. Land areas may be adjoining although separated by a roadway or waterway.

2. *"Annexation"* means the addition of territory to a city.

3. *"Board"* means the city development board established in section 368.9.

4. *"Boundary adjustment"* means annexation, severance or consolidation.

5. *"City development"* means an incorporation, discontinuance or boundary adjustment.

6. *"Committee"* means the board members, and the local representatives appointed as provided in sections 368.14 and 368.14A, to hear and make a decision on a petition or plan for city development.

7. *"Consolidation"* means the combining of two or more cities into one city.

8. *"Discontinuance"* means termination of a city.

9. *"Incorporation"* means establishment of a new city.

10. *"Island"* means land which is not part of a city and which is completely surrounded by the corporate boundaries of one or more cities. However, a part of the boundary of an *"island"* may be contiguous with a boundary of the state, a river, or similar natural barrier which prevents service access from an adjoining area of land outside the boundaries of a city.

11. *"Public utility"* means a public utility subject to regulation pursuant to chapter 476.

12. *"Registered voter"* means a person who is registered to vote pursuant to chapter 48A.

13. *"Severance"* means the deletion of territory from a city.

14. *"Territory"* means the land area or areas proposed to be incorporated, annexed, or severed, whether or not contiguous to all other areas proposed to be incorporated, annexed, or severed. Except as provided for by an agreement pursuant to chapter 28E, *"territory"* having a common boundary with the right-of-way of a secondary road extends to the center line of the road.

15. *"Urbanized area"* means any area of land within two miles of the boundaries of a city.

[C58, 62, 66, 71, 73, §362.1; C75, 77, 79, 81, §368.1]

89 Acts, ch 98, §1; 89 Acts, ch 299, §1; 91 Acts, ch 187, §1; 91 Acts, ch 250, §1; 92 Acts, ch 1174, §1; 93 Acts, ch 152, §1 – 3; 94 Acts, ch 1169, §61

DIVISION II

GENERAL PROVISIONS

368.2 Name change.

A city may change its name as follows:

1. The council shall propose the name change and shall notify the county commissioner of elections that the question shall be submitted at the next regular city election.

2. The county commissioner of elections shall publish notice, as provided in section 362.3, of the proposed new name, and of the fact that the question will be submitted at the next regular city election. The county commissioner of elections shall report the results of the balloting on the question to the mayor and the city council.

3. If a majority of those voting on the question approves the proposed new name, the city clerk shall enter the new name upon the city records and file certified copies of the proceedings, including the council's proposal, proof of publication of notice, and certification of the election result, with the county recorder of each county which contains part of the city, and with the secretary of state. Upon proper filing the name change is complete and effective.

[C97, §628 – 630; C24, 27, 31, 35, 39, §**5619 – 5622;** C46, 50, 54, §362.34 – 362.37; C58, 62, 66, 71, 73, §362.38 – 362.41; C75, 77, 79, 81, §368.2]

368.3 Discontinuance — cemetery fund transfer.

A city is discontinued if, for a period of six years or more, it has held no city election and has caused no taxes to be levied. If the board receives knowledge of facts which cause an automatic discontinuance under this section, it shall make a determination that the city is discontinued, shall take control of the property of the discontinued city, and shall carry out all necessary procedures as if the city were discontinued under a petition or plan.

A city may also be discontinued in accordance with the following procedures. The council shall adopt a resolution of intent to discontinue and shall call a public hearing on the proposal to discontinue. Notice of the time and place of the public hearing and the proposed action shall be published as provided in section 362.3, except that at least ten days' notice must be given. At the public hearing, the council shall receive oral and written comments regarding the proposal from any person. Thereafter, the council, at the same meeting or at a subsequent meeting, may pass a resolution of discontinuance or pass a resolution abandoning the proposal. If the council passes a resolution of discontinuance, a petition may be filed with the clerk in the manner provided in section 362.4, within thirty days following the effective date of the resolution, requesting that the question of discontinuance be submitted to the registered voters of the city. Upon receipt of a petition requesting an

election, the council shall direct the county commissioner of elections to call a special election on the question of discontinuance or shall adopt a resolution abandoning the discontinuance. Notice of the election shall be given by publication as required in section 49.53. If a majority of those voting approve the discontinuance or if no petition for an election is filed, the clerk shall send a copy of the resolution of discontinuance and, if an election is held, the results of the election to the board. The board shall take control of the property of the discontinued city and shall supervise procedures necessary to carry out the discontinuance in accordance with section 368.21.

When a city is discontinued under this section or under sections 368.11 through 368.22, and that city owns a cemetery, the board shall determine if any perpetual care funds exist and provide for their transfer to a trustee named by a district court or to the county or other suitable governmental entity.

[C46, 50, 54, 58, 62, 66, 71, 73, §362.18; C75, 77, 79, 81, §368.3]

91 Acts, ch 188, §2; 2000 Acts, ch 1006, §1

368.4 Annexing moratorium.

A city, following notice and hearing, may by resolution agree with another city or cities to refrain from annexing specifically described territory for a period not to exceed ten years and, following notice and hearing, may by resolution extend the agreement for subsequent periods not to exceed ten years each. Notice of a hearing shall be served by regular mail at least thirty days before the hearing on the city development board, on the board of supervisors of the county in which the territory is located, and on all persons owning land within the area subject to the agreement. The notice shall include the time and place of the hearing, describe the territory subject to the proposed agreement, and the general terms of the agreement. After passage of a resolution by the cities approving the agreements, a copy of the agreement and a copy of any resolution extending an agreement shall be filed with the city development board within ten days of enactment. If such an agreement is in force, the board shall dismiss a petition or plan which violates the terms of the agreement.

[C66, 71, 73, §362.26(7, 8); C75, 77, 79, 81, §368.4]

2002 Acts, ch 1132, §4, 11; 2002 Acts, ch 1175, §31

Applicability of 2002 amendment; 2002 Acts, ch 1132, §11

Section amended

368.5 Annexing state and county property.

Territory owned by the state of Iowa may be annexed, but the attorney general must be served with notice of the hearing and a copy of the proposal.

Territory within the road right-of-way owned by a county may be annexed, but the county attorney of that county must be served with notice of the hearing and a copy of the proposal.

[C58, 62, 66, 71, 73, §362.34, 362.35; C75, 77, 79, 81, §368.5]

89 Acts, ch 98, §2

368.6 Intent.

It is the intent of the general assembly to provide an annexation approval procedure which gives due consideration to the wishes of the residents of territory to be annexed, and to the interests of the residents of all territories affected by an annexation. The general assembly presumes that a voluntary annexation of territory more closely reflects the wishes of the residents of territory to be annexed, and, therefore, intends that the annexation approval procedure include a presumption of validity for voluntary annexation approval.

91 Acts, ch 250, §2

368.7 Voluntary annexation of territory.

1. All of the owners of land in a territory adjoining a city may apply in writing to the council of the adjoining city requesting annexation of the territory. Territory comprising railway right-of-way or territory comprising not more than twenty percent of the land area may be included in the application without the consent of the owner to avoid creating an island or to create more uniform boundaries if a copy of the application is mailed by certified mail to the owner and each affected public utility, at least fourteen business days prior to any action taken by the city council on the application. The application must contain a legal description and a map of the territory showing its location in relationship to the city. An annexation including territory comprising not more than twenty percent of the land area without consent of the property owners is not complete without approval by four-fifths of the members of the board after a hearing for all affected property owners and the county.

The city shall provide for a public hearing on the application before approving or denying it. The city shall provide written notice at least fourteen business days prior to any action by the city council regarding the application, including a public hearing, by regular mail to the chairperson of the board of supervisors of each county which contains a portion of the territory proposed to be annexed, each public utility which serves the territory proposed to be annexed, each owner of property located within the territory to be annexed who is not a party to the application, and each owner of property which adjoins the territory to be annexed. The city shall publish notice of the application and public hearing on the application in an official county newspaper in each county which contains a portion of the territory proposed to be annexed. Both the written and published notice shall in-

clude the time and place of the public hearing and a legal description of the territory to be annexed. The city may assess the costs of providing notice as required in this section to the applicants.

2. An application for annexation of territory not within an urbanized area of a city other than the city to which the annexation is directed must be approved by resolution of the council which receives the application. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368.11, subsection 13. The city council shall mail a copy of the application by certified mail to the board of supervisors of each county which contains a portion of the territory at least fourteen business days prior to any action taken by the city council on the application. The council shall also publish notice of the application in an official county newspaper in each county which contains a portion of the territory at least fourteen days prior to any action taken by the council on the application. Upon receiving approval of the council, the city clerk shall file a copy of the resolution, map, and legal description of the territory involved with the secretary of state, the county board of supervisors of each county which contains a portion of the territory, each affected public utility, and the state department of transportation. The city clerk shall also record a copy of the legal description, map, and resolution with the county recorder of each county which contains a portion of the territory. The secretary of state shall not accept and acknowledge a copy of a legal description, map, and resolution of annexation which would create an island. The annexation is completed upon acknowledgment by the secretary of state that the secretary of state has received the legal description, map, and resolution.

3. An application for annexation of territory within an urbanized area of a city other than the city to which the annexation is directed must be approved both by resolution of the council which receives the application and by the board. The board shall not approve an application which creates an island. Notice of the application shall be mailed by certified mail, by the city to which the annexation is directed, at least fourteen business days prior to any action by the city council on the application to the council of each city whose boundary adjoins the territory or is within two miles of the territory, to the board of supervisors of each county which contains a portion of the territory, each affected public utility, and to the regional planning authority of the territory. Notice of the application shall be published in an official county newspaper in each county which contains a portion of the territory at least ten business days prior to any action by the city council on the application. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368.11, subsection 13. The annexation is completed when the board has filed and recorded copies of applicable portions of the proceedings as required by section 368.20, subsection 2.

4. If one or more applications for a voluntary annexation and one or more petitions for an involuntary annexation or incorporation for a common territory are submitted to the board within thirty days of the date the first application or petition was submitted to the board, the board shall approve the application for voluntary annexation, if the application meets the applicable requirements of this chapter, unless the board determines by a preponderance of the evidence that the application was filed in bad faith, or that the application as filed is contrary to the best interests of the citizens of the urbanized area, or that the applicant cannot within a reasonable period of time meet its obligation to provide services to the territory to be annexed sufficient to meet the needs of the territory. In consideration of the requests, the board may appoint a committee in the manner provided in section 368.14 to seek additional information from the applicant for voluntary annexation as necessary, including the information required of petitioners pursuant to section 368.11. The board, or the committee, if applicable, shall hold a public hearing on the application for voluntary annexation in the manner provided for involuntary petitions in section 368.15. The decision of the board under this subsection shall be made within ninety days of receipt of the application by the board. The failure of the board to approve an application under this paragraph shall be deemed final agency action subject to judicial review.

If an application for voluntary annexation is not approved pursuant to this section, the board shall cause the conversion of the application to a petition pursuant to section 368.13 and shall proceed under section 368.14A. The conversion of an application to a petition shall not prejudice the status of the applicant. Judicial review of a board decision under this subsection may be requested by an aggrieved party.

[R60, §1038; C73, §426; C97, §617, 621; C24, 27, 31, 35, 39, §**5615, 5616;** C46, 50, 54, 58, 62, 66, 71, 73, §362.30, 362.31; C75, 77, 79, 81, §368.7]

86 Acts, ch 1245, §845; 89 Acts, ch 299, §2; 91 Acts, ch 187, §2, 3; 91 Acts, ch 250, §3, 4; 92 Acts, ch 1174, §2; 93 Acts, ch 152, §4; 2002 Acts, ch 1132, §5 – 8, 11

Applicability of 2002 amendments; 2002 Acts, ch 1132, §11
Subsections 1 – 3 amended

368.7A Secondary road annexation.

1. The board of supervisors of each affected county shall notify the city development board of the existence of that portion of any secondary road which extends to the center line but has not become part of the city by annexation and has a common boundary with a city. The notification shall include a legal description and a map identifying the location of the secondary road. The city devel-

opment board shall provide notice and an opportunity to be heard to each city in or next to which the secondary road is located. The city development board shall certify that the notification is correct and declare the road, or portion of the road extending to the center line, annexed to the city as of the date of certification. This section is not intended to interfere with or modify existing chapter 28E agreements on jurisdictional transfer of roads, or continuing negotiations between jurisdictions.

2. The remaining title and interest of a county in any secondary road or portion of the road which has been annexed by a city is transferred to the annexing city on July 1, 1993. The title and interest of a county in any secondary road which is annexed by a city after July 1, 1993, is transferred to the city upon the effective date of the annexation.

93 Acts, ch 152, §5

368.8 Voluntary severing of territory.

Any territory may be severed upon the unanimous consent of all owners of the territory and approval by resolution of the council of the city in which the territory is located. The council shall provide in the resolution for the equitable distribution of assets and equitable distribution and assumption of liabilities of the territory as between the city and the severed territory. The city clerk shall file a copy of the resolution, map, and a legal description of the territory involved with the county board of supervisors, secretary of state, and state department of transportation. The city clerk shall also record a copy of the map and resolution with the county recorder. The secretary of state shall not accept and acknowledge a copy of a map and resolution of severance which would create an island. The severance is completed upon acknowledgment by the secretary of state that the secretary of state has received the map and resolution.

[R60, §1048 – 1052; C73, §440 – 444; C97, §622 – 626; S13, §622; C24, 27, 31, 35, 39, §**5617;** C46, 50, 54, 58, 62, 66, 71, 73, §362.32; C75, 77, 79, 81, §368.8]

86 Acts, ch 1245, §846; 92 Acts, ch 1174, §3; 93 Acts, ch 152, §6

DIVISION III

CITY DEVELOPMENT BOARD

368.9 Board created.

1. A city development board is created. The department of economic development shall provide office space and staff assistance, and shall budget funds to cover expenses of the board and committees. The board consists of five members appointed by the governor subject to confirmation by the senate. The appointments must be for six-year staggered terms beginning and ending as provided by section 69.19, or to fill an unexpired term in case of a vacancy. Members are eligible for reappointment, but no member shall serve more than two complete six-year terms.

2. The board shall be composed of the following members:

a. One member appointed from a city with a population of more than forty-five thousand, according to the most recent certified federal census.

b. One member appointed from a city with a population of forty-five thousand or less, according to the most recent certified federal census.

c. One member appointed from a county with a population of more than fifty thousand, according to the most recent certified federal census.

d. One member appointed from a county with a population of fifty thousand or less, according to the most recent certified federal census.

e. One member appointed to represent the general public.

3. Each member is entitled to receive from the state actual and necessary expenses in performance of board duties and may also be eligible to receive compensation as provided in section 7E.6.

[C75, 77, 79, 81, §368.9]

86 Acts, ch 1245, §847; 91 Acts, ch 250, §5

Confirmation, see §2.32

368.10 Rules — establishment of filing fees.

The board may establish rules for the performance of its duties and the conduct of proceedings before it. The rules may include establishing filing fees for applications and petitions submitted to the board. The board's rules are subject to chapter 17A, as applicable.

[C75, 77, 79, 81, §368.10]

93 Acts, ch 152, §7, 8

368.11 Petition for involuntary city development action.

A petition for incorporation, discontinuance, or boundary adjustment may be filed with the board by a city council, a county board of supervisors, a regional planning authority, or five percent of the registered voters of a city or territory involved in the proposal. Notice of the filing, including a copy of the petition, must be served upon the council of each city for which a discontinuance or boundary adjustment is proposed, the board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed or severed, the council of a city if an incorporation includes territory within the city's urbanized area, and any regional planning authority for the area involved.

Within ninety days of receipt of a petition, the board shall initiate appropriate proceedings or dismiss the petition. The board may combine for consideration petitions or plans which concern the same territory or city or which provide for a boundary adjustment or incorporation affecting common

territory. The combined petitions may be submitted for consideration by a special local committee pursuant to section 368.14A.

The petition must include substantially the following information as applicable:

1. A general statement of the proposal.
2. A map of the territory, city or cities involved.
3. Assessed valuation of platted and unplatted land.
4. Names of property owners.
5. Population density.
6. Description of topography.
7. Plans for disposal of assets and assumption of liabilities.
8. Description of existing municipal services, including but not limited to water supply, sewage disposal, and fire and police protection.
9. Plans for agreements with any existing special service districts.
10. In a case of annexation or incorporation, the petition must state that none of the territory is within a city.
11. In a case of incorporation or consolidation, the petition must state the name of the proposed city.
12. Plans shall include a formal agreement between affected municipal corporations and counties for the maintenance, improvement and traffic control of any shared roads involved in an incorporation or boundary adjustment.
13. In the discretion of a city council, a provision for a transition for the imposition of city taxes against property within an annexation area. The provision shall not allow a greater exemption from taxation than the tax exemption formula schedule provided under section 427B.3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

At least fourteen business days before a petition for involuntary annexation is filed as provided in this section, the petitioner shall make its intention known by sending a letter of intent by certified mail to the council of each city whose urbanized area contains a portion of the territory, the board of supervisors of each county which contains a portion of the territory, the regional planning authority of the territory involved, each affected public utility, and to each property owner listed in the petition. The written notification shall include notice that the petitioners shall hold a public meeting on the petition for involuntary annexation prior to the filing of the petition.

Before a petition for involuntary annexation may be filed, the petitioner shall hold a public meeting on the petition. Notice of the meeting shall be published in an official county newspaper in each county which contains a part of the territory at least five days before the date of the public meeting. The mayor of the city proposing to annex the territory, or that person's designee, shall serve as chairperson of the public meeting. The city clerk of the same city or the city clerk's designee shall record the proceedings of the public meeting. Any person attending the meeting may submit written comments and may be heard on the petition. The minutes of the public meeting and all documents submitted at the public meeting shall be forwarded to the board by the chairperson of the meeting.

[R60, §1031, 1038, 1043; C73, §421, 426, 430, 431, 447, 448; C97, §599, 604, 610, 611, 615, 617, 621; S13, §615; C24, 27, 31, 35, 39, §**5588, 5598, 5612 – 5614, 5616;** C46, 50, §362.1, 362.11, 362.26, 362.28, 362.29, 362.31; C54, 58, 62, 66, 71, 73, §362.1, 362.11, 362.26, 362.31; C75, 77, 79, 81, §368.11]

89 Acts, ch 299, §3; 91 Acts, ch 250, §6; 92 Acts, ch 1174, §4; 93 Acts, ch 152, §9; 2001 Acts, ch 56, §31; 2002 Acts, ch 1132, §9, 11

Unnumbered paragraph 4 amended

368.12 Dismissal.

The board may dismiss a petition only if it finds that the petition does not meet the requirements of this chapter, or that substantially the same incorporation, discontinuance, or boundary adjustment has been disapproved by a committee formed to consider the proposal, or by the voters, within the two years prior to the date the petition is filed with the board, or that the territory to be annexed, or a portion of that territory, has been voluntarily annexed under section 368.7. The board shall file for record a statement of each dismissal and the reason for it, and shall promptly notify the parties to the proceeding of its decision.

[C75, 77, 79, 81, §368.12]

91 Acts, ch 250, §7

368.13 Board may initiate proceedings.

Based on the results of its studies, the board may initiate proceedings for the incorporation, discontinuance, or boundary adjustment of a city. The board may request a city to submit a plan for city development or may formulate its own plan for city development. A plan submitted at the board's initiation must include the same information as a petition and be filed and acted upon in the same manner as a petition. A petition or plan may include any information relevant to the proposal, including but not limited to results of studies and surveys, and arguments.

[C75, 77, 79, 81, §368.13]

93 Acts, ch 152, §10

368.14 Local representatives.

If an involuntary petition is not dismissed, the board shall direct the appointment of local representatives to serve with board members as a committee to consider the proposal. Each local representative is entitled to receive from the state the representative's actual and necessary expenses

spent in performance of committee duties. Three board members and one local representative, or if the number of local representatives exceeds one, three board members and at least one-half of the appointed local representatives, are required for a quorum of the committee. A local representative must be a registered voter of the territory or city which the representative represents, and must be selected as follows:

1. From a territory to be incorporated, one representative appointed by the county board of supervisors. If the territory is in more than one county, the board shall direct the appointment of a local representative from each county involved.

2. From a city to be discontinued, one representative appointed by the city council.

3. From a territory to be annexed to or severed from a city, one representative appointed by the county board of supervisors. If there are no registered voters residing in an area to be annexed to or severed from a city, the county board of supervisors shall appoint as local representative an individual owning property in the territory whether or not the individual is a registered voter or appoint a designee of such individual. If the territory is in more than one county, the board shall direct the appointment of a local representative from each county involved by its board of supervisors.

4. From a city to which territory is to be annexed or from which territory is to be severed, one representative appointed by the city council. If the territory is in more than one county, the board shall direct the appointment of an equal number of city and county local representatives.

5. From each city to be consolidated, one representative appointed by each city council.

[C75, 77, 79, 81, §368.14]

91 Acts, ch 250, §8; 94 Acts, ch 1169, §64

368.14A Special local committees.

When two or more petitions for city development action or applications for voluntary annexation describing common territory are being considered together, the board shall direct the appointment of representatives for each of the petitions to serve on one special committee to consider the petitions. Expense reimbursement and qualifications of these representatives shall be as provided in section 368.14. Three board members and at least one-half of the appointed local representatives are required for a quorum of the special local committee. The manner of appointment of representatives shall be the same as for single petition committees as provided in section 368.14. The special committee shall consider the petitions in conformity with the provisions of this chapter, and shall resolve common territory issues between petitioners. The special committee shall conduct a public hearing on the petitions pursuant to section 368.15. If the common territory issue is resolved, the special local committee may approve the resulting compatible petitions by a single vote or separately, in its discretion.

91 Acts, ch 250, §9; 93 Acts, ch 152, §11

368.15 Public hearing.

The committee shall conduct a public hearing on a proposal as soon as practicable. Notice of the hearing must be served upon the council of each city for which a discontinuance or boundary adjustment is proposed, the county board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed, or severed, and any regional planning authority for the area involved. A notice of the hearing, which includes a brief description of the proposal and a statement of where the petition or plan is available for public inspection, must be published as provided in section 362.3, except that there must be two publications in a newspaper having general circulation in each city and each territory involved in the proposal. Any person may submit written briefs, and in the committee's discretion, may be heard on the proposal. The board may subpoena witnesses and documents relevant to the proposal.

[C75, 77, 79, 81, §368.15]

368.16 Approval of proposal.

Subject to section 368.17, the committee shall approve any proposal which it finds to be in the public interest. A committee shall base its finding upon all relevant information before the committee, including but not limited to the following:

1. Statements in the petition or plan, and evidence supporting those statements.

2. Recommendations of the regional planning authority for the area.

3. Commercial and industrial development.

4. Potential growth in population.

5. Cost and adequacy of existing services and facilities.

6. Potential effect of the proposal and of possible alternative proposals on the cost and adequacy of services and facilities.

7. Potential effect of the proposal on adjacent areas, and on any unit of government directly affected, including but not limited to the potential effect on future revenues of any such unit of government.

[C75, 77, 79, 81, §368.16]

368.17 When approval barred.

The committee may not approve:

1. An incorporation unless it finds that the city to be incorporated will be able to provide customary municipal services within a reasonable time.

2. A discontinuance or severance if the city to be discontinued or the territory to be severed will be surrounded by one or more cities unless a petition for annexation of the same area is also filed and approved.

3. A discontinuance or severance unless it

finds that the county or another city will be able to provide necessary municipal services to the residents.

4. An annexation unless the territory is adjoining the city to which it will be annexed, and the committee finds that the city will be able to provide to the territory substantial municipal services and benefits not previously enjoyed by such territory, and that the motive for annexation is not solely to increase revenues to the city.

5. A consolidation unless the cities are contiguous.

6. An incorporation of territory, any part of which is within two miles of an existing city, unless a petition for annexation of substantially the same territory to such city has been dismissed, disapproved, or voted upon unfavorably within the last five years.

7. A city development action which creates an island.

[R60, §1043; C73, §430, 431; C97, §610, 611, 615; S13, §615; C24, 27, 31, 35, 39, §**5612 – 5614;** C46, 50, §362.26, 362.28, 362.29; C54, §362.26; C58, 62, 66, 71, 73, §362.1, 362.26; C75, 77, 79, 81, §368.17]

91 Acts, ch 187, §4; 92 Acts, ch 1174, §5

368.18 Amendment.

The committee may amend a petition or plan. If a petition or plan is substantially amended, the committee shall continue the hearing to a later date and serve and publish a notice describing the amended petition or plan, as required in section 368.15.

[C97, §600; S13, §600; C24, 27, 31, 35, 39, §**5591;** C46, 50, 54, 58, 62, 66, 71, 73, §362.4; C75, 77, 79, 81, §368.18]

368.19 Time limit — election.

The committee shall approve or disapprove the petition or plan as amended, within ninety days of the final hearing, and shall file its decision for record and promptly notify the parties to the proceeding of its decision. If a petition or plan is approved, the board shall set a date not less than thirty days nor more than ninety days after approval for a special election on the proposal and the county commissioner of elections shall conduct the election. In a case of incorporation or discontinuance, registered voters of the territory or city may vote, and the proposal is authorized if a majority of those voting approves it. In a case of annexation or severance, registered voters of the territory and of the city may vote, and the proposal is authorized if a majority of the total number of persons voting approves it. In a case of consolidation, registered voters of each city to be consolidated may vote, and the proposal is authorized only if it receives a favorable majority vote in each city. The county commissioner of elections shall publish notice of the election as provided in section 49.53 and shall conduct the election in the same manner as other special city elections.

The city shall provide to the commissioner of elections a map of the area to be incorporated, discontinued, annexed, severed, or consolidated, which must be approved by the commissioner as suitable for posting. The map shall be displayed prominently in at least four places within the voting precinct, and inside each voting booth, or on the left-hand side inside the curtain of each voting machine.

The costs of an incorporation election shall be borne by the initiating petitioners if the election fails, but if the proposition is approved the cost shall become a charge of the new city.

[R60, §1032, 1037, 1043, 1044; C73, §422, 423, 425, 430 – 432, 447 – 450; C97, §600 – 605, 610 – 612, 615; S13, §600 – 602, 615; C24, 27, 31, 35, 39, §**5592 – 5594, 5596, 5598, 5599, 5605, 5606, 5612 – 5614;** C46, 50, §362.5 – 362.7, 362.9, 362.11, 362.12, 362.19, 362.20, 362.26, 362.28, 362.29; C54, 58, 62, 66, 71, 73, §362.5 – 362.7, 362.9, 362.11, 362.12, 362.19, 362.20, 362.26; C75, 77, 79, 81, §368.19]

91 Acts, ch 250, §10; 95 Acts, ch 67, §53; 98 Acts, ch 1123, §16

368.20 Procedure after approval.

After the county commissioner of elections has certified the results to the board, the board shall:

1. Serve and publish notice of the result as provided in section 362.3.

2. File with the secretary of state and the clerk of each city incorporated or involved in a boundary adjustment, and record with the recorder of each county which contains a portion of any city or territory involved, copies of the proceedings including the original petition or plan and any amendments, the order of the board approving the petition or plan, proofs of service and publication of required notices, certification of the election result, and any other material deemed by the board to be of primary importance to the proceedings. Upon proper filing and expiration of time for appeal, the incorporation, discontinuance, or boundary adjustment is complete. However, if an appeal to any of the proceedings is pending, completion does not occur until the appeal is decided, unless a subsequent date is provided in the proposal. The board shall also file with the state department of transportation a copy of the map and legal land description of each completed incorporation or corporate boundary adjustment completed under sections 368.11 through 368.22 or approved annexation within an urbanized area.

[R60, §1044, 1053, 1054; C73, §432, 445, 446, 452; C97, §267, 603, 608, 612; C24, 27, 31, 35, 39, §**5596, 5603, 5606, 5618;** C46, 50, 54, 58, 62, 66, 71, 73, §362.9, 362.16, 362.20, 362.33; C75, 77, 79, 81, §368.20]

89 Acts, ch 22, §1; 93 Acts, ch 152, §12

368.21 Supervision of procedures.

When an incorporation, discontinuance, or boundary adjustment is complete, the board shall supervise procedures necessary to carry out the proposal. In the case of an incorporation, the county commissioner of elections shall conduct an election for mayor and council of the city, who shall serve until their successors take office following the next regular city election. In the case of a discontinuance, the board shall publish two notices as provided in section 368.15 that it will receive and adjudicate claims against the discontinued city for a period of six months from the date of last notice, and shall cause necessary taxes to be levied against the property within the discontinued city to pay claims allowed. All records of a discontinued city shall be deposited with the county auditor of the county designated by the board. Any remaining balances shall be deposited in the county treasury where the former city was located. In the case of boundary adjustments, the proper city officials shall carry out procedures necessary to implement the proposal.

[R60, §1037, 1045; C73, §425, 433, 449, 451, 453; C97, §602, 603, 605 – 607, 613; S13, §602; C24, 27, 31, 35, 39, §**5594, 5597, 5600 – 5602, 5607;** C46, 50, 54, 58, 62, 66, 71, 73, §362.7, 362.10, 362.13 – 362.15, 362.21; C75, 77, 79, 81, §368.21]

83 Acts, ch 123, §172, 209

368.22 Appeal.

A city, or a resident or property owner in the territory or city involved may appeal a decision of the board or a committee, or the legality of an election, to the district court of a county which contains a portion of any city or territory involved.

Appeal must be filed within thirty days of the filing of a decision or the publication of notice of the result of an election.

Appeal of an approval of a petition or plan does not stay the election.

The judicial review provisions of this section and chapter 17A shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of that agency action. The court's review on appeal of a decision is limited to questions relating to jurisdiction, regularity of proceedings, and whether the decision appealed from is arbitrary, unreasonable, or without substantial supporting evidence. The court may reverse and remand a decision of the board or a committee, with appropriate directions. The following portions of section 17A.19 are not applicable to this chapter:

1. The part of subsection 2 which relates to where proceedings for judicial review shall be instituted.
2. Subsection 5.
3. Subsection 8.
4. Subsection 9.
5. Subsection 10.
6. Subsection 11.

[C75, 77, 79, 81, §368.22]

98 Acts, ch 1202, §40, 46

368.23 Fees and taxes of public utilities.

Additional or increased fees or taxes, other than ad valorem taxes, imposed on a public utility as a result of an annexation of territory to a city shall become effective sixty days after the effective date of the annexation.

93 Acts, ch 152, §13

368.24 Notification to public utilities.

Notwithstanding any other provision of law to the contrary, any city that annexes territory shall provide written notification consisting of a legal description and map of the annexed territory, each street address within the annexed area, where possible, a statement containing the effective date of the annexation and a copy of the order, resolution, or ordinance proclaiming the annexation to all public utilities operating in the annexed area. If the notification of the annexation is provided to a public utility less than sixty days prior to the effective date of the annexation, the public utility shall have sixty days from the date of notification to adjust its tax and accounting records to reflect the annexation for any tax purpose.

96 Acts, ch 1204, §10

368.25 Failure to provide municipal services.

If a city fails to provide municipal services to territory involuntarily annexed, according to the plan filed pursuant to section 368.11, within three years after city taxes are imposed in the annexed territory, the city development board shall initiate proceedings to sever the annexed territory from the city. However, a city may appeal to the board for an additional three years to provide municipal services if good cause is shown. A petition for severance filed pursuant to this section shall be filed and acted upon in the same manner as a petition under section 368.11. For purposes of this section, *"municipal services"* means services selected by a landowner to be provided by the city, including, but not limited to, water supply, sewage disposal, street and road maintenance, and police and fire protection, if the provision of such services is within the legal authority of the annexing city.

2002 Acts, ch 1132, §10, 11; 2002 Acts, ch 1175, §32

Applicability of section; 2002 Acts, ch 1132, §11

NEW section

CHAPTER 368A

GENERAL POWERS AND DUTIES OF MUNICIPAL OFFICERS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 369

PERSONAL SERVICE TRADES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 370

PARK COMMISSIONERS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 371

PERMANENT PARK BOARDS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 372

ORGANIZATION OF CITY GOVERNMENT

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DIVISION I

FORMS OF GOVERNMENT

372.1 Forms of cities.

The forms of city government are:

1. Mayor-council, or mayor-council with appointed manager.
2. Commission.
3. Council-manager-at-large.
4. Council-manager-ward.
5. Home rule charter.
6. Special charter.

A city when first incorporated has the mayor-council form. A city retains its form of government until it adopts a different form as provided in this division.

Within thirty days of the date that this section becomes effective, a city shall adopt by ordinance a charter embodying its existing form of government, which must be one of the forms provided in this division, and shall file a copy of its charter with the secretary of state, and maintain copies available for public inspection.

[C54, 58, 62, 66, 71, 73, §363.1, 363.30; C75, 77, 79, 81, §372.1]

372.2 Six-year limitation.

A city may adopt a different form of government not more often than once in a six-year period. A different form, other than a home rule charter or special charter, must be adopted as follows:

1. Eligible electors of the city may petition the council to submit to the electors the question of adopting a different form of city government. The minimum number of signatures required on the petition shall be equal in number to twenty-five percent of those who voted in the last regular city election. The petition shall specify which form of city government in section 372.1 the petitioners propose for adoption.

2. Within fifteen days after receiving a valid petition, the council shall publish notice of the date that a special city election will be held to determine whether the city shall change to a different form of government. The election date shall be not more than sixty days after the publication. The notice shall include a statement that the filing of a petition for appointment of a home rule charter commission will delay the election until after the home rule charter commission has filed a proposed charter. Petition requirements and filing deadlines shall also be included in the notice.

The council shall notify the county commissioner of elections to publish notice of the election and conduct the election pursuant to chapters 39 to 53. The county commissioner of elections shall certify the results of the election to the council.

3. If a majority of the persons voting at the special election approves the proposed form, it is adopted.

4. If a majority of the persons voting at the special election does not approve the proposed form, that form may not be resubmitted to the voters within the next four years.

5. If the proposed form is adopted:

a. The elective officers provided for in the adopted form are to be elected at the next regular city election held more than eighty-four days after the special election at which the form was adopted. The adopted form becomes effective at the beginning of the new term following the regular city election.

b. The change of form does not alter any right or liability of the city in effect when the new form takes effect.

c. All departments and agencies shall continue to operate until replaced.

d. All measures in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted form.

e. Upon the effective date of the adopted form, the city shall adopt by ordinance a new charter embodying the adopted form, and shall file a copy of its charter with the secretary of state, and maintain copies available for public inspection.

[C73, §434 – 439; C97, §631 – 635, 637; S13, §633, 1056-a17, -a18, -a19, -a20, -a39; SS15, §1056-b1, -b2, -b22, -b26; C24, 27, 31, 35, 39, §**6478, 6482 – 6487, 6491, 6549, 6568, 6569, 6616, 6617, 6619, 6620, 6623, 6680 – 6682, 6687, 6689, 6690, 6936 – 6940, 6942;** C46, 50, §416.3, 416.6, 416.7 – 416.11, 416.15, 416.73, 416.93, 416.94, 419.2, 419.3, 419.5, 419.6, 419.9, 419.67 – 419.69, 419.74, 419.76, 419.77, 420.289 – 420.293, 420.295; C54, 58, 62, 66, 71, 73, §363.31 – 363.38, 363B.6, 363C.12, 420.289 – 420.293, 420.295; C75, 77, 79, 81, §372.2]

89 Acts, ch 39, §6, 7; 94 Acts, ch 1180, §52, 53; 97 Acts, ch 170, §88

372.3 Home rule charter.

If a petition for appointment of a home rule charter commission is filed with the city clerk not more than ten days after the council has published notice announcing the date of the special election on adoption of another form of government, the special election shall not be held until the charter proposed by the home rule charter commission is filed. Both forms must be published as provided in section 372.9 and submitted to the voters at the special election.

[C75, 77, 79, 81, §372.3]

97 Acts, ch 170, §89

372.4 Mayor-council form.

A city governed by the mayor-council form has a mayor and five council members elected at large, unless the council representation plan is changed pursuant to section 372.13, subsection 11. The council may, by ordinance, provide for a city manager and prescribe the manager's powers and duties, and as long as the council contains an odd number of council members, may change the number of wards, abolish wards, or increase the number of council members at large without changing the form.

However, a city governed, on July 1, 1975, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large, and one council member from each of four wards, or a special charter city governed, on July 1, 1975, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large and one council member elected from each of eight wards, may continue until the form of government is changed as provided in section 372.2 or section 372.9. While a city is thus operating with an even number of council members, the mayor may vote to break a tie vote on motions not involving ordinances, resolutions or appointments made by the council alone, and in a special charter city operating with ten council members under this section, the mayor may vote to break a tie vote on all measures.

The mayor shall appoint a council member as mayor pro tem, and shall appoint and dismiss the

marshal or chief of police except where an intergovernmental agreement makes other provisions for police protection or as otherwise provided in section 400.13. However, the appointment and dismissal of the marshal or chief of police are subject to the consent of a majority of the council. Other officers must be selected as directed by the council. The mayor is not a member of the council and shall not vote as a member of the council.

In a city having a population of five thousand or less, the city council may, or shall upon petition of the electorate meeting the numerical requirements of section 372.2, subsection 1, submit a proposal at the next regular or special city election to reduce the number of council members to three. If a majority of the voters voting on the proposal approves it, the proposal is adopted. If the proposal is adopted, the new council shall be elected at the next regular or special city election. The council shall determine by ordinance whether the three council members are elected at large or by ward.

[R60, §1081, 1086, 1093, 1095, 1098, 1103, 1105, 1106; C73, §511, 515, 521, 524, 528, 532, 534, 535; C97, §645, 646, 652, 654, 655; S13, §645, 646, 652, 654, 655; SS15, §679-1a, 937; C24, 27, 31, 35, 39, §**5631, 5634 – 5636, 6611, 6691;** C46, 50, §363.9, 363.13 – 363.15, 418.1, 420.1; C54, 58, 62, §363A.2, 363A.3, 363D.1; C66, 71, 73, §363A.2, 363A.3, 363A.5, 363D.1; C75, 77, 79, 81, §372.4]

86 Acts, ch 1171, §2; 87 Acts, ch 97, §1; 91 Acts, ch 256, §36; 97 Acts, ch 23, §38; 2001 Acts, ch 35, §1

372.5 Commission form.

A city governed by the commission form has five departments as follows:

1. Department of public affairs.
2. Department of accounts and finances.
3. Department of public safety.
4. Department of streets and public improvements.
5. Department of parks and public property.

A city governed by the commission form has a council composed of a mayor and four council members elected at large, unless the council representation plan is changed pursuant to section 372.13, subsection 11. The mayor administers the department of public affairs and each other council member is elected to administer one of the other four departments.

However, a city governed, on July 1, 1975, by the commission form and having a council composed of a mayor and two council members elected at large may continue with a council of three until the form of government is changed as provided in section 372.2 or section 372.9 or without changing the form, may submit to the voters the question of increasing the council to five members assigned to the five departments as set out in this section.

The mayor shall supervise the administration of all departments and report to the council all matters requiring its attention. The mayor is a member of the council and may vote on all matters before the council.

The council member elected to administer the department of accounts and finances is mayor pro tem.

The council may appoint a city treasurer or may, by ordinance, provide for election of that officer.

[S13, §1056-a18, -a20, -a24, -a25, -a26, -a29; C24, 27, 31, 35, 39, §**6484, 6488, 6489, 6502, 6520, 6524, 6526, 6527, 6565, 6566;** C46, 50, §416.8, 416.12 – 416.14, 416.26, 416.44, 416.48, 416.50, 416.51, 416.90, 416.91; C54, 58, 62, 66, 71, 73, §363B.1, 363B.2, 363B.4, 363B.5, 363B.7, 363B.8; C75, 77, 79, 81, §372.5]

91 Acts, ch 256, §37; 97 Acts, ch 23, §39

372.6 Council-manager-at-large form.

A city governed by the council-manager-at-large form has five council members elected at large for staggered four-year terms. At the first meeting of the new term following each city election, the council shall elect one of the council members to serve as mayor, and one to serve as mayor pro tem. The mayor is a member of the council and may vote on all matters before the council. As soon as possible after the beginning of the new term following each city election, the council shall appoint a manager.

The council may by ordinance provide that the city will be governed by council-manager-ward form. The ordinance must provide for the election of the mayor and council members required under council-manager-ward form at the next regular city election.

[SS15, §1056-b1, -b7, -b12; C24, 27, 31, 35, 39, §**6621, 6622, 6645, 6665;** C46, 50, §419.7, 419.8, 419.31, 419.51; C54, 58, 62, 66, §363C.1, 363C.3; C71, 73, §363C.1, 363C.3, 363C.17; C75, 77, 79, 81, §372.6]

372.7 Council-manager-ward form.

A city governed by council-manager-ward form has a council composed of a mayor and six council members. Of the six council members, two may be elected at large and one elected from each of four wards, or one may be elected from each of six wards. The mayor and other council members serve four-year staggered terms. The mayor is a member of the council and may vote on all matters before the council.

The council, by ordinance, may change from one ward option authorized under this section to the other ward option. The ordinance must provide for the election of the mayor and council members as provided in the selected ward option at the next regular city election.

As soon as possible after the beginning of the new term following each city election, the council shall appoint a city manager, and a council member to serve as mayor pro tem.

[C71, 73, §363E.1; C75, 77, 79, 81, §372.7]
87 Acts, ch 86, §1

372.8 Council-manager form — supervision.

When a city adopts a council-manager-at-large or council-manager-ward form of government:

1. The city manager is the chief administrative officer of the city.

2. The city manager shall:

a. Supervise enforcement and execution of the city laws.

b. Attend all meetings of the council.

c. Recommend to the council any measures necessary or expedient for the good government and welfare of the city.

d. Supervise the official conduct of all officers of the city appointed by the manager, and take active control of the police, fire, and engineering departments of the city.

e. Supervise the performance of all contracts for work to be done for the city, make all purchases of material and supplies, and see that such material and supplies are received, and are of the quality and character called for by the contract.

f. Supervise the construction, improvement, repair, maintenance, and management of all city property, capital improvements, and undertakings of the city, including the making and preservation of all surveys, maps, plans, drawings, specifications, and estimates for capital improvements, except property, improvements, and undertakings managed by a utility board of trustees.

g. Co-operate with any administrative agency or utility board of trustees.

h. Be responsible for the cleaning, sprinkling, and lighting of streets, alleys, and public places, and the collection and disposal of waste.

i. Provide for and cause records to be kept of the issuance and revocation of licenses and permits authorized by city law.

j. Keep the council fully advised of the financial and other conditions of the city, and of its future needs.

k. Prepare and submit to the council annually the required budgets.

l. Conduct the business affairs of the city and cause accurate records to be kept by modern and efficient accounting methods.

m. Make to the council not later than the tenth day of each month an itemized financial report in writing, showing the receipts and disbursements for the preceding month. Copies of financial reports must be available at the clerk's office for public distribution.

n. Appoint a treasurer subject to the approval of the council.

o. Perform other duties at the council's direction.

3. The city manager may:

a. Appoint administrative assistants, with the approval of the council.

b. Employ, reclassify, or discharge all employees and fix their compensation, subject to civil service provisions and chapter 35C, except the city clerk, deputy city clerk, and city attorneys.

c. Make all appointments not otherwise provided for.

d. Suspend or discharge summarily any officer, appointee, or employee whom the manager has power to appoint or employ, subject to civil service provisions and chapter 35C.

e. Summarily and without notice investigate the affairs and conduct of any department, agency, officer, or employee under the manager's supervision, and compel the production of evidence and attendance of witnesses.

f. Administer oaths.

4. The city manager shall not take part in any election for council members, other than by casting a vote, and shall not appoint a council member to city office or employment, nor shall a council member accept such appointment.

[SS15, §1056-b3, -b12, -b15, -b16, -b19, -b20; C24, 27, 31, 35, 39, §**6631, 6665, 6669 – 6672, 6675, 6676;** C46, 50, §419.17, 419.51, 419.55 – 419.58, 419.61, 419.62; C54, 58, 62, 66, 71, 73, §363C.3, 363C.7, 363C.10, 363C.11; C75, 77, 79, 81, §372.8]

372.9 Home rule charter procedure.

A city to be governed by the home rule charter form shall adopt a home rule charter in which its form of government is set forth. A city may adopt a home rule charter only by the following procedures:

1. A home rule charter may be proposed by:

a. The council, causing a charter to be prepared and filed and by resolution submitting it to the voters.

b. Eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last regular city election petitioning the council to appoint a charter commission to prepare a proposed charter. The council shall, within thirty days of the filing of a valid petition, appoint a charter commission composed of not less than five nor more than fifteen members. The charter commission shall, within six months of its appointment, prepare and file with the council a proposed charter.

2. When a charter is filed, the council and mayor shall notify the county commissioner of elections to publish notice containing the full text of the proposed home rule charter, a description of any other form of government being presented to the voters, and the date of the election, and to conduct the election. The notice shall be published at least twice in the manner provided in section 362.3, except that the publications must occur within sixty days of the filing of the home rule charter, with a two-week interval between each publication. The council shall provide copies of a

proposed charter for public distribution by the city clerk.

3. The proposed home rule charter must be submitted at a special city election on a date selected by the mayor and council in accordance with section 47.6. However, the date of the election must be not less than thirty nor more than sixty days after the last publication of the proposed home rule charter.

4. If a proposed home rule charter is rejected by the voters, it may not be resubmitted in substantially the same form to the voters within the next four years. If a proposed home rule charter is adopted by the voters, no other form of government may be submitted to the voters for six years.

5. If a petition for the appointment of a charter commission is filed at any time within two weeks after the second publication of a charter proposed by the council, the submission to the voters of a charter proposed by the council must be delayed, a charter commission appointed, and the council proposal and the charter proposed by the charter commission must be submitted to the voters at the same special election.

6. The ballot submitting a proposed charter or charters must also submit the existing form of government as an alternative.

7. If only two forms of government are being voted upon, the form of government which receives the highest number of votes is adopted.

If more than two forms are being voted upon and no form receives a majority of the votes cast in the special election, there must be a runoff election between the two proposed forms which receive the highest number of votes in the special election. The runoff election must be held within thirty days following the special election and must be conducted in the same manner as a special city election.

8. If a home rule charter is adopted:

a. The elective officers provided for in the charter are to be elected at the next regular city election held more than sixty days after the special election at which the charter was adopted, and the adopted charter becomes effective at the beginning of the new term following the regular city election.

b. The adoption of the charter does not alter any right or liability of the city in effect at the time of the special election at which the charter was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All measures in effect remain effective until amended or repealed, unless they are irreconcilable with the charter.

e. Upon the effective date of the home rule charter, the city shall adopt by ordinance the home rule charter, and shall file a copy of its charter with the secretary of state, and maintain copies available for public inspection.

[C75, 77, 79, 81, §372.9]

89 Acts, ch 39, §8; 2002 Acts, ch 1134, §103, 115

2002 amendment to subsection 2 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 2 amended

372.10 Contents of charter.

A home rule charter must contain provisions for:

1. A council of an odd number of members, not less than five.

2. A mayor, who may be one of those council members.

3. Two-year or staggered four-year terms of office for the mayor and council members.

4. The powers and duties of the mayor and the council, consistent with the provisions of the city code.

5. A council representation plan pursuant to section 372.13, subsection 11.

[C75, 77, 79, 81, §372.10]

91 Acts, ch 256, §38

372.11 Amendment to charter.

A home rule charter may be amended by one of the following methods:

1. The council, by resolution, may submit a proposed amendment to the voters at a special city election, and the proposed amendment becomes effective if approved by a majority of those voting.

2. The council, by ordinance, may amend the charter. However, within thirty days of publication of the ordinance, if a petition valid under the provisions of section 362.4 is filed with the council, the council must submit the ordinance amendment to the voters at a special city election, and the amendment does not become effective until approved by a majority of those voting.

3. If a petition valid under the provisions of section 362.4 is filed with the council proposing an amendment to the charter, the council must submit the proposed amendment to the voters at a special city election, and the amendment becomes effective if approved by a majority of those voting.

[C75, 77, 79, 81, §372.11]

372.12 Special charter form limitation.

A city may not adopt the special charter form but a city governed by a special charter on July 1, 1975, is considered to have the special charter form although it may utilize elements of the mayor-council form in conjunction with the provisions of its special charter. In adopting and filing its charter as required in section 372.1, a special charter city shall include the provisions of its charter and any provisions of the mayor-council form which are followed by the city on July 1, 1975.

A special charter city may utilize the provisions of chapter 420 in lieu of conflicting sections, until the city changes to one of the other forms of government as provided in this chapter.

[C75, 77, 79, 81, §372.12]
97 Acts, ch 23, §40

DIVISION II

CITY OFFICERS

372.13 The council.

1. A majority of all council members is a quorum.

2. A vacancy in an elective city office during a term of office shall be filled, at the council's option, by one of the two following procedures:

a. By appointment by the remaining members of the council, except that if the remaining members do not constitute a quorum of the full membership, paragraph *"b"* shall be followed. The appointment shall be for the period until the next pending election as defined in section 69.12, and shall be made within forty days after the vacancy occurs. If the council chooses to proceed under this paragraph, it shall publish notice in the manner prescribed by section 362.3, stating that the council intends to fill the vacancy by appointment but that the electors of the city or ward, as the case may be, have the right to file a petition requiring that the vacancy be filled by a special election. The council may publish notice in advance if an elected official submits a resignation to take effect at a future date. The council may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, there is filed with the city clerk a petition which requests a special election to fill the vacancy, an appointment to fill the vacancy is temporary and the council shall call a special election to fill the vacancy permanently, under paragraph *"b"*. The number of signatures of eligible electors of a city for a valid petition shall be determined as follows:

(1) For a city with a population of ten thousand or less, at least two hundred signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(2) For a city with a population of more than ten thousand but not more than fifty thousand, at least one thousand signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(3) For a city with a population of more than fifty thousand, at least two thousand signatures or at least the number of signatures equal to ten percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(4) The minimum number of signatures for a valid petition pursuant to subparagraphs (1) through (3) shall not be fewer than ten. In determining the minimum number of signatures required, if at the last preceding election more than one position was to be filled for the office in which the vacancy exists, the number of voters who voted for candidates for the office shall be determined by dividing the total number of votes cast for the office by the number of seats to be filled.

b. By a special election held to fill the office for the remaining balance of the unexpired term. If the council opts for a special election or a valid petition is filed under paragraph *"a"*, the special election may be held concurrently with any pending election as provided by section 69.12 if by so doing the vacancy will be filled not more than ninety days after it occurs. Otherwise, a special election to fill the office shall be called at the earliest practicable date. If there are concurrent vacancies on the council and the remaining council members do not constitute a quorum of the full membership, a special election shall be called at the earliest practicable date. The council shall give the county commissioner at least sixty days' written notice of the date chosen for the special election. The council of a city where a primary election may be required shall give the county commissioner at least eighty-five days' written notice of the date chosen for the special election. A special election held under this subsection is subject to sections 376.4 through 376.11, but the dates for actions in relation to the special election shall be calculated with regard to the date for which the special election is called.

3. The council shall appoint a city clerk to maintain city records and perform other duties prescribed by state or city law.

4. Except as otherwise provided by state or city law, the council may appoint city officers and employees, and prescribe their powers, duties, compensation, and terms. The appointment of a city manager must be made on the basis of that individual's qualifications and not on the basis of political affiliation.

5. The council shall determine its own rules and maintain records of its proceedings. City records and documents, or accurate reproductions, shall be kept for at least five years except that:

a. Ordinances, resolutions, council proceedings, records and documents, or accurate reproductions, relating to the issuance of public bonds or obligations shall be kept for at least eleven years following the final maturity of the bonds or obligations. Thereafter, such records, documents, and reproductions may be destroyed, preserving confidentiality as necessary. Records and documents pertaining to the transfer of ownership of bonds shall be kept as provided in section 76.10.

b. Ordinances, resolutions, council proceedings, records and documents, or accurate repro-

ductions, relating to real property transactions shall be maintained permanently.

6. Within fifteen days following a regular or special meeting of the council, the clerk shall cause the minutes of the proceedings of the council, including the total expenditure from each city fund, to be published in a newspaper of general circulation in the city. The publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claim. Matters discussed in closed session pursuant to section 21.3 shall not be published until entered on the public minutes. However, in cities having more than one hundred fifty thousand population the council shall each month print in pamphlet form a detailed itemized statement of all receipts and disbursements of the city, and a summary of its proceedings during the preceding month, and furnish copies to the city library, the daily newspapers of the city, and to persons who apply at the office of the city clerk, and the pamphlet shall constitute publication as required. Failure by the clerk to make publication is a simple misdemeanor. The provisions of this subsection are applicable in cities in which a newspaper is published, or in cities of two hundred population or over, but in all other cities, posting the statement in three public places in the city which have been permanently designated by ordinance is sufficient compliance with this subsection.

7. By ordinance, the council may divide the city into wards which shall be drawn according to the following standards:

a. All ward boundaries shall follow precinct boundaries.

b. Wards shall be as nearly equal as practicable to the ideal population determined by dividing the number of wards to be established into the population of the city.

c. Wards shall be composed of contiguous territory as compact as practicable.

d. Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

8. By ordinance, the council shall prescribe the compensation of the mayor, council members, and other elected city officers, but a change in the compensation of the mayor does not become effective during the term in which the change is adopted, and the council shall not adopt an ordinance changing the compensation of the mayor, council members, or other elected officers during the months of November and December in the year of a regular city election. A change in the compensation of council members becomes effective for all council members at the beginning of the term of the council members elected at the election next following the change in compensation. Except as provided in section 362.5, an elected city officer is not entitled to receive any other compensation for any other city office or city employment during that officer's tenure in office, but may be reimbursed for actual expenses incurred. However, if the mayor pro tem performs the duties of the mayor during the mayor's absence or disability for a continuous period of fifteen days or more, the mayor pro tem may be paid for that period the compensation determined by the council, based upon the mayor pro tem's performance of the mayor's duties and upon the compensation of the mayor.

9. A council member, during the term for which that member is elected, is not eligible for appointment to any city office if the office has been created or the compensation of the office has been increased during the term for which that member is elected. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which that person was elected if during that time, the compensation of the office has been increased.

10. A council member, during the term for which that member is elected, is not precluded from holding the office of chief of the volunteer fire department if the fire department serves an area with a population of not more than two thousand, and if no other candidate who is not a city council member is available to hold the office of chief of the volunteer fire department.

11. Council members shall be elected according to the council representation plans under sections 372.4 and 372.5. However, the council representation plan may be changed, by petition and election, to one of those described in this subsection. Upon receipt of a valid petition, as defined in section 362.4, requesting a change to a council representation plan, the council shall submit the question at a special city election to be held within sixty days. If a majority of the persons voting at the special election approves the changed plan, it becomes effective at the beginning of the term following the next regular city election. If a majority does not approve the changed plan, the council shall not submit another proposal to change a plan to the voters within the next two years.

Eligible electors of a city may petition for one of the following council representation plans:

a. Election at large without ward residence requirements for the members.

b. Election at large but with equal-population ward residence requirements for the members.

c. Election from single-member, equal-population wards, in which the electors of each ward shall elect one member who must reside in that ward.

d. Election of a specified number of members at large and a specified number of members from single-member, equal-population wards.

1. [R60, §1081, 1093; C73, §511, 522; C97, §668; S13, §668; C24, 27, 31, 35, 39, §**5663;** C46, 50, §363.36; C54, 58, 62, 66, 71, 73, §368A.1(2); C75, 77, 79, 81, §372.13(1)]

2. [R60, §1101; C73, §514, 524; C97, §668; S13,

§668; C24, 27, 31, 35, 39, §**5663;** C46, 50, §363.36; C54, 58, 62, 66, 71, 73, §368A.1(8); C75, 77, 79, 81, §372.13(2); 81 Acts, ch 34, §46]

3. [R60, §1082, 1093; C73, §512, 522; C97, §651, 659, 940; S13, §651; SS15, §1056-a26, 1056-b18; C24, 27, 31, 35, 39, §**5633, 5640, 5663, 6528, 6651, 6703;** C46, 50, §363.11, 363.19, 363.36, 416.52, 419.37, 420.13; C54, 58, 62, 66, 71, 73, §368A.1(1), 368A.3; C75, 77, 79, 81, §372.13(3)]

4. [R60, §1086, 1093, 1095, 1098, 1103, 1105, 1134; C73, §493, 515, 522, 524, 528, 532, 534; C97, §651, 657, 668, 676; S13, §651, 657, 668, 1056-a27, 1056-a28; SS15, §1056-a26, 1056-b14, 1056-b17, 1056-b18; C24, 27, 31, 35, 39, §**5638, 5663, 5671, 6519, 6528, 6529, 6533, 6651, 6666, 6674;** C46, 50, §363.11, 363.17, 363.36, 363.45, 416.43, 416.52, 416.53, 416.57, 419.37, 419.52, 419.60; C54, 58, 62, 66, 71, 73, §363.40, 363A.4, 363B.11, 363C.4, 363C.9, 368A.1(7, 9, 10); C75, 77, 79, 81, §372.13(4)]

5, 6. [R60, §1082, 1093; C73, §512, 522; C97, §659, 668; S13, §668, 687-a; C24, 27, 31, 35, 39, §**5640, 5663, 5722;** C46, 50, §363.19, 363.33, 366.10; C54, 58, 62, 66, 71, 73, §368A.1(4), 368A.3; C75, 77, 79, 81, §372.13(5,6); 82 Acts, ch 1047, §1]

7. [R60, §1092; C73, §520; C97, §641; S13, §641; C24, 27, 31, 35, 39, §**5626;** C46, 50, §363.4; C54, 58, 62, 66, 71, 73, §363.7; C75, 77, 79, 81, §372.13(7)]

8. [R60, §1091, 1095, 1098; C73, §505, 519, 524, 528; C97, §669, 676, 943, 945; S13, §669, 1056-a28; SS15, §1056-b9; C24, 27, 31, 35, 39, §**5664, 5671, 6517, 6633, 6704, 6705;** C46, 50, §363.38, 363.45, 416.41, 419.19, 420.14, 420.15; C54, 58, 62, 66, §363.39, 363A.4, 363B.9, 363C.2, 420.14, 420.15; C71, 73, §363.39, 363A.4, 363B.9, 363C.2, 363E.1, 420.14, 420.15; C75, 77, 79, 81, §372.13(8)]

9. [R60, §1091, 1122; C73, §490, 491, 519; C97, §668, 677; S13, §668; C24, 27, 31, 35, 39, §**5672;** C46, 50, §363.46, 420.17 – 420.19; C54, 58, 62, 66, 71, 73, §368A.21; C75, 77, 79, 81, §372.13(9)]

85 Acts, ch 107, §1; 87 Acts, ch 203, §3; 88 Acts, ch 1052, §1; 88 Acts, ch 1246, §4; 89 Acts, ch 39, §9; 89 Acts, ch 136, §71; 90 Acts, ch 1106, §1; 91 Acts, ch 256, §39; 93 Acts, ch 89, §2; 94 Acts, ch 1179, §24; 94 Acts, ch 1180, §54; 97 Acts, ch 170, §90; 2002 Acts, ch 1134, §104, 115

Removal of appointees, see §372.15
Removal of officers, chapter 66
2002 amendment to subsection 2, paragraph b, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115
Subsection 2, paragraph b amended

372.14 The mayor.

1. The mayor is the chief executive officer of the city and presiding officer of the council. Except for the supervisory duties which have been delegated by law to a city manager, the mayor shall supervise all city officers and departments.

2. The mayor may take command of the police and govern the city by proclamation, upon making a determination that a time of emergency or public danger exists. Within the city limits, the mayor has all the powers conferred upon the sheriff to suppress disorders.

3. The mayor pro tem is vice president of the council. When the mayor is absent or unable to act, the mayor pro tem shall perform the mayor's duties, except that the mayor pro tem may not appoint, employ, or discharge officers or employees without the approval of the council. Official actions of the mayor pro tem when the mayor is absent or unable to act are legal and binding to the same extent as if done by the mayor. The mayor pro tem retains all of the powers of a council member.

[R60, §1082, 1085, 1091, 1102, 1105, 1121; C73, §506, 512, 518, 519, 531, 534, 537, 547; C97, §658; S13, §658; SS15, §1056-b7; C24, 27, 31, 35, 39, §**5639, 6619, 6647;** C46, 50, §363.18, 419.33, 420.9 – 420.11; C54, 58, 62, 66, 71, 73, §363C.13, 368A.2; C75, 77, 79, 81, §372.14]

Enforcement of motor vehicle law, §321.6

372.15 Removal of appointees.

Except as otherwise provided by state or city law, all persons appointed to city office may be removed by the officer or body making the appointment, but every such removal shall be by written order. The order shall give the reasons, be filed in the office of the city clerk, and a copy shall be sent by certified mail to the person removed who, upon request filed with the clerk within thirty days of the date of mailing the copy, shall be granted a public hearing before the council on all issues connected with the removal. The hearing shall be held within thirty days of the date the request is filed, unless the person removed requests a later date.

[C77, 79, 81, §372.15]

CHAPTER 373

CONSOLIDATED METROPOLITAN CORPORATIONS

373.1 Creation of commission.
373.2 Appointment of commission members.
373.3 Organization and expenses.
373.4 Commission procedures and reports.
373.5 Consolidation charter.
373.6 Referendum — effective date.
373.7 Form of ballot.
373.8 Effect of consolidation.
373.9 Metropolitan council.
373.10 Taxing authority.
373.11 Service delivery.

373.1 Creation of commission.

1. Cities within a county may unite to form a single unit of local government in accordance with this chapter. Any city located in two or more counties shall be allowed to participate in a metropolitan consolidation in the county where at least fifty percent of its population resides. An alternative form of metropolitan government shall be submitted to the electorate by a commission in the form of a charter or charter amendment proposed in accordance with this chapter.

2. Participation in a charter commission under this chapter may be proposed by:

a. The city council adopting a resolution calling for participation.

b. By petition of the number of eligible electors of the city equal to at least twenty-five percent of the votes cast in the city at the last regular city election petitioning the council to adopt a resolution calling for participation. The council shall within thirty days of the filing of a valid petition adopt such a resolution.

91 Acts, ch 256, §40

373.2 Appointment of commission members.

1. Within forty-five days after the establishment of a commission, the members of the commission shall be appointed as follows:

a. One member shall be appointed by the city council of each city participating in the charter process.

b. An additional member shall be appointed by each city council for every twenty-five thousand residents in the participating city.

c. One member shall be appointed by each state legislator whose legislative district is located in the commission area if a majority of the constituents of that legislative district resides in the commission area. However, if a commission area does not have a state legislative district which has a majority of its constituents residing in the commission area, the legislative district having the largest plurality of constituents residing in the commission area shall appoint one member.

2. Only eligible electors of the county not holding a city, county, or state office shall be members of the commission. In counties having multiple state legislative districts, the districts shall be represented as equally as possible. The membership shall be bipartisan and gender balanced and each appointing authority under subsection 1 shall provide for representation of various age groups, racial minorities, economic groups, and representatives of identifiable geographically defined populations, all in reasonable relationship to the proportions in which these groups are present in the population of the commission area. A vacancy on the commission shall be filled by appointment in the same manner as the original appointment. The county auditor shall notify the appropriate appointing authority of a vacancy.

The legislative appointing authorities shall be considered one appointing authority for the purpose of complying with this subsection. The senior legislative appointing authority in terms of length of legislative service shall convene the legislative appointing authorities to consult for the purpose of complying with this subsection.

91 Acts, ch 256, §41

373.3 Organization and expenses.

1. Within thirty days after the appointment of the members of the commission, the city clerk of the participating city with the largest population shall give written notice of the date, time, and location of the first meeting of the commission. At the first meeting the commission shall organize by electing a chairperson, vice chairperson, and other officers as necessary. The commission shall adopt rules governing the conduct of its meetings, subject to chapter 21.

2. The members of the commission shall serve without compensation, but they are entitled to travel and other necessary expenses relating to their duties of office.

3. The participating cities shall make available to the commission in-kind services such as office space, printing, supplies, and equipment and shall pay the other necessary expenses of the commission, including compensation for secretarial, clerical, professional, and consultant services. The total annual expenses, not including the value of in-kind expenses, to be paid from public funds shall not exceed one hundred thousand dollars or an amount equal to thirty cents times the population of the commission area, according to the most recent certified federal census. The commission may employ staff as necessary.

4. The expenses of the commission may be paid from the general fund of the participating cities or from any combination of public or private funds available for that purpose. The commission's annual expenses may exceed the amount in subsection 3 only if the excess is paid from private funds. If a proposed charter is submitted to the electorate, private funds donated to the commission may be used to promote passage of the proposed charter.

91 Acts, ch 256, §42

373.4 Commission procedures and reports.

1. Within sixty days after its organization, the commission shall hold at least one public hearing for the purpose of receiving information and material which will assist in the drafting of a charter. Notice of the date, time, and place of the hearing shall be published in the official county newspapers of each county in which the participating cities are located.

2. Within nine months after the organization of the commission, the commission shall submit a

preliminary report to the councils of the participating cities, which report may include the text of the proposed charter. If a proposed charter is included in the preliminary report, the report shall also include an analysis of the fiscal impact of the proposed charter. Sufficient copies of the report shall be made available for distribution to residents of the participating cities who request a copy. The commission shall hold at least one public hearing after submission of the preliminary report to obtain public comment.

3. Within twenty months after organization, the commission shall submit the final report to the councils of the participating cities. If the commission recommends a charter of consolidation, the final report shall include the full text and an explanation of the proposed charter, an analysis of the fiscal impact of the proposed charter, any comments deemed desirable by the commission, and any minority reports. The final report may recommend no change to the existing form of government and that no charter be submitted to the electorate, or it may recommend consolidation of the participating cities with the county. If the board of supervisors by resolution agrees to participate in consolidation, then the participating cities and county shall proceed under sections 331.231 through 331.252.

4. The final report of the commission shall be made available to the residents of the participating cities upon request. A summary of the final report shall be published in the official newspapers of the county. If a charter is not recommended, the commission is dissolved upon submission of its final report to the councils of the participating cities.

91 Acts, ch 256, §43

373.5 Consolidation charter.

A proposed charter written by a charter commission shall specify the consolidated metropolitan form of government. The proposed consolidation charter shall do all of the following:

1. Provide the official name of the consolidated unit of local government and establish its geographic boundaries.

2. Establish an elective legislative body pursuant to section 373.9, including provisions on terms of office, initial compensation, meetings, and rules of procedure.

3. Provide for the at-large election of an officer to preside over the metropolitan council and perform other duties as specified, and provide for the election of other necessary officers.

4. Provide for the nonpartisan election of officers of the consolidated metropolitan corporation government.

5. Specify the powers and duties of the metropolitan council, its administrative officers, and elected officials.

6. Provide for delivery of certain services to the member cities, pursuant to section 373.11, and may provide for the abolition or consolidation of a department, agency, board, or commission and the assumptions of its powers and duties by the metropolitan council or another officer.

7. Provide for a system of revenue collection pursuant to section 373.10.

8. Provide for the orderly transition to the charter form of metropolitan consolidation.

9. Include other provisions which the consolidation charter commission elects to include and which are not inconsistent with state law.

10. Specify a charter amendment process pursuant to section 372.11.

11. Provide for the appointment of a manager by the metropolitan council pursuant to section 372.8.

91 Acts, ch 256, §44

373.6 Referendum — effective date.

1. If a proposed charter for consolidation is received not later than sixty days before the next general election, the council of the participating city with the largest population shall direct the county commissioner of elections to submit to the registered voters of the participating cities at the next general election the question of whether the proposed charter shall be adopted. A summary of the proposed charter shall be published in a newspaper of general circulation in each city participating in the charter commission process at least ten but not more than twenty days before the date of the election. The proposed charter shall be effective in regard to a city only if a majority of the electors of the city voting approves the proposed charter.

2. If a proposed charter for consolidation is adopted:

a. The adopted charter shall take effect July 1 following the election at which it is approved unless the charter provides a later effective date. A special election shall be called to elect the new elective officers.

b. The adoption of the consolidated metropolitan corporation form of government does not alter any right or liability of any participating city in effect at the time of the election at which the charter was adopted.

c. All departments and agencies shall continue to operate until replaced.

d. All ordinances or resolutions in effect remain effective until amended or repealed, unless they are irreconcilable with the adopted charter.

e. Upon the effective date of the adopted charter, the participating cities shall adopt the consolidation form by ordinance, and shall file a copy with the secretary of state, and maintain available copies for public inspection.

3. If a charter is submitted to the electorate but is not adopted, another charter shall not be submitted to the electorate for two years. If a charter is adopted, it may be amended at any time. If

a charter is adopted, a proposed charter for another alternative form of city government shall not be submitted to the electorate for six years.

4. Section 372.2 shall not apply to a charter commission established under this chapter.

91 Acts, ch 256, §45; 95 Acts, ch 67, §53

373.7 Form of ballot.

The question of metropolitan consolidation shall be submitted to the electors in substantially the following form:

Should the cities of ..... and ..... unite to form one joint metropolitan corporation government?

The ballot must contain a brief description and summary of the proposed charter or amendment.

91 Acts, ch 256, §46

373.8 Effect of consolidation.

Cities consolidating pursuant to this chapter shall retain all the rights, powers, and duties conferred upon them by the Constitution of the State of Iowa and shall retain all the rights, powers, and duties conferred upon them by the laws of the state of Iowa, except to the extent those statutory rights, powers, and duties are limited by the charter government in fulfilling its duty to provide efficient administration and delivery of services to its citizens.

The consolidation charter may provide for the replacement of the city government of the member city with the largest population, according to the most recent certified federal census. That city shall be known as the home city of the consolidated metropolitan corporation. If its government is replaced, the consolidation charter shall provide that the home city be governed either directly by the metropolitan council or by those members of the metropolitan council who reside within the corporate boundaries of the home city. The home city shall retain its geographic boundaries for the purposes of taxation.

Cities participating in consolidation shall be referred to as member cities of the consolidated metropolitan corporation.

A city may join an existing consolidated metropolitan corporation government by resolution of the city council or upon petition of eligible electors of the city equal in number to at least twenty-five percent of the persons who voted at the last general election for the office of governor or president of the United States, whichever is fewer. Within fifteen days after receiving a valid petition, the city council of the petitioning city shall adopt a resolution in favor of participation and shall immediately forward the resolution to the metropolitan council. If a majority of the metropolitan council approves the resolution, the question of joining the consolidated metropolitan corporation shall be submitted to the electorate of the petitioning city within sixty days after approval of the resolution.

91 Acts, ch 256, §47

373.9 Metropolitan council.

1. A consolidated metropolitan corporation shall be governed by a metropolitan council. The council shall consist of an odd number of members, not less than eleven and not more than seventeen. If a vacancy on the metropolitan council occurs more than sixty days before the next general election, the council shall direct the county commissioner of elections to conduct a special election to fill the vacancy until the next general election.

2. Unless otherwise specified in the consolidation charter, the council shall act by a majority vote of the members on the council.

91 Acts, ch 256, §48

373.10 Taxing authority.

The metropolitan council shall have the authority to levy city taxes to the extent the city tax levy authority is transferred by the charter to the metropolitan council. A member city shall transfer a portion of the city's tax levy authorized under section 384.1 or 384.12, whichever is applicable, to the metropolitan council. The maximum rates of taxes authorized to be levied under sections 384.1 and 384.12 by a member city shall be reduced by an amount equal to the rates of the same or similar taxes levied in the city by the metropolitan council.

91 Acts, ch 256, §49

373.11 Service delivery.

1. The charter of consolidation shall provide for the transfer into the metropolitan consolidated corporation of areawide services which had been provided by other boards, commissions, and local governments. The metropolitan council shall have the authority to determine the boundaries of the service areas, except that formation of a consolidated metropolitan corporation shall not affect the assignment of electric utility service territories pursuant to chapter 476, and shall not affect the rights of a city to grant a franchise under chapter 364.

For each service provided by the consolidated metropolitan corporation, the consolidated metropolitan corporation shall assume the same statutory rights, powers, and duties, except taxing authority, relating to the provision of such service as if the member city were itself providing the service to its citizens. However, the consolidated metropolitan corporation shall not assume any of the governmental functions of its member cities except as the functions relate to the delivery of services and except as provided in section 373.8.

If a service is being provided by the consolidated metropolitan corporation to any member city that member city shall not invoke any statutory right, power, or duty relating to the delivery of the ser-

vice to its citizens.

2. A member city may apply to the metropolitan council for the purchase of any service which is being provided by the consolidated metropolitan corporation to any other member city, including the home city of the consolidated metropolitan corporation. Such an agreement to provide services shall be executed pursuant to chapter 28E and must contain provisions necessary for the lawful execution of the agreement.

91 Acts, ch 256, §50

CHAPTER 374

COMMUNITY CENTER HOUSES AND RECREATION GROUNDS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 374A

AUDITORIUM TRUSTEES IN CERTAIN CITIES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 375

MUNICIPAL BANDS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 376

CITY ELECTIONS

376.1 City election held.
376.2 Terms.
376.3 Nominations.
376.4 Candidacy.
376.5 Publication of ballot.
376.6 Primary or other method of nomination — certification.
376.7 Date of primary.
376.8 Persons elected in city elections.
376.9 Runoff election.
376.10 Contest.
376.11 Write-in votes.

376.1 City election held.

A city shall hold a regular city election on the first Tuesday after the first Monday in November of each odd-numbered year. A city shall hold regular, special, primary, or runoff city elections as provided by state law.

The mayor or council shall give notice of any special election to the county commissioner of elections. The county commissioner of elections shall publish notice of any city election and conduct the election pursuant to the provisions of chapters 39 to 53, except as otherwise specifically provided in chapters 362 to 392. The results of any election shall be canvassed by the county board of supervisors and certified by the county commissioner of elections to the mayor and the council of the city for which the election is held.

[R60, §1130; C73, §501; C97, §642, 936; S13, §646, 1056-a20, -a21; SS15, §1056-b5, -b6; C24, 27, 31, 35, 39, §**5627, 6488, 6494, 6507, 6514, 6643, 6644, 6737;** C46, 50, §363.5, 416.12, 416.18, 416.31, 416.38, 419.29, 419.30; C54, 58, 62, 66, 71, 73, §363.8, 363.20, 363.24, 363.26; C75, 77, 79, 81, §376.1]

376.2 Terms.

Terms of city officers begin and end at noon on the first day in January which is not a Sunday or legal holiday, following a regular city election.

Except as otherwise provided by state law or the city charter, terms for elective offices are two years. However, the term of an elective office may be changed to two or four years by petition and election. Upon receipt of a valid petition as de-

fined in section 362.4, requesting that the term of an elective office be changed, the council shall submit the question at a special city election to be held within sixty days after the petition is received. The special election shall be held more than ninety days before the regular city election if the change shall go into effect at the next regular city election. If a majority of the persons voting at the special election approves the changed term, it becomes effective at the beginning of the term following the next regular city election. If a majority does not approve the changed term, the council shall not submit the same proposal to the voters within the next four years.

At the first regular city election after the terms of council members are changed to four years, terms shall be staggered as follows:

1. If an even number of council members are elected at large, the half of the elected council members who receive the highest number of votes are elected for four-year terms. The remainder are elected for two-year terms.

2. If an odd number of council members are elected at large, the majority of the elected council members who receive the highest number of votes are elected for four-year terms. The remainder are elected for two-year terms.

3. In case of a tie the mayor and clerk shall determine by lot which council members are elected for four-year terms.

4. If the council members are elected from wards, the council members elected from the odd-numbered wards are elected for four-year terms and the council members elected from even-numbered wards are elected for two-year terms.

After July 1, 1986, a petition submitted under this section to change the term of council members from two to four years shall specify if the terms are to be staggered or run concurrently. If the petition provides for concurrent terms and the changed term is approved by the voters, unnumbered paragraph 3 of this section shall not apply and the terms shall be concurrent. If valid petitions for staggered and concurrent terms are submitted, the first filed shall govern.

[R60, §1081, 1084, 1091, 1093, 1106; C73, §390, 511, 514, 518, 521, 535; C97, §646 – 649; S13, §646 – 649; SS15, §1056-b3; C24, 27, 31, 35, 39, §**5632, 6625, 6626;** C46, 50, §363.10, 419.11, 419.12; C54, 58, 62, 66, 71, 73, §363.9, 363.10, 363.28; C75, 77, 79, 81, §376.2]

86 Acts, ch 1224, §34; 2002 Acts, ch 1134, §105, 115

2002 amendment to unnumbered paragraph 2 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 2 amended

376.3 Nominations.

Candidates for elective city offices must be nominated as provided in sections 376.4 to 376.9 unless by ordinance a city chooses the provisions of chapters 44 or 45. However, a city acting under a special charter in 1973 and having a population of over fifty thousand shall continue to hold partisan elections as provided in sections 43.112 to 43.118 and 420.126 to 420.137 unless the city by election as provided in section 43.112 chooses to conduct city elections under this chapter or chapter 44 or 45. The choice of one of these options by such a special charter city does not otherwise affect the validity of the city's charter. However, special charter cities which choose to exercise the option to conduct nonpartisan city elections may choose in the same manner the original decision was made, to resume holding city elections on a partisan basis.

[S13, §1056-a21; SS15, §1056-b4; C24, 27, 31, 35, 39, §**6492, 6496, 6634, 6638;** C46, 50, §416.16, 416.20, 419.20, 419.24; C54, 58, 62, 66, 71, 73, §363.11, 363.16; C75, 77, 79, 81, §376.3; 82 Acts, ch 1097, §2]

376.4 Candidacy.

An eligible elector of a city may become a candidate for an elective city office by filing with the city clerk a valid petition requesting that the elector's name be placed on the ballot for that office. The petition must be filed not more than seventy-one days and not less than forty-seven days before the date of the election, and must be signed by eligible electors equal in number to at least two percent of those who voted to fill the same office at the last regular city election, but not less than ten persons. However, for those cities which may be required to hold a primary election, the petition must be filed not more than eighty-five days and not less than sixty-eight days before the date of the regular city election. A person may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the person signed nomination petitions for one or more other candidates for the office. Nomination petitions shall be filed not later than five o'clock p.m. on the last day for filing.

The petitioners for an individual seeking election from a ward must be residents of the ward at the time of signing the petition. An individual is not eligible for election from a ward unless the individual is a resident of the ward at the time the individual files the petition and at the time of election.

The petition must include the signature of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

The petition must include the affidavit of the individual for whom it is filed, stating the individual's name, the individual's residence, that the individual is a candidate and eligible for the office, and that if elected the individual will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the candidate has been con-

victed of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

If the city clerk is not readily available during normal office hours, the city clerk shall designate other employees or officials of the city who are ordinarily available to accept nomination papers under this section. On the final date for filing nomination papers the office of the city clerk shall remain open until five p.m.

The city clerk shall accept the petition for filing if on its face it appears to have the requisite number of signatures and if it is timely filed. The city clerk shall note upon each petition and affidavit accepted for filing the date and time that they were filed.

The city clerk shall deliver all nomination petitions together with the text of any public measure being submitted by the city council to the electorate to the county commissioner of elections not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed.

Any person on whose behalf nomination petitions have been filed under this section may withdraw as a candidate by filing a signed statement to that effect as prescribed in section 44.9. Objections to the legal sufficiency of petitions shall be filed in accordance with the provisions of sections 44.4, 44.5, and 44.8.

[S13, §1056-a21, -a40; SS15, §1056-b4; C24, 27, 31, 35, 39, §**6478, 6495 – 6498, 6634 – 6638;** C46, 50, §416.2, 416.19 – 416.22, 419.20 – 419.24; C54, 58, 62, 66, 71, 73, §363.11 – 363.16; C75, 77, 79, 81, §376.4]

86 Acts, ch 1224, §35; 87 Acts, ch 221, §33; 88 Acts, ch 1119, §39; 89 Acts, ch 136, §72; 90 Acts, ch 1238, §40; 94 Acts, ch 1180, §55; 97 Acts, ch 170, §91; 98 Acts, ch 1052, §7

376.5 Publication of ballot.

Notice containing a copy of the ballot for each regular, special, primary, or runoff city election must be published by the county commissioner of elections as provided in section 362.3, except that notice of a regular, primary, or runoff election may be published not less than four days before the date of the election. The published ballot must contain the names of all candidates, and may not contain any party designations. The published ballot must contain any question to be submitted to the voters.

[S13, §1056-a21; SS15, §1056-b4; C24, 27, 31, 35, 39, §**6499, 6500, 6501, 6503, 6640;** C46, 50, §416.23 – 416.25, 416.27, 419.26; C58, 62, 66, 71, 73, §363.19; C75, 77, 79, 81, §376.5]

376.6 Primary or other method of nomination — certification.

An individual for whom a valid petition is filed becomes a candidate in the regular city election for the office for which the individual has filed, except that a primary election must be held for offices for which the number of individuals for whom valid petitions are filed is more than twice the number of positions to be filled. However:

1. The council may by ordinance choose to have a runoff election, as provided in section 376.9, in lieu of a primary election.

2. If the council has by ordinance chosen to have nominations made in the manner provided by chapter 44 or 45, neither a primary election nor a runoff election is required.

Each city clerk shall certify to the commissioner of elections responsible under section 47.2 for conducting elections for that city the type of nomination process to be used for the city no later than ninety days before the date of the regular city election. If the city has by ordinance chosen a runoff election or has chosen to have nominations made in the manner provided by chapter 44 or 45, or has repealed nomination provisions under those sections in preference for the primary election method, a copy of the city ordinance shall be attached. No changes in the method of nomination to be used in a city shall be made after the clerk has filed the certification with the commissioner, unless the change will not take effect until after the next regular city election.

[S13, §1056-a21; SS15, §1056-b4; C24, 27, 31, 35, 39, §**6492, 6510, 6638;** C46, 50, §416.16, 416.34, 419.24; C54, 58, 62, 66, 71, 73, §363.16, 363.18; C75, 77, 79, 81, §376.6]

88 Acts, ch 1119, §40; 2002 Acts, ch 1134, §106, 115

2002 amendment to unnumbered paragraph 2 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 2 amended

376.7 Date of primary.

If a primary election is necessary, it shall be held on the Tuesday four weeks before the date of the regular city election. The county board of supervisors shall publicly canvass the tally lists of the vote cast in the primary election, following the procedures prescribed in section 50.24, at a meeting to be held beginning at one o'clock in the afternoon on the second day following the primary election.

The names of those candidates who receive the highest number of votes for each office on the primary election ballot, to the extent of twice the number of unfilled positions, must be placed on the ballot for the regular city election as candidates for that office.

[S13, §1056-a21; SS15, §1056-b5; C24, 27, 31, 35, 39, §**6493, 6507, 6643;** C46, 50, §416.17, 416.31, 419.29; C54, 58, 62, 66, 71, 73, §363.17, 363.24; C75, 77, 79, 81, §376.7]

86 Acts, ch 1224, §36

376.8 Persons elected in city elections.

1. In a regular city election following a city pri-

mary, the candidates receiving the greatest number of votes cast for each office on the ballot are elected, to the extent necessary to fill the positions open.

2. In a regular city election held for a city where the council has chosen a runoff election in lieu of a primary, candidates are elected as provided by subsection 1, except that no candidate is elected who fails to receive a majority of the votes cast for the office in question. In the case of at-large elections to a multimember body, a majority is one vote more than half the quotient found by dividing the total number of votes cast for all candidates for that body by the number of positions to be filled.

In calculating the number of votes necessary to constitute a majority, fractions shall be rounded up to the next higher whole number.

3. In a regular city election held for a city where the council has chosen to have nominations made in the manner provided by chapter 44 or 45, the candidates who receive the greatest number of votes for each office on the ballot are elected, to the extent necessary to fill the positions open.

[S13, §1056-a21; SS15, §1056-b4; C24, 27, 31, 35, 39, §**6492, 6638;** C46, 50, §416.16, 419.24; C54, 58, 62, 66, 71, 73, §363.16; C75, 77, 79, 81, §376.8]

88 Acts, ch 1119, §41

376.9 Runoff election.

A runoff election may be held only for positions unfilled because of failure of a sufficient number of candidates to receive a majority vote in the regular city election. When a council has chosen a runoff election in lieu of a primary, the county board of supervisors shall publicly canvass the tally lists of the vote cast in the regular city election, following the procedures prescribed in section 50.24, at a meeting to be held beginning at one o'clock in the afternoon on the second day following the regular city election. Candidates who do not receive a majority of the votes cast for an office, but who receive the highest number of votes cast for that office in the regular city election, to the extent of twice the number of unfilled positions, are candidates in the runoff election.

Runoff elections shall be held four weeks after the date of the regular city election and shall be conducted in the same manner as regular city elections.

Candidates in the runoff election who receive the highest number of votes cast for each office on the ballot are elected to the extent necessary to fill the positions open.

[C71, 73, §363.16; C75, 77, 79, 81, §376.9]

86 Acts, ch 1224, §37

376.10 Contest.

A nomination or election to a city office may be contested in the manner provided in chapter 62 for contesting elections to county offices, except that a statement of intent to contest must be filed with the city clerk within ten days after the nomination or election.

[C97, §678, 679; C24, 27, 31, 35, 39, §**5629;** C46, 50, §363.7; C54, 58, 62, 66, 71, 73, §363.22; C75, 77, 79, 81, §376.10]

97 Acts, ch 170, §92

376.11 Write-in votes.

Write-in votes are permitted to be cast in all elections for city offices. A person who receives a sufficient number of write-in votes to be elected to a city office shall be declared the winner of the election. If a person who was elected by write-in votes chooses not to serve in that office the person shall submit a resignation in writing to the city clerk not later than five o'clock p.m. on the day following the canvass of the election. If a person who was elected by write-in votes resigns at a later time, the office shall be considered vacant at the end of the term and the council shall fill the vacancy pursuant to the provisions of section 372.13, subsection 2.

Except in cities where the council has chosen a runoff election in lieu of a primary, following the resignation of a person who was elected by write-in votes, the city clerk shall notify the person who received the next highest number of votes cast for the office that the person may assume the office. If the person accepts the position, the person shall be considered the duly elected officer unless a petition requesting a special election is filed by eligible electors of the city equal in number to twenty-five percent of the number of persons who voted for the office at the election. If the person declines, the person shall do so in writing to the city clerk within ten days and the office shall be considered vacant at the end of the term. The vacancy shall be filled pursuant to the provisions of section 372.13, subsection 2. If the council chooses to appoint, the appointment may be made before the end of the current term.

In city primary elections any person who receives write-in votes shall execute an affidavit in substantially the form required by section 45.3, and file it with the county commissioner of elections or the city clerk not later than five o'clock p.m. on the day after the canvass of the primary election. If any person who received write-in votes fails to file the affidavit at the time required, the county commissioner shall disregard the write-in votes cast for that person. A notation shall be made on the abstract of votes showing which persons who received write-in votes filed affidavits. The total number of votes cast for each office on the ballot shall be amended by subtracting the write-in votes of those candidates who failed to file the affidavit. It is not necessary for a candidate whose name was printed upon the ballot to file an affidavit. Of the remaining candidates, those who receive the highest number of votes to the extent of twice the number of unfilled positions shall be

placed on the ballot for the regular city election as candidates for that office.

In cities in which the city council has chosen a runoff election in lieu of a primary, if a person who was elected by write-in votes chooses not to accept the office by filing a resignation notice with the city clerk or commissioner of elections not later than five o'clock p.m. on the day following the canvass, all remaining persons who received write-in votes and who wish to be considered candidates for the runoff election shall execute an affidavit in substantially the form required by section 45.3 and file it with the county commissioner or the city clerk not later than five o'clock p.m. of the fourth day following the canvass. If a person receiving write-in votes fails to file the affidavit at the time required, the county commissioner of elections shall disregard the write-in votes cast for that person. The abstract of votes shall be amended to show that the person who was declared elected declined the office and a notation shall be made next to the names of those persons who did not file the affidavit. A runoff election shall be held with the remaining candidates who have the highest number of votes to the extent of twice the number of unfilled positions.

In a city in which the council has chosen a runoff election, if no person was declared elected for an office all persons who received write-in votes shall execute an affidavit in substantially the form required by section 45.3 and file it with the county commissioner of elections or the city clerk not later than five o'clock p.m. on the day following the canvass of votes. If any person who received write-in votes fails to file the affidavit the county commissioner of elections shall disregard the write-in votes cast for that person. The abstract of votes shall be amended to note which of the write-in candidates failed to file the affidavit. A runoff election shall be held with the remaining candidates who have the highest number of votes to the extent of twice the number of unfilled positions.

[C77, 79, 81, §376.11]
88 Acts, ch 1119, §42

CHAPTER 377

JUVENILE PLAYGROUNDS AND RECREATION CENTERS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 378

PUBLIC LIBRARIES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 378A

MUNICIPAL CIVIC CENTERS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 379

MUNICIPAL ART GALLERIES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 379A

SYMPHONY ORCHESTRA TAX

Repealed by 72 Acts, ch 1088, §199

CHAPTER 379B

MUNICIPAL CULTURAL FACILITIES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 380

CITY LEGISLATION

380.1 Definitions.
380.1A Title of ordinance.
380.2 Amendment.
380.3 Two considerations before final passage — how waived.
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380.5 Mayor.
380.6 Effective date.
380.7 City clerk.
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380.9 Fee for publication.
380.10 Adoption by reference.
380.11 Certain measures recorded.

380.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §380.1 transferred to §380.1A

380.1A Title of ordinance.

The subject matter of an ordinance or amendment must be generally described in the title of the ordinance or amendment.

[R60, §1122; C73, §489; C97, §681; C24, 27, 31, 35, 39, §**5715;** C46, 50, 54, 58, 62, 66, 71, 73, §366.2; C75, 77, 79, 81, §380.1]

97 Acts, ch 168, §1

C2001, §380.1A

380.2 Amendment.

An amendment to an ordinance or to a code of ordinances must specifically identify the ordinance or code, or the section, subsection, or paragraph to be amended, and must set forth the ordinance, code, section, subsection, or paragraph as amended, which action is deemed to be a repeal of the previous ordinance, code, section, subsection, or paragraph amended.

[R60, §1122; C73, §489; C97, §681; C24, 27, 31, 35, 39, §**5715;** C46, 50, 54, 58, 62, 66, 71, 73, §366.2; C75, 77, 79, 81, §380.2]

91 Acts, ch 145, §3; 97 Acts, ch 168, §2

380.3 Two considerations before final passage — how waived.

A proposed ordinance or amendment must be considered and voted on for passage at two council meetings prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than three-fourths of all of the members of the council. If a proposed ordinance, amendment, or resolution fails to receive sufficient votes for passage at any consideration and vote thereon, the proposed ordinance, amendment, or resolution shall be considered defeated.

[R60, §1122; C73, §489; C97, §682; C24, 27, 31, 35, 39, §**5716;** C46, 50, 54, 58, 62, 66, 71, 73, §366.3; C75, 77, 79, 81, §380.3]

88 Acts, ch 1246, §5; 97 Acts, ch 168, §3, 4

380.4 Majority requirement — tie vote — conflicts of interest.

Passage of an ordinance, amendment, or resolution requires a majority vote of all of the members of the council, except when the mayor may vote to break a tie vote in a city with an even number of council members, as provided in section 372.4. Passage of a motion requires a majority vote of a quorum of the council. A resolution must be passed to spend public funds in excess of twenty-five thousand dollars on any one project, or to accept public improvements and facilities upon their completion. Each council member's vote on a measure must be recorded. A measure which fails to receive sufficient votes for passage shall be considered defeated.

As used in this chapter, *"all of the members of the council"* refers to all of the seats of the council including a vacant seat and a seat where the member is absent, but does not include a seat where the council member declines to vote by reason of a conflict of interest.

A measure voted upon is not invalid by reason of a conflict of interest in a member of the council, unless the vote of the member of the council was decisive to passage of the measure. The vote must be computed on the basis of the number of members not disqualified by reason of conflict of interest. However, a majority of all members is required for a quorum. For the purpose of this section, the statement of a council member that the council member declines to vote by reason of conflict of interest is conclusive and must be entered of record.

[R60, §1122, 1134, 1135; C73, §466, 489, 493, 494; C97, §683, 684, 793; S13, §683, 693; C24, 27,

31, 35, 39, §**5717;** C46, 50, 54, 58, 62, 66, 71, 73, §366.4; C75, 77, 79, 81, §380.4]
97 Acts, ch 168, §5

380.5 Mayor.
The mayor may sign, veto, or take no action on an ordinance, amendment, or resolution passed by the council. However, the mayor may not veto an ordinance, amendment, or resolution if the mayor was entitled to vote on such measure at the time of passage.
[C97, §685; C24, 27, 31, 35, 39, §**5718;** C46, 50, 54, 58, 62, 66, 71, 73, §366.5; C75, 77, 79, 81, §380.5]
97 Acts, ch 168, §6

380.6 Effective date.
Measures passed by the council become effective in one of the following ways:
1. *a.* An ordinance or amendment signed by the mayor becomes effective when the ordinance or a summary of the ordinance is published, as provided in section 380.7, subsection 3, unless a subsequent effective date is provided within the ordinance or amendment.
b. A resolution signed by the mayor becomes effective immediately upon signing.
c. A motion becomes effective immediately upon passage of the motion by the council.
2. The mayor may veto an ordinance, amendment, or resolution within fourteen days after passage. The mayor shall explain the reasons for the veto in a written message to the council at the time of the veto. Within thirty days after the mayor's veto, the council may pass the measure again by a vote of not less than two-thirds of all of the members of the council. If the mayor vetoes an ordinance, amendment, or resolution and the council repasses the measure after the mayor's veto, a resolution becomes effective immediately upon repassage, and an ordinance or amendment becomes a law when the ordinance or a summary of the ordinance is published, unless a subsequent effective date is provided within the ordinance or amendment.
3. If the mayor takes no action on an ordinance, amendment, or resolution, a resolution becomes effective fourteen days after the date of passage and an ordinance or amendment becomes a law when the ordinance or a summary of the ordinance is published, but not sooner than fourteen days after the date of passage, unless a subsequent effective date is provided within the ordinance or amendment.
[R60, §1133; C73, §492; C97, §685 – 687; C24, 27, 31, 35, §5718, 5720, 5721, 5721-a1; C39, §**5718, 5720, 5721, 5721.1;** C46, 50, §366.5, 366.7 – 366.9; C54, 58, 62, 66, 71, 73, §366.5, 366.7; C75, 77, 79, 81, §380.6]
89 Acts, ch 39, §10; 97 Acts, ch 168, §7

380.7 City clerk.
The city clerk shall:
1. Promptly record each measure.
2. Record a statement with the measure, where applicable, indicating whether the mayor signed, vetoed, or took no action on the measure, and whether the measure was repassed after the mayor's veto.
3. Publish a summary of all ordinances or the complete text of ordinances and amendments in the manner provided in section 362.3. As used in this subsection, *"summary"* shall mean a narrative description of the terms and conditions of an ordinance setting forth the main points of the ordinance in a manner calculated to inform the public in a clear and understandable manner the meaning of the ordinance and which shall provide the public with sufficient notice to conform to the desired conduct required by the ordinance. The description shall include the title of the ordinance, an accurate and intelligible abstract or synopsis of the essential elements of the ordinance, a statement that the description is a summary, the location and the normal business hours of the office where the ordinance may be inspected, when the ordinance becomes effective, and the full text of any provisions imposing fines, penalties, forfeitures, fees, or taxes. Legal descriptions of property set forth in ordinances shall be described in full, provided that maps or charts may be substituted for legal descriptions when they contain sufficient detail to clearly define the area with which the ordinance is concerned. The narrative description shall be written in a clear and coherent manner and shall, to the extent possible, avoid the use of technical or legal terms not generally familiar to the public. When necessary to use technical or legal terms not generally familiar to the public, the narrative description shall include definitions of those terms.
4. Authenticate all measures except motions with the clerk's signature and certification as to time and manner of publication, if any. The clerk's certification is presumptive evidence of the facts stated therein.
5. Maintain for public use copies of all effective ordinances and codes.
[R60, §1133; C73, §492; C97, §686, 687; C24, 27, 31, 35, §5719 – 5721, 5721-a1; C39, §**5719 – 5721, 5721.1;** C46, 50, §366.6 – 366.9; C54, 58, 62, 66, 71, 73, §366.6, 366.7; C75, 77, 79, 81, §380.7]
96 Acts, ch 1098, §2; 97 Acts, ch 168, §8

380.8 Code of ordinances published.
1. *a.* A city shall compile a code of ordinances containing all of the city ordinances in effect, except grade ordinances, bond ordinances, zoning map ordinances, ordinances vacating streets and alleys, and ordinances containing legal descriptions of urban revitalization areas and urban renewal areas.
b. A city may maintain a code of ordinances ei-

ther by compiling at least annually a supplement to the code of ordinances consisting of all new ordinances and amendments to ordinances which became effective during the previous year and adopting the supplement by resolution or by adding at least annually new ordinances and amendments to ordinances to the code of ordinances itself.

c. A city which does not maintain the city code of ordinances as provided in paragraph *"b"* shall compile a code of ordinances at least once every five years.

2. *a.* If a proposed code of ordinances contains only existing ordinances without change in substance, the council may adopt the code by ordinance.

b. If a proposed code of ordinances contains a new ordinance or an amendment to existing ordinances, the council shall hold a public hearing on the proposed code before adoption. The clerk shall publish notice of the hearing as provided in section 362.3. Copies of the proposed code of ordinances must be available at the city clerk's office and the notice must so state. Within thirty days after the hearing, the council may adopt the proposed code of ordinances. A new ordinance or an amendment to an existing ordinance becomes effective upon publication of the ordinance adopting the code of ordinances unless a subsequent effective date is provided within an ordinance. If the council substantially amends the proposed code of ordinances after the hearing, notice and hearing must be repeated before the code may be adopted.

3. A code of ordinances compiled and maintained at least annually, or compiled at least once every five years, is presumptive evidence of the passage, publication, and content of the ordinances codified therein as of the date of the clerk's certification of the ordinance adopting the code or supplement.

[R60, §1133; C73, §492; C97, §686, 687; C24, 27, 31, 35, §5720, 5721, 5721-a1; C39, §**5720, 5721, 5721.1;** C46, 50, §366.7 – 366.9; C54, 58, 62, 66, 71, 73, §366.7; C75, 77, 79, 81, §380.8]

97 Acts, ch 168, §9

380.9 Fee for publication.

The compensation paid to a newspaper for any publication required by this chapter may not exceed the fee provided in section 618.11. The compensation paid to a newspaper for publication of the complete text of an ordinance shall not exceed three-fourths of the fee provided in section 618.11.

[S13, §687-b; C24, 27, 31, 35, 39, §**5723;** C46, 50, 54, 58, 62, 66, 71, 73, §366.11; C75, 77, 79, 81, §380.9]

96 Acts, ch 1098, §3

380.10 Adoption by reference.

A city may adopt the provisions of any statewide or nationally recognized standard code or portions of any such code by an ordinance which identifies the code by subject matter, source and date, and which incorporates the provisions of the code or portions of the code by reference without setting them forth in full. Copies of the proposed code or portions of such code shall be available at the office of the city clerk.

A city may by ordinance adopt by reference any portion of the Code of Iowa in effect at the time of the adoption in the manner provided in this section, subject to the following limitations:

1. The ordinance shall describe the subject matter and identify the portion of the Code of Iowa adopted by chapter, section, and subsection or other subpart, as applicable.

2. A portion of the Code of Iowa may be adopted by reference only if the criminal penalty provided by the law adopted does not exceed thirty days' imprisonment and a five hundred dollar fine.

3. Amendments or other changes to those portions of the Code of Iowa which have been adopted by reference shall serve as an automatic modification of the applicable ordinance.

An ordinance which adopts by reference any portion of the Code of Iowa may provide that violations of the ordinance are municipal infractions and subject to the limitations of section 364.22.

Copies of any portions of the Code of Iowa to be adopted by reference shall be available at the city clerk's office. The council shall hold a public hearing on any proposed standard code or on the portions of any standard code to be adopted by reference. The council shall hold a public hearing on any portion of the Code of Iowa to be adopted by reference. The clerk shall publish notice of the hearing as provided in section 362.3. The notice must state that copies of the proposed standard code or portions thereof, or of the portion of the Iowa Code, are available at the city clerk's office. If the council substantially amends the proposed code after the hearing, notice and hearing must be repeated before the code may be adopted. Within thirty days after the hearing, the council by ordinance may adopt the proposed code which becomes effective upon publication of the ordinance adopting it, unless a subsequent effective date is provided within the adopting ordinance.

[R60, §1133; C73, §492; C97, §686, 687; C24, 27, 31, 35, §5720, 5721, 5721-a1; C39, §**5720, 5721, 5721.1;** C46, 50, §366.7 – 366.9; C54, 58, 62, 66, 71, 73, §366.7; C75, 77, 79, 81, §380.10]

91 Acts, ch 145, §4; 97 Acts, ch 168, §10, 11; 2000 Acts, ch 1203, §22

380.11 Certain measures recorded.

Immediately after the effective date of a measure establishing any zoning district, building lines, or fire limits, the city clerk shall certify the measure and a plat showing the district, lines, or limits to the recorder of any county which contains part of the city. The county recorder shall index and record the measure and plat. The city shall pay the recording fee.

[C24, 27, 31, 35, 39, §**5724 – 5727;** C46, 50, 54, 58, 62, 66, 71, 73, §366.12 – 366.15; C75, 77, 79, 81, §380.11]
2001 Acts, ch 44, §17

CHAPTER 381

BRIDGES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 382

INTERSTATE BRIDGES IN CITIES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 383

INTERSTATE BRIDGES (ADDITIONAL ACT)

Repealed by 72 Acts, ch 1088, §199

CHAPTER 384

CITY FINANCE

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DIVISION I

TAXES AND FUNDS

384.1 Taxes certified.

A city may certify taxes to be levied by the county on all taxable property within the city limits, for all city government purposes. However, the tax levied by a city on tracts of land and improvements thereon used and assessed for agricultural or horticultural purposes, shall not exceed three dollars and three-eighths cents per thousand dollars of assessed value in any year. Improvements located on such tracts of land and not used for agricultural or horticultural purposes and all residential dwellings are subject to the same rate of tax levied by the city on all other taxable property within the city. A city's tax levy for the general fund shall not exceed eight dollars and ten cents per thousand dollars of taxable value in any tax year, except for the levies authorized in section 384.12.

[C97, §616, 890; S13, §616; C24, 27, 31, 35, 39, §**6210;** C46, 50, §404.4; C54, 58, 62, 66, 71, 73, §404.1, 404.2, 404.15; C75, 77, 79, 81, §384.1]

89 Acts, ch 296, §39

384.2 Fiscal year and tax year.

Except as otherwise provided for special charter cities, a city's fiscal year shall be as provided in sec-

tion 24.2, subsection 3. All city property taxes must be certified by a city to the county auditor on or before the fifteenth day of March of each year, unless otherwise provided by state law. However, municipal utilities, if not supported by taxation or the proceeds of outstanding indebtedness payable from taxes may, with the council's consent, choose to operate on a fiscal year which is the calendar year. The receipt by the utility of payments from other governmental funds for public fire protection, street lighting, or other public use of the utility's services shall not be deemed support by taxation. After notice and hearing in the same manner as required for the city's regular budget under section 384.16, the utility budget must be approved by resolution of the council not later than twenty days prior to the beginning of the calendar year for which the budget applies.

The county auditor shall place city taxes and assessments upon the tax list for the current year, and the county treasurer shall collect city taxes and assessments in the same manner as other taxes. Delinquent city taxes and assessments draw the same interest as other taxes. Sales for delinquent city taxes and assessments must be made in the manner provided in chapter 446. The county treasurer shall combine in one tax sale all taxes and assessments due from the same person and collectible by the county.

[R60, §1123, 1126; C73, §495, 498; C97, §902; S13, §902, 1056-a7, 1056-a34; C24, §5678, 6227, 6228, 6570, 6571; C27, 31, 35, §5676-a1, 6227, 6228, 6570, 6871; C39, §**5676.1, 6227, 6228, 6570, 6871;** C46, 50, §363.51, 404.21, 404.22, 416.95, 420.212; C54, 58, §363.29, 404.3, 404.21; C62, 66, 71, 73, §363.29, 404.3, 404.22; C75, 77, 79, 81, §384.2]

92 Acts, ch 1016, §7

384.3 General fund.

All moneys received for city government purposes from taxes and other sources must be credited to the general fund of the city, except that moneys received for the purposes of the debt service fund, the trust and agency funds, the capital improvements reserve fund, the emergency fund and other funds established by state law must be deposited as otherwise required or authorized by state law. All moneys received by a city from the federal government must be reported to the department of management who shall transmit a copy to the legislative fiscal bureau.

[C50, §395.26; C54, 58, §395.26, 404.2, 404.23; C62, 66, 71, 73, §395.26, 404.2, 404.24; C75, 77, 79, 81, §384.3]

384.4 Debt service fund.

A city shall establish a debt service fund and shall certify taxes to be levied for the debt service fund in the amount necessary to pay:

1. Judgments against the city, except those authorized by state law to be paid from other funds.

2. Interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all general obligation bonds issued by the city or to pay, or to create a sinking fund to pay, amounts as due on loans received through the Iowa community development loan program.*

3. Payments required to be made from the debt service fund under a lease or lease-purchase agreement.

4. Payments required to be made from the debt service fund under a loan agreement.

Moneys pledged or available to service general obligation bonds, and received from sources other than property taxes, must be deposited in the debt service fund.

If a final judgment is entered against a city with a population of five hundred or less for an amount in excess of eighty-eight thousand dollars over and above what is covered by liability insurance, such city may spread the budgeting and payment of that portion not covered by insurance over a period of time not to exceed ten years. Interest shall be paid by the city on the unpaid balance. This paragraph shall only apply to final judgments entered but not fully satisfied prior to March 25, 1976.

[C97, §894; SS15, §879-s, 894; C24, 27, 31, 35, 39, §**6211, 6603;** C46, 50, §404.5, 416.132; C54, 58, 62, 66, 71, 73, §404.13; C75, 77, 79, 81, §384.4]

83 Acts, ch 207, §52, 93; 85 Acts, ch 156, §4; 87 Acts, ch 103, §5

*Iowa community development loan program, see §15E.120

384.5 Excess tax.

A tax levied for the debt service fund is not invalid if it raises moneys in excess of those needed for a specific purpose. Only excess moneys remaining after retirement of all indebtedness payable from the fund may be transferred from the debt service fund to any other city fund, subject to the terms of the original bond issue, and as provided in rules promulgated by the city finance committee created in section 384.13.

[C51, §123, 124; R60, §259, 260; C73, §318, 319; C97, §897; C24, 27, 31, 35, 39, §**6222;** C46, 50, §404.16; C54, 58, §404.20; C62, 66, 71, 73, §404.21; C75, 77, 79, 81, §384.5]

384.6 Trust and agency funds.

A city may establish trust and agency funds for the following purposes:

1. Accounting for pension and related employee benefit funds as provided by the city finance committee. A city may make contributions to a retirement system other than the Iowa public employees' retirement system for its city manager, or city administrator performing the duties of city manager, in an annual amount not to exceed the amount that would have been contributed by the employer under section 97B.11. If a police chief or fire chief has submitted a written request to the

board of trustees to be exempt from chapter 411, authorized in section 411.3, subsection 1, a city shall make contributions for the chief, in an amount not to exceed the amount that would have been contributed by the city under section 411.8, subsection 1, paragraph *"a"*, to the international city management association/retirement corporation. A city may certify taxes to be levied for a trust and agency fund in the amount necessary to meet its obligations.

2. Accounting for gifts received by the city for a particular purpose.

3. Accounting for money and property received and handled by the city as trustee or custodian or in the capacity of an agent.

[C54, 58, 62, 66, 71, 73, §404.16; C75, 77, 79, 81, §384.6]

85 Acts, ch 195, §45

384.7 Capital improvements fund.

A city may establish a capital improvements reserve fund, and may certify taxes not to exceed sixty-seven and one-half cents per thousand dollars of taxable value each year to be levied for the fund for the purpose of accumulating moneys for the financing of specified capital improvements, or carrying out a specific capital improvement plan.

The question of the establishment of a capital improvements reserve fund, the time period during which a levy will be made for the fund, and the tax rate to be levied for the fund is subject to approval by the voters, and may be submitted at any city election upon the council's motion, or shall be submitted at the next regular city election upon receipt of a valid petition as provided in section 362.4.

If a continuing capital improvements levy is established by election, it may be terminated in the same manner, upon the council's motion or upon petition. Balances in a capital improvements reserve fund are not unencumbered or unappropriated funds for the purpose of reducing tax levies. Transfers may be made between the capital improvements reserve fund, construction funds, and the general fund, as provided in rules promulgated by the city finance committee created in section 384.13.

[C75, 77, 79, 81, §384.7]

384.8 Emergency fund.

A city may establish an emergency fund and may certify taxes not to exceed twenty-seven cents per thousand dollars of taxable value each year to be levied for the fund. Transfers may be made from the emergency fund to the general fund as provided in rules promulgated by the city finance committee created in section 384.13.

[C24, 27, 31, 35, 39, §**373;** C46, 50, 54, 58, 62, 66, 71, 73, §24.6; C75, 77, 79, 81, §384.8]

384.9 Additional funds.

A city may establish other funds and may certify taxes to be levied for the funds as provided by state law. The status of each account or fund must be included in the annual report required in section 384.22.

[C54, 58, 62, 66, 71, 73, §404.1; C75, 77, 79, 81, §384.9]

384.10 Short-term loans.

A city may negotiate short-term loans, and may issue warrants as provided in chapter 74, in anticipation of and not in excess of its estimated revenues for the current fiscal year. However, natural disaster loans from the state or federal government and loans for projects where payment of state or federal funds has been guaranteed but receipt of such funds may not coincide with the fiscal year, may be negotiated in anticipation of revenues for a period of time longer than the current fiscal year.

[R60, §1129; C73, §500; C97, §898; C24, 27, 31, 35, 39, §**6223;** C46, 50, §404.17; C54, 58, §404.18; C62, 66, 71, 73, §404.19; C75, 77, 79, 81, §384.10]

384.11 Direct deposit of taxes.

Before the fifteenth day of each month, the county treasurer shall send the amount collected for each fund through the last day of the preceding month for direct deposit into the depository and the account designated by the city clerk. The county treasurer shall send a notice at the same time to the city clerk stating the amount deposited, date, amount to be credited to each fund according to the budget, and the source of the revenue. This section shall also apply to the collection of special assessments assessed under section 364.12 or division IV of this chapter.

[R60, §1123, 1126; C73, §495, 498; C97, §902; S13, §902; C24, 27, 31, 35, 39, §**6229;** C46, 50, §404.23; C54, 58, §404.19; C62, 66, 71, 73, §404.20; C75, 77, 79, 81, §384.11; 82 Acts, ch 1195, §5]

84 Acts, ch 1003, §9

384.12 Additional taxes.

A city may certify, for the general fund levy, taxes which are not subject to the limit provided in section 384.1, and which are in addition to any other moneys the city may wish to spend for such purposes, as follows:

1. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for the support of instrumental or vocal musical groups, one or more organizations which have tax-exempt status under section 501(c)(3) of the Internal Revenue Code and are organized and operated exclusively for artistic and cultural purposes, or any of these purposes, subject to the following:

a. Upon receipt of a petition valid under the provisions of section 362.4, the council shall submit to the voters at the next regular city election the question of whether a tax shall be levied.

b. If a majority approves the levy, it may be imposed.

c. The levy can be eliminated by the same procedure of petition and election.

d. A tax authorized by an election held prior to the effective date of the city code may be continued until eliminated by the council, or by petition and election.

2. A tax not to exceed eighty-one cents per thousand dollars of assessed value for development, operation, and maintenance of a memorial building or monument, subject to the provisions of subsection 1.

3. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for support of a symphony orchestra, subject to the provisions of subsection 1.

4. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for the operation of cultural and scientific facilities, subject to the provisions of subsection 1, except that the question may be submitted on the council's own motion.

5. A tax to aid in the construction of a county bridge, subject to the provisions of subsection 1, except that the question must be submitted at a special election. The expense of a special election under this subsection must be paid by the county. The notice of the special election must include full details of the proposal, including the location of the proposed bridge, the rate of tax to be levied, and all other conditions.

6. A tax to aid a company incorporated under the laws of this state in the construction of a highway or combination bridge across any navigable boundary river of this state, commencing or terminating in the city and suitable for use as highway, or for both highway and railway purposes. This tax levy is subject to the provisions of subsections 1 and 5. The levy is limited to one dollar and thirty-five cents per thousand dollars of the assessed value of taxable property in the city. The estimated cost of the bridge must be at least ten thousand dollars, and the city aid may not exceed one-half of the estimated cost. The notice of the special election must include the name of the corporation to be aided, and all conditions required of the corporation. Tax moneys received for this purpose may not be paid over by the county treasurer until the city has filed a statement that the corporation has complied with all conditions.

7. If a tax has been voted for aid of a bridge under subsection 6, a further tax may be voted for the purpose of purchasing the bridge, subject to the provisions of subsection 1. The levy under this subsection is limited to three dollars and thirty-seven and one-half cents per thousand dollars of the assessed value of the taxable property in the city, payable in not less than ten annual installments.

8. A tax for the purpose of carrying out the terms of a contract for the use of a bridge by a city situated on a river over which a bridge has been built. The tax may not exceed sixty-seven and one-half cents per thousand dollars of assessed value each year.

9. A tax for aid to a public transportation company, subject to the procedure provided in subsection 1, except the question must be submitted at a special election. The levy is limited to three and three-eighths cents per thousand dollars of assessed value. In addition to any other conditions the following requirements must be met before moneys received for this purpose may be paid over by the county treasurer:

a. The public transportation company shall provide the city with copies of state and federal income tax returns for the five years preceding the year for which payment is contemplated or for such lesser period of time as the company has been in operation.

b. The city shall, in any given year, be authorized to pay over only such sums as will yield not to exceed two percent of the public transportation company's investment as the same is valued in its tax depreciation schedule, provided that corporate profits and losses for the five preceding years or for such lesser period of time as the company has been in operation shall not average in excess of a two percent net return. Taxes levied under this subsection may not be used to subsidize losses incurred prior to the election required by this subsection.

10. A tax for the operation and maintenance of a municipal transit system, and for the creation of a reserve fund for the system, in an amount not to exceed ninety-five cents per thousand dollars of assessed value each year, when the revenues from the transit system are insufficient for such purposes, but proceeds of the tax may not be used to pay interest and principal on bonds issued for the purposes of the transit system.

11. If a city has entered into a lease of a building or complex of buildings to be operated as a civic center, a tax sufficient to pay the installments of rent and for maintenance, insurance and taxes not included in the lease rental payments.

12. A tax not to exceed thirteen and one-half cents per thousand dollars of assessed value each year for operating and maintaining a civic center owned by a city.

13. A tax not to exceed six and three-fourths cents per thousand dollars of assessed value for planning a sanitary disposal project.

14. A tax not to exceed twenty-seven cents per thousand dollars of assessed value each year for an aviation authority as provided in section 330A.15.

15. If a city has joined with the county to form an authority for a joint county-city building, as provided in section 346.27, and has entered into a lease with the authority, a tax sufficient to pay the annual rent payable under the lease.

16. A tax not to exceed six and three-fourths

cents per thousand dollars of assessed value each year for a levee improvement fund in special charter cities as provided in section 420.155.

17. A tax not to exceed twenty and one-half cents per thousand dollars of assessed value each year to maintain an institution received by gift or devise, subject to an election as required under subsection 1.

18. A tax to pay the premium costs on tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the city, the costs of a self-insurance program, the costs of a local government risk pool and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

19. A tax to fund an emergency medical services district under chapter 357G.

20. A tax that exceeds any tax levy limit within this chapter, provided the question has been submitted at a special levy election and received a simple majority of the votes cast on the proposition to authorize the enumerated levy limit to be exceeded for the proposed budget year.

a. The election may be held as specified in this subsection if notice is given by the city council, not later than thirty-two days before the second Tuesday in March, to the county commissioner of elections that the election is to be held.

b. An election under this subsection shall be held on the second Tuesday in March and be conducted by the county commissioner of elections in accordance with the law.

c. The ballot question shall be in substantially the following form:

WHICH TAX LEVY SHALL BE ADOPTED FOR THE CITY OF . . . . . ?

(Vote for only one of the following choices.)

CHANGE LEVY AMOUNT . . . . . .

Add to the existing levy amount a tax for the purpose of . . . . . (state purpose of proposed levy) at a rate of . . . . . (rate) which will provide an additional $ . . . . . (amount).

KEEP CURRENT LEVY . . . . . .

Continue under the current maximum rate of . . . . . , providing $ . . . . . (amount).

d. The commissioner of elections conducting the election shall notify the city officials and other county auditors where applicable, of the results within two days of the canvass which shall be held beginning at one o'clock on the second day following the special levy election.

e. Notice of the election shall be published twice in accordance with the provisions of section 362.3, except that the first such notice shall be given at least two weeks before the election.

f. The cost of the election shall be borne by the city.

g. The election provisions of this subsection shall supersede other provisions for elections only to the extent necessary to comply with the provisions hereof.

h. The provisions of this subsection apply to all cities, however organized, including special charter cities which may adopt ordinances where necessary to carry out these provisions.

i. The council shall certify the city's budget with the tax askings not exceeding the amount approved by the special levy election.

21. A tax not to exceed twenty-seven cents per thousand dollars of assessed value for support of a public library, subject to petition and referendum requirements of subsection 1, except that if a majority approves the levy, it shall be imposed.

22. A tax for the support of a local emergency management commission established pursuant to chapter 29C.

1. [C24, 27, 31, 35, 39, §**5835 – 5839;** C46, 50, 54, 58, 62, 66, 71, 73, §375.1 – 375.5; C75, 77, 79, 81, S81, §384.12(1)]

2. [C75, 77, 79, 81, S81, §384.12(2)]

3. [C50, 54, 58, 62, 66, 71, 73, §379A.1 – 379A.5; C75, 77, 79, 81, S81, §384.12(3)]

4. [C62, 66, 71, 73, §379B.1, 379B.2; C75, 77, 79, 81, S81, §384.12(4)]

5, 6. [R60, §710; C73, §796; C97, §758 – 764, 888, 895, 1303; C24, 27, 31, 35, 39, §**5882 – 5887, 6209, 6221;** C46, 50, §381.9 – 381.14, 404.3, 404.15; C54, 58, 62, 66, 71, 73, §381.9 – 381.14, 404.7; C75, 77, 79, 81, S81, §384.12(5, 6)]

7. [S13, §766-a, 766-b; C24, 27, 31, 35, 39, §**5890, 5891, 5894;** C46, 50, 54, 58, 62, 66, 71, 73, §381.17, 381.18, 382.1; C75, 77, 79, 81, S81, §384.12(7)]

8. [C97, §766; C24, 27, 31, 35, 39, §**5889;** C46, 50, 54, 58, 62, 66, 71, 73, §381.16; C75, 77, 79, 81, S81, §384.12(8)]

9. [C58, 62, 66, 71, 73, §386A.1, 386A.4, 386A.9, 386A.12; C75, 77, 79, 81, S81, §384.12(9)]

10. [C58, 62, 66, 71, 73, §386B.12; C75, 77, 79, 81, S81, §384.12(10)]

11. [C71, 73, §378A.6; C75, 77, 79, 81, S81, §384.12(11)]

12. [C71, 73, §378A.10; C75, 77, 79, 81, S81, §384.12(12)]

13. [C71, 73, §404.27; C75, 77, 79, 81, S81, §384.12(13)]

14. [C75, 77, 79, 81, S81, §384.12(14)]

15. [C66, 71, 73, §368.67; C75, 77, 79, 81, S81, §384.12(15); 81 Acts, ch 117, §1081; 82 Acts, ch 1104, §14]

16. [C75, 77, 79, 81, S81, §384.12(16)]

17. [S13, §740; C24, 27, 31, 35, 39, §**10190;** C46, 50, 54, 58, 62, 66, 71, 73, §565.8; C75, 77, 79, 81, S81, §384.12(18); 81 Acts, ch 117, §1081]

18. [C75, 77, 79, 81, S81, §384.12(19)]

20. [C81, S81, §384.12(20)]

83 Acts, ch 101, §82; 85 Acts, ch 195, §46; 86 Acts, ch 1211, §23; 88 Acts, ch 1213, §1; 89 Acts, ch 203, §1; 91 Acts, ch 247, §1; 92 Acts, ch 1139, §29;

94 Acts, ch 1075, §15; 94 Acts, ch 1180, §56; 95 Acts, ch 189, §21

DIVISION II

BUDGETING AND ACCOUNTING

384.13 City finance committee.

As used in this division, unless the context otherwise requires, *"committee"* means the city finance committee and *"director"* means the director of the department of management. A nine-member city finance committee is created. Members of the committee are:

1. The auditor of state or the auditor's designee.
2. A designee of the governor.
3. Five city officials who are regularly involved in budget preparation. One official must be from a city with a population of not over two thousand five hundred, one from a city with a population of over two thousand five hundred but not over fifteen thousand, one from a city with a population of over fifteen thousand but not over fifty thousand, one from a city with a population of over fifty thousand, and one from any size city. The governor shall select and appoint the city officials.
4. One certified public accountant experienced in city accounting, to be selected and appointed by the governor.
5. One operations research analyst experienced in cost effectiveness analysis of city services to be selected by, and serve at the pleasure of, the legislative council of the general assembly.

City official members and the certified public accountant are appointed for four-year terms beginning and ending as provided in section 69.19 and the terms of the city officials are staggered. When a city official member no longer holds the office which qualified the official for appointment, the official may no longer be a member of the committee. Any person appointed to fill a vacancy during a term is appointed to serve for the unexpired portion of the term. Any member is eligible for reappointment, but no member shall be appointed to serve more than two complete terms.

[C75, 77, 79, 81, §384.13]
86 Acts, ch 1245, §118

384.14 Office, expenses, compensation.

The committee is located for administrative purposes within the department of management. The director of the department of management shall provide office space and staff assistance, and shall budget funds to cover expenses of the committee.

Each member is entitled to receive actual and necessary expenses incurred in the performance of committee duties. Each member other than the state official members is also entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of committee duties.

[C75, 77, 79, 81, §384.14]
86 Acts, ch 1245, §119; 91 Acts, ch 258, §51

384.15 Duties — rules — law enforcement officer training reimbursement.

The committee shall:

1. Promulgate rules relating to budget amendments and the procedures for transferring moneys between funds, and other rules necessary or desirable in order to exercise its powers and perform its duties, including rules necessary to implement section 384.6, subsection 1. The committee's rules are subject to chapter 17A as applicable.
2. Select its officers and meet at the call of the director of the department of management or at the request of a majority of the committee.
3. Establish guidelines for program budgeting and accounting and the preparation of five-year capital improvement plans. A city shall hold a public hearing on its capital improvement plan before adoption of the plan. The committee may require performance budgeting. It shall, where practicable, use recommendations of the national council on governmental accounting.
4. Review and comment on city budgets to city officials and provide assistance to enable cities to improve upon and use sound financial procedures.
5. Conduct studies of municipal revenues and expenditures.
6. Advise and make recommendations annually to the governor and the general assembly concerning city budgets and finance.
7. Adopt rules for the administration of a law enforcement officer training reimbursement program by the director of the department of management. A decision of the director may be appealed by a city or county to the committee. The program shall provide reimbursement to a city or county for necessary and actual expenses incurred in training a law enforcement officer who resigns from law enforcement service with the city or county within four years after completion of the law enforcement training. The reimbursable training expenses include mileage, food, lodging, tuition, replacement of an officer while the officer is in training if the replacement officer is a temporary employee hired for that purpose only or is on overtime status, and salary costs of the officer while in training. The law enforcement training eligible for reimbursement is the minimum law enforcement officer training required under chapter 80B and, if funding is available, approved advanced law enforcement training and reserve officer training required under chapter 80D. The committee shall adopt rules prescribing application forms, expense documentation, and procedures necessary to administer the reimbursement program.

a. The amount of reimbursement shall be determined as follows:

(1) If a law enforcement officer resigns less

than one year following completion of approved training, one hundred percent.

(2) If a law enforcement officer resigns one year or more but less than two years after completion of approved training, seventy-five percent.

(3) If a law enforcement officer resigns two years or more but less than three years after completion of the approved training, fifty percent.

(4) If a law enforcement officer resigns three years or more but not more than four years after completion of the approved training, twenty-five percent.

b. An appropriated law enforcement training reimbursement account is established in the department of management. The proceeds shall be used by the director of the department of management to reimburse cities or counties for eligible law enforcement training expenses incurred as provided in this section.

[C75, 77, 79, 81, §384.15]

84 Acts, ch 1274, §1; 86 Acts, ch 1245, §120; 90 Acts, ch 1092, §6; 90 Acts, ch 1250, §4; 90 Acts, ch 1266, §42

384.16 City budget.

Annually, a city shall prepare and adopt a budget, and shall certify taxes as follows:

1. A budget must be prepared for at least the following fiscal year. When required by rules of the committee, a tentative budget must be prepared for one or two ensuing years. A proposed budget must show estimates of the following:

a. Expenditures for each program.

b. Income from sources other than property taxation.

c. Amount to be raised by property taxation, and the property tax rate expressed in dollars per one thousand dollars assessed valuation.

A budget must show comparisons between the estimated expenditures in each program in the following year and the actual expenditures in each program during the two preceding years. Wherever practicable, as provided in rules of the committee, a budget must show comparisons between the levels of service provided by each program as estimated for the following year, and actual levels of service provided by each program during the two preceding years.

2. Not less than twenty days before the date that a budget must be certified to the county auditor and not less than ten days before the date set for the hearing, the clerk shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations, and have them available for distribution at the offices of the mayor and clerk and at the city library, if any, or have a copy posted at one of the three places designated by ordinance for posting notices if there is no library.

3. The council shall set a time and place for public hearing on the budget before the final certification date and shall publish notice of the hearing not less than ten nor more than twenty days before the hearing in a newspaper published at least once weekly and having general circulation in the city. However, if the city has a population of two hundred or less, publication may be made by posting in three public places in the city. A summary of the proposed budget shall be included in the notice. Proof of publication must be filed with the county auditor. The department of management shall prescribe the form for the public hearing notice for use by cities.

4. At the hearing, any resident or taxpayer of the city may present to the council objections to any part of the budget for the following fiscal year or arguments in favor of any part of the budget.

5. After the hearing, the council shall adopt by resolution a budget for at least the next fiscal year, and the clerk shall certify the necessary tax levy for the next fiscal year to the county auditor and the county board of supervisors. The tax levy certified may be less than but not more than the amount estimated in the proposed budget submitted at the final hearing, unless an additional tax levy is approved at a city election. Two copies each of the detailed budget as adopted and of the tax certificate must be transmitted to the county auditor, who shall complete the certificates and transmit a copy of each to the department of management.

6. Taxes levied by a city whose budget is certified after March 15 shall be limited to the prior year's budget amount. However, this penalty may be waived by the director of the department of management if the city demonstrates that the March 15 deadline was missed because of circumstances beyond the control of the city.

[C24, 27, 31, 35, 39, §**370, 375 – 378, 381, 383;** C46, 50, 54, 58, 62, 66, 71, 73, §24.3, 24.9 – 24.12, 24.15, 24.17; C75, 77, 79, 81, §384.16]

97 Acts, ch 206, §19, 20, 24

384.17 Levy by county.

At the time required by law, the county board of supervisors shall levy the taxes necessary for each city fund for the following fiscal year. The levy must be as shown in the adopted city budget and as certified by the clerk, subject to any changes made after a protest hearing, and any additional tax rates approved at a city election. A city levy is not valid until proof of publication or posting of notice of a budget hearing is filed with the county auditor.

[C24, 27, 31, 35, 39, §**376, 385;** C46, 50, 54, 58, 62, 66, 71, 73, §24.10, 24.19; C75, 77, 79, 81, §384.17]

384.18 Budget amendment.

A city budget as finally adopted for the following fiscal year becomes effective July 1 and constitutes the city appropriation for each program and purpose specified therein until amended as pro-

vided in this section. A city budget for the current fiscal year may be amended for any of the following purposes:

1. To permit the appropriation and expenditure of unexpended, unencumbered cash balances on hand at the end of the preceding fiscal year which had not been anticipated in the budget.

2. To permit the appropriation and expenditure of amounts anticipated to be available from sources other than property taxation, and which had not been anticipated in the budget.

3. To permit transfers from the debt service fund, the capital improvements reserve fund, the emergency fund, or other funds established by state law, to any other city fund, unless specifically prohibited by state law.

4. To permit transfers between programs within the general fund.

A budget amendment must be prepared and adopted in the same manner as the original budget, as provided in section 384.16, and is subject to protest as provided in section 384.19, except that the committee may by rule provide that amendments of certain types or up to certain amounts may be made without public hearing and without being subject to protest. A city budget shall be amended by May 31 of the current fiscal year to allow time for a protest hearing to be held and a decision rendered before June 30. The amendment of a budget after May 31, which is properly appealed but without adequate time for hearing and decision before June 30 is void.

[C24, 27, 31, 35, 39, §**375;** C46, 50, 54, 58, 62, 66, 71, 73, §24.9; C75, 77, 79, 81, §384.18; 82 Acts, ch 1079, §6]

384.19 Written protest.

Within a period of ten days after the final date that a budget or amended budget may be certified to the county auditor, persons affected by the budget may file a written protest with the county auditor specifying their objections to the budget or any part of it. A protest must be signed by registered voters equal in number to one-fourth of one percent of the votes cast for governor in the last preceding general election in the city, but the number shall not be less than ten persons and the number need not be more than one hundred persons.

Upon the filing of any such protest, the county auditor shall immediately prepare a true and complete copy of the written protest, together with the budget to which the objections are made, and shall transmit the same forthwith to the state appeal board, and shall also send a copy of the protest to the council.

The state appeal board shall proceed to consider the protest in accordance with the same provisions that protests to budgets of municipalities are considered under chapter 24. The state appeal board shall certify its decision with respect to the protest to the county auditor and to the parties to the appeal as provided by rule, and the decision shall be final.

The county auditor shall make up the records in accordance with the decision and the levying board shall make its levy in accordance with the decision. Upon receipt of the decision the council shall correct its records accordingly, if necessary.

[C39, §**390.2, 390.7;** C46, 50, 54, §24.26, 24.31; C58, 62, 66, 71, 73, §24.27, 24.32; C75, 77, 79, 81, §384.19; 82 Acts, ch 1079, §7]

2001 Acts, ch 56, §32

384.20 Separate accounts.

A city shall keep separate accounts corresponding to the programs and items in its adopted or amended budget, as recommended by the committee.

A city shall keep accounts which show an accurate and detailed statement of all public funds collected, received, or expended for any city purpose, by any city officer, employee, or other person, and which show the receipt, use, and disposition of all city property. Public moneys may not be expended or encumbered except under an annual or continuing appropriation.

"Continuing appropriation" means the unexpended portion of the cost of public improvements, as defined in section 384.95, which cost was adopted through a public hearing pursuant to section 384.102 and was included in an adopted or amended budget of a city. A continuing appropriation does not expire at the conclusion of a fiscal year. A continuing appropriation continues until the public improvement is completed, but expenditures under the continuing appropriation shall not exceed the resources available for paying for the public improvement.

[S13, §741-a, 741-b; C24, 27, 31, 35, 39, §**5675, 5676;** C46, 50, §363.49, 363.50; C54, 58, 62, 66, 71, 73, §368A.5, 368A.6; C75, 77, 79, 81, §384.20]

96 Acts, ch 1104, §1

384.21 Joint investment of funds.

A city or a city utility board shall keep all funds invested to the extent practicable and may invest the funds jointly with one or more cities, utility boards, judicial district departments of correctional services, counties, or rural water districts created under chapter 357A pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

87 Acts, ch 105, §2; 88 Acts, ch 1084, §2; 92 Acts, ch 1156, §15; 95 Acts, ch 77, §6

384.22 Annual report.

Not later than December 1 of each year, a city shall publish an annual report as provided in section 362.3 containing a summary for the preceding fiscal year of all collections and receipts, all accounts due the city, and all expenditures, the current public debt of the city, and the legal debt limit

of the city for the current fiscal year. The report shall be prepared on forms and pursuant to instructions prescribed by the auditor of state. A copy of this report must be filed with the auditor of state not later than December 1 of each year.

A city that fails to meet the filing deadline imposed by this section shall have withheld from payments to be made to the city pursuant to chapter 405A an amount equal to five cents per capita until the annual report is filed with the auditor of state.

[S13, §741-c, 1056-a7, 1056-a9, 1056-a33; C24, 27, 31, 35, 39, §**5677, 5679, 5680, 6581;** C46, 50, §363.54, 363.56, 363.57, 416.109; C54, 58, 62, 66, 71, 73, §368A.9, 368A.11, 368A.12; C75, 77, 79, 81, §384.22]

97 Acts, ch 206, §21, 24

DIVISION III

GENERAL OBLIGATION BONDS

384.23 Construction of words "and" and "or."

As used in divisions III to VI of this chapter, the use of the conjunctive *"and"* includes the disjunctive *"or"* and the use of the disjunctive *"or"* includes the conjunctive *"and,"* unless the context clearly indicates otherwise.

[C75, 77, 79, 81, §384.23]

384.24 Definitions.

As used in this division, unless the context otherwise requires:

1. *"General obligation bond"* means a negotiable bond issued by a city and payable from the levy of unlimited ad valorem taxes on all the taxable property within the city through its debt service fund which is required to be established by section 384.4.

2. *"City enterprise"* means any of the following, including the real estate, fixtures, equipment, accessories, appurtenances, and all property necessary or useful for the operation of any of the following:

a. Parking facilities systems, which may include parking lots and other off-street parking areas, parking ramps and structures on, above, or below the surface, parking meters, both on-street and off-street, and all other fixtures, equipment, accessories, appurtenances, and requisites useful for the successful operation of a parking facilities system.

b. Civic centers or civic center systems, which may include auditoriums, music halls, theatres, sports arenas, armories, exhibit halls, meeting rooms, convention halls, or combinations of these.

c. Recreational facilities or recreational facilities systems, including, without limitation, real and personal property, water, buildings, improvements, and equipment useful and suitable for administering recreation programs, and also including without limitation, zoos, museums, and centers for art, drama, and music, as well as those programs more customarily identified with the term "recreation" such as public sports, games, pastimes, diversions, and amusement, on land or water, whether or not such facilities are located in or as a part of any public park.

d. Port facilities or port facilities systems, including without limitation, real and personal property, water, buildings, improvements and equipment useful and suitable for taking care of the needs of commerce and shipping, and also including without limitation, wharves, docks, basins, piers, quay walls, warehouses, tunnels, belt railway facilities, cranes, dock apparatus, and other machinery necessary for the convenient and economical accommodation and handling of watercraft of all kinds and of freight and passengers.

e. Airport and airport systems.

f. Solid waste collection systems and disposal systems.

g. Bridge and bridge systems.

h. Hospital and hospital systems.

i. Transit systems.

j. Stadiums.

k. Housing for persons who are elderly or persons with physical disabilities.

l. Child care centers providing child care or preschool services, or both. For purposes of this paragraph, *"child care"* means providing for the care, supervision, and guidance of a child by a person other than the parent, guardian, relative, or custodian for periods of less than twenty-four hours per day on a regular basis. For purposes of this paragraph, *"preschool"* means child care which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, and motor skills, and to extend their interest and understanding of the world about them.

3. *"Essential corporate purpose"* means:

a. The opening, widening, extending, grading, and draining of the right-of-way of streets, highways, avenues, alleys, public grounds, and market places, and the removal and replacement of dead or diseased trees thereon; the construction, reconstruction, and repairing of any street improvements; the acquisition, installation, and repair of traffic control devices; and the acquisition of real estate needed for any of the foregoing purposes.

b. The acquisition, construction, improvement, and installation of street lighting fixtures, connections, and facilities.

c. The construction, reconstruction, and repair of sidewalks and pedestrian underpasses and overpasses, and the acquisition of real estate needed for such purposes.

d. The acquisition, construction, reconstruction, extension, improvement, and equipping of works and facilities useful for the collection, treat-

ment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams.

e. The acquisition, construction, reconstruction, enlargement, improvement, and repair of bridges, culverts, retaining walls, viaducts, underpasses, grade crossing separations, and approaches thereto.

f. The settlement, adjustment, renewing, or extension of any part or all of the legal indebtedness of a city, whether evidenced by bonds, warrants, or judgments, or the funding or refunding of the same, whether or not such indebtedness was created for a purpose for which general obligation bonds might have been issued in the original instance.

g. The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the city alone, would be for an essential corporate purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

h. The acquisition, construction, reconstruction, improvement, and extension of works and facilities useful for the control and elimination of any and all sources of air, water, and noise pollution, and the acquisition of real estate needed for such purposes.

i. The acquisition, construction, reconstruction, and improvement of all waterways, and real and personal property, useful for the protection or reclamation of property situated within the corporate limits of cities from floods or high waters, and for the protection of property in cities from the effects of flood waters, including the deepening, widening, alteration, change, diversion, or other improvement of watercourses, within or without the city limits, the construction of levees, embankments, structures, impounding reservoirs, or conduits, and the establishment, improvement, and widening of streets, avenues, boulevards, and alleys across and adjacent to the project, as well as the development and beautification of the banks and other areas adjacent to flood control improvements.

j. The equipping of fire, police, sanitation, street, and civil defense departments and the acquiring, developing, and improving of a geographic computer data base system suitable for automated mapping and facilities management.

k. The acquisition and improvement of real estate for cemeteries, and the construction, reconstruction, and repair of receiving vaults, mausoleums, and other cemetery facilities.

l. The acquisition of ambulances and ambulance equipment.

m. The reconstruction and improvement of dams already owned.

n. The reconstruction, extension, and improvement of an airport owned or operated by the city, an agency of the city, or a multimember governmental body of which the city is a participating member.

o. The rehabilitation and improvement of parks already owned, including the removal, replacement and planting of trees in the parks, and facilities, equipment, and improvements commonly found in city parks.

p. The rehabilitation and improvement of area television translator systems already owned.

q. The aiding in the planning, undertaking, and carrying out of urban renewal projects under the authority of chapter 403, and all of the purposes set out in section 403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in section 384.26, without limitation on the amount of the bond issue or the size of the city, and the council shall include notice of the right of petition in the notice required under section 384.25, subsection 2.

r. The acquisition, construction, reconstruction, improvement, repair, and equipping of waterworks, water mains, and extensions, and real and personal property, useful for providing potable water to residents of a city.

s. The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the establishment of reserve funds for claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

t. The acquisition, restoration, or demolition of abandoned, dilapidated, or dangerous buildings, structures or properties or the abatement of a nuisance.

u. The establishment or funding of programs to provide for or assist in providing for the acquisition, restoration, or demolition of housing, as part of a municipal housing project under chapter 403 or otherwise, or for other purposes as may be authorized under chapter 403A.

4. *"General corporate purpose"* means:

a. The acquisition, construction, reconstruction, extension, improvement, and equipping of city utilities, city enterprises, and public improvements as defined in section 384.37, other than those which are essential corporate purposes.

b. The acquisition, construction, reconstruction, enlargement, improvement, and equipping of community center houses, recreation grounds, recreation buildings, juvenile playgrounds, swimming pools, recreation centers, parks, and golf courses, and the acquisition of real estate therefor.

c. The acquisition, construction, reconstruction, enlargement, improvement, and equipping of city halls, jails, police stations, fire stations, garages, libraries, and hospitals, including buildings to be used for any combination of the foregoing purposes, and the acquisition of real estate therefor.

d. The acquisition, construction, reconstruc-

tion, and improvement of dams at the time of acquisition.

e. The removal, replacement, and planting of trees, other than those on public right-of-way.

f. The acquisition, purchase, construction, reconstruction, and improvement of greenhouses, conservatories, and horticultural centers for growing, storing, and displaying trees, shrubs, plants, and flowers.

g. The acquisition, construction, reconstruction, and improvement of airports at the time of establishment.

h. The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the city alone, would be for a general corporate purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

i. Any other purpose which is necessary for the operation of the city or the health and welfare of its citizens.

5. The *"cost"* of a project for an essential corporate purpose or general corporate purpose includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during the period or estimated period of construction and for twelve months thereafter or for twelve months after the acquisition date, and provisions for contingencies.

1. [C75, 77, 79, 81, §384.24(1)]

2. a. [C46, §390.1; C50, 54, 58, 62, 66, 71, 73, §390.1, 390.7; C75, 77, 79, 81, §384.24(2, a)]

b. [C35, §5903-f1; C39, §**5903.12;** C46, 50, 54, 58, 62, 66, §385.1; C71, 73, §378A.1, 385.1; C75, 77, 79, 81, §384.24(2, b)]

c. [R60, §1111; C73, §538; C97, §957; C24, 27, 31, 35, 39, §**6742;** C46, 50, §368.9, 420.53; C54, 58, 62, 66, 71, 73, §368.30; C75, 77, 79, 81, §384.24(2, c)]

d. [S13, §741-w2; C24, 27, 31, §5902; C35, §5902, 6066-f2; C39, §**5902, 6066.25;** C46, 50, 54, 58, 62, 66, 71, 73, §384.3, 394.2; C75, 77, 79, 81, §384.24(2, d)]

e. [C31, 35, §5903-c2; C39, §**5903.02;** C46, 50, 54, 58, 62, 66, 71, 73, §330.2; C75, 77, 79, 81, §384.24(2, e)]

f. [S13, §1056-a61; SS15, §696-b; C24, 27, 31, §5746, 6592; C35, §5746, 6066-f1, 6066-f5, 6592; C39, §**5746, 6066.24, 6066.28, 6592;** C46, 50, §368.9, 394.1, 394.5, 416.120; C54, 58, 62, 66, 71, 73, §368.24, 394.1, 394.5; C75, 77, 79, 81, §384.24(2, f)]

g. [C31, 35, §5899-c1; C39, §**5899.01;** C46, 50, 54, 58, 62, 66, 71, 73, §383.1; C75, 77, 79, 81, §384.24(2, g)]

h. [C75, 77, 79, 81, §384.24(2, h)]

i. [C58, 62, 66, 71, 73, §386B.2; C75, 77, 79, 81, §384.24(2, i)]

j. [C75, 77, 79, 81, §384.24(2, j)]

k. [C75, 77, 79, 81, §384.24(2, k)]

3. a. [R60, §1064, 1097; C73, §464, 465, 527; C97, §751, 782; S13, §1056-a65; SS15, §751, 997-a, -c; C24, 27, 31, 35, 39, §**5938, 5951, 6608, 6744, 6746;** C46, 50, §389.1, 389.20, 416.138, 420.55, 420.57; C54, 58, 62, 66, 71, 73, §368.32, 389.1, 389.20, 408.17; C75, 77, 79, 81, §384.24(3, a)]

b. [R60, §1064; C73, §464; C97, §756; C24, 27, 31, 35, 39, §**5949;** C46, 50, 54, 58, 62, 66, 71, 73, §389.16; C75, 77, 79, 81, §384.24(3, b)]

c. [C73, §466; C97, §779; S13, §779; C24, 27, 31, 35, 39, §**5962;** C46, 50, 54, 58, §389.31; C62, 66, 71, 73, §389.31, 391.1; C75, 77, 79, 81, §384.24(3, c)]

d. [S13, §1056-a63; C24, 27, 31, 35, 39, §**6125, 6594;** C46, 50, §396.22, 416.122; C54, 58, §396.22, 404.18; C62, 66, 71, 73, §396.22, 404.19; C75, 77, 79, 81, §384.24(3, d)]

e. [R60, §1097; C73, §527; C97, §757, 758; SS15, §758; C24, 27, 31, 35, 39, §**5874 – 5876;** C46, 50, §381.1 – 381.3; C54, 58, 62, 66, §381.1; C71, 73, §381.1, 381.3; C75, 77, 79, 81, §384.24(3, e)]

f. [C97, §905; C24, 27, 31, 35, 39, §**6252;** C46, 50, 54, 58, 62, 66, 71, 73, §408.1; C75, 77, 79, 81, §384.24(3, f)]

g. [C27, 31, 35, §6066-a1; C39, §**6066.03;** C46, 50, 54, §392.1; C58, 62, 66, 71, 73, §368.49, 392.1; C75, 77, 79, 81, §384.24(3, g)]

h. [C75, 77, 79, 81, §384.24(3, h)]

i. [SS15, §849-a; C24, 27, 31, 35, 39, §**6080;** C46, 50, 54, 58, 62, 66, 71, 73, §395.1; C75, 77, 79, 81, §384.24(3, i)]

j. [C54, 58, 62, 66, 71, 73, §368.16; C75, 77, 79, 81, §384.24(3, j)]

k. [R60, §1060; C73, §458; C97, §697; C24, 27, 31, 35, 39, §**5750;** C46, 50, §368.13; C54, 58, 62, 66, 71, 73, §368.29; C75, 77, 79, 81, §384.24(3, k)]

l. [C66, 71, 73, §368.74; C75, 77, 79, 81, §384.24(3, l)]

m. – p. [C77, 79, 81, §384.24(3, m – p)]

q. [C75, §384.24(4, g); C77, 79, 81, §384.24(3, q)]

r. [82 Acts, ch 1089, §1]

4. a. [S13, §741-w2, 1306-b; C24, 27, 31, 35, 39, §**5902, 6239;** C46, 50, §384.3, 407.3(1); C54, 58, 62, 66, 71, 73, §384.3, 390.13, 407.3(1); C75, 77, 79, 81, §384.24(4, a)]

b. [R60, §1111; C73, §538; C97, §852, 957; S13, §850-c; SS15, §879-r; C24, 27, 31, 35, 39, §**5793, 5830, 5844, 6239, 6742;** C46, 50, §368.9, 370.7, 374.1, 377.1, 407.3(2, 3), 420.53; C54, 58, 62, 66, 71, 73, §368.30, 370.7, 374.1, 377.1, 407.3(2, 3); C75, 77, 79, 81, §384.24(4, b)]

c. [R60, §1116; C73, §542; C97, §732, 735; S13, §668, 732, 741-r; SS15, §741-f; C24, 27, §5772, 6239; C31, §5772, 6239, 6600-c1; C35, §5772, 6239, 6579-f; C39, §**5772, 6239, 6579.1;** C46, 50, §368.40, 407.3(4 – 6), 416.107; C54, 58, 62, 66,

§368.15, 368.41, 407.3(4 – 6); C71, 73, §368.15, 368.41, 407.3(4 – 6, 9); C75, 77, 79, 81, §384.24(4, c)]

d. [C27, 31, 35, 39, §**6239;** C46, 50, 54, 58, 62, 66, 71, 73, §407.3(7); C75, 77, 79, 81, §384.24(4, d)]

e. [S13, §1056-a65; SS15, §997-a, -c; C24, 27, 31, 35, 39, §**6608, 6744, 6746;** C46, 50, §416.138, 420.55, 420.57; C54, 58, 62, 66, 71, 73, §368.32; C75, 77, 79, 81, §384.24(4, e)]

f. [C75, 77, 79, 81, §384.24(4, f)]

g. [C77, 79, 81, §384.24(4, g)]

h. [C31, 35, §5766-c1; C39, §**5766.2;** C46, §368.31; C50, §368.31, 368.57, 392.1; C54, 58, 62, 66, 71, 73, §368.12, 368.19, 392.1; C75, 77, 79, 81, §384.24(4, h)]

i. [C75, 77, 79, 81, §384.24(4, i)]

5. [C75, 77, 79, 81, §384.24(5)]

83 Acts, ch 90, §21; 86 Acts, ch 1211, §24; 87 Acts, ch 103, §6 – 8; 89 Acts, ch 182, §10; 89 Acts, ch 189, §3; 96 Acts, ch 1129, §86; 96 Acts, ch 1204, §36; 2001 Acts, ch 88, §1, 2

384.24A Loan agreements.

A city may enter into loan agreements to borrow money for any public purpose in accordance with the following terms and procedures:

1. A loan agreement entered into by a city may contain provisions similar to those sometimes found in loan agreements between private parties, including, but not limited to, the issuance of notes to evidence its obligations.

2. A provision of a loan agreement which stipulates that a portion of the payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 is not applicable. A city utility or city enterprise is a separate entity under this section whether it is governed by the governing body of the city or another governing body.

3. The governing body shall follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose to authorize a loan agreement made payable from the debt service fund.

4. The governing body may authorize a loan agreement which is payable from the general fund and which would not cause the total of scheduled annual payments of principal or interest or both principal and interest of the city due from the general fund of the city in any future year with respect to all loan agreements in force on the date of the authorization to exceed ten percent of the last certified general fund budget amount in accordance with the following procedures:

a. The governing body must follow substantially the authorization procedures of section 384.25 to authorize a loan agreement for personal property which is payable from the general fund. The governing body must follow substantially the authorization procedures of section 384.25 to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement does not exceed the following limits:

(1) Four hundred thousand dollars in a city having a population of five thousand or less.

(2) Seven hundred thousand dollars in a city having a population of more than five thousand but not more than seventy-five thousand.

(3) One million dollars in a city having a population of more than seventy-five thousand.

b. The governing body must follow the following procedures to authorize a loan agreement for real property which is payable from the general fund if the principal amount of the loan agreement exceeds the limits set forth in paragraph *"a"*:

(1) The governing body must institute proceedings to enter into a loan agreement payable from the general fund by causing a notice of the meeting to discuss entering into the loan agreement, including a statement of the principal amount and purpose of the loan agreement and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city at least ten days prior to the discussion meeting. No sooner than thirty days following the discussion meeting shall the governing body hold a meeting at which it is proposed to take action to enter into the loan agreement.

(2) If at any time before the end of the thirty-day period after which a meeting may be held to take action to enter into the loan agreement, a petition is filed with the clerk of the city in the manner provided by section 362.4, asking that the question of entering into the loan agreement be submitted to the registered voters of the city, the governing body shall either by resolution declare the proposal to enter into the loan agreement to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of entering into the loan agreement. However, for purposes of this paragraph, the petition shall not require signatures in excess of one thousand persons. The question to be placed on the ballot shall be stated affirmatively in substantially the following manner: Shall the city of . . . . . enter into a loan agreement in amount of $ . . . . . for the purpose of . . . . . ? Notice of the election and its conduct shall be in the manner provided in section 384.26, subsections 2 through 4.

(3) If a petition is not filed or if a petition is filed and the proposition of entering into the loan agreement is approved at an election, the governing body may proceed and enter into the loan agreement.

5. The governing body may authorize a loan agreement payable from the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise by following the authorization procedures of section 384.83.

6. A loan agreement to which a city is a party or in which the city has a participatory interest is an obligation of a political subdivision of this state

for the purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

87 Acts, ch 103, §9; 92 Acts, ch 1138, §5; 95 Acts, ch 67, §53

384.25 General obligation bonds for essential purposes.

1. A city which proposes to carry out any essential corporate purpose within or without its corporate limits, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the cost of a project must do so in accordance with the provisions of this division.

2. Before the council may institute proceedings for the issuance of bonds for an essential corporate purpose, a notice of the proposed action, including a statement of the amount and purposes of the bonds, and the time and place of the meeting at which the council proposes to take action for the issuance of the bonds, must be published as provided in section 362.3. At the meeting, the council shall receive oral or written objections from any resident or property owner of the city. After all objections have been received and considered, the council may, at that meeting or any adjournment thereof, take additional action for the issuance of the bonds or abandon the proposal to issue the bonds. Any resident or property owner of the city may appeal the decision of the council to take additional action to the district court of the county in which any part of the city is located, within fifteen days after the additional action is taken, but the additional action of the council is final and conclusive unless the court finds that the council exceeded its authority. The provisions of this subsection with respect to notice, hearing, and appeal, are in lieu of the provisions contained in chapter 73A, or any other law.

[R60, §1060; C73, §458; C97, §697; S13, §716-d, 840-e, 849-h, -j, 912, 912-a, 1056-a43, -a63, -a64; SS15, §758-b, -e, 840-g, -p, 997-a, -c; C24, §5750, 5878 – 5881, 6103, 6126, 6261 – 6263, 6265, 6576, 6594, 6595, 6608, 6744, 6746; C27, 31, 35, §5750, 5878 – 5881, 6066-a11, 6103, 6126, 6261 – 6263, 6265, 6594, 6595, 6608, 6744, 6746; C39, §**5750, 5878 – 5881, 6066.13, 6103, 6126, 6261, 6261.1, 6261.2, 6262, 6263, 6265, 6576, 6594, 6595, 6608, 6744, 6746;** C46, 50, §368.13, 381.5 – 381.8, 392.11, 395.25, 396.22, 408.10 – 408.14, 408.16, 416.101, 416.104, 416.122, 416.123, 416.138, 420.55, 420.57; C54, 58, §368.16, 368.29, 368.32, 381.7, 392.11, 395.25, 396.22, 404.18, 408.17; C62, 66, 71, 73, §368.16, 368.29, 368.32, 381.7, 392.11, 395.25, 396.22, 404.19, 408.17; C75, 77, 79, 81, §384.25]

384.26 General obligation bonds for general purposes.

1. A city which proposes to carry out any general corporate purpose within or without its corporate limits, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the costs of a project, must do so in accordance with the provisions of this division.

2. Before the council may institute proceedings for the issuance of bonds for a general corporate purpose, it shall call a special city election to vote upon the question of issuing the bonds. At the election the proposition must be submitted in the following form:

Shall the . . . . . (insert the name of the city) issue its bonds in an amount not exceeding the amount of $ . . . . . for the purpose of . . . . . ?

3. Notice of the election must be given by publication as required by section 49.53 in a newspaper of general circulation in the city. At the election the ballot used for the submission of the proposition must be in substantially the form for submitting special questions at general elections.

4. The proposition of issuing general corporate purpose bonds is not carried or adopted unless the vote in favor of the proposition is equal to at least sixty percent of the total vote cast for and against the proposition at the election. If the proposition of issuing the general corporate purpose bonds is approved by the voters, the city may proceed with the issuance of the bonds.

5. *a.* Notwithstanding the provisions of subsection 2, a council may, in lieu of calling an election, institute proceedings for the issuance of bonds for a general corporate purpose by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds subject to the following limitations:

(1) In cities having a population of five thousand or less, in an amount of not more than four hundred thousand dollars.

(2) In cities having a population of more than five thousand and not more than seventy-five thousand, in an amount of not more than seven hundred thousand dollars.

(3) In cities having a population in excess of seventy-five thousand, in an amount of not more than one million dollars.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition is filed with the clerk of the city in the manner provided by section 362.4, asking that the question of issuing the bonds be submitted to the registered

voters of the city, the council shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in the preceding subsections of this section.

c. If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the council may proceed with the authorization and issuance of the bonds.

[C73, §461; C97, §727, 741-4, 852 – 855; S13, §727, 741-q, -r, -v, -w2, 850-c, -e, -f, 1306-d, -e; SS15, §696-b, 741-f, -g, -h, 879-r, -s; C24, 27, §5793 – 5795, 5800 – 5804, 5902, 6241, 6244 – 6246, 6248; C31, 35, §5793 – 5795, 5800 – 5804, 5902, 5903-c5, 6241, 6244 – 6246, 6248; C39, §**5793 – 5795, 5800 – 5804, 5902, 5903.05, 6241, 6244 – 6246, 6248, 6261.1;** C46, 50, §330.7, 330.8, 370.7 – 370.9, 370.15 – 370.19, 384.3, 407.5, 407.8 – 407.10, 407.12, 408.11; C54, 58, 62, 66, §330.7, 370.7, 384.3, 390.13, 407.5, 407.8 – 407.10, 407.12; C71, 73, §330.7, 370.7, 378A.11, 384.3, 390.13, 407.5, 407.8 – 407.10, 407.12, 408A.1, 408A.2, 408A.6; C75, 77, 79, 81, §384.26]

92 Acts, ch 1138, §6; 95 Acts, ch 67, §53

384.27 Sale of bonds.

1. A city may sell general obligation bonds at public or private sale in the manner prescribed by chapter 75.

2. General obligation funding or refunding bonds issued for the purposes specified in section 384.24, subsection 3, paragraph *"f,"* may be exchanged for the evidences of the legal indebtedness being funded or refunded, or such funding or refunding bonds may be sold in the manner prescribed by chapter 75 and the proceeds applied to the payment of such indebtedness. Funding or refunding bonds may bear interest at the same rate as, or at a higher or lower rate or rates of interest than the indebtedness being funded or refunded.

[C97, §910; C24, 27, 31, 35, 39, §**6258, 6259;** C46, 50, 54, 58, 62, 66, §408.7, 408.8; C71, 73, §378A.11, 408.7, 408.8; C75, 77, 79, 81, §384.27]

384.28 Categories for general obligation bonds.

A city may issue general obligation bonds pursuant to a resolution adopted at a regular or special meeting by a majority of the total number of members to which the council is entitled. Each paragraph of section 384.24, subsections 3 and 4 describes a separate category. Separate categories of essential corporate purposes and of general corporate purposes may be incorporated in a single notice of intention to institute proceedings for the issuance of bonds, or separate categories may be incorporated in separate notices, and after an opportunity has been provided for filing objections, or after a favorable election has been held, if required, the council may include in a single resolution and sell as a single issue of bonds, any number or combination of essential corporate purposes or general corporate purposes. If an essential corporate purpose is combined with a general corporate purpose in a single notice of intention to institute proceedings to issue bonds, then the entire issue is subject to the referendum requirement provided in section 384.26.

Definitions of city enterprises, essential corporate purposes, and general corporate purposes are not mutually exclusive and shall be liberally construed. The detailing of examples is not intended to modify or restrict the meaning of general words used. If a project or activity may be reasonably construed to be included in more than one classification, the council may elect at any time between the classifications and the procedures respectively applicable to each classification.

[C75, 77, 79, 81, §384.28]

83 Acts, ch 90, §22

384.29 Form of bonds.

As provided by resolution of the council, general obligation bonds may:

1. Bear dates.
2. Bear interest at rates not exceeding the limitations imposed by chapter 75.
3. Mature in one or more installments.
4. Be in either coupon or registered form.
5. Carry registration and conversion privileges.
6. Be payable as to principal and interest at times and places.
7. Be subject to terms of redemption prior to maturity with or without premium.
8. Be in one or more denominations.
9. Be designated with a brief reference to purpose, or if issued for a combination of purposes, be designated "corporate purpose bond".
10. Contain other provisions not in conflict with the laws of the state of Iowa.

[C97, §908; C24, 27, 31, 35, 39, §**6255;** C46, 50, 54, 58, 62, 66, 71, 73, §408.4; C75, 77, 79, 81, §384.29]

384.30 Execution.

General obligation bonds must be executed by the mayor and city clerk. If coupons are attached to the bonds, they must be executed with the original or facsimile signature of the clerk. A general obligation bond is valid and binding if it bears the signatures of the officers in office on the date of the execution of the bonds, notwithstanding that any or all such persons whose signatures appear thereon have ceased to be such officers prior to the delivery thereof.

[C97, §907; C24, 27, 31, 35, 39, §**6254;** C46, 50, 54, 58, 62, 66, 71, 73, §408.3; C75, 77, 79, 81, §384.30]

384.31 Negotiable.

General obligation bonds issued pursuant to this part are negotiable instruments.

[C75, 77, 79, 81, §384.31]

384.32 Tax to pay.

Taxes for the payment of general obligation bonds must be levied in accordance with chapter 76, and the bonds are payable from the levy of unlimited ad valorem taxes on all the taxable property within the city through its debt service fund authorized by section 384.4.

[C97, §852 – 855, 912; S13, §741-w2, 758-b, 849-j, 850-c, -e, -f, 912-a, 1056-a43, -a63, -a64, -a65; SS15, §840-g, -p, 997-c; C24, 27, 31, §5793 – 5795, 5800 – 5804, 5878 – 5881, 5902, 6103, 6261 – 6263, 6265, 6594, 6595, 6608, 6746; C35, §5793 – 5795, 5800 – 5804, 5878 – 5881, 5902, 6103, 6261 – 6263, 6265, 6578-b1, 6594, 6595, 6608, 6746; C39, §**5793 – 5795, 5800 – 5804, 5878 – 5881, 5902, 6103, 6261 – 6263, 6265, 6578.1, 6594, 6595, 6608, 6746;** C46, 50, §370.7 – 370.9, 370.15 – 370.19, 381.5 – 381.8, 384.3, 395.25, 408.10 – 408.14, 408.16, 416.104, 416.122, 416.123, 416.138, 420.57; C54, 58, §368.16, 368.29, 368.32, 370.7, 381.7, 384.3, 390.14, 395.25, 404.18, 408.17; C62, 66, §368.16, 368.29, 368.32, 370.7, 381.7, 384.3, 390.13, 395.25, 404.19, 408.17; C71, 73, §368.16, 368.29, 368.32, 370.7, 378A.11, 381.7, 384.3, 390.13, 395.25, 404.19, 408.17; C75, 77, 79, 81, §384.32]

384.33 Action.

No action may be brought which questions the legality of general obligation bonds or the power of the city to issue the bonds or the effectiveness of any proceedings relating to the authorization and issuance of the bonds from and after sixty days from the time the bonds are ordered issued by the city.

[C71, 73, §378A.13; C75, 77, 79, 81, §384.33]

384.34 Local budget law.

The provisions of division II of this chapter do not apply to any bonds issued pursuant to this division.

[C75, 77, 79, 81, §384.34]

384.35 Rule of construction.

The enumeration in this division of specified powers and functions is not a limitation of the powers of cities, but the provisions of this division and the procedures prescribed for exercising the powers and functions enumerated in this division shall control and govern in the event of any conflict with the provisions of any other section, division or chapter of the city code or with the provisions of any other law.

[C75, 77, 79, 81, §384.35]

384.36 Prior proceedings.

Projects and proceedings for the issuance of general obligation bonds commenced before the effective date of the city code may be consummated and completed as required or permitted by any statute or other law amended or repealed by the city code as though the repeal or amendment had not occurred, and the rights, duties, and interests flowing from such projects and proceedings remain valid and enforceable. Without limiting the foregoing, projects commenced prior to the effective date may be financed by the issuance of general obligation bonds under any such amended or repealed law or by the issuance of general obligation bonds under the city code. For the purposes of this section, commencement of a project includes but is not limited to action taken by the council or authorized officer to fix a date for a hearing in connection with any part of the project, and commencement of proceedings for the issuance of general obligation bonds includes but is not limited to action taken by the council to fix a date for either a hearing or a sale in connection with any part of the general obligation bonds, or to order any part thereof to be issued.

[C75, 77, 79, 81, §384.36]

DIVISION IV

SPECIAL ASSESSMENTS

384.37 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Abutting lot"* means a lot which abuts or joins the street in which the public improvement is located or which abuts the right of way of the public improvement.

2. *"Adjacent lot"* means a lot within the district which does not abut upon the street or right of way of the public improvement.

3. *"Construction"* includes materials, labor, acts, operations and services necessary to complete a public improvement.

4. *"District"* means the lots or parts of lots within boundaries established by the council for the purpose of the assessment of the cost of a public improvement.

5. *"Engineer"* means a professional engineer, registered in the state of Iowa, authorized by the council to render services in connection with the public improvement.

6. *"Final grade"* means the grade to which the public improvement is proposed to be constructed or repaired as shown on the final plans adopted by the council.

7. *"Grade"* means the longitudinal reference lines, as established by ordinance of the council, which designate the elevations at which a street or sidewalk is to be built.

8. *"Gravel"* includes gravel, crushed rock, cinders, shale and similar materials suitable for

street construction or repair.

9. *"Lateral sewer"* means a sewer which contributes sewage, or surface or ground water from a local area to a main sewer or outlet.

10. *"Lot"* means a parcel of land under one ownership, including improvements, against which a separate assessment is made. Two or more contiguous parcels under common ownership may be treated as one lot for purposes of this division if the parcels bear common improvements or if the council finds that the parcels have been assembled into a single unit for the purpose of use or development.

11. *"Main sewer"* means a sewer which serves as an outlet for two or more lateral sewers, and which is commonly referred to as an intercepting sewer, outfall sewer or trunk sewer.

12. *"Oil"* means any asphaltic or bituminous material suitable for street construction or repair.

13. *"Parking facilities"* means parking lots or other off-street areas for the parking of vehicles, including areas below or above the surface of streets.

14. *"Paving"* means any kind of hard street surface, including, but not limited to, concrete, bituminous concrete, brick, stabilized gravel, or combinations of these, together with or without curb and gutter.

15. *"Private property"* means all property within the district except streets.

16. *"Property owner"* or *"owner"* means the owner or owners of property, as shown by the transfer books in the office of the county auditor of the county in which the property is located.

17. *"Proposal"* means a legal bid on work advertised for a public improvement under division VI of this chapter.

18. *"Publication"* means public notice given in the manner provided in section 362.3.

19. *"Public improvement"* includes the principal structures, works, component parts and accessories of any of the following:

a. Sanitary, storm and combined sewers.

b. Drainage conduits, channels and levees.

c. Street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing with oil, oil and gravel or chloride.

d. Street lighting fixtures, connections and facilities.

e. Sewage pumping stations, and disposal and treatment plants.

f. Underground gas, water, heating, sewer and electrical connections located in streets for private property.

g. Sidewalks and pedestrian underpasses or overpasses.

h. Drives and driveway approaches located within the public right of way.

i. Waterworks, water mains and extensions.

j. Plazas, arcades and malls.

k. Parking facilities.

l. Removal of diseased or dead trees from any public place, publicly owned right of way or private property.

m. Traffic-control devices, fixtures, connections, and facilities.

20. *"Railways"* means all railways except street railways.

21. *"Repair"* includes materials, labor, acts, operations and services necessary for the repair, reconstruction, reconstruction by widening or resurfacing of a public improvement.

22. *"Sewer"* means structures designed, constructed and used for the purpose of controlling or carrying off streams, surface waters, waste or sanitary sewage.

23. *"Sewer systems"* are composed of the main sewers, sewage pumping stations, treatment and disposal plants, lateral sewers, drainage conduits or channels and sewer connections in public streets for private property.

24. *"Street"* means a public street, highway, boulevard, avenue, alley, parkway, public place, plaza, mall or publicly owned right of way or easement within the limits of the city.

25. *"Street improvement"* means the construction or repair of a street by grading, paving, curbing, guttering, and surfacing with oil, oil and gravel, or chloride, and street lighting fixtures, connections and facilities.

26. *"Total cost"* or *"cost"* of a public improvement includes the cost of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, legal services, acquisition of land, consequential damages or costs, easements, rights of way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for not more than six months thereafter, and printing and sale of bonds.

[R60, §1064, 1097; C73, §464 – 466, 527; C97, §751, 779, 792; S13, §779, 792, 792-f, 840-c, -d; SS15, §751, 840-h, -r; C24, 27, §5938, 5962, 5974, 5975, 5987; C31, 35, §5938, 5962, 5974, 5975, 5987, 6610-c8; C39, §**5938, 5962, 5974, 5975, 5987, 6610.04;** C46, §389.1, 389.31, 391.1, 391.2, 391.14, 417.8; C50, 54, 58, 62, §389.1, 389.31, 391.1, 391.2, 391.14, 391A.1, 417.8; C66, 71, 73, §389.1, 389.31, 390A.39, 391.1, 391.2, 391.14, 391A.1, 417.8; C75, 77, 79, 81, §384.37]

83 Acts, ch 90, §23; 92 Acts, ch 1176, §1

384.38 Certain costs assessed to private property.

1. A city may assess to private property within the city the cost of construction and repair of public improvements within the city, and main sewers, sewage pumping stations, disposal and treatment plants, waterworks, water mains, extensions, and drainage conduits extending outside the city.

2. Upon petition as provided in section 384.41, subsection 1, a city may assess to private property affected by public improvements within three

miles of the city's boundaries the cost of construction and repair of public improvements within that area. The right-of-way of a railway company shall not be assessed unless the company joins as a petitioner for said improvements. In the petition the property owners shall waive the limitation provided in section 384.62 that an assessment may not exceed twenty-five percent of the value of the lot. The petition shall contain a statement that the owners agree to pay the city an amount equal to five percent of the cost of the improvements, to cover administrative expenses incurred by the city. This amount may be added to the cost of the improvements. Before the council may adopt the resolution of necessity, the preliminary resolution, preliminary plans and specifications, plat, schedule, and estimate of cost must be submitted to, and receive written approval from, the board of supervisors of any county which contains part of the property, and the city development board established in section 368.9.

3. A city may establish, by ordinance or by resolution adopted as an ordinance after twenty days' notice published in accordance with section 362.3, and a public hearing, one or more districts and schedules of fees for the connection of property to the city sewer or water utility. If the governing body directs that notice be made by mail, the notice shall be as required in section 384.50. Each person whose property will be served by connecting to the city sewer or water utility shall pay a connection fee to the city. The ordinance shall be certified by the city and recorded in the office of the county recorder of the county in which a district is located. The connection fees are due and payable when a utility connection application is filed with the city. A connection fee may include the equitable cost of extending the utility to the properties, including reasonable interest from the date of construction to the date of payment. All fees collected under this subsection shall be paid to the city treasurer. The moneys collected as fees shall only be used for the purposes of operating the utility, or to pay debt service on obligations issued to finance improvements or extensions to the utility.

This subsection shall not apply when a city annexation plan includes annexation of an area adjoining the city and a petition has not been presented as provided in section 384.41 for a city sewer or water utility connection. Until annexation takes place, or the annexation plan is abandoned, the state mandate contained in section 455B.172, subsections 3, 4, and 5, shall not apply unless the individual property owner voluntarily pays the connection fee and requests to be connected to the city sewer or water utility.

[SS15, §840-d, -g; C24, §5985, 5986; C27, 31, 35, §5985, 5986, 6190-a1; C39, §**5985, 5986, 6190.01;** C46, §391.12, 391.13, 401.1; C50, §391.12, 391.13, 391A.2, 401.1, 420.56; C54, 58, 62, §391.12, 391.13, 391A.2, 401.1; C66, 71, 73, §390A.3, 390A.18, 391.12, 391.13, 391A.2, 401.1; C75, 77, 79, 81, §384.38]

94 Acts, ch 1073, §1; 96 Acts, ch 1120, §1

384.39 Improvements brought to grade.

Paving, curbing, guttering, or sidewalks may not be constructed unless the improvement, when completed, will be to grade.

[C73, §466; C97, §779, 792; S13, §779, 792; SS15, §840-q; C24, 27, 31, 35, 39, §**5962, 5976;** C46, §389.31, 391.3; C50, §389.31, 391.3, 391A.2; C54, 58, 62, 66, 71, 73, §389.31, 391.3, 391A.3; C75, 77, 79, 81, §384.39]

384.40 Underground improvements.

A city may include underground gas, water, heating, sewer, or electrical connections to the street or property line for private property as a part of the public improvement, or a city may order the property owner to make, repair, or relocate such connections by publication of a notice once each week for two consecutive weeks in the manner provided by section 362.3, and if the order is not complied with at the end of thirty days after the date of the first publication, the city may cause the work to be done and assess the cost against the property served by the connection.

[C97, §779, 809; S13, §779, 792-f; C24, 27, 31, 35, 39, §**5981;** C46, §391.8; C50, §391.8, 391A.16; C54, 58, 62, 66, 71, 73, §391.8, 391A.4; C75, 77, 79, 81, §384.40]

384.41 Petition by property owners.

1. Property owners may initiate a plan for a public improvement to be paid for in whole or in part by special assessments, by written contract to be approved by the city and signed by all of the owners of record of all property affected by the proposed assessment. If all owners of record of all the property to be affected by the public improvement petition the council, said owners may, in their petition, waive notice to property owners by publication and mailing, as provided in section 384.50, and the council may proceed to adopt a preliminary resolution, a plat, schedule and estimate, and resolution of necessity, and order preparation of detailed plans and specifications. Special assessments initiated without notice under this section are liens upon the property to be affected by the assessment, to the same extent as provided in section 384.65, subsection 5, except that they shall be subordinate to any perfected lien unless the holder of such perfected lien consents in writing to the initiation of the public improvement.

2. A petition may be filed subsequent to the initiation by the council of a plan for a public improvement, and if the petition is received prior to advertising for bids, the public improvement petitioned for may be added by amendment to the resolution of necessity. If the petition is received subsequent to advertising for bids and prior to the completion of the work under contract, the council may, in its discretion, approve the petition and

contract with the contractor at a cost not to exceed the unit prices bid at public letting for the construction of the public improvements petitioned for by property owners.

3. This section does not limit the power of a city to initiate a public improvement project on its own motion.

4. Owners of commercial or industrial property may initiate a plan, under subsection 1 or 2, for the purchase of a traffic-control device, fixture, connection, or facility to be paid for in whole or in part by special assessments provided that the proposed assessments shall be made only against the commercial or industrial property owned by the petitioners.

[C31, 35, §6610-c7; C39, §**6610.13;** C46, 50, 54, 58, 62, 66, 71, 73, §417.7; C75, 77, 79, 81, §384.41]

92 Acts, ch 1176, §2

384.42 Procedure on public improvement.

To construct or repair a public improvement to be paid for in whole or in part by special assessments, the council shall proceed as follows:

1. Arrange for engineering services to prepare the plats, schedules, estimates of cost, plans, and specifications and to supervise construction of the proposed improvement.

2. Adopt a preliminary resolution by the vote of a majority of all the members of the council. The preliminary resolution shall contain the following:

a. A description of the types or alternate types of improvement proposed.

b. The beginning and terminal points or general location of the proposed improvement.

c. An order to the engineer to prepare preliminary plans and specifications, estimated total cost of the work, and a plat and schedule, and to file them with the clerk.

d. A general description of the property or a designation of the lots which the council believes will be specially benefited by the improvement.

3. The preliminary resolution may also contain the following:

a. A statement of the proportion of the total cost which the council proposes to assess against specially benefited property.

b. A short and convenient designation for the public improvement by which it may be referred to in all subsequent proceedings.

4. A preliminary resolution may include more than one improvement or class of improvement.

5. A single improvement may be in more than one locality or street, and that portion of the street which has been improved by any railway, or which the city may require the railway to improve under franchise or contract, may be excluded.

[C50, §391A.4; C54, 58, 62, 66, 71, 73, §391A.5; C75, 77, 79, 81, §384.42]

384.43 Preliminary plans.

Preliminary plans and specifications must only be in sufficient detail to advise any person interested of the general nature, character, and type of the improvement.

[C54, 58, 62, 66, 71, 73, §391A.6; C75, 77, 79, 81, §384.43]

384.44 Estimated cost.

The estimated total cost of any public improvement constructed under this part must include all of the items of cost listed in section 384.37, subsection 26, which the council proposes to include as a part of the cost of the public improvement, and may include an item to be known as the default fund amounting to not more than ten percent of the portion of the total cost of the improvement which the council proposes to assess against specially benefited property.

[C50, §391A.25; C54, 58, 62, 66, 71, 73, §391A.7; C75, 77, 79, 81, §384.44]

384.45 Plats.

The plat as prepared and filed by the engineer must show the following information:

1. The boundaries of the district containing the lots proposed to be assessed.

2. The location of each lot under separate ownership within the district, including the property of all railways and utilities subject to assessment.

3. The location of the improvement within the district, together with the terminal points of all major parts proposed to be assessed.

4. The type and general details of the improvement.

[C97, §965; S13, §849-b, 965; SS15, §840-k; C24, 27, 31, 35, 39, §**5993, 6081, 6913;** C46, §391.20, 395.3, 420.265; C50, §391.20, 391A.5, 395.3, 420.265; C54, 58, 62, §391.20, 391A.8, 395.3, 420.265; C66, 71, 73, §390A.9, 391.20, 391A.8, 395.3, 420.265; C75, 77, 79, 81, §384.45]

384.46 Lot valuations.

Upon completion of the plat, the council shall determine the valuation of each lot within the proposed assessment district and shall report the valuations to the engineer, who shall show such valuations on the schedule before it is filed with the clerk. A valuation must be the present fair market value of the property with the proposed public improvement completed. As an aid in determining valuations, the council may appoint a committee of three persons skilled in the knowledge of real estate values within the city to appraise the present fair market value of each lot within a district and to file a written report of its appraisals with the council.

[C31, 35, §6610-c4; C39, §**6610.08;** C46, 50, §417.4; C54, 58, 62, 66, 71, 73, §391A.9, 417.4; C75, 77, 79, 81, §384.46]

384.47 Schedule.

The schedule, as prepared by the engineer, must show the following information for each lot within the district:

1. A description and parcel number of each lot and the name of the property owner.

2. The valuation of each lot as determined by the council.

3. The total amount proposed to be assessed to each lot, including the assessment for the default fund, if any.

4. The proportion of the estimated total cost of the public improvement which is allocated to each lot.

5. The amount of deficiency, if any, between the amount proposed to be assessed and the proportion of the estimated total cost of the public improvement allocated to each lot. The amount of deficiency shall be shown as a conditional deficiency assessment as authorized by sections 384.60, 384.62 and 384.63.

[C97, §965; S13, §849-b, 965; SS15, §751, 840-k; C24, 27, 31, 35, 39, §**5993, 6081, 6913;** C46, §391.20, 395.3, 420.265; C50, §391.20, 391A.6, 395.3, 420.265; C54, 58, 62, §391.20, 391A.10, 395.3, 420.265; C66, 71, 73, §390A.9, 391.20, 391A.10, 395.3, 420.265; C75, 77, 79, 81, §384.47]

98 Acts, ch 1107, §11

384.48 Adoption of plat.

When the plat, schedule, and estimate of cost have been filed, the council may, before adopting a proposed resolution of necessity, cause the estimate, valuation, or assessment of any lot or the boundaries of the district as reported by the engineer to be amended, and may adopt the plat, schedule, and estimate as amended or as filed.

[C50, §391A.8; C54, 58, 62, 66, 71, 73, §391A.11; C75, 77, 79, 81, §384.48]

384.49 Resolution of necessity.

If, upon adoption of the plat, schedule, and estimate, the council determines to proceed with all or any part of the public improvement, it shall cause a proposed resolution of necessity to be prepared and introduced.

1. The resolution of necessity must include all of the following:

a. A brief description of the proposed public improvement.

b. A statement that there is on file in the office of the clerk an estimated total cost of the work, and a preliminary plat and schedule showing the amount proposed to be assessed to each lot for the improvement.

c. The date, time, and place the council will hear property owners subject to the assessment and interested parties for or against the improvement, its cost, the assessment, or the boundaries of the district.

2. A resolution of necessity may include:

a. Any number of streets or sewer lines for improvement.

b. All improvements which are included in the preliminary resolution.

c. A provision that unless a property owner files objections with the clerk at the time of hearing on the resolution of necessity, the property owner is deemed to have waived all objections pertaining to the regularity of the proceeding and the legality of using the special assessment procedure.

3. *a.* To replace curbing and gutters in cities with a population of less than ten thousand, the council may adopt a preliminary resolution as provided in subsection 1. The description of the curbing and gutters to be replaced shall be prepared under the council's supervision. The council may, by resolution, provide for the computation of the assessments on the basis of the original assessment or of the lineal footage of the curbing and gutters to be replaced. Public improvements initiated under this subsection shall in all other respects comply with this division.

b. For purposes of this subsection, *"replace"* means to substitute new curb and gutter at the same location where old curb and gutter is located and being reconstructed due to deterioration or destruction. *"Replace"* does not include the reconstruction of curb and gutter to change the grade or reconstruction required because of a street widening project.

[C73, §465, 466; C97, §791, 810; S13, §849-c; SS15, §751, 810, 840-j, 840-m; C24, §5942, 5991, 5992; C27, §5942-b2, 5991, 5992, 5995, 6082; C31, 35, §5942-b2, 5991, 5992, 5995, 6082, 6610-c17; C39, §**5942.2, 5991, 5992, 5995, 6082, 6610.16;** C46, §389.6, 391.18, 391.19, 391.22, 395.4, 417.17; C50, §389.6, 391.18, 391.19, 391.22, 391A.9, 395.4, 417.17; C54, 58, 62, §389.6, 391.18, 391.19, 391.22, 391A.12, 395.4, 417.17; C66, 71, 73, §389.6, 390A.7, 390A.8, 390A.11, 391.18, 391.19, 391.22, 391A.12, 395.4, 417.17; C75, 77, 79, 81, §384.49; 82 Acts, ch 1087, §1]

384.50 Notice of hearing.

The clerk shall publish notice of the date, time, and place of the hearing once each week for two consecutive weeks in the manner provided by section 362.3, the first publication of which shall be not less than ten days before the date of the hearing. The notice must be in substantially the following form:

NOTICE TO PROPERTY OWNERS

Notice is given that there is now on file for public inspection in the office of the clerk of . . . . . , Iowa, a proposed resolution of necessity, an estimate of cost, and a plat and schedule showing the amounts proposed to be assessed against each lot and the valuation of each lot within a district approved by the council of . . . . . , Iowa, for a . . . . . improvement of the type(s) and in the location(s) as follows:

The council will meet at . . . . o'clock . . . . m., on . . . . . (date), at the . . . . . , at which time the owners of property subject to assessment for the proposed improvement or any other person having an interest in the matter may appear and be heard for or against the making of the improvement, the boundaries of the district, the cost, the assessment against any lot, or the final adoption of a resolution of necessity. A property owner will be deemed to have waived all objections unless at the time of hearing the property owner has filed objections with the clerk.

. . . . . .
Clerk

Not less than fifteen days before the hearing, the clerk shall send a copy of the notice by mail to each property owner whose property is subject to assessment for the improvement at the address as shown by the records of the county auditor. If a property is shown to be in the name of more than one owner at the same mailing address, a single notice may be mailed addressed to all owners at that address. Failure to receive a mailed notice is not a defense to the special assessment.

[C97, §810, 823, 824, 965, 971; S13, §823, 840-a, 849-c, 965, 971; SS15, §810, 840-l, -r; C24, 27, §5997, 6026, 6029, 6083, 6092, 6901, 6914; C31, 35, §5997, 6026, 6029, 6083, 6092, 6610-c9, 6610-c10, 6901, 6914; C39, §**5997, 6026, 6029, 6083, 6092, 6610.21, 6610.22, 6901, 6914;** C46, §391.24, 391.53, 391.56, 395.5, 395.14, 417.9, 417.10, 420.253, 420.266; C50, §391.24, 391.53, 391.56, 391A.10, 395.5, 395.14, 417.9, 417.10, 420.253, 420.266; C54, 58, 62, §391.24, 391.53, 391.56, 391A.13, 395.5, 395.14, 417.9, 417.10, 420.253, 420.266; C66, 71, 73, §390A.13, 390A.27, 390A.29, 391.24, 391.53, 391.56, 391A.13, 395.5, 395.14, 417.9, 417.10, 420.253, 420.266; C75, 77, 79, 81, §384.50]

86 Acts, ch 1241, §9; 2000 Acts, ch 1058, §62

384.51 Adoption of resolution.

The council shall meet as specified in the published notice, and after hearing all objections and endorsements from property owners and other persons having an interest in the matter, and after considering all filed, written objections, may adopt or amend and adopt the proposed resolution of necessity, or may defer action until a subsequent meeting. A resolution of necessity requires for passage the vote of three-fourths of all the members of the council, or, in cities having but three members of the council, the vote of two members, and where a remonstrance has been filed with the clerk, signed by the owners subject to seventy-five percent of the amount of the proposed assessments for the entire public improvement included in the resolution of necessity, a resolution of necessity requires a unanimous vote of the council.

An amendment which extends the boundaries of a district, increases the amount to be assessed against a lot, or adds additional public improvements, is not effective until an amended plat, schedule, and estimate have been prepared and adopted, a notice published and mailed to all affected property owners, and hearing held in the same manner as the original proceedings, or until all affected property owners agree in writing to the change. The adoption of a resolution of necessity is a legislative determination that the improvement is expedient and proper and that property assessed will be specially benefited by the improvement and this determination of the council is conclusive. Ownership of property to be assessed by an improvement does not, except for fraud or bad faith, disqualify a council member from voting on any measure.

After adopting the resolution of necessity, the clerk shall certify to the county treasurer of each county in which the assessed property is located, a copy of the resolution of necessity, the plat, and the schedule of assessments. In counties in which taxes are collected in two or more places, the resolution of necessity, the plat, and the schedule of assessments shall be certified to the office of county treasurer where the special assessments are collected. The county treasurer shall preserve the resolution, plat, and schedule as a part of the records of the office until the city certifies the final assessment schedule as provided in section 384.60 or certifies that the public improvement has been abandoned.

[C73, §466; C97, §793, 794, 810, 811, 965; S13, §792-b, 793, 965; SS15, §810, 840-m; C24, 27, §5996, 5999, 6915; C31, 35, §5996, 5999, 6610-c15, 6610-c16, 6915, 6915-c1; C39, §**5996, 5999, 6610.26, 6610.28, 6915, 6915.1;** C46, §391.23, 391.26, 417.15, 417.16, 420.267, 420.268; C50, §391.23, 391.26, 391A.11, 417.15, 417.16, 420.267, 420.268; C54, 58, 62, §391.23, 391.26, 391A.14, 417.15, 417.16, 420.267, 420.268; C66, 71, 73, §390A.12, 391.23, 391.26, 391A.14, 417.15, 417.16, 420.267, 420.268; C75, 77, 79, 81, §384.51; 82 Acts, ch 1104, §15]

86 Acts, ch 1241, §10; 89 Acts, ch 39, §11

384.52 Detailed plans and specifications.

After adopting a resolution of necessity, the council may, by resolution, order the engineer to prepare and file with the clerk detailed plans and

specifications, and order the engineer and city attorney, or any attorney designated by the council, to prepare and file with the clerk a notice to bidders and form of contract.

[C97, §965; S13, §965; C24, 27, 31, 35, 39, §**6915;** C46, §420.267; C50, §391A.12, 420.267; C54, 58, 62, 66, 71, 73, §391A.15, 420.267; C75, 77, 79, 81, §384.52]

384.53 Procedures to let contract.

Contract letting procedures shall be as provided in division VI of this chapter. The council may award any number of contracts for construction of any public improvement.

[C97, §791, 812; S13, §840-a; C24, 27, 31, 35, 39, §**6001;** C46, 50, 54, 58, 62, 66, 71, 73, §391.28; C75, 77, 79, 81, §384.53]

384.54 Confirmation by decree.

At any time after final adoption of the resolution of necessity, but before awarding the contract, the council may proceed as follows:

1. To direct the city attorney to file, in the district court of the county in which the property proposed to be assessed is located, a petition praying that the acts done by the council relative to the proposed public improvement be confirmed by decree.

2. The following must be filed with the petition in the office of the clerk of the court:

a. A copy of the resolution of necessity as adopted by the council.

b. A copy of the proposed schedule of assessments as adopted by the council under sections 384.48 and 384.51, which schedule shows the maximum amount that the council proposes to assess against any lot.

c. Preliminary plans and specifications, or, if available, detailed plans and specifications as prepared by the engineer.

d. A copy of the proposed contract if prepared.

3. Notice of the filing of the petition must be given in the same manner as is provided for service of original notice by publication by the rules of civil procedure, except as follows:

a. No affidavit of inability to obtain personal service within the state of Iowa is required.

b. The original notice must name as defendants those property owners who, on the date of filing the petition, have an interest in the real property to be assessed as a part of the public improvement, and the original notice must state that a plat and schedule is on file in the office of the clerk of the district court where the action is pending. No property owner is an indispensable party to the action. Publication of plat and schedule as part of the original notice is not required, nor shall reference in the original notice to specific descriptions of affected real property or the amounts of proposed assessments be necessary.

4. The petition must be given precedence over any other business of the court, except criminal cases. The court shall set the petition for hearing within thirty days from the date of final publication of notice. As a part of its order, the court may provide for a pretrial conference to be held not earlier than twenty days from the date of final publication of notice and require the appearance at the pretrial conference of all interested parties. Failure to appear at the pretrial conference may be grounds for dismissing any objection.

5. If no person having an interest in property proposed to be assessed has entered an appearance or filed an answer within the time set for hearing on the petition, the court shall confirm the assessment, and order the clerk of court to certify its decree to the city clerk.

6. If any person having an interest in property proposed to be assessed has entered an appearance or filed an answer to the petition, the court shall hear the cause as an action triable in equity.

7. Upon the hearing the court may correct any irregularities or inequalities in valuations or in the schedule of assessments, and shall consider any objections because of alleged illegal procedure or fraud.

8. The court shall render a decision upon the hearing as soon as practical after the final submission of the cause.

9. The clerk of the court shall certify to the city clerk the final action of the court, within three days from the date of the final decree upon the petition, showing assessments as confirmed in the schedule of assessments.

10. An appeal from the decree of the district court must be taken as in other equity cases.

11. A contract may or may not be let, in the discretion of the council, until appeals are finally determined, but the appeals need not delay the letting and execution of a contract for the work, if the council concludes the appeals were not taken in good faith.

12. An appeal does not, in the discretion of the council, delay the certification of an assessment or progress of an improvement, but upon decision of the appeal the assessment appealed from must be corrected and collected in the same manner as provided in section 384.74.

13. Corrections of assessments or valuations made by order of the district court are conclusive and not subject to review on appeal, or otherwise, except as provided in subsections 10 to 12 of this section. When court confirmation is obtained there is no right of appeal under the provisions of section 384.66.

14. If no contract is entered into within ninety days from the date of confirmation by the district court or within a further time allowed by the court on subsequent application, and if no appeal is pending, the court shall cancel the assessment, upon application of the city attorney.

15. The cost of all court proceedings are a legitimate item of expense in connection with a public

improvement, and may be included within the final assessment against any property specially benefited in the assessment district.

Whenever on a hearing by the court, the amount of any assessment is reduced or canceled so that there is a deficiency in the total amount remaining assessed in the proceeding, the court may assess the deficiency to the city or distribute the deficiency upon the other property abutting upon or adjacent to the improvement or in the district assessed, in a manner the court finds to be just and equitable, not exceeding, however, the amount the property would be specially benefited by the improvement, and not exceeding twenty-five percent of the value of the lot as shown by the plat and schedule of assessments or as reduced by the court.

[C31, 35, §6610-c28, -c31, -c32, -c34 – c40, -c42 – c44, -c56; C39, §**6610.31 – 6610.33, 6610.36 – 6610.41, 6610.43, 6610.44, 6610.46, 6610.65, 6610.67;** C46, 50, §417.28, 417.31, 417.32, 417.34 – 417.40, 417.42 – 417.44, 417.60; C54, 58, 62, 66, 71, 73, §391A.18, 417.28, 417.31, 417.32, 417.34 – 417.40, 417.42 – 417.44, 417.60; C75, 77, 79, 81, §384.54]

384.55 Notice of paving to water board.

In cities having a water utility under the management of a board of trustees and in which water connections are not installed by the trustees at public expense, the council shall notify the board at the time of the adoption of a preliminary resolution, of any proposed street paving projects. The board shall report to the council the number of connections from water mains in streets to the curb lines of the proposed improvement necessary to serve private property dependent upon those particular mains for water supply, and the numbers of the lots to be served by the connections, and the names of the owners. Notice must be given to property owners, at the same time and in the same manner as the notice provided in section 384.50, to install the necessary connections within thirty days after hearing. For the purposes of the hearing, property owners who are notified to install water connections, but whose property is not within the proposed assessment district, may appear as interested parties. If upon hearing, the council determines to proceed with the improvement, and any property owner fails to make connections as required, the board of waterworks trustees shall cause them to be made and certify the cost to the council to be assessed against the property and collected in the same manner as provided in section 384.40 for other underground connections.

[C97, §809; S13, §779, 792-f; C24, 27, 31, 35, 39, §**5892, 5893;** C46, §391.9, 391.10; C50, §391.9, 391.10, 391A.17; C54, 58, 62, 66, 71, 73, §391.9, 391.10, 391A.20; C75, 77, 79, 81, §384.55]

384.56 State lands.

1. Cities may assess the cost of a public improvement which extends through, abuts upon, or is adjacent to lands owned by the state, and the executive council shall pay the assessable portion of the cost of the improvement through or along the lands as provided. The executive council shall pay assessments as provided in section 307.45.

2. When a state park or institutional road abutting on or adjacent to state lands on one side of the road is improved by paving, the state shall pay one-half the total assessed cost of the portion of the improvement abutting, or adjacent to state lands, lots, or portions thereof, but for any other type of improvement so constructed and located, the state shall pay, as provided in section 307.45, the portion of the cost which would be assessable against state lands if they were privately owned.

3. When any portion of the cost of a public improvement is to be paid by the state under this section, the clerk shall, at the time of publication of the notice required by section 384.50, mail a copy of the notice to the secretary of the executive council.

4. Cities in which state buildings are located shall permit sewers for such buildings to be constructed through or under the streets of the city, and connections to be made to the sewer system of the city under the same regulations as for sewer connections to private property.

5. Subsections 1 and 3 of this section do not apply to lands under the jurisdiction and control of the department of transportation.

[C97, §794; C24, 27, 31, 35, 39, §**5988;** C46, §391.15; C50, §391.15, 391A.18; C54, 58, 62, §391.15, 391A.21; C66, 71, 73, §390A.22, 391.15, 391A.21; C75, 77, 79, 81, §384.56]

86 Acts, ch 1241, §11

384.57 Monthly payments.

The city may contract to pay not to exceed ninety-five percent of the engineer's estimated value of the acceptable work completed during the month to the contractor at the end of each month. Payment may be made in warrants drawn on any funds from which payment for the work may be made. If such funds are depleted, anticipatory warrants may be issued bearing a rate of interest not exceeding that permitted by chapter 74A, which do not constitute a violation of section 384.10, even if the collection of taxes or special assessments or income from the sale of bonds applicable to the public improvement is after the end of the fiscal year in which the warrants are issued. If the city arranges for the private sale of anticipatory warrants, they may be sold and the proceeds used to pay the contractor. Anticipatory warrants may also be used to pay other persons furnishing services constituting a part of the cost of the public improvement. The provisions of this section and section 384.58 shall not apply if the city has entered into a contract with the federal government

or accepted a federal grant which is governed by federal laws or rules that are contrary to this section and section 384.58.

[C50, §391A.19; C54, 58, 62, 66, 71, 73, §391A.22; C75, 77, 79, 81, §384.57; 81 Acts, ch 127, §1]

384.58 Inspection of work.

1. The engineer for the city shall inspect all work done under this division, and within fifteen days of final completion of the public improvement, the engineer shall file a certificate with the clerk stating:

a. That the engineer has inspected the completed work.

b. That the work has or has not been performed in compliance with the terms of the contract, and the particulars, if any, in which the work varies from the terms.

c. The total cost of the completed work.

2. Within fifteen days after the filing of the engineer's certificate, the council shall by resolution accept or reject the work.

3. Upon accepting the work, or within ten days thereafter, the council shall ascertain the total cost and by resolution determine the proportion or amount of the cost to be assessed against private property within the assessment district. If the council has elected to award more than one contract for the work, the council may elect to proceed separately with the acceptance and levy of assessments for the work done under each contract.

4. Upon accepting the work, the council shall order payment of any amount due the contractor, to be made by warrants issued in the manner provided by section 384.57 or by other means. The city shall order payment of any amount due the contractor to be made in accordance with the terms of the contract. Failure to make payment within seventy days after the work under the contract has been completed and if the work has been accepted and all required materials, certifications, and other documentations required to be submitted by the contractor and specified by the contract have been furnished the awarding city by the contractor, shall cause interest to accrue on the amount unpaid to the benefit of the unpaid party. Interest shall not accrue on funds retained by a city to satisfy the provisions of section 573.14 regarding claims on file. Interest shall accrue during the period commencing the thirty-first day following the completion of work and satisfaction of the other requirements of this subsection and ending on the date of payment. The rate of interest shall be determined, by the period of time during which interest accrues, and shall be the same as the rate of interest that is in effect under section 12C.6, as of the day interest begins to accrue, for a deposit of public funds for a comparable period of time. Nothing contained in this subsection shall abridge any of the rights set forth in section 573.16.

[C97, §820, 822; S13, §779, 792-f, 820, 840-a; SS15, §840-r; C24, 27, §6018, 6025; C31, 35, §6018, 6025, 6610-c52, 6610-c54; C39, §**6018, 6025, 6610.53, 6610.56;** C46, §391.45, 391.52, 417.56, 417.58; C50, §391.45, 391.52, 391A.20, 417.56, 417.58; C54, 58, 62, 66, 71, 73, §391.45, 391.52, 391A.23, 417.56, 417.58; C75, 77, 79, 81, §384.58; 81 Acts, ch 127, §2]

384.59 Assessment schedule.

1. Within thirty days after the council adopts a resolution fixing the amount to be assessed against private property, the engineer shall file with the clerk an assessment schedule showing:

a. A description and parcel number of each lot to be assessed.

b. The valuation of each lot as fixed by the council.

c. The amount to be assessed against each lot, which shall include the assessment for the default fund, if any, and the amount of deficiency, if any, which may be subsequently assessed against each lot under section 384.63.

2. In the case of the abatement of a nuisance by a city, the city clerk may prepare, sign, and file the assessment schedule and other related documents that would otherwise be required of the engineer.

[C97, §821; S13, §792-f; SS15, §840-r; C24, §6022, 6023; C31, 35, §6022, 6023, 6610-c19; C39, §**6022, 6023, 6610.45;** C46, §391.49, 391.50, 417.19; C50, §391.49, 391.50, 391A.21, 417.19; C54, 58, 62, §391.49, 391.50, 391A.24, 417.19; C66, 71, 73, §390A.24, 391.49, 391.50, 391A.24, 417.19; C75, 77, 79, 81, §384.59]

97 Acts, ch 121, §10; 2002 Acts, ch 1046, §1

Unnumbered paragraph 1 and subsections 1 – 3 redesignated as subsection 1, unnumbered paragraph 1 and paragraphs a – c respectively

NEW subsection 2

384.60 Adoption of schedule.

1. Within ten days after filing of the assessment schedule, the council shall meet, consider, and adopt or amend and adopt, by resolution, the final assessment schedule. The resolution must:

a. Confirm and levy assessments, including a conditional levy of the amount of deficiencies which may be subsequently assessed against each lot under section 384.63.

b. State the number of annual installments, not exceeding fifteen, into which assessments of one hundred dollars or more are divided.

c. Provide for interest on all unpaid installments at a rate not exceeding that permitted by chapter 74A.

d. State the time when assessments are payable.

e. Direct the clerk to certify the final schedule to the treasurer of the county or counties in which the assessed property is located, and to publish notice of the schedule once each week for two consecutive weeks in the manner provided in section 362.3, the first publication of which shall be not

more than fifteen days from the date of filing of the final schedule.

2. On or before the second publication of the notice, the clerk shall send by mail to each property owner whose property is subject to assessment for the improvement, as shown by the records in the office of the county auditor, a copy of the notice. The notice shall also include a statement in substance that assessments may be paid in full or in part without interest within thirty days after the date of the first notice of the final assessment schedule, and thereafter all unpaid special assessments bear interest at the rate specified by the council, but not exceeding that permitted by chapter 74A, computed to the December 1 next following the due dates of the respective installments as provided in section 384.65, subsection 3, and each installment will be delinquent from October 1 following its due date, including those instances when the last day of September is a Saturday or Sunday, and will draw additionally the same delinquent interest as ordinary taxes. The notice shall also state substantially that property owners may elect to pay any installment semiannually in advance. If a property is shown by the records to be in the name of more than one owner at the same mailing address, a single notice may be mailed to all owners at that address. Failure to receive a mailed notice is not a defense to the special assessment or interest due on the special assessment.

3. The county treasurer shall enter on the county system the amounts to be assessed against each lot within the assessment district, as certified.

[R60, §1068; C73, §481; C97, §825, 826, 827, 982; S13, §791-c, 825, 849-e; SS15, §840-r; C24, 27, §5966, 6030, 6034, 6101, 6923; C31, 35, §5966, 6030, 6034, 6101, 6610-c45, 6923; C39, §**5966, 6030, 6034, 6101, 6610.47, 6923;** C46, §389.35, 391.57, 391.61, 395.23, 417.45, 420.276; C50, §389.35, 391.57, 391.61, 391A.22, 395.23, 417.45, 420.276; C54, 58, 62, §389.35, 391.57, 391.61, 391A.25, 395.23, 417.45, 420.276; C66, 71, 73, §389.35, 390A.30, 391.57, 391.61, 391A.25, 395.23, 417.45, 420.276; C75, 77, 79, 81, §384.60; 82 Acts, ch 1104, §16]

83 Acts, ch 148, §1; 86 Acts, ch 1241, §12; 92 Acts, ch 1016, §8; 97 Acts, ch 121, §11; 98 Acts, ch 1107, §12, 13

384.61 Assessment of benefits.

The total cost of a public improvement, except for paving that portion of a street lying between railroad tracks and one foot outside of the tracks, or which is to be otherwise paid, must be assessed against all lots within the assessment district in accordance with the special benefits conferred upon the property, and not in excess of such benefits.

If an owner of property subject to special assessment divides the property into two or more lots, and if the plan of division is approved by the council, the owner may discharge the lien upon any of the lots by payment of the amount unpaid, calculated as determined by the council.

[C97, §828; S13, §792-a, -f, 849-e; SS15, §840-a, -j, -r; C24, §6021, 6036, 6089; C27, §5942-b3, 6021, 6036, 6089; C31, 35, §5942-b3, 6021, 6036, 6089, 6610 – 6620; C39, §**5942.3, 6021, 6036, 6089, 6610.14;** C46, §389.7, 391.48, 391.63, 395.11, 417.20; C50, §389.7, 391.48, 391.63, 391A.23, 395.11, 417.20; C54, 58, 62, 66, 71, 73, §389.7, 391.48, 391.63, 391A.26, 395.11, 417.20; C75, 77, 79, 81, §384.61]

384.62 Limit.

A special assessment against a lot for a public improvement may not be in excess of the amount of the assessment, including the conditional deficiency assessment, as shown in the schedule confirmed by the court, or if court confirmation is not utilized, then on the original plat and schedule adopted by the council, and an assessment may not exceed twenty-five percent of the value of the lot as shown by the plat and schedule approved by the council or as reduced by the court.

Special assessments for the construction or repair of underground connections for private property for gas, water, sewers, or electricity may be assessed to each lot for the actual cost of each connection for that lot, and the twenty-five percent limitation does not apply. Such connections shall not be installed to service railway right of way without written agreement with the railway company owning or leasing the right of way.

A special assessment for a public improvement against a tract of land used and assessed as agricultural property shall not become payable upon the filing of a request by the owner for deferment until that land is not used and assessed as agricultural property. At the time of the change in the use of the property, the special assessment shall become payable in the same manner as the special assessment would have become payable had it not been deferred by this section. This section shall not apply to a tract of land of less than one-quarter acre surrounding any dwelling or nonfarm structure on that tract nor shall it apply to a special assessment levied before July 3, 1978. This section shall not apply if the public improvement is a sewer, water, gas or electrical line to which the owner of the land makes a connection.

Payment of installments of special assessments for a public improvement against property used and assessed as agricultural property shall be deferred as follows:

1. The property owner who seeks deferment of an assessment shall file a written request for deferment with the city clerk at the time of the hearing on the resolution of necessity for the public improvement or within ten days following the date of the hearing and the request shall identify those lots subject to proposed assessments for which the

property owner is seeking deferment which are used and assessed as agricultural property. The request may be withdrawn by the property owner at any time before or after the adoption of the resolution of necessity.

2. The city shall indicate those lots for which a deferment has been requested on the special assessment schedule.

3. After the assessments for the public improvement have been levied and the special assessment schedule has been filed with the county treasurer, the county treasurer shall indicate on the tax rolls those assessments subject to deferment under this section.

4. An owner of property subject to an assessment that may be deferred may file a statement at any time up to six months before the assessment installment is due stating that a written request for deferment of such assessments is filed with the city clerk and that the entire lot subject to such assessment has continued to be and is still used and assessed as agricultural property. The collection of that installment and any other unpaid portion of the assessment shall be deferred until the next July 1 and subsequent installments may thereafter be deferred in the same manner for successive years in which a statement is filed.

[S13, §792-a, -f, 849-e; SS15, §840-a, -j, -r; C24, 27, §6021, 6089; C31, 35, §6021, 6089, 6610-c55; C39, §**6021, 6089, 6610.66;** C46, §391.48, 395.11, 417.59; C50, §391.48, 391A.24, 395.11, 417.59; C54, 58, 62, 66, 71, 73, §391.48, 391A.27, 395.11, 417.59; C75, 77, 79, 81, §384.62; 82 Acts, ch 1104, §17]

384.63 Insufficiency — certification to county treasurer — deficiency assessment.

1. If the special assessment which may be levied against a lot is insufficient to pay its proportion of the cost of the improvement, or if no special assessment may be levied against a lot, the deficiency shall be paid from the city fund or funds designated by the council.

2. The council shall, by resolution, provide that the deficiencies for the lots specially benefited by a public improvement shall be certified to the county treasurer, who shall record them in the county system as "special assessment deficiencies", and to the appropriate city official charged with the responsibility of issuing building permits, who shall notify the council when a private improvement is subsequently constructed on any lot subject to a deficiency. Certification to the county treasurer shall include a legal description of each lot. The period of amortization for a public improvement for which there are deficiencies shall commence with the adoption of the resolution of necessity and extend for the same period for which installments of assessments for the project are made payable. Deficiencies may be assessed only during the period of amortization, which shall also be certified to the county treasurer and the city official charged with the responsibility of issuing building permits. Certification to the county treasurer shall include a legal description of each lot.

3. When a private improvement is constructed on a lot subject to a deficiency, during the period of amortization, the council shall, by resolution, assess a pro rata portion of the deficiency on that lot, in the same proportion to the total deficiency on that lot as the number of future installments of special assessments remaining to be paid is to the total number of installments of assessments for the project, subject to the twenty-five percent limitation of section 384.62. A deficiency assessment becomes a lien on the property and is payable in the same manner, and subject to the same interests as the other special assessments. The council shall direct the clerk to certify a deficiency assessment to the county treasurer, and to send a notice of the deficiency assessment by mail to each owner, as provided in section 384.60, subsection 5, but publication of the notice is not required.

4. An owner may appeal from the amount of the assessment within thirty days of the date notice is mailed. County officials shall collect a deficiency assessment, commencing in the year following the assessment, in the manner provided for the collection of other special assessments. Upon collection, the county treasurer shall make the appropriate credit entries in the county system, and shall credit the amounts collected as provided for other special assessments on the same public improvement, or to the city, to the extent that the deficiency has been previously paid from other city funds.

[S13, §792-b; C24, 27, 31, 35, 39, §**6017;** C46, §391.44; C50, §391.44, 391A.25; C54, 58, 62, §391.44, 391A.28; C66, 71, 73, §390A.19, 391.44, 391A.28; C75, 77, 79, 81, §384.63; 82 Acts, ch 1104, §18]

83 Acts, ch 90, §24; 86 Acts, ch 1241, §13; 92 Acts, ch 1016, §9; 97 Acts, ch 121, §12

384.64 Assessment to railway company.

The right of way of a railway company is subject to special assessments for public improvements, and such assessments constitute a debt due the city which is a paramount lien upon the track of the railway company owning or leasing the right of way within the limits of the city. The property of a railway to which a lien for unpaid special assessment has attached may not be released from the lien until the whole assessment is paid.

[C97, §816, 828; S13, §791-i, 792-f, 816; SS15, §840-r; C24, 27, 31, 35, 39, §**6009, 6010, 6013;** C46, §391.36, 391.37, 391.40; C50, §391.36, 391.37, 391.40, 391A.26; C54, 58, 62, 66, 71, 73, §391.36, 391.37, 391.40, 391A.29; C75, 77, 79, 81, §384.64]

384.65 Installments due.

1. The first installment of each assessment, or

the total amount if less than one hundred dollars, is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of acceptance of the work by the council to the first day of December following the due date.

2. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the September semiannual payment of ordinary taxes.

3. All future installments of an assessment may be paid on any date by payment of the then outstanding balance, plus interest to the next December 1, or additional annual installments may be paid after the current installment has been paid before December 1 without interest. A payment must be for the full amount of the next installment. If installments remain to be paid, the next annual installment with interest added to December 1 will be due as provided in subsection 2.

4. Each installment of an assessment with interest on the unpaid balance is delinquent from October 1 after its due date, including those instances when the last day of September is a Saturday or Sunday, and bears the same delinquent interest as ordinary taxes. When collected, the interest must be credited to the same fund as the special assessment.

5. From the date of filing of a certified copy of the resolution of necessity, the plat, and the schedule of assessments as provided in section 384.51, all special assessments with all interest become and remain a lien on the benefited properties until paid, and have equal precedence with ordinary taxes, and are not divested by any judicial sale.

6. After December 1, if a special assessment is not delinquent, a property owner may pay one-half or all of the next annual installment of principal and interest of a special assessment prior to the delinquency date of the installment. When the next installment has been paid in full, successive principal installments may be prepaid. The county treasurer shall accept the payments of the special assessment, and shall credit the next annual installment or future installments of the special assessment to the extent of the payment or payments, and shall remit the payments to the city. If a property owner elects to pay one or more principal installments in advance, the pay schedule shall be advanced by the number of principal installments prepaid.

7. Each installment of an assessment shall be equal to the amount of the unpaid assessment as computed on the thirty-first day after the certification of the assessment divided by the number of annual installments into which the assessment may be divided as adopted by the council pursuant to section 384.60.

8. Each installment of a special assessment shall be calculated to the nearest whole dollar. Interest on unpaid installments and interest added for delinquencies shall also be calculated to the nearest whole dollar. The minimum interest amount is one dollar.

[R60, §1068; C73, §478, 481; C97, §816, 825, 827, 974, 975; S13, §791-b, -c, 792-f, 816, 825, 840-a, 975; SS15, §840-r, 974; C24, 27, 31, 35, 39, §**5965, 5966, 6008, 6033, 6906 – 6908;** C46, §389.33 – 389.35, 391.35, 391.60, 420.258 – 420.260; C50, §389.33 – 389.35, 391.35, 391.60, 391A.27, 420.258 – 420.260; C54, 58, 62, 66, 71, 73, §389.33 – 389.35, 391.35, 391.60, 391A.30, 420.258 – 420.260; C75, 77, 79, 81, §384.65]

83 Acts, ch 90, §25; 83 Acts, ch 148, §2; 86 Acts, ch 1215, §1; 88 Acts, ch 1104, §1; 92 Acts, ch 1016, §10; 95 Acts, ch 57, §8; 98 Acts, ch 1107, §14; 99 Acts, ch 83, §6

384.66 Test of regularity.

1. A person having an interest in property subject to special assessment may, within twenty days after the adoption of a resolution of necessity, test the regularity of the proceedings or legality of the assessment procedure by a petition in equity filed in the district court of the county where the property is located. A petition does not stay further proceedings on the improvement by the council, unless there is also filed a bond in an amount and with security approved by the court.

2. A person having an interest in any property specially assessed may appeal from the amount of the assessment, at any stage of the special assessment procedure up to twenty days after the final publication of notice of filing of the final assessment schedule, by petition to the district court of the county where the property is located but such appeal is only to the amount of that assessment and does not stay further proceedings by the council on the improvement. No action shall be brought appealing the amount of any special assessment from and after twenty days after said final publication.

3. A person having an interest in property subject to special assessment has a right of appeal to the district court on the ground of fraud.

4. No action may be brought questioning the regularity of the proceedings pertaining to special assessments or the validity of any special assessment levied for any public improvement under this part, from and after sixty days after the final publication of notice of filing the final assessment schedule.

[C97, §839; S13, §792-c, -f, 840-a; SS15, §840-r; C24, 27, 31, 35, 39, §**6063 – 6065, 6091;** C46, §391.88 – 391.90, 395.13; C50, §391.88 – 391.90, 391A.28, 395.13; C54, 58, 62, 66, 71, 73, §391.88 – 391.90, 391A.31, 395.13; C75, 77, 79, 81, §384.66]

384.67 Payment to county treasurer.

Assessments levied and certified under the provisions of this division, including installments and interest, are payable at the office of the county treasurer of the county where the property assessed is located, except that assessments may be paid in full or in part and without interest within thirty days after the date of certification, at the office of the county treasurer, if the property being assessed is located in an unincorporated area, or the city clerk, if the property being assessed is located in an incorporated area except when the city council specifically provides payment to be made in the office of the county treasurer.

[C97, §825; S13, §825; C24, 27, 31, 35, 39, §**6031;** C46, §391.58; C50, §391.58, 391A.29; C54, 58, 62, 66, 71, 73, §391.58, 391A.32; C75, 77, 79, 81, §384.67]

384.68 Bonds issued.

1. After certification of the final assessment schedule, the city may, by resolution, authorize and issue bonds in anticipation of the collection of unpaid special assessments. However, the total principal amount of bonds issued for a public improvement may not exceed the total amount of unpaid special assessments less the proportionate unpaid amount assessed for the default fund.

2. All special assessment bonds are negotiable, must state on their face that they are issued under the provisions of this division, and are payable as to both principal and interest from the proceeds of the special assessments levied for the public improvement. Such bonds may bear interest at a rate not exceeding that permitted by chapter 74A payable annually or semiannually, must mature serially on December 1 of the years in which any of the principal is scheduled to become due, and may contain a provision that the city reserves the right and option of calling and redeeming any or all of the bonds prior to maturity on any interest payment date or within forty-five days thereafter upon the terms specified therein. Such bonds must be called "improvement bonds", must designate the general type of improvement or improvements for which issued, and may be issued in any denomination, not exceeding ten thousand dollars. Bonds issued for a public improvement authorized in section 384.38, subsection 2, must be named in a way to distinguish them from other improvement bonds of the city, and to designate the property specially assessed for the improvement. Improvement bonds issued for any one levy must bear the same date and be divided into as many series as there are years in which installments of the special assessment mature, and each series must be as nearly equal in amount as practicable.

3. The proceeds of the special assessments and interest collected thereon must be used and applied by the city to the payment of the interest on the bonds and to the retirement of the principal as rapidly as proceeds are collected. Such bonds and coupons do not make the city liable in any way, except for the proper application of special assessments. If interest becomes due on any of the bonds when there is no fund or funds from which to pay it, the council may make a temporary loan for payment of the interest, which loan must be repaid from the special assessments and interest pledged to secure the bonds, but in case of purchase by the city at tax sale of the property on which a special assessment is levied, the loan must be repaid from the funds of the city from which deficiencies on the improvement were paid, or if there were no deficiencies, from the general fund.

4. Special assessment bonds must be sold at public or private sale in the manner provided by chapter 75, and may not be sold for less than par value with accrued interest from date to the time of delivery, or if no bids are received at public sale, bonds bearing the same rate of interest as the special assessment may be delivered to the contractor in payment of the cost of the public improvement. The proceeds of the sale must be applied to the payment of the cost of the public improvement.

5. Any excess of proceeds from special assessments remaining after all of the bonds for a particular improvement have been paid with interest may be credited to the fund from which deficiencies for the improvement could have been paid. However, any excess in a default fund established for a public improvement authorized in section 384.38, subsection 2, shall be held by the city in a special fund to guarantee other improvement bonds which may be issued by the city for public improvements authorized under that section.

6. Cities may issue refunding bonds to pay off and take up special assessment bonds issued in payment for public improvements, or to refund any part thereof, as follows:

a. Refunding bonds must substantially conform to the provisions of this division, and the face value is limited to the amount of the unpaid special assessments with the interest thereon of the particular issue of bonds to be refunded.

b. Refunding bonds or their proceeds may be used only to pay improvement bonds taken up.

c. The expense of refunding bonds must be paid out of the funds of the city from which the cost of similar improvements might lawfully be paid.

d. When refunding bonds are issued to pay improvement bonds, all special assessments and sinking funds applicable to the payment of the improvement bonds previously issued must be applied in the same manner and to the same extent to the payment of the refunding bonds, and all the powers and duties to levy and to carry special assessments and taxes, to create liens upon property, and to establish sinking funds in respect to the bonds previously issued continue until refunding bonds are paid.

e. The city shall collect the special assessment

out of which the refunding bonds are payable and hold the proceeds in trust for the payment of the refunding bonds, but it is not liable except for the proper application of the assessments.

7. No action shall be brought questioning the legality of the bonds authorized by this section from and after sixty days from the date the bonds are ordered issued by the city.

[C97, §842, 843, 845, 847, 987; C24, §6109 – 6113, 6117, 6118, 6121 – 6124, 6925, 6932; C27, §5942-b3, 6066-a11, 6109 – 6113, 6117, 6118, 6121 – 6124, 6126-a1 – a6, 6925, 6932; C31, 35, §5942-b3, 6066-a11, 6109 – 6113, 6117, 6118, 6121 – 6124, 6126-a1 – a6, 6610-c65, -c66, 6925, 6932; C39, §**5942.3, 6066.13, 6109 – 6113, 6117, 6118, 6121 – 6124, 6126.1 – 6126.6, 6610.71, 6610.72, 6925, 6932;** C46, §389.7, 392.11, 396.6 – 396.10, 396.14, 396.15, 396.18 – 396.21, 396.24 – 396.29, 417.68, 417.69, 420.278, 420.285; C50, §389.7, 391A.30, 392.11, 396.6 – 396.10, 396.14, 396.15, 396.18 – 396.21, 396.24 – 396.29, 417.68, 417.69, 420.278, 420.285; C54, 58, 62, 66, 71, 73, §389.7, 391A.33, 392.11, 396.6 – 396.10, 396.14, 396.15, 396.18 – 396.21, 396.24 – 396.29, 417.68, 417.69, 420.278, 420.285; C75, 77, 79, 81, §384.68]

384.69 Property sold at tax sale.

Property against which a special assessment has been levied for public improvements may be sold for any sum of principal or interest due and delinquent, at any regular or adjourned tax sale in the same manner with the same forfeitures, interest, right of redemption, certificates, and deeds, as for the nonpayment of ordinary taxes. The purchaser at a tax sale, other than the county, takes the property charged with the lien of the remaining unpaid installments and interest. When bonds have been issued in anticipation of special assessments and interest for which property is to be sold, the city may be a purchaser and is entitled to all rights of purchasers at tax sales. The proceeds subsequently realized from sales of property so purchased by the city must be credited to the funds of the city from which deficiencies on the improvement were paid, or if there were no deficiencies, to the general fund.

[C97, §829, 976, 983; SS15, §840-r; C24, 27, 31, 35, 39, §**6037 – 6040, 6909 – 6911, 6924;** C46, §391.64 – 391.67, 420.261 – 420.263, 420.277; C50, §391.64 – 391.67, 391A.31, 420.261 – 420.263, 420.277; C54, 58, 62, 66, 71, 73, §391.64 – 391.67, 391A.34, 420.261 – 420.263, 420.277; C75, 77, 79, 81, §384.69]

92 Acts, ch 1016, §11

384.70 Redemption by bondholder.

A holder of a special assessment bond payable in whole or in part out of a special assessment against any lot or parcel of ground, or a city within which the lot or parcel of ground is situated, which lot or parcel of ground has been sold for taxes, either general or special, may have an assignment of any certificate of tax sale of the property for any general taxes or special taxes thereon, upon tender to the holder or to the county treasurer of the amount to which the holder of the tax sale certificate would be entitled in case of redemption.

[C97, §816; S13, §792-f, 816; C24, 27, 31, 35, 39, §**6041;** C46, 50, 54, 58, 62, 66, 71, 73, §391.68; C75, 77, 79, 81, §384.70]

97 Acts, ch 121, §13

384.71 Costs paid from applicable funds.

The whole or any part of the cost of construction or repair of a public improvement may be paid from the proceeds of the issuance of general obligation bonds under the provisions of section 384.25 or 384.26, as applicable, or from the fund or funds of the city authorized to be used for the particular type of improvement, and the council shall provide that the tax authorized for purposes of the fund or funds must be annually levied to the full extent necessary to reimburse the fund or funds for the amount paid for the construction or repair of the improvement.

[R60, §1064; C73, §465; C97, §751, 830, 831, 977, 978; S13, §840-a, -d; SS15, §751; C24, 27, 31, 35, 39, §**5940, 6042, 6050, 6125, 6916, 6917;** C46, §389.3, 391.69, 391.75, 396.22, 420.269, 420.270; C50, §389.3, 391.69, 391.75, 391A.32, 396.22, 420.269, 420.270; C54, 58, 62, §389.3, 391.69, 391.75, 391A.35, 396.22, 420.269, 420.270; C66, 71, 73, §389.3, 390A.18, 391.69, 391.75, 391A.35, 396.22, 420.269, 420.270; C75, 77, 79, 81, §384.71]

384.72 Reassessment and relevy.

When by reason of nonconformity to any law or resolution, or by reason of any omission, informality, or irregularity, any special tax or assessment levied is determined by the council to be invalid or is adjudged illegal, the council may correct the levy by resolution, and may reassess and relevy with the same force and effect as if done at the proper time and in the manner provided by law or by the resolution.

[C97, §836, 980; S13, §840-a; SS15, §836, 840-r; C24, 27, §6059, 6920; C31, 35, §6059, 6610-c58, 6920; C39, §**6059, 6610.68, 6920;** C46, §391.84, 417.62, 420.273; C50, §391.84, 391A.33, 417.62, 420.273; C54, 58, 62, 66, 71, 73, §391.84, 391A.36, 417.62, 420.273; C75, 77, 79, 81, §384.72]

384.73 Void tax or assessment.

When a special tax or assessment, upon property not exempt, is adjudged void for any jurisdictional defect, or other reason, the council may as to such property, by resolution, cause to be prepared a schedule and proposed reassessment in proportion to and not in excess of benefits, cause notice to be given, hear objections, and make necessary corrections, and may reassess and relevy the tax or special assessment as corrected with the same force and effect as if jurisdiction had been ac-

quired in the first instance and all subsequent proceedings had been regularly and legally had.

[SS15, §836, 840-r; C24, 27, 31, 35, 39, §**6060;** C46, 50, 54, 58, 62, 66, 71, 73, §391.85; C75, 77, 79, 81, §384.73]

384.74 Correction of errors.

When, in making a special assessment, any property is assessed too little or too much, the assessment may be corrected and a reassessment and relevy made in conformity with the correction, and a tax collected in excess of the proper amount must be refunded to the person paying it. Corrected assessments are a lien on the lots the same as the original assessments, must be certified by the clerk to the county treasurer in the same manner, and must so far as practicable, be collected in the same installments, draw interest at the same rate, and be enforced in the same manner as the original assessment.

However, if the city does not certify the assessments within six months of final publication as required by division IV of this chapter, all such assessments shall be null, void, and of no effect. Any bonds issued with such void assessments as security shall be paid by the city as they become due out of its debt service as provided in section 384.4.

[C97, §837, 981; SS15, §840-r; C24, §6061, 6921; C31, 35, §6061, 6610-c21, 6921; C39, §**6061, 6610.59, 6921;** C46, 50, 54, 58, 62, 66, 71, 73, §391.86, 417.21, 420.274; C75, 77, 79, 81, §384.74; 82 Acts, ch 1104, §19]

384.75 Special provisions.

Any provision of law, resolution, or ordinance specifying a time when or the order in which acts must be done in a proceeding which may result in a special assessment, is subject to the qualifications of sections 384.72 to 384.74.

A city may combine any one or more of the procedural acts required by this division and call for bids for construction of a public improvement and comply with legal requirements respecting public contracts so as to permit the council to receive and consider proposals at the time of hearing on the resolution of necessity.

[C97, §838, 981; SS15, §840-r; C24, 27, 31, 35, 39, §**6062, 6921;** C46, 50, 54, 58, 62, 66, 71, 73, §391.87, 420.274; C75, 77, 79, 81, §384.75]

384.76 Application to joint undertakings.

The provisions of this division apply to any public improvement undertaken jointly by the city and another city or by the city and the state or any other political subdivision of the state, and a city may enter into an agreement for such purpose under the provisions of chapter 28E and may assess and pay its portion of the cost of a public improvement as provided in this division, but any requirement of this part in respect to approval of detailed plans and specifications, calling for construction bids, awarding construction contracts and acceptance of the completed improvement may be carried out by each city with other cities, the state or any other political subdivision of the state, as provided in an agreement entered into as permitted by chapter 28E. However, an agreement between the city and the state department of transportation is also governed by the provisions of sections 313.21 to 313.23.

[C50, §391A.34; C54, 58, 62, 66, 71, 73, §391A.37; C75, 77, 79, 81, §384.76]

384.77 Assessments along railways.

In the making of assessments for paving streets, avenues or public places along or upon which a track of a railway or street railway company is located, the engineer shall make an estimate of the cost of building the improvement, and an estimate of the cost of the improvement if tracks were not there. The railway or street railway company may be charged with the difference between the two estimates of cost, and shall make payment in the same manner as other special assessments are paid. This section applies only to track within the limits of the improvement proper and shall not be construed as exempting a railway or street railway company from a special assessment on other property, adjacent or abutting, within the assessment district and owned by the company, nor does this section relieve a company from any of its duties and liabilities set forth in any other law concerning repair or construction of the strip of paving between the rails and one foot outside.

[C31, 35, §6051-c1; C39, §**6051.1;** C46, 50, §391.77; C54, 58, 62, 66, 71, 73, §391.77, 391A.38; C75, 77, 79, 81, §384.77]

384.78 Prior proceedings.

Projects and proceedings for the levy of special assessments and the issuance of special assessment bonds commenced before the effective date of the city code may be hereafter consummated and completed and special assessments levied and special assessment bonds issued as required or permitted by any statute or other law amended or repealed by 64GA, chapter 1088, as though such repeal or amendment had not occurred, and the rights, duties, and interests flowing from such projects and proceedings remain valid and enforceable. Without limiting the foregoing, projects commenced prior to said effective date may be financed by the issuance of special assessment bonds and other bonds under any such amended or repealed law or by the issuance of special assessment bonds, or other bonds under the city code. For the purposes of this section, commencement of a project includes but is not limited to action taken by the council or authorized officer to fix a date for a hearing in connection with any part of a public improvement, and commencement of proceedings for the levy of special assessments and the issuance of special assessment bonds includes but is

not limited to action taken by the council to fix a date for a hearing in connection with any public improvement proposed to be financed in whole or in part through special assessments.

[C75, 77, 79, 81, §384.78]

384.79 Conflicting provisions.

The enumeration in this division of special powers and functions is not a limitation of the powers of cities, but the provisions of this division and the procedures prescribed for exercising the powers and functions enumerated in this division control and govern in the event of any conflict with the provisions of any other section, division or chapter of the city code or with the provisions of any other law.

[C75, 77, 79, 81, §384.79]

DIVISION V

REVENUE FINANCING

384.80 Definitions.

As used in this division, unless the context otherwise requires:

1. *"City enterprise"* means the same as defined in section 384.24.

2. *"Combined city enterprise"* means two or more city enterprises combined and operated as a single enterprise.

3. *"Combined service account"* means a customer service account for the provision of two or more utility or enterprise services, regardless of whether those services are being provided by a single city, or by any combination of city utilities, combined utility systems, city enterprises, or combined city enterprises of one or more cities.

4. *"Combined utility system"* means two or more city utilities owned by a single city, and combined and operated as a single system.

5. *"Governing body"* means the public body which by law is charged with the management and control of a city utility, combined utility system, city enterprise, or combined city enterprise. The council is the governing body of each city utility, combined utility system, city enterprise, or combined city enterprise, except that a utility board, as provided in chapter 388, is the governing body of the city utility, city utilities or combined utility system which it operates.

6. *"Gross revenue"* means all income and receipts derived from the operation of a city utility, combined utility system, city enterprise, or combined city enterprise.

7. *"Landlord"* means the owner of record of a rental property, or a real estate manager or management company appointed by the owner to administer rental property.

8. *"Net revenues"* means gross revenues less operating expenses.

9. *"Operating expense"* means salaries, wages, cost of maintenance and operation, materials, supplies, insurance and all other items normally included under recognized accounting practices, but does not include allowances for depreciation in the value of physical property.

10. *"Owner"* means the owner of record as reflected in the records of the county treasurer.

11. *"Pledge order"* means a promise to pay out of the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise, which is delivered to the contractors or other persons in payment of all or part of the cost of the project.

12. *"Project"* means the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, and equipping of all or part of a city utility, combined utility system, city enterprise, or combined city enterprise within or without the corporate limits of the city.

13. *"Rates"* means rates, fees, tolls, rentals and charges for the use of or service provided by a city utility, combined utility system, city enterprise, or combined city enterprise.

14. *"Revenue bond"* means a negotiable bond issued by a city and payable from the net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise.

[C75, 77, 79, 81, §384.80]

94 Acts, ch 1056, §1

384.81 Provisions of city code exclusive — combined utility or enterprise.

1. A city which proposes to establish, own, acquire by purchase, condemnation, or otherwise, lease, sell, construct, reconstruct, extend, remodel, improve, repair, equip, maintain and operate within or without its corporate limits a city utility, combined utility system, city enterprise, or combined city enterprise must do so in accordance with the provisions of the city code.

2. If all of the utilities involved in the establishment of a combined utility system are, at the time of establishment, controlled and managed by the same utility board, such utility board shall continue as the governing body of the combined utility system; otherwise the city council is the governing body of a combined utility system, but a utility board for a combined utility system may be established as provided in chapter 388. If a combined utility system or combined city enterprise is dissolved, each city utility or city enterprise shall continue in existence as a separate city utility or city enterprise unless the voters additionally authorize the abandonment thereof. The governing body of a combined utility system which is dissolved shall continue as the governing body of each city utility which was a part of the combined utility system unless changed as provided in chapter 388. The adding of an additional city utility to an existing combined utility system is the establishment of a new combined utility system and must be approved by the voters of the city as pro-

vided in chapter 388, but the governing body of the existing combined utility system shall continue as the governing body of the new combined utility system.

3. A combined utility system or combined city enterprise may be established, but if there are obligations outstanding which by their terms are payable from the revenues of any city utility or city enterprise involved, all such outstanding obligations must be assumed by the governing body of the combined utility system or combined city enterprise subject to all terms established at the time of the original issue, or refunded through the issuance of revenue bonds of the combined utility system or combined city enterprise as a part of the procedure for the establishment of the combined utility system or combined city enterprise, or funds sufficient to pay the principal of and all interest and premium, if any, on such outstanding obligations at and prior to maturity must have been properly set aside and pledged for that purpose. Any revenues earmarked for payment of the obligations must be handled by the governing body of the combined utility or combined city enterprise in the same manner as they were handled by the governing body of the city utility or city enterprise involved. A city utility or city enterprise may not be abandoned and a combined utility system or combined city enterprise may not be dissolved so long as there are obligations outstanding which by their terms are payable from the revenues of the city utility, combined utility system, city enterprise, or combined city enterprise unless funds sufficient to pay the principal of and all interest and premium, if any, on such outstanding obligations at and prior to maturity have been properly set aside and pledged for such purpose.

[C73, §471 – 473; C97, §720; S13, §720; C24, 27, 31, 35, 39, §**6127;** C46, 50, 54, §390.1, 397.1; C58, 62, 66, 71, 73, §386B.2, 390.1, 397.1; C75, 77, 79, 81, §384.81]

384.82 Authority — revenue bonds — pledge orders.

1. A city may carry out projects, borrow money, and issue revenue bonds and pledge orders to pay all or part of the cost of projects, such revenue bonds and pledge orders to be payable solely and only out of the net revenues of the city utility, combined utility system, city enterprise, or combined city enterprise involved in the project. The cost of a project includes the construction contracts, interest upon the revenue bonds and pledge orders during the period or estimated period of construction and for twelve months thereafter, or for twelve months after the acquisition date, such reserve funds as the governing body may deem advisable in connection with the project and the issuance of revenue bonds and pledge orders, and the costs of engineering, architectural, technical and legal services, preliminary reports, surveys, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights of way, supervision, inspection, testing, publications, printing and sale of bonds and provisions for contingencies. A city may sell revenue bonds or pledge orders at public or private sale in the manner prescribed by chapter 75 and may deliver revenue bonds and pledge orders to the contractors, sellers, and other persons furnishing materials and services constituting a part of the cost of the project in payment therefor.

A city may deliver its revenue bonds to the federal government or any agency thereof which has loaned the city money for sanitary or solid waste projects, water projects or other projects for which the government has a loan program.

2. A city may issue revenue bonds or pledge orders to refund revenue bonds, pledge orders, and other obligations which are by their terms payable from the net revenues of the same city utility, combined utility system, city enterprise, or combined city enterprise, or from a city utility comprising a part of the combined utility system or a city enterprise comprising a part of the combined city enterprise, at lower, the same, or higher rates of interest. Upon a finding of necessity by the governing body, a city may issue revenue bonds or pledge orders to refund general obligation bonds to the extent the general obligation bonds were issued or the proceeds of them were expended for a city utility, city enterprise, or a portion of a combined city utility or city enterprise. These revenue bonds or pledge orders may be issued at lower, the same, or at higher rates of interest than the rates of the general obligation bonds being refunded. A city may sell refunding revenue bonds or pledge orders at public or private sale in the manner prescribed by chapter 75 and apply the proceeds to the payment of the obligations being refunded, and may exchange refunding revenue bonds or pledge orders in payment and discharge of the obligations being refunded. The principal amount of refunding revenue bonds or pledge orders may exceed the principal amount of the obligations being refunded to the extent necessary to pay a premium due on the call of the obligations being refunded, to fund interest accrued and to accrue on the obligations being refunded, to pay the costs of issuance of the refunding revenue bonds or pledge orders, and to fund such reserve funds as the governing body may deem advisable in connection with the issuance of the refunding revenue bonds or pledge orders.

[C31, §6134-d1; C35, §5903-f4, 6066-f6, 6134-d1, -f1; C39, §**5903.15, 6066.29, 6134.01 – 6134.03;** C46, §385.4, 394.6, 397.9 – 397.11; C50, §385.4, 390.9, 394.6, 397.9 – 397.11; C58, 62, 66, §385.4, 386B.10, 390.9, 394.6, 397.9 – 397.11; C71, 73, §385.4, 386B.10, 390.9, 390.16, 394.6, 397.9 –

397.11; C75, 77, 79, 81, §384.82; 81 Acts, ch 126, §1]
84 Acts, ch 1058, §1

384.83 Procedures for revenue bonds and pledge orders.

1. A city may issue revenue bonds pursuant to a resolution of the governing body of the city utility, combined utility system, city enterprise, or combined city enterprise, adopted at a regular or special meeting by a majority of the total number of members to which the governing body is entitled.

2. *a.* Before the governing body institutes proceedings for the issuance of revenue bonds, it shall fix a time and place of meeting at which it proposes to take action and give notice by publication in the manner directed in section 362.3. The notice must include a statement of the time and place of the meeting, the maximum amount of the proposed revenue bonds, the purpose or purposes for which the revenue bonds will be issued, and the city utility, combined utility system, city enterprise, or combined city enterprise whose net revenues will be used to pay the revenue bonds and interest on them. The governing body shall at the meeting receive oral or written objections from any resident or property owner of the city. After all objections have been received and considered, the governing body may, at the meeting or any adjournment of the meeting, take additional action for the issuance of the bonds or abandon the proposal to issue bonds. Any resident or property owner of the city may appeal a decision of the governing body to take additional action to the district court of the county in which any part of the city is located within fifteen days after the additional action is taken, but the additional action of the governing body is final and conclusive unless the court finds that the governing body exceeded its authority. The provisions of this subsection with respect to notice, hearing, and appeal in connection with the issuance of revenue bonds are in lieu of those contained in chapter 73A or any other law.

b. Separate purposes may be incorporated in a single notice of intention to institute proceedings or separate purposes may be incorporated in separate notices and, after an opportunity for filing objections, the governing body may include in a single issue of revenue bonds any number or combination of purposes.

3. Revenue bonds may bear dates, bear interest at rates not exceeding that permitted by chapter 74A, mature in one or more installments, be in either coupon or registered form, carry registration and conversion privileges, be payable as to principal and interest at times and places, be subject to terms of redemption prior to maturity with or without premium, and be in one or more denominations, all as provided by the resolution of the governing body authorizing their issuance. The resolution may also prescribe additional provisions, terms, conditions, and covenants which the governing body deems advisable, consistent with the provisions of the city code, including provisions for creating and maintaining reserve funds, the issuance of additional revenue bonds ranking on a parity with such revenue bonds and additional revenue bonds junior and subordinate to such revenue bonds, and that such revenue bonds shall rank on a parity with or be junior and subordinate to any revenue bonds which may be then outstanding. Revenue bonds are a contract between the city and holders and the resolution is a part of the contract.

4. If the governing body is a city council, the revenue bonds must be executed by the mayor and clerk of the city. If the governing body is a utility board, the revenue bonds must be executed by the chairperson and secretary of the board. If coupons are attached to the revenue bonds, they must be executed with the original or facsimile signature of the clerk or secretary. A revenue bond is valid and binding for all purposes if it bears the signatures of the officers in office on the date of the execution of the bonds notwithstanding that any or all persons whose signatures appear thereon have ceased to be such officers prior to the delivery thereof. The issuance of revenue bonds must be recorded in the office of the city treasurer or other financial officer designated by the council, and a certificate of the recording by the treasurer or other officer must be printed on the back of each revenue bond.

5. Revenue bonds and pledge orders issued pursuant to this division are negotiable instruments.

6. A city may issue pledge orders pursuant to a resolution of the governing body of the city utility, combined utility system, city enterprise, or combined city enterprise, adopted by a majority of the total number of members to which the governing body is entitled, at a regular or special meeting, ordering their issuance and delivery in payment for all or part of the cost of a project. Pledge orders may bear interest at rates not exceeding that permitted by chapter 74A.

7. The physical properties of a city utility, combined utility system, city enterprise, or combined city enterprise may not be pledged or mortgaged to secure the payment of revenue bonds or pledge orders or the interest thereon.

[C35, §5903-f4, 6066-f6, -f7; C39, §**5903.15, 6066.29 – 6066.31;** C46, 50, §385.4, 394.6 – 394.8; C58, 62, 66, 71, 73, §385.4, 386B.10, 394.6 – 394.8; C75, 77, 79, 81, §384.83]
83 Acts, ch 90, §26

384.84 Rates and charges — billing and collection — contracts.

1. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may establish, impose, adjust, and

provide for the collection of rates and charges to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise. When revenue bonds or pledge orders are issued and outstanding pursuant to this division, the governing body shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise, and to leave a balance of net revenues sufficient to pay the principal of and interest on the revenue bonds and pledge orders as they become due and to maintain a reasonable reserve for the payment of principal and interest, and a sufficient portion of net revenues must be pledged for that purpose. Rates must be established by ordinance of the council or by resolution of the trustees, published in the same manner as an ordinance.

2. *a.* A city utility or enterprise service to a property or premises, including services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these services, may be discontinued if the account for the service becomes delinquent. Gas or electric service provided by a city utility or enterprise shall be discontinued only as provided by section 476.20, and discontinuance of those services are subject to rules adopted by the utilities board of the department of commerce.

b. If more than one city utility or enterprise service is billed to a property or premises as a combined service account, all of the services may be discontinued if the account becomes delinquent.

c. A city utility or enterprise service to a property or premises shall not be discontinued unless prior written notice is sent to the account holder by ordinary mail, informing the account holder of the nature of the delinquency and affording the account holder the opportunity for a hearing prior to discontinuance of service. If the account holder is a tenant, and if the owner or landlord of the property has made a written request for notice, the notice shall also be given to the owner or landlord.

d. If a delinquent amount is owed by an account holder for a utility service associated with a prior property or premises, a city utility, city enterprise, or combined city enterprise may withhold service from the same account holder at any new property or premises until such time as the account holder pays the delinquent amount owing on the account associated with the prior property or premises.

3. *a.* Except as provided in paragraph *"d"*, all rates or charges for the services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these services, if not paid as provided by ordinance of the council or resolution of the trustees, are a lien upon the property or premises served by any of these services upon certification to the county treasurer that the rates or charges are due.

b. This lien may be imposed upon a property or premises even if a city utility or enterprise service to the property or premises has been or may be discontinued as provided in this section.

c. A lien for a city utility or enterprise service under paragraph *"a"* shall not be certified to the county treasurer for collection unless prior written notice of intent to certify a lien is given to the account holder of the delinquent account at least thirty days prior to certification. If the account holder is a tenant, and if the owner or landlord of the property has made a written request for notice, the notice shall also be given to the owner or landlord. The notice shall be sent to the appropriate persons by ordinary mail not less than thirty days prior to certification of the lien to the county treasurer.

d. Residential rental property where a charge for water service is separately metered and paid directly to the city utility or enterprise by the tenant is exempt from a lien for delinquent rates or charges associated with such water service if the landlord gives written notice to the city utility or enterprise that the property is residential rental property and that the tenant is liable for the rates or charges. A city utility or enterprise may require a deposit not exceeding the usual cost of ninety days of water service to be paid to the utility or enterprise. Upon receipt, the utility or enterprise shall acknowledge the notice and deposit. A written notice shall contain the name of the tenant responsible for charges, address of the residential rental property that the tenant is to occupy, and the date that the occupancy begins. A change in tenant shall require a new written notice to be given to the city utility or enterprise within ten business days of the change in tenant. When the tenant moves from the rental property, the city utility or enterprise shall return the deposit if the water service charges are paid in full. A change in the ownership of the residential rental property shall require written notice of such change to be given to the city utility or enterprise within ten business days of the completion of the change of ownership. The lien exemption for rental property does not apply to charges for repairs to a water service if the repair charges become delinquent.

4. A lien shall not be imposed pursuant to this section for a delinquent charge of less than five dollars. The governing body of the city utility or enterprise may charge up to five dollars, and the county treasurer may charge up to five dollars, as an administrative expense of certifying and filing this lien, which amounts shall be added to the amount of the lien to be collected at the time of payment of the assessment from the payor. Administrative expenses collected by the county treasurer on behalf of the city utility or enterprise shall be paid to the governing body of the city util-

ity or enterprise, and those collected by the county treasurer on behalf of the county shall be credited to the county general fund. The lien has equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

5. A governing body may declare all or a certain portion of a city as a storm water drainage system district for the purpose of establishing, imposing, adjusting, and providing for the collection of rates as provided in this section. The ordinance provisions for collection of rates of a storm water drainage system may prescribe a formula for determination of the rates which may include criteria and standards by which benefits have been previously determined for special assessments for storm water public improvement projects under this chapter.

6. *a.* The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may:

(1) By ordinance of the council or by resolution of the trustees published in the same manner as an ordinance, establish, impose, adjust, and provide for the collection of charges for connection to a city utility or combined utility system.

(2) Contract for the use of or services provided by a city utility, combined utility system, city enterprise, or combined city enterprise with persons whose type or quantity of use or service is unusual.

(3) Lease for a period not to exceed fifteen years all or part of a city enterprise or combined city enterprise, if the lease will not reduce the net revenues to be produced by the city enterprise or combined city enterprise.

(4) Contract for a period not to exceed forty years with other governmental bodies for the use of or the services provided by the city utility, combined utility system, city enterprise, or combined city enterprise on a wholesale basis.

(5) Contract for a period not to exceed forty years with persons and other governmental bodies for the purchase or sale of water, gas, or electric power and energy on a wholesale basis.

b. Two or more city utilities, combined utility systems, city enterprises, or combined city enterprises, including city utilities established pursuant to chapter 388, may contract pursuant to chapter 28E for joint billing or collection, or both, of combined service accounts for utility or enterprise services, or both. The contracts may provide for the discontinuance of one or more of the city utility or enterprise services if a delinquency occurs in the payment of any charges billed under a combined service account.

c. One or more city utilities or combined utility systems, including city utilities established pursuant to chapter 388, may contract pursuant to chapter 28E with one or more sanitary districts established pursuant to chapter 358 for joint billing or collection, or both, of combined service accounts from utility services and sanitary district services. The contracts may provide for the discontinuance of one or more of the city water utility services or sanitary district services if a delinquency occurs in the payment of any charges billed under a combined service account.

7. The portion of cost attributable to the agreement or arbitration awarded under section 357A.21 may be apportioned in whole or in part among water customers within an annexed area.

8. For the purposes of this section, *"premises"* includes a mobile home, modular home, or manufactured home as defined in section 435.1, when the mobile home, modular home, or manufactured home is taxed as real estate.

[C73, §471, 473, 475; C97, §720, 725, 749; S13, §720, 724, 725, 766-c; C24, 27, 31, §5892, 5898, 6130, 6142, 6143, 6159; C35, §5892, 5898, 5903-f3, 5903-f6, 6066-f5, 6066-f8, 6130, 6142, 6143, 6159; C39, §**5892, 5898, 5903.14, 5903.17, 6066.28, 6066.32, 6130, 6142, 6143, 6159;** C46, 50, 54, §381.19, 382.5, 385.3, 385.6, 390.4, 390.5, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C58, §381.19, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C62, §381.15, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 392.11, 394.5, 394.9, 397.4, 397.27, 397.28; C66, §368.24, 381.19, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 392.11, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C71, 73, §368.24, 378A.7 – 378A.9, 381.19, 382.5, 385.3, 385.6, 386B.8, 390.4, 390.5, 392.11, 393.14, 394.5, 394.9, 397.4, 397.27, 397.28, 398.10; C75, 77, 79, 81, §384.84; 81 Acts, ch 128, §1]

83 Acts, ch 90, §27; 84 Acts, ch 1221, §1; 87 Acts, ch 109, §4; 88 Acts, ch 1246, §6; 90 Acts, ch 1206, §2; 90 Acts, ch 1211, §1; 93 Acts, ch 73, §4; 94 Acts, ch 1056, §2; 95 Acts, ch 49, §11; 95 Acts, ch 57, §9; 95 Acts, ch 67, §31; 97 Acts, ch 62, §3; 98 Acts, ch 1107, §15; 99 Acts, ch 149, §1, 2; 2000 Acts, ch 1085, §4

384.84A Special election.

1. The governing body of a city may institute proceedings to issue revenue bonds for storm water drainage construction projects under section 384.84, subsection 5, by causing notice of the proposed project, with a description of the proposed project and a description of the formula for the determination of the rate or rates applied to users for payment of the bonds, and a description of the bonds and maximum rate of interest and the right to petition for an election if the project meets the requirement of subsection 2, to be published at least once in a newspaper of general circulation within the city at least thirty days before the meeting at which the governing body proposes to take action to institute proceedings for issuance of revenue bonds for the storm water drainage construction project.

2. If, before the date fixed for taking action to authorize the issuance of revenue bonds for the storm water drainage construction project, a peti-

tion signed by eligible electors residing within the city equal in number to at least three percent of the registered voters of the city is filed, asking that the question of issuing revenue bonds for the storm water drainage construction project be submitted to the registered voters of the city, the council, by resolution, shall declare the project abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds for the storm water drainage construction project if the cost of the project and population of the city meet one of the following criteria:

a. The project cost is seven hundred fifty thousand dollars or more in a city having a population of five thousand or less.

b. The project cost is one million five hundred thousand dollars or more in a city having a population of more than five thousand but not more than seventy-five thousand.

c. The project cost is two million dollars or more in a city having a population of more than seventy-five thousand.

3. The proposition of issuing revenue bonds for a storm water drainage construction project under this section is not approved unless the vote in favor of the proposition is equal to a majority of the votes cast on the proposition.

4. If a petition is not filed, or if a petition is filed and the proposition is approved at an election, the council may issue the revenue bonds.

5. If a city is required by the federal environmental protection agency to file application for storm water sewer discharge or storm water drainage system under the federal Clean Water Act of 1987, this section does not apply to that city with respect to improvements and facilities required for compliance with EPA regulations, or any city that enters into a chapter 28E agreement to implement a joint storm water discharge or drainage system with a city that is required by the federal environmental protection agency to file application for storm water discharge or storm water drainage system.

90 Acts, ch 1206, §3; 95 Acts, ch 67, §53; 2001 Acts, ch 56, §33; 2002 Acts, ch 1119, §52

Subsection 2, unnumbered paragraph 1 amended

384.85 Records — accounts — deposits.

1. The governing body of each city utility, combined utility system, city enterprise, or combined city enterprise being operated on a revenue producing basis shall maintain a proper system of books, records, and accounts.

2. The gross revenues of each city utility, combined utility system, city enterprise, or combined city enterprise must be deposited with the treasurer of the governing body and kept by the treasurer in a separate account apart from the other funds of the city and from each other. The treasurer shall apply the gross revenues of each city utility, combined utility system, city enterprise, or combined city enterprise only as ordered by the governing body and in strict compliance with such orders, including the provisions, terms, conditions, and covenants of any and all resolutions of the governing body pursuant to which revenue bonds or pledge orders are issued and outstanding. If the council is the governing body, it may designate another city officer to serve as treasurer.

[C97, §748; S13, §741-w2, 748; C24, 27, 31, 35, 39, §**5902, 6158;** C46, 50, 54, 58, 62, 66, 71, 73, §384.3(12), 398.9; C75, 77, 79, 81, §384.85]

384.86 Pledge valid and effective.

The pledge of any net revenues of a city utility, combined utility system, city enterprise, or combined city enterprise is valid and effective as to all persons and other governmental bodies when it becomes valid and effective between the city and the holders of the revenue bonds or pledge orders.

[C75, 77, 79, 81, §384.86]

384.87 Payable from revenues.

Revenue bonds and pledge orders are payable both as to principal and interest solely out of the portion of the net revenues of the city utility, combined utility system, city enterprise, or combined city enterprise pledged to their payment and are not a debt of or charge against the city within the meaning of any constitutional or statutory debt limitation provision.

[C58, 62, 66, 71, 73, §386B.10; C75, 77, 79, 81, §384.87]

384.88 Sole remedy.

The sole remedy for a breach or default of a term of a revenue bond or pledge order is a proceeding in law or in equity by suit, action or mandamus to enforce and compel performance of the duties required by this division and of the terms of the resolution authorizing the issuance of the revenue bonds or pledge orders, or to obtain the appointment of a receiver to take possession of and operate the city utility, combined utility system, city enterprise, or combined city enterprise, and to perform the duties required by this division and the terms of the resolution authorizing the issuance of the revenue bonds or pledge orders.

[C58, 62, 66, 71, 73, §386B.10; C75, 77, 79, 81, §384.88]

384.89 Transfer of surplus.

The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise which has on hand surplus funds, after making all deposits into all funds required by the terms, covenants, conditions, and provisions of outstanding revenue bonds, pledge orders, and other obligations which are payable from the revenues of the city utility, combined utility system,

city enterprise, or combined city enterprise and after complying with all of the requirements, terms, covenants, conditions and provisions of the proceedings and resolutions pursuant to which revenue bonds, pledge orders, and other obligations are issued, may transfer such surplus funds to any other fund of the city in accordance with any rules promulgated by the city finance committee created in section 384.13 if the transfer is also approved by the city council, provided that no transfer may be made if it conflicts with any of the requirements, terms, covenants, conditions or provisions of any resolution authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the city utility, combined utility system, city enterprise, or combined city enterprise which are then outstanding.

[C27, 31, 35, §6151-b1 – 6151-b3, 6151-c1; C39, §**6151.1 – 6151.4;** C46, 50, 54, 58, 62, 66, 71, 73, §397.38 – 397.41; C75, 77, 79, 81, §384.89]

384.90 Part payment from other bonds and other sources.

This division does not prohibit or prevent a city from using funds derived from the issuance of general obligation bonds, the levy of special assessments and the issuance of special assessment bonds, and any other source which may be properly used for such purpose, to pay a part of the cost of a project.

[C75, 77, 79, 81, §384.90]

384.91 City to pay for services.

The city shall pay for the use of or the services provided by the city utility, combined utility system, city enterprise, or combined city enterprise as any other customer, except that the city may pay for use or service at a reduced rate or receive free use or service so long as the city complies with the provisions, terms, conditions and covenants of any and all resolutions pursuant to which revenue bonds or pledge orders are issued and outstanding.

[C75, 77, 79, 81, §384.91]

384.92 Statute of limitation.

No action may be brought which questions the legality of revenue bonds or the power of the city to issue revenue bonds or the effectiveness of any proceedings relating to the authorization and issuance of revenue bonds, from and after sixty days from the time the bonds are ordered issued by the city.

[C97, §913; C24, 27, 31, 35, 39, §**6264;** C46, 50, 54, 58, 62, 66, 71, 73, §408.15; C75, 77, 79, 81, §384.92]

384.93 Conflicting provisions.

The enumeration in this division of specified powers and functions is not a limitation of the powers of cities, but the provisions of this division and the procedures prescribed for exercising the powers and functions enumerated in this division control and govern in the event of any conflict with the provisions of any other section, division or chapter of the city code or with the provisions of any other law.

[C75, 77, 79, 81, §384.93]

384.94 Prior projects preserved.

Projects and proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations commenced before the effective date of the city code may be consummated and completed as required or permitted by any statute or other law amended or repealed by 64GA, chapter 1088, as though such repeal or amendment had not occurred, and the rights, duties, and interests flowing from such projects and proceedings remain valid and enforceable. Without limiting the foregoing, projects commenced prior to said effective date may be financed by the issuance of revenue bonds, pledge orders, and other temporary obligations under any such amended or repealed law or by the issuance of revenue bonds and pledge orders under the city code. For purposes of this section, commencement of a project includes, but is not limited to, action taken by the governing body or authorized officer to fix a date for either a hearing or an election in connection with any part of the project, and commencement of proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations includes, but is not limited to, action taken by the governing body to fix a date for either a hearing or a sale in connection with any part of such revenue bonds, pledge orders, or other temporary obligations or to order any part thereof to be issued.

[C75, 77, 79, 81, §384.94]

DIVISION VI

CONTRACT LETTING PROCEDURE

Subject to reciprocal resident bidder preference in §73A.21

384.95 Definitions.

As used in this division, unless the context clearly indicates otherwise:

1. *"Public improvement"* means any building or construction work, either within or outside the corporate limits of a city, to be paid for in whole or in part by the use of funds of the city, regardless of sources, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding urban renewal demolition and low-rent housing projects, industrial aid projects authorized under chapter 419, emergency work or work performed by employees of a city or a city utility.

2. *"Governing body"* means the council of a city, a utility board of trustees or an administra-

tive agency which is charged with the management and control of a building or improvement project.

[C75, 77, 79, 81, §384.95]

2000 Acts, ch 1174, §29

384.96 Sealed bids.

When the estimated total cost to a city of a public improvement exceeds the sum of twenty-five thousand dollars, the governing body shall advertise for sealed bids for the proposed improvement by publishing a notice to bidders as provided in section 362.3, except that the notice to bidders may be published more than twenty days but not more than forty-five days before the date for filing bids.

[C58, 62, 66, 71, 73, §386B.9; C75, 77, 79, 81, §384.96]

92 Acts, ch 1030, §1

Analogous provision, §73A.18

384.97 Notice to bidders.

The notice to bidders must state the following items:

1. The time and place for filing sealed proposals.
2. The time and place sealed proposals will be opened and considered on behalf of the governing body.
3. The general nature of the public improvement on which bids are requested.
4. In general terms when the work must be commenced and when it must be completed.
5. That each bidder shall accompany the bid with a bid security as defined in this subsection and as specified by the governing body, as security that the successful bidder will enter into a contract for the work bid upon and will furnish after the award of contract a corporate surety bond, acceptable to the governing body, for the faithful performance of the contract, in an amount equal to one hundred percent of the amount of the contract. The bidder's security shall be in an amount fixed by the governing body, and shall be in the form of a cashier's or certified check drawn on a bank in Iowa or a bank chartered under the laws of the United States, or a certified share draft drawn on a credit union in Iowa or chartered under the law of the United States, or the governing body may provide for a bidder's bond with corporate surety satisfactory to the governing body. The bid bond shall contain no condition except as provided in this section.
6. Any further information which the governing body deems pertinent.

The notice to bidders may provide that bids will be received for the furnishing of all labor and materials and furnishing or installing equipment under one contract, or for parts thereof in separate sections.

On public improvements to be financed wholly or partially by special assessments against benefited property, the governing body, in the notice to bidders, may request aggregate bids for all projects included in any resolution of necessity, notwithstanding variations in the sizes of the improvements and notwithstanding that some parts of the improvements are assessable and some nonassessable, and may award the contract to the lowest responsible bidder submitting the lowest aggregate bid.

[C97, §813, 815; S13, §840-a, 849-d; SS15, §813; C24, 27, §6004 – 6006, 6084 – 6086, 6088; C31, 35, §6004 – 6006, 6084 – 6086, 6088, 6134-d5, 6610-c48; C39, §**6004 – 6006, 6084 – 6086, 6088, 6134.09, 6610.50;** C46, §391.31 – 391.33, 395.6 – 395.8, 395.10, 397.17, 417.51; C50, §391.31 – 391.33, 391A.13, 391A.14, 395.6 – 395.8, 395.10, 397.17, 417.51; C54, §391.31 – 391.33, 391A.16, 391A.17, 395.6 – 395.8, 395.10, 397.17, 417.51; C58, 62, 66, 71, 73, §386B.9, 391.31 – 391.33, 391A.16, 391A.17, 395.6 – 395.8, 395.10, 397.17, 417.51; C75, 77, 79, 81, §384.97]

84 Acts, ch 1055, §9

384.98 Bid security.

The amount of bid security must be fixed by the governing body prior to ordering publication of the notice to bidders and must equal at least five percent, but may not exceed ten percent of either the estimated total contract cost of the public improvement, or the amount of each bid.

[C97, §813; SS15, §813; C24, 27, 31, 35, 39, §**6004;** C46, §391.31; C50, §391.31, 391A.13; C54, 58, 62, 66, 71, 73, §391.31, 391A.16; C75, 77, 79, 81, §384.98]

384.99 Award of contract.

The contract for the public improvement must be awarded to the lowest responsible bidder, provided, however, that contracts relating to public utilities or extensions or improvements thereof, as described in division V of this chapter, may be awarded by the governing body as it deems to be in the best interests of the city. This section shall not be construed to prohibit a city in the award of a contract for a public improvement or a governing body of a city utility from providing, in the award of a contract for a public improvement, an enhancement of payments upon early completion of the public improvement if the availability of the enhancement payments is included in the notice to bidders, the enhancement payments are competitively neutral to potential bidders, the enhancement payments are considered as a separate item in the public hearing on the award of contract, and the total value of the enhancement payments does not exceed ten percent of the value of the contract.

[C97, §813; SS15, §813; C24, 27, §6004; C31, 35, §6004, 6134-d6, 6610-c48; C39, §**6004, 6134.10, 6610.50;** C46, §391.31, 397.18, 417.51; C50, §391.31, 391A.14, 397.18, 417.51; C54, 58, 62, 66, 71, 73, §391.31, 391A.17, 397.18, 417.51; C75, 77,

79, 81, §384.99]
99 Acts, ch 137, §1

384.100 Opening and considering bids.
The governing body shall open, announce the amount of the bids, and file all proposals received, at the time and place specified in the notice to bidders. The governing body may, by resolution, award the contract for the public improvement to the bidder submitting the best bid, determined as provided in section 384.99, or it may reject all bids received, fix a new date for receiving bids, and order publication of a new notice to bidders. The bid security furnished by the successful bidder must be retained by the governing body until the approved contract form has been executed, and a bond filed by the bidder guaranteeing the performance of the contract, and the contract and bond, have been approved by the governing body. The provisions of chapter 573, where applicable, apply to contracts awarded under this division.
The checks or bidder's bonds of the unsuccessful bidder must be promptly returned to the bidders by the governing body as soon as the successful bidder is determined or within thirty days whichever is sooner.
[C97, §813; S13, §849-d; SS15, §813; C24, 27, §6005, 6086; C31, 35, §6005, 6086, 6610-c48, 6610-c49; C39, §**6005, 6086, 6610.50, 6610.51;** C46, §391.32, 395.8, 417.51, 417.52; C50, §391.32, 391A.14, 391A.15, 395.8, 417.51, 417.52; C54, §391.32, 391A.17, 391A.19, 395.8, 417.51, 417.52; C58, 62, 66, 71, 73, §386B.9, 391.32, 391A.17, 391A.19, 395.8, 417.51, 417.52; C75, 77, 79, 81, §384.100]

384.101 Delegation of authority.
When bids or proposals are required to be taken in connection with any public improvement, the governing body may delegate, by ordinance or resolution, to the city manager, clerk, engineer, or other public officer, the duty of receiving and opening bids and announcing the results. The officer shall report the results of the bidding with the officer's recommendations thereon to the governing body at its next meeting.
[C66, 71, 73, §368A.1(14); C75, 77, 79, 81, §384.101]

384.102 When hearing necessary.
When the estimated total cost of a public improvement exceeds the sum of twenty-five thousand dollars, the governing body shall not enter into a contract for the improvement until it has held a public hearing on the proposed plans, specifications, and form of contract, and estimated cost for the improvement. Notice of the hearing must be published as provided in section 362.3. At the hearing any interested person may appear and file objections to the proposed plans, specifications, contract, or estimated cost of the improvement. After hearing objections, the governing body shall by resolution enter its decision on the plans, specifications, contract, and estimated cost.
[C31, 35, §6134-d4, 6134-d6; C39, §**6134.08, 6134.10;** C46, 50, 54, 58, 62, 66, 71, 73, §397.16, 397.18; C75, 77, 79, 81, §384.102]
Analogous provision, §73A.2, 73A.3

384.103 Bonds authorized.
1. A governing body may authorize, sell, issue, and deliver its bonds whether or not notice and hearing on the plans, specifications, form of contract, and estimated cost for the public improvement to be paid for in whole or in part from the proceeds of said bonds has been given, and whether or not a contract has been awarded for the construction of the improvement. This subsection does not apply to bonds which are payable solely from special assessment levies against benefited property.
2. When emergency repair of a public improvement is necessary and the delay of advertising and a public letting might cause serious loss or injury to the city, the governing body shall, by resolution, make a finding of the necessity to institute emergency proceedings under this section, and shall procure a certificate from a competent registered professional engineer or architect, not in the regular employ of the city, certifying that emergency repairs are necessary.
In that event the governing body may contract for emergency repairs without holding a public hearing and advertising for bids, and the provisions of sections 384.96 to 384.102, do not apply.
[C75, 77, 79, 81, §384.103]
Analogous provision, §73A.19

384.104 through 384.109 Reserved.

DIVISION VII

INSURANCE, SELF-INSURANCE, AND RISK POOLING FUNDS

384.110 Insurance, self-insurance, and risk pooling funds.
A city may credit funds to a fund or funds for the purposes authorized by section 364.4, subsection 5; section 384.12, subsection 18; or section 384.24, subsection 3, paragraph *"s"*. Moneys credited to the fund or funds, and interest earned on such moneys, shall remain in the fund or funds until expended for purposes authorized by section 364.4, subsection 5; section 384.12, subsection 18; or section 384.24, subsection 3, paragraph *"s"*.
86 Acts, ch 1211, §25

384.111 through 384.119 Reserved.

DIVISION VIII

DEFINITIONS

384.120 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

CHAPTER 385

ARMORIES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 386

SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICTS

386.1 Definitions.
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386.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Cost"* of any improvement or self-liquidating improvement includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during construction and for not more than six months thereafter, and provisions for contingencies.

3. *"District"* means a self-supported municipal improvement district which may be created and the property therein taxed in accordance with this chapter.

4. *"Improvement"* means any of the following:

a. All or any part of a city enterprise as defined in section 384.24, subsection 2.

b. Public improvements as defined in section 384.37, subsection 19.

c. Those structures, properties, facilities or actions, the acquisition, construction, improvement, installation, reconstruction, enlargement, repair, equipping, purchasing, or taking of which would constitute an essential corporate purpose or general corporate purpose as defined in section 384.24, subsections 3 and 4.

5. *"Property"* means real property as defined in section 4.1, subsection 13, and in section 427A.1, subsection 1, paragraph *"h"*.

6. *"Property owner"* or *"owner"* means the owner of property, as shown by the transfer books in the office of the county auditor of the county in which the property is located.

7. *"Self-liquidating improvement"* means any facility or property proposed to be leased in whole or in part to any person or governmental body to further the corporate purposes of the city and:

a. To aid in the commercial development of the district.

b. To further the purposes of the districts; or

c. Not substantially reduce the city's property tax base.

8. The use of the conjunctive *"and"* includes the disjunctive *"or"* and the use of the disjunctive *"or"* includes the conjunctive *"and"*, unless the context clearly indicates otherwise.

9. All definitions in section 362.2 are incorporated by reference as a part of this chapter, except as provided in subsection 5.

[C77, 79, 81, §386.1]
84 Acts, ch 1179, §1; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

386.2 Authorization.
A city which proposes to create a district, to provide for its existence and operation, to provide for improvements or self-liquidating improvements for the district, to authorize and issue bonds for the purposes of the district, and to levy the taxes authorized by this chapter must do so in accordance with the provisions of this chapter.
[C77, 79, 81, §386.2]

386.3 Establishment of district.
1. Districts may be created by action of the council in accordance with the provisions of this chapter. A district shall:
a. Be comprised of contiguous property wholly within the boundaries of the city. A self-supported municipal improvement district shall be comprised only of property in districts which are zoned for commercial or industrial uses and properties within a duly designated historic district.
b. Be given a descriptive name containing the words *"self-supported municipal improvement district"*.
c. Be comprised of property related in some manner, including but not limited to present or potential use, physical location, condition, relationship to an area, or relationship to present or potential commercial or other activity in an area, so as to be benefited in any manner, including but not limited to a benefit from present or potential use or enjoyment of the property, by the condition, development or maintenance of the district or of any improvement or self-liquidating improvement of the district, or be comprised of property the owners of which have a present or potential benefit from the condition, development or maintenance of the district or of any improvement or self-liquidating improvement of the district.
2. The council shall initiate proceedings for establishing a district upon the filing with its clerk of a petition containing:
a. The signatures of at least twenty-five percent of all owners of property within the proposed district. These signatures must together represent ownership of property with an assessed value of twenty-five percent or more of the assessed value of all of the property in the proposed district.
b. A description of the boundaries of the proposed district or a consolidated description of the property within the proposed district.
c. The name of the proposed district.
d. A statement of the maximum rate of tax that may be imposed upon property within the district. The maximum rate of tax may be stated in terms of separate maximum rates for the debt service tax, the capital improvement fund tax, and the operation tax, or in terms of a maximum combined rate for all three.
e. The purpose of the establishment of the district, which may be stated generally, or in terms of the relationship of the property within the district or the interests of the owners of property within the district, or in terms of the improvements or self-liquidating improvements proposed to be developed for the purposes of the district, either specific improvements, self-liquidating improvements, or general categories of improvements, or any combination of the foregoing.
f. A statement that taxes levied for the self-supported improvement district operation fund shall be used for the purpose of paying maintenance expenses of improvements or self-liquidating improvements for a specified length of time, along with any options to renew, if the taxes are to be used for this maintenance purpose.
3. The council shall notify the city planning commission upon the receipt of a petition. It shall be the duty of the city planning commission to make recommendations to the council in regard to the proposed district. The city planning commission shall, with due diligence, prepare an evaluative report for the council on the merit and feasibility of the project. The council shall not hold its public hearings or take further action on the establishment of the district until it has received the report of the city planning commission. In addition to its report, the commission may, from time to time, recommend to the council amendments and changes relating to the project.
If no city planning commission exists, the council shall notify the metropolitan or regional planning commission upon receipt of a petition, and such commission shall have the same duties as the city planning commission set forth in this subsection. If no planning commission exists, the council shall notify the zoning commission upon receipt of a petition, and such commission shall have the same duties as the city planning commission set forth in this subsection. If no planning or zoning commission exists, the council shall call a hearing on the establishment of a district upon receipt of a petition.
4. Upon the receipt of the commission's final report the council shall set a time and place for a meeting at which the council proposes to take action for the establishment of the district, and shall publish notice of the meeting as provided in section 362.3, and the clerk shall send a copy of the notice by certified mail not less than fifteen days before the meeting to each owner of property within the proposed district at the owner's address as shown by the records of the county auditor. If a property is shown to be in the name of more than one owner at the same mailing address, a single notice may be mailed addressed to all owners at that address. Failure to receive a mailed notice is not grounds for objection to the council's taking any action authorized in this chapter.
5. In addition to the time and place of the

meeting for hearing on the petition, the notice must state:

a. That a petition has been filed with the council asking that a district be established.

b. The name of the district.

c. The purpose of the district.

d. The property proposed to be included in the district.

e. The maximum rate of tax which may be imposed upon the property in the district.

6. At the time and place set in the notice the council shall hear all owners of property in the proposed district or residents of the city desiring to express their views. The council must wait at least thirty days after the public hearing has been held before it may adopt an ordinance establishing a district which must be comprised of all the property which the council finds has the relationship or whose owners have the interest described in subsection 1, paragraph *"c"*. Property included in the proposed district need not be included in the established district. However, no property may be included in the district that was not included in the proposed district until the council has held another hearing after it has published and mailed the same notice as required in subsections 4 and 5 of this section on the original petition to the owners of the additional property, or has caused a notice of the inclusion of the property to be personally served upon each owner of the additional property, or has received a written waiver of notice from each owner of the additional property.

7. Adoption of the ordinance establishing a district requires the affirmative vote of three-fourths of all of the members of the council, or in cities having but three members of the council, the affirmative vote of two members. However if a remonstrance has been filed with the clerk signed by at least twenty-five percent of all owners of property within the proposed district representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all of the property in the proposed district, the adoption of the ordinance requires a unanimous vote of the council.

8. The clerk shall cause a copy of the ordinance to be filed in the office of the county recorder of each county in which any property within the district is located.

9. At any time prior to adoption of an ordinance establishing a district, the entire matter of establishing such district shall be withdrawn from council consideration if a petition objecting to establishing such district is filed with its clerk containing the signatures of at least forty percent of all owners of property within the proposed district or signatures which together represent ownership of property with an assessed value of forty percent or more of the assessed value of all property within the proposed district.

10. The adoption of an ordinance establishing a district is a legislative determination that the property within the district has the relationship or its owners have the interest required under subsection 1, paragraph *"c"* and includes all of the property within the area which has that relationship or the owners of which have that interest in the district.

11. Any resident or property owner of the city may appeal the action and the decisions of the council, including the creation of the district and the levying of the proposed taxes for the district, to the district court of the county in which any part of the district is located, within thirty days after the date upon which the ordinance creating the district becomes effective, but the action and decision of the council are final and conclusive unless the court finds that the council exceeded its authority. No action may be brought questioning the regularity of the proceedings pertaining to the establishment of a district or the validity of the district, or the propriety of the inclusion or exclusion of any property within or from the district, or the ability of the city to levy taxes in accordance with the ordinance establishing the district, after thirty days from the date on which the ordinance creating the district becomes effective.

12. The procedural steps for the petitioning and creation of the district may be combined with the procedural steps for the authorization of any improvement or self-liquidating improvement, or the procedural steps for the authorization of any tax, or any combination thereof.

13. The rate of debt service tax referred to in the petition and the ordinance creating the district shall only restrict the amount of bonds which may be issued, and shall not limit the ability of the city to levy as necessary in subsequent years to pay interest and amortize the principal of that amount of bonds.

14. The ordinance creating the district may provide for the division of all of the property within the district into two or more zones based upon a reasonable difference in the relationship of the property or the interest of its owners, whether the difference is qualitative or quantitative. The ordinance creating the district and establishing the different zones may establish a different maximum rate of tax for each zone, or may provide that the rate of tax for a zone shall be a certain set percentage of the tax levied in the zone which is subject to the highest rate of tax.

[C77, 79, 81, §386.3]

85 Acts, ch 113, §1; 88 Acts, ch 1246, §7

386.4 Amendments to district.

1. The ordinance creating the district may be amended and property may be added to the district and the maximum rate of taxes referred to in the ordinance may be increased at any time in the same manner and by the same procedure as for the establishment of a district. All property added to a district shall be subject to all taxes currently and thereafter levied including debt service levies for

bonds previously or thereafter issued.

2. Action by the council amending the ordinance creating the district, including adding any eligible property or deleting any property within the district or changing any maximum rate of taxes, shall be by ordinance adopted by an affirmative vote of three-fourths of all of the members of the council, or in cities having but three members of the council, the affirmative vote of two members. However, if a remonstrance has been filed with the clerk signed by at least twenty-five percent of all owners of property within the district and all property proposed to be included representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all the property in the district and all property proposed to be included, the amending ordinance must be adopted by unanimous vote of the council.

3. The clerk shall cause a copy of the amending ordinance to be filed in the office of the county recorder of each county in which any property within the district as amended is located.

4. At any time prior to council amendment of the ordinance creating the district, the entire matter of amending such ordinance shall be withdrawn from council consideration if a petition objecting to amending such ordinance is filed with its clerk containing either the signatures of at least forty percent of all owners of property within the district and all property proposed to be included or signatures which together represent ownership of property with an assessed value of forty percent or more of the assessed value of all property within the district and all property proposed to be included.

5. Any resident or property owner of the city may appeal the action or decisions of the council amending the ordinance creating the district, to the district court of the county in which any part of the district, as amended, is located, within fifteen days after the date upon which the ordinance amending the ordinance creating the district becomes effective, but the action and decision of the council are final and conclusive unless the court finds that the council exceeded its authority. No action may be brought questioning the regularity of the proceedings pertaining to the amended ordinance or the validity of the district as amended, or the propriety of the inclusion or exclusion of any property within or from the amended district, or the ability of the city to levy taxes in accordance with the ordinance establishing the district, as amended, after thirty days from the date upon which the amending ordinance becomes effective.

6. All other provisions in section 386.3 shall apply to an amended district and to the ordinance amending the ordinance creating the district with the same effect as they apply to the original district and the ordinance creating the original district.

[C77, 79, 81, §386.4]

386.5 Dissolution.

A district may be dissolved and terminated by action of the council rescinding the ordinance creating the district, and any subsequent ordinances amending the district, by an affirmative vote of three-fourths of all members of the council, or in cities having but three members of the council, the affirmative vote of two members. However, if a remonstrance has been filed with the clerk signed by at least twenty-five percent of all owners of property within the district representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all the property in the district, the rescission of the ordinance creating the district, and any subsequent ordinances amending the district, requires a unanimous vote of the council.

At any time prior to action of the council rescinding the ordinance creating the district, and any subsequent ordinances amending the district, the entire matter of dissolving a district shall be withdrawn from council consideration if a petition is filed with its clerk containing the signatures of at least forty percent of all owners of property within the district or signatures which together represent ownership of property with an assessed value of forty percent or more of the assessed value of all property within the district.

[C77, 79, 81, §386.5]

386.6 Improvements.

When a city proposes to construct an improvement the cost of which is to be paid or financed under the provisions of this chapter, it must do so in accordance with the provisions of this section, as follows:

1. The council shall initiate proceedings for a proposed improvement upon receipt of a petition signed by at least twenty-five percent of all owners of property within the district representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all the property in the district.

2. Upon the receipt of such a petition the council shall notify the city planning commission, if one exists, the metropolitan or regional planning commission, if one exists, or the zoning commission, if one exists, in the order set forth in section 386.3, subsection 3. Upon notification by the council, the commission shall prepare an evaluative report for the council on the merit and feasibility of the improvement and carry out all other duties as set forth in section 386.3, subsection 3. If no planning or zoning commission exists, the council shall call a hearing on a proposed improvement upon receipt of a petition.

3. Upon the receipt of the commission's report the council shall set a time and place of meeting at which the council proposes to take action on the proposed improvement and shall publish and mail notice as provided in section 386.3, subsections 4 and 5.

4. The notice must include a statement that an improvement has been proposed, the nature of the improvement, the source of payment of the cost of the improvement, and the time and place of hearing.

5. At the time and place set in the notice the council shall hear all owners of property in the district or residents of the city desiring to express their views. The council must wait at least thirty days after the public hearing has been held before it may take action to order construction of the improvement. The provisions of section 386.3, subsections 7 and 9 relating to the adoption of the ordinance establishing a district, the requisite vote therefor, the remonstrance thereto and the withdrawal of the entire matter from council consideration apply to the adoption of the resolution ordering the construction of the improvement.

6. If the council orders the construction of the improvement, it shall proceed to let contracts therefor in accordance with chapter 384, division VI.

7. The adoption of a resolution ordering the construction of an improvement is a legislative determination that the proposed improvement is in furtherance of the purposes of the district and that all property in the district will be affected by the construction of the improvement, or that all owners of property in the district have an interest in the construction of the improvement.

8. Any resident or property owner of the city may appeal the action or decisions of the council ordering the construction of the improvement to the district court of the county in which any part of the district is located within thirty days after the adoption of the resolution ordering construction of the improvement, but the action and decisions of the council are final and conclusive unless the court finds that the council exceeded its authority. No action may be brought questioning the regularity of the proceedings pertaining to the ordering of the construction of an improvement, or the right of the city to apply moneys in the capital improvement fund referred to in this chapter to the payment of the costs of the improvement, or the right of the city to issue bonds referred to in this chapter for the payment of the costs of the improvement, or the right of the city to levy taxes which with any other taxes authorized by this chapter do not exceed the maximum rate of tax that may be imposed upon property within the district for the payment of principal of and interest on bonds issued to pay the costs of the improvement, after thirty days from the date of adoption of the resolution ordering construction of the improvement.

9. The procedural steps contained in this section may be combined with the procedural steps for the petitioning and creation of the district or the procedural steps for the authorization of any tax or any combination thereof.

[C77, 79, 81, §386.6]

386.7 Self-liquidating improvements.

When a city proposes to construct a self-liquidating improvement, the cost of which is to be paid or financed under the provisions of this chapter, it must do so in accordance with the provisions of this section as follows:

1. Section 386.6, subsections 1 to 5 are applicable to a self-liquidating improvement to the same extent as they are applicable to an improvement and the proceedings initiating a self-liquidating improvement shall be governed thereby.

2. Before the council may order the construction of a self-liquidating improvement, and after hearing thereon, it must find that the self-liquidating improvement and the leasing of a part or the whole of it to any person or governmental body will further the corporate purposes of the city and will:

a. Aid in the commercial development of the district.

b. Further the interests of the district; or

c. Not substantially reduce the city's property tax base.

3. If the council orders the construction of the self-liquidating improvement, contracts for it shall be let in accordance with division VI of chapter 384.

4. The adoption of a resolution ordering the construction of a self-liquidating improvement is a legislative determination that the proposed self-liquidating improvement and the leasing of a part or the whole of it to any person or governmental body will further the corporate purposes of the city and will:

a. Aid in the commercial development of the district.

b. Further the interests of the district; or

c. Not substantially reduce the city's property tax base.

5. A city may lease any or all of a self-liquidating improvement to any person or governmental body.

6. A city may issue revenue bonds payable from the income and receipts derived from the self-liquidated improvement. Chapter 384, division V applies to revenue bonds for self-liquidating improvements and the term *"city enterprise"* as used in that division shall be deemed to include self-liquidating improvements authorized by this chapter.

7. Any resident or property owner of the city may appeal a decision of the council to order the construction of a self-liquidating improvement or to lease any or all of a self-liquidating improvement to the district court of the county in which any part of the district is located, within thirty days after the adoption of the resolution ordering the self-liquidating improvement, but the action of the council is final and conclusive unless the court finds that the council exceeded its authority.

8. No action may be brought questioning the regularity of the proceedings pertaining to the or-

dering of the construction of a self-liquidating improvement after thirty days from the date of adoption of the resolution ordering construction of the self-liquidating improvement. No action may be brought questioning the regularity of the proceedings pertaining to the leasing of any or all of a self-liquidating improvement after thirty days from the date of the adoption of a resolution approving the proposed lease. In addition to the limitation contained in section 384.92, no action may be brought which questions the legality of revenue bonds or the power of the city to issue revenue bonds or the effectiveness of any proceedings relating to the authorization and issuance of revenue bonds relating to a self-liquidating improvement after thirty days from the time the bonds are ordered issued by the city.

9. The procedural steps contained in this section may be combined with the procedural steps for the petitioning and creation of the district.

[C77, 79, 81, §386.7]
89 Acts, ch 83, §50

386.8 Operation tax.

A city may establish a self-supported improvement district operation fund, and may certify taxes not to exceed the rate limitation as established in the ordinance creating the district, or any amendment thereto, each year to be levied for the fund against all of the property in the district, for the purpose of paying the administrative expenses of the district, which may include but are not limited to administrative personnel salaries, a separate administrative office, planning costs including consultation fees, engineering fees, architectural fees, and legal fees and all other expenses reasonably associated with the administration of the district and the fulfilling of the purposes of the district. The taxes levied for this fund may also be used for the purpose of paying maintenance expenses of improvements or self-liquidating improvements for a specified length of time with one or more options to renew if such is clearly stated in the petition which requests the council to authorize construction of the improvement or self-liquidating improvement, whether or not such petition is combined with the petition requesting creation of a district. Parcels of property which are assessed as residential property for property tax purposes are exempt from the tax levied under this section except residential properties within a duly designated historic district. A tax levied under this section is not subject to the levy limitation in section 384.1.

[C77, 79, 81, §386.8]
85 Acts, ch 113, §2

386.9 Capital improvement tax.

A city may establish a capital improvement fund for a district and may certify taxes, not to exceed the rate established by the ordinance creating the district, or any subsequent amendment thereto, each year to be levied for the fund against all of the property in the district, for the purpose of accumulating moneys for the financing or payment of a part or all of the costs of any improvement or self-liquidating improvement. However, parcels of property which are assessed as residential property for property tax purposes are exempt from the tax levied under this section except residential properties within a duly designated historic district. A tax levied under this section is not subject to the levy limitations in section 384.1 or 384.7.

[C77, 79, 81, §386.9]
85 Acts, ch 113, §3

386.10 Debt service tax.

A city shall establish a self-supported municipal improvement district debt service fund whenever any self-supported municipal improvement district bonds are issued and outstanding, other than revenue bonds, and shall certify taxes to be levied against all of the property in the district for the debt service fund in the amount necessary to pay interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all self-supported municipal improvement district bonds as authorized in section 386.11, issued by the city. However, parcels of property which are assessed as residential property for property tax purposes at the time of the issuance of the bonds are exempt from the tax levied under this section until the parcels are no longer assessed as residential property or until the residential properties are designated as a part of an historic district.

[C77, 79, 81, §386.10]
85 Acts, ch 113, §4

386.11 Self-supported municipal improvement district bonds.

1. A city may issue and sell self-supported municipal improvement district bonds at public or private sale payable from taxes which must be levied in accordance with chapter 76. The bonds are payable from the levy of unlimited ad valorem taxes on all the taxable property within the district through the district debt service fund authorized by section 386.10. When self-supported municipal improvement district bonds are issued and taxes are levied in accordance with chapter 76, the taxes shall continue to be levied, until the bonds and interest thereon are paid in full, against all of the taxable property that was included in the district at the time of the issuance of the bonds, regardless of any subsequent removal of any property from the district or the dissolution of the district.

2. The proceeds of the sale of the bonds may be used to pay any or all of the costs of any improvement, or be used to pay any legal indebtedness in-

curred for the cost of any improvement including bonds or warrants previously issued to pay the costs of an improvement, or bonds may be exchanged for the evidences of such legal indebtedness.

3. Before the council may institute proceedings for the issuance of bonds, it shall proceed in the same manner as is required for the institution of proceedings for the issuance of bonds for an essential corporate purpose as provided in section 384.25, subsection 2 and all of the provisions of that subsection apply to bonds issued pursuant to this section.

4. A city may issue bonds authorized by this section pursuant to a resolution adopted at a regular or special meeting by an affirmative vote of a majority of the total members to which the council is entitled. The proceeds of a single bond issue may be used for various improvements.

5. The provisions of sections 384.29, 384.30, and 384.31 apply to bonds issued pursuant to this section, except that the bonds shall be designated "municipal improvement district bonds".

6. No action may be brought which questions the legality of bonds issued pursuant to this section or the power of a city to issue the bonds or the effectiveness of any proceedings relating to the authorization and issuance of the bonds after thirty days from the time the bonds are ordered issued by the city.

[C77, 79, 81, §386.11]

386.12 Payment for improvements.

The costs of improvements may be paid from any of the following sources or a combination thereof:

1. The capital improvement fund referred to in section 386.9.

2. The proceeds of bonds referred to in section 386.11.

3. Any other funds of the city which are legally available to pay all or a portion of the cost of an improvement. The fact that an improvement is initiated under the provisions of this chapter, or any of the costs of an improvement or any part of an improvement are being paid under the provisions of this chapter, shall not preclude the city from paying any costs of an improvement from any fund from which it might otherwise have been able to pay such costs. In addition, and not in limitation of the foregoing, any improvement which constitutes an essential corporate purpose or a general corporate purpose as defined in section 384.24, subsections 3 and 4, may be financed in whole or in part with the proceeds of the issuance of general obligation bonds of the city pursuant to the provisions of chapter 384, division III.

4. Payment for the costs of an improvement may also be made in warrants drawn on any fund from which payment for the improvement may be made. If such funds are depleted, anticipatory warrants may be issued bearing a rate of interest not exceeding that permitted by chapter 74A, which do not constitute a violation of section 384.10, even if the collection of taxes or income from the sale of bonds applicable to the improvement is after the end of the fiscal year in which the warrants are issued. If the city arranges for the private sale of anticipatory warrants, they may be sold and the proceeds used to pay the costs of the improvement. Such warrants may be used to pay other persons furnishing services constituting a part of the cost of the improvement.

[C77, 79, 81, §386.12]

386.13 Parking fee abatements.

A city may apply moneys in the operation fund of the district to prepay parking fees at any city parking facility located in or used in conjunction with the district but only after notice and hearing as required by section 386.6. The authority to prepay such fees shall exist only for the period of time set out in the notice to owners and in the resolution of the council authorizing the application of funds for that purpose. Upon the application of sufficient amounts of prepaid fees, the city need not charge individual users of the parking facility. Before adopting a resolution authorizing the application of funds for such purpose, the council must find that the application will further the purposes of the district, including but not limited to increasing the commercial activity in the district.

[C77, 79, 81, §386.13]

386.14 Independent provisions.

The provisions of this chapter with respect to notice, hearing and appeal for the construction of improvements and self-liquidating improvements and the issuance and sale of bonds are in lieu of the provisions contained in chapters 73A and 75, or any other law, unless specifically referred to and made applicable by this chapter.

[C77, 79, 81, §386.14]

CHAPTER 386A

PUBLIC TRANSPORTATION SUBSIDY

Repealed by 72 Acts, ch 1088, §199

CHAPTER 386B

MUNICIPAL TRANSIT SYSTEMS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 386C

URBAN TRANSIT COMPANIES VEHICLE FEES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 387

RURAL COMMUNITY DEVELOPMENT

Repealed by 86 Acts, ch 1245, §852

CHAPTER 388

CITY UTILITIES

Legislative intent regarding cable communications or television, telephone, and telecommunications systems or services; 99 Acts, ch 63, §1

388.1 Definitions.
388.2 Submission to voters.
388.3 Procedure upon approval.
388.4 Utility board.
388.5 Control of tax revenues.
388.6 Discrimination in rates.
388.7 Prior utility board.
388.8 Easement continuance.
388.9 Competitive information.
388.10 Municipal utility providing local exchange services.

388.1 Definitions.

As used in this chapter:

1. *"Combined utility system"* means the same as defined in section 384.80.

2. *"Utility board"* or *"board"* means a board of trustees established to operate a city utility, city utilities, or a combined utility system. A single utility board may operate more than one city utility even though such city utilities are not a combined utility system.

[C75, 77, 79, 81, §388.1]

388.2 Submission to voters.

The proposal of a city to establish, acquire, lease, or dispose of a city utility, except a sanitary sewage or storm water drainage system, in order to undertake or to discontinue the operation of the city utility, or the proposal to establish or dissolve a combined utility system, or the proposal to establish or discontinue a utility board, is subject to the approval of the voters of the city, except that a board may be discontinued by resolution of the council when the city utility, city utilities, or combined utility system it administers is disposed of or leased for a period of over five years.

The proposal may be submitted to the voters at any city election by the council on its own motion. Upon receipt of a valid petition as defined in section 362.4, requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election.

A proposal for the establishment of a utility board must specify a board of either three or five members.

If a majority of those voting for and against the proposal approves the proposal, the city may proceed as proposed.

If a majority of those voting for and against the proposal does not approve the proposal, the same or a similar proposal may not be submitted to the voters of the city for at least four years from the date of the election at which the proposal was defeated.

[C73, §471; C97, §720, 721; S13, §720, 721; C24, 27, 31, 35, 39, §**6131 – 6133, 6144;** C46, 50, 54, 58, §397.5 – 397.7, 397.29; C62, 66, 71, 73, §397.5 – 397.7, 397.29, 397.43; C75, 77, 79, 81, §388.2]

90 Acts, ch 1206, §4

City elections held after June 30, 1993, on issue of offer of communications or telecommunications systems or services and actions of utilities board deemed valid; 99 Acts, ch 63, §8

388.3 Procedure upon approval.

If a proposal to establish a utility board receives a favorable majority vote, the mayor shall appoint the board members, as provided in the proposal, subject to the approval of the council. The council shall by resolution provide for staggered six-year terms for, and shall set the compensation of, board members.

A board member appointed to fill a vacancy occurring by reason other than the expiration of a term is appointed for the balance of the unexpired term.

A public officer or a salaried employee of the city may not serve on a utility board.

[C97, §747; S13, §747-a, -b; C24, 27, §6147, 6148, 6157; C31, 35, §6147, 6148, 6157, 6943-c1, -c2, -c3; C39, §**6147, 6148, 6157, 6943.001 – 6943.003;** C46, 50, 54, 58, 62, 66, 71, 73, §397.32, 397.33, 398.8, 420.297 – 420.299; C75, 77, 79, 81, §388.3]

388.4 Utility board.

The title of a utility board must be appropriate to the city utility, city utilities, or combined utility system administered by the board. A utility board may be a party to legal action. A utility board may exercise all powers of a city in relation to the city utility, city utilities, or combined utility system it administers, with the following exceptions:

1. A board may not certify taxes to be levied, pass ordinances or amendments, or issue general obligation or special assessment bonds.

2. The title to all property of a city utility or combined utility system must be held in the name of the city, but the utility board has all the powers and authorities of the city with respect to the acquisition by purchase, condemnation, or otherwise, lease, sale, or other disposition of such property, and the management, control, and operation of the same, subject to the requirements, terms, covenants, conditions, and provisions of any resolutions authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the city utility or combined utility system, and which are then outstanding.

3. A board shall make to the council a detailed annual report, including a complete financial statement.

4. Immediately following a regular or special meeting of a utility board, the secretary shall prepare a condensed statement of the proceedings of the board and cause the statement to be published in a newspaper of general circulation in the city. The statement must include a list of all claims allowed, showing the name of the person or firm making the claim, the reason for the claim, and the amount of the claim. Salary claims must show the gross amount of the claim except that salaries paid to persons regularly employed by the utility, for services regularly performed by them, must be published once annually showing the gross amount of the salary. In cities having more than one hundred fifty thousand population the utility board shall each month prepare in pamphlet form the statement herein required for the preceding month, and furnish copies to the city library, the daily newspapers of the city, the city clerk, and to persons who apply at the office of the secretary, and the pamphlet shall constitute publication as required. Failure by the secretary to make publication is a simple misdemeanor.

[S13, §1056-a7, -c24; C24, §5678, 6149; C27, 31, 35, §5676-a2, 6149, 6159-a1; C39, §**5676.2, 6149, 6159.1;** C46, 50, §363.52, 397.34, 398.11; C54, 58, 62, 66, 71, 73, §368A.7, 368A.24, 397.34, 398.11; C75, 77, 79, 81, §388.4]

388.5 Control of tax revenues.

A utility board shall control tax revenues allocated to the city utility, city utilities, or combined utility system it administers and all moneys derived from the operation of the city utility, city utilities, or combined utility system, the sale of utility property, interest on investments, or from any other source related to the city utility, city utilities, or combined utility system.

All city utility moneys received must be held in a separate utility fund, with a separate account or accounts for each city utility or combined utility system. If a board administers a municipal utility or combined utility system, moneys may be paid out of that utility account only at the direction of the board.

[C97, §748; C13, §741-b, 748; C24, 27, 31, 35, 39, §**5676, 6158;** C46, 50, §363.50, 398.9; C54, 58, 62, 66, 71, 73, §368A.6, 398.9; C75, 77, 79, 81, §388.5]

388.6 Discrimination in rates.

A city utility or a combined utility system may not provide use or service at a discriminatory rate, except to the city or its agencies, as provided in section 384.91.

[C75, 77, 79, 81, §388.6]

388.7 Prior utility board.

A utility board functioning on the effective date of the city code shall continue to function until discontinued as provided in this chapter, and has all the powers granted in this chapter.

Nothing in the city code shall be construed to allow the abrogation of any franchise.

[C75, 77, 79, 81, §388.7]

388.8 Easement continuance.

If a city exercised a right to an easement on property before January 1, 1950, for the establishment of water, sewer, or gas or power lines, the city has acquired the right to exercise a continuing easement on that property to the extent necessary for repair and maintenance of those lines.

[81 Acts, ch 129, §1]

388.9 Competitive information.

1. Notwithstanding section 21.5, subsection 1, the governing body of a city utility or combined utility system, or a city enterprise or combined city enterprise as defined in section 384.80, by a vote of two-thirds of the members of the body or all of the members present at the meeting, may hold a closed session to discuss marketing and pricing strategies or proprietary information if its competitive position would be harmed by public disclosure not required of potential or actual competitors, and if no public purpose would be served by such disclosure. The minutes and a tape recording of a session closed under this subsection shall be available for public examination at that point in time when the public disclosure would no longer harm the utility's competitive position.

2. Notwithstanding section 22.2, subsection 1, public records of a city utility or combined utility system, or a city enterprise or combined city enterprise as defined in section 384.80, which shall not be examined or copied as of right, include proprietary information, records of customer names and accounts, records associated with marketing or pricing strategies, preliminary working papers, spreadsheet scenarios, and cost data, if the competitive position of the city utility, combined utility system, city enterprise, or combined city enterprise would be harmed by public disclosure not required of a potential or actual competitor, and if no public purpose would be served by such disclosure. A public record not subject to examination or copying under this subsection shall be available for public examination and copying at that point in time when public disclosure would no longer harm the competitive position of the city utility, combined utility system, city enterprise, or combined city enterprise.

99 Acts, ch 63, §3, 8

Legislative intent; 99 Acts, ch 63, §1

Section applies retroactively to July 1, 1993; 99 Acts, ch 63, §8

388.10 Municipal utility providing local exchange services.

1. *a.* A city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476 or the municipal utility shall not do, directly or indirectly, any of the following:

(1) Use general fund moneys for the ongoing support or subsidy of a telecommunications system.

(2) Provide any city facilities, equipment, or services to provide telecommunications systems or services at a cost for such facilities, equipment, or services which is less than the reasonable cost of providing such city facilities, equipment, or services.

(3) Provide any other city service, other than a communications service, to a telecommunications customer at a cost which is less than would be paid by the same person receiving such other city service if the person was not a telecommunications customer.

(4) Use funds or revenue generated from electric, gas, water, sewage, or garbage services provided by the city for the ongoing support of that portion of a system or service used to provide local exchange services.

b. For purposes of this section, *"telecommunications system"* means only that portion of a system or facilities which is used to provide local exchange services.

2. A city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476 or the municipal utility shall do the following:

a. Prepare and maintain records which record the full cost accounting of providing local exchange service. The records shall show the amount and source of capital for initial construction or acquisition of the local exchange system or facilities. This section shall not prohibit a municipal utility from utilizing capital from any lawful source, provided that the reasonable cost of such capital is accounted for as a cost of providing the service.

b. Adopt rates for the provision of local exchange services that reflect the actual cost of providing the local exchange service. However, this paragraph shall not prohibit the municipal utility from establishing market-based prices for competitive local exchange services.

c. Be subject to all requirements of the city which would apply to any other provider of local exchange services in the same manner as such requirements would apply to such other provider.

3. This section shall not prohibit the marketing or bundling of other products or services, in addition to local exchange services. However, a city shall include on a billing statement sent to a person receiving services from the city, a separate charge for each service provided to the person. This subsection does not prohibit the city from also including on the billing statement a total amount to be paid by the person.

99 Acts, ch 63, §4, 8

Legislative intent; 99 Acts, ch 63, §1

Section applies retroactively to July 1, 1993; validity of city elections after June 30, 1993, on issue of offer of communications or telecommunications systems or services and actions of utilities board; city financing measures prior to January 1, 1999, not a violation; 99 Acts, ch 63, §8

CHAPTER 389

JOINT WATER UTILITIES

389.1 Definitions.
389.2 Submission to voters.
389.3 Powers and duties.
389.4 Financing.
389.5 Construction.

389.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Joint water utility"* means a water utility established by two or more cities which owns or operates or proposes to finance the purchase or construction of all or part of a water supply system or the capacity or use of a water supply system pursuant to this chapter. A water supply system includes all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the system.

2. *"Joint water utility board"* means the board of trustees established to operate a joint water utility.

3. *"Project"* means any works or facilities useful or necessary for the operation of a joint water utility.

91 Acts, ch 168, §2

389.2 Submission to voters.

A joint water utility may be established by two or more cities. A proposal to establish a joint water utility or to join an existing joint water utility may be submitted to the voters of a city by the city council upon its own motion, or upon receipt of a valid petition pursuant to section 362.4. If the proposal is to establish a joint water utility, the proposal shall be submitted to the voters of each city proposing to establish the joint water utility. If a majority of the electorate in each of at least two cities approves the proposal, the cities approving the proposal may establish a joint water utility.

If the proposal is to join an existing joint water utility, the proposal must first be submitted to the joint water utility board for its approval. If the proposal is approved by the board, the proposal shall be submitted to the electorate of the city wishing to join. The proposal must receive a majority affirmative vote for passage.

91 Acts, ch 168, §3

389.3 Powers and duties.

Upon adoption of a proposal to establish a joint water utility, the member cities shall establish a joint water utility board, consisting of at least five members. The mayors of the participating cities shall appoint the members, subject to the approval of the city councils, and at least one member shall be appointed from each participating city. The board shall be responsible for the planning and operation of a joint water utility, subject to the provisions of this chapter.

A joint water utility is a political subdivision and an instrumentality of municipal government. The statutory powers, duties, and limitations conferred upon a city utility apply to a joint water utility, except that title to property of a joint water utility may be held in the name of the joint water utility. The joint water utility board shall have all powers and authority of a city with respect to property which is held by the joint water utility. A joint water utility shall have the power of eminent domain, including the powers conferred upon a city in chapters 6A and 6B, for the purposes of constructing and operating a joint water utility.

The joint water utility board may purchase or construct all or part of any water supply system, and may finance the purchase or construction. The board may also contract to sell all or part of the joint water utility's water supply, including any surplus, to a public or private agency, or an entity created to carry out an agreement authorizing the joint exercise of any of the governmental powers enumerated in section 28F.1. The board may contract for the purchase, from any source, of all or a portion of the water supply requirements of the joint water facility. A contract may include provisions for the payment for capacity or output of a facility whether the facility is completed or operating, and for establishing the rights and obligations of the parties to the contract in the event of a default by any of the parties.

Payments made by a joint water utility pursuant to a contract shall constitute operating expenses of the joint water utility and shall be payable from the revenues derived from the operation of the joint water utility.

91 Acts, ch 168, §4

389.4 Financing.

A joint water utility may finance projects pursuant to chapter 28F. A city may finance its share of the cost of a project by the use of any method of financing available for city utilities, including but not limited to sections 384.23 through 384.36 and sections 384.80 through 384.94.

If a project is financed by a joint water utility,

revenues derived from the project shall be deemed to be revenues of the joint water utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of the joint water utility. If a project is financed by member cities of a joint water utility, the revenues derived from the project shall be deemed to be revenues of the city or city utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of the city or city utility.

91 Acts, ch 168, §5

389.5 Construction.

This chapter being necessary for the public health, public safety, and general welfare, shall be liberally construed to effectuate its purposes. This chapter shall be construed as providing a separate and independent method for accomplishing its purposes, and shall take precedence over any contrary provision of the law.

91 Acts, ch 168, §6

CHAPTER 390

JOINT ELECTRICAL UTILITIES

390.1 Definitions.
390.2 Additional power.
390.3 Hearing — exception to general statutes.
390.4 Undivided joint interest.
390.5 Financing.
390.6 Construction.
390.7 Construction of amendments.

390.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Acquisition"* of a joint facility includes the purchase, lease, construction, reconstruction, extension, remodeling, improvement, repair, and equipping of the joint facility.

2. *"City"* means a municipal corporation, but not including a county, township, school district or special purpose district or authority.

3. *"City utility"* has the same meaning provided in section 362.2, subsection 6, and includes a *"combined utility system"*, as defined in section 384.80, which operates facilities for the generation or transmission of electric energy.

4. *"Electric co-operative"* means a co-operative association which owns and operates property for generating, purchasing, obtaining by exchange or otherwise acquiring, or transmitting electric power and energy.

5. *"Governing body"* means the public body which by law is charged with the management and control of a city utility as defined in section 384.80, subsection 5.

6. *"Joint agreement"* means an agreement of participants pursuant to the provisions of this chapter. A joint agreement may be one or more documents, and may be entitled joint agreement, agreement, contract or otherwise.

7. *"Joint facility"* means all property necessary or useful for generating, purchasing, obtaining by exchange or otherwise acquiring, or transmitting electric power and energy, which is owned and operated pursuant to a joint agreement.

8. *"Or"* includes the conjunctive *"and"* and *"and"* includes the disjunctive *"or"*, unless the context clearly indicates otherwise.

9. *"Own"* and *"ownership"* in the case of transmission facilities, including substations and associated facilities, which are located in whole or in part in Iowa, may include the right to the use of an amount of the capacity of the facilities, if the joint agreement so provides. *"Own"* and *"ownership"* in the case of transmission facilities, including substations and associated facilities, does not include those which are located in states which are not contiguous to Iowa.

10. *"Participant"* means a city, electric co-operative or privately owned utility company which is a party to a joint agreement.

[C75, 77, 79, 81, §390.1]

84 Acts, ch 1251, §1

390.2 Additional power.

In addition to other powers conferred by the Constitution and laws of this state, any city having established a utility which operates an existing electric generating facility or distribution system may enter into and carry out joint agreements with other participants for the acquisition of ownership of an undivided interest in a joint facility and for the planning, financing, operation and maintenance of the joint facility.

[C75, 77, 79, 81, §390.2]

390.3 Hearing — exception to general statutes.

Before a city may enter into or amend a joint agreement, the governing body shall adopt a proposed form of agreement and give notice and conduct a public hearing on the agreement in the manner provided by sections 73A.1 to 73A.11, which action shall be subject to appeal as provided in chapter 73A.

However, in the performance of a joint agreement, the governing body is not subject to statutes generally applicable to public contracts, including hearings on plans, specifications, form of contracts, costs, notice and competitive bidding required under sections 384.95 through 384.103, unless all parties to the joint agreement are cities located within the state of Iowa.

[C75, 77, 79, 81, §390.3]

84 Acts, ch 1067, §36

390.4 Undivided joint interest.

In substance, a joint agreement shall:

1. Provide that each participant shall own an undivided interest in the joint facility, the interest being equal to the percentage of the money furnished, value of property furnished, or services rendered by each participant toward the total cost of the joint facility, and that each participant shall own and control a like percentage of the output of the joint facility.

2. Provide that each participant shall undertake to finance its portion of the cost of planning, acquisition, operation, and maintenance of the joint facility.

3. Provide that each participant in the ownership of the joint facility shall bear all taxes, if any, chargeable to its ownership of the joint facility under statutes now or hereafter in effect.

4. Provide for the planning, financing, acquisition, operation and maintenance of the joint facility, or for any one or more of said purposes, including the cost to be contributed by each participant.

5. Provide for a uniform method of determining and allocating operation and maintenance expenses of the joint facility.

6. Provide that a participant may be liable only for its own acts with regard to the joint facility, or as principal for the acts of the manager in proportion to its percentage of ownership, and shall not be jointly or severally liable for the acts, omissions or obligations of other participants.

7. Provide that the undivided interest of a participant in the joint facility may not be charged directly or indirectly with a debt or obligation of another participant or be subject to any lien as a result thereof.

8. Provide for the management and operation of the affairs of the joint facility, and the indemnification of the manager, which may include a provision that the joint facility shall be managed and operated by one or more of the participants.

9. Provide that no participant may withdraw from the joint agreement during its duration so long as obligations payable in whole or in part from revenues derived from the operation of the joint facility, and issued by a city, are outstanding, unless prior consent is first granted by each of the other participants either in the joint agreement or otherwise.

10. Provide for the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property and assets upon partial or complete termination. The provisions of the joint agreement for disposition of the joint facilities shall not be subject to the statutes limiting or prescribing procedure for the sale of city-owned properties.

11. Provide for the duration of the agreement. An agreement authorized by this chapter shall not be limited as to period of existence, except as may be limited by the terms of the agreement itself.

12. Include other provisions as the parties may deem necessary or appropriate with respect to the conduct of the participants, the operation or ownership of the joint facility, or the settlement of disputes.

[C75, 77, 79, 81, §390.4]

390.5 Financing.

A city may finance its share of the cost of a joint facility by the use of any method of financing available for city utilities under the statutes of this state, for the financing of electric generation or transmission facilities to be owned by a city in their entirety, including but not limited to the provisions of chapters 397 and 407, Code 1973, and sections 384.23 to 384.36 and sections 384.80 to 384.94 as applicable. Revenues derived by a city utility from its share of ownership or operation of a joint facility shall be deemed to be revenues of the city utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of a city utility. A joint agreement shall be deemed payable from revenues or revenue bonds of a city utility in the absence of provision to the contrary or a referendum approving the issuance of general obligation bonds.

[C75, 77, 79, 81, §390.5]

390.6 Construction.

This chapter being necessary for the public health, public safety and general welfare, shall be liberally construed to effectuate its purposes. This chapter shall be construed as providing a separate and independent method for accomplishing its purposes, and except as provided or necessarily implied shall not be construed as subject to or an amendment of any other law. In particular, without limiting the generality of the foregoing, no restrictions or requirements contained in this chapter shall be construed as applying to bonds issued pursuant to the provisions of chapter 419. Noth-

ing contained in this chapter shall be construed to limit the powers and authority of privately owned utility companies or electric co-operatives under any other law.

[C75, 77, 79, 81, §390.6]

390.7 Construction of amendments.

The provisions of 1975 Iowa Acts, chapter 199, are retroactive in application to all joint agreements entered into and executed prior to July 1, 1975, under this chapter, on behalf of cities which, on the date of executing the agreements, operated existing electric generating or distribution facilities. However, all such joint agreements which complied with the provisions of this chapter prior to amendment by 1975 Iowa Acts, chapter 199, are also in full force and effect according to their terms, and are not rendered invalid in any respect by any provision of 1975 Iowa Acts, chapter 199.

[C77, 79, 81, §390.7]

CHAPTER 390A

OFF-STREET PARKING BENEFITED DISTRICTS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 391

STREET IMPROVEMENTS, SEWERS AND SPECIAL ASSESSMENTS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 391A

STREET IMPROVEMENTS AND SEWERS (ALTERNATIVE METHOD)

Repealed by 72 Acts, ch 1088, §199

CHAPTER 392

ADMINISTRATIVE AGENCIES

392.1 Establishment by ordinance.
392.2 Pledging credit or taxing power prohibited.
392.3 Contracts reviewable by council.
392.4 Joint action.
392.5 Library board.
392.6 Hospital trustees.
392.7 Prior agencies.

392.1 Establishment by ordinance.

If the council wishes to establish an administrative agency, it shall do so by an ordinance which indicates the title, powers, and duties of the agency, the method of appointment or election, qualifications, compensation, and term of members, and other appropriate matters relating to the agency. The title of an administrative agency must be appropriate to its function. The council may not delegate to an administrative agency any of the powers, authorities, and duties prescribed in division V of chapter 384 or in chapter 388, except that the council may delegate to an administrative agency established for the purpose of operating an airport any of its powers and duties prescribed in division V of chapter 384, and the council may delegate to an administrative agency power to establish and collect charges, and disburse the moneys received for the use of a city facility, including a city enterprise, as defined in section 384.24, if the delegation to an administrative agency is strictly subject to the limitations imposed by the revenue bonds or pledge orders outstanding which are payable from the revenues of the city enterprise. Except as otherwise provided in this chapter, the council may delegate rulemaking authority to the agency for matters within the scope of the agency's powers and duties, and may prescribe penalties for violation of agency rules which have been adopted by ordinance. Rules governing the use by the public

of any city facility must be made readily available to the public.

[C75, 77, 79, 81, §392.1]

95 Acts, ch 21, §1

392.2 Pledging credit or taxing power prohibited.

An administrative agency may not pledge the credit or taxing power of the city.

[C75, 77, 79, 81, §392.2]

392.3 Contracts reviewable by council.

Unless otherwise stated in the ordinance establishing the agency, contracts and agreements entered into by administrative agencies are subject to review and approval by the council, but when so approved and to the extent such contracts and agreements are otherwise valid by law, are valid and not voidable by subsequent actions of the city even if the administrative agency is dissolved, but no such contract or agreement may conflict with the provisions of division V of chapter 384 or chapter 388, or any action taken pursuant to the provisions of the same.

[C75, 77, 79, 81, §392.3]

392.4 Joint action.

Subject to approval by the council, an administrative agency may take action jointly with other public or private agencies as provided in chapter 28E.

[C75, 77, 79, 81, §392.4]

392.5 Library board.

A city library board of trustees functioning on the effective date of the city code shall continue to function in the same manner until altered or discontinued as provided in this section.

In order for the board to function in the same manner, the council shall retain all applicable ordinances, and shall adopt as ordinances all applicable state statutes repealed by 1972 Iowa Acts, chapter 1088.

A library board may accept and control the expenditure of all gifts, devises, and bequests to the library.

A proposal to alter the composition, manner of selection, or charge of a library board, or to replace it with an alternate form of administrative agency, is subject to the approval of the voters of the city.

The proposal may be submitted to the voters at any city election by the council on its own motion. Upon receipt of a valid petition as defined in section 362.4, requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election. A proposal submitted to the voters must describe with reasonable detail the action proposed.

If a majority of those voting approves the proposal, the city may proceed as proposed.

If a majority of those voting does not approve the proposal, the same or a similar proposal may not be submitted to the voters of the city for at least four years from the date of the election at which the proposal was defeated.

[C97, §728, 729; S13, §729; SS15, §728; C24, 27, 31, 35, 39, §**5851, 5858;** C46, 50, 54, 58, 62, 66, 71, 73, §378.3, 378.10; C75, 77, 79, 81, §392.5]

2001 Acts, ch 24, §49

392.6 Hospital trustees.

If a hospital or health care facility is established by a city, the city shall by ordinance provide for the election, at a general, city, or special election, of three trustees, whose terms of office shall be four years. However, at the first election, three shall be elected and hold their office, one for four years and two for two years, and they shall by lot determine their respective terms. A board of trustees elected pursuant to this section shall serve as the sole and only board of trustees for any and all institutions established by a city as provided for in this section.

Cities maintaining an institution as provided for in this section which have a board of trustees consisting of three or five members may by ordinance increase the number of members to five or seven. The ordinance shall provide for the immediate appointment of the additional members necessary to establish a five-member or seven-member board and shall provide that, of the additional members added to the board by appointment, one-half of the additional members added shall serve until the next succeeding general or city election, and the remaining additional members shall serve until the second succeeding general or city election. The ordinance shall also provide that the determination of which election an appointed additional member shall be required to seek election be determined by lot. Thereafter, the terms of office of such additional members shall be four years. However, if a city has adopted an ordinance which increases the number of members of the board of trustees to five or seven members and the terms of office of four of the five members or six of the seven members end in the same year, the date of expiration of the term of one of the four members or two of the six members, to be determined by lot, shall be extended by an additional two years.

Terms of office of trustees elected pursuant to general or city elections shall begin at noon on the first day in January which is not a Sunday or legal holiday. Terms of office of trustees elected pursuant to special elections shall begin at noon on the tenth day after the special election which is not a Sunday or legal holiday. The trustees shall begin their terms of office by taking the oath of office, and organize as a board by the election of one of their number as chairperson and one as secretary, but no bond shall be required of them. Terms of office of trustees shall extend to noon on the first day in January which is not a Sunday or legal holiday or until their successors are elected and qualified.

Trustees who are elected at special elections shall serve the unexpired terms of office or until their successors are elected and qualified.

The treasurer of the board of trustees shall receive and disburse all funds under the control of the board as ordered by it. The treasurer shall give bond in a form and amount as determined by the board in its discretion.

No trustee shall receive any compensation for services performed, but a trustee may receive reimbursement for any cash expenses actually made for personal expenses incurred as trustee, but an itemized statement of all expenses and moneys paid out shall be made under oath by each of the trustees and filed with the secretary and allowed only by the affirmative vote of the full board.

The board of trustees shall be vested with authority to provide for the management, control, and government of the city hospital or health care facility established as permitted by this section, and shall provide all needed rules for the economic conduct thereof and shall annually prepare a condensed statement of the total receipts and expenditures for the hospital or health care facility and cause the same to be published in a newspaper of general circulation in the city in which the hospital or health care facility is located. In the management of the hospital or health care facility no discrimination shall be made against practitioners of any school of medicine recognized by the laws of the state.

As a part of the board's authority it may accept property by gift, devise, bequest or otherwise; and, if the board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of trustees, and apply the proceeds thereof, or property received in exchange therefor, to any legitimate hospital or health care facility purpose.

The trustees may in their discretion establish a fund for depreciation as a separate fund. Said funds may be invested in United States government bonds and when so invested the accumulation of interest on the bonds so purchased shall be used for the purposes of the depreciation fund; an investment when so made shall remain in United States government bonds until such time as in the judgment of the board of trustees it is deemed advisable to use the funds for hospital or health care facility purposes.

Boards of trustees of institutions provided for in this section are granted all of the powers and duties necessary for the management, control and government of the institutions, specifically including but not limited to any applicable powers and duties granted boards of trustees under other provisions of the Code relating to hospitals, nursing homes, and custodial homes irrespective of the chapter of the Code under which such institutions are established, organized, operated or maintained.

[S13, §741-o, -p; C24, §5867 – 5871; C27, 31, 35, §5867, 5867-a1, 5868 – 5871; C39, §**5867, 5867.1, 5868 – 5871;** C46, 50, 54, 58, 62, 66, §380.1 – 380.6; C71, 73, §380.1 – 380.6, 380.16; C75, 77, 79, 81, §392.6]

94 Acts, ch 1034, §1; 96 Acts, ch 1080, §1, 2; 99 Acts, ch 36, §11; 2000 Acts, ch 1015, §1

392.7 Prior agencies.

Except as otherwise provided in this chapter, an administrative agency established by a city shall continue with the same powers and duties until altered or discontinued as provided in this section. The council may by ordinance reduce or increase an administrative agency's power and duties, or may transfer powers and duties from one agency to another. The council may discontinue an administrative agency by adopting a resolution proposing the action, and publishing notice as provided in section 362.3, of the resolution and of a date, time and place of a public hearing on the proposal, and may discontinue the agency by ordinance or amendment not sooner than thirty days following the hearing.

[C97, §850; S13, §679-m, 741-w1, 850-a, 1056-a6d; C24, §5685, 5787, 5832, 5845, 5901, 6827; C27, §5685, 5787, 5829-a1, 5832, 5845, 5866-a2, 5901, 6827; C31, 35, §5685, 5787, 5813-d2, 5829-a1, 5832, 5845, 5866-a2, 5901, 6827; C39, §**5685, 5787, 5813.2, 5829.01, 5832, 5845, 5866.02, 5901, 6827;** C46, 50, §364.1, 370.1, 371.2, 373.1, 374.3, 377.2, 379.2, 384.2, 420.160; C54, §364.1, 370.1, 371.2, 373.1, 374.3, 374A.1, 377.2, 379.2, 384.2, 420.160; C58, 62, 66, 71, 73, §364.1, 370.1, 371.2, 373.1, 374.3, 374A.1, 377.2, 379.2, 384.2, 386B.6, 420.160; C75, 77, 79, 81, §392.7]

CHAPTER 393

SEWER RENTALS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 394

ZOOLOGICAL GARDENS

See also §384.24(2c)

394.1 Authority to issue bonds — taxes.
394.2 Question submitted to voters.
394.3 Tax for operating zoo.
394.4 Contracts with other cities — election.

394.1 Authority to issue bonds — taxes.

Cities are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to pay the cost of opening, establishing, constructing, improving, extending or remodeling of a zoo or zoological garden and to construct, reconstruct or repair any such improvement and to pay the cost of land needed for any of said purposes.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76, and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding that permitted by chapter 74A, and shall be of such form as the city council shall by resolution provide, but no city shall become indebted in excess of five percent of the actual value of the taxable property within said city, as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose provided in this section shall not be considered an indebtedness incurred for general or ordinary purposes.

This section shall be construed as granting additional power without limiting the power already existing in cities.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation.

[C75, 77, 79, 81, §394.1]

394.2 Question submitted to voters.

It shall not be necessary to submit to the voters the proposition of issuing bonds for refunding purposes, but prior to the issuance of bonds for other purposes the council shall submit to the voters of the city at a general election or a regular city election the proposition of issuing the bonds. Notice of the election on the proposition of issuing bonds shall be published as required by section 49.53. The notice shall also state whether or not an admission fee is to be charged by the zoo or zoological gardens.

Bonds issued pursuant to the provisions of this chapter shall be sold by the council in the manner prescribed by chapter 75; however, refunding bonds may either be sold and the proceeds applied to the payment of the bonds to be refunded, or the refunding bonds may be issued in exchange for the bonds being refunded upon their surrender and cancellation.

[C75, 77, 79, 81, §394.2]

2002 Acts, ch 1134, §107, 115

2002 amendment to unnumbered paragraph 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 amended

394.3 Tax for operating zoo.

A city establishing or having established a zoo or zoological garden may authorize not to exceed a levy of twenty-seven cents per thousand dollars of assessed valuation on all taxable property within the corporation for the purpose of paying the costs of operating, maintaining and managing a zoo or zoological garden. The levy shall be subject to cumulative levy limitations otherwise provided by law unless said levy shall have been submitted to and approved by the voters of said city.

[C75, 77, 79, 81, §394.3]

394.4 Contracts with other cities — election.

Contracts may be made between any city establishing or having established a zoo or zoological garden and any other city or county, but a county may contract only with respect to residents outside of any city, for the use of such zoo or zoological garden or any extension service thereof by its residents, and for the levy of a tax in support thereof. Such contracts shall provide for the rate of tax to be levied during the term thereof, not exceeding twenty-seven cents per thousand dollars of assessed valuation. Said contracts may be submitted to the voters of either city and shall not be subject to termination if approved by the voters of both parties.

If not so approved, such contracts may be modified by mutual consent or may be terminated by the voters of either party thereto.

Any such tax shall be subject to cumulative levy limitations applicable generally to the contracting parties unless the contract shall have been approved by the voters.

Any election held hereunder may be held upon notice and in any manner provided by law applicable to the contracting party with respect to elections upon special public propositions; provided that it shall not be necessary to set out the contract provisions in full as a part of the ballot.

[C75, 77, 79, 81, §394.4]

CHAPTER 395

PROTECTION FROM FLOODS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 396

BONDS AND CERTIFICATES FOR STREET IMPROVEMENTS AND SEWERS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 397

HEATING PLANTS, WATER OR GAS WORKS AND ELECTRIC PLANTS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 397A

PURCHASE-LEASE AGREEMENTS FOR CONSTRUCTION OF FEDERAL BUILDINGS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 398

PURCHASE AND CONSTRUCTION OF WATERWORKS IN CERTAIN CITIES

Repealed by 72 Acts, ch 1088, §199

CHAPTER 398A

WATERWORKS IN CITIES OR TOWNS WITH INSTITUTIONS UNDER BOARD OF REGENTS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 399

PURCHASE OF WATERWORKS BY CITIES OF FIFTY THOUSAND OR OVER

Repealed by 72 Acts, ch 1088, §199

CHAPTER 400

CIVIL SERVICE

400.1 Appointment of commission.
400.2 Qualifications — conflict of interest.
400.3 Optional appointment of commission — abolishing commission.
400.4 Chairperson — clerk — records.
400.5 Rooms and supplies.
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400.8A Guidelines for ongoing fitness for police officers and fire fighters.
400.9 Promotional examinations and procedures.
400.10 Preferences.
400.11 Names certified — temporary appointment.
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400.13 Chief of police and chief of fire department.
400.14 Civil service status of chiefs.
400.15 Appointing powers.
400.16 Qualifications.
400.17 Employees under civil service — qualifications.
400.18 Removal, demotion, or suspension.
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400.22 Charges.
400.23 Time and place of hearing.
400.24 Oaths — books and papers.
400.25 Contempt.
400.26 Public trial.
400.27 Jurisdiction — attorney — appeal.
400.28 Employees — number diminished.
400.29 Political activity limited.
400.30 Penalty.
400.31 Waterworks employees.

400.1 Appointment of commission.

In cities having a population of eight thousand or over and having a paid fire department or a paid police department, the mayor, one year after a regular city election, with the approval of the council, shall appoint three civil service commissioners who shall hold office, one until the first Monday in April of the second year, one until the first Monday in April of the third year, and one until the first Monday in April of the fourth year after such appointment, whose successors shall be appointed for a term of four years. In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of civil service commissioners at not less than three.

For the purpose of determining the population of a city under this chapter, the federal census conducted in 1980 shall be used.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5689;** C46, 50, 54, 58, 62, 66, 71, 73, §365.1; C75, 77, 79, 81, §400.1]

92 Acts, ch 1118, §1; 95 Acts, ch 114, §3; 97 Acts, ch 162, §1, 9; 98 Acts, ch 1100, §55; 2002 Acts, ch 1134, §108, 115

2002 amendment to unnumbered paragraph 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 1 amended

400.2 Qualifications — conflict of interest.

The commissioners must be citizens of Iowa, eligible electors as defined in chapter 39, and residents of the city preceding their appointment, and shall serve without compensation. A person, while on the commission, shall not hold or be a candidate for any office of public trust. However, when a human rights commission has been established by a city, the director of the commission shall ex officio be a member, without vote, of the civil service commission.

Civil service commissioners shall not sell to, or in any manner become parties, directly, to any contract to furnish supplies, material, or labor to the city in which they are commissioners except as provided in section 362.5. A violation of this conflict of interest provision is a simple misdemeanor.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5690;** C46, 50, 54, 58, 62, 66, 71, 73, §365.2; C75, 77, 79, 81, §400.2]

86 Acts, ch 1138, §1; 89 Acts, ch 21, §1

400.3 Optional appointment of commission — abolishing commission.

In cities having a population of less than eight thousand, the city council may, by ordinance, adopt the provisions of this chapter in which case it shall either appoint such commission or provide, by ordinance, for the exercise of the powers and performance of the duties of the commission by the council. Where the city council exercises the powers of the commission the term *"commission"* as used in this chapter shall mean the city council.

If the city council appoints a commission, the city council may, by ordinance, abolish the commission, and the commission shall stand abolished sixty days from the date of the ordinance and the powers and duties of the commission shall revert to the city council except whenever a city having a population of less than eight thousand provides for the appointment of a civil service commission, the city council may by ordinance abolish such office, but the ordinance shall not take effect until the ordinance has been submitted to the voters at a regular city election and approved by a majority of the voters at such election. The ordinance shall be published once each week for two consecutive weeks preceding the date of the election in a newspaper published in and having a general circulation in the city. If a newspaper is not published in such city, publication may be made in any newspaper having general circulation in the county.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5691;** C46, 50, 54, 58, 62, 66, 71, 73, §365.3; C75, 77, 79, 81, §400.3]

2002 Acts, ch 1134, §109, 115

2002 amendment to unnumbered paragraph 2 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 2 amended

400.4 Chairperson — clerk — records.

The commission shall elect a chairperson from among its members. In cities having a population of more than seventy-five thousand, the commission shall appoint a clerk of the commission. In all other cities the city clerk or a designee of the city clerk shall be clerk of the commission. If an employee is appointed clerk of the commission who is employed in a civil service status at the time of appointment as clerk of the commission, the appointee shall retain the civil service rights held before the appointment. However, this section does not grant civil service status or rights to the employee in the capacity of clerk of the commission nor extend any civil service right upon which the appointee may retain the position of clerk of the commission.

The civil service commission shall keep a record of all its meetings and also a complete individual service record of each civil service employee which record shall be permanent and kept up to date.

When duly certified by the clerk of the commission copies of all records and entries or papers pertaining to said record shall be admissible in evidence with the same force and effect as the originals.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5692;** C46, 50, 54, 58, 62, 66, 71, 73, §365.4; C75, 77, 79, 81, §400.4]

86 Acts, ch 1138, §2; 91 Acts, ch 55, §1; 97 Acts, ch 162, §2

400.5 Rooms and supplies.

The council shall provide suitable rooms in which the commission may hold its meetings and supply the commission with all necessary equipment and a qualified shorthand reporter or an electronic voice recording device to enable it to properly perform its duties.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5693;** C46, 50, 54, 58, 62, 66, 71, 73, §365.5; C75, 77, 79, 81, §400.5]

93 Acts, ch 147, §1

400.6 Applicability — exceptions.

This chapter applies to permanent full-time police officers and fire fighters in cities having a population of more than eight thousand, and to all appointive permanent full-time employees in cities having a population of more than fifteen thousand except:

1. Persons appointed to fill vacancies in elective offices and members of boards and commissions and the clerk to the civil service commission.

2. The city clerk, chief deputy city clerk, city attorneys, city treasurer, city assessor, city auditor, professional city engineers licensed in this state, and city health officer.

3. The city manager or city administrator and assistant city managers or assistant city administrators.

4. The head and principal assistant of each department and the head of each division. This exclusion does not apply to assistant fire chiefs and to assistant police chiefs in cities with police departments of two hundred fifty or fewer members. However, sections 400.13 and 400.14 apply to police and fire chiefs.

5. The principal secretary to the city manager or city administrator, the principal secretary to the mayor, and the principal secretary to each of the department heads.

6. Employees of boards of trustees or commissions established pursuant to state law or city ordinances.

7. Employees whose positions are funded by state or federal grants or other temporary revenues. However, a city may use state or federal grants or other temporary revenue to fund a position under civil service if the position is a permanent position which will be maintained for at least one year after expiration of the grants or temporary revenues.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5694;** C46, 50, 54, 58, 62, 66, 71, 73, §365.6; C75, 77, 79, 81, §400.6]

83 Acts, ch 186, §10103, 10201; 86 Acts, ch 1138, §3; 88 Acts, ch 1058, §1; 97 Acts, ch 162, §3

400.7 Preference by service.

An employee regularly serving in or holding a position when the position becomes subject to this chapter or when the position is reclassified by the city shall retain the position and have full civil service rights in the position under any of the following conditions:

1. The employee meets the minimum qualifications established for the position and has completed the required probationary period for the position.

2. The employee has served satisfactorily in the position for a period equal to the probationary period of the position, and passes a qualifying noncompetitive examination for the position but does not meet the minimum qualifications established for the position.

3. An employee who has not completed the required probationary period but who otherwise meets the minimum qualifications established for the position or who passes a qualifying noncompetitive examination for the position shall receive full civil service rights in the position upon the completion of the probationary period.

Appointments made after the time this chapter becomes applicable in a city are subject to this chapter.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5695;** C46, 50, 54, 58, 62, 66, 71, 73, §365.7; C75, 77, 79, 81, §400.7]

86 Acts, ch 1138, §4; 97 Acts, ch 162, §4

400.8 Original entrance examination — appointments.

1. The commission, when necessary under the rules, including minimum and maximum age limits, which shall be prescribed and published in advance by the commission and posted in the city hall, shall hold examinations for the purpose of determining the qualifications of applicants for positions under civil service, other than promotions, which examinations shall be practical in character and shall relate to matters which will fairly test the mental and physical ability of the applicant to discharge the duties of the position to which the applicant seeks appointment. The physical examination of applicants for appointment to the positions of police officer, police matron, or fire fighter shall be held in accordance with medical protocols established by the board of trustees of the fire and police retirement system established by section 411.5 and shall be conducted in accordance with the directives of the board of trustees. The board of trustees may change the medical protocols at any time the board so determines. The physical examination of an applicant for the position of police officer, police matron, or fire fighter shall be conducted after a conditional offer of employment has been made to the applicant. An applicant shall not be discriminated against on the basis of height, weight, sex, or race in determining physical or mental ability of the applicant. Reasonable rules relating to strength, agility, and general health of applicants shall be prescribed. The costs of the physical examination required under this subsection shall be paid from the trust and agency fund of the city.

2. The commission shall establish the guidelines for conducting the examinations under subsection 1 of this section. It may prepare and administer the examinations or may hire persons with expertise to do so if the commission approves the examinations. It may also hire persons with expertise to consult in the preparation of such examinations if the persons so hired are employed to aid personnel of the commission in assuring that a fair examination is conducted. A fair examination shall explore the competence of the applicant in the particular field of examination.

3. All appointments to such positions shall be conditional upon a probation period of not to exceed six months, and in the case of police dispatchers and fire fighters a probation period not to exceed twelve months. In the case of police patrol officers, if the employee has successfully completed training at the Iowa law enforcement academy or another training facility certified by the director of the Iowa law enforcement academy before the initial appointment as a police patrol officer, the probationary period shall be for a period of up to nine months and shall commence with the date of initial appointment as a police patrol officer. If the employee has not successfully completed training at the Iowa law enforcement academy or another training facility certified by the director of the law enforcement academy before initial appointment as a police patrol officer, the probationary period shall commence with the date of initial employment as a police patrol officer and shall continue for a period of up to nine months following the date of successful completion of training at the Iowa law enforcement academy or another training facility certified by the director of the Iowa law enforcement academy. A police patrol officer transferring employment from one jurisdiction to another shall be employed subject to a probationary period of up to nine months. However, in cities with a population over one hundred seventy-five thousand, appointments to the position of fire fighter shall be conditional upon a probation period of not to exceed twenty-four months. During the probation period, the appointee may be removed or discharged from such position by the appointing person or body without the right of appeal to the commission. A person removed or discharged during a probationary period shall, at the time of discharge, be given a notice in writing stating the reason or reasons for the dismissal. A copy of such notice shall be promptly filed with the commission. Continuance in the position after the expiration of such probationary period shall constitute a permanent appointment.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5696;** C46, 50, 54, 58, 62, 66, 71, 73, §365.8; C75, 77, 79, 81, §400.8]

89 Acts, ch 187, §2; 93 Acts, ch 147, §2; 94 Acts, ch 1071, §1; 96 Acts, ch 1187, §99; 98 Acts, ch 1124, §3; 2000 Acts, ch 1077, §84; 2001 Acts, ch 176, §16

400.8A Guidelines for ongoing fitness for police officers and fire fighters.

The board of trustees of the fire and police retirement system established by section 411.5, in consultation with the medical board established in section 411.5, shall establish and maintain protocols and guidelines for ongoing wellness and fitness for police officers and fire fighters while in service. The board of trustees may change the protocols and guidelines at any time the board so determines. The protocols and guidelines shall be established by the board of trustees for the consideration of cities covered by this chapter and may be applied by a city for the purpose of determining continued wellness and fitness for members of the city's police and fire departments. However, the protocols and guidelines shall not be applied to members of a police or fire department of a city who are covered by chapter 20 except through the collective bargaining process as provided under chapter 20. The medical board established in section 411.5 shall provide to cities and fire and police departments assistance regarding the possible implementation and operation of the protocols and guidelines for ongoing wellness and fitness

provided by this section. For purposes of this section, *"wellness and fitness"* means the process by which police officers and fire fighters maintain fitness for duty.

2000 Acts, ch 1077, §85

400.9 Promotional examinations and procedures.

1. The commission shall, at such times as shall be found necessary, under such rules as shall be prescribed and published in advance by the commission, and posted in the city hall, hold competitive promotional examinations for the purpose of determining the qualifications of applicants for promotion to a higher grade under civil service, which examinations shall be practical in character, and shall relate to such matters as will fairly test the ability of the applicant to discharge the duties of the position to which the applicant seeks promotion.

2. The commission shall establish guidelines for conducting the examinations under subsection 1. It may prepare and administer the examinations or may hire persons with expertise to do so if the commission approves the examinations and if the examinations apply to the position in the city for which the applicant is taking the examination. It may also hire persons with expertise to consult in the preparation of such examinations if the persons so hired are employed to aid personnel of the commission in assuring that a fair examination is conducted. A fair examination shall explore the competence of the applicant in the particular field of examination.

3. Vacancies in civil service promotional grades shall be filled by lateral transfer, voluntary demotion, or promotion of employees of the city to the extent that the city employees qualify for the positions. When laterally transferred, voluntarily demoted, or promoted, an employee shall hold full civil service rights in the position. If an employee of the city does not pass the promotional examination and otherwise qualify for a vacated position, or if an employee of the city does not apply for a vacated position, an entrance examination may be used to fill the vacancy.

4. If there is a certified list of qualified candidates for a promotional appointment, the following procedures shall be followed:

a. A publication stating that interviews are being scheduled to make a new certified list to fill a vacancy in a civil service promotional grade classification shall be posted for at least five working days before the closing date for the interviews in the same locations where examination notices are posted.

b. An employee who wishes to voluntarily demote or to laterally transfer into a vacancy and has previously been or is currently in the classification where the vacancy exists, shall notify the civil service commission of the employee's interest in the vacant position. The employee shall be added to the list of candidates to be interviewed and considered for the vacancy.

5. If there is no certified list of qualified candidates for a promotional appointment, the following procedures shall be followed:

a. When an examination announcement is posted to make a certified list of qualified candidates, the announcement shall also state that an employee who has been or is currently employed in the classification where the vacancy exists, may notify the civil service commission of the employee's interest in the vacant position. Upon notification, the employee shall be added to the list of candidates for an interview and consideration for the vacant position.

b. All civil service employees of a city who meet the minimum qualifications for a classification, shall have the right to compete in the civil service examination process to establish a certified list of qualified candidates.

[C31, 35, §5696-d1; C39, §**5696.1;** C46, 50, 54, 58, 62, 66, 71, 73, §365.9; C75, 77, 79, 81, §400.9]

86 Acts, ch 1138, §5; 88 Acts, ch 1085, §1, 2; 97 Acts, ch 162, §5

400.10 Preferences.

In all examinations and appointments under this chapter, other than promotions and appointments of chief of the police department and chief of the fire department, veterans as defined in section 35.1, who are citizens and residents of this state, shall have five points added to the veteran's grade or score attained in qualifying examinations for appointment to positions and five additional points added to the grade or score if the veteran has a service-connected disability or is receiving compensation, disability benefits or pension under laws administered by the veterans administration. An honorably discharged veteran who has been awarded the Purple Heart for disabilities incurred in action shall be considered to have a service-connected disability. However, the points shall be given only upon passing the exam and shall not be the determining factor in passing.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5697;** C46, 50, 54, 58, 62, 66, 71, 73, §365.10; C75, 77, 79, 81, §400.10]

85 Acts, ch 50, §2; 92 Acts, ch 1238, §36; 99 Acts, ch 180, §17

Veterans preference law, chapter 35C

400.11 Names certified — temporary appointment.

The commission, within one hundred eighty days after the beginning of each competitive examination for original appointment, shall certify to the city council a list of the names of forty persons, or a lesser number as determined by the commission, who qualify with the highest standing as a result of each examination for the position they seek to fill, or the number which have qualified if

less than forty, in the order of their standing, and all newly created offices or other vacancies in positions under civil service which occur before the beginning of the next examination for the positions shall be filled from the lists, or from the preferred list existing as provided for in case of diminution of employees, within thirty days. If a tie occurs in the examination scores which would qualify persons for the last position on the list, the list of the names of the persons who qualify with the highest standing as a result of each examination shall include all persons who qualify for the last position. Preference for temporary service in civil service positions shall be given those on the lists. However, the commission may certify a list of names eligible for appointment subject to successfully completing a medical examination. The medical examination shall be provided pursuant to commission rules adopted under section 400.8.

The commission may hold in reserve, for original appointments, additional lists of forty persons, each next highest in standing, in order of their grade, or such number as may qualify if less than forty. If the list of up to forty persons provided in the first paragraph is exhausted within one year, the commission may certify such additional lists of up to forty persons each, in order of their standing, to the council as eligible for appointment to fill such vacancies as may exist.

The commission, within ninety days after the beginning of each competitive examination for promotion, shall certify to the city council a list of names of the ten persons who qualify with the highest standing as a result of each examination for the position the persons seek to fill, or the number which have qualified if less than ten, in the order of their standing and all newly created offices or other vacancies in positions under civil service which occur before the beginning of the next examination for the positions shall be filled from the lists, or from the preferred list existing as provided for in the case of diminution of employees, within thirty days. If a tie occurs in the examination scores which would qualify persons for the tenth position on the list, the list of names of the persons who qualify with the highest standing as a result of each examination shall include all persons who qualify for the tenth position.

Except where the preferred list exists, persons on the certified eligible list for promotion shall hold preference for promotion for two years following the date of certification, except for certified eligible lists of fire fighters as defined in section 411.1, subsection 9, which lists shall hold preference for three years upon approval of the commission, after which the lists shall be canceled and promotion to the grade shall not be made until a new list has been certified eligible for promotion.

When there is no such preferred list or certified eligible list, or when the eligible list shall be exhausted, the person or body having the appointing power may temporarily fill a newly created office or other vacancy only until an examination can be held and the names of qualified persons be certified by the commission, and such temporary appointments are hereby limited to ninety days for any one person in the same vacancy, but such limitation shall not apply to persons temporarily acting in positions regularly held by another. Any person temporarily filling a vacancy in a position of higher grade for twenty days or more, shall receive the salary paid in such higher grade.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5698;** C46, 50, 54, 58, 62, 66, 71, 73, §365.11; C75, 77, 79, 81, §400.11]

83 Acts, ch 62, §1; 89 Acts, ch 187, §3; 93 Acts, ch 147, §3; 94 Acts, ch 1071, §2; 97 Acts, ch 162, §6, 7

400.12 Seniority.

For the purpose of determining the seniority rights of civil service employees, seniority shall be computed, beginning with the date of appointment to or employment in any positions for which they were certified or otherwise qualified and established as provided in this chapter, but shall not include any period of time exceeding sixty days in any one year during which they were absent from the service except for disability.

In the event that a civil service employee has more than one classification or grade, the length of the employee's seniority rights shall date in the respective classifications or grades from and after the time the employee was appointed to or began employment in each classification or grade. In the event that an employee has been promoted from one classification or grade to another, the employee's civil service seniority rights shall be continuous in any department grade or classification that the employee formerly held.

A list of all civil service employees shall be prepared and posted in the city hall by the civil service commission on or before July 1 of each year, indicating the civil service standing of each employee as to the employee's seniority.

[C39, §**5698.1;** C46, 50, 54, 58, 62, 66, 71, 73, §365.12; C75, 77, 79, 81, §400.12]

400.13 Chief of police and chief of fire department.

The chief of the fire department and the chief of the police department shall be appointed from the chiefs' civil service eligible lists. Such lists shall be determined by original examination open to all persons applying, whether or not members of the employing city. The chief of a fire department shall have had a minimum of five years' experience in a fire department, or three years experience in a fire department and two years of comparable experience or educational training. The chief of a police department shall have had a minimum of five years experience in a public law enforcement agency, or three years experience in a public law enforcement agency and two years of

comparable experience or educational training. A chief of a police department or fire department shall maintain civil service rights as determined by section 400.12.

Any person who becomes chief of police or chief of the fire department shall be allowed to transfer all rights the person may have acquired under chapter 410 or 411, including employer contributions during the person's years of service in a city, employee contributions, and interest, to the retirement system of the city that hires the person as chief. Such person shall also transfer the number of years served as seniority toward other benefits provided by the city which hires the person. If a chief of a police or fire department is relieved of that position, the person shall be entitled to remain in the department for which the person was chief at a position commensurate with the person's civil service status, even if this means that the city must create a position for the person to fill until a regular position becomes vacant.

In cities under the commission plan of government the superintendent of public safety, with the approval of the city council, shall appoint the chief of the fire department and the chief of the police department. In cities under a council-manager form of government the city manager shall make the appointments with the approval of the city council, and in all other cities the appointments shall be made as provided by city ordinance or city charter.

[C24, 27, 31, 35, 39, §**5699;** C46, 50, 54, 58, 62, 66, 71, 73, §365.13; C75, 77, 79, 81, §400.13]

86 Acts, ch 1171, §1

400.14 Civil service status of chiefs.

A police officer under civil service may be appointed chief of police and a fire fighter under civil service may be appointed chief of the fire department without losing civil service status, and shall retain, while holding the office of chief, the same civil service rights that the officer or fire fighter may have had immediately previous to appointment as chief, but nothing herein shall be deemed to extend to such individual any civil service right upon which the individual may retain the position of chief.

[C27, 31, 35, §5699-a1; C39, §**5699.1;** C46, 50, 54, 58, 62, 66, 71, 73, §365.14; C75, 77, 79, 81, §400.14]

400.15 Appointing powers.

All appointments or promotions to positions within the scope of this chapter other than those of chief of police and chief of fire department shall be made:

In cities under the commission form of government, by the superintendents of the respective departments, with the approval of the city council; in cities under the city manager plan, by the city manager; in all other cities with the approval of the city council, and in the police and fire departments by the chiefs of the respective departments.

All such appointments or promotions shall promptly be reported to the clerk of the commission by the appointing officer. An appointing authority may transfer an employee, other than police officers and fire fighters, from one department to the same civil service classification in another department, and such employee shall retain the same civil service status.

[SS15, §1056-a32; C24, 27, 31, 35, §5698; C39, §**5699.2;** C46, 50, 54, 58, 62, 66, 71, 73, §365.15; C75, 77, 79, 81, §400.15]

97 Acts, ch 162, §8

400.16 Qualifications.

All appointive officers and employees of cities shall be selected with reference to their qualifications and fitness and for the good of the public service, and without reference to their political faith or party allegiance.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5700;** C46, 50, 54, 58, 62, 66, 71, 73, §365.16; C75, 77, 79, 81, §400.16]

400.17 Employees under civil service — qualifications.

Except as otherwise provided in section 400.7, a person shall not be appointed, promoted, or employed in any capacity, including a new classification, in the fire or police department, or any department which is governed by the civil service, until the person has passed a civil service examination as provided in this chapter, and has been certified to the city council as being eligible for the appointment. However, in an emergency in which the peace and order of the city is threatened by reason of fire, flood, storm, or mob violence, making additional protection of life and property necessary, the person having the appointing power may deputize additional persons, without examination, to act as peace officers until the emergency has passed. A person may be appointed to a position subject to successfully completing a civil service medical examination. A person shall not be appointed or employed in any capacity in the fire or police department if the person is unable to meet reasonable physical condition training requirements and reasonable level of experience requirements necessary for the performance of the position; if the person is a habitual criminal; if the person is addicted to narcotics or alcohol and has not been rehabilitated for a period of one year or more, or is not presently undergoing treatment; or if the person has attempted a deception or fraud in connection with a civil service examination.

Except as otherwise provided in this section and section 400.7, a person shall not be appointed or employed in any capacity in any department which is governed by civil service if the person is unable to meet reasonable physical condition training requirements and reasonable level of ex-

perience requirements necessary for the performance of the position; if the person is addicted to narcotics or alcohol and has not been rehabilitated for a period of one year or more, or is not presently undergoing treatment; or if the person has attempted a deception or fraud in connection with a civil service examination.

Employees shall not be required to be a resident of the city in which they are employed, but they shall become a resident of the state at the time such appointment or employment begins and shall remain a resident of the state during employment. Cities may set reasonable maximum distances outside of the corporate limits of the city that police officers, fire fighters and other critical municipal employees may live.

A person shall not be appointed, promoted, discharged, or demoted to or from a civil service position or in any other way favored or discriminated against in that position because of political or religious opinions or affiliations, race, national origin, sex, or age. However, the maximum age for a police officer or fire fighter covered by this chapter and employed for police duty or the duty of fighting fires is sixty-five years of age.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5701;** C46, 50, 54, 58, 62, 66, 71, 73, §365.17; C75, 77, 79, 81, §400.17]

89 Acts, ch 187, §4; 93 Acts, ch 147, §4, 5

400.18 Removal, demotion, or suspension.

No person holding civil service rights as provided in this chapter shall be removed, demoted, or suspended arbitrarily, except as otherwise provided in this chapter, but may be removed, demoted, or suspended after a hearing by a majority vote of the civil service commission, for neglect of duty, disobedience, misconduct, or failure to properly perform the person's duties.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5702;** C46, 50, 54, 58, 62, 66, 71, 73, §365.18; C75, 77, 79, 81, §400.18]

400.19 Removal or discharge of subordinates.

The person having the appointing power as provided in this chapter, or the chief of police or chief of the fire department, may peremptorily suspend, demote, or discharge a subordinate then under the person's or chief's direction for neglect of duty, disobedience of orders, misconduct, or failure to properly perform the subordinate's duties.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5703;** C46, 50, 54, 58, 62, 66, 71, 73, §365.19; C75, 77, 79, 81, §400.19]

86 Acts, ch 1138, §6

400.20 Appeal.

The suspension, demotion, or discharge of a person holding civil service rights may be appealed to the civil service commission within fourteen calendar days after the suspension, demotion, or discharge.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5704;** C46, 50, 54, 58, 62, 66, 71, 73, §365.20; C75, 77, 79, 81, §400.20]

86 Acts, ch 1138, §7

400.21 Notice of appeal.

If the appeal be taken by the person suspended, demoted, or discharged, notice thereof, signed by the appellant and specifying the ruling appealed from, shall be filed with the clerk of commission; if by the person making such suspension, demotion, or discharge, such notice shall also be served upon the person suspended, demoted, or discharged.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5705;** C46, 50, 54, 58, 62, 66, 71, 73, §365.21; C75, 77, 79, 81, §400.21]

400.22 Charges.

Within fourteen calendar days from the service of the notice of appeal, the person or body making the ruling appealed from shall file with the body to which the appeal is taken a written specification of the charges and grounds upon which the ruling was based. If the charges are not filed, the person suspended or discharged may present the matter to the body to whom the appeal is to be taken by affidavit, setting forth the facts, and the body to whom the appeal is to be taken shall immediately enter an order reinstating the person suspended or discharged for want of prosecution.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5706;** C46, 50, 54, 58, 62, 66, 71, 73, §365.22; C75, 77, 79, 81, §400.22]

86 Acts, ch 1138, §8

400.23 Time and place of hearing.

Within ten days after such specifications are filed, the commission shall fix the time, which shall be not less than five nor more than twenty days thereafter, and place for hearing the appeal and shall notify the parties in writing of the time and place so fixed, and the notice shall contain a copy of the specifications so filed.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5707;** C46, 50, 54, 58, 62, 66, 71, 73, §365.23; C75, 77, 79, 81, §400.23]

400.24 Oaths — books and papers.

The presiding officer of the commission or the council, as the case may be, shall have power to administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction. The council or commission shall cause subpoenas to be issued for such witnesses and the production of such books and papers as either party may designate. The subpoenas shall be signed by

the chairperson of the commission or mayor, as the case may be.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5708;** C46, 50, 54, 58, 62, 66, 71, 73, §365.24; C75, 77, 79, 81, §400.24]

400.25 Contempt.

In case a witness is duly subpoenaed and refuses to attend, or in case a witness appears and refuses to testify or to produce required books or papers, the official body hearing the appeal shall, in writing, report such refusal to the district court of the county, and said court shall proceed with said person or witness as though said refusal had occurred in a proceeding legally pending before said court.

[C24, 27, 31, 35, 39, §**5709;** C46, 50, 54, 58, 62, 66, 71, 73, §365.25; C75, 77, 79, 81, §400.25]

Contempts, chapter 665

400.26 Public trial.

The trial of all appeals shall be public, and the parties may be represented by counsel.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5710;** C46, 50, 54, 58, 62, 66, 71, 73, §365.26; C75, 77, 79, 81, §400.26]

400.27 Jurisdiction — attorney — appeal.

The civil service commission has jurisdiction to hear and determine matters involving the rights of civil service employees under this chapter, and may affirm, modify, or reverse any case on its merits.

The city attorney or solicitor shall be the attorney for the commission or when requested by the commission shall present matters concerning civil service employees to the commission, except the commission may hire a counselor or an attorney on a per diem basis to represent it when in the opinion of the commission there is a conflict of interest between the commission and the city council. The counselor or attorney hired by the commission shall not be the city attorney or solicitor. The city shall pay the costs incurred by the commission in employing an attorney under this section.

The city or any civil service employee shall have a right to appeal to the district court from the final ruling or decision of the civil service commission. The appeal shall be taken within thirty days from the filing of the formal decision of the commission. The district court of the county in which the city is located shall have full jurisdiction of the appeal and the said appeal shall be a trial de novo as an equitable action in the district court.

The appeal to the district court shall be perfected by filing a notice of appeal with the clerk of the district court within the time prescribed in this section by serving notice of appeal on the clerk of the civil service commission, from whose ruling or decision the appeal is taken.

In the event the ruling or decision appealed from is reversed by the district court, the appellant, if it be an employee, shall then be reinstated as of the date of the said suspension, demotion, or discharge and shall be entitled to compensation from the date of such suspension, demotion, or discharge.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5711;** C46, 50, 54, 58, 62, 66, 71, 73, §365.27; C75, 77, 79, 81, §400.27]

86 Acts, ch 1138, §9; 91 Acts, ch 55, §2

400.28 Employees — number diminished.

When the public interest requires a diminution of employees in a classification or grade under civil service, the city council, acting in good faith, may either:

1. Abolish the office and remove the employee from the employee's classification or grade thereunder, or

2. Reduce the number of employees in any classification or grade by suspending the necessary number.

In case it thus becomes necessary to so remove or suspend any such employees, the persons so removed or suspended shall be those having seniority of the shortest duration in the classifications or grades affected, and such seniority shall be computed as provided in section 400.12 for all persons holding seniority in the classification or grade affected, regardless of their seniority in any other classification or grade, but any such employee so removed from any classification or grade shall revert to the employee's seniority in the next lower grade or classification; if such seniority is equal, then the one less efficient and competent as determined by the person or body having the appointing power shall be the one affected.

In case of removal or suspension, the civil service commission shall issue to each person affected one certificate showing the person's comparative seniority or length of service in each of the classifications or grades from which the person is so removed and the fact that the person has been honorably removed. The certificate shall also list each classification or grade in which the person was previously employed. The person's name shall be carried for a period of not less than three years after the suspension or removal on a preferred list and appointments or promotions made during that period to the person's former duties in the classification or grade shall be made in the order of greater seniority from the preferred lists.

[S13, §679-h; C24, 27, 31, 35, 39, §**5712;** C46, 50, 54, 58, 62, 66, 71, 73, §365.28; C75, 77, 79, 81, §400.28]

86 Acts, ch 1138, §10, 11

400.29 Political activity limited.

1. A person holding a civil service position shall not, while performing official duties or while using city equipment at the person's disposal by reason of the position, solicit in any manner con-

tribution for any political party or candidate or engage in any political activity during working hours that impairs the efficiency of the position or presence during the working hours. A person shall not seek or attempt to use any political endorsement in connection with any appointment to a civil service position.

2. A person holding a civil service position shall not, by the authority of the position, secure or attempt to secure in any manner for any other person an appointment or advantage in appointment to a civil service position or an increase in pay or other advantage of employment in any such position for the purpose of influencing the vote or political action of that person or for any other consideration.

3. A person who in any manner supervises a person holding a civil service position shall not directly or indirectly solicit the person supervised to contribute money, anything of value, or service to a candidate seeking election, or a political party or candidate's political committee.

4. This section shall not be construed to prohibit any employee or group of employees, individually or collectively, from expressing honest opinions and convictions, or making statements and comments concerning their wages or other conditions of their employment.

[SS15, §1056-a32; C24, 27, 31, 35, 39, §**5713;** C46, 50, 54, 58, 62, 66, 71, 73, §365.29; C75, 77, 79, 81, §400.29]

86 Acts, ch 1021, §3

Leave of absence for candidacy and public service; see chapter 55

400.30 Penalty.

The provisions of this chapter shall be strictly carried out by each person or body having powers or duties thereunder, and any act or failure to act tending to avoid or defeat the purposes of such provisions is hereby prohibited and shall be a simple misdemeanor.

[C39, §**5713.1;** C46, 50, 54, 58, 62, 66, 71, 73, §365.30; C75, 77, 79, 81, §400.30]

400.31 Waterworks employees.

In cities where the board of waterworks trustees has adopted a resolution placing its employees under this chapter as to civil service, the civil service commission acting under this chapter has charge of the civil service procedure as to those employees and this chapter applies.

[C50, 54, 58, 62, 66, 71, 73, §365.31; C75, 77, 79, 81, §400.31]

83 Acts, ch 101, §83

CHAPTER 401

EXTENSION OF WATER MAINS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 402

STREET RAILWAY REGULATIONS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 403

URBAN RENEWAL

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403.1 Title.

This chapter shall be known and may be cited as the *"Urban Renewal Law."*

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.1]

403.2 Declaration of policy.

1. It is hereby found and declared that there exist in municipalities of the state slum and blighted areas, as herein defined, which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blighted areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency and consume an excessive proportion of state revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

2. It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that fringe areas can be conserved and rehabilitated through appropriate public action as herein authorized, and through the co-operation and voluntary action of the owners and tenants of property in such areas.

3. It is further found and declared that there exists in this state the continuing need for programs to alleviate and prevent conditions of unemployment and a shortage of housing; and that it is accordingly necessary to assist and retain local industries and commercial enterprises to strengthen and revitalize the economy of this state and its municipalities; that accordingly it is necessary to provide means and methods for the encouragement and assistance of industrial and commercial enterprises in locating, purchasing, constructing, reconstructing, modernizing, improving, maintaining, repairing, furnishing, equipping, and expanding in this state and its municipalities, for the provision of public improvements related to housing and residential development, and for the construction of housing for low and moderate income families; that accordingly it is necessary to authorize local governing bodies to designate areas of a municipality as economic development areas for commercial and industrial enterprises, public improvements related to housing and residential development, or construction of housing for low and moderate income families; and that it is also necessary to encourage the location and expansion of commercial enterprises to more conveniently provide needed services and facilities of the commercial enterprises to municipalities and the residents of the municipalities. Therefore, the powers granted in this chapter constitute the performance of essential public purposes for this state and its municipalities.

4. It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and for which the power of eminent domain and police power exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.2]

85 Acts, ch 66, §1; 91 Acts, ch 186, §1; 96 Acts, ch 1204, §13

403.3 Municipal program.

The local governing body of a municipality may formulate for the municipality a workable program for utilizing appropriate private and public resources to eliminate slums and prevent the development or spread of slums and urban blight and to encourage needed urban rehabilitation. Such workable program may include, without limitation, provisions for:

1. The prevention of the spread of blight into areas of the municipality which are free from blight, through diligent enforcement of housing, zoning and occupancy controls and standards.

2. The rehabilitation or conservation of slum or blighted areas or portions thereof by replanning, by removing congestion, by providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures.

3. The clearance of slum and blighted areas or portions thereof.

4. The redevelopment of slum and blighted areas by approval of urban renewal plans.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.3]

403.4 Resolution of necessity.

No municipality shall exercise the authority herein conferred upon municipalities by this chapter until after its local governing body shall have

adopted a resolution finding that:

1. One or more slum, blighted or economic development areas exist in the municipality.

2. The rehabilitation, conservation, redevelopment, development, or a combination thereof, of the area is necessary in the interest of the public health, safety, or welfare of the residents of the municipality.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.4]
85 Acts, ch 66, §2

403.5 Urban renewal plan.

1. A municipality shall not approve an urban renewal project for an urban renewal area unless the governing body has, by resolution, determined the area to be a slum area, blighted area, economic development area or a combination of those areas, and designated the area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. For this purpose and other municipal purposes, authority is vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole, giving due regard to the environs and metropolitan surroundings. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project in accordance with subsection 4.

2. The municipality may itself prepare or cause to be prepared an urban renewal plan; or any person or agency, public or private, may submit such a plan to a municipality. Prior to its approval of an urban renewal plan, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within the thirty days, then, without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal plan prescribed by subsection 3.

Prior to its approval of an urban renewal plan which provides for a division of revenue pursuant to section 403.19, the municipality shall mail the proposed plan by regular mail to the affected taxing entities. The municipality shall include with the proposed plan notification of a consultation to be held between the municipality and affected taxing entities prior to the public hearing on the urban renewal plan. Each affected taxing entity may appoint a representative to attend the consultation. The consultation may include a discussion of the estimated growth in valuation of taxable property included in the proposed urban renewal area, the fiscal impact of the division of revenue on the affected taxing entities, the estimated impact on the provision of services by each of the affected taxing entities in the proposed urban renewal area, and the duration of any bond issuance included in the plan. The designated representative of the affected taxing entity may make written recommendations for modification to the proposed division of revenue no later than seven days following the date of the consultation. The representative of the municipality shall, no later than seven days prior to the public hearing on the urban renewal plan, submit a written response to the affected taxing entity addressing the recommendations for modification to the proposed division of revenue.

3. The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal activities under consideration. A copy of the notice shall be sent by ordinary mail to each affected taxing entity.

4. Following such hearing, the local governing body may approve an urban renewal plan if it finds that:

a. A feasible method exists for the location of families who will be displaced from the urban renewal area into decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families.

b. The urban renewal plan conforms to the general plan of the municipality as a whole; provided, that if the urban renewal area consists of an area of open land to be acquired by the municipality, such area shall not be so acquired except:

(1) If it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design with decency, safety and sanitation exists in the municipality; that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality; and that one or more of the following conditions exist:

(a) That the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, including other portions of the urban renewal area.

(b) That conditions of blight in the municipality and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, so as to constitute a menace to the public health, safety, morals, or welfare.

(c) That the provision of public improvements

related to housing and residential development will encourage housing and residential development which is necessary to encourage the retention or relocation of industrial and commercial enterprises in this state and its municipalities.

(d) The acquisition of the area is necessary to provide for the construction of housing for low and moderate income families.

(2) If it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives. The acquisition may require the exercise of governmental action, as provided in this chapter, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topography or faulty lot layouts, or because of the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

A municipality shall not condemn agricultural land included within an economic development area unless the owner of the agricultural land consents to condemnation or unless the agricultural land is to be acquired for industry as that term is defined in section 260E.2. This paragraph shall not apply to land necessary or useful for the operation of a city utility as defined in section 362.2, for the operation of a city franchise conferred the authority to condemn private property under section 364.2, or a combined utility system as defined in section 384.80.

5. An urban renewal plan may be modified at any time: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the municipality may deem advisable, and in any event such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or a lessee's or purchaser's successor or successors in interest, may be entitled to assert. The municipality shall comply with the notification and consultation process provided in this section prior to the approval of any amendment or modification to an adopted urban renewal plan if such amendment or modification provides for refunding bonds or refinancing resulting in an increase in debt service or provides for the issuance of bonds or other indebtedness, to be funded primarily in the manner provided in section 403.19.

6. Upon the approval by a municipality of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area, and the municipality may then cause such plan or modification to be carried out in accordance with its terms.

7. Notwithstanding any other provisions of this chapter, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under Pub. L. No. 875, Eighty-first Congress, 64 Stat. L. 1109; 42 U.S.C. § 1855-1855g or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection 4 and without regard to provisions of this section requiring notification and consultation, a general plan for the municipality, and a public hearing on the urban renewal plan or project.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.5]

85 Acts, ch 66, §3; 94 Acts, ch 1182, §6; 96 Acts, ch 1204, §14 – 16; 99 Acts, ch 171, §35, 41, 42

1999 amendment to subsection 4 applies to urban renewal areas established before, on, or after July 1, 1999, and to amendments to such urban renewal areas; see 99 Acts, ch 171, §41

1999 amendment to subsection 4 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

403.6 Powers of municipality.

Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

1. To undertake and carry out urban renewal projects within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate slum clearance and urban renewal information.

2. To arrange or contract for the furnishing or repair by any person of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions, that it may deem reasonable and appropriate, attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project; and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

3. Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent

jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property, or personal property for administrative purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter: Provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project, unless the legislature shall specifically so state.

4. To invest any urban renewal project funds held in reserves or sinking funds, or any such funds not required for immediate disbursement, in property or securities in which a state bank may legally invest funds subject to its control; to redeem such bonds as have been issued pursuant to section 403.9 at the redemption price established therein, or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

5. To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required, and to enter into and carry out contracts in connection therewith. A municipality may include in any contract, for financial assistance with the federal government for an urban renewal project, such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of the chapter.

6. Within its area of operation, to make or have made all surveys and planning necessary to the carrying out of the purposes of this chapter, and to contract with any person in making and carrying out of such planning, and to adopt or approve, modify and amend such planning. Such planning may include, without limitation:

a. A general plan for the locality as a whole;

b. Urban renewal plans;

c. Preliminary plans outlining urban renewal activities for neighborhoods to embrace two or more urban renewal areas;

d. Planning for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

e. Planning for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements;

f. Appraisals, title searches, surveys, studies, and other planning and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and to apply for, accept and utilize grants of funds from the federal government for such purposes.

7. To plan for the relocation of persons, including families, business concerns and others, displaced by an urban renewal project, and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government. Other provisions of the Code notwithstanding, in making such payments on projects not federally funded, the municipality may pay relocation assistance benefits in the amounts authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV, Pub. L. No. 100-17.

8. To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter, and to levy taxes and assessments for such purposes; to zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements, respecting action to be taken by such municipality pursuant to any of the powers granted by this chapter, with an urban renewal agency vested with urban renewal project powers under section 403.14, which agreements may extend over any period, notwithstanding any provision of rule of law to the contrary.

9. To close, vacate, plan or replan streets, roads, sidewalks, ways or other places; and to plan or replan any part of the municipality.

10. Within its area of operation, to organize, co-ordinate and direct the administration of the provisions of this chapter as they apply to such municipality in order that the objective of remedying slum and blighted areas, and preventing the causes thereof, within such municipality, may be most effectively promoted and achieved; and to establish such new office or offices of the municipality, or to reorganize existing offices, in order to carry out such purpose most effectively.

11. To exercise all or any part of combination of powers herein granted.

12. To approve urban renewal plans.

13. To sell and convey real property in furtherance of an urban renewal project.

14. To supplement the rent required to be paid by any family residing in the municipality forced to relocate by reason of any governmental activity, provided it is necessary to do so in order to house such family in decent, safe and sanitary housing and provided further that such family does not have sufficient means, as determined by the municipality, to pay the required rent for such housing. Any such rent supplement for any such family shall not continue for more than five years.

15. To acquire by purchase, gift or condemnation real property within its area of operation for the relocation of railroad passenger and freight depots, tracks, and yard and other railroad facilities and to sell or exchange and convey such real property to railroads.

16. To acquire or dispose of by purchase, construction, or lease, or otherwise to deal in air rights, and facilities or easements for lateral or vertical support of land or structures of any kind.

17. Subject to applicable state or federal regulations in effect at the time of the municipal action, accept contributions, grants, and other financial assistance from the state or federal government to be used upon a finding of public purpose for grants, loans, loan guarantees, interest supplements, technical assistance, or other assistance as necessary or appropriate to private persons for an urban renewal project.

18. To provide in an urban renewal plan for the exclusion from taxation of value added to real estate during the process of construction for development or redevelopment. The exclusion may be limited as to the scope of exclusion, territory, or class of property affected. However, the value added during construction shall not be eligible for exclusion from taxation for more than two years and the exclusion shall not be applied to a facility which has been more than eighty percent completed as of the most recent date of assessment. This subsection permits the elimination only of those taxes which are levied against assessments made during the construction of the development or redevelopment.

19. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than $ . . . . . .

This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue and finance or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

The provisions of this chapter shall be liberally interpreted to achieve the purposes of this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.6]

83 Acts, ch 48, §2, 3; 84 Acts, ch 1210, §1; 88 Acts, ch 1209, §3; 96 Acts, ch 1204, §17; 2002 Acts, ch 1119, §160

Subsection 17 amended

403.7 Condemnation of property.

A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this chapter. However, a municipality shall not condemn agricultural land included within an economic development area unless the owner of the agricultural land consents to condemnation or unless the agricultural land is to be acquired for industry as that term is defined in section 260E.2. A municipality may exercise the power of eminent domain in the manner pro-

vided in chapter 6B, and Acts amendatory to that chapter or supplementary to that chapter, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner. However, real property belonging to the state, or any political subdivision of this state, shall not be acquired without its consent, and real property or any right or interest in the property owned by any public utility company, pipeline company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall not be acquired without the consent of the company, or without first securing, after due notice to the company and after hearing, a certificate authorizing condemnation of the property from the board, commission or body having the authority to grant a certificate authorizing condemnation. In a condemnation proceeding, if a municipality proposes to take a part of a lot or parcel of real property, the municipality shall also take the remaining part of the lot or parcel if requested by the owner.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.7]

85 Acts, ch 66, §4; 99 Acts, ch 171, §36, 41, 42

1999 amendment applies to urban renewal areas established before, on, or after July 1, 1999, and to amendments to such urban renewal areas; see 99 Acts, ch 171, §41

1999 amendment applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

403.8 Sale or lease of property.

1. A municipality may sell, lease or otherwise transfer real property or any interest in real property acquired by it, and may enter into contracts for such purposes, in an urban renewal area for residential, recreational, commercial, industrial or other uses, or for public use, subject to covenants, conditions and restrictions, including covenants running with the land, it deems to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas, or to otherwise carry out the purposes of this chapter. However, the sale, lease, other transfer, or retention, and any agreement relating to it, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall devote the real property only to the uses specified in the urban renewal plan, and they may be obligated to comply with other requirements the municipality determines to be in the public interest, including the requirement to begin within a reasonable time any improvements on the real property required by the urban renewal plan. The real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan except as provided in subsection 3. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the uses provided in the plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of the plan for the prevention of the recurrence of slum or blighted areas. The municipality in an instrument of conveyance to a private purchaser or lessee may provide that the purchaser or lessee shall not sell, lease or otherwise transfer the real property, without the prior written consent of the municipality, until the purchaser or lessee has completed the construction of any or all improvements which the purchaser or lessee has become obligated to construct. Real property acquired by a municipality which, in accordance with the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest, consistent with the carrying out of the urban renewal plan. A contract for a transfer under the urban renewal plan, or a part or parts of the contract or plan as the municipality determines, may be recorded in the land records of the county in a manner to afford actual or constructive notice of the contract or plan.

2. A municipality may dispose of real property in an urban renewal area to private persons only under reasonable competitive bidding procedures it shall prescribe, or as provided in this subsection. A municipality, by public notice by publication in a newspaper having a general circulation in the community, thirty days prior to the execution of a contract to sell, lease or otherwise transfer real property, and prior to the delivery of an instrument of conveyance with respect to the real property under this section, may invite proposals from and make available all pertinent information to any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or a part of the area. The notice shall identify the area, or portion of the area, and shall state that proposals shall be made by those interested within thirty days after the date of publication of the notice, and that further information available may be obtained at the office designated in the notice. The municipality shall consider all redevelopment or rehabilitation proposals, and the financial and legal ability of the persons making the proposals to carry them out, and the municipality may negotiate with any persons for proposals concerning the purchase, lease or other transfer of real property acquired by the municipality in the urban renewal area. The municipality may accept the proposal it deems to be in the public interest and in furtherance of the purposes of this chapter. However, a notification of intention to accept the proposal shall be filed with the governing body not less than thirty days prior to the acceptance. Thereafter, the municipality may execute a contract in accordance with subsection 1 and may deliver deeds,

leases and other instruments and may take all steps necessary to effectuate the contract.

However, this subsection does not apply to real property disposed of for the purpose of development or redevelopment as an industrial building or facility, facilities for use as a center for export for international trade, a home office or regional office facility for a multistate business or which meets the criteria set forth in subsection 3.

3. The requirement that real property or an interest in real property transferred or retained for the purpose of a development or redevelopment be sold, leased, otherwise transferred, or retained at not less than its fair market value does not apply if the developer enters into a written assessment agreement with the municipality pursuant to section 403.6, subsections 18 and 19 and the minimum actual value contained in the assessment agreement would indicate that there will be sufficient taxable valuations to permit the collection of incremental taxes as provided in subsection 2 of section 403.19 to cause the indebtedness and other costs incurred by the municipality with respect to the property or interest transferred or retained to be repayable as to principal within four tax years following the commencement of full operation of the development.

4. A municipality may temporarily operate and maintain real property acquired in an urban renewal area pending the disposition of the property as authorized in this chapter, without regard to the provisions of subsection 1 above, for such uses and purposes as may be deemed desirable, even though not in conformity with the urban renewal plan.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.8]
84 Acts, ch 1210, §2, 3; 88 Acts, ch 1144, §1, 3

403.9 Issuance of bonds.

1. A municipality shall have power to periodically issue bonds in its discretion to pay the costs of carrying out the purposes and provisions of this chapter, including, but not limited to, the payment of principal and interest upon any advances for surveys and planning, and the payment of interest on bonds, herein authorized, not to exceed three years from the date the bonds are issued. The municipality shall have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Said bonds shall be payable solely from the income and proceeds of the fund and portion of taxes referred to in subsection 2 of section 403.19, and revenues and other funds of the municipality derived from or held in connection with the undertaking and carrying out of urban renewal projects under this chapter. The municipality may pledge to the payment of the bonds the fund and portion of taxes referred to in subsection 2 of section 403.19, and may further secure the bonds by a pledge of any loan, grant or contribution from the federal government or other source in aid of any urban renewal projects of the municipality under this chapter, or by a mortgage of any such urban renewal projects, or any part thereof, title which is vested in the municipality.

2. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

3. Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding that permitted by chapter 74A be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

Before the local governing body may institute proceedings for the issuance of bonds under this section, a notice of the proposed action, including a statement of the amount and purposes of the bonds and the time and place of the meeting at which the local governing body proposes to take action for the issuance of the bonds, must be published as provided in section 362.3. At the meeting, the local governing body shall receive oral or written objections from any resident or property owner of the municipality. After all objections have been received and considered, the local governing body, at that meeting or any subsequent meeting, may take additional action for the issuance of the bonds or abandon the proposal to issue the bonds. Any resident or property owner of the municipality may appeal the decision of the local governing body to take additional action to the district court of the county in which any part of the municipality is located, within fifteen days after the additional action is taken. The additional action of the local governing body is final and conclusive unless the court finds that the municipality exceeded its authority.

4. Such bonds may be sold at not less than ninety-eight percent of par at public or private sale, or may be exchanged for other bonds at not less than ninety-eight percent of par.

5. In case any of the public officials of the municipality whose signatures appear on any bonds

or coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

6. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.9]
96 Acts, ch 1204, §18, 19

403.10 Bonds as legal investment.

All banks, trust companies, building and loan associations, savings and loan associations, investment companies and other persons carrying on an investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this chapter, or those issued by any urban renewal agency vested with urban renewal project powers under section 403.14. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.10]
96 Acts, ch 1204, §20

403.11 Exemptions from legal process.

1. All property of a municipality, including funds, owned or held by it for the purposes of this chapter shall be exempt from levy and sale by virtue of an execution; and no execution or other judicial process shall issue against the same; nor shall judgment against a municipality be a charge or lien upon such property: Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants or revenues from urban renewal projects.

2. The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: Provided, that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.11]

403.12 Powers of municipality.

1. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

a. Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or other rights or privileges therein to a municipality;

b. Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

c. Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal project;

d. Lend, grant or contribute funds to a municipality;

e. Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban renewal project;

f. Cause public buildings and public facilities, including parks, playgrounds, and recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished;

g. Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places;

h. Plan or replan, zone or rezone any part of the public body or make exceptions from building regulations;

i. Cause administrative and other services to be furnished to the municipality.

2. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, including any agency or instrumentality of the United States, other than the municipality, which is authorized by law to engage in the undertaking, carrying out, or administra-

tion of urban renewal projects, the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the term *"municipality"* shall also include an urban renewal agency vested with all of the urban renewal project powers pursuant to the provisions of section 403.14.

3. Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

4. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of an urban renewal agency, a municipality may, in addition to its other powers and upon such terms, with or without consideration, as it may determine, do and perform any or all of the actions or things which, by the provisions of subsection 1 of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

5. For the purposes of this section, or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project of a municipality, a municipality may, in addition to any authority to issue bonds pursuant to section 403.9, issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section must be issued, in the case of a city, by resolution of the council in the manner and within the limitations prescribed by chapter 384, division III, or in the case of a county, by resolution of the board of supervisors in the manner and within the limitations prescribed by chapter 331, division IV, part 3. Bonds issued pursuant to the provisions of this subsection must be sold in the manner prescribed by chapter 75. The additional power granted in this subsection for the financing of public undertakings and activities by municipalities within an urban renewal area shall not be construed as a limitation of the existing powers of municipalities.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.12]
94 Acts, ch 1182, §7

403.13 Presumption of title.

Any instrument executed by a municipality and purporting to convey any right, title or interest in any property under this chapter shall be conclusively presumed to have been executed in compliance with the provisions of this chapter insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.13]

403.14 Urban renewal agency powers.

1. A municipality may itself exercise its urban renewal project powers, as herein defined, or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency, if one exists or is subsequently established in the community. In the event the local governing body makes such determination, the urban renewal agency shall be vested with all of the urban renewal project powers in the same manner as though all such powers were conferred on such agency instead of the municipality. If the local governing body does not elect to make such determination, the municipality in its discretion may exercise its urban renewal project powers through a board or commissioner, or through such officers of the municipality as the local governing body may by resolution determine.

2. As used in this section, the term *"urban renewal project powers"* shall include the rights, powers, functions and duties of a municipality under this chapter, except the following:

a. The power to determine an area to be a slum or blighted area or combination thereof and to designate such area as appropriate for an urban renewal project and to hold any public hearings required with respect thereto;

b. The power to approve urban renewal plans and modifications thereof;

c. The power to establish a general plan for the locality as a whole;

d. The power to formulate a workable program under section 403.3;

e. The power to make the determinations and findings provided for in section 403.4, and section 403.5, subsection 4;

f. The power to issue general obligation bonds;

g. The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in section 403.6, subsection 8.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.14]

403.15 Agency created.

1. There is hereby created in each municipality a public body corporate and politic to be known as the "urban renewal agency" of the municipality: Provided, that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the finding prescribed in section 403.4, and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in section 403.14.

2. If the urban renewal agency is authorized to transact business and exercise powers pursuant to this chapter, the mayor or chairperson of the board, as applicable, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which board shall consist of five commissioners. In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of commissioners at not less than five. The term of office of each such commissioner shall be one year.

3. A commissioner shall receive no compensa-

tion for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of the commissioner's duties. Each commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

4. The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency, and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which area shall be conterminous with the area of operation of the municipality, and if they are otherwise eligible for such appointments under this chapter.

5. The mayor or chairperson of the board, as applicable, shall designate a chairperson and vice chairperson from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and the agency may determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the city or county, as applicable, a notice to the effect that such report has been filed with the municipality, and that the report is available for inspection during business hours in the office of the city clerk or county auditor, as applicable, and in the office of the agency.

6. For inefficiency, or neglect of duty, or misconduct in office, a commissioner may be removed only after a hearing, and after the commissioner shall have been given a copy of the charges at least ten days prior to such hearing, and after the commissioner shall have had an opportunity to be heard in person or by counsel.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.15]
91 Acts, ch 214, §1; 95 Acts, ch 114, §4

403.16 Personal interest prohibited.

No public official or employee of a municipality, or board or commission thereof, and no commissioner or employee of an urban renewal agency, which has been vested by a municipality with urban renewal project powers under section 403.14, shall voluntarily acquire any personal interest, as hereinafter defined, whether direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner or employee presently owns or controls, or has owned or controlled within the preceding two years, any interest, as hereinafter defined, whether direct or indirect, in any property which the official, commissioner or employee knows is included or planned to be included in an urban renewal project, the official, commissioner or employee shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body; and any such official, commissioner or employee shall not participate in any action by the municipality, or board or commission thereof, or urban renewal agency affecting such property, as the terms of such proscription are hereinafter defined. For the purposes of this section the following definitions and standards of construction shall apply:

1. *"Action affecting such property"* shall include only that action directly and specifically affecting such property as a separate property but shall not include any action, any benefits of which accrue to the public generally, or which affects all or a substantial portion of the properties included or planned to be included in such a project.

2. Employment by a public body, its agencies, or institutions or by any other person having such an interest shall not be deemed an interest by such employee or of any ownership or control by such employee of interests of the employee's employer. Such an employee may participate in an urban renewal project so long as any benefits of such participation accrue to the public generally, such participation affects all or a substantial portion of the properties included or planned to be included in such a project, or such participation promotes the public purposes of such project, and shall limit only that participation by an employee which directly or specifically affects property in which an employer of an employee has an interest.

3. The word *"participation"* shall be deemed not to include discussion or debate preliminary to a vote of a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.

4. The designation of a bank or trust company as depository, paying agent, or agent for invest-

ment of funds shall not be deemed a matter of interest or personal interest.

5. Stock ownership in a corporation having such an interest shall not be deemed an indicia of an interest or of ownership or control by the person owning such stocks when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such person.

6. The word *"action"* shall not be deemed to include resolutions advisory to the local governing body or agency by any citizens group, board, body, or commission designated to serve a purely advisory approving or recommending function under this chapter.

7. The limitations of this section shall be construed to permit action by a public official, commissioner, or employee where any benefits of such action accrue to the public generally, such action affects all or a substantial portion of the properties included or planned to be included in such a project, or such action promotes the public purposes of such project, and shall be construed to limit only that action by a public official, commissioner, or employee which directly or specifically affects property in which such official, commissioner, or employee has an interest or in which an employer of such official, commissioner, or employee has an interest. Any disclosure required to be made by this section to the local governing body shall concurrently be made to an urban renewal agency which has been vested with urban renewal project powers by the municipality pursuant to the provisions of section 403.14. No commissioner or other officer of any urban renewal agency, board or commission exercising powers pursuant to this chapter shall hold any other public office under the municipality, other than the commissionership or office with respect to such urban renewal agency, board or commission. Any violation of the provisions of this section shall constitute misconduct in office, but no ordinance or resolution of a municipality or agency shall be invalid by reason of a vote or votes cast in violation of the standards of this section unless such vote or votes were decisive in the passage of such ordinance or resolution.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.16]

403.17 Definitions.

The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

1. *"Affected taxing entity"* means a city, community college, county, or school district which levied or certified for levy a property tax on any portion of the taxable property located within the urban renewal area in the fiscal year beginning prior to the calendar year in which a proposed urban renewal plan is submitted to the local governing body for approval.

2. *"Agency"* or *"urban renewal agency"* shall mean a public agency created by section 403.15.

3. *"Agricultural land"* means real property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. Agricultural land includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. Agricultural land includes land taken out of agricultural production for purposes of environmental protection or preservation.

4. *"Area of operation"* of a city means the area within the corporate limits of the city and, with the consent of the county, the area within two miles of such limits, except that it does not include any area which lies within the territorial boundaries of another incorporated city, unless a resolution has been adopted by the governing body of the city declaring a need to be included in the area. The *"area of operation"* of a county means an area outside the corporate limits of a city. However, in that area outside a city's boundary but within two miles of the city's boundary, a joint agreement between the city and the county is required allowing the county to proceed with the activities authorized under this chapter. In addition, a county may proceed with activities authorized under this chapter in an area inside the boundaries of a city, provided a joint agreement is entered into with respect to such activities between a city and a county.

5. *"Blighted area"* means an area of a municipality within which the local governing body of the municipality determines that the presence of a substantial number of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; insanitary or unsafe conditions; deterioration of site or other improvements; diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or any combination of these factors; substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use. A disaster area referred to in section 403.5, subsection 7, constitutes a *"blighted area"*. *"Blighted area"* does

not include real property assessed as agricultural property for purposes of property taxation.

6. *"Board"* or *"commission"* shall mean a board, commission, department, division, office, body, or other unit of the municipality.

7. *"Bonds"* shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures, or other obligations.

8. *"Chairperson of the board"* means the chairperson of the board of supervisors or other legislative body charged with governing a county.

9. *"Clerk"* shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

10. *"Economic development area"* means an area of a municipality designated by the local governing body as appropriate for commercial and industrial enterprises, public improvements related to housing and residential development, or construction of housing and residential development for low and moderate income families, including single or multifamily housing. If an urban renewal plan for an urban renewal area is based upon a finding that the area is an economic development area and that no part contains slum or blighted conditions, then the division of revenue provided in section 403.19 and stated in the plan shall be limited to twenty years from the calendar year following the calendar year in which the municipality first certifies to the county auditor the amount of any loans, advances, indebtedness, or bonds which qualify for payment from the division of revenue provided in section 403.19. Such designated area shall not include agricultural land, including land which is part of a century farm, unless the owner of the agricultural land or century farm agrees to include the agricultural land or century farm in the urban renewal area. For the purposes of this subsection, *"century farm"* means a farm in which at least forty acres of such farm have been held in continuous ownership by the same family for one hundred years or more.

11. *"Federal government"* shall include the United States or any agency or instrumentality, corporate or otherwise, of the United States.

12. *"Housing and residential development"* means single or multifamily dwellings to be constructed in an area with respect to which the local governing body of the municipality determines that there is an inadequate supply of affordable, decent, safe, and sanitary housing and that providing such housing is important to meeting any or all of the following objectives: retaining existing industrial or commercial enterprises; attracting and encouraging the location of new industrial or commercial enterprises; meeting the needs of special elements of the population, such as the elderly or persons with disabilities; and providing housing for various income levels of the population which may not be adequately served.

13. *"Local governing body"* means the council, board of supervisors, or other legislative body charged with governing the municipality.

14. *"Low or moderate income families"* means those families, including single person households, earning no more than eighty percent of the higher of the median family income of the county or the statewide nonmetropolitan area as determined by the latest United States department of housing and urban development, section 8 income guidelines.

15. *"Mayor"* shall mean the mayor of a municipality, or other officer or body having the duties customarily imposed upon the executive head of a municipality.

16. *"Municipality"* means any city or county in the state.

17. *"Obligee"* shall include any bondholder, agents, or trustees for any bondholders, or any lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government, when it is a party to any contract with the municipality.

18. *"Person"* shall mean any individual, firm, partnership, corporation, company, association, joint stock association; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity for an individual or such entities.

19. *"Public body"* shall mean the state or any political subdivision thereof.

20. *"Public officer"* shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

21. *"Real property"* shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

22. *"Slum area"* shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which: by reason of dilapidation, deterioration, age or obsolescence; by reason of inadequate provision for ventilation, light, air, sanitation, or open spaces; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or which by any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and which is detrimental to the public health, safety, morals, or welfare. *"Slum area"* does not include real property assessed as agricultural property for purposes of property taxation.

23. *"Urban renewal area"* means a slum area, blighted area, economic development area, or com-

bination of the areas, which the local governing body designates as appropriate for an urban renewal project.

24. *"Urban renewal plan"* means a plan for the development, redevelopment, improvement, or rehabilitation of a designated urban renewal area, as it exists from time to time. The plan shall meet the following requirements:

a. Conform to the general plan for the municipality as a whole except as provided in section 403.5, subsection 7.

b. Be sufficiently complete to indicate the real property located in the urban renewal area to be acquired for the proposed development, redevelopment, improvement, or rehabilitation, and to indicate any zoning district changes, existing and future land uses, and the local objectives respecting development, redevelopment, improvement, or rehabilitation related to the future land uses plan, and need for improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements within the urban renewal area.

c. If the plan includes a provision for the division of taxes as provided in section 403.19, the plan shall also include a list of the current general obligation debt of the municipality, the current constitutional debt limit of the municipality, and the proposed amount of indebtedness to be incurred, including loans, advances, indebtedness, or bonds which qualify for payment from the special fund referred to in section 403.19, subsection 2.

25. *"Urban renewal project"* may include undertakings and activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, may include the designation and development of an economic development area in an urban renewal area, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal program. The undertakings and activities may include:

a. Acquisition of a slum area, blighted area, economic development area, or portion of the areas;

b. Demolition and removal of buildings and improvements;

c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;

d. Disposition of any property acquired in the urban renewal area, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan;

e. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

f. Acquisition of any other real property in the urban renewal area, where necessary to eliminate unhealthful, insanitary, or unsafe conditions, or to lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

g. Sale and conveyance of real property in furtherance of an urban renewal project;

h. Expenditure of proceeds of bonds issued before October 7, 1986, for the construction of parking facilities on city blocks adjacent to an urban renewal area.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.17]

85 Acts, ch 66, §5 – 9; 86 Acts, ch 1237, §23; 87 Acts, ch 104, §5; 89 Acts, ch 299, §4; 91 Acts, ch 186, §2 – 4; 91 Acts, ch 214, §2, 3; 94 Acts, ch 1182, §8, 9; 96 Acts, ch 1050, §1; 96 Acts, ch 1129, §113; 96 Acts, ch 1204, §21; 99 Acts, ch 171, §37, 38, 41, 42; 2002 Acts, ch 1119, §161

Subsection 3 applies to urban renewal areas established before, on, or after July 1, 1999, and to amendments to such urban renewal areas; see 99 Acts, ch 171, §41

Subsection 3 and amendments to subsection 10 apply to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

1999 amendment to subsection 10 applies to urban renewal areas established on or after July 1, 1999, and to agricultural land included in an urban renewal area established before July 1, 1999, if the land is so included by amendment to the urban renewal plan adopted on or after that date; see 99 Acts, ch 171, §41

Subsection 10 amended

403.18 Rule of construction.

Insofar as the provisions of this chapter may be inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §403.18]

TAX INCREMENT FINANCING

403.19 Division of revenue from taxation — tax increment financing.

A municipality may provide by ordinance that taxes levied on taxable property in an urban renewal area each year by or for the benefit of the state, city, county, school district, or other taxing district, shall be divided as follows:

1. *a.* Unless otherwise provided in this section, that portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts upon the total sum of the assessed value of the taxable property in the urban renewal area, as shown on the as-

sessment roll as of January 1 of the calendar year preceding the first calendar year in which the municipality certifies to the county auditor the amount of loans, advances, indebtedness, or bonds payable from the division of property tax revenue, or on the assessment roll last equalized prior to the date of initial adoption of the urban renewal plan if the plan was adopted prior to July 1, 1972, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for the taxing district into which all other property taxes are paid. However, the municipality may choose to divide that portion of the taxes which would be produced by levying the municipality's portion of the total tax rate levied by or for the municipality upon the total sum of the assessed value of the taxable property in the urban renewal area, as shown on the assessment roll as of January 1 of the calendar year preceding the effective date of the ordinance and if the municipality so chooses, an affected taxing entity may allow a municipality to divide that portion of the taxes which would be produced by levying the affected taxing district's portion of the total tax rate levied by or for the affected taxing entity upon the total sum of the assessed value of the taxable property in the urban renewal area, as shown on the assessment roll as of January 1 of the calendar year preceding the effective date of the ordinance. This choice to divide a portion of the taxes shall not be construed to change the effective date of the division of property tax revenue with respect to an urban renewal plan in existence on July 1, 1994.

b. For the purpose of allocating taxes levied by or for any taxing district which did not include the territory in an urban renewal area on the effective date of the ordinance or initial adoption of the plan, but to which the territory has been annexed or otherwise included after the effective date, the assessment roll applicable to property in the annexed territory as of January 1 of the calendar year preceding the effective date of the ordinance, which amends the plan to include the annexed area, shall be used in determining the assessed valuation of the taxable property in the annexed area.

c. For the purposes of dividing taxes under section 260E.4, the applicable assessment roll for purposes of paragraph *"a"* shall be the assessment roll as of January 1 of the calendar year preceding the first written agreement providing that all or a portion of program costs are to be paid for by incremental property taxes. The community college shall file a copy of the agreement with the appropriate assessor. The assessor may, within fourteen days of such filing, physically inspect the applicable taxable business property. If upon such inspection the assessor determines that there has been a change in the value of the property from the value as shown on the assessment roll as of January 1 of the calendar year preceding the filing of the agreement and such change in value is due to new construction, additions or improvements to existing structures, or remodeling of existing structures for which a building permit was required, the assessor shall promptly determine the value of the property as of the inspection in the manner provided in chapter 441 and that value shall be included for purposes of the jobs training project in the assessed value of the employer's taxable business property as shown on the assessment roll as of January 1 of the calendar year preceding the filing of the agreement. The assessor, within thirty days of such filing, shall notify the community college and the employer or business of that valuation which shall be included in the assessed valuation for purposes of this subsection and section 260E.4. The value determined by the assessor shall reflect the change in value due solely to new construction, additions or improvements to existing structures, or remodeling of existing structures for which a building permit was required.

2. That portion of the taxes each year in excess of such amount shall be allocated to and when collected be paid into a special fund of the municipality to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, including bonds issued under the authority of section 403.9, subsection 1, incurred by the municipality to finance or refinance, in whole or in part, an urban renewal project within the area, and to provide assistance for low and moderate income family housing as provided in section 403.22, except that taxes for the regular and voter-approved physical plant and equipment levy of a school district imposed pursuant to section 298.2 and taxes for the payment of bonds and interest of each taxing district must be collected against all taxable property within the taxing district without limitation by the provisions of this subsection. However, all or a portion of the taxes for the physical plant and equipment levy shall be paid by the school district to the municipality if the auditor certifies to the school district by July 1 the amount of such levy that is necessary to pay the principal and interest on bonds issued by the municipality to finance an urban renewal project, which bonds were issued before July 1, 2001. Indebtedness incurred to refund bonds issued prior to July 1, 2001, shall not be included in the certification. Such school district shall pay over the amount certified by November 1 and May 1 of the fiscal year following certification to the school district. Unless and until the total assessed valuation of the taxable property in an urban renewal area exceeds the total assessed value of the taxable property in such area as shown by the last equalized assessment roll referred to in subsection 1, all of the taxes levied and collected upon the taxable property in the urban renewal area shall be paid into the funds for the respective taxing districts as taxes by or for the taxing districts in the same manner as all other prop-

erty taxes. When such loans, advances, indebtedness, and bonds, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such urban renewal area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

3. The portion of taxes mentioned in subsection 2 and the special fund into which they shall be paid, may be irrevocably pledged by a municipality for the payment of the principal and interest on loans, advances, bonds issued under the authority of section 403.9, subsection 1, or indebtedness incurred by a municipality to finance or refinance, in whole or in part, the urban renewal project within the area.

4. As used in this section the word *"taxes"* includes, but is not limited to, all levies on an ad valorem basis upon land or real property.

5. A municipality shall certify to the county auditor on or before December 1 the amount of loans, advances, indebtedness, or bonds which qualify for payment from the special fund referred to in subsection 2, and the filing of the certificate shall make it a duty of the auditor to provide for the division of taxes in each subsequent year until the amount of the loans, advances, indebtedness, or bonds is paid to the special fund. In any year, the county auditor shall, upon receipt of a certified request from a municipality filed on or before December 1, increase the amount to be allocated under subsection 1 in order to reduce the amount to be allocated in the following fiscal year to the special fund, to the extent that the municipality does not request allocation to the special fund of the full portion of taxes which could be collected. Upon receipt of a certificate from a municipality, the auditor shall mail a copy of the certificate to each affected taxing district.

6. Tax collections within each taxing district may be allocated to the entire taxing district including the taxes on the valuations determined under subsection 1 and to the special fund created under subsection 2 in the proportion of their taxable valuations determined as provided in this section.

7. For any fiscal year, a municipality may certify to the county auditor for physical plant and equipment revenue necessary for payment of principal and interest on bonds issued prior to July 1, 2001, only if the municipality certified for such revenue for the fiscal year beginning July 1, 2000. A municipality shall not certify to the county auditor for a school district more than the amount the municipality certified for the fiscal year beginning July 1, 2000. If for any fiscal year a municipality fails to certify to the county auditor for a school district by July 1 the amount of physical plant and equipment revenue necessary for payment of principal and interest on such bonds, as provided in subsection 2, the school district is not required to pay over the revenue to the municipality. If a school district and a municipality are unable to agree on the amount of physical plant and equipment revenue certified by the municipality for the fiscal year beginning July 1, 2001, either party may request that the state appeal board review and finally pass upon the amount that may be certified. Such appeals must be presented in writing to the state appeal board no later than July 31 following certification. The burden shall be on the municipality to prove that the physical plant and equipment levy revenue is necessary to pay principal and interest on bonds issued prior to July 1, 2001. A final decision must be issued by the state appeal board no later than the following October 1.

[C71, 73, 75, 77, 79, 81, §403.19]

85 Acts, ch 240, §3 – 5; 88 Acts, ch 1144, §2, 3; 91 Acts, ch 214, §4; 94 Acts, ch 1182, §10 – 12; 96 Acts, ch 1047, §1; 96 Acts, ch 1180, §16; 96 Acts, ch 1204, §22, 23; 2000 Acts, ch 1054, §2, 3; 2001 Acts, ch 176, §40, 41, 47

2000 amendments to subsection 2 apply to property taxes due and owing on or after July 1, 2000; 2000 Acts, ch 1054, §3

2001 amendments to subsection 2 and adding subsection 7 take effect May 22, 2001, and apply to property taxes due and payable in fiscal years beginning on or after July 1, 2002; 2001 Acts, ch 176, §47

403.20 Percentage of adjustment considered in value assessment.

In determining the assessed value of property within an urban renewal area which is subject to a division of tax revenues pursuant to section 403.19, the difference between the actual value of the property as determined by the assessor each year and the percentage of adjustment certified for that year by the director of revenue and finance on or before November 1 pursuant to section 441.21, subsection 9, multiplied by the actual value of the property as determined by the assessor, shall be subtracted from the actual value of the property as determined pursuant to section 403.19, subsection 1. If the assessed value of the property as determined pursuant to section 403.19, subsection 1, is reduced to zero, the additional valuation reduction shall be subtracted from the actual value of the property as determined by the assessor.

[C81, §403.20]

403.21 Communication and cooperation regarding new jobs training projects.

1. In order to promote communication and cooperation among cities, counties, and community colleges with respect to the allocation and division of taxes, no jobs training projects as defined in chapter 260E or 260F shall be undertaken within the area of operation of a municipality after July 1, 1995, unless the municipality and the community college have entered into an agreement or have jointly adopted a plan relating to a community college's new jobs training program which shall pro-

vide for a procedure for advance notification to each affected municipality, for exchange of information, for mutual consultation, and for procedural guidelines for all such new jobs training projects, including related project financing to be undertaken within the area of operation of the municipality. The joint agreement or the plan shall state its precise duration and shall be binding on the community college and the municipality with respect to all new jobs training projects, including related project financing undertaken during its existence. The joint agreement or plan shall be effective upon adoption and shall be placed on file in the office of the secretary of the board of directors of the community college and such other location as may be stated in the joint agreement or plan. The joint agreement or plan shall also be sent to each school district which levied or certified for levy a property tax on any portion of the taxable property located in the area of operation of the municipality in the fiscal year beginning prior to the calendar year in which the plan is adopted or the agreement is reached. If no such agreement is reached or plan adopted, the community college shall not use incremental property tax revenues to fund jobs training projects within the area of operation of the municipality. Agreements entered into between a community college and a city or county pursuant to chapter 28E shall not apply.

2. The community college shall send a copy of the final agreement prepared pursuant to section 260E.3 to the department of economic development. For each year in which incremental property taxes are used to pay job training certificates issued for a project creating new jobs, the community college shall provide to the department of economic development a report of the incremental property taxes and new jobs credits from withholding generated for that year, a specific description of the training conducted, the number of employees provided program services under the project, the median wage of employees in the new jobs in the project, and the administrative costs directly attributable to the project.

3. The community college shall send a copy of the final agreement prepared pursuant to section 260F.3 to the department of economic development. For each year in which incremental property taxes are used to retire debt service on a jobs training advance issued for a project creating new jobs, the community college shall provide to the department of economic development a report of the incremental property taxes and new jobs credits from withholding generated for that year, a specific description of the training conducted, the number of employees provided program services under the project, and the median wage of employees in the new jobs in the project, and the administrative costs directly attributable to the project.

94 Acts, ch 1182, §13, 15

403.22 Public improvements related to housing and residential development — low income assistance requirements.

1. With respect to any urban renewal area established upon the determination that the area is an economic development area, a division of revenue as provided in section 403.19 shall not be allowed for the purpose of providing or aiding in the provision of public improvements related to housing and residential development, unless the municipality assures that the project will include assistance for low and moderate income family housing. For a municipality with a population over fifteen thousand, the amount to be provided for low and moderate income family housing for such projects shall be either equal to or greater than the percentage of the original project cost that is equal to the percentage of low and moderate income residents for the county in which the urban renewal area is located as determined by the United States department of housing and urban development using section 8 guidelines or by providing such other amount as set out in a plan adopted by the municipality and approved by the Iowa department of economic development if the municipality can show that it cannot undertake the project if it has to meet the low and moderate income assistance requirements. However, the amount provided for low and moderate income family housing for such projects shall not be less than an amount equal to ten percent of the original project cost.

For a municipality with a population of fifteen thousand or less, the amount to be provided for low and moderate income family housing shall be the same as for a municipality of over fifteen thousand in population, except that a municipality of fifteen thousand or less in population is not subject to the requirement to provide not less than an amount equal to ten percent of the original project cost for low and moderate income family housing.

For a municipality with a population of five thousand or less, the municipality need not provide any low and moderate income family housing assistance if the municipality has completed a housing needs assessment meeting the standards set out by the department of economic development, which shows no low and moderate income housing need, and the department of economic development agrees that no low and moderate income family housing assistance is needed.

2. The assistance to low and moderate income housing may be in, but is not limited to, any of the following forms:

a. Lots for low and moderate income housing within or outside the urban renewal area.

b. Construction of low and moderate income housing within or outside the urban renewal area.

c. Grants, credits or other direct assistance to low and moderate income families living within or outside the urban renewal area, but within the area of operation of the municipality.

d. Payments to a low and moderate income housing fund established by the municipality to be expended for one or more of the above purposes, including matching funds for any state or federal moneys used for such purposes.

3. Sources for low and moderate income family housing assistance may include the following:

a. Proceeds from loans, advances, bonds or indebtedness incurred.

b. Annual distributions from the division of revenues pursuant to section 403.19 related to the urban renewal area.

c. Lump sum or periodic direct payments from developers or other private parties under an agreement for development or redevelopment between the municipality and a developer.

d. Any other sources which are legally available for this purpose.

4. The assistance to low and moderate income family housing may be expended outside the boundaries of the urban renewal area.

5. Except for a municipality with a population under fifteen thousand, the division of the revenue under section 403.19 for each project under this section shall be limited to tax collections for ten fiscal years beginning with the second fiscal year after the year in which the municipality first certifies to the county auditor the amount of any loans, advances, indebtedness, or bonds which qualify for payment from the division of the revenue in connection with the project. A municipality with a population under fifteen thousand may, with the approval of the governing bodies of all other affected taxing districts, extend the division of revenue under section 403.19 for up to five years if necessary to adequately fund the project. The portion of the urban renewal area which is involved in a project under this section shall not be subject to any subsequent division of revenue under section 403.19.

6. A municipality shall not prohibit or restrict the construction of manufactured homes in any project for which public improvements were finalized under this section. As used in this subsection, *"manufactured home"* means the same as under section 435.1, subsection 3.

96 Acts, ch 1204, §24; 97 Acts, ch 214, §9; 98 Acts, ch 1100, §56

403.23 Annual reporting.

1. On or before December 1 of each year, the municipality shall submit an annual financial report containing the information required in section 403.15, subsection 5, to the department of management and to the county auditor of the county in which the municipality is located. In addition to the information contained in the report, the municipality shall provide the following information to the department and to the county auditor:

a. A listing and description of each project within an urban renewal area.

b. A description of the original purpose for establishing the urban renewal area.

c. The establishment date of the urban renewal area and the expiration date of the urban renewal area, if applicable, or otherwise, the term of the indebtedness.

d. The designation under which the urban renewal area was established.

e. The base year valuation of the urban renewal area.

f. The amount of incremental valuation in the urban renewal area.

g. A description of the use for the incremental funding.

h. The number of businesses that have located in each urban renewal area.

i. The number of urban renewal projects that have been completed in each urban renewal area.

j. The type and term length of financing for urban renewal projects.

k. The amount of loans, advances, indebtedness, or bonds which qualified for payment from the special fund for each urban renewal project in the preceding fiscal year.

l. The total of the amount specified in paragraph *"k"* for each urban renewal area located in the municipality.

2. At the request of the legislative fiscal bureau, the department of management shall provide the reports and additional information to the legislative fiscal bureau. The department of management, in consultation with the legislative fiscal bureau, shall determine reporting criteria for reports filed with the department pursuant to this section.

3. If a municipality does not file the annual report with the department of management and the county auditor by December 1, the county treasurer shall withhold disbursement of incremental taxes to the municipality until the annual report is filed beginning immediately with the next following disbursement of taxes. The county auditor shall notify the county treasurer if taxes are to be withheld.

99 Acts, ch 176, §1; 2000 Acts, ch 1158, §1, 2

CHAPTER 403A

MUNICIPAL HOUSING PROJECTS

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403A.1 Short title.

This chapter shall be known and may be cited as the *"Municipal Housing Law."*

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.1]

403A.2 Definitions.

The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

1. *"Agency"* or *"municipal housing agency"* shall mean a public agency created under the provisions of section 403A.5.

2. An *"agreement"* of any municipality authorized by this chapter with respect to a housing project, means a resolution or resolutions of the governing body of such municipality setting forth the action to be taken or the matter determined. Such resolutions shall be deemed to be agreements made for the benefit of the holders of bonds then outstanding or thereafter issued in connection with such project and for the benefit of any person, firm, corporation, state public body or the federal government which has agreed or thereafter agrees to make a grant or annual contribution for or in aid of such project.

3. *"Area of operation"* includes *(a)* all of a municipality and *(b)* any area adjacent to and within one mile of such municipality, provided that the governing body of such adjacent area approves and consents.

4. *"Bonds"* means any bonds, notes, interim certificates, debentures or other obligations issued by a municipality pursuant to this chapter.

5. *"Clerk"* means the clerk of the municipality or the officer charged with the duties customarily imposed on such clerk.

6. *a. "Families of low income"* means families who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe and sanitary dwellings for their use.

b. "Lower-income families" means families whose incomes do not exceed eighty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

c. "Very low-income families" means families whose incomes do not exceed fifty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

d. "Families" includes, but is not limited to, families consisting of a single person in the case of any of the following:

(1) A person who is at least sixty-two years of age.

(2) A person with a disability.

(3) A displaced person.

(4) The remaining member of a tenant family.

e. "Families" includes two or more persons living together, who are at least sixty-two years of age, are persons with a disability, or one or more such individuals living with another person who is essential to such individual's care or well-being.

f. "Disability" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or having a physical or mental impairment which is expected to be of long-continued and indefinite duration, substantially impedes the abili-

ty to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions.

g. "Displaced" means displaced by governmental action, or having one's dwelling extensively damaged or destroyed as a result of a disaster.

h. The municipality, by resolution, or the agency by rule shall establish further definitions applicable to this subsection as necessary to assure eligibility for funds available under federal housing laws.

7. *"Federal government"* includes the United States of America, the Public Housing Administration, or any other agency or instrumentality, corporate or otherwise of the United States of America.

8. *"Housing project"* or *"project"* means any work or undertaking: *(a)* to demolish, clear or remove buildings from any slum areas; or *(b)* to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for families of low income, lower-income families, or very low-income families; or *(c)* to accomplish a combination of the foregoing. Such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, utilities, parks, site preparation, landscaping, administrative, community, health, recreational, welfare or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration or repair of the improvements and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

9. *"Local governing body"* shall mean the council or other legislative body charged with governing the municipality.

10. *"Major disaster"* means any flood, drought, fire, hurricane, earthquake, storm or other catastrophe which, in the determination of the governing body, is of sufficient severity and magnitude to warrant the use of available resources of the federal, state and local governments to alleviate the damage, hardship or suffering caused thereby.

11. *"Mayor"* means the mayor of the municipality or the officer thereof charged with the duties customarily imposed on the mayor or executive head of a municipality.

12. *"Municipality"* shall mean any city or county in the state.

13. *"Obligee"* includes any bondholder, agent or trustee for any bondholder, or lessor demising to a municipality, property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality in respect to a housing project.

14. *"Persons engaged in national defense activities"* means persons in the armed forces of the United States; employees of the department of defense; and workers engaged or to be engaged in activities connected with national defense. The term also includes the families of the persons, employees and workers who reside with them.

15. *"Real property"* includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.

16. *"Slum"* means any area where dwellings predominate which by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to safety, health and morals.

17. *"State public body"* means any city, county, township, municipal corporation, commission, district or other subdivision or public body of the state.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.2]
96 Acts, ch 1129, §87

403A.3 Powers.

Every municipality in addition to other powers conferred by this or any other chapter, shall have power:

1. To prepare, carry out, and operate housing projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any housing project or any part thereof.

2. To undertake and carry out studies and analyses of the housing needs and of the meeting of such needs (including data with respect to population and family groups and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages and other factors affecting the local housing needs and the meeting thereof) and to make the results of such studies and analyses available to the public and the building, housing and supply industries; and to engage in research and disseminate information on housing and slum clearance.

3. To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any

contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

4. To lease or rent any dwellings, accommodations, lands, buildings, structures or facilities embraced in any project and (subject to the limitations contained in this chapter with respect to the rental of dwellings in housing projects) to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance, in any stock or mutual company of any real or personal property or operations of the municipality against any risks or hazards; to procure or agree to the procurement of federal or state government insurance or guarantees of the payment of any bonds or parts thereof issued by a municipality, including the power to pay premiums on any such insurance.

5. To invest any funds held in connection with a housing project in reserve or sinking funds, or any fund not required for immediate disbursement, in property or securities which banks designated as state depositories may use to secure the deposit of state funds; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than such redemption price, all bonds so redeemed or purchased to be canceled.

6. To determine where slum areas exist or where there is unsafe, insanitary or overcrowded housing; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas and the problem of eliminating unsafe, insanitary or overcrowded housing and providing dwelling accommodations for persons of low income; and to co-operate with any state public body in action taken in connection with these problems.

7. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

8. To, within its area of operation, enter into any building or property in any municipal housing area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

9. To exercise all or any part or combination of powers herein granted. No provision of law with respect to the acquisition, operation or disposition of property by public bodies shall be applicable to a municipality in its operations pursuant to this chapter unless the legislature shall specifically so state.

10. To co-operate with the Iowa finance authority, to participate in any of its programs, to use any of the funds available to the municipality for the uses of this chapter to contribute to such programs in which it participates, and to comply with the provisions of sections 16.1 to 16.36 and the rules of the Iowa finance authority promulgated thereunder.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.3]

403A.4 Aid from federal government.

In addition to the powers conferred upon a municipality by other provisions of this chapter, a municipality is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over, lease or manage any project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this chapter to authorize every municipality to do any and all things necessary or desirable to secure the financial aid or co-operation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such municipality. To accomplish this purpose a municipality, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government any provisions, which the federal government may require as conditions to its financial aid of a housing project, not inconsistent with the purposes of this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.4]

403A.5 Exercise of municipal housing powers — municipal housing agency.

Any municipality may create, in such municipality, a public body corporate and politic to be known as the "Municipal Housing Agency" of such municipality except that such agency shall not transact any business or exercise its powers here-

under until or unless the local governing body has elected to exercise its municipal housing powers through such an agency as prescribed in this section.

If the municipal housing agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the municipal housing agency which board shall consist of five commissioners. The term of office for three of the commissioners originally appointed shall be two years and the term of office for two of the commissioners originally appointed shall be one year. Thereafter the term of office for each commissioner shall be two years. In cities having a population of more than one hundred thousand, the city council may establish, by ordinance, the number of commissioners at not less than five.

A commissioner shall receive no compensation for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of a duty. Each commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner.

The powers of a municipal housing agency shall be exercised by the commissioners. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency, and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency, which area shall be conterminous with the area of operation of the municipality, and if they are otherwise eligible for appointments under this chapter.

The mayor shall designate a chairperson and vice chairperson from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and the agency may determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality, and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

For inefficiency, or neglect of duty, or misconduct in office, a commissioner may be removed by a majority vote of the governing body of the municipality only after a hearing before the body, and after the commissioner shall have been given a copy of the charges at least ten days prior to such hearing, and after the commissioner shall have had an opportunity to be heard in person or by counsel.

A municipality may itself exercise the powers in connection with municipal housing as defined in this chapter, or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the municipal housing agency, if one exists or is subsequently established in the community. In the event the local governing body makes such determination, the municipal housing agency shall be vested with all of the municipal housing project powers in the same manner as though all such powers were conferred on such agency instead of the municipality. If the local governing body does not elect to make such determination, the municipality in its discretion may exercise its municipal housing project powers through a board or commissioner, or through such officers of the municipality as the local governing body may by resolution determine.

A municipality or a "Municipal Housing Agency" may not proceed with a housing project until a study or a report and recommendation on housing available within the community is made public by the municipality or agency and is included in its recommendations for a housing project. Recommendations must receive majority approval from the local governing body before proceeding on the housing project.

[C58, §403.19; C62, 66, 71, 73, 75, 77, 79, 81, §403A.5]

95 Acts, ch 114, §5

403A.6 Operation of housing not for profit.

It is hereby declared to be the policy of this state that each municipality shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals or payments for dwelling accommodations at low rates consistent with its providing decent, safe and sanitary dwelling accommodations for persons of low income, and that no municipality shall construct or operate any housing project for profit, or as a source of revenue to the municipality. To this end the municipality shall fix the rentals or payments for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts in connection with

or for such projects from whatever sources derived, including federal financial assistance) will be sufficient (1) to pay, as the same become due, the principal and interest on the bonds issued pursuant to this chapter; (2) to create and maintain such reserves as may be required to assure the payment of principal and interest as it becomes due on such bonds; (3) to meet the cost of, and to provide for, maintaining and operating the projects (including necessary reserves therefor and the cost of any insurance, and of administrative expenses); and (4) to make such payments in lieu of taxes and, after payment in full of all obligations for which federal annual contributions are pledged, to make such repayments of federal and local contributions as it determines are consistent with the maintenance of the low-rent character of projects. Rentals or payments for dwellings shall be established and the projects administered, insofar as possible, so as to assure that any federal financial assistance required shall be strictly limited to amounts and periods necessary to maintain the low-rent character of the projects.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.6]

403A.7 Housing rentals and tenant admissions.

A municipality shall do the following:

1. Rent or lease the dwelling accommodations in a housing project only to persons or families of low income and at rentals within their financial reach.

2. Rent or lease to a tenant such dwelling accommodations consisting of the number of rooms which it deems necessary to provide safe and sanitary accommodations to the proposed occupants without overcrowding.

3. Fix income limits for occupancy and rents after taking into consideration the following:

a. The family size, composition, age, physical disabilities, and other factors which might affect the rent-paying ability of the person or family.

b. The economic factors which affect the financial stability and solvency of the project.

However, such determination of eligibility shall be within the limits of the income limits hereinbefore set out.

Nothing contained in this or the preceding section shall be construed as limiting the power of a municipality with respect to a housing project, to vest in an obligee the right, in the event of a default by the municipality, to take possession or cause the appointment of a receiver for the housing project, free from all the restrictions imposed by this or the preceding section.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.7]

96 Acts, ch 1129, §88, 113

403A.8 Dwellings for disaster victims and defense workers.

Notwithstanding the provisions of this or any other chapter relating to rentals of, preferences or eligibility for admission to, or occupancy of dwellings in housing projects, during the period when a municipality determines that there is an acute need in its area of operation for housing to assure the availability of dwellings for persons engaged in national defense activities or for victims of a major disaster, a municipality may undertake the development and administration of housing projects for the federal government, and dwellings in any housing project under the jurisdiction of the municipality may be made available to persons engaged in national defense activities or to victims of a major disaster, as the case may be. A municipality is authorized to contract with the federal government or the state or a state public body for advance payment or reimbursement for the furnishing of housing to victims of a major disaster, including the furnishing of the housing free of charge to needy disaster victims during any period covered by a determination of acute need by the municipality as herein provided.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.8]

403A.9 Co-operation between municipalities.

Any two or more municipalities may join or cooperate with one another in the exercise of any or all of the powers conferred hereby for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.9]

403A.10 Tax exemption and payments in lieu of taxes.

The property acquired or held pursuant to this chapter is declared to be public property used exclusively for essential city, or municipal public and governmental purposes and such property is hereby declared to be exempt from all taxes and special assessments of the state or of any state public body. In lieu of taxes on such property a municipality may agree to make payments to the state or a state public body (including itself) as it finds consistent with the maintenance of the low-rent character of housing projects and the achievement of the purposes of this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.10]

403A.11 Planning, zoning and building laws — insulation requirements.

All housing projects of a municipality shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the project is situated.

All dwellings which are part of housing projects and which are proposed to be rented to low-income families or the elderly through the programs of the United States department of housing and urban development shall have ceiling insulation having an R value of 38 in the attic, floor insulation hav-

ing an R value of 20, or perimeter wall insulation having an R value of 10 beneath all habitable heated areas or over unheated spaces. In addition, basement walls shall have insulation with an R value of 6 to their full height, with insulation in the box sill having an R value of 20. As used in this section, *"R value"* means resistance to heat flow.

The insulation requirements of this section are effective for all dwellings, the construction of which begins on or after July 1, 1991. For dwellings existing or under construction prior to July 1, 1991, the dwelling must comply with the insulation requirements of this section by June 30, 1996.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.11]

91 Acts, ch 270, §5

403A.12 Bonds.

A municipality shall have power to issue bonds from time to time in its discretion, for any of the purposes of this chapter. A municipality shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. A municipality may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable (1) exclusively from the income and revenues of the project financed with the proceeds of such bonds, or (2) exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any loan, grant or contribution or parts thereof from the federal government or other source, or a pledge of any income or revenues connected with a housing project or a mortgage of any housing project or projects.

Neither the governing body of a municipality nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof hereunder. The bonds and other obligations issued under the provisions of this chapter (and such bonds and obligations shall so state on their face) shall be payable solely from the sources provided in this section and shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Bonds issued pursuant to this chapter are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes. The tax exemption provisions of this chapter shall be considered part of the security for the repayment of bonds and shall constitute, by virtue of this chapter and without the necessity of the same being restated in said bonds, a contract between the bondholders and each and every one thereof, including all transferees of said bonds from time to time on the one hand and the respective municipalities issuing said bonds and the state on the other.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.12]

403A.13 Form and sale of bonds.

Bonds of a municipality shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding that permitted by chapter 74A, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds may be sold at public or private sale at not less than par.

If the officers of the municipality whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of the bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforcement of any bond issued pursuant to this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality pursuant to this chapter shall be conclusively deemed to have been issued for such purpose and the housing project in respect to which such bond was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.13]

403A.14 Provisions of bonds, trust indentures and mortgages.

In connection with the issuance of bonds pursuant to this chapter or the incurring of obligations under leases made pursuant to this chapter and in order to secure the payment of the bonds or obligations, a municipality, in addition to its other powers, shall have power to:

1. Pledge all or any part of the gross or net rents, fees or revenues of a housing project, financed with the proceeds of such bonds, to which its rights then exist or may thereafter come into existence.

2. Mortgage all or any part of its real or personal property, then owned or thereafter acquired or held pursuant to this chapter.

3. Covenant against pledging all or any part of the rents, fees and revenues or against mortgaging all or any part of its real or personal property, acquired or held pursuant to this chapter, to which

its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; covenant with respect to limitations on the right to sell, lease or otherwise dispose of any housing project or any part thereof; and covenant as to what other, or additional debts or obligations may be incurred by it.

4. Covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; provide for the replacement of lost, destroyed, or mutilated bonds; covenant against extending the time for the payment of its bonds or interest thereon; and covenant for the redemption of the bonds and to provide the terms and conditions thereof.

5. Covenant subject to the limitations contained in this chapter as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and the use and disposition to be made thereof; create or authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and covenant as to the use and disposition of the moneys held in such funds.

6. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the proportion of outstanding bonds the holders of which must consent to such action, and the manner in which such consent may be given.

7. Covenant as to the use, maintenance and replacement of any or all of its real or personal property acquired pursuant to this chapter, the insurance to be carried thereon and the use and disposition of insurance moneys.

8. Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation; and covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

9. Vest in any obligees or any specified proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; vest in an obligee or obligees the right, in the event of a default by the municipality to take possession of and use, operate and manage any housing project or any part thereof or any funds connected therewith, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement between the municipality and such obligees; provide for the powers and duties of such obligees and limit the liabilities thereof; and provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds.

10. Exercise all or any part or combination of the powers herein granted; make such covenants (other than and in addition to the covenants herein expressly authorized) and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said municipality, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

This chapter without reference to other statutes of the state, shall constitute full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of obligations that requires a bond election or in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.14]

403A.15 Remedies of an obligee.

An obligee of a municipality shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee.

1. By mandamus, suit, action or proceeding at law or in equity to compel said municipality to perform each and every term, provision and covenant contained in any contract of said municipality with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said municipality and the fulfillment of all duties imposed by this chapter.

2. By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said municipality.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.15]

403A.16 Additional remedies conferrable by a municipality.

A municipality shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction to:

1. Cause possession of any housing project or any part thereof to be surrendered to any such obligee.

2. Obtain the appointment of a receiver of any housing project of said municipality or any part thereof and of the rents and profits therefrom, and provide that, if a receiver be appointed, the receiver may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents,

revenues, or other charges thereafter arising therefrom, and keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the municipality as the court shall direct.

3. Require said municipality and the officers, agents and employees thereof to account as if it and they were the trustees of an express trust.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.16]

403A.17 Exemption of property from execution sale.

All property (including funds) owned or held by a municipality for the purposes of this chapter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the municipality be a charge or lien upon such property: Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage or other security executed or issued pursuant to this chapter or the right of obligees to pursue any remedies for the enforcement of any pledge or lien on rents, fees or revenues or the right of the federal government to pursue any remedies conferred upon it pursuant to the provisions of this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.17]

403A.18 Transfer of possession or title to federal government.

In any contract with the federal government for annual contributions to a municipality, the municipality may obligate itself (which obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other law) to convey to the federal government possession of or title to the housing project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenant or conditions to which the municipality is subject; and such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the housing project and funds in accordance with the terms of such contract: Provided, that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the housing project have been cured and that the housing project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the municipality the housing project as then constituted.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.18]

403A.19 Certificate of state auditor.

The municipality may submit to the state auditor a certified copy of the proceedings for the issuance of any bonds hereunder, including the form of such bonds. Upon the submission of these documents to the state auditor, it shall be the duty of the state auditor to pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this chapter and are otherwise regular in form and if such bonds when delivered and paid for will constitute binding and legal obligations enforceable according to the terms thereof, the state auditor shall so certify in an opinion addressed to the municipality.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.19]

403A.20 Condemnation of property.

A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with a municipal housing project under this chapter. A municipality may exercise the power of eminent domain in the manner provided in chapter 6B, and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner: Provided, that no real property belonging to the state, or any political subdivision thereof, may be acquired without its consent, provided further that no real property or any right or interest therein owned by any public utility company, pipeline company, railway or transportation company vested with the right of eminent domain under the laws of this state, shall be acquired without the consent of such company, or without first securing, after due notice to such company and after hearing, a certificate authorizing condemnation of such property from the board, commission or body having the authority to grant a certificate authorizing condemnation.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.20]

403A.21 Co-operation in undertaking housing projects.

For the purpose of aiding and co-operating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any state public body may upon such terms, with or without consideration, as it may determine:

1. Dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or any other rights or privileges therein to any municipality, or to the federal government.

2. Cause parks, playgrounds, recreational community, educational, water, sewer or drainage facilities or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects.

3. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, road-

ways, alleys, sidewalks or other places which it is otherwise empowered to undertake.

4. Cause services to be furnished for housing projects of the character which such state public body is otherwise empowered to furnish.

5. Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, elimination or closing of unsafe, insanitary or unfit dwellings.

6. Do any and all things necessary or convenient to aid and co-operate in the planning, undertaking, construction or operation of such housing projects.

7. Incur the entire expense of any public improvements made by such state public body in exercising the powers granted in this chapter.

8. Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with any municipality respecting action to be taken by such state public body pursuant to any of the powers granted by this chapter. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or administration of municipal housing or slum clearance projects, including any agency or instrumentality of the United States of America, the provisions of such agreements shall inure to the benefit of and may be enforced by such public body or governmental agency.

9. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.21]

403A.22 Personal interest prohibited.

No public official or employee of a municipality or board or commission thereof and no commissioner or employee of a municipal housing agency which has been vested with municipal housing project powers under section 403A.5, shall voluntarily acquire any personal interest, as hereinafter defined, whether direct or indirect, in any municipal housing project, or in any property included or planned to be included in any municipal housing project of such municipality, or in any contract or proposed contract in connection with such municipal housing project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner or employee presently owns or controls, or has owned or controlled within the preceding two years, any interest, as hereinafter defined, whether direct or indirect, in any property which it is known is included or planned to be included in a municipal housing project, the commissioner shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body; and any such official, commissioner or employee shall not participate in any action by the municipality, or board or commission thereof affecting such property, as the terms of such proscription are hereinafter defined. For the purposes of this section the following definitions and standards of construction shall apply:

1. *"Action affecting such property"* shall include only that action directly and specifically affecting such property as a separate property but shall not include any action of which any benefits accrue to the public generally, or which affects all or a substantial portion of the properties included or planned to be included in such a project.

2. Employment by a state public body, its agencies, and institutions or by any other person as defined in subsection 18 of section 403.17, having such an interest shall not be deemed an interest by such employee or of any ownership or control by such employee of interests of the employee's employer. Such an employee may participate in a municipal housing project so long as any benefits of such participation accrue to the public generally, such participation affects all or a substantial portion of the properties included or planned to be included in such a project, or such participation promotes the public purposes of such project, and shall limit only that participation by an employee which directly or specifically affects property in which an employer of an employee has an interest.

3. The word *"participation"* shall be deemed not to include discussion or debate preliminary to a vote by a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.

4. The designation of a bank or trust company as a depository, paying agent, or agent for investment of funds shall not be deemed a matter of interest or personal interest.

5. Stock ownership in a corporation having such an interest shall not be deemed an interest of, or ownership or control by, the person owning such stocks when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such person.

6. The word *"action"* shall not be deemed to include resolutions advisory to the local governing body or agency by any citizens group, board, body, or commission designated to serve a purely advisory function of approving or recommending under this chapter.

7. The limitations of this section shall be construed to permit action by a public official, commissioner, or employee where any benefits of such action accrue to the public generally, such action affects all or a substantial portion of the properties included or planned to be included in such a project, or such action promotes the public purposes of such project, and shall be construed to limit only that action by a public official, commissioner, or

employee which directly or specifically affects property in which such official, commissioner, or employee has an interest or in which an employer of such official, commissioner, or employee has an interest. Any violation of the provisions of this section shall constitute misconduct in office, but no ordinance or resolution of a municipality or agency shall be invalid by reason of a vote or votes cast in violation of the standards of this section unless such vote or votes were decisive in the passage of such ordinance or resolution.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.22]
2000 Acts, ch 1154, §28
Prior actions in accord with this section legalized, 69 Acts, ch 238, §2

403A.23 Eligibility of persons receiving public assistance.

Any statute to the contrary notwithstanding, no person otherwise eligible to be a tenant in a municipal housing project, shall be declared ineligible therefor or denied occupancy therein merely because the person is receiving in some form public assistance such as federal supplemental security income or state supplementary payments, as defined by section 249.1, or welfare assistance, unemployment compensation, social security payments, etc.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.23]

403A.24 Chapter controlling.

The provisions of this chapter shall be controlling, notwithstanding anything to the contrary contained in any other law of this state, or local ordinance. Any action of a municipality or the governing body thereof in carrying out the purposes of this chapter, whether by resolution, ordinance or otherwise, shall be deemed administrative in character, and no public notice or publication need be made with respect to such action taken.

[C62, 66, 71, 73, 75, 77, 79, 81, §403A.24]

403A.25 and 403A.26 Repealed by 72 Acts, ch 1092, § 2.

403A.27 Percentage of rent as taxes.

Any provision of this chapter notwithstanding, no housing project shall be approved unless as a condition at least ten percent of all rents and supplemental rental aid shall be paid annually as taxes to the office of the treasurer in the respective county in which said project is located, except as to the use of dwelling units in existing structures leased from private owners.

[C71, 73, 75, 77, 79, 81, §403A.27]

403A.28 Public hearing required.

The municipal housing agency shall not undertake any low-cost housing project until such time as a public hearing has been called, at which time the agency shall advise the public of the name of the proposed project, its location, the number of living units proposed and their approximate cost. Notice of the public hearing on the proposed project shall be published at least once in a newspaper of general circulation within the municipality, at least fifteen days prior to the date set for the hearing.

[C73, 75, 77, 79, 81, §403A.28]

CHAPTER 404

URBAN REVITALIZATION TAX EXEMPTIONS

Chapter 404 applies to all cities including special charter cities; 79 Acts, ch 84, §12
Contracts with city or county for services; see §364.19

404.1 Area established by city or county.
404.2 Conditions mandatory.
404.3 Basis of tax exemption.
404.3A Residential development area exemption.
404.4 Prior approval of eligibility.
404.5 Physical review of property by assessor.
404.6 Relocation expense of tenant.
404.7 Repeal of ordinance.
404.8 Productivity — additional tax not applicable. Repealed by 83 Acts, ch 101, §129.

404.1 Area established by city or county.

The governing body of a city may, by ordinance, designate an area of the city or the governing body of a county may, by ordinance, designate an area of the county outside the boundaries of a city, as a revitalization area, if that area is any of the following:

1. An area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, the existence of conditions which endanger

life or property by fire and other causes or a combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and which is detrimental to the public health, safety, or welfare.

2. An area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, incompatible land use relationships, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the actual value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or a combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use.

3. An area in which there is a predominance of buildings or improvements which by reason of age, history, architecture or significance should be preserved or restored to productive use.

4. An area which is appropriate as an economic development area as defined in section 403.17.

5. An area designated as appropriate for public improvements related to housing and residential development, or construction of housing and residential development, including single or multifamily housing.

[C81, §404.1]

91 Acts, ch 214, §6, 7; 97 Acts, ch 214, §10

404.2 Conditions mandatory.

A city or county may only exercise the authority conferred upon it in this chapter after the following conditions have been met:

1. The governing body has adopted a resolution finding that the rehabilitation, conservation, redevelopment, economic development, or a combination thereof of the area is necessary in the interest of the public health, safety, or welfare of the residents of the city, or county as applicable, and the area substantially meets the criteria of section 404.1.

2. The city or county has prepared a proposed plan for the designated revitalization area. The proposed plan shall include all of the following:

a. A legal description of the real estate forming the boundaries of the proposed area along with a map depicting the existing parcels of real estate.

b. The existing assessed valuation of the real estate in the proposed area, listing the land and building values separately.

c. A list of names and addresses of the owners of record of real estate within the area.

d. The existing zoning classifications and district boundaries and the existing and proposed land uses within the area.

e. Any proposals for improving or expanding city or county services within the area including but not limited to transportation facilities, sewage, garbage collection, street maintenance, park facilities and police and fire protection.

f. A statement specifying whether the revitalization is applicable to none, some, or all of the property assessed as residential, agricultural, commercial or industrial property within the designated area or a combination thereof and whether the revitalization is for rehabilitation and additions to existing buildings or new construction or both. If revitalization is made applicable only to some property within an assessment classification, the definition of that subset of eligible property must be by uniform criteria which further some planning objective identified in the plan. The city shall state how long it is estimated that the area shall remain a designated revitalization area which time shall be longer than one year from the date of designation and shall state any plan by the city to issue revenue bonds for revitalization projects within the area. For a county, a revitalization area shall include only property which will be used as industrial property, commercial property, commercial property consisting of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes, or residential property. However, a county shall not provide a tax exemption under this chapter to commercial property, commercial property consisting of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes, or residential property which is located within the limits of a city.

g. The provisions that have been made for the relocation of persons, including families, business concerns and others, whom the city or county anticipates will be displaced as a result of improvements to be made in the designated area.

h. Any tax exemption schedule that shall be used in lieu of the schedule set out in section 404.3, subsection 1, 2, 3 or 4. This schedule shall not allow a greater exemption, but may allow a smaller exemption, than allowed in the schedule specified in the corresponding subsection of section 404.3.

In the case of a county, the tax schedules used shall only be applicable to property of the type for which the revitalization area is zoned at the time the county designates the area a revitalization area.

i. The percent increase in actual value requirements that shall be used in lieu of the fifteen and ten percent requirements specified in section 404.3, subsection 7 and in section 404.5. This percent increase in actual value requirements shall not be greater than that provided in this chapter and shall be the same requirements applicable to all existing revitalization areas.

j. A description of any federal, state or private

grant or loan program likely to be a source of funding for that area for residential improvements and a description of any grant or loan program which the city or county has or will have as a source of funding for that area for residential improvements.

3. The city or county has scheduled a public hearing and notified all owners of record of real property located within the proposed area and the tenants living within the proposed area in accordance with section 362.3 or 331.305, as applicable. In addition to notice by publication, notification shall also be given by ordinary mail to the last known address of the owners of record. The city or county shall also send notice by ordinary mail addressed to the *"occupants"* of addresses located within the proposed area, unless the city council or board of supervisors, by reason of lack of a reasonably current and complete address list, or for other good cause, shall have waived the notice. Notwithstanding section 362.3 or 331.305, as applicable, the notice shall be given by the thirtieth day prior to the public hearing.

4. The public hearing has been held.

5. A second public hearing has been held if:

a. The city or county has received within thirty days after the holding of the first public hearing a valid petition requesting a second public hearing containing the signatures and current addresses of property owners that represent at least ten percent of the privately owned property within the designated revitalization area or;

b. The city or county has received within thirty days after the holding of the first public hearing a valid petition requesting a second public hearing containing the signatures and current addresses of tenants that represent at least ten percent of the residential units within the designated revitalization area.

At any such second public hearing the city or county may specifically request those in attendance to indicate the precise nature of desired changes in the proposed plan.

6. The city or county has adopted the proposed or amended plan for the revitalization area after the requisite number of hearings. The city or county may subsequently amend this plan after a hearing. Notice of the hearing shall be published as provided in section 362.3 or 331.305, except that at least seven days' notice must be given and the public hearing shall not be held earlier than the next regularly scheduled city council or board of supervisors meeting following the published notice. A city which has adopted a plan for a revitalization area which covers all property within the city limits may amend that plan at any time, pursuant to this section, to include property which has been or will be annexed to the city. The provisions of the original plan shall be applicable to the property which is annexed and the property shall be considered to have been part of the revitalization area as of the effective date of its annexation to the city.

[C81, §404.2]

83 Acts, ch 173, §1, 4, 5; 85 Acts, ch 95, §1; 86 Acts, ch 1245, §848, 849; 89 Acts, ch 2, §1; 91 Acts, ch 214, §5, 8 – 11; 92 Acts, ch 1191, §1, 4; 96 Acts, ch 1204, §38, 39

404.3 Basis of tax exemption.

1. All qualified real estate assessed as residential property is eligible to receive an exemption from taxation based on the actual value added by the improvements. The exemption is for a period of ten years. The amount of the exemption is equal to a percent of the actual value added by the improvements, determined as follows: One hundred fifteen percent of the value added by the improvements. However, the amount of the actual value added by the improvements which shall be used to compute the exemption shall not exceed twenty thousand dollars and the granting of the exemption shall not result in the actual value of the qualified real estate being reduced below the actual value on which the homestead credit is computed under section 425.1.

2. All qualified real estate is eligible to receive a partial exemption from taxation on the actual value added by the improvements. The exemption is for a period of ten years. The amount of the partial exemption is equal to a percent of the actual value added by the improvements, determined as follows:

a. For the first year, eighty percent.
b. For the second year, seventy percent.
c. For the third year, sixty percent.
d. For the fourth year, fifty percent.
e. For the fifth year, forty percent.
f. For the sixth year, forty percent.
g. For the seventh year, thirty percent.
h. For the eighth year, thirty percent.
i. For the ninth year, twenty percent.
j. For the tenth year, twenty percent.

3. All qualified real estate is eligible to receive a one hundred percent exemption from taxation on the actual value added by the improvements. The exemption is for a period of three years.

4. All qualified real estate assessed as residential property or assessed as commercial property, if the commercial property consists of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes, is eligible to receive a one hundred percent exemption from taxation on the actual value added by the improvements. The exemption is for a period of ten years.

5. The owners of qualified real estate eligible for the exemption provided in this section shall elect to take the applicable exemption provided in subsection 1, 2, 3 or 4 or provided in the different schedule adopted in the city or county plan if a different schedule has been adopted. Once the election has been made and the exemption granted, the owner is not permitted to change the method

of exemption.

6. The tax exemption schedule specified in subsection 1, 2, 3 or 4 shall apply to every revitalization area within a city or county unless a different schedule is adopted in the city or county plan as provided in section 404.2. However, a city or county shall not adopt a different schedule unless every revitalization area within the city or county has the same schedule applied to it, except in areas of the city or county which have been designated as both urban renewal and urban revitalization areas. In an area designated for both urban renewal and urban revitalization, a city or county may adopt a different schedule than has been adopted for revitalization areas which have not been designated as urban renewal areas. The different schedule adopted shall not provide for a larger tax exemption in a particular year than is provided for that year in the schedule specified in the corresponding subsection of this section.

7. *"Qualified real estate"* as used in this chapter and section 419.17 means real property, other than land, which is located in a designated revitalization area and to which improvements have been added, during the time the area was so designated, which have increased the actual value by at least the percent specified in the plan adopted by the city or county pursuant to section 404.2 or if no percent is specified then by at least fifteen percent, or at least ten percent in the case of real property assessed as residential property or which have, in the case of land upon which is located more than one building and not assessed as residential property, increased the actual value of the buildings to which the improvements have been made by at least fifteen percent. *"Qualified real estate"* also means land upon which no structure existed at the start of the new construction, which is located in a designated revitalization area and upon which new construction has been added during the time the area was so designated. *"Improvements"* as used in this chapter and section 419.17 includes rehabilitation and additions to existing structures as well as new construction on vacant land or on land with existing structures. However, new construction on land assessed as agricultural property shall not qualify as *"improvements"* for purposes of this chapter and section 419.17 unless the governing body of the city or county has presented justification at a public hearing held pursuant to section 404.2 for the revitalization of land assessed as agricultural property by means of new construction. Such justification shall demonstrate, in addition to the other requirements of this chapter and section 419.17, that the improvements on land assessed as agricultural land will utilize the minimum amount of agricultural land necessary to accomplish the revitalization of the other classes of property within the urban revitalization area. However, if such construction, rehabilitation or additions were begun prior to January 29, 1979, or one year prior to the adoption by the city or county of a plan of urban revitalization pursuant to section 404.2, whichever occurs later, the value added by such construction, rehabilitation or additions shall not constitute an increase in value for purposes of qualifying for the exemptions listed in this section. *"Actual value added by the improvements"* as used in this chapter and section 419.17 means the actual value added as of the first year for which the exemption was received.

8. The fifteen and ten percent increase in actual value requirements specified in subsection 7 shall apply to every revitalization area within a city or county unless different percent increases in actual value requirements are adopted in the city or county plan as provided in section 404.2. However, a city or county shall not adopt different requirements unless every revitalization area within the city or county has the same requirements and the requirements do not provide for a greater percent increase than specified in subsection 7.

[C81, §404.3]

83 Acts, ch 173, §2, 3, 5; 91 Acts, ch 186, §5; 91 Acts, ch 214, §11

404.3A Residential development area exemption.

Notwithstanding the schedules provided for in section 404.3, all qualified real estate assessed as residential property in an area designated under section 404.1, subsection 5, is eligible to receive an exemption from taxation on the first seventy-five thousand dollars of actual value added by the improvements. The exemption is for a period of five years.

97 Acts, ch 214, §11

404.4 Prior approval of eligibility.

A person may submit a proposal for an improvement project to the governing body of the city or county to receive prior approval for eligibility for a tax exemption on the project. The governing body shall, by resolution, give its prior approval for an improvement project if the project is in conformance with the plan for revitalization developed by the city or county. Such prior approval shall not entitle the owner to exemption from taxation until the improvements have been completed and found to be qualified real estate; however, if the proposal is not approved, the person may submit an amended proposal for the governing body to approve or reject.

An application shall be filed for each new exemption claimed. The first application for an exemption shall be filed by the owner of the property with the governing body of the city or county in which the property is located by February 1 of the assessment year for which the exemption is first claimed, but not later than the year in which all improvements included in the project are first assessed for taxation, or the following two assessment years, in which case the exemption is allowed for the total number of years in the exemp-

tion schedule. However, upon the request of the owner at any time, the governing body of the city or county provides by resolution that the owner may file an application by February 1 of any other assessment year selected by the governing body in which case the exemption is allowed for the number of years remaining in the exemption schedule selected. The application shall contain, but not be limited to, the following information: The nature of the improvement, its cost, the estimated or actual date of completion, the tenants that occupied the owner's building on the date the city or county adopted the resolution referred to in section 404.2, subsection 1, and which exemption in section 404.3 or in the different schedule, if one has been adopted, will be elected.

The governing body of the city or county shall approve the application, subject to review by the local assessor pursuant to section 404.5, if the project is in conformance with the plan for revitalization developed by the city or county, is located within a designated revitalization area, and if the improvements were made during the time the area was so designated. The governing body of the city or county shall forward for review all approved applications to the appropriate local assessor by March 1 of each year with a statement indicating whether section 404.3, subsection 1, 2, 3 or 4 applies or if a different schedule has been adopted, which exemption from that schedule applies. Applications for exemption for succeeding years on approved projects shall not be required.

[C81, §404.4]

87 Acts, ch 156, §1; 91 Acts, ch 214, §11; 92 Acts, ch 1191, §2, 4; 2001 Acts, ch 116, §2; 2002 Acts, ch 1151, §1, 36

2002 amendment to unnumbered paragraph 2 takes effect May 6, 2002, and applies retroactively to January 1, 2001, for claims made on or after that date; 2002 Acts, ch 1151, §36

Unnumbered paragraph 2 amended

404.5 Physical review of property by assessor.

The local assessor shall review each first-year application by making a physical review of the property, to determine if the improvements made increased the actual value of the qualified real estate by at least fifteen percent or at least ten percent in the case of real property assessed as residential property or the applicable percent increase requirement adopted by the city or county under section 404.2. If the assessor determines that the actual value of that real estate has increased by at least the requisite percent, the assessor shall proceed to determine the actual value of the property and certify the valuation determined pursuant to section 404.3 to the county auditor at the time of transmitting the assessment rolls. However, if a new structure is erected on land upon which no structure existed at the start of the new construction, the assessor shall proceed to determine the actual value of the property and certify the valuation determined pursuant to section 404.3 to the county auditor at the time of transmitting the assessment rolls. The assessor shall notify the applicant of the determination, and the assessor's decision may be appealed to the local board of review at the times specified in section 441.37. If an application for exemption is denied as a result of failure to sufficiently increase the value of the real estate as provided in section 404.3, the owner may file a first annual application in a subsequent year when additional improvements are made to satisfy requirements of section 404.3, and the provisions of section 404.4 shall apply. After the tax exemption is granted, the local assessor shall continue to grant the tax exemption, with periodic physical review by the assessor, for the time period specified in section 404.3, subsection 1, 2, 3 or 4, or specified in the different schedule if one has been adopted, under which the exemption was granted. The tax exemptions for the succeeding years shall be granted without the taxpayer having to file an application for the succeeding years.

For the purposes of this section, the actual value of the property upon which the value of improvements in the form of rehabilitation or additions to existing structures shall be determined shall be the lower of either the amount listed on the assessment rolls in the assessment year in which such improvements are first begun or the price paid by the owner if the improvements in the form of rehabilitation or additions to existing structures were begun within one year of the date the property was purchased and the sale was a fair and reasonable exchange between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property.

[C81, §404.5]

91 Acts, ch 214, §11; 92 Acts, ch 1191, §3, 4; 96 Acts, ch 1204, §40, 41

404.6 Relocation expense of tenant.

Upon application to it and after verification by it, the city or county shall require compensation of at least one month's rent and may require compensation of actual relocation expenses be paid to a qualified tenant whose displacement is due to action on the part of a property owner to qualify for the benefits under this chapter. However, the city or county may require the persons causing the qualified tenant to be displaced to pay all or a part of the relocation payments as a condition for receiving a tax exemption under section 404.3. *"Qualified tenant"* as used in this chapter shall mean the legal occupant of a residential dwelling unit which is located within a designated revitalization area and who has occupied the same dwelling unit continuously since one year prior to the city's or county's adoption of the plan pursuant to section 404.2.

[C81, §404.6]
91 Acts, ch 214, §11

404.7 Repeal of ordinance.
When in the opinion of the governing body of a city or county the desired level of revitalization has been attained or economic conditions are such that the continuation of the exemption granted by this chapter would cease to be of benefit to the city or county, the governing body may repeal the ordinance establishing a revitalization area. In that event, all existing exemptions shall continue until their expiration.
[C81, §404.7]
91 Acts, ch 214, §11

404.8 Productivity — additional tax not applicable. Repealed by 83 Acts, ch 101, § 129.

CHAPTER 404A

PROPERTY REHABILITATION TAX CREDIT

Chapter applies to qualified rehabilitation costs incurred on or after July 1, 2000; 2000 Acts, ch 1194, §20

404A.1 Property rehabilitation tax credit — eligible property.
404A.2 Amount of credit.
404A.3 Approval of rehabilitation project.
404A.4 Project completion and tax credit certification — credit refund.
404A.5 Economic impact — recommendations.

404A.1 Property rehabilitation tax credit — eligible property.
1. A property rehabilitation tax credit, subject to the availability of the credit, is granted against the tax imposed under chapter 422, division II, III, or V, or chapter 432, for the rehabilitation of eligible property located in this state as provided in this chapter. Tax credits in excess of tax liabilities shall be refunded as provided in section 404A.4, subsection 3.
2. Eligible property for which a taxpayer may receive the property rehabilitation tax credit computed under this chapter includes all of the following:
a. Property listed on the national register of historic places or eligible for such listing.
b. Property designated as of historic significance to a district listed in the national register of historic places or eligible for such designation.
c. Property or district designated a local landmark by a city or county ordinance.
d. A barn constructed prior to 1937.
2000 Acts, ch 1194, §3, 20; 2002 Acts, ch 1003, §1, 5
Section applies to qualified rehabilitation costs incurred on or after July 1, 2000; 2000 Acts, ch 1194, §20
2002 amendment to subsection 1 takes effect February 21, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1003, §5
Subsection 1 amended

404A.2 Amount of credit.
The amount of the credit equals twenty-five percent of the qualified rehabilitation costs made to eligible property. In the case of commercial property, rehabilitation costs must equal at least fifty percent of the assessed value of the property, excluding the land, prior to the rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least twenty-five thousand dollars or twenty-five percent of the fair market value, excluding the land, prior to the rehabilitation, whichever is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs used shall not exceed one hundred thousand dollars per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the later of either the date of issuance of the approval of the project as provided in section 404A.3 or two years prior to the project completion date.
For purposes of this chapter, qualified rehabilitation costs include amounts if they are properly includable in computing the basis for tax purposes of the eligible property. Amounts treated as an expense and deducted in the tax year in which they are paid or incurred and amounts that are otherwise not added to the basis for tax purposes of the eligible property are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis for tax purposes of the eligible property. Costs of sidewalks, parking lots, and landscaping do not

constitute qualified rehabilitation costs.

For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the rehabilitated property that would otherwise result from the qualified rehabilitation costs shall be reduced by the amount of the credit computed under this chapter.

2000 Acts, ch 1194, §4, 20; 2002 Acts, ch 1003, §2, 5

Section applies to qualified rehabilitation costs incurred on or after July 1, 2000; 2000 Acts, ch 1194, §20

2002 amendment to unnumbered paragraph 3 takes effect February 21, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1003, §5

Unnumbered paragraph 3 stricken and rewritten

404A.3 Approval of rehabilitation project.

1. *a.* In order for costs of a rehabilitation project to qualify for a tax credit, the rehabilitation project must receive approval from the state historic preservation office of the department of cultural affairs.

b. Applications for approvals from the state historic preservation office of the department of cultural affairs shall be on forms approved by the state historic preservation office and shall contain information as required by the state historic preservation office. The information shall at least include the approximate date of the start of rehabilitation, the approximate date of completion, as well as the cost.

c. The approval process shall not exceed ninety days beginning from the date the rehabilitation project is submitted. After the ninety-day limit, the rehabilitation project is deemed to be approved.

2. The state historic preservation office shall establish selection criteria and standards for rehabilitation projects involving eligible property. The main emphasis of the standards shall be to ensure that a rehabilitation project maintains the integrity of the eligible property. To the extent applicable, the standards shall be consistent with the standards of the United States secretary of the interior for rehabilitation of eligible property that is listed on the national register of historic places or is designated as of historic significance to a district listed in the national register of historic places or shall be consistent with standards for issuance of certificates of appropriateness under sections 303.27 through 303.32.

The selection standards shall provide that a person who qualifies for the rehabilitation tax credit under section 47 of the Internal Revenue Code shall automatically qualify for the state property rehabilitation tax credit under this chapter.

2000 Acts, ch 1194, §5, 20; 2002 Acts, ch 1119, §162

Section applies to qualified rehabilitation costs incurred on or after July 1, 2000; 2000 Acts, ch 1194, §20

Subsection 2, unnumbered paragraph 1 amended

404A.4 Project completion and tax credit certification — credit refund.

1. Upon completion of the rehabilitation project, a certification of completion must be obtained from the state historic preservation office of the department of cultural affairs. A completion certificate shall identify the person claiming the tax credit under this chapter and the rehabilitation costs incurred up to the two years preceding the completion date.

2. After verifying the eligibility for the tax credit, the state historic preservation office, in consultation with the department of economic development, shall issue a property rehabilitation tax credit certificate to be attached to the person's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of credit, and other information required by the department of revenue and finance.

3. A person receiving a property rehabilitation tax credit under this chapter which is in excess of the person's tax liability for the tax year is entitled to a refund of the excess at a discounted value. The discounted value of the tax credit refund, as calculated by the department of economic development, in consultation with the department of revenue and finance, shall be determined based on the discounted value of the tax credit five years after the tax year of the project completion at an interest rate equivalent to the prime rate plus two percent. The refunded tax credit shall not exceed seventy-five percent of the allowable tax credit.

4. The total amount of tax credits that may be approved for a fiscal year under this chapter shall not exceed two million four hundred thousand dollars. Tax credit certificates shall be issued on the basis of the earliest awarding of certifications of completion as provided in subsection 1. The departments of economic development and revenue and finance shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

2000 Acts, ch 1194, §6, 20

Section applies to qualified rehabilitation costs incurred on or after July 1, 2000; 2000 Acts, ch 1194, §20

404A.5 Economic impact — recommendations.

The department of cultural affairs, in consultation with the department of economic development, shall be responsible for keeping the general assembly and the legislative fiscal bureau informed on the overall economic impact to the state of the rehabilitation of eligible properties. An annual report shall be filed which shall include, but is not limited to, data on the number and potential value of rehabilitation projects begun during the latest twelve-month period, the total property rehabilitation tax credits originally granted during that period, the potential reduction in state

tax revenues as a result of all tax credits still unused and eligible for refund, and the potential increase in local property tax revenues as a result of the rehabilitated projects. The department, to the extent it is able, shall provide recommendations on whether a limit on tax credits should be established, the need for a broader or more restrictive definition of eligible property, and other adjustments to the tax credits under this chapter.

2000 Acts, ch 1194, §7, 20

Section applies to qualified rehabilitation costs incurred on or after July 1, 2000; 2000 Acts, ch 1194, §20

CHAPTER 405

ASSESSMENT OF PROPERTY FOR HOUSING DEVELOPMENT

405.1 Housing development — tax status — limitation.

405.1 Housing development — tax status — limitation.

1. The board of supervisors of a county with a population of less than twenty thousand may adopt an ordinance providing that property acquired and subdivided for development of housing shall continue to be assessed for taxation in the manner that it was prior to the acquisition for housing. Each lot shall continue to be taxed in the manner it was prior to its acquisition for housing until the lot is sold for construction or occupancy of housing or five years from the date of subdivision, whichever is shorter. Upon the sale or the expiration of the five-year period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

2. The board of supervisors of a county with a population of twenty thousand or more may adopt an ordinance providing that property acquired and subdivided for development of housing shall continue to be assessed for taxation in the manner that it was prior to the acquisition for housing. Each lot shall continue to be taxed in the manner it was prior to its acquisition for housing until the lot is sold for construction or occupancy of housing or three years from the date of subdivision, whichever is shorter. Upon the sale or the expiration of the three-year period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

96 Acts, ch 1204, §37

CHAPTER 405A

STATE FUND ALLOCATIONS TO LOCAL GOVERNMENT

See §24.14

405A.1 Definitions.
405A.2 General allocation.
405A.3 City allocations.
405A.4 County allocations.
405A.5 Local conference board allocations.
405A.6 County hospital allocations.
405A.7 Agricultural extension council allocations.
405A.8 Appropriations.
405A.9 Payment schedule.
405A.10 Franchise tax revenue allocation.

405A.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Local government"* means a school district, community college, city, county, local conference board established pursuant to chapter 441, county hospital established pursuant to chapter 347 or 347A, or county agricultural extension council elected pursuant to chapter 176A.

2. *"Personal property replacement base"* means the personal property tax replacement base as described in section 427A.12, subsection 2, paragraph *"c"*.

3. *"Political subdivision"* means a city, county,

local conference board established pursuant to chapter 441, county hospital established pursuant to chapter 347 or 347A, or county agricultural extension council elected pursuant to chapter 176A.

88 Acts, ch 1250, §1; 90 Acts, ch 1253, §120

405A.2 General allocation.

The general allocation for each local government is equal to the product of the following for all of the taxing districts comprising the local government: The ratio of sixty-five million to the total personal property replacement base in the state multiplied by the personal property replacement base of the taxing district, and the product multiplied by the ratio of the tax rate of the local government for taxes payable in the fiscal year ending June 30, 1987, to the consolidated tax rate of the taxing district for taxes payable in the fiscal year ending June 30, 1987.

88 Acts, ch 1250, §2

405A.3 City allocations.

1. For the fiscal year beginning July 1, 1988, and each subsequent fiscal year, the amount due to each city in the state is equal to the sum of the following:

a. The general allocation as determined pursuant to section 405A.2.

b. The ratio of the population of each city to the total population of all cities in the state, multiplied by twenty-seven million three hundred thousand dollars. The population of each city shall be determined by the latest available federal census. A city may have one special federal census taken each decade, and the population figure obtained shall be used in apportioning amounts under this subsection beginning the calendar year following the year in which the special census is certified to the secretary of state. If a city has annexed territory since the last regular or special federal census, the mayor and council shall certify to the treasurer of state the actual population of the annexed territory as determined by the last certified federal census of the territory and the apportionment of funds under this subsection shall be based upon the population of the city as modified by the certification of the population of the annexed territory until the next regular or special federal census enumeration.

c. The amount of moneys and credits replacement received by the city under section 422.100, Code 1987, for the fiscal year ending June 30, 1988.

2. A city shall not receive an apportionment of funds under this section after its dissolution. After the dissolution of a city, its general allocation as determined under section 405A.2 and the allocation as determined under subsection 1, paragraph *"c"* of this section shall be paid to the county in which the dissolved city was located. If two or more cities have consolidated, the apportionment of funds under this section shall be determined by adding the apportionment of the consolidating cities.

88 Acts, ch 1250, §3

405A.4 County allocations.

1. For the fiscal year beginning July 1, 1988, and each subsequent fiscal year, the amount due to each county in the state is equal to the sum of the following:

a. The general allocation as determined pursuant to section 405A.2.

b. The ratio of the population of each county residing in the unincorporated area of the county to the total population residing in the unincorporated areas of all the counties, multiplied by five million four hundred thousand dollars. The population of each county shall be determined by the latest available federal census.

c. The ratio of the personal property replacement base of the county to the total personal property replacement base of all counties in the state, multiplied by four hundred forty-seven thousand dollars.

2. The allocation of a county as determined under subsection 1 may be credited to the general, rural services, secondary road, or other special revenue fund of the county. The allocation of a county under subsection 1 shall not be credited to the county's mental health, mental retardation, and developmental disabilities services fund.

88 Acts, ch 1250, §4; 98 Acts, ch 1213, §6, 9

405A.5 Local conference board allocations.

1. For the fiscal year beginning July 1, 1988, and each subsequent fiscal year, the amount due to each local conference board in the state is equal to the general allocation of the local conference board as determined in section 405A.2.

2. When the office of city assessor is discontinued, the amounts that would otherwise be due to the city conference board under this section shall be paid to the county conference board.

88 Acts, ch 1250, §5

405A.6 County hospital allocations.

1. For the fiscal year beginning July 1, 1988, and each subsequent fiscal year, the amount due to each county hospital in the state is equal to the general allocation of the county hospital as determined in section 405A.2.

2. When a county hospital is discontinued or organized pursuant to chapter 37, the amounts that would otherwise be due to the hospital under this section shall be paid to the county.

88 Acts, ch 1250, §6

405A.7 Agricultural extension council allocations.

For the fiscal year beginning July 1, 1988, and

each subsequent fiscal year, the amount due to each county agricultural extension council in the state is equal to the general allocation of the county agricultural extension council as determined in section 405A.2.

88 Acts, ch 1250, §7

405A.8 Appropriations.

1. There are appropriated from the general fund of the state to the department of revenue and finance the following sums to carry out the provisions of this chapter: For the fiscal year beginning July 1, 1988, and each subsequent fiscal year, sixty-seven million seven hundred thirty-seven thousand dollars.

2. If, for any fiscal year the amount appropriated is insufficient to pay in full the amounts due to all political subdivisions, then the amount of each payment shall be reduced by the same percentage, so that the aggregate payments to all political subdivisions are equal to the amount appropriated for such payments. If, for any fiscal year the amount appropriated is in excess of the amounts due to all political subdivisions, then the amount of each payment shall be increased by the same percentage, so that the aggregate payments to all political subdivisions are equal to the amount appropriated for such payments.

88 Acts, ch 1250, §8

Appropriation limited for fiscal years beginning on or after July 1, 1993; see §8.59

405A.9 Payment schedule.

The amounts due each political subdivision for each fiscal year shall be paid in the form of warrants payable to the treasurers of the respective political subdivisions by the department of revenue and finance according to the following schedule:

1. One-half of the amount due for a fiscal year shall be paid on December 15 of that fiscal year.

2. One-half of the amount due for a fiscal year shall be paid on March 15 of that fiscal year.

88 Acts, ch 1250, §9

405A.10 Franchise tax revenue allocation.

For the fiscal year beginning July 1, 1997, and each subsequent fiscal year, there is appropriated from the general fund of the state to the department of revenue and finance the sum of eight million eight hundred thousand dollars which shall be paid quarterly on warrants by the director as allocated pursuant to section 422.65.

97 Acts, ch 158, §3

CHAPTER 406

SANITARY DISPOSAL PROJECTS

Repealed by 72 Acts, ch 1119, §112
See chapter 455B

CHAPTER 407

INDEBTEDNESS

Repealed by 72 Acts, ch 1088, §199
See chapter 384

CHAPTER 408

BONDS

Repealed by 72 Acts, ch 1088, §199

CHAPTER 408A

BOND PROPOSALS — PETITION FOR ELECTION

Repealed by 72 Acts, ch 1088, §199

CHAPTER 409

PLATS

Repealed by 90 Acts, ch 1236, §54; see chapter 354, 355

CHAPTER 409A

PLATTING — DIVISION AND SUBDIVISION OF LAND

Transferred to chapter 354

CHAPTER 410

FIRE FIGHTERS AND POLICE OFFICERS — RETIREMENT AND DISABILITY

410.1 Pension funds.
410.2 Boards of trustees — officers.
410.3 Investment of surplus.
410.4 Gifts, devises, or bequests.
410.5 Membership fee — assessments.
410.6 Who entitled to pension — conditions.
410.7 Soldiers and sailors.
410.8 Disability — how contracted.
410.9 Retired members assigned for light duty.
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410.11 Exemption.
410.12 Volunteer or call fire fighters.
410.13 Re-examination of retired members.
410.14 Decision of board.
410.15 Guarantee of pension benefits.
410.16 Moneys drawn — how paid — report.
410.17 City marshal.
410.18 Hospital expense.

HOURS OF SERVICE

410.19 Hours on duty limited.
410.20 Exceptions.

410.1 Pension funds.

Any city having an organized fire department may, and all cities having an organized police department or a paid fire department shall, levy annually on taxable property a tax not to exceed three and three-eighths cents per thousand dollars of assessed value for each such department, for the purpose of creating fire fighters' and police officers' pension funds.

Provided that cities having a population of more than six thousand five hundred may annually levy on taxable property a tax of not more than thirteen and one-half cents per thousand dollars of assessed value for each such department for such purpose. Provided, further, that cities, in which a police or fire retirement system based upon actuarial tables shall be established by law, shall levy for the police or fire pension funds a tax sufficient in amount to meet all necessary obligations and expenditures; and said obligations and expenditures shall be direct liabilities of said cities.

Whenever there is a sufficient balance in both of said funds to meet any proper or legitimate charges that may be made against the same, such city shall not be required to levy a tax for this purpose.

All moneys derived from each tax so levied, and all moneys received as membership fees and dues, and all moneys received from grants, donations, and devises for the benefit of each fund shall constitute separate funds, to be known and designated as a police officers' pension fund and a fire fighters' pension fund.

The provisions of this chapter shall not apply to police officers and fire fighters who entered employment after March 2, 1934, except that any police officer or fire fighter who had been making payments of membership fees and assessments as provided in section 410.5 prior to July 1, 1971, shall on July 1, 1973, be fully restored and entitled to all pension rights and benefits, vested or not vested, under this chapter if the city has not returned to such police officer or fire fighter the membership fees and assessments paid by the police officer or fire fighter prior to July 1, 1971, and if such police officer or fire fighter pays to the city within six months after July 1, 1973, the amount of the fees and assessments that the police officer or fire fighter would have paid to the police officers' or fire fighters' pension fund from July 1, 1971, to July 1, 1973, if Acts of the 1971 Session, Sixty-fourth General Assembly, chapter 108, had

not been adopted. If the membership fees and assessments paid by such police officer or fire fighter prior to July 1, 1971, have been returned to the police officer or fire fighter, all pension rights and benefits, vested or not vested, under this chapter shall be fully restored to the police officer or fire fighter on July 1, 1973, if, within six months after July 1, 1973, such police officer or fire fighter repays the fees and assessments so returned and pays the amount of the fees and assessments to the city that the police officer or fire fighter would have paid to the appropriate pension fund from July 1, 1971, to July 1, 1973, if Acts of the Sixty-fourth General Assembly, 1971 Session, chapter 108 had not been adopted.

[S13, §932-a,-j; C24, 27, 31, 35, 39, §**6310;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.1]

410.2 Boards of trustees — officers.

The chief officer of each department, with the city treasurer and the city solicitor or attorney of such cities, shall be ex officio members of and shall constitute separate boards of trustees for the management of each fund. The chief officer of the department shall be president and the city treasurer, treasurer of such boards, and the faithful performance of the duties of the treasurer shall be secured by an official bond as city treasurer. Such trustees shall not receive any compensation for their services as members of said boards. Provided, however, that in any city where contributory fire or police retirement systems or both systems based upon actuarial tables shall be established by this Act* for the benefit of police officers or fire fighters or both appointed to the force after the establishment of same, the board of trustees of each such system, respectively, shall also constitute the board of trustees for the management of each fund under this section as a separate and distinct fund in itself.

[S13, §932-a,-b,-j,-k; C24, 27, 31, 35, 39, §**6311;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.2]

*See 34 Acts, 1st Ex, ch 75, effective date March 2, 1934

410.3 Investment of surplus.

The boards shall have power to invest any surplus left in such funds, respectively, at the end of the fiscal year, but no part of the funds realized from any tax levy shall be used for any purpose other than the payment of pensions. Investments shall be in interest-bearing bonds, notes, certificates, or other evidences of indebtedness which are obligations of or guaranteed by the United States, or in interest-bearing bonds of the state of Iowa, of any county, township, or municipal corporation of the state of Iowa. All such securities shall be deposited with the treasurer of the boards of trustees for safekeeping.

[S13, §932-1; SS15, §932-c; C24, 27, 31, 35, 39, §**6312;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.3]

410.4 Gifts, devises, or bequests.

Each board may take by gift, grant, devise, or bequest, any money or property, real or personal, or other thing of value for the benefit of said funds. All rewards in moneys, fees, gifts, or emoluments of every kind or nature that may be paid or given to any police or fire department or to any member thereof, except when allowed to be retained or given to endow a medal or other permanent or competitive reward on account of extraordinary services rendered by said departments or any member thereof, and all fines and penalties imposed upon members, shall be paid into the said pension fund and become a part thereof.

[S13, §932-d,-m; C24, 27, 31, 35, 39, §**6313;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.4]

410.5 Membership fee — assessments.

Every member of said departments shall be required to pay to the treasurer of said funds a membership fee to be fixed by the board of trustees, not exceeding five dollars, and shall also be assessed and required to pay annually an amount equal to one percent per annum upon the amount of the annual salary paid to the member, which assessment shall be deducted and retained in equal monthly installments out of such salary.

[S13, §932-d,-m; C24, 27, 31, 35, 39, §**6314;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.5]

410.6 Who entitled to pension — conditions.

Any member of said departments who shall have served twenty-two years or more in such department, and shall have reached the age of fifty years; or who shall while a member of such department become mentally or physically permanently disabled from discharging the member's duties, shall be entitled to be retired, and upon retirement shall be paid out of the pension fund of such department a monthly pension equal to one-half the amount of salary received by the member monthly at the date the member actually retires from said department. If any member shall have served twenty-two years in said department, but shall not have reached the age of fifty years, the member shall be entitled to retirement, but no pension shall be paid while the member lives until the member reaches the age of fifty years.

Upon the adoption of any increase in pension benefits effective subsequent to the date of a member's retirement, the amount payable to each member as regular pension shall be increased by an amount equal to sixty percent of any increase in the pension benefits for the rank at which the member retired.

Pensions payable under this chapter shall be adjusted as follows:

1. On each July 1 and January 1, the monthly pension authorized in this chapter payable to each retired member and to each beneficiary, except children, of a deceased member shall be recom-

puted. The applicable formulas authorized in this chapter which were used to compute the retired member's or beneficiary's pension at the time of retirement or death shall be used in the recomputation except the earnable compensation payable on each July 1 or January 1 to an active member having the same or equivalent rank or position as was held by such retired or deceased member at the time of retirement or death, shall be used in lieu of the final compensation which the retired or deceased member was receiving at the time of retirement or death. At no time shall the monthly pension or payment to the beneficiary be less than the amount which was paid at the time of such member's retirement or death.

2. All monthly pensions adjusted as provided in this section shall be payable beginning on July 1 or January 1 of the year which the adjustment is made and shall continue in effect until the next adjustment at which time the monthly pension shall again be recomputed and all monthly pensions adjusted in accordance with the computations.

3. The adjustment of pensions required by this section shall recognize the retired or deceased member's position on the salary scale within the member's rank at the time of retirement or death. In the event that the rank or position held by the retired or deceased member at the time of retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as that granted to other ranks and positions in the department.

At no time shall the monthly pension or payment to the member be less than one hundred fifty dollars.

[S13, §932-e,-n; C24, 27, 31, 35, 39, §**6315;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.6]

86 Acts, ch 1243, §26; 90 Acts, ch 1240, §47

410.7 Soldiers and sailors.

Any member of the fire or police department, who resigned or obtained leave of absence therefrom to serve in the United States air force or air force reserve, army, navy or marine reserve, or marine corps, of the United States, or as a member of the United States army and navy reserve, the Spanish-American War, in the World War 1917-1918, or in World War II from December 7, 1941, to December 31, 1946, both dates inclusive, or in the Korean Conflict at any time between June 25, 1950, and January 31, 1955, both dates inclusive, or in the Vietnam Conflict at any time between August 5, 1964, and ending on the date the armed forces of the United States are directed by formal order of the government of the United States to cease hostilities, both dates inclusive, and has returned with an honorable discharge from such service, to the fire or police department, shall have the period of such service included as part of the member's period of service in the department.

[C27, 31, 35, §6315-b1; C39, §**6315.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.7]

410.8 Disability — how contracted.

No member who has not served five years or more in said department shall be entitled to be retired and paid a pension under the provisions of this chapter, unless such disability was contracted while engaged in the performance of the member's duties, or by reason of following such occupation. The question of disability shall be determined by the trustees upon the concurring report of at least two out of three physicians designated by the board of trustees to make a complete physical examination of the member. After any member shall become entitled to be retired, such right shall not be lost or forfeited by discharge or for any other reason except conviction for felony.

[S13, §932-e,-n; C24, 27, 31, 35, 39, §**6316;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.8]

410.9 Retired members assigned for light duty.

The chief of the police department and the chief of the fire department of such city may assign any member of such departments, respectively, retired by reason of mental or physical disability under the provisions of this chapter, to the performance of light duties in such department.

[S13, §932-e,-n; C24, 27, 31, 35, 39, §**6317;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.9]

410.10 Pensions — surviving spouse — children — dependents.

Upon the death of any acting or retired member of such departments, leaving a spouse or minor children, or dependent father or mother surviving, there shall be paid out of said fund as follows:

1. To the surviving spouse, a sum equal to one-half of the deceased member's total adjusted pension as provided for in section 410.6, but in no event less than seventy-five dollars per month.

2. If there be no surviving spouse, or upon the death of such spouse, then to the dependent father and mother, if both survive, or to either dependent parent, if one survives, thirty dollars per month.

3. To the guardian of each surviving child under eighteen years of age, twenty dollars per month.

Effective July 1, 1991, the remarriage of a surviving spouse does not make the spouse ineligible to receive benefits under this section, and for a surviving spouse who remarried prior to July 1, 1991, the remarriage does not make the spouse ineligible to receive benefits under this section.

However, the benefits provided by this section are subject to the following definitions: The term *"spouse"* means a surviving spouse of a marriage

contracted prior to retirement of a deceased member from active service, or of a marriage of a retired member contracted prior to March 2, 1934. Surviving spouse includes a former spouse only if the division of assets in the dissolution of marriage decree pursuant to section 598.17 grants the former spouse rights of a spouse under this chapter. If there is no surviving spouse of a marriage contracted prior to retirement of a deceased member, or of a marriage of a retired member contracted prior to March 2, 1934, surviving spouse includes a surviving spouse of a marriage of two years or more duration contracted subsequent to retirement of the member. The terms *"child"* and *"children"* mean only the surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to the member's retirement from active service.

This section and its provisions shall be interpreted for all purposes as including all surviving spouses.

[S13, §932-e,-n; C24, 27, 31, 35, 39, §**6318;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.10; 82 Acts, ch 1142, §1 – 3]

91 Acts, ch 41, §2

410.11 Exemption.

All pensions paid under the provisions of this chapter shall be exempt from liability for debts of the person to or on account of whom the same is paid, and shall not be subject to seizure upon execution or other process.

[S13, §932-e,-n; C24, 27, 31, 35, 39, §**6319;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.11]

410.12 Volunteer or call fire fighters.

The provisions of this chapter shall apply to volunteer or call members of a paid fire department, but the amount of pension to be paid to such members shall be determined by the board of trustees.

[S13, §932-e; C24, 27, 31, 35, 39, §**6320;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.12]

410.13 Re-examination of retired members.

The board of trustees of each department shall have power, at any time, to cause any member of such department retired by reason of physical or mental disability to be brought before it and again examined by three competent physicians appointed by the board of trustees to discover whether such disability yet continues and can be improved and whether such retired member should be continued on the pension roll, and shall have power to examine witnesses for the same purpose. The question of continued disability or ability to perform regular or light duty in the police or fire department shall be determined by the concurring report of at least two of the three examining physicians. Such member shall be entitled to reasonable notice that such examination will be made, and to be present at the time of the taking of any testimony, shall have the right to examine the witnesses brought before the board and to introduce evidence in the member's own behalf. All witnesses shall be examined under oath, which may be administered by any member of such board.

[S13, §932-g,-p; C24, 27, 31, 35, 39, §**6321;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.13]

410.14 Decision of board.

The decision of the board upon such matters shall be final and conclusive, in the absence of fraud, and no appeal shall be allowed therefrom. The member with a disability shall remain upon the pension roll unless and until reinstated in the department by reason of such examination.

[S13, §932-g,-p; C24, 27, 31, 35, 39, §**6322;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.14]

96 Acts, ch 1129, §89

410.15 Guarantee of pension benefits.

Each city, in which contributory fire or police retirement systems based upon actuarial tables, shall be established by this Act* for the benefit of fire fighters or police officers appointed to either force after the establishment of the same, is hereby bound and obligated to carry out, and authorized to enter into a written agreement evidencing the same, with each person, on retired or active service, who has heretofore contributed, or, at the time of the taking effect of this Act, is contributing to the pension system now in effect in said city, in consideration of past and future payments to the pension fund of the system to which the police officer or fire fighter is, or has been contributing, the present and prospective benefits provided by the pension system to which the police officer or fire fighter is or has been contributing, guaranteeing that the present rate of payment by such person to said pension fund shall not be increased, also guaranteeing that the present and prospective rights and benefits provided for by said systems shall not be abridged nor lessened, and guaranteeing to all such persons so contributing all of the rights and benefits present and prospective provided in such pension system. The obligation of each such city for said rights and benefits shall be a direct charge on said city.

[S13, §932-h,-q; C24, 27, 31, 35, 39, §**6323;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.15]

*See 34 Acts, 1st Ex, ch 75, effective date March 2, 1934

410.16 Moneys drawn — how paid — report.

All pensions paid and all moneys drawn from the pension fund under the provisions of this chapter shall be upon warrants signed by the appropriate board of trustees, which warrants shall designate the name of the person and the purpose for which payment is made. The treasurer's annual

report shall show the receipts and expenditures of each fund for the preceding fiscal year, the money on hand, and how invested.

[S13, §932-i,-r; C24, 27, 31, 35, 39, §**6324;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.16]

410.17 City marshal.

Service by any member of the police department as city marshal shall not deprive the member of any rights under this chapter. In any matter in which said city marshal shall be individually interested and which requires the action of the board of trustees of the police officers' pension fund, the city marshal shall not act as a member of said board, but the mayor of the city shall act with the other two trustees of the board with respect thereto. Upon the termination of the term as city marshal, the member shall regain the rank held in the police department at the time of the member's appointment as city marshal.

[C24, 27, 31, 35, 39, §**6325;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.17]

410.18 Hospital expense.

Cities shall provide hospital, nursing, and medical attention for the members of the police and fire departments of the cities, when injured while in the performance of their duties as members of such department, and shall continue to provide hospital, nursing, and medical attention for injuries or diseases incurred while in the performance of their duties for members being paid a pension by the city under section 410.8, and the cost of such hospital, nursing, and medical attention shall be paid out of the appropriation for the department to which the injured person belongs or belonged; provided that any amounts received by the injured person under the workers' compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by the city under the provisions of this section.

[C24, 27, 31, 35, 39, §**6326;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.18]

[A portion of this section was inadvertently omitted in the 1993 Code]

HOURS OF SERVICE

410.19 Hours on duty limited.

Fire fighters employed in the fire department of cities of ten thousand population or more, or under civil service, shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of fifty-six hours per week and no single period of time, or shift, shall exceed twenty-four hours in length, provided that in cases of serious emergencies such fire fighters may be required to remain on duty until such emergency has passed, when so ordered by the chief of the department or person acting in the chief's place. Fire fighters called back to duty under this provision shall be duly compensated in accordance with their regular hourly wage.

[C27, 31, 35, §6326-a1; C39, §**6326.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.19]

See also §411.16

410.20 Exceptions.

The provisions of section 410.19 shall not apply to the chief, or other persons when in command of the fire department, nor to fire fighters who are employed subject to call only.

[C27, 31, 35, §6326-a2; C39, §**6326.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §410.20]

CHAPTER 411

RETIREMENT SYSTEM FOR POLICE OFFICERS AND FIRE FIGHTERS

Applicable to all cities creating retirement systems for police officers and fire fighters appointed after March 2, 1934

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411.1 Definitions.

The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. *"Actuarial equivalent"* means a benefit of equal value, when computed upon the basis of mortality tables adopted by the system, and interest computed at the rate established by the actuary.

2. *"Amount earned"* shall mean the amount of money actually earned by a beneficiary in some definite period of time.

3. *"Average final compensation"* means the average earnable compensation of the member during the three years of service the member earned the member's highest salary as a police officer or fire fighter, or if the member has had less than three years of service, then the average earnable compensation of the member's entire period of service.

4. *"Beneficiary"* shall mean any person receiving a retirement allowance or other benefit as provided by this chapter.

5. *"Board of trustees"* means the board created by section 411.36 to direct the establishment and administration of the retirement system.

6. *"Child"* means only surviving issue of a deceased active or retired member, or a child legally adopted by a deceased member prior to the member's retirement. *"Child"* includes only an individual who is under the age of eighteen years, an individual who is under the age of twenty-two years and is a full-time student, or an individual who is disabled at the time under the definitions used in section 202 of the Social Security Act as amended if the disability occurred to the individual during the time the individual was under the age of eighteen years and the parent of the individual was an active member of the system.

7. *"City"* or *"cities"* means any city or cities participating in the statewide fire and police retirement system as required by this chapter.

8. *"Earnable compensation"* or *"compensation earnable"* shall mean the annual compensation which a member receives for services rendered as a police officer or fire fighter in the course of employment with a participating city. However, the term *"earnable compensation"* or *"compensation earnable"* shall not include amounts received for overtime compensation, meal or travel expenses, uniform allowances, fringe benefits, severance pay, or any amount received upon termination or retirement in payment for accumulated sick leave or vacation. Contributions made by a member from the member's earnable compensation to a plan of deferred compensation shall be included in earnable compensation. Other contributions made to a plan of deferred compensation shall not be included except to the extent provided in rules adopted by the board of trustees pursuant to section 411.5, subsection 3.

9. *"Fire fighter"* or *"fire fighters"* shall mean only the members of a fire department who have passed a regular mental and physical civil service examination for fire fighters and who shall have been duly appointed to such position. Such members shall include fire fighters, probationary fire fighters, lieutenants, captains, and other senior officers who have been so employed for the duty of fighting fires.

10. *"Medical board"* shall mean the single medical provider network designated by the system as the medical board as provided for in section 411.5.

11. *"Member"* means a member of the retirement system as defined by section 411.3.

12. *"Member in good standing"* means a member in service who is not subject to removal by the employing city of the member pursuant to section 400.18 or 400.19, or other comparable process, and who is not the subject of an investigation that could lead to such removal.

13. *"Membership service"* shall mean service as a police officer or a fire fighter rendered for a city which is credited as service pursuant to section 411.4.

14. *"Pension reserve"* means the present value of all payments to be made on account of any pension, or benefit in lieu of a pension, granted under the provisions of this chapter, upon the basis of mortality tables adopted by the system, and interest computed at the rate established by the actuary.

15. *"Pensions"* means annual payments for life derived from appropriations provided by the par-

ticipating cities and the state and from contributions of the members which are deposited in the fire and police retirement fund. All pensions shall be paid in equal monthly installments.

16. *"Police officer"* or *"police officers"* shall mean only the members of a police department who have passed a regular mental and physical civil service examination for police officers, and who shall have been duly appointed to such positions. Such members shall include patrol officers, probationary patrol officers, matrons, sergeants, lieutenants, captains, detectives, and other senior officers who are so employed for police duty.

17. *"Retirement allowance"* shall mean the pension, or any benefits in lieu thereof, granted to a member upon retirement.

18. *"Retirement system"* or *"system"* means the statewide fire and police retirement system established by this chapter for the fire fighters and police officers of the cities described in section 411.2, its board of trustees, and its appointed representatives.

19. *"Superintendent of public safety"* shall mean any elected city official who has direct jurisdiction over the fire or police department, or the city manager in cities under the city manager form of government.

20. *"Surviving spouse"* shall mean the surviving spouse of a deceased member from active service. Surviving spouse shall include a former spouse only if the division of assets in the dissolution of marriage decree pursuant to section 598.17 grants the former spouse rights of a spouse under this chapter.

[C35, §6326-f1, f6(8,d); C39, §**6326.03, 6326.08(8,d);** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.1, 411.6(8); 82 Acts, ch 1261, §26, 27]

84 Acts, ch 1285, §22; 90 Acts, ch 1240, §48; 92 Acts, ch 1201, §62; 2000 Acts, ch 1077, §86 – 89, 110, 111; 2001 Acts, ch 176, §17, 18; 2002 Acts, ch 1135, §41

2000 amendment to subsection 13 takes effect April 12, 2000, and applies retroactively on and after January 1, 1992; 2000 Acts, ch 1077, §110

2000 amendment to subsection 10 is effective July 1, 2002; 2000 Acts, ch 1077, §111; 2001 Acts, ch 176, §17, 18

Subsection 10 amended

NEW subsection 12 and former subsections 12 – 19 renumbered as 13 – 20

411.1A Purpose of chapter.

The purpose of this chapter is to promote economy and efficiency in the municipal public safety service by doing the following:

1. Provide an orderly means for police officers and fire fighters to have a retirement system which will provide for the payment of pensions to retired members and members incurring disabilities, and to the surviving spouses and dependents of deceased members.

2. Provide a comprehensive disability program for police officers and fire fighters to include standards for entrance physical examinations, guidelines for ongoing fitness and wellness, disability pensions, and postdisability retirement compliance requirements.

93 Acts, ch 44, §15; 96 Acts, ch 1129, §90; 2000 Acts, ch 1077, §90

411.2 Participation in retirement system.

1. Except as provided in subsections 2 through 5, each city in which the fire fighters or police officers are appointed under the civil service law of this state, shall participate in the retirement system established by this chapter for the purpose of providing retirement allowances only for fire fighters or police officers, or both, of the cities who are so appointed after the date the city comes under the retirement system, or benefits to their dependents.

2. A city whose population was under eight thousand prior to the results of the federal census conducted in 1990 is not required to come under the retirement system established by this chapter upon attaining a population of eight thousand or more.

3. A city which did not have a paid fire department on May 3, 1990, is not required to come under the retirement system established by this chapter upon establishing a paid fire department.

4. A city which did not have a paid police department on May 3, 1990, is not required to come under the retirement system established by this chapter upon establishing a paid police department.

5. If a city's fire fighters or police officers, or both, are appointed under the civil service law of this state but the city is not operating a city fire or police retirement system, or both, under this chapter on May 3, 1990, the city is not required to come under the statewide fire and police retirement system established by this chapter.

[C35, §6326-f2; C39, §**6326.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.2]

90 Acts, ch 1240, §49

411.3 Membership — reemployment.

1. All persons who become police officers or fire fighters after the date the city is required to come under the retirement system, shall become members of the retirement system as a condition of their employment, except that a police chief or a fire chief who would not complete twenty-two years of service under this chapter by the time the chief attains fifty-five years of age shall, upon written request to the system, be exempt from this chapter, and except as otherwise provided in subsection 3. Notwithstanding section 97B.1A, a police chief or fire chief who is exempt from this chapter is exempt from chapter 97B. Members of the system established in this chapter shall not be required to make contributions under any other pension or retirement system of a city, county, or the state of Iowa, anything to the contrary notwithstanding.

2. Should any member cease to be employed as

a police officer or fire fighter by a city, or should the member become a beneficiary or die, the member shall thereupon cease to be a member of the system.

3. *a.* As used in this section, unless the context otherwise requires, *"reemployed"* or *"reemployment"* means the employment of a person as a police officer or fire fighter by any participating city after the person has commenced receiving a service retirement allowance under section 411.6.

b. If a person is reemployed, the person shall not become an active member of the system upon reemployment, and the person so reemployed and the participating city shall not make contributions to the system based upon the person's compensation for reemployment. A person who is so reemployed shall continue to receive the service retirement allowance, and the service retirement allowance shall not be recalculated based upon the person's reemployment. Notwithstanding section 97B.1A or any other provision of law to the contrary, a person reemployed as provided in this subsection shall be exempt from chapter 97B.

[C35, §6326-f3; C39, §**6326.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.3]

90 Acts, ch 1240, §50; 94 Acts, ch 1183, §66; 98 Acts, ch 1183, §82; 2000 Acts, ch 1077, §91, 110

2000 amendment to subsection 2 takes effect April 12, 2000, and applies retroactively on and after January 1, 1992; 2000 Acts, ch 1077, §110

411.4 Service creditable.

1. Service for fewer than six months of a year is not creditable as service. Service of six months or more of a year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the system allow credit as service for any period of more than one month duration during which the member was absent without pay.

2. The system shall credit as service for a member of the system a previous period of service only under any of the following circumstances:

a. The member had withdrawn the member's accumulated contributions, as defined in section 411.21, for the previous period of service.

b. The member returned to service after an absence of service of a period of less than four years from the last day of the prior period of service.

c. The member returned to service after an absence of service of a period of four or more years from the last day of the prior period of service and the member had sufficient service as of the last day of the prior period of service to have been entitled to a retirement allowance on that date under section 411.6, subsection 1, paragraph *"b"*.

[C35, §6326-f4; C39, §**6326.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.4]

90 Acts, ch 1240, §51; 2000 Acts, ch 1077, §92, 110

2000 amendments take effect April 12, 2000, and apply retroactively on and after January 1, 1992; 2000 Acts, ch 1077, §110

411.5 Administration.

1. *Board.* The general responsibility for the establishment and proper operation of the retirement system is vested in the board of trustees created by section 411.36. The system shall be administered under the direction of the board.

2. *Compensation.* The trustees, other than the secretary, shall serve without compensation, but they shall be reimbursed from the fire and police retirement fund for all necessary expenses which they may incur through service on the board, as provided pursuant to section 411.36.

3. *Rules.* Subject to the limitations of this chapter, the board of trustees shall adopt rules for the establishment and administration of the system and the fire and police retirement fund created by this chapter, and for the transaction of its business.

4. *Organization — employees.* The board of trustees shall elect from its membership a chairperson, and shall, by majority vote of its members, appoint a secretary who may, but need not, be one of its members. The system shall engage such actuarial and other services as are required to transact the business of the retirement system. The compensation of all persons engaged by the system and all other expenses of the board of trustees necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the board of trustees approves.

5. *Data.* The system shall keep in convenient form such data as is necessary for actuarial valuation of the fire and police retirement fund and for checking the experience of the retirement system.

6. *Records — reports.*

a. The board of trustees shall keep a record of all its proceedings, which record shall be open to public inspection. It shall submit an annual report to the governor, the general assembly, and the city council of each participating city concerning the financial condition of the retirement system, its current and future liabilities, and the actuarial valuation of the system. The board of trustees shall submit a certified audit report prepared by a certified public accountant to the auditor of state annually. The system shall comply with the filing fee requirement of section 11.6, subsection 10.

b. The system shall maintain records, including but not limited to names, addresses, ages, and lengths of service, salaries and wages, contributions, designated beneficiaries, benefit amounts, if applicable, and other information pertaining to members as necessary in the administration of this chapter, as well as the names, addresses, and benefit amounts of beneficiaries. For the purpose of obtaining these facts, the system shall have access to the records of the participating cities and the cities shall provide such information upon request. Member and beneficiary records containing personal information are not public records for the purposes of chapter 22. However, summary information concerning the demographics of the

members and general statistical information concerning the system is subject to chapter 22, as well as aggregate information by category.

c. Notwithstanding any provision of chapter 22 to the contrary, the system's records may be released to any political subdivision, instrumentality, or agency of the state solely for use in a civil or criminal law enforcement activity pursuant to the requirements of this paragraph. To obtain the records, the political subdivision, instrumentality, or agency of the state shall, in writing, certify to the system that the activity is authorized by law, provide a written description of the information desired, and describe the law enforcement activity for which the information is sought. The system shall not be civilly or criminally liable for the release of records in accordance with the requirements of this paragraph.

7. *Legal advisor.* The system may employ or retain an attorney to serve as the system's legal advisor and to represent the system. The costs of an attorney employed or retained by the system shall be paid from the fire and police retirement fund created in section 411.8.

8. *Medical board.* The board of trustees shall designate a single medical provider network as the medical board for the system. The medical board shall arrange for and pass upon all medical examinations required under the provisions of chapter 400 and this chapter and shall assist the system in all aspects of the comprehensive disability program described in section 411.1A. For examinations required because of disability, a physician from the medical board specializing in occupational medicine, and a second physician specializing in an appropriate field of medicine as determined by the occupational medicine physician, shall pass upon the medical examinations required for disability retirements and shall report to the system in writing their conclusions and recommendations upon all matters referred to the medical board. Each report of a medical examination under section 411.6, subsections 3 and 5, shall include the medical board's findings in accordance with section 411.6 as to the extent of the member's physical impairment.

9. *Duties of actuary.* The actuary shall be the technical advisor of the system on matters regarding the operation of the fire and police retirement fund and shall perform such other duties as are required in connection with the operation of the system.

The actuary shall make such investigation of anticipated interest earnings and of the mortality, service, and compensation experience of the members of the system as the actuary recommends, and on the basis of the investigation the system shall adopt such tables and such rates as are required in subsection 11.

10. *Actuarial investigation — tables — rates.* At least once in each five-year period, the actuary shall make an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system, and the interest and other earnings on the moneys and other assets of the retirement system, and shall make a valuation of the assets and liabilities of the fire and police retirement fund, and on the basis of the results of the investigation and valuation, the system shall do all of the following:

a. Adopt for the retirement system such interest rate, mortality and other tables as are deemed necessary.

b. Certify the rates of contribution payable by the cities in accordance with section 411.8.

c. Certify the rates of contributions payable by the members in accordance with section 411.8.

11. *Valuation.* On the basis of the rate of interest and tables adopted, the actuary shall make an annual valuation of the assets and liabilities of the fire and police retirement fund created by this chapter.

12. *Requirements related to the Internal Revenue Code.*

a. As used in this subsection, unless the context otherwise requires, *"Internal Revenue Code"* means the federal Internal Revenue Code as defined in section 422.3.

b. The fund established in section 411.8 shall be held in trust for the benefit of the members of the system and the members' beneficiaries. No part of the corpus or income of the fund shall be used for, or diverted to, purposes other than for the exclusive benefit of the members or the members' beneficiaries or for expenses incurred in the operation of the fund. A person shall not have any interest in, or right to, any part of the corpus or income of the fund except as otherwise expressly provided.

c. Notwithstanding any provision of this chapter to the contrary, in the event of a complete discontinuance of contributions, for reasons other than achieving fully funded status upon an actuarially determined basis, or upon termination of the fund established in section 411.8, a member shall be vested, to the extent then funded, in the benefits which the member has accrued at the date of the discontinuance or termination.

d. Benefits payable from the fund established in section 411.8 to members and members' beneficiaries shall not be increased due to forfeitures from other members. Forfeitures shall be used as soon as possible to reduce future contributions by the cities to the fund, except that the rate shall not be less than the minimum rate established in section 411.8.

e. Notwithstanding any provision of this chapter to the contrary, a member's service retirement allowance shall commence on or before the later of the following:

(1) April 1 of the calendar year following the calendar year in which the member attains the age of seventy and one-half years.

(2) April 1 of the calendar year following the calendar year in which the member retires.

f. The maximum annual benefit payable to a member by the system shall be subject to the limitations set forth in section 415 of the federal Internal Revenue Code, and any regulations promulgated pursuant to that section.

g. The annual compensation of a member taken in account for any purpose under this chapter shall not exceed the applicable amount set forth in section 401(a)(17) of the federal Internal Revenue Code, and any regulations promulgated pursuant to that section.

13. *Voluntary benefit programs.* The board of trustees shall be responsible for the administration of the voluntary benefit programs established under section 411.40. The board may take any necessary action, including the adoption of rules, for purposes of administering the programs.

[C35, §6326-f5; C39, §**6326.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.5; 82 Acts, ch 1261, §28, 29]

83 Acts, ch 101, §84; 86 Acts, ch 1203, §1, 2; 90 Acts, ch 1240, §52; 92 Acts, ch 1201, §63; 93 Acts, ch 44, §16, 17; 94 Acts, ch 1183, §67, 68; 96 Acts, ch 1187, §100; 2000 Acts, ch 1077, §93, 94, 111; 2001 Acts, ch 176, §17, 18

See mortality tables at end of Vol IV

2000 amendment to subsection 8 takes effect July 1, 2002; 2000 Acts, ch 1077, §111; 2001 Acts, ch 176, §17, 18

Subsection 8 amended

411.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by the system as follows:

a. Any member in service may retire upon written application to the system, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing of the application, the member desires to be retired. However, the member at the time specified for retirement shall have attained the age of fifty-five and shall have served twenty-two years or more, and notwithstanding that, during the period of notification, the member may have separated from the service.

b. Any member in service who has been a member of the retirement system four or more years and whose employment is terminated prior to the member's retirement, other than by death or disability, shall upon attaining retirement age, receive a service retirement allowance of four twenty-seconds of the retirement allowance the member would receive at retirement if the member's employment had not been terminated, and an additional one twenty-second of such retirement allowance for each additional year of service not exceeding twenty-two years of service. The amount of the retirement allowance shall be calculated in the manner provided in this paragraph using the average final compensation at the time of termination of employment.

c. Once a person commences receiving a service retirement allowance pursuant to this section, if the person is reemployed, as defined in section 411.3, the service retirement allowance shall not be recalculated based upon the person's reemployment.

2. *Allowance on service retirement.*

a. The service retirement allowance for a member who terminates service, other than by death or disability, prior to July 1, 1990, shall consist of a pension which equals fifty percent of the member's average final compensation.

b. The service retirement allowance for a member who terminates service, other than by death or disability, on or after July 1, 1990, but before July 1, 1992, shall consist of a pension which equals fifty-four percent of the member's average final compensation.

c. Commencing July 1, 1992, for members who terminate service, other than by death or disability, on or after that date, but before July 1, 2000, the system shall increase the percentage multiplier of the member's average final compensation by an additional two percent each July 1 until reaching sixty percent of the member's average final compensation. The applicable percentage multiplier shall be the rate in effect on the date of the member's termination from service.

d. Upon retirement from service on or after July 1, 2000, a member shall receive a service retirement allowance which shall consist of a pension which equals sixty-six percent of the member's average final compensation.

e. Commencing July 1, 1990, if the member has completed more than twenty-two years of creditable service, the service retirement allowance shall consist of a pension which equals the amount provided in paragraph *"b"*, *"c"*, or *"d"*, plus an additional percentage as set forth below:

(1) For a member who terminates service, other than by death or disability, on or after July 1, 1990, but before July 1, 1991, and who does not withdraw the member's contributions pursuant to section 411.23, upon the member's retirement there shall be added three-tenths percent of the member's average final compensation for each year of service over twenty-two years, excluding years of service after the member's fifty-fifth birthday. However, this subparagraph does not apply to more than eight additional years of service.

(2) For a member who terminates service, other than by death or disability, on or after July 1, 1991, but before October 16, 1992, and who does not withdraw the member's contributions pursuant to section 411.23, upon the member's retirement there shall be added six-tenths percent of the member's average final compensation for each year of service over twenty-two years, excluding

years of service after the member's fifty-fifth birthday. However, this subparagraph does not apply to more than eight additional years of service.

(3) For a member who terminates service, other than by death or disability, on or after October 16, 1992, but before July 1, 1998, and who does not withdraw the member's contributions pursuant to section 411.23, upon the member's retirement there shall be added six-tenths percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

(4) For a member who terminates service, other than by death or disability, on or after July 1, 1998, but before July 1, 2000, and who does not withdraw the member's contributions pursuant to section 411.23, upon the member's retirement there shall be added one and one-half percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

(5) For a member who terminates service, other than by death or disability, on or after July 1, 2000, and who does not withdraw the member's contributions pursuant to section 411.23, upon the member's retirement there shall be added two percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

3. *Ordinary disability retirement benefit.* Upon application to the system, of a member in good standing or of the chief of the police or fire departments, respectively, any member in good standing shall be retired by the system, not less than thirty and not more than ninety days next following the date of filing the application, on an ordinary disability retirement allowance, if the medical board after a medical examination of the member certifies that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. However, if a person's membership in the system first commenced on or after July 1, 1992, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the medical board that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same position held immediately prior to the application for disability benefits. The member-in-good-standing requirement of this subsection may be waived for good cause as determined by the board. The burden of establishing good cause is on the member.

4. *Allowance on ordinary disability retirement.*

a. Upon retirement for ordinary disability prior to July 1, 1998, a member shall receive an ordinary disability retirement allowance which shall consist of a pension which shall equal fifty percent of the member's average final compensation unless either of the following conditions exist:

(1) If the member has not had five or more years of membership service the member shall receive a pension equal to one-fourth of the member's average final compensation.

(2) If the member has had twenty-two or more years of membership service, the member shall receive a disability retirement allowance that is equal to the greater of the benefit that the member would receive under subsection 2 if the member were fifty-five years of age or the disability pension otherwise calculated under this subsection.

b. Upon retirement for ordinary disability on or after July 1, 1998, a member who has five or more years of membership service shall receive a disability retirement allowance in an amount equal to the greater of fifty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member had attained fifty-five years of age. A member who has less than five years of membership service shall receive a pension equal to one-fourth of the member's average final compensation.

5. *Accidental disability benefit.*

a. Upon application to the system, of a member in good standing or of the chief of the police or fire departments, respectively, any member in good standing who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city by which the member is regularly employed, shall be retired by the system if the medical board certifies that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. However, if a person's membership in the system first commenced on or after July 1, 1992, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the medical board that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same position held immediately prior to the application for disability benefits.

b. If a member in service or the chief of the police or fire departments becomes incapacitated for duty as a natural or proximate result of an injury

or disease incurred in or aggravated by the actual performance of duty at some definite time or place or while acting, pursuant to order, outside the city by which the member is regularly employed, the member, upon being found to be temporarily incapacitated following a medical examination as directed by the city, is entitled to receive the member's full pay and allowances from the city's general fund until re-examined as directed by the city and found to be fully recovered or until the city determines that the member is likely to be permanently disabled. If the temporary incapacity of a member continues more than sixty days, or if the city expects the incapacity to continue more than sixty days, the city shall notify the system of the temporary incapacity. Upon notification by a city, the system may refer the matter to the medical board for review and consultation with the member's treating physician during the temporary incapacity. Except as provided by this paragraph, the board of trustees of the statewide system has no jurisdiction over these matters until the city determines that the disability is likely to be permanent.

c. Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases. However, if a person's membership in the system first commenced on or after July 1, 1992, and the heart disease or disease of the lungs or respiratory tract would not exist, but for a medical condition that was known to exist on the date that membership commenced, the presumption established in this paragraph shall not apply.

d. The requirement that a member be in good standing to apply for and receive a benefit under this subsection may be waived for good cause as determined by the board. The burden of establishing good cause is on the member.

6. *Retirement after accident.*

a. Upon retirement for accidental disability prior to July 1, 1990, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty-six and two-thirds percent of the member's average final compensation.

b. Upon retirement for accidental disability on or after July 1, 1990, but before July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty percent of the member's average final compensation. However, if the member has had twenty-two or more years of membership service, the member shall receive a disability retirement allowance that is equal to the greater of the retirement allowance that the member would receive under subsection 2 if the member was fifty-five years of age or the disability retirement allowance calculated under this paragraph.

c. Upon retirement for accidental disability on or after July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension in an amount equal to the greater of sixty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member had attained fifty-five years of age.

7. *Re-examination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the system may, and upon the member's application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. The examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. If any disability beneficiary who has not attained the age of fifty-five refuses to submit to the medical examination, the member's allowance may be discontinued until withdrawal of such refusal, and if the refusal continues for one year all rights in and to the member's pension may be revoked by the system. For a disability beneficiary who has not attained the age of fifty-five and whose entitlement to a disability retirement commenced on or after July 1, 2000, the medical board may, as part of the examination required by this subsection, suggest appropriate medical treatment or rehabilitation if, in the opinion of the medical board, the recommended treatment or rehabilitation would likely restore the disability beneficiary to duty.

a. Should any beneficiary for either ordinary or accidental disability, except a beneficiary who is fifty-five years of age or over, be engaged in a gainful occupation paying more than the difference between the member's net retirement allowance and one and one-half times the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement, then the amount of the member's retirement allowance shall be reduced to an amount such that the member's net retirement allowance plus the amount earned by the member shall equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. Should the member's earnings be later changed, the amount of the member's retirement allowance may be further modified, provided that the new retirement allowance shall not exceed the amount of the retirement allowance adjusted by annual readjustments of pensions pursuant to subsection 12 of this section nor an amount which would cause the member's net retirement allowance, when added to the amount earned by the beneficiary, to equal one and one-half times the amount of the earnable com-

pensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the member was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have the member's retirement allowance suspended while in active service. If the rank or position held by the retired member is subsequently abolished, adjustments to the allowable limit on the amount of income which can be earned in a gainful occupation shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department. For purposes of this paragraph, *"net retirement allowance"* means the amount determined by subtracting the amount paid during the previous calendar year by the beneficiary for health insurance or similar health care coverage for the beneficiary and the beneficiary's dependents from the amount of the member's retirement allowance paid for that year pursuant to this chapter. The beneficiary shall submit sufficient documentation to the system to permit the system to determine the member's net retirement allowance for the applicable year.

A beneficiary retired under this paragraph, in order to be eligible for continued receipt of retirement benefits, shall no later than May 15 of each year submit to the system a copy of the beneficiary's federal individual income tax return for the preceding year.

Retroactive to July 1, 1976, the limitations on pay of a member engaged in a gainful occupation who is retired under accidental disability prescribed in this paragraph shall not apply to a member who retired before July 1, 1976.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than the disability beneficiary's average final compensation, the disability beneficiary's retirement allowance shall cease, the disability beneficiary shall again become a member and shall contribute thereafter at the rate established in section 411.8, and former service on the basis of which the disability beneficiary's service was computed at the time of retirement shall be restored to full force and effect and upon subsequent retirement the disability beneficiary shall be credited with all service as a member and also with the period of disability retirement.

c. Should a disability beneficiary under age fifty-five be employed in a public safety occupation, the disability beneficiary's retirement allowance shall cease. Notwithstanding any provision of this chapter to the contrary, if a disability beneficiary is employed in a public safety occupation that would otherwise constitute membership service, the disability beneficiary shall not become a member of the system. For purposes of this paragraph, *"public safety occupation"* means a peace officer, as defined in section 97A.1; a protection occupation, as defined in section 97B.49B; a sheriff, deputy sheriff, or airport fire fighter, as defined in section 97B.49C; and a police officer or fire fighter as defined in section 411.1, who was not restored to active service as provided by this subsection.

8. *Ordinary death benefit.*

a. Upon the receipt of proof of the death of a member in service, or a member not in service who has completed four or more years of service as provided in subsection 1, paragraph *"b"*, there shall be paid to the person designated by the member to the system as the member's beneficiary, if the member has had one or more years of membership service and no pension is payable under subsection 9, the greater of the following:

(1) An amount equal to fifty percent of the compensation earnable by the member during the year immediately preceding the member's death if the member is in service, or an amount equal to fifty percent of the compensation earned by the member during the member's last year of service if the member is not in service.

(2) An amount the member would have been entitled to withdraw pursuant to section 411.23 if the member had terminated service on the date of the member's death.

b. In lieu of the payment specified in paragraph *"a"*, a beneficiary meeting the qualifications of paragraph *"c"* may elect to receive a monthly pension equal to one-twelfth of forty percent of the average final compensation of the member, but not less than twenty percent of the average monthly earnable compensation paid to an active member of the system, as reported by the actuary. For a member not in service at the time of death, the pension shall be reduced as provided in subsection 1, paragraph *"b"*.

For a member not in service at the time of death, the pension shall be paid commencing when the member would have attained the age of fifty-five except that if there is a child of the member, the pension shall be paid commencing with the member's death until the child of the member no longer meets the definition of child as provided in section 411.1. The pension shall resume when the member would have attained the age of fifty-five.

For a member in service at the time of death, the pension shall be paid commencing with the member's death. In addition to the pension, there shall also be paid for each child of a member, a monthly pension equal to six percent of the average monthly earnable compensation paid to an active member of the system, as reported by the actuary.

Notwithstanding section 411.6, subsection 8, Code 1985, effective July 1, 1990, for a member's surviving spouse who, prior to July 1, 1986, elected to receive pension benefits under this paragraph, the monthly pension benefit shall be

equal to the higher of one-twelfth of forty percent of the average final compensation of the member, or the amount the surviving spouse was receiving on July 1, 1990.

c. The pension under paragraph *"b"* may be selected only by the following beneficiaries:

(1) The spouse.

(2) If there is no spouse, or if the spouse dies and there is a child of a member, then the member's child or children, in equal shares. The pension to each child shall terminate when the child no longer meets the definition of child in section 411.1.

(3) If there is no surviving spouse or child, then the member's dependent father or mother, or both, as the system determines, to continue until remarriage or death.

d. If the member failed to designate a beneficiary, or if the beneficiary designated by the member predeceases the member, the benefits provided in paragraph *"a"* of this subsection shall be paid as follows in the following order of priority:

(1) To the member's surviving spouse.

(2) To the member's surviving children, including any adult children, in equal shares.

(3) To the member's surviving parents, in equal shares.

(4) To the member's estate.

(5) To the member's heirs if the estate is not probated.

9. *Accidental death benefit.*

a. If, upon the receipt of evidence and proof from the chief of the police or fire department that the death of a member in service was the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city by which the member is regularly employed, the system decides that death was so caused in the performance of duty, there shall be paid, in lieu of the ordinary death benefit provided in subsection 8, an accidental death benefit as set forth in this subsection. Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison, or gases.

b. (1) If the member's designated beneficiary is the member's spouse, child, or parent, an accidental death benefit pension equal to one-half of the average final compensation of the member shall be paid as follows:

(a) If the member's designated beneficiary is the member's spouse, then to the member's spouse.

(b) If the member's designated beneficiary is the member's child or children, then to the child or children in equal shares. The pension to each child shall terminate when the child no longer meets the definition of child in section 411.1.

(c) If the member's designated beneficiary is the member's dependent father or mother, or both, then to the father or mother, or both, in equal shares, to continue until remarriage or death.

(2) If the member failed to designate a beneficiary, or if the beneficiary designated by the member predeceases the member, then an accidental death benefit pension equal to one-half of the average final compensation of the member shall be paid as follows:

(a) To the member's spouse.

(b) If there is no spouse, or if the spouse dies and there is a child of the member, then to the member's child or children in equal shares. The pension to each child shall terminate when the child no longer meets the definition of child in section 411.1.

(c) If there is no surviving spouse or child, then to the member's dependent father or mother, or both, in equal shares, to continue until remarriage or death.

c. In addition to the accidental death benefit pension provided in paragraph *"b"*, there shall also be paid for each child of a member a monthly pension equal to six percent of the average monthly earnable compensation paid to an active member of the system, as reported by the actuary.

d. A person eligible to receive the pension payable under paragraph *"b"* of this subsection may elect to receive the benefit payable under subsection 8, paragraph *"a"*, in lieu of the pension provided in paragraph *"b"* of this subsection.

e. If there is no person entitled to the pension payable under paragraph *"b"* of this subsection, the death shall be treated as an ordinary death case and the benefit payable under subsection 8, paragraph *"a"*, in lieu of the pension provided in paragraph *"a"* of this subsection, shall be paid as provided by that subsection.

10. *Pensions offset by compensation benefits.* Any amounts which may be paid or payable by the said cities under the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable under the provisions of this chapter on account of the same disability or death. In addition, any amounts payable to a member as unemployment compensation under the provisions of chapter 96 based on unemployment from membership service for a member receiving an ordinary disability benefit or an accidental disability benefit pursuant to this chapter shall be offset against and payable in lieu of any benefits payable under the provisions of this chapter for an ordinary disability or an accidental disability.

11. *Pension to spouse and children of deceased pensioned member.* In the event of the death of any member receiving a retirement allowance under the provisions of subsection 2, 4, or 6 of this section there shall be paid a pension:

a. To the spouse, equal to one-half the amount received by the deceased beneficiary, but in no instance less than twenty percent of the average monthly earnable compensation paid to an active member of the system, as determined by the actuary, and in addition a monthly pension equal to the monthly pension payable under subsection 9 of this section for each child; or

b. If the spouse dies either prior or subsequent to the death of the member, to the guardian of each surviving child, a monthly pension equal to the monthly pension payable under subsection 9 of this section for the support of the child.

12. *Annual readjustment of pensions.* Pensions payable under this section shall be adjusted as follows:

a. On each July 1, the monthly pensions authorized in this section payable to members retired prior to that date and to beneficiaries entitled to a monthly pension prior to that date shall be adjusted as provided in this subsection. An amount equal to the sum of one and one-half percent of the monthly pension of each retired member and beneficiary and the applicable incremental amount shall be added to the monthly pension of each retired member and beneficiary. The board of trustees may report to the general assembly, at the board's discretion, on whether the provisions of this subsection continue to provide an equitable method for the annual readjustment of pensions payable under this chapter.

b. For purposes of this subsection, *"applicable incremental amount"* means the following amount for members receiving a pension under subsection 2, 4, or 6 and for beneficiaries receiving a pension under subsection 11:

(1) Fifteen dollars where the member's retirement date was less than five years prior to the effective date of the increase.

(2) Twenty dollars where the member's retirement date was at least five years, but less than ten years, prior to the effective date of the increase.

(3) Twenty-five dollars where the member's retirement date was at least ten years, but less than fifteen years, prior to the effective date of the increase.

(4) Thirty dollars where the member's retirement date was at least fifteen years, but less than twenty years, prior to the effective date of the increase.

(5) Thirty-five dollars where the member's retirement date was at least twenty years prior to the effective date of the increase.

c. For beneficiaries receiving a pension under subsection 8 or 9, the applicable incremental amount shall be determined as set forth in paragraph *"b"*, except that the date of the member's death shall be substituted for the member's retirement date.

d. A retired member eligible for benefits under subsection 1 of this section is not eligible for the readjustment of pensions provided in this subsection unless the member served twenty-two years and attained the age of fifty-five years prior to the member's termination of employment.

e. A retired member eligible for benefits under this section and otherwise eligible for the readjustment of benefits provided in this subsection is not eligible for the readjustment unless the member was retired on or before the effective date of the readjustment.

13. *a. Remarriage of surviving spouse.* Effective July 1, 1990, for a member who died prior to July 1, 1988, if the member's surviving spouse remarried prior to July 1, 1988, the remarriage does not make the spouse ineligible under subsection 8, paragraph *"c"*, subparagraphs (1) and (2), to receive benefits under subsections 8, 9, 11, and 12.

b. Recomputation of benefit — surviving spouse. A benefit payable under this chapter to a surviving spouse and to any surviving spouse who receives a division of the surviving spouse benefit pursuant to a marriage decree or marital property order under section 411.13 shall not be recomputed upon the death of any surviving spouse.

14. *Beneficiary designation.* A member may designate, in writing on a form prescribed by the system, any person or persons to whom the system will pay a death benefit under this section in the event of the member's death. If the member is married at the time a designation is signed, a designation of a beneficiary other than the member's spouse shall not be valid unless the member's spouse consents in writing to the designation. A designation filed with the system shall be deemed revoked if, subsequent to the designation, a new designation is filed with the system, the member marries, or the member divorces the individual who was the member's named beneficiary.

15. *Line of duty death benefit.*

a. If, upon the receipt of evidence and proof from the chief of the police or fire department that the death of a member in service was the direct and proximate result of a traumatic personal injury incurred in the line of duty, the system decides that death was so caused, there shall be paid, to a person authorized to receive an accidental death benefit as provided in subsection 9, paragraph *"b"*, the amount of one hundred thousand dollars, which shall be payable in a lump sum.

b. A line of duty death benefit shall not be payable under this subsection if any of the following applies:

(1) The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the member's death.

(2) The death was caused by the intentional misconduct of the member or by the member's intent to cause the member's own death.

(3) The member was voluntarily intoxicated at

the time of death.

(4) The member was performing the member's duties in a grossly negligent manner at the time of death.

(5) An individual who would otherwise be entitled to a benefit under this subsection was, through the individual's actions, a substantial contributing factor to the member's death.

16. *Ineligibility for disability benefits.*

a. A member otherwise eligible to receive a disability retirement benefit under this chapter shall not be eligible to receive such a benefit if the system determines that any of the following conditions for ineligibility applies:

(1) The disability would not exist but for the member's chemical dependency, as defined in section 125.2, on a schedule I controlled substance, as defined in section 124.204, or the member's chemical dependency on a schedule II controlled substance, as defined in section 124.206, resulting from the inappropriate use of the schedule II controlled substance.

(2) The disability is a mental disability proximately caused by appropriate disciplinary actions taken against the member, or by conflicts with a superior or coworker if the superior or coworker was acting legally and appropriately toward the member when the conflicts occurred.

b. A member otherwise eligible to receive a disability retirement benefit under this chapter, or who is receiving such a benefit, shall not be eligible to receive such a benefit beginning with the month following the determination by the system that the disability would not exist but for the action of the member for which the member has been convicted of a felony.

c. A member eligible to commence receiving a disability benefit on or after July 1, 2000, may be ineligible to receive a disability retirement benefit if the system determines that the member's alcoholism or drug addiction was a contributing factor material to the determination of the member's disability. Upon a determination that the member's alcoholism or drug addiction was a contributing factor in the member's disability, the system shall direct the member to undergo substance abuse treatment that the medical board determines is appropriate to treat the member's alcoholism or drug addiction. After the end of a twenty-four-month period following the member's first month of entitlement to a disability benefit, the system shall reevaluate the member's disability. If the system determines that the member failed to comply with the treatment program prescribed by this paragraph and that the member would not be disabled but for the member's alcoholism or drug addiction, the member's entitlement to a disability benefit under this chapter shall terminate effective the first day of the first month following the month the member is notified of the system's determination.

17. *Limitations on benefits — prisoners.*

a. An individual who is otherwise entitled to a retirement allowance under this chapter shall not receive a retirement allowance for any month during which both of the following conditions exist:

(1) The individual is confined in a jail, prison, or correctional facility pursuant to the individual's conviction of a felony.

(2) The individual has a spouse, or a child or children, as defined in section 411.1.

b. The amount of the retirement allowance not paid to the individual under paragraph *"a"* shall be paid in the following order of priority:

(1) To the individual's spouse, if any.

(2) If there is no spouse, then to the individual's child or children, as defined in section 411.1.

c. This subsection shall not be construed in a manner that impairs the rights of any individual under a marital property, spousal support, or child support order. In addition, this subsection shall not be construed to impair the statutory rights of a governmental entity, including, but not limited to, the right of a governmental entity to collect an amount for deposit in the victim compensation fund established in chapter 915.

[C35, §6326-f6; C39, §**6326.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.6; 82 Acts, ch 1261, §30 – 39, 47]

84 Acts, ch 1285, §23; 86 Acts, ch 1203, §3; 86 Acts, ch 1243, §27, 28; 88 Acts, ch 1242, §55 – 59; 90 Acts, ch 1240, §53 – 66; 91 Acts, ch 41, §3; 92 Acts, ch 1201, §64 – 68; 94 Acts, ch 1183, §69 – 72; 96 Acts, ch 1178, §3, 4; 96 Acts, ch 1187, §101 – 103, 110; 98 Acts, ch 1183, §86 – 92, 99; 2000 Acts, ch 1077, §95 – 107, 110; 2002 Acts, ch 1135, §42 – 51

Workers' compensation, chapter 85

2000 amendment creating new subsection 15 takes effect April 12, 2000, and applies retroactively on and after January 1, 1992; 2000 Acts, ch 1077, §110

Subsection 3 amended
Subsection 5, paragraph a amended
Subsection 5, NEW paragraph d
Subsection 7, paragraph b amended
Subsection 8, paragraph b amended
Subsection 9, paragraphs b and c amended
Subsection 11, paragraph a amended
Subsection 12, paragraph a amended
Subsection 13 amended

411.6A Optional retirement benefits.

1. In lieu of the payment of a service retirement allowance under section 411.6, subsection 2, and the payment of a pension to the spouse of a deceased pensioned member under section 411.6, subsection 11, a member may select an option provided under this section. The board of trustees shall adopt rules under section 411.5, subsection 3, providing the optional forms of payment that may be selected by the member. The optional forms of payment may provide adjustments to the amount of the retirement allowance paid to the member, may alter the pension amount and period of payment to the member's spouse after the death of the member, and may provide for payments to a designated recipient other than the member's

spouse for a designated period of time or an unlimited period of time.

2. Prior to the member's retirement and as a part of the application for a service retirement allowance, the member shall elect, in writing, either the benefits provided under section 411.6, subsections 2 and 11, or one of the optional forms adopted by the board of trustees. If the member is married at the time of application and the member elects an optional form, the member's spouse must consent in writing to the optional form selected and to the receipt of payments to a designated recipient, if applicable. Upon acceptance by a member of an initial retirement benefit paid in accordance with the election under this section, the election of the member is irrevocable.

3. The optional forms of payment determined by the board of trustees under this section, shall be the actuarial equivalent of the amount of retirement benefits payable to the member and the member's spouse pursuant to section 411.6, subsections 2 and 11. The actuarial equivalent shall be based upon the actuarial assumptions adopted for this purpose pursuant to section 411.5. Election of an optional form adopted by the board of trustees shall not affect the benefits, if any, payable to the member's child or children pursuant to section 411.6, subsection 11.

4. Optional benefits shall be adjusted annually in a manner consistent with that provided in section 411.6, subsection 12. However, if the member has selected a designated recipient other than the member's spouse, the designated recipient shall be deemed to be the member's surviving spouse for the purpose of calculating the annual adjustment in the manner provided in section 411.6, subsection 12.

90 Acts, ch 1240, §67; 92 Acts, ch 1201, §69; 93 Acts, ch 44, §18

411.6B Rollovers of members' accounts.

1. As used in this section, unless the context otherwise requires:

a. "Direct rollover" means a payment by the system to the eligible retirement plan specified by the member or the member's surviving spouse.

b. "Eligible retirement plan" means either of the following that accepts an eligible rollover distribution from a member or a member's surviving spouse:

(1) An individual retirement account in accordance with section 408(a) of the federal Internal Revenue Code.

(2) An individual retirement annuity in accordance with section 408(b) of the federal Internal Revenue Code.

In addition, an *"eligible retirement plan"* includes an annuity plan in accordance with section 403(a) of the federal Internal Revenue Code, or a qualified trust in accordance with section 401(a) of the federal Internal Revenue Code, that accepts an eligible rollover distribution from a member.

c. "Eligible rollover distribution" means all or any portion of a member's account, except that an eligible rollover distribution does not include any of the following:

(1) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or made for a specified period of ten years or more.

(2) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the federal Internal Revenue Code.

(3) The portion of any distribution that is not includible in the gross income of the distributee, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(4) A distribution of less than two hundred dollars of taxable income.

2. Effective January 1, 1993, a member or a member's surviving spouse may elect, at the time and in the manner prescribed in rules adopted by the board of trustees, to have the system pay all or a portion of an eligible rollover distribution directly to an eligible retirement plan, specified by the member or the member's surviving spouse, in a direct rollover. If a member or a member's surviving spouse elects a partial direct rollover, the amount of funds elected for the partial direct rollover must equal or exceed five hundred dollars.

94 Acts, ch 1183, §73

411.7 Management of fund.

1. The board of trustees is the trustee of the fire and police retirement fund created in section 411.8 and shall annually establish an investment policy to govern the investment and reinvestment of the moneys in the fund, subject to the terms, conditions, limitations and restrictions imposed by subsection 2. Subject to like terms, conditions, limitations, and restrictions the system has full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which the fund has been invested, as well as of the proceeds of the investments and any moneys belonging to the fund.

2. The secretary of the board of trustees shall invest, in accordance with the investment policy established by the board of trustees, the portion of the fund established in section 411.8 which in the judgment of the board is not needed for current payment of benefits under this chapter in investments authorized in section 97B.7A for moneys in the Iowa public employees' retirement fund.

3. The secretary of the board of trustees is the custodian of the fire and police retirement fund. All payments from the fund shall be made by the secretary only upon vouchers signed by two persons designated by the board of trustees. The sys-

tem may select master custodian banks to provide custody of the assets of the retirement system.

4. A member or employee of the board of trustees shall not have any direct interest in the gains or profits of any investment made by the board of trustees, other than as a member of the system. A trustee shall not receive any pay or emolument for the trustee's services except as secretary. A member or employee of the board of trustees shall not directly or indirectly for the trustee or employee or as an agent in any manner use the assets of the retirement system except to make current and necessary payments as authorized by the board of trustees, nor shall any trustee or employee of the system become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the system.

5. Except as otherwise provided in section 411.36, a member, employee, and the secretary of the board of trustees shall not be personally liable for a loss to the fire and police retirement fund, the loss shall be assessed against the fire and police retirement fund, and moneys are hereby appropriated from the fund in an amount sufficient to cover the losses.

[C35, §6326-f7; C39, §**6326.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.7; 82 Acts, ch 1261, §40]

86 Acts, ch 1203, §4; 90 Acts, ch 1240, §68; 91 Acts, ch 52, §1; 2001 Acts, ch 68, §17, 24

2001 amendment to subsection 2 takes effect July 1, 2002; 2001 Acts, ch 68, §24

Subsection 2 amended

411.8 Method of financing.

All the assets of the retirement system created and established by this chapter shall be credited to the fire and police retirement fund, which is hereby created. As used in this section, *"fund"* means the fire and police retirement fund.

1. All moneys for the payment of all pensions and other benefits payable from contributions made by the participating cities, the state, and the members shall be accumulated in the fund. The refunds and benefits for all members and beneficiaries shall be payable from the fund. Contributions to and payments from the fund shall be as follows:

a. On account of each member there shall be paid annually into the fund by the participating cities an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by annual actuarial valuations.

b. On the basis of the rate of interest and of the mortality, interest and other tables adopted by the system, the actuary engaged by the system to make each valuation required by this chapter, shall immediately after making such valuation, determine the "normal contribution rate". Except as otherwise provided in this lettered paragraph, the normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of the rate of interest and of mortality and service tables adopted, all reduced by the employee contribution made pursuant to paragraph *"f"* of this subsection. However, the normal rate of contribution shall not be less than seventeen percent.

Beginning July 1, 1996, and each fiscal year thereafter, the normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of the rate of interest and of mortality and service tables adopted, multiplied by six-tenths, or seventeen percent, whichever is greater.

The normal rate of contribution shall be determined by the actuary after each valuation.

c. The total amount payable in each year to the fund shall be not less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year, but the aggregate payment by the participating cities must be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the said cities shall be paid from the fund.

e. Reserved.

f. Except as otherwise provided in paragraph *"h"*:

(1) An amount equal to three and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1989.

(2) An amount equal to four and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1990.

(3) An amount equal to five and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1991.

(4) An amount equal to six and one-tenth percent of each member's compensation from the earnable compensation of the member shall be

paid to the fund for the fiscal year beginning July 1, 1992.

(5) An amount equal to seven and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1993.

(6) An amount equal to eight and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal period beginning July 1, 1994, through December 31, 1994, and an amount equal to eight and thirty-five hundredths percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal period beginning January 1, 1995, through June 30, 1995.

(7) An amount equal to nine and thirty-five hundredths percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal year beginning July 1, 1995.

(8) Beginning July 1, 1996, and each fiscal year thereafter, an amount equal to the member's contribution rate times each member's compensation shall be paid to the fund from the earnable compensation of the member. For the purposes of this subparagraph, the member's contribution rate shall be nine and thirty-five hundredths percent. However, the system shall increase the member's contribution rate as necessary to cover any increase in cost to the system resulting from statutory changes which are enacted by any session of the general assembly meeting after January 1, 1991, if the increase cannot be absorbed within the contribution rates otherwise established pursuant to this paragraph, but subject to a maximum employee contribution rate of eleven and three-tenths percent. The contribution rate increases specified in 1994 Iowa Acts, chapter 1183, pursuant to this chapter and chapter 97A shall be the only member contribution rate increases for these systems resulting from the statutory changes enacted in 1994 Iowa Acts, chapter 1183, and shall apply only to the fiscal periods specified in 1994 Iowa Acts, chapter 1183. After the employee contribution reaches eleven and three-tenths percent, sixty percent of the additional cost of such statutory changes shall be paid by employers under paragraph *"c"* and forty percent of the additional cost shall be paid by employees under this paragraph.

g. The system shall certify to the superintendent of public safety as defined in this chapter and the superintendent of public safety as defined in this chapter shall cause to be deducted from the earnable compensation of each member the contribution required under this subsection and shall forward the contributions to the system for recording and for deposit in the fund.

The deductions provided for under this paragraph shall be made notwithstanding that the minimum compensation provided by law for any member is reduced. Every member is deemed to consent to the deductions made under this paragraph.

h. Notwithstanding the provisions of paragraph *"f"*, the following transition percentages apply to members' contributions as specified:

(1) For members who on July 1, 1990, have attained the age of forty-nine years or more, an amount equal to nine and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the fund for the fiscal period beginning July 1, 1990, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

(2) For members who on July 1, 1990, have attained the age of forty-eight years but have not attained the age of forty-nine years, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, and an amount equal to nine and one-tenth percent shall be paid for the fiscal period beginning July 1, 1991, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

(3) For members who on July 1, 1990, have attained the age of forty-seven years but have not attained the age of forty-eight years, an amount equal to seven and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, and an amount equal to nine and one-tenth percent shall be paid for the fiscal period beginning July 1, 1992, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

(4) For members who on July 1, 1990, have attained the age of forty-six years but have not attained the age of forty-seven years, an amount equal to six and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to seven and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, an amount equal to eight and one-tenth percent shall be paid for the fiscal period beginning July 1, 1992, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

(5) For members who on July 1, 1990, have attained the age of forty-five years but have not attained the age of forty-six years, an amount equal to five and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to six and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, and an

amount equal to seven and one-tenth percent shall be paid for the fiscal period beginning July 1, 1992, through October 15, 1992. Commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph *"f"*, subparagraphs (4) through (8), shall apply.

i. (1) Notwithstanding paragraph *"g"* or other provisions of this chapter, beginning January 1, 1995, for federal income tax purposes, and beginning January 1, 1999, for state income tax purposes, member contributions required under paragraph *"f"* or *"h"* which are picked up by the city shall be considered employer contributions for federal and state income tax purposes, and each city shall pick up the member contributions to be made under paragraph *"f"* or *"h"* by its employees. Each city shall pick up these contributions by reducing the salary of each of its employees covered by this chapter by the amount which each employee is required to contribute under paragraph *"f"* or *"h"* and shall pay the amount picked up in lieu of the member contributions to the board of trustees for recording and deposit in the fund.

(2) Member contributions picked up by each city under subparagraph (1) shall be treated as employer contributions for federal and state income tax purposes only and for all other purposes of this chapter shall be treated as employee contributions and deemed part of the employee's earnable compensation or salary.

2. Annually the board of trustees shall budget the amount of money necessary during the ensuing year to provide for the expense of operation of the retirement system. The operating expenses shall be financed from the income derived from the system's investments. Investment management expenses shall be charged directly to the investment income of the system.

[C35, §6326-f8; C39, §**6326.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.8; 82 Acts, ch 1261, §41]

90 Acts, ch 1240, §69 – 77; 92 Acts, ch 1201, §70; 94 Acts, ch 1183, §74 – 76; 98 Acts, ch 1174, §4, 6

411.9 Military service exceptions.

1. A member who is absent while serving in the armed services of the United States or its allies and is discharged or separated from the armed services under honorable conditions shall have the period or periods of absence while serving in the armed services, not in excess of four years unless any period in excess of four years is at the request and for the convenience of the federal government, included as part of the member's period of service in the department. The member shall not continue the contributions required of the member under section 411.8 during the period of military service, if the member, within one year after the member has been discharged or separated under honorable conditions from military service, returns and resumes duties in the department, and if the member is declared physically capable of resuming duties upon examination by the medical board. A period of absence may exceed four years at the request and for the convenience of the federal government.

2. Notwithstanding any provisions of this chapter to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with section 414(u) of the federal Internal Revenue Code.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.9]

86 Acts, ch 1243, §29; 88 Acts, ch 1242, §60; 98 Acts, ch 1183, §93

411.10 Repealed by 78 Acts, ch 1060, § 62.

411.11 Contributions by the city.

1. On or before January 1 of each year the system shall certify to the superintendent of public safety of each participating city the amounts which will become due and payable during the year next following to the fire and police retirement fund. The amounts so certified shall be included by the superintendent of public safety in the annual budget estimate. The amounts so certified shall be appropriated by the respective cities and transferred to the retirement system for the ensuing year. The cities shall annually levy a tax sufficient in amount to cover the appropriations.

2. Amounts paid by a city to a member as back pay that would have constituted earnable compensation if paid when earned shall be allocated by the system as earnable compensation to the period or periods for which paid and employer and employee contributions shall be paid to the system for the amounts. The contribution rate to be applied to such amounts shall be determined pursuant to section 411.8 based on the rates in effect for the period or periods to which the amounts are allocated. Interest on the contributions required to be paid shall be calculated pursuant to this section as if the contributions were unpaid as of the date the contributions would have been due if the back pay had been paid to the member during the period in which it was due. The requirements of this subsection apply regardless of whether the back pay is made under a covenant not to sue, compromise settlement, denial of liability, or other agreement between the member and the employer.

3. Contributions unpaid on the date on which they are due and payable as prescribed by the system shall bear interest at the greater of the interest rate assumption adopted by the board of trustees or the rate of interest on the short-term investment fund account of the system's custodial bank for the period the contributions remain unpaid. Interest due pursuant to this section may be waived by the system pursuant to rules adopted by the board. Interest collected pursuant to this section shall be paid into the retirement fund created

in section 411.8.

4. If an employer fails to pay contributions or interest as required by this chapter after receiving thirty days' notice of the employer's obligation, the system may maintain a civil action to collect the unpaid contributions and interest from the employer, which action shall be heard as expeditiously as possible. If the system prevails in the civil action to recover unpaid contributions and interest, the court shall require the employer to pay the costs of the action.

[C35, §6326-f9; C39, §**6326.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.11; 82 Acts, ch 1261, §42]

90 Acts, ch 1240, §78; 2000 Acts, ch 1077, §108, 110

2000 amendments are effective April 12, 2000, and apply retroactively on and after January 1, 1992; 2000 Acts, ch 1077, §110

411.12 City obligations.

The creation and maintenance of moneys in the fire and police retirement fund as provided for the payment of all pensions and other benefits granted under the provisions of this chapter and all expenses in connection with the administration and operation of the retirement system are hereby made direct liability obligations of the cities participating in the retirement system.

[C35, §6326-f10; C39, §**6326.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.12]

90 Acts, ch 1240, §79

411.13 Exemption from execution and other process or assignment — exceptions.

The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under this chapter, and the moneys in the fire and police retirement fund created under this chapter, are not subject to execution, garnishment, attachment, or any other process whatsoever, and are unassignable except for the purposes of enforcing child, spousal, or medical support obligations or marital property orders, or as otherwise specifically provided in this chapter. For the purposes of enforcing child, spousal, or medical support obligations, the garnishment or attachment of or the execution against compensation due a person under this chapter shall not exceed the amount specified in 15 U.S.C. § 1673(b).

[C35, §6326-f11; C39, §**6326.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.13]

89 Acts, ch 228, §3; 90 Acts, ch 1240, §80; 96 Acts, ch 1187, §104

411.14 Fraudulent practice — correction of errors.

A person who knowingly makes a false statement or falsifies or permits to be falsified any record or records of the retirement system in an attempt to defraud the system as a result of such act, is guilty of a fraudulent practice. If any change or error in records results in a member or beneficiary receiving from the retirement system more or less than the member or beneficiary would have been entitled to receive had the records been correct, the system shall correct the error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled, shall be paid.

[C35, §6326-f12; C39, §**6326.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §411.14]

90 Acts, ch 1240, §81

See §714.8

411.15 Hospitalization and medical attention.

Cities shall provide hospital, nursing, and medical attention for the members of the police and fire departments of the cities, when injured while in the performance of their duties as members of such department, and shall continue to provide hospital, nursing, and medical attention for injuries or diseases incurred while in the performance of their duties for members receiving a retirement allowance under section 411.6, subsection 6. Cities may provide the hospital, nursing, and medical attention required by this section through the purchase of insurance, by self-insuring the obligation, or through payment of moneys into a local government risk pool established for the purpose of covering the costs associated with the requirements of this section. The cost of providing the hospital, nursing, and medical attention required by this section shall be paid from moneys held in a trust and agency fund established pursuant to section 384.6, or out of the appropriation for the department to which the injured person belongs or belonged; provided that any amounts received by the injured person under the workers' compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by the city under the provisions of this section.

[C66, 71, 73, 75, 77, 79, 81, §411.15]

98 Acts, ch 1183, §94

411.16 Hours of service.

Fire fighters employed in the fire department of cities of ten thousand population or more, or under civil service, shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of fifty-six hours per week and no single period of time, or shift, shall exceed twenty-four hours in length, provided that in cases of serious emergencies such fire fighters may be required to remain on duty until such emergency has passed, when so ordered by the chief of the department or person acting in the chief's place. Fire fighters called back to duty un-

der this provision shall be duly compensated in accordance with their regular hourly wage.

[C66, 71, 73, 75, 77, 79, 81, §411.16]

See also §410.19

411.17 Provisions not applicable.

The provisions of section 411.16 shall not apply to the chief, or other persons when in command of a fire department, nor to fire fighters who are employed subject to call only.

[C66, 71, 73, 75, 77, 79, 81, §411.17]

411.18 Transfer of authority to peace officers' system. Repealed by 90 Acts, ch 1240, § 90, 94.

411.19 Transfer of benefits to another city. Repealed by 90 Acts, ch 1240, § 90, 94.

411.20 State appropriation.

There is appropriated from the general fund of the state for each fiscal year an amount necessary to be distributed to the statewide fire and police retirement system, or to the cities participating in the system, to finance the cost of benefits provided in this chapter by amendments of the Acts of the Sixty-sixth General Assembly, chapter 1089. The method of distribution shall be determined by the board of trustees based on information provided by the actuary of the statewide retirement system.

Moneys appropriated by the state shall not be used to reduce the normal rate of contribution of any city below seventeen percent.

[C77, 79, 81, §411.20; 82 Acts, ch 1261, §44]

86 Acts, ch 1244, §45; 88 Acts, ch 1250, §13; 90 Acts, ch 1240, §82

Appropriation limited for fiscal years beginning on or after July 1, 1993; see §8.59

411.21 Vested and retired members before July 1, 1979 — annuity or withdrawal of contributions.

1. Members who became vested and terminated service prior to July 1, 1979, and members receiving an annuity from accumulated contributions made prior to July 1, 1979, shall continue to receive the benefits the member was entitled to under the provisions of this chapter, as it was effective on the date of the member's retirement or vested termination.

2. For the purposes of this section:

a. "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to the member's individual account in the annuity savings fund together with regular interest thereon as provided in this subsection. Accumulated contributions do not include any amount deducted from the compensation of a member and credited to the pension accumulation fund.

b. "Annuity" means annual payments for life derived from the accumulated contributions of a member. All annuities shall be payable in monthly installments.

c. "Annuity reserve" shall mean the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the respective boards of trustees, and regular interest.

d. "Annuity savings fund" means the account maintained by the respective board of trustees in which the accumulated contributions of the members were deposited prior to July 1, 1979, to provide for their annuities.

e. "Annuity reserve fund" means the account maintained by the respective boards of trustees from which shall be paid all annuities and all benefits in lieu of annuities payable as provided in this chapter as this chapter was effective on June 30, 1979.

f. "Regular interest" means interest at the rate of four percent per annum, compounded annually and credited to the member's account as of the date of the member's retirement or termination from employment.

g. "Member who became vested" and *"vested member"* mean a member who has been a member of the retirement system four or more years and is entitled to benefits under this chapter.

3. Beginning July 1, 1979, the respective boards of trustees shall maintain and invest funds in the annuity reserve fund and the annuity savings fund contributed by members prior to July 1, 1979. Members receiving an annuity as a portion of their retirement or disability benefits on June 30, 1979, shall continue to receive such annuity from the annuity reserve fund maintained by the respective board of trustees. Members receiving an annuity, if re-employed under service covered by this chapter, shall cease to receive retirement benefits.

4. The accumulated contributions of a member withdrawn by the member or paid to the member's estate or designated beneficiary in the event of the member's death shall be paid from the annuity savings fund account. Upon the retirement of a member, the member's accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

5. A member of the retirement system prior to July 1, 1979 with fifteen or more years of service whose employment was terminated prior to retirement, other than by death or disability, is entitled to receipt of the member's accumulated contributions upon retirement together with other retirement benefits provided in the law on the date of the member's retirement.

6. Any member in service prior to July 1, 1979 may at the time of the member's retirement withdraw the member's accumulated contributions made before July 1, 1979 or receive an annuity

which shall be the actuarial equivalent of the member's accumulated contributions at the time of the member's retirement.

7. Notwithstanding subsections 1, 3, 4, 5 and 6 of this section, beginning January 1, 1981, an active or vested member may request in writing and receive from the board of trustees, the member's accumulated contributions from the annuity savings fund and remain eligible to receive benefits under section 411.6. However, a member with fifteen or more years of service prior to July 1, 1979, is not eligible for a service retirement allowance under section 411.6 if the member withdrew the member's accumulated contributions from the annuity savings fund after July 1, 1972 but prior to July 1, 1979, except as provided in section 411.4. Accumulated contributions shall be paid according to the following schedule:

a. During the period beginning January 1, 1981 and ending December 31, 1982, any member who has completed twenty or more years of service.

b. During the period beginning January 1, 1983 and ending December 31, 1984, any member who has completed fifteen or more years of service.

c. During the period beginning January 1, 1985 and ending December 31, 1986, any member who has completed ten or more years of service.

d. During the period beginning January 1, 1987 and ending December 31, 1988, any member who has completed five or more years of service.

The board may return accumulated contributions from the annuity savings fund to an active or vested member prior to the dates listed in the schedule established in this subsection, except that the board shall not liquidate securities at a loss for the sole purpose of returning the accumulated contributions to the members at an earlier date.

8. The actuary shall annually determine the amount required in the annuity reserve fund. If the amount required is less than the amount in the annuity reserve fund, the respective board of trustees shall transfer the excess funds from the annuity reserve fund to the pension accumulation fund. If the amount required is more than the amount in the annuity reserve fund, the respective board of trustees shall transfer the amount prescribed by the actuary to the annuity reserve fund from the pension accumulation fund.

[C35, §6326-f1, 6326-f6, 6326-f8; C39, §**6326.03, 6326.08, 6326.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §411.1(12, 13, 17, 20), 411.6, 411.8(1, 2); C79, 81, §411.21; 82 Acts, ch 1261, §45, 46]

90 Acts, ch 1240, §83

411.22 Liability of third parties — subrogation.

1. If a member receives an injury or dies for which benefits are payable under section 411.6, subsection 3, 5, 8, or 9, or section 411.15, and if the injury or death is caused under circumstances creating a legal liability for damages against a third party other than the retirement system, the retirement system is subrogated to the rights of the member or the member's beneficiary entitled to receive a death benefit and may maintain an action for damages against the third party for lost earnings and lost earnings capacity. If the retirement system recovers damages in the action, the court shall enter judgment for distribution of the recovery as follows:

a. A sum sufficient to repay the retirement system for the amount of such benefits actually paid by the retirement system up to the time of the entering of the judgment.

b. A sum sufficient to pay the retirement system the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of such benefits, for which the retirement system is liable, but the sum is not a final adjudication of the future payments which the member is entitled to receive.

c. A sum sufficient to repay the retirement system for the costs and expenses of maintaining the action.

d. Any balance remaining after the repayments provided by paragraphs *"a"* through *"c"* shall be paid to the injured member, or the beneficiary under section 411.6, subsection 8 or 9, whichever is applicable.

2. If the system, after receiving written notice of the third-party liability, declines in writing to maintain an action against the third party or fails to maintain an action within one hundred eighty days of receiving written notice of the third-party liability, the member, the member's estate, or the legal representative of the member or the member's estate, may maintain an action for damages against the third party. If such an action is commenced, the plaintiff member, estate, or representative shall serve a copy of the original notice upon the retirement system not less than ten days before the trial of the action, but a failure to serve the notice does not prejudice the rights of the retirement system, and the following rights and duties ensue:

a. The retirement system shall be indemnified out of the recovery of damages to the extent of benefit payments paid or awarded by the retirement system, with legal interest, except that the plaintiff member's or estate's attorney fees may be first allowed by the district court. For purposes of this paragraph, *"benefit payments paid or awarded"* means the sum of the following amounts:

(1) The amount of benefits actually paid by the retirement system up to the time of the entering of the judgment.

(2) The present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of such benefits, for which the retirement system is liable,

but the sum is not a final adjudication of the future payments which the member is entitled to receive.

b. The retirement system has a lien on the damage claim against the third party and on any judgment on the damage claim for benefits for which the retirement system is liable. In order to continue and preserve the lien, the retirement system shall file a notice of the lien within thirty days after receiving a copy of the original notice in the office of the clerk of the district court in which the action is filed.

3. Before a settlement is effective between the retirement system and a third party who is liable for an injury or death, the member or beneficiary must consent in writing to the settlement; and if the settlement is between the member or the member's estate and a third party, the retirement system must consent in writing to the settlement; or on refusal to consent, in either case, the district court in the county in which either the city or the retirement system is located must consent in writing to the settlement.

4. For purposes of subrogation under this section, a payment made to an injured member, a member's estate, or the legal representative of the member or member's estate, by or on behalf of a third party or the third party's principal or agent, who is liable for, connected with, or involved in causing the injury or death of the member, shall be considered paid as damages because the injury or death was caused under circumstances creating a legal liability against the third party, whether the payment is made under a covenant not to sue, compromise settlement, denial of liability, or is otherwise made.

86 Acts, ch 1203, §5; 88 Acts, ch 1158, §71; 98 Acts, ch 1183, §95, 96; 2000 Acts, ch 1077, §109; 2000 Acts, ch 1232, §69

411.23 Withdrawal of contributions — repayment.

1. Commencing July 1, 1990, if an active member, in service on or after that date, terminates service, other than by death or disability, the member may elect to withdraw the member's contributions under section 411.8, subsection 1, paragraphs *"f"* and *"h"*, together with interest thereon at a rate determined by the board of trustees. If a member withdraws contributions as provided in this section, the member shall be deemed to have waived all claims for other benefits from the system for the period of membership service for which the contributions are withdrawn.

2. A layoff for an indefinite period of time shall be deemed to be a termination of service for the purposes of this section. A member who withdraws the member's contributions as provided in this section following a layoff for an indefinite period of time and who is subsequently recalled to service may repay the contributions. The contributions repaid by the member for such service shall be equal to the amount of contributions withdrawn, plus interest computed based upon the investment interest rate assumption established by the board of trustees as of the time the contributions are repaid. However, the member must make the contributions within two years of the date of the member's return to service. The period of membership service for which contributions are repaid shall be treated as though the contributions were never withdrawn.

90 Acts, ch 1240, §84; 93 Acts, ch 44, §19

411.24 Payment to representative payee.

1. *Adults.* When it appears to the system that the interest of an applicant entitled to a payment would be served, certification of payment may be made, regardless of the legal competence or incompetence of the individual entitled to the payment, either for direct payment to the applicant, or for the applicant's use and benefit to a representative of an applicant. Payments under this section shall be made in accordance with rules adopted by the board.

2. *Minors.* Payments on behalf of minors shall be made in accordance with rules adopted by the board.

3. *Finality.* Any payments made under the provisions of this section shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

98 Acts, ch 1183, §97

411.25 through 411.29 Reserved.

411.30 Transfer of membership.

Upon the written approval of the applicable county board of supervisors and city council, to the Iowa public employees' retirement system, a vested member of the Iowa public employees' retirement system on June 30, 1986 who meets all of the following requirements shall become a member of a retirement system under this chapter on July 1, 1986:

1. Was a vested member of the retirement system established in this chapter on June 30, 1973.

2. Was an elected bailiff of a municipal court on June 30, 1973.

3. Became a deputy sheriff on July 1, 1973 and pursuant to 1972 Iowa Acts, chapter 1124, section 43, continued coverage under a retirement system under this chapter.

4. Upon election as a county sheriff, was transferred from membership under this chapter to membership in a retirement system established in chapter 97B.

The Iowa public employees' retirement system shall transfer to the board of trustees of the applicable retirement system under this chapter an amount equal to the total of the accumulated contributions of the member as defined in section 97B.1A, subsection 2, together with the employer contribution for that period of service plus the in-

terest that accrued on the contributions for that period equal to two percent plus the interest dividend rate applicable for each year. The board of trustees of the applicable retirement system under this chapter shall credit the member whose contributions are transferred under this section with membership service under this chapter for the period for which the member was covered under the Iowa public employees' retirement system. If the amount of the accumulated contributions as defined in section 97B.1A, subsection 2, transferred is less than the amount that would have been contributed under section 411.8, subsection 1, paragraph *"f"*, at the rates in effect for the period for which contributions were made plus the interest that would have accrued on the amount, the member shall pay the difference together with interest that would have accrued on the amount.

If the amount of the employer contributions transferred is less than the amount that would have been contributed by the employer under section 411.5, subsection 12, paragraph *"b"*, plus the interest that would have accrued on the contributions, the board of trustees of the applicable retirement system under this chapter shall determine the remaining contribution amount due. The board of trustees shall notify the county board of supervisors of the county in which the sheriff was elected of the remaining amount to be paid to the retirement system under this chapter.

The county board of supervisors shall forthwith pay to the board of trustees of the applicable retirement system the remaining amount to be paid from moneys in the county general fund.

From July 1, 1986, the county board of supervisors of the county in which the sheriff was elected shall deduct the contribution required of the member under section 411.8, subsection 1, paragraph *"f"*, from the member's earnable compensation and the county shall pay from the county general fund an amount equal to the normal rate of contribution multiplied by the member's earnable compensation to the applicable retirement system for the period in which the member remains sheriff or deputy sheriff of that county.

86 Acts, ch 1243, §30; 98 Acts, ch 1183, §82

411.31 Optional transfers with chapter 97A.

1. For purposes of this section, unless the context otherwise requires:

a. "Average accrued benefit" means the average of the amounts representing the present value of the accrued benefit earned by the member determined by the former system and the present value of the accrued benefit earned by the member determined by the current system.

b. "Current system" means the eligible retirement system in which a person has commenced employment covered by the system after having terminated employment covered by the former system.

c. "Eligible retirement system" means the system created under this chapter and the Iowa department of public safety peace officers' retirement, accident, and disability system established in chapter 97A.

d. "Former system" means the eligible retirement system in which a person has terminated employment covered by the system prior to commencing employment covered by the current system.

2. Commencing July 1, 1996, a vested member of an eligible retirement system who terminates employment covered by one eligible retirement system and, within one year, commences employment covered by the other eligible retirement system may elect to transfer the average accrued benefit earned from the former system to the current system. The member shall file an application with the current system for transfer of the average accrued benefit within ninety days of the commencement of employment with the current system.

3. Notwithstanding subsection 2, a vested member whose employment with the current system commenced prior to July 1, 1996, may elect to transfer the average accrued benefit earned under the former system to the current system by filing an application with the current system for transfer of the average accrued benefit on or before July 1, 1997.

4. Upon receipt of an application for transfer of the average accrued benefit, the current system shall calculate the average accrued benefit and the former system shall transfer to the current system assets in an amount equal to the average accrued benefit. Once the transfer of the average accrued benefit is completed, the member's service under the former system shall be treated as membership service under the current system for purposes of this chapter and chapter 97A.

96 Acts, ch 1187, §105; 2002 Acts, ch 1135, §52, 53

2002 amendment to subsection 2 takes effect April 26, 2002, and applies retroactively to July 1, 1996; 2002 Acts, ch 1135, §53

Subsection 2 amended

411.32 through 411.34 Reserved.

411.35 Statewide system established — city systems terminated.

1. Effective January 1, 1992, a single statewide fire and police retirement system is established to replace the individual city fire retirement systems and police retirement systems operating under this chapter prior to that date. Each city fire retirement system and police retirement system operating under this chapter prior to May 3, 1990, shall participate in the statewide system.

2. Effective January 1, 1992, each city fire retirement system and police retirement system operating under this chapter prior to that date is terminated, and all membership, benefit rights, and

financial obligations under the terminating systems shall be assumed by the statewide fire and police retirement system.

90 Acts, ch 1240, §85; 91 Acts, ch 52, §4

411.36 Board of trustees for statewide system.

1. A board of trustees for the statewide fire and police retirement system is created. The board shall consist of thirteen members, including nine voting members and four nonvoting members. The voting members shall be as follows:

a. Two fire fighters from different participating cities, one of whom is an active member of the retirement system and one of whom is a retired member. The fire fighters shall be appointed by the governing body of the Iowa association of professional fire fighters.

b. Two police officers from different participating cities, one of whom is an active member of the retirement system and one of whom is a retired member. The police officers shall be appointed by the governing body of the Iowa state police association.

c. A city treasurer, city financial officer, or city clerk involved with the financial matters of the city from four participating cities, one of whom is from a city having a population of less than forty thousand, and three of whom are from cities having a population of forty thousand or more. The members authorized pursuant to this paragraph shall be appointed by the governing body of the Iowa league of cities.

d. One citizen who does not hold another public office. The citizen shall be appointed by the other members of the board.

The nonvoting members of the board shall be two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.

2. Except as otherwise provided for the initial appointments, the voting members shall be appointed for four-year terms, and the nonvoting members shall be appointed for two-year terms. Terms begin on May 1 in the year of appointment and expire on April 30 in the year of expiration.

3. Vacancies shall be filled in the same manner as original appointments. A vacancy shall be filled for the unexpired term.

4. The board shall elect a chairperson from among its own members.

5. *a.* Members of the board shall be paid their actual and necessary expenses incurred in the performance of their duties and shall receive a per diem as specified in section 7E.6 for each day of service. Per diem and expenses shall be paid to voting members from the fire and police retirement fund created in section 411.8.

b. A participating city shall allow an employee who is a member of the board to attend all meetings of the board. In their capacity as members of the board, which is an instrumentality of political subdivisions of the state, members of the board shall be deemed to be jointly serving the members of the system and the participating cities. The members of the board shall perform their duties in the best interest of the system. Board members who are employees of participating cities shall be allowed to attend board meetings without being required to use paid leave. Costs incurred by a board member which are associated with having a replacement perform the member's other duties for the participating city while serving in the capacity of a member of the board may be considered a necessary expense of the system.

c. Per diem and expenses of the legislative members shall be paid from the funds appropriated under section 2.12. However, legislative members shall not be paid pursuant to this section when the general assembly is actually in session at the seat of government.

6. A member, employee, and the secretary of the board of trustees are not personally liable for claims based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct, or for a transaction from which the person derives an improper personal benefit, even if the acts or omissions violate the standards established in section 411.7, subsection 2.

90 Acts, ch 1240, §86; 91 Acts, ch 52, §2; 93 Acts, ch 44, §20; 95 Acts, ch 3, §5; 98 Acts, ch 1183, §98

411.37 Board responsible for transition.

1. The board of trustees for the statewide system is responsible for effecting the transition from the city fire and police retirement systems to the statewide fire and police retirement system. The board shall adopt a transition plan and other appropriate transition documents it deems necessary to accomplish the transition in accordance with the requirements of this chapter. The city fire and police retirement systems shall comply with orders of the board issued pursuant to the transition plan or other transition documents.

2. The board shall include in the transition plan or other transition documents, provisions to facilitate continuity under sections 411.20, 411.21, and 411.30.

3. For each of the fiscal years beginning July 1, 1990, and July 1, 1991, ten percent of the amount appropriated for distribution to cities as provided in section 411.20 shall be made available to the board of trustees for the statewide system to cover the administrative costs of the transition. The amount distributed to each city shall be reduced accordingly. The moneys remaining unencumbered or unexpended at the end of the fiscal year beginning July 1, 1990, and the moneys remaining unencumbered or unexpended on Janu-

ary 1, 1992, shall be credited to the cities in the same proportion as the reduction.

90 Acts, ch 1240, §87; 91 Acts, ch 52, §3; 96 Acts, ch 1187, §106

411.38 Obligations of participating cities.

1. Upon the establishment of the statewide system, each city participating in the statewide fire and police retirement system shall do all of the following:

a. Pay to the statewide system the normal contribution rate provided pursuant to section 411.8.

b. Transfer from each terminated city fire or police retirement system to the statewide system amounts sufficient to cover the accrued liabilities of that terminated system as determined by the actuary of the statewide system. The actuary of the statewide system shall redetermine the accrued liabilities of the terminated systems as necessary to take into account additional amounts payable by the city which are attributable to errors or omissions which occurred prior to January 1, 1992, or to matters pending as of January 1, 1992. If the actuary of the statewide system determines that the assets transferred by a terminated system are insufficient to fully fund the accrued liabilities of the terminated system as determined by the actuary as of January 1, 1992, the participating city shall pay to the statewide system an amount equal to the unfunded liability plus interest for the period beginning January 1, 1992, and ending with the date of payment or the date of entry into an amortization agreement pursuant to this section. Interest on the unfunded liability shall be computed at a rate equal to the greater of the actuarial interest rate assumption on investments of the moneys in the fund or the actual investment earnings of the fund for the applicable calendar year. The participating city may enter into an agreement with the statewide system to make additional annual contributions sufficient to amortize the unfunded accrued liability of the terminated system. The terms of an amortization agreement shall be based upon the recommendation of the actuary of the statewide system, and the agreement shall do each of the following:

(1) Allow the city to make additional annual contributions over a period not to exceed thirty years from January 1, 1992.

(2) Provide that the city shall pay a rate of return on the amortized amount that is at least equal to the estimated rate of return on the investments of the statewide system for the years covered by the amortization agreement.

(3) Contain other terms and conditions as are approved by the board of trustees for the statewide system.

In the alternative, a city may treat the city's accrued unfunded liability for the terminated system as legal indebtedness to the statewide system for the purposes of section 384.24, subsection 3, paragraph *"f"*.

c. Contribute additional amounts necessary to ensure sufficient financial support for the statewide fire and police retirement system, as determined by the board of trustees based on information provided by the actuary of the statewide system.

2. It is the intent of the general assembly that a terminated city fire or police retirement system shall not subsidize any portion of any other system's unfunded liabilities in connection with the transition to the statewide system. The actuary of the statewide system shall determine if the assets of a terminated city fire or police retirement system would exceed the amount sufficient to cover the accrued liabilities of that terminated system as of January 1, 1992, using the alternative assumptions and the proposed assumptions.

3. As used in this section, unless the context otherwise requires, *"alternative assumptions"* means that the interest rate earned on investments of moneys in the fire and police retirement fund would be seven percent and that the state would not contribute to the fund under sections 411.8 and 411.20 after January 1, 1992, and *"proposed assumptions"* means that the interest rate earned on investments of moneys in the fire and police retirement fund would be seven and one-half percent and the state will pay contributions as provided pursuant to sections 411.8 and 411.20 after January 1, 1992. These assumptions are to be used solely for the purposes of this section, and shall not impact upon decisions of the board of trustees concerning the assumption of the interest rate earned on investments, or the contributions by the state as provided for in sections 411.8 and 411.20.

4. If the determination by the actuary using the alternative assumptions reflects that the assets of the terminated system exceed the amount sufficient to cover the accrued liabilities as of January 1, 1992, all excess funds as determined utilizing the alternative assumptions and the interest and earnings from those excess funds shall be used only as approved by the city council of the participating city. The city council may approve use of the excess funds to reduce only the city's contribution to the statewide system, or the city council may approve use of the excess funds to reduce the city's contribution and the members' contributions to the statewide system. If the city council approves use of the excess funds to reduce both the city's and the members' contributions, the members shall not withdraw the portion of the members' contributions paid from excess funds, as would otherwise be authorized in accordance with section 411.23.

5. If the determination by the actuary using the alternative assumptions reflects that the assets of the terminated system do not exceed the amount sufficient to cover the accrued liabilities as of January 1, 1992, but a determination by the

actuary using the proposed assumptions reflects that the assets of the terminated system do exceed the amount sufficient to cover the accrued liabilities as of January 1, 1992, all excess funds as determined utilizing the proposed assumptions and the interest and earnings from those excess funds shall be used only to reduce the city's contribution rate to the statewide system. The participating city shall determine what portion of the excess funds shall be applied to reduce the city's contribution rate for a given year.

90 Acts, ch 1240, §88; 92 Acts, ch 1197, §1, 2, 4; 92 Acts, ch 1201, §71; 96 Acts, ch 1187, §107

411.39 Benefits for employees of the board of trustees for the statewide system.

1. As used in this section, unless the context otherwise requires:

a. "Benefit programs" mean the state life insurance program, the state health or medical insurance program, and the state employees disability program administered by the department of personnel.

b. "Employees" mean the secretary and other employees of the board of trustees for the statewide fire and police retirement system.

2. Employees are eligible to participate in the benefit programs for state employees. Participation in the benefit programs is optional, and an employee may participate by filing an election, in writing, with the board of trustees for the statewide system. The board of trustees shall file these elections with the department of personnel.

3. The board of trustees shall determine what, if any, amount of the costs or premiums of the benefit programs shall be paid by the participating employees, and shall deduct the amount from the wages of the participating employees. The board of trustees shall pay the remaining costs or premiums of the benefit programs from the fire and police retirement fund, including any portion to be attributed to an employer, and shall forward all amounts paid by participating employees and the board to the department of personnel.

4. Participating employees shall be exempted from preexisting medical condition waiting periods. Participating employees may change programs or coverage under the state health or medical service group insurance plan subject to the enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20. A participating employee or the participating employee's surviving spouse shall have the same rights upon final termination of employment or death as are afforded full-time state employees and the employees' surviving spouses excluded from collective bargaining as provided in chapter 20.

92 Acts, ch 1197, §3

411.40 Voluntary benefit programs.

The board of trustees may establish voluntary benefit programs for members subject to the following conditions:

1. The voluntary benefit programs may provide benefits including, but not limited to, retiree health benefits, long-term care, and life insurance.

2. Participation in the voluntary benefit programs by members shall be voluntary.

3. Contributions to the voluntary benefit programs shall be paid entirely by each participating member by means of payroll deduction. Cities employing members participating in voluntary benefit programs shall forward the amounts deducted to the board of trustees for deposit in the voluntary benefit fund.

4. The voluntary benefit programs and the voluntary benefit fund shall be administered under the direction of the board of trustees for the exclusive benefit of members paying contributions as provided in subsection 3.

5. The assets of the voluntary benefit programs shall be credited to the voluntary benefit fund, which is hereby created. The voluntary benefit fund shall include contributions deposited in accordance with subsection 3, and any interest and earnings on the contributions. The board of trustees shall annually establish an investment policy to govern the investment and reinvestment of the assets in the voluntary benefit fund. The voluntary benefit fund created under this section and the fire and police retirement fund created under section 411.8 shall not be used to subsidize any portion of the liabilities of the other fund.

6. The board of trustees shall include in its annual budget the amount of money necessary during the following year to provide for the expense of operation of the voluntary benefit programs. The operating expenses shall be paid from the voluntary benefit fund under the direction of the board of trustees.

96 Acts, ch 1187, §108

CHAPTER 412

MUNICIPAL UTILITY RETIREMENT SYSTEM

412.1 Authority to establish system.
412.2 Source of funds.
412.3 Rules.
412.4 Payments and investments.
412.5 Public utility defined.

412.1 Authority to establish system.

The council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate any municipally owned waterworks system, or other municipally owned and operated public utility, may establish a pension and annuity retirement system for the employees of any such waterworks system, or other municipally owned and operated public utility.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §412.1]

412.2 Source of funds.

The fund for such pension and annuity retirement system shall be created from any or all of the following sources:

1. From the proceeds of the assessments on the wages and salaries of employees, of any such waterworks system, or other municipally owned and operated public utility, eligible to receive the benefits thereof.

2. From the interest on any permanent fund which may be created by gift, bequest, or otherwise.

3. From moneys derived from the operation of such waterworks, or other municipally owned and operated public utility, available and appropriated therefor by the council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate such waterworks or other municipally owned and operated public utility. Such money so expended shall constitute an operating expense of such utility.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §412.2]

412.3 Rules.

The council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate such waterworks, or other municipally owned and operated public utility, may formulate and establish such pension and annuity retirement system, and may make and establish such rules for the operation thereof as may be deemed necessary or appropriate.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §412.3]

412.4 Payments and investments.

The council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate any such waterworks, or other municipally owned and operated public utility, shall have the right and power to contract with any legal reserve insurance company authorized to conduct its business in the state, or any bank located in Iowa having trust powers for the investment of funds contributed to an annuity or pension system, for the payment of the pensions or annuities provided in such pension or annuity retirement system, and may pay the premiums or make the contribution of such contract out of the fund provided in section 412.2. Funds shall be invested in accordance with the investment policy for the retirement fund, as established by the governing body of the public utility. In establishing the investment policy, the council, board, or commission shall be governed by the standards set forth in section 97B.7A. However, permissible investments shall be limited to those investments authorized in section 12B.10, subsection 5, and investments in diversified commingled investment funds holding only publicly traded securities and under the management of an investment advisor registered with the federal securities and exchange commission under the Investment Advisor Act of 1940. Funds contributed to a bank pursuant to such a contract shall be invested in the manner prescribed in section 633.123A or chapter 633, division XX, part 4, subpart C, and may be commingled with and invested as a part of a common or master fund managed for the benefit of more than one public utility.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §412.4]

96 Acts, ch 1008, §1; 99 Acts, ch 125, §104, 109; 2001 Acts, ch 102, §4

412.5 Public utility defined.

Public utility as that term is used in this chapter shall be limited to any waterworks, sewage works, gas, or electric plants and systems managed, operated, and owned by a municipality.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §412.5]

CHAPTER 413

HOUSING LAW

Repealed effective January 1, 1981, 80 Acts, ch 1126, §3, see §364.17

CHAPTER 414

CITY ZONING

414.1 Building restrictions — powers granted.
414.2 Districts.
414.3 Basis of regulations.
414.4 Zoning regulations, district boundaries, amendments.
414.5 Changes — protest.
414.6 Zoning commission.
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414.21 Conflicting rules, ordinances, and statutes.
414.22 Zoning for family homes.
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414.26 and 414.27 Reserved.
414.28 Manufactured home.
414.28A Land-leased communities.
414.29 Elder family homes.
414.30 Homes for persons with physical disabilities.
414.31 Elder group homes.

414.1 Building restrictions — powers granted.

1. For the purpose of promoting the health, safety, morals, or the general welfare of the community or for the purpose of preserving historically significant areas of the community, any city is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

2. The city of Des Moines may, for the purpose of preserving the dominance of the dome of the state capitol building and the view of the state capitol building from prominent public viewing points, regulate and restrict the height and size of buildings and other structures in the city of Des Moines. Any regulations pertaining to such matters shall be made in accordance with a comprehensive plan and in consultation with the capitol planning commission.

[C24, 27, 31, 35, 39, §**6452;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.1]

99 Acts, ch 204, §36

414.2 Districts.

For any or all of said purposes the local legislative body, hereinafter referred to as the council, may divide the city into districts, including historical preservation districts but only as provided in section 303.34, of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

[C24, 27, 31, 35, 39, §**6453;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.2]

Certification of zoning district ordinance, §380.11

414.3 Basis of regulations.

The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street; to secure safety from fire, flood, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. However, provisions of this section relating to the objectives of energy conservation and access to solar energy do not void any zoning regulation existing on July 1, 1981, or require zoning in a city that did not have zoning prior to July 1, 1981.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings

and encouraging the most appropriate use of land throughout such city.

[C24, 27, 31, 35, 39, §**6454;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.3; 81 Acts, ch 125, §2; 82 Acts, ch 1245, §18]

414.4 Zoning regulations, district boundaries, amendments.

The council of the city shall provide for the manner in which the regulations and restrictions and the boundaries of the districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, the regulation, restriction, or boundary shall not become effective until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard. The notice of the time and place of the hearing shall be published as provided in section 362.3, except that at least seven days notice must be given and in no case shall the public hearing be held earlier than the next regularly scheduled city council meeting following the published notice.

[C24, 27, 31, 35, 39, §**6455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.4]

84 Acts, ch 1018, §1

414.5 Changes — protest.

The regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. Notwithstanding section 414.2, as a part of an ordinance changing land from one zoning district to another zoning district or an ordinance approving a site development plan, a council may impose conditions on a property owner which are in addition to existing regulations if the additional conditions have been agreed to in writing by the property owner before the public hearing required under this section or any adjournment of the hearing. The conditions must be reasonable and imposed to satisfy public needs which are directly caused by the requested change. In case, however, of a written protest against a change or repeal which is filed with the city clerk and signed by the owners of twenty percent or more of the area of the lots included in the proposed change or repeal, or by the owners of twenty percent or more of the property which is located within two hundred feet of the exterior boundaries of the property for which the change or repeal is proposed, the change or repeal shall not become effective except by the favorable vote of at least three-fourths of all the members of the council. The protest, if filed, must be filed before or at the public hearing. The provisions of section 414.4 relative to public hearings and official notice apply equally to all changes or amendments.

[C24, 27, 31, 35, 39, §**6456;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.5]

84 Acts, ch 1176, §1; 85 Acts, ch 9, §2; 88 Acts, ch 1246, §8

414.6 Zoning commission.

In order to avail itself of the powers conferred by this chapter, the council shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. Where a city plan commission already exists, it may be appointed as the zoning commission. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and such council shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the council amendments, supplements, changes, or modifications.

[C24, 27, 31, 35, 39, §**6457;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.6]

414.7 Board of adjustment — review by council.

The council shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinances in harmony with its general purpose and intent and in accordance with general or specific rules therein contained and provide that any property owner aggrieved by the action of the council in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners.

The council may provide for its review of variances granted by the board of adjustment before their effective date. The council may remand a decision to grant a variance to the board of adjustment for further study. The effective date of the variance is delayed for thirty days from the date of the remand.

[C24, 27, 31, 35, 39, §**6458;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.7]

86 Acts, ch 1098, §1

414.8 Membership.

The board of adjustment shall consist of five or seven members as determined by the council. Members of a five-member board shall be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members of a seven-member board shall be appointed for a term of five years, except when the board shall first be created two members shall

be appointed for a term of five years, two members for a term of four years, one for a term of three years, one for a term of two years, and one for a one-year term. A five-member board shall not carry out its business without having three members present and a seven-member board shall not carry out its business without having four members present. A majority of the members of the board of adjustment shall be persons representing the public at large and shall not be involved in the business of purchasing or selling real estate. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

[C24, 27, 31, 35, 39, §**6459;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.8]

See also §414.25

414.9 Rules — meetings — general procedure.

The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

[C24, 27, 31, 35, 39, §**6460;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.9]

414.10 Appeals.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

[C24, 27, 31, 35, 39, §**6461;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.10]

414.11 Effect of appeal.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay would in the officer's opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

[C24, 27, 31, 35, 39, §**6462;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.11]

414.12 Powers.

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.
2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.
3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

[C24, 27, 31, 35, 39, §**6463;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.12]

414.13 Decision on appeal.

In exercising the above-mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

[C24, 27, 31, 35, 39, §**6464;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.13]

414.14 Vote required.

The concurring vote of three members of the board in the case of a five-member board, and four members in the case of a seven-member board, shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

[C24, 27, 31, 35, 39, §**6465;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.14]

414.15 Petition for certiorari.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

[C24, 27, 31, 35, 39, §**6466;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.15]

414.16 Writ — restraining order.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

[C24, 27, 31, 35, 39, §**6467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.16]

414.17 Return.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

[C24, 27, 31, 35, 39, §**6468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.17]

414.18 Trial — judgment — costs.

If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with the referee's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

[C24, 27, 31, 35, 39, §**6469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.18]

414.19 Preference in trial.

All issues in any proceedings under the foregoing sections shall have preference over all other civil actions and proceedings.

[C24, 27, 31, 35, 39, §**6470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.19]

414.20 Actions to correct violations.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the council, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

[C24, 27, 31, 35, 39, §**6471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.20]

414.21 Conflicting rules, ordinances, and statutes.

If the regulations made under this chapter require a greater width or size of yards, courts or other open spaces, or a lower height of building or less number of stories, or a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under this chapter govern. If any other statute or local ordinance or regulation requires a greater width or size of yards, courts or other open spaces, or a lower height of building or a less number of stories, or a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under this chapter, the other statute or local ordinance or regulation governs. If a regulation proposed or made under this chapter relates to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream, prior approval of the department of natural resources is required to establish, amend, supplement, change or modify the regulation or to grant any variation or exception from the regulation.

[C24, 27, 31, 35, 39, §**6472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §414.21; 82 Acts, ch 1199, §68, 96]

414.22 Zoning for family homes.

1. It is the intent of this section to assist in improving the quality of life of persons with a developmental disability or brain injury by integrating them into the mainstream of society by making available to them community residential opportunities in the residential areas of this state. In or-

der to implement this intent, this section shall be liberally construed.

2. *a. "Brain injury"* means brain injury as defined in section 135.22.

b. "Developmental disability" means a disability of a person which has continued or can be expected to continue indefinitely and which is one of the following:

(1) Attributable to mental retardation, cerebral palsy, epilepsy, or autism.

(2) Attributable to any other condition found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation or requires treatment and services similar to those required for the persons.

(3) Attributable to dyslexia resulting from a disability described in either subparagraph (1) or (2).

(4) Attributable to a mental or nervous disorder.

c. "Family home" means a community-based residential home which is licensed as a residential care facility under chapter 135C or as a child foster care facility under chapter 237 to provide room and board, personal care, habilitation services, and supervision in a family environment exclusively for not more than eight persons with a developmental disability or brain injury and any necessary support personnel. However, family home does not mean an individual foster care family home licensed under chapter 237.

d. "Permitted use" means a use by right which is authorized in all residential zoning districts.

e. "Residential" means regularly used by its occupants as a permanent place of abode, which is made one's home as opposed to one's place of business and which has housekeeping and cooking facilities for its occupants only.

3. Notwithstanding any provision of this chapter to the contrary, a city, city council, or city zoning commission shall consider a family home a residential use of property for the purposes of zoning and shall treat a family home as a permitted use in all residential zones or districts, including all single-family residential zones or districts, of the city. A city, city council, or city zoning commission shall not require that a family home, its owner, or operator obtain a conditional use permit, special use permit, special exception, or variance. However, new family homes owned and operated by public or private agencies shall be dispersed throughout the residential zones and districts and shall not be located within contiguous city block areas. Section 135C.23, subsection 2, shall apply to all residents of a family home.

4. Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property in a city which permits residential use of property but prohibits the use of property as a family home for persons with a developmental disability or brain injury, to the extent of the prohibition, is void as against the public policy of this state and shall not be given legal or equitable effect.

83 Acts, ch 11, §2; 93 Acts, ch 90, §4; 94 Acts, ch 1023, §110; 94 Acts, ch 1170, §9; 96 Acts, ch 1129, §113

414.23 Extending beyond city limits.

The powers granted by this chapter may be extended by ordinance by any city to the unincorporated area up to two miles beyond the limits of such city, except for those areas within a county where a county zoning ordinance exists. The ordinance shall describe in general terms the area to be included. The exemption from regulation granted by section 335.2 to property used for agricultural purposes shall apply to such unincorporated area. If the limits of any such city are at any place less than four miles distant from the limits of any other city which has extended or thereafter extends its zoning jurisdiction under this section, then at such time the powers herein granted shall extend to a line equidistant between the limits of said cities.

A municipality, during the time its zoning jurisdiction is extended under this section, shall increase the size of its planning and zoning commission and its board of adjustment each by two members. The planning and zoning commission shall include a member of the board of supervisors of the affected county and a resident of the area outside the city limits over which the zoning jurisdiction is extended. The additional members of the board of adjustment shall be residents of the area outside the city limits over which the zoning jurisdiction is extended. The county supervisor and the residents shall be appointed by the board of supervisors of the county in which such extended area is located and for the same terms of office and have the same rights, privileges, and duties as other members of each of the bodies. However, if the extended zoning jurisdiction of a municipality extends into an adjacent county without a county zoning ordinance, the boards of supervisors of the affected counties, jointly, shall appoint one of their members to the planning and zoning commission.

Property owners affected by such zoning regulations shall have the same rights of hearing, protest, and appeal as those within the municipality exercising this power.

Whenever a county in which this power is being exercised by a municipality adopts a county zoning ordinance the power exercised by the municipality and the specific regulations and districts thereunder shall be terminated within three months of the establishment of the administrative authority for county zoning, or at such date as mutually agreed upon by the municipality and county.

[C71, 73, 75, 77, 79, 81, §414.23]
2002 Acts, ch 1078, §1
Effect of 2002 changes on planning and zoning commissions that have no vacant seats; 2002 Acts, ch 1078, §2
Unnumbered paragraph 2 amended

414.24 Restricted residence districts.

A city may, and upon petition of sixty percent of the owners of the real estate in the district sought to be affected who are residents of the city shall, designate and establish, after notice and hearing as provided in section 414.4, restricted residence districts within the city limits.

In the ordinance designating and establishing a restricted residence district, the city may establish reasonable rules for the use and occupancy of buildings of all kinds within the district, and provide that no building or other structure, except residences, schoolhouses, churches and other similar structures, shall be erected, altered, repaired or occupied without first securing from the city council a permit to be issued under reasonable rules as may be provided in the ordinance. An ordinance and rules passed under this section shall not conflict with applicable building and housing codes.

A building or structure erected, altered, repaired, or used in violation of an ordinance passed under this section shall be deemed a nuisance.

When a city has proceeded under the other provisions of this chapter, this section shall no longer be in effect for the city.

[C24, 27, 31, 35, 39, §**6473, 6474, 6475, 6476;** C46, 50, 54, 58, 62, 66, 71, 73, §414.22, 415.1, 415.2, 415.3; C77, 79, 81, §414.24]
84 Acts, ch 1018, §2

414.25 Transitional provisions.

Of the two additional members which may be appointed to increase a five-member board of adjustment to a seven-member board after January 1, 1980, one member shall be appointed to an initial term of five years and one member shall be appointed to an initial term of four years. The terms of office of members of a board of adjustment serving unexpired terms of office on January 1, 1980, shall expire according to their original appointments.

[C81, §414.25]

414.26 and 414.27 Reserved.

414.28 Manufactured home.

A city shall not adopt or enforce zoning regulations or other ordinances which disallow the plans and specifications of a proposed residential structure solely because the proposed structure is a manufactured home. However, a zoning ordinance or regulation shall require that a manufactured home be located and installed according to the same standards, including but not limited to, a permanent foundation system, set-back, and minimum square footage which would apply to a site-built, single family dwelling on the same lot, and shall require that the home is assessed and taxed as a site-built dwelling. A zoning ordinance or other regulation shall not require a perimeter foundation system for a manufactured home which is incompatible with the structural design of the manufactured home structure. A city shall not require more than one permanent foundation system for a manufactured home. For purposes of this section, a permanent foundation may be a pier footing foundation system designed and constructed to be compatible with the structure and the conditions of the site. When units are located outside a manufactured home community or mobile home park, requirements may be imposed which ensure visual compatibility of the permanent foundation system with surrounding residential structures. As used in this section, *"manufactured home"* means a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C. § 5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. This section shall not be construed as abrogating a recorded restrictive covenant.

A city shall not adopt or enforce construction, building, or design ordinances, regulations, requirements, or restrictions which would mandate width standards greater than twenty-four feet, roof pitch, or other design standards for manufactured housing if the housing otherwise complies with 42 U.S.C. § 5403. However, this paragraph shall not prohibit a city from adopting and enforcing zoning regulations related to transportation, water, sewerage, or other land development.

84 Acts, ch 1238, §2; 93 Acts, ch 154, §4; 94 Acts, ch 1110, §2; 97 Acts, ch 86, §3; 2001 Acts, ch 153, §16

414.28A Land-leased communities.

A city shall not adopt or enforce zoning or subdivision regulations or other ordinances which disallow or make infeasible the plans and specifications of land-leased communities because the housing within the land-leased community will be manufactured housing.

"Land-leased community" means any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, or enclosure used or intended for use as part of the equipment of the land-leased community. The term *"land-leased community"* shall not be construed to include homes, buildings, or other structures temporarily maintained by any indi-

vidual, educational institution, or company on their own premises and used exclusively to house their own labor or students. A manufactured home located in a land-leased community shall be taxed under section 435.22 as if the manufactured home were located in a mobile home park.

97 Acts, ch 86, §4; 98 Acts, ch 1107, §16, 33

414.29 Elder family homes.

A city council or city zoning commission shall consider an elder family home a family home, as defined in section 414.22, for purposes of zoning, in accordance with section 231A.2, and may identify limitations regarding the proximity of one proposed elder family home to another.

91 Acts, ch 88, §4

414.30 Homes for persons with physical disabilities.

A city council or city zoning commission shall consider a home for persons with physical disabilities a family home, as defined in section 414.22, for purposes of zoning in accordance with chapter 504C.

93 Acts, ch 90, §5; 94 Acts, ch 1023, §111

414.31 Elder group homes.

A city council or city zoning commission shall consider an elder family home a family home, as defined in section 414.22, for purposes of zoning, in accordance with section 231B.2, and may establish limitations regarding the proximity of one proposed elder group home to another.

93 Acts, ch 72, §8

CHAPTER 415

RESTRICTED RESIDENCE DISTRICTS

Repealed by 72 Acts, ch 1088, §199
See §414.24

CHAPTER 416

GOVERNMENT OF CITIES BY COMMISSION

All sections of this chapter, Code 1950, repealed or transferred as indicated in Code 1954

CHAPTER 417

STREET IMPROVEMENTS AND SEWERS IN CITIES OVER 125,000 POPULATION

Repealed by 72 Acts, ch 1088, §199

CHAPTER 418

CITY MANAGER PLAN BY ORDINANCE

Transferred to ch 363D in Code 1954
Ch 363D, Code 1971, repealed by 72 Acts, ch 1088, §199

CHAPTER 419

MUNICIPAL SUPPORT OF PROJECTS

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419.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Beginning businessperson"* means an individual with an aggregate net worth of the individual and the individual's spouse and children of less than one hundred thousand dollars. Net worth means total assets minus total liabilities as determined in accordance with generally accepted accounting principles.

2. *"Bonds"* of a municipality includes bonds, notes or other securities.

3. *"Contracting party"* or *"other contracting party"* means any party to a sale contract or loan agreement except the municipality.

4. *"Corporation"* includes a corporation whether organized for profit or not for profit for which the secretary of state has issued a certificate of incorporation or a permit for the transaction of business within the state and further includes a co-operative association.

5. *"Equip"* means to install or place on or in any building or improvements or the site thereof equipment of any and every kind, including, without limiting the generality of the foregoing, machinery, utility service connections, building service equipment, fixtures, heating equipment, and air conditioning equipment and including, in the case of portable equipment used for pollution control, all such machinery and equipment which maintains a substantial connection with the building or improvement or the site thereof where installed, placed, or primarily based.

6. *"Governing body"* means the board, council or other body in which the legislative powers of the municipality are vested.

7. *"Lease"* includes a lease containing an option to purchase the project for a nominal sum upon payment in full, or provision therefor, of all bonds issued in connection with the project and all interest thereon and all other expenses incurred in connection with the project, and a lease containing an option to purchase the project at any time, as provided therein, upon payment of the purchase price which shall be sufficient to pay all bonds issued in connection with the project and all interest thereon and all other expenses incurred in connection with the project, but which payment may be made in the form of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the lessee providing for timely payments, including without limitation, interest thereon sufficient for such purposes and delivered to the municipality or to the trustee under the indenture pursuant to which the bonds were issued. A single lease may contain both of the foregoing options.

8. *"Lessee"* includes a single person, firm or corporation or any two or more persons, firms or corporations which shall lease the project as tenants-in-common or otherwise and which shall undertake rental payments and other monetary obligations under the lease of the project sufficient in the aggregate to satisfy the rental and other monetary obligations required by this chapter to be undertaken by the lessee of a project.

9. *"Loan agreement"* means an agreement providing for a municipality to loan the proceeds derived from the issuance of bonds pursuant to this chapter to one or more contracting parties to be used to pay the cost of one or more projects and providing for the repayment of such loan by the other contracting party or parties, and which may provide for such loans to be secured or evidenced by one or more notes, debentures, bonds or other secured or unsecured debt obligations of the contracting party or parties, delivered to the municipality or to the trustee under the indenture pursuant to which the bonds were issued.

10. *"Mortgage"* shall include a deed of trust.

11. *"Municipality"* means any county, or any incorporated city in this state.

12. *"Project"* means all or any part of, or any interest in:

a. Land, buildings, or improvements, whether or not in existence at the time of issuance of the bonds issued under this chapter, which are suitable for the use of any of the following:

(1) A voluntary nonprofit hospital, clinic, or health care facility as defined in section 135C.1, subsection 6.

(2) One or more physicians for an office building to be used exclusively by professional health care providers, including appropriate ancillary facilities.

(3) A private college or university or a state institution governed under chapter 262 whether for the establishment or maintenance of the college or university or state institution.

(4) An industry or industries for the manufacturing, processing, or assembling of agricultural or manufactured products, even though the processed products may require further treatment before delivery to the ultimate consumer.

(5) A commercial enterprise engaged in storing, warehousing, or distributing products of agriculture, mining, or industry including but not limited to barge facilities and riverfront improvements useful and convenient for the handling and storage of goods and products.

(6) A facility for the generation of electrical energy through the use of a renewable energy source including but not limited to hydroelectric and wind generation facilities.

(7) A facility engaged in research and development activities.

(8) A national, regional, or divisional headquarters facility of a company that does multistate business.

(9) A museum, library, or tourist information center.

(10) A telephone company.

(11) A beginning businessperson for any purpose.

(12) A commercial amusement or theme park.

(13) A housing unit or complex for persons who are elderly or persons with disabilities.

(14) A fair or exposition held in the state, other than the Iowa state fair, which is a member of the association of Iowa fairs.

(15) A sports facility.

(16) A facility for an organization described in section 501(c)(3) of the Internal Revenue Code which is exempt from federal income tax under section 501(a) of the Internal Revenue Code.

b. Pollution control facilities which are suitable for use by any industry, commercial enterprise or utility. *"Pollution control facilities"* means any land, buildings, structures, equipment, including portable equipment, pipes, pumps, dams, reservoirs, improvements, or other facilities useful for the purpose of reducing, preventing, or eliminating pollution of the water or air by reason of the operations of any industry, commercial enterprise or utility or for the disposal, including without limitation recycling, of solid waste. *"Improve", "improving"* and *"improvements"* include any real property, personal property or mixed property of any and every kind that can be used or that will be useful in connection with a project, including but not limited to rights-of-way, roads, streets, sidings, trackage, foundations, tanks, structures, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, improvements, instrumentalities and other real, personal or mixed property of every kind, whether above or below ground level.

13. *"Revenues"* of a project, or derived from a project, include payments under a lease or sale contract and repayments under a loan agreement, or under notes, debentures, bonds and other secured or unsecured debt obligations of a lessee or contracting party delivered as herein provided.

14. *"Sale contract"* means a contract providing for the sale of one or more projects to one or more contracting parties and includes a contract providing for payment of the purchase price in one or more installments. If the sale contract permits title to the project to pass to the other contracting party or parties prior to payment in full of the entire purchase price, it shall also provide for the other contracting party or parties to deliver to the municipality or to the trustee under the indenture pursuant to which the bonds were issued one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments, including without limitation, interest thereon for the balance of the purchase price at or prior to the passage of such title.

[C66, 71, 73, 75, 77, 79, 81, §419.1; 81 Acts, ch 130, §1; 82 Acts, ch 1001, §1, ch 1049, §1, 2, ch 1132, §1]

83 Acts, ch 47, §1; 83 Acts, ch 182, §1; 84 Acts, ch 1266, §22; 94 Acts, ch 1162, §1; 96 Acts, ch 1129, §91

419.2 Powers.

In addition to any other powers which it may now have, each municipality shall have the following powers:

1. To acquire, whether by construction, purchase, gift or lease, and to improve and equip, one or more projects. The projects shall be located within this state, may be located within or near the municipality, but shall not be located more than eight miles outside the corporate limits of the municipality, provided that ancillary improvements necessary or useful in connection with the main project may be located more than eight miles outside the corporate limits of the municipality or, in the case of a project which includes portable equipment for pollution control, that the situs of the principal place of business of the owner of such portable equipment is located within the municipality or not more than eight miles outside of the corporate limits of the municipality.

2. To lease to others one or more projects for such rentals and upon such terms and conditions as the governing body may deem advisable in accordance with the provisions of this chapter, but in no case shall the rentals be less than the average rental cost for like or similar facilities within the competitive commercial area.

3. To sell to others one or more projects for such payments and upon such terms and conditions as the governing body may deem advisable in accordance with the provisions of this chapter.

4. To enter into loan agreements with others with respect to one or more projects for such payments and upon such terms and conditions as the governing body may deem advisable in accordance with the provisions of this chapter.

5. To issue revenue bonds for the purpose of defraying the cost of any project and to secure payment of such bonds as provided in this chapter. However, in the case of a project suitable for the

use of a beginning businessperson, the bonds may not exceed the aggregate principal amount of five hundred thousand dollars.

6. To grant easements for roads, streets, water mains and pipes, sewers, power lines, telephone lines, all pipe lines, and to all utilities.

7. To issue revenue bonds for the purpose of retiring existing indebtedness of any private or state of Iowa college or university or of any person who incurred the indebtedness to finance a project for any private or state of Iowa college or university, to secure payment of the bonds as provided in this chapter, and to enter into agreements with others with respect to these bonds for such payments and upon such terms and conditions as the governing body may deem advisable in accordance with the provisions of this chapter. The retiring of any existing indebtedness of a private or state of Iowa college or university or of any person who incurred the indebtedness to finance a project for a private or state of Iowa college or university shall be deemed a *"project"* for the purposes of this chapter.

8. To issue revenue bonds for the purpose of retiring any existing indebtedness of a health care facility, clinic or voluntary nonprofit hospital, to secure payment of the bonds as provided in this chapter, and to enter into agreements with others with respect to these bonds for such payments and upon such terms and conditions as the governing body may deem advisable in accordance with the provisions of this chapter. The retiring of any existing indebtedness of a health care facility, clinic or voluntary nonprofit hospital shall be deemed a *"project"* for the purposes of this chapter.

9. To issue revenue bonds for the purpose of retiring any existing indebtedness on a facility for an organization described in section 501(c)(3) of the Internal Revenue Code which is exempt from federal income tax under section 501(a) of the Internal Revenue Code, to secure payment of the bonds as provided in this chapter, and to enter into agreements with others with respect to these bonds for the payments and upon the terms and conditions as the governing body may deem advisable in accordance with the provisions of this chapter. The retiring of any existing indebtedness on a facility for an organization described in section 501(c)(3) of the Internal Revenue Code is a "project" for the purposes of this chapter.

No municipality shall have the power to operate any project financed under this chapter, as a business or in any manner except as specifically provided in this chapter.

[C66, 71, 73, 75, §419.2; C77, 79, §419.2, 419.7; C81, §419.2; 82 Acts, ch 1049, §3]

94 Acts, ch 1162, §2

419.3 Bonds as limited obligations.

1. All bonds issued by a municipality, under the authority of this chapter, shall be limited obligations of the municipality. The principal of and interest on such bonds shall be payable solely out of the revenues derived from the project to be financed by the bonds so issued under the provisions of this chapter including debt obligations of the lessee or contracting party obtained from or in connection with the financing of a project. Bonds and interest coupons issued under authority of this chapter shall never constitute an indebtedness of the municipality, within the meaning of any state constitutional provision or statutory limitation, and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of each such bond.

2. The bonds referred to in subsection 1 of this section may be executed and delivered at any time and from time to time; be in such form and denominations; without limitation as to the denomination of any bond, any other law to the contrary notwithstanding; be of such tenor; be fully registered, registrable as to principal or in bearer form; be transferable; be payable in such installments and at such time or times, not exceeding thirty years from their date; be payable at such place or places in or out of the state of Iowa; bear interest at such rate or rates, payable at such place or places in or out of the state of Iowa; be evidenced in such manner and may contain other provisions not inconsistent with this chapter; all as shall be provided in the proceedings of the governing body where the bonds are authorized to be issued. The governing body may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in the manner as may be provided in the proceedings authorizing their issuance, provided the bonds in changed form or denominations shall be exchanged for the surrendered bonds in the same aggregate principal amounts and in such manner that no overlapping interest is paid, and the bonds in changed form or denominations shall bear interest at the same rate or rates and shall mature on the same date or dates as the bonds for which they are exchanged. If an exchange is made under this section, the bonds surrendered by the holders at the time of the exchange shall be canceled or held by a trustee for subsequent exchanges in accordance with this section. The exchange shall be made only at the request of the holders of the bonds to be surrendered, and the governing body may require all expenses incurred in connection with the exchange to be paid by the holders. If any of the officers whose signatures appear on the bonds or coupons cease to be officers before the delivery of the bonds, such signatures are, nevertheless, valid and sufficient for all purposes, the same as if the officers had remained in office until delivery.

3. Unless otherwise provided in the proceedings of the governing body whereunder the bonds

are authorized to be issued, bonds issued under the provisions of this chapter shall be subject to the general provisions of law, presently existing or that may hereafter be enacted, respecting the execution and delivery of the bonds of a municipality and respecting the retaining of options of redemption in proceedings authorizing the issuance of municipal securities.

4. Any bonds, issued under the authority of this chapter, may be sold at public sale in such manner, at such price and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof.

5. All bonds, issued under the authority of this chapter and all interest coupons applicable thereto, shall be construed to be negotiable instruments, even though they are payable solely from a specified source.

[C66, 71, 73, 75, 77, 79, 81, §419.3]

83 Acts, ch 90, §28

419.4 Pledge of revenues.

1. The principal of and interest on any bonds, issued under authority of this chapter, shall be secured by a pledge of the revenues out of which such bonds shall be made payable. They may be secured by a mortgage covering all or any part of the project from which the revenues so pledged may be derived or by a pledge of the lease, sale contract or loan agreement with respect to such project or by a pledge of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the lessee or contracting party.

2. The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and any mortgage given to secure the same, may contain any agreements and provisions customarily contained in instruments securing bonds, including, but not limited to:

a. Provisions respecting custody of the proceeds from the sale of the bonds including their investment and reinvestment until used to defray the cost of the project.

b. Provisions respecting the fixing and collection of rents or payment with respect to any project covered by such proceedings or mortgage.

c. The terms to be incorporated in the lease, sale contract or loan agreement with respect to such project.

d. The maintenance and insurance of such project.

e. The creation, maintenance, custody, investment and reinvestment and use of special funds from the revenues of such project, and

f. The rights and remedies available in case of a default to the bond holders or to any trustee under the lease, sale contract, loan agreement or mortgage.

A municipality shall have the power to provide that proceeds from the sale of bonds and special funds from the revenues of the project shall be invested and reinvested in such securities and other investments as shall be provided in the proceedings under which the bonds are authorized to be issued including:

(1) obligations issued or guaranteed by the United States;

(2) obligations issued or guaranteed by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States;

(3) obligations issued or guaranteed by any state of the United States, or the District of Columbia, or any political subdivision of any such state or district;

(4) prime commercial paper;

(5) prime finance company paper;

(6) bankers' acceptances drawn on and accepted by banks organized under the laws of any state or of the United States;

(7) repurchase agreements fully secured by obligations issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; and

(8) certificates of deposit issued by banks organized under the laws of any state or of the United States; whether or not such investment or reinvestment is authorized under any other law of this state. The municipality shall also have the power to provide that such proceeds or funds or investments and the amounts payable under the lease, sale contract or loan agreement shall be received, held and disbursed by one or more banks or trust companies located in or out of the state of Iowa. A municipality shall also have the power to provide that the project and improvements shall be constructed by the municipality, lessee, the lessee's designee, the contracting party, or the contracting party's designee, or any one or more of them on real estate owned by the municipality, the lessee, the lessee's designee, the contracting party, or the contracting party's designee, as the case may be, that the bond proceeds shall be disbursed by the trustee bank or banks, trust company or trust companies, during construction upon the estimate, order or certificate of the lessee, the lessee's designee, the contracting party, or the contracting party's designee.

In making such agreements or provisions, a municipality shall not have the power to obligate itself, except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

3. The proceedings authorizing any bonds un-

der the provisions of this chapter, or any mortgage securing such bonds, may provide that if there is a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and payments and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

4. Any mortgage, made under the provisions of this chapter, to secure bonds issued thereunder, may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the mortgage, it may be foreclosed and sold under proceedings in equity or in any other manner permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any bonds secured thereby may become the purchaser at any foreclosure sale if the trustee or holder is the highest bidder therefor.

[C66, 71, 73, 75, 77, 79, 81, §419.4]

419.5 Determination of rent.

1. Prior to entering into a lease, sale contract or loan agreement with respect to any project, the governing body must determine the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance such project; the amount necessary to be paid each year into any reserve funds which the governing body may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and unless the terms of the lease, sale contract or loan agreement provide that the lessee or contracting party shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

2. The determination and findings of the governing body, required to be made by subsection 1 of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued; provided, however, that the foregoing amounts need not be expressed in dollars and cents in the lease, sale contract or loan agreement or in the proceedings under which the bonds are authorized to be issued, but may be set forth in the form of a formula or formulas. Prior to the issuance of the bonds authorized by this chapter the municipality shall enter into a lease, sale contract or loan agreement with respect to the project which shall require the lessee or contracting party to complete the project and which shall provide for payment to the municipality of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient to pay the principal of and interest on the bonds issued to finance the project; to build up and maintain any reserves deemed advisable, by the governing body, in connection therewith and unless the lease, sale contract or loan agreement obligates the lessee or contracting party to pay for the maintenance and insurance on the project, to pay the costs of maintaining the project in good repair and keeping it properly insured.

[C66, 71, 73, 75, 77, 79, 81, §419.5]

419.6 Refunding bonds.

Any bonds, issued under the provisions of this chapter and at any time outstanding, may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby, but the holders of any bonds to be so refunded shall not be compelled, without their consent, to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem or otherwise, or if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. All refunding bonds, issued under authority of this chapter, shall be payable solely from the revenues out of which the bonds to be refunded thereby are payable and shall be subject to the provisions contained in section 419.3 and may be secured in accordance with the provisions of section 419.4.

[C66, 71, 73, 75, 77, 79, 81, §419.6]

419.7 Application of proceeds limited.

The proceeds from the sale of any bonds, issued under authority of this chapter, shall be applied only for the purpose for which the bonds were issued and if, for any reason, any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, such unneeded portion of said proceeds shall be applied to the payment of the principal or the interest on said bonds. The cost of any project shall be deemed to include the actual cost of acquiring a site or the cost of the construction of any part of a project which may be constructed including architects' and engineers' fees, the purchase price of any part of a project that may be acquired by purchase, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition, an amount to be held as a bond reserve fund, and the interest on such bonds for a reasonable time prior to construction, during construction and for not exceed-

ing six months after completion of construction.
[C66, 71, 73, 75, 77, 79, 81, §419.7]

419.8 No payment by municipality.
No municipality shall have the power to pay out of its general fund or otherwise contribute any part of the costs of a project and shall not have the power to use land already owned by the municipality, or in which the municipality has an equity, unless specifically acquired for development of projects, or unless the land is determined by the municipal governing body to no longer be necessary for municipal purposes other than the project, for the construction thereon of a project or any part thereof. The entire cost of any project must be paid out of the proceeds from the sale of bonds issued under the authority of this chapter, but this provision shall not be construed to prevent a municipality from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.
[C66, 71, 73, 75, 77, 79, 81, §419.8]

419.9 Public hearing.
Prior to the issuance of any bonds under authority of this chapter, the municipality shall conduct a public hearing on the proposal to issue said bonds. Notice of intention to issue the bonds, specifying the amount and purpose thereof and the time and place of hearing, shall be published at least once not less than fifteen days prior to the date fixed for the hearing in a newspaper published and having a general circulation within the municipality. If there is no newspaper published therein, the notice shall be published in a newspaper published in the county and having a general circulation in the municipality. At the time and place fixed for the public hearing the governing body of the municipality shall give all local residents who appear at the hearing an opportunity to express their views for or against the proposal to issue the bonds and at the hearing, or any adjournment thereof, shall adopt a resolution determining whether or not to proceed with the issuance of the bonds.
[C66, 71, 73, 75, 77, 79, 81, §419.9]

419.10 Default.
In case of a default in the payment of any revenue bonds, issued pursuant to the provisions of this chapter, the municipality which defaulted in such payment shall be precluded from entering into any activity of its own except to release the property for some industrial activity.
[C66, 71, 73, 75, 77, 79, 81, §419.10]

419.11 Tax equivalent to be paid — assessment procedure — appeal.
Any municipality acquiring, purchasing, constructing, reconstructing, improving or extending any industrial buildings, buildings used as headquarters facilities or pollution control facilities, as provided in this chapter, shall annually pay out of the revenue from such industrial buildings, buildings used as headquarters facilities or pollution control facilities to the state of Iowa and to the city, school district and any other political subdivision, authorized to levy taxes, a sum equal to the amount of tax, determined by applying the tax rate of the taxing district to the assessed value of the property, which the state, county, city, school district or other political subdivision would receive if the property were owned by any private person or corporation, any other statute to the contrary notwithstanding. For purposes of arriving at such tax equivalent, the property shall be valued and assessed by the assessor in whose jurisdiction the property is located, in accordance with chapter 441, but the municipality, the lessee on behalf of the municipality, and such other persons as are authorized by chapter 441 shall be entitled to protest any assessment and take appeals in the same manner as any taxpayer. Such valuations shall be included in any summation of valuations in the taxing district for all purposes known to the law. Income from this source shall be considered under the provisions of section 384.16, subsection 1, paragraph *"b"*.

If and to the extent the proceedings under which the bonds authorized to be issued under the provisions of this chapter so provide, the municipality may agree to co-operate with the lessee of a project in connection with any administrative or judicial proceedings for determining the validity or amount of any such payments and may agree to appoint or designate and reserve the right in and for such lessee to take all action which the municipality may lawfully take in respect of such payments and all matters relating thereto, provided, however, that such lessee shall bear and pay all costs and expenses of the municipality thereby incurred at the request of such lessee or by reason of any such action taken by such lessee in behalf of the municipality. Any lessee of a project which has paid, as rentals additional to those required to be paid pursuant to section 419.5, the amounts required by the first sentence of this section to be paid by the municipality shall not be required to pay any such taxes to the state or to any such county, city, school district or other political subdivision, any other statute to the contrary notwithstanding. To the extent that any lessee or contracting party pays taxes on a project or part thereof, the municipality shall not be required to pay the tax equivalent herein provided, and to such extent the lessee or contracting party shall not be required to pay amounts to the municipality for such purpose.

This section shall not be applicable to any municipality acquiring, purchasing, constructing, reconstructing, improving, or extending any buildings for the purpose of establishing, maintaining,

or assisting any private or state of Iowa college or university, nor to any municipality in connection with any project for the benefit of a voluntary nonprofit hospital, clinic, or health care facility, the property of which is otherwise exempt under the provisions of chapter 427. The payment, collection, and apportionment of the tax equivalent shall be subject to the provisions of chapters 445, 446 and 447.

[C66, 71, 73, 75, 77, 79, 81, §419.11]

Appeals, see §441.37, 441.38

419.12 Purchase.

The municipality may accept any bona fide offer to purchase which is sufficient to pay all the outstanding bonds, interest, taxes, special levies, and other costs that have been incurred.

[C66, 71, 73, 75, 77, 79, 81, §419.12]

419.13 Exception to budget law and certain bond provisions.

The provisions of sections 73A.12 to 73A.16 shall not apply to bonds issued under the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §419.13]

419.14 Eminent domain not available.

No land acquired by a municipality by the exercise of condemnation through eminent domain can be used to effectuate the purposes of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §419.14]

419.15 Limitation of actions.

No action shall be brought questioning the legality of any contract, lease, mortgage, proceedings or bonds executed in connection with any project or improvements authorized by this chapter from and after three months from the time the bonds are ordered issued by the proper authority.

[C66, 71, 73, 75, 77, 79, 81, §419.15]

419.16 Intent of law.

In order to provide available alternatives to enable municipalities to accomplish the purposes of this chapter in the manner deemed most advisable by their governing bodies, it is the intent of this chapter that a lessee or contracting party under a sale contract or loan agreement is not required to be the eventual user of a project, provided that the use of the project is consistent with the purposes of this chapter.

[C75, 77, 79, 81, §419.16]

83 Acts, ch 90, §29

419.17 Revenue bonds issued.

Cities may also issue revenue bonds for projects located within a qualified urban renewal area or an area designated a revitalization area pursuant to sections 404.1 to 404.7. The revenue bonds shall be issued pursuant to the provisions of this chapter and all provisions of this chapter shall apply, except that:

1. The term *"project"* as defined in section 419.1 includes land, buildings, or improvements which are suitable for use as residential property or for the use of a commercial enterprise or nonprofit organization which the governing body finds is consistent with the urban renewal plan for a qualified urban renewal area or the revitalization plan, as the case may be.

2. To the extent that a city is authorized to pay out or contribute to the cost of a project under chapter 403 in the case of a qualified urban renewal area or under sections 404.1 to 404.7 in the case of a revitalization area, the provisions of section 419.8 shall not apply.

3. The provisions of section 419.14 shall not apply to projects within a qualified urban renewal area.

The power to issue revenue bonds pursuant to this section is in addition to other powers granted cities to aid qualified urban renewal areas and revitalization areas.

The term *"qualified urban renewal area"* means an urban renewal area designated as such pursuant to chapter 403 before July 1, 1979.

[C81, §419.17]

Chapter 404 applies to all cities including special charter cities; 79 Acts, ch 84, §12

419.18 Grain and soybean storage facilities — bonds issued.

In order to provide greater sources of financing and to encourage an increase in the capacity of grain and soybean storage facilities within the state, cities and counties may issue revenue bonds, to be originally purchased by financial institutions or other bond purchasers which are located within the city or county issuing the bonds, to finance the acquisition of grain and soybean storage facilities which may be located anywhere within the state. The revenue bonds shall be issued pursuant to this chapter and all provisions of this chapter shall apply except that the term *"project"* as defined in section 419.1 includes on-farm grain and soybean storage facilities, which facilities may include the grain or soybean drying and aerating equipment, and the project need not be located within the city or county issuing the revenue bonds.

[82 Acts, ch 1208, §1]

CHAPTER 420

SPECIAL CHARTER CITIES

Chapter 404 applies to all cities including special charter cities;
79 Acts, ch 84, §12

420.1 to 420.7 Repealed by 51 Acts, ch 145, §106, and ch 165, §3.
420.8 to 420.13 Repealed by 51 Acts, ch 165, §3.
420.14 and 420.15 Repealed by 72 Acts, ch 1088, §314.
420.16 to 420.25 Repealed by 72 Acts, ch 1124, §282.
420.26 to 420.30 Repealed by 51 Acts, ch 147, §40 and ch 165, §3.
420.31 Repealed by 72 Acts, ch 1088, §314.
420.32 and 420.33 Repealed by 51 Acts, ch 165, §3.
420.34 Repealed by 72 Acts, ch 1124, §282.
420.35 to 420.40 Repealed by 72 Acts, ch 1088, §314.

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420.42 Repealed by 51 Acts, ch 165, §4.
420.43 Application of certain terms.
420.44 Unliquidated claim — limitation of action.
420.45 Claims for personal injury — limitation.
420.46 Repealed by 72 Acts, ch 1088, §317.
420.47 Repealed by 51 Acts, ch 151, §55 and ch 165, §4.
420.48 Repealed by 51 Acts, ch 145, §107 and ch 165, §4.
420.49 to 420.58 Repealed by 51 Acts, ch 151, §56 and ch 165, §4.
420.59 to 420.61 Repealed by 72 Acts, ch 1088, §317.
420.62 to 420.120 Repealed by 51 Acts, ch 165, §4.
420.121 to 420.125 Repealed by 51 Acts, ch 151, §57 and ch 165, §4.

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420.139 to 420.148 Repealed by 51 Acts, ch 165, §4.
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420.150 to 420.154 Repealed by 51 Acts, ch 165, §4.

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420.156 Repealed by 72 Acts, ch 1088, §317.
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420.160 to 420.164 Repealed by 72 Acts, ch 1088, §317.
420.165 Grants of state lands — erection of structures.
420.166 to 420.180 Repealed by 72 Acts, ch 1088, §317.
420.181 Repealed by 70 Acts, ch 1025, §74.
420.182 to 420.189 Repealed by 72 Acts, ch 1088, §317.

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420.190 Garbage can tax — assessment against property.
420.191 to 420.203 Repealed by 51 Acts, ch 165, §4.
420.204 and 420.205 Repealed by 72 Acts, ch 1088, §317.
420.206 Levy and collection.
420.207 Taxation in general.
420.208 Repealed by 51 Acts, ch 165, §4.
420.209 and 420.210 Repealed by 47 Acts, ch 240, §50.
420.211 and 420.212 Repealed by 51 Acts, ch 165, §4.
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420.249 Repealed by 51 Acts, ch 165, §4.
420.250 to 420.285 Repealed by 72 Acts, ch 1088, §317.

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420.286 Procedure.
420.287 Proclamation of result.
420.288 Submission at special election.
420.289 to 420.304 Repealed by 72 Acts, ch 1088, §317.

420.1 to 420.7 Repealed by 51 Acts, ch 145, § 106, and ch 165, § 3.

420.8 to 420.13 Repealed by 51 Acts, ch 165, § 3.

420.14 and 420.15 Repealed by 72 Acts, ch 1088, § 314.

420.16 to 420.25 Repealed by 72 Acts, ch 1124, § 282.

420.26 to 420.30 Repealed by 51 Acts, ch 147, § 40 and ch 165, § 3.

420.31 Repealed by 72 Acts, ch 1088, § 314.

420.32 and 420.33 Repealed by 51 Acts, ch 165, § 3.

420.34 Repealed by 72 Acts, ch 1124, § 282.

420.35 to 420.40 Repealed by 72 Acts, ch 1088, § 314.

GENERAL PROVISIONS AND POWERS

420.41 Applicability of provisions.

1. No state law shall be deemed to impair, alter or affect the provisions of any such special charter or any existing amendment thereto in any of the following respects:

a. As an act of incorporation or as evidence thereof.

b. In respect of authority to license, tax and regulate various persons, occupations, amusements, places and objects, as said general subjects of licensing, taxing and regulation are more specifically set forth in the respective charters of such cities.

c. In respect of the levy and collection of taxes for city purposes, in accordance with provisions of the respective charters of such cities and other provisions of law relating to such levy and collections including, but without limitation, provisions relating to liens, distraint, tax sales, redemptions, tax deeds and other provisions incident to the levy and collection of taxes; provided that this paragraph shall apply only with respect to cities which prior to and currently with the taking effect of this subsection collect general city taxes directly or by or through their own officers, rather than indirectly and by or through any other public body or officer thereof.

d. In respect of the election or appointment of a clerk, treasurer, police magistrate and marshal or in respect of the authority, functions, duties or compensation of any of these except that section 372.13, subsection 2, applies in respect to a vacancy in any of these elective offices and to a vacancy in any other city elective office.

e. In respect of the power or authority of any such city to borrow and expend money and issue bonds or other evidences of indebtedness therefor.

f. In respect of the appropriation, condemning or taking of lands and property by any such city for public purposes and in respect of procedure and appeals in connection with any such taking.

g. In respect of the power to enact, make, adopt, amend and repeal ordinances necessary or proper in connection with any provisions referred to in paragraphs *"a"* to *"f"* inclusive, of this subsection.

2. The fiscal year for special charter cities, which prior to and concurrently with the taking effect of this subsection collect general city taxes directly through their own officers, and for all departments, boards and commissions thereof, shall be as established by city ordinance.

3. Special charter cities which prior to and concurrently with the taking effect of this subsection collect general city taxes directly through their own officers, shall, within the applicable provisions of chapter 384, division I, make the appropriations for the necessary expenditures for the next ensuing fiscal year by ordinance. The pro-

posed ordinance shall, upon first reading, be placed on file with the clerk for public inspection, and, upon second reading, if and as amended, forthwith be published in a newspaper of general circulation, together with the time and place for a public hearing on said proposed ordinance, which hearing shall be not less than ten days prior to the council meeting at which it shall be placed upon its passage.

[C97, §933; C24, §6730; C27, 31, 35, §4755-f35, 6730; C39, §**4755.32, 6730;** C46, 50, §313.41, 420.41, 420.62 – 420.117; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.41; 81 Acts, ch 34, §47]

420.42 Repealed by 51 Acts, ch 165, § 4.

420.43 Application of certain terms.

Whenever the words *"boards of supervisors"*, *"county auditor or recorder of deeds"*, and *"county treasurer"* are used in any section made applicable by this chapter to special charter cities, the words *"city council"*, *"city clerk"* or *"city recorder"*, and *"city collector or treasurer"* shall be respectively substituted.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

This section shall not be construed as depriving boards of supervisors, county auditors, and county treasurers of their powers to spread tax levies and collect taxes certified by cities acting under special charter as provided in section 420.206 and other state law. Nothing contained herein shall be deemed to affect the procedure for the assessment of property by the city or county assessor.

[C97, §958, 1024; S13, §958; C24, 27, 31, 35, 39, §**6732;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.43]

2000 Acts, ch 1148, §1

420.44 Unliquidated claim — limitation of action.

No suit shall be brought against any such city for any unliquidated claim or demand unless within three months from the time the same became due or cause of action accrued thereon, nor unless a written, verified statement of the general nature, cause, and amount of same is filed with the clerk or recorder thirty days before the commencement of such suit.

[C97, §1050; C24, 27, 31, 35, 39, §**6733;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.44]

420.45 Claims for personal injury — limitation.

In all cases of personal injury or damage to property resulting from defective streets or sidewalks, or from any cause originating in the neglect or failure of any municipal corporation or its officers to perform their duties, no suit shall be brought against any such city after three months from the time of the injury or damage, and not then unless a written verified statement of the amount, nature, and cause of such injury or damage, and the time when and the place where such injury occurred, and the particular defect or negligence of the city or its officers which it is claimed caused or contributed to the injury or damage, shall be presented to the council or filed with the clerk within thirty days after said alleged injury or damage was sustained.

[C97, §1051; C24, 27, 31, 35, 39, §**6734;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.45]

420.46 Repealed by 72 Acts, ch 1088, § 317.

420.47 Repealed by 51 Acts, ch 151, § 55 and ch 165, § 4.

420.48 Repealed by 51 Acts, ch 145, § 107 and ch 165, § 4.

420.49 to 420.58 Repealed by 51 Acts, ch 151, § 56 and ch 165, § 4.

420.59 to 420.61 Repealed by 72 Acts, ch 1088, § 317.

420.62 to 420.120 Repealed by 51 Acts, ch 165, § 4.

420.121 to 420.125 Repealed by 51 Acts, ch 151, § 57 and ch 165, § 4.

POLITICAL PARTIES IN CERTAIN CITIES

420.126 City convention.

Political parties in special charter cities having a population of fifty thousand or more shall hold a city convention within the city on the second Friday following the primary election. The city central committee shall set the time and place of the convention and shall file the same in the office of the city clerk at least ten days prior to the convention.

[C66, 71, 73, 75, 77, 79, 81, §420.126]

420.127 Delegates elected.

Delegates to city conventions of their respective political parties shall be elected at precinct caucuses held at eight p.m. on the third Monday in August of the same year in which the city general election is conducted. The precinct caucuses shall be convened within the boundaries of each precinct at places designated by the city central committee. The chairperson of the city central com-

mittee shall file with the city clerk a certified list of places where the precinct caucuses will be held not later than ten days prior to the date of the caucus and shall cause the time and place of said caucus to be published in two newspapers within the city not later than ten days prior to the convening of the precinct caucus.

[C66, 71, 73, 75, 77, 79, 81, §420.127]

420.128 Chairperson and secretary.

The precinct caucus shall elect, by a majority vote of those present, a chairperson and secretary who shall certify to the city central committee and city clerk the names and addresses of those elected as delegates to the city convention. The number of delegates from each voting precinct shall be determined by a ratio adopted by the respective political party's city central committee, and the chairperson of the city central committee shall file with the city clerk a statement designating the number of delegates for each voting precinct in the city not less than twenty-five days before the date of the precinct caucuses. If the chairperson of the city central committee fails to so act, the county chairperson shall designate the number of delegates to be elected from each voting precinct and shall cause such information to be published in two newspapers within the city at least ten days prior to holding the precinct caucuses.

[C66, 71, 73, 75, 77, 79, 81, §420.128]

420.129 Term.

The delegates shall hold office from the day following the election for a period of two years.

[C66, 71, 73, 75, 77, 79, 81, §420.129]

420.130 Affidavit of candidacy.

Candidates for city precinct committee member shall cause their names to be printed on the primary ballot by filing an affidavit as provided for in section 43.18 with the county commissioner of elections at least forty days prior to the day fixed for conducting the primary election.

[C66, 71, 73, 75, 77, 79, 81, §420.130]
88 Acts, ch 1119, §43

420.131 Members from each precinct.

Two persons for each political party shall be elected from each precinct to the city central committee at the primary election. They shall hold office for a period of two years immediately following the adjournment of the city convention, or until their successors are duly elected and qualified, unless sooner removed by the city central committee for failing to perform the duties of committee members, incompetency, or failing to support the ticket nominated by their respective party.

[C66, 71, 73, 75, 77, 79, 81, §420.131]

420.132 Committee meetings — vacancies.

The city central committee shall commence performing their duties on the day of the city convention and vacancies occurring therein may be filled by the city chairperson subject to confirmation of the central committee.

[C66, 71, 73, 75, 77, 79, 81, §420.132]

420.133 Returns of election.

Election judges shall make returns of the election of members of the city central committee in the same manner as returns are conducted for other officers except that the election judges shall canvass the returns as to members of the city central committee, and certify the results thereof to the county commissioner of elections with the returns.

[C66, 71, 73, 75, 77, 79, 81, §420.133]

420.134 Certified list of those elected.

After the canvass of votes by the county board of supervisors, the county commissioner of elections shall notify the members of the central committee who have been elected of the time and place of holding the city convention, and shall deliver a certified list of those elected to the chairperson of their respective political party's central committee in the city on or before the second Thursday following the primary election.

[C66, 71, 73, 75, 77, 79, 81, §420.134]

420.135 Elected delegates.

The city convention shall be composed of the delegates elected at the last preceding city precinct caucus, and the city clerk shall forward a certified list of said elected delegates at least ten days prior to the city convention to the chairperson of the city central committee.

[C66, 71, 73, 75, 77, 79, 81, §420.135]

420.136 Duties of city clerk.

The city clerk shall keep a certified list of delegates to the city convention elected at the precinct caucuses and a record of the precinct committee members elected at the primary election. The city clerk shall maintain a current list of all members of the city central committee. The certified list and records shall be maintained by the city clerk for at least two years subsequent to the election of the delegates and precinct committee members and shall be available for public inspection.

[C66, 71, 73, 75, 77, 79, 81, §420.136]

420.137 Applicable laws.

All laws governing political parties and the nomination of candidates in elections shall, as far as applicable, govern the political parties and nomination and election of candidates in cities acting under a special charter in 1973 and having a population of fifty thousand or more, except where

such a city by election chooses to conduct city elections under chapter 44, 45, or 376.

[C66, 71, 73, 75, 77, 79, 81, §420.137; 82 Acts, ch 1097, §3]

420.138 Repealed by 73 Acts, ch 136, § 401.

420.139 to 420.148 Repealed by 51 Acts, ch 165, § 4.

420.149 Repealed by 51 Acts, ch 151, § 58 and ch 165, § 4.

420.150 to 420.154 Repealed by 51 Acts, ch 165, § 4.

RIVERFRONT AND LEVEE IMPROVEMENTS

420.155 Waterfront improvement — fund.

Any city acting under special charter, which is bounded in part or divided by a river, may improve said waterfront by constructing retaining walls, filling, grading, paving, macadamizing, or riprapping the same and may improve and beautify its waterfront and the river bank and nearby uplands and made and reclaimed lands in such city; and to pay for such improvements the council of such city is empowered to levy a tax of not exceeding six and three-fourths cents per thousand dollars of assessed value per annum on the taxable property thereof, the same when collected to be known as the levee improvement fund. The proceeds of such fund shall be used exclusively for said purposes.

[S13, §1056-a6a; C24, 27, 31, 35, 39, §**6823;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.155]

420.156 Repealed by 72 Acts, ch 1088, § 317.

420.157 Bonds.

In the event that the proceeds of such tax in any one year shall be insufficient to pay for the improvements of that year, or if the city council shall deem best to extend the payment over a number of years, then upon a majority vote of said council approving the same, said cities may borrow the money to make such improvements and issue the negotiable interest-bearing bonds of said city to evidence said debt; provided that the total bond that may be issued under this chapter by any one city shall not exceed twenty-seven hundredths of one percent of the assessed value of said city.

[S13, §1056-a6b; C24, 27, 31, 35, 39, §**6824;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.157]

420.158 Repealed by 72 Acts, ch 1088, § 317.

420.159 Repealed by 51 Acts, ch 165, § 4. See chapter 372.

420.160 to 420.164 Repealed by 72 Acts, ch 1088, § 317.

420.165 Grants of state lands — erection of structures.

With respect to any lands title to which has been or may be granted by the state to any municipal corporation of the state, acting under special charter, sections 327F.4 and 327F.5 shall not, after the occurrence of such grant, continue to apply, excepting only that permanent structures erected prior to such grant under authority of said section 327F.4 may continue to be used, occupied, and maintained thereunder, and excepting further only that such lands may continue to be used and occupied thereunder, to the extent only that use and occupancy of such lands shall be necessary to the use and occupancy of such structures for like purposes and in like manner as before such grant; provided that nothing herein contained shall be deemed to affect riparian rights at common law.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.165]

420.166 to 420.180 Repealed by 72 Acts, ch 1088, § 317.

420.181 Repealed by 70 Acts, ch 1025, § 74.

420.182 to 420.189 Repealed by 72 Acts, ch 1088, § 317.

GENERAL TAXATION

420.190 Garbage can tax — assessment against property.

Special chartered cities which collect both rubbish and garbage by a monthly can tax shall have the power by ordinance to declare the service a benefit to the property so served and in case of failure to pay said monthly charge to assess the actual cost thereof against the property benefited.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.190]

420.191 to 420.203 Repealed by 51 Acts, ch 165, § 4.

420.204 and 420.205 Repealed by 72 Acts, ch 1088, § 317.

420.206 Levy and collection.

The council shall have power to levy and collect taxes for all general and special purposes in this chapter authorized, upon all property within the city not exempted from taxation by the general law of the state, and to fix the amount to be levied on the value thereof, which shall be ascertained by the assessor of said city.

[C97, §1010; C24, 27, 31, 35, 39, §**6867;** C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.206]

420.207 Taxation in general.

Sections 426A.11 through 426A.15, 427.1, 427.8 to 427.11, 428.4, 428.20, 428.22, 428.23, 437.1, 437.3, 441.21, 443.1 to 443.3, 444.2 to 444.5, and 447.9 to 447.13, so far as applicable, apply to cities acting under special charters.

[S13, §1322-3a; C24, 27, 31, 35, §7007; C39, §**6867.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §420.207; 81 Acts, ch 117, §1082]

89 Acts, ch 296, §40; 99 Acts, ch 114, §24; 2002 Acts, ch 1150, §3

Section amended

420.208 Repealed by 51 Acts, ch 165, § 4.

420.209 and 420.210 Repealed by 47 Acts, ch 240, § 50. See § 421.17.

420.211 and 420.212 Repealed by 51 Acts, ch 165, § 4.

420.213 Collection procedure.

Such cities shall have power and shall provide by ordinance when general or special taxes and assessments shall become delinquent, and the rate of interest which they shall thereafter bear, not exceeding ten percent per annum on the whole amount thereof, including penalty, and for the sale of both real and personal property for the collection of general and special delinquent taxes and assessments, on such terms as the council may determine.

[C97, §1012; C24, 27, 31, 35, 39, §**6872;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.213]

420.214 Sale of real estate — notice.

In the sale of real property for taxes and assessments, the notice of the time and place of such sale shall be given by the treasurer or the collector, and shall contain the description of each separate tract to be sold, as taken from the tax list; the amount of taxes for which it is liable, delinquent for each year, and the amount of penalty, interest, and cost thereon; the name of the owner, if known, or the person, if any, to whom it is taxable; by publication in some newspaper in the city once each week for two consecutive weeks, the last of which shall be not more than two weeks before the date of such sale, and by posting a copy thereof at the door of the office of the collector or treasurer one week before the day of such sale.

[C97, §1012; C24, 27, 31, 35, 39, §**6873;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.214]

420.215 Cost of publication.

The compensation for such publication shall not exceed thirty cents for each description, and shall be paid by the city. The amount paid therefor shall be collected as a part of the costs of sale and paid into the treasury.

[C97, §1012; C24, 27, 31, 35, 39, §**6874;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.215]

420.216 Sufficiency of notice.

In all cases such advertisement shall be sufficient notice to the owners and persons having an interest in or claiming title to any lot or parcel of real estate, of the sale of their property for delinquent taxes.

[C97, §1012; C24, 27, 31, 35, 39, §**6875;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.216]

420.217 Irregularities disregarded.

No irregularity or informality in the advertisement shall affect the legality of any sale or the title of any property conveyed, if it shall appear that said property was subject to taxation for the year or years for which the same was sold, and that the tax was due and unpaid at the time of sale.

[C97, §1012; C24, 27, 31, 35, 39, §**6876;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.217]

420.218 Demand unnecessary.

A failure of the collector to make personal demand of taxes shall not affect the validity of any sale or the title of any property acquired under such sale.

[C97, §1012; C24, 27, 31, 35, 39, §**6877;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.218]

420.219 Adjournment of sale.

Section 446.25 is made applicable to cities acting under special charters.

[C97, §1013; C24, 27, 31, 35, 39, §**6878;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.219]

420.220 City tax sale after public bidder sale.

Property located in a city acting under special charter which collects its own taxes, shall not, after sale of such property to the county for taxes, be offered or sold at any sale for taxes or special assessments collectible by any such city except in the following events:

1. In the event of redemption from sale to the county or transfer by the county of the certificate of purchase then sale may be made by the city as freely as if sections 420.220 to 420.229 had never become law.

2. In the event that any special assessment or installment thereof levied by any such city, prior to April 22, 1941, shall be or become delinquent, then the property against which the same was levied may be sold therefor only at the first regular tax sale of such city occurring within such a period of time after delinquency that sale for such assessment or installment might lawfully be made at such first regular tax sale.

3. In the event of sale or conveyance of the property by the county after issuance of tax deed to it then sale may be made for general city taxes levied after such sale or conveyance by the county.

4. In the event of levy of any special assessment against the property after purchase thereof at tax sale by the county, then sale may be made for any such special assessment or installment thereof, then delinquent.

The county auditor shall, promptly after the purchase of any real estate by the county at tax sale, certify to the city treasurer of any such city, a statement showing the tracts or parcels so purchased and the dates of purchase thereof respectively. In the event either of redemption from any such sale or transfer of the certificate of purchase, the county auditor shall promptly certify to the city treasurer a statement showing such redemption or transfer. The city treasurer shall make appropriate entries in the treasurer's tax books of the facts so certified by the county auditor as well as of the matters certified by such treasurer to said auditor under the provisions of section 420.222.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.220]

420.221 Tax deed to county — city's option to purchase — city tax levies.

In the event that there shall be issued to a county a tax deed for any real estate located in a special charter city which collects its own taxes, the county auditor of any such county shall promptly certify to the city treasurer of such city a statement showing each tract or parcel of real estate conveyed by any such deed, the date of conveyance thereof and the total amount which, immediately prior to the issuance of such deed, would have been required to be paid to make redemption from the sale to the county of each such tract or parcel as well as to pay all subsequent taxes due the county thereon. If any special assessment levied against any such parcel by any such city shall then remain uncollected in whole or part such city shall, at any time during three months next ensuing such certification, have the exclusive option to purchase from the county all its right, title, and interest in and to any such tract by paying to the county auditor the amount so certified in respect to such tract. Payment in any such case shall be made from the improvement fund of such city which fund it is hereby authorized to expend for the purposes stated. No general taxes shall be levied by any such city against real estate conveyed to the county by tax deed until the same shall have been sold or conveyed by the county.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.221]

420.222 Unpaid city taxes certified to county auditor.

The city treasurer shall, promptly after the certification to the treasurer by the county auditor of the fact of issuance to the county of a tax deed for any real estate, certify to such auditor a statement showing all unpaid general taxes, with interest, penalties, and costs to date, due said city and levied against the tracts or parcels of real estate so conveyed by tax deed to the county and also showing whether or not there are any unpaid special assessments against such respective tracts or parcels. After such certification (and, in respect to the tracts or parcels against which there shall so be shown to be any unpaid special assessments, after expiration of the optional right of purchase thereof by the city), the management and sale of any real estate acquired by the county under any such tax deed, as well as distribution of proceeds of sale and other incidents and proceedings consequential to the issuance of such deed, shall occur and be had in like manner and with like effect as if the general taxes, penalties, and costs so certified by such city treasurer had originally been collectible by the county treasurer for the account of the city as general taxes collectible with other general taxes for the respective corresponding years.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.222]

420.223 Purchase by city at tax sale.

In the event that any general tax or special assessment levied by any special charter city which collects its own taxes, or any installment of any such assessment, shall remain unpaid for two years or more after any delinquency in payment thereof, then such city may, at any regular sale for taxes thereafter, purchase any such real estate for the full amount of the general taxes, with interest, penalties and costs of advertising, for which the same shall be offered and for such further amount, if any as such city may elect, not to exceed the amount of the special assessments or installments thereof, with interest and penalties, for which the same may be offered. Payment to the extent of the amount of such general taxes, with interest, penalties, and costs of advertising, shall be made, without any necessity or prerequisite of appropriation therefor, by charging the respective funds to which such general taxes, interest, penalties, and costs shall be payable, in the amounts so payable, and, to the extent of any further amount, shall be made from the improvement fund of said city, which funds it is hereby authorized to expend for the purposes stated.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.223]

420.224 Limitation on resale by city.

No property which may be sold at tax sale to any such city shall be offered at any sale for taxes or special assessments, collectible by such city, while it holds the certificate of purchase thereof or tax deed thereon except only as follows: In the event that any special assessment or installment there-

of levied by any such city prior to April 22, 1941, shall be or become delinquent after purchase of such property at tax sale by the city, then the property against which the same was levied may be sold therefor only at the first regular tax sale of such city occurring within such a period of time after delinquency that sale for such assessment or installment might lawfully be made at such first regular tax sale. Nothing in sections 420.220 to 420.229 shall prevent the sale of property for any unpaid taxes collectible by the county.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.224]

420.225 City subrogated to county's rights — payment procedure.

Any such city, holding a certificate of purchase at tax sale, may, at its option, pay any unpaid taxes due the county and purchase from the county any tax sale certificate held by the county on the same real estate, making payment in the event of such purchase of the amount which would then be required to redeem from sale to the county or any lesser amount which the county may be lawfully enabled to accept. All amounts so paid shall be entered in the tax sale records of such city and added to the amount required to redeem from sale. All amounts so paid shall be payable out of the general fund.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.225]

420.226 City clerk makes purchases.

The city clerk shall act on behalf of the city under general or specific resolutions of its city council in making the purchases at tax sale hereby authorized.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.226]

420.227 Notice of expiration of redemption period.

After nine months from the date of such purchase at tax sale by the city and as soon as permitted by law with respect to any tax sale certificate held by such city, the city clerk shall, on behalf of the city, cause notice to be served of the expiration of the right of redemption from such sale on persons of the same description and in like manner as in general provided by law with respect to tax sales by such city and, on expiration of ninety days from completed service of such notice, tax deed shall be issued in like manner and with like effect as provided by law with respect to such other sales.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.227]

420.228 City may compromise tax — effect.

For the purpose of collecting and realizing on account of delinquent taxes and special assessments collectible by it as fully and expeditiously as deemed possible in the judgment of its city council any such city is hereby authorized to settle, compromise, and adjust any general tax, then having been delinquent for a period of two years or more and any special assessment then having been delinquent in whole or as to any installment thereof for a period of two years or more, and, in connection with any such settlement, compromise or adjustment, to accept a conveyance of real property and extend the time for payment of any installment of any special assessment. If any special assessment shall be reduced in amount in connection with any such settlement, compromise, or adjustment, the full amount of the reduction shall thereby become an obligation of such city to the special assessment fund into which such assessment was payable. The lien or charge created by law for the payment of any special assessment certificates or bonds against any special assessment so reduced in amount or against the proceeds thereof shall remain in effect against the balance of such special assessment and the proceeds of such balance. All such settlements, compromises, and adjustments heretofore effected are hereby ratified and validated.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.228]

420.229 Delinquent city taxes — exclusive collection procedure.

All general city taxes and special assessments which, under the provisions of sections 420.220 to 420.229 shall not be collectible by sale or shall be collectible by sale only in events or in a manner hereby prescribed shall respectively be deemed barred or barred as to collection thereof in any other event or any other manner than so prescribed.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.229]

420.230 Tax list.

All assessments and taxes levied by the council, except as otherwise provided by law, shall be placed by the auditor, clerk, or recorder, as provided by ordinance, upon the proper tax book, to be known as the "tax list", properly ruled and headed with distinct columns to correspond with the assessment books, with a column for polls and one for payments, and the appropriate officer shall complete the same by carrying out the consolidated tax and all other taxes levied, and at the end of the list shall make an abstract thereof and apportion the consolidated tax among the respective funds to which it belongs, according to the amount levied for each, and certify the same to the collector or treasurer at or before the regular time for the collection and payment of taxes.

[R60, §1123, 1126; C73, §495, 498; C97, §1014; C24, 27, 31, 35, 39, §**6879;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.230]

420.231 Lien on real estate.

Taxes upon real estate shall be a lien thereon against all persons except the state. Taxes due from any person upon personal property shall be a lien upon any and all real estate owned by such person or to which the person may acquire title, which lien shall attach to real estate owned by such person on the date when such personal property taxes become delinquent and shall continue for a period of ten years only thereafter.

[C97, §1015; C24, 27, 31, 35, 39, §**6880;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.231]

420.232 Lien between vendor and vendee.

As between vendor and vendee, such lien shall attach to real estate on the thirty-first day of December following the levy, unless otherwise provided in this chapter.

[C97, §1015; C24, 27, 31, 35, 39, §**6881;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.232]

420.233 Stocks of goods.

Taxes upon stocks of goods and merchandise shall be a lien thereon, and shall continue a lien thereon when sold in bulk, and may be collected from the owner, purchaser, or vendee, but the property of the seller thereof shall be first exhausted for the payment.

[C97, §1015; C24, 27, 31, 35, 39, §**6882;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.233]

420.234 When lien attaches.

All of such taxes shall remain a lien on the property aforesaid from and after the date of the levy in each year, except as provided in section 420.231, with respect to the lien of personal property taxes on real estate.

[C97, §1015; C24, 27, 31, 35, 39, §**6883;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.234]

420.235 Tax receipt.

The collector or treasurer shall in all cases make out and deliver to the taxpayer a receipt, which receipt shall contain the description and the assessed value of each lot and parcel of real estate, and the assessed value of personal property, and in case the property has been sold for taxes and not redeemed, the date of such sale and to whom sold, also the amount of taxes, interest, and costs paid; and the collector or treasurer shall give separate receipts for each year; whereupon the collector or treasurer shall make proper entries of such payments on the books of the collector's or treasurer's office.

[C97, §1016; C24, 27, 31, 35, 39, §**6884;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.235]

420.236 Payment refused — receipt made conclusive.

The council may provide by ordinance:

1. That no person shall be permitted to pay taxes of any one year until the taxes for the previous years shall be first paid.

2. That the receipt contemplated in section 420.235 shall be conclusive evidence that all taxes and the costs of every kind against the property described in such receipt are paid to the date of such receipt.

3. That for any failure or neglect on the part of the collector, or on the part of anyone acting as collector, the collector or the collector's surety shall be liable to an action on the collector's official bond for damages sustained by any person or the city for such neglect.

[C97, §1016; C24, 27, 31, 35, 39, §**6885;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.236]

420.237 Certificate of purchase.

The treasurer or collector of taxes, or person authorized to act as collector, shall make, sign, and deliver to the purchaser of any real property sold for the payment of any taxes or special assessments authorized by the provisions of this chapter, or by any law applicable to such cities, a certificate of purchase, which shall have the same force and effect as certificates issued by county treasurers for the sale of property for delinquent county taxes.

[C97, §1017; C24, 27, 31, 35, 39, §**6886;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.237]

County treasurer's certificate, §446.29

420.238 Redemption — terms.

Real property sold under the provisions of this chapter, or by virtue of any power heretofore given, may be redeemed before the time of redemption expires, as hereinafter provided, by payment to the treasurer, collector, or person authorized to receive the same, to be held by the treasurer, collector or other authorized person subject to the order of the purchaser on surrender of the certificate, or in case the same is lost and destroyed, on the purchaser's making affidavit of such fact, and of the further fact that it was not assigned, of the amount for which the same was sold, and ten percent of such amount immediately added as a penalty, with eight percent per annum on the whole amount thus made from the day of sale, and the amount of all taxes, either general or special, with interest and costs, paid at any time by the purchaser or the purchaser's assignee subsequent to the sale, and a similar penalty of ten percent added as before on the amount of the payment made at any subsequent time, with eight percent interest per annum on the whole of such amount or amounts from the day or days of payment; pro-

vided that such penalty for the nonpayment of the taxes at any subsequent time or times shall not attach, unless such subsequent tax or taxes shall have remained unpaid for thirty days after they became delinquent.

[C97, §1018; C24, 27, 31, 35, 39, §**6887;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.238]

420.239 Certificate of redemption.

The treasurer, collector, or person authorized to receive the same, upon application of any party to redeem real property sold as aforesaid, and being satisfied that such person has a right to redeem the same, and on payment of the proper amount, shall issue to such party a certificate of redemption, in substance and form as provided for the redemption of property sold for state and county taxes, which redemption shall thereupon be deemed complete without further proceedings.

[C97, §1018; C24, 27, 31, 35, 39, §**6888;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.239]

95 Acts, ch 91, §1

Tax redemption, chapter 447

420.240 Redemption statutes applicable.

The provisions of sections 447.7 to 447.13 shall, so far as the same shall be applicable, and are not herein changed or modified, apply to sales of real estate for delinquent taxes herein contemplated; but where the words "auditor of the county" or "treasurer" are used in said sections the words "city clerk," "recorder," "auditor," or "person authorized to make out the tax list" and "city collector" or "city treasurer or officer authorized to receive same" shall be substituted.

[C97, §1018; C24, 27, 31, 35, 39, §**6889;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.240]

420.241 Deed — when executed.

Immediately after the expiration of ninety days from the date of service of the notice, as prescribed by sections 447.9 to 448.1, the treasurer, collector, or person authorized to act as collector of taxes, shall make out a deed for each lot or parcel of land sold and remaining unredeemed and deliver the same to the purchaser upon the return of the certificate of purchase.

[C97, §1019; C24, 27, 31, 35, 39, §**6890;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.241]

420.242 Different parcels.

Any number of parcels of real estate bought by one person may be included in one deed, if required by the purchaser.

[C97, §1019; C24, 27, 31, 35, 39, §**6891;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.242]

420.243 Formal execution.

Deeds executed by the city treasurer, collector, or person authorized to act as collector, may be in form substantially as provided by section 448.2, and shall be signed and acknowledged by the treasurer, collector, or other authorized person in the person's official capacity.

[C97, §1019; C24, 27, 31, 35, 39, §**6892;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.243]

420.244 Force and effect.

All deeds and conveyances hereafter made and executed on account of any general or special tax sale shall be of the same force and effect as deeds made by the county treasurer as provided in sections 448.3 to 448.5 for delinquent county taxes.

[C97, §1019; C24, 27, 31, 35, 39, §**6893;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.244]

420.245 Rights and remedies.

The purchaser as well as the owner of any real property sold on account of such general or special delinquent taxes or assessments shall be entitled to all the rights and remedies which are granted and prescribed by sections 446.35, 446.36, and 448.6 to 448.14, but wherever the words "county and county treasurer and auditor" are used, the words "city, city treasurer, city clerk, recorder, auditor, or collector or officer authorized to act as collector," shall be substituted.

[C97, §1019; C24, 27, 31, 35, 39, §**6894;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.245]

420.246 Tax and deed statutes applicable.

Sections 446.16, 446.32, and 448.10 to 448.12 are applicable to cities acting under special charters, except that, where the word *"treasurer"* is used, there shall be substituted the words *"city collector or treasurer or deputy treasurer or deputy or officer authorized to collect city taxes"*; and where the word *"auditor"* is used, there shall be substituted the words *"city clerk or recorder"*.

[C97, §1020; S13, §1020; C24, 27, 31, 35, 39, §**6895;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.246]

83 Acts, ch 101, §85; 91 Acts, ch 191, §17

420.247 Failure to obtain deed — cancellation of sale.

After July 4, 1942, section 446.37 shall apply to cities acting under special charter which collect their own taxes, the terms *"county auditor"* and *"county treasurer"* in said section to be taken, for the purposes of this section, to refer to the persons performing their respective functions in relation to tax sales by such cities.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.247]

420.248 Penalty or interest on unpaid taxes.

Cities which act under special charters and which levy and collect their own taxes shall not collect any further penalty or interest on general

taxes remaining unpaid four years or more after March 31 of the year for which such general taxes are levied.

[S13, §1056-a4; C24, 27, 31, 35, 39, §**6896;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.248]

420.249 Repealed by 51 Acts, ch 165, § 4.

420.250 to 420.285 Repealed by 72 Acts, ch 1088, § 317.

AMENDMENT OF CHARTER

420.286 Procedure.

On the presentation of a petition signed by one-fourth of the electors, as shown by the vote at the next preceding city election, of any city acting under a special charter or act of incorporation, to the governing body thereof, asking that the question of the amendment of such special charter or act of incorporation be submitted to the electors of such city, such governing body shall immediately propose sections amendatory of said charter or act of incorporation, and shall submit the same, as requested, at the first ensuing city election. At least ten days before such election the mayor of such city shall issue a proclamation setting forth the nature and character of such amendment, and shall cause such proclamation to be published in a newspaper published therein, or, if there be none, the mayor shall cause the same to be posted in five public places in such city. On the day specified, the proposition to adopt the amendment shall be submitted to the electors thereof for adoption or rejection, in the manner provided by the general election laws.

[R60, §1141; C73, §548; C97, §1047; C24, 27, 31, 35, 39, §**6933;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.286]

Public measure submitted to voters, §49.43 et seq.

420.287 Proclamation of result.

If a majority of the votes cast be in favor of adopting said amendment, the mayor shall issue a proclamation accordingly; and the amendment shall thereafter constitute a part of said charter.

[R60, §1142; C73, §549; C97, §1048; C24, 27, 31, 35, 39, §**6934;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.287]

420.288 Submission at special election.

The legislative body of said city may submit any amendment to the vote of the people as aforesaid at any special election, provided one-half of the electors as aforesaid petition for that purpose, and the proceedings shall be the same as at the general election.

[R60, §1143; C73, §550; C97, §1049; C24, 27, 31, 35, 39, §**6935;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §420.288]

420.289 to 420.304 Repealed by 72 Acts, ch 1088, § 317.

TITLE X

FINANCIAL RESOURCES

SUBTITLE 1

REVENUES AND FINANCIAL MANAGEMENT

CHAPTER 421

DEPARTMENT OF REVENUE AND FINANCE

Deposit, accounting, and payment of school surtaxes, §298.14

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421.1 State board of tax review.

There is hereby established within the department of revenue and finance for administrative and budgetary purposes a state board of tax review for the state of Iowa. The state board of tax review, hereinafter called the state board, shall consist of three members.

The members of the state board shall be registered voters of the state and shall hold no other elective or appointive public office.

Members of the state board shall serve for six-year staggered terms beginning and ending as provided by section 69.19. A member who is appointed for a six-year term shall not be permitted a successive term.

Members shall be appointed by the governor subject to confirmation by the senate. Appointments to the board shall be bipartisan.

The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. A vacancy on the board shall be filled by appointment by the governor in the same manner as the original appointment.

The members of the state board shall be allowed

their necessary travel and expenses while engaged in their official duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. They shall organize the board and select one of their members as chairperson.

The place of office of the state board shall be in the office of the tax department in the capitol of the state.

The state board shall meet as deemed necessary by the chairperson. Special meetings of the state board may be called by the chairperson on five days' notice given to each member. All meetings shall be held at the office of the tax department unless a different place within the state is designated by the state board or in the notice of the meeting.

It shall be the responsibility of the state board to exercise the following general powers and duties:

1. Determine and adopt such policies as are authorized by law and are necessary for the more efficient operation of any phase of tax review.

2. Perform such duties prescribed by law as it may find necessary for the improvement of the state system of taxation in carrying out the purposes and objectives of the tax laws.

3. Employ, pursuant to the Iowa merit system, adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

4. Advise and counsel with the director of revenue and finance concerning the tax laws and the rules adopted pursuant to the law; and, upon its own motion or upon appeal by any affected taxpayer, review the record evidence and the decisions of, and any orders or directive issued by, the director of revenue and finance for the identification of taxable property, classification of property as real or personal, or for assessment and collection of taxes by the department or an order to reassess or to raise assessments to any local assessor, and shall affirm, modify, reverse, or remand them within sixty days from the date the case is submitted to the board for decision. For an appeal to the board to be valid, written notice must be given to the department within thirty days of the rendering of the decision, order, or directive from which the appeal is taken. The director shall certify to the board the record, documents, reports, audits, and all other information pertinent to the decision, order, or directive from which the appeal is taken.

The affected taxpayer and the department shall be given at least fifteen days' written notice by the board of the date the appeal shall be heard and both parties may be present at such hearing if they desire. The board shall adopt and promulgate, pursuant to chapter 17A, rules for the conduct of appeals by the board. The record and all documents, reports, audits and all other information certified to the board by the director, and hearings held by the board pursuant to the appeal and the decision of the board thereon shall be open to the public notwithstanding the provisions of section 422.72, subsection 1, and section 422.20; except that the board upon the application of the affected taxpayer may order the record and all documents, reports, audits, and all other information certified to it by the director, or so much thereof as it deems necessary, held confidential, if the public disclosure of same would reveal trade secrets or any other confidential information that would give the affected taxpayer's competitor a competitive advantage. Any deliberation of the board in reaching a decision on any appeal shall be confidential.

5. Adopt a long-range program for the state system of tax reform based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the director of revenue and finance.

The state board shall constitute a continuing research commission as to tax matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the legislature for its consideration.

6. All of the provisions of section 422.70 shall also be applicable to the state board of tax review.

[C51, §481, 482; R60, §742; C73, §834; C97, §1378; S13, §1378; C24, 27, 31, 35, 39, §**7140;** C46, 50, 54, 58, §422.15; C62, 66, §441.46; C71, 73, 75, 77, 79, 81, §421.1]

86 Acts, ch 1245, §418; 87 Acts, ch 82, §1; 88 Acts, ch 1251, §1; 95 Acts, ch 49, §12; 99 Acts, ch 151, §1, 89

Confirmation, see §2.32

421.2 Department of revenue and finance.

A department of revenue and finance is created. The department shall be administered by a director of revenue and finance who shall be appointed by the governor subject to confirmation by the senate and shall serve at the pleasure of the governor. If the office of the director becomes vacant, the vacancy shall be filled in the same manner as provided for the original appointment. The director may establish, abolish, and consolidate divisions within the department of revenue and finance when necessary for the efficient performance of the various functions and duties of the department of revenue and finance.

[C31, 35, §6943-c11, -c12, -c15, -c17; C39, §**6943.010, 6943.011, 6943.014, 6943.016;** C46, 50, 54, 58, 62, 66, §421.1, 421.2, 421.5, 421.7; C71, 73, 75, 77, 79, 81, §421.2]

86 Acts, ch 1245, §419

Confirmation, see §2.32

421.3 Director to have no conflicting interests.

The director of revenue and finance shall not hold any other office under the laws of the United

States or of this or any other state or hold any other position of profit. The director shall not engage in any occupation, business, or profession interfering with or inconsistent with the director's duties, serve on or under any committee of any political party, or contribute to the campaign fund of any person or political party. The director shall be of high moral character, shall be recognized for executive and administrative capacity, and shall possess expert knowledge and skills in the fields of taxation and property tax assessment. The director shall devote full time to the duties of the office.

[C31, 35, §6943-c14; C39, §**6943.013;** C46, 50, 54, 58, 62, 66, §421.4; C71, 73, 75, 77, 79, 81, §421.3]

421.4 Deputies.

The director may appoint deputy directors and may designate one or more of the deputies as acting director. A deputy designated to serve in the absence of the director has all of the powers possessed by the director. The director may employ certified public accountants, engineering and technical assistants, and other employees, or independent contractors necessary to protect the interests of the state and any political subdivision.

[C71, 73, 75, 77, 79, 81, §421.4]

86 Acts, ch 1245, §420; 94 Acts, ch 1165, §1; 97 Acts, ch 158, §4

421.5 Settling doubtful claims for taxes.

The director may compromise and settle doubtful and disputed claims for taxes or refunds or tax liability of doubtful collectibility notwithstanding the provisions of section 7D.9. Whenever such a compromise and settlement is made, the director shall make a complete record of the case showing the tax assessed or claimed due, tax refund claimed, recommendations, reports, and audits of departmental personnel if any, the taxpayer's grounds for dispute or contest together with all evidence thereof, and the amounts, conditions, and settlement or compromise of same.

[C71, 73, 75, 77, 79, 81, §421.5]

94 Acts, ch 1165, §2

421.6 Rules — deposit of departmental moneys.

The director shall further prescribe by rule the manner and methods by which all departments and agencies of the state who collect money for and in behalf of the state shall cause the money to be deposited with the treasurer of state or in a depository designated by the state treasurer. All such moneys collected shall be deposited at such times and in such depositories to permit the state of Iowa to deposit the funds in a manner consistent with the state's investment policies. All such moneys shall be promptly deposited, as directed, even though the individual amount remitted may not be correct. If any individual amount remitted is in excess of the amount required, the department or agency receiving the same shall refund the excess amount thereof. If the individual amount remitted is insufficient, the person, firm, or corporation concerned shall be immediately billed for the amount of the deficiency.

[C71, 73, 75, 77, 79, 81, §421.6]

421.7 Interest rate.

1. Except where a different rate of interest is stated in a provision of this title,* the rate of interest on interest-bearing obligations arising under this title shall be the rate of interest in effect under this section.

2. The rate of interest that shall be in effect during a calendar year shall be the rate which is two percentage points greater than the numerical average, rounded to the nearest one percent, of the respective prime rates for each of the months in the twelve-month period that ends September 30 of the previous calendar year. The rate of interest established by this subsection takes effect January 1, and applies to any amount which is due or becomes payable on or after that date.

3. Notwithstanding contrary provisions of subsection 2, the rate of interest that is in effect during a calendar year shall also be the rate of interest to be in effect for the following calendar year, unless the rate of interest as calculated under subsection 2 is at least one percentage point higher or lower than the rate then in effect.

4. In the event interest accrues or is calculated on a monthly basis, the rate of interest for each month shall be one-twelfth, rounded to the nearest one-tenth of one percent, of the rate specified in subsection 2.

5. As used in subsection 3, the term *"prime rate"* means the prime rate charged by banks on short-term business loans, as determined by the board of governors of the federal reserve system and published in the federal reserve bulletin.

6. In October of each year the director shall cause an advisory notice to be published in the Iowa administrative bulletin and in a newspaper of general circulation in this state, stating the rate of interest to be in effect on or after January 1 of the following year, as established by this section. The calculation and publication of the rate of interest by the director is exempt from chapter 17A.

[S13, §1481-a23; C24, 27, 31, §7310, 7368; C35, §6943-f20, -f21, -f24, 7310, 7368; C39, §**6943.056, 6943.057, 6943.060, 7310, 7368;** C46, 50, 54, §422.24, 422.25, 422.28, 450.6, 450.63; C58, 62, §324.64, 422.24, 422.25, 422.28, 450.6, 450.63; C66, §324.64, 422.16(9)(10, b), 422.24, 422.25, 422.28, 422.58, 423.18, 450.6, 450.63; C71, 73, 75, §324.65, 422.16(9)(10, b), 422.24, 422.25, 422.28, 422.58, 423.18, 450.6, 450.63; C77, §324.65, 422.16(9)(10, b)(11, e), 422.24, 422.25, 422.28, 422.58, 423.18, 450.6, 450.63, 450.94; C79, §324.65, 422.16(9)(10, b)(11, e), 422.24, 422.25,

422.28, 422.58, 422.88, 423.18, 435.4, 435.6, 450.6, 450.63, 450.94, 450A.9; C81, §324.65, 422.16(9)(10, b)(11, e), 422.24, 422.25, 422.28, 422.58, 422.88, 422.91, 423.18, 435.4, 435.6, 450.6, 450.63, 450.94, 450A.9; 81 Acts, ch 131, §1]

86 Acts, ch 1007, §16; 90 Acts, ch 1172, §5; 94 Acts, ch 1023, §48

*This provision does not include chapters 421B, 427C, 435, 452A, and 453A, which were moved into this title by the Code editor. Chapters 421B, 427C, 435, 452A, and 453A contain the applicable provisions pertaining to those chapters.

421.8 Penalty for defective return under certain circumstances.

If a person files a purported return of tax which does not contain information on which the substantial correctness of the self-assessment may be judged or which contains information that on its face indicates that the self-assessment is substantially incorrect and the conduct previously referred to in this section is due to a position which is frivolous or a desire which appears on the purported return to delay or impede the administration of the tax laws of this state, then the person shall pay a penalty of five hundred dollars. This penalty shall be in addition to any other penalty provided by law.

86 Acts, ch 1007, §17

421.8A Disputed assessments. Repealed by 90 Acts, ch 1232, § 22.

421.9 Duties and powers — office.

1. The director of revenue and finance or a designated deputy shall sign on behalf of the department all orders, subpoenas, warrants, and other documents of like character issued by the department.

2. The office of the department shall be maintained at the seat of government in this state. The department shall be deemed to be in continuous session and open for the transaction of business except Saturdays, Sundays and legal holidays. The director of revenue and finance may hold sessions in conducting investigations any place within the state when necessary to facilitate and render more thorough the performance of the director's duties.

3. The director may make application to the district court or judicial magistrate in the county where the books, records, or assets are located for an administrative search warrant as authorized by section 808.14, to ensure equitable administration of state tax law, if any of the following occurs:

a. A person refuses to allow the director or the director's authorized representative to audit the person's books or records or to inspect or value the person's assets.

b. The director has good and sufficient reason to believe that a person will not allow the department to audit books or records or inspect or value assets or to believe that the person will destroy books or records or secrete or transfer assets.

Immediately upon issuance of a distress warrant authorized by section 422.26, the director may make application to the district court or judicial magistrate for an administrative search warrant as authorized by section 808.14 to execute the distress warrant.

[C31, 35, §6943-c20, -c21, -c22, -c23; C39, §**6943.019, 6943.020, 6943.021, 6943.022;** C46, 50, 54, 58, 62, 66, §421.10, 421.11, 421.12, 421.13; C71, 73, 75, 77, 79, 81, §421.9]

86 Acts, ch 1245, §421; 90 Acts, ch 1232, §3; 94 Acts, ch 1165, §3

421.10 Appeal period — applicability.

The appeal period for revision of assessment of tax, interest, and penalties set out under section 422.28, 422.54, 437A.9, 437A.22, 452A.64, 453A.29, or 453A.46 applies to appeals to notices from the department denying changes in filing methods, denying refund claims, and denying portions of refund claims for the tax covered by that section, and notices of any department action directed to a specific taxpayer, other than licensing, which involves a calculation.

89 Acts, ch 251, §10; 95 Acts, ch 83, §1; 2000 Acts, ch 1114, §1, 18

421.11 to 421.13 Repealed by 67 Acts, ch 342, § 7.

421.14 Rules — director's duties.

The director shall have power to establish all needful rules not inconsistent with law for the orderly and methodical performance of the director's duties, and to require the observance of such rules by those having business with or appearing before the department.

[C31, 35, §6943-c24; C39, §**6943.023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.14]

421.15 Seal.

The director shall have an official seal, and orders or other papers executed by the director may, under the director's direction, be attested, with the seal affixed, by the secretary.

[C31, 35, §6943-c25; C39, §**6943.024;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.15]

421.16 Expenses.

The director and department employees are entitled to receive from the state their actual necessary expenses while traveling on the business of the department. The expenditures shall be sworn to by the party who incurred the expense, and approved and allowed by the director. However, such expenses shall not be allowed residents of Polk county while in the city of Des Moines or traveling between their homes and the city of Des Moines.

[C31, 35, §6943-c26; C39, §**6943.025;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.16]

88 Acts, ch 1158, §72; 89 Acts, ch 284, §6; 97

Acts, ch 23, §41; 99 Acts, ch 151, §2, 89

421.17 Powers and duties of director.

In addition to the powers and duties transferred to the director of revenue and finance, the director shall have and assume the following powers and duties:

1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards in the performance of their official duties in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied on the property be made relatively just and uniform in substantial compliance with the law.

2. To supervise the activity of all assessors and boards of review in the state of Iowa; to cooperate with them in bringing about a uniform and legal assessment of property as prescribed by law.

The director may order the reassessment of all or part of the property in any assessing jurisdiction in any year. Such reassessment shall be made by the local assessor according to law under the direction of the director and the cost of making the assessment shall be paid in the same manner as the cost of making an original assessment.

The director shall determine the degree of uniformity of valuation as between the various assessing jurisdictions of the state and shall have the authority to employ competent personnel for the purpose of performing this duty.

For the purpose of bringing about uniformity and equalization of assessments throughout the state of Iowa, the director shall prescribe rules relating to the standards of value to be used by assessing authorities in the determination, assessment and equalization of actual value for assessment purposes of all property subject to taxation in the state, and such rules shall be adhered to and followed by all assessing authorities.

3. To prescribe and promulgate all forms of books and forms to be used in the listing and assessment of property, and on or before November 1 of each year shall furnish to the county auditor of each county such prescribed forms of assessment rolls and other forms to properly list and assess all property subject to taxation in each county. The department of revenue and finance shall also from time to time prepare and furnish in like manner forms for any and all other blanks, memoranda or instructions which the director deems necessary or expedient for the use or guidance of any of the officers over which the director is authorized by law to exercise supervision.

4. To confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.

5. To direct proceedings, actions, and prosecutions to be instituted for the enforcement of the laws relating to the penalties, liabilities, and punishment of public officers, and officers or agents of corporations, and other persons or corporations, for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; to make or cause to be made complaints against members of boards of review, boards of supervisors or other assessing, reviewing, or taxing officers for official misconduct or neglect of duty. Employees of the department of revenue and finance shall not during their regular hours of employment engage in the preparation of tax returns, except in connection with a regular audit of a tax return or in connection with assistance requested by the taxpayer.

6. To require city, township, school districts, county, state, or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the department in such form and upon such blanks as the director may prescribe.

The director shall require all city and county assessors to prepare a quarterly report in the manner and form to be prescribed by the director showing for each warranty deed or contract of sale of real estate, divided between rural and urban, during the last completed quarter the amount of real property transfer tax, the sale price or consideration, and the equalized value at which that property was assessed that year. This report with further information required by the director shall be submitted to the department within sixty days after the end of each quarter. The department shall prepare annual summaries of the records of the ratio of assessments to actual sales prices for all counties, and for cities having city assessors, and the information for the preceding year shall be available for public inspection by May 1.

7. To hold public hearings either at the seat of government or elsewhere in the state, and tax the costs thereof; to summon and compel witnesses to appear and give testimony, to administer oaths to said witnesses, and to compel said witnesses to produce for examination records, books, papers, and documents relating to any matter which the director shall have the authority to investigate or determine. Provided, however, that no bank or trust company or its officers or employees shall be required to divulge knowledge concerning the property of any person when such knowledge was obtained through information imparted as a part of a business transaction with or for such person and in the usual and ordinary course of business of said bank or trust company, and was necessary and proper to the discharge of the duty of said bank or trust company in relation to such business transaction. This proviso shall be additional to other provisions of the law relating to confidential and privileged communications.

8. To cause the depositions of witnesses residing within or without the state, or absent there-

from, to be taken either on written or oral interrogatories, and the clerk of the district court of any county shall upon the order of the director issue a commission for the taking of such depositions. The proceedings therefor shall be the same as the proceedings for the taking of depositions in the district court so far as applicable.

9. To investigate the work and methods of boards of review, boards of supervisors, or other public officers, in the assessment, equalization, and taxation of all kinds of property, and for that purpose the director or employees of the department may visit the counties or localities when deemed necessary so to do.

10. To require any board of review at any time after its adjournment to reconvene and to make such orders as the director shall determine are just and necessary; to direct and order any board of review to raise or lower the valuation of the property, real or personal, in any township, city, or taxing district, to order and direct any board of review to raise or lower the valuation of any class or classes of property in any township, city, or taxing district, and generally to make any order or direction to any board of review as to the valuation of any property, or any class of property, in any township, city, county, or taxing district, which in the judgment of the director may seem just and necessary, to the end that all property shall be valued and assessed in the manner and according to the real intent of the law. For the purpose of this paragraph the words *"taxing district"* include drainage districts and levee districts.

The director may correct obvious errors or obvious injustices in the assessment of any individual property, but the director shall not reduce the valuation of any individual property except upon the recommendation of the local board of review and an order of the director affecting any valuation shall not be retroactive as to any reduction or increase in taxes payable prior to January 1 of the year in which that order is issued, or prior to September 1 of the preceding year in cities under special charter which collect their own municipal levies. The director shall not correct errors or injustices under the authority of this paragraph if that correction would involve the exercise of judgment. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

The director may order made effective reassessments or revaluations in any taxing district for any taxing year or years and the director may in any year order uniform increases or decreases in valuation of all property or upon any class of property within any taxing district or any area within such taxing district, such orders to be effective in the year specified by the director. For the purpose of this paragraph the words *"taxing district"* include drainage districts and levee districts.

11. To carefully examine into all cases where evasion or violation of the law for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered, and cause to be instituted such proceedings as will remedy improper or negligent administration of the laws relating to the assessment or taxation of property.

12. To make a summary of the tax situation in the state, setting out the amount of moneys raised by both direct and indirect taxation; and also to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation. To recommend such additions to and changes in the present system of taxation that in the director's judgment are for the best interest of the state and will eliminate the necessity of any levy for state purposes.

13. To transmit biennially to the governor and to each member and member-elect of the legislature, thirty days before the meeting of the legislature, the report of the director, covering the subject of assessment and taxation, the result of the investigation of the director, recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

14. To publish in pamphlet form the revenue laws of the state and distribute them to the county auditors, assessors, and boards of review.

15. The director may establish criteria allowing for the use of electronic filing or the use of alternative filing methods of any return, deposit, or document required to be filed for taxes administered by the department. The director may also establish criteria allowing for payment of taxes, penalty, interest, and fees by electronic funds transfer or other alternative methods.

The director shall adopt rules setting forth procedures for use in electronic filing and electronic funds transfer or other alternative methods and standards that provide for acceptance of a signature in a form other than the handwriting of a person. The rules shall also take into consideration any undue hardship electronic filing or electronic funds transfer or other alternative methods create for filers.

16. To call upon a state agency or institution for technical advice and data which may be of value in connection with the work of the department.

17. Reserved.

18. To prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state. The appraisal manual shall be continuously revised and the manual and revisions shall be issued to the county and city assessors in such form and manner as prescribed by the director.

19. To issue rules as are necessary, subject to the provisions of chapter 17A, to provide for the uniform application of the exemptions provided in section 427.1 in all assessor jurisdictions in the state.

20. To subpoena from property owners and taxpayers any and all records and documents necessary to assist the department in the determination of the fair market value of industrial real estate. The burden of showing reasonable cause to believe that the documents or records sought by the subpoena are necessary to assist the department under this subsection shall be upon the director.

The provisions of sections 17A.10 to 17A.18A relating to contested cases shall not apply to any matters involving the equalization of valuations of classes of property as authorized by this chapter and chapter 441. This exemption shall not apply to a hearing before the state board of tax review.

21. To establish and maintain a procedure to set off against a debtor's income tax refund or rebate any debt, which is assigned to the department of human services, or which the child support recovery unit is otherwise attempting to collect, or which the foster care recovery unit of the department of human services is attempting to collect on behalf of a child receiving foster care provided by the department of human services.

a. This includes any of the following:

(1) Any debt which has accrued through written contract, subrogation, or court judgment and which is in the form of a liquidated sum due and owing for the care, support or maintenance of a child.

(2) Any debt which has accrued through a court judgment which is due and owing as a support obligation for the debtor's spouse or former spouse when enforced in conjunction with a child support obligation.

(3) Any debt which is owed to the state for public assistance overpayments to recipients or to providers of services to recipients which the investigations division of the department of inspections and appeals is attempting to collect on behalf of the state. For purposes of this subsection, *"public assistance"* means assistance under the family investment program, medical assistance, food stamps, foster care, and state supplementary assistance.

b. The procedure shall meet the following conditions:

(1) Before setoff all outstanding tax liabilities collectible by the department of revenue and finance shall be satisfied except that no portion of a refund or rebate shall be credited against tax liabilities which are not yet due.

(2) Before setoff the child support recovery unit established pursuant to section 252B.2, the foster care recovery unit and the investigations division of the department of inspections and appeals shall obtain and forward to the department of revenue and finance the full name and social security number of the debtor. The department of revenue and finance shall cooperate in the exchange of relevant information with the child support recovery unit as provided in section 252B.9, with the foster care recovery unit, and with the investigations division of the department of inspections and appeals. However, only relevant information required by the child support unit, by the foster care recovery unit, or by the investigations division of the department of inspections and appeals shall be provided by the department of revenue and finance. The information shall be held in confidence and shall be used for purposes of setoff only.

(3) The child support recovery unit, the foster care recovery unit, and the investigations division of the department of inspections and appeals shall, at least annually, submit to the department of revenue and finance for setoff the debts described in this subsection, constituting a minimum amount determined by rule of the department of revenue and finance, on a date to be specified by the department of human services and the department of inspections and appeals by rule.

(4) Upon submission of a claim the department of revenue and finance shall notify the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals as to whether the debtor is entitled to a refund or rebate and if so entitled shall notify the unit or division of the amount of the refund or rebate and of the debtor's address on the income tax return.

(5) Upon notice of entitlement to a refund or rebate the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals shall send written notification to the debtor, and a copy of the notice to the department of revenue and finance, of the unit's or division's assertion of its rights, or the rights of the department of human services, or the rights of an individual not eligible as a public assistance recipient to all or a portion of the debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, the debtor's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application filed with the department of human services within fifteen days from the mailing of the notice of entitlement to a refund or rebate, the department of human services shall grant a hearing pursuant to chapters 10A and 17A. An appeal taken from the decision of an administrative law judge and subsequent appeals shall be taken pursuant to chapter 17A.

(6) Upon the request of a debtor or a debtor's spouse to the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals, filed within fifteen days from the mailing of the no-

tice of entitlement to a refund or rebate, and upon receipt of the full name and social security number of the debtor's spouse, the unit or division shall notify the department of revenue and finance of the request to divide a joint income tax refund or rebate. The department of revenue and finance shall upon receipt of the notice divide a joint income tax refund or rebate between the debtor and the debtor's spouse in proportion to each spouse's net income as determined under section 422.7.

(7) The department of revenue and finance shall, after notice has been sent to the debtor by the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals, set off the debt against the debtor's income tax refund or rebate. However, if a debtor has made all current child support or foster care payments in accordance with a court order or an assessment of foster care liability for the twelve months preceding the proposed setoff and has regularly made delinquent child support or foster care payments during those twelve months, the child support or foster care recovery unit shall notify the department of revenue and finance not to set off the debt against the debtor's income tax refund or rebate. If a debtor has made all current repayment of public assistance in accordance with a court order or voluntary repayment agreement for the twelve months preceding the proposed setoff and has regularly made delinquent payments during those twelve months, the investigations division of the department of inspections and appeals shall notify the department of revenue and finance not to set off the debt against the debtor's income tax refund or rebate. The department of revenue and finance shall refund any balance of the income tax refund or rebate to the debtor. The department of revenue and finance shall periodically transfer the amount set off to the child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals. If the debtor gives timely written notice of intent to contest the claim the department of revenue and finance shall hold the refund or rebate until final disposition of the contested claim pursuant to chapter 17A or by court judgment. The child support recovery unit, the foster care recovery unit, or the investigations division of the department of inspections and appeals shall notify the debtor in writing upon completion of setoff.

21A. To cooperate with the child support recovery unit created in chapter 252B to establish and maintain a process to implement the provisions of section 252B.5, subsection 8. The department of revenue and finance shall forward to individuals meeting the criteria under section 252B.5, subsection 8, paragraph *"a"*, a notice by first-class mail that the individual is obligated to file a state estimated tax form and to remit a separate child support payment.

a. Individuals notified shall submit a state estimated tax form on a quarterly basis.

b. The individual shall pay monthly, the lesser of the total delinquency or one hundred fifty percent of the current or most recent monthly obligation.

c. The individual shall remit the payment to the department of revenue and finance separate from any tax liability payments, identify the payment as a support payment, and make the payment payable to the collection services center. The department shall forward all payments received pursuant to this section to the collection services center established pursuant to chapter 252B, for processing and disbursement. The department of revenue and finance may establish a process for the child support recovery unit or collection services center to directly receive the payments. For purposes of crediting the support payments pursuant to sections 252B.14 and 598.22, payments received by the department of revenue and finance and forwarded to the collection services center shall be credited as if received directly by the collection services center.

d. The notice shall provide that, as an alternative to the provisions of paragraph *"b"*, the individual may contact the child support recovery unit to formalize a repayment plan and obtain an exemption from the quarterly filing requirement when payments are made pursuant to the repayment plan or to contest the balance due listed in the notice.

e. The department of revenue and finance, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

21B. To provide information contained in state individual tax returns to the child support recovery unit for the purposes of establishment or enforcement of support obligations. The department of revenue and finance and child support recovery unit may exchange information in a manual or automated fashion. The department of revenue and finance, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

22. To employ collection agencies, within or without the state, to collect delinquent taxes, including penalties and interest, administered by the department or delinquent accounts, charges, loans, fees or other indebtedness due the state or any state agency, that have formal agreements with the department for central debt collection where the director finds that departmental personnel are unable to collect the delinquent accounts, charges, loans, fees, or other indebtedness because of a debtor's location outside the state or for any other reason. Fees for services, reimbursement, or other remuneration, including attorney fees, paid to collection agencies shall be based upon the amount of tax, penalty, and interest or debt actually collected and shall be paid only after the amount of tax, penalty, and interest or debt is

collected. All funds collected must be remitted in full to the department within thirty days from the date of collection from a debtor or in a lesser time as the director prescribes. The funds shall be applied toward the debtor's account and handled as are funds received by other means. An amount is appropriated from the amount of tax, penalty, and interest, delinquent accounts, charges, loans, fees, or other indebtedness actually collected by the collection agency sufficient to pay all fees for services, reimbursement, or other remuneration pursuant to a contract with a collection agency under this subsection. A collection agency entering into a contract with the department for the collection of delinquent taxes, penalties, and interests, delinquent accounts, charges, loans, fees, or other indebtedness pursuant to this subsection is subject to the requirements and penalties of the confidentiality laws of this state regarding tax or indebtedness information.

22A. To develop, modify, or contract with vendors to create or administer systems or programs which identify nonfilers of returns or nonpayers of taxes administered by the department. Fees for services, reimbursements, costs incurred by the department, or other remuneration may be funded from the amount of tax, penalty, or interest actually collected and shall be paid only after the amount is collected. An amount is appropriated from the amount of tax, penalty, and interest actually collected, not to exceed the amount collected, which is sufficient to pay for services, reimbursement, costs incurred by the department, or other remuneration pursuant to this subsection. Vendors entering into a contract with the department pursuant to this subsection are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information. The director shall report annually to the legislative fiscal bureau and the chairpersons and ranking members of the ways and means committees on the amount of costs incurred and paid during the previous fiscal year pursuant to this subsection.

22B. Enter into agreements or compacts with remote sellers, retailers, or third-party providers for the voluntary collection of Iowa sales or use taxes attributable to sales into Iowa and to enter into multistate agreements or compacts that provide for the voluntary collection of sales and use taxes. The agreements or compacts shall generally conform to the provisions of Iowa sales and use tax statutes. All fees for services, reimbursements, remuneration, incentives, and costs incurred by the department associated with these agreements or compacts may be paid or reimbursed from the additional revenue generated. An amount is appropriated from amounts generated to pay or reimburse all costs associated with this subsection. Persons entering into an agreement or compact with the department pursuant to this subsection are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information. Notwithstanding any other provisions of law, the contract, agreement, or compact shall provide for the registration, collection, report, and verification of amounts subject to this subsection.

23. To establish and maintain a procedure to set off against a defaulter's income tax refund or rebate the amount that is due because of a default on a guaranteed student or parental loan under chapter 261. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department of revenue and finance shall be satisfied except that a refund or rebate shall not be credited against tax liabilities which are not yet due.

b. Before setoff the college student aid commission shall obtain and forward to the department of revenue and finance the full name and social security number of the defaulter. The department of revenue and finance shall cooperate in the exchange of relevant information with the college student aid commission.

c. The college student aid commission shall, at least annually, submit to the department of revenue and finance for setoff the guaranteed student loan defaults, constituting a minimum amount set by rule of the department of revenue and finance, on a date or dates to be specified by the college student aid commission by rule.

d. Upon submission of a claim, the department of revenue and finance shall notify the college student aid commission whether the defaulter is entitled to a refund or rebate of the minimum amount set by rule of the department and if so entitled shall notify the commission of the amount of the refund or rebate and of the defaulter's address on the income tax return. Section 422.72, subsection 1, does not apply to this paragraph.

e. Upon notice of entitlement to a refund or rebate, the college student aid commission shall send written notification to the defaulter, and a copy of the notice to the department of revenue and finance, of the commission's assertion of its rights to all or a portion of the defaulter's refund or rebate and the entitlement to recover the amount of the default through the setoff procedure, the basis of the assertion, the defaulter's opportunity to request that a joint income tax refund or rebate be divided between spouses, the defaulter's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing before a specified date will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application, the commission shall grant a hearing pursuant to chapter 17A. An appeal taken from the decision of an administrative law judge and any subsequent appeals shall be taken pursuant to chapter 17A.

f. Upon the timely request of a defaulter or a defaulter's spouse to the college student aid com-

mission and upon receipt of the full name and social security number of the defaulter's spouse, the commission shall notify the department of revenue and finance of the request to divide a joint income tax refund or rebate. The department of revenue and finance shall upon receipt of the notice divide a joint income tax refund or rebate between the defaulter and the defaulter's spouse in proportion to each spouse's net income as determined under section 422.7.

g. The department of revenue and finance shall, after notice has been sent to the defaulter by the college student aid commission, set off the amount of the default against the defaulter's income tax refund or rebate constituting a minimum amount set by rule of the department. The department shall refund any balance of the income tax refund or rebate to the defaulter. The department of revenue and finance shall periodically transfer the amount set off to the college student aid commission. If the defaulter gives written notice of intent to contest the claim, the commission shall hold the refund or rebate until final disposition of the contested claim pursuant to chapter 17A or by court judgment. The commission shall notify the defaulter in writing upon completion of setoff.

24. To enter into reciprocal agreements with the departments of revenue of other states that have enacted legislation, that is substantially equivalent to the setoff procedure in subsection 23. A reciprocal agreement shall also be approved by the college student aid commission. The agreement shall authorize the department to provide by rule for the setoff of state income tax refunds or rebates of defaulters from states with which Iowa has a reciprocal agreement and to provide for sending lists of names of Iowa defaulters to the states with which Iowa has a reciprocal agreement for setoff of that state's income tax refunds.

25. To establish and maintain a procedure to set off against a debtor's income tax refund or rebate any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of the district court. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department shall be satisfied except that no portion of a refund or rebate shall be credited against tax liabilities which are not yet due.

b. Before setoff the clerk of the district court shall obtain and forward to the department the full name and social security number of the debtor. The department shall cooperate in the exchange of relevant information with the clerk of the district court. However, only relevant information required by the clerk of the district court shall be provided by the department. The information shall be held in confidence and shall be used for purposes of setoff only.

c. The clerk of the district court, on the first day of February and August of each calendar year, shall submit to the department for setoff the debts described in this subsection, constituting a minimum amount set by rule of the department.

d. Upon submission of a claim the department shall send written notification to the debtor of the clerk of the district court's assertion of rights to all or a portion of the debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, and the debtor's opportunity to give written notice of intent to contest the amount of the claim.

e. Upon the request of a debtor or a debtor's spouse to the department, filed within fifteen days from the mailing of the notice of entitlement to a refund or rebate, and upon receipt of the full name and social security number of the debtor's spouse, the department shall divide a joint income tax refund or rebate between the debtor and the debtor's spouse in proportion to each spouse's net income as determined under section 422.7.

f. The department shall set off the debt, plus a fee established by rule to reflect the cost of processing, against the debtor's income tax refund or rebate. The department shall transfer ninety percent of the amount set off to the treasurer of state for deposit in the general fund of the state. The remaining ten percent shall be remitted to the judicial branch and used to defray the costs of this procedure. If the debtor gives timely written notice of intent to contest the amount of the claim, the department shall hold the refund or rebate until final determination of the correct amount of the claim.

g. The department shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. The clerk shall record the notice and enter a satisfaction for the amounts collected.

26. To provide that in the case of multiple claims to payments filed under subsections 21, 23, 25, and 29 that priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit under subsection 21, next priority shall be given to claims filed by the college student aid commission under subsection 23, next priority shall be given to claims filed by the investigations division of the department of inspections and appeals under subsection 21, next priority shall be given to claims filed by a clerk of the district court under subsection 25, and last priority shall be given to claims filed by other state agencies under subsection 29. In the case of multiple claims under subsection 29, priority shall be determined in accordance with rules to be established by the director.

27. Administer chapter 99E.

28. Assume the accounting functions of the state comptroller's office.

29. To establish and maintain a procedure to

set off against any claim owed to a person by a state agency any liability of that person owed to a state agency or a support debt being enforced by the child support recovery unit pursuant to chapter 252B, except the setoff procedures provided for in subsections 21, 23, and 25. The procedure shall only apply when at the discretion of the director it is feasible. The procedure shall meet the following conditions:

a. For purposes of this subsection unless the context requires otherwise:

(1) *"State agency"* means a board, commission, department, including the department of revenue and finance, or other administrative office or unit of the state of Iowa or any other state entity reported in the Iowa comprehensive annual financial report. The term *"state agency"* does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.

(2) *"Department"* means the department of revenue and finance and any other state agency that maintains a separate accounting system and elects to establish a debt collection setoff procedure for collection of debts owed to the state or its agencies.

(3) The term *"person"* does not include a state agency.

b. Before setoff, a person's liability to a state agency and the person's claim on a state agency shall be in the form of a liquidated sum due, owing, and payable.

c. Before setoff, the state agency shall obtain and forward to the department the full name and social security number of the person liable to it or to whom a claim is owing who is a natural person. If the person is not a natural person, before setoff, the state agency shall forward to the department the information concerning the person as the department shall, by rule, require. The department shall cooperate with other state agencies in the exchange of information relevant to the identification of persons liable to or claimants of state agencies. However, the department shall provide only relevant information required by a state agency. The information shall be held in confidence and used for the purpose of setoff only. Section 422.72, subsection 1, does not apply to this paragraph.

d. Before setoff, a state agency shall, at least annually, submit to the department the information required by paragraph *"c"* along with the amount of each person's liability to and the amount of each claim on the state agency. The department may, by rule, require more frequent submissions.

e. Before setoff, the amount of a person's claim on a state agency and the amount of a person's liability to a state agency shall constitute a minimum amount set by rule of the department.

f. Upon submission of an allegation of liability by a state agency, the department shall notify the state agency whether the person allegedly liable is entitled to payment from a state agency, and, if so entitled, shall notify the state agency of the amount of the person's entitlement and of the person's last address known to the department. Section 422.72, subsection 1, does not apply to this paragraph.

g. Upon notice of entitlement to a payment, the state agency shall send written notification to that person of the state agency's assertion of its rights to all or a portion of the payment and of the state agency's entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or commonly owned right to payment be divided among owners, and the person's opportunity to give written notice of intent to contest the amount of the allegation. The state agency shall send a copy of the notice to the department. A state agency subject to chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with chapter 17A.

However, upon submission of an allegation of the liability of a person which is owing and payable to the clerk of the district court and upon the determination by the department that the person allegedly liable is entitled to payment from a state agency, the department shall send written notification to the person which states the assertion by the clerk of the district court of rights to all or a portion of the payment, the clerk's entitlement to recover the liability through the setoff procedure, the basis of the assertions, the person's opportunity to request within fifteen days of the mailing of the notice that the department divide a jointly or commonly owned right to payment between owners, the opportunity to contest the liability to the clerk by written application to the clerk within fifteen days of the mailing of the notice, and the person's opportunity to contest the department's setoff procedure.

h. Upon the timely request of a person liable to a state agency or of the spouse of that person and upon receipt of the full name and social security number of the person's spouse, a state agency shall notify the department of the request to divide a jointly or commonly owned right to payment. Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

i. The department shall, after the state agency has sent notice to the person liable or, if the liability is owing and payable to the clerk of the district court, the department has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The department shall refund any balance of the amount to the person. The department shall periodically transfer amounts set off to the state agencies entitled to them. If a person liable to a state agency gives written notice of intent to contest an allegation, a state agency shall hold a refund or rebate until final disposition of the al-

legation. Upon completion of the setoff, a state agency shall notify in writing the person who was liable or, if the liability is owing and payable to the clerk of the district court, shall comply with the procedures as provided in paragraph *"k"*.

j. The department's existing right to credit against tax due or to become due under section 422.73 is not to be impaired by a right granted to or a duty imposed upon the department or other state agency by this subsection. This subsection is not intended to impose upon the department any additional requirement of notice, hearing, or appeal concerning the right to credit against tax due under section 422.73.

k. If the alleged liability is owing and payable to the clerk of the district court and setoff as provided in this subsection is sought, all of the following shall apply:

(1) The judicial branch shall prescribe procedures to permit a person to contest the amount of the person's liability to the clerk of the district court.

(2) The department shall, except for the procedures described in subparagraph (1), prescribe any other applicable procedures concerning setoff as provided in this subsection.

(3) Upon completion of the setoff, the department shall file, at least monthly, with the clerk of the district court a notice of satisfaction of each obligation to the full extent of all moneys collected in satisfaction of the obligation. The clerk shall record the notice and enter a satisfaction for the amounts collected and no separate written notice is required.

30. Under substantive rules established by the director, the department shall seek reimbursement from other state agencies to recover its costs for setting off liabilities.

31. At the director's discretion, accept payment of taxes, penalties, interest, and fees, or any portion thereof, by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

32. To ensure that persons employed under contract, other than officers or employees of the state, who provide assistance in administration of tax laws and who are directly under contract or who are involved in any way with work under the contract and who have access to confidential information are subject to applicable requirements and penalties of tax information confidentiality laws of the state regarding all tax return, return information, or investigative or audit information that may be required to be divulged in order to carry out the duties specified under the contract.

33. *a.* To develop and administer an indirect cost allocation system for state agencies. The system shall be based upon standard cost accounting methodologies and shall be used to allocate both direct and indirect costs of state agencies or state agency functions in providing centralized services to other state agencies. A cost that is allocated to a state agency pursuant to this system shall be billed to the state agency and the cost is payable to the general fund of the state. The source of payment for the billed cost shall be any revenue source except for the general fund of the state. If a state agency is authorized by law to bill and recover direct expenses, the state agency shall recover indirect costs in the same manner.

b. For the purposes of this subsection, *"state agency"* means a board, commission, department, including the department of revenue and finance, or other administrative office, institution, bureau, or unit of the state of Iowa. The term *"state agency"* does not include the general assembly, the governor, the courts, or any political subdivision of the state, or its offices and units.

34. *a.* To establish, administer, and make available a centralized debt collection capability and procedure for the use by any state agency as defined in subsection 29 to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state. The department's collection facilities shall only be available for use by other state agencies for their discretionary use when resources are available to the director and subject to the director's determination that use of the procedure is feasible. The director shall prescribe the appropriate form and manner in which this information is to be submitted to the office of the department. The obligations or indebtedness must be delinquent and not subject to litigation, claim, appeal, or review pursuant to the appropriate remedies of each state agency.

b. The director shall establish, as provided in this section, a centralized computer data bank to compile the information provided and shall establish in the centralized data bank all information provided from all sources within the state concerning addresses, financial records, and other information useful in assisting the department in collection services.

c. The director shall establish a formal debt collection policy for use by state agencies which have not established their own policy. Other state agencies may use the collection facilities of the department pursuant to formal agreement with the department. The agreement shall provide that the information provided to the department shall be sufficient to establish the obligation in a court of law and to render it as a legal judgment on behalf of the state. After transferring the file to the department for collection, an individual state agency shall terminate all collection procedures and be available to provide assistance to the department. Upon receipt of the file, the department shall assume all liability for its actions without recourse to the agency, and shall comply with all applicable state and federal laws governing collec-

tion of the debt. The department may use a participating agency's statutory collection authority to collect the participating agency's delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state. The department has the powers granted in this section regarding setoff from income tax refunds or other accounts payable by the state for any of the obligations transferred by state agencies.

d. The department's existing right to credit against tax due shall not be impaired by any right granted to, or duty imposed upon, the department or other state agency by this section.

e. All state agencies shall be given access, at the discretion of the director, to the centralized computer data bank and, notwithstanding any other provision of law to the contrary, may deny, revoke, or suspend any license or deny any renewal authorized by the laws of this state to any person who has defaulted on an obligation owed to or collected by the state. The confidentiality provisions of sections 422.20 and 422.72 do not apply to tax information contained in the centralized computer data bank. State agencies shall endeavor to obtain the applicant's social security or federal tax identification number, or state driver's license number from all applicants.

f. At the director's discretion, the department may accept payment of debts, interest, and fees, or any portion by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charge by the credit card issuer.

g. The director shall adopt administrative rules to implement this section, including, but not limited to, rules necessary to prevent conflict with federal laws and regulations or the loss of federal funds, to establish procedures necessary to guarantee due process of law, and to provide for reimbursement of the department by other state agencies for the department's costs related to debt collection.

h. The director shall report quarterly to the legislative fiscal committee, the legislative fiscal bureau, and the chairpersons and ranking members of the joint administration appropriations subcommittee concerning the implementation of the centralized debt collection program, the number of departmental collection programs initiated, the amount of debts collected, and an estimate of future costs and benefits which may be associated with the collection program. It is the intent of the general assembly that the centralized debt collection program will result in the collection of at least two dollars of indebtedness for every dollar expended in administering the collection program during a fiscal year. It is also the intent of the general assembly that the centralized debt collection program be administered without the anticipation of future additional commitments of computer equipment and personnel.

i. The director may distribute to credit reporting entities and for publication the names, addresses, and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in this subsection. The director shall adopt rules to administer this paragraph, and the rules shall provide guidelines by which the director shall determine which names, addresses, and amounts of indebtedness may be distributed for publication. The director may distribute information for publication pursuant to this paragraph, notwithstanding sections 422.20, 422.72, and 423.23, or any other provision of state law to the contrary pertaining to confidentiality of information.

[C97, §1010, 1011; C24, 27, §6868, 6869; C31, 35, §6868, 6869, 6943-c27; C39, §**6868, 6869, 6943.026;** C46, §420.209, 420.210, 421.17; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.17; 82 Acts, ch 1057, §2 – 4, ch 1216, §1]

83 Acts, ch 96, §157, 159, 160; 83 Acts, ch 153, §20, 21; 85 Acts, ch 197, §8, 9; 86 Acts, ch 1091, §4; 86 Acts, ch 1237, §24; 86 Acts, ch 1245, §422; 87 Acts, ch 199, §4, 5; 88 Acts, ch 1109, §25, 26; 89 Acts, ch 250, §2, 3; 90 Acts, ch 1232, §4; 90 Acts, ch 1253, §122; 91 Acts, ch 159, §3; 91 Acts, ch 268, §127; 92 Acts, ch 1195, §208, 507; 92 Acts, ch 1242, §32, 33; 92 Acts, ch 1243, §31; 93 Acts, ch 79, §34; 93 Acts, ch 97, §40; 93 Acts, ch 110, §5, 6; 94 Acts, ch 1107, §22 – 24; 94 Acts, ch 1142, §1; 94 Acts, ch 1165, §4 – 6; 94 Acts, ch 1171, §39; 95 Acts, ch 169, §4, 5; 95 Acts, ch 194, §7 – 9; 96 Acts, ch 1167, §1; 97 Acts, ch 153, §3; 97 Acts, ch 158, §5 – 9; 97 Acts, ch 175, §231; 98 Acts, ch 1047, §30, 68; 98 Acts, ch 1115, §4 – 6; 98 Acts, ch 1202, §41, 46; 99 Acts, ch 152, §1, 40; 2000 Acts, ch 1195, §1, 7; 2001 Acts, ch 116, §3, 4

Subsection 22B is effective May 16, 2000, and applies retroactively to March 15, 1995; 2000 Acts, ch 1195, §7

421.17A Administrative levy against accounts.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. *"Account"* means "account" as defined in section 524.103, "share account or shares" as defined in section 534.102, or the savings or deposits of a member received or being held by a credit union, or certificates of deposit. *"Account"* also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102. However, *"account"* does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

b. *"Bank"* means "bank", "insured bank", and "state bank" as these are defined in section 524.103.

c. *"Credit union"* means "credit union" as defined in section 533.51.

d. *"Facility"* means the centralized debt collec-

tion facility of the department of revenue and finance established pursuant to section 421.17, subsection 34.

e. "Financial institution" includes a bank, credit union, or savings and loan association. *"Financial institution"* also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in section 502.102.

f. "Obligor" means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

g. "Savings and loan association" means "association" as defined in section 534.102.

h. "Working days" means Monday through Friday, excluding the holidays specified in section 1C.2, subsections 1 through 9.

2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for the execution, attachment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or being collected by the state provided that any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section.

b. An obligor is subject to this section if the obligor's debt is being collected by the facility.

c. Any amount forwarded by a financial institution under this section shall not exceed the delinquent or accrued amount of the obligor's debt being collected by the state.

3. *Initial notice to obligor.* The facility may proceed under this section only if notice has been provided to the obligor by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. The facility shall give twenty days' notice of its intention to use the levy process. The twenty-day notice period shall not be required if the facility determines that the collection of past due amounts would be jeopardized.

4. *Verification of accounts and immunity from liability.*

a. The facility may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for the account, and the account balance of an account held by an obligor. Contact with a financial institution may be by telephone or by written communication. The financial institution may require positive voice recognition and may require the telephone number of the authorized person from the facility before releasing an obligor's account information by telephone.

b. The financial institution is immune from any civil or criminal liability which might otherwise be incurred or imposed for information released by the financial institution to the facility pursuant to this section.

c. The financial institution or the facility is not liable for the cost of any early withdrawal penalty of an obligor's certificate of deposit.

5. *Administrative levy — notice to financial institution.*

a. If an obligor is subject to this section, the facility may initiate an administrative action to levy against an account of the obligor.

b. The facility shall send a notice to the financial institution with which the account is placed, directing that the financial institution forward all or a portion of the moneys in the obligor's account to the facility.

c. The notice to the financial institution shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frame which the financial institution must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) A telephone number, address, and contact name of the facility initiating the action.

6. *Administrative levy — notice to obligor and other account holders.*

a. The facility may administratively initiate an action to seize one or more accounts of an obligor who is subject to this section and section 421.17, subsection 34.

b. The facility shall notify an obligor subject to this section. The notice shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frames the financial institution must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by

the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) A telephone number, address, and contact name of the facility initiating the action.

c. The facility shall forward the notice to the obligor by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph *"b"*.

d. The facility shall notify any party known to have an interest in the account. The notice shall contain all of the following:

(1) The name of the obligor.

(2) The name of the financial institution.

(3) A statement that the account in which the party is known to have an interest is subject to seizure.

(4) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the party known to have an interest.

(5) The address of the facility and the name of the obligor who also has an interest in the account.

(6) A telephone number, address, and contact name of the facility initiating the action.

e. The facility shall forward the notice to the party known to have an interest by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph *"b"*.

7. *Responsibilities of financial institution.* Upon receipt of a notice under subsection 5, paragraph *"b"*, the financial institution shall do all of the following:

a. Immediately encumber funds in any account in which the obligor has an interest to the extent of the debt indicated in the notice from the facility.

b. No sooner than fifteen days, and no later than twenty days from the date the financial institution receives the notice under subsection 5, paragraph *"b"*, unless notified by the facility of a challenge by the obligor or an account holder of interest, forward the moneys encumbered to the facility with the obligor's name and social security number, the facility's account number for the obligor, and any other information required in the notice.

c. The financial institution may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the state by the obligor. If insufficient moneys are available in the debtor's account to cover the fee and the amount in the notice, the institution may deduct the fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the state shall be reduced by the fee amount.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor or by an account holder of interest. Reviews by the facility under this section are not subject to chapter 17A.

b. The person challenging the action shall submit a written challenge to the person identified as the contact for the facility in the notice, within ten days of the date of the notice.

c. The facility, upon receipt of a written challenge, shall review the facts of the case with the challenging party within ten days of receipt of the challenge. If the challenging party is not available for the review on the scheduled date, the review shall take place without the challenging party being present. Information in favor of the challenging party shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the state shall be considered as a reason to dismiss or modify the action.

d. If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued amount being collected by or owed to the state, the facility shall notify the financial institution that the administrative levy has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the state is less than the amount indicated in the notice, the facility shall provide a notice to the financial institution of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the financial institution shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative levy.

e. If the facility finds no mistake of fact, the facility shall provide a notice to that effect to the challenging party by regular mail and notify the financial institution to forward the moneys pursuant to the administrative levy.

f. The challenging party shall have the right to file an action for wrongful levy in district court within thirty days of the date of the notice in paragraph *"e"*, either in the county where the obligor or the party known to have an interest in the account resides or in Polk county where the facility is located.

95 Acts, ch 194, §10, 12; 96 Acts, ch 1034, §34; 96 Acts, ch 1079, §11

See also chapter 252I pertaining to collection of child support payments

421.17B Administrative wage assignment cooperative agreement.

1. *Definitions.* As used in this section, unless

the context otherwise requires:

a. *"Employer"* means any person or entity that pays an obligor to do a specific task. *"Employer"* only includes such a person or entity in an employer-employee relationship and does not include an obligor acting as a contractor, distributor, agent, or in any representative capacity in which the obligor receives any form of consideration.

b. *"Employment"* means the performance of personal services for another. *"Employment"* only includes parties in an employer-employee relationship and does not include one acting as a self-employer, contractor, distributor, agent, or in any representative capacity.

c. *"Facility"* means the centralized debt collection facility of the department of revenue and finance established pursuant to section 421.17, subsection 34.

d. *"Obligor"* means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

e. *"Wage"* means any form of compensation due to an obligor. *"Wage"* includes, but is not limited to, wages, salary, bonus, commission, or other payment directly or indirectly related to employment. If a wage is assigned to the facility, wage only includes a payment in the form of money.

2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for the execution, attachment, garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the facility or being collected by the facility provided all administrative remedies have been waived or exhausted by the obligor. Any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section.

Administrative wage assignment under this section is the equivalent of condemning funds under chapter 642.

The administrative wage assignment is to be considered an additional means of collection by the facility and not an exclusive means of collection. If the use of an administrative wage assignment is not successful in collecting an outstanding debt due the facility, the facility may use the collection provisions set forth in chapters 626 and 642.

b. An obligor is subject to this section if the obligor's debt is being collected by the facility.

c. Any amount forwarded to the facility by an employer under this section shall not exceed the delinquent or accrued amount of the obligor's debt being collected by the facility.

3. *Notice to the obligor.*

a. The facility may proceed under this section only if a ten-day notice has been provided to the obligor. Notice by the facility may be by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. If the facility determines that collection of the debt may be in jeopardy, the facility may request that the employer deliver notice of the wage assignment simultaneous with the remainder of or in lieu of the obligor's compensation due from the employer.

The facility may obtain one or more wage assignments of an obligor who is subject to this section. If the obligor has more than one employer, the facility may receive wage assignments from one or all of the employers until the full debt obligation of the obligor is satisfied. If an obligor has more than one employer, the facility shall give notice to all employers that the facility seeks to have an assignment of wages.

b. The notice from the facility to the obligor shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have employment with the stated employer.

(3) A statement that pursuant to the provisions of this section, the obligor's wages will be assigned to the facility for payment of the specified debts and that the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frames the employer must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) A telephone number, address, and contact name of the facility initiating the action.

4. *Verification of employment and immunity from liability.*

a. The facility may contact an employer to obtain verification of employment, and any specific information from the employer that the facility needs to initiate, effectuate, or maintain collection of the obligation. Contact with an employer may be by telephone, fax, or by written communication. The employer may require proof of authority from the person from the facility and the telephone number of the authorized person from the facility before releasing an obligor's employment information by telephone.

b. The employer is immune from any civil or criminal liability for information released by the employer to the facility pursuant to this section.

5. *Costs.* The facility is not liable for any costs incurred or imposed for initiating, effectuating, or maintaining an administrative wage assignment under this section. Such costs will be the sole responsibility of the obligor and will be added

to the amount to be collected by the facility.

6. *Administrative wage assignment — notice to the employer.*

a. If an obligor is subject to this section, the facility may initiate an administrative wage assignment to have compensation due the obligor to be assigned by the employer to the facility up to the amount of the full debt to be collected by the facility.

b. The facility shall send a notice to the employer within fourteen days of sending notice of the wage assignment to the obligor. The notice shall inform the employer of the amount to be assigned to the facility from each wage, salary, or payment period that is due the obligor. The facility may receive assignment of up to one hundred percent of the obligor's disposable income, salary, or payment for any given period until the full obligation to the facility is paid in full.

c. The notice to the employer shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to be employed by the employer.

(3) A statement that pursuant to the provisions of this section, the obligor's wages are subject to assignment and the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frame the employer must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) A telephone number, address, and name of a contact person with the facility.

7. *Responsibilities of employer.* Upon receipt of the notice of wage assignment from the facility, the employer shall do all of the following:

a. Immediately give effect to the wage assignment and hold compensation which the obligor has owing to the extent of the debt indicated in the notice from the facility.

b. No sooner than ten days, and no later than twenty days from the date the employer receives the notice of wage assignment, unless notified by the facility of a challenge of the wage assignment by the obligor, the employer shall begin forwarding the obligor's compensation, to the extent required in the notice, to the facility with the obligor's name and social security number, the facility's account number for the obligor, and any other information required in the notice.

c. The employer may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the facility from the obligor. If insufficient moneys are available from the obligor's compensation to cover the fee and the amount in the notice, the employer may deduct the fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the facility shall be reduced by the fee amount. However, if the employer can present evidence to the facility that the employer's costs were in excess of twenty-five dollars and that such costs were necessary and reasonable, then the employer may impose a fee in excess of the twenty-five dollar fee limit.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor. An administrative wage assignment only occurs after the obligor has waived or exhausted administrative remedies. Reviews by the facility of a challenge to an administrative wage assignment are not subject to chapter 17A unless the challenge is regarding the validity of the assignment. Actions under this section are in equity and not actions at law.

b. The obligor challenging the administrative wage assignment shall submit a written challenge to the person identified as the contact for the facility in the notice, within ten days of the date of the notice to the obligor.

c. The facility, upon receipt of a written challenge, shall review the facts of the case with the obligor within ten days of receipt of the challenge. If the obligor is not available for the review on the scheduled date, the review shall take place without the obligor being present. Information in favor of the obligor shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the facility shall be considered as a reason to dismiss or modify the administrative wage assignment.

d. If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued amount being collected by or owed to the facility, the facility shall notify the employer that the administrative wage assignment has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the facility is less than the amount indicated in the notice, the facility shall provide a notice to the employer of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the employer shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative wage assignment.

(3) Any moneys received by the facility in excess of the amount owed to or to be collected by the

facility shall be returned to the obligor.

e. If the facility finds no mistake of fact, the facility shall provide a notice to that effect to the obligor by regular mail and notify the employer to forward the moneys pursuant to the administrative wage assignment.

f. The obligor shall have the right to file an action for wrongful assignment in district court within thirty days of the date of the notice to the obligor, either in the county where the obligor is located or in Polk county where the facility is located.

9. *Validity and duration of a wage assignment notice.* A notice of wage assignment given to the obligor is effective without the serving of another notice until the earliest of either of the following:

a. The debt owed to the facility is paid in full.

b. The obligor receives notice that the wage assignment shall cease.

Expiration of the wage assignment does not affect the obligor's duties and liabilities respecting the wages already withheld pursuant to the wage assignment.

2002 Acts, ch 1151, §2
NEW section

421.18 Duties of public officers and employees.

It shall be the duty of all public officers and employees of the state and local governments to give to the director of revenue and finance information in their possession relating to taxation when required by the director, and to cooperate with and aid the director's efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws.

[C31, 35, §6943-c28; C39, §**6943.027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.18]
99 Acts, ch 151, §3, 89

421.19 Counsel.

It shall be the duty of the attorney general and of the county attorneys in their respective counties to commence and prosecute actions, prosecutions, and complaints, when so directed by the director of revenue and finance and to represent the director in any litigation arising from the discharge of the director's duties.

[C31, 35, §6943-c29; C39, §**6943.028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.19]
Assistant attorney general assigned, §13.5

421.20 Actions.

The director of revenue and finance may bring actions of mandamus or injunction or any other proper actions in the district court to compel the performance of any order made by the director or to require any board or any other officer or person to perform any duty required by this chapter. The director shall commence an action only in the district court in the county in which the defendant or defendants in the action perform their official duties.

Upon the filing of an action in the county required by this section the director may move to change the action to another county, and the motion shall be granted upon a showing of good cause. As used in this section, good cause shall mean those grounds for change specified in rule of civil procedure 1.801; however, the director shall not be required to submit affidavits of disinterested persons in order to prevail in the motion.

[C31, 35, §6943-c30; C39, §**6943.029;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.20]
94 Acts, ch 1107, §25
Garnishment proceedings for collection of tax, §626.29 – 626.31

421.21 Administration of oaths.

The director of revenue and finance, or the deputies and other employees of the department when duly authorized by the director, shall have the power to administer all oaths authorized and required under the provisions of this chapter.

Each county treasurer, each deputy treasurer, and each automobile clerk of each county treasurer's office shall have the power to administer all oaths authorized and required by the director in connection with the issuance in this state of an original certificate of registration for motor vehicles and trailers and concerning the collection of, or exemption from, use tax thereon. The personal signature of the person administering such an oath shall be subscribed to the jurat thereof and the seal of the county treasurer shall be affixed thereto.

[C31, 35, §6943-c31; C39, §**6943.030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.21]

421.22 Service of orders.

Any sheriff or other person may serve any subpoena or order issued under the provisions of this chapter.

[C31, 35, §6943-c32; C39, §**6943.031;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.22]

421.23 Fees and mileage.

The fees and mileage of witnesses attending any hearing of the department, including contested case hearings, pursuant to any subpoena, shall be the same as those of witnesses in civil cases in district court.

[C31, 35, §6943-c33; C39, §**6943.032;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.23]
94 Acts, ch 1165, §7
Fees and mileage, §622.69 et seq.

421.24 Reciprocal interstate tax enforcement.

1. At the request of the director the attorney general may bring suit in the name of this state, in the appropriate court of any other state to collect any tax legally due in this state, and any political subdivision of this state or the appropriate officer

thereof, acting in its behalf, may bring suit in the appropriate court of any other state to collect any tax legally due to such political subdivision.

2. The courts of this state shall recognize and enforce liabilities for taxes lawfully imposed by any other state, or any political subdivision thereof, which extends a like comity to this state, and the duly authorized officer of any such state or a political subdivision thereof may sue for the collection of such tax in the courts of this state. A certificate by the secretary of state of such other state that an officer suing for the collection of such a tax is duly authorized to collect the same shall be conclusive proof of such authority.

3. For the purposes of this section, the words *"tax"* and *"taxes"* shall include interest and penalties due under any taxing statute, and liability for such interest or penalties, or both, due under a taxing statute of another state or a political subdivision thereof, shall be recognized and enforced by the courts of this state to the same extent that the laws of such other state permit the enforcement in its courts of liability for such interest or penalties, or both, due under a taxing statute of this state or a political subdivision thereof.

The courts of this state may not enforce interest rates or penalties on taxes of any other state which exceed the interest rates and penalties imposed by the state of Iowa for the same or a similar tax.

[C66, 71, 73, 75, 77, 79, 81, §421.24]

421.25 Professional appraisers employed.

The director shall employ professional appraisers to assist county and city assessors in assessing and valuing property required to be assessed and valued by county and city assessors and assist the director in equalizing property values in the state. The department shall, upon request, provide technical assistance to county and city assessors in assessing and valuing property required to be assessed and valued by county and city assessors.

[C73, 75, 77, 79, 81, §421.25]

421.26 Personal liability for tax due.

If a licensee or other person under section 452A.65, a retailer or purchaser under chapter 422A or 422B, or section 422.52, or a retailer or purchaser under section 423.13 or a user under section 423.14 fails to pay a tax under those sections when due, an officer of a corporation or association, notwithstanding sections 490A.601 and 490A.602, a member or manager of a limited liability company, or a partner of a partnership, having control or supervision of or the authority for remitting the tax payments and having a substantial legal or equitable interest in the ownership of the corporation, association, limited liability company, or partnership, who has intentionally failed to pay the tax is personally liable for the payment of the tax, interest, and penalty due and unpaid. However, this section shall not apply to taxes on accounts receivable. The dissolution of a corporation, association, limited liability company, or partnership shall not discharge a person's liability for failure to remit the tax due.

86 Acts, ch 1007, §19; 90 Acts, ch 1232, §5; 94 Acts, ch 1165, §8

421.27 Penalties.

1. *Failure to timely file a return or deposit form.* If a person fails to file with the department on or before the due date a return or deposit form there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax shown due or required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

a. At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.

b. Those taxpayers who are required to file quarterly returns, or monthly or semimonthly deposit forms may have one late return or deposit form within a three-year period. The use of any other penalty exception will not count as a late return or deposit form for purposes of this exception.

c. The death of a taxpayer, death of a member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, of a member of the immediate family of the taxpayer, or of the person directly responsible for filing the return and paying the tax.

e. Destruction of records by fire, flood, or other act of God.

f. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

g. Reliance upon results in a previous audit was a direct cause for the failure to file where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

h. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

i. The return, deposit form, or payment is

timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

l. If the availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer. *"Electronic funds transfer"* means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal telephone, computer, magnetic tape, or similar device for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

2. *Failure to timely pay the tax shown due, or the tax required to be shown due, with the filing of a return or deposit form.* If a person fails to pay the tax shown due or required to be shown due, on a return or deposit form on or before the due date there shall be added to the tax shown due or required to be shown due a penalty of five percent of the tax due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

a. At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.

b. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

c. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within sixty days of the final disposition of the federal government's audit.

d. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

e. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

f. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

g. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.

h. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

3. *Audit deficiencies.* If any person fails to pay the tax required to be shown due with the filing of a return or deposit and the department discovers the underpayment, there shall be added to the tax required to be shown due a penalty of five percent of the tax required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

a. At least ninety percent of the tax required to be shown due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

d. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

4. *Willful failure to file or deposit.* In case of willful failure to file a return or deposit form with the intent to evade tax, or in case of willfully filing a false return or deposit form with the intent to evade tax, in lieu of the penalties otherwise provided in this section, a penalty of seventy-five percent shall be added to the amount shown due or required to be shown as tax on the return or deposit

form. If penalties are applicable for failure to file a return or deposit form and failure to pay the tax shown due or required to be shown due on the return or deposit form, the penalty provision for failure to file shall be in lieu of the penalty provisions for failure to pay the tax shown due or required to be shown due on the return or deposit form, except in the case of willful failure to file a return or deposit form or willfully filing a false return or deposit form with intent to evade tax.

The penalties imposed under this subsection are not subject to waiver.

5. *Failure to remit on extension.* If a person fails to remit at least ninety percent of the tax required to be shown due by the time an extension for further time to file a return is made, there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax due.

6. *Improper receipt of refund or credit.* A person who makes an erroneous application for refund shall be liable for any overpayment received plus interest at the rate in effect under section 421.7. In addition, a person who willfully makes a false or frivolous application for refund with intent to evade tax is guilty of a fraudulent practice and is liable for a penalty equal to seventy-five percent of the refund claimed. Repayments, penalties, and interest due under this subsection may be collected and enforced in the same manner as the tax imposed.

7. *Failure to use required form.* If a person fails to remit payment of taxes in the form required by the rules of the director, there shall be added to the amount of the tax a penalty of five percent of the amount of tax shown due or required to be shown due. The penalty imposed by this subsection shall be waived if the taxpayer did not receive notification of the requirement to remit tax payments electronically or if the electronic transmission of the payment was not in a format or by means specified by the director and the payment was made before the taxpayer was notified of the requirement to remit tax payments electronically.

86 Acts, ch 1007, §20; 89 Acts, ch 6, §3; 90 Acts, ch 1172, §6, 7, 14 – 16; 90 Acts, ch 1232, §6, 29; 91 Acts, ch 97, §45; 91 Acts, ch 159, §4 – 6; 94 Acts, ch 1165, §9; 96 Acts, ch 1167, §2, 8

421.28 Exceptions to successor liability.

The immediate successor to a licensee's or retailer's business or stock of goods under chapter 422A or 422B, or section 422.52, 423.13, 423.14, or 452A.65 is not personally liable for the amount of delinquent tax, interest, or penalty due and unpaid if the immediate successor shows that the purchase of the business or stock of goods was made in good faith that no delinquent tax, interest, or penalty was due and unpaid. For purposes of this section the immediate successor shows good faith by evidence that the department had provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid, or that the immediate successor had taken in good faith a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid. When requested to do so by a person with whom the licensee or retailer is negotiating the sale of the business or stock of goods, the director of revenue and finance shall, upon being satisfied that such a situation exists, inform that person as to the amount of unpaid delinquent tax, interest, or penalty due by the licensee or the retailer. The giving of the information under this circumstance is not a violation of section 422.20, 422.72, or 452A.63.

86 Acts, ch 1007, §21; 90 Acts, ch 1232, §7; 92 Acts, 2nd Ex, ch 1001, §236

421.29 Registrations.

For purposes of the provisions of the Code which are administered by the department, *"permit"* or *"license"* includes registration. Unless otherwise specifically provided, the director shall determine by rule the circumstances for which registrations shall be issued and displayed.

94 Acts, ch 1165, §10

421.30 Reassessment expense fund.

1. There is created in the office of the treasurer of state a *"reassessment expense fund"* for the purpose of providing loans to a city and county conference board for conducting reassessments of property. There is appropriated to the reassessment expense fund from the general fund of the state from any unappropriated funds in the general fund of the state such funds as are necessary to carry out the provisions of this section, section 421.17, subsection 20, and the last paragraph of section 441.19, subject to the approval of the director of revenue and finance. Repayment of loans shall be credited to the fund.

2. The director of revenue and finance shall maintain and administer the reassessment expense fund created pursuant to subsection 1.

3. Within sixty days of the receipt of an order of the director to reassess all or part of the property in an assessing jurisdiction, the conference board and assessor of the assessing jurisdiction shall submit to the director a detailed proposal for complying with the order. The proposal shall contain specifications for the completion of the reassessment project, the financial condition of the assessing jurisdiction, and any other information deemed necessary by the director.

4. Each proposal submitted pursuant to subsection 3 shall be reviewed by the director to determine if the proposal will result in compliance with the reassessment order. The director shall approve or disapprove each proposal and shall notify the appropriate conference board and assessor of the decision. If the director determines the proposal will not result in compliance with the reassessment order, the notice shall contain the rea-

sons for the director's determination and an explanation as to how the proposal shall be corrected in order to be approved by the director.

5. If the notice to the conference board and the assessor states that the director has determined that the proposal will result in compliance with the reassessment order, the conference board may, if it lacks the financial resources to comply in all respects with the reassessment order, file with the director an application for a loan from the reassessment expense fund. The loan to the conference board may be for all or part of the funds required to comply with the reassessment order. The director shall approve, amend and approve, or reject each application and notify the conference board and assessor of its decision. If the application is amended or rejected, the notice shall contain the director's reasons for the amendment or rejection.

6. Upon the director's approval of the advancement of funds from the reassessment expense fund, the director shall certify to the appropriate conference board and assessor a schedule for disbursing the loan to the assessing jurisdiction's appraiser fund authorized by section 441.50. The schedule shall provide for the disbursement of funds over the period of the reassessment project, except that ten percent of the funds shall not be disbursed until the project is completed. The conference board shall at its next opportunity levy pursuant to section 441.50 sufficient funds for purposes of repaying the loan made from the reassessment expense fund. The amount levied shall be sufficient to repay the loan in semiannual installments during the course of the reappraisal project as specified by a repayment schedule established by the director. The repayment schedule shall provide for repayment of the loan not later than one year following the completion of the reassessment. Semiannual repayments of the proceeds of the loan shall be made on or before December 1 and May 1 of each year.

7. Any reassessment of property ordered by the director, whether or not undertaken with funds provided in this section, shall be conducted by the assessor in accordance with the Iowa real property appraisal manual issued under authority of section 421.17, subsection 18, the assessment laws of this state, and any reassessment order issued by the director under authority of this chapter. The conference board may employ appraisers or other expert help to assist the assessor in completing the reassessment, except that no conference board receiving funds under this section shall enter into a contract for the reassessment of property until the board's proposal for completing the reassessment is approved. The director shall supervise the conduct of all reassessments of property and issue to the assessor or conference board such instructions, directives, or orders as are necessary to ensure compliance with the provisions of this section and the assessment laws of this state.

8. The assessor of each assessing jurisdiction receiving funds under this section shall submit to the director, in the form and manner prescribed by the director, reports showing the progress of the reassessment. If the director determines that a reassessment undertaken with funds provided in this section is not being conducted in accordance with the proposal submitted pursuant to subsection 3, the director shall notify the appropriate conference board and assessor of the director's determination. The notice shall contain an explanation as to how the deficiencies in the reassessment may be corrected. If the deficiencies noted by the director are not corrected within sixty days of the date the assessor and conference board are notified of their existence, the director shall suspend payments from the reassessment expense fund until the deficiencies have been corrected.

9. Funds obtained under this section shall be used only to conduct reassessments of property as approved and conducted pursuant to this section.

[C79, 81, §421.30]

86 Acts, ch 1245, §423

421.31 Powers and duties.

In addition to the powers and duties transferred to the director of revenue and finance, the director has the following powers and duties:

1. *Collection and payment of funds — monthly payments.* To control the payment of all moneys into the treasury, and all payments from the treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payment, and to advise the state treasurer monthly in writing of the amount of public funds not currently needed for operating expenses. Whenever the state treasury includes state funds that require distribution to counties, municipalities, or other political subdivisions of this state, and the counties, municipalities, and other political subdivisions certify to the director that warrants will be stamped for lack of funds within the thirty-day period following certification, the director may partially distribute the funds on a monthly basis. Whenever the law requires that any funds be paid by a specific date, the director shall prepare a final accounting and shall make a final distribution of any remaining funds prior to that date.

2. *Preaudit system.* To establish and fix a reasonable imprest cash fund for each state department and institution for disbursement purposes where needed. These revolving funds shall be reimbursed only upon vouchers approved by the director. It is the purpose of this subsection to establish a preaudit system of settling all claims against the state, but the preaudit system is not applicable to any of the following:

a. Institutions under the control of the state board of regents.

b. The state fair board as established in chapter 173.

c. The Iowa dairy industry commission as established in chapter 179, the Iowa beef cattle producers association as established in chapter 181, the Iowa pork producers council as established in chapter 183A, the Iowa turkey marketing council as established in chapter 184A, the Iowa soybean promotion board as established in chapter 185, the Iowa corn promotion board as established in chapter 185C, and the Iowa egg council as established in chapter 184.

3. *Audit of claims.* To set rules and procedures for the preaudit of claims by individual agencies or organizations. The director reserves the right to refuse to accept incomplete or incorrect claims and to review, preaudit, or audit claims as determined by the director.

4. *Contracts.* To certify, record, and encumber all formal contracts to prevent overcommitment of appropriations and allotments.

5. *Accounts.* To keep the central budget and proprietary control accounts of the general fund of the state and special funds, as defined in section 8.2, of the state government. Upon elimination of the state deficit under generally accepted accounting principles, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year, the recognition of revenues received and expenditures paid and transfers received and paid within the time period required pursuant to section 8.33 shall be in accordance with generally accepted accounting principles. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations, and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income, and expense. For each fiscal year, the financial position and results of operations of the state shall be reported in a comprehensive annual financial report prepared in accordance with generally accepted accounting principles, as established by the governmental accounting standards board.

6. *Fair board and board of regents.* To control the financial operations of the state fair board and the institutions under the state board of regents:

a. By charging all warrants issued to the respective educational institutions and the state fair board to an advance account to be further accounted for and not as an expense which requires no further accounting.

b. By charging all collections made by the educational institutions and state fair board to the respective advance accounts of the institutions and state fair board, and by crediting all such repayment collections to the respective appropriations and special funds.

c. By charging all disbursements made to the respective allotment accounts of each educational institution or state fair board and by crediting all such disbursements to the respective advance and inventory accounts.

d. By requiring a monthly abstract of all receipts and of all disbursements, both money and stores, and a complete account-current each month from each educational institution and the state fair board.

7. *Entities representing agricultural producers.* To control the financial operations of the Iowa dairy industry commission as provided in chapter 179, the Iowa beef cattle producers association as provided in chapter 181, the Iowa pork producers council as provided in chapter 183A, the Iowa turkey marketing council as provided in chapter 184A, the Iowa soybean promotion board as provided in chapter 185, the Iowa corn promotion board as provided in chapter 185C, and the Iowa egg council as provided in chapter 184.

8. *Custody of records.* To have the custody of all books, papers, records, documents, vouchers, conveyances, leases, mortgages, bonds, and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office.

9. *Interest of the permanent school fund.* To transfer the interest of the permanent school fund to the credit of the interest for Iowa schools fund.

10. *Forms.* To prescribe all accounting and business forms and the system of accounts and reports of financial transactions by all departments and agencies of the state government other than those of the legislative branch.

11. *Federal Cash Management and Improvement Act administrator.* To serve as administrator for state actions relating to the federal Cash Management and Improvement Act of 1990, Pub. L. No. 101-453, as codified in 31 U.S.C. § 6503. The director shall perform the following duties relating to the federal law:

a. Act as the designated representative of the state in the negotiation and administration of contracts between the state and federal government relating to the federal law.

b. Modify the centralized statewide accounting system and develop, or require to be developed by the appropriate departments of state government, the necessary reports and procedures necessary to complete the managerial and financial reports required to comply with the federal law.

There is annually appropriated from the general fund of the state to the department of revenue and finance an amount sufficient to pay interest costs that may be due the federal government as a result of implementation of the federal law. Nothing in this paragraph authorizes the payment of interest from the general fund of the state for any departmental revolving, trust, or special fund where monthly interest earnings accrue to the credit of the departmental revolving, trust, or special fund. For any departmental revolving, trust, or special fund where monthly interest is accrued to the credit of the fund, the director may authorize a supplemental expenditure to pay interest costs from the individual fund which are

due the federal government as a result of implementation of the federal law.

86 Acts, ch 1244, §46; 86 Acts, ch 1245, §424; 88 Acts, ch 1158, §73; 89 Acts, ch 284, §7; 92 Acts, ch 1227, §28; 94 Acts, ch 1107, §10; 94 Acts, ch 1146, §44, 45; 94 Acts, ch 1181, §16; 95 Acts, ch 209, §4; 95 Acts, ch 214, §8; 96 Acts, ch 1034, §35; 2002 Acts, ch 1151, §3

Subsection 3 stricken and rewritten

421.32 Accounting.

The director of the department of revenue and finance may at any time require any person receiving money, securities, or property belonging to the state, or having the management, disbursement, or other disposition of them, an account of which is kept in the department of revenue and finance, to render statements thereof and information in reference thereto.

86 Acts, ch 1245, §425

421.33 Stating account.

If an officer who is accountable to the treasury for any money or property neglects to render an account to the director of the department of revenue and finance within the time prescribed by law, or, if no time is so prescribed, within twenty days after being required so to do by the director of the department of revenue and finance, the director of the department of revenue and finance shall state an account against the officer from the books of the officer's office, charging ten percent damages on the whole sum appearing due, and interest at the rate of six percent per annum on the aggregate from the time when the account should have been rendered; all of which may be recovered by action brought on the account, or on the official bond of the officer.

86 Acts, ch 1245, §426

421.34 Compelling payment.

If an officer fails to pay into the treasury the amount received by the officer within the time prescribed by law, or, having settled with the director of the department of revenue and finance, fails to pay the amount found due, the director of the department of revenue and finance shall charge the officer with twenty percent damages on the amount due, with interest on the aggregate from the time it became due at the rate of six percent per annum, and the whole may be recovered by an action brought on the account, or on the official bond of the officer, and the officer shall forfeit the officer's commission.

86 Acts, ch 1245, §427

421.35 Defense to claim.

The penal provisions in sections 421.33 and 421.34 are subject to any legal defense which the officer may have against the account as stated by the director of the department of revenue and finance, but judgment for costs shall be rendered against the officer in the action, whatever its result, unless the officer rendered an account within the time named in those sections.

86 Acts, ch 1245, §428

421.36 Requested credits — oath required.

When a county treasurer or other receiver of public money seeks to obtain credit on the books of the department of revenue and finance for payment made to the treasurer, before giving such credit the director of the department of revenue and finance shall require that person to take and subscribe an oath that the person has not used, loaned, nor appropriated any of the public money for the person's private benefit, nor for the benefit of any other person.

86 Acts, ch 1245, §429

421.37 Requisition for information.

In those cases where the director of the department of revenue and finance is authorized to call upon persons or officers for information, or statements, or accounts, the director may issue a requisition therefor in writing to the person or officer called upon, allowing reasonable time, which, having been served and return made to the director of the department of revenue and finance, as a notice in a civil action, is evidence of the making of the requisition.

86 Acts, ch 1245, §430

421.38 Limits on claims.

The director of the department of revenue and finance is limited in authorizing the payment of claims, as follows:

1. *a. Funding limit.* A claim shall not be allowed by the department of revenue and finance if the appropriation or fund of certification available for paying the claim has been exhausted or proves insufficient.

b. The authority of the director is subject to the following exceptions:

(1) Claims by state employees for benefits pursuant to chapters 85, 85A, and 86 are subject to limitations provided in those chapters.

(2) Claims for medical assistance payments authorized under chapter 249A are subject to the time limits imposed by rule adopted by the department.

(3) Claims approved by an agency according to the provisions of sections 25.1 and 25.2.

2. *Convention expenses.* Claims for expenses in attending conventions, meetings, conferences, or gatherings of members of an association or society organized and existing as a quasi-public association or society outside the state of Iowa shall not be allowed at public expense, unless authorized by the executive council; and claims for these expenses outside of the state shall not be allowed unless the voucher is accompanied by the portion

of the minutes of the executive council, certified to by its secretary, showing that the expense was authorized by the council. This section does not apply to claims in favor of the governor, attorney general, utilities board members, or to trips referred to in sections 97B.4 and 217.20.

3. *Payment from fees.* No claims for per diem and expenses payable from fees shall be approved for payment in excess of those fees if the law provides that such expenditures are limited to the special funds collected and deposited in the state treasury.

86 Acts, ch 1245, §431; 88 Acts, ch 1242, §61; 91 Acts, ch 158, §10; 96 Acts, ch 1075, §3; 2000 Acts, ch 1232, §27, 28

421.39 Claims — approval.

The director of the department of revenue and finance before approving a claim shall determine:

1. That the creation of the claim is clearly authorized by law. Statutes authorizing the expenditure may be referenced through account coding authorized by the director.

2. That the claim has been authorized by an officer or official body having legal authority to so authorize and that the fact of authorization has been certified to the director of the department of revenue and finance by such officer or official body.

3. That all legal requirements have been observed, including notice and opportunity for competition, if required by law.

4. That the claim is in proper form as the director may provide.

5. That the charges are reasonable, proper, and correct and no part of the claim has been paid.

86 Acts, ch 1245, §432; 89 Acts, ch 284, §8

421.40 Vouchers — interest — payment of claims.

Before a warrant or its equivalent is issued for a claim payable from the state treasury, the department shall file an itemized voucher showing in detail the items of service, expense, thing furnished, or contract for which payment is sought. However, the director may authorize the prepayment of claims when the best interests of the state are served under rules adopted by the department. The claimant's original invoice shall be attached to a department's approved voucher. The director of the department of revenue and finance shall adopt rules specifying the form and contents for invoices submitted by a vendor to a department. The requirements apply to acceptance of an invoice by a department. A department shall not impose additional or different requirements on submission of invoices than those contained in rules of the director of the department of revenue and finance unless the director exempts the department from the invoice requirements or a part of the requirements upon a finding that compliance would result in poor accounting or management practices.

Vouchers for postage, stamped envelopes, and postal cards may be audited as soon as an order for them is entered.

The departments, the general assembly, and the courts shall pay their claims in a timely manner. If a claim for services, supplies, materials, or a contract which is payable from the state treasury remains unpaid after sixty days following the receipt of the claim or the satisfactory delivery, furnishing, or performance of the services, supplies, materials, or contract, whichever date is later, the state shall pay interest at the rate of one percent per month on the unpaid amount of the claim. This paragraph does not apply to claims against the state under chapters 25 and 669 or to claims paid by federal funds. The interest shall be charged to the appropriation or fund to which the claim is certified. Departments may enter into contracts for goods or services on payment terms of less than sixty days if the state may obtain a financial benefit or incentive which would not otherwise be available from the vendor. The department of revenue and finance, in consultation with the department of general services and other affected agencies, shall develop policies to promote consistency and fiscal responsibility relating to payment terms authorized under this paragraph. The director of the department of revenue and finance shall adopt rules under chapter 17A relating to the administration of this paragraph.

86 Acts, ch 1244, §47; 86 Acts, ch 1245, §433; 89 Acts, ch 284, §9; 98 Acts, ch 1164, §39

421.41 Warrants — form.

Each warrant shall bear on its face the signature or its facsimile of the director of the department of revenue and finance, or the signature or its facsimile of an assistant in case of a vacancy in the office of the director; a proper number, date, amount, and name of payee; a reference to the law under which it is drawn; whether for salaries or wages, services, or supplies, and what kind of supplies; and from what office or department, or for what other general or special purposes; or in lieu thereof, a coding system may be used, which particulars shall be entered in a warrant register kept for that purpose in the order of issuance; and as soon as practicable after issuing a warrant register, the director shall certify a duplicate of it to the treasurer.

86 Acts, ch 1245, §434

421.42 Required payee.

All warrants shall be drawn to the order of the person entitled to payment or compensation, except that when goods or material are purchased in foreign countries, warrants may be drawn upon the treasurer of state, payable to bearer for the net amount of invoice and current exchange, and the treasurer of state shall furnish a foreign draft payable to the order of the person from whom pur-

chase is made.

86 Acts, ch 1245, §435

421.43 Prohibited payee.

In no case shall warrants be drawn in the name of the certifying office, department, board, or institution, or in the name of an employee of it, except for personal service rendered or expense incurred by the employee, unless there is express statutory authority therefor.

86 Acts, ch 1245, §436

421.44 Claims exceeding appropriations.

No claim shall be allowed when the claim will exceed the amount specifically appropriated for it.

86 Acts, ch 1245, §437

421.45 Cancellation of state warrants.

On the last business day of each month, the director of the department of revenue and finance shall cancel and request the treasurer of state to stop payment on all state warrants which have been outstanding and unredeemed by the state treasurer for six months or longer.

86 Acts, ch 1245, §438; 88 Acts, ch 1158, §74; 94 Acts, ch 1165, §11

421.46 Terminal liability health insurance fund.

1. A terminal liability health insurance fund is created in the state treasury under the control of the department of personnel. The proceeds of the terminal liability health insurance fund shall be used by the department of personnel to pay the state's share of the terminal liability of the existing health insurance contract administered by the department of personnel. The moneys appropriated to the terminal liability health insurance fund plus any additional moneys appropriated or collected pursuant to 2001 Acts, chapter 190, or other Acts of the general assembly shall constitute the total amount due to pay the terminal liability specified in this section.

2. Notwithstanding section 8.33, any unencumbered or unobligated balance remaining in the terminal liability health insurance fund at the close of a fiscal year shall not revert.

2001 Acts, ch 190, §20; 2002 Acts, ch 1175, §15

Terminal liability health insurance surcharge on employer's share; 2002 Acts, ch 1175, §12

Subsection 2 stricken and former subsection 3 renumbered as 2

421.47 Tax agreements with Indian tribes.

1. *"Indian country"* means the Indian country as defined in 18 U.S.C. § 1151, and includes trust land as defined by the United States secretary of the interior.

2. The department and the governing body of an Indian tribe may enter into an agreement to provide for the collection and distribution or refund by the department within Indian country of any tax or fee imposed by the state and administered by the department.

An agreement may also provide for the collection and distribution by the department of any tribal tax or fee imposed by tribal ordinance. The agreement may provide for the retention of an administrative fee by the department which fee shall be an agreed-upon percentage of the gross revenue of the tribal tax or fee collected.

3. An Act of Congress regulating the collection of state taxes and their remittance to the states shall preempt an agreement between the department and the governing body of an Indian tribe under this section to the extent such federal Act regulates the collection and remittance of a tax covered by the agreement.

4. An agreement between the department and the governing body of an Indian tribe under this section shall not preclude the negotiation of an amendment to such agreement, which conforms to an Act of Congress regulating the collection of state taxes and their remittance to the states.

2002 Acts, ch 1151, §4

NEW section

421.48 through 421.59 Reserved.

421.60 Tax procedures and practices.

1. *Short title.* This section shall be known and may be cited as the *"Tax Procedures and Practices Act"*.

2. *Procedures and practices.*

a. The department shall prepare a statement which sets forth in simple and nontechnical terms all of the following:

(1) The rights of a taxpayer and the obligations of the department during an audit.

(2) The procedures by which a taxpayer may appeal an adverse decision of the department, including administrative and judicial appeals.

(3) The procedures which the department may use in enforcing the tax laws, including notices of assessment and jeopardy assessment and the filing and enforcement of liens.

The statement prepared in accordance with this paragraph shall be distributed by the department to all taxpayers at the first contact by the department with respect to the determination or collection of any tax, except in the case of simply providing tax forms.

b. The department shall furnish to the taxpayer, before or at the time of issuing a notice of assessment or denial of a refund claim, an explanation of the reasons for the assessment or refund denial. An inadequate explanation shall not invalidate the notice. For purposes of this section, an explanation by the department shall be sufficient where the amount of tax, interest, and penalty is stated together with an attachment setting forth the computation of the tax by the department.

c. If the notice of assessment or denial of a

claim for refund relates to a tax return filed pursuant to section 422.14 or chapter 450, 450A, or 451, by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to that return, or if a power of attorney has been filed with the department by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to any tax that is included in the notice of assessment or denial of a claim for refund, a copy of the notice together with any additional information required to be sent to the taxpayer shall be sent to the authorized representative as well.

If the department fails to mail a notice of assessment to the last known address of a taxpayer or fails to personally deliver such notice to a taxpayer, interest for the month such mailing or personal delivery fails to occur through the month of the correct mailing or personal delivery is waived.

If the department fails to mail a notice of assessment or denial of a claim for refund to the taxpayer's last known address or fails to personally deliver such notice to a taxpayer and, if applicable, to the taxpayer's authorized representative, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered, or in any event, for a period not to exceed one year, whichever is the lesser period.

Collection activities, except where a jeopardy situation exists, shall be suspended and the statute of limitations for assessment or collection of the tax shall be tolled during the period in which interest is waived.

d. A taxpayer is permitted to designate in writing the type of tax and tax periods to which any voluntary payment relates, provided that separate written instructions accompany the payment. This paragraph does not apply to jeopardy assessments and does not apply if the department has to enforce collection of the payment.

e. Unless otherwise provided by law, all Iowa taxes which are administered by the department and which result in a refund shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest.

f. A taxpayer may appeal a refund claim to the director if a claim for refund has been filed and not denied by the department within six months of the filing of the claim. The filing of an appeal by a taxpayer shall not affect the ability of the department to examine and inspect a taxpayer's records.

g. A taxpayer may request in writing that a contested case proceeding be commenced by the department after a period of six months from the filing of a proper appeal by the taxpayer. The department shall file an answer within thirty days of receipt of the request and a contested case proceeding shall be commenced. In the case of an appeal of an assessment, failure to answer within the thirty-day time period and after a request has been made shall result in the suspension of interest from the time that the department was required to answer until the date that the department files its answer. In the case of an appeal of a denial of a refund, failure to answer within the thirty-day time period, and after a request has been made, shall result in the accrual of interest payable to the taxpayer at double the rate in effect under section 421.7 from the time the department was required to answer until the date that the department files its answer.

h. A taxpayer who has failed to appeal a notice of assessment to the department within the time provided by law may contest the assessment by paying the tax, interest, and penalty, which in the case of divisible taxes might not be the entire liability and by filing a refund claim within the time period provided for filing such claim. The filing of a refund claim allows the time period for which the refund is claimed to be open to examination and to be open to offset, to zero, based upon any issue associated with the type of tax for which the refund is claimed and which has not up to that time been resolved between the taxpayer and the department, irrespective of whether the period of limitations to issue a notice of assessment has expired. The department may make this offset at any time until the department grants or denies the refund.

i. The director may, at any time, abate any unpaid portion of assessed tax, interest, or penalties which the director determines is erroneous, illegal, or excessive. The director shall prepare quarterly reports summarizing each case in which abatement of tax, interest, or penalties was made. However, the report shall not disclose the identity of the taxpayer.

j. The director shall adopt rules for setting times and places for taxpayer interviews and to permit any taxpayer to record the interviews.

k. If the determination that a return is incorrect is the result of an audit of the books and records of the taxpayer, the tax or additional tax, if any, shall be assessed and the notice of assessment to the taxpayer shall be given by the department within one year after the completion of the examination of the books and records.

l. The department shall annually report to the general assembly all areas of recurrent taxpayer noncompliance with rules or guidelines issued by the department and shall make recommendations concerning the noncompliance in the report.

m. (1) The director may abate unpaid state sales and use taxes and local sales and services taxes owed by a retailer in the event that the retailer failed to collect tax from the purchaser as a result of erroneous written advice issued by the department that was specially directed to the retailer by the department and the retailer is unable to collect the tax, interest, or penalties from the purchaser. Before the tax, interest, and penalties

shall be abated on the basis of erroneous written advice, the retailer must present a copy of the retailer's request for written advice to the department and a copy of the department's reply. The department shall not maintain a position against the retailer that is inconsistent with the erroneous written advice, except on the basis of subsequent written advice sent by the department to that retailer, or a change in state or federal law, a reported court case to the contrary, a contrary rule adopted by the department, a change in material facts or circumstances relating to the retailer, or the retailer's misrepresentation or incomplete or inadequate representation of material facts and circumstances in requesting the written advice.

(2) The director shall abate the unpaid state sales and use taxes and any local sales and services taxes owed by a retailer where the retailer failed to collect the tax from the purchaser on the charges paid for access to on-line computer services as a result of erroneous written advice issued by the department regarding the taxability of charges paid for access to on-line computer services. To qualify for the abatement under this subparagraph, the erroneous written advice shall have been issued by the department prior to July 1, 1999, and shall have been specially directed to the retailer by the department.

If an abatement of unpaid state sales and use taxes and any local sales and services taxes is granted to the retailer by the director pursuant to this subparagraph, the department is precluded from collecting from the purchaser any unpaid state sales and use taxes and any local sales and services taxes which were abated.

(3) The director shall prepare quarterly reports summarizing each case in which abatement of tax, interest, or penalties was made. However, the report shall not disclose the identity of the taxpayer. An abatement authorized by this paragraph to a retailer shall not preclude the department from proceeding to collect the liability from a purchaser, except as provided in subparagraph (2).

3. *Installment payments.* The department may permit the payment of a delinquent tax on a deferred basis where the equities indicate that a deferred payment agreement would be in the interest of the state and that without a deferred payment agreement the taxpayer would experience extreme financial hardship. A deferred payment agreement shall include applicable penalty and interest at the rate in effect under section 421.7 on the unpaid balance of the liability.

4. *Costs.*

a. A prevailing taxpayer in an administrative hearing or a court proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded reasonable litigation costs by the department, state board of tax review, or a court, incurred subsequent to the issuance of the notice of assessment or denial of claim for refund in the proceeding, based upon the following:

(1) The reasonable expenses of expert witnesses.

(2) The reasonable costs of studies, reports, and tests.

(3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer.

(4) An award for reasonable litigation costs shall not exceed twenty-five thousand dollars per case.

b. An award under paragraph *"a"* shall not be made with respect to a portion of the proceedings during which the prevailing taxpayer has unreasonably protracted the proceedings.

c. For purposes of this section, *"prevailing taxpayer"* means a taxpayer who establishes that the position of the state was not substantially justified and who has substantially prevailed with respect to the amount in controversy or has substantially prevailed with respect to the most significant issue or set of issues presented. The determination of whether a taxpayer is a prevailing taxpayer is to be determined in accordance with chapter 17A.

d. An award for reasonable litigation costs shall be paid to the taxpayer from the general fund of the state. For purposes of this subsection, there is appropriated from the general fund of the state an amount sufficient to pay each taxpayer entitled to an award under this subsection.

e. This subsection does not apply to the tax imposed by chapter 453B if the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies.

5. *Damages.* Notwithstanding section 669.14, subsection 2, if the director or an employee of the department recklessly or intentionally disregards any tax law or rule in the collection of any tax, or if the director or an employee of the department knowingly or negligently fails to release a lien against or bond on a taxpayer's property, the taxpayer may file a claim in accordance with the Iowa tort claims Act, chapter 669, for damages against the state. However, the damages shall be limited to the actual direct economic damages suffered by the taxpayer as a proximate result of the actions of the director or employee, plus costs, reduced by the amount of such damages and costs as could reasonably have been mitigated by the taxpayer. The Iowa tort claims Act shall be the exclusive remedy for recovering damages resulting from such actions. This subsection does not apply to the tax imposed by chapter 453B.

6. *Burden of proof.* The burden of proof with respect to assessments or denial of refunds in contested case proceedings shall be allocated as follows:

a. With respect to the issue of fraud with intent to evade tax, the burden of proof is upon the department. The burden of proof must be carried by clear and convincing evidence.

b. In a case where the assessment was not made within six years after the return became due, excluding any extension of time for filing, the burden of proof shall be upon the department. However, the burden of proof shall be upon the taxpayer where the determination of the department is the result of the final disposition of a matter between the taxpayer and the internal revenue service or where the taxpayer and the department have signed a waiver of the statute of limitations.

c. In all other cases, the burden of proof shall be upon the taxpayer who challenges the assessment or refund denial, except that, with respect to any new matter or affirmative defense, the burden of proof shall be upon the department. For purposes of this provision, *"new matter"* means an adjustment not set forth in the computation of the tax in the assessment or refund denial as distinguished from a new reason for the assessment or refund denial. *"Affirmative defense"* is one resting on facts not necessary to support the taxpayer's case.

7. *Employee evaluations.* It is unlawful to base a performance evaluation for an employee of the department on the total amount of assessments issued by that employee.

8. *Refund of untimely assessed taxes.* Notwithstanding any other refund statute, if it appears that an amount of tax, penalty, or interest has been paid to the department after the expiration of the statute of limitations for the department to determine and assess or collect the amount of such tax due, then the amount paid shall be credited against another tax liability of the taxpayer which is outstanding, if the statute of limitations for assessment or collection of that other tax has not expired or the amount paid shall be refunded to the person or, with the person's approval, credited to tax to become due. An application for refund or credit under this subsection must be filed within one year of payment. This subsection shall not be construed to prohibit the department from offsetting the refund claim against any tax due, if the statute of limitations for that other tax has not expired.

9. *No applicability to real property.* The provisions of this section do not apply to the assessment and taxation of real property.

10. *Illegal tax.* A tax shall not be collected by the department if it is prohibited under the Constitution of the United States or laws of the United States, or under the Constitution of the State of Iowa.

94 Acts, ch 1133, §1, 16; 95 Acts, ch 83, §2; 2000 Acts, ch 1189, §28, 34; 2002 Acts, ch 1122, §2, 4

2002 amendments to subsection 2, paragraph m, subparagraphs (2) and (3) are effective April 22, 2002, and apply to taxes due on or after January 1, 1996, which were abated for a retailer pursuant to subsection 2, paragraph m, subparagraph (2); no filing requirement for refunds; refunds to be paid by October 1, 2002; 2002 Acts, ch 1122, §3, 4

Subsection 2, paragraph m, subparagraphs (2) and (3) amended

421.61 Unconstitutionally withheld tax benefits.

If a provision in the Code grants a tax benefit to taxpayers that is unconstitutionally withheld from other taxpayers as expressed in an Iowa attorney general's opinion based upon decisions of the Iowa supreme court, United States supreme court, or other courts of competent jurisdiction, the tax benefit shall also be granted to the adversely affected taxpayers as if the unconstitutional provision did not exist.

97 Acts, ch 158, §10

421.62 through 421.69 Reserved.

421.70 Electronic commerce data collection.

1. *Short title.* This section shall be known and may be cited as the *"Electronic Commerce and New Economy Data Collection Act"*.

2. *Purpose.* The purpose of this section is to require the department of revenue and finance to begin collecting valid Iowa-specific data concerning the extent of electronic commerce within Iowa, and to expand the number of factors used when projecting estimated net gains or losses in tax revenues from electronic commerce.

3. *Definitions.* As used in this section:

a. *"Electronic commerce"* means business-to-consumer sales conducted via the internet that are subject to taxation levied under chapter 422, division IV, or chapter 423. Electronic commerce includes, but is not limited to, the sale of tangible and intangible goods.

b. *"Electronic commerce vendor"* means a person engaged in business-to-consumer sales of goods or services.

c. *"Person"* means a natural person or via the internet any other entity subject to retail sales and use taxation under chapter 422, division IV, or chapter 423.

4. *Annual report.* The department shall collect primary and supplementary data to accurately measure the level of electronic commerce activity within the state. The primary data set shall include, but is not limited to, the number of electronic commerce vendors domiciled within the state, if obtainable; gross retail sales of electronic commerce vendors domiciled within the state; an estimate of the number of in-state electronic commerce transactions conducted by persons within the state boundaries based on accepted standards of scientific sampling; an estimate of the number of out-of-state electronic commerce transactions conducted by persons within the state boundaries based on accepted standards of scientific sampling; an estimate of the total value of electronic

commerce transactions conducted by persons within state boundaries during a fiscal year; a reliable estimate of the use tax revenue that is uncollected due to out-of-state electronic commerce; and a reliable estimate of income, property, excise, and other revenues paid to the state and its political subdivisions by electronic commerce vendors. Collection of primary data shall be considered part of the department's normal duties and shall not require an additional budgetary appropriation. The department shall supplement primary data with information supplied by the United States department of commerce, the United States census bureau, the United States small business administration, any other federal agency collecting electronic commerce data, and if obtainable, affiliated state data centers. The department may use information gathered from private, academic, and nongovernmental entities provided that the source and methodology is clearly stated within the text of the report. The department shall not cite, as authoritative sources, studies conducted by private, academic, and nongovernmental entities that are speculative in nature or based on unscientific methods. In addition, the department shall include an analysis of the financial impact increased sales and use tax collection requirements would have on in-state companies engaged in electronic commerce. The data shall be compiled in the form of an annual report to be delivered to the general assembly no later than February 1 of each year.

5. *Repeal.* This section is repealed March 1, 2005.

2002 Acts, ch 1161, §1, 5
NEW section

CHAPTER 421A

EXCISE TAX ON UNLAWFUL DEALING IN CONTROLLED AND OTHER SUBSTANCES

Transferred to chapter 453B

CHAPTER 421B

CIGARETTE SALES

This chapter not enacted as a part of this title;
transferred from chapter 551A in Code 1993

421B.1 Short title.
421B.2 Definitions.
421B.3 Sales at less than cost — penalty.
421B.4 Combination sales.
421B.5 Sales by a wholesaler to a wholesaler.
421B.6 Sales exceptions.
421B.7 Transactions permitted to meet lawful competition.
421B.8 Cost determined.
421B.9 Sales outside ordinary channels of business — effect.
421B.10 Injunction.
421B.11 Director of revenue and finance — powers and duties.

421B.1 Short title.

This chapter shall be known and cited as the *"Iowa Unfair Cigarette Sales Act."*

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.1]

C93, §421B.1

421B.2 Definitions.

When used in any part of this chapter, the following words, terms and phrases shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

1. *"Basic cost of cigarettes"* shall mean whichever of the two following amounts is lower: *(a)* the true invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or *(b)* the lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased, less, in either case, all trade discounts and customary discounts for cash, plus one-half of the full face value of any stamps which may be required by any cigarette tax act of this state.

2. *"Cigarettes"* shall mean and include any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

3. *a.* *"Cost to the retailer"* shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in this chapter.

b. The cost of doing business by the retailer is presumed to be six percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

c. If any retailer in connection with the retailer's purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business, the sum of the cost of doing business by the retailer and, to the extent that the retailer shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as hereinabove defined in subsection 4, paragraph *"b."*

4. *a.* *"Cost to wholesaler"* shall mean the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in this chapter.

b. The cost of doing business by the wholesaler is presumed to be three percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost, which includes cartage to the retail outlet, plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

5. *"Person"* shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

6. *"Retailer"* means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail.

For purposes of this chapter, a person who does not meet the definition of retailer or wholesaler but who is engaged in the business of selling cigarettes in this state to a retailer or final consumer shall be considered a retailer and subject to the minimum pricing requirements of this chapter.

7. *"Sale"* and *"sell"* shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

8. *"Sell at retail", "sale at retail"* and *"retail sales"* shall mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller's business.

9. *"Sell at wholesale", "sale at wholesale"*, and *"wholesale sales"* shall mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

10. *"Wholesaler"* means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed under this chapter, and where at all times a stock of cigarettes is available to retailers for resale.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.2]

83 Acts, ch 165, §3 – 5

C93, §421B.2

2001 Acts, ch 116, §5

421B.3 Sales at less than cost — penalty.

1. It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in this chapter. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a simple misdemeanor.

2. Evidence of advertisement, offering to sell, or sale of cigarettes by any wholesaler or retailer at less than cost to the wholesaler or retailer as defined by this chapter shall be evidence of a violation of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.3]

C93, §421B.3

421B.4 Combination sales.

In all offers for sale or sales involving cigarettes and any other item at a combined price, and in all offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts and concessions included in such transactions: If any such articles, products, commodities, gifts or concessions, shall not be cigarettes, the basic cost thereof shall be determined in like manner as provided in section 421B.2, subsection 8.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.4]

C93, §421B.4

421B.5 Sales by a wholesaler to a wholesaler.

When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in the selling price to the latter, the cost to the wholesaler, as defined by section 421B.2, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of the said section.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.5]

C93, §421B.5

421B.6 Sales exceptions.

The provisions of this chapter shall not apply to a sale at wholesale or a sale at retail made (1) in an isolated transaction; (2) where cigarettes are offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such cigarettes and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold; (3) where cigarettes are offered for sale, or sold as imperfect or damaged, and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.6]

C93, §421B.6

421B.7 Transactions permitted to meet lawful competition.

1. Any wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at the cost to the competing wholesaler as defined by this chapter. Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling at the cost to the said competing retailer as defined in this chapter. The price of cigarettes offered for sale, or sold under the exceptions specified in section 421B.6 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt or forced sale be considered the price of a competitor within the purview of this section.

2. In the absence of proof of the actual cost to a competing wholesaler or to a competing retailer, as the case may be, such cost shall be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to section 421B.8, subsection 2.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.7]

C93, §421B.7

421B.8 Cost determined.

1. *Admissible evidence.* In determining cost to the wholesaler and cost to the retailer the court shall receive and consider as bearing on the bona fides of such cost, evidence that any person complained against under any of the provisions of this chapter purchased the cigarettes involved in the complaint before the court, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

2. *Cost survey.* Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of this chapter is committed or charged, to determine and establish the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under this chapter to establish actual cost to the wholesaler or actual cost to the retailer complained against. In such surveys to determine cost to the wholesaler or retailer there shall be included in the cost of doing business without limitation, labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance and other expenses.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.8]

C93, §421B.8

421B.9 Sales outside ordinary channels of business — effect.

In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or close out sale, or other sale outside of the ordinary channels of trade.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.9]

C93, §421B.9

421B.10 Injunction.

The director of revenue and finance, or any person or persons injured by any violation, or who would suffer injury from any threatened violation of this chapter, may maintain an action in any equity court to enjoin such actual or threatened violation. If a violation or threatened violation of this chapter shall be established, the court shall enjoin such violation or threatened violation, and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit including reasonable attorney's fees. Where alleged and proved, the plaintiff, in addition to such injunctive relief and costs of suit, including reasonable attorney's fees, shall be entitled to recover from the defendant the actual damages sustained by the plaintiff.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.10]

C93, §421B.10

421B.11 Director of revenue and finance — powers and duties.

The director of revenue and finance may adopt rules for the enforcement of this chapter and the director is empowered to and may from time to time undertake and make or cause to be made such cost surveys for the state or such trading area or areas as the director shall deem necessary and

it shall be permissible to use such cost survey as provided in section 421B.7, subsection 2 and section 421B.8, subsection 2.

The director of revenue and finance may, upon notice and after hearing, suspend or revoke any permit issued under the provisions of the cigarette tax chapter and the rules of the director promulgated thereunder, for failure of the permit holder to comply with any provision of this unfair cigarette sales chapter or any rule adopted thereunder. The suspension or revocation of a permit shall be for a period of not less than six months from the date of suspension or revocation, and no permit shall be issued for the location designated in the suspended or revoked permit, during the period of suspension or revocation.

Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, and section 422.55.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.11]

C93, §421B.11

CHAPTER 422

INCOME, SALES, SERVICES, AND FRANCHISE TAXES

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DIVISION I

INTRODUCTORY PROVISIONS

422.1 Classification of chapter.

The provisions of this chapter are herein classified and designated as follows:

Division I	Introductory provisions.
Division II	Personal net income tax.
Division III	Business tax on corporations.
Division IV	Retail sales tax.
Division V	Taxation of financial institutions.
Division VI	Administration.
Division VII	Estimated taxes by corporations and financial institutions.
Division VIII	Allocation of revenues.
Division IX	Fuel tax credit.

[C35, §6943-f1; C39, §**6943.033;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.1]

422.2 Purpose or object.

This chapter shall be known as the *"Property Relief Act"*, and shall have for its purpose the direct replacement of taxes already levied or to be levied

on property to the extent of the net revenue obtained from the taxes imposed herein, which shall be apportioned back to the credit of individual taxpayers on the basis of the assessed valuation of taxable property as provided in division VIII of this chapter.

[C35, §6943-f2; C39, §**6943.034;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.2]

422.3 Definitions controlling chapter.

For the purpose of this chapter and unless otherwise required by the context:

1. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Court"* means the district court in the county of the taxpayer's residence.

3. *"Department"* means the department of revenue and finance.

4. *"Director"* means the director of revenue and finance.

5. *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 31, 2002, whichever is applicable.

6. The word *"taxpayer"* includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

[C35, §6943-f3; C39, §**6943.035;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.3]

84 Acts, ch 1305, §25; 85 Acts, ch 230, §3; 86 Acts, ch 1213, §8; 86 Acts, ch 1245, §439; 88 Acts, ch 1028, §1; 89 Acts, ch 285, §2; 90 Acts, ch 1171, §1; 91 Acts, ch 215, §1; 92 Acts, ch 1219, §1; 93 Acts, ch 113, §1; 94 Acts, ch 1166, §1; 95 Acts, ch 152, §2; 96 Acts, ch 1166, §2, 4; 97 Acts, ch 135, §3, 9; 98 Acts, ch 1078, §3, 10; 99 Acts, ch 95, §3, 12, 13; 2000 Acts, ch 1146, §3, 9, 11; 2000 Acts, ch 1148, §1; 2001 Acts, ch 127, §3, 9, 10; 2002 Acts, ch 1069, §3, 10, 14; 2002 Acts, ch 1119, §200, 201

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Code for that year

2000 amendment to subsection 5 takes effect April 26, 2000, and applies retroactively to tax years beginning on or after January 1, 1999; 2000 Acts, ch 1146, §9, 11

2001 amendment to subsection 5 is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

2002 amendment to subsection 5 takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1009, §10, 14

Subsection 5 amended

DIVISION II

PERSONAL NET INCOME TAX

422.4 Definitions controlling division.

For the purpose of this division and unless otherwise required by the context:

1. *a. "Annual inflation factor"* means an index, expressed as a percentage, determined by the department by October 15 of the calendar year preceding the calendar year for which the factor is determined, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in the calendar year preceding the calendar year for which the factor is determined. In determining the annual inflation factor, the department shall use the annual percent change, but not less than zero percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the bureau of economic analysis of the United States department of commerce and shall add all of that percent change to one hundred percent. The annual inflation factor and the cumulative inflation factor shall each be expressed as a percentage rounded to the nearest one-tenth of one percent. The annual inflation factor shall not be less than one hundred percent.

b. "Cumulative inflation factor" means the product of the annual inflation factor for the 1988 calendar year and all annual inflation factors for subsequent calendar years as determined pursuant to this subsection. The cumulative inflation factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual inflation factor has been determined.

c. The annual inflation factor for the 1988 calendar year is one hundred percent.

2. *a. "Annual standard deduction factor"* means an index, expressed as a percentage, determined by the department by October 15 of the calendar year preceding the calendar year for which the factor is determined, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in the calendar year preceding the calendar year for which the factor is determined. In determining the annual standard deduction factor, the department shall use the annual percent change, but not less than zero percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the bureau of economic analysis of the United States department of commerce and shall add all of that percent change to one hundred percent. The annual standard deduction factor and the cumulative standard deduction factor shall each be expressed as a percentage rounded to the nearest one-tenth of one percent. The annual standard deduction factor shall not be less than one hundred percent.

b. "Cumulative standard deduction factor" means the product of the annual standard deduction factor for the 1989 calendar year and all annual standard deduction factors for subsequent calendar years as determined pursuant to this subsection. The cumulative standard deduction factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual standard deduction factor has been determined.

3. The term *"employer"* shall mean and include those who have a right to exercise control as to how, when, and where services are to be performed.

4. The word *"fiduciary"* means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

5. The words *"fiscal year"* mean an accounting period of twelve months, ending on the last day of any month other than December.

6. The words *"foreign country"* mean any jurisdiction other than one embraced within the United States. The words *"United States"*, when used in a geographical sense, include the states, the District of Columbia, and the possessions of the United States.

7. The words *"head of household"* have the same meaning as provided by the Internal Revenue Code.

8. The words *"income year"* mean the calendar year or the fiscal year upon the basis of which the net income is computed under this division.

9. The word *"individual"* means a natural person; and if an individual is permitted to file as a corporation, under the Internal Revenue Code, that fictional status is not recognized for purposes of this chapter, and the individual's taxable income shall be computed as required under the Internal Revenue Code relating to individuals not filing as a corporation, with the adjustments allowed by this chapter.

10. The word *"nonresident"* applies only to individuals, and includes all individuals who are not "residents" within the meaning of subsection 15 hereof.

11. *"Notice of assessment"* means a notice by the department to a taxpayer advising the taxpayer of an assessment of tax due.

12. The term *"other person"* shall mean that person or entity properly empowered to act in behalf of an individual payee and shall include authorized agents of such payees whether they be individuals or married couples.

13. The word *"paid",* for the purposes of the deductions under this division, means "paid or accrued" or "paid or incurred", and the terms *"paid or incurred"* and *"paid or accrued"* shall be construed according to the method of accounting upon the basis of which the net income is computed under this division. The term *"received"*, for the purpose of the computation of net income under this division, means "received or accrued", and the term *"received or accrued"* shall be construed according to the method of accounting upon the basis of which the net income is computed under this division.

14. The word *"person"* includes individuals and fiduciaries.

15. The word *"resident"* applies only to individuals and includes, for the purpose of determining liability to the tax imposed by this division upon or with reference to the income of any tax year, any individual domiciled in the state, and any other individual who maintains a permanent place of abode within the state.

16. The words *"taxable income"* mean the net income as defined in section 422.7 minus the deductions allowed by section 422.9, in the case of individuals; in the case of estates or trusts, the words *"taxable income"* mean the taxable income (without a deduction for personal exemption) as computed for federal income tax purposes under the Internal Revenue Code, but with the adjustments specified in section 422.7 plus the Iowa income tax deducted in computing the federal taxable income and minus federal income taxes as provided in section 422.9.

17. The words *"tax year"* mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this division.

a. If a taxpayer has made the election provided by section 441, subsection *"f"*, of the Internal Revenue Code, *"tax year"* means the annual period so elected, varying from fifty-two to fifty-three weeks.

b. If the effective date or the applicability of a provision of this division is expressed in terms of a tax year beginning, including, or ending with reference to a specified date which is the first or last day of a month, a tax year described in paragraph *"a"* of this subsection shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of the tax year or as ending with the last day of the calendar month ending nearest to the last day of the tax year.

18. The word *"wages"* has the same meaning as provided by the Internal Revenue Code.

19. The term *"withholding agent"* means any individual, fiduciary, estate, trust, corporation, partnership or association in whatever capacity acting and including all officers and employees of the state of Iowa, or any municipal corporation of the state of Iowa and of any school district or school board of the state, or of any political subdivision of the state of Iowa, or any tax-supported unit of government that is obligated to pay or has control of paying or does pay to any resident or nonresident of the state of Iowa or the resident's or nonresident's agent any wages that are subject to the Iowa income tax in the hands of such resident or nonresident, or any of the above-designated entities making payment or having control of making such payment of any taxable Iowa income to any nonresident. The term *"withholding agent"* shall also include an officer or employee of a corporation or association, or a member or employee of a partnership, who as such officer, employee, or member has the responsibility to perform an act under section 422.16 and who subsequently knowingly violates the provisions of section 422.16.

[C35, §6943-f4; C39, §**6943.036;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §422.4; 81 Acts, ch 132, §1, 2, 9; 82 Acts, ch 1023, §1, 30, ch 1203, §1]

83 Acts, ch 179, §1, 2, 21, 23; 84 Acts, ch 1305, §26, 27; 87 Acts, 1st Ex, ch 1, §1; 87 Acts, 2nd Ex, ch 1, §1; 88 Acts, ch 1028, §2 – 4; 89 Acts, ch 268, §1; 94 Acts, ch 1107, §11; 94 Acts, ch 1133, §2, 16; 96 Acts, ch 1197, §1 – 4, 13, 18; 97 Acts, ch 111, §1, 8; 99 Acts, ch 152, §2, 40; 2002 Acts, ch 1119, §163

Subsection 2, paragraph c stricken

422.5 Tax imposed — exclusions — alternative minimum tax.

1. A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

a. On all taxable income from zero through one thousand dollars, thirty-six hundredths of one percent.

b. On all taxable income exceeding one thousand dollars but not exceeding two thousand dollars, seventy-two hundredths of one percent.

c. On all taxable income exceeding two thousand dollars but not exceeding four thousand dollars, two and forty-three hundredths percent.

d. On all taxable income exceeding four thousand dollars but not exceeding nine thousand dollars, four and one-half percent.

e. On all taxable income exceeding nine thousand dollars but not exceeding fifteen thousand dollars, six and twelve hundredths percent.

f. On all taxable income exceeding fifteen thousand dollars but not exceeding twenty thousand dollars, six and forty-eight hundredths percent.

g. On all taxable income exceeding twenty thousand dollars but not exceeding thirty thousand dollars, six and eight-tenths percent.

h. On all taxable income exceeding thirty thousand dollars but not exceeding forty-five thousand dollars, seven and ninety-two hundredths percent.

i. On all taxable income exceeding forty-five thousand dollars, eight and ninety-eight hundredths percent.

j. (1) The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraphs *"a"* through *"i"* by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident's net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph *"a"*, is the numerator and the nonresident's total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

(2) The tax imposed upon the taxable income of a resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state may be computed by reducing the amount determined pursuant to paragraphs *"a"* through *"i"* by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the resident's net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph *"b"*, is the numerator and the resident's total net income computed under section 422.7 is the denominator. If a resident shareholder has elected to take advantage of this subparagraph, and for the next tax year elects not to take advantage of this subparagraph, the resident shareholder shall not reelect to take advantage of this subparagraph for the three tax years immediately following the first tax year for which the shareholder elected not to take advantage of this subparagraph, unless the director consents to the reelection. This subparagraph also applies to individuals who are residents of Iowa for less than the entire tax year.

This subparagraph shall not affect the amount of the taxpayer's checkoff to the Iowa election campaign fund under section 56.18, the checkoff for the fish and game fund in section 456A.16, the credits from tax provided in sections 422.10, 422.11A, and 422.12 and the allocation of these credits between spouses if the taxpayers filed separate returns or separately on combined returns.

k. There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in paragraphs *"a"* through *"j"* or the state alternative minimum tax equal to seventy-five percent of the maximum state individual income tax rate for the tax year, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer as computed under this paragraph.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income, as computed with the deductions in section 422.9, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(iii), and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an

estate or trust.

(b) Twenty-six thousand dollars for a single person or an unmarried head of household.

(c) Thirty-five thousand dollars for a married couple which files a joint return.

(d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph, exceeds the following:

(i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph subdivision (a).

(ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph subdivision (b).

(iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph subdivision (c).

(3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

The state alternative minimum tax of a taxpayer whose net capital gain deduction includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure, where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange, shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection. In the case of a resident or part-year resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state, a nonresident, including a nonresident estate or trust, or an individual, estate, or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection, reduced by the applicable credits in sections 422.10 through 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, paragraph *"a"* or *"b"* as applicable, plus tax preference items, adjustments, and losses under subparagraph (1) attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 plus all tax preference items, adjustments, and losses under subparagraph (1). In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse's respective preference items, adjustments, and losses under subparagraph (1) bear to the combined preference items, adjustments, and losses under subparagraph (1) of both spouses.

2. However, the tax shall not be imposed on a resident or nonresident whose net income, as defined in section 422.7, is thirteen thousand five hundred dollars or less in the case of married persons filing jointly or filing separately on a combined return, unmarried heads of household, and surviving spouses or nine thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirteen thousand five hundred dollars or nine thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirteen thousand five hundred dollars or nine thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds thirteen thousand five hundred dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirteen thousand five hundred dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claim-

ing the dependent has net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable.

In addition, if the married persons', filing jointly or filing separately on a combined return, unmarried head of household's, or surviving spouse's net income exceeds thirteen thousand five hundred dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirteen thousand five hundred dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

3. The tax herein levied shall be computed and collected as hereinafter provided.

4. The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

5. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in subsection 1, paragraphs *"a"* through *"i"* of this section by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

6. The state income tax of a taxpayer whose net income includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered in determining if the fair market value of the taxpayer's assets exceed the taxpayer's liabilities.

7. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allocable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under the thirteen thousand five hundred dollar or less or nine thousand dollar or less exclusion, as applicable.

8. In the case of income derived from the sale or exchange of livestock which qualifies under section 451(e) of the Internal Revenue Code because of drought, the taxpayer may elect to include the income in the taxpayer's net income in the tax year following the year of the sale or exchange in accordance with rules prescribed by the director.

9. If an individual's federal income tax was forgiven for a tax year under section 692 of the Internal Revenue Code, because the individual was killed while serving in an area designated by the president of the United States or the United States Congress as a combat zone, the individual was missing in action and presumed dead, or the individual was killed outside the United States in a terroristic or military action while the individual was a military or civilian employee of the United States, the individual's Iowa income tax is also forgiven for the same tax year.

10. If a taxpayer repays in the current tax year certain amounts of income that were subject to tax under this division in a prior year and a tax benefit would be allowed under similar circumstances under section 1341 of the Internal Revenue Code, a tax benefit shall be allowed on the Iowa return. The tax benefit shall be the reduced tax for the current tax year due to the deduction for the repaid income or the reduction in tax for the prior year or years due to exclusion of the repaid income. The reduction in tax shall qualify as a refundable tax credit on the return for the current year pursuant to rules prescribed by the director.

[C35, §6943-f5; C39, §**6943.037;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.5; 81 Acts, ch 132, §3; 82 Acts, ch 1023, §2, 31, ch 1064, §1, 2, ch 1226, §1, 2, 6]

83 Acts, ch 101, §86; 83 Acts, ch 179, §3, 20, 22; 85 Acts, ch 243, §1, 2; 86 Acts, ch 1213, §9; 86 Acts, ch 1232, §1; 86 Acts, ch 1236, §3, 4; 87 Acts, ch 214, §2; 87 Acts, 1st Ex, ch 1, §2; 87 Acts, 2nd Ex, ch 1, §2, 3; 88 Acts, ch 1028, §5 – 11; 89 Acts, ch 228, §4, 5; 89 Acts, ch 251, §11; 89 Acts, ch 268, §2, 3; 89 Acts, ch 296, §41; 91 Acts, ch 159, §7; 91 Acts, ch 196, §1; 92 Acts, 2nd Ex, ch 1001, §217, 218, 224; 96 Acts, ch 1166, §3, 4; 96 Acts, ch 1197, §14, 15, 18; 96 Acts, ch 1219, §27; 97 Acts, ch 8, §1, 2; 97 Acts, ch 111, §2 – 4, 7, 8; 97 Acts, ch 158, §11, 49; 99 Acts, ch 151, §4, 89

422.6 Income from estates or trusts.

The tax imposed by section 422.5 less the credits allowed under sections 15.333, 15.335, 422.10,

422.11, 422.11A, and 422.11B, and the personal exemption credit allowed under section 422.12 apply to and are a charge against estates and trusts with respect to their taxable income, and the rates are the same as those applicable to individuals. The fiduciary shall make the return of income for the estate or trust for which the fiduciary acts, whether the income is taxable to the estate or trust or to the beneficiaries. However, for tax years ending after August 5, 1997, if the trust is a qualified preneed funeral trust as set forth in section 685 of the Internal Revenue Code and the trustee has elected the special tax treatment under section 685 of the Internal Revenue Code, neither the trust nor the beneficiary is subject to Iowa income tax on income accruing to the trust.

The beneficiary of a trust who receives an accumulation distribution shall be allowed credit without interest for the Iowa income taxes paid by the trust attributable to the accumulation distribution in a manner corresponding to the provisions for credit under the federal income tax relating to accumulation distributions as contained in the Internal Revenue Code. The trust is not entitled to a refund of taxes paid on the distributions. The trust shall maintain detailed records to verify the computation of the tax.

[C35, §6943-f6; C39, §**6943.038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.6]

83 Acts, ch 179, §4, 25; 84 Acts, ch 1305, §28; 88 Acts, ch 1028, §12; 89 Acts, ch 251, §12; 91 Acts, ch 159, §8; 97 Acts, ch 23, §42; 98 Acts, ch 1078, §4, 11; 99 Acts, ch 95, §4, 12, 13; 2002 Acts, ch 1145, §8

Unnumbered paragraph 1 amended

422.7 "Net income" — how computed.

The term *"net income"* means the adjusted gross income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code.

3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract payments received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan when the commuted value of the installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes.

5. Individual taxpayers and married taxpayers who file a joint federal income tax return and who elect to file a joint return, separate returns, or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the disability income exclusion and shall compute the amount of the disability income exclusion subject to the limitations for joint federal income tax return filers provided by section 105(d) of the Internal Revenue Code. The disability income exclusion provided in section 105(d) of the Internal Revenue Code, as amended up to and including December 31, 1982, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1984.

6. Reserved.

7. Married taxpayers who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the expensing of business assets and capital loss provisions of sections 179(a) and 1211(b) respectively of the Internal Revenue Code and shall compute the amount of expensing of business assets and capital loss subject to the limitations for joint federal income tax return filers provided by sections 179(b) and 1211(b) respectively of the Internal Revenue Code.

8. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

9. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

10. Notwithstanding the method for computing the amount of travel expenses that may be deducted under section 162(h) of the Internal Revenue Code, for tax years beginning on or after January 1, 1987, a member of the general assembly whose place of residence within the legislative district is greater than fifty miles from the capitol building of the state may deduct the total amount per day determined under section 162(h)(1)(B) of the Internal Revenue Code and a member of the general assembly whose place of residence within the legislative district is fifty or fewer miles from the capitol building of the state may deduct fifty dollars per day. This subsection does not apply to a member of the general assembly who elects to itemize for state tax purposes the member's travel expenses.

11. Add the amounts deducted and subtract the amounts included as income as a result of the

treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property included in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

12. If the adjusted gross income includes income or loss from a small business operated by the taxpayer, an additional deduction shall be allowed in computing the income or loss from the small business if the small business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year any of the following:

a. An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs *"a"*, *"b"*, and *"c"* who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the department of workforce development, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

For purposes of this subsection, *"physical or mental impairment"* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

For purposes of this subsection, *"small business"* means small business as defined in section 16.1, subsection 36, except that it shall also include the operation of a farm.

12A. If the adjusted gross income includes income or loss from a business operated by the taxpayer, and if the business does not qualify for the adjustment under subsection 12, an additional deduction shall be allowed in computing the income or loss from the business if the business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year either of the following:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs *"a"* and *"b"* who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is al-

lowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the department of workforce development, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs *"a"* and *"b"*.

13. Subtract, to the extent included, the amount of additional social security benefits taxable under the Internal Revenue Code for tax years beginning on or after January 1, 1994. The amount of social security benefits taxable as provided in section 86 of the Internal Revenue Code, as amended up to and including January 1, 1993, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1994. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or who elect separate filing on a combined return for state income tax purposes, shall allocate between the spouses the amount of benefits subtracted from net income in the ratio of the social security benefits received by each spouse to the total of these benefits received by both spouses.

14. Add the amount of intangible drilling and development costs optionally deducted in the year paid or incurred as described in section 57(a)(2) of the Internal Revenue Code. This amount may be recovered through cost depletion or depreciation, as appropriate under rules prescribed by the director.

15. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well as described in section 57(a)(1) of the Internal Revenue Code.

16. Subtract the income resulting from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure if all of the following conditions are met:

a. The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

b. Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt to asset ratio exceeded ninety percent as computed under generally accepted accounting practices.

c. The taxpayer's net worth at the end of the tax year is less than seventy-five thousand dollars. In determining a taxpayer's net worth at the end of the tax year a taxpayer shall include any asset transferred within one hundred twenty days prior to the end of the tax year without adequate and full consideration in money or money's worth. In determining the taxpayer's debt to asset ratio, the taxpayer shall include any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange without adequate and full consideration in money or money's worth. For purposes of this subsection, actual notice of foreclosure includes, but is not limited to, bankruptcy or written notice from a creditor of the creditor's intent to foreclose where there is a reasonable belief that the creditor can force a sale of the asset. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered for purposes of determining the taxpayer's net worth or the taxpayer's debt to asset ratio.

17. Add interest and dividends from regulated investment companies exempt from federal income tax under the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

18. Reserved.

19. Subtract interest earned on bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

20. Subtract, to the extent included, the proceeds received pursuant to a judgment in or settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide. This subsection applies to proceeds received by a taxpayer who is a disabled veteran or who is a beneficiary of a disabled veteran.

For purposes of this subsection:

a. *"Vietnam herbicide"* means a herbicide, defoliant or other causative agent containing dioxin, including, but not limited to, Agent Orange, used in the Vietnam Conflict beginning December 22, 1961, and ending May 7, 1975, inclusive.

b. *"Agent Orange"* means the herbicide composed of trichlorophenoxyacetic acid and dichloro-

phenoxyacetic acid and the contaminant dioxin (TCDD).

21. Subtract the net capital gain from the following:

a. (1) Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 422.42, in which the taxpayer was employed or in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

However, where the business is sold to individuals who are all lineal descendants of the taxpayer, the taxpayer does not have to have materially participated in the business in order for the net capital gain from the sale to be excluded from taxation.

However, in lieu of the net capital gain deduction in this paragraph and paragraphs *"b"*, *"c"*, and *"d"*, where the business is sold to individuals who are all lineal descendants of the taxpayer, the amount of capital gain from each capital asset may be subtracted in determining net income.

(2) For purposes of this paragraph, *"lineal descendant"* means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

b. Net capital gain from the sale of cattle or horses held by the taxpayer for breeding, draft, dairy, or sporting purposes for a period of twenty-four months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

c. Net capital gain from the sale of breeding livestock, other than cattle or horses, if the livestock is held by the taxpayer for a period of twelve months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

d. Net capital gain from the sale of timber as defined in section 631(a) of the Internal Revenue Code.

However, to the extent otherwise allowed, the deduction provided in this subsection is not allowed for purposes of computation of a net operating loss in section 422.9, subsection 3, and in computing the income for the taxable year or years for which a net operating loss is deducted.

22. Subtract, to the extent included, the amounts paid to an eligible individual under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383, Title I, as satisfaction for a claim against the United States arising out of the confinement, holding in custody, relocation, or other deprivation of liberty or property of an individual of Japanese ancestry.

23. Reserved.

24. Subtract to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for services performed on or after August 2, 1990, pursuant to military orders related to the Persian Gulf Conflict.

25. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after November 21, 1995, pursuant to military orders related to peacekeeping in Bosnia-Herzegovina.

26. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property under the accelerated cost recovery system of the Internal Revenue Code during the period during which it is owned by the for-profit entity and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the for-profit entity, subsidiary of the for-profit entity, or majority owners of the for-profit entity, for other than as a speculative shell building, as defined in section 427.1, subsection 27.

27. Subtract, to the extent included, payments received by an individual providing unskilled in-home health-related care services pursuant to section 249.3, subsection 2, paragraph *"a"*, subparagraph (2), to a member of the individual caregiver's family. For purposes of this subsection, a member of the individual caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor, or lineal descendant, and such persons by marriage or adoption. A health care professional licensed by an examination board designated in section 147.13, subsections 1 through 10, is not eligible for the exemption authorized in this subsection.

28. If the taxpayer is owner of an individual development account certified under chapter 541A at any time during the tax year, deductions of all of the following shall be allowed:

a. Contributions made to the account by persons and entities, other than the taxpayer, as authorized in chapter 541A.

b. The amount of any savings refund authorized under section 541A.3, subsection 1.

c. Earnings from the account.

29. Subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts paid by the taxpayer for the purchase of health benefits coverage or insurance for the tax-

payer or taxpayer's spouse or dependent.

30. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted gross income.

31. For a person who is disabled, or is fifty-five years of age or older, or is the surviving spouse of an individual or a survivor having an insurable interest in an individual who would have qualified for the exemption under this subsection for the tax year, subtract, to the extent included, the total amount of a governmental or other pension or retirement pay, including, but not limited to, defined benefit or defined contribution plans, annuities, individual retirement accounts, plans maintained or contributed to by an employer, or maintained or contributed to by a self-employed person as an employer, and deferred compensation plans or any earnings attributable to the deferred compensation plans, up to a maximum of six thousand dollars for a person, other than a husband or wife, who files a separate state income tax return and up to a maximum of twelve thousand dollars for a husband and wife who file a joint state income tax return. However, a surviving spouse who is not disabled or fifty-five years of age or older can only exclude the amount of pension or retirement pay received as a result of the death of the other spouse. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined maximum exclusion under this subsection of up to twelve thousand dollars. The twelve thousand dollar exclusion shall be allocated to the husband or wife in the proportion that each spouse's respective pension and retirement pay received bears to total combined pension and retirement pay received.

32. *a.* Subtract the maximum contribution that may be deducted for Iowa income tax purposes as a participant in the Iowa educational savings plan trust pursuant to section 12D.3, subsection 1, paragraph *"a"*.

b. Add the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Iowa educational savings plan trust to the extent previously deducted as a contribution to the trust.

33. Subtract, to the extent included, income from interest and earnings received from the Iowa educational savings plan trust created in chapter 12D.

34. Subtract, to the extent not deducted for federal income tax purposes, the amount of any gift, grant, or donation made to the Iowa educational savings plan trust for deposit in the endowment fund of that trust.

35. Subtract, to the extent included, the following:

a. Payments made to the taxpayer because of the taxpayer's status as a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or as an heir of such victim.

b. Items of income attributable to, derived from, or in any way related to assets stolen from, hidden from, or otherwise lost to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime immediately prior to, during, and immediately after World War II, including, but not limited to, interest on the proceeds receivable as insurance under policies issued to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime by European insurance companies immediately prior to and during World War II. However, income from assets acquired with such assets or with the proceeds from the sale of such assets shall not be subtracted. This paragraph shall only apply to a taxpayer who was the first recipient of such assets after recovery of the assets and who is a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or is an heir of such victim.

36. Add, to the extent not already included, income from the sale of obligations of the state and its political subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state individual income tax.

37. Notwithstanding the method for computing income from an installment sale under section 453 of the Internal Revenue Code, as defined in section 422.3, the method to be used in computing income from an installment sale shall be the method under section 453 of the Internal Revenue Code, as amended up to and including January 1, 2000. A taxpayer affected by this subsection shall make adjustments in the adjusted gross income pursuant to rules adopted by the director.

The adjustment to net income provided in this subsection is repealed for tax years beginning on or after January 1, 2002. However, to the extent that a taxpayer using the accrual method of accounting reported the entire capital gain from the sale or exchange of property on the Iowa return for the tax year beginning in the 2001 calendar year and the capital gain was reported on the installment method on the federal income tax return, any additional installment from the capital gain reported for federal income tax purposes is not to be included in net income in tax years beginning on or after January 1, 2002.

38. Subtract, to the extent not otherwise excluded, the amount of withdrawals from qualified retirement plan accounts made during the tax year if the taxpayer or taxpayer's spouse is a member of the Iowa national guard or reserve forces of the United States who is ordered to active state service or federal service or duty. In addition, a penalty for such withdrawals shall not be assessed by the state.

[C35, §6943-f7; C39, §**6943.039;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §422.7; 81 Acts, ch 132, §4 – 6, 9 – 11; 82 Acts, ch 1023, §3 – 8, 25, 30, 31, ch 1203, §2]

83 Acts, ch 174, §1, 3; 83 Acts, ch 179, §5, 6, 21, 24; 84 Acts, ch 1305, §29, 30; 85 Acts, ch 230, §4; 86 Acts, ch 1232, §2; 86 Acts, ch 1236, §5; 86 Acts, ch 1238, §18; 86 Acts, ch 1241, §14; 86 Acts, ch 1243, §33; 87 Acts, 1st Ex, ch 1, §3; 87 Acts, 2nd Ex, ch 1, §4 – 6; 88 Acts, ch 1028, §13 – 15; 89 Acts, ch 175, §2; 89 Acts, ch 225, §18, 19; 89 Acts, ch 228, §6, 7, 11; 89 Acts, ch 249, §2; 89 Acts, ch 251, §13; 89 Acts, ch 268, §4; 89 Acts, ch 285, §3; 90 Acts, ch 1171, §2; 90 Acts, ch 1195, §1; 90 Acts, ch 1251, §52; 90 Acts, ch 1271, §1901, 1903; 91 Acts, ch 196, §2; 91 Acts, ch 210, §1; 92 Acts, ch 1225, §1, 5; 92 Acts, ch 1247, §30, 31, 39; 93 Acts, ch 97, §14, 20; 94 Acts, ch 1165, §12, 46; 94 Acts, ch 1166, §2, 3, 12; 94 Acts, ch 1183, §77 – 79, 97; 95 Acts, ch 5, §1, 14; 95 Acts, ch 152, §3, 7; 95 Acts, ch 206, §1, 4; 96 Acts, ch 1106, §7; 96 Acts, ch 1129, §113; 96 Acts, ch 1186, §23; 97 Acts, ch 133, §1; 97 Acts, ch 135, §4, 9; 98 Acts, ch 1100, §57; 98 Acts, ch 1172, §12, 14; 98 Acts, ch 1174, §5, 6; 98 Acts, ch 1177, §1 – 6; 2000 Acts, ch 1103, §2, 3; 2000 Acts, ch 1163, §5, 6; 2000 Acts, ch 1194, §8, 21; 2001 Acts, ch 15, §1, 2; 2001 Acts, ch 116, §6, 28; 2001 Acts, ch 127, §4, 5, 9, 10; 2001 Acts, 2nd Ex, ch 6, §21, 22, 25, 26, 37; 2002 Acts, ch 1069, §4, 11, 14; 2002 Acts, ch 1150, §4; 2002 Acts, ch 1151, §5, 36

2000 amendment to subsection 31 applies to tax years beginning on or after January 1, 2001; 2000 Acts, ch 1194, §21

2000 amendment adding new subsection 35 is effective April 14, 2000, and applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1103, §3

2001 amendments striking former subsection 6 and adding subsection 37 take effect May 16, 2001, and apply retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

Subsection 36 takes effect May 3, 2001, and applies retroactively to tax years beginning on or after January 1, 2001; 2001 Acts, ch 116, §28

2001 amendments to subsection 12, paragraph c, and subsection 12A, paragraph b, take effect July 1, 2002; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

Subsection 37, unnumbered paragraph 2, takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1069, §11, 14

Subsection 38 applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1151, §36

Subsection 4 amended

Subsection 12, paragraph c amended

Subsection 12A, paragraph b amended

Subsection 37, NEW unnumbered paragraph 2

NEW subsection 38

422.8 Allocation of income earned in Iowa and other states.

Under rules prescribed by the director, net income of individuals, estates and trusts shall be allocated as follows:

1. The amount of income tax paid to another state or foreign country by a resident taxpayer of this state on income derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this chapter, except that the credit shall not exceed what the amount of the Iowa tax would have been on the same income which was taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: Income earned outside of Iowa and taxed by another state or foreign country shall be divided by the total income of the resident taxpayer of Iowa. This quotient multiplied times the net Iowa tax as determined on the total income of the taxpayer as if entirely earned in Iowa shall be the maximum tax credit against the Iowa net tax.

2. *a.* Nonresident's net income allocated to Iowa is the net income, or portion of net income, which is derived from a business, trade, profession, or occupation carried on within this state or income from any property, trust, estate, or other source within Iowa. However, income derived from a business, trade, profession, or occupation carried on within this state and income from any property, trust, estate, or other source within Iowa shall not include distributions from pensions, including defined benefit or defined contribution plans, annuities, individual retirement accounts, and deferred compensation plans or any earnings attributable thereto so long as the distribution is directly related to an individual's documented retirement and received while the individual is a nonresident of this state. If a business, trade, profession, or occupation is carried on partly within and partly without the state, only the portion of the net income which is fairly and equitably attributable to that part of the business, trade, profession, or occupation carried on within the state is allocated to Iowa for purposes of section 422.5, subsection 1, paragraph *"j"*, and section 422.13 and income from any property, trust, estate, or other source partly within and partly without the state is allocated to Iowa in the same manner, except that annuities, interest on bank deposits and interest-bearing obligations, and dividends are allocated to Iowa only to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state.

b. A resident's income allocable to Iowa is the income determined under section 422.7 reduced by items of income and expenses from an S corporation that carries on business within and without the state when those items of income and expenses pass directly to the shareholders under provisions of the Internal Revenue Code. These items of income and expenses are increased by the greater of the following:

(1) The net income or loss of the corporation which is fairly and equitably attributable to this state under section 422.33, subsections 2 and 3.

(2) Any cash or the value of property distributions which are made only to the extent that they are paid from income upon which Iowa income tax has not been paid, as determined under rules of the director, reduced by the amount of any of these distributions that are made to enable the shareholder to pay federal income tax on items of income, loss, and expenses from the corporation.

3. Taxable income of resident and nonresident estates and trusts shall be allocated in the same manner as individuals.

4. The amount of minimum tax paid to another

state or foreign country by a resident taxpayer of this state from preference items derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this division except that the credit shall not exceed what the amount of state alternative minimum tax would have been on the same preference items which were taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: The total of preference items earned outside of Iowa and taxed by another state or foreign country shall be divided by the total of preference items of the resident taxpayer of Iowa. In computing this quotient, those items excludable under section 422.5, subsection 1, paragraph *"k"*, subparagraph (1) shall not be used in computing the preference items. This quotient multiplied times the net state alternative minimum tax as determined in section 422.5, subsection 1, paragraph *"k"* on the total of preference items as if entirely earned in Iowa shall be the maximum tax credit against the Iowa alternative minimum tax. However, the maximum tax credit will not be allowed to the extent that the minimum tax imposed by the other state or foreign country is less than the maximum tax credit computed above.

5. The director may, in accordance with the provisions of this subsection, and when cost-efficient, administratively feasible, and of mutual benefit to both states, enter into reciprocal agreements with tax administration agencies of other states to further tax administration and eliminate duplicate withholding by exempting from Iowa taxation income earned from personal services in Iowa by residents of another state, if the other state provides a tax exemption for the same type of income earned from personal services by Iowa residents in the other state. For purposes of this subsection, *"income earned from personal services"* means wages, salaries, commissions, and tips, and earned income from other sources. This subsection does not authorize the department to withhold taxes on deferred compensation payments, pension distributions, and annuity payments when paid to a nonresident of the state of Iowa. All the terms of the agreements shall be described in the rules adopted by the department.

A reciprocal agreement entered into on or after April 4, 2002, with a tax administration agency of another state shall not take effect until such agreement has been authorized by a constitutional majority of each house of the general assembly and approved by the governor. A reciprocal agreement in effect on or after January 1, 2002, shall not be terminated by the state of Iowa unless the termination has been authorized by a constitutional majority of each house of the general assembly and approved by the governor. An amendment to an existing reciprocal agreement does not constitute a new agreement.

6. If the resident or part-year resident is a shareholder of an S corporation which has in effect an election under subchapter S of the Internal Revenue Code, subsections 1 and 3 do not apply to any income taxes paid to another state or foreign country on the income from the corporation which has in effect an election under subchapter S of the Internal Revenue Code.

[C35, §6943-f8; C39, §**6943.037, 6943.040, 6943.050;** C46, 50, 54, 58, §422.5, 422.8, 422.18; C62, 66, 71, 73, 75, 77, 79, 81, §422.5, 422.8; 82 Acts, ch 1226, §3, 6]

83 Acts, ch 16, §1, 2; 85 Acts, ch 243, §3; 88 Acts, ch 1028, §16; 92 Acts, ch 1224, §1, 2, 4; 94 Acts, ch 1149, §1, 2; 96 Acts, ch 1197, §16 – 18; 97 Acts, ch 111, §5, 6, 8; 2002 Acts, ch 1005, §10, 11; 2002 Acts, ch 1069, §5, 12, 14

2002 amendment to subsection 2, paragraph b, subparagraph (2) applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1005, §11

2002 amendment to subsection 5 takes effect April 4, 2002, and the termination provisions apply to termination of reciprocal agreements in effect on or after January 1, 2002; 2002 Acts, ch 1069, §12, 14

Subsection 2, paragraph b, subparagraph (2) amended

Subsection 5 amended

422.9 Deductions from net income.

In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

1. An optional standard deduction, after deduction of federal income tax, equal to one thousand two hundred thirty dollars for a married person who files separately or a single person or equal to three thousand thirty dollars for a husband and wife who file a joint return, a surviving spouse, or an unmarried head of household. The optional standard deduction shall not exceed the amount remaining after deduction of the federal income tax.

2. The total of contributions, interest, taxes, medical expense, nonbusiness losses, and miscellaneous expenses deductible for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

a. Subtract the deduction for Iowa income taxes.

b. Add the amount of federal income taxes paid or accrued as the case may be, during the tax year, adjusted by any federal income tax refunds. Provided, however, that where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion thereof paid or accrued, as the case may be, by each.

c. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the biological mother which are incident to the child's birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by a

child-placing agency licensed under chapter 238 or by a person making an independent placement according to the provisions of chapter 600.

d. Add an additional deduction for mileage incurred by the taxpayer in voluntary work for a charitable organization consisting of the excess of the state employee mileage reimbursement over the amount deductible for federal income tax purposes. The deduction shall be proven by the keeping of a contemporaneous diary by the person throughout the period of the voluntary work in the tax year.

e. Add the amount, not to exceed five thousand dollars, of expenses not otherwise deductible under this section actually incurred in the home of the taxpayer for the care of a person who is the grandchild, child, parent, or grandparent of the taxpayer or the taxpayer's spouse and who is unable, by reason of physical or mental disability, to live independently and is receiving, or would be eligible to receive if living in a health care facility licensed under chapter 135C, medical assistance benefits under chapter 249A. In the event that the person being cared for is receiving assistance benefits under chapter 239B, the expenses not otherwise deductible shall be the net difference between the expenses actually incurred in caring for the person and the assistance benefits received under chapter 239B.

f. Add the amount of the mortgage interest credit allowable for the tax year under section 25 of the Internal Revenue Code to the extent the credit decreased the amount of interest deductible under section 163(g) of the Internal Revenue Code.

g. To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, add the amount of the annual registration fee paid for a motor vehicle pursuant to section 321.113, subsection 4, or section 321.113, subsection 5, paragraph *"b"*, which is based upon the value of the vehicle. For purposes of this paragraph, sixty percent of the amount of the registration fee is based upon the value of the motor vehicle.

h. To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, add the amount of the annual registration fee paid for a multipurpose vehicle pursuant to section 321.124, subsection 3, paragraph *"h"*, which is based upon the value of the vehicle. For purposes of this paragraph, sixty percent of the amount of the registration fee is based upon the value of the multipurpose vehicle.

i. If the taxpayer has a deduction for medical care expenses under section 213 of the Internal Revenue Code, the taxpayer shall recompute for the purposes of this subsection the amount of the deduction under section 213 by excluding from medical care, as defined in section 213, the amount subtracted under section 422.7, subsection 29.

3. If, after applying all of the adjustments provided for in section 422.7, the allocation provisions of section 422.8, and the deductions allowable in this section subject to the modifications provided in section 172(d) of the Internal Revenue Code, the taxable income results in a net operating loss, the net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years for an individual taxpayer with a casualty or theft property loss or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the taxpayer first earned income in Iowa whichever year is the later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph *"a"* or *"d"* or if not required to be carried back shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. Notwithstanding paragraph *"a"*, for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

4. Where married persons file separately, both must use the optional standard deduction if either elects to use it.

5. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa under the rules prescribed by the director.

6. In determining the amount of deduction for federal income tax under subsection 1 or subsection 2, paragraph *"b"*, for tax years beginning in the 2001 calendar year, the amount of the deduction shall not be adjusted by the amount received during the tax year of the advanced refund of the rate reduction tax credit provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, and the advanced refund of such credit shall not be subject to taxation under this division.

7. In determining the amount of deduction for federal income tax under subsection 1 or subsection 2, paragraph *"b"*, for tax years beginning in the 2002 calendar year, the amount of the deduction for the tax year shall not be adjusted by the amount of the rate reduction credit received in the tax year to the extent that the credit is attribut-

able to the rate reduction credit provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, and the amount of such credit shall not be taxable under this division.

[C35, §6943-f9; C39, §**6943.041;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.9; 82 Acts, ch 1023, §9, 10, 30, 32, ch 1192, §1, 2, ch 1226, §4, 6]

83 Acts, ch 179, §7, 22; 84 Acts, ch 1305, §31; 87 Acts, ch 233, §493; 87 Acts, 2nd Ex, ch 1, §7 – 9; 88 Acts, ch 1028, §17 – 20; 89 Acts, ch 268, §5; 91 Acts, ch 159, §9; 91 Acts, ch 210, §2; 92 Acts, ch 1222, §4, 6; 94 Acts, ch 1046, §9; 94 Acts, ch 1166, §4 – 6, 12; 95 Acts, ch 5, §2, 14; 96 Acts, ch 1168, §1, 3; 97 Acts, ch 41, §32; 97 Acts, ch 135, §5, 9; 98 Acts, ch 1078, §5, 12; 99 Acts, ch 95, §5, 6, 12, 13; 99 Acts, ch 114, §25; 2001 Acts, ch 132, §22, 24; 2001 Acts, 1st Ex, ch 3, §1, 2; 2002 Acts, ch 1069, §6, 13, 14

Subsection 2, paragraph g, takes effect January 1, 2002; 2001 Acts, ch 132, §24

Subsection 6 applies retroactively to tax years beginning on or after January 1, 2001, and before January 1, 2002; 2001 Acts, 1st Ex, ch 3, §2

Subsection 7 takes effect April 4, 2002, and applies retroactively to January 1, 2002, for tax years beginning in the 2002 calendar year; 2002 Acts, ch 1069, §13, 14

NEW subsection 7

422.10 Research activities credit.

1. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state.

a. For individuals, the credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph *"a"*, subparagraph (1), a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph *"b"*, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

2. For purposes of this section, an individual may claim a research credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, S corporation, limited liability company, estate, or trust.

3. For purposes of this section, *"base amount"*, *"basic research payment"*, and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state. For purposes of this section, *"Internal Revenue Code"* means the Internal Revenue Code in effect on January 1, 2002.

4. Any credit in excess of the tax liability imposed by section 422.5 less the credits allowed under sections 422.11A, 422.12, and 422.12B for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following taxable year.

83 Acts, ch 179, §8, 25; 85 Acts, ch 230, §5; 86 Acts, ch 1007, §22; 87 Acts, 2nd Ex, ch 1, §10; 88 Acts, ch 1028, §21; 90 Acts, ch 1171, §3; 91 Acts, ch 159, §10; 91 Acts, ch 215, §2; 93 Acts, ch 113, §2, 4; 94 Acts, ch 1166, §7, 11; 95 Acts, ch 152, §4, 7; 97 Acts, ch 23, §43; 97 Acts, ch 135, §6, 9; 98 Acts, ch 1078, §6, 10; 99 Acts, ch 95, §7, 12, 13; 2000 Acts, ch 1146, §4, 9, 11; 2000 Acts, ch 1194, §9, 21; 2001 Acts, ch 127, §6, 9, 10; 2002 Acts, ch 1069, §7, 10, 14

For 2000 amendment to unnumbered paragraph 1 which takes effect April 26, 2000, and relates to the amount of the state tax credit for increasing research activities for tax years beginning on or after January 1, 1999, see 2000 Acts, ch 1146, §4, 9, 11

2000 amendment amending and renumbering former unnumbered paragraphs 1 and 2 as subsections 1 – 4 applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21

2001 amendment to subsection 3 is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

2002 amendment to subsection 3 takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1069, §10, 14

Subsection 3 amended

422.11 Franchise tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code, shall com-

pute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution and subtracting the credits allowed under section 422.12. This recomputed tax shall be subtracted from the amount of tax computed under this division after the deduction for credits allowed under section 422.12. The resulting amount, which shall not exceed the taxpayer's pro rata share of the franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

97 Acts, ch 154, §1, 3

422.11A New jobs tax credit.

The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. An individual may claim the new jobs tax credit allowed a partnership, subchapter S corporation, or estate or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, or estate or trust. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted, whichever is the earlier. For purposes of this section, *"agreement"*, *"industry"*, *"new job"* and *"project"* mean the same as defined in section 260E.2 and *"base employment level"* means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 260E on the date of that agreement.

85 Acts, ch 32, §80; 89 Acts, ch 251, §14; 91 Acts, ch 159, §11

422.11B Minimum tax credit.

1. There is allowed as a credit against the tax determined in section 422.5, subsection 1, paragraphs *"a"* through *"j"* for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this section for those prior tax years.

2. The allowable credit under subsection 1 for a tax year shall not exceed the excess, if any, of the tax determined in section 422.5, subsection 1, paragraphs *"a"* through *"j"* over the state alternative minimum tax as determined in section 422.5, subsection 1, paragraph *"k"*.

The net minimum tax for a tax year is the excess, if any, of the tax determined in section 422.5, subsection 1, paragraph *"k"* for the tax year over the tax determined in section 422.5, subsection 1, paragraphs *"a"* through *"j"* for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

89 Acts, ch 285, §4

422.11C Ethanol blended gasoline tax credit.

1. As used in this section, unless the context otherwise requires:

a. "Ethanol blended gasoline" means the same as defined in section 452A.2.

b. "Gasoline" means gasoline that meets the specifications required by the department of agriculture and land stewardship pursuant to section 214A.2 and that is dispensed through a metered pump.

c. "Metered pump" means a motor vehicle fuel pump licensed by the department of agriculture and land stewardship pursuant to chapter 214.

d. "Retail dealer" means a retail dealer as defined in section 214A.1 who operates a metered pump at a service station.

e. "Sell" means to sell on a retail basis.

f. "Service station" means each geographic location in this state where a retail dealer sells and dispenses gasoline on a retail basis.

g. "Tax credit" means the designated ethanol blended gasoline tax credit as provided in this section.

2. The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by an ethanol blended gasoline tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this

section. In order to be eligible, all of the following must apply:

a. The taxpayer is a retail dealer.

b. The taxpayer operates at least one service station at which more than sixty percent of the total gallons of gasoline sold and dispensed through one or more metered pumps by the taxpayer in the tax year is ethanol blended gasoline.

c. The taxpayer complies with requirements of the department required to administer this section.

3. The tax credit shall be calculated separately for each service station site operated by the taxpayer. The amount of the tax credit for each eligible service station is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at that service station during the tax year in excess of sixty percent of all gasoline sold and dispensed through metered pumps at that service station during the tax year.

4. Any credit in excess of the taxpayer's tax liability shall be refunded. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

5. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

2001 Acts, ch 123, §2, 6; 2002 Acts, ch 1050, §35

Ethanol blended gasoline tax credit applies to tax years beginning on or after January 1, 2002; implementation; 2001 Acts, ch 123, §6

Subsection 1, paragraph b amended

422.11D Property rehabilitation tax credit.

1. The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by a property rehabilitation tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded as provided in section 404A.4, subsection 3.

2. An individual may claim a property rehabilitation tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

3. For purposes of this section, *"eligible property"* means the same as used in section 404A.1.

2000 Acts, ch 1194, §10

422.11E Assistive device tax credit — small business.

1. The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by an assistive device tax credit. A small business purchasing, renting, or modifying an assistive device or making workplace modifications for an individual with a disability who is employed or will be employed by the small business is eligible, subject to availability of credits, to receive this assistive device tax credit which is equal to fifty percent of the first five thousand dollars paid during the tax year for the purchase, rental, or modification of the assistive device or for making the workplace modifications. Any credit in excess of the tax liability shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year. If the small business elects to take the assistive device tax credit, the small business shall not deduct for Iowa tax purposes any amount of the cost of an assistive device or workplace modifications which is deductible for federal tax purposes.

2. To receive the assistive device tax credit, the eligible small business must submit an application to the department of economic development. If the taxpayer meets the criteria for eligibility, the department of economic development shall issue to the taxpayer a certification of entitlement for the assistive device tax credit. However, the combined amount of tax credits that may be approved for a fiscal year under this section and section 422.33, subsection 9, shall not exceed five hundred thousand dollars. Tax credit certificates shall be issued on an earliest filed basis. The certification shall contain the taxpayer's name, address, tax identification number, the amount of the credit, and tax year for which the certificate applies. The taxpayer must file the tax credit certificate with the taxpayer's individual income tax return in order to claim the tax credit. The departments of economic development and revenue and finance shall each adopt rules to jointly administer this section and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

3. An individual may claim an assistive device tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

4. For purposes of this section:

a. *"Assistive device"* means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the

workplace or on the job. *"Assistive device"* does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. *"Assistive device"* does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of *"assistive device"* that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

b. *"Disability"* means the same as defined in section 225C.46.

c. *"Small business"* means a business that either had gross receipts for its preceding tax year of three million dollars or less or employed not more than fourteen full-time employees during its preceding tax year.

d. *"Workplace modifications"* means physical alterations to the work environment.

2000 Acts, ch 1194, §11, 21

Section applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21

422.11F Investment tax credits.

The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

2002 Acts, ch 1006, §7, 13

Section takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

NEW section

422.11G Venture capital fund investment tax credit.

The tax imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by a venture capital fund investment tax credit authorized pursuant to section 15E.51.

2002 Acts, ch 1156, §2, 8

Section takes effect May 8, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1156, §8

NEW section

422.12 Deductions from computed tax.

There shall be deducted from but not to exceed the tax, after the same shall have been computed as provided in this division, the following:

1. A personal exemption credit in the following amounts:

a. For an estate or trust, a single individual, or a married person filing a separate return, forty dollars.

b. For a head of household, or a husband and wife filing a joint return, eighty dollars.

c. For each dependent, an additional forty dollars. As used in this section, the term *"dependent"* has the same meaning as provided by the Internal Revenue Code.

d. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who has attained the age of sixty-five years before the close of the tax year or on the first day following the end of the tax year.

e. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who is blind at the close of the tax year. For the purposes of this paragraph, an individual is blind only if the individual's central visual acuity does not exceed twenty-two hundredths in the better eye with correcting lenses, or if the individual's visual acuity is greater than twenty-two hundredths but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

2. A tuition credit equal to twenty-five percent of the first one thousand dollars which the taxpayer has paid to others for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216. As used in this subsection, *"textbooks"* means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship. *"Textbooks"* includes books or materials used for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature. Notwithstanding any other provision, all other credits allowed under this section and section 422.12B shall be deducted before the tuition credit under this subsection. The department, when conducting an audit of a taxpayer's return, shall also audit the tuition tax credit portion of the tax return.

As used in this subsection, *"tuition"* means any charges for the expenses of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship. *"Tuition"* includes those expenses which relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

3. For the purpose of this section, the determination of whether an individual is married shall be made as of the close of the individual's tax year unless the individual's spouse dies during the individual's tax year, in which case the determination shall be made as of the date of the spouse's death. An individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance shall not be considered married.

[C35, §6943-f12; C39, §**6943.044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.12]

83 Acts, ch 179, §9, 10, 22; 84 Acts, ch 1305, §32; 86 Acts, ch 1236, §6, 7; 86 Acts, ch 1241, §15; 87 Acts, ch 233, §494; 88 Acts, ch 1028, §22, 23; 89 Acts, ch 296, §42; 90 Acts, ch 1248, §9; 91 Acts, ch 159, §13; 95 Acts, ch 206, §2, 4; 96 Acts, ch 1168, §2, 3; 98 Acts, ch 1177, §7 – 10

422.12A Income tax refund checkoff for keep Iowa beautiful fund.

1. A person who files an individual or a joint income tax return with the department of revenue and finance under section 422.13 may designate one dollar or more to be paid to the keep Iowa beautiful fund as created in section 314.28. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return. The designation of a contribution to the keep Iowa beautiful fund under this section is irrevocable.

2. The director of revenue and finance shall draft the income tax form to allow the designation of contributions to the keep Iowa beautiful fund on the tax return. The department of revenue and finance, on or before January 31, shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the treasurer of state. The treasurer of state shall credit the amount to the keep Iowa beautiful fund. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and finance and accounts identified as owing under section 421.17 and the political contribution allowed under section 56.18 shall be satisfied.

3. Moneys in the fund are subject to appropriation as provided in section 314.28.

4. The department of revenue and finance shall adopt rules to administer this section.

5. This section is subject to repeal under section 422.12E.

2001 Acts, ch 160, §2, 3

Section applies retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 160, §3

422.12B Earned income tax credit.

1. The taxes imposed under this division less the credits allowed under section 422.12 shall be reduced by an earned income credit equal to six and one-half percent of the federal earned income credit provided in section 32 of the Internal Revenue Code. Any credit in excess of the tax liability is nonrefundable.

2. Married taxpayers electing to file separate returns or filing separately on a combined return may avail themselves of the earned income credit by allocating the earned income credit to each spouse in the proportion that each spouse's respective earned income bears to the total combined earned income. Taxpayers affected by the allocation provisions of section 422.8 shall be permitted a deduction for the credit only in the amount fairly and equitably allocable to Iowa under rules prescribed by the director.

89 Acts, ch 268, §6; 90 Acts, ch 1171, §4; 91 Acts, ch 159, §14; 91 Acts, ch 215, §3; 2000 Acts, ch 1146, §5, 9, 11

2000 amendment to subsection 1 takes effect April 26, 2000, and applies retroactively to tax years beginning on or after January 1, 1999; 2000 Acts, ch 1146, §9, 11

422.12C Child and dependent care credit — refund.

1. The taxes imposed under this division, less the credits allowed under sections 422.11A, 422.11B, 422.12, and 422.12B shall be reduced by a child and dependent care credit equal to the following percentages of the federal child and dependent care credit provided in section 21 of the Internal Revenue Code:

a. For a taxpayer with net income of less than ten thousand dollars, seventy-five percent.

b. For a taxpayer with net income of ten thousand dollars or more but less than twenty thousand dollars, sixty-five percent.

c. For a taxpayer with net income of twenty thousand dollars or more but less than twenty-five thousand dollars, fifty-five percent.

d. For a taxpayer with net income of twenty-five thousand dollars or more but less than thirty-five thousand dollars, fifty percent.

e. For a taxpayer with net income of thirty-five thousand dollars or more but less than forty thousand dollars, forty percent.

f. For a taxpayer with net income of forty thousand dollars or more, zero percent.

2. Any credit in excess of the tax liability shall be refunded. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following taxable year.

3. Married taxpayers who have filed joint federal returns electing to file separate returns or to file separately on a combined return form must determine the child and dependent care credit under subsection 1 based upon their combined net income and allocate the total credit amount to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa

must determine their Iowa child and dependent care credit in the ratio of their Iowa source net income to their all source net income. Nonresidents or part-year residents who are married and elect to file separate returns or to file separately on a combined return form must allocate the Iowa child and dependent care credit between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income of the taxpayers.

90 Acts, ch 1248, §10; 91 Acts, ch 159, §15; 93 Acts, ch 172, §44, 56; 97 Acts, ch 23, §44

422.12D Income tax checkoff for the Iowa state fair foundation.

1. A person who files an individual or a joint income tax return with the department of revenue and finance under section 422.13 may designate one dollar or more to be paid to the Iowa state fair foundation as established in section 173.22. If the refund due on the return or the payment remitted with the return is insufficient to pay the amount designated by the taxpayer to the Iowa state fair foundation, the amount designated shall be reduced to the remaining amount of the refund or the remaining amount remitted with the return. The designation of a contribution to the Iowa state fair foundation under this section is irrevocable.

2. The director of revenue and finance shall draft the income tax form to allow the designation of contributions to the Iowa state fair foundation on the tax return. The department, on or before January 31, shall transfer the total amount designated on the tax form due in the preceding year to the foundation fund created pursuant to section 173.22.

3. The Iowa state fair board may authorize payment from the foundation fund for purposes of supporting foundation activities.

4. The department shall adopt rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and finance and accounts identified as owing under section 421.17 and the political contribution allowed under section 56.18 shall be satisfied.

93 Acts, ch 144, §3, 5, 6; 94 Acts, ch 1199, §3 – 6

Limitation on number of income tax return checkoffs; automatic repeal of certain checkoffs; see §422.12E

422.12E Income tax return checkoffs limited.

For tax years beginning on or after January 1, 1995, there shall be allowed no more than three income tax return checkoffs on each income tax return. When the same three income tax return checkoffs have been provided on the income tax return for three consecutive years, the checkoff for which the least amount has been contributed, in the aggregate for the first two tax years and through March 15 of the third tax year, shall be repealed. This section does not apply to the income tax return checkoff provided in section 56.18.

93 Acts, ch 144, §4, 6; 94 Acts, ch 1199, §3 – 6

Checkoff for keep Iowa beautiful fund; §422.12A
Checkoff for Iowa state fair foundation; §422.12D
Checkoff for fish and game fund; §456A.16

422.13 Return by individual.

1. Except as provided in subsection 1A, a resident or nonresident of this state shall make a return, signed in accordance with forms and rules prescribed by the director, if any of the following are applicable:

a. The individual has net income of nine thousand dollars or more for the tax year from sources taxable under this division.

b. The individual is claimed as a dependent on another person's return and has net income of five thousand dollars or more for the tax year from sources taxable under this division.

c. However, if that part of the net income of a nonresident which is allocated to Iowa pursuant to section 422.8, subsection 2, is less than one thousand dollars the nonresident is not required to make and sign a return except when the nonresident is subject to the state alternative minimum tax imposed pursuant to section 422.5, subsection 1, paragraph *"k"*.

1A. Notwithstanding any other provision in this section, a resident of this state is not required to make and file a return if the person's net income is equal to or less than the appropriate dollar amount listed in section 422.5, subsection 2, upon which tax is not imposed. A nonresident of this state is not required to make and file a return if the person's total net income in section 422.5, subsection 1, paragraph *"j"*, is equal to or less than the appropriate dollar amount provided in section 422.5, subsection 2, upon which tax is not imposed. For purposes of this subsection, the amount of a lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining if a resident is required to file a return and the portion of the lump sum distribution that is allocable to Iowa is included in total net income for purposes of determining if a nonresident is required to make and file a return.

2. For purposes of determining the requirement for filing a return under subsection 1, the combined net income of a husband and wife from sources taxable under this division shall be considered.

3. If the taxpayer is unable to make the return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

4. A nonresident taxpayer shall file a copy of the taxpayer's federal income tax return for the current tax year with the return required by this section.

5. Notwithstanding subsections 1 through 4

and sections 422.15 and 422.36, a partnership, a limited liability company whose members are taxed on the company's income under provisions of the Internal Revenue Code, trust, or corporation whose stockholders are taxed on the corporation's income under the provisions of the Internal Revenue Code may, not later than the due date for filing its return for the taxable year, including any extension thereof, elect to file a composite return for the nonresident partners, members, beneficiaries, or shareholders. The director may require that a composite return be filed under the conditions deemed appropriate by the director. A partnership, limited liability company, trust, or corporation filing a composite return is liable for tax required to be shown due on the return. All powers of the director and requirements of the director apply to returns filed under this subsection including, but not limited to, the provisions of this division and division VI of this chapter.

[C35, §6943-f13; C39, §**6943.045;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.13; 82 Acts, ch 1226, §5, 6]

87 Acts, ch 214, §3; 87 Acts, 1st Ex, ch 1, §4; 87 Acts, ch 196, §1; 88 Acts, ch 1028, §24; 89 Acts, ch 251, §15; 92 Acts, 2nd Ex, ch 1001, §219, 224, 227; 93 Acts, ch 123, §1 – 4; 99 Acts, ch 151, §5, 89; 2000 Acts, ch 1146, §6, 10, 11; 2001 Acts, ch 127, §7, 9, 10

1999 amendment to subsection 5 applies retroactively to January 1, 1999, for tax years beginning on or after that date; 99 Acts, ch 151, §89

2000 amendment to subsection 1, paragraph c, takes effect April 26, 2000, and applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1146, §10, 11

2001 amendment to subsection 1, paragraph b, is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2001; 2001 Acts, ch 127, §9, 10

422.14 Return by fiduciary.

1. A fiduciary subject to taxation under this division, as provided in section 422.6, shall make a return, signed in accordance with forms and rules prescribed by the director, for the individual, estate, or trust for whom or for which the fiduciary acts, if the taxable income thereof amounts to six hundred dollars or more. A nonresident fiduciary shall file a copy of the federal income tax return for the current tax year with the return required by this section.

2. Under such regulations as the director may prescribe, a return may be made by one of two or more joint fiduciaries.

3. Fiduciaries required to make returns under this division shall be subject to all the provisions of this division which apply to individuals.

[C35, §6943-f14; C39, §**6943.046;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.14]

89 Acts, ch 251, §16

422.15 Information at source.

1. Every person or corporation being a resident of or having a place of business in this state, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, or agent of the person or corporation, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, unemployment compensation, royalties, patronage dividends, or other fixed or determinable annual or periodical gains, profits and income, in an amount sufficient to require that an information return be filed under the Internal Revenue Code if the income is subject to federal tax, paid or payable during any year to any individual, whether a resident of this state or not, shall make a complete information return under such regulations and in such form and manner and to such extent as may be prescribed by the director. However, the person or corporation shall not be required to file an information return if the information is available to the department from the internal revenue service.

2. Every partnership including limited partnerships organized under chapter 487, having a place of business in the state, shall make a return, stating specifically the net income and capital gains (or losses) reported on the federal partnership return, the names and addresses of the partners, and their respective shares in said amounts.

3. Every fiduciary shall make a return for the individual, estate, or trust for whom or for which the fiduciary acts, and shall set forth in such return the taxable income, the names and addresses of the beneficiaries, and the amounts distributed or distributable to each as reported on the federal fiduciary income tax return. Such return may be made by one or two or more joint fiduciaries.

4. Notwithstanding subsections 1, 2, and 3, or any other provision of this chapter, withholding of income tax and any reporting requirement shall not be imposed upon a person, corporation, or withholding agent or any payor of deferred compensation, pensions, or annuities with regard to such payments made to a nonresident of the state.

[C35, §6943-f15; C39, §**6943.047;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.15; 82 Acts, ch 1103, §1110]

92 Acts, ch 1224, §3, 4; 92 Acts, 2nd Ex, ch 1001, §237, 250

422.16 Withholding of income tax at source — penalties — interest — declaration of estimated tax — bond.

1. Every withholding agent and every employer as defined in this chapter and further defined in the Internal Revenue Code, with respect to income tax collected at source, making payment of wages to a nonresident employee working in Iowa, or to a resident employee, shall deduct and withhold from the wages an amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be

prepared by the department and schedules or percentage rates, based on the wages, to be prescribed by the department. Every employee or other person shall declare to the employer or withholding agent the number of the employee's or other person's personal exemptions and dependency exemptions or credits to be used in applying the tables and schedules or percentage rates. However, no greater number of personal or dependency exemptions or credits may be declared by the employee or other person than the number to which the employee or other person is entitled except as allowed under section 3402(m)(1) of the Internal Revenue Code and as allowed for the child and dependent care credit provided in section 422.12C. The claiming of exemptions or credits in excess of entitlement is a serious misdemeanor.

Nonresidents engaged in any facet of feature film, television, or educational production using the film or videotape disciplines in the state are not subject to Iowa withholding if the employer has applied to the department for exemption from the withholding requirement and the department has determined that any nonresident receiving wages would be entitled to a credit against Iowa income taxes paid.

For the purposes of this subsection, state income tax shall be withheld from pensions, annuities, other similar periodic payments, and other income payments of those persons whose primary residence is in Iowa in those circumstances in which those persons have federal income tax withheld from pensions, annuities, other similar periodic payments, and other income payments under sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code at a rate to be specified by the department.

For the purposes of this subsection, state income tax shall be withheld on winnings in excess of six hundred dollars derived from gambling activities authorized under chapter 99B or 99E. State income tax shall be withheld on winnings in excess of one thousand dollars from gambling activities authorized under chapter 99D. State income tax shall be withheld on winnings in excess of twelve hundred dollars derived from slot machines authorized under chapter 99F.

For the purposes of this subsection, state income tax at the rate of six percent shall be withheld from supplemental wages of employees in those circumstances in which the employer treats the supplemental wages as wholly separate from regular wages for purposes of withholding and federal income tax is withheld from the supplemental wages under section 3402(g) of the Internal Revenue Code.

2. A withholding agent required to deduct and withhold tax under subsections 1 and 12, except those required to deposit on a semimonthly basis, shall deposit for each calendar quarterly period, on or before the last day of the month following the close of the quarterly period, on a quarterly deposit form as prescribed by the director and shall pay to the department, in the form of remittances made payable to "Treasurer, State of Iowa", the tax required to be withheld, or the tax actually withheld, whichever is greater, under subsections 1 and 12. However, a withholding agent who withholds more than fifty dollars in any one month, except those required to deposit on a semimonthly basis, shall deposit with the department the amount withheld, with a monthly deposit form as prescribed by the director. The monthly deposit form is due on or before the fifteenth day of the month following the month of withholding, except that a deposit is not required for the amount withheld in the third month of the quarter but the total amount of withholding for the quarter shall be computed and the amount by which the deposits for that quarter fail to equal the total quarterly liability is due with the filing of the quarterly deposit form. The quarterly deposit form is due within the month following the end of the quarter. A withholding agent who withholds more than eight thousand dollars in a semimonthly period shall deposit with the department the amount withheld, with a semimonthly deposit form as prescribed by the director. The first semimonthly deposit form for the period from the first of the month through the fifteenth of the month is due on the twenty-fifth day of the month in which the withholding occurs. The second semimonthly deposit form for the period from the sixteenth of the month through the end of the month is due on the tenth day of the month following the month in which the withholding occurs.

Every withholding agent on or before the end of the second month following the close of the calendar year in which the withholding occurs shall make an annual reporting of taxes withheld and other information prescribed by the director and send to the department copies of wage and tax statements with the return. At the discretion of the director, the withholding agent shall not be required to send wage statements and tax statements with the annual reporting return form if the information is available from the internal revenue service or other state or federal agencies.

If the director has reason to believe that the collection of the tax provided for in subsections 1 and 12 is in jeopardy, the director may require the employer or withholding agent to make the report and pay the tax at any time, in accordance with section 422.30. The director may authorize incorporated banks, trust companies, or other depositories authorized by law which are depositories or financial agents of the United States or of this state, to receive any tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall also prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

The director, in cooperation with the department of management, may periodically change the filing and remittance thresholds by administrative rule if in the best interest of the state and the taxpayer.

3. Every withholding agent employing not more than two persons who expects to employ either or both of such persons for the full calendar year may, with respect to such persons, pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes required to be withheld from the wages of such persons for the full calendar year. The amount to be paid shall be computed as if the employee were employed for the full calendar year for the same wages and with the same pay periods as prevailed during the first quarter of the year with respect to such employee. No such lump sum payment of withheld income tax shall be made without the written consent of all employees involved. The withholding agent shall be entitled to recover from the employee any part of such lump sum payment that represents an advance to the employee. If a withholding agent pays a lump sum with the first quarterly return the withholding agent shall be excused from filing further quarterly returns for the calendar year involved unless the withholding agent hires other or additional employees.

4. Every withholding agent who fails to withhold or pay to the department any sums required by this chapter to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums withheld in accordance with the provisions of subsections 1 and 12, shall be deemed to be held in trust for the state of Iowa. Notwithstanding sections 490A.601 and 490A.602, this subsection applies to a member or manager of a limited liability company.

5. In the event a withholding agent fails to withhold and pay over to the department any amount required to be withheld under subsections 1 and 12 of this section, such amount may be assessed against such employer or withholding agent in the same manner as prescribed for the assessment of income tax under the provisions of divisions II and VI of this chapter.

6. Whenever the director determines that any employer or withholding agent has failed to withhold or pay over to the department sums required to be withheld under subsections 1 and 12 of this section the unpaid amount thereof shall be a lien as defined in section 422.26, shall attach to the property of said employer or withholding agent as therein provided, and in all other respects the procedure with respect to such lien shall apply as set forth in said section 422.26.

7. Every withholding agent required to deduct and withhold a tax under subsections 1 and 12 of this section shall furnish to such employee, nonresident, or other person in respect of the remuneration paid by such employer or withholding agent to such employee, nonresident, or other person during the calendar year, on or before January 31 of the succeeding year, or, in the case of employees, if the employee's employment is terminated before the close of such calendar year, within thirty days from the day on which the last payment of wages is made, if requested by such employee, but not later than January 31 of the following year, a written statement showing the following:

a. The name and address of such employer or withholding agent, and the identification number of such employer or withholding agent.

b. The name of the employee, nonresident, or other person and that person's federal social security account number, together with the last known address of such employee, nonresident, or other person to whom wages have been paid during such period.

c. The gross amount of wages, or other taxable income, paid to the employee, nonresident, or other person.

d. The total amount deducted and withheld as tax under the provisions of subsections 1 and 12 of this section.

e. The total amount of federal income tax withheld.

The statements required to be furnished by this subsection in respect of any wages or other taxable Iowa income shall be in such form or forms as the director may, by regulation, prescribe.

8. An employer or withholding agent shall be liable for the payment of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, under subsections 1 and 12 of this section; and any amount deducted and withheld as tax under subsections 1 and 12 of this section during any calendar year upon the wages of any employee, nonresident, or other person shall be allowed as a credit to the employee, nonresident, or other person against the tax imposed by section 422.5, irrespective of whether or not such tax has been, or will be, paid over by the employer or withholding agent to the department as provided by this chapter.

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate in effect under section 421.7 for each month or fraction of a month, the interest to begin to accrue on the

first day of the second calendar month following the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by warrants drawn by the director of revenue and finance, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

10. *a.* An employer or withholding agent required under this chapter to furnish a statement required by this chapter who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish the statement is, for each failure, subject to a civil penalty of five hundred dollars, the penalty to be in addition to any criminal penalty otherwise provided by the Code.

b. In addition to the tax or additional tax, any person or withholding agent shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent.

c. If any withholding agent, being a domestic or foreign corporation, required under the provisions of this section to withhold on wages or other taxable Iowa income subject to this chapter, fails to withhold the amounts required to be withheld, make the required returns or remit to the department the amounts withheld, the director may, having exhausted all other means of enforcement of the provisions of this chapter, certify such fact or facts to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights of such corporation to carry on business in the state of Iowa shall thereupon cease. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state. The provisions of section 422.40, subsection 3, shall be applicable.

d. The department shall upon request of any fiduciary furnish said fiduciary with a certificate of acquittance showing that no liability as a withholding agent exists with respect to the estate or trust for which said fiduciary acts, provided the department has determined that there is no such liability.

11. *a.* A person or married couple filing a return shall make estimated tax payments if the person's or couple's Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to two hundred dollars or more for the taxable year, except that, in the cases of farmers and fishermen, the exceptions provided in the Internal Revenue Code with respect to making estimated payments apply. The estimated tax shall be paid in quarterly installments. The first installment shall be paid on or before the last day of the fourth month of the taxpayer's tax year for which the estimated payments apply. The other installments shall be paid on or before the last day of the sixth month of the tax year, the last day of the ninth month of the tax year, and the last day of the first month after the tax year. However, at the election of the person or married couple, an installment of the estimated tax may be paid prior to the date prescribed for its payment. If a person or married couple filing a return has reason to believe that the person's or couple's Iowa income tax may increase or decrease, either for purposes of meeting the requirement to make estimated tax payments or for the purpose of increasing or decreasing estimated tax payments, the person or married couple shall increase or decrease any subsequent estimated tax payments accordingly.

b. In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through payment of estimated tax, or a combination of withholding and estimated tax payments is due and payable on or before April 30 following the close of the calendar year, or if the return is to be made on the basis of a fiscal year, then on or before the last day of the fourth month following the close of the fiscal year.

c. If a taxpayer is unable to make the taxpayer's estimated tax payments, the payments may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of the taxpayer.

d. Any amount of estimated tax paid is a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under sections 422.5 through 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and the return constitutes a claim for refund for this purpose. Amounts less than one dollar shall not be refunded. The method provided by the Internal Revenue Code for determining what is applicable to the addition to tax for underpayment of the tax payable applies to persons required to make payments of estimated tax under this section except the amount to be added to the tax for underpay-

ment of estimated tax is an amount determined at the rate in effect under section 421.7. This addition to tax specified for underpayment of the tax payable is not subject to waiver provisions relating to reasonable cause, except as provided in the Internal Revenue Code. Underpayment of estimated tax shall be determined in the same manner as provided under the Internal Revenue Code and the exceptions in the Internal Revenue Code also apply.

e. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return for the taxable year credited to the taxpayer's tax liability for the following taxable year.

12. In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of this subsection unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

Notwithstanding this subsection, withholding agents are not required to withhold state income tax from payments subject to taxation made to nonresidents for commodity credit certificates, grain, livestock, domestic fowl, or other agricultural commodities or products sold to the withholding agents by the nonresidents or their representatives, if the withholding agents provide on forms prescribed by the department information relating to the sales required by the department to determine the state income tax liabilities of the nonresidents. However, the withholding agents may elect to make estimated tax payments on behalf of the nonresidents on the basis of the net incomes of the nonresidents from the agricultural commodities or products, if the estimated tax payments are made on or before the last day of the first month after the end of the tax years of the nonresidents.

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, section 1207 of the Tax Reform Act of 1976, Public Law 94-455, amending title 5, section 5517 of the United States Code.

14. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the employer or withholding agent who deposited the securities.

If the withholding agent fails to file the bond as requested by the director to secure collection of the tax, the withholding agent is subject to penalty for failure to file the bond. The penalty is equal to fifteen percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty shall not exceed five thousand dollars.

[C39, §**6943.048;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.16; 81 Acts, ch 131, §4 – 6, ch 133, §1, 4; 82 Acts, ch 1022, §1, 2, 8, ch 1023, §29, ch 1180, §2, 8]

83 Acts, ch 160, §3, 4; 83 Acts, ch 179, §11; 84 Acts, ch 1173, §4; 86 Acts, ch 1007, §23 – 25; 86 Acts, ch 1208, §1; 86 Acts, ch 1241, §16; 87 Acts, ch 115, §55; 87 Acts, ch 214, §4; 87 Acts, 1st Ex, ch 1, §26; 88 Acts, ch 1028, §25, 26; 88 Acts, ch 1157, §1; 89 Acts, ch 6, §4, 5; 89 Acts, ch 251, §17, 18; 90 Acts, ch 1172, §8; 90 Acts, ch 1248, §11

Unnumbered paragraph 2 of subsection 1 was inadvertently deleted in the 1991 Code and 1991 Code Supplement

91 Acts, ch 215, §4, 8; 92 Acts, 2nd Ex, ch 1001, §238; 94 Acts, ch 1165, §13 – 15, 45, 47, 48; 99 Acts, ch 151, §6, 89; 2002 Acts, ch 1151, §6

Subsection 2, NEW unnumbered paragraph 4

422.16A Job training withholding — certification and transfer.

Upon the completion by a business of its repayment obligation for a training project funded under chapter 260E, including a job training project funded under section 15A.8 or repaid in whole or in part by the supplemental new jobs credit from withholding under section 15A.7 or section 15.331, the sponsoring community college shall report to the department of economic development the amount of withholding paid by the business to the community college during the final twelve months of withholding payments. The department of economic development shall notify the department of revenue and finance of that amount. The department shall credit to the workforce development

fund account established in section 15.342A twenty-five percent of that amount each quarter for a period of ten years. If the amount of withholding from the business or employer is insufficient, the department shall prorate the quarterly amount credited to the workforce development fund account. The maximum amount from all employers which shall be transferred to the workforce development fund account in any year is four million dollars.

95 Acts, ch 184, §9; 96 Acts, ch 1180, §17; 97 Acts, ch 98, §1, 3; 98 Acts, ch 1225, §26; 2000 Acts, ch 1196, §9, 10; 2000 Acts, ch 1230, §23, 35; 2001 Acts, ch 188, §26

For provisions effective May 18, 2000, until July 1, 2000, see 2000 Acts, ch 1196, §9

422.17 Certificate issued by department to make payments without withholding.

Any nonresident whose Iowa income is not subject to section 422.16, subsection 1, in whole or in part, and who elects to be governed by subsection 12 of that section to the extent that the nonresident pays the entire amount of tax properly estimated on or before the last day of the fourth month of the nonresident's tax year, for the year, may for the year of the election and payment, be granted a certificate from the department authorizing each withholding agent, the income from whom the nonresident has considered in the payment of estimated tax and to the extent the income is included in the estimate, to make payments of income to the nonresident without withholding tax from those payments. Withholding agents, if payments exceed the tax liability estimated by the nonresident as indicated upon the certificate, shall withhold tax in accordance with subsection 12 of section 422.16.

[C39, §**6943.049;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.17]

86 Acts, ch 1241, §17

422.18 Repealed by 61 Acts, ch 228, § 2.

422.19 Scope of nonresidents tax.

The tax herein imposed upon certain income of nonresidents shall apply to all such income actually received by such nonresident regardless of when such income was earned. If the nonresident is reporting on the accrual basis it shall apply to all such income which first became available to the nonresident so that the nonresident might demand payment thereof regardless of when such income was earned. The duty to withhold herein imposed upon withholding agents shall apply only to amounts paid after June 30, 1937.

[C39, §**6943.051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.19]

422.20 Information confidential — penalty.

1. It shall be unlawful for any present or former officer or employee of the state to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person shall also be dismissed from office or discharged from employment. Nothing herein shall prohibit turning over to duly authorized officers of the United States or tax officials of other states state information and income returns pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

2. It is unlawful for an officer, employee, or agent, or former officer, employee, or agent of the state to disclose to any person, except as authorized in subsection 1 of this section, any federal tax return or return information as defined in section 6103(b) of the Internal Revenue Code. It is unlawful for a person to whom any federal tax return or return information, as defined in section 6103(b) of the Internal Revenue Code, is disclosed in a manner unauthorized by subsection 1 of this section to thereafter print or publish in any manner not provided by law any such return or return information. A person violating this provision is guilty of a serious misdemeanor.

3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 22A, 23, 25, 29, and 32, sections 252B.9, 421.19, 421.28, 422.72, and 452A.63, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

[C62, 66, 71, 73, 75, 77, 79, 81, §422.20]

87 Acts, ch 199, §6; 88 Acts, ch 1028, §27; 91 Acts, ch 159, §16; 97 Acts, ch 158, §12

422.21 Form and time of return.

Returns shall be in the form the director prescribes, and shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year. However, co-operative associations as defined in section 6072(d) of the Internal Revenue Code shall file their returns on or before the fifteenth day of the ninth month following the close of the taxable year and nonprofit corporations subject to the unrelated business income tax imposed by section 422.33, subsection 1A, shall file their returns on or before the fifteenth day of the fifth month following the close of the taxable year. If, under the Internal Revenue Code, a corporation is required to file a return covering a tax period of less than twelve months, the state return shall be for the same period and is due forty-five days after the due date of the federal tax return, excluding any extension of time to file. In case of sickness, absence, or other disability, or if good cause exists, the director may allow further time for filing returns. The director shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form does not relieve the taxpayer from the obligation of making a return that is required. The department may as far as consistent with the Code draft income tax forms to conform to the income tax forms of the internal revenue department of the United States government. Each return by a taxpayer upon whom a tax is imposed by section 422.5 shall show the county of the residence of the taxpayer.

An individual in the armed forces of the United States serving in an area designated by the president of the United States or the United States Congress as a combat zone or as a qualified hazardous duty area, or an individual serving in support of those forces, is allowed the same additional time period after leaving the combat zone or the qualified hazardous duty area, or after a period of continuous hospitalization, to file a state income tax return or perform other acts related to the department, as would constitute timely filing of the return or timely performance of other acts described in section 7508(a) of the Internal Revenue Code. For the purposes of this paragraph, *"other acts related to the department"* includes filing claims for refund for any tax administered by the department, making tax payments other than withholding payments, filing appeals on the tax matters, filing other tax returns, and performing other acts described in the department's rules. The additional time period allowed applies to the spouse of the individual described in this paragraph to the extent the spouse files jointly or separately on the combined return form with the individual or when the spouse is a party with the individual to any matter for which the additional time period is allowed.

The department shall make available to persons required to make personal income tax returns under the provisions of this chapter, and when such income is derived mainly from salaries and wages or from the operation of a business or profession, a form which shall take into consideration the normal deductions and credits allowable to any such taxpayer, and which will permit the computation of the tax payable without requiring the listing of specific deductions and credits. In arriving at schedules for payment of taxation under such forms the department shall as nearly as possible base such schedules upon a total of deductions and credits which will result in substantially the same payment as would have been made by such taxpayer were the taxpayer to specifically list the taxpayer's allowable deductions and credits. In lieu of such return any taxpayer may elect to list permissible deductions and credits as provided by law. It is the intent and purpose of this provision to simplify the procedure of collection of personal income tax, and the director shall have the power in any case when deemed necessary or advisable to require any taxpayer, who has made a return in accordance with the schedule herein provided for, to make an additional return in which all deductions and credits are specifically listed. The department may revise the schedules adopted in connection with such simplified form whenever such revision is necessitated by changes in federal income tax laws, or to maintain the collection of substantially the same amounts from taxpayers as would be received were the specific listing of deductions and credits required.

The department shall provide space on the prescribed income tax form, wherein the taxpayer shall enter the name of the school district of the taxpayer's residence. Such place shall be indicated by prominent type. A nonresident taxpayer shall so indicate. If such information is not supplied on the tax return it shall be deemed an incompleted return.

The director shall determine for the 1989 and each subsequent calendar year the annual and cumulative inflation factors for each calendar year to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts as specified to be adjusted in section 422.5 by the latest cumulative inflation factor and round off the result to the nearest one dollar. The annual and cumulative inflation factors determined by the director are

not rules as defined in section 17A.2, subsection 11. The director shall determine for the 1990 calendar year and each subsequent calendar year the annual and cumulative standard deduction factors to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts of the standard deductions specified in section 422.9, subsection 1, by the latest cumulative standard deduction factor and round off the result to the nearest ten dollars. The annual and cumulative standard deduction factors determined by the director are not rules as defined in section 17A.2, subsection 11.

The department shall provide on income tax forms or in the instruction booklets in a manner that will be noticeable to the taxpayers a statement that, even though the taxpayer may not have any federal or state income tax liability, the taxpayer may be eligible for the federal earned income tax credit or state child and dependent care credit. The statement shall also contain notice of where the taxpayer may check on the taxpayer's eligibility for these credits.

If married taxpayers file a joint return or file separately on a combined return in accordance with rules prescribed by the director, both spouses are jointly and severally liable for the total tax due on the return, except when one spouse is considered to be an innocent spouse under criteria established pursuant to section 6015 of the Internal Revenue Code.

[C35, §6943-f17; C39, §**6943.053;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.21]

85 Acts, ch 230, §6; 87 Acts, ch 115, §56; 87 Acts, 2nd Ex, ch 1, §11; 88 Acts, ch 1028, §28; 89 Acts, ch 268, §7, 8; 90 Acts, ch 1248, §13; 91 Acts, ch 159, §17; 91 Acts, ch 196, §3; 94 Acts, ch 1165, §16, 48; 2000 Acts, ch 1146, §9, 11; 2002 Acts, ch 1069, §8, 11, 14

2000 amendment to unnumbered paragraph 2 takes effect April 26, 2000, and applies retroactively to tax years beginning on or after January 1, 1999; 2000 Acts, ch 1146, §7, 9, 11

2002 amendment to unnumbered paragraph 7 takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1069, §11, 14

Unnumbered paragraph 7 amended

422.22 Supplementary returns.

If the director shall be of the opinion that any taxpayer required under this division to file a return has failed to file such a return or to include in a return filed, either intentionally or through error, items of taxable income, the director may require from such taxpayer a return or supplementary return in such form as the director shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this division. If from a supplementary return, or otherwise, the director finds that any items of income, taxable under this division, have been omitted from the original return, the director may require the items so omitted to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which the taxpayer may be liable under any provisions of this division, whether or not the director required a return or a supplementary return under this section.

[C35, §6943-f18; C39, §**6943.054;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.22]

422.23 Return by administrator.

The return by an individual, who, while living, was subject to income tax in the state during the tax year, and who has died before making the return, shall be made in the individual's name and behalf by the administrator or executor of the estate and the tax shall be levied upon and collected from the individual's estate. In the making of said return, the executor or administrator shall use the same method of computation, either cash or accrual, as was last used by the deceased taxpayer.

[C35, §6943-f19; C39, §**6943.055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.23]

86 Acts, ch 1241, §18; 99 Acts, ch 151, §7, 89

1999 amendment striking unnumbered paragraph 2 applies retroactively to January 1, 1999, for tax years beginning on or after that date; 99 Acts, ch 151, §89

422.24 Payment — interest.

1. For all taxpayers the total tax due shall be paid in full at the time of filing the return.

2. When, at the request of the taxpayer, the time for filing the return is extended, interest at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, on the total tax due, from the time when the return was required to be filed to the time of payment, shall be added and paid.

[C35, §6943-f20; C39, §**6943.056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.24; 81 Acts, ch 131, §7]

422.24A Start-up business tax deferment.

1. For purposes of this section, *"start-up business"* does not include any of the following:

a. An existing business locating in this state from another state or from another location in this state.

b. A newly created business which is the result of the merger of two or more businesses.

c. A newly created subsidiary or new business of a corporation.

d. A previously existing business which has been dissolved and reincorporated.

e. An existing business operating under a different name and located in a different location.

f. A newly created partnership owned by two or more of the same partners as an existing business and engaging in similar business activity as

the existing business.

g. A business entity that reorganizes or experiences a change in either the legal or trade name of the business.

h. A joint venture.

2. In order to qualify for a deferment of taxable income and the tax to be imposed on it pursuant to this section, a taxpayer must meet all of the following criteria:

a. The taxpayer is a business that is a wholly new start-up business beginning operations during the first tax year for which the deferment of taxable income is claimed.

b. The business has its commercial domicile, as defined in section 422.32, in the state.

c. The operations of the business are at least twenty-five percent funded by venture capital moneys. For purposes of this section, *"venture capital moneys"* means an equity investment from an individual or a private seed and venture capital fund whose only business is investing in seed and venture capital opportunities. *"Venture capital moneys"* does not mean a loan or other nonequity financing from a person, financial institution, or other entity.

d. The taxpayer does not have any delinquent taxes or other debt outstanding and owed to the state.

3. A taxpayer meeting the criteria provided in subsection 2 may submit a request to the department for the deferment of taxable income for the first three tax years that the taxpayer's business is in operation. If a deferment is approved by the department pursuant to subsection 4, the taxpayer shall pay taxes on the deferred taxable income in five equal annual installments during the five tax years following the three years of taxable income deferment. Section 422.26 shall apply if the taxpayer refuses or neglects to pay the taxes owed on the deferred taxable income in the manner provided in this section. A taxpayer receiving a deferment shall file a return for each tax year in which a deferment is approved. If the taxpayer has a net loss during a tax year during the three-year period in which taxable income is deferred, the loss may be applied to any deferred taxable income during that period.

4. Upon a determination that the criteria provided in subsection 2 have been met, the department shall approve a request for deferment of taxable income.

5. For purposes of assessing penalty and interest, the tax on any deferred taxable income is not due and payable until the tax years in which the annual installments as provided in subsection 3 are due and payable.

6. The department shall adopt rules pursuant to chapter 17A necessary for the administration of this section.

2002 Acts, ch 1123, §1, 2

Section is effective April 22, 2002, and applies retroactively to January 1, 2002; 2002 Acts, ch 1123, §2

NEW section

422.25 Computation of tax, interest, and penalties — limitation.

1. *a.* Within three years after the return is filed or within three years after the return became due, including any extensions of time for filing, whichever time is the later, the department shall examine the return and determine the tax. However, if the taxpayer omits from income an amount which will, under the Internal Revenue Code, extend the statute of limitations for assessment of federal tax to six years under the federal law, the period for examination and determination is six years. In addition to the applicable period of limitation for examination and determination, the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-month period, the notice shall be in writing in any form sufficient to inform the department of the final disposition with respect to that year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

b. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to that prior year of a net operating loss or net capital loss, the period is the period of limitation for the taxable year of the net operating loss or net capital loss which results in the carryback. If the tax found due is greater than the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall mail a notice of assessment to the taxpayer and, if applicable, to the taxpayer's authorized representative of the total, which shall be computed as a sum certain if paid on or before the last day of the month in which the notice is dated, or on or before the last day of the following month if the notice is dated after the twentieth day of any month. The notice shall also inform the taxpayer of the additional interest and penalty which will be added to the total due if not paid on or before the last day of the applicable month.

2. In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month

as an entire month, computed from the date the return was required to be filed. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27.

3. If the amount of the tax as determined by the department is less than the amount paid, the excess shall be refunded with interest, the interest to begin to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed, or the extended due date by which the return was due to be filed if ninety percent of the tax was paid by the original due date, or was filed, whichever is the latest, at the rate in effect under section 421.7 counting each fraction of a month as an entire month under the rules prescribed by the director. If an overpayment of tax results from a net operating loss or net capital loss which is carried back to a prior year, the overpayment, for purposes of computing interest on refunds, shall be considered as having been made on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or on the first day of the second calendar month following the date of the actual payment of the tax, whichever is later. However, when the net operating loss or net capital loss carryback to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due. For purposes of this subsection, the department shall not reapply prior payments made by the taxpayer to penalty or interest determined to be due after the date of those prior payments, except that the taxpayer and the department may agree to apply payments in accordance with rules adopted by the director when there are both agreed and unagreed to items as a result of an examination.

5. A person or withholding agent required to supply information, to pay tax, or to make, sign, or file a deposit form or return required by this division, who willfully makes a false or fraudulent deposit form or return, or willfully fails to pay the tax, supply the information, or make, sign, or file the deposit form or return, at the time or times required by law, is guilty of a fraudulent practice.

6. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima facie evidence thereof except as otherwise provided in this section.

7. The periods of limitation provided by this section may be extended by the taxpayer by signing a waiver agreement to be provided by the department. The agreement shall stipulate the period of extension and the year or years to which the extension applies. It shall provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

8. A person or withholding agent who willfully attempts in any manner to defeat or evade a tax imposed by this division or the payment of the tax, upon conviction for each offense is guilty of a class "D" felony.

9. A prosecution for any offense defined in this section must be commenced within six years after the commission thereof, and not after.

10. If a taxpayer files an amended return within sixty days prior to the expiration of the applicable period of limitations described in subsection 1, the department has sixty days from the date of receipt of the amended return to issue an assessment for any applicable tax, interest, or penalty.

[C35, §6943-f21; C39, §**6943.057;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.25; 81 Acts, ch 131, §8, ch 133, §2, 4, ch 134, §1, 2; 82 Acts, ch 1180, §3, 8]

83 Acts, ch 160, §5; 84 Acts, ch 1025, §1; 84 Acts, ch 1173, §5; 86 Acts, ch 1007, §26; 86 Acts, ch 1241, §19; 88 Acts, ch 1028, §29; 89 Acts, ch 251, §19; 90 Acts, ch 1172, §9; 94 Acts, ch 1133, §3, 4, 16; 95 Acts, ch 83, §3, 34; 99 Acts, ch 151, §8, 9, 89; 99 Acts, ch 152, §3, 40; 2002 Acts, ch 1150, §5

1999 amendment to subsection 3 applies retroactively to January 1, 1999, for tax years beginning on or after that date; 99 Acts, ch 151, §89

Subsection 5 amended

422.26 Lien of tax — collection — action authorized.

Whenever any taxpayer liable to pay a tax and penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said taxpayer.

The lien shall attach at the time the tax becomes due and payable and shall continue for ten years from the date an assessment is issued unless sooner released or otherwise discharged. The lien may, within ten years from the date an assessment is issued, be extended by filing for record a notice with the appropriate county official of any county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions. The director shall charge off any account whose lien is allowed to lapse and may charge off any account and release the corresponding lien before the lien has lapsed if the director determines under uniform rules prescribed by the director that the account is uncollectible or collection costs involved would not

warrant collection of the amount due.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the director shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall keep in the recorder's office an index and record to show the following data, under the names of taxpayers, arranged alphabetically:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the index and shall record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of the indexing of the lien.

The department shall pay, from moneys appropriated to the department for this purpose, a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of a tax as to which the director has filed notice with a county recorder, the director shall forthwith file with said recorder a satisfaction of said tax and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate said fact on the index aforesaid.

The department shall, substantially as provided in this chapter and chapter 626, proceed to collect all taxes and penalties as soon as practicable after they become delinquent, except that no property of the taxpayer is exempt from payment of the tax. If service has not been made on a distress warrant by the officer to whom addressed within five days from the date the distress warrant was received by the officer, the authorized revenue agents of the department may serve and make return of the warrant to the clerk of the district court of the county named in the distress warrant, and all subsequent procedure shall be in compliance with chapter 626.

The distress warrant shall be in a form as prescribed by the director. It shall be directed to the sheriff of the appropriate county and it shall identify the taxpayer, the tax type, and the delinquent amount. It shall direct the sheriff to distrain, seize, garnish, or levy upon, and sell, as provided by law, any real or personal property belonging to the taxpayer to satisfy the amount of the delinquency plus costs. It shall also direct the sheriff to make due and prompt return to the department or to the district court under chapters 626 and 642 of all amounts collected.

The attorney general shall, upon the request of the director, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any taxes and penalties, and in such action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

For purposes of this section, *"assessment issued"* means the most recent assessment against the taxpayer for the tax type and tax period.

[C35, §6943-f22; C39, §**6943.058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §422.26; 81 Acts, ch 117, §1220]

90 Acts, ch 1232, §8 – 10; 91 Acts, ch 191, §18, 124; 91 Acts, ch 267, §522; 92 Acts, ch 1016, §12; 97 Acts, ch 23, §45; 2001 Acts, ch 44, §18

Garnishment proceedings for collection of tax, §626.29 – 626.31

422.27 Final report of fiduciary — conditions.

1. A final account of a personal representative, as defined in section 450.1, shall not be allowed by any court unless the account shows, and the judge of the court finds, that all taxes imposed by this division upon the personal representative, which have become payable, have been paid, and that all taxes which may become due are secured by bond or deposit, or are otherwise secured. The certificate of acquittances of the department of revenue and finance is conclusive as to the payment of the tax to the extent of the acquittance. This subsection does not apply if all property in the estate of a decedent is held in joint tenancy with right of survivorship by husband and wife alone.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the director may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this division, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

[C35, §6943-f23; C39, §**6943.059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.27]

85 Acts, ch 148, §1; 86 Acts, ch 1054, §1; 86 Acts, ch 1238, §19; 86 Acts, ch 1241, §20; 90 Acts, ch 1232, §11

Fiduciaries' reports, §636.33
Similar provision, §450.58

422.28 Revision of tax.

A taxpayer may appeal to the director for revision of the tax, interest, or penalties assessed at any time within sixty days from the date of the notice of the assessment of tax, additional tax, interest, or penalties. The director shall grant a

hearing and if, upon the hearing, the director determines that the tax, interest, or penalties are excessive or incorrect, the director shall revise them according to the law and the facts and adjust the computation of the tax, interest, or penalties accordingly. The director shall notify the taxpayer by mail of the result of the hearing and shall refund to the taxpayer the amount, if any, paid in excess of the tax, interest, or penalties found by the director to be due, with interest after sixty days from the date of payment by the taxpayer at the rate in effect under section 421.7 for each month or a fraction of a month.

[C35, §6943-f24; C39, §**6943.060;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.28; 81 Acts, ch 131, §9]

86 Acts, ch 1007, §27; 86 Acts, ch 1241, §21; 94 Acts, ch 1133, §5, 16

See state board of tax review, §421.1(4)

422.29 Judicial review.

1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the petitioner resides, or in which the petitioner's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in any county in which the income involved was earned or derived or in Polk county, within sixty days after the petitioner shall have received notice of a determination by the director as provided for in section 422.28.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of tax appealed from, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court of this state irrespective of the amount involved.

[C35, §6943-f25; C39, §**6943.061;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.29]

94 Acts, ch 1133, §6, 16

422.30 Jeopardy assessments.

If the director believes that the assessment or collection of taxes will be jeopardized by delay, the director may immediately make an assessment of the estimated amount of tax due, together with all interest, additional amounts, or penalties, as provided by law. The director shall serve the taxpayer by regular mail at the taxpayer's last known address or in person, with a written notice of the amount of tax, interest, and penalty due, which notice may include a demand for immediate payment. Service of the notice by regular mail is complete upon mailing. A distress warrant may be issued or a lien filed against the taxpayer immediately.

The director shall be permitted to accept a bond from the taxpayer to satisfy collection until the amount of tax legally due shall be determined. Such bond to be in an amount deemed necessary, but not more than double the amount of the tax involved, and with securities satisfactory to the director.

[C35, §6943-f26; C39, §**6943.062;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.30]

94 Acts, ch 1165, §17

422.31 Statute applicable to personal tax.

All the provisions of section 422.36, subsection 3, shall be applicable to persons taxable under this division.

[C35, §6943-f27; C39, §**6943.063;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.31]

DIVISION III

BUSINESS TAX ON CORPORATIONS

422.32 Definitions.

For the purpose of this division and unless otherwise required by the context:

1. The term *"affiliated group"* means a group of corporations as defined in section 1504(a) of the Internal Revenue Code.

2. *"Business income"* means income arising from transactions and activity in the regular course of the taxpayer's trade or business; or income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations; or gain or loss resulting from the sale, exchange, or other disposition of real property or of tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa or operationally related to sources within Iowa, or the property was operationally related to sources outside this state and to the taxpayer's trade or business carried on in Iowa; or gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer's trade or business carried on in Iowa while the stock was owned by the taxpayer. A taxpayer may have more than one regular trade or business in determining whether income is business income.

It is the intent of the general assembly to treat as apportionable business income all income that may be treated as apportionable business income under the Constitution of the United States.

The filing of an Iowa income tax return on a combined report basis is neither allowed nor required

by this subsection.

3. *"Commercial domicile"* means the principal place from which the trade of business of the taxpayer is directed or managed.

4. *"Corporation"* includes joint stock companies, and associations organized for pecuniary profit, and partnerships and limited liability companies taxed as corporations under the Internal Revenue Code.

5. The words *"domestic corporation"* mean any corporation organized under the laws of this state.

6. The words *"foreign corporation"* mean any corporation other than a domestic corporation.

7. *"Nonbusiness income"* means all income other than business income.

8. *"State"* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

9. *"Taxable in another state".* For purposes of allocation and apportionment of income under this division, a taxpayer is taxable in another state if:

a. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

10. The term *"unitary business"* means a business carried on partly within and partly without a state where the portion of the business carried on within the state depends on or contributes to the business outside the state.

The words, terms, and phrases defined in division II, section 422.4, subsections 4 to 6, 8, 9, 13, and 15 to 17, when used in this division, shall have the meanings ascribed to them in said section except where the context clearly indicates a different meaning.

[C35, §6943-f28; C39, §**6943.064;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.32; 81 Acts, ch 132, §7, 9; 82 Acts, ch 1023, §11, 30, ch 1103, §1111, ch 1203, §1]

83 Acts, ch 179, §12, 13, 21, 23; 84 Acts, ch 1305, §33, 34; 87 Acts, 1st Ex, ch 1, §5; 88 Acts, ch 1028, §30 – 32, 55; 92 Acts, ch 1151, §7; 94 Acts, ch 1165, §18; 95 Acts, ch 141, §1 – 3; 97 Acts, ch 158, §13, 49; 99 Acts, ch 152, §4, 40

1999 amendment to subsection 2 is retroactive to January 1, 1999, for tax years beginning on or after that date; 99 Acts, ch 152, §4, 40

422.33 Corporate tax imposed — credit.

1. A tax is imposed annually upon each corporation doing business in this state, or deriving income from sources within this state, in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

a. On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent.

b. On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent.

c. On taxable income between one hundred thousand dollars and two hundred fifty thousand dollars or any part thereof, the rate of ten percent.

d. On taxable income of two hundred fifty thousand dollars or more, the rate of twelve percent.

"Income from sources within this state" means income from real, tangible, or intangible property located or having a situs in this state.

1A. There is imposed upon each corporation exempt from the general business tax on corporations by section 422.34, subsection 2, a tax at the rates in subsection 1 upon the state's apportioned share computed in accordance with subsections 2 and 3 of the unrelated business income computed in accordance with the Internal Revenue Code and with the adjustments set forth in section 422.35.

2. If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business or sources within the state, with the net income attributable to the state to be determined as follows:

a. Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(1) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer's commercial domicile is in this state.

(2) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(3) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the proper-

ty during the rental or royalty period is unknown, or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.

(4) Nonbusiness capital gains and losses from the sale or other disposition of assets shall be allocated as follows:

Gains and losses from the sale or other disposition of real property located in this state are allocable to this state.

Gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale or disposition or if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

Gains and losses from the sale or disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

b. Net nonbusiness income of the above class having been separately allocated and deducted as above provided, the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

(1) Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(2) Capital gains and losses from the sale or other disposition of assets shall be apportioned to the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with paragraph *"a"*, subparagraph (4).

(3) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(4) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(5) Where income consists of more than one class of income as provided in subparagraphs (1) to (4) of this paragraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(6) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word *"sale"* shall include exchange, and the word *"manufacture"* shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words *"tangible personal property"* shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state the greater of the tax determined in subsection 1, paragraphs *"a"* through *"d"* or the state alternative minimum tax equal to sixty percent of the maximum state corporate income tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.35 and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4) and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities and

interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code, net of amortization of any discount or premium, shall be subtracted.

b. Apply the allocation and apportionment provisions of subsection 2.

c. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

d. In the case of a net operating loss computed for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which is taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

5. *a.* The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph *"a"*, subparagraph (1), a corporation may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph *"b"*, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

d. For purposes of this subsection, *"base amount"*, *"basic research payment"*, and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state. For purposes of this subsection, *"Internal Revenue Code"* means the Internal Revenue Code in effect on January 1, 2002.

e. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following taxable year.

6. The taxes imposed under this division shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted in less than the ten years. For purposes of this section, *"agreement"*, *"industry"*, *"new job"* and *"project"* mean the same as defined in section 260E.2 and *"base employment level"* means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 260E on the date of that agreement.

7. *a.* There is allowed as a credit against the

tax determined in subsection 1 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph *"a"* for a tax year shall not exceed the excess, if any, of the tax determined in subsection 1 over the state alternative minimum tax as determined in subsection 4.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 4 for the tax year over the tax determined in subsection 1 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

8. The taxes imposed under this division shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution. This recomputed tax shall be subtracted from the tax computed under this division and the resulting amount, which shall not exceed the taxpayer's pro rata share of franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

9. *a.* The taxes imposed under this division shall be reduced by an assistive device tax credit. A small business purchasing, renting, or modifying an assistive device or making workplace modifications for an individual with a disability who is employed or will be employed by the small business is eligible, subject to availability of credits, to receive this assistive device tax credit which is equal to fifty percent of the first five thousand dollars paid during the tax year for the purchase, rental, or modification of the assistive device or for making the workplace modifications. Any credit in excess of the tax liability shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year. If the small business elects to take the assistive device tax credit, the small business shall not deduct for Iowa tax purposes any amount of the cost of an assistive device or workplace modifications which is deductible for federal income tax purposes.

b. To receive the assistive device tax credit, the eligible small business must submit an application to the department of economic development. If the taxpayer meets the criteria for eligibility, the department of economic development shall issue to the taxpayer a certification of entitlement for the assistive device tax credit. However, the combined amount of tax credits that may be approved for a fiscal year under this subsection and section 422.11E shall not exceed five hundred thousand dollars. Tax credit certificates shall be issued on an earliest filed basis. The certification shall contain the taxpayer's name, address, tax identification number, the amount of the credit, and tax year for which the certificate applies. The taxpayer must file the tax credit certificate with the taxpayer's corporate income tax return in order to claim the tax credit. The departments of economic development and revenue and finance shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

c. For purposes of this subsection:

(1) *"Assistive device"* means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. *"Assistive device"* does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. *"Assistive device"* does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of *"assistive device"* that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

(2) *"Disability"* means the same as defined in section 225C.46.

(3) *"Small business"* means a business that either had gross receipts for its preceding tax year of three million dollars or less or employed not more than fourteen full-time employees during its preceding tax year.

(4) *"Workplace modifications"* means physical alterations to the work environment.

10. *a.* The taxes imposed under this division shall be reduced by a property rehabilitation tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded as provided in section 404A.4, subsection 3.

b. For purposes of this subsection, *"eligible property"* means the same as used in section 404A.1.

11. *a.* As used in this subsection, unless the context otherwise requires:

(1) *"Ethanol blended gasoline"*, *"gasoline"*, *"metered pump"*, *"retail dealer"*, *"sell"*, and *"service station"* mean the same as defined in section 422.11C.

(2) *"Tax credit"* means the designated ethanol blended gasoline tax credit as provided in this subsection.

b. The taxes imposed under this division shall be reduced by an ethanol blended gasoline tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer.

(2) The taxpayer operates at least one service station at which more than sixty percent of the total gallons of gasoline sold and dispensed through one or more metered pumps by the taxpayer is ethanol blended gasoline.

(3) The taxpayer complies with requirements of the department required to administer this subsection.

c. The tax credit shall be calculated separately for each service station site operated by the taxpayer. The amount of the tax credit for each eligible service station is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at that service station during the tax year in excess of sixty percent of all gasoline sold and dispensed through metered pumps at that service station during the tax year.

d. Any credit in excess of the taxpayer's tax liability shall be refunded. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

12. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

13. The taxes imposed under this division shall be reduced by a venture capital fund investment tax credit authorized pursuant to section 15E.51.

[C35, §6943-f29; C39, §**6943.065;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.33; 81 Acts, ch 135, §1 – 3; 82 Acts, ch 1023, §12, 13, 30, 31, ch 1234, §1]

83 Acts, ch 179, §14, 15, 22, 25; 83 Acts, ch 207, §90, 93; 85 Acts, ch 32, §81; 85 Acts, ch 230, §7; 86 Acts, ch 1007, §28; 86 Acts, ch 1194, §1; 86 Acts, ch 1236, §8; 86 Acts, ch 1241, §22; 87 Acts, ch 22, §11; 87 Acts, 1st Ex, ch 1, §6, 7; 88 Acts, ch 1028, §33; 88 Acts, ch 1099, §1; 89 Acts, ch 251, §20 – 22; 89 Acts, ch 285, §5; 90 Acts, ch 1171, §5; 90 Acts, ch 1196, §2; 91 Acts, ch 215, §5; 92 Acts, ch 1200, §1, 4; 93 Acts, ch 113, §3; 94 Acts, ch 1165, §19; 94 Acts, ch 1166, §8, 11; 95 Acts, ch 83, §4, 35; 95 Acts, ch 152, §5, 7; 97 Acts, ch 135, §7, 9; 98 Acts, ch 1078, §7, 10; 99 Acts, ch 95, §8, 9, 12, 13; 99 Acts, ch 151, §10, 11, 89; 2000 Acts, ch 1146, §8, 9, 11; 2000 Acts, ch 1194, §12 – 14, 21; 2001 Acts, ch 123, §3, 6; 2001 Acts, ch 127, §8 – 10; 2002 Acts, ch 1006, §8, 13; 2002 Acts, ch 1069, §9, 10, 14; 2002 Acts, ch 1156, §3, 8

1999 amendment to subsection 2 applies retroactively to tax years beginning on or after January 1, 1999; 99 Acts, ch 151, §89

1999 amendment to subsection 5 and new subsection 8 apply retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13

For 2000 amendment to text of former unnumbered paragraph 1 of subsection 5, which provides for the reduction in taxes by a corporate tax credit for increasing research activities, takes effect April 26, 2000, and applies retroactively to tax years beginning on or after January 1, 1999, see 2000 Acts, ch 1146, §8, 9, 11

2000 amendment to subsection 5, which provides for alternative methods of computing the corporate tax credit for increasing research activities, applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21

2000 amendment adding new subsection 9, which provides for an assistive device tax credit for eligible small businesses, applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21

2001 amendment to subsection 5, paragraph d, is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

Ethanol blended gasoline tax credit provided in subsection 11 applies to tax years beginning on or after January 1, 2002; implementation; 2001 Acts, ch 123, §6

2002 amendment to subsection 5, paragraph d, takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1069, §10, 14

Subsection 12 takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

Subsection 13 takes effect May 8, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1156, §8

Subsection 5, paragraph d amended

NEW subsections 12 and 13

422.34 Exempted corporations and organizations.

The following organizations and corporations shall be exempt from taxation under this division:

1. All state, national, private, co-operative, and savings banks, credit unions, title insurance and trust companies, savings and loan associations, production credit associations, insurance companies or insurance associations, reciprocal or inter-insurance exchanges, and fraternal beneficiary associations.

2. An organization described in section 501 of the Internal Revenue Code unless the exemption is denied under section 501, 502, 503, or 504 of the Internal Revenue Code.

[C35, §6943-f30; C39, §**6943.066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.34]

92 Acts, 2nd Ex, ch 1001, §239, 251; 94 Acts, ch 1165, §20

422.34A Exempt activities of foreign corporations.

A foreign corporation shall not be considered doing business in this state or deriving income from sources within this state for the purposes of this division by reason of carrying on in this state one or more of the following activities:

1. Holding meetings of the board of directors or shareholders or holiday parties or employee appreciation dinners.
2. Maintaining bank accounts.
3. Borrowing money, with or without security.
4. Utilizing Iowa courts for litigation.
5. Owning and controlling a subsidiary corpo-

ration which is incorporated in or which is transacting business within this state where the holding or parent company has no physical presence in the state as that presence relates to the ownership or control of the subsidiary.

6. Recruiting personnel where hiring occurs outside the state.

7. Training employees or educating employees, or using facilities in Iowa for this purpose.

96 Acts, ch 1123, §1, 2; 97 Acts, ch 46, §1, 2

422.35 Net income of corporation — how computed.

The term *"net income"* means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities, from securities of state and other political subdivisions, and from regulated investment companies exempt from federal income tax under the Internal Revenue Code.

3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract fifty percent of the federal income taxes paid or accrued, as the case may be, during the tax year, adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.

5. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

6. If the taxpayer is a small business corporation, subtract an amount equal to sixty-five percent of the wages paid to individuals, but not to exceed twenty thousand dollars per individual, named in paragraphs *"a"*, *"b"*, and *"c"* who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs *"a"*, *"b"*, and *"c"* during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

For purposes of this subsection, *"physical or mental impairment"* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

For purposes of this subsection, *"small business"* means small business as defined in section 16.1, subsection 36, except that it shall also include the operation of a farm.

6A. If the taxpayer is a business corporation and does not qualify for the adjustment under subsection 6, subtract an amount equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs *"a"* and *"b"* who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs *"a"* and *"b"* during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs *"a"* and *"b"*.

7. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

8. Add the amounts deducted and subtract the amounts included in income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

9. Reserved.

10. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well using methods in section 613 of the Internal Revenue Code that is in excess of the cost depletion amount determined under section 611 of the Internal Revenue Code.

11. If after applying all of the adjustments provided for in this section and the allocation and apportionment provisions of section 422.33, the Iowa taxable income results in a net operating loss, such net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years for a net operating loss incurred in a presidentially declared disaster area by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph *"a"* or *"f"* or if not required to be carried back shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. No portion of a net operating loss which was sustained from that portion of the trade or business carried on outside the state of Iowa shall be deducted.

e. The limitations on net operating loss carryback and carryforward under sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code shall apply.

f. Notwithstanding paragraph *"a"*, for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

Provided, however, that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only such portion of the deductions for net operating loss and federal income taxes as is fairly and equitably allocable to Iowa, under rules prescribed by the director.

12. Subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

13. Subtract the interest earned from bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

14. Subtract, to the extent not deducted for federal income tax purposes, the amount of any gift, grant, or donation made to the Iowa educational savings plan trust, as created in chapter 12D, for deposit in the endowment fund of that trust.

15. To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, subtract the amount of the annual registration fee paid for a multipurpose vehicle pursuant to section 321.124, subsection 3, paragraph *"h"*, which is based upon the value of the vehicle. For purposes of this subsection, sixty percent of the amount of the registration fee is based upon the value of the vehicle.

16. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property during the period during which it is owned by the taxpayer and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the taxpayer, subsidiary of the taxpayer, or majority owners of the taxpayer, for other than as a speculative

shell building, as defined in section 427.1, subsection 27.

17. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted gross income.

18. Add, to the extent not already included, income from the sale of obligations of the state and its political divisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state corporate income tax.

[C35, §6943-f31; C39, §**6943.067;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.35; 81 Acts, ch 132, §8, 9; 82 Acts, ch 1023, §14, 15, 30, 31, ch 1203, §2, ch 1206, §1]

83 Acts, ch 174, §2, 3; 83 Acts, ch 179, §16, 24; 86 Acts, ch 1236, §9; 86 Acts, ch 1238, §20; 86 Acts, ch 1241, §23; 87 Acts, 1st Ex, ch 1, §8 – 11; 89 Acts, ch 175, §3; 89 Acts, ch 225, §20, 21; 90 Acts, ch 1168, §46; 90 Acts, ch 1171, §6; 90 Acts, ch 1195, §2; 90 Acts, ch 1251, §53; 91 Acts, ch 210, §3; 92 Acts, ch 1222, §5, 6; 92 Acts, ch 1225, §2, 5; 94 Acts, ch 1107, §26; 94 Acts, ch 1166, §9, 10, 12; 95 Acts, ch 152, §6, 7; 96 Acts, ch 1129, §113; 97 Acts, ch 135, §8, 9; 98 Acts, ch 1078, §8, 12; 98 Acts, ch 1172, §13, 14; 99 Acts, ch 95, §10 – 13; 2001 Acts, ch 15, §3, 4; 2001 Acts, ch 116, §7, 28; 2001 Acts, 2nd Ex, ch 6, §23 – 26, 37

Subsection 18 takes effect May 3, 2001, and applies retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 116, §28

2001 amendments to subsection 6, paragraph c, and subsection 6A, paragraph b, take effect July 1, 2002; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

Subsection 6, paragraph c amended

Subsection 6A, paragraph b amended

422.36 Returns.

1. A corporation shall make a return and the return shall be signed by the president or other duly authorized officer in accordance with forms and rules prescribed by the director. Before a corporation is dissolved and its assets distributed it shall make a return for settlement of the tax for income earned in the income year up to its final date of dissolution.

2. When any corporation, liable to taxation under this division, conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products, goods or commodities of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said corporations, or where a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products, goods, or commodities, of the corporation of which it so owns a substantial portion of the stock, in such a manner as to create a loss or improper net income for either of said corporations, the department may determine the amount of taxable income of either or any of such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained, by the corporation or corporations liable to taxation under this division, from dealing in such products, goods, or commodities.

3. Where the director has reason to believe that any person or corporation so conducts a trade or business as either directly or indirectly to distort the person's or corporation's true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for services, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, the director may require such facts as are necessary for the proper computation of the entire net income and the net income properly attributable to the state, and shall determine the same, and in the determination thereof the director shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

4. Foreign corporations shall file a copy of their federal income tax return for the current tax year with the return required by this section.

5. Where a corporation is not subject to income tax and the stockholders of such corporation are taxed on the corporation's income under the provisions of the Internal Revenue Code, the same tax treatment shall apply to such corporation and such stockholders for Iowa income tax purposes.

6. A foreign corporation is not required to file a return if its only activities in Iowa are the storage of goods for a period of sixty consecutive days or less in a warehouse for hire located in this state whereby the foreign corporation transports or causes a carrier to transport such goods to that warehouse and provided that none of the goods are delivered or shipped so as to be included in the gross sales of the corporation within this state as provided in section 422.33, subsection 2, paragraph *"b"*, subparagraph (6).

[C35, §6943-f32; C39, §**6943.068;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.36]

87 Acts, 1st Ex, ch 1, §12; 89 Acts, ch 251, §23; 2001 Acts, ch 97, §1, 2

Subsection 6 is effective April 30, 2001, and applies retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 97, §2

422.37 Consolidated returns.

Any affiliated group of corporations may, not later than the due date for filing its return for the tax-

able year, including any extensions thereof, under rules to be prescribed by the director, elect, and upon demand of the director shall be required, to make a consolidated return showing the consolidated net income of all such corporations and other information as the director may require, subject to the following:

1. The affiliated group filing under this section shall file a consolidated return for federal income tax purposes for the same taxable year.

2. All members of the affiliated group shall join in the filing of an Iowa consolidated return to the extent they are subject to the tax imposed by section 422.33.

3. Members of the affiliated group exempt from taxation by section 422.34 of the Code shall not be included in a consolidated return.

4. All members of the affiliated group shall use the statutory method of allocation and apportionment unless the director has granted permission to all members to use an alternative method of allocation and apportionment.

5. Each member of the affiliated group shall consent to the rules governing a consolidated return prescribed by the director at the time the consolidated return is filed, unless the director requires the filing of a consolidated return. The filing of a consolidated return shall be considered the affiliated group's consent.

6. The filing of a consolidated return for any taxable year shall require the filing of consolidated returns for all subsequent taxable years so long as the filing taxpayers remain members of the affiliated group unless the director determines that the filing of separate returns will more clearly disclose the taxable incomes of each member of the affiliated group. This determination shall be made after specific request by the taxpayer for the filing of separate returns.

7. The computation of consolidated taxable income for the members of an affiliated group of corporations subject to tax shall be made in the same manner and under the same procedures, including all intercompany adjustments and eliminations, as are required for consolidating the incomes of affiliated corporations for the taxable year for federal income tax purposes in accordance with section 1502 of the Internal Revenue Code.

[C35, §6943-f33; C39, §**6943.069;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.37]

86 Acts, ch 1213, §10; 87 Acts, 1st Ex, ch 1, §13; 92 Acts, 2nd Ex, ch 1001, §240, 252

422.38 Statutes governing corporations.

All the provisions of sections 422.15 to 422.22 of division II, insofar as the same are applicable, shall apply to corporations taxable under this division.

[C35, §6943-f34; C39, §**6943.070;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.38]

422.39 Statutes applicable to corporation tax.

All the provisions of sections 422.24 to 422.27 of division II, respecting payment and collection, shall apply in respect to the tax due and payable by a corporation taxable under this division.

[C35, §6943-f35; C39, §**6943.071;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.39]

422.40 Cancellation of authority — penalty — offenses.

1. If a corporation required by the provisions of this division to file any report or return or to pay any tax or fee, either as a corporation organized under the laws of this state, or as a foreign corporation doing business in this state for profit, or owning and using a part or all of its capital or plant in this state, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this division for making such report or return, or for paying such tax or fee, the director may certify such fact to the secretary of state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state.

2. Any person or persons who shall exercise or attempt to exercise any powers, privileges, or franchises under articles of incorporation or certificate of authority after the same are canceled, as provided in any section of this division, shall pay a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered by an action to be brought by the director.

3. Any corporation whose articles of incorporation or certificate of authority to do business in this state have been canceled by the secretary of state, as provided in subsection 1, or similar provisions of prior revenue laws, upon the filing, within ten years after such cancellation, with the secretary of state, of a certificate from the department that it has complied with all the requirements of this division and paid all state taxes, fees, or penalties due from it, and upon the payment to the secretary of state of an additional penalty of fifty dollars, shall be entitled again to exercise its rights, privileges, and franchises in this state; and the secretary of state shall cancel the entry made by the secretary under the provisions of subsection 1 or similar provisions of prior revenue laws, and shall issue a certificate entitling such corporation to exercise its rights, privileges and fran-

chises.

4. A person, officer or employee of a corporation, or member or employee of a partnership, who, with intent to evade a requirement of this division or a lawful requirement of the director, fails to pay tax or fails to make, sign, or verify a return or fails to supply information required under this division, is guilty of a fraudulent practice. A person, corporation, officer or employee of a corporation, or member or employee of a partnership, who, with intent to evade any of the requirements of this division, or any lawful requirements of the director, makes, renders, signs, or verifies a false or fraudulent return or statement, or supplies false or fraudulent information, or who aids, abets, directs, causes, or procures anyone so to do, is guilty of a class "D" felony. The penalty is in addition to all other penalties in this division.

[C35, §6943-f36; C39, §**6943.072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.40]

83 Acts, ch 160, §6

422.41 Corporations.

All the provisions of sections 422.28, 422.29, and 422.30 of division II in respect to revision, appeal, and jeopardy assessments shall be applicable to corporations taxable under this division.

[C35, §6943-f37; C39, §**6943.073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.41]

DIVISION IV

RETAIL SALES TAX

See also §453A.26
Multistate discussions to consider simplification and uniformity of sales and use tax administration; 2002 Acts, ch 1161, §4, 5

422.42 Definitions.

The following words, terms, and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *"Agricultural production"* includes the production of flowering, ornamental, or vegetable plants in commercial greenhouses or otherwise, and production from aquaculture. *"Agricultural products"* include flowering, ornamental, or vegetable plants and those products of aquaculture.

2. *"Business"* includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

3. *"Casual sales"* means:

a. Sales or the rendering, furnishing or performing of a nonrecurring nature of tangible personal property or services by the owner, if the seller, at the time of the sale, is not engaged for profit in the business of selling tangible personal property or services taxed under section 422.43.

b. The sale of all or substantially all of the tangible personal property or services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit when the retailer sells or otherwise transfers the trade or business to another person who shall engage in a similar trade or business.

4. *"Farm deer"* means the same as defined in section 189A.2.

5. *"Farm machinery and equipment"* means machinery and equipment used in agricultural production.

6. *"Gross receipts"* means the total amount of the sales of retailers, valued in money, whether received in money or otherwise; provided, however,

a. That discounts for any purpose allowed and taken on sales shall not be included if excessive sales tax is not collected from the purchaser, nor shall the sale price of property returned by customers when the total sale price thereof is refunded either in cash or by credit.

b. That in transactions in which tangible personal property is traded toward the purchase price of other tangible personal property the gross receipts are only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

7. *"Gross taxable services"* means the total amount received in money, credits, property, or other consideration, valued in money, from services rendered, furnished, or performed in this state except where the service is used in processing of tangible personal property for use in retail sales or services and embraced within the provisions of this division. However, the taxpayer may take credit in the taxpayer's report of gross taxable services for an amount equal to the value of services rendered, furnished, or performed when the full value of the services is refunded either in cash or by credit. Taxes paid on gross taxable services represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax due, but if any accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts collected.

8. *"Livestock"* includes but is not limited to an animal classified as an ostrich, rhea, or emu; bison; or farm deer.

9. *"Nonresidential commercial operations"* means industrial, commercial, mining, and agricultural operations, whether for profit or not, but does not include apartment complexes and manu-

factured home communities or mobile home parks.

10. *"Place of business"* shall mean any warehouse, store, place, office, building or structure where goods, wares or merchandise are offered for sale at retail or where any taxable amusement is conducted or each office where gas, water, heat, communication or electric services are offered for sale at retail.

Where a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building or place where the books, papers and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business.

11. *"Property purchased for resale in connection with the performance of a service"* means property which is purchased for resale in connection with the performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

a. The provider and user of the service intend that a sale of the property will occur.

b. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value.

c. The sale is evidenced by a separate charge for the identifiable piece of property.

12. *"Person"* includes any individual, firm, copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

13. *"Relief agency"* means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

14. *"Retailer"* includes every person engaged in the business of selling tangible goods, wares, merchandise or taxable services at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this division or operating amusement devices or other forms of commercial amusement from which revenues are derived; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this division to regard any salespersons, representatives, truckers, peddlers, or canvassers, as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this division.

15. *"Retail sale"* or *"sale at retail"* means the sale to a consumer or to any person for any purpose, other than for processing, for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services; and includes the sale of gas, electricity, water, and communication service to retail consumers or users; but does not include agricultural breeding livestock and domesticated fowl; and does not include commercial fertilizer, agricultural limestone, herbicide, pesticide, insecticide, including adjuvants, surfactants, and other products directly related to the application enhancement of those products, and food, medication, or agricultural drain tile, including installation of agricultural drain tile, any of which are to be used in disease control, weed control, insect control, or health promotion of plants or livestock produced as part of agricultural production for market; and does not include electricity, steam, or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail. When used by a manufacturer of food products, carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services are sold for processing when used to produce marketable food products for human consumption, including but not limited to, treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that the property will, by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal property intended to be sold ultimately at retail; or will be consumed as fuel in creating heat, power, or steam for processing including grain drying, or for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, or for use in cultivation of agricultural products by aquaculture, or for generating electric current, or in implements of husbandry engaged in agricultural production; or the property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing personal property which is intended to be

sold ultimately at retail or consumed in the maintenance or repair of fabric or clothing, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides is a retail sale for purposes of the processing exemption.

16. Sales of building materials, supplies, and equipment to owners, contractors, subcontractors or builders, for the erection of buildings or the alteration, repair, or improvement of real property, are retail sales in whatever quantity sold. If a contractor, subcontractor, or builder is to use building materials, supplies, and equipment in the performance of a construction contract with a designated exempt entity, the person shall purchase such items of tangible personal property without liability for the tax if such property will be used in the performance of the construction contract and a purchasing agent authorization letter and an exemption certificate, issued by the designated exempt entity, are presented to the retailer. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail. The tax shall not be due when materials are withdrawn from inventory for use in construction outside of Iowa and the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials in the performance by the manufacturer or its subcontractor of construction outside of Iowa. The tax shall not be due when materials are withdrawn from inventory for use in construction performed for a designated exempt entity if an exemption certificate is received from such entity.

For the purposes of this subsection, the sale of carpeting is not a sale of building materials. The sale of carpeting to owners, contractors, subcontractors, or builders shall be treated as the sale of ordinary tangible personal property and subject to the tax imposed under section 422.43, subsection 1, and the tax imposed under section 423.2.

For purposes of this subsection, *"designated exempt entity"* means an entity which is designated in section 422.45, subsection 7.

17. The use within this state of tangible personal property by the manufacturer of such property, as building materials, supplies, or equipment, in the performance of construction contracts in Iowa, shall, for the purpose of this division, be construed as a sale at retail of such property by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to the manufacturer of the fabrication or production of such property. However, the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials, supplies, or equipment in the performance of a construction contract for a designated exempt entity, as defined in subsection 16, if a purchasing agent authorization letter and an exemption certificate are received from such entity and presented to the retailer.

18. *"Sales"* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

19. *"Services"* means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an *"employer"* as defined in section 422.4, subsection 3, for a valuable consideration by any person engaged in any business or occupation specifically enumerated in this division. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user of the service.

"Services used in the processing of tangible personal property" includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale.

20. The word *"taxpayer"* includes any person within the meaning of subsection 12 hereof, who is subject to a tax imposed by this division, whether acting on the person's own behalf or as a fiduciary.

21. *"User"* means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

22. *"Value of services"* means the price to the user exclusive of any direct tax imposed by the federal government or by this division.

[C35, §6943-f38; C39, §**6943.074;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.42; 81 Acts, ch 136, §1; 82 Acts, ch 1019, §1]

83 Acts, ch 158, §1; 85 Acts, ch 32, §82; 85 Acts, ch 223, §1; 86 Acts, ch 1241, §24; 87 Acts, ch 214, §5 – 7; 90 Acts, ch 1186, §1; 90 Acts, ch 1232, §12; 92 Acts, ch 1019, §3; 92 Acts, ch 1232, §403, 412; 92 Acts, 2nd Ex, ch 1001, §241; 94 Acts, ch 1107, §27; 94 Acts, ch 1165, §21; 95 Acts, ch 174, §1, 2; 97 Acts, ch 54, §1 – 3; 97 Acts, ch 158, §14; 99 Acts, ch 151, §12, 13, 89; 99 Acts, ch 152, §5, 40; 2001 Acts, ch 153, §16; 2002 Acts, ch 1010, §1, 4; 2002 Acts, ch 1151, §7, 36

Subsections 4 and 8 take effect March 6, 2002, and apply retroactively to April 1, 1995; 2002 Acts, ch 1010, §4

2002 amendments to subsections 16 and 17 take effect January 1, 2003, and apply to construction contracts entered into on or after that date; 2002 Acts, ch 1151, §36

NEW subsection 4 and former subsections 4 – 6 renumbered as 5 – 7

NEW subsection 8 and former subsections 7 and 8 renumbered as 9 and 10

Reserved subsection 9 omitted editorially and former subsections 10 – 21 renumbered as 11 – 22

Subsections 16 and 17 amended

422.43 Tax imposed.

1. There is imposed a tax of five percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this division, sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service, including the gross receipts from such sales by any municipal corporation or joint water utility furnishing gas, electricity, water, heat, pay television service, and communication service to the public in its proprietary capacity, except as otherwise provided in this division, when sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions; a like rate of tax on the gross receipts from an entry fee or like charge imposed solely for the privilege of participating in an activity at a place of amusement, fair, or athletic event unless the gross receipts from the sales of tickets or admissions charges for observing the same activity are taxable under this division; and a like rate of tax upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

2. There is imposed a tax of five percent upon the gross receipts derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, operated or conducted within the state, the tax to be collected from the operator in the same manner as for the collection of taxes upon the gross receipts of tickets or admission as provided in this section. The tax shall also be imposed upon the gross receipts derived from the sale of lottery tickets or shares pursuant to chapter 99E. The tax on the lottery tickets or shares shall be included in the sales price and distributed to the general fund as provided in section 99E.10.

3. The tax thus imposed covers all receipts from the operation of games of skill, games of chance, raffles and bingo games as defined in chapter 99B, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on all receipts from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the gross receipts from any source of amusement operated for profit, not specified in this section, and upon the gross receipts from which no tax is collected for tickets or admission, but no tax shall be imposed upon any activity exempt from sales tax under section 422.45, subsection 3. Every person receiving gross receipts from the sources defined in this section is subject to all provisions of this division relating to retail sales tax and other provisions of this chapter as applicable.

4. There is imposed a tax of five percent upon the gross receipts from the sales of engraving, photography, retouching, printing, and binding services. For the purpose of this division, the sales of engraving, photography, retouching, printing, and binding services are sales of tangible property.

5. There is imposed a tax of five percent upon the gross receipts from the sales of vulcanizing, recapping, and retreading services. For the purpose of this division, the sales of vulcanizing, recapping, and retreading services are sales of tangible property.

6. There is imposed a tax of five percent upon the gross receipts from the sales of optional service or warranty contracts, except residential service contracts regulated under chapter 523C, which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under this section. The gross receipts are subject to tax even if some of the services furnished are not enumerated under this section. For the purpose of this division, the sale of an optional service or warranty contract, other than a residential service contract regulated under chapter 523C, is a sale of tangible personal property. Additional sales, services, or use taxes shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this section.

If the optional service or warranty contract is a computer software maintenance or support service contract and there is no separately stated fee for the taxable personal property or for the nontaxable service, the tax of five percent imposed by this subsection shall be imposed on fifty percent of the gross receipts from the sale of such contract. If the contract provides for technical support services only, no tax shall be imposed under this subsection. The provisions of this subsection also apply to the tax imposed by chapter 423.

7. There is imposed a tax of five percent upon the gross receipts from the renting of rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, manufactured or mobile home which is tangible personal property, or tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. *"Renting"* and *"rent"* include any kind of direct or indirect charge for such rooms, apartments, or sleeping quarters, or their use. For the purposes of this division, such renting is regarded as a sale of tangible personal property at retail. However, this tax does not apply to the gross receipts from the renting of a room, apartment, or

sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

8. All revenues arising under the operation of the provisions of this section shall become part of the state general fund.

9. Nothing herein shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

10. There is imposed a tax of five percent upon the gross receipts from the rendering, furnishing, or performing of services as defined in section 422.42.

11. The following enumerated services are subject to the tax imposed on gross taxable services: alteration and garment repair; armored car; vehicle repair; battery, tire, and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dating services; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; rental of tangible personal property, except manufactured or mobile homes which are tangible personal property; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; house and building moving; household appliance, television, and radio repair; jewelry and watch repair; limousine service, including driver; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pipe fitting and plumbing; wood preparation; executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state; sewage services for nonresidential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; taxidermy services; telephone answering service; test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons, excluding services provided by massage therapists licensed under chapter 152C; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables; wrecking service; wrecker and towing; pay television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping, and tree trimming and removal; pet grooming; reflexology; security and detective services; tanning beds or salons; and water conditioning and softening.

For purposes of this subsection, gross taxable services from rental includes rents, royalties, and copyright and license fees. For purposes of this subsection, *"financial institutions"* means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, and credit unions organized under chapter 533.

For purposes of the tax on enumerated services under this subsection, service charges of financial institutions do not include surcharges assessed with regard to nonproprietary ATM transactions. This paragraph is repealed June 30, 2003.

12. A tax of five percent is imposed upon the gross receipts from the sales of prepaid telephone calling cards and prepaid authorization numbers. For the purpose of this division, the sales of prepaid telephone calling cards and prepaid authorization numbers are sales of tangible personal property.

13. *a.* A tax of five percent is imposed upon the gross receipts from the sales, furnishing, or service of solid waste collection and disposal service.

For purposes of this subsection, *"solid waste"* means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include auto hulks; street sweepings; ash; construction debris; mining waste; trees; tires; lead acid batteries; used oil; hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954.

A recycling facility that separates or processes recyclable materials and that reduces the volume of the waste by at least eighty-five percent is exempt from the tax imposed by this subsection if the waste exempted is collected and disposed of separately from other solid waste.

b. A person who transports solid waste generated by that person or another person without compensation shall pay the tax imposed by this subsection at the collection or disposal facility

based on the disposal charge or tipping fee. However, the costs of a service or portion of a service to collect and manage recyclable materials separated from solid waste by the waste generator is exempt from the tax imposed by this subsection.

14. An increase or decrease in the retail sales tax rate shall only be effective on January 1 or July 1, but not sooner than ninety days after enactment of the rate increase or decrease.

15. For purposes of this division, a sale of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.

16. *a.* A tax of five percent is imposed upon the gross receipts from sales of bundled services contracts. For purposes of this subsection, a *"bundled services contract"* means an agreement providing for a retailer's performance of services, one or more of which is a taxable service enumerated in this section and one or more of which is not, in return for a consumer's or user's single payment for the performance of the services, with no separate statement to the consumer or user of what portion of that payment is attributable to any one service which is a part of the contract.

b. For purposes of the administration of the tax on bundled services contracts, the director may enter into agreements of limited duration with individual retailers, groups of retailers, or organizations representing retailers of bundled services contracts. Such an agreement shall impose the tax rate only upon that portion of the gross receipts from a bundled services contract which is attributable to taxable services provided under the contract.

17. A tax of five percent is imposed upon the gross receipts from any mobile telecommunication service which this state is allowed to tax by the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 116 et seq. For purposes of this subsection, taxes on mobile telecommunications service, as defined under the federal Mobile Telecommunications Sourcing Act, that are deemed to be provided by the customer's home service provider shall be paid to the taxing jurisdiction whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication service originates, terminates, or passes through and shall in all other respects be taxed in conformity with the federal Mobile Telecommunications Sourcing Act. All other provisions of the federal Mobile Telecommunications Sourcing Act are adopted by the state of Iowa and incorporated into this subsection by reference. With respect to mobile telecommunications service under the federal Mobile Telecommunications Sourcing Act the director shall, if requested, enter into agreements consistent with the provisions of the federal Act.

[C35, §6943-f39; C39, §**6943.075;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.43; 81 Acts, ch 137, §1; 82 Acts, ch 1172, §1]

83 Acts, ch 1, §1 – 3, 6; 84 Acts, ch 1140, §1, 2; 84 Acts, ch 1254, §1, 2; 84 Acts, ch 1305, §76, 77; 85 Acts, ch 32, §83; 85 Acts, ch 195, §47; 87 Acts, ch 136, §1; 87 Acts, ch 214, §8; 88 Acts, ch 1154, §1; 90 Acts, ch 1232, §13; 91 Acts, ch 81, §1; 91 Acts, ch 159, §18; 91 Acts, ch 168, §7; 92 Acts, ch 1019, §4, 8; 92 Acts, ch 1217, §1; 92 Acts, ch 1232, §404 – 406, 412; 92 Acts, 1st Ex, ch 1001, §1, 2, 5; 92 Acts, 2nd Ex, ch 1001, §206 – 208, 213, 242, 601; 93 Acts, ch 135, §1; 94 Acts, ch 1165, §22; 95 Acts, ch 83, §5, 6; 95 Acts, ch 187, §1; 97 Acts, ch 158, §15; 98 Acts, ch 1063, §1; 98 Acts, ch 1163, §1; 99 Acts, ch 156, §1, 23; 2000 Acts, ch 1195, §2, 7; 2001 Acts, ch 150, §1; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1150, §6; 2002 Acts, ch 1151, §8; 2002 Acts, ch 1161, §2, 5

Local sales and services tax; §422B.8 et seq.

Subsection 14 is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §1, 23

Subsection 15 is effective May 16, 2000, and applies retroactively to March 15, 1995; 2000 Acts, ch 1195, §7

Abatement of taxes owed or refund of taxes paid by foundries located in Lee or Jefferson county on certain purchases of tangible personal property between July 1, 1997, and May 6, 2002; filing deadline and limitation on claims for refunds; 2002 Acts, ch 1151, §33, 36

Subsection 11, unnumbered paragraph 1 amended

Subsection 11, NEW unnumbered paragraph 3

Subsection 15, unnumbered paragraph 2 stricken

422.44 Federal sales of property and services.

Purchases of tangible personal property or services from the government of the United States or any of its agencies by ultimate consumer-users are hereby declared to be subject to the state use tax.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.44]

99 Acts, ch 151, §14, 89

422.45 Exemptions.

There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

1. The gross receipts from sales of tangible personal property and services rendered, furnished, or performed, which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The gross receipts from the sales, furnishing, or service of transportation service except the rental of recreational vehicles or recreational boats, except the rental of motor vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less, and except the rental of aircraft for a period of sixty days or less. This exemption does not apply to the transportation of electric energy. This exemption does not apply to the transportation of natural gas.

2A. The gross receipts from charges paid for the delivery of electricity or natural gas if the sale,

furnishing, or service of the electricity or natural gas or its use is exempt from the tax on gross receipts imposed under this division or from the use tax imposed under chapter 423.

3. The gross receipts from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property or services rendered are used by or donated to a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a nonprofit private educational institution, and where the entire proceeds from the sales, rental, or services are expended for any of the following purposes:

a. Educational.

b. Religious.

c. Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

This exemption does not apply to the gross receipts from games of skill, games of chance, raffles, and bingo games as defined in chapter 99B. This exemption is disallowed on the amount of the gross receipts only to the extent the profits from the sales, rental, or services are not used by or donated to the appropriate entity and expended for educational, religious, or charitable purposes.

4. The gross receipts from sales of vehicles subject to registration or subject only to the issuance of a certificate of title and sales of aircraft subject to registration under section 328.20.

5. The gross receipts from services rendered, furnished, or performed and of all sales of goods, wares, or merchandise used for public purposes to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state, including regional transit systems, as defined in section 324A.1, the state board of regents, department of human services, state department of transportation, any municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except sales of goods, wares, or merchandise or from services rendered, furnished, or performed and used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, heat, or pay television service to the general public; except the sales, furnishing or providing of sewage services to a county or municipality on behalf of nonresidential commercial operations; and except the sales, furnishing, or service of solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality.

The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise or from services rendered, furnished, or performed and subject to use tax under the provisions of chapter 423.

6. The gross receipts from *"casual sales"*.

7. A private nonprofit educational institution in this state, nonprofit private museum in this state, tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which do not have earnings going to the benefit of an equity investor or stockholder, may make application to the department for the refund of the sales, services, or use tax upon the gross receipts of all sales of goods, wares, or merchandise, or from services rendered, furnished, or performed, to a contractor, used in the fulfillment of a written contract with the state of Iowa, any political subdivision of the state, or a division, board, commission, agency, or instrumentality of the state or a political subdivision, a private nonprofit educational institution in this state, or a nonprofit private museum in this state if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, is devoted to educational uses, or becomes a nonprofit private museum; except goods, wares, or merchandise, or services rendered, furnished, or performed used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public or in connection with the operation of a municipal pay television system; and except goods, wares, and merchandise used in the performance of a contract for a *"project"* under chapter 419 as defined in that chapter other than goods, wares, or merchandise used in the performance of a contract for a *"project"* under chapter 419 for which a bond issue was approved by a municipality prior to July 1, 1968, or for which the goods, wares, or merchandise becomes an integral part of the project under contract and at the completion of the project becomes public property or is devoted to educational uses.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares or merchandise or services rendered, furnished, or performed and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit, private nonprofit educational institution, or nonprofit private museum which has made any written contract for performance by the contractor. The forms

shall be filed by the contractor with the governmental unit, educational institution, or nonprofit private museum before final settlement is made.

b. Such governmental unit, educational institution, or nonprofit private museum shall, not more than one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares or merchandise, or services rendered, furnished, or performed, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the governmental unit, educational institution, or nonprofit private museum in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

c. Any contractor who shall willfully make false report of tax paid under the provisions of this subsection shall be guilty of a simple misdemeanor and in addition thereto shall be liable for the payment of the tax and any applicable penalty and interest.

7A. The refund of sales and use tax paid on transportation construction projects let by the state department of transportation is subject to the special provisions of this subsection.

a. A contractor awarded a contract for a transportation construction project is considered the consumer of all building materials, building supplies and equipment and shall pay sales tax to the supplier or remit consumer use tax directly to the department.

b. The contractor is not required to file information with the department of transportation stating the amount of goods, wares, or merchandise, or services rendered, furnished, or performed and used in the performance of the contract or the amount of sales or use tax paid.

c. The department of transportation shall file a refund claim based on a formula that considers the following:

(1) The quantity of material to complete the contract, and quantities of items of work.

(2) The estimated cost of these materials included in the items of work, and the state sales or use tax to be paid on the tax rate in effect in section 422.43.

The quantity of materials shall be determined after each letting based on the contract quantities of all items of work let to contract. The quantity of individual component materials required for each item shall be determined and maintained in a database. The total quantities of materials shall be determined by multiplying the quantities of component materials for each contract item of work by the total quantities of each contract item for each letting. Where variances exist in the cost of materials, the lowest cost shall be used as the base cost.

d. Only the state sales or use tax is refundable. Local option taxes paid by the contractor are not refundable.

7B. The gross receipts from the sale of building materials, supplies, or equipment sold to rural water districts organized under chapter 504A as provided in chapter 357A and used for the construction of facilities of a rural water district.

8. The gross receipts of all sales of goods, wares, merchandise, or services, used for educational purposes to any private nonprofit educational institution in this state. For the purpose of this subsection, *"educational institution"* means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. *"Educational institution"* includes an institution primarily functioning as a library.

9. Gross receipts from the sales of newspapers, free newspapers or shoppers guides and the printing and publishing thereof, and envelopes for advertising.

10. The gross receipts from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

11. The gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the gross receipts from the sales of ethanol blended gasoline, as defined in section 452A.2.

12. Gross receipts from the sale of all foods for human consumption which are eligible for purchase with food coupons issued by the United States department of agriculture pursuant to regulations in effect on July 1, 1974, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. However, as used in this subsection, *"foods"* does not include candy, candy-coated items, and other candy products; beverages, excluding tea and coffee, and all mixes and ingredients used to produce such beverages, which do not contain a primary dairy product or dairy ingredient base or which contain less than fifteen percent natural fruit or vegetable juice; foods prepared on or off the premises of the retailer which are consumed on the premises of the retailer; foods sold by caterers and hot or cold foods prepared for immediate consumption off the premises of the retailer. *"Foods prepared for immediate consumption"* include any food product upon which an act of preparation, including but not limited to, cooking, mixing, sand-

wich making, blending, heating or pouring, has been performed by the retailer so the food product may be immediately consumed by the purchaser.

12A. The gross receipts from the sale of foods purchased with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. § 2011, et seq.

13. The gross receipts from the sale or rental of prescription drugs or medical devices intended for human use or consumption.

For the purposes of this subsection:

a. "Medical device" means equipment or a supply, intended to be prescribed by a practitioner, including orthopedic or orthotic devices. However, *"medical device"* also includes prosthetic devices, ostomy, urological, and tracheostomy equipment and supplies, and diabetic testing materials, hypodermic syringes and needles, anesthesia trays, biopsy trays and biopsy needles, cannula systems, catheter trays and invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, intraocular lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets, venous blood sets, and oxygen equipment, intended to be dispensed for human use with or without a prescription to an ultimate user.

b. "Practitioner" means a practitioner as defined in section 155A.3, or a person licensed to prescribe drugs.

c. "Prescription drug" means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order or medication order from a practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

d. "Ultimate user" means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed, or prescribed.

14. Reserved.

15. Reserved.

16. The gross receipts from the sale of feed and feed supplements and additives when used for consumption by farm deer or bison.

17. The gross receipts from the sale of horses, commonly known as draft horses, when purchased for use and so used as a draft horse.

18. Gross receipts from the sale of tangible personal property, except vehicles subject to registration, to a person regularly engaged in the business of leasing if the period of the lease is for more than five months, or in the consumer rental purchase business if the property is to be utilized in a transaction involving a consumer rental purchase agreement as defined in section 537.3604, subsection 8, and the leasing or consumer rental of the property is subject to taxation under this division. If tangible personal property exempt under this subsection is made use of for any purpose other than leasing, renting, or consumer rental purchase, the person claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price. The aggregate of the tax paid on the leasing, renting, or rental purchase of such tangible personal property, not to exceed the amount of the sales tax owed, shall be credited against the tax. This sales tax is in addition to any sales or use tax that may be imposed as a result of the disposal of such tangible personal property.

19. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.*

20. The gross receipts from sales or services rendered, furnished, or performed by a county or city. This exemption does not apply to the tax specifically imposed under section 422.43 on the gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service to the public by a municipal corporation in its proprietary capacity; does not apply to the sales, furnishing, or service of solid waste collection and disposal service to nonresidential commercial operations; does not apply to the sales, furnishing, or service of sewage service for nonresidential commercial operations; and does not apply to fees paid to cities and counties for the privilege of participating in any athletic sports.

21. The gross receipts from sales or rentals to a printer or publisher of the following: acetate; anti-halation backing; anti-static spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models, modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; pad-

ding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; pH-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; veloxes; wood mounts; and any other items used in a like capacity to any of the above enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies which are not enumerated in this subsection are excluded from the exemption. *"Printer"* means that portion of a person's business engaged in printing that completes a finished product for ultimate sale at retail or means that portion of a person's business used to complete a finished printed packaging material used to package a product for ultimate sale at retail. *"Printer"* does not mean an in-house printer who prints or copyrights its own materials.

22. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to the following nonprofit corporations:

a. Residential care facilities and intermediate care facilities for persons with mental retardation and residential care facilities for persons with mental illness licensed by the department of inspections and appeals under chapter 135C.

b. Residential facilities licensed by the department of human services pursuant to chapter 237, other than those maintained by individuals as defined in section 237.1, subsection 7.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for persons with mental retardation and other persons with developmental disabilities and adult day services approved for reimbursement by the state department of human services.

d. Community mental health centers accredited by the department of human services pursuant to chapter 225C.

e. Community health centers as defined in 42 U.S.C. § 254c and migrant health centers as defined in 42 U.S.C. § 254b.

23. The gross receipts from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such a river.

24. The gross receipts from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts or other media used for the purpose of transmitting that which can be seen, heard or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing or the rental of such media and the charge for the viewing or the rental is subject to taxation under this division or chapter 423.

b. The lessee broadcasts the contents of such media for public viewing or listening.

25. The gross receipts from services rendered, furnished or performed by specialized flying implements of husbandry used for agricultural aerial spraying and aerial commercial and charter transportation services.

26. The gross receipts from the sale or rental of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if the following conditions are met:

a. The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

b. The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in the production of agricultural products.

Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, shall not be eligible for this exemption.

26A. The gross receipts from the sale or rental of irrigation equipment, whether installed above or below ground, to a contractor or farmer if the equipment will be primarily used in agricultural operations.

27. *a.* The gross receipts from the sale or rental of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment if such items are any of the following:

(1) Directly and primarily used in processing by a manufacturer.

(2) Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and

specifications of the product.

(3) Directly and primarily used in research and development of new products or processes of processing.

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

(5) Directly and primarily used in recycling or reprocessing of waste products.

(6) Pollution control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government.

b. The gross receipts from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph *"a"*, subparagraph (1), (2), (3), (5), or (6).

c. However, the gross receipts from the sale or rental of the following shall not be exempt from the tax imposed by this division:

(1) Hand tools.

(2) Point-of-sale equipment and computers.

(3) Industrial machinery, equipment, and computers, including pollution control equipment, within the scope of section 427A.1, subsection 1, paragraphs *"h"* and *"i"*.

(4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

d. As used in this subsection:

(1) *"Commercial enterprise"* includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers but excludes professions and occupations and nonprofit organizations.

(2) *"Financial institution"* means as defined in section 527.2.

(3) *"Insurance company"* means an insurer organized or operating under chapter 508, 514, 515, 518, 518A, 519, or 520, or authorized to do business in Iowa as an insurer or an insurance producer under chapter 522B.

(4) *"Manufacturer"* means as defined in section 428.20, but also includes contract manufacturers. A contract manufacturer is a manufacturer that otherwise falls within the definition of manufacturer under section 428.20, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities.

(5) *"Processing"* means a series of operations in which materials are manufactured, refined, purified, created, combined, or transformed by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes but is not limited to refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; and construction of packaging and shipping devices, placement into shipping containers or any type of shipping devices or medium, and the movement of materials, components, or products until shipment from the processor.

(6) *"Receipt or producing of raw materials"* means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, the receipt or producing of raw materials is deemed to occur immediately following the severance of the raw materials from the real estate.

28. Reserved.

29. The gross receipts from the rendering, furnishing or performing of the following service: design and installation of new industrial machinery or equipment, including electrical and electronic installation.

30. The gross receipts from the sale of wood chips, sawdust, hay, straw, paper, or other materials used for bedding in the production of agricultural livestock or fowl.

31. Reserved.

32. Gross receipts from the sale of raffle tickets for a raffle licensed pursuant to section 99B.5.

33. The gross receipts from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or application of the fluids in or on a motor vehicle, which service is subject to section 422.43, subsection 11, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section 423.7. For purposes of this subsection, automotive fluids are all those which are refined, manufactured or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle. They include but are not limited to motor oil and other lubricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze and gasoline additives.

33A. The gross receipts from the sale of electricity to water companies assessed for property tax pursuant to sections 428.24, 428.26, and 428.28 which is used solely for the purpose of pumping water from a river or well.

34. The gross receipts from the sale, furnishing, or service of gas, electricity, water, or heat to

be used in implements of husbandry engaged in agricultural production.

35. The gross receipts from the sale of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in chapter 99B.

36. Gross receipts from the sale of tangible personal property to a nonprofit organization which was organized for the purpose of lending the tangible personal property to the general public for use by them for nonprofit purposes.

37. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to nonprofit legal aid organizations.

38. The gross receipts from the sale of aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

38A. The gross receipts from the sale or rental of aircraft; the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the gross receipts of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *"aircraft"* means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

38B. The gross receipts from the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the gross receipts of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *"aircraft"* means aircraft used in a nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

38C. The gross receipts from the sale of aircraft to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs *"a"*, *"b"*, and *"c"* are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

39. The gross receipts from the sale or rental of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production, used in aquaculture production, or in the production of flowering, ornamental, or vegetable plants.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in livestock or dairy production, use in aquaculture production, or in the production of flowering, ornamental, or vegetable plants.

40. The gross receipts from the sale of a modular home, as defined in section 435.1, to the extent of the portion of the purchase price of the modular home which is not attributable to the cost of the tangible personal property used in the processing of the modular home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the modular home is forty percent.

41. The gross receipts from the sale of motion picture films, video and audio tapes, video and audio discs and records, or other media which can be seen, heard, or read, to a person regularly engaged in the business of leasing, renting, or selling this property if the ultimate leasing, renting, or selling of the property is subject to tax under this division.

42. The gross receipts from the sale or rental of irrigation equipment used in farming operations.

43. The gross receipts of all sales of goods, wares, merchandise, or services, used for educational, scientific, historic preservation, or aesthetic purpose to a nonprofit private museum.

44. The gross receipts from the sale of tangible personal property or the sale, furnishing, or servicing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state if the other state provides a similar reciprocal exemption for this state and political subdivisions of this state.

45. The gross receipts from the sale of tangible personal property consisting of advertising material including paper to a person in Iowa if that person or that person's agent will, subsequent to the sale, send that advertising material outside this state and the material is subsequently used solely outside of Iowa. For the purpose of this subsection, *"advertising material"* means any brochure, catalog, leaflet, flyer, order form, return envelope, or similar item used to promote sales of property

or services.

46. The gross receipts from the sale of property or of services performed on property which the retailer transfers to a carrier for shipment to a point outside of Iowa, places in the United States mail or parcel post directed to a point outside of Iowa, or transports to a point outside of Iowa by means of the retailer's own vehicles, and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption shall not apply if the purchaser, consumer, or their agent, other than a carrier, takes physical possession of the property in Iowa.

47. Reserved.

48. The gross receipts from the sale of wind energy conversion property to be used as an electric power source and the sale of the materials used to manufacture, install, or construct wind energy conversion property used or to be used as an electric power source.

For purposes of this section, *"wind energy conversion property"* means any device, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, which converts wind energy to a form of usable energy.

49. The gross receipts from services rendered, furnished, or performed, by the notification center established pursuant to section 480.3, and the vendor selected pursuant to section 480.3 to provide the notification service.

50. The gross receipts from sales or services rendered, furnished, or performed by the state fair organized under chapter 173 or a fair society organized under chapter 174.

51. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production.

52. The gross receipts from the sales of food and beverages for human consumption by a nonprofit organization which principally promotes a food or beverage product for human consumption produced, grown, or raised in this state and whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.

53. The gross receipts from the sale of tangible property or from services performed, rendered, or furnished to a statewide nonprofit organ procurement organization, as defined in section 142C.2.

54. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital.

54A. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a freestanding nonprofit hospice facility which operates a hospice program as defined in 42 C.F.R. ch. IV, § 418.3, which property or services are to be used in the hospice program.

54B. The gross receipts from all sales of goods, wares, or merchandise, or from services rendered, furnished, or performed which are used in the fulfillment of a written construction contract with a nonprofit hospital licensed pursuant to chapter 135B if all of the following apply:

a. The sales and delivery of the goods, wares, or merchandise, or the services rendered, furnished, or performed occurred between July 1, 1998, and December 31, 2001.

b. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

c. The sales or services were purchased by a contractor as the agent for the hospital or were purchased directly by the hospital.

55. The gross receipts from the sale of argon and other similar gases to be used in the manufacturing process.

56. The gross receipts from charges paid to a provider for access to on-line computer services. For purposes of this subsection, *"on-line computer service"* means a service that provides or enables computer access by multiple users to the internet or to other information made available through a computer server.

57. The gross receipts from the sales of livestock ear tags by a nonprofit organization whose income is exempt from federal taxation under section 501(c)(6) of the Internal Revenue Code where the proceeds are used in bovine research programs selected or approved by such organization.

58. The gross receipts from the services rendered, furnished, or performed of the sale or rental of information services. *"Information services"* means every business activity, process, or function by which a seller or its agent accumulates, prepares, organizes, or conveys data, facts, knowledge, procedures, and like services to a buyer or its agent of such information through any tangible or intangible medium. Information accumulated, prepared, or organized for a buyer or its agent is an information service even though it may incorporate preexisting components of data or other information. Information services include, but are not limited to, database files, mailing lists, subscription files, market research, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, and scouting reports, or other similar items.

59. *a.* The gross receipts from the sale of an article of clothing or footwear designed to be worn on or about the human body if all of the following apply:

(1) The sales price of the article is less than one hundred dollars.

(2) The sale takes place during a period begin-

ning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Saturday.

b. This subsection does not apply to any of the following:

(1) Special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed.

(2) Accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

(3) The rental of clothing or footwear.

60. *a.* The gross receipts from the sale, furnishing, or service of metered gas to provide energy for residential customers and the gross receipts from the sale, furnishing, or service of fuel, including propane and heating oil, used to provide heat for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. Paragraph *"a"* applies to the gross receipts from the sale, furnishing, or service of metered gas for energy if the date of the utility billing of the customer is during March 2001, or April 2001, or applies to the gross receipts from the sale, furnishing, or service of fuel used for heating purposes if such sale, furnishing, or service occurs during the period beginning with February 5, 2001, and ending on March 31, 2001.

61. *a.* Subject to paragraph *"b"*, the gross receipts from the sale, furnishing, or service of metered gas, electricity, and fuel, including propane and heating oil to residential customers which is used to provide energy for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. The exemption in this subsection shall be phased in by means of a reduction in the tax rate as follows:

(1) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2002, through December 31, 2002, the rate of tax is four percent of the gross receipts.

(2) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2003, through December 31, 2003, the rate of tax is three percent of the gross receipts.

(3) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2004, through December 31, 2004, the rate of tax is two percent of the gross receipts.

(4) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2005, through December 31, 2005, the rate of tax is one percent of the gross receipts.

(5) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2006, the rate of tax is zero percent of the gross receipts.

c. The exemption in this subsection does not apply to local option sales and services tax imposed pursuant to chapters 422B and 422E.

62. The gross receipts from sales of goods, wares, or merchandise, or from services performed, rendered, or furnished to a nonprofit private art center to be used in the operation of the art center.

63. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a recognized community action agency as provided in section 216A.93 to be used for the purposes of the agency.

[C35, §6943-f40; C39, §**6943.076;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.45; 82 Acts, ch 1251, §20]

83 Acts, ch 96, §157, 159; 83 Acts, ch 129, §1, 2, 3; 83 Acts, ch 162, §1, 2; 85 Acts, ch 32, §84 – 86; 85 Acts, ch 33, §506; 85 Acts, ch 195, §48; 85 Acts, ch 231, §17; 85 Acts, ch 245, §1; 85 Acts, ch 247, §1; 86 Acts, ch 1187, §1; 86 Acts, ch 1201, §13; 86 Acts, ch 1238, §21; 86 Acts, ch 1241, §25; 87 Acts, ch 18, §3, 4; 87 Acts, ch 205, §1; 87 Acts, ch 215, §47; 87 Acts, ch 214, §9; 87 Acts, ch 115, §57; 87 Acts, ch 199, §7; 87 Acts, ch 169, §8; 87 Acts, ch 233, §134; 88 Acts, ch 1134, §77; 88 Acts, ch 1143, §1; 88 Acts, ch 1205, §20, 21; 88 Acts, ch 1243, §2 – 6; 89 Acts, ch 147, §1; 89 Acts, ch 232, §1; 89 Acts, ch 259, §1; 89 Acts, ch 272, §26; 89 Acts, ch 304, §602; 90 Acts, ch 1039, §16; 90 Acts, ch 1232, §14 – 18; 91 Acts, ch 81, §2 – 4; 91 Acts, ch 87, §11; 91 Acts, ch 97, §46; 91 Acts, ch 159, §19; 92 Acts, ch 1019, §5 – 8; 92 Acts, ch 1144, §1; 92 Acts, ch 1189, §1 – 5; 92 Acts, ch 1232, §407 – 409, 412; 93 Acts, ch 122, §1, 2; 93 Acts, ch 135, §2; 93 Acts, ch 161, §1; 94 Acts, ch 1016, §1 – 3; 94 Acts, ch 1023, §49, 50; 95 Acts, ch 8, §1, 2; 95 Acts, ch 83, §7; 95 Acts, ch 142, §1 – 3; 95 Acts, ch 150, §1, 2; 95 Acts, ch 154, §1 – 3; 95

Acts, ch 174, §3; 96 Acts, ch 1034, §36; 96 Acts, ch 1049, §1; 96 Acts, ch 1124, §1; 96 Acts, ch 1129, §92; 96 Acts, ch 1145, §1, 2; 97 Acts, ch 87, §1; 97 Acts, ch 104, §57; 97 Acts, ch 158, §16 – 18, 50; 98 Acts, ch 1063, §2 – 6; 98 Acts, ch 1091, §1 – 3; 98 Acts, ch 1156, §1; 98 Acts, ch 1161, §2; 98 Acts, ch 1177, §11; 98 Acts, ch 1182, §5, 6; 99 Acts, ch 59, §1, 2; 99 Acts, ch 62, §1; 99 Acts, ch 151, §15 – 18, 89; 99 Acts, ch 152, §6, 40; 99 Acts, ch 168, §1; 99 Acts, ch 170, §1 – 3; 99 Acts, ch 173, §1; 2000 Acts, ch 1058, §34; 2000 Acts, ch 1169, §1; 2000 Acts, ch 1189, §29, 34; 2000 Acts, ch 1195, §3, 6, 7; 2000 Acts, ch 1207, §1 – 3; 2000 Acts, ch 1212, §1 – 3

[A portion of subsection 2 was inadvertently omitted in the 2001 Code]

2001 Acts, ch 1, §1 – 4; 2001 Acts, ch 16, §4, 37; 2001 Acts, ch 64, §11; 2001 Acts, ch 115, §1, 2; 2001 Acts, ch 149, §1 – 3; 2001 Acts, ch 150, §2 – 4, 26; 2002 Acts, ch 1010, §2 – 4; 2002 Acts, ch 1119, §164; 2002 Acts, ch 1150, §7; 2002 Acts, ch 1151, §9

*See 88 Acts, ch 1182, §4 and 5, for amendment to subsection 19 and addition of subsections 19A and 19B, effective on a date to be established by rule of laboratory division of the department of agriculture and land stewardship upon determination that degradable products are available to a degree which makes compliance reasonably possible; 88 Acts, ch 1182, §6; 89 Acts, ch 83, §86

1999 amendment to subsection 2, relating to the transportation of natural gas, takes effect April 1, 2000; 99 Acts, ch 151, §89

Subsection 54B takes effect May 19, 2000, and applies retroactively to July 1, 1998; refunds limited to aggregate of $25,000; filing deadline; 2000 Acts, ch 1207, §2, 3

Subsection 58 takes effect May 16, 2000, and applies retroactively to March 15, 1995; refunds limited to aggregate of $25,000; filing deadline; 2000 Acts, ch 1195, §6, 7

2001 amendments to subsections 3 and 8 are effective January 1, 2002; 2001 Acts, ch 150, §26

Subsection 26A is effective May 18, 2001, and applies retroactively to April 1, 1995; refunds limited to aggregate of $25,000; filing deadline; 2001 Acts, ch 149, §2, 3

2001 amendment to subsection 27, paragraph d, subparagraph (3) is effective January 1, 2002; 2001 Acts, ch 16, §37

Alternative billing procedure for utilities to provide exemption in subsection 60; 2001 Acts, ch 1, §3, 4

Subsection 16 takes effect March 6, 2002, and applies retroactively to April 1, 1995; 2002 Acts, ch 1010, §4

Limitation on refunds for claims arising under subsection 16 for sales occurring between April 1, 1995, and March 6, 2002; 2002 Acts, ch 1010, §3, 4

Subsection 3, unnumbered paragraph 1 amended
NEW subsection 16
Subsection 24, unnumbered paragraph 2 stricken
NEW subsection 63

422.46 Credit on tax.

Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax herein provided; provided, that if such accounts are thereafter collected by the retailer, a tax shall be paid upon the amount so collected.

[C35, §6943-f41; C39, §**6943.077;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.46]

422.47 Refunds — exemption certificates.

1. *a.* A relief agency may apply to the director for refund of the amount of tax imposed hereunder and paid upon sales to it of any goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

b. Such refunds may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department, and filed within such time as the director shall provide by regulation, the relief agency shall report to the department the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

(2) On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

(3) The relief agency must prove to the satisfaction of the director that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this division, based upon such computation of gross receipts.

c. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the relief agency.

2. Reserved.

3. *a.* The department shall issue or the seller may separately provide exemption certificates in the form prescribed by the director to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to purchasers for a nontaxable purpose. The department shall also allow the use of exemption certificates for those circumstances in which a sale is taxable but the seller is not obligated to collect tax from the buyer.

b. The sales tax liability for all sales of tangible personal property and all sales of services is upon the seller and the purchaser unless the seller takes in good faith from the purchaser a valid exemption certificate stating under penalties for perjury that the purchase is for a nontaxable purpose and is not a retail sale as defined in section 422.42, subsection 15, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate pursuant to subsection 4. If the tangible personal property or services are purchased tax free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 shall apply to the purchaser.

c. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director.

d. A valid exemption certificate is taken in good faith by the seller when the seller has exer-

cised that caution and diligence which honest persons of ordinary prudence would exercise in handling their own business affairs, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one upon inquiry as to the facts. In order for a seller to take a valid exemption certificate in good faith, the seller must exercise reasonable prudence to determine the facts supporting the valid exemption certificate, and if any facts upon such certificate would lead a reasonable person to further inquiry, then such inquiry must be made with an honest intent to discover the facts.

e. If the circumstances change and as a result the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner or the purchaser becomes obligated to pay the tax, the purchaser is liable solely for the taxes and shall remit the taxes directly to the department in accordance with this subsection.

4. *a.* The department shall issue or the seller may separately provide fuel exemption certificates in the form prescribed by the director.

b. The seller may accept a completed fuel exemption certificate, as prepared by the purchaser, for five years unless the purchaser files a new completed exemption certificate. If the fuel is purchased tax free pursuant to a fuel exemption certificate which is taken by the seller, and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes, and shall remit the taxes directly to the department and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 shall apply to the purchaser.

c. The purchaser may apply to the department for its review of the fuel exemption certificate. In this event, the department shall review the fuel exemption certificate within twelve months from the date of application and determine the correct amount of the exemption. If the amount determined by the department is different than the amount that the purchaser claims is exempt, the department shall promptly notify the purchaser of the determination. Failure of the department to make a determination within twelve months from the date of application shall constitute a determination that the fuel exemption certificate is correct as submitted. A determination of exemption by the department is final unless the purchaser appeals to the director for a revision of the determination within sixty days after the date of the notice of determination. The director shall grant a hearing, and upon the hearing the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision of the director is final unless the purchaser seeks judicial review of the director's decision under section 422.55 within sixty days after the date of the notice of the director's decision. Unless there is a substantial change, the department shall not impose penalties pursuant to section 422.58, both retroactively to purchases made after the date of application and prospectively until the department gives notice to the purchaser that a tax or additional tax is due, for failure to remit any tax due which is in excess of a determination made under this section. A determination made by the department pursuant to this subsection does not constitute an audit for purposes of section 422.54.

d. If the circumstances change and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department in accordance with subsection 3.

e. The purchaser shall attach documentation to the fuel exemption certificate which is reasonably necessary to support the exemption for fuel consumed in processing. If the purchaser files a new exemption certificate with the seller, documentation shall not be required if the purchaser previously furnished the seller with this documentation and substantial change has not occurred since that documentation was furnished or if fuel consumed in processing is separately metered and billed by the seller.

f. In this section, *"fuel"* includes gas, electricity, water, heat, steam, and any other tangible personal property consumed in creating heat, power, or steam. In this section, *"fuel consumed in processing"* means fuel used or disposed of for processing including grain drying, for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, for use in aquaculture production, or for generating electric current, or in implements of husbandry engaged in agricultural production. In this subsection, *"fuel exemption certificate"* means an exemption certificate given by the purchaser under penalty of perjury to assist retailers in properly accounting for nontaxable sales of fuel consumed in processing. In this subsection, *"substantial change"* means a change in the use or disposition of tangible personal property and services by the purchaser such that the purchaser pays less than ninety percent of the purchaser's actual sales tax liability. A change includes a misstatement of facts in an application made pursuant to paragraph *"c"* or in a fuel exemption certificate.

5. For purposes of assisting retailers in properly accounting for nontaxable sales of building materials, supplies, and equipment to be used in the performance of a construction contract for a designated exempt entity, as defined in section 422.42, subsection 16, the designated exempt entity shall issue a purchasing agent authorization letter and an exemption certificate to the contractor, subcontractor, builder, or manufacturer to be used as provided in section 422.42, subsection 16 or 17. The authorization letter and the exemption certificate shall specify the construction project to which they apply and shall be valid only for that

project.

The designated exempt entity shall notify the department that such authorization letter and exemption certificate have been issued. The notification shall, to the extent practicable, describe the project and identify the contractors, subcontractors, builders, and manufacturers which will be using the letter and certificate.

If a designated exempt entity is required by law to advertise for bids with regard to the construction project, the entity shall include in its notice to bidders that the entity will issue an exemption certificate for the purchase or use of building materials, supplies, and equipment that will be used in the performance of the construction contract.

The provisions of subsection 3, paragraphs *"b"*, *"d"*, and *"e"*, to the extent not inconsistent with this subsection shall apply to this subsection.

[C35, §6943-f42; C39, §**6943.078;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.47; 82 Acts, ch 1164, §2, 3]

83 Acts, ch 1, §4, 6; 86 Acts, ch 1007, §29; 87 Acts, ch 196, §2, 3; 88 Acts, ch 1243, §7; 92 Acts, 2nd Ex, ch 1001, §209; 95 Acts, ch 174, §4; 97 Acts, ch 158, §19; 99 Acts, ch 151, §19–21, 89; 2001 Acts, ch 116, §8; 2002 Acts, ch 1151, §10, 36

Subsection 5 is effective January 1, 2003, and applies to construction contracts entered into on or after that date; 2002 Acts, ch 1151, §36

NEW subsection 5

422.47A through 422.47C Repealed by 96 Acts, ch 1034, § 70.

422.48 Adding of tax.

1. Retailers shall, as far as practicable, add the tax imposed under this division, or the average equivalent thereof, to the sales price or charge, less trade-ins allowed and taken and when added such tax shall constitute a part of such price or charge, shall be a debt from consumer or user to retailer until paid, or until the director assumes responsibility for collection of a tax on services, as provided in section 422.43, and shall be recoverable at law in the same manner as other debts.

2. Agreements between competing retailers, or the adoption of appropriate rules and regulations by organizations or associations of retailers to provide uniform methods for adding such tax or the average equivalent thereof, and which do not involve price-fixing agreements otherwise unlawful, are expressly authorized and shall be held not in violation of chapter 553, or other antitrust laws of this state. The director shall co-operate with such retailers, organizations, or associations in formulating such agreements and rules. The director may adopt and promulgate rules and regulations for adding such tax, or the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax.

[C35, §6943-f43; C39, §**6943.079;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.48]

422.49 Absorbing tax prohibited.

It shall be unlawful for any retailer to advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this division will be assumed or absorbed by the retailer or that it will not be considered as an element in the price to the consumer, or if added, that it or any part thereof will be refunded.

[C35, §6943-f44; C39, §**6943.080;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.49]

422.50 Records required.

It shall be the duty of every retailer required to make a return and pay any tax under this division, to preserve those records of the gross receipts from sales or services as the director may require and it shall be the duty of every retailer to preserve for a period of five years all invoices and other records of goods, wares, merchandise, or services; and all these books, invoices, and other records shall be open to examination at any time by the department, and shall be made available within this state for examination upon reasonable notice when the director orders.

[C35, §6943-f45; C39, §**6943.081;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.50]

94 Acts, ch 1165, §23; 99 Acts, ch 151, §22, 89

422.51 Return of gross receipts.

1. Each person subject to sections 422.52 and 422.53 and in accordance with the provisions thereof shall, on or before the last day of the month following the close of each calendar quarter during which such person is or has become or ceased being subject to the provisions of such sections, make, sign, and file a return for such calendar quarter in such form as may be required. Such returns shall show information relating to gross receipts including goods, wares, and services converted to the use of such person, the amounts of gross receipts excluded and exempt from the tax, the receipts subject to tax, a calculation of tax due, and such other information for the period covered by the return as may be required. Persons required to file, or committed to file by reason of voluntary action or by order of the department, monthly deposits of taxes due under this division shall be entitled to take credit against the total quarterly amount of tax due such amount as shall have been deposited by such persons during such calendar quarter. The balance remaining due after such credit for monthly deposits shall be entered on the return; provided, however, that such person may be granted an extension of time not exceeding thirty days for filing such quarterly return, upon a proper showing of necessity therefor. If such extension be granted such person shall have paid by the twentieth day of the month fol-

lowing the close of such quarter ninety percent of the estimated tax due.

2. If necessary or advisable in order to insure the payment of the tax imposed by this division, the director may require returns and payment of the tax to be made for other than quarterly periods, the provisions of section 422.52 or elsewhere to the contrary notwithstanding.

3. Returns shall be signed by the retailer or the retailer's authorized agent and must be certified by the retailer to be correct in accordance with forms and rules prescribed by the director.

4. If it is reasonably expected, as determined by rules prescribed by the director, that a retailer's annual tax liability will not exceed one hundred twenty dollars for a calendar year, the retailer may request and the director may grant permission, in lieu of the quarterly filing requirement of subsection 1 of this section and the remitting requirements of section 422.52, to file the return required under this section and remit the sales tax due on a calendar year basis. The return and tax are due and payable no later than January 31 following each calendar year in which the retailer carried on business.

5. Upon making application and receiving approval from the director, a parent corporation and its affiliated corporations that make retail sales of tangible personal property or taxable enumerated services may make deposits and file a consolidated sales tax return for the affiliated group, pursuant to rules adopted by the director. A parent corporation and each affiliate corporation that files a consolidated return is jointly and severally liable for all tax, penalty, and interest found due for the tax period for which a consolidated return is filed or required to be filed.

A business required to file a consolidated sales tax return shall file a form entitled *"schedule of consolidated business locations"* with its quarterly sales tax return that shows the taxpayer's consolidated permit number, the permit number for each Iowa business location, the state sales tax amount by business location, and the amount of state sales tax due on goods consumed that are not assigned to a specific business location. Consolidated quarterly sales tax returns that are not accompanied by the schedule of consolidated business locations form are considered incomplete and are subject to penalty under section 421.27.

[C35, §6943-f46; C39, §**6943.082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.51; 82 Acts, ch 1022, §3, 9, ch 1205, §1]

89 Acts, ch 251, §24; 99 Acts, ch 156, §2, 23; 2002 Acts, ch 1150, §8

Director authorized to change filing and remittance thresholds; §422.54

Subsection 5 is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §2, 23

Subsection 5, NEW unnumbered paragraph 2

422.52 Payment of tax — bond.

1. The tax levied under this division is due and payable in quarterly installments on or before the last day of the month following each quarterly period except as otherwise provided in this subsection. Every retailer who collects more than four thousand dollars in retail sales tax in a semimonthly period shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or an amount equal to not less than one-sixth of the tax collected and paid to the department during the preceding quarter, with a deposit form for the semimonthly period as prescribed by the director. The first semimonthly deposit form is for the period from the first of the month through the fifteenth of the month and is due on or before the twenty-fifth day of the month. The second semimonthly deposit form is for the period from the sixteenth through the end of the month and is due on or before the tenth day of the month following the month of collection. A deposit is not required for the last semimonthly period of the calendar quarter. The total quarterly amount, less the amount deposited for the five previous semimonthly periods, is due with the quarterly report on the last day of the month following the month of collection. A retailer who collects more than five hundred dollars in retail sales taxes in one month and not more than four thousand dollars in retail sales taxes in a semimonthly period shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or an amount equal to not less than one-third of the tax collected and paid to the department during the preceding quarter, with a deposit form for the month as prescribed by the director. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. Every retailer who collects more than fifty dollars and not more than five hundred dollars in retail sales tax in one month shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected, or an amount equal to not less than one-third of the tax collected and paid to the department during the last preceding quarter, with a deposit form for the month as prescribed by the director. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. The monthly remittance procedure is optional for any sales tax permit holder whose average monthly

collection of tax amounts to more than twenty-five dollars and less than fifty dollars. If the exact amounts of the taxes due or an amount equal to not less than one-third or one-sixth, as applicable, of the tax collected and paid to the department during the last preceding quarter on the deposit form are not ascertainable by the retailer, or would work undue hardship in the computation of the taxes due by the retailer, the director may provide by rules alternative procedures for estimating the amounts (but not the dates) due by the retailers. The forms prescribed by the director shall be referred to as "retailers semimonthly tax deposit" or "retailers monthly tax deposit". Deposit forms shall be signed by the retailer or the retailer's duly authorized agent, and shall be duly certified by the retailer or agent to be correct. The director may authorize incorporated banks and trust companies or other depositories authorized by law which are depositories or financial agents of the United States, or of this state, to receive any tax imposed under this chapter, in the manner, at the times and under the conditions the director prescribes. The director shall prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

2. Every permit holder at the time of making the return required hereunder, shall compute and pay to the department the tax due for the preceding period.

3. The director may, when necessary and advisable in order to secure the collection of the tax levied under this division, require any person subject to such tax to file with the director a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of any tax or penalties due or which may become due from such person. In lieu of such bond, securities approved by the director, in such amount as the director may prescribe, may be deposited with the department, which securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this division shall be returned to the person who deposited the securities.

4. The tax by this division imposed upon those sales of motor vehicle fuel which are subject to tax and refund under chapter 452A shall be collected by the department by way of deduction from refunds otherwise allowable under said chapter. The amount of such deductions the department shall transfer from the motor vehicle fuel fund to the special tax fund.

5. The provisions of subsection 1, according to the context, shall apply to persons having receipts from rendering, furnishing, or performing services enumerated in section 422.43.

6. *a.* If a purchaser fails to pay tax imposed by this division to the retailer required to collect the tax, then in addition to all of the rights, obligations, and remedies provided, the tax is payable by the purchaser directly to the department, and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 apply to the purchaser. For failure, the retailer and purchaser are liable, unless the circumstances described in section 421.60, subsection 2, paragraph *"m"*, or section 422.47, subsection 3, paragraph *"b"* or *"e"*, or subsection 4, paragraph *"b"* or *"d"*, are applicable.

b. If any retailer subject to this division sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the delinquent taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an *"immediate successor"* for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

c. A person sponsoring a flea market, or a craft, antique, coin, or stamp show or similar event shall obtain from every retailer selling tangible personal property or taxable services at the event proof that the retailer possesses a valid sales tax permit or secure from the retailer a statement, taken in good faith, that property or services offered for sale are not subject to sales tax. Failure to do so renders a sponsor of the event liable for payment of any sales tax, interest and penalty due and owing from any retailer selling property or services at the event. Sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 apply to the sponsors. For purposes of this paragraph a person sponsoring a flea market, or a craft, antique, coin or stamp show or similar event does not include an organization which sponsors an event less than three times a year or a state, county or district agricultural fair.

7. The tax on gross receipts from the sale or rental of tangible personal property under a consumer rental purchase agreement as defined in

section 537.3604, subsection 8, is payable in the tax period of receipt.

8. If an amount of tax represented by a retailer to a consumer or user as constituting tax due is computed upon gross receipts that are not taxable or the amount represented is in excess of the actual taxable amount and the amount represented is actually paid by the consumer or user to the retailer, the excess amount of tax paid shall be returned to the consumer or user upon notification to the retailer by the department or by the consumer or user that an excess payment exists. If the retailer fails to make a return, the amount which the consumer or user has paid to the retailer shall be remitted by the retailer to the department.

[C35, §6943-f47; C39, §**6943.083;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.52; 82 Acts, ch 1022, §4, 9, ch 1205, §2, 3]

86 Acts, ch 1007, §30; 87 Acts, ch 196, §4; 89 Acts, ch 232, §2; 89 Acts, ch 251, §25; 91 Acts, ch 260, §1230; 99 Acts, ch 151, §23, 89; 2000 Acts, ch 1189, §30, 34; 2002 Acts, ch 1119, §165

Personal liability of officers and partners; see §421.26
Director authorized to change filing and remittance thresholds; §422.54
Subsection 4 amended

422.53 Permits required — applications — revocation.

1. It is unlawful for any person to engage in or transact business as a retailer within this state, unless a permit has been issued to the retailer under this section, except as provided in subsection 6. Every person desiring to engage in or conduct business as a retailer within this state shall file with the department an application for a permit. Every application for a permit shall be made upon a form prescribed by the director and shall set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place of business, and any other information as the director may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of the person's authority.

2. The applicant must have a permit for each place of business. The department may deny a permit to an applicant who is substantially delinquent in paying a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if the partner is substantially delinquent in paying any delinquent tax, penalty, or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest.

3. The department shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated or a place of relocation within the state if the ownership remains the same.

4. Permits issued under this division are valid and effective until revoked by the department.

5. If the holder of a permit fails to comply with any of the provisions of this division or any order or rule of the department adopted under this division or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the director may revoke the permit. The director shall send notice by mail to a permit holder informing that person of the director's intent to revoke the permit and of the permit holder's right to a hearing on the matter. If the permit holder petitions the director for a hearing on the proposed revocation, after giving ten days' notice of the time and place of the hearing in accordance with section 17A.18, subsection 3, the matter may be heard and a decision rendered. The director may restore permits after revocation. The director shall adopt rules setting forth the period of time a retailer must wait before a permit may be restored or a new permit may be issued. The waiting period shall not exceed ninety days from the date of the revocation of the permit.

6. Persons who are not regularly engaged in selling at retail and do not have a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like, shall report and remit the tax on a nonpermit basis, under rules the director shall provide for the efficient collection of the sales tax.

Persons engaged in selling tangible personal property or performing services shall not be required to obtain or retain a sales tax permit for a place of business at which taxable sales of tangible personal property or taxable performance of services will not occur.

7. The provisions of subsection 1, dealing with lawful right of a retailer to transact business, according to the context, apply to persons having receipts from rendering, furnishing, or performing services enumerated in section 422.43, except that a person holding a permit pursuant to subsection 1 shall not be required to obtain any separate sales tax permit for the purpose of engaging in business involving the services.

8. *a.* Except as provided in paragraph *"b"*, purchasers, users, and consumers of tangible personal property or enumerated services taxed pur-

suant to this division, chapter 423, or chapter 422B may be authorized, pursuant to rules adopted by the director, to remit tax owed directly to the department instead of the tax being collected and paid by the seller. To qualify for a direct pay tax permit, the purchaser, user, or consumer must accrue a tax liability of more than four thousand dollars in tax under this division and chapter 423, in a semimonthly period and make deposits and file returns pursuant to section 422.52. This authority shall not be granted or exercised except upon application to the director and then only after issuance by the director of a direct pay tax permit.

b. The granting of a direct pay tax permit is not authorized for any of the following:

(1) Taxes imposed on the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service.

(2) Taxes imposed under sections 423.7 and 423.7A and chapter 422C.

[C35, §6943-f48; C39, §**6943.084;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.53]

83 Acts, ch 112, §1; 86 Acts, ch 1007, §31; 86 Acts, ch 1241, §26; 94 Acts, ch 1165, §24; 95 Acts, ch 83, §8; 97 Acts, ch 158, §20, 52; 99 Acts, ch 152, §7, 40; 2001 Acts, ch 116, §9

422.54 Failure to file return — incorrect return.

1. As soon as practicable after a return is filed and in any event within four years after the return is filed, if filed for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, and within three years after the return is filed, if filed for quarterly periods beginning on or after January 1, 2001, the department shall examine it, assess and determine the tax due if the return is found to be incorrect, and give notice to the taxpayer of the assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

The director, in cooperation with the department of management, may periodically change the filing and remittance thresholds under sections 422.51 and 422.52 by administrative rule if in the best interest of the state and the taxpayer to do so.

2. If a return required by this division is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall determine the amount of tax due from information as the department may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by the person, stock on hand, or other factors. The department shall give notice of the determination to the person liable for the tax. The determination shall fix the tax unless the person against whom it is assessed shall, within sixty days after the giving of notice of the determination, apply to the director for a hearing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax.

3. The four-year or three-year period of limitation, as applicable, provided in subsection 1 may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement shall stipulate the period of extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

[C35, §6943-f49; C39, §**6943.085;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.54]

87 Acts, ch 199, §8; 92 Acts, 2nd Ex, ch 1001, §243; 94 Acts, ch 1133, §7, 16; 99 Acts, ch 156, §3, 23; 2002 Acts, ch 1151, §11

1999 amendments to subsections 1 and 3 are effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §3, 23

Subsection 1, NEW unnumbered paragraph 2

422.55 Judicial review.

1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of tax appealed from, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court of this state irrespective of the amount involved.

[C35, §6943-f50; C39, §**6943.086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.55]

95 Acts, ch 83, §9

Filing petition on appeal, R.C.P. 1.1803

422.56 Statute applicable to sales tax.

All the provisions of section 422.26 shall apply in respect to the taxes and penalties imposed by this division, excepting that, as applied to any tax imposed by this division, the lien therein provided shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this division, apply only to the liens upon real property. When requested to do so by any person from whom

a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this division. The giving of such information under such circumstances shall not be deemed a violation of section 422.72 as applied to this division.

[C35, §6943-f51; C39, §**6943.087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.56]

422.57 Service of notices.

1. A notice authorized or required under this division may be given by mailing the notice to the person for whom it is intended, addressed to that person at the address given in the last return filed by the person pursuant to this division, or if no return has been filed, then to any address obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. Any period of time which is determined according to this division by the giving of notice commences to run from the date of mailing of the notice.

2. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty provided by this division.

[C35, §6943-f52; C39, §**6943.088;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.57]

86 Acts, ch 1241, §27; 88 Acts, ch 1134, §78

422.58 Penalties — offenses — limitation.

1. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the semimonthly or monthly tax deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this division. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this division.

2. *a.* Any person who knowingly sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, and communication service at retail, or engages in the rendering, furnishing, or performing of services enumerated in section 422.43, in this state without procuring a permit, as provided in section 422.53, or who violates section 422.49, and the officers of any corporation who so acts is guilty of a serious misdemeanor.

b. A person who knowingly sells tangible personal property, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, and communication service at retail, or engages in the rendering, furnishing, or performing of services enumerated in section 422.43, in this state after the person's license has been revoked and before it has been restored as provided in section 422.53, subsection 5, and the officers of any corporation who so act are guilty of an aggravated misdemeanor.

3. A person who willfully attempts to evade a tax imposed by this division or the payment of the tax or a person who makes or causes to be made a false or fraudulent semimonthly or monthly tax deposit form or return with intent to evade the tax imposed by this division or the payment of the tax is guilty of a class "D" felony.

4. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this division, shall be prima facie evidence thereof.

5. A person required to pay a tax, or to make, sign, or file a semimonthly or monthly tax deposit form or return or supplemental return, who willfully makes a false or fraudulent semimonthly or monthly tax deposit form or return, or willfully fails to pay at least ninety percent of the tax or willfully fails to make, sign, or file the semimonthly or monthly tax deposit form or return, at the time required by law, is guilty of a fraudulent practice.

6. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

[C35, §6943-f53; C39, §**6943.089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.58; 81 Acts, ch 131, §10; 82 Acts, ch 1022, §5, 9]

83 Acts, ch 160, §7; 84 Acts, ch 1173, §6; 86 Acts, ch 1007, §32, 33; 90 Acts, ch 1172, §10; 99 Acts, ch 152, §8, 40

422.59 Statutes applicable.

The director shall administer the taxes imposed by this division in the same manner and subject to all the provisions of, and all of the powers, duties, authority, and restrictions contained in section 422.25, subsection 4, section 422.30 and sections 422.67 to 422.75 or any amendments which may hereafter be made thereto, all of which sections are by this reference incorporated herein.

[C39, §**6943.090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.59]

DIVISION V

TAXATION OF FINANCIAL INSTITUTIONS

422.60 Imposition of tax — credit.

1. A franchise tax according to and measured by net income is imposed on financial institutions for the privilege of doing business in this state as

financial institutions.

2. In addition to all taxes imposed under this division, there is imposed upon each financial institution doing business within the state the greater of the tax determined in section 422.63 or the state alternative minimum tax equal to sixty percent of the maximum state franchise tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.61, subsection 3, and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (c)(1), (d), (f), and (g), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code.

b. Make the adjustments provided in section 56(c)(1) of the Internal Revenue Code, except that in making the calculation under sections 56(f)(1) and 56(g)(1) of the Internal Revenue Code the state alternative minimum taxable income, computed without regard to the adjustments made by this paragraph, the exemption provided for in paragraph *"d"*, and the state alternative tax net operating loss described in paragraph *"e"*, shall be substituted for the items described in sections 56(f)(1)(B) and 56(g)(1)(B) of the Internal Revenue Code.

c. Apply the allocation and apportionment provisions of section 422.63.

d. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

e. In the case of a net operating loss beginning after December 31, 1986 which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which was taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

3. *a.* There is allowed as a credit against the tax determined in section 422.63 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph *"a"* for a tax year shall not exceed the excess, if any, of the tax determined in section 422.63 over the state alternative minimum tax as determined in subsection 2.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 2 for the tax year over the tax determined in section 422.63 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

4. *a.* The taxes imposed under this division shall be reduced by a property rehabilitation tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded as provided in section 404A.4, subsection 3.

b. For purposes of this subsection, *"eligible property"* means the same as used in section 404A.1.

5. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

6. The taxes imposed under this division shall be reduced by a venture capital fund investment tax credit authorized pursuant to section 15E.51.

[C71, 73, 75, 77, 79, 81, §422.60; 82 Acts, ch 1023, §16, 31]

83 Acts, ch 179, §17, 22; 86 Acts, ch 1241, §28; 87 Acts, 1st Ex, ch 1, §14; 89 Acts, ch 285, §6; 2002 Acts, ch 1003, §3, 5; 2002 Acts, ch 1006, §9, 13; 2002 Acts, ch 1156, §4, 8

Subsection 4 takes effect February 21, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1003, §5

Subsection 5 takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

Subsection 6 takes effect May 8, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1156, §8

NEW subsections 4 – 6

422.61 Definitions.

In this division, unless the context otherwise requires:

1. *"Financial institution"* means a state bank as defined in section 524.103, subsection 33, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state chartered savings

bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under chapter 534, or a production credit association.

2. *"Investment subsidiary"* means an affiliate that is owned, capitalized, or utilized by a financial institution with one of its purposes being to make, hold, or manage, for and on behalf of the financial institution, investments in securities which the financial institution would be permitted by applicable law to make for its own account.

3. *"Net income"* means the net income of the financial institution computed in accordance with section 422.35, with the following adjustments:

a. Federal income taxes paid or accrued shall not be subtracted.

b. Notwithstanding sections 262.41 and 262.51, or any other provisions of law, income from obligations of the state and its political subdivisions and franchise taxes paid or accrued under this division during the taxable year shall be added. Income from sales of obligations of the state and its political subdivisions and interest and dividend income from these obligations are exempt from the taxes imposed by this division only if the law authorizing the obligations specifically exempts the income from the sale and interest and dividend income from the state franchise tax.

c. Interest and dividends from federal securities shall not be subtracted.

d. Interest and dividends derived from obligations of United States possessions, agencies, and instrumentalities, including bonds which were purchased after January 1, 1991, and issued by the governments of Puerto Rico, Guam, and the Virgin Islands shall be added, to the extent they were not included in computing federal taxable income.

e. A deduction disallowed under section 265(b) or section 291(e)(1)(B) of the Internal Revenue Code shall be subtracted.

f. A deduction shall not be allowed for that portion of the taxpayer's expenses computed under this paragraph which is allocable to an investment in an investment subsidiary. The portion of the taxpayer's expenses which is allocable to an investment in an investment subsidiary is an amount which bears the same ratio to the taxpayer's expenses as the taxpayer's average adjusted basis, as computed pursuant to section 1016 of the Internal Revenue Code, of investment in that investment subsidiary bears to the average adjusted basis for all assets of the taxpayer. The portion of the taxpayer's expenses that is computed and disallowed under this paragraph shall be added.

g. Where a financial institution as defined in section 581 of the Internal Revenue Code is not subject to income tax and the shareholders of the financial institution are taxed on the financial institution's income under the provisions of the Internal Revenue Code, such tax treatment shall be disregarded and the financial institution shall compute its net income for franchise tax purposes in the same manner under this subsection as a financial institution that is subject to or liable for federal income tax under the Internal Revenue Code in effect for the applicable year.

4. *"Taxable year"* means the calendar year or the fiscal year ending during a calendar year, for which the tax is payable. *"Fiscal year"* includes a tax period of less than twelve months if, under the Internal Revenue Code, a corporation is required to file a tax return covering a tax period of less than twelve months.

5. *"Taxpayer"* means a financial institution subject to any tax imposed by this division.

[C71, 73, 75, 77, 79, 81, §422.61]

85 Acts, ch 230, §8; 87 Acts, ch 18, §2; 87 Acts, 1st Ex, ch 1, §15, 16; 89 Acts, ch 285, §7; 91 Acts, ch 217, §1; 95 Acts, ch 193, §1 – 3; 97 Acts, ch 154, §2, 3; 2001 Acts, ch 116, §10, 28

2001 amendment to subsection 3, paragraph b, takes effect May 3, 2001, and applies retroactively to tax years beginning on or after January 1, 2001; 2001 Acts, ch 116, §28

422.62 Due and delinquent dates.

The franchise tax is due and payable on the first day following the end of the taxable year of each financial institution, and is delinquent after the last day of the fourth month following the due date or forty-five days after the due date of the federal tax return, excluding extensions of time to file, whichever is the later. Every financial institution shall file a return as prescribed by the director on or before the delinquency date.

[C71, 73, 75, 77, 79, 81, §422.62]

85 Acts, ch 230, §9; 86 Acts, ch 1237, §25

422.63 Amount of tax.

The franchise tax is imposed annually in an amount equal to five percent of the net income received or accrued during the taxable year. If the net income of the financial institution is derived from its business carried on entirely within the state, the tax shall be imposed on the entire net income, but if the business is carried on partly within and partly without the state, the portion of net income reasonably attributable to the business within the state shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

[C71, 73, 75, 77, 79, 81, §422.63]

86 Acts, ch 1194, §2

422.63A United community bank office franchise tax treatment. Repealed by 90 Acts, ch 1232, § 24, 30.

422.64 Tax payable to treasurer. Repealed by 90 Acts, ch 1232, § 23.

422.65 Allocation of revenue.

All moneys received from the franchise tax shall be deposited in the state general fund. Franchise tax moneys appropriated in section 405A.10 are allocated as follows:

1. Sixty percent to the general fund of the city from which the tax is collected.

2. Forty percent to the county from which the tax is collected.

If the financial institution maintains one or more offices for the transaction of business, other than its principal office, a portion of its franchise tax shall be allocated to each office, based upon a reasonable measure of the business activity of each office. The director shall prescribe, for each type of financial institution, a method of measuring the business activity of each office. Financial institutions shall furnish all necessary information for this purpose at the request of the director.

[C71, 73, 75, 77, 79, 81, §422.65]

83 Acts, ch 123, §173, 209; 88 Acts, ch 1151, §2; 93 Acts, ch 180, §2; 97 Acts, ch 158, §21

422.66 Department to enforce.

The department shall administer and enforce the provisions of this division, and all applicable provisions of sections 422.24, 422.25, 422.26, 422.28, 422.29, and 422.30, and division VI of this chapter, apply to financial institutions and to the franchise tax imposed by this division.

[C71, 73, 75, 77, 79, 81, §422.66]

DIVISION VI

ADMINISTRATION

422.67 Generally — bond — approval.

The director shall administer the taxes imposed by this chapter. The director shall give a bond in an amount to be fixed by the governor, which has been issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility. The reasonable cost of said bond shall be paid by the state, out of the proceeds of the taxes collected under the provisions of this chapter.

[C35, §6943-f54; C39, §**6943.091;** C46, 50, 54, 58, 62, 66, §422.60; C71, 73, 75, 77, 79, 81, §422.67]

422.68 Powers and duties.

1. The director shall have the power and authority to prescribe all rules not inconsistent with the provisions of this chapter, necessary and advisable for its detailed administration and to effectuate its purposes.

2. The director may, for administrative purposes, divide the state into districts, provided that in no case shall a county be divided in forming a district.

3. The director may destroy useless records and returns, reports, and communications of any taxpayer filed with or kept by the department after those returns, records, reports, or communications have been in the custody of the department for a period of not less than three years or such time as the director prescribes by rule. However, after the accounts of a person have been examined by the director and the amount of tax and penalty due have been finally determined, the director may order the destruction of any records previously filed by that taxpayer, notwithstanding the fact that those records have been in the custody of the department for a period less than three years. These records and documents shall be destroyed in the manner prescribed by the director.

4. The department may make photostat, microfilm, electronic, or other photographic copies of records, reports, and other papers either filed by the taxpayer or prepared by the department. In addition, the department may create and use any system of recordkeeping reasonably calculated to preserve its records for any time period required by law. When these photostat, electronic, microfilm, or other copies have been made, the department may destroy the original records which are the basis for the copies in any manner prescribed by the director. These photostat, electronic, microfilm, or other types of copies, when no longer of use, may be destroyed as provided in subsection 3. These photostat, microfilm, electronic, or other records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of them.

[C35, §6943-f55; C39, §**6943.092;** C46, 50, 54, 58, 62, 66, §422.61; C71, 73, 75, 77, 79, 81, §422.68]

85 Acts, ch 230, §10; 99 Acts, ch 151, §24, 89; 99 Acts, ch 152, §9, 40

422.69 Moneys paid and deposited.

1. All fees, taxes, interest and penalties imposed under this chapter shall be paid to the department in the form of remittances payable to the state treasurer and the department shall transmit each payment daily to the state treasurer.

2. Unless otherwise provided the fees, taxes, interest and penalties collected under this chapter shall be credited to the general fund.

[C35, §6943-f56; C39, §**6943.093, 6943.101;** C46, §422.62, 422.70; C50, 54, 58, 62, 66, §422.62; C71, 73, 75, 77, 79, 81, §422.69]

85 Acts, ch 32, §88; 85 Acts, ch 258, §13; 88 Acts, ch 1154, §2; 89 Acts, ch 236, §15; 91 Acts, ch 260, §1231; 92 Acts, ch 1227, §29; 96 Acts, ch 1034, §37

422.70 General powers — hearings.

1. The director, for the purpose of ascertaining the correctness of a return or for the purpose of making an estimate of the taxable income or receipts of a taxpayer, has power: To examine or cause to be examined by an agent or representative designated by the director, books, papers, records, or memoranda; to require by subpoena the

attendance and testimony of witnesses; to issue and sign subpoenas; to administer oaths, to examine witnesses and receive evidence; to compel witnesses to produce for examination books, papers, records, and documents relating to any matter which the director has the authority to investigate or determine.

2. Where the director finds the taxpayer has made a fraudulent return, the costs of any hearing, including a contested case hearing, shall be taxed to the taxpayer. In all other cases the costs shall be paid by the state.

3. The fees and mileage to be paid witnesses and charged as costs shall be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs shall be charged in the manner provided by law in proceedings in civil cases. If the costs are charged to the taxpayer they shall be added to the taxes assessed against the taxpayer and shall be collected in the same manner. Costs charged to the state shall be certified by the director who shall issue warrants on the state treasurer for the amount of the costs, to be paid out of the proceeds of the taxes collected under this chapter.

4. In case of disobedience to a subpoena the director may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents, and such court may issue an order requiring the person to appear before the director and give evidence or produce records, books, papers, and documents, as the case may be, and any failure to obey such order of court may be punished by the court as a contempt thereof.

5. Testimony on hearings before the director may be taken by a deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided.

[C35, §6943-f57; C39, §**6943.094;** C46, 50, 54, 58, 62, 66, §422.63; C71, 73, 75, 77, 79, 81, §422.70]

88 Acts, ch 1134, §79; 88 Acts, ch 1243, §9; 95 Acts, ch 83, §10

Contempts, chapter 665

422.71 Assistants — salaries — expenses — bonds.

1. The director may appoint and remove such agents, auditors, clerks, and employees as the director may deem necessary, such persons to have such duties and powers as the director may, from time to time, prescribe.

2. The salaries of all assistants, agents, and employees shall be fixed by the director in a budget to be submitted to the department of management and approved by the legislature.

3. All such agents and employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties.

4. The director may require certain officers, agents, and employees to give bond for the faithful performance of the duties in such sum and with such sureties as the director may determine and the state shall pay, out of the proceeds of the taxes collected under the provisions of this chapter, the premiums on such bonds.

5. The director may utilize the office of treasurer of the various counties in order to administer this chapter and effectuate its purposes, and may appoint the treasurers of the various counties as agents to collect any or all of the taxes imposed by this chapter, provided, however, that no additional compensation shall be paid to said treasurer by reason thereof.

[C35, §6943-f58; C39, §**6943.095;** C46, 50, 54, 58, 62, 66, §422.64; C71, 73, 75, 77, 79, 81, §422.71]

88 Acts, ch 1134, §80

422.72 Information deemed confidential — informational exchange agreement — subpoenas.

1. It is unlawful for the director, or any person having an administrative duty under this chapter, or any present or former officer or other employee of the state authorized by the director to examine returns, to divulge in any manner whatever, the business affairs, operations, or information obtained by an investigation under this chapter of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy of a return or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law. It is unlawful for any person to willfully inspect, except as authorized by the director, any return or return information. However, the director may authorize examination of such state returns and other state information which is confidential under this section, if a reciprocal arrangement exists, by tax officers of another state or the federal government. The director may, by rules adopted pursuant to chapter 17A, authorize examination of state information and returns by other officers or employees of this state to the extent required by their official duties and responsibilities. Disclosure of state information to tax officers of another state is limited to disclosures which have a tax administrative purpose and only to officers of those states which by agreement with this state limit the disclosure of the information as strictly as the laws of this state protecting the confidentiality of returns and information. The director shall place upon the state tax form a notice to the taxpayer that state tax information may be disclosed to tax officials of another state or of the United States for

tax administrative purposes.

The department shall not authorize the examination of tax information by officers and employees of this state, another state, or of the United States if the officers or employees would otherwise be required to obtain a judicial order to examine the information if it were to be obtained from another source, and if the purpose of the examination is other than for tax administration. However, the director may provide sample individual income tax information to be used for statistical purposes to the legislative fiscal bureau. The information shall not include the name or mailing address of the taxpayer or the taxpayer's social security number. Any information contained in an individual income tax return which is provided by the director shall only be used as a part of a data base which contains similar information from a number of returns. The legislative fiscal bureau shall not have access to the income tax returns of individuals. Each request for individual income tax information shall contain a statement by the director of the legislative fiscal bureau that the individual income tax information received by the bureau shall be used solely for statistical purposes. This subsection does not prevent the department from authorizing the examination of state returns and state information under the provisions of section 252B.9. This subsection prevails over any general law of this state relating to public records.

The director shall provide state tax returns and return information to the auditor of state, to the extent that the information is necessary to complete the annual audit of the department required by section 11.2. The state tax returns and return information provided by the director shall remain confidential and shall not be included in any public documents issued by the auditor of state.

2. Federal tax returns, copies of returns, and return information as defined in section 6103(b) of the Internal Revenue Code, which are required to be filed with the department for the enforcement of the income tax laws of this state, shall be held as confidential by the department and subject to the disclosure limitations in subsection 1.

3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 22A, 23, 25, 29, and 32, sections 252B.9, 421.19, 421.28, 422.20, and 452A.63, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. A person violating subsection 1, 2, 3, or 6 is guilty of a serious misdemeanor.

5. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

6. The department may enter into a written informational exchange agreement for tax administration purposes with a city or county which is entitled to receive funds due to a local hotel and motel tax or a local sales and services tax. The written informational exchange agreement shall designate no more than two paid city or county employees that have access to actual return information relating to that city's or county's receipts from a local hotel and motel tax or a local sales and services tax.

City or county employees designated to have access to information under this subsection are deemed to be officers and employees of the state for purposes of the restrictions pursuant to subsection 1 pertaining to confidential information. The department may refuse to enter into a written informational exchange agreement if the city or county does not agree to pay the actual cost of providing the information and the department may refuse to abide by a written informational exchange agreement if the city or county does not promptly pay the actual cost of providing the information or take reasonable precautions to protect the information's confidentiality.

7. Notwithstanding subsection 3, the director shall provide state tax returns and return information in response to a subpoena issued by the court pursuant to rule of criminal procedure 2.5 commanding the appearance before the attorney general or an assistant attorney general if the subpoena is accompanied by affidavits from such person and from a sworn peace officer member of the department of public safety affirming that the information is necessary for the investigation of a felony violation of chapter 124 or chapter 706B. The affidavits accompanying the subpoenas and the information provided by the director shall remain a confidential record which may be disseminated only to a prosecutor or peace officer involved in the investigation, or to the taxpayer who filed the information and to the court in connection with the filing of criminal charges or institution of a forfeiture action. A person who knowingly files a false affidavit with the director to secure information or who divulges information received under this subsection in a manner prohibited by this subsection commits a serious misdemeanor.

[C35, §6943-f59; C39, §**6943.096;** C46, 50, 54, 58, 62, 66, §422.65; C71, 73, 75, 77, 79, 81, §422.72]

83 Acts, ch 32, §1, 2; 87 Acts, ch 199, §9; 88 Acts, ch 1028, §34; 88 Acts, ch 1153, §3, 4; 90 Acts, ch

1232, §19; 91 Acts, ch 159, §20; 97 Acts, ch 158, §22, 23; 99 Acts, ch 151, §25, 89; 99 Acts, ch 152, §10, 40

422.73 Correction of errors — refunds, credits and carrybacks.

1. If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of division IV of this chapter or chapter 423, then such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. A claim for refund or credit that has not been filed with the department within four years after the tax payment for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, upon which a refund or credit is claimed became due, and within three years after the tax payment for quarterly periods beginning on or after January 1, 2001, upon which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall not be allowed by the director.

2. If it appears that an amount of tax, penalty, or interest has been paid which was not due under division II, III or V of this chapter, then that amount shall be credited against any tax due on the books of the department by the person who made the excessive payment, or that amount shall be refunded to the person or with the person's approval, credited to tax to become due. A claim for refund or credit that has not been filed with the department within three years after the return upon which a refund or credit claimed became due, or within one year after the payment of the tax upon which a refund or credit is claimed was made, whichever time is the later, shall not be allowed by the director. If, as a result of a carryback of a net operating loss or a net capital loss, the amount of tax in a prior period is reduced and an overpayment results, the claim for refund or credit of the overpayment shall be filed with the department within the three years after the return for the taxable year of the net operating loss or net capital loss became due. Notwithstanding the period of limitation specified, the taxpayer shall have six months from the day of final disposition of any income tax matter between the taxpayer and the internal revenue service with respect to the particular tax year to claim an income tax refund or credit.

The department shall enter into an agreement with the internal revenue service for the transmission of federal income tax reports on individuals required to file an Iowa income tax return who have been involved in an income tax matter with the internal revenue service. After final disposition of the income tax matter between the taxpayer and the internal revenue service, the department shall determine whether the individual is due a state income tax refund as a result of final disposition of such income tax matter. If the individual is due a state income tax refund, the department shall notify the individual within thirty days and request the individual to file a claim for refund or credit with the department.

3. Notwithstanding subsection 2, a claim for credit or refund of the income tax paid is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the federal Taxpayer Relief Act of 1997, Pub. L. No. 105-34, which affected the federal adjusted gross incomes of individuals or estates and trusts, or affected the taxable incomes of corporate taxpayers.

[C35, §6943-f60; C39, §**6943.097;** C46, 50, 54, 58, 62, 66, §422.66; C71, 73, 75, 77, 79, 81, §422.73; 81 Acts, ch 138, §1]

83 Acts, ch 154, §1, 2; 83 Acts, ch 155, §1, 2, 3; 84 Acts, ch 1155, §1; 85 Acts, ch 230, §11; 86 Acts, ch 1194, §3; 86 Acts, ch 1237, §26; 87 Acts, 2nd Ex, ch 1, §12; 89 Acts, ch 285, §8; 91 Acts, ch 221, §1, 2; 94 Acts, ch 1023, §51; 98 Acts, ch 1078, §9, 13; 99 Acts, ch 156, §4, 23

1999 amendment to subsection 1 is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §4, 23

422.74 Certification of refund.

If a refund is authorized in any division of this chapter, the director shall certify the amount of the refund and the name of the payee and draw a warrant on the general fund of the state in the amount specified payable to the named payee, and the treasurer of state shall pay the warrant.

[C35, §6943-f61; C39, §**6943.098;** C46, 50, 54, 58, 62, 66, §422.67; C71, 73, 75, 77, 79, 81, §422.74]

91 Acts, ch 97, §47

422.75 Statistics — publication.

The department shall prepare and publish an annual report which shall include statistics reasonably available, with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. The annual report shall also include the reports and information required pursuant to section 421.1, subsection 5; section 421.17, subsection 13; section 421.17, subsection 34, paragraph *"h"*; section 421.60, subsection 2, paragraphs *"i"* and *"l"*; and 1997 Iowa Acts, chapter 211, section 22, subsection 5, paragraph *"a"*.

[C35, §6943-f62; C39, §**6943.099;** C46, 50, 54, 58, 62, 66, §422.68; C71, 73, 75, 77, 79, 81, §422.75]

98 Acts, ch 1119, §28

422.76 to 422.84 Reserved.

DIVISION VII

ESTIMATED TAXES BY CORPORATIONS AND FINANCIAL INSTITUTIONS

422.85 Imposition of estimated tax.

A taxpayer subject to the tax imposed by sections 422.33 and 422.60 shall make payments of estimated tax for the taxable year if the amount of tax payable, less credits, can reasonably be expected to be more than one thousand dollars for the taxable year. For purposes of this division, *"estimated tax"* means the amount which the taxpayer estimates to be the tax due and payable under division III or V of this chapter for the taxable year.

[C79, 81, §422.85]
89 Acts, ch 251, §26

422.86 Payment of estimated tax.

A taxpayer required to pay estimated tax under section 422.85 shall pay the estimated tax in accordance with the following schedule:

1. If it is first determined that the estimated tax will be greater than one thousand dollars on or before the last day of the fourth month of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid not later than the last day of the fourth month of the taxable year. The second and third installments shall be paid not later than the last day of the sixth and ninth months of the taxable year, and the final installment shall be paid on or before the last day of the taxable year.

2. If it is first determined that the estimated tax will be greater than one thousand dollars after the last day of the fourth month but not later than the last day of the sixth month of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid not later than the last day of the sixth month of the taxable year. The second installment shall be paid on or before the last day of the ninth month of the taxable year and the third installment shall be paid on or before the last day of the taxable year.

3. If it is first determined that the estimated tax will be greater than one thousand dollars after the last day of the sixth month but not later than the last day of the ninth month of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid not later than the last day of the ninth month and the second installment shall be paid on or before the last day of the taxable year.

4. If it is first determined that the estimated tax will be greater than one thousand dollars after the last day of the ninth month of the taxable year, the estimated tax shall be paid in full on or before the last day of the taxable year.

5. If, after paying any installment of estimated tax, the taxpayer makes a new estimate, the remaining installments shall be ratably adjusted to reflect the increase or decrease in the estimated tax.

[C79, 81, §422.86]
89 Acts, ch 251, §27

422.87 Transitional period. Repealed by 84 Acts, ch 1067, § 51.

422.88 Failure to pay estimated tax.

1. If the taxpayer submits an underpayment of the estimated tax, the taxpayer is subject to an underpayment penalty at the rate established under section 421.7 upon the amount of the underpayment for the period of the underpayment.

2. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax was equal to ninety percent of the tax shown on the return of the taxpayer for the taxable year over the amount of installments paid on or before the date prescribed for payment.

3. If the taxpayer did not file a return during the taxable year, the amount of the underpayment shall be equal to ninety percent of the taxpayer's tax liability for the taxable year over the amount of installments paid on or before the date prescribed for payment.

4. The period of the underpayment shall run from the date the installment was required to be paid to the last day of the fourth month following the close of the taxable year or the date on which such portion is paid, whichever date first occurs.

5. A payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection 2 or 3 of this section for such installment date.

[C79, 81, §422.88; 82 Acts, ch 1180, §4, 9]
95 Acts, ch 83, §11, 36

422.89 Exception to penalty.

The penalty for underpayment of any installment of estimated tax imposed under section 422.88 shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax amount at least to one of the following:

1. The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months.

2. An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preced-

ing taxable year.

3. An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

a. For the first three months of the taxable year if an installment is required to be paid in the fourth month;

b. For the first three months or for the first five months of the taxable year if an installment is required to be paid in the sixth month;

c. For the first six months or for the first eight months of the taxable year if an installment is required to be paid in the ninth month; and

d. For the first nine months or for the first eleven months of the taxable year if an installment is required to be paid in the twelfth month of the taxable year.

The taxable income shall be placed on an annualized basis by multiplying the taxable income as determined under this subsection by twelve and dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven months, as the case may be) referred to in this subsection.

[C79, 81, §422.89]

95 Acts, ch 83, §12, 36

422.90 Penalty not subject to waiver. Repealed by 99 Acts, ch 151, § 85, 89.

422.91 Credit for estimated tax.

Any amount of estimated tax paid is a credit against the amount of tax due on a final, completed return, and any overpayment of five dollars or more shall be refunded to the taxpayer with interest, the interest to begin to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest, at the rate established under section 421.7, and the return constitutes a claim for refund for this purpose. Amounts less than five dollars shall be refunded to the taxpayer only upon written application in accordance with section 422.73, and only if the application is filed within twelve months after the due date for the return.

In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on its final, completed return for the taxable year credited to the tax liability for the following taxable year.

[C79, 81, §422.91; 81 Acts, ch 133, §3, 4; 82 Acts, ch 1180, §5, 9]

89 Acts, ch 251, §28

422.92 Rules for short taxable year.

A taxpayer having a taxable year of less than twelve months shall pay estimated tax under rules adopted by the director.

[C79, 81, §422.92]

89 Acts, ch 251, §29

422.93 Public utility accounting method.

Nothing in this chapter shall be construed to require the utilities board of the department of commerce to allow or require the use of any particular method of accounting by any public utility to compute its tax expense, depreciation expense, or operating expense for purposes of establishing its cost of service for rate-making purposes and for reflecting operating results in its regulated books of account.

[82 Acts, ch 1023, §17]

422.94 to 422.99 Reserved.

DIVISION VIII

ALLOCATION OF REVENUES

422.100 Allocation to the child care credit fund.

The treasurer of state shall credit during the first month of each quarter of each fiscal year to the child care credit fund created in section 237A.28 the sum of six hundred fifty thousand dollars from the individual income tax withholding receipts.

93 Acts, ch 172, §45; 99 Acts, ch 192, §33

422.101 through 422.104 Repealed by 2002 Acts, ch 1150, § 22.

422.105 to 422.109 Reserved.

DIVISION IX

FUEL TAX CREDIT

422.110 Income tax credit in lieu of refund.

In lieu of the fuel tax refund provided in section 452A.17, a person or corporation subject to taxation under division II or III of this chapter may elect to receive an income tax credit. The person or corporation which elects to receive an income tax credit shall cancel its refund permit obtained under section 452A.18 within thirty days after the first day of its tax year or the permit becomes invalid at that time. For the purposes of this section, *"person"* includes a person claiming a tax credit based upon the person's pro rata share of the earnings from a partnership, limited liability company, or corporation which is not subject to a tax under division II or III of this chapter as a partnership, limited liability company, or corporation. If the election to receive an income tax credit has been made, it remains effective for at least one tax year, and for subsequent tax years unless a change is requested and a new refund permit applied for within thirty days after the first day of the person's or corporation's tax year. The income tax credit shall

be the amount of the Iowa fuel tax paid on fuel purchased by the person or corporation and is subject to the conditions provided in section 452A.17 with the exception that the income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, blending errors, idle time, power takeoffs, reefer units, and exports by distributors.

The right to a credit under this section is not assignable and the credit may be claimed only by the person or corporation that purchased the fuel.

[C75, 77, §422.86; C79, 81, §422.110; 82 Acts, ch 1176, §2]

86 Acts, ch 1141, §19; 86 Acts, ch 1241, §29; 88 Acts, ch 1205, §22, 23; 95 Acts, ch 155, §6, 7, 44; 99 Acts, ch 151, §26, 89; 2001 Acts, ch 116, §11

422.111 Fuel tax credit as income tax credit.

The fuel tax credit may be applied against the income tax liability of the person or corporation as determined on the tax return filed for the year in which the fuel tax was paid. The department shall provide forms for claiming the fuel tax credit. If the fuel tax credit would result in an overpayment of income tax, the person or corporation may apply for a refund of the amount of overpayment or may have the overpayment credited to income tax due in subsequent years. Each person or corporation that claims a fuel tax credit shall maintain the original invoices showing the purchase of the fuel on which a credit is claimed. An invoice is not acceptable in support of a claim for credit unless the invoice is a separate serially numbered invoice covering no more than one purchase of motor fuel or undyed special fuel, prepared by the seller on a form approved by the department, or unless the invoice is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the fuel, the total purchase price including the Iowa fuel tax, and that the total purchase price has been paid. However, as to refund invoices made on a billing machine, the department may waive these requirements. If an original invoice is lost or destroyed, the department may approve a credit supported by a copy identified and certified by the seller as being a true copy of the original. Each person or corporation that claims a fuel tax credit shall maintain complete records of purchases of motor fuel or undyed special fuel on which Iowa fuel tax was paid, and for which a fuel tax credit is claimed.

In order to verify the validity of a claim for credit the department shall have the right to require the claimant to furnish such additional proof of validity as the department may determine and to examine the books and records of the claimant. Failure of the claimant to furnish the books and records for examination shall constitute a waiver of rights to claim a credit related to that taxpayer's year and the department may disallow the entire credit claimed by the taxpayer for that year.

[C75, 77, §422.87; C79, 81, §422.111]

88 Acts, ch 1205, §24; 99 Acts, ch 151, §27, 28, 89

422.112 Aircraft fuel tax transfer.

The department shall certify quarterly to the treasurer of state the amount of credit that has been taken against income tax liability since the time of the last certification, for the Iowa fuel tax paid on motor fuel, special fuel and motor fuel used for the purpose of operating aircraft, and the treasurer of state shall transfer the amount of the total credit from the motor fuel tax fund, or in the case of aircraft motor fuel, from the separate fund established by section 452A.82, to the general fund of the state.

[C75, 77, §422.88; C79, 81, §422.112]

422.113 through 422.119 Reserved.

DIVISION X

LIVESTOCK PRODUCTION TAX CREDIT

422.120 Livestock production tax credit allowed — cow-calf operation.

1. *a.* There is allowed a state tax credit for livestock production operations located in the state. The amount of the credit equals ten cents for each corn equivalent consumed by the livestock in the production operation as specified under this section. The credit shall be refunded as provided in section 422.122.

b. (1) The credit shall be available to an individual or corporate taxpayer if the taxpayer's federal taxable income is not more than ninety-nine thousand six hundred dollars for the tax year. In the case of married taxpayers, their combined federal taxable income shall be used to determine if they qualify for the credit.

(2) For each subsequent tax year, the maximum taxable income amount specified in subparagraph (1) shall be multiplied by the cumulative index factor for that tax year. *"Cumulative index factor"* means the product of the annual index factor for the 1997 calendar year and all annual index factors for subsequent calendar years. The cumulative index factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual index factor has been determined.

(3) The annual index factor for the 1997 calendar year is one hundred percent. For each subsequent calendar year, the annual index factor equals the annual inflation factor for that calendar year as computed in section 422.4 for purposes of the individual income tax.

2. The amount of the credit per operation is determined by adding together for each head of live-

stock in the operation the product of ten cents times the number of corn equivalents consumed by that head of livestock. The amount of livestock production credit per operation per tax year shall not exceed three thousand dollars and the amount of livestock production credit per taxpayer per tax year shall not exceed three thousand dollars.

The maximum amount of corn equivalents for a head of livestock in a production operation is the following:

a.	Hog operations:	Corn equivalents:
(1)	Farrow to finish	13.0
(2)	Farrow to feeder pig	2.6
(3)	Finishing feeder pigs	10.4
b.	Poultry operations:	
(1)	Layers	0.88
(2)	Turkey	1.5
(3)	Broilers	0.15
c.	Beef operations:	
(1)	Cow-calf	111.5
(2)	Stocker	41.5
(3)	Feedlot	75.0
(4)	Dairy	350.0
d.	Sheep operations:	
(1)	Ewe flock	20.5
(2)	Feedlot	4.1

3. As used in this division, *"cow-calf operation"* means any of the following:

a. Mature beef cows bred or for breeding.

b. Bred yearling heifers.

c. Breeding bulls.

4. If the livestock operation is carried on partly within and partly without the state, the portion of the operation attributable to this state shall be determined pursuant to rules adopted by the department. The department may adjust the allocation upon request of the taxpayer in order to reflect the actual livestock operation carried on within this state.

5. An individual may claim the livestock production tax credit allowed a partnership, limited liability company, subchapter S corporation, or estate or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earning of the partnership, limited liability company, subchapter S corporation, or estate or trust.

6. A fraudulent claim for a credit refund under this division shall cause the forfeiture of any right or interest to a tax credit refund in subsequent tax years under this division.

96 Acts, ch 1197, §19, 23; 97 Acts, ch 206, §1, 2; 98 Acts, ch 1100, §58

Credit allowed only for cow-calf operations; §422.121

422.121 Appropriation — limitation.

Beginning with the fiscal year beginning July 1, 1997, there is appropriated annually from the general fund of the state two million dollars to refund the credits allowed under this division. Notwithstanding section 422.120, for tax years beginning on or after January 1, 1997, the livestock production tax credit shall only be allowed for cow-calf operations. In calculating the tax credit for cow-calf operations for tax years beginning in the 1997 calendar year, mature beef cows bred or for breeding, bred yearling heifers, and breeding bulls in the operations' inventory on December 31 of the tax year which were also in the operations' inventory on July 1 of the tax year and stockers and feeders sold during the tax year may be counted. In calculating the tax credit for cow-calf operations for tax years beginning on or after January 1, 1998, only those bred cows, bred heifers, and breeding bulls in the operations' inventory on December 31 of the tax year which were also in the operations' inventory on July 1 of the tax year may be counted.

96 Acts, ch 1197, §20, 23; 97 Acts, ch 206, §3; 99 Acts, ch 151, §29, 89; 2000 Acts, ch 1058, §35

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions

422.122 Refund of livestock production credit claims.

1. Each tax year the total amount of livestock production credit refund claims that shall be paid pursuant to section 422.120 shall not exceed the amount appropriated by the general assembly for that purpose. If the total dollar amount of the refund claims exceeds that amount, each claim shall be paid an amount equal to that amount divided by the total number of claims, not to exceed the amount of the taxpayer's claim. Remaining funds shall be prorated among those claims not paid in full in the proportion that each such claim bears to the total amount of such claims not paid in full.

2. In the case where refund claims are not paid in full, the amount of the refund to which the taxpayer is entitled is the amount computed in subsection 1, and paid to the taxpayer, and the taxpayer is not entitled to any unpaid portion of a claim and is not entitled to carry forward or backward to another tax year any unpaid portion of a claim. A taxpayer shall not use a refund as an estimated payment for the succeeding tax year.

3. A taxpayer must file a claim for refund within ten months from the last day of the taxpayer's tax year. An extension for filing shall not be allowed. The department shall determine by February 28 of the calendar year following the calendar year in which the claims were filed if the total amount of claims for refund exceeds the amount appropriated for that purpose by the general assembly for the tax year. If the claim is not payable on February 28 because the taxpayer is a fiscal year filer, the claim shall be considered as a claim filed for the following tax year.

4. A claim for refund shall be made on claim forms to be made available by the department. In

order for a taxpayer to have a valid refund claim, the taxpayer must supply legible copies of documents the director deems necessary to verify the amount of the refund.

96 Acts, ch 1197, §21, 23

Credit allowed only for cow-calf operations; §422.121

CHAPTER 422A

HOTEL AND MOTEL TAX

Personal liability of officers and partners; see §421.26

422A.1 Hotel and motel tax.

422A.2 Local transient guest tax fund.

422A.1 Hotel and motel tax.

A city or county may impose by ordinance of the city council or by resolution of the board of supervisors a hotel and motel tax, at a rate not to exceed seven percent, which shall be imposed in increments of one or more full percentage points upon the gross receipts from the renting of sleeping rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, manufactured or mobile home which is tangible personal property, or tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals; except the gross receipts from the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state of Iowa and the guests of a religious institution if the property is exempt under section 427.1, subsection 8, and the purpose of renting is to provide a place for a religious retreat or function and not a place for transient guests generally. The tax when imposed by a city shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within that county. *"Renting"* and *"rent"* include any kind of direct or indirect charge for such sleeping rooms, apartments, or sleeping quarters, or their use. However, the tax does not apply to the gross receipts from the renting of a sleeping room, apartment, or sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the hotel and motel tax, the county auditor shall give written notice by sending a copy of the abstract of votes from the favorable election to the director of revenue and finance.

A local hotel and motel tax shall be imposed on January 1, April 1, July 1, or October 1, following the notification of the director of revenue and finance. Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one year. A local hotel and motel tax shall terminate only on March 31, June 30, September 30, or December 31. At least forty-five days prior to the tax being effective or prior to a revision in the tax rate, or prior to the repeal of the tax, a city or county shall provide notice by mail of such action to the director of revenue and finance.

A city or county shall impose a hotel and motel tax or increase the tax rate only after an election at which a majority of those voting on the question favors imposition or increase. However, a hotel and motel tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422A.2, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose. The election shall be held at the time of the regular city election or the county's general election or at the time of a special election.

The director of revenue and finance shall administer a local hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting local hotel and motel tax liability. All moneys received or refunded one hundred eighty days after the date on which a city or county terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund.

The director, in consultation with local officials, shall collect and account for a local hotel and motel tax and shall credit all revenues to a *"local transient guest tax fund"* established by section 422A.2.

No tax permit other than the state tax permit required under section 422.53 may be required by local authorities.

The tax levied shall be in addition to any state sales tax imposed under section 422.43. Section 422.25, subsection 4, sections 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69,

subsection 1, and sections 422.70 to 422.75, consistent with the provisions of this chapter, apply with respect to the taxes authorized under this chapter, in the same manner and with the same effect as if the hotel and motel taxes were retail sales taxes within the meaning of those statutes. Notwithstanding this paragraph, the director shall provide for quarterly filing of returns as prescribed in section 422.51 and for other than quarterly filing of returns as prescribed in section 422.51, subsection 2. The director may require all persons, as defined in section 422.42, who are engaged in the business of deriving gross receipts subject to tax under this chapter, to register with the department.

[C79, 81, §422A.1]

86 Acts, ch 1199, §1; 86 Acts, ch 1241, §30; 86 Acts, ch 1244, §49; 87 Acts, ch 136, §2; 88 Acts, ch 1153, §5; 89 Acts, ch 251, §30; 89 Acts, ch 294, §1; 2001 Acts, ch 116, §12; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1134, §110, 115

2002 amendment to unnumbered paragraph 4 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Unnumbered paragraph 4 amended

422A.2 Local transient guest tax fund.

1. There is created in the department of revenue and finance a local transient guest tax fund which shall consist of all moneys credited to such fund under section 422A.1.

2. All moneys in the local transient guest tax fund shall be remitted at least quarterly by the department of revenue and finance, pursuant to rules of the director of revenue and finance, to each city in the amount collected from businesses in that city and to each county in the amount collected from businesses in the unincorporated areas of the county.

3. Moneys received by the city from this fund shall be credited to the general fund of the city, subject to the provisions of subsection 4.

4. The revenue derived from any hotel and motel tax authorized by this chapter shall be used as follows:

a. Each county or city which levies the tax shall spend at least fifty percent of the revenues derived therefrom for the acquisition of sites for, or constructing, improving, enlarging, equipping, repairing, operating, or maintaining of recreation, convention, cultural, or entertainment facilities including but not limited to memorial buildings, halls and monuments, civic center convention buildings, auditoriums, coliseums, and parking areas or facilities located at those recreation, convention, cultural, or entertainment facilities or the payment of principal and interest, when due, on bonds or other evidence of indebtedness issued by the county or city for those recreation, convention, cultural, or entertainment facilities; or for the promotion and encouragement of tourist and convention business in the city or county and surrounding areas.

b. The remaining revenues may be spent by the city or county which levies the tax for any city or county operations authorized by law as a proper purpose for the expenditure within statutory limitations of city or county revenues derived from ad valorem taxes.

c. Any city or county which levies and collects the hotel and motel tax authorized by this chapter may pledge irrevocably an amount of the revenues derived therefrom for each of the years the bonds remain outstanding to the payment of bonds which the city or county may issue for one or more of the purposes set forth in paragraph *"a"* of this subsection. Any revenue pledged to the payment of such bonds may be credited to the spending requirement of paragraph *"a"* of this subsection.

d. The provisions of division III of chapter 384 relating to the issuance of corporate purpose bonds apply to the issuance by a city of bonds payable as provided in this section and the provisions of chapter 331, division IV, part 3, relating to the issuance of county purpose bonds apply to the issuance by a county of bonds payable as provided in this section. The provisions of chapter 76 apply to the bonds payable as provided in this section except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged portion of the hotel and motel tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the city or county which levied the tax from the first available hotel and motel tax collections received in excess of the requirement for the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes.

The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the hotel and motel tax for the last four calendar quarters, as certified by the director of revenue and finance. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of determining the amount of bonds which may be issued. If the hotel and motel tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be adjusted to project the collections for the full year for the purpose of determining the amount of the bonds which may be issued.

e. A city or county, jointly with one or more other cities or counties as provided in chapter 28E, may pledge irrevocably any amount derived from the revenues of the hotel and motel tax to the support or payment of bonds issued for a project within the purposes set forth in paragraph *"a"* of this subsection and located within one or more of the

participatory cities or counties or may apply the proceeds of its bonds to the support of any such project. Revenue so pledged or applied shall be credited to the spending requirement of paragraph *"a"* of this subsection.

f. A city or county acting on behalf of an unincorporated area may, in lieu of calling an election, institute proceedings for the issuance of bonds under this section by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by eligible electors residing in the city or the unincorporated area equal in number to at least three percent of the registered voters of the city or unincorporated area is filed, asking that the question of issuing the bonds be submitted to the registered voters of the city or unincorporated area, the council or board of supervisors acting on behalf of an unincorporated area shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds.

The proposition of issuing bonds under this section is not approved unless the vote in favor of the proposition is equal to a majority of the vote cast.

If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the council or board of supervisors acting on behalf of an unincorporated area may proceed with the authorization and issuance of the bonds.

Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with this paragraph.

[C79, 81, §422A.2; 82 Acts, ch 1178, §1]

83 Acts, ch 123, §175, 209; 84 Acts, ch 1067, §38; 90 Acts, ch 1024, §1; 94 Acts, ch 1107, §12; 95 Acts, ch 67, §53; 2001 Acts, ch 56, §34; 2002 Acts, ch 1119, §53

Subsection 4, paragraph f, unnumbered paragraph 2 amended

CHAPTER 422B

LOCAL OPTION TAXES

Personal liability of officers and partners; see §421.26
Multistate discussions to consider simplification and uniformity of sales and use tax administration; 2002 Acts, ch 1161, §4, 5

422B.1 Authorization — election — imposition and repeal.
422B.2 Local vehicle tax.
422B.3 Administration of local vehicle tax.
422B.4 Payment — penalties.
422B.5 Local earnings tax. Repealed by 86 Acts, ch 1199, §9.
422B.6 Administration. Repealed by 86 Acts, ch 1199, §9.
422B.7 Payment to local government — use of receipts. Repealed by 86 Acts, ch 1199, §9.
422B.8 Local sales and services tax.
422B.9 Administration.
422B.10 Payment to local governments.
422B.11 Construction contractor refunds.
422B.12 Issuance of bonds.

422B.1 Authorization — election — imposition and repeal.

1. A county may impose by ordinance of the board of supervisors local option taxes authorized by this chapter, subject to this section and subject to the exception provided in subsection 2.

2. *a.* A city whose corporate boundaries include areas of two counties may impose by ordinance of its city council a local sales and services tax if all of the following apply:

(1) At least eighty-five percent of the residents of the city live in one county.

(2) The county in which at least eighty-five percent of the city residents reside has held an election on the question of the imposition of a local sales and services tax and a majority of those voting on the question in the city favored its imposition.

(3) The city has entered into an agreement on the distribution of the sales and services tax revenues collected from the area where the city tax is imposed with the county where such area is located.

b. The city council of a city authorized to im-

pose a local sales and services tax pursuant to paragraph *"a"* shall only do so subject to all of the following restrictions:

(1) The tax shall only be imposed in the area of the city located in the county where not more than fifteen percent of the city's residents reside.

(2) The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

(3) The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.

(4) The tax shall be imposed on the same basis as provided in section 422B.8 and notification requirements in section 422B.9 apply.

(5) The city shall assist the department of revenue and finance to identify the businesses in the area which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.

c. The agreement on the distribution of the revenues collected from the city-imposed tax shall provide that fifty percent of such revenues shall be remitted to the county in which the part of the city where the city tax is imposed is located.

d. The latest certified federal census preceding the election held by the county on the question of imposition of the local sales and services tax shall be used in determining if the city qualifies under paragraph *"a"*, subparagraph (1), to impose its own tax and in determining the area where the city tax may be imposed under paragraph *"b"*, subparagraph (1).

e. A city is not authorized to impose a local sales and services tax under this subsection after July 1, 2000. A city that has imposed a local sales and services tax under this subsection on or before July 1, 2000, may continue to collect the tax until such time as the tax is repealed by the city and the fact that the area acquires more than fifteen percent of the city's residents after the tax is imposed shall not affect the imposition or collection of the tax.

3. A local option tax shall be imposed only after an election at which a majority of those voting on the question favors imposition and shall then be imposed until repealed as provided in subsection 6, paragraph *"a"*. If the tax is a local vehicle tax imposed by a county, it shall apply to all incorporated and unincorporated areas of the county. If the tax is a local sales and services tax imposed by a county, it shall only apply to those incorporated areas and the unincorporated area of that county in which a majority of those voting in the area on the tax favors its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favors its imposition. For purposes of the local sales and services tax, a city is not contiguous to another city if the only road access between the two cities is through another state.

4. *a.* A county board of supervisors shall direct within thirty days the county commissioner of elections to submit the question of imposition of a local vehicle tax or a local sales and services tax to the registered voters of the incorporated and unincorporated areas of the county upon receipt of a petition, requesting imposition of a local vehicle tax or a local sales and services tax, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election. In the case of a local vehicle tax, the petition requesting imposition shall specify the rate of tax and the classes, if any, that are to be exempt. If more than one valid petition is received, the earliest received petition shall be used.

b. The question of the imposition of a local sales and services tax shall be submitted to the registered voters of the incorporated and unincorporated areas of the county upon receipt by the county commissioner of elections of the motion or motions, requesting such submission, adopted by the governing body or bodies of the city or cities located within the county or of the county, for the unincorporated areas of the county, representing at least one half of the population of the county. Upon adoption of such motion, the governing body of the city or county, for the unincorporated areas, shall submit the motion to the county commissioner of elections and in the case of the governing body of the city shall notify the board of supervisors of the adoption of the motion. The county commissioner of elections shall keep a file on all the motions received and, upon reaching the population requirements, shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion. The county commissioner of elections shall eliminate from the file any motion that ceases to be valid. The manner provided under this paragraph for the submission of the question of imposition of a local sales and services tax is an alternative to the manner provided in paragraph *"a"*.

5. The county commissioner of elections shall submit the question of imposition of a local option tax at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the type and rate of tax and in the case of a vehicle tax the classes that will be exempt and in the case of a local sales and services tax the date it will be imposed which date shall not be

earlier than ninety days following the election. The ballot proposition shall also specify the approximate amount of local option tax revenues that will be used for property tax relief and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended. If the county board of supervisors decides under subsection 6 to specify a date on which the local option sales and services tax shall automatically be repealed, the date of the repeal shall also be specified on the ballot. The rate of the vehicle tax shall be in increments of one dollar per vehicle as set by the petition seeking to impose the tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

6. *a.* If a majority of those voting on the question of imposition of a local option tax favors imposition of a local option tax, the governing body of that county shall impose the tax at the rate specified for an unlimited period. However, in the case of a local sales and services tax, the county shall not impose the tax in any incorporated area or the unincorporated area if the majority of those voting on the tax in that area did not favor its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax shall be imposed in each of those contiguous cities only if the majority of those voting on the tax in the total area covered by the contiguous cities favored its imposition. The local option tax may be repealed or the rate increased or decreased or the use thereof changed after an election at which a majority of those voting on the question of repeal or rate or use change favored the repeal or rate or use change. The date on which the repeal, rate, or use change is to take effect shall not be earlier than ninety days following the election. The election at which the question of repeal or rate or use change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 4 and 5 for the election on the imposition of the local option tax. However, in the case of a local sales and services tax where the tax has not been imposed countywide, the question of repeal or imposition or rate or use change shall be voted on only by the registered voters of the areas of the county where the tax has been imposed or has not been imposed, as appropriate. However, the governing body of the incorporated area or unincorporated area where the local sales and services tax is imposed may, upon its own motion, request the county commissioner of elections to hold an election in the incorporated or unincorporated area, as appropriate, on the question of the change in use of local sales and services tax revenues. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. If a majority of those voting in the incorporated or unincorporated area on the change in use favors the change, the governing body of that area shall change the use to which the revenues shall be used. The ballot proposition shall list the present use of the revenues, the proposed use, and the date after which revenues received will be used for the new use.

When submitting the question of the imposition of a local sales and services tax, the county board of supervisors may direct that the question contain a provision for the repeal, without election, of the local sales and services tax on a specific date, which date shall be as provided in section 422B.9, subsection 1.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue and finance or, in the case of a local vehicle tax, to the director of the department of transportation.

7. More than one of the authorized local option taxes may be submitted at a single election and the different taxes shall be separately implemented as provided in this section.

Costs of local option tax elections shall be apportioned among jurisdictions within the county voting on the question at the same election on a pro rata basis in proportion to the number of registered voters in each taxing jurisdiction and the total number of registered voters in all of the taxing jurisdictions.

8. Local option taxes authorized to be imposed as provided in this chapter are a local sales and services tax and a local vehicle tax. The rate of the tax shall be in increments of one dollar per vehicle for a vehicle tax as set on the petition seeking to impose the vehicle tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body.

9. In a county that has imposed a local option sales and services tax, the board of supervisors shall, notwithstanding any contrary provision of this chapter, repeal the local option sales and services tax in the unincorporated areas or in an incorporated city area in which the tax has been imposed upon adoption of its own motion for repeal in the unincorporated areas or upon receipt of a motion adopted by the governing body of that incorporated city area requesting repeal. The board of supervisors shall repeal the local option sales and services tax effective on the later of the date of the adoption of the repeal motion or the earliest date specified in section 422B.9, subsection 1. For purposes of this subsection, incorporated city area includes an incorporated city which is contiguous to another incorporated city.

10. Notwithstanding subsection 9 or any other contrary provision of this chapter, a local option

sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422B.12, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

85 Acts, ch 32, §89; 85 Acts, ch 198, §6; 86 Acts, ch 1199, §2 – 6; 89 Acts, ch 146, §1; 89 Acts, ch 276, §1; 90 Acts, ch 1256, §21; 92 Acts, ch 1063, §1; 93 Acts, ch 143, §50; 95 Acts, ch 67, §53; 95 Acts, ch 186, §1 – 4, 9; 96 Acts, ch 1079, §22, 23; 99 Acts, ch 156, §5 – 11, 23; 2000 Acts, ch 1058, §36; 2002 Acts, ch 1119, §166

Amendments to subsection 5, subsection 6, paragraph a, and subsection 9 are effective April 1, 2000, for local sales and services taxes; 99 Acts, ch 156, §8, 9, 11, 23

Subsection 6, paragraph b amended

422B.2 Local vehicle tax.

An annual local vehicle tax at the rate per vehicle specified on the ballot proposition may be imposed by a county on every vehicle which is required to be registered by the state and is registered with the county treasurer to a person residing within the county where the tax is imposed at the time of the renewal of the registration of the vehicle. The local vehicle tax shall be imposed only on the renewals of registrations and shall be payable during the registration renewal periods provided under section 321.40.

The county imposing the tax shall provide for the exemption of each class, if any, of vehicles for which an exemption was listed on the ballot proposition.

For the purpose of the tax authorized by this section, *"person"* and *"registration year"* mean the same as defined in section 321.1, and *"vehicle"* means motor vehicle as defined in section 321.1 which is subject to registration under section 321.18, and which is registered with the county treasurer.

85 Acts, ch 32, §90

422B.3 Administration of local vehicle tax.

A local vehicle tax or change in the rate shall be imposed January 1 immediately following a favorable election for registration years beginning on or after that date and the repeal of the tax shall be as of December 31 following a favorable election for registration years beginning after that date.

Local officials shall confer with the director of the department of transportation for assistance in drafting the ordinance imposing a local vehicle tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage. The director shall inform the appropriate county treasurers and provide assistance to them for the collection of all local vehicle taxes and any penalties, crediting local vehicle tax receipts excluding penalties to a *"local vehicle tax fund"* established in the office of the county treasurer. From the local vehicle tax fund, the treasurer shall remit monthly, by direct deposit in the same manner as provided in section 384.11, to each city in the county the amount collected from residents of the city during the preceding calendar month and to the county the amount collected from the residents of the unincorporated area during the preceding calendar month. Moneys received by a city or county from this fund shall be credited to the general fund of the city or county to be used solely for public transit or shall be credited to the street construction fund of that city or the secondary road fund of that county to be used for the purposes specified in section 312.6. Any penalties collected shall be credited to the county general fund to be used to defray the cost to the county of administering the local vehicle tax.

85 Acts, ch 32, §91

422B.4 Payment — penalties.

Taxpayers shall pay a local vehicle tax to the county treasurer at the time of application for the renewal of the registration of the vehicle under chapter 321 for the registration year. The county treasurer shall require a person applying for the renewal of the registration of a vehicle to state the person's residence and shall not renew a registration certificate of a vehicle on which a local vehicle tax is due until the local vehicle tax is paid.

Payment of a local vehicle tax shall be evidenced by a notation on the state registration certificate. The director of the department of transportation shall prescribe by rule the type of notation. A local vehicle tax shall not be refunded even when state registration fees are refunded.

Penalties for late payment which are comparable to the penalties for late payment of state registration fees shall be imposed by the ordinance imposing a local vehicle tax. Willful violation of a local vehicle tax ordinance is a simple misdemeanor.

85 Acts, ch 32, §92

422B.5 Local earnings tax. Repealed by 86 Acts, ch 1199, § 9.

422B.6 Administration. Repealed by 86 Acts, ch 1199, § 9.

422B.7 Payment to local government — use of receipts. Repealed by 86 Acts, ch 1199, § 9.

422B.8 Local sales and services tax.

A local sales and services tax at the rate of not more than one percent may be imposed by a county on the gross receipts taxed by the state under chapter 422, division IV. A local sales and services tax shall be imposed on the same basis as the state sales and services tax or in the case of the use of natural gas, natural gas service, electricity, or electric service on the same basis as the state use

tax and shall not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 452A which is consumed for highway use or in watercraft or aircraft if the fuel tax is paid on the transaction and a refund has not or will not be allowed, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of equipment by the state department of transportation, on the gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E and except the tax shall not be imposed on the gross receipts from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the gross receipts from the sale of natural gas or electric energy are subject to a franchise fee or user fee during the period the franchise or user fee is imposed. A local sales and services tax is applicable to transactions within those incorporated and unincorporated areas of the county where it is imposed and shall be collected by all persons required to collect state gross receipts taxes. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. All cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favor its imposition.

The amount of the sale, for purposes of determining the amount of the local sales and services tax, does not include the amount of any state gross receipts taxes.

A tax permit other than the state tax permit required under section 422.53 or 423.10 shall not be required by local authorities.

If a local sales and services tax is imposed by a county pursuant to this chapter, a local excise tax at the same rate shall be imposed by the county on the purchase price of natural gas, natural gas service, electricity, or electric service subject to tax under chapter 423 and not exempted from tax by any provision of chapter 423. The local excise tax is applicable only to the use of natural gas, natural gas service, electricity, or electric service within those incorporated and unincorporated areas of the county where it is imposed and, except as otherwise provided in this chapter, shall be collected and administered in the same manner as the local sales and services tax. For purposes of this chapter, *"local sales and services tax"* shall also include the local excise tax.

85 Acts, ch 32, §96; 86 Acts, ch 1042, §11; 86 Acts, ch 1199, §7; 88 Acts, ch 1154, §3; 89 Acts, ch 276, §2; 95 Acts, ch 83, §13; 99 Acts, ch 151, §30 – 32; 99 Acts, ch 156, §12; 2001 Acts, ch 116, §13

1999 amendments to unnumbered paragraph 1 relating to the sales and services tax on natural gas, natural gas service, electricity, and electric service, and 1999 amendments to unnumbered paragraph 3, and adding new unnumbered paragraph 4 are effective May 1, 1999; 99 Acts, ch 151, §31, 32, 89

Abatement of taxes owed or refund of taxes paid by foundries located in Lee or Jefferson county on certain purchases of tangible personal property between July 1, 1997, and May 6, 2002; filing deadline and limitation on claims for refunds; 2002 Acts, ch 1151, §33, 36

422B.9 Administration.

1. *a.* A local sales and services tax shall be imposed either January 1 or July 1 following the notification of the director of revenue and finance but not sooner than ninety days following the favorable election. However, a jurisdiction which has voted to continue imposition of the tax may impose that tax without repeal of the prior tax.

b. A local sales and services tax shall be repealed only on June 30 or December 31 but not sooner than ninety days following the favorable election if one is held. However, a local sales and services tax shall not be repealed before the tax has been in effect for one year. At least forty days before the imposition or repeal of the tax, a county shall provide notice of the action by certified mail to the director of revenue and finance.

c. If a local sales and services tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be repealed on that date, notwithstanding paragraph *"b"*.

2. *a.* The director of revenue and finance shall administer a local sales and services tax as nearly as possible in conjunction with the administration of state gross receipts tax laws. The director shall provide appropriate forms or provide on the regular state tax forms for reporting local sales and services tax liability.

b. The ordinance of a county board of supervisors imposing a local sales and services tax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division IV, and chapter 423. All powers and requirements of the director to administer the state gross receipts tax law and use tax law are applicable to the administration of a local sales and services tax law and the local excise tax, including but not limited to, the provisions of section 422.25, subsection 4,

sections 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, sections 422.70 to 422.75, 423.6, subsections 2 to 4, and sections 423.11 to 423.18, and 423.21. Local officials shall confer with the director of revenue and finance for assistance in drafting the ordinance imposing a local sales and services tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

c. Frequency of deposits and quarterly reports of a local sales and services tax with the department of revenue and finance are governed by the tax provisions in section 422.52. Local tax collections shall not be included in computation of the total tax to determine frequency of filing under section 422.52.

3. *a.* The director, in consultation with local officials, shall collect and account for a local sales and services tax. The director shall certify each quarter the amount of local sales and services tax receipts and any interest and penalties to be credited to the "local sales and services tax fund" established in the office of the treasurer of state.

b. All local tax moneys and interest and penalties received or refunded one hundred eighty days or more after the date on which the county repeals its local sales and services tax shall be deposited in or withdrawn from the state general fund.

85 Acts, ch 32, §97; 86 Acts, ch 1245, §441; 89 Acts, ch 276, §3; 97 Acts, ch 145, §1; 99 Acts, ch 151, §33, 89; 99 Acts, ch 156, §13, 23; 2001 Acts, ch 116, §14

1999 amendment to subsection 1 is effective April 1, 2000; 99 Acts, ch 156, §23

1999 amendment to subsection 2, paragraph b is effective May 1, 1999; 99 Acts, ch 151, §33, 89

422B.10 Payment to local governments.

1. The director shall credit the local sales and services tax receipts and interest and penalties from a county-imposed tax to the county's account in the local sales and services tax fund and from a city-imposed tax under section 422B.1, subsection 2, to the city's account in the local sales and services tax fund. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated among the possible counties based on allocation rules adopted by the director.

2. *a.* The director of revenue and finance by August 15 of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the amount of tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director of revenue and finance shall remit ninety-five percent of the estimated tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director of revenue and finance shall remit a final payment of the remainder of tax moneys due the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the November payment shall be adjusted to reflect any overpayment.

3. Seventy-five percent of each county's account shall be remitted on the basis of the county's population residing in the unincorporated area where the tax was imposed and those incorporated areas where the tax was imposed as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the above population of the county residing in the unincorporated area of the county where the tax was imposed according to the most recent certified federal census.

b. To each city in the county where the tax was imposed a pro rata share based upon the percentage of the city's population residing in the county to the above population of the county according to the most recent certified federal census.

c. If a subsequent certified census exists which modifies that most recent certified federal census for a participating jurisdiction under paragraphs *"a"* and *"b"*, the computations under paragraphs *"a"* and *"b"* shall utilize the subsequent certified census in the distribution formula under rules established by the director of revenue and finance.

4. Twenty-five percent of each county's account shall be remitted based on the sum of property tax dollars levied by the board of supervisors if the tax was imposed in the unincorporated areas and each city in the county where the tax was imposed during the three-year period beginning July 1, 1982, and ending June 30, 1985, as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the total property tax dollars levied by the board of supervisors during the above three-year period.

b. To each city council where the tax was imposed a pro rata share based upon the percentage of property tax dollars levied by the city during the above three-year period of the above total property tax dollars levied by the board of supervisors and each city where the tax was imposed during the above three-year period.

5. From each city's account, the percent of revenues agreed to be distributed to the county in the agreement entered into as provided in section 422B.1, subsection 2, paragraph *"a"*, subparagraph (3), and paragraph *"c"*, shall be deposited into the appropriate county's account to be remitted as provided in subsections 3 and 4. The remaining revenues in the city's account shall be remitted to the city council. If a county does not have an account, its percent of the revenues shall be remitted directly to the county board of supervisors.

6. Local sales and services tax moneys received by a city or county may be expended for any

lawful purpose of the city or county.

85 Acts, ch 32, §98; 86 Acts, ch 1199, §8; 89 Acts, ch 277, §1, 2; 95 Acts, ch 186, §5, 6, 9; 96 Acts, ch 1079, §22, 23; 97 Acts, ch 145, §2; 99 Acts, ch 151, §34, 89; 99 Acts, ch 156, §14; 2002 Acts, ch 1151, §12

Contingent appropriation of funds for deposit in certain school district accounts within local sales and service tax fund under this section, if treasurer of state determines that appropriation will not affect tax exempt status of outstanding bonds under §292.1; letter to Code editor from treasurer of state stating that appropriation of funds is consistent with use of tax exempt proceeds and should proceed as authorized by general assembly and governor; 2002 Acts, 2nd Ex, ch 1003, §193, 194, 213

Subsection 2, paragraph a amended

422B.11 Construction contractor refunds.

1. Construction contractors may make application to the department for a refund of the additional local sales and services tax paid under this chapter by reason of taxes paid on goods, wares, or merchandise under the following conditions:

a. The goods, wares, or merchandise are incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to the date of the imposition or increase in rate of a local sales and services tax under this chapter. The refund shall not apply to equipment transferred in fulfillment of a mixed construction contract.

b. The contractor has paid to the department or to a retailer the full amount of the state and local tax.

c. The claim is filed on forms provided by the department and is filed within one year of the date the tax is paid.

2. The department shall pay the refund from the appropriate city's or county's account in the local sales and services tax fund.

3. A contractor who makes an erroneous application for refund shall be liable for payment of the excess refund paid plus interest at the rate in effect under section 421.7. In addition, a contractor who willfully makes a false application for refund is guilty of a simple misdemeanor and is liable for a penalty equal to fifty percent of the excess refund claimed. Excess refunds, penalties, and interest due under this subsection may be enforced and collected in the same manner as the local sales and services tax imposed under this chapter.

88 Acts, ch 1153, §6; 2001 Acts, ch 116, §15

422B.12 Issuance of bonds.

1. For purposes of this section unless the context otherwise requires:

a. *"Bond issuer"* or *"issuer"* means a city, a county, or a secondary recipient.

b. *"Designated portion"* means the portion of the local option sales and services tax revenues which is authorized to be expended for one or a combination of purposes under an adopted public measure.

c. *"Secondary recipient"* means a political subdivision of the state which is to receive revenues from a local option sales and services tax over a period of years pursuant to the terms of a chapter 28E agreement with one or more cities or counties.

2. An issuer of public bonds which is a recipient of revenues from a local option sales and services tax imposed pursuant to this chapter may issue bonds in anticipation of the collection of one or more designated portions of the local option sales and services tax and may pledge irrevocably an amount of the revenue derived from the designated portions for each of the years the bonds remain outstanding to the payment of the bonds. Bonds may be issued only for one or more of the purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax, except bonds shall not be issued which are payable from that portion of tax revenues designated for property tax relief. The bonds may be issued in accordance with the procedures set forth in either subsection 3 or 4.

3. The governing body of an issuer may authorize the issuance of bonds which are payable from the designated portion of the revenues of the local option sales and services tax, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

4. To authorize the issuance of bonds payable as provided in this subsection, the governing body of an issuer shall comply with all of the procedures as follows:

a. A bond issuer may institute proceedings for the issuance of bonds by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the political subdivision or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by eligible electors residing within the jurisdiction seeking to issue the bonds in a number equal to at least three percent of the registered voters of the bond issuer is filed, asking that the question of issuing the bonds be submitted to the registered voters, the governing body shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. The proposition of issuing bonds under this subsection is not approved unless the vote in favor of the proposition is equal to at least sixty percent of the vote cast.

If a petition is not filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the governing body acting on behalf of the issuer may proceed with the authorization and issuance of the bonds. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

b. The provisions of chapter 76 apply to the bonds payable as provided in this subsection, except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged designated portion of the local option sales and services tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the bond issuer which levied the tax from the first available designated portion of local option sales and services tax collections received in excess of the requirement for the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes. The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the designated portions of the local option sales and services tax for the last four calendar quarters, as certified by the director of revenue and finance. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of determining the amount of bonds which may be issued. If the local option sales and services tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be adjusted to project the collections of the designated portion for the full year for the purpose of determining the amount of the bonds which may be issued. The provisions of this section constitute separate authorization for the issuance of bonds and shall prevail in the event of conflict with any other provision of the Code limiting the amount of bonds which may be issued or the source of payment of the bonds. Bonds issued under this section shall not limit or restrict the authority of the bond issuer to issue bonds under other provisions of the Code.

5. A city or county, jointly with one or more other political subdivisions as provided in chapter 28E, may pledge irrevocably any amount derived from the designated portions of the revenues of the local option sales and services tax to the support or payment of bonds of an issuer, issued for one or more purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax or a political subdivision may apply the proceeds of its bonds to the support of any such purpose.

6. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued pursuant to this section are declared to be issued for an essential public and governmental purpose. Bonds issued pursuant to this section shall be authorized by resolution of the governing body and may be issued in one or more series and shall bear the date or dates, be payable on demand or mature at the time or times, bear interest at the rate or rates not exceeding that permitted by chapter 74A, be in the denomination or denominations, be in the form, have the rank or priority, be executed in the manner, be payable in the medium of payment, at the place or places, be subject to the terms of redemption, with or without premium, be secured in the manner, and have the other characteristics, as may be provided by the resolution authorizing their issuance. The bonds may be sold at public or private sale at a price as may be determined by the governing body.

95 Acts, ch 186, §7, 9; 96 Acts, ch 1079, §22, 23; 2001 Acts, ch 56, §35

CHAPTER 422C

AUTOMOBILE RENTAL EXCISE TAX

422C.1 Short title.
422C.2 Definitions.
422C.3 Tax on rental of automobiles.
422C.4 Administration and enforcement.
422C.5 Deposit of revenue.

422C.1 Short title.

This chapter may be cited as the *"Automobile Rental Excise Tax Act"*.

92 Acts, ch 1006, §2

422C.2 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Automobile"* means a motor vehicle subject to registration in any state designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

2. *"Department"* means the department of revenue and finance.

3. *"Lessor"* means a person engaged in the business of renting automobiles to users. *"Lessor"* includes a motor vehicle dealer licensed pursuant to chapter 322 who rents automobiles to users. For this purpose, the objective of making a profit is not necessary to make the renting activity a business.

4. *"Person"* means person as defined in section 422.42.

5. *"Rental"* means a transfer of the possession or right to possession of an automobile to a user for a valuable consideration for a period of sixty days or less.

6. *"Rental price"* means the consideration for renting an automobile valued in money, and means the same as *"gross taxable services"* as defined in section 422.42.

7. *"User"* means a person to whom the possession or the right to possession of an automobile is transferred for a period of sixty days or less for a valuable consideration which is paid by the user or by another person.

92 Acts, ch 1006, §3

422C.3 Tax on rental of automobiles.

1. A tax of five percent is imposed upon the rental price of an automobile if the rental transaction is subject to the sales and services tax under chapter 422, division IV, or the use tax under chapter 423. The tax shall not be imposed on any rental transaction not taxable under the state sales and services tax, as provided in section 422.45, or the state use tax, as provided in section 423.4, on automobile rental receipts.

2. The lessor shall collect the tax by adding the tax to the rental price of the automobile.

3. The tax, when collected, shall be stated as a distinct item separate and apart from the rental price of the automobile and the sales and services tax imposed under chapter 422, division IV, or the use tax imposed under chapter 423.

92 Acts, ch 1006, §4; 92 Acts, 2nd Ex, ch 1001, §210

422C.4 Administration and enforcement.

All powers and requirements of the director of revenue and finance to administer the state gross receipts tax law under chapter 422, division IV, are applicable to the administration of the tax imposed under section 422C.3, including but not limited to section 422.25, subsection 4, sections 422.30, 422.48 through 422.52, 422.54 through 422.58, 422.67, 422.68, 422.69, subsection 1, and sections 422.70 through 422.75. However, as an exception to the powers specified in section 422.52, subsection 1, the director shall only require the filing of quarterly reports.

92 Acts, ch 1006, §5

422C.5 Deposit of revenue.

The revenue arising from the operation of this chapter shall be credited to the road use tax fund.

92 Acts, ch 1006, §6

CHAPTER 422D

OPTIONAL TAXES FOR EMERGENCY MEDICAL SERVICES

422D.1 Authorization — election — imposition and repeal — use of revenues.
422D.2 Local income surtax.
422D.3 Administration.
422D.4 Payment to local government — use of receipts.
422D.5 Property tax levy.
422D.6 Emergency medical services trust fund.

422D.1 Authorization — election — imposition and repeal — use of revenues.

1. A county board of supervisors may offer for voter approval any of the following taxes or a combination of the following taxes:

a. Local option income surtax.

b. An ad valorem property tax.

Revenues generated from these taxes shall be used for emergency medical services as provided in section 422D.6.

2. The taxes for emergency medical services shall only be imposed after an election at which a

majority of those voting on the question of imposing the tax or combination of taxes specified in subsection 1, paragraph *"a"* or *"b"*, vote in favor of the question. However, the tax or combination of taxes specified in subsection 1 shall not be imposed on property within or on residents of a benefited emergency medical services district under chapter 357F. The question of imposing the tax or combination of the taxes may be submitted at the regular city election, a special election, or state general election. Notice of the question shall be provided by publication at least sixty days before the time of the election and shall identify the tax or combination of taxes and the rate or rates, as applicable. If a majority of those voting on the question approve the imposition of the tax or combination of taxes, the tax or combination of taxes shall be imposed as follows:

a. A local option income surtax shall be imposed for tax years beginning on or after January 1 of the fiscal year in which the favorable election was held.

b. An ad valorem property tax shall be imposed for the fiscal year in which the election was held.

Before a county imposes an income surtax as specified in subsection 1, paragraph *"a"*, a benefited emergency medical services district in the county shall be dissolved, and the county shall be liable for the outstanding obligations of the benefited district. If the benefited district extends into more than one county, the county imposing the income surtax shall be liable for only that portion of the obligations relating to the portion of the benefited district in the county.

3. Revenues received by the county from the taxes imposed under this chapter shall be deposited into the emergency medical services trust fund created pursuant to section 422D.6 and shall be used as provided in that section.

4. Any tax or combination of taxes imposed shall be for a maximum period of five years.

92 Acts, ch 1226, §17

422D.2 Local income surtax.

A county may impose by ordinance a local income surtax as provided in section 422D.1 at the rate set by the board of supervisors, of up to one percent, on the state individual income tax of each individual residing in the county at the end of the individual's applicable tax year. However, the cumulative total of the percents of income surtax imposed on any taxpayer in the county shall not exceed twenty percent. The reason for imposing the surtax and the amount needed shall be set out in the ordinance. The surtax rate shall be set to raise only the amount needed. For purposes of this section, *"state individual income tax"* means the tax computed under section 422.5, less the credits allowed in sections 422.11A, 422.11B, 422.12, and 422.12B.

92 Acts, ch 1226, §18; 97 Acts, ch 23, §46

See also §298.14

422D.3 Administration.

A local income surtax shall be imposed January 1 of the fiscal year in which the favorable election was held for tax years beginning on or after January 1, and is repealed as provided in section 422D.1, subsection 4, as of December 31 for tax years beginning after December 31.

The director of revenue and finance shall administer the local income surtax as nearly as possible in conjunction with the administration of state income tax laws. The director shall provide on the regular state tax forms for reporting local income surtax.

An ordinance imposing a local income surtax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division II. All powers and requirements of the director in administering the state income tax law apply to the administration of a local income surtax, including but not limited to, the provisions of sections 422.4, 422.20 to 422.31, 422.68, 422.70, and 422.72 to 422.75. Local officials shall confer with the director of revenue and finance for assistance in drafting the ordinance imposing a local income surtax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

The director, in consultation with local officials, shall collect and account for a local income surtax and any interest and penalties. The director shall credit local income surtax receipts and any interest and penalties collected from returns filed on or before November 1 of the calendar year following the tax year for which the local income surtax is imposed to a "local income surtax fund" established in the department of revenue and finance. All local income surtax receipts and any interest and penalties received or refunded from returns filed after November 1 of the calendar year following the tax year for which the local income surtax is imposed shall be deposited in or withdrawn from the state general fund and shall be considered part of the cost of administering the local income surtax.

92 Acts, ch 1226, §19; 99 Acts, ch 151, §35, 89

422D.4 Payment to local government — use of receipts.

1. On or before December 15, the director of revenue and finance shall make an accounting of the local income surtax receipts and any interest and penalties collected from returns filed on or before November 1 and shall certify to the treasurer of state this amount collected. The treasurer of state shall remit within fifteen days of the certification by the director to each county which has imposed a local income surtax the amount in the local

income surtax fund collected as a result of its surtax.

2. Local income surtax moneys received by a county shall be deposited and used as provided in section 422D.6.

92 Acts, ch 1226, §20

422D.5 Property tax levy.

A county may levy an emergency medical services tax at the rate set by the board of supervisors and approved at the election as provided in section 422D.1, on all taxable property in the county for fiscal years beginning with the fiscal year in which the favorable election was held. The reason for imposing the tax and the amount needed shall be set out on the ballot. The rate shall be set so as to raise only the amount needed. The levy is repealed for subsequent fiscal years as provided in section 422D.1, subsection 4.

92 Acts, ch 1226, §21

422D.6 Emergency medical services trust fund.

1. A county authorized to impose a tax under this chapter shall establish an emergency medical services trust fund into which revenues received from the taxes imposed shall be deposited. Moneys in the trust fund shall be used for emergency medical services. In addition, moneys in the fund may be used for the purpose of matching federal or state funds for education and training related to emergency medical services.

2. A county may enter into chapter 28E agreements with other counties in order to ensure adequate coverage of the county's service area.

3. Costs which are eligible for emergency medical services trust fund expenditures include, but are not limited to:

a. Defibrillators.

b. Nondisposable essential ambulance equipment, as defined by rule by the Iowa department of public health.

c. Communications pagers, radios, and base repeaters.

d. Training in the use of emergency medical services equipment.

e. Vehicles including, but not limited to, ambulances, fire apparatus, boats, rescue/first response vehicles, and snowmobiles.

f. Automotive parts.

g. Buildings.

h. Land.

92 Acts, ch 1226, §22

CHAPTER 422E

SCHOOL INFRASTRUCTURE FUNDING

Multistate discussions to consider simplification and uniformity of sales and use tax administration; 2002 Acts, ch 1161, §4, 5

422E.1 Authorization — rate of tax — use of revenues.
422E.2 Imposition by county.
422E.3 Collection of tax.
422E.4 Bonding.
422E.5 School infrastructure safety fund.

422E.1 Authorization — rate of tax — use of revenues.

1. A local sales and services tax for school infrastructure purposes may be imposed by a county on behalf of school districts as provided in this chapter.

If a local sales and services tax for school infrastructure is imposed by a county pursuant to this chapter, a local excise tax for school infrastructure at the same rate shall be imposed by the county on the purchase price of natural gas, natural gas service, electricity, or electric service subject to tax under chapter 423 and not exempted from tax by any provision of chapter 423. The local excise tax for school infrastructure is applicable only to the use of natural gas, natural gas service, electricity, or electric service within those incorporated and unincorporated areas of the county where it is imposed and, except as otherwise provided in this chapter, shall be collected and administered in the same manner as the local sales and services tax for school infrastructure. For purposes of this chapter, *"local sales and services tax for school infrastructure"* shall also include the local excise tax for school infrastructure.

2. The maximum rate of tax shall be one percent. The tax shall be imposed without regard to any other local sales and services tax authorized in chapter 422B, and is repealed at the expiration of a period of ten years of imposition or a shorter period as provided in the ballot proposition.

3. Local sales and services tax moneys received by a county for school infrastructure purposes pursuant to this chapter shall be utilized

solely for school infrastructure needs. For purposes of this chapter, *"school infrastructure"* means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, purchasing, or remodeling of schoolhouses, stadiums, gyms, fieldhouses, and bus garages and the procurement of schoolhouse construction sites and the making of site improvements. Additionally, *"school infrastructure"* includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this subsection, and the payment or retirement of bonds issued under section 422E.4.

98 Acts, ch 1130, §1, 6; 99 Acts, ch 151, §36, 89

Subsection 1, new unnumbered paragraph 2 is effective May 1, 1999; 99 Acts, ch 151, §36, 89

Contingent appropriation of funds for deposit in certain school district accounts within local sales and service tax fund under §422B.10, subsection 1, if treasurer of state determines that appropriation will not affect tax exempt status of outstanding bonds under §292.1; letter to Code editor from treasurer of state stating that appropriation of funds is consistent with use of tax exempt proceeds and should proceed as authorized by general assembly and governor; 2002 Acts, 2nd Ex, ch 1003, §193, 194, 213

422E.2 Imposition by county.

1. *a.* A local sales and services tax shall be imposed by a county only after an election at which a majority of those voting on the question favors imposition. The effective date shall be either January 1 or July 1 but not sooner than ninety days following the favorable election. A local sales and services tax approved by a majority vote shall apply to all incorporated and unincorporated areas of that county.

b. A local sales and services tax shall be repealed on either June 30 or December 31 but not sooner than ninety days following the favorable election, if one is held.

c. If a local sales and services tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be repealed on that date, notwithstanding paragraph *"b"*.

2. *a.* Upon receipt by a county board of supervisors of a petition requesting imposition of a local sales and services tax for infrastructure purposes, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election, the board shall within thirty days direct the county commissioner of elections to submit the question of imposition of the tax to the registered voters of the whole county.

b. Alternatively, the question of imposition of a local sales and services tax for school infrastructure purposes may be proposed by motion or motions, requesting such submission, adopted by the governing body of a school district or school districts located within the county containing a total, or a combined total in the case of more than one school district, of at least one-half of the population of the county, or by the county board of supervisors. Upon adoption of such motion, the governing body of a school district shall notify the board of supervisors of the adoption of the motion. The county board of supervisors shall submit the motion to the county commissioner of elections, who shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion.

3. The county commissioner of elections shall submit the question of imposition of a local sales and services tax for school infrastructure purposes at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the rate of tax, the date the tax will be imposed and repealed, and shall contain a statement as to the specific purpose or purposes for which the revenues shall be expended. The dates for the imposition and repeal of the tax shall be as provided in subsection 1. The rate of tax shall not be more than one percent as set by the county board of supervisors. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

4. *a.* The tax may be repealed or the rate increased, but not above one percent, or decreased after an election at which a majority of those voting on the question of repeal or rate change favored the repeal or rate change. The election at which the question of repeal or rate change is offered shall be called and held in the same manner and under the same conditions as provided in this section for the election on the imposition of the tax. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. However, the tax shall not be repealed before it has been in effect for one year.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue and finance. Election costs shall be apportioned among school districts within the county on a pro rata basis in proportion to the number of registered voters in each school district who reside within the county and the total number of registered voters within the county.

A local option sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422E.4, unless funds sufficient to pay the princi-

pal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

98 Acts, ch 1130, §2, 6; 99 Acts, ch 156, §15, 16, 23; 2000 Acts, ch 1058, §37; 2001 Acts, ch 24, §50; 2002 Acts, ch 1134, §111, 115

Amendments to subsections 1 and 3 are effective April 1, 2000, for local sales and services taxes; 99 Acts, ch 156, §15, 23

2002 amendment to subsection 4, paragraph b, unnumbered paragraph 1, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 4, paragraph b, unnumbered paragraph 1 stricken and rewritten

422E.3 Collection of tax.

1. If a majority of those voting on the question of imposition of a local sales and services tax for school infrastructure purposes favors imposition of the tax, the tax shall be imposed by the county board of supervisors within the county pursuant to section 422E.2, at the rate specified for a ten-year duration on the gross receipts taxed by the state under chapter 422, division IV.

2. The tax shall be imposed on the same basis as the state sales and services tax or in the case of the use of natural gas, natural gas service, electricity, or electric service on the same basis as the state use tax and shall not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 452A which is consumed for highway use or in watercraft or aircraft if the fuel tax is paid on the transaction and a refund has not or will not be allowed, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of equipment by the state department of transportation, on the gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99E and except the tax shall not be imposed on the gross receipts from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the gross receipts from the sale of natural gas or electric energy are subject to a franchise fee or user fee during the period the franchise or user fee is imposed.

3. The tax is applicable to transactions within the county where it is imposed and shall be collected by all persons required to collect state gross receipts or local excise taxes. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. The amount of the sale, for purposes of determining the amount of the tax, does not include the amount of any state gross receipts or excise taxes or other local option sales or excise taxes. A tax permit other than the state tax permit required under section 422.53 or 423.10 shall not be required by local authorities.

4. The director of revenue and finance shall credit tax receipts and interest and penalties from the local sales and services tax for school infrastructure purposes to an account within the county's local sales and services tax fund, as created in section 422B.10, subsection 1, maintained in the name of the school district or school districts located within the county. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated among the possible counties based on allocation rules adopted by the director.

5. *a.* The director of revenue and finance by August 15 of each fiscal year shall send to each school district where the tax is imposed an estimate of the amount of tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director shall remit ninety-five percent of the estimated tax receipts for the school district to the school district on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director shall remit a final payment of the remainder of tax moneys due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the November payment shall be adjusted to reflect any overpayment.

If more than one school district, or a portion of a school district, is located within the county, tax receipts shall be remitted to each school district or portion of a school district in which the county tax is imposed in a pro rata share based upon the ratio which the percentage of actual enrollment for the school district that attends school in the county bears to the percentage of the total combined actual enrollments for all school districts that attend school in the county. The combined actual enrollment for a county, for purposes of this section, shall be determined for each county imposing a sales and services tax for school infrastructure purposes by the department of management based on the actual enrollment figures reported by Octo-

ber 1 to the department of management by the department of education pursuant to section 257.6, subsection 1. The combined actual enrollment count shall be forwarded to the director of the department of management by March 1, annually, for purposes of supplying estimated tax payment figures and making estimated tax payments pursuant to this section for the following fiscal year.

6. The local sales and services tax for school infrastructure purposes shall be administered as provided in section 422B.9.

7. Construction contractors may make application to the department for a refund of the additional local sales and services tax paid under this chapter by reason of taxes paid on goods, wares, or merchandise under the conditions specified in section 422B.11. The refund shall be paid by the department from the appropriate school district's account in the local sales and services tax fund. The penalty provisions contained in section 422B.11, subsection 3, shall apply regarding an erroneous application for refund of local sales and services tax paid under this chapter.

98 Acts, ch 1130, §3, 6; 99 Acts, ch 151, §37 – 39, 89; 99 Acts, ch 156, §17 – 19, 23; 2001 Acts, ch 116, §16; 2002 Acts, ch 1151, §13

1999 amendment to subsection 2 regarding imposition of a local sales and services tax on natural gas, natural gas service, electricity, or electric service is effective May 1, 1999; 99 Acts, ch 151, §37, 89

1999 amendment to subsection 3 requiring persons collecting local excise taxes to collect local sales and services tax if imposed is effective May 1, 1999; 99 Acts, ch 151, §39, 89

Subsection 7 applies retroactively to July 1, 1998; 99 Acts, ch 156, §19, 23

Abatement of taxes owed or refund of taxes paid by foundries located in Lee or Jefferson county on certain purchases of tangible personal property between July 1, 1997, and May 6, 2002; filing deadline and limitation on claims for refunds; 2002 Acts, ch 1151, §33, 36

Subsection 5, paragraph a amended

422E.4 Bonding.

The board of directors of a school district shall be authorized to issue negotiable, interest-bearing school bonds, without election, and utilize tax receipts derived from the sales and services tax for school infrastructure purposes for principal and interest repayment. Proceeds of the bonds issued pursuant to this section shall be utilized solely for school infrastructure needs as school infrastructure is defined in section 422E.1, subsection 3. Issuance of bonds pursuant to this section shall be permitted only in a district which has imposed a local sales and services tax for school infrastructure purposes pursuant to section 422E.2. The provisions of sections 298.22 through 298.24 shall apply regarding the form, rate of interest, registration, redemption, and recording of bond issues pursuant to this section, with the exception that the maximum period during which principal on the bonds is payable shall not exceed a ten-year period, or the date of repeal stated on the ballot proposition.

A school district in which a local option sales tax for school infrastructure purposes has been imposed shall be authorized to enter into a chapter 28E agreement with one or more cities or a county whose boundaries encompass all or a part of the area of the school district. A city or cities entering into a chapter 28E agreement shall be authorized to expend its designated portion of the local option sales and services tax revenues for any valid purpose permitted in this chapter or authorized by the governing body of the city. A county entering into a chapter 28E agreement with a school district in which a local option sales tax for school infrastructure purposes has been imposed shall be authorized to expend its designated portion of the local option sales and services tax revenues to provide property tax relief within the boundaries of the school district located in the county. A school district where a local option sales and services tax is imposed is also authorized to enter into a chapter 28E agreement with another school district which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district shall only expend its designated portion of the local option sales and services tax for infrastructure purposes.

The governing body of a city may authorize the issuance of bonds which are payable from its designated portion of the revenues of the local option sales and services tax, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. A city may pledge irrevocably any amount derived from its designated portions of the revenues of the local option sales and services tax to the support or payment of such bonds.

98 Acts, ch 1130, §4, 6; 99 Acts, ch 156, §20, 23

1999 amendment to unnumbered paragraph 2 applies retroactively to July 1, 1998; 99 Acts, ch 156, §20, 23

422E.5 School infrastructure safety fund.

1. There shall be distributed from the federal funds allocated to the state of Iowa as described in Conference Committee Report 105-390, accompanying H.R. 2264, making federal appropriations to the United States departments of labor, health and human services, and education, to the state department of education the sum of eight million dollars to establish a school infrastructure safety fund.

2. The funds shall be allocated to the school budget review committee to develop a school infrastructure safety fund grant program, in conjunction with the state fire marshal. For purposes of reviewing grant applications and making recommendations regarding the administration of the program, the state fire marshal shall be considered an additional voting member of the school budget review committee.

3. Top priority in awarding program grants shall be the making of school infrastructure improvements relating to fire and personal safety. School districts eligible for program grants shall have received an order or citation from the state fire marshal, or a fire department chief or fire pre-

vention officer, for one or more fire safety violations regarding a school facility, or in the opinion of the state fire marshal shall be regarded as operating facilities subject to significant fire safety deficiencies. Grant awards shall also be available for defects or violations of the state building code revealed during an inspection of school facilities by a local building department, or for improvements consistent with the standards and specifications contained in the state building code regarding ensuring that buildings and facilities are accessible to and functional for persons with disabilities. The school budget review committee shall allocate program funds to school districts which, in its discretion, are determined to be faced with the most severe deficiencies. School districts applying for program grants shall have developed and submitted to the state fire marshal or local building department a written plan to remedy fire or safety defects within a specified time frame. Approval of the written plan by the state fire marshal or local building department shall be obtained prior to receipt of a grant award by a school district.

4. Application forms, submission dates for applications and for written plans to remedy fire or safety defects, and grant award criteria shall be developed by the state department of education, in coordination with the state fire marshal, by rule.

5. The school budget review committee shall submit a progress report of the number and amount of grants awarded, and fire and safety improvements made, pursuant to the school infrastructure safety fund grant program, to the general assembly by January 1, 2000.

6. If federal rules or regulations are adopted relating to the distribution or utilization of funds allocated to the state department of education pursuant to this section which are inconsistent with the provisions of this section, the state department of education shall adopt rules to comply with the requirements of the federal rules or regulations.

98 Acts, ch 1130, §5, 6

CHAPTER 423

USE TAX

Refunds to governmental bodies, §422.45
Multistate discussions to consider simplification and uniformity of sales and use tax administration; 2002 Acts, ch 1161, §4, 5

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423.1 Definitions.

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section:

1. *"Certificate of title"* means a certificate of title issued for a vehicle or for manufactured housing under chapter 321.

2. *"Department"* and *"director"* shall have the same meaning as defined in section 422.3.

3. *"Installed purchase price"* is the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. *"Installed purchase price"* includes, but is not limited to, amounts charged for installing a foundation and electrical and plumbing hookups. *"Installed purchase price"* excludes any amount charged for landscaping in connection

with the conversion.

4. *"Manufactured housing"** means the same as defined in section 321.1.

5. *"Mobile home"** means mobile home as defined in section 321.1, subsection 36C, paragraph *"a"*.

6. *"Person"* and *"taxpayer"* shall have the same meaning as defined in section 422.42.

7. *"Purchase"* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

8. *"Purchase price"* means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided:

a. That cash discounts taken on sales are not included. A cash rebate which is provided by a motor vehicle manufacturer to the purchaser of a vehicle subject to registration shall not be included so long as the rebate is applied to the purchase price of the vehicle.

b. That in transactions, except those subject to paragraph *"c"*, in which tangible personal property is traded toward the purchase price of other tangible personal property the purchase price is only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

c. That in transactions between persons, neither of which is a retailer of vehicles subject to registration, in which a vehicle subject to registration is traded toward the purchase price of another vehicle subject to registration, the purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the amount of the vehicle subject to registration traded.

9. *"Retailer"* means and includes every person engaged in the business of selling tangible personal property or services enumerated in section 422.43 for use within the meaning of this chapter. However, when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of those dealers, distributors, supervisors, employers, or persons, the director may regard them and the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter.

10. *"Retailer maintaining a place of business in this state"* or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, tangible personal property leased to a lessee of the retailer, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

11. *"Street railways"* shall mean and include urban transportation systems.

12. *"Tangible personal property"* means tangible goods, wares, merchandise, optional service or warranty contracts, except residential service contracts regulated under chapter 523C, vulcanizing, recapping, or retreading services, engraving, photography, retouching, printing, or binding services, and gas, electricity, water, and communication service when furnished or delivered to consumers or users within this state.

13. *"Tangible personal property"* does not include the substance of a transaction that is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.

14. *"Trailer"* shall mean every trailer, as is now or may be hereafter so defined by the motor vehicle law of this state, which is required to be registered or is subject only to the issuance of a certificate of title under such motor vehicle law.

15. *"Use"* means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business. Property used in *"processing"* within the meaning of this subsection shall mean and include any of the following:

a. Any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, and containers used in the collection, recovery or return of empty beverage containers subject to chapter 455C.

b. Fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

c. Chemicals, solvents, sorbents, or reagents, which are directly used and are consumed, dissipated, or depleted in processing personal property, which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product.

The distribution to the public of free newspa-

pers or shoppers guides shall be deemed a retail sale for purposes of the processing exemption. A retailer's or building contractor's sale of manufactured housing* for use in this state, whether in the form of tangible personal property or of realty, is a use of that property for the purposes of this chapter.

16. *"Vehicles subject to registration"* means any vehicle subject to registration pursuant to section 321.18.

17. Definitions contained in section 422.42 shall apply to this chapter according to their context. The use in this state of building materials, supplies, or equipment, the sale or use of which is not treated as a retail sale or a sale at retail under section 422.42, subsections 16 and 17, shall not be subject to tax under this chapter.

[C39, §**6943.102;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.1; 82 Acts, ch 1019, §2, ch 1225, §1, ch 1251, §21, 22, 28]

83 Acts, ch 158, §2; 84 Acts, ch 1140, §3; 84 Acts, ch 1254, §3; 85 Acts, ch 32, §101; 85 Acts, ch 231, §18; 86 Acts, ch 1246, §31; 87 Acts, ch 214, §10, 11; 88 Acts, ch 1206, §1; 93 Acts, ch 126, §2; 94 Acts, ch 1107, §28; 95 Acts, ch 83, §14; 95 Acts, ch 187, §2; 97 Acts, ch 158, §24; 99 Acts, ch 188, §17 – 19; 2000 Acts, ch 1195, §4, 7; 2001 Acts, ch 150, §5, 6; 2002 Acts, ch 1161, §3, 5

*Definitions of "manufactured housing" and "mobile home" changed to "manufactured home" and "manufactured or mobile home" in 2001 Acts, ch 153, §15, 17; 2001 Acts, ch 176, §80

Subsection 13 takes effect May 16, 2000, and applies retroactively to March 15, 1995; 2000 Acts, ch 1195, §7

Subsection 13, unnumbered paragraph 2 stricken

423.2 Imposition of tax.

An excise tax is imposed on the use in this state of tangible personal property, including aircraft subject to registration under section 328.20, purchased for use in this state, at the rate of five percent of the purchase price of the property. An excise tax is imposed on the use of manufactured housing in this state at the rate of five percent of the purchase price if the manufactured housing is sold in the form of tangible personal property and at the rate of five percent of the installed purchase price if the manufactured housing is sold in the form of realty. An excise tax is imposed on the use of leased vehicles at the rate of five percent of the amount otherwise subject to tax as calculated pursuant to section 423.7A. The excise tax is imposed upon every person using the property within this state until the tax has been paid directly to the county treasurer or the state department of transportation, to a retailer, or to the department. An excise tax is imposed on the use in this state of services enumerated in section 422.43 at the rate of five percent. This tax is applicable where services are rendered, furnished, or performed in this state or where the product or result of the service is used in this state. This tax is imposed on every person using the services or the product of the services in this state until the user has paid the tax either to an Iowa use tax permit holder or to the department.

[C39, §**6943.103;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.2]

83 Acts, ch 1, §5, 6; 92 Acts, 2nd Ex, ch 1001, §211, 213; 96 Acts, ch 1125, §2; 99 Acts, ch 168, §2; 99 Acts, ch 188, §20

Abatement of taxes owed or refund of taxes paid by foundries located in Lee or Jefferson county on purchases of tangible personal property between July 1, 1997, and May 6, 2002; filing deadline and limitation on claims for refunds; 2002 Acts, ch 1151, §33, 36

423.3 Sales by federal government.

Purchases of tangible personal property made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by section 423.2. Services purchased from the same source or sources shall be subject to service tax imposed by this chapter and apply to the user thereof.

This section shall not apply to purchases made by counties or municipal corporations.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.3]

423.4 Exemptions.

The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this chapter:

1. Tangible personal property and enumerated services, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by division IV of chapter 422, if that tax has been paid to the department or paid to the retailer. This exemption does not include vehicles subject to registration or subject only to the issuance of a certificate of title.

2. All articles of tangible personal property brought into the state of Iowa by a nonresident individual thereof for the individual's use or enjoyment while within the state.

3. Services exempt from taxation by provisions of section 422.45.

4. The gross receipts from the sale or rental of tangible personal property or from the rendering, furnishing, or performing of services which are exempted from the retail sales tax by the terms of section 422.45, except subsection 4 and subsection 6 of section 422.45 as it relates to the sale of vehicles subject to registration or subject only to the issuance of a certificate of title and as it relates to aircraft subject to registration under section 328.20.

5. Advertisement and promotional material and matter, seed catalogs, envelopes for same, and other similar material temporarily stored in this state which are acquired outside of Iowa and which, subsequent to being brought into this state, are sent outside of Iowa, either singly or physically attached to other tangible personal property sent outside of Iowa.

6. Tangible personal property used or to be used as railroad rolling stock for transporting per-

sons or property, or as materials or parts therefor.

7. Vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, except such vehicles subject to registration which are designed primarily for carrying persons, when purchased for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. This subsection shall be retroactive to January 1, 1973.

8. Tangible personal property which, by means of fabrication, compounding, or manufacturing, become an integral part of vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Vehicles subject to registration which are designed primarily for carrying persons are excluded from this subsection. This subsection shall be retroactive to January 1, 1973.

9. Vehicles subject to registration which are transferred from a business or individual conducting a business within this state as a sole proprietorship, partnership, or limited liability company to a corporation formed by the sole proprietorship, partnership, or limited liability company for the purpose of continuing the business when all of the stock of the corporation so formed is owned by the sole proprietor and the sole proprietor's spouse, by all the partners in the case of a partnership, or by all of the members in the case of a limited liability company. This exemption is equally available where the vehicles subject to registration are transferred from a corporation to a sole proprietorship, partnership, or limited liability company formed by that corporation for the purpose of continuing the business when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

This exemption also applies where the vehicles subject to registration are transferred from a corporation as part of the liquidation of the corporation to its stockholders if within three months of such transfer the stockholders retransfer those vehicles subject to registration to a sole proprietorship, partnership, or limited liability company for the purpose of continuing the business of the corporation when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

10. Vehicles registered or operated under chapter 326 and used substantially in interstate commerce, section 423.5 notwithstanding. For purposes of this subsection, *"substantially in interstate commerce"* means that a minimum of twenty-five percent of the miles operated by the vehicle accrues in states other than Iowa. This subsection applies only to vehicles which are registered for a gross weight of thirteen tons or more.

For purposes of this subsection, trailers and semitrailers registered or operated under chapter 326 are deemed to be used substantially in interstate commerce and to be registered for a gross weight of thirteen tons or more.

For the purposes of this subsection, if a vehicle meets the requirement that twenty-five percent of the miles operated accrues in states other than Iowa in each year of the first four-year period of operation, the exemption from use tax shall continue until the vehicle is sold or transferred. If the vehicle is found to have not met the exemption requirements or the exemption was revoked, the value of the vehicle upon which the use tax shall be imposed is the book or market value, whichever is less, at the time the exemption requirements were not met or the exemption was revoked.

11. Mobile homes and manufactured homes the use of which has previously been subject to the tax imposed under this chapter and for which that tax has been paid.

12. Mobile homes to the extent of the portion of the purchase price of the mobile home which is not attributable to the cost of the tangible personal property used in the processing of the mobile home and manufactured home to the extent of the purchase price or the installed purchase price of the manufactured home which is not attributable to the cost of the tangible personal property used in the processing of the manufactured home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the mobile home is forty percent and the portion of the purchase price or installed purchase price which is not attributable to the cost of the tangible personal property used in the processing of the manufactured home is forty percent.

13. Tangible personal property used or to be used as a ship, barge, or waterborne vessel which is used or to be used primarily in or for the transportation of property or cargo for hire on the rivers bordering the state or as materials or parts of such ship, barge, or waterborne vessel.

14. Vehicles subject to registration in any state when purchased for rental or registered and titled by a motor vehicle dealer licensed pursuant to chapter 322 for rental use, and held for rental for a period of one hundred twenty days or more and actually rented for periods of sixty days or less by a person regularly engaged in the business of renting vehicles including, but not limited to, motor vehicle dealers licensed pursuant to chapter 322 who rent automobiles to users, if the rental of the vehicles is subject to taxation under chapter 422C.

15. Motor vehicles subject to registration which were registered and titled between July 1, 1982, and July 1, 1992, to a motor vehicle dealer licensed under chapter 322 and which were rented to a user as defined in section 422C.2 if the following occurred:

a. The dealer kept the vehicle on the inventory

of vehicles for sale at all times.

b. The vehicle was to be immediately taken from the user of the vehicle when a buyer was found.

c. The user was aware of this situation.

16. Vehicles subject to registration under chapter 321, with a gross vehicle weight rating of less than sixteen thousand pounds, excluding motorcycles and motorized bicycles, when purchased for lease and titled by the lessor licensed pursuant to chapter 321F and actually leased for a period of twelve months or more if the lease of the vehicle is subject to taxation under section 423.7A.

A lessor may maintain the exemption from use tax under this subsection for a qualifying lease that terminates at the conclusion or prior to the contracted expiration date, if the lessor does not use the vehicle for any purpose other than for lease. Once the vehicle is used by the lessor for a purpose other than for lease, the exemption from use tax under this subsection no longer applies and, unless there is an exemption from the use tax, use tax is due on the fair market value of the vehicle determined at the time the lessor uses the vehicle for a purpose other than for lease, payable to the department. If the lessor holds the vehicle exclusively for sale, use tax is due and payable on the purchase price of the vehicle at the time of purchase pursuant to this chapter.

17. Aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

18. Aircraft; tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *"aircraft"* means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

19. Tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *"aircraft"* means aircraft used in a nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

20. Aircraft sold to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs *"a"*, *"b"*, and *"c"* are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

[C39, §**6943.104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.4; 82 Acts, ch 1251, §23]

85 Acts, ch 231, §19; 86 Acts, ch 1189, §1, 2; 86 Acts, ch 1205, §1; 90 Acts, ch 1233, §27; 92 Acts, ch 1006, §7; 94 Acts, ch 1165, §25; 96 Acts, ch 1125, §3; 97 Acts, ch 34, §1; 98 Acts, ch 1154, §1; 99 Acts, ch 168, §3, 4; 99 Acts, ch 188, §21; 2000 Acts, ch 1058, §38; 2001 Acts, ch 116, §17; 2001 Acts, ch 150, §7; 2001 Acts, ch 153, §17

Tax paid in another state, §423.25

423.5 Evidence of use.

For the purpose of the proper administration of this chapter and to prevent evasion of the tax, evidence that tangible personal property was sold by any person for delivery in this state shall be prima facie evidence that such tangible personal property was sold for use in this state.

[C39, §**6943.105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.5]

423.6 How collected.

The tax herein imposed shall be collected in the following manner:

1. The tax upon the use of all vehicles subject to registration or subject only to the issuance of a certificate of title or the tax upon the use of manufactured housing shall be collected by the county treasurer or the state department of transportation pursuant to sections 423.7 and 423.7A. The county treasurer shall retain one dollar from each tax payment collected, to be credited to the county general fund.

2. The tax upon the use of all tangible personal property other than that enumerated in subsection 1 hereof, which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the director shall authorize pursuant to section 423.10, shall be collected by such retailer and remitted to the department, pursuant to the provisions of sections 423.9 to 423.13.

3. The tax upon the use of all tangible personal property not paid pursuant to subsections 1 and 2 hereof shall be paid to the department directly by any person using such property within this state, pursuant to the provisions of section 423.14.

4. The tax on services imposed in section 423.2 shall be collected, remitted, and paid to the depart-

ment of revenue and finance of this state in the corresponding manner as use tax on tangible personal property is collected, remitted and paid under provisions of this chapter.

[C39, §**6943.106;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.6; 82 Acts, ch 1251, §24]

89 Acts, ch 174, §1; 96 Acts, ch 1125, §4; 99 Acts, ch 188, §22

423.7 Vehicles subject to registration or only to the issuance of title — manufactured housing.

The tax imposed upon the use of vehicles subject to registration or subject only to the issuance of a certificate of title or imposed upon the use of manufactured housing shall be paid by the owner of the vehicle or of the manufactured housing to the county treasurer or the state department of transportation from whom the registration receipt or certificate of title is obtained. A registration receipt for a vehicle subject to registration or certificate of title shall not be issued until the tax has been paid. The county treasurer or the state department of transportation shall require every applicant for a registration receipt for a vehicle subject to registration or certificate of title to supply information as the county treasurer or the director deems necessary as to the time of purchase, the purchase price, installed purchase price, and other information relative to the purchase of the vehicle or manufactured housing. On or before the tenth day of each month the county treasurer or the state department of transportation shall remit to the department the amount of the taxes collected during the preceding month.

[C39, §**6943.107;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.7; 82 Acts, ch 1251, §25]

86 Acts, ch 1241, §31; 99 Acts, ch 188, §23

Motor vehicles from other states, §423.25

423.7A Motor vehicle lease tax.

1. The tax imposed upon the use of leased vehicles subject to registration under chapter 321, with gross vehicle weight ratings of less than sixteen thousand pounds, excluding motorcycles and motorized bicycles, which are leased by a lessor licensed pursuant to chapter 321F for a period of twelve months or more shall be paid by the owner of the vehicle to the county treasurer or state department of transportation from whom the registration receipt or certificate of title is obtained. A registration receipt for a vehicle subject to registration or issuance of a certificate of title shall not be issued until the tax is paid in the initial instance. Tax on the lease transaction that does not require titling or registration of the vehicle shall be remitted to the department. Tax and the reporting of tax due to the department shall be remitted on or before fifteen days from the last day of the month that the vehicle lease tax becomes due. Failure to timely report or remit any of the tax when due shall result in a penalty and interest being imposed on the tax due pursuant to sections 423.18 and 423.23.

2. The amount subject to tax shall be computed on each separate lease transaction by taking the total of the lease payments, plus the down payment, and excluding all of the following:

a. Title fee.

b. Registration fees.

c. Vehicle lease tax pursuant to this section.

d. Federal excise taxes attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner.

e. Optional service or warranty contracts subject to tax pursuant to section 422.43, subsection 6.

f. Insurance.

g. Manufacturer's rebate.

h. Refundable deposit.

i. Finance charges, if any, on items listed in paragraphs *"a"* through *"h"*.

If any or all of the items in paragraphs *"a"* through *"i"* are excluded from the taxable lease price, the owner shall maintain adequate records of the amounts of those items. If the parties to a lease enter into an agreement providing that the tax imposed under this statute is to be paid by the lessee or included in the monthly lease payments to be paid by the lessee, the total cost of the tax shall not be included in the computation of lease price for the purpose of taxation under this section. The county treasurer, the state department of transportation, or the department of revenue and finance shall require every applicant for a registration receipt for a vehicle subject to tax under this section to supply information as the county treasurer or director deems necessary as to the date of the lease transaction, the lease price, and other information relative to the lease of the vehicle.

3. On or before the tenth day of each month the county treasurer or the state department of transportation shall remit to the department the amount of the taxes collected during the preceding month.

4. If the lease is terminated prior to the termination date contained in the lease agreement, no refund shall be allowed for tax previously paid under this section, except as provided in section 322G.4.

96 Acts, ch 1125, §5; 97 Acts, ch 34, §2

423.8 Sales tax report — deduction.

Motor vehicle or trailer dealers, in making their reports and returns to the department for the purpose of paying the retail sales tax imposed by division IV of chapter 422, shall be permitted to deduct all gross receipts from retail sales of vehicles subject to registration or subject only to the issuance of a certificate of title. Gross receipts from sales of vehicles subject to registration or subject only to the issuance of a certificate of title are exempted from the tax imposed by division IV, but, if re-

quired by the director, the gross receipts shall be included in the returns made by motor vehicle or trailer dealers under division IV, and proper deductions taken pursuant to this section.

[C39, §**6943.108;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.8; 82 Acts, ch 1251, §26]

423.9 Collection by retailer.

Every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under section 423.4 nor collectible under section 423.7, shall at the time of making the sales, whether within or without the state, collect the tax imposed by this chapter from the purchaser, and give to the purchaser a receipt for the tax in the manner and form prescribed by the director, if the director, by rules, requires a receipt. Each such retailer shall list with the department the name and address of all the retailer's agents operating in this state, and the location of all the retailer's distribution or sales houses or offices or other places of business in this state. The department may deny the issuance of a permit to a retailer who is substantially delinquent in paying a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if a partner owes any delinquent tax, penalty or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty or interest of the applicant corporation.

Every person rendering, furnishing, or performing services enumerated in section 422.43, maintaining a place of business in this state shall be subject to the provisions of the preceding paragraph.

[C39, §**6943.109;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.9]

86 Acts, ch 1007, §34

423.10 Foreign retailers.

The director may, upon application authorize the collection of the tax herein imposed by any retailer not maintaining a place of business within this state, who, to the satisfaction of the director furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject to such regulations and agreements as the director shall prescribe. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property sold to the retailer's knowledge for use within this state, in the same manner and subject to the same requirements as a retailer maintaining a place of business within this state. Such authority and permit may be canceled when, at any time, the director considers the security inadequate, or that such tax can more effectively be collected from the person using such property in this state.

The discretionary power granted therein is extended to apply in the case of persons rendering, furnishing or performing services enumerated in section 422.43.

[C39, §**6943.110;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.10]

423.11 Absorbing tax prohibited.

It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. The director shall have the power to adopt and promulgate rules for adding such tax, or the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. Any person violating any of the provisions of this section within this state shall be guilty of a simple misdemeanor.

[C39, §**6943.111;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.11]

423.12 Tax as debt.

The tax herein required to be collected by any retailer pursuant to section 423.9 or 423.10, and any tax collected by any retailer pursuant to said sections, shall constitute a debt owed by the retailer to this state.

An increase or decrease in the excise tax rate in this section shall only be effective on January 1 or July 1, but not sooner than ninety days after enactment of the rate increase or decrease.

[C39, §**6943.112;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.12]

99 Acts, ch 156, §21, 23

Unnumbered paragraph 2 is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §21, 23

423.13 Payment to department — successor liability.

A permit holder required or authorized, pursuant to section 423.9 or 423.10, to collect or pay the tax imposed, shall remit to the department the amount of tax, on or before the last day of the month following each calendar quarterly period. However, a retailer who collects or owes more than fifteen hundred dollars in use taxes in a month shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or owed, with a deposit form for the month as prescribed by the director. The deposit form is due on or before the twentieth day of the month following the month of collection,

except a deposit is not required for the third month of the calendar quarter, and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. At that time, the retailer shall file with the department a return for the preceding quarterly period in the form prescribed by the director showing the sales price of the tangible personal property sold by the retailer during the preceding quarterly period, the use of which is subject to the tax imposed by this chapter, and other information the director deems necessary for the proper administration of this chapter. The return shall be accompanied by a remittance of the tax for the period covered by the return. If necessary in order to ensure payment to the state of the tax, the director may in any or all cases require returns and payments to be made for other than quarterly periods. The director may, upon request and a proper showing of necessity, grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed, in accordance with forms and rules prescribed by the director, by the retailer or the retailer's authorized agent, and shall be certified by the retailer or agent to be correct.

If it is reasonably expected, as determined by rules prescribed by the director, that a retailer's annual use tax liability will not exceed one hundred twenty dollars for a calendar year, the retailer may request and the director may grant permission to the retailer, in lieu of the quarterly filing and remitting requirements of the first paragraph of this section, to file the return required by and remit the use tax due under this section on a calendar year basis. The return and tax are due and payable no later than January 31 following each calendar year in which the retailer carries on business.

If a retailer sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of delinquent taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an *"immediate successor"* for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

The director, in cooperation with the department of management, may periodically change the filing and remittance thresholds by administrative rule if in the best interest of the state and the taxpayer to do so.

[C39, §**6943.113;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.13; 82 Acts, ch 1022, §6, 8]

86 Acts, ch 1007, §35; 89 Acts, ch 251, §31, 32; 2002 Acts, ch 1151, §14

Personal liability of officers and partners; see §421.26

NEW unnumbered paragraph 4

423.14 Liability of user.

Any person who uses any property or services enumerated in section 422.43 upon which the tax imposed under this chapter has not been paid, either to the county treasurer or to a retailer or direct to the department as provided in this chapter, shall be liable for the payment of tax, and shall on or before the last day of the month next succeeding each quarterly period pay the tax imposed upon all such property and services used by the person during the preceding quarterly period in the manner and accompanied by such returns as the director shall prescribe. All of the provisions of section 423.13 with reference to the returns and payments shall be applicable to the returns and payments required under this section.

[C39, §**6943.114;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.14]

2002 Acts, ch 1150, §9

Personal liability of officers and partners; see §421.26

Section amended

423.15 Bond to secure payment.

The director may, when necessary and advisable in order to secure the collection of the tax levied under this chapter, authorize any person subject to such tax, and any permit holder required or authorized to collect such tax pursuant to the provisions of sections 423.9 and 423.10, to file with the department a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of any tax, amount, or penalties due or which may become due from such person. In lieu of such bond, securities approved by the director, in such amount as the director may prescribe, may be deposited with the department, which securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this chapter shall be returned to the person who deposited the securities.

[C39, §**6943.115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.15]

423.16 Determination by department.

If any return required by this chapter is not filed, or if any return when filed is incorrect or insufficient, and the maker or person from whom it is due fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall have the same power to determine the amount due, as is vested in the department by sections 422.54, 422.55, and 422.57, subject to all of the provisions, and restrictions, and rights to seek judicial review provided in the sections. If a return required by this chapter has been filed, the period of limitation specified in section 422.54, subsection 1, shall apply to the making of a determination by the department of the amount of tax due and to the giving of notice to the taxpayer of such determination. The right to waive the period of limitation as provided in section 422.54, subsection 3, is applicable to this chapter.

[C39, §**6943.116;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.16]

92 Acts, 2nd Ex, ch 1001, §244; 99 Acts, ch 156, §22, 23

1999 amendment is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §22, 23

423.17 Lien of tax — penalties.

All of the provisions of sections 422.56 and 422.57 shall apply in respect to the procedure, taxes, amounts required to be paid, or penalties imposed, as provided by this chapter.

[C39, §**6943.117;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.17]

423.18 Offenses — penalties — limitations.

1. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the monthly deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter.

2. A person who willfully attempts in any manner to evade a tax imposed by this chapter or the payment of the tax, or a person who makes or causes to be made any false or fraudulent monthly deposit form or return with intent to evade the tax imposed by this chapter or the payment of the tax is guilty of a class "D" felony.

3. A person required to pay tax, or to make, sign or file a monthly deposit form or return, who willfully makes a false or fraudulent monthly deposit form or return, or who willfully fails at the time required by law to pay at least ninety percent of the tax or fails to make, sign or file the monthly deposit form or return, is guilty of a fraudulent practice.

4. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

[C39, §**6943.118 – 6943.120;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §423.18 – 423.20; C81, §423.18; 81 Acts, ch 131, §11; 82 Acts, ch 1022, §7, 8]

83 Acts, ch 160, §8; 84 Acts, ch 1173, §7; 86 Acts, ch 1007, §36; 87 Acts, ch 199, §10; 90 Acts, ch 1172, §11; 95 Acts, ch 83, §15; 99 Acts, ch 152, §11, 40

423.19 and 423.20 Repealed by 79 Acts, ch 97, § 6. See § 423.18.

423.21 Books — examination.

Every retailer required or authorized to collect taxes imposed by this chapter and every person using in this state tangible personal property, services, or the product of services shall keep those records, receipts, invoices, and other pertinent papers as the director shall require, in the form that the director shall require. The director or any duly authorized agent of the department may examine the books, papers, records, and equipment of any person either selling tangible personal property or services or liable for the tax imposed by this chapter, and investigate the character of the business of any person in order to verify the accuracy of any return made, or if a return was not made by the person, ascertain and determine the amount due under this chapter. These books, papers, and records shall be made available within this state for examination upon reasonable notice when the director shall deem it advisable and shall so order. The preceding requirements shall likewise apply to users and persons rendering, furnishing, or performing service enumerated in section 422.43.

[C39, §**6943.121;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.21]

95 Acts, ch 83, §16

423.22 Revoking permits.

If a retailer maintaining a place of business in this state, or authorized to collect the tax imposed pursuant to section 423.10, fails to comply with any of the provisions of this chapter or any orders or rules prescribed and adopted under this chapter, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permitholding corporation, or interest or penalty on the

tax, administered by the department, the director may, upon notice and hearing as provided, by order revoke the permit, if any, issued to the retailer under section 422.53, or if the retailer is a corporation authorized to do business in this state under chapter 490, may certify to the secretary of state a copy of an order finding that the retailer has failed to comply with specified provisions, orders, or rules. The secretary of state shall, upon receipt of the certified copy, revoke the permit authorizing the corporation to do business in this state, and shall issue a new permit only when the corporation has obtained from the director an order finding that the corporation has complied with its obligations under this chapter. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why the order should not be made, and the retailer shall be given ten days' notice of the time, place, and purpose of the hearing. The director may issue a new permit pursuant to section 422.53 after revocation. The preceding provision applies to users and persons supplying services enumerated in section 422.43.

[C39, §**6943.122;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.22]

86 Acts, ch 1007, §37; 93 Acts, ch 126, §3; 94 Acts, ch 1107, §29

423.23 Statutes applicable.

The director shall enforce this chapter, and the director and employees of the department shall administer this chapter and the taxes imposed by this chapter in the same manner and subject to all of the provisions of, and all of the powers, duties, authority, and restrictions contained in section 422.25, subsection 4, section 422.30 and sections 422.67 to 422.75.

[C39, §**6943.123;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.23; 82 Acts, ch 1164, §4]

423.24 Deposit of revenue — appropriations.

Except as otherwise provided in section 312.2, subsection 14, all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to sections 423.7 and 423.7A shall be deposited and credited to the road use tax fund and shall be used exclusively for the construction, maintenance, and supervision of public highways.

1. Notwithstanding any provision of this section which provides that all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 and section 423.7A shall be deposited and credited to the road use tax fund, eighty percent of the revenues shall be deposited and credited as follows:

a. Twenty-five percent of all such revenue, up to a maximum of four million two hundred fifty thousand dollars per quarter, shall be deposited into and credited to the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes.

b. Any such revenues remaining shall be credited to the road use tax fund.

2. Notwithstanding any other provision of this section that provides that all revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 shall be deposited and credited to the road use tax fund, twenty percent of the revenues shall be credited and deposited as follows: one-half to the road use tax fund and one-half to the primary road fund to be used for the commercial and industrial highway network.

3. All other revenue arising under the operation of this chapter shall be credited to the general fund of the state.

[C39, §**6943.124;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.24]

87 Acts, ch 232, §26; 90 Acts, ch 1235, §8; 91 Acts, ch 252, §1; 92 Acts, ch 1099, §6, 10; 92 Acts, ch 1239, §41; 92 Acts, 2nd Ex, ch 1001, §212; 93 Acts, ch 180, §7; 94 Acts, ch 1119, §29, 36; 95 Acts, ch 67, §49; 95 Acts, ch 215, §1, 29; 95 Acts, ch 220, §24; 96 Acts, ch 1125, §6; 97 Acts, ch 207, §11, 13 – 15; 98 Acts, ch 1207, §13 – 17, 19; 99 Acts, ch 202, §21

Road use tax fund, §312.1

Subsection 1, former paragraph b stricken effective July 1, 2000; prior amendments and repeals stricken; 94 Acts, ch 1119, §29, 36; 95 Acts, ch 67, §49; 97 Acts, ch 207, §11, 13 – 15

423.24A Reimbursement for the primary road fund.

From moneys deposited into the road use tax fund, the department may credit to the primary road fund any amount of revenues derived from the use tax on motor vehicles, trailers, and motor vehicles accessories and equipment as collected pursuant to sections 423.7 and 423.7A to the extent necessary to reimburse that fund for the expenditures not otherwise eligible to be made from the primary road fund, which are made for repairing, improving, and maintaining bridges over the rivers bordering the state. Expenditures for those portions of bridges within adjacent states may be included when they are made pursuant to an agreement entered into under section 313.63, 313A.34, or 314.10.

98 Acts, ch 1207, §18

423.25 Taxation in another state.

If any person who causes tangible personal property to be brought into this state or who uses in this state services enumerated in section 422.43 has already paid a tax in another state in respect to the sale or use of the property or the performance of the service, or an occupation tax in re-

spect to the property or service, in an amount less than the tax imposed by this title, the provisions of this title shall apply, but at a rate measured by the difference only between the rate fixed in this title* and the rate by which the previous tax on the sale or use, or the occupation tax, was computed. If the tax imposed and paid in the other state is equal to or more than the tax imposed by this title, then a tax is not due in this state on the personal property or service.

[C39, §**6943.125;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §423.25]

94 Acts, ch 1023, §52; 95 Acts, ch 83, §17; 97 Acts, ch 158, §25

*This provision does not include chapters 421B, 427C, 435, 452A, and 453A, which were moved into this title by the Code editor. Chapters 421B, 427C, 435, 452A, and 453A contain the applicable provisions pertaining to those chapters.

423.26 Penalty for false statement.

A person who willfully makes a false statement in regard to the purchase price of a vehicle subject to taxation under section 423.7 is guilty of a fraudulent practice.

[C73, 75, 77, 79, 81, §423.26]

83 Acts, ch 160, §9

423.27 Penalty for willful failure to pay tax.

A person who willfully makes a false statement in regard to the purchase price of a vehicle subject to taxation under section 423.7 with the intent to evade the payment of tax shall be assessed a penalty of seventy-five percent of the amount of tax unpaid and required to be paid on the actual purchase price less trade-in allowance.

91 Acts, ch 159, §21

CHAPTER 423A

DISCLOSURE OF INFORMATION IN PREPARATION OF TAX RETURNS

423A.1 Definitions.
423A.2 Disclosure prohibited.
423A.3 Engaged in business.
423A.4 Penalty.

423A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Person"* means any person, firm, corporation, association, partnership or an employee or agent of one of these.
2. *"Tax return"* means any federal, state, or local form required to be filled out, by or for a taxpayer, incident to the collection or refund of a tax.
3. *"Information"* for the purpose of this chapter shall include but not be limited to the name, address and statistical data of the taxpayer.

[C73, 75, 77, 79, 81, §423A.1]

423A.2 Disclosure prohibited.

A person who obtains any information in the course of or arising out of the business of preparing or assisting in the preparation of a tax return of another person, shall not disclose any of the information obtained unless the disclosure is within any of the following:

1. Consented to in writing by the taxpayer in a separate document.
2. Expressly authorized by state or federal law.
3. Necessary to the preparation of the return.
4. Pursuant to court order.

[C73, 75, 77, 79, 81, §423A.2]

423A.3 Engaged in business.

A person is engaged in the business of preparing income tax returns or assisting in preparing of returns if the person does any of the following:

1. Advertises, or gives publicity to the effect that the person prepares or assists others in the preparation of tax returns.
2. Prepares or assists others in the preparation of tax returns for compensation.

[C73, 75, 77, 79, 81, §423A.3]

423A.4 Penalty.

A person who violates the provisions of this chapter shall upon conviction be guilty of an aggravated misdemeanor.

[C73, 75, 77, 79, 81, §423A.4]

CHAPTER 424

ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION

Legislative findings; legislative intent; conditions upon finding of invalidity; 89 Acts, ch 131, §1, 2, 59

424.1 Title — director's authority.
424.2 Definitions.
424.3 Environmental protection charge imposed upon petroleum diminution.
424.4 Adding of charge.
424.5 Depositor permits required — applications — revocation.
424.6 Exemption certificates for receivers of petroleum underground storage tanks not subject to financial responsibility rules.
424.7 Deposit of moneys — filing of environmental protection charge return.
424.8 Payment of environmental protection charge.
424.9 Bond for environmental protection charge collection.
424.10 Failure to file return — incorrect return.
424.11 Environmental protection charge lien — collection — action authorized.
424.12 Records required.
424.13 Judicial review.
424.14 Reserved.
424.15 Environmental protection charge refund.
424.16 Notice of change in diminution rate — service of notice.
424.17 Penalties — offenses — limitation.
424.18 Effective date.

424.1 Title — director's authority.

1. This chapter is entitled *"Environmental Protection Charge on Petroleum Diminution"*.

2. The director's and the department's authority and power under chapter 421 and other provisions of the tax code relevant to administration apply to this chapter, and the charge imposed under this chapter is imposed as if the charge were a tax within the meaning of that chapter or provision.

3. The director shall enter into a contract or agreement with the board to provide assistance requested by the board. Policy issues arising under this chapter or chapter 455G shall be determined by the board, and the board shall be joined as a real party in interest when a policy issue is raised.

4. The board shall retain rulemaking authority, but may contract with the department for assistance in drafting rules. The board shall retain contested case jurisdiction over any challenge to the diminution rate or cost factor. The department shall conduct all other contested cases and be responsible for other agency action in connection with the environmental protection charge imposed under this chapter.

5. The board shall reimburse the department of revenue and finance by contract for the reasonable cost of administration of the environmental protection charge imposed under this chapter and for other duties delegated to the department or to the director by the board.

89 Acts, ch 131, §12, 13

424.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the Iowa comprehensive petroleum underground storage tank board.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"Charge"* means the environmental protection charge imposed upon petroleum diminution pursuant to section 424.3.

4. *"Charge payer"* means a depositor, receiver, or tank owner or operator obligated to pay the environmental protection charge under this chapter.

5. *"Department"* means the department of revenue and finance.

6. *"Depositor"* means the person who deposits petroleum into an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor vehicle fuel outlet on a retail basis.

7. *"Diminution"* means the petroleum released into the environment prior to its intended beneficial use.

8. *"Director"* means the director of revenue and finance.

9. *"Fund"* means the Iowa comprehensive petroleum underground storage tank fund.

10. *"Owner or operator"* means *"owner or operator"* of an underground storage tank as used in chapter 455G or the *"owner"* or *"operator"* of an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle

fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor vehicle fuel outlet on a retail basis.

11. *"Petroleum"* means petroleum as defined in section 455G.2.

12. *"Receiver"* means, if the owner and operator are not the same person, the person who, under a contract between the owner and operator, is responsible for payment for petroleum deposited into a tank; and if the owner and operator of a tank are the same person, means the owner.

13. *"Tank"* means an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor vehicle fuel outlet on a retail basis.

89 Acts, ch 131, §14; 91 Acts, ch 252, §2; 92 Acts, ch 1217, §2; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

424.3 Environmental protection charge imposed upon petroleum diminution.

1. An environmental protection charge is imposed upon diminution. A depositor shall collect from the receiver of petroleum deposited into a tank, the environmental protection charge imposed under this section on diminution each time petroleum is deposited into the tank, and pay the charge to the department as directed by this chapter.

2. The environmental protection charge shall be equal to the total volume of petroleum deposited in a tank multiplied by the diminution rate multiplied by the cost factor.

3. The diminution rate is one-tenth of one percent.

4. Diminution equals total volume of petroleum deposited multiplied by the diminution rate established in subsection 3.

5. The cost factor is an amount per gallon of diminution determined by the board pursuant to this subsection. The board, after public hearing, shall determine, or shall adjust, the cost factor to the greater of either an amount reasonably calculated to generate an annual average revenue, year to year, of seventeen million dollars from the charge, excluding penalties and interest, or ten dollars. The board may determine or adjust the cost factor at any time but shall at minimum determine the cost factor at least once each fiscal year.

89 Acts, ch 131, §15; 90 Acts, ch 1235, §9 – 11; 91 Acts, ch 252, §3; 95 Acts, ch 215, §2

424.4 Adding of charge.

A depositor shall, as far as practicable, add the charge imposed under this chapter, or the average equivalent of the charge, to the depositor's sales price for the petroleum subject to the charge and when added such charge shall constitute a part of the depositor's price, shall be a debt from the receiver to the depositor until paid, and shall be recoverable at law in the same manner as other debts.

89 Acts, ch 131, §16

424.5 Depositor permits required — applications — revocation.

1. It is unlawful for any person to deposit petroleum into a tank in this state, unless a depositor permit has been issued to that person under this section. A depositor shall file with the department an application for a permit. An application for a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location or locations of the applicant's place of business, and any other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of the person's authority.

2. The department may deny a permit to an applicant who is substantially delinquent in paying a tax or charge due, or the interest or penalty on the tax or charge, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if the partner is substantially delinquent in paying any delinquent tax or charge, penalty, or interest.

3. A permit is not assignable and is valid only for the person in whose name it is issued.

4. A permit issued under this chapter is valid and effective until revoked by the department.

5. If the holder of a permit fails to comply with any of the provisions of this chapter or any order or rule of the department, or rule or order of the board pursuant to this chapter, or is substantially delinquent in the payment of a tax or charge administered by the department or the interest or penalty on the tax or charge, the director may revoke the permit.

6. To revoke a permit the director shall serve notice as required by section 17A.18 to the permit holder informing that person of the director's intent to revoke the permit and of the permit holder's right to a hearing on the matter. If the permit holder petitions the director for a hearing on the proposed revocation, after giving ten days' notice of the time and place of the hearing in accordance with section 17A.18, subsection 3, the matter may be heard and a decision rendered. The director may restore permits after revocation. The director shall adopt rules setting forth the period of time a depositor must wait before a permit may be restored or a new permit may be issued. The waiting

period shall not exceed ninety days from the date of the revocation of the permit.

89 Acts, ch 131, §17

424.6 Exemption certificates for receivers of petroleum underground storage tanks not subject to financial responsibility rules.

1. The department of natural resources shall issue an exemption certificate in the form prescribed by the director of the department of natural resources to an applicant who is an owner or operator of a petroleum underground storage tank which is exempt, deferred, or excluded from regulation under chapter 455G, for that tank. The director of the department of natural resources shall revoke and require the return of an exemption certificate if the petroleum underground storage tank later becomes subject to chapter 455G pursuant to section 455G.1. A tank is subject to chapter 455G when the federal regulation subjecting that tank to financial responsibility becomes effective and not upon the effective compliance date unless the effective compliance date is the effective date of the regulation.

The department shall permit a credit against the charge due from a person operating an eligible underground bulk storage facility equal to the total volume of petroleum transferred or sold from a tank in bulk quantities and delivered to a person for deposit in a tank which is exempt, deferred, or excluded pursuant to this subsection, multiplied by the diminution rate multiplied by the cost factor, subject to rules adopted by the board. *"Bulk quantities"* as used in this paragraph means at least a portion of a standard tanker truck load. *"Eligible underground bulk storage facility"* means an underground bulk storage facility in operation on or before January 1, 1990.

2. Liability for the charge is upon the depositor and the receiver unless the depositor takes in good faith from the receiver a valid exemption certificate and records the exemption certificate number and related transaction information required by the director and submits such information as part of the environmental protection charge return. If petroleum is deposited into a tank, pursuant to a valid exemption certificate which is taken in good faith by the depositor, and the receiver is liable for the charge, the receiver is solely liable for the charge and shall remit the charge directly to the department and this chapter applies to that receiver as if the receiver were a depositor.

3. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director of the department of natural resources.

4. A valid exemption certificate is taken in good faith by the depositor when the depositor has exercised that caution and diligence which honest persons of ordinary prudence would exercise in handling their own business affairs, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one upon inquiry as to the facts. A depositor has constructive notice of the classes of exempt, deferred, or excluded tanks. In order for a depositor to take a valid exemption certificate in good faith, the depositor must exercise reasonable prudence to determine the facts supporting the valid exemption certificate, and if any facts upon such certificate would lead a reasonable person to further inquiry, then such inquiry must be made with an honest intent to discover the facts.

5. If the circumstances change and the tank becomes subject to financial responsibility regulations, the tank owner or operator is liable solely for the charges and shall remit the charges directly to the department of revenue and finance pursuant to this chapter.

6. The board may waive the requirement for an exemption certificate for one or more classes of exempt, deferred, or excluded tanks, if in the board's judgment an exemption certificate is not required for effective and efficient collection of the charge. If an exemption certificate is not required for a class pursuant to this subsection, the depositor shall maintain and file such records and information as may be required by the director regarding deposits into a tank subject to the waiver.

89 Acts, ch 131, §18; 90 Acts, ch 1235, §12

424.7 Deposit of moneys — filing of environmental protection charge return.

1. A depositor shall, on or before the last day of the month following the close of each calendar quarter during which the depositor is or has become or ceased being subject to the provisions of section 424.3, make, sign, and file an environmental protection charge return for that calendar quarter in such form as may be required by the director. The return shall show information relating to the volume of petroleum deposited into tanks subject to the charge, and any claimed exemptions or exclusions from the charge, a calculation of charges due, and such other information for the period covered by the return as may be required by the director. The depositor may be granted an extension of time not exceeding thirty days for filing a quarterly return, upon a proper showing of necessity. If an extension is granted, the depositor shall have paid by the thirtieth day of the month following the close of the quarter ninety percent of the estimated charges due.

2. If necessary or advisable in order to ensure the payment of the charge imposed by this chapter, the director may require returns and payment of the charge to be made for other than quarterly periods.

3. Returns shall be signed by the depositor or the depositor's duly authorized agent, and must be duly certified by the depositor to be correct.

4. Upon receipt of a payment pursuant to this chapter, the department shall deposit the moneys

into the road use tax fund created in section 312.1.
89 Acts, ch 131, §19; 90 Acts, ch 1235, §13

424.8 Payment of environmental protection charge.

1. The charge levied under this chapter is due and payable in calendar quarterly installments on or before the last day of the month following each quarterly period except as otherwise provided in this section.

2. Every permit holder at the time of making the return required hereunder, shall compute and pay to the department the charges due for the preceding period.

3. *a.* If a receiver fails to pay charges imposed by this chapter to the depositor required to collect the charge, then in addition to all of the rights, obligations, and remedies provided, the charge is payable by the receiver directly to the department, and this chapter applies to the receiver as if the receiver were a depositor.

b. If a depositor subject to this chapter sells the depositor's business or stock of petroleum or quits the business, the depositor shall prepare a final return and pay all charges due within the time required by law. The immediate successor to the depositor, if any, shall withhold a sufficient amount of the purchase price, in money or money's worth, to pay the amount of delinquent charge, interest, or penalty due and unpaid. If the immediate successor of the business or stock of petroleum intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the delinquent charges, interest, and penalty accrued and unpaid on account of the operation of the business by the immediate predecessor depositor, except when the purchase is made in good faith as provided in section 424.6. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an *"immediate successor"* for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.
89 Acts, ch 131, §20

424.9 Bond for environmental protection charge collection.

The director, when necessary and advisable in order to secure the collection of the environmental protection charge imposed by section 424.3, may require a depositor to file a bond with the director. The bond shall assure collection by the department of the amount of the charge required to be collected or the amount actually collected by the depositor required to file the bond, whichever is greater. The bond shall be issued by a surety company authorized to conduct business in this state and approved by the commissioner of insurance as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the charge, and penalty due or which may become due. In lieu of the bond, securities or cash shall be kept in the custody of the department and securities may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any charge and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the person who deposited the securities.
89 Acts, ch 131, §21

424.10 Failure to file return — incorrect return.

1. As soon as practicable after a return is filed and in any event within three years after the return is filed the department shall examine it, assess and determine the charge due if the return is found to be incorrect, and give notice to the depositor of the assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of the charge is unlimited in the case of a false or fraudulent return made with the intent to evade the charge or in the case of a failure to file a return. If the determination that a return is incorrect is the result of an audit of the books and records of the depositor, the charge, or additional charge, if any is found due, shall be assessed and determined and the notice to the depositor shall be given by the department within one year after the completion of the examination of the books and records.

2. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the return is required by notice from the department, the department shall determine the amount of charge due from information as the department may be able to obtain and, if necessary, may estimate the charge on the basis of external indices or factors. The department shall give notice of the determination to the person liable for the charge. The determination shall fix the charge unless the person against whom it is assessed shall, within sixty days after the date of the notice of the determination, apply to the director for a hearing or unless the person against whom it is assessed contests the determination by paying the charge, interest, and penalty and timely filing a claim for refund. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the charge.

If a depositor's, receiver's, or other person's challenge relates to the diminution rate, the burden of proof upon the challenger shall only be satisfied by clear and convincing evidence.

3. If the amount paid is greater than the cor-

rect charge, penalty, and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at the rate in effect under section 421.7, pursuant to rules prescribed by the director. However, the director shall not allow a claim for refund that has not been filed with the department within three years after the charge payment upon which a refund is claimed became due, or one year after the charge payment was made, whichever time is later. A determination by the department of the amount of charge, penalty, and interest due, or the amount of refund for any excess amount paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of charge, penalty, and interest due or refund owing. The director shall grant a hearing, and upon hearing the director shall determine the correct charge, penalty, and interest due or refund owing, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 424.13.

89 Acts, ch 131, §22; 94 Acts, ch 1133, §8, 16; 99 Acts, ch 151, §40, 89; 2001 Acts, ch 116, §18; 2001 Acts, ch 150, §8

424.11 Environmental protection charge lien — collection — action authorized.

Whenever a person liable to pay a charge refuses or neglects to pay the charge, the amount, including any interest, penalty, or addition to the charge, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to that person.

The environmental protection charge lien shall attach at the time the charge becomes due and payable and shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing for record a notice with the appropriate county official of the appropriate county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions. The director shall charge off any account whose lien is allowed to lapse and may charge off any account and release the corresponding lien before the lien has lapsed if the director determines under uniform rules adopted by the board that the account is uncollectible or collection costs involved would not warrant collection of the amount due.

In order to preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the director shall file with the recorder of the county in which the property is located a notice of the lien.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the notice, and shall immediately index the notice and record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of its indexing.

The department shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of a charge as to which the director has filed notice with a county recorder, the director shall immediately file with the recorder a satisfaction of the charge and the recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

The department shall proceed, substantially as provided in this chapter, to collect all charges and penalties as soon as practicable after the same become delinquent, except that no property of the depositor shall be exempt from the payment of the charge. In the event service has not been made on a distress warrant by the officer to whom addressed within five days from the date the distress warrant was received by the officer, the authorized revenue agents of the department are hereby empowered to serve and make return of the warrant to the clerk of the district court of the county named in the distress warrant, and all subsequent procedure shall be in compliance with chapter 626.

The attorney general shall, upon the request of the director, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any charges and penalties, and in such action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

89 Acts, ch 131, §23; 2002 Acts, ch 1113, §7, 8

Unnumbered paragraph 4 stricken and former unnumbered paragraph 5 amended

424.12 Records required.

It is the duty of every depositor required to make a report and pay any charge under this chapter, to preserve such records as the director may require, and it is the duty of every depositor to preserve for a period of three years all invoices and other records; and all such books, invoices, and other records shall be open to examination at any time by the department, and shall be made available within this state for examination upon reasonable notice when the director shall so order. When requested to do so by any person from whom a charge

payer is seeking credit, or with whom the charge payer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director, upon being satisfied that such a situation exists, shall inform that person as to the amount of unpaid charges due by the charge payer under this chapter. The giving of information under such circumstances shall not be deemed a violation of section 422.72 as applied to this chapter.

Section 422.72 applies to this chapter as if the environmental protection charge were a tax.

89 Acts, ch 131, §24; 2001 Acts, ch 150, §9

424.13 Judicial review.

1. Judicial review of contested cases under this chapter may be sought in accordance with chapter 17A.

2. For cause and upon a showing by the director that collection of the charge in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of the charge appealed from, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the charge payer or the director to the supreme court of this state irrespective of the amount involved.

89 Acts, ch 131, §25; 95 Acts, ch 83, §18; 2001 Acts, ch 116, §19

424.14 Reserved.

424.15 Environmental protection charge refund.

If it appears that, as a result of mistake, an amount of a charge, penalty, or interest has been paid which was not due under this chapter, then that amount shall be refunded to the charge payer by the department. A claim for refund that has not been filed with the department within three years after the charge payment upon which a refund is claimed became due, or one year after that charge payment was made, whichever time is the later, shall not be allowed by the director.

Refunds may be made only from the unallocated or uncommitted moneys in the road use tax fund, and are limited by the total amount budgeted by the board for charge refunds.

89 Acts, ch 131, §26; 90 Acts, ch 1235, §14; 2001 Acts, ch 150, §10

424.16 Notice of change in diminution rate — service of notice.

1. *a.* The board shall notify each person who has previously filed an environmental protection charge return, and any other person known to the board who will owe the charge at any address obtainable for that person, at least thirty days in advance of the start of any calendar quarter during which the following will occur:

An administrative change in the cost factor, pursuant to section 424.3, subsection 5, becomes effective.

b. Notice shall be provided by mailing a notice of the change to the address listed on the person's last return. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. The board shall also publish the same notice at least twice in a paper of general circulation within the state at least thirty days in advance of the first day of the calendar quarter during which a change in paragraph *"a"* becomes effective.

2. A notice authorized or required under this section may be given by mailing the notice to the person for whom it is intended, addressed to that person at the address given in the last return filed by the person pursuant to this chapter, or if no return has been filed, then to any address obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. Any period of time which is determined according to this chapter by the giving of notice commences to run from the date of mailing of the notice. Neither mailed notice or notice by publication is required for the initial determination and imposition of the charge. The board shall undertake to provide reasonable notice of the environmental protection charge and procedures, as in the board's sole discretion it deems appropriate, provided that the actual charge and procedures are published in the Iowa administrative bulletin prior to the effective date of the charge.

3. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any charge or penalty provided by this chapter.

89 Acts, ch 131, §27; 90 Acts, ch 1235, §15

424.17 Penalties — offenses — limitation.

1. In addition to the charge or additional charge, the charge payer shall pay a penalty as provided in section 421.27. The charge payer shall also pay interest on the charge or additional charge at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as the charge imposed under this chapter. Unpaid penalties and interest may be enforced in the same manner as the charge imposed by this chapter.

2. A person who willfully attempts to evade a charge imposed by this chapter or the payment of the charge or a person who makes or causes to be made a false or fraudulent return with intent to

evade the charge imposed by this chapter or the payment of the charge is guilty of a class "D" felony.

3. The certificate of the director to the effect that a charge has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter, shall be prima facie evidence thereof.

4. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

89 Acts, ch 131, §28; 90 Acts, ch 1168, §47; 90 Acts, ch 1172, §12; 99 Acts, ch 152, §12, 40

424.18 Effective date.

The environmental protection charge is imposed beginning July 1, 1989. For all deposits subject to the charge made on or after July 1, 1989, the depositor and receiver are obligated to pay the charge as provided in this chapter.

89 Acts, ch 131, §29; 97 Acts, ch 23, §47

SUBTITLE 2

PROPERTY TAXES

CHAPTER 425

HOMESTEAD TAX CREDITS AND REIMBURSEMENT

For requirements relating to state funding of property tax credits, see §25B.7

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425.1 Homestead credit fund — apportionment — payment.

1. A homestead credit fund is created. There is appropriated annually from the general fund of the state to the department of revenue and finance to be credited to the homestead credit fund, an amount sufficient to implement this chapter.

The director of revenue and finance shall issue warrants on the homestead credit fund payable to the county treasurers of the several counties of the state under this chapter.

2. The homestead credit fund shall be apportioned each year so as to give a credit against the tax on each eligible homestead in the state in an amount equal to the actual levy on the first four thousand eight hundred fifty dollars of actual value for each homestead.

3. The amount due each county shall be paid in two payments on November 15 and March 15 of each fiscal year, drawn upon warrants payable to the respective county treasurers. The two payments shall be as nearly equal as possible.

4. Annually the department of revenue and finance shall estimate the credit not to exceed the actual levy on the first four thousand eight hundred fifty dollars of actual value of each eligible homestead, and shall certify to the county auditor of each county the credit and its amount in dollars. Each county auditor shall then enter the credit against the tax levied on each eligible homestead in each county payable during the ensuing year, designating on the tax lists the credit as being from the homestead credit fund, and credit shall then be given to the several taxing districts in which eligible homesteads are located in an amount equal to the credits allowed on the taxes of the homesteads. The amount of credits shall be apportioned by each county treasurer to the several taxing districts as provided by law, in the same manner as though the amount of the credit had

been paid by the owners of the homesteads. However, the several taxing districts shall not draw the funds so credited until after the semiannual allocations have been received by the county treasurer, as provided in this chapter. Each county treasurer shall show on each tax receipt the amount of credit received from the homestead credit fund.

5. If the homestead tax credit computed under this section is less than sixty-two dollars and fifty cents, the amount of homestead tax credit on that eligible homestead shall be sixty-two dollars and fifty cents subject to the limitation imposed in this section.

6. The homestead tax credit allowed in this chapter shall not exceed the actual amount of taxes payable on the eligible homestead, exclusive of any special assessments levied against the homestead.

[C35, §6943-f63, -f64; C39, §**6943.100, 6943.142;** C46, §422.69, 425.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.1; 82 Acts, ch 1186, §2, 5]

83 Acts, ch 172, §3; 86 Acts, ch 1244, §50; 91 Acts, ch 97, §48

425.2 Qualifying for credit.

A person who wishes to qualify for the credit allowed under this chapter shall obtain the appropriate forms for filing for the credit from the assessor. The person claiming the credit shall file a verified statement and designation of homestead with the assessor for the year for which the person is first claiming the credit. The claim shall be filed not later than July 1 of the year for which the person is claiming the credit. A claim filed after July 1 of the year for which the person is claiming the credit shall be considered as a claim filed for the following year.

Upon the filing and allowance of the claim, the claim shall be allowed on that homestead for successive years without further filing as long as the property is legally or equitably owned and used as a homestead by that person or that person's spouse on July 1 of each of those successive years, and the owner of the property being claimed as a homestead declares residency in Iowa for purposes of income taxation, and the property is occupied by that person or that person's spouse for at least six months in each of those calendar years in which the fiscal year begins. When the property is sold or transferred, the buyer or transferee who wishes to qualify shall refile for the credit. However, when the property is transferred as part of a distribution made pursuant to chapter 598, the transferee who is the spouse retaining ownership of the property is not required to refile for the credit. Property divided pursuant to chapter 598 shall not be modified following the division of the property. An owner who ceases to use a property for a homestead or intends not to use it as a homestead for at least six months in a calendar year shall provide written notice to the assessor by July 1 following the date on which the use is changed. A person who sells or transfers a homestead or the personal representative of a deceased person who had a homestead at the time of death, shall provide written notice to the assessor that the property is no longer the homestead of the former claimant.

In case the owner of the homestead is in active service in the armed forces of this state or of the United States, or is sixty-five years of age or older, or is disabled, the statement and designation may be signed and delivered by any member of the owner's family, by the owner's guardian or conservator, or by any other person who may represent the owner under power of attorney. If the owner of the homestead is married, the spouse may sign and deliver the statement and designation. The director of human services or the director's designee may make application for the benefits of this chapter as the agent for and on behalf of persons receiving assistance under chapter 249.

Any person sixty-five years of age or older or any person who is disabled may request, in writing, from the appropriate assessor forms for filing for homestead tax credit. Any person sixty-five years of age or older or who is disabled may complete the form, which shall include a statement of homestead, and mail or return it to the appropriate assessor. The signature of the claimant on the statement shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

Upon adoption of a resolution by the county board of supervisors, any person may request, in writing, from the appropriate assessor forms for the filing for homestead tax credit. The person may complete the form, which shall include a statement of homestead, and mail or return it to the appropriate assessor. The signature of the claimant on the statement of homestead shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

[C39, §**6943.143;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.2; 82 Acts, ch 1246, §1, 11]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1109, §1; 87 Acts, ch 198, §2; 88 Acts, ch 1141, §1; 89 Acts, ch 256, §1; 90 Acts, ch 1087, §1; 91 Acts, ch 97, §49; 92 Acts, ch 1073, §9; 94 Acts, ch 1143, §1; 97 Acts, ch 206, §6

425.3 Verification of claims for homestead credit.

The assessor shall retain a permanent file of current homestead claims filed in the assessor's office. The assessor shall file a notice of transfer of property for which a claim is filed when notice is received from the office of the county recorder.

The county recorder shall give notice to the assessor of each transfer of title filed in the record-

er's office. The notice shall describe the property transferred, the name of the person transferring the title to the property, and the name of the person to whom title to the property has been transferred.

Not later than July 6 of each year, the assessor shall remit the statements and designation of homesteads to the county auditor with the assessor's recommendation for allowance or disallowance. If the assessor recommends disallowance of a claim, the assessor shall submit the reasons for the recommendation, in writing, to the county auditor.

The county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim, it shall send written notice, by mail, to the claimant at the claimant's last known address. The notice shall state the reasons for disallowing the claim for the credit. The board is not required to send notice that a claim is disallowed if the claimant voluntarily withdraws the claim.

[C39, §**6943.144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.3; 82 Acts, ch 1246, §2, 11]

86 Acts, ch 1241, §32; 94 Acts, ch 1144, §1

425.4 Certification to treasurer.

All claims which have been allowed by the board of supervisors shall be certified on or before August 1, in each year, by the county auditor to the county treasurer, which certificates shall list the total amount of dollars, listed by taxing district in the county, due for homestead tax credits claimed and allowed. The county treasurer shall forthwith certify to the department of revenue and finance the total amount of dollars, listed by taxing district in the county, due for homestead tax credits claimed and allowed.

[C39, §**6943.145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.4]

425.5 Correcting listing.

If the assessor who last listed and valued a claimed eligible homestead did not, in the description and valuation thereof, comply with the provisions of section 428.7, the assessor shall, if still in office, on the written request of such claimant and without expense to the claimant or to the county, correct the listing and valuations of such claimed homestead and contiguous real property originally listed and valued by the assessor, and file such corrected listing and valuations with the county auditor, who forthwith shall certify the same to the county treasurer, and said county treasurer shall so correct the tax books; provided, that if the assessor who last listed and valued such property is not still in office, the assessor in office shall, on such written request and at the expense of the county, so correct such listing and valuations of said homestead and said contiguous real property.

[C39, §**6943.146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.5]

425.6 Waiver by neglect.

If a person fails to file a claim or to have a claim on file with the assessor for the credits provided in this chapter, the person is deemed to have waived the homestead credit for the year in which the person failed to file the claim or to have a claim on file with the assessor.

[C39, §**6943.147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.6; 82 Acts, ch 1246, §3, 11]

425.7 Appeals permitted — disallowed claims and penalty.

1. Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

2. In the event any claim under this chapter is allowed, any owner of an eligible homestead may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated, by giving written notice of such appeal to the county auditor of said county and such notice to the owner of said claimed homestead as a judge of the district court shall direct.

3. If the director of revenue and finance determines that a claim for homestead credit has been allowed by the board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or board of supervisors may appeal to the state board of tax review pursuant to section 421.1, subsection 4. The claimant or the board of supervisors may seek judicial review of the action of the state board of tax review in accordance with chapter 17A.

If a claim is disallowed by the director of revenue and finance and not appealed to the state board of tax review or appealed to the state board of tax review and thereafter upheld upon final resolution, including any judicial review, any amounts of credits allowed and paid from the homestead credit fund including the penalty, if any, become a lien upon the property on which credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona fide purchaser, and any amount so erroneously paid in-

cluding the penalty, if any, shall be collected by the county treasurer in the same manner as other taxes and the collections shall be returned to the department of revenue and finance and credited to the homestead credit fund. The director of revenue and finance may institute legal proceedings against a homestead credit claimant for the collection of payments made on disallowed credits and the penalty, if any. If a person makes a false claim or affidavit with fraudulent intent to obtain the homestead credit, the person is guilty of a fraudulent practice and the claim shall be disallowed in full. If the credit has been paid, the amount of the credit plus a penalty equal to twenty-five percent of the amount of credit plus interest, at the rate in effect under section 421.7, from the time of payment shall be collected by the county treasurer in the same manner as other property taxes, penalty, and interest are collected and when collected shall be paid to the director of revenue and finance. If a homestead credit is disallowed and the claimant failed to give written notice to the assessor as required by section 425.2 when the property ceased to be used as a homestead by the claimant, a civil penalty equal to five percent of the amount of the disallowed credit is assessed against the claimant.

[C39, §**6943.148;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.7; 82 Acts, ch 1246, §4, 11]

89 Acts, ch 251, §33; 97 Acts, ch 158, §26; 2001 Acts, ch 154, §1, 6; 2002 Acts, ch 1151, §15

Fraudulent practices; §714.8 – 714.14

2001 amendment to subsection 3 applies to homestead tax credit claims filed or on file on or after July 1, 2001; 2001 Acts, ch 154, §6

Subsection 3, unnumbered paragraph 2 amended

425.8 Forms — rules.

The director of revenue and finance shall prescribe the form for the making of verified statement and designation of homestead, the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. Whenever necessary, the department of revenue and finance shall forward to the county auditors of the several counties in the state the prescribed sample forms, and the county auditors shall furnish blank forms prepared in accordance therewith with the assessment rolls, books, and supplies delivered to the assessors. The department of revenue and finance shall prescribe and the county auditors shall provide on the forms for claiming the homestead credit a statement to the effect that the owner realizes that the owner must give written notice to the assessor when the owner changes the use of the property.

The director of revenue and finance may prescribe rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes.

[C39, §**6943.149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.8; 82 Acts, ch 1246, §5, 11]

425.9 Credits in excess of tax — appeals — refunds.

If the amount of credit apportioned to any homestead under the provisions of this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against said homestead, then such excess shall be remitted by the county treasurer to the department of revenue and finance to be redeposited in the homestead credit fund and be reallocated the following year by the department as provided hereunder.

If any claim for credit made hereunder has been denied by the board of supervisors, and such action is subsequently reversed on appeal, the credit shall be allowed on the homestead involved in said appeal, and the director of revenue and finance, the county auditor, and the county treasurer shall make such credit and change their books and records accordingly.

In the event the appealing taxpayer has paid one or both of the installments of the tax payable in the year or years in question on such homestead valuation, remittance shall be made to such taxpayer of the amount of such credit.

The amount of such credit shall be allocated and paid from the surplus redeposited in the homestead credit fund provided for in the first paragraph of this section.

[C39, §**6943.150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.9]

425.10 Reversal of allowed claim.

In the event any claim is allowed, and subsequently reversed on appeal, any credit made thereunder shall be void, and the amount of such credit shall be charged against the property in question, and the director of revenue and finance, the county auditor, and the county treasurer are authorized and directed to correct their books and records accordingly. The amount of such erroneous credit, when collected, shall be returned by the county treasurer to the homestead credit fund to be reallocated the following year as provided herein.

[C39, §**6943.151;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.10]

425.11 Definitions.

For the purpose of this chapter and wherever used in this chapter:

1. The words *"assessed valuation"* shall mean the taxable valuation of the homestead as fixed by the assessor, or by the board of review, under the provisions of section 441.21, without deducting therefrom the exemptions authorized in section 426A.11.

2. Unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. The word *"homestead"* shall have the follow-

ing meaning:

a. The homestead includes the dwelling house which the owner, in good faith, is occupying as a home on July 1 of the year for which the credit is claimed and occupies as a home for at least six months during the calendar year in which the fiscal year begins, except as otherwise provided.

When any person is inducted into active service under the Selective Training and Service Act of the United States or whose voluntary entry into active service results in a credit on the quota of persons required for service under the Selective Training and Service Act, or who, being a member of any component part of the military, naval, or air forces or nurse corps of this state or nation, is called or ordered into active service, such person shall be considered as occupying or living on the homestead during such service and, where equitable or legal title of the homestead is in the spouse of the person who is a member of or is inducted into the armed services of the United States, the spouse shall be considered as occupying or living on the homestead during such service.

When any person is confined in a nursing home, extended-care facility, or hospital, such person shall be considered as occupying or living on a homestead where such person is the owner of such homestead and such person maintains such homestead and does not lease, rent, or otherwise receive profits from other persons for the use thereof.

b. It may contain one or more contiguous lots or tracts of land with the buildings or other appurtenances thereon habitually, and in good faith, used as a part of the homestead.

c. It must not embrace more than one dwelling house, but where a homestead has more than one dwelling house situated thereon, the credit provided for in this chapter shall apply to the home and buildings used by the owner, but shall not apply to any other dwelling house and buildings appurtenant.

d. The words *"dwelling house"* shall embrace any building occupied wholly or in part by the claimant as a home.

4. The word *"owner"* shall mean the person who holds the fee simple title to the homestead, and in addition shall mean the person occupying as a surviving spouse or the person occupying under a contract of purchase which contract has been recorded in the office of the county recorder of the county in which the property is located, or the person occupying the homestead under devise or by operation of the inheritance laws where the whole interest passes or where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption, or the person occupying the homestead is a shareholder of a family farm corporation that owns the property, or the person occupying the homestead under a deed which conveys a divided interest where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption or where the person occupying the homestead holds a life estate with the reversion interest held by a nonprofit corporation organized under chapter 504A, provided that the holder of the life estate is liable for and pays property tax on the homestead or where the person occupying the homestead holds an interest in a horizontal property regime under chapter 499B, regardless of whether the underlying land committed to the horizontal property regime is in fee or as a leasehold interest, provided that the holder of the interest in the horizontal property regime is liable for and pays property tax on the homestead. For the purpose of this chapter the word *"owner"* shall be construed to mean a bona fide owner and not one for the purpose only of availing the person of the benefits of this chapter. In order to qualify for the homestead tax credit, evidence of ownership shall be on file in the office of the clerk of the district court or recorded in the office of the county recorder at the time the owner files with the assessor a verified statement of the homestead claimed by the owner as provided in section 425.2.

Where not in conflict with the terms of the definitions above set out, the provisions of chapter 561 shall control.

[C39, §**6943.152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.11; 82 Acts, ch 1246, §6, 11]

89 Acts, ch 256, §2; 90 Acts, ch 1087, §2; 90 Acts, ch 1250, §5; 91 Acts, ch 97, §50; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

425.12 Indian land.

Each forty acres of land, or fraction thereof, occupied by a member or members of the Sac and Fox Indians in Tama county, which land is held in trust by the secretary of the interior of the United States for said Indians, shall be given a homestead tax credit within the meaning and under the provisions of this chapter. Application for such homestead tax credit shall be made to the county auditor of Tama county and may be made by a representative of the tribal council.

[C39, §**6943.153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.12]

425.13 Conspiracy to defraud.

If any two or more persons conspire and confederate together with fraudulent intent to obtain the credit provided for under the terms of this chapter by making a false deed, or a false contract of purchase, they are guilty of a fraudulent practice.

[C39, §**6943.154;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.13]

425.14 False affidavits. Repealed by 2001 Acts, ch 154, § 5, 6. See § 425.7.

2001 repeal applies to homestead tax credit claims filed or on file on or after July 1, 2001; 2001 Acts, ch 154, §6

425.15 Disabled veteran tax credit.

If the owner of a homestead allowed a credit under this chapter is a veteran of any of the military forces of the United States, who acquired the homestead under 38 U.S.C. § 21.801, 21.802, or 38 U.S.C. § 2101, 2102, the credit allowed on the homestead from the homestead credit fund shall be the entire amount of the tax levied on the homestead. The credit allowed shall be continued to the estate of a veteran who is deceased or the surviving spouse and any child, as defined in section 234.1, who are the beneficiaries of a deceased veteran, so long as the surviving spouse remains unmarried. This section is not applicable to the holder of title to any homestead whose annual income, together with that of the titleholder's spouse, if any, for the last preceding twelve-month income tax accounting period exceeds thirty-five thousand dollars. For the purpose of this section *"income"* means taxable income for federal income tax purposes plus income from securities of state and other political subdivisions exempt from federal income tax. A veteran or a beneficiary of a veteran who elects to secure the credit provided in this section is not eligible for any other real property tax exemption provided by law for veterans of military service. If a veteran acquires a different homestead, the credit allowed under this section may be claimed on the new homestead unless the veteran fails to meet the other requirements of this section.

[C71, 73, 75, 77, 79, 81, §425.15]

90 Acts, ch 1250, §7; 2002 Acts, ch 1151, §16, 36

2002 amendment takes effect May 6, 2002, and applies retroactively to claims filed on or after January 1, 2002; 2002 Acts, ch 1151, §36

Section amended

PROPERTY TAX RELIEF — PERSONS WHO ARE ELDERLY, PERSONS WITH DISABILITIES, AND OTHER PERSONS

425.16 Additional tax credit.

In addition to the homestead tax credit allowed under section 425.1, subsections 1 to 4, persons who own or rent their homesteads and who meet the qualifications provided in this division are eligible for an extraordinary property tax credit or reimbursement.

[C75, 77, 79, 81, §425.16]

425.17 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Base year"* means the calendar year last ending before the claim is filed.

2. *"Claimant"* means either of the following:

a. A person filing a claim for credit or reimbursement under this division who has attained the age of sixty-five years on or before December 31 of the base year or who is totally disabled and was totally disabled on or before December 31 of the base year and is domiciled in this state at the time the claim is filed or at the time of the person's death in the case of a claim filed by the executor or administrator of the claimant's estate.

b. A person filing a claim for credit or reimbursement under this division who has attained the age of twenty-three years on or before December 31 of the base year or was a head of household on December 31 of the base year, as defined in the Internal Revenue Code, but has not attained the age or disability status described in paragraph *"a"*, and is domiciled in this state at the time the claim is filed or at the time of the person's death in the case of a claim filed by the executor or administrator of the claimant's estate, and was not claimed as a dependent on any other person's tax return for the base year.

"Claimant" under paragraph *"a"* or *"b"* includes a vendee in possession under a contract for deed and may include one or more joint tenants or tenants in common. In the case of a claim for rent constituting property taxes paid, the claimant shall have rented the property during any part of the base year. In the case of a claim for property taxes due, the claimant shall have occupied the property during any part of the fiscal year beginning July 1 of the base year. If a homestead is occupied by two or more persons, and more than one person is able to qualify as a claimant, the persons may each file a claim based upon each person's income and rent constituting property taxes paid or property taxes due.

3. *"Gross rent"* means rental paid at arm's length for the right of occupancy of a homestead or manufactured or mobile home, including rent for space occupied by a manufactured or mobile home not to exceed one acre. If the director of revenue and finance determines that the landlord and tenant have not dealt with each other at arm's length, and the director of revenue and finance is satisfied that the gross rent charged was excessive, the director shall adjust the gross rent to a reasonable amount as determined by the director.

4. *"Homestead"* means the dwelling owned or rented and actually used as a home by the claimant during the period specified in subsection 2, and so much of the land surrounding it including one or more contiguous lots or tracts of land, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. It does not include personal property except that a manufactured or mobile home may be a homestead. Any dwelling or a part of a multidwelling or multipurpose building which is exempt from taxation does not qualify as a homestead under this division. However, solely for purposes of claimants living in a property and receiving reimbursement for rent constituting

property taxes paid immediately before the property becomes tax exempt, and continuing to live in it after it becomes tax exempt, the property shall continue to be classified as a homestead. A homestead must be located in this state. When a person is confined in a nursing home, extended-care facility, or hospital, the person shall be considered as occupying or living in the person's homestead if the person is the owner of the homestead and the person maintains the homestead and does not lease, rent, or otherwise receive profits from other persons for the use of the homestead.

5. *"Household"* means a claimant and the claimant's spouse if living with the claimant at any time during the base year. *"Living with"* refers to domicile and does not include a temporary visit.

6. *"Household income"* means all income of the claimant and the claimant's spouse in a household and actual monetary contributions received from any other person living with the claimant during their respective twelve-month income tax accounting periods ending with or during the base year.

7. *"Income"* means the sum of Iowa net income as defined in section 422.7, plus all of the following to the extent not already included in Iowa net income: capital gains, alimony, child support money, cash public assistance and relief, except property tax relief granted under this division, amount of in-kind assistance for housing expenses, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, payments received under the federal Social Security Act, except child insurance benefits received by a member of the claimant's household, and all military retirement and veterans' disability pensions, interest received from the state or federal government or any of its instrumentalities, workers' compensation and the gross amount of disability income or "loss of time" insurance. *"Income"* does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency. In determining income, net operating losses and net capital losses shall not be considered.

8. *"Property taxes due"* means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which will actually be paid by the claimant. However, if the claimant is a person whose property taxes have been suspended under sections 427.8 and 427.9, *"property taxes due"* means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which would have to be paid by the claimant if the payment of the taxes has not been suspended pursuant to sections 427.8 and 427.9. *"Property taxes due"* shall be computed with no deduction for any credit under this division or for any homestead credit allowed under section 425.1. Each claim shall be based upon the taxes due during the fiscal year next following the base year. If a homestead is owned by two or more persons as joint tenants or tenants in common, and one or more persons are not members of claimant's household, *"property taxes due"* is that part of property taxes due on the homestead which equals the ownership percentage of the claimant and the claimant's household. The county treasurer shall include with the tax receipt a statement that if the owner of the property is eighteen years of age or over, the person may be eligible for the credit allowed under this division. If a homestead is an integral part of a farm, the claimant may use the total property taxes due for the larger unit. If a homestead is an integral part of a multidwelling or multipurpose building the property taxes due for the purpose of this subsection shall be prorated to reflect the portion which the value of the property that the household occupies as its homestead is to the value of the entire structure. For purposes of this subsection, *"unit"* refers to that parcel of property covered by a single tax statement of which the homestead is a part.

9. *"Rent constituting property taxes paid"* means twenty-three percent of the gross rent actually paid in cash or its equivalent during the base year by the claimant or the claimant's household solely for the right of occupancy of their homestead in the base year, and which rent constitutes the basis, in the succeeding year, of a claim for reimbursement under this division by the claimant.

10. *"Special assessment"* means an unpaid special assessment certified pursuant to chapter 384, division IV. The claimant may include as a portion of the taxes due during the fiscal year next following the base year an amount equal to the unpaid special assessment installment due, plus interest, during the fiscal year next following the base year.

11. *"Totally disabled"* means the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is reasonably expected to last for a continuous period of not less than twelve months.

[C75, 77, 79, 81, §425.17; 82 Acts, ch 1214, §1, 2, 4]

88 Acts, ch 1139, §2, 3; 89 Acts, ch 233, §1; 90 Acts, ch 1250, §6; 91 Acts, ch 191, §19, 124; 92 Acts, ch 1016, §41; 92 Acts, 2nd Ex, ch 1001, §220, 225; 93 Acts, ch 156, §1, 2; 93 Acts, ch 180, §4, 15, 16, 22, 23; 94 Acts, ch 1125, §1, 2, 5; 94 Acts, ch 1165, §26, 50; 99 Acts, ch 152, §13, 40; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

425.18 Right to file a claim.

The right to file a claim for reimbursement or credit under this division may be exercised by the claimant or on behalf of a claimant by the claimant's legal guardian, spouse, or attorney, or by the executor or administrator of the claimant's estate. If a claimant dies after having filed a claim for reimbursement for rent constituting property taxes paid, the amount of the reimbursement may be paid to another member of the household as determined by the director. If the claimant was the only member of the household, the reimbursement may be paid to the claimant's executor or administrator, but if neither is appointed and qualified within one year from the date of the filing of the claim, the reimbursement shall escheat to the state. If a claimant dies after having filed a claim for credit for property taxes due, the amount of credit shall be paid as if the claimant had not died.

[C75, 77, 79, 81, §425.18; 82 Acts, ch 1214, §3, 4]
83 Acts, ch 111, §1, 4

425.19 Claim and credit or reimbursement.

Subject to the limitations provided in this division, a claimant may annually claim a credit for property taxes due during the fiscal year next following the base year or claim a reimbursement for rent constituting property taxes paid in the base year. The amount of the credit for property taxes due for a homestead shall be paid on June 15 of each year by the director to the county treasurer who shall credit the money received against the amount of the property taxes due and payable on the homestead of the claimant and the amount of the reimbursement for rent constituting property taxes paid shall be paid to the claimant from the state general fund on or before December 31 of each year.

[C75, 77, 79, 81, §425.19]
83 Acts, ch 172, §4; 99 Acts, ch 152, §14, 40

425.20 Filing dates — affidavit — extension.

A claim for reimbursement for rent constituting property taxes paid shall not be paid or allowed, unless the claim is filed with and in the possession of the department of revenue and finance on or before June 1 of the year following the base year.

A claim for credit for property taxes due shall not be paid or allowed unless the claim is filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the property taxes are due. However, in case of sickness, absence, or other disability of the claimant, or if in the judgment of the county treasurer good cause exists, the county treasurer may extend the time for filing a claim for credit through September 30 of the same calendar year. The county treasurer shall certify to the director of revenue and finance on or before May 1 of each year the total amount of dollars due for claims allowed.

In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue and finance, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for reimbursement or credit. However, any further time granted shall not extend beyond December 31 of the year following the year in which the claim was required to be filed. Claims filed as a result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

[C75, 77, 79, 81, §425.20; 81 Acts 2nd Ex, ch 4, §1]
83 Acts, ch 111, §2, 4; 88 Acts, ch 1050, §1; 94 Acts, ch 1125, §3, 5; 94 Acts, ch 1165, §27, 50; 96 Acts, ch 1167, §3, 8

425.21 Satisfaction of outstanding tax liabilities.

The amount of any claim for credit or reimbursement payable under this division may be applied by the department of revenue and finance against any tax liability, delinquent accounts, charges, loans, fees, or other indebtedness due the state or state agency that has a formal agreement with the department for central debt collection, outstanding on the books of the department against the claimant, or against a spouse who was a member of the claimant's household in the base year.

[C75, 77, 79, 81, §425.21]
99 Acts, ch 152, §15, 40; 2001 Acts, ch 24, §51

425.22 One claimant per household.

Only one claimant per household per year shall be entitled to reimbursement under this division and only one claimant per household per fiscal year shall be entitled to a credit under this division.

[C75, 77, 79, 81, §425.22]

425.23 Schedule for claims for credit or reimbursement.

The amount of any claim for credit or reimbursement filed under this division shall be determined as provided in this section.

1. *a.* The tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph *"a"* and paragraph *"b"* if no appropriation is made to the fund created in section 425.40 shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
$ 0 — 8,499.99	100%
8,500 — 9,499.99	85
9,500 — 10,499.99	70
10,500 — 12,499.99	50
12,500 — 14,499.99	35
14,500 — 16,499.99	25

b. If moneys have been appropriated to the fund created in section 425.40, the tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph *"b"*, shall be determined as follows:

(1) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is at least twenty-seven million dollars, the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
$ 0 — 8,499.99	100%
8,500 — 9,499.99	85
9,500 — 10,499.99	70
10,500 — 12,499.99	50
12,500 — 14,499.99	35
14,500 — 16,499.99	25

(2) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is less than twenty-seven million dollars the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
$ 0 — 8,499.99	50%
8,500 — 9,499.99	42
9,500 — 10,499.99	35
10,500 — 12,499.99	25
12,500 — 14,499.99	17
14,500 — 16,499.99	12

2. The actual credit for property taxes due shall be determined by subtracting from the tentative credit the amount of the homestead credit under section 425.1 which is allowed as a credit against property taxes due in the fiscal year next following the base year by the claimant or any person of the claimant's household. If the subtraction produces a negative amount, there shall be no credit but no refund shall be required. The actual reimbursement for rent constituting property taxes paid shall be equal to the tentative reimbursement.

3. *a.* A person who is eligible to file a claim for credit for property taxes due and who has a household income of eight thousand five hundred dollars or less and who has an unpaid special assessment levied against the homestead may file a claim for a special assessment credit with the county treasurer. The department shall provide to the respective treasurers the forms necessary for the administration of this subsection. The claim shall be filed not later than September 30 of each year. Upon the filing of the claim, interest for late payment shall not accrue against the amount of the unpaid special assessment due and payable. The claim filed by the claimant constitutes a claim for credit of an amount equal to the actual amount due upon the unpaid special assessment, plus interest, payable during the fiscal year for which the claim is filed against the homestead of the claimant. However, where the claimant is an individual described in section 425.17, subsection 2, paragraph *"b"*, and the tentative credit is determined according to the schedule in subsection 1, paragraph *"b"*, subparagraph (2), of this section, the claim filed constitutes a claim for credit of an amount equal to one-half of the actual amount due and payable during the fiscal year. The treasurer shall certify to the director of revenue and finance not later than October 15 of each year the total amount of dollars due for claims allowed. The amount of reimbursement due each county shall be paid by the director of revenue and finance by November 15 of each year, drawn upon warrants payable to the respective treasurer. There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to carry out the provisions of this subsection. The treasurer shall credit any moneys received from the department against the amount of the unpaid special assessment due and payable on the homestead of the claimant.

b. For purposes of this subsection, in computing household income, a person with a total disability shall deduct all medical and necessary care expenses paid during the twelve-month income tax accounting periods used in computing household income which are attributable to the person's total disability. *"Medical and necessary care expenses"* are those used in computing the federal income tax deduction under section 213 of the Internal Revenue Code as defined in section 422.3.

4. *a.* For the base year beginning in the 1999 calendar year and for each subsequent base year, the dollar amounts set forth in subsections 1 and 3 shall be multiplied by the cumulative adjustment factor for that base year. *"Cumulative ad-*

justment factor" means the product of the annual adjustment factor for the 1998 base year and all annual adjustment factors for subsequent base years. The cumulative adjustment factor applies to the base year beginning in the calendar year for which the latest annual adjustment factor has been determined.

b. The annual adjustment factor for the 1998 base year is one hundred percent. For each subsequent base year, the annual adjustment factor equals the annual inflation factor for the calendar year, in which the base year begins, as computed in section 422.4 for purposes of the individual income tax.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.23]

83 Acts, ch 172, §5; 83 Acts, ch 189, §3, 5, 6; 84 Acts, ch 1305, §35; 88 Acts, ch 1139, §4; 90 Acts, ch 1250, §8, 9; 91 Acts, ch 267, §524; 92 Acts, ch 1016, §13, 42; 92 Acts, 2nd Ex, ch 1001, §221 – 223, 225; 93 Acts, ch 180, §5, 6, 15, 16, 22, 23; 96 Acts, ch 1129, §93; 96 Acts, ch 1167, §4, 8; 98 Acts, ch 1177, §12 – 14, 16

425.24 Maximum property tax for purpose of credit or reimbursement.

In any case in which property taxes due or rent constituting property taxes paid for any household exceeds one thousand dollars, the amount of property taxes due or rent constituting property taxes paid shall be deemed to have been one thousand dollars for purposes of this division.

[C75, 77, 79, 81, §425.24]

425.25 Administration.

The director of revenue and finance shall make available suitable forms with instructions for claimants. Each assessor and county treasurer shall make available the forms and instructions. The claim shall be in a form as the director may prescribe. The director may also devise a tax credit or reimbursement table, with amounts rounded to the nearest even whole dollar. Reimbursements or credits in the amount of less than one dollar shall not be paid.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.25]

84 Acts, ch 1190, §1

425.26 Proof of claim.

Every claimant shall give the department of revenue and finance, in support of the claim reasonable proof of:

1. Age and total disability, if any.
2. Property taxes due or rent constituting property taxes paid, including the name and address of the owner or manager of the property rented and a statement whether the claimant is related by blood, marriage, or adoption to the owner or manager of the property rented.
3. Homestead credit allowed against property taxes due.
4. Changes of homestead.
5. Household membership.
6. Household income.
7. Size and nature of property claimed as the homestead.

The director may require any additional proof necessary to support a claim.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.26]

83 Acts, ch 111, §3, 4; 85 Acts, ch 67, §44; 94 Acts, ch 1125, §4, 5; 94 Acts, ch 1165, §28

425.27 Audit — recalculation or denial.

If on the audit of a claim for credit or reimbursement under this division, the director determines the amount of the claim to have been incorrectly calculated or that the claim is not allowable, the director shall recalculate the claim and notify the claimant of the recalculation or denial and the reasons for it. The director shall not adjust a claim after three years from October 31 of the year in which the claim was filed. If the claim for reimbursement has been paid, the amount may be recovered by assessment in the same manner that income taxes are assessed under sections 422.26 and 422.30. If the claim for credit has been paid, the director shall give notification to the claimant and the county treasurer of the recalculation or denial of the claim and the county treasurer shall proceed to collect the tax owed in the same manner as other property taxes due and payable are collected, if the property on which the credit was granted is still owned by the claimant, and repay the amount to the director upon collection. If the property on which the credit was granted is not owned by the claimant, the amount may be recovered from the claimant by assessment in the same manner that income taxes are assessed under sections 422.26 and 422.30. The recalculation of the claim shall be final unless appealed as provided in section 425.31. Section 422.70 is applicable with respect to this division.

[C75, 77, 79, 81, §425.27]

84 Acts, ch 1190, §2; 88 Acts, ch 1050, §2

425.28 Waiver of confidentiality.

A claimant shall expressly waive any right to confidentiality relating to all income tax information obtainable through the department of revenue and finance, including all information covered by sections 422.20 and 422.72. This waiver shall apply to information available to the county treasurer who shall hold the information confidential except that it may be used as evidence to disallow the credit.

The department of revenue and finance may release information pertaining to a person's eligibility or claim for or receipt of rent reimbursement to an employee of the department of inspections and appeals in the employee's official conduct of an audit or investigation.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.28]

94 Acts, ch 1165, §29; 99 Acts, ch 139, §1

425.29 False claim — penalty.

A person who makes a false affidavit for the purpose of obtaining credit or reimbursement provided for in this division or who knowingly receives the credit or reimbursement without being legally entitled to it or makes claim for the credit or reimbursement in more than one county in the state without being legally entitled to it is guilty of a fraudulent practice. The claim for credit or reimbursement shall be disallowed in full and if the claim has been paid the amount shall be recovered in the manner provided in section 425.27. The director of revenue and finance shall send a notice of disallowance of the claim.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.29]
83 Acts, ch 160, §10; 99 Acts, ch 152, §16, 40

425.30 Notices.

Section 422.57, subsection 1, shall apply to all notices under this division.

[C75, 77, 79, 81, §425.30]

425.31 Appeals.

Any person aggrieved by an act or decision of the director of revenue and finance or the department of revenue and finance under this division shall have the same rights of appeal and review as provided in sections 421.1 and 422.55 and the rules of the department of revenue and finance.

[C75, 77, 79, 81, §425.31]

425.32 Disallowance of certain claims.

A claim for credit shall be disallowed if the department finds that the claimant or a person of the claimant's household received title to the homestead primarily for the purpose of receiving benefits under this division.

[C75, 77, 79, 81, §425.32]

425.33 Rent increase — request and order for reduction.

If upon petition by a claimant the department of revenue and finance determines that a landlord has increased the claimant's rent primarily because the claimant is eligible for reimbursement under this division, the department of revenue and finance shall request the landlord by mail to reduce the rent appropriately.

In determining whether a landlord has increased a claimant's rent primarily because the claimant is eligible for reimbursement under this division, the department of revenue and finance shall consider the following factors:

1. The amount of the increase in rent.
2. If the landlord operates other rental property, whether a similar increase was imposed on the other rental property.
3. Increased or decreased costs of materials, supplies, services, and taxes in the area.
4. The time the rent was increased.
5. Other relevant factors in each particular case.

If the landlord fails to comply with the request of the department of revenue and finance within fifteen days after the request is mailed by the department, the department of revenue and finance shall order the rent reduced by an appropriate amount.

[C75, 77, 79, 81, §425.33]
86 Acts, ch 1241, §33

425.34 Hearings and appeals.

If the department of revenue and finance orders a landlord to reduce rent to a claimant, then upon the request of the landlord the department of revenue and finance shall hold a prompt hearing of the matter, to be conducted in accordance with the rules of the department. The department of revenue and finance shall give notice of the decision by mail to the claimant and to the landlord.

The claimant and the landlord shall have the rights of appeal and review as provided in section 425.31.

[C75, 77, 79, 81, §425.343]
86 Acts, ch 1241, §34

425.35 Defense to action for nonpayment of rent.

It is an affirmative defense to any action by a landlord based upon nonpayment or partial payment of rent that the landlord increased the rent primarily because the tenant had received, or was eligible for, reimbursement under this division.

[C75, 77, 79, 81, §425.35]

425.36 Discrimination in rentals or rent charges.

Discrimination by a landlord in the rental of or in rent charges for a homestead because the tenant has received or is eligible for reimbursement under this division is a simple misdemeanor.

[C75, 77, 79, 81, §425.36]

425.37 Rules.

The director of revenue and finance shall adopt rules in accordance with chapter 17A for the interpretation and proper administration of this division, including rules to prevent and disallow duplication of benefits and to prevent any unreasonable hardship or advantage to any person.

[C75, 77, 79, 81, §425.37]

425.38 Repealed by 79 Acts, ch 43, § 18.

425.39 Fund created — appropriation — priority.

The elderly and disabled property tax credit and reimbursement fund is created. There is appropriated annually from the general fund of the state to the department of revenue and finance to be

credited to the elderly and disabled property tax credit and reimbursement fund, from funds not otherwise appropriated, an amount sufficient to implement this division for claimants described in section 425.17, subsection 2, paragraph *"a"*.

[C75, 77, 79, 81, §425.39]

86 Acts, ch 1244, §51; 93 Acts, ch 180, §8; 97 Acts, ch 206, §7, 8, 10

425.40 Low-income fund created.

1. A low-income tax credit and reimbursement fund is created.

2. If the amount appropriated for purposes of this section for a fiscal year is insufficient to pay all claims in full, the director shall pay, in full, all claims to be paid during the fiscal year for reimbursement of rent constituting property taxes paid or if moneys are insufficient to pay all such claims on a pro rata basis. If the amount of claims for credit for property taxes due to be paid during the fiscal year exceed the amount remaining after payment to renters, the director of revenue and finance shall prorate the payments to the counties for the property tax credit. In order for the director to carry out the requirements of this subsection, notwithstanding any provision to the contrary in this division, claims for reimbursement for rent constituting property taxes paid filed before May 1 of the fiscal year shall be eligible to be paid in full during the fiscal year and those claims filed on or after May 1 of the fiscal year shall be eligible to be paid during the following fiscal year and the director is not required to make payments to counties for the property tax credit before June 15 of the fiscal year.

93 Acts, ch 180, §9, 22; 97 Acts, ch 23, §48

CHAPTER 425A

FAMILY FARM TAX CREDIT

425A.1 Family farm tax credit fund.
425A.2 Definitions.
425A.3 Where credit given.
425A.4 Claim for credit.
425A.5 Computation by county auditor.
425A.6 Warrants drawn by director — proration.
425A.7 Apportionment by auditor.
425A.8 False claim — penalty.

425A.1 Family farm tax credit fund.

The family farm tax credit fund is created in the office of the treasurer of state. There shall be transferred annually to the fund the first ten million dollars of the amount annually appropriated to the agricultural land credit fund, provided in section 426.1. Any balance in the fund on June 30 shall revert to the general fund.

90 Acts, ch 1250, §10; 93 Acts, ch 180, §10

425A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Actively engaged in farming"* means the designated person is personally involved in the production of crops and livestock on the eligible tract on a regular, continuous, and substantial basis. However, a lessor, whether under a cash or a crop share lease, is not actively engaged in farming on the area of the tract covered by the lease. This provision applies to both written and oral leases.

2. *"Agricultural land"* means land in tracts of ten acres or more excluding any buildings or other structures located on the land, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within a school corporation and in good faith used for agricultural or horticultural purposes. Any land in tracts laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and in good faith used for agricultural or horticultural purposes is entitled to the benefits of this chapter.

3. *"Crop"* or *"crop production"* includes pastureland.

4. *"Designated person"* means one of the following:

a. If the owner is an individual, the designated person includes the owner of the tract, the owner's spouse, the owner's child or stepchild, and their spouses, or the owner's relative within the third degree of consanguinity, and the relative's spouse.

b. If the owner is a partnership, a partner, or the partner's spouse.

c. If the owner is a family farm corporation, a family member who is a shareholder of the family farm corporation or the shareholder's spouse.

d. If the owner is an authorized farm corporation, a shareholder who owns at least fifty-one percent of the stock of the authorized farm corporation or the shareholder's spouse.

e. If the owner is an individual who leases the tract to a family farm corporation, a shareholder of the corporation if the combined stock of the fam-

ily farm corporation owned by the owner of the tract and persons related to the owner as enumerated in paragraph *"a"* is equal to at least fifty-one percent of the stock of the family farm corporation.

f. If the owner is an individual who leases the tract to a partnership, a partner if the combined partnership interest owned by a designated person as defined in paragraph *"a"* is equal to at least fifty-one percent of the ownership interest of the partnership.

5. *"Eligible tract"* or *"eligible tract of agricultural land"* means an area of agricultural land which meets all of the following:

a. Is comprised of all of the contiguous tracts under identical legal ownership that are located within the same county.

b. In the aggregate more than half the acres of the contiguous tract is devoted to the production of crops or livestock by a designated person who is actively engaged in farming.

c. For purposes of paragraph *"b"*, if some or all of the contiguous tract is being farmed under a lease arrangement, the activities of the lessor do not constitute being actively engaged in farming on the areas of the tract covered by the lease. If the lessee is a designated person who is actively engaged in farming, the acres under lease may be considered in determining whether more than half the acres of the contiguous tract are devoted to the production of crops or livestock.

6. *"Owner"* means any of the following:

a. An individual who holds the fee simple title to the agricultural land.

b. An individual who owns the agricultural land under a contract of purchase which has been recorded in the office of the county recorder of the county in which the agricultural land is located.

c. An individual who owns the agricultural land under devise or by operation of the inheritance laws, where the whole interest passes or where the divided interest is shared only by individuals related or formerly related to each other by blood, marriage, or adoption.

d. An individual who owns the agricultural land under a deed which conveys a divided interest, where the divided interest is shared only by individuals related or formerly related to each other by blood, marriage, or adoption.

e. A partnership where all partners are related or formerly related to each other by blood, marriage, or adoption.

f. A family farm corporation or authorized farm corporation, as both are defined in section 9H.1, which owns the agricultural land.

90 Acts, ch 1250, §11; 91 Acts, ch 267, §609 – 611; 96 Acts, ch 1198, §1, 2

425A.3 Where credit given.

1. The family farm tax credit fund shall be apportioned each year in the manner provided in this chapter so as to give a credit against the tax on each eligible tract of agricultural land within the several school districts of the state in which the levy for the general school fund exceeds five dollars and forty cents per thousand dollars of assessed value. The amount of the credit on each eligible tract of agricultural land shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on each eligible tract of agricultural land were the levy for the general school fund five dollars and forty cents per thousand dollars of assessed value for the previous year. However, in the case of a deficiency in the family farm tax credit fund to pay the credits in full, the credit on each eligible tract of agricultural land in the state shall be proportionate and applied as provided in this chapter.

2. An eligible tract of agricultural land qualifies for the credit computed under subsection 1 if the tract is owned by an owner as defined in section 425A.2 and a designated person is actively engaged in farming during the fiscal year preceding the fiscal year in which the auditor computes the amount of the credit under section 425A.5 for which the tract would be eligible. Notwithstanding the foregoing sentence, the *"actively engaged in farming"* requirement is satisfied if the designated person is in general control of the tract under a federal program pertaining to agricultural land.

3. The county board of supervisors shall determine the eligibility of each tract for which an application is received.

90 Acts, ch 1250, §12; 91 Acts, ch 267, §612, 613

425A.4 Claim for credit.

1. To apply for the credit, the person shall deliver to the county assessor a verified statement and designation of the tracts of agricultural land for which the credit is claimed. The assessor shall return the statement and designation on or before November 15 of each year to the county board of supervisors with a recommendation for allowance or disallowance. A claim for credit filed after November 1 of the year shall be considered as a claim filed for the following year.

2. The county board of supervisors in each county shall examine all claims delivered to county assessors, and shall either allow or disallow the claims, and if disallowed shall send notice of disallowance by regular mail to the claimant at the claimant's last known address. The claimant may appeal the decision of the board to the district court in which the tract for which the credit is claimed is situated by giving written notice of the appeal to the county board of supervisors within twenty days from the date of the mailing of the notice of the decision of the board of supervisors.

3. Upon the filing and allowance of the claim, the claim shall be allowed on that tract for successive years without further filing as long as the property is legally or equitably owned by that person or that person's spouse on July 1 of each of

those successive years, and the designated person who is actively engaged in farming remains the same during these years. When the property is sold or transferred, the buyer or transferee who wishes to qualify shall file for the credit. However, when the property is transferred as part of a distribution made pursuant to chapter 598, the transferee who is the spouse retaining ownership of the property is not required to file for the credit. In the case where the owner remains the same but the person who is actively engaged in farming changes, the owner shall refile for the credit. The owner shall provide written notice if the person actively engaged in farming changes.

4. The assessor shall retain a permanent file of current family farm credit claims filed in the assessor's office.

The county recorder shall give notice to the assessor of each transfer of title filed in the recorder's office. The notice shall describe the tract of agricultural land transferred, the name of the person transferring the title to the tract, and the name of the person to whom title to the tract has been transferred.

90 Acts, ch 1250, §13; 91 Acts, ch 97, §51; 91 Acts, ch 267, §614, 615; 2001 Acts, ch 154, §2, 3, 6

2001 amendments apply to family farm tax credit claims filed on or after July 1, 2001; 2001 Acts, ch 154, §6

425A.5 Computation by county auditor.

The family farm tax credit allowed each year shall be computed as follows: On or before April 1, the county auditor shall list by school districts all tracts of agricultural land which are entitled to credit, the taxable value for the previous year, the budget from each school district for the previous year, and the tax rate determined for the general fund of the school district in the manner prescribed in section 444.3 for the previous year, and if the tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value, the auditor shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural land entitled to credit in the school district, and on or before April 1, certify the total amount of credit and the total number of acres entitled to the credit to the department of revenue and finance.

90 Acts, ch 1250, §14; 91 Acts, ch 267, §616; 2001 Acts, ch 143, §2

425A.6 Warrants drawn by director — proration.

After receiving from the county auditors the certifications provided for in section 425A.5, and during the following fiscal year, the director of revenue and finance shall draw warrants on the family farm tax credit fund created in section 425A.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on June 1 of each year taking into consideration the relative budget and cash position of the state resources. However, if the family farm tax credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue and finance, the director shall prorate the fund to the county treasurers and shall notify the county auditors of the pro rata percentage on or before June 1.

90 Acts, ch 1250, §15; 91 Acts, ch 267, §617

425A.7 Apportionment by auditor.

Upon receiving the pro rata percentage from the director of revenue and finance, the county auditor shall determine the amount to be credited to each tract of agricultural land, and shall enter upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering the tax lists to the county treasurer. Upon receipt of the director's warrant by the county auditor, the auditor shall deliver the warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title.

90 Acts, ch 1250, §16

425A.8 False claim — penalty.

A person making a false claim or affidavit with fraudulent intent to obtain the credit under section 425A.3, is guilty of a fraudulent practice and the claim shall be disallowed in full. If the credit has been paid, the amount of the credit plus a penalty equal to twenty-five percent of the amount of credit plus interest, at the rate in effect under section 421.7, from the time of payment shall be collected by the county treasurer in the same manner as other property taxes, penalty, and interest are collected and when collected shall be paid to the director of revenue and finance.

A person who fails to notify the assessor of a change in the person who is actively engaged in farming the tract for which the credit under section 425A.3 is allowed shall be liable for the amount of the credit plus a penalty equal to five percent of the amount of the credit. The amounts shall be collected by the county treasurer in the same manner as other property taxes and any penalty are collected and when collected shall be paid to the director of revenue and finance.

90 Acts, ch 1250, §17; 2001 Acts, ch 154, §4, 6

Fraudulent practices; §714.8 – 714.14

2001 amendment applies to family farm tax credit claims filed on or after July 1, 2001; 2001 Acts, ch 154, §6

CHAPTER 426

AGRICULTURAL LAND TAX CREDIT

426.1 Agricultural land credit fund.
426.2 Definition.
426.3 Where credit given.
426.4 and 426.5 Repealed by 47 Acts, ch 152, §11, 12.
426.6 Computation by auditor — appeal.
426.7 Warrants drawn by director.
426.8 Apportionment by auditor.
426.9 Pro rata disbursement. Repealed by 89 Acts, ch 296, §96.
426.10 Rules.

426.1 Agricultural land credit fund.

There is created as a permanent fund in the office of the treasurer of state a fund to be known as the agricultural land credit fund, and for the purpose of establishing and maintaining this fund for each fiscal year there is appropriated thereto from funds in the general fund not otherwise appropriated the sum of thirty-nine million one hundred thousand dollars of which the first ten million dollars shall be transferred to and deposited into the family farm tax credit fund created in section 425A.1. Any balance in said fund on June 30 shall revert to the general fund.

[C39, §**6943.156;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.1]

93 Acts, ch 180, §11

426.2 Definition.

"Agricultural lands" as used in this chapter shall mean and include land in tracts of ten acres or more excluding any buildings or other structures located on such land, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes.

Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter.

[C39, §**6943.165;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.2]

426.3 Where credit given.

The agricultural land credit fund shall be apportioned each year in the manner hereinafter provided so as to give a credit against the tax on each tract of agricultural lands within the several school districts of the state in which the levy for the general school fund exceeds five dollars and forty cents per thousand dollars of assessed value; the amount of such credit on each tract of such lands shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on said tract of such lands were the levy for the general school fund five dollars and forty cents per thousand dollars of assessed value for the previous year, except in the case of a deficiency in the agricultural land credits fund to pay said credits in full, in which case the credit on each eligible tract of such lands in the state shall be proportionate and shall be applied as hereinafter provided.

[C39, §**6943.157, 6943.164;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.3]

426.4 and 426.5 Repealed by 47 Acts, ch 152, § 11, 12. See § 426.6.

426.6 Computation by auditor — appeal.

The agricultural land tax credit allowed each year shall be computed as follows: On or before April 1, the county auditor shall list by school districts all tracts of agricultural lands which are entitled to credit, together with the taxable value for the previous year, together with the budget from each school district for the previous year, and the tax rate determined for the general fund of the district in the manner prescribed in section 444.3 for the previous year, and if such tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value, the auditor shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural lands entitled to credit in the district, and on or before April 1, certify the amount to the department of revenue and finance.

In the event the county auditor denies a credit upon any such lands, the auditor shall immediately mail to the owner at the owner's last known address notice of the decision thereon. The owner may, within thirty days thereafter, appeal to the board of supervisors of the county wherein the land involved is situated by serving notice of said appeal upon the chairperson of said board. The board shall hear such appeal promptly and shall determine anew all questions involved in said appeal and shall within ten days after such hearing, mail to the owner at the owner's last known address, notice of its decision. In the event of disal-

lowance the owner may, within ten days from the date such notice is mailed, appeal such disallowance by the board of supervisors to the district court of that county by serving written notice of appeal on the county auditor. The appeal shall be tried de novo and may be heard in term time or vacation. The decision of the district court thereon shall be final.

[C39, §**6943.160 – 6943.163;** C46, §426.4 – 426.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.6]

86 Acts, ch 1245, §442; 2001 Acts, ch 143, §3; 2002 Acts, ch 1119, §54

Unnumbered paragraph 1 amended

426.7 Warrants drawn by director.

After receiving from the county auditors the certifications provided for in section 426.6, and during the following fiscal year, the director of revenue and finance shall draw warrants on the agricultural land credit fund created in section 426.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on July 15 of each year taking into consideration the relative budget and cash position of the state resources. However, if the agricultural land credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue and finance, the director shall prorate the fund to the county treasurers and notify the county auditors of the pro rata percentage on or before June 15.

[C39, §**6943.157;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.7]

83 Acts, ch 172, §6; 86 Acts, ch 1244, §52; 2001 Acts, ch 143, §4

426.8 Apportionment by auditor.

Upon receiving the pro rata percentage from the director of revenue and finance, the county auditor shall determine the amount to be credited to each tract of agricultural land, and shall enter upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering said tax lists to the county treasurer. Upon receipt of the director's warrant by the county auditor, the auditor shall deliver said warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title.

[C39, §**6943.158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.8]

86 Acts, ch 1245, §443

426.9 Pro rata disbursement. Repealed by 89 Acts, ch 296, § 96.

426.10 Rules.

The director of revenue and finance shall prescribe forms and rules, not inconsistent with this chapter, necessary to carry out its purposes.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.10]

86 Acts, ch 1245, §444

CHAPTER 426A

MILITARY SERVICE TAX CREDIT AND EXEMPTIONS

For requirements relating to state funding of military service property tax credits and exemptions, see §25B.7

426A.1 Definitions.
426A.1A Appropriation.
426A.2 Military service tax credit.
426A.3 Computation by auditor.
426A.4 Certification by director of revenue and finance.
426A.5 Proportionate shares to districts.
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426A.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §426A.1 transferred to §426A.1A

426A.1A Appropriation.

There is appropriated from the general fund of the state the amounts necessary to fund the credits provided under this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.1]

88 Acts, ch 1151, §3

C2001, §426A.1A

426A.2 Military service tax credit.

The moneys shall be apportioned each year so as to replace all or a portion of the tax which would be due on property eligible for military service tax exemption in the state, if the property were subject to taxation, the amount of the credit to be not more than six dollars and ninety-two cents per thousand dollars of assessed value of property which would be subject to the tax, except for the military service tax exemption.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.2]

88 Acts, ch 1151, §4; 89 Acts, ch 83, §51; 99 Acts, ch 180, §23, 24

1999 amendment applies to the military service property tax exemption claims allowed on or after January 1, 2000; 99 Acts, ch 180, §24

426A.3 Computation by auditor.

On or before August 1 of each year the county auditor shall certify to the county treasurer all claims for military service tax exemptions which have been allowed by the board of supervisors. Such certificate shall list the total amount of dollars, listed by taxing district in the county, due for military service tax credits claimed and allowed. The county treasurer shall forthwith certify to the department of revenue and finance the amount of dollars, listed by taxing district in the county, due for military service tax credits claimed and allowed.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.3]

426A.4 Certification by director of revenue and finance.

Sums distributable from the general fund of the state shall be allocated annually to the counties of the state. On September 15 annually the director of revenue and finance shall certify and draw warrants to the treasurer of each county payable from the general fund of the state in the amount claimed. Payments shall be made to the treasurer of each county not later than September 30 of each year.

[C50, 54, §426A.2, 426A.4, 426A.10; C58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.4, 426A.10; 81 Acts, ch 139, §2]

83 Acts, ch 172, §7; 86 Acts, ch 1244, §53; 88 Acts, ch 1151, §5

426A.5 Proportionate shares to districts.

The amount of credits received under this chapter shall then be apportioned by each county treasurer to the several taxing districts. Each taxing district shall receive its proportionate share of the military service tax credit allowed on each and every tax exemption allowed in such taxing district, in the proportion that the levy made by such taxing district upon general property bears to the total levy upon all property subject to general property taxation by all taxing districts imposing a general property tax in such taxing district.

[C50, §426A.2, 426A.4; C58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.5]

426A.6 Setting aside allowance.

If the director of revenue and finance determines that a claim for military service tax exemption has been allowed by a board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or the board of supervisors may appeal to the state board of tax review pursuant to section 421.1, subsection 4. The claimant or the board of supervisors may seek judicial review of the action of the state board of tax review in accordance with chapter 17A. If a claim is disallowed by the director of revenue and finance and not appealed to the state board of tax review or appealed to the state board of tax review and thereafter upheld upon final resolution, including judicial review, the credits allowed and paid from the general fund of the state become a lien upon the property on which the credit was originally granted, if still in the hands of the claimant and not in the hands of a bona fide purchaser, the amount so erroneously paid shall be collected by the county treasurer in the same manner as other taxes, and the collections shall be returned to the department of revenue and finance and credited to the general fund of the state. The director of revenue and finance may institute legal proceedings against a military service tax exemption claimant for the collection of payments made on disallowed exemptions.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.6; 82 Acts, ch 1246, §7, 11]

88 Acts, ch 1151, §6; 89 Acts, ch 251, §34; 97 Acts, ch 158, §27; 2002 Acts, ch 1151, §17

Section amended

426A.7 Forms — rules.

The director of revenue and finance shall prescribe the form for the making of a verified state-

ment and designation of property eligible for military service tax exemption, and the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. As soon as practicable after the effective date of this chapter, and from time to time thereafter as necessary, the department of revenue and finance shall forward to the county auditors of the several counties of the state, such prescribed sample forms. The director of revenue and finance shall have the power and authority to prescribe rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.7]

426A.8 Excess remitted — appeals.

If the amount of credit apportioned to any property eligible to military service tax exemption under this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against such property eligible for military service tax exemption, then the excess shall be remitted by the county treasurer to the department of revenue and finance to be redeposited in the general fund of the state and reallocated the following year by the department.

If any claim for exemption made has been denied by the board of supervisors, and the action is subsequently reversed on appeal, the same credit shall be allowed on the assessed valuation, not to exceed the amount of the military service tax exemption involved in the appeal, as was allowed on other military service tax exemption valuations for the year or years in question, and the director of revenue and finance, the county auditor, and the county treasurer shall credit and change their books and records accordingly.

If the appealing taxpayer has paid one or both of the installments of the tax payable in the year or years in question on such military service tax exemption valuation, remittance shall be made to the county treasurer in the amount of such credit.

The amount of the credit shall be allocated and paid from the surplus redeposited in the general fund of the state provided for in the first paragraph of this section.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.8]

88 Acts, ch 1151, §7

426A.9 Erroneous credits.

If any claim is allowed, and subsequently reversed on appeal, any credit shall be void, and the amount of the credit shall be charged against the property in question, and the director of revenue and finance, the county auditor and the county treasurer shall correct their books and records. The amount of the erroneous credit, when collected, shall be returned by the county treasurer to the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.9]

88 Acts, ch 1151, §8

426A.10 Repealed by 81 Acts, ch 139, § 3. See § 426A.4.

426A.11 Military service — exemptions.

The following exemptions from taxation shall be allowed:

1. The property, not to exceed two thousand seven hundred seventy-eight dollars in taxable value of any veteran, as defined in section 35.1, of the First World War.

2. The property, not to exceed one thousand eight hundred fifty-two dollars in taxable value of an honorably separated, retired, furloughed to a reserve, placed on inactive status, or discharged veteran, as defined in section 35.1.

3. Where the word *"veteran"* appears in this chapter, it includes, without limitation, the members of the United States air force, merchant marine, and coast guard.

4. For the purpose of determining a military tax exemption under this section, property includes a manufactured or mobile home as defined in section 435.1.

[C97, §1304; S13, SS15, §1304; C24, 27, 31, 35, 39, §**6946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.3; 82 Acts, ch 1063, §1]

83 Acts, ch 101, §87; 84 Acts, ch 1219, §32; 88 Acts, ch 1151, §9, 10; 88 Acts, ch 1243, §10; 89 Acts, ch 296, §45; 91 Acts, ch 199, §5; 94 Acts, ch 1173, §35; 99 Acts, ch 151, §88, 89; 99 Acts, ch 180, §18

CS99, §426A.11

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1151, §18

Cooperative apartments, see §499A.14

For requirements relating to state funding of military service exemptions, see §25B.7

Subsection 3 amended

426A.12 Exemptions to relatives.

In case any person in the foregoing classifications does not claim the exemption from taxation, it shall be allowed in the name of the person to the same extent on the property of any one of the following persons in the order named:

1. The spouse, or surviving spouse remaining unmarried, of a veteran, as defined in section 35.1, where they are living together or were living together at the time of the death of the veteran.

2. The parent whose spouse is deceased and who remains unmarried, of a veteran, as defined in section 35.1, whether living or deceased, where the parent is, or was at the time of death of the veteran, dependent on the veteran for support.

3. The minor child, or children owning property as tenants in common, of a deceased veteran, as defined in section 35.1.

No more than one tax exemption shall be al-

lowed under this section or section 426A.11 in the name of a veteran, as defined in section 35.1.

[C97, §1304; S13, SS15, §1304; C24, 27, 31, 35, 39, §**6946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.4]

99 Acts, ch 151, §88, 89; 99 Acts, ch 180, §19

CS99, §426A.12

426A.13 Claim for military tax exemption — discharge recorded.

A person named in section 426A.11, who is a resident of and domiciled in the state of Iowa, shall receive a reduction equal to the exemption, to be made from any property owned by the person or owned by a family farm corporation of which the person is a shareholder and who occupies the property and so designated by proceeding as provided in the section. To be eligible to receive the exemption the person claiming it shall have recorded in the office of the county recorder of the county in which is located the property designated for the exemption, evidence of property ownership by that person or the family farm corporation of which the person is a shareholder and the military certificate of satisfactory service, order transferring to inactive status, reserve, retirement, order of separation from service, honorable discharge or a copy of any of these documents of the person claiming or through whom is claimed the exemption.

The person shall file with the appropriate assessor on forms obtained from the assessor the claim for exemption for the year for which the person is first claiming the exemption. The claim shall be filed not later than July 1 of the year for which the person is claiming the exemption. The claim shall set out the fact that the person is a resident of and domiciled in the state of Iowa, and a person within the terms of section 426A.11, and shall give the volume and page on which the certificate of satisfactory service, order of separation, retirement, furlough to reserve, inactive status, or honorable discharge or certified copy thereof is recorded in the office of the county recorder, and may include the designation of the property from which the exemption is to be made, and shall further state that the claimant is the equitable or legal owner of the property designated or if the property is owned by a family farm corporation, that the person is a shareholder of that corporation and that the person occupies the property.

Upon the filing and allowance of the claim, the claim shall be allowed to that person for successive years without further filing. Provided, that notwithstanding the filing or having on file a claim for exemption, the person or person's spouse is the legal or equitable owner of the property on July 1 of the year for which the claim is allowed. When the property is sold or transferred or the person wishes to designate different property for the exemption, a person who wishes to receive the exemption shall refile for the exemption. A person who sells or transfers property which is designated for the exemption or the personal representative of a deceased person who owned such property shall provide written notice to the assessor that the property is no longer legally or equitably owned by the former claimant.

In case the owner of the property is in active service in any of the armed forces of the United States or of this state, including the nurses corps of the state or of the United States, or is sixty-five years of age or older, or is disabled, the claim may be filed by any member of the owner's family, by the owner's guardian or conservator, or by any other person who may represent the owner under power of attorney. In all cases where the owner of the property is married, the spouse may file the claim for exemption. A person may not claim an exemption in more than one county of the state, and if a designation is not made the exemption shall apply to the homestead, if any.

[C24, 27, 31, 35, 39, §**6947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.5; 82 Acts, ch 1246, §8, 11]

84 Acts, ch 1221, §2; 87 Acts, ch 198, §3; 89 Acts, ch 296, §46; 97 Acts, ch 158, §31; 97 Acts, ch 206, §9; 99 Acts, ch 151, §88, 89

CS99, §426A.13

426A.14 Allowance — continuing effectiveness.

The assessor shall retain a permanent file of current military service tax exemption claims filed in the assessor's office. The assessor shall file a notice of transfer of property for which a claim is filed when notice is received from the office of the county recorder, from the person who sold or transferred the property, or from the personal representative of a deceased claimant.

The county recorder shall give notice to the assessor of each transfer of title filed in the recorder's office. The notice shall describe the property transferred, the name of the person transferring the title to the property, and the name of the person to whom title to the property has been transferred.

Not later than July 6 of each year, the assessor shall remit the claims and designations of property to the county auditor with the assessor's recommendation for allowance or disallowance. If the assessor recommends disallowance of a claim, the assessor shall submit the reasons for the recommendation, in writing, to the county auditor.

The county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim, it shall send written notice, by mail, to the claimant at the claimant's last known address. The notice shall state the reasons for disallowing the claim for the exemption. The board is not required to send notice that a claim is disallowed if the claimant voluntarily withdraws the claim.

Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors in the district court of the county in which said claimed military service tax exemption is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

Upon adoption of a resolution by the county board of supervisors, any person may request, in writing, from the appropriate assessor forms for the filing for a military service tax exemption. The person may complete the form, which shall include a statement claiming the military service tax exemption and designating the property upon which the tax exemption is claimed, and mail or return it to the appropriate assessor. The signature of the claimant on the claim shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

[SS15, §1304-1A; C24, 27, 31, 35, 39, §**6948;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.6; 82 Acts, ch 1246, §9, 11]

86 Acts, ch 1241, §36; 94 Acts, ch 1144, §2; 99 Acts, ch 151, §88, 89

CS99, §426A.14

426A.15 Penalty.

Any person making a false affidavit for the purpose of obtaining the exemption provided for in sections 426A.11 to 426A.14 or who knowingly receives such exemption without being legally entitled thereto, or who makes claim for exemption in more than one county in the state shall be guilty of a fraudulent practice.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.7]

99 Acts, ch 151, §88, 89

CS99, §426A.15

CHAPTER 426B

PROPERTY TAX RELIEF — MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES SERVICES

426B.1 Appropriations — property tax relief fund.
426B.2 Property tax relief fund distributions.
426B.3 Notification of relief fund payment.
426B.4 Rules.
426B.5 Funding pools.

426B.1 Appropriations — property tax relief fund.

1. A property tax relief fund is created in the state treasury under the authority of the department of human services. The fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state except in determining the cash position of the state for payment of state obligations. The moneys in the fund are not subject to the provisions of section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this chapter. Moneys in the fund may be used for cash flow purposes, provided that any moneys so allocated are returned to the fund by the end of each fiscal year. However, the fund shall be considered a special account for the purposes of section 8.53, relating to elimination of any GAAP deficit. For the purposes of this chapter, unless the context otherwise requires, *"property tax relief fund"* means the property tax relief fund created in this section.

2. There is appropriated to the property tax relief fund for the indicated fiscal years from the general fund of the state the following amounts:

For the fiscal year beginning July 1, 1997, and succeeding fiscal years, ninety-five million dollars.

3. There is annually appropriated from the property tax relief fund to the department of human services to supplement the medical assistance appropriation for the fiscal year beginning July 1, 1997, and for succeeding fiscal years, six million six hundred thousand dollars to be used for the nonfederal share of the costs of services provided to minors with mental retardation under the medical assistance program to meet the requirements of section 249A.12, subsection 4. The appropriation in this subsection shall be charged to the property tax relief fund prior to the distribution of moneys from the fund under section 426B.2 and the amount of moneys available for distribution shall be reduced accordingly. However, the appropriation in this subsection shall be considered to be a property tax relief payment for purposes of the combined amount of payments required to achieve fifty percent of the counties' base year expenditures as provided in section 426B.2, subsection 2.

95 Acts, ch 206, §17; 96 Acts, ch 1034, §38; 96

Acts, ch 1219, §104; 97 Acts, ch 158, §28; 2002 Acts, ch 1119, §167

Subsection 2, paragraphs a and b stricken and former paragraph c redesignated as unnumbered paragraph 2

426B.2 Property tax relief fund distributions.

1. The moneys in the property tax relief fund available to counties for a fiscal year shall be distributed as provided in this section. A county's proportion of the moneys shall be equivalent to the sum of the following three factors:

a. One-third based upon the county's proportion of the state's general population.

b. One-third based upon the county's proportion of the state's total taxable property valuation assessed for taxes payable in the previous fiscal year.

c. One-third based upon the county's proportion of all counties' base year expenditures, as defined in section 331.438.

Moneys provided to a county for property tax relief in a fiscal year in accordance with this subsection shall not be less than the amount provided for property tax relief in the previous fiscal year.

2. The distributions under subsection 1 shall continue to be made until the combined amount of the distributions made under subsection 1 are equal to fifty percent of the total of all counties' base year expenditures as defined in section 331.438.

3. The director of human services shall draw warrants on the property tax relief fund, payable to the county treasurer in the amount due to a county in accordance with subsection 1 and mail the warrants to the county auditors in July and January of each year.

4. As used in this chapter, and in sections 331.438 and 331.439, *"population"* means the latest applicable population estimate issued by the federal government.

95 Acts, ch 206, §18; 96 Acts, ch 1205, §4, 5; 97 Acts, ch 198, §5; 98 Acts, ch 1100, §59; 98 Acts, ch 1213, §7, 9; 2001 Acts, ch 191, §44

426B.3 Notification of relief fund payment.

1. The county auditor shall reduce the certified budget amount received from the board of supervisors for the succeeding fiscal year for the county mental health, mental retardation, and developmental disabilities services fund created in section 331.424A by an amount equal to the amount the county will receive from the property tax relief fund pursuant to section 426B.2, for the succeeding fiscal year and the auditor shall determine the rate of taxation necessary to raise the reduced amount. On the tax list, the county auditor shall compute the amount of taxes due and payable on each parcel before and after the amount received from the property tax relief fund is used to reduce the county budget. The director of human services shall notify the county auditor of each county of the amount of moneys the county will receive from the property tax relief fund pursuant to section 426B.2, for the succeeding fiscal year.

2. The amount of property tax dollars reduced on each parcel as a result of the moneys received from the property tax relief fund pursuant to section 426B.2, shall be noted on each tax statement prepared by the county treasurer pursuant to section 445.23.

95 Acts, ch 206, §19; 97 Acts, ch 198, §6; 98 Acts, ch 1100, §60

426B.4 Rules.

The mental health and developmental disabilities commission shall consult with county representatives and the director of human services in prescribing forms and adopting rules pursuant to chapter 17A to administer this chapter.

95 Acts, ch 206, §20; 97 Acts, ch 158, §29; 2002 Acts, ch 1146, §19

Continuation of rules adopted by council on human services prior to July 1, 2002; 2002 Acts, ch 1146, §22

Section amended

426B.5 Funding pools.

1. *Per capita expenditure target pool.*

a. A per capita expenditure target pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

b. A statewide per capita expenditure target amount is established. The statewide per capita expenditure target amount shall be equal to the one-hundredth percentile of all county per capita expenditures in the fiscal year beginning July 1, 1997, and ending June 30, 1998.

c. Moneys available in the per capita expenditure pool for a fiscal year shall be distributed to those counties that meet all of the following eligibility requirements:

(1) The county is levying the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under section 331.424A.

(2) The county's per capita expenditure in the latest fiscal year for which the actual expenditure information is available is equal to or less than the statewide per capita expenditure target amount.

(3) In the fiscal year that commenced two years prior to the fiscal year of distribution, the county's mental health, mental retardation, and developmental disabilities services fund ending balance under generally accepted accounting principles was equal to or less than twenty-five percent of the county's actual gross expenditures for the fiscal year that commenced two years prior to the fiscal year of distribution.

(4) The county is in compliance with the filing date requirements under section 331.403.

d. The distribution amount a county receives from the moneys available in the pool shall be de-

termined based upon the county's proportion of the general population of the counties eligible to receive moneys from the pool for that fiscal year. However, a county shall not receive moneys in excess of the amount which would cause the county's per capita expenditure to exceed the statewide per capita expenditure target. Moneys credited to the per capita expenditure target pool which remain unobligated or unexpended at the close of a fiscal year shall remain in the pool for distribution in the succeeding fiscal year.

e. The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with this subsection. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued in January.

2. *Risk pool.*

a. For the purposes of this subsection, unless the context otherwise requires:

(1) *"Net expenditure amount"* means a county's gross expenditures from the services fund for a fiscal year as adjusted by subtracting all services fund revenues for that fiscal year that are received from a source other than property taxes, as calculated on a modified accrual basis.

(2) *"Services fund"* means a county's mental health, mental retardation, and developmental disabilities services fund created in section 331.424A.

b. A risk pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

c. A risk pool board is created. The board shall consist of two county supervisors, two county auditors, a member of the mental health and developmental disabilities commission who is not a member of a county board of supervisors, a member of the county finance committee created in chapter 333A who is not an elected official, a representative of a provider of mental health or developmental disabilities services selected from nominees submitted by the Iowa association of community providers, and two single entry point process administrators, all appointed by the governor, and one member appointed by the director of human services. All members appointed by the governor shall be subject to confirmation by the senate. Members shall serve for three-year terms. A vacancy shall be filled in the same manner as the original appointment. Expenses and other costs of the risk pool board members representing counties shall be paid by the county of origin. Expenses and other costs of risk pool board members who do not represent counties shall be paid from a source determined by the governor. Staff assistance to the board shall be provided by the department of human services and counties. Actuarial expenses and other direct administrative costs shall be charged to the pool.

d. (1) A county must apply to the board for assistance from the risk pool on or before April 1 to cover an unanticipated net expenditure amount in excess of the county's current fiscal year budgeted net expenditure amount for the county's services fund. For purposes of applying for risk pool assistance and for repaying unused risk pool assistance, the current fiscal year budgeted net expenditure amount shall be deemed to be the higher of either the budgeted net expenditure amount in the management plan approved under section 331.439 for the fiscal year in which the application is made or the prior fiscal year's net expenditure amount.

(2) Basic eligibility for risk pool assistance shall require a projected net expenditure amount in excess of the sum of one hundred five percent of the county's current fiscal year budgeted net expenditure amount and any amount of the county's prior fiscal year ending fund balance in excess of twenty-five percent of the county's gross expenditures from the services fund in the prior fiscal year. However, if a county's services fund ending balance in the previous fiscal year was less than ten percent of the amount of the county's gross expenditures from the services fund for that fiscal year and the county has a projected net expenditure amount for the current fiscal year that is in excess of one hundred one percent of the budgeted net expenditure amount for the current fiscal year, the county shall be considered to have met the basic eligibility requirement and is qualified for risk pool assistance.

(3) The board shall review the fiscal year-end financial records for all counties that are granted risk pool assistance. If the board determines a county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county, the county shall refund the difference between the amount of assistance granted and the actual need. The county shall submit the refund within thirty days of receiving notice from the board. Refunds shall be credited to the risk pool.

(4) A county receiving risk pool assistance in a fiscal year in which the county did not levy the maximum amount allowed for the county's services fund under section 331.424A shall be required to repay the risk pool assistance during the two succeeding fiscal years. The repayment amount shall be limited to the amount by which the actual amount levied was less than the maximum amount allowed, with at least fifty percent due in the first succeeding fiscal year and the remainder due in the second succeeding fiscal year.

(5) The board shall determine application requirements to ensure prudent use of risk pool assistance. The board may accept or reject an application for assistance in whole or in part. The decision of the board is final.

(6) The total amount of risk pool assistance shall be limited to the amount available in the risk pool for a fiscal year. If the total amount of eligible

assistance exceeds the amount available in the risk pool the amount of assistance paid shall be prorated among the counties eligible for assistance. Moneys remaining unexpended or unobligated in the risk pool at the close of a fiscal year shall remain available for distribution in the succeeding fiscal year.

e. A county may apply for preapproval for risk pool assistance based upon an individual who has an unanticipated disability condition with an exceptional cost and the individual is either new to the county's service system or the individual's unanticipated disability condition is new to the individual.

f. The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with the board's decisions. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued before the close of the fiscal year.

g. On or before March 1 and September 1 of each fiscal year, the department of human services shall provide the risk pool board with a report of the financial condition of each funding source administered by the board. The report shall include but is not limited to an itemization of the funding source's balances, types and amount of revenues credited, and payees and payment amounts for the expenditures made from the funding source during the reporting period.

98 Acts, ch 1213, §8, 9; 2000 Acts, ch 1090, §4, 6; 2000 Acts, ch 1232, §2, 3, 9, 10; 2001 Acts, ch 155, §4 – 8, 11; 2002 Acts, ch 1050, §36; 2002 Acts, ch 1146, §20

Confirmation, see §2.32

Purchase of service provider reimbursement; 2000 Acts, ch 1221, §3; 2001 Acts, ch 184, §2; 2002 Acts, ch 1174, §2

2001 amendments striking subsection 2 and amending former subsection 3, renumbered as 2, take effect May 21, 2001, and apply to fiscal years beginning on or after July 1, 2001; crediting of remaining moneys in the incentive and efficiency pool; 2001 Acts, ch 155, §11

Subsection 1, paragraph c, unnumbered paragraph 1 amended

Subsection 2, paragraph c amended

CHAPTER 427

PROPERTY EXEMPT AND TAXABLE

See chapter 437A for assessment and taxation of certain property associated with the production, generation, transmission, or delivery of electricity or natural gas

427.1 Exemptions.
427.2 Taxable property acquired through eminent domain.
427.2A Taxation of life estate in property donated to public.
427.3 Military service — exemptions. Transferred to §426A.11; 99 Acts, ch 151, §88, 89.
427.4 Exemptions to relatives. Transferred to §426A.12; 99 Acts, ch 151, §88, 89.
427.5 Claim for military tax exemption — discharge recorded. Transferred to §426A.13; 99 Acts, ch 151, §88, 89.
427.6 Allowance — continuing effectiveness. Transferred to §426A.14; 99 Acts, ch 151, §88, 89.
427.7 Penalty. Transferred to §426A.15; 99 Acts, ch 151, §88, 89.
427.8 Petition for suspension or abatement of taxes, assessments, and rates or charges, including interest, fees, and costs.
427.9 Suspension of taxes, assessments, and rates or charges, including interest, fees, and costs.
427.10 Abatement.
427.11 Grantee or devisee to pay tax.
427.12 Suspended tax record.
427.13 What taxable.
427.14 County lands.
427.15 Interest of lessee.
427.16 Historic property — rehabilitation tax exemption — application.
427.17 Tax credit for livestock tax. Repealed by 88 Acts, ch 1250, §21.
427.18 Token tax liability accrues.
427.19 Exemptions eligibility — prorating.

427.1 Exemptions.

The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including state university, university of science and technology, and school lands. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment.

2. *Municipal and military property.* The

property of a county, township, city, school corporation, levee district, drainage district, or the Iowa national guard, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F or 476A that shall be subject to taxation under chapter 437A and facilities of a municipal utility that are used for the provision of local exchange services pursuant to chapter 476, but only to the extent such facilities are used to provide such services, which shall be subject to taxation under chapter 433, except that section 433.11 shall not apply. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes, or leased from the city or county by the Iowa national guard or by a federal agency for the benefit of the Iowa national guard when devoted for public use and not for pecuniary profit. Food and beverages may be served at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire company buildings and grounds.* The publicly owned buildings and grounds used exclusively for keeping fire engines and implements for extinguishing fires and for meetings of fire companies.

5. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit. The operation of bingo games on property of such organization shall not adversely affect the exemption of that property under this subsection if all proceeds, in excess of expenses, are used for the legitimate purposes of the organization.

6. *Property of cemetery associations.* Burial grounds, mausoleums, buildings and equipment owned and operated by cemetery associations and used exclusively for the maintenance and care of the cemeteries devoted to interment of human bodies and human remains. The exemption granted by this subsection shall not apply to any property used for the practice of mortuary science.

7. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

8. *Property of religious, literary, and charitable societies.* All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. However, an organization mentioned in this subsection whose primary objective is to preserve land in its natural state may own or lease land not exceeding three hundred twenty acres in each county for its appropriate objects. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment. All such property shall be listed upon the tax rolls of the district or districts in which it is located and shall have ascribed to it an actual fair market value and an assessed or taxable value, as contemplated by section 441.21, whether such property be subject to a levy or be exempted as herein provided and such information shall be open to public inspection.

9. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district in which the real property is located. The property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All the property shall be listed on the assessment rolls in the district in which the property is located and an actual fair market value and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this subsection may be or is affirmed, and the information shall be open to public inspection; it being the intent of this section that the property be valued whether or not it be subject to a levy. Every educational institution claiming an exemption under this subsection shall file with the assessor not later than February 1 of the year for which the exemption is requested, a

statement upon forms to be prescribed by the director of revenue and finance, describing and locating the property upon which exemption is claimed. Property which is located on the campus grounds and used for student union purposes may serve food and beverages without affecting its exemption received pursuant to subsection 8 or this subsection.

10. *Homes for soldiers.* The buildings and grounds of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

11. *Agricultural produce.* Growing agricultural and horticultural crops except commercial orchards and vineyards.

12. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

13. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

14. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 5, 8, or 33 shall file with the assessor not later than February 1 a statement upon forms to be prescribed by the director of revenue and finance, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases, or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred.

The assessor, in arriving at the valuation of any property of the society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased or rented and is used regularly for commercial purposes for a profit to a party or individual. If a portion of the property is used regularly for commercial purposes, an exemption shall not be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. However, the board of trustees or the board of directors of a hospital, as defined in section 135B.1, may permit use of a portion of the hospital for commercial purposes, and the hospital is entitled to full exemption for that portion used for nonprofit health-related purposes, upon compliance with the filing requirements of this subsection.

An exemption shall not be granted upon property upon or in which persistent violations of the laws of the state are permitted. A claimant of an exemption shall, under oath, declare that no violations of law will be knowingly permitted or have been permitted on or after January 1 of the year in which a tax exemption is requested. Claims for exemption shall be verified under oath by the president or other responsible head of the organization. A society or organization which ceases to use the property for the purposes stated in the claim shall provide written notice to the assessor of the change in use.

15. *Mandatory denial.* No exemption shall be granted upon any property which is the location of federally licensed devices not lawfully permitted to operate under the laws of the state.

16. *Revoking or modifying exemption.* Any taxpayer or any taxing district may make application to the director of revenue and finance for revocation or modification of any exemption, based upon alleged violations of this chapter. The director of revenue and finance may also on the director's own motion set aside or modify any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue and finance shall give notice by mail to the taxpayer or taxing district applicant and to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue and finance, and shall hold a hearing prior to issuing any order for revocation or modification. An order made by the director of revenue and finance revoking or modifying an exemption shall be applicable to the tax year commencing with the tax year in which the application is made to the director or the tax year commencing with the tax year in which the director's own motion is filed. An order made by the director of revenue and finance revoking or modifying an exemption is subject to judicial review in accordance with chapter 17A, the Iowa administrative procedure Act. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court having jurisdiction in the county in which the property is located, and must be filed within thirty days after any order revoking or modifying an exemption is made by the director of revenue and finance.

17. *Rural water sales.* The real property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

18. *Assessed value of exempt property.* Each

county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within the assessor's jurisdiction. A summary report of tax exempt property shall be filed with the director of revenue and finance and the local board of review on or before April 16 of each year on forms prescribed by the director of revenue and finance.

19. *Pollution control and recycling.* Pollution-control or recycling property as defined in this subsection shall be exempt from taxation to the extent provided in this subsection, upon compliance with the provisions of this subsection.

This exemption shall apply to new installations of pollution-control or recycling property beginning on January 1 after the construction or installation of the property is completed. This exemption shall apply beginning on January 1, 1975, to existing pollution-control property if its construction or installation was completed after September 23, 1970, and this exemption shall apply beginning January 1, 1994, to recycling property.

This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control or recycling property. If the pollution-control or recycling property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control or recycling property, determined as of the assessment date.

Application for this exemption shall be filed with the assessing authority not later than the first of February of the first year for which the exemption is requested, on forms provided by the department of revenue and finance. The application shall describe and locate the specific pollution-control or recycling property to be exempted.

The application for a specific pollution-control or recycling property shall be accompanied by a certificate of the department of natural resources certifying that the primary use of the pollution-control property is to control or abate pollution of any air or water of this state or to enhance the quality of any air or water of this state or, if the property is recycling property, that the primary use of the property is for recycling.

A taxpayer may seek judicial review of a determination of the department or, on appeal, of the environmental protection commission in accordance with the provisions of chapter 17A.

The environmental protection commission of the department of natural resources shall adopt rules relating to certification under this subsection and information to be submitted for evaluating pollution-control or recycling property for which a certificate is requested. The department of revenue and finance shall adopt any rules necessary to implement this subsection, including rules on identification and valuation of pollution-control or recycling property. All rules adopted shall be subject to the provisions of chapter 17A.

For the purposes of this subsection *"pollution-control property"* means personal property or improvements to real property, or any portion thereof, used primarily to control or abate pollution of any air or water of this state or used primarily to enhance the quality of any air or water of this state and *"recycling property"* means personal property or improvements to real property or any portion of the property, used primarily in the manufacturing process and resulting directly in the conversion of waste plastic, wastepaper products, or waste paperboard, into new raw materials or products composed primarily of recycled material. In the event such property shall also serve other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation under this subsection.

For the purposes of this subsection *"pollution"* means air pollution as defined in section 455B.131 or water pollution as defined in section 455B.171. *"Water of the state"* means the water of the state as defined in section 455B.171. *"Enhance the quality"* means to diminish the level of pollutants below the air or water quality standards established by the environmental protection commission of the department of natural resources.

20. *Impoundment structures.* The impoundment structure and any land underlying an impoundment located outside an incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year not later than February 1 for the exemption. The application shall be made on forms prescribed by the department of revenue and finance. The first application shall be accompanied by a copy of the water storage permit approved by the director of the department of natural resources or the director's designee, and a copy of the plan for the construction of the impoundment structure and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommendation of the soil and water conservation district commissioners, to the board of supervisors for approval or denial. An applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court.

As used in this subsection, *"impoundment"* means a reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; *"storage capacity"* means the total area below the crest elevation of the principal spillway including the volume of any excavation in the area; and *"impoundment structure"* means a dam, earthfill, or other structure used to create an impoundment.

21. *Low-rent housing.* The property owned and operated by a nonprofit organization providing low-rent housing for persons who are elderly and persons with physical and mental disabilities. The exemption granted under the provisions of this subsection shall apply only until the terms of the original low-rent housing development mortgage is paid in full or expires, subject to the provisions of subsection 14.

22. *Natural conservation or wildlife areas.* Recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983, the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is granted. A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, not later than February 1 of the assessment year, on forms provided by the department of revenue and finance. The application shall describe and locate the property to be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application. Upon receipt of the application, the commissioners shall certify whether the property is eligible to receive the exemption. The commissioners shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

Before the board of supervisors may designate real property for the exemption, it shall establish priorities for the types of real property for which an exemption may be granted and the amount of acreage. These priorities may be the same as or different than those for previous years. The board of supervisors shall get the approval of the governing body of the city before an exemption may be granted to real property located within the corporate limits of that city. A public hearing shall be held with notice given as provided in section 73A.2 at which the proposed priority list shall be presented. However, no public hearing is required if the proposed priorities are the same as those for the previous year. After the public hearing, the board of supervisors shall adopt by resolution the proposed priority list or another priority list. Property upon which are located abandoned buildings or structures shall have the lowest priority on the list adopted, except where the board of supervisors determines that a structure has historic significance. The board of supervisors shall also provide for a procedure where the amount of acres for which exemptions are sought exceeds the amount the priority list provides for that type or in the aggregate for all types.

After receipt of an application with its accompanying certification and affidavit and the establishment of the priority list, the board of supervisors may grant a tax exemption under this subsection using the established priority list as a mandate. Real property designated for the tax exemption shall be designated by May 15 of the assessment year in which begins the fiscal year for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is recreational lakes, forest cover, river and stream, river and stream banks, or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested, is eligible for the exemption under this subsection. How-

ever, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil and water conservation district in which it is located. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

a. "Open prairies" includes hillsides and gully areas which have a permanent grass cover but does not include native prairies meeting the criteria of the natural resource commission.

b. "Forest cover" means land which is predominantly wooded.

c. "Recreational lake" means a body of water, which is not a river or stream, owned solely by a nonprofit organization and primarily used for boating, fishing, swimming and other recreational purposes.

d. "Used for economic gain" includes, but is not limited to, using property for the storage of equipment, machinery, or crops.

Notwithstanding other requirements under this subsection, the owner of any property lying between a river or stream and a dike which is required to be set back three hundred feet or less from the river or stream shall automatically be granted an exemption for that property upon submission of an application accompanied by an affidavit signed by the applicant that if the exemption is granted the property will not be used for economic gain during the period of exemption. The exemption shall continue from year to year for as long as the property qualifies and is not used for economic gain, without need for filing additional applications or affidavits. Property exempted pursuant to this paragraph is in addition to the maximum acreage applicable to other exemptions under this subsection.

23. *Native prairie and wetland.* Land designated as native prairie or land designated as a protected wetland by the department of natural resources pursuant to section 456B.12. Application for the exemption shall be made on forms provided by the department of revenue and finance. Land designated as a protected wetland shall be assessed at a value equal to the average value of the land where the wetland is located and which is owned by the person granted the exemption. The application forms shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested. The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate from the department of natural resources stating that the land is native prairie or protected wetland. The department of natural resources shall issue a certificate for the native prairie exemption if the department finds that the land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the natural resource commission for native prairie. The department of natural resources shall issue a certificate for the wetland exemption if the department finds the land is a protected wetland, as defined under section 456B.1, or if the wetland was previously drained and cropped but has been restored under a nonpermanent restoration agreement with the department or other county, state, or federal agency or private conservation group. A taxpayer may seek judicial review of a decision of the department according to chapter 17A. The natural resource commission shall adopt rules to implement this subsection.

The assessing authority each year may submit to the department a claim for reimbursement of tax revenue lost from the exemption. Upon receipt of the claim, the department shall reimburse the assessing authority an amount equal to the lost tax revenue based on the value of the protected wetland as assessed by the authority, unless the department reimburses the authority based upon a departmental assessment of the protected wetland. The authority may contest the department's assessment as provided in chapter 17A. The department is not required to honor a claim submitted more than sixty days after the authority has assessed land where the protected wetland is located and which is owned by the person granted the exemption.

24. *Land certified as a wildlife habitat.* The owner of agricultural land may designate not more than two acres of the land for use as a wildlife habitat. After inspection, if the land meets the standards established by the natural resource commission for a wildlife habitat under section 483A.3, the department of natural resources shall certify the designated land as a wildlife habitat and shall send a copy of the certification to the appropriate assessor not later than February 1 of the assessment year for which the exemption is requested. The department of natural resources may subsequently withdraw certification of the designated land if it fails to meet the established standards for

a wildlife habitat and the assessor shall be given written notice of the decertification.

25. *Right-of-way.* Railroad right-of-way and improvements on the right-of-way only during that period of time that the Iowa railway finance authority holds an option to purchase the right-of-way under section 327I.24.

26. *Public television station.* All grounds and buildings used or under construction for a public television station and not leased or otherwise used or under construction for pecuniary profit.

27. *Speculative shell buildings of certain organizations.* New construction of shell buildings by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities for speculative purposes or the portion of the value added to buildings being reconstructed or renovated by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities in order to become speculative shell buildings. The exemption or partial exemption shall be allowed only pursuant to ordinance of a city council or board of supervisors, which ordinance shall specify if the exemption will be available for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities and shall be effective for the assessment year in which the building is first assessed for property taxation or the assessment year in which the reconstruction or renovation first adds value and all subsequent years until the property is leased or sold or for a specific time period stated in the ordinance or until the exemption is terminated by ordinance of the city council or board of supervisors which approved the exemption. Eligibility for an exemption as a speculative shell building shall be determined as of January 1 of the assessment year. However, an exemption shall not be granted a speculative shell building of a not-for-profit cooperative association under chapter 499 or a for-profit entity if the building is used by the cooperative association or for-profit entity, or a subsidiary or majority owners thereof for other than as a speculative shell building. If the shell building or any portion of the shell building is leased or sold, the portion of the shell building which is leased or sold shall not be entitled to an exemption under this subsection for subsequent years. An application shall be filed pursuant to section 427B.4 for each project for which an exemption is claimed. Upon the sale of the shell building, the shell building shall be considered new construction for purposes of section 427B.1 if used for purposes set forth in section 427B.1.

For purposes of this subsection the following definitions apply:

a. (1) *"Community development organization"* means an organization, which meets the membership requirements of subparagraph (2), formed within a city or county or multicommunity group for one or more of the following purposes:

(a) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the community, area, or region and its citizens.

(b) To encourage and assist the location of new business and industry.

(c) To rehabilitate and assist existing business and industry.

(d) To stimulate and assist in the expansion of business activity.

(2) For purposes of this definition, a community development organization must have at least fifteen members with representation from the following:

(a) A representative from government at the level or levels corresponding to the community development organization's area of operation.

(b) A representative from a private sector lending institution.

(c) A representative of a community organization in the area.

(d) A representative of business in the area.

(e) A representative of private citizens in the community, area, or region.

b. *"New construction"* means new buildings or structures and includes new buildings or structures which are constructed as additions to existing buildings or structures. *"New construction"* also includes reconstruction or renovation of an existing building or structure which constitutes complete replacement of an existing building or structure or refitting of an existing building or structure, if the reconstruction or renovation of the existing building or structure is required due to economic obsolescence, if the reconstruction or renovation is necessary to implement recognized industry standards for the manufacturing or processing of products, and the reconstruction or renovation is required in order to competitively manufacture or process products or for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities to market a building or structure as a speculative shell building, which determination must receive prior approval from the city council of the city or county board of supervisors of the county.

c. *"Speculative shell building"* means a building or structure owned and constructed or reconstructed by a community development organization, a not-for-profit cooperative association under chapter 499, or a for-profit entity without a tenant or buyer for the purpose of attracting an employer or user which will complete the building to the employer's or user's specification for manufacturing, processing, or warehousing the employer's or user's product line.

28. *Joint water utilities.* The property of a joint water utility established under chapter 389, when devoted to public use and not held for pecuniary profit.

29. *Methane gas conversion.* Methane gas

conversion property shall be exempt from taxation.

For purposes of this subsection, *"methane gas conversion property"* means personal property, real property, and improvements to real property, and machinery, equipment, and computers assessed as real property pursuant to section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, used in an operation connected with, or in conjunction with, a publicly owned sanitary landfill to collect methane gas or other gases produced as a by-product of waste decomposition and to convert the gas to energy, or to collect waste that would otherwise be collected by, or deposited with, a publicly owned sanitary landfill in order to decompose the waste to produce methane gas or other gases and to convert the gas to energy. However, property used to decompose the waste and convert the waste to gas is not eligible for this exemption.

If the property used to convert the gas to energy also burns another fuel, the exemption shall apply to that portion of the value of such property which equals the ratio that its use of methane gas bears to total fuel consumed.

Application for this exemption shall be filed with the assessing authority not later than February 1 of each year for which the exemption is requested on forms provided by the department of revenue and finance. The application shall describe and locate the specific methane gas conversion property to be exempted. If the property consuming methane gas also consumes another fuel, the first year application shall contain a statement to that effect and shall identify the other fuel and estimate the ratio that the methane gas consumed bears to the total fuel consumed. Subsequent year applications shall identify the actual ratio for the previous year which ratio shall be used to calculate the exemption for that assessment year.

30. *Manufactured home community or mobile home park storm shelter.* A structure constructed as a storm shelter at a manufactured home community or mobile home park as defined in section 435.1. An application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue and finance. The application shall describe and locate the storm shelter to be exempted. If the storm shelter structure is used exclusively as a storm shelter, all of the structure's assessed value shall be exempt from taxation. If the storm shelter structure is not used exclusively as a storm shelter, the storm shelter structure shall be assessed for taxation at seventy-five percent of its value as commercial property.

31. *Barn preservation.* The increase in assessed value added to a farm structure constructed prior to 1937 as a result of improvements made to the farm structure for purposes of preserving the integrity of the internal and external features of the structure as a barn is exempt from taxation. To be eligible for the exemption, the structure must have been first placed in service as a barn prior to 1937. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a barn.

For purposes of this subsection, *"barn"* means an agricultural structure, in whatever shape or design, which is used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue and finance. The application shall describe and locate the specific structure for which the added value is requested to be exempt.

Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure continues to be used as a barn. The taxpayer shall notify the assessing authority when the structure ceases to be used as a barn.

32. *One-room schoolhouse preservation.* The increase in assessed value added to a one-room schoolhouse as a result of improvements made to the structure for purposes of preserving the integrity of the internal and external features of the structure as a one-room schoolhouse is exempt from taxation. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a one-room schoolhouse.

Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue and finance. The application shall describe and locate the specific one-room schoolhouse for which the added value is requested to be exempt.

Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure is not used for dwelling purposes and the structure is preserved as a one-room schoolhouse. The taxpayer shall notify the assessing authority when the structure ceases to be eligible. The exemption in this subsection applies even though the one-room schoolhouse is no longer used for instructional purposes.

33. *Indian housing authority property.* Property owned and operated by an Indian housing authority, as defined in 24 C.F.R. § 950.102, created under Indian law, if a cooperative agreement has been made with the local governing body agreeing to the exemption. The exemption in this subsection is subject to the provisions of subsection 14.

For purposes of this subsection:

a. "Indian law" means the code of an Indian tribe recognized as eligible for services provided to Indians by the United States secretary of the interior.

b. "Local governing body" means the county board of supervisors if the property is located outside an incorporated city or the governing body of the city in which the property is located.

1. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

2. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1; 81 Acts, ch 31, §8]

3, 4. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

5. [SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

6. [C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

7, 8, 9, 10. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1; 82 Acts, ch 1247, §1]

11. [C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

12. [C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

13. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

14. [C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

15. [C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

16. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

17. [R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

18. [SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

19. [C51, §468, 469; R60, §723, 724; C73, §815, 816; C97, §1318, 1319, 1323; S13, §1330-g, 1342-g, 1346-g; SS15, §1346-s; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

20. [C35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

21. [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

22. [C62, 66, 71, 73, 75, 77, 79, 81, §427.1]

23. [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

24, 25. [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

26. [C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

27. [C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

28. [C62, 66, 71, 73, 75, 77, 79, 81, §427.1]

29. [C66, 71, 73, 75, 77, 79, 81, §427.1]

30. [C71, 73, 75, 77, 79, 81, §427.1]

31. [C73, 75, 77, 79, 81, §427.1; 82 Acts, ch 1034, §1]

32. [C75, 77, 79, 81, §427.1; 82 Acts, ch 1199, §92, 93, 96]

33. [C75, 77, 79, 81, §427.1; 82 Acts, ch 1199, §69, 96]

34. [C77, 79, 81, §427.1]

35. [C79, 81, §427.1]

36. [82 Acts, ch 1247, §2]

37. [82 Acts, ch 1247, §2]

38. [82 Acts, ch 1247, §2]

83 Acts, ch 121, §8; 83 Acts, ch 133, §1, 2; 83 Acts, ch 178, §1; 84 Acts, ch 1222, §5, 6, 7; 85 Acts, ch 32, §102; 86 Acts, ch 1113, §1, 2; 86 Acts, ch 1200, §8; 86 Acts, ch 1241, §35; 87 Acts, ch 23, §12 – 14; 87 Acts, ch 233, §495; 88 Acts, ch 1134, §81; 89 Acts, ch 296, §43, 44; 90 Acts, ch 1006, §1; 90 Acts, ch 1199, §5 – 8; 91 Acts, ch 97, §52, 53; 91 Acts, ch 168, §8; 92 Acts, ch 1073, §10, 11; 92 Acts, ch 1225, §3, 4; 93 Acts, ch 121, §1; 93 Acts, ch 159, §1; 95 Acts, ch 83, §19; 95 Acts, ch 84, §1 – 3; 96 Acts, ch 1034, §39; 96 Acts, ch 1129, §94; 96 Acts, ch 1167, §5; 97 Acts, ch 158, §30; 98 Acts, ch 1194, §28, 40; 99 Acts, ch 63, §5, 8; 99 Acts, ch 151, §41, 42, 89; 99 Acts, ch 152, §17, 40; 99 Acts, ch 186, §3 – 5; 99 Acts, ch 208, §56; 2000 Acts, ch 1058, §39; 2000 Acts, ch 1194, §15, 17; 2000 Acts, ch 1205, §1; 2001 Acts, ch 59, §1, 3; 2001 Acts, ch 116, §20; 2001 Acts, ch 139, §1, 2, 4; 2001 Acts, ch 150, §11 – 14, 26; 2001 Acts, ch 153, §16; 2001 Acts, 1st Ex, ch 4, §4, 36; 2002 Acts, ch 1119, §55, 56; 2002 Acts, ch 1151, §19; 2002 Acts, ch 1162, §39, 40

(1) Federally owned lands, §1.4 et seq.

(8) Leased church property, §565.2

Contracts with city or county for services; see §364.19

1999 amendment to subsection 2 applies retroactively to July 1, 1993; 99 Acts, ch 63, §8

Subsection 30 applies to property tax assessment years beginning on or after January 1, 2000; 99 Acts, ch 186, §4

2001 amendments to subsections 14, 20, and 22, and amendment to the filing deadline in subsection 30 are effective January 1, 2002, and apply to claims filed on or after that date; 2001 Acts, ch 150, §26

2001 amendment to subsection 29 is effective May 16, 2001, and applies retroactively to January 1, 1998, for purposes of taxes levied pursuant to section 437A.6; filing of claims for credit for tax years 1998 – 2001; 2001 Acts, ch 139, §2, 4

2001 amendment to subsection 2 takes effect July 3, 2001; 2001 Acts, 1st Ex, ch 4, §4, 36

Deadline for filing a claim for exemption under subsection 14 for assessment year beginning January 1, 2002, for taxes due and payable in the fiscal year beginning July 1, 2003, is October 1, 2002; 2002 Acts, ch 1151, §30, 36

Abatement of property taxes for religious institutions failing to file for exemption under subsection 14, Code Supplement 1999, in counties with 180,000 – 200,000 population, for taxes levied for the fiscal year beginning July 1, 2000, and due and payable in the fiscal year beginning July 1, 2001; filing deadline; 2002 Acts, ch 1151, §32, 36

Subsection 5 amended

Subsection 14, unnumbered paragraph 1 amended

Subsection 16 amended

Subsection 19, unnumbered paragraphs 5 and 6 amended

Subsection 20, unnumbered paragraph 1 amended

427.2 Taxable property acquired through eminent domain.

Real estate occupied as a public road, and rights of way for established public levees and rights of way for established, open, public drainage improvements shall not be taxed.

When land or rights in land are acquired in connection with or for public use or public purposes, the acquiring authority shall assist in the collection of property taxes and special assessments. However, assistance in the collection of the property taxes does not require the payment of property taxes on the property acquired which exceed the amount of just compensation offered as required by section 6B.45 for the acquisition of the property.

The property owner shall pay all property taxes which are due and payable when the property owner surrenders possession of the property acquired and also those which become due and payable for the fiscal year the property is acquired in an amount equal to one-twelfth of the taxes due and payable on the property acquired for the preceding fiscal year multiplied by the number of months in the fiscal year in which the property was acquired which elapsed prior to the month in which the property owner surrenders possession, and including that month if the surrender of possession occurs after the fifteenth day of a month. For purposes of computing the payments, the property owner has surrendered possession of property acquired by eminent domain proceedings when the acquiring authority has the right to obtain possession of the acquired property as authorized by law. When all of the property is acquired for public use or public purposes, the property owner shall pay all special assessments in full which have been certified to the county treasurer for collection before the possession date of the acquiring authority. When part but not all of the property is acquired for public use or public purposes, taxing authorities may collect property taxes and special assessments which the property owner is obligated to pay, in accordance with chapter 446, from that part of the property which is not acquired. The county treasurer shall collect and accept the payment received on property acquired for public use or public purposes as full and final payment of all property tax on the property.

For that portion of the prorated year for which the acquiring authority has possession of the property or part of the property acquired in connection with or for public use or public purposes, all taxes shall be canceled by the county treasurer.

From the date of possession by the acquiring authority for land or rights in land acquired in connection with or for public use or public purposes, and for as long as ownership is retained by the acquiring authority, a special assessment shall not be certified to the county treasurer for collection while under public ownership. However, the assessment may be certified for collection to the county treasurer upon the sale of the acquired property by the acquiring authority to a new owner on a prorated basis. Special assessments certified to a county treasurer for collection while under public ownership shall be canceled by the county treasurer.

Upon sale of the acquired property by the acquiring authority to a new owner, the new owner shall pay all property taxes which become due and payable or would have become due and payable but for the acquisition by the acquiring authority for the fiscal year the property is acquired by the new owner in an amount equal to one-twelfth of the taxes multiplied by the number of months in the fiscal year in which the new owner acquired the property which occurred after the month in which the new owner acquired the property.

[C73, §809; C97, §1344; C24, 27, 31, 35, 39, §**6945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.2; 82 Acts, ch 1183, §1]

86 Acts, ch 1153, §1; 87 Acts, ch 40, §1

427.2A Taxation of life estate in property donated to public.

Real estate donated to the state or a political subdivision of the state or any agency of the state or political subdivision, for which the donor retains a life estate, or provides for another to possess a life estate shall continue to be subject to property taxation and special assessment to the same extent as the property was so subject during the fiscal year in which the donation was made. The real property shall continue to be taxed until the fiscal year following the fiscal year during which the life estate terminates. Upon termination of the life estate, the real estate shall be subject to taxation as otherwise provided by law.

This section applies to property donated on or after July 1, 1992, for purposes of property taxes or special assessments due and payable in fiscal years beginning on or after July 1, 1997.

97 Acts, ch 146, §1; 2002 Acts, ch 1119, §168

Unnumbered paragraph 3 stricken

427.3 Military service — exemptions. Transferred to § 426A.11; 99 Acts, ch 151, § 88, 89.

427.4 Exemptions to relatives. Transferred to § 426A.12; 99 Acts, ch 151, § 88, 89.

427.5 Claim for military tax exemption — discharge recorded. Transferred to § 426A.13; 99 Acts, ch 151, § 88, 89.

427.6 Allowance — continuing effectiveness. Transferred to § 426A.14; 99 Acts, ch 151, § 88, 89.

427.7 Penalty. Transferred to § 426A.15; 99 Acts, ch 151, § 88, 89.

427.8 Petition for suspension or abatement of taxes, assessments, and rates or charges, including interest, fees, and costs.

If a person is unable to contribute to the public revenue, the person may file a petition, duly sworn to, with the board of supervisors, stating that fact and giving a statement of parcels, as defined in section 445.1, owned or possessed by the petitioner, and other information as the board may require. The board of supervisors may order the county treasurer to suspend the collection of the taxes, special assessments, and rates or charges, including interest, fees, and costs, which are assessed against the petitioner or the petitioner's estate for the current year and those unpaid for prior years, or the board may abate the taxes, special assessments, and rates or charges, including interest, fees, and costs. The petition, when approved, shall be filed by March 1 of the current tax year with the treasurer.

[C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6950;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.8]

84 Acts, ch 1219, §33; 88 Acts, ch 1031, §1; 89 Acts, ch 296, §47; 91 Acts, ch 191, §20; 92 Acts, ch 1016, §14

For definitions applicable to this section, see §445.1

427.9 Suspension of taxes, assessments, and rates or charges, including interest, fees, and costs.

If a person is a recipient of federal supplementary security income or state supplementary assistance, as defined in section 249.1, or is a resident of a health care facility, as defined by section 135C.1, which is receiving payment from the department of human services for the person's care, the person shall be deemed to be unable to contribute to the public revenue. The director of human services shall notify a person receiving such assistance of the tax suspension provision and shall provide the person with evidence to present to the appropriate county board of supervisors which shows the person's eligibility for tax suspension on parcels owned, possessed, or upon which the person is paying taxes as a purchaser under contract. The board of supervisors so notified, without the filing of a petition and statement as specified in section 427.8, shall order the county treasurer to suspend the collection of all the taxes, special assessments, and rates or charges, including interest, fees, and costs, assessed against the parcels and remaining unpaid by the person or contractually payable by the person, for such time as the person remains the owner or contractually prospective owner of the parcels, and during the period the person receives assistance as described in this section. The county board of supervisors shall annually send to the department of human services the names and social security numbers of persons receiving a tax suspension pursuant to this section. The department shall verify the continued eligibility for tax suspension of each name on the list and shall return the list to the board of supervisors. The director of human services shall advise the person that the person may apply for an additional property tax credit pursuant to sections 425.16 to 425.39 which shall be credited against the amount of the taxes suspended.

[C35, §6950-g1; C39, §**6950.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.9]

83 Acts, ch 96, §157, 159; 88 Acts, ch 1031, §2; 91 Acts, ch 191, §21; 92 Acts, ch 1016, §15; 95 Acts, ch 151, §1; 97 Acts, ch 121, §14

For definitions applicable to this section, see §445.1

427.10 Abatement.

The board of supervisors may, if in their judgment it is for the best interests of the public and the petitioner referred to in section 427.8, or the public and the person referred to in section 427.9, abate the taxes, special assessments, and rates or charges, including interest, fees, and costs, which have previously been suspended as provided in section 427.8 or 427.9.

[C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6951;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.10]

84 Acts, ch 1219, §34; 91 Acts, ch 191, §22; 92 Acts, ch 1016, §16

For definitions applicable to this section, see §445.1

427.11 Grantee or devisee to pay tax.

If the petitioner or person described in section 427.9 sells any parcel upon which the taxes, special assessments, and rates or charges, including interest, fees, and costs, have been suspended, or if any parcel, or any part of the parcel, upon which the taxes, special assessments, and rates or charges, including interest, fees, and costs, have been suspended, passes by devise, bequest, or inheritance to any person other than the surviving spouse or minor child of the petitioner or other person, the total amount due that has been thus suspended shall all become due and payable with the next semiannual installment of taxes. Interest shall accrue on the total amount due at the rate of one and one-half percent per month from the next succeeding delinquency date to the month of payment unless payment is tendered in full before the delinquency date. Interest does not accrue during the suspension period on suspended parcels, including those parcels suspended prior to April 1, 1992. The petitioner, or any other person, may pay the suspended amounts at any time during the suspension period. Except in the case of manufactured or mobile home taxes, special assessments, or rates or charges, the treasurer may accept a partial payment during the suspension period with the partial payment first being applied to in-

terest and costs.

[C24, 27, 31, 35, 39, §**6952;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.11]

91 Acts, ch 191, §23; 92 Acts, ch 1016, §17; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

For definitions applicable to this section, see §445.1

427.12 Suspended tax record.

The county treasurer shall maintain within the county system, as defined in section 445.1, the official record of suspended taxes, special assessments, and rates or charges, the collection of which has been suspended by order of the board of supervisors. The record shall include, but is not limited to, the following information:

1. A governmental or platted description of the parcel on which the tax, special assessment, rate, or charge has been levied or on which it is a lien.
2. The name of the owner of the parcel.
3. The amount and year of the tax, special assessment, rate or charge.
4. The date the suspension was ordered.

The county system, as defined in section 445.1, shall be such that all entries of taxes, special assessments, rates, or charges against the parcel shall be separate from the entry of taxes, special assessments, rates, or charges against all other parcels.

If a suspended tax, special assessment, or rate or charge in the county system is paid, or subsequently abated, the treasurer shall enter in the county system a notification of payment or abatement.

When a suspension ordered by the board of supervisors for any reason provided by law, has been entered in the county system, the entry, on and after its date, is a lien and shall serve as notice of a lien in accordance with section 445.10.

[C31, 35, §6952-d1; C39, §**6952.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.12]

84 Acts, ch 1219, §35; 91 Acts, ch 191, §24

For definitions applicable to this section, see §445.1

427.13 What taxable.

All other real property is subject to taxation in the manner prescribed, and this section is also intended to embrace ferry franchises and toll bridges, which, for the purpose of this chapter are considered real property.

However, this section is subject to section 427.1.

[C51, §456; R60, §712; C73, §801; C97, §1308; C24, 27, 31, 35, 39, §**6953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.13]

89 Acts, ch 296, §48

Bridges taxed, §434.20

Registration fees in lieu of taxes, §321.130

427.14 County lands.

All lands in this state which are owned or held by any other county or counties claiming title under locations with swampland indemnity scrip, or otherwise, shall be taxed the same as other real estate within the limits of the county.

[C51, §456; R60, §712; C73, §801; C97, §1308; C24, 27, 31, 35, 39, §**6954;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.14]

427.15 Interest of lessee.

In all cases where land belonging to any state institution has been leased and the leases renewed, containing an option of purchase, the interest of the lessees therein shall be subject to assessment and taxation as real estate. The value of such interest shall be fixed by deducting from the value of the lands and improvements the amount required by the lease to acquire the title thereto, which leasehold interest so assessed and taxed may be sold for delinquent taxes and deeds issued thereunder as in other cases of tax sales, and the same rights shall accrue to the grantee therein as were held and owned by the tenant.

[C97, §1351; C24, 27, 31, 35, 39, §**6955;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.15]

427.16 Historic property — rehabilitation tax exemption — application.

1. The board of supervisors shall annually designate real property in the county for a historic property tax exemption.

2. Application for the exemption shall be filed with the assessor, not later than February 1 of the assessment year, on forms provided by the department of revenue and finance. The exemption application shall include an approved application for certified substantial rehabilitation from the state historic preservation officer and documentation of additional property tax relief or financial assistance currently allowed for the real property. Upon receipt of the application, the assessor shall certify whether or not the property is eligible to receive the exemption and shall forward the application to the board.

3. Before the board may designate real property for the exemption, the board shall establish priorities for which an exemption may be granted. The priorities shall be based upon financial assistance or property tax relief the owner is receiving for the property or for which the property is eligible. A public hearing shall be held with notice given as provided in section 73A.2 at which the proposed priority list shall be presented. However, a public hearing is not required if the proposed priorities are the same as those established for the previous year. After the public hearing, the board shall adopt by resolution the proposed priority list or another priority list.

4. After receipt from the assessor of an exemption application with an accompanying approved application from the state historic preservation officer, and the establishment of a priority list, the board shall grant a tax exemption under this section using the adopted priority list. The board shall notify an owner in writing of a denial of the

exemption under this section and an explanation of the denial.

5. Real property designated for the tax exemption shall be designated by April 15 of the assessment year in which the fiscal year begins for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

6. The owner shall apply for an exemption and the exemption may be approved for a period of not more than four years.

7. For purposes of this section *"historic property"* means any of the following:

a. Property in Iowa listed on the national register of historic places.

b. An historical site as defined in section 303.2.

c. Property located in an area of historical significance as defined in section 303.20.

d. Property located in an area designated as an area of historic significance under section 303.34.

e. Property designated an historic building or site as approved by a county or municipal landmark ordinance.

8. For purposes of this section, *"substantial rehabilitation"* means qualified expenditures which exceed the greater of the adjusted basis of the building or five thousand dollars.

9. For purposes of this section, *"adjusted basis"* means the acquisition cost of the property to the taxpayer; less the value of the land; less depreciation taken or one-half the current assessed valuation of the property, whichever is greater; plus the cost of additions or improvements to the property since its acquisition.

10. For purposes of this section, *"qualified expenditures"* means costs incurred to preserve or to maintain a building as a historic property according to the secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings.

11. The assessor shall determine the base year valuation of the historic property upon receipt of the approved application and shall make a notation on each statement of assessment that the exemption of the historic property shall be based upon the certification from the state historic preservation officer. An assessor shall make an annual report to the county auditor of all substantial rehabilitations of historic property made in the county which receive a tax exemption under this section and shall submit a copy or summary of the record to the state historic preservation officer.

12. A tax exemption granted under this section is valid if the property continues to be certified by the state historic preservation officer. If the property is sold or transferred, the buyer or transferee is not required to refile for the tax exemption for the year in which the property is purchased or transferred.

13. The valuation for purposes of computing the assessed valuation of property under this section following the four-year exemption period is as follows:

a. For the first year after the expiration of the four-year exemption period, the valuation is the base year valuation plus twenty-five percent of the adjustment in value.

b. For the second year after the expiration of the four-year exemption period, the valuation is the base year valuation plus fifty percent of the adjustment in value.

c. For the third year after the expiration of the four-year exemption period, the valuation is the base year valuation plus seventy-five percent of the adjustment in value.

d. For the fourth year after the expiration of the four-year exemption period, the valuation is based upon the current fair cash value.

14. An additional application for a tax exemption under this section for substantial rehabilitation shall not affect subsection 11 and under subsection 13 the increase in assessed value of the historic property following a four-year tax exemption period.

15. The department of cultural affairs shall adopt rules pursuant to chapter 17A to administer this section.

90 Acts, ch 1160, §1; 2001 Acts, ch 150, §15, 26

2001 amendment to subsection 2 is effective January 1, 2002, and applies to claims filed on or after that date; 2001 Acts, ch 150, §26

427.17 Tax credit for livestock tax. Repealed by 88 Acts, ch 1250, § 21. See chapter 405A.

427.18 Token tax liability accrues.

If property which may be exempt from taxation is acquired after July 1 by a person or the state or any of its political subdivisions, the exemption shall not be allowed for that fiscal year and the person or the state or any of its political subdivisions shall pay the property taxes levied against the property for that fiscal year, and payable in the following fiscal year. However, the seller and the purchaser may designate, by written agreement, the party responsible for payment of the property taxes due.

[C81, §427.18]

427.19 Exemptions eligibility — prorating.

All credits for and exemptions from property taxes for which an application is required shall be granted on the basis of eligibility in the fiscal year for which the application is filed. If the property which has received a credit or exemption becomes ineligible for the credit or exemption during the fiscal year for which it was granted, the property is subject to the taxes in a prorated amount for that part of the fiscal year for which the property was ineligible for the credit or exemption.

[C81, §427.19]

CHAPTER 427A

PERSONAL PROPERTY TAX REPLACEMENT

427A.1 Property taxed as real property.
427A.2 Personal property not subject to property tax.
427A.3 through 427A.6 Repealed by 94 Acts, ch 1173, §42.
427A.7 and 427A.8 Repealed by 73 Acts, ch 255, §4.
427A.9 through 427A.11 Repealed by 94 Acts, ch 1173, §42.
427A.12 Replacement fund.
427A.13 Appropriation. Repealed by 97 Acts, ch 158, §48.
427A.14 Computing debt limitations. Repealed by 99 Acts, ch 152, §39, 40.

427A.1 Property taxed as real property.

1. For the purposes of property taxation only, the following shall be assessed and taxed, unless otherwise qualified for exemption, as real property:

a. Land and water rights.

b. Substances contained in or growing upon the land, before severance from the land, and rights to such substances. However, growing crops shall not be assessed and taxed as real property, and this paragraph is also subject to the provisions of section 441.22.

c. Buildings, structures or improvements, any of which are constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation. However, property taxed under chapter 435 shall not be assessed and taxed as real property.

d. Buildings, structures, equipment, machinery or improvements, any of which are attached to the buildings, structures, or improvements defined in paragraph *"c"* of this subsection.

e. Machinery used in manufacturing establishments. The scope of property taxable under this paragraph is intended to be the same as, and neither broader nor narrower than, the scope of property taxable under section 428.22, Code 1973, prior to July 1, 1974.

f. Property taxed under chapter 499B.

g. Rights to space above the land.

h. Property assessed by the department of revenue and finance pursuant to sections 428.24 to 428.29, or chapters 433, 434, 437, 437A, and 438.

i. Property used but not owned by the persons whose property is defined in paragraph *"h"* of this subsection, which would be assessed by the department of revenue and finance if the persons owned the property. However, this paragraph does not change the manner of assessment or the authority entitled to make the assessment.

j. (1) Computers. As used in this paragraph, *"computer"* means stored program processing equipment and all devices fastened to the computer by means of signal cables or communication media that serve the function of signal cables, but does not include point of sales equipment.

(2) Computer output microfilming equipment.

(3) Key entry devices that prepare information for input to a computer.

(4) All equipment that produces a final output from one of the facilities listed in subparagraphs (1), (2) and (3) of this paragraph.

k. Transmission towers and antennae not a part of a household.

2. As used in subsection 1, *"attached"* means any of the following:

a. Connected by an adhesive preparation.

b. Connected in a manner so that disconnecting requires the removal of one or more fastening devices, other than electric plugs.

c. Connected in a manner so that removal requires substantial modification or alteration of the property removed or the property from which it is removed.

3. Notwithstanding the definition of *"attached"* in subsection 2, property is not *"attached"* if it is a kind of property which would ordinarily be removed when the owner of the property moves to another location. In making this determination the assessing authority shall not take into account the intent of the particular owner.

4. Notwithstanding the definition of *"attached"* in subsection 2, property is not *"attached"* if it is a fixture used for cooking, refrigeration, or freezing of value-added agricultural products, used in value-added agricultural processing or used in direct support of value-added agricultural processing. For purposes of this subsection, *"direct support"* includes storage by public refrigerated warehouses for processors of value-added agricultural products. Such fixtures shall not be considered *"attached"* whether owned directly by the processor or warehouse operator or by another who leases the fixture to the processor or warehouse operator. This subsection shall not apply to fixtures used primarily for retail sale or display.

5. Notwithstanding the other provisions of this section, property described in this section, if held solely for sale, lease or rent as part of a business regularly engaged in selling, leasing or renting such property, and if the property is not yet sold, leased, rented or used by any person, shall

not be assessed and taxed as real property. This subsection does not apply to any land or building.

6. Nothing in this section shall be construed to permit an item of property to be assessed and taxed in this state more than once in any one year.

7. The assessing authority shall annually reassess property which is assessed and taxed as real property, but which would be regarded as personal property except for this section. This section shall not be construed to limit the assessing authority's powers to assess or reassess under other provisions of law.

8. The director of revenue and finance shall promulgate rules subject to chapter 17A to carry out the intent of this section.

[C71, 73, 75, 77, 79, 81, §427A.1]

85 Acts, ch 32, §103; 95 Acts, ch 67, §32; 2001 Acts, ch 116, §21, 28; 2002 Acts, ch 1150, §10

Subsection 4 is effective May 3, 2001, and applies retroactively to assessment years beginning on or after January 1, 2000; 2001 Acts, ch 116, §28

Subsection 1, paragraph h amended

427A.2 Personal property not subject to property tax.

Personal property shall not be listed or assessed for taxation and is not subject to the property tax.

95 Acts, ch 67, §33

427A.3 through 427A.6 Repealed by 94 Acts, ch 1173, § 42.

427A.7 and 427A.8 Repealed by 73 Acts, ch 255, § 4.

427A.9 through 427A.11 Repealed by 94 Acts, ch 1173, § 42.

427A.12 Replacement fund.

1. A personal property tax replacement fund is established as a permanent fund in the office of the treasurer of state, for the purpose of reimbursing the taxing districts for their loss of revenue from personal property taxes due to the provisions of this chapter, determined as provided in this section.

2. On or before January 15, 1974, the county auditor of each county shall prepare a statement listing for each taxing district in the county:

a. The total assessed value of all personal property assessed for taxation as of January 1, 1973, excluding livestock but including other personal property eligible for tax credits granted by this chapter.

b. The millage rate of each taxing district levied in 1972 and payable in 1973.

c. The personal property tax replacement base for each taxing district, which shall be equal to the amount determined pursuant to paragraph *"a"* of this subsection multiplied by the millage rate specified in paragraph *"b"*.

3. The county auditor shall certify and forward one copy each of the statement to the state comptroller and to the director of revenue not later than January 15, 1974.

4. The personal property tax replacement base for each taxing district is permanent and shall not be adjusted, except that the department of revenue and finance shall make any necessary corrections and shall make appropriate adjustments to reflect mergers, annexations, and other changes in taxing districts or their boundaries.

[C71, 73, §427A.7; C75, 77, 79, 81, §427A.12]

83 Acts, ch 172, §9; 84 Acts, ch 1298, §1; 85 Acts, ch 32, §106; 88 Acts, ch 1134, §82; 88 Acts, ch 1250, §14; 97 Acts, ch 23, §49, 50; 99 Acts, ch 152, §18, 40; 2000 Acts, ch 1154, §29, 30

See also chapter 405A

427A.13 Appropriation. Repealed by 97 Acts, ch 158, § 48.

427A.14 Computing debt limitations. Repealed by 99 Acts, ch 152, § 39, 40.

CHAPTER 427B

SPECIAL TAX PROVISIONS

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DIVISION I

INDUSTRIAL PROPERTY AND CATTLE FACILITIES ACTUAL VALUE ADDED EXEMPTION

427B.1 Actual value added exemption from tax — public hearing.

A city council, or a county board of supervisors as authorized by section 427B.2, may provide by ordinance for a partial exemption from property taxation of the actual value added to industrial real estate by the new construction of industrial real estate, research-service facilities, warehouses, distribution centers and the acquisition of or improvement to machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph *"e"*. *"New construction"* means new buildings and structures and includes new buildings and structures which are constructed as additions to existing buildings and structures. *"New construction"* does not include reconstruction of an existing building or structure which does not constitute complete replacement of an existing building or structure or refitting of an existing building or structure, unless the reconstruction of an existing building or structure is required due to economic obsolescence and the reconstruction is necessary to implement recognized industry standards for the manufacturing and processing of specific products and the reconstruction is required for the owner of the building or structure to continue to competitively manufacture or process those products which determination shall receive prior approval from the city council of the city or the board of supervisors of the county upon the recommendation of the Iowa department of economic development. The exemption shall also apply to new machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph *"e"*, unless the machinery or equipment is part of the normal replacement or operating process to maintain or expand the existing operational status. *"Research-service facilities"* means a building or group of buildings devoted primarily to research and development activities, including, but not limited to, the design and production or manufacture of prototype products for experimental use, and corporate-research services which do not have a primary purpose of providing on-site services to the public. *"Warehouse"* means a building or structure used as a public warehouse for the storage of goods pursuant to chapter 554, article 7, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. *"Distribution center"* means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. *"Distribution center"* does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods.

The ordinance may be enacted not less than thirty days after a public hearing is held in accordance with section 335.6 in the case of a county, or section 362.3 in the case of a city. The ordinance

shall designate the length of time the partial exemption shall be available and may provide for an exemption schedule in lieu of that provided in section 427B.3. However, an alternative exemption schedule adopted shall not provide for a larger tax exemption in a particular year than is provided for that year in the schedule contained in section 427B.3.

[C81, §427B.1; 82 Acts, ch 1104, §20]
84 Acts, ch 1232, §2; 85 Acts, ch 232, §1
Contracts with city or county for services; see §364.19

427B.2 Zoning under chapter 335.

1. The board of supervisors of a county which has appointed a county zoning commission and provided for county zoning under chapter 335 may provide for a partial exemption from property taxation of the actual value added to industrial real estate as provided under section 427B.1.

2. The board of supervisors of a county which has not appointed a zoning commission may provide for a partial exemption from property taxation of the actual value added to industrial real estate as provided under section 427B.1 in the following areas:

a. Outside the incorporated limits of a city to which a city has extended its zoning ordinance pursuant to section 414.23 which complies with the city's zoning ordinance.

b. Outside the incorporated limits of a city which has adopted a zoning ordinance but which has not extended the ordinance to the area permitted under section 414.23 if the property would be within the area to which a city may extend a zoning ordinance pursuant to section 414.23.

c. Outside the incorporated limits of a city which has not adopted a zoning ordinance but which would be within the area to which a city may extend a zoning ordinance pursuant to section 414.23.

3. The board of supervisors of a county which has not appointed a zoning commission may provide for a partial exemption from property taxation of the actual value added to industrial real estate as provided under section 427B.1 in an area where the partial exemption could not otherwise be granted under this chapter where the actual value added is to industrial real estate existing on July 1, 1979.

To grant an exemption under the provisions of this section, the county board of supervisors shall comply with all of the requirements imposed by this chapter upon the city council of a city.

[C81, §427B.2; 82 Acts, ch 1104, §21 – 23]

427B.3 Period of partial exemption.

The actual value added to industrial real estate for the reasons specified in section 427B.1 is eligible to receive a partial exemption from taxation for a period of five years. However, if property ceases to be classified as industrial real estate or ceases to be used as a warehouse or distribution center, the partial exemption for the value added shall not be allowed for subsequent assessment years. *"Actual value added"* as used in this chapter means the actual value added as of the first year for which the exemption is received, except that actual value added by improvements to machinery and equipment means the actual value as determined by the assessor as of January 1 of each year for which the exemption is received. The amount of actual value added which is eligible to be exempt from taxation shall be as follows:

1. For the first year, seventy-five percent.
2. For the second year, sixty percent.
3. For the third year, forty-five percent.
4. For the fourth year, thirty percent.
5. For the fifth year, fifteen percent.

This schedule shall be followed unless an alternative schedule is adopted by the city council of a city or the board of supervisors of a county in accordance with section 427B.1.

However, the granting of the exemption under this section for new construction constituting complete replacement of an existing building or structure shall not result in the assessed value of the industrial real estate being reduced below the assessed value of the industrial real estate before the start of the new construction added.

[C81, §427B.3]
84 Acts, ch 1232, §3

427B.4 Application for exemption by property owner.

An application shall be filed for each project resulting in actual value added for which an exemption is claimed. The application for exemption shall be filed by the owner of the property with the local assessor by February 1 of the assessment year in which the value added is first assessed for taxation. Applications for exemption shall be made on forms prescribed by the director of revenue and finance and shall contain information pertaining to the nature of the improvement, its cost, and other information deemed necessary by the director of revenue and finance.

A person may submit a proposal to the city council of the city or the board of supervisors of a county to receive prior approval for eligibility for a tax exemption on new construction. The city council or the board of supervisors, by ordinance, may give its prior approval of a tax exemption for new construction if the new construction is in conformance with the zoning plans for the city or county. The prior approval shall also be subject to the hearing requirements of section 427B.1. Prior approval does not entitle the owner to exemption from taxation until the new construction has been completed and found to be qualified real estate. However, if the tax exemption for new construction is not approved, the person may submit an amended proposal to the city council or board of supervisors to approve or reject.

[C81, §427B.4; 82 Acts, ch 1104, §24]
2000 Acts, ch 1058, §40

427B.5 Exemption may be repealed.
When in the opinion of the city council or the county board of supervisors continuation of the exemption granted by this chapter ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by section 427B.1, but all existing exemptions shall continue until their expiration.
[C81, §427B.5]

427B.6 Dual exemptions prohibited.
A property tax exemption under this chapter shall not be granted if the property for which the exemption is claimed has received any other property tax exemption authorized by law.
[C81, §427B.6]

427B.7 Actual value added exemption from tax — cattle facilities.
A city council, or a county board of supervisors as authorized by section 427B.2, may, by ordinance as provided in section 427B.1, establish a partial exemption from property taxation of the actual value added to owner-operated cattle facilities, including small or medium sized feedlots but not including slaughter facilities, either by new construction or by the retrofitting of existing facilities. The application for the exemption shall be filed pursuant to section 427B.4. The actual value added to owner-operated cattle facilities, as specified in section 427B.1, is eligible to receive a partial exemption from taxation for a period of five years. The amount of actual value added which is eligible to be exempt from taxation is the same as provided in the exemption schedule in section 427B.3.
87 Acts, ch 169, §10

427B.8 and 427B.9 Reserved.

DIVISION II

SPECIAL VALUATION FOR MACHINERY AND COMPUTERS ACQUIRED OR LEASED ON OR BEFORE JANUARY 1, 1985

427B.10 Property subject to special valuation. Repealed by 93 Acts, ch 180, § 20. See § 427B.17.

427B.11 Assessor and county auditor duties. Repealed by 93 Acts, ch 180, § 20.

427B.12 Reimbursement. Repealed by 93 Acts, ch 180, § 20.

427B.13 Appropriation. Repealed by 92 Acts, ch 1227, § 31.

427B.14 Property not eligible. Repealed by 93 Acts, ch 180, § 20.

427B.15 and 427B.16 Reserved.

DIVISION III

SPECIAL VALUATION FOR MACHINERY, EQUIPMENT, AND COMPUTERS — STATE REPLACEMENT FUNDS

427B.17 Property subject to special valuation.
1. For property defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, the taxpayer's valuation shall be limited to thirty percent of the net acquisition cost of the property, except as otherwise provided in subsections 2 and 3. For purposes of this section, *"net acquisition cost"* means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.
2. Property defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, which is first assessed for taxation in this state on or after January 1, 1995, shall be exempt from taxation.
3. Property defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, and assessed under subsection 1 of this section, shall be valued by the local assessor as follows for the following assessment years:
a. For the assessment year beginning January 1, 1999, at twenty-two percent of the net acquisition cost.
b. For the assessment year beginning January 1, 2000, at fourteen percent of the net acquisition cost.
c. For the assessment year beginning January 1, 2001, at six percent of the net acquisition cost.
d. For the assessment year beginning January 1, 2002, and succeeding assessment years, at zero percent of the net acquisition cost.
4. Property assessed pursuant to this section shall not be eligible to receive a partial exemption under sections 427B.1 to 427B.6.
5. This section shall not apply to property assessed by the department of revenue and finance pursuant to sections 428.24 to 428.29, or chapters 433, 434, 437, 437A, and 438, and such property shall not receive the benefits of this section.
Any electric power generating plant which operated during the preceding assessment year at a net capacity factor of more than twenty percent, shall not receive the benefits of this section or of sections 15.332 and 15.334. For purposes of this section, *"electric power generating plant"* means any nameplate rated electric power generating plant, in which electric energy is produced from

other forms of energy, including all taxable land, buildings, and equipment used in the production of such energy. *"Net capacity factor"* means net actual generation divided by the product of net maximum capacity times the number of hours the unit was in the active state during the assessment year. Upon commissioning, a unit is in the active state until it is decommissioned. *"Net actual generation"* means net electrical megawatt hours produced by the unit during the preceding assessment year. *"Net maximum capacity"* means the capacity the unit can sustain over a specified period when not restricted by ambient conditions or equipment deratings, minus the losses associated with station service or auxiliary loads.

6. For the purpose of dividing taxes under section 260E.4, the employer's or business's valuation of property defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, and used to fund a new jobs training project which project's first written agreement providing for a division of taxes as provided in section 403.19 is approved on or before June 30, 1995, shall be limited to thirty percent of the net acquisition cost of the property. The community college shall notify the assessor by February 15 of each assessment year if taxes levied against such property of an employer or business will be used to finance a project in the following fiscal year. In any fiscal year in which the community college does rely on taxes levied against an employer's or business's property defined in section 427A.1, subsection 1, paragraph *"e"* or *"j"*, to finance a project, such property shall not be valued pursuant to subsection 2 or 3, whichever is applicable, for that fiscal year. An employer's or business's taxable property used to fund a new jobs training project shall not be valued pursuant to subsection 2 or 3, whichever is applicable, until the assessment year following the calendar year in which the certificates or other funding obligations have been retired or escrowed. If the certificates issued, or other funding obligations incurred, between January 1, 1982, and June 30, 1995, are refinanced or refunded after June 30, 1995, the valuation of such property shall then be the valuation specified in subsection 2 or 3, whichever is applicable, for the applicable assessment year beginning with the assessment year following the calendar year in which those certificates or other funding obligations are refinanced or refunded after June 30, 1995.

85 Acts, ch 32, §109; 93 Acts, ch 180, §12; 95 Acts, ch 206, §29; 96 Acts, ch 1049, §2, 3, 9; 96 Acts, ch 1180, §18; 97 Acts, ch 66, §1, 2; 2002 Acts, ch 1150, §11

Subsection 5, unnumbered paragraph 1 amended

427B.18 Replacement.

Beginning with the fiscal year beginning July 1, 1996, each county treasurer shall be paid from the industrial machinery, equipment and computers replacement fund an amount equal to the amount of the industrial machinery, equipment and computers tax replacement claim, as calculated in section 427B.19.

95 Acts, ch 206, §30

427B.19 Assessor and county auditor duties.

1. On or before July 1 of each fiscal year, the assessor shall determine the total assessed value of the property assessed under section 427B.17 for taxes payable in that fiscal year and the total assessed value of such property assessed as of January 1, 1994, and shall report the valuations to the county auditor.

2. On or before July 1 of each fiscal year, the assessor shall determine the valuation of all commercial and industrial property assessed for taxes payable in that fiscal year and the valuation of such property assessed as of January 1, 1994, and shall report the valuations to the county auditor.

3. On or before September 1 of each fiscal year through June 30, 2006, the county auditor shall prepare a statement, based upon the report received pursuant to subsections 1 and 2, listing for each taxing district in the county:

a. Beginning with the assessment year beginning January 1, 1995, the difference between the assessed valuation of property assessed pursuant to section 427B.17 for that year and the total assessed value of such property assessed as of January 1, 1994. If the total assessed value of the property assessed as of January 1, 1994, is less, there is no tax replacement for the fiscal year.

b. The tax levy rate for each taxing district for that fiscal year.

c. The industrial machinery, equipment and computers tax replacement claim for each taxing district. For fiscal years beginning July 1, 1996, and ending June 30, 2001, the replacement claim is equal to the amount determined pursuant to paragraph *"a"*, multiplied by the tax rate specified in paragraph *"b"*. For fiscal years beginning July 1, 2001, and ending June 30, 2006, the replacement claim is equal to the product of the amount determined pursuant to paragraph *"a"*, less any increase in valuations determined in paragraph *"d"*, and the tax rate specified in paragraph *"b"*. If the amount subtracted under paragraph *"d"* is more than the amount determined in paragraph *"a"*, there is no tax replacement for the fiscal year.

d. Beginning with the assessment year beginning January 1, 2000, the auditor shall reduce the amount listed in paragraph *"a"*, by the increase, if any, in assessed valuations of commercial and industrial property in the assessment year beginning January 1, 1994, and the assessment year for which taxes are due and payable in that fiscal year. If the calculation under this paragraph indicates a net decrease in aggregate valuation of such property, the industrial machinery, equipment

and computers tax replacement claim for each taxing district is equal to the amount determined pursuant to paragraph *"a"*, multiplied by the tax rate specified in paragraph *"b"*.

4. The county auditor shall certify and forward one copy of the statement to the department of revenue and finance not later than September 1 of each year.

5. For purposes of this section, *"assessed value of the property assessed under section 427B.17"* does not include the value of property defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, which is obligated to secure payment of certificates or other indebtedness incurred pursuant to chapter 260E or 260F.

6. For purposes of computing replacement amounts under this section, that portion of an urban renewal area defined as the sum of the assessed valuations defined in section 403.19, subsections 1 and 2, shall be considered a taxing district.

95 Acts, ch 206, §31; 96 Acts, ch 1049, §4; 97 Acts, ch 158, §32, 33

427B.19A Fund created.

1. The industrial machinery, equipment and computers property tax replacement fund is created. For the fiscal year beginning July 1, 1996, through the fiscal year ending June 30, 2006, there is appropriated annually from the general fund of the state to the department of revenue and finance to be credited to the industrial machinery, equipment and computers property tax replacement fund, an amount sufficient to implement this division.

2. If an amount appropriated for a fiscal year is insufficient to pay all claims as a result of action by the general assembly limiting the amount appropriated to the fund, the director shall prorate the disbursements from the fund to the county treasurers and shall notify the county auditors of the pro rata percentage on or before September 30.

3. The replacement claims shall be paid to each county treasurer in equal installments in September and March of each year. The county treasurer shall apportion the replacement claim payments among the eligible taxing districts in the county. If the taxing district is an urban renewal area, the amount of the replacement claim shall be apportioned as provided in subsection 4 unless the municipality elects to proceed under subsection 5.

4. *a.* If the total assessed value of property located in an urban renewal area taxing district is equal to or more than that portion of such valuation defined in section 403.19, subsection 1, the total tax replacement amount computed pursuant to section 427B.19 shall be credited to that portion of the assessed value defined in section 403.19, subsection 2.

b. If the total assessed value of the property is less than that portion of such valuation defined in section 403.19, subsection 1, the replacement amount shall be credited to those portions of the assessed value defined in section 403.19, subsections 1 and 2, as follows:

(1) To that portion defined in section 403.19, subsection 1, an amount equal to the amount that would be produced by multiplying the applicable consolidated levy times the difference between the assessed value of the taxable property defined in section 403.19, subsection 1, and the total assessed value in the budget year for which the replacement claim is computed.

(2) To that portion defined in section 403.19, subsection 2, the remaining amount, if any.

c. Notwithstanding the allocation provisions of paragraphs *"a"* and *"b"*, the amount of the tax replacement amount that shall be allocated to that portion of the assessed value defined in section 403.19, subsection 2, shall not exceed the amount equal to the amount certified to the county auditor under section 403.19 for the budget year in which the claim is paid, after deduction of the amount of other revenues committed for payment on that amount for the budget year. The amount not allocated to that portion of the assessed value defined in section 403.19, subsection 2, as a result of the operation of this paragraph, shall be allocated to that portion of assessed value defined in section 403.19, subsection 1.

5. A municipality may elect to reduce the amount of assessed value of property defined in section 403.19, subsection 1, by an amount equal to that portion of the amount of such assessed value which was phased out for the fiscal year by operation of section 427B.17, subsection 3. The applicable assessment roll and ordinance providing for the division of taxes under section 403.19 in the urban renewal taxing district shall be deemed to be modified for that fiscal year only to the extent of such adjustment without further action on the part of the city or county implementing the urban renewal taxing district.

95 Acts, ch 206, §32; 96 Acts, ch 1049, §5, 6; 97 Acts, ch 158, §34; 2001 Acts, ch 116, §22

427B.19B Guarantee of state replacement funds.

For the fiscal years beginning July 1, 1996, and ending June 30, 2006, if the industrial machinery, equipment and computers property tax replacement fund is insufficient to pay in full the total of the amounts certified to the director of revenue and finance as a result of action by the general assembly limiting the amount appropriated to the fund, the director shall compute for each county the difference between the total of all replacement claims for each taxing district within the county and the amount paid to the county treasurer for disbursement to each taxing district in the county. The assessor, for the assessment year for which taxes are due and payable in the fiscal year for

which a sufficient appropriation was not made as a result of action by the general assembly limiting the amount appropriated to the fund, shall revalue all industrial machinery, equipment and computers described in section 427B.17, subsections 2 and 3, in the county at a percentage of net acquisition cost which will yield from each taxing district its shortfall and the property shall be assessed and taxed in such manner for taxes due and payable in the following fiscal year in addition to being assessed and taxed in the applicable manner under section 427B.17. When conducting the revaluation, the assessor shall increase the percentage of net acquisition cost of such property by the same percentage point. Property tax dollar amounts certified pursuant to this section shall not be considered property tax dollars certified for purposes of the property tax limitation in chapter 444.

95 Acts, ch 206, §33; 2001 Acts, ch 116, §23

427B.19C Adjustment of certain assessments required.

In the assessment year beginning January 1, 2005, the amount of assessed value of property defined in section 403.19, subsection 1, for an urban renewal taxing district which received replacement moneys under section 427B.19A, subsection 4, shall be reduced by an amount equal to that portion of the amount of assessed value of such property which was assessed pursuant to section 427B.17, subsection 3.

96 Acts, ch 1049, §7

427B.19D Appeal for state assistance.

For fiscal years beginning on or after July 1, 1996, a municipality in which is located an urban renewal district for which debt was incurred prior to June 30, 1996, may appeal to the state appeal board for state assistance to meet such debt obligations for the fiscal year if such debt is not secured by an assessment agreement pursuant to section 403.6, subsection 19, and if the urban renewal area contains property assessed pursuant to section 427B.17. The appeal shall be made by May 15 preceding the fiscal year on forms approved by the department of management.

96 Acts, ch 1049, §8

DIVISION IV

UNDERGROUND STORAGE TANKS
REMEDIAL ACTION CREDIT

427B.20 Local option remedial action property tax credit — public hearing.

1. In order to further the public interests of protecting the drinking water supply, preserving business and industry within a community, preserving convenient access to gas stations within a community, or other public purposes, a city council or county board of supervisors may provide by ordinance for partial or total property tax credits to owners of small businesses that own or operate an underground storage tank to reduce the amount of property taxes paid over the permitted period in amounts not to exceed the actual portion of costs paid by the business owner in connection with a remedial action for which the Iowa comprehensive petroleum underground storage tank fund shares in the cost of corrective action, and for which the small business owner was not reimbursed from any other source. A county board of supervisors may grant credits only for property located outside of the corporate limits of a city, and a city council may grant credits only for property located within the corporate limits of the city. The credit shall be taken on the property where the underground storage tank is situated. The credit granted by the council or board shall not exceed the amount of taxes generated by the property for the respective city or county. The credit shall apply to property taxes payable in the fiscal year following the calendar year in which a cost of remedial action was paid by the small business owner.

As used in this division, *"actual portion of the costs paid by the owner or operator of an underground storage tank in connection with a remedial action for which the Iowa comprehensive petroleum underground storage tank fund shares in the cost of corrective action"* means the amount determined by the fund's board, or the board's designee, as the administrator of the Iowa comprehensive petroleum underground storage tank fund, and for which the owner or operator was not reimbursed from any other source.

As used in this division, *"small business"* means a business with gross receipts of less than five hundred thousand dollars per year.

2. The ordinance may be enacted not less than thirty days after a public hearing is held in accordance with section 335.6 in the case of a county, or section 362.3 in the case of a city. The ordinance shall designate the length of time the partial or total credit shall be available, and shall include a credit schedule and description of the terms and conditions of the credit.

3. A property tax credit provided under this section shall be paid for out of any available funds budgeted for that purpose by the city council or county board of supervisors. A city council may certify a tax for the general fund levy and a county board of supervisors may certify a tax for the rural county service fund levy for property tax credits authorized by this section.

4. The maximum permitted period of a tax credit granted under this section is ten years.

89 Acts, ch 131, §30

427B.21 Application for credit by underground storage tank owner or operator — approval by county board of supervisors or city council.

An application shall be filed by an owner of a small business that owns or operates an underground storage tank for each property for which a credit is sought. Applications shall be filed with the respective county board of supervisors or the city council by September 30 of the year following the calendar year in which a cost of remedial action was paid by the owner or operator. Small business owners receiving credits shall file applications for renewal of the credit by September 30 of each year. A credit may be renewed only if title to the credited property remains in the name of the person or entity originally receiving the credit.

In reviewing the applications, the board of supervisors or city council shall consider whether granting the credit would serve a public purpose. Upon approval of the application by the board of supervisors, and after the applicant has paid any property taxes due, the board shall direct the county treasurer to issue a warrant to the small business owner in the amount of the credit granted. Upon approval of the application by the city council, and after the applicant has paid any property taxes due, the council shall direct the city clerk to issue a warrant to the small business owner in the amount of the credit granted.

Applications for credit shall be made on forms prescribed by the director of revenue and finance and shall contain information pertaining to the nature of the release, the total cost of corrective action, the actual portion of the costs paid by the small business owner and for which the owner was not reimbursed from any other source, the small business owner's income tax form from the most recent tax year, and other information deemed necessary by the director.

89 Acts, ch 131, §31

427B.22 Credit may be repealed.

If in the opinion of the city council or the county board of supervisors continuation of the credit granted under an ordinance adopted pursuant to this division ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by section 427B.20, but all existing credits shall continue until their expiration.

89 Acts, ch 131, §32

427B.23 through 427B.25 Reserved.

DIVISION V

SPECIAL VALUATION FOR WIND ENERGY CONVERSION PROPERTY

427B.26 Special valuation of wind energy conversion property.

1. *a.* A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property as provided in subsection 2. The ordinance may be enacted not less than thirty days after a public hearing on the ordinance is held. Notice of the hearing shall be published in accordance with section 331.305 in the case of a county, or section 362.3 in the case of a city. The ordinance shall only apply to property first assessed on or after the effective date of the ordinance.

b. If in the opinion of the city council or the county board of supervisors continuation of the special valuation provided under this section ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by this subsection. Property specially valued under this section prior to repeal of the ordinance shall continue to be valued under this section until the end of the nineteenth assessment year following the assessment year in which the property was first assessed.

2. In lieu of the valuation and assessment provisions in section 441.21, subsection 8, paragraphs *"b"* and *"c"*, and sections 428.24 to 428.29, wind energy conversion property which is first assessed for property taxation on or after January 1, 1994, and on or after the effective date of the ordinance enacted pursuant to subsection 1, shall be valued by the local assessor for property tax purposes as follows:

a. For the first assessment year, at zero percent of the net acquisition cost.

b. For the second through sixth assessment years, at a percent of the net acquisition cost which rate increases by five percentage points each assessment year.

c. For the seventh and succeeding assessment years, at thirty percent of the net acquisition cost.

3. The taxpayer shall file with the local assessor by February 1 of the assessment year in which the wind energy conversion property is first assessed for property tax purposes, a declaration of intent to have the property assessed at the value determined under this section in lieu of the valuation and assessment provisions in section 441.21, subsection 8, paragraphs *"b"* and *"c"*, and sections 428.24 to 428.29.

4. For purposes of this section:

a. *"Net acquisition cost"* means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

b. "Wind energy conversion property" means the entire wind plant including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation.

93 Acts, ch 161, §2

CHAPTER 427C

FOREST AND FRUIT-TREE RESERVATIONS

This chapter not enacted as a part of this title;
transferred from chapter 161 in Code 1993

427C.1 Tax exemption.
427C.2 Reservations.
427C.3 Forest reservation.
427C.4 Removal of trees.
427C.5 Forest trees.
427C.6 Groves.
427C.7 Fruit-tree reservation — duration of exemption.
427C.8 Fruit trees.
427C.9 Replacing trees.
427C.10 Restraint of livestock and limitation on use.
427C.11 Penalty.
427C.12 Application — inspection — continuation of exemption — recapture of tax.
427C.13 Report to department of natural resources.

427C.1 Tax exemption.

Any person who establishes a forest or fruit-tree reservation as provided in this chapter shall be entitled to the tax exemption provided by law.

[C24, 27, 31, 35, 39, §**2605;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.1]

C93, §427C.1

427C.2 Reservations.

On any tract of land in the state of Iowa, the owner or owners may select a permanent forest reservation or reservations, each not less than two acres in continuous area, or a fruit-tree reservation or reservations, not less than one nor more than ten acres in total area, or both, and upon compliance with the provisions of this chapter, such owner or owners shall be entitled to the benefits provided by law.

[S13, §1400-c; C24, 27, 31, 35, 39, §**2606;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.2]

C93, §427C.2

427C.3 Forest reservation.

A forest reservation shall contain not less than two hundred growing forest trees on each acre. If the area selected is a forest containing the required number of growing forest trees, it shall be accepted as a forest reservation under this chapter provided application is made or on file on or before February 1 of the exemption year. If any buildings are standing on an area selected as a forest reservation under this section or a fruit-tree reservation under section 427C.7, one acre of that area shall be excluded from the tax exemption. However, the exclusion of that acre shall not affect the area's meeting the acreage requirement of section 427C.2.

[S13, §1400-d; C24, 27, 31, 35, 39, §**2607;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.3]

84 Acts, ch 1222, §1

C93, §427C.3

2001 Acts, ch 150, §16, 26

2001 amendment is effective January 1, 2002, and applies to claims filed on or after that date; 2001 Acts, ch 150, §26

427C.4 Removal of trees.

Not more than one-fifth of the total number of trees in any forest reservation may be removed in any one year, excepting in cases where the trees die naturally.

[S13, §1400-e; C24, 27, 31, 35, 39, §**2608;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.4]

C93, §427C.4

427C.5 Forest trees.

The ash, black cherry, black walnut, butternut, catalpa, coffee tree, the elms, hackberry, the hickories, honey locust, Norway and Carolina poplars, mulberry, the oaks, sugar maple, cottonwood, soft maple, osage orange, basswood, black locust, European larch and other coniferous trees, and all other forest trees introduced into the state for experimental purposes, shall be considered forest trees within the meaning of this chapter. In forest reservations which are artificial groves, the willows, box elder, and other poplars shall be included among forest trees for the purposes of this chapter when they are used as protecting borders not exceeding two rows in width around a forest reservation, or when they are used as nurse trees for forest trees in such forest reservation, the number of such nurse trees not to exceed one hundred on each acre; provided that only box elder shall be used as nurse trees.

[S13, §1400-f; C24, 27, 31, 35, 39, §**2609;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.5]
C93, §427C.5

427C.6 Groves.

The trees of a forest reservation shall be in groves not less than four rods wide except when the trees are growing or are planted in or along a gully or ditch to control erosion in which case any width will qualify provided the area meets the size requirement of two acres.

[S13, §1400-g; C24, 27, 31, 35, 39, §**2610;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.6]
C93, §427C.6

427C.7 Fruit-tree reservation — duration of exemption.

A fruit-tree reservation shall contain on each acre, at least forty apple trees, or seventy other fruit trees, growing under proper care and annually pruned and sprayed. A reservation may be claimed as a fruit-tree reservation, under this chapter, for a period of eight years after planting provided application is made or on file on or before February 1 of the exemption year.

[S13, §1400-h; C24, 27, 31, 35, 39, §**2611;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.7]
84 Acts, ch 1222, §2
C93, §427C.7
2001 Acts, ch 150, §17, 26
2001 amendment is effective January 1, 2002, and applies to claims filed on or after that date; 2001 Acts, ch 150, §26

427C.8 Fruit trees.

The cultivated varieties of apples, crabs, plums, cherries, peaches, and pears shall be considered fruit trees within the meaning of this chapter.

[S13, §1400-i; C24, 27, 31, 35, 39, §**2612;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.8]
C93, §427C.8

427C.9 Replacing trees.

When any tree or trees on a fruit-tree or forest reservation shall be removed or die, the owner or owners of such reservation shall, within one year, plant and care for other fruit or forest trees, in order that the number of such trees may not fall below that required by this chapter.

[S13, §1400-j; C24, 27, 31, 35, 39, §**2613;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.9]
C93, §427C.9

427C.10 Restraint of livestock and limitation on use.

Cattle, horses, mules, sheep, goats, ostriches, rheas, emus, and swine shall not be permitted upon a fruit-tree or forest reservation. Fruit-tree and forest reservations shall not be used for economic gain other than the gain from raising fruit or forest trees.

[S13, §1400-k; C24, 27, 31, 35, 39, §**2614;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.10]
84 Acts, ch 1222, §3
C93, §427C.10
95 Acts, ch 43, §11

427C.11 Penalty.

If the owner or owners of a fruit-tree or forest reservation violate any provision of this chapter within the two years preceding the making of an assessment, the assessor shall not list any tract belonging to such owner or owners, as a reservation within the meaning of this chapter, for the ensuing two years.

[S13, §1400-m; C24, 27, 31, 35, 39, §**2615;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.11]
C93, §427C.11

427C.12 Application — inspection — continuation of exemption — recapture of tax.

It shall be the duty of the assessor to secure the facts relative to fruit-tree and forest reservations by taking the sworn statement, or affirmation, of the owner or owners making application under this chapter; and to make special report to the county auditor of all reservations made in the county under the provisions of this chapter.

The board of supervisors shall designate the county conservation board or the assessor who shall inspect the area for which an application is filed for a fruit-tree or forest reservation tax exemption before the application is accepted. Use of aerial photographs may be substituted for on-site inspection when appropriate. The application can only be accepted if it meets the criteria established by the natural resource commission to be a fruit-tree or forest reservation. Once the application has been accepted, the area shall continue to receive the tax exemption during each year in which the area is maintained as a fruit-tree or forest reservation without the owner having to refile. If the property is sold or transferred, the seller shall notify the buyer that all, or part of, the property is in fruit-tree or forest reservation and subject to the recapture tax provisions of this section. The tax exemption shall continue to be granted for the remainder of the eight-year period for fruit-tree reservation and for the following years for forest reservation or until the property no longer qualifies as a fruit-tree or forest reservation. The area may be inspected each year by the county conservation board or the assessor to determine if the area is maintained as a fruit-tree or forest reservation. If the area is not maintained or is used for economic gain other than as a fruit-tree reservation during any year of the eight-year exemption period and any year of the following five years or as a forest reservation during any year for which the exemption is granted and any of the five years following those exemption years, the assessor shall assess the property for taxation at its fair

market value as of January 1 of that year and in addition the area shall be subject to a recapture tax. However, the area shall not be subject to the recapture tax if the owner, including one possessing under a contract of sale, and the owner's direct antecedents or descendants have owned the area for more than ten years. The tax shall be computed by multiplying the consolidated levy for each of those years, if any, of the five preceding years for which the area received the exemption for fruit-tree or forest reservation times the assessed value of the area that would have been taxed but for the tax exemption. This tax shall be entered against the property on the tax list for the current year and shall constitute a lien against the property in the same manner as a lien for property taxes. The tax when collected shall be apportioned in the manner provided for the apportionment of the property taxes for the applicable tax year.

[S13, §1400-n; C24, 27, 31, 35, 39, §**2616;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.12]

84 Acts, ch 1222, §4; 85 Acts, ch 75, §1

C93, §427C.12

95 Acts, ch 156, §1

427C.13 Report to department of natural resources.

The county assessor shall keep a record of all forest and fruit-tree reservations in the county and submit a report of the reservations to the department of natural resources not later than June 15 of each year.

[S13, §1400-o; C24, 27, 31, 35, 39, §**2617;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §161.13; 81 Acts, ch 117, §1208]

C93, §427C.13

CHAPTER 428

LISTING PROPERTY FOR TAXATION

See chapter 437A for assessment and taxation of certain property associated with the production, generation, transmission, or delivery of electricity or natural gas

428.1 Listing of property.
428.2 Listing property of another.
428.3 Agent personally liable. Repealed by 89 Acts, ch 296, §96.
428.4 Real estate — buildings.
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428.6 Deceased owner.
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428.8 Place of listing. Repealed by 89 Acts, ch 296, §96.
428.9 Definition of owner. Repealed by 99 Acts, ch 114, §54.
428.10 Ice and coal dealers. Repealed by 94 Acts, ch 1173, §42.
428.11 Business in different districts. Repealed by 99 Acts, ch 114, §54.
428.12 Branch banks. Repealed by 89 Acts, ch 296, §96.
428.13 How assessment made. Repealed by 99 Acts, ch 114, §54.
428.14 Stipulation for payment. Repealed by 99 Acts, ch 114, §54.
428.15 Partners. Repealed by 99 Acts, ch 114, §54.
428.16 through 428.19 Repealed by 89 Acts, ch 296, §96.
428.20 Definitions.
428.21 Assessment — how made. Repealed by 89 Acts, ch 296, §96.
428.22 Locker plants.
428.23 Manufacturer to list.
428.24 Public utility plants.
428.25 Property in different districts.
428.26 Personal property.
428.27 Capital stock listed and assessed. Repealed by 95 Acts, ch 83, §33.
428.28 Annual report by utility.
428.29 Assessment and certification.
428.30 Repealed by 80 Acts, ch 1142, §6.
428.31 Repealed by 80 Acts, ch 1142, §6.
428.32 and 428.33 Repealed by 74 Acts, ch 1090, §211.
428.34 Real estate of corporations. Repealed by 99 Acts, ch 114, §54.
428.35 Grain handled.
428.36 Listing property of financial institutions. Repealed by 99 Acts, ch 114, §54.
428.37 Listing certain electric power generating plants. Repealed by 98 Acts, ch 1194, §39, 40.

428.1 Listing of property.

Every person shall list for the assessor all property subject to taxation in the state, of which the person is the owner, or has the control or management, including but not limited to the following:

1. The property of one under disability, by the person having charge thereof.

2. The property of a married person, by either party.

3. The property of a beneficiary for whom the property is held in trust, by the trustee.

4. The property of a body corporate, company,

society or partnership, by its principal accountant, officer, agent, or partner, as the assessor may demand.

5. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless listed by the mortgagee or lessee.

[C51, §458; R60, §714; C73, §803; C97, §1312; S13, §1312; C24, 27, 31, 35, 39, §**6956;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.1]

89 Acts, ch 296, §49; 95 Acts, ch 83, §20; 99 Acts, ch 151, §43, 89

428.2 Listing property of another.

Any person required to list property belonging to another shall list it in the same county in which the person would be required to list it if it were the person's own, except as herein otherwise directed; but the person shall list it separately from the person's own, giving the assessor the name of the person or estate to which it belongs.

[C51, §461; R60, §716; C73, §805; C97, §1316; C24, 27, 31, 35, 39, §**6957;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.2]

428.3 Agent personally liable. Repealed by 89 Acts, ch 296, § 96.

428.4 Real estate — buildings.

Property shall be assessed for taxation each year. Real estate shall be listed and assessed in 1981 and every two years thereafter. The assessment of real estate shall be the value of the real estate as of January 1 of the year of the assessment. The year 1981 and each odd-numbered year thereafter shall be a reassessment year. In any year, after the year in which an assessment has been made of all the real estate in an assessing jurisdiction, the assessor shall value and assess or revalue and reassess, as the case may require, any real estate that the assessor finds was incorrectly valued or assessed, or was not listed, valued, and assessed, in the assessment year immediately preceding, also any real estate the assessor finds has changed in value subsequent to January 1 of the preceding real estate assessment year. However, a percentage increase on a class of property shall not be made in a year not subject to an equalization order unless ordered by the department of revenue and finance. The assessor shall determine the actual value and compute the taxable value thereof as of January 1 of the year of the revaluation and reassessment. The assessment shall be completed as specified in section 441.28, but no reduction or increase in actual value shall be made for prior years. If an assessor makes a change in the valuation of the real estate as provided for, sections 441.23, 441.37, 441.38 and 441.39 apply.

The assessor shall notify the director of revenue and finance, in the manner and form to be prescribed by the director, as to the class or classes of real estate reviewed, revalued, and reassessed and shall report such details as to the effects or results of the revaluation and reassessment as may be deemed necessary by the director. This notification shall be contained in a report to be attached to the abstract of assessment for the year in which the new valuations become effective.

Any buildings erected, improvements made, or buildings or improvements removed in a year after the assessment of the class of real estate to which they belong, shall be valued, listed, and assessed and reported by the assessor to the county auditor after approval of the valuations by the local board of review, and the auditor shall thereupon enter the taxable value of such building or taxable improvement on the tax list as a part of real estate to be taxed. If such buildings or improvements are erected or made by any person other than the owner of the land, they shall be listed and assessed to the owner of the buildings or improvements as real estate.

[C51, §460, 465; R60, §719, 720; C73, §812; C97, §1350; C24, 27, 31, 35, 39, §**6959;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §428.4; 81 Acts, ch 140, §3, 4; 82 Acts, ch 1190, §5]

89 Acts, ch 296, §50, 51; 97 Acts, ch 158, §35

428.5 Unknown owners.

When the name of the owner of any real estate is unknown, it shall be assessed without connecting therewith any name, but inscribing at the head of the page the words "owners unknown", and such property, whether lands or city lots, shall be listed as nearly as practicable in the order of the numbers thereof.

[R60, §737; C73, §826; C97, §1353; C24, 27, 31, 35, 39, §**6960;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.5]

428.6 Deceased owner.

The real estate of persons deceased may be listed as belonging to the estate or the person's heirs, without enumerating them.

[C51, §461; R60, §716; C73, §805; C97, §1353; C24, 27, 31, 35, 39, §**6961;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.6]

428.7 Description of tracts — manner.

A description shall not comprise more than one city lot or other smallest subdivision of the land according to the government surveys, except in cases where the boundaries are so irregular that it cannot be described in the usual manner in accordance therewith. However, descriptions may be combined for assessment purposes to allow the assessor to value the property as a unit. This section shall apply to known owners and unknown owners, alike.

[C97, §1353; C24, 27, 31, 35, 39, §**6962;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.7]

428.8 Place of listing. Repealed by 89 Acts, ch 296, § 96.

428.9 Definition of owner. Repealed by 99 Acts, ch 114, § 54.

428.10 Ice and coal dealers. Repealed by 94 Acts, ch 1173, § 42.

428.11 Business in different districts. Repealed by 99 Acts, ch 114, § 54.

428.12 Branch banks. Repealed by 89 Acts, ch 296, § 96.

428.13 How assessment made. Repealed by 99 Acts, ch 114, § 54.

428.14 Stipulation for payment. Repealed by 99 Acts, ch 114, § 54.

428.15 Partners. Repealed by 99 Acts, ch 114, § 54.

428.16 through 428.19 Repealed by 89 Acts, ch 296, § 96.

428.20 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

A person who purchases, receives, or holds personal property of any description for the purpose of adding to its value by a process of manufacturing, refining, purifying, combining of different materials, or by the packing of meats, with a view to selling the property for gain or profit, is a *"manufacturer"* for the purposes of this title.*

[C51, §469; R60, §724; C73, §816; C97, §1319; C24, 27, 31, 35, 39, §**6975;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.20]

89 Acts, ch 296, §53; 90 Acts, ch 1168, §48; 94 Acts, ch 1023, §53; 2000 Acts, ch 1148, §1

*This provision does not include chapters 421B, 427C, 435, 452A, and 453A, which were moved into this title by the Code editor; chapters 421B, 427C, 435, 452A, and 453A contain the applicable provisions pertaining to those chapters

428.21 Assessment — how made. Repealed by 89 Acts, ch 296, § 96.

428.22 Locker plants.

For purposes of valuing and assessing property for tax purposes, locker plants shall be valued and assessed as commercial property. For purposes of this section, *"locker plants"* means any property used primarily for any or all of the following purposes:

1. To provide, as a part of its business operations, locker facilities which are rented at retail to consumers to be used for the storage of frozen meats, fish, or fowl owned by the person renting the locker.
2. To custom slaughter livestock under contract for a natural person and to process the carcass for the natural person by cutting, wrapping, and freezing the meat.
3. To process an animal carcass to offer at retail processed meat products to a natural person after the facility has purchased the livestock or carcass.

[C81, §428.22]

428.23 Manufacturer to list.

Corporations organized for pecuniary profit and engaged in manufacturing as defined in section 428.20 shall list their real property in the same manner as is required of individuals.

[C97, §1319; C24, 27, 31, 35, 39, §**6978;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.23]

89 Acts, ch 296, §54; 95 Acts, ch 83, §21

428.24 Public utility plants.

The lands, buildings, machinery, and mains belonging to individuals or corporations operating waterworks or gasworks or pipelines, except those natural gas pipelines permitted pursuant to chapter 479, shall be listed and assessed by the department of revenue and finance. In the making of assessments of waterworks plants, the value of any interest in the property assessed, of the municipal corporation where it is situated, shall be deducted, whether the interest is evidenced by stock, bonds, contracts, or otherwise.

[C97, §1343; C24, 27, 31, 35, 39, §**6979;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.24; 81 Acts, ch 31, §9]

83 Acts, ch 101, §88; 98 Acts, ch 1194, §29, 40

428.25 Property in different districts.

Where any such property except the capital stock is situated partly within and partly without the limits of a city, such portions of the said plant shall be assessed separately, and the portion within the said city shall be assessed as above provided, and the portion without the said city shall be apportioned by the department of revenue and finance to the district or districts in which it is located.

[C97, §1343; C24, 27, 31, 35, 39, §**6980;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.25]

428.26 Personal property.

All the personal property of such individuals and corporations used or purchased by them for the purposes of such gas or waterworks, other than natural gas pipelines permitted pursuant to

chapter 479, shall be listed and assessed by the department of revenue and finance.

In the making of any such assessment of waterworks plants, the value of any interest in the property so assessed, of the municipal corporation in which the waterworks is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise.

[C97, §1343; C24, 27, 31, 35, 39, §**6981;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.26]

98 Acts, ch 1194, §30, 40

428.27 Capital stock listed and assessed. Repealed by 95 Acts, ch 83, § 33.

428.28 Annual report by utility.

Every individual, copartnership, corporation, or association operating for profit, waterworks or gasworks or pipelines other than natural gas pipelines permitted pursuant to chapter 479, annually on or before May 1 of each calendar year, shall make a report on blanks to be provided by the department of revenue and finance of all of the property owned by such individual, copartnership, corporation, or association within the incorporated limits of any city in the state, and give such other information as the director of revenue and finance shall require.

Every individual, copartnership, corporation, or association which operates a public utility on a nonprofit basis other than a utility subject to tax under chapter 437A, as defined in section 428.24 shall annually, on or before May 1 of each calendar year, make a report on blanks to be provided by the department of revenue and finance of all of the property owned by the individual, copartnership, corporation, or association within the incorporated limits of any city in the state, and give other information the director of revenue and finance requires.

[C31, 35, §6982-d1; C39, §**6982.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.28; 81 Acts, ch 31, §10]

84 Acts, ch 1177, §1; 98 Acts, ch 1194, §31, 40

428.29 Assessment and certification.

The director of revenue and finance shall on the second Monday of July of each year proceed to determine, upon the basis of the data required in such report and any other information the director may obtain, the actual value of all property, subject to the director's jurisdiction, of said individual, copartnership, corporation, or association, and shall make assessments upon the taxable value thereof, as provided by section 441.21. The director of revenue and finance shall, on or before the third Monday in August, certify to the county auditor of every county in the state the valuations fixed for assessment upon all such property in each and every taxing district in each county by the department of revenue and finance. This valuation shall then be spread upon the books in the same manner as other valuations fixed by the department of revenue and finance upon property assessed under the department's jurisdiction.

[C31, 35, §6982-d2; C39, §**6982.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.29]

428.30 Repealed by 80 Acts, ch 1142, § 6. See § 429.2.

428.31 Repealed by 80 Acts, ch 1142, § 6. See § 429.3.

428.32 and 428.33 Repealed by 74 Acts, ch 1090, § 211.

428.34 Real estate of corporations. Repealed by 99 Acts, ch 114, § 54.

428.35 Grain handled.

1. *Definitions. "Person"* as used herein means individuals, corporations, firms and associations of whatever form. *"Handling or handled"* as used herein means the receiving of grain at or in each elevator, warehouse, mill, processing plant or other facility in this state in which it is received for storage, accumulation, sale, processing or for any purpose whatsoever. *"Grain"* as used herein means wheat, corn, barley, oats, rye, flaxseed, field peas, soybeans, grain sorghums, spelts, and such other products as are usually stored in grain elevators. Such term excludes such seeds after being processed, and the products of such processing when packaged or sacked. The term *"processing"* shall not include hulling, cleaning, drying, grading or polishing.

2. *Tax imposed.* An annual excise tax is hereby levied on such handling of grain in the amount hereinafter provided. All grain so handled shall be exempt from all taxation as property under the laws of this state. The amount of such excise tax shall be a sum equal to one-fourth mill per bushel upon all grain as herein defined so handled.

3. *Statement filing form.* Every person engaged in handling grain shall, on the first day of January of each year and not later than sixty days thereafter, make and file with the assessor a statement of the number of bushels of grain handled by the person in that district during the year immediately preceding, or the part thereof, during which the person was engaged in handling grain; and on demand the assessor shall have the right to inspect all such person's records thereof. A form for making such statement shall be included in the blanks prescribed by the director of revenue and finance. If such statement is not furnished as herein required, section 441.24, shall be applicable.

4. *Assessment.* The assessor of each such district, from the statement required or from such other information as the assessor may acquire, shall ascertain the number of bushels of grain

handled by each person handling grain in the assessor's district during the preceding year, or part thereof, and shall assess the amount herein provided to such person under the provisions of this section.

5. *Computation of tax.* The rate imposed by subsection 2 shall be applied to the number of bushels of grain so handled, and the computed amount thereof shall constitute the tax to be assessed.

6. *Payment of tax.* The tax, when determined, shall be entered in the same manner as general property taxes on the tax list of the taxing district, and the proceeds of the collection of the tax shall be distributed to the same taxing units and in the same proportion as the general property tax on the tax list of each taxing district. All provisions of the law relating to the assessment and collection of property taxes and the powers and duties of the county treasurer, county auditor and all other officers with respect to the assessment, collection, and enforcement of property taxes apply to the assessment, collection, and enforcement of the tax imposed by this section.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.35]

89 Acts, ch 296, §55

428.36 Listing property of financial institutions. Repealed by 99 Acts, ch 114, § 54.

428.37 Listing certain electric power generating plants. Repealed by 98 Acts, ch 1194, § 39, 40. See chapter 437A.

CHAPTER 428A

REAL ESTATE TRANSFER TAX

428A.1 Amount of tax on transfers — declaration of value.
428A.2 Exceptions.
428A.3 Who liable for tax.
428A.4 Recording refused.
428A.5 Documentation of payment.
428A.6 Canceling stamp. Repealed by 83 Acts, ch 135, §6.
428A.7 Forms provided by director of revenue and finance.
428A.8 Remittance to state treasurer — portion retained in county.
428A.9 Refund of tax.
428A.10 Penalty.
428A.11 Enforcement.
428A.12 Definition. Repealed by 83 Acts, ch 135, §6.
428A.13 Nonapplicability.
428A.14 Credit on tax. Repealed by 86 Acts, ch 1241, §48, 51.
428A.15 Penal provisions.

428A.1 Amount of tax on transfers — declaration of value.

There is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty in this state are granted, assigned, transferred, or otherwise conveyed, a tax determined in the following manner: When there is no consideration or when the deed, instrument, or writing is executed and tendered for recording as an instrument corrective of title, and so states, there is no tax. When there is consideration and the actual market value of the real property transferred is in excess of five hundred dollars, the tax is eighty cents for each five hundred dollars or fractional part of five hundred dollars in excess of five hundred dollars. The term *"consideration"*, as used in this chapter, means the full amount of the actual sale price of the real property involved, paid or to be paid, including the amount of an encumbrance or lien on the property, if assumed by the grantee. It is presumed that the sale price so stated includes the value of all personal property transferred as part of the sale unless the dollar value of personal property is stated on the instrument of conveyance. When the dollar value of the personal property included in the sale is so stated, it shall be deducted from the consideration shown on the instrument for the purpose of determining the tax.

When each deed, instrument, or writing by which any real property in this state is granted, assigned, transferred, or otherwise conveyed is presented for recording to the county recorder, a declaration of value signed by at least one of the sellers or one of the buyers or their agents shall be submitted to the county recorder. However, if the deed, instrument, or writing contains multiple parcels some of which are located in more than one county, separate declarations of value shall be submitted on the parcels located in each county and submitted to the county recorder of that county when paying the tax as provided in section 428A.5. A declaration of value is not required for

those instruments described in section 428A.2, subsections 2 to 5, 7 to 13, and 16 to 21, or described in section 428A.2, subsection 6, except in the case of a federal agency or instrumentality, or if a transfer is the result of acquisition of lands, whether by contract or condemnation, for public purposes through an exercise of the power of eminent domain.

The declaration of value shall state the full consideration paid for the real property transferred. If agricultural land, as defined in section 9H.1, is purchased by a corporation, limited partnership, trust, alien or nonresident alien, the declaration of value shall include the name and address of the buyer, the name and address of the seller, a legal description of the agricultural land, and identify the buyer as a corporation, limited partnership, trust, alien, or nonresident alien. The county recorder shall not record the declaration of value, but shall enter on the declaration of value information the director of revenue and finance requires for the production of the sales/assessment ratio study and transmit all declarations of value to the city or county assessor in whose jurisdiction the property is located. The city or county assessor shall enter on the declaration of value the information the director of revenue and finance requires for the production of the sales/assessment ratio study and transmit one copy of each declaration of value to the director of revenue and finance, at times as directed by the director of revenue and finance. The assessor shall retain one copy of each declaration of value for three years from December 31 of the year in which the transfer of realty for which the declaration was filed took place. The director of revenue and finance shall, upon receipt of the information required to be filed under this chapter by the city or county assessor, send to the office of the secretary of state that part of the declaration of value which identifies a corporation, limited partnership, trust, alien, or nonresident alien as a purchaser of agricultural land as defined in section 9H.1.

[C66, 71, 73, 75, 77, 79, 81, S81, §428A.1; 81 Acts, ch 141, §1; 82 Acts, ch 1027, §1]

85 Acts, ch 96, §1; 87 Acts, ch 133, §1; 87 Acts, ch 198, §4; 89 Acts, ch 271, §1; 91 Acts, ch 267, §317; 92 Acts, ch 1073, §12; 92 Acts, ch 1212, §35; 96 Acts, ch 1167, §6; 99 Acts, ch 175, §1

428A.2 Exceptions.

The tax imposed by this chapter shall not apply to:

1. Any executory contract for the sale of land under which the vendee is entitled to or does take possession thereof, or any assignment or cancellation thereof.
2. Any instrument of mortgage, assignment, extension, partial release, or satisfaction thereof.
3. Any will.
4. Any plat.
5. Any lease.
6. Any deed, instrument, or writing in which the United States or any agency or instrumentality thereof or the state of Iowa or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, assignor, transferor, or conveyor; and any deed, instrument or writing in which any of such unit of government is the grantee or assignee where there is no consideration.
7. Deeds for cemetery lots.
8. Deeds which secure a debt or other obligation, except those included in the sale of real property.
9. Deeds for the release of a security interest in property excepting those pertaining to the sale of real estate.
10. Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.
11. Deeds between husband and wife, or parent and child, without actual consideration. A cancellation of indebtedness alone which is secured by the property being transferred and which is not greater than the fair market value of the property being transferred is not actual consideration within the meaning of this subsection.
12. Tax deeds.
13. Deeds of partition where the interest conveyed is without consideration. However, if any of the parties take shares greater in value than their undivided interest a tax is due on the greater values, computed at the rate set out in section 428A.1.
14. The making or delivering of instruments of transfer resulting from a corporate merger, consolidation, or reorganization or a merger, consolidation, or reorganization of a limited liability company under the laws of the United States or any state thereof, where such instrument states such fact on the face thereof.
15. Deeds between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or corporate dissolution or the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deeds are given for no actual consideration other than for shares or for debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company. For purposes of this subsection, a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company where the majority of the voting stock of the corporation, or of the ownership shares of the partnership, limited partnership, limited liability partnership, or limited liability company is held

by and the majority of the stockholders, partners, or members are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related and where all of its stockholders, partners, or members are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons.

16. Deeds for the transfer of property or the transfer of an interest in property when the deed is executed between former spouses pursuant to a decree of dissolution of marriage.

17. Deeds transferring easements.

18. Deeds giving back real property to lienholders in lieu of forfeitures or foreclosures.

19. Deeds executed by public officials in the performance of their official duties.

20. Deeds transferring distributions of assets to heirs at law or devisees under a will.

21. Deeds in which the consideration is five hundred dollars or less.

[C66, 71, 73, 75, 77, 79, 81, §428A.2; 82 Acts, ch 1027, §2 – 4]

87 Acts, ch 198, §5; 89 Acts, ch 271, §2; 91 Acts, ch 191, §25; 95 Acts, ch 175, §1; 96 Acts, ch 1170, §1

428A.3 Who liable for tax.

Any person, firm or corporation who grants, assigns, transfers, or conveys any land, tenement, or realty by a deed, writing, or instrument subject to the tax imposed by this chapter shall be liable for such tax but no public official shall be liable for a tax with respect to any instrument executed by the public official in connection with official duties.

[C66, 71, 73, 75, 77, 79, 81, §428A.3]

428A.4 Recording refused.

The county recorder shall refuse to record any deed, instrument, or writing, taxable under section 428A.1 for which payment of the tax determined on the full amount of the consideration in the transaction has not been paid. However, if the deed, instrument, or writing, is exempt under section 428A.2, the county recorder shall not refuse to record the document if there is filed with or endorsed on it a statement signed by either the grantor or grantee or an authorized agent, that the instrument or writing is excepted from the tax under section 428A.2. The validity of an instrument as between the parties, and as to any person who would otherwise be bound by the instrument, is not affected by the failure to comply with this section. If an instrument is accepted for recording or filing contrary to this section the failure to comply does not destroy or impair the record as notice.

The county recorder shall refuse to record any deed, instrument, or writing by which any real property in this state shall be granted, assigned, transferred, or otherwise conveyed, except those transfers exempt from tax under section 428A.2, subsections 2 to 5, and 7 to 13, or under section 428A.2, subsection 6, except in the case of a federal agency or instrumentality, until the declaration of value has been submitted to the county recorder. A declaration of value shall not be required with a deed given in fulfillment of a recorded real estate contract provided the deed has a notation that it is given in fulfillment of a contract.

[C66, 71, 73, 75, 77, 79, 81, §428A.4]

83 Acts, ch 135, §1; 87 Acts, ch 133, §2

428A.5 Documentation of payment.

The amount of tax imposed by this chapter shall be paid to the county recorder in the county where the real property is located and the amount received and the initials of the county recorder shall appear on the face of the document or instrument. The method of documentation of a transfer tax shall be approved by the department of revenue and finance.

[C66, 71, 73, 75, 77, 79, 81, §428A.5]

83 Acts, ch 135, §2; 99 Acts, ch 175, §2; 2001 Acts, ch 44, §19

428A.6 Canceling stamp. Repealed by 83 Acts, ch 135, § 6.

428A.7 Forms provided by director of revenue and finance.

The director of revenue and finance shall prescribe the form of the declaration of value and shall include an appropriate place for the inclusion of special facts and circumstances relating to the actual sales price in real estate transfers. The director shall provide an adequate number of the declaration of value forms to each county recorder in the state.

[C66, 71, 73, 75, 77, 79, 81, §428A.7]

83 Acts, ch 135, §3

428A.8 Remittance to state treasurer — portion retained in county.

On or before the tenth day of each month the county recorder shall determine and pay to the treasurer of state eighty-two and three-fourths percent of the receipts from the real estate transfer tax collected during the preceding month and the treasurer of state shall deposit ninety-five percent of the receipts in the general fund of the state and transfer five percent of the receipts to the shelter assistance fund created in section 15.349.

The county recorder shall deposit the remaining seventeen and one-fourth percent of the receipts in the county general fund.

Any tax or additional tax found to be due shall be collected by the county recorder. If the county recorder is unable to collect the tax, the director of revenue and finance shall collect the tax in the same manner as taxes are collected in chapter 422,

division III. If collected by the director of revenue and finance, the director shall pay the county its proportionate share of the tax. Section 422.25, subsections 1, 2, 3, and 4, and sections 422.26, 422.28 through 422.30, and 422.73, consistent with this chapter, apply with respect to the collection of any tax or additional tax found to be due, in the same manner and with the same effect as if the deed, instrument, or writing were an income tax return within the meaning of those statutes.

The county recorder shall keep records and make reports with respect to the real estate transfer tax as the director of revenue and finance prescribes.

[C66, 71, 73, 75, 77, 79, 81, §428A.8]

83 Acts, ch 123, §176, 209; 83 Acts, ch 135, §4; 91 Acts, ch 267, §318; 94 Acts, ch 1201, §28; 97 Acts, ch 201, §22; 2001 Acts, ch 150, §18

428A.9 Refund of tax.

To receive a refund from the state the taxpayer shall petition the state appeal board for a refund of the amount of overpayment of the tax paid to the treasurer of state. To receive a refund from the county the taxpayer shall petition the board of supervisors for a refund of the remaining portion of the overpayment paid to that county.

2001 Acts, ch 150, §19

428A.10 Penalty.

Any person, firm or corporation liable for the tax imposed by this chapter who knowingly fails to comply with this chapter relating to the payment of the real estate transfer tax is guilty of a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §428A.10]

83 Acts, ch 135, §5

428A.11 Enforcement.

The director of revenue and finance shall enforce the provisions of this chapter and may prescribe rules for their detailed and efficient administration.

[C66, 71, 73, 75, 77, 79, 81, §428A.11]

428A.12 Definition. Repealed by 83 Acts, ch 135, § 6.

428A.13 Nonapplicability.

This chapter shall not apply with respect to any deed, instrument, or writing where such deed, instrument, or writing may not under the Constitution of this state or under the Constitution or laws of the United States be made the subject of taxation by this state.

[C66, 71, 73, 75, 77, 79, 81, §428A.13]

428A.14 Credit on tax. Repealed by 86 Acts, ch 1241, § 48, 51.

428A.15 Penal provisions.

Any person who willfully enters false information on the declaration of value shall be guilty of a simple misdemeanor.

[C79, 81, §428A.15]

CHAPTER 429

NOTIFICATION OF TAXPAYERS

429.1 Notice of assessment.
429.2 Appeal.
429.3 Judicial review.

429.1 Notice of assessment.

The director of revenue and finance shall, at the time of making the assessment of property as provided in chapters 428, 433, 434, 437, and 438, inform the person assessed, by mail, of the valuation put upon the taxpayer's property. The notice shall contain a notice of the taxpayer's right of appeal to the state board of tax review as provided in section 429.2.

[C81, §429.1]

86 Acts, ch 1241, §37; 2002 Acts, ch 1150, §12
Section amended

429.2 Appeal.

1. Notwithstanding the provisions of chapter 17A, the taxpayer shall have thirty days from the date of the notice of assessment to appeal the assessment to the state board of tax review. Thereafter, the proceedings before the state board of tax review shall conform to the provisions of subsection 2, section 421.1, subsection 4, and chapter 17A.

2. The following rules shall apply to the appeal proceedings in addition to those stated in section 421.1, subsection 4, and chapter 17A.

a. The department's assessment shall be presumed correct and the burden of proof shall be on the taxpayer with respect to all issues raised on appeal, including any challenge of the director's valuation.

b. The burden of proof must be carried by a preponderance of the evidence.

c. The board shall consider all evidence and witnesses offered by the taxpayer and the department, including, but not limited to, evidence relating to the proper valuation of the property involved.

d. The board shall make an independent determination of the value of the property based solely upon its review of the evidence presented.

e. Upon the request of a party the board shall set the case for hearing within one year of the date of the request, unless for good cause shown, by application and ruling thereon after notice and not ex parte, the hearing date is continued by the board.

[C31, 35, §6982-d3; C39, §**6982.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §428.30; C81, §429.2]

94 Acts, ch 1133, §9, 16; 99 Acts, ch 151, §44, 89

429.3 Judicial review.

Judicial review of the action of the state board of tax review may be sought by the taxpayer or the director of revenue and finance in accordance with the terms of chapter 17A.

[C31, 35, §6982-d4; C39, §**6982.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §428.31; C81, §429.3]

94 Acts, ch 1133, §10, 16

CHAPTER 430

TAXATION OF BANKS

Repealed by 70 Acts, ch 1204, §16

CHAPTER 430A

LOAN AGENCIES TAX

430A.1 Verified statement filed.
430A.2 Exemptions.
430A.3 Levy.
430A.4 Computation by assessor.
430A.5 Forms — several places of business.
430A.6 Real property assessment.
430A.7 Repealed by 70 Acts, ch 1204, §19.

430A.1 Verified statement filed.

Every corporation not organized under the laws of Iowa and every individual, partnership or other nonincorporated agency engaged in the business of making loans or investments within the state of Iowa on other than real estate security, shall annually on or before March 1 furnish to the assessor of the taxing district in which its principal place of business is located, a verified statement showing specifically with reference to the next year preceding the first day of January then last past: (1) The total amount of money loaned or invested by such financial corporation or loaning agency on security other than real estate or upon unsecured loans outside the state of Iowa; (2) The total assets of such corporation; (3) The total indebtedness of such corporation, or loaning agency excluding indebtedness not relating to the business of loaning money upon security other than real estate, or upon unsecured loans; (4) The location of each place of business maintained within or without the state by such corporation, or loaning agency; (5) The amount of money loaned on security other than real estate or upon unsecured loans by each place of business in Iowa; and such other information as the assessor shall require in order to determine the amount of capital employed in such business within the state of Iowa. The terms *"loaned"* or *"invested"* as employed in this section shall have the same meaning and effect with respect to loans and investments outside the state of Iowa as is hereinafter provided with respect to loans and investments within the state of Iowa.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §430A.1]

430A.2 Exemptions.

The provisions of this chapter shall not apply to corporations or agencies which are exempt from taxation under the provisions of the Constitution of the United States or federal statutes, or to in-

surance companies subject to tax on gross premiums, under chapter 432, or to corporations organized under the laws of the state of Iowa, or to production credit associations, or to rural electrification association loans, or to national and state banks.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §430A.2]

430A.3 Levy.

There is imposed upon capital employed in the business of making loans or investments within the state of Iowa, as determined under this chapter, a tax of five mills on each dollar of capital; the tax to be considered a tax upon moneys and credits of the corporations which shall be levied by the board of supervisors, and placed upon the tax list and collected by the county treasurer. The amount collected in each taxing district in cities shall be apportioned twenty percent to the county, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county and fifty percent to the general fund of the state. The term *"loans"* means the lending of money to members of the general public upon other than real estate security. The term *"investments"* means the discounting, purchasing, or otherwise acquiring notes, mortgages, sales contracts, debentures, or any other evidences of indebtedness, based upon other than real estate security when the investments are made in connection with loans made to members of the general public in the state of Iowa or in the course of any operations having as their effect the financing of business transactions within the state of Iowa resulting in the incurring of any indebtedness based upon security other than real estate security.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §430A.3]

83 Acts, ch 123, §177, 209

430A.4 Computation by assessor.

The assessor shall, upon the basis of the return made under the provisions of this chapter, determine the amount of capital employed by the maker of the return in the business of making loans or investments within the state of Iowa on other than real estate security, and shall deduct from the amount thus determined a pro rata share of the indebtedness of such corporation, individual, partnership or other nonincorporated agency, appertaining to the loaning of money on other than real estate security, a percentage equal to that which the amount of money loaned by such financial corporation in Iowa, unsecured or upon security other than real estate, bears to the total amount loaned by such loaning agency, unsecured or upon security other than real estate outside the state of Iowa; provided that no deduction for indebtedness shall be allowed in excess of eighty percent of the amount of capital employed in the business of making loans or investments within the state of Iowa as provided by this chapter and that in the determination of the indebtedness deducted, any and all assets of the company in the form of accounts receivable, cash on hand, or other capital used or available for use in connection with loans and investments on other than real estate security which have not been included in capital, shall be deductible from any such indebtedness for which credit is claimed or allowed. The amount thus determined shall be assessed as moneys and credits.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §430A.4]

430A.5 Forms — several places of business.

The director of revenue and finance shall prescribe forms for the making of returns as provided by this chapter. Any individual, partnership or agency subject to the provisions of this chapter and which maintains more than one place of business within the state of Iowa, may elect to make the return provided for by this chapter to the director of revenue and finance, who shall determine the proper assessment to be made in each taxing district in which such taxpayer maintains a place of business, and the results thereof shall be by the director of revenue and finance promptly certified to the county auditors of the respective counties in which offices are maintained, who shall add such assessments to the tax lists. In making such assessments the director of revenue and finance shall determine the proportion of business done by such taxpayer in each taxing district in which a place of business is maintained, and shall assess in each taxing district an amount in proportion to the business done in such taxing district to the amount of business done in the entire state. The director of revenue and finance shall have the power to require the making of a return by any corporation, individual, partnership, or agency which the director deems to be subject to taxation under the provisions of this chapter and in case of failure or refusal to make such a return, the director of revenue and finance shall make an assessment based upon the best information the director is able to obtain against any such corporation, individual, partnership, or agency, and shall certify such assessment as provided by this chapter. Judicial review may be sought of the action of the director of revenue and finance in regard to assessments or orders made by the director in connection with this chapter under the same procedure generally, as is provided by section 422.29.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §430A.5]

430A.6 Real property assessment.

All real property of individuals, corporations or agencies subject to this chapter and located within the state of Iowa shall be assessed in the same manner as other real property.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §430A.6]

89 Acts, ch 296, §57

430A.7 Repealed by 70 Acts, ch 1204, § 19.

CHAPTER 431

CORPORATION STOCK TAXATION

Repealed by 70 Acts, ch 1204, §20

CHAPTER 432

INSURANCE COMPANIES TAX

432.1 Tax on gross premiums — exclusions.
432.2 Mutual service corporations.
432.3 Receipts — certificate of authority.
432.4 Deduction for debts.
432.5 Risk retention groups.
432.6 Personal and real property.
432.7 Assessment.
432.8 Repealed by 72 Acts, ch 1019, §7.
432.9 Debts deductible.
432.10 Sufficiency of remitted tax — notice.
432.11 Premium tax exemption for basic benefit health plans. Repealed by 2002 Acts, ch 1119, §111.
432.12 Premium tax credit for employer-sponsored health plan premium credit. Repealed by 2001 Acts, ch 69, §38, 39.
432.12A Property rehabilitation tax credit.
432.12B Venture capital fund investment tax credit.
432.12C Investment tax credits.
432.13 Premium tax exemption — HAWK-I program — state employee benefits.
432.14 Statute of limitations.

432.1 Tax on gross premiums — exclusions.

Every insurance company or association of whatever kind or character, not including fraternal beneficiary associations, and nonprofit hospital and medical service corporations, shall, as required by law, pay to the director of the department of revenue and finance, or to a depository designated by the director, as taxes, an amount equal to the following, except that the premium tax applicable to county mutual insurance associations shall be governed by section 518.18:

1. *a.* The applicable percent, as provided in subsection 2, of the gross amount of premiums received during the preceding calendar year by every life insurance company or association, not including fraternal beneficiary associations, or the gross payments or deposits collected from holders of fraternal beneficiary association certificates, on contracts of insurance covering risks resident in this state during the preceding year, including contracts for group insurance and annuities and without including or deducting any amounts received or paid for reinsurance.

b. In determining the gross amount of premiums to be taxed hereunder, there shall be excluded all premiums received from policies or contracts issued in connection with a pension, annuity, profit-sharing plan or individual retirement annuity qualified or exempt under sections 401, 403, 404, 408 or 501(a) of the federal Internal Revenue Code as now or hereafter amended and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

c. In determining the gross amount of premiums to be taxed, there shall be excluded all consideration received in connection with an annuity contract, whether or not such contract is qualified or exempt under the federal Internal Revenue Code as now or hereafter amended, and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, and all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

2. The *"applicable percent"* for purposes of subsection 1 of this section and section 432.2 is the following:

a. For calendar years beginning before the 2003 calendar year, two percent.

b. For the 2003 calendar year, one and three-fourths percent.

c. For the 2004 calendar year, one and one-half percent.

d. For the 2005 calendar year, one and one-fourth percent.

e. For the 2006 and subsequent calendar years, one percent.

3. The applicable percent, as provided in subsection 4, of the gross amount of premiums, assessments, and fees received during the preceding calendar year by every company or association other than life on contracts of insurance other than life for business done in this state, including all insurance upon property situated in this state, after deducting the amounts returned upon canceled policies, certificates and rejected applications but not including the gross premiums, assessments, and fees in connection with ocean marine insurance authorized in section 515.48.

4. The *"applicable percent"* for purposes of subsection 3 is the following:

a. For calendar years beginning before the 2004 calendar year, two percent.

b. For the 2004 calendar year, one and three-fourths percent.

c. For the 2005 calendar year, one and one-half percent.

d. For the 2006 calendar year, one and one-fourth percent.

e. For the 2007 and subsequent calendar years, one percent.

5. Except as provided in subsection 4, the premium tax shall be paid on or before March 1 of the year following the calendar year for which the tax is due. The commissioner may suspend or revoke the license of a company or association that fails to pay its premium tax on or before the due date.

6. *a.* Each insurance company and association transacting business in this state whose Iowa premium tax liability for the preceding calendar year was one thousand dollars or more shall remit on or before June 1, on a prepayment basis, an amount equal to one-half of the premium tax liability for the preceding calendar year.

b. In addition to the prepayment amount in paragraph *"a"*, each life insurance company or association which is subject to tax under subsection 1 of this section and each mutual health service corporation which is subject to tax under section 432.2 shall remit on or before June 30, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 calendar year, four percent.

(2) For prepayment in the 2004 calendar year, twenty-one percent.

(3) For prepayment in the 2005 and subsequent calendar years, fifty percent.

c. In addition to the prepayment amount in paragraph *"a"*, each insurance company or association, other than a life insurance company or association, which is subject to tax under subsection 3 shall remit on or before June 30, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 and 2004 calendar years, eleven percent.

(2) For prepayment in the 2005 calendar year, twenty-six percent.

(3) For prepayment in the 2006 and subsequent calendar years, fifty percent.

d. The sums prepaid by a company or association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments are made. If a prepayment made under this subsection exceeds the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The commissioner may suspend or revoke the license of a company or association that fails to make a prepayment on or before the due date.

[C51, §464; R60, §718; C73, §807; C97, §1333; S13, §1333, 1333-d; C24, 27, 31, 35, 39, §**7021, 7022, 7025;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.1; 81 Acts, ch 142, §1; 82 Acts, ch 1231, §1]

88 Acts, ch 1159, §1; 2002 Acts, ch 1119, §169; 2002 Acts, ch 1158, §2 – 6

Taxation of organized delivery systems; see §135.120

Unnumbered paragraph 1 amended

Subsection 1, paragraph a amended

NEW subsection 2 and former subsection 2 amended and renumbered as 3

NEW subsection 4 and former subsections 3 and 4 renumbered as 5 and 6

Subsection 6 amended

432.2 Mutual service corporations.

Notwithstanding section 432.1, a hospital service corporation, medical service corporation, pharmaceutical service corporation, optometric service corporation, and any other service corporation operating under chapter 514 shall pay as taxes to the director of revenue and finance an amount equal to the applicable percent, as provided in section 432.1, subsection 2, of the gross amount of payments received during the preceding calendar year for subscriber contracts covering residents in this state after deducting the amounts returned to subscribers upon canceled subscriber contracts and rejected applications. Section 432.1, subsections 5 and 6, apply to the tax imposed by this section.

85 Acts, ch 239, §1; 2002 Acts, ch 1158, §7

Section amended

432.3 Receipts — certificate of authority.
At the time of filing the annual tax return and the final payment of said taxes, said companies and associations shall take duplicate receipts therefor, one of which shall be filed with the commissioner of insurance, and upon filing of said receipt, and not until then, the commissioner of insurance shall issue the annual certificate as provided by law.
[C73, §807; C97, §1333; S13, §1333; C24, 27, 31, 35, 39, §**7023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.3; 81 Acts, ch 142, §2]

432.4 Deduction for debts.
No deduction or exemption from the taxes herein provided shall be allowed for or on account of any indebtedness owing by any such insurance company or association; provided, however, that companies doing a fire insurance business may deduct from the gross amount of premiums received, the amount of premiums returned upon canceled policies issued upon property situated in this state.
[C97, §1333; S13, §1333; C24, 27, 31, 35, 39, §**7024;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.4]

432.5 Risk retention groups.
A risk retention group organized and operating pursuant to Pub. L. No. 99-563, also known as the risk retention amendments of 1986, shall pay as taxes to the director of revenue and finance an amount equal to two percent of the gross amount of the premiums received during the previous calendar year for risks placed in this state. A resident or nonresident agent shall report and pay the taxes on the premiums for risks that the agent has placed in this state with or on behalf of a risk retention group. The failure of a risk retention group to pay the tax imposed in this section shall result in the risk retention group being considered an unauthorized insurer under chapter 507A.
87 Acts, ch 138, §1

432.6 Personal and real property.
Every insurance corporation or association organized under the laws of this state, not including corporations with capital stock, county mutuals, and fraternal beneficiary associations, which county mutuals and fraternal beneficiary associations are not organized for pecuniary profit, shall, on or before the twenty-sixth day of January in each year, for the purpose of assessment of its property, furnish to the assessor of the assessment district in which its principal place of business is located, a statement verified by its president, showing specifically with reference to the year next preceding the first day of January then last past:

1. A duplicate of the statement required by law to be made to the commissioner of insurance for the said year last past.
2. A detailed statement of all its property and assets of every kind and nature whatsoever, and the value of each item thereof, including surplus, guaranty, and reserve fund, and the amount of each.

[S13, §1333-b; C24, 27, 31, 35, 39, §**7027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.6]

432.7 Assessment.
The assessor shall, upon the receipt of the statements, and from other information acquired by the assessor, assess against every corporation or association referred to in section 432.6, the actual value of each parcel of real estate situated in the assessment district of the assessor, and all the property shall be assessed at the same rate, and for the same purposes as the property of private individuals, as provided in section 441.21.
[S13, §1333-b; C24, 27, 31, 35, 39, §**7028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.7]
89 Acts, ch 296, §58

432.8 Repealed by 72 Acts, ch 1019, § 7.

432.9 Debts deductible.
In ascertaining the indebtedness or liability of such corporation, company, or association, a debt shall be deemed to exist on account of its liability on the policies, certificates or other contracts of insurance issued by it equal to the amount of the surplus or other funds accumulated by any such corporation or association for the purpose of fulfilling its policies, certificates, or other contracts of insurance, and which can be used for no other purpose.
[S13, §1333-c; C24, 27, 31, 35, 39, §**7030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.9]

432.10 Sufficiency of remitted tax — notice.
The commissioner of insurance shall determine whether or not the tax remitted is correct. If the tax remitted is not sufficient, the commissioner shall notify the delinquent company of the amount of such delinquency and certify the amount thereof to the department of revenue and finance which shall proceed to collect such delinquency.
[C71, 73, 75, 77, 79, 81, §432.10]

432.11 Premium tax exemption for basic benefit health plans. Repealed by 2002 Acts, ch 1119, § 111.

432.12 Premium tax credit for employer-sponsored health plan premium credit. Repealed by 2001 Acts, ch 69, § 38, 39.

432.12A Property rehabilitation tax credit.

1. The tax imposed under this chapter shall be reduced by a property rehabilitation tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded as provided in section 404A.4, subsection 3.

2. For purposes of this section, *"eligible property"* means the same as used in section 404A.1.

2002 Acts, ch 1003, §4, 5

Section takes effect February 21, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1003, §5

NEW section

432.12B Venture capital fund investment tax credit.

The tax imposed under this chapter shall be reduced by a venture capital fund investment tax credit authorized pursuant to section 15E.51.

2002 Acts, ch 1156, §5, 8

Section takes effect May 8, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1156, §8

NEW section

432.12C Investment tax credits.

The tax imposed under this chapter shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

2002 Acts, ch 1006, §10, 13

Section takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

NEW section

432.13 Premium tax exemption — HAWK-I program — state employee benefits.

Premiums collected by participating insurers under chapter 514I are exempt from premium tax.

Premiums received for benefits acquired by the department of personnel on behalf of state employees pursuant to section 19A.1, subsection 2, are exempt from premium tax.

98 Acts, ch 1196, §1, 16; 99 Acts, ch 200, §19, 23

432.14 Statute of limitations.

Within five years after the tax return is filed or within five years after the tax return became due, whichever is later, the commissioner of insurance shall examine the return and determine the tax. An assessment or a claim for credit must be made within five calendar years after the annual tax filing is made. For a five-year period preceding the current calendar year, a company may apply for a credit, or the commissioner may make an assessment, as appropriate. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

98 Acts, ch 1057, §1

CHAPTER 432A

MARINE INSURANCE TAX

432A.1 Amount of tax on underwriting profit.
432A.2 Profit within this state.
432A.3 Profit within United States.
432A.4 Computation of net earned premiums.
432A.5 Expenses incurred.
432A.6 Computation of tax on ocean marine insurance profit.
432A.7 Tax payable annually.
432A.8 Filing tax return.
432A.9 Underwriting profits tax in lieu of other taxes.

432A.1 Amount of tax on underwriting profit.

Every insurer authorized to do the business of selling marine insurance in this state, as authorized in section 515.48, shall, with respect to all insurance written within this state upon hulls, freights, or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in the course of exportation from or importation into any country, or transportation coastwise including transportation by land or water from point of origin to final destination in respect to or appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation and upon the property while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builder's risks, pay a tax of six and one-half percent on its taxable underwriting profit ascertained as provided in section 432A.2, from such insurance written within this state.

[C75, 77, 79, 81, §432A.1]

432A.2 Profit within this state.

The underwriting profit on such insurance written within this state shall be that proportion of the total underwriting profit of such insurer from such insurance written within the United States which the amount of net premiums of such insurer from such insurance written within this state bears to the total amount of net premiums of such insurer from such insurance written within the United States.

[C75, 77, 79, 81, §432A.2]

432A.3 Profit within United States.

The underwriting profit of such insurer on such insurance written within the United States shall be determined by deducting from the net earned premiums on such ocean marine insurance written within the United States during the taxable year which is the calendar year preceding the date on which such tax is due, the following items:

1. Net losses incurred, which means gross losses incurred during such calendar year under ocean marine insurance contracts written within the United States, less reinsurance claims collected or collectible and less net salvages or recoveries collected or collectible from any source applicable to the corresponding losses under such contracts.

2. Net expenses incurred in connection with such ocean marine contracts, including all state and federal taxes in connection therewith, but in no event shall the aggregate amount of such net expenses deducted exceed forty percent of the net premiums on such ocean marine insurance contracts, ascertained as provided in section 432A.4.

3. Net dividends paid or credited to policyholders on such ocean marine insurance contracts.

[C75, 77, 79, 81, §432A.3]

432A.4 Computation of net earned premiums.

In determining the amount of the tax imposed by this chapter, net earned premiums on ocean marine insurance contracts written within the United States during the taxable year shall be arrived at by deducting from gross premiums written on such contracts during the taxable year all return premiums, premiums on policies not taken, premiums paid for reinsurance of such contracts and net unearned premiums on all such outstanding contracts at the end of the taxable year, and adding to such amount net unearned premiums on such outstanding marine insurance contracts at the end of the calendar year preceding the taxable year.

[C75, 77, 79, 81, §432A.4]

432A.5 Expenses incurred.

In determining the amount of the tax imposed by this chapter, net expenses incurred shall be determined as the sum of the following:

1. Specific expenses incurred on such ocean marine insurance business, consisting of all commissions, agency expenses, taxes, licenses, fees, loss adjustment expenses, and all other expenses incurred directly and specifically in connection with such business, less recoveries or reimbursements on account of or in connection with such commissions or other expenses collected or collectible because of reinsurance or from any other source.

2. General expenses incurred on such ocean marine insurance business, consisting of that proportion of general or overhead expenses incurred in connection with such business which the net premiums on such ocean marine insurance written during the taxable year bear to the total net premiums written by such insurer from all classes of insurance written by it during the taxable year. Within the meaning of this subsection, general or overhead expenses shall include salaries of officers and employees, printing and stationery, all taxes of this state and of the United States, except as included in subsection 1, and all other expenses of such insurer, not included in subsection 1, after deducting expenses specifically chargeable to any or all other classes of insurance business.

[C75, 77, 79, 81, §432A.5]

432A.6 Computation of tax on ocean marine insurance profit.

In determining the amount of the tax imposed by this chapter, the taxable underwriting profit of such insurer on such ocean marine insurance business written within this state, shall be ascertained as follows:

1. In the case of every such insurer which has written any such business within this state during three calendar years immediately preceding the year in which such taxes were payable, the taxable underwriting profit shall be determined by adding or subtracting, as the case may be, the underwriting profit or loss on all such insurance written within the United States, ascertained as hereinbefore provided, for each of such three years and dividing by three.

2. In the case of every such insurer other than as specified in subsection 1 such taxable underwriting profit, if any, shall be the underwriting profit, if any, on such ocean marine insurance business written within this state during the taxable year, ascertained as hereinbefore provided, but after such insurer has written such ocean marine insurance business within this state during three calendar years, an adjustment shall be made on the three-year average basis by ascertaining the amount of tax payable in accordance with subsection 1.

[C75, 77, 79, 81, §432A.6]

432A.7 Tax payable annually.

The tax imposed by this chapter shall be paid annually, on or before the first day of June, by every insurer authorized to do the business of marine insurance in this state during any one or more of the preceding three calendar years, and the calendar year next preceding such June 1 shall be deemed the taxable year within the meaning of this section.

[C75, 77, 79, 81, §432A.7]

432A.8 Filing tax return.

Every insurer liable to pay the tax shall, on or before June 1 of each year, file with the commissioner of insurance a tax return in accordance with or upon forms prescribed by the commissioner of insurance. The tax shown to be due, if any, shall be paid to the director of revenue and finance who shall issue to the insurer a receipt in duplicate, one of which shall be filed with the commissioner of insurance before issuance of the annual certificate as provided by law.

[C75, 77, 79, 81, §432A.8]

432A.9 Underwriting profits tax in lieu of other taxes.

The tax imposed by this chapter shall be paid upon the marine underwriting profits, if any, upon all marine insurance business written in this state each calendar year. The tax on gross premiums under section 432.1 shall not be levied on marine insurance premiums reportable in a tax return prescribed by the commissioner of insurance to record taxable underwriting profit, if any, defined herein. The tax return required shall be in lieu of all other tax requirements imposed by section 432.1.

[C75, 77, 79, 81, §432A.9]

CHAPTER 433

TELEGRAPH AND TELEPHONE COMPANIES TAX

433.1 Statement required.
433.2 Additional statement.
433.3 Failure to make statement.
433.4 Assessment.
433.5 Actual value per mile.
433.6 Taxable value.
433.7 Hearing.
433.8 Assessment in each county — how certified.
433.9 Entry of certificate.
433.10 Rate of taxation — collection.
433.11 Other real property.
433.12 Definitions.
433.13 Line operated by railroad.
433.14 Maps required.
433.15 Failure to file.

433.1 Statement required.

Every telegraph and telephone company operating a line in this state shall, on or before the first day of May in each year, furnish to the director of revenue and finance a statement verified by its president or secretary showing:

1. The total number of miles owned, operated, or leased within the state, with a separate showing of the number leased.
2. The average number of poles per mile, and the whole number of poles on its lines in this state.
3. The total number of miles in each separate line or division thereof, also the average number of separate wires thereon.
4. The whole number of stations on each line, and the value of the same, including furniture.
5. The whole number of instruments on each separate line, and the gross rental charges per instrument, where the same are rented to patrons of the company making the return, together with the number of stations maintained, other than railroad stations.
6. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, on business originating and terminating in this state.
7. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, and not included in the statement made under subsection 6 hereof.
8. The total capital stock of said company.
9. The number of shares of capital stock issued and outstanding, and the par or face value of each share.
10. The market value of such shares of stock on the first day of January next preceding, and if such shares have no market value, the actual value thereof.
11. All real estate and other property owned by such company and subject to local taxation within this state.
12. The specific real estate, together with the permanent improvements thereon, owned by such company and situated outside this state and taxed

as other real estate in the state where located, with a specific description of each piece, where located, and the purpose for which the same is used, and the actual value thereof in the locality where situated.

13. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

14. The total length of the lines of said company.

15. The total length of the lines of said company outside this state.

[C97, §1328; S13, §1328; C24, 27, 31, 35, 39, §**7031;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.1]

433.2 Additional statement.

Upon the receipt of said statements from the several companies, the director of revenue and finance shall examine said statements and if the director shall deem the same insufficient and that further information is requisite, the director shall require the officer making same to make such other or further statement as the director may desire.

[C97, §1329; S13, §1329; C24, 27, 31, 35, 39, §**7032;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.2]

433.3 Failure to make statement.

In case of failure or refusal of any company to make out or deliver to the director of revenue and finance the statements required in section 433.1, such company shall forfeit and pay to the state one hundred dollars for each day such report is delayed beyond the first day of May, to be sued and recovered in any proper form of action in the name of the state, and on the relation of the director of revenue and finance, and such penalty, when collected, shall be paid into the general fund of the state.

[C97, §1329; S13, §1329; C24, 27, 31, 35, 39, §**7033;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.3]

433.4 Assessment.

The director of revenue and finance shall on the second Monday in July of each year, proceed to find the actual value of the property of these companies in this state, taking into consideration the information obtained from the statements required, and any further information the director can obtain, using the same as a means for determining the actual cash value of the property of these companies within this state. The director shall also take into consideration the valuation of all property of these companies, including franchises and the use of the property in connection with lines outside the state, and making these deductions as may be necessary on account of extra value of property outside the state as compared with the value of property in the state, in order that the actual cash value of the property of the company within this state may be ascertained. The assessment shall include all property of every kind and character whatsoever, real, personal, or mixed, used by the companies in the transaction of telegraph and telephone business; and the property so included in the assessment shall not be taxed in any other manner than as provided in this chapter.

[C97, §1330; S13, §1330; C24, 27, 31, 35, 39, §**7034;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.4]

95 Acts, ch 83, §23

433.5 Actual value per mile.

The director of revenue and finance shall ascertain the value per mile of the property of each of said companies within this state by dividing the total value, as above ascertained, by the number of miles of line of such company within the state, and the result shall be deemed and held to be the actual value per mile of line of the property of such company within this state.

[S13, §1330-a; C24, 27, 31, 35, 39, §**7035;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.5]

433.6 Taxable value.

The taxable value shall be determined by taking the percentage of the actual value so ascertained, as provided by section 441.21, and the ratio between the actual value and the assessed or taxable value of the property of each of said companies shall be the same as in the case of property of private individuals.

[S13, §1330-a; C24, 27, 31, 35, 39, §**7036;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.6]

433.7 Hearing.

At such meeting in July any company interested shall have the right to appear, by its officers or agents, before the director of revenue and finance and be heard on the question of the valuation of its property for taxation.

[S13, §1330-a; C24, 27, 31, 35, 39, §**7037;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.7]

433.8 Assessment in each county — how certified.

The director of revenue and finance shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line of the said company extends, multiply the assessed or taxable value per mile of line of said company, as above ascertained, by the number of miles in each of said counties, and the result thereof shall be by the director certified to the several county auditors of the respective counties into, over, or through which said line extends.

[S13, §1330-b; C24, 27, 31, 35, 39, §**7038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.8]

433.9 Entry of certificate.

At the first meeting of the board of supervisors held after such statement is received by the county auditor, it shall cause such statement to be entered in its minute book, and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each city, township, or lesser taxing district in its county, as fixed by the director of revenue and finance, which shall constitute the taxable value of said property for taxing purposes, and the taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate. The county auditor shall transmit a copy of said order to the council or trustees of each city or township in which the lines of said company extend.

[S13, §1330-c; C24, 27, 31, 35, 39, §**7039;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.9]

433.10 Rate of taxation — collection.

All telegraph and telephone property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, townships, or lesser taxing districts, and the county treasurer shall collect such taxes at the same time and in the same manner as other taxes, and the same penalties for the nonpayment shall be due and collectible as for the nonpayment of individual taxes.

[S13, §1330-d; C24, 27, 31, 35, 39, §**7040;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.10]

433.11 Other real property.

Land, lots, and other real property belonging to a telegraph company or telephone company not used exclusively in its telegraph or telephone business are subject to assessment and taxation on the same basis as other property of individuals in the counties where situated.

[S13, §1330-e; C24, 27, 31, 35, 39, §**7041;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.11]

89 Acts, ch 296, §59

433.12 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

"Company" as used in this chapter means any person, copartnership, association, corporation, or syndicate that owns or operates, or is engaged in operating, any telegraph or telephone line, whether formed or organized under the laws of this state or elsewhere. *"Company"* includes a city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476.

[S13, §1330-f; C24, 27, 31, 35, 39, §**7042;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.12]

95 Acts, ch 83, §24; 99 Acts, ch 63, §6, 8; 2000 Acts, ch 1148, §1

1999 amendment applies retroactively to July 1, 1993; 99 Acts, ch 63, §8

433.13 Line operated by railroad.

No telegraph line shall be assessed which is owned and operated by any railroad company exclusively for the transaction of its business, and which has been duly reported as such in its annual report under the laws providing for the taxation of railroad property.

[C97, §1332; C24, 27, 31, 35, 39, §**7043;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.13]

433.14 Maps required.

On or before the first day of August 1904, each telephone or telegraph company owning or operating a telephone or telegraph line, any part of which lies within the state of Iowa, shall file with the several county auditors of the counties within which any part of its line is located, a map of all its lines within said county, except its line within any platted city, drawn to a scale of not less than one inch to four miles, on which the location of the line or lines of said company is correctly shown. The map of any line situated upon any highway or street which is the dividing line between taxing districts shall show on which side of said street or highway said line is situated and shall locate all points at which said line may cross said street or highway. A statement showing the length of pole line in each taxing district of each company shall be filed when no map of the pole lines of such company is required under the terms of this section. A telephone or telegraph company whose line is situated upon the right of way of a railway may file, in lieu of the map required to be filed by the provisions of this section, a certificate setting forth along what lines of railway said company's telephone or telegraph line extends. On or before the first day of March 1905, and annually thereafter, like maps, statements, or certificates shall be filed with the several county auditors of counties in which any part of said lines may have been extended, constructed, relocated, or taken down entirely, during the preceding calendar year, showing the correct location of all such new or relocated lines, and the location of any part abandoned or taken down, as the same existed on the thirty-first day of December preceding; provided county auditors of the several counties shall, upon application of any company owning or operating a telephone or telegraph line in their respective counties, furnish a map or maps accurately showing the boundaries of all taxing districts in said county, and the public highways located within such taxing districts.

[S13, §1400-a; C24, 27, 31, 35, 39, §**7044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.14]

433.15 Failure to file.

In the event of the failure or refusal of any telephone or telegraph company, owning or operating any telephone or telegraph line not situated upon the right of way of a railway, to file the map required under section 433.14, at the time and according to the conditions named, then the county auditor may cause the map to be prepared by the county surveyor and the cost of it shall, in the first place, be audited and paid by the board of supervisors of the county and the amount shall be by the board levied as a special tax against the company and the property of the company, which shall be collected in the same manner as county taxes.

[S13, §1400-b; C24, 27, 31, 35, 39, §**7045;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.15]

83 Acts, ch 123, §178, 209

CHAPTER 434

RAILWAY COMPANIES TAX

434.1 Definitions.
434.2 When assessed — statement required.
434.3 Continuing record. Repealed by 86 Acts, ch 1241, §49.
434.4 Additional statements. Repealed by 86 Acts, ch 1241, §49.
434.5 Record of railway lands. Repealed by 86 Acts, ch 1241, §49.
434.6 Sleeping and dining cars.
434.7 Gross earnings.
434.8 Method of accounting.
434.9 Net earnings.
434.10 Reports additional.
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434.14 Amended statement.
434.15 Assessment of railways.
434.16 Assessment of sleeping and dining cars.
434.17 Certification to county auditors.
434.18 Plats.
434.19 Failure to file.
434.20 Property assessed by local authorities.
434.21 Roadbeds.
434.22 Levy and collection of tax.
434.23 Rates — purposes.

434.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §434.1 transferred to §434.2

434.2 When assessed — statement required.

On the second Monday in July of each year, the director of revenue and finance shall assess all the property of each railway corporation in the state, excepting the lands, lots, and other real estate belonging thereto not used in the operation of any railway, and excepting railway bridges across the Mississippi and Missouri rivers, and excepting grain elevators; and for the purpose of making such assessment its president, vice president, general manager, general superintendent, receiver, or such other officer as the director of revenue and finance may designate, shall, on or before the first day of April in each year, furnish the department of revenue and finance a verified statement showing in detail for the year ended December 31 next preceding:

1. The whole number of miles of railway owned, operated, or leased by such corporation or company within and without the state.
2. The whole number of miles of railway owned, operated, or leased within the state, including double tracks and sidetracks, the mileage of the main line and branch lines to be stated separately, and showing the number of miles of track in each county.
3. A full and complete statement of the cost and actual present value of all buildings of every description owned by said railway company within the state not otherwise assessed.
4. The total number of ties per mile used on all its tracks within the state.
5. The weight of rails per yard in main line, double tracks, and sidetracks.
6. The number of miles of telegraph lines owned and used within the state.
7. The total number of engines, and passenger, chair, dining, official, express, mail, baggage, freight, and other cars, including handcars and boarding cars used in constructing and repairing such railway, in use on its whole line, and the sleeping cars owned by it, and the number of each class on its line within the state, each class to be valued separately.
8. Any and all other movable property owned

by said railway within the state, classified and scheduled in such manner as may be required by the director of revenue and finance.

9. The gross earnings of the entire road, and the gross earnings in this state.

10. The operating expenses of the entire road, and the operating expenses within this state.

11. The net earnings of the entire road, and the net earnings within this state.

[C73, §810, 1317, 1318; C97, §1334; S13, §1334; C24, 27, 31, 35, 39, §**7046;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.1]

C2001, §434.2

434.3 Continuing record. Repealed by 86 Acts, ch 1241, § 49.

434.4 Additional statements. Repealed by 86 Acts, ch 1241, § 49.

434.5 Record of railway lands. Repealed by 86 Acts, ch 1241, § 49.

434.6 Sleeping and dining cars.

In addition to the matters required to be contained in the statement made by the company for the purposes of taxation, such statement shall show the number of sleeping and dining cars not owned by such corporation, but used by it in operating its railway in this state during each month of the year for which the return is made, the value of each car so used, and also the number of miles each month said cars have been run or operated on such railway within the state, and the total number of miles said cars have been run or operated each month within and without the state. Such statement shall show the average daily sleeping car and dining car service or wheelage operated on each part or division of the line or system within the state, designating the points on the line where variations occur, with the mileage of that part having the same daily service or wheelage.

[C97, §1340; S13, §1340; C24, 27, 31, 35, 39, §**7051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.6]

434.7 Gross earnings.

For the purpose of making reports to the department of revenue and finance, the gross earnings of railway companies, owning or operating a line or lines of railway partly within this state and partly within another state, or other states, or territory, or territories, upon their line or lines within this state, shall be ascertained and reported by said railway companies as follows, to wit: The aggregate of the earnings upon business originating and terminating within this state, upon business originating in this state and terminating elsewhere, upon business originating elsewhere and terminating in this state, and upon business neither originating nor terminating in this state but carried on or done over the line or lines in this state or over some part thereof, shall be reported; and with respect to all such interstate business the earnings in this state for the purpose of report shall be actually computed upon the basis of the length of haul or carriage in this state as compared with the length of haul or carriage elsewhere. It is hereby declared that for the purpose of making reports looking to the assessment of railway property for taxation, the gross earnings or business done or carried partly within this state and partly in another state, or other states, or territories, shall be that proportion of the entire earnings of such business that the haul or carriage in this state bears to the entire haul or carriage.

[S13, §1340-a; C24, 27, 31, 35, 39, §**7052;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.7]

434.8 Method of accounting.

The director of revenue and finance shall have the power to prescribe such rules and regulations with respect to the keeping of accounts by the railway companies doing business in this state as will insure the accurate division of earnings as aforesaid, and uniformity in reporting the same to the department of revenue and finance.

[S13, §1340-b; C24, 27, 31, 35, 39, §**7053;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.8]

434.9 Net earnings.

The director of revenue and finance shall have the power to prescribe a method for all railway companies doing business in this state, together with the rules and regulations, for the ascertainment of the net earnings of the railway lines in this state, to the end that all such railway companies, in ascertaining and making report of net earnings, shall proceed upon the same basis and in a uniform manner.

[S13, §1340-c; C24, 27, 31, 35, 39, §**7054;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.9]

434.10 Reports additional.

The reports provided for in sections 434.7 to 434.9 are not in lieu of, but in addition to, the reports provided for by law, and they shall be made at the time and as a part of the reports already required.

[S13, §1340-d; C24, 27, 31, 35, 39, §**7055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.10]

434.11 Additional rules and regulations.

The rules, regulations, method, and requirements herein provided to be made by the director of revenue and finance shall be made and communicated in writing or print to the said several railway companies and shall be and become binding upon said railway companies as provided in chapter 17A, provided, however, that the director shall have the power to prescribe supplemental or addi-

tional rules, regulations, and requirements in the manner prescribed by chapter 17A.

[S13, §1340-e; C24, 27, 31, 35, 39, §**7056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.11]

434.12 Refusal to obey.

If any railway company shall fail or refuse to obey or conform to the rules, regulations, method, and requirements so made or prescribed by the director of revenue and finance under the provisions of sections 434.7 to 434.11 or to make the reports therein provided, the director of revenue and finance shall proceed to assess the property of such railway company so failing or refusing, according to the best information obtainable, and shall then add to the taxable valuation of such railway company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year.

[S13, §1340-f; C24, 27, 31, 35, 39, §**7057;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.12]

434.13 Operating expenses.

There shall not be included in said operating expenses any payments for interest or discount, or construction of new tracks, except needed sidings, for raising or lowering tracks above or below crossings at grade in cities, for new equipment except replacements, for reducing any bonded or permanent debt, nor for any other item of operating expenses not fairly and reasonably chargeable as such in railway accounts.

[C97, §1335; C24, 27, 31, 35, 39, §**7058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.13]

434.14 Amended statement.

The director of revenue and finance may demand, in writing, detailed, explanatory, and amended statements of any of the items mentioned in section 434.2, or any other items deemed by the director important, to be furnished the director by such railway corporation within thirty days from such demand, in such form as the director may designate, which shall be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the director, in writing, shall require.

[C73, §1318; C97, §1335; C24, 27, 31, 35, 39, §**7059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.14]

434.15 Assessment of railways.

The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire railway within the state, except as otherwise provided, and the actual value so ascertained shall be assessed as provided by section 441.21, and shall include the right of way, roadbed, bridges, culverts, rolling stock, depots, station grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, the director of revenue and finance shall take into consideration the gross earnings per mile for the year ending January 1, preceding, and any and all other matters necessary to enable the director to make a just and equitable assessment of said railway property. If a part of any railway is without this state, then, in estimating the value of its rolling stock and movable property, the director shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the business of the railway without this state.

Trackless trolleys, buses, cars and vehicles used for the transportation of passengers owned and operated by any urban transit company as a part of an urban transit system shall not be included in the determination of the value of an urban transit system for taxation purposes.

[C73, §1319; C97, §1336; C24, 27, 31, 35, 39, §**7060;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.15]

434.16 Assessment of sleeping and dining cars.

The director of revenue and finance shall, at the time of the assessment of other railway property for taxation, assess for taxation the average number of sleeping and dining cars as provided in section 434.6 so used by such corporation each month and the assessed value of said cars shall bear the same proportion to the entire value thereof that the monthly average number of miles such cars have been run or operated within the state shall bear to the monthly average number of miles such cars have been used or operated within and without the state. Such valuation shall be in the same ratio as that of the property of individuals, and shall be added to the assessed valuation of the corporation, fixed under the preceding sections.

[C97, §1341; C24, 27, 31, 35, 39, §**7061;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.16]

See §441.21

434.17 Certification to county auditors.

On or before the third Monday in August of each year, the director of revenue and finance shall transmit to the county auditor of each county, through and into which any railway may extend, a statement showing the length of the main track within the county, and the assessed value per mile of the same, as fixed by a ratable distribution per mile of the assessed valuation of the whole property.

[C73, §1320; C97, §1337; S13, §1337; C24, 27, 31, 35, 39, §**7062;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.17]

434.18 Plats.

Every railroad company owning or operating a line of railroad within this state shall, on or before the first day of August 1902, place on file in the office of the county auditor of each county in the state into which any part of the lines of any said company lies, a plat of the lines of said companies within said county, showing the length of their said lines and the area of the land owned or occupied by said companies in each government subdivision of land not included within the platted portion of any city, within each of said counties, and the length of the said lines within the platted portion of cities. Companies having on file such plats of part or all of their lines, in any of said counties, shall be required to file plats only of that part of their lines not fully shown as above required on the plats now on file. On the first day of January of each year hereafter, like plats shall be filed of all new lines or extensions of existing lines built or completed within the calendar year preceding.

[S13, §1337-a; C24, 27, 31, 35, 39, §**7063;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.18]

434.19 Failure to file.

In the event of the failure or refusal of any railroad company to file the plats required under section 434.18, at the time or according to the conditions named, then the county auditor may cause them to be prepared by the county surveyor and their cost shall, in the first place, be audited and paid by the board of supervisors, and the amount shall be levied by the board as a special tax against the company and the property of the company, which shall be collected as county taxes.

[S13, §1337-b; C24, 27, 31, 35, 39, §**7064;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.19]

83 Acts, ch 123, §179, 209

434.20 Property assessed by local authorities.

Lands, lots, and other real estate belonging to any railway company, not used exclusively in the operation of the several roads, and all railway bridges across the Mississippi and Missouri rivers, and grain elevators, shall be subject to assessment and taxation on the same basis as property of individuals in the several counties where situated.

[C73, §808; C97, §1342; C24, 27, 31, 35, 39, §**7065;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.20]

See also §427.13

434.21 Roadbeds.

No real estate used by railway corporations for roadbeds shall be included in the assessment to individuals of the adjacent property, but all such real estate shall be the property of such companies for the purpose of taxation.

[C73, §809; C97, §1344; C24, 27, 31, 35, 39, §**7066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.21]

434.22 Levy and collection of tax.

At the first meeting of the board of supervisors held after said statement is received by the county auditor, it shall cause the same to be entered on its minute book, and make and enter therein an order stating the length of the main track and the assessed value of each railway lying in each city, township or lesser taxing district in its county, through or into which said railway extends, as fixed by the director of revenue and finance, which shall constitute the taxable value of said property for taxing purposes; and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of said order to the council or trustees of the city or township.

[C73, §1321; C97, §1338; C24, 27, 31, 35, 39, §**7067;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.22]

434.23 Rates — purposes.

All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purpose as the property of individuals within such counties, cities, townships, and lesser taxing districts.

[C73, §1322; C97, §1339; C24, 27, 31, 35, 39, §**7068;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.23]

CHAPTER 435

TAX ON HOMES IN MANUFACTURED HOME COMMUNITIES AND MOBILE HOME PARKS

This chapter not enacted as a part of this title;
transferred from chapter 135D in Code 1993

435.1 Definitions.
435.2 through 435.17 Reserved.
435.18 Penalty.
435.19 through 435.21 Reserved.
435.22 Annual tax — credit.
435.23 Exemptions — prorating tax.
435.24 Collection of tax.
435.25 Apportionment and collection of taxes.

435.26 Conversion to real property.
435.27 Reconversion.
435.28 County treasurer to notify assessor.
435.29 Civil penalty.
435.30 through 435.32 Reserved.
435.33 Rent reimbursement.
435.34 Modular home exemption.
435.35 Existing home outside of manufactured home community or mobile home park — exemption.

435.1 Definitions.

The following definitions shall apply to this chapter:

1. Unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Home"* means a mobile home or a manufactured home.

3. *"Manufactured home"* means a factory-built structure built under authority of 42 U.S.C. § 5403, that is required by federal law to display a seal from the United States department of housing and urban development, and was constructed on or after June 15, 1976. If a manufactured home is placed in a manufactured home community or a mobile home park, the home must be titled and is subject to the manufactured or mobile home square foot tax. If a manufactured home is placed outside a manufactured home community or a mobile home park, the home must be titled and is to be assessed and taxed as real estate.

4. *"Manufactured home community"* means the same as land-leased community defined in sections 335.30A and 414.28A.

5. *"Mobile home"* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. A *"mobile home"* is not built to a mandatory building code, contains no state or federal seals, and was built before June 15, 1976. If a mobile home is placed outside a mobile home park, the home is to be assessed and taxed as real estate.

6. *"Mobile home park"* means a site, lot, field, or tract of land upon which three or more mobile homes or manufactured homes, or a combination of any of these homes, are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available.

The term *"manufactured home community"* or *"mobile home park"* shall not be construed to include manufactured or mobile homes, buildings, tents, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students.

A manufactured home community or a mobile home park must be classified as to whether it is a residential manufactured home community or a mobile home park or a recreational manufactured home community or a mobile home park or both. The manufactured home community or mobile home park residential landlord and tenant Act* only applies to residential manufactured home communities or mobile home parks.

7. *"Modular home"* means a factory-built structure which is manufactured to be used as a place of human habitation, is constructed to comply with the Iowa state building code for modular factory-built structures, and must display the seal issued by the state building code commissioner. If a modular home is placed in a manufactured home community or mobile home park, the home is subject to the annual tax as required by section 435.22. If a modular home is placed outside a manufactured home community or a mobile home park, the home shall be considered real property and is to be assessed and taxed as real estate.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135D.1]
86 Acts, ch 1245, §1114
C93, §435.1
94 Acts, ch 1110, §3 – 6, 24; 95 Acts, ch 57, §10, 26; 97 Acts, ch 121, §15, 16; 98 Acts, ch 1107, §17, 18, 33; 2000 Acts, ch 1148, §1; 2001 Acts, ch 153, §11; 2002 Acts, ch 1119, §200, 201

*Chapter 562B

435.2 through 435.17 Reserved.

435.18 Penalty.

Any person violating any provision of this chapter shall be guilty of a simple misdemeanor.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135D.18]
C93, §435.18

435.19 through 435.21 Reserved.

435.22 Annual tax — credit.

The owner of each mobile home or manufactured home located within a manufactured home community or mobile home park shall pay to the county treasurer an annual tax. However, when the owner is any educational institution and the

home is used solely for student housing or when the owner is the state of Iowa or a subdivision of the state, the owner shall be exempt from the tax. The annual tax shall be computed as follows:

1. Multiply the number of square feet of floor space each home contains when parked and in use by twenty cents. In computing floor space, the exterior measurements of the home shall be used as shown on the certificate of title, but not including any area occupied by a hitching device.

2. If the owner of the home is an Iowa resident, has attained the age of twenty-three years on or before December 31 of the base year, and has an income when included with that of a spouse which is less than eight thousand five hundred dollars per year, the annual tax shall not be imposed on the home. If the income is eight thousand five hundred dollars or more but less than sixteen thousand five hundred dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
$ 8,500 — 9,499.99	3.0 cents
9,500 — 10,499.99	6.0
10,500 — 12,499.99	10.0
12,500 — 14,499.99	13.0
14,500 — 16,499.99	15.0

For purposes of this subsection *"income"* means income as defined in section 425.17, subsection 7, and *"base year"* means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The home reduced rate of tax shall only be allowed on the home in which the claimant is residing at the time the claim for a reduced rate of tax is filed or was residing at the time of the claimant's death in the case of a claim filed on behalf of a deceased claimant by the claimant's legal guardian, spouse, or attorney, or by the executor or administrator of the claimant's estate.

Beginning with the 1998 base year, the income dollar amounts set forth in this subsection shall be multiplied by the cumulative adjustment factor for that base year as determined in section 425.23, subsection 4.

3. The amount thus computed shall be the annual tax for all homes, except as follows:

a. For the sixth through ninth years after the year of manufacture the annual tax is ninety percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

b. For all homes ten or more years after the year of manufacture the annual tax is eighty percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

4. The tax shall be figured to the nearest even whole dollar.

5. A claim for credit for manufactured or mobile home tax due shall not be paid or allowed unless the claim is actually filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the home taxes are due. However, in case of sickness, absence, or other disability of the claimant, or if in the judgment of the county treasurer good cause exists, the county treasurer may extend the time for filing a claim for credit through September 30 of the same calendar year. The county treasurer shall certify to the director of revenue and finance on or before November 15 each year the total dollar amount due for claims allowed.

The forms for filing the claim shall be provided by the department of revenue and finance. The forms shall require information as determined by the department.

In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue and finance, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for credit or reimbursement. However, any further time granted shall not extend beyond December 31 of the year in which the claim was required to be filed. Claims filed as a result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

The director of revenue and finance shall certify the amount due to each county, which amount shall be the dollar amount which will not be collected due to the granting of the reduced tax rate under subsection 2.

The amounts due each county shall be paid by the department of revenue and finance on December 15 of each year, drawn upon warrants payable to the respective county treasurers. The county treasurer in each county shall apportion the payment in accordance with section 435.25.

There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to carry out this subsection.

[C66, §135D.22; C71, 73, 75, §135D.22, 135D.28; C77, 79, 81, §135D.22; 82 Acts, ch 1251, §1]

83 Acts, ch 172, §2; 83 Acts, ch 189, §1, 2, 4, 6; 86 Acts, ch 1244, §26; 87 Acts, ch 198, §1; 87 Acts, ch 210, §1; 88 Acts, ch 1139, §1; 89 Acts, ch 190, §1; 90 Acts, ch 1250, §1; 91 Acts, ch 267, §513; 92 Acts, 2nd Ex, ch 1001, §215, 216, 225

C93, §435.22

94 Acts, ch 1110, §7 – 9, 24; 94 Acts, ch 1165, §30, 50; 96 Acts, ch 1167, §7, 8; 98 Acts, ch 1107, §19, 33; 98 Acts, ch 1177, §15, 16; 99 Acts, ch 152, §19, 20, 40; 2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80

435.23 Exemptions — prorating tax.

The manufacturer's and dealer's inventory of mobile homes, manufactured homes, or modular homes* not in use as a place of human habitation shall be exempt from the annual tax. All travel trailers shall be exempt from this tax. The homes and travel trailers in the inventory of manufactur-

ers and dealers shall be exempt from personal property tax. The homes coming into Iowa from out of state and located in a manufactured home community or mobile home park shall be liable for the tax computed pro rata to the nearest whole month, for the time the home is actually situated in Iowa.

[C66, 71, 73, 75, 77, 79, 81, §135D.23]
87 Acts, ch 210, §2
C93, §435.23
94 Acts, ch 1110, §10, 24; 2001 Acts, ch 153, §16
*See §435.34

435.24 Collection of tax.

1. The annual tax is due and payable to the county treasurer on or after July 1 in each fiscal year and is collectible in the same manner and at the same time as ordinary taxes as provided in sections 445.36, 445.37, and 445.39. Interest at the rate prescribed by law shall accrue on unpaid taxes. Both installments of taxes may be paid at one time. The September installment represents a tax period beginning July 1 and ending December 31. The March installment represents a tax period beginning January 1 and ending June 30. A mobile home, manufactured home, or modular home* coming into this state from outside the state, put in use from a dealer's inventory, or put in use at any time after July 1 or January 1, and located in a manufactured home community or mobile home park, is subject to the taxes prorated for the remaining unexpired months of the tax period, but the purchaser is not required to pay the tax at the time of purchase. Interest attaches the following April 1 for taxes prorated on or after October 1. Interest attaches the following October 1 for taxes prorated on or after April 1. If the taxes are not paid, the county treasurer shall send a statement of delinquent taxes as part of the notice of tax sale as provided in section 446.9. The owner of a home who sells the home between July 1 and December 31 and obtains a tax clearance statement is responsible only for the September tax payment and is not required to pay taxes for subsequent tax periods. If the owner of a home located in a manufactured home community or mobile home park sells the home, obtains a tax clearance statement, and obtains a replacement home to be located in a manufactured home community or mobile home park, the owner shall not pay taxes under this chapter for the newly acquired home for the same tax period that the owner has paid taxes on the home sold. Interest for delinquent taxes shall be calculated to the nearest whole dollar. In calculating interest each fraction of a month shall be counted as an entire month.

2. The home owners upon issuance of a certificate of title or upon transporting to a new site shall file the address, township, and school district, of the location where the home is parked with the county treasurer's office. Failure to comply is punishable as set out in section 435.18. When the new location is outside of a manufactured home community or mobile home park, the county treasurer shall provide to the assessor a copy of the tax clearance statement for purposes of assessment as real estate on the following January 1.

3. Each manufactured home community or mobile home park owner shall notify monthly the county treasurer concerning any home arriving in or departing from the manufactured home community or park without a tax clearance statement. The records of the owner shall be open to inspection by a duly authorized representative of any law enforcement agency. The manufactured home community or mobile home park owner or manager shall make an annual report to the county treasurer due June 1 of the homes sited in the manufactured home community or mobile home park, listing the owner and mailing address of each home located in the manufactured home community or mobile home park. The report is delinquent if not filed with the county treasurer by June 30. In addition to the annual report, the owner or manager shall also report any changes of homes or owners in a report due December 1, which is delinquent if not filed by December 31. However, if no changes have occurred since the June annual report, the December report is not required to be filed.

4. The tax is a lien on the vehicle senior to any other lien upon it except a judgment obtained in an action to dispose of an abandoned home under section 555B.8. The home bearing a current registration issued by any other state and remaining within this state for an accumulated period not to exceed ninety days in any twelve-month period is not subject to Iowa tax. However, when one or more persons occupying a home bearing a foreign registration are employed in this state, there is no exemption from the Iowa tax. This tax is in lieu of all other taxes general or local on a home.

5. Before a home may be moved from its present site by any person, a tax clearance statement in the name of the owner must be obtained from the county treasurer of the county where the present site is located certifying that taxes are not owing under this section for previous years and that the taxes have been paid for the current tax period. When a person moves a home from real property to a dealer's stock or to a manufactured home community or mobile home park, as defined in section 435.1, a tax clearance statement shall be applied for, and issued, from the county treasurer of the county where the present site is located. When the home is moved to another county in this state, the county treasurer shall forward a copy of the tax clearance statement to the county treasurer of the county in which the home is being relocated. However, a tax clearance statement is not required for a home in a manufacturer's or dealer's stock which has not been used as a place for human habitation. A tax clearance form is not required to move an abandoned home. A tax clear-

ance form is not required in eviction cases provided the manufactured home community or mobile home park owner or manager advises the county treasurer that the tenant is being evicted. If a dealer acquires a home from a person other than a manufacturer, the person shall provide a tax clearance statement in the name of the owner of record to the dealer. The tax clearance statement shall be provided by the county treasurer in a method prescribed by the department of transportation.

6. *a.* As an alternative to the semiannual or annual payment of taxes, the county treasurer may accept partial payments of current year home taxes. A minimum payment amount shall be established by the treasurer. The treasurer shall transfer amounts from each taxpayer's account to be applied to each semiannual tax installment prior to the delinquency dates specified in section 445.37 and the amounts collected shall be apportioned by the tenth of the month following transfer. If, prior to the due date of each semiannual installment, the account balance is insufficient to fully satisfy the installment, the treasurer shall transfer and apply the entire account balance, leaving an unpaid balance of the installment. Interest shall attach on the unpaid balance in accordance with section 445.39. Unless funds sufficient to fully satisfy the delinquency are received, the treasurer shall collect the unpaid balance as provided in sections 445.3 and 445.4 and chapter 446. Any remaining balance in a taxpayer's account in excess of the amount needed to fully satisfy an installment shall remain in the account to be applied toward the next semiannual installment. Any interest income derived from the account shall be deposited in the county's general fund to cover administrative costs. The treasurer shall send a notice with the tax statement or by separate mail to each taxpayer stating that, upon request to the treasurer, the taxpayer may make partial payments of current year home taxes.

b. Partial payment of taxes which are delinquent may be made to the county treasurer. A minimum payment amount shall be established by the treasurer. The minimum payment must be equal to or exceed the interest, fees, and costs attributed to the oldest delinquent installment of the tax and shall be apportioned in accordance with section 445.57. If the payment does not include the whole of any installment of the delinquent tax, the unpaid tax shall continue to accrue interest pursuant to section 445.39. Partial payment shall not be permitted in lieu of redemption if the property has been sold for taxes under chapter 446 and under any circumstances shall not constitute an extension of the time period for a sale under chapter 446.

7. Current year taxes may be paid at any time regardless of any outstanding prior year delinquent taxes.

[C66, 71, 73, 75, 77, 79, 81, §135D.24; 82 Acts, ch 1251, §2]

83 Acts, ch 5, §1, 2, 4, 5; 85 Acts, ch 70, §1; 86 Acts, ch 1139, §1; 86 Acts, ch 1245, §1115; 87 Acts, ch 210, §3 – 5; 88 Acts, ch 1138, §11, 18; 90 Acts, ch 1080, §2; 91 Acts, ch 191, §2, 3; 92 Acts, ch 1016, §1

C93, §435.24

94 Acts, ch 1110, §11, 12, 24; 99 Acts, ch 83, §7; 2000 Acts, ch 1085, §5; 2001 Acts, ch 153, §16

*See §435.34

435.25 Apportionment and collection of taxes.

The tax and interest for delinquent taxes collected under section 435.24 shall be apportioned in the same manner as though they were the proceeds of taxes levied on real property at the same location as the home.

Chapters 446, 447, and 448 apply to the sale of a home for the collection of delinquent taxes and interest, the redemption of a home sold for the collection of delinquent taxes and interest, and the execution of a tax sale certificate of title for the purchase of a home sold for the collection of delinquent taxes and interest in the same manner as though a home were real property within the meaning of these chapters to the extent consistent with this chapter. The certificate of title shall be issued by the county treasurer. The treasurer shall charge ten dollars for each certificate of title, except that the treasurer shall issue a tax sale certificate of title to the county at no charge.

When a home is removed from the county where delinquent taxes, regular or special, are owing, or when it is administratively impractical to pursue tax collection through the remedies of this section, all taxes, regular and special, interest, and costs shall be abated by resolution of the county board of supervisors. The resolution shall direct the treasurer to strike from the tax books the reference to that home.

[C66, 71, 73, 75, 77, 79, 81, §135D.25; 82 Acts, ch 1251, §3]

87 Acts, ch 210, §6, 7; 88 Acts, ch 1134, §26; 92 Acts, ch 1016, §2

C93, §435.25

94 Acts, ch 1110, §13, 24

435.26 Conversion to real property.

1. *a.* A mobile home or manufactured home which is located outside a manufactured home community or mobile home park shall be converted to real estate by being placed on a permanent foundation and shall be assessed for real estate taxes. A home, after conversion to real estate, is eligible for the homestead tax credit and the military tax exemption as provided in sections 425.2 and 426A.11.

b. If a security interest is noted on the certificate of title, the home owner shall tender to the se-

cured party a mortgage on the real estate upon which the home is to be located in the unpaid amount of the secured debt, and with the same priority as or a higher priority than the secured party's security interest, or shall obtain the written consent of the secured party to the conversion, in which latter case the lien notation on the certificate of title shall suffice to preserve the lienholder's security in the home separate from any interest in the land.

2. After complying with subsection 1, the owner shall notify the assessor who shall inspect the new premises for compliance. If a security interest is noted on the certificate of title, the assessor shall require an affidavit, as defined in section 622.85, from the home owner, declaring that the owner has complied with subsection 1, paragraph *"b"*, and setting forth the method of compliance.

a. If compliance with subsection 1, paragraph *"b"*, has been accomplished by the secured party accepting the tender of a mortgage, the assessor shall collect the home vehicle title and enter the property upon the tax rolls.

b. If compliance with subsection 1, paragraph *"b"*, has been accomplished by the secured party consenting to the conversion without accepting a mortgage, the secured party shall retain the home vehicle title and the assessor shall note the conversion on the assessor's records and enter the property upon the tax rolls. So long as a security interest is noted on the certificate of title, the title to the home will not be merged with title to the land, and the sale or foreclosure of an interest in the land shall not affect title to the home or any security interest in the home.

3. When the property is entered on the tax rolls, the assessor shall also enter on the tax rolls the title number last assigned to the mobile home or manufactured home and the manufacturer's identification number.

[C66, 71, 73, 75, 77, 79, 81, §135D.26]

83 Acts, ch 64, §1; 85 Acts, ch 98, §2; 89 Acts, ch 260, §1; 91 Acts, ch 191, §4, 5

C93, §435.26

94 Acts, ch 1110, §14, 24; 98 Acts, ch 1107, §20, 21, 33; 99 Acts, ch 114, §26; 2001 Acts, ch 153, §16

435.27 Reconversion.

1. A mobile home or manufactured home converted to real estate under section 435.26 may be reconverted to a home as provided in this section when it is moved to a manufactured home community or mobile home park or a manufactured or mobile home retailer's inventory. When the home is located within a manufactured home community or mobile home park, the home shall be taxed pursuant to section 435.22, subsection 1.

2. If the vehicular frame of the home can be modified to return it to the status of a mobile home or manufactured home, the owner or a secured party holding a mortgage or certificate of title pursuant to section 435.26 who has obtained possession of the home may apply to the county treasurer as provided in section 321.20 for a certificate of title for the home. If a mortgage exists on the real estate, a security interest in the home shall be given to a secured party not applying for reconversion and noted on the certificate of title with the same priority or a higher priority than the secured party's mortgage interest. A reconversion shall not occur without the written consent of every secured party holding a mortgage or certificate of title.

If the secured party has elected to retain the home vehicle title pursuant to section 435.26, subsection 2, paragraph *"b"*, an owner applying for reconversion shall present to the county treasurer written consent to the reconversion from all secured parties and an affirmation from the secured party holding the title that the title is in its possession and is intact. Upon receipt of the affirmation, the county treasurer shall notify the assessor of the reconversion, which notification constitutes compliance by the owner with subsection 3.

3. After compliance with subsection 2 and receipt of the title, the owner shall notify the assessor of the reconversion. The assessor shall remove the assessed valuation of the home from assessment rolls as of the succeeding January 1 when the home becomes subject to taxation as provided under section 435.24.

85 Acts, ch 98, §1

CS85, §135D.27

89 Acts, ch 260, §2

C93, §435.27

94 Acts, ch 1110, §15, 24; 98 Acts, ch 1107, §22, 33; 2001 Acts, ch 153, §16, 18; 2002 Acts, ch 1119, §57

Subsection 1 amended

435.28 County treasurer to notify assessor.

Upon issuance of a certificate of title to a mobile home or manufactured home which is not located in a manufactured home community or mobile home park or dealer's inventory, the county treasurer shall notify the assessor of the existence of the home for tax assessment purposes.

94 Acts, ch 1110, §16, 24; 2001 Acts, ch 153, §16

435.29 Civil penalty.

The person who moves the mobile home or manufactured home without having obtained a tax clearance statement as provided in section 435.24 shall pay a civil penalty of one hundred dollars. The penalty money shall be credited to the general fund of the county.

85 Acts, ch 70, §2

CS85, §135D.29

C93, §435.29

94 Acts, ch 1110, §17, 24; 98 Acts, ch 1107, §23, 33

435.30 through 435.32 Reserved.

435.33 Rent reimbursement.

A home owner who qualifies for a reduced tax rate provided in section 435.22 and who rents a space upon which to set the home shall be entitled to the protections provided in sections 425.33 to 425.36 and if the home owner who qualifies for a reduced tax rate believes that a landlord has increased the home owner's rent because the home owner is eligible for a reduced tax rate, the provisions of sections 425.33 and 425.36 shall be applicable.

[C77, 79, 81, §135D.33]
C93, §435.33
94 Acts, ch 1110, §18, 24

435.34 Modular home exemption.

For the purposes of this chapter a modular home shall not be construed to be a mobile home and shall be exempt from the provisions of this chapter. However, this section shall not prohibit the location of a modular home within a manufactured home community or mobile home park.

This section does not apply to manufactured home communities or mobile home parks in existence on or before January 1, 1998. If a modular home is placed in a manufactured home community or mobile home park which was in existence on or before January 1, 1998, that modular home shall be subject to property tax pursuant to section 435.22.

98 Acts, ch 1107, §24, 33; 2001 Acts, ch 153, §16

435.35 Existing home outside of manufactured home community or mobile home park — exemption.

A taxable mobile home or manufactured home which is not located in a manufactured home community or mobile home park as of January 1, 1995, shall be assessed and taxed as real estate. The home is also exempt from the permanent foundation requirements of this chapter until the home is relocated.

94 Acts, ch 1110, §19, 24; 98 Acts, ch 1107, §25, 33; 2001 Acts, ch 153, §16

CHAPTER 436

EXPRESS COMPANIES TAX

Repealed by 2002 Acts, ch 1050, §23

CHAPTER 437

ELECTRIC TRANSMISSION LINES TAX

See chapter 437A for taxes on certain electricity and natural gas providers

437.1 Definitions.
437.2 Statement required.
437.3 Verification.
437.4 Additional statement.
437.5 Failure to furnish.
437.6 Actual value.
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437.8 Hearing.
437.9 County assessment — certification.
437.10 Entry of certificate.
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437.13 Local assessment.
437.14 Co-operative corporations or associations — assessment. Repealed by 98 Acts, ch 1194, §39, 40.
437.15 Reassessment — procedure and requirements.

437.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Company"* means an electric cooperative referred to in section 437A.7, subsection 2, paragraph *"c"*.

3. *"Electric cooperative"* means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere.

4. *"Transmission lines"* means electric lines and associated facilities operating at thirty-four

thousand five hundred volts or higher voltage, and substations, transformers, and associated facilities operated at thirty-four thousand five hundred or more volts on the low voltage side.

[SS15, §1346-r; C24, 27, 31, 35, 39, §**7089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.1]

95 Acts, ch 83, §25; 98 Acts, ch 1194, §32, 40; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

437.2 Statement required.

Every company owning or operating a transmission line or lines for the conduct of electric energy and which line or lines are located within the state, and which said line or lines are also located wholly or partly outside cities, shall, on or before the first day of May in each year, furnish to the director of revenue and finance a verified statement as to its entire line or lines within this state, when all of said line or lines are located outside cities, and as to such portion of its line or lines within this state as are located outside cities, when such line or lines are located partly outside and partly inside cities, showing:

1. The total number of miles of line owned, operated, or leased, located outside cities within this state, with a separate showing of the number of miles leased.

2. The location and length of each division within the state and the character of poles, towers, wires, substation equipment, and other construction of each such division, designating the length and portion thereof in each separate county into which each such division extends.

[SS15, §1346-k; C24, 27, 31, 35, 39, §**7090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.2]

437.3 Verification.

The verification of any statement required by law shall be made by some member, officer, or agent of the company having knowledge of the facts.

[SS15, §1346-r; C24, 27, 31, 35, 39, §**7091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.3]

98 Acts, ch 1194, §33, 40

437.4 Additional statement.

Upon receipt of the statements from the companies, the director of revenue and finance shall examine the statements, and if the director deems them insufficient, and that further information is required, the director shall require the company making the statements to make other or further statement as the director deems necessary, notifying the company by mail.

[SS15, §1346-l; C24, 27, 31, 35, 39, §**7092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.4]

86 Acts, ch 1241, §39

437.5 Failure to furnish.

In case of the total failure or refusal to make any statement required by sections 437.2 and 437.4 to be made by May 1 in any year, or of failure or refusal to make other or further statement within thirty days from the time the notice is received by the company that the additional statement is required by the director of revenue and finance, the company shall forfeit and pay to the state, one hundred dollars for each day the total failure or refusal to make any report is continued beyond the first day of May of the year in which it is required, or in case of any other or further report required by the director for each day it is delayed beyond thirty days from the receipt of the notice by the company that the additional report is required. The forfeiture shall be sued for and recovered in any proper form of action in the name of the state and on relation of the director of revenue and finance of the state, and the penalty, when collected, shall be paid into the general fund of the state.

[SS15, §1346-l; C24, 27, 31, 35, 39, §**7093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.5]

86 Acts, ch 1241, §40

437.6 Actual value.

On the second Monday in July of each year, the director of revenue and finance shall proceed to find the actual value of that part of such transmission line or lines referred to in section 437.2, owned or operated by any company, that is located within this state but outside cities, including the whole of such line or lines when all of such line or lines owned or operated by said company is located wholly outside of cities, taking into consideration the information obtained from the statements required by this chapter, and any further information obtainable, using the same as a means of determining the actual cash value of such transmission line or lines or part thereof, within this state, located outside of cities. The director shall then ascertain the value per mile of such transmission line or lines owned or operated by each company specified in section 437.2, by dividing the total value as above ascertained by the number of miles of line of such company within the state located outside of cities, and the result shall be deemed and held to be the actual value per mile of said transmission line or lines of each of said companies within the state located outside of cities.

[SS15, §1346-m; C24, 27, 31, 35, 39, §**7094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.6]

437.7 Taxable value.

The taxable value of such line or lines of which the director of revenue and finance by this chapter is required to find the value, shall be determined by taking the percentage of the actual value so ascertained, as provided by section 441.21, and the ratio between the actual value and the assessed or taxable value of the transmission line or lines of each of said companies located outside of cities

shall be the same as in the case of the property of private individuals.

[SS15, §1346-m; C24, 27, 31, 35, 39, §**7095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.7]

437.8 Hearing.

At the time of determination of value by the director of revenue and finance, any company interested shall have the right to appear by its officers, agents, and attorneys before the director, and be heard on the question of the value of its property for taxation.

[SS15, §1346-m; C24, 27, 31, 35, 39, §**7096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.8]

437.9 County assessment — certification.

The director of revenue and finance shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line or lines of the company extend, multiply the assessed or taxable value per mile of line of said company, as ascertained according to the provisions of this chapter, by the number of miles of line in each of said counties, and the result thereof shall be by the director certified to the several county auditors of the respective counties into, over, or through which said line or lines extend.

[SS15, §1346-n; C24, 27, 31, 35, 39, §**7097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.9]

437.10 Entry of certificate.

At the first meeting of the board of supervisors held after said statements are received by the county auditor, it shall cause such statement to be entered in its minute book and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each township or lesser taxing district in each county outside cities, as fixed by the director of revenue and finance, which shall constitute the taxable value of said property for taxing purposes. The county auditor shall transmit a copy of said order to the trustees of each township and to the proper taxing boards in lesser taxing districts into which the line or lines of said company extend in the county. The taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate.

[SS15, §1346-o; C24, 27, 31, 35, 39, §**7098;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.10]

437.11 Rate — purposes.

Such portions of the transmission line or lines within the state referred to in section 437.2, as are located outside cities, shall be taxable upon said assessment provided for by sections 437.6 to 437.9 at the same rate, by the same officers and for the same purposes as property of individuals within such counties, townships or lesser taxing districts, outside cities, and the county treasurer shall collect said taxes at the same time and in the same manner as other taxes, and the same penalties shall be due and collectible as for the nonpayment of individual taxes.

[SS15, §1346-p; C24, 27, 31, 35, 39, §**7099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.11]

437.12 Assessment exclusive.

Every transmission line or part of a transmission line, of which the director of revenue and finance is required by this chapter to find the value, shall be exempt from other assessment or taxation either under sections 428.24 to 428.26, or under any other law of this state except as provided in this chapter.

[SS15, §1346-q; C24, 27, 31, 35, 39, §**7100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.12]

95 Acts, ch 83, §26

437.13 Local assessment.

All lands, buildings, machinery, poles, towers, wires, station and substation equipment, and other construction owned or operated by any company referred to in section 437.2, and where this property is located within any city within this state, shall be listed and assessed for taxation in the same manner as provided in sections 428.24, 428.25, and 428.29, for the listing and assessment of that part of the lands, buildings, machinery, tracks, poles, and wires within the limits of any city belonging to individuals or corporations furnishing electric light or power, and where this property, except the capital stock, is situated partly within and partly without the limits of a city. All personal property of every company owning or operating any transmission line referred to in section 437.2, used or purchased by it for the purpose of the transmission line, shall be listed and assessed in the assessment district where usually kept and housed and under sections 428.26 and 428.29.

[SS15, §1346-q; C24, 27, 31, 35, 39, §**7101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.13]

95 Acts, ch 83, §27

437.14 Co-operative corporations or associations — assessment. Repealed by 98 Acts, ch 1194, § 39, 40. See chapter 437A.

437.15 Reassessment — procedure and requirements.

Sections 433.14, 433.15, 439.1, and 439.2 shall apply to the property of transmission lines which are referred to in section 437.2.

[SS15, §1346-t; C24, 27, 31, 35, 39, §**7103;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.15]

CHAPTER 437A

TAXES ON ELECTRICITY AND NATURAL GAS PROVIDERS

Legislative findings; 98 Acts, ch 1194, §1

SUBCHAPTER I

INTRODUCTORY PROVISIONS

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437A.2 Purposes.
437A.3 Definitions.

SUBCHAPTER II

GENERATION, TRANSMISSION, AND DELIVERY TAXES

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437A.5 Replacement tax imposed on delivery of natural gas.
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437A.15 Allocation of revenue.
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SUBCHAPTER III

STATEWIDE PROPERTY TAX

437A.18 Tax imposition.
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SUBCHAPTER IV

GENERAL PROVISIONS

437A.24 Records.
437A.25 Rules.

SUBCHAPTER I

INTRODUCTORY PROVISIONS

437A.1 Classification of chapter.

The provisions of this chapter are classified and designated as follows:

Subchapter I	Introductory Provisions.
Subchapter II	Generation, Transmission, and Delivery Taxes.
Subchapter III	Statewide Property Tax.
Subchapter IV	General Provisions.

98 Acts, ch 1194, §2, 40

437A.2 Purposes.

The purposes of this chapter are to replace property taxes imposed on electric companies, natural gas companies, electric cooperatives, and municipal utilities with a system of taxation which will remove tax costs as a factor in a competitive environment by imposing like generation, transmission, and delivery taxes on similarly situated competitors who generate, transmit, or deliver electricity or natural gas in the same competitive service area, to preserve revenue neutrality and debt capacity for local governments and taxpayers, to preserve neutrality in the allocation and cost impact of any replacement tax among and upon consumers of electricity and natural gas in this state, and to provide a system of taxation which reduces existing administrative burdens on state government.

98 Acts, ch 1194, §3, 40

437A.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Assessed value"* means the base year assessed value, as adjusted by section 437A.19, subsection 2. *"Base year assessed value"*, for a taxpayer other than an electric company, natural gas company, or electric cooperative, means the value attributable to property identified in section 427A.1, subsection 1, paragraph *"h"*, certified by the department of revenue and finance to the county auditors for the assessment date of January 1, 1997, and the value attributable to property identified in section 427A.1 and section 427B.17, subsection 5, as certified by the local assessors to the county auditors for the assessment date of January 1, 1997, provided, that for a taxpayer sub-

ject to section 437A.17A, such value shall be the value certified by the department of revenue and finance and local assessors to the county auditors for the assessment date of January 1, 1998. However, *"base year assessed value"*, for purposes of property of a taxpayer that is a municipal utility, if the property is not a major addition, and the property was initially assessed to the taxpayer as of January 1, 1998, and is not located in a county where the taxpayer had property that was assessed for purposes of this chapter as of January 1, 1997, means the value attributable to such property for the assessment date of January 1, 1998.

For taxpayers that are electric companies, natural gas companies, and electric cooperatives, *"base year assessed value"* means the average of the total of these values for each taxpayer for the assessment dates of January 1, 1993, through January 1, 1997, allocated among taxing districts in proportion to the allocation of the taxpayer's January 1, 1998, assessed value among taxing districts. *"Base year assessed value"* does not include value attributable to steam-operating property.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"Centrally assessed property tax"* means property tax imposed with respect to the value of property determined by the director pursuant to section 427.1, subsection 2, section 428.29, chapter 437, and chapter 438, Code 1997, and allocated to electric service and natural gas service. For purposes of this subsection, *"natural gas service"* means such service provided by natural gas pipelines permitted pursuant to chapter 479.

4. *"Consumer"* means an end user of electricity or natural gas used or consumed within this state. *"Consumer"* includes any master-metered facility even though the electricity or natural gas delivered to such facility may ultimately be used by another person. A person to whom electricity or natural gas is delivered by a master-metered facility is not a consumer. A *"master-metered facility"* means any multi-occupancy premises where units are separately rented or owned and where electricity or natural gas is used in centralized heating, cooling, water-heating, or ventilation systems, where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

5. *"Delivery"* means the physical transfer of electricity or natural gas to a consumer. Physical transfer to a consumer occurs when transportation of electricity or natural gas ends and such electricity or natural gas becomes available for use or consumption by a consumer.

6. *"Director"* means the director of revenue and finance.

7. *"Electric company"* means a person engaged primarily in the production, delivery, service, or sales of electric energy whether formed or organized under the laws of this state or elsewhere. *"Electric company"* includes a combination natural gas company and electric company. *"Electric company"* does not include an electric cooperative or a municipal utility.

8. *"Electric competitive service area"* means an electric service area assigned by the utilities board under chapter 476 as of January 1, 1999, including utility property and facilities described in section 476.23, subsection 3, which were owned and served by the electric company, electric cooperative, or municipal utility serving such area on January 1, 1999.

9. *"Electric cooperative"* means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An electric cooperative shall also include an incorporated city utility provider. *"Generation and transmission electric cooperative"* means an electric cooperative which owns both transmission lines and property which is used to generate electricity. *"Distribution electric cooperative"* means an electric cooperative other than a generation and transmission electric cooperative or a municipal electric cooperative association.

10. *"Electric power generating plant"* means a nameplate rated electric power generating plant, which produces electric energy from other forms of energy, including all taxable land, buildings, and equipment used in the production of such electric energy.

11. *"Incorporated city utility provider"* means a corporation with assets worth one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land which it owns, and which provides electricity to ten thousand or fewer customers.

12. *"Lease"* means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to transmit or deliver electricity or natural gas using operating property within this state is not a lease. *"Capital lease"* means a lease classified as a capital lease under generally accepted accounting principles.

13. *"Local amount"* means the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the acquisition cost of any major addition which is an electric power generating plant and the total acquisition cost of any other major addition.

14. *"Local taxing authority"* means a city, county, community college, school district, or other taxing authority located in this state and authorized to certify a levy on property located within such authority for the payment of bonds and interest or other obligations of such authority.

15. *"Local taxing district"* means a geographic

area with a common consolidated property tax rate.

16. *"Low capacity factor electric power generating plant"* means, for any tax year, an electric power generating plant, with the exception of an electric power generating plant owned or leased by an electric company, an electric cooperative, or a municipal utility, which operated during the preceding calendar year at a net capacity factor of twenty percent or less. *"Net capacity factor"* means net actual generation during the preceding calendar year divided by the product of nameplate capacity times the number of hours the plant was in the active state during the preceding calendar year. Upon commissioning, a plant is in the active state until it is decommissioned. *"Net actual generation"* means net electrical megawatt hours produced by a plant during the preceding calendar year.

17. *"Major addition"* means any acquisition on or after January 1, 1998, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

a. A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

b. An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, *"electric power generating plant"* means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F or 476A in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

c. Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

d. Any property described in section 437A.16 in this state acquired by a person not previously subject to taxation under this chapter.

For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

18. *"Municipal electric cooperative association"* means an electric cooperative, the membership of which is composed entirely of municipal utilities.

19. *"Municipal utility"* means all or part of an electric light and power plant system or a natural gas system, either of which is owned by a city, including all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the municipal utility.

20. *"Natural gas company"* means a person that owns, operates, or is engaged primarily in operating or utilizing pipelines for the purpose of distributing natural gas to consumers located within this state, excluding a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. *"Natural gas company"* includes a combination natural gas company and electric company. *"Natural gas company"* does not include a municipal utility.

21. *a.* *"Natural gas competitive service area"* means any of the fifty-two natural gas competitive service areas described as follows:

(1) Each of the following municipal natural gas competitive service areas:

(a) Taylor county, except for those areas of Taylor county which are contained within another municipal natural gas competitive service area as described in this subsection.

(b) The city of Brighton in Washington county and the area within two miles of the city limits plus sections 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30 in Brighton township; sections 19, 30, and 33 in Franklin township; sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36 in Dutch Creek township; and sections 25, 26, 35, and 36 in Seventy-Six township.

(c) Davis county.

(d) The city of Brooklyn in Poweshiek county and the area within two miles of the city limits.

(e) The city of Cascade in Dubuque county and the area within two miles of the city limits.

(f) The city of Cedar Falls in Black Hawk county and the area within one mile of the city limits, not including any part of the city of Waterloo.

(g) The city of Clearfield in Taylor county and the area within two miles of the city limits and sections 20, 21, 26, and 27 of Platte township, Grant township in Taylor county, and Grant township in Ringgold county.

(h) The south half of Carroll county and sections 3 and 4 of Orange township in Guthrie county.

(i) Adams county, except those areas of Adams county which are contained within another municipal natural gas competitive service area as defined in this subsection.

(j) The city of Emmetsburg in Palo Alto county and the area within two miles of the city limits.

(k) The city of Everly in Clay county and the area within two miles of the city limits.

(l) The city of Fairbank and the area within two miles of the city limits plus the area one-quarter mile on either side of the county line road, Highway 281, from Fairbank to the intersection of Outer road and Tenth street, proceeding twenty-eight hundredths of a mile north in Buchanan and Fayette counties.

(m) The city of Gilmore City in Pocahontas and Humboldt counties and the area within two miles of the city limits.

(n) The city of Graettinger in Palo Alto county and the area within two miles of the city limits.

(o) The city of Guthrie Center in Guthrie county and the area within one mile of the city limits.

(p) The city of Harlan in Shelby county and the

area within two miles of the city limits.

(q) The city of Hartley in O'Brien county and the area within one mile of the city limits, except the eastern one-half of section four in Omega township.

(r) The city of Hawarden in Sioux county and the area within two miles of the city limits.

(s) The city of Lake Park plus Silver Lake township in Dickinson county.

(t) Fayette and New Buda townships in Decatur county.

(u) The city of Lenox in Taylor county including section 1 of Platte township in Taylor county and the townships of Carl, Grant, Mercer, Colony, Union, and Prescott in Adams county.

(v) Grand River township in Wayne county.

(w) New Hope township in Union county and Monroe township in Madison county.

(x) Ewoldt and Eden townships in Carroll county and Iowa township in Crawford county.

(y) The city of Montezuma in Poweshiek county and the area within two miles of the city limits plus Jackson township in Poweshiek county except the city of Barnes City, Pleasant Grove and Monroe townships in Mahaska county except the city of Barnes City.

(z) Morning Sun township in Louisa county.

(aa) Wells and Washington townships in Appanoose county.

(ab) The city of Osage in Mitchell county and the area within two miles of the city limits.

(ac) The city of Prescott in Adams county and the area within two miles of the city limits.

(ad) The city of Preston in Jackson county and the area within two miles of the city limits.

(ae) The city of Remsen in Plymouth county and the area within two miles of the city limits.

(af) The city of Rock Rapids in Lyon county and the area within two miles of the city limits.

(ag) The city of Rolfe in Pocahontas county and the area within two miles of the city limits.

(ah) The city of Sabula in Jackson county and the area within two miles of the city limits.

(ai) The city of Sac City in Sac county and the area within two miles of the city limits.

(aj) The city of Sanborn in O'Brien county and the area within two miles of the city limits.

(ak) The city of Sioux Center in Sioux county and the area within two miles of the city limits.

(al) The city of Tipton in Cedar county and the area within two miles of the city limits.

(am) The city of Waukee in Dallas county.

(an) The city of Wayland plus Jefferson and Trenton townships in Henry county.

(ao) Seventy-Six and Lime Creek townships in Washington county except for those areas of Seventy-Six township which are contained within another municipal natural gas competitive service area as defined in this subsection.

(ap) The city of West Bend in Kossuth and Palo Alto counties and the area within two miles of the city limits.

(aq) The city of Whittemore in Kossuth county and the area within two miles of the city limits.

(ar) Scott, Canaan, and Wayne townships in Henry county.

(as) The city of Woodbine in Harrison county and the area within two miles of the city limits.

(at) Nishnabotna township in Crawford county.

(2) The natural gas competitive service area, excluding any municipal natural gas competitive service area described in subparagraph (1) and consisting of Sioux county; Plymouth county; Woodbury county; Ida county; Harrison county; Shelby county; Audubon county; Palo Alto county; Humboldt county; Mahaska county; Scott county; Lyon county except Wheeler, Dale, Liberal, Grant, Midland, and Elgin townships; O'Brien county except Union, Dale, Summit, Highland, Franklin, and Center townships; Cherokee county except Cherokee and Pilot townships; Monona county except Franklin township and the south half of Ashton township; Pottawattamie county except Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships; Mills county except Glenwood and Center townships; Montgomery county except Douglas, Washington, and East townships; Page county except Valley, Douglas, Nodaway, Nebraska, Harlan, East River, Amity, and Buchanan townships; Fremont county except Green, Scott, Sidney, Benton, Washington, and Madison townships; Brighton and Pleasant townships in Cass county; Sac county except Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships; Newell township in Buena Vista county; Calhoun county except Reading township; Denmark township in Emmet county; Kossuth county except Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Seneca, Greenwood, Ramsey, and German townships; Webster county except Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Hardin townships; Guthrie county except Grant, Thompson, and Beaver townships; Union township in Union county; Madison county except Ohio and New Hope townships; Warren county except Virginia, Squaw, Liberty, and White Breast townships; Cedar, Union, Bluff Creek, and Pleasant townships in Monroe county; Marion county except Lake Prairie, Knoxville, Summit, and Union townships; Dallas county except Des Moines and Grant townships; Polk county except sections 4, 5, 6, 7, 8, 9, 16, 17, and 18 in Lincoln township and the city of Grimes, and sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 in Union township; Poweshiek, Washington, Mound Prairie, Des Moines, Elk Creek, and Fairview townships in Jasper county; Wright county except Belmond and Pleasant townships; Geneseo township in Cerro Gordo county; Franklin county except Wisner and Scott townships and the city of Coulter; Butler county except Bennezette, Coldwater, Dayton, and Fremont townships; Floyd county except Rock Grove, Rudd, Rockford, Ulster,

Scott, and Union townships; Branford township in Chickasaw county; Bremer county except Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships; Perry, Washington, Westburg, and Sumner townships in Buchanan county; Black Hawk county except Big Creek township; Fremont township in Benton county; Wapello county except Washington township; Benton and Steady Run townships in Keokuk county; the city of Barnes City in Poweshiek county; Iowa township in Washington county; Johnson county except Fremont township; Linn county except Franklin, Grant, Spring Grove, Jackson, Boulder, Washington, Otter Creek, Maine, Buffalo, and Fayette townships; Monroe township west and north of Otter Creek to its intersection with County Home road, and north of County Home road in Linn county; the city of Walford in Linn county; Farmington township in Cedar county; Wapsinonoc, Goshen, Moscow, Wilton, and Fulton townships in Muscatine county; and Lee county except Des Moines, Montrose, Keokuk, and Jackson townships.

(3) The natural gas competitive service area, excluding any municipal natural gas competitive service areas described in subparagraph (1) and consisting of that part of Kossuth county not described in subparagraph (2); Lincoln and Buffalo townships in Winnebago county; Worth county except Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships; Cerro Gordo county except Grimes, Pleasant Valley, and Dougherty townships; Rock Grove and Rudd townships in Floyd county; Eden, Camanche, and Hampshire townships and the city of Clinton in Clinton county; and Stacyville and Union townships in Mitchell county.

(4) The natural gas competitive service area, excluding any municipal natural gas service areas described in subparagraph (1) and consisting of Franklin township and the south half of Ashton township in Monona county; Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships in Pottawattamie county; Glenwood and Center townships in Mills county; Green, Scott, Sidney, Benton, Washington, and Madison townships in Fremont county; Cass, Bear Grove, Union, Noble, Edna, Victoria, Massena, Lincoln, and Grant townships in Cass county; Glidden township in Carroll county; Summit township in Adair county; Grant township in Guthrie county; Crawford county except Nishnabotna township; Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships in Sac county; Reading township in Calhoun county; Marshall, Sherman, Roosevelt, Dover, Grant, Lincoln, and Cedar townships in Pocahontas county; Union, Dale, Summit, Highland, Franklin, and Center townships in O'Brien county; the north half of Clay county plus Clay township; Dickinson county; Emmet county except Denmark, Armstrong Grove, and Iowa Lake townships; Greene county except Bristol, Hardin, Jackson, and Grant townships; Boone county except Worth, Colfax, Des Moines, Jackson, Dodge, and Harrison townships; Des Moines and Grant townships in Dallas county; Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Newark townships in Webster county; Clear Lake, Hamilton, Webster, Freedom, Independence, Cass, and Fremont townships in Hamilton county; Ell, Madison, and Ellington townships in Hancock county; Winnebago county except Lincoln and Buffalo townships; Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships in Worth county; Etna township in Hardin county; Lafayette township and the west one-half of Howard township in Story county; the city of Grimes in Polk county; Independence, Malaka, Mariposa, Hickory Grove, Rock Creek, Kellogg, Newton, Sherman, Palo Alto, Buena Vista, and Richland townships in Jasper county; Palermo, Grant, and Fairfield townships in Grundy county; Bennezette, Coldwater, Dayton, and Fremont townships in Butler county; Rockford, Ulster, Scott, and Union townships in Floyd county; St. Ansgar and Mitchell townships in Mitchell county; Howard county; Chickasaw county except Branford township; Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships in Bremer county; Big Creek township in Black Hawk county; Brown township in Linn county; Madison township and the east half of Buffalo township in Buchanan county; Fayette county except Harlan, Fremont, Oran, and Jefferson townships; Winneshiek county; Alamakee county; Clayton county; Delaware county except Adams and Hazel Green townships; Dubuque county; Jones county except Rome, Hale, Oxford, and the east half of Greenfield townships; and Jackson county.

(5) The natural gas competitive service area consisting of Des Moines, Montrose, Keokuk, and Jackson townships in Lee county.

(6) The natural gas competitive service area consisting of the city of Allerton and the area within two miles of the city limits.

(7) The natural gas competitive service area consisting of all of Iowa not contained in any of the other natural gas competitive service areas described in this paragraph.

b. *"Township"* includes any city or part of a city located within the exterior boundaries of that township.

c. References to city limits contained in this subsection mean those city limits as they existed on January 1, 1999.

22. *"Operating property"* means all property owned by or leased to an electric company, electric cooperative, municipal utility, or natural gas company, not otherwise taxed separately, which is necessary to and without which the company could not perform the activities of an electric company, electric cooperative, municipal utility, or natural gas company.

23. *"Pole miles"* means miles measured along the line of poles, structures, or towers carrying electric conductors regardless of the number of conductors or circuits carried, and miles of conduit bank, regardless of number of conduits or ducts, of all sizes and types, including manholes and handholes. *"Conduit bank"* means a length of one or more underground conduits or ducts, whether or not enclosed in concrete, designed to contain underground cables, including a gallery or cable tunnel for power cables.

24. *"Purchasing member"* means a municipal utility which purchases electricity from a municipal electric cooperative association of which it is a member.

25. *"Replacement tax"* means the excise tax imposed on the generation, transmission, delivery, consumption, or use of electricity or natural gas under section 437A.4, 437A.5, 437A.6, or 437A.7.

26. *"Self-generator"* means a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, who generates, by means of an on-site facility wholly owned by or leased in its entirety to such person, electricity solely for its own consumption, except for inadvertent unscheduled deliveries to the electric utility furnishing electric service to that self-generator. A person who generates electricity which is consumed by any other person, including any owner, shareholder, member, beneficiary, partner, or associate of the person who generates electricity, is not a self-generator. For purposes of this subsection, *"on-site facility"* means an electric power generating plant that is wholly owned by or leased in its entirety to a person and used to generate electricity solely for consumption by such person on the same parcel of land on which such plant is located or on a contiguous parcel of land. For purposes of this subsection, *"parcel of land"* includes each separate parcel of land shown on the tax list.

27. *"Statewide amount"* means the acquisition cost of any major addition which is not a local amount.

28. *"Taxpayer"* means an electric company, natural gas company, electric cooperative, municipal utility, or other person subject to the replacement tax imposed under section 437A.4, 437A.5, 437A.6, or 437A.7.

29. *"Tax year"* means a calendar year beginning January 1 and ending December 31.

30. *"Transfer replacement tax"* means the excise tax imposed in a competitive service area of a municipal utility which replaces transfers made by the municipal utility in accordance with section 384.89.

31. *"Transmission line"* means a line, wire, or cable which is capable of operating at an electric voltage of at least thirty-four and one-half kilovolts.

32. *"Utilities board"* means the utilities board created in section 474.1.

98 Acts, ch 1194, §4, 40; 99 Acts, ch 114, §27; 99 Acts, ch 152, §21 – 23, 40; 2000 Acts, ch 1114, §2, 18; 2000 Acts, ch 1148, §1; 2001 Acts, ch 145, §1, 2, 13; 2001 Acts, 1st Ex, ch 4, §5, 36; 2002 Acts, ch 1119, §58, 200, 201

2001 amendment to subsection 1, unnumbered paragraph 1, applies to tax years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13

Subsection 17, paragraph d amended

SUBCHAPTER II

GENERATION, TRANSMISSION, AND DELIVERY TAXES

437A.4 Replacement tax imposed on delivery of electricity.

1. A replacement delivery tax is imposed on every person who makes a delivery of electricity to a consumer within this state. The replacement delivery tax imposed by this section is equal to the sum of the following:

a. The number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric replacement delivery tax rate in effect for each such electric competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph *"a"*, the number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric transfer replacement tax rate for each such electric competitive service area.

2. If electricity is consumed in this state, whether such electricity is purchased, transferred, or self-generated, and the delivery, purchase, transference, or self-generation of such electricity is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Electric replacement delivery tax rates shall be calculated by the director for each electric competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to electric service is the centrally assessed property tax liability of such municipal utility allocated to electric service for the 1997 assessment year based on property tax payments made.

b. The director shall determine, for each taxpayer, the number of kilowatt-hours of electricity generated which would have been subject to taxation under section 437A.6, the number of pole

miles which would have been subject to taxation under section 437A.7, and the number of kilowatt-hours of electricity delivered to consumers which would have been subject to taxation under this section in calendar year 1998, had such sections been in effect for calendar year 1998.

c. The director shall determine the electric generation, transmission, and delivery tax components of the average centrally assessed property tax liability determined in paragraph *"a"* for each electric competitive service area as follows:

(1) The electric generation tax component for an electric competitive service area shall be computed by multiplying the tax rate set forth in section 437A.6 by the number of kilowatt-hours of electricity generated by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.6 in calendar year 1998, had that section been in effect for calendar year 1998.

(2) The electric transmission tax component for an electric competitive service area shall be computed by multiplying the tax rates set forth in section 437A.7 by the number of pole miles for each line voltage owned or leased by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.7 on December 31, 1998, had that section been in effect for calendar year 1998.

(3) The electric delivery tax component for an electric competitive service area shall be the average centrally assessed property tax liability allocated to electric service of the taxpayer principally serving such electric competitive service area less the electric generation and transmission tax components computed for such electric competitive service area.

(4) The electric delivery tax component for each electric competitive service area shall be adjusted, as necessary, to assign the excess property tax liability of each generation and transmission electric cooperative to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such assignment of excess property tax liability of each such generation and transmission electric cooperative shall be made in proportion to the appropriate wholesale rate charges in calendar year 1998 to its distribution electric cooperative members and municipal electric cooperative association members which purchased electricity from the generation and transmission electric cooperative. Any amount assignable to a municipal electric cooperative association shall be reassigned to the electric competitive service areas served by such association's purchasing municipal utility members and shall be allocated among them in proportion to the appropriate wholesale rate charges in calendar year 1998 by such municipal electric cooperative association to its purchasing municipal utility members. For purposes of this subsection, *"excess property tax liability"* means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such generation and transmission electric cooperative under sections 437A.6 and 437A.7 for calendar year 1998, had such taxes been in effect for calendar year 1998. An electric cooperative described in section 437A.7, subsection 2, paragraph *"c"*, is deemed not to have any excess property tax liability.

d. The director shall determine an electric delivery tax rate for each electric competitive service area by dividing the electric delivery tax component for the electric competitive service area, as adjusted by paragraph *"c"*, subparagraph (4), by the number of kilowatt-hours delivered by the taxpayer principally serving the electric competitive service area to consumers in calendar year 1998, which would have been subject to taxation under this section if this section had been in effect for calendar year 1998.

4. Municipal electric transfer replacement tax rates shall be calculated annually by the city council of each city located within an electric competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of electric-related transfers made pursuant to section 384.89 by the municipal utility serving the electric competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years by the number of kilowatt-hours of electricity delivered to consumers in the electric competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal electric transfer replacement tax equal to the average amount of electric-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer re-

placement tax by the city council, during the preceding five calendar years.

6. The following are not subject to the replacement delivery tax imposed by subsections 1 and 2:

a. Delivery of electricity generated by a low capacity factor electric power generating plant.

b. Delivery of electricity to a city from such city's municipal utility, provided such electricity is used by the city for the public purposes of the city.

c. Electricity consumed by a state university or university of science and technology, provided such electricity was generated by property described in section 427.1, subsection 1.

d. Electricity generated and consumed by a self-generator.

7. Notwithstanding subsection 1, the electric delivery tax rate applied to kilowatt-hours of electricity delivered by a taxpayer to utility property and facilities which are placed in service on or after January 1, 1999, and are owned by or leased to and initially served by such taxpayer shall be the electric delivery tax rate in effect for the electric competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another electric competitive service area.

8. If for any tax year after calendar year 1998, the total taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs *"a"* and *"b"*, with respect to any electric competitive service area, increases or decreases by more than the threshold percentage from the average of the base year amounts for that electric competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph *"a"*, and subsection 2, for that tax year shall be recalculated by the director for that electric competitive service area so that the total of the replacement electric delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph *"e"*, for that electric competitive service area with respect to the tax imposed under subsection 1, paragraph *"a"*, and subsection 2, shall be as follows:

a. If the number of kilowatt-hours of electricity required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

b. If the number of kilowatt-hours of electricity required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

For purposes of paragraphs *"a"* and *"b"*, in computing the tax rate under subsection 1, paragraph *"a"*, and subsection 2, for tax year 1999, the director shall use the electric delivery tax component computed for the electric competitive service area pursuant to subsection 3, paragraph *"c"*, in lieu of the taxes required to be reported for that electric competitive service area for the immediately preceding tax year.

The threshold percentage shall be determined annually and shall be eight percent for any electric competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed three billion kilowatt-hours, and ten percent for all other electric competitive service areas.

Any such recalculation of an electric delivery tax rate, if required, shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph *"a"*, and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph *"e"*, to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new electric delivery tax rate shall apply prospectively, until such time as further adjustment is required.

For purposes of this section, *"base year amount"* means for calendar years prior to tax year 1999, the sum of the kilowatt-hours of electricity delivered to consumers within an electric competitive service area by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs *"a"* and *"b"*, with respect to any electric competitive service area.

9. *a.* After calendar year 1998, if a municipal electric cooperative association ceases to purchase electricity from the generation and transmission electric cooperative from which it purchased electricity in 1998, and for a period of one hundred eighty days after such purchases cease, no municipal utility member of such association purchases electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph *"c"*, subparagraph (4), to the electric competitive service areas principally served by the municipal utility members on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

b. After calendar year 1998, if a municipal utility ceases to be a purchasing member of a municipal electric cooperative association which purchased electricity in calendar year 1998 from a

generation and transmission electric cooperative, and for a period of one hundred eighty days after the municipal utility ceases to be a purchasing member of such association such municipal utility does not purchase electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph *"c"*, subparagraph (4), to the electric competitive service area principally served by the municipal utility on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

c. If a recalculation has previously been made by the director pursuant to subsection 8 for an electric competitive service area described in this subsection, the recalculation required by this subsection shall be made by the director by modifying the most recent recalculation under subsection 8 to eliminate the excess property tax liability originally allocated to such electric competitive service area under subsection 3, paragraph *"c"*, subparagraph (4).

d. Any recalculation required by this subsection shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by May 31 of the calendar year during which the events described in paragraphs *"a"* and *"b"* are reported as provided in section 437A.8, subsection 1, paragraph *"f"*. The new electric delivery tax rate shall be effective January 1 of the tax year in which it is published and shall apply prospectively, until such time as further adjustment is required.

10. The electric delivery tax rate in effect for each electric competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

98 Acts, ch 1194, §5, 40

Recomputation of electric replacement tax rate; publication; 2000 Acts, ch 1114, §16

437A.5 Replacement tax imposed on delivery of natural gas.

1. A replacement delivery tax is imposed on every person who makes a delivery of natural gas to a consumer within this state. The replacement delivery tax imposed by this section shall be equal to the sum of the following:

a. The number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the natural gas delivery tax rate in effect for each such natural gas competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph *"a"*, the number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the municipal natural gas transfer replacement tax rate for each such natural gas competitive service area.

2. If natural gas is consumed in this state, whether such natural gas is purchased or transferred, and the delivery, purchase, or transference of such natural gas is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Natural gas delivery tax rates shall be calculated by the director for each natural gas competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to natural gas service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to natural gas service is the centrally assessed property tax liability of such municipal utility allocated to natural gas service for the 1997 assessment year based on property tax payments made. For purposes of this subsection, taxpayer does not include a pipeline company defined in section 479A.2.

b. The director shall determine for each taxpayer the number of therms of natural gas delivered to consumers which would have been subject to taxation under this section in calendar year 1998 had this section been in effect for calendar year 1998.

c. The director shall determine a natural gas delivery tax rate for each natural gas competitive service area by dividing the average centrally assessed property tax liability allocated to natural gas service of the taxpayer principally serving the natural gas competitive service area by the number of therms of natural gas delivered by such taxpayer to consumers in calendar year 1998 which would have been subject to taxation under this section had such section been in effect for calendar year 1998.

4. Municipal natural gas transfer replacement tax rates shall be calculated annually by the city council of each city located within a natural gas competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of natural gas-related transfers made pursuant to section 384.89 by the municipal utility serving the natural gas competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years, by the number of therms of natural gas delivered to consumers in the natural gas competitive service area during the immediately preced-

ing calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal natural gas transfer replacement tax equal to the average amount of natural gas-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. Notwithstanding subsection 1, the natural gas delivery tax rate applied to therms of natural gas delivered by a taxpayer to utility property and facilities which are placed in service on or after January 1, 1999, and which are owned by or leased to and initially served by such taxpayer shall be the natural gas delivery tax rate in effect for the natural gas competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another natural gas competitive service area.

7. Delivery of natural gas to a city from such city's municipal utility is not subject to the replacement delivery tax imposed under subsection 1, paragraph *"a"*, and subsection 2, provided such natural gas is used by the city for the public purposes of the city.

Subsection 2 does not apply to natural gas consumed by a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, acquired by means of facilities owned by or leased to such person on January 1, 1999, which were physically attached to pipelines that are not permitted pursuant to chapter 479 and used by such person for the purpose of bypassing the local natural gas company or municipal utility.

Subsection 1 does not apply to natural gas which is delivered, by a pipeline that is not permitted pursuant to chapter 479, into a facility owned by or leased to a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, if the person who consumes the gas uses the gas for the purpose of bypassing the local natural gas company or municipal utility, regardless of whether such facility existed on January 1, 1999.

8. If, for any tax year after calendar year 1998, the total taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs *"a"* and *"b"*, with respect to any natural gas competitive service area increases or decreases by more than the threshold percentage from the average of the base year amounts for that natural gas competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph *"a"*, and subsection 2 for that tax year shall be recalculated by the director for that natural gas competitive service area so that the total of the replacement natural gas delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph *"e"*, for that natural gas competitive service area with respect to the tax imposed under subsection 1, paragraph *"a"*, and subsection 2 shall be as follows:

a. If the number of therms of natural gas required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

b. If the number of therms of natural gas required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

c. For purposes of paragraphs *"a"* and *"b"*, in computing the tax rate under subsection 1, paragraph *"a"*, and subsection 2 for calendar year 1999, the director shall use the average centrally assessed property tax liability allocated to natural gas service computed for the natural gas competitive service area pursuant to subsection 3, paragraph *"a"*, in lieu of the taxes required to be reported for that natural gas competitive service area for the immediately preceding tax year.

The threshold percentage shall be determined annually and shall be eight percent for any natural gas competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed two hundred fifty million therms, and ten percent for all other natural gas competitive service areas.

Recalculation of a natural gas delivery tax rate, if required, shall be made and the new rate published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph *"a"*, and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph *"e"*, to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new natural gas delivery tax rate shall apply prospectively, until such time as further adjustment is required.

For purposes of this subsection, *"base year amount"* means for calendar years prior to tax year 1999, the sum of the therms of natural gas de-

livered to consumers within a natural gas competitive service area by the taxpayer principally serving such natural gas competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs *"a"* and *"b"*, with respect to any natural gas competitive service area.

9. The natural gas delivery tax rate in effect for each natural gas competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

98 Acts, ch 1194, §6, 40; 2000 Acts, ch 1114, §3, 4, 17, 18

2000 amendments to subsection 7 take effect April 19, 2000, and apply retroactively to tax years beginning on and after January 1, 1999; 2000 Acts, ch 1114, §17, 18

437A.6 Replacement tax imposed on electric generation.

1. A replacement generation tax of six hundredths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every person generating electricity, except electricity generated by the following:

a. A low capacity factor electric power generating plant.

b. Facilities owned by or leased to a municipal utility when devoted to public use and not held for pecuniary profit, except facilities of a municipally owned electric utility held under joint ownership or lease and facilities of an electric power facility financed under chapter 28F or 476A.

c. Wind energy conversion property subject to section 427B.26.

d. Methane gas conversion property subject to section 427.1, subsection 29.

e. Facilities owned by or leased to a state university or university of science and technology, to the extent electricity generated by such facilities is consumed exclusively by such state university or university of science and technology.

f. On-site facilities wholly owned by or leased in their entirety to a self-generator.

2. In lieu of the replacement generation tax imposed in subsection 1, a replacement generation tax of one thousand eight hundred forty-seven ten-thousandths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every hydroelectric generating power plant with a generating capacity of one hundred megawatts or greater.

3. In lieu of the replacement generation tax imposed in subsection 1, a replacement generation tax of one thousand ninety-nine ten-thousandths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every electric company which owns a joint interest in an electric power generating plant in this state and which has a joint interest in less than five pole miles of transmission lines in this state.

4. For purposes of this section, if a generation facility is jointly owned or leased, the number of kilowatt-hours of electricity subject to the replacement generation tax shall be the number of kilowatt-hours of electricity generated and dispatched by the jointly held generation facility to the account of the taxpayer.

5. For purposes of this section, the number of kilowatt-hours generated by a generation facility shall exclude any kilowatt-hours used to operate that generation facility.

98 Acts, ch 1194, §7, 40; 2000 Acts, ch 1114, §5, 6, 17, 18; 2001 Acts, ch 145, §3, 13; 2001 Acts, 1st Ex, ch 4, §6, 36

Recomputation of electric replacement delivery tax rate; 2000 Acts, ch 1114, §16

2000 amendments to subsections 4 and 5 take effect April 19, 2000, and apply retroactively to tax years beginning on and after January 1, 1999; 2000 Acts, ch 1114, §17, 18

2001 amendments adding new subsections 2 and 3 apply to tax years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13

437A.7 Replacement tax imposed on electric transmission.

1. A replacement transmission tax is imposed on every person owning or leasing transmission lines within this state and shall be equal to the sum of all of the following:

a. Five hundred fifty dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

b. Three thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred kilovolts but not exceeding one hundred fifty kilovolts.

c. Seven hundred dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

d. Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than three hundred kilovolts.

The replacement transmission tax shall be calculated on the basis of pole miles of transmission line owned or leased by the taxpayer on the last day of the tax year.

2. The following shall not be subject to the replacement transmission tax:

a. Transmission lines owned by or leased to a municipal utility when devoted to public use and not for pecuniary profit, except transmission lines of a municipally owned electric utility held under joint ownership and transmission lines of an electric power facility financed under chapter 28F or 476A.

b. Transmission lines owned by or leased to a lessor when the transmission lines are subject to the replacement transmission tax payable by the lessee or sublessee.

c. Any electric cooperative which owns, leases, or owns and leases in total less than seven hun-

dred fifty pole miles of transmission lines in this state. Chapter 437 shall apply to such electric cooperatives.

d. Transmission lines owned by or leased to a state university or university of science and technology, provided such transmission lines are used exclusively for the transmission of electricity consumed by such state university or university of science and technology.

e. Transmission lines owned by or leased to a person, other than a public utility, for which a franchise is not required under chapter 478.

3. For purposes of this section, if a transmission line is jointly owned or leased, the taxpayer shall compute the number of pole miles subject to the replacement transmission tax by multiplying the taxpayer's percentage interest in the jointly held transmission lines by the number of pole miles of such lines.

98 Acts, ch 1194, §8, 40; 99 Acts, ch 152, §24, 40; 2001 Acts, ch 145, §4, 13; 2001 Acts, 1st Ex, ch 4, §7, 36

2001 amendment to subsection 2, paragraph c, applies to tax and assessment years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13

437A.8 Return and payment requirements — rate adjustments.

1. Each taxpayer, on or before March 31 following a tax year, shall file with the director a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer to consumers within each electric competitive service area during the tax year, and the total taxable therms of natural gas delivered by the taxpayer to consumers within each natural gas competitive service area during the tax year.

b. The total kilowatt-hours of electricity consumed by the taxpayer within each electric competitive service area during the tax year subject to tax under section 437A.4, subsection 2, and the total therms of natural gas consumed by the taxpayer within each natural gas competitive service area during the tax year subject to tax under section 437A.5, subsection 2.

c. The total taxable kilowatt-hours of electricity generated by the taxpayer in Iowa during the tax year.

d. The total taxable pole miles of electric transmission lines in Iowa, by kilovolt, owned or leased by the taxpayer on the last day of the tax year.

e. The tentative replacement taxes imposed by section 437A.4, subsection 1, paragraph *"a"*, section 437A.4, subsection 2, section 437A.5, subsection 1, paragraph *"a"*, section 437A.5, subsection 2, and sections 437A.6 and 437A.7, due for the tax year.

f. For purposes of a municipal utility which is a member of a municipal electric cooperative association, the occurrence on or before September 1 of the preceding calendar year of an event described in section 437A.4, subsection 9, paragraph *"a"* or *"b"*, and the date on which the one-hundred-eighty-day requirement under such paragraph was met.

2. Each taxpayer subject to a municipal transfer replacement tax, on or before March 31 following a tax year, shall file with the chief financial officer of each city located within an electric or natural gas competitive service area served by a municipal utility as of January 1, 1999, a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer within each electric competitive service area described in section 437A.4, subsection 4, during the tax year and the total taxable therms of natural gas delivered by the taxpayer within each natural gas competitive service area described in section 437A.5, subsection 4, during the tax year.

b. For a municipal utility taxpayer, the total transfers made by the taxpayer under section 384.89 within each competitive service area during the preceding calendar year, allocated between electric-related transfers and natural gas-related transfers and total credits described in sections 437A.4, subsection 5, and 437A.5, subsection 5.

c. The transfer replacement taxes imposed by sections 437A.4, subsection 1, paragraph *"b"*, and 437A.5, subsection 1, paragraph *"b"*, due for the tax year.

3. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with forms and rules prescribed by the director in the case of a return filed pursuant to subsection 1, and in accordance with forms and rules prescribed by the chief financial officer of the city in the case of a return filed pursuant to subsection 2.

4. *a.* At the time of filing the return required by subsection 1 with the director, the taxpayer shall calculate the tentative replacement tax due for the tax year. The director shall compute any adjustments to the replacement tax required by subsection 7 and by section 437A.4, subsection 8, and section 437A.5, subsection 8, and notify the taxpayer of any such adjustments in accordance with the requirements of such provisions. The director and the department of management shall compute the allocation of replacement taxes among local taxing districts and report such allocations to county treasurers pursuant to section 437A.15. Based on such allocations, the treasurer of each county shall notify each taxpayer on or before August 31 following a tax year of its replacement tax obligation to the county treasurer. On or before September 30, 2000, and on or before September 30 of each subsequent year, the taxpayer shall remit to the county treasurer of each county to which such replacement tax is allocated pursuant to section 437A.15, one-half of the replacement tax so allocated, and on or before the

succeeding March 31, the taxpayer shall remit to the county treasurers the remaining replacement tax so allocated. If notification of a taxpayer's replacement tax obligation is not mailed by a county treasurer on or before August 31 following a tax year, such taxpayer shall have thirty days from the date the notification is mailed to remit one-half of the replacement tax otherwise required by this subsection to be remitted to such county treasurer on or before September 30. If a taxpayer fails to timely remit replacement taxes as provided in this subsection, the county treasurer of each affected county shall notify the director of such failure.

b. If a distribution electric cooperative member or a municipal utility purchasing member subject to section 437A.15, subsection 3, paragraph *"b"*, does not make timely payment of the correct amount of replacement tax to the generation and transmission electric cooperative, the generation and transmission electric cooperative shall notify the director in writing within ten days after September 10. The director shall then notify the generation and transmission electric cooperative in writing within five days after delivery of notice to the director of the paid amount to be remitted to the appropriate county treasurer and shall also notify the county treasurer. The generation and transmission electric cooperative shall remit the amount determined by the director to the appropriate county treasurer by September 30. If the generation and transmission electric cooperative timely notifies the director and timely remits to the county treasurer the amounts of replacement tax, as determined by the director, the generation and transmission electric cooperative shall not be liable for that unpaid replacement tax due from the distribution electric cooperative member or municipal utility purchasing member. The generation and transmission electric cooperative shall also not be liable for a special utility property tax levy, if any, and shall not be entitled to a tax credit, if any, attributable to the unpaid replacement tax. The county treasurer and the director shall enforce payment of the replacement tax against the appropriate distribution electric cooperative member or municipal utility purchasing member pursuant to sections 437A.9 through 437A.13. The county treasurer shall enforce payment of the special utility property tax levy, if any, against the appropriate distribution electric cooperative member or municipal utility purchasing member. For purposes of this paragraph:

(1) Written notice to the director must be either delivered to the director by electronic means, United States postal service, or a common carrier, by ordinary, certified, or registered mail directed to the attention of the director, be personally delivered to the director, or be served on the director by personal service during business hours. If the notice is mailed, a notice is considered delivered on the date of the postmark. If a postmark date is not present on the mailed article, the date of receipt of notice shall be considered the date of the mailing. A notice is considered delivered on the date personal service or personal delivery to the office of the director is made.

(2) Written notice to a generation and transmission electric cooperative must be delivered to the cooperative by electronic means, United States postal service, or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the manager of the cooperative, be personally delivered to the manager of the cooperative, or be served on the manager of the cooperative by personal service during business hours. For the purpose of mailing, a notice is considered delivered on the date of the postmark. If a postmark date is not present on the mailed article, the date of receipt of notice shall be considered the date of the mailing. A notice is considered delivered on the date personal service or personal delivery to the office of the manager of the cooperative is made.

c. If a generation and transmission electric cooperative, after notice, does not timely pay the correct amount of replacement tax or special utility property tax levy attributable to the excess property tax liability to the appropriate county treasurer, after receiving the required payment from the distribution electric cooperative member or municipal utility purchasing member, such replacement tax shall be enforced solely against the generation and transmission electric cooperative under sections 437A.9 through 437A.13, and shall not be enforced against the paying distribution electric cooperative member or municipal utility purchasing member, and the special utility property tax levy shall be enforced solely against the generation and transmission electric cooperative.

5. At the time of filing the return required by subsection 2, the taxpayer shall calculate the municipal transfer replacement tax due for the tax year. Municipal transfer replacement taxes shall be paid to the chief financial officer of the city to which the taxes are allocated at such time and place as directed by the city council.

6. Notwithstanding subsections 1 through 5, a taxpayer shall not be required to file a return otherwise required by this section or remit any replacement tax for any tax year in which the taxpayer's replacement tax liability before credits is three hundred dollars or less, provided that all electric companies, electric cooperatives, municipal utilities, and natural gas companies shall file a return, regardless of the taxpayer's replacement tax liability.

7. Following the determination of electric and natural gas delivery tax rates by the director pursuant to section 437A.4, subsection 3, and section 437A.5, subsection 3, if an adjustment resulting from a taxpayer appeal is made to taxes levied and paid by a taxpayer with respect to any of the assessment years 1993 through 1997 used in deter-

mining such rates, the director shall recalculate the delivery tax rate for any affected electric or natural gas competitive service area to reflect the impact of such adjustment as if such adjustment had been reflected in the initial determination of average centrally assessed property tax liability allocated to electric or natural gas service pursuant to section 437A.4, subsection 3, paragraph *"a"*, and section 437A.5, subsection 3, paragraph *"a"*. Rate recalculations shall be made and published in the Iowa administrative bulletin by the director on or before March 31 following the calendar year in which a final determination of the adjustment is made. Taxpayers shall report to the director any increase or decrease in the tentative replacement tax required to be shown to be due pursuant to subsection 1, paragraph *"e"*, for any tax year with the return for the year in which the recalculated tax rates which gave rise to the adjustment are published in the Iowa administrative bulletin. The director and the department of management shall redetermine the allocation of replacement taxes pursuant to section 437A.15 for each affected tax year. If a taxpayer has overpaid replacement taxes, the overpayment shall be reported by the director to such taxpayer and to the appropriate county treasurers and shall be a credit against the replacement taxes owed by such taxpayer for the year in which the recalculated rates which gave rise to the overpayment are published in the Iowa administrative bulletin. If a taxpayer has overpaid centrally assessed property taxes for assessment years prior to tax year 1999, such overpayment shall be a credit against replacement taxes owed by such taxpayer for the year in which the overpayment is determined. Unused credits may be carried forward and used to reduce future replacement tax liabilities until exhausted.

98 Acts, ch 1194, §9, 40; 2000 Acts, ch 1114, §7, 17, 18; 2001 Acts, ch 145, §5 – 8, 13

2000 amendment to subsection 4 takes effect April 19, 2000, and applies retroactively to tax years beginning on and after January 1, 1999; 2000 Acts, ch 1114, §17, 18

2001 amendments to subsections 1 and 2 apply for returns due for tax years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13

437A.9 Failure to file return — incorrect return.

1. As soon as practicable after a return required by section 437A.8, subsection 1, is filed, and in any event within three years after such return is filed, the director shall examine the return, determine the tax due if the return is found to be incorrect, and give notice to the taxpayer of the determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade any tax or in the case of a failure to file a return. The chief financial officer of a city shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

2. If a return required by section 437A.8, subsection 1, is not filed, or if such return when filed is incorrect or insufficient and the taxpayer fails to file a corrected or sufficient return within twenty days after such return is required by notice from the director, the director shall determine the amount of tax due from information as the director may be able to obtain and, if necessary, may estimate the tax due on the basis of external indices. The director shall give notice of the determination to the taxpayer liable for the tax and to the county treasurers to whom the tax is owed. The determination shall fix the tax unless the taxpayer against whom it is levied, within sixty days after notice of the determination, applies to the director for a hearing. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax and to the county treasurers to whom the tax is owed.

3. The three-year period of limitation provided in subsection 1 may be extended by the taxpayer by signing a waiver agreement form provided by the department. The agreement shall stipulate the period of extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

98 Acts, ch 1194, §10, 40

437A.10 Judicial review.

1. Judicial review of the actions of the director may be sought pursuant to chapter 17A, the Iowa administrative procedure Act.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk of the district court a bond for the use of the appropriate local taxing authorities, with sureties approved by the clerk of the district court, in the amount of the tax appealed from, conditioned upon the performance by the petitioner of any orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court irrespective of the amount involved.

4. A person aggrieved by a decision of the chief financial officer of a city under this chapter may seek review by writ of certiorari within thirty days of the decision sought to be reviewed.

98 Acts, ch 1194, §11, 40; 99 Acts, ch 152, §25, 40

437A.11 Lien — actions authorized.

Whenever a taxpayer who is liable to pay a tax imposed by subchapter II refuses or neglects to pay such tax, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue, shall be a lien in favor of the

chief financial officer of the city or the county treasurer to which the tax is owed upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien shall be prior to and superior over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer, without the necessity of recording the lien. The requirement for recording, as applied to the tax imposed by subchapter II, shall apply only to a lien upon real property. The lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, by the county treasurer to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien. For purposes of the replacement tax collected by a city, the lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in the county, by the chief financial officer of the city to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien.

The county recorder of each county shall prepare and keep in the recorder's office an index and record to show, under the names of taxpayers arranged alphabetically, all of the following:

1. The name of the taxpayer.
2. The name of the county treasurer and county or the name of the chief financial officer and city as claimant.
3. Time the notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. Date when the lien is satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

The county treasurer or chief financial officer of the city shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of the replacement tax as to which a county treasurer or chief financial officer of a city has filed notice with a county recorder, the county treasurer or chief financial officer of the city shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

Section 445.3 applies with respect to the replacement taxes and special utility property tax levies and penalties and interest imposed by this chapter, except for the provisions limiting the commencement of actions. In addition, at the county treasurer's discretion, chapters 446, 447, and 448 apply in the enforcement of the special utility property tax levies, but any tax deed issued shall not extinguish a tax lien or judgment lien for replacement taxes that has attached to the property.

98 Acts, ch 1194, §12, 40; 2000 Acts, ch 1114, §8, 18; 2001 Acts, ch 44, §20

437A.12 Service of notice.

1. A notice authorized or required under this chapter may be given by mailing the notice to the taxpayer, addressed to the taxpayer at the address given in the last return filed by the taxpayer pursuant to this chapter, or if no return has been filed, then to the most recent address of the taxpayer obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the taxpayer to whom the notice is addressed. A period of time within which some action must be taken for which notice is provided under this section commences to run from the date of mailing of the notice.

2. There is no limitation for the enforcement of a civil remedy pursuant to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty due under this chapter.

98 Acts, ch 1194, §13, 40

437A.13 Penalties — offenses — limitation.

1. A taxpayer is subject to the penalty provisions in section 421.27 with respect to any replacement tax due under this chapter. A taxpayer shall also pay interest on the delinquent replacement tax at the rate in effect under section 421.7 for each month computed from the date the payment was due, counting each fraction of a month as an entire month. The penalty and interest shall be paid to the county treasurer, or in the case of penalty and interest associated with a municipal transfer replacement tax to the city financial officer, and shall be disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as provided for unpaid replacement tax under this chapter.

2. A taxpayer, or officer, member, or employee of the taxpayer, who willfully attempts to evade the replacement tax imposed or the payment of the replacement tax is guilty of a class "D" felony.

3. The issuance of a certificate by the director or a county treasurer stating that a replacement tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter is prima facie evidence of such failure.

4. A taxpayer, or officer, member, or employee of the taxpayer, required to pay a replacement tax, or required to make, sign, or file an annual return or supplemental return, who willfully makes a false or fraudulent annual return, or who willfully

fails to pay at least ninety percent of the replacement tax or willfully fails to make, sign, or file the annual return, as required, is guilty of a fraudulent practice.

5. For purposes of determining the place of trial for a violation of this section, the situs of an offense is in the county of the residence of the taxpayer, officer, member, or employee of the taxpayer charged with the offense, unless the taxpayer, officer, member, or employee of the taxpayer is a nonresident of this state or the residence cannot be established, in which event the situs of the offense is in Polk county.

6. Prosecution for an offense specified in this section shall be commenced within six years after the commission of the offense.

98 Acts, ch 1194, §14, 40

437A.14 Correction of errors — refunds or credits of replacement tax paid — information confidential — penalty.

1. *a.* If an amount of replacement tax, penalty, or interest has been paid which was not due under this chapter, a city's chief financial officer or county treasurer to whom such erroneous payment was made shall do one of the following:

(1) Credit the amount of the erroneous payment against any replacement tax due, or to become due, from the taxpayer on the books of the city or county.

(2) Refund the amount of the erroneous payment to the taxpayer.

b. Claims for refund or credit of replacement taxes paid shall be filed with the director. A claim for refund or credit that is not filed with the director within three years after the replacement tax payment upon which a refund or credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later, shall not be allowed. A claim for refund or credit of tax alleged to be unconstitutional not filed with the director within ninety days after the replacement tax payment upon which a refund or credit is claimed became due shall not be allowed. As a precondition for claiming a refund or credit of alleged unconstitutional taxes, such taxes must be paid under written protest which specifies the particulars of the alleged unconstitutionality. Claims for refund or credit may only be made by, and refunds or credits may only be made to, the person responsible for paying the replacement tax, or such person's successors. The director shall notify affected county treasurers of the acceptance or denial of any refund claim. Section 421.10 applies to claims denied by the director.

If an amount of overpaid replacement tax is attributable to payment of excess property tax liability as described in section 437A.15, subsection 3, paragraph *"b"*, a claim for refund or credit may only be made by, and a refund or credit shall only be made to, the person who made such excess payment. Such claim shall not be made by the person who collected the tax from another person.

2. It is unlawful for any present or former officer or employee of the state to divulge or to make known in any manner to any person the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information. A person who violates this section is guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person, in addition to any other penalty, shall also be dismissed from office or discharged from employment. This section does not prohibit turning over to duly authorized officers of the United States or tax officials of other states such kilowatt-hours or therms pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

3. Unless otherwise expressly permitted by a section referencing this chapter, the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area shall not be divulged to any person or entity, other than the taxpayer, the department, or the internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department. A subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service, for use in a nontax proceeding is void.

4. Notwithstanding subsections 2 and 3, the chief financial officer of any local taxing authority and any designee of such officer shall have access to any computations made by the director pursuant to the provisions of this chapter, and any tax return or other information used by the director in making such computations, which affect the replacement tax owed by any such taxpayer.

Notwithstanding this section, providing information relating to the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area to the task force established in section 437A.15, subsection 7, or to the study committee established in section 476.6, subsection 23, is not a violation of this section.

5. Local taxing authority employees are deemed to be officers and employees of the state for purposes of subsection 2.

6. Claims for refund or credit of municipal transfer replacement tax shall be filed with the appropriate city's chief financial officer. Subsection 1 applies with respect to the transfer replacement tax and the city's chief financial officer shall have the same authority as is granted to the director

under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

7. Claims for refund or credit of special utility property tax levies shall be filed with the appropriate county treasurer. Subsection 1 applies with respect to the special utility property tax levy and the county treasurer shall have the same authority as is granted to the director under this section.

98 Acts, ch 1194, §15, 40; 99 Acts, ch 152, §26, 27, 40; 2000 Acts, ch 1114, §9, 17, 18

2000 amendment to subsection 1, paragraph b, takes effect April 19, 2000, and applies retroactively to tax years beginning on and after January 1, 1999; 2000 Acts, ch 1114, §17, 18

437A.15 Allocation of revenue.

1. The director and the department of management shall compute the allocation of all replacement tax revenues other than transfer replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. *a.* All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the assessed value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to section 437A.19, subsection 2. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

b. Notwithstanding other provisions of this section, if excess property tax liability has been assigned pursuant to section 437A.4, subsection 3, paragraph *"c"*, subparagraph (4), and has not been removed, the allocation of electric delivery replacement tax attributable to the excess property tax liability shall be made by the director and the department of management so as to allocate the electric delivery replacement tax attributable to the excess property tax liability among those local taxing districts in which the property associated with the excess property tax liability is located. In order to ensure that the electric delivery replacement tax attributable to the excess property tax liability is paid to the appropriate county treasurer for disposition to the local taxing districts, each distribution electric cooperative member and each municipal utility purchasing member subject to section 437A.4, subsection 3, paragraph *"c"*, subparagraph (4), shall pay to the appropriate generation and transmission electric cooperative the electric delivery replacement tax attributable to the excess property tax liability by September 10. The amount of electric delivery replacement tax attributable to the excess property tax liability shall equal that percentage of total electric delivery replacement tax liability that the excess property tax liability bears to the total property tax liability contained in the electric delivery tax component. The generation and transmission electric cooperative shall pay the electric delivery replacement tax attributable to the excess property tax liability to the appropriate county treasurer.

c. If paragraph *"b"* is applicable, on or before August 1, the director shall notify each distribution electric cooperative member, each municipal utility purchasing member, and each generation and transmission electric cooperative of the amount of electric delivery replacement tax to be paid to the generation and transmission electric cooperative. On or before August 1, the director shall notify the generation and transmission electric cooperative of the amount of replacement tax liability attributable to the excess property tax liability that is payable to each county treasurer. The director shall determine the amount of any special utility property tax levy or tax credit attributable to the excess property tax liability which shall be reflected in the amount required to be paid by each distribution electric cooperative member and each municipal utility purchasing member to the generation and transmission electric cooperative.

d. If, during the tax year, a taxpayer transferred operating property or an interest in operating property to another taxpayer, the transferee taxpayer's replacement tax associated with that property shall be allocated, for the tax year in which the transfer occurred, under this section in accordance with the general allocation formula on the basis of the general property tax equivalents of the transferor taxpayer.

e. Notwithstanding the provisions of this section, if during the tax year a person who was not a taxpayer during the prior tax year acquires a new major addition, as defined in section 437A.3, subsection 17, paragraph *"d"*, the replacement tax associated with that major addition shall be allocated, for that tax year, under this section in accordance with the general allocating formula on the basis of the general property tax equivalents established under section 437A.15, except that the levy rates established and reported to the department of management on or before June 30 follow-

ing the tax year in which the major addition was acquired shall be applied to the prorated assessed value of the major addition and provided that section 437A.19, subsection 2, paragraph *"b"*, subparagraph (2), is in any event applicable. For purposes of this paragraph, *"prorated assessed value of the major addition"* means the assessed value of the major addition as of January 1 of the year following the tax year in which the major addition was acquired multiplied by the percentage derived by dividing the number of months that the major addition existed during the tax year by twelve, counting any portion of a month as a full month.

4. On or before August 31 following tax years 1999, 2000, and 2001, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer's total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437A.8, subsection 4. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437A.8, subsection 7. A recalculation of a special utility property tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437A.8, subsection 7, or adjustment to assessed value under section 437A.19, subsection 2, paragraph *"f"*. *"Anticipated tax revenues from a taxpayer"* means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437A.11. If a special utility property tax levy payment becomes delinquent, the delinquent payment shall accrue interest and penalty in the same manner and amount as the replacement tax under section 437A.13.

It is the intent of the general assembly that the general assembly evaluate the impact of the imposition of the replacement tax for purposes of determining whether this subsection shall remain in effect and whether a determination shall be made as to the necessity of a recalculation as provided in this subsection for tax years beginning after tax year 2000.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disposed of by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any affected taxing entity, as defined in section 403.17, subsection 1, which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such affected taxing entity under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437A.16 included in such area on January 1, 1997, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. On or before July 1, 1998, the department of management, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of management, department of revenue and finance, electric companies, natural gas companies, municipal utilities, electric cooperatives, counties, cities, school boards, and industrial, commercial, and residential consumers, and other appropriate stakeholders.

The task force shall study the effects of the replacement tax on local taxing authorities, local

taxing districts, consumers, and taxpayers and the department of management shall report to the general assembly by January 1 of each year through January 1, 2003, the results of the study and the specific recommendations of the task force for modifications to the replacement tax, if any, which will further the purposes of tax neutrality for local taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter. The department of management shall also report to the legislative council by November 15 of each year through 2002, the status of the task force study and any recommendations.

98 Acts, ch 1194, §16, 40; 99 Acts, ch 152, §28, 40; 2000 Acts, ch 1114, §10, 11, 17, 18; 2001 Acts, ch 145, §9; 2002 Acts, ch 1050, §37

2000 amendment to subsection 3 takes effect April 19, 2000, and applies retroactively to tax years beginning on and after January 1, 1999; 2000 Acts, ch 1114, §17, 18

Subsection 3, paragraph c amended

437A.16 Assessment exclusive.

All operating property and all other property that is primarily and directly used in the production, generation, transmission, or delivery of electricity or natural gas subject to replacement tax or transfer replacement tax is exempt from taxation except as otherwise provided by this chapter. This exemption shall not extend to taxes imposed under chapters 437, 438, and 468, taxpayers described in section 437A.8, subsection 6, or facilities or property described in section 437A.6, subsection 1, paragraphs *"a"* through *"f"*, and section 437A.7, subsection 2.

98 Acts, ch 1194, §17, 40; 99 Acts, ch 152, §29, 40

437A.17 Statutes applicable — rate calculations.

1. The director shall administer and enforce the replacement tax imposed by this chapter in the same manner as provided in and subject to sections 422.68, 422.70, 422.71, and 422.75.

2. The calculation of tax rates and adjustments to such rates by the director pursuant to this chapter do not constitute rulemaking subject to the provisions of chapter 17A.

98 Acts, ch 1194, §18, 40

437A.17A Centrally assessed property tax adjustment.

A municipal utility whose property tax assessment for the 1998 assessment year was adjusted by the department of revenue and finance to include depreciation and whose property tax assessment for the 1997 assessment year did not include depreciation in determining its assessment shall be entitled to file a property tax adjustment form provided by the department. The tax adjustment form shall be filed by July 1, 1999. The tax adjustment form shall include an adjusted centrally assessed property tax computation determined by multiplying the centrally assessed property tax which was payable in the fiscal year beginning July 1, 1998, based upon valuation determined for the 1997 assessment year allocated to electric service and natural gas service by the percentage of adjustment for depreciation made by the department for the 1998 assessment year. The adjusted centrally assessed property tax allocated to electric service and natural gas service shall be used to determine the replacement delivery tax rates in accordance with sections 437A.4 and 437A.5.

99 Acts, ch 152, §30, 40

SUBCHAPTER III

STATEWIDE PROPERTY TAX

437A.18 Tax imposition.

An annual statewide property tax of three cents per one thousand dollars of assessed value is imposed upon all property described in section 437A.16 on the assessment date of January 1.

98 Acts, ch 1194, §19, 40

437A.19 Adjustment to assessed value — reporting requirements.

1. *a.* A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 1999, and by May 1 of each subsequent tax year, on forms prescribed by the director, the book value, as of the beginning and end of the preceding calendar year, of all of the following:

(1) The local amount of any major addition by local taxing district.

(2) The statewide amount of any major addition without notation of location.

(3) Any building in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(4) Any electric power generating plant in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(5) All other taxpayer property without notation of location.

(6) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 404, by situs.

b. For purposes of this section:

(1) *"Book value"* means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.

(2) *"Taxpayer property"* means property described in section 437A.16.

(3) *"To dispose of"* means to sell, abandon, decommission, or retire an asset.

(4) *"Transfer"* means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

c. For purposes of this subsection, *"taxpayer"* includes a person who would have been a taxpayer in calendar year 1998 had the provisions of this chapter been in effect for the 1998 assessment year.

d. If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a major addition, the local amount and statewide amount, if any, of such major addition shall be apportioned to the taxpayer on the basis of its percentage interest in such major addition.

2. Beginning January 1, 1999, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

a. Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

b. (1) Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph *"a"*, subparagraph (5), to the assessed value of all taxpayer property in the state pro rata according to its preadjustment value.

(2) If, during the preceding calendar year, a taxpayer transferred an electric power generating plant or an interest in an electric power generating plant to a taxpayer who owned no other taxpayer property in this state as of the end of such preceding calendar year, in lieu of the adjustment provided in subparagraph (1), the director shall allocate the transferee taxpayer's change in book value of the statewide amount during such preceding calendar year, if any, among local taxing districts in proportion to the allocation of the transferor's assessed value among local taxing districts as of the end of such preceding calendar year.

c. In the case of taxpayer property described in subsection 1, paragraph *"a"*, subparagraphs (3) and (4), decrease the assessed value of taxpayer property in each local taxing district by the taxable value of such property within each such local taxing district on January 1, 1998.

d. In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

e. In the event any taxpayer property is eligible for the urban revitalization tax exemption described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

f. In the event the base year assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer's assessed value among the local taxing districts determined without regard to this adjustment. If an adjustment to the base year assessed value of taxpayer property is finally determined on or before September 30, 1999, it shall be reflected in the January 1, 1999, assessed value. Otherwise, any such adjustment shall be made as of January 1 of the year following the date on which the adjustment is finally determined.

In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

The director, on or before October 31, 1999, in the case of January 1, 1999, assessed values, and on or before August 31 of each subsequent assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of January 1 of such assessment year for each local taxing district, provided that for a taxpayer whose base year as defined in section 437A.3, subsection 1, changed from 1997 to 1998, the director shall, before May 1, 2000, report to the department of management and to the auditor of each county, the assessed values as of January 1, 1999. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined and allocated among the local taxing districts by the director.

Nothing in this chapter shall be interpreted to authorize local taxing authorities to exclude from the calculation of levy rates the adjusted assessed value of taxpayer property reported to county auditors pursuant to this subsection.

98 Acts, ch 1194, §20, 40; 99 Acts, ch 152, §31, 40; 2000 Acts, ch 1114, §12, 18; 2001 Acts, ch 145, §10

437A.20 Tax exemptions.

Except as provided in section 437A.16, all property tax exemptions in the Code do not apply to property subject to the statewide property tax unless such exemptions expressly refer to the statewide property tax, except that if property was exempt from property tax on January 1, 1999, such exemption shall continue until the exemption expires, is phased out, or is repealed. The property

of a taxpayer who does not owe any replacement tax is exempt from the statewide property tax for the coinciding assessment year.

98 Acts, ch 1194, §21, 40

437A.21 Return and payment requirements.

1. Each electric company, natural gas company, electric cooperative, municipal utility, and other person whose property is subject to the statewide property tax shall file with the director a return, on or before March 31 following the assessment year, including, but not limited to, the following information:

a. The assessed value of property subject to the statewide property tax.

b. The amount of statewide property tax computed on such assessed value.

2. The first return under subsection 1 is due on or before February 28, 2000.

3. If an electric company, natural gas company, electric cooperative, municipal utility, or person is not required to file a statewide property tax return on or before February 28, 2000, but is required to file a return after such date, the return shall be filed on or before the due date. This subsection also applies in the event of a consolidation.

4. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with rules and forms prescribed by the director.

5. At the time of filing the return with the director, the taxpayer shall calculate the statewide property tax owed for the assessment year and shall remit to the director the statewide property tax required to be shown to be due on the return.

6. Notwithstanding subsections 1 through 5, a taxpayer is not required to file a return under this section or to remit any statewide property tax for any tax year in which the taxpayer's statewide property tax liability is one dollar or less.

98 Acts, ch 1194, §22, 40; 2000 Acts, ch 1114, §13, 18; 2001 Acts, ch 145, §11, 13

2001 amendment to subsection 1 applies for returns due for assessment years commencing on or after January 1, 2001; 2001 Acts, ch 145, §13

437A.22 Statutes applicable.

Sections 437A.9, 437A.10, 437A.12, 437A.13, and 437A.14, subsection 1, are applicable to electric companies, natural gas companies, electric cooperatives, municipal utilities, and persons whose property is subject to the statewide property tax. However, a required credit or refund of overpaid statewide property tax pursuant to section 437A.14, subsection 1, as it applies to this subchapter, shall be made by the director and not by city chief financial officers or county treasurers.

Section 422.26 applies with respect to the statewide property tax and penalties imposed by this chapter, except that, as applied to any tax imposed by this chapter, the lien provided shall be prior to and superior over all subsequent liens upon any personal property within this state or right to such personal property belonging to the taxpayer, without the necessity of recording the lien as provided in section 422.26. The requirement for recording, as applied to the statewide property tax imposed by this chapter, shall apply only to a lien upon real property. In order to preserve such lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, the director shall file with the recorder of the county in which the real property is located a notice of the lien.

The county recorder of each county shall prepare and keep in the recorder's office an index and record to show, under the names of taxpayers arranged alphabetically, all of the following:

1. The name of the taxpayer.
2. The name *"State of Iowa"* as claimant.
3. Time the notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. Date when the lien is satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

The director, from moneys appropriated to the department of revenue and finance for this purpose, shall pay a recording fee as provided in section 331.604 for the recording of the lien, or for its satisfaction.

Upon the payment of the replacement tax as to which the director has filed notice with a county recorder, the director shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

98 Acts, ch 1194, §23, 40; 2001 Acts, ch 44, §21

437A.23 Deposit of tax proceeds.

All revenues received from imposition of the statewide property tax shall be deposited in the general fund of the state. Fifty percent of the revenues shall be available, as appropriated by the general assembly, to the department of management for salaries, support, services, and equipment to administer the replacement tax. The balance of the revenues shall be available, as appropriated by the general assembly, to the department of revenue and finance for salaries, support, services, and equipment to administer and enforce the replacement tax and the statewide property tax.

98 Acts, ch 1194, §24, 40; 99 Acts, ch 208, §17

SUBCHAPTER IV

GENERAL PROVISIONS

437A.24 Records.

Each electric company, natural gas company, electric cooperative, municipal utility, and other person who is subject to the replacement tax or the statewide property tax shall maintain records associated with the replacement tax and the assessed value of property subject to the statewide property tax for a period of five years following the later of the original due date for filing a return pursuant to sections 437A.8 and 437A.21 in which such taxes are reported, or the date on which either such return is filed. Such records shall include those associated with any additions or dispositions of property, and the allocation of such property among local taxing districts.

98 Acts, ch 1194, §25, 40; 2001 Acts, ch 145, §12

437A.25 Rules.

The director of revenue and finance may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

98 Acts, ch 1194, §26, 40

CHAPTER 438

PIPELINE COMPANIES TAX

438.1 Taxation procedure.
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438.17 Collection.
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438.1 Taxation procedure.

Every person, copartnership, association, corporation, or syndicate engaged in the business of transporting or transmitting gas, gasoline, oils, or motor fuels by means of pipelines other than natural gas pipelines permitted pursuant to chapter 479, whether such pipelines be owned or leased, shall be taxed as provided in this chapter.

[C31, 35, §7103-d1; C39, §**7103.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.1]

98 Acts, ch 1194, §34, 40

438.2 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

"Pipeline company", as used in this chapter, means any person, copartnership, association, corporation, or syndicate that may own or operate or be engaged in operating or utilizing pipelines, other than natural gas pipelines permitted pursuant to chapter 479, for the purposes described in section 438.1.

[C31, 35, §7103-d2; C39, §**7103.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.2]

98 Acts, ch 1194, §35, 40; 2000 Acts, ch 1148, §1

438.3 Statement required.

Every pipeline company having lines in the state of Iowa shall annually, on or before the first day of April in each year, make out and deliver to the director of revenue and finance a statement, verified by the oath of an officer or agent of such pipeline company making such statement, showing in detail for the year ended December 31 next preceding:

1. The name of the company.
2. The nature of the company, whether a person or persons, an association, copartnership, corporation or syndicate, and under the laws of what state organized.
3. The location of its principal office or place of business.
4. The name and post-office address of the president, secretary, auditor, treasurer and superintendent or general manager.
5. The name and post-office address of the chief officer or managing agent of the company in Iowa.
6. The whole number of miles of pipeline

owned, operated or leased within the state, including a classification of the size, kind and weight thereof, separated, so as to show the mileage in each county, and each lesser taxing district.

7. A full and complete statement of the cost and actual present value of all buildings of every description owned by said pipeline company within the state and each lesser taxing district, not otherwise assessed.

8. The number, location, size and cost of each pressure pump or station.

9. Any and all other property owned by said pipeline company within the state which property must be classified and scheduled in such a manner as the director of revenue and finance may by rule require.

10. The gross earnings of the entire company, and the gross earnings on business done within this state.

11. The operating expenses of the entire company and the operating expenses within this state.

12. The net earnings of the entire company and the net earnings within this state.

[C31, 35, §7103-d3; C39, §**7103.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.3]

438.4 Real estate holdings.

Every pipeline company required by law to report to the director of revenue and finance under the provisions of this chapter shall, on or before the first day of April, 1932, make to the director a detailed statement showing the amount of real estate owned or used by it on December 31, 1931, for pipeline purposes, the county in which said real estate is situated, including the rights of way, pumping or station grounds, buildings, storage or tank yards, equipment grounds for any and all purposes, with the estimated actual value thereof, in such manner as may be required by the director.

[C31, 35, §7103-d4; C39, §**7103.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.4]

438.5 Statement deemed permanent.

Only one such detailed statement by any pipeline company shall be necessary, and when received by the director of revenue and finance, it shall become the record of the pipeline lands of such company, and be deemed as annually thereafter reported for valuation and assessment by the director.

[C31, 35, §7103-d5; C39, §**7103.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.5]

438.6 Additional corrective statements.

On or before the first day of April of each subsequent year, such company shall, in like manner, report all real estate acquired for any of the pipeline purposes above named during the preceding calendar year; and also, a list of any real estate, previously reported, disposed of during the same period, which disposition shall be noted by the director of revenue and finance in an appropriate column opposite to the description of said tract in the original report of the same in the record of pipeline land.

[C31, 35, §7103-d6; C39, §**7103.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.6]

438.7 Consolidated list of real estate.

The director of revenue and finance shall, by some convenient method of binding, arrange the statements required to be made by sections 438.4 to 438.6 so as to form a consolidated list of all real estate reported to the director as being owned or used for pipeline purposes within the state of Iowa.

[C31, 35, §7103-d7; C39, §**7103.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.7]

438.8 Gross earnings.

For the purpose of making reports to the director of revenue and finance, the gross earnings of a pipeline company, owning or operating a line or lines within this state, shall be computed and reported by said company upon such bases as the director may by rule require.

[C31, 35, §7103-d8; C39, §**7103.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.8]

438.9 Accounts — regulation.

The director of revenue and finance may prescribe such rules with respect to the keeping of accounts by the pipeline companies doing business or having property in this state as will insure the accurate division of the accounts and the information to be reported, and uniformity in reporting the same to the director.

[C31, 35, §7103-d9; C39, §**7103.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.9]

438.10 Rules — promulgation.

The rules, method and requirements herein provided to be made by the director of revenue and finance shall be made and communicated in writing or printing to the said several pipeline companies, and shall be and become binding upon said pipeline companies as provided in chapter 17A; provided that the director shall have the power to prescribe supplemental or additional rules and requirements in the manner prescribed by chapter 17A.

[C31, 35, §7103-d10; C39, §**7103.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.10]

438.11 Refusal to comply — penalty.

If any pipeline company shall fail or refuse to obey and conform to the rules, method and requirements so made and prescribed by the director of revenue and finance under the provisions of this chapter, or to make the reports herein provided, the director shall proceed to assess the property of such pipeline company so failing or refusing, ac-

cording to the best information obtainable, and shall then add to the director's valuation of such pipeline company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year.

[C31, 35, §7103-d11; C39, §**7103.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.11]

438.12 Amended and explanatory statements.

The director of revenue and finance may demand, in writing, detailed, explanatory and amended statements of any of the items mentioned in section 438.3, or any other item deemed to be important, to be furnished to the director by such pipeline company within thirty days from such demand in such form as the director may designate, which shall be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the director, in writing, shall require.

[C31, 35, §7103-d12; C39, §**7103.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.12]

438.13 Basis of valuation and assessment.

The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire pipeline property within the state, except as otherwise provided, and the actual and taxable value so ascertained shall be assessed as provided by section 441.21; and shall include the rights of way, easements, the pipelines, stations, grounds, shops, buildings, pumps and all other property, real and personal exclusively used in the operation of such pipeline. In assessing said pipeline company and its equipment, the director of revenue and finance shall take into consideration the gross earnings and the net earnings for the entire property, and per mile, for the year ending December 31 preceding, and any and all other matters necessary to enable the director to make a just and equitable assessment of said pipeline property.

[C31, 35, §7103-d13; C39, §**7103.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.13]

See §441.18

438.14 Valuation and certification thereof.

The director of revenue and finance shall on or before the third Monday in August of each year determine the value of pipeline property located in each taxing district of the state, and in fixing said value shall take into consideration the structures, equipment, pumping stations, etc., located in said taxing district, and shall transmit to the county auditor of each such county through and into which any pipeline may extend, a statement showing the assessed value of said property in each of the taxing districts of said county. The said property shall then be taxed in said county and lesser taxing districts, based upon the valuation so certified, in the same manner as in other property.

[C31, 35, §7103-d14; C39, §**7103.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.14]

438.15 Assessed value in each taxing district — record.

At the first meeting of the board of supervisors held after said statement is received by the county auditor, it shall cause the same to be entered on its minute book, and make and enter therein an order describing and stating the assessed value of each pipeline lying in each city, township or lesser taxing district in its county, through or into which said pipeline extends, as fixed by the director of revenue and finance, which shall constitute the assessed value of said property for taxing purposes; and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of said order to the council of the city, or the trustees of the township, as the case may be.

[C31, 35, §7103-d15; C39, §**7103.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.15]

438.16 Taxation procedure.

All such pipeline property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purpose as the property of individuals within such counties, cities, townships and lesser taxing districts.

[C31, 35, §7103-d16; C39, §**7103.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.16]

438.17 Collection.

If said tax is not paid, the county treasurer shall collect the same by whatever method may seem proper.

[C31, 35, §7103-d17; C39, §**7103.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.17]

438.18 Nonpayment of tax — effect.

If said tax is not paid within the fiscal year in which the same is due, the company shall not be permitted thereafter to use the public or private property of the state of Iowa, or to operate in Iowa for any purpose.

[C31, 35, §7103-d18; C39, §**7103.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.18]

438.19 Scope of chapter.

The provisions of this chapter shall not apply to a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. Such local municipal plant shall be taxed in the municipality where located.

[C31, 35, §7103-d19; C39, §**7103.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.19]

CHAPTER 439

REASSESSMENT OF TAXES

439.1 Reassessment and relevy.
439.2 Voluntary payments.

439.1 Reassessment and relevy.

When by reason of nonconformity to any law, or by any omission, informality, or irregularity, or for any other cause, any tax heretofore or hereafter levied and assessed against any person, company, association, or corporation by the director of revenue and finance is invalid or is adjudged illegal, the director may assess and levy a tax against such person, company, association, or corporation for the year or years for which such tax is invalid or illegal, or when necessary may assess and certify the same to the proper county officers, who shall levy such tax as by law in such cases made and provided, with the same force and effect as though done at the proper time and under any valid law, whether in force at the time of said levy and assessment or thereafter enacted.

[S13, §1330-h; C24, 27, 31, 35, 39, §**7104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §439.1]

439.2 Voluntary payments.

When any person, company, association, or corporation, against whom any tax has been assessed and levied by the director of revenue and finance and held invalid or illegal, shall have paid the same voluntarily or shall otherwise waive such invalidity and illegality, the director shall accept such tax in lieu of the tax to be raised by the reassessment and relevy provided for in section 439.1.

[S13, §1330-i; C24, 27, 31, 35, 39, §**7105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §439.2]

CHAPTER 440

ASSESSMENT OF OMITTED PROPERTY

440.1 Definitions.
440.2 Assessment of omitted property.
440.3 and 440.4 Repealed by 97 Acts, ch 158, §48.
440.5 Procedure — penalty.
440.6 Fraudulent withholding — penalty.
440.7 Entry on tax books.
440.8 Delinquency.

440.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1
Former §440.1 transferred to §440.2

440.2 Assessment of omitted property.

When the director of revenue and finance is vested with the power and duty to assess property and an assessment has, for any reason, been omitted, the director shall proceed to assess the property at any time within two years from the date at which such assessment should have been made. The omitted assessment may apply to not more than the assessment year in which the omitted assessment is made and the prior assessment year. Chapter 429 shall apply to assessments of omitted property.

[C27, 31, 35, §7105-a1; C39, §**7105.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.1]

97 Acts, ch 158, §36; 99 Acts, ch 174, §1, 7
C2001, §440.2

440.3 and 440.4 Repealed by 97 Acts, ch 158, § 48. See chapter 429.

440.5 Procedure — penalty.

If it is made to appear that the property is assessable by the director of revenue and finance as omitted property, the director shall proceed in the manner in which the director would have proceeded had the assessment not been omitted, except that the director shall find the value of the omitted property for each year during which it has been

omitted but for not more than the two previous assessment years and shall add ten percent to each yearly value as a penalty.

[C27, 31, 35, §7105-a5; C39, §**7105.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.5]

99 Acts, ch 174, §2, 7

440.6 Fraudulent withholding — penalty.

In case the property has been fraudulently withheld from assessment, the director of revenue and finance may, in addition to said ten percent add any additional percent, not exceeding fifty percent.

[C27, 31, 35, §7105-a6; C39, §**7105.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.6]

440.7 Entry on tax books.

Should an assessment be made at such time in the year that, in the opinion of the director of revenue and finance, said assessment cannot conveniently be entered on the current tax books, the director may direct that the assessment be entered on the first ensuing tax books.

[C27, 31, 35, §7105-a7; C39, §**7105.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.7]

440.8 Delinquency.

A tax based on said assessment shall be deemed delinquent from and after its entry on the tax books.

[C27, 31, 35, §7105-a8; C39, §**7105.8;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.8]

CHAPTER 441

ASSESSMENT AND VALUATION OF PROPERTY

ASSESSORS

441.1 Office of assessor created.
441.2 Conference board.
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DUTIES

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441.65 through 441.71 Repealed by 90 Acts, ch 1236, §54.
441.72 Assessment of platted lots.
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ASSESSORS

441.1 Office of assessor created.

In every county in the state of Iowa the office of assessor is hereby created. A city having a population of ten thousand or more, according to the latest federal census, may by ordinance provide for the selection of a city assessor and for the assessment of property in the city under the provisions of this chapter. A city desiring to provide for assessment under the provisions of this chapter shall, not less than sixty days before the expiration of the term of the assessor in office, notify the taxing bodies affected and proceed to establish a conference board, examining board, and board of review and select an assessor, all as provided in this chapter. A city desiring to abolish the office of city assessor shall repeal the ordinance establishing the office of city assessor, notify the county conference board and the affected taxing districts, provide for the transfer of appropriate records and other matters, and provide for the abolition of the respective boards and the termination of the terms of office of the assessor and members of the respective boards. The abolition of the city assessor's office shall take effect on July 1 following notification of the abolition unless otherwise agreed to by the affected conference boards. If notification of the proposed abolition is made after January 1, sufficient funds shall be transferred from the city assessor's budget to fund the additional responsibilities transferred to the county assessor for the next fiscal year.

[C50, 54, 58, §405A.1, 441.1; C62, 66, 71, 73, 75, §441.1, 441.51; C77, 79, 81, §441.1]

97 Acts, ch 22, §1

441.2 Conference board.

In each county and each city having an assessor there shall be established a conference board. In counties the conference board shall consist of the mayors of all incorporated cities in the county whose property is assessed by the county assessor, one representative from the board of directors of each high school district of the county, who is a resident of the county, said board of directors appointing said representative for a one-year term and notifying the clerk of the conference board as to their representative, and members of the board of supervisors. In cities having an assessor the conference board shall consist of the members of the city council, school board and county board of supervisors. In the counties the chairperson of the board of supervisors shall act as chairperson of the conference board, in cities having an assessor the mayor of the city council shall act as chairperson of the conference board. In any action taken by the conference board, the mayors of all incorporated cities in the county whose property is assessed by the county assessor shall constitute one voting unit, the members of the city board of education or one representative from the board of directors of each high school district of the county shall constitute one voting unit, the members of the city council shall constitute one voting unit, and the county board of supervisors shall constitute one voting unit, each unit having a single vote and no action shall be valid except by the vote of not less than two out of the three units. The majority vote of the members present of each unit shall determine the vote of the unit. The assessor shall be clerk of the conference board.

[R60, §739; C73, §829, 830, 832; C97, §1368, 1370, 1375, 1376; C24, 27, 31, 35, 39, §**7127, 7129, 7137, 7138;** C46, §441.21, 442.1, 442.12, 442.13; C50, 54, 58, §441.2, 442.1; C62, 66, 71, 73, 75, 77, 79, 81, §441.2]

441.3 Examining board.

At a regular meeting of the conference board each voting unit of the conference board shall appoint one person who is a resident of the assessor jurisdiction to serve as a member of an examining board to hold an examination for the positions of assessor or deputy assessor. This examining board shall organize as soon as possible after its appointment with a chairperson and secretary. All its necessary expenditures shall be paid as provided. Members of the board shall serve without compensation. The terms of each shall be for six years.

[C46, §405.1; C50, 54, 58, §405.1, 405A.2, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.3]

88 Acts, ch 1043, §1

441.4 Removal of member.

A member of this examining board may be removed by the voting unit of the conference board by which the member was appointed but only after specific charges have been filed and a public hearing held, if requested by the discharged member of the board. Subsequent appointments and an appointment to fill a vacancy, shall be made in the same way as the original appointment.

[C46, 50, 54, 58, §405.2; C62, 66, 71, 73, 75, 77, 79, 81, §441.4]

441.5 Examination and certification of applicants — incumbents.

For the purpose of examining and certifying candidates for the positions of assessor and deputy assessor, the director of revenue and finance shall prepare and administer a written examination. The examinations shall be administered twice each year in the city of Des Moines. Notification of the time, place and date of the examinations shall be mailed to each city and county assessor, county auditor and chairperson of each city and county conference board at least thirty days prior to the date of the examination.

These examinations shall be conducted by the director of revenue and finance in the same man-

ner as other similar examinations, including secrecy regarding questions prior to the examination and in accordance with other rules as may be prescribed by the director of revenue and finance. The examination shall cover the following and related subjects:

1. Laws pertaining to the assessment of property for taxation, with emphasis on market value assessment as provided in this chapter.
2. Laws on tax exemption.
3. Assessment of real estate and personal property, including market value assessment in accordance with this chapter and including fundamental principles and practices of property appraisal and valuation which are consistent with market value assessment as provided in this chapter.
4. The rights of taxpayers and property owners related to the assessment of property for taxation.
5. The duties of the assessor.
6. Other items related to the position of assessor.

Only individuals who possess a high school diploma or its equivalent are eligible to take the examination. A person desiring to take the examination shall complete an application prior to the administration of the examination.

The director of revenue and finance shall grade the examination taken. The director shall notify, in writing, each applicant of the score attained by the applicant on the examination. An individual who attains a score of seventy percent or greater on the examination is eligible to be certified by the director of revenue and finance as a candidate for any assessor position. Any person who passes the examination and who possesses at least two years of appraisal related experience as determined by the director of revenue and finance shall be granted regular certification and become eligible for appointment to a six-year term as assessor. Any person who passes the examination but who lacks such experience shall be granted temporary certification, and shall be eligible for a provisional appointment as assessor.

Any person possessing temporary certification who receives a provisional appointment as assessor shall, during the person's first eighteen months in office, be required to complete a course of study prescribed and administered by the director of revenue and finance. Upon the successful completion of this course of study, the assessor shall be granted regular certification and shall be eligible to remain in office for the balance of the assessor's six-year term. All expenses incurred in obtaining regular certification shall be defrayed by the assessment expense fund.

Following the administration of the examination, the director of revenue and finance shall establish a register containing the names, in alphabetical order, of all individuals who are eligible for appointment as assessor. The test scores of individuals on the register shall be given to a city or county conference board upon request. All eligible individuals shall remain on the register for a period of two years following the date of certification granted by the director.

Incumbent assessors who have served six consecutive years shall be placed on the register of individuals eligible for appointment as assessor. In order to be appointed to the position of assessor, the assessor shall comply with the continuing education requirements. The number of credits required for certification as eligible for appointment as assessor in a jurisdiction other than where the assessor is currently serving shall be prorated according to the percentage of the assessor's term which is covered by the continuing education requirements of section 441.8. The credit necessary for certification for appointment is the product of one hundred fifty multiplied by the quotient of the number of months served of an assessor's term covered by the continuing education requirements of section 441.8 divided by seventy-two. If the number of credits necessary for certification for appointment as determined under this paragraph results in a partial credit hour, the credit hour shall be rounded to the nearest whole number.

[C46, §405.3; C50, 54, 58, §405.3, 441.2, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.5]

88 Acts, ch 1228, §1

441.6 Appointment of assessor.

When a vacancy occurs in the office of city or county assessor, the examining board shall, within seven days of the occurrence of the vacancy, request the director of revenue and finance to forward a register containing the names of all individuals eligible for appointment as assessor. The examining board may, at its own expense, conduct a further examination, either written or oral, of any person whose name appears on the register, and shall make written report of the examination and submit the report together with the names of those individuals certified by the director of revenue and finance to the conference board within fifteen days after the receipt of the register from the director of revenue and finance.

Upon receipt of the report of the examining board, the chairperson of the conference board shall by written notice call a meeting of the conference board to appoint an assessor. The meeting shall be held not later than seven days after the receipt of the report of the examining board by the conference board. The physical condition, general reputation of the applicants, and their fitness for the position as determined by the examining board shall be taken into consideration in making the appointment. At the meeting, the conference board shall appoint an assessor from the register of eligible candidates. However, if a special examination has not been conducted previously for the same vacancy, the conference board may request the director of revenue and finance to hold

a special examination pursuant to section 441.7. The chairperson of the conference board shall give written notice to the director of revenue and finance of the appointment and its effective date within ten days of the decision of the board.

[C46, 50, 54, 58, §405.4; C62, 66, 71, 73, 75, 77, 79, 81, §441.6]

441.7 Special examination.

If the conference board fails to appoint an assessor from the list of individuals on the register, the conference board shall request permission from the director of revenue and finance to hold a special examination in the particular city or county in which the vacancy has occurred. Permission may be granted by the director of revenue and finance after consideration of factors such as the availability of candidates in that particular city or county. The director of revenue and finance shall conduct no more than one special examination for each vacancy in an assessing jurisdiction. The examination shall be conducted by the director of revenue and finance as provided in section 441.5, except as otherwise provided in this section. The examining board shall give notice of holding the examination for assessor by posting a written notice in a conspicuous place in the county courthouse in the case of county assessors or in the city hall in the case of city assessors, stating that at a specified date, an examination for the position of assessor will be held at a specified place. Similar notice shall be given at the same time by one publication of the notice in three newspapers of general circulation in the case of a county assessor, or in case there are not three such newspapers in a county, then in newspapers which are available, or in one newspaper of general circulation in the city in the case of city assessor. The conference board of the city or county in which a special examination is held shall reimburse the department of revenue and finance for all expenses incurred in the administration of the examination, to be paid for by the respective city or county assessment expense fund. Following the administration of this special examination, the director of revenue and finance shall certify to the examining board a new list of candidates eligible to be appointed as assessor and the examining board and conference board shall proceed in accordance with the provisions of section 441.6.

[C46, 50, 54, 58, §405.5; C62, 66, 71, 73, 75, 77, 79, 81, §441.7]

441.8 Term — continuing education — filling vacancy.

The term of office of an assessor appointed under this chapter shall be for six years. Appointments for each succeeding term shall be made in the same manner as the original appointment except that not less than ninety days before the expiration of the term of the assessor the conference board shall hold a meeting to determine whether or not it desires to reappoint the incumbent assessor to a new term.

Effective January 1, 1980, the conference board shall have the power to reappoint the incumbent assessor only if the incumbent assessor has satisfactorily completed the continuing education program provided for in this section.

The director of revenue and finance shall develop and administer a program of continuing education which shall emphasize assessment and appraisal procedures, and the assessment laws of this state, and which shall include the subject matter specified in section 441.5.

The director of revenue and finance shall establish, designate, or approve courses, workshops, seminars, or symposiums to be offered as part of the continuing education program, the content of these courses, workshops, seminars, or symposiums and the number of hours of classroom instruction for each. The director of revenue and finance may provide that no more than thirty hours of tested credit may be received for the submission of a narrative appraisal approved by a professional appraisal society designated by the director. At least once each year the director of revenue and finance shall evaluate the continuing education program and make necessary changes in the program.

Upon the successful completion of courses, workshops, seminars, a narrative appraisal or symposiums contained in the program of continuing education, as demonstrated by attendance at sessions of the courses, workshops, seminars or symposiums and, in the case of a course designated by the director of revenue and finance, attaining a grade of at least seventy percent on an examination administered at the conclusion of the course, or the submission of proof that a narrative appraisal has been approved by a professional appraisal society designated by the director of revenue and finance the assessor or deputy assessor shall receive credit equal to the number of hours of classroom instruction contained in those courses, workshops, seminars, or symposiums or the number of hours of credit specified by the director of revenue and finance for a narrative appraisal. An assessor or deputy assessor shall not be allowed to obtain credit for a course, workshop, seminar, or symposium for which the assessor or deputy assessor has previously received credit during the current term or appointment except for those courses, workshops, seminars, or symposiums designated by the director of revenue and finance. Only one narrative appraisal may be approved for credit during the assessor's or deputy assessor's current term or appointment and credit shall not be allowed for a narrative appraisal approved by a professional appraisal society prior to the beginning of the assessor's or deputy assessor's current term or appointment. The examinations shall be confidential, except that the director of revenue and finance and persons designated by

the director may have access to the examinations.

Upon receiving credit equal to one hundred fifty hours of classroom instruction during the assessor's current term of office of which at least ninety of the one hundred fifty hours are from courses requiring an examination upon conclusion of the course, the director of revenue and finance shall certify to the assessor's conference board that the assessor is eligible to be reappointed to the position. For persons appointed to complete an unexpired term, the number of credits required to be certified as eligible for reappointment shall be prorated according to the amount of time remaining in the present term of the assessor. If the person was an assessor in another jurisdiction, the assessor may carry forward any credit hours received in the previous position in excess of the number that would be necessary to be considered current in that position.

Within each six-year period following the appointment of a deputy assessor, the deputy assessor shall comply with this section except that upon the successful completion of ninety hours of classroom instruction of which at least sixty of the ninety hours are from courses requiring an examination upon conclusion of the course, the deputy assessor shall be certified by the director of revenue and finance as being eligible to remain in the position. If a deputy assessor fails to comply with this section, the deputy assessor shall be removed from the position until successful completion of the required hours of credit. If a deputy is appointed to the office of assessor, the hours of credit obtained as deputy pursuant to this section shall be credited to that individual as assessor and for the individual to be reappointed at the expiration of the term as assessor, that individual must obtain the credits which are necessary to total the number of hours for reappointment.

Each conference board shall include in the budget for the operation of the assessor's office funds sufficient to enable the assessor and any deputy assessor to obtain certification as provided in this section. The conference board shall also allow the assessor and any deputy assessor sufficient time off from their regular duties to obtain certification. The director of revenue and finance shall adopt rules pursuant to chapter 17A to implement and administer this section.

If the incumbent assessor is not reappointed as above provided, then not less than sixty days before the expiration of the term of said assessor, a new assessor shall be selected as provided in section 441.6.

In the event of the removal, resignation, death, or removal from the county of the said assessor, the conference board shall proceed to fill the vacancy by appointing an assessor to serve the unexpired term in the manner provided in section 441.6. Until the vacancy is filled, the chief deputy shall act as assessor, and in the event there be no deputy, in the case of counties the auditor shall act as assessor and in the case of cities having an assessor the city clerk shall act as assessor.

[C46, §405.6; C50, 54, 58, §405.6, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.8; 81 Acts, ch 143, §1]

86 Acts, ch 1245, §449; 87 Acts, ch 198, §6; 97 Acts, ch 158, §37

441.9 Removal of assessor.

The assessor may be removed by a majority vote of the conference board, after charges of misconduct, nonfeasance, malfeasance, or misfeasance in office shall have been substantiated at a public hearing, if same is demanded by the assessor by written notice served upon the chairperson of the conference board.

[C46, §405.7; C50, 54, 58, §405.7, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.9]

441.10 Examination and appointment of deputies — incumbents.

Immediately after the appointment of the assessor, and at other times as the conference board directs, one or more deputy assessors may be appointed by the assessor. Each appointment shall be made from either the list of eligible candidates provided by the director of revenue and finance, which shall contain only the names of those persons who achieve a score of seventy percent or greater on the examination administered by the director of revenue and finance, or the list of candidates eligible for appointment as city or county assessor. Examinations for the position of deputy assessor shall be conducted in the same manner as examinations for the position of city or county assessor.

Following the administration of the examination, the director of revenue and finance shall establish a register containing the names, in alphabetical order, of all individuals who are eligible for appointment as a deputy assessor. The test scores of individuals on the register shall be given to a city or county conference board upon request. All eligible individuals shall remain on the register for a period of two years following the date of certification granted by the director.

Incumbent deputy assessors who have served six consecutive years shall be placed on the register of individuals eligible for appointment as deputy assessor. In order to be appointed to the position of deputy assessor, the deputy assessor shall comply with the continuing education requirements. The number of credits required for certification as eligible for appointment as a deputy assessor in a jurisdiction other than where the deputy assessor is currently serving shall be prorated according to the percentage of the deputy assessor's term which is covered by the continuing education requirements of section 441.8. The credit necessary for certification for appointment is the product of ninety multiplied by the quotient of the number of months served of a deputy assessor's

term covered by the continuing education requirements of section 441.8 divided by seventy-two. If the number of credits necessary for certification for appointment as determined under this paragraph results in a partial credit hour, the credit hour shall be rounded to the nearest whole number.

The assessor may peremptorily suspend or discharge any deputy assessor under the assessor's direction upon written charges for neglect of duty, disobedience of orders, misconduct, or failure to properly perform the deputy assessor's duties. Within five days after delivery of written charges to the employee, the deputy assessor may appeal by written notice to the secretary or chairperson of the examining board. The board shall grant the deputy assessor a hearing within fifteen days, and a decision by a majority of the examining board is final. The assessor shall designate one of the deputies as chief deputy, and the assessor shall assign to each deputy the duties, responsibilities, and authority as is proper for the efficient conduct of the assessor's office.

[C46, §405.8; C50, 54, 58, §405.8, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.10; 82 Acts, ch 1169, §1]

88 Acts, ch 1228, §2; 89 Acts, ch 296, §60; 90 Acts, ch 1233, §28

441.11 Incumbent deputy assessors.

The director of revenue and finance shall grant a restricted certificate to any deputy assessor holding office as of January 1, 1976. A deputy assessor possessing such a certificate shall be considered eligible to remain in the deputy's present position provided continuing education requirements are met. To become eligible for another deputy assessor position, a deputy assessor presently holding office is required to obtain certification as provided for in sections 441.5 and 441.10. The number of credit hours required for certification as eligible for appointment as a deputy in a jurisdiction other than where the deputy is currently serving shall be prorated according to the completed portion of the deputy's six-year continuing education period.

[C46, §405.9; C50, 54, 58, §405.9, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.11]

90 Acts, ch 1233, §29; 97 Acts, ch 158, §38

441.12 Dog fee. Repealed by 83 Acts, ch 123, § 206, 209.

441.13 Office personnel.

Other office personnel shall be appointed by the assessor subject to the limitations of the annual budget as hereinafter provided. The assessor shall select field persons, so far as possible, from the eligible list of deputy assessors. Their compensation shall be fixed as provided in section 441.16. They shall serve at the pleasure of the assessor.

[C46, §405.10, 405.11; C50, 54, 58, §405.10, 405.11, 441.8; C62, 66, 71, 73, 75, 77, 79, 81, §441.13]

441.14 Repealed by 81 Acts, ch 117, § 1097. See § 331.322(5).

441.15 Bond.

Assessors and deputy assessors shall be required to furnish bond for the performance of their duties in such amount as the conference board may require and the cost thereof shall be provided for in the budget of the assessor and paid out of the assessment expense fund.

[C50, 54, 58, §441.6; C62, 66, 71, 73, 75, 77, 79, 81, §441.15]

441.16 Budget.

All expenditures under this chapter shall be paid as hereinafter provided.

Not later than January 1 of each year the assessor, the examining board, and the board of review, shall each prepare a proposed budget of all expenses for the ensuing fiscal year. The assessor shall include in the proposed budget the probable expenses for defending assessment appeals. Said budgets shall be combined by the assessor and copies thereof forthwith filed by the assessor in triplicate with the chairperson of the conference board.

Such combined budgets shall contain an itemized list of the proposed salaries of the assessor and each deputy, the amount required for field personnel and other personnel, their number and their compensation; the estimated amount needed for expenses, printing, mileage and other expenses necessary to operate the assessor's office, the estimated expenses of the examining board and the salaries and expenses of the local board of review.

Each fiscal year the chairperson of the conference board shall, by written notice, call a meeting of the conference board to consider the proposed budget and to comply with section 24.9.

At such meeting the conference board shall authorize:

1. The number of deputies, field personnel, and other personnel of the assessor's office.
2. The salaries and compensation of members of the board of review, the assessor, chief deputy, other deputies, field personnel, and other personnel, and determine the time and manner of payment.
3. The miscellaneous expenses of the assessor's office, the board of review and the examining board, including office equipment, records, supplies, and other required items.
4. The estimated expense of assessment appeals. All such expense items shall be included in the budget adopted for the ensuing year.

All tax levies and expenditures provided for

herein shall be subject to the provisions of chapter 24 and the conference board is hereby declared to be the certifying board.

Any tax for the maintenance of the office of assessor and other assessment procedure shall be levied only upon the property in the area assessed by said assessor and such tax levy shall not exceed forty and one-half cents per thousand dollars of assessed value in assessing areas where the valuation upon which the tax is levied does not exceed ninety-two million, six hundred thousand dollars; thirty-three and three-fourths cents per thousand dollars of assessed value in assessing areas where the valuation upon which the tax is levied exceeds ninety-two million, six hundred thousand dollars and does not exceed one hundred eleven million, one hundred twenty thousand dollars; twenty-seven cents per thousand dollars of assessed value in assessing areas where the valuation upon which the tax is levied exceeds one hundred eleven million, one hundred twenty thousand dollars. The county treasurer shall credit the sums received from such levy to a separate fund to be known as the "assessment expense fund" and from which fund all expenses incurred under this chapter shall be paid. In the case of a county where there is more than one assessor the treasurer shall maintain separate assessment expense funds for each assessor.

The county auditor shall keep a complete record of said funds and shall issue warrants thereon only on requisition of the assessor.

The assessor shall not issue requisitions so as to increase the total expenditures budgeted for the operation of the assessor's office. However, for purposes of promoting operational efficiency, the assessor shall have authority to transfer funds budgeted for specific items for the operation of the assessor's office from one unexpended balance to another; such transfer shall not be made so as to increase the total amount budgeted for the operation of the office of assessor, and no funds shall be used to increase the salary of the assessor or the salaries of permanent deputy assessors. The assessor shall issue requisitions for the examining board and for the board of review on order of the chairperson of each board and for costs and expenses incident to assessment appeals, only on order of the city legal department, in the case of cities and of the county attorney in the case of counties.

Unexpended funds remaining in the assessment expense fund at the end of a year shall be carried forward into the next year.

[R60, §730; C73, §390, 3810; C97, §592, 661, 674; S13, §592, 661, 674; SS15, §1056-b18; C24, 27, 31, 35, 39, §**5573, 5656, 5669, 6652, 6653;** C46, §359.48, 363.29, 363.43, 405.18, 419.38, 419.39, 441.5; C50, 54, 58, §405.18, 405A.4, 441.5, 442.12; C62, 66, 71, 73, 75, 77, 79, 81, §441.16; 82 Acts, ch 1079, §8]

DUTIES

441.17 Duties of assessor.

The assessor shall:

1. Devote full time to the duties of the assessor's office and shall not engage in any occupation or business interfering or inconsistent with such duties. This subsection does not preclude an assessor from being a candidate for elective office during the term of appointment as assessor. If an assessor is elected to a city or county office, to a statewide elective office, or to the general assembly, the assessor shall resign as assessor before the beginning of the term of the office to which the assessor was elected.

2. Cause to be assessed, in accordance with section 441.21, all the property in the assessor's county or city, except property exempt from taxation, or the assessment of which is otherwise provided for by law.

3. Have access to all public records of the county and, so far as practicable, make or cause to be made a careful examination of all such records and files in order to obtain all available information which may contribute to the accurate listing at its taxable value, and to the proper persons, of all property subject to assessment by the assessor.

4. Cooperate with the director of revenue and finance as may be necessary or required, and obey and execute all orders, directions, and instructions of the director of revenue and finance, insofar as the same may be required by law.

5. Have power to apply to the district court of the county for an order to examine witnesses and requiring the production of books and records of any person, firm, association or corporation within the county, whenever the assessor has reason to believe that such person, firm, association or corporation has not listed property as provided by law. The proceeding for the examination of witnesses and examination of the books and records of any such taxpayer, to determine the existence of taxable property, shall be instituted and conducted in the manner provided for the discovery of property under the provisions of chapter 630. The court shall make an appropriate finding as to the existence of taxable property not listed. All taxable property discovered thereby shall thereupon be assessed by the assessor in the manner provided by law.

In all cases where the court finds that the taxpayer has not listed the taxpayer's property, as provided by law, and in all hearings where the court decides a matter against the taxpayer, the costs shall be paid by the taxpayer, otherwise they shall be paid out of the assessment expense fund. The fees and mileage to be paid witnesses shall be the same as prescribed by law in proceedings in the district courts of this state in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said

taxpayer and the taxpayer's property and shall be collected in the same manner as are other taxes.

6. Make up all assessor's books and records as prescribed by the director of revenue and finance, turn the completed assessor's books and records required for the preparation of the tax list over to the county auditor each year when the board of review has concluded its hearings and the county auditor shall proceed with the preparation of the current year tax list and the assessor shall cooperate with the auditor in the preparation of the tax lists.

7. Submit on or before May 1 of each year completed assessment rolls to the board of review.

8. Lay before the board of review such information as the assessor may possess which will aid said board in performing its duties in adjusting the assessments to the valuations required by law.

9. Furnish to the director of revenue and finance any information which the assessor may have relative to the ownership of any property that may be assessable within this state, but not assessable or subject to being listed for taxation by the assessor.

10. Measure the exterior length and exterior width of all mobile homes and manufactured homes except those for which measurements are contained in the manufacturer's and importer's certificate of origin, and report the information to the county treasurer. Check all manufactured or mobile homes for inaccuracy of measurements as necessary or upon written request of the county treasurer and report the findings immediately to the county treasurer. The assessor shall make frequent inspections and checks within the assessor jurisdiction of all manufactured or mobile homes and manufactured home communities or mobile home parks and make all the required and needed reports to carry out the purposes of this section.

11. Cause to be assessed for taxation property which the assessor believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

[C51, §474, 475; R60, §735, 736; C73, §824, 825; C97, §1355, 1359, 1366; S13, §1355, 1366; C24, 27, 31, 35, 39, §**7108, 7114, 7122, 7123;** C46, §441.3, 441.9, 441.17, 441.18; C50, 54, 58, §405A.8, 441.4, 441.9, 441.12; C62, 66, 71, 73, 75, 77, 79, 81, §441.17]

83 Acts, ch 64, §2; 87 Acts, ch 84, §1; 89 Acts, ch 296, §61; 94 Acts, ch 1110, §20, 24; 2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80; 2002 Acts, ch 1088, §1, 2

Subsection 1 amended

441.18 Listing and valuation.

Each assessor shall, with the assistance of each person assessed, or who may be required by law to list property belonging to another, enter upon the assessment rolls the several items of property required to be entered for assessment. The assessor shall personally affix values to all property assessed by the assessor.

[C51, §473; R60, §733; C73, §822; C97, §1352; C24, 27, 31, 35, 39, §**7106;** C46, §405.19, 441.1; C50, 54, 58, §405.19, 405A.6, 405A.7, 441.10; C62, 66, 71, 73, 75, 77, 79, 81, §441.18]

441.19 Owner to assist — provisions for assessment.

The assessor shall list every person in the assessor's county or city as the case may be and assess all the property in the county or city, except property exempted or otherwise assessed. A person who refuses to assist in making out a list of the person's property, or of any property which the person is by law required to assist in listing, is guilty of a simple misdemeanor.

1. Supplemental and optional to the procedure for the assessment of property by the assessor as provided in this chapter, the assessor may require from all persons required to list their property for taxation as provided by sections 428.1 and 428.2, a supplemental return to be prescribed by the director of revenue and finance upon which the person shall list the person's property. The supplemental return shall be in substantially the same form as now prescribed by law for the assessment rolls used in the listing of property by the assessors. Every person required to list property for taxation shall make a complete listing of the property upon supplemental forms and return the listing to the assessor as promptly as possible. The return shall be verified over the signature of the person making the return and section 441.25 applies to any person making such a return. The assessor shall make supplemental return forms available as soon as practicable after the first day of January of each year. The assessor shall make supplemental return forms available to the taxpayer by mail, or at a designated place within the taxing district.

2. Upon receipt of such supplemental return from any person the assessor shall prepare a roll assessing such person as hereinafter provided. In the preparation of such assessment roll the assessor shall be guided not only by the information contained in such supplemental roll, but by any other information the assessor may have or which may be obtained by the assessor as prescribed by the law relating to the assessment of property. The assessor shall not be bound by any values as listed in such supplemental return, and may include in the assessment roll any property omitted from the supplemental return which in the knowledge and belief of the assessor should be listed as required by law by the person making the supplemental return. Upon completion of such roll the assessor shall deliver to the person submitting such supplemental return a copy of the assessment roll, either personally or by mail.

3. Any taxpayer aggrieved by the action of the assessor in the preparation of an assessment roll upon which a supplemental return has been made shall have the same rights and privileges of appeal as provided by law in connection with the assessment rolls prepared in entirety by the assessor, but no assessment rolls prepared by the assessor after receiving a supplemental return shall be deemed insufficient or invalid because of the fact that such assessment roll does not bear the signature of the person assessed, and the signature of the person listing property upon the supplemental return shall be deemed a signature on the roll as prepared by the assessor.

4. The supplemental returns herein provided for shall be preserved in the same manner as assessment rolls, but shall be confidential to the assessor, board of review, or director of revenue and finance, and shall not be open to public inspection, but any final assessment roll as made out by the assessor shall be a public record, provided that such supplemental return shall be available to counsel of either the person making the return or of the public, in case any appeal is taken to the board of review or to the court.

5. In the event of failure of any person required to list property to make a supplemental return, as required herein, on or before the fifteenth day of February of any year when such listing is required, the assessor shall proceed in the listing and assessment of the person's property as provided by this chapter, and no person subject to taxation shall be relieved of the person's obligation to list the person's property through failure to make a supplemental return as herein provided, and any roll prepared by the assessor after receiving a supplemental return or when prepared in accordance with other provisions of this chapter, shall be a valid assessment.

6. The provisions of this chapter relating to assessment rolls shall be applicable to the preparation of rolls upon which a supplemental return has been received, insofar as they are not in conflict with the provision of this section.

On or before February 15 of each year, each owner of industrial real estate shall submit to the local assessor a report listing by year of acquisition and by acquisition cost the owner's machinery as described in section 427A.1, subsection 1, paragraph *"e"*, and specifying any machinery added or removed during the preceding assessment year. A report containing an itemized list of machinery by year of acquisition and by acquisition cost shall be required only when deemed necessary by the assessor. The reports shall be submitted on forms prescribed by the director of revenue and finance or on forms submitted by the taxpayer and approved by the assessor which forms shall contain the same information as is required to be reported on forms prescribed by the director. If a person shall knowingly enter false information on the report, the person shall be guilty of a simple misdemeanor. Also, if a person refuses to file the report provided for in this paragraph, the assessor shall proceed in accordance with the provisions of section 441.24.

[C51, §477; R60, §734; C73, §823; C97, §1354; S13, §1354; [C24, 27, 31, 35, 39, §**7107;** C46, §441.2; C50, 54, 58, §441.11; C62, 66, 71, 73, 75, 77, 79, 81, §441.19]

89 Acts, ch 296, §62

441.20 Oath. Repealed by 89 Acts, ch 296, § 96.

441.21 Actual, assessed and taxable value.

1. *a.* All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.

b. The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. *"Market value"* is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

The actual value of special purpose tooling, which is subject to assessment and taxation as real property under section 427A.1, subsection 1, paragraph *"e"*, but which can be used only to manufacture property which is protected by one or more United States or foreign patents, shall not exceed the fair and reasonable exchange value between a willing buyer and a willing seller, assuming that the willing buyer is purchasing only the special purpose tooling and not the patent covering the property which the special purpose tooling is designed to manufacture nor the rights to manufacture the patented property. For purposes of this paragraph, special purpose tooling includes dies, jigs, fixtures, molds, patterns, and similar

property. The assessor shall not take into consideration the special value or use value to the present owner of the special purpose tooling which is designed and intended solely for the manufacture of property protected by a patent in arriving at the actual value of the special purpose tooling.

c. In assessing and determining the actual value of special purpose industrial property having an actual value of five million dollars or more, the assessor shall equalize the values of such property with the actual values of other comparable special purpose industrial property in other counties of the state. Such special purpose industrial property includes, but is not limited to chemical plants. If a variation of ten percent or more exists between the actual values of comparable industrial property having an actual value of five million dollars or more located in separate counties, the assessors of the counties shall consult with each other and with the department of revenue and finance to determine if adequate reasons exist for the variation. If no adequate reasons exist, the assessors shall make adjustments in the actual values to provide for a variation of ten percent or less. For the purposes of this paragraph, special purpose industrial property includes structures which are designed and erected for operation of a unique and special use, are not rentable in existing condition, and are incapable of conversion to ordinary commercial or industrial use except at a substantial cost.

d. Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

e. The actual value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property determined on the basis of its use for agricultural purposes capitalized at a rate of seven percent and applied uniformly among counties and among classes of property. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule.

f. In counties or townships in which field work on a modern soil survey has been completed since January 1, 1949, the assessor shall place emphasis upon the results of the survey in spreading the valuation among individual parcels of such agricultural property.

g. Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value, except agricultural property which shall be valued exclusively as provided in paragraph *"e"* of this subsection.

2. In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the good will or value of a business which uses the property as distinguished from the value of the property as property. However, in assessing property that is rented or leased to low-income individuals and families as authorized by section 42 of the Internal Revenue Code, as amended, and which section limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property. The assessor shall not consider any tax credit equity or other subsidized financing as income provided to the property in determining the assessed value. Upon adoption of uniform rules by the revenue department or succeeding authority covering assessments and valuations of such properties, said valuation on such properties shall be determined in accordance therewith for assessment purposes to assure uniformity, but such rules shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

3. *"Actual value"*, *"taxable value"*, or *"assessed value"* as used in other sections of the Code in relation to assessment of property for taxation shall mean the valuations as determined by this section; however, other provisions of the Code providing special methods or formulas for assessing or valuing specified property shall remain in effect, but this section shall be applicable to the extent consistent with such provisions. The assessor and department of revenue and finance shall disclose at the written request of the taxpayer all information in any formula or method used to determine the actual value of the taxpayer's property.

The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable or capricious; however, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by

the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

4. For valuations established as of January 1, 1979, the percentage of actual value at which agricultural and residential property shall be assessed shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus six percent of the amount so determined. However, if the difference between the dividend so determined for either class of property and the dividend for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is less than six percent, the 1979 dividend for the other class of property shall be the dividend as determined for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus a percentage of the amount so determined which is equal to the percentage by which the dividend as determined for the other class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is increased in arriving at the 1979 dividend for the other class of property. The divisor for each class of property shall be the total actual value of all such property in the state in the preceding year, as reported by the assessors on the abstracts of assessment submitted for 1978, plus the amount of value added to said total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. The director shall utilize information reported on abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, and each year thereafter, the percentage of actual value as equalized by the director of revenue and finance as provided in section 441.49 at which agricultural and residential property shall be assessed shall be calculated in accordance with the methods provided herein including the limitation of increases in agricultural and residential assessed values to the percentage increase of the other class of property if the other class increases less than the allowable limit adjusted to include the applicable and current values as equalized by the director of revenue and finance, except that any references to six percent in this subsection shall be four percent.

5. For valuations established as of January 1, 1979, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 7, shall be assessed as a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the total actual valuation for each class of property established for 1978, plus six percent of the amount so determined. The divisor for each class of property shall be the valuation for each class of property established for 1978, as reported by the assessors on the abstracts of assessment for 1978, plus the amount of value added to the total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. For valuations established as of January 1, 1979, property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be considered as one class of property and shall be assessed as a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1978 by the department of revenue, plus ten percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be the valuation established for 1978, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1979. For valuations established as of January 1, 1980, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 7, shall be assessed at a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section.

The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1979, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1979, plus four percent of the amount so determined. The divisor for each class of property shall be the total actual value of all such property in 1979, as equalized by the director of revenue pursuant to section 441.49, plus the amount of value added to the total actual value by the revaluation of existing properties in 1980. The director shall utilize information reported on the abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be assessed at a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1979 by the department of revenue, plus eight percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be the valuation established for 1979, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1980. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value as equalized by the director of revenue and finance as provided in section 441.49 at which commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 7, shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to six percent in this subsection shall be four percent. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value at which property valued by the department of revenue and finance pursuant to chapters 428, 433, 437, and 438 shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to ten percent in this subsection shall be eight percent. Beginning with valuations established as of January 1, 1979, and each year thereafter, property valued by the department of revenue and finance pursuant to chapter 434 shall also be assessed at a percentage of its actual value which percentage shall be equal to the percentage determined by the director of revenue and finance for commercial property, industrial property, or property valued by the department of revenue and finance pursuant to chapters 428, 433, 437, and 438, whichever is lowest.

6. Beginning with valuations established as of January 1, 1978, the assessors shall report the aggregate taxable values and the number of dwellings located on agricultural land and the aggregate taxable value of all other structures on agricultural land. Beginning with valuations established as of January 1, 1981, the agricultural dwellings located on agricultural land shall be valued at their market value as defined in this section and agricultural dwellings shall be valued as rural residential property and shall be assessed at the same percentage of actual value as is all other residential property.

7. For the purpose of computing the debt limitations for municipalities, political subdivisions and school districts, the term *"actual value"* means the *"actual value"* as determined by subsections 1 to 3 of this section without application of any percentage reduction and entered opposite each item, and as listed on the tax list as provided in section 443.2 as *"actual value"*.

Whenever any board of review or other tribunal changes the assessed value of property, all applicable records of assessment shall be adjusted to reflect such change in both assessed value and actual value of such property.

8. *a.* Any normal and necessary repairs to a building, not amounting to structural replacements or modification, shall not increase the taxable value of the building. This paragraph applies only to repairs of two thousand five hundred dollars or less per building per year.

b. Notwithstanding paragraph *"a"*, any construction or installation of a solar energy system on property classified as agricultural, residential, commercial, or industrial property shall not increase the actual, assessed and taxable values of the property for five full assessment years.

c. As used in this subsection, *"solar energy system"* means either of the following:

(1) A system of equipment capable of collecting and converting incident solar radiation or wind energy into thermal, mechanical or electrical energy and transforming these forms of energy by a separate apparatus to storage or to a point of use which is constructed or installed after January 1, 1978.

(2) A system that uses the basic design of the building to maximize solar heat gain during the cold season and to minimize solar heat gain in the hot season and that uses natural means to collect, store and distribute solar energy which is constructed or installed after January 1, 1981.

In assessing and valuing the property for tax purposes, the assessor shall disregard any market value added by a solar energy system to a building. The director of revenue and finance shall adopt rules, after consultation with the department of natural resources, specifying the types of equip-

ment and structural components to be included under the guidelines provided in this subsection.

9. Not later than November 1, 1979, and November 1 of each subsequent year, the director shall certify to the county auditor of each county the percentages of actual value at which residential property, agricultural property, commercial property, industrial property, and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 437, and 438 in each assessing jurisdiction in the county shall be assessed for taxation. The county auditor shall proceed to determine the assessed values of agricultural property, residential property, commercial property, industrial property, and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 437, and 438 by applying such percentages to the current actual value of such property, as reported to the county auditor by the assessor, and the assessed values so determined shall be the taxable values of such properties upon which the levy shall be made.

10. The percentage of actual value computed by the director for agricultural property, residential property, commercial property, industrial property and property valued by the department of revenue and finance pursuant to chapters 428, 433, 434, 437, and 438 and used to determine assessed values of those classes of property does not constitute a rule as defined in section 17A.2, subsection 11.

11. Beginning with valuations established on or after January 1, 1995, as used in this section, *"residential property"* includes all land and buildings of multiple housing cooperatives organized under chapter 499A and includes land and buildings used primarily for human habitation which land and buildings are owned and operated by organizations that have received tax-exempt status under section 501(c)(3) of the Internal Revenue Code and rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A.

12. Beginning with valuations established on or after January 1, 2002, as used in this section, *"agricultural property"* includes the real estate of a vineyard and buildings used in connection with the vineyard, including any building used for processing wine if such building is located on the same parcel as the vineyard.

[C97, §1305; S13, §1305; C24, 27, 31, 35, 39, §**7109;** C46, §441.4; C50, 54, 58, §441.13; C62, 66, 71, 73, 75, 77, 79, 81, §441.21; 81 Acts, ch 144, §1; 82 Acts, ch 1100, §22, ch 1159, §1 – 3, ch 1186, §4, 5]

83 Acts, ch 202, §22, 23; 84 Acts, ch 1223, §1; 88 Acts, ch 1116, §1; 89 Acts, ch 176, §1; 89 Acts, ch 296, §63; 95 Acts, ch 83, §28; 95 Acts, ch 157, §1; 96 Acts, ch 1034, §40; 97 Acts, ch 23, §51; 99 Acts, ch 114, §28; 2001 Acts, ch 119, §1; 2002 Acts, ch 1150, §13; 2002 Acts, ch 1153, §1, 2

Subsection 12 applies retroactively to assessment years beginning on or after January 1, 2002; 2002 Acts, ch 1153, §2

Subsections 5, 9, and 10 amended

NEW subsection 12

441.22 Forest and fruit-tree reservations.

Forest and fruit-tree reservations fulfilling the conditions of sections 427C.1 to 427C.13 shall be exempt from taxation. In all other cases where trees are planted upon any tract of land, without regard to area, for forest, fruit, shade, or ornamental purposes, or for windbreaks, the assessor shall not increase the valuation of the property because of such improvements.

[S13, §1400-l; C24, 27, 31, 35, 39, §**7110;** C46, §441.5; C50, 54, 58, §441.14; C62, 66, 71, 73, 75, 77, 79, 81, §441.22; 82 Acts, ch 1247, §3]

84 Acts, ch 1222, §8

441.23 Notice of valuation.

If there has been an increase or decrease in the valuation of the property, or upon the written request of the person assessed, the assessor shall, at the time of making the assessment, inform the person assessed, in writing, of the valuation put upon the taxpayer's property, and notify the person, if the person feels aggrieved, to appear before the board of review and show why the assessment should be changed. However, if the valuation of a class of property is uniformly decreased, the assessor may notify the affected property owners by publication in the official newspapers of the county. The owners of real property shall be notified not later than April 15 of any adjustment of the real property assessment.

[C97, §1356; C24, 27, 31, §7111; C35, §7111, 7129-e1; C39, §**7111, 7129.1;** C46, §441.6, 442.2; C50, 54, 58, §441.15, 442.2; C62, 66, 71, 73, 75, 77, 79, 81, §441.23]

92 Acts, ch 1073, §13

441.24 Refusal to furnish statement.

1. If a person refuses to furnish the verified statements required in connection with the assessment of property by the assessor, or to list the corporation's or person's property, the director of revenue and finance, or assessor, as the case may be, shall proceed to list and assess the property according to the best information obtainable, and shall add to the taxable valuation one hundred percent thereof, which valuation and penalty shall be separately shown, and shall constitute the assessment; and if the valuation of the property is changed by a board of review, or on appeal from a board of review, a like penalty shall be added to the valuation thus fixed.

2. However, all or part of the penalty imposed under this section may be waived by the board of review upon application to the board by the assessor or the property owner. The waiver or reduction in the penalty shall be allowed only on the valuation of real property against which the penalty has been imposed.

[C51, §475; R60, §734; C73, §823, 1318; C97, §1357; C24, 27, 31, 35, 39, §**7112;** C46, §441.7; C50, 54, 58, §441.16; C62, 66, 71, 73, 75, 77, 79, 81, §441.24]

89 Acts, ch 296, §64

441.25 False statement.

Any person making any verified statement or return, or taking any oath required by this title, who knowingly makes a false statement therein, shall be guilty of perjury.

[C97, §1358; C24, 27, 31, 35, 39, §**7113;** C46, §441.8; C50, 54, 58, §441.17; C62, 66, 71, 73, 75, 77, 79, 81, §441.25]

Perjury, punishment, §720.2

441.26 Assessment rolls and books.

The director of revenue and finance shall each year prescribe the form of assessment roll to be used by all assessors in assessing property, in this state, also the form of pages of the assessor's assessment book. The assessment rolls shall be in a form that will permit entering, separately, the names of all persons assessed, and shall also contain a notice in substantially the following form:

If you are not satisfied that the foregoing assessment is correct, you may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment, such protest to be confined to the grounds specified in section 441.37.

Dated: . . . . day of . . . . . (month), ... (year)

. . . . . .

County/City Assessor.

The notice in 1981 and each odd-numbered year thereafter shall contain a statement that the assessments are subject to equalization pursuant to an order issued by the director of revenue and finance, that the county auditor shall give notice on or before October 15 by publication in an official newspaper of general circulation to any class of property affected by the equalization order, and that the board of review shall be in session from October 15 to November 15 to hear protests of affected property owners or taxpayers whose valuations have been adjusted by the equalization order.

The assessment rolls shall be used in listing the property and showing the values affixed to the property of all persons assessed. The rolls shall be made in duplicate. The duplicate roll shall be signed by the assessor, detached from the original and delivered to the person assessed if there has been an increase or decrease in the valuation of the property. If there has been no change in the evaluation, the information on the roll may be printed on computer stock paper and preserved as required by this chapter. If the person assessed requests in writing a copy of the roll, the copy shall be provided to the person. The pages of the assessor's assessment book shall contain columns ruled and headed for the information required by this chapter and that which the director of revenue and finance deems essential in the equalization work of the director. The assessor shall return all assessment rolls and schedules to the county auditor, along with the completed assessment book, as provided in this chapter, and the county auditor shall carefully keep and preserve the rolls, schedules and book for a period of five years from the time of its filing in the county auditor's office.

Beginning with valuations for January 1, 1977 and each succeeding year, for each parcel of property entered in the assessment book, the assessor shall list the classification of the property.

[C51, §471, 473; R60, §732, 733; C73, §821; C97, §1360, 1361; S13, §1360, 1361; C24, 27, 31, 35, 39, §**7115, 7116, 7117, 7118;** C46, §405.20, 441.10, 441.11, 441.13; C50, 54, 58, §405.20, 441.18, 441.19, 441.20, 441.21; C62, 66, 71, 73, 75, 77, 79, 81, §441.26]

86 Acts, ch 1107, §1; 89 Acts, ch 296, §65; 2000 Acts, ch 1058, §56

441.27 Uniform assessment rolls.

The director of revenue and finance shall from time to time prepare and certify to each assessor such instructions as to a uniform method of making up the assessment rolls as the director of revenue and finance thinks necessary to secure a compliance with the law and uniform returns, which shall be printed upon each assessment roll, and also prepare instructions for the same purpose as to making up the assessment book, which shall be printed therein.

[C97, §1362; C24, 27, 31, 35, 39, §**7119;** C46, §441.14; C50, 54, 58, §441.22; C62, 66, 71, 73, 75, 77, 79, 81, §441.27]

441.28 Assessment rolls — change — notice to taxpayer.

The assessment shall be completed not later than April 15 each year. If the assessor makes any change in an assessment after it has been entered on the assessor's rolls, the assessor shall note on said roll, together with the original assessment, the new assessment and the reason for the change, together with the assessor's signature and the date of the change. Provided, however, in the event the assessor increases any assessment the assessor shall give notice in writing thereof to the taxpayer by mail prior to the meeting of the board of review. No changes shall be made on the assessment rolls after April 15 except by order of the board of review or by decree of court.

[C51, §471, 473; R60, §732, 733, 736; C73, §821, 825; C97, §1360, 1366; S13, §1360, 1366; C24, 27, 31, 35, 39, §**7115, 7122, 7123;** C46, §405.20, 441.10, 441.17, 441.18; C50, 54, 58, §405.20, 441.18, 441.25; C62, 66, 71, 73, 75, 77, 79, 81, §441.28]

441.29 Plat book — index system.

The county auditor shall furnish to each assessor a plat book on which shall be platted the lands and lots in the assessor's assessment district, showing on each subdivision or part thereof, written in ink or pencil, the name of the owner, the number of acres, or the boundary lines and distances in each, and showing as to each tract the number of acres to be deducted for railway right of way and for roads and for rights of way for public levees and open public drainage improvements.

The auditor of any county with the approval of the board of supervisors may establish a permanent real estate index number system with related tax maps for all real estate tax administration purposes, including the assessment, levy and collection of such taxes. Wherever in real property tax administration the legal description of tax parcels is required, such permanent number system may be adopted in addition thereto or in lieu thereof. If established, the permanent real estate index number system shall describe real estate by township, section, quarter section, block series and parcel; and the auditor shall prepare and maintain permanent real estate index number tax maps, which shall carry such numbers and reflect the legal description of each parcel of real estate and delineate it graphically; and the auditor shall prepare and maintain cross indexes of the numbers assigned under said system, with legal description of the real estate to which such numbers relate. Indexes and tax maps established as provided herein shall be open to public inspection.

[C51, §181; R60, §733; C73, §821; C97, §1364; C24, 27, 31, 35, 39, §**7120;** C46, §441.15; C50, 54, 58, §441.23; C62, 66, 71, 73, 75, 77, 79, 81, §441.29]

441.30 Completion of assessment — oath. Repealed by 99 Acts, ch 114, § 54.

441.31 Board of review.

1. The chairperson of the conference board shall call a meeting by written notice to all of the members of the board for the purpose of appointing a board of review for all assessments made by the assessor. The board of review may consist of either three members or five members. As nearly as possible this board shall include one licensed real estate broker and one registered architect or person experienced in the building and construction field. In the case of a county, at least one member of the board shall be a farmer. Not more than two members of the board of review shall be of the same profession or occupation and members of the board of review shall be residents of the assessor jurisdiction. The terms of the members of the board of review shall be for six years, beginning with January 1 of the year following their selection. In boards of review having three members the term of one member of the first board to be appointed shall be for two years, one member for four years and one member for six years. In the case of boards of review having five members, the term of one member of the first board to be appointed shall be for one year, one member for two years, one member for three years, one member for four years and one member for six years.

2. *a.* However, notwithstanding the board of review appointed by the county conference board pursuant to subsection 1, a city council of a city having a population of seventy-five thousand or more which is a member of a county conference board may provide, by ordinance, for a city board of review to hear appeals of property assessments by residents of that city. The members of the city board of review shall be appointed by the city council. The city shall pay the expenses incurred by the city board of review. However, if the city has a population of more than one hundred twenty-five thousand, the expenses incurred by the city board of review shall be paid by the county. All of the provisions of this chapter relating to the boards of review shall apply to a city board of review appointed pursuant to this subsection.

b. If a city having a population of more than one hundred twenty-five thousand abolishes its office of city assessor, the city may provide, by ordinance, for a city board of review or request the county conference board to appoint a ten-member county board of review. The initial ten-member county board of review established pursuant to this paragraph shall consist of the members of the city board of review and the county board of review who are serving unexpired terms of office. The members of the initial ten-member county board of review may continue to serve their unexpired terms of office and are eligible for reappointment for a six-year term. The ten-member county board of review created pursuant to this paragraph is in lieu of the boards of review provided for in subsection 1, but the professional and occupational qualifications of members shall apply.

3. Notwithstanding the requirements of subsection 1, the conference board or a city council which has appointed a board of review may increase the membership of the board of review by an additional two members if it determines that as a result of the large number of protests filed or estimated to be filed the board of review will be unable to timely resolve the protests with the existing number of members. If the board of review has ten members, not more than four additional members may be appointed by the conference board. The additional emergency members shall be appointed for a term set by the conference board or the city council but not for longer than two years. The conference board or the city council may extend the terms of the emergency members if it makes a similar determination as required for the initial appointment.

[R60, §739; C73, §829, 830, 832; C97, §1368, 1370, 1375, 1376; C24, 27, 31, 35, 39, §**7127, 7129,**

7137, 7138; C46, §441.21, 442.1, 442.12, 442.13; C50, 54, 58, §405.13, 405A.3, 442.1; C62, 66, 71, 73, 75, 77, 79, 81, §441.31]

86 Acts, ch 1230, §1; 88 Acts, ch 1043, §2; 95 Acts, ch 74, §1; 97 Acts, ch 22, §2, 3

441.32 Terms — vacancies.

The terms of the members of the board of review are for six years each except for the emergency members whose terms shall be set by the conference board for a period not to exceed two years. Members of this board may be removed by the conference board but only after a public hearing upon specified charges, if a hearing is requested by the member. A subsequent appointment, and an appointment to fill a vacancy, shall be made in the same way as the original selection. The board may subpoena witnesses and administer oaths.

[R60, §739; C73, §829, 830, 832; C97, §1368, 1370, 1375, 1376; C24, 27, 31, 35, 39, §**7127, 7129, 7137, 7138;** C46, §405.14, 441.21, 442.1, 442.12, 442.13; C50, 54, 58, §405.14, 441.3, 442.1; C62, 66, 71, 73, 75, 77, 79, 81, §441.32]

86 Acts, ch 1230, §2

441.33 Sessions of board of review.

The board of review shall be in session from May 1 through the period of time necessary to act on all protests filed under section 441.37 but not later than May 31 each year and for an additional period as required under section 441.37 and shall hold as many meetings as are necessary to discharge its duties. On or before May 31 in those years in which a session has not been extended as required under section 441.37, the board shall return all books, records and papers to the assessor except undisposed of protests and records pertaining to those protests. If it has not completed its work by May 31, in those years in which the session has not been extended under section 441.37, the director of revenue and finance may authorize the board of review to continue in session for a period necessary to complete its work, but the director of revenue and finance shall not approve a continuance extending beyond July 15. On or before May 31 or on the final day of any extended session required under section 441.37 or authorized by the director of revenue and finance, the board of review shall adjourn until May 1 of the following year. It shall adopt its own rules of procedure, elect its own chairperson from its membership, and keep minutes of its meetings. The board shall appoint a clerk who may be a member of the board or any other qualified person, except the assessor or any member of the assessor's staff. It may be reconvened by the director of revenue and finance. All undisposed protests in its hands on July 15 shall be automatically overruled and returned to the assessor together with its other records.

Within fifteen days following the adjournment of any regular or special session, the board of review shall submit to the director of revenue and finance, on forms prescribed by the director, a report of any actions taken during that session.

[R60, §739; C73, §829, 830, 832; C97, §1368, 1370, 1375, 1376; C24, 27, 31, 35, 39, §**7127, 7129, 7137, 7138;** C46, §405.15, 441.21, 442.1, 442.12, 442.13; C50, 54, 58, §405.15, 442.1, 442.12; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.33; 81 Acts, ch 145, §1]

87 Acts, ch 198, §7

441.34 Quarters — hours — expenses.

The board of review of assessments shall hold meetings in quarters provided by the board of supervisors. Said board shall be in session such hours each day and shall devote such time to its duties as may be necessary to the discharge of its duties and to accomplish substantial justice. The expenses of the board shall be included in the assessor's annual budget as provided hereafter.

[C39, §**7134.1;** C46, 50, 54, 58, §405.16, 405.17, 442.8; C62, 66, 71, 73, 75, 77, 79, 81, §441.34]

441.35 Powers of review board.

The board of review shall have the power:

1. To equalize assessments by raising or lowering the individual assessments of real property, including new buildings, made by the assessor.

2. To add to the assessment rolls any taxable property which has been omitted by the assessor.

3. To add to the assessment rolls for taxation property which the board believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

In any year after the year in which an assessment has been made of all of the real estate in any taxing district, it shall be the duty of the board of review to meet as provided in section 441.33, and where it finds the same has changed in value, to revalue and reassess any part or all of the real estate contained in such taxing district, and in such case, it shall determine the actual value as of January 1 of the year of the revaluation and reassessment and compute the taxable value thereof, and any aggrieved taxpayer may petition for a revaluation of the taxpayer's property, but no reduction or increase shall be made for prior years. If the assessment of any such property is raised, or any property is added to the tax list by the board, the clerk shall give notice in the manner provided in section 441.36, provided, however, that if the assessment of all property in any taxing district is raised the board may instruct the clerk to give immediate notice by one publication in one of the official newspapers located in the taxing district, and such published notice shall take the place of the mailed notice provided for in section 441.36, but all other provisions of said section shall apply. The decision of the board as to the foregoing matters shall be subject to appeal to the district court with-

in the same time and in the same manner as provided in section 441.38.

[C35, §7129-e1; C39, §**7129.1;** C46, 50, 54, 58, §405.21, 442.2; C62, 66, 71, 73, 75, 77, 79, 81, §441.35]

87 Acts, ch 84, §2; 89 Acts, ch 296, §66

441.36 Change of assessment — notice.

All changes in assessments authorized by the board of review, and reasons therefor, shall be entered in the minute book kept by said board and on the assessment roll. Said minute book shall be filed with the assessor after the adjournment of the board of review and shall at all times be open to public inspection. In case the value of any specific property or the entire assessment of any person, partnership, or association is increased, or new property is added by the board, the clerk shall give immediate notice thereof by mail to each at the post-office address shown on the assessment rolls, and at the conclusion of the action of the board therein the clerk shall post an alphabetical list of those whose assessments are thus raised and added, in a conspicuous place in the office or place of meeting of the board, and enter upon the records a statement that such posting has been made, which entry shall be conclusive evidence of the giving of the notice required. The board shall hold an adjourned meeting, with at least five days intervening after the posting of said notices, before final action with reference to the raising of assessments or the adding of property to the rolls is taken, and the posted notices shall state the time and place of holding such adjourned meeting, which time and place shall also be stated in the proceedings of the board.

[R60, §740; C73, §831; C97, §1371, 1372; S13, §1371, 1372; C24, 27, 31, 35, 39, §**7130, 7131;** C46, 50, 54, 58, §405.23, 442.3, 442.4; C62, 66, 71, 73, 75, 77, 79, 81, §441.36]

441.37 Protest of assessment — grounds.

1. Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment. In any county which has been declared to be a disaster area by proper federal authorities after March 1 and prior to May 20 of said year of assessment, the board of review shall be authorized to remain in session until June 15 and the time for filing a protest shall be extended to and include the period from May 25 to June 5 of such year. Said protest shall be in writing and signed by the one protesting or by the protester's duly authorized agent. The taxpayer may have an oral hearing thereon if request therefor in writing is made at the time of filing the protest. Said protest must be confined to one or more of the following grounds:

a. That said assessment is not equitable as compared with assessments of other like property in the taxing district. When this ground is relied upon as the basis of a protest the legal description and assessments of a representative number of comparable properties, as described by the aggrieved taxpayer shall be listed on the protest, otherwise said protest shall not be considered on this ground.

b. That the property is assessed for more than the value authorized by law, stating the specific amount which the protesting party believes the property to be overassessed, and the amount which the party considers to be its actual value and the amount the party considers a fair assessment.

c. That the property is not assessable, is exempt from taxes, or is misclassified and stating the reasons for the protest.

d. That there is an error in the assessment and state the specific alleged error.

e. That there is fraud in the assessment which shall be specifically stated.

In addition to the above, the property owner may protest annually to the board of review under the provisions of section 441.35, but such protest shall be in the same manner and upon the same terms as heretofore prescribed in this section.

2. A property owner or aggrieved taxpayer who finds that a clerical or mathematical error has been made in the assessment of the owner's or taxpayer's property may file a protest against that assessment in the same manner as provided in this section, except that the protest may be filed for previous years. The board may correct clerical or mathematical errors for any assessment year in which the taxes have not been fully paid or otherwise legally discharged.

Upon the determination of the board that a clerical or mathematical error has been made the board shall take appropriate action to correct the error and notify the county auditor of the change in the assessment as a result of the error and the county auditor shall make the correction in the assessment and the tax list in the same manner as provided in section 443.6.

The board shall not correct an error resulting from a property owner's or taxpayer's inaccuracy in reporting or failure to comply with section 441.19.

3. After the board of review has considered any protest filed by a property owner or aggrieved taxpayer and made final disposition of the protest, the board shall give written notice to the property owner or aggrieved taxpayer who filed the protest of the action taken by the board of review on the protest. The written notice to the property owner or aggrieved taxpayer shall also specify the reasons for the action taken by the board of review on the protest.

[R60, §740; C73, §831; C97, §1373; S13, §1373; C24, 27, 31, 35, 39, §**7132;** C46, 50, 54, 58, §405.22, 442.5; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.37;

81 Acts, ch 145, §2]
86 Acts, ch 1028, §1; 88 Acts, ch 1251, §2

441.38 Appeal to district court.

1. Appeals may be taken from the action of the board of review with reference to protests of assessment, to the district court of the county in which the board holds its sessions within twenty days after its adjournment or May 31, whichever date is later. No new grounds in addition to those set out in the protest to the board of review as provided in section 441.37 can be pleaded, but additional evidence to sustain those grounds may be introduced. The assessor shall have the same right to appeal and in the same manner as an individual taxpayer, public body or other public officer as provided in section 441.42. Appeals shall be taken by filing a written notice of appeal with the clerk of district court. Filing of the written notice of appeal shall preserve all rights of appeal of the appellant.

2. Notice of appeal shall be served as an original notice on the chairperson, presiding officer, or clerk of the board of review after the filing of notice under subsection 1 with the clerk of district court.

[R60, §738; C73, §827, 831; C97, §1367, 1373; S13, §1373; C24, 27, 31, 35, 39, §**7126, 7133;** C46, §441.20; C50, 54, 58, §405.24, 441.27, 442.6; C62, 66, 71, 73, 75, 77, 79, 81, §441.38]
87 Acts, ch 198, §8; 90 Acts, ch 1192, §1
Manner of service, R.C.P. 1.302 – 1.315

441.39 Trial on appeal.

The court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof. The court shall consider all of the evidence and there shall be no presumption as to the correctness of the valuation of assessment appealed from. Its decision shall be certified by the clerk of the court to the county auditor, and the assessor, who shall correct the assessment books accordingly.

[C97, §1373; S13, §1373; C24, 27, 31, 35, 39, §**7134;** C46, 50, 54, 58, §442.7; C62, 66, 71, 73, 75, 77, 79, 81, §441.39]

441.40 Costs, fees and expenses apportioned.

The clerk of the court shall likewise certify to the county treasurer the costs assessed by the court on any appeal from a board of review to the district court, in all cases where said costs are taxed against the board of review or any taxing body. Thereupon the county treasurer shall compute and apportion the said costs between the various taxing bodies participating in the proceeds of the collection of the taxes involved in any such appeal, and said treasurer shall so compute and apportion the various amounts which said taxing bodies are required to pay in proportion to the amount of taxes each of said taxing bodies is entitled to receive from the whole amount of taxes involved in each of such appeals. The said county treasurer shall deduct from the proceeds of all general taxes collected the amount of costs so computed and apportioned by the treasurer from the moneys due to each taxing body from general taxes collected. The amount so deducted shall be certified to each taxing body in lieu of moneys collected. Said county treasurer shall pay to the clerk of the district court the amount of said costs so computed, apportioned and collected by the treasurer in all cases now on file or hereafter filed in which said costs have not been paid.

[R60, §730; C73, §390, 3810; C97, §592, 661, 674; S13, §592, 661, 674; SS15, §1056-b18; C24, 27, 31, 35, §5573, 5656, 5669, 6652, 6653; C39, §**5573, 5656, 5669, 6652, 6653, 7134.1;** C46, §359.48, 363.29, 363.43, 419.38, 419.39, 442.8; C50, 54, 58, §405A.4, 442.8; C62, 66, 71, 73, 75, 77, 79, 81, §441.40]

441.41 Legal counsel.

In the case of cities having an assessor, the city legal department shall represent the assessor and board of review in all litigation dealing with assessments. In the case of counties, the county attorney shall represent the assessor and board of review in all litigation dealing with assessments. Any taxing body interested in the taxes received from such assessments may be represented by an attorney and shall be required to appear by attorney upon written request of the assessor to the presiding officer of any such taxing body. The conference board may employ special counsel to assist the city legal department or county attorney as the case may be.

[C39, §**7134.2;** C46, 50, 54, 58, §405.26, 442.9; C62, 66, 71, 73, 75, 77, 79, 81, §441.41]

441.42 Appeal on behalf of public.

Any officer of a county, city, township, drainage district, levee district, or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any property in the township, drainage district, levee district or city and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers.

Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, township, drainage district, levee district, or school district interested, and tried in the same manner, except that the notice of appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person required to return said property for assessment.

[S13, §1373; C24, 27, 31, 35, 39, §**7135;** C46, 50,

54, 58, §405.25, 442.10; C62, 66, 71, 73, 75, 77, 79, 81, §441.42]

441.43 Power of court.

Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease, or affirm the amount of the assessment appealed from.

[S13, §1373; C24, 27, 31, 35, 39, §**7136;** C46, 50, 54, 58, §405.24, 442.11; C62, 66, 71, 73, 75, 77, 79, 81, §441.43]

441.44 Notice of voluntary settlement.

No voluntary court settlement of an assessment appeal shall be valid unless written notice thereof shall first be served upon each of the taxing bodies interested in the taxes derived from such assessment.

[C46, 50, 54, 58, §405.27; C62, 66, 71, 73, 75, 77, 79, 81, §441.44]

441.45 Abstract to state department of revenue and finance.

The county assessor of each county and each city assessor shall, on or before July 1 of each year, make out and transmit to the department of revenue and finance an abstract of the real property in the assessor's county or city, as the case may be, and file a copy of the abstract with the county auditor, in which the assessor shall set forth:

1. The number of acres of land and the aggregate taxable values of the land, exclusive of city lots, returned by the assessors, as corrected by the board of review.
2. The aggregate taxable values of real estate by class in each township and city in the county, returned as corrected by the board of review.
3. Other facts required by the director of revenue and finance.

If a board of review continues in session beyond June 1, under sections 441.33 and 441.37, the abstract of the real property shall be made out and transmitted to the department of revenue and finance within fifteen days after the date of final adjournment by the board.

[R60, §741; C73, §833; C97, §1377; S13, §1361; C24, 27, 31, 35, 39, §**7117, 7139;** C46, 50, 54, 58, §441.20, 442.14; C62, 66, 71, 73, 75, 77, 79, 81, §441.45]

83 Acts, ch 140, §1; 89 Acts, ch 296, §67

441.46 Assessment date.

The assessment date of January 1 is the first date of an assessment year period which constitutes a calendar year commencing January 1 and ending December 31. All property tax statutes providing for tax exemptions or credits and requiring that a claim be filed, shall be construed to require the claims to be filed by July 1 of the assessment year. If no claim is required to be filed to procure an exemption or credit, the status of the property as exempt or taxable on July 1 of the fiscal year which commences during the assessment year determines its eligibility for exemption or credit. Any statute requiring proration of property taxes for any purpose shall be for the fiscal year, and the proration shall be based on the status of the property during the fiscal year.

The assessment date is January 1 for taxes for the fiscal year which commences six months after the assessment date and which become delinquent during the fiscal year commencing eighteen months after the assessment date.

[C77, 79, 81, §441.46]

97 Acts, ch 23, §52

441.47 Adjusted valuations.

The director of revenue and finance on or about August 15, 1977 and every two years thereafter shall order the equalization of the levels of assessment of each class of property in the several assessing jurisdictions by adding to or deducting from the valuation of each class of property such percentage in each case as may be necessary to bring the same to its taxable value as fixed in this chapter and chapters 427 to 443. The director shall adjust to actual value the valuation of any class of property as set out in the abstract of assessment when the valuation is at least five percent above or below actual value as determined by the director. For purposes of such value adjustments and before such equalization the director shall adopt, in the manner prescribed by chapter 17A, such rules as may be necessary to determine the level of assessment for each class of property in each county. The rules shall cover: (1) The proposed use of the assessment-sales ratio study set out in section 421.17, subsection 6; (2) the proposed use of any statewide income capitalization studies; (3) the proposed use of other methods that would assist the director in arriving at the accurate level of assessment of each class of property in each assessing jurisdiction.

[C51, §481, 482; R60, §742; C73, §834; C97, §1379; C24, 27, 31, 35, 39, §**7141;** C46, 50, 54, 58, §442.16; C62, 66, 71, 73, 75, 77, 79, 81, §441.47]

441.48 Notice of adjustment.

Before the director of revenue and finance shall adjust the valuation of any class of property any such percentage, the director shall serve ten days' notice by mail, on the county auditor of the county whose valuation is proposed to be adjusted and the director shall hold an adjourned meeting after such ten days' notice, at which time the county or assessing jurisdiction may appear by its city council or board of supervisors, city or county attorney, and other assessing jurisdiction, city or county officials, and make written or oral protest against such proposed adjustment, which protest shall consist simply of a statement of the error, or er-

rors, complained of with such facts as may lead to their correction, and at such adjourned meeting final action may be taken in reference thereto.

[C24, 27, 31, 35, 39, §**7142;** C46, 50, 54, 58, §405.23, 442.17; C62, 66, 71, 73, 75, 77, 79, 81, §441.48]

441.49 Adjustment by auditor.

The director shall keep a record of the review and adjustment proceedings and finish the proceedings on or before October 1 unless for good cause the proceedings cannot be completed by that date. The director shall notify each county auditor by mail of the final action taken at the proceedings and specify any adjustments in the valuations of any class of property to be made effective for the jurisdiction.

However, an assessing jurisdiction may request the director to permit the use of an alternative method of applying the equalization order to the property values in the assessing jurisdiction, provided that the final valuation shall be equivalent to the director's equalization order. The assessing jurisdiction shall notify the county auditor of the request for the use of an alternative method of applying the equalization order and the director's disposition of the request. The request to use an alternative method of applying the equalization order, including procedures for notifying affected property owners and appealing valuation adjustments, shall be made within ten days from the date the county auditor receives the equalization order and the valuation adjustments, and appeal procedures shall be completed by November 30 of the year of the equalization order. Compliance with the provisions of section 441.21 is sufficient grounds for the director to permit the use of an alternative method of applying the equalization order.

On or before October 15 the county auditor shall cause to be published in official newspapers of general circulation the final equalization order. The publication shall include, in type larger than the remainder of the publication, the following statement: "Assessed values are equalized by the department of revenue and finance every two years. Local taxing authorities determine the final tax levies and may reduce property tax rates to compensate for any increase in valuation due to equalization." Failure to publish the equalization order has no effect upon the validity of the orders.

The county auditor shall add to or deduct from the valuation of each class of property in the county the required percentage, rejecting all fractions of fifty cents or less in the result, and counting all fractions over fifty cents as one dollar. For any special charter city that levies and collects its own tax based on current year assessed values, the equalization percentage shall be applied to the following year's values, and shall be considered the equalized values for that year for purposes of this chapter.

The local board of review shall reconvene in special session from October 15 to November 15 for the purpose of hearing the protests of affected property owners or taxpayers within the jurisdiction of the board whose valuation of property if adjusted pursuant to the equalization order issued by the director of revenue and finance will result in a greater value than permitted under section 441.21. The board of review shall accept protests only during the first ten days following the date the local board of review reconvenes. The board of review shall limit its review to only the timely filed protests. The board of review may adjust all or a part of the percentage increase ordered by the director of revenue and finance by adjusting the actual value of the property under protest to one hundred percent of actual value. Any adjustment so determined by the board of review shall not exceed the percentage increase provided for in the director's equalization order. The determination of the board of review on filed protests is final, subject to review by the director of revenue and finance for the purpose of determining whether the board's actions substantially altered the equalization order. In making the review, the director has all the powers provided in chapter 421, and in exercising the powers the director is not subject to chapter 17A. Not later than fifteen days following the adjournment of the board, the board of review shall submit to the director of revenue and finance, on forms prescribed by the director, a report of all actions taken by the board of review during this session.

Not later than ten days after the date the final equalization order is issued, the city or county officials of the affected county or assessing jurisdiction may appeal the final equalization order to the state board of tax review. The appeal shall not delay the implementation of the equalization orders.

Tentative and final equalization orders issued by the director of revenue and finance are not rules as defined in section 17A.2, subsection 7.

[C51, §483; R60, §743; C73, §836; C97, §1382; S13, §1382; C24, 27, 31, 35, 39, §**7143;** C46, 50, 54, 58, §442.18; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.49; 81 Acts, ch 145, §3]

99 Acts, ch 167, §1

441.50 Appraisers employed.

The conference board shall have power to employ appraisers or other technical or expert help to assist in the valuation of property, the cost thereof to be paid in the same manner as other expenses of the assessor's office. The conference board may certify for levy annually an amount not to exceed forty and one-half cents per thousand dollars of assessed value of taxable property for the purpose of establishing a special appraiser's fund, to be used only for such purposes. From time to time the conference board may direct the transfer of any unex-

pended balance in the special appraiser's fund to the assessment expense fund.

[C50, 54, 58, §405.19, 405A.6; C62, 66, 71, 73, 75, 77, 79, 81, §441.50]

441.51 Repealed by 74 Acts, ch 1230, § 8, 9.

441.52 Failure to perform duty.

If any assessor or member of any board of review shall knowingly fail or neglect to make or require the assessment of property for taxation to be of and for its taxable value as provided by law or to perform any of the duties required of the assessor or member by law, at the time and in the manner specified, the assessor or member shall forfeit and pay the sum of five hundred dollars to be recovered in an action in the district court in the name of the county or in the name of the city as the case may be, and for its use, and the action against the assessor shall be against the assessor and the assessor's sureties.

[R60, §738; C73, §827; C97, §1367; C24, 27, 31, 35, 39, §**7126;** C46, 50, 54, 58, §405.29, 441.27; C62, 66, 71, 73, 75, 77, 79, 81, §441.52]

441.53 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

441.54 Construction.

Whenever in the laws of this state, the words *"assessor"* or *"assessors"* appear, singly or in combination with other words, they shall be deemed to mean and refer to the county or city assessor, as the case may be.

[C50, 54, 58, §441.29, 442.13; C62, 66, 71, 73, 75, 77, 79, 81, §441.54]

441.55 Conflicting laws.

If any of the provisions of this chapter shall be in conflict with any of the laws of this state, then the provisions of this chapter shall prevail.

[C62, 66, 71, 73, 75, 77, 79, 81, §441.55]

441.56 Assessor's duties — combined appointment.

When the duties of the county assessor are combined with the duties of another officer or employee as provided in section 331.323, subsection 1, the person named to perform the combined duties shall be appointed as provided in sections 441.5 to 441.8.

[C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.56; 81 Acts, ch 117, §1083]

441.57 Repealed by 79 Acts, ch 105, § 1.

441.58 to 441.64 Reserved.

441.65 through 441.71 Repealed by 90 Acts, ch 1236, § 54. See chapter 354.

441.72 Assessment of platted lots.

When a subdivision plat is recorded pursuant to chapter 354, the individual lots within the subdivision plat shall not be assessed in excess of the total assessment of the land as acreage or unimproved property for three years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in chapter 428 and this chapter. This section does not apply to special assessment levies.

90 Acts, ch 1236, §50

441.73 Litigation expense fund.

1. A litigation expense fund is created in the state treasury. The litigation expense fund shall be used for the payment of litigation expenses incurred by the state to defend property valuations established by the director of revenue and finance pursuant to section 428.24 and chapters 430A, 433, 434, 437, 437A, and 438, and for the payment of litigation expenses incurred by the state to defend the imposition of replacement taxes and statewide property taxes under chapter 437A.

2. If the director of revenue and finance determines that foreseeable litigation expenses will exceed the amount available from appropriations made to the department of revenue and finance, the director of revenue and finance may apply to the executive council for use of funds on deposit in the litigation expense fund. The initial application for approval shall include an estimate of potential litigation expenses, allocated to each of the next four succeeding calendar quarters and substantiated by a breakdown of all anticipated costs for legal counsel, expert witnesses, and other applicable litigation expenses.

3. The executive council may approve expenditures from the litigation expense fund on a quarterly basis. Prior to each quarter, the director of revenue and finance shall report to the executive council and give a full accounting of actual litigation expenses to date as well as estimated litigation expenses for the remaining calendar quarters of the fiscal year. The executive council may adjust quarterly expenditures from the litigation expense fund based on this information.

4. The executive council shall transfer for the fiscal year beginning July 1, 1992, and each fiscal year thereafter, from funds established in sections 405A.8, 425.1, and 426.1, an amount necessary to

pay litigation expenses. The amount of the fund for each fiscal year shall not exceed seven hundred thousand dollars. The executive council shall determine annually the proportionate amounts to be transferred from the three separate funds. At any time when no litigation is pending or in progress the balance in the litigation expense fund shall not exceed one hundred thousand dollars. Any excess moneys shall be transferred in a proportionate amount back to the funds from which they were originally transferred.

92 Acts, ch 1238, §37; 97 Acts, ch 23, §53; 98 Acts, ch 1194, §36, 40; 2002 Acts, ch 1150, §14
Subsection 1 amended

CHAPTER 442

SCHOOL FOUNDATION PROGRAM

Chapter repealed June 30, 1991; 87 Acts, ch 224, §81; see chapter 257

CHAPTER 442A

IOWA ADVANCE FUNDING AUTHORITY

Transferred to chapter 257C

CHAPTER 443

TAX LIST

443.1 Consolidated tax.
443.2 Tax list.
443.3 Correction — tax apportioned.
443.4 Tax list delivered — informality and delay.
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443.13 Action by treasurer — apportionment.
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443.17 Presumption of two-year ownership.
443.18 Real estate — duty of owner.
443.19 Irregularities, errors and omissions — effect.
443.20 Repealed by 81 Acts, ch 117, §1097.
443.21 Assessments certified to county auditor.
443.22 Uniform assessments mandatory.
443.23 Definition.
443.23A Definitions.

443.1 Consolidated tax.

All taxes which are uniform throughout any township or school district shall be formed into a single tax and entered upon the tax list in a single column, to be known as a consolidated tax, and each receipt shall show the percentage levied for each separate fund.

[C73, §838; C97, §1383; S13, §1383; C24, 27, 31, 35, 39, §**7144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.1]

443.2 Tax list.

Before the first day of July in each year, the county auditor shall transcribe the assessments of the townships and cities into a book or record, to be known as the tax list, properly ruled and headed, with separate columns, in which shall be entered the names of the taxpayers, descriptions of lands, number of acres and value, numbers of city lots and value, and each description of tax, with a column for polls and one for payments, and shall complete it by entering the amount due on each installment, separately, and carrying out the total of both installments. The total of all columns of each page of each book or other record shall balance with the tax totals. After computing the amount of tax due and payable on each property, the county auditor shall round the total amount of tax due and payable on the property to the nearest even whole dollar.

The county auditor shall list the aggregate actual value and the aggregate taxable value of all tax-

able property within the county and each political subdivision including property subject to the statewide property tax imposed under section 437A.18 on the tax list in order that the actual value of the taxable property within the county or a political subdivision may be ascertained and shown by the tax list for the purpose of computing the debt-incurring capacity of the county or political subdivision. As used in this section, *"actual value"* is the value determined under section 441.21, subsections 1 to 3, prior to the reduction to a percentage of actual value as otherwise provided in section 441.21. *"Actual value"* of property subject to statewide property tax is the assessed value under section 437A.18.

[C51, §486; R60, §745; C73, §837; C97, §1383; S13, §1383; C24, 27, 31, 35, 39, §**7145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.2; 82 Acts, ch 1151, §1]

84 Acts, ch 1195, §1; 89 Acts, ch 296, §68; 2000 Acts, ch 1114, §14, 18

Limitation on section, §445.15

443.3 Correction — tax apportioned.

At the time of transcribing said assessments into the tax list, the county auditor shall correct all transfers up to date and place the legal descriptions of all real estate in the name of the owner at said date as shown by the transfer book in the auditor's office. At the end of the list for each township or city the auditor shall make an abstract thereof, and apportion the consolidated tax among the respective funds to which it belongs, according to the amounts levied for each.

[C97, §1383; S13, §1383; C24, 27, 31, 35, 39, §**7146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.3]

443.4 Tax list delivered — informality and delay.

The county auditor shall make an entry upon the tax list showing what it is, for what county and year, and deliver it to the county treasurer on or before June 30, taking the treasurer's receipt therefor; and such list shall be a sufficient authority for the treasurer to collect the taxes therein levied. No informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, sales, or other proceedings for the collection of such taxes.

[C51, §487; R60, §748; C73, §843; C97, §1387; C24, 27, 31, 35, 39, §**7147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.4]

443.5 Aggregate valuations certified. Repealed by 84 Acts, ch 1195, § 3.

443.6 Corrections by auditor.

The auditor may correct any error in the assessment or tax list, and the assessor or auditor may assess and list for taxation any omitted property.

[R60, §747; C73, §841; C97, §1385; S13, §1385-b; C24, 27, 31, 35, 39, §**7149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.6]

443.7 Notice.

Before assessing and listing for taxation any omitted property, the assessor or auditor shall notify by mail the person in whose name the property is taxed, to appear before the assessor or auditor at the assessor's or auditor's office within ten days from the date of the notice and show cause, if any, why the correction or assessment should not be made.

[S13, §1385-b; C24, 27, 31, 35, 39, §**7150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.7]

86 Acts, ch 1241, §42

443.8 Right of appeal.

Should such party feel aggrieved at the action of said assessor or auditor the party shall have the right of appeal therefrom to the district court.

[S13, §1385-b; C24, 27, 31, 35, 39, §**7151;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.8]

443.9 Adjustment of accounts.

If such correction or assessment is made after the books or other records approved by the state auditor have passed into the hands of the treasurer, the treasurer shall be charged or credited therefor as the case may be. In the event such assessment of omitted property is made by the assessor after the tax records have passed into the hands of the auditor or treasurer, such correction or assessment shall be entered on the records by the auditor or treasurer.

[S13, §1385-b; C24, 27, 31, 35, 39, §**7152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.9]

443.10 Expense — report to supervisors.

All expense incurred in the making of said correction or assessment shall be borne pro rata by the funds which are affected by said correction and the proceedings shall be reported to the board of supervisors.

[S13, §1385-b; C24, 27, 31, 35, 39, §**7153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.10]

443.11 Procedure on appeal.

The appeal provided for in section 443.8 shall be taken within ten days from the time of the final action of the assessor or auditor, by a written notice to that effect to the assessor or auditor, and served as an original notice. The court on appeal shall hear and determine the rights of the parties in the same manner as appeals from the board of review, as prescribed in sections 441.39 and 441.43.

[S13, §1385-c; C24, 27, 31, 35, 39, §**7154;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.11]

Service of original notice, R.C.P. 1.302 – 1.315

443.12 Corrections by treasurer.

When property subject to taxation is withheld, overlooked, or from any other cause is not listed and assessed, the county treasurer shall, when apprised thereof, at any time within two years from the date at which such assessment should have been made, demand of the person, firm, corporation, or other party by whom the same should have been listed, or to whom it should have been assessed, or of the administrator thereof, the amount the property should have been taxed in each year the same was so withheld or overlooked and not listed and assessed, together with six percent interest thereon from the time the taxes would have become due and payable had such property been listed and assessed.

[C97, §1374; C24, 27, 31, 35, 39, §**7155;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.12]

99 Acts, ch 174, §3, 7

443.13 Action by treasurer — apportionment.

Upon failure to pay such sum within thirty days, with all accrued interest, the treasurer shall cause an action to be brought in the name of the treasurer for the use of the proper county, to be prosecuted by the county attorney, or such other person as the board of supervisors may appoint, and when such property has been fraudulently withheld from assessment, there shall be added to the sum found to be due a penalty of fifty percent upon the amount, which shall be included in the judgment. The amount thus recovered shall be by the treasurer apportioned ratably as the taxes would have been if they had been paid according to law.

[C97, §1374; C24, 27, 31, 35, 39, §**7156;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.13]

443.14 Duty of treasurer.

The treasurer shall assess any real property subject to taxation which may have been omitted by the assessor, board of review, or county auditor, and collect taxes thereon, and in such cases shall note, opposite the tract or lot assessed, the words "by treasurer".

[C51, §491; R60, §752; C73, §851; C97, §1398; C24, 27, 31, 35, 39, §**7157;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.14]

443.15 Time limit.

The assessment shall be made within two years after the tax list shall have been delivered to the treasurer for collection, and not afterwards, if the property is then owned by the person who should have paid the tax.

[C73, §851; C97, §1398; C24, 27, 31, 35, 39, §**7158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.15]

99 Acts, ch 174, §4, 7

443.16 Entry by treasurer — details required.

When the county treasurer makes an entry of taxes on the tax list, or an entry of the correction of a tax, the treasurer shall, immediately in connection with the entry, enter the year, month, day, hour, and minute when the entry was made.

[C31, 35, §7158-d1; C39, §**7158.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.16]

443.17 Presumption of two-year ownership.

In any action or proceeding, now pending or hereafter brought, to recover taxes upon property not listed or assessed for taxation during the lifetime of any decedent, it shall be presumed that any property, any evidence of ownership of property, and any evidence of a promise to pay, owned by a decedent at the date of the decedent's death, had been acquired and owned by such decedent more than two years before the date of the decedent's death; and the burden of proving that any such property had been acquired by such decedent less than two years before the date of the decedent's death shall be upon the heirs, legatees, and legal representatives of any such decedent.

[C35, §7158-f1; C39, §**7158.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.17]

99 Acts, ch 174, §5, 7

443.18 Real estate — duty of owner.

In all cases where real estate subject to taxation has not been assessed, the owner, or an agent of the owner, shall have the same done by the treasurer, and pay the taxes thereon; and if the owner fails to do so the treasurer shall assess the same and collect the tax assessed as the treasurer does other taxes.

[R60, §753; C73, §852; C97, §1399; C24, 27, 31, 35, 39, §**7159;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.18]

443.19 Irregularities, errors and omissions — effect.

No failure of the owner to have such property assessed or to have the errors in the assessment corrected, and no irregularity, error or omission in the assessment of such property, shall affect in any manner the legality of the taxes levied thereon, or affect any right or title to such real estate which would have accrued to any party claiming or holding under and by virtue of a deed executed by the treasurer as provided by this title,* had the assessment of such property been in all respects regular and valid.

[R60, §753; C73, §852; C97, §1399; C24, 27, 31, 35, 39, §**7160;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.19]

94 Acts, ch 1023, §54

*This provision does not include chapters 421B, 427C, 435, 452A, and 453A, which were moved into this title by the Code editor; chapters 421B, 427C, 435, 452A, and 453A contain the applicable provisions pertaining to those chapters

443.20 Repealed by 81 Acts, ch 117, § 1097.

443.21 Assessments certified to county auditor.

All assessors and assessing bodies, including the department of revenue and finance having authority over the assessment of property for tax purposes shall certify to the county auditor of each county the assessed values of all the taxable property in such county as finally equalized and determined, and the same shall be transcribed onto the tax lists as required by section 443.2.

[C71, 73, 75, 77, 79, 81, §443.21]

443.22 Uniform assessments mandatory.

All assessors and assessing bodies, including the department of revenue and finance having authority over the assessment of property for tax purposes, shall comply with sections 428.4, 428.29, 434.15, 438.13, 441.21, and 441.45. The department of revenue and finance having authority over the assessments, shall exercise its powers and perform its duties under section 421.17 and other applicable laws so as to require the uniform and consistent application of said section.

[C71, 73, 75, 77, 79, 81, §443.22]

84 Acts, ch 1195, §2

443.23 Definition.

As used in this chapter, unless the context otherwise requires, *"tax list"*, *"assessment list"*, *"book"*, or *"record"* kept by a county auditor, assessor, treasurer, or other county officer means the county system as defined in section 445.1.

92 Acts, ch 1073, §14

443.23A Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

See §443.23; corrective legislation is pending

CHAPTER 444

TAX LEVIES

CERTIFICATION OF TAXES

444.1 Basis for amount of tax.
444.2 Amounts certified in dollars.
444.3 Computation of rate.
444.4 Fractional rates disregarded.
444.5 Interpretative clause. Repealed by 83 Acts, ch 101, §129.
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COUNTY LEVIES

444.9 Repealed by 81 Acts, ch 117, §1097.
444.10 Repealed by 81 Acts, ch 117, §1097.
444.11 Repealed by 81 Acts, ch 117, §1097.
444.12 Repealed by 81 Acts, ch 117, §1097.
444.13 Repealed by 82 Acts, ch 1104, §61.
444.14 to 444.19 Reserved.

LEVIES BY DEPARTMENT OF REVENUE AND FINANCE

444.20 Repealed by 79 Acts, ch 68, §19.
444.21 General fund of the state.
444.22 Annual levy.
444.23 Rate certified to county auditor.
444.24 Reserved.

PROPERTY TAX LIMITATIONS

444.25 Property tax limitations for 1994 and 1995 fiscal years. Repealed by 97 Acts, ch 158, §48.
444.25A through 444.27 Repealed by 2002 Acts, ch 1119, §199.
444.28 Property tax limitation for 1995 fiscal year — exception. Repealed by 97 Acts, ch 121, §33; 97 Acts, ch 158, §48.

CERTIFICATION OF TAXES

444.1 Basis for amount of tax.

In all taxing districts in the state, including townships, school districts, cities and counties, when by law then existing the people are authorized to determine by vote, or officers are authorized to estimate or determine, a rate of taxation required for any public purpose, such rate shall in all cases be estimated and based upon the adjusted taxable valuation of such taxing district for

the preceding calendar year.

[C24, 27, 31, 35, 39, §**7162;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.1]

444.2 Amounts certified in dollars.

When an authorized tax rate within a taxing district, including townships, school districts, cities and counties, has been thus determined as provided by law, the officer or officers charged with the duty of certifying the authorized rate to the county auditor or board of supervisors shall, before certifying the rate, compute upon the adjusted taxable valuation of the taxing district for the preceding fiscal year, the amount of tax the rate will raise, stated in dollars, and shall certify the computed amount in dollars and not by rate, to the county auditor and board of supervisors.

[C24, 27, 31, 35, 39, §**7163;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.2]

83 Acts, ch 101, §90

444.3 Computation of rate.

When the valuations for the several taxing districts shall have been adjusted by the several boards for the current year, the county auditor shall thereupon apply such a rate, not exceeding the rate authorized by law, as will raise the amount required for such taxing district, and no larger amount. For purposes of computing the rate under this section, the adjusted taxable valuation of the property of a taxing district does not include the valuation of property of a railway corporation or its trustee which corporation has been declared bankrupt or is in bankruptcy proceedings. Nothing in the preceding sentence exempts the property of such railway corporation or its trustee from taxation and the rate computed under this section shall be levied on the taxable property of such railway corporation or its trustee.

[C24, 27, 31, 35, 39, §**7164;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.3; 82 Acts, ch 1207, §5, 6]

88 Acts, ch 1250, §19

444.4 Fractional rates disregarded.

If in adjusting the rate to be levied in any taxing district to conform to law, such rates shall make necessary the levying of a fraction of a cent, said fractional excess may be computed as one cent, which latter shall be the smallest required to be spread upon the tax lists for any purpose except rates applicable to a state purpose.

[C24, 27, 31, 35, 39, §**7166;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.4]

444.5 Interpretative clause. Repealed by 83 Acts, ch 101, § 129.

444.6 Record of rates.

On the determination by the auditor of the necessary rates as herein directed, it is made the auditor's duty to enter a record of such rates for each taxing district upon the permanent records of the auditor's office in a book to be kept for that purpose.

[C24, 27, 31, 35, 39, §**7168;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.6]

444.7 Excessive tax prohibited.

It is a simple misdemeanor for the board of supervisors to authorize, or the county auditor to carry upon the tax lists for any year, an amount of tax for a public purpose in excess of the amount certified or authorized as provided by law. The department of management shall prescribe and furnish the county auditors forms and instructions to aid them in determining the legality and authorized amount of tax levies. The county auditor shall reduce an excessive levy to the maximum amount authorized by law, and not in excess of the amount certified; and the county auditor shall not enter or carry a tax on the tax lists for an illegal levy.

[C24, 27, 31, 35, 39, §**7169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.7]

88 Acts, ch 1158, §75

444.8 Mandatory provisions.

The provisions of sections 444.1 to 444.7, and the methods of computation, certification, and levy therein provided shall be obligatory on all officers within the several counties of the state upon whom devolves the duty of determining, certifying, and levying taxes.

[C24, 27, 31, 35, 39, §**7170;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.8]

444.8A Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

COUNTY LEVIES

444.9 Repealed by 81 Acts, ch 117, § 1097. See chapter 331, div IV, part 2.

444.10 Repealed by 81 Acts, ch 117, § 1097.

444.11 Repealed by 81 Acts, ch 117, § 1097.

444.12 Repealed by 81 Acts, ch 117, § 1097. See chapter 331, div IV, part 2.

444.13 Repealed by 82 Acts, ch 1104, § 61.

444.14 to 444.19 Reserved.

LEVIES BY DEPARTMENT
OF REVENUE AND FINANCE

444.20 Repealed by 79 Acts, ch 68, § 19.

444.21 General fund of the state.
The amount derived from taxes levied for state general revenue purposes, and all other sources which are available for appropriations for general state purposes, and all other money in the state treasury which is not by law otherwise segregated, shall be established as a general fund of this state.
[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.21]

444.22 Annual levy.
In each year the director of revenue and finance shall fix the rate in percentage to be levied upon the assessed valuation of the taxable property of the state necessary to raise the amount for general state purposes as shall be designated by the department of management.
[S13, §1380-c; C24, 27, 31, 35, 39, §**7182;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.22]
91 Acts, ch 258, §52

444.23 Rate certified to county auditor.
The director of revenue and finance shall certify the rate so fixed to the auditor of each county.
[S13, §1380-d; C24, 27, 31, 35, 39, §**7183;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.23]

444.24 Reserved.

PROPERTY TAX LIMITATIONS

444.25 Property tax limitations for 1994 and 1995 fiscal years. Repealed by 97 Acts, ch 158, § 48.

444.25A through 444.27 Repealed by 2002 Acts, ch 1119, § 199.

444.28 Property tax limitation for 1995 fiscal year — exception. Repealed by 97 Acts, ch 121, § 33; 97 Acts, ch 158, § 48.

CHAPTER 445

TAX COLLECTION

445.1 Definition of terms.
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445.25 to 445.27 Repealed by 79 Acts, ch 68, §19.
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445.53 Taxes certified to another county.
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445.60 Refunding erroneous tax.
445.61 Sale for erroneous tax.
445.62 Abatement or refund in case of loss.
445.63 Abatement of taxes.

445.1 Definition of terms.

For the purpose of this chapter and chapters 446, 447, and 448, section 331.553, subsection 3, and sections 427.8 through 427.12 and 569.8:

1. *"Abate"* means to cancel in their entirety all applicable amounts.

2. *"Compromise"* means to enter into a contractual agreement for the payment of taxes, interest, fees, and costs in amounts different from those specified by law.

3. *"County system"* means a method of data storage and retrieval as approved by the auditor of state including, but not limited to, tax lists, books, records, indexes, registers, or schedules.

4. *"Parcel"* means each separate item shown on the tax list, manufactured or mobile home tax list, schedule of assessment, or schedule of rate or charge.

5. *"Rate or charge"* means an item, including rentals, legally certified to the county treasurer for collection as provided in sections 331.465, 331.489, 358.20, 364.11, 364.12, and 468.589 and section 384.84, subsection 3.

6. *"Taxes"* means an annual ad valorem tax, a special assessment, a drainage tax, a rate or charge, and taxes on homes pursuant to chapter 435 which are collectible by the county treasurer.

7. *"Total amount due"* means the aggregate total of all taxes, penalties, interest, costs, and fees due on a parcel.

[R60, §751; C73, §846; C97, §1390; C24, 27, 31, 35, 39, §**7184;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.1]

86 Acts, ch 1139, §2; 91 Acts, ch 191, §26; 92 Acts, ch 1163, §85; 93 Acts, ch 73, §5; 95 Acts, ch 57, §11; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

445.2 Duty of county treasurer.

The county treasurer, after making the entry provided in section 445.10, shall proceed to collect the ad valorem taxes, and the list referred to in chapter 443 is the treasurer's authority and justification against any illegality in the proceedings prior to receiving the list. The treasurer shall also collect, as far as practicable, the taxes remaining unpaid on the county system. If the taxes are not paid, the treasurer shall send a statement of delinquent taxes as part of the notice of tax sale as provided in section 446.9.

91 Acts, ch 191, §27

445.3 Actions authorized.

In addition to all other remedies and proceedings now provided by law for the collection of taxes, the county treasurer may bring or cause an ordinary suit at law to be commenced and prosecuted in the treasurer's name for the use and benefit of the county for the collection of taxes from any person, as shown by the county system in the treasurer's office, and the suit shall be in all respects commenced, tried, and prosecuted to final judgment the same as provided for ordinary actions.

The commencement of actions for ad valorem taxes authorized under this section shall not begin until the issuance of a tax sale certificate under the requirements of section 446.19. The commencement of actions for all other taxes authorized under this section shall not begin until ten days after the publication of tax sale under the requirements of section 446.9, subsection 2. This paragraph does not apply to the collection of ad valorem taxes under section 445.32, grain handling taxes under section 428.35, and moneys and credits taxes under chapter 430A.

Notwithstanding the provisions in section 535.3, interest on the judgment shall be at the rate provided in section 447.1 and shall commence from the month of the commencement of the action. This interest shall be in lieu of the interest assessed under section 445.39 from and after the month of the commencement of the action.

An appeal may be taken to the Iowa supreme court as in other civil cases regardless of the amount involved.

Notwithstanding any other provisions in this section, if the treasurer is unable or has reason to believe that the treasurer will be unable to offer land at the annual tax sale to collect the total amount due, the treasurer may immediately collect the total amount due by the commencement of an action under this section.

Notwithstanding any other provision of law, if a statute authorizes the collection of a delinquent tax, assessment, rate, or charge by tax sale, the tax, assessment, rate, or charge, including interest, fees, and costs, may also be collected under this section and section 445.4.

This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

[S13, §1452-a; C24, 27, 31, 35, 39, §**7186;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.3]

91 Acts, ch 191, §28; 92 Acts, ch 1016, §18, 19; 95 Acts, ch 57, §12

445.4 Statutes applicable — attachment — damages.

Chapter 639 is applicable to proceedings instituted by a county treasurer under section 445.3, and a writ of attachment shall be issued upon the treasurer complying with the provisions of chapter 639, for taxes, whether due or not due, except that a bond shall not be required from the treasurer or county in such cases, but the county shall be liable for damages only, as provided by section 639.14. The county attorney, upon request of the treasurer, shall assist in prosecution of actions authorized in this section.

This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

[S13, §1452-b; C24, 27, 31, 35, 39, §**7187;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.4]

91 Acts, ch 191, §29; 95 Acts, ch 57, §13

445.5 Statement and receipt.

1. As soon as practicable after receiving the tax list prescribed in chapter 443, the treasurer shall deliver to the titleholder a statement of taxes due and payable which shall include the following information:

a. The year of tax.

b. A description of the parcel.

c. The assessed value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year as valued by the assessor after application of any equalization orders.

d. The taxable value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year after application of any equalization orders, assessment limitations, and itemized valuation exemptions.

e. The complete name of all taxing authorities receiving a tax distribution, the amount of the distribution, and the percentage distribution for each named authority, listed from the highest to the lowest distribution percentage.

f. The consolidated levy rate for one thousand dollars of taxable valuation multiplied by the taxable valuation to produce the gross taxes levied before application of credits against levied taxes for the previous and current fiscal years.

g. The itemized credits against levied taxes deducted from the gross taxes levied in order to produce the net taxes owed for the previous and current fiscal years.

h. The amount of property tax dollars reduced on each parcel as a result of the moneys received from the property tax relief fund pursuant to section 426B.2, subsections 1 and 2.

i. The total amount of taxes levied by each taxing authority in the previous fiscal year and the current fiscal year and the difference between the two amounts, expressed as a percentage increase or decrease.

2. The county treasurer shall each year, upon request, deliver to the following persons or entities, or their duly authorized agents, a copy of the tax statement or tax statement information:

a. Contract purchaser.

b. Lessee.

c. Mortgagee.

d. Financial institution organized or chartered or holding an authorization certificate pursuant to chapter 524, 533, or 534.

e. Federally chartered financial institution.

The treasurer may negotiate and charge a reasonable fee not to exceed the cost of producing the information for the requestor for a tax statement or tax statement information provided by the treasurer.

3. A person other than those listed in subsection 2, who requests a tax statement or tax statement information, shall pay a fee to the treasurer at a rate not to exceed two dollars per parcel.

4. The county treasurer shall deliver to the taxpayer a receipt stating the year of tax, date of payment, a description of the parcel, and the amount of taxes, interest, fees, and costs paid except when payment of taxes is made by check, then a receipt shall be issued only upon request. The receipt shall be in full of the first half, second half, or full year amounts unless a payment is made under section 445.36A or 435.24, subsection 6.

[R60, §760; C73, §867; C97, §1405; C24, 27, 31, 35, 39, §**7188;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.5]

83 Acts, ch 156, §1, 2; 91 Acts, ch 191, §30; 97 Acts, ch 206, §22, 24; 98 Acts, ch 1186, §2, 3, 5; 99 Acts, ch 167, §2

445.6 Application to waive tax statement requirements.

For the fiscal years beginning July 1, 1998, and July 1, 1999, a county may apply to the director of the department of management for a deferral in implementing the property tax statement format requirements of section 445.5, subsection 1, paragraphs *"a"* through *"i"*. For the fiscal year beginning July 1, 1998, the application for deferral must be received by the department within thirty days of May 14, 1998. For the fiscal year beginning July 1, 1999, the application for deferral must be received by the department on or before January 1, 1999.

An application for deferral must outline in detail the reason why the county is requesting the deferral and why the county is unable to substantially comply with the tax statement format requirements of section 445.5, subsection 1. When

reviewing a county's application, the director shall, among other factors, consider whether or not the county contracts with, or otherwise uses the services of, accounting vendors or computer software vendors who have software that will facilitate the timely implementation of the tax statement format requirements of section 445.5, subsection 1. A presumption arises that these counties are capable of complying with the property tax statement format requirements of section 445.5, subsection 1. The director shall notify the county treasurer of the director's decision within thirty days of receipt of a deferral application from the county. If the director grants a deferral to a county, application of the property tax statement format requirements of section 445.5, subsection 1, is waived for that county.

A county granted a deferral pursuant to this section shall, for the fiscal year for which the deferral is granted, provide with the tax statement an enclosure detailing comparative property tax data for each taxing authority in the county. The comparative data shall include the total amount of taxes levied by each taxing authority in the previous fiscal year and the current fiscal year, the dollar amount difference between the two amounts, and that same difference expressed as a percentage increase or decrease. The comparative data enclosure shall also contain a statement that the county received from the state a deferral from the timely implementation of the tax statement format requirements.

For the purposes of this section and section 445.5, *"taxing authority"* means a public body which has the authority to certify a tax to be levied.

98 Acts, ch 1186, §4, 5

445.7 Distress warrant — form. Repealed by 91 Acts, ch 191, § 123, 124.

445.8 Delinquent personal tax list — distress warrant. Repealed by 91 Acts, ch 191, § 123, 124.

445.9 Record — contents. Repealed by 91 Acts, ch 191, § 123, 124.

445.10 Former delinquent taxes.

The county treasurer shall each year, after receiving the tax list referred to in chapter 443, enter into the county system a notation of delinquency for each parcel on which the tax remains unpaid for any previous year. Unless the delinquent tax is so entered it shall cease to be a lien upon that parcel. To preserve the tax lien it is only necessary to enter the notation for any parcel upon which it is a lien. If the county system is such that all delinquent taxes of any preceding year are automatically brought forward against each parcel on which the tax remains unpaid for any year, the treasurer is not required to make any further entry. Any sale for a delinquent tax not noted on the county system is invalid. However, this section does not require that in order to preserve the lien of tax and make the tax sale valid, delinquent taxes must be brought forward upon the county system if the tax list is received by the treasurer less than six months preceding the date of conducting the tax sale as provided in section 446.25 or 446.28.

[R60, §750; C73, §845; C97, §1389; S13, §1389-d; C24, 27, 31, 35, 39, §**7193;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.10]

91 Acts, ch 191, §31

Limitation on section, §445.15

445.11 Special assessment levy submitted.

When the levy of a special assessment is submitted to the county treasurer, in a format acceptable by the treasurer, the treasurer shall enter in the county system a description of each parcel affected, the date of the assessment, the total amount assessed, the installments to be paid, and the amounts of the respective installments if the assessment is payable in installments.

[C31, 35, §7193-d1; C39, §**7193.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §445.11; 81 Acts, ch 117, §1221]

91 Acts, ch 191, §32

445.12 Additional data for special assessments.

The county system may contain space for showing interest, if any, that may be incurred, a column showing payments and their amounts, a column showing the number of the receipt to be issued by the county treasurer, and a column that may be used to show the date of payment of the assessment, or any installment of it.

[C31, 35, §7193-d2; C39, §**7193.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.12]

91 Acts, ch 191, §33

445.13 Repealed by 81 Acts, ch 117, § 1244.

445.14 Entries on the county system.

The county treasurer shall each year, after receiving the tax list referred to in section 445.10, indicate on the county system that a special assessment is unpaid. This indication is not required if the county system automatically brings forward a notation of the unpaid special assessment.

[C31, 35, §7193-d4; C39, §**7193.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.14]

91 Acts, ch 191, §34

445.15 Limitations.

Nothing contained in sections 443.2 and 445.10 shall apply to special assessment levies.

[C31, 35, §7193-d5; C39, §**7193.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.15]

445.16 Abatement or compromise of tax.

If the county holds the tax sale certificate of purchase, the county, through the board of supervisors, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs. In the event of a compromise, the board of supervisors may enter into a written agreement with the owner of the legal title or with any lienholder for the payment of a stipulated sum in full satisfaction of all amounts included in that agreement. In addition, if a parcel is offered at regular tax sale and is not sold, the county, prior to public bidder sale to the county under section 446.19, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs, as provided in this section.

A copy of the agreement or resolution shall be filed with the county treasurer.

If the treasurer determines that it is impractical to pursue collection of the total amount due through the tax sale and the personal judgment remedies, the treasurer shall make a written recommendation to the board of supervisors to abate the amount due. The board of supervisors shall abate, by resolution, the amount due and direct the treasurer to strike the amount due from the county system.

[C27, 31, 35, §7193-a1; C39, §**7193.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.16]

91 Acts, ch 191, §35; 92 Acts, ch 1016, §20; 93 Acts, ch 73, §6; 95 Acts, ch 57, §14

445.17 Filing of compromise agreement. Repealed by 91 Acts, ch 191, § 123, 124. See § 445.16.

445.18 Effect of compromise payment or abatement.

When payment is made, as provided by the compromise agreement or when there is an abatement, all taxes included in the compromise agreement or abatement shall be deemed to be fully satisfied and canceled and the county treasurer shall show the satisfaction on the county system.

[C27, 31, 35, §7193-a3; C39, §**7193.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §445.18; 81 Acts, ch 117, §1223]

91 Acts, ch 191, §36

445.19 Compromising tax on personal property. Repealed by 91 Acts, ch 191, § 123, 124.

445.20 Penalty on unpaid taxes. Repealed by 91 Acts, ch 191, § 123, 124. See § 445.39.

445.21 Repealed by 79 Acts, ch 68, § 19.

445.22 Subsequent collection.

Any tax subsequently collected shall be apportioned according to the tax apportionment at the time of collection. However, this section does not apply to the payment of special assessments, or rates or charges.

[SS15, §1391; C24, 27, 31, 35, 39, §**7196;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.22]

91 Acts, ch 191, §37

445.23 Statement of taxes due.

Upon request, the county treasurer shall state in writing the full amount of taxes against a parcel, all sales for unpaid taxes, and the amount needed to redeem the parcel, if redeemable. If the person requesting the statement is not the titleholder of record or contract holder of record of the parcel, that person shall pay a fee at the rate of two dollars per parcel for each year for which information is requested, and the money shall be deposited in the county general fund.

[C73, §848; C97, §1393; C24, 27, 31, 35, 39, §**7197;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.23]

91 Acts, ch 191, §38; 92 Acts, ch 1016, §21

445.24 Effect of statement and receipt.

The statement received under section 445.23, with the county treasurer's receipt showing the payment of all the taxes specified in the statement, and the treasurer's certificate of redemption from the tax sales mentioned in the statement, is conclusive evidence for all purposes, and against all persons, that the parcel was, at the date of the receipt, free and clear of all taxes, and sales for taxes, except sales where the time of redemption had already expired and the tax purchaser had received the deed.

[C73, §849; C97, §1394; C24, 27, 31, 35, 39, §**7198;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.24]

84 Acts, ch 1221, §4; 91 Acts, ch 191, §39

445.25 to 445.27 Repealed by 79 Acts, ch 68, § 19. See § 445.23.

445.28 Tax lien.

Taxes upon a parcel are a lien on the parcel against all persons except the state. However, taxes upon the parcel are a lien on the parcel against the state and a political subdivision of the state which is liable for payment of taxes as a purchaser under section 427.18.

[C51, §495; R60, §759; C73, §853, 865; C97, §1400; S13, §1400; C24, 27, 31, 35, 39, §**7202;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.28]

91 Acts, ch 191, §40

445.29 Lien of personal taxes. Repealed by 91 Acts, ch 191, § 123, 124.

445.30 Lien between vendor and purchaser.

As against a purchaser, tax liens attach to a parcel on and after June 30 in each year.

[C97, §1400; S13, §1400; C24, 27, 31, 35, 39, §**7204;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.30]

91 Acts, ch 191, §41

445.31 Lien follows certain personal property. Repealed by 91 Acts, ch 191, § 123, 124.

445.32 Liens on buildings or improvements.

If a building or improvement is erected or made by a person other than the owner of the land on which the building or improvement is located, as provided for in section 428.4, the taxes on the building or improvement are and remain a lien on the building or improvement from the date of levy until paid. If the taxes on the building or improvement become delinquent, as provided in section 445.37, the county treasurer shall collect the tax as provided in sections 445.3 and 445.4. This section does not apply to special assessments, or rates or charges.

[S13, §1400; C24, 27, 31, 35, 39, §**7206;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.32]

91 Acts, ch 191, §42; 97 Acts, ch 158, §41

445.33 to 445.35 Repealed by 79 Acts, ch 68, § 19.

445.36 Payment — installments.

1. The taxes which become delinquent during the fiscal year are for the previous fiscal year.

2. A demand of taxes is not necessary, but every person subject to taxation shall attend at the office of the county treasurer and pay the taxes either in full, or one-half of the taxes before September 1 succeeding the levy, and the remaining half before March 1 following. However, if the first installment of taxes is delinquent and not paid as of February 1, the treasurer shall mail a notice to the taxpayer of the delinquency and the due date for the second installment. Failure to receive a mailed notice is not a defense to the payment of the total amount due. This section does not apply to special assessments, or rates or charges.

[C51, §492; R60, §756; C73, §857; C97, §1403; C24, 27, 31, 35, 39, §**7210;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.36]

89 Acts, ch 214, §3; 91 Acts, ch 191, §43; 98 Acts, ch 1107, §26; 2002 Acts, ch 1043, §5

Subsection 2 amended

445.36A Partial payments.

1. As an alternative to the semiannual or annual payment of taxes, the county treasurer may accept partial payments of taxes. A minimum payment amount shall be established by the treasurer. The treasurer shall transfer amounts from each taxpayer's account to be applied to each semiannual tax installment prior to the delinquency dates specified in section 445.37 and the amounts collected shall be apportioned by the tenth of the month following transfer. If, prior to the due date of each semiannual installment, the account balance is insufficient to fully satisfy the installment, the treasurer shall transfer and apply the entire account balance, leaving an unpaid balance of the installment. Interest shall attach on the unpaid balance in accordance with section 445.39. Unless funds sufficient to fully satisfy the delinquency are received, the treasurer shall collect the unpaid balance as provided in sections 445.3 and 445.4 and chapter 446. Any remaining balance in a taxpayer's account in excess of the amount needed to fully satisfy an installment shall remain in the account to be applied toward the next semiannual installment. Any interest income derived from the account shall be deposited in the county's general fund to cover administrative costs. The treasurer shall send a notice with the tax statement or by separate mail to each taxpayer stating that, upon request to the treasurer, the taxpayer may make partial payments of taxes.

2. Partial payment of taxes which are delinquent may be made to the county treasurer. A minimum payment amount shall be established by the treasurer. The minimum payment must be equal to or exceed the interest and costs attributed to the oldest delinquent installment of the tax and shall be apportioned in accordance with section 445.57. If the payment does not include the whole of any installment of the delinquent tax, the unpaid tax shall continue to accrue interest pursuant to section 445.39. Partial payment shall not be permitted in lieu of redemption if the property has been sold for taxes under chapter 446 and under any circumstances shall not constitute an extension of the time period for a sale under chapter 446.

Current year taxes may be paid at any time regardless of any outstanding prior year delinquent tax.

This section does not apply to the payment of manufactured or mobile home taxes, special assessments, or rates or charges.

90 Acts, ch 1080, §1; 91 Acts, ch 191, §44; 92 Acts, ch 1016, §22; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

445.37 When delinquent.

If the semiannual installment of any tax has not been paid before October 1 succeeding the levy, that amount becomes delinquent from October 1 after due. However, in those instances when the last day of September is a Saturday or Sunday, that amount becomes delinquent on the second

business day of October. If the second installment is not paid before April 1 succeeding its maturity, it becomes delinquent from April 1 after due. However, in those instances when the last day of March is a Saturday or Sunday, that amount becomes delinquent on the second business day of April. This paragraph applies to all taxes as defined in section 445.1, subsection 6.

However, if there is a delay in the delivery of the tax list referred to in chapter 443 to the county treasurer, the amount of ad valorem taxes and manufactured or mobile home taxes due shall become delinquent thirty days after the date of delivery or on the delinquent date of the first installment, whichever date occurs later. The delay shall not affect the due dates for special assessments and rates or charges. The delinquent date for special assessments and rates or charges is the same as the first installment delinquent date for ad valorem taxes, including any extension, in absence of a statute to the contrary.

To avoid interest on delinquent taxes, a payment must be received by the treasurer on or before the last business day of the month preceding the delinquent date, or mailed with appropriate postage and applicable fees paid, and a United States postal service postmark affixed to the payment envelope, with the postmark bearing a date preceding the delinquent date. Items returned to the sender by the United States postal service for insufficient postage or applicable fees shall be assessed interest, unless the appropriate postage and fees are paid and the items are postmarked again before the delinquent date. However, if the last calendar day of a month falls on a Saturday, Sunday, or a holiday, that amount becomes delinquent on the second business day of the following month.

To avoid interest on current or delinquent taxes, an electronic payment must be initiated by midnight on the last day of the month preceding the delinquent date.

[C97, §1403; C24, 27, 31, 35, 39, §**7211;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.37]

91 Acts, ch 191, §45; 92 Acts, ch 1016, §23; 95 Acts, ch 57, §15; 97 Acts, ch 121, §17; 2001 Acts, ch 45, §7; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1043, §6

Unnumbered paragraphs 1, 3, and 4 amended

445.38 Apportionment.

If ad valorem or manufactured or mobile home taxes are paid by installment, each of those payments shall be apportioned among the several funds for which taxes have been assessed in their proper proportions.

[C97, §1403; C24, 27, 31, 35, 39, §**7212;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.38]

91 Acts, ch 191, §46; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

445.39 Interest on delinquent taxes.

If the first installment of taxes is not paid by the delinquent date specified in section 445.37, the installment becomes due and draws interest of one and one-half percent per month until paid, from the delinquent date following the levy. If the last half is not paid by the delinquent date specified for it in section 445.37, the same interest shall be charged from the date the last half became delinquent. However, after April 1 in a fiscal year when late delivery of the tax list referred to in chapter 443 results in a delinquency date later than October 1 for the first installment, interest on delinquent first installments shall accrue as if delivery were made on the previous June 30. The interest imposed under this section shall be computed to the nearest whole dollar and the amount of interest shall not be less than one dollar. In calculating interest each fraction of a month shall be counted as an entire month. The interest percentage on delinquent special assessments and rates or charges is the same as that for the first installment of delinquent ad valorem taxes.

[C51, §495, 497; R60, §759, 760; C73, §865; C97, §1413; C24, 27, 31, 35, 39, §**7214;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.39]

85 Acts, ch 112, §1; 89 Acts, ch 214, §4; 91 Acts, ch 191, §47

445.40 Penalty on personal taxes. Repealed by 91 Acts, ch 191, § 123, 124.

445.41 When interest omitted.

Interest shall not be added to taxes levied by a court to pay a judgment on county, city, or school district indebtedness, other than the interest which that judgment may draw, nor upon taxes levied in aid of the construction of a railroad.

[C73, §866; C97, §1413; C24, 27, 31, 35, 39, §**7216;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.41]

91 Acts, ch 191, §48

445.42 through 445.46 Repealed by 91 Acts, ch 191, § 123, 124.

445.47 through 445.52 Repealed by 91 Acts, ch 191, § 123, 124. See § 445.2.

445.53 Taxes certified to another county.

In all cases of delinquent taxes, if the person upon whose property the taxes were levied has disposed of or removed the property and the treasurer of the county where the taxes were levied can find no property within that county against which those taxes can be collected, the treasurer of the county where those taxes are delinquent shall make out a certified abstract of the taxes and forward it to the treasurer of the county in which the person resides or has property, if the treasurer transmitting the abstract has reason to believe

that the delinquent taxes can be collected by that county.

[C73, §861; C97, §1409; SS15, §1409; C24, 27, 31, 35, 39, §**7228;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.53]

91 Acts, ch 191, §49

445.54 Collection in such case.

The county treasurer forwarding and the one receiving said abstract shall each keep a record of it, and, upon receipt and filing in the office of the treasurer to whom sent, it shall have the effect of a levy of taxes in that county, and the collection shall proceed in the same manner as in the collection of other taxes.

[C73, §862; C97, §1410; C24, 27, 31, 35, 39, §**7229;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.54]

91 Acts, ch 191, §50

445.55 Fees collectible.

The county treasurer collecting taxes so certified into another county shall, in addition to the interest, fees, and costs on delinquent taxes, assess a collection fee of twenty percent on the whole amount of the taxes, inclusive of the interest, fees, and costs on the taxes.

[C73, §863; C97, §1411; C24, 27, 31, 35, 39, §**7230;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.55]

91 Acts, ch 191, §51

445.56 Return.

The county treasurer receiving the abstract shall, upon collection, forward the amount to the treasurer of the county where the taxes were levied, less the collection fee provided in section 445.55.

The treasurer receiving the abstract shall, when in the treasurer's opinion the taxes are uncollectible, return the abstract with the endorsement *"uncollectible"* on it. In such case, when it is administratively impractical to collect the tax, the board of supervisors shall compromise or abate the tax, interest, and costs.

[C73, §864; C97, §1412; C24, 27, 31, 35, 39, §**7231;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.56]

91 Acts, ch 191, §52

445.57 Monthly apportionment.

On or before the tenth day of each month, the county treasurer shall apportion all taxes collected during the preceding month, except partial payment amounts collected pursuant to section 445.36A, subsection 1 and section 435.24, subsection 6, paragraph *"a"*, among the several funds to which they belong according to the amount levied for each fund, and shall apportion the interest, fees, and costs on the taxes to the general fund, and shall enter those amounts upon the treasurer's cash account, and report the amounts to the county auditor.

The county treasurer shall apportion all interest and penalties on the replacement taxes and special utility property tax levies collected by the county treasurer to the general fund. Replacement taxes collected by the county treasurer shall be apportioned as set forth in this section.

[C73, §868; C97, §1415; S13, §1415; C24, 27, 31, 35, 39, §**7232;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.57]

91 Acts, ch 191, §53; 2000 Acts, ch 1114, §15, 18

445.58 Misapplied interest or penalty. Repealed by 91 Acts, ch 191, § 123, 124.

445.59 Record of separate funds. Repealed by 91 Acts, ch 191, § 123, 124.

445.60 Refunding erroneous tax.

The board of supervisors shall direct the county treasurer to refund to the taxpayer any tax or portion of a tax found to have been erroneously or illegally paid, with all interest, fees, and costs actually paid. A refund shall not be ordered or made unless a claim for refund is presented to the board within two years of the date the tax was due, or if appealed to the board of review, the state board of tax review, or district court, within two years of the final decision.

[R60, §762; C73, §870; C97, §1417; C24, 27, 31, 35, 39, §**7235;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.60]

88 Acts, ch 1140, §1; 91 Acts, ch 191, §54; 99 Acts, ch 174, §6, 7

445.61 Sale for erroneous tax.

If a parcel subject to taxation is sold for the payment of such erroneous tax, interest, fees, or costs, the error or irregularity in the tax may be corrected at any time provided in this chapter, but this correction does not affect the validity of the sale or the right or title conveyed by a county treasurer's deed, if the parcel was subject to taxation for any of the purposes for which any portion of the taxes for which the parcel was sold was levied, and the taxes were not paid before the sale, or the parcel redeemed from sale.

[R60, §762; C73, §870; C97, §1417; C24, 27, 31, 35, 39, §**7236;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.61]

91 Acts, ch 191, §55

445.62 Abatement or refund in case of loss.

The board of supervisors has the authority to abate or refund in whole or in part the taxes of any person whose buildings, crops, stock, or other property has been destroyed by fire, tornado, or other unavoidable casualty, if that property has

not been sold for taxes, or if the taxes have not been delinquent for thirty days at the time of the destruction. The loss for which abatement or refund is allowed shall be only that amount which is not covered by insurance. The loss of capital stock in a bank operated within the state and the making and paying of a stock assessment for the year that stock was assessed for taxation is a destruction within the meaning of this section.

[R60, §818; C73, §800; C97, §1307; C24, 27, 31, 35, 39, §**7237;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.62]

91 Acts, ch 191, §56

445.63 Abatement of taxes.

When taxes are owing against a parcel owned or claimed by the state or a political subdivision of this state and the taxes were owing before the parcel was acquired by the state or a political subdivision of this state, the county treasurer shall give notice to the appropriate governing body which shall pay the amount of the taxes due. If the governing body fails to immediately pay the taxes due, the board of supervisors shall abate all of the taxes.

87 Acts, ch 126, §1; 91 Acts, ch 191, §57

CHAPTER 446

TAX SALES

For definitions applicable to chapter, see §445.1

446.1 Sale shown.
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446.4 Notice of time and place of sale. Repealed by 91 Acts, ch 191, §123, 124.
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446.28 Subsequent sale.
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446.31 Assignment — presumption from deed recitals.
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446.34 School, agricultural college, or university land.
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446.37 Failure to obtain deed — cancellation of sale.
446.38 Suspended taxes of old-age assistance recipients.
446.39 Iowa finance authority statement.
446.40 through 446.44 Reserved.
446.45 Applicable law.

446.1 Sale shown.

The county treasurer shall designate on the county system each parcel sold for taxes and not redeemed, by noting on the county system the year in which it was sold.

[C73, §842; C97, §1386; C24, 27, 31, 35, 39, §**7238;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.1; 81 Acts, ch 117, §1224]

91 Acts, ch 191, §58

446.2 Notice of sale.

For each parcel sold, the county treasurer shall notify the party in whose name the parcel was taxed, according to the treasurer's records at the time of sale, that the parcel was sold at tax sale. The notice of sale shall be sent by regular mail within fifteen days from the date of the annual tax sale or any adjourned tax sale. Failure to receive a mailed notice is not a defense to payment of the

total amount due.

[C73, §847; C97, §1392; C24, 27, 31, 35, 39, §**7239;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.2]

91 Acts, ch 191, §59; 93 Acts, ch 73, §7; 98 Acts, ch 1107, §27

446.3 Sale of personal property. Repealed by 91 Acts, ch 191, § 123, 124.

446.4 Notice of time and place of sale. Repealed by 91 Acts, ch 191, § 123, 124.

446.5 Time of sale — adjournment. Repealed by 91 Acts, ch 191, § 123, 124.

446.6 Surplus. Repealed by 91 Acts, ch 191, § 123, 124.

446.7 Annual tax sale.

Annually, on the third Monday in June the county treasurer shall offer at public sale all parcels on which taxes are delinquent. The sale shall be made for the total amount of taxes, interest, fees, and costs due. If for good cause the treasurer cannot hold the annual tax sale on the third Monday of June, the treasurer may designate a different date in June for the sale.

Parcels against which the county holds a tax sale certificate or a municipality holds a tax sale certificate acquired under section 446.19, parcels of municipal and political subdivisions of the state of Iowa, parcels held by a city or county agency or the Iowa finance authority for use in an Iowa homesteading project, or parcels of the state or its agencies, shall not be offered or sold at tax sale and a tax sale of those parcels is void from its inception. When taxes are owing against parcels owned or claimed by a municipal or political subdivision of the state of Iowa, parcels held by a city or county agency or the Iowa finance authority for use in an Iowa homesteading project, or parcels of the state or its agencies, the treasurer shall give notice to the appropriate governing body which shall then pay the total amount due. If the governing body fails to pay the total amount due, the board of supervisors shall abate the total amount due.

[C51, §496; R60, §763; C73, §871; C97, §1418; C24, 27, 31, 35, 39, §**7244;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.7]

83 Acts, ch 101, §91; 83 Acts, ch 123, §182, 209; 84 Acts, ch 1221, §5; 91 Acts, ch 191, §60; 93 Acts, ch 73, §8; 99 Acts, ch 4, §1, 4

1999 amendment to unnumbered paragraph 1 applies to tax sales held on or after February 17, 1999; 99 Acts, ch 4, §4

446.8 Repealed by 81 Acts, ch 117, § 1244.

446.9 Notice of sale — service — publication — costs.

1. A notice of the date, time, and place of the annual tax sale shall be served upon the person in whose name the parcel subject to sale is taxed. The county treasurer shall serve the notice by sending it by regular first class mail to the person's last known address not later than May 1 of each fiscal year. The notice shall contain a description of the parcel to be sold which is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. It shall also contain the amount of delinquent taxes for which the parcel is liable each year, the amount of the interest, fees, and the amount of the service fee as provided in section 446.10, subsection 2, all to be incorporated as a single sum. The notice shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

2. Publication of the date, time, and place of the annual tax sale shall be made once by the treasurer in at least one official newspaper in the county as selected by the board of supervisors and designated by the treasurer at least one week, but not more than three weeks, before the day of sale. The publication shall contain a description of the parcel to be sold that is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. All items offered for sale pursuant to section 446.18 may be indicated by an *"s"* or by an asterisk. The publication shall also contain the name of the person in whose name the parcel to be sold is taxed, the amount delinquent for which the parcel is liable each year, the amount of the interest, fees, and the service fee as provided in section 446.10, subsection 2, all to be incorporated as a single sum. The publication shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

3. In addition to the notice required by subsection 1 and the publication required by subsection 2, the treasurer shall send, at least one week but not more than three weeks before the day of sale, a notice of sale in the form prescribed by subsection 1, by regular first class mail to any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor of the parcel who has a recorded lease or memorandum of a recorded lease, and to any other person who has an interest of record in the parcel, if the mortgagee, vendor, lessor, or other person having an interest of record has done both of the following:

a. Requested on a form prescribed by the treasurer that notice of sale be sent to the person.

b. Filed the request form with the treasurer at least one month prior to the date of sale, together with a fee of twenty-five dollars per parcel.

The request for notice is valid for a period of five years from the date of filing with the treasurer. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection.

4. Notice required by subsections 1 and 3 shall be deemed completed when the notice is enclosed in a sealed envelope with the proper postage on the envelope, is addressed to the person entitled to receive it at the person's last known mailing address, and is deposited in a mail receptacle provided by the United States postal service. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

5. If, for good cause, a parcel is not included in the publication specified in subsection 2, notice shall be given by publication or by posting a description of the parcel and the date, time, and place of the tax sale in the treasurer's office for two weeks before the regular or any adjourned tax sale and, at the time of the publication or posting, by mailing the notice required in subsection 1.

[C51, §498; R60, §764; C73, §872 – 874, 3833; C97, §1419; S13, §1419; C24, 27, 31, 35, 39, §**7246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.9]

84 Acts, ch 1221, §6; 86 Acts, ch 1139, §4; 89 Acts, ch 214, §5; 91 Acts, ch 191, §61; 92 Acts, ch 1016, §24; 97 Acts, ch 121, §18; 98 Acts, ch 1107, §28; 99 Acts, ch 4, §2, 4; 2002 Acts, ch 1043, §7, 8

1999 amendments to subsections 1 and 2 apply to tax sales held on or after February 17, 1999; 99 Acts, ch 4, §4

Subsections 1 and 2 amended

NEW subsection 5

446.10 Publication costs and service fees.

1. The compensation for publication shall not exceed four dollars for each separately described parcel and shall be paid by the county.

2. A service fee not to exceed four dollars shall be collected as a fee for sale notice preparation and deposited into the county general fund. If the taxes are paid before the date of sale, the service fee shall be included as a part of the costs of collecting the taxes.

[C51, §498; R60, §764; C73, §873, 3833; C97, §1419; S13, §1419; C24, 27, 31, 35, 39, §**7247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.10]

86 Acts, ch 1139, §5; 91 Acts, ch 191, §62; 2002 Acts, ch 1043, §9

Section amended

446.11 Substituted service.

If the county treasurer cannot procure the publication of the notice for the sum specified in section 446.10, the notice may be given by posting it in the treasurer's office for two weeks.

[C51, §498; R60, §764; C73, §873, 3833; C97, §1419; S13, §1419; C24, 27, 31, 35, 39, §**7248;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.11]

91 Acts, ch 191, §63

446.12 Certificate of publication.

The county treasurer shall obtain a copy of the notice of sale with a certificate of its publication from the printer or publisher, and file it in the office of the treasurer. The certificate shall be substantially in the following form:

I, ... , publisher (or printer) of the . . . . . , a newspaper printed and published in the county of . . . . . and state of Iowa, certify that the foregoing notice and list were published in that newspaper on the . . . . . day of . . . . . , ... , and that copies of each issue of the paper in which the notice and list were published were delivered by carrier or transmitted by mail to each of the subscribers to the paper.

. . . . . .
Signature of publisher (or printer)

State of Iowa,)
. . . . . County.) ss.

The above certificate of publication was subscribed and sworn to before me by the above named . . . . . , who is personally known to me to be the identical person described in the certificate, on the . . . . . day of . . . . . , ...

. . . . . .
Notary
. . . . . County, Iowa.

[C51, §500; R60, §771; C73, §881; C97, §1420; C24, 27, 31, 35, 39, §**7249;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.12]

86 Acts, ch 1139, §6; 91 Acts, ch 191, §64

446.13 Method of describing parcels, etc.

In entries required to be made by the county auditor, county treasurer, or other officer, letters and figures may be used to denote townships, ranges, sections, parts of sections, lots, blocks, dates, and the amount of taxes, interest, fees, and costs.

[R60, §770; C73, §880; C97, §1421; C24, 27, 31, 35, 39, §**7250;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.13]

91 Acts, ch 191, §65

446.14 Irregularities in advertisement.

An irregularity or informality in the advertisement does not affect the legality of the sale or the title to a parcel conveyed by the county treasurer's deed under this chapter and chapters 447 and 448, and in all cases its provisions shall be sufficient notice to the owners of the sale of the parcel.

[R60, §770; C73, §880; C97, §1421; C24, 27, 31, 35, 39, §**7251;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.14]

91 Acts, ch 191, §66

446.15 Offer for sale.

The county treasurer shall offer for sale, on the day of the sale, each parcel separately for the total amount due against each parcel advertised for sale.

[C51, §499; R60, §765; C73, §875; C97, §1422; C24, 27, 31, 35, 39, §**7252;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.15]

91 Acts, ch 191, §67; 95 Acts, ch 57, §16

446.16 Bid — purchaser — registration fee.

1. The person who offers to pay the total amount due, which is a lien on any parcel, for the smallest percentage of the parcel is the purchaser, and when the purchaser designates the percentage of any parcel for which the purchaser will pay the total amount due, the percentage thus designated shall give the person an undivided interest upon the issuance of a treasurer's deed, as provided in chapter 448. If two or more persons have placed an equal bid and the bids are the smallest percentage offered, the county treasurer shall use a random selection process to select the bidder to whom a certificate of purchase will be issued.

2. The treasurer may establish and collect a reasonable registration fee from each purchaser at the tax sale. The fee shall not be assessed against a county or municipality as a purchaser. The total of the fees collected shall not exceed the total costs of the tax sale. Registration fees collected shall be deposited in the general fund of the county.

3. The delinquent tax lien transfers with the tax sale certificate, whether held by the county or purchased by an individual, through assignment or direct purchase at the tax sale. The delinquent tax sale lien expires when the tax sale certificate expires.

[C51, §501; R60, §766; C73, §876; C97, §1423; C24, 27, 31, 35, 39, §**7253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.16]

90 Acts, ch 1203, §1; 91 Acts, ch 191, §68; 92 Acts, ch 1016, §25; 95 Acts, ch 57, §17; 97 Acts, ch 121, §19

446.17 Sale continued.

The county treasurer shall continue the sale from day to day as long as there are bidders or until all delinquent parcels have been offered for sale.

If notice of annual tax sale has been published under section 446.9, as it appeared in the 1991 Code, the notice is valid and further notice is not required for an adjourned sale held under this section, unless it is a public bidder sale.

[C51, §499; R60, §767; C73, §877; C97, §1424; C24, 27, 31, 35, 39, §**7254;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.17]

91 Acts, ch 191, §69; 92 Acts, ch 1016, §26

446.18 "Public bidder sale" — notice.

Each county treasurer shall, on the day of the regular tax sale each year or any continuance or adjournment of the tax sale, offer and sell at public sale all parcels which remain liable to sale for delinquent taxes, which have previously been advertised, offered for one year or more, and remain unsold for want of bidders. Notice of the sale shall be given at the same time and in the same manner as that given of the regular sale.

[C97, §1425; C24, 27, 31, 35, 39, §**7255;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.18]

91 Acts, ch 191, §70

446.19 County or city as purchaser.

When a parcel is offered at a tax sale under section 446.18, and no bid is received, or if the bid received is less than the total amount due, the county in which the parcel is located, through its county treasurer, shall bid for the parcel a sum equal to the total amount due. Money shall not be paid by the county or other tax-levying or tax-certifying body for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price.

This section does not prohibit a governmental agency or political subdivision from bidding at the sale for a parcel to protect its interests. When a bid is received from a city in which the parcel is located, money shall not be paid by the city, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price.

[C27, 31, 35, §7255-b1; C39, §**7255.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.19]

91 Acts, ch 191, §71; 92 Acts, ch 1163, §86; 95 Acts, ch 57, §18

Management and disposal, chapter 569

446.19A Purchase by county or city for low or moderate income housing.

1. The board of supervisors of a county may adopt an ordinance authorizing the county and each city in the county to bid on and purchase delinquent taxes and to assign tax sale certificates of abandoned property. This section may only be used by a county or by a city in the county if such an ordinance is in effect.

2. On the day of the regular tax sale or any continuance or adjournment of the tax sale, the county or a city may bid for abandoned property assessed as residential property or as commercial multifamily housing property a sum equal to the total amount due. Money shall not be paid by the county or city for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price. Prior to the purchase, the county or city shall file with the county treasurer a verified statement that a parcel to be purchased is abandoned and deteriorating in condition or is, or is likely to become, a public nuisance, and that the parcel is suitable for use for

low or moderate income housing following rehabilitation.

3. If after the date that a parcel is sold pursuant to this chapter, or after the date that a parcel is sold under section 446.18, 446.38, or 446.39, the parcel assessed as residential property or as commercial multifamily housing property is identified as abandoned pursuant to a verified statement filed with the county treasurer by a city or county in the form set forth in subsection 2, a city or county may require the assignment of the tax sale certificate that had been issued for such parcel by paying to the holder of such certificate the total amount due on the date the assignment of the certificate is made to the county or city and recorded with the county treasurer. If the certificate is not assigned by the county or city pursuant to subsection 4, the county or city, whichever is applicable, is liable for the tax sale interest that was due the certificate holder pursuant to section 447.1, as of the date of assignment.

4. *a.* The city or county may assign the tax sale certificate obtained pursuant to this section. Preference shall be given to purchasers who are low or moderate income families or organizations which assist low or moderate income families to obtain housing. Persons who purchase certificates from the city or county under this subsection are liable for the total amount due the certificate holder pursuant to section 447.1.

b. All persons who purchase certificates from the city or county under this subsection shall demonstrate the intent to rehabilitate the property for habitation if the property is not redeemed. In the alternative, the county or city may, if title to the property has vested in the county or city under section 448.1, dispose of the property in accordance with section 331.361 or 364.7, as applicable.

5. For the purposes of this section, *"abandoned"* means the same as in section 657A.1. For the purposes of this section, *"low or moderate income families"* has the same meaning as in section 403.17.

96 Acts, ch 1204, §31; 99 Acts, ch 29, §1, 3

1999 amendment is effective April 15, 1999, and applies to parcels first offered for sale at the tax sale held in June 1999 and subsequent years; 99 Acts, ch 29, §3

446.20 Remedies.

1. Without limiting the county's rights under section 445.3, once a certificate is issued to a county, a county may collect the total amount due by the alternative remedy provided in section 445.3 by converting the total amount due to a personal judgment. Entrance of the judgment shall be shown on the county system. Collection of the judgment may then be initiated as provided in section 445.4. The county attorney shall, upon request of the county treasurer, assist in prosecution of action authorized under this section and sections 445.3 and 445.4.

The remedies associated with tax sale and personal judgment may be simultaneously pursued until such time as the total amount due has been collected or otherwise discharged. If the total amount due is collected pursuant to a personal judgment, the tax sale shall be canceled by the treasurer. If a tax deed is issued, any personal judgment shall be released and a satisfaction of judgment shall be filed with the clerk of the appropriate district court.

2. If the board or council determines that any property located on a parcel purchased by the county or city pursuant to section 446.19 requires removal, dismantling, or demolition, the board or council shall, at the same time and in the same manner that the notice of expiration of right of redemption is served, cause to be served on the person in possession of the parcel and also upon the person in whose name the parcel is taxed a separate notice stating that if the parcel is not redeemed within the time period specified in the notice of expiration of right of redemption, the property described in the notice shall be removed, dismantled, or demolished. The notice shall further state that the costs of removal, dismantling, or demolition shall be assessed against the person in whose name the parcel is taxed and a lien for the costs shall be placed against any other parcel taxed in that person's name within the county.

Service of the notice shall also be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memorandum of a recorded lease, and any other person who has an interest of record, at the person's last known address, if the mortgagee, vendor, lessor, or other person has filed a request for notice, as prescribed in section 446.9, subsection 3, and on the state of Iowa in case of an old-age assistance lien by service upon the department of human services. The notice shall also be served on any city where the parcel is situated. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

3. This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

91 Acts, ch 191, §72; 92 Acts, ch 1016, §27; 95 Acts, ch 57, §19; 98 Acts, ch 1107, §29

446.21 Assignment of certificate to bondholder.

In tax sales made under section 446.19, a holder of a special assessment certificate against a parcel, a holder of a bond payable in whole or in part out of a special assessment against a parcel, or a city within which a parcel is situated, which parcel has been sold, is entitled to an assignment of any certificate of tax sale of the parcel, upon tender to the holder or to the county treasurer of the amount to which the holder of the tax sale certificate would

be entitled in case of redemption.

[C97, §816; S13, §792-f, 816; C24, 27, 31, §6041; C35, §6041, 7255-g2; C39, §**6041, 7255.3;** C46, 50, 54, 58, 62, 66, 71, 73, §391.68, 446.21; C75, 77, 79, 81, S81, §446.21; 81 Acts, ch 117, §1225]

91 Acts, ch 191, §73

446.22 Repealed by 79 Acts, ch 68, § 19.

446.23 Resale.

The person purchasing a tax sale certificate against any parcel shall immediately pay to the county treasurer the total amount bid. Upon failure to do so the parcel is again offered as if no such sale had been made. These payments may be made in the funds receivable in payment of taxes.

[C51, §502; R60, §768; C73, §878; C97, §1426; C24, 27, 31, 35, 39, §**7257;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.23]

91 Acts, ch 191, §74

446.24 Record of sales.

The county treasurer or a designee shall attend all tax sales and keep a record in the county system of the sales, describing each parcel on which the total amount due was paid by the purchaser, as they are described in the copy of the notice on file in the treasurer's office. The county system shall include a statement of the amount, kind of tax, interest, fees, and costs for each parcel, to whom sold, and the date of sale.

[R60, §772; C73, §882; C97, §1427; C24, 27, 31, 35, 39, §**7258;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.24; 81 Acts, ch 117, §1226]

91 Acts, ch 191, §75

446.25 Sale adjourned.

When all the parcels advertised for sale have been offered and parcels remain unsold for want of bidders, the county treasurer shall adjourn the sale to some day not exceeding two months from adjournment, due notice of which day shall be given at the time of adjournment, and by keeping the notice posted in a conspicuous place in the treasurer's office. Further notice is not necessary. On the day fixed by the adjournment, the same proceedings shall occur as in the first instance. Further adjournments shall be made, not exceeding intervals of two months, and the sales continue until the next regular annual sale or until all the parcels are sold.

[R60, §773; C73, §883; C97, §1428; C24, 27, 31, 35, 39, §**7259;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.25]

91 Acts, ch 191, §76

446.26 Responsibility of treasurer to attend tax sale.

A county treasurer failing to attend a tax sale in person, by a deputy treasurer, or by another designated employee is guilty of a simple misdemeanor.

[R60, §774; C73, §884; C97, §1429; C24, 27, 31, 35, 39, §**7260;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.26; 81 Acts, ch 117, §1227]

91 Acts, ch 191, §77

446.27 Liability of treasurer.

1. If the county treasurer, deputy treasurer, or other designated employee sells or assists in selling any parcel, knowing it is not subject to taxation or that the amount for which it is sold has been paid, or knowingly and willfully sells or assists in selling a parcel to defraud the owner, or knowingly and willfully executes a deed for such a parcel sold, the treasurer, deputy treasurer, or designated employee is guilty of a serious misdemeanor and liable to pay the injured party all damages sustained as a result of the illegal sale.

2. If the treasurer, deputy treasurer, or designated person is directly or indirectly concerned in the purchase of a parcel sold at tax sale, the treasurer and the treasurer's sureties are liable on the treasurer's official bond for all damages sustained by the owner of the parcel. In addition, the treasurer, deputy treasurer, or designated person, as the case may be, is guilty of a fraudulent practice.

3. Sales made in violation of this section are void.

[R60, §775; C73, §885; C97, §1430; C24, 27, 31, 35, 39, §**7261;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.27; 81 Acts, ch 117, §1228]

91 Acts, ch 191, §78; 92 Acts, ch 1016, §28

446.28 Subsequent sale.

If for good cause, a parcel cannot be advertised and offered for sale on the third Monday of June or on another date in June designated by the treasurer, the county treasurer shall make the sale on the third Monday of the next succeeding month in which the required notice can be given.

[R60, §776; C73, §886; C97, §1431; C24, 27, 31, 35, 39, §**7262;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.28]

91 Acts, ch 191, §79; 99 Acts, ch 4, §3, 4

1999 amendment applies to tax sales held on or after February 17, 1999; 99 Acts, ch 4, §4

446.29 Certificate of purchase.

The county treasurer shall prepare, sign, and deliver to the purchaser of any parcel or part of a parcel sold a certificate of purchase, describing the parcel or part of the parcel as shown in the county system identifying the parcel or part of the parcel sold, the total amount due for each parcel as described, and that payment has been made. Not more than one parcel shall be entered upon each certificate of purchase. The certificate fee is the amount specified in section 331.552, subsection 23. The delinquent tax lien transfers with the tax sale certificate, whether held by the county or purchased by an individual through assignment or direct purchase at the tax sale. The delinquent tax

lien expires when the tax sale certificate expires.

[C51, §503; R60, §777; C73, §887; C97, §1432; S13, §1432; C24, 27, 31, 35, 39, §**7263;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.29; 82 Acts, ch 1104, §25]

90 Acts, ch 1203, §2; 91 Acts, ch 191, §80

446.30 Loss of certificate.

If a certificate of purchase is lost or destroyed, the owner of record, may, by filing an affidavit of the loss or destruction with the county treasurer, receive a duplicate of the certificate, which shall take the place of the original certificate and have the same force and effect in law and be subject to the same laws. The cost of a duplicate certificate of purchase is the same as the cost of the original certificate as provided in section 331.552, subsection 23.

[S13, §1432; C24, 27, 31, 35, 39, §**7264;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.30]

91 Acts, ch 191, §81

446.31 Assignment — presumption from deed recitals.

The certificate of purchase is assignable by endorsement and entry in the county system in the office of county treasurer of the county from which the certificate was issued, and when the assignment is so entered and the assignment transaction fee paid, it shall vest in the assignee or legal representatives of the assignee all the right and title of the assignor. The statement in the treasurer's deed of the fact of the assignment is presumptive evidence of that fact. For each assignment transaction, the treasurer shall charge the assignee an assignment transaction fee of one hundred dollars, or ten dollars in the case of an assignment by an estate, to be deposited in the county general fund. The assignment transaction fee shall not be added to the amount necessary to redeem.

When the county acquires a certificate of purchase, the county may assign the certificate for the total amount due as of the date of assignment or compromise the total amount due and assign the certificate. An assignment or a compromise and assignment shall be by written agreement. A copy of the agreement shall be filed with the treasurer. For each assignment transaction, the treasurer shall collect from the assignee an assignment transaction fee of ten dollars to be deposited in the county general fund. The assignment transaction fee shall not be added to the amount necessary to redeem. All money received from the assignment of county-held certificates of purchase shall be apportioned to the tax-levying and certifying bodies in proportion to their interests in the taxes for which the parcel was sold with all interest, fees, and costs deposited in the county general fund. After assignment of a certificate of purchase which is held by the county, section 446.37 applies. In that instance, the three-year requirement shall be calculated from the date the assignment is recorded by the treasurer in the county system. When the assignment is entered and the assignment transaction fee is paid, all of the rights and title of the assignor shall vest in the assignee or the legal representative of the assignee. The statement in the treasurer's deed of the fact of the assignment is presumptive evidence of that fact.

A certificate of purchase for a parcel shall not be assigned to a person, other than a municipality, who is entitled to redeem that parcel.

[R60, §778; C73, §888; C97, §1433; S13, §1433; C24, 27, 31, 35, 39, §**7265;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.31]

91 Acts, ch 191, §82; 92 Acts, ch 1016, §29; 93 Acts, ch 73, §9; 95 Acts, ch 57, §20; 97 Acts, ch 121, §20

446.32 Payment of subsequent taxes by purchaser.

The county treasurer shall provide to the purchaser of a parcel sold at tax sale a receipt for the total amount paid by the purchaser after the date of purchase for a subsequent year. Taxes for a subsequent year may be paid by the purchaser beginning fourteen days following the date from which an installment becomes delinquent as provided in section 445.37.

[C73, §889; C97, §1434; C24, 27, 31, 35, 39, §**7266;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.32; 81 Acts, ch 117, §1229]

91 Acts, ch 191, §83; 93 Acts, ch 73, §10

446.33 Repealed by 81 Acts, ch 117, § 1244.

446.34 School, agricultural college, or university land.

When any school, agricultural college, or university land sold on credit is sold for taxes, the purchaser shall acquire only the interest of the original purchaser therein, and no sale of any such lands for taxes shall prejudice the rights of the state, agricultural college, or university. In all cases where the real estate is mortgaged or otherwise encumbered to the school, agricultural college, or university fund, the interest of the person who holds the fee shall alone be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale thereof. The foregoing provision shall include all lands exempt from taxation by law, and any legal or equitable estate therein held, possessed, or claimed for any public purpose, and no assessment or taxation of such lands, nor the payment of any such tax by any person, or the sale and conveyance for taxes of any such lands, shall in any manner affect the right or title of the public therein, or confer upon the purchaser or person who pays such taxes any right or interest in such land.

[R60, §810, 811; C73, §900; C97, §1435; C24, 27, 31, 35, 39, §**7268;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.34]

446.35 Assessment to wrong person.

A sale of a parcel through tax sale is not invalid if taxed in any other name than that of the rightful owner, if it is in other respects sufficiently described.

[R60, §787; C73, §904; C97, §1450; C24, 27, 31, 35, 39, §**7269;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.35]

91 Acts, ch 191, §84

446.36 Certified copies of records as evidence.

The information in the county system of the office of the county treasurer, or a copy properly certified, is sufficient evidence to prove the sale of a parcel at tax sale, the redemption of the parcel, or the payment of taxes on it.

[R60, §788; C73, §905; C97, §1451; C24, 27, 31, 35, 39, §**7270;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.36; 81 Acts, ch 117, §1230]

91 Acts, ch 191, §85

Similar provision, §622.43

446.37 Failure to obtain deed — cancellation of sale.

After three years have elapsed from the time of any tax sale, and action has not been completed during the time which qualifies the holder of a certificate to obtain a deed, the county treasurer shall cancel the sale from the county system. However, this section does not apply to certificates of purchase at tax sale which are held by a county.

[C97, §1452; C24, 27, 31, 35, 39, §**7271;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.37; 81 Acts, ch 117, §1231]

91 Acts, ch 191, §86

446.38 Suspended taxes of old-age assistance recipients.

In cases where taxes were suspended one year or more upon the parcel of a deceased old-age assistance recipient and no estate was opened within ninety days after the death of the recipient and the surviving spouse of the recipient is not occupying the parcel, the county may apply to the probate court to have the parcel conveyed to it for satisfaction of the suspended taxes. The probate court shall prescribe the manner and notices to be given. The probate court shall order the parcel conveyed to the county for satisfaction of the suspended taxes if an estate is not opened within a time specified by the court. The probate court shall make and enter all appropriate orders to effect this conveyance to the county if an estate is not opened within the time specified. The parcel, at the election of the county treasurer, may be offered at tax sale in accordance with this chapter in lieu of the county making application to the probate court.

[C66, 71, 73, 75, 77, 79, 81, §446.38]

91 Acts, ch 191, §87; 92 Acts, ch 1016, §30; 2001 Acts, ch 24, §52

446.39 Iowa finance authority statement.

A city or county, a city or county agency as authorized by the Iowa finance authority, or the Iowa finance authority may file with the county treasurer a verified statement that a parcel to be sold at tax sale is abandoned and deteriorating in condition, is inhabited but is not safe for human habitation, or is, or is likely to become, a public nuisance, and that the parcel is suitable for use and is to be used in an Iowa homesteading project under section 16.14. Other information may be included. Upon proper filing of the statement, and if the parcel is offered at a tax sale and no bid is received, or if the bid received is less than the total amount due, the city, county, city or county agency, or Iowa finance authority may bid for the parcel for use in an Iowa homesteading project, bidding a sum equal to the total amount due. Each of the tax-levying and tax-certifying bodies having an interest in the taxes for which the parcel is sold shall be charged with its proportionate share of the purchase price.

[C77, 79, 81, §446.39]

91 Acts, ch 191, §88; 97 Acts, ch 121, §21

446.40 through 446.44 Reserved.

446.45 Applicable law.

Sections 446.21, 446.31, 446.32, and 446.37, as amended by 1991 Iowa Acts, chapter 191, sections 73, 82, 83, and 86, only apply if associated with a tax sale that occurred on or after April 1, 1992. For tax sales occurring prior to April 1, 1992, the provisions of sections 446.21, 446.31, 446.32, and 446.37 in effect on the date of the tax sale apply.

92 Acts, ch 1016, §31

CHAPTER 447

TAX REDEMPTION

For definitions applicable to chapter, see §445.1

447.1 Redemption — terms.
447.2 Nonallowable penalties. Repealed by 91 Acts, ch 191, §123, 124.
447.3 Agricultural college lands.
447.4 Redemption from sale for part of tax.
447.5 Certificate of redemption — issued by treasurer.
447.6 Documentation of corrections.

447.7 Minors and persons of unsound mind.
447.8 Redemption after delivery of deed.
447.9 Notice of expiration of right of redemption — county right of redemption.
447.10 Service by publication — fees.
447.11 Agent of nonresident.
447.12 When service deemed complete — presumption.
447.13 Cost — fee — report.
447.14 Law in effect at time of sale.

447.1 Redemption — terms.

A parcel sold under this chapter and chapter 446 may be redeemed at any time before the right of redemption expires, by payment to the county treasurer, to be held by the treasurer subject to the order of the purchaser, of the amount for which the parcel was sold, including the fee for the certificate of purchase, and interest of two percent per month, counting each fraction of a month as an entire month, from the month of sale, and the total amount paid by the purchaser or the purchaser's assignee for any subsequent year, with interest at the same rate added on the amount of the payment for each subsequent year from the month of payment, counting each fraction of a month as an entire month. The amount of interest must be at least one dollar and shall be rounded to the nearest whole dollar. Interest shall accrue on subsequent amounts from the month of payment by the certificate holder.

When the county or city is the certificate holder of the parcel redeemed from a sale held under section 446.19, the redemption amount shall be apportioned among the several funds for which the taxes were levied. All interest, costs, and fees shall be apportioned to the general fund of the county regardless of who is the certificate holder. If a city is the certificate holder of the parcel redeemed from a sale held under section 446.7 or 446.28, the city shall be entitled to the total amount redeemed.

[C51, §505; R60, §779; C73, §890; C97, §1436; S13, §1436; C24, 27, 31, 35, 39, §**7272;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.1; 81 Acts, ch 117, §1232]

91 Acts, ch 191, §89; 93 Acts, ch 73, §11

447.2 Nonallowable penalties. Repealed by 91 Acts, ch 191, § 123, 124.

447.3 Agricultural college lands.

In redeeming from a sale of a leasehold interest in agricultural college land, the amount to be paid shall include any amount paid by the holder of the certificate as interest or principal due by the terms of the lease or otherwise to prevent a forfeiture, and for which proper voucher has been filed with the county treasurer, with interest at eight percent per annum from date of payment, which amount shall be paid by the treasurer to the holder of the certificate, and the certificate of redemption shall show the amount paid by the party redeeming.

[C51, §505; R60, §779; C73, §890; C97, §1436; S13, §1436; C24, 27, 31, 35, 39, §**7274;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.3; 81 Acts, ch 117, §1233]

91 Acts, ch 191, §90

447.4 Redemption from sale for part of tax.

In case a redemption is made of a parcel compromised and assigned for a sum less than the total amount due, the purchaser is entitled to receive only the amount paid and a ratable part of the interest and costs. In determining the interest to be paid upon redemption from sale, the sum due on a parcel sold shall be taken to be the total amount due on the parcel at the time of sale, and the amount paid for a parcel at sale shall be apportioned ratably in accordance with section 447.1. Parcels so sold are redeemable in the same manner and with the same interest as those sold for the taxes of the preceding year.

[C97, §1437; C24, 27, 31, 35, 39, §**7275;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.4]

90 Acts, ch 1168, §49; 91 Acts, ch 191, §91

447.5 Certificate of redemption — issued by treasurer.

The county treasurer, upon application of a party to redeem a parcel sold at a tax sale, and being satisfied that the party has a right to redeem the parcel upon the payment of the proper amount, shall issue to the party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate, the date of the redemption, the amount paid, and by whom redeemed, and shall make the proper entries in the county system in the treasurer's office. The amount of the fee shall be as provided in section 331.552, subsection 23, for either the original certificate or duplicate certificate.

[R60, §780; C73, §891; C97, §1438; C24, 27, 31, 35, 39, §**7276;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.5; 81 Acts, ch 117, §1234]

91 Acts, ch 191, §92

447.6 Documentation of corrections.

The entries by the county treasurer on the county system shall be of a permanent nature and if errors are subsequently discovered the correcting entries shall be adequately documented to support the correction.

[C31, 35, §7276-c1; C39, §**7276.1;** C46, 50, 54,

58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.6; 81 Acts, ch 117, §1235]
91 Acts, ch 191, §93

447.7 Minors and persons of unsound mind.

If a parcel of a minor or person of unsound mind is sold at tax sale, it may be redeemed at any time within one year after the disability is removed, in the manner specified in section 447.8, or redemption may be made by the guardian or legal representative under sections 447.1 and 447.3 at any time before the delivery of the treasurer's deed.

[R60, §779; C73, §892; C97, §1439; C24, 27, 31, 35, 39, §**7277;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.7]
91 Acts, ch 191, §94

447.8 Redemption after delivery of deed.

After the delivery of the treasurer's deed, a person entitled to redeem a parcel sold at tax sale shall do so by an equitable action in a court of record, in which all persons claiming an interest in the parcel derived from the tax sale, as shown by the record, shall be made defendants, and the court shall determine the rights, claims, and interests of the several parties, including liens for taxes and claims for improvements made on or to the parcel by the person claiming under the tax title. A person is not allowed to redeem a parcel sold for taxes in any other manner after the service of the notice provided for by section 447.9 and the execution and delivery of the treasurer's deed.

[C73, §893; C97, §1440; C24, 27, 31, 35, 39, §**7278;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.8]
91 Acts, ch 191, §95

447.9 Notice of expiration of right of redemption — county right of redemption.

1. After one year and nine months from the date of sale, or after nine months from the date of a sale made under section 446.18, 446.19A, or 446.39, the holder of the certificate of purchase may cause to be served upon the person in possession of the parcel, and also upon the person in whose name the parcel is taxed, a notice signed by the certificate holder or the certificate holder's agent or attorney, stating the date of sale, the description of the parcel sold, the name of the purchaser, and that the right of redemption will expire and a deed for the parcel be made unless redemption is made within ninety days from the completed service of the notice. The notice shall be served by both regular mail and certified mail to the person's last known address and such service is deemed completed when the notice by certified mail is deposited in the mail and postmarked for delivery. The ninety-day redemption period begins as provided in section 447.12. When the notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county treasurer or the county attorney, and when given by a city, it shall be signed by the city officer designated by resolution of the council. When the notice is given by the Iowa finance authority or a city or county agency holding the parcel as part of an Iowa homesteading project, it shall be signed on behalf of the agency or authority by one of its officers, as authorized in rules of the agency or authority.

2. Service of the notice shall be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or recorded memorandum of a lease, and any other person who has an interest of record, at the person's last known address. The notice shall be served on any city where the parcel is situated. Notice shall not be served after the filing of the affidavit required by section 447.12. Only those persons who are required to be served the notice of expiration as provided in this section or who have acquired an interest in or possession of the parcel subsequent to the filing of the notice of expiration of the right of redemption are eligible to redeem a parcel from tax sale.

3. The county in which the parcel is located has the right of redemption for owner-occupied residential parcels as provided in this subsection. If a person is unable to contribute to the public revenue, the person may file a petition, duly sworn to, with the board of supervisors, stating that fact and giving a statement of parcels, as defined in section 445.1, owned or possessed by the petitioner, and other information as the board may require. The board of supervisors may order the county auditor to redeem a parcel owned or possessed by the petitioner from the holder of a certificate of purchase upon payment by the county to the certificate holder of the amount necessary to redeem under section 447.1. Each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price, and that amount shall be deducted from the next month's disbursement made by the county to the tax-levying or tax-certifying body. Interest paid by the county to the certificate holder pursuant to section 447.1 shall be paid solely by the county and shall not be charged against the other tax-levying and tax-certifying bodies. Taxes charged and paid by the tax-levying or tax-certifying body in this manner shall be treated as suspended taxes pursuant to sections 427.8 through 427.12. Notwithstanding section 447.14, a county may redeem pursuant to this subsection for tax sales held before, on, or after July 1, 1998. A county may limit the number of times a taxpayer may file a petition for assistance under this subsection.

[R60, §781; C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7279;** C46, 50, 54, 58, 62, 66,

71, 73, 75, 77, 79, 81, S81, §447.9; 81 Acts, ch 117, §1236]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1139, §7; 86 Acts, ch 1241, §43; 89 Acts, ch 66, §1; 90 Acts, ch 1203, §3; 91 Acts, ch 191, §96; 95 Acts, ch 57, §21; 95 Acts, ch 67, §34; 97 Acts, ch 121, §22; 98 Acts, ch 1107, §30; 98 Acts, ch 1153, §2; 99 Acts, ch 29, §2, 3; 99 Acts, ch 83, §8, 10, 12

Management when county acquires deed, chapter 569

Service of original notice, R.C.P. 1.302 – 1.315

1998 amendment to former unnumbered paragraph 1 applies to redemption of parcels sold for delinquent taxes beginning with the tax sale held in June 1999; 99 Acts, ch 83, §10, 12

1999 amendment to subsection 1 by 99 Acts, ch 29, §2, is effective April 15, 1999, and applies to parcels first offered for sale at the tax sale held in June 1999 and subsequent years; 99 Acts, ch 29, §3

447.10 Service by publication — fees.

If notice in accordance with section 447.9 cannot be served upon a person entitled to notice in the manner prescribed in that section, then the holder of the certificate of purchase shall cause the required notice to be published once in an official newspaper in the county. If service is made by publication, the affidavit required by section 447.12 shall state the reason why service in accordance with section 447.9 could not be made. Service of notice by publication shall be deemed complete on the day of the publication. Fees for publication, if required under section 447.13, shall not exceed the customary publication fees for official county publications.

[C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7280;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.10]

86 Acts, ch 1139, §8; 97 Acts, ch 121, §23

447.11 Agent of nonresident.

A nonresident may in writing appoint a resident of the county in which the parcel is situated as agent, and file the appointment with the county treasurer of the county, who shall make note of the appointment in the county system, after which service of notice by certified and regular mail shall be made upon the agent.

[C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7281;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.11]

91 Acts, ch 191, §97; 2001 Acts, ch 45, §8

447.12 When service deemed complete — presumption.

Service is complete only after an affidavit has been filed with the county treasurer, showing the making of the service, the manner of service, the time when and place where made, under whose direction the service was made, and costs incurred as provided in section 447.13. Costs not filed with the treasurer before a redemption is complete shall not be collected by the treasurer. Costs shall not be filed with the treasurer prior to the filing of the affidavit. The affidavit shall be made by the holder of the certificate or by the holder's agent or attorney, and in either of the latter cases stating that the affiant is the agent or attorney of the holder of the certificate. The affidavit shall be filed by the treasurer and entered in the county system and is presumptive evidence of the completed service of the notice. The right of redemption shall not expire until ninety days after service is complete. A redemption shall not be considered valid unless received by the treasurer prior to the close of business on the ninetieth day from the date of completed service except in the case of a public bidder certificate held by the county in which case the county may accept a redemption at any time prior to the issuance of the tax deed. When the parcel is held by a city or county, a city or county agency, or the Iowa finance authority, for use in an Iowa homesteading project, whether or not the parcel is the subject of a conditional conveyance granted under the project, the affidavit shall be made by the treasurer of the county or the county attorney, a city officer designated by resolution of the council, or on behalf of the agency or authority, by one of its officers as authorized in rules of the agency or authority.

[C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7282;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.12; 81 Acts, ch 117, §1237]

89 Acts, ch 66, §2; 91 Acts, ch 191, §98; 93 Acts, ch 73, §12

447.13 Cost — fee — report.

The cost of publication under section 447.10, if publication is required, shall be added to the amount necessary to redeem. The county treasurer shall file the proof of service and statement of costs and record these costs against the parcel. The certificate holder or the holder's agent shall report in writing to the treasurer the amount of authorized costs incurred, and the treasurer shall file the statement. Costs not filed with the treasurer before a redemption is complete shall not be collected by the treasurer and may be recovered through a court action against the parcel owner by the certificate holder. If the parcel is held by a city or county, a city or county agency, or the Iowa finance authority, for use in an Iowa homesteading project, whether or not the parcel is the subject of a conditional conveyance granted under the project, the costs incurred for repairs and rehabilitation work required and undertaken in order to make the parcel meet applicable building or housing code standards shall be added to the amount necessary to redeem.

For tax sale certificates of purchase held by a county, the cost of a record search and the cost of serving the notice, including the cost of mailing certified mail notices and the cost of publication under section 447.10, if publication is required, shall be added to the amount necessary to redeem.

[C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7283;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,

79, 81, S81, §447.13; 81 Acts, ch 117, §1238]
86 Acts, ch 1139, §9; 91 Acts, ch 191, §99; 92 Acts, ch 1016, §32; 99 Acts, ch 83, §9; 2001 Acts, ch 45, §9, 11

447.14 Law in effect at time of sale.
The law in effect at the time of tax sale governs redemption.
92 Acts, ch 1016, §33

CHAPTER 448

TAX DEEDS

For definitions applicable to chapter, see §445.1

448.1 Return of certificate of purchase — execution of deed — fees.
448.2 Form.
448.3 Execution and effect of deed.
448.4 Presumptive evidence.
448.5 Conclusive evidence.
448.6 Facts necessary to defeat deed.
448.7 Additional facts necessary.
448.8 Sale made by mistake.
448.9 Fraudulent sale.
448.10 Wrongful sales — purchaser indemnified.
448.11 Correcting wrongful sale.
448.12 Limitation of actions.
448.13 Limitation of action on tax sales and deeds. Repealed by 91 Acts, ch 191, §123, 124.
448.14 Officers de facto.
448.15 Affidavit by tax-title holder.
448.16 Claims adverse to tax title barred.
448.17 Indexing and recording of affidavits and claims.
448.17A Definitions.

448.1 Return of certificate of purchase — execution of deed — fees.
Immediately after the expiration of ninety days from the date of completed service of the notice provided in section 447.12, the county treasurer shall make out a deed for each parcel sold and unredeemed upon the return of the certificate of purchase and payment of the appropriate deed and recording fees by the purchaser. The treasurer shall record the deed with the county recorder prior to delivering the deed to the purchaser. The treasurer shall receive twenty-five dollars for each deed made by the treasurer, and the treasurer may include any number of parcels purchased by one person in one deed, if authorized by the treasurer.

The tax sale certificate holder shall return the certificate of purchase and remit the appropriate deed issuance fee and recording fee to the county treasurer within ninety calendar days after the redemption period expires. The treasurer shall cancel the certificate for any tax sale certificate holder who fails to comply with this paragraph. This paragraph does not apply to certificates held by a county. This paragraph is applicable to all certificates of purchase issued before, on, or after July 1, 1997. Holders of certificates of purchase that are outstanding on July 1, 1997, shall return the certificate of purchase and remit the appropriate deed issuance fee to the county treasurer within ninety calendar days from that date.

[C51, §503, 504; R60, §781, 782; C73, §895; C97, §1442; C24, 27, 31, 35, 39, §**7284;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.1]
91 Acts, ch 191, §100; 97 Acts, ch 121, §24; 2000 Acts, ch 1085, §6
Management when county acquires deed, chapter 569

448.2 Form.
Deeds executed by the county treasurer shall be substantially in the following form:

KNOW ALL PERSONS BY THESE PRESENTS, that the following described parcel: (Here follows the description), situated in the county of . . . . . and state of Iowa, was subject to taxes for the year (or years) A.D. . . . . , and the taxes on the parcel for the year (or years) stated remained due and unpaid at the date of the sale; and the treasurer of the county, on the . . . . . day of . . . . . , A.D. . . . . , by virtue of the authority vested by law in the treasurer, at (an adjournment of) the sale begun and publicly held on the third Monday of June, A.D. . . . . , exposed to public sale at the office of the county treasurer in the county named, in substantial conformity with all the requirements of the statute, the parcel described, for the payment of the total amount then due and remaining unpaid on the parcel, and at that time and place . . . . . , of the county of . . . . . and state of . . . . . , offered to pay the sum of . . . . . dollars and . . . . . cents, being the total amount then due and remaining unpaid on the parcel, for (here follows the description of the parcel sold) which was the least quantity bid for, and payment of that sum was made by that person to the treasurer, the parcel was stricken off to that person at that price;

and . . . . . did, on the . . . . . day of . . . . . , A.D. . . . . , assign the certificate of the sale of the parcel and all right, title, and interest to the parcel to . . . . . of the county of . . . . . and state of . . . . . ; and by the affidavit of . . . . . , filed in the treasurer's office on the . . . . . day of . . . . . , A.D. . . . . , it appears that notice has been given more than ninety days before the execution of this deed to . . . . . and . . . . . of the expiration of the time of redemption allowed by law; and two years have elapsed since the date of the sale, and the parcel has not been redeemed:

Now, I, ... , treasurer of the county, for the consideration of the stated sum paid to the treasurer and by virtue of law, have granted, bargained, and sold, and by these presents do grant, bargain, and sell to . . . . . (or . . . . .), and that person's heirs and assigns, the parcel described, to have and to hold unto that person (or . . . . .), and that person's heirs and assigns, forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, ... , treasurer of . . . . . county, by virtue of the authority vested in me, have subscribed my name on this . . . . . day of . . . . . , A.D. . . . . .

. . . . . .
Treasurer

State of Iowa,)
. . . . . County.) ss.

I certify that before me, ... , in and for said county, personally appeared the above named . . . . . , treasurer of the county, personally known to me to be the treasurer of the county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of the county, and acknowledged the execution of the conveyance to be the treasurer's voluntary act and deed as treasurer of the county, for the purposes expressed in the conveyance.

Given under my hand (and seal) this . . . . . day of . . . . . , A.D. . . . . .

. . . . . .

[R60, §783; C73, §896; C97, §1443; C24, 27, 31, 35, 39, §**7285;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.2]

83 Acts, ch 101, §92; 91 Acts, ch 191, §101; 2000 Acts, ch 1058, §41

448.3 Execution and effect of deed.

The deed shall be signed by the county treasurer as such, and acknowledged by the treasurer before some officer authorized to take acknowledgments, and when substantially thus executed and recorded in the proper record in the office of the recorder of the county in which the parcel is situated, shall vest in the purchaser all the right, title, interest, and claim of the state and county to the parcel, and all the right, title, interest, and estate of the former owner in and to the parcel conveyed. However, the deed is subject to all restrictive covenants, resulting from prior conveyances in the chain of title to the former owner, and subject to all the right and interest of a holder of a certificate of purchase from a tax sale occurring after the tax sale for which the deed was issued. The issuance of the deed shall operate to cancel all suspended taxes.

[C51, §503; R60, §784; C73, §897; C97, §1444; C24, 27, 31, 35, 39, §**7286;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.3]

91 Acts, ch 191, §102; 95 Acts, ch 57, §22; 97 Acts, ch 121, §25

448.4 Presumptive evidence.

The deed shall be presumptive evidence in all the courts of this state in all controversies and actions in relation to the rights of the purchaser, and the purchaser's heirs or assigns, to the parcel conveyed, of the following facts:

1. That the parcel conveyed was subject to taxes for the year or years stated in the deed.
2. That the taxes were not paid at any time before the sale.
3. That the parcel conveyed had not been redeemed from the sale at the date of the deed.
4. That the parcel had been listed and assessed.
5. That the taxes were levied or set according to law.
6. That the parcel was duly advertised for sale.
7. That the parcel was sold as stated in the deed.

[C51, §503; R60, §784; C73, §897; C97, §1444; C24, 27, 31, 35, 39, §**7287;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.4]

91 Acts, ch 191, §103

448.5 Conclusive evidence.

The deed shall be conclusive evidence of the following facts:

1. That the manner in which the listing, assessment, levy, notice and sale were conducted was in all respects as the law directed.
2. That the grantee named in the deed was the purchaser.
3. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the parcel up to the execution of the deed, both inclusive, and that all things required by law to make a good and valid sale and to vest the title in the purchaser were done, except in regard to the points named in section 448.4 for which the deed shall be presumptive evidence only.

[C51, §503; R60, §784; C73, §897; C97, §1444; C24, 27, 31, 35, 39, §**7288;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.5]
91 Acts, ch 191, §104

448.6 Facts necessary to defeat deed.
In all actions involving the title to a parcel claimed and held under a deed executed substantially as required in this chapter by the county treasurer, the person claiming title adverse to the title conveyed shall be required to prove, in order to defeat the title, any of the following:
1. That the parcel was not subject to taxes for the year or years named in the deed.
2. That the taxes had been paid before the sale.
3. That the parcel had been redeemed from the sale and that the redemption was made for the use and benefit of persons having the right of redemption.
4. That there had been an entire omission to list or assess the parcel, or to levy the taxes, or to give notice of the sale, or to sell the parcel.
[C51, §503; R60, §784; C73, §897; C97, §1445; C24, 27, 31, 35, 39, §**7289;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.6]
91 Acts, ch 191, §105

448.7 Additional facts necessary.
A person shall not be permitted to question the title acquired by a county treasurer's deed without first showing that the person, or the person under whom that person claims title, had title to the parcel at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all amounts due upon the parcel have been paid by that person, or the person under whom that person claims title.
[R60, §784; C73, §897; C97, §1445; C24, 27, 31, 35, 39, §**7290;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.7]
91 Acts, ch 191, §106

448.8 Sale made by mistake.
If an amount due was paid, and through mistake in the entry made in the county system, the parcel was afterward sold, the treasurer's deed does not convey the title.
[R60, §784; C73, §897; C97, §1445; C24, 27, 31, 35, 39, §**7291;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.8]
91 Acts, ch 191, §107

448.9 Fraudulent sale.
If the owner of a parcel sold for taxes resists the validity of the tax title, the owner may prove fraud committed by the officer selling the parcel, or in the purchaser, to defeat the title, and, if fraud is established, the sale and title shall be void.
[R60, §784; C73, §897; C97, §1445; C24, 27, 31, 35, 39, §**7292;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.9]
91 Acts, ch 191, §108

448.10 Wrongful sales — purchaser indemnified.
If, by mistake or wrongful act of the county treasurer, a parcel has been sold on which no tax was due at the time, or when a parcel is sold in consequence of error in describing it within the county system, the county shall hold the purchaser harmless by paying the purchaser the amount due to which the purchaser would have been entitled had the parcel been rightfully sold, and the treasurer and the treasurer's surety shall be liable to the county to the amount of the treasurer's official bond; or the purchaser, or the purchaser's assignee, may recover the amount directly from the treasurer and the treasurer's surety.
[C51, §509; R60, §785; C73, §899; C97, §1446; C24, 27, 31, 35, 39, §**7293;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.10]
91 Acts, ch 191, §109

448.11 Correcting wrongful sale.
When it is made known to the county treasurer, before the execution of a deed for a parcel sold, or if the deed is returned by the purchaser, that a parcel was sold which was not subject to taxation, or upon which the taxes had been paid, the treasurer shall make an entry in the county system that the parcel was erroneously sold, and the entry shall be evidence of the fact, and the purchase money shall be refunded to the purchaser.
[R60, §789; C73, §901; C97, §1447; C24, 27, 31, 35, 39, §**7294;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.11]
91 Acts, ch 191, §110

448.12 Limitation of actions.
An action for the recovery of a parcel sold for the nonpayment of taxes shall not be brought after three years from the execution and recording of the county treasurer's deed, unless the owner is, at the time of the sale, a minor, a person with mental illness, or an inmate in an adult correctional institution, in which case the action must be brought within three years after the disability is removed.
This section, as amended by 1991 Iowa Acts, chapter 191, section 111, is effective for parcels sold at tax sales occurring on or after April 1, 1992, and for disabilities removed on or after April 1, 1992. For tax sales occurring prior to April 1, 1992, the provisions of this section in effect on the date of the tax sale apply.
[R60, §790; C73, §902; C97, §1448; C24, 27, 31, 35, 39, §**7295;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.12]
85 Acts, ch 21, §44; 91 Acts, ch 191, §111; 92 Acts, ch 1016, §34; 96 Acts, ch 1129, §113

448.13 Limitation of action on tax sales and deeds. Repealed by 91 Acts, ch 191, § 123, 124.

448.14 Officers de facto.

In all actions and controversies involving the question of title to a parcel held under a county treasurer's deed, all acts of assessors, treasurers, auditors, supervisors, and other officers de facto shall be of the same validity as acts of officers de jure.

[R60, §786; C73, §903; C97, §1449; C24, 27, 31, 35, 39, §**7296;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.14]

91 Acts, ch 191, §112

448.15 Affidavit by tax-title holder.

Immediately after the issuance and recording of a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of the title or purported title may file with the county recorder of the county in which the parcel is located an affidavit substantially in the following form:

State of Iowa,)
. . . . . County.) ss.

I, ... , being first duly sworn, on oath depose and say that on . . . . . (date) the county treasurer issued a tax deed to . . . . . (grantee) for the following described parcel: . . . . . ; that the tax deed was filed for record in the office of the county recorder of . . . . . county, Iowa, on . . . . . (date), and appears in the records of the office in . . . . . county as recorded in Book . . . . . Page . . . . . of the . . . . . Records; and that . . . . . claims title to an undivided . . . . . percent interest in the parcel by virtue of the tax deed, or purported tax title.

Any person claiming any right, title, or interest in or to the parcel adverse to the title or purported title by virtue of the tax deed referred to shall file a claim with the recorder of the county where the parcel is located, within one hundred twenty days after the filing of this affidavit, the claim to set forth the nature of the interest, also the time and manner in which the interest claimed was acquired.

. . . . . .

Subscribed and sworn to before me this . . . . . day of . . . . . (month), ... (year).

. . . . . .
Notary Public in and for
. . . . . County, Iowa.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.15]

91 Acts, ch 191, §113; 95 Acts, ch 57, §23; 2000 Acts, ch 1058, §56

448.16 Claims adverse to tax title barred.

When the affidavit described in section 448.15 is filed it shall be notice to all persons, and any person claiming any right, title, or interest in or to the parcel described adverse to the title or purported title by virtue of the tax deed referred to, shall file a claim with the county recorder of the county in which the parcel is located within one hundred twenty days after the filing of the affidavit, which claim shall set forth the nature of the interest, the time when and the manner in which the interest was acquired.

At the expiration of the period of one hundred twenty days, if no such claim has been filed, all persons shall thereafter be forever barred and estopped from having or claiming any right, title, or interest in the parcel adverse to the tax title or purported tax title, and no action shall thereafter be brought to recover the parcel, and the then tax-title owner or owner of the purported tax title shall also have acquired title to the parcel by adverse possession.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.16]

91 Acts, ch 191, §114

448.17 Indexing and recording of affidavits and claims.

All affidavits and claims as provided for in sections 448.15 and 448.16, filed with the county recorder, shall be indexed in the claimant's book under the description of the parcel involved, and shall be recorded as other instruments affecting parcels.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.17]

91 Acts, ch 191, §115

448.17A Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

See §445.1

CHAPTER 449

TAX APPORTIONMENT

449.1 Definitions.
449.1A Application.
449.2 Notice.
449.3 Order — record.
449.4 Correction of books or records.
449.5 Effect of order.
449.6 Appeal.
449.7 Trial on appeal.
449.8 Interpretative clause.

449.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §449.1 transferred to §449.1A

449.1A Application.

When a parcel has been assessed and taxed as one unit, and thereafter and before the tax is paid, the title to different portions of the parcel becomes vested in different parties in severalty, and the owners are unable to agree as to what portion of the total tax each portion of the parcel should bear, any of the parties may file with the board of supervisors a written application for the apportionment of the tax.

[C24, 27, 31, 35, 39, §**7297;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.1]

91 Acts, ch 191, §116

C2001, §449.1A

449.2 Notice.

In the absence of the appearance of all interested parties, the board shall prescribe the notice which nonappearing parties shall receive, and the time and manner of the service thereof.

[C24, 27, 31, 35, 39, §**7298;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.2]

449.3 Order — record.

At the hearing, the board shall apportion the tax to the different portions of the parcel owned in severalty, in accordance with the values of the portions. All orders and determinations of the board shall be entered in its minutes. An order of apportionment shall clearly identify each portion of the parcel owned in severalty.

[C24, 27, 31, 35, 39, §**7299;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.3]

91 Acts, ch 191, §117

449.4 Correction of books or records.

The county auditor shall, upon the making of an order of apportionment, correct the tax books or records in the auditor's possession, in accordance with the order, and if the books or other records have been delivered to the county treasurer, the auditor shall at once certify the order of apportionment to the treasurer who shall correct the county system.

[C24, 27, 31, 35, 39, §**7300;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.4]

91 Acts, ch 191, §118

449.5 Effect of order.

An order of apportionment, when followed by a correction of the tax book or other record in accordance therewith, shall have the same effect as though the original assessment had been made in the same manner.

[C24, 27, 31, 35, 39, §**7301;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.5]

449.6 Appeal.

A party aggrieved by an order of apportionment may appeal therefrom to the district court at any time within ten days from the date of said order, by serving written notice of said appeal on all other parties to said proceeding. Should personal service of said notice within the county be impossible as to any party, any judge of the district court may prescribe the manner of such service.

[C24, 27, 31, 35, 39, §**7302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.6]

449.7 Trial on appeal.

The district court shall try said appeal anew and in equity. The final order of the court shall be certified by the clerk of the district court to the county auditor and shall be treated in the same manner as though originally made by the board of supervisors.

[C24, 27, 31, 35, 39, §**7303;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.7]

449.8 Interpretative clause.

This chapter shall not be construed as exclusive of other legal remedies.

[C24, 27, 31, 35, 39, §**7304;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.8]

SUBTITLE 3

INHERITANCE AND ESTATE TAXES

CHAPTER 450

INHERITANCE TAX

See chapter 450A for generation skipping transfer tax

450.1 Definitions — authority of county attorney.
450.2 Estates taxable.
450.3 Property included.
450.4 Exemptions.
450.5 Liability for tax.
450.6 Accrual of tax — maturity — extension of time.
450.7 Lien of tax.
450.8 Transfers and trusts.
450.9 Individual exemptions.
450.10 Rate of tax.
450.11 Repealed by 65 Acts, ch 366, §6.
450.12 Liabilities deductible.
450.13 Inheritance tax and lien book. Repealed by 83 Acts, ch 177, §37, 38.
450.14 Report required — blanks. Repealed by 83 Acts, ch 177, §37, 38.
450.15 Copy for department of revenue. Repealed by 83 Acts, ch 177, §37, 38.
450.16 Repealed by 76 Acts, ch 1056, §45.
450.17 Conveyance — effect.
450.18 Acceptance of final report. Repealed by 83 Acts, ch 177, §37, 38.
450.19 Record of estates by department. Repealed by 83 Acts, ch 177, §37, 38.
450.20 Record of deferred estates.
450.21 Administration on application of director.
450.22 Administration avoided — inheritance tax duties required.
450.23 Repealed by 71 Acts, ch 218, §13.
450.24 Appraisers.
450.25 and 450.26 Repealed by 71 Acts, ch 218, §13.
450.27 Commission to appraisers.
450.28 Notice of appraisement.
450.29 Notice of filing.
450.30 Real property in different counties.
450.31 Objections.
450.32 Hearing — order.
450.33 Appeal and notice.
450.34 Bond on appeal.
450.35 Repealed by 76 Acts, ch 1056, §45.
450.36 Appraisal of other property.
450.37 Value for computing the tax.
450.38 Deduction of debts. Repealed by 83 Acts, ch 177, §37, 38.
450.39 Valuation established by inventory. Repealed by 83 Acts, ch 177, §37, 38.
450.40 to 450.43 Repealed by 71 Acts, ch 218, §13.
450.44 Remainders — valuation.
450.45 Life and term estates — valuation.
450.46 Deferred estate — valuation.
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450.48 Payment deferred — bond.
450.49 Bonds — conditions.
450.50 Removal of property from state — bond.
450.51 Annuities — life and term estates.
450.52 Deferred estates — removal of lien.
450.53 Duty to pay tax — penalties.
450.54 Sale to pay tax.
450.55 Means to collect tax.
450.56 Time of payment extended. Repealed by 83 Acts, ch 177, §37, 38.
450.57 Tax deducted from legacy or collected.
450.58 Final settlement to show payment.
450.59 Judicial review.
450.60 Director to represent state.
450.61 Bequests to personal representatives.
450.62 Legacies charged upon real estate.
450.63 Maturity of tax — interest — penalty.
450.64 Receipt showing payment.
450.65 Director to enforce collection.
450.66 Investigation by director.
450.67 Inspection of books, records, etc.
450.68 Information confidential.
450.69 Contempt.
450.70 Fees.
450.71 Proof of amount of tax due.
450.72 Extension of time of appraisement. Repealed by 83 Acts, ch 177, §37, 38.
450.73 Heirs at law to make report. Repealed by 83 Acts, ch 177, §37, 38.
450.74 to 450.80 Repealed by 76 Acts, ch 1056, §45.
450.81 Duty of recorder.
450.82 and 450.83 Repealed by 76 Acts, ch 1056, §45.
450.84 Costs charged against estate — exceptions.
450.85 Appropriation.
450.86 Securities and assets held by bank, etc. Repealed by 97 Acts, ch 60, §1, 2.
450.87 Transfer of corporation stock.
450.88 Corporations to report transfers.
450.89 Foreign estates — deduction of debts. Repealed by 83 Acts, ch 177, §37, 38.
450.90 Property in this state belonging to foreign estate.
450.91 Foreign estates — reciprocity — personal property.
450.92 Compromise settlement. Repealed by 99 Acts, ch 151, §86, 89.
450.93 Unknown heirs.
450.94 Return — determination — appeal.
450.95 Appropriation.
450.96 Contingent estates.
450.97 Joint owners of bank accounts — duty to notify department of revenue and finance.

450.1 Definitions — authority of county attorney.

In the construction of this chapter the word *"person"* shall include plural as well as singular, and artificial as well as natural persons. This chapter shall not be construed to confer upon a county attorney authority to represent the state in any case, and the county attorney shall represent the department of revenue and finance only when especially authorized by it to do so.

For purposes of this chapter, unless the context otherwise requires, *"personal representative"* means an executor, administrator, or trustee as each is defined in section 633.3 and *"Internal Revenue Code"* means the same as defined in section 422.3.

"Real estate or real property" for the purpose of appraisal under this chapter means real estate which is the land and appurtenances, including structures affixed thereto.

[S13, §1481-a45; C24, 27, 31, 35, 39, §**7305;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.1]

83 Acts, ch 177, §2, 38; 88 Acts, ch 1028, §35; 99 Acts, ch 152, §32, 40

Unnumbered paragraph 3 is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 152, §32, 40

450.2 Estates taxable.

The estates of all deceased persons in any property whether the decedents be inhabitants of this state or not, and whether such estates consist of real, personal, or mixed property, tangible or intangible, and any interest in, or income from, any such estate or property which estate or property is, at the death of the decedent owner within this state, or is subject to the jurisdiction of the courts of this state, or thereafter is brought within this state and becomes subject to the jurisdiction of the courts of this state; or the property of any decedent, domiciled within this state at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the state, except real estate located outside of the state, passing in fee from the decedent owner, which shall pass in any manner herein described shall be subject to tax as herein provided.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.2]

450.3 Property included.

The tax hereby imposed shall be collected upon the net market value and shall go into the general fund of the state to be determined as herein provided, of any property passing as follows:

1. By will or under the statutes of inheritance of this or any other state or country.

2. By deed, grant, sale, gift or transfer made within three years of the death of the grantor or donor, which is not a bona fide sale for an adequate and full consideration in money or money's worth and which is in excess of the annual gift tax exclusion allowable for each donee under section 2503, subsections b and e of the Internal Revenue Code. If both spouses consent, a gift made by one spouse to a person who is not the other spouse is considered, for the purposes of this subsection, as made one half by each spouse under the same terms and conditions provided for in section 2513 of the Internal Revenue Code.

3. By deed, grant, sale, gift or transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. A transfer of property in respect of which the transferor reserves to the transferor a life income or interest shall be deemed to have been intended to take effect in possession or enjoyment at death, provided, that if the transferor reserves to the transferor less than the entire income or interest, the transfer shall be deemed taxable thereunder only to the extent of a like proportion of the value of the property transferred.

4. To the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has within three years of death exercised or released a general power of appointment by a disposition which is of a nature that if it were a transfer of property owned by the decedent, the property would be includable in the decedent's gross estate under this section whether the general power was created before or after the taking effect of this chapter. A transfer involving creation of a general power of appointment shall be treated as a transfer of a fee or equivalent interest in the property subject thereto to the donee of the power. Any transfer involving creation of any other power of appointment shall be treated, except when an election is made under subsection 7, as the transfer of a life estate or term of years in the property subject thereto to the donee of the power and as the transfer of the remainder interests to those who would take if the power is not exercised.

5. Property which is held in joint tenancy by the decedent and any other person or persons or any deposit in banks, or other institution in their joint names and payable to either or to the survivor, except such part as may be proven to have belonged to the survivor; or any interest of a decedent in property owned by a joint stock or other corporate body whereby the survivor or survivors become beneficially entitled to the decedent's interest upon the death of a shareholder. However, if such property is so held by the decedent and the surviving spouse as the only co-owners, one half of such property is not subject to taxation under the provisions of this chapter, but if the surviving spouse proves that the surviving spouse contributed to acquisition of such property an amount, in money or other property, greater than one half of the cost of the property held in joint tenancy, the

portion of such property which is not subject to taxation under the provisions of this chapter shall be the proportion which the actual contribution by the surviving spouse is of the total contribution to acquisition of such property. The tax imposed upon the passing of property under the provisions of this subsection shall apply to property held under all such contracts or agreements whether made before or after the taking effect of this chapter.

6. When the decedent shall have disposed of the decedent's estate in any manner to take effect at the decedent's death with a request secret or otherwise that the beneficiary give, pay to, or share the property or any interest therein received from the decedent, with other person or persons, or to so dispose of beneficial interests conferred by the decedent upon the beneficiaries as that the property so passing would be taxable under the provisions of this chapter if passing directly by will or deed from the decedent owner to those to receive the gift from the beneficiary, compliance with such request shall constitute a transfer taxable under the provisions of this chapter, at the highest rate possible in like cases of transfers by will or deed.

7. Which qualifies as a qualified terminable interest property as defined in section 2056(b)(7)(B) of the Internal Revenue Code, shall, if an election is made, be treated and considered as passing in fee, or its equivalent, to the surviving spouse in the estate of the donor-grantor. Property on which the election is made shall be included in the gross estate of the surviving spouse and shall be deemed to have passed in fee from the surviving spouse to the persons succeeding to the remainder interest, unless the property was sold, distributed, or otherwise disposed of prior to the death of the surviving spouse. A sale, disposition, or disposal of the property prior to the death of the surviving spouse shall void the election, and shall subject the property disposed of, less amounts received or retained by the surviving spouse, to tax in the donor-grantor's estate in the same manner as if the tax had been deferred under sections 450.44 through 450.49.

Unless the will or trust instrument provides otherwise, the estate of the surviving spouse shall have the right to recover from the persons succeeding to the remainder interests, the additional tax imposed, if any, without interest, on the surviving spouse by reason of the election being made. The amount of tax recovered, if any, shall be a credit in the donee's estate against the tax imposed on the qualified terminable interest property.

An election under this subsection can only be made if an election in relation to the qualified terminable interest property is also made for federal estate tax purposes.

The director of revenue and finance shall adopt and promulgate all rules necessary for the enforcement and administration of this subsection including the form and manner of making the election.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.3]

84 Acts, ch 1240, §1; 85 Acts, ch 148, §2, 3; 85 Acts, ch 230, §12; 86 Acts, ch 1237, §27; 88 Acts, ch 1028, §36

450.4 Exemptions.

The tax imposed by this chapter shall not be collected:

1. When the entire estate of the decedent does not exceed the sum of twenty-five thousand dollars after deducting the liabilities, as defined in this chapter.

2. When the property passes for a charitable, educational, or religious purpose as defined in sections 170(c) and 2055 of the Internal Revenue Code.

3. When the property passes to public libraries or public art galleries within this state, open to the use of the public and not operated for gain, or to hospitals within this state, or to trustees for such uses within this state, or to municipal corporations for purely public purposes.

4. On bequests for the care and maintenance of the cemetery or burial lot of the decedent or the decedent's family, and bequests not to exceed five hundred dollars in any estate of a decedent for the performance of a religious service or services by some person regularly ordained, authorized, or licensed by some religious society to perform such service, which service or services are to be performed for or in behalf of the testator or some person named in the testator's last will.

5. On the value of that portion of any lump sum or installment payments which will be includable as net income as defined in section 422.7 as received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan.

6. On property in an individual development account in the name of the decedent that passes to another individual development account or the state human investment reserve pool created in section 541A.4. For purposes of this subsection, *"individual development account"* means an account that has been certified as an individual development account pursuant to chapter 541A.

7. On the value of that portion of any lump sum or installment payments which are received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan where the employee is a nonresident of Iowa at the time of death.

8. On the value of that portion of any lump sum or installment payments which are received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan which was excluded from net income as set forth in section 422.7, subsection 31.

[S13, §1481-a1; C24, 27, 31, 35, 39, §**7308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.4; 81 Acts, ch 147, §1, 19]

83 Acts, ch 177, §3, 38; 93 Acts, ch 97, §15, 20; 94 Acts, ch 1165, §31; 96 Acts, ch 1106, §8; 2001 Acts, ch 140, §1, 5; 2001 Acts, ch 150, §20, 21; 2002 Acts, ch 1050, §38

2001 amendment to subsection 1 applies to estates of decedents dying on or after July 1, 2001; 2001 Acts, ch 140, §5

Subsection 4 amended

450.5 Liability for tax.

Any person becoming beneficially entitled to any property or interest in property by any method of transfer as specified in this chapter, and all personal representatives and referees of estates or transfers taxable under this chapter, are respectively liable for all taxes to be paid by them respectively.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7309;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.5]

83 Acts, ch 177, §4, 38

450.6 Accrual of tax — maturity — extension of time.

The tax imposed by this chapter accrues at the death of the decedent owner, and shall be paid to the department of revenue and finance on or before the last day of the ninth month after the death of the decedent owner except if otherwise provided in this chapter. If in the opinion of the director of revenue and finance additional time should be granted for payment to avoid hardship, the director may extend the period to a date not exceeding ten years from the last day of the month in which the death of the decedent occurred. In the case of an extension the tax bears interest at the rate in effect under section 421.7 from the expiration of the last day of the ninth month after the decedent's death. Interest shall be computed on a monthly basis with a fraction of a month counted as a full month.

Upon the approval of the executive council, the tax liability of a beneficiary, heir, surviving joint tenant or other transferee may be paid, in lieu of money, in whole or in part by the transfer of real property or tangible personal property to the state or a political subdivision of the state to be used for public purposes. Before the tax liability may be paid by transfer of property to a political subdivision, the governing body of the political subdivision shall also approve the transfer. The property transferred in payment of tax shall have been included in the decedent's gross estate for inheritance tax purposes and its value for the payment of the tax shall be the same as its value for inheritance tax purposes. The acceptance or rejection of the property in payment of the tax liability and the value of the property shall be certified by the executive council to the director of revenue and finance. The acceptance of the property transferred acts as payment and satisfaction of the inheritance tax liability to the extent of the value of the transferred property, but notwithstanding any other provision, the taxpayer is not entitled to a refund if the transferred property has a value in excess of the tax liability.

[S13, §1481-a; C24, 27, 31, 35, 39, §**7310;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.6; 81 Acts, ch 131, §15, ch 147, §2, 20]

84 Acts, ch 1240, §2

Interest on delinquent taxes, §450.63

450.7 Lien of tax.

1. Except for the share of the estate passing to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants, the tax is a charge against and a lien upon the estate subject to tax under this chapter, and all property of the estate or owned by the decedent from the death of the decedent until paid, subject to the following limitation:

Inheritance taxes owing with respect to a passing of property of a deceased person are no longer a lien against the property ten years from the date of death of the decedent owner regardless of whether the decedent owner died prior to or subsequent to July 1, 1995, except to the extent taxes are attributable to remainder or deferred interests and are deferred in accordance with the provisions of this chapter.

2. Notice of the lien is not required to be recorded. The rights of the state under the lien have priority over all subsequent mortgages, purchases, or judgment creditors; and a conveyance after the decedent's death of the property subject to a lien does not discharge the property except as otherwise provided in this chapter. However, if additional tax is determined to be owing under this chapter or chapter 451 after the lien has been released under paragraph *"a"* or *"b"*, the lien does not have priority over subsequent mortgages, purchases, or judgment creditors unless notice of the lien is recorded in the office of the recorder of the county where the estate is probated, or where the property is located if the estate has not been administered. The department of revenue and finance may release the lien by filing in the office of the clerk of the court in the county where the property is located, the decedent owner died, or the estate is pending or was administered, one of the following:

a. A receipt in full payment of the tax.

b. A certificate of nonliability for the tax as to all property reported in the estate.

c. A release or waiver of the lien as to all or any part of the property reported in the estate, which shall release the lien as to the property designated in the release or waiver.

3. The sale, exchange, mortgage, or pledge of property by the personal representative pursuant to a testamentary direction or power, pursuant to section 633.387, or under order of court, divests the property from the lien of the tax. The proceeds from that sale, exchange, mortgage, or pledge shall be held by the personal representative subject to the same priorities for the payment of the tax as existed with respect to the property before the transaction, and the personal representative is personally liable for payment of the tax to the extent of the proceeds.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7311;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.7]

83 Acts, ch 177, §5, 38; 84 Acts, ch 1240, §3; 90 Acts, ch 1232, §20; 95 Acts, ch 63, §1; 97 Acts, ch 1, §1, 8; 99 Acts, ch 151, §45, 89

450.8 Transfers and trusts.

If the decedent makes transfer of, or creates a trust with respect to, property passing under section 450.3, subsection 2, or intended to take effect after death, except in the case of a bona fide sale for a fair consideration in money or money's worth, and if the tax in respect to the transfer is not paid when due, the transferee or trustee is personally liable for the tax, and the property, to the extent of the decedent's interest in the property at the time of death, is subject to a lien for the payment of the tax.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7312;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.8]

84 Acts, ch 1240, §4

450.9 Individual exemptions.

In computing the tax on the net estate, the entire amount of property, interest in property, and income passing to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants are exempt from tax.

[C31, 35, §7312-d1; C39, §**7312.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.9; 81 Acts, ch 147, §3, 19]

91 Acts, ch 159, §23, 24; 94 Acts, ch 1046, §10; 97 Acts, ch 1, §2, 8

450.10 Rate of tax.

The property or any interest therein or income therefrom, subject to the provisions of this chapter, shall be taxed as herein provided:

1. When the property or any interest in property, or income from property, taxable under the provisions of this chapter, passes to the brother or sister, son-in-law, or daughter-in-law, the rate of tax imposed on the individual share so passing shall be as follows:

Five percent on any amount up to twelve thousand five hundred dollars.

Six percent on any amount in excess of twelve thousand five hundred dollars and up to twenty-five thousand dollars.

Seven percent on any amount in excess of twenty-five thousand dollars and up to seventy-five thousand dollars.

Eight percent on any amount in excess of seventy-five thousand dollars and up to one hundred thousand dollars.

Nine percent on any amount in excess of one hundred thousand dollars and up to one hundred fifty thousand dollars.

Ten percent on all sums in excess of one hundred fifty thousand dollars.

2. When the property or interest in property or income from property, taxable under this chapter, passes to a person not included in subsections 1 and 6, the rate of tax imposed on the individual share so passing shall be as follows:

Ten percent on any amount up to fifty thousand dollars.

Twelve percent on any amount in excess of fifty thousand dollars and up to one hundred thousand dollars.

Fifteen percent on all sums in excess of one hundred thousand dollars.

3. When the property or any interest therein or income therefrom, taxable under the provisions of this chapter, passes in any manner to societies, institutions or associations incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to cemetery associations, including humane societies not organized under the laws of this state, or to resident trustees for uses without this state, the rate of tax imposed shall be as follows:

Ten percent on the entire amount so passing.

4. When the property or any interest in property or income from property, taxable under this chapter, passes to any firm, corporation, or society organized for profit, including fraternal and social organizations which do not qualify for exemption under sections 170(c) and 2055 of the Internal Revenue Code, the rate of tax imposed shall be as follows:

Fifteen percent on the entire amount so passing.

5. When the property or any interest in property, or income from property, taxable under this chapter, passes to any person included under subsection 1, there shall be credited to the tax imposed on the individual share so passing an amount equal to the tax imposed in this state on the decedent on any property, real, personal or mixed, or the proportionate share thereof on property passing to the person taxed hereunder, which can be identified as having been received by the decedent as a share in the estate of any person who died within two years prior to the death of the de-

cedent, or which can be identified as having been acquired by the decedent in exchange for property so received. The credit shall not be applicable to taxes on property of the decedent which was not acquired from the prior estate.

6. Property, interest in property, or income passing to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants, is not taxable under this section.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7313;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.10; 81 Acts, ch 147, §4]

91 Acts, ch 159, §25 – 27; 94 Acts, ch 1046, §11; 97 Acts, ch 1, §3 – 8; 2001 Acts, ch 116, §24, 28

2001 amendment to subsection 4 applies to estates of decedents dying on or after July 1, 2001; 2001 Acts, ch 116, §28

450.11 Repealed by 65 Acts, ch 366, § 6.

450.12 Liabilities deductible.

1. Subject to the limitations in subsections 2 and 3, there shall be deducted from the gross value of the estate only the liabilities defined as follows:

a. The debts owing by the decedent at the time of death, the local and state taxes accrued before the decedent's death, the federal estate tax and federal taxes owing by the decedent, a reasonable sum for funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to section 2053 of the Internal Revenue Code.

b. A liability shall not be deducted unless the personal representative or other person filing the inheritance tax return as provided in section 450.22 certifies that it has been paid or, if not paid, the director of revenue and finance is satisfied that it will be paid. If the amount of liabilities deductible under this section exceeds the amount of property subject to the payment of the liabilities, the excess shall be deducted from other property included in the gross estate on a prorated basis that the gross value of each item of other property bears to the total gross value of all the other property. Subject to the previous provision, a liability is deductible whether or not the liability is legally enforceable against the decedent's estate.

2. If the decedent's gross estate includes property with a situs outside of Iowa, the liabilities deductible under subsection 1 shall be prorated on the basis that the gross value of property with a situs in Iowa bears to the total gross estate. Only the Iowa portion of the liabilities shall be deductible in computing the tax imposed by this chapter. However, a liability secured by a lien on property shall be allocated to the state where the property has a situs and shall not be prorated except to the extent the liability exceeds the value of the property.

3. If a liability under subsection 1 is secured by property, or a portion of property, not included in the decedent's gross estate, only that portion of the liability attributable to property or a portion of property included in the decedent's gross estate is deductible in computing the tax imposed by this chapter.

83 Acts, ch 177, §6, 38; 90 Acts, ch 1232, §21; 94 Acts, ch 1165, §32, 49; 95 Acts, ch 63, §2

450.13 Inheritance tax and lien book. Repealed by 83 Acts, ch 177, § 37, 38.

450.14 Report required — blanks. Repealed by 83 Acts, ch 177, § 37, 38.

450.15 Copy for department of revenue. Repealed by 83 Acts, ch 177, § 37, 38.

450.16 Repealed by 76 Acts, ch 1056, § 45.

450.17 Conveyance — effect.

When real estate or an interest in real estate is subject to tax, a conveyance does not discharge the real estate conveyed from the lien except as provided in section 450.7.

[S13, §1481-a26; C24, 27, 31, 35, 39, §**7323;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.17]

83 Acts, ch 177, §7, 38

450.18 Acceptance of final report. Repealed by 83 Acts, ch 177, § 37, 38.

450.19 Record of estates by department. Repealed by 83 Acts, ch 177, § 37, 38.

450.20 Record of deferred estates.

It shall also keep a separate record of any deferred estate upon which the tax due is not paid within fifteen months from the death of the decedent, showing substantially the same facts as are required in other cases, and also showing:

1. The date and amount of all bonds given to secure the payment of the tax with a list of the sureties thereon.

2. The name of the person beneficially entitled to such estate or interest, with place of residence.

3. A description of the property or a statement of conditions upon which such deferred estate is based or limited.

[S13, §1481-a46; C24, 27, 31, 35, 39, §**7326;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.20]

450.21 Administration on application of director.

If, upon the death of any person leaving an estate that may be liable to a tax under this chapter, a will disposing of the estate is not offered for pro-

bate, or an application for administration made within four months from the time of the decease, the director of revenue and finance may, at any time thereafter, make application to the proper court, setting forth that fact and requesting that a personal representative be appointed, and the court shall appoint a personal representative to administer upon the estate.

[S13, §1481-a3; C24, 27, 31, 35, 39, §**7327;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.21]

83 Acts, ch 177, §8, 38

450.22 Administration avoided — inheritance tax duties required.

When the heirs or persons entitled to inherit the property of an estate subject to tax under this chapter desire to avoid the appointment of a personal representative as provided in section 450.21, and in all instances where real estate is involved and there are no regular probate proceedings, they or one of them shall file under oath the inventories required by section 633.361 and the required reports, perform all the duties required by this chapter of the personal representative, and file the inheritance tax return. However, this section does not apply and a return is not required even though real estate is part of the assets subject to tax under this chapter, if all of the assets are held in joint tenancy with right of survivorship between husband and wife alone, or if the estate exclusively consists of property held in joint tenancy with the right of survivorship solely by the decedent and any individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax and the estate does not have a federal estate tax obligation. When this section applies, proceedings for the collection of the tax when a personal representative is not appointed shall conform as nearly as possible to proceedings under this chapter in other cases.

[S13, §1481-a3; C24, 27, 31, 35, 39, §**7328;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.22]

83 Acts, ch 177, §9, 38; 89 Acts, ch 251, §36; 99 Acts, ch 151, §46, 89

1999 amendment is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §46, 89

450.23 Repealed by 71 Acts, ch 218, § 13.

450.24 Appraisers.

In each county, the chief judge of the judicial district for that county shall, on or before January 15 of the year an appointment is required, appoint three competent residents and freeholders of the county to act as appraisers of the real property within its jurisdiction which is charged or sought to be charged with an inheritance tax. The appraisers shall serve for four years, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the chief judge of the judicial district for that county. The chief judge may also in the chief judge's discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term shall be filled by appointment of the chief judge of the judicial district for that county. A person interested in any manner in the estate to be appraised shall not serve as an appraiser of that estate.

[S13, §1481-a4; C24, 27, 31, 35, 39, §**7330;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.24]

83 Acts, ch 177, §10, 38; 2000 Acts, ch 1032, §2; 2000 Acts, ch 1057, §5

450.25 and 450.26 Repealed by 71 Acts, ch 218, § 13.

450.27 Commission to appraisers.

When an appraisal of real estate is requested by the department of revenue and finance, as provided in section 450.37, or is otherwise required by this chapter, the clerk shall issue a commission to the appraisers, who shall fix a time and place for appraisement, except that if the only interest that is subject to tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, the clerk shall not issue the commission until the determination of the prior estate, except at the request of the department of revenue and finance when the parties in interest seek to remove an inheritance tax lien. When valuing the real estate for purposes of inheritance tax, an appraiser does not have the jurisdiction to determine what property or partial interests may or may not be subject to tax. Whole interests in the property should be appraised and the question of the actual property or partial interest subject to inheritance tax is to be determined by means of the administrative procedures pursuant to section 450.94. All joint property that is to be appraised should be listed at its full market value. Long-term leases are not considered in determining the value of property when being appraised.

[S13, §1481-a5; C24, 27, 31, 35, 39, §**7331;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.27]

83 Acts, ch 177, §11, 38; 99 Acts, ch 152, §33, 40

1999 amendment is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 152, §33, 40

450.28 Notice of appraisement.

It shall be the duty of all appraisers appointed under the provisions of this chapter, upon receiving a commission as herein provided, to give notice to the director of revenue and finance, the attorney of record of the estate, if any, and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be

less than ten days from the date of such notice. The notice shall further state that the director of revenue and finance or any person interested in the estate or property appraised may, within sixty days after filing of the appraisement with the clerk of court, file objections to the appraisement. The notice shall be served by certified mail and such notice is deemed completed when the notice is deposited in the mail and postmarked for delivery.

[S13, §1481-a6; C24, 27, 31, 35, 39, §**7332;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.28]

97 Acts, ch 157, §1

450.29 Notice of filing.

Upon service of such notice and the making of such appraisement, the notice and appraisement shall be filed with the clerk, and a copy of the appraisement shall at once be filed by the clerk with the director of revenue and finance. The clerk shall send a notice, by ordinary mail, to the attorney of record of the estate, if any, to the personal representative of the estate, and to each person known to be interested in the estate or property appraised. The notice shall state the date the appraisement was filed with the clerk of court and shall include a copy of the appraisement.

[C97, §1476; S13, §1481-a6; C24, 27, 31, 35, 39, §**7333;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.29]

97 Acts, ch 157, §2

450.30 Real property in different counties.

If real property is located in more than one county, the appraisers of the county in which the estate is being administered may appraise all real estate, or those of the several counties may serve for the real property within their respective counties or other appraisers be appointed as the district court may direct.

[C97, §1476; S13, §1481-a6; C24, 27, 31, 35, 39, §**7334;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.30]

83 Acts, ch 177, §12, 38

450.31 Objections.

The director of revenue and finance or any person interested in the estate or property appraised may, within sixty days after filing of the appraisement with the clerk, file objections to said appraisement and give notice thereof as in beginning civil actions, to the director of revenue and finance or the representative of the estate or trust, if any, otherwise to the person interested as heir, legatee, or transferee, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved.

[S13, §1481-a7; C24, 27, 31, 35, 39, §**7335;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.31]

Service of notice, R.C.P. 1.302 – 1.315

450.32 Hearing — order.

If upon the hearing the court finds the amount at which the real property is appraised is its value on the market in the ordinary course of trade and the appraisement was fairly and in good faith made, it shall approve the appraisement. If the court finds that the appraisement was made at a greater or lesser sum than the value of the real property in the ordinary course of trade, or that it was not fairly or in good faith made, it shall set aside the appraisement. Upon the appraisement being set aside, the court shall fix the value of the real property of the estate for inheritance tax purposes and the valuation fixed is that upon which the tax shall be paid, unless an appeal is taken from the order of the court as provided for in this chapter.

[S13, §1481-a7; C24, 27, 31, 35, 39, §**7336;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.32]

83 Acts, ch 177, §13, 38

450.33 Appeal and notice.

The director of revenue and finance or anyone interested in the property appraised may appeal to the supreme court from the order of the district court fixing the value of the property of said estate. Notice of appeal shall be served within sixty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions.

[S13, §1481-a7; C24, 27, 31, 35, 39, §**7337;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.33]

450.34 Bond on appeal.

In case of appeal the appellant, if not the director of revenue and finance, shall give bond to be approved by the clerk of the court, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable with cost of appeal.

[S13, §1481-a7; C24, 27, 31, 35, 39, §**7338;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.34]

Presumption of approval, §636.10

450.35 Repealed by 76 Acts, ch 1056, § 45.

450.36 Appraisal of other property.

If there is an estate or real property subject to tax and the records in the clerk's office do not disclose that there may be a tax due under this chapter, the persons interested in the real property shall report the matter to the department of revenue and finance with a request that the real property be appraised.

[S13, §1481-a8; C24, 27, 31, 35, 39, §**7341;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.36]

83 Acts, ch 177, §14, 38

450.37 Value for computing the tax.

1. Unless the value has been determined under chapter 450B, the tax shall be computed based

upon one of the following:

a. The fair market value of the property in the ordinary course of trade determined under subsection 2.

b. The alternate value of the property, if the personal representative so elects, that has been established for federal estate tax purposes under section 2032 of the Internal Revenue Code. The election shall be exercised on the return by the personal representative or other person signing the return, within the time prescribed by law for filing the return or before the expiration of any extension of time granted for filing the return.

2. Fair market value of real estate in the ordinary course of trade shall be established by agreement, including an agreement to accept the values as finally determined for federal estate tax purposes. The agreement shall be between the department of revenue and finance, the personal representative, and the persons who have an interest in the property.

a. If an agreement has not been reached on the fair market value of real property in the ordinary course of trade, the director of revenue and finance has thirty days after the return is filed to request an appraisal under section 450.27. If an appraisal request is not made within the thirty-day period, the value listed on the return is the agreed value of the real property.

b. If an agreement is not reached on the fair market value of personal property in the ordinary course of trade, the personal representative or any person interested in the personal property may appeal to the director of revenue and finance for a revision of the department of revenue and finance's determination of the value and after the appeal hearing may seek judicial review of the director's decision. The provisions of section 450.94, subsection 3, relating to appeal of a determination of the department and review of the director's decision apply to an appeal and review made under this subsection.

3. In addition to the applicable period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the internal revenue service for federal estate tax purposes. The department shall make an examination and adjustment for the value of the real property at any time within six months from the date of receipt by the department of written notice from the personal representative for the estate that all federal estate tax matters between the estate and the internal revenue service have been concluded. To begin the running of the six-month period, the notice shall be in writing in a form sufficient to inform the department of the final disposition of the federal estate tax obligation with the internal revenue service and a copy of the federal document showing the final disposition and final federal adjustments of all real property values must be attached. The department shall make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether an inheritance clearance has been issued, an appraisal has been obtained on the real property indicating a contrary value, whether there has been an acceptance of another value for real property by the department, or whether an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property. Notwithstanding the period of limitation specified in section 450.94, subsection 3, the personal representative for the estate shall have six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the internal revenue service to claim a refund of an overpayment of tax due to the change in the valuation of real property by the internal revenue service.

[S13, §1481-a8; C24, 27, 31, 35, 39, §**7342;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.37; 81 Acts, ch 147, §6]

83 Acts, ch 177, §15, 38; 84 Acts, ch 1305, §37; 88 Acts, ch 1028, §37; 89 Acts, ch 6, §6; 99 Acts, ch 151, §47, 89; 99 Acts, ch 152, §34, 40

1999 amendments to subsections 2 and 3 are effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §47, 89; 99 Acts, ch 152, §34, 40

450.38 Deduction of debts. Repealed by 83 Acts, ch 177, § 37, 38. See § 450.12.

450.39 Valuation established by inventory. Repealed by 83 Acts, ch 177, § 37, 38. See § 450.37.

450.40 to 450.43 Repealed by 71 Acts, ch 218, § 13.

450.44 Remainders — valuation.

When a person whose estate over and above the amount of that person's liabilities, as defined in this chapter, exceeds the sum of twenty-five thousand dollars, bequeaths, devises, or otherwise transfers real property to or for the use of persons exempt from the tax imposed by this chapter, during life or for a term of years and the remainder to persons not thus exempt, this property, upon the determination of the estate for life or years, shall be valued at its then actual market value from which shall be deducted the value of any improvements on it made by the person who owns the remainder interest during the time of the prior estate, to be determined as provided in section 450.37, subsection 1, paragraph *"a"*, and the tax on the remainder shall be paid by the person who owns the remainder interest as provided in section 450.46.

[S13, §1481-a10; C24, 27, 31, 35, 39, §**7349;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.44; 81 Acts, ch 147, §7, 19]

83 Acts, ch 177, §16, 38; 2001 Acts, ch 140, §2, 5

2001 amendment applies to estates of decedents dying on or after July 1, 2001; 2001 Acts, ch 140, §5

450.45 Life and term estates — valuation.

If an estate or interest for life or term of years in real property is given to a party other than those exempt by this chapter, the property shall be valued as provided in section 450.37 as is provided in ordinary cases, and the party entitled to the estate or interest shall, on or before the last day of the ninth month from the death of the decedent owner, pay the tax, and in default the court shall order the estate or interest, or as much as necessary to pay the tax, penalty, and interest, to be sold.

[S13, §1481-a11; C24, 27, 31, 35, 39, §**7350;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.45; 81 Acts, ch 147, §8, 20]

83 Acts, ch 177, §17, 38; 84 Acts, ch 1240, §5

450.46 Deferred estate — valuation.

Upon the determination of a prior estate or interest, when the remainder or deferred estate or interest or a part of it is subject to tax and the tax upon the remainder or deferred interest has not been paid, the persons entitled to the remainder or deferred interest shall immediately report to the department of revenue and finance the fact of the determination of the prior estate, and upon receipt of the report, or upon information from any source, of the determination of a prior estate when the remainder interest has not been valued for the purpose of assessing tax, the property shall be valued as provided in like cases in section 450.44 and the tax upon the remainder interest shall be paid by the person who owns the remainder interest on or before the last day of the ninth month after the determination of the prior estate. If the tax is not paid within this time the court shall then order the property, or as much as necessary to pay the tax, penalty, and interest, to be sold.

[S13, §1481-a11; C24, 27, 31, 35, 39, §**7351;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.46; 81 Acts, ch 147, §9, 20]

83 Acts, ch 177, §18, 38; 84 Acts, ch 1240, §6

450.47 Life and term estates in personal property.

If an estate or interest for life or term of years in personal property is given to one or more persons other than those exempt by this chapter and the remainder or deferred estate to others, the property devised or conveyed shall be valued under section 450.37 as provided in ordinary estates and the value of the estates or interests devised or conveyed shall be determined as provided in section 450.51, and the tax upon the estates or interests liable for the tax shall be paid to the department of revenue and finance from the property valued or by the persons entitled to the estate or interest on or before the last day of the ninth month after the death of the testator, grantor, or donor. However, payment of the tax upon a deferred estate or remainder interest may be deferred until the determination of the prior estate by the giving of a good and sufficient bond as provided in section 450.48.

[S13, §1481-a12; C24, 27, 31, 35, 39, §**7352;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.47; 81 Acts, ch 147, §10, 20]

83 Acts, ch 177, §19, 38; 84 Acts, ch 1240, §7

450.48 Payment deferred — bond.

When in case of deferred estates or remainder interests in personal property or in the proceeds of any real estate that may be sold during the time of a life, term, or prior estate, the persons interested who may desire to defer the payment of the tax until the determination of the prior estate, shall file with the clerk of the proper district court a bond as provided herein in other cases, such bond to be renewed every two years until the tax upon such deferred estate is paid. If at the end of any two-year period the bond is not promptly renewed as herein provided and the tax has not been paid, the bond shall be declared forfeited, and the amount thereof forthwith collected. When the estate of a decedent consists in part of real and in part of personal property, and there be an estate for life or for a term of years to one or more persons and a deferred or remainder estate to others, and such deferred or remainder estate is in whole or in part subject to the tax imposed by this chapter, if the deferred or remainder estates or interests are so disposed that good and sufficient security for the payment of the tax for which such deferred or remainder estates may be liable can be had because of the lien imposed by this chapter upon the real property of such estate, then payment of the tax upon such deferred or remainder estates may be postponed until the determination of the prior estate without giving bond as herein required to secure payment of such tax, and the tax shall remain a lien upon such real estate until the tax upon such deferred estate or interest is paid.

[S13, §1481-a13; C24, 27, 31, 35, 39, §**7353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.48]

450.49 Bonds — conditions.

All bonds required by this chapter shall be payable to the department of revenue and finance and shall be conditioned upon the payment of the tax, interest, and costs for which the estate may be liable, and for the faithful performance of all the duties hereby imposed upon and required of the person whose acts are by such bond to be guaranteed, and shall be in an amount equal to twice the amount of the tax, interest, and costs that may be due, but in no case less than five hundred dollars, and must be secured by not less than two resident freeholders or by a fidelity or surety company au-

thorized by the commissioner of insurance to do business in this state.

[S13, §1481-a14; C24, 27, 31, 35, 39, §**7354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.49]

450.50 Removal of property from state — bond.

It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this chapter, without paying the said tax to the department of revenue and finance. Any person violating the provisions of this section shall be guilty of a serious misdemeanor and upon conviction shall be fined an amount equal to twice the amount of tax, interest, and costs for which the estate may be liable; provided, however, that the penalty hereby imposed shall not be enforced if, prior to the removal of such property or the proceeds thereof, the person desiring to effect such removal files with the clerk a bond conditioned upon the payment of the tax, interest, and costs, as is provided in section 450.49 hereof.

[S13, §1481-a15; C24, 27, 31, 35, 39, §**7355;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.50]

450.51 Annuities — life and term estates.

The value of any annuity, deferred estate, or interest, or any estate for life or term of years, subject to inheritance tax shall be determined for the purpose of computing the tax by the use of current, commonly used tables of mortality and actuarial principles pursuant to regulations prescribed by the director of revenue and finance. The taxable value of annuities, life or term, deferred, or future estates, shall be computed at the rate of four percent per annum of the established value of the property in which the estate or interest exists or is founded.

[S13, §1481-a16; C24, 27, 31, 35, 39, §**7356;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.51]

83 Acts, ch 177, §20, 38

Mortality table, at end of this chapter

450.52 Deferred estates — removal of lien.

Whenever it is desired to remove the lien of the inheritance tax on remainders, reversions, or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interests determined according to the rules herein fixed.

[S13, §1481-a16; C24, 27, 31, 35, 39, §**7357;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.52]

450.53 Duty to pay tax — penalties.

1. All personal representatives, except guardians and conservators, and other persons charged with the management or settlement of any estate or trust from which a tax is due under this chapter, shall file an inheritance tax return, within the time limits set by section 450.6, with a copy of any federal estate tax return and other documents required by the director which may reasonably tend to prove the amount of tax due, and at the time of filing, shall pay to the department of revenue and finance the amount of the tax due from any devisee, grantee, donee, heir, or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate. The owner of the future interest shall file a supplemental inheritance tax return and pay to the department of revenue and finance the tax due within the time limits set in this chapter. The inheritance tax returns shall be in the form prescribed by the director.

2. A person in possession of assets to be reported for purposes of taxation, including a personal representative or trustee, who willfully makes a false or fraudulent return, or willfully fails to pay the tax, supply the information, make, sign, or file the required return within the time required by law, is guilty of a fraudulent practice.

3. A person who willfully attempts in any manner to evade taxes imposed by this chapter or avoid payment of the tax, is guilty of an aggravated misdemeanor.

4. The jurisdiction of any offense as defined in this section is in the county of the residence of the decedent at the time of death. If the decedent is a nonresident of the state, jurisdiction is in any county in which property subject to the tax is located.

5. A prosecution for any offense defined in this section shall be commenced not later than six years following the commission of the offense.

[S13, §1481-a17; C24, 27, 31, 35, 39, §**7358;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.53]

83 Acts, ch 177, §21, 38; 94 Acts, ch 1165, §33

450.54 Sale to pay tax.

Personal representatives or the director of revenue and finance may sell as much of the property of the decedent as will enable them to pay the tax, in the same manner as provided by law for the sale of that property for the payment of debts of testators or intestates.

[S13, §1481-a17; C24, 27, 31, 35, 39, §**7359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.54]

83 Acts, ch 177, §22, 38

450.55 Means to collect tax.

The provisions of sections 422.26 and 422.30, pertaining to jeopardy assessments and distress warrants, apply to the unpaid tax, penalty, and interest imposed under this chapter. In addition the director of revenue and finance may bring, or cause to be brought in the director's name of office, suit for the collection of the tax, penalty, interest, and costs, against the personal representative or against the person entitled to property subject to

the tax, or upon any bond given to secure payment of the tax, either jointly or severally, and upon obtaining judgment may cause execution to be issued as is provided by statute in other cases. The proceedings shall conform as nearly as may be to those for the collection of ordinary debt by suit.

[S13, §1481-a17; C24, 27, 31, 35, 39, §**7360;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.55]

83 Acts, ch 177, §23, 38, 39; 84 Acts, ch 1240, §8

450.56 Time of payment extended. Repealed by 83 Acts, ch 177, § 37, 38.

450.57 Tax deducted from legacy or collected.

Every personal representative or referee having in charge or trust any property of an estate subject to tax which is made payable by the personal representative or referee, shall deduct the tax from the property or shall collect the tax from the legatee or person entitled to the property and pay the tax to the department of revenue and finance, and the personal representative or referee shall not deliver any specific legacy or property subject to tax to any person until the personal representative or referee has collected the tax.

[S13, §1481-a18; C24, 27, 31, 35, 39, §**7362;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.57]

83 Acts, ch 177, §24, 38

450.58 Final settlement to show payment.

The final settlement of the account of a personal representative shall not be accepted or allowed unless it shows, and the court finds, that all taxes imposed by this chapter upon any property or interest in property that are made payable by the personal representative and to be settled by the account, have been paid, and that the receipt of the department of revenue and finance for the tax has been obtained as provided in section 450.64. Any order contravening this section is void.

[S13, §1481-a19; C24, 27, 31, 35, 39, §**7363;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.58]

83 Acts, ch 177, §25, 38; 85 Acts, ch 148, §4; 86 Acts, ch 1054, §2; 86 Acts, ch 1241, §44

Similar provision, §422.27

450.59 Judicial review.

Judicial review of a decision of the director may be sought under the Iowa Administrative Procedure Act, except that the petition may be filed in the district court in the county in which some part of the property is situated, if the decedent was not a resident, or such court in the county of which the deceased was a resident at the time of the decedent's death or where such estate is administered.

[S13, §1481-a20; C24, 27, 31, 35, 39, §**7364;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.59]

450.60 Director to represent state.

The director of revenue and finance shall, with all the rights and privileges of a party in interest, represent the state in any such proceedings.

[S13, §1481-a20; C24, 27, 31, 35, 39, §**7365;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.60]

450.61 Bequests to personal representatives.

If a decedent appoints one or more personal representatives and, in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to tax, or appoints them residuary legatees, and the bequests, devises, or residuary legacies exceed the statutory fees as compensation for their services, the excess is liable to tax.

[S13, §1481-a21; C24, 27, 31, 35, 39, §**7366;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.61]

83 Acts, ch 177, §26, 38

450.62 Legacies charged upon real estate.

If legacies subject to tax are charged upon or payable out of real estate, the heir or devisee, before paying the tax, shall deduct the tax from it and pay it to the personal representative or department of revenue and finance, and the tax shall remain a charge against and be a lien upon the real estate until it is paid. Payment of the tax shall be enforced by the personal representative or director of revenue and finance as provided in this chapter.

[S13, §1481-a22; C24, 27, 31, 35, 39, §**7367;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.62]

83 Acts, ch 177, §27, 38

450.63 Maturity of tax — interest — penalty.

All taxes not paid within the time prescribed in this chapter are subject to a penalty as provided in section 421.27 and shall draw interest at the rate in effect under section 421.7 until paid.

[S13, §1481-a23; C24, 27, 31, 35, 39, §**7368;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.63; 81 Acts, ch 131, §16, ch 147, §11, 20; 82 Acts, ch 1180, §7, 8]

84 Acts, ch 1173, §9; 86 Acts, ch 1007, §39; 90 Acts, ch 1172, §13

Interest on extension of time, §450.6

450.64 Receipt showing payment.

Upon payment of the tax in full the department of revenue and finance shall forthwith transmit a receipt to the person designated by the taxpayer signing the return showing payment of the tax. If the tax is not paid in full, a taxpayer whose tax liability is paid in full may request a receipt as to that taxpayer's share of the tax.

[S13, §1481-a23; C24, 27, 31, 35, 39, §**7369;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.64]

83 Acts, ch 177, §28, 38

450.65 Director to enforce collection.

It shall be the duty of the director of revenue and finance to enforce the collection of the delinquent inheritance tax, and the provisions of law with reference thereto.

[C24, 27, 31, 35, 39, §**7370;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.65]

450.66 Investigation by director.

The director of revenue and finance may issue a citation to any person who the director may believe or has reason to believe has any knowledge or information concerning any property which the director believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of the inheritance tax laws of this state, and by such citation require such person to appear before the director or anyone designated by the director at the county seat of the county where said person resides and at a time to be designated in such citation, and testify under oath as to any fact or information within the person's knowledge touching the quantity, value, and description of any such property and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the director of revenue and finance, any books, records, accounts, or documents in the possession of or under the control of any person so cited.

[C24, 27, 31, 35, 39, §**7371;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.66]

450.67 Inspection of books, records, etc.

The director of revenue and finance may also inspect and examine the books, records, and accounts of any person, firm, or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by the director for the proper enforcement of the inheritance tax laws of this state, and the collection of the full amount of the tax which may be due to the state thereunder.

[C24, 27, 31, 35, 39, §**7372;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.67]

450.68 Information confidential.

Any and all information acquired by the department of revenue and finance under and by virtue of the means and methods provided for by sections 450.66 and 450.67 shall be deemed and held as confidential and shall not be disclosed by the department except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by the laws of this state; provided, however, that the director of revenue and finance may authorize the examination of the information by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state or of the federal government.

Federal tax returns, copies of returns, return information as defined in section 6103(b) of the Internal Revenue Code, and state inheritance tax returns, which are required to be filed with the department for the enforcement of the inheritance and estate tax laws of this state, shall be deemed and held as confidential by the department. However, such returns or return information, may be disclosed by the director to officers or employees of other state agencies, subject to the same confidentiality restrictions imposed on the officers and employees of the department.

It shall be unlawful for any present or former officer or employee of the state to disclose, except as provided by law, any return, return information or any other information deemed and held confidential under the provisions of this section. Any person violating the provisions of this section shall be guilty of a serious misdemeanor.

[C24, 27, 31, 35, 39, §**7373;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.68]

92 Acts, 2nd Ex, ch 1001, §245

450.69 Contempt.

Refusal of any person to attend before the director of revenue and finance in obedience to any such citation, or to testify, or produce any books, accounts, records, or documents in the person's possession or under the person's control and submit the same to inspection of the department of revenue and finance when so required, may, upon application of the director of revenue and finance, be punished by any district court in the same manner as if the proceedings were pending in such court.

[C24, 27, 31, 35, 39, §**7374;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.69]

Contempts, chapter 665

450.70 Fees.

Witnesses so cited before the director of revenue and finance, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be audited by the department of revenue and finance and paid upon the certificate of the director of revenue and finance out of funds not otherwise appropriated.

[C24, 27, 31, 35, 39, §**7375;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.70]

Sheriff's fees, §331.655; witness fees, §622.69

450.71 Proof of amount of tax due.

Before issuing a receipt for the tax, the director of revenue and finance may demand from personal representatives or beneficiaries information as necessary to verify the correctness of the amount of the tax and interest, and when this demand is made they shall send to the director of revenue and finance certified copies of wills, deeds, or other papers, or of those parts of their reports as the director may demand, and upon the refusal or neglect of the parties to comply with the demand of the director, the clerk of the court shall comply

with the demand, and the expenses of making copies and transcripts shall be charged against the estate, as are other costs in probate, or the tax may be assessed without deducting liabilities for which the estate is liable.

[S13, §1481-a24; C24, 27, 31, 35, 39, §**7376;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.71]

83 Acts, ch 177, §29, 38

450.72 Extension of time of appraisement. Repealed by 83 Acts, ch 177, § 37, 38.

450.73 Heirs at law to make report. Repealed by 83 Acts, ch 177, § 37, 38.

450.74 to 450.80 Repealed by 76 Acts, ch 1056, § 45.

450.81 Duty of recorder.

Each county recorder shall, upon the filing in the recorder's office of a deed, bill of sale, or other transfer of any description which shows upon its face that it was made or intended to take effect in possession or enjoyment at or after the death of the maker of the instrument, forward to the department of revenue and finance a copy of the instrument.

[C24, 27, 31, 35, 39, §**7385;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.81]

91 Acts, ch 191, §119

450.82 and 450.83 Repealed by 76 Acts, ch 1056, § 45.

450.84 Costs charged against estate — exceptions.

If an estate or interest in an estate passes so as to be liable to taxation under this chapter, all costs of the proceedings for the assessment of the tax are chargeable to the estate as other costs in probate proceedings and, to discharge the lien, all costs as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court. When a decision adverse to the state has been rendered, with an order that the state pay the costs, the clerk of the court in which the action was pending shall certify the amount of the costs to the director of revenue and finance, who shall, if the costs are correctly certified and the case has been finally terminated and the tax, if any is due, has been paid, audit the claim and issue a warrant on the treasurer of state in payment of the costs.

[S13, §1481-a35; C24, 27, 31, 35, 39, §**7388;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.84]

88 Acts, ch 1134, §84

450.85 Appropriation.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of section 450.84.

[C27, 31, 35, §7388-a1; C39, §**7388.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.85]

450.86 Securities and assets held by bank, etc. Repealed by 97 Acts, ch 60, § 1, 2.

450.87 Transfer of corporation stock.

If a foreign personal representative assigns or transfers any corporate stock or obligations in this state standing in the name of a decedent or in trust for a decedent liable to tax, the tax shall be paid to the department of revenue and finance on or before the transfer; otherwise the corporation permitting its stock to be transferred is liable to pay the tax, interest, and costs, and the director of revenue and finance shall enforce the payment of the tax, interest, and costs.

[S13, §1481-a37; C24, 27, 31, 35, 39, §**7390;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.87]

83 Acts, ch 177, §31, 38

450.88 Corporations to report transfers.

Every Iowa corporation organized for pecuniary profit shall, on July 1 of each year, by its proper officers under oath, make a full and correct report to the director of revenue and finance of all transfers of its stocks made during the preceding year by any person who appears on the books of the corporation as the owner of the stock, when the transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by a personal representative, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of the corporation, prior to the transfer. This report shall show the name of the owner of the stocks and the owner's place of residence, the name of the person at whose request the stock was transferred, the person's place of residence and the authority by virtue of which the person acted in making the transfer, the name of the person to whom the transfer was made, and the residence of the person, together with other information the officers reporting have relating to estates of persons deceased who may have been owners of stock in the corporation. If it appears that any stock transferred is subject to tax under this chapter, and the tax has not been paid, the director of revenue and finance shall notify the corporation in writing of its liability for the payment of the tax, and shall bring suit against the corporation as in other cases unless payment of the tax is made within sixty days from the date of notice.

This section does not apply if the lien has been released under section 450.7 or the director has issued a consent to transfer.

[S13, §1481-a38; C24, 27, 31, 35, 39, §**7391;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.88]

83 Acts, ch 177, §32, 38

450.89 Foreign estates — deduction of debts. Repealed by 83 Acts, ch 177, § 37, 38. See § 450.12(2).

450.90 Property in this state belonging to foreign estate.

When property, real or personal, within this state belongs to a foreign estate and the foreign estate passes in part exempt from the tax imposed by this chapter and in part subject to the tax and there is not a specific devise of the property within this state to exempt persons or if it is within the authority or discretion of the foreign personal representative administering the estate to dispose of the property not specifically devised to exempt persons in the payment of liabilities owing by the decedent at the time of death, or in the satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state belonging to the foreign estate is subject to the tax imposed by this chapter, and the tax due shall be assessed as provided in section 450.12, subsection 2, relating to the deduction of the proportionate share of liabilities. However, if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt from the tax imposed by this chapter, the excess is not subject to tax.

[S13, §1481-a40; C24, 27, 31, 35, 39, §**7393;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.90]

83 Acts, ch 177, §33, 38

450.91 Foreign estates — reciprocity — personal property.

The tax imposed by this chapter in respect to personal property of nonresidents (other than tangible personal property having an actual situs in this state) shall not be payable (1) if the decedent at the time of the decedent's death was a resident of a state or territory of the United States which at the time of the decedent's death did not impose a transfer tax or death tax of any character in respect to personal property of residents of this state (other than tangible personal property having an actual situs in such state or territory), or (2) if the laws of the state or territory of residence of the decedent at the time of the decedent's death contained a reciprocal provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property (other than tangible personal property having an actual situs therein) provided the state or territory of residence of such nonresidents allowed a similar exemption to residents of the state or territory of residence of such decedent.

In no case shall the provisions of this section apply to the intangible personal property of nonresident decedents unless such intangible personal property shall have been subjected to a tax or submitted for purposes of taxation in the state of the decedent's residence.

This section shall apply only to estates of decedents dying subsequent to July 4, 1929.

For the purpose of this section the District of Columbia and possessions of the United States shall be considered territories of the United States.

[C31, 35, §7393-c1; C39, §**7393.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.91]

450.92 Compromise settlement. Repealed by 99 Acts, ch 151, § 86, 89.

450.93 Unknown heirs.

Whenever the heirs or persons entitled to any estate or any interest therein are unknown or their place of residence cannot with reasonable certainty be ascertained, a tax of five percent shall be paid to the department of revenue and finance upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that any estate or interest passes to aliens, there shall be paid within sixty days after such determination and before delivery of such estate or property, an amount equal to the difference between five percent, the amount paid, and the amount which such person should pay under the provisions of this chapter.

[S13, §1481-a42; C24, 27, 31, 35, 39, §**7395;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.93]

450.94 Return — determination — appeal.

1. *"Taxpayer"* as used in this section means a person liable for the payment of tax as stated in section 450.5.

2. The taxpayer shall file an inheritance tax return on forms to be prescribed by the director of revenue and finance on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is dated, or on or before the last day of the following month if the notice is dated after the twentieth day of a month and before the first day of the following month.

3. If the amount paid is greater than the correct tax, penalty, and interest due, the department shall refund the excess with interest. Interest shall be computed at the rate in effect under section 421.7, under the rules prescribed by the director counting each fraction of a month as an entire month and the interest shall begin to accrue on the first day of the second calendar month following the date of payment or on the date the return was due to be filed or was filed, whichever is the latest. However, the director shall not allow a claim for refund or credit that has not been filed with the department within three years after the tax payment upon which a refund or credit is claimed became due, or one year after the tax payment was made, whichever time is later. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest due or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing, and upon the hearing the director shall determine the correct tax, penalty, and interest or refund due, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 450.59 within sixty days after the date of the notice of the director's decision.

4. Payments received must be credited first to the penalty and interest accrued and then to the tax due.

5. The amount of tax imposed under this chapter shall be assessed according to one of the following:

a. Within three years after the return is filed with respect to property reported on the final inheritance tax return.

b. At any time after the tax became due with respect to property not reported on the final inheritance tax return, but not later than three years after the omitted property is reported to the department on an amended return or on the final inheritance tax return if one was not previously filed.

In addition to the applicable periods of limitations for examination and determination specified in paragraphs *"a"* and *"b"*, the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the federal estate, gift, or generation skipping transfer tax. In order to begin the running of the six months assessment period, the notice shall be in writing in form sufficient to inform the department of the final disposition of any matter with respect to the federal estate, gift, or generation skipping transfer tax, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

[S13, §1481-a43; C24, 27, 31, 35, 39, §**7396;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.94; 81 Acts, ch 131, §17]

83 Acts, ch 177, §34, 38; 84 Acts, ch 1240, §9, 10; 85 Acts, ch 148, §5; 86 Acts, ch 1007, §40; 86 Acts, ch 1241, §45; 89 Acts, ch 285, §9; 91 Acts, ch 159, §28; 94 Acts, ch 1133, §11, 16; 96 Acts, ch 1034, §42; 99 Acts, ch 151, §48, 89

1999 amendments to subsections 2 and 3 are effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §48, 89

450.95 Appropriation.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of section 450.94.

[C27, 31, 35, §7396-a1; C39, §**7396.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.95]

450.96 Contingent estates.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation has been held in abeyance, shall be valued at their full, undiminished value when the persons entitled to the estates come into the beneficial enjoyment or possession of the estates, without diminution for or on account of any valuation previously made. When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of the divesting. When a devise, bequest, or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of the inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon the bequest or transfer as upon a vested interest, at the highest rate possible under this chapter if no contingency existed; provided that if the contingency reduces the value of the estate or interest taxed, and the amount of tax paid is in excess of the tax for which the bequest or transfer is liable upon the removal of the contingency, the excess shall be refunded as provided in sections 450.94 and 450.95 in other cases.

[S13, §1481-a44; C24, 27, 31, 35, 39, §**7397;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.96]

83 Acts, ch 177, §35, 38

450.97 Joint owners of bank accounts — duty to notify department of revenue and finance.

No person, bank, credit union, or savings and loan association shall permit the withdrawal of funds from a joint account by a surviving joint owner without first notifying the department of revenue and finance of the balance in such account at the date of decedent's death and the name and address of the surviving joint owner. Such notification may be accomplished by mailing the required information to the department of revenue and finance and withdrawal or payment of such funds may be made immediately thereafter as long as such mailing is accomplished by ordinary mail no later than the date of withdrawal or earlier if knowledge of the decedent's death is known by the depository. A person, bank, credit union, or savings and loan association shall only be liable for any inheritance tax due by the surviving joint owner for willful failure to report to the department of revenue and finance as herein provided.

[C66, 71, 73, 75, 77, 79, 81, §450.97]

DEPARTMENT OF REVENUE AND FINANCE MORTALITY TABLES

TABLES FOR LIFE ESTATES AND REMAINDERS

(for estates of decedents dying on or after January 1, 1986)

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING
50% MALE–50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

The two factors across the page equal one hundred percent. Multiply the corpus of the estate by the first factor to obtain value of the life estate.

Use the second factor to obtain the remainder interest if the tax is to be paid at the time of probate, or to determine if there would be any tax due.

Age of Life Tenant	Life Estate	Remainder
0	.91904	.08096
1	.91919	.08081
2	.91689	.08311
3	.91443	.08557
4	.91186	.08814
5	.90914	.09086
6	.90629	.09371
7	.90329	.09671
8	.90014	.09986
9	.89683	.10317
10	.89338	.10662
11	.88977	.11023
12	.88603	.11397
13	.88219	.11781
14	.87828	.12172
15	.87429	.12571
16	.87027	.12973
17	.86617	.13383
18	.86200	.13800
19	.85773	.14227
20	.85333	.14667
21	.84878	.15122
22	.84404	.15596
23	.83912	.16088
24	.83399	.16601
25	.82865	.17135
26	.82306	.17694
27	.81724	.18276
28	.81117	.18883
29	.80487	.19513
30	.79833	.20167
31	.79155	.20845
32	.78451	.21549
33	.77723	.22277
34	.76970	.23030
35	.76192	.23808
36	.75389	.24611
37	.74562	.25438
38	.73710	.26290
39	.72836	.27164
40	.71940	.28060
41	.71022	.28978
42	.70083	.29917
43	.69122	.30878
44	.68138	.31862
45	.67131	.32869
46	.66101	.33899
47	.65046	.34954
48	.63966	.36034
49	.62860	.37140
50	.61730	.38270
51	.60576	.39424
52	.59399	.40601
53	.58199	.41801
54	.56979	.43021
55	.55740	.44260
56	.54483	.45517
57	.53206	.46794
58	.51906	.48094
59	.50582	.49418
60	.49234	.50766
61	.47862	.52138
62	.46471	.53529
63	.45064	.54936
64	.43647	.56353
65	.42226	.57774
66	.40801	.59199
67	.39372	.60628
68	.37936	.62064
69	.36489	.63511
70	.35031	.64969
71	.33565	.66435
72	.32098	.67902
73	.30639	.69361
74	.29199	.70801
75	.27787	.72213
76	.26405	.73595
77	.25053	.74947
78	.23727	.76273
79	.22422	.77578
80	.21134	.78866
81	.19866	.80134
82	.18625	.81375
83	.17419	.82581
84	.16260	.83740
85	.15151	.84849
86	.14093	.85907
87	.13081	.86919
88	.12108	.87892
89	.11163	.88837
90	.10235	.89765
91	.09309	.90691
92	.08368	.91632
93	.07390	.92610
94	.06350	.93650
95	.05221	.94779
96	.03994	.96006
97	.02678	.97322
98	.01321	.98679
99	.00000	1.00000

TABLE FOR AN ANNUITY FOR LIFE

(for estates of decedents dying on or after January 1, 1986)

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING
50% MALE–50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

To find the present value of an Annuity or a given amount (specified sum) for life, multiply the Annuity by the Annuity Factor opposite the age at the nearest birthday of the person receiving the Annuity.

Age In Years	Life Expectancy In Years	Annuities $1.00
0	73.30	22.976
1	72.56	22.980
2	71.63	22.922
3	70.70	22.861
4	69.76	22.796
5	68.82	22.728
6	67.87	22.657
7	66.93	22.582
8	65.98	22.504
9	65.03	22.421
10	64.07	22.334
11	63.12	22.244
12	62.16	22.151
13	61.21	22.055
14	60.27	21.957
15	59.32	21.857
16	58.39	21.757
17	57.46	21.654
18	56.53	21.550
19	55.61	21.443
20	54.69	21.333
21	53.77	21.219
22	52.85	21.101
23	51.93	20.978
24	51.01	20.850
25	50.08	20.716
26	49.15	20.576
27	48.23	20.431
28	47.30	20.279
29	46.36	20.122
30	45.43	19.958
31	44.50	19.789
32	43.57	19.613
33	42.64	19.431
34	41.72	19.242
35	40.79	19.048
36	39.87	18.847
37	38.94	18.640
38	38.03	18.428
39	37.11	18.209
40	36.21	17.985
41	35.30	17.756
42	34.41	17.521
43	33.52	17.280
44	32.63	17.035
45	31.75	16.783
46	30.88	16.525
47	30.01	16.261
48	29.15	15.991
49	28.30	15.715
50	27.45	15.433
51	26.61	15.144
52	25.77	14.850
53	24.94	14.550
54	24.13	14.245
55	23.32	13.935
56	22.52	13.621
57	21.73	13.301
58	20.95	12.976
59	20.18	12.645
60	19.41	12.308
61	18.66	11.966
62	17.91	11.618
63	17.18	11.266
64	16.45	10.912
65	15.75	10.557
66	15.05	10.200
67	14.38	9.843
68	13.71	9.484
69	13.06	9.122
70	12.42	8.758
71	11.79	8.391
72	11.17	8.024
73	10.57	7.660
74	10.00	7.300
75	9.44	6.947
76	8.91	6.601
77	8.39	6.263
78	7.90	5.932
79	7.42	5.605
80	6.96	5.283
81	6.52	4.967
82	6.09	4.656
83	5.68	4.355
84	5.29	4.065
85	4.93	3.788
86	4.58	3.523
87	4.26	3.270
88	3.95	3.027
89	3.66	2.791
90	3.37	2.559
91	3.09	2.327
92	2.81	2.092
93	2.52	1.848
94	2.22	1.588
95	1.90	1.305
96	1.56	.999
97	1.20	.670
98	.84	.330
99	.50	.000

CHAPTER 450A

GENERATION SKIPPING TRANSFER TAX

450A.1 Definitions.
450A.2 Imposition of tax.
450A.3 Value of property.
450A.4 Payment of the tax.
450A.5 Liability for the tax.
450A.6 Lien of the tax.
450A.7 Disposal of tax.
450A.8 Returns.
450A.9 Delinquent returns.
450A.10 Director to enforce collection.
450A.11 Duty to claim maximum credit.
450A.12 Applicable statutes.
450A.13 Retroactive.
450A.14 Limitation.

450A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of revenue and finance.
2. *"Director"* means the director of the department of revenue and finance.
3. *"Direct skip"* means the same as the term is defined in section 2612(c) of the Internal Revenue Code.
4. *"Generation skipping transfer"* means the generation skipping transfer as defined in section 2611 of the Internal Revenue Code.
5. *"Internal Revenue Code"* means the same as the term is defined in section 422.3.
6. *"Taxable distribution"* means the same as the term is defined in section 2612(b) of the Internal Revenue Code.
7. *"Taxable termination"* means the same as the term is defined in section 2612(a) of the Internal Revenue Code.
8. *"Transferee"* means a person receiving property in a generation skipping transfer.
9. *"Transferor"*, *"trust"*, *"trustee"* and *"interest"* mean the same as those respective terms are defined in section 2652 of the Internal Revenue Code.

[C79, 81, §450A.1]

84 Acts, ch 1305, §38; 86 Acts, ch 1245, §450; 87 Acts, 1st Ex, ch 1, §17; 88 Acts, ch 1028, §38

450A.2 Imposition of tax.

A tax is imposed on the transfer of any property, included in a generation skipping transfer, other than a direct skip, occurring at the same time and as a result of the death of an individual, in an amount equal to the maximum federal credit allowable under section 2604 of the Internal Revenue Code, for the generation skipping transfer tax actually paid to the state in respect of any property included in the generation skipping transfer.

Where the transferor is a resident of Iowa and all property included in a generation skipping transfer that is subject to tax under this section has a situs in Iowa, or is subject to the jurisdiction of the courts of Iowa, an amount equal to the total credit as allowed under the Internal Revenue Code shall be paid to the state of Iowa. Where the transferor is a nonresident or where the property included in a generation skipping transfer that is subject to tax under this section has a situs outside the state of Iowa and not subject to the jurisdiction of Iowa courts, the tax shall be prorated on the basis that the value of Iowa property included in the generation skipping transfer bears to the total value of property included in the generation skipping transfer.

[C79, 81, §450A.2]

86 Acts, ch 1241, §46; 87 Acts, 1st Ex, ch 1, §18

450A.3 Value of property.

The value of property, included in a generation skipping transfer, shall be the same as determined for federal generation skipping transfer tax purposes under the Internal Revenue Code.

[C79, 81, §450A.3]

87 Acts, 1st Ex, ch 1, §19

450A.4 Payment of the tax.

The tax imposed by this chapter shall be paid on or before the last day of the ninth month after the death of the individual whose death is the event causing the generation skipping transfer which is eligible for the credit for state taxes paid under section 2604 of the Internal Revenue Code.

[C79, 81, §450A.4]

87 Acts, 1st Ex, ch 1, §20

450A.5 Liability for the tax.

The transferee of the property included in the generation skipping transfer shall be personally liable for the tax to the extent of its value, determined under section 2624 of the Internal Revenue Code as of the time of the generation skipping transfer. If the tax is attributable to a taxable termination, as defined in section 2612(a) of the Internal Revenue Code, the trustee and the transferee shall be personally liable for the tax to the extent of the value of the property subject to tax under the trustee's control.

[C79, 81, §450A.5]

87 Acts, 1st Ex, ch 1, §21

450A.6 Lien of the tax.

The tax imposed by this chapter shall be a lien on the property subject to the tax for a period of ten years from the time the generation skipping transfer occurs. Full payment of the tax, penalty and interest due shall release the lien and discharge the transferee and trustee of personal liability. Unless the lien has been perfected by recording, a transfer by the transferee or the trustee to a bona fide purchaser for value shall divest the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgages, purchases or judgment creditors. The department may release the lien prior to the payment of the tax due if adequate security for payment of the tax is given.

[C79, 81, §450A.6]
87 Acts, 1st Ex, ch 1, §22

450A.7 Disposal of tax.

The proceeds of the tax shall be credited to the general fund of the state.

[C79, 81, §450A.7]

450A.8 Returns.

It shall be the duty of the persons liable for the payment of the tax to file a return with the department, in such form as the director may prescribe, containing sufficient information to enable the department to determine the maximum federal credit allowable for the payment of the tax imposed by this chapter. A copy of the federal return filed for the purpose of paying the generation skipping transfer tax shall be submitted to the department at the time the Iowa return is filed. Copies of all amended or supplemental returns shall be submitted to the department at the time such returns are filed with the internal revenue service.

[C79, 81, §450A.8]

450A.9 Delinquent returns.

If the tax imposed by this chapter is not paid within the time prescribed by law, the tax is delinquent and shall draw interest thereafter at the rate in effect under section 421.7 until paid.

[C79, 81, §450A.9; 81 Acts, ch 131, §18]

450A.10 Director to enforce collection.

It shall be the duty of the director to enforce collection of the tax imposed by this chapter and shall with all the rights of a party in interest, represent the state in any proceedings to collect the tax. The director shall have the power to bring suit against any person liable for the payment of the tax, penalty, interest and costs and may foreclose the lien of the tax in the same manner as is now prescribed for the foreclosure of real estate mortgages and upon judgment may cause execution to be issued to sell so much of the property necessary to satisfy the tax, penalty, interest and costs due.

[C79, 81, §450A.10]
87 Acts, 1st Ex, ch 1, §23

450A.11 Duty to claim maximum credit.

It shall be the duty of any person liable for the payment of the tax to claim the maximum federal credit allowable for that portion of the state generation skipping transfer tax paid in respect of any property included in a taxable generation skipping transfer. Claiming on a federal return a sum less than the maximum federal credit allowable shall not relieve any person liable for the tax of the duty to pay the tax imposed under this chapter.

If an amended or supplemental return is filed with the internal revenue service which results in a change in the amount of tax owing under this chapter, the persons liable for the payment of the tax shall submit an amended return, on forms prescribed by the director, indicating the amount of the tax then owing as a result of such change.

If any federal generation skipping transfer tax has been paid before the enactment of this chapter, the persons liable for the payment of the tax under this chapter shall file an amended federal return claiming the maximum federal credit allowable and file the Iowa returns specified in section 450A.8 within six months after the enactment of this chapter or within the time limit provided in section 450A.4 whichever is the later.

[C79, 81, §450A.11]
87 Acts, 1st Ex, ch 1, §24

450A.12 Applicable statutes.

All of the provisions of chapter 450 with respect to the payment and collection of the tax imposed under that chapter, including penalty and interest upon delinquent taxes and the confidentiality of the tax return, are applicable to the provisions of this chapter, except as they are in conflict with this chapter. The director shall adopt and promulgate rules necessary for the enforcement of this chapter.

[C79, 81, §450A.12]
92 Acts, 2nd Ex, ch 1001, §246

450A.13 Retroactive.

The provisions of this chapter are retroactive to April 30, 1976, for any generation skipping transfer made after April 30, 1976, except for those generation skipping transfers excepted under section 2006(c) of the federal Tax Reform Act of 1976 and to this extent the provisions of this chapter are retroactive.

[C79, 81, §450A.13]

450A.14 Limitation.

The tax imposed under section 450A.2 shall not be construed to impose a federal and state generation skipping tax obligation greater than the tax payable had this chapter not been enacted.

[C79, 81, §450A.14]

CHAPTER 450B

QUALIFIED USE INHERITANCE TAX

450B.1 Definitions.
450B.2 Alternate election of value for qualified use.
450B.3 Additional inheritance tax applicable.
450B.4 Reserved.
450B.5 Ratio of applicable tax.
450B.6 Lien of tax.
450B.7 Other inheritance tax laws applicable.

450B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Internal Revenue Code"* means the same as defined in section 422.3.

2. *"Qualified real property"*, *"qualified use"*, *"cessation of qualified use"*, and *"qualified heir"* mean the same as defined in section 2032A of the Internal Revenue Code.

3. *"Taxpayer"* means a qualified heir liable for the inheritance tax imposed under chapter 450 on qualified real property.

4. For purposes of subsection 1, the Internal Revenue Code shall be interpreted to include the provisions of Pub. L. No. 98-4.

[81 Acts, ch 147, §12]

83 Acts, ch 179, §18, 23; 84 Acts, ch 1305, §39; 88 Acts, ch 1028, §39

450B.2 Alternate election of value for qualified use.

Notwithstanding section 450.37, the value of qualified real property for the purpose of the tax imposed under chapter 450 may, at the election of the taxpayer, be its value for the use under which it qualifies as prescribed by section 2032A of the Internal Revenue Code. A taxpayer may make an election under this section only if all of the following conditions are met:

1. An election for federal estate tax purposes was made with regard to the qualified real property under section 2032A of the Internal Revenue Code.

2. All persons who signed the agreement referred to in section 2032A(d)(2) of the Internal Revenue Code make the election under this section and sign an agreement with the department of revenue and finance consenting to the application of section 450B.3 with respect to the qualified real property.

3. The total decrease in the value of the qualified real property as a result of the election under this section does not exceed the dollar limitation specified in section 2032A(a)(2) of the Internal Revenue Code.

The election under this section shall be made by the taxpayer in the manner as the director of revenue and finance may prescribe by rule. The value for the qualified use under this section shall be the value as determined and accepted for federal estate tax purposes.

The definitions and special rules specified in section 2032A(e) of the Internal Revenue Code shall apply with respect to qualified real property for which an election was made under this section except that rules shall be prescribed by the director of revenue and finance in lieu of the regulations promulgated by the secretary of treasury.

The director shall prescribe regulations setting forth the application of this chapter in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business within the meaning of section 6166(b)(1) of the Internal Revenue Code. Such regulations shall conform as nearly as possible with the regulations promulgated by the United States secretary of treasury in respect to such interests.

[81 Acts, ch 147, §13]

88 Acts, ch 1028, §40

450B.3 Additional inheritance tax applicable.

There is imposed upon the qualified heir an additional inheritance tax if, within ten years after the decedent's death and before the death of the qualified heir, the qualified heir disposes of, other than to a member of the family, any interest in qualified real property for which an election under section 450B.2 was made or ceases to use for the qualified use the qualified real property for which an election under section 450B.2 was made as prescribed in section 2032A(c) of the Internal Revenue Code. The additional inheritance tax shall be the amount computed under section 450B.5 and shall be due six months after the date of the disposition or cessation of qualified use referred to in this section. The amount of the additional inheritance tax shall accrue interest at the rate of ten percent per year from nine months after the decedent's death to the due date of the tax. The tax shall be paid to the department of revenue and finance and shall be deposited into the general fund of the state. Taxes not paid within the time prescribed in this section shall draw interest at the rate of ten percent per annum until paid.

There shall not be an additional inheritance tax if the disposition or cessation occurs ten years or more after the decedent's death.

[81 Acts, ch 147, §14, 15; 82 Acts, ch 1023, §26, 27, 34]

88 Acts, ch 1028, §41

450B.4 Reserved.

450B.5 Ratio of applicable tax.

The amount of the additional inheritance tax imposed by section 450B.3 is the excess of what the tax imposed by chapter 450 would have been had the election to use the qualified use valuation under section 450B.2 not been made over the tax paid on the real estate based on qualified use valuation. However, if all of the real estate valued under section 450B.2 is not disposed of or does not cease to be used for the qualified use, the amount of the additional inheritance tax is the amount computed by applying the ratio that the real estate subject to the qualified use valuation which has been disposed of or which the qualified use ceases bears to all the real estate subject to the qualified use valuation passing to the taxpayer to the excess of the tax which would have been imposed by chapter 450 had the election under section 450B.2 not been made over the tax paid on the real estate based on qualified use valuation. However, the additional inheritance tax shall not be computed on a value greater than the fair market value of the qualified real estate at the time the disposition or cessation of the qualified use occurs.

[81 Acts, ch 147, §16]

450B.6 Lien of tax.

A lien is created in favor of the state for the additional inheritance tax which may be imposed by section 450B.3 on the qualified real property for which an election has been made under section 450B.2. The lien created by this section shall continue until the tax has been paid or ten years after the tax is due, whichever date occurs first. However, the lien shall expire ten years after the decedent's death if the qualified heir has not disposed of or ceased to use for the qualified use the qualified real property which would impose the tax under section 450B.3. The department of revenue and finance may release the lien prior to the payment of the tax due, if any, if adequate security for payment of the tax is given.

Unless the lien has been perfected by recording in the office of the recorder in the county where the estate is probated, a transfer of the qualified real property to a bona fide purchaser for value shall divest the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgagees, purchasers or judgment creditors. The lien may be foreclosed by the director of revenue and finance in the same manner as is now prescribed for the foreclosure of real estate mortgages and upon judgment, execution shall be issued to sell as much of the property necessary to satisfy the tax, interest and costs due.

[81 Acts, ch 147, §17; 82 Acts, ch 1023, §28, 34]

450B.7 Other inheritance tax laws applicable.

All the provisions of chapter 450 with respect to the payment, collection and administration of the inheritance tax imposed under that chapter, including the confidentiality of the tax return, are applicable to the provisions of this chapter to the extent consistent. The director of revenue and finance shall adopt and promulgate all rules necessary for the enforcement and administration of this chapter.

[81 Acts, ch 147, §18]

92 Acts, 2nd Ex, ch 1001, §247

CHAPTER 451

IOWA ESTATE TAX

451.1 Definitions.
451.2 Additional tax.
451.3 Gross and net estate.
451.4 Tax on net estate.
451.5 Duty of personal representative.
451.6 Payment of tax.
451.7 Disposal of tax.
451.8 Claim for credit or refund.
451.9 Appeal.
451.10 Effect of allowance.
451.11 Effect of disallowance.
451.12 Applicable statutes — penalties.
451.13 Invalidation.

451.1 Definitions.

When used in this chapter:

1. The term *"federal estate tax"* means the tax imposed by the provisions of said federal estate tax

Act referred to in subsection 2 of this section.

2. The term *"Federal Estate Tax Act"* means Title III of chapter 27 of the Acts of the Sixty-ninth Congress of the United States, first session, appearing in 44 Statutes at Large, chapter 27, or any amendments thereof.

3. The term *"gross estate"* means the gross estate as determined under the provisions of section 451.3.

4. *"Internal Revenue Code"* means the same as defined in section 422.3.

5. The term *"Iowa estate tax"* means the tax imposed by this chapter.

6. The term *"month"* means a calendar month.

7. The term *"net estate"* means the net estate as determined under the provisions of section 451.3.

8. The term *"personal representative"* means the executor of the will or administrator of the estate of the decedent, or if there is no such executor or administrator appointed, qualified and acting, then any person in actual or constructive possession of any property included in the gross estate of the decedent.

[C31, 35, §7397-c1; C39, §**7397.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.1]

84 Acts, ch 1305, §40; 88 Acts, ch 1028, §42

451.2 Additional tax.

An amount equal to the federal estate tax credit for state death taxes as allowed in the Internal Revenue Code is imposed upon every transfer of the net estate of every decedent, being a resident of, or owning property in this state.

1. Where decedent is a resident of Iowa and all property is located in Iowa, or is subject to the jurisdiction of the courts of Iowa, an amount equal to the total credit as allowed under federal statute shall be paid to the state of Iowa. Where decedent is a nonresident or where property is located outside the state of Iowa and not subject to jurisdiction of Iowa courts, the tax shall be prorated on the basis that the Iowa property bears to the total gross estate for federal tax purposes.

2. The total tax or the Iowa share of said tax shall be credited with the amount of any inheritance tax due the state of Iowa as provided in chapter 450.

[C31, 35, §7397-c2; C39, §**7397.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.2]

88 Acts, ch 1028, §43

451.3 Gross and net estate.

The gross estate shall be the same as finally determined for federal estate tax and the net estate shall be the gross estate less deductions as permitted by federal law, in arriving at the net taxable federal estate, all determined as provided in the Internal Revenue Code.

[C31, 35, §7397-c3; C39, §**7397.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.3]

88 Acts, ch 1028, §44

451.4 Tax on net estate.

The tax hereby imposed shall be upon the transfer of:

1. The total net estate of every decedent dying after April 12, 1929.

2. The net personal estate of every decedent dying after the twenty-sixth day of February, 1926, whose estate shall be open and pending in the courts of this state, or subject to the jurisdiction of such courts, at the effective date of this chapter, or whose estate shall or may become subject to administration in, or to the jurisdiction of, the courts of this state after the effective date of this chapter.

[C31, 35, §7397-c4; C39, §**7397.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.4]

451.5 Duty of personal representative.

The personal representative of a decedent whose estate may be subject to the tax imposed by this chapter, shall file in the office of the director of revenue and finance, on or before the last day of the ninth month after the death of the decedent, duplicate copies of the estate tax return provided for in the federal estate tax Act, and in like manner, duplicate copies of all supplemental or amended returns. The values of all items included in the gross estate, as shown by those returns, or supplemental or amended returns, shall be considered as the values of those items for the purposes of this chapter. In case of revaluation or correction of valuation of any of those items, either by supplemental or amended returns, or by the federal commissioner of internal revenue, or by an appellate tribunal by which the value is finally determined, the corrected values shall be considered as the values of those items for the purposes of this chapter.

[C31, 35, §7397-c5; C39, §**7397.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.5]

89 Acts, ch 251, §37

451.6 Payment of tax.

The tax imposed by this chapter shall be paid by the personal representative to the department of revenue and finance on or before the last day of the ninth month after the death of the decedent.

[C31, 35, §7397-c6; C39, §**7397.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.6]

86 Acts, ch 1241, §47

451.7 Disposal of tax.

The proceeds of this tax shall be paid into the general fund of the state.

[C31, 35, §7397-c7; C39, §**7397.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.7]

451.8 Claim for credit or refund.

If the personal representative of a resident decedent shall have paid to the treasurer of the United States or to a collector of internal revenue an estate tax under the provisions of said federal estate tax Act in respect of property included in the gross estate, determined as herein provided, and shall have claimed as credits against said federal estate tax a sum less than the maximum credits allowed by the provisions of said federal estate tax Act for any estate, inheritance, legacy or succession taxes actually paid to any state or territory of the United States, or to the District of Columbia, it shall be the personal representative's duty, with due diligence, to file in the bureau of internal revenue a claim for credit or refund for such amount, if any, as such estate shall be properly entitled to receive under the provisions of said federal estate tax Act and of this chapter.

[C31, 35, §7397-c8; C39, §**7397.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.8]

451.9 Appeal.

If any claim for refund or credit, or any part thereof, shall be denied or disallowed by the commissioner of internal revenue, the personal representative, the director of revenue and finance, or any person having an interest in said estate which may be adversely affected by such denial or disallowance, may apply to the judge of the court having jurisdiction of such estate, for an order directing such personal representative to take, perfect, and prosecute an appeal from the decision of the commissioner of internal revenue to such court or tribunal as may have jurisdiction of such matter, and, upon the granting of such order, the director of revenue and finance may assist in the prosecution of such appeal. The judge of the court granting such order may make a reasonable allowance for attorneys' fees for the prosecution of such appeal, and direct the manner in which the same, together with any other costs or expenses which may be allowed by said court in connection therewith, shall be paid.

[C31, 35, §7397-c9; C39, §**7397.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.9]

451.10 Effect of allowance.

If any claim for credit or refund, or any part thereof, shall be finally determined in favor of such personal representative, any amount refunded or credited thereon shall inure to the benefit of such estate.

[C31, 35, §7397-c10; C39, §**7397.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.10]

451.11 Effect of disallowance.

If any claim for credit or refund or any part thereof, shall be finally determined adversely to such personal representative, for any reason other than lack of diligence or other failure of duty on the personal representative's part, the amount so denied or disallowed, or so much thereof as shall have been paid to the department of revenue and finance under the provisions of this chapter, shall, upon a claim duly filed with, and proper showing made to, the director of revenue and finance, be refunded by the department of revenue and finance to such personal representative, and shall inure to the benefit of such estate.

[C31, 35, §7397-c11; C39, §**7397.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.11]

451.12 Applicable statutes — penalties.

All the provisions of chapter 450 with respect to the lien provisions of section 450.7, and the determination, imposition, payment, and collection of the tax imposed under that chapter, including penalty and interest upon delinquent taxes and the confidentiality of the tax return, are applicable to this chapter, except as they are in conflict with this chapter. The exceptions to the lien provisions found in section 450.7 do not apply to this chapter. The penalty provisions set out in section 450.53 shall apply to a person in possession of assets to be reported for purposes of taxation who willfully makes a false or fraudulent return or willfully fails to pay the tax, supply the information, make, sign, or file the required return within the time required by law or a person who willfully attempts in any manner to evade taxes imposed by this chapter or avoid payment of the tax. The director of revenue and finance shall adopt rules necessary for the enforcement of this chapter.

[C31, 35, §7397-c12; C39, §**7397.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.12]

84 Acts, ch 1240, §11; 92 Acts, 2nd Ex, ch 1001, §248; 94 Acts, ch 1165, §34; 99 Acts, ch 151, §49, 89

1999 amendment is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §49, 89

451.13 Invalidation.

This chapter shall become void and of no effect in respect to the estates of persons who die after the effective date of the repeal of the federal estate tax Act, or of the provisions thereof providing for a credit of the taxes paid to the several states of the United States not exceeding eighty percent of the tax imposed by said federal estate tax Act, or after such federal estate tax Act, or the eighty percent credit provision thereof, may be declared, by the supreme court of the United States, to be void by reason of any contravention of the Constitution of the United States.

[C31, 35, §7397-c13; C39, §**7397.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §451.13]

SUBTITLE 4

EXCISE TAXES

CHAPTER 452

SECURITY OF THE REVENUE

Transferred to chapter 12B

CHAPTER 452A

MOTOR FUEL AND SPECIAL FUEL TAXES

This chapter not enacted as a part of this
title; transferred from chapter 324 in Code 1993

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DIVISION I

MOTOR FUEL AND SPECIAL FUEL TAX

452A.1 Short title.

This division, plus applicable provisions of division IV of this chapter, shall be known and may be cited as the *"Motor Fuel and Special Fuel Tax Law"*.

[C35, §5093-f40; C39, §**5093.39;** C46, 50, 54, §324.66; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.1]

C93, §452A.1

95 Acts, ch 155, §8

452A.2 Definitions.

As employed in this division:

1. *"Aviation gasoline"* means any gasoline which is capable of being used for propelling aircraft, which is invoiced as aviation gasoline or is received, sold, stored, or withdrawn from storage by any person for the purpose of propelling aircraft. Motor fuel capable of being used for propelling motor vehicles is not aviation gasoline.

2. *"Biofuel"* means an oxygenated product derived from soybean oil, vegetable oil, or animal fats that can be used in diesel engines or aircraft. Biofuel may be a blend with diesel fuel or it may be one hundred percent soybean oil, vegetable oil, or animal fats. Any biofuel product is a special fuel.

3. *"Blender"* means a person who owns and blends alcohol with gasoline to produce ethanol blended gasoline and blends the product at a nonterminal location. The blender is not restricted to blending alcohol with gasoline. Products blended with gasoline other than grain alcohol are taxed as gasoline. *"Blender"* also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. This blend is taxed as a special fuel.

4. *"Common carrier"* or *"contract carrier"* means a person involved in the movement of motor fuel or special fuel from the terminal or movement of the motor fuel or special fuel imported into this state, who is not an owner of the motor fuel or special fuel.

5. *"Dealer"* means a person, other than a distributor, who engages in the business of selling or distributing motor fuel or special fuel to the end user in this state.

6. *"Denatured ethanol"* means ethanol that is to be blended with gasoline, has been derived from cereal grains, complies with American society of testing materials designation D-4806-95b, and may be denatured only as specified in Code of Federal Regulations, Titles 20, 21, and 27. Alcohol and denatured ethanol have the same meaning in this chapter.

7. *"Department"* means the department of revenue and finance.

8. *"Director"* means the director of revenue and finance.

9. *"Distributor"* means a person who acquires tax paid motor fuel or special fuel from a supplier, restrictive supplier or importer, or another distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both. The department may require that the distributor be registered to have terminal purchase rights.

10. *"Eligible purchaser"* means a distributor of motor fuel or special fuel or an end user of special fuel who has purchased a minimum of two hundred forty thousand gallons of special fuel each year in the preceding two years. Eligible purchasers who elect to make delayed payments to a licensed supplier shall use electronic funds transfer. Additional requirements for qualifying as an eligible purchaser shall be established by rule.

11. *"Ethanol blended gasoline"* means motor

fuel containing at least ten percent alcohol distilled from cereal grains.

12. *"Export"* means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

13. *"Exporter"* means a person or other entity who acquires fuel in this state for export to another state.

14. *"Import"* means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

15. *"Importer"* means a person who imports motor fuel or undyed special fuel in bulk or transport load into the state by truck, rail, or barge.

16. *"Licensed compressed natural gas and liquefied petroleum gas dealer"* means a person in the business of handling untaxed compressed natural gas or liquefied petroleum gas who delivers any part of the fuel into a fuel supply tank of any motor vehicle.

17. *"Licensed compressed natural gas and liquefied petroleum gas user"* means a person licensed by the department who dispenses compressed natural gas or liquefied petroleum gas, upon which the special fuel tax has not been previously paid, for highway use from fuel sources owned and controlled by the person into the fuel supply tank of a motor vehicle, or commercial vehicle owned or controlled by the person.

18. *"Licensee"* means a person holding an uncanceled supplier's, restrictive supplier's, importer's, exporter's, dealer's, user's, or blender's license issued by the department under this division or any prior motor fuel tax law or any other person who possesses fuel for which the tax has not been paid.

19. *"Motor fuel"* means both of the following:

a. All products commonly or commercially known or sold as gasoline, including ethanol blended gasoline, casinghead, and absorption or natural gasoline, regardless of the products' classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

b. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles which, when subjected to distillation of gasoline, naphtha, kerosene and similar petroleum products (American society for testing and materials designation D-86), shows not less than ten per centum distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees Centigrade) and not less than ninety-five per centum distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees Centigrade).

"Motor fuel" does not include special fuel, and does not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph *"b"*, in which event the resulting product shall be deemed to be motor fuel.

20. *"Naphthas and solvents"* shall mean and include those liquids which come within the distillation specifications for motor fuel set out under subsection 19, paragraph *"b"*, but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

21. *"Racing fuel"* means leaded gasoline of one hundred ten octane or more that does not meet American society for testing and materials designation D-4814 for gasoline and is sold in bulk for use in nonregistered motor vehicles.

22. *"Regional transit system"* means regional transit system as defined in section 452A.57, subsection 11.

23. *"Restrictive supplier"* means a person who imports motor fuel or undyed special fuel into this state in tank wagons or in small tanks not otherwise licensed as an importer.

24. *"Special fuel"* means fuel oils and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any substance used for that purpose, except that it does not include motor fuel. Kerosene shall not be considered to be a special fuel, unless blended with other special fuels for use in a motor vehicle with a diesel engine.

25. *"Supplier"* means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline, a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, alcohol or alcohol derivative substances, or a person who produces, manufactures, or refines motor fuel or special fuel in this state. *"Supplier"* includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. *"Supplier"* does not include a retail dealer or wholesaler who merely blends alcohol with gasoline before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

26. *"Terminal"* means a motor fuel or special fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which the fuel may be removed at a rack. *"Terminal"* does not include a facility at which motor fuel or special fuel blend stocks and additives are used in the manufacture of products other than motor fuel or special fuel and from which no motor fuel or special fuel is removed.

27. *"Terminal operator"* means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If co-venturers own a terminal, *"terminal operator"* means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

28. *"Urban transit system"* means Iowa urban transit system as defined in section 452A.57, subsection 6.

29. *"Use"* means the receipt, delivery, or placing of liquefied petroleum gas by a licensed liquefied petroleum gas user into a fuel supply tank of a motor vehicle while the vehicle is in the state, except that with respect to natural gas used as a special fuel, *"use"* means the receipt, delivery, or placing of the natural gas into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

30. *"Withdrawn from terminal"* means physical movement from a supplier to a distributor or eligible end user and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal.

[C27, 31, §5093-a2; C35, §5093-f2; C39, §**5093.02;** C46, 50, 54, §324.1; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.2]

85 Acts, ch 231, §12; 86 Acts, ch 1116, §1; 86 Acts, ch 1245, §414; 88 Acts, ch 1205, §2; 91 Acts, ch 87, §3

C93, §452A.2

95 Acts, ch 155, §9 – 13; 96 Acts, ch 1066, §2, 21; 99 Acts, ch 151, §50, 51, 89; 2001 Acts, ch 150, §22, 23; 2002 Acts, ch 1050, §39, 40; 2002 Acts, ch 1151, §20

Additional definitions, see §452A.57
NEW subsection 2 and former subsections 2 – 29 renumbered as 3 – 30
Subsection 19, paragraphs a and b amended
Subsection 21 amended

452A.3 Levy of excise tax.

1. Except as otherwise provided in this section and in this division, until June 30, 2007, this subsection shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

a. The rate of the excise tax shall be based on the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel distributed in this state, which is referred to as the distribution percentage. The department shall determine the percentage basis for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period.

b. The rate for the excise tax shall be as follows:

(1) If the distribution percentage is not greater than fifty percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty cents for motor fuel other than ethanol blended gasoline.

(2) If the distribution percentage is greater than fifty percent but not greater than fifty-five percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and one-tenth cents for motor fuel other than ethanol blended gasoline.

(3) If the distribution percentage is greater than fifty-five percent but not greater than sixty percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and three-tenths cents for motor fuel other than ethanol blended gasoline.

(4) If the distribution percentage is greater than sixty percent but not greater than sixty-five percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and five-tenths cents for motor fuel other than ethanol blended gasoline.

(5) If the distribution percentage is greater than sixty-five percent but not greater than seventy percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and seven-tenths cents for motor fuel other than ethanol blended gasoline.

(6) If the distribution percentage is greater than seventy percent but not greater than seventy-five percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty-one cents for motor fuel other than ethanol blended gasoline.

(7) If the distribution percentage is greater than seventy-five percent but not greater than eighty percent, the rate shall be nineteen and three-tenths cents for ethanol blended gasoline and twenty and eight-tenths cents for motor fuel other than ethanol blended gasoline.

(8) If the distribution percentage is greater than eighty percent but not greater than eighty-five percent, the rate shall be nineteen and five-tenths cents for ethanol blended gasoline and twenty and seven-tenths cents for motor fuel other than ethanol blended gasoline.

(9) If the distribution percentage is greater than eighty-five percent but not greater than ninety percent, the rate shall be nineteen and seven-tenths cents for ethanol blended gasoline and twenty and four-tenths cents for motor fuel other than ethanol blended gasoline.

(10) If the distribution percentage is greater than ninety percent but not greater than ninety-five percent, the rate shall be nineteen and nine-tenths cents for ethanol blended gasoline and twenty and one-tenth cents for motor fuel other than ethanol blended gasoline.

(11) If the distribution percentage is greater than ninety-five percent, the rate shall be twenty cents for ethanol blended gasoline and twenty cents for motor fuel other than ethanol blended

gasoline.

1A. Except as otherwise provided in this section and in this division, after June 30, 2007, an excise tax of twenty cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

2. For the privilege of operating aircraft in this state an excise tax of eight cents per gallon is imposed on the use of all aviation gasoline.

3. For the privilege of operating motor vehicles or aircraft in this state, there is imposed an excise tax on the use of special fuel in a motor vehicle or aircraft. The tax rate on special fuel for diesel engines of motor vehicles is twenty-two and one-half cents per gallon. The rate of tax on special fuel for aircraft is three cents per gallon. On all other special fuel, unless otherwise specified in this section, the per gallon rate is the same as the motor fuel tax. Indelible dye meeting United States environmental protection agency and internal revenue service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel may be used only for an exempt purpose.

3A. For liquefied petroleum gas used as a special fuel, the rate of tax shall be twenty cents per gallon.

4. For compressed natural gas used as a special fuel, the rate of tax that is equivalent to the motor fuel tax shall be sixteen cents per hundred cubic feet adjusted to a base temperature of sixty degrees Fahrenheit and a pressure of fourteen and seventy-three hundredths pounds per square inch absolute.

5. The tax shall be paid by the following:

a. The supplier, upon the invoiced gross gallonage of all motor fuel or undyed special fuel withdrawn from a terminal for delivery in this state.

Tax shall not be paid when the sale of alcohol occurs within a terminal from an alcohol manufacturer to an Iowa licensed supplier. The tax shall be paid by the Iowa licensed supplier when the invoiced gross gallonage of the alcohol or the alcohol part of ethanol blended gasoline is withdrawn from a terminal for delivery in this state.

b. The person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer, upon the invoiced gross gallonage of motor fuel or undyed special fuel imported.

c. The blender on total invoiced gross gallonage of alcohol or other product sold to be blended with gasoline or special fuel.

d. Any other person who possesses taxable fuel upon which the tax has not been paid to a licensee.

However, the tax shall not be imposed or collected under this division with respect to motor fuel or special fuel sold for export or exported from this state to any other state, territory, or foreign country.

6. Thereafter, except as otherwise provided in this division, the per gallon amount of the tax shall be added to the selling price of every gallon of such motor fuel or undyed special fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

[C27, 31, §4755-b38, 5093-a1; C35, §5093-f3, -f4; C39, §**5093.03, 5093.04;** C46, 50, 54, §324.2, 324.3; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.3; 81 Acts, 2nd Ex, ch 2, §7 – 9; 82 Acts, ch 1170, §3, 4]

83 Acts, ch 150, §1, 2; 84 Acts, ch 1141, §1; 84 Acts, ch 1253, §5; 85 Acts, ch 231, §13, 14; 86 Acts, ch 1116, §2, 3; 88 Acts, ch 1019, §13, 14; 88 Acts, ch 1205, §3; 91 Acts, ch 87, §4; 91 Acts, ch 254, §19, 20

C93, §452A.3

95 Acts, ch 155, §14, 44; 96 Acts, ch 1034, §43; 98 Acts, ch 1108, §1; 99 Acts, ch 151, §52, 89; 2001 Acts, ch 123, §4 – 6; 2001 Acts, ch 150, §24; 2002 Acts, ch 1150, §15, 16

Determination of excise tax for periods subsequent to July 1, 2002; 2001 Acts, ch 123, §6

Subsection 3 amended

NEW subsection 3A

452A.4 Supplier's, restrictive supplier's, importer's, exporter's, dealer's, and user's license.

1. It shall be unlawful for any person to sell motor fuel or undyed special fuel within this state or to otherwise act as a supplier, restrictive supplier, importer, exporter, dealer, or user unless the person holds an uncanceled license issued by the department. To procure a license, a supplier, restrictive supplier, importer, exporter, dealer, or user shall file with the department an application signed under penalty for false certificate setting forth and complying with all of the following:

a. The name under which the licensee will transact business in this state.

b. The location, with street number address, of the principal office or place of business of the licensee within this state.

c. The name and complete residence address of the owner or the names and addresses of the partners, if the licensee is a partnership, or the names and addresses of the principal officers, if the licensee is a corporation or association.

d. A dealer's or user's license shall be required for each separate place of business or location where compressed natural gas or liquefied petroleum gas is delivered or placed into the fuel supply tank of a motor vehicle.

e. An applicant for an exporter's license shall provide verification as required by the department that the applicant has the appropriate license valid in the state or states into which the motor fuel or undyed special fuel will be exported.

2. *a.* The department may deny the issuance of a license to an applicant who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department. If the applicant is a partnership, a li-

cense may be denied if a partner owes any delinquent tax, interest, or penalty. If the applicant is a corporation, a license may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest, or penalty of the applicant corporation.

b. The department may deny the issuance of a license if an application for a license to transact business as a supplier, restrictive supplier, importer, exporter, dealer, or user in this state is filed by a person whose license or registration has been canceled for cause at any time under the provisions of this chapter or any prior motor fuel tax law, if the department has reason to believe that the application is not filed in good faith, or if the application is filed by some person as a subterfuge for the real person in interest whose license or registration has been canceled for cause under the provisions of this chapter or any prior motor fuel tax law. The applicant shall be given fifteen days' notice in writing of the date of the hearing and shall have the right to appear in person or by counsel and present testimony.

3. *a.* The application in proper form having been accepted for filing, and the other conditions and requirements of this section and division IV having been complied with, the department shall issue to the applicant a license to transact business as a supplier, restrictive supplier, importer, exporter, dealer, or user in this state. The license shall remain in full force and effect until canceled as provided in this chapter.

b. The license shall not be assignable and shall be valid only for the licensee in whose name it is issued.

c. The department shall keep and file all applications and bonds and a record of all licensees.

[C31, §5093-c2; C35, §5093-f5, -f6, -f7; C39, §**5093.05 – 5093.07;** C46, 50, 54, §324.5, 324.6, 324.8 – 324.10; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.4]

86 Acts, ch 1007, §10; 89 Acts, ch 251, §4

C93, §452A.4

94 Acts, ch 1165, §35; 95 Acts, ch 155, §15, 44

452A.5 Distribution allowance.

A supplier shall retain a distribution allowance of not more than one and six-tenths percent of all gallons of motor fuel and a distribution allowance of not more than seven-tenths percent of all gallons of undyed special fuel removed from the terminal during the reporting period for purposes of tax computation under section 452A.8.

The distribution allowance shall be prorated between the supplier and the distributor or dealer as follows:

1. Motor fuel: four-tenths percent retained by the supplier, one and two-tenths percent to the distributor.

2. Undyed special fuel: thirty-five hundredths percent retained by the supplier, thirty-five hundredths percent to the distributor or dealer purchasing directly from a supplier. Gallons exported outside of the state shall not be included in the calculation of the distribution.

[C27, 31, §5093-a3, -a4; C39, §**5093.04, 5093.05;** C46, 50, 54, §324.4, 324.6; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.5]

C93, §452A.5

95 Acts, ch 155, §16, 44; 96 Acts, ch 1066, §3, 21

452A.6 Ethanol blended gasoline and other products — blender's license.

A person other than a supplier, restrictive supplier, or importer licensed under this division, who blends gasoline with alcohol distilled from cereal grains so that the blend contains at least ten percent alcohol distilled from cereal grains, shall obtain a blender's license. A person who blends two or more special fuel products or sells one hundred percent biofuel shall obtain a blender's license. The license shall be obtained by following the procedure under section 452A.4 and the license is subject to the same restrictions as contained in that section. A blender shall maintain records as required by section 452A.10 as to motor fuel, alcohol, ethanol blended gasoline, and special fuels.

[C81, §324.6]

92 Acts, ch 1163, §79

C93, §452A.6

95 Acts, ch 155, §17, 44; 2002 Acts, ch 1151, §21

Section amended

452A.7 Foreign suppliers.

The director, upon application, may authorize the collection and reporting of the tax by any supplier not having jurisdictional connections with this state. A foreign supplier shall be issued a license to collect and report the tax and shall be subject to the same regulations and requirements as suppliers having a jurisdictional connection with the state, or other regulations and agreements as prescribed by the director.

95 Acts, ch 155, §18

452A.8 Tax reports — computation and payment of tax — credits.

1. For the purpose of determining the amount of the supplier's, restrictive supplier's, or importer's tax liability, a supplier or restrictive supplier shall file a return, not later than the last day of the month following the month in which this division becomes effective and not later than the last day of each calendar month thereafter, and an importer shall file a return semimonthly with the department, signed under penalty for false certification. For an importer for the reporting period from the first day of the month through the fifteenth of the month, the return is due on the last day of the month. For an importer for the reporting period from the sixteenth of the month through the last day of the month, the return is due on the fifteenth

day of the following month. The returns shall include the following:

a. A statement of the number of invoiced gallons of motor fuel and undyed special fuel withdrawn from the terminal by the licensee within this state during the preceding calendar month in such detail as determined by the department. This includes on-site blending reports at the terminal.

b. For information purposes only, a supplier, restrictive supplier, or importer shall show the number of invoiced gallons of dyed special fuel withdrawn from the terminal.

c. A statement showing the deductions authorized in this division in such detail and with such supporting evidence as required by the department.

d. Any other information the department may require for the enforcement of this chapter.

2. At the time of filing a return, a supplier or restrictive supplier shall pay to the department the full amount of the fuel tax due for the preceding calendar month. An importer shall pay to the department the full amount of fuel tax due for the preceding semimonthly period. The tax shall be computed as follows:

a. From the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the licensee during the preceding calendar month or semimonthly period the following deductions shall be made:

(1) The gallonage of motor fuel or undyed special fuel withdrawn from a terminal by a licensee and exported outside Iowa.

(2) For suppliers only, the one and six-tenths percent of the number of gallons of motor fuel or seven-tenths percent of the number of gallons of undyed special fuel of the invoiced gallons of motor fuel or undyed special fuel withdrawn from a terminal within this state during the preceding calendar month.

b. The number of invoiced gallons remaining after the deductions in paragraph *"a"* shall be multiplied by the per gallon fuel tax rate.

c. The tax due under paragraph *"b"* shall be the amount of fuel tax due from the supplier, restrictive supplier, or importer for the preceding reporting period. The director may require by rule that the payment of taxes by suppliers, restrictive suppliers, and importers be made by electronic funds transfer. The director may allow a tax float by rule where the eligible purchaser is not required to pay the tax to the supplier until one business day prior to the date the tax is due. A licensed supplier who is unable to recover the tax from an eligible purchaser is not liable for the tax, upon proper documentation, and may credit the amount of unpaid tax against a later remittance of tax. Under this provision, a supplier does not qualify for a credit if the purchaser did not elect to use the eligible purchaser status, or otherwise does not qualify to be an eligible purchaser. To qualify for the credit, the supplier must notify the department of the uncollectible account no later than ten calendar days after the due date for payment of the tax. If a supplier sells additional motor fuel or undyed special fuel to a delinquent eligible purchaser after notifying the department that the supplier has an uncollectible debt with that eligible purchaser, the limited liability provision does not apply to the additional fuel. The supplier is liable for tax collected from the purchaser.

d. The director may require by rule that reports and returns be filed by electronic transmission.

e. The tax for compressed natural gas and liquefied petroleum gas delivered by a licensed compressed natural gas or liquefied petroleum gas dealer for use in this state shall attach at the time of the delivery and shall be collected by the dealer from the consumer and paid to the department as provided in this chapter. The tax, with respect to compressed natural gas and liquefied petroleum gas acquired by a consumer in any manner other than by delivery by a licensed compressed natural gas or liquefied petroleum gas dealer into a fuel supply tank of a motor vehicle, attaches at the time of the use of the fuel and shall be paid over to the department by the consumer as provided in this chapter.

The department shall adopt rules governing the dispensing of compressed natural gas and liquefied petroleum gas by licensed dealers and licensed users. For purposes of this paragraph, *"dealer"* and *"user"* mean a licensed compressed natural gas or liquefied petroleum gas dealer or user and *"fuel"* means compressed natural gas or liquefied petroleum gas. The department shall require that all pumps located at dealer locations and user locations through which liquefied petroleum gas can be dispensed shall be metered, inspected, tested for accuracy, and sealed and licensed by the state department of agriculture and land stewardship, and that fuel delivered into the fuel supply tank of any motor vehicle shall be dispensed only through tested metered pumps and may be sold without temperature correction or corrected to a temperature of sixty degrees. If the metered gallonage is to be temperature-corrected, only a temperature-compensated meter shall be used. Natural gas used as fuel shall be delivered into compressing equipment through sealed meters certified for accuracy by the department of agriculture and land stewardship.

All gallonage which is not for highway use, dispensed through metered pumps as licensed under this section on which fuel tax is not collected, must be substantiated by exemption certificates as provided by the department or by valid exemption certificates provided by the dealers, signed by the purchaser, and retained by the dealer. A *"valid exemption certificate provided by a dealer"* is an exemption certificate which is in the form prescribed by the director to assist a dealer to properly ac-

count for fuel dispensed for which tax is not collected and which is complete and correct according to the requirements of the director.

For the privilege of purchasing liquefied petroleum gas, dispensed through licensed metered pumps, on a basis exempt from the tax, the purchaser shall sign exemption certificates for the gallonage claimed which is not for highway use.

The department shall disallow all sales of gallonage which is not for highway use unless proof is established by the certificate. Exemption certificates shall be retained by the dealer for a period of three years.

(1) For the purpose of determining the amount of liability for fuel tax, each dealer and each user shall file with the department not later than the last day of the month following the month in which this division becomes effective and not later than the last day of each calendar month thereafter a monthly tax return certified under penalties for false certification. The return shall show, with reference to each location at which fuel is delivered or placed by the dealer or user into a fuel supply tank of any motor vehicle during the next preceding calendar month, information as required by the department.

(2) The amount of tax due shall be computed by multiplying the appropriate tax rate per gallon by the number of gallons of fuel delivered or placed by the dealer or user into supply tanks of motor vehicles.

(3) The return shall be accompanied by remittance in the amount of the tax due for the month in which the fuel was placed into the supply tanks of motor vehicles.

3. For the purpose of determining the amount of the tax liability on alcohol blended to produce ethanol blended gasoline or a blend of special fuel products, each licensed blender shall, not later than the last day of each month following the month in which the blending is done, file with the department a monthly return, signed under penalty for false certificate, containing information required by rules adopted by the director.

4. A person who possesses fuel or uses fuel in a motor vehicle upon which no tax has been paid by a licensee in this state is subject to reporting and paying the applicable tax.

[C27, 31, §5093-a5, -b1; C35, §5093-f9; C39, §**5093.09;** C46, 50, 54, §324.13 – 324.15, 324.17, 324.29; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.8; 81 Acts, 2nd Ex, ch 2, §10, 11]

91 Acts, ch 87, §5, 6

C93, §452A.8

94 Acts, ch 1165, §36; 95 Acts, ch 155, §19, 44; 96 Acts, ch 1066, §4 – 7, 21; 99 Acts, ch 151, §53 – 56, 89; 2002 Acts, ch 1151, §22

Subsection 3 amended

452A.9 Returns from persons not licensed as suppliers, restrictive suppliers, importers, or blenders.

Every person other than a licensed supplier, restrictive supplier, importer, or blender, who purchases, brings into this state, or otherwise acquires within this state motor fuel or undyed special fuel, not otherwise exempted, which the person has knowingly not paid or incurred liability to pay either to a licensee or to a dealer the motor fuel or special fuel tax, shall be subject to the provisions of this division that apply to suppliers, restrictive suppliers, importers, and blenders of motor fuel or undyed special fuel and shall file the same returns and make the same tax payments and be subject to the same penalties for delinquent filing or nonfiling or delinquent payment or nonpayment as apply to suppliers, restrictive suppliers, importers, and blenders.

[C31, §5093-c2; C35, §5093-f6; C39, §**5093.06;** C46, 50, 54, §324.8, 324.9; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.9]

C93, §452A.9

95 Acts, ch 155, §20, 44; 99 Acts, ch 151, §57, 89; 2002 Acts, ch 1151, §23

Section amended

452A.10 Required records.

A motor fuel or special fuel supplier, restrictive supplier, importer, exporter, blender, dealer, user, common carrier, contract carrier, or terminal shall maintain, for a period of three years, records of all transactions by which the supplier, restrictive supplier, or importer withdraws from a terminal within this state or imports into this state motor fuel or undyed special fuel together with invoices, bills of lading, and other pertinent records and papers as required by the department.

If in the normal conduct of a supplier's, restrictive supplier's, importer's, exporter's, blender's, dealer's, user's, common carrier's, contract carrier's, or terminal's business the records are maintained and kept at an office outside this state, the records shall be made available for audit and examination by the department at the office outside this state, but the audit and examination shall be without expense to this state.

Each distributor handling motor fuel or special fuel in this state shall maintain for a period of three years records of all motor fuel or undyed special fuel purchased or otherwise acquired by the distributor, together with delivery tickets, invoices, and bills of lading, and any other records required by the department.

The department, after an audit and examination of records required to be maintained under this section, may authorize their disposal upon the written request of the supplier, restrictive suppli-

er, importer, exporter, blender, dealer, user, carrier, terminal, or distributor.

[C27, 31, §5093-a4, -a5; C35, §5093-f5, -f8; C39, §**5093.05, 5093.08;** C46, 50, 54, §324.7, 324.11; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.10]

C93, §452A.10

95 Acts, ch 155, §21, 44

452A.11 Reserved.

452A.12 Loading and delivery evidence on transportation equipment.

1. A serially numbered manifest shall be carried on every vehicle, except small tank wagons, while in use in transportation service, on which shall be entered the following information as to the cargo of motor fuel or special fuel being moved in the vehicle: The date and place of loading, the place to be unloaded, the person for whom it is to be delivered, the nature and kind of product, the amount of product, and other information required by the department. The manifest for small tank wagons shall be retained at the home office. The manifest covering each load transported, upon consummation of the delivery, shall be completed by showing the date and place of actual delivery and the person to whom actually delivered and shall be kept as a permanent record for a period of three years. However, the record of the manifest of past cargoes need not be carried on the conveyance but shall be preserved by the carrier for inspection by the department. A carrier subject to this subsection when distributing for a licensee may with the approval of the department substitute the loading and delivery evidence required in subsection 2 for the manifest.

2. A person while transporting motor fuel or undyed special fuel from a refinery or marine or pipeline terminal in this state or from a point outside this state over the highways of this state in service other than that under subsection 1 shall carry in the vehicle a loading invoice showing the name and address of the seller or consignor, the date and place of loading, and the kind and quantity of motor fuel or special fuel loaded, together with invoices showing the kind and quantity of each delivery and the name and address of each purchaser or consignee.

[C35, §5093-f19; C39, §**5093.19;** C46, 50, 54, §324.34, 324.35; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.12]

84 Acts, ch 1174, §1

C93, §452A.12

95 Acts, ch 155, §22, 44

452A.13 Evidence produced upon request. Repealed effective January 1, 1996, by 95 Acts, ch 155, § 43, 44.

452A.14 Reserved.

452A.15 Transportation reports — refinery and pipeline and marine terminal reports.

1. Every railroad and common carrier or contract carrier transporting motor fuel or special fuel either in interstate or intrastate commerce within this state and every person transporting motor fuel or special fuel by whatever manner into this state shall, subject to penalties for false certificate, report to the department all deliveries of motor fuel or special fuel to points within this state other than refineries or marine or pipeline terminals. If any supplier, restrictive supplier, importer, blender, or distributor is also engaged in the transportation of motor fuel or special fuel for others, the supplier, restrictive supplier, importer, blender, or distributor shall make the same reports as required of common carriers and contract carriers.

The report shall cover monthly periods and shall show as to each delivery:

a. The name and address of the person to whom delivery was actually made.

b. The name and address of the originally named consignee, if delivered to any other than the originally named consignee.

c. The point of origin, the point of delivery, and the date of delivery.

d. The number and initials of each tank car and the number of gallons contained in the tank car, if shipped by rail.

e. The name of the boat, barge, or vessel, and the number of gallons contained in the boat, barge, or vessel, if shipped by water.

f. The registration number of each tank truck and the number of gallons contained in the tank truck, if transported by motor truck.

g. The manner, if delivered by other means, in which the delivery is made.

h. Additional information relative to shipments of motor fuel or special fuel as the department may require.

If a person required under this section to file transportation reports is a licensee under this division and if the information required in the transportation report is contained in any other report rendered by the person under this division, a separate transportation report of that information shall not be required.

2. A person operating storage facilities at a refinery or at a terminal in this state shall make a monthly accounting to the department of all motor fuel, alcohol, and undyed special fuel withdrawn from the refinery and all motor fuel, alcohol, and undyed special fuel delivered into, withdrawn from, and on hand in the refinery or terminal.

3. Persons operating storage facilities at a nonterminal location shall file a monthly report with the department accounting for all motor fuel, alcohol, and special fuel that is delivered into, stored within, withdrawn from, or sold from the storage facility.

4. The reports required in this section shall be for information purposes only and the department may in its discretion waive the filing of any of these reports not necessary for proper administration of this division. The reports required in this section shall be certified under penalty for false certificate and filed with the department within the time allowed for filing of suppliers' and restrictive suppliers' returns of motor fuel or special fuel withdrawn from a terminal within this state or imported into this state.

5. The director may impose a civil penalty against any person who fails to file the reports or keep the records required under this section. The penalty shall be one hundred dollars for the first violation and shall increase by one hundred dollars for each additional violation occurring in the calendar year in which the first violation occurred.

6. The director may require by rule that reports be filed by electronic transmission.

[C27, 31, §5093-a6, -b1; C35, §5093-f25, -f26, -f27; C39, §**5093.25 – 5093.27;** C46, 50, 54, §324.46 – 324.48; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.15]

C93, §452A.15

95 Acts, ch 155, §23; 99 Acts, ch 151, §58, 89; 2002 Acts, ch 1150, §17; 2002 Acts, ch 1151, §24 – 26

Subsection 1, unnumbered paragraph 1 amended
NEW subsection 3 and former subsection 3 renumbered as 4
NEW subsections 5 and 6

452A.16 Credit or refund to licensee — fuel used other than in watercraft, aircraft, or motor vehicles — casualty losses. Repealed effective January 1, 1996, by 95 Acts, ch 155, § 43, 44.

452A.17 Refunds.

1. A person who uses motor fuel or undyed special fuel for any of the nontaxable purposes listed in this subsection, and who has paid the motor fuel or special fuel tax either directly to the department or by having the tax added to the price of the fuel, and who has a refund permit, upon presentation to and approval by the department of a claim for refund, shall be reimbursed and repaid the amount of the tax which the claimant has paid on the gallonage so used, except that the amount of a refund payable under this division may be applied by the department against any tax liability outstanding on the books of the department against the claimant.

a. The refund is allowable for motor fuel or undyed special fuel sold directly to and used for the following:

(1) The United States or any agency or instrumentality of the United States or where collection of the tax would be prohibited by the Constitution of the United States or the laws of the United States or by the Constitution of the State of Iowa.

(2) An Iowa urban transit system which is used for a purpose specified in section 452A.57, subsection 6.

(3) A regional transit system, the state, any of its agencies, or any political subdivision of the state which is used for a purpose specified in section 452A.57, subsection 11, or for public purposes, including fuel sold for the transportation of pupils of approved public and nonpublic schools by a carrier who contracts with the public school under section 285.5.

(4) Fuel used in unlicensed vehicles, stationary engines, implements used in agricultural production, and machinery and equipment used for nonhighway purposes.

(5) Fuel used for producing denatured alcohol.

(6) Fuel used for idle time, power takeoffs, reefer units, pumping credits, and transport diversions, fuel lost through casualty, exports by distributors, and blending errors for special fuel. The department shall adopt rules setting forth specific requirements relating to refunds for idle time, power takeoffs, reefer units, pumping credits, and transport diversions, fuel lost through casualty, and blending errors for special fuel.

(7) A bona fide commercial fisher, licensed and operating under an owner's certificate for commercial fishing gear issued pursuant to section 482.4.

(8) For motor fuel or undyed special fuel placed in motor vehicles and used, other than on a public highway, in the extraction and processing of natural deposits, without regard to whether the motor vehicle was registered under section 321.18. An applicant under this subparagraph shall maintain adequate records for a period of three years beyond the date of the claim.

(9) Undyed special fuel used in watercraft.

(10) Racing fuel.

b. A claim for refund is subject to the following conditions:

(1) The claim shall be on a form prescribed by the department and be certified by the claimant under penalty for false certificate.

(2) The claim shall include proof as prescribed by the department showing the purchase of the motor fuel or undyed special fuel on which a refund is claimed.

(3) An invoice shall not be acceptable in support of a claim for refund unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel or undyed special fuel, prepared by the seller on a form approved by the department which will prevent erasure or alteration and unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the motor fuel or undyed special fuel, the total purchase price including the Iowa motor fuel or undyed special fuel tax and that the total purchase price including tax has been paid. However, with respect to refund invoices made on a billing

machine, the department may waive any of the requirements of this subparagraph.

(4) The claim shall state the gallonage of motor fuel that was used or will be used by the claimant other than in aircraft, watercraft, or to propel motor vehicles and the gallonage of undyed special fuel that was or will be used by the claimant other than in aircraft or to propel motor vehicles, the manner in which the motor fuel or undyed special fuel was used or will be used, and the equipment in which it was used or will be used.

(5) The claim shall state whether the claimant used fuel for aircraft, watercraft, or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the motor fuel on which the refund is claimed or whether the claimant used fuel for aircraft or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the undyed special fuel on which the refund is claimed.

(6) If an original invoice is lost or destroyed the department may in its discretion accept a copy identified and certified by the seller as being a true copy of the original.

(7) Claim shall be made by and the amount of the refund shall be paid to the person who purchased the motor fuel or undyed special fuel as shown in the supporting invoice unless that person designates another person as an agent for purposes of filing and receiving the refund for idle time, power takeoff, reefer units, pumping credits, and transport diversions. A governmental agency may be designated as an agent for another governmental agency for purposes of filing and receiving the refund under this section.

(8) In order to verify the validity of a claim for refund the department shall have the right to require the claimant to furnish such additional proof of validity as the department may determine and to examine the books and records of the claimant. Failure of a claimant to furnish the claimant's books and records for examination shall constitute a waiver of all rights to refund related to the transaction in question.

2. In lieu of the refund provided in this section, a person may receive an income tax credit as provided in chapter 422, division IX, but only as to motor fuel not used in motor vehicles, aircraft, or watercraft or as to undyed special fuel not used in motor vehicles or aircraft.

3. *a.* A claim for refund shall not be allowed unless the claimant has accumulated sixty dollars in credits for one calendar year. A claim for refund may be filed anytime the sixty dollar minimum has been met within the calendar year. If the sixty dollar minimum has not been met in the calendar year, the credit shall be claimed on the claimant's income tax return unless the taxpayer is not required to file an income tax return in which case a refund shall be allowed. Once the sixty dollar minimum has been met, the claim for refund must be filed within three years following the end of the month in which the earliest invoice is dated.

b. A refund shall not be paid with respect to any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or with respect to any undyed special fuel taken out of this state in supply tanks of aircraft or motor vehicles.

[C27, 31, §5093-a8; C35, §5093-f29, -f30, -f36; C39, §**5093.29, 5093.30, 5093.36;** C46, 50, 54, §324.50, 324.52 – 324.57, 324.64; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.17; 82 Acts, ch 1176, §1]

86 Acts, ch 1141, §18; 88 Acts, ch 1205, §5, 6; 89 Acts, ch 251, §5

C93, §452A.17

95 Acts, ch 155, §24, 44; 96 Acts, ch 1066, §8 – 11, 21; 97 Acts, ch 158, §42, 43, 53; 99 Acts, ch 151, §59 – 63, 89; 2001 Acts, ch 150, §25; 2002 Acts, ch 1150, §18

See §452A.81

Subsection 3, paragraph a amended

452A.18 Refund permit.

A person shall not claim a refund under section 452A.17 or section 452A.21 until the person has obtained a refund permit from the department. A special permit shall be obtained by an applicant claiming a refund under this chapter for motor fuel used to blend ethanol blended gasoline. Application for a refund permit shall be made to the department, shall be certified by the applicant under penalty for false certificate, and shall contain among other things, the name, address, and occupation of the applicant, the nature of the applicant's business, and a sufficient description for identification of the machines and equipment in which the motor fuel or undyed special fuel is to be used. Each permit shall bear a separate number and each claim for refund shall bear the number of the permit under which it is made. The department shall keep a permanent record of all permits issued and a cumulative record of the amount of refund claimed and paid under each. A refund permit shall continue in effect until it is revoked or becomes invalid.

[C27, 31, §5093-a8; C35, §5093-f29, -f30; C39, §**5093.29, 5093.30;** C46, 50, 54, §324.52, 324.57; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.18]

86 Acts, ch 1241, §6; 88 Acts, ch 1205, §7; 91 Acts, ch 87, §7

C93, §452A.18

95 Acts, ch 155, §25, 44

452A.19 Revocation of refund permit.

Any refund permit issued under this chapter may be revoked by the department for any of the following violations, but only after the holder of the permit has been given reasonable notice of the intention to revoke the permit and reasonable opportunity to be heard:

1. Using in support of a refund claim a false or altered invoice.

2. Making a false statement in a claim for re-

fund or in response to an investigation by the department of a claim for refund.

3. Refusal to submit the holder's books and records for examination by the department.

A person whose refund permit is revoked for cause may not obtain another refund permit for a period of one year after the revocation. A refund permit under which a refund is not claimed for a period of three years or a refund permit whose holder has moved from the county in which the holder resided at the time of application for the permit is invalid subject to reinstatement or issuance of a new permit upon application as provided in section 452A.18.

[C27, 31, §5093-a4, -a6, -a7, -a8; C35, §5093-f22, -f31; C39, §**5093.22, 5093.31;** C46, 50, 54, §324.43, 324.58, 324.59; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.19]

86 Acts, ch 1241, §7

C93, §452A.19

2002 Acts, ch 1150, §19

Unnumbered paragraph 2 amended

452A.20 Posting price and discounts. Repealed effective January 1, 1996, by 95 Acts, ch 155, § 43, 44.

452A.21 Refund — credit.

Persons not licensed under this division who blend motor fuel and alcohol to produce ethanol blended gasoline may file for a refund for the difference between taxes paid on the motor fuel purchased to produce ethanol blended gasoline and the tax due on the ethanol blended gasoline blended. If, during any month, a person licensed under this division uses tax paid motor fuel to blend ethanol blended gasoline and the refund otherwise due under this section is greater than the licensee's total tax liability for that month, the licensee is entitled to a credit. The claim for credit shall be filed as part of the return required by section 452A.8.

In order to obtain the refund established by this section, the person shall do all of the following:

1. Obtain a blender's permit as provided in section 452A.18.

2. File a refund claim containing the information as required by the department and certified by the claimant under penalty for false certificate.

3. Retain invoices meeting the requirements of section 452A.17, subsection 1, paragraph *"b"*, subparagraph (3), for the motor fuel purchased.

4. Retain invoices for the purchase of alcohol.

A refund shall not be issued unless the claim is filed within three years following the end of the month during which the ethanol blended gasoline was actually blended. An income tax credit is not allowed under this section.

[C81, §324.21]

91 Acts, ch 87, §8, 9

C93, §452A.21

95 Acts, ch 155, §26, 44; 96 Acts, ch 1066, §12, 21; 99 Acts, ch 151, §64, 65, 89; 2002 Acts, ch 1150, §20

Unnumbered paragraph 3 amended

452A.22 Tax collected on exempt fuel.

If an amount of tax represented by a licensee to a purchaser as constituting tax due is computed upon gallonage that is not taxable or the amount represented is in excess of the actual amount of tax due and the amount represented is actually paid by the purchaser to the licensee, the excess amount of tax paid shall be returned to the purchaser by the licensee. If the licensee fails to return the excess tax paid to the purchaser, the amount which the purchaser has paid to the licensee shall be remitted by the licensee to the department.

99 Acts, ch 151, §66, 89

452A.23 through 452A.30 Reserved.

DIVISION II

SPECIAL FUEL TAX

Division repealed effective January 1, 1996; licenses issued prior to January 1, 1996, canceled as of that date; 95 Acts, ch 155, §43, 44; see division I

452A.31 through 452A.38 Repealed by 95 Acts, ch 155, § 43, 44. See division I.

452A.39 through 452A.49 Reserved.

DIVISION III

MOTOR FUEL AND SPECIAL FUEL USE TAX FOR INTERSTATE MOTOR VEHICLE OPERATIONS

452A.50 Short title.

This division and applicable provisions of division IV of this chapter and any amendments to either shall be known and may be cited as the *"Interstate Fuel Use Tax Law,"* and as so constituted is hereinafter referred to as this division.

[C35, §5093-f40; C39, §**5093.39;** C46, 50, 54, §324.66; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.50]

C93, §452A.50

452A.51 Purpose.

The purpose of this division is to provide an additional method of collecting fuel taxes from interstate motor vehicle operators commensurate with their operations on Iowa highways; and to permit the state department of transportation to suspend this collection as to transportation entering Iowa from any other state where it appears that Iowa highway fuel tax revenue and interstate

highway transportation moving out of Iowa will not be unduly prejudiced thereby. Further, all motor vehicle operators from jurisdictions not participating in the international fuel tax agreement are required to comply with this chapter using the guidelines from the international fuel tax agreement for Iowa fuel tax compliance reporting purposes, penalty, interest, refunds, and credential display.

[C27, 31, §4755-b38, 5093-a1; C35, §5093-f3; C39, §**5093.03;** C46, 50, 54, §324.2; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.51]

C93, §452A.51

97 Acts, ch 108, §42

452A.52 Fuels imported in supply tanks of motor vehicles.

1. No person shall bring into this state in the fuel supply tanks of a commercial motor vehicle, or any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor fuel or special fuel to be used in the operation of the vehicle in this state unless that person has paid or made arrangements in advance with the state department of transportation for payment of Iowa fuel taxes on the gallonage consumed in operating the vehicle in this state; except that this division shall not apply to a private passenger automobile.

2. Any person who is unable to display either of the permits or the license provided in section 452A.53 and brings into the state in the fuel supply tanks of a commercial motor vehicle more than thirty gallons of motor fuel or special fuel in violation of subsection 1 commits a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 13, paragraph *"c"*.

[C35, §5093-f19; C39, §**5093.19;** C46, 50, 54, §324.34, 324.37; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.52]

C93, §452A.52

98 Acts, ch 1100, §61; 2001 Acts, ch 176, §57, 59

452A.53 Permit or license.

The advance arrangements referred to in the preceding section shall include the procuring of a permanent international fuel tax agreement permit or license or single trip interstate permit.

Persons choosing not to make advance arrangements with the state department of transportation by procuring a permit or license are not relieved of their responsibility to purchase motor fuel and special fuel commensurate with their use of the state's highway system. When there is reasonable cause to believe that there is evasion of the fuel tax on commercial motor vehicles, the state department of transportation may audit persons not holding a permit or license. Audits shall be conducted pursuant to section 452A.55 and in accordance with international fuel tax agreement guidelines. The state department of transportation shall collect all taxes due and refund any overpayment.

A permanent international fuel tax agreement permit or license may be obtained upon application to the state department of transportation. A fee of ten dollars shall be charged for each permit or license issued. The holder of a permanent permit or license shall have the privilege of bringing into this state in the fuel supply tanks of commercial motor vehicles any amount of motor fuel or special fuel to be used in the operation of the vehicles and for that privilege shall pay Iowa motor fuel or special fuel taxes as provided in section 452A.54. A single trip interstate permit may be obtained from the state department of transportation. A fee of twenty dollars shall be charged for each individual single trip interstate permit issued. A single trip interstate permit is subject to the following provisions and limitations:

1. The permit shall be issued and be valid for seventy-two consecutive hours, except in emergencies, or until the time of leaving the state, whichever first occurs.

2. The permit shall cover only one commercial motor vehicle and is not transferable.

3. Single trip interstate fuel permits may be made available from sources other than indicated in this section at the discretion of the state department of transportation.

Each vehicle operated into or through Iowa in interstate operations using motor fuel or special fuel acquired in any other state shall carry in or on the vehicle a duplicate or evidence of the permit or license required in this section. A fee not to exceed fifty cents shall be charged for each duplicate or other evidence of a permit or license issued.

[C35, §5093-f19, -f20; C39, §**5093.19, 5093.20;** C46, 50, 54, §324.38; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.53]

84 Acts, ch 1174, §2

C93, §452A.53

97 Acts, ch 108, §43; 98 Acts, ch 1100, §62

452A.54 Fuel tax computation — refund — reporting and payment.

Fuel tax liability under this division shall be computed on the total number of gallons of each kind of motor fuel and special fuel consumed in the operation in Iowa by commercial motor vehicles subject to this division at the same rate for each kind of fuel as would be applicable if taxed under division I of this chapter. A refund against the fuel tax liability so computed shall be allowed, on excess Iowa motor fuel purchased, in the amount of fuel tax paid at the prevailing rate per gallon set out under division I of this chapter on motor fuel and special fuel consumed by commercial motor vehicles, the operation of which is subject to this division.

Notwithstanding any provision of this chapter to the contrary, except as provided in this section, the holder of a permanent international fuel tax

agreement permit or license may make application to the state department of transportation for a refund, not later than the last day of the third month following the quarter in which the overpayment of Iowa fuel tax paid on excess purchases of motor fuel or special fuel was reported as provided in section 452A.8, and which application is supported by such proof as the state department of transportation may require. The state department of transportation shall refund Iowa fuel tax paid on motor fuel or special fuel purchased in excess of the amount consumed by such commercial motor vehicles in their operation on the highways of this state.

Application for a refund of fuel tax under this division must be made for each quarter in which the excess payment was reported, and will not be allowed unless the amount of fuel tax paid on the fuel purchased in this state, in excess of that consumed for highway operation in this state in the quarter applied for, is in an amount exceeding ten dollars. An application for a refund of excess Iowa fuel tax paid under this division which is filed for any period or in any manner other than herein set out shall not be allowed.

To determine the amount of fuel taxes due under this division and to prevent the evasion thereof, the state department of transportation shall require a quarterly report on forms prescribed by the state department of transportation. It shall be filed not later than the last day of the month following the quarter reported, and each quarter thereafter. These reports shall be required of all persons who have been issued a permit or license under this division and shall cover actual operation and fuel consumption in Iowa on the basis of the permit or license holder's average consumption of fuel in Iowa, determined by the total miles traveled and the total fuel purchased and consumed for highway use by the permittee's or licensee's commercial motor vehicles in the permittee's or licensee's entire operation in all states to establish an overall miles per gallon ratio, which ratio shall be used to compute the gallons used for the miles traveled in Iowa.

Subject to compliance with rules adopted by the department, annual reporting may be permitted in lieu of quarterly reporting. A licensee permitted to report annually shall maintain records in compliance with this chapter.

[C27, 31, §5093-b1; C35, §5093-f18, -f25; C39, §**5093.18, 5093.25;** C46, 50, 54, §324.32, 324.46; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.54; 81 Acts, 2nd Ex, ch 2, §14]

87 Acts, ch 170, §15

C93, §452A.54

95 Acts, ch 155, §27; 97 Acts, ch 108, §44, 45

452A.55 Records.

Every person operating within the purview of this division shall make and keep for a period of four years such records as may reasonably be required by the state department of transportation for the administration of this division. If in the normal conduct of the business, the required records are maintained and kept at an office outside the state of Iowa, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the state department of transportation at the office outside Iowa.

The state department of transportation within a period of one year from the issuance of a permanent international fuel tax agreement fuel permit or license may audit the records of the permittee or licensee for the two years preceding the issuance of the permit or license. The state department of transportation shall collect all taxes due had the permittee or licensee been licensed for the two years prior to the issuance of the permit or license and shall refund any overpayment pursuant to section 452A.54. When, as a result of an audit, fuel taxes unpaid and due the state of Iowa exceed five hundred dollars, the audit shall be at the expense of the person whose records are being audited. However, if an audit of records maintained under this section is made outside the state of Iowa in a state which requires payment of the costs for similar audits performed by officials or employees of the other state when made in Iowa, then all costs of audits performed outside of Iowa in the other state shall be at the expense of the person whose records are audited.

[C27, 31, §5093-a8; C35, §5093-f14, -f21; C39, §**5093.14, 5093.21;** C46, 50, 54, §324.27, 324.28, 324.41; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.55]

84 Acts, ch 1174, §3

C93, §452A.55

97 Acts, ch 108, §46

452A.56 Interstate motor fuel tax — reciprocity agreements.

The director of transportation may enter into motor fuel tax agreements on behalf of this state with authorized representatives of other states. The director of transportation may enter into and the state department of transportation may become a member of a motor fuel tax agreement for the collection and refund of interstate motor fuel tax. The director of transportation may adopt rules pursuant to chapter 17A to implement the agreement for the collection and refund of interstate motor fuel tax.

The department may enter into an agreement for the collection and refund of interstate motor fuel tax which conflicts with sections 452A.57, 452A.58, 452A.65, and 452A.68 and the agreement shall govern carriers covered by the agreement. Copies of the agreement shall be filed with the secretary of the senate and the chief clerk of the house.

[82 Acts, ch 1071, §1]
C83, §324.56
86 Acts, ch 1245, §1942
C93, §452A.56

DIVISION IV

PROVISIONS COMMON TO TAXES IMPOSED UNDER DIVISIONS I AND III

452A.57 Definitions.

1. *"Appropriate state agency"* or *"state agency"* means the department of revenue and finance or the state department of transportation, whichever is responsible for control, maintenance, or supervision of the power, requirement, or duty referred to in the provision. The department of revenue and finance shall administer the provisions of division I of this chapter, and the state department of transportation shall administer the provisions of division III. The state department of transportation shall have enforcement authority for division I as agreed upon by the director of revenue and finance and the director of transportation.

2. *"Carrier"* means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state.

3. *"Commercial motor vehicle"* means a passenger vehicle that has seats for more than nine passengers in addition to the driver, any road tractor, any truck tractor, or any truck having two or more axles which passenger vehicle, road tractor, truck tractor, or truck is propelled on the public highways by either motor fuel or special fuel. *"Commercial motor vehicle"* does not include a motor truck with a combined gross weight of less than twenty-six thousand pounds, operated as a part of an identifiable one-way fleet and which is leased for less than thirty days to a lessee for the purpose of moving property which is not owned by the lessor.

4. *"Department of revenue and finance"* includes the director of revenue and finance or the director's authorized representative.

5. *"Fuel taxes"* means the per gallon excise taxes imposed under divisions I and III of this chapter with respect to motor fuel and undyed special fuel.

6. An *"Iowa urban transit system"* is a system whereby motor buses are operated primarily upon the streets of cities for the transportation of passengers for an established fare and which accepts passengers who present themselves for transportation without discrimination up to the limit of the capacity of each motor bus. *"Iowa urban transit system"* also includes motor buses operated upon the streets of adjoining cities, whether interstate or intrastate, for the transportation of passengers without discrimination up to the limit of the capacity of the motor bus. Privately chartered bus services, motor carriers and interurban carriers subject to the jurisdiction of the state department of transportation, school bus services and taxicabs shall not be construed to be an urban transit system nor a part of any such system.

7. *"Mobile machinery and equipment"* means vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a highway including but not limited to corn shellers, truck-mounted feed grinders, roller mills, ditch digging apparatus, power shovels, drag lines, earth moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth moving scrapers. However, *"mobile machinery and equipment"* does not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus or lime spreaders, has been attached.

8. *"Motor vehicle"* shall mean and include all vehicles (except those operated on rails) which are propelled by internal combustion engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment or produce shall not be deemed to be a motor vehicle. *"Motor vehicle"* shall not include *"mobile machinery and equipment"* as defined in this section.

9. *"Person"* shall mean and include natural persons, partnerships, firms, associations, corporations, representatives appointed by any court and political subdivisions of this state and use of the singular shall include the plural.

10. *"Public highways"* shall mean and include any way or place available to the public for purposes of vehicular travel notwithstanding that it is temporarily closed.

11. *"Regional transit system"* means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride ba-

sis shall not be construed to be a regional transit system.

[C27, 31, §5093-a2; C35, §5093-f2; C39, §**5093.02;** C46, 50, 54, §324.1; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.57; 81 Acts, ch 108, §4; 82 Acts, ch 1140, §1]

84 Acts, ch 1253, §7; 86 Acts, ch 1245, §416

C93, §452A.57

95 Acts, ch 155, §28, 44; 96 Acts, ch 1034, §44

See §452A.2

452A.58 Commercial motor vehicles on lease.

Every commercial motor vehicle as defined in section 452A.57, subsection 3, leased to a carrier shall be subject to the provisions of this division and rules and regulations enforced pursuant thereto to the same extent and in the same manner as commercial vehicles owned by such carrier.

A lessor of a commercial motor vehicle shall be deemed a carrier with respect to such vehicles leased to others by the lessor and motor fuel or special fuel consumed thereby if the lessor supplies or pays for the motor fuel or special fuel consumed by such vehicle or makes rental or other charges calculated to include the cost of such fuel.

The provisions of this section shall govern the primary liability pursuant to this section if either lessor or lessee primarily fails in whole or in part to discharge this liability. Such failing party as lessor or lessee party to the transaction shall be jointly and severally responsible and liable for the provisions of division III of this chapter and for payment of any tax unpaid and due pursuant thereto, provided that any taxes collected by this state shall not exceed the total amount or amounts of the taxes due on account of the transaction in question and such penalties and costs, if any, as may be imposed.

[C71, 73, 75, 77, 79, 81, §324.58]

C93, §452A.58

452A.59 Administrative rules.

The department of revenue and finance and the state department of transportation are authorized and empowered to adopt rules under chapter 17A, relating to the administration and enforcement of this chapter as deemed necessary by the departments.

[C35, §5093-f18, -f21, -f36; C39, §**5093.18, 5093.21, 5093.36;** C46, 50, 54, §324.32, 324.40, 324.64; C58, 62, 66, §324.58; C71, 73, 75, 77, 79, 81, §324.59]

C93, §452A.59

95 Acts, ch 155, §29

452A.60 Forms of report, refund claim, and records.

The department of revenue and finance or the state department of transportation shall prescribe and furnish all forms, as applicable, upon which reports, returns, and applications shall be made and claims for refund presented under this chapter and may prescribe forms of record to be kept by suppliers, restrictive suppliers, importers, exporters, blenders, common carriers, contract carriers, licensed compressed natural gas and liquefied petroleum gas dealers and users, terminal operators, nonterminal storage facility operations, and interstate commercial motor vehicle operators.

The department of revenue and finance or the state department of transportation may approve a form of record, other than a prescribed form, if the required information is presented in a reasonably accessible form which substantially complies with the prescribed form.

[C35, §5093-f21, -f36; C39, §**5093.21, 5093.36;** C46, 50, 54, §324.42, 324.64; C58, 62, 66, §324.59; C71, 73, 75, 77, 79, 81, §324.60]

C93, §452A.60

95 Acts, ch 155, §30; 99 Acts, ch 151, §67, 89; 2002 Acts, ch 1151, §27

Unnumbered paragraph 1 amended

452A.61 Timely filing of reports and returns — extension.

The reports, returns, and remittances required under this chapter shall be deemed filed within the required time if postpaid, properly addressed, and postmarked on or before midnight of the day on which due and payable. If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date.

The department of revenue and finance or the state department of transportation upon application may grant a reasonable extension of time for the filing of any required report, return, or tax payment.

[C27, 31, §5093-a5, -b1; C35, §5093-f9, -f21, -f25; C39, §**5093.09, 5093.21, 5093.25;** C46, 50, 54, §324.13, 324.41, 324.46; C58, 62, 66, §324.60; C71, 73, 75, 77, 79, 81, §324.61]

C93, §452A.61

99 Acts, ch 151, §68, 89

452A.62 Inspection of records.

The department of revenue and finance or the state department of transportation, whichever is applicable, is hereby given the authority within the time prescribed for keeping records to do the following:

1. To examine, during the usual business hours of the day, the records, books, papers, receipts, invoices, storage tanks, and any other equipment of any of the following:

a. A distributor, supplier, restrictive supplier, importer, exporter, blender, terminal operator, common carrier, or contract carrier, pertaining to motor fuel or undyed special fuel withdrawn from a terminal or brought into this state.

b. A licensed compressed natural gas or liquefied petroleum gas dealer, user, or person supplying compressed natural gas or liquefied petroleum gas to a licensed compressed natural gas or liquefied petroleum gas dealer or user.

c. An interstate operator of motor vehicles to verify the truth and accuracy of any statement, report, or return, or to ascertain whether or not the taxes imposed by this chapter have been paid.

d. Any person selling fuels that can be used for highway use.

2. To examine the records, books, papers, receipts, and invoices of any distributor, supplier, restrictive supplier, importer, blender, exporter, terminal operator, licensed compressed natural gas or liquefied petroleum gas dealer or user, or any other person who possesses fuel upon which the tax has not been paid to determine financial responsibility for the payment of the taxes imposed by this chapter.

If a person under this section refuses access to pertinent records, books, papers, receipts, invoices, storage tanks, or any other equipment, the appropriate state agency shall certify the names and facts to any court of competent jurisdiction, and the court shall enter an order to enforce this chapter.

[C27, 31, §5093-a6; C35, §5093-f26, -f29; C39, §**5093.26, 5093.29;** C46, 50, 54, §324.47, 324.52; C58, 62, 66, §324.61; C71, 73, 75, 77, 79, 81, §324.62]

C93, §452A.62

95 Acts, ch 155, §31, 44; 2002 Acts, ch 1151, §28

Subsection 2, unnumbered paragraph 1 amended

452A.63 Information confidential.

All information obtained by the department of revenue and finance or the state department of transportation from the examining of reports, returns, or records required to be filed or kept under this chapter shall be treated as confidential and shall not be divulged except to other state officers, a member or members of the general assembly, or any duly appointed committee of either or both houses of the general assembly, or to a representative of the state having some responsibility in connection with the collection of the taxes imposed or in proceedings brought under this chapter. The appropriate state agency may make available to the public on or before forty-five days following the last day of the month in which the tax is required to be paid, the names of suppliers, restrictive suppliers, and importers and as to each of them the total gallons of motor fuel, undyed special fuel, and ethanol-blended gasoline withdrawn from terminals or imported into the state during that month. The department of revenue and finance or the state department of transportation, upon request of officials entrusted with enforcement of the motor vehicle fuel tax laws of the federal government or any other state, may forward to these officials any pertinent information which the appropriate state agency may have relative to motor fuel and special fuel, provided the officials of the other state furnish like information.

Any person violating this section, and disclosing the contents of any records, returns, or reports required to be kept or made under this chapter, except as otherwise provided, shall be guilty of a simple misdemeanor.

[C27, 31, §5093-a6; C35, §5093-f27; C39, §**5093.27;** C46, 50, 54, §324.48; C58, 62, 66, §324.62; C71, 73, 75, 77, 79, 81, §324.63]

C93, §452A.63

95 Acts, ch 155, §32, 44; 96 Acts, ch 1066, §13, 21; 99 Acts, ch 151, §69, 89

452A.64 Failure to file return — incorrect return.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the filer fails to file a corrected or sufficient return within twenty days after the same is required by notice from the appropriate state agency, the appropriate state agency shall determine the amount of tax due. The determination shall be made from all information that the appropriate state agency may be able to obtain and, if necessary, the agency may estimate the tax on the basis of external indices. The appropriate state agency shall give notice of the determination to the person liable for the tax. The determination shall fix the tax unless the person against whom it is assessed shall, within sixty days after the giving of notice of the determination, apply to the director of the appropriate state agency for a hearing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. At the hearing, evidence may be offered to support the determination or to prove that it is incorrect. After the hearing, the director shall give notice of the decision to the person liable for the tax. The findings of the appropriate state agency as to the amount of fuel taxes, penalties and interest due from any person shall be presumed to be the correct amount and in any litigation which may follow, the certificate of the agency shall be admitted in evidence, shall constitute a prima facie case and shall impose upon the other party the burden of showing any error in the findings and the extent thereof or that the finding was contrary to law.

[C35, §5093-f11, -f12; C39, §**5093.11, 5093.12;** C46, 50, 54, §324.19, 324.20, 324.21; C58, 62, 66, §324.63; C71, 73, 75, 77, 79, 81, §324.64; 81 Acts, ch 131, §2]

C93, §452A.64

94 Acts, ch 1133, §12, 16

452A.65 Failure to promptly pay fuel taxes — refunds — interest and penalties — successor liability.

In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the return was required to be filed. If the amount of the tax as determined by the appropriate state agency is less than the amount paid, the excess shall be refunded with interest, the interest to begin to accrue on the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the latest, at the rate in effect under section 421.7 counting each fraction of a month as an entire month under the rules prescribed by the appropriate state agency. Claims for refund filed under sections 452A.17 and 452A.21 shall accrue interest beginning with the first day of the second calendar month following the date the refund claim is received by the department.

A report required of licensees or persons operating under division III, upon which no tax is due, is subject to a penalty of ten dollars if the report is not timely filed with the state department of transportation.

If a licensee or other person sells the licensee's or other person's business or stock of goods or quits the business, the licensee or other person shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the licensee or other person, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of any delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold any amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former licensee or other person, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an *"immediate successor"* for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

[C27, 31, §5093-a5; C35, §5093-f9, -f11; C39, §**5093.09, 5093.11;** C46, 50, 54, §324.16, 324.19; C58, 62, 66, §324.64; C71, 73, 75, 77, 79, 81, §324.65; 81 Acts, ch 131, §3; 82 Acts, ch 1180, §1, 8]

84 Acts, ch 1173, §3; 86 Acts, ch 1246, §30; 86 Acts, ch 1007, §11 – 13; 89 Acts, ch 251, §7; 90 Acts, ch 1172, §3, 4; 91 Acts, ch 159, §2

C93, §452A.65

97 Acts, ch 158, §44

Personal liability of officers and partners; see §421.26

452A.66 Statutes applicable to motor vehicle fuel tax.

The appropriate state agency shall administer the taxes imposed by this chapter in the same manner as and subject to section 422.25, subsection 4 and section 422.52, subsection 3.

All the provisions of section 422.26 shall apply in respect to the taxes, penalties, interest, and costs imposed by this chapter excepting that as applied to any tax imposed by this chapter, the lien therein provided shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this chapter, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this chapter. The giving of such information under such circumstances shall not be deemed a violation of section 452A.63 as applied to this chapter.

[C35, §5093-f13; C39, §**5093.13;** C46, 50, 54, §324.22 – 324.24; C58, 62, 66, §324.65; C71, 73, 75, 77, 79, 81, §324.66]

86 Acts, ch 1007, §14; 87 Acts, ch 233, §132

C93, §452A.66

452A.67 Limitation on collection proceedings.

The department shall examine the return and enforce collection of any amount of tax, penalty, fine, or interest over and above the amount shown to be due by the return filed by a licensee as soon as practicable but no later than three years after the return is filed. An assessment shall not be made covering a period beyond three years after the return is filed except that the period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for

refund may be filed by the taxpayer at any time during the period of extension.

[C58, 62, 66, §324.66; C71, 73, 75, 77, 79, 81, §324.67]

89 Acts, ch 251, §8

C93, §452A.67

96 Acts, ch 1066, §14, 21; 99 Acts, ch 151, §70, 89

452A.68 Power of department of revenue and finance or the state department of transportation to cancel licenses.

If a licensee files a false return of the data or information required by this chapter, or fails, refuses, or neglects to file a return required by this chapter, or to pay the full amount of fuel tax as required by this chapter, or is substantially delinquent in paying a tax due, owing, and administered by the department of revenue and finance, and interest and penalty if appropriate, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the licensee corporation, or interest or penalty on the tax, administered by the department, then after ten days' written notice by mail directed to the last known address of the licensee setting a time and place at which the licensee may appear and show cause why the license should not be canceled, and if the licensee fails to appear or if upon the hearing it is shown that the licensee failed to correctly report or pay the tax, the appropriate state agency may cancel the license and shall notify the licensee of the cancellation by mail to the licensee's last known address.

If a licensee abuses the privileges for which the license was issued, fails to produce records reasonably requested or fails to extend reasonable cooperation to the appropriate state agency, the licensee shall be advised in writing of a hearing scheduled to determine if the license shall be canceled. The appropriate state agency upon the presentation of a preponderance of evidence may cancel a license for cause.

The director of the appropriate state agency may reissue a license which has been canceled for cause. As a condition of reissuance of a license, in addition to requirements for issuing a new license, the director may require a waiting period not to exceed ninety days before a license can be reissued or a new license issued. The director shall adopt rules specifying those instances for which a waiting period will be required.

Upon receipt of written request from any licensee the appropriate state agency shall cancel the license of the licensee effective on the date of receipt of the request. If, upon investigation, the appropriate state agency finds that a licensee is no longer engaged in the activities for which a license was issued and has not been so engaged for a period of six months, the state agency shall cancel the license and give thirty days' notice of the cancellation mailed to the last known address of the licensee.

[C27, 31, §5093-a5; C35, §5093-f10, -f18, -f37; C39, §**5093.10, 5093.18, 5093.37;** C46, 50, 54, §324.18, 324.32, 324.65; C58, 62, 66, §324.67; C71, 73, 75, 77, 79, 81, §324.68; 82 Acts, ch 1045, §1]

86 Acts, ch 1007, §15; 86 Acts, ch 1241, §8; 89 Acts, ch 251, §9

C93, §452A.68

99 Acts, ch 151, §71, 89

452A.69 Hearings before state agency.

Hearings before a state agency authorized under the provisions of this chapter may be held at a site in the state as the state agency may direct. The state agency shall have the power to issue subpoenas including subpoenas duces tecum and to require the attendance of witnesses and the production of books, records and papers. In the event any person shall refuse to obey subpoena, or after appearing refuses to testify, the state agency shall certify the name of the person to the district court of the county where the hearing is being held and the court shall proceed with the witness in the same manner as if the refusal had occurred in open court.

[C27, 31, §5093-a5; C35, §5093-f10, -f11, -f12; C39, §**5093.10, 5093.11, 5093.12;** C46, 50, 54, §324.18 – 324.21; C58, 62, 66, §324.68; C71, 73, 75, 77, 79, 81, §324.69]

C93, §452A.69

452A.70 Discontinuance of licensed activity — liability for taxes and penalties.

If a licensee ceases to engage in the state in activities for which the person's license was issued or discontinues, sells, or transfers the business in which the person has carried on that activity the licensee shall notify the department of revenue and finance, which shall forward notice to the state department of transportation, in writing at least ten days prior to the time the cessation, discontinuance, sale or transfer takes effect. The notice shall give the date of proposed cessation or discontinuance, and, in the event of a proposed sale or transfer of the business, the date and the name and address of the purchaser or transferee. All fuel taxes, penalties and interest under this chapter not yet due and payable shall, together with any and all interest accruing or penalties imposed under this chapter shall become due and payable concurrently with the cessation, discontinuances, sale or transfer, and it shall be the duty of the licensee to make a report and pay all the fuel taxes, interest, and penalties within ten days.

[C27, 31, §5093-a5; C35, §5093-f10; C39, §**5093.10;** C46, 50, 54, §324.18; C58, 62, 66, §324.69; C71, 73, 75, 77, 79, 81, §324.70]

C93, §452A.70

452A.71 Refund of tax on fuel lost as result of casualty.

Except as provided in section 452A.54, a person who has paid or has had charged to the person's account with a distributor, dealer, or user fuel taxes imposed under this chapter with respect to motor fuel or undyed special fuel in excess of one hundred gallons, which, while the person is the owner, is subsequently lost or destroyed through leakage, fire, explosion, lightning, flood, storm, or other casualty, except evaporation or unknown causes, shall be entitled to a refund of the tax so paid or charged. To qualify for the refund, the person shall notify the department of revenue and finance in writing of the loss or destruction and the gallonage lost or destroyed within ten days from the date of discovery of the loss or destruction. Within sixty days after filing the notice, the person shall file with the department of revenue and finance an affidavit sworn to by the person having immediate custody of the motor fuel or undyed special fuel at the time of the loss or destruction setting forth in full the circumstances and amount of the loss or destruction and such other information as the department of revenue and finance may require. Any refund payable under this section may be applied by the department against any tax liability outstanding on the books of the department against the claimant.

[C27, 31, §5093-a5; C35, §5093-f9; C39, §**5093.09;** C46, 50, 54, §324.14, 324.15; C58, 62, 66, §324.70; C71, 73, 75, 77, 79, 81, §324.71]

C93, §452A.71

95 Acts, ch 155, §33, 44; 96 Acts, ch 1034, §45; 96 Acts, ch 1066, §15, 21

452A.72 Refund for fuel taxes erroneously or illegally collected or paid.

If any fuel taxes, penalties, or interest have been erroneously or illegally collected by the appropriate state agency from a licensee, the appropriate state agency may apply the overpayment against any tax liability outstanding on the books of the department against the claimant, or shall certify the amount to the director of revenue and finance, who shall draw a warrant for the certified amount on the treasurer of state payable to the licensee. The refund shall be paid to the licensee immediately.

A refund shall not be made under this section unless a written claim setting forth the circumstances for which the refund should be allowed is filed with the appropriate state agency within three years from the date of the payment of the taxes erroneously or illegally collected or paid.

However, if it is found during an examination by the appropriate state agency that a licensee paid, as a result of a mistake, an amount of tax, penalty, or interest which was not due, and the mistake is found within three years of the overpayment, the appropriate state agency shall credit the amount against any penalty, interest or taxes due or shall refund the amount to the person.

[C27, 31, §5093-a5, -b1; C35, §5093-f9; C39, §**5093.09;** C46, 50, 54, §324.13, 324.15; C58, 62, 66, §324.71; C71, 73, 75, 77, 79, 81, §324.72]

C93, §452A.72

96 Acts, ch 1066, §16, 21; 2002 Acts, ch 1150, §21

Unnumbered paragraph 2 amended

452A.73 Embezzlement of fuel tax money — penalty.

Every sale of motor fuel in this state and every sale of undyed special fuel dispensed by the seller into a fuel supply tank of a motor vehicle shall, unless otherwise provided, be presumed to include as a part of the purchase price the fuel tax due the state of Iowa under the provisions of this chapter. Every person collecting fuel tax money as part of the selling price of motor fuel or undyed special fuel, shall hold the tax money in trust for the state of Iowa unless the fuel tax on the fuel has been previously paid to the state of Iowa. Any person receiving fuel tax money in trust and failing to remit it to the department of revenue and finance on or before time required shall be guilty of theft.

[C27, 31, §5093-a5; C35, §5093-f9, -f13; C39, §**5093.09 – 5093.13;** C46, 50, 54, §324.16 – 324.22; C58, 62, 66, §324.72; C71, 73, 75, 77, 79, 81, §324.73]

C93, §452A.73

95 Acts, ch 155, §34, 44

Theft, chapter 714

452A.74 Unlawful acts — penalty.

It shall be unlawful:

1. For any person to knowingly fail, neglect, or refuse to make any required return or statement or pay over fuel taxes required under this chapter.

2. For any person to knowingly make any false, incorrect, or materially incomplete record required to be kept or made under this chapter, to refuse to offer required books and records to the department of revenue and finance or the state department of transportation for inspection on demand or to refuse to permit the department of revenue and finance or the state department of transportation to examine the person's motor fuel or undyed special fuel storage tanks and handling or dispensing equipment.

3. For any seller to issue or any purchaser to receive and retain any incorrect or false invoice or sales ticket in connection with the sale or purchase of motor fuel or undyed special fuel.

4. For any claimant to alter any invoice or sales ticket, whether the invoice or sales ticket is to be used to support a claim for refund or income tax credit or not, provided, however, if a claimant's refund permit has been revoked for cause as provided in section 452A.19, the revocation shall serve as a bar to prosecution for violation of this subsection.

5. For any person to act as a supplier, restric-

tive supplier, importer, exporter, blender, or compressed natural gas or liquefied petroleum gas dealer or user without the required license.

6. For any person to use motor fuel, undyed special fuel, or dyed special fuel in the fuel supply tank of a vehicle with respect to which the person knowingly has not paid or had charged to the person's account with a distributor or dealer, or with respect to which the person does not, within the time required in this chapter, report and pay the applicable fuel tax.

7. For any licensed compressed natural gas or liquefied petroleum gas dealer or user to dispense compressed natural gas or liquefied petroleum gas into the fuel supply tank of any motor vehicle without collecting the fuel tax.

8. Any delivery of compressed natural gas or liquefied petroleum gas to a compressed natural gas or liquefied petroleum gas dealer or user for the purpose of evading the state tax on compressed natural gas or liquefied petroleum gas, into facilities other than those licensed above knowing that the fuel will be used for highway use shall constitute a violation of this section. Any compressed natural gas or liquefied petroleum gas dealer or user for purposes of evading the state tax on compressed natural gas or liquefied petroleum gas, who allows a distributor to place compressed natural gas or liquefied petroleum gas for highway use in facilities other than those licensed above, shall also be deemed in violation of this section.

A person found guilty of an offense specified in this section is guilty of a fraudulent practice. Prosecution for an offense specified in this section shall be commenced within six years following its commission.

[C27, 31, §5093-a4, -a6, -a7, -a8; C35, §5093-f31; C39, §**5093.31;** C46, 50, 54, §324.58; C58, 62, 66, §324.73; C71, 73, 75, 77, 79, 81, §324.74]

83 Acts, ch 160, §1

C93, §452A.74

95 Acts, ch 155, §35, 44; 96 Acts, ch 1066, §17, 18, 21; 99 Acts, ch 152, §35, 40

See §452A.19

Fraudulent practices, see §714.8 through 714.14

452A.74A Additional penalty and enforcement provisions.

In addition to the tax or additional tax, the following fines and penalties shall apply:

1. *Illegal use of dyed fuel.* The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

a. A two hundred dollar fine for the first violation.

b. A five hundred dollar fine for a second violation within three years of the first violation.

c. A one thousand dollar fine for third and subsequent violations within three years of the first violation.

2. *Illegal importation of untaxed fuel.* A person who imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as provided in this subsection. However, the owner or operator of the importing vehicle shall not be guilty of violating this subsection if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.

a. For a first violation, the importing vehicle shall be detained and a fine of two thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the fine.

b. For a second violation, the importing vehicle shall be detained and a fine of five thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a fine of ten thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and fine for a first or second offense, the importing vehicle and the fuel may be seized. The department of revenue and finance, the state department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel move the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "This vehicle cannot be moved until the tax, penalty, and interest have been paid to the Department of Revenue and Finance", an additional penalty of five thousand dollars shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

f. For purposes of this subsection, *"vehicle"* means as defined in section 321.1.

3. *Improper receipt of refund.* If a person files an incorrect refund claim, in addition to the excess amount of the claim, a penalty of ten percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be seventy-five percent in lieu of the ten percent. The person shall also pay interest on the excess refunded at the rate per month specified in section 421.7, counting each fraction of a month as an entire month, computed from the date the refund

was issued to the date the excess refund is repaid to the state.

4. *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

5. *Prevention of inspection.* The department of revenue and finance or the state department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than one thousand dollars per occurrence. Any law enforcement officer or department of revenue and finance or state department of transportation employee may physically inspect, examine or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

6. *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a fuel pump or other delivery facility as required by the internal revenue service, that dispenses dyed diesel fuel so as to notify customers that it contains dyed diesel fuel, shall pay to the department a penalty of one hundred dollars per occurrence.

7. *False or fraudulent report or return.* Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report or return, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent report or return or false statement in any report or return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

95 Acts, ch 155, §36, 44; 96 Acts, ch 1066, §19 – 21; 99 Acts, ch 151, §72, 89

Fraudulent practices, see §714.8 through 714.14

452A.75 Penalty for false certificate — place of trial.

Any person who makes a false certificate, false fuel invoice, false fuel receipt, or false fuel sales ticket in any report, return, application, claim, or evidence required or provided for by this chapter or under any rule or regulation shall be guilty of a fraudulent practice.

Prosecution for an offense specified in this section shall be commenced within six years following its commission.

[C27, 31, §5093-a4, -a6, -a7, -a8; C35, §5093-f31; C39, §**5093.31;** C46, 50, 54, §324.58, 324.59; C58, 62, 66, §324.74; C71, 73, 75, 77, 79, 81, §324.75]

83 Acts, ch 160, §2

C93, §452A.75

99 Acts, ch 152, §36, 40

Fraudulent practices, see §714.8 – 714.14

452A.76 Enforcement authority.

Authority to enforce division III is given to the state department of transportation. Employees of the department of transportation designated enforcement employees have the power of peace officers in the performance of their duties; however, they shall not be considered members of the Iowa state patrol. The department of transportation shall furnish enforcement employees with necessary equipment and supplies in the same manner as provided in section 80.18, including uniforms which are distinguishable in color and design from those of the Iowa state patrol. Enforcement employees shall be furnished and shall conspicuously display badges of authority.

Authority is given to the department of revenue and finance, the state department of transportation, the department of public safety, and any peace officer as requested by such departments to enforce the provisions of division I and this division of this chapter. The department of revenue and finance shall adopt rules providing for enforcement under division I and this division of this chapter regarding the use of motor fuel or special fuel in implements of husbandry. Enforcement personnel or requested peace officers are authorized to stop a conveyance suspected to be illegally transporting motor fuel or special fuel on the highways, to investigate the cargo, and also have the authority to inspect or test the fuel in the supply tank of a conveyance to determine if legal fuel is being used to power the conveyance. The operator of any vehicle transporting motor fuel or special fuel shall, upon request, produce and offer for inspection the manifest or loading and delivery invoices pertaining to the load and trip in question and shall permit the authority to inspect and measure the contents of the vehicle. If the vehicle operator fails to produce the evidence or if, when produced, the evidence fails to contain the required information and it appears that there is an attempt to evade payment of the fuel tax, the vehicle operator will be subject to the penalty provisions contained in section 452A.74A. For purposes of this section, *"vehicle"* means as defined in section 321.1.

[C35, §5093-f18, -f32; C39, §**5093.18, 5093.32;** C46, 50, 54, §324.32, 324.60; C58, 62, 66, §324.75; C71, 73, 75, 77, 79, 81, §324.76]

84 Acts, ch 1174, §4

C93, §452A.76

95 Acts, ch 155, §37, 44; 98 Acts, ch 1074, §29

452A.77 Moneys deposited in treasury — refunds — administration.

All fees, taxes, interest and penalties imposed

under this chapter must be paid to the department of revenue and finance or the state department of transportation, whichever is responsible for the collection. The appropriate state agency shall transmit each payment daily to the treasurer of state. Such payments shall be deposited by the treasurer of state in a fund, hereby created, within the state treasury which shall be known as the *"motor fuel tax fund,"* the net proceeds of which fund, after deductions by lawful transfers and refunds, shall be known as the *"motor vehicle fuel tax fund"*. The department of revenue and finance and the state department of transportation shall certify monthly to the director of revenue and finance amounts of refunds of tax approved during each month, and the director of revenue and finance shall draw warrants in such amounts on the motor fuel tax fund and transmit them. There is hereby appropriated out of the money received under the provisions of this chapter and deposited in the motor fuel tax fund sufficient funds to pay such refunds as may be authorized in this chapter.

The general assembly may appropriate from the motor fuel tax fund such amounts as it determines are necessary for administrative expenses. Allocations and transfers of fees, taxes, interest and penalties imposed under this chapter, pursuant to any provision of the Code, shall be made from the motor fuel tax fund.

[C27, 31, §5093-a11; C35, §5093-f33; C39, §**5093.33;** C46, 50, 54, §324.61; C58, 62, 66, §324.76; C71, 73, 75, 77, 79, 81, §324.77]

C93, §452A.77

452A.78 Other remedies available.

The special remedies provided under the provisions of this chapter to enable the state to collect motor vehicle fuel excise tax shall not be construed as depriving the state of any other remedy it might have either at law or in equity independent of this chapter. The state shall have the right to maintain an action at law for the collection of said taxes required to be paid herein and in connection therewith shall be entitled to a writ of attachment without bond.

[C35, §5093-f34; C39, §**5093.34;** C46, 50, 54, §324.62; C58, 62, 66, §324.77; C71, 73, 75, 77, 79, 81, §324.78]

C93, §452A.78

452A.79 Use of revenue.

The net proceeds of the excise tax on the diesel special fuel and the excise tax on motor fuel and other special fuel, and penalties collected under the provision of this chapter, shall be credited to the road use tax fund.

Annually, the first four hundred eleven thousand three hundred eleven dollars derived from the excise tax on the sale of motor fuel used in watercraft shall be deposited in the general fund of the state. The moneys in excess of four hundred eleven thousand three hundred eleven dollars shall be deposited in the rebuild Iowa infrastructure fund. Moneys deposited to the general fund and to the rebuild Iowa infrastructure fund under this section and section 452A.84 are subject to the requirements of section 8.60 and are subject to appropriation by the general assembly to the department of natural resources for use in its recreational boating program, which may include but is not limited to:

1. Dredging and renovation of lakes of this state.
2. Acquisition, development and maintenance of access to public boating waters.
3. Development and maintenance of boating facilities and navigation aids.
4. Administration, operation, and maintenance of recreational boating activities of the department of natural resources.
5. Acquisition, development and maintenance of recreation facilities associated with recreational boating.

[C27, 31, §4755-b38, 5093-a9; C35, §5093-f35; C39, §**5093.35;** C46, 50, 54, §324.63; C58, 62, 66, §324.78; C71, 73, 75, 77, 79, 81, §324.79]

88 Acts, ch 1134, §69, 70; 91 Acts, ch 260, §1227

C93, §452A.79

93 Acts, ch 131, §17; 94 Acts, ch 1107, §68, 69; 98 Acts, ch 1219, §18; 99 Acts, ch 204, §37

See §24.14

452A.80 Microfilm or photographic copies — originals destroyed.

The appropriate state agency shall have the power and authority to record, copy, or reproduce by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original of any forms or records pertaining to motor fuel tax or undyed special fuel tax, or any paper or document with respect to refund of the tax. If the forms and records have been reproduced in accordance with this section, the state agency may destroy the originals and the reproductions shall be competent evidence in any court in accordance with the provision of section 622.30.

[C35, §5093-f36; C39, §**5093.36;** C46, 50, 54, §324.64; C58, 62, 66, §324.79; C71, 73, 75, 77, 79, 81, §324.80]

C93, §452A.80

95 Acts, ch 155, §38

452A.81 Agreement for refund of federal tax.

1. The department of revenue and finance is hereby authorized to enter into and empowered to carry out the provisions of agreements with any duly authorized agent or department of the United States government for joint or cooperative action by the state and the United States government in the making of refunds of the federal tax on gasoline. Such agreements may provide that the de-

partment of revenue and finance may receive applications for and make refunds of the federal tax on gasoline as an agent of the United States. Such agreements shall provide that the United States shall provide the department of revenue and finance with sufficient funds in advance to pay all costs to the state in the performance of such agreements and in the making of such refunds. In the event such an agreement is concluded, the director of revenue and finance is hereby designated, appointed and empowered, through the motor vehicle fuel tax division of the department, to, as an agent of the United States government, accept applications for refunds of the federal tax on gasoline and to make such refunds from such moneys provided to the director in advance by the federal government.

2. All moneys that may be paid in advance by the United States to the state to pay the cost to the state of performing such agreements and the cost of making such refunds are hereby appropriated to the department of revenue and finance for such purposes. Neither the state nor the department of revenue and finance shall be liable in any manner for the actions of the department of revenue and finance or employees of the department in the receipt, administration, and expenditure of such federal funds including the making of refunds.

[C58, 62, 66, §324.80; C71, 73, 75, 77, 79, 81, §324.81]
C93, §452A.81
See refunds, §452A.17

452A.82 Aviation fuel tax fund.

The portion of the moneys collected under this chapter received on account of aviation gasoline and special fuel used in aircraft shall be deposited in a separate fund to be maintained by the treasurer. All moneys remaining in the separate fund after the cost of administering the fund has been paid shall be credited to the general fund of the state.

[C71, 73, 75, 77, 79, 81, §324.82]
88 Acts, ch 1205, §17
C93, §452A.82
94 Acts, ch 1107, §70

452A.83 Reserved.

452A.84 Transfer to state general fund.

The treasurer of state shall transfer from the motor fuel tax fund to the general fund of the state that portion of moneys collected under this chapter attributable to motor fuel used in watercraft computed as follows:

1. Determine monthly the total amount of motor fuel tax collected under this chapter and multiply the amount by nine-tenths of one percent.

2. Subtract from the figure computed pursuant to subsection 1 of this section three percent of the figure for administrative costs and further subtract from the figure the amounts refunded to commercial fishers pursuant to section 452A.17, subsection 1, paragraph *"a"*, subparagraph (7). All moneys remaining after claims for refund and the cost of administration have been made shall be transferred to the general fund of the state.

[C73, 75, 77, 79, 81, §324.84]
84 Acts, ch 1012, §1
C93, §452A.84
94 Acts, ch 1107, §71; 95 Acts, ch 155, §39, 44

452A.85 Tax payment for stored motor fuel, ethanol blended gasoline, special fuel, compressed natural gas, and liquefied petroleum gas — penalty.

1. Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas under this chapter shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

2. Persons subject to the tax imposed under this section shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within thirty days of the prescribed inventory date. The department of revenue and finance shall adopt rules pursuant to chapter 17A as are necessary to administer this section.

3. The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage as determined under subsection 1. The inventory tax rate is equal to the difference of the increased excise tax rate less the previous excise tax rate.

[C81, §324.85]
91 Acts, ch 87, §10
C93, §452A.85
95 Acts, ch 155, §40, 44

452A.86 Method of determining gallonage.

The exclusive method of determining gallonage of any purchases or sales of motor fuel, undyed special fuel, compressed natural gas, or liquefied petroleum gas as defined in this chapter and distillate fuels shall be on a gross volume basis. A temperature-adjusted or other method shall not be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All invoices, bills of lading, or other records of sale or purchase

and all returns or records required to be made, kept, and maintained by a supplier, restrictive supplier, importer, exporter, blender, or compressed natural gas or liquefied petroleum gas dealer or user shall be made, kept, and maintained on the gross volume basis. For purposes of this section, *"distillate fuels"* means any fuel oil, gas oil, topped crude oil, or other petroleum oils derived by refining or processing crude oil or unfinished oils which have a boiling range at atmospheric pressure which falls completely or in part between five hundred fifty and twelve hundred degrees Fahrenheit.

[81 Acts, 2nd Ex, ch 2, §16]
C83, §324.86
C93, §452A.86
95 Acts, ch 155, §41, 44; 99 Acts, ch 151, §73, 89

CHAPTER 453

DEPOSIT OF PUBLIC FUNDS

Transferred to chapter 12C
Former §453.22 repealed by 92 Acts, ch 1156, §42; see §12C.1, subsection 3

CHAPTER 453A

CIGARETTE AND TOBACCO TAXES

This chapter not enacted as a part of this title;
transferred from chapter 98 in Code 1993

DIVISION I

CIGARETTES

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CIGARS AND OTHER TOBACCOS

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DIVISION III

UNIFORM APPLICATION OF CHAPTER

453A.56 Uniform application.

DIVISION I

CIGARETTES

453A.1 Definitions.

The following words, terms, and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. *"Attorney general"* shall mean the attorney general of the state or the attorney general's duly authorized assistants and employees.

2. *"Carton"* means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

3. *"Cigarette"* means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition herein shall not be construed to include cigars.

4. *"Cigarette vending machine"* means any self-service device offered for public use which, upon insertion of a coin, coins, paper currency, or by other means, dispenses cigarettes or tobacco products without the necessity of replenishing the device between each vending operation.

5. *"Cigarette vendor"* means any person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more cigarette vending machines for the purpose of selling cigarettes at retail.

6. *"Counterfeit stamp"* shall mean any stamp, label, print, indicium, or character which evidences, or purports to evidence the payment of any tax levied by this chapter, and which stamp, label, print, indicium, or character has not been printed, manufactured or made by authority of the director as hereinafter provided, and issued, sold or circulated by the department.

7. *"Department"* means the department of revenue and finance.

8. *"Director"* means the director of revenue and finance or the director's duly authorized assistants and employees.

9. *"Distributing agent"* shall mean and include every person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received by said manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such place of storage.

10. *"Distributing agent's permit"* shall mean and include permits issued by the department to distributing agents.

11. *"Distributor"* shall mean and include every person in this state who manufactures or produces cigarettes or who ships, transports, or imports into this state or in any manner acquires or possesses cigarettes without stamps affixed for the purpose of making a "first sale" of the same within the state.

12. *"Drop shipment"* shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

13. *"First sale"* shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this state.

14. *"Individual packages of cigarettes"* shall mean and include every package of cigarettes ordinarily sold at retail.

15. *"Manufacturer"* shall mean and include every person who ships cigarettes into this state from outside the state.

16. *"Manufacturer's permit"* shall mean and include permits issued by the department to a manufacturer.

17. *"Package"* or *"pack"* means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

18. *"Person"* shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation, trustee, agency or receiver, or respective legal representative.

19. *"Place of business"* is construed to mean and include any place where cigarettes are sold or where cigarettes are stored within or without the state of Iowa by the holder of an Iowa permit or kept for the purpose of sale or consumption; or if sold from any vehicle or train, the vehicle or train on which or from which such cigarettes are sold shall constitute a place of business.

20. *"Previously used stamp"* shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale, or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

21. *"Retailer"* shall mean and include every person in this state who shall sell, distribute, or offer for sale for consumption or possess for the purpose of sale for consumption, cigarettes irrespective of quantity or amount or the number of sales.

22. *"Retail permit"* shall mean and include permits issued to retailers.

23. *"Self-service display"* means any manner of product display, placement, or storage from

which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.

24. *"Stamps"* means the stamp or stamps printed, manufactured or made by authority of the director and issued, sold or circulated by the department and by the use of which the tax levied is paid. It also means any impression, indicium, or character fixed upon packages of cigarettes by metered stamping machine or device which may be authorized by the director to the holder of state or manufacturers' permits and by the use of which the tax levied is paid.

25. *"State permit"* shall mean and include permits issued by the department to distributors, wholesalers, and retailers.

26. *"Tobacco products"* means cigars; little cigars as defined in section 453A.42, subsection 5; cheroots; stogies; periques; granulated; plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; or refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not mean cigarettes.

27. *"Wholesaler"* shall mean and include every person other than a distributor or distributing agent who engages in the business of selling or distributing cigarettes within the state, for the purpose of resale.

[C24, 27, 31, 35, 39, §**1552;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.1]

86 Acts, ch 1245, §401; 91 Acts, ch 240, §1, 2

C93, §453A.1

98 Acts, ch 1129, §2

453A.2 Persons under legal age.

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

2. A person under eighteen years of age shall not smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes.

3. Possession of cigarettes or tobacco products by an individual under eighteen years of age does not constitute a violation under this section if the individual under eighteen years of age possesses the cigarettes or tobacco products as part of the individual's employment and the individual is employed by a person who holds a valid permit under this chapter or who lawfully offers for sale or sells cigarettes or tobacco products.

4. The Iowa department of public health, a county health department, a city health department, or a city may directly enforce this section in district court and initiate proceedings pursuant to section 453A.22 before a permit-issuing authority which issued the permit against a permit holder violating this section.

5. Payment and distribution of court costs, fees, and fines in a prosecution initiated by a city or county shall be made as provided in chapter 602 for violation of a city or county ordinance.

6. A person shall not be guilty of a violation of this section if conduct that would otherwise constitute a violation is performed to assess compliance with cigarette and tobacco products laws if any of the following applies:

a. The compliance effort is conducted by or under the supervision of law enforcement officers.

b. The compliance effort is conducted with the advance knowledge of law enforcement officers and reasonable measures are adopted by those conducting the effort to ensure that use of cigarettes or tobacco products by individuals under eighteen years of age does not result from participation by any individual under eighteen years of age in the compliance effort.

For the purposes of this subsection, *"law enforcement officer"* means a peace officer as defined in section 801.4 and includes persons designated under subsection 4 to enforce this section.

[C97, §5005, 5006; C24, 27, 31, 35, 39, §**1553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.2]

87 Acts, ch 83, §1; 91 Acts, ch 240, §3

C93, §453A.2

94 Acts, ch 1172, §37; 2000 Acts, ch 1105, §2; 2001 Acts, ch 116, §25

For scheduled fines applicable to violations of subsections 1 and 2, see §805.8C, subsection 3, paragraphs b and c

453A.3 Penalty.

1. *a.* A person, other than a retailer, who violates section 453A.2, subsection 1, is guilty of a simple misdemeanor.

b. An employee of a retailer who violates section 453A.2, subsection 1, commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 3, paragraph *"b"*.

c. A person who violates section 453A.39,* is guilty of a simple misdemeanor.

2. A person who violates section 453A.2, subsection 2, is subject to the following, as applicable:

a. A civil penalty pursuant to section 805.8C, subsection 3, paragraph *"c"*. Notwithstanding section 602.8106 or any other provision to the contrary, any civil penalty paid under this subsection shall be retained by the city or county enforcing the violation.

b. For a first offense, performance of eight hours of community work requirements, unless waived by the court.

c. For a second offense, performance of twelve hours of community work requirements.

d. For a third or subsequent offense, performance of sixteen hours of community work requirements.

[C97, §5005, 5006; C24, 27, 31, 35, 39, §**1554;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.3]
91 Acts, ch 240, §4
C93, §453A.3
94 Acts, ch 1172, §38; 97 Acts, ch 74, §3; 98 Acts, ch 1100, §63; 2000 Acts, ch 1105, §3; 2000 Acts, ch 1232, §70, 95; 2001 Acts, ch 137, §5
*Section 453A.39 repealed effective May 15, 2000; corrective legislation is pending

453A.4 Seizure of false or altered driver's license or nonoperator's identification card.

1. If a person holding a permit under this chapter or an employee of such a permittee has a reasonable belief based on factual evidence that a driver's license as defined in section 321.1, subsection 20A, or nonoperator's identification card issued pursuant to section 321.190 offered by a person who wishes to purchase cigarettes or tobacco products is altered or falsified or belongs to another person, the permittee or employee may retain the driver's license or nonoperator's identification card. Within twenty-four hours, the card shall be delivered to the appropriate city or county law enforcement agency of the jurisdiction in which the permittee's premises are located, and the permittee shall file a written report of the circumstances under which the card was retained. The local law enforcement agency may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. If an investigation is not initiated or probable cause is not established by the local law enforcement agency, the driver's license or nonoperator's identification card shall be delivered to the person to whom it was issued. The local law enforcement agency may forward the card with the report to the state department of transportation for investigation, in which case, the state department of transportation may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. The state department of transportation shall return the card to the person to whom it was issued if an investigation is not initiated or probable cause is not established.

2. Upon taking possession of an identification card as provided in subsection 1, a receipt for the card with the date and hour of seizure noted shall be provided to the person from whom the card is seized.

3. A person holding a permit under this chapter or an employee of such a permittee is not subject to criminal prosecution for, or to civil liability for damages alleged to have resulted from, the retention and delivery of a driver's license or a nonoperator's identification card which is taken pursuant to subsections 1 and 2. This section shall not be construed to relieve a permittee or an employee of such a permittee from civil liability for damages resulting from the use of unreasonable force in obtaining the alleged altered or falsified driver's license or identification card or the driver's license or identification card believed to belong to another person.

2000 Acts, ch 1105, §4

453A.5 Reserved.

453A.6 Tax imposed.

1. There is imposed, and shall be collected and paid to the department, the following taxes on all cigarettes used or otherwise disposed of in this state for any purpose whatsoever:

Class A. On cigarettes weighing not more than three pounds per thousand, eighteen mills on each such cigarette.

Class B. On cigarettes weighing more than three pounds per thousand, eighteen mills on each such cigarette.

2. The said tax shall be paid only once by the person making the "first sale" in this state, and shall become due and payable as soon as such cigarettes are subject to a "first sale" in Iowa, it being intended to impose the tax as soon as such cigarettes are received by any person in Iowa for the purpose of making a "first sale" of same. If the person making the "first sale" did not pay such tax, it shall be paid by any person into whose possession such cigarettes come until said tax has been paid in full. No person, however, shall be required to pay a tax on cigarettes brought into this state on or about the person in quantities of forty cigarettes or less, when such cigarettes have had the individual packages or seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

3. Payment of the tax shall be evidenced by stamps purchased from the department by a distributor or manufacturer and securely affixed to each individual package of cigarettes in amounts equal to the tax as imposed by this chapter, or by the impressing of an indicium upon individual packages of cigarettes, under regulations prescribed by the director.

4. Any other person who purchases or is in possession of unstamped cigarettes shall pay the tax directly to the department.

5. The per cigarette amount of the tax shall be added to the selling price of every package of cigarettes sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

[C24, 27, 31, 35, §1570; C39, §**1556.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.6]
83 Acts, ch 165, §1; 85 Acts, ch 32, §1; 88 Acts, ch 1005, §1; 88 Acts, ch 1153, §1; 91 Acts, ch 267, §509, 510
C93, §453A.6
99 Acts, ch 151, §74, 75, 89
Inventory tax, §453A.40

453A.7 Printing and custody of stamps.

The director of the department of general ser-

vices shall have printed or manufactured, cigarette and little cigar tax stamps of such design, size, denomination, and type and in such quantities as may be determined by the director of revenue and finance. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes and little cigars or cigarette papers. The cigarette and little cigar tax stamps shall be in the possession of and under the control of the director of revenue and finance and the director shall keep accurate records of all cigarette and little cigar tax stamps.

There is appropriated annually from the general fund of the state the sum of one hundred fifteen thousand dollars to carry out the provisions of this section.

[C24, 27, 31, 35, §1574; C39, §**1556.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.7]

C93, §453A.7

93 Acts, ch 180, §13

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying the funding provided under this section

453A.8 Sale and exchange of stamps.

1. Stamps shall be sold by and purchased from the department. The department shall sell stamps to the holder of a state distributor's or manufacturer's permit which has not been revoked and to no other person. Stamps shall be sold to the permit holders at a discount of two percent of the face value. Stamps shall be sold in unbroken rolls of thirty thousand stamps or unbroken lots of any other form authorized by the director.

2. Orders for cigarette tax stamps, including the payment for such stamps, shall be sent direct to the department on a form to be prescribed by the director, except as provided in subsection 6.

3. The department may make refunds on unused stamps to the person who purchased the stamps at a price equal to the amount paid for the stamps when proof satisfactory to the department is furnished that any stamps upon which a refund is requested were properly purchased from the department and paid for by the person requesting the refund. In making the refund, the department shall prepare a voucher showing the amount of refund due and to whom payable and issue a warrant upon order of the director to pay the refund out of any funds in the state treasury not otherwise appropriated.

The director may promulgate rules providing for refunds of the face value of stamps, less any discount, affixed to any cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss. Refund shall be made in the same manner as provided for unused stamps.

4. The department may in the enforcement of this division recall any stamps which have been sold by the department and which have not been used, and the department shall, upon receipt of recalled stamps, issue a refund for tax stamps surrendered for the face value of the stamps less the amount of the discount. The purchaser of stamps shall surrender any unused stamps for refund upon demand of the department.

5. The department shall keep a record of all stamps sold by the department and of all refunds made by the department.

6. The director may authorize a bank as defined by section 524.103, subsection 8, to sell stamps. A bank authorized to sell stamps shall comply with all of the requirements governing the sale of stamps by the department. Section 453A.12 shall apply to any bank authorized to sell stamps.

[C24, §1574, 1575; C27, 31, 35, §1574-al, 1575; C39, §**1556.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.8; 81 Acts, ch 43, §2]

83 Acts, ch 165, §2; 92 Acts, ch 1163, §22

C93, §453A.8

99 Acts, ch 151, §76, 89

Inventory tax, §453A.40

453A.9 Change of design.

The design of the stamps used may be changed as often as the director deems necessary for the best enforcement of the provisions of this division.

[C39, §**1556.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.9]

C93, §453A.9

453A.10 Affixing of stamps by distributors.

Except as provided in section 453A.17, every distributor holding an Iowa permit shall cause to be affixed, within or without the state of Iowa, upon every individual package of cigarettes received by the distributor in this state or for distribution in this state, upon which no sufficient tax stamp is already affixed, a stamp or stamps of an amount equal to the tax due thereon. Such stamps shall be affixed within forty-eight hours, exclusive of Sundays and legal holidays, from the hour the cigarettes were received, and shall be affixed before such distributor sells, offers for sale, consumes, or otherwise distributes or transports the same. It shall be unlawful for any person, other than a distributing agent or distributor, bonded pursuant to section 453A.14, or common carrier to receive or accept delivery of any cigarettes without stamps affixed to evidence the payment of the tax, or without having in possession the requisite amount or number of stamps necessary to stamp such cigarettes, and the possession of any unstamped cigarettes, without the possession of the requisite amount or number of stamps, shall be prima facie evidence of the violation of this provision.

[C24, 27, 31, 35, §1571; C39, §**1556.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.10]

C93, §453A.10

453A.11 Cancellation of stamps.

Stamps affixed to a package of cigarettes shall not be canceled by any letter, numeral, or other mark of identification or otherwise mutilated in any manner that will prevent or hinder the department in making an examination as to the genuineness of the stamp. However, the director may require such cancellation of the tax stamps affixed to packages of cigarettes which is necessary to carry out properly the provisions of this division.

[C39, §**1556.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.11]

C93, §453A.11

453A.12 Use of stamping machines.

The department may purchase and supply suitable machines or devices to the holders of a state or manufacturer's permit, or authorize the leasing by the permit holder of such machines or the metering device or both, and provide under proper regulation and direction for the impression of a distinctive imprint, indicium or character upon individual packages of cigarettes, as evidence of the payment of the tax imposed by this division, in lieu of the purchase and affixation of stamps.

If the director decides to purchase the machines they shall be paid for upon order of the director out of any funds in the general fund of the state not otherwise appropriated.

The machines or devices shall be so constructed as to record or meter the number of impressions or indicia made and shall at all times be open for inspection by the department.

All of the provisions of this division relating to the collection of the tax by means of the sale and affixation of stamps shall apply in the use of the stamping machines or devices, including the right of refund.

[C39, §**1556.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.12]

C93, §453A.12

Inventory tax, §453A.40

453A.13 Distributor's, wholesaler's, and retailer's permits.

1. *Permits required.* Every distributor, wholesaler, cigarette vendor, and retailer, now engaged or who desires to become engaged in the sale or use of cigarettes, upon which a tax is required to be paid, shall obtain a state or retail cigarette permit as a distributor, wholesaler, cigarette vendor, or retailer, as the case may be.

2. *Issuance or denial.*

a. The department shall issue state permits to distributors, wholesalers, and cigarette vendors subject to the conditions provided in this division. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities.

b. The department may deny the issuance of a permit to a distributor, wholesaler, vendor or retailer who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent on any delinquent tax, penalty or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest or penalty of the applicant corporation.

c. The department, or a city or county, shall submit a duplicate of any application for a retail permit and any retail permit issued by the entity under this subsection to the Iowa department of public health within thirty days of the issuance.

3. *Fees — expiration.* All permits provided for in this division shall expire on June 30 of each year. A permit shall not be granted or issued until the applicant has paid for the period ending June 30 next, to the department or the city or county granting the permit, the fees provided for in this division. The annual state permit fee for a distributor, cigarette vendor, and wholesaler is one hundred dollars when the permit is granted during the months of July, August, or September. However, whenever a state permit holder operates more than one place of business, a duplicate state permit shall be issued for each additional place of business on payment of five dollars for each duplicate state permit, but refunds as provided in this division do not apply to any duplicate permit issued.

The fee for retail permits is as follows when the permit is granted during the months of July, August, or September:

a. In places outside any city, fifty dollars.

b. In cities of less than fifteen thousand population, seventy-five dollars.

c. In cities of fifteen thousand or more population, one hundred dollars.

If any permit is granted during the months of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the months of January, February, or March, one-half of the maximum schedule, and if granted during the months of April, May, or June, one-fourth of the maximum schedule.

4. *Refunds.*

a. An unrevoked permit for which the holder has paid the full annual fee may be surrendered during the first nine months of said year to the officer issuing it, and the department, or the city or county granting the permit shall make refunds to the said holder as follows:

Three-fourths of the annual fee if the surrender is made during July, August, or September.

One-half of the annual fee if the surrender is made during October, November, or December.

One-fourth of the annual fee if the surrender is made during January, February, or March.

b. An unrevoked permit for which the holder has paid three-fourths of a full annual fee may be so surrendered during the first six months of the period covered by said payment and the said department, city or county shall make refunds to the holder as follows:

A sum equal to one-half of an annual fee if the surrender is made during October, November or December.

A sum equal to one-fourth of an annual fee if the surrender is made during January, February or March.

c. An unrevoked permit for which the holder has paid one-half of a full annual fee may be so surrendered during the first three months of the period covered by said payment, and the department, city or county, shall refund to the holder a sum equal to one-fourth of an annual fee.

5. *Application — bond.* Said permits shall be issued only upon applications accompanied by the fee indicated above, and by an adequate bond as provided in section 453A.14, and upon forms furnished by the department upon written request. The failure to furnish such forms shall be no excuse for the failure to file the same unless absolute refusal is shown. Said forms shall set forth:

a. The manner under which such distributor, wholesaler, or retailer, transacts or intends to transact such business as distributor, wholesaler, or retailer.

b. The principal office, residence, and place of business, for which the permit is to apply.

c. If the applicant is not an individual, the principal officers or members thereof, not to exceed three, and their addresses.

d. Such other information as the director shall by rules prescribe.

6. *No sales without permit.* No distributor, wholesaler, cigarette vendor, or retailer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is unrevoked and unexpired.

7. *Number of permits — trucks.* An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesaler, or retailer, excepting that no permit need be obtained for a delivery or sales truck of a distributor or wholesaler holding a permit, provided that the director may by regulation require that said truck bear the distributor's or wholesaler's name, and that the permit number of the place of business for and from which it operates be conspicuously displayed on the outside of the body of the truck, immediately under the name.

8. *Group business.* Any person who operates both as a distributor and wholesaler in the same place of business shall only be required to obtain a state permit for the particular place of business where such operation of said business is conducted. A separate retail permit, however, shall be required if any distributor or wholesaler sells cigarettes at both retail and wholesale.

9. *Permit — form and contents.* Each permit issued shall describe clearly the place of business for which it is issued, shall be nonassignable, consecutively numbered, designating the kind of permit, and shall authorize the sale of cigarettes in this state subject to the limitations and restrictions herein contained. The retail permits shall be upon forms furnished by the department.

[S13, §5007-a; C24, 27, §1557, 1558, 1560, 1563, 1564, 1584; C31, 35, §1557, 1558, 1560, 1563, 1563-d1, 1564, 1584; C39, §**1556.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.13]

86 Acts, ch 1007, §5; 86 Acts, ch 1241, §1

C93, §453A.13

94 Acts, ch 1165, §38; 2000 Acts, ch 1105, §5

453A.14 Bonds.

1. No state or manufacturer's permit shall be issued until the applicant files a bond, with good and sufficient surety, to be approved by the director, which bond shall be in favor of the state and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the provisions of this division.

The bonds shall be on forms prescribed by the director and in the following amounts:

a. State permit, not less than five hundred dollars.

b. Manufacturer's permit, not less than five thousand dollars.

2. A person shall not engage in interstate business unless the person files a bond, with good and sufficient surety in an amount of not less than one thousand dollars. The amount of the bond required of the person shall be fixed by the director, subject to the minimum limitation provided in this section. The bond is subject to approval by the director and shall be payable to the state in Des Moines, Polk county, and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the person for violation of any of the requirements of this division affecting the person, on a form prescribed by the director.

3. An additional bond or a new bond may be required by the director at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond, or new bond, shall be supplied within ten days after demand. On failure to supply a new bond or additional bond within ten days after demand, the director may cancel any existing bond made and secured by and for the person. If the bond is canceled the person shall within forty-eight hours after receiving cigarettes or forty-eight hours after the cancellation, excluding Sundays and legal holidays, cause any cigarettes in the person's possession to have the requisite amount of stamps af-

fixed to represent the tax.

[C24, 27, 31, 35, §1561, 1562; C39, §**1556.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.14]

C93, §453A.14

453A.15 Records and reports of permit holders.

1. The director may prescribe the forms necessary for the efficient administration of this division and may require uniform books and records to be used and kept by each permit holder or other person as deemed necessary. The director may also require each permit holder or other person to keep and retain in the director's possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps. The evidence shall be kept for a period of two years from the date of each transaction, for the inspection at all times by the department.

2. Where a state permit holder sells cigarettes at retail, the holder shall be required to issue an invoice to the holder's retail department for cigarettes to be sold at retail and such cigarette invoices shall be kept separate and apart.

3. The director may by regulation require every holder of a manufacturer's or state permit or other person to make and deliver to the department on or before the tenth day of each month a report or reports for the preceding calendar month, upon a form or forms prescribed by the director, and may require that the reports shall be properly sworn to and executed by the permit holder or the holder's duly authorized representative or other person.

4. Every permit holder or other person shall, when requested by the department, make additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the permit holder or other person involving the purchase or sale or use of cigarettes or purchase of cigarette stamps.

5. Every person engaged in the business of selling cigarettes in interstate commerce only, who has, by furnishing the bond required in section 453A.14, been permitted to set aside or store cigarettes in this state for the conduct of such interstate business without the stamps affixed thereto, shall be required to keep such records and make such reports to the department as are required by the department.

6. If any distributor, manufacturer, or other person fails or refuses to pay any tax, penalties, or cost of audit hereinafter provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claims, in any judicial proceedings, any report filed in the office of the director by the distributor, manufacturer, or other person, or the distributor's, manufacturer's, or other person's representative, or a copy thereof, certified to by the director, showing the number of cigarettes sold by the distributor, the distributor's representative, the manufacturer, or the other person, upon which a tax, penalty, or cost of audit has not been paid, or any audit made by the department from the books or records of the distributor, manufacturer, or other person when signed and sworn to by the agent of the department making the audit as being made from the records of the distributor, manufacturer, or other person from or to whom the distributor, manufacturer, or other person has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof. However, the incorrectness of the report or audit may be shown.

[C27, 31, 35, §1570-b1, -b2; C39, §**1556.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.15]

C93, §453A.15

99 Acts, ch 151, §77, 89

453A.16 Manufacturer's permit.

The department may, upon application of any manufacturer, issue without charge to the manufacturer a manufacturer's permit. The application shall contain information as the director shall prescribe. The holder of a manufacturer's permit is authorized to purchase stamps from the department, and must affix stamps to individual packages of cigarettes outside of this state, prior to their shipment into the state unless the cigarettes are shipped to an Iowa permitted distributor or an Iowa permitted distributor's agent.

[C39, §**1556.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.16]

C93, §453A.16

99 Acts, ch 151, §78, 89

453A.17 Distributing agent's permit.

1. Every distributing agent in the state, now engaged, or who desires to become engaged, in the business of storing unstamped cigarettes which are received in interstate commerce for distribution or delivery only upon order received from without the state or to be sold outside the state, shall file with the department, an application for a distributing agent's permit, on a form prescribed by the director, to be furnished upon written request. The failure to furnish shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Iowa to which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The director may require any other information in said application. No distributing agent shall engage in such business until such application has been filed and

fee in the sum of one hundred dollars paid for the permit and until the permit has been obtained. Such permit shall expire on June 30 following the date of issuance. All of the provisions of the last two paragraphs of section 453A.14, relative to bonds, are incorporated herein and by this reference made applicable to distributing agents. Upon failure to furnish adequate bond as required, the permit shall be revoked without hearing. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

2. Upon receipt of the application, bond and permit fee, the department may issue to every distributing agent for the place of business designated a nonassignable consecutively numbered permit, authorizing the storing, and distribution of unstamped cigarettes within this state when the distribution is made upon interstate orders only. A distributing agent may also transport unstamped cigarettes in the agent's own conveyances to the state boundary for distribution outside the state, and any nonresident customer of the distributor may purchase and convey unstamped cigarettes to the state line for distribution outside the state. The nonresident purchaser shall have in possession an invoice evidencing the purchase of the unstamped cigarettes, which must be exhibited upon request to any peace officer or agent charged with the enforcement of this division.

3. Cigarettes set aside for interstate business must be kept separate from intrastate stock and those not so kept shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a *"first sale"*.

4. It is unlawful for any distributing agent to sell at retail cigarettes from automobiles, trucks, or any similar conveyances.

[C39, §**1556.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.17]

C93, §453A.17

453A.18 Forms for records and reports.

The department shall furnish, without charge, to holders of the various permits, forms in sufficient quantities to enable permit holders to make the reports required to be made under this division. The permit holders shall furnish at their own expense the books, records, and invoices, required to be used and kept, but the books, records, and invoices shall be in exact conformity to the forms prescribed for that purpose by the director, and shall be kept and used in the manner prescribed by the director. However, the director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed. The authorization may be revoked at any time.

[C39, §**1556.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.18]

C93, §453A.18

453A.19 Examination of records and premises.

1. For the purpose of enabling the department to determine the tax liability of permit holders or any other person dealing in cigarettes or to determine whether a tax liability has been incurred, the department shall have the right to inspect any premises of the holder of an Iowa permit located within or without the state of Iowa where cigarettes are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange, and to examine all of the records required to be kept or any other records that may be kept incident to the conduct of the cigarette business of said permit holder or any other person dealing in cigarettes.

2. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of cigarettes and cigarette stamps and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

3. It shall be unlawful for any of the foregoing permit holders to fail to produce upon demand of the department any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

4. In the case of any departmental inspection conducted under this section requiring department personnel to travel outside the state of Iowa, any additional costs incurred by the department for out-of-state travel expenses shall be borne by the permittee. These additional costs shall be those costs in excess of the costs of a similar inspection conducted at the geographical point located within the state of Iowa nearest to the out-of-state inspection point. In lieu of conducting an on premises out-of-state inspection, the department shall have the authority to direct the permittee to assemble and transport all records described in subsection 1, to the nearest practical and convenient geographical location in Iowa for inspection by the department.

[C39, §**1556.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.19]

C93, §453A.19

453A.20 Subpoena for witnesses and papers.

For the purpose of enforcing the provisions of this chapter and of detecting violations thereof, the director shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of all relevant books, papers, and records. Such at-

tendance and production may be required at the statehouse at Des Moines, or at any place convenient for such investigation. In case any person fails or refuses to obey a subpoena so issued, the director may procure an order from the district court in the county where such person resides, or where such person is found, requiring such person to appear for examination and/or to produce such books, papers, and records as are required in the subpoena. Failure to obey such order shall be punished by such court as contempt thereof.

[C39, §**1556.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.20]

C93, §453A.20

453A.21 Cigarettes retailer may not sell.

Unless a retail permit holder shall also hold a state permit, it shall be unlawful for a retailer to sell or have in the retailer's possession cigarettes upon which the stamp tax has not been affixed.

[C39, §**1556.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.21]

C93, §453A.21

453A.22 Revocation — suspension — civil penalty.

1. If a person holding a permit issued by the department under this division, including a retailer permit for railway car, has willfully violated section 453A.2, the department shall revoke the permit upon notice and hearing. If the person violates any other provision of this division, or a rule adopted under this division, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the department may be held at a site in the state as the department may direct. The notice shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

2. If a retailer or employee of a retailer has violated section 453A.2 or section 453A.36, subsection 6, the department or local authority, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

a. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen days.

b. For a second violation within a period of two years, the retailer's permit shall be suspended for a period of thirty days.

c. For a third violation within a period of three years, the retailer's permit shall be suspended for a period of sixty days.

d. For a fourth violation within a period of three years, the retailer's permit shall be revoked.

3. If a permit is revoked a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority.

4. Notwithstanding subsection 3, if a retail permit is suspended or revoked under this section, the suspension or revocation shall only apply to the place of business at which the violation occurred and shall not apply to any other place of business to which the retail permit applies but at which the violation did not occur.

5. The department or local authority shall report the suspension or revocation of a retail permit under this section to the Iowa department of public health within thirty days of the suspension or revocation of the retail permit.

[C24, 27, 31, 35, §1559; C39, §**1556.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.22]

86 Acts, ch 1007, §6; 86 Acts, ch 1241, §2; 89 Acts, ch 251, §1; 91 Acts, ch 240, §5

C93, §453A.22

2000 Acts, ch 1105, §6, 7; 2000 Acts, ch 1232, §71, 95

453A.23 Retailer's permit for railway car.

1. Subject to this division, a retailer's permit may be issued by the department to any dining car company, sleeping car company, railroad or railway company. The permit shall authorize the holder to keep for sale, and sell, cigarettes at retail on any dining car, sleeping car, or passenger car operated by the applicant in, through, or across the state of Iowa, subject to all of the restrictions imposed upon retailers under this division. The application for the permit shall be in the form and contain the information required by the director. Each permit is good throughout the state. Only one permit is required for all cars operated in this state by the applicant, but a duplicate of the permit shall be posted in each car in which cigarettes are sold and no further permit shall be required or tax levied for the privilege of selling cigarettes in the cars. No cigarettes shall be sold in the cars without having affixed thereto stamps evidencing the payment of the tax as provided in this division.

2. As a condition precedent to the issuing of a

retailer's permit for railway car, the applicant shall file with the department a bond in favor of the state for the benefit of all parties interested in the amount of five hundred dollars conditioned upon the payment of all taxes, fines and penalties and costs in this division.

3. The annual fee for a retailer's permit for railway cars shall be twenty-five dollars and two dollars for each duplicate thereof, which fee shall be paid to the department. The department shall issue duplicates of such permits from time to time as applied for by such companies.

4. The provisions of subsections 1 and 3 of section 453A.22 shall apply to the revocation of such permit and the issuance of a new one.

[C39, §**1556.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.23]

C93, §453A.23

453A.24 Carrier to permit access to records.

Every common carrier in this state having custody of books or records showing the transportation of cigarettes both interstate and intrastate shall give and allow the department free access to such books and records.

[C39, §**1556.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.24]

C93, §453A.24

453A.25 Administration.

1. The director shall administer the provisions of this chapter, and shall collect, supervise, and enforce the collection of all taxes and penalties that may be due under the provisions of this chapter.

2. The director may make and publish rules, not inconsistent with this chapter, necessary and advisable for its detailed administration, enforce the provisions thereof, and collect the taxes and fees herein imposed. The director may promulgate rules hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.

3. The director is hereby authorized to appoint an assistant, whose sole duty it shall be to administer and enforce the provisions of this chapter, including the collection of all taxes provided for herein. In such enforcement the director may request aid from the attorney general, the special agents of the state, any county attorney or any peace officer. The director is authorized to appoint such clerks and additional help as may be needed to carry out the provisions of this chapter.

[C24, 27, 31, 35, §1576; C39, §**1556.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.25]

C93, §453A.25

453A.26 Liens and actions.

All of the provisions for the lien of the tax, its collection, and all actions as provided in the sales tax Act shall apply to the tax imposed by this chapter, except that where the sales tax and the cigarette tax may become conflicting liens, they shall be of equal priority.

[C24, 27, 31, 35, §1565; C39, §**1556.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.26]

C93, §453A.26

Sales tax Act, chapter 422, division IV

453A.27 Venue of actions to collect.

Venue of any civil proceedings filed under the provisions of this chapter to collect the taxes, fees, and penalties levied herein shall be in a court of competent jurisdiction in Polk county, or in any court having jurisdiction.

[C39, §**1556.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.27]

C93, §453A.27

453A.28 Assessment of tax by department — interest — penalty.

If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes without stamps affixed or that any person responsible for paying the tax has not done so as required by this division, the department shall fix and determine the amount of tax due, and shall assess the tax against the person, together with a penalty as provided in section 421.27. The taxpayer shall pay interest on the tax or additional tax at the rate determined under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by the person, the presumption shall be that the cigarettes were sold without the proper stamps affixed. Within two years after the report is filed or within two years after the report became due, whichever is later, the department shall examine the report and determine the correct amount of tax. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report made with the intent to evade tax, or in the case of a failure to file a report, or if a person purchases or is in possession of unstamped cigarettes.

The two-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

[C24, 27, 31, 35, §1568; C39, §**1556.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.28]

84 Acts, ch 1173, §1; 86 Acts, ch 1007, §7; 90

Acts, ch 1172, §1
C93, §453A.28
99 Acts, ch 151, §79, 89

453A.29 Notice and appeal.

The department shall notify any person assessed pursuant to section 453A.28 by sending a written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with the Iowa administrative procedure Act and section 422.29.

[C39, §**1556.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.29]
86 Acts, ch 1007, §8; 86 Acts, ch 1241, §3, 4
C93, §453A.29
94 Acts, ch 1133, §13, 16; 99 Acts, ch 151, §80, 89
Iowa administrative procedure Act; see chapter 17A

453A.30 Assessment of cost of audit.

The department may employ auditors or other persons to audit and examine the books and records of any permit holder or other person dealing in cigarettes to ascertain whether such permit holder or other person has paid the amount of the taxes required to be paid by the holder or person under the provisions of this chapter. If such taxes have not been paid, as required, the department shall assess against such permit holder or other person, as additional penalty, the reasonable expenses and costs of such investigation and audit.

[C39, §**1556.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.30]
C93, §453A.30

453A.31 Civil penalty for certain violations.

If a permit holder fails to keep any of the records required to be kept by the provisions of this division, or sells cigarettes upon which a tax is required to be paid by this division without at the time having a valid permit, or if a distributor, wholesaler, manufacturer, or distributing agent fails to make reports to the department as required, or makes a false or incomplete report to the department, or if a distributing agent stores unstamped cigarettes in the state or distributes or delivers unstamped cigarettes within this state without at the time of storage or delivery having a valid permit, or if a person purchases or is in possession of unstamped cigarettes, or if a person affected by this division fails or refuses to abide by any of its provisions or the rules adopted under this division, the person is civilly liable to the state for a penalty as follows:

1. For possession of unstamped cigarettes:

a. A two hundred dollar penalty for the first violation if a person is in possession of more than forty but not more than four hundred unstamped cigarettes.

b. A five hundred dollar penalty for the first violation if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes.

c. A one thousand dollar penalty for the first violation if a person is in possession of more than two thousand unstamped cigarettes.

d. For a second violation within two years of the first violation, the penalty is four hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and two thousand dollars if a person is in possession of more than two thousand unstamped cigarettes.

e. For a third or subsequent violation within two years of the first violation, the penalty is six hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand five hundred dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and three thousand dollars if a person is in possession of more than two thousand unstamped cigarettes.

2. For all other violations of this section:

a. A two hundred dollar penalty for the first violation.

b. A five hundred dollar penalty for a second violation within two years of the first violation.

c. A thousand dollar penalty for a third or subsequent violation within two years of the first violation.

The penalty imposed under this section shall be assessed and collected pursuant to section 453A.28 and is in addition to the tax, penalty, and interest imposed in that section.

[C24, 27, 31, 35, §1572; C39, §**1556.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.31]
C93, §453A.31
99 Acts, ch 151, §81, 89

453A.32 Seizure and forfeiture — procedure.

1. All cigarettes on which taxes are imposed by this division, which are found in the possession or

custody, or within the control of any person, for the purpose of being sold or removed by the person in violation of this division, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal or transportation of cigarettes for such purpose, and all equipment or other tangible personal property incident to and used for such purpose, found in the place, building, or vehicle where cigarettes are found, may be seized by the department, with or without process and shall be from the time of the seizure forfeited to the state of Iowa. A proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain the seizure and declare and perfect the forfeiture. All cigarettes, vehicles, and property seized, remaining in the possession or custody of the department, sheriff or other officer for forfeiture or other disposition as provided by law, are not subject to replevin.

2. The department, when taking the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisement thereof at the reasonable value of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the director and shall be open to public inspection.

3. The county attorney of the county of seizure, shall, at the request of the director, file in the county and court aforesaid forfeiture proceeding in the name of the state as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the state or the defendant's residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the director to this effect, notice shall be given as ordered by the court.

4. In the event final judgment is rendered in the forfeiture proceedings aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale thereof to the highest bidder, by the sheriff at public auction in the county of seizure after notice is given in the manner provided in the case of the sale of personal property under execution, and the proceeds of such sale, less expense of seizure and court costs, shall be paid into the state treasury.

5. In the event the cigarettes seized hereunder and sought to be sold upon forfeiture shall be unstamped, the cigarettes shall be sold by the director or the director's designee to the highest bidder among the licensed distributors in this state after written notice has been mailed to all such distributors. If there is no bidder or in the opinion of the director the quantity of cigarettes to be sold is insufficient or for any other reason such disposition of the cigarettes is impractical, the cigarettes shall be destroyed or disposed of in a manner as determined by the director. The proceeds of such sales shall be paid into the state treasury.

[C39, §**1556.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.32]
C93, §453A.32

453A.33 Seizure not to affect criminal prosecution.

The seizure, forfeiture, and sale of cigarettes, tobacco products, and other property under the terms and conditions hereinabove set out, shall not constitute any defense to the person owning or having control or possession of the property from criminal prosecution for any act or omission made or offense committed under this chapter or from liability to pay penalties provided by this chapter.

[C39, §**1556.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.33]
C93, §453A.33

453A.34 Restrictions on injunction.

Any person who shall invoke the power and remedies of injunction against the department to restrain or enjoin the department from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued shall file such proceedings in a court of competent jurisdiction in Polk county, and venue for such injunction is hereby declared to be in Polk county.

[C39, §**1556.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.34]
C93, §453A.34

453A.35 Tax and fees paid to general fund.

The proceeds derived from the sale of stamps and the payment of taxes, fees and penalties provided for under this chapter, and the permit fees received from all permits issued by the department, shall be credited to the general fund of the state. All permit fees provided for in this chapter and collected by cities in the issuance of permits granted by the cities shall be paid to the treasurer of the city where the permit is effective, or to another city officer as designated by the council, and credited to the general fund of the city. Permit fees so collected by counties shall be paid to the county

treasurer.

[C24, 27, 31, 35, §1569; C39, §**1556.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.35]

83 Acts, ch 123, §51, 209

C93, §453A.35

453A.36 Unlawful acts.

1. Except as otherwise provided in this division, it is unlawful for any person to have in the person's possession for sale, distribution, or use, or for any other purpose, in excess of forty cigarettes, or to sell, distribute, use, or present as a gift or prize cigarettes upon which a tax is required to be paid by this division, without having affixed to each individual package of cigarettes, the proper stamp evidencing the payment of the tax and the absence of the stamp on the individual package of cigarettes is notice to all persons that the tax has not been paid and is prima facie evidence of the nonpayment of the tax.

2. No person, other than a common carrier and a distributor's truck bearing the distributor's name and permit number in plain view on the outside of such truck, shall transport within this state cigarettes upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes; and no person shall fail or refuse, upon demand of agent of the department, or any peace officer to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

3. No person shall use, sell, offer for sale, or possess for the purpose of use or sale, within this state, any previously used stamp or stamps, or attach any such previously used stamps to an individual package of cigarettes, nor shall any person purchase stamps from any person other than the department or sell stamps purchased from the department.

4. No person shall knowingly use, consume, or smoke, within this state, cigarettes upon which a tax is required to be paid, without said tax having been paid.

5. No person, unless the person be the holder of a permit, or the holder's representative, shall solicit the sale of cigarettes, provided that this section shall not prevent solicitation by a nonpermitholder for the sale of cigarettes to any state permitholder.

6. Any sales of cigarettes or tobacco products made through a cigarette vending machine are subject to rules and penalties relative to retail sales of cigarettes and tobacco products provided for in this chapter. No cigarettes shall be sold through any cigarette vending machine unless the cigarettes have been properly stamped or metered as provided by this division, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be canceled. Payment of the license fee as provided in section 453A.13 authorizes a cigarette vendor to sell cigarettes or tobacco products through vending machines. However, cigarettes or tobacco products shall not be sold through a vending machine unless the vending machine is located in a place where the retailer ensures that no person younger than eighteen years of age is present or permitted to enter at any time. This section does not require a retail licensee to buy a cigarette vendor's permit if the retail licensee is in fact the owner of the cigarette vending machines and the machines are operated in the location described in the retail permit.

7. It shall be unlawful for a person other than a holder of a retail permit to sell cigarettes at retail. No state permit holder shall sell or distribute cigarettes at wholesale to any person in the state of Iowa who does not hold a permit authorizing the retail sale of cigarettes or who does not hold a state permit as a manufacturer, distributing agent, wholesaler, or distributor.

8. It is unlawful for a person to ship or import into the state, or to offer for sale, sell, distribute, transport, or possess within this state, cigarettes or tobacco products previously exported from or manufactured for use outside the United States.

Violation of this section by the holder of a distributor's, wholesaler's or manufacturer's permit shall be grounds for the revocation of such permit.

[C24, §1573; C27, 31, 35, §1573, 1575-a2; C39, §**1556.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.36]

91 Acts, ch 240, §6

C93, §453A.36

97 Acts, ch 136, §1; 2000 Acts, ch 1104, §1, 2

453A.36A Self-service sales prohibited.

1. Beginning January 1, 1999, except as provided in section 453A.36, subsection 6, a retailer shall not sell or offer for sale cigarettes or tobacco products, in a quantity of less than a carton, through the use of a self-service display.

2. Violation of this section by a holder of a retail permit is grounds for revocation of such permit.

98 Acts, ch 1129, §3

Legislative intent to restrict access of minors to cigarettes and tobacco products; 98 Acts, ch 1129, §1

453A.37 Violation as fraudulent practice.

A person who violates a provision of this division is guilty of a fraudulent practice unless otherwise provided in this division.

[C39, §**1556.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.37]

89 Acts, ch 251, §2

C93, §453A.37

453A.38 Counterfeiting and previously used stamps.

Any person who shall print, engrave, make, issue, sell, or circulate, or shall possess or have in the person's possession with intent to use, sell, cir-

culate, or pass, any counterfeit stamp or previously used stamp, or who shall use, or consent to the use of, any counterfeit stamp or previously used stamp in connection with the sale, or offering for sale, of any cigarettes, or who shall place, or cause to be placed, on any individual package of cigarettes, any counterfeit stamp or previously used stamp, shall be guilty of an aggravated misdemeanor.

[C24, 27, 31, 35, §1573; C39, §**1556.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.38]

C93, §453A.38

453A.39 Tobacco product and cigarette samples — restrictions — administration. Repealed by 2000 Acts, ch 1192, § 12, 17. See § 142A.6.

453A.40 Inventory tax.

1. All persons required to be licensed under section 453A.13 as distributors having in their possession and held for resale on the effective date of an increase in the tax rate cigarettes or little cigars upon which the tax under section 453A.6 or 453A.43 has been paid, unused cigarette tax stamps which have been paid for under section 453A.8, or unused metered imprints which have been paid for under section 453A.12 shall be subject to an inventory tax on the items as provided in this section.

2. Persons subject to the inventory tax imposed under this section shall take an inventory as of the close of the business day next preceding the effective date of the increased tax rate of those items subject to the inventory tax for the purpose of determining the tax due. These persons shall report the tax on forms provided by the department of revenue and finance and remit the tax due within thirty days of the prescribed inventory date. The department of revenue and finance shall adopt rules as are necessary to carry out this section.

3. The rate of the inventory tax on each item subject to the tax as specified in subsection 1 is equal to the difference between the amount paid on each item under section 453A.6, 453A.8, 453A.12, or 453A.43 prior to the tax increase and the amount that is to be paid on each similar item under section 453A.6, 453A.8, 453A.12, or 453A.43 after the tax increase except that in computing the rate of the inventory tax any discount allowed or allowable under section 453A.8 shall not be considered.

88 Acts, ch 1005, §2

C89, §98.40

C93, §453A.40

453A.41 Reserved.

DIVISION II

CIGARS AND OTHER TOBACCOS

453A.42 Definitions.

When used in this division, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively, ascribed to them in this section:

1. *"Business"* means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

2. *"Consumer"* means any person who has title to or possession of tobacco products in storage, for use or other consumption in this state.

3. *"Director"* means the director of the department of revenue and finance.

4. *"Distributor"* means any and each of the following:

a. Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

b. Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

c. Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers.

5. *"Little cigar"* means any roll for smoking which:

a. Is made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient;

b. Is not a cigarette as defined in section 453A.1, subsection 3; and

c. Either weighs not more than three pounds per thousand, irrespective of retail price, or weighs more than three pounds per thousand and has a retail price of not more than two and one-half cents per little cigar. For purposes of this subsection, the retail price is the ordinary retail price in this state, not including retail sales tax, use tax, or the tax on little cigars imposed by section 453A.43.

6. *"Manufacturer"* means a person who manufactures and sells tobacco products.

7. *"Person"* means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency, or receiver, or any legal representative of any of the foregoing.

8. *"Place of business"* means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

9. *"Retail outlet"* means each place of business from which tobacco products are sold to consumers.

10. *"Retailer"* means any person engaged in

the business of selling tobacco products to ultimate consumers.

11. *"Sale"* means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this division, or for any other purposes whatsoever.

12. *"Storage"* means any keeping or retention of tobacco products for use or consumption in this state.

13. *"Subjobber"* means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

14. *"Tobacco products"* means cigars; little cigars as defined herein; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include cigarettes as defined in section 453A.1, subsection 3.

15. *"Use"* means the exercise of any right or power incidental to the ownership of tobacco products.

16. *"Wholesale sales price"* means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction.

[C71, 73, 75, 77, 79, 81, §98.42]
86 Acts, ch 1245, §402
C93, §453A.42
2002 Acts, ch 1119, §59
Subsection 14 amended

453A.43 Tax on tobacco products.

1. A tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-two percent of the wholesale sales price of the tobacco products, except little cigars as defined in section 453A.42. Little cigars shall be subject to the same rate of tax imposed upon cigarettes in section 453A.6, payable at the time and in the manner provided in section 453A.6; and stamps shall be affixed as provided in division I of this chapter. The tax on tobacco products, excluding little cigars, shall be imposed at the time the distributor does any of the following:

a. Brings, or causes to be brought, into this state from without the state tobacco products for sale.

b. Makes, manufactures, or fabricates tobacco products in this state for sale in this state.

c. Ships or transports tobacco products to retailers in this state, to be sold by those retailers.

2. A tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon the consumers, at the rate of twenty-two percent of the cost of the tobacco products.

The tax imposed by this subsection shall not apply if the tax imposed by subsection 1 on the tobacco products has been paid.

This tax shall not apply to the use or storage of tobacco products in quantities of:

a. Less than 25 cigars.

b. Less than 10 oz. snuff or snuff powder.

c. Less than 1 lb. smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

3. Any tobacco product with respect to which a tax has once been imposed under this division shall not again be subject to tax under said division.

4. The tax imposed by this section shall not apply with respect to any tobacco product which under the Constitution and laws of the United States may not be made the subject of taxation by this state.

5. The tax imposed by this section shall be in addition to all other occupation or privilege taxes or license fees now or hereafter imposed by any city or county.

[C71, 73, 75, 77, 79, 81, §98.43]
85 Acts, ch 32, §2; 88 Acts, ch 1005, §3; 91 Acts, ch 267, §511, 512
C93, §453A.43
Inventory tax, §453A.40

453A.44 Licenses — distributors, subjobbers.

1. No person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received a license from the director to engage in that business at that place of business.

2. Every application for such a license shall be made on a form prescribed by the director and shall state the name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the director may require for the purpose of the administration of this division.

3. A person without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for a license as a distributor, be granted a license by the director, and thereafter be subject to all the provisions of this division and entitled to act as a licensed distributor.

4. Each application for a distributor's license shall be accompanied by a fee of one hundred dol-

lars, except that an applicant holding a permit pursuant to division I of this chapter shall not be required to pay an additional fee. The application shall be accompanied by a corporate surety bond issued by a surety licensed to do business in this state, in the sum of one thousand dollars, conditioned upon the true and faithful compliance by the distributor with all the provisions of this division and the payment when due of all taxes, penalties and accrued interest arising in the ordinary course of business or by reason of any delinquent money which may be due the state of Iowa. This bond shall be in a form to be fixed by the director and approved by the attorney general. Whenever it is the opinion of the director that the bond given by a licensee is inadequate in amount to fully protect the state, the director shall require either an increase in the amount of said bond or additional bond, in such amount as the director deems sufficient. Any bond required by this division, or a reissue thereof, or a substitute therefor, shall be kept in full force and effect during the entire period covered by the license.

A separate application for license shall be made for each place of business where a distributor proposes to engage in business as such under this division.

5. Each application for a subjobber's license shall be accompanied by a fee of ten dollars, except that no applicant holding a permit pursuant to division I of this chapter shall be required to pay an additional fee.

6. A distributor or subjobber applying for a license between January 1 and June 30 of any year shall be required to pay only one-half of the license fee provided for herein.

7. The director, upon receipt of the application (and bond, in the case of the distributor) in proper form, and payment of the license fee required by subsection 4 or subsection 5, shall unless otherwise provided by this division, issue the applicant a license in form as prescribed by the director, which license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business shown in the application. The director shall assign a permit number to each person licensed as a distributor at the time of issuance of the person's first license, which shall be inscribed upon all licenses issued to that distributor.

8. Each license shall expire on June 30 following its date of issue unless sooner revoked by the director or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the director.

9. No license shall be transferable to any other person.

10. The director may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of any of the provisions of this division, or any other act applicable to the sale of tobacco products, or any rule or regulations promulgated by the director in furtherance of this division. No license shall be revoked, canceled, or suspended except after notice and a hearing by the director as provided in section 453A.48.

11. No license shall be issued under this division to any person within one year of the date of final determination of a revocation of any previous license held by the person.

12. When the surety upon any bond issued pursuant to the provisions of this division shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of the person bonded under this division, such surety shall be subrogated to all the rights of the state in connection with the transaction wherein such loss occurred.

[C71, 73, 75, 77, 79, 81, §98.44]
89 Acts, ch 251, §3; 90 Acts, ch 1232, §1
C93, §453A.44
94 Acts, ch 1165, §39

453A.45 Licensees, duties.

1. Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, an invoice of those sales is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least two years after the date of the documents or the date of the entries appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine if all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making the examination, the license of the distributor at that premises is subject to revocation by the director.

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The person shall preserve legible copies of all such invoices for two years from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for two years from the date of purchase. Invoices shall be available for inspection by the director or the director's authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for two years from the date of delivery of the tobacco products.

5. The transportation of tobacco products into this state by means other than common carrier must be reported to the director within thirty days with the following exceptions:

a. The transportation of not more than fifty cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

b. Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 453A.44, or tobacco products sold by such person to a retailer in this state.

Such report shall be made on forms provided by the director.

Common carriers transporting tobacco products into this state shall file with the director reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 554. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month; the date, point of origin, point of delivery, name of consignee, description and quantity of tobacco products delivered, and such information as the director may otherwise require.

Any person who fails or refuses to transmit to the director the required reports or whoever refuses to permit the examination of the records by the director shall be guilty of a simple misdemeanor.

[C71, 73, 75, 77, 79, 81, §98.45]
87 Acts, ch 199, §1
C93, §453A.45
99 Acts, ch 151, §82, 89

453A.46 Distributors, monthly returns — interest, penalties.

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; and made, manufactured, or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the director and shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within two years after the return is filed or within two years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

The two-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

2. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

The director may reduce or abate interest when in the director's opinion the facts warrant the reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

3. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27.

4. The department shall notify any person assessed pursuant to this section by sending a writ-

ten notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

5. The director may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under this division.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 453A.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. Within two years after the return is filed or within two years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

[C71, 73, 75, 77, 79, 81, §98.46]

84 Acts, ch 1173, §2; 86 Acts, ch 1007, §9; 87 Acts, ch 199, §2, 3; 90 Acts, ch 1172, §2

C93, §453A.46

94 Acts, ch 1133, §14, 16; 99 Acts, ch 151, §83, 89

453A.47 Refunds, credits.

Where tobacco products upon which the tax imposed by this division has been reported and paid, are shipped or transported by the distributor to consumers, to be consumed without the state, or to retailers or subjobbers without the state, to be sold by those retailers, or subjobbers without the state, or are returned to the manufacturer by the distributor or destroyed by the distributor, refund of such tax or credit may be made to the distributor in accordance with regulations prescribed by the director. Any overpayment of the tax imposed under section 453A.43 may be made to the taxpayer in accordance with regulations prescribed by the director. The director shall cause any such refund of tax to be paid out of the general revenue fund, and so much of said fund as may be necessary is hereby appropriated for that purpose.

[C71, 73, 75, 77, 79, 81, §98.47]

C93, §453A.47

453A.48 Investigations and hearings, testimonial powers.

1. The director, or the director's duly authorized agents, may conduct investigations, inquiries, and hearings for the purpose of enforcing the provisions of this division, and, in connection with such investigations, inquiries, and hearings, the director and the director's duly authorized agents shall have all the powers conferred upon the director and the director's examiners by Iowa statutes, and the provisions of such shall apply to all such investigations, inquiries and hearings.

2. A hearing conducted under this division shall be preceded by ten days' notice in writing of the subject of the hearing, including, in the case of suspension or revocation of a license, a statement of the nature of the charges against the licensee. The notice shall be sent by mail to the last known address of the licensee or other person involved in the hearing, and the service shall be complete upon mailing. After every hearing the director shall make the director's findings and order in writing. The findings and order shall be filed in the office of the director, and a copy sent by mail or otherwise to the person to whom the notice was directed.

3. The director may exchange information with the officers and agencies of other states administering laws relating to the taxation of tobacco products.

4. No person shall be excused from testifying or from producing, pursuant to a subpoena, any books, papers, records or memoranda in any investigation or upon any hearing, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate the person or subject the person to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which the person may testify or produce evidence, documentary or otherwise, before the director or an employee or agent thereof; provided that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, pursuant to a subpoena. No person so testifying shall be exempt from prosecution and punishment for

perjury committed in so testifying.

5. Any person aggrieved by an order of the director fixing a tax, penalty or interest under section 453A.43 may, within sixty days from the date of notice of the order, appeal to the board of review in the manner provided by law or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. Judicial review of any other action of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C71, 73, 75, 77, 79, 81, §98.48]
86 Acts, ch 1241, §5
C93, §453A.48
94 Acts, ch 1133, §15, 16

453A.49 Enforcement.

The director shall enforce the provisions of this division. The director may prescribe rules not inconsistent with the provisions of this division for its detailed and efficient administration. In the enforcement of this division the director may call upon any county attorney or the attorney general for assistance. The director may bring injunction proceedings to restrain any person from acting as a distributor or subjobber without complying with the provisions of this division.

[C71, 73, 75, 77, 79, 81, §98.49]
C93, §453A.49

453A.50 Violations, penalties.

1. Any person who in any manner knowingly attempts to evade the tax imposed by this division or who knowingly aids or abets in the evasion or attempted evasion of the tax or who knowingly violates the provisions of section 453A.44, subsection 1, of this division, shall be guilty of a serious misdemeanor.

2. Any person who otherwise violates any provisions of this division shall be guilty of a simple misdemeanor.

[C71, 73, 75, 77, 79, 81, §98.50]
C93, §453A.50

453A.51 through 453A.55 Reserved.

DIVISION III

UNIFORM APPLICATION OF CHAPTER

453A.56 Uniform application.

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

91 Acts, ch 240, §8
CS91, §98.56
C93, §453A.56

CHAPTER 453B

EXCISE TAX ON UNLAWFUL DEALING IN CERTAIN SUBSTANCES

453B.1 Definitions.
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453B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Controlled substance"* means controlled substance as defined in section 124.101.

2. *"Counterfeit substance"* means a counterfeit substance as defined in section 124.101.

3. *"Dealer"* means any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces in this state any of the following:

a. Seven or more grams of a taxable substance other than marijuana, but including a taxable substance that is a mixture of marijuana and other taxable substances.

b. Forty-two and one-half grams or more of

processed marijuana or of a substance consisting of or containing marijuana.

c. One or more unprocessed marijuana plants.

d. Ten or more dosage units of a taxable substance which is not sold by weight.

However, a person who lawfully ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces a taxable substance in this state is not considered a dealer.

4. *"Department"* means the department of revenue and finance.

5. *"Director"* means the director of revenue and finance.

6. *"Dosage unit"* means the unit of measurement in which a substance is dispensed to the ultimate user. Dosage unit includes, but is not limited to, one pill, one capsule, or one microdot.

7. *"Marijuana"* means marijuana as defined in section 124.101.

8. *"Processed marijuana"* means all marijuana except unprocessed marijuana plants.

9. *"Simulated controlled substance"* means a simulated controlled substance as defined in section 124.101.

10. *"Taxable substance"* means a controlled substance, a counterfeit substance, a simulated controlled substance, or marijuana, or a mixture of materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marijuana.

11. *"Unprocessed marijuana plant"* means any cannabis plant at any level of growth, whether wet, dry, harvested, or growing.

90 Acts, ch 1251, §37
C91, §421A.1
C93, §453B.1
95 Acts, ch 83, §29 – 31

453B.2 Administration — rules.

The director shall administer this chapter. The director shall collect all taxes, interest, and civil penalties imposed under this chapter and deposit them in the general fund of the state.

The director may adopt rules under chapter 17A that are necessary to enforce this chapter. The director shall adopt a uniform system of providing, affixing, and displaying official stamps, labels, or other official indicia for taxable substances.

90 Acts, ch 1251, §38
C91, §421A.2
C93, §453B.2

453B.3 Tax payment required for possession — payment due.

A dealer shall not possess, distribute, or offer to sell a taxable substance unless the tax imposed under this chapter has been paid as evidenced by a stamp, label, or other official indicia permanently affixed to the taxable substance.

Taxes imposed on taxable substances by this chapter are due and payable immediately upon manufacture, production, acquisition, purchase, or possession by a dealer.

If the indicia evidencing the payment of the tax imposed on taxable substances under this chapter have not been affixed, the dealer shall have the indicia permanently affixed on the taxable substance immediately after receiving the taxable substance. A stamp, label, or other official indicia shall be used only once and shall not be used after the date of expiration.

90 Acts, ch 1251, §39
C91, §421A.3
C93, §453B.3

453B.4 Measurements.

For purposes of measurements under this chapter, the weight of a taxable substance shall be measured by its weight in metric grams in the dealer's possession. If a taxable substance consists of a mixture containing both marijuana and another substance or combination of substances listed in the definition of taxable substance in section 453B.1, the taxable substance shall be taxed under section 453B.7, subsection 2.

90 Acts, ch 1251, §40
C91, §421A.4
C93, §453B.4

453B.5 Defense or immunity.

This chapter does not provide in any manner a defense or affirmative defense to or immunity for a dealer from criminal prosecution pursuant to Iowa law.

90 Acts, ch 1251, §41
C91, §421A.5
C93, §453B.5

453B.6 Pharmaceuticals.

This chapter does not require persons lawfully in possession of a taxable substance to pay the tax required under this chapter or to purchase, acquire, or affix the stamps, labels, or other official indicia otherwise required by this chapter.

90 Acts, ch 1251, §42
C91, §421A.6
C93, §453B.6

453B.7 Tax imposed — rate of tax.

An excise tax is imposed on dealers at the following rates:

1. On each gram of processed marijuana, or each portion of a gram, five dollars.

2. On each gram or portion of a gram of any taxable substance sold by weight other than marijuana, two hundred fifty dollars.

3. On each unprocessed marijuana plant, seven hundred fifty dollars.

4. On each ten dosage units of any taxable substance, other than unprocessed marijuana plants, that is not sold by weight, or portion thereof, four

hundred dollars.
90 Acts, ch 1251, §43
C91, §421A.7
C93, §453B.7
95 Acts, ch 83, §32

453B.8 Price of stamps, labels, or other indicia.

Stamps, labels, or other official indicia to be affixed to a taxable substance indicating the payment of the excise tax shall be obtained and purchased from the department. The dealer shall pay the entire excise tax listed in section 453B.7 at the time of purchase, except as provided in section 453B.13, and receive stamps, labels, or other official indicia for the amount paid. However, the minimum purchase price to be paid for any stamps, labels, or indicia shall be two hundred fifteen dollars.
90 Acts, ch 1251, §44
C91, §421A.8
C93, §453B.8

453B.9 Assessments are jeopardy assessments.

All assessments of taxes made pursuant to this chapter shall be considered jeopardy assessments or collections as provided in section 422.30. The director shall assess a tax, interest, and applicable penalties based on knowledge or information available to the director; serve the taxpayer by regular mail at the taxpayer's last known address or in person, a written notice of the amount of tax, interest, and penalty due, which notice may include a demand for immediate payment; and immediately proceed to collect the tax, interest, and penalty by any method prescribed in section 422.30. The period for examination, determination of amount of tax owed, and assessment is unlimited. Service of the notice by regular mail is complete upon mailing.

A person shall not bring suit to enjoin the assessment or collection of any taxes, interest, or penalties imposed by this chapter.

The tax, interest, and penalties assessed by the director are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show any incorrectness or invalidity of an assessment. The burden is upon the taxpayer to prove that the shipment, transportation, importation, acquisition, purchase, possession, manufacture, or production of a taxable substance was lawful if a taxpayer's status as a dealer is disputed. Any statement filed by the director with the clerk of the district court, or any other certificate by the director of the amount of tax, interest, and penalties determined or assessed is admissible in evidence and is prima facie evidence of the facts contained in the statement.
90 Acts, ch 1251, §45
C91, §421A.9
C93, §453B.9
94 Acts, ch 1165, §40

453B.10 Confidential nature of information.

Notwithstanding any law to the contrary, the director or an employee of the department shall not reveal any information obtained from a dealer; nor shall information obtained from a dealer be used against the dealer in any criminal proceeding, unless the information is independently obtained, except in connection with a proceeding involving taxes due under this chapter from the dealer against whom the tax was assessed.

A person who violates this section is guilty of a simple misdemeanor.

This section does not prohibit the director from publishing statistics that do not disclose the identity of the dealers.

A stamp, label, or other official indicia denoting payment of the tax imposed under this chapter shall not be used against a taxpayer in a criminal proceeding, except that such information may be used against the taxpayer in connection with the administration or civil or criminal enforcement of the tax imposed under this chapter or any similar tax imposed by another state or local unit of government.
90 Acts, ch 1251, §46
C91, §421A.10
C93, §453B.10

453B.11 Examination of records by director — subpoenas.

For the purpose of determining whether or not the dealer should have paid taxes, determining the amount of tax that should have been paid, or collecting any taxes under this chapter, the director may examine, or cause to be examined, any books, papers, records, or memoranda that may be relevant to making such determinations, whether the books, papers, records, or memoranda are the property of or in the possession of the dealer or another person. The director may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records, or memoranda by persons required to attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon demand of the director or an examiner or investigator, the court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, or memoranda. The director may also issue subpoenas. Disobedience of subpoenas issued under this chapter is punishable by the district court of the county in which the subpoena is issued, or if the subpoena is issued by the director, by the district

court of the county in which the party served with the subpoena is located, in the same manner as a contempt of court.

The director may petition the district court or a magistrate for an administrative search warrant as authorized by section 808.14 to execute a distress warrant authorized by section 422.26.

90 Acts, ch 1251, §47
C91, §421A.11
C93, §453B.11

453B.12 Civil and criminal penalties for violation of chapter — interest.

A dealer who violates this chapter is subject to a penalty equal to the amount of the tax imposed by section 453B.7, in addition to the tax imposed by that section. The dealer shall pay interest on the tax and penalty at the rate in effect under section 421.7, counting each fraction of a month as an entire month, computed from the date of assessment through the date of payment. The penalty and interest shall be collected as part of the tax.

In addition to the civil tax penalty and interest imposed by this section, a dealer distributing, offering to sell, or possessing taxable substances without affixing the appropriate stamps, labels, or other official indicia is guilty of a class "D" felony.

A person who possesses, prints, engraves, makes, issues, sells, or circulates a counterfeit taxable substance tax stamp, label, or other official indicia, or places or causes to be placed a counterfeit taxable substance tax stamp, label, or other official indicia on a taxable substance, is guilty of a class "D" felony.

A person who uses, sells, offers for sale, or possesses for use or sale a previously used or expired taxable substance tax stamp, label, or other official indicia, or attaches or causes to be attached a previously used or expired taxable substance tax stamp, label, or other official indicia to a taxable substance, is guilty of a class "D" felony.

Notwithstanding section 802.3, an indictment may be found or information filed upon any criminal offense specified in this chapter, in the proper court, within six years after the commission of the offense.

90 Acts, ch 1251, §48
C91, §421A.12
C93, §453B.12

453B.13 Credit for previously paid taxes.

If another state or local unit of government has previously assessed an excise tax on a taxable substance, the taxpayer shall pay the difference between the tax imposed under this chapter and the tax previously paid. If the tax previously paid to the other state or local unit of government was equal to or greater than the tax imposed under this chapter, no tax is due. The burden is on the taxpayer to show that an excise tax on the taxable substances has been paid to another state or local unit of government.

90 Acts, ch 1251, §49
C91, §421A.13
C93, §453B.13

453B.14 Revision of tax — refunds.

Sections 421.5, 422.26, 422.28, 422.29, 422.73, subsection 2, and section 422.74 shall apply to this chapter, except that a refund claim filed later than thirty days from the expiration date of the stamps for which the refund is requested shall not be allowed by the director.

90 Acts, ch 1251, §50
C91, §421A.14
C93, §453B.14

453B.15 Availability of records and information.

The director may request from state, county, and local agencies, information and assistance deemed necessary to administer this chapter. State, county, and local agencies, officers, and employees shall cooperate with the director in identifying dealers and shall, on request, supply the department with available information and assistance which the director deems necessary to administer this chapter, notwithstanding any provisions of law making such information confidential.

90 Acts, ch 1251, §51
C91, §421A.15
C93, §453B.15

453B.16 Notice of conviction.

If a person enters a plea of guilty, or forfeits bail or collateral deposited to secure the person's appearance in court, and the forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation.

93 Acts, ch 16, §12

CHAPTER 453C

TOBACCO PRODUCT MANUFACTURERS — FINANCIAL OBLIGATIONS

453C.1 Definitions.
453C.2 Requirements.

453C.1 Definitions.

1. *"Adjusted for inflation"* means increased in accordance with the formula for inflation adjustment set forth in exhibit "C" to the master settlement agreement.

2. *"Affiliate"* means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms *"owns"*, *"is owned"*, and *"ownership"* mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term *"person"* means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

3. *"Allocable share"* means allocable share as defined in the master settlement agreement.

4. *"Cigarette"* means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

c. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph *"a"* of this definition.

The term *"cigarette"* includes "roll-your-own" tobacco, meaning tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of *"cigarette"*, 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

5. *"Master settlement agreement"* means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

6. *"Qualified escrow fund"* means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with section 453C.2, subsection 2, paragraph *"b"*.

7. *"Released claims"* means released claims as that term is defined in the master settlement agreement.

8. *"Releasing parties"* means releasing parties as that term is defined in the master settlement agreement.

9. *"Tobacco product manufacturer"* means an entity that on or after May 20, 1999, directly and not exclusively through any affiliate does any of the following:

a. Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States).

b. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

c. Becomes a successor of an entity described in paragraph *"a"* or *"b"*.

The term *"tobacco product manufacturer"* shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs *"a"* through *"c"*.

10. *"Units sold"* means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or roll-your-own tobacco containers bearing the excise tax stamp of the state. The de-

partment of revenue and finance shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

99 Acts, ch 157, §1, 3; 2000 Acts, ch 1058, §42; 2001 Acts, ch 18, §1, 2, 4

453C.2 Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, on or after May 20, 1999, shall do one of the following:

1. Become a participating manufacturer as that term is defined in section II(jj) of the master settlement agreement and generally perform its financial obligations under the master settlement agreement.

2. *a.* Place into a qualified escrow fund by April 15 of the year following the year in question, the following amounts, as such amounts are adjusted for inflation:

(1) For 1999: $.0094241 per unit sold on or after May 20, 1999.

(2) For 2000: $.0104712 per unit sold.

(3) For each of 2001 and 2002: $.0136125 per unit sold.

(4) For each of 2003 through 2006: $.0167539 per unit sold.

(5) For 2007 and each year thereafter: $.0188482 per unit sold.

b. A tobacco product manufacturer that places funds into escrow pursuant to paragraph *"a"* shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under any of the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow, under this subparagraph (1), (a) in the order in which they were placed into escrow and (b) only to the extent and at the time necessary to make payments required under such judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount the manufacturer was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement had such manufacturer been a participating manufacturer, as such payments are determined pursuant to section IX(i)(2) of the master settlement agreement and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

(3) To the extent not released from escrow under subparagraph (1) or (2), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

c. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that the manufacturer is in compliance with this subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that is not a participating manufacturer under the master settlement agreement and fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subsection shall be subject to all of the following:

(1) Be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

d. Each failure to make an annual deposit required under this subsection shall constitute a separate violation.

99 Acts, ch 157, §2, 3; 2001 Acts, ch 18, §3, 4

CHAPTER 454

STATE SINKING FUND FOR PUBLIC DEPOSITS

Repealed effective July 1, 1985, by 84 Acts, ch 1230, §28, 29;
85 Acts, ch 194, §13;
see chapter 12C and §12C.25

TITLE XI

NATURAL RESOURCES

SUBTITLE 1

CONTROL OF ENVIRONMENT

CHAPTER 455

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT

Transferred to §468.1 through §468.240;
89 Acts, ch 126

CHAPTER 455A

DEPARTMENT OF NATURAL RESOURCES

Former chapter 455A, Code 1981, repealed by 82 Acts, ch 1199, §97;
effect of repeal, 83 Acts, ch 137, §30

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455A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Department"* means the department of natural resources created under section 455A.2.

2. *"Director"* means the director of the department of natural resources.

3. *"Environmental protection commission"* means the environmental protection commission created under section 455A.6.

4. *"Fund"* means the Iowa resources enhancement and protection fund created under section 455A.18.

5. *"Natural resource commission"* means the natural resource commission created under section 455A.5.

6. *"Soil conservation division"* means the soil conservation division of the department of agriculture and land stewardship.

86 Acts, ch 1245, §1801; 89 Acts, ch 236, §1

455A.2 Department of natural resources.

A department of natural resources is created, which has the primary responsibility for state parks and forests, protecting the environment, and managing energy, fish, wildlife, and land and water resources in this state.

86 Acts, ch 1245, §1802

455A.3 Director — qualifications.

The chief administrative officer of the department is the director who shall be appointed by the governor, subject to confirmation of the senate, and serve at the governor's pleasure. The governor shall make the appointment based on the appointee's training, experience, and capabilities. The director shall be knowledgeable in the general field of natural resource management and environmental protection. The salary of the director shall be fixed by the governor within salary guidelines or a range established by the general assembly.

86 Acts, ch 1245, §1803

455A.4 General powers and duties of the director.

1. Except as otherwise provided by law and subject to rules adopted by the natural resource commission and the environmental protection commission, the director shall:

a. Plan, direct, coordinate, and execute the functions vested in the department.

b. Provide overall supervision, direction, and coordination of functions to be administered by the administrators under chapters 321G, 455B, 455C, 456, 456A, 456B, 457A, 458A, 459, subchapters I, II, III, IV, and VI,* chapters 461A, 462A, 462B, 464A, 465C, 473, 481A, 481B, 483A, 484A, and 484B.

c. Annually compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department and each program, subprogram, and activity in the department in accordance with section 8.23.

d. Submit a biennial or an annual report to the governor and the general assembly, in accordance with chapter 7A.

e. Employ personnel as necessary to carry out the functions vested in the department consistent with chapter 19A unless the positions are exempt from that chapter.

f. Devote full time to the duties of the director's office.

g. Not be a candidate for nor hold any other public office or trust, nor be a member of a political committee.

h. Maintain an office at the state capitol complex, which is open at all reasonable times for the conduct of public business.

i. Adopt rules in accordance with chapter 17A as necessary or desirable for the organization or reorganization of the department.

j. Submit a report to the natural resource commission before January 15, 1992, and every five years thereafter, which shall include but not be limited to information on the following topics:

(1) The classification of the state's parks, recreation areas, and preserves and recommendations for their reclassification based upon present and future use.

(2) Methods for maintaining the diversity of animal and plant life in state parks, recreation areas, and preserves.

(3) Options to achieve controlled deer hunting in order to prevent overpopulation of deer.

(4) Prevention of economic damage to private property which is located adjacent to state parks, recreation areas, and preserves.

The portion of the report dealing with preserves shall be prepared in conjunction with the state advisory board for preserves. A copy of the report shall be made available to members of the general assembly by sending a copy of the report to the chief clerk of the house of representatives, the secretary of the senate, and the director of each of the caucus or research staffs of the general assembly.

2. All powers and duties vested in the director may be delegated by the director to an employee of the department, but the director retains the responsibility for an employee's acts within the scope of the delegation.

3. The director and other officers and employees of the department are entitled to receive, in addition to salary, their actual and necessary travel and related expenses incurred in the performance of official business.

4. The director shall obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

5. The department may accept payment of any fees, interest, penalties, subscriptions, or other payments due or collected by the department, or any portion of such payments, by credit card. The department may adjust the amount of the payment to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

86 Acts, ch 1245, §1804; 90 Acts, ch 1105, §1; 90 Acts, ch 1108, §2; 91 Acts, ch 154, §1; 92 Acts, ch 1160, §22

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to directive in 2002 Acts, ch 1137

455A.5 Natural resource commission — appointment and duties.

1. A natural resource commission is created, which consists of seven members appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. The appointees are subject to senate confirmation.

The members shall be citizens of the state who have a substantial knowledge of the subjects embraced by chapter 456A. The appointments shall be based upon the training, experience, and capacity of the appointees, and not based upon political considerations, other than as provided in section 69.16. A member of the commission shall not hold any other state or federal office.

2. A vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment was made.

3. The members of the commission shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

4. The commission shall hold an organizational meeting within thirty days of the beginning of a new regular term for one or more of its members. The commission shall organize by electing a chairperson, vice chairperson, secretary, and any other officers deemed necessary or desirable. The commission shall meet at least quarterly throughout the year.

5. A majority of the members of the commission is a quorum, and a majority of a quorum may act in any matter within the jurisdiction of the commission, unless a more restrictive rule is adopted by the commission.

6. Except as otherwise provided by law, the commission shall:

a. Establish policy and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 321G, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.

b. Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 321G, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.

c. Approve or disapprove proposals for the acquisition or disposal of state lands and waters relating to state parks, recreational facilities, and wildlife programs, submitted by the director.

d. Approve the budget request prepared by the director for the programs authorized by chapters 321G, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 481A, 481B, 483A, 484A, and 484B. The commission may increase, decrease, or strike any item within the department budget request for the specified programs before granting approval.

e. Adopt, by rule, a schedule of fees for permits, including conditional permits, and a schedule of fees for administration of the permits. The fees shall be collected by the department and used to offset costs incurred in administrating a program for which the issuance of the permit is made or under which enforcement is carried out. In determining the fee schedule, the commission shall consider all of the following:

(1) The reasonable costs associated with reviewing applications, issuing permits, and monitoring compliance with the terms of issued permits.

(2) The relative benefits to the applicant and to the public of a permit review, permit issuance, and monitoring compliance with the terms of the permit.

(3) The typical costs associated with a type of project or activity for which a permit is required. However, a fee shall not exceed the actual costs incurred by the department.

f. Approve or disapprove proposals involving the dredging or renovation of lakes; the acquisition, development, and maintenance of boating facilities; and the acquisition, development, and maintenance of recreational facilities associated with recreational boating.

86 Acts, ch 1245, §1805; 89 Acts, ch 72, §1; 91 Acts, ch 268, §230; 92 Acts, ch 1160, §23; 92 Acts, ch 1239, §42

Confirmation, see §2.32

455A.6 Environmental protection commission — appointment and duties.

1. An environmental protection commission is created, which consists of nine members appointed by the governor for staggered terms of four years beginning and ending as provided in section 69.19. Commission appointees are subject to senate confirmation. The members shall be electors of the state and have knowledge of the subjects embraced in chapters 455B and 459, subchapters II and III. The appointments shall be based upon the training, experience, and capacity of the appointees, and not based upon political considerations, other than as provided in section 69.16. The membership of the commission shall be as follows:

a. Three members actively engaged in livestock and grain farming.

b. A member actively engaged in the business of finance or commerce.

c. A member actively engaged in the management of a manufacturing company.

d. Four members who are electors of the state.

2. A vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment was made.

3. The members of the commission shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

4. The commission shall hold an organizational meeting within thirty days of the beginning of a new regular term for one or more of its members. The commission shall organize by electing a chairperson, vice chairperson, secretary, and any other officers deemed necessary or desirable. The commission shall meet at least quarterly throughout

the year.

5. A majority of the members of the commission is a quorum, and a majority of a quorum may act in any matter within the jurisdiction of the commission, unless a more restrictive rule is adopted by the commission.

6. Except as otherwise provided by law, the commission shall:

a. Establish policy for the department and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 455B, 455C, or 459.

b. Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 455C, 458A, 464B, or 473.

c. Approve or disapprove the issuance of hazardous waste disposal site licenses under chapter 455B.

d. Approve the budget request prepared by the director for the programs authorized by chapters 455B, 455C, 455E, 455F, 455H, and 459, subchapters II and III. The commission shall approve the budget request prepared by the director for programs subject to the rulemaking authority of the commission. The commission may increase, decrease, or strike any item within the department budget request for the specified programs before granting approval.

86 Acts, ch 1245, §1806; 87 Acts, ch 115, §59; 89 Acts, ch 72, §2; 89 Acts, ch 296, §69; 90 Acts, ch 1108, §3; 91 Acts, ch 268, §231; 92 Acts, ch 1239, §43; 2002 Acts, ch 1162, §41

Confirmation, see §2.32

Subsection 6, paragraph d amended

455A.7 Creation of divisions, bureaus, and other administrative entities — deputy director — administrators.

1. The director may establish administrative divisions, bureaus, or other administrative entities within the department in order to most efficiently and effectively carry out the department's responsibilities. The creation or modification of departmental divisions, bureaus, or other administrative entities shall be implemented only after consultation with the natural resource commission or the environmental protection commission as applicable.

2. The director shall appoint a deputy director who shall be in charge of the department in the absence of the director. The appointment shall be based on the appointee's training, experience, and capabilities.

3. The director shall appoint an administrator for each division created under subsection 1. The director shall make the appointment based on the appointee's training, experience, and capabilities. Each administrator has the responsibility of administering the programs assigned the division under subsection 1 and other programs assigned by the director. Each administrator shall carry out the duties and responsibilities of office under the general direction and supervision of the director.

86 Acts, ch 1245, §1807; 91 Acts, ch 268, §233; 92 Acts, ch 1239, §21, 44, 45; 2000 Acts, ch 1160, §1; 2001 Acts, ch 7, §3; 2002 Acts, ch 1162, §42

Subsection 1 stricken and rewritten

455A.8 Brushy creek recreation area trails advisory board.

1. The Brushy creek recreation trails advisory board shall be organized within the department and shall be composed of ten members including the following: the director of the department or the director's designee who shall serve as a nonvoting ex officio member, the park ranger responsible for the Brushy creek recreation area, a member of the state advisory board for preserves established under chapter 465C, a person appointed by the governor, and six persons appointed by the legislative council. Each person appointed by the governor or legislative council must actively participate in recreational trail activities such as hiking, an equestrian sport, or a winter sport at the Brushy creek recreation area. The voting members shall elect a chairperson at the board's first meeting each year.

2. Each voting member of the board shall serve three years, and shall be eligible for reappointment. However, the park ranger responsible for Brushy creek shall be replaced by the ranger's successor, and the person representing the state advisory board for preserves shall serve at the pleasure of the board. The department shall reimburse each member, other than the director or the director's designee and the park ranger, for actual expenses incurred by the member in performance of the duties of the board. A majority of voting members constitutes a quorum, and the affirmative vote of a majority present is necessary for any action taken by the board, except that a lesser number may adjourn a meeting. A vacancy in the membership of the board does not impair the rights of a quorum to exercise all rights and perform all duties of the board. The board shall meet as required, but at least twice a year. The board shall meet upon call of the chairperson, or upon written request of three members of the board. Written notice of the time and place of the meeting shall be given to each member.

3. The board shall advise the department and the natural resource commission regarding issues and recommendations relating to the development and maintenance of trails and related activities at or adjacent to the Brushy creek recreation area.

89 Acts, ch 311, §27; 90 Acts, ch 1233, §31; 93 Acts, ch 176, §41; 2002 Acts, ch 1162, §43

Subsection 1 amended

455A.8A Brushy creek area — trail improvements.

The department, in cooperation with the

Brushy creek recreation trails advisory board, shall provide for trail improvements in the recreation area and the state preserve adjoining the recreation area. The department shall establish and maintain a system of trails in the recreation area and the preserve. The trails shall be established or maintained to ensure the minimum possible disturbance to the natural terrain and the natural growth of vegetation, including but not limited to trees. The system of trails shall include equestrian and pedestrian trails.

The department in conjunction with the board shall provide for the location, type, and distance of trails, consistent with this section. The pedestrian trails shall be located in view of scenic attractions, including the lake and the valley. The trails shall be established and maintained in areas where hunting is permitted. The department and the board shall plan for the development of the lake shore.

The northern and southern part of the area shall be connected by trails. The northern part of the area shall include an equestrian campground which shall be maintained by the department. Trails shall exist on the eastern and western sides of the lake. An equestrian trail shall extend across the dam. There shall be established convenient road crossings. The southern part of the area shall include an area designed to securely confine horses. The southern part of the area shall also include pedestrian trails. The department shall post signs on the trails, the campground, and at the confinement area.

93 Acts, ch 176, §42

455A.9 Fees — publications.

The department may establish a schedule of fees for subscriptions to publications produced by the department, including periodicals. However, this subsection does not apply to application forms and materials intended for general distribution which explain departmental programs or duties.

Fees shall be based on the amount required to recover the reasonable costs of producing a publication, including costs relating to preparing, printing, publishing, and distributing the publication.

91 Acts, ch 268, §235

455A.10 State fish and game protection fund — capital projects and contingencies.

Funds remaining in the state fish and game protection fund during a fiscal year which are not specifically appropriated by the general assembly are appropriated and may be used for capital projects and contingencies under the jurisdiction of the department relating to fish and wildlife arising during the fiscal year. A contingency shall not include any purpose or project which was presented to the general assembly by way of a bill or a proposed bill and which failed to be enacted into law. For the purpose of this section, a necessity of additional operating funds may be construed as a contingency. Before any of the funds authorized to be expended by this section are allocated for contingencies, it shall be determined by the executive council that a contingency exists and that the contingency was not existent while the general assembly was in session and that the proposed allocation shall be for the best interests of the state. If a contingency arises or could reasonably be foreseen during the time the general assembly is in session, expenditures for the contingency must be authorized by the general assembly.

91 Acts, ch 268, §610; 2002 Acts, ch 1162, §44
Section amended

455A.11 Preferences in temporary employment.

In its employment of persons in temporary positions in conservation and outdoor recreation, the department of natural resources shall give preference to persons meeting eligibility requirements for the green thumb program and to persons working toward an advanced education in natural resources and conservation.

96 Acts, ch 1214, §32; 98 Acts, ch 1100, §64

455A.12 Gift certificates for special privilege fees at state parks and recreation areas.

The department of natural resources shall publish and make available for purchase by the general public, gift certificates entitling the bearer of the certificate to free camping and other special privileges at state parks and recreation areas. The department shall establish prices for the certificates based on amounts required to be paid in fees for camping and special privileges pursuant to section 461A.47.

97 Acts, ch 213, §26

455A.13 State nurseries.

Notwithstanding section 17A.2, subsection 11, paragraph *"g"*, the department of natural resources shall adopt administrative rules establishing a range of prices of plant material grown at the state forest nurseries to cover all expenses related to the growing of the plants.

1. The department shall develop programs to encourage the wise management and preservation of existing woodlands and shall continue its efforts to encourage forestation and reforestation on private and public lands in the state.

2. The department shall encourage a cooperative relationship between the state forest nurseries and private nurseries in the state in order to achieve these goals.

97 Acts, ch 213, §27

455A.14 Reserved.

RESOURCES ENHANCEMENT AND PROTECTION

455A.15 Legislative findings.

The general assembly finds that:

1. The citizens of Iowa have built and sustained their society on Iowa's air, soils, waters, and rich diversity of life. The well-being and future of Iowa depend on these natural resources.

2. Many human activities have endangered Iowa's natural resources. The state of Iowa has lost ninety-nine and nine-tenths percent of its prairies, ninety-eight percent of its wetlands, eighty percent of its woodlands, fifty percent of its topsoils, and more than one hundred species of wildlife since settlement in the early 1800's. There has been a significant deterioration in the quality of Iowa's surface waters and groundwaters.

3. The long-term effects of Iowa's natural resource losses are not completely known or understood, but detrimental effects are already apparent. Prevention of further loss is therefore imperative.

4. The air, waters, soils, and biota of Iowa are interdependent and form a complex ecosystem. Iowans have the right to inherit this ecosystem in a sustainable condition, without severe or irreparable damage caused by human activities.

89 Acts, ch 236, §2

455A.16 State resource enhancement policy.

It is the policy of the state of Iowa to protect its natural resource heritage of air, soils, waters, and wildlife for the benefit of present and future citizens with the establishment of a resource enhancement program. The program shall be a long-term integrated effort to wisely use and protect Iowa's natural resources through the acquisition and management of public lands; the upgrading of public park and preserve facilities; environmental education, monitoring, and research; and other environmentally sound means. The resource enhancement program shall strongly encourage Iowans to develop a conservation ethic, and to make necessary changes in our activities to develop and preserve a rich and diverse natural environment.

89 Acts, ch 236, §3

455A.17 Iowa congress on resources enhancement and protection.

1. Biennially, during even-numbered years, the director shall schedule and make the necessary arrangements for an Iowa congress on resources enhancement and protection. The congress shall be held within the state capitol complex during the summer months.

2. Prior to each congress, the director shall make arrangements to hold an assembly in each council of governments area of persons having an interest in resources enhancement and protection. The department shall promote attendance of interested persons at each assembly. The director shall call each assembly and serve as temporary chairperson. The department shall provide those attending with information regarding resource enhancement and protection expenditures. The assemblies shall identify opportunities for regional resource enhancement and protection and review and recommend changes in resource enhancement and protection policies, programs, and funding. The persons meeting at each assembly shall elect five persons as delegates to the congress on resources enhancement and protection.

3. The delegates to the congress on resources enhancement and protection shall organize, discuss, and make recommendations to the governor, the general assembly, and the natural resource commission regarding issues concerning resources enhancement and protection. The director shall call the congress and serve as temporary chairperson. The delegates are entitled to a per diem as specified in section 7E.6 for expenses of office while attending the congress.

4. The expenses of the department in making the arrangements for and the conducting of the council of governments area assemblies and the congress on resources enhancement and protection and the per diem for expenses of the delegates at the congress shall be paid from the funds appropriated for this purpose.

89 Acts, ch 236, §4; 91 Acts, ch 258, §53

455A.17A Review of allocation of REAP moneys — congress on resources enhancement and protection. Repealed by 95 Acts, ch 216, § 41.

455A.18 Iowa resources enhancement and protection fund — audits.

1. An Iowa resources enhancement and protection fund is created in the office of the treasurer of state. The fund consists of all revenues and all other moneys lawfully credited or transferred to the fund. The director shall certify monthly the portions of the fund that are allocated to the various accounts as provided under section 455A.19. The director shall certify before the twentieth of each month the portions of the fund resulting from the previous month's receipts to be allocated to the various accounts.

2. The auditor of state or a certified public accountant firm appointed by the auditor of state shall conduct annual audits of all accounts and transactions of the fund.

3. For each fiscal year of the fiscal period beginning July 1, 1997, and ending June 30, 2021, there is appropriated from the general fund, to the Iowa resources enhancement and protection fund, the amount of twenty million dollars, to be used as provided in this chapter. However, in any fiscal year of the fiscal period, if moneys from the lottery

are appropriated by the state to the fund, the amount appropriated under this subsection shall be reduced by the amount appropriated from the lottery.

Section 8.33 does not apply to moneys appropriated under this subsection.

4. Notwithstanding section 12C.7, interest or earnings on investments or time deposits of the moneys in the Iowa resources enhancement and protection fund or any of its accounts shall be credited to the Iowa resources enhancement and protection fund.

89 Acts, ch 236, §5; 89 Acts, ch 311, §9; 90 Acts, ch 1255, §22; 91 Acts, ch 260, §1232, 1233; 94 Acts, ch 1198, §46; 96 Acts, ch 1214, §31

Special fees from natural resources vehicle registration plates; see §321.34

See Iowa Acts for special provisions relating to appropriation of funds in a given fiscal year

455A.19 Allocation of fund proceeds.

1. Upon receipt of any revenue, the director shall deposit the moneys in the Iowa resources enhancement and protection fund created pursuant to section 455A.18. The first three hundred fifty thousand dollars of the funds received for deposit in the fund annually shall be allocated to the conservation education program board for the purposes specified in section 455A.21. One percent of the revenue receipts shall be deducted and transferred to the administration fund provided for in section 456A.17. All of the remaining receipts shall be allocated to the following accounts:

a. Twenty-eight percent shall be allocated to the open spaces account. At least ten percent of the allocations to the account shall be made available to match private funds for open space projects on the cost-share basis of not less than twenty-five percent private funds pursuant to the rules adopted by the natural resource commission. Five percent of the funds allocated to the open spaces account shall be used to fund the protected waters program. This account shall be used by the department to implement the statewide open space acquisition, protection, and development programs.

The department shall give priority to acquisition and control of open spaces of statewide significance. The department shall also use these funds for developments on state property. The total cost of an open spaces project funded under this paragraph *"a"* shall not exceed two million dollars unless a public hearing is held on the project in the area of the state affected by the project. However, on and after July 1, 1994, the following shall apply:

(1) If the total amount appropriated by the general assembly to the resources enhancement and protection fund, in any fiscal year as defined in section 8.36, is seven million dollars or more, not more than seventy-five percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single project.

(2) If the total amount appropriated by the general assembly to the resources enhancement and protection fund, in any fiscal year as defined in section 8.36, is less than seven million dollars, not more than fifty percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single project.

Political subdivisions of the state shall be reimbursed for property tax dollars lost to open space acquisitions based on the reimbursement formula provided for in section 465A.4. There is appropriated from the open spaces account to the department the amount in that account, or so much thereof as is necessary, to carry out the open spaces program as specified in this paragraph *"a"*. An appropriation made under this paragraph *"a"* shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the final fiscal year, whichever date is earlier, shall revert to the open spaces account.

b. Twenty percent shall be allocated to the county conservation account.

(1) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county equally.

(2) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county on a per capita basis.

(3) Forty percent of the allocation to the county conservation account annually shall be held in an account in the state treasury for the natural resource commission to award to counties on a competitive grant basis by a project selection committee established in this subparagraph. Local matching funds are not required for grants awarded under this subparagraph. The project planning and review committee shall be composed of two staff members of the department and two county conservation board directors appointed by the director and a fifth member selected by a majority vote of the director's appointees. The natural resource commission, by rule, shall establish procedures for application, review, and selection of county projects submitted for funding. Upon recommendation of the project planning and review committee, the director shall award the grants.

(4) Funds allocated to the counties under subparagraphs (1), (2), and (3) may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment. However, expenditures are not allowed for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities. Funds may be used for county projects located within the bound-

aries of a city.

(5) Funds allocated pursuant to subparagraphs (2) and (3) shall only be allocated to counties dedicating property tax revenue at least equal to twenty-two cents per thousand dollars of the assessed value of taxable property in the county to county conservation purposes. State funds received under this paragraph shall not reduce or replace county tax revenues appropriated for county conservation purposes. The county auditor shall submit documentation annually of the dedication of property tax revenue for county conservation purposes. The annual audit of the financial transactions and condition of a county shall certify compliance with requirements of this subparagraph. Funds not allocated to counties not qualifying for the allocations under subparagraph (2) as a result of this subparagraph shall be held in reserve for each county for two years. Counties qualifying within two years may receive the funds held in reserve. Funds not spent by a county within two years shall revert to the general pool of county funds for reallocation to other counties where needed.

(6) Each board of supervisors shall create a special resource enhancement account in the office of county treasurer and the county treasurer shall credit all resource enhancement funds received from the state in that account. Notwithstanding section 12C.7, all interest earned on funds in the county resource enhancement account shall be credited to that account and used for the purposes authorized for that account.

(7) There is appropriated from the county conservation account to the department the amount in that account, or so much thereof as is necessary, to fund the provisions of this paragraph. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which a project funded pursuant to subparagraph (3) is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the county conservation account.

(8) Any funds received by a county under this paragraph may be used to match other state or federal funds, and multicounty or multiagency projects may be funded under this paragraph.

c. Twenty percent shall be allocated to the soil and water enhancement account. The moneys shall be used to carry out soil and water enhancement programs including, but not limited to, reforestation, woodland protection and enhancement, wildlife habitat preservation and enhancement, protection of highly erodible soils, and clean water programs. The division of soil conservation, by rule, shall establish procedures for eligibility, application, review, and selection of projects and practices to implement the requirements of this paragraph. There is appropriated from the soil and water enhancement account to the soil conservation division the amount in that account, or so much thereof as is necessary, to carry out the programs as specified in this paragraph. Remaining funds of the soil and water enhancement account shall be allocated to the accounts of the water protection fund authorized in section 161C.4. Annually, fifty percent of the soil and water enhancement account funds shall be allocated to the water quality protection projects account. The balance of the funds shall be allocated to the water protection practices account. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the soil and water enhancement account.

d. Fifteen percent shall be allocated to a cities' parks and open space account. The moneys allocated in this paragraph may be used to fund competitive grants to cities to acquire, establish, and maintain natural parks, preserves, and open spaces. The grants may include expenditures for multipurpose trails, restroom facilities, shelter houses, and picnic facilities, but expenditures for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities requiring specialized equipment are excluded. The grants may be used for city projects located outside of a city's boundaries. The natural resource commission, by rule, shall establish procedures for application, review, and selection of city projects on a competitive basis. The rules shall provide for three categories of cities based on population within which the cities shall compete for grants. There is appropriated from the cities' parks and open space account to the department the amount in that account, or so much thereof as is necessary, to carry out the competitive grant program as provided in this paragraph.

e. Nine percent shall be allocated to the state land management account. The department shall use the moneys allocated to this account for maintenance and expansion of state lands and related facilities under its jurisdiction. The authority to expand state lands and facilities under this paragraph is limited to expansion of the state lands and facilities already owned by the state. There is appropriated from the state land management account to the department the moneys in that account, or so much thereof as is necessary, to implement a maintenance and expansion program for state lands and related facilities under the jurisdiction of the department.

f. Five percent shall be allocated to the historical resource grant and loan fund established pursuant to section 303.16. The department of cultural affairs shall use the moneys allocated to this fund to implement historical resource development programs as provided under section 303.16.

g. Three percent shall be allocated to the living roadway account for distribution to the living roadway trust fund created under section 314.21 for the development and implementation of integrated roadside vegetation plans.

2. The moneys appropriated under this section shall remain in the appropriate account of the Iowa resources enhancement and protection fund until such time as the agency, board, commission, or overseer of the fund to which moneys are appropriated has made a request to the treasurer for use of moneys appropriated to it and the amount needed for that use. Notwithstanding section 8.33, moneys remaining of the appropriations made for a fiscal year from any of the accounts within the Iowa resources enhancement and protection fund on June 30 of that fiscal year, shall not revert to any fund but shall remain in that account to be used for the purposes for which they were appropriated and the moneys remaining in that account shall not be considered in making the allotments for the next fiscal year.

However, any moneys in excess of five hundred thousand dollars, remaining in the living roadway account under subsection 1, paragraph *"g"*, on June 30 shall revert to the resources enhancement and protection fund under this section for distribution pursuant to the formula under this section except for subsection 1, paragraph *"g"*. That proportion of moneys that would have been reallocated to subsection 1, paragraph *"g"*, shall be distributed to the open spaces account under subsection 1, paragraph *"a"*.

89 Acts, ch 236, §6; 91 Acts, ch 146, §4 – 6; 91 Acts, ch 191, §120; 93 Acts, ch 176, §43; 95 Acts, ch 220, §29, 30; 2000 Acts, ch 1128, §1; 2001 Acts, ch 24, §53; 2002 Acts, ch 1140, §38

Subsection 1, unnumbered paragraph 1 amended

455A.20 County resource enhancement committee.

1. A county resource enhancement committee is created in each county. The membership of the committee shall be as follows:

a. The chairpersons of the board of supervisors, county conservation board, commissioners of the soil and water district, and board of directors of each school district in the county. A chairperson may appoint a member of the chairperson's board or commission as the chairperson's designee on the committee. The chairperson or designee of a school district shall be a member of the county committee of the county in which a majority or the largest plurality of the district's students reside.

b. The mayor or the mayor's designee of each city in a county. The mayor's designee shall be a member of the city council. If a city is located in more than one county, the membership shall be on the county committee of the county in which the largest population of the city resides.

c. The titular head or the head's designee of each recognized farm organization having a county organization in the county. The designee shall be a member of the organization represented. The recognized farm organizations are the following:

(1) The Iowa farm bureau federation.
(2) The Iowa farmers union.
(3) The Iowa grange.
(4) The national farmers organization.
(5) The Iowa farm unity coalition.
(6) Any other recognized farm or farm commodity group.

d. The chairperson or the chairperson's designee of each of the following wildlife or conservation organizations having a recognized county organization:

(1) Iowa Audubon council.
(2) Iowa sportsmens federation.
(3) Ducks unlimited.
(4) Sierra club.
(5) Pheasants forever.
(6) The nature conservancy.
(7) Iowa association of naturalists.
(8) Izaak Walton league of America.
(9) Other recognized wildlife, conservation, environmental, recreation, conservation education, or historical-cultural preservation groups, or a nonpartisan governmental research or study group limited to the league of women voters.

The designee shall be a member of the county chapter or organization in the county.

e. If a question arises as to whether a recognized county organization exists under paragraph *"c"* or *"d"*, the question shall be decided by a majority vote of the members selected under paragraphs *"a"* and *"b"*, excluding the representative of the county conservation board. Sections 69.16 and 69.16A do not apply to appointments made pursuant to this subsection.

2. The duties of the county resource enhancement committee are to coordinate the resource enhancement program, plans, and proposed projects developed by cities, county conservation board, and soil and water conservation district commissioners for funding under this division. The county committee shall review and comment upon all projects before they are submitted for funding under section 455A.19. Each county committee shall propose a five-year program plan which includes a one-year proposed expenditure plan and submit it to the department.

3. The initial meeting of the committee shall be called by the chairperson of the board of supervisors. The chairperson shall give written notice of the date, time, and location of the first meeting. The county committee shall meet at least annually to organize by selecting a chairperson, vice chair-

person, and other officers as necessary. The committee shall adopt rules governing the conduct of its meetings, subject to chapter 21.

4. The board of supervisors shall provide a meeting room and the necessary secretarial and clerical assistance for the committee. The expenses shall be paid from the county general fund.

5. The members of the committee are not entitled to compensation or expenses related to their duties of office, except as may otherwise be provided by the boards, commissions, or organizations which the members represent.

89 Acts, ch 236, §7; 91 Acts, ch 146, §7 – 9

455A.21 Conservation education program board.

1. A conservation education program board is created in the department. The board shall have five members appointed as follows:

a. One member appointed by the director of the department of education.

b. One member appointed by the director of the department of natural resources.

c. One member appointed by the president of the Iowa association of county conservation boards.

d. One member appointed by the president of the Iowa association of naturalists.

e. One member appointed by the president of the Iowa conservation education council.

2. Section 69.16 does not apply to appointments made pursuant to this section.

3. The duties of the board are to revise and produce conservation education materials and to specify stipends to Iowa educators who participate in innovative conservation education programs approved by the board. The board shall allocate the funds provided for under section 455A.19, subsection 1, for the educational materials and stipends.

4. The department shall administer the funds allocated to the conservation education program as provided in this section.

2002 Acts, ch 1140, §39
NEW section

CHAPTER 455B

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

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As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of natural resources created under section 455A.2.

2. *"Director"* means the director of the department or a designee.

3. *"Commission"* means the environmental protection commission created under section 455A.6.

[C66, §455B.2(10); C71, §136B.2(6), 455B.2(10), 455C.1(2); C73, 75, 77, §455B.1, 455B.10(6), 455B.30(11), 455B.50(2), 455B.67(2), 455B.75(5), 455B.85(4), 455B.95(3); C79, §455B.1, 455B.10(6), 455B.30(11), 455B.50(2), 455B.67(2), 455B.75(5), 455B.85(4), 455B.95(3), 455B.110(7); C81, §455B.1; 82 Acts, ch 1199, §1, 96]

C83, §455B.101

86 Acts, ch 1245, §1884

455B.102 Department created. Repealed by 86 Acts, ch 1245, § 1899O.

455B.103 Director's duties.

The director shall:

1. Recommend to the commission the adoption of rules that are necessary for the effective administration of the department.

2. Recommend to the commission the adoption of rules to implement the programs and services assigned to it.

3. Contract, with the approval of the commission, with public agencies of this state to provide all laboratory, scientific field measurement and environmental quality evaluation services necessary to implement the provisions of this chapter and chapter 459, subchapters II and III. If the di-

rector finds that public agencies of this state cannot provide the laboratory, scientific field measurement and environmental evaluation services required by the department, the director may contract, with the approval of the commission, with any other public or private persons or agencies for such services or for scientific or technical services required to carry out the programs and services assigned to the department.

4. Conduct investigations of complaints received directly or referred by the commission created in section 455A.6 or other investigations deemed necessary. While conducting an investigation, the director may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter or chapter 459, subchapters II and III, or the rules or standards adopted under this chapter or chapter 459, subchapters II and III. However, the owner or person in charge shall be notified.

a. If the owner or occupant of any property refuses admittance thereto, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

b. In the application the director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the director it shall be identified in the application.

c. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

d. In making inspections and searches pursuant to the authority of this division, the director must execute the warrant:

(1) Within ten days after its date.

(2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapters 808, 809, and 809A.

(3) Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

5. Accept, receive and administer grants or other funds or gifts from public or private agencies, including the federal government, for the abatement, prevention, or control of pollution, or other environmental programs, subject to the approval of the commission.

6. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts relating to the control of pollution or the protection or enhancement of the environment. Any agreement is subject to the approval of the commission.

[C66, §455B.14; C71, §136B.4, 136B.5, 455B.14; C73, §455B.3, 455B.12(12), 455B.13(3, 7), 455B.36, 455B.89(4); C75, 77, 79, §455B.3, 455B.12(12), 455B.13(6); C81, §455B.3]

C83, §455B.103

84 Acts, ch 1158, §1; 86 Acts, ch 1245, §1885, 1886, 1899; 96 Acts, ch 1133, §45

455B.103A General permits — stormwater discharge — air contaminant sources.

1. If a permit is required pursuant to this chapter or chapter 459 for stormwater discharge or an air contaminant source and a facility to be permitted is representative of a class of facilities which could be described and conditioned by a single permit, the director may issue, modify, deny, or revoke a general permit for all of the following conditions:

a. If adoption of a general permit is proposed, the terms, conditions, and limitations of the permit shall be drafted into a notice of intended action and adopted in accordance with the provisions of chapter 17A as a rule of the department. The same process of adoption shall be used for modification of a general permit.

b. Following the effective date of a general permit, a person proposing to conduct activities covered by the general permit shall provide a notice of intent to conduct a covered activity on a form provided by the department. A person shall also provide public notice of intent to conduct activities covered under the general permit by publishing notice in two newspapers with the largest circulation in the area in which the facility is located. Notice of the discontinuation of a permitted activity shall be provided in the same manner.

c. If the department finds that a proposed activity is not covered by a general permit, the department shall notify the affected person and shall provide the person with a permit application if the practice is one which could be authorized by individual permit.

d. A person holding an existing permit is subject to the terms of the existing permit until it expires. If the person holding an existing permit continues the activity beyond the expiration date of the existing permit, an applicable, approved general permit shall become effective.

e. A variance or alteration of the terms and conditions of a general permit shall not be granted. If a variance or modification of an operation authorized by a general permit is desired, the applicant shall apply for an individual permit.

f. The department shall perform on-site inspections and review monitoring data to assess the effectiveness of general permits. If a significant adverse environmental problem exists for an individual facility or class of facilities due to regulation under a general permit, the facility or class of facilities shall be required to obtain individual permits.

g. The department shall establish a procedure for the filing of complaints by persons believing themselves to be adversely affected by the environmental impact of the discharge of a facility operating under a general permit under this section.

2. General permits are not subject to the requirements applicable to individual permits.

3. Three years after the adoption of a general permit by rule, the department shall assess the activities which have been conducted under the general permit and determine whether any significant adverse environmental consequences have resulted.

4. An applicant to be covered under a general permit shall pay a permit fee, as established by rule of the commission, which is sufficient in the aggregate to defray the costs of the permit program. Moneys collected shall be remitted to the department.

5. The enforcement provisions of division II of this chapter and chapter 459, subchapter II, apply to general permits for air contaminant sources. The enforcement provisions of division III, part 1, of this chapter and chapter 459, subchapter III, apply to general permits for stormwater discharge.

91 Acts, ch 121, §1; 92 Acts, ch 1239, §46; 93 Acts, ch 137, §1

455B.104 Departmental duties — permits — assistance.

1. The department shall either approve or deny a permit to a person applying for a permit under this chapter within six months from the date that the department receives a completed application for the permit. An application which is not approved or denied within the six-month period shall be approved by default. The department shall issue a permit to the applicant within ten days following the date of default approval. However, this subsection shall not apply to applications for permits which are issued under division II or division IV, parts 2 through 7.

2. The department shall assist persons applying for assistance to establish and operate renewable fuel production facilities pursuant to the value-added agricultural products and processes financial assistance program established in section 15E.111.

93 Acts, ch 176, §44; 94 Acts, ch 1119, §30; 98 Acts, ch 1209, §10, 53; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Subsection 2 transferred to §459.605; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Former subsection 3 renumbered as 2

455B.105 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of programs under its jurisdiction. The commission shall appoint advisory committees to advise the commission and the director in carrying out their respective powers and duties.

2. Advise, consult, and co-operate with other agencies of the state, political subdivisions, and any other public or private agency to promote the orderly, efficient, and effective accomplishment of its responsibilities.

3. Adopt, modify, or repeal rules necessary to implement this chapter and chapter 459, subchapters I, II, III, IV, and VI,* and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the operations of the department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter and chapter 459, subchapters I, II, III, IV, and VI.* Rules adopted by the executive committee before January 1, 1981, shall remain effective until modified or rescinded by action of the commission.

4. Issue orders and directives necessary to insure integration and co-ordination of the programs administered by the department.

5. Make a concise annual report to the governor and the general assembly, which report shall contain information relating to the accomplishments and status of the programs administered by the department and include recommendations for legislative action which may be required to protect or enhance the environment or to modernize the operation of the department or any of the pro-

grams or services assigned to the department and recommendations for the transfer of powers and duties of the department as deemed advisable by the commission. The annual report shall conform to the provisions of section 7A.3.

6. Approve all contracts and agreements under this chapter and chapter 459, subchapters I, II, III, IV, and VI,* between the department and other public or private persons or agencies.

7. Obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

8. Hold public hearings, except when the evidence to be received is confidential pursuant to this chapter, chapter 22, or chapter 459, subchapters I, II, III, IV, and VI,* necessary to carry out its powers and duties. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as provided in civil actions.

9. Upon request of at least four members of the commission before adopting or modifying a rule, the director shall prepare and publish with the notice required under section 17A.4, subsection 1, paragraph *"a"*, a comprehensive estimate of the economic impact of the proposed rule or modification.

10. Appoint a water coordinator who shall coordinate requests from the public for information or assistance relating to the administration of water resources laws and programs and the resolution of water-related problems.

11. *a.* Adopt, by rule, procedures and forms necessary to implement the provisions of this chapter and chapter 459 relating to permits, conditional permits, and general permits. The commission may also adopt, by rule, a schedule of fees for permit and conditional permit applications and a schedule of fees which may be periodically assessed for administration of permits and conditional permits. In determining the fee schedules, the commission shall consider:

(1) The state's reasonable cost of reviewing applications, issuing permits and conditional permits, and checking compliance with the terms of the permits.

(2) The relative benefits to the applicant and to the public of permit and conditional permit review, issuance, and monitoring compliance.

It is the intention of the legislature that permit fees shall not cover any costs connected with correcting violation of the terms of any permit and shall not impose unreasonable costs on any municipality.

(3) The typical costs of the particular types of projects or activities for which permits or conditional permits are required, provided that in no circumstances shall fees be in excess of the actual costs to the department.

b. Except as otherwise provided in this chapter and chapter 459, fees collected by the department under this subsection shall be remitted to the treasurer of state and credited to the general fund of the state.

[C50, 54, 58, 62, 66, §455A.9; C71, §136B.4(7), 455A.9; C73, 75, 77, 79, §455A.9, 455B.5, 455B.7, 455B.12(6); C81, §455A.9, 455B.5; 82 Acts, ch 1199, §4, 5, 96]

C83, §455B.105

83 Acts, ch 136, §1; 83 Acts, ch 137, §1; 86 Acts, ch 1245, §1887, 1899; 89 Acts, ch 72, §3; 91 Acts, ch 121, §2; 94 Acts, ch 1198, §47

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.106 Appeal board. Repealed by 86 Acts, ch 1245, § 1899O.

455B.107 Warrants by director of revenue and finance.

The director of revenue and finance shall draw warrants on the treasurer of state for all disbursements authorized by the provisions of this chapter and chapter 459, subchapters I, II, III, IV, and VI,* upon itemized and verified vouchers bearing the approval of the director of the department of natural resources.

[C73, 75, 77, 79, 81, §455B.8]

C83, §455B.107

86 Acts, ch 1245, §1899

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.108 Office facilities.

The department of general services shall provide the department with appropriate office facilities.

[C73, 75, 77, 79, 81, §455B.9]

C83, §455B.108

455B.109 Schedule of fines — violations.

1. The commission shall establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than ten thousand dollars for violations of this chapter* or rules, permits or orders adopted or issued under this chapter.* In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and director shall consider among other relevant factors the following:

a. The costs saved or likely to be saved by noncompliance by the violator.

b. The gravity of the violation.

c. The degree of culpability of the violator.

d. The maximum penalty authorized for that violation under this chapter.*

Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the mer-

its of the alleged violation. Violations not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under this subsection.

2. When the commission establishes a schedule for violations, the commission shall provide, by rule, a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action.

3. A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final. When a person against whom a civil penalty is assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final for the purposes of this section until all judicial review processes are completed. Additional judicial review may not be sought after the order becomes final. A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. The attorney general shall institute, at the request of the department, summary proceedings to recover the penalty and any accrued interest.

4. All civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state. However, civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving animal feeding operations under chapter 459, subchapter II, shall be deposited in the animal agriculture compliance fund as created in section 459.401. Civil penalties assessed by the department and interest on the penalties arising out of violations committed by animal feeding operations under chapter 459, subchapter III, which may be assessed pursuant to section 455B.191 or 459.604, shall also be deposited in the animal agriculture compliance fund.

5. This section does not require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

84 Acts, ch 1159, §1; 86 Acts, ch 1245, §1899; 92 Acts, ch 1111, §1; 95 Acts, ch 195, §12; 2002 Acts, ch 1137, §2, 71

*Sections formerly contained in this chapter were transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137; see also §459.601 – 459.604

Subsection 4 amended

455B.110 Animal feeding operations — investigations and enforcement actions. Transferred to § 459.601; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262

455B.111 Citizen actions.

1. Except as provided in subsection 2, a person with standing as provided in subsection 3 may commence a civil action in district court on the person's own behalf against any of the following:

a. A person, including the state of Iowa, for violating any provision of this chapter or chapter 459, subchapters I, II, III, IV, and VI,* or a rule adopted pursuant to this chapter or chapter 459, subchapters I, II, III, IV, and VI.*

b. The director, the commission, or any official or employee of the department where there is an alleged failure to perform any act or duty under this chapter or chapter 459, subchapters I, II, III, IV, and VI,* or a rule adopted pursuant to this chapter or chapter 459, subchapters I, II, III, IV, and VI,* which is not a discretionary act or duty.

2. An action shall not be commenced pursuant to subsection 1, paragraph *"a"*, unless the person commencing the action has provided the director and the alleged violator with a written notice at least sixty days prior to commencing the action. The written notice shall specify the nature of the violation and that legal action is contemplated under this section if the violation is not abated and, if necessary, remedial action is not taken. The state may intervene in such an action as a matter of right. In addition, an action shall not be commenced pursuant to subsection 1, paragraph *"a"*, if the department or the state has commenced and is actively prosecuting a civil action or is actively negotiating an out-of-court settlement to require abatement of the violation and, if necessary, remediation of damages. However, any person may intervene as a matter of right in such an action.

3. A person shall have standing to commence an action pursuant to subsection 1 or to intervene in an action pursuant to subsection 2 if the person is adversely affected by the alleged violation or the alleged failure to perform a duty or act.

4. In an action commenced pursuant to subsection 1, the court may award costs of litigation, including reasonable attorney and expert witness fees, to any party.

5. This section does not restrict any right under statutory or common law of a person or class of person to seek enforcement of provisions of this chapter or chapter 459, subchapters I, II, III, IV, and VI,* or a rule adopted pursuant to this chapter or chapter 459, subchapters I, II, III, IV, and VI,* or seek other relief permitted under the law.

86 Acts, ch 1245, §1888

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.112 Actions by attorney general.

In addition to the duty to commence legal proceedings at the request of the director or commis-

sion under this chapter or chapter 459, subchapters I, II, III, IV, and VI,* the attorney general may institute civil or criminal proceedings, including an action for injunction, to enforce the provisions of this chapter or chapter 459, subchapters I, II, III, IV, and VI,* including orders or permits issued or rules adopted under this chapter or chapter 459, subchapters I, II, III, IV, and VI.*

86 Acts, ch 1245, §1889

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.113 Certification of laboratories.

1. The director shall certify laboratories which perform laboratory analyses of samples required to be submitted by the department by this chapter or chapter 459, subchapters I, II, III, IV, and VI,* by rules adopted in accordance with this chapter or chapter 459, subchapters I, II, III, IV, and VI,* or by permits or orders issued under this chapter or chapter 459, subchapters I, II, III, IV, and VI.*

2. The commission shall adopt rules regarding content of laboratory certification application forms, which shall be furnished by the department.

The commission shall adopt rules regarding reciprocity agreements with other states that have equivalent laboratory certification requirements.

3. The director may charge a fee for processing of an application. The application fee is nonrefundable. In establishing the fee, the director shall take into account the administrative costs incurred and the cost of enforcement of this section. Fees collected shall be retained by the department.

4. A laboratory shall submit an application, every other year, accompanied by the fee determined by the director.

88 Acts, ch 1120, §1

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.114 Laboratory certificates.

1. Upon determination by the director that an applicant for certification has the necessary competence, equipment, and capability to perform the laboratory analytical procedures required, the director shall issue a certificate of competency to the laboratory. The certificate shall indicate the analytical parameters and procedures which the laboratory is certified to conduct.

2. The director may suspend or revoke the certificate of competency of a laboratory upon determination of the director that the laboratory no longer fulfills the requirements for certification.

88 Acts, ch 1120, §2

455B.115 Analysis by certified laboratory required.

Laboratory analysis of samples as required by this chapter or chapter 459, subchapters I, II, III, IV, and VI,* or by rules adopted, or by permits or orders issued pursuant to this chapter or chapter 459, subchapters I, II, III, IV, and VI,* shall be conducted by a laboratory certified by the director as having the necessary competence, equipment, and capabilities to perform the analysis. Analytical results from laboratories not certificated shall not be accepted by the director.

88 Acts, ch 1120, §3

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.116 Pollution hotline program.

The department shall establish a toll-free telephone number to allow citizens to report incidents resulting in pollution of the environment or damage to natural resources. The department shall receive and evaluate the reports and refer them to the appropriate state or local jurisdiction for initial investigation. The agency receiving a referral shall investigate the complaint, attempt to resolve the problem, and upon completion of the investigation, report to the department on the disposition of each complaint indicating how the problem was resolved.

The department shall use moneys appropriated to the waste volume reduction and recycling fund for the purpose of implementation of the program and shall use the moneys appropriated under section 455E.11 for the program to provide financial assistance to counties for investigation of complaints.

89 Acts, ch 272, §27

455B.117 Results of environmental tests — public records.

The results of any test, which test is relative to the purview of the department, and which test is conducted or performed by an independent entity at the request of a government body, as defined in section 22.1, or an agent or attorney for a government body, are public records pursuant to chapter 22.

A government body shall not be required to provide such test results to any person under this section until the agency head and agency's governing body have received a copy of the test results. A government body shall not be required to provide such test results if the confidentiality of such information is protected pursuant to section 22.7. However, following receipt of test results by an agency head and the agency's governing body, the agency head or agency's governing body shall not take action regarding such test results unless the test results have been made public knowledge for a period of not less than seven days.

89 Acts, ch 242, §1

455B.118 through 455B.130 Reserved.

DIVISION II

AIR QUALITY

PART 1

GENERAL

455B.131 Definitions.

When used in this division II, unless the context otherwise requires:

1. *"Air contaminant"* means dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof.

2. *"Air contaminant source"* means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

Air contaminant source includes, but is not limited to, all types of businesses, commercial and industrial plants, works, shops, and stores, heating and power plants and stations, buildings and other structures of all types including single and multiple family residences, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses, aircraft, and other motor vehicles, garages, vending and service locations and stations, railroad locomotives, ships, boats, and other waterborne craft, portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

An air contaminant source does not include a fire truck or other fire apparatus operated by an organized fire department.

3. *"Air pollution"* means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.

4. *"Atmosphere"* means all space outside of buildings, stacks or exterior ducts.

5. *"Earthen waste slurry storage basin"* means an uncovered and exclusively earthen cavity which, on a regular basis, receives waste discharges from a confinement animal feeding operation if accumulated wastes from the basin are completely removed at least twice each year.

6. *"Emission"* means a release of one or more air contaminants into the outside atmosphere.

7. *"Major stationary source"* means a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the department or the administrator of the United States environmental protection agency.

8. *"Person"* means an individual, partnership, copartnership, cooperative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, an agency or department of the federal government or any other legal entity, or a legal representative, agent, officer, employee or assigns of such entities.

9. *"Political subdivision"* means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof.

10. *"Potential to emit"* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design as defined in rules adopted by the department.

11. *"Schedule and timetable of compliance"* means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

[C71, §136B.2; C73, 75, 77, 79, 81, §455B.10]
C83, §455B.131
85 Acts, ch 44, §1; 86 Acts, ch 1245, §1899B; 90 Acts, ch 1153, §1; 93 Acts, ch 137, §2

455B.132 Executive agency.

The department shall be the agency of the state to prevent, abate, or control air pollution.

[C73, 75, 77, 79, 81, §455B.11]
C83, §455B.132

455B.133 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the abatement, control, and prevention of air pollution in this state, recognizing varying requirements for different areas in the state. The plans may include emission limitations, schedules and timetables for compliance with the limitations, measures to prevent the significant deterioration of air quality and other measures as necessary to assure attainment and maintenance of ambient air quality standards.

2. Adopt, amend, or repeal rules pertaining to the evaluation, abatement, control, and prevention of air pollution. The rules may include those that are necessary to obtain approval of the state implementation plan under section 110 of the federal Clean Air Act as amended through January 1, 1991.

3. Adopt, amend, or repeal ambient air quality standards for the atmosphere of this state on the basis of providing air quality necessary to protect the public health and welfare and to reduce emissions contributing to acid rain pursuant to Title IV of the federal Clean Air Act Amendments of 1990.

4. Adopt, amend, or repeal emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted

from any air contaminant source. The standards or limitations adopted under this section shall not exceed the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. This does not prohibit the commission from adopting a standard for a source or class of sources for which the United States environmental protection agency has not promulgated a standard. This also does not prohibit the commission from adopting an emission standard or limitation for infectious medical waste treatment or disposal facilities which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. The commission shall not adopt an emission standard or limitation for infectious medical waste treatment or disposal facilities prior to January 1, 1995, which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act, as amended through January 1, 1991, for a hospital, or a group of hospitals, licensed under chapter 135B which has been operating an infectious medical waste treatment or disposal facility prior to January 1, 1991.

a. (1) The commission shall establish standards of performance unless in the judgment of the commission it is not feasible to adopt or enforce a standard of performance. If it is not feasible to adopt or enforce a standard of performance, the commission may adopt a design, equipment, material, work practice or operational standard, or combination of those standards in order to establish reasonably available control technology or the lowest achievable emission rate in nonattainment areas, or in order to establish best available control technology in areas subject to prevention of significant deterioration review, or in order to adopt the emission limitations promulgated by the administrator of the United States environmental protection agency under section 111 or 112 of the federal Clean Air Act as amended through January 1, 1991.

(2) If a person establishes to the satisfaction of the commission that an alternative means of emission limitation will achieve a reduction in emissions of an air pollutant at least equivalent to the reduction in emissions of the air pollutant achieved under the design, equipment, material, work practice or operational standard, the commission shall amend its rules to permit the use of the alternative by the source for purposes of compliance with this paragraph with respect to the pollutant.

(3) A design, equipment, material, work practice or operational standard promulgated under this paragraph shall be promulgated in terms of a standard of performance when it becomes feasible to promulgate and enforce the standard in those terms.

(4) For the purpose of this paragraph, the phrase *"not feasible to adopt or enforce a standard of performance"* refers to a situation in which the commission determines that the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

b. If the maximum standards for the emission of sulfur dioxide from solid fuels have to be reduced in an area to meet ambient air quality standards, a contract for coal produced in Iowa and burned by a facility in that area that met the sulfur dioxide emission standards in effect at the time the contract went into effect shall be exempted from the decreased requirement until the expiration of the contract period or December 31, 1983, whichever first occurs, if there is any other reasonable means available to satisfy the ambient air quality standards. To qualify under this subsection, the contract must be recorded with the county recorder of the county where the burning facility is located within thirty days after the signing of the contract.

c. The degree of emission limitation required for control of an air contaminant under an emission standard shall not be affected by that part of the stack height of a source that exceeds good engineering practice, as defined in rules, or any other dispersion technique. This paragraph shall not apply to stack heights in existence before December 30, 1970, or dispersion techniques implemented before that date.

5. Classify air contaminant sources according to levels and types of emissions, and other characteristics which relate to air pollution. The commission may require, by rule, the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods at such locations and intervals, and using such procedures as the commission shall prescribe, and provide such other information as the commission may reasonably require. Such classifications may be for application to the state as a whole, or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

6. *a.* Require, by rules, notice of the construction of any air contaminant source which may cause or contribute to air pollution, and the submission of plans and specifications to the department, or other information deemed necessary, for the installation of air contaminant sources and related control equipment. The rules shall allow the owner or operator of a major stationary source to elect to obtain a conditional permit in lieu of a construction permit. The rules relating to a condi-

tional permit for an electric power generating facility subject to chapter 476A and other major stationary sources shall allow the submission of engineering descriptions, flow diagrams and schematics that quantitatively and qualitatively identify emission streams and alternative control equipment that will provide compliance with emission standards. Such rules shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce such levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind or composition of fuels permitted to be sold, stored, or used unless authorized by subsection 4 of this section.

b. The commission may give technical advice pertaining to the construction or installation of the equipment or any other recommendation.

7. Commission rules establishing maximum permissible sulfate content shall not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

8. *a.* Adopt rules consistent with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, which require the owner or operator of an air contaminant source to obtain an operating permit prior to operation of the source. The rules shall specify the information required to be submitted with the application for a permit and the conditions under which a permit may be granted, modified, suspended, terminated, revoked, reissued, or denied. For sources subject to the provisions of Title IV of the federal Clean Air Act Amendments of 1990, permit conditions shall include emission allowances for sulfur dioxide emissions. The commission may impose fees, including fees upon regulated pollutants emitted from an air contaminant source, in an amount sufficient to cover all reasonable costs, direct and indirect, required to develop and administer the permit program in conformance with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. Affected units regulated under Title IV of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, shall pay operating permit fees in the same manner as other sources subject to operating permit requirements, except as provided in section 408 of the federal Act. The fees collected pursuant to this subsection shall be deposited in the air contaminant source fund created pursuant to section 455B.133B, and shall be utilized solely to cover all reasonable costs required to develop and administer the programs required by Title V of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, including the permit program pursuant to section 502 of the federal Act and the small business stationary source technical and environmental assistance program pursuant to section 507 of the federal Act.

b. Adopt rules allowing the department to issue a state operating permit to an owner or operator of an air contaminant source. The state operating permit granted under this paragraph may only be issued at the request of an air contaminant source and will be used to limit its potential to emit to less than one hundred tons per year of a criteria pollutant as defined by the United States environmental protection agency or ten tons per year of a hazardous air pollutant or twenty-five tons of any combination of hazardous air pollutants.

c. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous sources to the extent that the sources are representative of a class of facilities which can be identified and conditioned by a single permit.

9. Adopt rules allowing asphalt shingles to be burned in a fire set for the purpose of bona fide training of public or industrial employees in fire fighting methods only if a notice is provided to the director containing testing results indicating that the asphalt shingles do not contain asbestos. Each fire department shall be permitted to host two fires per year as allowed under this subsection.

10. Adopt rules allowing a city to conduct a controlled burn of a demolished building subject to the same restrictions as are in effect for fire fighting training fires. The rules shall include a provision that a city may undertake no more than three controlled burns in every overlapping six-tenths-of-a-mile-radius circle every three years. The rules shall prohibit a controlled burn of a demolished building in Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City, or any other area where area-specific state implementation plans require the control of particulate matter.

[C71, §136B.4; C73, 75, 77, 79, 81, §455B.12; 82 Acts, ch 1124, §1]

C83, §455B.133

91 Acts, ch 242, §1; 91 Acts, ch 255, §8; 92 Acts, ch 1163, §87 – 89; 93 Acts, ch 137, §3; 94 Acts, ch 1040, §1; 95 Acts, ch 2, §1; 2002 Acts, ch 1162, §45; 2002 Acts, 2nd Ex, ch 1003, §241, 262

NEW subsection 10

455B.133A Temporary air toxics fee imposed. Repealed by 95 Acts, ch 26, § 4.

455B.133B Air contaminant source fund created.

An air contaminant source fund is created in the office of the treasurer of state under the control of the department. Moneys received from the fees assessed pursuant to section 455B.133, subsection 8, shall be deposited in the fund. Moneys in the fund shall be used solely to defray the costs related

to the permit, monitoring, and inspection program, including the small business stationary source technical and environmental compliance assistance program required pursuant to the federal Clean Air Act Amendments of 1990, sections 502 and 507, Pub. L. No. 101-549. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Notwithstanding section 12C.7, any interest and earnings on investments from money in the fund shall be credited to the fund.

91 Acts, ch 255, §10; 92 Acts, ch 1163, §91, 92; 95 Acts, ch 26, §1, 2

455B.134 Director — duties — limitations.

The director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II and chapter 459, subchapter II.

3. Grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A and other major stationary sources, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source.

b. The condition of expected performance shall be reasonably detailed in the construction or conditional permit.

c. All applications for permits other than conditional permits for electric generating facilities shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit other than a conditional permit for an electric generating facility, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission.

d. All applications for conditional permits for electric power generating facilities shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agreement pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or by the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.

e. A regulated air contaminant source for which a construction permit or conditional permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements including emission allowances for sulfur dioxide emissions for sources subject to Title IV of the federal Clean Air Act Amendments of 1990. If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.

f. (1) Notwithstanding any other provision of division II of this chapter or chapter 459, subchapter II, the following siting requirements shall apply to anaerobic lagoons and earthen waste slurry storage basins:

Anaerobic lagoons, constructed or expanded on or after June 20, 1979, but prior to May 31, 1995, or earthen waste slurry storage basins, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995, which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the deter-

mination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation.

Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon or an earthen waste slurry storage basin closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution, or to secure compliance with permit conditions. In making the orders, the director shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public, the practicability of reducing or limiting the emissions from the air pollution source, and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary co-operation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and chapter 459, subchapter II, and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter and chapter 459, subchapter II. The director may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

[C71, §136B.4, 136B.5; C73, 75, 77, 79, §455B.12, 455B.13; C81, §455B.13; 82 Acts, ch 1124, §2, 3]

C83, §455B.134

86 Acts, ch 1245, §1899; 90 Acts, ch 1153, §2, 3; 91 Acts, ch 255, §11 – 13; 93 Acts, ch 137, §4; 95 Acts, ch 195, §14

For regulations establishing separation distances between anaerobic lagoons or earthen manure storage structures constructed or expanded on or after May 31, 1995, and various locations and objects, see chapter 459

For regulations governing the construction of earthen storage structures within agricultural drainage well areas, see chapter 460

Review and oversight of actions of ozone transport assessment group; repeal of 1997 provisions; 99 Acts, ch 92, §1 – 3

455B.135 Limit on authority.

Nothing contained in this division II or chapter 459, subchapter II, shall be deemed to grant to the department or the director any authority or jurisdiction with respect to air pollution existing solely within residences; or solely within commercial and industrial plants, works, or shops under the jurisdiction of chapters 88 and 91; or to affect the relations between employers and employees with respect to, or arising out of, any condition of air pollution.

[C71, §136B.6; C73, 75, 77, 79, 81, §455B.14]

C83, §455B.135

86 Acts, ch 1245, §1899, 1899B

455B.136 Assistance on demand.

The department and the director may request and receive assistance from any other agency, de-

partment, or educational institution of the state, or political subdivision thereof, when it is deemed necessary or beneficial by the department or the director. The department may reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

[C71, §136B.7; C73, 75, 77, 79, 81, §455B.15]
C83, §455B.136
86 Acts, ch 1245, §1899, 1899B

455B.137 Privileged information.

Information received by the department or any employees of the department through filed reports, inspections, or as otherwise authorized in this division II or chapter 459, subchapter II, concerning trade secrets, secret industrial processes, or other privileged communications, except emission data, shall not be disclosed or opened to public inspection, except as may be necessary in a proceeding concerning a violation of said division or of any rules promulgated thereunder, or as otherwise authorized or ordered by appropriate court action or proceedings. Nothing herein shall be construed to prevent the director from compiling or publishing analyses or summaries relating to the general condition of the atmosphere; provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

[C71, §136B.8; C73, 75, 77, 79, 81, §455B.16]
C83, §455B.137
86 Acts, ch 1245, §1899B

455B.138 Resolution of violations — appeal.

1. When the director has evidence that a violation of any provision of division II of this chapter or chapter 459, subchapter II, or rule, standard or permit established or issued under division II or chapter 459, subchapter II, has occurred, the director shall notify the alleged violator and, by informal negotiation, attempt to resolve the problem. If the negotiations fail to resolve the problem within a reasonable period of time, the director shall issue an order directing the violator to prevent, abate or control the emissions or air pollution involved. The order shall prescribe the date by which the violation shall cease and may prescribe timetables for necessary action to prevent, abate or control the emissions of air pollution. The order may be appealed to the commission.

2. After the hearing on appeal, the commission may affirm, modify or rescind the order of the director.

3. The director shall keep a complete record of the hearings and proceeding and the record shall be open to public inspection, subject to section 455B.137. Upon request, a copy of the transcript shall be furnished to the violator or alleged violator at the violator's or alleged violator's expense.

4. An appeal to the commission under this section shall be conducted as a contested case under chapter 17A.

[C71, §136B.9; C73, 75, 77, 79, 81, §455B.17]
C83, §455B.138
86 Acts, ch 1245, §1899

455B.139 Emergency orders.

If the director has evidence that any person is causing air pollution and that such pollution creates an emergency requiring immediate action to protect the public health and safety, or property, the director may, without notice, issue an emergency order requiring such person to reduce or discontinue immediately the emission of air contaminants. A copy of the emergency order shall be served by personal service. An emergency order issued by the director may be appealed to the commission. After hearing on appeal, the commission may affirm, modify or rescind the order of the director.

[C71, §136B.9(5); C73, 75, 77, 79, 81, §455B.18]
C83, §455B.139
86 Acts, ch 1245, §1899

455B.140 Judicial review.

Judicial review of actions of the commission or of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed.

[C71, §136B.10; C73, 75, 77, 79, 81, §455B.19]
C83, §455B.140
86 Acts, ch 1245, §1899

455B.141 Legal action.

If action to prevent, control, or abate air pollution is not taken in accordance with the rules established, or orders or permits issued by the department, or if the director has evidence that an emergency exists by reason of air pollution which requires immediate action to protect the public health or property, the attorney general, at the request of the director, shall commence legal action, in the name of the state, for an injunction to prevent any further or continued violation of such rule or order.

[C71, §136B.11; C73, 75, 77, 79, 81, §455B.20]
C83, §455B.141
86 Acts, ch 1245, §1899; 91 Acts, ch 255, §14

455B.142 Burden of proof.

In all proceedings with respect to any alleged violation of the provisions of this division II or chapter 459, subchapter II, or any rule established by the commission, the burden of proof shall be upon the department except in an action for an injunction as provided in section 455B.141.

[C71, §136B.12; C73, 75, 77, 79, 81, §455B.21]
C83, §455B.142

455B.143 Variance.

Any person who owns or operates any plant, building, structure, process, or equipment may apply for a variance from the rules or standards adopted by the department by filing an application with the department. The application shall be accompanied by such information and data required by the department.

1. The director shall promptly investigate the application and approve or disapprove the application. The director may grant a variance if the director finds that:

a. The emissions occurring or proposed to occur do not endanger or tend to endanger human health or safety or property; and

b. Compliance with the rules or standards from which the variance is sought will produce serious hardship without equal or greater benefits to the public.

2. The applicant may request a review hearing before the department if the application is denied.

3. In determining under what conditions and to what extent a variance may be granted, the director shall give due recognition to the progress which the applicant has made toward eliminating or preventing air pollution. In such a case, the director shall consider the reasonableness of the request, conditioned upon such applicant effecting a partial abatement of the particular air pollution within a reasonable period of time, or the director may prescribe other requirements with which such applicant shall comply.

4. The director may grant a variance for a specified period of time, not exceeding one year, and the director may further specify that the applicant make periodic reports specifying the progress that has been made toward compliance with any rule for which the variance was granted. A variance may be extended from year to year by affirmative action of the director.

5. The director shall maintain a record of each variance granted specifying the reasons for its issuance or extension.

[C71, §136B.13; C73, 75, 77, 79, 81, §455B.22]
C83, §455B.143
86 Acts, ch 1245, §1899, 1899B

455B.144 Local control program.

1. Any political subdivision may conduct an air pollution control program within the boundaries of its jurisdiction, or may jointly conduct an air pollution control program with other political subdivisions of this state or of other states, except that every joint program shall be established and administered as provided in chapter 28E. In conducting such programs, political subdivisions may adopt and enforce rules or standards to secure and maintain adequate air quality within their respective jurisdictions.

2. If the board of supervisors in any county establishes an air pollution control program and has obtained a certificate of acceptance, the agency implementing the program may regulate air pollution within the county including any incorporated areas therein until such incorporated areas obtain a certificate of acceptance as a joint or separate agency.

[C71, §136B.14; C73, 75, 77, 79, 81, §455B.23]
C83, §455B.144

455B.145 Acceptance of local program.

When an air pollution control program conducted by a political subdivision, or a combination of them, is deemed upon review as provided in section 455B.134, to be consistent with the provisions of this division II or the rules established under this division, the director shall accept such program in lieu of state administration and regulation of air pollution within the political subdivisions involved. This section shall not be construed to limit the power of the director to issue state permits and to take other actions consistent with this division II or the rules established under this division that the director deems necessary for the continued proper administration of the air pollution programs within the jurisdiction of the local air pollution program.

1. In evaluating an air pollution control program, consideration shall be given to whether such program provides for the following:

a. Ordinances, rules and standards establishing requirements consistent with, or more strict than, those imposed by this division II or rules and standards adopted by the department.

b. Enforcement of such requirements by appropriate administrative and judicial process.

c. Administrative organization, staff, financial and other resources necessary to administer an efficient and effective program.

d. Location of emission monitoring devices in areas of the political subdivision in compliance with uniform state standards adopted by the department. The department shall adopt uniform state standards for the location of emission monitoring devices specifying such intervals and such procedures to provide a reasonably consistent measurement of emissions from air contaminant sources regardless of the political subdivision of the state in which the sources may be located.

2. Upon acceptance of a local air pollution control program, the director shall issue a certificate of acceptance to the appropriate local agency.

a. Any political subdivision desiring a certificate of acceptance shall apply to the department on forms prescribed by the director.

b. The director shall promptly investigate the application and approve or disapprove the application. The director may conduct a public hearing before action is taken to approve or disapprove. If the director disapproves issuing a certificate, the political subdivision may appeal the action to the department of inspections and appeals. At the

hearing on appeal, the department of inspections and appeals shall decide whether the local program is substantially consistent with the provisions of this division II, or rules adopted thereunder, and whether the local program is being enforced. The burden of proof shall be upon the political subdivision.

c. If the director determines at any time that a local air pollution program is being conducted in a manner inconsistent with the substantive provisions of this division II or the rules adopted thereunder, the director shall notify the political subdivision, citing the deviations from the acceptable standards and the corrective measures to be completed within a reasonable amount of time. If the corrective measures are not implemented as prescribed, the director shall suspend in whole or in part the certificate of acceptance of such political subdivision and shall administer the regulatory provisions of said division in whole or in part within the political subdivision until the appropriate standards are met. Upon receipt of evidence that necessary corrective action has been taken, the director shall reinstate the suspended certificate of acceptance, and the political subdivision shall resume the administration of the local air pollution control program within its jurisdiction. In cases where the certificate of acceptance is suspended, the political subdivision may appeal the suspension to the department of inspections and appeals.

d. Nothing in this division II shall be construed to supersede the jurisdiction of any local air pollution control program in operation on the first of January, 1973, except that any such program shall meet all requirements of said division.

[C71, §136B.15; C73, 75, 77, 79, 81, §455B.24]
C83, §455B.145
86 Acts, ch 1245, §1899, 1899B; 87 Acts, ch 33, §1
Former sections in chapter 455B, division II, relating to animal feeding operations transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137

455B.146 Civil action for compliance — local program actions.

If any order, permit, or rule of the department is being violated, the attorney general shall, at the request of the department or the director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed ten thousand dollars per day for each day such violation continues, or both such injunctive relief and civil penalty. Notwithstanding sections 331.302 and 331.307, a city or county which maintains air pollution control programs authorized by certificate of acceptance under this division may provide civil penalties consistent with the amount established for such penalties under this division.

[C71, §136B.16; C73, 75, 77, 79, 81, §455B.25]
C83, §455B.146
86 Acts, ch 1245, §1899, 1899B; 91 Acts, ch 251, §1
Former sections in chapter 455B, division II, relating to animal feeding operations transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137

455B.146A Criminal action — penalties.

1. A person who knowingly violates any provision of division II of this chapter, any permit, rule, standard, or order issued under division II of this chapter, or any condition or limitation included in any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor. A conviction for a violation is punishable by a fine of not more than ten thousand dollars for each day of violation or by imprisonment for not more than two years, or both. If the conviction is for a second or subsequent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than four years, or by both.

2. *a.* A person who knowingly makes any false statement, representation, or certification of any application, record, report, plan, or other document filed or required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter, or who knowingly fails to notify or report as required by division II of this chapter or by any permit, rule, standard, or order issued under division II of this chapter, or by any condition or limitation included in any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent violation committed by a person under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

b. A person who knowingly fails to pay any fee owed the state under any provision of division II of this chapter, or any permit, rule, standard, or order issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than six months, or by both. If the conviction is for a second or subsequent violation under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not

more than one year, or by both.

3. A person who negligently releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent negligent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

4. *a.* A person who knowingly releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who knows at the time that the conduct places another person in imminent danger of death or serious bodily injury shall, upon conviction, if the person committing the violation is an individual or a government entity, be punished by a fine of not more than fifty thousand dollars per violation or by imprisonment for not more than two years, or by both. However, if the person committing the violation is other than an individual or a government entity, upon conviction the person shall be punished by a fine of not more than one million dollars per violation. If the conviction is for a second or subsequent violation under this paragraph, the conviction is punishable by a fine or imprisonment, or both, as consistent with federal law.

b. In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury the following shall apply:

(1) The defendant is deemed to have knowledge only if the defendant possessed actual awareness or held an actual belief.

(2) Knowledge possessed by a person other than the defendant, and not by the defendant personally, is not attributable to the defendant. In establishing a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative action to be shielded from relevant information.

c. It is an affirmative defense that the conduct was freely consented to by the person endangered and that the danger and conduct were reasonably foreseeable hazards of either of the following:

(1) An occupation, a business, or a profession.

(2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person was made aware of the risks involved prior to providing consent. An affirmative defense under this subparagraph shall be established by a preponderance of the evidence.

d. All general defenses, affirmative defenses, and bars to prosecution that are applicable with respect to other criminal offenses apply under paragraph *"a"*. All defenses and bars to prosecution shall be determined by the courts in accordance with the principles of common law as interpreted, taking into consideration the elements of reason and experience. The concepts of justification and legal excuse, as applicable, may be developed, taking into consideration the elements of reason and experience.

e. As used in this subsection, *"serious bodily injury"* means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

5. *a.* Notwithstanding this section, a source required to obtain a permit for construction or modification of a source prior to the date on which the state received delegation of the federal operating permit program which failed to timely file for the permit is subject to the civil penalty for noncompliance in effect at the time.

b. This subsection does not provide an exception from application of the penalties established under this section for failure of a person to file a timely and complete application for a federal construction permit.

c. This subsection does not provide an exception from application of the penalties established in this section for a person who does not file a timely and complete application for a required permit once notified, in writing, by the department of the noncompliance. A person who does not comply following notification of noncompliance is subject to the criminal penalties established under this section.

93 Acts, ch 137, §5

Former sections in chapter 455B, division II, relating to animal feeding operations transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137

455B.147 Failure — procedure.

1. If the director fails to take action within sixty days after an application for a variance is made, or if the department fails to enter a final order or determination within sixty days after the final argument in hearing on appeal, the person seeking the action may treat the failure to act as a grant of the requested variance, or of a finding favorable to the respondent in hearing on appeal, as the case may be.

2. The section shall not apply to an application for a conditional permit for an electrical power generating facility subject to chapter 476A.

[C71, §136B.17; C73, 75, 77, 79, 81, §455B.26]

C83, §455B.147

86 Acts, ch 1245, §1899, 1899B; 93 Acts, ch 137, §6

455B.148 Fees. Repealed by 83 Acts, ch 136, § 8. See § 455B.105(12).

455B.149 Energy or economic emergency.

1. Upon application by the owner or operator of a fuel-burning stationary source, and after notice and opportunity for public hearing, the commission may petition the president, under section 110, subsection *"f,"* paragraph 1 of the federal Clean Air Act as amended through January 1, 1991, for a determination that a national or regional energy emergency exists. If the president determines an emergency exists, the commission may suspend any requirement of this division or a rule or permit issued under this division. A temporary emergency suspension under this subsection shall be issued only if there exists in the vicinity of the source a temporary emergency involving high levels of unemployment or loss of necessary energy supplies for residential buildings and if the unemployment or loss can be totally or partially alleviated by the suspension. Only one suspension may be issued for a source on the basis of the same set of circumstances or on the basis of the same emergency. A suspension shall remain in effect for a maximum of four months. The commission may include in a suspension a provision directing the director to delay for a period identical to the period of the suspension a compliance schedule or increment of progress to which the source is subject under section 455B.138, if the source is unable to comply with the schedule or increment solely because of the conditions on the basis of which the suspension was issued.

2. If a plan revision has been submitted to the administrator of the United States environmental protection agency under section 110 of the federal Clean Air Act as amended through January 1, 1991, and if the commission determines that the revision meets the requirements of that section and the revision is necessary to prevent the closing of an air contaminant source for one year or more and to prevent substantial increases in unemployment which would result from the closing, and if the administrator has not approved or disapproved within the required four-month period, the commission may issue a temporary emergency suspension of the part of the applicable implementation plan which is proposed to be revised with respect to the source. The determination under this subsection shall not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved. A temporary emergency suspension issued under this subsection shall remain in effect for a maximum of four months. A temporary emergency suspension under this subsection may include a provision directing the director to delay for a period identical to the period of the suspension a compliance schedule or increment of progress to which the source is subject under section 119 of the federal Clean Air Act as in effect prior to August 7, 1977, or section 113, subsection *"d"* of the federal Clean Air Act as amended through January 1, 1991, upon a finding that the source is unable to comply with the schedule or increment solely because of the conditions on the basis of which a suspension was issued under this subsection.

[C81, §455B.29]
C83, §455B.149
86 Acts, ch 1245, §1899; 92 Acts, ch 1163, §93

455B.150 Compliance advisory panel.

A compliance advisory panel shall be created, pursuant to Title V, section 507(e) of the federal Clean Air Act Amendments of 1990, to review and report on the effectiveness of the small business technical assistance program required by the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549.

93 Acts, ch 137, §7

455B.151 Moratorium — commercial waste incinerators.

1. The department shall not grant a permit for the construction or operation of a commercial waste incinerator until such time as the department or the United States environmental protection agency adopts rules which establish safe emission standards for releases of toxic air emissions from commercial waste incinerators.

2. For purposes of this section:

a. "Commercial waste incinerator" means an incinerator which burns waste, at least one-third of which is waste as defined by paragraph *"c"*, and the owner or operator of the incinerator derives at least one-third of its expenditures or profits from the incineration of the waste as defined in paragraph *"c"*. A commercial waste incinerator does not include those facilities that use incineration as an emission control device to comply with the federal Clean Air Act Amendments of 1990 or those facilities which use incineration only as part of their waste reduction programs for reducing waste produced by that facility.

b. "Incinerator" means any enclosed combustion device including a boiler, an industrial furnace, a waste-to-energy facility, a kiln, and a cogeneration unit.

c. "Waste" means toxic or hazardous waste as identified and included in the consolidated chemical list pursuant to Title III of the federal Superfund Amendments and Reauthorization Act of 1986, or substances which have been treated with a toxic or hazardous waste. *"Waste"* does not include waste oil which is burned under federal environmental protection agency guidelines for purposes of volume reduction, heat production, or energy cogeneration.

93 Acts, ch 120, §1

455B.152 through 455B.160 Reserved.

PART 2

ANIMAL FEEDING OPERATIONS REQUIREMENTS

455B.161 Definitions. Transferred to § 459.102; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, ch 1138, § 5; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

455B.161A Confinement feeding operations — special terms. Transferred to § 459.201; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

455B.162 Animal feeding operations — new construction and expansion. Transferred subsections 1 – 4 to § 455B.202; subsection 5 to § 459.204; subsection 6 to § 459.206; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

For text of section effective until March 1, 2003, see Code 2001; 2002 Acts, ch 1137, §67

455B.163 Separation distance requirements for animal feeding operations — expansion of prior constructed operations. Transferred to § 459.203; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

For text of section effective until March 1, 2003, see Code 2001; 2002 Acts, ch 1137, §67

455B.164 Distance measurements. Repealed by 2002 Acts, ch 1137, § 69, 71. See § 459.201.

455B.165 Separation distance requirements — exemptions. Transferred to § 459.205; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

455B.166 through 455B.170 Reserved.

DIVISION III

WATER QUALITY

PART 1

GENERAL

455B.171 Definitions.

When used in this part 1 of division III, unless the context otherwise requires:

1. *"Abandoned well"* means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.

2. *"Construction"* of a water well means the physical act or process of making the water well including, but not limited to, siting, excavation, construction, and the installation of equipment and materials necessary to maintain and operate the well.

3. *"Contractor"* means a person engaged in the business of well construction or reconstruction or other well services.

4. *"Credible data"* means scientifically valid chemical, physical, or biological monitoring data collected under a scientifically accepted sampling and analysis plan, including quality control and quality assurance procedures. Data dated more than five years before the department's date of listing or other determination under section 455B.194, subsection 1, shall be presumed not to be credible data unless the department identifies compelling reasons as to why the data is credible.

5. *"Disposal system"* means a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge. *"Disposal system"* includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.

6. *"Effluent standard"* means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard, or other limitation.

7. *"Federal Water Pollution Control Act"* means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as published in 33 U.S.C. § 1251 – 1376, as amended through December 31, 1985.

8. *"Historical data"* means data collected more than five years before the department's date of listing or other determination under section 455B.194, subsection 1.

9. *"Industrial waste"* means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource.

10. *"Manure"* means the same as defined in section 459.102.

11. *"Manure sludge"* means the solid or semisolid residue produced during the treatment of manure in an anaerobic lagoon.

12. *"Maximum contaminant level"* means the maximum permissible level of any physical, chemical, biological, or radiological substance in water which is delivered to any user of a public water supply system.

13. *"Naturally occurring condition"* means any condition affecting water quality which is not caused by human influence on the environment including, but not limited to, soils, geology, hydrolo-

gy, climate, wildlife influence on the environment, and water flow with specific consideration given to seasonal and other natural variations.

14. *"New source"* means any building, structure, facility, or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

15. *"Open feedlot"* means the same as defined in section 459.102.

16. *"Other waste"* means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste.

17. *"Person"* means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

For the purpose of imposing liability for violation of a section of this part, or a rule or regulation adopted by the department of natural resources under this part, *"person"* does not include a person who holds indicia of ownership in contaminated property from which prohibited discharges, deposits, or releases of pollutants into any water of the state have been or are evidenced, if the person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

18. *"Point source"* means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

19. *"Pollutant"* means sewage, industrial waste, or other waste.

20. *"Private sewage disposal system"* means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis.

21. *"Private water supply"* means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

22. *"Production capacity"* means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

23. *"Public water supply system"* means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. The term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

24. *"Reconstruction"* of a water well means replacement or removal of all or a portion of the casing of the water well.

25. *"Schedule of compliance"* means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

26. *"Section 303(d) list"* means any list required under 33 U.S.C. § 1313(d).

27. *"Section 305(b) report"* means any report required under 33 U.S.C. § 1315(b).

28. *"Semi-public sewage disposal system"* means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under section 1288 of the federal Water Pollution Control Act (33 U.S.C. § 1288).

29. *"Septage"* means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or from a holding tank, when the system is cleaned or maintained.

30. *"Sewage"* means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present.

31. *"Sewage sludge"* means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. *"Sewage sludge"* includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum septage, portable toilet pumpings, type III marine device pumpings as defined in 33 C.F.R. part 159, and sewage sludge products. *"Sewage sludge"* does not include grit, screenings, or ash generated during the incineration of sewage sludge.

32. *"Sewer extension"* means pipelines or conduits constituting main sewers, lateral sewers, or trunk sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

33. *"Sewer system"* means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices, and appliances appurte-

nant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act, ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this part of this division.

34. *"Total maximum daily load"* means the same as in the federal Water Pollution Control Act.

35. *"Treatment works"* means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes.

36. *"Viable"* means a disposal system or a public water supply system which is self-sufficient and has the financial, managerial, and technical capability to reliably meet standards of performance on a long-term basis, as required by state and federal law, including the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

37. *"Water of the state"* means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

38. *"Water pollution"* means the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.

39. *"Water supply distribution system extension"* means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer's service connection.

40. *"Water well"* means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. *"Water well"* does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

[C66, 71, §455B.2; C73, 75, 77, 79, 81, §455B.30; 82 Acts, ch 1050, §1, 2, ch 1199, §6, 7, 8, 96]

C83, §455B.171

83 Acts, ch 137, §2; 84 Acts, ch 1121, §1, 2; 85 Acts, ch 176, §1; 86 Acts, ch 1144, §1; 86 Acts, ch 1237, §29; 91 Acts, ch 224, §3; 92 Acts, ch 1041, §1; 93 Acts, ch 42, §1; 95 Acts, ch 195, §20; 96 Acts, ch 1079, §13; 97 Acts, ch 137, §1, 2; 98 Acts, ch 1209, §22; 2000 Acts, ch 1068, §9; 2000 Acts, ch 1232, §72; 2002 Acts, ch 1137, §25, 68, 71; 2002 Acts, ch 1138, §3, 5; 2002 Acts, 2nd Ex, ch 1003, §249, 260, 262

Former subsections 7, 33, and 44 transferred to §459.102 in Code 2003 pursuant to directive; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

New subsections 38A and 38B, enacted in 2002 Acts, ch 1138, §3, transferred to §459.102 in Code 2003 pursuant to directive in 2002 Acts, ch 1138, §5

Subsections 2 – 6 stricken

Subsection 7 transferred to §459.102, subsection 11

Subsection 8 stricken and former subsections 9 – 12 renumbered as 2 – 5

Subsection 13 stricken and former subsections 14 – 19 renumbered as 6 – 11

Subsection 20 stricken and former subsections 21 – 23 renumbered as 12 – 14

NEW subsection 15 and former subsections 24 – 32 renumbered as 16 – 24

Subsection 33 transferred to §459.102, subsection 40, and former subsections 34 – 42 renumbered as 25 – 33

Subsection 43 stricken

Subsection 44 transferred to §459.102, subsection 44, and former subsections 45 and 46 renumbered as 34 and 35

Subsection 47 stricken and former subsections 48 – 52 renumbered as 36 – 40

455B.172 Jurisdiction of department and local boards.

1. The department is the agency of the state to prevent, abate, or control water pollution and to conduct the public water supply program.

2. The department shall carry out the responsibilities of the state related to private water supplies and private sewage disposal systems for the protection of the environment and the public health and safety of the citizens of the state.

3. Each county board of health shall adopt standards for private water supplies and private sewage disposal facilities. These standards shall be at least as stringent but consistent with the standards adopted by the commission. If a county board of health has not adopted standards for private water supplies and private sewage disposal facilities, the standards adopted by the commission shall be applied and enforced within the county by the county board of health.

4. Each county board of health shall regulate the private water supply and private sewage disposal facilities located within the county board's jurisdiction, including the enforcement of standards adopted pursuant to this section.

5. The department shall maintain jurisdiction over and regulate the direct discharge to a water of the state. The department shall retain concurrent authority to enforce state standards for private water supply and private sewage disposal facilities within a county, and exercise departmental authority if the county board of health fails to fulfill board responsibilities pursuant to this section.

The department shall by rule adopt standards for the commercial cleaning of private sewage disposal facilities, including but not limited to septic

tanks and pits used to collect waste in livestock confinement structures, and for the disposal of waste from the facilities. The standards shall not be in conflict with the state building code. A person shall not commercially clean such facilities or dispose of waste from such facilities unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. The license or license renewal fee is twenty-five dollars. A person violating this section or the rules adopted pursuant to this section, is subject to a civil penalty of not more than twenty-five dollars. Each day that a violation continues constitutes a separate offense. However, the total civil penalty shall not exceed five hundred dollars per year. The penalty shall be assessed for a violation occurring ten days following written notice of the violation delivered to the person by the department or a county board of health. Moneys collected by the department or a county board of health from the imposition of civil penalties shall be deposited in the general fund of the state.

The commission shall make grants to counties for the purpose of conducting programs for the testing of private, rural water supply wells and for the proper closing of abandoned, rural, private water supply wells within the jurisdiction of the county. Grants shall be funded through allocation of the agriculture management account of the groundwater protection fund. Grants awarded, continued, or renewed shall be subject to the following conditions:

a. An application for a grant shall be in a form and shall contain information as prescribed by rule of the commission.

b. Nothing in this section shall be construed to prohibit the department from making grants to one or more counties to carry out the purpose of the grant on a joint, multicounty basis.

c. A grant shall be awarded on an annual basis to cover a fiscal year from July 1 to June 30 of the following calendar year.

d. The continuation or renewal of a grant shall be contingent upon the county's acceptable performance in carrying out its responsibilities, as determined by the director. The director, subject to approval by the commission, may deny the awarding of a grant or withdraw a grant awarded if, by determination of the director, the county has not carried out the responsibilities for which the grant was awarded, or cannot reasonably be expected to carry out the responsibilities for which the grant would be awarded.

6. *a.* The department is the state agency to regulate the construction, reconstruction and abandonment of all of the following water wells:

(1) Those used as part of a public water supply system as defined in section 455B.171.

(2) Those used for the withdrawal of water for which a permit is required pursuant to section 455B.268, subsection 1.

(3) Those used for the purpose of monitoring groundwater quantity and quality required or installed pursuant to directions or regulations of the department.

b. A local board of health is the agency to regulate the construction, reconstruction and abandonment of water wells not otherwise regulated by the department. The local board of health shall not adopt standards relative to the construction, reconstruction and abandonment of wells less stringent than those adopted by the department.

7. The department is the state agency to regulate the registration or certification of water well contractors pursuant to section 455B.187 or section 455B.190A.

8. Pursuant to chapter 28E, the department may delegate its authority for regulation of the construction, reconstruction and abandonment of water wells specified in subsection 6 or the registration of water well contractors specified in subsection 7 to boards of health or other agencies which have adequate authority and ability to administer and enforce the requirements established by law or rule.

9. Any county ordinance related to sewage sludge which is in effect on March 1, 1997, shall not be preempted by any provision of section 455B.171, 455B.174, 455B.183, or 455B.304.

[C66, 71, §455B.3; C73, §455B.31; C75, 77, 79, 81, §135.20, 455B.31; 82 Acts, ch 1199, §9]

C83, §455B.172

83 Acts, ch 137, §3; 84 Acts, ch 1121, §3; 85 Acts, ch 176, §2; 87 Acts, ch 225, §112, 113; 90 Acts, ch 1243, §1; 91 Acts, ch 224, §4; 97 Acts, ch 137, §3

455B.173 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards. The effluent standards may provide for maintaining the existing quality of the water of the state where the quality thereof exceeds the requirements of the water quality standards.

If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306, or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive efflu-

ent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306, or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division or chapter 459, subchapter III, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 and 169 or both sections of the Internal Revenue Code, whichever period ends first.

3. Establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions, including the viability of a system pursuant to section 455B.174, under which the director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system, or for the discharge of any pollutant. The rules specifying the conditions under which the director shall issue permits for the construction of an electric power generating facility subject to chapter 476A shall provide for issuing a conditional permit upon the submission of engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems that will provide compliance with effluent standards or limitations.

No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

A publicly owned treatment works whose discharge meets the final effluent limitations which were contained in its discharge permit on the date that construction of the publicly owned treatment works was approved by the department shall not be required to meet more stringent effluent limitations for a period of ten years from the date the construction was completed and accepted but not longer than twelve years from the date that construction was approved by the department.

4. Cooperate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.

5. Establish, modify or repeal rules relating to drinking water standards for public water supply systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.

6. Adopt rules relating to inspection, monitoring, recordkeeping, and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

7. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall cooperate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into any agreement, subject to approval of the commission, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be coordinated with disaster emergency plans.

8. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature, and applicable safety standards. The material standards for polyvinyl chloride pipe shall not exceed the specifications for polyvinyl chloride pipe in designations D-1784-69, D-2241-73, D-2564-76, D-2672-76, D-3036-73, and D-3139-73 of the American society for testing and materials. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be

known respectively as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public.

9. Adopt, modify, or repeal rules relating to the construction and reconstruction of water wells, the proper abandonment of wells, and the registration or certification of water well contractors. The rules shall include those necessary to protect the public health and welfare, and to protect the waters of the state. The rules may include, but are not limited to, establishing fees for registration or certification of water well contractors, requiring the submission of well driller's logs, formation samples or well cuttings, water samples, information on test pumping and requiring inspections. Fees shall be based upon the reasonable cost of conducting the water well contractor registration or certification program.

10. Adopt, modify, or repeal rules relating to the awarding of grants to counties for the purpose of carrying out responsibilities pursuant to section 455B.172 relative to private water supplies and private sewage disposal facilities.

11. Adopt, modify, or repeal rules relating to the business plan which disposal systems and public water supply systems must file with the department pursuant to section 455B.174, and adopt, modify, or repeal rules establishing a methodology and timetable by which nonviable systems shall take action to become viable or make alternative arrangements in providing treatment or water supply services.

12. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit.

13. Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations, as provided in sections relating to animal feeding operations provided in chapter 459, subchapter III.

[C97, §2565; C24, 27, 31, 35, 39, §**2220;** C46, 50, 54, 58, 62, §136.3(2,c); C66, 71, §136.3(2,c), 455B.9; C73, 75, §455B.32, 455B.65; C77, 79, 81, §455B.32; 82 Acts, ch 1199, §10, 96]

C83, §455B.173

83 Acts, ch 136, §2; 85 Acts, ch 176, §3; 86 Acts, ch 1245, §1899A; 87 Acts, ch 225, §114; 89 Acts, ch 125, §1; 90 Acts, ch 1255, §23; 91 Acts, ch 224, §5; 92 Acts, ch 1041, §2, 3; 95 Acts, ch 61, §1; 95 Acts, ch 195, §21, 22; 98 Acts, ch 1209, §23, 53; 99 Acts, ch 45, §1; 2000 Acts, ch 1058, §43

455B.174 Director's duties.

The director shall:

1. Conduct investigations of alleged water pollution or of alleged violations of this part of this division or chapter 459, subchapter III, or any rule adopted or any permit issued pursuant thereto upon written request of any state agency, political subdivision, local board of health, twenty-five residents of the state, as directed by the department, or as may be necessary to accomplish the purposes of this part of this division or chapter 459, subchapter III.

2. Conduct periodic surveys and inspection of the construction, operation, self-monitoring, recordkeeping and reporting of all public water supply systems and all disposal systems except as provided in section 455B.183.

3. Take any action or actions allowed by law which, in the director's judgment, are necessary to enforce or secure compliance with the provisions of this part of this division or chapter 459, subchapter III, or of any rule or standard established or permit issued pursuant thereto.

4. *a.* Approve or disapprove the plans and specifications for the construction of disposal systems or public water supply systems except for those sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.183. The director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system except for sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.183. The director shall also issue, revoke, suspend, modify, or deny permits for the discharge of any pollutant, or for the use or disposal of sewage sludge. The permits shall contain conditions and schedules of compliance as necessary to meet the requirements of this part of this division or chapter 459, subchapter III, the federal Water Pollution Control Act and the federal Safe Drinking Water Act. A permit issued under this chapter for the use or disposal of sewage sludge is in addition to and must contain references to any other permits required under this chapter. The director shall not issue or renew a permit to a disposal system or a public water supply system which is not viable. If the director has reasonable grounds to believe that a disposal system or public water supply system is not viable, the department may require the system to submit a business plan as a means of determining viability. This plan shall include the following components:

(1) A facilities plan which describes proposed new facilities and the condition of existing facilities, rehabilitation and replacement needs, and future needs to meet the requirements of the fed-

eral Water Pollution Control Act and the federal Safe Drinking Water Act.

(2) A management plan which consists of an administrative plan describing methods to assure performance of functions necessary to administer the system, including credentials of management personnel; and an operation and maintenance plan describing how all operating and maintenance duties necessary to the system's proper function will be accomplished.

(3) A financial plan which describes provisions for assuring that adequate revenues will be available to meet cash flow requirements, based on the full cost of providing the service, adequate initial capitalization, and access to additional capital for contingencies.

If, upon submission and review of the business plan, the department determines that the disposal system or public water supply system is not viable, the director may require the system to take actions to become viable within a time period established pursuant to section 455B.173, or to make alternative arrangements in providing treatment or water supply services as determined by rule.

b. In addition to the requirements of paragraph *"a"*, a permit shall not be issued to operate or discharge from any disposal system unless the conditions of the permit assure that any discharge from the disposal system meets or will meet all applicable state and federal water quality standards and effluent standards and the issuance of the permit is not otherwise prohibited by the federal Water Pollution Control Act. All applications for discharge permits are subject to public notice and opportunity for public participation including public hearing as the department may by rule require. The director shall promptly notify the applicant in writing of the director's action and, if the permit is denied, state the reasons for denial. The applicant may appeal to the commission from the denial of a permit or from any condition in any permit if the applicant files notice of appeal with the director within thirty days of the notice of denial or issuance of the permit. The director shall notify the applicant within thirty days of the time and place of the hearing.

c. Copies of all forms or other paper instruments required to be filed during on-site inspections or investigations shall be given to the owner or operator of the disposal system or public water supply system being investigated or inspected before the inspector or investigator leaves the site. Any other report, statement, or instrument shall not be filed with the department unless a copy is sent by ordinary mail to the owner or operator of the disposal system or public water supply system within ten working days of the filing. If an inspection or investigation is done in co-operation with another state department, the department involved and the areas inspected shall be stated.

d. The director shall also issue or deny conditional permits for the construction of disposal systems for electric power generating facilities subject to chapter 476A. All applications for conditional permits shall be subject to such notice and opportunity for public participation as may be required by the department and as may be consistent with chapter 476A and any agreement pursuant thereto under chapter 28E. The applicant or an intervenor may appeal to the department from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or the department upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the department. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawing and an application for a construction permit for a disposal system that will meet the effluent limitations in the conditional permit.

5. Conduct random inspections of work done by city and county public works departments to ensure such public works departments are complying with this part of this division. If a city or county public works department is not complying with section 455B.183 in reviewing plans and specifications or in granting permits or both, the department shall perform these functions in that jurisdiction until the city or county public works department is able to perform them. Performance of these functions in a jurisdiction by a local public works department shall not be suspended or revoked until after notice and opportunity for hearing as provided in chapter 17A.

The department shall give technical assistance to city and county public works departments upon request of such local public works departments.

[C97, §2565; C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, §135.11(7); C66, 71, §135.11(7), 455B.9 – 455B.11, 455B.15, 455B.17; C73, 75, §455B.33, 455B.37, 455B.66; C77, 79, 81, §455B.33; 82 Acts, ch 1050, §3]

C83, §455B.174

83 Acts, ch 137, §4; 86 Acts, ch 1245, §1899, 1899B; 92 Acts, ch 1041, §4; 96 Acts, ch 1079, §14; 97 Acts, ch 137, §4

455B.175 Violations.

If there is substantial evidence that any person has violated or is violating any provision of this part of this division or chapter 459, subchapter III, or of any rule or standard established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act by filing with the director within

thirty days a notice of appeal to the commission. On appeal the commission may affirm, modify or vacate the order of the director; or

2. If it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a hearing before the commission or by a court; or

3. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.191 or 459.604.

[C66, 71, §455B.12, 455B.15, 455B.17; C73, 75, §455B.34, 455B.37; C77, 79, 81, §455B.34]

C83, §455B.175

83 Acts, ch 137, §5; 86 Acts, ch 1245, §1899

455B.176 Criteria considered.

In establishing, modifying, or repealing water quality standards the commission shall base its decision upon data gathered from sources within the state regarding the following:

1. The protection of the public health;

2. The size, depth, surface area covered, volume, direction and rate of flow, stream gradient, and temperature of the affected water of the state;

3. The character and uses of the land area bordering the affected water of the state;

4. The uses which have been made, are being made, or may be made of the affected water of the state for public, private, or domestic water supplies, irrigation; livestock watering; propagation of wildlife, fish, and other aquatic life; bathing, swimming, boating, or other recreational activity; transportation; and disposal of sewage and wastes;

5. The extent of contamination resulting from natural causes including the mineral and chemical characteristics;

6. The extent to which floatable or settleable solids may be permitted;

7. The extent to which suspended solids, colloids, or a combination of solids with other suspended substances may be permitted;

8. The extent to which bacteria and other biological organisms may be permitted;

9. The amount of dissolved oxygen that is to be present and the extent of the oxygen demanding substances which may be permitted;

10. The extent to which toxic substances, chemicals or deleterious conditions may be permitted.

11. The economic costs and benefits. The goal shall be a reasonable balance between total costs to the people and to the economy, and the resultant benefits to the people of Iowa.

[C66, 71, §455B.13; C73, 75, 77, 79, 81, §455B.35]

C83, §455B.176

455B.177 Declaration of policy.

1. The general assembly finds and declares that because the federal Water Pollution Control Act provides for a permit system to regulate the discharge of pollutants into the waters of the United States and provides that permits may be issued by states which are authorized to implement that Act, it is in the interest of the people of Iowa to enact this part of this division in order to authorize the state to implement the federal Water Pollution Control Act, and federal regulations and guidelines issued pursuant to that Act.

2. The general assembly further finds and declares that because the federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as amended by Pub. L. No. 104-182, provides for the implementation of the Act by states which have adequate authority to do so, it is in the interest of the people of Iowa to implement the provisions of the federal Safe Drinking Water Act and federal regulations and guidelines issued pursuant to the Act.

[C77, 79, 81, §455B.36; 82 Acts, ch 1050, §4]

C83, §455B.177

96 Acts, ch 1079, §15; 97 Acts, ch 4, §5

455B.178 Judicial review.

Except as provided in section 455B.191, subsection 6, judicial review of any order or other action of the commission or of the director may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or such final order was entered.

[C66, 71, §455B.18; C73, 75, 77, 79, 81, §455B.39]

C83, §455B.178

86 Acts, ch 1245, §1899

455B.179 Trade secrets protected.

Upon a satisfactory showing by any person to the director that public disclosure of any record, report, permit, permit application, or other document or information or part thereof would divulge methods or processes entitled to protection as a trade secret, any such record, report, permit, permit application, or other document or part thereof other than effluent data and analytical results of monitoring of public water supply systems, shall be accorded confidential treatment. Notwithstanding the provisions of chapter 22, a person in connection with duties or employment by the department shall not make public any information accorded confidential status; however, any such record or other information accorded confidential status may be disclosed or transmitted to other officers, employees, or authorized representatives of this state or the United States concerned with car-

rying out this part of this division or chapter 459, subchapter III, or when relevant in any proceeding under this part of this division or chapter 459, subchapter III.

[C66, 71, §455B.17; C73, 75, §455B.37; C77, 79, 81, §455B.40]

C83, §455B.179

86 Acts, ch 1245, §1899; 96 Acts, ch 1079, §16

455B.180 Stay order.

The granting of a stay may be conditioned upon the furnishing by the appellant of such reasonable security as the court may direct. A stay may be vacated on application of the department or any other party after hearing by the court.

[C66, 71, §455B.20; C73, 75, 77, 79, 81, §455B.41]

C83, §455B.180

455B.181 Variances and exemptions.

The director may, after public notice and hearing, grant exemptions from a maximum contaminant level or treatment technique, or both. The director may also grant a variance from drinking water standards for public water supply systems when the characteristics of the raw water sources, which are available to a system, cannot meet the requirements with respect to maximum contaminant level of the standards despite application of the best treatment techniques which are generally available and if the director determines that the variance will not result in an unreasonable risk to the public health. A schedule of compliance may be prescribed by the director, at the time the variance or exemption is granted. The director shall also require the interim measures to minimize the contaminant levels of systems subject to the variance or exemption as may reasonably be implemented. The director may also issue variances from other rules of the department if necessary and appropriate. The director shall submit variances granted regarding a wastewater treatment facility to the commission for the commission's review within thirty days of the granting of a variance. The denial of a variance or exemption may be appealed to the commission.

[C77, 79, 81, §455B.42]

C83, §455B.181

86 Acts, ch 1245, §1899, 1899B; 87 Acts, ch 29, §1

455B.182 Failure constitutes contempt.

Failure to obey any order issued by the department with reference to a violation of this part of this division or chapter 459, subchapter III, or any rule promulgated or permit issued pursuant thereto shall constitute prima facie evidence of contempt. In such event the department may certify to the district court of the county in which such alleged disobedience occurred the fact of such failure. The district court after notice, as prescribed by the court, to the parties in interest shall then proceed to hear the matter and if it finds that the order was lawful and reasonable it shall order the party to comply with the order. If the person fails to comply with the court order, that person shall be guilty of contempt and shall be fined not to exceed five hundred dollars for each day that the person fails to comply with the court order. The penalties provided in this section shall be considered as additional to any penalty which may be imposed under the law relative to nuisances or any other statute relating to the pollution of any waters of the state or related to public water supply systems and a conviction under this section shall not be a bar to prosecution under any other penal statute.

[C66, 71, §455B.24; C73, 75, 77, 79, 81, §455B.44]

C83, §455B.182

455B.183 Written permits required.

It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department:

1. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto except those sewer extensions and water supply distribution system extensions that are subject to review and approval by a city or county public works department pursuant to this section, the use or disposal of sewage sludge, and private sewage disposal systems. Unless federal law or regulation requires the review and approval of plans and specifications, a permit shall be issued for the construction, installation, or modification of a public water supply system or part of a system if a qualified, registered engineer certifies to the department that the plans for the system or part of the system meet the requirements of state and federal law or regulations. The permit shall state that approval is based only upon the engineer's certification that the system's design meets the requirements of all applicable state and federal laws and regulations and the review of the department shall be advisory.

2. The construction or use of any new point source for the discharge of any pollutant into any water of the state.

3. The operation of any waste disposal system or public water supply system or any part of or extension or addition to the system. This provision does not apply to a pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal; a semipublic sewage disposal system, the construction of which has been approved by the department and which does not discharge into water of the state; or a private sewage disposal system which does not discharge into a water of the state.

Sludge from a semipublic or private sewage disposal system shall be disposed of in accordance with the rules adopted by the department pursuant to chapter 17A. The exemption of this paragraph shall not apply to any industrial waste discharges.

Upon adoption of standards by the commission pursuant to section 455B.173, subsections 5 to 8, plans and specifications for sewer extensions and water supply distribution system extensions covered by this section shall be submitted to the city or county public works department for approval if the local public works department employs a qualified, registered engineer who reviews the plans and specifications using the specific state standards known as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems that have been formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. The local agency shall issue a written permit to construct if all of the following apply:

a. The submitted plans and specifications are in substantial compliance with departmental rules and the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems.

b. The extensions primarily serve residential consumers and will not result in an increase greater than five percent of the capacity of the treatment works or serve more than two hundred fifty dwelling units or, in the case of an extension to a water supply distribution system, the extension will have a capacity of less than five percent of the system or will serve fewer than two hundred fifty dwelling units.

c. The proposed sewer extension will not exceed the capacity of any treatment works which received a state or federal monetary grant after 1972.

d. The proposed water supply distribution system extension will not exceed the production capacity of any public water supply system constructed after 1972.

After issuing a permit, the city or county public works department shall notify the director of such issuance by forwarding a copy of the permit to the director. In addition, the local agency shall submit quarterly reports to the director including such information as capacity of local treatment plants and production capacity of public water supply systems as well as other necessary information requested by the director for the purpose of implementing this chapter.

Plans and specifications for all other waste disposal systems and public water supply systems, including sewer extensions and water supply distribution system extensions not reviewed by a city or county public works department under this section, shall be submitted to the department before a written permit may be issued. Plans and specifications for public water supply systems and water supply distribution system extensions must be certified by a registered engineer as provided in subsection 1. The construction of any such waste disposal system or public water supply system shall be in accordance with standards formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. If it is necessary or desirable to make material changes in the plans or specifications, revised plans or specifications together with reasons for the proposed changes must be submitted to the department for a supplemental written permit. The revised plans and specifications for a public water supply system must be certified by a registered engineer as provided in subsection 1.

Prior to the adoption of statewide standards, the department may delegate the authority to review plans and specifications to those governmental subdivisions if in addition to compliance with subsection 3 the governmental subdivisions agree to comply with all state and federal regulations and submit plans for the review of plans and specifications including a complete set of local standard specifications for such improvements.

The director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in chapter 17A if the director determines that a city or county public works department has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of public water supply systems or which otherwise violate state or federal requirements.

The department shall exempt any public water supply system from any requirement respecting a maximum contaminant level or any treatment technique requirement of an applicable national drinking water regulation if these regulations apply to contaminants which the department determines are harmless or beneficial to the health of consumers and if the owner of a public water supply system determines that funds are not reasonably available to provide for controlling amounts of those contaminants which are harmless or beneficial to the health of consumers.

[C66, 71, §455B.25; C73, 75, 77, 79, 81, §455B.45; 82 Acts, ch 1199, §11, 96]

C83, §455B.183

83 Acts, ch 137, §6; 84 Acts, ch 1099, §1; 84 Acts, ch 1121, §4; 86 Acts, ch 1245, §1899, 1899B; 97 Acts, ch 4, §6; 97 Acts, ch 137, §5, 6

455B.183A Water quality protection fund.

1. A water quality protection fund is created in the state treasury under the control of the department. The fund consists of moneys appropriated to the fund by the general assembly, moneys deposited into the fund from fees described in subsection 2, and other moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the fund. The fund is divided into

two accounts, including the administration account and the public water supply system account. Moneys in the administration account shall be used for purposes of carrying out the provisions of this division, which relate to the administration, regulation, and enforcement of the federal Safe Drinking Water Act. Moneys in the public water supply system account shall be used to support the program to assist supply systems, as provided in section 455B.183B.

2. The commission shall adopt fees as required pursuant to section 455B.105 for permits required for public water supply systems as provided in sections 455B.174 and 455B.183. Fees paid pursuant to this section shall not be subject to the sales or services tax. The fees shall be for each of the following:

a. The construction, installation, or modification of a public water supply system. The amount of the fees may be based on the type of system being constructed, installed, or modified.

b. The operation of a public water supply system, including any part of the system. The commission shall adopt a fee schedule which shall be based on the total number of persons served by public water supply systems in this state. However, a public water supply system shall be assessed a fee of at least twenty-five dollars. A public water supply system not owned or operated by a community and serving a transient population shall be assessed a fee of twenty-five dollars. The commission shall calculate all fees in the schedule to produce total revenues equaling three hundred fifty thousand dollars for each fiscal year, commencing with the fiscal year beginning July 1, 1995, and ending June 30, 1996. For each fiscal year, one-half of the fees shall be deposited into the administration account and one-half of the fees shall be deposited into the public water supply system account. By May 1 of each year, the department shall estimate the total revenue expected to be collected from the overpayment of fees, which are all fees in excess of the amount of the total revenues which are expected to be collected under the current fee schedule, and the total revenue expected to be collected from the payment of fees during the next fiscal year. The commission shall adjust the fees if the estimate exceeds the amount of revenue required to be deposited in the fund pursuant to this paragraph.

3. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of revenue and finance, drawn upon the written requisition of the department.

4. Section 8.33 does not apply to moneys in the fund. Moneys earned as income, including interest from the fund, shall remain in the fund until expended.

5. On or before November 15 of each fiscal year, the department shall transmit to the department of management and the legislative fiscal bureau information regarding the fund and accounts, including all of the following:

a. The balance of unobligated and unencumbered moneys in each account as of November 1.

b. A summary of revenue deposited in and expenditures from each account during the current fiscal year.

c. Estimates of revenues expected to be deposited into the public water supply system account during the current fiscal year, and an estimate of the expected balance of unobligated and unencumbered moneys in the account on June 30 of the current fiscal year.

94 Acts, ch 1198, §48; 95 Acts, ch 216, §39

455B.183B Program to assist supply systems.

1. The state of Iowa declares its intention to retain its jurisdiction to enforce areas provided under the federal Safe Drinking Water Act as delegated to the state by the United States.

2. The department shall establish a program to assist supply systems, in order to provide assistance to ensure safe public water supplies. The department in administering the program shall provide technical advice and perform vulnerability and viability studies of public water supply systems.

3. Whenever practical, the department may enter into a contract with a person qualified to provide assistance services under this section, if the agreement for the services is cost-effective and the quality of the services ensures compliance with state and federal law. A person entering into a contract with the department for the purpose of providing the services shall be deemed to be an agent of the department, and shall have the same authority as provided to the department, unless the contract specifies otherwise. The department shall review assistance services performed by a person under a contract to ensure that quality cost-effective service is being provided.

4. The program shall be supported by moneys deposited in the public water supply system account created in the water quality protection fund established pursuant to section 455B.183A.

94 Acts, ch 1198, §49

455B.183C Personnel — department of management.

Notwithstanding any limitation upon the department's number of full-time equivalent positions as defined in section 8.36A, any point limitation on personnel, or any other limitation upon the number of personnel or their employment classification, imposed by the department of management, the department may employ the number of full-time equivalent positions which equals the number of positions allocated by the general assembly to the department for each applicable fiscal year in order to carry out the provisions of this division relating to the administration, regula-

tion, and enforcement of the federal Safe Drinking Water Act and the program to assist supply systems, but only to the extent that moneys used to support the positions derive from moneys deposited in the water quality protection fund, as provided in section 455B.183A. If a specific number of full-time equivalent positions are not allocated by the general assembly, the department may fill any number of positions required to administer the program, to the extent the positions are supported by the fund.

94 Acts, ch 1198, §50

455B.184 Disposal system plans.

The department may also require the owner of a disposal system, discharging pollutants into any water of the state, or of a public water supply system to file with it complete plans of the whole or any part of such system and any other information and records concerning the installation and operation of such system.

[C66, 71, §455B.26; C73, 75, 77, 79, 81, §455B.46]

C83, §455B.184

455B.185 Data from departments.

The commission and the director may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the commission or the director to properly carry out their activities and effectuate the purposes of this part 1 of division III and chapter 459, subchapter III. The department shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

[C66, 71, §455B.27; C73, 75, 77, 79, 81, §455B.47]

C83, §455B.185

86 Acts, ch 1245, §1899

455B.186 Prohibited actions.

1. A pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director. A pollutant whether treated or untreated shall not be discharged into any state-owned natural or artificial lake.

2. A pesticide shall not be applied to any water of this state which has been classified by the department as a class "A" or class "C", high quality, or high quality resource water, except that this section shall not be construed to prohibit the application of such a pesticide by a certified applicator who is trained in aquatic applications and who has received a permit from the department.

[C66, 71, §455B.28; C73, 75, 77, 79, 81, §455B.48]

C83, §455B.186

86 Acts, ch 1245, §1899; 90 Acts, ch 1167, §1

455B.187 Water well construction.

A contractor shall not engage in well construction or reconstruction without first registering or being certified as required in department rules. If a well contractor is registered prior to July 1, 1991, the well contractor shall meet the requirements of certification by July 1, 1993. Following adoption of the rules establishing a well contractor certification program, a person seeking initial well contractor status shall meet the requirements established for certification. Beginning July 1, 1993, the department shall replace the registration program with the well certification program. Water wells shall not be constructed, reconstructed, or abandoned by a person except as provided in this part or rules adopted pursuant to this part. Within thirty days after construction or reconstruction of a well, a contractor shall provide well information required by rule to the department and the Iowa geological survey.

A landowner or the landowner's agent shall not drill for or construct a new water well without first obtaining a permit for this activity from the department. The department shall not issue a permit to any person for this activity unless the person first registers with the department all wells, including abandoned wells, on the property. The department may delegate the authority to issue a permit to a county board of supervisors or the board's designee. In the event of such delegation, the department shall retain concurrent authority. The commission shall adopt rules pursuant to chapter 17A to implement this paragraph.

Notwithstanding the provisions of this section, a county board of supervisors or the board's designee may grant an exemption from the permit requirements to a landowner or the landowner's agent if an emergency drilling is necessary to meet an immediate need for water. The exemption shall be effective immediately upon approval of the county board of supervisors or the board's designee. The board of supervisors or the board's designee shall notify the director within thirty days of the granting of an exemption.

In the case of property owned by a state agency, a person shall not drill for or construct a new water well without first registering with the department the existence of any abandoned wells on the property. The department shall develop a prioritized closure program and time frame for the completion of the program, and shall adopt rules to implement the program.

85 Acts, ch 176, §4; 87 Acts, ch 225, §304; 91 Acts, ch 224, §6

455B.188 Provision for emergency replacement of water wells.

Rules adopted to implement section 455B.172, subsection 6, paragraph *"b"*; section 455B.173, subsection 9; and section 455B.187 shall specifically provide for the immediate replacement or reconstruction of water wells in response to the sudden and unforeseen loss or serious impairment of a well for its intended use. These provisions shall include the granting of emergency authorizations and registration of well contractors pursuant to section 455B.187 and may include the granting of variances and exemptions from technical standards as appropriate.

85 Acts, ch 176, §5

455B.189 Reserved.

455B.190 Abandoned wells properly plugged.

1. As used in this section:

a. "Class 1 well" means a well one hundred feet or less in depth and eighteen inches or more in diameter.

b. "Class 2 well" means a well more than one hundred feet in depth or less than eighteen inches in diameter or a bedrock well.

c. "Class 3 well" means a sandpoint well or a well fifty feet or less in depth constructed by joining a screened drive point with lengths of pipe and driving the assembly into a shallow sand and gravel aquifer.

d. "Department" means the department of natural resources.

e. "Designated agent" means a person other than the state, designated by a county board of supervisors to review and confirm that a well has been properly plugged.

f. "Filling materials" means agricultural lime. Filling materials may also include other materials, including soil, sand, gravel, crushed stone, and pea gravel as approved by the department.

g. "Owner" means the titleholder of the land where a well is located.

h. "Plug" means the closure of an abandoned well with plugging materials which will permanently seal the well from contamination by surface drainage, or permanently seal off the well from contamination into an aquifer.

i. "Plugging materials" means filling and sealing materials.

j. "Sealing materials" means bentonite. Sealing materials may also include neat cement, sand cement grout, or concrete as approved by the department.

k. "Well" means an abandoned well as defined in section 455B.171.

2. All wells shall be properly plugged in accordance with the schedule established by the department. The department shall develop a prioritized closure program and a time frame for the completion of the program and shall adopt rules to implement the program. The schedule established by the department shall provide that to the fullest extent technically and economically feasible, all wells shall be properly plugged not later than July 1, 2000.

3. Wells shall be plugged as follows:

a. Class 1 wells shall be plugged by placing filling materials up to one foot below the static water level. At least one foot of sealing materials shall be placed on top of the filling materials up to the static water level, as a seal. Filling materials shall be added up to four feet below the ground surface. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The casing pipe shall be removed down to at least four feet below the ground surface and shall be capped with at least one foot of sealing materials. Obstructions shall be removed from the top four feet of the ground surface and the top four feet shall be backfilled with soil and graded.

b. Class 2 wells shall be plugged by placing filling materials at the bottom of the well up to four feet below the static water level. At least four feet of sealing material shall be added on top of the filling material up to the original static water level. Filling materials shall be placed up to four feet below the ground surface and the well shall be capped with at least one foot of sealing material. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The upper four feet of the casing pipe below the ground surface shall be removed. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

c. Class 3 wells shall be plugged by pulling the casing and sandpoint out of the ground, and collapsing the hole. The well may also be plugged by placing sealing materials up to four feet below the ground surface and by removing the upper four feet of casing pipe below the ground surface. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

4. The department shall sponsor an advertising campaign directed to persons throughout the state by print and electronic media designed to notify owners of the deadline for plugging wells, penalties for noncompliance, and information about receiving assistance in plugging wells.

5. An owner may, independent of a contractor, plug a well pursuant to this section subject to review and confirmation by a designated agent of the county or a well driller registered with the department.

6. A person who fails to properly plug a well on property the person owns, in accordance with the program established by the department, or as reported by a designated agent or a registered or certified well contractor, is subject to a civil penalty

of up to one hundred dollars per every five calendar days that the well remains unplugged or improperly plugged. However, the total civil penalty shall not exceed one thousand dollars. The penalty shall only be assessed after the one thousand dollar limit is reached. If the owner plugs the well in compliance with this section, including applicable departmental rules, before the date that the one thousand dollar limit is reached, the civil penalty shall not be assessed. The penalty shall not be imposed upon a person for improperly plugging a well until the department notifies the person of the improper plugging. The moneys collected shall be deposited in the financial incentive portion of the agriculture management account. The department of agriculture and land stewardship may provide by rule for financial incentive moneys, through expenditure of the moneys allocated to the financial-incentive-program portion of the agriculture management account, to reduce a person's cost in properly plugging wells abandoned prior to July 1, 1987.

87 Acts, ch 225, §305; 89 Acts, ch 286, §1; 91 Acts, ch 224, §7

455B.190A Well contractor certification program.

1. As used in this section:

a. "Certified well contractor" means a well contractor who has successfully passed an examination prescribed by the department to determine the applicant's qualifications to perform well drilling or pump services or both.

b. "Examination" means an examination for well contractors which includes, but is not limited to, relevant aspects of Iowa groundwater law, well construction, well maintenance, pump services, and well abandonment practices which protect groundwater and water supplies.

c. "Groundwater" means groundwater as defined in section 455E.2.

d. "Pump services" means the installation, repair, and maintenance of water systems.

e. "Water systems" means any part of the mechanical portion of a water well that delivers water from the well to a valve that separates the well from the plumbing system. *"Water systems"* includes the pump, drop pipe to the well, electrical wire from the pump to the electrical panel, piping from the well to the pressure tank, pitless unit or adaptor, and all related miscellaneous fittings necessary to operate the well pump. *"Water systems"* does not include any outside piping to other buildings, and does not include the piping that carries the water in the remainder of the distribution system.

f. "Water well" or *"well"* means water well as defined in section 455B.171.

g. "Well contractor" means contractor as defined pursuant to section 455B.171, subsection 3.

h. "Well contractors' council" means the council established in subsection 3.

i. "Well services" means new well construction, well reconstruction, installation of pitless equipment, pump services, or well plugging.

2. The department shall establish a well contractor certification program which shall include all of the following provisions:

a. Specification of certification requirements, including minimum work experience levels, successful completion of an examination, and continuing education requirements.

b. A certified well contractor shall be present at the well site and in direct charge of the services whenever well services are provided.

c. A person shall not act as a well contractor on or after July 1, 1993, unless the person is certified by the department pursuant to this section.

d. Violation of the rules regarding the provision of well services are grounds for suspension or revocation of certification.

e. Provisional certification may be obtained by an applicant in instances of shortages of certified personnel if all of the following conditions are met:

(1) The applicant provides documentation of at least one year of work experience in well services performed under the direct supervision of a certified well contractor.

(2) The applicant successfully completes the examination.

(3) A certified well contractor who employs an applicant for well contractor certification cosigns the application for provisional certification. An employer who cosigns an application for provisional certification is jointly liable for a violation of the rules regarding well services by the provisionally certified well contractor and the violation is grounds for the suspension or revocation of certification of the certified well contractor and the provisionally certified well contractor.

f. The department shall develop continuing education requirements for certification of a well contractor in consultation with the well contractors' council.

g. The examination shall be developed by the department in consultation with the well contractors' council to determine the applicant's qualifications to perform well drilling or pump services or both. The examination shall be updated as necessary to reflect current groundwater law and well construction, maintenance, pump services, and abandonment practices. The examination shall be administered by the department or by a person designated by the department.

h. The department may provide for multiyear certification of well contractors.

3. *a.* The department shall establish a well contractors' council.

b. The membership of the council shall consist of the following members:

(1) Two well drilling contractors.

(2) Two pump installation contractors.

(3) One citizen member of the Iowa ground-

water association or its successor.

(4) One citizen member of the Iowa environmental health association or its successor.

(5) The director of public health or the director's designee.

(6) The state geologist or the state geologist's designee.

(7) The director of the state hygienic laboratory or the director's designee.

c. The council shall advise and assist the department in doing all of the following:

(1) The development, review, and revision of the department's rules to implement this section.

(2) The development, updating, and revision of the examination for well contractor certification.

(3) The establishment, review, and revision of the continuing education requirements for certification.

(4) The production and publication of the consumer information pamphlet.

d. The council shall meet as often as necessary to perform the council's duties. The department shall provide the council with staff assistance.

4. The department shall develop, in consultation with the well contractors' council, a consumer information pamphlet regarding well construction, well maintenance, well plugging, pump services, and Iowa groundwater laws. The department and the council shall review and revise the consumer information pamphlet as necessary. The consumer information pamphlet shall be supplied to well contractors, at cost, and well contractors shall supply one copy at no cost to potential customers prior to initiation of well services.

5. The department shall establish by rule and collect, in consultation with the well contractors' council, the following fees to be used to implement and administer the provisions of this section:

a. An annual certification fee to be paid by certified well contractors. The initial annual certification fee is one hundred fifty dollars. The fee may be increased by rule, as necessary, to reflect the costs of administration of the program. The department may establish a fee for multiyear certification.

b. The department may also charge and collect fees for testing, the provision of continuing education, and other fees related to and based on the actual costs of the well contractor certification program.

6. Rules adopted by the commission shall be developed in consultation with the council. If a majority of the council does not endorse the rules adopted by the commission, notice shall be sent to the administrative rules review committee indicating the council's position.

7. A well contractor who is engaged in performing pump services on or prior to June 30, 2004, and who registers as a pump installer with the department by June 30, 2004, shall be deemed to have met the certification requirements of this section without examination. Beginning July 1, 2004, a pump installer seeking an initial well contractor certification shall meet the requirements for certification established in this section.

91 Acts, ch 224, §2; 2002 Acts, ch 1077, §1 – 5

Provision of notice to persons performing pump services on or before June 30, 2004, regarding duty to register and become certified well contractors; 2002 Acts, ch 1077, §6

Subsection 1 amended

Subsection 2, paragraphs d, e, and g amended

Subsection 3 stricken and rewritten

Subsection 4 amended

NEW subsection 7

455B.191 Penalties — burden of proof.

1. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation.

2. Any person who negligently or knowingly violates section 455B.183 or section 455B.186 or any condition or limitation included in any permit issued under section 455B.183, or who negligently or knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal and state requirements or permits, negligently or knowingly causes a treatment works to violate any water quality standard, effluent standard, pretreatment standard or condition of a permit issued to the treatment works pursuant to section 455B.183 is guilty of a serious misdemeanor for a negligent violation and is guilty of an aggravated misdemeanor for a knowing violation. A conviction for a negligent violation is punishable by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or both; however, if the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both. A conviction for a knowing violation is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both; however, if the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than one hundred thousand dollars for each day of violation or by imprisonment for not more than five years, or both. As used in this section, *"hazardous substance"* means hazardous substance as defined in section 455B.381 or section 455B.411.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other docu-

ment filed or required to be maintained under part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

4. The attorney general shall, at the request of the director with approval of the commission, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the director or the commission after notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

5. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 455B.182.

6. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.178 shall be raised in the legal proceedings instituted in accordance with this section.

[C66, 71, §455B.23, 455B.25; C73, §455B.43, 455B.45, 455B.49; C75, §455B.43, 455B.49; C77, 79, 81, §455B.49]

C83, §455B.187

C85, §455B.191

86 Acts, ch 1245, §1899A; 88 Acts, ch 1080, §1, 2; 95 Acts, ch 195, §23; 98 Acts, ch 1209, §24; 2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Former sections in chapter 455B, division III, applicable to animal feeding operations transferred to chapter 459, subchapter III, pursuant to legislative directive in 2002 Acts, ch 1137; see also §459.603

Subsections 7 and 8 transferred to §459.604; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

455B.192 Local government — penalties.

Notwithstanding sections 331.302, 331.307, 364.3, and 364.22, a city or county may assess a civil penalty for a violation of this division which is equal to the amount the department has assessed for a violation under this division.

93 Acts, ch 137, §8

455B.193 Qualifications for collection of credible data.

For purposes of this part, all of the following shall apply:

1. Data is not credible data unless the data originates from studies and samples collected by the department, a professional designee of the department, or a qualified volunteer. For purposes of this subsection, *"professional designee"* includes governmental agencies other than the department, and a person hired by, or under contract for compensation with, the department to collect or study data.

2. All information submitted by a qualified volunteer shall be reviewed and approved or disapproved by the department. The qualified volunteer shall submit a site specific plan with data which includes information used to obtain the data, the sampling and analysis plan, and quality control and quality assurance procedures used in the monitoring process. The qualified volunteer must provide proof to the department that the water monitoring plan was followed. The department shall review all data collected by a qualified volunteer, verify the accuracy of the data collected by a qualified volunteer, and determine that all components of the water monitoring plan were followed.

3. The department shall retain all information submitted by a qualified volunteer submitting the information for a period of not less than ten years from the date of receipt by the department. All information submitted shall be a public record.

4. The department shall adopt rules establishing requirements for a person to become a qualified volunteer.

The department of natural resources shall develop a methodology for water quality assessments as used in the section 303(d) lists and assess the validity of the data.

2000 Acts, ch 1068, §10; 2000 Acts, ch 1232, §73

455B.194 Credible data required.

1. The department shall use credible data when doing any of the following:

a. Developing and reviewing any water quality standard.

b. Developing any statewide water quality inventory or other water assessment report.

c. Determining whether any water of the state is to be placed on or removed from any section 303(d) list.

d. Determining whether any water of the state is supporting its designated use or other classification.

e. Determining any degradation of a water of the state under 40 C.F.R. § 131.12.

f. Establishing a total maximum daily load for any water of the state.

2. Notwithstanding subsection 1, credible data shall not be required for any section 305(b) report and credible data shall not be required for the establishment of a designated use or other classification of a water of the state.

3. This section shall not be construed to require credible data as defined in section 455B.171, subsection 4, in order for the department to bring an enforcement action for an illegal discharge.

2000 Acts, ch 1068, §11

2000 Acts, ch 1068, requirements apply to section 303(d) lists created after the year 2000 list; 2000 Acts, ch 1068, §14

455B.195 Use or analysis of credible data.

1. For any use or analysis of credible data described in section 455B.194, subsection 1, all of the following shall apply:

a. The use of credible data shall be consistent with the requirements of the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

b. The data quality for removal of water of the state from any list of impaired waters including any section 303(d) list shall be the same as the data quality for adding a water to that list.

c. A water of the state shall not be placed on any section 303(d) list if the impairment is caused solely by violations of national pollutant discharge elimination system program permits or stormwater permits issued pursuant to section 455B.103A and the enforcement of the pollution control measures is required.

d. A water of the state shall not be placed on any section 303(d) list if the data shows an impairment, but existing technology-based effluent limits or other required pollution control measures are adequate to achieve applicable water quality standards.

e. If a pollutant causing an impairment is unknown, the water of the state may be placed on a section 303(d) list. However, the department shall continue to monitor the water of the state to determine the cause of impairment before a total maximum daily load is established for the water of the state and a water of the state listed with an unknown status shall retain a low priority for a total maximum daily load development until the cause of the impairment is determined unless the department, after taking into consideration the use of the water of the state and the severity of the pollutant, identifies compelling reasons as to why the water of the state should not have a low priority.

f. When evaluating the waters of the state, the department shall develop and maintain three separate listings including a section 303(d) list, a section 305(b) report, and a listing for which further investigative monitoring is necessary. The section 305(b) report shall be a summary of all potential impairments for which credible data is not required. If credible data is not required for a section 305(b) report, the placement of a water of the state on any section 305(b) report alone is not sufficient evidence for the water of the state's placement on any section 303(d) list. When developing a section 303(d) list, the department is not required to use all data, but the department shall assemble and evaluate all existing and readily available water quality-related data and information. The department shall provide documentation to the regional administrator of the federal environmental protection agency to support the state's determination to list or not to list its waters.

g. The department shall take into consideration any naturally occurring condition when placing or removing any water of the state on any section 303(d) list, and establishing or allocating responsibility for a total maximum daily load.

h. Numerical standards shall have a preference over narrative standards. A narrative standard shall not constitute the basis for determining an impairment unless the department identifies specific factors as to why a numeric standard is not sufficient to assure adequate water quality.

i. If the department has obtained credible data for a water of the state, the department may also use historical data for that particular water of the state for the purpose of determining whether any trends exist for that water of the state.

2. This section shall not be construed to require or authorize the department to perform any act listed in section 455B.194, subsection 1, not otherwise required or authorized by applicable law.

2000 Acts, ch 1068, §12

2000 Acts, ch 1068, requirements apply to section 303(d) lists created after the year 2000 list; 2000 Acts, ch 1068, §14

455B.196 through 455B.199 Reserved.

ANIMAL FEEDING OPERATIONS

455B.200 General. Transferred to § 459.103; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

455B.200A Permit requirements. Transferred to § 459.303; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

455B.200B Confinement feeding operations — special terms. Transferred to § 459.301; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

New subsection 6, paragraphs a – j, enacted in 2002 Acts, ch 1137, §32, transferred to §459.102, subsections 17, 19, 20, 25, 27, 29, 32, 35, 47, and 48, pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

455B.201 Minimum manure control. Transferred to § 459.311; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

455B.202 Confinement feeding operations — pending actions and habitual violators. Transferred to § 459.317; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

455B.203 Manure management plan — requirements. Transferred to § 459.312; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

455B.203A Manure applicators certification. Transferred to § 459.315; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

455B.203B Application requirements. Transferred to § 459.313; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

455B.204 Distance requirements. Transferred to § 459.310; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

For text of section effective until March 1, 2003, see Code 2001; 2002 Acts, ch 1137, §71

455B.204A Disposal of manure within designated areas — adoption of rules. Transferred to § 459.314; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

For text of section effective until March 1, 2003, see Code 2001; 2002 Acts, ch 1137, §71

455B.205 Manure storage structures — construction standards — inspections. Transferred to § 459.308; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

455B.206 Exception to regulation. Transferred to § 459.318; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262.

455B.207 through 455B.210 Reserved.

PART 2

WATER TREATMENT

455B.211 Definitions.

When used in this part 2 of division III, unless the context otherwise requires:

1. *"Certificate"* means the certificate of competence issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

2. *"Operator"* means a person who has direct responsibility for the operation of a water treatment plant, water distribution system, or waste water treatment plant.

3. *"Water distribution system"* means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.

4. *"Water supply system"* means the system of pipes, structures, and facilities through which a public water supply is obtained, treated and sold or distributed for human consumption or household use.

5. *"Water treatment plant"* means that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.

6. *"Waste water treatment plant"* means the facility or group of units used for the treatment of waste water from public sewer systems and for the reduction and handling of solids removed from such wastes.

[C66, 71, §136A.1; C73, 75, 77, 79, 81, §455B.50]
C83, §455B.211
86 Acts, ch 1245, §1890

455B.212 Director's duties.

The director shall classify all water treatment plants, water distribution systems, and waste water treatment plants affecting the public welfare with regard to the size, type, character of water and waste water to be treated and other physical conditions affecting such treatment plants and distribution systems, and according to the skill, knowledge, and experience that an operator must have to supervise the operation of the facilities to protect the public health and prevent pollution. The director may appoint advisory committees to advise the department in carrying out the requirements of this part.

[C66, 71, §136A.2; C73, 75, 77, 79, 81, §455B.51]
C83, §455B.212
86 Acts, ch 1245, §1891, 1899

455B.213 Certification of operators.

1. *By director.* The director shall certify persons as to their qualifications to supervise the operation of treatment plants and water distribution systems after considering the recommendations of the commission.

2. *Applications.* Applications for certification shall be on forms prescribed and furnished by the department and shall not contain a recent photograph of the applicant. An applicant is not ineligible for certification because of age, citizenship, sex, race, religion, marital status, or national origin although the application may require citizenship information. The director may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of operation of waterworks or wastewater works.

Character references may be required, but shall not be obtained from certificate holders.

3. *Disclosure of confidential information.* An employee of the department shall not disclose information relating to the following:

a. Criminal history or prior misconduct of the applicant.

b. Information relating to the contents of the examination to persons other than members of a board of certification of another state or their employees or an employee of the department.

c. Information relating to the examination results other than final scores except for information about the results of an examination which is given to the person who took the examination.

4. *Violation.* An employee of the department who willfully communicates or seeks to communicate such information, and a person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

A member of the commission who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days.

[C66, 71, §136A.3; C73, 75, 77, 79, 81, §455B.52]
C83, §455B.213
86 Acts, ch 1245, §1892, 1899; 88 Acts, ch 1134, §85

455B.214 Board. Repealed by 86 Acts, ch 1245, § 1899O.

455B.215 Organization — compensation and expenses. Repealed by 86 Acts, ch 1245, § 1899O.

455B.216 Examinations.

The director shall hold at least one examination each year for the purpose of examining candidates for certification at a time and place designated by the director. Any written examination may be given by the department. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. Those applicants whose competency is acceptable shall be recommended for certification. Applicants who fail the examination shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the department concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the director administers a uniform, standardized examination, the director is only required to provide the examination grade and the other information concerning the applicant's examination results which is available to the department.

[C66, 71, §136A.7; C73, 75, 77, 79, 81, §455B.56]
C83, §455B.216
86 Acts, ch 1245, §1893

455B.217 Operator's certificate.

When the director is satisfied that an applicant is qualified by examination or otherwise, the director shall issue a certificate attesting to the competency of the applicant as an operator. The certificate shall indicate the classification of works which the operator is qualified to supervise.

[C66, 71, §136A.9; C73, 75, 77, 79, 81, §455B.57]
C83, §455B.217
86 Acts, ch 1245, §1894

455B.218 Duration of certificates — fee — renewal.

Certificates shall be for the multiyear period determined by the director unless sooner revoked by the director, but the certificates remain the property of the department and the certificate shall so state. The fee for issuance of certificates as determined under section 455B.221 shall be prorated on a quarterly basis for any original certificate issued for a period of less than twelve months. A person who fails to renew a certificate prior to its expiration shall be allowed to renew it within thirty days following its expiration, but the director may assess a reasonable penalty as established by rule.

[C66, 71, §136A.10; C73, 75, 77, 79, 81, §455B.58]
C83, §455B.218
86 Acts, ch 1245, §1895

455B.219 Revocation or suspension.

The director may suspend or revoke the certificate of an operator, following a hearing before the director, when the operator is guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the operator's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to operate a water treatment or wastewater treatment plant. A copy of the record of conviction or

plea of guilty shall be conclusive evidence.

6. Fraud in representation as to skill or ability.

7. Use of untruthful or improbable statements in advertisements.

8. Willful or repeated violations of division III of this chapter.

[C66, 71, §136A.11; C73, 75, 77, 79, 81, §455B.59]

C83, §455B.219

86 Acts, ch 1245, §1896

455B.220 Certificate without examination.

1. A certificate in appropriate classification shall be issued without examination to any operator who, prior to January 1, 1973, held a valid certificate attained by examination and issued by the commissioner of public health.

2. A certificate of proper classification shall be issued without examination to any operator who, prior to January 1, 1973, held a valid certificate to operate a particular treatment plant or water distribution system. The certificate so issued shall be valid only for that particular treatment plant or system and shall remain in effect indefinitely unless revoked as provided in section 455B.219.

3. A certificate of proper classification may be issued without examination to operators of a water distribution system in which water is conveyed from a supply point to the premises of consumers without treatment which in some way alters the physical, chemical, or bacteriological quality of the water and which serves a population of not more than two hundred fifty persons. Renewals of those certificates issued shall be governed by the provisions of this part 2 of division III and rules promulgated pursuant to this part. Notwithstanding chapter 272C, continuing education requirements shall not be imposed as a condition of certificate renewal for certificates issued under this subsection.

[C66, 71, §136A.12, 136A.13; C73, 75, 77, 79, 81, §455B.60]

C83, §455B.220

84 Acts, ch 1099, §2

455B.221 Certification and examination fees.

The director may charge a fee for certificates issued under this part. The fee for the certificates and for renewal shall be based on the costs of administering and enforcing this part and paying the expenses of the department relating to certification. The department shall be reimbursed for all costs incurred. The director shall set a fee for the examination which shall be based upon the annual cost of administering the examinations. All fees collected shall be retained by the department for administration of the certification program.

[C66, 71, §136A.14; C73, 75, 77, 79, 81, §455B.61]

C83, §455B.221

86 Acts, ch 1245, §1897; 94 Acts, ch 1059, §1

455B.222 Rules.

The commission may adopt rules as are necessary to carry out this part.

[C66, 71, §136A.15; C73, 75, 77, 79, 81, §455B.62]

C83, §455B.222

86 Acts, ch 1245, §1898

455B.223 Competent operator required.

It shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency, operating a water treatment plant, water distribution system or wastewater treatment plant to operate same unless the competency of the operator to operate such plant or system is duly certified to by the director under the provisions of this part 2 of division III. It shall also be unlawful for any person to perform the duties of an operator, as defined herein, without being duly certified under the provisions of said part.

[C66, 71, §136A.16; C73, 75, 77, 79, 81, §455B.63]

C83, §455B.223

455B.224 Simple misdemeanor.

Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, violating any provisions of this part 2 of division III or the rules adopted thereunder after written notice thereof by the executive director is guilty of a simple misdemeanor. Each day of operation in such violation of said part or any rules adopted thereunder shall constitute a separate offense. It shall be the duty of the appropriate county attorney to secure injunctions of continuing violations of any provisions of said part or the rules adopted thereunder.

[C66, 71, §136A.17; C73, 75, 77, 79, 81, §455B.64]

C83, §455B.224

455B.225 to 455B.240 Reserved.

PART 3

SEWAGE WORKS CONSTRUCTION

455B.241 Fund.

There is established a fund to be known as the *"sewage works construction fund"*. All moneys appropriated to and deposited in the sewage works construction fund are hereby appropriated for and shall be used by the department in carrying out the purposes of this part 3 of division III.

When used in said part, and unless the context requires otherwise:

1. *"Construction"* means the erection, building, acquisition, alteration, reconstruction, improvement, or extension of treatment works; preliminary planning to determine the economic and engineering feasibility of treatment works; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, inspection, and supervision, and other action necessary in the construction of treatment works.

2. *"Eligible project"* means a project for construction of sewage treatment works:

a. For which approval of the director is required under this part 3 of division III.

b. Which is, in the judgment of the director, eligible for federal pollution abatement assistance, whether or not federal funds are then available for such purpose. Eligible projects shall be those which the construction contract therefor shall have been entered into subsequent to July 1, 1966.

c. Which conforms with applicable rules of the commission.

d. Which is, in the judgment of the director, necessary for the accomplishment of the state's policy of water purity.

3. *"Federal pollution abatement assistance"* means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works pursuant to the federal Water Pollution Control Act as defined in section 455B.171.

4. *"Municipality"* means the city, sanitary district, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of such governmental bodies or corporations acting jointly, in connection with an eligible project.

5. *"Treatment works"* means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, interceptor sewer, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes, which qualify for federal grants pursuant to the federal Water Pollution Control Act as defined in section 455B.171, or any other federal Act or program.

[C71, §455C.1; C73, 75, 77, 79, 81, §455B.67; 82 Acts, ch 1050, §5]
C83, §455B.241
86 Acts, ch 1245, §1899

455B.242 Grants of assistance.

The director may make grants as funds are available to any municipality to assist such municipality in the construction of sewage treatment works.

[C71, §455C.2; C73, 75, 77, 79, 81, §455B.68]
C83, §455B.242
86 Acts, ch 1245, §1899

455B.243 Acceptance of grants.

The director shall accept and administer all funds granted by the state pursuant to this part 3 of division III.

In allocating state grants under said part, the director shall give consideration to:

1. The public benefits to be derived by the construction.

2. The ultimate cost of constructing and maintaining the works.

3. The public interest and public necessity for the works.

4. The adequacy of the provisions made or proposed by the municipality for assuring proper and efficient operation and maintenance of the treatment works after the completion of construction thereof.

5. The applicant's readiness to start construction, including financing and planning.

[C71, §455C.3; C73, 75, 77, 79, 81, §455B.69]
C83, §455B.243
86 Acts, ch 1245, §1899

455B.244 Contracts.

The director may, in the name of the state, contract with any municipality concerning eligible projects, subject to the approval of the commission. The contract may include such provisions as may be agreed upon by the parties, and shall include, in substance, the following provisions:

1. An estimate of the reasonable cost of the project as determined by the director.

2. An agreement by the director to pay to the municipality, during the progress of construction or following completion of the construction as may be agreed upon by the parties, an amount as determined by appropriation of the general assembly.

3. An agreement by the municipality:

a. To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to this part 3 of division III and pursuant to part 1 of this division III.

b. To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the director.

c. To operate and maintain the sewage treatment works in accordance with applicable provisions of part 1 of this division III and rules of the commission.

d. To obtain approval of the director before applying for federal assistance for pollution abatement, in order to maximize the amounts of such assistance received or to be received for all projects in Iowa.

e. To provide for the payment by the municipality of its share of the cost of the project.

4. A provision that, if federal assistance which was not included in the calculation of the state payment pursuant to subsection 2 becomes available to the municipality, the amount of the state

payment shall be recalculated with the inclusion of the additional federal assistance and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation.

[C71, §455C.4; C73, 75, 77, 79, 81, §455B.70]
C83, §455B.244
86 Acts, ch 1245, §1899

455B.245 Rules.

The commission may adopt such rules as are necessary for the effective administration of this part 3 of this division III.

[C71, §455C.5; C73, 75, 77, 79, 81, §455B.71]
C83, §455B.245

455B.246 Review of contracts by attorney general.

All contracts entered into pursuant to this part 3 of division III shall be subject to approval of the attorney general as to form. All payments by the state pursuant to such contracts shall be made after review and by warrant of the director of revenue and finance to the credit of the municipality and shall be used for the payment of costs of construction of an eligible project. However, if such costs have been paid by the municipality, then such payment may be used by the municipality for:

1. The payment of outstanding bonds or obligations incurred for any such eligible project.
2. Any improvement or extension of an eligible project.
3. Any other lawful municipal purpose determined to be necessary, reasonable, and in the interest of the public welfare.

[C71, §455C.6; C73, 75, 77, 79, 81, §455B.72]
C83, §455B.246

455B.247 to 455B.260 Reserved.

PART 4

WATER ALLOCATION AND USE;
FLOOD PLAIN CONTROL

455B.261 Definitions.

As used in this part of division III, unless the context otherwise requires:

1. *"Aquifer"* means a water-bearing geologic formation which is capable of yielding a usable quantity of water to a well or spring and which transports and stores groundwater.
2. *"Aquifer storage and recovery"* means the injection and storage of treated water in an aquifer through a permitted well during times when treated water is available, and withdrawal of the treated water from the same aquifer through the same well during times when treated water is needed.
3. *"Basin"* means a specific subsurface water-bearing reservoir having reasonably ascertainable boundaries.
4. *"Beneficial use"* means the application of water to a useful purpose that inures to the benefit of the water user and subject to the user's dominion and control but does not include the waste or pollution of water.
5. *"Depleting use"* means the storage, diversion, conveyance, or other use of a supply of water if the use may impair rights of lower or surrounding users, may impair the natural resources of the state, or may injure the public welfare if not controlled.
6. *"Diffused waters"* means waters from precipitation and snowmelt which is not a part of any watercourse or basin including capillary soil water.
7. *"Established average minimum flow"* means the average minimum flow for a given watercourse at a given point determined and established by the commission. The "average minimum flow" for a given watercourse shall be determined by the following factors:

a. Average of minimum daily flows occurring during the preceding years chosen by the commission as more nearly representative of changing conditions and needs of a given drainage area at a particular time.

b. Minimum daily flows shown by experience to be the limit at which further withdrawals would be harmful to the public interest in any particular drainage area.

c. The minimum daily flows shown by established discharge records and experiences to be definitely harmful to the public interest.

The determination shall be based upon available data, supplemented, when available data are incomplete, with whatever evidence is available.

8. *"Flood plains"* means the area adjoining a river or stream which has been or may be covered by flood water.
9. *"Floodway"* means the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any river or stream.
10. *"Groundwater"* means that water occurring beneath the surface of the ground.
11. *"Nonregulated use"* means any beneficial use of water by any person of less than twenty-five thousand gallons per day.
12. *"Permit"* means a written authorization issued by the department to a permittee which authorizes diversion, storage, including storage of treated water in an aquifer, or withdrawal of water limited as to quantity, time, place, and rate in accordance with this part or authorizes construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain in accordance with the principles and policies of protecting life and property from floods as specified in this part.

13. *"Permittee"* means a person who obtains a permit from the department authorizing the person to take possession by diversion, storage in an aquifer, or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for that purpose or a person who obtains a permit from the department authorizing construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain for a designated purpose.

14. *"Regulated use"* means any depleting use except a use specifically designated as a nonregulated use.

15. *"Surface water"* means the water occurring on the surface of the ground.

16. *"Waste"* means any of the following:

a. Permitting groundwater or surface water to flow, or taking it or using it in any manner so that it is not put to its full beneficial use.

b. Transporting groundwater from its source to its place of use in such a manner that there is an excessive loss in transit.

c. Permitting or causing the pollution of a water-bearing strata through any act which will cause salt water, highly mineralized water, or otherwise contaminated water to enter it.

17. *"Watercourse"* means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.1; 82 Acts, ch 1199, §15, 96]

C83, §455B.261

83 Acts, ch 137, §7, 8; 85 Acts, ch 7, §1; 98 Acts, ch 1043, §1, 2

455B.262 Declaration of policy and planning requirements.

1. It is recognized that the protection of life and property from floods, the prevention of damage to lands from floods, and the orderly development, wise use, protection, and conservation of the water resources of the state by their considered and proper use is of paramount importance to the welfare and prosperity of the people of the state, and to realize these objectives, it is the policy of the state to correlate and vest the powers of the state in a single agency, the department, with the duty and authority to assess the water needs of all water users at five-year intervals for the twenty years beginning January 1, 1985, and ending December 31, 2004, utilizing a data base developed and managed by the Iowa geological survey, and to prepare a general plan of water allocation in this state considering the quantity and quality of water resources available in this state designed to meet the specific needs of the water users. The department shall also develop and the department shall adopt no later than June 30, 1986, a plan for delineation of flood plain and floodway boundaries for selected stream reaches in the various river basins of the state. Selection of the stream reaches and assignment of priorities for mapping of the selected reaches shall be based on consideration of flooding characteristics, the type and extent of existing and anticipated flood plain development in particular stream reaches, and the needs of local governmental bodies for assistance in delineating flood plain and floodway boundaries. The plan of flood plain mapping shall be for the period from June 30, 1986, to December 31, 2004. After the department adopts a plan of flood plain mapping, the department shall submit a progress report and proposed implementation schedule to the general assembly biennially. The department may modify the flood plain mapping plan as needed in response to changing circumstances.

2. The general welfare of the people of the state requires that the water resources of the state be put to beneficial use which includes ensuring that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be required with the view to their reasonable and beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served.

3. Water occurring in a basin or watercourse, or other body of water of the state, is public water and public wealth of the people of the state and subject to use in accordance with this chapter, and the control and development and use of water for all beneficial purposes is vested in the state, which shall take measures to ensure the conservation and protection of the water resources of the state. These measures shall include the protection of specific surface and groundwater sources as necessary to ensure long-term availability in terms of quantity and quality to preserve the public health and welfare.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.2; 82 Acts, ch 1199, §16, 96]

C83, §455B.262

83 Acts, ch 137, §9; 85 Acts, ch 7, §2; 85 Acts, ch 91, §1; 86 Acts, ch 1245, §1899B

455B.263 Duties.

1. The commission shall deliver to the general assembly by January 15, 1987, a plan embodying a general groundwater protection strategy for this state which considers the effects of potential sources of groundwater contaminations on groundwater quality. The plan shall evaluate the ability of existing laws and programs to protect groundwater quality and recommend any necessary additional or alternative laws and programs. The department shall develop the plan with the assistance of and in consultation with representa-

tives of agriculture, industry, and public and other interests. The commission shall report to the general assembly on the status and implementation of the plan on a biennial basis. This section does not preclude the implementation of existing or new laws or programs which may protect groundwater quality.

2. The commission shall designate the official representative of this state on all comprehensive water resources planning groups for which state participation is provided. The commission shall coordinate state planning with local and national planning and, in safeguarding the interests of the state and its people, shall undertake the resolution of any conflicts that may arise between the water resources policies, plans, and projects of the federal government and the water resources policies, plans, and projects of the state, its agencies, and its people. This section does not limit or supplant the functions, duties, and responsibilities of other state or local agencies or institutions with regard to planning of water-associated projects within the particular area of responsibility of those state or local agencies or institutions.

3. The commission shall enter into negotiations and agreements with the federal government relative to the operation of, or the release of water from, any project that has been authorized or constructed by the federal government when the commission deems the negotiations and agreements to be necessary for the achievement of the policies of this state relative to its water resources.

4. The commission, on behalf of the state, shall enter into negotiations with the federal government relative to the inclusion of conservation storage features for water supply in any project that has been authorized by the federal government when the commission deems the negotiations to be necessary for the achievement of the policies of this state, however, an agreement reached pursuant to these negotiations does not bind the state until enacted into law by the general assembly.

5. A water user who benefits from the development by the federal government of conservation storage for water supply shall be encouraged to assume the responsibility for repaying to the federal government any reimbursable costs incurred in the development, and a user who accepts benefits from the developments financed in whole or part by the state shall assume by contract the responsibility of repaying to the state the user's reasonable share of the state's obligations in accordance with a basis which will assure payment within the life of the development. An appropriation, diversion, or use shall not be made by a person of any waters of the state that have been stored or released from storage either under the authority of the state or pursuant to an agreement between the state and the federal government until the person has assumed by contract the person's repayment responsibility. However, this subsection does not infringe upon any vested property interests.

6. In its contracts with water users for the payment of state obligations incurred in the development of conservation storage for water supply, the commission shall include the terms deemed reasonable and necessary:

a. To protect the health, safety, and general welfare of the people of the state.

b. To achieve the purposes of this chapter.

c. To provide that the state is not responsible to any person if the waters involved are insufficient for performance.

The commission may designate and describe any such contract, and describe the relationships to which it relates, as a sale of storage capacity, a sale of water release services, a contract for the storage or sale of water, or any similar terms suggestive of the creation of a property interest. The term of the contracts shall be commensurate with the investment and use concerned, but the commission shall not enter into any such contract for a term in excess of the maximum period provided for water use permits.

7. The commission shall procure flood control works and water resources projects from or by cooperation with any agency of the United States, by cooperation with the cities and other subdivisions of the state under the laws of the state relating to flood control and use of water resources, and by cooperation with the action of landowners in areas affected by the works or projects when the commission deems the projects to be necessary for the achievement of the policies of this state.

8. The commission shall promote the policies set forth in this part and shall represent this state in all matters within the scope of this part. The commission shall adopt rules pursuant to chapter 17A as necessary to transact its business and for the administration and exercise of its powers and duties.

9. In carrying out its duties, the commission may accept gifts, contributions, donations and grants, and use them for any purpose within the scope of this part.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.3, 455A.8, 455A.15, 455A.17; 82 Acts, ch 1199, §17, 96]

C83, §455B.263

83 Acts, ch 137, §10; 85 Acts, ch 7, §3

455B.264 Jurisdiction — water and flood plains.

1. The department has jurisdiction over the public and private waters in the state and the lands adjacent to the waters necessary for the purposes of carrying out this part. The department may construct flood control works or any part of the works. In the construction of the works, in making surveys and investigations, or in formulating plans and programs relating to the water resources of the state, the department may cooperate with an agency of another state or the United States, or with any other person.

2. Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use, the director shall investigate the effect of the use upon the natural flow of the watercourse, the effect of the use upon the owners of any land which might be affected by the use, the effect of the use upon prior users of the water source and contracts made under section 455B.263 and whether the use is consistent with the principles and policies of beneficial use.

3. Upon application by any person for approval of the construction or maintenance of any structure, dam, obstruction, deposit, or excavation to be erected, used, or maintained in or on the flood plains of any river or stream, the department shall investigate the effect of the construction or maintenance project on the efficiency and capacity of the floodway. In determining the effect of the proposal the department shall consider fully its effect on flooding of or flood control for any proposed works and adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife, and recreational facilities or uses, and on all other public rights and requirements.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.18; 82 Acts, ch 1199, §18, 96]

C83, §455B.264

83 Acts, ch 137, §11; 85 Acts, ch 7, §4; 86 Acts, ch 1245, §1899A, 1899B

455B.265 Permits for diversion, storage, and withdrawal.

1. In its consideration of applications for permits, the department shall give priority in processing to persons in the order that the applications are received, except where the application of this processing priority system prevents the prompt approval of routine applications or where the public health, safety, or welfare will be threatened by delay. If the department determines after investigation that the diversion, storage, or withdrawal is consistent with the principles and policies of beneficial use and ensuring conservation, the department shall grant a permit. An application for a permit shall be approved or denied within ninety days from the date that the department receives the application. A renewal permit shall be approved or denied by the department within thirty days from the date that the department receives an application for renewal. Regardless of the request in the application, the director or the department on appeal may determine the duration and frequency of withdrawal and the quantity of water to be diverted, stored, or withdrawn pursuant to the permit. Each permit granted after July 1, 1986, shall include conditions requiring routine conservation practices, and requiring implementation of emergency conservation measures after notification by the department.

2. If an application is received by July 1, 1986, the department shall grant a permit for the continuation of a beneficial use of water that was a nonregulated use prior to July 1, 1985, and now requires a permit pursuant to section 455B.268. However, the permit is subject to conditions requiring routine and emergency conservation measures and to modification or cancellation under section 455B.271. Applications received after July 1, 1986 for those uses shall be determined pursuant to subsection 1.

3. Permits shall be granted for a period of ten years; however, permits for withdrawal of water may be granted for less than ten years if geological data on the capacity of the aquifer and the rate of its recharge are indeterminate, and permits for the storage of water may be granted for the life of the structure unless revoked by the department. A permit granted shall remain as an appurtenance of the land described in the permit through the date specified in the permit and any extension of the permit or until an earlier date when the permit or its extension is canceled under section 455B.271. Upon application for a permit prior to the termination date specified in the permit, a permit may be renewed by the department for a period of ten years.

4. Permits for aquifer storage and recovery shall be granted for a period of twenty years or the life of the project, whichever is less, unless revoked by the department. The department shall adopt rules pursuant to chapter 17A relating to information an applicant for a permit shall submit to the department. At a minimum, the information shall include engineering, investigation, and evaluation information requisite to assure protection of the groundwater resource, and assurances that an aquifer storage and recovery site shall not unreasonably restrict other uses of the aquifer. Upon application and prior to the termination date specified in the original permit or a subsequent renewal permit, a renewal permit may be issued by the department for an additional period of twenty years. The department shall not authorize withdrawals of treated water from an aquifer storage and recovery site by anyone other than the permittee during the period of the original permit and each subsequent renewal permit. Treated water injected into an aquifer covered by a permit issued pursuant to this subsection is the property of the permittee.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.20; 82 Acts, ch 1199, §19, 96]

C83, §455B.265

83 Acts, ch 137, §12; 85 Acts, ch 7, §5; 86 Acts, ch 1245, §1899A, 1899B; 90 Acts, ch 1094, §1; 98 Acts, ch 1043, §3

455B.266 Priority allocation.

1. After any event described in paragraphs *"a"*

through *"d"* of this subsection has occurred, the department shall investigate and, if appropriate, may implement the priority allocation plan provided in subsection 2. The department shall require existing permittees to implement appropriate emergency conservation measures. The pertinent public notice and hearing requirements of subsection 4 of this section and sections 455B.271 and 455B.278 shall apply to the implementation of the plan.

a. Receipt of a petition by twenty-five affected persons or a governmental subdivision requesting that the priority allocation plan be implemented due to a substantial local water shortage.

b. Receipt of information from a state or federal natural resource, research or climatological agency indicating that a drought of local or state magnitude is imminent.

c. Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

d. Determination by the department in conjunction with the emergency management division of the department of public defense of a local crisis which affects availability of water.

2. Notwithstanding a person's possession of a permit or the person's use of water being a nonregulated use, the department may suspend or restrict usage of water by category of use on a local or statewide basis in the following order:

a. Water conveyed across state boundaries.

b. Uses of water primarily for recreational or aesthetic purposes.

c. Uses of water for the irrigation of hay, corn, soybeans, oats, grain sorghum or wheat.

d. Uses of water for the irrigation of crops other than hay, corn, soybeans, oats, grain sorghum or wheat.

e. Uses of water for manufacturing or other industrial processes.

f. Uses of water for generation of electrical power for public consumption.

g. Uses of water for livestock production.

h. Uses of water for human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies as defined in section 455B.171.

i. Uses of water for human consumption and sanitation supplied by a private water supply as defined in section 455B.171.

3. Unless the governor has issued a proclamation described in subsection 1, paragraph *"c"*, the department shall not impose a suspension of water use or a further restriction, other than conservation, on the uses of water provided in subsection 2, paragraphs *"g"* through *"i"* or on users of water pursuant to a contract with the state as provided in section 455B.263, subsections 5 and 6. If a contract with the state as provided in section 455B.263, subsections 5 and 6 was in effect prior to March 5, 1985, the department shall not impose a suspension of water use or a further restriction, other than conservation, on the users of water pursuant to that contract.

4. Suspension or restrictions of water usage applicable to otherwise nonregulated water users shall be by emergency order of the director which the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be immediately effective on such date unless stayed, modified or vacated at a hearing before the commission or by a court.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.21; 82 Acts, ch 1199, §20, 96]

C83, §455B.266

83 Acts, ch 137, §13; 85 Acts, ch 7, §6; 86 Acts, ch 1136, §1; 86 Acts, ch 1245, §1899A, 1899B; 92 Acts, ch 1139, §30

455B.267 Permits for beneficial use — prohibitions.

1. The director or the commission may issue a permit for beneficial use of water in a watercourse if the established average minimum water flow is preserved.

2. A use of water shall not be authorized if it will impair the effect of this chapter or any other pollution control law of this state.

3. A permit shall not be issued or continued if it will impair the navigability of any navigable watercourse.

4. A permit to divert, store or withdraw water shall not be issued or continued if it will unreasonably impair the long-term availability of water from a surface or groundwater source in terms of quantity or quality, or otherwise adversely affect the public health or welfare.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.22 – 455A.24; 82 Acts, ch 1199, §21, 96]

C83, §455B.267

85 Acts, ch 7, §7; 86 Acts, ch 1245, §1899A

455B.268 When permit required.

1. A permit shall be required for the following:

a. Except for a nonregulated use, a person diverting, storing or withdrawing water from any surface or groundwater source.

b. A person who diverts water or any material from the surface directly into an underground watercourse or basin.

2. The commission may adopt, modify, or repeal rules pursuant to chapter 17A specifying the conditions under which the director may authorize specific nonrecurring minor uses of water for periods not to exceed one year through registration.

3. Notwithstanding any exemptions from permit requirements, nothing in this part exempts water users from requirements for reporting which the commission adopts by rule.

[C58, 62, 66, 71, 73, 75, 77, §455A.25; C79, 81,

§455A.8, 455A.25; 82 Acts, ch 1199, §22, 96]
C83, §455B.268
85 Acts, ch 7, §8; 86 Acts, ch 1245, §1899A

455B.269 Taking water prohibited.

1. A person shall not take water from a natural watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use except in compliance with the sections of this part which relate to the withdrawal, diversion, or storage of water. However, existing uses may be continued during the period of the pendency of an application for a permit.

2. A person, other than the aquifer storage and recovery permittee, shall not take treated water from a permitted aquifer storage and recovery site within this state.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.26; 82 Acts, ch 1199, §23, 96]
C83, §455B.269
83 Acts, ch 137, §14; 98 Acts, ch 1043, §4

455B.270 Rights preserved.

The sections of this part which relate to the withdrawal, diversion, or storage of water do not deprive any person of the right to use diffused waters, to drain land by use of tile, open ditch, or surface drainage, or to construct an impoundment on the person's property or across a stream that originates on the person's property if provision is made for safe construction and for a continued established average minimum flow when the flow is required to protect the rights of water users below.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.27; 82 Acts, ch 1199, §24, 96]
C83, §455B.270
83 Acts, ch 137, §15

455B.271 Modification or cancellation of permits.

Each permit issued under section 455B.265 is irrevocable for its term and for any extension of its term except as follows:

1. A permit may be modified or canceled by the department with the consent of the permittee.

2. Subject to appeal to the department of inspections and appeals, a permit may be modified or canceled by the director if any of the following occur:

a. There is a breach of the terms of the permit.

b. There is a violation of the law pertaining to the permit by the permittee or the permittee's agents.

c. There is a circumstance of nonuse as provided in section 455B.272.

d. The department finds that modification or cancellation is necessary to protect the public health or safety, to protect the public interests in lands or waters, to require conservation measures or to prevent substantial injury to persons or property in any manner. Before the modification or cancellation is effective, the department shall give at least thirty days' written notice mailed to the permittee at the permittee's last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard on the proposal.

3. By written emergency order to the permittee, the department may suspend or restrict operations under a permit if the director finds it necessary in an emergency to protect the public health, to protect the public interest in waters against imminent danger of substantial injury in any manner or to an extent not expressly authorized by the permit, to implement the priority allocation system of section 455B.266, or to protect persons or property against imminent danger. The department may require the permittee to take measures necessary to prevent or remedy the injury. The emergency order shall state the effective date of the suspension or restriction and shall be immediately effective on that date unless stayed, modified or vacated at a hearing before the department or by a court.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.28; 82 Acts, ch 1199, §25, 96]
C83, §455B.271
83 Acts, ch 137, §16; 85 Acts, ch 7, §9, 10; 86 Acts, ch 1245, §1899A, 1899B

455B.272 Termination of permit.

The right of the permittee and the permittee's successors to the use of water shall terminate when the permittee or the permittee's successors fail for three consecutive years to use it for the specific beneficial purpose authorized in the permit and, after notification by the department of intent to cancel the permit for nonuse, the permittee or the permittee's successors fail to demonstrate adequate plans to use water within a reasonable time. However, nonuse of water due to adequate rainfall does not constitute grounds for cancellation of a permit to use water for irrigation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.29; 82 Acts, ch 1199, §26, 96]
C83, §455B.272
83 Acts, ch 137, §17

455B.273 Disposal of permit.

A permittee may sell, transfer, or assign a permit by conveying, leasing, or otherwise transferring the ownership of the land described in the permit, but the permit does not constitute ownership or absolute rights of use of the waters. The waters remain subject to the principle of beneficial use and the orders of the director or commission.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.30; 82 Acts, ch 1199, §27, 96]
C83, §455B.273
86 Acts, ch 1245, §1899

455B.274 Unauthorized depleting uses.

If a person files a complaint with the department that another person is making a depleting use of water not expressly exempted as a nonregulated use under this part and without a permit to do so, the department shall cause an investigation to be made and if the facts stated in the complaint are verified the department shall order the discontinuance of the use.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.32; 82 Acts, ch 1199, §28, 96]

C83, §455B.274

455B.275 Prohibited acts — powers of commission and executive director.

1. A person shall not permit, erect, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on a floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, or adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, and the same are declared to be public nuisances.

2. The department may commence, maintain, and prosecute any appropriate action to enjoin or abate a nuisance, including any of the nuisances specified in subsection 1 and any other nuisance which adversely affects flood control.

3. A person shall file a written application with the department if the person desires to do any of the following:

a. Erect, construct, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on any floodway or flood plains.

b. Erect, construct, maintain, or operate a dam on a navigable or meandered stream.

c. Erect, construct, maintain, or operate a dam on a stream for manufacturing or industrial purposes.

The application shall set forth information as required by rule of the commission. The department, after an investigation, shall approve or deny the application imposing conditions and terms as prescribed by the department.

4. The department may maintain an action in equity to enjoin a person from erecting or making or permitting to be made a structure, dam, obstruction, deposit, or excavation for which a permit has not been granted. The department may also seek judicial abatement of any structure, dam, obstruction, deposit, or excavation erected or made without a permit required under this part. The abatement proceeding may be commenced to enforce an administrative determination of the department in a contested case proceeding that a public nuisance exists and should be abated. The costs of abatement shall be borne by the violator. Notwithstanding section 352.11, a structure, dam, obstruction, deposit, or excavation on a floodway or flood plain in an agricultural area established under chapter 352 is not exempt from the sections of this part which relate to regulation of flood plains and floodways. As used in this subsection, *"violator"* includes a person contracted to erect or make a structure, dam, obstruction, deposit, or excavation in a floodway including stream straightening unless the project is authorized by a permit required under this part.

5. The department may remove or eliminate a structure, dam, obstruction, deposit, or excavation in a floodway which adversely affects the efficiency of or unduly restricts the capacity of the floodway, by an action in condemnation, and in assessing the damages in the proceeding, the appraisers and the court shall take into consideration whether the structure, dam, obstruction, deposit, or excavation is lawfully in or on the floodway in compliance with this part.

6. The department may require, as a condition of an approval order or permit granted pursuant to this part, the furnishing of a performance bond with good and sufficient surety, conditioned upon full compliance with the order or permit and the rules of the commission. In determining the need for and amount of bond, the department shall give consideration to the hazard posed by the construction and maintenance of the approved works and the protection of the health, safety, and welfare of the people of the state. This subsection does not apply to orders or permits granted to a governmental entity.

7. When approving a request to straighten a stream, the department may establish as a condition of approval a permanent prohibition against tillage of land owned by the person receiving the approval and lying within a minimum distance from the stream sufficient in the judgment of the director or commission to hold soil erosion to reasonable limits. The department shall record the prohibition in the office of the county recorder of the appropriate county and the prohibition shall attach to the land.

8. The commission shall establish, by rule, thresholds for dimensions and effects, and any structure, dam, obstruction, deposit, or excavation having smaller dimensions and effects than those established by the commission is not subject to regulation under this section. The thresholds shall be established so that only those structures, dams, obstructions, deposits, or excavations posing a significant threat to the well-being of the public and the environment are subject to regulation.

9. The commission or the department shall not initiate any administrative or judicial action to remove or eliminate any structure, dam, obstruction, deposit, or excavation in a floodway, or to remove or eliminate any stream straightening, or to place other restrictions on the use of land or water affected by the structure, dam, obstruction, deposit, excavation, or stream straightening if not initi-

ated within five years after the department becomes aware of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening. After ten years from the completion of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening, the prohibition of this subsection applies to, but is not limited to, any administrative or judicial abatement or action in condemnation that the commission or department may initiate under this section unless action is required to protect the public safety, in which case this section is not intended to limit the department from taking actions otherwise authorized by law.

[C50, 54, §455A.19; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.33; 82 Acts, ch 1199, §29, 96]

C83, §455B.275

83 Acts, ch 137, §18; 86 Acts, ch 1144, §2; 88 Acts, ch 1196, §1, 2; 90 Acts, ch 1108, §4

In addition to prospective application, 1988 amendments to subsection 4 and new subsection 9 apply to all knowledge possessed by department for at least five years before July 1, 1988, and to all projects completed earlier than ten years before July 1, 1988; 88 Acts, ch 1196, §3

See also 83 Acts, ch 137, §30

Validity of permits or licenses issued before July 1, 1990, under chapter 469, Code 1989; rights and obligations governed by §455B.275; 90 Acts, ch 1108, §6

455B.276 Flood plains — encroachment limits.

The commission may establish and enforce rules for the orderly development and wise use of the flood plains of any river or stream within the state and alter, change, or revoke the rules. The commission shall determine the characteristics of floods which reasonably may be expected to occur and may establish by order encroachment limits, protection methods, and minimum protection levels appropriate to the flooding characteristics of the stream and to reasonable use of the flood plains. The order shall fix the length of flood plains to be regulated at any practical distance, the width of the zone between the encroachment limits so as to include portions of the flood plains adjoining the channel, which with the channel, are required to carry and discharge the flood waters or flood flow of the river or stream, and the design discharge and water surface elevations for which protection shall be provided for projects outside the encroachment limits but within the limits of inundation. Plans for the protection of projects proposed for areas subject to inundation shall be reviewed as plans for flood control works within the purview of section 455B.277. An order establishing encroachment limits shall not be issued until notice of the proposed order is given and opportunity for public hearing given for the presentation of protests against the order. In establishing the limits, the commission shall avoid to the greatest possible degree the evacuation of persons residing in the area of a floodway, the removal of residential structures occupied by the persons in the area of a floodway, and the removal of structures erected or made prior to July 4, 1965, which are located on the flood plains of a river or stream but not within the area of a floodway.

The commission shall cooperate with and assist local units of government in the establishment of encroachment limits, flood plain regulations, and zoning ordinances relating to flood plain areas within their jurisdiction. Encroachment limits, flood plain regulations, or flood plain zoning ordinances proposed by local units of government shall be submitted to the department for review and approval prior to adoption by the local units of government. Changes or variations from an approved regulation or ordinance as it relates to flood plain use are subject to approval by the commission prior to adoption. Individual applications, plans, and specifications and individual approval orders shall not be required for works on the flood plains constructed in conformity with encroachment limits, flood plain regulations, or zoning ordinances adopted by the local units of government and approved by the commission.

[C50, 54, §455A.21; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.35; 82 Acts, ch 1199, §30, 96]

C83, §455B.276

83 Acts, ch 137, §19

455B.277 Flood control works coordinated.

All flood control works in the state, which are established and constructed after April 16, 1949, shall be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout the state. A person shall not construct or install works of any nature for flood control until the proposed works and the plans and specifications for the works are approved by the department. The department shall consider all the pertinent facts relating to the proposed works which will affect flood control and water resources in the state and shall determine whether the proposed works in the plans and specifications will be in aid of and acceptable as part of, or will adversely affect and interfere with flood control in the state, adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, or adversely affect or interfere with an approved local water resources plan. In the event of disapproval, the department shall set forth the objectionable features so that the proposed works and the plans and specifications for the proposed works may be corrected or adjusted to obtain approval.

This section applies to drainage districts, soil and water conservation districts, the natural resource commission, political subdivisions of the state, and private persons undertaking projects relating to flood control.

[C50, 54, §455A.22; C58, 62, 66, 71, 73, 75, 77,

79, 81, §455A.36; 82 Acts, ch 1199, §31, 96]
C83, §455B.277
83 Acts, ch 137, §20; 88 Acts, ch 1134, §86

455B.278 Permit application procedures.
1. The commission shall adopt, modify, or repeal rules establishing procedures by which permits required under this part shall be issued, suspended, revoked, modified, or denied. The rules shall include provisions for application, public notice and opportunity for public hearing, and contested cases. Public notice of a decision by the director to issue a permit shall be given in a manner designed to inform persons who may be adversely affected by the permitted project or activity.
2. Action by the department upon an application for a permit required under this part may be appealed to the commission by the applicant or any affected person within thirty days of the department's action. A hearing before the commission or its designee is a contested case. The hearings and judicial review of decisions of the commission shall be carried out in accordance with chapter 17A. Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of Polk county or of any county in which the property affected is located. If the commission, the district court, or the supreme court determines that the action of the commission shall be stayed, the petitioner shall file an appropriate bond approved by the court.
[C50, 54, §455A.23; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.19, 455A.37; 82 Acts, ch 1199, §32, 96]
C83, §455B.278
83 Acts, ch 136, §3; 83 Acts, ch 137, §21

455B.279 Violation.
1. The director may issue any order necessary to secure compliance with or prevent a violation of this part or the rules adopted pursuant to this part. Within thirty days of issuance, the order may be appealed to the commission by filing a notice of appeal with the director. The appeal shall be conducted as a contested case pursuant to chapter 17A and the commission may affirm, modify, or revoke the order. The department may request legal services as required from the attorney general, including any legal proceeding necessary to obtain compliance with this part and rules and orders issued under this part.
2. A person who violates a provision of this part or a rule or order adopted or promulgated or the conditions of a permit issued pursuant to this part is subject to a civil penalty not to exceed five hundred dollars for each day that a violation occurs.
[C50, 54, §455A.26; C58, 62, 66, 71, 73, 75, 77, §455A.39; C79, 81, §455A.33(7), 455A.39; 82 Acts, ch 1199, §33, 96]
C83, §455B.279
83 Acts, ch 137, §22; 86 Acts, ch 1144, §3

455B.280 Coordination with water resource districts. Repealed by 86 Acts, ch 1245, § 668. Repeal effective July 1, 1988.

455B.281 Compensation for well interference.
If an investigation by the department, using information provided by the applicant or permittee and the complainant, discloses that a proposed or existing permitted use or combination of such uses is causing or will cause the delivery system to fail in a well which supplies water for a nonregulated use, the department may condition issuance or continuation of a permit upon payment by the permittee of compensation for all or a portion of the cost of a replacement water supply system or remedial measures necessitated by the interference. However, such condition may be imposed only after the parties demonstrate to the department that a good faith effort to negotiate a mutually agreeable compensation has been made and has failed.
Determination of the amount of compensation for the well interference shall be made a part of the determination of the department in accordance with section 455B.265 or 455B.271. The department may require the submission of itemized estimates of the cost of remedial repairs or a replacement water supply system. In determining appropriate compensation, the department shall consider the age and condition of the affected well or pumping system and its reasonableness as a method of obtaining groundwater in light of the history of development of groundwater in the surrounding area. When compensation is required for all or part of the cost of construction of a replacement water supply system or reconstruction of an affected well, the construction or reconstruction must comply with applicable well construction standards. A permittee is not required to pay compensation before having an opportunity to do test pumping authorized by the department and supervised by the department or designee.
The determination of the department shall be subject to administrative and judicial review and shall be the exclusive remedy for such interference.
85 Acts, ch 7, §11

455B.282 to 455B.290 Reserved.

PART 5

WATER POLLUTION CONTROL WORKS AND DRINKING WATER FACILITIES FINANCING PROGRAM

See also §16.131 – 16.133

455B.291 Definitions.
As used in this part, unless the context requires otherwise:

1. *"Administration funds"* means the water pollution control works administration fund and the drinking water facilities administration fund.

2. *"Authority"* means the Iowa finance authority established in section 16.2.

3. *"Clean Water Act"* means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as amended by the Water Quality Act of 1987, Pub. L. No. 100-4, as published in 33 U.S.C. § 1251 – 1376.

4. *"Cost"* means all costs, charges, expenses, or other indebtedness incurred by a loan recipient and determined by the director as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.

5. *"Drinking water facilities administration fund"* means the drinking water facilities administration fund established in section 455B.295.

6. *"Drinking water facilities revolving loan fund"* means the drinking water facilities revolving loan fund established in section 455B.295.

7. *"Eligible entity"* means a person eligible under the provisions of the Clean Water Act, the Safe Drinking Water Act, and the commission rules to receive loans for projects from either of the revolving loan funds.

8. *"Loan recipient"* means an eligible entity that has received a loan from either of the revolving loan funds.

9. *"Municipality"* means a city, county, sanitary district, state agency, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of the governmental bodies or corporations acting jointly, in connection with a project.

10. *"Program"* means the Iowa water pollution control works and drinking water facilities financing program created pursuant to section 455B.294.

11. *"Project"* means one of the following:

a. In the context of water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in section 212 of the Clean Water Act, or the implementation and development of management programs established under sections 319 and 320 of the Clean Water Act, including construction and undertaking of nonpoint source water pollution control projects and related development activities authorized under those sections.

b. In the context of drinking water facilities, the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, or equipping of waterworks, water mains, extensions, or treatment facilities useful for providing potable water to residents served by a water system, including the acquisition of real property needed for any of the foregoing purposes, and such other purposes and programs as may be authorized under the Safe Drinking Water Act.

12. *"Revolving loan funds"* means the water pollution control works revolving loan fund and the drinking water facilities revolving loan fund.

13. *"Safe Drinking Water Act"* means Title XIV of the federal Public Health Service Act, commonly known as the "Safe Drinking Water Act", 42 U.S.C. § 300f et seq., as amended by the Safe Drinking Water Amendments of 1996, Pub. L. No. 104-182.

14. *"Water pollution control works administration fund"* means the water pollution control works administration fund established in section 455B.295.

15. *"Water pollution control works revolving loan fund"* means the water pollution control works revolving loan fund established in section 455B.295.

16. *"Water system"* means any community water system or nonprofit noncommunity water system, each as defined in the Safe Drinking Water Act, that is eligible under the rules of the department to receive a loan under the program for the purposes of undertaking a project.

88 Acts, ch 1217, §10; 89 Acts, ch 83, §54; 95 Acts, ch 98, §1; 97 Acts, ch 4, §7; 2002 Acts, ch 1019, §1

Section amended

455B.292 Findings.

The general assembly finds that the proper construction, rehabilitation, operation, and maintenance of modern and efficient wastewater treatment works, other water pollution control works, and drinking water facilities are essential to protecting and improving the state's water quality and the health of its citizens; that protecting and improving water quality is an issue of concern to the citizens of the state; that in addition to protecting and improving the state's water quality, adequate wastewater treatment and water pollution control works and drinking water facilities are essential to economic growth and development; that during the last several years the amount of federal grant money available to states and local governments for assistance in constructing and improving wastewater treatment works and safe drinking water facilities has sharply diminished and will likely continue to diminish; and that it is proper for the state to encourage local governments, individuals, and other entities to undertake water pollution control and drinking water projects through the establishment of a state mechanism to provide loans at the lowest reasonable rates.

88 Acts, ch 1217, §11; 97 Acts, ch 4, §8; 2002 Acts, ch 1019, §2

Section amended

455B.293 Policy.

It is the policy of this state that it is in the public interest to establish a water pollution control works and drinking water facilities financing program and revolving loan funds and administration funds to make loans available from the state to eligible entities for the purpose of undertaking projects. This section shall be broadly construed to effect and accomplish that purpose.

88 Acts, ch 1217, §12; 97 Acts, ch 4, §9; 2002 Acts, ch 1019, §3

Section amended

455B.294 Establishment of the Iowa water pollution control works and drinking water facilities financing program.

The Iowa water pollution control works and drinking water facilities financing program is established for the purpose of making loans available to eligible entities to finance all or part of the costs of projects. The program shall be a joint and cooperative undertaking of the department and the authority. The department and the authority may enter into and provide any agreements, documents, instruments, certificates, data, or information necessary in connection with the operation, administration, and financing of the program consistent with this part, the Safe Drinking Water Act, the Clean Water Act, the rules of the department and the commission, the rules of the authority, and other applicable federal and state law. The authority and the department may act to conform the program to the applicable guidance and regulations adopted by the United States environmental protection agency.

88 Acts, ch 1217, §13; 97 Acts, ch 4, §10; 2002 Acts, ch 1019, §4

Section amended

455B.295 Funds and accounts.

1. Four separate funds are established in the state treasury, to be known as the water pollution control works revolving loan fund, the water pollution control works administration fund, the drinking water facilities revolving loan fund, and the drinking water facilities administration fund.

2. Each of the revolving loan funds shall include sums appropriated to the revolving loan funds by the general assembly, sums transferred by action of the governor under section 455B.296, subsection 3, sums allocated to the state expressly for the purposes of establishing each of the revolving loan funds under the Clean Water Act and the Safe Drinking Water Act, all receipts by the revolving loan funds, and any other sums designated for deposit to the revolving loan funds from any public or private source. All moneys appropriated to and deposited in the revolving loan funds are appropriated and shall be used for the sole purpose of making loans to eligible entities to finance all or part of the cost of projects. The moneys appropriated to and deposited in the water pollution control works revolving loan fund shall not be used to pay the nonfederal share of the cost of projects receiving grants under the Clean Water Act. The moneys in the revolving loan funds are not considered part of the general fund of the state, are not subject to appropriation for any other purpose by the general assembly, and in determining a general fund balance shall not be included in the general fund of the state but shall remain in the revolving loan funds to be used for their respective purposes. The revolving loan funds are separate dedicated funds under the administration and control of the authority and subject to section 16.31. Moneys on deposit in the revolving loan funds shall be invested by the treasurer of state in cooperation with the authority, and the income from the investments shall be credited to and deposited in the appropriate revolving loan funds.

3. The administration funds shall include sums appropriated to the administration funds by the general assembly, sums allocated to the state for the express purposes of administering the programs, policies, and undertakings authorized by the Clean Water Act and the Safe Drinking Water Act, and all receipts by the administration funds from any public or private source. All moneys appropriated to and deposited in the administration funds are appropriated for and shall be used and administered by the department to pay the costs and expenses associated with the program, including administration of the program, as may be determined by the department.

4. The department and the authority may establish and maintain other funds or accounts determined to be necessary to carry out the purposes of this part and shall provide for the funding, administration, investment, restrictions, and disposition of the funds and accounts. The department and the authority may combine administration of the revolving loan funds, and cross collateralize the same, and the administration funds to the extent permitted by the Clean Water Act, the Safe Drinking Water Act, and other applicable federal law.

88 Acts, ch 1217, §14; 97 Acts, ch 4, §11; 2002 Acts, ch 1019, §5

Subsections 1, 2, and 4 amended

455B.296 Intended use plans — capitalization grants — accounting.

1. Each fiscal year beginning July 1, 1988, the department may prepare and deliver intended use plans and enter into capitalization grant agreements with the administrator of the United States environmental protection agency under the terms and conditions set forth in the Clean Water Act and the Safe Drinking Water Act and federal regulations adopted pursuant to the Acts and may accept capitalization grants for each of the revolving loan funds in accordance with payment schedules established by the administrator. All payments

from the administrator shall be deposited in the appropriate revolving loan funds.

2. The department and the authority shall establish fiscal controls and accounting procedures during appropriate accounting periods for payments and disbursements received and made by the revolving loan funds, the administration funds, and other funds established pursuant to section 455B.295, subsection 4, and to fund balances at the beginning and end of the accounting periods.

3. Upon receipt of the joint recommendation of the department and the authority with respect to the amounts to be so reserved and transferred, and subject in all respects to the applicable provisions of the Clean Water Act, Safe Drinking Water Act, and other applicable federal law, the governor may direct that the recommended portion of a capitalization grant made in respect of one of the revolving loan funds in any year be reserved for the transfer to the other revolving loan fund. The authority and the department may effect the transfer of any funds reserved for such purpose, as directed by the governor, and shall cause the records of the program to reflect the transfer. Any sums so transferred shall be expended in accordance with the intended use plan for the applicable revolving loan fund.

88 Acts, ch 1217, §15; 97 Acts, ch 4, §12; 2002 Acts, ch 1019, §6

Subsection 3 amended

455B.297 Loans to eligible entities.

Moneys deposited in the revolving loan funds shall be used for the primary purpose of making loans to eligible entities to finance the cost of projects in accordance with the intended use plans developed by the department under section 455B.296. The loan recipients and the purpose, amount, interest rate, and repayment terms of the loans shall be determined by the director, in accordance with rules adopted by the commission, in compliance with and subject to the terms and conditions of the Clean Water Act, the Safe Drinking Water Act, and other applicable federal law, as applicable, and any resolution, agreement, indenture, or other document of the authority, and rules adopted by the authority, relating to any bonds, notes, or other obligations issued for the program which may be applicable to the loan.

88 Acts, ch 1217, §16; 97 Acts, ch 4, §13; 2002 Acts, ch 1019, §7

Section amended

455B.298 Powers and duties of the director.

The director shall:

1. Process and review loan applications to determine if an application meets the eligibility requirements set by the rules of the department.

2. Approve loan applications of eligible entities which satisfy the rules adopted by the commission, and the intended use plans developed by the department under section 455B.296.

3. Process and review all documents relating to projects and the extending of loans.

4. Prepare and process, in coordination with the authority, documents relating to the extending of loans, the sale and issuance of bonds, notes, or other obligations of the authority relating to the program, and the administration of the program.

5. Include in the budget prepared pursuant to section 455A.4, subsection 1, paragraph *"c"*, an annual budget for the administration of the program and the use and disposition of amounts on deposit in the administration funds.

6. Charge each loan recipient a loan origination fee and an annual loan servicing fee. The amount of the loan origination fees and the loan servicing fees established shall be relative to the amount of a loan made from the revolving loan fund. The director shall deposit the receipts from the loan origination fees and the loan servicing fees in the appropriate administration fund.

7. Consult with and receive the approval of the authority concerning the terms and conditions of loan agreements as to the financial integrity of the loan.

8. Perform other acts and assume other duties and responsibilities necessary for the operation of the program.

88 Acts, ch 1217, §17; 97 Acts, ch 4, §14; 2002 Acts, ch 1019, §8

Subsections 2, 4, 6, and 7 amended

455B.299 Adoption of rules.

The commission shall adopt rules pursuant to chapter 17A appropriate for the administration of this part.

88 Acts, ch 1217, §18

455B.300 Reserved.

DIVISION IV

SOLID WASTE DISPOSAL

PART 1

SOLID WASTE

455B.301 Definitions.

As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. *"Actual cost"* means the operational, remedial and emergency action, closure, postclosure, and monitoring costs of a sanitary disposal project for the lifetime of the project.

2. *"Beverage"* means wine as defined in section 123.3, subsection 37, alcoholic liquor as defined in section 123.3, subsection 5, beer as defined in section 123.3, subsection 7, wine cooler or drink, tea, potable water, soda water and similar carbonated soft drinks, mineral water, fruit juice, vegetable juice, or fruit or vegetable drinks, which are in-

tended for human consumption.

3. *"Beverage container"* means a sealed glass, plastic, or metal bottle, can, jar, or carton containing a beverage.

4. *"Biodegradable"* means degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gasses and organic compounds.

5. *"Closure"* means actions that will prevent, mitigate, or minimize the threat to public health and the environment posed by a closed sanitary landfill, including, but not limited to, application of final cover, grading and seeding of final cover, installation of an adequate monitoring system, and construction of ground and surface water diversion structures, if necessary.

6. *"Closure plan"* means the plan which specifies the methods and schedule by which an operator will complete or cease disposal operations of a sanitary disposal project, prepare the area for long-term care, and make the area suitable for other uses.

7. *"Degradable"* means capable of decomposing by biodegradation, photodegradation, or chemical process into harmless component parts after exposure to natural elements for not more than three hundred sixty-five days.

8. *"Financial assurance instrument"* means an instrument submitted by an applicant to ensure the operator's financial capability to provide reasonable and necessary response during the lifetime of the project and for the thirty years following closure, and to provide for the closure of the facility and postclosure care required by rules adopted by the commission in the event that the operator fails to correctly perform closure and postclosure care requirements. The form may include the establishment of a secured trust fund, use of a cash or surety bond, or the obtaining of an irrevocable letter of credit.

8A. *"Incinerator"* means any enclosed device using controlled flame combustion that does not meet the criteria for classification as a boiler and is not listed as an industrial furnace. *"Incinerator"* does not include thermal oxidizers used for the treatment of gas emissions.

9. *"Leachate"* means fluid that has percolated through solid waste and which contains contaminants consisting of dissolved or suspended materials, chemicals, or microbial waste products from the solid waste.

10. *"Lifetime of the project"* means the projected period of years that a landfill will receive waste, from the time of opening until closure, based on the volume of waste to be received projected at the time of submittal of the initial project plan and the calculated refuse capacity of the landfill based upon the design of the project.

11. *"Manufacturer"* means a person who by labor, art, or skill transforms raw material into a finished product or article of trade.

12. *"Photodegradable"* means degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

13. *"Postclosure"* and *"postclosure care"* mean the time and actions taken for the care, maintenance, and monitoring of a sanitary disposal project after closure that will prevent, mitigate, or minimize the threat to public health, safety, and welfare and the threat to the environment posed by the closed facility.

14. *"Postclosure plan"* means the plan which specifies the methods and schedule by which the operator will perform the necessary monitoring and care for the area after closure of a sanitary disposal project.

15. *"Private agency"* means a private agency as defined in section 28E.2.

16. *"Public agency"* means a public agency as defined in section 28E.2.

17. *"Resource recovery system"* means the recovery and separation of ferrous metals and nonferrous metals and glass and aluminum and the preparation and burning of solid waste as fuel for the production of electricity.

18. *"Sanitary disposal project"* means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.

19. *"Sanitary landfill"* means a sanitary disposal project where solid waste is buried between layers of earth.

20. *"Solid waste"* means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by section 321.1, subsection 90. However, this division does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal project. Solid waste does not include hazardous waste as defined in section 455B.411 or source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979, or petroleum contaminated soil which has been remediated to acceptable state or federal standards.

[C71, §406.2; C73, 75, 77, 79, 81, §455B.75]
C83, §455B.301

85 Acts, ch 241, §1, 2; 86 Acts, ch 1175, §1; 87 Acts, ch 225, §404; 88 Acts, ch 1182, §1; 90 Acts, ch 1168, §50; 91 Acts, ch 252, §4; 92 Acts, ch 1182, §1

455B.301A Declaration of policy.

1. The protection of the health, safety, and welfare of Iowans and the protection of the environment require the safe and sanitary disposal of sol-

id wastes. An effective and efficient solid waste disposal program protects the environment and the public, and provides the most practical and beneficial use of the material and energy values of solid waste. While recognizing the continuing necessity for the existence of landfills, alternative methods of managing solid waste and a reduction in the reliance upon land disposal of solid waste are encouraged. In the promotion of these goals, the following waste management hierarchy in descending order of preference, is established as the solid waste management policy of the state:

a. Volume reduction at the source.

b. Recycling and reuse.

c. Other approved techniques of solid waste management including, but not limited to, combustion with energy recovery, combustion for waste disposal, and disposal in sanitary landfills.

2. In the implementation of the solid waste management policy, the state shall:

a. Establish and maintain a cooperative state and local program of project planning, and technical and financial assistance to encourage comprehensive solid waste management.

b. Utilize the capabilities of private enterprise as well as the services of public agencies to accomplish the desired objectives of an effective solid waste management program.

87 Acts, ch 225, §405; 94 Acts, ch 1177, §1

455B.302 Duty of cities and counties — agreements — liens.

Every city and county of this state shall provide for the establishment and operation of a comprehensive solid waste reduction program consistent with the waste management hierarchy under section 455B.301A, and a sanitary disposal project for final disposal of solid waste by its residents. Comprehensive programs and sanitary disposal projects may be established either separately or through co-operative efforts for the joint use of the participating public agencies as provided by law.

Cities and counties may execute with public and private agencies contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law for the implementation of waste management programs, collection of solid waste, establishment and operation of sanitary disposal projects, and general administration of the same. Any agreement executed with a private agency for the operation of a sanitary disposal project shall provide for the posting of a sufficient surety bond by the private agency conditioned upon the faithful performance of the agreement. A city or county may at any time during regular working hours enter upon the premises of a sanitary disposal project, including the premises of a sanitary landfill, in order to inspect the premises and monitor the operations and general administration of the project to ensure compliance with the agreement and with state and federal laws. This includes the right of the city or county to enter upon the premises of a former sanitary disposal project which has been closed, including the premises of a former sanitary landfill, owned by a private agency, for the purpose of providing required postclosure care.

A city or county which provides closure or postclosure care on the premises of a sanitary landfill owned by a private agency, shall have a lien upon the property to secure payment for the amount of materials and labor expended by the city or county to perform the required closure or postclosure care on the premises. The lien shall be recordable and collectable in the same manner as provided in section 424.11. The lien shall attach at the time the city or county incurs expenses to provide closure or postclosure care on the premises of the sanitary landfill. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only upon filing a notice of the lien with the recorder of the county in which the property is located. Upon payment, the city or county shall release the lien. If no lien has been recorded at the time the property is sold or transferred, the property shall not be subject to a lien or claim for any closure or postclosure costs incurred by the city or county.

[C71, §406.3; C73, 75, 77, 79, 81, §455B.76]

C83, §455B.302

88 Acts, ch 1169, §4; 89 Acts, ch 272, §28; 94 Acts, ch 1044, §1

455B.303 Administrator's duties.

The director shall administer the provisions of this part 1 of division IV subject to the rules established by the commission.

Local boards of health shall co-operate in the enforcement of the provisions of said part and the director may seek their aid and delegate administrative duties of the department to the local boards of health in matters relating to solid waste, refuse disposal plants, and sanitary disposal projects.

The director may issue, modify, or deny variances from the rules of the commission. The applicant may appeal the decision of the director to the commission.

[C71, §406.4; C73, 75, 77, 79, 81, §455B.77]

C83, §455B.303

86 Acts, ch 1245, §1899

455B.304 Rules established.

1. The commission shall establish rules for the proper administration of this part 1 of division IV which shall reflect and accommodate as far as is reasonably possible the current and generally accepted methods and techniques for treatment and disposition of solid waste which will serve the purposes of this part, and which shall take into consideration the factors, including others which it deems proper, such as existing physical conditions, topography, soils and geology, climate, transportation, and land use, and which shall in-

clude but are not limited to rules relating to the establishment and location of sanitary disposal projects, sanitary practices, inspection of sanitary disposal projects, collection of solid waste, disposal of solid waste, pollution controls, the issuance of permits, approved methods of private disposition of solid waste, the general operation and maintenance of sanitary disposal projects, and the implementation of this part.

2. The commission shall adopt rules that allow the use of wet or dry sludge from publicly owned treatment works for land application. A sale of wet or dry sludge for the purpose of land application shall be accompanied by a written agreement signed by both parties which contains a general analysis of the contents of the sludge. The heavy metal content of the sludge shall not exceed that allowed by rules of the commission. An owner of a publicly owned treatment works which sells wet or dry sludge is not subject to any action by the purchaser to recover damages for harm to person or property caused by sludge that is delivered pursuant to a sale unless it is a result of a violation of the written agreement or if the heavy metal content of the sludge exceeds that allowed by rules of the commission. Nothing in this section shall provide immunity to any person from action by the department pursuant to section 455B.307. The rules adopted under this subsection shall be generally consistent with those rules of the department existing on January 1, 1982, regarding the land application of municipal sewage sludge except that they may provide for different methods of application for wet sludge and dry sludge.

3. The commission shall adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill. The rules shall prohibit land burial or disposal by land application of wet sewer sludge at a sanitary landfill.

4. The commission shall adopt rules requiring that each sanitary disposal project established pursuant to section 455B.302 and permitted pursuant to section 455B.305 install and maintain a sufficient number of groundwater monitoring wells to adequately determine the quality of the groundwater and the impact the sanitary disposal project, if any, is having on the groundwater adjacent to the sanitary disposal project site.

5. The commission shall adopt rules requiring a schedule of monitoring of the quality of groundwater adjacent to the sanitary disposal project from the groundwater monitoring wells installed in accordance with this section during the period the sanitary disposal project is in use. Schedules of monitoring may be varied in consideration of the types of sanitary disposal practices, hydrologic and geologic conditions, construction and operation characteristics, and volumes and types of wastes handled at the sanitary disposal project site.

6. The commission shall, by rule, require continued monitoring of groundwater pursuant to this section for a period of thirty years after the sanitary disposal project is closed. The commission may prescribe a lesser period of monitoring duration and frequency in consideration of the potential or lack thereof for groundwater contamination from the sanitary disposal project. The commission may extend the thirty-year monitoring period on a site-specific basis by adopting rules specifically addressing additional monitoring requirements for each sanitary disposal project for which the monitoring period is to be extended.

7. The commission shall adopt rules which may require the installation of shafts to relieve the accumulation of gas in a sanitary disposal project.

8. The commission shall adopt rules which establish closure, postclosure, leachate control and treatment, and financial assurance standards and requirements and which establish minimum levels of financial responsibility for sanitary disposal projects.

9. The commission shall adopt rules which establish the minimum distance between tiling lines and a sanitary landfill in order to assure no adverse effect on the groundwater.

10. The commission shall adopt rules for the distribution of grants to cities, counties, central planning agencies, and public or private agencies working in cooperation with cities or counties, for the purpose of solid waste management. The rules shall base the awarding of grants on a project's reflection of the solid waste management policy and hierarchy established in section 455B.301A, the proposed amount of local matching funds, and community need.

11. By July 1, 1990, a sanitary landfill disposal project operating with a permit shall have a trained, tested, and certified operator. A certification program shall be devised or approved by rule of the department.

12. The commission shall adopt rules for the certification of operators of solid waste incinerators. The criteria for certification shall include, but is not limited to, an operator's technical competency and operation and maintenance of solid waste incinerators.

13. Notwithstanding the provisions of this chapter regarding the requirement of the equipping of a sanitary landfill with a leachate control system and the establishment and continuation of a postclosure account, the department shall adopt rules which provide for an exemption from the requirements to equip a publicly owned sanitary landfill with a leachate control system and to establish and maintain a postclosure account if the sanitary landfill operator is a public agency, if the sanitary landfill has closed or will close by July 1, 1992, and will no longer accept waste for disposal after that date, and if at the time of closure of the sanitary landfill monitoring of the groundwater does not reveal the presence of leachate. The department shall require postclosure groundwater monitoring and shall establish the requirements

for the implementation of leachate collection and control in cases in which leachate is found during postclosure monitoring. The department shall provide for a closure completion period following the date of closure of a sanitary landfill. Notwithstanding the provisions of this paragraph, the public agency shall retain financial responsibility for closure and postclosure requirements applicable to sanitary disposal projects.

14. The commission shall adopt rules providing for the land application of soils resulting from the remediation of underground storage tank releases in the state.

15. The commission shall adopt rules which require all sanitary disposal projects in which the tonnage fee pursuant to section 455B.310 is imposed, to install scales and utilize these scales to calculate payment of the tonnage fee.

16. The commission shall adopt rules which prohibit the land application of petroleum contaminated soils on flood plains.

17. The commission shall adopt rules to establish a special waste authorization program. For purposes of this subsection, *"special waste"* means any industrial process waste, pollution control waste, or toxic waste which presents a threat to human health or the environment or a waste with inherent properties which make the disposal of the waste in a sanitary landfill difficult to manage. Special waste does not include domestic, office, commercial, medical, or industrial waste that does not require special handling or limitations on its disposal. Special waste does not include hazardous wastes which are regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6921 – 6934, hazardous wastes as defined in section 455B.411, subsection 3, or hazardous wastes included in the list compiled in accordance with section 455B.464.

18. The commission shall adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit.

[C71, §406.5; C73, 75, 77, 79, 81, §455B.78; 82 Acts, ch 1112, §1, 2]

C83, §455B.304

85 Acts, ch 58, §1; 86 Acts, ch 1174, §1 – 3; 87 Acts, ch 225, §406 – 408; 89 Acts, ch 272, §29; 90 Acts, ch 1235, §16; 90 Acts, ch 1255, §27; 90 Acts, ch 1260, §25; 92 Acts, ch 1215, §5; 94 Acts, ch 1177, §2; 95 Acts, ch 61, §2; 95 Acts, ch 215, §3; 97 Acts, ch 137, §7; 98 Acts, ch 1193, §1

455B.305 Issuance or renewal of permits by director.

1. The director shall issue, revoke, suspend, modify, or deny permits for the construction and operation of sanitary disposal projects.

A permit shall be issued by the director or at the director's direction, by a local board of health, for each sanitary disposal project operated in this state. The permit shall be issued in the name of the city or county or, where applicable, in the name of the public or private agency operating the project. Each sanitary disposal project shall be inspected annually by the department or a local board of health. The permits issued pursuant to this section are in addition to any other licenses, permits or variances authorized or required by law, including, but not limited to, chapter 335. A permit may be suspended or revoked by the director if a sanitary disposal project is found not to meet the requirements of part 1 or rules issued under part 1. The suspension or revocation of a permit may be appealed to the department.

2. Beginning July 1, 1988, the director shall not issue a permit for the construction or operation of a new sanitary disposal project unless the permit applicant, in conjunction with all local governments using the sanitary disposal project, has filed a plan as required by section 455B.306. For those sections for which the department has not developed rules, the permit shall contain conditions and a schedule for meeting all applicable requirements of section 455B.306.

3. Beginning July 1, 1988, the director shall not renew or reissue a permit which had been initially issued prior to that date for a sanitary disposal project, unless the permit applicant, in conjunction with all local governments using the sanitary disposal project, has filed a plan as required by section 455B.306. For those sections for which the department has not developed rules, the permit shall contain conditions and a schedule for meeting all applicable requirements of section 455B.306.

4. Beginning July 1, 1994, the director shall not renew or reissue a permit which had been initially issued or renewed prior to that date for a sanitary disposal project, unless and until the permit applicant, in conjunction with all local governments using the sanitary disposal project, documents that steps are being taken to begin implementing the plan filed pursuant to section 455B.306. For those sections for which the department has not developed rules, the permit shall contain conditions and a schedule for meeting all applicable requirements of section 455B.306. However, a permit may be issued for the construction and operation of a new sanitary disposal project in accordance with subsection 2.

5. Beginning July 1, 1997, the director shall not renew or reissue a permit which had been renewed or reissued prior to that date for a sanitary landfill, unless and until the permit applicant, in conjunction with all local governments using the landfill, documents that alternative methods of solid waste disposal other than use of a sanitary landfill have been implemented as set forth in the plan filed pursuant to section 455B.306. However,

the director may issue a permit for the construction and operation of a new sanitary landfill in accordance with subsection 2 and a permit may be renewed or reissued for a sanitary landfill which had received an initial permit but the permit had not been previously renewed or reissued prior to July 1, 1997 in accordance with subsection 3.

After July 1, 1997, however, no new landfill permits shall be issued unless the applicant, in conjunction with all local governments which will use the landfill, certifies that the landfill is needed as a part of an alternative disposal method, or unless the applicant provides documentation which satisfies the director that alternatives have been studied and are not either technically or economically feasible. The decision of the director is subject to review by the commission at its next meeting.

6. Beginning July 1, 1992, the director shall not issue a permit for a sanitary landfill unless the sanitary landfill is equipped with a leachate control system. Beginning July 1, 1994, the director shall not renew or reissue a permit for an existing sanitary landfill unless the sanitary landfill is equipped with a leachate control system. During the period from July 1, 1992, through June 30, 1994, the director may require an existing sanitary landfill to install a leachate control system if leachate from the sanitary landfill is adversely impacting the public health or safety or the environment. During the period from July 1, 1992, through June 30, 1994, the director shall require an existing sanitary landfill to install a leachate control system if the sanitary landfill has not submitted a completed hydrogeological plan to the department. The director may exempt a permit applicant from these requirements if the director determines that certain conditions regarding, but not limited to, existing physical conditions, topography, soil, geology, and climate, are such that a leachate control system is unnecessary. The director may exempt a permit applicant from the requirements of this subsection if the permittee certifies that a risk assessment of the site indicates that a current or potential threat to environmental health does not exist such that an exposed individual has no greater than a one in one million risk of developing cancer and for noncarcinogens a hazard index of less than one. The director shall use the United States environmental protection agency's risk assessment guidance for the superfund as a basis for determining whether to grant the exemption. The exemption in this subsection shall apply only to sanitary landfill cells in existence prior to July 1, 1992, or the vertical expansion above a cell in which waste was deposited prior to July 1, 1992. A sanitary landfill permittee desiring an exemption shall apply to the director and certify a completion date for a risk assessment study by December 1, 1994. If an exemption is not granted, or if the risk assessment study concludes that a leachate control system is required, a permittee shall certify a completion date and increments of progress for the installation of a leachate control system. The department shall retain the discretion to approve or disapprove a risk assessment study or a proposed completion date under this subsection. If a schedule for a risk assessment study or the installation of a leachate control system is approved by the department and satisfactory progress is being made toward completion of the study or the installation of the leachate control system, the permittee shall not be subject to penalties for failure to meet the requirements of this subsection.

[C71, §406.6; C73, 75, 77, 79, 81, §455B.79]
C83, §455B.305
83 Acts, ch 136, §4; 86 Acts, ch 1175, §2; 86 Acts, ch 1245, §1899, 1899B; 87 Acts, ch 225, §409, 410; 89 Acts, ch 272, §30; 92 Acts, ch 1215, §6; 94 Acts, ch 1177, §3

455B.305A Local approval of sanitary landfill and infectious waste incinerator projects.

1. Prior to the siting of a proposed, new sanitary landfill, incinerator, or infectious medical waste incinerator, a city, county, or private agency, shall submit a request for local siting approval to the city council or county board of supervisors which governs the city or county in which the proposed site is to be located. The requirements of this section do not apply to the expansion of an existing sanitary landfill owned by a private agency which disposes of waste which the agency generates on property owned by the agency. The city council or county board of supervisors shall approve or disapprove the site for each sanitary landfill, or incinerator, or infectious medical waste incinerator.

Prior to the siting of a proposed new sanitary landfill or incinerator by a private agency disposing of waste which the agency generates on property owned by the agency which is located outside of the city limits and for which no county zoning ordinance exists, the private agency shall cause written notice of the proposal, including the nature of the proposed facility, and the right of the owner to submit a petition for formal siting of the proposed site, to be served either in person or by mail on the owners and residents of all property within two miles in each direction of the proposed local site area. The owners shall be identified based upon the authentic tax records of the county in which the proposed site is to be located. The private agency shall notify the county board of supervisors which governs the county in which the site is to be located of the proposed siting, and certify that notices have been mailed to owners and residents of the impacted area. Written notice shall be published in the official newspaper, as selected by the county board of supervisors pursuant to section 349.1, of the county in which the site is located. The notice shall state the name and address

of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, and a description of the right of persons to comment on the request. If two hundred fifty or a minimum of twenty percent, whichever is less, of the owners and residents of property notified submit a petition for formal review to the county board of supervisors or if the county board of supervisors, on the board's own motion, requires formal review of the proposed siting, the private agency proposal is subject to the formal siting procedures established pursuant to this section.

2. An applicant for siting approval shall submit information to the city council or county board of supervisors to demonstrate compliance with the requirements prescribed by this chapter regarding a sanitary landfill or infectious waste incinerator. Siting approval shall be granted only if the proposed project meets all of the following criteria:

a. The project is necessary to accommodate the solid waste management needs of the area which the project is intended to serve.

b. The project is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.

c. The project is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The city council or county board of supervisors shall consider the advice of the appropriate planning and zoning commission regarding the application.

d. The plan of operations for the project is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

e. The traffic patterns to or from the project are designed in order to minimize the impact on existing traffic flows.

f. Information regarding the previous operating experience of a private agency applicant and its subsidiaries or parent corporation in the area of solid waste management or related activities are made available to the city council or county board of supervisors.

g. The department of natural resources has been consulted by the city council or board of supervisors prior to the approval.

3. No later than fourteen days prior to a request for siting approval, the applicant shall cause written notice of the request to be served either in person or by restricted certified mail on the owners of all property within the proposed local site area not solely owned by the applicant, and on the owners of all property within one thousand feet in each direction of the lot line of the proposed local site property if the proposed local site is within the city limits, or within two miles in each direction of the lot line of the proposed local site property if the proposed local site is outside of the city limits. The owners shall be identified based upon the authentic tax records of the county in which the project is to be located.

Written notice shall be published in the official newspaper of the county in which the site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on the request.

4. An applicant shall file a copy of its request with the department and with the city council or the county board of supervisors in which the proposed site is located. The request shall include the substance of the applicant's proposal and all documents, if any, submitted as of that date to the department pertaining to the proposed project. All documents or other materials pertaining to the proposed project on file with the city council or county board of supervisors shall be made available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction.

Any person may file written comment with the city council or county board of supervisors concerning the appropriateness of the proposed site for its intended purpose. The city council or county board of supervisors shall consider any comment received or postmarked not later than thirty days after the date of the last public hearing.

5. At least one public hearing shall be held by the city council or county board of supervisors no sooner than ninety days but no later than one hundred twenty days from receipt of the request for siting approval. A hearing shall be preceded by published notice in an official newspaper of the county of the proposed site, including in any official newspaper located in the city of the proposed site.

6. Decisions of the city council or the county board of supervisors shall be in writing, specifying the reasons for the decision. The written decision of the city council or the county board of supervisors shall be available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction. Final action shall be taken by the city council or the county board of supervisors within one hundred eighty days after the filing of the request for site approval.

At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for questioning by the city council or the county board of supervisors and members of the public, the applicant may file not more than one amended application upon payment of additional fees pursuant to subsection 9. The time limitation for final action on an amended application shall be extended for an additional

ninety days.

7. Construction of a project which is granted local siting approval under this section shall commence within one calendar year from the date upon which it was granted or the permit shall be nullified.

8. The local siting approval, criteria, and other procedures provided for in this section are the exclusive local siting procedures. Local zoning, ordinances, or other local land use requirements may be considered in such siting decisions.

9. A city council or a county board of supervisors shall charge an applicant for siting approval, under this section, a fee to cover the reasonable and necessary costs incurred by the city or county in the siting approval process.

10. An applicant shall not file a request for local siting approval which is substantially the same as a request which was denied within the preceding two years pursuant to a finding against the applicant under the established criteria.

90 Acts, ch 1191, §1; 92 Acts, ch 1182, §2, 3; 94 Acts, ch 1023, §55

455B.305B Appeal from decision. Repealed by 90 Acts, ch 1191, § 8.

455B.306 Plans filed.

1. A city, county, and a private agency operating or planning to operate a sanitary disposal project shall file with the director a comprehensive plan detailing the method by which the city, county, or private agency will comply with this part 1. All cities and counties shall also file with the director a comprehensive plan detailing the method by which the city or county will comply with the requirements of section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents.

For the purposes of this section, a public agency managing the waste stream for cities or counties pursuant to chapter 28E, shall file one comprehensive plan on behalf of its members, which constitutes full compliance by the public agency's members with the filing requirements of this section. If both a public agency managing the waste stream for a city or county pursuant to chapter 28E, and one or more of the public agency's member cities or counties file a comprehensive plan under this subsection, the director shall, following notice to the agency, make a determination that any plan filed by a member city or county is compatible with the comprehensive plan of the chapter 28E public agency. If the director determines that the comprehensive plan of a city or county is not compatible with the comprehensive plan of a chapter 28E public agency, the director shall require the city or county to provide justification for approval of the comprehensive plan based upon the innovative nature of the comprehensive plan, the urgency of implementation, or other unique features of the comprehensive plan of the city or county, and that the plan otherwise complies with the provisions of this chapter.

This subsection does not prevent the director from approving pilot projects which otherwise comply with the provisions of this chapter. The director shall review each comprehensive plan submitted and may reject, suggest modification, or approve the proposed plan. The director shall aid in the development of comprehensive plans for compliance with this part. The director shall make available to a city, county, and private agency appropriate forms for the submission of comprehensive plans and may hold hearings for the purpose of implementing this part. The director and governmental agencies with primary responsibility for the development and conservation of energy resources shall provide research and assistance, when cities and counties operating or planning to operate sanitary disposal projects request aid in planning and implementing resource recovery systems.

A comprehensive plan filed by a private agency operating or planning to operate a sanitary disposal project required pursuant to section 455B.302 shall be developed in cooperation and consultation with the city or county responsible to provide for the establishment and operation of a sanitary disposal project.

A completed plan for the control and treatment of leachate, submitted to meet the requirements of section 455B.305, subsection 6, shall be reviewed by the director, and the director shall reject, suggest modifications, or approve the completed plan within six months of submittal of the plan. If no action is taken within the six-month period, the plan shall be considered approved. However, the director may require updating of the plan at the time of renewal or reissuance of a previously issued permit.

2. The plan required by subsection 1 for sanitary disposal projects shall be filed with the department at the time of initial application for the construction and operation of a sanitary disposal project and at a minimum shall be updated and refiled with the department at the time of each subsequent application for renewal or reissuance of a previously issued permit. The department may, consistent with rules of the commission, require filing or updating of a plan at other times.

3. A city or county required to file with the director a comprehensive plan detailing the method by which the city or county will comply with the requirements of section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents and which seeks approval of the inclusion of refuse-derived fuel as a component of its percentage of waste reduction, shall file an annual report with the director regarding the percentage of reduction attributable to refuse-derived fuel and the justification for such inclusion. The director shall approve or reject the inclu-

sion. The percentage of reduction attributable to refuse-derived fuel and allowable for inclusion shall not exceed fifty percent and only those products established as allowable pursuant to section 455D.20 shall be included in the calculation of the waste reduction goal.

4. A comprehensive plan filed pursuant to this section shall incorporate and reflect the waste management hierarchy of the state solid waste management policy and shall at a minimum address the following general topics:

a. The extent to which solid waste is or can be recycled.

b. The economic and technical feasibility of using other existing sanitary disposal project facilities in lieu of initiating or continuing the sanitary landfill currently used.

c. The expected environmental impact of alternative solid waste disposal methods, including the use of sanitary landfills.

d. A specific plan and schedule for implementing technically and economically feasible solid waste disposal methods that will result in minimal environmental impact.

5. The comprehensive plan shall provide details of a local recycling program which shall contain a methodology for meeting the state volume reduction goal pursuant to section 455D.3, and a methodology for implementing a program of separation of wastes including but not limited to glass, plastic, paper, and metal.

6. In addition to the above requirements, the following specific areas must be addressed in detail in a comprehensive plan filed in conjunction with the issuance, renewal, or reissuance of a permit for a sanitary disposal project:

a. A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure adopted by rule by the commission. The plan shall include, but is not limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting these costs. The postclosure plan shall reflect the thirty-year time period requirement for postclosure responsibility.

b. A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of control and treatment in order to meet the requirements of section 455B.305, subsection 6.

c. A financial plan detailing the actual cost of the sanitary disposal project and including the funding sources of the project. In addition to the submittal of the financial plan filed pursuant to this subsection, the operator of an existing sanitary landfill shall submit an annual financial statement to the department.

d. An emergency response and remedial action plan including established provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment, and the identification of possible occurrences that may endanger human health and environment.

e. A description of the service area to be served by the city, county, or private agency under the comprehensive plan. A comprehensive plan shall not include a service area, any part of which is included in another comprehensive plan.

7. When a proposed plan is subject to review and approval by several state and local agencies, if the plan is substantially modified after approval by an agency, the plan shall be resubmitted as a new proposal to all other agencies to ensure that all agencies have approved the same plan.

8. In addition to the comprehensive plan filed pursuant to subsection 1, a person operating or proposing to operate a sanitary disposal project shall provide a financial assurance instrument to the department prior to the initial approval of a permit or prior to the renewal of a permit for an existing or expanding facility beginning July 1, 1988.

a. The financial assurance instrument shall meet all requirements adopted by rule by the commission, and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Following the cessation of operation or closure of a sanitary disposal project, neither the guarantor nor the operator shall cancel, revoke, or disburse the financial assurance instrument or allow the instrument to terminate until the operator is released from closure, postclosure, and monitoring responsibilities.

b. The operator shall maintain closure, and postclosure accounts. The commission shall adopt by rule the amounts to be contributed to the accounts based upon the amount of solid waste received by the facility. The accounts established shall be specific to the facility.

(1) Money in the accounts shall not be assigned for the benefit of creditors with the exception of the state.

(2) Money in an account shall not be used to pay any final judgment against a licensee arising out of the ownership or operation of the site during its active life or after closure.

(3) Conditions under which the department may gain access to the accounts and circumstances under which the accounts may be released to the operator after closure and postclosure responsibilities have been met, shall be established by the commission.

c. The commission shall adopt by rule the minimum amounts of financial responsibility for sanitary disposal projects.

d. Financial assurance instruments may include instruments such as cash or surety bond, a letter of credit, a secured trust fund, or a corporate guarantee.

e. The annual financial statement submitted to the department pursuant to subsection 6, paragraph *"c"*, shall include the current amounts established in each of the accounts and the projected amounts to be deposited in the accounts in the following year.

9. If a city, county, or private agency does not incorporate the elements of the solid waste hierarchy of the state solid waste management policy in a proposed initial or adopted comprehensive plan, the city council or county board of supervisors governing the city or county in which the sanitary landfill is proposed to be located or is located shall hold a public hearing to address the basis for not including any of the elements in the plan.

10. A city council or county board of supervisors governing the area in which a sanitary disposal project is proposed to be located or is located shall hold a public hearing to address the issue of including or not including local curbside recycling in the comprehensive plan.

[C71, §406.7; C73, 75, 77, 79, 81, §455B.80]

C83, §455B.306

86 Acts, ch 1175, §3; 86 Acts, ch 1245, §1899; 87 Acts, ch 225, §411 – 414; 89 Acts, ch 272, §31, 32; 90 Acts, ch 1255, §24; 92 Acts, ch 1213, §1; 92 Acts, ch 1215, §7 – 9

455B.306A Annexation of territory — expansion of services.

1. A city which annexes an area pursuant to chapter 368, or plans to operate or expand solid waste collection services into an area where the collection of solid waste is presently being provided by a private entity, shall notify the private entity by certified mail at least sixty days before its annexation or expansion of its intent to provide solid waste collection services in the area.

2. A city shall not commence alternative solid waste collection in such an area for one year from the effective date of the annexation or one year from the effective date of the notice that the city intends to operate or expand solid waste collection services in the area, unless the city contracts with the private entity to continue the services for that period.

3. A private entity providing solid waste collection services pursuant to this section shall provide solid waste collection services in the area in accordance with the city's comprehensive plan.

92 Acts, ch 1174, §6

455B.307 Dumping — where prohibited — penalty.

1. A private agency or public agency shall not dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director unless the agency has been granted a permit by the department which allows the dumping or depositing of solid waste on land owned or leased by the agency. The department shall adopt rules regarding the permitting of this activity which shall provide that the public interest is best served, but which may be based upon criteria less stringent than those regulating a public sanitary disposal project provided that the rules adopted meet the groundwater protection goal specified in section 455E.4. The comprehensive plans for these facilities may be varied in consideration of the types of sanitary disposal practices, hydrologic and geologic conditions, construction and operations characteristics, and volumes and types of waste handled at the disposal site. The director may issue temporary permits for dumping or disposal of solid waste at disposal sites for which an application for a permit to operate a sanitary disposal project has been made and which have not met all of the requirements of part 1 of this division and the rules adopted by the commission if a compliance schedule has been submitted by the applicant specifying how and when the applicant will meet the requirements for an operational sanitary disposal project and the director determines the public interest will be best served by granting such temporary permit.

2. The director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this part 1 of division IV or the rules adopted pursuant to the part. The attorney general shall, on request of the department, institute any legal proceedings necessary in obtaining compliance with an order of the commission or the director or prosecuting any person for a violation of the provisions of the part or rules issued pursuant to the part.

3. Any person who violates any provision of part 1 of this division or any rule or any order adopted or the conditions of any permit or order issued pursuant to part 1 of this division shall be subject to a civil penalty, not to exceed five thousand dollars for each day of such violation.

[C71, §406.9; C73, 75, 77, 79, 81, §455B.82]

C83, §455B.307

86 Acts, ch 1245, §1899; 87 Acts, ch 225, §415; 88 Acts, ch 1169, §5; 89 Acts, ch 281, §1

455B.307A Discarding of solid waste — prohibitions — penalty.

1. For the purposes of this section, *"discard"* means to place, cause to be placed, throw, deposit, or drop.

2. A person shall not discard solid waste onto or in any water or land of the state, or into areas or receptacles provided for such purposes which are under the control of or used by a person who has not authorized the use of the receptacle by the person discarding the solid waste.

3. A person who violates this section is subject to a civil penalty not to exceed five hundred dollars for each violation.

92 Acts, ch 1215, §10

455B.308 Appeal from order.

Any person aggrieved by an order of the director may appeal the order by filing a written notice of appeal with the director within thirty days of the issuance of the order. The director shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal. The hearing may be held before the commission or its designee. A complete record shall be made of the proceedings. The director shall issue the findings in writing to the aggrieved person within thirty days of the conclusion of the hearing. Judicial review may be sought of actions of the commission in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Act, petitions for judicial review may be filed in the district court of the county where the acts in issue occurred.

[C71, §406.10; C73, 75, 77, 79, 81, §455B.83]
C83, §455B.308
86 Acts, ch 1245, §1899

455B.309 Groundwater fund. Repealed by 87 Acts, ch 225, § 116. See § 455E.11.

455B.310 Tonnage fee imposed — appropriations — exemptions.

1. Except as provided in subsection 5, the operator of a sanitary landfill shall pay a tonnage fee to the department for each ton or equivalent volume of solid waste received and disposed of at the sanitary landfill during the preceding reporting period. The department shall determine by rule the volume which is equivalent to a ton of waste.

2. The tonnage fee is four dollars and twenty-five cents per ton of solid waste.

3. If a sanitary landfill required to pay a tonnage fee under this section has an updated comprehensive plan approved by the department, the sanitary landfill operator shall retain, in addition to the ninety-five cents retained pursuant to subsection 4, twenty-five cents of the tonnage fee per ton of solid waste in the fiscal year beginning July 1, 1998, and every year thereafter. In the fiscal year beginning July 1, 1999, and every year thereafter, any planning area which meets the statewide average, as determined by the department on July 1, 1999, shall retain, in addition to the twenty-five cents retained pursuant to this subsection, ten cents of the tonnage fee per ton of solid waste regardless of whether the planning area subsequently fails to meet the statewide average. Any tonnage fees retained pursuant to this subsection shall be used for waste reduction, recycling, or small business pollution prevention purposes. Any tonnage fee retained pursuant to this subsection shall be taken from that portion of the tonnage fee which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph *"a"*, subparagraph (1).

4. If a planning area achieves the fifty percent waste reduction goal provided in section 455D.3, ninety-five cents of the tonnage fee shall be retained by a city, county, or public or private agency. If the fifty percent waste reduction goal has not been met, one dollar and twenty cents of the tonnage fee shall be retained by a city, county, or public or private agency. Moneys retained by a city, county, or public or private agency shall be used as follows:

a. To meet comprehensive planning requirements of section 455B.306, the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications, and the preparation of a financial plan.

b. If a planning area achieves the fifty percent waste reduction goal provided in section 455D.3, forty-five cents of the retained funds shall be used for implementing waste volume reduction and recycling requirements of comprehensive plans filed under section 455B.306. If the fifty percent waste reduction goal has not been met, seventy cents of the retained funds shall be used for implementing waste volume reduction and recycling requirements of comprehensive plans filed under section 455B.306. The funds shall be distributed to a city, county, or public agency served by the sanitary disposal project. Fees collected by a private agency which provides for the final disposal of solid waste shall be remitted to the city, county, or public agency served by the sanitary disposal project. However, if a private agency is designated to develop and implement the comprehensive plan pursuant to section 455B.306, fees under this paragraph shall be retained by the private agency.

c. For other environmental protection activities.

d. Each sanitary landfill owner or operator shall submit a return to the department identifying the use of all fees retained under this section including the manner in which the fees were distributed. The return shall be submitted concurrently with the return required under subsection 7.

5. Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste, landscape waste, coal combustion waste, cement kiln dust, foundry sand, and solid waste materials approved by the department for lining or capping, or for construction berms, dikes, or roads in a sanitary disposal project or sanitary landfill are exempt from the tonnage fees imposed under this section. However, solid waste disposal facilities under this subsection are subject to the fees imposed pursuant to section 455B.105, subsection 11, paragraph *"a"*. Notwithstanding the provisions of section 455B.105, subsection 11, paragraph *"b"*, the fees

collected pursuant to this subsection shall be deposited in the solid waste account as established in section 455E.11, subsection 2, paragraph *"a"*, to be used by the department for the regulation of these solid waste disposal facilities.

6. All tonnage fees received by the department under this section shall be deposited in the solid waste account of the groundwater protection fund created under section 455E.11.

7. Fees imposed by this section shall be paid to the department on a quarterly basis with payment due by no more than ninety days following the quarter during which the fees were collected. The payment shall be accompanied by a return which shall identify the amount of fees to be allocated to the landfill alternative financial assistance program, the amount of fees, in terms of cents per ton, retained for meeting waste reduction and recycling goals under section 455D.3, and additional fees imposed for failure to meet the twenty-five percent waste reduction and recycling goal under section 455D.3.

8. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section or who fails or refuses to provide the return required by this section shall be assessed a penalty of two percent of the fee due for each month the fee or return is overdue. The penalty shall be paid in addition to the fee due.

9. Foundry sand used by a sanitary landfill as daily cover, road base, or berm material or for other purposes defined as beneficial uses by rule of the department is exempt from imposition of the tonnage fee under this section. Sanitary landfills shall use foundry sand as a replacement for earthen material, if the foundry sand is generated by a foundry located within the state and if the foundry sand is provided to the sanitary landfill at no cost to the sanitary landfill.

85 Acts, ch 241, §4; 86 Acts, ch 1175, §5; 87 Acts, ch 225, §416 – 418; 88 Acts, ch 1169, §6 – 8; 90 Acts, ch 1070, §1; 91 Acts, ch 257, §2 – 5; 92 Acts, ch 1215, §11, 12; 92 Acts, ch 1239, §47; 92 Acts, ch 1244, §44; 93 Acts, ch 176, §45; 95 Acts, ch 80, §1; 98 Acts, ch 1018, §1; 98 Acts, ch 1193, §2; 2001 Acts, ch 124, §1, 6

2001 amendment to subsection 4 is effective July 1, 2002; 2001 Acts, ch 124, §6

Subsection 4 amended

455B.311 Grants.

The director, with the approval of the commission, may make grants to cities, counties, or central planning agencies representing cities and counties or combinations of cities, counties, or central planning agencies from funds reserved under and for the purposes specified in section 455E.11, subsection 2, paragraph *"a"*, subject to all of the following conditions:

1. Application for grants shall be in a form and contain information as prescribed by rule of the department.

2. Grants shall only be awarded to a city or a county; however, a grant may be made to a central planning agency representing more than one city or county or combination of cities or counties for the purpose of planning and implementing regional solid waste management facilities or may be made to private or public agencies working in cooperation with a city or county. The department shall award grants, in accordance with the rules adopted by the commission, based upon a proposal's reflection of the solid waste management policy and hierarchy established in section 455B.301A. Grants shall be awarded only for an amount determined by the department to be reasonable and necessary to conduct the work as set forth in the grant application. Grants may be awarded at a maximum cost-share level of ninety percent with a preference given for regional or shared projects and a preference given to projects involving environmentally fragile areas which are particularly subject to groundwater contamination. Grants shall be awarded in a manner which will distribute the grants geographically throughout the state.

3. Grants shall be awarded only for an amount determined by the department to be reasonable and necessary to conduct the work as set forth in the grant application. Grants for less than a county-wide planning area shall be limited to twenty-five percent state funds, for a single-county planning area the state funds shall be limited to fifty percent, and for a two-county planning area the state funds shall be limited to seventy-five percent. For each additional county above a two-county planning area, the maximum allowable state funds shall be increased by an additional five percent, up to a maximum of ninety percent state funds.

4. Grants shall not be awarded to a city, county, or central planning agency if the entity has not submitted a completed hydrogeological plan to the department.

5. A city, county, or central planning agency on behalf of a city or county may not receive more than one grant under this section in any three-year period.

6. The director, with the approval of the commission, may deny a grant application if in the judgment of the director the applicant could not reasonably be expected to adequately and properly complete the plan for which the grant is requested or the applicant could not reasonably be expected to implement a planned sanitary disposal project.

86 Acts, ch 1175, §6; 87 Acts, ch 225, §115, 419; 92 Acts, ch 1215, §13

455B.312 Waste abatement program.

1. If the department receives a complaint that certain products or packaging when disposed of are incompatible with an alternative method of managing solid waste and with the solid waste

management policy, the director shall investigate the complaint. If the director determines that the complaint is well-founded, the department shall inform the manufacturer of the product or packaging and attempt to resolve the matter by informal negotiations.

2. If informal procedures fail to result in resolution of the matter, the director shall hold a hearing between the affected parties. Following the hearing, if it is determined that removal of the product or packaging is critical to the utilization of the alternative method of disposing of solid waste, the director shall issue an order setting out the requirements for an abatement plan to be prepared by the manufacturer within the time frame established in the order.

If an acceptable plan is not prepared, the plan is not implemented, or the problem otherwise continues unabated, the attorney general shall take actions authorized by law to secure compliance.

87 Acts, ch 225, §420

455B.313 Beverage container connectors — prohibition.

1. A distributor as defined in section 455C.1, subsection 9, shall not sell or offer to sell any beverage container if the beverage container is connected to another beverage container by a device constructed of a material which is not biodegradable or photodegradable.

2. A distributor violating subsection 1 is guilty of a serious misdemeanor.

88 Acts, ch 1182, §2

455B.314 Incineration at sanitary disposal projects.

Beginning January 1, 1990, a sanitary disposal project that includes incineration as a part of its disposal process shall separate from the materials to be incinerated recyclable and reusable materials, materials which will result in uncontrolled toxic or hazardous air emissions when burned, and hazardous or toxic materials which are not rendered nonhazardous or nontoxic by incineration. The removed materials shall be recycled, reused, or treated and disposed in a manner approved by the department. Separation of waste includes magnetic separation.

89 Acts, ch 272, §33

455B.315 Radioactive materials — prohibited deposit in sanitary landfills.

A person shall not dispose of, and a sanitary landfill shall not accept for final disposal, radioactive materials, as defined as of January 1, 1990, pursuant to section 136C.1.

90 Acts, ch 1191, §3

455B.316 Penalty.

A person who knowingly makes a false statement or representation in a plan filed pursuant to section 455B.306 is guilty of a serious misdemeanor.

92 Acts, ch 1111, §2

455B.317 through 455B.330 Reserved.

PART 2

RADIOACTIVE WASTE

455B.331 Definitions.

As used in this part 2 of division IV, unless the context otherwise requires:

1. *"Nuclear waste disposal site"* means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, leased, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of radioactive waste without creating a significant hazard to the public health or safety, and which are approved by the director.

2. *"Radiation"* means any ionizing radiation including, but not limited to, high-speed electrons, neutrons, protons and other nuclear particles, but not sound waves.

3. *"Radioactive material"* means any solid, liquid, or gaseous material which emits radiation spontaneously.

[C73, 75, 77, 79, 81, §455B.85]
C83, §455B.331
86 Acts, ch 1245, §1899

455B.332 Policy.

The department shall be the agency of the state to establish policy for the transportation, storage, handling, and disposal of radioactive material for the purpose of protecting the public health and safety.

[C73, 75, 77, 79, 81, §455B.86]
C83, §455B.332

455B.333 Rules for transporting.

The commission shall provide, by rule, for the proper methods of transporting, storage, and handling of radioactive material except that the provisions of this section shall not apply to the transportation, handling, or storage of radioactive material by licensed physicians and surgeons, licensed osteopathic physicians and surgeons, licensed podiatric physicians, licensed dentists, or licensed pharmacists within the scope of their practice or by qualified employees of licensed hospitals within the scope of their duties. In adopting such rules, the commission shall consider the methods and techniques used by the United States nuclear regulatory commission and radiation control agencies of other states for the regulation of the transporting, handling, and storage of radioactive material. The commission shall also

consult with the department of public safety in the development of rules for the transporting of radioactive material on the public roads of this state.

[C73, 75, 77, 79, 81, §455B.87]
C83, §455B.333
96 Acts, ch 1034, §68

455B.334 Waste disposal site.

The commission may approve or prohibit the establishment and operation of a nuclear waste disposal site in this state by a private person. In determining whether to grant or deny a permit to establish and operate a nuclear waste disposal site, the commission shall consider the need for a nuclear waste disposal site and the existing physical conditions, topography, soils and geology, climate, transportation, and land use at the proposed site. If the commission decides to issue a permit to establish and operate a nuclear waste disposal site, it shall establish, by rule, standards and procedures for the safe operation and maintenance of the proposed site. The commission shall also require the permittee to provide a sufficient surety bond or other financial commitment to insure the perpetual maintenance and monitoring of the nuclear waste disposal site.

[C73, 75, 77, 79, 81, §455B.88]
C83, §455B.334
83 Acts, ch 136, §5

455B.335 Director's duties.

The director:

1. Shall enforce any rules adopted under this part 2 of division IV and furnish a copy of the rules to each applicant for a permit required under this part.
2. May issue a permit to any person transporting, handling, or storing any radioactive material under rules adopted by the commission.
3. May require the maintenance of records relating to the receipt, storage, transfer, or disposal of radioactive material.
4. May issue, modify, or revoke orders in accordance with the provisions of this part 2 of division IV or the rules adopted under said part.
5. May require the submission of plans and specifications for the design, construction, maintenance, and monitoring of nuclear waste disposal sites for review and appraisal.

[C73, 75, 77, 79, 81, §455B.89]
C83, §455B.335
83 Acts, ch 136, §6; 86 Acts, ch 1245, §1899

455B.335A Pathological waste incineration facilities — radioactive materials — requirements.

1. The director shall require that a person who operates or proposes to operate a waste incinerator which provides for the incineration of pathological radioactive materials conduct dispersion modeling, under the direction of the Iowa department of public health, for radiological isotopes to measure the emission levels of alpha and gamma rays. The director shall allow a three-month period during which time the operator or person proposing operation of such an incinerator shall conduct the required dispersion modeling. In order to initiate or continue such incineration, the results of the modeling shall provide that the existing incinerator meets or the proposed incinerator will meet the emission standards established by the United States environmental protection agency for a selected isotope.
2. The department shall conduct a public hearing following submission to the director of the results of the dispersion modeling conducted by an operator or person proposing operation of a waste incinerator which provides for or will provide for the incineration of pathological radioactive materials.
3. If the dispersion modeling results do not meet the standards for emission limitations prescribed under subsection 1, the director shall require the operator or the person who proposes to operate a waste incinerator which provides for the incineration of pathological radioactive materials to employ or conduct an additional dispersion modeling test employing the best available control technology. Following employment of the best available control technology or the conducting of the additional dispersion modeling, if the incinerator or proposed incinerator does not or will not meet the standards prescribed under subsection 2, the operator's permit for incineration of pathological radioactive materials shall be revoked or the permit for such proposed incineration shall be denied.

91 Acts, ch 242, §2

455B.336 Notice to violators.

If the director determines that there are reasonable grounds to believe a violation of this part 2 of division IV or of the rules issued under said part has occurred, the director shall give written notice by certified mail to the alleged violator specifying the alleged violations involved and specifying a period of time in which to eliminate the violation. If the alleged violator fails to comply within such specified time, the director shall schedule a hearing and give written notice to the alleged violator by certified mail. In connection with the hearings, the director may issue subpoenas requiring the attendance of witnesses and the production of records pertinent to such hearing. On the basis of the findings, the director shall issue a final order which shall be forwarded to the alleged violator by certified mail.

[C73, 75, 77, 79, 81, §455B.90]
C83, §455B.336
86 Acts, ch 1245, §1899

455B.337 Emergency action.

Whenever the director finds that an emergency exists requiring immediate action to protect the public health and safety, the director may, without notice or hearing, issue an emergency order reciting that an emergency exists and requiring that such action be taken as the director deems necessary to meet the emergency. The order may be issued orally to the person whose operation constitutes the emergency by the director and confirmed by a copy of such order to be sent by certified mail within twenty-four hours after the issuance of the oral order. The emergency order shall be effective immediately. Any person receiving an emergency order may request a hearing before the commission within thirty days following the receipt of the order. The commission shall schedule a hearing within fourteen days after receipt of the request for a hearing and give written notice to the alleged violator by certified mail. The commission may also schedule a hearing in the absence of a request by the alleged violator. On the basis of the findings, the commission shall issue a final order which shall be forwarded to the alleged violator by certified mail.

The director may, if an emergency exists, impound or order the impounding of any radioactive material in the possession of any person who is not equipped to observe, or fails to observe, the provisions of this part 2 of division IV or any rules adopted under said part.

[C73, 75, 77, 79, 81, §455B.91]
C83, §455B.337
86 Acts, ch 1245, §1899

455B.338 Judicial review.

Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, a petition for judicial review may be filed in the district court of the county in which the alleged violation was committed or in which a final order was entered.

[C73, 75, 77, 79, 81, §455B.92]
C83, §455B.338

455B.339 Injunction.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this part 2 of division IV or any rule or order promulgated under said part, the director may request the attorney general to make application in the name of the state to the district court of the county in which such acts or practices may be performed, for an order enjoining such acts or practices notwithstanding the existence or pursuit of any other remedy, and the attorney general shall make such application.

[C73, 75, 77, 79, 81, §455B.93]
C83, §455B.339
86 Acts, ch 1245, §1899

455B.340 Penalty.

Any person who violates any provisions of this part 2 of division IV or rules adopted under said part, or any order of the department or director issued pursuant to said part, shall be guilty of a serious misdemeanor and, in addition, the person may be enjoined from continuing such violation. Each day of continued violation after notice that a violation is being committed shall constitute a separate violation.

[C73, 75, 77, 79, 81, §455B.94]
C83, §455B.340
86 Acts, ch 1245, §1899, 1899B

455B.341 to 455B.360 Reserved.

PART 3

DEBRIS

455B.361 Definitions.

As used in this part 3 of division IV, unless the context otherwise requires:

1. *"Discard"* means to place, cause to be placed, throw, deposit or drop.
2. *"Litter"* means any garbage, rubbish, trash, refuse, waste materials, or debris.

[C73, 75, 77, 79, 81, §455B.95]
C83, §455B.361

455B.362 Director's duties.

The director, at the direction of the commission, shall establish programs to encourage the active support of business, industry and the general public for litter control.

The director, at the direction of the commission, shall co-ordinate and encourage the co-operation of state and local public agencies in the administration of this part 3 of division IV.

[C73, 75, 77, 79, 81, §455B.96]
C83, §455B.362
86 Acts, ch 1245, §1899

455B.363 Litter.

No person shall discard any litter onto or in any water or land of this state, except that nothing in this section shall be construed to affect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose.

[C73, 75, 77, 79, 81, §455B.97]
C83, §455B.363
See §321.369

455B.364 Penalty.

Any person violating the provisions of section 455B.363, upon conviction, shall be guilty of a sim-

ple misdemeanor. The court, in lieu of or in addition to any other sentence imposed, may direct and supervise a labor of litter gathering.

[C73, 75, 77, 79, 81, §455B.98]
C83, §455B.364

455B.365 to 455B.380 Reserved.

PART 4

HAZARDOUS CONDITIONS

455B.381 Definitions.

As used in this part 4 unless the context otherwise requires:

1. *"Cleanup"* means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.

2. *"Cleanup costs"* means costs incurred by the state or its political subdivisions or their agents, or by any other person participating with the approval of the director in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition.

3. *"Corrosive"* means causing or producing visible destruction or irreversible alterations in human skin tissue at the site of contact, or in the case of leakage of a hazardous substance from its packaging, causing or producing a severe destruction or erosion of other materials through chemical processes.

4. *"Hazardous condition"* means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. For purposes of this division, a site which is a hazardous waste or hazardous substance disposal site as defined in section 455B.411, subsection 4, is a hazardous condition.

5. *"Hazardous substance"* means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. *"Hazardous substance"* may include any hazardous waste identified or listed by the administrator of the United States environmental protection agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act.

6. *"Irritant"* means a substance causing or producing dangerous or intensely irritating fumes upon contact with fire or when exposed to air.

7. *"Person having control over a hazardous substance"* means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

"Person having control over a hazardous substance" does not include a person who holds indicia of ownership in a hazardous condition site, if the person satisfies all of the following:

a. Holds indicia of ownership primarily to protect that person's security interest in the hazardous condition site, where the indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term *"primarily to protect that person's security interest"* includes, but is not limited to, ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the hazardous condition site, where the exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by the interest. The person holding indicia of ownership in a hazardous condition site and who acquires title or a right to title to the site upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold the indicia of ownership primarily to protect that person's security interest so long as the subsequent actions of the person with respect to the site are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

b. Does not exhibit managerial control of, or managerial responsibility for, the daily operation of the hazardous condition site through the actual, direct, and continual or recurrent exercise of managerial control over the hazardous condition site in which that person holds a security interest, which managerial control materially divests the borrower, debtor, or obligor of control.

c. Has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

8. *"Release"* means a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying, or dumping of a hazardous substance into or onto the land, air, or waters of the

state unless one of the following applies:

a. The release is done in compliance with the conditions of a federal or state permit.

b. The hazardous substance is confined and expected to stay confined to property owned, leased or otherwise controlled by the person having control over the hazardous substance.

c. In the use of pesticides, the application is done in accordance with the product label.

9. *"Toxic"* means causing or producing a dangerous physiological, anatomic, or biochemical change in a biological system.

10. *"Waters of the state"* means rivers, streams, lakes and any other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common. *"Waters of the state"* includes waters of the United States lying within the state.

[C79, 81, §455B.110]
C83, §455B.381
84 Acts, ch 1108, §1; 86 Acts, ch 1025, §1; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §1; 93 Acts, ch 42, §2

455B.382 Administrative agency.

The department shall be the agency of the state to prevent, abate, and control the exposure of the citizens of the state to hazardous conditions as defined in this part 4 of division IV.

[C79, 81, §455B.111]
C83, §455B.382

455B.383 Powers and duties of department.

The department shall:

1. Establish such rules pursuant to the provisions of chapter 17A as are necessary to protect the public from unnecessary exposure to hazardous substances.

2. Develop a comprehensive plan for the prevention, abatement and control of hazardous conditions within the state.

[C79, 81, §455B.112]
C83, §455B.383
86 Acts, ch 1245, §1899B

455B.384 Powers and duties of the executive director.

The director shall:

1. Provide technical advice and assistance to other state agencies, to political subdivisions of the state and to other persons upon request for the control, abatement, and prevention of hazardous conditions.

2. Collect and disseminate such information, publish such guidelines or reports, and conduct such educational programs deemed necessary to implement the provisions of this part 4 of division IV. Educational programs may be conducted in co-operation with other public or private agencies through agreements concluded pursuant to chapter 28E.

3. Exercise such other powers consistent with the Code and the provisions of this part 4 as the commission may direct.

[C79, 81, §455B.113]
C83, §455B.384
86 Acts, ch 1245, §1899

455B.385 State hazardous condition contingency plan.

All public agencies, as defined in chapter 28E, shall co-operate in the development and implementation of a state hazardous condition contingency plan. The plan shall detail the manner in which public agencies shall participate in the response to a hazardous condition. The director may enter into agreements, with approval of the commission, with any state agency or unit of local government or with the federal government, as necessary to develop and implement the plan. The plan shall be co-ordinated with the emergency management division of the department of public defense and any joint emergency management agencies established pursuant to chapter 29C.

[C79, 81, §455B.114]
C83, §455B.385
86 Acts, ch 1245, §1899; 92 Acts, ch 1139, §31

455B.386 Notification of spills — penalty.

A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. A sheriff or police chief who has been notified of a hazardous condition shall immediately notify the department. The department, upon receiving notice of a hazardous condition, shall immediately notify the operator of any public water supply system or private water supply system which may be affected by the hazardous condition. If requested, a person shall submit within thirty days of the department's request a written report of particulars of the incident. A person violating this section is subject to a civil penalty of not more than one thousand dollars.

[C79, 81, §455B.115]
C83, §455B.386
84 Acts, ch 1108, §2; 90 Acts, ch 1032, §1
See also §321.266

455B.387 Removal of hazardous substances.

1. When any hazardous condition exists, the

director may remove or provide for the removal and disposal of the hazardous substance at any time, unless the director determines such removal will be properly and promptly accomplished by the owner or operator of the vessel, vehicle, container, pipeline or other facility.

2. The director may use any resources available under the hazardous condition contingency plan to provide for the removal of hazardous substances. If the director finds that public agencies cannot provide the necessary labor or equipment or if the director determines that emergency conditions exist, the director may contract with a private person or agency for removal of the hazardous substance. In those cases where equipment or services are obtained from a public or private person or agency under emergency conditions, section 455B.105, subsection 6 does not apply.

3. An action taken by a person to abate, control, or clean up a hazardous substance involved in a hazardous condition shall not be construed as an admission of liability for a hazardous condition.

[C79, 81, §455B.116]
C83, §455B.387
83 Acts, ch 101, §94; 84 Acts, ch 1108, §3; 86 Acts, ch 1245, §1899

455B.388 Injunctions and emergency orders.

1. If it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a contested case hearing before the commission or by a court.

2. The director may request that the attorney general institute legal proceedings for a temporary or permanent injunction pursuant to section 455B.391 for purposes of enforcing an emergency order.

[C79, 81, §455B.117]
C83, §455B.388
86 Acts, ch 1245, §1899

455B.389 Judicial review.

Judicial review of any order or other action of the commission or of the director may be sought in accordance with the terms of chapter 17A. Notwithstanding the provisions of chapter 17A, petitions for judicial review may be filed in the district court of the county in which the alleged hazardous condition occurred.

[C79, 81, §455B.118]
C83, §455B.389
86 Acts, ch 1245, §1899

455B.390 Jurisdiction limited.

Nothing contained in this part 4 of division IV shall be deemed to grant to the department any authority or jurisdiction under this part 4 with respect to the following:

1. Hazardous conditions existing solely within and which will probably continue to exist solely within commercial and industrial plants, works, or shops under the jurisdiction of chapters 88 and 91.

2. Relations between employers and employees with respect to hazardous conditions except that where such hazardous conditions extend to or affect areas within the scope of the authority granted by this part 4 of division IV, the department may take any action consistent with this part 4 to abate such hazardous condition.

3. The storage, transportation, handling, or use of flammable liquids, combustibles, and explosives, control over which is exercised by the state fire marshal under chapter 100.

4. The storage, transportation, handling or use of pesticides over which control is exercised by the state secretary of agriculture under chapter 206, except when spillage of pesticides creates a hazardous condition.

5. The storage, transportation, handling or use of fertilizers over which control is exercised by the state secretary of agriculture under chapter 200, except when spillage of fertilizers creates a hazardous condition.

[C79, 81, §455B.119]
C83, §455B.390
92 Acts, ch 1163, §94

455B.391 Duties of attorney general.

1. The attorney general shall, at the request of the department, institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to obtain compliance with the provisions of this part 4 of division IV. In any legal proceedings any previous findings of fact of the director or the department after due notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

2. The attorney general shall, at the request of the director, take appropriate action against the person having control over a hazardous substance to recover for the liabilities resulting under section 455B.392.

[C79, 81, §455B.120]
C83, §455B.391
86 Acts, ch 1158, §1; 86 Acts, ch 1245, §1899, 1899B

455B.392 Liability for cleanup costs.

1. A person having control over a hazardous substance is strictly liable to the state for all of the following:

a. The reasonable cleanup costs incurred by the state or its political subdivisions, by governmental subdivisions, or by any other persons participating in the prevention or mitigation of dam-

ages with the approval of the director, as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

b. The reasonable costs incurred by the state to evacuate people from the area threatened by a hazardous condition caused by the person.

c. The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from a hazardous condition caused by that person including the costs of assessing the injury, destruction, or loss.

d. The excessive and extraordinary cost, excluding salaries, incurred by the department in responding at and to the scene of a hazardous condition caused by that person.

If the failure is willful, the person is liable for punitive damages not to exceed triple the cleanup costs incurred by the state. Prompt and good faith notification to the director by the person having control over a hazardous substance that the person does not have the resources or managerial capability to begin or continue cleanup, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs. The director shall keep a record of all expenses incurred in carrying out a project or activity authorized by this part.

Claims by the state under this subsection may be appealed to the commission by the person filing a written notice of appeal within thirty days after receipt of the bill.

2. Liability under subsection 1 is limited to the following maximum dollar limitations:

a. Five million dollars for any vehicle, boat, aircraft, pipeline, or other manner of conveyance which transports a hazardous substance.

b. Fifty million dollars for any facility generating, storing, or disposing of a hazardous substance.

3. There is no liability under this section for a person otherwise liable if the hazardous condition is solely resulting from one or more of the following:

a. An act of God.

b. An act of war.

c. An act or omission of a third party if the person establishes both of the following:

(1) That taking into consideration the characteristics of the hazardous substance, the person otherwise liable exercised due care with respect to the hazardous substance.

(2) That the person otherwise liable took precautions against the foreseeable acts or omissions of the third party and the foreseeable consequences.

As used in this paragraph, *"third party"* does not include an employee or agent of the person otherwise liable or a third party whose act or omission occurs directly or indirectly in connection with a contractual relationship with the person otherwise liable.

4. There is no liability under this section for a person otherwise liable if all of the following conditions exist:

a. The liability arises during the transportation of a hazardous substance.

b. The fact that the hazardous substance is a hazardous substance has been misrepresented to the person transporting the hazardous substance.

c. The person transporting the hazardous substance does not know or have reason to know that the misrepresentation has been made.

5. Money collected pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423. Moneys shall be used to reimburse governmental subdivisions requested to assist in the cleanup for which the moneys were collected. The remainder of the moneys shall be used in the manner permitted for the fund.

6. This section does not deny any person any legal or equitable rights, remedies or defenses or affect any legal relationship other than the legal relationship between the state and a person having control over a hazardous substance pursuant to subsection 1.

7. *a.* There is no liability under this section for a person who has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, regardless of when that person acquired title or right to title to the hazardous condition site, except that a person otherwise exempt from liability under this subsection shall be liable to the state for the lesser of:

(1) The total reasonable cleanup costs incurred by the state to clean up a hazardous substance at the hazardous condition site; or

(2) The amount representing the postcleanup fair market value of the property comprising the hazardous condition site.

b. Liability under this subsection shall only be imposed when the person holds title to the hazardous condition site at the time the state incurs reasonable cleanup costs.

c. For purposes of this subsection, *"postcleanup fair market value"* means the actual amount of consideration received by such person upon sale or transfer of the hazardous condition site which has been cleaned up by the state to a bona fide purchaser for value.

d. Cleanup expenses incurred by the state shall be a lien upon the real estate constituting the hazardous condition site, recordable and collectable in the same manner as provided for in section 424.11, subject to the terms of this subsection. The lien shall attach at the time the state incurs expenses to clean up the hazardous condition site. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only when a notice of the lien is filed with the recorder of the county in which the property is located. Upon payment by the person to the state, of the amount

specified in this subsection, the state shall release the lien. If no lien has been recorded at the time the person sells or transfers the property, then the person shall not be liable for any cleanup costs incurred by the state.

84 Acts, ch 1108, §4; 86 Acts, ch 1158, §2, 3; 86 Acts, ch 1245, §1899; 93 Acts, ch 42, §3; 94 Acts, ch 1157, §1, 2

455B.393 Liability of state employees or persons providing assistance.

1. A person employed by the state is not liable for damages incurred as a result of actions taken by the person when acting in the person's official capacity pursuant to this part, rules adopted pursuant to this part and the hazardous condition contingency plan.

2. A person who provides assistance at the request of the department or by previous agreement with the department in the event of a hazardous condition is not liable in a civil action for damages as a result of that person's acts or omissions in rendering the assistance. This section does not relieve a person from civil damages in any of the following circumstances:

a. If the person providing assistance is also the person having control over the hazardous substance which created the hazardous condition.

b. If the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment.

c. For acts or omissions which result from intentional wrongdoing or gross negligence.

84 Acts, ch 1108, §5

455B.394 Right of entry.

A person shall not refuse entry or access to, or harass or obstruct an authorized representative of the department who seeks entry or access for the purpose of investigating or responding to a hazardous condition. The representative shall present appropriate credentials. Upon a showing of probable cause in writing and made under oath, a judge or magistrate having proper jurisdiction shall issue a suitably restricted search warrant to the representative of the department for the purposes of enabling the representative to investigate or respond to a hazardous condition.

84 Acts, ch 1108, §6

455B.395 Public information.

Information obtained under this part or a rule, order or condition adopted or issued under this part, or an investigation authorized thereby, shall be available to the public unless the information constitutes trade secrets or information which is entitled to confidential treatment in order to protect a plan, process, tool, mechanism, or compound which is known only to the person claiming confidential treatment and confidential treatment is necessary to protect the person's trade, business or manufacturing process.

84 Acts, ch 1108, §7

455B.396 Claim of state.

Liability to the state under this part or part 5 of this division is a debt to the state. The debt, together with interest on the debt at the maximum lawful rate of interest permitted pursuant to section 535.2, subsection 3, paragraph *"a"* from the date costs and expenses are incurred by the department is a lien on real property, except single and multi-family residential property, on which the department incurs costs and expenses creating a liability and owned by the persons liable under this part or part 5. To perfect the lien a statement of claim describing the property subject to the lien, signed by the director and approved by the commission must be filed within one hundred twenty days after the incurrence of costs and expenses by the department. The statement shall be filed with, accepted by, and recorded by the county recorder in the county in which the property subject to the lien is located. The statement of claim may be amended to include subsequent liabilities. To be effective the statement of claim shall be amended and filed within one hundred twenty days after the occurrence of the event resulting in the amendment.

The lien may be dissolved by filing with the appropriate recording officials a certificate, signed by the director, that the debt for which the lien is attached, together with interest and costs on the debt, has been paid or legally abated.

86 Acts, ch 1115, §1

455B.397 Financial disclosure.

Immediately upon the incurrence of any liability to the state under this part, the debtor shall submit to the director a report consisting of documentation of the debtor's liabilities and assets, including if filed, a copy of the annual report submitted to the secretary of state pursuant to chapter 490. A subsequent report pursuant to this section shall be submitted annually on April 15 for the life of the debt. These reports shall be kept confidential and shall not be available to the public.

86 Acts, ch 1115, §2; 90 Acts, ch 1205, §12

455B.398 Reserved.

455B.399 Cleanup assistance — liability.

1. A person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous condition or in preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of a hazardous condition is not liable for damages resulting from the assistance or advice.

2. Subsection 1 does not apply to a person who receives compensation other than reimbursement

for out-of-pocket expenses for services in rendering the assistance or advice.

3. This section does not limit the liability of a person for damages resulting from the person's gross negligence or reckless, wanton or intentional misconduct.

84 Acts, ch 1059, §1

455B.400 to 455B.410 Reserved.

PART 5

HAZARDOUS WASTE AND SUBSTANCE MANAGEMENT

"Toxic Cleanup Days"; see §455E.11(2c) and 455F.8
Section 455B.411, subsections 6, 9, and 10,
section 455B.412, subsections 2 – 4, and
sections 455B.413 – 455B.421
partially suspended; 87 Acts, ch 233, §204;
94 Acts, ch 1198, §30; 2000 Acts, ch 1073, §1

455B.411 Definitions.

As used in this part 5, unless the context otherwise requires:

1. *"Disposal"* means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste or hazardous substance into or on land or water so that the hazardous waste or hazardous substance or a constituent of the hazardous waste or hazardous substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

2. *"Hazardous substance"* means a hazardous substance as defined in 42 U.S.C. § 9601 of the federal Comprehensive Environmental Response, Compensation, and Liability Act and any element, compound, mixture, solution, or substance designated pursuant to 40 C.F.R. § 302.4.

3. *a. "Hazardous waste"* means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either of the following effects:

(1) Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. *"Hazardous waste"* may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.

b. "Hazardous waste" does not include:

(1) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.

(2) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

4. *"Hazardous waste or hazardous substance disposal site"* means real property which has been used for the disposal of hazardous waste or hazardous substances either illegally or prior to regulation as a hazardous waste or a hazardous substance under this part and any adjoining real property and groundwater affected by the disposal activities.

5. *"Lubricating oil"* means the fraction of crude oil or re-refined oil which is sold for purposes of reducing friction in an industrial or mechanical device.

6. *"Manifest"* means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

7. *"Recycled oil"* means used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Recycled oil includes oil which is refined, reclaimed, burned, or reprocessed.

8. *"Re-refined oil"* means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

9. *"Storage"* means the containment of a hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

10. *"Treatment"* means a method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous waste so as to neutralize the waste or to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or to reduce the waste in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste to render the waste nonhazardous.

11. *"Used oil"* means oil which has been refined from crude oil, has then been used, and as a result of the use, is contaminated by physical or chemical impurities.

[C81, §455B.130; 81 Acts, ch 151, §1]

C83, §455B.411

84 Acts, ch 1108, §8; 84 Acts, ch 1157, §1; 84 Acts, ch 1158, §2; 86 Acts, ch 1025, §2, 3; 91 Acts, ch 155, §2

Partial suspension and applicability of subsections 6, 9, and 10; 2000 Acts, ch 1073, §1

455B.412 Duties of the department.

The department shall:

1. Develop comprehensive plans and programs for the state for the management of hazardous waste. In the development of plans and programs, the department shall recognize the need for assuring that suitable facilities and sites for treatment and disposal are available for hazardous wastes generated in Iowa. As part of the hazardous waste management plan, the department

shall conduct a study of hazardous waste management in Iowa and shall report its findings to the general assembly not later than eighteen months after July 1, 1979. The study shall include the following:

a. A description of current sources of hazardous waste within the state, including the types and quantities of hazardous wastes.

b. A description of current hazardous waste transportation, storage, treatment and disposal practices and costs within the state.

c. A description of practices and methods that would reduce at the source the amount of hazardous waste generated and an estimate of the cost of these practices.

d. Identification and evaluation of alternatives to land disposal of hazardous wastes.

e. Identification of the general geologic and other criteria for a site for land disposal of hazardous wastes and the areas in Iowa that might meet the general criteria if alternatives to land disposal are not feasible.

f. The proper role and activities of the state in addition to those established in sections 455B.411 to 455B.421 and the federal Solid Waste Disposal Act in facilitating safe and efficient disposal of hazardous waste, including but not limited to a determination of the most appropriate procedures for receiving public comments and approving permits for siting hazardous waste disposal facilities.

g. The estimated private and public capital and annual operating costs of implementing the hazardous waste management plan recommended by the department.

2. Adopt rules establishing criteria for identifying the characteristics of hazardous wastes and listing hazardous wastes that are subject to this part. The department shall consider toxicity, persistence and degradability in nature, potential for accumulation in tissue, and related factors including flammability, corrosiveness, and other hazardous characteristics.

3. Adopt rules, applicable to generators or transporters of or owners or operators of facilities for the treatment, storage, or disposal of hazardous waste listed or identified by the department under subsection 2 of this section, as necessary to protect human health and the environment. The rules shall include establishment of a manifest system.

4. Adopt rules establishing standards and procedures for the certification of supervisory personnel and operators at hazardous waste treatment, storage or disposal facilities required to have a permit under section 455B.415.

5. Notwithstanding section 455B.420, adopt rules regulating the use of recycled oil for the purpose of road oiling, dust control, or weed control necessary to protect public health and the environment. The rules adopted shall be limited to addressing the following:

a. Analysis of oils by those persons supplying the oils prior to their use for road oiling, dust control or weed control. This analysis shall be for polychlorinated biphenyl, flashpoints, and lead.

b. Notification by the person supplying the oils of the results of analysis required to the person to whom the oils are supplied or delivered and the department at the time of delivery or prior to application of oils for road oiling, dust control or weed control.

c. Establishing maximum levels of contaminants allowed in oils used for the purpose of road oiling, dust control or weed control and prohibiting the use of oils containing contaminants in excess of maximum allowable levels for such purposes.

d. Requirements for persons supplying or applying oils for the mitigation and cleanup of contamination posing a threat to public health and the environment resulting from oils applied for road oiling, dust control or weed control.

[C81, §455B.131]

C83, §455B.412

84 Acts, ch 1157, §2; 84 Acts, ch 1158, §3; 85 Acts, ch 42, §1; 86 Acts, ch 1025, §4; 86 Acts, ch 1245, §1899B

Partial suspension and applicability of subsections 2 – 4; 2000 Acts, ch 1073, §1

455B.413 Director's duties.

The director shall:

1. Issue, revoke, suspend, modify or deny permits for persons owning or operating a facility for the treatment, storage or disposal of a hazardous waste identified by the commission under section 455B.412, subsection 2. Permits shall be issued for a period as the commission may by rule prescribe.

2. Administer examinations to determine the competence of operators and supervisory personnel at facilities for the treatment, storage or disposal of hazardous waste that are required to have a permit under section 455B.415. The director shall issue, revoke, suspend, or deny certificates of competency for persons as supervisory or operating personnel at facilities for the treatment, storage or disposal of hazardous waste.

3. Inspect and investigate hazardous waste generators and transporters and treatment, storage and disposal facilities as may be necessary to determine compliance with sections 455B.411 to 455B.421 and rules adopted and permits and orders issued pursuant to sections 455B.411 to 455B.421. The director shall periodically survey or inspect the construction, operation and monitoring, reporting and record-keeping systems of hazardous waste generators and transporters and treatment, storage and disposal facilities.

[C81, §455B.132]

C83, §455B.413

84 Acts, ch 1158, §4; 86 Acts, ch 1245, §1899

Partial suspension; applicability; 2000 Acts, ch 1073, §1

455B.414 Hazardous waste notification.

1. A person who on the effective date of a rule adopted under section 455B.412, subsection 2 identifying a hazardous waste as subject to sections 455B.411 to 455B.421 is generating or transporting the identified hazardous waste or owns or is operating a treatment, storage or disposal facility handling the identified hazardous waste shall file with the director a notification stating the waste handled by the person and the location and a general description of the activity involving the waste. The notice shall be given within ninety days after the effective date of the rule identifying the waste.

2. Except as provided in subsection 1, a person shall not commence to transport or generate a hazardous waste identified by rule under section 455B.412, subsection 2 without first notifying the director of the proposed activity. The notice shall state the waste to be handled, and the location and a general description of the activity involving the identified waste.

3. When the commission amends a rule adopted under section 455B.412, subsection 2, identifying additional characteristics of hazardous waste or identifying an additional substance as hazardous waste, the commission may require a person to file the notification required by subsection 1 or 2.

[C81, §455B.133; 81 Acts, ch 151, §2]

C83, §455B.414

84 Acts, ch 1158, §5; 86 Acts, ch 1245, §1899

Partial suspension; applicability; 2000 Acts, ch 1073, §1

455B.415 Permit required.

1. Except as provided in subsections 2 and 4, a person shall not construct or operate a facility for the treatment, storage or disposal of a hazardous waste identified under section 455B.412, subsection 2 unless the owner or operator has obtained a permit for the facility from the director.

2. The owner or operator of a facility for the treatment, storage or disposal of a hazardous waste identified under section 455B.412, subsection 2 existing on the effective date of the rule listing the waste shall obtain a permit for the facility within six months of the effective date of the rule. A person owning or operating a facility for the treatment, storage or disposal of a hazardous waste that existed on the effective date of the rule identifying the waste and that is required to have a permit under sections 455B.411 to 455B.421 is considered to have a permit until a final administrative determination is made if the person meets the following conditions:

a. The person has given notice as required by section 455B.414.

b. The person has applied for a permit.

c. The director has determined that the failure to issue the permit is not the result of the failure of the applicant to furnish information reasonably required or requested to process the application.

3. The commission may by rule specify the information required to be submitted with the application for a permit and the conditions under which the director shall issue, deny, revoke, suspend or modify permits. However, a permit shall not be issued for a treatment, storage or disposal facility unless the applicant presents evidence of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of the hazardous waste as determined by the commission.

4. A permit is not required for the storage of a hazardous waste identified under section 455B.412, subsection 2 when the only purpose of the storage is to accumulate for a period of up to ninety days sufficient quantities of the waste for transportation, treatment or disposal unless a permit for the storage is required under federal law.

5. A permit issued pursuant to this section shall be in addition to other licenses, permits or variances authorized or required by law, including, but not limited to, the requirements of chapter 335.

6. If the director denies a permit, the director shall inform the applicant in writing of the reasons for the denial. The applicant may appeal to the commission from the denial of a permit or from a condition of a permit if the applicant files a notice of appeal with the director within thirty days of receipt of the denial or issuance of the permit.

[C81, §455B.134]

C83, §455B.415

83 Acts, ch 136, §7; 84 Acts, ch 1158, §6; 86 Acts, ch 1245, §1899

Partial suspension; applicability; 2000 Acts, ch 1073, §1

455B.416 Inspections.

1. For purposes of developing a rule, conducting a study of hazardous waste management, compiling a site inventory, or enforcing sections 455B.411 to 455B.421, a person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous waste shall, upon request of the director, furnish information relating to the hazardous waste and permit the director at reasonable times to have access to and copy records relating to the waste. For the purpose of developing a rule or enforcing sections 455B.411 to 455B.421, the director may:

a. Enter at reasonable times an establishment or other place where hazardous waste is or has been generated, stored, treated or disposed of, or a vehicle transporting hazardous waste.

b. Inspect and obtain samples from a person of a hazardous waste and of containers or labeling associated with the waste.

c. Install, service and take samples from monitoring equipment on the property.

The inspection shall be completed within a rea-

sonable period of time.

2. If the director obtains a sample, prior to leaving the premises, the director shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

3. Documents or information obtained from a person under this section shall be available to the public except as provided in this subsection. Upon a showing satisfactory to the director by a person that documents or information, or a particular part of the documents or information to which the director has access under this section if made public would divulge commercial or financial information obtained from a person and privileged or confidential or a trade secret, the director shall consider the documents or information or the particular portion of the documents or information confidential. However the document or information may be disclosed to officers, employees or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this part 5.

4. *a.* If upon receipt of any information, the director determines that the presence of a hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or the release of the waste from the facility or site may present a substantial hazard to human health or the environment, the director may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the facility or site to determine the nature and extent of the hazard.

b. In the case of a facility or site not in operation at the time a determination is made regarding the facility or site under this subsection, if the director finds that the owner of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, the director may issue an order requiring the most recent previous owner or operator of the facility or site who could reasonably be expected to have actual knowledge to carry out the actions referred to in this subsection.

c. An order under this subsection shall require the person to whom the order is issued to submit to the director within thirty days from the issuance of the order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The director may, after providing the person with an opportunity to confer with the director on the proposal, require the person to carry out the monitoring, testing, analysis, and reporting in accordance with the proposal, which may be modified as the director deems reasonable to determine the nature and extent of the hazard or to remove the hazard.

d. If the director determines that no owner or operator referred to in this subsection is able to conduct monitoring, testing, analysis, or reporting satisfactory to the director, if the director deems any action carried out by an owner or operator to be unsatisfactory, or if the director cannot initially determine that there is an owner or operator referred to in this subsection who is able to conduct monitoring, testing, analysis, or reporting, the director may conduct reasonable monitoring, testing, or analysis to determine the nature and extent of the hazard associated with the site. The director may require the owner or operator referred to in this subsection to reimburse the director or other authority or person for the costs of the monitoring, testing, analysis, or reporting. The director shall not order a person to pay the costs of monitoring, testing, analysis, or reporting carried out by the director which confirms the results of monitoring, testing, or analysis done pursuant to an earlier order of the director.

e. For purposes of carrying out this subsection, the director may exercise the powers set forth in subsection 1.

[C81, §455B.135; 81 Acts, ch 151, §3, 4]
C83, §455B.416
86 Acts, ch 1245, §1899
Partial suspension; applicability; 2000 Acts, ch 1073, §1

455B.417 Prohibited acts — penalties.

1. A person shall not knowingly do any of the following acts:

a. Transport a hazardous waste identified under the commission's rules to a hazardous waste storage, treatment or disposal facility that is located in Iowa and that does not have a permit under section 455B.415, subsection 1.

b. Treat, store, or dispose of a hazardous waste identified under sections 455B.411 to 455B.421 either without having obtained a permit for the treatment, storage, or disposal under section 455B.415, subsection 1, or in violation of a material condition or requirement of a permit.

c. Make a false material statement or representation in an application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the provisions of sections 455B.411 to 455B.421.

d. Destroy, alter or conceal after July 1, 1981, any record required to be kept under rules adopted by the commission under this part. This paragraph applies to all persons who generated, stored, treated, transported, disposed of, or otherwise handled hazardous waste after November 19, 1980.

2. A person who violates subsection 1 is sub-

ject upon conviction to a fine of not more than twenty-five thousand dollars or to imprisonment for not to exceed one year, or both for each day of violation. If the conviction is for a violation committed after a first conviction, punishment shall be by a fine of not more than fifty thousand dollars or by imprisonment for not more than two years, or both for each day of violation.

3. A person who violates a provision of this part or a rule, permit, or order adopted or issued under this part is subject to a civil penalty not to exceed ten thousand dollars for each violation. Each day of violation constitutes a separate violation.

[C81, §455B.136; 81 Acts, ch 151, §5 – 8]
C83, §455B.417
84 Acts, ch 1158, §7, 8
Partial suspension; applicability; 2000 Acts, ch 1073, §1

455B.418 Enforcement.

1. If the director has substantial evidence that a person has violated or is violating a provision of sections 455B.411 to 455B.421, or of a rule or standard established or permit issued pursuant to sections 455B.411 to 455B.421:

a. The director may issue an order directing the person to desist in the practice that constitutes the violation or to take corrective action as necessary to ensure that the violation will cease. The person to whom the order is issued may commence a contested case within the meaning of chapter 17A by filing with the director within thirty days of receipt of the order a notice of appeal to the commission. On appeal, the commission may affirm, modify or vacate the order of the director.

b. If it is determined by the director that an emergency exists, the director may issue without notice or hearing an order necessary to terminate the emergency. The order shall be binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a court. *"Emergency"* as used in this subsection means a situation where the handling, storage, treatment, transportation or disposal of a hazardous waste is presenting an imminent and substantial threat to human health or the environment.

c. When the director determines that a disposal site contains hazardous waste in an amount and under conditions that cause an imminent threat to human health and that the person responsible for the site will not properly and promptly remove the waste or eliminate the threat, the director may take action as necessary to remove the waste or permanently alleviate or eliminate the threat to human health. The costs of removing the waste or alleviating or eliminating the threat shall be recovered from the person responsible for the disposal site.

d. The director with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to subsection 2 of this section.

2. The attorney general shall, at the request of the director pursuant to paragraph *"d"* of subsection 1 of this section, institute legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of sections 455B.411 to 455B.421 or to obtain compliance with said sections or a rule promulgated or a condition of a permit or order issued under said sections.

3. In a case arising from the violation of an order issued under subsection 1, paragraph *"a"* of this section, the burden of proof shall be on the state to show that the time specified in the order within which the individual must take corrective action is reasonable.

4. For the purpose of determining violations under this section and section 455B.417, the term *"person"* does not include a person who holds indicia of ownership in the hazardous waste or hazardous substance disposal site which contains a hazardous waste or hazardous substance, or where hazardous substances or wastes are treated, stored, or disposed of, if such person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the disposal site, whether or not the director has determined that such disposal site constitutes a hazardous condition site.

[C81, §455B.137; 81 Acts, ch 151, §9 – 11]
C83, §455B.418
86 Acts, ch 1245, §1899; 93 Acts, ch 42, §4
Partial suspension; applicability; 2000 Acts, ch 1073, §1

455B.419 Agricultural chemicals.

1. A farmer using or disposing of federally approved agricultural chemicals or the empty containers of agricultural chemicals is not in violation of sections 455B.411 to 455B.421 by reason of the use or disposal if the farmer does both of the following:

a. Applies or disposes of the chemicals in accordance with the manufacturer's instructions.

b. Triple rinses each chemical container after it has been emptied and uses the rinsing as makeup water in a tankmix and applies the mix to the farmer's cropland at an application rate that does not exceed the manufacturer's instructions.

2. As used in this section, farmer means an owner or tenant of a farm unit, a member of the family of the owner or tenant, or an employee of the owner or tenant. Farmer does not include a commercial applicator of agricultural chemicals.

[C73, 75, 77, §455B.102(2); C79, §455B.132(2); C81, §455B.138]
C83, §455B.419
84 Acts, ch 1158, §9
Partial suspension; applicability; 2000 Acts, ch 1073, §1

455B.420 Rules.

Except as provided in chapter 89B, rules adopted by the commission under sections 455B.411 to 455B.421 shall be consistent with and shall not exceed the requirements of 42 U.S.C.

secs. 6921-6934 as amended to January 1, 1981, and rules and regulations adopted pursuant to those sections.

[C81, §455B.139; 81 Acts, ch 151, §12]
C83, §455B.420
84 Acts, ch 1085, §21
Partial suspension; applicability; 2000 Acts, ch 1073, §1

455B.421 Judicial review.

Judicial review of actions of the commission or the director may be sought in accordance with the provisions of chapter 17A. Notwithstanding the provisions of chapter 17A, petitions for judicial review may be filed in the district court of the county where the acts in issue occurred. In addition to other rights of judicial review authorized by this section, a person who has complied with an order issued by the director or commission may within six months of compliance with the order seek relief in the district court on the grounds that the requirements imposed by the order are excessive, that the benefits to society are not commensurate with the costs of complying with the order and that society can be protected in a less costly manner. Upon a finding that the requirements imposed by the order are excessive, the court may modify or vacate the order.

[C81, §455B.140]
C83, §455B.421
86 Acts, ch 1245, §1899
Partial suspension; applicability; 2000 Acts, ch 1073, §1

455B.422 Acquisition and lease of sites. Repealed by 87 Acts, ch 180, § 12. See § 455B.486, 455B.487.

455B.423 Hazardous substance remedial fund.

1. A hazardous substance remedial fund is created within the state treasury. Moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the remedial fund at the end of each fiscal year shall be retained in the fund. However, any unexpended balance shall be transferred to the general fund to replace funds appropriated from the general fund during fiscal year 1985 and fiscal year 1986 for the purposes for which expenditures from the remedial fund are allowed.

2. The director may use the fund for any of the following purposes:

a. Administrative services for the identification, assessment and cleanup of hazardous waste or hazardous substance disposal sites.

b. Payments to other state agencies for services consistent with the management of hazardous waste or hazardous substance disposal sites.

c. Emergency response activities as provided in part 4 of this division.

d. Financing the nonfederal share of the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

e. Financing the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs of hazardous waste or hazardous substance disposal sites that do not qualify for federal cost-sharing pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

f. Through agreements or contracts with other state agencies, work with private industry to develop alternatives to land disposal of hazardous waste or hazardous substances including, but not limited to, resource recovery, recycling, neutralization, and reduction.

g. For the administration of the waste tire collection or processing site permit program.

However, at least seventy-five percent of the fund shall be used for the purposes stated in paragraphs *"d"* and *"e"*.

3. Neither the state nor its officers, employees, or agents are liable for an injury caused by a dangerous condition at a hazardous waste or hazardous substance disposal site unless the condition is the result of gross negligence on the part of the state, its officers, employees, or agents.

4. The director may contract with any person to perform the acts authorized in this section.

5. Moneys shall not be used from the fund for hazardous waste or hazardous substance disposal site cleanup unless the director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of hazardous waste or hazardous substance disposal sites or other responsible persons.

6. The director shall make all reasonable efforts to recover the full amount of moneys expended from the fund through litigation or cooperative agreements with responsible persons. Moneys recovered pursuant to this subsection shall be deposited with the treasurer of state and credited to the remedial fund.

84 Acts, ch 1108, §9; 86 Acts, ch 1025, §5; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §3 – 5; 92 Acts, ch 1218, §2

455B.424 Hazardous waste fees.

1. The person who generates hazardous waste or the owner or operator of a hazardous waste disposal facility who transports hazardous wastes off of the site where the hazardous waste was generated or off the disposal facility site shall pay a fee of ten dollars for each ton up to two thousand five hundred tons of hazardous waste transported off the site, excluding the water content of any waste that is transported to another facility under the ownership of the generator for the purposes of

waste treatment or recycling.

2. A person who generates hazardous waste or owns or operates a facility which treats or disposes of hazardous waste at the facility shall pay the following fees:

a. Forty dollars for each ton of hazardous wastes placed, deposited, dumped or disposed of onto or into the land at a disposal facility in Iowa.

b. Two dollars for each ton up to five hundred tons of hazardous waste destroyed or treated at the generator's site or at the disposal facility to render the hazardous waste nonhazardous.

3. Fees specified in subsections 1 and 2 shall not be imposed on the state or any of its political subdivisions.

4. Fees specified in subsections 1 and 2 shall not be imposed on any of the following:

a. Hazardous waste that is reclaimed or reused for energy or materials.

b. Hazardous waste that is transformed into new products which are not wastes.

c. Hazardous wastes created or retrieved as a result of remedial actions at a hazardous waste or hazardous substance disposal site.

d. Influent waste water to a treatment facility which is subject to regulation under either 33 U.S.C. § 1317(b) or 33 U.S.C. § 1342.

e. A hazardous waste which due to its intrinsic physical, chemical or biological composition degrades, decomposes or changes physical characteristics so as to be rendered or considered nonhazardous without any form of external mechanical, physical or chemical treatment being introduced. However, such change to a nonhazardous nature must occur within twenty-four hours of the generation of the hazardous waste before the exemption granted in this paragraph is applicable.

5. In addition to other fees imposed by this section, a person that is required to obtain a United States environmental protection agency identification number shall pay the following fees:

a. If the person generates more than one thousand kilograms of hazardous waste per month, a fee of two hundred fifty dollars.

b. If the person generates hazardous waste but does not generate more than one thousand kilograms of hazardous waste per month, a fee of twenty-five dollars.

c. If the person is a transporter of hazardous waste, a fee of twenty-five dollars.

d. If the person operates a hazardous waste treatment, storage, or disposal facility, a fee of twenty-five dollars.

6. Fees imposed by this section shall be paid to the department on an annual basis. Fees are due on April 15 for the previous calendar year. The payment shall be accompanied by a return in the form prescribed by the department.

7. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section shall be assessed a penalty of fifteen percent of the fee due. The penalty shall be paid in addition to the fee due.

8. Moneys collected or received by the department pursuant to this section shall be transmitted to the treasurer of state for deposit in the hazardous waste remedial fund.

9. The fees imposed by this section shall be suspended if after collection of the fees due from the previous quarter, the hazardous waste remedial fund has a balance in excess of six million dollars. If the balance falls below three million dollars, the fees shall be reimposed commencing the beginning of the next calendar quarter.

84 Acts, ch 1108, §10; 88 Acts, ch 1115, §1; 91 Acts, ch 155, §6; 98 Acts, ch 1178, §11, 12

455B.425 Annual report on hazardous substance remedial fund.

The director shall annually on January 1 give a full accounting of moneys received, moneys expended, sources and recipients, and purposes of the expenditures for the preceding fiscal year in the hazardous substance remedial fund to the general assembly and the governor.

84 Acts, ch 1108, §11; 86 Acts, ch 1025, §6; 86 Acts, ch 1245, §1899

455B.426 Registry of hazardous waste or hazardous substance disposal sites.

1. The director shall maintain and make available for public inspection a registry of confirmed hazardous waste or hazardous substance disposal sites in the state. The director shall take all necessary action to ensure that the registry provides a complete listing of all sites. The registry shall contain the exact location of each site and identify the types of waste found at each site.

2. The director shall investigate all known or suspected hazardous waste or hazardous substance disposal sites and determine whether each site should be included in the registry. In the evaluation of known or suspected hazardous waste or hazardous substance disposal sites, the director may enter private property and perform tests and analyses in the manner provided in section 455B.416.

84 Acts, ch 1108, §12; 86 Acts, ch 1025, §7; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §7

455B.427 Annual report on hazardous waste or hazardous substance disposal sites.

1. The director shall annually on January 1 transmit a report to the general assembly and the governor identifying all hazardous waste or hazardous substance disposal sites in the state listed on the registry. A copy of the report shall also be sent to the board of supervisors of every county containing a site.

2. The annual report shall include, but is not limited to, the following information for each site:

a. A general description of the site, including the name and address of the site, the type and

quantity of the hazardous waste or hazardous substance disposed of at the site and the name of the current owners of the site.

b. A summary of significant environmental problems at or near the site.

c. A summary of serious health problems in the immediate vicinity of the site and health problems deemed by the director in cooperation with the Iowa department of public health to be related to conditions at the site.

d. The status of testing, monitoring, or remedial actions in progress or recommended by the director.

e. The status of pending legal actions and federal, state, or local government permits concerning the site.

f. The relative priority for remedial action at each site.

g. The proximity of the site to private residences, public buildings or property, school facilities, places of work, or other areas where individuals may be regularly present.

3. In developing and maintaining the annual report, the director shall assess the relative priority of the need for action at each site to remedy environmental and health problems resulting from the presence of hazardous wastes or hazardous substances at the sites. In making assessments of relative priority, the director, in cooperation with the Iowa department of public health on matters relating to public health, shall place every site in one of the following classifications:

a. Causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment – immediate action required.

b. Significant threat to the environment – action required.

c. Not a significant threat to the public health or environment – action may be deferred.

d. Site properly closed – requires continued management.

e. Site properly closed, no evidence of present or potential adverse impact – no further action required.

4. A site classified as properly closed under subsection 3, paragraph *"e"*, shall be removed from all subsequent annual reports and the register of hazardous waste or hazardous substance disposal sites.

5. The director shall work with the Iowa department of public health when assessing the effects of a hazardous waste or hazardous substance disposal site on human health.

84 Acts, ch 1108, §13; 86 Acts, ch 1025, §8; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §8

455B.428 Investigation of sites.

1. The director shall investigate each hazardous waste or hazardous substance disposal site listed in the registry to determine its relative priority.

2. The director shall identify each hazardous waste or hazardous substance disposal site by providing all of the following:

a. The address and site boundaries.

b. The time period of use for disposal of hazardous waste or hazardous substances.

c. The name of the current owner and operator and names of reported owners and operators during the time period of use for disposal of hazardous waste or hazardous substances.

d. The names of persons responsible for the generation and transportation of the hazardous waste or hazardous substances disposed of at the site.

e. The type, quantity and manner of hazardous waste or hazardous substances disposal.

3. When preliminary evidence suggests further assessment is necessary, the director may assess any of the following:

a. The depth of the water table at the site.

b. The nature of soils at the site.

c. The location, nature, and size of aquifers at the site.

d. The direction of present and historic groundwater flows at the site.

e. The location and nature of surface waters at and near the site.

f. The levels of contaminants in groundwater, surface water, air, and soils at and near the site resulting from hazardous wastes or hazardous substances disposed of at the site.

g. The current quality of all drinking water drawn from or distributed through the area in which the site is located, if the director determines that water quality may have been affected by the site.

4. The director shall maintain a site assessment file for each site listed in the registry. The file shall contain all information obtained pursuant to this section and shall be open to the public. Information in the file may be reproduced by any person at a charge not to exceed the actual cost of reproduction for copies of file information.

84 Acts, ch 1108, §14; 86 Acts, ch 1025, §9; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §9

455B.429 Notification to owners — appeals.

1. Within sixty days after July 1, 1984, the director shall notify the owner of any part of a site to be included in the registry required by section 455B.426. The notice shall be sent by certified mail to the owner's last known address. Thirty days before a site is added to the registry, the director shall notify the owner of any part of the site by certified mail of the proposed addition to the registry. The notice shall be sent by certified mail to the owner's last known address.

2. An owner or operator of a site proposed for listing in the registry or listed in the registry pursuant to section 455B.426, may petition the direc-

tor for deletion of the site, modification of the site classification, or modification of any information regarding the site. A site shall not be listed on the registry until a final determination has been made on any appeal initiated under this section. An appeal is a contested case for the purposes of chapter 17A.

3. Within ninety days after the submission of an appeal, the department shall conduct a hearing to review the determination. At least thirty days prior to the hearing the department shall publish a notice of hearing in a newspaper of general circulation in the county in which the site is located. The department shall also notify in writing the owner or operator of the site at least thirty days prior to the hearing.

4. At least thirty days following the hearing, the department shall provide the owner or operator with a written determination accompanied by reasons for the determination on the appeal.

5. Within ten days of a determination, the director shall notify the local governments with jurisdiction over the site whenever a change is made in the registry pursuant to this section.

84 Acts, ch 1108, §15; 86 Acts, ch 1245, §1899

455B.430 Use and transfer of sites — penalty — financial disclosure.

1. A person shall not substantially change the manner in which a hazardous waste or hazardous substance disposal site on the registry pursuant to section 455B.426 is used without the written approval of the director.

2. A person shall not sell, convey, or transfer title to a hazardous waste or hazardous substance disposal site which is on the registry pursuant to section 455B.426 without the written approval of the director. The director shall respond to a request for a change of ownership within thirty days of its receipt.

3. Decisions of the director concerning the use or transfer of a hazardous waste or hazardous substance disposal site may be appealed in the manner provided in section 455B.429.

4. If the director has reason to believe this section has been violated, or is in imminent danger of being violated, the director may institute a civil action in district court for injunctive relief to prevent the violation and for the assessment of a civil penalty not to exceed one thousand dollars per day for each day of violation. Moneys collected under this subsection shall be deposited in the remedial fund.

5. Immediately upon the listing of real property in the registry of hazardous waste or hazardous substance disposal sites, a person liable for cleanup costs shall submit to the director a report consisting of documentation of the responsible person's liabilities and assets, including if filed, a copy of the annual report submitted to the secretary of state pursuant to chapter 490. A subsequent report pursuant to this section shall be submitted annually on April 15 for the period the site remains on the registry.

84 Acts, ch 1108, §16; 86 Acts, ch 1025, §10; 86 Acts, ch 1245, §1899; 86 Acts, ch 1115, §3; 90 Acts, ch 1205, §13; 91 Acts, ch 155, §10

455B.431 Recording of site designation.

When the director places a site on the registry as provided in section 455B.426, then the director shall file with the county recorder a statement disclosing the period during which the site was used as a hazardous waste or hazardous substances disposal area. When the director finds that a site on the registry has been properly closed under section 455B.427, subsection 3, paragraph *"e"*, with no evidence of potential adverse impact, this finding shall be filed with the county recorder. The finding shall state that the director's finding does not warrant to a future purchaser of the site that the site will be free from any future adverse impacts as a result of use of the site as a hazardous waste or hazardous substances disposal site.

84 Acts, ch 1108, §17; 86 Acts, ch 1025, §11; 86 Acts, ch 1245, §1899

455B.432 Liability.

Acts or omissions of the director or the department in carrying out the duties imposed by sections 455B.423 through 455B.431 shall not be cause for a claim against the state within the meaning of chapter 669.

84 Acts, ch 1108, §18; 86 Acts, ch 1245, §1899

455B.433 Physical infrastructure assistance — funding — liability.

1. The department of natural resources shall work in conjunction with the Iowa department of economic development to identify environmentally contaminated sites which qualify for the physical infrastructure assistance program under section 15E.175. The department shall provide an assessment of the site and shall provide any emergency response activities which the department deems necessary. The department may take any further action, including remediation of the site, that the department deems to be appropriate and which promotes the purposes of the physical infrastructure assistance program.

2. The department shall be reimbursed from the physical infrastructure assistance fund under section 15E.175 for any costs incurred pursuant to this section.

3. A person shall not have standing pursuant to section 455B.111 to commence a citizen suit which is based upon property that is part of the physical infrastructure assistance program pursuant to section 15E.175.

96 Acts, ch 1218, §53

455B.434 through 455B.440 Reserved.

PART 6

HAZARDOUS WASTE SITES AND FACILITIES

455B.441 Purpose and guidelines.

The purpose of this part is to protect the public health and the environment by providing a procedure for establishing appropriate sites and properly designed facilities for the treatment, storage and disposal of hazardous waste. It is the intent of the general assembly that in the implementation of this part the department of natural resources shall emphasize alternatives to land burial of hazardous waste whenever possible with emphasis on the following management methods in the following order: Source reduction, reuse, resource recovery, incineration, and detoxification.

[81 Acts, ch 152, §1]

83 Acts, ch 101, §95; 83 Acts, ch 137, §23

455B.442 Definitions.

As used in this part 6 of division IV unless the context otherwise requires:

1. *"Construct"* means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility. *"Construct"* includes alteration to existing structures or a land disposal facility to initially accommodate hazardous waste but does not include any alteration to increase the capacity or change the ability to accommodate hazardous waste. However, any alteration to increase or change the ability to accommodate hazardous waste is subject to section 455B.413.

2. *a.* *"Facility"* means land and structures, other appurtenances, and improvements on the land used for the treatment, storage, or disposal of a hazardous waste required to have a permit under section 455B.415.

b. *"Facility"* does not include land, structures, other appurtenances and improvements contiguous to the source of generation and owned and operated by and exclusively for the treatment, storage, or disposal of hazardous waste of the generator.

c. As used in this subsection property is contiguous if it is divided only by a public or private way.

3. *"Hazardous waste"* means a hazardous waste as defined in section 455B.411, subsection 3 and listed under section 455B.412, subsection 2.

4. *"Regulatory agency"* means a state or local agency that issues a license or permit required for the construction, operation, or maintenance of a facility pursuant to state statute or rule or local ordinance or resolution in effect on the date the application for a site license is submitted to the commission.

[81 Acts, ch 152, §2]

83 Acts, ch 101, §96, 97; 83 Acts, ch 137, §24, 25

455B.443 License required.

1. A person shall not construct a facility until the person obtains a site license issued under this part 6 of division IV by the commission. A person planning to construct a facility shall give notice of the intent to construct the facility as provided in this section. The notice shall be served on the director and on the city council and board of supervisors of each city and county in which the facility is located and shall be published in a newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks. The notice shall contain the following:

a. A description of the proposed location of the facility.

b. A description of the treatment, storage, or disposal method to be used and the types of wastes to be handled, including estimated volumes.

c. The names and addresses of the owners and the operators of the facility.

2. Within fifteen days of the date the notice is last published, the owners and operators of the facility shall submit an application to the director requesting that a site license be issued under this part 6 of division IV. The application for a site license shall contain the name and residence of the applicant, and the following additional information:

a. The location of the proposed facility and a plat of the proposed location.

b. A description of the design and capacity of the proposed facility.

c. The expected sources of hazardous wastes for the facility, the proposed methods and routes of transporting the wastes to and from the facility.

d. The qualifications of the operator.

e. Other relevant information as the commission requires by rule.

The application shall be accompanied by a nonrefundable application fee determined by a schedule established by the commission by rule, but which shall not exceed one thousand dollars.

3. Within thirty days of the receipt of the application, the director shall determine whether the application is in substantial compliance with the information requirements, and shall either accept the application or notify the applicant of any deficiencies. An applicant who receives notification of deficiencies in the application has ninety days from the receipt of notice to remedy the deficiencies and resubmit the application for consideration. The director shall notify the applicant within thirty days of receipt of a resubmitted application whether the application is accepted. An application rejected under this subsection may be resubmitted only once. If a resubmitted application is rejected the applicant may reapply for a license by giving notice and resubmitting an application as provided in subsections 1 and 2, including payment of the nonrefundable application fee.

4. This part 6 of division IV does not apply to

a facility that is subject to section 455B.415, subsection 2, and that has obtained applicable local zoning permits and for which contracts have been signed prior to January 1, 1982.

[81 Acts, ch 152, §3]
86 Acts, ch 1245, §1899

455B.444 Temporary members appointed.

Immediately upon receipt of an application for a site license the director shall notify the city council of the city closest to the proposed facility and the county board of supervisors of the county in which the facility is proposed to be located that the application has been received. Within thirty days of the receipt of notification the city council or the county board of supervisors may make the following appointments to the commission for purposes of consideration of the site license application and if the city council or the county board of supervisors chooses to make the temporary appointments the director shall be notified of the names of those persons appointed as follows:

1. The county board may appoint two temporary members who are residents of the county.
2. The city council may appoint two temporary members who are residents of the city.

Temporary members who may be appointed under this section shall serve on the commission only during discussion and proceedings relating to the application for a site license which the temporary members were appointed to consider and shall vote only on questions relating to the issuance of that site license. Temporary members shall serve on the commission until final action is taken on the application for the site license which the temporary members were appointed to consider. Temporary members who are not public employees shall receive a per diem as specified in section 7E.6 and actual and necessary expenses incurred in performance of their official duties. Temporary employees who are public employees shall receive reimbursement for expenses only. Per diem and expenses under this section shall be paid by the state.

[81 Acts, ch 152, §4]
86 Acts, ch 1245, §1899; 90 Acts, ch 1256, §48

455B.445 Notification requirements.

Upon acceptance of a site license application under section 455B.443 the director shall mail copies of the application to regulatory agencies. A regulatory agency receiving a copy of the application shall conduct a preliminary review of the contents and shall evaluate the application for completeness and for compliance with the regulatory agency's permit or licensing requirements.

[81 Acts, ch 152, §5]
86 Acts, ch 1245, §1899

455B.446 Proceeding.

1. Within thirty days after the acceptance of the application for a site license, the commission shall establish a timetable for consideration of the application. The timetable for final action by the commission shall not exceed one hundred eighty days after the date the application is accepted.
2. The proceeding for the issuance of a site license is a contested case under chapter 17A.
3. The commission shall establish a date for the hearing on the application and shall serve notice of the hearing on interested agencies, as determined by the commission, and regulatory agencies.

The commission shall notify all owners of record of real property located within one mile from the boundaries of the proposed site of the time and place of the hearing.

4. Notice of the hearing in the form provided in section 17A.12, subsection 2, shall be published in a newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing.

[81 Acts, ch 152, §6]

455B.447 Proceeding — role of regulatory agencies.

1. Regulatory agencies that appear on record at the proceeding shall state whether the application meets their permit or licensing requirements. If the application does not meet the requirements of a regulatory agency, the regulatory agency shall state why the application is not in compliance.
2. Any person may present oral or written comments to the commission at the hearing.

[81 Acts, ch 152, §7]

455B.448 Decision by commission.

1. The commission shall grant or deny the site license. In making its decision, the commission shall consider the following:

a. The need for the services to be offered by the facility.

b. The impact of the proposed facility on the area in which it is to be located.

c. The zoning classification of the proposed site and the extent to which a proposed site is by present or projected use dedicated to industrial development.

d. The land uses and the density of population in areas near the facility.

e. The density of population in areas adjacent to probable transportation routes to the facility.

f. The risk and effect of accidents during the transportation of hazardous wastes to the site.

g. The geology of the site, where relevant, with reference to factors which include, but are not limited to, the presence of fault zones and the risk of contamination of ground and surface waters by leaching and runoff from the facility.

h. The risk and effect of fires or explosions from improper storage and disposal methods.

i. The impact of the facility on the operations and responsibilities of the city and county in which the facility is proposed to be located and on cities and counties near the proposed site.

j. Local ordinances, permits, or other requirements and their relationship to the proposed facility.

k. The availability of alternative sites and methods of treatment, disposal, or storage, including cost comparisons. The cost comparisons shall cover short and long-term costs including, but not limited to, liability insurance, postclosure maintenance, monitoring of ground and surface waters, monitoring of air before and after closure, and the potential loss of land or water resources due to contamination.

l. To the maximum extent feasible a site should be located away from all of the following areas:

(1) Areas subject to natural hazards including, but not limited to, flooding, earthquakes, or subsidence.

(2) Sources of drinking water supply including, but not limited to, reservoirs, lakes and rivers and their watersheds, and aquifers and their recharge areas.

(3) Fragile land areas including, but not limited to, wetlands and the shorelines of rivers, lakes, and streams.

(4) Areas with rare or valuable ecosystems or geologic formations or significant wildlife habitat.

(5) Unique scenic or historic areas.

(6) Residential areas, parks, or schools.

(7) Prime farmland as defined by the United States department of agriculture in 7 C.F.R. § 657.5(a).

m. Other criteria adopted by rule which the commission finds relevant to the siting of a facility which are consistent with this part 6 of division IV.

2. The commission shall grant the license if it finds that the facility will meet the requirements imposed by rules adopted by the commission under section 455B.412, subsection 3, and the permit requirement of section 455B.415, that operation of the facility at the proposed location will be in the public interest and that the public health and welfare and the environment will be adequately protected. The failure of the proposed facility to meet zoning requirements established under chapters 329, 335, and 414, and the licensing requirements of regulatory agencies except the requirements imposed by sections 455B.412, subsection 3 and 455B.415 shall not preclude the commission from issuing the license and to that extent this subsection supersedes the licensing requirements of regulatory agencies and the requirements of chapters 329, 335 and 414.

3. A municipality as defined in section 670.1, subsection 2, is not liable in an action for damages arising out of the construction, operation, or maintenance of a hazardous waste facility which is licensed by the commission under this part 6 of division IV unless the municipality is responsible for or in control of the facility. However, a municipality may be subject to liability for damages caused by hazardous waste in connection with an act or omission which would otherwise subject the municipality to liability. A municipality shall not be required to pay any portion of the costs associated with the response to a release or threatened release of a hazardous waste from a facility into the land, air, or water that threatens or may threaten human health or the environment unless the municipality is responsible for or in control of the facility or unless the municipality is otherwise subject to liability under this subsection.

[81 Acts, ch 152, §8]
86 Acts, ch 1149, §2

455B.449 Issuance of license — effect.

Issuance of a license by the commission authorizes construction of the facility on the site designated in the license according to the terms and conditions stated in the license. A license may be transferred, subject to the rules and approval of the commission, to a person who agrees and is able to comply with the terms of the license.

[81 Acts, ch 152, §9]

455B.450 Cost of proceedings.

The cost of the proceeding for the issuance of a license shall be paid by the applicant for the license until the cost exceeds nine thousand dollars. The director shall notify the applicant upon the issuance or denial of the license or upon termination of the proceeding at any point during the process of the cost of the proceeding to the applicant. These costs include the costs of providing notices, holding the hearing and the per diem of the commissioners in the proceeding for the license. Moneys collected shall be deposited in the general fund of the state.

[81 Acts, ch 152, §10]
86 Acts, ch 1245, §1899

455B.451 Further approvals prohibited — exception.

Upon the issuance of a license under this part 6 of division IV, notwithstanding any provision of law or ordinance except statutory requirements relating to the protection of employees engaged in the construction of the facility, no further approval, permit, or license for the construction, operation, or maintenance of the facility as stated in the license shall be required. The commission may incorporate in the license the licensing requirements of a regulatory agency to the extent that those requirements are consistent with the construction and operation of the facility according to the requirements of the commission. However, this section does not limit the authority of the director under sections 455B.413 and 455B.415. A

local unit of government shall not unduly restrict the transportation of hazardous waste to a facility for which a license has been issued under this part 6 of division IV.

[81 Acts, ch 152, §11]
86 Acts, ch 1245, §1899

455B.452 Single hearing — judicial review.

Notwithstanding chapter 17A:

1. Any proceeding or oral presentation held before the commission on an application for a license shall be held in lieu of any other proceeding or oral presentation required for a license or permit necessary for the construction, maintenance, or operation of a facility.

2. The issuance or denial of the license is a final agency action, and the date for determining whether any person is aggrieved or adversely affected by the action is the date of the issuance or denial of the license.

[81 Acts, ch 152, §12]

455B.453 Rules.

The commission shall adopt rules under chapter 17A necessary to implement this part 6 of division IV including but not limited to the form for an application for a license and the description of information to be furnished by the applicant.

[81 Acts, ch 152, §13]

455B.454 Penalties.

A person required to obtain a site license under this part 6 of division IV who constructs a facility without having first obtained the license is subject to a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the general fund of the state.

[81 Acts, ch 152, §14]

455B.455 Surcharge imposed.

A land burial surcharge tax of two percent is imposed on the fee for land burial of a hazardous waste. The owner of the land burial facility shall remit the tax collected to the director of revenue and finance after consultation with the director according to rules that the director shall adopt. The director shall forward a copy of the site license to the director of revenue and finance which shall be the appropriate license for the collection of the land burial surcharge tax and shall be subject to suspension or revocation if the site license holder fails to collect or remit the tax collected under this section. The provisions of sections 422.25, subsection 4, 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and 422.70 to 422.75, consistent with the provisions of this part 6 of division IV, shall apply with respect to the taxes authorized under this part, in the same manner and with the same effect as if the land burial surcharge tax were retail sales taxes within the meaning of those statutes. Notwithstanding the provisions of this paragraph, the director shall provide for only quarterly filing of returns as prescribed in section 422.51. Taxes collected by the director of revenue and finance under this section shall be deposited in the general fund of the state.

[81 Acts, ch 152, §15]
86 Acts, ch 1245, §1899

455B.456 to 455B.460 Reserved.

PART 7

DISPOSAL OF HAZARDOUS WASTE ON LAND

455B.461 Definitions.

As used in this part 7 of division IV, unless the context otherwise requires:

1. *"Facility"* means facility as defined in section 455B.442, subsection 2.

2. *"Hazardous waste"* means hazardous waste as defined in section 455B.411, subsection 3, and section 455B.464.

3. *"Land disposal"* means either of the following:

a. Disposal of hazardous wastes on or into the land, including, but not limited to, landfill, surface impoundment, waste piles, land spreading, and coburial with municipal garbage.

b. Treatment of hazardous wastes on or in the land, such as neutralization and evaporation ponds and land farming, where the treatment residues are hazardous wastes and are not removed for subsequent processing or disposal within one year.

"Land disposal" does not include long-term storage as defined in subsection 4.

4. *"Long-term storage"* means the aboveground containment of stabilized or solidified hazardous waste on a temporary basis or for a period of years in a manner that does not constitute disposal of hazardous waste.

5. *"Restricted waste"* means a hazardous waste or any other waste which is determined by rule of the commission to be a significant environmental burden if disposed of at a land disposal facility.

6. *"Storage"* means the containment of a hazardous waste for a period less than one year in a manner consistent with the requirements of 42 U.S.C. § 6921-6934 as amended to January 1, 1981 and the regulations adopted pursuant to those sections.

85 Acts, ch 202, §2

455B.462 Limitations on land disposal of hazardous waste.

1. A generator, recycler, transporter or other handler of hazardous waste shall not dispose of the wastes by land disposal or store wastes at an above-ground storage facility, unless all of the following conditions exist:

a. The commission determines that the best available technology is being used at the land disposal facility.

b. The handler proves to the satisfaction of the commission that there is no available alternative including above ground storage for the disposal of hazardous waste.

c. The handler utilizes methods of source reduction, recycling and destruction of hazardous waste to the extent feasible, as determined by rule.

d. The handler pretreats the hazardous waste as determined by rule.

2. The commission shall adopt rules including, but not limited to, the following:

a. To determine the criteria that industry must satisfy to show that alternatives to land disposal of hazardous wastes are not technically or economically feasible.

b. To require that all industrial and commercial owners or users of land disposal and storage sites report to the department annually the amount and content of current hazardous waste production, treatment methods used and technological advances made or pursued to implement alternatives to land disposal and source reduction.

85 Acts, ch 202, §3

455B.463 Dilution of hazardous waste.

Any hazardous waste shall be considered a restricted waste for the purposes of this part even though it is diluted to a concentration less than the listed concentration threshold by the addition of other hazardous waste or any other material during waste handling treatment or storage. Dilution which occurs as a normal part of the manufacturing process shall not be considered dilution for purposes of this section.

85 Acts, ch 202, §4

455B.464 Additional hazardous or restricted waste listed.

Notwithstanding the restriction in section 455B.420, the director shall compile, annually, a list of additional hazardous wastes for adoption by the commission pursuant to the rulemaking procedures of chapter 17A. The list shall include wastes which may be a significant environmental burden if disposed of at a land disposal facility.

85 Acts, ch 202, §5; 86 Acts, ch 1245, §1899A

455B.465 Well injection prohibited.

It is unlawful for a person to inject hazardous or restricted wastes into a well.

85 Acts, ch 202, §6

455B.466 Civil penalties.

A person who violates a provision of this part is subject to a civil penalty of not more than ten thousand dollars for each violation and for each day of continuing violation. Civil penalties collected pursuant to this section shall be forwarded by the clerk of the district court to the treasurer of state for deposit in the general fund of the state.

85 Acts, ch 202, §7

455B.467 Emergency variance.

The department may grant a variance to the restrictions or prohibition of land disposal of a hazardous waste in either of the following situations:

1. When the materials sought to be disposed of resulted from the cleanup of a hazardous condition involving a hazardous waste.

2. When the materials sought to be disposed of resulted from remediation or cleanup of hazardous waste or hazardous substance disposal sites.

85 Acts, ch 202, §8; 91 Acts, ch 155, §11

455B.468 Coordination with existing reporting and permitting requirements.

This part does not require the department to establish a reporting or permitting system if such a system is already established under the federal Resource Conservation and Recovery Act 42 U.S.C. § 6901 et seq. and administered and enforced through the federal environmental protection agency that achieves the objectives set out in this part. Consistent with this part, the department may establish requirements in addition to those established under the Resource Conservation Recovery Act for reporting, permitting, and enforcement. However, in such actions, the department shall avoid any redundancy in reporting, compliance, and enforcement with that provided under the Resource Conservation and Recovery Act.

Notwithstanding section 455B.420, the rules and requirements imposed under this part may be more restrictive than required by federal law or regulation.

85 Acts, ch 202, §9

455B.469 and 455B.470 Reserved.

PART 8

UNDERGROUND STORAGE TANKS

455B.471 Definitions.

As used in this part unless the context otherwise requires:

1. *"Board"* means the Iowa comprehensive petroleum underground storage tank fund board.

2. *"Corrective action"* means an action taken to reduce, minimize, eliminate, clean up, control, or monitor a release to protect the public health and safety or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for purposes of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, and site management practices. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

3. *"Fund"* means the Iowa comprehensive petroleum underground storage tank fund.

4. *"Nonoperational storage tank"* means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.

5. *"Operator"* means a person in control of, or having responsibility for, the daily operation of the underground storage tank.

6. *a.* *"Owner"* means:

(1) In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.

(2) In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

b. To the extent consistent with the federal Resource Conservation and Recovery Act, as amended to January 1, 1994, 42 U.S.C. § 6901 et seq., *"owner"* does not include a person who holds indicia of ownership in the underground storage tank or the tank site property if all of the following apply:

(1) The person holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or tank site property, where such indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term *"primarily to protect that person's security interest"* includes but is not limited to ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the underground storage tank or tank site property, where such exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by such interest. The person holding indicia of ownership in the underground storage tank or tank site property and who acquires title or a right to title to such underground storage tank or tank site property upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold such indicia of ownership primarily to protect that person's security interest so long as subsequent actions taken by that person with respect to the underground storage tank or tank site property are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) The person does not exhibit managerial control of, or managerial responsibility for, the daily operation of the underground storage tank or tank site property through the actual, direct, and continual or recurrent exercise of managerial control over the underground storage tank or tank site property in which that person holds a security interest, which managerial control materially divests the borrower, debtor, owner or operator of the underground storage tank or tank site property of such control.

(3) The person has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

7. *"Petroleum"* means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

8. *"Regulated substance"* means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes substances designated in 40 C.F.R., Parts 61 and 116, and 40 C.F.R. § 401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute). However, regulated substance does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be added or deleted as regulated substances by rule of the commission pursuant to section 455B.474.

9. *"Release"* means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance, including petroleum, from an underground storage tank into groundwater, surface water, or subsurface soils.

10. *"Tank site"* means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

11. *"Underground storage tank"* means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. Underground storage tank does not include:

a. Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Residential septic tanks.

d. Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985 (49 U.S.C. § 1671 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985 (49 U.S.C. § 2001 et seq.), or an intrastate pipeline facility regulated under chapter 479.

e. A surface impoundment, pit, pond, or lagoon.

f. A storm water or wastewater collection system.

g. A flow-through process tank.

h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

i. A storage tank situated in an underground area including, but not limited to, a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

Underground storage tank does not include pipes connected to a tank described in paragraphs *"a"* to *"i"*.

85 Acts, ch 162, §1; 89 Acts, ch 131, §33 – 35; 93 Acts, ch 42, §5; 94 Acts, ch 1067, §1; 95 Acts, ch 215, §4

455B.472 Declaration of policy.

The general assembly finds that the release of regulated substances from underground storage tanks constitutes a threat to the public health and safety and to the natural resources of the state, and that existing regulatory programs of the department and other agencies do not adequately or appropriately address this substantial public concern.

85 Acts, ch 162, §2

455B.473 Report of existing and new tanks — fee.

1. Except as provided in subsection 2, the owner or operator of an underground storage tank existing on or before July 1, 1985, shall notify the department in writing by May 1, 1986, of the existence of each tank and specify the age, size, type, location and uses of the tank.

2. The owner of an underground storage tank taken out of operation between January 1, 1974 and July 1, 1985, shall notify the department in writing by July 1, 1986, of the existence of the tank unless the owner knows the tank has been removed from the ground. The notice shall specify to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator which brings into use an underground storage tank after July 1, 1985, shall notify the department in writing within thirty days of the existence of the tank and specify the age, size, type, location and uses of the tank.

4. An owner or operator of a storage tank described in section 455B.471, subsection 11, paragraph *"a"*, which brings the tank into use after July 1, 1987, shall notify the department of the existence of the tank within thirty days. The registration of the tank shall be accompanied by a fee of ten dollars to be deposited in the storage tank management account. A tank which is existing before July 1, 1987, shall be reported to the department by July 1, 1989. Tanks under this section installed on or following July 1, 1987, shall comply with underground storage tank regulations adopted by rule by the department.

5. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of ten dollars for each tank included in the notice. All moneys collected shall be deposited in the storage tank management account of the groundwater protection fund created in section 455E.11. All moneys collected pursuant to this section prior to July 1, 1987, which have not been expended, shall be deposited in the storage tank management account.

6. Subsections 1 to 3 do not apply to an underground storage tank for which notice was given pursuant to section 103, subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980.

7. A person who sells, installs, modifies, or repairs a tank used or intended to be used as an underground storage tank shall notify the purchaser and the owner or operator of the tank in writing of the owner's notification requirements pursuant to this section including the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department. A person who installs an underground storage tank and the owner or operator of the underground storage tank shall, prior to installing an underground storage tank, notify the department in writing regarding the intent to install a tank.

8. It shall be unlawful to deposit or accept a regulated substance in an underground storage tank which has not been registered and issued permanent and annual tank management fee renewal tags pursuant to subsections 1 through 6. A person shall not deposit a regulated substance in an underground storage tank after receiving notice from the department that the underground storage tank is not covered by an approved form of financial responsibility in accordance with section 455B.474, subsection 2.

The department shall furnish the owner or operator of an underground storage tank with a regis-

tration tag for each underground storage tank registered with the department. The owner or operator shall affix the tag to the fill pipe of each registered underground storage tank. If an owner or operator fails to register or obtain annual renewal tags for the underground storage tank, the owner or operator shall pay an additional fee of two hundred fifty dollars upon registration of the tank. A fee imposed pursuant to this subsection shall not preclude the department from assessing an administrative penalty pursuant to section 455B.476.

9. The department may deny issuance of a registration or annual tank management fee renewal tag for failure of the owner or operator to provide proof the underground storage tank is covered by an approved form of financial responsibility as provided in section 455B.474, subsection 2.

85 Acts, ch 162, §3; 87 Acts, ch 225, §604, 605; 2001 Acts, ch 51, §1, 2; 2002 Acts, ch 1119, §60

Subsection 8, unnumbered paragraph 1 amended

455B.473A Petroleum underground storage tank registration amnesty program.

A petroleum underground storage tank required to be registered under section 455B.473, which has not been registered prior to July 1, 1988, may be registered under the following conditions:

1. The tank registration fee under section 455B.473, subsection 5, shall accompany the registration.

2. The storage tank management fee of fifteen dollars per tank under section 455B.479 shall be paid for past years in which the tank should have been registered.

If a tank is registered under this section on or prior to October 1, 1989, penalties under section 455B.477 shall be waived.

88 Acts, ch 1244, §3

455B.474 Duties of commission — rules.

The commission shall adopt rules pursuant to chapter 17A relating to:

1. Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include, but are not limited to, requirements for:

a. Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

b. Maintaining records of any monitoring or leak detection system, inventory control system, or tank testing or comparable system.

c. Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

d. Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(1) The classification system shall consider the actual or potential threat to public health and safety and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(a) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(b) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(c) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(d) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(2) A site shall be classified as either high risk, low risk, or no action required.

(a) A site shall be considered high risk when it

is determined that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

(i) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(iii) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(b) A site shall be considered low risk under any of the following conditions:

(i) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(ii) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(c) A site shall be considered no action required if contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(d) For purposes of classifying a site as either low risk or no action required, the department shall rely upon the example tier one risk-based screening level look-up table of the American society for testing and materials' emergency standard, ES38-94, or other look-up table as determined by the department by rule.

(e) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site. However, if the report is found to be inaccurate or incomplete, and if based upon information in the report the risk classification of the site cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately classify the site. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under section 455G.18.

e. The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

f. Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include, but not be limited to, all of the following:

(1) A requirement that the site cleanup report do all of the following:

(a) Identify the nature and level of contamination resulting from the release.

(b) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph *"d"*.

(c) Provide supporting data and a recommendation of the need for corrective action.

(d) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(2) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(3) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(4) High risk sites shall be addressed pursuant to a corrective action design report, as submitted by a groundwater professional and as accepted by the department. The corrective action design report shall determine the most appropriate response to the high risk conditions presented. The appropriate corrective action response shall be based upon industry standards and shall take into account the following:

(a) The extent of remediation required to reclassify the site as a low risk site.

(b) The most appropriate exposure scenarios based upon residential, commercial, or industrial use or other predefined industry accepted scenarios.

(c) Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

(d) Affected human or environmental receptors and exposure scenarios based on current and projected use scenarios.

(e) Risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the pub-

lic health and safety or the environment using a tiered procedure consistent with the American society for testing and materials' emergency standard, ES38-94.

(f) Other relevant site specific factors such as the feasibility of available technologies, existing background contaminant levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of engineering and institutional controls.

(g) Remediation shall not be required on a site that does not present an increased cancer risk at the point of exposure of one in one million for residential areas or one in ten thousand for nonresidential areas.

(5) A corrective action design report submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if the corrective action design report is found to be inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately determine the corrective action response requirements. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in an improper or incorrect corrective action response shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under section 455G.18.

(6) Low risk sites shall be monitored as deemed necessary by the department consistent with industry standards. Monitoring shall not be required on a site which has received a no further action certificate.

(7) An owner or operator may elect to proceed with additional corrective action on the site. However, any action taken in addition to that required pursuant to this paragraph *"f"* shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of section 455G.9.

(8) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph, *"bioremediation"* means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(9) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board approved tank system or methodology.

(10) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this paragraph are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(11) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this paragraph. Any order taken by the director pursuant to this subparagraph shall be reviewed at the next meeting of the environmental protection commission.

g. Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

h. Issuing a no further action certificate or a monitoring certificate to the owner or operator of an underground storage tank site.

(1) A no further action certificate shall be issued by the department for a site which has been classified as a no further action site or which has been reclassified pursuant to completion of a corrective action plan or monitoring plan to be a no further action site.

(2) A monitoring certificate shall be issued by the department for a site which does not require remediation, but does require monitoring of the site.

(3) A certificate may be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this paragraph *"h"* or a subsequent purchaser of the site shall not be required to perform further corrective action solely because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.

In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including, but not limited to, location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of

the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

2. The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term *"guarantor"* means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

3. Standards of performance for new underground storage tanks which shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to

be stored. If soil tests conducted in accordance with A.S.T.M., standard G 57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after January 14, 1987. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 8. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the federal Water Pollution Control Act, 33 U.S.C. § 1321(b)(2)(A), pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9602, pursuant to section 307, subsection a of the federal Water Pollution Control Act, 33 U.S.C. § 1317(a), pursuant to section 112 of the Clean Air Act, 42 U.S.C. § 7412, or pursuant to section 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

The rules adopted by the commission under this section shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in subsection 1, paragraph *"f"* and subsection 3, paragraph *"d"*. It is the intent of the general assembly that state rules adopted pursuant to subsection 1, paragraph *"f"* and subsection 3, paragraph *"d"* be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

85 Acts, ch 162, §4; 86 Acts, ch 1245, §1899A; 87 Acts, ch 225, §606; 88 Acts, ch 1244, §4 – 7, 9; 89 Acts, ch 131, §36, 37; 91 Acts, ch 252, §5, 6; 92 Acts, ch 1163, §95; 95 Acts, ch 215, §5 – 10; 2000 Acts, ch 1058, §44, 45

455B.475 Duties and powers of the director.

The director shall:

1. Inspect and investigate the facilities and records of owners and operators of underground storage tanks as may be necessary to determine compliance with this part and the rules adopted pursuant to this part. An inspection or investigation shall be concluded subject to section 455B.103, subsection 4. For purposes of developing a rule, maintaining an accurate inventory or enforcing this part, the department may:

a. Enter at reasonable times any establishment or other place where an underground storage tank is located.

b. Inspect and obtain samples from any person of a regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

(1) If the director obtains a sample, prior to leaving the premises, the director shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the director by a person that public disclosure of documents or information, or a particular part of the documents or information to which the director has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the director shall consider the documents or information or the particular portion of the documents or information confidential. However, the document or information may be disclosed to officers, employees or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this part.

2. Maintain an accurate inventory of underground storage tanks.

3. Take any action allowed by law which, in the director's judgment, is necessary to enforce or secure compliance with this part or any rule adopted under this part.

85 Acts, ch 162, §5; 86 Acts, ch 1245, §1899A

455B.476 Violations — orders.

1. If there is substantial evidence that a person has violated or is violating a provision of this part or a rule adopted under this part the director may issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 455B.109. The person to whom the order is issued may appeal the order to the commission as provided in chapter 17A. On appeal, the commission may affirm, modify or vacate the order of the director.

2. However, if it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. The order is binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a district court.

3. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.477.

85 Acts, ch 162, §6; 86 Acts, ch 1245, §1899A

455B.477 Penalties — burden of proof.

1. A person who violates a provision of this part or a rule or order issued under this part is subject to a civil penalty not to exceed five thousand dollars for each day during which the violation continues. The civil penalty is an alternative to a criminal penalty provided under this part.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, plan or other document filed or required to be maintained under this part or who falsifies, tampers with or knowingly renders inaccurate a monitoring device or method required to be maintained under this part or by a rule or order issued under this part, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the director with approval of the commission, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this part or to obtain compliance with the provisions of this part or rules adopted or order issued under this part. In any action, previous findings of fact of the director or the commission after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of a provision of this part or a rule adopted or order issued by the commission, the burden of proof is upon the commission or the department.

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.478 shall be raised in the legal proceedings instituted in accordance with this section.

6. The penalty for intentional failure of an owner or operator to register a petroleum underground storage tank under section 455B.473 shall be a minimum of seven thousand five hundred dollars up to a maximum of ten thousand dollars after October 1, 1989.

7. The civil penalties or other damages or moneys recovered by the state or the petroleum underground storage tank fund in connection with a petroleum underground storage tank under this part of this division or chapter 455G shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget. Any federal moneys, including but not limited to federal underground storage tank trust fund moneys, received by the state or the department of natural resources in connection with a release occurring on or after May 5, 1989, or received generally for underground storage tank programs on or after May 5, 1989, shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget, unless such use would be contrary to federal law. The department shall cooperate with the board of the Iowa comprehensive petroleum underground storage tank fund to maximize the state's eligibility for and receipt of federal funds for underground storage tank related purposes.

85 Acts, ch 162, §7; 86 Acts, ch 1245, §1899A; 88 Acts, ch 1244, §10; 89 Acts, ch 131, §39

455B.478 Judicial review.

Except as provided in section 455B.477, subsection 5, judicial review of an order or other action of the commission or the director may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

85 Acts, ch 162, §8; 86 Acts, ch 1245, §1899A

455B.479 Storage tank management fee.

An owner or operator of an underground storage tank shall pay an annual storage tank management fee of sixty-five dollars per tank of over one thousand one hundred gallons capacity. Twenty-three percent of the fees collected shall be depos-

ited in the storage tank management account of the groundwater protection fund. Seventy-seven percent of the fees collected shall be deposited in the Iowa comprehensive petroleum underground storage tank fund created in chapter 455G.

87 Acts, ch 225, §607; 89 Acts, ch 131, §38

PART 9

WASTE MANAGEMENT ASSISTANCE

Legislative findings and purpose; 87 Acts, ch 180, §2

455B.480 Short title.

This part may be cited as the *"Waste Management Assistance Act"*.

87 Acts, ch 180, §1; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §4; 2002 Acts, ch 1162, §46

Section amended

455B.481 Waste management policy.

1. The purpose of this part is to promote the proper and safe storage, treatment, and disposal of solid, hazardous, and low-level radioactive wastes in Iowa. The management of these wastes generated within Iowa is the responsibility of Iowans. It is the intent of the general assembly that Iowans assume this responsibility to the extent consistent with the protection of public health, safety, and the environment, and that Iowans insure that waste management practices, as alternatives to land disposal, including source reduction, recycling, compaction, incineration, and other forms of waste reduction, are employed.

2. It is also the intent of the general assembly that a comprehensive waste management plan be established by the department which includes: the determination of need and adequate regulatory controls prior to the initiation of site selection; the process for selecting a superior site determined to be necessary; the establishment of a process for a site community to submit or present data, views, or arguments regarding the selection of the operator and the technology that best ensures proper facility operation; the prohibition of shallow land burial of hazardous and low-level radioactive wastes; the establishment of a regulatory framework for a facility; and the establishment of provisions for the safe and orderly development, operation, closure, postclosure, and long-term monitoring and maintenance of the facility.

3. In order to meet capacity assurance requirements of section 104k of the federal Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, and further the objectives of waste minimization, the department, in cooperation with the small business assistance center at the university of northern Iowa, shall work with generators of hazardous wastes in the state to develop and implement aggressive waste minimization programs. The goal of these programs is to reduce the volume of hazardous waste generated in the state as a whole by twenty-five percent of the amount generated as of January 1, 1987, as reported in the biennial reports collected by the United States environmental protection agency. The twenty-five percent reduction goal shall be reached as expeditiously as possible and no later than July 1, 1994. In meeting the reduction goal, elements *"a"* through *"d"* of the hazardous waste management hierarchy shall be utilized. The department, in cooperation with the small business assistance center, shall reassess the twenty-five percent reduction goal in 1994. The department shall promote research and development, provide and promote educational and informational programs, promote and encourage voluntary technical assistance to hazardous waste generators, promote assistance by the small business assistance center, and promote other activities by the public and private sectors that support this goal. In the promotion of the goal, the following hazardous waste management hierarchy, in descending order of preference, is established by the department:

a. Source reduction for waste elimination.
b. On-site recycling.
c. Off-site recycling.
d. Waste treatment.
e. Incineration.
f. Land disposal.

4. Additionally, the department shall establish and distribute to generators a listing of hazardous waste materials which are currently being recycled. The department shall require that each hazardous waste generator in the state submit, with the biennial report submitted to the United States environmental protection agency, a report of hazardous waste materials currently designated as recyclable by the department which are not being recycled by the generator. The report shall include the reason why the generator is not recycling such products. A small generator which does not submit a biennial report to the United States environmental protection agency, shall provide the information required to be submitted under this paragraph on a form provided by the department, with the submittal of the small generator's hazardous waste permit fee.

5. The department shall consult with representatives of industries which generate hazardous waste and shall make recommendations to the general assembly by January 1, 1991, concerning the possible application of a front-end fee for substances which will result in the generation of hazardous waste, the role of state government in assisting the private sector in establishing permanent, on-site, internal audit functions, and other measures which state government may initiate to encourage and assist generators of hazardous waste in reducing the hazardous waste generated.

87 Acts, ch 180, §3; 89 Acts, ch 242, §2; 92 Acts,

ch 1239, §21; 2001 Acts, ch 7, §5; 2002 Acts, ch 1162, §47
Subsection 2 amended

455B.482 Definitions.

As used in this part unless the context otherwise requires:

1. *"Disposal"* means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

2. *"Facilities"* means land and improvements on land, buildings and other structures, and other appurtenances used for the management of solid, toxic, hazardous, or low-level radioactive wastes, including but not limited to waste collection sites, waste transfer stations, waste reclamation and recycling centers, waste processing centers, waste treatment centers, waste storage sites, waste reduction and compaction centers, waste incineration centers, waste detoxification centers, and waste disposal sites.

3. *"Hazardous waste"* means hazardous waste as defined in section 455B.411, subsection 3, and under section 455B.464.

4. *"Long-term monitoring and maintenance"* means the continued observation and care of a facility after closure in order to ensure that the site poses no threat to the public health, the groundwater, and the environment. In the case of a low-level radioactive waste facility, the time period constituting *"long-term"* is the number of years of monitoring and maintenance based upon the half-life properties of the wastes, and in the case of a hazardous waste facility is the number of years based upon the projected active toxicity of the waste.

5. *"Low-level radioactive waste"* means low-level radioactive waste as defined in section 457B.1, article II, section *"m"*, and as defined in the federal Low-Level Radioactive Waste Policy Amendments Act, 42 U.S.C. § 2021.

6. *"Management of waste"* means the storage, transportation, treatment, or disposal of waste.

7. *"Person"* means person as defined in section 4.1.

8. *"Regulatory agency"* means a federal, state, or local agency that issues a license or permit required for the siting, construction, operation, or maintenance of a facility pursuant to federal or state statute or rule, or local ordinance or resolution.

9. *"Site"* means the geographic location of a facility.

10. *"Solid waste"* means solid waste as defined in section 455B.301, subsection 20.

11. *"State"* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

12. *"Storage"* means the temporary holding of waste for treatment or disposal.

13. *"Treatment"* means any method, technique, or process designed to change the physical, chemical, or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.

14. *"Waste"* means solid waste, hazardous waste, and low-level radioactive waste as defined in this section.

87 Acts, ch 180, §4; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §6; 2002 Acts, ch 1162, §48
Subsection 4 stricken and former subsections 5 – 15 renumbered as 4 – 14

455B.483 Waste management assistance.

The director of the department of natural resources shall provide for administration of the provisions of this part.

87 Acts, ch 180, §5; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §7; 2002 Acts, ch 1162, §49
Section stricken and rewritten

455B.484 Duties of the department.

The department shall:

1. Recommend to the commission the adoption of rules necessary to implement this part.

2. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for deposit into the waste management trust fund* to be used for programs relating to the duties of the department under this part.

3. Administer and coordinate the land quality and waste management trust fund* created under this part.

4. Enter into contracts and agreements, with the approval of the commission for contracts in excess of twenty-five thousand dollars, with local units of government, other state agencies, governments of other states, governmental agencies of the United States, other public and private contractors, and other persons as may be necessary or beneficial in carrying out its duties under this part.

5. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts or public-private compacts relating to the ownership, operation, management, or funding of a facility. Any agreement is subject to the approval of the commission.

6. Review, propose, and recommend legislation relating to the proper and safe management of waste.

7. Establish a central repository and information clearinghouse within the state for the collection and dissemination of data and information pertaining to the proper and safe management of waste.

8. Develop, sponsor, and assist in the implementation of public education and information programs on proper and safe management of waste in cooperation with other public and private agencies as deemed appropriate.

9. Include in the annual report to the governor and the general assembly required by section 455A.4, subsection 1, paragraph *"d"*, information outlining the activities of the department in carrying out programs and responsibilities under this part, and identifying trends and developments in the management of waste. The report shall also include specific recommendations for attaining the goals for waste minimization and capacity assurance requirements.

10. Solicit proposals from public and private agencies to conduct hazardous waste research, and to develop and implement storage, treatment, and other hazardous waste management practices including but not limited to source reduction, recycling, compaction, incineration, fuel recovery, and other alternatives to land disposal of hazardous waste. In the acceptance of a proposal, preference shall be given to Iowa agencies pursuant to chapter 73.

11. Develop and implement programs, in cooperation with the small business assistance center at the university of northern Iowa, which result in widespread adoption of waste minimization programs by hazardous waste generators. The department shall conduct educational and informational programs. The small business assistance center shall provide direct waste minimization technical assistance to small quantity hazardous waste generators. These programs may include, but are not limited to, source reduction, recycling, fuel recovery, incineration, compaction, and other alternatives to land disposal. The preference for program development and implementation shall be for programs which result in the generation of less waste, followed by a preference for programs which reuse the waste generated in a beneficial manner.

87 Acts, ch 180, §6; 88 Acts, ch 1134, §87; 89 Acts, ch 242, §3, 4; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §8, 9; 2002 Acts, ch 1050, §41; 2002 Acts, ch 1119, §61; 2002 Acts, ch 1162, §50 – 52

Iowa waste reduction center; see also §268.4

*"Waste management assistance trust fund" probably intended; corrective legislation is pending

See Code editor's note to §8.55 at the end of Vol IV

Unnumbered paragraph 1 amended

Subsections 2, 3, and 9 amended

Subsection 10 stricken and former subsection 11 renumbered as 10

Subsections 12 and 13 stricken and former subsection 14 renumbered as 11

455B.484A Confidentiality for assistance programs.

1. As used in this section:

a. "Applicant" means a person, acting in good faith, who seeks the services of an assistance program.

b. "Assistance information" means all information voluntarily supplied to or obtained by an assistance program for the sole purpose of providing assistance to an applicant and which constitutes information not otherwise available to an assistance program.

c. "Assistance program" means the waste reduction assistance program of the department or of the Iowa waste reduction center for safe and economic management of solid waste and hazardous substances conducted pursuant to section 268.4.

2. Assistance information in the possession of an assistance program or an employee or agent of an assistance program is privileged and confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and is not admissible evidence in an administrative or judicial proceeding. However, assistance information discoverable from sources other than an assistance program or prohibited from being made confidential pursuant to federal or state law does not become privileged or confidential merely because it has been made available to or is in the custody of an assistance program or an employee or agent of an assistance program.

3. Assistance information shall not be used by an employee or agent of the state in determining whether to initiate an enforcement action or investigation by the state.

92 Acts, ch 1214, §1

455B.485 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of this part.

2. Adopt, modify, or repeal rules necessary to implement this part pursuant to chapter 17A.

3. Approve the budget request for administration of this part prior to submission to the department of management. The commission may increase, decrease, or strike any proposed expenditure within the budget request before granting approval.

4. Recommend legislative action which may be required for the safe and proper management of waste, for the acquisition or operation of a facility, for the funding of a facility, to enter into interstate agreements for the management of a facility, and to improve the operation of the department relating to waste management assistance.

5. Approve all contracts and agreements, in excess of twenty-five thousand dollars, under this part between the department and other public or private persons or agencies.

87 Acts, ch 180, §7; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §10; 2002 Acts, ch 1162, §53

Subsections 3 – 5 amended

455B.486 Facility siting.

1. The department shall identify and recommend to the commission suitable sites for locating facilities for the treatment, storage, or disposal of hazardous waste within this state. The department shall use site selection criteria adopted by the environmental protection commission pursuant to section 455B.487 in identifying these sites. The commission shall accept or reject the

recommendation of the department. If the commission rejects the recommendation of the department, the commission shall state its reasons for rejecting the recommendation.

2. The commission shall adopt rules establishing criteria for the identification of sites which are suitable for the operation of low-level radioactive waste disposal facilities. The department shall apply these criteria, once adopted, to identify and recommend to the commission sites suitable for locating facilities for the disposal of low-level radioactive waste. The commission shall accept or reject the recommendation of the department. If the commission rejects the recommendation of the department, the commission shall state its reasons for rejecting the recommendation.

87 Acts, ch 180, §8; 92 Acts, ch 1239, §21; 2002 Acts, ch 1162, §54

Section amended

455B.487 Facility acquisition and operation.

The commission shall adopt rules establishing criteria for the identification of land areas or sites which are suitable for the operation of facilities for the management of hazardous and low-level radioactive wastes. Upon request, the department shall assist in locating suitable sites for the location of a facility. The commission may purchase or condemn land to be leased or used for the operation of a facility subject to chapter 6A. Consideration for a contract for purchase of land shall not be in excess of funds appropriated by the general assembly for that purpose. The commission may lease land purchased under this section to any person including the state or a state agency. This section authorizes the state to own or operate hazardous waste facilities and low-level radioactive waste facilities, subject to the approval of the general assembly.

The terms of the lease or contract shall establish responsibility for long-term monitoring and maintenance of the site. The commission shall require that the lessee or operator post bond or provide proof of sufficient insurance coverage, as determined by the commission to be reasonably necessary to protect the state against liabilities arising from the storage of wastes, abandonment of the facility, facility accidents, failure of the facility, or other liabilities which may arise.

The terms of the lease or contract shall also require that the lessee or operator of the facility pay an annual fee to the state, as established by the commission, to cover facility monitoring costs, and shall require that the lessee or operator establish a long-term monitoring and maintenance fund in which the lessee or operator shall deposit annually an amount specified by the commission. The fund shall be used to pay closure, long-term monitoring and maintenance, and contingency costs.

The lease agreement or contract shall provide for a local review and monitoring committee established by the county or municipal entity governing the jurisdiction in which the facility is located. Prior to the approval of a lease agreement or contract the local committee shall review the application of the prospective lessee or operator and shall determine the suitability of the proposed site for the facility. The local committee may inspect the facility during operation and may make recommendations regarding the operation and closure of the facility. The commission shall establish a surtax paid by the lessee or operator of a facility to the local governmental entity, and retained by the local governmental entity in which the facility is located. The lessee or operator of the facility shall provide funding for the implementation of the duties of the local committee.

The lessee or operator is subject to all applicable permit and licensing requirements. The leasehold interest, including improvements made to the property, shall be listed, assessed, and valued as any other real property as provided by law.

Facilities acquired or operated pursuant to this section shall comply with applicable federal and state statutes, local ordinances, and regulations adopted by regulatory agencies to the extent required by law.

The purchase, condemnation, use, or lease of land for the management of wastes, shall be approved by the general assembly prior to the purchase, condemnation, use, or lease of the land.

Facilities acquired or operated pursuant to this section may be used for regional, statewide or multistate management of wastes.

Facilities acquired or operated pursuant to this section shall not be used for the purpose of shallow land burial of wastes as a means of disposal.

An operator of a facility acquired or operated pursuant to this section shall require that a person, prior to the use of the facility, submit proof that reasonable and good faith measures have been taken to reduce the generation of waste.

A hazardous waste facility acquired or operated pursuant to this section shall be operated in accordance with the following schedule:

1. The initial fee paid by a person depositing hazardous waste at the facility shall be increased by ten percent per ton upon receipt of twenty-five percent of the waste capacity of the facility.

2. The initial fee paid by a person depositing hazardous waste at the facility shall be increased by twenty-five percent per ton upon receipt of fifty percent of the waste capacity of the facility.

3. Upon receipt of fifty percent of the waste capacity of the facility, the receipt of waste shall be limited to hazardous waste generated within the state of Iowa. If an agreement has been established between the owner or operator of the hazardous waste facility and an out-of-state generator of hazardous waste, this limitation is null and void.

87 Acts, ch 180, §9

455B.488 Household hazardous waste collection and disposition.

The division shall develop, sponsor, and assist in conducting local, regional, or statewide programs for the receipt or collection and proper management of hazardous wastes from households and farms. In conducting such events the division may establish limits on the types and amounts of wastes that will be collected, and may establish a fee system for acceptance of wastes in quantities exceeding the limits established pursuant to this section.

87 Acts, ch 180, §10; 92 Acts, ch 1239, §21

455B.489 Waste management authority fund. Repealed by 89 Acts, ch 272, § 41. See § 455D.15.

455B.490 Used storage tank disposal. Repealed by 92 Acts, ch 1018, § 3.

DIVISION V

CHEMICAL TECHNOLOGY

455B.491 Restrictions on use of agricultural chemicals.

1. If the commission determines that an agricultural chemical causes an unreasonable, adverse effect on humans or the environment, the commission shall submit to the secretary of agriculture its findings and recommended actions. The secretary of agriculture shall propose rules implementing the recommended actions and shall hold a public hearing to determine the effects of the proposed rules as provided in chapter 206 after review and consideration of the findings as provided in subsection 2 of this section. A rule of the secretary shall be adopted pursuant to chapter 17A.

2. The commission shall submit to the secretary of agriculture its findings on the unreasonable, adverse effect that the agricultural chemical causes to humans or the environment. The department of agriculture and land stewardship shall prepare an estimate of the economic impact of restricting the use of the agricultural chemical. The economic impact statement, the commission's findings and the report of the advisory committee created under section 206.23 shall be available at the time of publication of the intended rule action by the secretary. The secretary of agriculture and the advisory committee shall review the commission's findings and collect, analyze and interpret any other scientific data relating to the agricultural chemical. The secretary and the committee shall consider any official reports, academic studies, expert opinions or testimony, or other matters deemed to have probative value and shall consider the toxicity, hazard, effectiveness, public need for the agricultural chemical or other means of control other than the chemical in question, and the economic impact on the members of the public and agencies affected by it.

3. As used in this section, *"agricultural chemical"* means a pesticide as defined in section 206.2 and also means any feed or soil additive, other than a pesticide, which is designed for and used to promote the growth of plants or animals.

[C71, §206A.2; C73, 75, 77, §455B.100; C79, §455B.130, 455B.131; C81, §455B.150]

C83, §455B.471

CS85, §455B.491

455B.492 through 455B.499 Reserved.

455B.500 Waste management research by persons in conjunction with institutions of higher education.

A person acting in conjunction with a private college, community college, or state board of regents' institution, to conduct research relating to waste management, on private property, or on property in which a city or county holds an interest, shall notify the department in writing. The person is not required to obtain authorization, including but not limited to a permit, by the department for one hundred twenty days after submitting the notice. After the end of the one-hundred-twenty-day period the department shall conduct an evaluation of the permit status of the research and may determine whether a permit ought to be issued or modified before the research continues.

90 Acts, ch 1260, §26

DIVISION VI

INFECTIOUS WASTE

455B.501 Regulation of infectious waste.

1. As used in this section, unless the context otherwise requires:

a. "Contaminated animal carcasses" means waste including carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

b. "Contaminated sharps" means all discarded sharp items derived from patient care in medical, research, or industrial facilities including glass vials containing materials defined as infectious, hypodermic needles, scalpel blades, and pasteur pipettes.

c. "Cultures and stocks of infectious agents" means specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biological agents, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, or mix cultures.

d. "Human blood and blood products" means human serum, plasma, other blood components, bulk blood, or containerized blood in quantities greater than twenty milliliters.

e. "Infectious" means containing pathogens with sufficient virulence and quantity so that exposure to an infectious agent by a susceptible host could result in an infectious disease when the infectious agent is improperly treated, stored, transplanted, or disposed.

f. "Infectious waste" means waste, which is infectious, including but not limited to contaminated sharps, cultures, and stocks of infectious agents, blood and blood products, pathological waste, and contaminated animal carcasses from hospitals or research laboratories.

g. "Pathological waste" means human tissues and body parts that are removed during surgery or autopsy.

2. The department shall recommend, for adoption by the commission, standards for on-site and off-site treatment of infectious waste. In developing standards, the department shall consider factors affecting the feasibility of alternative methods of treatment and disposal, including but not limited to the volume of infectious waste generated, the availability of treatment facilities within geographic areas, and the costs of transporting infectious wastes to treatment facilities. The standards shall include monitoring requirements for treatment facilities and training requirements for operators of facilities. The standards may include requirements for management plans dealing with the plans for management of infectious wastes in compliance with adopted standards. In cases in which an individual generator of infectious waste is served by a person treating or disposing of the infectious waste, the person treating or disposing of the waste may prepare the plan for all generators served.

89 Acts, ch 245, §1; 99 Acts, ch 46, §1

Local approval of infectious waste incinerator projects; §455B.305A

455B.502 Infectious medical waste incinerators — regents universities — requirements. Repealed by 99 Acts, ch 46, § 3.

455B.503 Infectious waste treatment and disposal facilities — permits required — rules.

The commission shall adopt rules which require a person who owns or operates an infectious waste treatment or disposal facility to obtain an operating permit before initial operation of the facility. The rules shall specify the information required to be submitted with the application for a permit and the conditions under which a permit may be issued, suspended, modified, revoked, or renewed. The rules shall address but are not limited to the areas of operator safety, recordkeeping and tracking procedures, best available appropriate technologies, emergency response and remedial action procedures, waste minimization procedures, and long-term liability. The department shall not grant permits for the construction or operation of a commercial infectious waste treatment or disposal facility until the commission has adopted the required rules.

91 Acts, ch 242, §4; 92 Acts, ch 1182, §4; 93 Acts, ch 103, §1; 99 Acts, ch 46, §2

455B.504 Collection and transportation of infectious medical waste — permits required — rules.

The commission shall adopt rules which require a person who owns or operates an infectious medical waste collection or transportation operation to obtain an operating permit prior to initial operation. The rules shall address but are not limited to the areas of operator safety, recordkeeping and tracking procedures, best available appropriate technologies, emergency response and remedial action procedures, waste minimization procedures, and long-term liability.

91 Acts, ch 242, §5

455B.505 Infectious waste treatment and disposal facilities — national register of historic places.

The department of natural resources shall not grant a permit for the construction or operation of a commercial infectious waste treatment or disposal facility within one mile of a site or building which has been placed on the national register of historic places. This section does not apply to hospitals, health care facilities licensed pursuant to chapter 135C, physicians' offices or clinics, and other health service-related entities.

91 Acts, ch 242, §6

455B.506 through 455B.515 Reserved.

DIVISION VII

TOXICS POLLUTION PREVENTION PROGRAM

Findings; goal and policy;
91 Acts, ch 255, §1, 2

455B.516 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Commission"* means the environmental protection commission established pursuant to section 455A.6.

2. *"Department"* means the department of natural resources created pursuant to section 455A.2.

3. *"Emergency Planning and Community Right-to-know Act"* or *"EPCRA"* means the federal Emergency Planning and Community Right-to-know Act as defined in section 30.1.

4. *"Environmental waste"* means a pollutant,

waste, or release regardless of the type or existence of regulation and regardless of the media affected by the pollutant, waste, or release.

5. *"Existing toxics user"* means a toxics user installation or source constructed prior to July 1, 1991.

6. *"Multimedia"* means any combination of air, water, land, or workplace environments into which toxic substances or wastes are released.

7. *"Release"* means emission, discharge, or disposal into any environmental media including air, water, or land.

8. *"Toxics"* means toxic substances.

9. *"Toxics pollution prevention"* means employment of a practice which reduces the industrial use of toxic substances or reduces the environmental and health hazards associated with an environmental waste without diluting or concentrating the waste before the release, handling, storage, transport, treatment, or disposal of the waste. The term includes toxics pollution prevention techniques but does not include a practice which is applied to an environmental waste after the waste is generated or comes into existence on or after the waste exits a production or commercial operation.

"Toxics pollution prevention" does not include, promote, or require any of the following:

a. Waste burning in industrial furnaces, boilers, smelters, or cement kilns for the purpose of energy recovery.

b. The transfer of an environmental waste from one environmental medium to another environmental medium, the workplace environment, or a product.

c. Off-site waste recycling.

d. Any other method of end-of-pipe management of environmental wastes including waste exchange and the incorporation or embedding of regulated environmental wastes into products or byproducts.

10. *"Toxics pollution prevention techniques"* means any of the following practices by a toxics user:

a. Input substitution, which refers to replacing a toxic substance or raw material used in a production process with a nontoxic or less toxic substance.

b. Product reformulation, which refers to substituting for an existing end product an end product which is nontoxic or less toxic upon use or release.

c. Production process redesign or modification, which refers to developing and using production processes of a different design other than those currently in use.

d. Production process modernization, which refers to upgrading or replacing existing production process equipment or methods with other equipment or methods based on the same production process.

e. Improved operation and maintenance of existing production process equipment and methods, which refers to modifying or adding to existing equipment or methods, including but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections, and production process control equipment or methods.

f. Recycling, reuse, or extended use of toxic substances by using equipment or methods which become an integral part of the production process.

11. *"Toxic substance"* means any chemical substance in a gaseous, liquid, or solid state which is identified as a reportable substance under the federal Resource Conservation and Recovery Act, EPCRA, or defined as a hazardous air pollutant under the Clean Air Act of 1990. However, *"toxic substance"* does not include a chemical substance present in the article; used as a structural component of a facility; present in a product used for routine janitorial or facility grounds maintenance; present in foods, drugs, cosmetics, or other personal items used by employees or other persons at a toxics user facility; present in process water or noncontact cooling water as drawn from the environment or from municipal sources; present in air used either as compressed air or as part of combustion; present in a pesticide or herbicide when used in agricultural applications; or present in crude, fuel, or lube oils for direct wholesale or retail sale.

12. *"Toxics user"* means a large quantity generator as defined pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or a person required to report pursuant to Title III of the federal Superfund Amendments and Reauthorization Act of 1986.

13. *"Waste exchange"* means a method of end-of-pipe management of environmental wastes that involves the transfer of environmental wastes between businesses or facilities owned or operated by the same business for recovery or to serve a productive purpose.

91 Acts, ch 255, §3; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §11; 2002 Acts, ch 1162, §55

Subsection 3 stricken and former subsections 4 – 8 renumbered as 3 – 7; former subsection 12 renumbered as 8 to alphabetize; and former subsections 13 and 14 renumbered as 12 and 13

455B.517 Duties of department.

The department shall do all of the following:

1. Establish the criteria for the development of the toxics pollution prevention program.

2. Develop and implement a toxics pollution prevention program.

3. Assist toxics users in the completion of toxics pollution prevention plans and inventories, and provide technical assistance as requested by the toxics user.

4. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for the uses designated pursuant to section 455B.133B. The department shall also coordinate existing resources and oversee the disbursement of federal grant moneys to

provide consistency in achieving the toxics pollution prevention goal of the state.

5. Develop and implement guidelines regarding assistance to toxics users to ensure that the plans are multimedia in approach and are not duplicated by the department or other agencies of the state.

6. Identify obstacles to the promotion, within the toxics user community, of toxics pollution prevention techniques and practices.

7. Compile an assessment inventory, through solicitation of recommendations of toxics users and owners and operators of air contaminant sources, of the informational and technical assistance needs of toxics users and air contaminant sources.

8. Function as a repository of research, data, and information regarding toxics pollution prevention activities throughout the state.

9. Provide a forum for public discussion and deliberation regarding toxic substances and toxics pollution prevention.

10. Promote increased coordination between the department, the Iowa waste reduction center at the university of northern Iowa, and other departments, agencies, and institutions with responsibilities relating to toxic substances.

11. Coordinate state and federal efforts of clearinghouses established to provide access to toxics reduction and management data for the use of toxics users.

12. Make recommendations to the general assembly by January 1, 1992, regarding a funding structure for the long-term implementation and continuation of a toxics pollution prevention program.

13. Work with the Iowa waste reduction center at the university of northern Iowa to assist small business toxics users with plan preparation and technical assistance.

91 Acts, ch 255, §4; 92 Acts, ch 1239, §21; 95 Acts, ch 26, §3; 2001 Acts, ch 7, §12; 2002 Acts, ch 1162, §56, 57

Unnumbered paragraph 1 amended
Subsection 4 amended

455B.518 Toxics pollution prevention plans.

1. A toxics user required to report under section 313 of EPCRA, 42 U.S.C. § 11023, or a large quantity generator, as defined pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., shall be encouraged to develop a facility-wide multimedia toxics pollution prevention plan, as described pursuant to this section.

2. The department shall adopt criteria for the information required in a multimedia toxics pollution prevention plan. To the extent possible, the plans shall coordinate reporting requirements in order to minimize unnecessary duplication. The plans shall include, but are not limited to, all of the following:

a. A policy statement which articulates upper management and corporate support for the toxics pollution prevention plan and its implementation.

b. The identification and quantities of toxic substances used and released by groups of related production processes or by processes used in producing an identifiable product.

c. An assessment of the applicability of the approaches designated as toxics pollution prevention techniques including the following: input substitution; production reformulation; production process redesign or modification; production process modernization; improved operation and maintenance of existing production process equipment and methods; and recycling, reuse, or extended use of toxic substances, to the toxics users' production processes as identified in paragraph *"b"*.

d. A description of current and previous techniques used to reduce or eliminate toxics used or released.

e. An economic analysis of the proposed toxics pollution prevention plan. The economic analysis shall also include an evaluation of the impact upon the toxics user's existing labor force by division or department, and the projected impact upon future expansion of the toxics user's labor force.

f. A clear statement listing specific reduction objectives.

g. A method for employees of a toxics user to provide input and to be involved in the development of the plans. If the employees are represented by a labor union, organization, or association, a representative of the union, organization, or association shall be included in the development of the plans.

3. The plans developed under this section shall not promote the use of pollution control or waste management approaches that address waste or pollution after the creation of the waste or pollution.

4. A toxics pollution prevention plan developed under this section shall be reviewed by the authority for completeness, adequacy, and accuracy.

5. A toxics user shall maintain a copy of the plan on the premises, and shall submit a summary of the plan to the department.

91 Acts, ch 255, §5; 92 Acts, ch 1239, §21; 2002 Acts, ch 1162, §58

Subsection 2, unnumbered paragraph 1 amended

455B.519 through 455B.600 Reserved.

DIVISION VIII

CONTAMINATED SITES

455B.601 Pesticide and fertilizer contaminated sites — prioritization of cleanup.

1. The commission shall adopt rules to estab-

lish criteria for the classification and prioritization of sites upon which contamination has been discovered.

a. A contaminated site shall be classified as either high, medium, or low priority.

(1) A site shall be considered high priority under any of the following conditions:

(a) Groundwater contamination exceeds action levels and is affecting or likely to affect groundwater used as a drinking water source.

(b) Contamination is affecting or likely to affect surface water bodies to a level which exceeds surface water quality standards under section 455B.173.

(c) Contamination is discovered in an ecologically sensitive area. An ecologically sensitive area is one which is designated by the department.

(2) A site shall be considered medium priority if contamination of groundwater exceeds action levels, but does not meet the criteria for classification as a high priority site.

(3) A site shall be considered low priority under any of the following conditions:

(a) If soil contamination exists at the site, but no groundwater contamination exists at the site.

(b) If soil contamination exists and groundwater contamination has been discovered, but is below action levels.

(4) A site shall be reclassified as a site with a higher or lower classification when the site falls within a higher or lower classification as established under this paragraph.

b. An initial site plan shall be developed by the responsible person and approved by the department for each site upon which contamination has been discovered. The site plan shall include all of the following:

(1) A determination as to the extent of the existing soil, groundwater, or surface water contamination.

(2) The proximity of the contamination and the likelihood that the contamination will affect a drinking water well.

(3) The characteristics of the site and the potential for migration of the contamination.

(4) A recommendation as to whether the site should be classified as a high, medium, or low priority site.

(5) If a site is classified as a high or medium priority site, further investigation shall be conducted to determine the extent of the remediation which should be conducted on the site.

c. A responsible person shall remediate a contaminated site according to standards established by rules adopted pursuant to chapter 17A. Remediation for high, medium, or low priority sites shall be administered in accordance with the following:

(1) Soils and groundwaters on a high priority site shall be subject to active cleanup, where technically feasible, until such time as the ground water contamination levels are below action levels.

(2) Remediation on a medium priority site shall include either monitoring or active or passive site cleanup as determined by the department on a site-by-site basis based upon the findings of the site plan. Remediation on a medium priority site shall include at least that which would be required on a low priority site.

(3) (a) Active site cleanup for soil shall be required on a low priority site if remediation would be more practical and cost-effective than monitoring.

(b) If active site cleanup for soil on a low priority site is undertaken, no further action shall be required on the site.

(c) If active site remediation for soil is not undertaken on a low priority site, the site shall be monitored, for a specified period of time as determined by the department.

2. This section is applicable to a site upon which contamination has been discovered, unless one of the following applies:

a. Remediation on the site has already been approved by the department and implemented.

b. A responsible person has executed a remediation agreement with the agrichemical remediation board and the responsible person is remediating or has remediated the site pursuant to a plan of remediation as provided in chapter 161.

3. Application of contaminated groundwaters and soils on land upon which the contaminants have been applied in accordance with department rules shall not exceed a level which would preclude the resumption of normal farming practices within a two-year period.

4. This section does not affect the ability of the department or the United States environmental protection agency to require monitoring or remediation on sites that are placed on the national priorities list pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act.

92 Acts, ch 1239, §48; 2000 Acts, ch 1184, §11 – 13; 2002 Acts, ch 1119, §175

Classification and prioritization of sites by department of agriculture and land stewardship; §161.6

Subsection 2, paragraph b amended

455B.602 Definitions.

As used in this division:

1. *"Action level"* means action level as provided in 567 IAC ch. 133 or 137.

2. *"Active site cleanup"* means treating, dispersing, removing, or disposing of contamination located in soil or water, including, but not limited to, excavating soil or installing institutional or technological controls to water quality.

3. *"Background levels"* means concentrations of a contaminant generally present in the environment in the vicinity of a site or an affected area and

not the result of release.

4. *"Contaminated site"* means a site upon which contamination has been discovered.

5. *"Contamination"* means the presence of one or more pesticides, as defined in section 206.2, or the presence of fertilizer, as defined in section 200.3, in soil or groundwater at levels above those that would result at normal field application rates or above background levels.

6. *"Passive site cleanup"* means the removal or treatment of a contaminant in soil or water through management practices or the construction of barriers, trenches, and other similar facilities for prevention of contamination, as well as the use of natural processes such as groundwater recharge, natural decay, and chemical or biological decomposition.

7. *"Remediation"* means a process used to protect the public health and safety or the environment from contamination, including by doing all of the following:

a. Controlling, containing, or stabilizing the effects caused by a prohibited release.

b. Investigating, identifying, or analyzing a contaminant or a contamination source; collecting samples, including soil and water samples; assessing the condition of a site; monitoring a contaminated site; providing for structural testing; or providing for engineering services.

c. Providing for site cleanup.

8. *a. "Responsible person"* means a person who is legally liable for the contamination or who is legally responsible for abating contamination under any applicable law, including chapters 455B and 455E, and the common law. This may include a person causing, allowing, or otherwise participating in the activities or events which cause the contamination, persons who have failed to conduct their activities so as to prevent the release of contaminants into groundwater, persons who are obligated to abate a condition, or persons responsible for or a successor to such persons.

b. "Responsible person" does not include a person who caused contamination by acting in a manner unauthorized by the owner of the pesticide or fertilizer, including a person who trespasses upon a site.

9. *"Site cleanup"* means measures used to contain, reduce, or eliminate contamination present at a site including by using active site cleanup or passive site cleanup measures, or complying with a correction action required or recommended by the department of natural resources or the United States environmental protection agency.

2000 Acts, ch 1184, §14

455B.603 through 455B.700 Reserved.

DIVISION IX

OIL SPILLS

455B.701 Oil spill immunity.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or relating to the discharge or threatened discharge of oil.

b. "Discharge" means any emission, other than natural seepage, intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

c. "Federal on-scene coordinator" means the federal official designated by the federal agency in charge of the removal efforts or by the United States environmental protection agency or the United States coast guard to coordinate and direct responses under the national contingency plan.

d. "National contingency plan" means the national contingency plan prepared and published under 33 U.S.C. § 1321(d).

e. "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

f. "Remove" or *"removal"* means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

g. "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

h. "Responsible party" means a responsible party as defined under 33 U.S.C. § 2701.

2. *Exemption from liability.*

a. Notwithstanding any other provisions of law, a person is not liable for removal costs or damages which result from acts or omissions taken or made in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the state official with responsibility for oil spill response.

b. Paragraph *"a"* does not apply to the following:

(1) A responsible party.

(2) When the damage involves personal injury or wrongful death.

(3) If the person is grossly negligent or engages in willful misconduct.

c. A responsible party is liable for any removal costs and damages that another person is relieved of under paragraph *"a"*.

d. This section does not affect the liability of a responsible party for oil spill response under state law.

95 Acts, ch 15, §1

CHAPTER 455C

BEVERAGE CONTAINERS CONTROL

455C.1 Definitions.
455C.2 Refund values.
455C.3 Payment of refund value.
455C.4 Refusal to accept containers.
455C.5 Refund value stated on container — exceptions.
455C.6 Redemption centers.
455C.7 Unapproved redemption centers.
455C.8 Snap-top cans prohibited.
455C.9 Rules adopted.
455C.10 Appeal.
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455C.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Beverage"* means wine as defined in section 123.3, subsection 37, alcoholic liquor as defined in section 123.3, subsection 5, beer as defined in section 123.3, subsection 7, mineral water, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

2. *"Beverage container"* means any sealed glass, plastic, or metal bottle, can, jar or carton containing a beverage.

3. *"Commission"* means the environmental protection commission of the department.

4. *"Consumer"* means any person who purchases a beverage in a beverage container for use or consumption.

5. *"Dealer"* means any person who engages in the sale of beverages in beverage containers to a consumer.

6. *"Dealer agent"* means a person who solicits or picks up empty beverage containers from a dealer for the purpose of returning the empty beverage containers to a distributor or manufacturer.

7. *"Department"* means the department of natural resources created under section 455A.2.

8. *"Director"* means the director of the department.

9. *"Distributor"* means any person who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer who engages in such sales.

10. *"Geographic territory"* means the geographical area within a perimeter formed by the outermost boundaries served by a distributor.

11. *"Manufacturer"* means any person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers.

12. *"Nonrefillable beverage container"* means a beverage container not intended to be refilled for sale by a manufacturer.

13. *"Redemption center"* means a facility at which consumers may return empty beverage containers and receive payment for the refund value of the empty beverage containers.

[C79, 81, §455C.1; 82 Acts, ch 1199, §71, 96]

85 Acts, ch 32, §111; 86 Acts, ch 1245, §1899C, 1899D; 87 Acts, ch 22, §12; 88 Acts, ch 1200, §1; 89 Acts, ch 272, §34, 42; 90 Acts, ch 1261, §43, 44; 91 Acts, ch 268, §433, 442, 443; 92 Acts, ch 1242, §40, 47

455C.2 Refund values.

1. A refund value of not less than five cents shall be paid by the consumer on each beverage container sold in this state by a dealer for consumption off the premises. Upon return of the empty beverage container upon which a refund value has been paid to the dealer or person operating a redemption center and acceptance of the empty beverage container by the dealer or person operating a redemption center, the dealer or person operating a redemption center shall return the amount of the refund value to the consumer.

2. In addition to the refund value provided in subsection 1 of this section, a dealer, or person operating a redemption center who redeems empty beverage containers or a dealer agent shall be re-

imbursed by the distributor required to accept the empty beverage containers an amount which is one cent per container. A dealer, dealer agent, or person operating a redemption center may compact empty metal beverage containers with the approval of the distributor required to accept the containers.

[C79, 81, §455C.2]

87 Acts, ch 22, §13; 88 Acts, ch 1200, §2; 89 Acts, ch 272, §35, 42; 90 Acts, ch 1261, §43, 44; 91 Acts, ch 268, §434, 442, 443; 92 Acts, ch 1242, §34, 38, 39, 40, 47

455C.3 Payment of refund value.

Except as provided in section 455C.4:

1. A dealer shall not refuse to accept from a consumer any empty beverage container of the kind, size and brand sold by the dealer, or refuse to pay to the consumer the refund value of a beverage container as provided under section 455C.2.

2. A distributor shall accept and pick up from a dealer served by the distributor or a redemption center for a dealer served by the distributor at least weekly, or when the distributor delivers the beverage product if deliveries are less frequent than weekly, any empty beverage container of the kind, size and brand sold by the distributor, and shall pay to the dealer or person operating a redemption center the refund value of a beverage container and the reimbursement as provided under section 455C.2 within one week following pickup of the containers or when the dealer or redemption center normally pays the distributor for the deposit on beverage products purchased from the distributor if less frequent than weekly. A distributor or employee or agent of a distributor is not in violation of this subsection if a redemption center is closed when the distributor attempts to make a regular delivery or a regular pickup of empty beverage containers. This subsection does not apply to a distributor selling alcoholic liquor to the alcoholic beverages division of the department of commerce.

3. A distributor shall not be required to pay to a manufacturer a deposit or refund value on a nonrefillable beverage container.

4. A distributor shall accept from a dealer agent any empty beverage container of the kind, size, and brand sold by the distributor and which was picked up by the dealer agent from a dealer within the geographic territory served by the distributor and the distributor shall pay the dealer agent the refund value of the empty beverage container and the reimbursement as provided in section 455C.2.

5. The alcoholic beverages division of the department of commerce shall provide for the disposal of empty beverage containers as required under subsection 2. The division shall give priority consideration to the recycling of the empty beverage containers to the extent possible, before any other appropriate disposal method is considered or implemented.

[C79, 81, §455C.3]

83 Acts, ch 84, §1; 88 Acts, ch 1200, §3; 89 Acts, ch 272, §36, 42; 90 Acts, ch 1261, §43, 44; 91 Acts, ch 268, §442, 443; 92 Acts, ch 1242, §35, 38, 39, 40, 47

455C.4 Refusal to accept containers.

1. Except as provided in section 455C.5, subsection 3, a dealer, a person operating a redemption center, a distributor or a manufacturer may refuse to accept any empty beverage container which does not have stated on it a refund value as provided under section 455C.2.

2. A dealer may refuse to accept and to pay the refund value of any empty beverage container if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order of the department approving a redemption center under section 455C.6.

3. A dealer or a distributor may refuse to accept and to pay the refund value of an empty wine or alcoholic liquor container which is marked to indicate that it was sold by a state liquor store. The alcoholic beverages division shall not reimburse a dealer or a distributor the refund value on an empty wine or alcoholic liquor container which is marked to indicate that the container was sold by a state liquor store.

4. A class "E" liquor control licensee may refuse to accept and to pay the refund value on an empty alcoholic liquor container from a dealer or a redemption center or from a person acting on behalf of or who has received empty alcoholic liquor containers from a dealer or a redemption center.

5. A manufacturer or distributor may refuse to accept and to pay the refund value and reimbursement as provided in section 455C.2 on any empty beverage container that was picked up by a dealer agent from a dealer outside the geographic territory served by the manufacturer or distributor.

[C79, 81, §455C.4]

85 Acts, ch 32, §112; 87 Acts, ch 22, §14, 15; 88 Acts, ch 1200, §4; 89 Acts, ch 161, §9

455C.5 Refund value stated on container — exceptions.

1. Each beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, label or other method securely affixed to the container, the refund value of the container. The department shall specify, by rule, the minimum size of the refund value indication on the beverage containers.

2. A person, except a distributor, shall not import into this state after July 1, 1979 a beverage container which does not have securely affixed to the container the refund value indication. The provisions of this subsection do not apply if:

a. For beverage containers containing alcoholic liquor as defined in section 123.3, subsection 5,

the total capacity of the containers is not more than one quart or, in the case of alcoholic liquor personally obtained outside the United States, one gallon.

b. For beverage containers containing beer as defined in section 123.3, subsection 7, the total capacity of the containers is not more than two hundred eighty-eight fluid ounces.

c. For all other beverage containers, the total capacity of the containers is not more than five hundred seventy-six fluid ounces.

3. The provisions of subsections 1 and 2 of this section do not apply to a refillable glass beverage container which has a brand name permanently marked on it and which has a refund value of not less than five cents, to any other refillable beverage container which has a refund value of not less than five cents and which is exempted by the director under rules adopted by the commission, or to a beverage container sold aboard a commercial airliner or passenger train for consumption on the premises.

[C79, 81, §455C.5]

85 Acts, ch 32, §113; 87 Acts, ch 22, §16

455C.6 Redemption centers.

1. To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the department, at which consumers may return empty beverage containers and receive payment of the refund value of such beverage containers.

2. An application for approval of a redemption center shall be filed with the department. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind and brand names of the beverage containers which will be accepted at the redemption center, and the names and addresses of the dealers to be served by the redemption center. The application shall contain such other information as the director may reasonably require.

3. The department shall approve a redemption center if it finds that the redemption center will provide a convenient service to consumers for the return of empty beverage containers. The order of the department approving a redemption center shall state the dealers to be served by the redemption center and the kind and brand names of empty beverage containers which the redemption center must accept. The order may contain such other provisions to insure that the redemption center will provide a convenient service to the public as the director may determine.

4. The department may review the approval of any redemption center at any time. After written notice to the person responsible for the establishment and operation of the redemption center, and to the dealers served by the redemption center, the commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with the department's order approving the redemption center, or if the redemption center no longer provides a convenient service to the public.

5. All approved redemption centers shall meet applicable health standards.

[C79, 81, §455C.6]

455C.7 Unapproved redemption centers.

Any person may establish a redemption center which has not been approved by the department, at which a consumer may return empty beverage containers and receive payment of the refund value of the beverage containers. The establishment of an unapproved redemption center shall not relieve any dealer from the responsibility of redeeming any empty beverage containers of the kind and brand sold by the dealer.

[C79, 81, §455C.7]

455C.8 Snap-top cans prohibited.

A person shall not sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container.

[C79, 81, §455C.8]

455C.9 Rules adopted.

The commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this chapter, subject to the provisions of chapter 17A.

[C79, 81, §455C.9]

455C.10 Appeal.

Any person aggrieved by an order of the department relating to the approval or withdrawal of approval for a redemption center may seek judicial review of such order as provided in chapter 17A.

[C79, 81, §455C.10]

455C.11 Annual appropriation. Repealed by 87 Acts, ch 22, § 17.

455C.12 Penalties.

1. Any person violating the provisions of section 455C.2, 455C.3, 455C.5, and 455C.8, or a rule adopted under this chapter shall be guilty of a simple misdemeanor.

2. A distributor who collects or attempts to collect a refund value on an empty beverage container when the distributor has paid the refund value on the container to a dealer, redemption center, or consumer is guilty of a fraudulent practice.

3. Any person who does any of the following acts is guilty of a fraudulent practice:

a. Collects or attempts to collect the refund value on the container a second time, with the knowledge that the refund value has once been

paid by the distributor to a dealer, redemption center or consumer.

b. Manufactures, sells, possesses or applies a false or counterfeit label or indication which shows or purports to show a refund value for a beverage container, with intent to use the false or counterfeit label or indication.

c. Collects or attempts to collect a refund value on a container with the use of a false or counterfeit label or indication showing a refund value, knowing the label or indication to be false or counterfeit.

4. As used in this section, a false or counterfeit label or indication means a label or indication purporting to show a valid refund value which has not been initially applied as authorized by a distributor.

5. Subsection 2 and subsection 3, paragraph *"a"* of this section have no application to empty beverage containers which are intended to be refillable and are in a standard of condition except for sanitization to be refillable by the manufacturer.

[C79, 81, §455C.12]

455C.13 Distributors' agreements authorized.

A distributor may enter into a contract or agreement with any other distributor, manufacturer or person for the purpose of collecting or paying the refund value on, or disposing of, beverage containers as provided in this chapter.

[C81, §455C.13]

455C.14 Redemption of refused nonrefillable metal beverage containers.

1. If the refund value indication required under section 455C.5 on an empty nonrefillable metal beverage container is readable but the redemption of the container is lawfully refused by a dealer or person operating a redemption center under other sections of this chapter or rules adopted pursuant to these sections, the container shall be accepted and the refund value paid to a consumer as provided in this section. Each beer distributor selling nonrefillable metal beverage containers in this state shall provide individually or collectively by contract or agreement with a dealer, person operating a redemption center or another person, at least one facility in the county seat of each county where refused empty nonrefillable metal beverage containers having a readable refund value indication as required by this chapter are accepted and redeemed. In cities having a population of twenty-five thousand or more, the number of the facilities provided shall be one for each twenty-five thousand population or a fractional part of that population.

2. A beer distributor violating this section is guilty of a simple misdemeanor.

[C81, §455C.14]

455C.15 Plastic cans prohibited.

1. A person shall not manufacture, offer for sale, or sell any single-serving beverage container which is a plastic can nor offer for sale or sell any beverage packaged in a single-serving plastic can. For the purposes of this section, a *"plastic can"* means a beverage container which, in addition to the closure mechanism, is composed of plastic and metal.

2. A person violating this section is guilty of a serious misdemeanor.

89 Acts, ch 44, §1

455C.16 Beverage containers — disposal at sanitary landfill prohibited.

Beginning July 1, 1990, the final disposal of beverage containers by a dealer, distributor, or manufacturer, or person operating a redemption center, in a sanitary landfill, is prohibited. Beginning September 1, 1992, the final disposal of beverage containers used to contain alcoholic liquor as defined in section 123.3, subsection 5, by a dealer, distributor, or manufacturer, or person operating a redemption center in a sanitary landfill, is prohibited.

89 Acts, ch 272, §37; 91 Acts, ch 268, §435; 92 Acts, ch 1215, §14

CHAPTER 455D

WASTE VOLUME REDUCTION AND RECYCLING

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455D.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commission"* means the environmental protection commission.

2. *"Department"* means the department of natural resources created pursuant to section 455A.2.

3. *"Deposit"* means the amount paid by the consumer to the retailer at the time of initial purchase that is intended to encourage the return of materials or containers and which is returned in full to the consumer when the used material or container is redeemed.

4. *"Director"* means the director of the department.

5. *"Rebate"* means the portion of the amount paid by the consumer to the retailer at the time of initial purchase that is returned to the consumer when the used material or container is returned for disposal.

6. *"Recycling"* means any process by which waste, or materials which would otherwise become waste, are collected, separated, or processed and revised or returned to use in the form of raw materials or products. *"Recycling"* includes but is not limited to the composting of yard waste which has been previously separated from other waste, but does not include any form of energy recovery.

7. *"Waste abatement fee"* means the amount paid by the consumer to the retailer at the time of initial purchase of a product that is intended to support the cost of proper disposal.

8. *"Waste reduction"* means practices which reduce, avoid, or eliminate both the generation of solid waste and the use of toxic materials so as to reduce risks to health and the environment and to avoid, reduce, or eliminate the generation of wastes or environmental pollution at the source and not merely achieved by shifting a waste output or waste stream from one environmental medium to another environmental medium.

89 Acts, ch 272, §1

455D.2 Findings.

The general assembly finds that:

1. Iowa's environment is precious and no person has the right to pollute Iowa's air, water, or soil. The environment is vulnerable and irreplaceable, and all Iowans have an ongoing responsibility to conserve, preserve, and enhance the state's natural resources to guarantee their continued existence and use by the present and future generations.

2. The land itself is the source of Iowa's livelihood not only for the purposes of an agricultural economy, but for the establishment of manufacturing plants, business offices, and residences. While zoning establishes restrictions on the use of land for social order, a similar system has not been established to maintain environmental order below the ground. Protection of the environment includes not only visible but invisible threats as well.

3. The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal today means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the groundwater supply. In addition, the nature of the waste and disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition.

4. Wastes filling Iowa's landfills may, at best, represent a potential resource. However, without proper management, wastes are hazards to the environment and life itself.

5. The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to sanitary landfills and

increase the supply of reusable materials for the use of the public.

89 Acts, ch 272, §2

455D.3 Goals for waste stream reduction — procedures — reductions and increases in fees.

1. *Year 1994 and 2000 goals.* The goal of the state is to reduce the amount of materials in the waste stream, existing as of July 1, 1988, twenty-five percent by July 1, 1994, and fifty percent by July 1, 2000, through the practice of waste volume reduction at the source and through recycling. For the purposes of this section, *"waste stream"* means the disposal of solid waste as *"solid waste"* is defined in section 455B.301.

Notwithstanding section 455D.1, subsection 6, facilities which employ combustion of solid waste with energy recovery and refuse-derived fuel, which are included in an approved comprehensive plan, and which were in operation prior to July 1, 1989, may include these processes in the definition of recycling for the purpose of meeting the state goal if at least thirty-five percent of the waste reduction goal, required to be met by July 1, 2000, pursuant to this section, is met through volume reduction at the source and recycling and reuse, as established pursuant to section 455B.301A, subsection 1, paragraphs *"a"* and *"b"*.

2. *Projected waste stream — year 2000.* A planning area may request the department to allow the planning area to project the planning area's waste stream for the year 2000 for purposes of meeting the year 2000 fifty percent waste volume reduction and recycling goals required by this section. The department shall make a determination of the eligibility to use this option based upon the annual tonnage of solid waste processed by the planning area and the population density of the area the planning area serves. If the department agrees to allow the planning area to make year 2000 waste stream projections, the planning area shall calculate the year 2000 projections and submit the projections to the department for approval. The planning area shall use data which is current as of July 1, 1994, and shall take into account population, employment, and industrial changes and documented diversions due to existing programs. The planning area shall use the departmental methodology to calculate the tonnage necessary to be diverted from landfills in order to meet the year 2000 fifty percent waste volume reduction and recycling goals required by this section. Once the department approves the year 2000 projections, the projections shall not be changed prior to the year 2001.

3. *Departmental monitoring.*

a. By October 31, 1994, a planning area shall submit to the department a solid waste abatement table which is updated through June 30, 1994. By April 1, 1995, the department shall report to the general assembly on the progress that has been made by each planning area on attainment of the July 1, 1994, twenty-five percent goal.

If at any time the department determines that a planning area has met or exceeded the twenty-five percent goal, but has not met or exceeded the fifty percent goal, a planning area shall subtract sixty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310. If at any time the department determines that a planning area has met or exceeded the fifty percent goal, a planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310. The reduction in tonnage fees pursuant to this paragraph shall be taken from that portion of the tonnage fees which would have been allocated for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph *"a"*, subparagraph (1).

If the department determines that a planning area has failed to meet the July 1, 1994, twenty-five percent goal, the planning area shall, at a minimum, implement the solid waste management techniques as listed in subsection 4. Evidence of implementation of the solid waste management techniques shall be documented in subsequent comprehensive plans submitted to the department.

b. By October 31, 2000, a planning area shall submit to the department, a solid waste abatement table which is updated through June 30, 2000. By April 1, 2001, the department shall report to the general assembly on the progress that has been made by each planning area on attainment of the July 1, 2000, fifty percent goal.

If at any time the department determines that a planning area has met or exceeded the fifty percent goal, the planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310. This amount shall be in addition to any amount subtracted pursuant to paragraph *"a"* of this subsection. The reduction in tonnage fees pursuant to this paragraph shall be taken from that portion of the tonnage fees which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph *"a"*, subparagraph (1). Except for fees required under subsection 4, paragraph *"a"*, a planning area failing to meet the fifty percent goal is not required to remit any additional tonnage fees to the department.

4. *Solid waste management techniques.* A planning area that fails to meet the twenty-five percent goal shall implement the following solid waste management techniques:

a. Remit fifty cents per ton to the department, as of July 1, 1995. The funds shall be deposited in the solid waste account under section 455E.11, subsection 2, paragraph *"a"*, to be used for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph *"a"*, subparagraph (1). Moneys under this paragraph shall be

remitted until such time as evidence of attainment of the twenty-five percent goal is documented in subsequent comprehensive plans submitted to the department.

b. Notify the public of the planning area's failure to meet the waste volume reduction goals of this section, utilizing standard language developed by the department for that purpose.

c. Develop draft ordinances which shall be used by local governments for establishing collection fees that are based on volume or on the number of containers used for disposal by residents.

d. Conduct an educational and promotional program to inform citizens of the manner and benefits of reducing, reusing, and recycling materials and the procurement of products made with recycled content. The program shall include the following:

(1) Targeted waste reduction and recycling education for residents, including multifamily dwelling complexes having five or more units.

(2) An intensive one-day seminar for the commercial sector regarding the benefits of and opportunities for waste reduction and recycling.

(3) Promotion of recycling through targeted community and media events.

(4) Recycling notification and education packets to all new residential, commercial, and institutional collection service customers that include, at a minimum, the manner of preparation of materials for collection, and the reasons for separation of materials for recycling.

89 Acts, ch 272, §3; 92 Acts, ch 1213, §2; 94 Acts, ch 1177, §4; 95 Acts, ch 80, §2; 95 Acts, ch 209, §25; 98 Acts, ch 1193, §3; 2001 Acts, ch 124, §2, 6

2001 amendment to subsection 3, paragraph a, is effective July 1, 2002; 2001 Acts, ch 124, §6

Subsection 3, paragraph a, unnumbered paragraph 2 amended

455D.4 Waste volume reduction policies.

1. It is the policy of this state to encourage the development of waste volume reduction programs and education at the local government level through incentives, technical assistance, grants, and other practical measures.

2. It is the policy of this state to support and encourage the development of new uses and markets for recycled goods, placing emphasis on the development, in Iowa, of businesses relating to waste reduction and recycling.

3. The provision of education concerning waste volume reduction at the elementary through high school levels and through community organizations will enhance the success of local programs requiring public involvement.

4. This state supports and encourages manufacturing methods which are environmentally sustainable, technologically safe, and ecologically sound. The state shall encourage manufacturing methods which enhance waste reduction by creating products with longer usage life, and by creating products which are adaptable to secondary uses, require less input material, and decrease resource consumption.

5. The people of this state recognize that a variety of benefits result from a comprehensive waste reduction policy including the following environmental, economic, governmental, and public benefits:

a. Not producing waste in the first instance is the most certain means for avoiding the widely recognized health and environmental damage associated with waste. Although waste reduction will never eliminate all wastes, to the extent that waste reduction is achieved it results in the most certain form of direct risk reduction.

b. Waste reduction may result in reduced pollution control costs for industry by stimulating and promoting beneficial technological and management reorganization within industry in place of pollution control strategies which channel capital into nonproductive pollution control expenditures.

c. The government is better able to administer programs which offer a variety of benefits to industry and which reduce the overall cost of government involvement than it is to administer programs which offer few benefits to industry and require increasingly extensive, complex, and costly governmental actions.

d. Public confidence in environmental policies of the government is important for the effectiveness of these policies. Waste reduction poses no adverse environmental and public health effects and does not, therefore, lead to increased public concern. Waste reduction also increases the public confidence that the government and industry are doing all that is possible to protect human health and the environment.

89 Acts, ch 272, §4

455D.5 Statewide waste reduction and recycling network — established.

1. The department shall establish a statewide waste reduction and recycling network to promote the waste management policy contained in section 455B.481 and the waste management hierarchy contained in section 455B.301A. Programs established shall encourage waste generators to reduce the volume of waste generated and to recycle or properly dispose of the waste that is generated. The network shall utilize existing recycling companies when possible. The programs may utilize financial and legal incentives, education, technical assistance, regulation, and other methods as appropriate to implement the programs. The programs may involve the development of public and private sector initiatives, the development of markets and other opportunities for waste reduction and recycling, and other related efforts.

2. The elements of the network shall include but are not limited to all of the following:

a. Promotion of efforts to increase the amount of recyclable materials used by the public.

b. Promotion of efforts to recover recyclable materials from the waste stream.

c. Promotion of local efforts to implement recycling collection centers located at disposal sites or other convenient local sites.

d. Promotion of local efforts of curbside collection of separated recyclable waste materials.

e. Provision of public education programs which promote public awareness of waste volume reduction and the use of recyclable materials.

f. Promotion of the creation of markets for recyclable materials.

g. Promotion of research, manufacturing processes, and product development, which provide for waste reduction through decreased material input, and resource consumption.

h. Promotion of the concentration of the efforts of the business and industry resource search service by the small business assistance center for the safe and economic management of solid waste and hazardous substances at the university of northern Iowa, to locate existing waste streams and materials from businesses and industries which generate small amounts of waste and to catalyze the reuse of these materials in the production of goods and services.

89 Acts, ch 272, §5; 95 Acts, ch 44, §4

455D.6 Duties of the director.

The director shall:

1. Unless otherwise specified in this chapter, recommend rules to the commission which are necessary to implement this chapter. Initial recommendations shall be made to the commission no later than July 1, 1991.

2. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for deposit in the waste reduction and recycling trust fund to be used for programs relating to the duties of the department under this chapter.

3. Administer and coordinate the waste volume reduction and recycling fund created under section 455D.15.

4. Enter into contracts and agreements, with the approval of the commission, for contracts in excess of twenty-five thousand dollars, with local units of government, other state agencies, governments of other states, governmental agencies of the United States, other public and private contractors, and other persons as may be necessary or beneficial in carrying out the department's duties under this chapter.

5. Submit a report to the general assembly on or before July 1, 1990, that characterizes the solid waste stream in Iowa and that contains a strategy for managing each major component of the waste stream. The strategy shall describe the actions necessary to assure that each segment of the waste stream is managed according to the highest appropriate priority of the waste management hierarchy.

6. Develop a strategy and recommend to the commission the adoption of rules necessary to implement a strategy for white goods and waste oil by January 1, 1990.

7. Develop a strategy and recommend to the commission the adoption of rules necessary to implement by January 1, 2004, a strategy for the recycling of electronic goods and the disassembling and removing of toxic parts from electronic goods.

8. Provide financial assistance through expenditure of the waste volume reduction and recycling fund to public and private entities to promote and enable the development and implementation of markets and industries in Iowa that will support and complement the state's waste reduction and recycling programs.

9. Study the technology available for the reclamation and recycling of refrigerant, including the findings of nationwide industry surveys, and make recommendations concerning whether or not all persons providing refrigerator or air conditioner repair services should own or have access to refrigerant reclamation or recycling machinery.

10. Identify products made from recycled or recovered materials and provide a list of these products to the department of general services and to all other state agencies to assist in the development and review of procurement specifications. The director shall also develop, in cooperation with the director of the department of general services, a program to promote the procurement of listed products and seek information from state agencies using products containing recycled or recovered materials to evaluate their performance. The program shall also provide that the director seek information from suppliers regarding product performance and recovered material content of products offered for sale. Based on the above evaluation, and information regarding the recyclability of the components of products and their longevity, and, where applicable, the energy efficiency of such products, the department shall publish information on recommended products for procurement. This information shall be provided to all state agencies as well as city and county purchasing agencies.

89 Acts, ch 272, §6; 2002 Acts, ch 1162, §59

NEW subsection 7 and former subsections 7 – 9 renumbered as 8 – 10

455D.7 Duties of the commission.

The commission shall:

1. Unless otherwise specified in this chapter, adopt rules necessary to implement this chapter pursuant to chapter 17A. Initial rules shall be adopted no later than April 1, 1992.

2. Prohibit land disposal of specific components of the waste stream for which the department has developed and implemented a strategy for alternative disposal according to the waste management hierarchy.

3. Establish by rule standards for the accep-

tance of recyclable or rebatable products at redemption centers. The standards may address matters of public health and handling by the redemption center.

4. Recommend to the general assembly, annually, the imposition of waste abatement fees, rebates, and deposits.

89 Acts, ch 272, §7

455D.8 Deposits, rebates, and waste abatement fees.

The commission shall recommend to the general assembly, annually, deposits, rebates, and waste abatement fees on elements of the waste stream when necessary to encourage waste reduction, and the recycling and recovery of useful components of that waste stream element, or to encourage proper management and disposal of components that cannot be recycled or recovered. In making these recommendations, the commission shall not recommend the imposition of a deposit, rebate, or waste abatement fee on an element that is being properly managed through a market-driven or publicly supported recycling, recovery, or source separation program. The commission shall recommend to the general assembly that a deposit, rebate, or waste abatement fee is removed from an element of the waste stream when the commission determines that market forces will ensure that the element is recycled, recovered, or properly managed and disposed.

89 Acts, ch 272, §8

455D.9 Land disposal of yard waste — prohibited.

1. Beginning January 1, 1991, land disposal of yard waste as defined by the department is prohibited. However, yard waste which has been separated at its source from other solid waste may be accepted by a sanitary landfill for the purposes of soil conditioning or composting.

2. The department shall assist local communities in the development of collection systems for yard waste generated from residences and shall assist in the establishment of local composting facilities. Within one hundred twenty days of the adoption of rules by the department regarding yard waste, each city and county shall, by ordinance, require persons within the city or county to separate yard waste from other solid waste generated. Municipalities which provide a collection system for solid waste shall provide for a collection system for yard waste which is not composted.

3. The department shall develop rules which define yard waste and provide for the safe and proper method of composting. The rules adopted for a composting facility to be located on property owned by an applicant for a permit prior to July 1, 1992, when the property is located within twenty miles of a metropolitan area of two hundred fifty thousand or more, shall require that prior to the issuance of a permit for a composting facility, the applicant shall submit an economic impact statement to the department. For the purpose of this subsection, *"economic impact statement"* means an estimate of the economic impact of the siting of a composting facility at a specific location on affected property owners.

4. State and local agencies responsible for the maintenance of public lands in the state shall give preference to the use of composted materials in all land maintenance activities.

5. This section does not prohibit the use of yard waste as land cover or as soil conditioning material.

6. This section prohibits the incineration of yard waste at a sanitary disposal project.

89 Acts, ch 272, §9; 90 Acts, ch 1191, §4; 92 Acts, ch 1182, §5

455D.9A Disposal of baled solid waste at a sanitary landfill — prohibited.

Beginning January 1, 1992, a person shall not dispose of baled solid waste at a sanitary landfill and a sanitary landfill shall not accept baled solid waste for final disposal. Solid waste which is baled on-site may be disposed of at the sanitary landfill.

91 Acts, ch 113, §1; 99 Acts, ch 14, §1

455D.10 Land disposal of lead acid batteries — prohibited — collection for recycling.

1. Beginning July 1, 1990, land disposal of lead acid batteries is prohibited.

2. A person offering for sale or selling lead acid batteries at retail in the state shall do all of the following:

a. Accept used lead acid batteries from customers who purchase new lead acid batteries, at the point of sale.

b. Post written notice that land disposal of lead acid batteries is prohibited and that state law requires the retailer to accept lead acid batteries for recycling when new lead acid batteries are purchased.

3. A person offering for sale or selling lead acid batteries at wholesale shall accept used lead acid batteries from retailers who purchase new lead acid batteries for resale to consumers, or from wholesale customers.

89 Acts, ch 272, §10

455D.10A Household batteries — heavy metal content and recycling requirements.

1. *Definitions.* As used in this section and in section 455D.10B unless the context otherwise requires:

a. *"Button cell battery"* means a household battery which resembles a button or coin in size and shape.

b. *"Consumer"* means a person who purchases household batteries for personal or business use.

c. *"Easily removed"* means a battery or battery

pack which can be removed from a battery-powered product by the consumer, using common household tools.

d. "Household battery" means any type of dry cell battery used by consumers, including but not limited to mercuric oxide, carbon-zinc, zinc air, silver oxide, nickel-cadmium, nickel-hydride, alkaline, lithium, or sealed lead acid batteries.

e. "Institutional generator" means a governmental, commercial, industrial, communications, or medical facility which generates waste mercuric oxide, nickel-cadmium, or sealed lead acid rechargeable batteries.

f. "Rechargeable consumer product" means a product that is primarily powered by a rechargeable battery and is primarily used or purchased to be used for household purposes.

g. "Rechargeable household battery" means a small sealed nickel-cadmium or sealed lead acid battery used for nonvehicular purposes and weighing less than twenty-five pounds, which can be recharged by the consumer and reused.

2. *Mercury content limited.*

a. A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese battery that contains more than twenty-five one-thousandths of a percent mercury by weight. A person shall not sell, distribute, or offer for sale at retail in this state an alkaline manganese household battery manufactured on or after January 1, 1996, to which mercury has been added. This paragraph does not apply to alkaline manganese button cell batteries.

b. A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese button cell battery which contains more than twenty-five milligrams of mercury.

3. *Recycling/disposal requirements for household batteries.*

a. Beginning July 1, 1996, a system or systems shall be in place to protect the health and safety of Iowans, and the state's environment, from the toxic components of used household batteries. The system or systems shall include at least one of the following elements:

(1) Elimination or reduction to the extent established by rule of the department, of heavy metals and other toxic components in nickel-cadmium, mercuric oxide, or sealed lead acid household batteries, to ensure protection of public health, safety, and the environment when placed in or disposed of as part of mixed municipal solid waste.

(2) Establishment of a comprehensive recycling program for each type of battery listed in subparagraph (1) that is sold, distributed, or offered for sale in this state. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable batteries. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph *"c"* or *"d"*, shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for the recycling of used batteries in an environmentally sound manner.

(3) Provision for collection, transporting, and proper disposal of used household batteries of the types listed in subparagraph (1) which are distributed, sold, or offered for retail sale in the state. For the purposes of this paragraph, *"proper disposal"* means disposal which complies with all applicable state and federal laws. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph *"c"* or *"d"*, shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for proper disposal of the used batteries.

b. To meet the recycling and disposal requirements of this subsection, participants in the systems established under this subsection, either individually or collectively, shall do all of the following:

(1) Identify a collection entity, other than a local government collection system, unless the local government agrees otherwise, through which the discarded batteries listed in paragraph *"a"*, subparagraph (1) shall be returned for collection and recycling or disposal.

(2) Inform each customer of the prohibition of disposal of batteries listed in paragraph *"a"*, subparagraph (1), and a safe and convenient return process available to the customer for recycling or proper disposal.

c. After July 1, 1996, nickel-cadmium, sealed lead acid, or mercuric oxide household batteries shall not be sold, distributed, or offered for sale in the state, unless a system required by this section is in operation.

d. The department may make recommendations to the commission to include other types of household or rechargeable batteries, not enumerated in paragraph *"a"*, subparagraph (1), in the requirements of this subsection.

e. This subsection does not apply to batteries subject to regulation under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.

4. *Rules adopted.* The commission shall adopt, upon recommendation of the director, the

rules necessary to carry out the provisions of this section pursuant to chapter 17A.

5. *Penalties.* A person violating a provision of this section is subject to a civil penalty of not more than ten thousand dollars per day of violation.

92 Acts, ch 1215, §15; 95 Acts, ch 99, §1

455D.10B Batteries used in rechargeable consumer products.

1. A person shall not distribute, sell, or offer for retail sale in the state a rechargeable consumer product manufactured on or after January 1, 1994, unless all of the following conditions are met:

a. The battery can be easily removed by the consumer, or is contained in a battery pack that is separate from the product and can be easily removed.

b. The battery, the instruction manual, and the product package are clearly labeled to indicate that the battery must be recycled or disposed of properly and includes the designation "Cd" or "Ni-Cd" for nickel-cadmium batteries and "Pb" or "Lead" for small lead batteries.

2. A rechargeable consumer product manufacturer may apply to the department for exemption from the requirements of subsection 1 if any of the following apply:

a. The product cannot be redesigned or manufactured to comply with the requirements prior to January 1, 1994.

b. The redesign of the product to comply with the requirements would result in significant danger to public health and safety.

c. The battery poses no unreasonable hazard to public health, safety, or the environment when placed in and processed or disposed of as part of mixed municipal solid waste, pursuant to section 455D.10A.

d. The consumer product manufacturer has in operation a program to recycle used batteries in an environmentally sound manner.

A manufacturer of a product that is powered by a battery that cannot be easily removed who has been granted an exemption under this subsection shall label the product as required in subsection 1, paragraph *"b"*.

3. An exemption granted by the department under subsection 2, paragraph *"a"* is limited to a maximum of two years, but may be renewed.

92 Acts, ch 1215, §16; 94 Acts, ch 1037, §1, 2

455D.11 Waste tires — land disposal prohibited.

1. As used in this section, unless the context otherwise requires:

a. *"Permit"* means a permit issued by the department to establish, construct, modify, own, or operate a tire stockpiling facility.

b. *"Processing"* means producing or manufacturing usable materials from waste tires.

c. *"Processing site"* means a site which is used for the processing of waste tires and which is owned or operated by a tire processor who has a permit for the site.

d. *"Tire collector"* means either a person who owns or operates a site used for the storage, collection, or deposit of more than five hundred waste tires or an authorized vehicle recycler who is licensed by the state department of transportation pursuant to section 321H.4 and who owns or operates a site used for the storage, collection, or deposit of more than three thousand five hundred waste tires.

e. *"Tire processor"* means a person engaged in the processing of waste tires.

f. *"Waste tire"* means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. *"Waste tire"* does not include a nonpneumatic tire.

g. *"Waste tire collection site"* means a site which is used for the storage, collection, or deposit of waste tires.

2. Land disposal of waste tires is prohibited beginning July 1, 1991, unless the tire has been processed in a manner established by the department. A sanitary landfill shall not refuse to accept a waste tire which has been properly processed.

3. The department shall conduct a study and make recommendations to the general assembly by January 1, 1991, concerning a waste tire abatement program which includes but is not limited to the following:

a. The number and geographic distribution of waste tires generated and existing in the state.

b. The development of markets for the recycling and processing of waste tires, in the midwestern states.

c. The methods to establish reliable sources of waste tires for users of waste tires.

d. The permitting of waste tire collection sites, waste tire processing facilities, and waste tire haulers.

e. The methods for the cleanup of existing stockpiles of waste tires.

4. Upon completion of the study pursuant to subsection 3, the department shall determine the number of stockpiling facilities which are necessary and shall develop rules for stockpiling facilities which include but are not limited to the following:

a. The prohibition of burning within one hundred yards of a tire stockpile.

b. The maximum height, width, and length of a tire stockpile.

c. Plans to control mosquitoes and rodents.

d. A facility closure plan.

e. Specifications for fire lanes between stockpiles.

f. Limitations of the total number of tires allowed at a single stockpile site.

5. The department shall develop criteria for the issuance of permits and shall issue permits to qualified stockpiling facilities.

6. The department shall provide financial assistance to persons who establish recycling and processing sites for waste tires, subject to the rules established by the department for the establishment of such sites and subject to the conditions prescribed by the department for application for and awarding of such financial assistance.

7. The commission shall adopt rules which provide the following:

a. That a person who contracts with another person to transport more than forty waste tires is required to contract only with a person registered as a waste tire hauler pursuant to section 455D.11I.

b. That a person who transports waste tires for final disposal is required to only dispose of the tires at a permitted sanitary disposal facility.

c. A person who does not comply with this subsection is subject to the penalty imposed pursuant to section 455D.11I and the moneys allocated shall be deposited and used pursuant to section 455D.11I.

8. The department shall adopt rules relating to the storage and disposal of nonpneumatic tires and processed tires.

89 Acts, ch 272, §11; 91 Acts, ch 257, §7; 92 Acts, ch 1218, §3; 96 Acts, ch 1117, §2; 97 Acts, ch 24, §1; 2002 Acts, ch 1121, §2

Subsection 7, paragraphs a and c amended

455D.11A Financial assurance — waste tire collection or processing sites.

1. A person owning or operating a waste tire collection or processing site shall provide a financial assurance instrument to the department prior to the initial approval of a permit or prior to the renewal of a permit for an existing or expanding facility. The financial assurance instrument shall be used to provide for closure of the waste tire collection or processing facility.

2. The financial assurance instrument shall meet all requirements adopted by rule by the commission, and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department.

3. Financial assurance instruments may include instruments such as cash or surety bond, a letter of credit in a form prescribed by the department, a secured trust fund, a corporate guarantee, or a combination of such instruments and guarantees sufficient to satisfy the requirements of subsection 5. The department may request an annual audit, which shall remain confidential, to be performed by a third party.

4. If the owner or operator of a waste tire collection or processing site chooses to provide financial assurance in the form of a surety bond, the bond shall be executed by a surety company authorized to do business in this state. The bond shall be continuous in nature until canceled by the surety. A surety shall provide at least ninety days' notice in writing to the owner or operator and to the department indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon compliance with this section. The surety's liability under this subsection is limited to the amount of the bond or the amount of the damages or moneys due, whichever is less. However, this subsection does not limit the amount of damages recoverable from an owner or operator to the amount of the surety bond. The bond shall be made in a form prescribed by the commissioner of insurance and written by a company authorized by the commissioner of insurance to do business in this state. If a surety bond is canceled which has been provided as financial assurance under this subsection, the owner or operator of the waste tire collection or processing site shall demonstrate to the department within thirty days of the cancellation, a means of continued compliance with the financial assurance requirements of this section. If a means of continued compliance is not demonstrated within the thirty-day period, the department shall suspend the permit for the site, and the owner or operator shall perform proper closure of the site within thirty days. If the owner or operator does not properly close the site within the time period allowed, the department shall file a claim with the surety company, prior to the effective date of cancellation of the bond, to collect the amount of the bond for use in performing proper closure. A person who fails to provide for proper closure, notwithstanding collection by the department of the amount of the bond, is guilty of a serious misdemeanor.

5. Financial assurance shall be provided in the amounts as follows:

a. For a waste tire collection or processing site, the financial assurance instrument for a waste tire collection site shall provide coverage in an amount which is equivalent to thirty-five cents per passenger tire equivalent collected by the site prior to July 1, 1998. The financial assurance instrument for a waste tire processing site shall provide coverage in an amount which is equivalent to thirty-five cents per passenger tire equivalent collected for processing by the site which is above the three-day processing supply of tires for the site as determined by the department. This paragraph shall take effect July 1, 1999.

b. For a waste tire collection or processing site, the financial assurance instrument for a waste tire collection site shall provide coverage in an amount which is equivalent to eighty-five cents per passenger tire equivalent collected by the site on or after July 1, 1998, and the financial assurance instrument for a waste tire processing site shall provide coverage in an amount which is equivalent to eighty-five cents per passenger tire equivalent collected for processing by the site which is above the three-day processing supply of tires for the site as determined by the department.

6. The financial assurance instrument shall

not be assigned for the benefit of creditors with the exception of the state, and shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site. The commission shall adopt rules to establish conditions under which the department may gain access to the financial assurance instrument.

7. The requirement for financial assurance shall not apply to waste tire collection or processing sites operated by a city or county, or operated in conjunction with a sanitary landfill.

8. All requirements for financial assurance provided for in this section shall become effective July 1, 1998.

92 Acts, ch 1218, §4; 94 Acts, ch 1023, §56; 97 Acts, ch 53, §1, 2; 98 Acts, ch 1180, §1, 2

455D.11B Permitting of waste tire collection or processing sites — fees.

An owner or operator of a waste tire collection or processing site, including an enclosed site, shall obtain a permit from the department prior to operation of the site. The owner or operator shall pay an annual fee of eight hundred fifty dollars to the department. The moneys collected by the department shall be deposited in the hazardous substance remedial fund established pursuant to section 455B.423 and shall be used for the purposes of administering the waste tire collection or processing site permit program.

92 Acts, ch 1218, §5

455D.11C Waste tire management fund.

1. A waste tire management fund is created within the state treasury. Moneys received from each five dollar surcharge on the issuance of a certificate of title shall be deposited as provided in section 321.52A, subsection 2. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Notwithstanding section 12C.7, any interest or earnings on investments from moneys in the fund shall be credited to the fund. Moneys from the fund that are expended by the department in closing or bringing into compliance a waste tire collection site pursuant to section 455D.11A and later recouped by the department shall be credited to the fund.

2. Moneys in the waste tire management fund are appropriated and shall be used for the following purposes:

a. Fifty thousand dollars shall be allocated each fiscal year to the department to administer the waste tire management fund. This amount shall be allocated to the department each fiscal year before other moneys from the waste tire management fund are awarded pursuant to this subsection.

b. The awarding of contracts by the department for bringing waste tire collection sites or existing stockpiles of waste tires into compliance with section 455D.11, or processing waste tires from existing waste tire collection sites or existing stockpiles of waste tires.

c. The awarding of moneys to boards of supervisors of counties pursuant to section 455D.11D.

d. The awarding of moneys to state board of regents institutions pursuant to section 455D.11E.

e. The awarding of moneys to tire processors pursuant to section 455D.11F.

3. Notwithstanding any other provision of law, three hundred thousand dollars shall be transferred on August 1, 1996, from the hazardous substance remedial fund created in section 455B.423 to the waste tire management fund. Moneys received in the waste tire management fund pursuant to section 321.52A shall be paid quarterly beginning on July 1, 1997, to the hazardous substance remedial fund until the amount of three hundred thousand dollars has been paid to the hazardous substance remedial fund.

96 Acts, ch 1117, §3

Section is repealed effective July 1, 2007; see §455D.11H

455D.11D Waste tire management — grant program.

1. The department shall establish a waste tire management grant program to promote the safe collection and disposal of waste tires at the local community level. The program shall consist of all of the following:

a. Evaluation and approval or denial of grant applications in accordance with the criteria developed by the department for grants for local waste tire management programs.

b. Allocation of grant moneys from the waste tire management fund created in section 455D.11C to boards of supervisors of participating counties or to designees of each board including, but not limited to, public or private entities for which a grant is approved for use in establishing and administering local waste tire management programs.

2. Moneys, if available from the waste tire management fund, shall be used in the waste tire management program in the following amounts: for the fiscal year beginning July 1, 1996, seven hundred thousand dollars; for each fiscal year during the fiscal period beginning July 1, 1997, and ending June 30, 2001, one million dollars; and for the fiscal year beginning July 1, 2001, seven hundred thousand dollars.

3. The department shall approve or deny grant applications submitted by boards of supervisors of participating counties.

a. Grant moneys shall be allocated to a participating county based upon the population of the county as documented in the 1990 census as follows:

(1) Participating counties with populations of less than sixty thousand shall each be allocated grant moneys not to exceed fifteen thousand dollars.

(2) Participating counties with populations of sixty thousand but less than one hundred ten thousand shall each be allocated grant moneys not to exceed thirty thousand dollars.

(3) Participating counties with populations of one hundred ten thousand one but less than two hundred thousand shall each be allocated grant moneys not to exceed fifty thousand dollars.

(4) Participating counties with populations of two hundred thousand or more shall each be allocated grant moneys not to exceed sixty-five thousand dollars.

The department may award additional grant moneys to a county with special waste tire concerns or problems.

b. The program shall require that boards of supervisors of participating counties submit an annual application for participation by August 14. Applications shall be approved or denied by October 1, in accordance with the criteria developed by the department, and moneys shall be allocated by January 1 of the subsequent year.

c. Grant moneys shall be allocated to the board of supervisors of a participating county for which an application has been approved for the establishment and implementation of local waste tire management programs.

d. Each county participating in the grant program shall designate a site or sites for the collection of waste tires, which shall accept waste tires without charge in accordance with local waste tire management programs.

e. Each county participating in the grant program is encouraged to promote local waste tire management programs, to encourage nonprofit organization and private entity participation, and to generate local funding for supplementation of the grant moneys awarded. The board of supervisors of a participating county or designees of the board may establish limitations regarding the numbers and types of waste tires collected and the entities from which a site is required to accept waste tires.

f. Each board of supervisors of a participating county shall submit an annual report to the department which shall include an itemization of expenditures, a report of the volume of waste tires collected, and recommendations for improvement in the grant program and other information requested by the department in the grant application form.

g. Moneys which are not expended but which are encumbered at the end of each year may be retained by the county if the county submits an application for continued grant approval. If a county does not receive continued approval of local waste tire management programs and unexpended and unencumbered moneys remain, the county shall remit the moneys to the treasurer of state for deposit in the waste tire management fund.

96 Acts, ch 1117, §4

Section is repealed effective July 1, 2007; see §455D.11H

455D.11E Use by regents institutions of tire-derived fuels and other beneficial uses of waste tires.

State board of regents institutions of higher education, defined in section 262.7, are encouraged to use, to the fullest extent practicable, waste tires for beneficial uses including, but not limited to, the consumption of tire-derived fuels. Moneys shall be awarded from the waste tire management fund, pursuant to section 455D.11C, subsection 2, to such an institution by the department pursuant to section 455D.11C to offset additional fuel, operation, and maintenance costs incurred in generating heat, electricity, or power through the use of tire-derived fuel and for the reimbursement of costs associated with mandated air permits, regulatory fees, and emission or fuel testing required to expand the institution's use of tire-derived fuel. Moneys of not more than one hundred thousand dollars may be awarded in the aggregate in a fiscal year to such institutions to offset costs described in this section which are associated with assisting the state's program to dispose of waste tires in an environmentally sound manner, and shall be available only to the extent that such moneys help to reduce the number of waste tires in the state. Institutions receiving moneys as described in this section shall not be eligible to receive funding available in section 455D.11F.

96 Acts, ch 1117, §5; 98 Acts, ch 1180, §3

Section is repealed effective July 1, 2007; see §455D.11H

455D.11F End-users awarded moneys for using processed waste tires.

1. As used in this section:

a. *"End-user"* means a facility, industry, utility, or operation where processed waste tires are recycled, reused, or consumed for energy recovery.

b. *"Passenger tire equivalent"* means the physical dimensions of a tire which has a rim diameter of sixteen and one-half inches or less.

c. *"Tire processor"* means a person who reduces waste tires into a processed form suitable for recycling or producing fuel for energy or heat, or uses whole waste tires in any other beneficial use as authorized by the department. *"Tire processor"* does not mean a person who retreads tires or processes and stores tires.

2. An end-user that annually recycles, reuses, or consumes for energy recovery more than two hundred fifty thousand processed waste tires may be awarded moneys pursuant to section 455D.11C, subsection 2, from the waste tire management fund of not more than ten cents per passenger tire equivalent processed and delivered to the end-user, at a reimbursement rate of no more than fifty percent of the costs incurred or paid per ton by the end-user to receive the processed waste tire materials. Moneys of not more than three hundred thousand dollars for such end-user awards shall be available in the aggregate in a fiscal year and shall be disbursed by the department upon ap-

plication and approval to such end-users. An end-user shall not receive more than one hundred fifty thousand dollars from the waste tire management fund in a fiscal year. Funding allocations shall be made proportionately between eligible end-users in the event that funding requests exceed the total annual amount of moneys available. Moneys shall be available only for waste tires that have been generated from within the state and which are processed by and received from a tire processor located within the state. An end-user with a pending enforcement action against the end-user by the department relating to sections 455D.11 through 455D.11H shall be ineligible for consideration of reimbursement for any processed waste tire materials recycled, reused, or consumed for energy recovery while the enforcement action is pending. An end-user of processed waste tire material is encouraged to use moneys awarded under this subsection to increase the purchase and consumption of processed materials.

96 Acts, ch 1117, §6; 98 Acts, ch 1180, §4
Section is repealed effective July 1, 2007; see §455D.11H

455D.11G Waste tire disposal fees and abatement costs.

1. A retail tire dealer who currently charges a fee relating to disposal of used tires is encouraged to include the fee within the sales price of new tires. The practice by retail tire dealers of adding the fee as a separate charge on sales invoices is discouraged.

2. Notwithstanding any provision in this chapter, any generator of waste tires who is identified as being a contributor to the materials which are the object of an abatement and who can document full compliance with this chapter and administrative rules adopted pursuant to this chapter in disposing of such waste tires shall not be liable for any of the cost of recovery actions of the abatement.

96 Acts, ch 1117, §7; 98 Acts, ch 1180, §5

455D.11H Future repeal.

Sections 455D.11C, 455D.11D, 455D.11E, 455D.11F, and this section are repealed effective July 1, 2007.

96 Acts, ch 1117, §8; 2002 Acts, ch 1121, §3, 7
Section amended

455D.11I Registration of waste tire haulers — bond — penalty.

1. For the purposes of this section, *"waste tire hauler"* means a person who transports for hire more than forty waste tires in a single load for commercial purposes.

2. A waste tire hauler shall register with, and obtain a certificate of registration from, the department before hauling waste tires in this state. Requirements for registration of a waste tire hauler shall include a provision that waste tire haulers shall pay all amounts due to any individual or group of individuals when due for damages caused by improper disposal of waste tires by the waste tire hauler or the waste tire hauler's employee while acting within the scope of employment. The waste tire hauler may apply for a certificate of registration by submitting the forms provided for that purpose and shall provide the name of the applicant and the address of the applicant's principal place of business and any additional information as deemed appropriate by the department.

3. A certificate of registration issued under this section is valid for one year from the date of issuance. A registered waste tire hauler may renew the certificate by filing a renewal application in the form prescribed by the department, accompanied by any applicable renewal fee.

4. A certificate of registration shall at all times be carried and displayed in the vehicle used for transportation of waste tires and shall be shown to a representative of the department of natural resources or the state department of transportation, upon request. The state department of transportation may inspect vehicles used for the transportation of waste tires and request that the certificate of registration of the waste tire hauler be shown, upon request.

5. The department shall establish a reasonable registration fee sufficient to offset expenses incurred in the administration of this section.

6. The department shall require that a waste tire hauler have on file with the department before the issuance or renewal of a registration certificate, a surety bond executed by a surety company authorized to do business in this state in the sum of a minimum of ten thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days' notice in writing to the waste tire hauler and to the department indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the waste tire hauler's willingness to comply with this section. The surety's liability under this subsection is limited to the amount of the bond or the amount of the damages or moneys due, whichever is less. However, this subsection does not limit the amount of damages recoverable from a waste tire hauler to the amount of the surety bond. The bond shall be made in a form prescribed by the commissioner of insurance and written by a company authorized by the commissioner of insurance to do business in this state.

7. The department shall adopt rules including imposition of civil penalties necessary for the implementation and administration of this section.

8. A person who knowingly and willfully violates a provision of this section is subject to a civil penalty in an amount not to exceed ten thousand dollars. Moneys collected from the penalties im-

posed shall be deposited in the waste volume reduction and recycling fund established pursuant to section 455D.15.

2002 Acts, ch 1121, §4
NEW section

455D.12 Plastic container labeling.

1. In this section unless the context otherwise requires:

a. *"Label"* means a molded imprint or raised symbol on or near the bottom of a plastic product.

b. *"Plastic"* means any material made of polymeric organic compounds and additives that can be shaped by flow.

c. *"Plastic bottle"* means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure, and has a capacity of sixteen fluid ounces or more, but less than five gallons.

d. *"Rigid plastic container"* means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible infinite shape or form with a capacity of eight ounces or more, but less than five gallons.

2. Beginning July 1, 1992, a person shall not distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the product is labeled with a code indicating the plastic resin used to produce the bottle or container. Rigid plastic bottles or rigid plastic containers with labels and basecups of a different material shall be coded by their basic material. The code shall consist of a number placed within a triangle of arrows and letters placed below the triangle of arrows. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

a. 1. -PETE (polyethylene terephthalate)
b. 2. -HDPE (high density polyethylene)
c. 3. -V (vinyl)
d. 4. -LDPE (low density polyethylene)
e. 5. -PP (polypropylene)
f. 6. -PS (polystyrene)
g. 7. -OTHER (includes multilayer)

3. The department shall maintain a list of the label codes provided in subsection 2 and shall provide a copy of that list to any person upon request.

4. A container manufacturer or distributor who violates this section is subject to a civil penalty of not more than five hundred dollars for each violation.

89 Acts, ch 272, §12

455D.13 Land disposal of waste oil prohibited — collection.

1. A sanitary landfill shall not accept waste oil for final disposal beginning July 1, 1990.

2. A person offering for sale or selling oil at retail in the state shall do the following:

a. Accept at the point of sale, waste oil from customers, or post notice of locations where a customer may dispose of waste oil.

b. Post written notice that it is unlawful to dispose of waste oil in a sanitary landfill.

89 Acts, ch 272, §13

455D.14 Products manufactured with chlorofluorocarbons prohibited.

Beginning January 1, 1990, a person shall not sell, offer for sale, purchase, or use plastic foam packaging products or food service items manufactured with chlorofluorocarbons. Beginning January 1, 1998, a person shall not sell, offer for sale, purchase, or use plastic foam products, not previously prohibited, which are manufactured with fully halogenated chlorofluorocarbons. A person violating this section is guilty of a serious misdemeanor.

89 Acts, ch 272, §14

455D.15 Waste volume reduction and recycling fund.

1. A waste volume reduction and recycling fund is created within the state treasury. Moneys received by the department from fees, including general revenue, federal funds, awards, wills, bequests, gifts, or other moneys designated shall be deposited in the state treasury to the credit of the fund. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Any interest and earnings on investments from money in the fund shall be credited to the fund, section 12C.7 notwithstanding.

2. The department shall award grants based upon the solid waste management hierarchy set forth in section 455B.301A, subsection 1. A grant shall not be awarded to a county, city, or central planning agency which has not complied with the requirements of a comprehensive solid waste management program and which has not complied with or demonstrated an intent to comply with the requirements of section 455B.306.

3. The fund shall be utilized for the following purposes:

a. The initial thirty-five thousand dollars collected for deposit in the fund shall be appropriated to the department for establishment of the pollution hotline program established pursuant to section 455B.116, and for the salary and support of not more than one full-time equivalent position.

b. To provide financial assistance to public and private entities to develop and implement waste reduction and minimization programs for Iowa industries.

c. To provide financial assistance to public and private entities and to develop and implement programs to create and enhance markets for recyclable and other waste products.

d. To develop and implement educational and technical assistance programs that support and encourage waste reduction and recycling efforts by Iowans.

e. To administer the provisions of chapter 455B, division IV, part 1.

f. The department may utilize up to ten percent of the fund to administer the provisions of this chapter.

g. To provide grants to local communities or private individuals for projects which establish recycling collection centers, establish local curbside collection of separated recyclable waste materials, promote public awareness regarding waste volume reduction and the use of recyclable materials, and create markets for recyclable materials. Grants shall not be awarded for incineration.

h. To provide technical assistance to local communities in establishing collection systems and composting facilities for yard waste.

i. To fund the study required pursuant to section 455D.11, subsection 3, and to provide loans and grants for waste tire recycling and reprocessing projects.

j. To carry out the functions of the department of natural resources concerning recycling.

k. To promote the recycling of chlorofluorocarbons used as refrigerant.

89 Acts, ch 272, §15

455D.16 Packaging products — recycling — prohibition of polystyrene products. Repealed by 95 Acts, ch 44, § 5.

455D.17 Plastic bag and package labeling. Repealed by 92 Acts, ch 1215, § 19.

455D.18 Nondegradable grocery bags and trash bags. Repealed by 92 Acts, ch 1215, § 19.

455D.19 Packaging — heavy metal content.

1. The general assembly finds and declares all of the following:

a. The management of solid waste can pose a wide range of hazards to public health and safety and to the environment.

b. Packaging comprises a significant percentage of the overall solid waste stream.

c. The presence of heavy metals in packaging is a concern in light of the likely presence of heavy metals in emissions or ash when packaging is incinerated or in leachate when packaging is landfilled.

d. Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern.

e. It is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of heavy metals to packaging.

f. The intent of the general assembly is to achieve reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components.

2. As used in this section unless the context otherwise requires:

a. "Distributor" means a person who takes title to one or more packages or packaging components purchased for promotional purposes or resale. A person involved solely in delivering packages or packaging components on behalf of third parties is not a distributor.

b. "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

c. "Intentional introduction" means an act of deliberately utilizing a regulated metal in the formulation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality. Intentional introduction does not include the use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, if the incidental presence of a residue of the metal in the final package or packaging component is neither desired nor deliberate, and if the final package or packaging component is in compliance with subsection 4, paragraph *"c"*. Intentional introduction also does not include the use of recycled materials as feedstock for the manufacture of new packaging materials, if the recycled materials contain amounts of a regulated metal and if the new package or packaging component is in compliance with subsection 4, paragraph *"c"*.

"Regulated metal" means any metal regulated under this section.

d. "Manufacturer" means a person who produces one or more packages or packaging components.

e. "Manufacturing" means physical or chemical modification of one or more materials to produce packaging or packaging components.

f. "Package" means a container which provides a means of marketing, protecting, or handling a product including a unit package, intermediate package, or a shipping container. *"Package"* also includes but is not limited to unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

g. "Packaging component" means any individual assembled part of a package including but not limited to interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping,

coatings, closures, inks, labels, tin-plated steel that meets the American society for testing and materials specification A-623, electro-galvanized coated steel, or hot-dipped-coated galvanized steel that meets the American society for testing and materials specification A-525 or A-879.

h. "Reusable entities" means packaging or packaging components having a controlled distribution and reuse subject to the exemption provided in subsection 5, paragraph *"e"*.

3. A manufacturer or distributor shall not offer for sale or sell, or offer for promotional purposes a package or packaging component, in this state, which includes, in the package itself, or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements and which exceed the concentration level established by the department.

4. The concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed the following:

a. Six hundred parts per million by weight by July 1, 1992.

b. Two hundred fifty parts per million by weight by July 1, 1993.

c. One hundred parts per million by weight by July 1, 1994.

Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using American standard of testing materials test methods, as revised, or United States environmental protection agency test methods for evaluating solid waste, S-W 846, as revised.

5. The following packaging and packaging components are exempt from the requirements of this section:

a. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1990, and packaging or packaging components used by the alcoholic beverage industry or the wine industry prior to July 1, 1992.

b. Packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative if the manufacturer of a package or packaging component petitions the department for an exemption from the provisions of this paragraph for a particular package or packaging component. The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting either criterion of this paragraph, be renewed for two years. For purposes of this paragraph, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents.

c. Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of recycled materials.

d. Packages or packaging components that are reused, but exceed contaminant levels set forth in subsection 4, paragraph *"c"*, if all of the following criteria are met:

(1) The product being conveyed by the package, including any packaging component, is regulated under federal or state health or safety requirements.

(2) Transportation of the packaged product is regulated under federal or state transportation requirements.

(3) The disposal of the packages or packaging components is performed according to federal or state radioactive or hazardous waste disposal requirements.

The department may grant a two-year exemption if warranted by the circumstances and an exemption may, upon meeting the criteria of this paragraph, be renewed for additional two-year periods.

e. Packages or packaging components which qualify as reusable entities that exceed the contaminant levels set forth in subsection 4, paragraph *"c"*, if the manufacturers or distributors of such packages or packaging components petition the department for an exemption and receive approval from the department according to the following standards based upon a satisfactory demonstration that the environmental benefit of the controlled distribution and reuse is significantly greater than if the same package is manufactured in compliance with the contaminant levels set forth in subsection 4, paragraph *"c"*. The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting the four criteria listed in subparagraphs (1) through (4), be renewed for additional two-year periods.

In order to receive an exemption, the application must ensure that reusable entities are used, transported, and disposed of in a manner consistent with the following criteria:

(1) A means of identifying in a permanent and visible manner those reusable entities containing regulated metals for which an exemption is sought.

(2) A method of regulatory and financial accountability so that a specified percentage of the reusable entities manufactured and distributed to another person are not discarded by that person after use, but are returned to the manufacturer or the manufacturer's designee.

(3) A system of inventory and record maintenance to account for the reusable entities placed in, and removed from, service.

(4) A means of transforming returned entities,

that are no longer reusable, into recycled materials for manufacturing or into manufacturing wastes which are subject to existing federal or state laws or regulations governing manufacturing wastes to ensure that these wastes do not enter the commercial or municipal waste stream.

The application for an exemption must document the measures to be taken by the applicant as set out in subparagraphs (1) through (4).

6. By July 1, 1992, a manufacturer or distributor of packaging or packaging components shall make available to purchasers, to the department, and to the general public upon request, certificates of compliance which state that the manufacturer's or distributor's packaging or packaging components comply with, or are exempt from, the requirements of this section.

If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

7. The commission shall adopt rules to administer this section and recommend any other toxic substances contained in packaging to be added to the list in order to further reduce the toxicity of packaging waste.

8. A manufacturer or distributor who does not comply with the requirements of this section is guilty of a simple misdemeanor.

90 Acts, ch 1255, §29; 91 Acts, ch 203, §5; 91 Acts, ch 255, §15; 94 Acts, ch 1085, §1; 96 Acts, ch 1095, §1

455D.20 Refuse-derived fuel — calculation as portion of waste reduction goal.

1. The commission shall adopt rules which provide for the inclusion of reduction attributable to refuse-derived fuel in the calculation of a city or county in meeting the waste reduction goal of the state. No more than fifty percent of the waste reduction requirement of a city or county shall be met through inclusion of reduction attributable to refuse-derived fuel in the calculation.

2. The rules adopted by the commission under subsection 1 shall provide that only fuel derived from paper and paperboard products which are not recyclable due to contamination, including contamination from blood or egg, which occurred at the time of the use of the product for its originally intended purpose, or products which are not recyclable due to composition of the product, such as wax-coated cardboard, are included in the calculation.

92 Acts, ch 1213, §3

455D.21 Local ordinance — curbside collection.

A city council or county board of supervisors which provides for the collection of solid waste by its residents shall consider as a proposed ordinance, the mandatory curbside collection of recyclable materials which have been separated from other solid waste. The proposed ordinance shall be considered in accordance with chapter 331 or 380.

92 Acts, ch 1215, §17

CHAPTER 455E

GROUNDWATER PROTECTION

455E.1 Title.
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455E.1 Title.

This chapter shall be known and may be cited as the *"Groundwater Protection Act"*.

87 Acts, ch 225, §101

455E.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Active cleanup"* means removal, treatment, or isolation of a contaminant from groundwater through the directed efforts of humans.

2. *"Commission"* means the environmental protection commission created under section 455A.6.

3. *"Contaminant"* means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste, or other substance which does not occur naturally in groundwater or which naturally occurs at a lower concentration.

4. *"Contamination"* means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activities.

5. *"Department"* means the department of natural resources created under section 455A.2.

6. *"Director"* means the director of the department.

7. *"Groundwater"* means any water of the state, as defined in section 455B.171, which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.

8. *"Passive cleanup"* means the removal or treatment of a contaminant in groundwater through management practices or the construction of barriers, trenches, and other similar facilities for prevention of contamination, as well as the use of natural processes such as groundwater recharge, natural decay, and chemical or biological decomposition.

87 Acts, ch 225, §102

455E.3 Findings.

The general assembly finds that:

1. Groundwater is a precious and vulnerable natural resource. The vast majority of persons in the state depend on groundwater as a drinking water source. Agriculture, commerce, and industry also depend heavily on groundwater. Historically, the majority of Iowa's groundwater has been usable for these purposes without treatment. Protection of groundwater is essential to the health, welfare, and economic prosperity of all citizens of the state.

2. Many activities of humans, including the manufacturing, storing, handling, and application to land of pesticides and fertilizers; the disposal of solid and hazardous wastes; the storing and handling of hazardous substances; and the improper construction and the abandonment of wells and septic systems have resulted in groundwater contamination throughout the state.

3. Knowledge of the health effects of contaminants varies greatly. The long-term detriment to human health from synthetic organic compounds in particular is largely unknown but is of concern.

4. Any detectable quantity of a synthetic organic compound in groundwater is unnatural and undesirable.

5. The movement of groundwater, and the movement of contaminants in groundwater, are often difficult to ascertain or control. Decontamination is difficult and expensive to accomplish. Therefore, preventing contamination of groundwater is of paramount importance.

87 Acts, ch 225, §103

455E.4 Groundwater protection goal.

The intent of the state is to prevent contamination of groundwater from point and nonpoint sources of contamination to the maximum extent practical, and if necessary to restore the groundwater to a potable state, regardless of present condition, use, or characteristics.

87 Acts, ch 225, §104

455E.5 Groundwater protection policies.

1. It is the policy of the state to prevent further contamination of groundwater from any source to the maximum extent practical.

2. The discovery of any groundwater contamination shall require appropriate actions to prevent further contamination. These actions may consist of investigation and evaluation or enforcement actions if necessary to stop further contamination as required under chapter 455B.

3. All persons in the state have the right to have their lawful use of groundwater unimpaired by the activities of any person which render the water unsafe or unpotable.

4. All persons in the state have the duty to conduct their activities so as to prevent the release of contaminants into groundwater.

5. Documentation of any contaminant which presents a significant risk to human health, the environment, or the quality of life shall result in either passive or active cleanup. In both cases, the best technology available or best management practices shall be utilized. The department shall adopt rules which specify the general guidelines for determining the cleanup actions necessary to meet the goals of the state and the general procedures for determining the parties responsible by July 1, 1989. Until the rules are adopted, the absence of rules shall not be raised as a defense to an order to clean up a source of contamination.

6. Adopting health-related groundwater standards may be of benefit in the overall groundwater protection or other regulatory efforts of the state. However, the existence of such standards, or lack of them, shall not be construed or utilized in derogation of the groundwater protection goal and protection policies of the state.

7. The department shall take actions necessary to promote and assure public confidence and public awareness. In pursuing this goal, the department shall make public the results of groundwater investigations.

8. Education of the people of the state is necessary to preserve and restore groundwater quality. The content of this groundwater protection education must assign obligations, call for sacrifice, and change some current values. Educational efforts should strive to establish a conservation ethic among Iowans and should encourage each Iowan to go beyond enlightened self-interest in the protection of groundwater quality.

87 Acts, ch 225, §105

455E.6 Legal effects — liability.

This chapter supplements other legal authority and shall not enlarge, restrict, or abrogate any remedy which any person or class of persons may

have under other statutory or common law and which serves the purpose of groundwater protection. An activity that does not violate chapter 455B or 459, subchapters II and III, does not violate this chapter. In the event of a conflict between this section and another provision of this chapter, it is the intent of the general assembly that this section prevails.

Liability shall not be imposed upon an agricultural producer for the costs of active cleanup, or for any damages associated with or resulting from the detection in the groundwater of any quantity of nitrates provided that application has been in compliance with soil test results and that the applicator has properly complied with label instructions for application of the fertilizer. Compliance with the above provisions may be raised as an affirmative defense by an agricultural producer.

Liability shall not be imposed upon an agricultural producer for costs of active cleanup, or for any damages associated with or resulting from the detection in the groundwater of pesticide provided that the applicator has properly complied with label instructions for application of the pesticide and that the applicator has a valid appropriate applicator's license. Compliance with the above provisions may be raised as an affirmative defense by an agricultural producer.

87 Acts, ch 225, §106

455E.7 Primary administrative agency.

The department is designated as the agency to coordinate and administer groundwater protection programs for the state.

87 Acts, ch 225, §107

455E.8 Powers and duties of the director.

In addition to other groundwater protection duties, the director, in cooperation with soil and water conservation district commissioners and with other state and local agencies, shall:

1. Develop and administer a comprehensive groundwater monitoring network, including point of use, point of contamination, and problem assessment monitoring sites across the state, and the assessment of ambient groundwater quality.

2. Include in the annual report required by section 455A.4, the number and concentration of contaminants detected in groundwater. This information shall also be provided to the director of public health and the secretary of agriculture.

3. Report any data concerning the contamination of groundwater by a contaminant not regulated under the federal Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq. to the United States environmental protection agency along with a request to establish a maximum contaminant level and to conduct a risk assessment for the contaminant.

4. Complete groundwater hazard mapping of the state and make the results available to state and local planning organizations by July 1, 1991.

5. Establish a system or systems within the department for collecting, evaluating, and disseminating groundwater quality data and information.

6. Develop and maintain a natural resource geographic information system and comprehensive water resource data system. The system shall be accessible to the public.

7. Develop and adopt by administrative rule, criteria for evaluating groundwater protection programs by July 1, 1988.

8. Take any action authorized by law, including the investigatory and enforcement actions authorized by chapters 455B and 459, subchapters I, II, III, IV, and VI,* to implement the provisions of this chapter and the rules adopted pursuant to this chapter.

9. Disseminate data and information, relative to this chapter, to the public to the greatest extent practical.

10. Develop a program, in consultation with the department of education and the department of environmental education of the University of Northern Iowa, regarding water quality issues which shall be included in the minimum program required in grades seven and eight pursuant to rules adopted by the state board of education under section 256.11, subsection 4.

87 Acts, ch 225, §108; 88 Acts, ch 1262, §8

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former subchapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455E.9 Powers and duties of the commission.

1. The commission shall adopt rules to implement this chapter.

2. When groundwater standards are proposed by the commission, all available information to develop the standards shall be considered, including federal regulations and all relevant information gathered from other sources. A public hearing shall be held in each congressional district prior to the submittal of a report on standards to the general assembly. This report on how groundwater standards may be a part of a groundwater protection program shall be submitted by the department to the general assembly for its consideration by January 1, 1989.

87 Acts, ch 225, §109

455E.10 Joint duties — local authority.

1. All state agencies shall consider groundwater protection policies in the administration of their programs. Local agencies shall consider groundwater protection policies in their programs. All agencies shall cooperate with the department in disseminating public information and education materials concerning the use and protection of groundwater, in collecting groundwater management data, and in conducting research on technologies to prevent or remedy contamination

of groundwater.

2. Political subdivisions are authorized and encouraged to implement groundwater protection policies within their respective jurisdictions, provided that implementation is at least as stringent but consistent with the rules of the department.

87 Acts, ch 225, §110

455E.11 Groundwater protection fund established — appropriations.

1. A groundwater protection fund is created in the state treasury. Moneys received from sources designated for purposes related to groundwater monitoring and groundwater quality standards shall be deposited in the fund. Notwithstanding section 8.33, any unexpended balances in the groundwater protection fund and in any of the accounts within the groundwater protection fund at the end of each fiscal year shall be retained in the fund and the respective accounts within the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the groundwater protection fund or in any of the accounts within the groundwater protection fund shall be credited to the groundwater protection fund or the respective accounts within the groundwater protection fund. The fund may be used for the purposes established for each account within the fund.

The director shall include in the departmental budget prepared pursuant to section 455A.4, subsection 1, paragraph *"c"*, a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

The secretary of agriculture shall submit the report on a biennial basis to the governor in the same manner as provided in section 7A.3. The report shall include a proposal for the use of groundwater protection fund moneys, and uses of the groundwater protection fund moneys appropriated in the two previous fiscal years.

2. The following accounts are created within the groundwater protection fund:

a. A solid waste account. Moneys received from the tonnage fee imposed under section 455B.310 and from other sources designated for environmental protection purposes in relation to sanitary disposal projects shall be deposited in the solid waste account. Moneys shall be allocated as follows:

(1) After the one dollar and fifty-five cents is allocated pursuant to subparagraph (2), the remaining moneys from the tonnage fee shall be used for funding alternatives to landfills and shall be allocated as follows:

(a) Fifty thousand dollars to the department to implement the special waste authorization program.

(b) One hundred sixty-five thousand dollars to the department to be used for the by-products and waste search service at the university of northern Iowa.

(c) The remaining funds shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(2) One dollar and fifty-five cents shall be used as follows:

(a) Forty-eight percent to the department to be used for the following purposes:

(i) Eight thousand dollars shall be transferred to the Iowa department of public health for departmental duties required under section 135.11, subsections 21 and 22, and section 139A.21.

(ii) The administration and enforcement of a groundwater monitoring program and other required programs relating to solid waste management.

(iii) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301.

(iv) The waste management assistance program of the department.

(b) Sixteen percent to the university of northern Iowa to develop and maintain the Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.

(c) Six and one-half percent for the department to establish a program to provide competitive grants to regional coordinating councils for projects in regional economic development centers related to a by-products and waste exchange system. Grantees under this program shall coordinate activities with other available state or multistate waste exchanges, including but not limited to the by-products and waste search service at the university of northern Iowa. The department shall consult with the Iowa department of economic development and the waste reduction center at the university of northern Iowa in establishing criteria for and the awarding of grants under this program. The department shall expend not more than thirty thousand dollars of the moneys appropriated under this subparagraph subdivision to contract with the by-products and waste search service at the university of northern Iowa to provide training and other technical services to grantees under the program. If regional economic development centers cease to exist, the department shall transfer existing contracts to one or more community colleges or councils of governments and shall revise the criteria and rules for this program to allow community colleges or councils of governments to be applicants for competitive grants.

(d) Nine and one-half percent to the department to establish permanent household hazardous waste collection sites so that both urban and rural populations are served and so that collection services are available to the public on a regular basis.

(e) Three percent to the department for pay-

ment of transportation costs related to household hazardous waste collection programs.

(f) Eight and one-half percent to the department to provide additional toxic cleanup days or other efforts of the department to support permanent household hazardous material collection systems and special events for household hazardous material collection, and for the natural resource geographic information system required under section 455E.8, subsection 6. Departmental rules adopted for implementation of toxic cleanup days shall provide sufficient flexibility to respond to the household hazardous material collection needs of both small and large communities. Repayment moneys from the Iowa business loan program for waste reduction and recycling pursuant to section 455B.310, subsection 2, paragraph *"b"*, Code 1993, and discontinued pursuant to 1993 Iowa Acts, chapter 176, section 45, shall be placed into this account to support household hazardous materials programs of the department.

(g) Three percent for the Iowa department of economic development to establish, in cooperation with the department of natural resources, a marketing initiative to assist Iowa businesses producing recycling or reclamation equipment or services, recyclable products, or products from recycled materials to expand into national markets. Efforts shall include the reuse and recycling of sawdust.

(h) Five and one-half percent to the department for the provision of assistance to public and private entities in developing and implementing waste reduction and minimization programs for Iowa industries.

b. An agriculture management account. Moneys collected from the groundwater protection fee levied pursuant to section 200.8, subsection 4, the portion of the fees collected pursuant to sections 206.8, subsection 2, and 206.12, subsection 3, and other moneys designated for the purpose of agriculture management shall be deposited in the agriculture management account. The agriculture management account shall be used for the following purposes:

(1) Nine thousand dollars of the account is appropriated to the Iowa department of public health for carrying out the departmental duties under section 135.11, subsections 21 and 22, and section 139A.21.

(2) Two hundred thousand dollars of the moneys deposited in the agriculture management account is appropriated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the demonstration projects regarding agriculture drainage wells and sinkholes. Any remaining balance of the appropriation made for the purpose of funding such demonstration projects for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding such demonstration projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

(3) Of the remaining moneys in the account:

(a) Thirty-five percent is appropriated annually for the Leopold center for sustainable agriculture at Iowa state university of science and technology.

(b) Two percent is appropriated annually to the department and, except for administrative expenses, is transferred to the Iowa department of public health for the purpose of administering grants to counties and conducting oversight of county-based programs for the testing of private rural water supply wells, private rural water supply well sealing, and the proper closure of private rural abandoned wells and cisterns. Not more than thirty-five percent of the moneys is appropriated annually for grants to counties for the purpose of conducting programs of private rural water supply testing, private rural water supply well sealing, the proper closure of private rural abandoned wells and cisterns, or any combination thereof. An amount agreed to by the department of natural resources and the Iowa department of public health shall be retained by the department of natural resources for administrative expenses.

A county applying for grants under this subparagraph subdivision shall submit only one application. To be eligible for a grant, a county must have adopted standards for private water supply and private disposal facilities at least as stringent as the standards adopted by the commission. During each fiscal year, the amount granted each eligible applicant shall be the total funds available divided by the number of eligible counties applying. Upon receipt of the grant, the county may apply the funds to any one or more of the above three programs.

Not more than six percent of the moneys is appropriated annually to the state hygienic laboratory to assist in well testing. For purposes of this subparagraph subdivision, *"cistern"* means an artificial reservoir constructed underground for the purpose of storing rainwater.

(c) The department shall allocate a sum not to exceed seventy-nine thousand dollars of the moneys appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the preparation of a detailed report and plan for the establishment on July 1, 1988, of the center for health effects of environmental contamination. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The report shall include the assemblage of all existing data relating to Iowa drinking water supplies, including characteristics of source, treatment, presence of contaminants, precise location, and usage patterns to facilitate data retrieval and use in research; and detailed organizational plans, research objectives, and budget projections for the anticipated functions of the center in subse-

quent years. The department may allocate annually a sum not to exceed nine percent of the moneys of the account to the center, beginning July 1, 1988.

(d) Thirteen percent of the moneys is appropriated annually to the department of agriculture and land stewardship for financial incentive programs related to agricultural drainage wells and sinkholes, for studies and administrative costs relating to sinkholes and agricultural drainage wells programs. Of the moneys allocated for financial incentive programs, the department may reimburse landowners for engineering costs associated with voluntarily closing agricultural drainage wells. The financial incentives allocated for voluntary closing of agricultural drainage wells shall be provided on a cost-share basis which shall not exceed fifty percent of the estimated cost or fifty percent of the actual cost, whichever is less. Engineering costs do not include construction costs, including costs associated with earth moving.

c. A household hazardous waste account. The moneys collected pursuant to section 455F.7 and moneys collected pursuant to section 29C.8A which are designated for deposit, shall be deposited in the household hazardous waste account. Two thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 21 and 22, and section 139A.21. The remainder of the account shall be used to fund toxic cleanup days and the efforts of the department to support a collection system for household hazardous materials, including public education programs, training, and consultation of local governments in the establishment and operation of permanent collection systems, and the management of collection sites, education programs, and other activities pursuant to chapter 455F, including the administration of the household hazardous materials permit program by the department of revenue and finance.

The department shall submit to the general assembly, annually on or before January 1, an itemized report which includes but is not limited to the total amount of moneys collected and the sources of the moneys collected, the amount of moneys expended for administration of the programs funded within the account, and an itemization of any other expenditures made within the previous fiscal year.

d. A storage tank management account. All fees collected pursuant to section 455B.473, subsection 5, and section 455B.479, shall be deposited in the storage tank management account, except those moneys deposited into the Iowa comprehensive petroleum underground storage tank fund pursuant to section 455B.479. Funds shall be expended for the following purposes:

(1) One thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 21 and 22, and section 139A.21.

(2) Twenty-three percent of the proceeds of the fees imposed pursuant to section 455B.473, subsection 5, and section 455B.479 shall be deposited in the account annually, up to a maximum of three hundred fifty thousand dollars. If twenty-three percent of the proceeds exceeds three hundred fifty thousand dollars, the excess shall be deposited into the fund created in section 455G.3. Three hundred fifty thousand dollars is appropriated from the storage tank management account to the department of natural resources for the administration of a state storage tank program pursuant to chapter 455B, division IV, part 8, and for programs which reduce the potential for harm to the environment and the public health from storage tanks.

(3) The remaining funds in the account are appropriated annually to the Iowa comprehensive petroleum underground storage tank fund.

e. An oil overcharge account. The oil overcharge moneys distributed by the United States department of energy, and approved for the energy related components of the groundwater protection strategy available through the energy conservation trust created in section 473.11, shall be deposited in the oil overcharge account as appropriated by the general assembly. The oil overcharge account shall be used for the following purposes:

(1) The following amounts are appropriated to the department of natural resources to implement its responsibilities pursuant to section 455E.8:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, eight hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, six hundred fifty thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, six hundred thousand dollars is appropriated.

(d) For the fiscal year beginning July 1, 1990 and ending June 30, 1991, five hundred thousand dollars is appropriated.

(e) For the fiscal year beginning July 1, 1991 and ending June 30, 1992, five hundred thousand dollars is appropriated.

(2) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, five hundred sixty thousand dollars is appropriated to the department of natural resources for assessing rural, private water supply quality.

(3) For the fiscal period beginning July 1, 1987 and ending June 30, 1989, one hundred thousand dollars is appropriated annually to the department of natural resources for the administration of a groundwater monitoring program at sanitary landfills.

(4) The following amounts are appropriated to the Iowa state water resources research institute

to provide competitive grants to colleges, universities, and private institutions within the state for the development of research and education programs regarding alternative disposal methods and groundwater protection:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, one hundred twenty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, one hundred thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, one hundred thousand dollars is appropriated.

(5) The following amounts are appropriated to the department of natural resources to develop and implement demonstration projects for landfill alternatives to solid waste disposal, including recycling programs:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, seven hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, eight hundred fifty thousand dollars is appropriated.

(6) For the fiscal period beginning July 1, 1987 and ending June 30, 1988, eight hundred thousand dollars is appropriated to the Leopold center for sustainable agriculture.

(7) Seven million five hundred thousand dollars is appropriated to the agriculture energy management fund created under chapter 161B for the fiscal period beginning July 1, 1987 and ending June 30, 1992, to develop nonregulatory programs to implement integrated farm management of farm chemicals for environmental protection, energy conservation, and farm profitability; interactive public and farmer education; and applied studies on best management practices and best appropriate technology for chemical use efficiency and reduction.

(8) The following amounts are appropriated to the department of natural resources to continue the Big Spring demonstration project in Clayton county.

(a) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, seven hundred thousand dollars is appropriated annually.

(b) For the fiscal period beginning July 1, 1990 and ending June 30, 1992, five hundred thousand dollars is appropriated annually.

(9) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, one hundred thousand dollars is appropriated annually to the department of agriculture and land stewardship to implement a targeted education program on best management practices and technologies for the mitigation of groundwater contamination from or closure of agricultural drainage wells, abandoned wells, and sinkholes.

87 Acts, ch 225, §111; 88 Acts, ch 1169, §9 – 13; 88 Acts, ch 1188, §2, 3; 88 Acts, ch 1190, §3; 89 Acts, ch 131, §41; 89 Acts, ch 272, §38; 89 Acts, ch 311, §28; 90 Acts, ch 1255, §30, 31; 90 Acts, ch 1260, §27, 28; 91 Acts, ch 257, §6; 91 Acts, ch 268, §237; 92 Acts, ch 1215, §18; 92 Acts, ch 1239, §21; 93 Acts, ch 176, §46; 94 Acts, ch 1023, §112; 94 Acts, ch 1173, §36; 94 Acts, ch 1177, §5; 95 Acts, ch 80, §3; 95 Acts, ch 97, §1; 95 Acts, ch 216, §35; 98 Acts, ch 1220, §22; 2000 Acts, ch 1066, §46 – 49; 2000 Acts, ch 1086, §1; 2001 Acts, ch 7, §13, 14; 2001 Acts, ch 24, §54; 2001 Acts, ch 124, §3 – 6; 2001 Acts, ch 129, §6; 2002 Acts, ch 1119, §176; 2002 Acts, ch 1162, §60 – 62

See Iowa Acts for special provisions relating to appropriations in a given year

2001 amendments to subsection 2, paragraph a, subparagraph (1), unnumbered paragraph 1, and subparagraph (2), unnumbered paragraph 1, take effect July 1, 2002; 2001 Acts, ch 124, §6

Subsection 2, paragraph a, subparagraph (1), unnumbered paragraph 1 amended

Subsection 2, paragraph a, subparagraph (1), subparagraph subdivision (b) amended

Subsection 2, paragraph a, subparagraph (2), unnumbered paragraph 1 amended

Subsection 2, paragraph a, subparagraph (2), subparagraph subdivision (a), subparagraph subdivision part (iv) amended

Subsection 2, paragraph b, subparagraph (1) amended

Subsection 2, paragraph b, subparagraph (3), subparagraph subdivision (b), unnumbered paragraph 1 amended

CHAPTER 455F

HOUSEHOLD HAZARDOUS WASTE

455F.1 Definitions.
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455F.3 Labels required. Repealed by 97 Acts, ch 191, §4.
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455F.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commission"* means the state environmental protection commission.

2. *"Department"* means the department of natural resources.

3. *"Display area label"* means the signage used by a retailer to mark a household hazardous material display area as prescribed by the department of natural resources.

4. *"Household hazardous material"* means a product used for residential purposes and designated by rule of the department of natural resources and may include any hazardous substance as defined in section 455B.411, subsection 2; and any hazardous waste as defined in section 455B.411, subsection 3; and shall include but is not limited to the following materials: motor oils, motor oil filters, gasoline and diesel additives, degreasers, waxes, polishes, pure solvents, lacquers, thinners, caustic household cleaners, spot and stain remover with petroleum base, petroleum-based fertilizers, and paints with the exception of latex-based paints. However, *"household hazardous material"* does not include noncaustic household cleaners, laundry detergents or soaps, dishwashing compounds, chlorine bleach, personal care products, personal care soaps, cosmetics, and medications.

5. *"Manufacturer"* means a person who manufactures or produces a household hazardous material for resale in this state.

6. *"Residential"* means a permanent place of abode, which is a person's home as opposed to a person's place of business.

7. *"Retailer"* means a person offering for sale or selling a household hazardous material to the ultimate consumer, within the state.

8. *"Wholesaler"* or *"distributor"* means a person other than a manufacturer or manufacturer's agent who engages in the business of selling or distributing a household hazardous material within the state, for the purpose of resale.

87 Acts, ch 225, §501; 97 Acts, ch 191, §1

455F.2 Policy statement.

It is the policy of this state to educate Iowans regarding the hazardous nature of certain household products, proper use of the products, and the proper methods of disposal of residual product and containers in order to protect the public health, safety, and the environment.

87 Acts, ch 225, §502

455F.3 Labels required. Repealed by 97 Acts, ch 191, § 4.

455F.4 Consumer information booklets.

A retailer shall maintain and prominently display a booklet, developed by the department, in cooperation with manufacturers, distributors, wholesalers, and retailer associations and provided to retailers at departmental expense, which provides information regarding the proper use of household hazardous materials and specific instructions for the proper disposal of certain substance categories. The department shall also develop and provide to a retailer, at departmental expense, bulletins regarding household hazardous materials which provide information designated by rule of the commission. The retailer shall distribute the bulletins without charge to customers.

A manufacturer or distributor of household hazardous materials who authorizes independent contractor retailers to sell the products of the manufacturer or distributor on a person-to-person basis primarily in the customer's home, shall print informational lists of its products which are designated by the department as household hazardous materials. These lists of products and the consumer information booklets prepared in accordance with this section shall be provided by the manufacturer or distributor in sufficient quantities to each contractor retailer for dissemination to customers. During the course of a sale of a household hazardous material by a contractor retailer, the customer shall in the first instance be provided with a copy of both the list and the consumer information booklet. In subsequent sales to the same customer, the list and booklet shall be noted as being available if desired.

87 Acts, ch 225, §504

455F.5 Duties of the commission.

The commission shall:

1. Adopt rules which establish a uniform label to be supplied and used by retailers.

2. Adopt rules which designate the type and amount of information to be included in the consumer information booklets and bulletins.

87 Acts, ch 225, §505

455F.6 Duties of the department.

The department shall:

1. Designate products which are household hazardous materials and, based upon the designations and in consultation with manufacturers, distributors, wholesalers, and retailer associations, develop a household hazardous product list for the use of retailers in identifying the products.

2. Enforce the provisions of this chapter and implement the penalties established.

3. Identify, after consulting with departmental staff and the listing of other states, no more than fifty commonly used household products which, due to level of toxicity, extent of use, nondegradability, or other relevant characteristic, constitute the greatest danger of contamination of the groundwater when placed in a landfill. The department may identify additional products by rule.

87 Acts, ch 225, §506; 88 Acts, ch 1169, §14

455F.7 Household hazardous materials permit.

1. A retailer offering for sale or selling a household hazardous material shall have a valid permit for each place of business owned or operated by the retailer for this activity. All permits provided for in this division shall expire on June 30 of each year. Every retailer shall submit an annual application by July 1 of each year and a fee of twenty-five dollars to the department of revenue and finance for a permit upon a form prescribed by the director of revenue and finance. Permits are nonrefundable, are based upon an annual operating period, and are not prorated. A person in violation of this section shall be subject to permit revocation upon notice and hearing. The department shall remit the fees collected to the household hazardous waste account of the groundwater protection fund. A person distributing general use pesticides labeled for agricultural or lawn and garden use with gross annual pesticide sales of less than ten thousand dollars is subject to the requirements and fee payment prescribed by this section.

2. A manufacturer or distributor of household hazardous materials, which authorizes retailers as independent contractors to sell the products of the manufacturer or distributor on a person-to-person basis primarily in the customer's home, may obtain a single household hazardous materials permit on behalf of its authorized retailers in the state, in lieu of individual permits for each retailer, and pay a fee of twenty-five dollars. However, a manufacturer or distributor which has gross retail sales of three million dollars or more in the state shall pay an additional permit fee of one hundred dollars for each subsequent increment of three million dollars of gross retail sales in the state, up to a maximum permit fee of three thousand dollars.

87 Acts, ch 225, §507; 88 Acts, ch 1169, §15

455F.8 Household hazardous waste cleanup program created.

The department shall conduct programs to collect and dispose of small amounts of hazardous wastes which are being stored in residences or on farms. The program shall be known as "toxic cleanup days". The department shall promote and conduct the program and shall by contract with a qualified and bonded waste handling company, collect and properly dispose of wastes believed by the person disposing of the waste to be hazardous. The department shall establish maximum amounts of hazardous wastes to be accepted from a person during the toxic cleanup days program. Amounts accepted from a person above the maximum shall be limited by the department and may be subject to a fee set by the department, but the department shall not assess a fee for amounts accepted below the maximum amount. The department shall designate the times and dates for the collection of wastes. In order to achieve the maximum benefit from the program, the department shall offer toxic cleanup days on a statewide basis and provide at least one toxic cleanup day in each departmental region. Toxic cleanup days shall be offered in both rural and urban areas to provide a comparison of response levels and to test the viability of multicounty toxic cleanup days. The department shall prepare an annual report citing the results and costs of the program for submittal to the general assembly.

87 Acts, ch 225, §508; 90 Acts, ch 1255, §32

455F.8A Household hazardous material collection sites.

1. By January 1, 1991, the department shall complete an assessment of the needs of local governments for temporary collection sites for household hazardous materials. Upon completion of the assessment, the department shall design a model facility which would adequately serve the needs identified. During the design phase, the department shall also identify facility permit requirements.

2. *a.* Following the completion of the assessment and design of the model facility, the department shall set a goal of establishing a three-year competitive grant program to assist in the development of five pilot household hazardous waste reduction and collection programs.

b. The grant program shall provide for the establishment of five pilot sites so that both rural and urban populations are served.

c. The department shall develop criteria to evaluate proposals for the establishment of sites. The criteria shall give priority to proposals for sites which provide the most efficient services and which provide local, public, and private contributions for establishment of the sites. The criteria shall also include a requirement that the recipient of a grant design and construct a facility sufficient for the collection, sorting, and packaging of materials prior to transportation of the materials to the final disposal site. Final review of design and construction of the proposed facilities shall be by the department.

d. The recipients of grants shall provide for collection of hazardous wastes from conditionally exempt small quantity generators in the area of the facility established. The facility shall require payment for collection from conditionally exempt small quantity generators if the amount of waste disposed is greater than ten pounds. Conditionally exempt small quantity generators which deliver their hazardous wastes to the site shall not be required to obtain a permit to transport the hazardous waste to the site.

90 Acts, ch 1255, §33

455F.8B Local government education programs.

A recipient of a household hazardous waste reduction and collection program grant shall do all of the following:

1. Identify a regional or local agency to coordinate a public education effort, and provide for staff to implement the education program.

2. Establish a community education effort to be integrated within the existing educational system regarding household hazardous waste reduction and recycling.

3. Develop a plan for the recycling of hazardous substances not minimized by the public. The plan shall optimize resource use while minimizing waste and shall include a formal arrangement for the exchange of materials at no cost to the participants and an arrangement for the acceptance by the department of general services or the local or regional government agency of hazardous materials useful in its operations.

90 Acts, ch 1255, §34; 97 Acts, ch 191, §2

455F.9 Education program.

In addition to the toxic cleanup days program, the department shall implement a public information and education program regarding the use and disposal of household hazardous materials. The program shall provide appropriate information concerning the reduction in use of the materials, including the purchase of smaller quantities, selection of alternative products, and hazards associated with the use of unregistered and unregulated alternative products. The department shall cooperate with existing educational institutions, the household product industry, distributors, wholesalers, and retailers, and other agencies of government and shall enlist the support of service organizations, whenever possible, in promoting and conducting the programs in order to effectuate the household hazardous materials policy of the state.

87 Acts, ch 225, §509; 97 Acts, ch 191, §3

455F.10 Penalty.

Any person violating a provision of this chapter or a rule adopted pursuant to this chapter is guilty of a simple misdemeanor.

87 Acts, ch 225, §510

455F.11 Recycling and reclamation programs.

Up to eighty thousand dollars of the moneys deposited in the household hazardous waste account shall be allocated to the department of natural resources for city, county, or service organization projects relative to recycling and reclamation events. A city, county, or service organization shall submit a competitive grant to the department of natural resources by April 1 for approval by the department no later than May 15.

87 Acts, ch 225, §512

CHAPTER 455G

COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND

Legislative findings; legislative intent; conditions upon finding of invalidity; 89 Acts, ch 131, §1, 2, 59

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455G.1 Title — scope.

1. This chapter is entitled the *"Iowa Comprehensive Petroleum Underground Storage Tank Fund Act"*.

2. This chapter applies to petroleum underground storage tanks for which an owner or operator is required to maintain proof of financial responsibility under federal or state law, from the effective date of the regulation of the federal environmental protection agency governing that tank, and not from the effective compliance date, unless the effective compliance date of the regulation is the effective date of the regulation. An owner or operator of a petroleum underground storage tank required by federal or state law to maintain proof of financial responsibility for that underground storage tank is subject to this chapter and chapter 424.

a. As of May 5, 1989, tanks excluded by the federal Resource Conservation and Recovery Act, subtitle I, included the following:

(1) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) A tank used for storing heating oil for consumptive use on the premises where stored.

(3) A septic tank.

(4) A pipeline facility, including gathering lines, regulated under any of the following:

(a) The federal Natural Gas Pipeline Safety Act of 1968.

(b) The federal Hazardous Liquid Petroleum Pipeline Safety Act of 1979.

(c) State laws comparable to the provisions of the law referred to in subparagraph subdivision (a) or (b).

(5) A surface impoundment, pit, pond, or lagoon.

(6) A storm water or wastewater collection system.

(7) A flow-through process tank.

(8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor to permit inspection of its entire surface.

b. As of May 5, 1989, tanks exempted or excluded by United States environmental protection agency financial responsibility regulations, 40 C.F.R. § 280.90, included the following:

(1) Underground storage tank systems not in operation on or after the applicable compliance date.

(2) Those owned or operated by state and federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(3) Any underground storage tank system holding hazardous wastes listed or identifiable under subtitle C of the federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(4) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the federal Clean Water Act.

(5) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and reservoirs and electrical equipment tanks.

(6) Any underground storage tank system whose capacity is one hundred ten gallons or less.

(7) Any underground storage tank system that contains a de minimis concentration of regulated substances.

(8) Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(9) Any underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. pt. 50, appendix A.

(10) Airport hydrant fuel distribution systems.

(11) Underground storage tank systems with field-constructed tanks.

c. If and when federal law changes, the department of natural resources shall adopt by rule such additional requirements, exemptions, deferrals, or exclusions as required by federal law. It is expected that certain classes of tanks currently exempted or excluded by federal regulation will be regulated by the United States environmental protection agency in the future. A tank which is not required by federal law to maintain proof of financial responsibility shall not be subject to department of natural resources rules on proof of financial responsibility.

89 Acts, ch 131, §42; 91 Acts, ch 252, §7, 8

Exemption certificates; §424.6

455G.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Authority"* means the Iowa finance authority created in chapter 16.

2. *"Board"* means the Iowa comprehensive petroleum underground storage tank fund board.

3. *"Bond"* means a bond, note, or other obligation issued by the authority for the fund and the purposes of this chapter.

4. *"Claimant"* means an owner or operator who has received assistance under the remedial account or who has coverage under the insurance fund with respect to a release, or an installer or inspector who has coverage under the insurance fund.

5. *"Community remediation"* means a pro-

gram of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or federal law.

6. *"Corrective action"* means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare a site cleanup report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by a site cleanup report.

7. *"Diminution"* is the amount of petroleum which is released into the environment prior to its intended beneficial use.

8. *"Diminution rate"* is the presumed rate at which petroleum experiences diminution, and is equal to one-tenth of one percent of all petroleum deposited into a tank.

9. *"Free product"* means a regulated substance that is present as a nonaqueous phase liquid.

10. *"Fund"* means the Iowa comprehensive petroleum underground storage tank fund.

11. *"Improvement"* means the acquisition, construction, or improvement of any tank, tank system, or monitoring system in order to comply with state and federal technical requirements or to obtain insurance to satisfy financial responsibility requirements.

12. *"Insurance"* includes any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa department of natural resources' underground storage tank financial responsibility rules.

13. *"Insurance board"* means the Iowa underground storage tank insurance board created under section 455G.11.

14. *"Insurance premium"* includes any form of premium or payment for insurance or for obtaining other forms of financial assurance, or showing of financial responsibility.

15. *"Petroleum"* means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

16. *"Potentially responsible party"* means a person who may be responsible or liable for a release for which the fund has made payments for corrective action or third-party liability.

17. *"Precorrective action value"* means the purchase price of the tank site paid by the owner after October 26, 1990.

18. *"Release"* means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing from an underground storage tank into groundwater, surface water, or subsurface soils.

19. *"Small business"* means a business that meets all of the following requirements:

a. Is independently owned and operated.

b. Owns at least one, but no more than twelve tanks at no more than two different tank sites.

c. Has a net worth of four hundred thousand dollars or less.

20. *"Tank"* means an underground storage tank for which proof of financial responsibility is, or on a date definite will be, required to be maintained pursuant to the federal Resource Conservation and Recovery Act and the regulations from time to time adopted pursuant to that Act or successor Acts or amendments.

21. *"Third-party liability"* means both of the following:

a. Property damage including physical injury to tangible property, but not including loss of use, other than costs to remediate.

b. Bodily injury including sickness, bodily injury, illness, or death.

89 Acts, ch 131, §43; 90 Acts, ch 1235, §17, 18; 91 Acts, ch 252, §9 – 12; 98 Acts, ch 1068, §1, 2; 2001 Acts, ch 51, §4

455G.3 Establishment of Iowa comprehensive petroleum underground storage tank fund.

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section, section 423.24, subsection 1, paragraph *"a"*, and sections 455G.8, 455G.9, and 455G.11, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in

the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

2. The board shall assist Iowa's owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The authority may issue its bonds, or series of bonds, to assist the board, as provided in this chapter.

3. The purposes of this chapter shall include but are not limited to any of the following:

a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.

b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10.

c. To establish an insurance fund for insurable underground storage tank risks within the state as provided by section 455G.11.

d. To establish a marketability fund for the purposes as stated in section 455G.21.

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account or fund under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

5. For purposes of payment of refunds of the environmental protection charge under section 424.15 by the department of revenue and finance, the treasurer of state shall allocate to the department of revenue and finance the total amount budgeted by the fund's board for environmental protection charge refunds. Any unused funds shall be remitted to the treasurer of state.

89 Acts, ch 131, §44; 90 Acts, ch 1235, §19; 91 Acts, ch 159, §29; 95 Acts, ch 215, §11, 12; 98 Acts, ch 1065, §1; 98 Acts, ch 1068, §3, 4; 2000 Acts, ch 1226, §13, 30; 2001 Acts, ch 190, §21; 2002 Acts, ch 1050, §42

For temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions, see annual Acts of the general assembly

For reduction of FY 2001-2002 appropriation to the salary adjustment fund in former subsection 6, paragraph b, see 2002 Acts, ch 1166, §24, 26

See Code editor's note at the end of Vol IV

Subsection 6 stricken per its own terms

455G.4 Governing board.

1. *Members of the board.* The Iowa comprehensive petroleum underground storage tank fund board is established consisting of the following members:

a. The director of the department of natural resources, or the director's designee.

b. The treasurer of state, or the treasurer's designee.

c. The commissioner of insurance, or the commissioner's designee.

d. Two public members appointed by the governor and confirmed by the senate to staggered four-year terms, except that of the first members appointed, one public member shall be appointed for a term of two years and one for a term of four years. A public member shall have experience, knowledge, and expertise of the subject matter embraced within this chapter. Two public members shall be appointed with experience in either, or both, financial markets or insurance.

e. The director of the legislative fiscal bureau, or the director's designee. The director under this paragraph shall not participate as a voting member of the board.

A public member shall not have a conflict of interest. For purposes of this section a *"conflict of interest"* means an affiliation, within the twelve months before the member's appointment, with the regulated tank community, or with a person or property and casualty insurer offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated tank community.

The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board or made available to the fund. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The members shall elect a voting chairperson of the board from among the members of the board.

2. *Department cooperation with board.* The director of the department of natural resources shall cooperate with the board in the implementation of this part so as to minimize unnecessary duplication of effort, reporting, or paperwork and

maximize environmental protection.

3. *Rules and emergency rules.*

a. The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish premiums for insurance fund coverage and risk factors, procedures for investigating and settling claims made against the fund, determine appropriate deductibles or retentions in coverages or benefits offered, and otherwise implement and administer this chapter.

b. The board may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph *"b"*, to implement this subsection for one year after May 5, 1989.

c. Rules necessary for the implementation and collection of the environmental protection charge shall be adopted on or before June 1, 1989.

d. Rules necessary for the implementation and collection of insurance fund premiums shall be adopted prior to offering insurance to an owner or operator of a petroleum underground storage tank or other person.

e. Rules related to the establishment of the insurance fund and the terms and conditions of coverage shall be adopted as soon as practicable to permit owners and operators to meet their applicable compliance date with federal financial responsibility regulations.

f. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

g. The board shall adopt rules relating to appeal procedures which shall require the administrator to deliver notice of appeal to the affected parties within fifteen days of receipt of notice, require that the hearing be held within one hundred eighty days of the filing of the petition unless good cause is shown for the delay, and require that a final decision be issued no later than one hundred twenty days following the close of the hearing. The time restrictions in this paragraph may be waived by mutual agreement of the parties.

4. *Public bid.* All contracts entered into by the board, including contracts relating to community remediation, shall be awarded on a competitive basis to the maximum extent practical. In those situations where it is determined that public bidding is not practical, the basis for the determination of impracticability shall be documented by the board or its designee. This subsection applies only to contracts entered into on or after July 1, 1992.

5. *Contract approval.*

a. The board shall approve any contract entered into pursuant to this chapter if the cost of the contract exceeds seventy-five thousand dollars.

b. A listing of all contracts entered into pursuant to this chapter shall be presented at each board meeting and shall be made available to the public. The listing shall state the interested parties to the contract, the amount of the contract, and the subject matter of the contract.

c. The board shall be required to review and approve or disapprove the administrator's failure to approve a contract under section 455G.12A. Review by the board shall not be required for cancellation or replacement of a contract for a site included in a community remediation project or when an emergency situation exists.

89 Acts, ch 131, §45; 91 Acts, ch 252, §13; 92 Acts, ch 1217, §3, 4; 93 Acts, ch 155, §1; 98 Acts, ch 1068, §5

455G.5 Independent contractors to be retained by board.

The board shall administer the fund. A contract entered into on or after July 1, 1992, to retain a person to act as the administrator of the fund shall be subject to public bid. All other contracts to retain a person under this section shall be in compliance with the public bidding requirements of section 455G.4, subsection 4.

The board may enter into a contract or an agreement authorized under chapter 28E with a private agency or person, the department of natural resources, the Iowa finance authority, the department of revenue and finance, other departments, agencies, or governmental subdivisions of this state, another state, or the United States, in connection with its administration and implementation of this chapter or chapter 424 or 455B.

The board may reimburse a contractor, public or private, retained pursuant to this section for expenses incurred in the execution of a contract or agreement. Reimbursable expenses include, by way of example, but not exclusion, the costs of collecting the environmental protection charge or administering specific delegated duties or powers of the board.

89 Acts, ch 131, §46; 92 Acts, ch 1217, §5

455G.6 Iowa comprehensive petroleum underground storage tank fund — general and specific powers.

In administering the fund, the board has all of the general powers reasonably necessary and convenient to carry out its purposes and duties and may do any of the following, subject to express limitations contained in this chapter:

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board may take any action which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.

2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used.

3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more improvements under the

terms it determines.

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including revenues derived from the use tax under section 423.24, subsection 1, paragraph *"a"*, and deposited in the fund or an account of the fund.

5. Provide that the interest on bonds may vary in accordance with a base or formula.

6. Contract for the acquisition, construction, or both of one or more improvements or parts of one or more improvements and for the leasing, subleasing, sale, or other disposition of one or more improvements in a manner it determines.

7. The board may contract with the authority for the authority to issue bonds and do all things necessary with respect to the purposes of the fund, as set out in the contract between the board and the authority. The board may delegate to the authority and the authority shall then have all of the powers of the board which are necessary to issue and secure bonds and carry out the purposes of the fund, to the extent provided in the contract between the board and the authority. The authority may issue the authority's bonds in principal amounts which, in the opinion of the board, are necessary to provide sufficient funds for the fund, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the authority incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the board necessary or convenient to administer the fund. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

8. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the board to the payment thereof, and are not an indebtedness of this state or the authority, or a charge against the general credit or general fund of the state or the authority, and the state shall not be liable for any financial undertakings with respect to the fund. Bonds issued under this chapter shall contain on their face a statement that the bonds do not constitute an indebtedness of the state or the authority.

9. The proceeds of bonds issued by the authority and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested in any investment approved by the authority and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

10. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the authority. Chapters 73A, 74, 74A and 75 do not apply to their sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

11. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

12. Bonds must be authorized by a trust indenture, resolution, or other instrument of the authority, approved by the board. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

13. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code to be valid, binding, or effective.

14. Bonds issued under the provisions of this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this chapter shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

15. *a.* Subject to the terms of any bond documents, moneys in the fund or fund accounts may be expended for administration expenses, civil penalties, moneys paid under an agreement, stipulation, or settlement, for the costs associated with sites within a community remediation project, for costs related to contracts entered into with a state agency or university, costs for activities relating to litigation, or for the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and

to implement the intent of federal laws and regulations and this chapter. For purposes of this chapter, administration expenses include expenses incurred by the underground storage tank section of the department of natural resources in relation to tanks regulated under this chapter.

b. The authority granted under this subsection which allows the board to expend fund moneys on an activity the board determines is necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter, shall only be used in accordance with the following:

(1) Prior board approval shall be required before expenditure of moneys pursuant to this authority shall be made.

(2) If the expenditure of fund moneys pursuant to this authority would result in the board establishing a policy which would substantially affect the operation of the program, rules shall be adopted pursuant to chapter 17A prior to the board or the administrator taking any action pursuant to this proposed policy.

16. The board shall cooperate with the department of natural resources in the implementation and administration of this chapter to assure that in combination with existing state statutes and rules governing underground storage tanks, the state will be, and continue to be, recognized by the federal government as having an *"approved state account"* under the federal Resource Conservation and Recovery Act, especially by compliance with the Act's subtitle I financial responsibility requirements as enacted in the federal Superfund Amendments and Reauthorization Act of 1986 and the financial responsibility regulations adopted by the United States environmental protection agency at 40 C.F.R. pts. 280 and 281. Whenever possible this chapter shall be interpreted to further the purposes of, and to comply, and not to conflict, with such federal requirements.

89 Acts, ch 131, §47; 90 Acts, ch 1235, §20; 92 Acts, ch 1018, §1; 92 Acts, ch 1217, §6; 95 Acts, ch 215, §13; 98 Acts, ch 1065, §2; 2000 Acts, ch 1226, §14, 30

Section repealed effective July 1, 2009; exception for outstanding bonds; 89 Acts, ch 131, §63

455G.7 Security for bonds — capital reserve fund — irrevocable contracts.

1. For the purpose of securing one or more issues of bonds for the fund, the authority, with the approval of the board, may authorize the establishment of one or more special funds, called *"capital reserve funds"*. The authority may pay into the capital reserve funds the proceeds of the sale of its bonds and other money which may be made available to the authority from other sources for the purposes of the capital reserve funds. Except as provided in this section, money in a capital reserve fund shall be used only as required for any of the following:

a. The payment of the principal of and interest on bonds or of the sinking fund payments with respect to those bonds.

b. The purchase or redemption of the bonds.

c. The payment of a redemption premium required to be paid when the bonds are redeemed before maturity.

However, money in a capital reserve fund shall not be withdrawn if the withdrawal would reduce the amount in the capital reserve fund to less than the capital reserve fund requirement, except for the purpose of making payment, when due, of principal, interest, redemption premiums on the bonds, and making sinking fund payments when other money pledged to the payment of the bonds is not available for the payments. Income or interest earned by, or increment to, a capital reserve fund from the investment of all or part of the capital reserve fund may be transferred by the authority to other accounts of the fund if the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

2. If the authority decides to issue bonds secured by a capital reserve fund, the bonds shall not be issued if the amount in the capital reserve fund is less than the capital reserve fund requirement, unless at the time of issuance of the bonds the authority deposits in the capital reserve fund from the proceeds of the bonds to be issued or from other sources, an amount which, together with the amount then in the capital reserve fund, is not less than the capital reserve fund requirement.

3. In computing the amount of a capital reserve fund for the purpose of this section, securities in which all or a portion of the capital reserve fund is invested shall be valued by a reasonable method established by the authority. Valuation shall include the amount of interest earned or accrued as of the date of valuation.

4. In this section, *"capital reserve fund requirement"* means the amount required to be on deposit in the capital reserve fund as of the date of computation.

5. To assure maintenance of the capital reserve funds, the authority shall, on or before July 1 of each calendar year, make and deliver to the governor the authority's certificate stating the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited in the applicable capital reserve fund.

6. All amounts paid by the state pursuant to this section shall be considered advances by the

state and, subject to the rights of the holders of any bonds of the authority that have previously been issued or will be issued, shall be repaid to the state without interest from all available revenues of the fund in excess of amounts required for the payment of bonds of the authority, the capital reserve fund, and operating expenses.

7. If any amount deposited in a capital reserve fund is withdrawn for payment of principal, premium, or interest on the bonds or sinking fund payments with respect to bonds thus reducing the amount of that fund to less than the capital reserve fund requirement, the authority shall immediately notify the governor and the general assembly of this event and shall take steps to restore the capital reserve fund to the capital reserve fund requirement for that fund from any amounts designated as being available for such purpose.

89 Acts, ch 131, §48

Section repealed effective July 1, 2009; exception for outstanding bonds; 89 Acts, ch 131, §63

455G.8 Revenue sources for fund.

Revenue for the fund shall include, but is not limited to, the following, which shall be deposited with the board or its designee as provided by any bond or security documents and credited to the fund:

1. *Bonds issued to capitalize fund.* The proceeds of bonds issued to capitalize and pay the costs of the fund, and investment earnings on the proceeds except as required for the capital reserve funds.

2. *Use tax.* The revenues derived from the use tax imposed under chapter 423. The proceeds of the use tax under section 423.24, subsection 1, paragraph *"a"*, shall be allocated, consistent with this chapter, among the fund's accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or authority under direction of the board.

3. *Storage tank management fee.* That portion of the storage tank management fee proceeds which are deposited into the fund, pursuant to section 455B.479.

4. *Cost recovery enforcement.* Cost recovery enforcement net proceeds as provided by section 455G.13 shall be allocated to the innocent landowners fund created under section 455G.21, subsection 2, paragraph *"a"*. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

5. *Other sources.* Interest attributable to investment of money in the fund or an account of the fund. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

89 Acts, ch 131, §49; 90 Acts, ch 1235, §21; 95 Acts, ch 215, §14, 15; 98 Acts, ch 1068, §6; 99 Acts, ch 114, §31

455G.9 Remedial program.

1. *Limits of remedial account coverage.* Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1984, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial pro-

gram shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

(b) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after January 1, 1985.

(d) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to September 1, 1990.

(e) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

(5) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph *"f"*, subparagraph (9). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

(6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph *"f"*, but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph *"a"*.

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d. One hundred percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a *"responsible party"* for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

e. Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990, in connection with a tank owned or operated by a state agency or department which elects to participate in the remedial account pursuant to this paragraph. A state agency or department which does not receive a standing unlimited appropriation which may be used to pay for the costs of a corrective action may opt, with the approval of the board, to participate in the remedial account. As a condition of opting to participate in the remedial account, the agency or department shall pay all registration fees, storage tank management fees, environmental protection charges, and all other charges and fees upon all tanks owned or operated by the agency or department in the same manner as if the agency or department were a person required to maintain financial responsibility. Once an agency has opted to participate in the remedial program, it cannot opt out, and shall continue to

pay all charges and fees upon all tanks owned or operated by the agency or department so long as the charges or fees are imposed on similarly situated tanks of a person required to maintain financial responsibility. The board shall by rule adopted pursuant to chapter 17A provide the terms and conditions for a state agency or department to opt to participate in the remedial account. A state agency or department which opts to participate in the remedial account shall be subject to the minimum copayment schedule of subsection 4, as if the state agency or department were a person required to maintain financial responsibility.

f. One hundred percent of the costs up to twenty thousand dollars incurred by the board under section 455G.12A, subsection 2, unnumbered paragraph 2, for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments under subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

g. Corrective action for the costs of a release under all of the following conditions:

(1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since December 31, 1975.

(3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(4) The release was reported to the board by October 26, 1991.

Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

h. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

i. Notwithstanding section 455G.1, subsection 2, corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no-further-action letter by the department of natural resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property and the applicant must not be a financial institution.

j. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was acquired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which it acquired, and does not become a responsible party by sale or transfer of property so acquired.

k. Corrective action in response to a high risk condition caused by a release from an underground storage tank located on a site for which the department, after January 31, 1997, has issued a no further action certificate under section 455B.474. As a condition of receiving benefits under this paragraph, the department must determine that the condition necessitating the corrective action was not a result of a release that occurred after the issuance of the no further action certificate, and that the site qualified for remedial benefits under this section prior to the issuance of the no further action certificate. No more than one hundred thousand dollars per site may be used for the costs of a corrective action under this paragraph. This paragraph does not confer a legal right on an owner or operator of petroleum-contaminated property or on any other person to receive benefits under this paragraph.

2. *Remedial account funding.* The remedial account shall be funded by that portion of the proceeds of the use tax imposed under chapter 423 and other moneys and revenues budgeted to the remedial account by the board.

3. *Trust fund to be established.* When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose.

4. *Minimum copayment schedule.* An owner

or operator shall be required to pay the greater of five thousand dollars or eighteen percent of the first eighty thousand dollars of the total costs of corrective action for that release.

If a site's actual expenses exceed eighty thousand dollars, the remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, not to exceed one million dollars, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph *"d"*, unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

5. *Recovery of gain on sale of property.* If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. *Recurring releases treated as a newly reported release.* A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the site cleanup report or in addition to the work actually performed.

7. *Expenses of cleanup not required.* When an owner or operator who is eligible for benefits under this chapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup.

8. *Owner or operator defined.* For purposes of receiving benefits under this section, *"owner or operator"* means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

9. *Self-insureds.* For a self-insured as determined under 567 IAC 136.6(455B), to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met.

10. *Expenses incurred by governmental subdivisions.* The board may adopt rules for reimbursement for reasonable expenses incurred by a governmental subdivision for treating, handling, or disposing, as required by the department, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance, or repair of a public improvement. The board may seek full recovery from a responsible party liable for the release for such expenses and for all other costs and reasonable attorney fees and costs of litigation for which moneys are expended by the fund. Any expense described in this subsection incurred by the fund constitutes a lien upon the property from which the release occurred. A lien shall be recorded and an expense shall be collected in the same manner as provided in section 424.11.

89 Acts, ch 131, §50; 89 Acts, ch 307, §46; 90 Acts, ch 1235, §22 – 28; 90 Acts, ch 1267, §42 – 44; 91 Acts, ch 252, §14 – 24; 92 Acts, ch 1217, §7; 93 Acts, ch 155, §2 – 4; 95 Acts, ch 215, §16, 17; 98 Acts, ch 1065, §3 – 5; 99 Acts, ch 74, §1, 2; 2000 Acts, ch 1226, §15, 30

455G.10 Loan guarantee account. Repealed by 89 Acts, ch 131, § 62.

455G.11 Insurance fund.

1. *Underground storage tank insurance fund.*

a. An Iowa underground storage tank insurance fund is created as a separate fund in the state

treasury on July 1, 1998, consisting of all moneys held in the insurance account of the comprehensive petroleum underground storage tank fund.

Notwithstanding section 8.33, moneys remaining in the underground storage tank insurance fund at the end of each fiscal year shall not revert to the general fund but shall remain in the underground storage tank insurance fund. Notwithstanding section 12C.7, interest or earnings on moneys in the underground storage tank insurance fund shall be credited to the underground storage tank insurance fund in addition to any other income specifically allocated to the underground storage tank insurance fund.

b. Amounts in the underground storage tank insurance fund shall not be subject to appropriation for any purpose by the general assembly, but shall be used only for the purposes set forth in this section. The treasurer of state shall act as custodian of the underground storage tank insurance fund and disburse moneys contained in it as directed by the board. The treasurer of state is authorized to invest the moneys deposited in the underground storage tank insurance fund at the discretion of the board. The income from such investments shall be credited to and deposited in the underground storage tank insurance fund. The underground storage tank insurance fund shall be administered by the board which shall make expenditures from the underground storage tank insurance fund consistent with the purposes of the programs provided for in this chapter without further appropriation.

c. No later than July 1, 2004, all moneys in the underground storage tank insurance fund shall be transferred to the insurance board when restructured as an independent nonprofit entity organized to provide an allowable mechanism to demonstrate financial responsibility as required in 40 C.F.R. pts. 280 and 281, owned and operated by insureds, as determined by the comprehensive petroleum underground storage tank fund board.

2. *Underground storage tank insurance board.*

a. An underground storage tank insurance board is established and shall consist of the following members:

(1) The treasurer of state or the treasurer of state's designee serving for a two-year term. The treasurer of state or the treasurer of state's designee shall serve as a nonvoting member of the insurance board.

(2) The auditor of state or the auditor of state's designee serving for a three-year term. The auditor of state or the auditor of state's designee shall serve as a nonvoting member of the insurance board.

(3) A representative of a governmental subdivision which owns an underground storage tank system which is insured through the insurance account and was insured through the insurance account of the comprehensive petroleum underground storage tank fund beginning on or before October 26, 1990, appointed by the governor and serving a six-year term.

(4) Two owners or operators appointed by the governor who have been petroleum systems insureds through the insurance account and were insured through the insurance account of the comprehensive petroleum underground storage tank fund on or before October 26, 1990. The insurance board members appointed under this subparagraph shall serve a term of six years and shall be eligible to serve subsequent terms pursuant to paragraph *"b"*.

b. After the initial terms served by the insurance board members designated in paragraph *"a"*, subparagraphs (1), (2), (3), and (4), all subsequent insurance board members shall be a part of and elected by the population of private insureds who have been petroleum systems insureds through the underground storage tank insurance fund and were insured through the insurance account of the comprehensive petroleum underground storage tank fund. The subsequent insurance board members elected pursuant to this paragraph shall serve for three-year terms and are eligible to serve an unlimited number of terms.

c. Members of the insurance board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of the moneys appropriated to the insurance board or made available to the underground storage tank insurance fund.

d. Members of the insurance board shall elect a voting chairperson from among the members who are privately insured owners and operators.

3. *Recommendations for restructuring.* Prior to the restructuring of the insurance board as an independent nonprofit entity, the insurance board shall provide recommendations to the comprehensive petroleum underground storage tank fund board relating to all of the following:

a. Relating to rules, practices, procedures, underwriting criteria, premium determinations, organizational structure, procedures for investigating and settling claims, determining appropriate deductibles, benefits offered, and otherwise implementing and administering the underground storage tank insurance fund.

b. Confirming that the insurance board has established a process to independently provide the following:

(1) Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

(2) Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

(3) Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

(4) Participation of insureds in establishing underwriting, application, claims, and premium determinations.

(5) Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

c. Determining a date specific upon which all assets and liabilities of the insurance fund will be transferred to the insurance board as an independent nonprofit entity organized to provide an allowable mechanism to provide financial responsibility as required by 40 C.F.R. pts. 280 and 281, owned and operated by insureds, on or before July 1, 2004.

4. *Transfer of insurance board moneys.*

a. If the insurance board dissolves or ceases to function as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 1, paragraph *"c"*, shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

b. If a person or persons purchase the ownership rights of the assets of the underground storage tank insurance board, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 1, paragraph *"c"*, shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

5. *Insurance fund as a financial assurance mechanism.* The insurance fund shall offer financial assurance for a qualified owner or operator under the terms and conditions provided for under this section. Coverage may be provided to the owner or the operator, or to each separately. The board is not required to resolve whether the owner or operator, or both, are responsible for a release under the terms of any agreement between the owner and operator.

The source of funds for the insurance fund shall be from the following:

a. Moneys allocated to the board or moneys allocated to the account by the board according to the fund budget approved by the board.

b. Moneys collected as an insurance premium including service fees, if any, and investment income attributed to the account by the board.

6. *Limits of coverage available.* An owner or operator required to maintain proof of financial responsibility may purchase coverage up to the federally required levels for that owner or operator subject to the terms and conditions under this section and those adopted by the board.

7. *Eligibility of owners and operators for insurance fund coverage.* An owner or operator, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance fund to provide proof of financial responsibility provided that a tank to be insured satisfies one of the following conditions:

a. Satisfies performance standards for new underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.20, as amended through January 1, 1989.

b. Has satisfied on or before the date of the application standards for upgraded underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989.

c. Is in compliance with all technical requirements of the department.

8. *Insurance account premiums.* An owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance fund. Premiums paid shall be credited to and deposited in the insurance fund. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. Risk factors shall be taken into account in establishing premiums. It is the intent of the general assembly that an actuarially sound premium reflect the risk to the insurance fund presented by the insured. Risk factor adjustments should reflect the range of risk presented by the variety of tank systems, monitoring systems, and risk management practices in the general insurable tank population. Premium adjustments for risk factors should at minimum take into account lifetime costs of a tank and monitoring system and insurance fund premiums for that tank system so as to provide a positive economic incentive to the owner or operator to install the more environmentally safe option so as to reduce the exposure of the insurance fund to loss. Actuarially sound is not limited in its meaning to fund premium revenue equaling or exceeding fund expenditures for the general tank population.

If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

The insurance fund may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

9. *Future repeal.* The future repeal of this section shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied:

a. The payment of claims filed prior to the effective date of any future repeal against the insurance fund until moneys in the fund are exhausted. Upon exhaustion of the moneys in the fund, any remaining claims shall be invalid.

b. The resolution of a cost recovery action filed prior to the effective date of the repeal.

10. *Installer's and inspector's insurance coverage.*

a. Coverage. The board may offer insurance

coverage under the insurance fund to installers and inspectors of certified underground storage tank installations within the state for an environmental hazard arising in connection with a certified installation as provided in this subsection. Coverage shall be limited to environmental hazard coverage for both corrective action and third-party liability for a certified tank installation within the state in connection with a release from that tank.

b. Annual premiums. The annual premium shall be:

(1) For the year July 1, 1991, through June 30, 1992, two hundred dollars per insured tank.

(2) For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per insured tank.

(3) For the year July 1, 1993, through June 30, 1994, three hundred dollars per insured tank.

(4) For the period from July 1, 1994, through December 31, 1994, three hundred fifty dollars per insured tank.

(5) For subsequent time periods, installers and inspectors shall pay an annually adjusted insurance premium to maintain coverage on each tank previously installed or newly insured by the insurance fund. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. The premium paid shall be fully earned and is not subject to refund or cancellation. If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

(6) The board may offer coverage at rates based on sales if the qualifying installer or inspector cannot be rated on a per tank basis, or if the work the installer or inspector performs involves more than tank installation. The rates to develop premiums shall be based on the premium charged per tank under subparagraphs (1), (2), (3), and (4).

c. Limits of coverage available. Installers and inspectors may purchase coverage up to one million dollars per occurrence and two million dollars aggregate, subject to the terms and conditions under this section and those adopted by the board.

d. Deductible. The insurance fund may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

e. Excess coverage. Installers and inspectors may purchase excess coverage of up to five million dollars upon such terms and conditions as determined by the board.

f. Certification of tank installations. The board shall adopt certification rules requiring certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer or inspector. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, local fire marshal, state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, installer, or inspector, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector may be an owner or operator of a tank, or an employee of an owner, operator, or installer.

g. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist.

11. *Coverage alternatives.* The board shall provide for insurance coverage to be offered to installers and inspectors for a tank installation certified pursuant to subsection 10, through both of the following methods:

a. Directly through the underground storage tank insurance fund with premiums and deductibles as provided in subsection 10.

b. In cooperation with a private insurance carrier with excess or stop loss coverage provided by the underground storage tank insurance fund to reduce the cost of insurance to such installers or inspectors, and including such other terms and conditions as the board deems necessary and convenient to provide adequate coverage for a certified tank installation at a reasonable premium. An installer or inspector obtaining insurance coverage pursuant to this paragraph, may purchase excess coverage of up to five million dollars, subject to the terms and conditions as determined by the board.

The insurance coverage offered pursuant to this subsection shall, at a minimum, cover environmental hazards for both corrective action and third-party liability.

12. *Account expenditures.* Moneys in the insurance fund may be expended to take corrective action for and to compensate a third party for damages, including but not limited to payment of a judgment for bodily injury or property damage caused by a release from a tank, where coverage has been provided to the owner or operator from the insurance fund, up to the limits of coverage extended. A personal injury is not a compensable third-party liability damage.

13. *Conditions to receive premium discount.* A person engaged in the wholesale or retail sale of petroleum shall receive a discount of eight percent on that person's annual insurance premium for all tanks located at a site which meets all of the following conditions:

a. The person maintains a tank for the purpose of storing waste oil.

b. The person accepts waste oil from the general public.

c. The person posts a notice at the site in a form and manner approved by the administrator advertising that the person will accept waste oil from the general public.

14. *Limitations on third-party liability.* To

the extent that coverage under this section includes third-party liability, third-party liability specifically excludes any claim, cause of action, or suit for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

15. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist and if the board determines that all of the following conditions are met:

a. Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

b. Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

c. Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

d. Participation of insureds in establishing underwriting, application, claims, and premium determinations.

e. Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

89 Acts, ch 131, §52; 90 Acts, ch 1235, §33 – 39; 91 Acts, ch 252, §26 – 30; 92 Acts, ch 1217, §8; 93 Acts, ch 155, §6 – 9; 95 Acts, ch 215, §19 – 25; 98 Acts, ch 1068, §7 – 11; 99 Acts, ch 114, §32 – 35

Section repealed effective July 1, 2004, subject to the qualifications of subsection 9; 89 Acts, ch 131, §61

455G.12 Board authority for prioritization.

If the board determines that, within the realm of sound business judgment and practice, prioritization of assistance is necessary in light of funds available for loan guarantees or insurance coverage, the board may develop rules for assistance or coverage prioritization based upon adherence or planned adherence of the owner or operator to higher than minimum environmental protection and safety compliance considerations.

Prior to the adoption of prioritization rules, the board shall at minimum review the following issues:

1. The positive environmental impact of assistance prioritization.

2. The economic feasibility, including the availability of private financing, for an owner or operator to obtain priority status.

3. Any negative impact on Iowa's rural petroleum distribution network which could result from prioritization.

4. Any similar prioritization systems in use by the private financing or insurance markets in this state, including terms, conditions, or exclusions.

5. The intent of this chapter that the board shall maximize the availability of reasonably priced, financially sound insurance coverage or loan guarantee assistance.

89 Acts, ch 131, §53

455G.12A Cost containment authority.

1. *Validity of contracts.* A contract in which one of the parties to the contract is an owner or operator of a petroleum underground storage tank, for goods or services which may be payable or reimbursable from the fund, is invalid unless and until the administrator has approved the contract as fair and equitable to the tank owner or operator, and found that the contract terms are within the range of usual and customary rates for similar or equivalent goods or services within the state, and found that the goods or services are necessary for the owner or operator to comply with fund or regulatory standards. An owner or operator may appoint the administrator as an agent for the purposes of negotiating contracts with suppliers of goods or services compensable by the fund. The administrator may select another contractor for goods or services other than the one offered by the owner or operator, if the scope of the proposed work or actual work of the offered contractor does not reflect the quality of workmanship required, or the costs are determined to be excessive.

2. *Contract approval.* In the course of review and approval of a contract pursuant to this section, the administrator may require an owner or operator to obtain and submit three bids, provided that the administrator coordinates bid submission with the department. The administrator may require specific terms and conditions in a contract subject to approval.

The board shall have authority to contract for site cleanup reports. The board's responsibility for site cleanup reports is limited to those site cleanup reports subject to approval by the department of natural resources and required in connection with the remediation of a release which is eligible for benefits under section 455G.9. The site cleanup report shall address existing and available remedial technologies and the costs associated with the use of each technology. The board shall not have the authority to affect a contract which has been given written approval under this section.

3. *Exclusive contracts.* The administrator may enter into a contract or an exclusive contract with the supplier of goods or services required by a class of tank owners or operators in connection with an expense payable or reimbursable from the fund, to supply a specified good or service for a gross maximum price, fixed rate, on an exclusive basis, or subject to another contract term or condition reasonably calculated to obtain goods or services for the fund or for tank owners and operators at a reasonable cost. A contract may provide for direct payment from the fund to a supplier.

The administrator may retain, subject to board approval, an independent person to assist in the review of work required in connection with a re-

lease or tank system for which fund benefits are sought, and to establish prevailing cost of goods and services needed. Nothing in this section is intended to preempt the regulatory authority of the department.

4. *Prior approval by administrator.* Unless emergency conditions exist, a contractor performing services pursuant to this section shall have the budget for the work approved by the administrator prior to commencement of the work. No expense incurred which is above the budgeted amount shall be paid unless the administrator approves such expense prior to its being incurred. All invoices or bills shall be submitted with appropriate documentation as deemed necessary by the board, no later than thirty days after the work has been performed. Neither the board nor an owner or operator is responsible for payment for work incurred which has not been previously approved by the board.

90 Acts, ch 1235, §40; 91 Acts, ch 252, §31, 32

455G.13 Cost recovery enforcement.

1. *Full recovery sought from owner.* The board shall seek full recovery from the owner, operator, or other potentially responsible party liable for the released petroleum which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs, including reasonable attorney fees and costs of litigation for which moneys are expended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

2. *Limitation of liability of owner or operator.* Except as provided in subsection 3:

a. The board or the department of natural resources shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the remedial account except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department of natural resources to impose or collect civil or administrative fines or penalties or fees. The remedial account shall not be held liable for any third-party liability.

b. An owner or operator's liability for a release for which coverage is admitted under the insurance fund shall not exceed the amount of the deductible.

3. *Owner or operator not in compliance, subject to full and total cost recovery.* Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in subsection 1, if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department of natural resources or with this chapter and rules adopted under this chapter.

4. *Treble damages for certain violations.* Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:

a. Failed, without sufficient cause, to respond to a release of petroleum from the tank upon, or in accordance with, a notice issued by the director of the department of natural resources.

b. After May 5, 1989, failed to perform any of the following:

(1) Failed to register the tank, which was known to exist or reasonably should have been known to exist.

(2) Intentionally failed to report a known release.

The punitive damages imposed under this subsection are in addition to any costs or expenditures recovered from the owner or operator pursuant to this chapter and in addition to any other penalty or relief provided by this chapter or any other law.

However, the state, a city, county, or other political subdivision shall not be liable for punitive damages.

5. *Lien on tank site.* Any amount for which an owner or operator is liable to the fund, if not paid when due, by statute, rule, or contract, or determination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11.

6. *Joinder of parties.* The department of natural resources has standing in any case or contested action related to the fund or a tank to assert any claim that the department may have regarding the tank at issue in the case or contested action, upon motion and sufficient showing by a party to a cost recovery or subrogation action provided for under this section, the court or the administrative law judge shall join to the action any potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section.

7. *Strict liability.* The standard of liability for a release of petroleum or other regulated substance as defined in section 455B.471 is strict liability.

8. *Third-party contracts not binding on board, proceedings against responsible party.* An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources may

proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the remedial account for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable. Any such provision is null and void and of no force or effect.

9. *Later proceedings permitted against other parties.* The entry of judgment against a party to the action does not bar a future action by the board or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Notwithstanding section 668.5 no other potentially responsible party may seek contribution or any other recovery from an owner or operator eligible for assistance under the remedial account for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

10. *Claims against potentially responsible parties.* Upon payment by the fund for corrective action or third-party liability pursuant to this chapter, the rights of the claimant to recover payment from any potentially responsible party, are assumed by the board to the extent paid by the fund. A claimant is precluded from receiving double compensation for the same injury.

In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

A claimant may elect to permit the board to pursue the claimant's cause of action for any injury not compensated by the fund against any potentially responsible party, provided the attorney general determines such representation would not be a conflict of interest. If a claimant so elects, the board's litigation expenses shall be shared on a pro rata basis with the claimant, but the claimant's share of litigation expenses is payable exclusively from any share of the settlement or judgment payable to the claimant.

11. *Exclusion of punitive damages.* The fund shall not be liable in any case for punitive damages.

12. *Recovery or subrogation — installers and inspectors.* Notwithstanding any other provision contained in this chapter, the board or a person insured under the insurance fund has no right of recovery or right of subrogation against an installer or an inspector insured by the insurance fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

89 Acts, ch 131, §54; 91 Acts, ch 252, §33 – 36; 98 Acts, ch 1068, §12, 13; 99 Acts, ch 114, §36

455G.14 Fund not subject to regulation.

The fund, including but not limited to insurance coverage offered by the insurance fund, is not subject to regulation under chapter 502 or Title XIII, subtitle 1.

89 Acts, ch 131, §55; 98 Acts, ch 1068, §14

455G.15 Fund not part of the Iowa insurance guaranty association.

Notwithstanding any other provisions of law to the contrary, the fund shall not be considered an insurance company or insurer under the laws of this state and shall not be a member of nor be entitled to claim against the Iowa insurance guaranty association created under chapter 515B.

89 Acts, ch 131, §56

455G.16 Financial institution participation in fund.

The board may impose conditions on the participation of a financial institution in the fund. Conditions shall be reasonably intended to increase the quantity of private capital available for loans to tank owners or operators who are small businesses within the meaning of section 455G.2. Additionally, the board may offer incentives to financial institutions meeting conditions imposed by the board. Incentives may include extended fund coverage of corrective action or third-party liability expenses, waiver of copayment or deductible requirements, or other benefits not offered to other participants, if reasonably intended to increase the quantity of private capital available for loans by an amount greater than the increased costs of the incentives to the fund.

Third-party liability expenses under this section specifically exclude any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

89 Acts, ch 131, §57; 91 Acts, ch 252, §37

455G.17 Inspectors — education — registration.

1. The board shall adopt certification procedures and standards for the following classes of persons as underground storage tank installation inspectors:

a. A licensed engineer, except that if underground storage tank installation is within the

scope of practice of a particular class of licensed engineer, additional training shall not be required for that class. A licensed engineer for whom underground storage tank installation is within the scope of practice shall be an *"authorized inspector"*, rather than a *"certified inspector"*.

b. A fire marshal, or other person unaffiliated with the tank owner, operator, or installer.

2. The board shall adopt approved curriculum for training both engineers and fire marshals or other unaffiliated persons as a precondition to their certification as underground storage tank installation inspectors.

3. The board shall adopt approved curricula for training persons to install underground storage tanks in such a manner that the resulting installation may be certified under section 455G.11, subsection 10, and provide fire safety and environmental protection guidelines for persons removing tanks.

4. The board shall require by rule that all certified or authorized underground storage tank inspectors register with the board and that all persons trained to perform or performing certified tank installations register with the board. A person's failure to register shall not affect the person's certification, or the certification of an otherwise eligible installation performed by that person, but rules may provide for a civil penalty of no more than fifty dollars. The board may provide a list of registrants to any interested person. The board may impose a fee for registration to recover the costs of administering the registration account.

89 Acts, ch 131, §58; 90 Acts, ch 1235, §41; 91 Acts, ch 252, §38, 39

455G.18 Groundwater professionals — certification.

1. The department of natural resources shall adopt rules pursuant to chapter 17A requiring the certification of groundwater professionals. The rules shall include provisions for suspension or revocation of certification for good cause.

2. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

a. A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.

b. A professional engineer registered in Iowa.

c. A professional geologist certified by a national organization.

d. Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences.

e. Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(1) Possession of a bachelor's degree from an accredited college.

(2) Five years of related professional experience.

3. The department of natural resources may provide for a civil penalty of no more than fifty dollars for failure to obtain certification. An interested person may obtain a list of certified groundwater professionals from the department of natural resources. The department of natural resources may impose a fee for the certification of persons under this section.

4. The certification of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of groundwater professionals certified pursuant to this section.

5. Any person who was not previously registered as a groundwater professional who requests certification under this section, after January 1, 1996, shall be required to attend a course of instruction and pass a certification examination. The administrator of the fund shall hold certification courses and offer examinations. An applicant who successfully passes the examination shall be certified as a groundwater professional.

6. A groundwater professional who was registered prior to January 1, 1996, shall not be required to attend the course of instruction but shall be required to pass the certification examination by January 1, 1997.

7. All groundwater professionals shall be required to complete continuing education requirements as adopted by rule by the department.

8. The board may provide for exemption from the certification requirements of this section for a professional engineer registered pursuant to chapter 542B, if the person is qualified in the field of geotechnical, hydrological, environmental groundwater, or hydrogeological engineering.

9. Notwithstanding the certification requirements of this section, a site cleanup report or corrective action design report submitted by a registered groundwater professional shall be accepted by the department in accordance with section 455B.474, subsection 1, paragraph *"d"*, subparagraph (2), subparagraph subdivision (e), and paragraph *"f"*, subparagraph (5).

91 Acts, ch 252, §40; 93 Acts, ch 155, §10; 95 Acts, ch 215, §27; 97 Acts, ch 31, §1

455G.19 Environmental damage offset. Repealed by 95 Acts, ch 215, § 29.

455G.20 Final approval.

Notwithstanding any other provision to the con-

trary, the department of natural resources shall have final approval for a determination as to when remediation shall begin on a site.

92 Acts, ch 1217, §9

455G.21 Marketability fund.

1. A marketability fund is created as a separate fund in the state treasury under the control of the board. The board shall administer the marketability fund. Notwithstanding section 8.33, moneys remaining in the marketability fund at the end of each fiscal year shall not revert to the general fund but shall remain in the marketability fund. The marketability fund shall include, notwithstanding section 12C.7, interest earned by the marketability fund or other income specifically allocated to the marketability fund.

2. The marketability fund shall be used for the following purposes:

a. The innocent landowners fund shall be established as a separate fund in the state treasury under the control of the board. The innocent landowners fund shall include any moneys recovered pursuant to cost recovery enforcement under section 455G.13. Notwithstanding section 455G.1, subsection 2, benefits for the costs of corrective action may be provided to the owner of a petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, who is not otherwise eligible to receive benefits under section 455G.9 due to the date on which the release causing the contamination was reported or the date the claim was filed. An owner of a petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, shall be eligible for payment of corrective action costs subject to copayment requirements under section 455G.9, subsection 4. The board may adopt rules conditioning receipt of benefits under this paragraph to those petroleum-contaminated properties which present a higher degree of risk to the public health and safety or the environment and may adopt rules providing for denial of benefits under this paragraph to a person who did not make a good faith attempt to comply with the provisions of this chapter. This paragraph does not confer a legal right to an owner of petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, for receipt of benefits under this paragraph.

b. The remainder of the moneys shall be used for payment of remedial benefits as provided in section 455G.9.

3. Moneys in the fund shall not be used for purposes of bonding or providing security for bonding under chapter 455G.

95 Acts, ch 215, §28, 34; 96 Acts, ch 1034, §69, 71; 98 Acts, ch 1065, §6; 99 Acts, ch 114, §37, 38; 2001 Acts, ch 51, §3

455G.22 No further action fund. Repealed by 2000 Acts, ch 1226, § 21, 30.

CHAPTER 455H

LAND RECYCLING AND REMEDIATION STANDARDS

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SUBCHAPTER 1

GENERAL PROVISIONS

455H.101 Short title.

This chapter shall be known and may be cited as the *"Iowa Land Recycling and Environmental Remediation Standards Act"*.

97 Acts, ch 127, §1

455H.102 Scope.

The environmental remediation standards established under this chapter shall be used for any response action or other site assessment or remediation that is conducted at a site enrolled pursuant to this chapter notwithstanding provisions regarding water quality in chapter 455B, division III; hazardous conditions in chapter 455B, division IV, part 4; hazardous waste and substance management in chapter 455B, division IV, part 5; underground storage tanks, other than petroleum underground storage tanks, in chapter 455B, division IV, part 8; contaminated sites in chapter 455B, division VIII; and groundwater protection in chapter 455E.

97 Acts, ch 127, §2

455H.103 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Affected area"* means any real property affected, suspected of being affected, or modeled to be likely affected by a release occurring at an enrolled site.

2. *"Affiliate"* means a corporate parent, subsidiary, or predecessor of a participant, a co-owner or co-operator of a participant, a spouse, parent, or child of a participant, an affiliated corporation or enterprise of a participant, or any other person substantially involved in the legal affairs or management of a participant, as defined by the department.

3. *"Background levels"* means concentrations of hazardous substances naturally occurring and generally present in the environment in the vicinity of an enrolled site or an affected area and not the result of releases.

4. *"Commission"* means the environmental protection commission created under section 455A.6.

5. *"Department"* means the department of natural resources created under section 455A.2.

6. *"Director"* means the director of the department of natural resources appointed under section 455A.3.

7. *"Enrolled site"* means any property which has been or is suspected to be the site of or affected by a release and which has been enrolled pursuant to this chapter by a participant.

8. *"Hazardous substance"* has the same meaning as defined in section 455B.381.

9. *"Noncancer health risk"* means the potential for adverse systemic or toxic effects caused by exposure to noncarcinogenic hazardous substances expressed as the hazard quotient for a hazardous substance. A hazard quotient is the ratio of the level of exposure of a hazardous substance over a specified time period to a reference dose for a similar exposure period.

10. *"Participant"* means any person who enrolls property pursuant to this chapter. A participant is a participant only to the extent the participant complies with the requirements of this chapter.

11. *"Protected groundwater source"* means a saturated bed, formation, or group of formations which has a hydraulic conductivity of at least forty-four-hundredths meters per day and a total dissolved solids concentration of less than two thousand five hundred milligrams per liter.

12. *"Protected party"* means any of the following:

a. A participant, including, but not limited to, a development authority or fiduciary.

b. A person who develops or otherwise occupies an enrolled site after the issuance of a no further action letter.

c. A successor or assignee of a protected party, as to an enrolled site of a protected party.

d. A lender which practices commercial lending including, but not limited to, providing financial services, holding of security interests, workout practices, and foreclosure or the recovery of

funds from the sale of an enrolled site.

e. A parent corporation or subsidiary of a participant.

f. A co-owner or co-operator, either by joint tenancy or a tenancy in common, or any other party sharing a legal relationship with the participant.

g. A holder of a beneficial interest of a land trust or inter vivos trust, whether revocable or irrevocable, as to any interests in an enrolled site.

h. A mortgagee or trustee of a deed of trust existing as to an enrolled site as of the date of issuance of a no further action letter.

i. A transferee of the participant whether the transfer is by purchase, eminent domain, assignment, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest, in conjunction with the acquisition of title to the enrolled site.

j. An heir or devisee of a participant.

k. A government agency or political subdivision which acquires an enrolled site through voluntary or involuntary means, including, but not limited to, abandonment, tax foreclosure, eminent domain, or escheat.

13. *"Release"* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a hazardous substance, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excludes all of the following:

a. Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons.

b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

c. The release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under 42 U.S.C. § 2210 or, for the purposes of 42 U.S.C. § 9604 or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under 42 U.S.C. § 7912(a)(1) or 7942(a).

d. The use of pesticides in accordance with the product label.

14. *"Response action"* means an action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release to protect the public health and safety or the environment. *"Response action"* includes, but is not limited to, investigation, excavation, removal, disposal, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, technological controls, or site management practices.

97 Acts, ch 127, §3; 99 Acts, ch 114, §39

455H.104 Declaration of policy.

The general assembly finds and declares all of the following:

1. Some real property in Iowa is not put to its highest productive use because it is contaminated or it is perceived to be contaminated as a result of past activity on the property. The reuse of these sites is an important component of a sound land-use policy that will prevent the needless development of prime farmland and open-space and natural areas, and reduce public expenditures for installing new infrastructure.

2. Incentives should be put in place to encourage capable persons to voluntarily develop and implement cleanup plans.

3. The safe reuse of property should be encouraged through the adoption of environmental remediation standards developed through an open process which take into account the risks associated with any release at the site. Any remediation standards adopted by this state must provide for the protection of the public health and safety and the environment.

97 Acts, ch 127, §4

455H.105 Duties of the commission.

The commission shall do all of the following:

1. Adopt rules pertaining to the assessment, evaluation, and cleanup of the presence of hazardous substances which allow participants to carry out response actions using background standards, statewide standards, or site-specific cleanup standards pursuant to this chapter.

2. Adopt rules establishing statewide standards and criteria for determination of background standards and site-specific cleanup standards.

3. Adopt rules establishing a program intended to encourage and enhance assessment, evaluation, and cleanup of sites which may have been the site of or affected by a release.

4. Adopt rules establishing a program to administer the land recycling fund established in section 455H.401.

5. Adopt rules establishing requirements for the submission, performance, and verification of site assessments, cleanup plans, and certifications of completion. The rules shall provide that all site assessments, cleanup plans, and certifications of completion submitted by a participant shall be prepared by or under the supervision of an appropriately trained professional, including a groundwater professional certified pursuant to section 455G.18.

6. Adopt rules for public notice of the proposed verification of a certificate of completion by the department where the certificate of completion is conditioned on the use of an institutional or tech-

nological control.

97 Acts, ch 127, §5

455H.106 Duties of the department.

The department shall do all of the following:

1. Enter into agreements or issue orders in connection with the enrollment of property into a program established pursuant to this chapter.

2. Issue no further action letters upon the demonstration of compliance with applicable standards for an affected area by a participant.

3. Enter into agreements or issue orders providing for institutional and technological controls to assure compliance with applicable standards pursuant to this chapter.

4. Take actions necessary, including the revocation, suspension, or modification of permits or agreements, the issuance of orders, and the initiation of administrative or judicial proceedings, to enforce the provisions of this chapter and any agreements, covenants, easements, or orders issued pursuant to this chapter.

97 Acts, ch 127, §6

455H.107 Land recycling program.

1. A person may enroll property in the land recycling program pursuant to this chapter to carry out a response action in accordance with rules adopted by the commission which outline the eligibility for enrollment. The eligibility rules shall reasonably encourage the enrollment of all sites potentially eligible to participate under this chapter and shall not take into account any amounts the department may be reimbursed under this chapter.

2. All participants shall enter into an agreement with the department to reimburse the department for actual costs incurred by the department in reviewing documents submitted as a part of the enrollment of the site. This fee shall not exceed seven thousand five hundred dollars per enrolled site. An agreement entered into under this subsection must allow the department access to the enrolled site and must require a demonstration of the participant's ability to carry out a response action reasonably associated with the enrolled site.

3. All of the following shall not be enrolled in the land recycling program:

a. Property for which corrective action is needed or has been taken for petroleum underground storage tanks under chapter 455B, division IV, part 8. However, such property may be enrolled to address hazardous substances other than petroleum from underground storage tanks.

b. Property which has been placed or is proposed to be included on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

c. An animal feeding operation structure as defined in section 459.102.

4. If the site cleanup assessment demonstrates that the release on the enrolled site has affected additional property, all property which is shown to be affected by the release on the enrolled site shall be enrolled in addition to the enrolled site.

5. Following enrollment of the property in the land recycling program, the participant shall proceed on a timely basis to carry out response actions in accordance with the rules implementing this chapter.

6. Once the participant has demonstrated the affected area is in compliance with the standards described in subchapter 2, the department shall proceed on a timely basis and issue a no further action letter pursuant to section 455H.301.

7. The participant may withdraw the enrolled site from further participation in the land recycling program at any time upon written notice to the department. Any participant who withdraws an enrolled site from further participation in the program shall not be entitled to any refund or credit for the enrollment fee paid pursuant to this section and shall, subject to the limitation on fees in subsection 2, be liable for any costs actually incurred by the department. The department or court may determine that a participant who withdraws prior to completion of all response actions identified for the enrolled site forfeits all benefits and immunities provided by this chapter as to the enrolled site. If it is deemed necessary and appropriate by the department, a participant who withdraws shall stabilize the enrolled site in accordance with a plan approved by the department.

97 Acts, ch 127, §7

SUBCHAPTER 2

RESPONSE ACTION STANDARDS AND REVIEW PROCEDURES

455H.201 Cleanup standards.

1. A participant carrying out a response action shall take such response actions as necessary to assure that conditions in the affected area comply with any of the following, as applicable:

a. Background standards established pursuant to section 455H.202.

b. Statewide standards established pursuant to section 455H.203.

c. Site-specific cleanup standards established pursuant to section 455H.204.

Any remediation standard which is applied must provide for the protection of the public health and safety and the environment.

2. A participant may use a combination of these standards to implement a site remediation plan and may propose to use the site-specific cleanup standards whether or not efforts have been made to comply with the background or statewide standards.

3. Until rules setting out requirements for background standards, statewide standards, or site-specific cleanup standards are finally adopted by the commission and effective, participants may utilize site-specific cleanup standards for any hazardous substance utilizing the procedures set out in the department's rules implementing risk-based corrective action for underground storage tanks and, where relevant, the United States environmental protection agency's guidance regarding risk assessment for superfund sites.

4. The standards may be complied with through a combination of response actions that may include, but are not limited to, treatment, removal, technological or institutional controls, and natural attenuation and other natural mechanisms, and can include the use of innovative or other demonstrated measures.

97 Acts, ch 127, §8

455H.202 Background standards.

1. Methods to identify background standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee.

2. The demonstration that the affected area meets the background standard shall be documented by the participant in the following manner:

a. Compliance with the background standard shall be demonstrated by collection and analysis of representative samples from environmental media of concern.

b. A final report that documents compliance with the background standard shall be submitted to the department and shall include, as appropriate, all of the following:

(1) A description of procedures and conclusions of the site investigation to characterize the nature, extent, direction, volume, and composition of hazardous substances.

(2) The basis for selecting environmental media of concern, descriptions of removal or decontamination procedures performed in remediation, and summaries of sampling methodology and analytical results which demonstrate that the background standard has been complied with.

(3) The basis for determining the background levels.

97 Acts, ch 127, §9

455H.203 Statewide standards.

1. Statewide standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee. The standards must provide for the protection of the public health and safety and the environment.

2. In establishing these standards, all of the following shall be considered:

a. Separate standards shall be established for hazardous substances in soil, in groundwater which is a protected groundwater source, and in groundwater which is not a protected groundwater source.

b. In groundwater which is a protected groundwater source, the standards shall be the maximum contaminant levels established pursuant to the department's drinking water standards or, for contaminants that do not have established drinking water standards, the standards shall be derived in a manner comparable to that used for establishment of drinking water standards. An affected area shall not be required to be cleaned up to concentration levels below or more restrictive than background levels.

c. In groundwater which is not a protected groundwater source, the standards shall be no more protective than a standard reflecting an increased cancer risk of one in ten thousand from exposure to contaminants that are known or probable human carcinogens; a standard reflecting a noncancer health risk of one-tenth from exposure to contaminants that are possible human carcinogens; or a standard reflecting a noncancer health risk of one from exposure to contaminants that are not known, probable, or possible human carcinogens. An affected area shall not be required to be cleaned up to levels below or more restrictive than background levels.

d. In soil, the standards shall be no more protective than a standard reflecting an increased cancer risk of five in one million from exposure to contaminants that are known or probable human carcinogens; a standard reflecting a noncancer health risk of one-tenth from exposure to contaminants that are possible human carcinogens; or a standard reflecting a noncancer health risk of one from exposure to contaminants that are not known, probable, or possible human carcinogens. An affected area shall not be required to be cleaned up to concentration levels below or more restrictive than background levels.

e. Statewide standards specified in paragraphs *"b"*, *"c"*, and *"d"* assume exposure to individual contaminants in groundwater or soil. If more than one contaminant exists in a medium or exposure to contaminants can occur from more than one medium, standards shall be adjusted to reflect a cumulative increased cancer risk that is no less protective than one in ten thousand and a cumulative noncancer health risk to the same target human organ that is no less protective than one. Risks associated with background levels of contaminants shall not be included in the cumulative risk determination.

3. The demonstration that the affected area meets the statewide standard shall be documented by the participant, as appropriate, in the following manner:

a. Compliance with cleanup levels shall be demonstrated by collection and analysis of representative samples from the environmental me-

dium of concern.

b. A final report that documents compliance with the statewide standard shall be submitted to the department which includes, as appropriate, the descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, rate of movement at the site and cumulative effects, if any, volume, composition, and concentration of hazardous substances in environmental media, the basis for selecting environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, descriptions of removal or treatment procedures performed in remediation, and summaries of sampling methodology and analytical results which demonstrate that hazardous substances have been removed or treated to applicable levels.

97 Acts, ch 127, §10; 2002 Acts, ch 1091, §1
Subsection 2 amended

455H.204 Site-specific cleanup standards.

1. Procedures to establish site-specific cleanup standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee. Site-specific cleanup standards must provide for the protection of the public health and safety and the environment.

2. Site-specific cleanup standards and appropriate response actions shall take into account all of the following provided, however, that an affected area shall not be required to be cleaned up to levels below or more restrictive than background levels, and in groundwater which is not a protected groundwater source, to a concentration level which presents an increased cancer risk of less than one in ten thousand:

a. The most appropriate exposure scenarios based on current or probable future residential, commercial, industrial, or other industry-accepted scenarios.

b. Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

c. Affected human or environmental receptors and exposure scenarios based on current or probable projected use scenarios.

d. Risk-based corrective action assessment principles which identify risks presented to the public health and safety or the environment by each released hazardous substance in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with the American society for testing of materials' standards applied to nonpetroleum and petroleum hazardous substances.

e. Other relevant site-specific risk-related factors such as the feasibility of available technologies, existing background levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of technological and institutional controls.

f. Cleanup shall not be required in an affected area that does not present any of the following:

(1) An increased cancer risk from a single contaminant at the point of exposure of five in one million for residential areas or one in ten thousand for nonresidential areas.

(2) An increased cancer risk from multiple contaminants or multiple routes of exposure greater than one in ten thousand.

(3) An increased noncancer health risk from a single contaminant at the point of exposure of greater than one, or greater than one-tenth for possible carcinogens.

(4) An increased noncancer risk to the same target human organ from multiple contaminants or multiple routes of exposure greater than one.

3. The concentration of a hazardous substance in an environmental medium of concern at an affected area where the site-specific standard has been selected shall not be required to meet the site-specific standard if the site-specific standard is numerically less than the background level. In such cases, the background level shall apply.

4. Any participant electing to comply with site-specific standards established by this section shall submit, as appropriate, all of the following reports and evaluations for review and approval by the department:

a. A site-specific risk assessment report and a cleanup plan. The site-specific risk assessment report must include, as appropriate, all of the following:

(1) Documentation and descriptions of procedures and conclusions from the site investigation to characterize the nature, extent, direction, rate of movement, volume, and composition of hazardous substances.

(2) The concentration of hazardous substances in environmental media of concern, including summaries of sampling methodology and analytical results.

(3) A fate and transport analysis to demonstrate that no exposure pathways exist.

If no exposure pathways exist, a risk assessment report and a cleanup plan are not required and no remedy is required to be proposed or completed.

b. A final report demonstrating compliance with site-specific cleanup standards has been completed in accordance with the cleanup plan.

c. This section does not preclude a participant from submitting a site-specific risk assessment report and cleanup plan at one time to the department for review.

5. Upon submission of either a site-specific risk assessment report or a cleanup plan to the department, the department shall notify the participant of any deficiencies in the report or plan in a timely manner.

6. Owners and operators of underground storage tanks other than petroleum underground storage tanks, aboveground storage tanks, and pipelines which contain or have contained petroleum shall comply with the corrective action rules issued pursuant to chapter 455B, division IV, part 8, to satisfy the requirements of this section.

97 Acts, ch 127, §11; 2002 Acts, ch 1091, §2
Subsection 2, paragraph f amended

455H.205 Variances.

1. A participant may apply to the department for a variance from any applicable provision of this chapter.

2. The department may issue a variance from applicable standards only if the participant demonstrates all of the following:

a. The participant demonstrates either of the following:

(1) It is technically infeasible to comply with the applicable standards.

(2) The cost of complying with the applicable standards exceeds the benefits.

b. The proposed alternative standard or set of standards in the terms and conditions set forth in the application will result in an improvement of environmental conditions in the affected area and ensure that the public health and safety will be protected.

c. The establishment of and compliance with the alternative standard or set of standards in the terms and conditions is necessary to promote, protect, preserve, or enhance employment opportunities or the reuse of the enrolled site.

3. If requested by a participant, the department may issue a variance from any other provision of this chapter if the department determines that the variance would be consistent with the declaration of policy of this chapter and is reasonable under the circumstances.

97 Acts, ch 127, §12

455H.206 Institutional and technological controls.

1. In achieving compliance with the cleanup standards under this chapter, a participant may use an institutional or technological control. The director may require reasonable proof of financial assurance where necessary to assure a technological control remains effective.

2. An institutional or technological control includes any of the following:

a. A state or federal law or regulation.

b. An ordinance of any political subdivision of the state.

c. A contractual obligation recorded and executed in a manner satisfying chapter 558.

d. A control which the participant can demonstrate reduces or manages the risk from a release through the period necessary to comply with the applicable standards.

e. An environmental protection easement.

3. If the department's determination of compliance with applicable standards pursuant to subchapter 3 is conditioned on a restriction in the use of any real estate in the affected area, the participant must utilize an institutional control. If the restriction in use is to limit the use to nonresidential use, the participant must use an environmental protection easement as the institutional control. Environmental protection easements may also be used to implement other institutional or technological controls. An environmental protection easement must be granted by the fee title owners of the relevant real estate. The participant shall furnish to the department abstracts of title and other documents sufficient to enable the department to determine that the easements will be enforceable. An environmental protection easement shall be in a form provided by rule of the department. An environmental protection easement must provide all of the following:

a. The easement names the state, acting through the department, as grantee.

b. The easement identifies the activity either being restricted or required through the institutional or technological control.

c. The easement runs with the land, binding the owner of the land and the owner's successors and assigns.

d. The easement shall include an acknowledgment by the director of acceptance of the easement by the department.

e. The easement is filed in the office of the recorder of the county in which the real estate is located and in any central registry which may be created by the director.

4. If the use of an institutional or technological control is confirmed in a no further action letter issued pursuant to section 455H.301, the institutional or technological control may be enforced in district court by the department, a political subdivision of this state, the participant, or any successor in interest to the participant. An environmental protection easement granted pursuant to subsection 3 shall be enforceable in perpetuity notwithstanding sections 614.24 through 614.38. After the recording of the easement, each instrument transferring an interest in the area affected by the easement shall include a specific reference to the recorded easement. If a transfer instrument fails to include a specific reference to the recorded easement, the transferor may lose any of the benefits provided by this chapter.

5. An institutional or technological control, except for an environmental protection easement, may be removed, discontinued, modified, or terminated by the participant or a successor in interest to the participant upon a demonstration that the control no longer is required to assure compliance with the applicable standard. Upon review and approval by the department, the department shall

issue an amendment to its no further action letter approving the removal, discontinuance, modification, or termination of an institutional or technological control which is no longer needed.

6. An environmental protection easement granted pursuant to subsection 3 may be released or amended only by a release or amendment of the easement executed by the director and filed with the county recorder. The department may determine that any person who intentionally violates an environmental protection easement or other technological or institutional control contained in a no further action letter loses any of the benefits provided by this chapter as to the affected area. In the event the technological or institutional controls fail to achieve compliance with the applicable standards, the participant shall undertake an additional response action sufficient to demonstrate to the department compliance with applicable standards. Failure to proceed in a timely manner in performing the additional response action may result in termination of the participant's enrollment in the land recycling program.

97 Acts, ch 127, §13

455H.207 Response action — permitting requirements.

1. A participant who would be otherwise required to obtain a permit, license, plan approval, or other approval from the department under any provision of the Code may obtain a consolidated standards permit for the activities in connection with the response action for which the permit, license, plan approval, or other approval is required. The consolidated standards permit shall encompass all the substantive requirements applicable to those activities under any applicable federal or state statute, rule, or regulation and any agreements the director had entered into with the United States environmental protection agency under those statutes, rules, or regulations.

2. In addition to any other notice or hearing requirements of relevant chapters, at least ten days prior to issuing a permit under this section, the director shall publish a notice of the proposed permit which contains a general description of the activities to be conducted in the affected area under the permit. The notice shall be published in the official newspaper, as designated by the county board of supervisors pursuant to section 349.1, of the county in which the site is located. A person may submit written or oral comments on or objections to the permit. After considering the comments and objections, the director shall approve or deny the application for the consolidated standards permit.

3. A participant issued a consolidated standards permit under this section in connection with a particular activity is not required to obtain a permit, license, plan approval, or other approval from the department in connection with any activity under the applicable provisions of the Code or rules. A participant who obtains a consolidated standards permit for a particular activity is deemed to be in compliance with the requirement to obtain from the department a permit, license, plan approval, or other approval in connection with the activity under the applicable provisions of the Code or rules. A violation of the conditions of the consolidated standards permit shall be deemed to be a violation of the applicable statute, rule, or regulation under which approval of activities in connection with a response action would have been required and is subject to enforcement in the same manner and to the same extent as a violation of the applicable statute, rule, or regulation would have been.

97 Acts, ch 127, §14

455H.208 Public participation.

Public participation shall be a required component of the process for participants for all sites enrolled in the land recycling program. The required level of public participation shall vary depending on the conditions existing at a site. At a minimum, the department shall notify all adjacent property owners, occupants of adjacent property, and the city or county in which the property is located of a site's enrollment in the land recycling program and of the scope of work described in the participation agreement, and give the notified parties the opportunity to obtain updates regarding the status of activities relating to the enrolled site in the land recycling program. The notification shall not be required before the participant has had the opportunity to collect basic information characterizing the nature and extent of the contamination, but the notification shall be required in a timely manner allowing appropriate parties to have input in the formulation of the response action. If contaminants from the enrolled site have migrated off the enrolled site or are likely to migrate off the enrolled site, as determined by the department, the department shall notify by direct mailing all potentially affected parties, including the city or county in which the potentially affected property is located, and officials of any potentially impacted public water supply and the notified parties shall be given opportunity to comment on proposed response actions. The department may require the participant of an enrolled site to publish public notice in a local newspaper if widespread interest in the site exists or is likely to exist as determined by the department. The department shall consider reasonable comments from potentially affected parties in determining whether to approve or disapprove a proposed response action or site closure.

2002 Acts, ch 1091, §3

NEW section

SUBCHAPTER 3

EFFECTS OF PARTICIPATION

455H.301 No further action letters.

1. Once a participant demonstrates that an affected area meets applicable standards and the department has certified that the participant has met all requirements for completion, the department shall promptly issue a no further action letter to the participant.

2. A no further action letter shall state that the participant and any protected party are not required to take any further action at the site related to any hazardous substance for which compliance with applicable standards is demonstrated by the participant in accordance with applicable standards, except for continuing requirements specified in the no further action letter. If the participant was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, a no further action letter may provide that a further response action may be required, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare. A protected party who was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, may be required by the department to conduct a further response action, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare.

If a person transfers property to an affiliate in order for that person or the affiliate to obtain a benefit to which the transferor would not otherwise be eligible under this chapter or to avoid an obligation under this chapter, the affiliate shall be subject to the same obligations and obtain the same level of benefits as those available to the transferor under this chapter.

A no further action letter shall be void if the department demonstrates by clear, satisfactory, and convincing evidence that any approval under this chapter was obtained by fraud or material misrepresentation, knowing failure to disclose material information, or false certification to the department.

3. The department shall provide, upon request, a no further action letter as to the affected area to each protected party.

4. The department shall condition the no further action letter upon compliance with any institutional or technological controls relied upon by the participant to demonstrate compliance with the applicable standards.

5. A no further action letter shall be in a form recordable in county real estate records as provided in chapter 558.

97 Acts, ch 127, §15

455H.302 Covenants not to sue.

Upon issuance of a no further action letter pursuant to section 455H.301, a covenant not to sue arises by operation of law. The covenant releases the participant and each protected party from liability to the state, in the state's capacity as a regulator administering environmental programs, to perform additional environmental assessment, remedial activity, or response action with regard to the release of a hazardous substance for which the participant and each protected party has complied with the requirements of this chapter.

97 Acts, ch 127, §16

455H.303 Cessation of statutory liability.

Upon issuance of a no further action letter pursuant to section 455H.301, except as provided in that section, the participant and each protected party shall no longer have liability under chapter 455A, under chapter 455B other than liability for petroleum underground storage tanks, or under chapters 455D and 455E to the state or to any other person as to any condition at the affected area with regard to hazardous substances for which compliance with applicable standards was demonstrated by the participant in accordance with this chapter and for which the department has provided a certificate of completion.

97 Acts, ch 127, §17

455H.304 Limitation of liability.

1. As used in this section, unless the context requires otherwise:

a. "Environmental claim" means a civil action for damages for environmental harm and includes a civil action under this chapter for recovery of the costs of conducting a response action, but does not include a civil action for damages for a breach of contract or another agreement between persons or for a breach of a warranty that exists pursuant to the Code or common law of this state.

b. "Environmental harm" means injury, death, loss, or threatened loss to a person or property caused by exposure to or the release of a hazardous substance.

2. Except as may be required in accordance with obligations incurred pursuant to participation in the land recycling program established in this chapter, all of the following, or any officer or employee thereof, are relieved of any further liability for any environmental claim resulting from the presence of hazardous substances at, or the release of hazardous substances from, an enrolled site where a response action is being or has been conducted under this chapter, unless an action or omission of the person, state agency, political subdivision, or public utility, or an officer or employee thereof, constitutes willful or wanton misconduct or intentionally tortious conduct:

a. A contractor working for another person in conducting any response action under this chapter.

b. A state agency or political subdivision that is conducting a voluntary response action or a maintenance activity on lands, easements, or rights-of-way owned, leased, or otherwise held by the state agency or political subdivision.

c. A state agency when an officer or employee of the state agency provides technical assistance to a participant undertaking a response action under this chapter or rules adopted pursuant to this chapter, or to a contractor, officer, or employee of the agency, in connection with the response action.

d. A public utility, as defined in section 476.1, which is performing work in any of the following:

(1) An easement or right-of-way of a public utility across an affected area where a response action is being or has been conducted and where the public utility is constructing or has main or distribution lines above or below the surface of the ground for purposes of maintaining the easement or right-of-way for construction, repair, or replacement of any of the following:

(a) Main or distribution lines above or below the surface of the ground.

(b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.

(c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.

(2) An affected area where a response action is being conducted that is necessary to establish or maintain utility service to the property, including, without limitation, the construction, repair, or replacement of any of the following:

(a) Main or distribution lines above or below the surface of the ground.

(b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.

(c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.

3. This section does not create, and shall not be construed to create, a new cause of action against or substantive legal right against a person, state agency, political subdivision, or public utility, or an officer or employee thereof.

4. This section does not affect, and shall not be construed as affecting, any immunities from civil liability or defenses established by another section of the Code or available at common law, to which a person, state agency, political subdivision, or public utility, or officer or employee thereof, may be entitled under circumstances not covered by this section.

97 Acts, ch 127, §18

455H.305 Participation not deemed an admission of liability.

1. Enrolling a site pursuant to this chapter or participating in a response action does not constitute an admission of liability under the statutes of this state, the rules adopted pursuant to the statutes, or the ordinances and resolutions of a political subdivision, or an admission of civil liability under the Code or common law of this state.

2. The fact that a person has become a participant in a response action under this chapter is not admissible in any civil, criminal, or administrative proceeding initiated or brought under any law of this state other than to enforce this chapter.

3. All information, documents, reports, data produced, and any sample collected as a result of enrolling any property under this chapter are not admissible against the person undertaking the response action, and are not discoverable in any civil or administrative proceeding against the participant undertaking the response action except in a judicial or administrative proceeding initiated to enforce this chapter in connection with an alleged violation thereof. This prohibition against admissibility does not apply to any person whose covenant not to sue has been revoked under this chapter.

4. Enrolling a site pursuant to this chapter or participating in a response action shall not be construed to be an acknowledgment that the conditions at the affected area identified and addressed by the response action constitute a threat or danger to public health or safety or the environment.

97 Acts, ch 127, §19

455H.306 Liability protections.

The protections from liability afforded under this chapter shall be in addition to the exclusions to any liability protections afforded participants under any other provision of the Code.

97 Acts, ch 127, §20

455H.307 Liability — new release — condition outside affected area.

Protections afforded in this chapter shall not relieve a person from liability for a release of a hazardous substance occurring at the enrolled site after the issuance of a no further action letter or from liability for any condition outside the affected area addressed in the cleanup plan and no further action letter.

97 Acts, ch 127, §21

455H.308 Relationship to federal law.

The liability protection and immunities afforded under this chapter extend only to liability or potential liability arising under state law. It is not intended to provide any relief as to liability or potential liability arising under federal law. This section shall not be construed as precluding any agreement with a federal agency by which it agrees to provide liability protection based on participation and completion of a cleanup plan under this chapter.

97 Acts, ch 127, §22

455H.309 Incremental property taxes.

To encourage economic development and the recycling of contaminated land to promote the purposes of this chapter, cities and counties may provide by ordinance that the costs of carrying out response actions under this chapter are to be reimbursed, in whole or in part, by incremental property taxes over a six-year period. A city or county which implements the option provided for under this section shall provide that taxes levied on property enrolled in the land recycling program under this chapter each year by or for the benefit of the state, city, county, school district, or other taxing district shall be divided as provided in section 403.19, subsections 1 and 2, in the same manner as if the enrolled property was taxable property in an urban renewal project. Incremental property taxes collected under this section shall be placed in a special fund of the city or county. A participant shall be reimbursed with moneys from the special fund for costs associated with carrying out a response action in accordance with rules adopted by the commission. Beginning in the fourth of the six years of collecting incremental property taxes, the city or county shall begin decreasing by twenty-five percent each year the amount of incremental property taxes computed under this section.

97 Acts, ch 127, §23

SUBCHAPTER 4

LAND RECYCLING FUND

455H.401 Land recycling fund.

1. A land recycling fund is created within the state treasury under the control of the commission. Moneys received from fees, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the fund. Any unexpended balance in the land recycling fund at the end of each fiscal year shall be retained in the fund, notwithstanding section 8.33.

2. The commission may use the land recycling fund to provide for all of the following:

a. Financial assistance to political subdivisions of the state for activities related to an enrolled site.

b. Financial assistance and incentives for qualifying enrolled sites.

c. Funding for any other purpose consistent with this chapter and deemed appropriate by the commission.

97 Acts, ch 127, §24

SUBCHAPTER 5

MISCELLANEOUS PROVISIONS

455H.501 Rulemaking. Repealed by 99 Acts, ch 114, § 54.

455H.502 Technical advisory committee. Repealed by 99 Acts, ch 114, § 54.

455H.503 Recordkeeping requirements.

The director shall maintain a record of the affected areas or portion of affected areas for which no further action letters were issued under section 455H.301 and which involve institutional or technological controls that restrict the use of any of the enrolled sites to comply with applicable standards. The records pertaining to those sites shall indicate the applicable use restrictions.

97 Acts, ch 127, §27

455H.504 Transferability of participation benefits.

A no further action letter, a covenant not to sue, and any agreement authorized to be entered into and entered into under this chapter and the rules adopted pursuant to this chapter may be transferred by the participant or a later recipient to any other person by assignment or in conjunction with the acquisition of title to the enrolled site to which the document applies.

97 Acts, ch 127, §28

455H.505 Emergency response.

The provisions of this chapter shall not prevent or impede the immediate response of the department or a participant to an emergency which involves an imminent or actual release of a hazardous substance which threatens public health and safety or the environment. The emergency response action taken by the participant shall comply with the provisions of this chapter and the participant shall not be prejudiced by the mitigation measures undertaken to that point.

97 Acts, ch 127, §29

455H.506 Interim response.

The provisions of this chapter shall not prevent or impede a participant from undertaking mitigation measures to prevent significant impacts on human health or the environment. A response action for the site shall not be prejudiced by the mitigation measures undertaken prior to enrolling a property in the land recycling program. The effects of any interim mitigation measure shall be taken into account in the department's evaluation of the participant's compliance with applicable standards.

97 Acts, ch 127, §30

455H.507 Transition from existing programs.

Except for any enrolled site which is the subject of an enforcement action by an agency of the state or the federal government prior to July 1, 1997, for any property where actions similar to a response action have commenced pursuant to any provision of chapter 455B prior to July 1, 1997, the person

carrying out the action shall elect within ninety days following the final adoption of rules implementing this chapter to either continue to proceed in accordance with the laws and rules in effect prior to July 1, 1997, or to proceed pursuant to this chapter.

97 Acts, ch 127, §31

455H.508 Participant protection.

A participant shall not be subject to either a civil enforcement action by an agency of this state or a political subdivision of this state, or an action filed pursuant to section 455B.112 regarding any release, response action, or condition which is the subject of the response action. This protection is contingent on the participant proceeding on a due and timely basis to carry out the response action.

97 Acts, ch 127, §32

455H.509 Removal of a site from the registry listing.

An enrolled site listed on the registry of confirmed hazardous waste or hazardous substance disposal sites, established pursuant to section 455B.426, which has completed a response action as to the conditions which led to its original listing on the registry, shall be removed from the registry listing, once a letter of no further action has been issued pursuant to section 455H.301.

97 Acts, ch 127, §33

455H.510 Relationship to federal programs.

The provisions of this chapter shall not prevent the department from enforcing both specific numerical cleanup standards and monitoring of compliance requirements specifically required to be enforced by the federal government as a condition of the receipt of program authorization, delegation, primacy, or federal funds.

97 Acts, ch 127, §34

455H.511 Federal stringency.

Any rules or standards established pursuant to this chapter shall be no more stringent than those required under any comparable federal law or regulation.

97 Acts, ch 127, §35

CHAPTER 455I

AGRICULTURAL DRAINAGE WELLS

Transferred to chapter 460; 2002 Acts, ch 1137, §68, 71;
2002 Acts, 2nd Ex, ch 1003, §260, 262
See Code editor's note at the end of Vol IV

CHAPTER 455J

MANURE STORAGE INDEMNITY FUND

Transferred to chapter 459; 2002 Acts, ch 1137, §68, 71;
2002 Acts, 2nd Ex, ch 1003, §260, 262
See Code editor's note to §8.55 at the end of Vol IV
For amendment striking §455J.1, subsections 1 – 5, 7, and 8,
see 2002 Acts, ch 1137, §53, 71

CHAPTER 455K

ENVIRONMENTAL AUDIT PRIVILEGE AND IMMUNITY

455K.1 Title.
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455K.11 Summary.
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455K.1 Title.

This chapter shall be known and cited as the *"Environmental Audit Privilege and Immunity Act"*.

98 Acts, ch 1109, §1

455K.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of natural resources created under section 455A.2 or its delegated authority.

2. *"Environmental audit"* means a voluntary evaluation of a facility or operation, of an activity at a facility or operation, or of an environmental management system at a facility or operation when the facility, operation, or activity is regulated under state or federal environmental laws, rules, or permit conditions, conducted by an owner or operator, an employee of the owner or operator, or an independent contractor retained by the owner or operator that is designed to identify historical or current noncompliance with environmental laws, rules, ordinances, or permit conditions, discover environmental contamination or hazards, remedy noncompliance or improve compliance with environmental laws, or improve an environmental management system. Once notification is given to the department, an environmental audit shall be completed within a reasonable time not to exceed six months unless an extension is approved by the department based on reasonable grounds.

3. *"Environmental audit report"* means a document or set of documents generated and developed for the primary purpose and in the course of or as a result of conducting an environmental audit. An *"environmental audit report"* includes supporting information which may include, but is not limited to, the report document itself, observations, samples, analytical results, exhibits, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, surveys, implementation plans, interviews, discussions, correspondence, and communications related to the environmental audit. An *"environmental audit report"* may include any of the following components:

a. An executive summary prepared by the person conducting the environmental audit which may include the scope of the environmental audit, the information gained in the environmental audit, conclusions, recommendations, exhibits, and appendices.

b. Memoranda and documents analyzing portions or all of the report and discussing implementation issues.

c. An implementation plan which addresses correcting past noncompliance, improving current compliance or an environmental management system, or preventing future noncompliance.

d. Periodic updates documenting progress in completing the implementation plan.

4. *"Inquiring party"* means any party appearing before a court or a presiding officer in an administrative proceeding seeking to review or obtain an in camera review of an environmental audit report.

5. *"Owner or operator"* means the person or entity who caused the environmental audit to be undertaken.

6. *"Privilege"* means the protections provided in regard to an environmental audit report as provided in this chapter.

98 Acts, ch 1109, §2

455K.3 Privilege.

1. Material included in an environmental audit report generated during an environmental audit conducted after July 1, 1998, is privileged and confidential and is not discoverable or admissible as evidence in any civil or administrative proceeding, except as otherwise provided in this chapter. The environmental audit report shall be labeled "ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT". Failure to label each document within the report does not constitute a waiver of the environmental audit privilege or create a presumption that the privilege does or does not apply.

2. A person shall not be compelled to testify in regard to or produce a document included in an environmental audit report in any of the following circumstances:

a. If the testimony or document discloses any component listed in section 455K.2, subsection 3, that was made as part of the preparation of an environmental audit report and that is addressed in a privileged part of an environmental audit report.

b. If the person is any of the following:

(1) A person who conducted any portion of the environmental audit but did not personally observe the physical events of an environmental violation.

(2) A person to whom the results of the environmental audit report are disclosed under section 455K.4, subsection 2.

(3) A custodian of the environmental audit report.

3. A person who conducts or participates in the preparation of an environmental audit report and who has observed physical events of an environmental violation may testify about those events but shall not be compelled to testify about or produce documents related to the preparation of or any privileged part of an environmental audit or any component listed in section 455K.2, subsection 3.

4. An employee of a state agency or other governmental employee shall not request, review, or otherwise use an environmental audit report dur-

ing an agency inspection of a regulated facility or operation, or an activity of a regulated facility or operation.

5. A party asserting the privilege under this section has the burden of establishing the applicability of the privilege.

6. The privilege provided in this section is in addition to the privilege provided to assistance programs pursuant to section 455B.484A.

98 Acts, ch 1109, §3

455K.4 Waiver of privilege — disclosure.

1. The privilege described in section 455K.3 shall not apply to the extent that the privilege is expressly waived in writing by the owner or operator who prepared the environmental audit report or caused the report to be prepared.

2. Disclosure of an environmental audit report or any other information generated by an environmental audit does not waive the privilege established in section 455K.3 if the disclosure meets any of the following criteria:

a. The disclosure is made to address or correct a matter raised by the environmental audit and the disclosure is made to any of the following:

(1) A person employed by the owner or operator, including temporary and contract employees.

(2) A legal representative of the owner or operator.

(3) An officer or director of the regulated facility or operation or a partner of the owner or operator.

(4) An independent contractor retained by the owner or operator.

b. The disclosure is made under the terms of a confidentiality agreement between any person and the owner or operator of the audited facility or operation.

3. A party to a confidentiality agreement described in subsection 2, paragraph *"b"*, who violates that agreement is liable for damages caused by the disclosure and for any other penalties stipulated in the confidentiality agreement.

4. Information that is disclosed under subsection 2, paragraph *"b"*, is confidential and is not subject to disclosure under chapter 22. A governmental entity, governmental employee, or governmental official who discloses information in violation of this subsection is subject to the penalty provided in section 22.6.

5. The protections provided by federal or state law shall be afforded to individuals who disclose information to law enforcement authorities.

6. The provisions of this chapter shall not abrogate the protections provided by federal and state law regarding confidentiality and trade secrets.

98 Acts, ch 1109, §4

455K.5 Required disclosure.

1. A court or a presiding officer in an administrative hearing may require disclosure of a portion of an environmental audit report in a civil or administrative proceeding if the court or presiding officer affirmatively determines, after an in camera review, that any of the following exists:

a. The privilege is asserted for a fraudulent purpose.

b. The portion of the environmental audit report is not subject to the privilege under section 455K.6.

c. The portion of the environmental audit report shows evidence of noncompliance with a state or federal environmental or other law, rule, or permit condition and appropriate efforts to achieve compliance with the law or ordinance were not promptly initiated and pursued with reasonable diligence after discovery of noncompliance.

d. The portion of the environmental audit report shows clear and convincing evidence of substantial actual personal injury, which information is not otherwise available.

e. The portion of the environmental audit report shows a clear and present danger to the public health or the environment.

2. A party seeking disclosure under this section has the burden of proving that subsection 1 applies.

3. A decision of a presiding officer in an administrative hearing under subsection 1 may be directly appealed to the district court without disclosure of the environmental audit report to any person unless so ordered by the court.

4. A determination of a court under this section is subject to interlocutory appeal to an appropriate appellate court.

5. If a court finds that a person claiming privilege under this chapter intentionally claimed the privilege for material not privileged as provided in section 455K.6, the person is subject to a fine not to exceed one thousand dollars.

6. Privilege provided in this chapter does not apply if an owner or operator of the facility or operation has been found in a civil or administrative proceeding to have committed serious violations in this state that constitute a pattern of continuous or repeated violations of environmental laws, administrative rules, or permit conditions, that were due to separate and distinct events giving rise to the violations within the three-year period prior to the date of disclosure.

98 Acts, ch 1109, §5

455K.6 Materials not privileged.

1. The privilege described in this chapter does not apply to any of the following:

a. A document, communication, datum, report, or other information required by a regulatory agency to be collected, developed, retained, or reported under a state or federal environmental law, rule, or permit condition.

b. Information obtained by observation, sampling, or monitoring by a regulatory agency or a

regulatory agency's authorized designee.

c. Information obtained from a source not involved in the preparation of the environmental audit report.

2. This section does not limit the right of a person to agree to conduct an environmental audit and disclose an environmental audit report.

98 Acts, ch 1109, §6

455K.7 Review of privileged documents.

1. The privileges created in this chapter shall not apply to criminal investigations or proceedings. An environmental audit report, supporting documents, and testimony relating thereto may be obtained by a prosecutor's subpoena pursuant to the rules of criminal procedure. If an environmental audit report is obtained, reviewed, or used in a criminal investigation or proceeding, the administrative and civil evidentiary privilege established in this chapter is not waived or made inapplicable for any purpose other than for the criminal investigation or proceeding.

2. Notwithstanding the privilege established in this chapter, the department may review information in an environmental audit report, but such review does not waive or make the administrative and civil evidentiary privilege inapplicable to the report. A regulatory agency shall not adopt a rule or impose a condition that circumvents the purpose of this chapter.

3. If information is required to be made available to the public by operation of a specific state or federal law, rule, or permit condition, the governmental authority shall notify the person claiming the privilege of the potential for public disclosure prior to obtaining such information under subsection 1 or 2.

4. If privileged information is disclosed under subsection 2 or 3, on the motion of a party, a court or the presiding officer in an administrative hearing shall suppress evidence offered in any civil or administrative proceeding that arises or is derived from review, disclosure, or use of information obtained under this section if the review, disclosure, or use is not authorized under section 455K.6. A party having received information under subsection 2 or 3 has the burden of proving that the evidence offered did not arise and was not derived from the review of privileged information.

98 Acts, ch 1109, §7

455K.8 Voluntary disclosure of environmental violation — immunity.

1. An owner or operator is eligible for immunity under this section from the time the department receives official notification from the owner or operator of a scheduled environmental audit. An owner or operator is immune from any administrative or civil penalty associated with the information disclosed if the owner or operator makes a prompt voluntary disclosure to the department regarding an environmental violation which is discovered through the environmental audit. The owner or operator creates a rebuttable presumption that the disclosure is voluntary by meeting the criteria provided in subsection 2 at the time of disclosure. To rebut the presumption that a disclosure is voluntary, the department or other party has the burden of proving that the disclosure was not voluntary. Immunity is not provided if the violations of state or federal environmental law, rule, or permit condition are intentional or if the violations of state or federal law, rule, or permit condition resulted in substantial actual injury or imminent and substantial risk of injury to persons, property, or the environment.

2. The disclosure of information is voluntary if all of the following circumstances exist:

a. The disclosure arises out of an environmental audit and relates to privileged information as provided in section 455K.3.

b. The person making the disclosure uses reasonable efforts to pursue compliance and to correct the noncompliance within a reasonable period of time after completion of the environmental audit in accordance with a remediation schedule submitted to and approved by the department. If evidence shows that the noncompliance is due to the failure to obtain a permit, reasonable effort may be demonstrated by the submittal of a complete permit application within a reasonable time. Disclosure of information required to be reported by state or federal law, rule, or permit condition is not considered to be voluntary disclosure and the immunity provisions in this section are not applicable.

c. Environmental violations are identified in an environmental audit report and disclosed to the department before there is notice of a citizen suit or a legal complaint by a third party.

d. Environmental violations are identified in an environmental audit report and disclosed to the department before the environmental violations are reported by any person not involved in conducting the environmental audit or to whom the environmental audit report was disclosed.

3. If an owner or operator has not provided the department with notification of a scheduled environmental audit prior to performing the audit, a disclosure of information is voluntary if the environmental violations are identified in an environmental audit report and disclosed by certified mail to the proper regulatory agency that has jurisdiction over the disclosed violation prior to the agency's commencement of an investigation.

4. If a person is required to make a disclosure relating to a specific issue under a specific permit condition or under an order issued by the department, the disclosure is not voluntary with respect to that issue.

5. Except as provided in this section, this section does not impair the authority of the proper regulatory agency to require a technical or reme-

dial action or to order injunctive relief.

6. Upon application to the department, the time period within which the disclosed violation is corrected under subsection 2 may be extended if it is not practical to correct the noncompliance within the reasonable period of time initially approved by the department. The department shall not unreasonably withhold the grant of an extension. If the department denies an extension, the department shall provide the requesting party with a written explanation of the reasons for the denial. A request for de novo review of the department's decision may be made to the appropriate court.

7. Immunity provided under this section from administrative or civil penalties does not apply under any of the following circumstances:

a. If an owner or operator of the facility or operation has been found in a civil or administrative proceeding to have committed serious violations in this state that constitute a pattern of continuous or repeated violations of environmental laws, administrative rules, and permit conditions and that were due to separate and distinct events giving rise to the violations within the three-year period prior to the date of disclosure, or if under section 459.604 an owner or operator of a facility or operation is classified as a habitual violator.

b. If a violation of an environmental law, administrative rule, permit condition, settlement agreement, or order on consent, final order, or judicial order results in a substantial economic benefit which gives the violator a clear advantage over its business competitors.

8. In cases where the conditions of a voluntary disclosure are not met but a good faith effort was made to voluntarily disclose and resolve a violation detected in an environmental audit, the state regulatory authorities shall consider the nature and extent of any good faith effort in deciding the appropriate enforcement response and shall consider reducing any administrative or civil penalties based on mitigating factors showing that one or more of the conditions for voluntary disclosure have been met.

9. The immunity provided by this section does not abrogate the responsibility of a person as provided by applicable law to report a violation, to correct the violation, conduct necessary remediation, or respond to third-party actions. This chapter shall not be construed to confer immunity from liability in any private civil action except those actions brought pursuant to section 455B.111.

10. Information required by rule to be submitted to the department as part of a disclosure made pursuant to this section is not privileged information.

98 Acts, ch 1109, §8

455K.9 Other privileges not affected.

This chapter shall not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work product doctrine and the attorney-client privilege.

98 Acts, ch 1109, §9

455K.10 Environmental auditor training program.

A training program for and standards for certification of environmental auditors shall be developed jointly by the Iowa waste reduction center and the department. The training program shall be administered by the Iowa waste reduction center. The program shall provide training on the proper conduct of an environmental audit; local, state, and federal environmental ordinances, rules, and laws that apply to businesses in this state; and the environmental audit laws in this state. The program shall be made available to small and large business owners and operators, consulting engineers, regulatory personnel, and citizens through the community college system. A fee may be assessed for participation in the program. Upon completion of the training program, program participants may elect to be tested by the department for certification as an environmental auditor for the purposes of this chapter.

98 Acts, ch 1109, §10

455K.11 Summary.

On or before December 1 of each year, the department shall make available a summary of the number of environmental audit notices received, the violations, and the remediation status of the violations reported pursuant to this chapter during the preceding fiscal year.

98 Acts, ch 1109, §11

455K.12 Rulemaking.

The department shall adopt rules pursuant to chapter 17A necessary to administer this chapter.

98 Acts, ch 1109, §12

455K.13 Costs.

The necessary costs incurred by the department under this chapter shall be funded from appropriations made to the department from the general fund of the state.

98 Acts, ch 1109, §13

CHAPTER 456

GEOLOGICAL SURVEY

Chapter transferred from chapter 460A in Code 2003 pursuant to Code editor directive; 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.1 Geological survey created — definitions.
456.2 State geologist — qualifications.
456.3 Survey.
456.4 Investigations — collection — renting space.
456.5 Authority to enter lands.
456.6 Detailed reports.
456.7 Annual report.
456.8 Cooperation.
456.9 Publication of reports.
456.10 Distribution and sale of reports.
456.11 Maps — surveys.
456.12 Failure to furnish map.
456.13 Maps property of state — custody — copies.

456.1 Geological survey created — definitions.

A geological survey of the state is created within the department.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of natural resources created under section 455A.2.

2. *"Director"* means the director of the department.

[C97, §2497; C24, 27, 31, 35, 39, §**4549;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.1]

86 Acts, ch 1245, §1881

C93, §460A.1

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.1

Section transferred from §460A.1 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.2 State geologist — qualifications.

The director shall appoint the state geologist. The state geologist must have a degree in geology from an accredited college or university and must have at least five years of geological experience. The annual salary of the state geologist shall be determined by the director.

[R60, §180, 181; C97, §2498; C24, 27, 31, 35, 39, §**4550;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.2]

86 Acts, ch 1245, §1882

C93, §460A.2

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.2

Section transferred from §460A.2 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.3 Survey.

The state geologist shall be director of the survey and shall make a complete survey of the natural resources of the state in all their economic and scientific aspects, including the determination of the order, arrangement, dip, and comparative magnitude of the various formations; the discovery and examination of all useful deposits, including their richness in mineral contents and their fossils; and the investigation of the position, formation, and arrangement of the different ores, coals, clays, building stones, glass sands, marls, peats, mineral oils, natural gases, mineral and artesian waters, and such other minerals or other materials as may be useful, with particular regard to the value thereof for commercial purposes and their accessibility.

[R60, §182; C97, §2499; C24, 27, 31, 35, 39, §**4551;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.3]

C93, §460A.3

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.3

Section transferred from §460A.3 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.4 Investigations — collection — renting space.

The state geologist shall investigate the characters of the various soils and their capacities for agricultural purposes, the streams, and other scientific and natural resource matters that may be of practical importance and interest. For the purpose of preserving well drilling samples, rock cores, fossils, and other materials as may be necessary to carry on investigations, the state geologist shall have the authority to lease or rent sufficient space for storage of these materials with the approval of the director of the department of general services. A complete cabinet collection may be made to illustrate the natural products of the state, and the state geologist may also furnish suites of materials, rocks, and fossils for colleges and public museums within the state, if it can be done without impairing the general state collection.

[R60, §182, 185, 187; C97, §2499; C24, 27, 31, 35, 39, §**4552;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79,

81, §305.4]
C93, §460A.4
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.4
Section transferred from §460A.4 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.5 Authority to enter lands.
For the purpose of carrying on the aforesaid investigations the state geologist and the state geologist's assistants and employees shall have authority to enter and cross all lands within the state; provided that in so doing no damage is done to private property.
[C24, 27, 31, 35, 39, §**4553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.5]
C93, §460A.5
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.5
Section transferred from §460A.5 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.6 Detailed reports.
The state geologist and the state geologist's assistants shall make detailed maps and reports of counties and districts as fast as the work is completed, which reports shall embrace such geological, mineralogical, topographical, and scientific details as are necessary to make complete records thereof, which may include the necessary illustrations, maps, charts, and diagrams.
[R60, §184; C97, §2500; S13, §2500; C24, 27, 31, 35, 39, §**4554;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.6]
C93, §460A.6
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.6
Section transferred from §460A.6 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.7 Annual report.
The state geologist shall, annually, at the time provided by law, make to the governor a full report of the work in the preceding year, which report shall be accompanied by such other reports and papers as may be considered desirable for publication.
[R60, §184; C97, §2498, 2500; S13, §2500; C24, 27, 31, 35, 39, §**4555;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.7]
C93, §460A.7
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.7
Section transferred from §460A.7 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.8 Cooperation.
The state geologist shall cooperate with the United States geological survey, with other federal and state organizations, and with adjoining state surveys in the making of topographic maps and the study of geologic problems of the state when, in the opinion of the state geologist, such cooperation will result in profit to the state.
[S13, §2500; C24, 27, 31, 35, 39, §**4556;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.8]
C93, §460A.8
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.8
Section transferred from §460A.8 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.9 Publication of reports.
The state geologist may direct the preparation and publication of special reports and bulletins of educational and scientific value or containing information of immediate use to the people.
[C97, §2501; S13, §2501; C24, 27, 31, 35, 39, §**4557;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.9]
C93, §460A.9
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.9
Reports, §7A.27
Section transferred from §460A.9 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.10 Distribution and sale of reports.
All publications of the geological survey shall be distributed by the state as are other published reports of state officers when no special provision is made. When such distribution has been made the state geologist shall retain a sufficient number of copies to supply probable future demands and any copies in excess of such number shall be sold to persons making application therefor at the cost price of publication, the money thus accruing to be turned into the treasury of the state.
[C97, §2501; S13, §2501; C24, 27, 31, 35, 39, §**4558;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.10]
C93, §460A.10
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.10
Section transferred from §460A.10 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.11 Maps — surveys.
The operator of any underground mine shall comply with the following provisions relative to maps and surveys:
1. *Scale.* Each mine map shall be drawn to a scale of not more than two hundred feet to the inch.
2. *General specifications.* Each map shall show the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or operator, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the map is drawn.
3. *Boundaries and surface lines.* Every map shall correctly show the surface boundary lines of the mineral rights pertaining to each mine and all section or quarter section lines or corners within the same, the lines of town lots and streets, the tracks and sidetracks of all railroads, the location

of all wagon roads, rivers, streams, and ponds, and reservations made of the mineral.

4. *Underground conditions.* For the underground workings, the map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the location of the escape ways, and of the fan or furnace or other means of ventilation and the direction of air currents, and the location of permanent pumps, hauling engines, engine planes, abandoned works, fire walls, and standing water.

5. *Separate maps.* A separate and similar map drawn to the same scale in all cases shall be made of each layer of minerals mined in any mine in this state. A separate map shall also be made of the surface whenever the surface buildings, lines, or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them, and in such case the surface map shall be drawn upon transparent cloth or paper so that it can be laid upon the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavations of the mine and any other principal workings of the mine.

6. *Rise and dip of minerals.* Each map of underground workings shall also show by profile drawing and measurement, the last one hundred fifty feet approaching the boundary lines, showing the rise and dip of the minerals.

7. *Copies.* The original or true copies of the maps shall be kept at the office of the mine, and true copies thereof shall also be furnished the state geologist within thirty days after the completion of the same.

8. *Extensions.* An accurate extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1 of every year and the result of such survey, with the date thereof, shall be promptly and accurately entered upon the original map, and a true, correct, and accurate copy of the extended map shall be forwarded to the state geologist so as to show all changes in plan of new work in the mine, and all extensions of the old workings to the most advanced face or boundary of the workings which have been made since the last preceding survey, and the parts of the mine abandoned or worked out after the last preceding survey shall be clearly indicated and shown by colorings, which copy must be delivered to the state geologist within thirty days after the last survey is made.

9. *Abandoned mine.* When any underground mine is worked out or is about to be abandoned or indefinitely closed, the operator of the same shall make or cause to be made a completed and extended map of the mine and the result of the same shall be duly extended on all maps of the mine and copies thereof so as to show all excavations and the most advanced workings of the mine, and their exact relation to the boundary or section lines on the surface, and deliver to the state geologist a copy of the completed map.

10. *Copies furnished.* The state geologist shall provide the division of soil conservation within the department of agriculture and land stewardship a copy of each map and map extension received by the geologist under this section.

[C97, §2485; S13, §2485, 2496-m; C24, 27, 31, 35, 39, §**1245, 1351 – 1355, 1357, 1358;** C46, 50, 54, 58, 62, 66, 71, 73, §82.28, 83.14 – 83.18, 83.20, 83.21; C75, 77, 79, 81, §305.12]

C93, §460A.12

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.11

Section transferred from §460A.12 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.12 Failure to furnish map.

When the operator of any mine neglects or refuses for a period of ninety days to furnish to the state geologist the map or plan, or a copy thereof, of such mine or any extension thereof, as provided in this chapter, the state geologist shall cause to be made an accurate map or plan of such mine or extension as the case may be, at the expense of the operator. The cost shall be paid by the state and recovered from such operator. It shall be the duty of the county attorney of the county in which such mine is located, at the request of the state geologist, to bring action in the name of the state for such recovery.

[S13, §2485-a, 2496-m; C24, 27, 31, 35, 39, §**1246, 1359;** C46, 50, 54, 58, 62, 66, 71, 73, §82.29, 83.22; C75, 77, 79, 81, §305.13]

C93, §460A.13

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.12

Section transferred from §460A.13 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.13 Maps property of state — custody — copies.

The maps so delivered to the state geologist shall be the property of the state and shall remain in the custody of the state geologist. They shall be kept at the office of the geological survey and be open to examination by all persons interested in the maps; but such examination shall only be made in the presence of the state geologist or a designee, and the state geologist shall not permit any copies of the maps to be made without the written consent of the operator or the owner of the property, except as provided in section 456.11 or if the mine has been abandoned for at least five years.

[C97, §2485; S13, §2485, 2496-m; C24, 27, 31, 35, 39, §**1247, 1356;** C46, 50, 54, 58, 62, 66, 71, 73, §82.30, 83.19; C75, 77, 79, 81, §305.14]

C93, §460A.14

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.13

Section transferred from §460A.14 in Code 2003 pursuant to directive in 2002 Acts, 2nd Ex, ch 1003, §260, 262

CHAPTER 456A

REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

This chapter not enacted as a part of this title; transferred from chapter 107 in Code 1993

456A.1 Definitions.
456A.2 through 456A.5 Reserved.
456A.6 Expenses generally.
456A.7 through 456A.11 Reserved.
456A.12 Lighting by law enforcement vehicles of conservation officer.
456A.13 Officers and employees — peace officer status.
456A.14 Temporary appointments — peace officer status.
456A.15 Removal.
456A.16 Income tax refund checkoff for fish and game fund.
456A.17 Funds — restrictions.
456A.18 Report of funds.
456A.19 Expenditures.
456A.20 Limitation on nursery stock — exception.
456A.21 Forestry management and enhancement fund.
456A.22 Political activity. Repealed by 96 Acts, ch 1022, §1.
456A.23 General duties.
456A.24 Specific powers.
456A.25 Orders.
456A.26 Interpretation and limitations.
456A.27 Federal wildlife Act — assent.
456A.28 Fish restoration projects.
456A.29 Outdoor recreational and watershed projects.
456A.30 Federal assistance for outdoor recreation.
456A.31 Comprehensive plan.
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456A.33A Watershed priority.
456A.34 Limit on state's commitment.
456A.35 Applications not limited.
456A.36 Timber buyers.
456A.37 Eurasian water milfoil.

456A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.

2. *"Department"* means the department of natural resources created under section 455A.2.

3. *"Director"* means the director of the department.

[S13, §1400-p; C24, 27, §1795, 2604; C31, §1703-d2, -d3, 1795, 2604; C35, §1703-g1; C39, §**1703.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.1; 82 Acts, ch 1199, §92, 96]

86 Acts, ch 1245, §1827

C93, §456A.1

456A.2 through 456A.5 Reserved.

456A.6 Expenses generally.

The members and employees of the commission, the director and officers shall be reimbursed for all actual and necessary expenses incurred by them in the discharge of their official duties when absent from their usual place of abode, unless said appointees or employees are serving under a contract which requires them to defray their own expenses.

[C31, §1703-d6; C35, §1703-g6; C39, §**1703.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.6]

C93, §456A.6

456A.7 through 456A.11 Reserved.

456A.12 Lighting by law enforcement vehicles of conservation officer.

The required usage of lighting devices set out in sections 321.384 through 321.409 and section 321.415 does not apply to official law enforcement vehicles operated by conservation officers appointed under section 456A.13, while these vehicles are being used in criminal investigations or while attempting to apprehend suspected criminals.

88 Acts, ch 1216, §43

C89, §107.12

C93, §456A.12

456A.13 Officers and employees — peace officer status.

The director shall employ the number of assistants, including a professionally trained state forester, that are necessary to carry out the duties imposed on the commission; and, under the same conditions, the director shall appoint the number of full-time officers and supervisory personnel that are necessary to enforce all laws of the state and rules and regulations of the commission. The full-time officers and supervisory personnel have the same powers that are conferred by law on peace officers in the enforcement of all laws of the state of Iowa and the apprehension of violators. A person appointed as a full-time officer shall be at least twenty-one years of age on the date of appointment and shall not be employed as a full-time officer after attaining the age of sixty-five. *"Full-time officer"* means any person appointed by the

director to enforce the laws of this state.

[C73, §4052; C97, §2540; SS15, §2539, 2540; C24, 27, §1715; C31, §1703-d20, -d22, 1715; C35, §1703-g13, -g15; C39, §**1703.40, 1703.42;** C46, 50, 54, 58, 62, 66, 71, §107.13, 107.15; C73, 75, 77, 79, 81, §107.13]

86 Acts, ch 1245, §1828, 1854

C93, §456A.13

98 Acts, ch 1183, §114

456A.14 Temporary appointments — peace officer status.

The director may appoint temporary officers for a period not to exceed six months and may adopt minimum physical, educational, mental, and moral requirements for the temporary officers. Chapter 80B does not apply to the temporary officers. Temporary officers have all the powers of peace officers in the enforcement of this chapter and chapters 321G, 456B, 461A, 461B, 462A, 462B, 463B, 465C, 481A, 481B, 482, 483A, 484A, and 484B, and the trespass laws.

[C35, §1703-g14; C39, §**1703.41;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.14]

86 Acts, ch 1245, §1829; 92 Acts, ch 1160, §15

C93, §456A.14

456A.15 Removal.

The appointees and employees aforesaid may be removed by the said director at any time subject to the approval of the commission.

[C31, §1703-d20; C35, §1703-g16; C39, §**1703.43;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.16]

C83, §107.15

C93, §456A.15

456A.16 Income tax refund checkoff for fish and game fund.

A person who files an individual or a joint income tax return with the department of revenue and finance under section 422.13 may designate any amount to be paid to the state fish and game protection fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the state fish and game protection fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return.

The revenues received shall be used within the state of Iowa for habitat development and shall be deposited in the state fish and game protection fund. The revenue may be used for the matching of federal funds. The revenues and matched federal funds may be used for acquisition of land, leasing of land or obtaining of easements from willing sellers for use of land as wildlife habitats for game and nongame species. Not less than fifty percent of the funds derived from the checkoff shall be used for the purposes of preserving, protecting, perpetuating and enhancing nongame wildlife in this state. Nongame wildlife includes those animal species which are endangered, threatened or not commonly pursued or killed either for sport or profit. Notwithstanding the exemption in section 427.1, the land acquired with the revenues and matched federal funds is subject to the full consolidated levy of property taxes which shall be paid from those revenues. In addition the revenues may be used for the development and enhancement of wildlife lands and habitat areas and for research and management necessary to qualify for federal funds.

The director of revenue and finance shall draft the income tax form to allow the designation of contributions to the state fish and game protection fund on the tax return.

The department of revenue and finance on or before January 31 of the year following the preceding calendar year shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the state treasurer. The state treasurer shall credit the amount to the state fish and game protection fund.

The general assembly shall appropriate annually from the state fish and game protection fund the amount credited to the fund from the checkoff to the department for the purposes specified in this section.

The action taken by a person for the checkoff is irrevocable.

The department shall adopt rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and finance and accounts identified as owing under section 421.17 and the political contribution allowed under section 56.18 shall be satisfied.

[82 Acts, ch 1015, §1, 2, ch 1196, §1]

C83, §107.16

84 Acts, ch 1263, §2; 85 Acts, ch 230, §2; 86 Acts, ch 1244, §22

C93, §456A.16

2002 Acts, ch 1162, §63

Limitation on number of income tax return checkoffs; automatic repeal of certain checkoffs; see §422.12E

Unnumbered paragraph 5 amended

456A.17 Funds — restrictions.

The following four funds are created in the state treasury:

1. A state fish and game protection fund.
2. A state conservation fund.
3. An administration fund.
4. A county conservation board fund.

The state fish and game protection fund, except as otherwise provided, consists of all moneys accruing from license fees and all other sources of revenue arising under the fish and wildlife programs. Notwithstanding section 12C.7, subsec-

tion 2, interest or earnings on investments or time deposits of the moneys in the state fish and game protection fund shall be credited to that fund.

The county conservation board fund consists of all moneys credited to it by law or appropriated to it by the general assembly.

The conservation fund, except as otherwise provided, consists of all other funds accruing to the department for the purposes embraced by this chapter.

The administration fund shall consist of an equitable portion of the gross amount of the state fish and game protection fund and the state conservation fund, to be determined by the commission, sufficient to pay the expense of administration entailed by this chapter.

All receipts and refunds and reimbursements related to activities funded by the administration fund are appropriated to the administration fund. All refunds and reimbursements relating to activities of the state fish and game protection fund shall be credited to the state fish and game protection fund.

The department may apply for a loan for the construction of facilities for the collection and treatment of waste water under the state water pollution control works and drinking water facilities financing program as established in sections 455B.291 through 455B.299. In order to provide for the repayment of a loan granted under the financing program, the commission may impose a lien on not more than ten percent of the annual revenues from user fees and related revenue derived from park and recreation areas under chapter 461A which are deposited in the state conservation fund. If a lien is established as provided in this paragraph, repayment of the loan is the first priority on the revenues received and dedicated for the loan repayment each year.

[C31, §1703-d23, 1820; C35, §1703-g17; C39, §**1703.44;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.17; 82 Acts, ch 1084, §1]

84 Acts, ch 1262, §3; 86 Acts, ch 1244, §23; 86 Acts, ch 1245, §1830, 1831

C93, §456A.17

94 Acts, ch 1107, §72; 95 Acts, ch 98, §2; 2002 Acts, ch 1162, §64; 2002 Acts, 2nd Ex, ch 1003, §242, 262

Unnumbered paragraphs 2 and 7 amended

456A.18 Report of funds.

The director shall, at least monthly, make return and pay to the treasurer of state all moneys then in the director's hands belonging to the five funds.

[C31, §1703-d23, 1820; C35, §1703-g18; C39, §**1703.45;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.18]

86 Acts, ch 1245, §1832

C93, §456A.18

456A.19 Expenditures.

All funds accruing to the fish and game protection fund, except an equitable portion of the administration fund, shall be expended solely in carrying on the fish and wildlife activities. Expenditures incurred by the department in carrying on the activities shall be only on authorization by the general assembly.

The department shall by October 1 of each year submit to the department of management for transmission to the general assembly a detailed estimate of the amount required by the department during the succeeding year for carrying on the fish and wildlife activities. The estimate shall be in the same general form and detail as required by law in estimates submitted by other state departments.

Any unexpended balance at the end of the biennium shall revert to the fish and game protection fund.

All administrative expense shall be paid from the administration fund.

All other expenditures shall be paid from the conservation fund.

All expenditures under this chapter are subject to approval by the director of management and the director of revenue and finance.

All moneys credited to the county conservation board fund shall be used to provide grants to county conservation boards to provide funding for the purposes of chapter 350. These grants are in addition to moneys appropriated to the conservation boards from the county boards of supervisors. The grants shall be made to the conservation boards based upon the needs of the boards. Applications shall be made by the boards to the commission.

[C35, §1703-g19; C39, §**1703.46;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.19]

84 Acts, ch 1262, §4; 86 Acts, ch 1245, §1833, 1834; 88 Acts, ch 1134, §25; 88 Acts, ch 1158, §18

C93, §456A.19

94 Acts, ch 1107, §73; 95 Acts, ch 214, §22; 2002 Acts, ch 1162, §65

Unnumbered paragraphs 1 and 2 amended

456A.20 Limitation on nursery stock — exception.

1. Moneys appropriated to the department which are used in growing or handling nursery stock shall be used for growing or handling of the nursery stock for distribution only on state-owned lands. However, the department may do any of the following:

a. Produce and sell game cover packets and trees for erosion control at private sale.

b. Produce trees for a demonstration windbreak in each township in the state.

c. Dispose of growing trees under a departmental plan of distribution.

2. The department shall deposit a portion of the moneys that it receives from selling trees and

shrubs as provided in this section to the forestry management and enhancement fund as created in section 456A.21. The amount deposited in the fund shall equal five cents for each coniferous tree and ten cents for each hardwood tree and shrub sold.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.20]

86 Acts, ch 1245, §1835, 1845

C93, §456A.20

99 Acts, ch 206, §25; 2000 Acts, ch 1154, §32

456A.21 Forestry management and enhancement fund.

1. A forestry management and enhancement fund is created in the state treasury under the department's control. The fund is composed of moneys deposited into the fund pursuant to section 456A.20, moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the division or the department from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants written by the director of revenue and finance, drawn upon the written requisition of the division.

3. The fund shall be used exclusively to support the management and enhancement of forests, including woodlands or timber stands in this state, on private lands in cooperation with the owners of those lands. The department shall use moneys in the fund to support the following full-time equivalent positions in addition to those supported from the general fund of the state:

a. Four forestry technicians who shall serve regions of the state as designated by the division.

b. One professional forester who shall serve the southwest region of the state.

4. The commission may adopt rules pursuant to chapter 17A to administer this section.

5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

99 Acts, ch 206, §26; 2000 Acts, ch 1160, §2; 2002 Acts, ch 1162, §66

Legislative findings; 99 Acts, ch 206, §24

Subsection 1 amended

456A.22 Political activity. Repealed by 96 Acts, ch 1022, § 1.

456A.23 General duties.

The department shall protect, propagate, increase, and preserve the wild mammals, fish, birds, reptiles, and amphibians of the state and enforce by proper actions and proceedings the laws, rules, and regulations relating to them. The department shall collect, classify, and preserve all statistics, data, and information as in its opinion tend to promote the objects of this chapter, conduct research in improved conservation methods, and disseminate information to residents and nonresidents of Iowa in conservation matters.

[C31, 35, §1703-d11; C39, §**1703.49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.23]

83 Acts, ch 168, §1; 91 Acts, ch 268, §224

C93, §456A.23

456A.24 Specific powers.

The department is hereby authorized and empowered to:

1. Expend, as authorized by the general assembly under section 456A.19, any and all moneys accruing to the fish and game protection fund from any and all sources in carrying out the purposes of this chapter; any Act, or Acts, not consistent with this provision are hereby repealed so far as they may apply to the fish and game protection fund.

2. Acquire by purchase, condemnation, lease, agreement, gift, and devise lands or waters suitable for the purposes hereinafter enumerated, and rights of way thereto, and to maintain the same for the following purposes, to wit:

a. Public hunting, fishing, and trapping grounds and waters to provide areas in which any person may hunt, fish, or trap in accordance with the law and the rules of the department;

b. Fish hatcheries, fish nurseries, game farms, and wild mammal, fish, bird, reptile, and amphibian refuges.

3. Extend and consolidate lands or waters suitable for the above purposes by exchange for other lands or waters and to purchase, erect, and maintain buildings necessary to the work of the department.

4. Capture, propagate, buy, sell, or exchange any species of wild mammal, fish, bird, reptile, and amphibian needed for stocking the lands or waters of the state, and to feed, provide for, and care for them.

5. The department is hereby authorized to adopt and enforce such departmental rules governing procedure as may be necessary to carry out the provisions of this chapter; also to carry out any other laws the enforcement of which is vested in the department.

6. The department is hereby further authorized to adopt, publish, and enforce such administrative orders as are authorized in section 481A.38.

7. Pay the salaries, wages, compensation, traveling, and other necessary expenses of the commissioners, director, officers, and other employees of the department, and to expend money for necessary supplies and equipment, and to make such other expenditures as may be necessary for the carrying into effect the purposes of this chapter.

8. Control by shooting or trapping any wild

mammal, fish, bird, reptile, and amphibian for the purpose of preventing the destruction of or damage to private or public property, but shall not go upon private property for that purpose without the consent of the owner or occupant.

9. Provide for the protection against fire and other destructive agencies on state and privately owned forests, parks, wildlife areas, and other property under its jurisdiction, and cooperate with federal and other state agencies in protection programs approved by the department, and with the consent of the owner, on privately owned areas.

10. Provide conservation employees, when on duty, suitable uniforms, equipment, arms, and supplies.

11. Establish a program governing the harvesting and sale of American ginseng subject to the convention on international trade in endangered species of wild fauna and flora and adopt rules providing for the time and conditions for harvesting the ginseng, the registration of dealers and exporters, the records kept by dealers and exporters, and the certification of legal taking. The time for harvesting of wild ginseng shall not begin before September 1 or extend beyond November 1. A person violating this subsection or rules adopted by the department pursuant to this subsection is subject to a scheduled fine pursuant to section 805.8B, subsection 4.

12. Adopt rules authorizing officers and employees of the department who are peace officers to issue warning citations for violations of this chapter and chapters 321G, 350, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481A, 481B, 482, 483A, 484A, and 484B.

13. Apply to any appropriate agency or officer of the United States government to participate in or receive aid from any federal program relating to forests or forestry management. The department may enter into contracts and agreements with the United States government or an appropriate agency of the United States government as necessary to secure funding for the acquisition, development, improvement, and management of forests and forestry resources and to provide funds or assistance to local governments or private citizens involved in forestry management. In connection with obtaining the benefits of a forestry program, the director shall coordinate the department's activities with and represent the interests of all state agencies and the political subdivisions of the state having interests in forests or forestry management.

14. Enter into an interstate wildlife violators compact with one or more states to enforce state laws and rules relating to the protection and conservation of wildlife subject to the requirements of section 28E.9. The commission may adopt rules as necessary for the implementation of the compact.

[C31, 35, §1703-d12; C39, §**1703.50;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.24]

83 Acts, ch 33, §1; 83 Acts, ch 168, §2 – 4; 86 Acts, ch 1245, §1836, 1837, 1845; 91 Acts, ch 78, §1; 92 Acts, ch 1160, §16

C93, §456A.24

93 Acts, ch 13, §1; 93 Acts, ch 38, §1; 2001 Acts, ch 14, §1; 2001 Acts, ch 137, §5

456A.25 Orders.

Administrative orders shall be made only after an investigation of the matter concerned.

[C31, §1703-d13; C35, §1703-e12; C39, §**1703.51;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.25]

C93, §456A.25

456A.26 Interpretation and limitations.

The foregoing sections shall not be construed as authorizing the commission to change any penalty for violating any game law or regulation, or change the amount of any license established by the legislature, or to promulgate any open season on any fish, animal or bird contrary to the laws of the state of Iowa, or to extend except as provided in this chapter any open season or bag limit on any kind of fish, game, fur-bearing animals or of any birds prescribed by the laws of the state of Iowa or by federal laws or regulations, or to contract any indebtedness or obligation beyond the funds to which they are lawfully entitled.

[C31, 35, §1703-d15; C39, §**1703.52;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.26]

C93, §456A.26

456A.27 Federal wildlife Act — assent.

The state of Iowa assents to the provisions of the Act of Congress entitled *"An Act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes"*, approved September 2, 1937, 50 Stat. L. 917, and the department may perform acts as necessary to the conduct and establishment of co-operative wildlife restoration projects, as defined in the Act of Congress, in compliance with the Act and with regulations promulgated by the secretary of agriculture under the Act. No funds accruing to the state of Iowa from license fees paid by hunters shall be diverted for any other purpose than as set out in sections 456A.17 and 456A.19.

[C39, §**1703.53;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.27]

86 Acts, ch 1245, §1838, 1845

C93, §456A.27

456A.28 Fish restoration projects.

The state of Iowa assents to the provisions of the Act of Congress entitled *"An Act to provide that the United States shall aid the states in fish restoration projects, and for other purposes"*, approved August 9, 1950, Pub. L. No. 681, and the department may perform acts as necessary to the conduct and establishment of co-operative fish resto-

ration projects, as defined in the Act of Congress, in compliance with the Act and with regulations promulgated by the secretary of the interior under the Act. No funds accruing to the state of Iowa from fishing license fees shall be diverted for any other purposes than as set out in sections 456A.17 and 456A.19.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §107.28]
86 Acts, ch 1245, §1839, 1845
C93, §456A.28

456A.29 Outdoor recreational and watershed projects.

The department may perform acts as necessary to the conduct and establishment of co-operative outdoor recreational and watershed projects as defined by the Congress of the United States and by regulations of the appropriate federal agency and may accept federal funds and assistance for the purpose of planning, acquisition, and development of outdoor recreational and watershed projects.

[C66, 71, 73, 75, 77, 79, 81, §107.29]
86 Acts, ch 1245, §1840, 1845
C93, §456A.29

456A.30 Federal assistance for outdoor recreation.

The legislature finds that the state of Iowa and its subdivisions should enjoy the benefits of federal assistance programs for the planning and development of the outdoor recreation resources of the state, including the acquisition of lands and waters and interests therein. It is the purpose of this section and sections 456A.31 through 456A.34 to provide authority to enable the state of Iowa and its subdivisions to participate in the benefits of such programs.

[C66, 71, 73, 75, 77, 79, 81, §107.30]
C93, §456A.30

456A.31 Comprehensive plan.

The department may prepare, maintain, and keep up-to-date a comprehensive plan for the development of the outdoor recreation resources of the state, and acquire lands, waters, and interests in lands and waters for such areas and facilities.

[C66, 71, 73, 75, 77, 79, 81, §107.31]
86 Acts, ch 1245, §1841, 1845
C93, §456A.31

456A.32 Application for aid.

The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation. The department may enter into contracts and agreements with the United States or any appropriate agency of the United States and, for purposes of preparation, maintenance, and updating of the comprehensive plan, may from time to time engage and contract for the services and advice of a professional planner of outdoor recreation plans and facilities and hire employees for such purposes as deemed necessary. In connection with obtaining the benefits of any such program, the department shall co-ordinate the department's activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development, and maintenance of outdoor recreation resources and facilities.

[C66, 71, 73, 75, 77, 79, 81, §107.32]
86 Acts, ch 1245, §1842, 1845
C93, §456A.32

456A.33 Watershed projects.

The department may perform acts as necessary to conduct an establishment of co-operative outdoor recreational and watershed projects as defined by the Congress of the United States and by regulations of the appropriate federal agency and may accept federal funds and assistance for the purpose of planning, acquisition, and development of outdoor recreational and watershed projects.

[C66, 71, 73, 75, 77, 79, 81, §107.33]
86 Acts, ch 1245, §1843, 1845
C93, §456A.33

456A.33A Watershed priority.

The commission shall each year establish a priority list of watersheds which are of highest importance based on soil loss to be used for the allocation of moneys set aside in annual appropriations from the general fund to the department of agriculture and land stewardship for permanent soil conservation practices under chapter 161A on watersheds above publicly owned lakes. Chapter 17A does not apply to this section.

91 Acts, ch 268, §225
CS91, §107.33A
C93, §456A.33A

456A.34 Limit on state's commitment.

The department shall not make a commitment or enter into an agreement pursuant to an exercise of authority under sections 456A.30 through 456A.33 until the department has determined that sufficient funds are available to the department for meeting the state's share, if any, of project costs. It is the legislative intent that, to the extent necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of these sections, the areas and facilities shall be publicly maintained for outdoor recreation purposes. The department may enter into and administer agreements with the United States or any appropriate agency of the United States for planning, acquisition, and development projects involving participating federal aid funds on behalf of any subdivision of this state,

if the subdivision gives necessary assurances to the department that it has available sufficient funds to meet its shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of the subdivision for public outdoor recreation use.

[C66, 71, 73, 75, 77, 79, 81, §107.34]
86 Acts, ch 1245, §1844, 1845
C93, §456A.34

456A.35 Applications not limited.

The commission shall not limit the number of applications submitted for consideration or the number of projects under construction with respect to United States heritage conservation and recreation service projects.

[C79, 81, §107.35]
C93, §456A.35

456A.36 Timber buyers.

1. As used in this section, unless the context otherwise requires:

a. "Employee" means a person in service or under contract for hire, expressed or implied, oral or written, who is engaged in any phase of the enterprise or business.

b. "Timber" means trees, standing or felled, and logs which can be used for sawing or processing into lumber for building or structural purposes or for the manufacture of an article. However, *"timber"* does not include firewood, Christmas trees, fruit or ornamental trees or wood products not used or to be used for building, structural, manufacturing, or processing purposes.

c. "Timber buyer" means a person engaged in the business of buying timber from the timber growers for sawing into lumber, for processing, or for resale, but does not include a person who occasionally purchases timber for sawing or processing for the person's own use and not for resale. *"Timber buyer"* includes a person who contracts with a timber grower on a shared-profit basis to harvest timber from the timber grower's land.

d. "Timber grower" means the owner, tenant, or operator of land in this state who has an interest in, or is entitled to receive a part of the proceeds from, the sale of timber grown in this state and includes a person exercising authority to sell timber.

2. A timber buyer shall file with the commission a surety bond signed by the person as principal and a corporate surety authorized to engage in the business of executing surety bonds within the state. In lieu of a corporate surety a timber buyer may, with the approval of the commission, file a bond signed by the timber buyer as principal and accompanied by a bank certificate of deposit in a form approved by the commission showing to the satisfaction of the commission that funds equal to the amount of the required bond are on deposit in a bank to be held by the bank for the period covered by the certificate. The funds shall be made payable upon demand to the director, subject to the provisions of this section, for the use and benefit of the people of the state and for the use and benefit of a timber grower from whom the timber buyer purchased and who is not paid by the timber buyer or for the use and benefit of a timber grower whose timber has been cut by the timber buyer or the timber buyer's agents, and who has not been paid.

The principal amount of the bond shall be ten percent of the total amount paid to timber growers during the preceding year, plus ten percent of the total amount due or delinquent and unpaid to timber growers at the end of the preceding year, and ten percent of the market value of growers' shares of timber harvested during the previous year. However, the total amount of the bond shall be not less than three thousand dollars and not more than fifteen thousand dollars.

The bond or surety shall not be canceled or altered except upon at least sixty days' notice in writing to the commission.

Bonds shall be in the form approved by the director, be conditioned to secure an honest cutting and accounting for timber purchased by the timber buyer, secure payment to the timber growers, and insure the timber growers against all fraudulent acts of the timber buyer in the purchase and cutting of the timber of this state.

If a timber buyer fails to pay when due an amount due a timber grower for timber purchased, or fails to pay legally determined damages for timber wrongfully cut by a timber buyer or the buyer's agent, or commits a violation of this section, an action on the bond for forfeiture may be commenced. The action is not exclusive and is in addition to other legal remedies available.

The timber grower, the owner of timber cut, or the director may bring action on the bond for payment of the amount due from proceeds of the bond in the district court of the county in which the place of business of the timber buyer is situated or in any other lawful venue.

The attorney general, upon request of the commission, shall institute proceedings to have the bond of the timber buyer forfeited for violation of any of the provisions of this section or for noncompliance with a commission rule. A timber buyer whose bond has been forfeited shall not engage in the business of buying timber for one year after the forfeiture.

If the commission realizes more than the amount of liability from the security, after deducting expenses incurred in converting the security into money, the commission shall pay the excess to the timber buyer who furnished the security.

3. The following are violations of this section:

a. For a timber buyer to fail to pay, as agreed, for timber purchased.

b. For a timber buyer to cut or cause to be cut or appropriate timber not purchased.

c. For a timber buyer to willfully make a false statement in connection with the bond or other in-

formation required to be given to the commission or a timber grower.

d. For a timber buyer to fail to honestly account to the timber grower or the commission for timber purchased or cut if the buyer is under a duty to do so.

e. For a timber buyer to commit a fraudulent act in connection with the purchase or cutting of timber.

f. For a timber buyer to transport timber without written proof of ownership or the written consent of the owner.

g. For a person to purchase timber without obtaining, prior to taking possession of the timber, written proof of the vendor's ownership of the timber or the written consent of the owner of the timber. The purchaser shall keep the written proof of ownership or consent on file for at least three months from the date the timber was released to the purchaser's possession.

4. *a.* With the written consent of the timber buyer, the commission, its agents and other employees may inspect the premises and records of the timber buyer.

b. If the timber buyer refuses admittance, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath to the district court of the county in which the premises or records are located for the issuance of a search warrant.

c. In the application the director shall state that an inspection of the premises or record designated in the application may result in evidence tending to reveal the existence of violations of the provisions of this section or rule issued by the commission pursuant to this section. The application shall describe the premises or records to be inspected, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute or rule pursuant to which inspection is to be made.

d. The court may issue a search warrant, after examination of the applicant and any witnesses, if the court is satisfied that there is probable cause to believe the existence of the allegations contained in the application.

e. In making investigations, examinations, or surveys pursuant to the authority of this subsection, the director must execute the warrant in a reasonable manner within ten days after its date of issuance.

5. A person who engages in business as a timber buyer without filing a bond or surety with the commission or in violation of any of the provisions of this section, or a timber buyer who refuses to permit inspection of premises, books, accounts, or records as provided in this section is guilty of a serious misdemeanor.

6. The commission may promulgate rules as necessary to carry out the provisions of this section.

7. The commission may, by application to a district court, obtain an injunction restraining a person who engages in the business of timber buying in this state from engaging in the business until that person complies with this section. Upon refusal or neglect to obey the order of the court, the court may compel obedience by proceedings for contempt.

[C81, §107.36]
C93, §456A.36
96 Acts, ch 1073, §1, 2

456A.37 Eurasian water milfoil.

1. *Definitions.* As used in this section:

a. "Infestation of Eurasian water milfoil" means an infestation of Eurasian water milfoil that occupies more than twenty percent of the littoral area of a body of water.

b. "Watercraft" means any vessel which through the buoyance of water floats upon the water and is capable of carrying one or more persons.

2. *Eurasian water milfoil management plan.* Before January 1, 1998, the commission shall prepare a long-term statewide Eurasian water milfoil management plan. The plan shall address all of the following:

a. The detection and prevention of accidental introductions into the state of Eurasian water milfoil.

b. A public awareness campaign regarding Eurasian water milfoil.

c. The control and eradication of Eurasian water milfoil in public waters.

d. The development of a plan of containment strategies that at a minimum shall include all of the following:

(1) The participation by lake associations, local citizens groups, and local units of government in the development and implementation of lake management plans where Eurasian water milfoil exists.

(2) Notice to travelers of the penalties for violation of laws relating to Eurasian water milfoil.

3. *Grants.* The director of the department of natural resources shall accept gifts, donations, and grants to aid in accomplishing the control and eradication of Eurasian water milfoil.

4. *Rulemaking.* The commission shall adopt rules pursuant to chapter 17A. The rules shall:

a. Restrict the introduction, propagation, use, possession, and spread of Eurasian water milfoil.

b. Identify bodies of water with infestation of Eurasian water milfoil. The department shall require that bodies of water be posted as infested. The department may prohibit boating, fishing, swimming, and trapping in infested bodies of water.

5. *Prohibitions.*

a. A person shall not do any of the following:

(1) Transport Eurasian water milfoil on a public road.

(2) Place a trailer or launch a watercraft with Eurasian water milfoil attached in public waters.

(3) Operate a watercraft in a marked Eurasian water milfoil infestation area.

b. The penalty for violating this subsection is contained in section 805.8B, subsection 5.

96 Acts, ch 1042, §1; 2001 Acts, ch 137, §5

CHAPTER 456B

SPECIAL PROVISIONS — NATURAL RESOURCES DEPARTMENT

This chapter not enacted as a part of this title; transferred from chapter 108 in Code 1993

456B.1 Definitions.
456B.2 through 456B.6 Reserved.
456B.7 Stream control on private lands.
456B.8 Jurisdiction — public access.
456B.9 Accreted land.
456B.10 Artificial lakes — soil conservation.
456B.11 Agricultural drainage wells — wetlands — conservation easements.

PROTECTED WETLANDS

456B.12 Inventory of protected wetlands.
456B.13 Protection of wetlands.
456B.14 Civil penalty.

456B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.

2. *"Department"* means the department of natural resources created under section 455A.2.

3. *"Director"* means the director of the department.

4. *"Protected wetlands"* means type 3, type 4, and type 5 wetlands as described in circular 39, Wetlands of the United States, 1971 Edition, published by the United States department of the interior. However, a protected wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.

5. *"Wetlands"* means an area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.

86 Acts, ch 1245, §1846
C87, §108.1
90 Acts, ch 1199, §1
C93, §456B.1

456B.2 through 456B.6 Reserved.

456B.7 Stream control on private lands.

Upon receiving consent in writing from the landowner, the department may enter upon private lands containing waters and streams draining into state-owned lakes and streams, for any or all of the following purposes:

1. Deepening.
2. Filling.
3. Widening.
4. Contracting.
5. Improving and protecting banks.
6. Constructing spillways and discharge structures.
7. Controlling erosion on tributary land.
8. Providing structures or other works conducive to the regulation of stream flow.

Any action taken by the commission under this section is subject to the approval of the environmental protection commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.7; 82 Acts, ch 1199, §53, 96]
86 Acts, ch 1245, §1847
C93, §456B.7

456B.8 Jurisdiction — public access.

Any such agreement with any landowner shall give the commission jurisdiction of such land, waters, and streams to accomplish the purposes set out in said agreement and in case any improvement contemplated by section 456B.7 is for the sole purpose of improving any stream and not mainly for the purpose of preventing silting in a state-owned lake, then said agreement with the landowner shall include an easement of public access to said stream where improved and along the banks thereof.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.8]
C93, §456B.8

456B.9 Accreted land.
Any land created, by any such improvement, in areas now under the jurisdiction of the state will remain under such jurisdiction until otherwise disposed of.
[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.9]
C93, §456B.9

456B.10 Artificial lakes — soil conservation.
In the construction of artificial lakes on intermittent streams, for which funds are appropriated by the general assembly, the commission shall not proceed with actual construction work unless and until soil conservation practices are in effect on at least seventy-five percent of the land comprising the watershed of the proposed impoundment, or a willingness to carry on such practices has been shown by the owners or operators of seventy-five percent of the land by signing of a soil conservation farm plan and co-operative agreements with the local soil and water conservation district governing body.
[C35, §1703-g28; C39, §**1703.58;** C46, 50, 54, §108.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §108.10]
86 Acts, ch 1245, §1854; 87 Acts, ch 23, §3
C93, §456B.10

456B.11 Agricultural drainage wells — wetlands — conservation easements.
The department shall develop and implement a program for the acquisition of wetlands and conservation easements on and around wetlands that result from the closure or change in use of agricultural drainage wells upon implementation of the programs specified in section 460.302 to eliminate groundwater contamination caused by the use of agricultural drainage wells. The program shall be coordinated with the department of agriculture and land stewardship. The department may use moneys appropriated for this purpose from the agriculture management account of the groundwater protection fund in addition to other moneys available for wetland acquisition, protection, development, and management.
87 Acts, ch 225, §301
CS87, §108.11
C93, §456B.11

PROTECTED WETLANDS

456B.12 Inventory of protected wetlands.
The department shall inventory the wetlands and marshes of each county and make a preliminary designation as to which constitute protected wetlands. The department shall consult with the county conservation board in making the preliminary designations. Upon completion of the inventory with preliminary designations, the department shall use an existing map or prepare a map and a list of the marshes and wetlands which are designated as protected wetlands in each county. The department shall file at least one copy of the list and map with the county conservation board and the county recorder. The department shall notify the landowners affected by the preliminary wetlands designation by certified mail. The notice shall state that any person may challenge the designation of the protected wetlands or may request the designation of additional marshes or wetlands as protected wetlands, by doing one of the following:
1. Filing a petition for a hearing with the director within sixty days following the date of notice. The petition shall state specifically the reasons for disputing the preliminary designations of the department. The hearing shall be held in the county within sixty days following the expiration of the sixty-day period for filing petitions.
2. Filing a request for mediation with the farm mediation service as provided in section 654A.16 within sixty days following the date of the notice. The department shall participate in mediation as provided in section 654A.16.
Within sixty days following the completion of the hearing, or the issuance of a mediation release in which both parties agree to the designation or no agreement is reached, the director shall issue an order designating the protected wetlands in the county. The order shall be considered a final decision of the department in a contested case for the purposes of judicial review pursuant to chapter 17A.
90 Acts, ch 1199, §2
C91, §108.12
C93, §456B.12

456B.13 Protection of wetlands.
1. A person shall not drain a protected wetland without first obtaining a permit from the department.
2. The department shall not issue a permit to drain a protected wetland except under one of the following conditions:
a. The protected wetland is replaced by the applicant with a wetland of equal or greater value as determined by the department.
b. The protected wetland does not meet the criteria for continued designation as a protected wetland.
3. This section does not prohibit any of the following:
a. A landowner utilizing the bed of a protected wetland for pasture or cropland if there is no construction of dikes, ditches, tile lines, or buildings and the agricultural use does not result in drainage.

b. A person maintaining, repairing, or replacing an improvement to a drainage district as provided in chapter 468, as long as the improvement continues to serve the drainage district and the functions of the improvement are not expanded beyond the scope of functions as designed prior to the maintenance, repair, or replacement.

90 Acts, ch 1199, §3
C91, §108.13
91 Acts, ch 172, §1
C93, §456B.13
98 Acts, ch 1025, §1

456B.14 Civil penalty.

A person who violates the permit requirement of section 456B.13 is subject to a civil penalty of not more than five hundred dollars for each day that the violation continues. A civil penalty assessed under this section shall not apply until the fourth day after a violator is given written notification of the violation.

90 Acts, ch 1199, §4
C91, §108.14
C93, §456B.14

CHAPTER 457

INTERCOUNTY LEVEE OR DRAINAGE DISTRICTS

Transferred to §468.270 through §468.299;
89 Acts, ch 126

CHAPTER 457A

CONSERVATION EASEMENTS

This chapter not enacted as a part of this title;
transferred from chapter 111D in Code 1993

457A.1 Acquisition by other than condemnation.
457A.2 Definitions.
457A.3 Recording.
457A.4 Statement of extent.
457A.5 Rule of construction.
457A.6 and 457A.7 Reserved.
457A.8 Privately held easements.

457A.1 Acquisition by other than condemnation.

The department of natural resources, the historical division of the department of cultural affairs, the state archaeologist appointed by the state board of regents pursuant to section 263B.1, any county conservation board, and any city or agency of a city may acquire by purchase, gift, contract, or other voluntary means, but not by eminent domain, conservation easements in land to preserve scenic beauty, wildlife habitat, riparian lands, wetlands, or forests; promote outdoor recreation, agriculture, or open space; or otherwise conserve for the benefit of the public the natural beauty, natural and cultural resources, and public recreation facilities of the state.

[C71, 73, 75, 77, 79, 81, §111D.1; 82 Acts, ch 1199, §58, 96]

86 Acts, ch 1245, §1873
C93, §457A.1
2002 Acts, ch 1012, §1
Section amended

457A.2 Definitions.

1. *"Conservation easement"* means an easement in, servitude upon, restriction upon the use of, or other interest in land owned by another, created for any of the purposes set forth in section 457A.1. A conservation easement shall be transferable to any other public body authorized to acquire conservation easements. A conservation easement shall be perpetual unless expressly limited to a lesser term, or unless released by the holder, or unless a change of circumstances renders the easement no longer beneficial to the public. A comparative economic test shall not be used to determine whether a conservation easement is beneficial to the public. A conservation easement shall be enforceable during the term of the easement notwithstanding sections 614.24 through 614.38.

2. *"Natural resources"* includes, but is not limited to, archaeological and historical resources.

[C71, 73, 75, 77, 79, 81, §111D.2]
86 Acts, ch 1245, §1874
C93, §457A.2
2002 Acts, ch 1012, §2
Section amended

457A.3 Recording.
Conservation easements shall be recorded as other instruments affecting real estate are recorded, and each public body acquiring one or more conservation easements shall maintain a current inventory thereof. Unrecorded and uninventoried conservation easements shall be deemed abandoned.
[C71, 73, 75, 77, 79, 81, §111D.3]
C93, §457A.3

457A.4 Statement of extent.
A conservation easement shall clearly state its extent and purpose.
[C71, 73, 75, 77, 79, 81, §111D.4]
C93, §457A.4

457A.5 Rule of construction.
The powers accorded by this chapter shall be in addition to, and not in derogation of, all powers provided by law with respect to the public bodies named in section 457A.1.
[C71, 73, 75, 77, 79, 81, §111D.5]
C93, §457A.5

457A.6 and 457A.7 Reserved.

457A.8 Privately held easements.
A conservation easement may be held by a private, nonprofit organization for public benefit if the instrument granting the easement or the bylaws of the organization provide that the easement will be transferred either to a public body or another private, nonprofit organization upon the dissolution of the private, nonprofit organization. A conservation easement meeting these requirements acquired after July 1, 1984 is transferable and perpetual as provided in section 457A.2.
84 Acts, ch 1115, §1
C85, §111D.8
C93, §457A.8

CHAPTER 457B

MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

This chapter not enacted as a part of this title;
transferred from chapter 8C in Code 1993

457B.1 Low-level radioactive waste compact.

457B.1 Low-level radioactive waste compact.
The midwest interstate low-level radioactive waste compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I — POLICY AND PURPOSE

There is created the *"Midwest Interstate Low-Level Radioactive Waste Compact"*.

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. § 2021b-j, has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposing of such waste. The party states acknowledge that the Congress declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the disposal of low-level radioactive waste is handled most efficiently on a regional basis; and that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

a. It is the policy of the party states to enter into a regional low-level radioactive waste disposal compact for the purpose of:

1. Providing the instrument and framework for a cooperative effort;
2. Providing sufficient facilities for the proper disposal of low-level radioactive waste generated in the region;
3. Protecting the health and safety of the citizens of the region;
4. Limiting the number of facilities required to effectively and efficiently dispose of low-level radioactive waste generated in the region;

5. Encouraging source reduction and the environmentally sound treatment of waste that is generated to minimize the amount of waste to be disposed of;

6. Ensuring that the costs, expenses, liabilities, and obligations of low-level radioactive waste disposal are paid by generators and other persons who use compact facilities to dispose of their waste;

7. Ensuring that the obligations of low-level radioactive waste disposal that are the responsibility of the party states are shared equitably among them;

8. Ensuring that the party states that comply with the terms of this compact and fulfill their obligations under it share equitably in the benefits of the successful disposal of low-level radioactive waste; and

9. Ensuring the environmentally sound, economical, and secure disposal of low-level radioactive wastes.

b. Implicit in the congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the compact commission and the individual party states to this compact by:

1. Expeditious enforcement of federal rules, regulations, and laws;

2. Imposition of sanctions against those found to be in violation of federal rules, regulations, and laws; and

3. Timely inspection of their licensees to determine their compliance with these rules, regulations, and laws.

ARTICLE II — DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. *"Care"* means the continued observation of a facility after closing for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and including the correction of problems which are detected as a result of that observation.

b. *"Close"*, *"closed"*, or *"closing"* means that the compact facility with respect to which any of those terms are used has ceased to accept low-level radioactive waste for disposal. *"Permanently closed"* means that the compact facility with respect to which the term is used has ceased to accept low-level radioactive waste because a compact facility has operated for twenty years or a longer period of time as authorized by article VI, section i, its capacity has been reached, the commission has authorized it to close pursuant to article III, section h, subsection 7, the host state of such facility has withdrawn from the compact or had its membership revoked, or this compact has been dissolved.

c. *"Commission"* means the midwest interstate low-level radioactive waste commission.

d. *"Compact facility"* means a waste disposal facility that is located within the region and that is established by a party state pursuant to the designation of that state as a host state by the commission.

e. *"Development"* includes the characterization of potential sites for a waste disposal facility, siting of such a facility, licensing of such a facility, and other actions taken by a host state prior to the commencement of construction of a facility to fulfill its obligations as a host state.

f. *"Disposal"* with regard to low-level radioactive waste, means the permanent isolation of that waste in accordance with the requirements established by the United States nuclear regulatory commission or the licensing agreement state.

g. *"Disposal plan"* means the plan adopted by the commission for the disposal of low-level radioactive waste within the region.

h. *"Facility"* means a parcel of land or site, together with the structures, equipment, and improvements on or appurtenant to the land or site, which is or has been used for the disposal of low-level radioactive waste, which is being developed for that purpose, or upon which the construction of improvements or installation of equipment is occurring for that purpose.

i. *"Final decision"* means a final action of the commission determining the legal rights, duties, or privileges of any person. *"Final decision"* does not include preliminary, procedural, or intermediate actions by the commission, actions regulating the internal administration of the commission, or actions of the commission to enter into or refrain from entering into contracts or agreements with vendors to provide goods or services to the commission.

j. *"Generator"* means a person who first produces low-level radioactive waste, including, without limitation, any person who does so in the course of or incident to manufacturing, power generation, processing, waste treatment, waste storage, medical diagnosis and treatment, research, or other industrial or commercial activity. If the person who first produced an item or quantity of low-level radioactive waste cannot be identified, *"generator"* means the person first possessing the low-level radioactive waste who can be identified.

k. *"Host state"* means any state which is designated by the commission to host a compact facility or has hosted a compact facility.

l. *"Long-term care"* means those activities taken by a host state after a compact facility is permanently closed to ensure the protection of air, land, and water resources and the health and safety of all people who may be affected by the compact facility.

m. *"Low-level radioactive waste"* or *"waste"* means radioactive waste that is not classified as high-level radioactive waste and that is Class A, B, or C low-level radioactive waste as defined in 10 C.F.R. § 61.55, as that section existed on January

26, 1983. *"Low-level radioactive waste"* or *"waste"* does not include any such radioactive waste that is owned or generated by the United States department of energy; by the United States navy as a result of the decommissioning of its vessels; or as a result of research, development, testing, or production of an atomic weapon.

n. "Operates", *"operational"*, or *"operating"* means that the compact facility with respect to which any of those terms is used accepts low-level radioactive waste for disposal.

o. "Party state" means an eligible state that enacts this compact into law, pays any eligibility fee established by the commission, and has not withdrawn from this compact or had its membership in this compact revoked, provided that a state that has withdrawn from this compact or had its membership revoked becomes a party state if it is readmitted to membership in this compact pursuant to article VIII, section a. *"Party state"* includes a host state. *"Party state"* also includes statutorily created administrative departments, agencies, or instrumentalities of a party state, but does not include municipal corporations, regional or local units of government, or other political subdivisions of a party state that are responsible for governmental activities on less than a statewide basis.

p. "Person" means any individual, corporation, association, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, association, business enterprise, or other legal entity. *"Person"* also includes the United States, states, political subdivisions of states, and any department, agency, or instrumentality of the United States or a state.

q. "Region" means the area of the party states.

r. "Site" means the geographic location of a facility.

s. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or other territorial possession of the United States.

t. "Storage" means the temporary holding of low-level radioactive waste.

u. "Treatment" means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of low-level radioactive waste in order to render the low-level radioactive waste safer for transport or management, amenable to recovery, convertible to another usable material or reduced in volume.

v. "Waste management", *"manage waste"*, *"management of waste"*, *"management"*, or *"managed"* means the storage, treatment, or disposal of low-level radioactive waste.

ARTICLE III — THE COMMISSION

a. There is created the midwest interstate low-level radioactive waste commission. The commission consists of one voting member from each party state. The governor of each party state shall notify the commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each commission member shall be the responsibility of the member's respective state.

b. Each commission member is entitled to one vote. Except as otherwise specifically provided in this compact, an action of the commission is binding if a majority of the total membership casts its vote in the affirmative. A party state may direct its member or alternate member of the commission how to vote or not vote on matters before the commission.

c. The commission shall elect annually from among its members a chairperson. The commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact, including procedures for the use of binding arbitration under article VI, section o, and procedures which substantially conform with the provisions of the federal Administrative Procedure Act (5 U.S.C. § 500 to 559) in regard to notice, conduct, and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d. The commission shall meet at least once annually and shall also meet upon the call of the chairperson or any other commission member.

e. All meetings of the commission shall be open to the public with reasonable advance notice. The commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all commission actions and decisions shall be made in open meetings and appropriately recorded.

f. The commission may establish advisory committees for the purpose of advising the commission on any matters pertaining to waste management.

g. The office of the commission shall be in a party state. The commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall have the responsibilities and authority delegated to it by the commission in its bylaws. The staff shall serve at the commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the commission.

h. The commission may do any or all of the following:

1. Appear as an intervenor or party in interest

before any court of law or any federal, state, or local agency, board, or commission in any matter related to waste management. In order to represent its views, the commission may arrange for any expert testimony, reports, evidence, or other participation.

2. Review any emergency closing of a compact facility, determine the appropriateness of that closing, and take whatever lawful actions are necessary to ensure that the interests of the region are protected.

3. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

4. Approve the disposal of naturally occurring and accelerator-produced radioactive material at a compact facility. The commission shall not approve the acceptance of such material without first making an explicit determination of the effect of the new low-level radioactive waste stream on the compact facility's maximum capacity. Such approval requires the affirmative vote of a majority of the commission, including the affirmative vote of the member from the host state of the compact facility that would accept the material for disposal. Any such host state may at any time rescind its vote granting the approval and, thereafter, additional naturally occurring and accelerator-produced radioactive material shall not be disposed of at a compact facility unless the disposal is again approved. All provisions of this compact apply to the disposal of naturally occurring and accelerator-produced radioactive material that has been approved for disposal at a compact waste facility pursuant to this subsection.

5. Enter into contracts in order to perform its duties and functions as provided in this compact.

6. When approved by the commission, with the member from each host state in which an affected compact facility is operating or being developed or constructed voting in the affirmative, enter into agreements to do any of the following:

(a) Import for disposal within the region low-level radioactive waste generated outside the region.

(b) Export for disposal outside the region low-level radioactive waste generated inside the region.

(c) Dispose of low-level radioactive waste generated within the region at a facility within the region that is not a compact facility.

7. Authorize a host state to permanently close a compact facility located within its borders earlier than otherwise would be required by article VI, section i. Such closing requires the affirmative vote of a majority of the commission, including the affirmative vote of the member from the state in which the affected compact facility is located.

i. The commission shall do all of the following:

1. Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the commission.

2. Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to article IV, a regional disposal plan which designates host states for the establishment of needed compact facilities.

3. Adopt an annual budget.

4. Establish and implement a procedure for determining the capacity of a compact facility. The capacity of a compact facility shall be established as soon as reasonably practical after the host state of the compact facility is designated and shall not be changed thereafter without the consent of the host state. The capacity of a compact facility shall be based on the projected volume, radioactive characteristics, or both, of the low-level radioactive waste to be disposed of at the compact facility during the period set forth in article VI, section i.

5. Provide a host state with funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.

6. Establish and implement procedures for making payments from the remedial action fund provided for in section p.

7. Establish and implement procedures to investigate a complaint joined in by two or more party states regarding another party state's performance of its obligations.

8. Adopt policies promoting source reduction and the environmentally sound treatment of low-level radioactive waste in order to minimize the amount of low-level radioactive waste to be disposed of at compact facilities.

9. Establish and implement procedures for obtaining information from generators regarding the volume and characteristics of low-level radioactive waste projected to be disposed of at compact facilities and regarding generator activities with respect to source reduction, recycling, and treatment of low-level radioactive waste.

10. Prepare annual reports regarding the volume and characteristics of low-level radioactive waste projected to be disposed of at compact facilities.

j. Funding for the commission shall be provided as follows:

1. When no compact facility is operating, the commission may assess fees to be collected from generators of low-level radioactive waste in the region. The fees shall be reasonable and equitable. The commission shall establish and implement procedures for assessing and collecting the fees. The procedures may allow the assessing of fees against less than all generators of low-level radioactive waste in the region; provided that if fees are assessed against less than all generators of waste in the region, generators paying the fees shall be reimbursed the amount of the fees, with reasonable interest, out of the revenues of operating com-

pact facilities.

2. When a compact facility is operating, funding for the commission shall be provided through a surcharge collected by the host state as part of the fee system provided for in article VI, section j. The surcharge to be collected by the host state shall be determined by the commission and shall be reasonable and equitable.

3. In the aggregate, the fees or surcharges, as the case may be, shall be no more than is necessary to:

(a) Cover the annual budget of the commission.

(b) Provide a host state with the funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.

(c) Provide moneys for deposit in the remedial action fund established pursuant to section p.

(d) Provide moneys to be added to an inadequately funded long-term care fund as provided in article VI, section o.

k. Financial statements of the commission shall be prepared according to generally accepted accounting principles. The commission shall contract with an independent certified public accountant to annually audit its financial statements and to submit an audit report to the commission. The audit report shall be made a part of the annual report of the commission required by this article.

l. The commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation. The nature, amount, and condition, if any, attendant upon any donation or grant accepted or received by the commission together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the commission.

m. The commission is a legal entity separate and distinct from the party states. Members of the commission and its employees are not personally liable for actions taken by them in their official capacity. The commission is not liable or otherwise responsible for any costs, expenses, or liabilities resulting from the development, construction, operation, regulation, closing, or long-term care of any compact facility or any noncompact facility made available to the region by any contract or agreement entered into by the commission under section h, subsection 6. Nothing in this section relieves the commission of its obligations under this article or under contracts to which it is a party. Any liabilities of the commission are not liabilities of the party states.

n. Final decisions of the commission shall be made, and shall be subject to judicial review, in accordance with all of the following conditions:

1. Every final decision shall be made at an open meeting of the commission. Before making a final decision, the commission shall provide an opportunity for public comment on the matter to be decided. Each final decision shall be reduced to writing and shall set forth the commission's reasons for making the decision.

2. Before making a final decision, the commission may conduct an adjudicatory hearing on the proposed decision.

3. Judicial review of a final decision shall be initiated by filing a petition in the United States district court for the district in which the person seeking the review resides or in which the commission's office is located not later than sixty days after issuance of the commission's written decision. Concurrently with filing the petition for review with the court, the petitioner shall serve a copy of the petition on the commission. Within five days after receiving a copy of the petition, the commission shall mail a copy of it to each party state and to all other persons who have notified the commission of their desire to receive copies of such petitions. Any failure of the commission to so mail copies of the petition does not affect the jurisdiction of the reviewing court. Except as otherwise provided in this subsection, standing to obtain judicial review of final decisions of the commission and the form and scope of the review are subject to and governed by 5 U.S.C. § 706.

4. If a party state seeks judicial review of a final decision of the commission that does any of the following, the facts shall be subject to trial de novo by the reviewing court unless trial de novo of the facts is affirmatively waived in writing by the party state:

(a) Imposes financial penalties on a party state.

(b) Suspends the right of a party state to have waste generated within its borders disposed of at a compact facility or at a noncompact facility made available to the region by an agreement entered into by the commission under section h, subsection 6.

(c) Terminates the designation of a party state as a host state.

(d) Revokes the membership of a party state in this compact.

(e) Establishes the amounts of money that a party state that has withdrawn from this compact or had its membership in this compact revoked is required to pay under article VIII, section e.

Any such trial de novo of the facts shall be governed by the federal rules of civil procedure and the federal rules of evidence.

5. Preliminary, procedural, or intermediate actions by the commission that precede a final decision are subject to review only in conjunction with review of the final decision.

6. Except as provided in subsection 5, actions of the commission that are not final decisions are not subject to judicial review.

o. Unless approved by a majority of the com-

mission, with the member from each host state in which an affected compact facility is operating or is being developed or constructed voting in the affirmative, no person shall do any of the following:

1. Import low-level radioactive waste generated outside the region for disposal within the region.

2. Export low-level radioactive waste generated within the region for disposal outside the region.

3. Manage low-level radioactive waste generated outside the region at a facility within the region.

4. Dispose of low-level radioactive waste generated within the region at a facility within the region that is not a compact facility.

p. The commission shall establish a remedial action fund to pay the costs of reasonable remedial actions taken by a party state if an event results from the development, construction, operation, closing, or long-term care of a compact facility that poses a threat to human health, safety, or welfare or to the environment. The amount of the remedial action fund shall be adequate to pay the costs of all reasonably foreseeable remedial actions. A party state shall notify the commission as soon as reasonably practical after the occurrence of any event that may require the party state to take a remedial action. The failure of a party state to notify the commission does not limit the rights of the party state under this section.

If the moneys in the remedial action fund are inadequate to pay the costs of reasonable remedial actions, the amount of the deficiency is a liability with respect to which generators shall provide indemnification under article VII, section g. Generators who provide the required indemnification have the rights of contribution provided in article VII, section g. This section applies to remedial action taken by a party state regardless of whether the party state takes the remedial action on its own initiative or because it is required to do so by a court or regulatory agency of competent jurisdiction.

q. If the commission makes payment from the remedial action fund provided for in section p, the commission is entitled to obtain reimbursement under applicable rules of law from any person who is responsible for the event giving rise to the remedial action. Reimbursement may be obtained from a party state only if the event giving rise to the remedial action resulted from the activities of that party state as a generator of waste.

r. If this compact is dissolved, all moneys held by the commission shall be used first to pay for any ongoing or reasonably anticipated remedial actions. Remaining moneys shall be distributed in a fair and equitable manner to those party states that have operating or closed compact facilities within their borders and shall be added to the long-term care funds maintained by those party states.

ARTICLE IV — REGIONAL DISPOSAL PLAN

The commission shall adopt and periodically update a regional disposal plan designed to ensure the safe and efficient disposal of low-level radioactive waste generated within the region. In adopting a regional low-level radioactive waste disposal plan, the commission shall do all of the following:

a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of compact facilities which are presently necessary and which are projected to be necessary to dispose of low-level radioactive waste generated within the region;

b. Develop and adopt procedures and criteria for identifying a party state as a host state for a compact facility. In developing these criteria, the commission shall consider all of the following:

1. The health, safety, and welfare of the citizens of the party states.

2. The existence of compact facilities within each party state.

3. The minimization of low-level radioactive waste transportation.

4. The volumes and types of low-level radioactive wastes projected to be generated within each party state.

5. The environmental impacts on the air, land, and water resources of the party states.

6. The economic impacts on the party states.

c. Conduct such hearings, and obtain such reports, studies, evidence, and testimony required by its approved procedures prior to identifying a party state as a host state for a needed compact facility;

d. Prepare a draft disposal plan and any update thereof, including procedures, criteria, and host states, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the commission shall conduct a public hearing in that state prior to the adoption or update of the disposal plan. The disposal plan and any update thereof shall include the commission's response to public and party state comment.

ARTICLE V — RIGHTS AND OBLIGATIONS OF PARTY STATES

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Except for low-level radioactive waste attributable to radioactive material or low-level radioactive waste imported into the region in order to render the material or low-level radioactive waste amenable to transportation, storage, disposal, or recovery, or in order to convert the low-level radioactive waste or material to another usable material, or to reduce it in volume or other-

wise treat it, each party state has the right to have all low-level radioactive wastes generated within its borders disposed of at compact facilities subject to the payment of all fees established by the host state under article VI, section j, and to the provisions contained in article VI, sections l and s, article VIII, section d, article IX, sections c and d, and article X. All party states have an equal right of access to any facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, subject to the provisions of article VI, sections l and s, article VIII, sections c and d, and article X.

c. If a party state's right to have waste generated within its borders disposed of at compact facilities, or at any noncompact facility made available to the region by an agreement entered into by the commission under article III, section h, subsection 6, is suspended, low-level radioactive waste generated within its borders by any person shall not be disposed of at any such facility during the period of the suspension.

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations, and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this section shall be construed to require a party state to enter into any agreement with the United States nuclear regulatory commission.

e. Each party state shall provide to the commission any data and information the commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the commission.

f. If, notwithstanding the sovereign immunity provision in article VII, section f, subsection 1, and the indemnification provided for in article III, section p, article VI, section o, and article VII, section g, a party state incurs a cost as a result of an inadequate remedial action fund or an exhausted long-term care fund, or incurs a liability as a result of an action described in article VII, section f, subsection 1, and not described in article VII, section f, subsection 2, the cost or liability shall be the pro rata obligation of each party state and each state that has withdrawn from this compact or had its membership in this compact revoked. The commission shall determine each state's pro rata obligation in a fair and equitable manner based on the amount of low-level radioactive waste from each such state that has been or is projected to be disposed of at the compact facility with respect to which the cost or liability to be shared was incurred. No state shall be obligated to pay the pro rata obligation of any other state.

The pro rata obligations provided for in this section do not result in the creation of state debt. Rather, the pro rata obligations are contractual obligations that shall be enforced by only the commission or an affected party state.

g. If the party states make payment pursuant to this section, the surcharge or fee provided for in article III, section j, shall be used to collect the funds necessary to reimburse the party states for those payments. The commission shall determine the time period over which reimbursement shall take place.

ARTICLE VI — DEVELOPMENT, OPERATION, AND CLOSING OF COMPACT FACILITIES

a. A party state may volunteer to become a host state, and the commission may designate that state as a host state.

b. If not all compact facilities required by the regional disposal plan are developed pursuant to section a, the commission may designate a host state.

c. After a state is designated a host state by the commission, it is responsible for the timely development and operation of the compact facility it is designated to host. The development and operation of the compact facility shall not conflict with applicable federal and host state laws, rules, and regulations, provided that the laws, rules, and regulations of a host state and its political subdivisions shall not prevent, nor shall they be applied so as to prevent, the host state's discharge of the obligation set forth in this section. The obligation set forth in this section is contingent upon the discharge by the commission of its obligation set forth in article III, section i, subsection 5.

d. If a party state designated as a host state fails to discharge the obligations imposed upon it by section c, its host state designation may be terminated by a two-thirds vote of the commission with the member from the host state of any then operating compact facility voting in the affirmative. A party state whose host state designation has been terminated has failed to fulfill its obligations as a host state and is subject to the provisions of article VIII, section d.

e. Any party state designated as a host state may request the commission to relieve that state of the responsibility to serve as a host state. Except as set forth in section d, the commission may relieve a party state of its responsibility only upon a showing by the requesting party state that, based upon criteria established by the commission that are consistent with applicable federal criteria, no feasible potential compact facility site exists within its borders. A party state relieved of its host state responsibility shall repay to the commission any funds provided to that state by the commission for the development of a compact facility, and also shall pay to the commission the amount the commission determines is necessary to ensure that the commission and the other party states do not incur financial loss as a result of the state being relieved of its host state responsibility. Any funds so paid to the commission with respect to the financial loss of the other party states shall

be distributed forthwith by the commission to the party states that would otherwise incur the loss. In addition, until the state relieved of its responsibility is again designated as a host state and a compact facility located in that state begins operating, it shall annually pay to the commission, for deposit in the remedial action fund, an amount the commission determines is fair and equitable in light of the fact the state has been relieved of the responsibility to host a compact facility, but continues to enjoy the benefits of being a member of this compact.

f. The host state shall select the technology for the compact facility. If requested by the commission, information regarding the technology selected by the host state shall be submitted to the commission for its review. The commission may require the host state to make changes in the technology selected by the host state if the commission demonstrates that the changes do not decrease the protection of air, land, and water resources and the health and safety of all people who may be affected by the compact facility. If requested by the host state, any commission decision requiring the host state to make changes in the technology shall be preceded by an adjudicatory hearing in which the commission shall have the burden of proof.

g. A host state may assign to a private contractor the responsibility, in whole or in part, to develop, construct, operate, close, or provide long-term care for a compact facility. Assignment of such responsibility by a host state to a private contractor does not relieve the host state of any responsibility imposed upon it by this compact. A host state may secure indemnification from the private contractor for any costs, liabilities, and expenses incurred by the host state resulting from the development, construction, operation, closing, or long-term care of a compact facility.

h. To the extent permitted by federal and state law, a host state shall regulate and license any compact facility within its borders and ensure the long-term care of that compact facility.

i. A host state shall accept waste for disposal for a period of twenty years from the date the compact facility in the host state becomes operational, or until its capacity has been reached, whichever occurs first. At any time before the compact facility closes, the host state and the commission may enter into an agreement to extend the period during which the host state is required to accept such waste or to increase the capacity of the compact facility. Except as specifically authorized by section l, subsection 4, the twenty-year period shall not be extended, and the capacity of the facility shall not be increased, without the consent of the affected host state and the commission.

j. A host state shall establish a system of fees to be collected from the users of any compact facility within its borders. The fee system, and the costs paid through the system, shall be reasonable and equitable. The fee system shall be subject to the commission's approval. The fee system shall provide the host state with sufficient revenue to pay costs associated with the compact facility, including, but not limited to operation, closing, long-term care, debt service, legal costs, local impact assistance, and local financial incentives. The fee system also shall be used to collect the surcharge provided in article III, section j, subsection 2. The fee system shall include incentives for source reduction and shall be based on the hazard of the low-level radioactive waste as well as the volume.

k. A host state shall ensure that a compact facility located within its borders that is permanently closed is properly cared for so as to ensure protection of air, land, and water resources and the health and safety of all people who may be affected by the facility.

l. The development of subsequent compact facilities shall be as follows:

1. No compact facility shall begin operating until the commission designates the host state of the next compact facility.

2. The following actions shall be taken by the state designated to host the next compact facility within the specified number of years after the compact facility it is intended to replace begins operation:

(a) Within three years, enact legislation providing for the development of the next compact facility.

(b) Within seven years, initiate site characterization investigations and tests to determine licensing suitability for the next compact facility.

(c) Within eleven years, submit a license application for the next compact facility that the responsible licensing authority deems complete.

If a host state fails to take any of these actions within the specified time, all low-level radioactive waste generated by a person within that state shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, section h, subsection 6, until the action is taken. Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the affirmative. A host state that fails to take any of these actions within the specified time has failed to fulfill its obligations as a host state and is subject to the provisions of this section, and article VIII, section d.

3. Within fourteen years after a compact facility begins operating, the state designated to host the next compact facility shall have obtained a license from the responsible licensing authority to construct and operate the compact facility the state has been designated to host. If the license is not obtained within the specified time, all low-level radioactive waste generated by any person within the state designated to host the next compact facility shall be denied access to the then op-

erating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, section h, subsection 6, until the license is obtained. The state designated to host the next compact facility shall have failed in its obligations as a host state and shall be subject to section d, and article VIII, section d. In addition, at the sole option of the host state of the then operating compact facility, all low-level radioactive waste generated by any person within any party state that has not fully discharged its obligations under section i, shall be denied access to the then operating compact facility, and to a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, until the license is obtained. Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the affirmative.

4. If twenty years after a compact facility begins operating, the next compact facility is not ready to begin operating, the state designated to host the next compact facility shall have failed in its obligation as a host state and shall be subject to section d, and article VIII, section d. If at the time the capacity of the then operating compact facility has been reached, or twenty years after the facility began operating, whichever occurs first, the next compact facility is not ready to begin operating, the host state of the then operating compact facility, without the consent of any other party state or the commission, may continue to operate the facility until a compact facility in the next host state is ready to begin operating. During any such period of continued operation of a compact facility, all low-level radioactive waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility and to a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6. In addition, during such period, at the sole option of the host state of the then operating compact facility, all low-level radioactive waste generated by any person within any party state that has not fully discharged its obligations under section i, shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, section h, subsection 6. Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the affirmative. The provisions of this subsection shall not apply if their application is inconsistent with an agreement between the host state of the then operating compact facility and the commission as authorized in section i, or inconsistent with section p or q.

5. During any period that access is denied for low-level radioactive waste disposal pursuant to section l, subsection 2, 3, or 4, the party state designated to host the next compact disposal facility shall pay to the host state of the then operating compact facility an amount the commission determines is reasonably necessary to ensure that the host state, or an agency or political subdivision thereof, does not incur financial loss as a result of the denial of access.

6. The commission may modify any of the requirements contained in section l, subsections 2 and 3, if it finds that circumstances have changed so that the requirements are unworkable or unnecessarily rigid or no longer serve to ensure the timely development of a compact facility. The commission may adopt such a finding by a two-thirds vote, with the member from the host state of the then operating compact facility voting in the affirmative.

m. This compact shall not prevent an emergency closing of a compact facility by a host state to protect air, land, and water resources and the health and safety of all people who may be affected by the compact facility. A host state that has an emergency closing of a compact facility shall notify the commission in writing within three working days of its action and shall, within thirty working days of its action, demonstrate justification for the closing.

n. A party state that has fully discharged its obligations under section i shall not again be designated a host state of a compact facility without its consent until each party state has been designated to host a compact facility and has fully discharged its obligations under section i, or has been relieved under section e, of its responsibility to serve as a host state.

o. Each host state of a compact facility shall establish a long-term care fund to pay for monitoring, security, maintenance, and repair of the facility after it is permanently closed. The expenses of administering the long-term care fund shall be paid out of the fund. The fee system established by the host state that establishes a long-term care fund shall be used to collect moneys in amounts that are adequate to pay for all long-term care of the compact facility. The moneys shall be deposited into the long-term care fund. Except where the matter is resolved through arbitration, the amount to be collected through the fee system for deposit into the fund shall be determined through an agreement between the commission and the host state establishing the fund. Not less than three years, nor more than five years, before the compact facility it is designated to host is scheduled to begin operating, the host state shall propose to the commission the amount to be collected through the fee system for deposit into the fund. If, one hundred eighty days after such proposal is made to the commission, the host state and the commission have not agreed, either the commis-

sion or the host state may require the matter to be decided through binding arbitration. The method of administration of the fund shall be determined by the host state establishing the long-term care fund, provided that moneys in the fund shall be used only for the purposes set forth in this section, and shall be invested in accordance with the standards applicable to trustees under the laws of the host state establishing the fund. If, after a compact facility is closed, the commission determines the long-term care fund established with respect to that compact facility is not adequate to pay for all long-term care for that compact facility, the commission shall collect and pay over to the host state of the closed compact facility, for deposit into the long-term care fund, an amount determined by the commission to be necessary to make the amount in the fund adequate to pay for all long-term care of the compact facility. If a long-term care fund is exhausted and long-term care expenses for the compact facility with respect to which the fund was created have been reasonably incurred by the host state of the compact facility, those expenses are a liability with respect to which generators shall provide indemnification as provided in article VII, section g. Generators that provide indemnification shall have contribution rights as provided in article VII, section g.

p. A host state that withdraws from the compact or has its membership revoked shall immediately and permanently close any compact facility located within its borders, except that the commission and a host state may enter into an agreement under which the host state may continue to operate, as a noncompact facility, a facility within its borders that, before the host state withdrew or had its membership revoked, was a compact facility.

q. If this compact is dissolved, the host state of any then operating compact facility shall immediately and permanently close the compact facility, provided that a host state may continue to operate a compact facility or resume operating a previously closed compact facility, as a noncompact facility, subject to all of the following requirements:

1. The host state shall pay to the other party states the portion of the funds provided to that state by the commission for the development, construction, operation, closing, or long-term care of a compact facility that is fair and equitable, taking into consideration the period of time the compact facility located in that state was in operation and the amount of waste disposed of at the compact facility, provided that a host state that has fully discharged its obligations under section i, shall not be required to make such payment.

2. The host state shall physically segregate low-level radioactive waste disposed of at the compact facility after this compact is dissolved from low-level radioactive waste disposed of at the compact facility before this compact is dissolved.

3. The host state shall indemnify and hold harmless the other party states from all costs, liabilities, and expenses, including reasonable attorneys' fees and expenses, caused by operating the compact facility after this compact is dissolved, provided that this indemnification and hold-harmless obligation shall not apply to costs, liabilities, and expenses resulting from the activities of a host state as a generator of waste.

4. Moneys in the long-term care fund established by the host state that are attributable to the operation of the compact facility before this compact is dissolved, and investment earnings thereon, shall be used only to pay the cost of monitoring, securing, maintaining, or repairing that portion of the compact facility used for the disposal of low-level radioactive waste before this compact is dissolved. Such moneys and investment earnings, and moneys added to the long-term care fund through a distribution authorized by article III, section r, also may be used to pay the cost of any remedial action made necessary by an event resulting from the disposal of waste at the facility before this compact is dissolved.

r. Financial statements of a compact facility shall be prepared according to generally accepted accounting principles. The commission may require the financial statements to be audited on an annual basis by a firm of certified public accountants selected and paid by the commission.

s. Low-level radioactive waste may be accepted for disposal at a compact facility only if the generator of the low-level radioactive waste has signed, and there is on file with the commission, an agreement to provide indemnification to a party state, or employee of that state, for all of the following:

1. Any cost of a remedial action described in article III, section p, that, due to inadequacy of the remedial action fund, is not paid as set forth in that provision.

2. Any expense for long-term care described in section o that, due to exhaustion of the long-term care fund, is not paid as set forth in that provision.

3. Any liability for damages to persons, property, or the environment incurred by a party state, or employee of that state while acting within the scope of employment, resulting from the development, construction, operation, regulation, closing, or long-term care of a compact facility, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, or other matter arising from this compact. The agreement also shall require generators to indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending an action for such damages. This indemnification shall not extend to liability based on any of the following:

(a) The activities of the party states as generators of waste.

(b) The obligations of the party states to each

other and the commission imposed by this compact or other contracts related to the disposal of low-level radioactive waste under this compact.

(c) Activities of a host state or employees thereof that are grossly negligent or willful and wanton.

The agreement shall provide that the indemnification obligation of generators shall be joint and several, except that the indemnification obligation of the party states with respect to their activities as generators of low-level radioactive waste shall not be joint and several, but instead shall be prorated according to the amount of waste that each state had disposed of at the compact facility giving rise to the liability. Such proration shall be calculated as of the date of the event giving rise to the liability. The agreement shall be in a form approved by the commission with the member from the host state of any then operating compact facility voting in the affirmative. Among generators there shall be rights of contribution based on equitable principles, and generators shall have rights of contribution against another person responsible for such damages under common law, statute, rule, or regulation, provided that a party state that through its own activities did not generate any low-level radioactive waste disposed of at the compact facility giving rise to the liability, an employee of such a party state, and the commission shall not have a contribution obligation. The commission may waive the requirement that the party state sign and file such an indemnification agreement as a condition to being able to dispose of low-level radioactive waste generated as a result of the party state's activities. Such a waiver shall not relieve a party state of the indemnification obligation imposed by article VII, section g.

ARTICLE VII — OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

1. Abrogates or limits the applicability of any act of Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

3. Prohibits any generator from storing or treating, on its own premises, low-level radioactive waste generated by it within the region;

4. Affects any administrative or judicial proceeding pending on the effective date of this compact;

5. Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;

6. Affects the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the secretary of the United States department of energy or successor agencies or federal research and development activities as described in 42 U.S.C. § 2021;

7. Affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders.

8. Requires a party state to enter into any agreement with the United States nuclear regulatory commission.

9. Limits, expands, or otherwise affects the authority of a state to regulate low-level radioactive waste classified by any agency of the United States government as below regulatory concern or otherwise exempt from federal regulation.

b. If a court of the United States finally determines that a law of a party state conflicts with this compact, this compact shall prevail to the extent of the conflict. The commission shall not commence an action seeking such a judicial determination unless commencement of the action is approved by a two-thirds vote of the membership of the commission.

c. Except as authorized by this compact, no law, rule, or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

d. Except as provided in article III, section m, and section f of this article, no provision of this compact shall be construed to eliminate or reduce in any way the liability or responsibility, whether arising under common law, statute, rule, or regulation, of any person for penalties, fines, or damages to persons, property, or the environment resulting from the development, construction, operation, closing, or long-term care of a compact facility, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, or other matter arising from this compact. The provisions of this compact shall not alter otherwise applicable laws relating to compensation of employees for workplace injuries.

e. Except as provided in 28 U.S.C. § 1251(a), the district courts of the United States have exclusive jurisdiction to decide cases arising under this compact. This section does not apply to proceedings within the jurisdiction of state or federal regulatory agencies or to judicial review of proceedings before state or federal regulatory agencies. This section shall not be construed to diminish other laws of the United States conferring jurisdiction on the courts of the United States.

f. For the purposes of activities pursuant to this compact, the sovereign immunity of party states and employees of party states shall be as follows:

1. A party state or employee thereof, while acting within the scope of employment, shall not be subject to suit or held liable for damages to persons, property, or the environment resulting from the development, construction, operation, regula-

tion, closing, or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, section h, subsection 6. This applies whether the claimed liability of the party state or employee is based on common law, statute, rule, or regulation.

2. The sovereign immunity granted in subsection 1 does not apply to any of the following:

(a) Actions based upon the activities of the party states as generators of low-level radioactive waste. With regard to those actions, the sovereign immunity of the party states shall not be affected by this compact.

(b) Actions based on the obligations of the party states to each other and the commission imposed by this compact, or other contracts related to the disposal of low-level radioactive waste under this compact. With regard to those actions, the party states shall have no sovereign immunity.

(c) Actions against a host state, or employee thereof, when the host state or employee acted in a grossly negligent or willful and wanton manner.

g. If in an action described in section f, subsection 1, and not described in section f, subsection 2, it is determined that, notwithstanding section f, subsection 1, a party state, or employee of that state who acted within the scope of employment, is liable for damages or has liability for other matters arising under this compact as described in article VI, section s, subsection 3, the generators who caused waste to be placed at the compact facility with respect to which the liability was incurred shall indemnify the party state or employee against that liability. Those generators also shall indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending against any such action. The indemnification obligation of generators under this section shall be joint and several, except that the indemnification obligation of party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste each state has disposed of at the compact facility giving rise to the liability. Among generators, there shall be rights of contribution based upon equitable principles, and generators shall have rights of contribution against another person responsible for damages under common law, statute, rule, or regulation. A party state that through its own activities did not generate low-level radioactive waste disposed of at the compact facility giving rise to the liability, an employee of a party state, and the commission shall have no contribution obligation under this section. This section shall not be construed as a waiver of the sovereign immunity provided for in section f, subsection 1.

h. The sovereign immunity of a party state provided for in section f, subsection 1, shall not be extended to a private contractor assigned responsibilities as authorized in article VI, section g.

ARTICLE VIII — ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, SUSPENSION OF ACCESS, ENTRY INTO FORCE, AND TERMINATION

a. Any state may petition the commission to be eligible for membership in the compact. The commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the commission, including the affirmative vote of the member from each host state in which a compact facility is operating or being developed or constructed. Any state becoming eligible upon the approval of the commission becomes a member of the compact when the state enacts this compact into law and pays the eligibility fee established by the commission.

b. The commission is formed upon the appointment of commission members and the tender of the membership fee payable to the commission by three party states. The governor of the first state to enact this compact shall convene the initial meeting of the commission. The commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the commission and implement the provisions of this compact.

c. A party state that has fully discharged its obligations under article VI, section i, or has been relieved under article VI, section e, of its responsibilities to serve as a host state, may withdraw from this compact by repealing the authorizing legislation and by receiving the unanimous consent of the commission. Withdrawal takes effect on the date specified in the commission resolution consenting to withdrawal. All legal rights of the withdrawn state established under this compact, including, but not limited to, the right to have low-level radioactive waste generated within its borders disposed of at compact facilities, cease upon the effective date of withdrawal, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in section e continue until they are fulfilled.

d. Any party state that fails to comply with the terms of this compact or fails to fulfill its obligations may have reasonable financial penalties imposed against it, may have the right to have low-level radioactive waste generated within its borders disposed of at compact facilities, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, suspended, or may have its membership in the compact revoked by a two-thirds vote of the commission, provided that the membership of the party state designated to host the next compact facility shall not be revoked unless the member from the host state of a then operating compact facility

votes in the affirmative. Revocation takes effect on the date specified in the resolution revoking the party state's membership. All legal rights of the revoked party state established under this compact, including, but not limited to, the right to have low-level radioactive waste generated within its borders disposed of at compact facilities, cease upon the effective date of revocation, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in section e continue until they are fulfilled. The chairperson of the commission shall transmit written notice of a revocation of a party state's membership in the compact, suspension of a party state's low-level radioactive waste disposal rights, or imposition of financial penalties immediately following the vote of the commission to the governor of the affected party state, governors of all the other party states, and the Congress of the United States.

e. A party state that withdraws from this compact or has its membership in the compact revoked before it has fully discharged its obligations under article VI forthwith shall repay to the commission the portion of the funds provided to that state by the commission for the development, construction, operation, closing, or long-term care of a compact facility that the commission determines is fair and equitable, taking into consideration the period of time the compact facility located in that host state was in operation and the amount of low-level radioactive waste disposed of at the compact facility. If at any time after a compact facility begins operating, a party state withdraws from the compact or has its membership revoked, the withdrawing or revoked party state shall be obligated forthwith to pay to the commission, the amount the commission determines would have been paid under the fee system established by the host state of the compact facility, to dispose of at the compact facility the estimated volume of low-level radioactive waste generated in the withdrawing or revoked party state that would have been disposed of at the compact facility from the time of withdrawal or revocation until the time the compact facility is closed. Any funds so paid to the commission shall be distributed by the commission to the persons who would have been entitled to receive the funds had they originally been paid to dispose of low-level radioactive waste at the facility. Any person receiving funds from the commission shall apply the funds to the purposes to which they would have been applied had they originally been paid to dispose of low-level radioactive waste at the compact facility. In addition, a withdrawing or revoked party state forthwith shall pay to the commission an amount the commission determines to be necessary to cover all other costs and damages incurred by the commission and the remaining party states as a result of the withdrawal or revocation. The intention of this section is to eliminate a decrease in revenue resulting from withdrawal of a party state or revocation of a party state's membership, to eliminate financial harm to the remaining party states, and to create an incentive for party states to continue as members of the compact and to fulfill their obligations. This section shall be construed and applied so as to effectuate this intention.

f. Any party state whose right to have low-level radioactive waste generated within its borders disposed of at compact facilities is suspended by the commission, shall pay to the host state of the compact facility to which access has been suspended the amount the commission determines is reasonably necessary to ensure that the host state, or any political subdivision thereof, does not incur financial loss as a result of the suspension of access.

g. This compact becomes effective upon enactment by at least three eligible states and consent to this compact by the Congress. The consent given to this compact by the Congress shall extend to any future admittance of new party states and to the power of the commission to regulate the shipment and disposal of waste and disposal of naturally occurring and accelerator-produced radioactive material pursuant to this compact. Amendments to this compact are effective when enacted by all party states and, if necessary, consented to by the Congress. To the extent required by the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. § 2021(d)(4)(d), every five years after this compact has taken effect, the Congress by law may withdraw its consent.

h. The withdrawal of a party state from this compact, the suspension of low-level radioactive waste disposal rights, the termination of a party state's designation as a host state, or the revocation of a state's membership in this compact does not affect the applicability of this compact to the remaining party states.

i. This compact may be dissolved and the obligations arising under this compact may be terminated only as follows:

1. Through unanimous agreement of all party states expressed in duly enacted legislation; or

2. Through withdrawal of consent to this compact by the Congress under Article I, section 10, of the United States Constitution, in which case dissolution shall take place one hundred twenty days after the effective date of the withdrawal of consent.

Unless explicitly abrogated by the state legislation dissolving this compact, or if dissolution results from withdrawal of congressional consent, the limitations on the investment and use of long-term care funds in article VI, section o and section q, subsection 4, the contractual obligations in article V, section f, the indemnification obligations and contribution rights in article VI, sections o and s, and article VII, section g, and the operation rights indemnification and hold-harmless obligations in article VI, section q, shall remain in force

notwithstanding dissolution of this compact.

ARTICLE IX — PENALTIES AND ENFORCEMENT

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. The parties to this compact intend that the courts of the United States shall specifically enforce the obligations, including the obligations of party states and revoked or withdrawn party states, established by this compact.

c. The commission, an affected party state, or both may obtain injunctive relief, recover damages, or both to prevent or remedy violations of this compact.

d. Each party state acknowledges that the transport into a host state of low-level radioactive waste packaged or transported in violation of applicable laws, rules, and regulations may result in the imposition of sanctions by the host state which may include reasonable financial penalties assessed against any generator, transporter, or collector responsible for the violation, or suspension or revocation of access to the compact facility in the host state by a generator, transporter, or collector responsible for the violation.

e. Each party state has the right to seek legal recourse against a party state which acts in violation of this compact.

f. This compact shall not be construed to create a cause of action for a person other than a party state or the commission. Nothing in this section shall limit the right of judicial review set forth in article III, section n, subsection 3, or the rights of contribution set forth in article III, section p, article VI, sections o and s, and article VII, section g.

ARTICLE X — SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any provision of this compact is finally determined by a court of competent jurisdiction to be contrary to the constitution of a participating state or of the United States or the application thereof to a person or circumstance is held invalid, the validity of the remainder of this compact to that person or circumstance and the applicability of the entire compact to any other person or circumstance shall not be affected thereby. If a provision of this compact shall be held contrary to the constitution of a state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. If any provision of this compact imposing a financial obligation upon a party state, or a state that has withdrawn from this compact or had its membership in this compact revoked, is finally determined by a court of competent jurisdiction to be unenforceable due to the state's constitutional limitations on its ability to pay the obligation, then that state shall use its best efforts to obtain an appropriation to pay the obligation, and, if the state is a party state, its right to have low-level radioactive waste generated within its borders disposed of at compact facilities, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, section h, subsection 6, shall be suspended until the appropriation is obtained.

83 Acts, ch 8, §1
CS83, §8C.1
85 Acts, ch 67, §3
C93, §457B.1
96 Acts, ch 1051, §1; 97 Acts, ch 23, §54

CHAPTER 458

CONVERTING INTRACOUNTY DISTRICTS INTO INTERCOUNTY DISTRICT

Transferred to §468.305 through §468.309;
89 Acts, ch 126

CHAPTER 458A

OIL, GAS, AND OTHER MINERALS

This chapter not enacted as a part of this title;
transferred from chapter 84 in Code 1993

458A.1 Declaration of policy.
458A.2 Definitions.
458A.3 Waste prohibited.
458A.4 Duties and powers of director.
458A.5 Drilling permit required.
458A.6 Department shall determine market demand and regulate the amount of production.
458A.7 Department shall set spacing units.
458A.8 Integration of fractional tracts.

458A.9 Voluntary agreements for unit operation valid.
458A.10 Liens for development and operating costs.
458A.11 Rules covering practice before department.
458A.12 Summoning witnesses, administering oaths, requiring production of records — hearing examiners appointed.
458A.13 Reserved.
458A.14 Appeal to district court — procedure of appeal.
458A.15 Acquisition and handling illegal oil and gas prohibited — seizure of illegal oil and gas and sale thereof.
458A.16 Penalties.
458A.17 Action to restrain violation or threatened violation.
458A.18 Mineral rights taxed separately.
458A.19 Rate.
458A.20 Tax sale — redemption by owner.
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458A.1 Declaration of policy.

It is declared to be in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas and metallic minerals in the state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas and metallic minerals properties in such a manner that a greater ultimate recovery of oil and gas and metallic minerals be had and that the correlative rights of all owners be fully protected; and to encourage and to authorize such measures as will result in the greatest possible economic recovery of oil and gas and metallic minerals within the state to the end that the landowners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources. It is further declared that the general welfare of the people requires that the underground and surface water of the state be protected from pollution and conserved in the best interests of the people of the state.

[C39, §**1360.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §84.1; 81 Acts, ch 41, §1]

C93, §458A.1

458A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Certificate of clearance"* means a permit prescribed by the department for the transportation or the delivery of oil or gas or product and issued or registered in accordance with the rule or order requiring the permit.

2. *"Commission"* means the environmental protection commission of the department.

3. *"Department"* means the department of natural resources created under section 455A.2.

4. *"Director"* means the director of the department or a designee.

5. *"Exploration"* means an on-site geologic examination from the surface of an area by core, rotary, percussion, or other drilling for the purpose of obtaining stratigraphic or metallic mineral resource information or establishing the nature of a known metallic mineral deposit.

6. *"Field"* means the general area underlaid by one or more pools.

7. *"Gas"* means and includes all natural gas and all other fluid hydrocarbons which are produced at the wellhead and not hereinabove defined as oil.

8. *"Illegal gas"* means gas which has been produced from any well within this state in excess of the quantity permitted by any rule or order of the department.

9. *"Illegal oil"* means oil which has been produced from any well within the state in excess of the quantity permitted by any rule or order of the department.

10. *"Illegal product"* means any product derived in whole or in part from illegal oil or illegal gas.

11. *"Metallic mineral resources"* means the valuable minerals of an area containing metals such as, but not restricted to, lead, copper, zinc, and iron that are presently recoverable or may be recoverable in the future.

12. *"Oil"* means and includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

13. *"Owner"* means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas that person produces therefrom either for that person or others or for that person and others.

14. *"Person"* means and includes any natural person, corporation, association, partnership, re-

ceiver, trustee, personal representative, guardian, fiduciary or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.

15. *"Pool"* means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

16. *"Producer"* means the owner of a well or wells capable of producing oil or gas or both.

17. *"Product"* means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas, whether hereinabove enumerated or not.

18. *"Reasonable market demand"* means the demand for oil or gas for reasonable current requirements for consumption and use within and without the state, together with such quantities as are reasonably necessary for building up or maintaining reasonable working stocks and reasonable reserves of oil or gas or product.

19. *"Waste"* means and includes

a. Physical waste, as that term is generally understood in the oil and gas industry,

b. The inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy,

c. The location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas,

d. The inefficient storing of oil, and

e. The production of oil or gas in excess of transportation or marketing facilities or in excess of reasonable market demand.

20. *"Well"* means any hole drilled to determine stratigraphic sequence, mineralization, or for the discovery of oil or gas.

21. The word *"and"* includes the word *"or"* and the use of the word "or" includes the word "and". The use of the plural includes the singular and the use of the singular includes the plural.

[C66, 71, 73, 75, 77, 79, 81, §84.2; 81 Acts, ch 41, §2; 82 Acts, ch 1199, §37, 38, 96]

86 Acts, ch 1245, §1810 – 1812

C93, §458A.2

458A.3 Waste prohibited.

Waste of oil and gas is prohibited.

[C66, 71, 73, 75, 77, 79, 81, §84.3]

C93, §458A.3

458A.4 Duties and powers of director.

The director shall administer this chapter. The director shall make investigations the director deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action. The director has the authority:

1. To require:

a. Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the refining or intrastate transportation of oil and gas;

b. The making and filing of all mechanical well logs and the filing of directional surveys if taken, and the filing of reports on well location, drilling and production, and the filing free of charge of samples and core chips and of complete cores less tested sections when requested in the department within six months after the completion or abandonment of the well;

c. The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, the pollution of fresh water supplies by oil, gas, or highly mineralized water, to prevent blowouts, cavings, seepages, and fires, and to prevent the escape of oil, gas, or water into workable coal or other mineral deposits;

d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules of the department prescribed to govern the production of oil and gas on state and private lands within the state of Iowa;

e. That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by the means and upon standards prescribed by the department;

f. The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios;

g. Certificates of clearance in connection with the transportation or delivery of any native and indigenous Iowa produced crude oil, gas, or any product;

h. Metering or other measuring of any native and indigenous Iowa produced crude oil, gas, or product in pipelines, gathering systems, barge terminals, loading racks, refineries, or other places; and

i. That every person who produces, sells, purchases, acquires, stores, transports, refines, or processes native and indigenous Iowa produced crude oil or gas in this state shall keep and maintain within this state complete and accurate records of the quantities of oil or gas, which records shall be available for examination by the depart-

ment at all reasonable times, and that every such person file with the department the reports it may prescribe with respect to the oil or gas or the products of the oil or gas.

2. To regulate:

a. The drilling, producing, and plugging of wells, and all other operations for the production of oil or gas;

b. The shooting and chemical treatment of wells;

c. The spacing of wells;

d. Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and

e. Disposal of highly mineralized water and oil field wastes.

3. To limit and to allocate the production of oil and gas from any field, pool, or area.

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

5. To promulgate and to enforce rules and orders to effectuate the purposes and the intent of this chapter.

6. To make rules or orders for the classification of wells as oil wells or dry natural gas wells; or wells drilled, or to be drilled, for geological information, or as wells for secondary recovery projects, or wells for the disposal of highly mineralized water, brine, or other oil field wastes, or wells for the storage of dry natural gas, or casinghead gas, or wells for the development of reservoirs for the storage of liquid petroleum gas and for the exploration and production of metallic mineral resources.

[C39, §**1360.04, 1360.05;** C46, 50, 54, 58, 62, §84.4, 84.5; C66, 71, 73, 75, 77, 79, 81, §84.4; 81 Acts, ch 41, §3; 82 Acts, ch 1199, §39, 40, 96]

86 Acts, ch 1245, §1813 – 1815

C93, §458A.4

458A.5 Drilling permit required.

It is unlawful to commence operations for the drilling of a well for oil or gas or the production of metallic minerals or to commence operations to deepen any well to a different geological formation without first giving the director notice of intention to drill, and without first obtaining a permit from the director, under rules prescribed by the department and paying to the department a fee established by rule of the department for the well. The fee shall be deposited in the general fund of the state.

[C39, §**1360.03;** C46, 50, 54, 58, 62, §84.3; C66, 71, 73, 75, 77, 79, 81, §84.5; 81 Acts, ch 41, §4; 82 Acts, ch 1199, §41, 96]

86 Acts, ch 1245, §1815, 1816

C93, §458A.5

458A.6 Department shall determine market demand and regulate the amount of production.

The department shall determine market demand for each marketing district and regulate the amount of production as follows:

1. The department shall limit the production of oil and gas within each marketing district to that amount which can be produced without waste, and which does not exceed the reasonable market demand.

2. When the department limits the total amount of oil or gas which may be produced in the state or a marketing district, the department shall allocate or distribute the allowable production among the pools in the district on a reasonable basis, giving, where reasonable under the circumstances to each pool with small wells of settled production, an allowable production which prevents the general premature abandonment of the wells in the pool.

3. When the department limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, which limitation is imposed either incidental to, or without, a limitation of the total amount of oil or gas produced in the marketing district wherein the pool is located, the department shall allocate or distribute the allowable production among the wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonable avoidable drainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.

4. In allocating the market demand for gas between pools within marketing districts, the department shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner which will protect the reasonable use of its energy for oil production.

5. The department is not required to determine the reasonable market demand applicable to any single pool, except in relation to all other pools within the same marketing district, and in relation to the demand applicable to the marketing district. In allocating allowables to pools, the department may consider, but is not bound by nominations of purchasers to purchase from particular fields, pools, or portions thereof. The department shall allocate the total allowable for the state in a manner which prevents undue discrimination between marketing districts, fields, pools, or portions thereof resulting from selective buying or nomination by purchasers.

[C66, 71, 73, 75, 77, 79, 81, §84.6; 82 Acts, ch 1199, §42, 96]

C93, §458A.6

458A.7 Department shall set spacing units.

The department shall set spacing units as follows:

1. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the department shall establish spacing units for a pool. Spacing units when established shall be of uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above mentioned, the department may divide any pool into zones and establish spacing units for each zone, which units may differ in size and shape from those established in any other zone.

2. The size and shape of spacing units are to be such as will result in the efficient and economical development of the pool as a whole.

3. An order establishing spacing units for a pool shall specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application, if the director finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the director is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however, the director shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool.

4. An order establishing units for a pool shall cover all lands determined or believed to be underlaid by the pool, and may be modified by the director from time to time to include additional areas determined to be underlaid by the pool. When found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells or to protect correlative rights, an order establishing spacing units in a pool may be modified by the director to increase the size of spacing units in the pool or any zone of the pool, or to permit the drilling of additional wells on a reasonable uniform plan in the pool, or any zone of the pool. Orders of the director may be appealed to the department within thirty days.

[C39, §**1360.02;** C46, 50, 54, 58, 62, §84.2; C66, 71, 73, 75, 77, 79, 81, §84.7; 82 Acts, ch 1199, §43, 96]

86 Acts, ch 1245, §1816

C93, §458A.7

458A.8 Integration of fractional tracts.

1. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners of the tracts may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling the department upon the application of any interested person, shall enter an order pooling all interests in the spacing unit for the development and operations of the unit. Each pooling order shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, a just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be deemed for all purposes to be the conduct of the operations upon each separately owned tract in the drilling unit by the several owners of the unit. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from the tract by a well drilled on it.

2. Each pooling order shall make provision for the drilling and operation of a well on the spacing unit, and for the payment of the reasonable actual cost of the well by the owners of interests in the spacing unit, plus a reasonable charge for supervision. In the event of any dispute as to such costs the department shall determine the proper costs. If an owner shall drill and operate, or pay the expenses of drilling and operating the well for the benefit of others, then, the owner so drilling or operating shall, upon complying with the terms of section 458A.10, have a lien on the share of production from the spacing unit accruing to the interest of each of the other owners for the payment of a proportionate share of the expenses. All the oil and gas subject to the lien shall be marketed and sold and the proceeds applied in payment of the expenses secured by the lien as provided for in section 458A.10.

[C66, 71, 73, 75, 77, 79, 81, §84.8; 82 Acts, ch 1199, §44, 96]

C93, §458A.8

458A.9 Voluntary agreements for unit operation valid.

An agreement for the unit or co-operative development and operation of a field or pool, in connection with the conduct of a repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas, or any other method of operation, including water floods, may be performed without being in violation of any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the department as being in the public interest, protective of correlative rights, and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. The agreements bind only

the persons who execute them, and their heirs, successors, assigns, and legal representatives.

[C66, 71, 73, 75, 77, 79, 81, §84.9; 82 Acts, ch 1199, §45, 96]

C93, §458A.9

458A.10 Liens for development and operating costs.

A person to whom another is indebted for expenses incurred in drilling and operating a well on a drilling unit required to be formed as provided for in section 458A.8, may, in order to secure payment of the amount due, fix a lien upon the interest of the debtor in the production from the drilling unit or the unit area, as the case may be, by filing for record, with the recorder of the county where property involved, or any part thereof, is located, an affidavit setting forth the amount due and the interest of the debtor in such production. The person to whom the amount is payable may, at the expense of the debtor, store all or any part of the production upon which the lien exists until the total amount due, including reasonable storage charges, is paid or the commodity is sold at foreclosure sale and delivery is made to the purchaser. The lien may be foreclosed as provided for with respect to foreclosure of a lien on chattels.

[C66, 71, 73, 75, 77, 79, 81, §84.10]

C93, §458A.10

458A.11 Rules covering practice before department.

1. The department shall prescribe rules governing the practice and procedure before it.

2. An order or amendment of an order, except in an emergency, shall not be made by the department without a public hearing upon at least ten days' notice. The public hearing shall be held at the time and place prescribed by the department, and any interested person is entitled to be heard.

3. When an emergency requiring immediate action is found to exist the department may issue an emergency order without notice of hearing, which shall be effective upon promulgation. An emergency order shall not remain effective for more than fifteen days.

4. Any notice required by this chapter shall be given at the election of the department either by personal service or by letter to the last recorded address and one publication in a newspaper of general circulation in the state capital city and in a newspaper of general circulation in the county where the land affected or some part of the land is situated. The notice shall issue in the name of the state, shall be signed by the director, shall specify the style and number of the proceeding, the time and place of the hearing, and shall briefly state the purpose of the proceeding. Should the department elect to give notice by personal service, the service may be made by any officer authorized to serve process, or by any agent of the department, in the same manner as is provided by law for the service of original notices in civil actions in the district court of the state. Proof of the service by such agent shall be by the affidavit of the person making personal service.

5. All orders issued by the department shall be in writing, shall be entered in full and indexed in books to be kept by the director for that purpose, and shall be public records open for inspection at all times during reasonable office hours. A copy of any rule or order certified by the director or any officer of the department shall be received in evidence in all courts of this state with the same effect as the original.

6. The department may act upon its own motion, or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the department, the department shall promptly fix a date for a hearing and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The department shall enter its order within thirty days after the hearing.

[C66, 71, 73, 75, 77, 79, 81, §84.11; 82 Acts, ch 1199, §46, 96]

86 Acts, ch 1245, §1815, 1816

C93, §458A.11

458A.12 Summoning witnesses, administering oaths, requiring production of records — hearing examiners appointed.

1. The department may summon witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted. A person shall not be excused from attending and testifying, or from producing books, papers, and records before the department or a court, or from obedience to the subpoena of the department or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However this subsection does not require a person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before the department or court for determination. A natural person is not subject to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of objections, the person may be required to testify or produce as evidence, documentary or otherwise, before the department or court, or in obedience to subpoena. However, a person testifying shall not be exempted from prosecution and punishment for perjury committed in so testifying.

2. In case of failure or refusal on the part of any person to comply with the subpoena issued by the department, or in case of the refusal of any witness to testify as to any matter regarding which the wit-

ness may be interrogated, any court in the state, upon the application of the department, may issue an attachment for the person and compel the person to comply with the subpoena, and to attend before the department and produce the records, books, and documents for examination, and to give testimony. The courts may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify.

3. The department may appoint a hearing examiner or examiners to conduct hearings required by this chapter. When appointed, the hearing examiner may exercise all of the powers delegated to the department by this section.

[C66, 71, 73, 75, 77, 79, 81, §84.12; 82 Acts, ch 1199, §47, 96]

C93, §458A.12

458A.13 Reserved.

458A.14 Appeal to district court — procedure of appeal.

Judicial review of an action of the department may be sought in accordance with the terms of chapter 17A. Notwithstanding that chapter, petitions for judicial review may be filed in the district court of Polk county or in the district court of any county in which the property affected or some portion of the property is located.

[C66, 71, 73, 75, 77, 79, 81, §84.14; 82 Acts, ch 1199, §48, 49, 96]

C93, §458A.14

458A.15 Acquisition and handling illegal oil and gas prohibited — seizure of illegal oil and gas and sale thereof.

1. The sale, purchase, acquisition, transportation, refining, processing, or handling of illegal oil, illegal gas, or illegal product is prohibited. However, a penalty by way of fine shall not be imposed upon a person who sells, purchases, acquires, transports, refines, processes, or handles illegal oil, illegal gas, or illegal product unless:

a. The person knows, or is put on notice, of facts indicating that illegal oil, illegal gas, or illegal product is involved.

b. The person fails to obtain a certificate of clearance with respect to the oil, gas, or product where prescribed by order of the department, or fails to follow any other method prescribed by an order of the department for the identification of the oil, gas or product.

2. Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale; seizure and sale to be in addition to any other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. When the department believes that any oil, gas or product is illegal, the department acting by the attorney general, shall bring a civil action in rem in the district court of the county where the oil, gas, or product is found, to seize and sell the same, or the department may include an action in rem for the seizure and sale of illegal oil, illegal gas, or illegal product in any suit brought for an injunction or penalty involving illegal oil, illegal gas, or illegal product. Any person claiming an interest in oil, gas, or product affected by the action may intervene as an interested party in the action.

3. Actions for the seizure and sale of illegal oil, illegal gas, or illegal product shall be strictly in rem, and shall proceed in the name of the state as plaintiff against the illegal oil, illegal gas, or illegal products as defendant. No bond or similar undertaking shall be required of the plaintiff. Upon the filing of the petition for seizure and sale, the attorney general shall issue a notice, with a copy of the complaint attached thereto, which shall be served in the manner provided for service of original notices in civil actions, upon any and all persons having or claiming any interest in the illegal oil, illegal gas, or illegal products described in the petition. Service shall be completed by the filing of an affidavit by the person making the service, stating the time and manner of making such service. Any person who fails to appear and answer within the period of thirty days shall be forever barred by the judgment based on such service. If the court, on a properly verified petition, or affidavits, or oral testimony, finds that grounds for seizure and for sale exist, the court shall issue an immediate order of seizure, describing the oil, gas, or product to be seized and directing the sheriff of the county to take such oil, gas, or product into the sheriff's custody, actual or constructive, and to hold the same subject to the further order of the court. The court, in such order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by the sheriff under the order to an agent appointed by the court as the agent of the court; such agent to give bond in an amount and with such surety as the court may direct, conditioned upon the agent's compliance with the orders of the court concerning the custody and disposition of such oil, gas, or product.

4. Any person having an interest in oil, gas, or product described in an order of seizure and contesting the right of the state to the seizure and sale thereof may, prior to the sale thereof as herein provided, obtain the release thereof, upon furnishing bond to the sheriff approved by the court, in an amount equal to one hundred fifty percent of the market value of the oil, gas, or product to be released, and conditioned as the court may direct upon redelivery to the sheriff of such product released or upon payment to the sheriff of the market value thereof as the court may direct, if and when ordered by the court, and upon full compliance with the further orders of the court.

5. If the court, after a hearing upon a petition for the seizure and sale of oil, gas, or product, finds that such oil, gas, or product is contraband, the court shall order the sale thereof by the sheriff in the same manner and upon the same notice of sale as provided by law for the sale of personal property on execution of judgment entered in a civil action except that the court may order that the illegal oil, illegal gas, or illegal product be sold in specified lots or portions and at specified intervals. Upon such sale, title to the oil, gas, or product sold shall vest in the purchaser free of the claims of any and all persons having any title thereto or interest therein at or prior to the seizure thereof, and the same shall be legal oil, legal gas, or legal product, as the case may be, in the hands of the purchaser.

6. All proceeds derived from the sale of illegal oil, illegal gas, or illegal product, as above provided, after payment of costs of suit and expenses incident to the sale and all amounts paid as penalties provided for by this chapter shall be paid to the state treasurer and credited to the general fund.

[C66, 71, 73, 75, 77, 79, 81, §84.15; 82 Acts, ch 1199, §50, 96]

C93, §458A.15

458A.16 Penalties.

1. Any person who violates any provision of this chapter, or any rule or order of the department where no other penalty is provided is guilty of a simple misdemeanor.

2. If any person, for the purpose of evading this chapter, or any rule or order of the department, makes or causes to be made any false entry or statement in a report required by this chapter or by any rule or order, or makes or causes to be made any false entry in any record, account, or memorandum required by this chapter, or by any rule or order, or omits, or causes to be omitted, from any record, account, or memorandum, full, true, and correct entries as required by this chapter, or by any rule or order, or removes from this state or destroys, mutilates, alters, or falsifies any such record, account, or memorandum, the person is guilty of a fraudulent practice.

3. Any person knowingly aiding or abetting any other person in the violation of any provision of this chapter, or any rule or order of the department is subject to the same penalty as that prescribed by this chapter for the violation by the other person.

[C66, 71, 73, 75, 77, 79, 81, §84.16; 82 Acts, ch 1199, §51, 96]

C93, §458A.16

458A.17 Action to restrain violation or threatened violation.

1. If it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order of the department, the department shall bring suit against the person in the district court of any county where the violation occurs or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. In the suit, the court has jurisdiction to grant to the department, without bond or other undertaking, the prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders, preliminary injunctions, temporary, preliminary, or final orders restraining the movement or disposition of any illegal oil, illegal gas, or illegal product, any of which the court may order to be impounded or placed in the custody of an agent appointed by the court.

2. If the department fails to bring suit to enjoin a violation or threatened violation of any provision of this chapter, or any rule or order of the department, within ten days after receipt of written request to do so by any person who is or will be adversely affected by the violation, the person making the request may bring suit in the person's own behalf to restrain the violation or threatened violation in any court in which the department might have brought suit. The department shall be made a party defendant in the suit in addition to the person violating or threatening to violate a provision of this chapter, or a rule or order of the department, and the action shall proceed and injunctive relief may be granted to the department or the petitioner without bond in the same manner as if suit had been brought by the department.

[C66, 71, 73, 75, 77, 79, 81, §84.17; 82 Acts, ch 1199, §52, 96]

C93, §458A.17

458A.18 Mineral rights taxed separately.

All rights and interests in or to oil, gas or other minerals underlying land, whether created by or arising under deed, lease, reservation of rights, or otherwise, which rights or interests are owned by any person other than the owner of the land, shall be assessed and taxed separately to the owner of such rights or interests in the same manner as other real estate. The taxes on such rights or interests which are not owned by the owner of the land shall not be a lien on the land.

[C66, 71, 73, 75, 77, 79, 81, §84.18]

C93, §458A.18

458A.19 Rate.

In order to pay the costs of assessment and collection and provide a reasonable minimum standard of taxation, the taxes on any such rights or interests not owned by the owner of the land, shall be not less than five cents per acre.

[C66, 71, 73, 75, 77, 79, 81, §84.19]

C93, §458A.19

458A.20 Tax sale — redemption by owner.

When any such rights or interests not owned by the owner of the land are sold at tax sale, and when the owner of such rights or interests does not redeem under the provisions of chapter 447 within ninety days after such tax sale, the owner of the land shall thereafter have the same right of redemption as the owner of such rights or interests has, and redemption by the owner of the land shall terminate all right of redemption of the owner of such rights or interests.

[C66, 71, 73, 75, 77, 79, 81, §84.20]
C93, §458A.20

458A.21 Lease of public lands.

The state, counties and cities and other political subdivisions may lease publicly owned lands under their respective jurisdictions for the purpose of oil or gas or metallic minerals exploration and production. Any such leases shall be entered into on behalf of the state by the executive council, on behalf of a county by the board of supervisors, on behalf of a city by the council and on behalf of another political subdivision by the governing body. The leases shall be upon terms and conditions as agreed upon.

Revenues derived from the leasing of state-owned lands shall be paid into the general fund of the state. Revenues derived from the leasing of other public lands shall be paid into the general fund of the respective lessor political subdivision.

[C39, §**1360.10;** C46, 50, 54, 58, 62, §84.10; C66, 71, 73, 75, 77, 79, 81, §84.21; 81 Acts, ch 41, §5]
C93, §458A.21

458A.22 Duty to have forfeited lease released — affidavit of noncompliance — notice to landowner — remedies.

When any oil, gas, or metallic mineral lease given on land situated in Iowa and recorded, becomes forfeited by failure of the lessee to comply with its provisions or the Iowa law, the lessee shall, within sixty days after date of forfeiture of the lease, have the lease surrendered in writing, duly acknowledged and placed on record in the county where the leased land is situated, or the lease may be released by a marginal release on margin of the record without cost to the owner of land described in the lease. If the lessee fails to execute and record a release of the recorded lease within the time provided for, the owner of the land may execute and file with the recorder of the counties in which the forfeited lease has been recorded an affidavit of noncompliance in substantially the following form:

AFFIDAVIT OF NONCOMPLIANCE

State of Iowa)
County of . . . . .) ss.

. . . . . , being first duly sworn, upon oath deposes and says that the deponent is . . . . . as referred to in an (oil and gas) (metallic mineral) mining lease dated the . . . . . day of . . . . . (month), ... (year), which lease is recorded in Volume . . . . , Page . . . . , of the County Records of . . . . . County, ... , and which lease covers the following described lands: . . . . . .
. . . . . .

And further, deponent says that on the . . . . . day of . . . . . (month), ... (year), under the terms of said lease, there should have been paid to the deponent or deposited to the deponent's credit in the . . . . . Bank of . . . . . the sum of . . . . . Dollars ($ . . . . .), the payment of which was necessary in order to keep the above described lease in force and effect. Deponent hereby swears the above payment has never been made to the deponent or the deponent's representatives, in money or otherwise, nor has same been deposited to the deponent's credit in the above bank.

And further, deponent says that there has been no drilling or development of any nature or kind whatsoever done on the land covered by the lease referred to herein, as called for under the terms of said lease.

. . . . . .
. . . . . .

Subscribed and sworn to before me, a Notary Public for the State of Iowa, this . . . . . day of . . . . . (month), ... (year)

. . . . . .
Notary Public
My commission expires . . . . . .

AFFIDAVIT OF THE BANKER

State of . . . . .)
County of . . . . .) ss.

I, ... , (Cashier) (President) of the . . . . . Bank of . . . . . , being first duly sworn, upon my oath declare that there has not been deposited to the credit of . . . . . in the . . . . . Bank of . . . . . , by . . . . . or any other party, any sum of money whatsoever, in payment of rental under the terms of the (oil and gas) (metallic mineral) mining lease referred to in this affidavit.

Witness my hand this ..... day of ..... (month), ... (year)

.....
(Cashier) (President) of ..... Bank

Subscribed and sworn to before me, a Notary Public for the State of Iowa on the ..... day of ..... (month), ... (year)

.....
Notary Public
My commission expires .....

If the lessee shall, within thirty days after the filing of such affidavit, give notice in writing to the county recorder of the county where said land is located that said lease has not been forfeited and that said lessee still claims that said lease is in full force and effect, then the said affidavit shall not be recorded but the county recorder shall notify the owner of the land of the action of the lessee, and the owner of the land shall be entitled to the remedies provided by this chapter for the cancellation of such disputed lease. If the lessee shall not notify the county recorder as above provided, then the county recorder shall record said affidavit, and thereafter the record of the said lease shall not be notice to the public of the existence of said lease or of any interest therein or rights thereunder, and said record shall not be received in evidence in any court of the state on behalf of the lessee against the lessor, and said lease shall stand forfeited.

[C39, §**1360.06;** C46, 50, 54, 58, 62, §84.6; C66, 71, 73, 75, 77, 79, 81, §84.22; 81 Acts, ch 41, §6, 7]
C93, §458A.22
2000 Acts, ch 1058, §56

458A.23 Action to obtain release — damages, costs and attorney's fees — attachment.

Should the owner of such lease neglect or refuse to execute a release as provided by this chapter, or contend lease is in full force and effect, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and may also recover in such action the sum of one hundred dollars as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and may also recover any additional damages that the evidence in the case will warrant. In all such actions, writs of attachment may issue as in other cases.

[C39, §**1360.07;** C46, 50, 54, 58, 62, §84.7; C66, 71, 73, 75, 77, 79, 81, §84.23]
C93, §458A.23

458A.24 Extension upon contingency — affidavit.

If a recorded lease contains the statement of any contingency upon the happening of which the term of any such lease may be extended, the owner of said lease may at any time before the expiration of the definite term of said lease file with said county recorder an affidavit setting forth the description of the lease, that the affiant is the owner thereof and the facts showing that the required contingency has happened, or the record of such lease shall not impart notice to the public of the continuance of said lease. This affidavit shall be recorded in full by the county recorder and such record together with that of the lease shall be due notice to the public of the existence and continuing validity of said lease, until the same shall be forfeited, canceled, set aside, or surrendered according to law.

[C39, §**1360.08;** C46, 50, 54, 58, 62, §84.8; C66, 71, 73, 75, 77, 79, 81, §84.24]
C93, §458A.24

458A.25 Liens for labor or materials and of contractor and subcontractor — manner of perfecting liens — enforcement of liens.

Provisions of chapter 572 as to mechanic's liens or labor and materials furnished for improvements on real estate and of contractors and subcontractors, shall apply to labor and materials furnished for gas or oil wells, or pipe lines, and such liens shall not attach on the real estate, but shall attach to the whole of the lease held, and upon the gas or oil wells, buildings and appurtenances and pipe lines for which said labor or materials were furnished, and shall be perfected and enforced as provided by said chapter.

[C39, §**1360.09;** C46, 50, 54, 58, 62, §84.9; C66, 71, 73, 75, 77, 79, 81, §84.25]
C93, §458A.25

CHAPTER 459

ANIMAL AGRICULTURE COMPLIANCE ACT

Chapter transferred from sections in chapter 455B and from chapter 455J in Code 2003 pursuant to Code editor directive; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

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SUBCHAPTER I

GENERAL PROVISIONS

459.101 Title.

This chapter shall be known and may be cited as the *"Animal Agriculture Compliance Act"*.

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Section enacted and codified pursuant to legislative directive contained in 2002 Acts, ch 1137, §68, 71, as amended by 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

NEW section

459.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Aerobic structure"* means an animal feeding operation structure other than an egg washwater storage structure which employs bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment.

2. *"Anaerobic lagoon"* means an unformed manure storage structure, if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

a. A settled open feedlot effluent basin that collects and stores only precipitation-induced runoff from an open feedlot.

b. An anaerobic treatment system that includes collection and treatment facilities for all off gases.

3. *"Animal"* means a species classified as cattle, swine, horses, sheep, chickens, or turkeys.

4. *"Animal feeding operation"* means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation. An animal feeding operation does not include a livestock market.

5. *"Animal feeding operation structure"* means a confinement building, manure storage structure, or egg washwater storage structure.

6. *"Animal unit"* means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor as follows:

a. Slaughter or feeder cattle 1.000

b. Immature dairy cattle 1.000

c. Mature dairy cattle 1.400

d. Butcher or breeding swine weighing more than fifty-five pounds 0.400

e. Swine weighing fifteen pounds or more but not more than fifty-five pounds 0.100

f. Sheep or lambs 0.100

g. Horses 2.000

h. Turkeys 0.018

i. Broiler or layer chickens 0.010

7. *"Animal unit capacity"* means a measurement used to determine the maximum number of animal units that may be maintained as part of an animal feeding operation at any one time, including as provided in sections 459.201 and 459.301.

8. *"Animal weight capacity"* means the product of multiplying the maximum number of animals which the owner or operator confines in an animal feeding operation at any one time by the average weight during a production cycle.

9. *"Cemetery"* means a space held for the purpose of permanent burial, entombment, or interment of human remains that is owned or managed by a political subdivision or private entity, or a cemetery regulated pursuant to chapter 523I or 566A. However, *"cemetery"* does not include a pioneer cemetery as defined in section 331.325.

10. *"Commercial enterprise"* means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

11. *"Commercial manure applicator"* means a person who engages in the business of and charges a fee for applying manure on the land of another person.

12. *"Commission"* means the environmental protection commission created pursuant to section 455A.6.

13. *"Confinement feeding operation"* means an animal feeding operation in which animals are confined to areas which are totally roofed.

14. *"Confinement feeding operation building"* or *"confinement building"* means a building used in conjunction with a confinement feeding operation to house animals.

15. *"Confinement feeding operation structure"* means an animal feeding operation structure that is part of a confinement feeding operation.

16. *"Covered"* means organic or inorganic material placed upon an animal feeding operation structure used to store manure as provided by rules adopted by the department after receiving recommendations which shall be submitted to the department by the college of agriculture at Iowa state university.

17. *"Critical public area"* means land as designated by the department pursuant to rules adopted pursuant to chapter 17A, if all of the following apply:

a. The land is part of a public park, preserve, or recreation area that is owned or managed by the federal government; by the department, including under chapter 461A or 465C; or by a political subdivision.

b. The land has a unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system.

18. Reserved.*

19. *"Designated wetland"* means land designated as a protected wetland by the United States department of the interior or the department of natural resources, including but not limited to a protected wetland as defined in section 456B.1, if the land is owned and managed by the federal government or the department of natural resources. However, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.

20. *"Document"* means any form required to be processed by the department under this chapter regulating animal feeding operations, including but not limited to applications or related materials for permits as provided in section 459.303, manure management plans as provided in section 459.312, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department's analysis of the application including using and responding to a master matrix pursuant to section 459.304,** and notices required under those sections.

21. *"Earthen manure storage basin"* means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are completely removed at least once each year.

22. *"Educational institution"* means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

23. *"Egg washwater storage structure"* means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs.

24. *"Formed manure storage structure"* means a covered or uncovered impoundment used to store manure from an animal feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

25. *"High-quality water resource"* means that part of a water source or wetland that the department has designated as any of the following:

a. A high-quality water (Class "HQ") or a high-quality resource water (Class "HQR") according to 567 IAC ch. 61, in effect on January 1, 2001.

b. A protected water area system, according to a state plan adopted by the department in effect on January 1, 2001.

26. *"Indemnity fee"* means the fee provided in section 459.502.

27. *"Karst terrain"* means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves.

28. *"Livestock market"* means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

29. *"Major water source"* means a water source that is a lake, reservoir, river, or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding which has been identified by rules adopted by the commission.

30. *"Manure"* means animal excreta or other commonly associated wastes of animals, including, but not limited to, bedding, litter, or feed losses.

31. *"Manure storage structure"* means a formed manure storage structure or an unformed manure storage structure. A manure storage structure does not include an egg washwater storage structure.

32. *"One hundred year floodplain"* means the land adjacent to a major water source, if there is at least a one percent chance that the land will be inundated in any one year, according to calculations adopted by rules adopted pursuant to section 459.103. In making the calculations, the department shall consider available maps or data compiled by the federal emergency management agency.

33. *"Open feedlot"* means an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue cover is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation.

34. *"Permittee"* means a person who, pursuant to section 459.303, obtains a permit for the construction of a manure storage structure, or a confinement feeding operation, if a manure storage structure is connected to the confinement feeding operation.

35. *"Professional engineer"* means a person engaged in the practice of engineering as defined in section 542B.2 who is issued a certificate of licensure as a professional engineer pursuant to section 542B.17.

36. *"Public thoroughfare"* means a road, street, or bridge that is constructed or maintained by the state or a political subdivision.

37. *"Public use area"* means any of the following:

a. A portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and

remain in the area for significant periods of time, as provided by rules which shall be adopted by the department pursuant to chapter 17A.

b. A cemetery.

38. *"Qualified confinement feeding operation"* means a confinement feeding operation having an animal unit capacity of any of the following:

a. For a confinement feeding operation maintaining animals other than swine as part of a farrowing and gestating operation or farrow-to-finish operation or cattle as part of a cattle operation, five thousand three hundred thirty-three or more animal units.

b. For a confinement feeding operation maintaining swine as part of a farrowing and gestating operation, two thousand five hundred or more animal units.

c. For a confinement feeding operation maintaining swine as part of a swine farrow-to-finish operation, five thousand four hundred or more animal units.

d. For a confinement feeding operation maintaining cattle, eight thousand five hundred or more animal units.

39. *"Religious institution"* means a building in which an active congregation is devoted to worship.

40. *"Restricted spray irrigation equipment"* means spray irrigation equipment which disperses manure through an orifice at a rate of eighty pounds per square inch or more.

41. *"Settled open feedlot effluent"* means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot after its settleable solids have been removed.

42. *"Settled open feedlot effluent basin"* or *"basin"* means an impoundment which is part of an open feedlot, if the primary function of the impoundment is to collect and store settled open feedlot effluent.

43. *"Small animal feeding operation"* means an animal feeding operation which has an animal unit capacity of five hundred or fewer animal units.

44. *"Spray irrigation equipment"* means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for the aerial application of water to aid the growing of general farm crops.

45. *"Swine farrow-to-finish operation"* means a confinement feeding operation in which porcine are produced and in which a primary portion of the phases of the production cycle are conducted at one confinement feeding operation. Phases of the production cycle include, but are not limited to, gestation, farrowing, growing, and finishing.

46. *"Unformed manure storage structure"* means a covered or uncovered impoundment used to store manure, other than a formed manure storage structure, which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

47. *"Water of the state"* means the same as defined in section 455B.171.

48. *"Water source"* means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

95 Acts, ch 195, §15

CS95, §455B.161

98 Acts, ch 1209, §12, 13, 53; 2002 Acts, ch 1137, §7, 8, 32, 68, 71; 2002 Acts, ch 1138, §1 – 3, 5; 2002 Acts, 2nd Ex, ch 1003, §248, 260, 262

C2003, §459.102

*Definition of the term "department" probably intended; definition stricken in legislation transferring provisions from former §455J.1 to this section; 2002 Acts, ch 1137, §53, 68, 71; corrective legislation is pending

**New §459.304 takes effect March 1, 2003

With respect to amendments to subsection 2 and reserved entry at subsection 18, see Code editor's note to §8.55 at the end of Vol IV

With exception of new provisions enacted in 2002 Acts, contents of section transferred from §455B.161, 455B.171, and 455J.1 in Code 2003 pursuant to Code editor directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Subsections 2 – 5 amended

NEW subsections 6 and 7 and former subsections 6 – 8 renumbered as 8 – 10

Subsection 11 transferred from §455B.171, subsection 7

NEW subsection 12 and former subsections 9, 10, 11, and 12 renumbered as 14, 13, 15, and 16 respectively

Subsections 14 and 15 amended

NEW subsection 17

Subsection 18 reserved

NEW subsections 19 and 20, and former subsection 13 renumbered as 21

Subsection 22 stricken and former subsections 14 – 16 renumbered as 22 – 24

NEW subsection 25

Subsection 26 transferred from §455J.1, subsection 6

NEW subsection 27, and former subsection 17 renumbered as 28

NEW subsection 29 and former subsection 18 renumbered as 30

NEW subsections 31 – 33

Subsection 34 transferred from §455J.1, subsection 9

NEW subsections 35 and 36 and former subsection 19 renumbered as 37

NEW subsection 38 and former subsection 20 renumbered as 39

Subsection 40 transferred from §455B.171, subsection 33

NEW subsections 41 and 42 and former subsection 21 renumbered as 43

Subsection 44 transferred from §455B.171, subsection 44, and former subsections 23 and 24 renumbered as 45 and 46

NEW subsections 47 and 48

459.103 General authority — commission and department.

1. The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of animal feeding operations, including related animal feeding operation structures. The requirements shall include but are not limited to minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing.

2. Any provision referring generally to compliance with the requirements of this chapter as applied to animal feeding operations also includes compliance with requirements in rules adopted by the commission pursuant to this section, orders is-

sued by the department as authorized under this chapter, and the terms and conditions applicable to permits or manure management plans required under subchapter III. However, for purposes of approving or disapproving an application for a construction permit as provided in section 459.304,* conditions for the approval of an application based on results produced by a master matrix are not requirements of this chapter until the department approves or disapproves an application based on those results.

3. The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I, unless otherwise provided in this chapter.

98 Acts, ch 1209, §25

C99, §455B.200

2002 Acts, ch 1137, §27, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §250, 259, 260, 262

C2003, §459.103

*New §459.304 takes effect March 1, 2003

Section transferred from §455B.200 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

Section amended

SUBCHAPTER II

ANIMAL FEEDING OPERATIONS — AIR QUALITY

459.201 Special terms.

For purposes of this subchapter, all of the following shall apply:

1. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. For purposes of determining whether two or more confinement feeding operations are adjacent, all of the following must apply:

a. At least one confinement feeding operation structure must be constructed on or after March 21, 1996.

b. A confinement feeding operation structure which is part of one confinement feeding operation is separated by less than a minimum required distance from a confinement feeding operation structure which is part of the other confinement feeding operation. The minimum required distance shall be as follows:

(1) (a) One thousand two hundred fifty feet for a confinement feeding operation having an animal unit capacity of less than three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) One thousand two hundred fifty feet for a confinement feeding operation having an animal unit capacity of less than one thousand two hundred fifty animal units for swine maintained as part of a farrowing and gestating operation, less than two thousand seven hundred animal units for swine maintained as part of a farrow-to-finish operation, or less than four thousand animal units for cattle maintained as part of a cattle operation.

(2) (a) One thousand five hundred feet for a confinement feeding operation having an animal unit capacity of three thousand or more but less than five thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) One thousand five hundred feet for a confinement feeding operation having an animal unit capacity of one thousand two hundred fifty or more but less than two thousand animal units for swine maintained as part of a swine farrowing and gestating operation, two thousand seven hundred or more but less than five thousand four hundred animal units for swine maintained as part of a farrow-to-finish operation, or four thousand or more but less than six thousand five hundred animal units for cattle maintained as part of a cattle operation.

(3) (a) Two thousand five hundred feet for a confinement feeding operation having an animal unit capacity of five thousand or more animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) Two thousand five hundred feet for a confinement feeding operation having an animal unit capacity of two thousand or more animal units for swine maintained as part of a swine farrowing and gestating operation, five thousand four hundred animal units or more for swine maintained as part of a farrow-to-finish operation, or six thousand five hundred or more animal units for cattle maintained as part of a cattle operation.

2. A confinement feeding operation structure is *"constructed"* when any of the following occurs:

a. Excavation for a proposed confinement feeding operation structure or proposed expansion of an existing confinement feeding operation structure, including excavation for the footings of the confinement feeding operation structure.

b. Forms for concrete are installed for a proposed confinement feeding operation structure or the proposed expansion of an existing confinement feeding operation structure.

c. Piping for the movement of manure is installed within or between confinement feeding operation structures as proposed or proposed to be expanded.

3. In calculating the animal unit capacity of a confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all confinement feeding operation buildings which are part of the confinement feeding operation, unless a confinement feeding operation building has

been abandoned.

4. A confinement feeding operation structure is abandoned if the confinement feeding operation structure has been razed, removed from the site of a confinement feeding operation, filled in with earth, or converted to uses other than a confinement feeding operation structure so that it cannot be used as a confinement feeding operation structure without significant reconstruction.

5. All distances between locations of objects provided in this part shall be measured in feet from their closest points, as provided by rules adopted by the department. However, a distance between a public thoroughfare and a confinement feeding operation structure shall be measured from the portion of the right-of-way which is closest to the confinement feeding operation structure.

98 Acts, ch 1209, §14, 53
C99, §455B.161A
2002 Acts, ch 1137, §9, 10, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.201
Section transferred from §455B.161A in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
Terminology changes applied
Subsection 1 stricken and rewritten
NEW subsections 3 – 5

459.202 Confinement feeding operations structures — separation distances.

The following shall apply to confinement feeding operation structures:

1. Except as provided in subsection 3 and sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after May 31, 1995, but prior to January 1, 1999; and to the expansion of structures constructed prior to January 1, 1999.

The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than cattle, or less than 1,600,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than cattle, or 1,600,000 or more pounds but less than 4,000,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than cattle, or 4,000,000 or more pounds for cattle
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,000	1,500	2,000
Covered earthen manure storage basin	750	1,000	1,500
Covered formed manure storage structure	750	1,000	1,500
Confinement building	750	1,000	1,500
Egg washwater storage structure	750	1,000	1,500

2. Except as provided in subsection 3 and sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after January 1, 1999, but prior to March 1, 2003, and to the expansion of structures constructed on or after January 1, 1999, but prior to March 1, 2003.

The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than cattle, or less than 1,600,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than cattle, or 1,600,000 or more pounds but less than 4,000,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than cattle, or 4,000,000 or more pounds for cattle
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,250	1,500	2,000
Covered earthen manure storage basin	1,000	1,250	1,875
Covered formed manure storage structure	1,000	1,250	1,875
Confinement building	1,000	1,250	1,875
Egg washwater storage structure	750	1,000	1,500

3. Except as provided in sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after May 31, 1995, but prior to March 1, 2003; to the expansion of structures constructed on or after May 31, 1995, but prior to March 1, 2003; and to the expansion of structures constructed prior to May 31, 1995.

The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a public use area; or between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution, if the residence, commercial enterprise, religious institution, or educational institution is located within the corporate limits of a city:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than cattle, or less than 1,600,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than cattle, or 1,600,000 or more pounds but less than 4,000,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than cattle, or 4,000,000 or more pounds for cattle
Confinement feeding operation structure	1,250	1,875	2,500

4. Except as provided in subsection 5 and sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after March 1, 2003, and to the expansion of confinement feeding operation structures constructed on or after March 1, 2003.

The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution:

Type of structure	For a confinement feeding operation having an animal unit capacity of less than 1,000 animal units	For a confinement feeding operation having an animal unit capacity of 1,000 or more but less than 3,000 animal units	For a confinement feeding operation having an animal unit capacity of 3,000 or more animal units
Anaerobic lagoon	1,875	2,500	3,000
Uncovered earthen manure storage basin	1,875	2,500	3,000
Uncovered formed manure storage structure	1,500	2,000	2,500
Covered earthen manure storage basin	1,250	1,875	2,375
Covered formed manure storage structure	1,250	1,875	2,375
Confinement building	1,250	1,875	2,375
Egg washwater storage structure	1,000	1,500	2,000

5. Except as provided in sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after March 1, 2003, and to the expansion of confinement feeding operation structures constructed on or after March 1, 2003.

The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a public use area; or between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution, if the residence, commercial enterprise, religious institution, or educational institution is located within the corporate limits of a city:

Type of structure	For a confinement feeding operation having an animal unit capacity of less than 1,000 animal units	For a confinement feeding operation having an animal unit capacity of 1,000 or more but less than 3,000 animal units	For a confinement feeding operation having an animal unit capacity of 3,000 or more animal units
Confinement feeding operation structure	1,875	2,500	3,000

6. Except as provided in section 459.205, a confinement feeding operation structure shall not be constructed or expanded within one hundred feet from a public thoroughfare.

95 Acts, ch 195, §16

CS95, §455B.162

98 Acts, ch 1209, §15 – 17, 53; 99 Acts, ch 114, §58, 59; 2002 Acts, ch 1137, §11 – 17, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.202

Except for terminology changes from "animal" to "confinement" feeding operation structures and of "bovine" to "cattle", 2002 amendments to this section take effect March 1, 2003; for prior law effective until that date, see §455B.162, subsections 1 – 4, Code 2001; 2002 Acts, ch 1137, §67, 71

Section transferred from §455B.162, subsections 1 – 4 and newly enacted subsections 3A and 3B, in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Terminology changes applied

Subsection 1, unnumbered paragraphs 1 and 2 amended

Subsection 2, unnumbered paragraph 1 amended and divided

Subsection 3, unnumbered paragraph 1 amended and divided

NEW subsections 3A and 3B renumbered as 4 and 5 and former subsection 4 amended and renumbered as 6

Former subsections 5 and 6 transferred as new sections 459.204 and 459.206 respectively

459.203 Separation distance requirements for confinement feeding operations — expansion of prior constructed operations.

A confinement feeding operation constructed or expanded prior to the date that a distance require-

ment became effective under section 459.202 and which does not comply with the section's distance requirement may continue to operate regardless of the distance requirement. The confinement feeding operation may be expanded if any of the following applies:

1. *a.* For a confinement feeding operation constructed prior to January 1, 1999, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 459.202, subsections 1 and 3.

b. For a confinement feeding operation constructed on or after January 1, 1999, but prior to March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 459.202, subsections 2 and 3.

c. For a confinement feeding operation constructed on or after March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 459.202, subsections 4 and 5.

2. All of the following apply to the expansion of the confinement feeding operation:

a. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required under section 459.202.

b. For a confinement feeding operation that includes a confinement feeding operation structure constructed prior to March 1, 2003, the animal weight capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal weight capacity on the following dates:

(a) May 31, 1995, for a confinement feeding operation that includes a confinement feeding operation structure constructed prior to January 1, 1999.

(b) January 1, 1999, for a confinement feeding operation that only includes a confinement feeding operation structure constructed on or after January 1, 1999, but does include a confinement feeding operation structure constructed prior to March 1, 2003.

(2) Either of the following:

(a) Six hundred twenty-five thousand pounds animal weight capacity for animals other than cattle.

(b) One million six hundred thousand pounds animal weight capacity for cattle.

c. For a confinement feeding operation that does not include a confinement feeding operation structure constructed prior to March 1, 2003, the animal unit capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal unit capacity on March 1, 2003.

(2) One thousand animal units.

3. The confinement feeding operation includes a confinement feeding operation structure that is constructed prior to March 1, 2003, and is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures, if all of the following apply:

a. The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any fourteen-month period.

d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under section 459.202 than any other confinement feeding operation structure which is part of the operation.

95 Acts, ch 195, §17

CS95, §455B.163

98 Acts, ch 1209, §18, 53; 99 Acts, ch 114, §58, 59; 2002 Acts, ch 1137, §18 – 20, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.203

2002 amendments to subsections 1 and 2, and subsection 3, unnumbered paragraph 1 and paragraph a, take effect March 1, 2003; for prior law effective until that date, see §455B.163, Code 2001; 2002 Acts, ch 1137, §67, 71

Section transferred from §455B.163 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Terminology changes applied

Subsections 1 and 2 amended

Subsection 3, unnumbered paragraph 1 and paragraph a amended

459.204 Liquid manure application — separation distance.

Except as provided in section 459.205, a person shall not apply liquid manure from a confinement feeding operation on land located within seven hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

C2001, §455B.162(5)

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.204

Section transferred from §455B.162, subsection 5, in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

459.205 Separation distance requirements — exemptions.

A separation distance requirement provided in

this subchapter shall not apply to the following:

1. A confinement feeding operation structure, if the structure is part of a confinement feeding operation which qualifies as a small animal feeding operation. However, this subsection shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

2. *a.* A confinement feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure is located. If a confinement feeding operation structure is constructed or expanded within the separation distance required between a confinement feeding operation structure and a public thoroughfare as required pursuant to section 459.202, the state or a political subdivision constructing or maintaining the public thoroughfare benefiting from the distance separation requirement may execute a written waiver with the titleholder of the land where the structure is located. The confinement feeding operation structure shall be constructed or expanded under such terms and conditions that the parties negotiate.

b. A written waiver under this subsection becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The filed waiver shall preclude enforcement by the state of section 459.202 as it relates to a distance requirement between the confinement feeding operation structure and the location or object benefiting from the separation distance requirement.

3. A confinement feeding operation structure which is constructed or expanded within any distance from a residence, educational institution, commercial enterprise, bona fide religious institution, city, or public use area, if the residence, educational institution, commercial enterprise, or bona fide religious institution was constructed or expanded, or the boundaries of the city or public use area were expanded, after the date that the confinement feeding operation was established. The date the confinement feeding operation was established is the date on which the confinement feeding operation commenced operating. A change in ownership or expansion of the confinement feeding operation shall not change the established date of operation.

4. The application of liquid manure on land within a separation distance required between the applied manure and an object or location for which separation is required under section 459.204, if any of the following apply:

a. The liquid manure is injected into the soil or incorporated within the soil not later than twenty-four hours from the original application, as provided by rules adopted by the commission.

b. The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

c. The liquid manure originates from a small animal feeding operation.

d. The liquid manure is applied by spray irrigation equipment using a center pivot mechanism as provided by rules adopted by the department, if all of the following apply:

(1) The spray irrigation equipment uses hoses which discharge the liquid manure in a downward direction at a height of not more than nine feet above the soil.

(2) The spray irrigation equipment disperses manure through an orifice at a maximum pressure of not more than twenty-five pounds per square inch.

(3) The liquid manure is not applied within two hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

5. The distance between a confinement feeding operation structure and a cemetery, if any of the following applies:

a. The confinement feeding operation structure was constructed or expanded prior to January 1, 1999.

b. The construction or expansion of the confinement feeding operation structure began prior to January 1, 1999.

95 Acts, ch 195, §19

CS95, §455B.165

98 Acts, ch 1209, §20, 21, 53; 2000 Acts, ch 1154, §31; 2002 Acts, ch 1137, §21, 22, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.205

2002 amendments to this section take effect March 1, 2003; for prior law effective until that date, see §455B.165, Code 2001; 2002 Acts, ch 1137, §71

Section transferred from §455B.165 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Terminology changes applied

Subsection 1 stricken and former subsections 2 and 3 renumbered as 1 and 2

Subsection 2, paragraph a amended

Subsections 4 and 5 stricken and former subsections 6 – 8 renumbered as 3 – 5

459.206 Qualified confinement feeding operations — manure storage structures.

1. Except as provided in subsection 2, a qualified confinement feeding operation storing manure in a manure storage structure shall only use a manure storage structure that employs bacterial action which is maintained by the utilization of air or oxygen, and which shall include aeration equipment. The type and degree of treatment technology required to be installed shall be based on the size of the confinement feeding operation, according to rules adopted by the department. The equipment shall be installed, operated, and maintained in accordance with the manufacturer's instructions and requirements of rules adopted pursuant to this section.

2. The requirements of subsection 1 do not apply to any of the following:

a. A qualified confinement feeding operation which includes a confinement feeding operation structure constructed prior to May 31, 1995.

b. A qualified confinement feeding operation that stores manure on a dry matter basis.

C2001, §455B.162(6)

2002 Acts, ch 1137, §16, 17, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.206

2002 amendments to this section take effect March 1, 2003; for text of prior law effective until that date, see §455B.162, subsection 6, Code 2001; 2002 Acts, ch 1137, §71

Section transferred from §455B.162, subsection 6, in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Former §455B.162, subsection 6, paragraphs a and c stricken

Former §455B.162, subsection 6, paragraph b amended and redesignated as subsection 1

NEW subsection 2

459.207 Animal feeding operations — airborne pollutants control.

1. As used in this section, unless the context otherwise requires:

a. *"Airborne pollutant"* means hydrogen sulfide, ammonia, or odor.

b. *"Separated location"* means a location or object from which a separation distance is required under section 459.202 or 459.204, other than a public thoroughfare.

2. The department shall conduct a comprehensive field study to monitor the level of airborne pollutants emitted from animal feeding operations in this state, including but not limited to each type of confinement feeding operation structure.

3. *a.* After the completion of the field study, the department may develop comprehensive plans and programs for the abatement, control, and prevention of airborne pollutants originating from animal feeding operations in accordance with this section. The comprehensive plans and programs may be developed if the baseline data from the field study demonstrates to a reasonable degree of scientific certainty that airborne pollutants emitted by an animal feeding operation are present at a separated location at levels commonly known to cause a material and verifiable adverse health effect. The department may adopt any comprehensive plans or programs in accordance with chapter 17A prior to implementation or enforcement of an air quality standard but in no event shall the plans and programs provide for the enforcement of an air quality standard prior to December 1, 2004.

b. Any air quality standard established by the department for animal feeding operations shall be based on and enforced at distances measured from a confinement feeding operation structure to a separated location. In providing for the enforcement of the standards, the department shall take all initial measurements at the separated location. If the department determines that a violation of the standards exists, the department may conduct an investigation to trace the source of the airborne pollutant. This section does not prohibit the department from entering the premises of an animal feeding operation in compliance with section 455B.103. The department shall comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

c. The department shall establish recommended best management practices, mechanisms, processes, or infrastructure under the comprehensive plans and programs in order to reduce the airborne pollutants emitted from an animal feeding operation.

d. The department shall provide a procedure for the approval and monitoring of alternative or experimental practices, mechanisms, processes, or infrastructure to reduce the airborne pollutants emitted from an animal feeding operation, which may be incorporated as part of the comprehensive plans and programs developed under this section.

2002 Acts, ch 1137, §23, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

NEW section

SUBCHAPTER III

ANIMAL FEEDING OPERATIONS — WATER QUALITY

459.301 Special terms.

For purposes of this subchapter, all of the following shall apply:

1. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. In addition, for purposes of determining whether two or more confinement feeding operations are adjacent, all of the following must apply:

a. At least one confinement feeding operation structure must be constructed on and after May 21, 1998.

b. A confinement feeding operation structure which is part of one confinement feeding operation is separated by less than a minimum required distance from a confinement feeding operation structure which is part of the other confinement feeding operation. The minimum required distance shall be as follows:

(1) One thousand two hundred fifty feet for confinement feeding operations having a combined animal unit capacity of less than one thousand animal units.

(2) Two thousand five hundred feet for confinement feeding operations having a combined animal unit capacity of one thousand animal units or more.

2. A confinement feeding operation structure is *"constructed"* in the same manner as provided in section 459.201.

3. In calculating the animal unit capacity of a

confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all confinement feeding operation buildings which are part of the confinement feeding operation, unless a confinement feeding operation building has been abandoned as provided in section 459.201.

4. All distances between locations or objects provided in this subchapter shall be measured in feet from their closest points.

5. *a.* The department shall designate by rule each one hundred year floodplain in this state according to the location of the one hundred year floodplain. A person shall not be prohibited from constructing a confinement feeding operation structure on a one hundred year floodplain unless the one hundred year floodplain is designated by rule in accordance with this subsection.

b. (1) Until the effective date of rules adopted by the department to designate the location of each one hundred year floodplain in this state, a person shall not construct a confinement feeding operation structure on land that contains a soil type classified as alluvial unless one of the following applies:

(a) If the person does not apply for a construction permit as provided in section 459.303, the person must petition the department for a declaratory order pursuant to section 17A.9 to determine whether the location of the proposed confinement feeding operation structure is located on a one hundred year floodplain. The department shall issue a declaratory order in response to the petition, notwithstanding any other provision provided in section 17A.9 to the contrary, within thirty days from the date that the petition is filed with the department.

(b) If the person does apply for a construction permit as provided in section 459.303, the person must identify that the land contains a soil type classified as alluvial. The department shall determine whether the land is located on a one hundred year floodplain.

(2) The department shall provide in its declaratory order or its approval or disapproval of a construction permit application a determination regarding whether the confinement feeding operation structure is to be located on a one hundred year floodplain, whether the confinement feeding operation structure may be constructed at the location, and any conditions for the construction.

(3) This paragraph *"b"* is repealed on the effective date that rules are adopted by the department pursuant to paragraph *"a"*. The department shall provide a caption on the adopted rule as published in the Iowa administrative bulletin as provided in section 17A.4, stating that this paragraph is repealed as provided in this subparagraph. The director of the department shall deliver a copy of the adopted rule to the Iowa Code editor.

98 Acts, ch 1209, §27, 53
C99, §455B.200B
2002 Acts, ch 1137, §30 – 32, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §252, 259, 260, 262
C2003, §459.301
Section transferred from §455B.200B in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
NEW subsection 6, paragraphs a – j, enacted as part of former §455B.200B in 2002 Acts, ch 1137, §32, transferred to §459.102, subsections 17, 19, 20, 25, 27, 29, 32, 35, 47, and 48, pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
Terminology change applied
Unnumbered paragraph 1 amended
Subsection 1 stricken and rewritten
NEW subsections 3 – 5

459.302 Document processing requirements.

1. The department shall adopt and promulgate forms required to be completed in order to comply with this subchapter including forms for documents that the department shall make available on the internet.

2. *a.* The department shall provide for procedures for the receipt, filing, processing, and return of documents in an electronic format, including but not limited to the transmission of documents by the internet. The department shall provide for authentication of the documents that may include electronic signatures as provided in chapter 554D.

b. The department shall to every extent feasible provide for the processing of permits and manure management plans required under this subchapter using electronic systems, including programming, necessary to ensure the completeness and accuracy of the documents in accordance with the requirements of this subchapter.

2002 Acts, ch 1137, §34, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
NEW section

459.303 Confinement feeding operations — permit requirements.

1. The department shall approve or disapprove applications for permits for the construction, including the expansion, of confinement feeding operation structures, as provided by rules adopted pursuant to this chapter. The department's decision to approve or disapprove a permit for the construction of a confinement feeding operation structure shall be based on whether the application is submitted according to procedures required by the department and the application meets standards established by the department. A person shall not begin construction of a confinement feeding operation structure requiring a permit under this section, unless the department first approves the person's application and issues to the person a construction permit. The department shall provide conditions for requiring when a person must obtain a construction permit.

a. Except as provided in paragraph *"b"*, a person must obtain a permit to construct any of the following:

(1) A confinement feeding operation structure if after construction its confinement feeding operation would have an animal unit capacity of at

least one thousand animal units.

(2) The confinement feeding operation structure is an unformed manure storage structure.

b. A person is not required to obtain a permit to construct a confinement feeding operation structure if any of the following apply:

(1) The confinement feeding operation structure, if constructed, would be part of a small animal feeding operation. However, the person must obtain a permit under this section if the confinement feeding operation structure is an unformed manure storage structure.

(2) The confinement feeding operation structure is part of a confinement feeding operation which is owned by a research college conducting research activities as provided in section 459.318.

2. The department shall issue a construction permit upon approval of an application. The department shall approve the application if the application is submitted to the county board of supervisors in the county where the proposed confinement feeding operation is to be located as required pursuant to section 459.304,** and the application meets the requirements of this chapter. If a county submits an approved recommendation pursuant to a construction evaluation resolution filed with the department, the application must also achieve a satisfactory rating produced by the master matrix used by the board or department under section 459.304.** The department shall approve the application regardless of whether the applicant is required to be issued a construction permit.

3. The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. An indemnity fee as provided in section 459.502 that the department shall deposit into the manure storage indemnity fund created in section 459.501.

b. A manure management plan as provided in section 459.312 and manure management plan filing fee as provided in section 459.316.

c. A construction permit application fee as provided in section 459.316.

4. The applicant may submit a master matrix as completed by the applicant.

5. *a.* A confinement feeding operation meets threshold requirements under this paragraph* if the confinement feeding operation after construction of a proposed confinement feeding operation structure would have a minimum animal unit capacity of the following:

(1) Three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation or cattle maintained as part of a cattle operation.

(2) One thousand two hundred fifty animal units for swine maintained as part of a swine farrowing and gestating operation.

(3) Two thousand seven hundred fifty animal units for swine maintained as part of a farrow-to-finish operation.

(4) Four thousand animal units for cattle maintained as part of a cattle operation.

b. The department shall not approve an application for a construction permit unless the following apply:

(1) If the application is for a permit to construct an unformed manure storage structure, the application must include a statement approved by a professional engineer certifying that the construction of the unformed manure storage structure complies with the construction design standards required in this subchapter.

(2) If the application is for a permit to construct three or more confinement feeding operation structures, the application must include a statement providing that the construction of the confinement feeding operation structures will not impede drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction. For a confinement feeding operation that meets threshold requirements, the statement must be approved by a professional engineer. Otherwise, if the application is for a permit to construct a formed manure storage structure, the statement must be part of the construction design statement as provided in section 459.306.***

(3) If the application is for a permit to construct a formed manure storage structure, other than for a confinement feeding operation meeting threshold requirements, the applicant must include a construction design statement as provided in section 459.306.*** An application for a permit to construct a formed manure storage structure as part of a confinement feeding operation that meets threshold requirements must include a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the requirements of this subchapter.

(4) The department may only require that an application for a permit to construct a formed manure storage structure or egg washwater storage structure that is part of a confinement feeding operation meeting threshold requirements include an engineering report, construction plans, or specifications prepared by a licensed professional engineer or the natural resources conservation service of the United States department of agriculture.

6. As a condition to approving an application for a construction permit, the department may require any of the following:

a. The installation of a related pollution control device or practice, including but not limited to the installation and operation of a water pollution monitoring system for an unformed manure storage structure.

b. The department's approval of the installation of any proposed system to permanently lower the groundwater table at a site as part of the con-

struction of an unformed manure storage structure, as is necessary to ensure that the unformed manure storage structure does not pollute groundwater sources, including providing for standards as provided in section 459.308.

7. *a.* The department shall not issue a permit to a person under this section if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending, as provided in section 459.317.

b. The department shall not issue a permit to a person under this section for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under section 459.604.

98 Acts, ch 1209, §26, 53

C99, §455B.200A

2002 Acts, ch 1137, §28, 29, 68, 70, 71; 2002 Acts, 2nd Ex, ch 1003, §251, 259 – 262

C2003, §459.303

For provisions effective until March 1, 2003, relating to applications for construction permits pending on April 29, 2002, including circumstances in which the provisions of this section apply retroactively, see 2002 Acts, ch 1137, §70, 71; 2002 Acts, 2nd Ex, ch 1003, §261, 262

For provisions effective until March 1, 2003, and applicable to construction permit applications received by a county board of supervisors prior to that date, providing for interim county participation in the approval of applications and for rights of applicants and counties to contest departmental decisions, see 2002 Acts, ch 1137, §61, 66, 71; 2002 Acts, 2nd Ex, ch 1003, §258, 262

Approval of construction permit applications using interim matrix until March 1, 2003; 2002 Acts, ch 1137, §63, 65, 70, 71

*The term "subsection" may be intended; corrective legislation is pending

**New §459.304 takes effect March 1, 2003

***New §459.306 takes effect March 1, 2003

Section transferred from §455B.200A in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

Subsection 1 amended and redesignated as subsections 1 and 2

Former subsection 2 amended and renumbered as 3

NEW subsection 4

Former subsections 3 and 4 amended and renumbered as 5 and 6

Former subsections 5 – 8 stricken and subsection 9 renumbered as 7

459.304 Construction permit application procedure — county participation — comments — master matrix.

1. *a.* The department shall deliver a copy or require the applicant to deliver a copy of the application for a permit to construct, including expanding, a confinement feeding operation structure pursuant to section 459.303, including supporting documents, to the county board of supervisors in the county where the confinement feeding operation structure subject to the permit is proposed to be constructed.

b. The county auditor or other county officer designated by the county board of supervisors may accept the application on behalf of the board. If the department requires the applicant to deliver a copy of the application to the county board of supervisors, the board shall notify the department that the board has received the application according to procedures required by the department.

2. Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the county may provide comment to the department on a construction permit application for a confinement feeding operation structure.

a. The board shall provide for comment as follows:

(1) The board shall publish a notice that the board has received the application in a newspaper having a general circulation in the county.

(2) The notice shall include all of the following:

(a) The name of the person applying to receive the construction permit.

(b) The name of the township where the confinement feeding operation structure is to be constructed.

(c) Each type of confinement feeding operation structure proposed to be constructed.

(d) The animal unit capacity of the confinement feeding operation if the construction permit were to be approved.

(e) The time when and the place where the application may be examined as provided in section 22.2.

(f) Procedures for providing public comments to the board as provided by the board.

b. The board may hold a public hearing to receive public comments regarding the application. The county board of supervisors may submit comments by the board and the public to the department as provided in this section, including but not limited to all of the following:

(1) The existence of an object or location not included in the application that benefits from a separation distance requirement as provided in section 459.202 or 459.204 or 459.310.

(2) The suitability of soils and the hydrology of the site where construction of a confinement feeding operation structure is proposed.

(3) The availability of land for the application of manure originating from the confinement feeding operation.

(4) Whether the construction of a proposed confinement feeding operation structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage of land not owned by the person applying for the construction permit.

3. A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit such resolution to the department for filing. If the board has submitted such resolution to the department, the board may evaluate the construction permit application and submit an adopted recommendation to the department to approve or disapprove a construction permit application as provided in this subsection. The board must make its decision to recommend approval or disapproval of the permit application as provided in this subsection.

a. For the expansion of a confinement feeding operation that includes a confinement feeding operation structure constructed prior to April 1, 2002, the board shall not evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if after the expansion of the confinement feeding operation, its animal unit capacity is one thousand six hundred sixty-six animal units or less.

b. The board must conduct an evaluation of the application using the master matrix as provided in section 459.305. The board's recommendation may be based on the master matrix or may be based on comments under this section regardless of the results of the master matrix.

c. In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria which is part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into a manure management plan as provided in section 459.312.

d. The board's adopted recommendation to the department shall include the specific reasons and any supporting documentation for the decision to recommend approval or disapproval of the application.

4. The department must receive the county board of supervisor's comments or evaluation for approval or disapproval of an application for a construction permit not later than thirty days following the applicant's delivery of the application to the department. Regardless of whether the department receives comments or an evaluation by a county board of supervisors, the department must approve or disapprove an application for a construction permit within sixty days following the applicant's delivery of the application to the department. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the county or department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days after the department's receipt of the notice. The applicant may submit more than one notice. However, the department may provide that an application is terminated if no action is required by the department for one year following delivery of the application to the board. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant and the board of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days. However, the department shall not provide for more than one continuance.

5. *a.* The department shall approve an application for a construction permit if the board of supervisors which has filed a county construction evaluation resolution submits an adopted recommendation to approve the construction permit application which may be based on a satisfactory rating produced by the master matrix to the department and the department determines that the application meets the requirements of this chapter. The department shall disapprove an application that does not satisfy the requirements of this chapter regardless of the adopted recommendation of the board. The department shall consider any timely filed comments made by the board as provided in this section to determine if an application meets the requirements of this chapter.

b. If the board submits to the department an adopted recommendation to disapprove an application for a construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter as provided in section 459.103. The department shall disapprove an application that does not satisfy the requirements of this chapter regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter, the department shall conduct an independent evaluation of the application using the master matrix. The department shall approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall disapprove the application if it produces an unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter. The department shall consider any timely filed comments made by the board as provided in this section to determine if an application meets the requirements of this chapter.

c. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter as provided in section 459.103.

6. The department may conduct an inspection of the site on which the construction is proposed after providing at a minimum twenty-four hours' notice or upon receiving consent from the construction permit applicant. The county board of supervisors that has adopted a construction evaluation resolution may designate a county employee to accompany a departmental official during the site inspection. The county employee shall have the same right to access to the site's real estate as the departmental official conducting the inspection during the period that the county employee accompanies the departmental official. The departmental official and the county employee shall comply with standard biosecurity requirements customarily required by the confinement feeding operation that are necessary in order to control the spread of disease among an animal

population.

7. Upon written request by a county resident, the county board of supervisors shall forward to the county resident a copy of the board's adopted recommendation, any county comments to the department on the permit application, and the department's responses, as provided in chapter 22.

8. *a.* The department shall deliver a notice to the applicant within three days of the department's decision to approve or disapprove an application for a construction permit. If the board of supervisors has submitted an adopted recommendation to the department for the approval or disapproval of a construction permit application as provided in this section, the department shall notify the board of the department's decision to approve or disapprove the application at the same time.

b. (1) The applicant may contest the department's decision by requesting a hearing and may elect to have the hearing conducted before an administrative law judge pursuant to chapter 17A or before the commission. If the applicant and a board of supervisors are both contesting the department's decision, the applicant may request that the commission conduct the hearing on a consolidated basis. The commission shall hear the case according to procedures established by rules adopted by the department. The commission may hear the case as a contested case proceeding under chapter 17A. The department, upon petition by the applicant, shall deliver to the administrative law judge or the commission a copy of the board of supervisors' recommendation together with the results produced by its master matrix and any supporting data or documents submitted with the results, comments submitted by the board to the department, and the department's evaluation of the application including the results produced by its matrix and any supporting data or documents. If the commission hears the case, its decision shall be the department's final agency action. The commission shall render a decision within thirty-five days from the date that the applicant or board files a demand for a hearing.

(2) A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's decision by requesting a hearing before the commission. The commission shall hear the case according to procedures established by rules adopted by the department. The commission may hear the case as a contested case proceeding under chapter 17A. The board may request that the department submit a copy of the department's evaluation of the application including the results produced by its matrix and any supporting data or documents. The decision by the commission shall be the department's final agency action. The commission shall render a decision within thirty-five days from the date that the board initiates the proceeding.

c. Judicial review of the decision of either the department or the commission may be sought in accordance with the terms of chapter 17A.

9. An applicant for a construction permit may withdraw the permit application from consideration by the department at any time by filing a written request with the department. The filing of the request shall not prejudice the right of the applicant to resubmit the application.

2002 Acts, ch 1137, §35, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §255, 259, 260, 262

For provisions effective until March 1, 2003, and applicable to construction permit applications received by a county board of supervisors prior to that date, providing for interim county participation in the approval of applications and for rights of applicants and counties to contest departmental decisions, see 2002 Acts, ch 1137, §61, 66, 71; 2002 Acts, 2nd Ex, ch 1003, §258, 262

Section takes effect March 1, 2003; interim matrix to be used until March 1, 2003; 2002 Acts, ch 1137, §70, 71; 2002 Acts, 2nd Ex, ch 1003, §262

NEW section

459.305 Master matrix.

1. The department shall adopt rules for the development and use of a master matrix. The purpose of the master matrix is to provide a comprehensive assessment mechanism in order to produce a statistically verifiable basis for determining whether to approve or disapprove an application for the construction, including expansion, of a confinement feeding operation structure requiring a permit pursuant to section 459.303.

a. The master matrix shall be used to establish conditions for the construction of a confinement feeding operation structure and for the implementation of manure management practices, which conditions shall be included in the approval of the construction permit or the original manure management plan as applicable. The master matrix shall be used to determine all of the following:

(1) The appropriate location to construct a confinement feeding operation structure, including the proximity and orientation of a proposed confinement feeding operation structure to objects or locations for which separation distances are required pursuant to sections 459.202 or 459.204 and 459.310.

(2) The appropriate type of a confinement feeding operation structure required to be constructed, including the type and size of the manure storage structure, or the installation of a related pollution-control device.

b. The master matrix shall be designed to produce quantifiable results based on the scoring of objective criteria according to an established value scale. Each criterion shall be assigned points corresponding to the value scale. The master matrix shall consider risks and factors mitigating risks if the confinement feeding operation structure were constructed according to the application.

c. The master matrix may be a computer model. However, the master matrix must be a practical tool for use by persons when completing applications and by persons when scoring applications. To every extent feasible, the master matrix shall include criteria presented in the form of

questions that may be readily scored according to ascertainable data and upon which reasonable persons familiar with the location of a proposed construction site would not ordinarily disagree.

2. The master matrix shall include criteria valuing environmental and community impacts for use by county boards of supervisors and the department. The master matrix shall include definite point selections for all criteria provided in the master matrix. The master matrix shall provide only for scoring of positive points and shall not provide for deduction of points. The master matrix shall provide for a minimum threshold score required to receive a satisfactory rating. The master matrix shall be structured to ensure that it feasibly provides for a satisfactory rating. Criteria valuing environmental impacts shall account for animal agriculture's relationship to quality of the environment and the conservation of natural resources, and may include factors that refer to all of the following:

a. Topography.

b. Surface water drainage characteristics.

c. The suitability of the soils and the hydrology or hydrogeology of the site.

d. The proximity to public use areas and critical public areas.

e. The proximity to water sources, including high-quality water resources.

2002 Acts, ch 1137, §36, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

Approval of construction permit applications using interim matrix until March 1, 2003; 2002 Acts, ch 1137, §63, 65, 70, 71

Establishment of master matrix technical advisory committee to recommend rules for adoption by March 1, 2003; 2002 Acts, ch 1137, §62, 71

NEW section

459.306 Construction design statement — formed manure storage structures.

1. *a.* Except as provided in paragraph *"b"*, a person shall not construct a formed manure storage structure, unless the person submits a construction design statement for filing with the department.

b. The following persons are not required to submit a construction design statement with the department:

(1) A person who constructs a formed manure storage structure as part of a small animal feeding operation.

(2) A person who submits a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the construction design standards required in this subchapter, including a person required to submit such a statement as part of an application for a construction permit pursuant to section 459.303.

2. The construction design statement must include all of the following:

a. A summary description of the type of formed manure storage structure proposed to be constructed, including whether such formed manure storage structure is to be constructed of concrete.

b. (1) If the formed manure storage structure is to be constructed of concrete, a statement by the person responsible for constructing the formed manure storage structure certifying that such person will construct the formed manure storage structure in accordance with the construction design standards required in this subchapter.

(2) If the formed manure storage structure is not to be constructed of concrete, a statement by the person responsible for constructing the formed manure storage structure certifying that such person will construct the formed manure storage structure in accordance with the construction design standards required in this subchapter.

c. If a construction permit is required pursuant to section 459.303 for the construction of three or more confinement feeding operation structures that include a formed manure storage structure, the person responsible for constructing the formed manure storage structure must provide that the construction of the formed manure storage structure will not impede drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction.

d. A manure management plan as required in section 459.312 which may be submitted as part of an application for a construction permit as provided in section 459.303.

3. Unless the construction design statement is part of a construction permit application as provided in section 459.303, the department shall file the construction design statement. Otherwise, the department shall approve or disapprove the construction design statement as part of the construction permit application. The construction design statement shall be considered filed on the date that it is first received by the department. The department may request information from the person submitting the construction design statement if the department determines that it is incorrect or incomplete. Within thirty days after filing the construction design statement, the department shall notify the person that the construction design statement is filed and request any additional information.

2002 Acts, ch 1137, §33, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §254, 259, 260, 262

Section takes effect March 1, 2003; 2002 Acts, ch 1137, §71; 2002 Acts, 2nd Ex, ch 1003, §262

NEW section

459.307 Construction design standards — formed manure storage structures.

The department shall adopt rules establishing construction design standards for formed manure storage structures that are part of confinement feeding operations other than small animal feeding operations.

1. The department may provide for different standards based on criteria developed by the department, which may include any of the following:

a. The animal unit capacity of the manure storage structure's confinement feeding operation or the manure storage structure's manure volume capacity.

b. Whether the manure storage structure stores manure in an exclusively dry form.

c. Whether the manure storage structure is part of a confinement feeding operation building.

d. The use of concrete, including its use for the structure's footings, walls, or floor.

2. The construction design standards shall be based, to every extent possible, on uniform standards such as available standards promulgated by the American society for testing and materials. The department may require that all or any part of a formed manure storage structure be constructed of concrete.

3. The construction design standards for concrete shall provide for all of the following:

a. The concrete's minimum compressive strength calculated on a pounds-per-square-inch basis.

b. The use of reinforcement, including but not limited to the grade, amount, and location of steel rebar or fiberglass, wire mesh or fabric, or similar materials set in the concrete, or the use of exterior braces to support joints.

c. The depth of footings.

d. The thickness of the footings, the floor, and walls.

4. A person shall only construct a formed manure storage structure on karst terrain or an area which drains into a known sinkhole pursuant to upgraded construction design standards necessary to ensure that the structure does not pollute groundwater sources.

2002 Acts, ch 1137, §50, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

For applicability of existing rules providing construction design standards for formed manure storage structures until the effective date of rules adopted as provided in this section, see 2002 Acts, ch 1137, §60, 71

Provisions of this section as they apply to confinement feeding operations storing manure exclusively on a dry matter basis take effect upon the effective date of rules implementing this section; 2002 Acts, ch 1137, §71

NEW section

459.308 Unformed manure storage structures — construction standards — inspections.

1. The department shall adopt rules requiring construction design standards for unformed manure storage structures required to be constructed pursuant to a construction permit issued pursuant to section 459.303.

2. The construction design standards for unformed manure storage structures established by the department shall account for special design characteristics of confinement feeding operations, including all of the following:

a. The lining of the structure shall be constructed with materials deemed suitable by the department in order to minimize seepage loss through the lining's seal.

b. The structure shall be constructed with materials deemed suitable by the department in order to control erosion on the structure's berm, side slopes, and base.

c. The structure shall be constructed to minimize seepage into near-surface water sources.

d. The top of the floor of the structure's liner must be above the groundwater table as determined by the department. If the groundwater table is less than two feet below the top of the liner's floor, the structure shall be installed with a synthetic liner. If the department allows an unformed manure storage structure to be located at a site by permanently lowering the groundwater table, the department shall confirm that the proposed system meets standards necessary to ensure that the structure does not pollute groundwater sources. If the department allows drain tile installed to lower a groundwater table to remain where located, the department shall require that a device be installed to allow monitoring of the water in the drain tile line. The department shall also require the installation of a device to allow shutoff of the drain tile lines, if the drain tile lines do not have a surface outlet accessible on the property where the structure is located.

3. A person shall not construct an unformed manure storage structure on karst terrain or on an area that drains into a known sinkhole.

4. *a.* The department shall conduct a routine inspection of each unformed manure storage structure at least once each year. A routine inspection conducted pursuant to this subsection shall be limited to a visual inspection of the site where the unformed manure storage structure is located. The department shall inspect the site at a reasonable time after providing at least twenty-four hours' notice to the person owning or managing the confinement feeding operation. The visual inspection shall include, but not be limited to, determining whether any of the following exists:

(1) An adequate freeboard level.

(2) The seepage of manure from the unformed manure storage structure.

(3) Erosion.

(4) Inadequate vegetation cover.

(5) The presence of an opening allowing manure to drain from the unformed manure storage structure.

b. Nothing in this subsection restricts the department from conducting an inspection of a confinement feeding operation which is not routine.

98 Acts, ch 1209, §36

C99, §455B.205

2002 Acts, ch 1137, §47 – 49, 67, 68, 71; 2002

Acts, 2nd Ex, ch 1003, §259, 260, 261
C2003, §459.308
Section transferred from §455B.205 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
Terminology change applied
Subsection 1 amended
Subsection 2, unnumbered paragraph 1 amended
NEW subsection 3 and former subsection 3 renumbered as 4

459.309 Settled open feedlot effluent basins — construction design standards.

If the department requires that a settled open feedlot effluent basin be constructed according to design standards, regardless of whether the department requires the owner to be issued a construction permit under section 459.103, any design standards for the basin shall be established by rule as provided in chapter 17A that exclusively account for special design characteristics of open feedlots and related basins, including but not limited to the dilute composition of settled open feedlot effluent as collected and stored in the basins.

2002 Acts, ch 1138, §4, 5
NEW section

459.310 Distance requirements.

1. Except as provided in subsection 3, the following shall apply:

a. A confinement feeding operation structure shall not be constructed closer than five hundred feet away from the surface intake of an agricultural drainage well. A confinement feeding operation structure shall not be constructed closer than one thousand feet from a wellhead, cistern of an agricultural drainage well, or known sinkhole. However, the department may adopt rules requiring an increased separation distance under this paragraph in order to protect the integrity of a water of this state. The increased separation distance shall not be more than two thousand feet. If the department exercises its discretion to increase the separation distance requirement, the department shall not approve an application for the construction of a confinement feeding operation structure within that separation distance as provided in section 459.303.

b. A confinement feeding operation structure shall not be constructed if the confinement feeding operation structure as constructed is closer than any of the following:

(1) Five hundred feet away from a water source other than a major water source.

(2) One thousand feet away from a major water source.

(3) Two thousand five hundred feet away from a designated wetland.

c. (1) A water source, other than a major water source, shall not be constructed, expanded, or diverted, if the water source as constructed, expanded, or diverted is closer than five hundred feet away from a confinement feeding operation structure.

(2) A major water source shall not be constructed, expanded, or diverted, if the major water source as constructed, expanded, or diverted is closer than one thousand feet from a confinement operation structure.

(3) A designated wetland shall not be established, if the designated wetland is closer than two thousand five hundred feet away from a confinement feeding operation structure.

2. A confinement feeding operation structure shall not be constructed on land that is part of a one hundred year floodplain as designated by rules adopted by the department pursuant to section 459.301.

3. A separation distance required in subsection 1 shall not apply to any of the following:

a. A location or object and a farm pond or privately owned lake, as defined in section 462A.2.

b. A confinement feeding operation building, an egg washwater storage structure, or a manure storage structure constructed with a secondary containment barrier. The department shall adopt rules providing for the construction and use of a secondary containment barrier, including construction design standards.

4. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as provided in section 460.205.

95 Acts, ch 195, §26
CS95, §455B.204
98 Acts, ch 1209, §35, 53; 2002 Acts, ch 1137, §44, 45, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
C2003, §459.310
2002 amendments to this section take effect March 1, 2003; for prior law effective until that date, see §455B.204, Code 2001; 2002 Acts, ch 1137, §71
Section transferred from §455B.204 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
Subsection 1 stricken and former subsection 2 amended and renumbered as 1
NEW subsection 2
Subsection 3 amended
Subsection 4 stricken and former subsection 5 renumbered as 4

459.311 Minimum requirements for manure control.

1. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges directly into water of the state.

2. Manure from an animal feeding operation shall be disposed of in a manner which will not cause surface water or groundwater pollution. Disposal in accordance with the provisions of state law, including this chapter, rules adopted pursuant to the provisions of state law, including this chapter, guidelines adopted pursuant to this chapter, and section 459.314, shall be deemed as compliance with this requirement.

3. The department may require that the owner of a confinement feeding operation install and operate a water pollution monitoring system as part of an unformed manure storage structure.

4. The owner of the confinement feeding operation which discontinues the use of the operation shall remove all manure from related confinement feeding operation structures used to store manure, by a date specified in an order issued to the operation by the department, or six months following the date that the confinement feeding operation is discontinued, whichever is earlier.

95 Acts, ch 195, §24

CS95, §455B.201

98 Acts, ch 1209, §28; 99 Acts, ch 114, §57; 2002 Acts, ch 1137, §37, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.311

Section transferred from §455B.201 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

NEW subsection 3 and former subsection 3 renumbered as 4

459.312 Manure management plan — requirements.

1. The following persons shall submit a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section to the department:

a. The owner of a confinement feeding operation, other than a small animal feeding operation, if any of the following apply:

(1) The confinement feeding operation was constructed after May 31, 1985, regardless of whether the confinement feeding operation structure was required to be constructed pursuant to a construction permit.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to section 459.303 or whether the person has submitted a prior manure management plan.

b. A person who applies manure from a confinement feeding operation, other than a small animal feeding operation, which is located in another state, if the manure is applied on land located in this state.

2. Not more than one confinement feeding operation shall be covered by a single manure management plan.

3. The owner of a confinement feeding operation who is required to submit a manure management plan under this section shall submit an updated manure management plan to the department on an annual basis. The department shall provide for a date that each updated manure management plan is required to be submitted to the department. The department may provide for staggering the dates on which updated manure management plans are due. To satisfy the requirements of an updated manure management plan, an owner of a confinement feeding operation may, in lieu of submitting a complete plan, file a document stating that the manure management plan has not changed, or state all of the changes made since the original manure management plan or a previous updated manure management plan was submitted and approved.

4. The department shall deliver a copy of the manure management plan or require the person submitting the manure management plan to deliver a copy of the manure management plan to all of the following:

a. The county board of supervisors in the county where the manure storage structure owned by the person is located.

b. The county board of supervisors in the county where the manure storage structure is proposed to be constructed. If the person is required to be issued a permit for the construction of the manure storage structure as provided in section 459.303, the manure management plan shall accompany the application for the construction permit as provided in section 459.303.

c. The county board of supervisors in the county where the manure is to be applied.

The manure management plan shall be filed with the county board of supervisors. The county auditor or other county officer may accept the manure management plan on behalf of the board.

5. A person shall not remove manure from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required under this section, unless the department approves a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section. The manure management plan shall be submitted by the owner of the confinement feeding operation as provided by the department in accordance with section 459.302. The owner of a confinement feeding operation required to submit a manure management plan for the construction of a manure storage structure may remove manure from another manure storage structure that is constructed, if the department has approved a manure management plan covering that manure storage structure. The department may adopt rules allowing a person to remove manure from a manure storage structure until the manure management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the department.

6. The department shall not approve an original manure management plan unless the plan is accompanied by a manure management plan filing fee required pursuant to section 459.316. The department shall not approve an updated manure management plan unless the updated manure management plan is accompanied by an annual compliance fee required pursuant to section 459.316.

7. *a.* The department shall not approve an application for a permit to construct a confinement feeding operation structure unless the owner of the confinement feeding operation applying for

approval submits an original manure management plan together with the application for the construction permit as provided in section 459.303.

b. The department shall not file a construction design statement as provided in section 459.306* unless the owner of the confinement feeding operation structure submits an original manure management plan together with the construction design statement. The construction design statement and manure management plan may be submitted as part of an application for a construction permit as provided in section 459.303.

8. A manure management plan must be authenticated by the person required to submit the manure management plan as required by the department in accordance with section 459.302.

9. The department shall approve or disapprove a manure management plan according to procedures established by the department:

a. For an original manure management plan submitted due to the construction of a confinement feeding operation structure, the department shall approve or disapprove the manure management plan as follows:

(1) If the confinement feeding operation structure is constructed pursuant to a construction permit issued pursuant to section 459.303, the manure management plan shall be approved or disapproved as part of the construction permit application.

(2) If the confinement feeding operation structure is not constructed pursuant to a construction permit issued pursuant to section 459.303, the manure management plan shall be approved or disapproved within sixty days from the date that the department receives the manure management plan.

b. For an original manure management plan submitted for a reason other than the construction of a confinement feeding operation structure, the manure management plan shall be approved within sixty days from the date that the department receives the manure management plan.

c. For an updated manure management plan, the manure management plan shall be approved within thirty days from the date that the department receives the updated manure management plan.

10. A manure management plan shall include all of the following:

a. Restrictions on the application of manure based on all of the following:

(1) Calculations necessary to determine the land area required for the application of manure from a confinement feeding operation based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the manure management plan, and according to requirements adopted by the department.

(2) (a) A phosphorus index. The department shall establish a phosphorus index by rule in order to determine the manner and timing of the application to a land area of manure originating from a confinement feeding operation. The phosphorus index shall provide for the application of manure on a field basis. The phosphorus index shall be used to determine application rates, based on the number of pounds of phosphorus that may be applied per acre and application practices. The phosphorus index shall be based on the field office technical guide for Iowa as published by the United States department of agriculture, natural resources conservation service, which sets forth nutrient management standards.

(b) The department shall develop a state comprehensive nutrient management strategy. Prior to developing the state comprehensive nutrient management strategy, the department shall complete all of the following:

(i) The development of a comprehensive state nutrient budget for the maximum volume, frequency, and concentration of nutrients for each watershed that addresses all significant sources of nutrients in a water of this state on a watershed basis.

(ii) The assessment of the available nutrient control technologies required to identify and assess their effectiveness.

(iii) The development and adoption of administrative rules pursuant to chapter 17A required to establish a numeric water quality standard for phosphorus.

(c) Regardless of the development of the state comprehensive nutrient management strategy as provided in subparagraph subdivision (b), the department shall adopt rules required to establish a phosphorus index. The department shall cooperate with the United States department of agriculture natural resource conservation service technical committee for Iowa to refine and calibrate the phosphorus index in adopting the rules. Rules adopted by the department pursuant to this subparagraph shall become effective on July 1, 2003.

(d) The department shall conduct a study that considers the effects on waters of this state from phosphorus originating from municipal and industrial sources and from farm and lawn and garden use. The department shall report the results of its study to the general assembly by January 1, 2004.

(e) A person submitting a manure management plan shall include a phosphorus index as part of the manure management plan as follows:

(i) A person who has submitted an original manure management plan prior to April 1, 2002, shall not be required to submit a manure management plan update which includes a phosphorus index until on and after the four-year anniversary date that the department's rules adopted to implement the phosphorus index become effective.

(ii) A person required to submit an original manure management plan on and after April 1, 2002, but prior to the date that is sixty days after

the department's rules adopted to implement the phosphorus index become effective, shall not be required to submit a manure management plan update that includes a phosphorus index until on and after the two-year anniversary date that the department's rules adopted to implement the phosphorus index become effective.

(iii) A person required to submit an original manure management plan on and after the date that is sixty days after the department's rules adopted to implement the phosphorus index become effective shall include the phosphorus index as part of the original manure management plan and updated manure management plans.

Subparagraph subdivisions (b) through (e) and this paragraph are repealed on the date that any person who has submitted an original manure management plan prior to April 1, 2002, is required to submit a manure management plan update which includes a phosphorus index as provided in subparagraph subdivision (e), subparagraph subdivision part (i). The department shall publish a notice in the Iowa administrative bulletin published immediately prior to that date, and the director of the department shall deliver a copy of the notice to the Iowa Code editor.

b. Manure nutrient levels as determined by either manure testing or accepted standard manure nutrient values.

c. Manure application methods, timing of manure application, and the location of the manure application.

d. If the location of the application is on land other than land owned by the person applying for the construction permit, the plan shall include a copy of each written agreement executed between the person and the landowner where the manure will be applied.

e. An estimate of the annual animal production and manure volume or weight produced by the confinement feeding operation.

f. Methods, structures, or practices to prevent or diminish soil loss and potential surface water pollution.

g. Methods or practices to minimize potential odors caused by the application of manure by the use of spray irrigation equipment.

11. A confinement feeding operation classified as a habitual violator as provided in section 459.604 shall submit a manure management plan to the department on an annual basis, which must be approved by the department for the following year of operation. The manure management plan shall be a replacement original manure management plan rather than a manure management plan update. However, the habitual violator required to submit a replacement original manure management plan must submit an annual compliance fee in the same manner as if the habitual violator were submitting an updated manure management plan.

12. A person required to submit a manure management plan to the department shall maintain a current manure management plan and maintain records sufficient to demonstrate compliance with the manure management plan. Chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

a. Upon waiver by the person receiving the permit.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

13. The department may inspect the confinement feeding operation at any time during normal working hours, and may inspect records required to be maintained as part of the manure management plan. The department shall regularly inspect a confinement feeding operation if the operation or a person holding a controlling interest in the operation is classified as a habitual violator pursuant to section 459.604. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection.

14. A person required to authenticate a manure management plan submitted to the department who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than the assessment of a civil penalty pursuant to section 459.603.

95 Acts, ch 195, §25

CS95, §455B.203

98 Acts, ch 1209, §30 – 32, 53; 2002 Acts, ch 1137, §38 – 41, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §256, 257, 259, 260, 262

C2003, §459.312

Manure management plan updates are not required to be submitted earlier than March 1, 2003; 2002 Acts, ch 1137, §71

*New §459.306 takes effect March 1, 2003

Section transferred from §455B.203 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

Subsection 1 amended

NEW subsections 2 – 4

Former subsection 2 amended, divided, and renumbered as 5 and 7

NEW subsections 6, 8, and 9

Former subsections 3 – 7 renumbered as 10 – 14

Subsections 10, 11, and 14 amended

459.313 Manure application — rules.

1. The department shall adopt rules governing the application of manure originating from an anaerobic lagoon or aerobic structure which is part of a confinement feeding operation. The rules shall establish application rates and practices to minimize groundwater or surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. The rules shall establish different application rates and practices based on the water holding capacity of the soil at the time of application.

2. A person shall not apply manure by spray irrigation equipment, except as provided by rules adopted by the department pursuant to chapter

17A. However, a person shall not use restricted spray irrigation equipment to apply manure originating from a confinement feeding operation, unless the manure has been diluted as provided by rules adopted by the department, including diluted by use of an anaerobic lagoon.

98 Acts, ch 1209, §34, 53

C99, §455B.203B

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.313

Section transferred from §455B.203B in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

459.314 Application of manure within designated areas.

1. The department shall adopt rules relating to the application of manure in close proximity to a designated area.

2. Except as otherwise provided in this subsection, a person shall not apply manure on land located within two hundred feet from a designated area, unless one of the following applies:

a. The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

b. An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for fifty feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

c. The department adopts rules requiring an increased separation distance for the application of manure located in proximity to a high-quality water resource in order to protect the integrity of the high-quality water resource. However, the department shall not provide for an increased separation distance requirement that is more than four times the separation distance requirement otherwise applicable under this section.

As used in this section, *"designated area"* means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface inlet, drinking water well, designated wetland, or water source. However, a *"designated area"* does not include a terrace tile inlet.

95 Acts, ch 195, §3

CS95, §159.27

98 Acts, ch 1209, §50

C99, §455B.204A

2002 Acts, ch 1137, §46, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.314

2002 amendments to this section take effect March 1, 2003; for prior law effective until that date, see §455B.204A, Code 2001; 2002 Acts, ch 1137, §71

Section transferred from §455B.204A in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

Section amended

459.315 Manure applicators certification.

1. As used in this section, unless the context otherwise requires:

a. *"Commercial manure applicator"* means the same as defined in section 459.102.

b. *"Confinement site"* means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a small animal feeding operation.

c. *"Confinement site manure applicator"* means a person who applies manure stored at a confinement site other than a commercial manure applicator.

d. *"Family member"* means a person related to another person as a spouse, parent, grandparent, child, grandchild, or sibling.

2. *a.* A commercial manure applicator shall not apply manure to land, unless the person is certified pursuant to this section.

b. A confinement site manure applicator shall not apply manure to land, unless the person is certified pursuant to this section.

3. *a.* A person required to be certified as a commercial manure applicator must be certified by the department each year. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or three hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

b. A person required to be certified as a confinement site manure applicator must be certified by the department every three years. However, if the person is exempt from paying the certification fee because a family member has paid a certification fee as provided in this section, the person's certification shall expire on the same date that the paid family member's certification expires. A person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or two hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

4. The department shall adopt, by rule, requirements for the certification, including educational program requirements. The department may establish different educational programs designed for commercial manure applicators and confinement site manure applicators. The department shall adopt rules necessary to administer this section, including establishing certification standards, which shall at least include standards for the handling, application, and storage of manure, the potential effects of manure upon surface water and groundwater, and procedures to remediate the potential effects on surface water or groundwater.

a. The department shall adopt by rule criteria for allowing a person required to be certified to complete either a written or oral examination.

b. The department shall administer the continuing instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the continuing instructional courses. The department is not required to compensate persons to teach the continuing instructional courses. In selecting persons, the department shall consult with organizations interested in the application of manure, including associations representing manure applicators and associations representing agricultural producers. The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the continuing instructional courses. The Iowa cooperative extension service may teach continuing instructional courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

c. The department, in administering the certification program under this section, and the department of agriculture and land stewardship in administering the certification program for pesticide applicators may cooperate together.

5. *a.* This section shall not require a person to be certified as a commercial manure applicator if any of the following applies:

(1) The person is any of the following:

(a) Actively engaged in farming who trades work with another such person.

(b) Employed by a person actively engaged in farming not solely as a manure applicator who applies manure as an incidental part of the person's general duties.

(c) Engaged in applying manure as an incidental part of a custom farming operation.

(d) Engaged in applying manure as an incidental part of a person's duties as provided by rules adopted by the department providing for an exemption.

(2) The person applies manure for a period of thirty days from the date of initial employment as a commercial manure applicator if the person applying the manure is acting under the instructions and control of a certified commercial manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

b. This section shall not require a person to be certified as a confinement site manure applicator if all of the following apply:

(1) The person is a part-time employee or family member of a confinement site manure applicator.

(2) The person is acting under the instructions and control of a certified confinement site manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

6. The department may charge a fee for certifying a person under this section. The fee for certification shall be based on the costs of administering and enforcing this section and paying the expenses of the department relating to certification. A person who is certified as a confinement site manure applicator as provided in this section is exempt from paying the certification fee, if all of the following apply:

a. The person is certified within one year from the date that a family member has been certified as a confinement site manure applicator.

b. The family member has paid the fee for that family member's own certification.

98 Acts, ch 1209, §33, 47, 53

C99, §455B.203A

99 Acts, ch 114, §30; 2000 Acts, ch 1107, §1 – 4; 2002 Acts, ch 1137, §42, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.315

Section transferred from §455B.203A in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

Subsection 6, paragraph b stricken and former paragraph a and subparagraphs (1) and (2) redesignated as unnumbered paragraph 1 and paragraphs a and b respectively

459.316 Compliance fees.

1. The department shall establish, assess, and collect all of the following compliance fees:

a. A construction permit application fee that is required to accompany an application submitted to the department for approval to construct a confinement feeding operation structure as provided in section 459.303. The amount of the construction permit application fee shall not exceed two hundred fifty dollars.

b. A manure management plan filing fee that is required to accompany an original manure management plan submitted to the department for approval as provided in section 459.312. However, the manure management plan required to be filed as part of an application for a construction permit shall be paid together with the construction permit application fee. The amount of the manure management plan filing fee shall not exceed two hundred fifty dollars.

c. An annual compliance fee that is required to accompany an updated manure management plan submitted to the department for approval as provided in section 459.312. The amount of the annual compliance fee shall not exceed a rate of fifteen cents per animal unit based on the animal unit capacity of the confinement feeding operation covered by the manure management plan. If the person submitting the manure management plan is a contract producer, as provided in chapter 202, the

active contractor shall be assessed the annual compliance fee.

d. Fees paid by persons required by the department to be certified as commercial manure applicators or confinement site manure applicators pursuant to section 459.315.

2. *a.* Except as provided in paragraph *"b"*, fees collected by the department shall be deposited into the animal agriculture compliance fund created in section 459.401. Moneys collected from all fees other than the annual compliance fee shall be deposited into the compliance fund's general account. Moneys collected from the annual compliance fee shall be deposited into the compliance fund's assessment account.

b. Receipts that are required to be received by the department from persons required to be certified pursuant to section 459.315 may be used to compensate a person who teaches continuing instructional courses in lieu of deposit into the compliance fund.

3. At the end of each fiscal year the department shall determine the balance of unencumbered and unobligated moneys in the assessment account of the animal agriculture compliance fund created pursuant to section 459.401. If on that date the balance of unencumbered and unobligated moneys in the account is one million dollars or more, the department shall adjust the rate of the annual compliance fee for the following fiscal year. The adjusted rate for the annual compliance fee shall be based on the department's estimate of the amount required to ensure that at the end of the following fiscal year the balance of unencumbered and unobligated moneys in the assessment account is not one million dollars or more.

2002 Acts, ch 1137, §43, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

NEW section

459.317 Habitual violators — pending actions — restrictions on construction.

1. As used in this section, unless the context otherwise requires:

a. *"Habitual violator"* means a person classified as a habitual violator pursuant to section 459.604.

b. *"Operation of law"* means a transfer by inheritance, devise or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.

c. *"Suspect site"* means a confinement feeding operation or land where a confinement feeding operation could be constructed, if the site is subject to a suspect transaction.

d. *"Suspect transaction"* means a transaction in which a habitual violator does any of the following:

(1) Transfers a controlling interest in a suspect site to any of the following:

(a) An employee of the habitual violator or business in which the person holds a controlling interest.

(b) A person who holds an interest in a business, including a confinement feeding operation, in which the habitual violator holds a controlling interest.

(c) A person related to the habitual violator as spouse, parent, grandparent, lineal ascendant of a grandparent or spouse and any other lineal descendant of the grandparent or spouse, or a person acting in a fiduciary capacity for a related person. This paragraph does not apply to a transaction completed by an operation of law.

(2) Provides financing for the construction or operation of a confinement feeding operation to any person, by providing a contribution or loan to the person, or providing cash or other tangible collateral for a contribution or loan made by a third person.

e. *"Transaction"* includes a transfer in any manner or by any means, including any of the following:

(1) Delivery and acceptance between two parties, including by contract or agreement with or without consideration, including by sale, exchange, barter, or gift.

(2) An operation of law.

2. *a.* A person shall not construct or expand a confinement feeding operation structure if the person is any of the following:

(1) A party to a pending action for a violation of this chapter* concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

b. A person shall not construct or expand a confinement feeding operation structure for five years after the date of the last violation, committed by the person or confinement feeding operation in which the person holds a controlling interest, during which the person or operation was classified as a habitual violator.

c. This subsection shall not prohibit a person from completing the construction or expansion of a confinement feeding operation structure, if any of the following apply:

(1) The person has an unexpired permit for the construction or expansion of the confinement feeding operation structure.

(2) The person is not required to obtain a permit for the construction or expansion of the confinement feeding operation structure.

d. For purposes of this subsection, *"construct"* or *"expand"* includes financing and contracting to build a confinement feeding operation structure regardless of whether the person subsequently leases, owns, or operates the confinement feeding operation structure.

3. A person who receives a controlling interest in a suspect site pursuant to a suspect transaction must submit a notice of the transaction to the department within thirty days. If, after notice and opportunity to be heard, pursuant to the contested case provisions of chapter 17A, the department finds that one purpose of the transaction was to avoid the conditions and enhanced penalties imposed upon a habitual violator, the person shall be subject to the same conditions and enhanced penalties as applied to the habitual violator at the time of the transaction.

4. The department shall conduct an annual review of each confinement feeding operation which is a habitual violator and each confinement feeding operation in which a habitual violator holds a controlling interest.

97 Acts, ch 150, §1

CS97, §455B.202

98 Acts, ch 1209, §29, 53; 99 Acts, ch 114, §29; 2002 Acts, ch 1137, §67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.317

*This section was enacted in chapter 455B and transferred to this chapter in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137; reference to chapter 455B may also be intended

Section transferred from §455B.202 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

Terminology change applied

459.318 Exception to regulation.

1. As used in this section, *"research college"* means an accredited public or private college or university, including but not limited to a university under the control of the state board of regents as provided in chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

2. The requirements of this subchapter which regulate animal feeding operations, including rules adopted by the department pursuant to section 459.103, shall not apply to research activities and experiments performed under the authority and regulations of a research college, if the research activities and experiments relate to animal feeding operations, including but not limited to the confinement of animals and the storage and disposal of manure originating from animal feeding operations.

3. This section shall not apply to requirements provided in any of the following:

a. Section 459.311, including rules adopted by the department under that section.

b. Section 459.310, including rules adopted by the department under that section.

98 Acts, ch 1209, §37

C99, §455B.206

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.318

Section transferred from §455B.206 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

SUBCHAPTER IV

ANIMAL AGRICULTURE COMPLIANCE FUND — FEES

459.401 Animal agriculture compliance fund.

1. An animal agriculture compliance fund is created in the state treasury under the control of the department. The compliance fund is separate from the general fund of the state.

2. The compliance fund is composed of two accounts, the general account and the assessment account.

a. The general account is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the compliance fund. Unless otherwise specifically provided in statute, moneys required to be deposited in the compliance fund shall be deposited into the general account. The general account shall include moneys deposited into the account from all of the following:

(1) The construction permit application fee required pursuant to section 459.303.

(2) The manure management plan filing fee required pursuant to section 459.312.

(3) Fees paid by persons required to be certified as commercial manure applicators or confinement site manure applicators pursuant to section 459.315.

(4) The collection of civil penalties assessed by the department and interest on civil penalties, arising out of violations involving animal feeding operations as provided in sections 459.602 and 459.603.

b. The assessment account is composed of moneys collected from the annual compliance fee required pursuant to section 459.316.

3. Moneys in the compliance fund are appropriated to the department exclusively to pay the expenses of the department in administering and enforcing the provisions of subchapters II and III as necessary to ensure that animal feeding operations comply with all applicable requirements of those provisions, including rules adopted or orders issued by the department pursuant to those provisions. The moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. The department shall not transfer moneys from the compliance fund's assessment account to another fund or account, including but not limited to the fund's general account.

4. Moneys in the fund, which may be subject to

warrants written by the director of revenue and finance, shall be drawn upon the written requisition of the director of the department of natural resources or an authorized representative of the director.

5. Notwithstanding section 8.33, any unexpended balance in the compliance fund at the end of the fiscal year shall be retained in the fund. Notwithstanding section 12C.7, subsection 2, interest, earnings on investments, or time deposits of the moneys in the compliance fund shall be credited to the fund.

2002 Acts, ch 1137, §6, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §247, 259, 260, 262

Temporary transfer of manure storage indemnity fund moneys to the animal agriculture compliance fund; schedule for return of funds; 2002 Acts, ch 1137, §59, 71

NEW section

459.402 Animal agriculture compliance fees — delinquencies.

If a fee imposed under this chapter for deposit into the animal agriculture compliance fund is delinquent, the department may charge interest on any amount of the fee that is delinquent. The rate of interest shall not be more than the current rate published in the Iowa administrative bulletin by the department of revenue and finance pursuant to section 421.7. The interest amount shall be computed from the date that the fee is delinquent, unless the department designates a later date. The interest amount shall accrue for each month in which a delinquency is calculated as provided in section 421.7, and counting each fraction of a month as an entire month. The interest amount shall become part of the amount of the fee due.

2002 Acts, ch 1137, §5, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

NEW section

459.403 County assessment of fees prohibited.

A county shall not assess or collect a fee under this chapter for the regulation of animal agriculture, including but not limited to any fee related to the filing, consideration, or evaluation of an application for a construction permit pursuant to section 459.303 or the filing of a manure management plan pursuant to section 459.312.

2002 Acts, ch 1137, §4, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

NEW section

SUBCHAPTER V

MANURE STORAGE INDEMNITY FUND

459.501 Manure storage indemnity fund.

1. A manure storage indemnity fund is created as a separate fund in the state treasury under the control of the department. The general fund of the state is not liable for claims presented against the fund.

2. The fund consists of moneys from indemnity fees remitted by permittees to the department as provided in section 459.502; moneys from indemnity fees remitted by persons required to submit manure management plans to the department pursuant to section 459.503; sums collected on behalf of the fund by the department through legal action or settlement; moneys required to be repaid to the department by a county pursuant to this subchapter; civil penalties assessed and collected by the department or the attorney general pursuant to chapter 455B,* against animal feeding operations; moneys paid as a settlement involving an enforcement action for a civil penalty subject to assessment and collection against permittees by the department or the attorney general pursuant to chapter 455B;* interest, property, and securities acquired through the use of moneys in the fund; or moneys contributed to the fund from other sources.

3. The moneys collected under this section shall be deposited in the fund and shall be appropriated to the department for the exclusive purpose of providing moneys for cleanup of abandoned facilities as provided in section 459.505, and to pay the department for costs related to administering the provisions of this subchapter. For each fiscal year, the department shall not use more than one percent of the total amount which is available in the fund or ten thousand dollars, whichever is less, to pay for the costs of administration. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose than provided in this section.

4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department. The treasurer of state is authorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this subchapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of revenue and finance pursuant to the order of the department. The fiscal year of the fund begins July 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

5. The following shall apply to moneys in the fund:

a. On August 31 following the close of each fiscal year, moneys in the fund which are not obligated or encumbered on June 30 of the past fiscal year, not counting the department's estimate of

the cost to the fund for pending or unsettled claims and any amount required to be credited to the general fund of the state under this subsection, in excess of three million dollars shall be deposited in the organic nutrient management fund as created in section 161C.5 for purposes of supporting the organic nutrient management program.

b. The executive council may allocate moneys from the general fund of the state as provided in section 7D.10A in an amount necessary to support the fund, including payment of claims as provided in section 459.505. However, an allocation of moneys from the general fund of the state shall be made only if the amount of moneys in the fund, which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be credited to the general fund of the state under this subsection, is less than one million dollars.

c. The department shall credit an amount to the general fund of the state which is equal to an amount allocated to the fund by the executive council under paragraph *"b"*. The department shall credit the moneys to the general fund of the state if the moneys in the fund which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be transferred to the general fund under this paragraph, are in excess of two million five hundred thousand dollars. The department is not required to credit the total amount to the general fund of the state during any one fiscal year.

95 Acts, ch 195, §5
CS95, §204.2
98 Acts, ch 1209, §3, 50
C99, §455J.2
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.501

*Civil penalties assessed against animal feeding operations under chapter 459 are to be deposited in the agriculture compliance fund created in §459.401; see §455B.109 and §459.602 – 459.604; corrective legislation is pending

Temporary transfer of unencumbered and unobligated funds to the general fund of the animal agriculture compliance fund; schedule for return of funds; 2002 Acts, ch 1137, §59, 71

Section transferred from §455J.2 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

459.502 Indemnity fees required — construction permits.

An indemnity fee shall be assessed upon permittees which shall be paid to and collected by the department, prior to issuing a permit for the construction of a confinement feeding operation as provided in section 459.303. The amount of the fees shall be based on the following:

1. If the confinement feeding operation has an animal unit capacity of less than one thousand animal units, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be ten cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be four cents per animal unit of capacity for confinement feeding operations.

2. If the confinement feeding operation has an animal unit capacity of one thousand or more animal units but less than three thousand animal units, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be fifteen cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be six cents per animal unit of capacity for confinement feeding operations.

3. If the confinement feeding operation has an animal unit capacity of three thousand or more animal units, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be twenty cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be eight cents per animal unit of capacity for confinement feeding operations.

The department shall deposit moneys collected from the fees into the fund according to procedures adopted by the department.

95 Acts, ch 195, §6
CS95, §204.3
98 Acts, ch 1209, §4, 50
C99, §455J.3
2002 Acts, ch 1137, §54 – 56, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.502

Section transferred from §455J.3 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
Subsection 1, unnumbered paragraph 1 amended
Subsection 2, unnumbered paragraph 1 amended
Subsection 3, unnumbered paragraph 1 amended

459.503 Indemnity fee required — manure management plan.

An indemnity fee shall be assessed upon persons required to submit an original manure management plan as provided in section 459.312, but not required to obtain a construction permit pursuant to section 459.303. A person required to submit a replacement original manure management plan shall not be assessed an indemnity fee. The amount of the fee shall be ten cents per animal unit of capacity for the confinement feeding operation covered by the manure management plan.

98 Acts, ch 1209, §5, 50
C99, §455J.4
2002 Acts, ch 1137, §57, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.503

Section transferred from §455J.4 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
Section amended

459.504 Use of fund for emergency cleanup.

If the department provides cleanup of a condition caused by a confinement feeding operation as provided in section 459.506, the department may use moneys in the fund for purposes of supporting the cleanup. The department shall reimburse the fund from moneys recovered by the department as reimbursement for the cleanup as provided in section 459.506.

98 Acts, ch 1209, §7, 50
C99, §455J.6
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.504
Section transferred from §455J.6 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

459.505 Use of moneys by counties for cleanup.

1. A county that has acquired real estate containing a manure storage structure following nonpayment of taxes pursuant to section 446.19, may make a claim against the fund to pay cleanup costs incurred by the county as provided in section 459.506. Each claim shall include a bid by a qualified person, other than a governmental entity, to remove and dispose of the manure for a fixed amount specified in the bid.

2. If a county provides cleanup under section 459.506 after acquiring real estate following nonpayment of taxes, the department shall determine if a claim is eligible to be satisfied under this subsection, and do one of the following:

a. Pay the amount of the claim required in this section, based on the fixed amount specified in the bid submitted by the county upon completion of the work.

b. Obtain a lower fixed amount bid for the work from another qualified person, other than a governmental entity, and pay the amount of the claim required in this section, based on the fixed amount in this bid upon completion of the work. The department is not required to comply with section 18.6 in implementing this section.

3. If a county provides cleanup of a condition causing a clear, present, and impending danger to the public health or environment, as provided in section 459.506, the county may make a claim against the fund to pay cleanup costs incurred by the county, according to procedures and requirements established by rules adopted by the department. The department shall determine if a claim is eligible to be satisfied under this subsection, and pay the amount of the claim required in this section.

4. Upon a determination that the claim is eligible for payment, the department shall provide for payment of one hundred percent of the claim, as provided in this section. If at any time the department determines that there are insufficient moneys to make payment of all claims, the department shall pay claims according to the date that the claims are received by the department. To the extent that a claim cannot be fully satisfied, the department shall order that the unpaid portion of the payment be deferred until the claim can be satisfied. However, the department shall not satisfy claims from moneys dedicated for the administration of the fund.

5. In the event of payment of a claim under this section, the fund is subrogated to the extent of the amount of the payment to all rights, powers, privileges, and remedies of the county regarding the payment amount. The county shall render all necessary assistance to the department in securing the rights granted in this section. A case or proceeding initiated by a county which involves a claim submitted to the department shall not be compromised or settled without the consent of the department. A county shall not be eligible to submit a claim to the department if the county has compromised or settled a case or proceeding, without the consent of the department.

6. If upon disposition of the real estate the county realizes an amount which exceeds the total amount of the delinquent real estate taxes, the county shall forward to the fund any excess amount which is not more than the amount expended by the fund to pay the claim by the county.

95 Acts, ch 195, §7
CS95, §204.4
98 Acts, ch 1209, §6, 50
C99, §455J.5
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.505
Section transferred from §455J.5 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

459.506 Cleanup.

1. *a.* A county that has acquired real estate on which there is located a confinement feeding operation following the nonpayment of taxes pursuant to section 446.19, may provide for cleanup, including removing and disposing of manure at any time, remediating contamination which originates from the confinement feeding operation, or demolishing and disposing of structures relating to the confinement feeding operation. The county may seek reimbursement including by bringing an action for the costs of the cleanup from the person abandoning the real estate.

b. If the confinement feeding operation has caused a clear, present, and impending danger to the public health or the environment, the department may clean up the confinement feeding operation and remediate contamination which originates from the confinement feeding operation, pursuant to sections 455B.381 through 455B.399. If the department fails to commence cleanup within twenty-four hours after being notified of a condition requiring cleanup, the county may provide for the cleanup as provided in this paragraph. The

department or county may seek reimbursement including by bringing an action for the costs of the cleanup from a person liable for causing the condition.

2. A person cleaning up a confinement feeding operation located on real estate acquired by a county may demolish or dispose of any building or equipment of the confinement feeding operation located on the land according to rules adopted by the department pursuant to chapter 17A, which apply to the disposal of farm buildings or equipment by an individual or business organization.

95 Acts, ch 195, §8
CS95, §204.5
98 Acts, ch 1209, §8, 50
C99, §455J.7
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.506
Section transferred from §455J.7 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

459.507 No state obligation.

This subchapter does not imply any guarantee or obligation on the part of this state, or any of its agencies, employees, or officials, either elective or appointive, with respect to any agreement or undertaking to which this subchapter relates.

95 Acts, ch 195, §9
CS95, §204.6
98 Acts, ch 1209, §50
C99, §455J.8
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.507
Section transferred from §455J.8 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

459.508 Departmental rules.

The department shall adopt administrative rules pursuant to chapter 17A necessary to administer this subchapter.

95 Acts, ch 195, §10
CS95, §204.7
98 Acts, ch 1209, §50
C99, §455J.9
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.508
Section transferred from §455J.9 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

SUBCHAPTER VI

ENFORCEMENT

459.601 Animal feeding operations — investigations and enforcement actions.

1. A person may file a complaint alleging that an animal feeding operation is in violation of this chapter,* including rules adopted by the department, or environmental standards or regulations subject to federal law and enforced by the department.

a. The complaint may be filed with the department according to procedures required by the department or with the county board of supervisors in the county where the violation is alleged to have occurred, according to procedures required by the board. The county auditor may accept the complaint on behalf of the board.

b. If the county board of supervisors receives a complaint, it shall conduct a review to determine if the allegation contained in the complaint constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue.

(1) If the county board of supervisors determines that the allegation does not constitute a violation, it shall notify the complainant, the animal feeding operation which is the subject of the complaint, and the department, according to rules adopted by the department.

(2) If the county board of supervisors determines that the allegation constitutes a violation, it shall forward the complaint to the department which shall investigate the complaint as provided in this section.

c. If the department receives a complaint from a complainant or a county forwarding a complaint, the department shall conduct an investigation of the complaint if the department determines that the complaint is legally sufficient and an investigation is justified. The department shall receive a complaint filed by a complainant, regardless of whether the complainant has filed a complaint with a county board of supervisors.

(1) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of a threat to the quality of surface or subsurface water.

(2) The department shall notify the county board of supervisors in the county where the violation is alleged to occur prior to investigating the premises of the alleged violation. However, the department is not required to provide notice if the department determines that a clear, present, and impending danger to the public health or environment requires immediate action.

(3) The county board of supervisors may designate a county employee to accompany a departmental official during the investigation of the premises of a confinement feeding operation. The county designee shall have the same right of access to the real estate of the premises as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official.

(4) Upon the completion of an investigation, the department shall notify the complainant of the

results of the investigation, including any anticipated, pending, or completed enforcement action arising from the investigation. The department shall deliver a copy of the notice to the animal feeding operation that is the subject of the complaint and the board of supervisors of the county where the violation is alleged to have occurred.

d. A county board of supervisors or the department is not required to divulge information regarding the identity of the complainant.

2. When entering the premises of an animal feeding operation, a person who is a departmental official, an agent of the department, or a person accompanying the departmental official or agent shall comply with section 455B.103. The person shall also comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

95 Acts, ch 195, §13

CS95, §455B.110

98 Acts, ch 1209, §11, 53; 99 Acts, ch 96, §39; 2002 Acts, ch 1137, §3, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.601

*Section was transferred from chapter 455B in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137; chapter 455B may also be intended

Section transferred from §455B.110 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Subsection 3 stricken

459.602 Air quality violations — civil penalty.

A person who violates subchapter II shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109. Any civil penalty collected shall be deposited in the animal agriculture compliance fund created in section 459.401.

2002 Acts, ch 1137, §24, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

NEW section

459.603 Water quality violations — civil penalty.

A person who violates subchapter III shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.191. Any civil penalty collected shall be deposited in the animal agriculture compliance fund created in section 459.401.

2002 Acts, ch 1137, §51, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

NEW section

459.604 Habitual violators — classification — penalties.

1. The department may impose a civil penalty upon a habitual violator which shall not exceed twenty-five thousand dollars for each day the violation continues. The increased penalty may be assessed for each violation committed subsequent to the violation which results in classifying the person as a habitual violator. A person shall be classified as a habitual violator if the person has committed three or more violations as described in this subsection. To be considered a violation that is applicable to a habitual violator determination, a violation must have been committed on or after January 1, 1995. In addition, each violation must have been referred to the attorney general for legal action under this chapter, and each violation must be subject to the assessment of a civil penalty or a court conviction, in the five years prior to the date of the latest violation provided in this subsection, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A person shall be removed from the classification of habitual violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. A violation must relate to one of the following:

a. The construction or operation of a confinement feeding operation structure, or the installation or use of a related pollution control device or practice, for which the person must obtain a permit, in violation of this chapter, or rules adopted by the department, including the terms or conditions of the permit.

b. Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for a confinement feeding operation structure, or the installation of a related pollution control device or practice for which the person must obtain a construction permit.

c. Failing to obtain a permit or approval by the department in violation of this chapter or departmental rule which requires a permit to construct or operate a confinement feeding operation or use a confinement feeding operation structure, anaerobic lagoon, or a pollution control device or practice which is part of a confinement feeding operation.

d. Operating a confinement feeding operation, including a confinement feeding operation structure, or a related pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

e. Failing to submit a manure management plan as required pursuant to section 459.312, or

operating a confinement feeding operation without having a manure management plan approved by the department.

This subsection shall not apply unless the department of natural resources has previously notified the person of the person's classification as a habitual violator. The department shall notify persons classified as habitual violators of their classification, additional restrictions imposed upon the persons pursuant to their classification, and special civil penalties that may be imposed upon the persons. The notice shall be sent to the persons by certified mail.

2. Moneys assessed and collected in civil penalties and interest earned on civil penalties, arising out of a violation involving an animal feeding operation, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Transferred from §455B.191, subsections 7 and 8, and renumbered as subsections 1 and 2 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Terminology change applied

Subsection 2 amended

459.605 Habitual violators — permit restrictions.

For five years after the date of the last violation of this chapter committed by a person or by a confinement feeding operation in which the person holds a controlling interest during which the person or confinement feeding operation was classified as a habitual violator under section 459.604, all of the following shall apply:

1. The department may not issue a new permit under this chapter to the person or confinement feeding operation.

2. The department may revoke or refuse to renew an existing permit issued under this chapter to the person or confinement feeding operation, if the permit relates to a confinement feeding operation and the department determines that the continued operation of the confinement feeding operation under the existing permit constitutes a clear, present, and impending danger to the public health or environment.

2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Transferred from §455B.104, subsection 2, and redesignated as unnumbered paragraph 1 and subsections 1 and 2 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

CHAPTER 460

AGRICULTURAL DRAINAGE WELLS AND SINKHOLES

Chapter transferred from §159.28 – 159.29B and chapter 455I in
Code 2003 pursuant to Code editor directive;
2002 Acts, ch 1137, §68, 71;
2002 Acts, 2nd Ex, ch 1003, §260, 262

SUBCHAPTER I

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AGRICULTURAL DRAINAGE WELLS — REGISTRATION — ALTERNATIVE DRAINAGE SYSTEMS — SINKHOLES

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SUBCHAPTER I

GENERAL PROVISIONS

460.101 Definitions.

1. *"Agricultural drainage well"* means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, boring, augering, jetting, washing, or coring, and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

2. *"Agricultural drainage well area"* means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

3. *"Alternative drainage system"* means a drainage system constructed as part of a drainage district in order to drain surface or subsurface water from land due to the closing of an agricultural drainage well.

4. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

5. *"Designated agricultural drainage well area"* means an agricultural drainage well area in which there is located an anaerobic lagoon or earthen manure storage basin required to obtain a construction permit by the department of natural resources.

6. *"Division"* means the soil conservation division of the department of agriculture and land stewardship.

7. *"Drainage district"* means a drainage district established pursuant to chapter 468.

8. *"Drainage system"* means tile lines, laterals, surface inlets, or other improvements which are constructed to facilitate the drainage of land.

9. *"Earthen storage structure"* means an earthen cavity, either covered or uncovered, including but not limited to an anaerobic lagoon or earthen manure storage basin which is used to store manure, sewage, wastewater, industrial waste, or other waste as regulated by the department of natural resources, if stored in a liquid or semi-liquid state.

10. *"Land"* means land which is used or which is suitable for use for any purpose, if the land is located within an agricultural drainage well area which includes land used or suitable for use in farming.

11. *"Surface water"* means water occurring on the surface of the ground.

12. *"Surface water intake"* means an artificial opening to a drain tile line which drains into an agricultural drainage well, if the artificial opening allows surface water to enter the drain tile line without filtration through the soil profile.

97 Acts, ch 193, §4

CS97, §455I.1

2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201; 2002 Acts, ch 1137, §52, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.101

Transfer directive and corresponding amendments in 2002 Acts, ch 1137, omitted directions regarding disposition of §455I.1, subsection 5, Code 2001, that contained language equivalent to language directed to be added to subchapter 2 of this chapter, which was codified at section 460.201; corrective legislation is pending

See Code editor's note to chapter 455I at the end of Vol IV

Section transferred from §455I.1 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Unnumbered paragraph 1 stricken

Former subsection 5 omitted and former subsections 6 – 13 renumbered as 5 – 12

SUBCHAPTER II

AGRICULTURAL DRAINAGE WELLS — REGULATION

460.201 Definition.

As used in this subchapter, unless the context otherwise requires, *"department"* means the department of natural resources.

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

See Code editor's note to chapter 455I at the end of Vol IV

Section added per directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

NEW section

460.202 Preventing surface water drainage into agricultural drainage wells.

Not later than December 31, 2001, all of the following shall apply:

1. An owner of land on which an agricultural drainage well is located shall prevent surface water from draining into the agricultural drainage well. The landowner shall comply with rules, which shall be adopted by the department, in consultation with the division, required to carry out this section. The landowner shall do all of the following:

a. If the land has a surface water intake emptying into an agricultural drainage well, including a surface water intake located in a road ditch, the landowner shall remove the surface water intake.

b. If the land has a cistern connecting to an agricultural drainage well, the landowner shall construct and maintain sidewalls surrounding the cistern in order to prevent surface water runoff directly emptying into the agricultural drainage well.

c. If the land has an agricultural drainage well, the landowner shall ensure that the agricultural drainage well and related drainage system are adequately ventilated in a manner that does not allow surface water to directly drain into the agricultural drainage well.

d. The landowner shall install a locked cover over the agricultural drainage well or its cistern in order to prevent unauthorized access to the agri-

cultural drainage well or its cistern.

This subsection does not require a person to remove a tile line that drains into an agricultural drainage well if the tile line does not have a surface water intake. This subsection also does not prohibit a person from installing a tile line, if the installed tile line does not increase an agricultural drainage well area.

2. An agricultural drainage well shall be inspected to ensure compliance with this section, as required by the county board of supervisors in the county in which the agricultural drainage well is located.

3. The department shall adopt guidelines as necessary to assist counties in performing inspections as provided in this section. The guidelines shall not affect the authority of a county to designate a person to perform inspections.

97 Acts, ch 193, §5
CS97, §455I.2
98 Acts, ch 1173, §1; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.202
Section transferred from §455I.2 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.203 Closing of agricultural drainage wells and construction of alternative drainage systems.

1. Not later than December 31, 2001, the owner of land which is within a designated agricultural drainage well area shall close each agricultural drainage well located on the land. The owner shall close the agricultural drainage well in a manner using materials and according to specifications required by rules which shall be adopted by the department in consultation with the division. The department may provide different closing requirements based on classifications established by the department. However, the department's requirements shall ensure that an agricultural drainage well is closed by using sealing materials such as bentonite to permanently seal the agricultural drainage well from contamination by surface or subsurface water drainage.

2. A person owning land affected by the closing of an agricultural drainage well as required pursuant to subsection 1 may construct an alternative drainage system as part of an established or new drainage district as provided in chapter 468. The alternative drainage system shall ensure that surface or subsurface water does not drain into an agricultural drainage well.

97 Acts, ch 193, §6
CS97, §455I.3
99 Acts, ch 72, §1; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.203
Section transferred from §455I.3 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.204 Notice.

1. The department shall provide information regarding landowners registering agricultural drainage wells pursuant to section 460.302 to each county board of supervisors in which an agricultural drainage well is registered.

2. The department shall notify landowners of land on which an agricultural drainage well is located of the deadline for complying with this subchapter. The notice shall be provided by print, electronic media, or other notification process. The department shall provide the notice in cooperation with the county board of supervisors in the county where the agricultural drainage well is located.

3. The department shall mail a special notice to owners of land registering agricultural drainage wells pursuant to section 460.302.

97 Acts, ch 193, §7
CS97, §455I.4
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.204
Section transferred from §455I.4 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.205 Prohibition against constructing earthen storage structures.

A person shall not construct or expand an earthen storage structure within an agricultural drainage well area. Each day that a person operates an earthen storage structure which is constructed in violation of this section constitutes a separate violation.

97 Acts, ch 193, §8
CS97, §455I.5
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.205
Section transferred from §455I.5 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.206 Penalties.

1. *a.* A person who violates section 460.202 or 460.203 is subject to a civil penalty of not more than one thousand dollars. However, if a person is found to have violated a section and again violates the section by not taking action necessary to correct a previous violation within sixty days after the person was found to have committed the previous violation, the person is subject to a civil penalty not to exceed five thousand dollars. If a person is convicted of violating a section two or more times and again violates that section by not taking action necessary to correct a previous violation within sixty days after the person was found to have committed the last previous violation, the person is subject to a civil penalty not to exceed fifteen thousand dollars.

b. A person who violates section 460.205 is subject to a civil penalty not to exceed five thousand dollars.

2. Moneys collected from the assessment of

civil penalties and interest on civil penalties as provided for in this section shall be deposited in the manure storage indemnity fund as created in section 459.501.

97 Acts, ch 193, §9

CS97, §455I.6

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.206

Section transferred from §455I.6 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.207 Reimbursement of expenses.

The expenses incurred by a county in carrying out this subchapter shall be prorated among the landowners in the county who own land on which an agricultural drainage well is located. The amount shall be placed upon the tax books, and collected with interest and penalties after due, in the same manner as other unpaid property taxes. If expenses are incurred by a drainage district, the board shall levy an assessment on the lands in the district where an agricultural drainage well is located as provided in section 468.50.

97 Acts, ch 193, §10

CS97, §455I.7

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.207

Section transferred from §455I.7 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

SUBCHAPTER III

AGRICULTURAL DRAINAGE WELLS — REGISTRATION — ALTERNATIVE DRAINAGE SYSTEMS — SINKHOLES

460.301 Definition.

As used in this subchapter, unless the context otherwise requires, *"department"* means the department of agriculture and land stewardship.

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Section added per directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

NEW section

460.302 Agricultural drainage wells.

1. An owner of an agricultural drainage well shall register the well with the department of natural resources by September 30, 1988. The department of agriculture and land stewardship, in cooperation with the department of natural resources, shall adopt rules, pursuant to chapter 17A, which provide for an appeals process for violations of this subsection.

2. An owner of an agricultural drainage well and a landholder whose land is drained by the well or wells of another person shall develop, in consultation with the department of agriculture and land stewardship and the department of natural resources, a plan which proposes alternatives to the use of agricultural drainage wells by July 1, 1998.

a. Financial incentive moneys may be allocated from the financial incentive portion of the agriculture management account of the groundwater protection fund to implement alternatives to agricultural drainage wells.

b. An owner of an agricultural drainage well and a landholder whose land is drained by the well or wells of another person shall not be eligible for financial incentive moneys pursuant to paragraph *"a"* if the owner fails to register the well with the department of natural resources by September 30, 1988, or if the owner fails to develop a plan for alternatives in cooperation with the department of agriculture and land stewardship and the department of natural resources.

3. The department shall:

a. On July 1, 1987 initiate a pilot demonstration and research project concerning elimination of groundwater contamination attributed to the use of agricultural chemicals and agricultural drainage wells. The project shall be established in a location in north central Iowa determined by the department to be the most appropriate. A demonstration project shall also be established in northeast Iowa to study techniques for the cleanup of sinkholes.

The agricultural drainage well pilot project shall be designed to identify the environmental, economic, and social problems presented by continued use or closure of agricultural drainage wells and to monitor possible contamination caused by agriculture land management practices and agricultural chemical use relative to agricultural drainage wells.

b. Develop alternative management practices based upon the findings from the demonstration projects to reduce the infiltration of synthetic organic compounds into the groundwater through agricultural drainage wells and sinkholes.

c. Examine alternatives and the costs of implementation of alternatives to the use of agricultural drainage wells, and examine the legal, technical, and hydrological constraints for integrating alternative drainage systems into existing drainage districts.

4. Financial incentive moneys expended through the use of the financial incentive portion of the agriculture management account may be provided by the department to landowners in the project areas for employing reduced chemical farming practices and land management techniques.

5. The secretary may appoint interagency committees and groups as needed to coordinate the involvement of agencies participating in department sponsored projects. The interagency committees and groups may accept grants and funds from public and private organizations.

6. The department shall publish a report on

the status and findings of the pilot demonstration projects on or before July 1, 1989, and each subsequent year of the projects. The department of agriculture and land stewardship shall develop a priority system for the elimination of chemical contamination from agricultural drainage wells and sinkholes. The priority system shall incorporate available information regarding the significance of contamination, the number of registered wells in the area, and the information derived from the report prepared pursuant to this subsection. The highest priority shall be given to agricultural drainage wells for which the above criteria are best met, and the costs of necessary action are at the minimum level.

7. Beginning July 1, 1993, the department shall initiate an ongoing program to meet the goal of eliminating chemical contamination caused by the use of agricultural drainage wells by January 1, 1995, based upon the findings of the report published pursuant to subsection 6.

8. Notwithstanding the prohibitions of section 455B.267, subsection 4, an owner of an agricultural drainage well may make emergency repairs necessitated by damage to the drainage well to minimize surface runoff into the agricultural drainage well, upon the approval of the county board of supervisors or the board's designee of the county in which the agricultural drainage well is located. The approval shall be based upon the following conditions:

a. The well has been registered in accordance with both state and federal law.

b. The applicant will institute management practices including alternative crops, reduced application of chemicals, or other actions which will reduce the level of chemical contamination of the water which drains into the well.

c. The owner submits a written statement that approved emergency repairs are necessary and do not constitute a basis to avoid the eventual closure of the well if closure is later determined to be required. If a county board of supervisors or the board's designee approves the emergency repair of an agricultural drainage well, the county board of supervisors or the board's designee shall notify the department of natural resources of the approval within thirty days of the approval.

87 Acts, ch 225, §303

CS87, §159.29

88 Acts, ch 1188, §1; 90 Acts, ch 1027, §1 – 4; 94 Acts, ch 1198, §32; 96 Acts, ch 1219, §65; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.302

Section transferred from §159.29 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.303 Agricultural drainage wells — alternative drainage system assistance fund.

1. An alternative drainage system assistance fund is created in the state treasury under the control of the soil conservation division. The fund is composed of moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the division or the state soil conservation committee established pursuant to section 161A.4, from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants written by the director of revenue and finance, drawn upon the written requisition of the division.

3. The fund shall be used to support the alternative drainage system assistance program as provided in section 460.304. Moneys shall be used to provide financial incentives under the program, and to defray expenses by the division in administering the program. However, not more than one percent of the money in the fund is available to defray administrative expenses. The division may adopt rules pursuant to chapter 17A to administer this section.

4. The division shall not in any manner directly or indirectly pledge the credit of the state.

5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

97 Acts, ch 193, §2

CS97, §159.29A

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.303

Section transferred from §159.29A in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.304 Agricultural drainage wells — alternative drainage system assistance program.

1. The soil conservation division shall establish an alternative drainage system assistance program as provided by rules which shall be adopted by the division pursuant to chapter 17A. The program shall be supported from moneys deposited in the alternative drainage system assistance fund created pursuant to section 460.303.

2. To the extent that moneys are available to support the program, the division shall provide cost-share moneys to persons closing agricultural drainage wells located within designated agricultural drainage well areas, and constructing alternative drainage systems which are part of a drainage district in accordance with the priority system established pursuant to section 460.302. The amount of moneys allocated in cost-share payments to a person qualifying under the program shall not exceed seventy-five percent of the estimated cost of installing the alternative drainage system or seventy-five percent of the actual cost of installing the alternative drainage system, whichever is less.

3. *a.* A person who owns an interest in land within a designated agricultural drainage well area shall not be eligible to participate in the program, if the person is any of the following:

(1) A party to a pending legal or administrative action, including a contested case proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(2) Is classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

b. Noncrop acres located within a designated agricultural drainage well area shall not be eligible to benefit from the program.

The department of natural resources shall cooperate with the division by providing information necessary to administer this subsection.

97 Acts, ch 193, §3

CS97, §159.29B

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.304

Section transferred from §159.29B in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.305 Sinkholes — conservation easement programs.

The department shall develop and implement a program for the prevention of groundwater contamination through sinkholes. The program shall provide for education of landowners and encourage responsible chemical and land management practices in areas of the state prone to the formation of sinkholes.

The program may provide financial incentives for land management practices and the acquisition of conservation easements around sinkholes. The program may also provide financial assistance for the cleanup of wastes dumped into sinkholes.

The program shall be coordinated with the groundwater protection programs of the department of natural resources and other local, state, or federal government agencies which could compensate landowners for resource protection measures. The department shall use moneys appropriated for this purpose from the agriculture management account of the groundwater protection fund.

87 Acts, ch 225, §302

CS87, §159.28

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.305

Section transferred from §159.28 in Code 2003 pursuant to directive in 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

CHAPTER 460A

GEOLOGICAL SURVEY

Transferred to chapter 456; 2002 Acts, 2nd Ex, ch 1003, §260, 262

SUBTITLE 2

LANDS AND WATERS

CHAPTER 461

DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

Transferred to §468.355 through §468.383;
89 Acts, ch 126

CHAPTER 461A

PUBLIC LANDS AND WATERS

This chapter not enacted as a part of this title;
transferred from chapter 111 in Code 1993

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461A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.

2. *"Department"* means the department of natural resources created under section 455A.2.

3. *"Director"* means the director of the department.

[C24, 27, 31, 35, 39, §**1797;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.1]

86 Acts, ch 1238, §57, 58; 86 Acts, ch 1245, §1861, 1992

C93, §461A.1

461A.2 Duties in general.

The commission shall investigate places in Iowa rich in natural history, forest reserves, archaeological specimens, and geological deposits; and the means of promoting forestry and maintaining and preserving animal and bird life and the conservation of the natural resources of the state.

[C24, 27, 31, 35, 39, §**1798;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.2]

C93, §461A.2

461A.3 Duties as to parks.

It shall be the duty of the commission to establish, maintain, improve, and beautify public parks and preserves upon the shores of lakes, streams, or other waters, or at other places within the state which have become historical or which are of scientific interest, or which by reason of their natural scenic beauty or location are adapted therefor. The commission shall have the power to maintain, improve or beautify state-owned bodies of water, and to provide proper public access thereto. The commission shall have the power to provide and operate facilities for the proper public use of the areas above described.

The commission shall open all roads which pass through the Ledges State Park from September 15 to November 1 of each year.

[C24, 27, 31, 35, 39, §**1799;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.3]

86 Acts, ch 1245, §1877

C93, §461A.3

461A.3A Restore the outdoors program — appropriation.

1. The department shall establish a restore the outdoors program. The purpose of the program is to provide funding for projects involving existing vertical infrastructure as defined in section 8.57, subsection 5, paragraph *"c"*, or the construction of new vertical infrastructure if the new construction is required due to increased demand for facilities at the park or if it is not cost-effective to repair or renovate the existing vertical infrastructure. Projects shall be limited to existing state parks and other public facilities managed by the department.

2. There is appropriated from the rebuild Iowa infrastructure fund for each fiscal year of the fiscal period beginning July 1, 1997, and ending June 30, 2001, the sum of three million dollars to the department for use in the restore the outdoors program. Notwithstanding section 8.33, unencumbered or unobligated moneys remaining at the end of a fiscal year shall not revert but shall remain available for expenditure during the following fiscal year for purposes of the restore the outdoors program.

The department shall provide in its annual budget documentations to the governor and general assembly a report on the use of moneys under the program since the last report and the projected use of future moneys.

97 Acts, ch 215, §37; 98 Acts, ch 1219, §19, 26

461A.4 Construction permit — rules — commercial concessions.

A person, association, or corporation shall not build or erect any pier, wharf, sluice, piling, wall, fence, obstruction, building, or erection of any kind upon or over any state-owned land or water under the jurisdiction of the commission, without first obtaining from the commission a written permit. A permit, in matters relating to or in any manner affecting flood control, shall not be issued without approval of the environmental protection commission of the department. A person shall not maintain or erect any structure beyond the line of private ownership along or upon the shores of state-owned waters in a manner to obstruct the passage of pedestrians along the shore between the ordinary high-water mark and the water's edge, except by permission of the commission.

It shall be the duty of the commission to adopt and enforce rules governing and regulating the building or erection of any such pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind, and said commission may prohib-

it, restrict or order the removal thereof, when in the judgment of said commission it will be for the best interest of the public.

Any person, firm, association, or corporation violating any of the provisions of this section or any rule adopted by the commission under the authority of this section shall be guilty of a simple misdemeanor.

A person, association, or corporation shall not operate a commercial concession in a park, forest, fish and wildlife area, or recreation area under jurisdiction of the department without first entering into a written contract with the department. The contract shall state the consideration and other terms under which the concession may be operated. The department may cancel or, in an emergency, suspend a concession contract for the protection of the public health, safety, morals, or welfare.

[C27, 31, 35, §1799-b2; C39, §**1703.19, 1799.1;** C46, 50, 54, 58, §106.19, 111.4; C62, 66, 71, 73, 75, 77, 79, 81, §111.4; 82 Acts, ch 1199, §55, 96]

86 Acts, ch 1245, §1862, 1877; 88 Acts, ch 1192, §1; 90 Acts, ch 1108, §1

C93, §461A.4

461A.5 Obstruction removed.

The commission shall have full power and authority to order the removal of any pier, wharf, sluice, piling, wall, fence, obstruction, erection or building of any kind upon or over any state-owned lands or waters under their supervision and direction, when in their judgment it would be for the best interests of the public, the same to be removed within thirty days after written notice thereof by the commission. Should any person, firm, association or corporation fail to comply with said order of the commission within the time provided, the commission shall then have full power and authority to remove the same.

[C27, 31, 35, §1799-b3; C39, §**1799.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.5]

C93, §461A.5

461A.6 Costs — lien.

The cost of such removal shall be paid by the owner of said pier, wharf, sluice, piling, wall, fence, obstruction, erection or building, and the state shall have a lien upon the property removed for such costs. Said costs shall be payable at the time of removal and such lien may be enforced and foreclosed, as provided for the foreclosure of security interests in uniform commercial code, chapter 554, article 9, part 6.

[C31, 35, §1799-d1; C39, §**1799.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.6]

C93, §461A.6

2000 Acts, ch 1149, §170, 187

461A.7 Eminent domain.

The commission may purchase or condemn lands for public parks. No contract for the purchase of such public parks shall be made to an amount in excess of funds appropriated therefor by the general assembly.

[C24, 27, 31, 35, 39, §**1800;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.7]

86 Acts, ch 1245, §1980

C93, §461A.7

461A.8 Highways.

The commission may purchase or condemn highways connecting parks with the public highways. When the highways have been purchased or condemned the same shall be public highways of this state and shall be maintained as other public highways of the county.

[C24, 27, 31, 35, 39, §**1801;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.8]

86 Acts, ch 1245, §1981

C93, §461A.8

461A.9 Condemnation statutes.

All the provisions of the law relating to the condemnation of lands for public state purposes shall apply to the provisions hereof in and so far as applicable.

[C24, 27, 31, 35, 39, §**1802;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.9]

C93, §461A.9

Eminent domain, chapter 6A et seq.

461A.10 Title to lands.

The title to all lands purchased, condemned, or donated, hereunder, for park or highway purposes, shall be taken in the name of the state and if thereafter it shall be deemed advisable to sell any portion of the land so purchased or condemned, the proceeds of such sale shall be placed to the credit of the said public state parks fund to be used for such park purposes.

[C24, 27, 31, 35, 39, §**1803;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.10]

C93, §461A.10

461A.11 Gifts — jurisdiction over dedicated lands — plan.

The commission may accept gifts of land or other property, or the use of lands or other property for a term of years, and improve and use the land as public state parks.

Any land adjacent to a meandered lake or a meandered stream which has been conveyed by gift, dedication or other means to the public, but has not been conveyed to the jurisdiction of a specific state agency or political subdivision, shall be subject to the jurisdiction of the commission and to the rules promulgated pursuant to this chapter. The commission shall prepare a plan for the appropriate public use of such land in accordance with this chapter within two years of its coming under the jurisdiction of the commission. The plan may be amended by the commission.

[C24, 27, 31, 35, 39, §**1804;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.11]
86 Acts, ch 1237, §5; 86 Acts, ch 1245, §1982
C93, §461A.11

461A.12 Conditions — lands.
The conditions attached to a gift shall be entered in writing as part of the record of the title by which the state takes the lands, and shall be inscribed upon any chart, map, or description of said park if the conditions are made by the grantor in lieu of money as a consideration paid by the state.
[C24, 27, 31, 35, 39, §**1805;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.12]
C93, §461A.12

461A.13 Conditions — personalty.
If the donation be other than real estate and a particular specification for its use be made by the donor, no part of such donation shall be used or expended for any other purpose.
[C24, 27, 31, 35, 39, §**1806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.13]
C93, §461A.13

461A.14 Reversion of gift.
If the lands transferred to the state as a gift, or if lands purchased in whole or in part by the state from moneys given for that purpose, shall be abandoned or sold and not used for state park purposes, the donor shall reclaim the land or funds donated by filing the donor's request in writing with the executive council within six months of the time of the abandonment or sale by the state of such lands, but no interest or other charge shall be demanded of or paid by the state. Any unclaimed funds shall be used for park purposes.
[C24, 27, 31, 35, 39, §**1807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.14]
C93, §461A.14

461A.15 Use of private funds.
The commission may permit the improvement of parks, when established, or the improvement of bodies of water, upon the border of which such parks may be established, by the expenditure of private funds, such improvement to be done, however, under the direction of the commission, by and with the consent of the executive council.
[C24, 27, 31, 35, 39, §**1808;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.15]
C93, §461A.15

461A.16 Landscape architect.
The commission may call upon the Iowa State University of science and technology for the services of at least one competent landscape architect, engineer, or gardener, who shall, under the direction of the commission, proceed to work with it in the improvement of the state property under the control of said commission. The president of said university shall, when called upon, designate the landscape architect, engineer, or gardener, as the case may be, who shall work with said commission.
[C24, 27, 31, 35, 39, §**1809;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.16]
C93, §461A.16

461A.17 Expense and compensation.
All necessary expenses incurred by such landscape architect, engineer, or gardener, under the provisions of section 461A.16, shall be paid in the same manner as are other expenditures by the commission, but no compensation shall be paid for such services.
[C24, 27, 31, 35, 39, §**1811;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.17]
C93, §461A.17

461A.18 Jurisdiction.
Jurisdiction over all meandered streams and lakes of this state and of state lands bordering thereon, not now used by some other state body for state purposes, is conferred upon the commission. The exercise of this jurisdiction is subject to the approval of the department in matters relating to or in any manner affecting flood control. The commission, with the approval of the executive council, may establish parts of the property into state parks, and when so established all of the provisions of this chapter relative to public parks apply to the property.
[C24, 27, 31, 35, 39, §**1812;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.18; 82 Acts, ch 1199, §56, 96]
C93, §461A.18

461A.19 Boundaries.
The commission shall at once proceed to establish the boundary lines between the state-owned property under its jurisdiction and privately owned property when said commission deems it feasible and necessary, and shall where deemed advisable mark the same so that the boundaries of such state-owned property may be easily ascertainable to the public.
[C24, 27, 31, 35, 39, §**1813;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.19]
C93, §461A.19

461A.20 State department of transportation — duties.
The commission may call upon the state department of transportation for the services of at least one competent engineer, who shall, under the direction of the commission, proceed to work in conjunction with it in carrying out the true spirit and purpose of this chapter.
[C24, 27, 31, 35, 39, §**1814;** C46, 50, 54, 58, 62,

66, 71, 73, 75, 77, 79, 81, §111.20]
86 Acts, ch 1245, §1877
C93, §461A.20

461A.21 County engineer — duties.
The commission may call upon the county engineer of any county to advise relative to the true boundary between the state-owned property and private property in the county, and to furnish plats and surveys showing such true boundary lines, and when directed by the commission, shall mark such boundary lines as herein provided.
[C24, 27, 31, 35, 39, §**1815;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.21]
C93, §461A.21

461A.22 Surveys and plats.
All surveys and plats shall be filed with the secretary of the executive council, and shall become public records of this state.
[C24, 27, 31, 35, 39, §**1816;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.22]
86 Acts, ch 1245, §1863
C93, §461A.22

461A.23 Compensation.
The compensation and expenses of the highway engineer shall be paid as a part of the maintenance of the state department of transportation, and of the county engineer by the county, as the case may be.
[C24, 27, 31, 35, 39, §**1817;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.23]
C93, §461A.23

461A.24 Boundaries — adjustment.
Whenever a controversy shall arise as to the true boundary line between state-owned property and private property, the commission may adjust the boundary line or take such other action in the premises as in its judgment may seem right. When the disputed boundary line is fixed it shall be surveyed and marked.
[C24, 27, 31, 35, 39, §**1818;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.24]
86 Acts, ch 1245, §1983
C93, §461A.24

461A.25 Leases and easements.
The commission may recommend that the executive council lease property under the commission's jurisdiction. All leases shall reserve to the public of the state the right to enter upon the property leased for any lawful purpose. The council may, if it approves the recommendation and the lease to be entered into is for five years or less, execute the lease in behalf of the state and commission. If the recommendation is for a lease in excess of five years, with the exception of agricultural lands specifically dealt with in Article I, section 24 of the Constitution of the State of Iowa, the council shall advertise for bids. If a bid is accepted, the lease shall be let or executed by the council in accordance with the most desirable bid. The lease shall not be executed for a term longer than fifty years. Any such leasehold interest, including any improvements placed on it, shall be listed on the tax rolls as provided in chapters 428 and 443; assessed and valued as provided in chapter 441; taxes shall be levied on it as provided in chapter 444 and collected as provided in chapter 445; and the leasehold interest is subject to tax sale, redemption, and apportionment of taxes as provided in chapters 446, 447 and 448. The lessee shall discharge and pay all taxes.
The commission shall adopt rules providing for granting easements to political subdivisions and utility companies on state land under the jurisdiction of the department. An applicant for an easement shall provide the director with information setting forth the need for the easement, availability of alternatives, and measures proposed to prevent or minimize adverse impacts on the affected property. An easement shall be executed by the director, approved as to form by the attorney general, and if granted for a term longer than five years, approved by the commission.
[C24, 27, 31, 35, 39, §**1819;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.25]
83 Acts, ch 101, §12
C93, §461A.25
97 Acts, ch 10, §1

461A.26 Special police.
The commission in carrying out its duties may appoint the director and such other supervisory personnel of the department as necessary to act as special police to carry out the law enforcement program of the department. The officers are vested with the powers and charged with the duties of peace officers while in the performance of their official duties.
[C35, §1821-e1; C39, §**1821.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.26]
86 Acts, ch 1245, §1864
C93, §461A.26

461A.27 Management by municipalities.
The commission may enter into an agreement or arrangement with the board of supervisors of a county or the council of a city whereby the county or city shall undertake the care and maintenance of any lands under the jurisdiction of the commission. Counties and cities may maintain the lands and pay the expense of maintenance. A city may pay the expense from the general fund.
[C24, 27, 31, 35, 39, §**1822;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.27]
83 Acts, ch 123, §57, 209
C93, §461A.27

461A.28 Expenditure by cities.

Any one or more cities may through action of its city council expend money to aid in the purchase of land within the county for state parks which, when purchased, shall be the property of the state of Iowa, to be cared for as state parks.

[C27, 31, 35, §1822-a1; C39, §**1822.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.28]

C93, §461A.28

461A.29 Limitation on expenditures.

The amount to be paid by such city or cities shall in no event exceed one-half of the total purchase price of the land involved in any single purchase, and in no event shall the total amount paid by such city or cities in any single purchase exceed the sum of fifty thousand dollars.

[C27, 31, 35, §1822-a2; C39, §**1822.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.29]

C93, §461A.29

461A.30 City funds available.

Any such city or cities aiding in the purchase of land for state parks, as provided for in sections 461A.28 and 461A.29 may pay for the same out of the general fund, or may issue bonds for the payment of the same and levy a tax for the payment of such bonds and the interest thereon, in accordance with the provisions of law relating to general corporate purpose bonds of a city.

[C27, 31, 35, §1822-a3; C39, §**1822.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.30]

C93, §461A.30

461A.31 Sale of islands.

No islands in any of the meandered streams and lakes of this state or in any of the waters bordering upon this state shall hereafter be sold, except with the majority vote of the executive council upon the majority recommendation of the commission, and in the event any of such islands are sold as herein provided the proceeds thereof shall become a part of the funds to be expended under the terms and provisions of this chapter.

[C24, 27, 31, 35, 39, §**1823;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.31]

C93, §461A.31

461A.31A Sale of timber.

If the estimated quantity of timber grown in a state park or a preserve to be sold by the department in a sixty-day period is ten thousand board feet or more or if the estimated value of the timber grown in a state park or a preserve to be sold by the department during the same period of time is five thousand dollars or more, the department shall conduct a public hearing on the proposed sale. Notice of the hearing shall be published as provided in section 331.305. After the public hearing, the department may proceed with the sale of the timber.

99 Acts, ch 206, §27

461A.32 Sale of park lands — conveyances to cities or counties.

The commission may sell or exchange such parts of public lands under the jurisdiction of the commission as in its judgment may be undesirable for conservation purposes, excepting state-owned meandered lands already surveyed and platted at state expense as a conservation plan and project tentatively adopted and now in the process of rehabilitation and development authorized by a special legislative Act. The sale or exchange shall be made upon the terms, conditions or considerations as the commission may approve, whereupon the secretary of state shall issue a patent therefor in the manner provided by law in other cases. The proceeds of any such sale or exchange shall become a part of the funds to be expended under the provisions of this chapter.

Upon request by resolution of any city or county or any legal agency thereof, the executive council may, upon majority recommendation of the commission, convey without consideration to such city or county or legal agency thereof, such public lands under the jurisdiction of the commission as in its judgment may be desirable for city or county parks. Conveyance shall be in the name of the state, with the great seal of the state attached and shall contain a provision that when such lands cease to be used as public park by said city or county such lands revert to the state, and such park shall, within one year after such land has reverted to the state, be restored, as nearly as possible, to the condition it was in when acquired by such city, county or legal agency thereof at the expense of such city, county or legal agency.

The state may require that the city, county or legal agency thereof file a notice of intention every three years.

[C24, 27, 31, 35, 39, §**1824;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.32]

86 Acts, ch 1244, §25; 86 Acts, ch 1245, §1877

C93, §461A.32

461A.33 Form of conveyance.

Conveyances shall be in the name of the state, signed by the governor and secretary of state, with the great seal of the state attached.

[C24, 27, 31, 35, 39, §**1825;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.33]

C93, §461A.33

461A.34 Powers in municipalities.

Municipalities, or individuals, or corporations organized for that purpose only, acting separately or in conjunction with each other, may establish like parks outside the limits of cities, and when established without the support of the public state

parks fund, the municipalities, corporations, or persons establishing the same, as the case may be, shall have control thereof independently of the executive council; but none of the said municipalities, individuals, or corporations, acting under the provisions of this section shall establish, maintain or operate any such park as herein contemplated for pecuniary profit.

[C24, 27, 31, 35, 39, §**1827;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.34]

C93, §461A.34

461A.35 Prohibited destructive acts.

It shall be unlawful for any person to use, enjoy the privileges of, destroy, injure or deface plant life, trees, buildings, or other natural or material property, or to construct or operate for private or commercial purposes any structure, or to remove any plant life, trees, buildings, sand, gravel, ice, earth, stone, wood or other natural material, or to operate vehicles, within the boundaries of any state park, preserve, or stream or any other lands or waters under the jurisdiction of the commission for any purpose whatsoever, except upon the terms, conditions, limitations and restrictions as set forth by the commission.

[C39, §**1828.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.35]

86 Acts, ch 1245, §1877

C93, §461A.35

461A.35A Entrance fee.

The department shall not impose a fee upon a person for entering into a state park or preserve.

99 Acts, ch 206, §28, 29

461A.36 Speed limit.

The maximum speed limit of all vehicles on state park and preserve drives, roads and highways shall be thirty-five miles per hour. All driving shall be confined to designated roadways. Whenever the commission shall determine that the speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of the park roads, drives or highways, said commission shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such places of congestion or other parts of the park roads, drives or highways.

[C39, §**1828.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.36]

86 Acts, ch 1245, §1877

C93, §461A.36

For applicable scheduled fine, see §805.8A, subsection 5

461A.37 Excessive loads.

Excessively loaded vehicles shall not operate over state park or preserve drives, roads or highways. The determination as to whether the load is excessive will be made by the director or the director's representative and will depend upon the load and the road conditions.

[C39, §**1828.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.37]

86 Acts, ch 1245, §1878

C93, §461A.37

461A.38 Parking.

All vehicles shall be parked in designated parking areas, and no vehicle shall be left unattended on any state park or preserve drive, road or highway, except in the case of an emergency.

[C39, §**1828.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.38]

C93, §461A.38

For applicable scheduled fine, see §805.8A, subsection 1, paragraph a

461A.39 Hitching to trees.

No horse or other animal shall be hitched or tied to any tree or shrub, or in such a manner as to result in injury to state property.

[C39, §**1828.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.39]

C93, §461A.39

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

461A.40 Fires.

No fires shall be built, except in a place provided therefor, and such fire shall be extinguished when site is vacated unless it is immediately used by some other party.

[C39, §**1828.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.40]

C93, §461A.40

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

461A.41 Removing plants, flowers or fruit.

No person shall, in any manner, remove, destroy, injure or deface any tree, shrub, plant, or flower, or the fruit thereof, or disturb or injure any structure or natural attraction, except that upon written permission of the commission certain specimens may be removed for scientific purposes.

This section shall not apply to activities of the commission or its officers, or employees when caring for and managing state-owned land and waters under the jurisdiction of the commission. This section shall not apply to the gathering or removal of any tree, shrub, plant, flower, fruits, structures or natural attractions under terms, conditions, limitations and restrictions adopted by the commission as rules under chapter 17A.

[C39, §**1828.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.41]

86 Acts, ch 1245, §1877

C93, §461A.41

461A.42 Use of firearms, explosives, weapons, and fireworks prohibited — exceptions.

1. The use of firearms, explosives, and weapons of all kinds by a person is prohibited in all state parks and preserves except under the following conditions:

a. A firearm or other weapon authorized for hunting may be used in preserves or parts of preserves designated by the state advisory board on preserves at the request of the commission.

b. A person may use a bow and arrow with an attached bow fishing reel and ninety-pound minimum line attached to the arrow to take rough fish as provided by rule of the commission.

c. The commission may establish, by rule, the state parks or parts of state parks where firearms may be discharged during special events, festivals and education programs, or a special hunt to control animal populations. The rules governing special hunts to control animal populations shall be applied separately to each designated state park.

2. The use of fireworks, as defined in section 727.2, in state parks and preserves is prohibited except as authorized by a permit issued by the department. The commission shall establish, by rule adopted pursuant to chapter 17A, a fireworks permit system which authorizes the issuance of a limited number of permits to qualified persons to use or display fireworks in selected state parks and preserves. A person violating this subsection is guilty of a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars. The court shall order restitution if any damages were caused by the violation which may include, but is not limited to, community service.

[C39, §**1828.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.42]

86 Acts, ch 1245, §1877; 91 Acts, ch 101, §1

C93, §461A.42

97 Acts, ch 180, §1; 99 Acts, ch 153, §10

461A.43 Littering grounds.

No person shall place any waste, refuse, litter or foreign substance in any area or receptacle except those provided for that purpose.

[C39, §**1828.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.43]

C93, §461A.43

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

461A.44 Prohibited areas.

No person shall enter upon portions of any state park or preserve in disregard of official signs forbidding same, except by permission of the director or the director's representative.

[C39, §**1828.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.44]

86 Acts, ch 1245, §1878

C93, §461A.44

For applicable scheduled fine, see §805.8B, subsection 6, paragraph c

461A.45 Animals on leash.

No privately owned animal shall be allowed to run at large in any state park or preserve or upon lands or in waters owned by or under the jurisdiction of the commission except by permission of the commission. Every such animal shall be deemed as running at large unless the owner carries such animal or leads it by a leash or chain not exceeding six feet in length, or keeps it confined in or attached to a vehicle.

[C39, §**1828.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.45]

C93, §461A.45

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

461A.46 Closing time.

Except by arrangement or permission granted by the director or the director's authorized representative, all persons shall vacate state parks and preserves before ten-thirty o'clock p.m. Areas may be closed at an earlier or later hour, of which notice shall be given by proper signs or instructions. The provisions of this section shall not apply to authorized camping in areas provided for that purpose.

[C39, §**1828.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.46]

C93, §461A.46

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

461A.47 Camping.

The commission is hereby authorized to fix fees for camping and other special privileges which shall be in such amounts as may be determined by the commission upon a basis of the cost of providing and reasonable value of such privileges.

[C39, §**1828.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.47]

C93, §461A.47

461A.48 Camping areas.

No person shall camp in any portion of a state park or preserve except in portions prescribed or designated by the commission.

[C39, §**1828.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.48]

C93, §461A.48

For applicable scheduled fine, see §805.8B, subsection 6, paragraph d

461A.49 Time limit.

No camping unit shall be permitted to camp for a period longer than that designated by the commission for the specific state park or preserve, and in no event longer than for a period of two weeks.

[C39, §**1828.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.49]

C93, §461A.49

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

461A.50 Registering — vacating.
Any person who camps in any state park or preserve shall register the person's name and address with the park custodian and advise the custodian when the camp is vacated.
[C39, §**1828.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.50]
C93, §461A.50
For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

461A.51 Camping refused.
Custodians are given authority to refuse camping privileges and to rescind any and all camping permits for cause.
[C39, §**1828.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.51]
C93, §461A.51

ICE, SAND, AND GRAVEL REMOVAL

461A.52 Agreement with commission.
No person shall remove any ice, sand, gravel, stone, wood, or other natural material from any lands or waters under the jurisdiction of the commission without first entering into an agreement with the commission.
[C39, §**1828.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.52]
C93, §461A.52

461A.53 Permits.
The commission may enter into agreements for the removal of ice, sand, gravel, stone, wood, or other natural material from lands or waters under the jurisdiction of the commission if, after investigation, it is determined that such removal will not be detrimental to the state's interest. The commission may specify the terms and consideration under which such removal is permitted and issue written permits for such removal.
[C39, §**1828.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.53]
C93, §461A.53

461A.54 Barriers on ice field.
Any person removing ice under a permit shall erect barriers on any part of an ice field where ice is cut, where said field crosses or traverses any part of a stream or lake that is used as a way of passage.
[C39, §**1828.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.54]
C93, §461A.54

461A.55 Dredging.
In removing sand, gravel, or other material from state-owned waters by dredging, the operator shall so arrange the operator's equipment that other users of the lake or stream shall not be endangered by cables, anchors, or any concealed equipment. No waste material shall be left in the water in such manner as to endanger other craft or to change the course of any stream.
[C39, §**1828.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.55]
C93, §461A.55

461A.56 Disturbing natural bank.
Where operations are entirely on private property adjacent to a public lake or stream the natural bank between the state and privately owned areas shall not be removed except by permission of the commission.
[C39, §**1828.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.56]
C93, §461A.56

461A.57 Penalties.
Any person violating any of the provisions of sections 461A.35 to 461A.56 is guilty of a simple misdemeanor.
[C39, §**1828.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.57]
85 Acts, ch 206, §2
C93, §461A.57

MAINTENANCE EQUIPMENT

461A.58 Use by cities and state department of transportation.
The city council within the limits of the municipal corporation and the state department of transportation may permit use of maintenance equipment under their control in state parks and other lands of the commission.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §111.58; 81 Acts, ch 117, §1011]
86 Acts, ch 1245, §1877
C93, §461A.58

WATER RECREATIONAL AREAS

461A.59 Powers in municipalities.
Municipalities or corporations organized for that purpose only, acting separately or in conjunction with each other in counties not having a county conservation board, may establish water recreational areas and when established without the support of public funds of the state of Iowa, the municipalities or corporations establishing the same, as the case may be, shall have control thereof independently of the executive council.
[C66, 71, 73, 75, 77, 79, 81, §111.59]
C93, §461A.59

461A.60 Application for permit.
Any municipality or corporation seeking to establish a water recreational area without public

funds of the state of Iowa shall file with the commission a verified petition asking for a permit to establish a water recreational area.

[C66, 71, 73, 75, 77, 79, 81, §111.60]
86 Acts, ch 1245, §1877
C93, §461A.60

461A.61 Petition.

Said petition shall state:

1. The name of the municipality or corporation.
2. The applicant's principal office and place of business.
3. A legal description of the lands to be included within said water recreational area, a showing that seventy-five percent of the area is either owned or under option for purchase by the applicant, together with a map thereof.
4. A general description of the public and private highways, grounds and real estate, streams and private lands of any kind within said area.
5. The tentative locations, types of dams to be constructed for any artificial lakes to be established, the proposed area to be inundated by the waters to be impounded by said dams, and a map showing the location of said dams and areas to be inundated.
6. A map showing the location of proposed roads, fixtures, utilities and other facilities necessary in the operation of said water recreational area.
7. The proposed plan of operation and regulations for the use of said facilities by the public.

[C66, 71, 73, 75, 77, 79, 81, §111.61]
C93, §461A.61

461A.62 Copy to environmental protection commission.

A copy of the petition and the applications, plans, and specifications required under chapter 455B shall be filed with the environmental protection commission and any approval or permit required under chapter 455B shall be obtained prior to the establishment of the water recreational area or the granting of a permit for the area by the commission.

[C66, 71, 73, 75, 77, 79, 81, §111.62; 82 Acts, ch 1199, §57, 96]
83 Acts, ch 101, §13; 86 Acts, ch 1245, §1865
C93, §461A.62

461A.63 Hearing — notice.

On the filing of said petition the commission shall fix a date for hearing thereon and shall cause notice thereof to be published in some newspaper of general circulation in each county in which said proposed water recreational area will be established, said notice to be published for two consecutive weeks.

[C66, 71, 73, 75, 77, 79, 81, §111.63]
86 Acts, ch 1245, §1877
C93, §461A.63

461A.64 Time and place.

Said hearing shall not be less than ten days nor more than thirty days from the date of the last publication and shall be held in the office of the commission or such place as the commission shall decide.

[C66, 71, 73, 75, 77, 79, 81, §111.64]
86 Acts, ch 1245, §1877
C93, §461A.64

461A.65 Objections.

Any person, corporation, company, levee or drainage district or city whose rights or interests may be affected by said proposed water recreational area may file written objections to said proposed water recreational area or to the granting of said permit.

[C66, 71, 73, 75, 77, 79, 81, §111.65]
C93, §461A.65

461A.66 Filing.

All such objections shall be on file in the office of said commission not less than five days before the date of hearing on said application but said commission may permit the filing of said objections later than five days before said hearing in which event the applicant must be granted a reasonable time to meet said objections.

[C66, 71, 73, 75, 77, 79, 81, §111.66]
86 Acts, ch 1245, §1877
C93, §461A.66

461A.67 Examination — testimony.

The commission may examine the proposed water recreational area or may cause such examination to be made by an engineer or such other persons as it desires to be selected by it, who shall report the results of said examination to the commission. At said hearing the commission shall consider the petition and any objections filed thereto and may at its discretion hear such testimony as may aid it in determining the propriety of granting such permit.

[C66, 71, 73, 75, 77, 79, 81, §111.67]
86 Acts, ch 1245, §1877
C93, §461A.67

461A.68 Final order — condition.

It may grant such permit in whole or in part upon such terms, conditions and restrictions as may be determined by it to be just and proper and in the public interest, provided that before any permit shall be granted to any such municipality or corporation the commission shall, after public hearing as provided hereby, determine whether the water recreational area will be in the interests of the public health and welfare and an affirmative

finding to such effect shall be a condition precedent to the granting of such permit.
[C66, 71, 73, 75, 77, 79, 81, §111.68]
C93, §461A.68

461A.69 Costs and fees.
Applicant shall pay all costs and expenses of the hearing and necessary preliminary investigation in connection therewith, including the cost of publishing notice of hearing.
[C66, 71, 73, 75, 77, 79, 81, §111.69]
C93, §461A.69

461A.70 Permit.
The commission shall cause to be prepared a uniform blank form of permit which shall provide a space for a general description of the area authorized to be included in any water recreational area to be established hereunder, the name and address of the municipality or corporation to whom said permit is granted and the terms and conditions upon which it is granted. Said permit shall be signed by the chairperson and all other members of the commission and the official seal of said commission shall be attached thereto.
[C66, 71, 73, 75, 77, 79, 81, §111.70]
86 Acts, ch 1245, §1877
C93, §461A.70

461A.71 Public access and use.
Any lake in the water recreational area, together with at least twenty-five percent of the water frontage of the water recreational area and all land which adjoins and lies within one hundred yards from any point of such twenty-five percent of the water frontage, shall be permanently subject to and available for free public access and use. The municipality or corporation shall grant to the state of Iowa a perpetual easement for such public access and use, and such easement shall not be impaired or destroyed in whole or in part by nonuse. Before a permit is granted as provided in section 461A.70, the commission and the municipality or corporation shall agree on the location and description of such water frontage and land to be permanently subject to and available for free public access and use, and such location and description shall be stated in the permit. However, in lieu of the foregoing procedure, the commission and the municipality or corporation may agree that the commission may select such water frontage and land after the permit is granted, and the permit shall so state. At any time the commission, with the written consent of the municipality or corporation, may designate any additional land within the water recreational area to be permanently subject to and available for free public access and use; and the municipality or corporation shall grant to the state of Iowa a perpetual easement for such public access and use, which easement shall not be impaired or destroyed in whole or in part by nonuse. However, the commission may enter into agreements from time to time with one or more municipalities or corporations for the management, development, improvement, care and maintenance of such lake, water frontage and land.
[C66, 71, 73, 75, 77, 79, 81, §111.71]
86 Acts, ch 1245, §1877
C93, §461A.71

461A.72 Sale of permit.
No permit shall be sold until the sale is approved by the commission.
[C66, 71, 73, 75, 77, 79, 81, §111.72]
C93, §461A.72

461A.73 Records.
The commission shall keep a record of all permits granted and issued by it showing when and to whom issued and the location of the area of the proposed water recreational area covered thereby.
[C66, 71, 73, 75, 77, 79, 81, §111.73]
86 Acts, ch 1245, §1877
C93, §461A.73

461A.74 Extension of permit.
Any municipality or corporation owning a permit granted hereby desiring to acquire an extension of said permit may petition the commission in the same manner provided for the granting of such permit and the same proceeding shall be had as on an original application.
[C66, 71, 73, 75, 77, 79, 81, §111.74]
C93, §461A.74

461A.75 Condemnation of land.
Whenever a permit has been granted as provided in section 461A.70 and the commission finds that the municipality or corporation owning such permit cannot acquire at a reasonable cost any necessary land or interest therein, the commission, with the approval of the executive council, may condemn such land or interest therein as provided in chapter 6B. However, such condemnation shall be limited to land and interests therein which will be permanently subject to and available for free public access and use, as provided in section 461A.71, or which will be required for a dam or other facilities necessary for the water recreational area. All costs of such condemnation, including all costs occasioned by appeal as set out in section 6B.33, and including the award and compensation for such land or interest therein, shall be paid by such municipality or corporation. The commission may permit such municipality or corporation to use such land or interest therein for the purposes of this division, upon such terms, conditions and restrictions as the commission shall determine to be just and proper and for free public access and use. Title to such land or interest therein shall remain in the state of Iowa.

[C66, 71, 73, 75, 77, 79, 81, §111.75]
86 Acts, ch 1245, §1877
C93, §461A.75

461A.76 Contracts with local authorities.

Anything in chapter 468, subchapter I, parts 1 through 5, to the contrary, county boards of supervisors and trustees having control of any levee or drainage district established thereunder, including joint levee or drainage districts, may enter into contracts and agreements with municipalities or corporations authorized to establish water recreational areas under the provisions of this division. Such contracts or agreements shall be in writing and may be made prior to or after the establishment of a water recreational area. If made prior to the establishment of a water recreational area they may be made conditional upon the final establishment of such area and if conditional upon such final establishment may be entered into prior to the hearing provided for in section 461A.63.

Such contracts or agreements may embrace any of the following subjects:

1. For the impoundment of drainage waters to create artificial lakes or ponds.
2. For compensation to drainage districts for drainage improvements destroyed or rendered useless by the establishment of water recreational areas and the structures, waters or works thereof.
3. For the diversion of waters from established drainage ditches or tile drains to other channels.
4. For sanitary measures and precautions.
5. For the control of water levels in lakes, ponds or impoundments of water to avoid damage to or malfunction of drainage facilities.
6. For the construction of additional drainage facilities promoting the interests of either or both of the contracting parties.
7. For the granting of easements or licenses by one party to the other.
8. For the payment of money by one contracting party to the other in consideration of acts or performance of the other party required by such contract or agreement.

When any expenditure of levee or drainage district funds is proposed by the authority contained in this section and where the estimated expenditure will exceed fifty percent of the original total cost of the district and subsequent improvements therein as defined by section 468.126, the same procedure respecting notice and hearing shall be followed as is provided in said section 468.126, for repair proposals where the estimated cost of the repair exceeds fifty percent of the original total cost of the district and subsequent improvements therein.

[C66, 71, 73, 75, 77, 79, 81, §111.76]
C93, §461A.76

461A.77 Prohibited near borders of state.

In order to reduce the possibility of affecting conservation measures to flood control projects which may be in progress in other states, water recreational areas shall not be established hereunder within seventy miles of the border of any other state.

[C66, 71, 73, 75, 77, 79, 81, §111.77]
C93, §461A.77

461A.78 Method not exclusive.

This division shall not be the exclusive method for establishing a water recreational area and shall not be construed to prohibit the establishment of public recreational areas by the Missouri river preservation and land use authority under chapter 463B.

[C66, 71, 73, 75, 77, 79, 81, §111.78]
91 Acts, ch 246, §4
C93, §461A.78

461A.79 Public outdoor recreation and resources.

1. Fifty percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on land acquisition and capital improvements in carrying out this chapter. Acquisition projects, both fee-simple and less-than-fee, from willing sellers, may be for purposes of establishment or expansion of state parks, public hunting areas, natural areas, public fishing areas, water access sites, trail corridors, and other acquisition projects that are in accord with this chapter. Notwithstanding the exemption provided by section 427.1, land acquired under this subsection is subject to the full consolidated levy of property taxes which shall be paid from revenues available to be expended under this subsection. Capital improvements may be either new developments or rehabilitative in nature. Lake and watershed restoration projects are eligible for funding under this subsection. Not more than fifty percent of the revenues available to be expended under this subsection may be used by the commission to enter into agreements with county conservation boards and county boards of supervisors in those counties without conservation boards to carry out the purposes of this subsection. The agreement shall not provide for the payment by the commission of more than seventy-five percent of the cost of the project and the agreement shall specify that the county conservation board or county board of supervisors, whichever is applicable, shall provide funds for the remaining cost of the project covered by the agreement. Moneys available to be expended under this subsection may be used for the matching of federal funds.

2. Forty-five percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on the state recreation tourism grant program. This program shall provide matching grants to cities and unincorporated communities for purposes of developing or improving recreational projects or

tourist attractions. A city or unincorporated community may submit an application to the commission for a matching grant, except that an unincorporated community shall submit the application through the county board of supervisors. Applications shall be reviewed by the advisory council for public outdoor recreation and resources. The advisory council shall submit recommendations to the commission regarding possible recipients and grant amounts. Grants made to an unincorporated community shall be paid to the county board of supervisors to be used for the project of the unincorporated community. The amount of the grant shall not exceed fifty percent of the cost of the development or improvement to be made and the application must demonstrate that the city or unincorporated community will provide the required matching funds.

3. Five percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on advertising which shall promote the use of recreational facilities and tourist attractions in the state. The commission shall enter into an agreement with the Iowa department of economic development for the expenditure of these funds for this purpose.

4. Moneys available to be expended for purposes of this section for public outdoor recreation and resources shall be credited to or deposited to the general fund of the state and appropriations made for purposes of this section shall be allocated as provided in this section. Moneys credited to or deposited to the general fund of the state pursuant to this subsection are subject to the requirements of section 8.60.

84 Acts, ch 1262, §1
C85, §111.79
86 Acts, ch 1245, §1877; 91 Acts, ch 260, §1212; 92 Acts, ch 1163, §28
C93, §461A.79
93 Acts, ch 131, §18; 94 Acts, ch 1107, §74

461A.80 Public outdoor recreation and resources advisory council.

1. An advisory council for public outdoor recreation and resources appropriations made for the purposes of section 461A.79 is created. The council shall consist of a public member appointed by the governor from each congressional district, the chairperson of the commission, the director, and a designee of the Iowa department of economic development. No more than three public members shall belong to the same political party. The council shall elect a chairperson annually from among the council's members, and the director shall serve as council secretary. Persons already serving in an elected or appointed governmental capacity are not eligible to serve as council members.

2. The advisory council shall meet annually, in July, and upon the call of the chairperson of the advisory council. The advisory council shall make policy recommendations to the commission regarding the projects and programs to be funded from funds available for public outdoor recreation and resources from appropriations made for the purposes of section 461A.79.

3. Each county conservation board of those counties which are located in a congressional district shall nominate one person from the congressional district for appointment to the advisory council. The commission shall compile a list of the nominations of the county conservation boards for each congressional district and shall provide this list to the governor. The governor shall appoint one member from each congressional district from the nominations as provided. Appointments shall be made for three-year terms beginning July 1 in the year of appointment. A person shall not serve more than two terms. A vacancy shall be filled for the unexpired term in the same manner as the original appointment was made.

The public members of the advisory council shall be reimbursed for actual and necessary expenses for each day employed in the official discharge of their duties. The expenses shall be paid from the administration fund of the commission. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

84 Acts, ch 1262, §2
C85, §111.80
86 Acts, ch 1245, §1866, 1877
C93, §461A.80
94 Acts, ch 1107, §75

CHAPTER 461B

USE OF STATE WATERS BY NONRESIDENTS

This chapter not enacted as a part of this title;
transferred from chapter 106A in Code 1993
See §321.498 et seq. for similar provisions for motor vehicles

461B.1 Legal effect of use and operation.
461B.2 "Person" defined.
461B.3 Original notice — form.
461B.4 Manner of service.
461B.5 Notification to nonresident — form.
461B.6 Optional notification.
461B.7 Proof of service.
461B.8 Actual service within this state.

461B.9 Venue of actions.
461B.10 Continuances.
461B.11 Duty of secretary of state.
461B.12 Expenses and attorney fees.
461B.13 Dismissal — effect.
461B.14 Action against insurance.

461B.1 Legal effect of use and operation.

The use, operation or maintenance by any nonresident of watercraft in the waters of this state, shall be deemed an appointment by such nonresident of the secretary of state as the nonresident's true and lawful attorney upon whom may be served all original notices of suit growing out of such use, operation or maintenance or resulting in damage or loss to person or property and said use, operation or maintenance shall be deemed an agreement by such nonresident that any original notice of suit so served shall be of the same legal force and validity as if personally served on the nonresident in this state.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.1]
C93, §461B.1

461B.2 "Person" defined.

The term *"person"* as used in this chapter means:

1. The owner of watercraft whether it is being used and operated personally by said owner or by the owner's agent.
2. An agent using and operating the watercraft for the agent's principal.
3. Any person who is in charge of the watercraft and of the use and operation thereof with the express or implied consent of the owner.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.2]
C93, §461B.2

461B.3 Original notice — form.

The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that the part of said notice pertaining to the return day shall be in substantially the following form, to wit:

"and unless you appear thereto and defend in the district court of Iowa in and for . . . . . county at the courthouse in . . . . . , Iowa before noon of the sixtieth day following the filing of this notice with the secretary of state, default will be entered and judgment rendered against you."

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.3]
C93, §461B.3

461B.4 Manner of service.

Plaintiff in any such action shall cause the original notice of suit to be served as follows:

1. By filing a copy of said original notice of suit with said secretary of state, together with a fee of four dollars, and
2. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at the defendant's last known residence or place of abode, a notification of the said filing with the secretary of state.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.4; 81 Acts, ch 21, §4]
C93, §461B.4

461B.5 Notification to nonresident — form.

The notification, provided for by this chapter, shall be substantially in the following form, to wit:

To . . . . . (Here insert the name of each defendant and the defendant's residence or last known place of abode.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the . . . . . day of . . . . . (month), ... (year), with the secretary of state.

Dated at . . . . . , Iowa, this . . . . . day of . . . . . (month), ... (year)

. . . . . .
Plaintiff
By . . . . . .
Attorney for Plaintiff

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.5]
C93, §461B.5
2000 Acts, ch 1058, §56

461B.6 Optional notification.

In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.6]
C93, §461B.6

461B.7 Proof of service.

Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to

said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.7]
C93, §461B.7

461B.8 Actual service within this state.

The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form and under the conditions provided for service on residents.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.8]
C93, §461B.8

461B.9 Venue of actions.

Actions against nonresidents as contemplated by this chapter may be brought in the county of which plaintiff is a resident, or in the county in which the injury was received or damage done.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.9]
C93, §461B.9

461B.10 Continuances.

The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the nonresident defendant reasonable opportunity to defend said action.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.10]
C93, §461B.10

461B.11 Duty of secretary of state.

The secretary of state shall keep a record of all notices of suit filed with the secretary, shall not permit said filed notices to be taken from the secretary's office except on an order of court and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which the person is defendant.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.11]
C93, §461B.11

461B.12 Expenses and attorney fees.

If judgment is rendered against the plaintiff upon the trial of said action, said judgment shall include the reasonable expenses incurred by the defendant and the defendant's attorney in appearing to and defending against said action, provided that in the judgment of the trial court said action was commenced maliciously or without probable cause.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.12]
C93, §461B.12

461B.13 Dismissal — effect.

The dismissal of an action after the nonresident has entered a general appearance under the substituted service herein authorized shall bar the recommencement of the same action against the same defendant unless said recommenced action is accompanied by actual personal service of the original notice of suit on said defendant in this state.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.13]
C93, §461B.13

461B.14 Action against insurance.

Any contract insuring the liability of a nonresident operator of a motorboat in Iowa shall, in case of the death of said nonresident, be considered an asset of the nonresident's estate having a situs in Iowa in any civil action arising out of an accident in which said nonresident may be liable.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.14]
C93, §461B.14

CHAPTER 461C

PUBLIC USE OF PRIVATE LANDS AND WATERS

This chapter not enacted as a part of this title;
transferred from chapter 111C in Code 1993

461C.1 Purpose.
461C.2 Definitions.
461C.3 Liability of owner limited.
461C.4 Users not invitees or licensees.
461C.5 Duties and liabilities of owner of leased land.
461C.6 When liability lies against owner.
461C.7 Construction of law.

461C.1 Purpose.

The purpose of this chapter is to encourage private owners of land to make land and water areas available to the public for recreational purposes by

limiting their liability toward persons entering thereon for such purposes.

[C71, 73, 75, 77, 79, 81, §111C.1]
C93, §461C.1

461C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Charge"* means any consideration, the admission price or fee asked in return for invitation or permission to enter or go upon the land.

2. *"Holder"* means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises; provided, however, holder shall not mean the state of Iowa, its political subdivisions, or any public body or any agencies, departments, boards or commissions thereof.

3. *"Land"* means abandoned or inactive surface mines, caves, and land used for agricultural purposes, including marshlands, timber, grasslands and the privately owned roads, water, water courses, private ways and buildings, structures and machinery or equipment appurtenant thereto.

4. *"Recreational purpose"* means the following or any combination thereof: Hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein.

[C71, 73, 75, 77, 79, 81, §111C.2]
88 Acts, ch 1216, §46
C93, §461C.2

461C.3 Liability of owner limited.

Except as specifically recognized by or provided in section 461C.6, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

[C71, 73, 75, 77, 79, 81, §111C.3]
C93, §461C.3

461C.4 Users not invitees or licensees.

Except as specifically recognized by or provided in section 461C.6, a holder of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

1. Extend any assurance that the premises are safe for any purpose.

2. Confer upon such person the legal status of an invitee or licensee to whom the duty of care is owed.

3. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

[C71, 73, 75, 77, 79, 81, §111C.4]
C93, §461C.4

461C.5 Duties and liabilities of owner of leased land.

Unless otherwise agreed in writing, the provisions of sections 461C.3 and 461C.4 shall be deemed applicable to the duties and liability of an owner of land leased, or any interest or right therein transferred to, or the subject of any agreement with, the United States or any agency thereof, or the state or any agency or subdivision thereof, for recreational purposes.

[C71, 73, 75, 77, 79, 81, §111C.5]
C93, §461C.5

461C.6 When liability lies against owner.

Nothing in this chapter limits in any way any liability which otherwise exists:

1. For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

2. For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land or any interest or right therein, leased or transferred to, or the subject of any agreement with, the United States or any agency thereof or the state or any agency thereof or subdivision thereof, any consideration received by the holder for such lease, interest, right or agreement, shall not be deemed a charge within the meaning of this section.

[C71, 73, 75, 77, 79, 81, §111C.6]
C93, §461C.6

461C.7 Construction of law.

Nothing in this chapter shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property.

2. Relieve any person using the land of another for recreational purposes from any obligation which the person may have in the absence of this chapter to exercise care in the use of such land and in the person's activities thereon, or from the legal consequences of failure to employ such care.

3. Amend, repeal or modify the common law doctrine of attractive nuisance.

[C71, 73, 75, 77, 79, 81, §111C.7]
C93, §461C.7

CHAPTER 462

MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

Transferred to §468.500 through §468.537; 89 Acts, ch 126

CHAPTER 462A

WATER NAVIGATION REGULATIONS

This chapter not enacted as a part of this title;
transferred from chapter 106 in Code 1993

462A.1 Declaration of policy.
462A.2 Definitions.
462A.3 Powers and duties of commission.
462A.4 Operation of unnumbered vessels prohibited.
462A.5 Registration and identification number.
462A.5A Filing bond as assurance of ownership.
462A.6 Exemption from registration provisions of this chapter.
462A.6A Exemption from display of registration and capacity numbers.
462A.7 Collisions, accidents and casualties.
462A.8 Transmittal of information.
462A.9 Classification and required equipment.
462A.10 Boat liveries.
462A.11 Muffling devices.
462A.12 Prohibited operation.
462A.13 Penalty.
462A.14 Operating a motorboat or sailboat while intoxicated.
462A.14A Implied consent to test.
462A.14B Refusal to submit — penalty.
462A.14C Statement of officer.
462A.14D Tests pursuant to warrants.
462A.14E Violations of orders not to operate a motorboat or sailboat.
462A.14F Department recordkeeping.
462A.15 Water skis and surfboards.
462A.16 Regattas, races, marine parades, tournaments or exhibitions.
462A.17 Local regulations restricted.
462A.18 Owner's civil liability.
462A.19 Reserved.
462A.20 Boat inspection.
462A.21 Fees.
462A.22 Engineer or pilot license.
462A.23 Suspension or revocation.
462A.24 Overloading of vessels.
462A.25 Penalty.
462A.26 Right-of-way rules — speed and distance rules — zoning water areas.
462A.27 Removal of nonpermanent structures.
462A.28 Unworthy vessels drydocked.
462A.29 Official duty exempted.
462A.30 Aircraft restriction.
462A.31 Artificial lakes.
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462A.34A Vehicles prohibited in streambed.

VESSEL REGISTRATION REGULATIONS

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462A.54 Disposal of writing fees.
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462A.56 through 462A.65 Reserved.
462A.66 Inspection authority.
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VESSEL CERTIFICATES OF TITLE

462A.77 Owner's certificate of title — in general.
462A.78 Fees — surcharge — duplicates.
462A.79 Obtaining manufacturer's or importer's certificate of origin.
462A.80 Hull identification number of vessel.
462A.81 Dealer's record of vessels bought, sold, or transferred.
462A.82 Transfer or repossession of vessel by operation of law — coast guard documentation of vessel.
462A.83 Security interest in vessels — exemptions.
462A.84 Perfection and titles — fee.
462A.85 Forms — investigations.

462A.1 Declaration of policy.

It is the policy of this state to promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote uniformity of laws relating thereto.

[C97, §2511; C24, 27, 31, §1691; C35, §1703-e1; C39, §**1703.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §106.1]

C93, §462A.1

462A.2 Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

1. *"Alcohol concentration"* means the number of grams of alcohol per any of the following:

a. One hundred milliliters of blood.

b. Two hundred ten liters of breath.

c. Sixty-seven milliliters of urine.

2. *"Alcoholic beverage"* includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

3. *"Authorized emergency vessel"* means any vessel which is designated or authorized by the commission for use in law enforcement, search and rescue, and disaster work.

4. *"Boat livery"* means a person who holds a vessel for hire, renting, leasing, or chartering including hotels, motels, or resorts which furnish a vessel to guests as part of the services of the business.

5. *"Certificate"* means a certificate of title.

6. *"Chemical test"* means an analysis of a person's blood, breath, urine, or other bodily substance for the determination of the presence of alcohol, a controlled substance, or a drug.

7. *"Commission"* means the natural resource commission.

8. *"Controlled substance"* means any drug, substance, or compound that is regulated under chapter 124, including any counterfeit substance or simulated controlled substance, as well as any metabolite or derivative of the drug, substance, or compound.

9. *"Dealer"* means a person who engages in whole or in part in the business of buying, selling, or exchanging vessels either outright or on conditional sale, bailment, lease, security interest, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

10. *"Department"* means the department of natural resources.

11. *"Director"* means the director of the department or the director's designee.

12. *"Established place of business"* means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer's or manufacturer's books and records are kept and a large share of the dealer's or manufacturer's business is transacted.

13. *"Farm pond"* means a body of water wholly on the lands of a single owner, or a group of joint owners, which does not have any connection with any public waters and which is less than ten surface acres.

14. *"Inboard"* means a vessel in which the engine is located internally, the propulsion system is rigidly attached to the engine, and the propulsion mechanism is within the confines of the vessel's extreme length and beam.

15. *"Inboard-outdrive"* means a vessel in which the power plant or engine is located inside of the vessel and the propulsion mechanism is located outside of the transom.

16. *"Inflatable vessel"* means a vessel which achieves and maintains its intended shape and buoyancy by inflation.

17. *"Lienholder"* means a person holding a security interest.

18. *"Manufacturer"* means a person engaged in the business of manufacturing or importing new and unused vessels, or new and unused outboard motors, for the purpose of sale or trade.

19. *"Motorboat"* means any vessel propelled by an inboard, inboard-outdrive, or outboard engine, whether or not such engine is the principal source of propulsion.

20. *"Navigable waters"* means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

21. *"Nonresident"* means every person who is not a resident of this state.

22. *"Operate"* means to navigate or otherwise use a vessel or motorboat.

23. *"Operator"* means a person who operates or is in actual physical control of a vessel.

24. *"Owner"* means a person, other than a lienholder, having the property right in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a vessel or motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

25. *"Passenger"* means a person carried on board a vessel, including the operator, and anyone towed by a vessel on water skis, surfboards, inner tubes, or similar devices.

26. *"Peace officer"* means:

a. A member of the Iowa state patrol.

b. A police officer under civil service as provided in chapter 400.

c. A sheriff.

d. A regular deputy sheriff who has had formal police training.

e. Any other certified law enforcement officer as defined in section 80B.3, who has satisfactorily completed an approved course relating to operating while intoxicated, either at the Iowa law enforcement academy or in a law enforcement train-

ing program approved by the department of public safety.

27. *"Person"* means an individual, partnership, firm, corporation, or association.

28. *"Personal watercraft"* means a vessel, less than sixteen feet in length, which is propelled by a water jet pump or similar machinery as its primary source of motor propulsion and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than being operated by a person sitting, standing, or kneeling inside the vessel.

29. *"Privately owned lake"* means any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.

30. *"Proceeds"* includes whatever is received when collateral or proceeds are sold, exchanged, collected, or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks, and the like are cash *"proceeds"*. All other proceeds are *"noncash proceeds"*.

31. *"Sailboard"* means a windsurfing vessel with a mount for a sail, a daggerboard, and a small skeg.

32. *"Sailboat"* means any watercraft operated with a sail.

33. *"Security interest"* means an interest which is reserved or created by an agreement which secures payment or performance of an obligation and is valid against third parties generally.

34. *"Serious injury"* means a bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes protracted loss or impairment of the function of any bodily organ or major bodily member, or which causes the loss of any bodily member.

35. *"State of principal use"* means the state on whose waters a vessel is used or to be used most during a calendar year.

36. *"Undocumented vessel"* means any vessel which is not required to have, and does not have, a valid marine document issued by the bureau of customs or a foreign government.

37. *"Use"* means to operate, navigate, or employ a vessel. A vessel is in use whenever it is upon the water.

38. *"Vessel"* means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Ice boats are watercraft.

39. *"Vessel for hire or commercial vessel"* means a vessel for the use of which a fee of any nature is imposed, including vessels furnished as a part of lodge, hotel, or resort services.

40. *"Wake"* means any movement of water created by a vessel which adversely affects the activities of another person who is involved in activities approved for that area or which may adversely affect the natural features of the shoreline.

41. *"Watercraft"* means any vessel which through the buoyance force of water floats upon the water and is capable of carrying one or more persons.

42. *"Waters of this state under the jurisdiction of the commission"* means any navigable waters within the territorial limits of this state, and the marginal river areas adjacent to this state, exempting only farm ponds and privately owned lakes.

43. *"Writing fee"* means the amount paid by the boat owner to the county recorder for handling the transaction.

[C97, §2511; C24, 27, 31, §1691; C35, §1703-e1; C39, §**1703.01, 1703.09, 1703.10;** C46, 50, 54, 58, §106.1, 106.9, 106.10; C62, 66, 71, 73, 75, 77, 79, 81, §106.2; 82 Acts, ch 1028, §2, 3]

86 Acts, ch 1245, §1823 – 1826; 87 Acts, ch 134, §1, 2; 88 Acts, ch 1008, §1; 88 Acts, ch 1134, §24; 92 Acts, ch 1131, §1

C93, §462A.2

2000 Acts, ch 1099, §1; 2002 Acts, ch 1133, §1

NEW subsection 28 and former subsections 28 – 42 renumbered as 29 – 43

462A.3 Powers and duties of commission.

The commission is hereby vested with the power and is charged with the duty of observing, administering and enforcing the provisions of this chapter.

The commission may adopt and enforce rules under chapter 17A as necessary to carry out this chapter and to protect private and public property and the health, safety, and welfare of the public. In adopting rules, the commission shall give consideration to the various uses to which they may be put by and for public and private purposes, the preservation of each body of water, its bed, waters, ice, banks, and public and private property attached thereto, and the need for uniformity of rules relating to the use, operation, and equipment of vessels and vehicles.

[C97, §2511, 2512; S13, §2512; C24, 27, 31, §1691, 1692, 1694; C35, §1703-e1 – 1703-e3; C39, §**1703.01 – 1703.03, 1703.26;** C46, 50, 54, 58, §106.1 – 106.3, 106.26; C62, 66, 71, 73, 75, 77, 79, 81, §106.3; 82 Acts, ch 1028, §4]

86 Acts, ch 1245, §1826

C93, §462A.3

462A.4 Operation of unnumbered vessels prohibited.

Every vessel except as provided in sections 462A.6 and 462A.6A on the waters of this state under the jurisdiction of the commission shall be numbered. A person shall not operate, maintain or give permission for the operation or maintenance of any vessel on such waters unless the vessel is numbered in accordance with this chapter or

in accordance with applicable federal laws or in accordance with a federally approved numbering system of another state and unless the certificate of number awarded to the vessel is in full force and effect.

[C97, §2512; S13, §2512; C24, 27, 31, §1692; C35, §1703-e2, 1703-e7; C39, §**1703.02, 1703.07;** C46, 50, 54, 58, §106.2, 106.7; C62, 66, 71, 73, 75, 77, 79, 81, §106.4; 82 Acts, ch 1028, §5]

86 Acts, ch 1245, §1826; 88 Acts, ch 1183, §1

C93, §462A.4

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.5 Registration and identification number.

1. The owner of each vessel required to be numbered by this state shall register it every two years with the county recorder of the county in which the owner resides, or, if the owner is a nonresident, the owner shall register it in the county in which such vessel is principally used. The commission shall have supervisory responsibility over the registration of all vessels and shall provide each county recorder with registration forms and certificates and shall allocate identification numbers to each county.

The owner of the vessel shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the vessel and shall be accompanied by the appropriate fee, and the writing fee specified in section 462A.53. Upon applying for registration, the owner shall display a bill of sale, receipt, or other satisfactory proof of ownership as provided by the rules of the commission to the county recorder. If the county recorder is not satisfied as to the ownership of the vessel or that there are no undisclosed security interests in the vessel, the county recorder may register the vessel but shall, as a condition of issuing a registration certificate, require the applicant to follow the procedure provided in section 462A.5A. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records of the recorder's office and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the vessel, the passenger capacity of the vessel, and the name and address of the owner. In the use of all vessels except nonpowered sailboats, nonpowered canoes, and commercial vessels, the registration certificate shall be carried either in the vessel or on the person of the operator of the vessel when in use. In the use of nonpowered sailboats, nonpowered canoes, or commercial vessels, the registration certificate may be kept on shore in accordance with rules adopted by the commission. The operator shall exhibit the certificate to a peace officer upon request or, when involved in a collision or accident of any nature with another vessel or other personal property, to the owner or operator of the other vessel or personal property.

On all vessels except nonpowered sailboats the owner shall cause the identification number to be painted on or attached to each side of the bow of the vessel in such size and manner as may be prescribed by the rules of the commission. On nonpowered boats the number may be placed at alternate locations as prescribed by the rules of the commission. All numbers shall be maintained in a legible condition at all times.

No number, other than the number awarded to a vessel under the provisions of this chapter or granted reciprocity pursuant to this chapter, shall be painted, attached or otherwise displayed on either side of the bow of such vessel.

The owner of each vessel must display and maintain, in a legible manner and in a prominent spot on the exterior of such vessel, other than the bow, the passenger capacity of the vessel which must conform with the passenger capacity designated on the registration certificate.

2. When an agency of the United States government shall have in force an overall system of identification numbering for vessels, the numbering system prescribed by the commission pursuant to this chapter, shall be in conformity therewith.

3. The registration fees for vessels subject to this chapter are as follows:

a. For vessels of any length without motor or sail, five dollars.

b. For motorboats or sailboats less than twelve feet in length, eight dollars.

c. For motorboats or sailboats twelve feet or more, but less than fifteen feet in length, ten dollars.

d. For motorboats or sailboats fifteen feet or more, but less than eighteen feet in length, twelve dollars.

e. For motorboats or sailboats eighteen feet or more, but less than twenty-five feet in length, eighteen dollars.

f. For motorboats or sailboats twenty-five feet in length or more, twenty-eight dollars.

Every registration certificate and number issued becomes delinquent at midnight April 30 of odd-numbered years unless terminated or discontinued in accordance with this chapter. After January 1 in odd-numbered years, an unregistered vessel and a renewal of registration may be registered for the two-year registration period beginning May 1 of that year. After January 1 in even-numbered years, unregistered vessels may be registered for the remainder of the current registration period at fifty percent of the appropriate registration fee.

If a timely application for renewal is made, the applicant shall receive the same registration num-

ber allocated to the applicant for the previous registration period. If the application for registration for the biennium is not made before May 1 of each odd-numbered year, the applicant shall be charged a penalty of five dollars.

4. If a person, after registering a vessel, moves from the address shown on the registration certificate, the person shall, within ten days, notify the county recorder in writing of the old and new address. If appropriate, the county recorder shall forward all past records of the vessel to the recorder of the county in which the owner resides.

If the name of a person, who has registered a vessel, is changed, the person shall, within ten days, notify the county recorder of the former and new name.

No fee shall be paid to the county recorder for making the changes mentioned in this subsection, unless the owner requests a new registration certificate showing the change, in which case a fee of one dollar plus a writing fee shall be paid to the recorder.

If a registration certificate is lost, mutilated or becomes illegible, the owner shall immediately make application for and obtain a duplicate registration certificate by furnishing information satisfactory to the county recorder.

A fee of one dollar plus a writing fee shall be paid to the county recorder for a duplicate registration certificate.

If a vessel, registered under this chapter, is destroyed or abandoned, the destruction or abandonment shall be reported to the county recorder and the registration certificate shall be forwarded to the office of the county recorder within ten days after the destruction or abandonment.

5. All records of the commission and the county recorder, other than those declared by law to be confidential for the use of the commission and the county recorder, shall be open to public inspection during office hours.

6. The owner of each vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto shall register it every two years with the county recorder in the same manner prescribed for undocumented vessels and shall cause the registration validation decal to be placed on the vessel in the manner prescribed by the rules of the commission. When the vessel bears the identification required in the documentation, it is exempt from the placement of the identification numbers as required on undocumented vessels. The fee for such registration is twenty-five dollars plus a writing fee.

7. If the owner of a currently registered vessel places the vessel in storage, the owner shall return the registration certificate to the county recorder with an affidavit stating that the vessel is placed in storage and the effective date of the storage. The county recorder shall notify the commission of each registered vessel placed in storage. When the owner of a stored vessel desires to renew the vessel's registration, the owner shall apply to the county recorder and pay the registration fees plus a writing fee as provided in subsections 1 and 3 without penalty. No refund of registration fees shall be allowed for a stored vessel.

8. The registration certificate shall indicate if the vessel is subject to the requirement of a certificate of title and the county from which the certificate of title is issued.

[C97, §2512; S13, §2512; C24, 27, 31, §1694; C35, §1703-e3, 1703-e7; C39, §**1703.03, 1703.07, 1703.08;** C46, 50, 54, 58, §106.3, 106.7, 106.8; C62, 66, 71, 73, 75, 77, 79, 81, §106.5; 82 Acts, ch 1028, §6 – 9]

84 Acts, ch 1082, §1, 2; 85 Acts, ch 110, §1; 87 Acts, ch 134, §3; 92 Acts, ch 1101, §1

C93, §462A.5

2000 Acts, ch 1019, §2; 2002 Acts, ch 1113, §9

For applicable scheduled fines, see §805.8B, subsection 1, paragraph a

Subsection 1, unnumbered paragraph 2 amended

462A.5A Filing bond as assurance of ownership.

An applicant for registration of a vessel for which the county recorder is not satisfied as to the ownership of the vessel as provided in section 462A.5, subsection 1, shall file with the department a bond in the form prescribed by the department and executed by the applicant, and also executed by a person authorized to conduct a surety business in this state. The form and amount of the bond shall be established by rule of the department. The bond shall be conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vessel or person acquiring any security interest in the vessel, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney fees, by reason of the issuance of the registration certificate of the vessel or on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the vessel. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of three years or prior thereto if the vessel is no longer registered in this state and the registration certificate is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

2002 Acts, ch 1113, §10

NEW section

462A.6 Exemption from registration provisions of this chapter.

A vessel shall not be required to be registered if it is:

1. Covered by a number in full force and effect which has been awarded to it pursuant to a federally approved numbering system of another state

if such vessel shall not have been within this state for a period in excess of sixty days within one calendar year.

2. Foreign vessels temporarily using the navigable waters of the United States and of this state.

3. A public vessel of the United States, a state or subdivision thereof which is used for enforcement, search and rescue or official research and studies, but not including vessels used for recreation or commercial purposes.

4. A ship's lifeboat.

5. A type of vessel which has been exempted from registration by the commission after said commission has found that the registration or numbering of such vessel will not materially aid in their identification and such vessel would be exempt from numbering if it were subject to federal law.

6. An air mattress, inner tube, or other toy or beach type item which is being used in a recognized swimming area. In the case of a natural lake or reservoir these beach or swimming areas may be less, but in no case shall exceed three hundred feet from shore.

7. The following nonpower or nonsail vessels:

a. Inflatable vessels, seven feet or less in length.

b. Conventional design canoes and kayak type vessels, thirteen feet or less in length.

[C39, §**1703.16, 1703.22;** C46, 50, 54, 58, §106.16, 106.22; C62, 66, 71, 73, 75, 77, 79, 81, §106.6]

C93, §462A.6

462A.6A Exemption from display of registration and capacity numbers.

The following vessels are exempt from displaying a registration number and a passenger capacity number as required in section 462A.5:

1. Authentically constructed native American styled craft including birchbark canoes, dugout canoes, competitive racing shells, reed boats, and skin-covered canoes or boats.

2. Historically styled craft such as keel boats used only during historic recreations or public demonstrations.

3. A vessel which has a valid marine document issued by the United States coast guard and the vessel bears the identification required in the document.

4. A sailboard. However, the registration decal shall be attached to the bottom surface of the bow.

88 Acts, ch 1183, §2
C89, §106.6A
92 Acts, ch 1131, §2
C93, §462A.6A

462A.7 Collisions, accidents and casualties.

1. The operator of a vessel involved in a collision, accident or other casualty shall, so far as possible without serious danger to the operator's own vessel, crew or passengers, render to other persons affected by the collision, accident or casualty, such assistance as may be practicable and necessary to save them from or minimize any danger caused by the collision, accident or other casualty. The operator shall also give the operator's name, address and identification of the operator's vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

2. Whenever any vessel is involved in a collision, accident or casualty, except one which results only in property damage not exceeding five hundred dollars, a report thereof shall be filed with the commission. The report shall be filed by the operator of the vessel and shall contain such information as the commission may, by rule, require. The report shall be submitted without delay in death or disappearance cases and within five days in all other cases.

3. Every law enforcement officer who, in the regular course of duty, investigates an occurrence which is required to be reported by this section, shall, after completing such investigation, forward a report of such occurrence to the commission.

4. *a.* All reports shall be in writing. A vessel operator's report shall be without prejudice to the person making the report and shall be for the confidential use of the department. However, upon request the department shall disclose the identities of the persons on board the vessels involved in the occurrence and their addresses. Upon request of a person who made and filed a vessel operator's report, the department shall provide a copy of the vessel operator's report to the requestor. A written vessel operator's report filed with the department shall not be admissible in or used in evidence in any civil or criminal action arising out of the facts on which the report is based.

b. All written reports filed by law enforcement officers as required under subsection 3 are confidential to the extent provided in section 22.7, subsection 5, and section 622.11. However, a completed law enforcement officer's report shall be made available by the department or the investigating law enforcement agency to any party to a boating accident, collision, or other casualty, the party's insurance company or its agent, or the party's attorney on written request and payment of a fee.

5. Failure of the operator of any vessel involved in a collision, reportable accident, or other casualty, to offer assistance and aid to other persons affected by such collision, accident, or casualty, as set forth in this chapter, shall constitute a serious misdemeanor.

[C39, §**1703.21, 1703.23;** C46, 50, 54, 58, §106.21, 106.23; C62, 66, 71, 73, 75, 77, 79, 81,

§106.7; 82 Acts, ch 1028, §10]
C93, §462A.7
97 Acts, ch 55, §1 – 3

462A.8 Transmittal of information.

When any request is duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the commission under this chapter, such information shall be transmitted to said official or agency.

[C62, 66, 71, 73, 75, 77, 79, 81, §106.8]
C93, §462A.8

462A.9 Classification and required equipment.

1. Vessels subject to the provisions of this chapter shall be divided into four classes as follows:

Class I. Less than sixteen feet in length.

Class II. Sixteen feet or over and less than twenty-six feet in length.

Class III. Twenty-six feet or over and less than forty feet in length.

Class IV. Forty feet or over.

2. Every vessel, in all weathers, from sunset to sunrise, shall carry and exhibit the following lights when underway, and during that time shall exhibit no other lights which may be mistaken for those required except that the international lighting system as approved by the United States coast guard will be accepted for use on motorboats on the waters of this state.

a. Every motorboat of classes I and II shall carry the following lights:

(1) A bright white light aft to show all around the horizon.

(2) A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

b. Every motorboat of classes III and IV shall carry the following lights:

(1) A bright white light in the fore part of the vessel as near the bow as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

(2) A bright white light aft to show all around the horizon and higher than the white light forward.

(3) A green light on the starboard side so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. A red light on the port side, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

c. Vessels of classes I and II, when propelled by sail alone, shall carry the combined lantern, but not the white light aft prescribed by this section. Vessels of classes III and IV when so propelled, shall carry the colored side lights, suitably screened, but not the white lights required by this section.

d. Every white light required by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light required by this section shall be of such character as to be visible at a distance of at least one mile. The term *"visible"* in this section, when applied to lights, shall mean visible on a dark night with clear atmosphere.

e. When propelled by sail and machinery, such motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

3. Every vessel shall carry and exhibit such other lights required by the rules and regulations of the commission.

4. Every motorboat of class II, III or IV shall be provided with an efficient whistle or other sound producing appliance.

5. Every motorboat of class III or IV shall be provided with an efficient bell.

6. Every vessel shall carry at least one life preserver, life belt, ring buoy or other device, of the sort prescribed by the rules of the commission, for each passenger, so placed as to be readily accessible. This does not apply to a vessel which is a racing shell used in the sport of sculling or to a sailboard while used for windsurfing.

7. Every motorboat shall be provided with such number, size and type of fire extinguishers capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the commission. Such fire extinguishers shall, at all times, be kept in condition for immediate and effective use and shall be so placed as to be readily accessible. Vessels powered by outboard motors of ten horsepower or less, need not carry the extinguishers as provided herein.

8. The provisions of subsections 4, 5 and 7 of this section shall not apply to motorboats while competing in any race conducted pursuant to section 462A.16 or, if such boats are designed and used solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

The operator of a motorboat, while engaged in such race, must wear a crash helmet and life preserver.

9. Every motorboat shall have the carburetor or carburetors of every engine therein, except outboard motors, using a liquid of a volatile nature as fuel, equipped with such efficient flame arrestor,

backfire trap or other similar device as may be prescribed by the rules and regulations of the commission.

10. Every motorboat, except open boats, using any liquid of a volatile nature as fuel, shall be provided with the means prescribed by the rules of the commission for properly and efficiently ventilating the bilges of the engines and fuel tank compartments so as to remove any explosive or flammable gases.

11. The commission is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary for the safety of operators and passengers.

12. The commission is hereby authorized to establish such pilot rules as may be necessary for the safe operation of vessels on the waters of this state under the jurisdiction of the commission.

13. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

[S13, §2514-a; C24, 27, 31, §1697; C39, §**1703.10 – 1703.13;** C46, 50, 54, 58, §106.10 – 106.13; C62, 66, 71, 73, 75, 77, 79, 81, §106.9; 82 Acts, ch 1028, §11 – 13]

92 Acts, ch 1131, §3; 92 Acts, ch 1163, §26

C93, §462A.9

For applicable scheduled fines, see §805.8B, subsection 1, paragraphs a and b

462A.10 Boat liveries.

1. The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by the owner to be operated for hire, the identification number thereof, the departure date and time and the expected time of return. The records shall be preserved for six months.

2. The owner of a boat livery shall not permit any of the owner's vessels, operated for hire, to depart from the owner's premises unless it shall have been provided, either by the owner or renter, with the equipment required by the commission.

[C97, §2512; S13, §2512; C24, 27, 31, §1692; C35, §1703-e2; C39, §**1703.02, 1703.11, 1703.24;** C46, 50, 54, 58, §106.2, 106.11, 106.24; C62, 66, 71, 73, 75, 77, 79, 81, §106.10]

C93, §462A.10

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.11 Muffling devices.

The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the total vessel noise in a reasonable manner in accordance with rules adopted by the commission. The use of cut-outs is prohibited, except for motorboats competing in a regatta or boat race approved as provided in section 462A.16 and for such motorboats while on trial run during a period from 8:00 a.m. to 6:00 p.m. not to exceed twenty-four hours immediately preceding such regatta or race.

[C39, §**1703.11, 1703.17;** C46, 50, 54, 58, §106.11, 106.17; C62, 66, 71, 73, 75, 77, 79, 81, §106.11; 82 Acts, ch 1028, §14]

C93, §462A.11

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.12 Prohibited operation.

1. No person shall operate any vessel, or manipulate any water skis, surfboard or similar device in a careless, reckless or negligent manner so as to endanger the life, limb or property of any person.

2. A person shall not operate any vessel, or manipulate any water skis, surfboard or similar device while under the influence of an alcoholic beverage, marijuana, a narcotic, hypnotic or other drug, or any combination of these substances. However, this subsection does not apply to a person operating any vessel or manipulating any water skis, surfboard or similar device while under the influence of marijuana, or a narcotic, hypnotic or other drug if the substances were prescribed for the person and have been taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A, provided there is no evidence of the consumption of alcohol and further provided the medical practitioner has not directed the person to refrain from operating a motor vehicle, any vessel or from manipulating any water skis, surfboard or similar device.

3. No person shall place, cause to be placed, throw or deposit onto or in any of the public waters, ice or land of this state any cans, bottles, garbage, rubbish, and other debris.

4. No person shall operate on the waters of this state under the jurisdiction of the conservation commission any vessel displaying or reflecting a blue light or flashing blue light unless such vessel is an authorized emergency vessel.

5. No person shall operate a vessel and enter into areas in which search and rescue operations are being conducted or an area affected by a natural disaster unless authorized by the officer in charge of the search and rescue or disaster operation. Any person authorized in an area of operation shall operate the person's vessel at a no wake speed and shall keep clear of all other vessels engaged in the search and rescue or disaster operation. A person who must operate a vessel in a disaster area to gain access or egress from the person's home shall be considered an authorized person by the officer in charge.

6. An owner or operator shall not permit any person under twelve years of age to operate the personal watercraft unless accompanied in or on the same personal watercraft by a responsible person of at least eighteen years of age. However, commencing January 1, 2003, a person who is twelve years of age or older but less than eighteen

years of age shall not operate any personal watercraft unless the person has successfully completed a department-approved watercraft safety course. A person required to have a watercraft safety certificate shall carry and shall exhibit or make available the certificate upon request of an officer of the department. A violation of this subsection is a simple misdemeanor as provided in section 462A.13. However, a person charged with violating this subsection shall not be convicted if the person produces in court, within a reasonable time, a department-approved certificate. The cost of a department certificate, or any duplicate, shall not exceed five dollars.

7. A person shall not operate watercraft in a manner which unreasonably or unnecessarily interferes with other watercraft or with the free and proper navigation of the waters of the state. Anchoring under bridges, in a heavily traveled channel, in a lock chamber, or near the entrance of a lock constitutes such interference if unreasonable under the prevailing circumstances.

8. A person shall not operate a vessel in violation of restrictions as given by state-approved buoys or signs marking an area.

9. A person shall not operate on the waters of this state under the jurisdiction of the commission a vessel equipped with an engine of greater horsepower rating than is designated for the vessel by the federally required capacity plate or by the manufacturer's plate on those vessels not covered by federal regulations.

10. A person shall not leave an unattended vessel tied or moored to a dock which is placed immediately adjacent to a public boat launching ramp or to a dock which is posted for loading and unloading.

11. A person shall not operate a vessel within fifty feet of a diver's flag placed in accordance with the rules of the commission adopted under chapter 17A.

12. A person shall not operate a personal watercraft at any time between sundown and sunup.

13. A person shall not chase or harass animals while operating a personal watercraft or motorboat.

[C39, §**1703.17, 1703.21;** C46, 50, 54, 58, §106.17, 106.21, 106.28; C62, 66, 71, 73, 75, 77, 79, 81, §106.12; 82 Acts, ch 1028, §15, 16]

86 Acts, ch 1143, §1; 87 Acts, ch 215, §38

C93, §462A.12

2002 Acts, ch 1133, §2, 3

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c

Subsection 6 stricken and rewritten

NEW subsections 12 and 13

462A.13 Penalty.

Any person violating any of the provisions of this chapter, or any of the rules adopted under this chapter, for which another penalty is not otherwise specifically provided, is guilty of a simple misdemeanor.

Chapter 232 shall have no application in the prosecution of offenses committed in violation of this chapter or rules and regulations which are adopted under the authority of this chapter which constitute simple misdemeanors.

[C97, §2313, 2315; S13, §2313, 2315; C24, 27, 31, §1695; C35, §1703-e5, 1703-e6; C39, §**1703.05, 1703.06;** C46, 50, 54, 58, §106.5, 106.6; C62, 66, 71, 73, 75, 77, 79, 81, §106.13; 82 Acts, ch 1028, §17]

C93, §462A.13

462A.14 Operating a motorboat or sailboat while intoxicated.

1. A person commits the offense of operating a motorboat or sailboat while intoxicated if the person operates a motorboat or sailboat on the navigable waters of this state in any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of .10 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

a. A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, up to five hundred dollars of the fine may be waived. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Prohibition of operation of a motorboat or sailboat for one year, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsection 12, and a course for drinking drivers.

b. An aggravated misdemeanor for a second offense, punishable by all of the following:

(1) Imprisonment in the county jail or community-based correctional facility for not less than seven days.

(2) Assessment of a fine of not less than one thousand five hundred dollars nor more than five thousand dollars.

(3) Prohibition of operation of a motorboat or sailboat for two years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

c. A class "D" felony for a third offense and each subsequent offense, punishable by all of the following:

(1) Imprisonment in the county jail for a determinate sentence of not more than one year but not less than thirty days, or committed to the custody of the director of the department of corrections. A person convicted of a third or subsequent offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513 or the offender may be committed to treatment in the community under the provisions of section 907.13.

(2) Assessment of a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars.

(3) Prohibition of operation of a motorboat or sailboat for six years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

d. A class "D" felony for any offense under this section resulting in serious injury to persons other than the defendant, if the court determines that the person who committed the offense caused the serious injury, and shall be imprisoned for a determinate sentence of not more than five years but not less than thirty days, or committed to the custody of the director of the department of corrections, and assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for one year in addition to any other period of time the defendant would have been ordered not to operate if no injury had occurred in connection with the violation. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

e. A class "B" felony for any offense under this section resulting in the death of persons other than the defendant, if the court determines that the person who committed the offense caused the death, and shall be imprisoned for a determinate sentence of not more than twenty-five years, or committed to the custody of the director of the department of corrections. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for six years. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

3. *a.* Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 462A.14A.

(5) If the offense under this section results in bodily injury to a person other than the defendant.

b. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license or privilege revocation under this section:

a. Any conviction under this section within the previous twelve years shall be counted as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this sec-

tion shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to an offense defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1. However, a person who refuses a test pursuant to section 462A.14B may be subject to imposition of the penalties under that section in addition to the penalties under this section if the person violates both sections, even though the actions arise out of the same event or occurrence.

6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

7. *a.* This section does not apply to a person operating a motorboat or sailboat while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle, or motorboat or sailboat.

b. When charged with a violation of subsection 1, paragraph *"c"*, a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was operating or in physical control of a motorboat or sailboat is presumed to be the alcohol concentration at the time of operating or being in physical control of the motorboat or sailboat.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was operating or in physical control of a motorboat or sailboat is presumed to show the presence of such controlled substance or other drug in the defendant at the time of operating or being in physical control of the motorboat or sailboat.

c. The nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances adopted by the department of public safety shall be utilized in prosecutions under this section.

9. *a.* In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, *"emergency response"* means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph *"b"* or paragraph *"c"*, if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1.

11. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

12. *a.* All substance abuse evaluations required under this section shall be completed at the

defendant's expense.

b. In addition to assignment to substance abuse evaluation and treatment under this section, the court shall order any defendant convicted under this section to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86.

c. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

d. The court may prescribe the length of time for the evaluation and treatment or the court may request that the community college or licensed substance abuse program conducting the course for drinking drivers which the defendant is ordered to attend or the treatment program to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

e. Upon successfully completing a course for drinking drivers or an ordered substance abuse treatment program, a court may place the defendant on probation for six months and as a condition of probation, the defendant shall attend a program providing posttreatment services relating to substance abuse as approved by the court.

f. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

g. A defendant who fails to carry out the order of the court shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

h. In addition to any other condition of probation, the defendant shall attend a program providing substance abuse prevention services or posttreatment services related to substance abuse as ordered by the court. The defendant shall report to the defendant's probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

13. *a.* Upon a second or subsequent offense in violation of section 462A.14, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in this state providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

b. The court may prescribe the length of time for the evaluation and treatment or the court may request that the hospital to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the program of the hospital or institution or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

c. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

[C97, §2513; S13, §2513; C24, 27, 31, §1695; C35, §1703-e5; C39, §**1703.05;** C46, 50, 54, 58, §106.5, 106.28; C62, 66, 71, 73, 75, 77, 79, 81, §106.14; 82 Acts, ch 1028, §18]

C93, §462A.14

2000 Acts, ch 1099, §2; 2000 Acts, ch 1232, §74

462A.14A Implied consent to test.

1. A person who operates a motorboat or sailboat on the navigable waters in this state under circumstances which give reasonable grounds to believe that the person has been operating a motorboat or sailboat in violation of section 462A.14 is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of controlled substances or other drugs, subject to this section.

2. *a.* If a peace officer has reasonable grounds to believe that any of the following has occurred, the peace officer may request that the motorboat or sailboat operator provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose:

(1) The motorboat or sailboat operator may be violating or has violated section 462A.14.

(2) The motorboat or sailboat has been involved in an accident resulting in injury or death.

(3) The motorboat or sailboat operator is or has been operating carelessly or recklessly, in violation of section 462A.12.

b. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made or whether to request a chemical test authorized in this chapter,

but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this section.

3. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motorboat or sailboat in violation of section 462A.14, and if any of the following conditions exist:

a. A peace officer has lawfully placed the person under arrest for violation of section 462A.14.

b. The motorboat or sailboat has been involved in an accident or collision resulting in personal injury or death.

c. The person has refused to take a preliminary breath screening test provided by this chapter.

d. The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 462A.14.

e. The preliminary breath screening test was administered and it indicated an alcohol concentration of less than the level prohibited under section 462A.14, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol or a combination of alcohol and another drug.

4. *a.* The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested.

b. If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused, or the arrest is made, whichever occurs first, a test is not required, and there shall be no suspension of motorboat or sailboat operation privileges.

c. Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and the peace officer shall inform the person that the person's refusal will result in the suspension of the person's privilege to operate a motorboat or sailboat.

d. Refusal to submit to a chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test.

e. Notwithstanding paragraphs *"a"* through *"d"*, if the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol, or a combination of alcohol and another drug, a urine test may be required even after a blood or breath test has been administered.

f. A person who is dead, unconscious, or otherwise in a condition rendering the person incapable of consent or refusal is deemed not to have withdrawn the consent provided by this section, and the test may be given if a licensed physician certifies in advance of the test that the person is dead, unconscious, or otherwise in a condition rendering that person incapable of consent or refusal.

g. A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

(1) A refusal to submit to the test is punishable by a mandatory civil penalty of five hundred to two thousand dollars, and suspension of motorboat or sailboat operating privileges for at least a year. In addition, if the person is also convicted of operating a motorboat or sailboat while intoxicated, the person shall be subject to additional penalties.

(2) If the person submits to the test and the results indicate an alcohol concentration equal to or in excess of the level prohibited under section 462A.14 and the person is convicted, the person's motorboat or sailboat operating privileges will be suspended for at least one year and up to six years, depending upon how many previous convictions the person has under this chapter, and whether or not the person has caused serious injury or death, in addition to any sentence and fine imposed for a violation of section 462A.14.

5. Refusal to submit to a test under this section does not prohibit the withdrawal of a specimen for chemical testing if a motorboat or sailboat has been involved in an accident resulting in death or serious bodily injury, if the peace officer has reasonable grounds to believe that the operator of the motorboat or sailboat was violating section 462A.14 at the time of the accident, and the peace officer has obtained, in compliance with chapter 808 or according to the procedure in section 462A.14D, a search warrant permitting the withdrawal of a specimen for chemical testing. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment, and further constitutes a refusal to submit, punishable under this section.

6. Only a licensed physician, licensed physician assistant as defined in section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration or the presence of drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to this section.

7. The person may have an independent chemical test or tests administered at the person's own expense in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests administered at the direction of the peace officer shall be made available to the person.

8. In any prosecution under section 462A.14, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was operating or was otherwise in physical control of a motorboat or sailboat is presumed to be the alcohol concentration at the time of operation or being in physical control of the motorboat or sailboat. If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or sailboat in violation of section 462A.14. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

2000 Acts, ch 1099, §3

462A.14B Refusal to submit — penalty.

1. If a person refuses to submit to the chemical testing, a test shall not be given unless the procedure in section 462A.14D is invoked. However, if the person refuses the test, the person shall be punishable by the court according to this section.

2. The court, upon finding that the officer had reasonable ground to believe the person to have been operating a motorboat or sailboat in violation of section 462A.14, that specified conditions existed for chemical testing pursuant to section 462A.14A, and that the person refused to submit to the chemical testing, shall:

a. Order that the person shall not operate a motorboat or sailboat for one year.

b. Impose a mandatory civil penalty as follows:

(1) For a first refusal under this section, five hundred dollars.

(2) For a second refusal under this section, one thousand dollars.

(3) For a third or subsequent refusal under this section, two thousand dollars.

3. If the person does not pay the civil penalty by the time the one-year order not to operate expires, the court shall extend the order not to operate a motorboat or sailboat for an additional year, and may also impose penalties for contempt.

4. The court shall not defer judgment or sentencing, or suspend execution of any order or fine applicable under this section.

5. The penalties imposed by this section shall apply in addition to any penalties imposed under section 462A.14, except that the one-year period under the order not to operate a motorboat or sailboat under this section shall be imposed and run concurrently with any period of time a defendant is ordered not to operate a motorboat or sailboat under section 462A.14.

2000 Acts, ch 1099, §4

462A.14C Statement of officer.

1. A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

a. A refusal to submit to the test is punishable by a mandatory civil penalty of five hundred to two thousand dollars, and suspension of motorboat or sailboat operating privileges for at least a year. In addition, if the person is also convicted of operating a motorboat or sailboat while intoxicated, the person shall be subject to additional penalties.

b. If the person submits to the test and the results indicate the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 462A.14, the person's privilege to operate a motorboat or sailboat will be prohibited for at least one year, and up to six years.

2. This section does not apply in any case involving a person described in section 462A.14A, subsection 4, paragraph *"f"*.

3. If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or sailboat in violation of section 462A.14.

2000 Acts, ch 1099, §5

462A.14D Tests pursuant to warrants.

1. Refusal to consent to a test under section 462A.14A does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 462A.14 if all of the following grounds exist:

a. An accident has resulted in a death or personal injury reasonably likely to cause death.

b. There are reasonable grounds to believe that one or more of the persons whose operation of a motorboat or sailboat may have been the proximate cause of the accident was violating section

462A.14 at the time of the accident.

2. Search warrants may be issued under this section in full compliance with chapter 808 or search warrants may be issued under subsection 3.

3. Notwithstanding section 808.3, the issuance of a search warrant under this section may be based upon sworn oral testimony communicated by telephone if the magistrate who is asked to issue the warrant is satisfied that the circumstances make it reasonable to dispense with a written affidavit. The following shall then apply:

a. When a caller applies for the issuance of a warrant under this section and the magistrate becomes aware of the purpose of the call, the magistrate shall place under oath the person applying for the warrant.

b. The person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the magistrate on a form that will be considered the original warrant. The magistrate may direct that the warrant be modified.

c. The oral application testimony shall set forth facts and information tending to establish the existence of the grounds for the warrant and shall describe with a reasonable degree of specificity the person or persons whose operation of a motorboat or sailboat is believed to have been the proximate cause of the accident and from whom a specimen is to be withdrawn and the location where the withdrawal of the specimen or specimens is to take place.

d. If a voice recording device is available, the magistrate may record by means of that device all of the call after the magistrate becomes aware of the purpose of the call. Otherwise, the magistrate shall cause a stenographic or longhand memorandum to be made of the oral testimony of the person applying for the warrant.

e. If the magistrate is satisfied from the oral testimony that the grounds for the warrant exist or that there is probable cause to believe that they exist, the magistrate shall order the issuance of the warrant by directing the person applying for the warrant to sign the magistrate's name on the duplicate warrant. The magistrate shall immediately sign the original warrant and enter on its face the exact time when the issuance was ordered.

f. The person who executes the warrant shall enter the time of execution on the face of the duplicate warrant.

g. The magistrate shall cause any record of the call made by means of a voice recording device to be transcribed, shall certify the accuracy of the transcript, and shall file the transcript and the original record with the clerk. If a stenographic or longhand memorandum was made of the oral testimony of the person who applied for the warrant, the magistrate shall file a signed copy with the clerk.

h. The clerk of court shall maintain the original and duplicate warrants along with the record of the telephone call and any transcript or memorandum made of the call in a confidential file until a charge, if any, is filed.

4. *a.* Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 462A.14A. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants.

b. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, the warrant may be executed as follows:

(1) If the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing, unless the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

(2) If the testimony in support of the warrant sets forth facts and information that the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a urine sample shall be collected in lieu of a blood sample, if the person is capable of giving a urine sample and the sample can be collected without the need to physically compel the execution of the warrant.

5. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under section 462A.14D constitutes contempt punishable as provided in that section and further constitutes a refusal to submit. Also, if the withdrawal of a specimen is so resisted or obstructed, section 462A.14A applies.

6. Nonsubstantive variances between the contents of the original and duplicate warrants shall not cause a warrant issued under subsection 3 to be considered invalid.

7. Specimens obtained pursuant to warrants issued under this section are not subject to disposition under section 808.9 or chapter 809 or 809A.

8. Subsections 3 to 7 of this section do not apply where a test may be administered under section 462A.14A, subsection 4, paragraph *"f"*.

9. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to search warrants or pursuant to section 462A.14A.

2000 Acts, ch 1099, §6

462A.14E Violations of orders not to operate a motorboat or sailboat.

1. A person who operates a motorboat or sailboat after the person has been ordered, pursuant to section 462A.14 or 462A.14B, not to operate a motorboat or sailboat commits a serious misdemeanor, punishable with a jail term and a mandatory fine of one thousand dollars.

2. In addition to the jail term and fine, the court shall extend the period of prohibition of operating a motorboat or sailboat for an additional like period.

2000 Acts, ch 1099, §7

462A.14F Department recordkeeping.

The department shall collect and maintain statistics on the number of arrests and convictions for violations of section 462A.14 that occur each year.

2000 Acts, ch 1099, §8

462A.15 Water skis and surfboards.

1. No person shall operate a vessel on any waters of this state under the jurisdiction of the commission for towing a person or persons on water skis, surfboard or similar device unless there is in such vessel a responsible person, in addition to the operator, in a position to observe the progress of the person or persons being towed.

2. This section does not apply to a performer engaged in a professional exhibition or a person or persons engaged in a professional exhibition or a person or persons engaged in an activity authorized under section 462A.16.

[C39, §**1703.17;** C46, 50, 54, 58, §106.17; C62, 66, 71, 73, 75, 77, 79, 81, §106.15; 82 Acts, ch 1028, §19]

C93, §462A.15

2002 Acts, ch 1050, §43

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c

Subsection 2 amended

462A.16 Regattas, races, marine parades, tournaments or exhibitions.

1. The commission may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments or exhibitions on any waters of this state under the jurisdiction of the commission. The commission shall adopt and may, from time to time, amend regulations concerning the safety of vessels and persons, either observers or participants. If a regatta, motorboat or other boat race, marine parade, tournament or exhibition is proposed to be held, the person in charge thereof shall file an application with the commission for permission to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition. The application shall set forth the date, time and location where it is proposed to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition and it shall not be conducted without written authorization of the commission.

2. The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit under this section if a permit therefor has been obtained from an authorized agency having jurisdiction of the waters where such regatta, race, marine parade, tournament or exhibition is being conducted.

[C39, §**1703.17;** C46, 50, 54, 58, §106.17, 106.28; C62, 66, 71, 73, 75, 77, 79, 81, §106.16]

C93, §462A.16

462A.17 Local regulations restricted.

1. This chapter and other applicable laws of this state govern the operation, equipment, numbering and all other matters relating thereto of any vessel whenever the vessel is operated or maintained on the waters of this state under the jurisdiction of the commission, but this chapter does not prevent the adoption of any ordinance or local law relating to the operation or equipment of vessels. Such ordinances or local law are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.

2. Any subdivision of this state may, but only after public notice thereof by publication in a newspaper having a general circulation in such subdivision, make formal application to the commission for special rules and regulations concerning the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

3. The commission, upon application of local authorities, may make special rules in conformity with this chapter, concerning the operation of vessels on any waters of this state under the jurisdiction of the commission within the territorial limits of any subdivision of this state. Special rules shall only be adopted upon a finding by the commission that the rules are necessary to carry out the policies and purposes of this chapter due to special conditions with regard to a particular body of water and that the special rules provide greater protection to the public health, safety, and welfare than the rules of general application.

[C39, §**1703.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §106.17; 82 Acts, ch 1028, §20, 21]

C93, §462A.17

For applicable scheduled fines, see §805.8B, subsection 1, paragraph e

462A.18 Owner's civil liability.

The owner and operator of any undocumented vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel.

[C39, §**1703.21;** C46, 50, 54, 58, §106.21; C62, 66, 71, 73, 75, 77, 79, 81, §106.18]

C93, §462A.18

462A.19 Reserved.

462A.20 Boat inspection.

Any person having, upon any waters of this state under the jurisdiction of the commission, any vessel, either for hire or offered for hire, must have such vessel and all its appurtenances annually inspected.

Every such owner shall file in the office of the commission, an application for inspection of such vessels on a blank furnished by the commission for that purpose.

Officers appointed by the commission shall have the power and authority to determine whether such vessel is safe for the transportation of passengers or cargo and upon what waters it may be used. They may determine and designate the number of passengers or cargo, including crew, that may be carried and determine whether the machinery, equipment and all appurtenances are such as to make said vessels seaworthy, where used, and such other matters as are pertinent.

After such vessels have been inspected as provided herein, a current inspection seal or tag shall be issued by the commission and shall be kept posted in a conspicuous place upon or in such vessel. Any inspection seal or tag shall be in effect only for the calendar year for which the inspection seal or tag is issued.

Private vessels may also be inspected to determine their seaworthiness at any time by representatives of the commission.

[C97, §2511, 2512, 2513; S13, §2512, 2513; C24, 27, 31, §1691, 1692, 1694; C35, §1703-e1 – e3, 1703-e5; C39, §**1703.01 – 1703.03, 1703.05;** C46, 50, 54, 58, §106.1 – 106.3, 106.5; C62, 66, 71, §106.19, 106.20; C73, 75, 77, 79, 81, §106.20]

C93, §462A.20

462A.21 Fees.

The annual fee for the inspection of vessels operated for hire shall be based upon the passenger-carrying capacity, including crew, for which such vessel is registered.

Such fee shall be computed at the rate of fifty cents per person capacity, except rowboats, but shall be not less than one dollar and shall not exceed the maximum of twenty dollars. The fee for inspecting rowboats shall be one dollar per boat.

The annual fee for pilot's license is one dollar.

The annual fee for engineer's license is two dollars.

The provisions of this section shall be applicable to all vessels which are rented to the public for hire, including vessels furnished with leased cottages. If such vessels are found to be in satisfactory condition, the inspecting officer shall attach thereto a small plate or inspection seal, indicating the date of inspection and the passenger-carrying capacity. The owner of such vessel shall not offer it for hire or allow it to be so used until such inspection has been made and the vessel found to be in satisfactory condition.

There shall be no fee charged for the inspection of private vessels not used for hire.

The inspecting officer shall collect all inspection fees and forward them to the commission.

All fees collected shall be forwarded by the commission to the treasurer of the state, who shall place such money in a conservation fund. The money so collected shall be appropriated by the legislature to the commission solely for the administration and enforcement of navigation laws and water safety.

[C97, §2512; S13, §2512; C24, 27, 31, §1694; C35, §1703-e4, 1703-e7; C39, §**1703.04, 1703.08;** C46, 50, 54, 58, §106.4, 106.8; C62, 66, 71, 73, 75, 77, 79, 81, §106.21]

C93, §462A.21

462A.22 Engineer or pilot license.

No vessel shall be operated for hire by a pilot or engineer upon the waters of this state under the jurisdiction of the commission unless the pilot or engineer first obtains an engineer's or pilot's license. A pilot's license is required for any person who has charge of the steering or directing of the vessel's course or who does the steering or directs the vessel's course. An engineer's license is required for all operators who have charge of or operate the equipment by which the boat is propelled. If one person acts in a dual or alternate capacity, the person shall first obtain both an engineer's and pilot's license.

Any person desiring a pilot's or engineer's license shall file an application with the commission upon forms prepared and furnished by the commission. Such license may be issued by the commission only upon recommendation of an officer duly authorized by the commission. Before the officer recommends such a license, the officer shall investigate the competency of the applicant, the applicant's acquaintance with and experience in boat work, habits as to sobriety, mental and physical qualifications for the work, acquaintance with the waters for which application to operate upon is made, familiarity with the laws and regulations pertaining to the vessel operation and all other pertinent matters. Such license shall not be issued to anyone under eighteen years of age.

Engineer's and pilot's licenses shall be in effect only for the calendar year in which such license is issued.

[C97, §2512; S13, §2512; C24, 27, 31, §1694; C35, §1703-e3; C39, §**1703.03;** C46, 50, 54, 58, §106.3; C62, 66, 71, 73, 75, 77, 79, 81, §106.22]

C93, §462A.22

462A.23 Suspension or revocation.

1. Any officer appointed by the commission may, for cause, temporarily suspend the registration certificate of any vessel and the license of a pilot or engineer, that has been issued under this

chapter, and the commission, after a due hearing on the matter at its next session, shall make final determination in the matter.

2. The commission shall forthwith revoke the registration certificate of any vessel and the pilot's or engineer's license of the operator of such vessel upon receiving a record of such owner or operator's conviction of any of the following offenses, when such conviction has become final:

a. Manslaughter resulting from the operation of a vessel.

b. Operating a motorboat or sailboat while intoxicated, or manipulating water skis, a surfboard, or a similar device while in an intoxicated condition or under the influence of a narcotic drug.

c. Failure to stop and render aid as required by this chapter when a collision, accident or other casualty results in the death or personal injury of another.

d. Perjury or the making of a false affidavit or statement under oath to the commission under this chapter relating to the ownership or operation of a vessel.

3. The commission is hereby authorized to suspend the registration certificate of any vessel and the pilot's or engineer's license of an operator upon a showing by its records that the owner or operator:

a. Has committed an offense for which mandatory revocation of registration certificate or pilot's or engineer's license is required upon conviction.

b. Is a habitual reckless or negligent operator of a vessel.

c. Is incompetent to operate a vessel.

d. Has permitted an unlawful or fraudulent use of such registration certificate or pilot's or engineer's license.

4. The commission is hereby authorized to suspend or revoke the certificate of registration of a vessel registered under the provisions of this chapter when:

a. It is satisfied that such registration certificate was fraudulently or erroneously obtained.

b. It determines that a registered vessel is unsafe to be operated on waters of the state under the jurisdiction of the commission.

c. A registered vessel has been abandoned or wrecked.

d. Identification numbers are knowingly displayed on a vessel other than the one to which assigned.

5. Upon revocation of any registration certificate, the commission shall notify the county recorder who issued the same, who shall immediately enter the revocation upon the recorder's records.

6. The commission is hereby authorized to suspend or revoke the special certificate of any manufacturer or dealer when it is satisfied that:

a. Such special certificate was fraudulently or erroneously obtained.

b. Such special certificate is being used in violation of the provisions of this chapter or the rules and regulations of the commission.

c. Such manufacturer or dealer is violating any of the provisions of this chapter or the rules and regulations of the commission.

[C97, S13, §2513; C24, 27, 31, §1695; C35, §1703-e5; C39, §**1703.05;** C46, 50, 54, 58, §106.5; C62, 66, 71, 73, 75, 77, 79, 81, §106.23]

C93, §462A.23

2000 Acts, ch 1099, §9

462A.24 Overloading of vessels.

No person owning or operating a vessel shall permit said vessel to be occupied by more passengers and crew than the registration capacity permits.

[C39, §**1703.16, 1703.24;** C46, 50, 54, 58, §106.16, 106.24; C62, 66, 71, 73, 75, 77, 79, 81, §106.24]

C93, §462A.24

For applicable scheduled fine, see §805.8B, subsection 1, paragraph c

462A.25 Penalty.

If any owner, agent or master of any vessel, plying the waters of this state, shall hire or offer for hire, such vessel for the carrying of a person or persons thereon, without first obtaining annually, a permit as in this chapter required, and before operating such vessel in such service; or if the owner, agent or master, having obtained such permit, receives for carriage or permits carriage on such vessel a greater number of persons than authorized therein, or if any person acts as pilot or engineer on any vessel, for which inspection and registration are required, without first obtaining a permit therefor; or if such pilot or engineer continues to follow such avocation after the same has been revoked or expired, the pilot or engineer shall be guilty of a serious misdemeanor. The provisions of this section shall not apply to vessels registered or numbered by authority of the United States.

[C97, §2513; S13, §2513, 2514-d; C24, 27, 31, §1695, 1700; C35, §1703-e6, 1703-e10; C39, §**1703.06, 1703.22, 1703.27;** C46, 50, 54, 58, §106.6, 106.22, 106.27; C62, 66, 71, 73, 75, 77, 79, 81, §106.25]

C93, §462A.25

462A.26 Right-of-way rules — speed and distance rules — zoning water areas.

1. Vessel traffic shall be governed by the following rules:

a. Passing from rear — keep to the operator's left.

b. Passing head on — keep to the operator's right.

c. Passing at right angles — vessel at the right has the right-of-way.

d. Manually propelled vessels have the right-of-way over all other vessels.

e. Sailboats have the right-of-way over all motor driven vessels. Motorboats, when meeting or

overtaking sailboats, shall always pass on the leeward side.

f. Any vessel backing from a landing has the right-of-way over incoming vessels.

g. When necessary to protect the public health, safety, and welfare due to the physical nature and characteristics of any waters under the jurisdiction of the commission, the commission may promulgate further rules governing vessel traffic on such waters.

2. The commission may adopt rules governing all activities on waters and ice of this state under the jurisdiction of the commission, including impoundments constructed by or in cooperation with the federal government, when necessary and desirable to permit appropriate utilization of specific water areas, consistent with section 462A.3. The rules may include rules relating to the following:

a. Zoning as to area, activity, vessel, or vehicle, speed, and time of day during which specified activities are permitted.

b. Horsepower, size, and types of vessels and vehicles which may be operated.

c. Safety precautions and practices required.

3. Except as provided in special rules promulgated under this chapter, the following speed and distance regulations apply:

a. On all waters under the jurisdiction of the commission:

(1) A motorboat shall not be operated at speeds greater than five miles per hour when within one hundred feet of another craft traveling at five miles per hour or less.

(2) Motorboats shall maintain a minimum passing or meeting distance of fifty feet when both boats are traveling at speeds greater than five miles per hour.

(3) A motorboat shall not be operated at a speed exceeding ten miles per hour unless vision is unobstructed at least two hundred feet ahead.

b. On all inland lakes and federal impoundments under the jurisdiction of the commission.

A motorboat shall not be operated within three hundred feet of shore at a speed greater than ten miles per hour.

[C39, §**1703.14;** C46, 50, 54, 58, §106.14; C62, 66, §106.26; C71, 73, 75, 77, 79, 81, §106.26, 106.31; 82 Acts, ch 1028, §22]

C93, §462A.26

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.27 Removal of nonpermanent structures.

Every structure, not considered a permanent structure by the commission or excepted by the rules of the commission, shall be removed from the waters, ice, or land of this state under the jurisdiction of the commission on or before December 15 of each year. Failure to comply with this section shall cause the structure to be declared a public nuisance and disposition shall be in accordance with sections 483A.32 to 483A.34.

[C39, §**1703.16, 1703.25;** C46, 50, 54, 58, §106.16, 106.25; C62, 66, 71, 73, 75, 77, 79, 81, §106.27; 82 Acts, ch 1028, §23]

C93, §462A.27

For applicable scheduled fine, see §805.8B, subsection 1, paragraph d

462A.28 Unworthy vessels drydocked.

A person shall not place or allow to remain in the waters of this state under the jurisdiction of the commission, any vessel which has failed to pass inspection. All vessels shall be seaworthy for the waters on which they are being used.

[C39, §**1703.25;** C46, 50, 54, 58, §106.25; C62, 66, 71, 73, 75, 77, 79, 81, §106.28; 82 Acts, ch 1028, §24]

C93, §462A.28

For applicable scheduled fines, see §805.8B, subsection 1, paragraph d

462A.29 Official duty exempted.

Peace officers, members of the commission, its deputies, agents and employees are not violating the provisions of this chapter while acting within the scope of their employment in search and rescue operations, law enforcement duty, emergency duty, and other resource management activities as determined by rules of the commission.

[C39, §**1703.26;** C46, 50, 54, 58, §106.26; C62, 66, 71, 73, 75, 77, 79, 81, §106.29; 82 Acts, ch 1028, §25]

C93, §462A.29

462A.30 Aircraft restriction.

It is unlawful for any aircraft to make use of the inland lakes of the state, except in the transportation of persons or property between points separated by a distance of thirty miles or more. However, this section does not prohibit the use of such waters by any aircraft in danger or distress or the use of such waters by the operators of private aircraft, not operated for hire. In addition, the commission may, on the recommendation of the state department of transportation, designate certain areas on inland lakes of the state where seaplane flight instruction may be conducted under such conditions as may be adopted by the commission and the state department of transportation.

[C39, §**1703.15;** C46, 50, 54, 58, §106.15; C62, 66, 71, 73, 75, 77, 79, 81, §106.30]

C93, §462A.30

462A.31 Artificial lakes.

1. Except as provided in rules adopted under this chapter, a motorboat shall not be permitted on any artificial lake under the jurisdiction of the commission except the following:

a. A motorboat equipped with one or more outboard battery operated electric trolling motors.

b. A motorboat equipped with any power unit mounted or carried aboard the vessel may be operated at a no-wake speed on all artificial lakes of more than one hundred acres in size under the custody of the department. However, on lake Mac-

bride, a motorboat with a power unit exceeding ten horsepower may be operated only when permitted by rule and the rule shall not authorize such use during the period beginning on the Friday before Memorial Day and ending on Labor Day inclusively. This paragraph does not limit motorboat horsepower on natural lakes under the custody of the department or limit the department's authority to establish special speed zoning regulations.

2. All privately owned vessels on artificial lakes under the jurisdiction of the commission shall be kept at locations designated by the commission.

3. All privately owned vessels, used on or kept at the artificial lakes under the jurisdiction of the commission, shall be seaworthy for the waters where they are kept and used. All such vessels shall be removed from state property whenever ordered by the commission, and, in any event, shall be removed from such property not later than December 15 of each year.

4. Upon construction of an artificial lake by a political subdivision of this state, the subdivision may, after publication in a newspaper of general circulation in the subdivision, make formal application to the commission for special rules relating to the operation of watercraft on the lake, and shall set forth therein the reasons which make such special rules necessary or appropriate. The commission may promulgate the special rules as provided in this chapter, concerning the operation of watercraft on a lake constructed and maintained by a subdivision of this state. Such special rules may include the following:

a. Zoning by area and time to regulate navigation and other types of activity.

b. Regulating the horsepower, size and type of watercraft.

5. As provided in section 350.5, county conservation boards may make regulations concerning horsepower limits and no-wake speeds on artificial lakes under their jurisdiction, except for state-owned artificial lakes managed by a county conservation board under a management agreement.

[C39, §**1703.16;** C46, 50, 54, 58, §106.16; C62, 66, 71, 73, 75, 77, 79, 81, §106.31; 82 Acts, ch 1028, §26]

86 Acts, ch 1227, §1; 87 Acts, ch 124, §1, 2; 92 Acts, ch 1101, §2, 3

C93, §462A.31

97 Acts, ch 91, §1

For applicable scheduled fines, see §805.8B, subsection 1, paragraphs b and e

462A.32 Rules for buoys.

1. No private buoy shall be maintained in the waters of this state under the jurisdiction of the commission except as specified by the rules of the commission.

2. No other obstruction of any kind shall be maintained in the waters of this state under the jurisdiction of the commission without first receiving permission from the commission to maintain such obstruction.

3. It is unlawful to tamper with, move or attempt to move or, except in an emergency, moor a vessel to any waterway marker or state-approved buoy or sign.

4. No boat shall be anchored away from the shore and left unguarded unless it is attached to a legal buoy.

[C39, §**1703.18;** C46, 50, 54, 58, §106.18; C62, 66, 71, 73, 75, 77, 79, 81, §106.32; 82 Acts, ch 1028, §27]

C93, §462A.32

For applicable scheduled fines, see §805.8B, subsection 1, paragraph d

462A.33 Driving over ice.

A craft or vehicle operating on the surface of ice on the lakes and streams of this state including boundary streams and lakes and propelled by sail or by machinery in whole or in part, except automobiles, motorcycles and trucks registered under chapter 321 or snowmobiles registered under chapter 321G when they are used without endangering public safety, shall not be operated without a permit issued by the commission for the operation. A permit may be revoked by the commission if the craft or vehicle is operated in a careless manner which endangers others. Except when authorized by a permit for a special event, automobiles, motorcycles, and trucks when used on the ice of waters under the jurisdiction of the commission shall not exceed fifteen miles per hour and shall be operated in a reasonable and prudent manner.

[C39, §**1703.20;** C46, 50, 54, 58, §106.20; C62, 66, 71, 73, 75, 77, 79, 81, §106.33; 82 Acts, ch 1028, §28]

85 Acts, ch 67, §13

C93, §462A.33

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.34 Authorized emergency vessels.

Upon approach of an authorized emergency vessel displaying a blue light or flashing blue light, the operator of every other vessel shall stop and yield the right-of-way until the authorized vessel has passed. The provisions of this section shall not relieve the operator of an authorized emergency vessel from the duty to operate the vessel with due regard for the safety of all persons using the waters of this state, nor shall the provisions relieve the operator of any such vessel from liability from the operator's negligence.

[C71, 73, 75, 77, 79, 81, §106.34]

C93, §462A.34

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c

462A.34A Vehicles prohibited in streambed.

1. Except as provided in subsection 2, a person shall not operate a motor vehicle in any of the following:

a. Any portion of a meandered stream.

b. Any portion of the bed of a nonmeandered stream which has been identified as a navigable stream or river by rule adopted by the department and which is covered by water.

c. Any portion of a stream identified as a trout stream by the department.

2. This section does not prohibit the use of ford crossings of public or private roads or any other ford crossing when used for agricultural purposes, the operation of construction vehicles engaged in lawful construction, repair, or maintenance in a streambed, or the operation of motor vehicles on ice.

3. The department of natural resources shall adopt rules identifying the navigable streams and rivers in which a motor vehicle may be operated. The department may exempt participants of organized special events from this section where the organized special event is approved by a state or local authority.

4. As used in this section, *"motor vehicle"* means a motor vehicle as defined in section 321.1, subsection 42.

89 Acts, ch 244, §41
CS89, §106.34A
C93, §462A.34A

VESSEL REGISTRATION REGULATIONS

462A.35 Special certificate for manufacturer or dealer.

A manufacturer or dealer owning, storing, repairing, or altering a vessel required to be registered under this chapter may operate the vessel for purposes of transporting, testing, demonstrating, or selling the vessel without registering each such vessel, provided that any such vessel displays thereon a special certificate issued to the manufacturer or dealer as provided in this chapter. This special certificate shall not be used for any vessel offered for hire or for any work or service vessels owned by a manufacturer or dealer.

[C71, 73, 75, 77, 79, 81, §106.35]
91 Acts, ch 57, §1; 92 Acts, ch 1163, §27
C93, §462A.35
For applicable scheduled fines, see §805.8B, subsection 1, paragraph a

462A.36 Fee for certificate.

Any manufacturer or dealer may, upon payment of a fee of fifteen dollars, make application to the commission, upon such forms as the commission prescribes, for a special certificate containing a general distinguishing number and for one or more duplicate special certificates. The applicant shall submit such reasonable proof of the applicant's status as a bona fide manufacturer or dealer as the commission may require.

[C71, 73, 75, 77, 79, 81, §106.36]
C93, §462A.36

462A.37 Number assigned — special signs.

The commission, upon granting any such application, shall issue to the applicant a special certificate containing the applicant's name and address, the general distinguishing number assigned to the applicant, the word *"manufacturer"* or *"dealer"*, and such other information as the commission may prescribe. The manufacturer or dealer shall have the number so awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the vessel being used, and the display must meet the requirements of this chapter and the rules and regulations of the commission.

[C71, 73, 75, 77, 79, 81, §106.37]
C93, §462A.37
For applicable scheduled fines, see §805.8B, subsection 1, paragraph a

462A.38 Duplicates.

The commission shall also issue duplicate special certificates as applied for which shall have displayed thereon the general distinguishing number assigned to the applicant. Each duplicate special certificate so issued shall contain a number or symbol identifying the same from every other duplicate special certificate bearing the same general distinguishing number. The fee for each additional duplicate special certificate shall be two dollars.

[C71, 73, 75, 77, 79, 81, §106.38]
C93, §462A.38

462A.39 Expiration date.

Each special certificate issued hereunder shall expire at midnight on April 30 of each odd-numbered year, and a new special certificate for the ensuing biennium may be obtained upon application to the commission and payment of the fee provided by law.

[C71, 73, 75, 77, 79, 81, §106.39]
C93, §462A.39

462A.40 Record of use.

Every manufacturer or dealer shall keep a written record of the vessels upon which such special certificates are used, which record shall be open to inspection by any law enforcement officer or any officer or employee of the commission.

[C71, 73, 75, 77, 79, 81, §106.40]
C93, §462A.40

462A.41 Separate certificate for each city.

If a manufacturer or dealer has an established place of business in more than one city, the manufacturer or dealer shall secure a separate and distinct special certificate and general distinguishing number for each such place of business.

[C71, 73, 75, 77, 79, 81, §106.41]
C93, §462A.41

462A.42 List of used boats on hand furnished.

Dealers using special certificates under the provisions of this chapter shall, before May 5 of each year, furnish the commission with a list of all used vessels held by them for sale or trade, and upon which the registration fee for the current year has not been paid, giving the previous registration number, name of previous owner at the time such vessel was transferred to the dealer, and such other information as the commission may require.

[C71, 73, 75, 77, 79, 81, §106.42]
C93, §462A.42

462A.43 Transfer of ownership.

Upon the transfer of ownership of any vessel, the owner, except as otherwise provided by this chapter, shall complete the form on the back of the registration certificate and shall deliver it to the purchaser or transferee at the time of delivering the vessel. All registrations must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer.

[C71, 73, 75, 77, 79, 81, §106.43]
C93, §462A.43

462A.44 Application for transfer.

The purchaser or transferee shall, except as otherwise provided by this chapter, within thirty days of the purchase or transfer, file a new application form with the county recorder with a fee of one dollar and the appropriate writing fee, and a transfer of number shall be awarded in the same manner as provided for in an original registration.

[C71, 73, 75, 77, 79, 81, §106.44]
C93, §462A.44
2002 Acts, ch 1035, §1
Section amended

462A.45 Transfer by dealer.

When the purchaser or transferee of a vessel is a dealer who holds the same for resale and operates the vessel only for purposes incident to a resale and displays thereon a special dealers' certificate, or does not operate such vessel or permit it to be operated, such transferee shall not be required to obtain a new registration certificate but upon transferring the title or interest to another person the dealer shall sign the reverse side of the registration certificate of such vessel indicating the name and address of the new purchaser.

[C71, 73, 75, 77, 79, 81, §106.45]
C93, §462A.45

462A.46 Purchase of registered vessel by dealer.

Whenever a dealer purchases or otherwise acquires a vessel registered in this state, the dealer shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of such previous owner, and the registration number of the vessel purchased or acquired. The original receipt shall be delivered to the previous owner and one copy shall be mailed or delivered by the dealer to the county recorder of the county in which the vessel is registered, and one copy shall be delivered to the commission within forty-eight hours.

[C71, 73, 75, 77, 79, 81, §106.46]
C93, §462A.46

462A.47 Transfer to dealer.

Nothing in this section shall prohibit a dealer from obtaining a new registration and transfer of registration in the same manner as other purchasers.

[C71, 73, 75, 77, 79, 81, §106.47]
C93, §462A.47

462A.48 Sales by manufacturer or dealer.

Upon the sale of a vessel by a manufacturer or dealer, the purchaser shall, within thirty days of the purchase, make application for registration and the purchaser may operate the vessel without its individual identification number thereon for a period of not more than thirty-five days after the purchase date, provided that during such period the vessel shall have attached thereto, in accordance with the provisions of this chapter, a pasteboard card bearing the words "registration applied for" and the special certificate number of the dealer from whom the vessel was purchased together with the date of purchase plainly stamped or stenciled thereon.

[C71, 73, 75, 77, 79, 81, §106.48]
C93, §462A.48
2002 Acts, ch 1035, §2
Section amended

462A.49 Prohibited use of "applied for" card.

No manufacturer or dealer shall permit the use of such card unless an application for a registration certificate has been made.

[C71, 73, 75, 77, 79, 81, §106.49]
C93, §462A.49

462A.50 Official cards only to be used.

The commission shall, upon the application of any manufacturer or dealer, furnish *"registration applied for"* cards free of charge. No cards shall be used except those furnished by the commission.

[C71, 73, 75, 77, 79, 81, §106.50]
C93, §462A.50

462A.51 County recorder — duties.

The county recorder shall be responsible for all fees and penalties for the issuance of vessel registrations. All unused registration certificates shall be surrendered to the commission upon demand.

[C71, 73, 75, 77, 79, 81, §106.51]
C93, §462A.51

462A.52 Fees remitted to commission.
Within ten days after the end of each month, a county recorder shall remit to the commission all fees collected by the recorder during the previous month. Before May 10 in odd-numbered years, a county recorder shall remit to the commission all unused license blanks for the previous biennium. All fees collected for the registration of vessels shall be forwarded by the commission to the treasurer of the state, who shall place the money in a special conservation fund. The money so collected is appropriated to the commission solely for the administration and enforcement of navigation laws and water safety.
[C71, 73, 75, 77, 79, 81, §106.52]
89 Acts, ch 102, §1
C93, §462A.52

462A.53 Amount of writing fees.
A writing fee of one dollar for each transaction shall be collected by the county recorder. If two or more functions are transacted for the same vessel at one time, the writing fee is limited to one dollar.
[C71, 73, 75, 77, 79, 81, §106.5, 106.53; 82 Acts, ch 1028, §29]
C93, §462A.53

462A.54 Disposal of writing fees.
The writing fees collected by the county recorder shall be paid to the county treasurer by the county recorder as other such fees are paid to the county treasurer by the county recorder.
[C71, 73, 75, 77, 79, 81, §106.54]
C93, §462A.54

462A.55 Sales or use tax to be paid before registration.
No vessel shall be registered by the county recorder until there has been presented to the recorder receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the vessel. If the owner of the vessel is unable to present satisfactory evidence that the sales or use tax has been paid, the county recorder shall collect the tax. On or before the tenth day of each month, the county recorder shall remit to the department of revenue and finance the amount of the taxes so collected during the preceding month, together with an itemized statement on forms furnished by the department of revenue and finance showing the name of each taxpayer, the make and purchase price of each vessel and motor, the amount of tax paid, and such other information as the department of revenue and finance shall require.
[C71, 73, 75, 77, 79, 81, §106.55]
C93, §462A.55

462A.56 through 462A.65 Reserved.

462A.66 Inspection authority.
An officer of the commission may stop and inspect a vessel being launched, being operated, or being moored on the waters of this state under the jurisdiction of the commission to determine whether the vessel is properly registered, numbered, and equipped as provided under this chapter and rules of the commission. An officer may board a vessel in the course of an inspection if the operator is unable to supply visual evidence that the vessel is properly registered and equipped as required by this chapter and rules of the commission. The inspection shall not include an inspection of an area that is not essential to determine compliance with the provisions of this chapter and rules of the commission.
[82 Acts, ch 1028, §31]
C83, §106.66
C93, §462A.66

462A.67 Inspection deficiency order.
If after performing an inspection the officer determines that the vessel is not properly registered, numbered, or equipped, the officer may issue an inspection deficiency order or citation to the operator of the vessel. The inspection deficiency order may indicate any deficiencies found to exist during the inspection and shall direct the owner or operator of the vessel to properly register or number the vessel or have equipment repairs or replacements made and return a copy of the inspection deficiency order with proof of compliance with the registration, numbering, or equipment requirements to the commission within fourteen days. If such proof is not provided within fourteen days, the owner or operator is in violation of this chapter.
[82 Acts, ch 1028, §32]
C83, §106.67
C93, §462A.67

462A.68 Termination of use.
A vessel for which an inspection deficiency order has been issued shall cease to be used as soon as possible and shall not be launched upon the waters of this state under the jurisdiction of the commission until the vessel is in compliance with the registration, numbering, or equipment requirement for which the order was issued.
[82 Acts, ch 1028, §33]
C83, §106.68
C93, §462A.68

462A.69 Public use of water for navigation purposes.
Water occurring in any river, stream, or creek having definite banks and bed with visible evidence of the flow of water is flowing surface water and is declared to be public waters of the state of Iowa and subject to use by the public for naviga-

tion purposes in accordance with law. Land underlying flowing surface water is held subject to a trust for the public use of the water flowing over it. Such use is subject to the same rights, duties, limitations, and regulations as presently apply to meandered streams, or other streams deemed navigable for commercial purposes and to any reasonable use by the owner of the land lying under and next to the flowing surface water.

[82 Acts, ch 1028, §34]
C83, §106.69
C93, §462A.69

462A.70 Hull identification, capacity plates, warning labels.

1. *Altering or changing numbers on plates.*

a. A person shall not with fraudulent intent, deface, destroy, or alter the hull identification number, capacity plate, or any other plate, warning label, or instrument required by state or federal law on a vessel or component part nor shall a person place or stamp a hull identification number, capacity plate, or any other warning label or instrument upon a vessel or component part except one assigned thereto by state or federal law.

b. This section does not prohibit the restoration of an original hull identification number, capacity plate, or any other original plate, warning label, or instrument required by state or federal law when the restoration is made by the commission nor prevent a manufacturer from placing in the ordinary course of business numbers, plates, or marks upon vessels or component parts.

2. *Test to determine true number or plate.* When it appears that a hull identification number, capacity plate, or any other plate, warning label, or instrument required by state or federal law has been altered, defaced, or tampered with, a peace officer or inspector employed by the commission or any other person acting under the direction of a peace officer or inspector, may apply any recognized process or test to the vessel or part containing such number or plate for the purpose of determining the true number or plate content.

3. *Right of inspection.* Peace officers or examiners employed by the commission may inspect any vessel or component part in possession of any person or found upon the waters of this state under the jurisdiction of the commission or in a public mooring or storage area or enclosure in which vessels or component parts are kept for sale, storage, hire, or repair and to determine vessel or component part identification may board the vessel or enter the public mooring or storage area or enclosure.

4. *Penalty.* A person who is convicted of a violation of any of the provisions of this section or rules adopted under this section by the commission is guilty of a class "D" felony.

[82 Acts, ch 1028, §35]
C83, §106.70
C93, §462A.70

462A.71 Reciprocity.

The director, with the consent of the commission, may enter into agreements with the appropriate regulatory agencies of other states as necessary or convenient to carry out the purposes of this chapter and not inconsistent with this chapter, and may do all acts contained in the agreements.

The agreements may include, but are not restricted to, the following provisions:

1. Regulations in regard to registration, numbering, and equipment of vessels.
2. Operating requirements for vessels and vessel operators.
3. Enforcement activity of officers.

[82 Acts, ch 1028, §36]
C83, §106.71
C93, §462A.71

462A.72 through 462A.76 Reserved.

VESSEL CERTIFICATES OF TITLE

462A.77 Owner's certificate of title — in general.

1. Except as provided in subsection 3, an owner of a vessel seventeen feet or longer in length principally used on the waters of the state and to be numbered pursuant to section 462A.4 shall apply to the county recorder of the county in which the owner resides for a certificate of title for the vessel. The requirement of a certificate of title does not apply to canoes or inflatable vessels regardless of length.

2. Each certificate of title shall contain the information and shall be issued in a form the department prescribes.

3. *a.* A person who, on January 1, 1988, is the owner of a vessel seventeen feet or longer in length with a valid certificate of number issued by the state is not required to file an application for a certificate of title for the vessel. A person who, on or after January 1, 1988, purchases a vessel seventeen feet or longer in length which was registered with a valid certificate of number issued by this state before January 1, 1988, shall obtain a certificate of title for the vessel.

b. A person who is the owner of a vessel that is documented with the United States coast guard is not required to file an application for a certificate of title for the vessel and the vessel is exempt from the requirements of section 462A.82, subsections 1 and 2, and section 462A.84.

4. Every owner of a vessel subject to titling under this chapter shall apply to the county recorder for issuance of a certificate of title for the vessel within thirty days after acquisition. The application shall be on forms the department prescribes, and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or

shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the vessel or the fair market value if no sale immediately preceded the transfer, and any additional information the department requires. If the application is made for a vessel last previously registered or titled in another state or foreign country, it shall contain this information and any other information the department requires.

5. If a dealer buys or acquires a used vessel for resale, the dealer shall report the acquisition to the county recorder on the forms the department provides, or the dealer may apply for and obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used unnumbered vessel, the dealer shall apply for a certificate of title in the dealer's name within fifteen days. If a dealer buys or acquires a new vessel for resale, the dealer may apply for a certificate of title in the dealer's name.

6. Every dealer transferring a vessel requiring titling under this chapter shall assign the title to the new owner, or in the case of a new vessel assign the certificate of origin. Within fifteen days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain a record of any certificate of title which the county recorder issues and shall keep each certificate of title on record until the certificate of title has been inactive for five years.

8. A person shall not sell, assign, or transfer a vessel titled by the state without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire a vessel required to be titled by the state without obtaining a certificate of title for it in that person's name.

9. A person who owns a vessel which is not required to have a certificate of title may apply for and receive a certificate of title for the vessel and the vessel shall subsequently be subject to the requirements of this division as though the vessel was required to be titled.

87 Acts, ch 134, §4
CS87, §106.77
88 Acts, ch 1008, §2; 92 Acts, ch 1073, §1
C93, §462A.77
96 Acts, ch 1020, §1; 97 Acts, ch 23, §55

462A.78 Fees — surcharge — duplicates.

1. *a.* The county recorder shall charge a five dollar fee to issue a certificate of title, a transfer of title, a duplicate, or a corrected certificate of title.

b. In addition to the fee required under paragraph *"a"*, and sections 462A.82 and 462A.84, a surcharge of five dollars shall be required.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying to the county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate.

3. The duplicate certificate of title shall be marked plainly *"duplicate"* across its face, and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the department for cancellation.

5. The funds collected under subsection 1, paragraph *"a"*, shall be placed in the general fund of the county and used for the expenses of the county conservation board if one exists in that county. Of each surcharge collected as required under subsection 1, paragraph *"b"*, the county recorder shall remit five dollars to the department of revenue and finance for deposit in the general fund of the state.

87 Acts, ch 134, §5
CS87, §106.78
91 Acts, ch 267, §606
C93, §462A.78
95 Acts, ch 219, §42

462A.79 Obtaining manufacturer's or importer's certificate of origin.

A manufacturer or dealer shall not transfer ownership of a new vessel required to be titled without supplying the transferee with the manufacturer's or importer's certificate of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for a vessel by the department upon good cause shown by the owner.

87 Acts, ch 134, §6
CS87, §106.79
88 Acts, ch 1008, §3
C93, §462A.79

462A.80 Hull identification number of vessel.

1. Every vessel whose construction began after October 31, 1972, shall have a hull identification number assigned and affixed as required by the federal Boat Safety Act of 1971. The department shall determine the procedures for application and for issuance of the hull identification number for homebuilt boats.

2. A person shall not destroy, remove, alter,

cover, or deface the manufacturer's hull identification number, the plate bearing it, or any hull identification number the department assigns to a vessel without the department's permission.

3. A person other than a manufacturer who constructs a vessel or uses an unconventional device as a vessel for navigation shall submit an affidavit which describes the vessel or device to the department. In cooperation with the county recorder, the department shall assign a hull identification number to the vessel or device. The applicant shall cause the number to be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outermost starboard side at the end of the hull that bears the rudder or other steering mechanism, above the waterline of the vessel or device in such a way that alteration, removal, or replacement would be obvious and evident.

87 Acts, ch 134, §7
CS87, §106.80
C93, §462A.80

462A.81 Dealer's record of vessels bought, sold, or transferred.

Every dealer shall maintain for three years a record of any vessel bought, sold, exchanged, or received for sale or exchange. This record shall be open to inspection by department representatives during reasonable business hours.

87 Acts, ch 134, §8
CS87, §106.81
C93, §462A.81

462A.82 Transfer or repossession of vessel by operation of law — coast guard documentation of vessel.

1. If ownership of a vessel is transferred by operation of law, such as by inheritance, order in bankruptcy, insolvency, replevin, or execution sale, the transferee, within thirty days after acquiring the right to possession of the vessel by operation of law, shall mail or deliver to the county recorder satisfactory proof of ownership as the county recorder requires, together with an application for a new certificate of title, and the required fee. A title tax is not required on these transactions.

2. If a lienholder repossesses a vessel by operation of law and holds it for resale, the lienholder shall secure a new certificate of title and shall pay the required fee.

3. If a vessel is documented with the United States coast guard, the owner shall mail or deliver to the county recorder proof of the documentation and the owner's certificate of title issued pursuant to this chapter is canceled upon the delivery. A title tax is not required on these transactions.

87 Acts, ch 134, §9
CS87, §106.82
C93, §462A.82
96 Acts, ch 1020, §2

462A.83 Security interest in vessels — exemptions.

This division does not apply to or affect any of the following:

1. A lien given by statute or rule of law to a supplier of services or materials for a vessel.

2. A lien given by statute to the United States, this state, or any political subdivision of this state.

3. A security interest in a vessel created by a manufacturer or dealer who holds the vessel for sale, but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of the security interest.

4. A lien arising out of an attachment of a vessel.

5. A security interest claimed on proceeds if the original security interest did not have to be noted on the certificate of title in order to be perfected.

6. A vessel for which a certificate of title is not required under this chapter.

7. A security interest perfected under chapter 554 before January 1, 1988.

87 Acts, ch 134, §10
CS87, §106.83
C93, §462A.83

462A.84 Perfection and titles — fee.

1. A security interest created in this state in a vessel required to have a certificate of title is not perfected until the security interest is noted on the certificate of title.

a. To perfect the security interest, an application for security interest must be presented along with the original title. The county recorder shall note the security interest on the face of the title and on the copy in the recorder's office.

b. The application fee for a security interest is five dollars. The fees shall be credited to the county general fund.

2. The certificate of title shall be presented to the county recorder when the application for security interest or for assignment of the security interest is presented and a new or endorsed certificate of title shall be issued to the secured party with the name and address of the secured party upon it.

3. The secured party shall present the certificate of title to the county recorder when a release statement is filed and a new or endorsed certificate shall be issued to the owner.

87 Acts, ch 134, §11
CS87, §106.84
88 Acts, ch 1008, §4
C93, §462A.84

462A.85 Forms — investigations.

1. The department shall prescribe and provide suitable forms for applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out this division.

2. The department may make necessary investigations to procure information required to carry out this division.

87 Acts, ch 134, §12
CS87, §106.85
88 Acts, ch 1008, §5
C93, §462A.85

CHAPTER 462B

PROTECTED WATER AREA SYSTEM

This chapter not enacted as a part of this title;
transferred from chapter 108A in Code 1993

462B.1 Definitions.
462B.2 State plan.
462B.3 Nomination of prospective protected water areas.
462B.4 Prospective designation.
462B.5 Prospective designation public hearing.
462B.6 Management plan.
462B.7 Management plan public hearing.
462B.8 Designation.
462B.9 Protection methods.
462B.10 Landowner cooperation.
462B.11 Judicial review.
462B.12 Local tax reimbursement.
462B.13 Interagency cooperation.
462B.14 Management cooperation with local government subdivisions.
462B.15 Part of a national system.
462B.16 Departmental rules.

462B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.

2. *"Conservation easement"* means an easement as defined in section 457A.2.

3. *"Department"* means the department of natural resources.

4. *"Legislature"* means the Iowa general assembly.

5. *"Management plan"* means the document that states the goals and objectives of a specific protected water area which has been proposed for designation, the specific description of the area to be protected, land use agreements with property owners, the specific management programming considerations for the area, the in-depth project evaluations, analysis, justifications, and cost estimates, the proposed acquisition of fee title and conservation easements and other agreements, and the specific design and layout of facilities.

6. *"Prospective protected water area"* means a water area designated by the commission for which an in-depth study for permanent designation as an element of the protected water area system is conducted. Such areas shall possess outstanding cultural and natural resource values such as water conservation, scenic, fish, wetland, forest, prairie, mineral, geological, historic, archaeological, recreation, education, water quality, or flood protection values.

7. *"Protected water area"* means a water area permanently designated by the commission for inclusion in the protected water area system.

8. *"Protected water area system"* means a total comprehensive program that includes the goals and objectives, the state plan, the individual management plans, the prospective protected water areas, the protected water areas, the acquisition of fee title and conservation easements and other agreements, and the administration and management of such areas.

9. *"State plan"* means a long-range comprehensive document that states the goals and objectives of the protected water area system, establishes the procedure and criteria for prospective protected water area designation, provides the format for prospective area analysis, establishes a priority system for prospective area study, recommends potential areas for inclusion into the system, institutes interagency coordination, and outlines general administrative and management needs to develop and administer this system.

10. *"Water area"* means a river, lake, wetland, or other body of water and adjacent lands where the use of those lands affects the integrity of the water resource.

84 Acts, ch 1261, §2
C85, §108A.1
86 Acts, ch 1245, §1848, 1849
C93, §462B.1

462B.2 State plan.

The commission shall maintain a state plan for the design and establishment of an administrative framework of a protected water area system and those adjacent lands needed to protect the integri-

ty of that system.
84 Acts, ch 1261, §4
C85, §108A.2
C93, §462B.2

462B.3 Nomination of prospective protected water areas.
After basic resource and user data are gathered by or provided to the commission and the commission deems an area has merit for inclusion into a protected water area system, it may nominate the area for prospective protected water area designation. Other public agencies, interest groups, or citizens, may also recommend nomination of water areas for consideration of inclusion into the protected water area system by submitting to the commission a statement which includes at minimum a general description of the area being recommended for nomination, the resources needing protection, and the benefits to be derived from protecting the resources and a list of the individuals, organizations, and public agencies supporting the nomination.
84 Acts, ch 1261, §5
C85, §108A.3
C93, §462B.3

462B.4 Prospective designation.
The commission may designate all or part of any water area having any or all of the resource values cited in section 462B.1, subsection 6, as a prospective protected water area. The prospective designation shall be in effect for a period not to exceed two years during which a management plan is prepared for the protection and enhancement of those values cited in section 462B.1, subsection 6.
84 Acts, ch 1261, §6
C85, §108A.4
C93, §462B.4

462B.5 Prospective designation public hearing.
After the nomination of prospective protected water areas by the commission and prior to the designation as a prospective protected water area, the commission shall conduct a public hearing in the vicinity of the water area. Notice of the hearing shall be published at least twice, not less than seven days prior to the hearing, in a newspaper having general circulation in each county in which the proposed water area is located.
84 Acts, ch 1261, §7
C85, §108A.5
C93, §462B.5

462B.6 Management plan.
The commission shall prepare and maintain a management plan containing the recommendations for the establishment, development, management, use, and administration of each prospective protected water area designated by the commission. The management plan shall be completed during the two-year prospective designation period.
84 Acts, ch 1261, §8
C85, §108A.6
C93, §462B.6

462B.7 Management plan public hearing.
The commission shall hold a final public hearing on the completed management plan in the vicinity of the water area at least thirty days before permanent designation by the commission. Notice of the hearing shall be published at least twice, not less than seven days prior to the hearing, in a newspaper having general circulation in each county in which the water area is located.
84 Acts, ch 1261, §9
C85, §108A.7
85 Acts, ch 67, §14
C93, §462B.7

462B.8 Designation.
The commission may adopt the management plan and may permanently designate the area into the protected water area system. Upon the commission adopting the management plan and permanently designating the area as a protected water area, the commission may submit the management plan to the legislature for funding consideration.
84 Acts, ch 1261, §10
C85, §108A.8
C93, §462B.8

462B.9 Protection methods.
The commission may use any one or a combination of the available methods, except condemnation, for managing and preserving a protected water area, including but not limited to fee and less than fee title acquisition techniques, such as easements, leasing agreements, covenants, and existing tax incentive programs.
84 Acts, ch 1261, §11
C85, §108A.9
C93, §462B.9

462B.10 Landowner cooperation.
Recognizing that most of the protected water areas may be within privately owned lands, the legislature encourages the commission to cooperate with the landowners within the designated areas in achieving the purposes of this chapter. Likewise, the landowners within the designated areas are encouraged to cooperate with the commission. Commission staff shall meet separately or in small groups with landowners within interim protected water areas during the preparation of the master plan to establish workable and acceptable agreements for the protection of the area and its accompanying resources in a manner consis-

tent with the purposes of this chapter and the interest and concerns of the landowner.
84 Acts, ch 1261, §12
C85, §108A.10
C93, §462B.10

462B.11 Judicial review.
Judicial review of action of the commission may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of Polk county or of any county in which the property affected is located.
84 Acts, ch 1261, §13
C85, §108A.11
C93, §462B.11

462B.12 Local tax reimbursement.
The state of Iowa shall reimburse from the general fund of the state any political subdivision the amount of tax moneys lost due to any lower assessments of property resulting from lease agreements, and the acquisition of public lands and conservation easements stemming from designation of a protected water area.
84 Acts, ch 1261, §14
C85, §108A.12
C93, §462B.12

462B.13 Interagency cooperation.
All state and local agencies shall cooperate with the commission and coordinate their authorities, responsibilities, and program administration in a manner which will aid in the integrity of the protected water area system as outlined in the state plan, individual management plans, and commission administrative rules.
84 Acts, ch 1261, §15
C85, §108A.13
C93, §462B.13

462B.14 Management cooperation with local government subdivisions.
The commission may enter into written cooperative agreements with county boards of supervisors, county conservation boards, and municipal public agencies, for the management of a protected water area.
84 Acts, ch 1261, §16
C85, §108A.14
C93, §462B.14

462B.15 Part of a national system.
This chapter does not preclude a component of the protected water area system from being a part of the national wild and scenic river system under the federal Wild and Scenic Rivers Act, 16 U.S.C., secs. 1271 through 1287. The commission may enter into a written cooperative agreement for joint federal-state administration of rivers which may be designated under that federal Act.
84 Acts, ch 1261, §17
C85, §108A.15
C93, §462B.15

462B.16 Departmental rules.
The commission shall adopt under chapter 17A and enforce the administrative rules it deems necessary to carry out this chapter.
84 Acts, ch 1261, §18
C85, §108A.16
C93, §462B.16

CHAPTER 463

DRAINAGE REFUNDING BONDS

Transferred to §468.540 through §468.567; 89 Acts, ch 126

CHAPTER 463A

UPPER MISSISSIPPI RIVERWAY COMPACT

Chapter repealed by 2000 Acts, ch 1031, §1

CHAPTER 463B

MISSOURI RIVER PRESERVATION AND LAND USE AUTHORITY

This chapter not enacted as a part of this title;
transferred from chapter 108B in Code 1993

463B.1 Legislative findings.
463B.2 Missouri river preservation and land use authority created — duties.
463B.3 Missouri river preservation and land use fund.

463B.1 Legislative findings.

The general assembly finds that the Missouri river is an important natural resource to the state of Iowa and that the creation of comprehensive plans which lead to the purchase, development, and preservation of land adjacent to the Missouri river will provide recreational and economic benefits to the state and to the counties and cities which border on the river. The general assembly further finds that current planning and purchase efforts relating to development of Missouri riverfront property have fallen short of the goal of developing a comprehensive plan for the recreational development of the Missouri river and that the creation of an authority which has the mission of engaging in these efforts will have a greater likelihood of reaching the desired goal.

91 Acts, ch 246, §1
CS91, §108B.1
C93, §463B.1

463B.2 Missouri river preservation and land use authority created — duties.

1. A Missouri river preservation and land use authority is created to engage in comprehensive planning for and the development and implementation of strategies designed to preserve and restore the natural beauty of the land adjacent to and the water of the Missouri river through state land acquisition. Planning and implementation activities shall be coordinated with plans and implementation activities of the department of natural resources for lands owned or acquired by the department. The authority shall be composed of a representative from each of the county conservation boards of the counties which border on the Missouri river, an elected official selected by the county board of supervisors of each of the counties which border on the Missouri river, six at-large public members, and four ex officio members. The board of supervisors of the counties which border on the Missouri river shall each appoint one of the at-large public members, who shall possess a demonstrated interest in or knowledge about natural resource conservation and protection and one of whom shall also be actively engaged in the business of farming. Interest or knowledge of an at-large member may be demonstrated by membership in an association or other organization which is involved in conservation, environmental protection, or related activities. The ex officio members of the authority shall be composed of a representative from the natural resource commission of the department of natural resources, a representative from the state department of transportation, a representative from the department of cultural affairs, and a representative from the office of attorney general. Members of the authority shall serve two-year terms. Members who are also members of a county conservation board or board of supervisors shall be reimbursed only for actual expenses incurred while performing duties of the authority. At-large members shall be reimbursed for actual expenses and shall receive a per diem as specified in section 7E.6 for their performance of duties for the authority.

2. The mission of the authority is to research, develop comprehensive plans, and implement strategies which emphasize the creation of multipurpose recreational areas that foster and accent the natural characteristics of the Missouri river and which provide for environmentally sound land and water use practices for land adjacent to the Missouri river; to designate and prioritize for purchase parcels of land which are located in areas critical for the environmental health of the Missouri river waterway; to develop plans for and to acquire parcels of land to establish a public greenbelt along the banks of the Missouri river; to develop plans for public recreational use of lands adjacent to the Missouri river, including but not limited to a public bicycle trail; and to cooperate with county and city authorities, and federal and state authorities in order to fulfill the mission of the authority.

3. The authority shall develop plans and proposals and conduct public hearings relating to the conservation, preservation, and acquisition of land adjacent to the Missouri river. In developing plans and proposals the authority shall consult with any person or organization which has interests that would be affected by the acquisition and development of Missouri river property in accordance with the mission of the authority, including but not limited to utility companies, municipalities, agricultural organizations, the corps of engineers, rural water districts, soil and water conservation districts, private water suppliers, business and industry organizations, drainage and levee district associations, benefited recreational lake districts, and any soil conservation organizations. The authority shall include a copy of any plans and proposals and shall document the results and findings of those hearings in a report or series of reports. The authority shall submit an initial report, including an outline for a proposed ten-year plan and strategies for the attainment of the goals of this section, to the general assembly by the first day of the legislative session which commences in 1993. As part of the authority's planning and coordinating effort, the authority shall consult, at least annually, with the Iowa boundary commission and shall send copies of the minutes of all meetings of the authority to the commission. Within one year of July 1, 1991, the authority shall meet with the Iowa boundary commission. Meetings with the Iowa boundary commission shall be held at a time and a place agreed to between the commission and the authority.

4. The authority shall administer the Missouri river preservation and land use fund, under section 463B.3, and shall deposit and expend moneys

in the fund for the development of plans for, development of, and purchase of lands adjacent to the Missouri river and for annual payment of property taxes on any land purchased. The county treasurer shall certify the amount of taxes due to the authority. The assessed value of the property held by the authority shall be that value determined under section 427.1, subsection 18, and the authority may protest the assessed value in the manner provided by law for any property owner to protest an assessment. For purposes of chapter 257, the assessed value of any property which was acquired by the authority shall be included in the valuation base of the school district and the payments made by the authority shall be considered as property tax revenues and not as miscellaneous income. The expenditure of funds may include, but is not limited to, use of moneys from the Missouri river preservation and land use fund to match funds from state, federal, and private resources.

5. The title to all property purchased by the authority shall be taken in the name of the state, but no land shall be acquired through condemnation proceedings and all purchases shall be from willing sellers. The authority may transfer jurisdiction over any lands the authority acquires to the department of natural resources, or may enter into agreements with the department or the appropriate county conservation board, for the management of the lands. All lands purchased shall be for public use, and not for private commercial purposes, but the authority may permit the expenditure of private funds for the improvement of land or water adjacent to or purchased by the authority. All surveys and plats of lands purchased by the authority shall be filed in the manner provided in section 461A.22. Land purchased by the authority shall be managed and policed in the manner provided under agreements between the authority and the agency responsible for management of the property, except that, subject to the restrictions contained in chapter 455B, the authority shall not be required to obtain the prior permission of the natural resource commission when using private funds to establish land or water recreational areas, and any property purchased by the authority shall not be sold without the prior notification and consent of the authority.

91 Acts, ch 246, §2
CS91, §108B.2
C93, §463B.2

463B.3 Missouri river preservation and land use fund.

A Missouri river preservation and land use fund is established in the office of treasurer of state, to be administered by and subject to the use of the Missouri river preservation and land use authority for the purposes established in section 463B.2. The Missouri river preservation and land use authority may accept gifts, grants, bequests, other moneys including but not limited to state or federal moneys, and in-kind contributions for deposit in the fund for the use of the authority to carry out the authority's mission. Gifts, grants, and bequests from public and private sources, state and federal moneys, and other moneys received by the authority shall be deposited in the fund and any interest earned on the fund shall be credited to the fund to be used for the purposes specified in section 463B.2. Notwithstanding section 8.33, any unexpended or unencumbered moneys remaining in the fund at the end of a fiscal year shall not revert to the general fund, but shall remain available for expenditure by the authority in succeeding fiscal years.

91 Acts, ch 246, §3
CS91, §108B.3
C93, §463B.3

CHAPTER 464

DEFAULTED DRAINAGE BONDS

Transferred to §468.570 through §468.581; 89 Acts, ch 126

CHAPTER 464A

DAMS AND SPILLWAYS

This chapter not enacted as a part of this title;
transferred from chapter 112 in Code 1993

464A.1 Resolution of necessity.
464A.1A Definitions.
464A.2 Expert plan.
464A.3 Hearing — damages.
464A.4 Adoption of plan.
464A.5 Appraisal of damages.
464A.6 Filing appraisement.
464A.7 Damages determined.
464A.8 Judicial review — bond.
464A.9 Final determination and costs.
464A.10 Tentative plan.

464A.1 Resolution of necessity.

Whenever, in the opinion of the commission, it is necessary and desirable for it to erect a dam or spillway across a stream or at the outlet of a lake, or to alter or reconstruct an existing dam or spillway, so as to increase or decrease its permanent height, or to permanently affect the water level above the structure, it shall proceed with said project by first adopting a resolution of necessity to be placed upon its records, in which it shall describe in a general way the work contemplated.

[C24, 27, 31, §1826; C35, §1828-e1; C39, §**1828.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.1]

86 Acts, ch 1245, §1877

C93, §464A.1

464A.1A Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.

2. *"Department"* means the department of natural resources created under section 455A.2.

3. *"Director"* means the director of the department.

86 Acts, ch 1245, §1875

C87, §112.1A

C93, §464A.1A

464A.2 Expert plan.

The commission, upon receipt of a report and plan prepared by a competent civil engineer, showing the work contemplated, the effect on the water level, and probable cost and such other facts and recommendations as may be deemed material, may approve said plan which shall be considered a tentative plan only, for the project.

[C24, 27, 31, §1826; C35, §1828-e2; C39, §**1828.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.2]

C93, §464A.2

464A.3 Hearing — damages.

After the approval the commission, if it wishes to proceed further with the project, shall, with the consent of the environmental protection commission, fix a date of hearing not less than two weeks from date of approval of the plan. Notice of the day, hour and place of hearing, relative to proposed work, shall be provided by publication at least once a week for two consecutive weeks in some newspaper of general circulation published in the county where the project is located, or in the counties where the water elevations are affected, under the tentative plan approved. The last publication shall not be less than five days prior to the day set for hearing. Any claim by any persons for damages which may be caused by the project shall be filed with the commission at or prior to the time of the hearing.

[C24, 27, 31, §1826; C35, §1828-e3; C39, §**1828.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.3; 82 Acts, ch 1199, §59, 96]

86 Acts, ch 1245, §1876

C93, §464A.3

464A.4 Adoption of plan.

If, at the time of the hearing, the commission shall find that the improvement would be conducive to the public convenience, welfare, benefit or utility, and the cost thereof is not excessive, and no claim shall have been filed for damages, it may adopt the tentative plan as final or may modify the plan, provided said modification will not, to any greater extent than the tentative plan, materially and adversely affect the interests of littoral or riparian owners.

[C24, 27, 31, §1826; C35, §1828-e4; C39, §**1828.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.4]

C93, §464A.4

464A.5 Appraisal of damages.

If, at the time of the hearing, the claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date and place of which shall be fixed at the time of adjournment and of which all interested parties shall take notice, and the commission shall have the damages appraised by three appraisers to be appointed by the chief justice of the supreme court. One of these appraisers shall be a registered civil engineer resident of the state and two shall be freeholders of the state, who shall not be interested in nor related to any person affected by the proposed project.

[C24, 27, 31, §1826; C35, §1828-e5; C39, §**1828.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.5]

C93, §464A.5

464A.6 Filing appraisement.

The appraisers appointed to determine the damages caused by the proposed project shall view the premises and determine and fix the amount of damages to which each claimant is entitled and shall, at least three days before the date fixed by the commission to hear and determine the same, file with the secretary of the commission reports in writing showing the amount of damages sustained by each claimant. Should good cause for delay exist, the commission may postpone the time of final action on the project.

[C24, 27, 31, §1826; C35, §1828-e6; C39, §**1828.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.6]

C93, §464A.6

464A.7 Damages determined.

At the time fixed for hearing and after receipt of

the report of the appraisers, the commission shall examine said report, both for and against each claim for damages and compensation and shall determine the amount of damages and compensation due each claimant and may affirm, increase or diminish the amount awarded by the appraisers. After such action, the commission may thereupon adopt a final plan for the project, and proceed with its construction, or it may dismiss the entire proceedings.

[C24, 27, 31, §1826; C35, §1828-e7; C39, §**1828.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.7]

C93, §464A.7

464A.8 Judicial review — bond.

Judicial review of the orders or actions of the commission fixing the amount of compensation awarded or damages sustained by any claimant may be sought in accordance with the terms of the Iowa administrative procedure Act. The petition for review shall be accompanied by an appeal bond with sufficient sureties to be approved by the clerk of the district court conditioned to pay all costs adjudged against the petitioner.

[C24, 27, 31, §1826; C35, §1828-e8; C39, §**1828.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.8]

C93, §464A.8

464A.9 Final determination and costs.

The amount of damages or compensation found by the court shall be entered of record. Unless the result of the judicial review proceeding is more favorable to the petitioner than the action of the commission, all costs of the judicial review proceeding shall be taxed to the petitioner, but if more favorable, the cost shall be taxed to the respondents. All damages assessed and all costs occasioned under this chapter shall be paid from the funds of the commission.

[C24, 27, 31, §1826; C35, §1828-e9; C39, §**1828.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.9]

C93, §464A.9

464A.10 Tentative plan.

If, at the time of hearing on the tentative plan, no objectors appear and no claim for damages or compensation shall have been filed, or if proper waivers giving consent to the construction of the proposed improvement have been obtained from all parties affected then the commission may adopt the tentative plan as final and proceed with the work proposed.

[C24, 27, 31, §1826; C35, §1828-e10; C39, §**1828.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.10]

C93, §464A.10

CHAPTER 464B

DAMS

464B.1 through 464B.22 Reserved.
464B.23 Protection of banks.
464B.24 Embankments — damages.
464B.25 Right to utilize fall.

464B.1 through 464B.22 Reserved.

464B.23 Protection of banks.

Where the water backed up by any dam belonging to any mill or machinery is about to break through or over the banks of the stream or raceway, or to wash a channel, so as to turn the water of such stream or raceway, or any part thereof, out of its ordinary channel, whereby such mill or machinery will be materially injured or affected, the owner or occupant of such mill or machinery, if that person does not own such banks or the land lying contiguous thereto, may, if necessary, enter thereon and erect and keep in repair such embankments and other works as may be necessary to prevent such water from breaking through or over the banks, or washing a channel as aforesaid; such owner or occupier committing thereon no unnecessary waste or damage, and being liable to pay all damages which the owner of the lands may actually sustain by reason thereof.

[R60, §1275, 1276; C73, §1204; C97, §1936; C24, 27, 31, 35, 39, §**7789;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469.23]

C93, §464B.23

464B.24 Embankments — damages.

If any person shall injure, destroy, or remove any such embankment or other works, the owner or occupier of such mill or machinery may recover of such person all damages the owner or occupant may sustain by reason thereof.

[R60, §1277; C73, §1205; C97, §1937; C24, 27, 31, 35, 39, §**7790;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469.24]

C93, §464B.24

464B.25 Right to utilize fall.

Any person owning and using a water power for the purpose of propelling machinery shall have the right to acquire, maintain, and utilize the fall below such power for the purpose of improving the same, in like manner and to the same extent as provided in this chapter for the erection or heightening of milldams. After such right has been acquired, the fall shall be considered part and parcel of said water power or privilege, and the deepening or excavating of the stream, tail, or raceway, as herein contemplated, shall in no way affect any rights relating to such water power acquired by the owner thereof prior to such change.

[C73, §1206; C97, §1938; C24, 27, 31, 35, 39, §**7791;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469.25]

C93, §464B.25

CHAPTER 465

INDIVIDUAL DRAINAGE RIGHTS

Transferred to §468.600 through §468.634; 89 Acts, ch 126

CHAPTER 465A

OPEN SPACE LANDS

This chapter not enacted as a part of this title;
transferred from chapter 111E in Code 1993

465A.1 Statement of purpose — intent.
465A.2 Statewide open space acquisition and protection program — objectives and agency duties.
465A.3 Funding sources.
465A.4 Payment in lieu of property taxes.

465A.1 Statement of purpose — intent.

The general assembly finds that:

1. Iowa's most significant open space lands are essential to the well-being and quality of life for Iowans and to the economic viability of the state's recreation and tourism industry.

2. Many areas of high national significance in the state have not received adequate public protection to keep them free of visual blight, resource degradation, and negative impacts from inappropriate land use and surrounding development. Some of these areas include national park service and United States fish and wildlife service properties, national landmarks and trails, the Des Moines river greenbelt, the great river road, areas where interstate highways enter the state, cross major rivers, and pass by other areas of national significance, major state park and recreation areas, unique and protected water areas, and significant natural, geological, scenic, historic, and cultural properties of the state.

3. While state and federal funds are generally available for the acquisition and protection of fish and wildlife areas and habitats as well as boating access to public waters, funding programs for public open space acquisition and protection have not been adequate to meet needs.

4. Relative to other midwestern states, Iowa ranks last in the proportion of land acquired and protected for public open space.

5. A program shall be established to:

a. Educate the citizens of the state about the needs and urgency of protecting the state's open spaces.

b. Plan for the protection of the state's significant open space areas.

c. Acquire and protect those properties on a priority basis through a variety of appropriate means.

In addition to other goals for the program, it is intended that a minimum of ten percent of the state's land area be included under some form of public open space protection by the year 2000.

87 Acts, ch 174, §1
CS87, §111E.1
C93, §465A.1

465A.2 Statewide open space acquisition and protection program — objectives and agency duties.

1. The department of natural resources has the following duties in undertaking programs to meet the objectives stated in section 465A.1.

a. Prepare and conduct new education and

awareness programs designed to create greater public understanding of the needs, issues, and opportunities for protecting the state's significant open spaces. The department shall incorporate the recommendations of other state agencies and private sector organizations which have interests in open space protection. The department may enter into contracts with other agencies and the private sector for preparing and conducting these programs.

b. Prepare a statewide, long-range plan for the acquisition and protection of significant open space lands throughout the state as identified in section 465A.1. The department of transportation, department of economic development, and department of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies with lands in the state shall be directly involved in preparing the plan. The plan shall include, but is not limited to, the following elements:

(1) Specific acquisition and protection needs and priorities for open space areas based on the following sequence of priorities:

(a) National.

(b) Regional.

(c) Statewide.

(d) Local.

(2) Identification of open space acquisition and protection techniques available or needed to carry out the plan.

(3) Additional education and awareness programs which are needed to encourage the acquisition and protection of areas identified in the plan.

(4) Management needs including maintenance, rehabilitation, and improvements.

(5) Funding levels needed to accomplish the statewide open space programs.

(6) Recommendations as to how federal programs can be modified or developed to assist the state's open space programs.

c. Acquire and protect open space properties as identified by priority in the plan as funding is made available for this purpose. In acquiring and protecting open space, the department shall:

(1) Accept applications for funding assistance from federal agencies, other state agencies, regional organizations, county conservation boards, city park and recreation agencies, and private organizations with an interest in open spaces.

(2) Obtain the maximum efficiency of funds appropriated for this program through the use of acquisition and protection techniques that provide the degree of protection required at the lowest cost.

(3) Encourage the provision of supporting or matching funds; however, the absence of these funds shall not prevent the approval of those projects of clear national importance.

2. The department may enter into contracts with private consultants for preparing all or part of the plan required under subsection 1, paragraph *"b"*. The plan shall be submitted to the general assembly by July 1, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state and federal agencies and private organizations with interests in open space protection. The comments shall be submitted to the general assembly.

3. The department may initiate pilot acquisition and protection projects prior to completion of the open space plan if the pilot projects have high national significance as identified in section 1, subsection 2.

87 Acts, ch 174, §2
CS87, §111E.2
C93, §465A.2

465A.3 Funding sources.

1. To achieve the purposes of this chapter, the department, other state agencies, political subdivisions of the state, and private organizations may use funds from the following sources:

a. Appropriations by the general assembly.

b. Private grants and gifts.

c. Federal grants and loans intended for these purposes.

2. The department may enter into agreements with other state agencies, political subdivisions of the state, and private organizations for the purposes of carrying out this natural open space program or specific elements of the program.

87 Acts, ch 174, §3
CS87, §111E.3
C93, §465A.3

465A.4 Payment in lieu of property taxes.

As a part of the budget proposal submitted to the general assembly under section 455A.4, subsection 1, paragraph *"c"*, the director of the department of natural resources shall submit a budget request to pay the property taxes for the next fiscal year on open space property acquired by the department which would otherwise be subject to the levy of property taxes. The assessed value of open space property acquired by the department shall be that determined under section 427.1, subsection 18, and the director may protest the assessed value in the manner provided by law for any property owner to protest an assessment. For the purposes of chapter 257, the assessed value of the open space property acquired by the department shall be included in the valuation base of the school district and the payments made pursuant to this section shall be considered as property tax revenues and not as miscellaneous income. The county treasurer shall certify taxes due to the department. The taxes shall be paid annually from the departmental fund or account from which the open space property acquisition was funded. If the departmental fund or account has no moneys or no longer exists, the taxes shall be paid from funds as otherwise provided by the general assembly. If the

total amount of taxes due certified to the department exceeds the amount appropriated, the taxes due shall be reduced proportionately so that the total amount equals the amount appropriated. This section applies to open space property acquired by the department on or after January 1, 1987.

87 Acts, ch 174, §4; 89 Acts, ch 135, §52
CS87, §111E.4
C93, §465A.4

CHAPTER 465B

RECREATION TRAILS

This chapter not enacted as a part of this title;
transferred from chapter 111F in Code 1993

465B.1 Statement of purpose — intent.
465B.2 Statewide trails development program.
465B.3 Involvement of other agencies.
465B.4 Funding.

465B.1 Statement of purpose — intent.

The general assembly finds that recreation trails provide a significant benefit for the health and well-being of Iowans and state visitors. Iowa has a national reputation as a place for hiking, walking, and bicycling. The use of recreation trails has a significant influence on Iowa's economy. Iowa's scenic landscapes, many small communities, and existing natural and transportation corridors are ideally suited for new recreation trails to support recreation and tourism activities such as walking, biking, driving for pleasure, horseback riding, boating and canoeing, skiing, snowmobiling, and others.

The general assembly finds that a program shall be established to acquire, develop, promote, and manage existing and new recreation trails. The objective of a statewide trails program shall be for the state to acquire and develop two thousand miles of new recreation trails and completion of existing trail projects before the year 2000.

87 Acts, ch 173, §1
CS87, §111F.1
C93, §465B.1

465B.2 Statewide trails development program.

The state department of transportation shall undertake the following programs to meet the objective stated in section 465B.1:

1. Prepare a long-range plan for the acquisition, development, promotion, and management of recreation trails throughout the state. The plan shall identify needs and opportunities for recreation trails of different kinds having national, statewide, regional, and multicounty importance. Recommendations in the plan shall include but not be limited to:

a. Specific acquisition needs and opportunities for different types of trails.

b. Development needs including trail surfacing, restrooms, shelters, parking, and other needed facilities.

c. Promotional programs which will encourage Iowans and state visitors to increase use of trails.

d. Management activities including maintenance, enforcement of rules, and replacement needs.

e. Funding levels needed to accomplish the statewide trails objectives.

f. Ways in which trails can be more fully incorporated with parks, cultural sites, and natural resource sites.

2. The plan shall recommend standards for establishing functional classifications for all types of recreation trails as well as a system for determining jurisdictional control over trails. Levels of jurisdiction may be vested in the state, counties, cities, and private organizations.

3. The state department of transportation may enter into contracts for the preparation of the trails plan. The department shall involve the department of natural resources, the Iowa department of economic development, and the department of cultural affairs in the preparation of the plan. The recommendations and comments of organizations representing different types of trail users and others with interests in this program shall also be incorporated in the preparation of the trails plan and shall be submitted with the plan to the general assembly. The plan shall be submitted to the general assembly no later than January 15, 1988. Existing trail projects involving acquisition or development may receive funding prior to the completion of the trails plan.

The department shall give priority to funding the acquisition and development of trail portions which will complete segments of existing trails. The department shall give preference to the ac-

quisition of trail routes which use existing or abandoned railroad right-of-ways, river valleys, and natural greenbelts. Multiple recreational use of routes for trails, other forms of transportation, utilities, and other uses compatible with trails shall be given priority.

The department may acquire property by negotiated purchase and hold title to property for development of trails. The department may enter into agreements with other state agencies, political subdivisions of the state, and private organizations for the planning, acquisition, development, promotion, management, operations, and maintenance of recreation trails.

The department may adopt rules under chapter 17A to carry out a trails program.

87 Acts, ch 173, §2
CS87, §111F.2
C93, §465B.2

465B.3 Involvement of other agencies.

The department of natural resources, the Iowa department of economic development, and the department of cultural affairs shall assist the state department of transportation in developing the statewide plan for recreation trails, in acquiring property, and in the development, promotion, and management of recreation trails.

87 Acts, ch 173, §3
CS87, §111F.3
C93, §465B.3

465B.4 Funding.

To achieve the purposes of this chapter, the state department of transportation, other state agencies, political subdivisions of the state, and private organizations may use funds from the following sources:

1. Funds appropriated by the general assembly.
2. Private grants and gifts.
3. Federal grants and loans intended for these purposes.

87 Acts, ch 173, §4
CS87, §111F.4
C93, §465B.4

CHAPTER 465C

STATE PRESERVES

This chapter not enacted as a part of this title; transferred from chapter 111B in Code 1993

465C.1 Definitions.
465C.2 Advisory board.
465C.3 Membership.
465C.4 Expenses.
465C.5 Organization.
465C.6 Advisors.
465C.7 Ecologist.
465C.8 Powers and duties.
465C.9 Articles of dedication.
465C.10 When dedicated as a preserve.
465C.11 Area held in trust.
465C.12 Agencies urged to dedicate preserves.
465C.13 Other purposes not affected.
465C.14 Confidentiality of ecologically sensitive sites and information.

465C.1 Definitions.

As used in this chapter:

1. *"Area"* means an area of land or water or both land and water.
2. *"Board"* means the state advisory board for preserves established by this chapter.
3. *"Commission"* means the natural resource commission.
4. *"Dedication"* means the allocation of an area as a preserve by a public administrative agency or by a private owner by written stipulation in a form approved by the state advisory board for preserves.
5. *"Department"* means department of natural resources created under section 455A.2.
6. *"Director"* means director of the department.
7. *"Preserve"* means an area of land or water formally dedicated under this chapter for maintenance as nearly as possible in its natural condition though it need not be completely primeval in character at the time of dedication or an area which has unusual flora, fauna, geological, archaeological, scenic, or historical features of scientific or educational value.

[C66, 71, 73, 75, 77, 79, 81, §111B.1]
86 Acts, ch 1245, §1869
C93, §465C.1

465C.2 Advisory board.

There is hereby created a state system of preserves and a state advisory board for preserves.

[C66, 71, 73, 75, 77, 79, 81, §111B.2]
C93, §465C.2

465C.3 Membership.

The board shall be composed of seven members, six of which shall be appointed by the governor. The commission, the conservation committee of the Iowa academy of science, and the state historical society shall submit to the governor a list of possible appointments. Members shall be selected from persons with a demonstrated interest in the preservation of natural lands and waters, and historic sites. The director shall serve as one member of the board. Any vacancies on the board shall be filled, for the remainder of the term vacated, by appointment by the governor provided by this chapter.

The first members appointed after the effective date of this chapter shall serve as follows: Two members to serve until July 1, 1968; two members to serve until July 1, 1969; two members to serve until July 1, 1970, and the director shall serve as long as the director is director. Members shall serve until their successors are appointed and qualified. As terms of members so appointed expire, their successors shall be appointed for terms to expire three years thereafter. Any member who has served two consecutive full terms will not be eligible for reappointment for a period of one year following the expiration of the member's second term.

[C66, 71, 73, 75, 77, 79, 81, §111B.3]
86 Acts, ch 1245, §1877
C93, §465C.3

465C.4 Expenses.

The members of the board may be reimbursed for necessary expenses in connection with performance of their duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C66, 71, 73, 75, 77, 79, 81, §111B.4]
86 Acts, ch 1245, §1870
C93, §465C.4

465C.5 Organization.

The board shall organize annually by the election of a chairperson. The board shall meet annually and at such other times as it deems necessary. Meetings may be called by the chairperson, and shall be called by the chairperson on the request of three members of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.5]
C93, §465C.5

465C.6 Advisors.

Representatives of such agencies, institutions, and organizations as the board may determine may serve as advisors to the board. Such advisors shall receive no compensation for this function but at the discretion of the board may be reimbursed for necessary expenses in connection with the performance of their duties.

[C66, 71, 73, 75, 77, 79, 81, §111B.6]
C93, §465C.6

465C.7 Ecologist.

The director shall employ, upon recommendation by the board, at salaries fixed by the board, a trained ecologist and other personnel as necessary to carry out the powers and duties of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.7]
86 Acts, ch 1245, §1871
C93, §465C.7

465C.8 Powers and duties.

The board shall have the following powers and duties:

1. To approve an area as a preserve.
2. To make and publish all rules necessary to carrying out the purposes of this chapter.
3. To recommend dedication as preserves, of areas owned by the state under the jurisdiction of the department.
4. To recommend acquisition of areas for dedication as preserves subject to approval by the natural resource commission.
5. To recommend dedication as preserves, areas owned by other public agencies, private groups, and individuals.
6. To make surveys and maintain registries and records of preserves and other areas of educational or scientific value and of habitats for rare and endangered species of plants and animals in the state.
7. To promote research and investigations, carry on interpretive programs and publish and disseminate information pertaining to preserves and related areas of educational or scientific value.
8. To promote the establishment and protection of, and advise in the management of, wild parks and other areas of educational or scientific value and otherwise foster and aid in the preservation of natural conditions elsewhere than in preserves.
9. To authorize payment of travel and other necessary expenses of the members of the board and advisors to the board, and salaries, wages, compensations, travel, supplies, and equipment necessary to carry out the duties of the board, and to authorize any other expenditures as may be necessary to carry into effect the purposes of this chapter.
10. To design and control the use of official state preserve signs and recommend to the state department of transportation locations for state preserve signs.
11. To submit to the governor and the legislature a report before January 15, 1967, and every two years thereafter which shall account for each preserve in the system and make such other reports and recommendations as it may deem necessary.
12. To prepare and recommend a budget, for

inclusion as a line item money request in the departmental budget, for appropriation from the state general fund.

[C66, 71, 73, 75, 77, 79, 81, §111B.8]
86 Acts, ch 1245, §1872
C93, §465C.8

465C.9 Articles of dedication.

The public administrative agency or private owner shall complete articles of dedication on forms approved by the board. When the articles of dedication have been approved by the governor the board shall record them with the county recorder for the county or counties in which the area is located.

The articles of dedication may contain restrictions on development, sale, transfer, method of management, public access, and commercial or other use, and may contain such other provisions as may be necessary to further the purposes of this chapter. They may define the respective jurisdictions of the owner or operating agency and the board. They may provide procedures to be applied in case of violation of the dedication. They may recognize reversionary rights. They may vary in provisions from one preserve to another in accordance with differences in relative conditions.

[C66, 71, 73, 75, 77, 79, 81, §111B.9]
C93, §465C.9

465C.10 When dedicated as a preserve.

An area shall become a preserve when it has been approved by the board for dedication as a preserve, whether in public or private ownership, formally dedicated as a preserve within the system by a public administrative agency or private owner and designated by the governor as a preserve.

[C66, 71, 73, 75, 77, 79, 81, §111B.10]
C93, §465C.10

465C.11 Area held in trust.

An area designated as a preserve within the system is hereby declared put to its highest, best, and most important use for public benefit. It shall be held in trust and shall not be alienated except to another public use upon a finding by the board of imperative and unavoidable public necessity and with the approval of the commission, the general assembly by concurrent resolution, and the governor. The board's interest or interests in any area designated as a preserve shall not be taken under the condemnation statutes of this state without such a finding of imperative and unavoidable public necessity by the board, and with the consent of the commission, the general assembly by concurrent resolution, and the governor.

The board, with the approval of the governor, may enter into amendments to any articles of dedication upon its finding that such amendment will not permit an impairment, disturbance, or development of the area inconsistent with the purposes of this chapter.

Before the board shall make a finding of imperative and unavoidable public necessity, or shall enter into any amendment to articles of dedication, it shall provide notice of such proposal and opportunity for any person to be heard. Such notice shall be published at least once in a newspaper with a general circulation in the county or counties wherein the area directly affected is situated, and mailed within ten days of such published notice to all persons who have requested notice of all such proposed actions. Each notice shall set forth the substance of the proposed action and describe, with or without legal description, the area affected, and shall set forth a place and time not less than sixty days thence for all persons desiring to be heard to have reasonable opportunity to be heard prior to the finding of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.11]
86 Acts, ch 1245, §1877
C93, §465C.11

465C.12 Agencies urged to dedicate preserves.

All departments, agencies, and instrumentalities of the state, including counties, municipalities, public corporations, boards, commissions, and universities shall be urged to dedicate as nature preserves within the system under the procedures outlined in this chapter, suitable areas or portions of areas within their jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §111B.12]
C93, §465C.12

465C.13 Other purposes not affected.

Nothing contained in this chapter shall be construed as interfering with the purposes stated in the establishment of or pertaining to any state or local park, preserve, wildlife refuge, or other area or the proper management and development thereof except that any agency administering any area designated as a nature preserve under the system shall be responsible for preserving the natural character of the area in accordance with the articles of dedication.

Designation of an area as a preserve within the system shall not void or replace any protected status under law which the area would have were it not so designated.

[C66, 71, 73, 75, 77, 79, 81, §111B.13]
C93, §465C.13

465C.14 Confidentiality of ecologically sensitive sites and information.

The director of the department of natural resources and the state ecologist shall comply with the requirements of section 22.7, subsection 21, regarding information pertaining to the nature and location of ecologically sensitive resources or sites. The director of the department of natural re-

sources, in consultation with the state ecologist, shall consult with other public officers serving as lawful custodians of ecologically sensitive information to determine whether the information should be confidential or be released.

86 Acts, ch 1228, §3
C87, §111B.14
C93, §465C.14

CHAPTER 466

IMPROVEMENT OF WATERSHED ATTRIBUTES

466.1 Short title.
466.2 Legislative goal.
466.3 Iowa clean water award.
466.4 Conservation buffer strip program.
466.5 Conservation reserve enhancement program.
466.6 Water quality monitoring.
466.7 Water quality protection program.
466.8 On-site wastewater systems assistance program.
466.9 On-site wastewater systems assistance fund.

466.1 Short title.

This chapter shall be known and may be cited as *"Initiative on Improving Our Watershed Attributes (I on IOWA)"*.

2000 Acts, ch 1068, §1

466.2 Legislative goal.

The goal of this chapter is to develop a comprehensive water quality program that will result in water quality improvements while reducing proposed regulatory impacts. The program shall use information, education, monitoring, technical assistance, data gathering and evaluation, incentives, and more efficient issuance of permits. The program is expected to have a menu of initiatives and approaches to appeal to a broad audience of participants and shall be coordinated so that individual initiatives work toward the objective of improved water quality. The departments of agriculture and land stewardship and natural resources shall work cooperatively with federal agencies to obtain waivers and changes in rules and procedures at national and state levels to improve the federal programs' environmental and economic performance for Iowans. State agencies shall collaborate with other state agencies to attain the overall goal of improved water quality. The state department of transportation and the department of natural resources shall collaborate to provide for the preservation of topsoil, erosion control, water impoundment during highway construction and reconstruction, and restoration and management of roadside right-of-way for prairie restoration, wildlife habitat, and erosion control.

2000 Acts, ch 1068, §2

466.3 Iowa clean water award.

An Iowa clean water award is created. The governor and the general assembly shall give the award annually to a city or other political subdivision which has met criteria established by the department of natural resources and the department of agriculture and land stewardship identifying exemplary efforts to improve water quality within its jurisdiction.

2000 Acts, ch 1068, §3

466.4 Conservation buffer strip program.

1. As used in this section, *"conservation buffer strip"* means a riparian buffer, filter strip, waterway, contour buffer strip, shallow water area for wildlife, field border, or any vegetative barrier on private land that meets the criteria established by the United States department of agriculture, natural resources conservation service.

2. *a.* The department of agriculture and land stewardship, in consultation with the department of natural resources, shall establish a program to accelerate the United States department of agriculture's program to install conservation buffer strips in this state.

b. The department of agriculture and land stewardship shall request waivers from the United States department of agriculture to initiate projects that reward landowners maintaining current conservation practices. The goal of the projects is to discourage the destruction of existing conservation buffer strips and to monetarily reward landowners who maintain quality conservation practices. If the waivers are granted, up to twenty-five percent of the program resources shall be committed to establishing projects.

c. The department of agriculture and land stewardship shall request a waiver from the United States department of agriculture for the purpose of establishing that a person who is subject to a twenty-five percent reduction in conservation buffer strip payments due to grazing shall be allowed ninety days to graze animals.

d. The department of natural resources shall establish a prairie seed harvest program to assist

in the restoration of prairies and provide for private land stewardship and public resource management through assistance with the implementation of buffer and filter strip practices, and public or private habitat development and management. The department shall carry out these efforts through landowner contacts and cooperation with private and public organizations.

e. The five-year goal of the conservation buffer strip program shall be to meet the objective of water quality improvement by enrolling an additional four hundred seven thousand five hundred acres.

2000 Acts, ch 1068, §4

466.5 Conservation reserve enhancement program.

1. A conservation reserve enhancement program is established within the department of agriculture and land stewardship to restore or construct wetlands for the purposes of intercepting tile line runoff, reducing nutrient loss, improving water quality, and enhancing agricultural production practices. The program shall be directed primarily, but not exclusively, toward the tile-drained areas of the state.

2. The department of agriculture and land stewardship shall request the assistance of and consult with the United States department of agriculture's natural resources conservation service and farm service agency to implement the conservation reserve enhancement program. The department shall also consult with county boards of supervisors, county conservation boards, drainage district representatives, department of natural resources, and soil and water conservation districts affected by the implementation of the conservation reserve enhancement program. The department shall also collaborate with other public agencies and private organizations to develop wetland habitat and related projects to improve water quality.

3. The department of agriculture and land stewardship shall maintain a record of all wetlands established pursuant to the conservation reserve enhancement program including any conditions that may apply to the landowner's right to remove the wetland after the provisions of the conservation reserve enhancement program contract or easement are concluded.

4. When establishing a wetland under this subsection,* the department of agriculture and land stewardship shall be governed by the following requirements:

a. Wetland construction or restoration shall not damage the value of property in any public or private drainage system without the property owner's consent.

b. Wetland construction or restoration shall improve water quality and provide aesthetic and habitat benefits.

c. Wetland construction or restoration under this section may be used to mitigate wetland removal by the landowner if it meets the requirements of federal agencies with wetland jurisdictional authorities. Where practicable, priority shall be given to mitigating wetland removal within the same United States geological survey hydrologic unit code 8 watershed, but a watershed confines shall not limit the use of duly authorized wetland mitigation banks.

5. The five-year goal of the conservation reserve enhancement program is the establishment of thirty-two thousand five hundred acres of wetlands.

2000 Acts, ch 1068, §5; 2000 Acts, ch 1232, §75

*The word "section" probably intended; corrective legislation is pending

466.6 Water quality monitoring.

The department of natural resources shall operate water quality monitoring stations for the purpose of gathering information and data to establish benchmarks for water quality in this state.

2000 Acts, ch 1068, §6

466.7 Water quality protection program.

1. The department of agriculture and land stewardship shall implement, in conjunction with the federal government and other entities, a program that provides multiobjective resource protections for flood control, water quality, erosion control, and natural resource conservation.

2. The department of agriculture and land stewardship shall implement a statewide, voluntary farm management demonstration program to demonstrate the effectiveness and adaptability of emerging practices in agronomy that protect water resources and provide other environmental benefits. A demonstration program under this subsection may complement, but shall not duplicate, projects conducted by Iowa state university extension service. The demonstration program shall be designed to concentrate on management techniques in both the livestock and crop genres and shall be offered to farm operators through an educational setting and demonstration projects. The demonstration program shall be offered in conjunction with the community colleges, Iowa state university, and private farmer demonstrations. Continuing education units shall be offered. The educational program shall be offered at no cost to farm operators who file a schedule F with the internal revenue service and do not have permitted livestock facilities or are certified under a manure management plan.

3. The department of agriculture and land stewardship shall provide financial assistance for the establishment of permanent soil and water conservation practices.

4. The department of natural resources shall provide local watershed managers with geographic information system data for their use in developing, monitoring, and displaying results of their

watershed work. The local watershed data shall be considered public records and are accessible to the public pursuant to chapter 22.

5. The department of natural resources shall develop a program that provides support to local volunteer management efforts to the different programs concerned with water quality. The department shall assist in coordinating and tracking of the volunteer component of these programs to increase efficiency and avoid duplication of efforts in water quality monitoring and watershed improvement.

6. The department of natural resources shall provide for activities supporting the analysis of water quality monitoring data for trends and for the preparation and presentation of data to the public.

7. The department of natural resources shall contract to assist its staff with the review of national pollutant discharge elimination system permits.

8. The department of natural resources shall expand floodplain protection education to better inform local officials that make decisions with regard to floodplain management.

9. The department of natural resources shall continue the establishment of an effective and efficient method of developing a total maximum daily load program, based on information gathered on other states' programs and investigation into alternative methods for satisfying the requirements.

2000 Acts, ch 1068, §7; 2001 Acts, ch 37, §1, 4

466.8 On-site wastewater systems assistance program.

The department of natural resources shall establish an on-site wastewater systems assistance program for the purpose of providing low-interest loans to homeowners residing outside the boundaries of a city for improving on-site wastewater disposal systems.

1. The environmental protection commission shall adopt rules for carrying out the program including but not limited to criteria for homeowner participation, the methods used to provide loans, and financing terms and limits.

2. The department may make and execute agreements with public or private entities, including lending institutions as defined in section 12.32, as required to administer the program.

3. Assistance provided to homeowners shall not be used to pay the nonfederal share of the cost of any wastewater system projects receiving grants under the federal Clean Water Act, 33 U.S.C. § 1381-1387.

4. The department shall report to the general assembly annually on the progress of the on-site wastewater systems assistance program.

2001 Acts, ch 37, §2, 4; 2001 Acts, ch 176, §69, 70

466.9 On-site wastewater systems assistance fund.

1. An on-site wastewater systems assistance fund is established as a separate fund in the state treasury under the control of the department. Moneys in the fund are appropriated to the department for the exclusive purpose of supporting and administering the on-site wastewater systems assistance program as established in section 466.8.

2. The fund shall consist of all of the following:

a. Moneys appropriated to the department by the general assembly for deposit in the fund or to carry out the purposes of the on-site wastewater systems assistance program.

b. Moneys provided to the department by the federal government to carry out the purpose of administering the programs, policies, and undertakings authorized in the federal Clean Water Act, 33 U.S.C. § 1381-1387.

c. Moneys collected by the department pursuant to loan agreements from homeowners receiving loans under the on-site wastewater systems assistance program.

d. Any other moneys obtained or accepted by the department for deposit in the fund.

3. *a.* The fund shall consist of the following accounts:

(1) The financing account which shall be used for the exclusive purpose of providing financing to homeowners residing outside the boundaries of a city with improving on-site wastewater systems under the on-site wastewater systems assistance program.

(2) The administration account which shall be used by the department to defray expenses associated with carrying out the on-site wastewater systems assistance program.

b. Of all moneys deposited into the fund each year, the department shall credit at least ninety-six percent of the moneys to the financing account and any remaining moneys to the administration account.

4. The moneys in the fund are not considered part of the general fund of the state, and in determining a general fund balance shall not be included in the general fund of the state. The moneys in the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2001 Acts, ch 37, §3, 4

SUBTITLE 3

SOIL AND WATER PRESERVATION — COUNTIES

CHAPTER 467

INTERSTATE DRAINAGE DISTRICTS

Transferred to §468.400 through §468.405; 89 Acts, ch 126

CHAPTER 467A

SOIL AND WATER CONSERVATION

Transferred to chapter 161A
Former section 467A.75 repealed; 92 Acts, ch 1184, §10;
see §161A.73

CHAPTER 467B

FLOOD AND EROSION CONTROL

Transferred to chapter 161E

CHAPTER 467C

SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS

Transferred to chapter 161F

CHAPTER 467D

WATER RESOURCE DISTRICTS

Chapter repealed effective July 1, 1988; 86 Acts, ch 1245, §668

CHAPTER 467E

AGRICULTURAL ENERGY MANAGEMENT

Transferred to chapter 161B

CHAPTER 467F

WATER PROTECTION PROJECTS AND PRACTICES

Transferred to chapter 161C

CHAPTER 468

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

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SUBCHAPTER I

ESTABLISHMENT

PART 1

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468.1 Jurisdiction to establish.

The board of supervisors of any county shall have jurisdiction, power, and authority at any regular, special, or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain, or watercourse, or settling basins in connection therewith, or to straighten, widen, deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience or welfare.

[C73, §1207; C97, §1939; S13, §1989-a1; C24, 27, 31, 35, 39, §**7421;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.1]

89 Acts, ch 126, §2

CS89, §468.1

468.2 Presumption and construction of laws.

1. The drainage of surface waters from agricultural lands and all other lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare.

2. The provisions of this subchapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands.

[S13, §1989-a1, -a46; C24, 27, 31, 35, 39, §**7422, 7594;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.2, 455.182]

89 Acts, ch 126, §2

CS89, §468.2

468.3 Definitions.

1. The term *"appraisers"* shall mean the persons appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements.

2. Within the meaning of this subchapter, parts 1 through 5, and subchapter II, part 1, the term *"board"* shall embrace the board of supervisors, the joint boards of supervisors in case of intercounty levee or drainage districts, and the board of trustees in case of a district under trustee management.

3. As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

4. The term *"commissioners"* shall mean the persons appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.

5. The term *"cost of improvements"* means the costs of any improvement which is subject to special assessment including, but not limited to, the costs of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of land, easements, rights of way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for a reasonable period following the completion of construction, and may include the default fund which shall amount to not more than ten percent of the total cost of an improvement assessed against benefited property.

6. The term *"engineer"* and the term *"civil engineer"*, within the meaning of this subchapter, parts 1 through 5, subchapter II, parts 1, 4, 5, and 6, and subchapter V, shall mean a person registered as a professional engineer under the provisions of chapter 542B.

7. For the purpose of this subchapter, parts 1 through 5, and with reference to improvements along or adjacent to the Missouri river the word *"levee"* shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which may be deemed necessary to adequately protect the banks of any river or stream, within or adjacent to any county, from wash, cutting, or erosion.

[C24, 27, 31, 35, 39, §**7423, 7424;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.3, 455.4]

88 Acts, ch 1070, §1; 89 Acts, ch 126, §2

CS89, §468.3

2000 Acts, ch 1148, §1

468.4 General rule for location.

The levees, ditches, or drains herein provided for shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district; but where it will be more economical or practicable such ditch or drain need not follow the course of such natural streams, watercourses, or course of natural drainage, but may straighten, shorten, or change the course of any natural stream, watercourse, or general course of drainage.

[S13, §1989-a2; C24, 27, 31, 35, 39, §**7425;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.5]

89 Acts, ch 126, §2

CS89, §468.4

468.5 Location across railroad.

When any such ditch or drain crosses any railroad right of way, it shall when practicable be located at the place of the natural waterway across such right of way, unless said railroad company shall have provided another place in the construction of the roadbed for the flow of the water; and if located at the place provided by the railroad company, such company shall be estopped from afterwards objecting to such location on the ground that it is not at the place of the natural waterway.

[S13, §1989-a2; C24, 27, 31, 35, 39, §**7426;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.6]

89 Acts, ch 126, §2

CS89, §468.5

468.6 Number of petitioners required.

Two or more owners of lands named in the petition described in section 468.8, may file in the office of the county auditor a petition for the establishment of a levee or drainage district, including a district which involves only the straightening of a creek or river. If the district described in the petition is a subdistrict, one or more owners of land affected by the proposed improvement may petition for such district.

[S13, §1989-a2, -a23; C24, 27, 31, 35, 39, §**7427, 7428;** C46, §455.7, 455.8; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.7]
89 Acts, ch 126, §2
CS89, §468.6

468.7 Request by nonpetitioners.
In the event two or more landowners included in the proposed district other than the petitioners request a classification prior to the establishment of said district, they shall file in writing their request and execute a bond as required in section 468.9 to cover the expense of such classification if the district is not established. Such written request and the bond shall be filed before the board establishes a district.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455.8]
89 Acts, ch 126, §2
CS89, §468.7

468.8 Petition.
The petition shall set forth:
1. An intelligible description, by congressional subdivision or otherwise, of the lands suggested for inclusion in the district.
2. That said lands are subject to overflow or are too wet for cultivation or subject to erosion or flood danger.
3. That the public benefit, utility, health, convenience, or welfare will be promoted by the suggested improvements.
4. The suggested starting point, route, terminus and lateral branches of the proposed improvements.
5. In the event the petitioners request a classification before the establishment of the district, the petition shall include a request that the district be classified as provided in sections 468.38 through 468.44 after the board has approved the report of the engineer as a tentative plan but before the district is finally established.
[S13, §1989-a2, -a23; C24, 27, 31, 35, 39, §**7429;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.9]
89 Acts, ch 126, §2
CS89, §468.8

468.9 Bond.
1. There shall be filed with the petition a bond in an amount fixed and with sureties approved by the auditor, conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not finally established.
2. No preliminary expense shall be incurred before the establishment of such proposed improvement district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of such bond, the board of supervisors shall require the filing of an additional bond by the petitioners and shall not proceed with the preliminary survey or authorize any additional expense until the additional bond is filed in a sufficient amount to cover such expense.
[S13, §1989-a2; C24, 27, 31, 35, 39, §**7430, 7431;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.10, 455.11]
89 Acts, ch 126, §2
CS89, §468.9

468.10 Engineer.
1. The board shall at its first session thereafter, regular, special, or adjourned, examine the petition and if it be found sufficient in form and substance, shall appoint a disinterested and competent civil engineer who shall give bond to the county for the use of the proposed levee or drainage district, if it be established, and if not established, for the use of the petitioners, in amount and with sureties to be approved by the auditor, and conditioned for the faithful and competent performance of the engineer's duties.
2. Any engineer employed under the provisions of this subchapter, parts 1 through 5 shall receive such compensation per diem as shall be fixed and determined by the board of supervisors.
3. The board may at any time terminate the contract with, and discharge the engineer.
4. The engineer shall keep an accurate record of the kind of work done by the engineer, the place where done, and the time engaged therein, and shall file an itemized statement thereof with the auditor. No expenses shall be incurred by the engineer except upon authority of the board, and vouchers shall be filed with the claims therefor.
[S13, §1989-a2, -a41, -a42; SS15, §1527-s21b; C24, 27, 31, 35, 39, §**7432 – 7436;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.12 – 455.16]
89 Acts, ch 126, §2
CS89, §468.10
94 Acts, ch 1051, §1

468.11 Survey.
The engineer shall examine the lands described in the petition and any other lands which would be benefited by said improvement or necessary in carrying out the same.
The engineer shall locate and survey such ditches, drains, levees, settling basins, pumping stations, and other improvements as will be necessary, practicable, and feasible in carrying out the purposes of the petition and which will be of public benefit or utility, or conducive to public health, convenience, or welfare.
[S13, §1989-a2; C24, 27, 31, 35, 39, §**7437;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.17]
89 Acts, ch 126, §2
CS89, §468.11

468.12 Report.
The engineer shall make full written report to the county auditor, setting forth:
1. The starting point, route, and terminus of each ditch, drain, and levee and the character and

location of all other improvements.

2. A plat and profile, showing all ditches, drains, levees, settling basins, and other improvements, the course, length, and depth of each ditch, the length, size, and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty-acre tract or fraction thereof as right of way, or for settling basin or basins, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor. Said plat shall describe the width of the right of way to be taken from each forty-acre tract or fraction thereof.

3. The boundary of the proposed district, including therein by color or other designation other lands that will be benefited or otherwise affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.

4. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.

5. The probable cost of the proposed improvements, together with such other facts and recommendations as the engineer shall deem material.

Where the proposed district contemplates as its object flood control or soil conservance the engineer shall include in the report data describing any soil conservance or flood control improvements, the nature of the improvements, and other data as prescribed by the department of natural resources.

[S13, §1989-a2; C24, 27, 31, 35, 39, §**7438;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.18; 82 Acts, ch 1199, §70, 96]

89 Acts, ch 126, §2

CS89, §468.12

468.13 Procedure on report — classification.

Upon the filing of the report of the engineer recommending the establishment of the levee or drainage district, the board shall at its first regular, adjourned, or special meeting examine and consider the same, and, if the plan is not approved the board may employ said engineer or another disinterested engineer to report another plan or make additional examination and surveys and file an additional report covering such matters as the board may direct. Additional surveys and reports must be made in accordance with the provisions of sections 468.11 and 468.12. At any time prior to the final adoption of the plans they may be amended, and as finally adopted by the board shall be conclusive unless the action of the board in finally adopting them shall be appealed from as hereinafter provided.

If the petition or other landowners requested a classification of the district prior to establishment, the board shall order a classification as provided by sections 468.38 through 468.44 after they have approved the report of the engineer as a tentative plan. The notice of hearing provided by section 468.14 shall also include the requirements of the notice of hearing provided in section 468.45 as to this classification, and the hearing on the petition provided in section 468.21 shall also include the matters to be heard as provided in section 468.46. If the board establishes the district as provided in section 468.22, the classification which is finally approved at said hearing by the board shall remain the basis of all future assessments for the purposes of said district as provided in section 468.49. The landowners shall have the same right of appeal from this classification as they would have if the petition had not requested a classification prior to establishment and the classification had been made after establishment.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7439;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.19]

89 Acts, ch 126, §2

CS89, §468.13

468.14 Notice of hearing.

When any plan and report of the engineer has been approved by the board, such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty days from the date of the order of approval, and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right of way in the proposed district and to all lienholders or encumbrancers of any land within the proposed district without naming them, and also to all other persons whom it may concern, and without naming individuals all actual occupants of the land in the proposed district, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan, and the day and the hour set for hearing on said petition and report, and that all claims for damages except claims for land required for right of way, and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set for such hearing.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7440;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.20]

89 Acts, ch 126, §2

CS89, §468.14

468.15 Service by publication — copy mailed — proof.

The notice provided in section 468.14 shall be served by publication as provided in section 331.305 before the hearing except that the notice shall be published at least twenty days before the hearing date. Proof of the service shall be made by affidavit of the publisher. Copy of the notice shall also be sent by ordinary mail to each person and to the clerk or recorder of each city named in the notice at that person's last known mailing address unless there is on file an affidavit of the auditor, or of a person designated by the board to make the necessary investigation, stating that no mailing address is known and that diligent inquiry has been made to ascertain it. The copy of notice shall be mailed not less than twenty days before the day set for hearing and proof of the service shall be by affidavit of the auditor. Proofs of service required by this section shall be on file at the time the hearing begins.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7441;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.21]

87 Acts, ch 43, §14; 88 Acts, ch 1035, §1; 89 Acts, ch 126, §2

CS89, §468.15

468.16 Service on agent.

If any person, corporation, or company owning or having interest in any land or other property affected by any proposed improvement under this chapter shall file with the auditor an instrument in writing designating the name and post-office address of the agent of the person, corporation, or company upon whom service of notice of said proceeding shall be made, the auditor shall, not less than twenty days prior to the date set for hearing upon said petition, send a copy of said notice by certified mail addressed to the agent so designated. Proof of such service shall be made by affidavit of the auditor filed in said proceeding at or before the date of the hearing upon the petition, and such service shall be in lieu of all other service of notice to such persons, corporations, or companies.

This designation when filed shall be in force for a period of five years thereafter and shall apply to all proceedings under said chapters during such period. The person, company, or corporation making such designation shall have the right to change the agent appointed therein or to amend it in any other particular.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7442;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.22]

89 Acts, ch 126, §2

CS89, §468.16

468.17 Personal service.

In lieu of publication, personal service of said notice may be made upon any owner of land in the proposed district, or upon any lienholder or other person interested in the proposed improvement, in the manner and for the time required for service of original notices in the district court. Proof of such service shall be on file with the auditor on the date of said hearing.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7443;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.23]

89 Acts, ch 126, §2

CS89, §468.17

Time and manner of service, R.C.P. 1.302 – 1.315

468.18 Waiver of notice.

No service of notice shall be required upon any person who shall file with the auditor a statement in writing, signed by the person, waiving notice, or who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7444;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.24]

89 Acts, ch 126, §2

CS89, §468.18

468.19 Waiver of objections and damages.

Any person, company, or corporation failing to file any claim for damages or objections to the establishment of the district at or before the time fixed for said hearing, except claims for land required for right of way, or for settling basins, shall be held to have waived all objections and claims for damages.

[S13, §1989-a4; C24, 27, 31, 35, 39, §**7445;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.25]

89 Acts, ch 126, §2

CS89, §468.19

468.20 Adjournment for service — jurisdiction retained.

If at the date set for hearing, it shall appear that any person entitled to notice has not been properly served with notice, the board may postpone said hearing and set another time for the same not less than thirty days from said date, and notice of such hearing as hereinbefore provided shall be served on such omitted parties. By fixing such new date for hearing and the adjournment of said proceeding to said date, the board shall not lose jurisdiction of the subject matter of said proceeding nor of any parties already served with notice.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7446;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.26]

89 Acts, ch 126, §2

CS89, §468.20

468.21 Hearing of petition — dismissal.

At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition in form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the estab-

lishment of such district, and the board may view the premises included in the said district. If it shall find that the construction of the proposed improvement will not materially benefit said lands or would not be for the public benefit or utility nor conducive to the public health, convenience, or welfare, or that the cost thereof is excessive it shall dismiss the proceedings.

[S13, §1989-a5; C24, 27, 31, 35, 39, §**7447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.27]
89 Acts, ch 126, §2
CS89, §468.21

468.22 Establishment — further investigation.

If the board shall find that such petition complies with the requirements of law in form and substance, and that such improvement would be conducive to the public health, convenience, welfare, benefit, or utility, and that the cost thereof is not excessive, and no claim shall have been filed for damages, it may locate and establish the said district in accordance with the recommendation of the engineer and the report and plans on file; or it may refuse to establish the proposed district if it deem best, or it may direct the engineer or another one employed for that purpose to make further examinations, surveys, plats, profiles, and reports for the modification of said plans, or for new plans in accordance with sections 468.11 and 468.12, and continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing; but any new parties rendered necessary by any modification or change of plans shall be served with notice as for the original establishment of a district. The county auditor shall appoint three appraisers as provided for in section 468.24 to assess the value of the right of way required for open ditches or other improvements.

[S13, §1989-a5; C24, 27, 31, 35, 39, §**7448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.28]
89 Acts, ch 126, §2
CS89, §468.22

468.23 Settling basins — purchase or lease of lands.

If a settling basin or basins are provided as a part of a drainage improvement, the board of supervisors may buy or lease the necessary lands in lieu of condemning said lands. The board may by purchase acquire the necessary lands required for right of way for open ditches or other improvements in lieu of condemning said lands.

[C27, 31, 35, §7448-a1; C39, §**7448.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.29]
89 Acts, ch 126, §2
CS89, §468.23

468.24 Appraisers.

If the board shall find that such improvement will materially benefit said lands, will be conducive to the public health, convenience, welfare, benefit, or utility, and that the law has been complied with as to form and substance of the petition, the service of notice, and the survey and report of the engineer, and that said improvement should be made, then if any claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date of which shall be fixed at the time of adjournment, and of which all interested parties shall take notice, and the auditor shall appoint three appraisers to assess damages, one of whom shall be an engineer, and two freeholders of the county who shall not be interested in nor related to any person interested in the proposed improvement, and the said appraisers shall take and subscribe an oath to examine the said premises, ascertain and impartially assess all damages according to their best judgment, skill, and ability.

[S13, §1989-a5; C24, 27, 31, 35, 39, §**7449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.30]
89 Acts, ch 126, §2
CS89, §468.24

468.25 Assessment — report — adjournment — other appraisers.

The appraisers appointed to assess damages shall view the premises and determine and fix the amount of damages to which each claimant is entitled, and shall place a separate valuation upon the acreage of each owner taken for right of way for open ditches or for settling basins, as shown by plat of engineer, and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing, showing the amount of damage sustained by each claimant. Should the report not be filed in time, or should any good cause for delay exist, the board may postpone the time of final action on the subject, and, if necessary, the auditor may appoint other appraisers.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7450;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.31]
89 Acts, ch 126, §2
CS89, §468.25

468.26 Award by board.

At the time fixed for hearing and after the filing of the report of the appraisers, the board shall examine said report, and may hear evidence thereon, both for and against each claim for damages and compensation, and shall determine the amount of damages and compensation due each claimant, and may affirm, increase, or diminish the amount awarded by the appraisers.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7451;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.32]
89 Acts, ch 126, §2
CS89, §468.26

468.27 Dismissal or establishment — permanent easement.

The board shall at the meeting, or at an adjourned session of the meeting, consider the costs of construction of the improvement as shown by the reports of the engineer and the amount of damages and compensation awarded to all claimants, and if, in its opinion, the costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, it shall then dismiss the petition and assess the costs and expenses to the petitioners and their sureties, but if it finds that the cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, it shall finally and permanently locate and establish the district and improvement.

Following its establishment, the drainage district is deemed to have acquired by permanent easement all right-of-way for drainage district ditches, tile lines, settling basins and other improvements, unless they are acquired by fee simple, in the dimensions shown on the survey and report made in compliance with sections 468.11 and 468.12 or as shown on the permanent survey, plat, and profile, if one is made. Upon the establishment of the district, the petitioners shall file with the county auditor the survey and report or permanent survey, plat, and profile, as set forth in sections 468.172 and 468.173. This filing constitutes constructive notice to all persons of the rights conferred by this section. The permanent easement includes the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement, and inspection. The owner or lessee shall be reimbursed for any crop damages incurred in the maintenance, repair, improvement, and inspection except within the right-of-way of the drainage district.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7452;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.33]

85 Acts, ch 163, §1; 87 Acts, ch 42, §1; 89 Acts, ch 126, §2

CS89, §468.27

91 Acts, ch 80, §1; 91 Acts, ch 191, §121; 92 Acts, ch 1163, §96

468.28 Dismissal on remonstrance.

If, at or before the time set for final hearing as to the establishment of a proposed levee, drainage, or improvement district, except subdrainage district, there shall have been filed with the county auditor, or auditors, in case the district extends into more than one county, a remonstrance signed by a majority of the landowners in the district, and these remonstrants must in the aggregate own seventy percent or more of the lands to be assessed for benefits or taxed for said improvements, remonstrating against the establishment of said levee, drainage, or improvement district, setting forth the reasons therefor, the board or boards as the case may be, shall assess to the petitioners and their sureties or apportion the costs among them as the board or boards may deem just or as said parties may agree upon. When all such costs have been paid, the board or boards of supervisors shall dismiss said proceedings and cause to be filed with the county auditor all surveys, plats, reports, and records in relation to the proposed district.

[C24, 27, 31, 35, 39, §**7453;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.34]

89 Acts, ch 126, §2

CS89, §468.28

468.29 Dissolution.

When for a period of two years from and after the date of the establishment of a drainage district, or when an appeal is taken or litigation brought against said district within two years from the date such appeal or litigation is finally determined, no contract shall have been let or work done or drainage certificates or bonds issued for the construction of the improvements in such district, a petition may be filed in the office of the auditor, addressed to the board of supervisors, signed by a majority of the persons owning land in such district and who, in the aggregate, own sixty percent or more of all the land embraced in said district, setting forth the above facts and reciting that provision has been made by the petitioners for the payment of all costs and expenses incurred on account of such district. The board shall examine such petition at its next meeting after the filing thereof, and if found to comply with the above requirements, shall dissolve and vacate said district by resolution entered upon its records, to become effective upon the payment of all the costs and expenses incurred in relation to said district. In case of such vacation and dissolution and upon payment of all costs as herein provided, the auditor shall note the same on the drainage record, showing the date when such dissolution became effective.

[C24, 27, 31, 35, 39, §**7454;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.35]

89 Acts, ch 126, §2

CS89, §468.29

468.30 Permanent survey, plat and profile.

When the improvement has been finally located and established, the board may if necessary appoint the said engineer or a new one to make a permanent survey of said improvement as so located, showing the levels and elevations of each forty-acre tract of land and file a report of the same with the county auditor together with a plat and profile thereof.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.36]

89 Acts, ch 126, §2

CS89, §468.30

468.31 Paying or securing damages.

The amount of damages or compensation finally determined in favor of any claimant shall be paid in the first instance by the parties benefited by the said improvement, or secured by bond in the amount of such damages and compensation with sureties approved by the auditor.

[S13, §1989-a7; C24, 27, 31, 35, 39, §**7456;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.37]

89 Acts, ch 126, §2

CS89, §468.31

468.32 Division of improvement.

After the damages as finally fixed, shall have been paid or secured, the board may divide said improvement into suitable sections, having regard to the kind of work to be done, numbering the same consecutively from outlets to the beginning, and prescribing the time within which the improvement shall be completed. A settling basin, if provided for, may be embraced in a section by itself.

[S13, §1989-a7; C24, 27, 31, 35, 39, §**7457;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.38]

89 Acts, ch 126, §2

CS89, §468.32

468.33 Supervising engineer — bond.

Upon the payment or securing of damages, the board shall appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district, to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of the engineer's duties.

[S13, §1989-a7; C24, 27, 31, 35, 39, §**7458;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.39]

89 Acts, ch 126, §2

CS89, §468.33

468.34 Advertisement for bids.

The board shall publish notice once each week for two consecutive weeks in a newspaper published in the county where the improvement is located, and publish additional advertisement and publication elsewhere as the board may direct. The notice shall state the time and place of letting the work of construction of the improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time fixed for the commencement, and the time of the completion of the work, that bids will be received on the entire work and in sections or divisions of it, and that a bidder will be required to deposit with the bid cash, a certified check on and certified by a bank in Iowa, or a certified share draft from a credit union in Iowa payable to the auditor or the auditor's order, at the auditor's office, in an amount equal to ten percent of the bid, in no case to exceed ten thousand dollars. If the estimated cost of the improvement exceeds fifteen thousand dollars, the board may make additional publication for two consecutive weeks in a contractors' journal of general circulation, giving only the type of proposed construction or repairs, estimated amount, date of letting, amount of bidder's bond, and name and address of the county auditor. All notices shall fix the date to which bids will be received and upon which the work will be let. However, when the estimated cost of the improvement is less than ten thousand dollars, the board may let the contract for the construction without taking bids and without publishing notice.

[C73, §1212; C97, §1944; S13, §1944; SS15, §1989-a8; C24, 27, 31, 35, 39, §**7459;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.40]

84 Acts, ch 1055, §10; 84 Acts, ch 1189, §1; 89 Acts, ch 126, §2

CS89, §468.34

94 Acts, ch 1051, §2

See §468.66

468.35 Bids — letting of work.

1. The board shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received and acted upon separately as to the main drain and each of the laterals, and each settling basin, if any, exercising their own discretion as to letting such work as to the main drain as a whole, or as to each lateral as a whole, or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work.

2. A bid shall be in writing, specifying the portion of the work upon which the bid is made, and filed with the auditor. The bid shall be accompanied with a bid security. The bid security shall be in the form of a deposit of cash, a certified check on and certified by a bank in Iowa, a certified share draft drawn on a credit union in Iowa, or a bid bond with a corporate surety satisfactory to the board as provided in section 73A.20. The bid security must be payable to the auditor or the auditor's order at the auditor's office in a sum equal to ten percent of the amount of the bid, but not to exceed ten thousand dollars. However, if the maximum limit on a bid security would cause a denial of funds or services from the federal government which would otherwise be available, or if the maximum limit would otherwise be inconsistent with the requirements of federal law, the maximum limit may be suspended to the extent necessary to prevent denial of federal funds or services or to eliminate the inconsistency with federal requirements. The cash, check, or share draft of an unsuccessful bidder shall be returned, and the bid bond of an unsuccessful bidder shall be canceled. The bid security of a successful bidder shall be maintained as a guarantee that the bidder will enter into con-

tract in accordance with the bids.

[SS15, §1989-a8; C24, 27, 31, 35, 39, §**7460, 7461;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.41, 455.42]

84 Acts, ch 1055, §11; 89 Acts, ch 126, §2

CS89, §468.35

94 Acts, ch 1051, §3

See §468.66

468.36 Performance bond — return of deposit.

A successful bidder is required to execute a bond with sureties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five percent of the contract price of the work to be done, conditioned for the timely, efficient, and complete performance of the contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out the contract. When a contract is executed and bond approved by the board, the certified check or certified share draft deposited with the bid shall be returned to the bidder.

[SS15, §1989-a8; C24, 27, 31, 35, 39, §**7462;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.43]

84 Acts, ch 1055, §12; 89 Acts, ch 126, §2

CS89, §468.36

468.37 Contracts.

All agreements and contracts for work or materials in constructing the improvements of such district shall be in writing, signed by the chairperson of the board of supervisors for and on behalf of the district and the parties who are to perform the work or furnish the materials specified in such contract. Such contract shall specify the particular work to be done or materials to be furnished, the time when it shall begin and when it shall be completed, the amount to be paid and the times of payment, with such other terms and conditions as to details necessary to a clear understanding of the terms thereof.

[C24, 27, 31, 35, 39, §**7463;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.44]

89 Acts, ch 126, §2

CS89, §468.37

468.38 Commissioners to classify and assess.

When a levee or drainage district has been located and finally established or, unless otherwise provided by law, when the required proceedings have been taken to enlarge, deepen, widen, change, or extend any of the ditches, laterals, settling basins, or drains of a district, or the required proceedings have been taken to annex additional lands to a district, or a plan of the United States government for original construction of the improvements in a district has been adopted by the district under sections 468.201 through 468.216, the board shall appoint three commissioners to assess benefits and classify the lands affected by the improvement. One of the commissioners shall be a competent civil engineer and two of them shall be resident freeholders of the county in which the district is located, but not living within, nor interested in, any lands included in the district, nor related to any party whose land is affected by the district. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of the lands, to fix the percentages of benefits, apportion and assess the costs and expenses of constructing the improvement, divide and rename original improvements, and, if included in the board's resolution, adopt special common outlet classifications to be maintained independent of the district's regular assessment schedules, according to law and their best judgment, skill, and ability. If the commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform the duties.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7464;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.45]

89 Acts, ch 126, §2

CS89, §468.38

91 Acts, ch 80, §2

See §468.67

468.39 Duties — time for performance — scale of benefits.

At the time of appointing said commissioners, the board shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the auditor. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto. They shall also make an equitable apportionment of the costs, expenses, fees, and damages computed on the basis of the percentages fixed.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7465;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.46]

89 Acts, ch 126, §2

CS89, §468.39

468.40 Rules of classification.

In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

In estimating the benefits as to the lands not traversed by said improvement, they shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow and relieves and protects the same from damage by erosion.

[S13, §1989-a13; SS15, §1989-a12; C24, 27, 31, 35, 39, §**7467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.47]

89 Acts, ch 126, §2

CS89, §468.40

468.41 Assessment for lateral ditches — reclassification of benefited lands.

1. In fixing the percentages and assessments of benefits and apportionment of costs of construction to lands benefited by lateral ditches and drains as a part of the entire improvement to be made in a drainage district, the commissioners shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches on the same basis and in the same manner as if said lateral was, with its sublaterals, being constructed as a subdistrict as provided in this subchapter, parts 1 through 5, reporting separately:

a. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of the main ditch, drain, or watercourse including pumping plant, if any.

b. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of such lateral improvement.

2. When there has been a repair or improvement to a lateral ditch or drain as provided in section 468.126 and the lands benefited by the lateral have not been classified as provided in this section, the board may order a classification of the lands and the commission shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches or drains on the same basis and in the same manner as if the lateral was with its sublaterals being constructed as a subdistrict as provided in this subchapter, parts 1 through 5. When this procedure is followed for the classification of any lateral ditch or drain in a given district, the board shall follow the same procedure for all other lateral ditches or drains in the district which have not been classified as prescribed in this section.

[S13, §1989-a23; SS15, §1989-a12; C24, 27, 31, 35, 39, §**7468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.48]

83 Acts, ch 30, §1; 89 Acts, ch 126, §2

CS89, §468.41

468.42 Railroad property — collection.

The commissioners to assess benefits and make apportionment of costs and expenses shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district, and make return thereof showing the benefit and the apportionment of costs and expenses of construction. Such assessment when finally fixed by the board shall constitute a debt due from the railroad company to the district, and unless paid it may be collected by ordinary proceedings for the district in the name of the county in any court having jurisdiction. All other proceedings in relation to railroads, except as otherwise provided, shall be the same as provided for individual property owners within the levee or drainage district.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.49]

89 Acts, ch 126, §2

CS89, §468.42

468.43 Public highways and state-owned lands.

When any public highway or other public land extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway or other public land, and the board of supervisors shall assess the same against such highway and land.

Such assessments against primary highways and other state-owned lands under the jurisdiction of the state department of transportation shall be paid by the state department from the primary road fund on due certification of the amount by the county treasurer to the department, and against all secondary roads and other county owned lands under the jurisdiction of the board of supervisors, from county funds.

When state-owned land under the jurisdiction of the department of natural resources is situated within a levee or drainage district, the commissioners assessing benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to the land, and the board of supervisors shall assess the amount against the land.

The assessments against lands under the jurisdiction of the department of natural resources shall be paid by the executive council upon certification of the amount by the county treasurer. There is appropriated from any funds in the general fund of the state not otherwise appropriated amounts sufficient to pay the certified assessments.

[S13, §1989-a19, -a26; C24, 27, 31, 35, 39, §**7470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.50]

83 Acts, ch 123, §183, 209; 85 Acts, ch 267, §3; 86 Acts, ch 1008, §1; 89 Acts, ch 126, §2

CS89, §468.43

97 Acts, ch 194, §1

468.44 Report of commissioners.

The commissioners, within the time fixed or as extended, shall make and file in the auditor's office a written verified report in tabulated form as to each forty-acre tract, and each tract of less than forty acres, setting forth:

1. The names of the owners thereof as shown by the transfer books of the auditor's office or the reports of the engineer on file, showing said entire classification of lands in said district.

2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense, or estimated costs or expense, against each:

a. For main ditches, and settling basins.

b. For laterals.

c. For levees and pumping station.

d. For erosion protection and control or flood control.

3. The aggregate amount of all assessments.

4. Any specific benefits other than those derived from the drainage of agricultural lands shall be separately stated.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.51]

89 Acts, ch 126, §2

CS89, §468.44

See §468.67

468.45 Notice of hearing.

The board shall fix a time for a hearing upon the report of the commissioners, and the auditor shall cause notice to be served upon each person whose name appears as owner, naming the person, and also upon the person or persons in actual occupancy of any tract of land without naming the person or persons, of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a levee or drainage district, and shall state the amount of assessment of costs and expenses of construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the auditor at or before the time set for such hearing.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.52]

89 Acts, ch 126, §2

CS89, §468.45

468.46 Hearing and determination.

At the time fixed or at an adjourned hearing, the board shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be just and equitable.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.53]

89 Acts, ch 126, §2

CS89, §468.46

468.47 Evidence — conclusive presumption.

At such hearing, the board may hear evidence both for and against the approval of said report or any portion thereof, but it shall not be competent to show that any of the lands in said district assessed for benefits or against which an apportionment of costs and expenses has been made will not be benefited by such improvement in some degree. Any interested party may be heard in argument in person or by counsel.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7474;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.54]

89 Acts, ch 126, §2

CS89, §468.47

Similar provision, §468.92

468.48 Notice of increased assessment.

The board shall cause notice to be served upon the owner of any tract of land or easement against which it is proposed to increase the assessment, requiring the owner to appear at a fixed date and show cause why such assessment should not be so increased. Such notice shall be served for the time and in the manner prescribed in section 468.15 or section 468.16, as the case may be, except that personal service in the same manner as an original notice may be made in lieu of the other methods.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7475;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.55]

89 Acts, ch 126, §2

CS89, §468.48

Service of notice, R.C.P. 1.302 – 1.315

468.49 Classification as basis for future assessments.

A classification of land for drainage, erosion or flood control purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said district unless revised by the board in the manner provided for reclassification, except that where land included in said classification has been destroyed, in whole or in part, by the erosion of a river, or where additional right of way has been subsequently taken for drainage purposes,

said land which has been so eroded and carried away by the action of a river or which has been taken for additional right of way, may be removed by said board from said district as classified, without any reclassification, and no assessment shall thereafter be made on the land so removed. Any deficiency in assessment existing as the result of said action of the board shall be spread by it over the balance of lands remaining in said district in the same ratio as was fixed in the classification of the lands, payable at the next taxpaying period.

Except districts established by mutual agreement in accordance with section 468.142 in the event any forty-acre tract or less, or any lot, tract, or parcel, as set forth in the existing classification or reclassification of any drainage district now or hereafter established, is divided into two or more tracts, whether such division is by sale or condemnation or platted as a subdivision, the classification of the original tract shall be apportioned to the resulting parcels, regardless of use, except for land taken for additional drainage right of way. The classification of the original tract may be apportioned between the resulting parcels by agreement between the parties to such division. The parties shall file with the county auditor a written agreement setting forth the original description and the description of the tracts as subdivided and the percentage of the original classification apportioned to each. This agreement shall bear the signature of all of the parties to such subdivision. The agreement contemplated herein may be contained in the deed or other instrument effecting the division of the land, which agreement shall be binding upon the grantee or grantees by their acceptance of such instrument and their signatures shall not be necessary. The auditor shall enter this agreement in the drainage record and amend the current classification of the district in accordance with such agreement.

In the event the parties to such subdivision cannot agree as to the apportionment of the percentage classification, the board of supervisors shall, upon application of either party, appoint a commission having the qualifications of commissioners, in accordance with section 468.38. The commissioners shall inspect the lands involved and apportion the existing classification of the original tract equitably and fairly to each of the several tracts as subdivided and shall make a full, accurate and detailed report thereof and file the same with the county auditor within the time set by the board. The report of the commissioners shall set forth the names of the owners thereof, the description of each of the tracts and the percentage of the original classification that each such tract shall bear (1) for main ditches and settling basins, (2) for laterals, (3) for levees and pumping station. Thereafter all the proceedings in relation thereto as to notice of hearing and fixing of percentage benefits shall be as in this subchapter, parts 1 through 5, provided in relation to original classification and assessments, and at such hearing, the board may affirm, increase or diminish the percentage of benefits so as to make them just and equitable, and cause the record of the existing classification, percentage of benefits or assessments, or both, to be modified accordingly. In the event the parties neither agree as to the apportionment of classification nor make application for the appointment of commissioners, then the auditor of the county in which the land is situated shall make such apportionment upon an equitable basis and enter the same of record as herein provided. No tract of land included within the boundary of any drainage district shall be exempt from drainage assessments or reassessments, except as herein provided.

[SS15, §1989-a12; C24, 27, §7466, 7476; C31, 35, 39, §**7476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.56]

89 Acts, ch 126, §2

CS89, §468.49

468.50 Levy — interest.

When the board has finally determined the matter of assessments of benefits and apportionment, the board shall levy the assessments as fixed by it upon the lands within the district, but an assessment on a tract, parcel, or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars. All assessments shall be levied at that time as a tax and shall bear interest at a rate determined by the board notwithstanding chapter 74A from that date, payable annually, except as provided as to cash payments within a specified time.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7477;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.57]

83 Acts, ch 101, §93; 89 Acts, ch 126, §2

CS89, §468.50

94 Acts, ch 1035, §1; 94 Acts, ch 1051, §4

468.51 Lien of tax.

Such taxes shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes.

[S13, §1989-a45; C24, 27, 31, 35, 39, §**7478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.58]

89 Acts, ch 126, §2

CS89, §468.51

468.52 Levy for deficiency.

If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional assessment and levy in the same ratio as the first for either purpose, but an assessment on any tract, parcel, or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars. All assessments shall be levied at that time as a tax and, notwithstanding chapter 74A, shall bear interest at a rate determined by

the board from that date, payable annually, except as provided as to cash payments within a specified time.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7479;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.59]

89 Acts, ch 126, §2

CS89, §468.52

94 Acts, ch 1051, §5; 2001 Acts, ch 107, §1

468.53 Record of drainage taxes.

All drainage or levee tax assessments shall be entered in the drainage record of the district to which they apply, and also upon the tax records of each county.

[C24, 27, 31, 35, 39, §**7480;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.60]

89 Acts, ch 126, §2

CS89, §468.53

468.54 Funds — disbursement — interest.

The taxes when collected shall be kept in a separate fund known as the county drainage or levee fund and shall be paid out only for purposes properly connected with and growing out of the county drainage and levee districts on order of the board. The auditor shall continue to keep a record of each of the drainage and levee district's funds so as to accurately reflect the financial condition of each district account. The county treasurer, on order of the board of supervisors, shall invest such funds not immediately needed for current operating expenses in United States government bonds, in time certificates of deposit, in savings accounts in banks as the board shall approve, in the interest-bearing obligations of the drainage and levee districts of the county, or as provided by chapter 12C. Interest collected by the treasurer on the funds invested shall be deposited in the county drainage or levee fund, and on July 1 of each year the auditor shall apportion and credit the interest to each drainage or levee district account in the proportion which the average credit balance of each district bears to the average balance of the county drainage or levee fund. The averages to be ascertained shall be the averages of the balances existing on the first of each month during the fiscal year immediately preceding. Interest collected on drainage or levee district taxes shall be credited to the district for which the taxes are being collected. This section does not permit expenditures in behalf of any district in excess of its share of the county drainage or levee fund. This section does not apply to drainage and levee districts under trustee management unless the trustees consent to its application, and in the absence of such consent, section 468.528 applies.

[S13, §1989-a13; C24, 27, 31, 35, 39, §**7481;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.61]

89 Acts, ch 126, §2

CS89, §468.54

92 Acts, ch 1016, §35

468.55 Assessments — maturity and collection.

If a landowner selects an option provided in section 468.57, all drainage or levee tax assessments become due and payable with the first half of ordinary taxes, and shall be collected in the same manner with the same interest for delinquency and the same manner of enforcing collection by tax sales. As an alternative, the certifying authority may request that the annual installment be payable in two equal payments, one-half with the September payment of ordinary taxes and one-half payable with the March payment of ordinary taxes. All drainage or levee tax assessments not optioned for installment payments by the landowner shall become due and payable within thirty days after the levy of assessments.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7482;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.62]

89 Acts, ch 126, §2

CS89, §468.55

92 Acts, ch 1016, §36; 92 Acts, ch 1177, §1; 2001 Acts, ch 107, §2

Collection of taxes, chapter 445

468.56 Payment of assessments.

All assessments for benefits, as corrected and approved by the board, shall be levied at one time against the property benefited, and when levied and certified by the board, are payable at the office of the county treasurer. A person may pay the person's assessment in full without interest within thirty days after the levy of assessments, and before any improvement certificates or drainage bonds are issued for the assessment, and may pay a certificate at any time after issue, with accrued interest.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7483;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.63]

84 Acts, ch 1028, §1; 84 Acts, ch 1189, §2; 88 Acts, ch 1039, §1; 89 Acts, ch 126, §2

CS89, §468.56

468.57 Installment payments — waiver.

If the owner of any land against which a levy exceeding one hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing endorsed upon any improvement certificate referred to in section 468.70, or in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the property, then such owner shall have the following options:

1. To pay one-third of the amount of the assessment at the time of filing the agreement; one-third within twenty days after the engineer in charge certifies to the auditor that the improvement is one-half completed; and the remaining one-third within twenty days after the improvement has

been completed and accepted by the board. All installments shall be without interest if paid at said times, otherwise the assessments shall bear interest from the date of the levy at a rate determined by the board notwithstanding chapter 74A, payable annually, and be collected as other taxes on real estate, with like interest for delinquency.

2. To pay the assessments in not less than ten nor more than twenty equal installments, with the number of payments and interest rate determined by the board, notwithstanding chapter 74A. The first installment of each assessment, or the total amount if less than one hundred dollars, is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of the levy as set by the board to the first day of December following the due date. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the first semiannual payment of ordinary taxes. All future installments of an assessment may be paid on any date by payment of the then outstanding balance plus interest to the next December 1, or additional annual installments may be paid after the current installment has been paid before December 1 without interest. A payment must be for the full amount of the next installment. If installments remain to be paid, the next annual installment with interest added to December 1 will be due. After December 1, if a drainage assessment is not delinquent, a property owner may pay one-half or all of the next annual installment of principal and interest of a drainage assessment prior to the delinquency date of the installment. When the next installment has been paid in full, successive principal installments may be prepaid. The county treasurer shall accept the payments of the drainage assessment, and shall credit the next annual installment or future installments of the drainage assessment to the extent of the payment or payments, and shall remit the payments to the drainage fund. If a property owner elects to pay one or more principal installments in advance, the pay schedule shall be advanced by the number of principal installments prepaid. Each installment of an assessment with interest on the unpaid balance is delinquent from October 1 after its due date, including those instances when the last day of September is a Saturday or Sunday, and bears the same delinquent interest as ordinary taxes. When collected, the interest must be credited to the same drainage fund as the drainage special assessment.

The provisions of this section and of sections 468.58 through 468.61 may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of section 468.126.

[S13, §1989-a26, -a27; SS15, §1989-a12; C24, 27, 31, 35, 39, §**7484;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.64]

85 Acts, ch 163, §2; 86 Acts, ch 1099, §1; 89 Acts, ch 126, §2

CS89, §468.57

92 Acts, ch 1016, §37; 94 Acts, ch 1035, §2; 95 Acts, ch 57, §24; 97 Acts, ch 121, §26

468.58 Installment payments after appeal.

When an owner takes an appeal from the assessment against any of the owner's land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal the owner shall file in the office of the auditor the owner's written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date.

[C24, 27, 31, 35, 39, §**7486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.65]

89 Acts, ch 126, §2

CS89, §468.58

468.59 Notice of half and full completion.

Within two days after the engineer has filed a certificate that the work is half completed and within two days after the board of supervisors has accepted the completed improvement as in this subchapter, parts 1 through 5, provided, the county auditor shall notify the owner of each lot or parcel of land who has signed an agreement of waiver as provided in section 468.57, of such fact. Such notice shall be given by certified mail sent to such owners, respectively, at the addresses filed with the auditor at the time of making such agreement of waiver.

[C24, 27, 31, 35, 39, §**7487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.66]

89 Acts, ch 126, §2

CS89, §468.59

468.60 Lien of deferred installments.

No deferred installment of the amount assessed as between vendor and vendee, mortgagor and mortgagee shall become a lien upon the property against which it is assessed and levied until June 30 of the preceding fiscal year in which it is due and payable.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7488;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.67]

89 Acts, ch 126, §2

CS89, §468.60

468.61 Surplus funds — application of.

When one-half or more of all assessments for a drainage or levee district have been paid and it is ascertained that there will be a surplus in the district fund after all assessments have been paid, the board may refund to the owner of each tract of land, not more than fifty percent of the owner's proportionate part of such surplus. When all construction work has been completed and all cost paid, and all assessments have been paid in full, the board may refund, to the owner of each tract of land, the owner's proportionate part of any surplus funds except such portion of the surplus as the board considers should be retained for a sinking fund to pay future maintenance and repair costs.

[C24, 27, 31, §7489; C35, §7488-e1, 7489; C39, §**7488.1, 7489;** C46, §455.68, 455.69; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.68]

89 Acts, ch 126, §2

CS89, §468.61

468.62 Change of conditions — modification of plan.

If, after the improvement has been finally located and before construction thereof has been completed, there has been a change of conditions of such nature that the plan of improvement as adopted should be modified or amended, the board may direct the engineer appointed under section 468.30 or another engineer, to make a report showing such changes or modifications of the plan of improvement as may be necessary to meet the change of conditions. Upon the filing of such report, the board shall have jurisdiction to adopt said modified or amended plan of improvement or may further modify or amend and adopt the same by following the procedure provided in sections 468.201 and 468.205 through 468.209 so far as same are applicable, except that awards for damages shall not be canceled where there has been no change made in the improvement which would increase or decrease the damages awarded. However, modifications and changes may be made in the plan on which hearing was held without further notice or hearing, provided the same do not increase or decrease the estimated cost to the district by more than twenty-five percent.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.69]

89 Acts, ch 126, §2

CS89, §468.62

468.63 Drainage subdistrict.

After the establishment of a drainage district, a person owning land within the district which has been assessed for benefits, but which is separated from the main ditch, drain, or watercourse for which it has been so assessed, by the land of others, who desires a ditch or drain constructed from the person's land across the land of the others in order to connect with the main ditch, drain, or watercourse, and is unable to agree with the intervening owners on the terms and conditions on which the person may enter upon their lands and cause to be constructed the connecting drain or ditch, may file a petition for the establishment of a subdistrict. After the petition is filed, the proceedings shall be the same as provided for the establishment of an original district.

[S13, §1989-a23; C24, 27, 31, 35, 39, §**7490;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.70]

86 Acts, ch 1050, §1; 88 Acts, ch 1069, §1; 89 Acts, ch 126, §2

CS89, §468.63

97 Acts, ch 163, §1

468.64 Presumption — jurisdiction.

Such connecting ditch or drain which a person shall cause to be constructed shall be presumed conducive to the public health, welfare, convenience, and utility the same as if it had been so constructed as a part of the original improvement of said district. When such subdistrict has been established and constructed it shall become and be a part of the improvement of such drainage district as a whole and be under the control and supervision of the board to the same extent and in every way as if it had been a part of the original improvement of such district.

[S13, §1989-a23; C24, 27, 31, 35, 39, §**7491;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.71]

89 Acts, ch 126, §2

CS89, §468.64

468.65 Reclassification.

When, after a drainage or levee district has been established, except districts established by mutual agreement in accordance with section 468.142, and the improvements thereof constructed and put in operation, there has been a material change as to lands occupied by highway or railroad right of way or in the character of the lands benefited by the improvement, or when a repair, improvement, or extension has become necessary, the board may consider whether the existing assessments are equitable as a basis for payment of the expense of maintaining the district and of making the repair, improvement or extension. If they find the same to be inequitable in any particular, they shall by resolution express such finding, appoint three commissioners possessing the qualifications prescribed in section 468.38 and order a reclassification as follows:

1. If they find the assessments to be generally inequitable they shall order a reclassification of all property subject to assessment, such as lands, highways, and railroads in said district.

2. If the inequity ascertained by the board is limited to the proportion paid by highways or railroads, a general reclassification of all lands shall not be necessary but the commissioners may evaluate and determine the fair proportion to be paid by such highways or railroads or both as provided

in sections 468.42 and 468.43.

3. Any benefits of a character for which levee or drainage districts may be established and which are attributable to or enhanced by the improvement or by the repair, improvement, or extension thereof, shall be a proper subject of consideration in a reclassification notwithstanding the district may have been originally established for a limited purpose.

4. If after a district has been reclassified, the board in its judgment concludes there were errors in the reclassification or there is an inequitable assessment of benefits, the board may on its own motion, after notice to the landowners involved as provided in sections 468.14 through 468.18 and by resolution, order the district or any portion of the district to again be reclassified as prescribed in this section and in section 468.67.

The board may include in its resolution an order to the commissioners that they prepare special common outlet classifications, if needed, in conjunction with the reclassification of the district.

Such reclassification when finally adopted shall remain the basis for all future assessments unless revised as provided in this subchapter, parts 1 through 5.

[C24, 27, 31, 35, 39, §**7492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.72]

89 Acts, ch 126, §2

CS89, §468.65

91 Acts, ch 80, §3

468.66 Bids required.

In case the board shall finally determine that any such changes as defined in section 468.62 shall be made involving an expenditure of ten thousand dollars or more, the work shall be let by bids in the same manner as is provided for the original construction of such improvements.

[C24, 27, 31, 35, 39, §**7493;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.73]

89 Acts, ch 126, §2

CS89, §468.66

94 Acts, ch 1051, §6

See §468.34, 468.35

468.67 Procedure governing reclassification.

The proceedings for such reclassification shall in all particulars be governed by the same rules as for original classification. The commissioners shall fix the percentage of actual benefits and make an equitable apportionment of the costs and expenses of such repairs, improvements or extensions and file a report thereof with the auditor in the same form and manner as for original classification. Thereafter, all the proceedings in relation thereto as to notice, hearing, and fixing of percentage of benefits and amount of assessments shall be as in this subchapter, parts 1 through 5, provided in relation to original classification and assessments, and at such hearing the board may affirm, increase, or diminish the percentage and assessment of benefits and apportionment of costs and expenses so as to make them just and equitable, and cause the record of the original classification, percentage of benefits, and assessments to be modified accordingly.

[C24, 27, 31, 35, 39, §**7494;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.74]

89 Acts, ch 126, §2

CS89, §468.67

See §468.38, 468.44

468.68 Drainage warrants received for assessments.

Warrants drawn upon the construction or maintenance funds of any district for which an assessment has been or must be levied, shall be transferable by endorsement, and may be acquired by any taxpayer of such district and applied at their accrued face value upon the assessment levied to create the fund against which the warrant was drawn; when the amount of the warrant exceeds the amount of the assessment, the treasurer shall cancel the said warrant, and give the holder thereof a certificate for the amount of such excess, which certificate shall be filed with the auditor, who shall issue a warrant for the amount of such excess, and charge the treasurer therewith. Such certificate is transferable by endorsement, and will entitle the holder to the new warrant, made payable to the holder's order, and bearing the original number, preceded by the words, "Issued as unpaid balance due on warrant number . . . . . ."

[S13, §1989-a13; C24, 27, 31, 35, 39, §**7495;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.75]

89 Acts, ch 126, §2

CS89, §468.68

468.69 Bonds received for assessments.

Bonds issued for the cost of construction, maintenance or repair of any drainage or levee district, or for the refunding of any obligation of such district, may be acquired by any taxpayer or group of taxpayers of such district, and applied at their face value in the order of their priority, if any priority exists between bonds of the same issue, upon the payment of the delinquent and/or future assessments levied against the property of such taxpayers to pay off the bonds so acquired; the interest coupons attached to such bonds, may likewise be applied at their face value to the payment of assessments for interest accounts, delinquent or future.

[C35, §7495-e1; C39, §**7495.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.76]

89 Acts, ch 126, §2

CS89, §468.69

See §74.1 et seq.

468.70 Installment assessments — interest-bearing warrants — improvement certificates.

The board may provide by resolution for the payment of assessments in not more than twenty annual installments with interest at a rate determined by the board, notwithstanding chapter 74A. The board may issue warrants bearing interest at the same rate, which warrants shall be numbered and state a maturity date in which event they shall bear interest from the date of issuance without being presented for payment and marked unpaid for want of funds. The warrants may be sold by the board for cash in an amount not less than their face value, together with any accrued interest.

The board may provide by resolution for the issuance of improvement certificates payable to bearer or to the contractors, naming them, who have constructed the said improvement or completed any part thereof, in payment or part payment of such work.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.77]

89 Acts, ch 126, §2

CS89, §468.70

94 Acts, ch 1035, §3

468.71 Form, negotiability and effect.

Each of such certificates shall state the amount of one or more drainage assessments or part thereof made against the property, designating it and the owner thereof liable for the payment of such assessments. Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every such assessment or part thereof described in such certificates, and shall authorize such bearer to collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.78]

89 Acts, ch 126, §2

CS89, §468.71

468.72 Interest — place of payment.

Such certificates shall bear interest at a rate determined by the board, payable annually, and shall be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount to be credited on the certificates issued therefor.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.79]

89 Acts, ch 126, §2

CS89, §468.72

94 Acts, ch 1035, §4

468.73 Sale at par — right to pay.

Any person shall have the right to pay the amount of the person's assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any time. No improvement certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Every such certificate, when paid, shall be delivered to the treasurer and by the treasurer surrendered to the party to whose assessment it relates.

[S13, §1989-a26, -a27; C24, 27, 31, 35, 39, §**7502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.80]

89 Acts, ch 126, §2

CS89, §468.73

468.74 Drainage bonds.

When a drainage district has been established or the making of any subsequent repair or improvement determined upon, if the board of supervisors shall find that the cost of such improvement will create assessments against the land included therein greater than should be levied in a single year upon the lands benefited by such improvement, then, instead of issuing improvement certificates, as provided in sections 468.70 through 468.73 the board may fix the amount that shall be levied and collected each year until such cost and expenses are paid, and may issue drainage bonds of the county covering all assessments exclusive of assessments of one hundred dollars and less.

Before such bonds shall be issued, the governing body of the district shall cause an action for declaratory judgment to be brought in the district court of the county in which the bonds are to be issued, asking that their legality be confirmed. The court shall fix a date for hearing thereon and notice thereof shall be given to the owners of each lot or tract of land within the district, which shall be affected by an assessment to pay the proposed bonds, as shown by the transfer books in the auditor's office; also to the holders of liens of record upon said lands; and to all persons to whom it may concern without naming them specifically. Such notice shall be given by publication and by mailing for the same time in advance of hearing and in the same manner prescribed in section 468.15. After the entry of the declaratory judgment adjudicating the validity of such bonds, the approval of the district court shall be endorsed on the bonds before their issuance.

[C97, §1953; S13, §1989-a27; C24, 27, 31, 35, 39, §**7503;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.81]

89 Acts, ch 126, §2

CS89, §468.74

468.75 Form.

Each of such bonds shall be numbered and have printed upon its face that it is a "Drainage Bond",

stating the county and number of the district for which it is issued, the date and maturity thereof, that it is in pursuance of a resolution of the board of supervisors, that it is to be paid only from taxes for levee and drainage improvement purposes levied and collected on the lands assessed for benefits within the district for which the bond is issued.

[S13, §1989-a27; C24, 27, 31, 35, 39, §**7504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.82]

89 Acts, ch 126, §2

CS89, §468.75

468.76 Amount — interest — maturity.

In no case shall the aggregate amount of all bonds issued exceed the benefits assessed. The bonds shall not be issued for a greater amount than the aggregate amount of assessments for the payment of which they are issued, nor for a longer period of maturity than twenty years. The bonds shall bear interest at a rate determined by the board, notwithstanding chapter 74A, payable semiannually, on June 1 and December 1 of each year. The interest on unpaid assessments shall be at a rate determined by the board.

[C97, §1953; S13, §1989-a27; C24, 27, 31, 35, 39, §**7505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.83]

89 Acts, ch 126, §2

CS89, §468.76

94 Acts, ch 1035, §5

468.77 Maturity — interest — highway benefits.

The board shall fix the amount, maturity, and interest of all bonds to be issued. It shall determine the amount of assessments to highways for benefits within the district to be covered by each bond issue. The taxes levied for benefits to highways and other public lands within any drainage or levee district shall be paid at the same times and in the same proportion as assessments against the lands of private owners.

[S13, §1989-a27; C24, 27, 31, 35, 39, §**7506;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.84]

89 Acts, ch 126, §2

CS89, §468.77

468.78 Sale or application at par — premium.

Such bonds may be applied at par with accrued interest to the payment of work as it progresses upon the improvements of the district, or, the board may sell, through the county treasurer, said bonds at not less than par with accrued interest and devote the proceeds to such payment. Any premium derived from the sale of said bonds shall be credited to the drainage fund of the district.

[C97, §1953; S13, §1989-a27; C24, 27, 31, 35, 39, §**7508;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.86]

89 Acts, ch 126, §2

CS89, §468.78

468.79 Deficiency levy — additional bonds.

If any levy of assessments is not sufficient to meet the interest and principal of outstanding bonds, or if default shall occur by reason of nonpayment of assessments, additional assessments may be made on the same classification as the previous ones. Additional bond issues may be made when necessary to complete full payment for improvements, by the same proceedings as previous issues.

[C97, §1953; S13, §1989-a27; C24, 27, 31, 35, 39, §**7509;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.87]

89 Acts, ch 126, §2

CS89, §468.79

468.80 Funding or refunding indebtedness.

Drainage districts may settle, adjust, renew, or extend the time of payment of the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, certificates, or judgments, and may fund or refund the same and issue bonds therefor in the manner provided in section 468.367.

[C27, 31, 35, §7509-a1; C39, §**7509.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.88]

89 Acts, ch 126, §2

CS89, §468.80

Additional provisions, subchapter IV, part 1

468.81 Record of bonds.

A record of the numbers, amounts, and maturities of all such bonds shall be kept by the auditor showing specifically the lands embraced in the district upon which the tax has not been previously paid in full.

[S13, §1989-a27; C24, 27, 31, 35, 39, §**7510;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.89]

89 Acts, ch 126, §2

CS89, §468.81

468.82 Payment.

1. All assessments of twenty dollars and less shall be paid in cash.

2. The board at the time of making the levy, shall fix a time within which all assessments in excess of one hundred dollars may be paid in cash, and before any bonds are issued, publish notice in an official newspaper in the county where the district is located, of such time. After the expiration of such time, no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds.

[C24, 27, 31, 35, 39, §**7511, 7512;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.90, 455.91]
89 Acts, ch 126, §2
CS89, §468.82

468.83 Appeals.

1. Any person aggrieved may appeal from any final action of the board in relation to any matter involving the person's rights, to the district court of the county in which the proceeding was held.

2. In districts extending into two or more counties, appeals from final orders resulting from the joint action of the several boards or the board of trustees of such district may be taken to the district court of any county into which the district extends.

[S13, §1989-a6, -a11, -a14, -a35; C24, 27, 31, 35, 39, §**7513, 7514;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.92, 455.93]
89 Acts, ch 126, §2
CS89, §468.83

468.84 Time and manner.

All appeals shall be taken within twenty days after the date of final action or order of the board from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken and the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court.

[S13, §1989-a6, -a14, -a35; C24, 27, 31, 35, 39, §**7515;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.94]
89 Acts, ch 126, §2
CS89, §468.84
Presumption of approval of bond, §636.10

468.85 Transcript.

When notice of any appeal with the bond as required by section 468.84 shall be filed with the auditor, the auditor shall forthwith make and certify a transcript of the notice of appeal and appeal bond, and file the same with the clerk.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7516;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.95]
89 Acts, ch 126, §2
CS89, §468.85

468.86 Petition — docket fee — waiver — dismissal.

Within twenty days after perfection of the appeal the appellant shall file a petition setting forth the order or final action of the board appealed from and the grounds of the appellant's objections and the appellant's complaint, with a copy of the appellant's claim for damages or objections filed with the auditor. The appellant shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7517;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.96]
89 Acts, ch 126, §2
CS89, §468.86

468.87 Pleadings on appeal.

It shall not be necessary for the appellees to file an answer to the petition unless some affirmative defense is made thereto, but they may do so.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7518;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.97]
89 Acts, ch 126, §2
CS89, §468.87

468.88 Proper parties — employment of counsel.

In all actions or appeals affecting the district, the board of supervisors shall be a proper party for the purpose of representing the district and all interested parties therein, other than the adversary parties, and the employment of counsel by the board shall be for the purpose of protecting the rights of the district and interested parties therein other than the adversary parties.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7519;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.98]
89 Acts, ch 126, §2
CS89, §468.88

468.89 Plaintiffs and defendants.

In all appeals or actions adversary to the district, the appellant or complaining party shall be entitled the plaintiff, and the board of supervisors and drainage district it represents, the defendants.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7520;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.99]
89 Acts, ch 126, §2
CS89, §468.89

468.90 Right of board and district to sue.

In all appeals or actions for or in behalf of the district, the board and the drainage district it represents may sue as the plaintiffs.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7521;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.100]
89 Acts, ch 126, §2
CS89, §468.90

468.91 Trial on appeal — consolidation.

Appeals from orders or actions of the board fixing the amount of compensation for lands taken for right of way or the amount of damages to which any claimant is entitled shall be tried as ordinary

proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases.

[S13, §1989-a6, -a14, -a35; C24, 27, 31, 35, 39, §**7522;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.101]

89 Acts, ch 126, §2

CS89, §468.91

468.92 Conclusive presumption on appeal.

On the trial of an appeal from the action of the board in fixing and assessing the amount of benefits to any land within the district as established, it shall not be competent to show that any lands assessed for benefits within said district as established are not benefited in some degree by the construction of the said improvement.

An exception to the conclusiveness of an assessment under this section shall be in those cases where it has been determined under section 468.188 that land has later been deprived of benefits received by a division of the district by some other improvement.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7523;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.102]

89 Acts, ch 126, §2

CS89, §468.92

Similar provision, §468.47

468.93 Order as to damages — duty of clerk.

If the appeal is from the action of the board as to the amount of damages or compensation awarded, the amount found by the court shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of said court to the board of supervisors who shall thereafter proceed as if such amount had been by it allowed to the claimant.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7524;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.103]

89 Acts, ch 126, §2

CS89, §468.93

468.94 Costs.

Unless the result on the appeal is more favorable to the appellant than the action of the board, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7525;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.104]

89 Acts, ch 126, §2

CS89, §468.94

468.95 Decree as to establishing district or including lands.

On appeal from the action of the board in establishing or refusing to establish said district, or in including land within the district, the court may enter such order or decree as may be equitable and just in the premises, and the clerk of said court shall certify the decree or order to the board of supervisors which shall proceed thereafter in said matter as if such order had been made by the board. The taxation of costs among the litigants shall be in the discretion of the court.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7526;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.105]

89 Acts, ch 126, §2

CS89, §468.95

468.96 Appeal as exclusive remedy — nonappellants.

Upon appeal the decision of the court shall in no manner affect the rights or liabilities of any person who did not appeal. The remedy by appeal provided for in this subchapter, parts 1 through 5, shall be exclusive of all other remedies.

[S13, §1989-a46; C24, 27, 31, 35, 39, §**7527;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.106]

89 Acts, ch 126, §2

CS89, §468.96

468.97 Reversal by court — rescission by board.

In any case where the decree has been entered setting aside the establishment of a drainage district for errors in the proceedings, and such decree becomes final, the board shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and shall refund any and all assessments paid.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7528;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.107]

89 Acts, ch 126, §2

CS89, §468.97

468.98 Setting aside establishment — procedure.

After the court on appeal has entered a decree revising or modifying the action of the board, the board shall fix a new date for hearing, and proceed in all particulars in the manner provided for the original establishment of the district, avoiding the errors and irregularities for which the original establishment was set aside, and after a valid establishment thereof, proceed in all particulars as provided by law in relation to the original establishment of such districts.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.108]

89 Acts, ch 126, §2

CS89, §468.98

468.99 Reassessment to cure illegality.

Whenever any special assessment upon any lands within any drainage district shall have been adjudged to be void for any jurisdictional defect or for any illegality or uncertainty as to the terms of any contract and the improvement shall have been wholly completed, the board or boards of supervisors shall have power to remedy such illegality or uncertainty as to the terms of any such contract with the consent of the person with whom such contract shall have been entered into and make certain the terms of such contract and shall then cause a reassessment of such land to be made on an equitable basis with the other land in the district by taking the steps required by law in the making of an original assessment and relevying the tax in accordance with such assessment, and such tax shall have the same force and effect as though the board or boards of supervisors had jurisdiction in the first instance and no illegality or uncertainty existed in the contract.

[C24, 27, 31, 35, 39, §**7530;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.109]

89 Acts, ch 126, §2

CS89, §468.99

468.100 Monthly estimate — payment.

The supervising engineer shall, on or before the tenth day of each calendar month, furnish the contractor and file with the auditor estimates for work done during the preceding calendar month under the contract on each section, and the auditor shall at once draw warrants in favor of such contractor on the drainage funds of the district or give the contractor an order directing the county treasurer to deliver to the contractor or contractors improvement certificates, or drainage bonds as the case may be, for ninety percent of the estimate on work done. Such monthly estimates shall remain on file in the office of the auditor as a part of the permanent records of the district to which they relate. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines, not however, in amounts in excess of one thousand dollars.

All of the provisions of this section shall, when applicable, apply to repair work and improvement work in the same force and effect as to original construction.

[C97, §1944; S13, §1944, 1989-a9; C24, 27, 31, 35, 39, §**7531;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.110]

89 Acts, ch 126, §2

CS89, §468.100

468.101 Completion of work — report — notice.

When the work to be done under a contract is completed to the satisfaction of the engineer in charge of construction, the engineer shall report and certify that the contract is completed to the board. Upon receipt of the report, the board shall set a day to consider the report and shall give notice of the time and purpose of the meeting by ordinary mail to the owners of the land on which the work was done, and to the owners of each tract of land or lot within the district by publication in a newspaper of general circulation in the county. The publication is not required to name the owners of any tract of land or lot within the district. The date for considering the report by the board shall be not less than ten days after the date of mailing, or publication, whichever is later.

[S13, §1989-a9; C24, 27, 31, 35, 39, §**7532;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.111]

85 Acts, ch 163, §3; 86 Acts, ch 1099, §2; 89 Acts, ch 126, §2

CS89, §468.101

95 Acts, ch 47, §1

468.102 Objections.

Any party interested in the said district or the improvement thereof may file objections to said report and submit any evidence tending to show said report should not be accepted. Any interested party having a claim for damages arising out of the construction of the improvement or repair shall file said claim with the board at or before the time fixed for hearing on the completion of the contract, which claim shall not include any claim for land taken for right of way or for severance of land.

[C24, 27, 31, 35, 39, §**7533;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.112]

89 Acts, ch 126, §2

CS89, §468.102

468.103 Final settlement — claims for damages.

If it finds the work under any contract has been completed and accepted, the board shall compute the balance due, and if there are no liens on file against such balance, it shall enter of record an order directing the auditor to draw a warrant in favor of said contractor upon the levee or drainage fund of said district or give the contractor an order directing the county treasurer to deliver to the contractor improvement certificates or drainage bonds, as the case may be, for such balance found to be due, but such warrants, improvement certificates or bonds shall not be delivered to the contractor until the expiration of thirty days after the acceptance of the work.

If any claims for damages have been filed as provided in section 468.102, the board shall review said claims and determine said claims. If the determination by the board on any claim for damages results in a finding by the board that the damages resulting to the claimant were due to the negligence of the contractor, then the board shall provide for payment of said claim out of the remaining funds owing to the contractor. If the determination by the board results in a finding that the damages resulting to the claimant were not due to the

negligence of the contractor but resulted from unavoidable necessity in the performance of the contract, then the board shall allow for payment of said claim in the amount fixed by the board out of the funds in said drainage district.

[C73, §1212; C97, §1944; S13, §1944, 1989-a9; C24, 27, 31, 35, 39, §**7534;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.113]

89 Acts, ch 126, §2

CS89, §468.103

Filing of claims, §573.10

468.104 Abandonment of work.

In case any contractor abandons or fails to proceed diligently and properly with the work before completion, or in case the contractor fails to complete the same in the time and according to the terms of the contract, the board shall make written demand on the contractor and the contractor's surety to proceed with the work within ten days. Service of said demand may be personal, or by certified mail addressed to the contractor and the surety, respectively, at their places of residence or business, as shown by the records in the auditor's office.

[S13, §1944, 1989-a10; C24, 27, 31, 35, 39, §**7535;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.114]

89 Acts, ch 126, §2

CS89, §468.104

468.105 New contract — suit on bond.

Unless the contractor or the surety on the contractor's bond shall appear and in good faith proceed to comply with the demand, and resume work under the contract within the time fixed, the board shall proceed to let contracts for the unfinished work in the same manner as original contracts, and apply all funds not paid to the original contractor toward the completion of the work, and if not sufficient for such purpose, may cause suit to be brought upon the bond of the defaulting contractor for the benefit of the district, and the amount of recovery thereon shall be credited to the district.

[C73, §1212; C97, §1944; S13, §1944, 1989-a10; C24, 27, 31, 35, 39, §**7536;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.115]

89 Acts, ch 126, §2

CS89, §468.105

468.106 Construction on or along highway.

When a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain, or improvement shall be located and constructed within the limits of any public highway, it shall be so built as not materially to interfere with the public travel thereon.

[S13, §1989-a20; C24, 27, 31, 35, 39, §**7537;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.116]

89 Acts, ch 126, §2

CS89, §468.106

468.107 Establishment of highways.

The board shall have power to establish public highways along and upon any levee or embankment along any such ditch or drain, but when so established the same shall be worked and maintained as other highways and so as not to obstruct or impair the levee, ditch, or drain.

[S13, §1989-a20; C24, 27, 31, 35, 39, §**7538;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.117]

89 Acts, ch 126, §2

CS89, §468.107

468.108 Bridges.

When a levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any secondary road bridge upon, or ditch or drain crossing the road, the board of supervisors shall move, build, or rebuild it, paying the costs and expenses, including construction, maintenance, repair and improvement costs, from county funds.

If the bridge or crossing be upon or across a primary or interstate road, the work aforesaid shall be done by the state department of transportation and paid for out of the primary road fund.

[S13, §1989-a19; C24, 27, 31, 35, 39, §**7539;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.118]

83 Acts, ch 123, §184, 209; 89 Acts, ch 126, §2

CS89, §468.108

468.109 Construction across railroad.

Whenever the board of supervisors shall have established any levee, or drainage district, or change of any natural watercourse and the levee, ditch, drain, or watercourse as surveyed and located crosses the right of way of any railroad company, the county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice in writing stating the nature of the improvement to be constructed, the place where it will cross the right of way of such company, and the full requirements for its complete construction across such right of way as shown by the plans, specifications, plat, and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications at the place designated, across its right of way, and to build and construct or rebuild and reconstruct the necessary culvert or bridge where any ditch, drain, or watercourse crosses its right of way, so as not to obstruct, impede, or interfere with the free flow of the water therein, within thirty days from the time of the service of such notice upon it.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7540;** C46,

50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.119]
89 Acts, ch 126, §2
CS89, §468.109
Manner of service, R.C.P. 1.302 – 1.315

468.110 Duty to construct.

Upon receiving the notice provided in section 468.109, such railroad company shall construct the improvement across its right of way according to the plans and specifications prepared by the engineer for said district, and build or rebuild the necessary culvert or bridge and complete the same within the time specified.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7541;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.120]
89 Acts, ch 126, §2
CS89, §468.110

468.111 Bridges at natural waterway — costs.

The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be borne by such railroad company without reimbursement therefor.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7542;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.121]
89 Acts, ch 126, §2
CS89, §468.111

468.112 Construction when company refuses.

If a railroad company does not comply with a notice provided in section 468.109, the board shall provide for the construction of the improvement under the supervision of the engineer in charge of the improvement. The railroad company shall be liable for the cost of the construction which shall be collected by the county on behalf of the district in any court having jurisdiction. The court may award a prevailing county reasonable attorney fees incurred by the county, to be paid by the railroad company and taxed as part of the costs of the action.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7543;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.122]
89 Acts, ch 126, §2
CS89, §468.112
99 Acts, ch 184, §1

468.113 Cost of construction across railway.

The cost of constructing the improvement across the right of way of such company, not including the cost of building or rebuilding and constructing or reconstructing any necessary culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be considered as an element of such company's damages by the appraiser to appraise damages.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7544;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.123]
89 Acts, ch 126, §2
CS89, §468.113

468.114 Passing drainage equipment across railway.

It shall be the duty of any steam or electric railway company to furnish the contractor unrestricted passage across its right of way, telegraph, telephone, and signal lines for the contractor's machines and equipment, whenever recommended by the engineer and approved by the board of supervisors, and the cost thereof shall be considered as an element of such company's damages by the appraisers thereof; provided that if such company shall fail to do so within thirty days after written notice from the auditor, the engineer shall cause the same to be done under the engineer's direction and the company shall be liable for the cost thereof to be collected by the county in any court having jurisdiction. Provided, further, that the railway company shall have the right to designate the day and hours thereof within said period of thirty days above mentioned when such crossing shall be made.

[C24, 27, 31, 35, 39, §**7545;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.124]
89 Acts, ch 126, §2
CS89, §468.114

468.115 Passage across other public utilities.

The owner or operator of a public utility, whether operated publicly or privately other than steam and electric railways shall afford the contractor of any drainage project under this subchapter, parts 1 through 5, unrestricted passage for the contractor's machines and equipment across the right of way lines or other equipment of such utility whenever recommended by the engineer and approved by the board of supervisors.

[C24, 27, 31, 35, 39, §**7546;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.125]
89 Acts, ch 126, §2
CS89, §468.115

468.116 Failure to comply.

If the owner or operator of the utility fails to afford such passage within fifteen days after written notice from the drainage engineer so to do, the contractor, under the supervision of the engineer, may proceed to do the necessary work to afford such passage and to place said utility in the same condition as before said passage; but the owner or operator shall have the right to designate the hours of the day when such crossing or passage shall be made.

[C24, 27, 31, 35, 39, §**7547;** C46, 50, 54, 58, 62,

66, 71, 73, 75, 77, 79, 81, §455.126]
89 Acts, ch 126, §2
CS89, §468.116

468.117 Expenses attending passage.

The work necessary to afford such passage shall be deemed to be covered by and included in the contract with the district under which the contractor is operating, and if the work is done by the owner or operator of such utility the reasonable expense thereof shall be paid out of the drainage funds of the district and charged to the account of the contractor.

[C24, 27, 31, 35, 39, §**7548;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.127]
89 Acts, ch 126, §2
CS89, §468.117

468.118 Abandoned right-of-way.

If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use it for a purpose other than for which it was originally acquired, the prior right or privilege of the drainage district to pass through the right-of-way of the railroad or utility shall become a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress through adjacent property and the right of access for maintenance, repair, improvement and inspection. The permanent easement has the same dimensions as originally specified in the engineer's report and survey, or as acquired by use or as subsequently acquired.

If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use it for a purpose other than for which it was originally acquired in segments, each segment shall be assessed for benefits in the same proportion as the area of the segment bears to the area of the right-of-way through the forty-acre tract.

85 Acts, ch 163, §4
CS85, §455.127A
89 Acts, ch 126, §2
CS89, §468.118

468.119 Annexation of additional lands.

After the establishment of a levee or drainage district, if the board becomes convinced that additional lands contiguous to the district, and without regard to county boundaries, are benefited by the improvement or that the same are then receiving benefit or will be benefited by a repair or improvement to said district as contemplated in section 468.126, it may adopt, with or without a petition from owners of the proposed annexed lands, a resolution of necessity for the annexation of such additional land and appoint an engineer with the qualifications provided in this subchapter, parts 1 through 5, to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and condition of drainage with reference to such established district, and to make and file with the auditor a report as in this subchapter, parts 1 through 5, provided for the original establishment of such district, said report to specify the character of the benefits received.

In the event the additional lands are a part of an existing drainage district, as an alternative procedure to that established by the foregoing provisions of this section, the lands may be annexed in either of the following methods:

1. A petition, proposing that the lands be included in a contiguous drainage district and signed by at least twenty percent of the landowners of those lands to be annexed, shall be filed with the governing board of each affected district.

The board of the district in which the lands are presently included may, at its next regular meeting or at a special meeting called for that purpose, adopt a resolution approving and consenting to the annexation; or

2. Whenever the owners of all of the land proposed to be annexed file a petition with the governing boards of the affected districts, the consent of the board in which the lands are then located shall not be required to consent to the annexation, and the board of the annexing district may proceed as provided in this section.

3. If either method of annexation provided for in subsections 1 and 2 of this section is completed, the board of the district to which the lands are to be annexed may adopt a resolution of necessity for the annexation of the additional lands, as provided in this section.

The right of remonstrance, as provided under section 468.28, does not apply to the owners of lands being involuntarily annexed to an established district.

[S13, §1989-a54; C24, 27, 31, 35, 39, §**7549;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.128]
85 Acts, ch 163, §5; 89 Acts, ch 126, §2
CS89, §468.119

468.120 Proceedings on report.

If the report recommends the annexation of the lands or any portion of them, the board shall consider the report, plats, and profiles and if satisfied that any of the lands are materially benefited by the district and that annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing on the annexation; and if the annexation is finally made, as to classification and assessment of benefits to the annexed lands only, to the same extent and in the same manner as provided in the establishment of an original district. However, the annexation and classification of the annexed lands for benefits may be determined at one hearing. Those parties having an interest in the lands proposed to

be annexed have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district.

[S13, §1989-a54; C24, 27, 31, 35, 39, §**7550;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.129]
85 Acts, ch 163, §6; 89 Acts, ch 126, §2
CS89, §468.120

468.121 Levy on annexed lands.

After annexation is made the board may levy upon the annexed lands an assessment sufficient to equal the assessments for benefit originally paid by the lands of equal classification if the finding by the board as provided by section 468.119 was that the lands should have been included in the district when originally established, plus their proportionate share of the costs of any enlargement or extension of drains required to serve the annexed lands. If the finding of the board as provided in section 468.119 was based on the fact that additional lands are now benefited by virtue of the repair, improvement, or the change of the topographical conditions made to the district and were not benefited by the district as originally established, then the board shall levy upon the annexed lands an assessment sufficient to pay their proportionate share of the costs of the repair or improvement which was the basis for the lands being annexed. If the board finds that the lands are presently receiving benefits from the district but that some were reasonably omitted from the original establishment because of the change of the topographical conditions, the assessments levied upon the annexed lands shall be limited to a proportionate share of the costs of current and future maintenance, repairs and improvements.

[S13, §1989-a54; C24, 27, 31, 35, 39, §**7551;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.130]
85 Acts, ch 163, §7; 89 Acts, ch 126, §2
CS89, §468.121

468.122 Use of former and abandoned surveys.

In cases where proceedings have been taken for the establishment of a levee or drainage district and an engineer has been appointed who has made a survey, return, and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed, and afterward proceedings are instituted for the establishment of a levee or drainage district which will benefit any territory surveyed in said former proceedings, the engineer shall use so much of the return, levels, surveys, plat, and profile made in the former proceedings as may be applicable. The engineer shall specify in the engineer's reports the parts thereof so used, and in case the cost of said returns, levels, surveys, plat, and profile made in said former proceedings has been paid by the former petitioners or their sureties, then a reasonable amount shall be allowed said petitioners or sureties for the use of the same.

[S13, §1989-a16; C24, 27, 31, 35, 39, §**7552;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.131]
89 Acts, ch 126, §2
CS89, §468.122

468.123 Unsuccessful procedure — re-establishment.

When proceedings have been instituted for the establishment of a drainage district or for any change or repair thereof, or the change of a natural watercourse, and the establishment thereof has failed for any reason either before or after the improvement is completed, the board shall have power to re-establish such district or improvement and any new improvement in connection therewith as recommended by the report of the engineer. As to all lands benefited by such re-establishment, repair, or improvement, the board shall proceed in the same manner as in the establishment of an original district, using as a basis for assessment the entire cost of the proceedings, improvement, and maintenance from the beginning; but in awarding damages and in the assessment of benefits account shall be taken of the amount of damages and taxes, if any, theretofore paid by those benefited, and credit therefor given accordingly. All other proceedings shall be the same as for the original establishment of the district, making of improvements, and assessment of benefits.

[S13, §1989-a17, -a50; C24, 27, 31, 35, 39, §**7553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.132]
89 Acts, ch 126, §2
CS89, §468.123

468.124 New district including old district.

If any levee or drainage district or improvement established either by legal proceedings or by private parties shall be insufficient to properly drain all of the lands tributary thereto, the board upon petition as for the establishment of an original levee or drainage district, shall have power to establish a new district covering and including such old district or improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein.

[S13, §1989-a25; C24, 27, 31, 35, 39, §**7554;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.133]
89 Acts, ch 126, §2
CS89, §468.124

468.125 Credit for old improvement.

When such district as contemplated in section 468.124 and the new improvement therein shall include the whole or any part of the former im-

provement, the commissioners, for classification of lands for assessment of benefits and apportionment of costs and expenses of such new improvement, shall take into consideration the value of such old improvement in the construction of the new one and allow proper credit therefor to the parties owning the old improvement as their interests may appear. In all other respects the same proceedings shall obtain as are provided for the original establishment of levee and drainage districts.

[S13, §1989-a25; C24, 27, 31, 35, 39, §**7555;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.134]

89 Acts, ch 126, §2

CS89, §468.125

468.126 Repair.

1. When any levee or drainage district has been established and the improvement constructed, the improvement shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and management by a board of trustees and the board shall keep the improvement in repair as provided in this section.

a. The board at any time on its own motion, without notice, may order done whatever is necessary to restore or maintain a drainage or levee improvement in its original efficiency or capacity, and for that purpose may remove silt and debris, repair any damaged structures, remove weeds and other vegetable growth, and whatever else may be needed to restore or maintain such efficiency or capacity or to prolong its useful life.

b. The board may at any time obtain an engineer's report regarding the most feasible means of repairing a drainage or levee improvement and the probable cost of making the repair. If the engineer advises, or the board otherwise concludes that permanent restoration of a damaged structure is not feasible at the time, the board may order temporary construction it deems necessary to the continued functioning of the improvement. If in maintaining and repairing tile lines the board finds from an engineer's report it is more economical to construct a new line than to repair the existing line, the new line may be considered to be a repair.

c. If the estimated cost of a repair exceeds ten thousand dollars, or seventy-five percent of the original total cost of the district and subsequent improvements, whichever is the greater amount, the board shall set a date for a hearing on the matter of making the proposed repairs, and shall give notice as provided in sections 468.14 through 468.18. If a hearing is required and the estimated cost of the repair exceeds twenty-five thousand dollars, an engineer's report or a report from the soil and water conservation district conservationist shall be presented at the hearing. The requirement of a report may be waived by the board if a prior report on the repair exists and that report is less than ten years old. The board shall not divide proposed repairs into separate programs in order to avoid the notice and hearing requirements of this paragraph. At the hearing the board shall hear objections to the feasibility of the proposed repairs, and following the hearing the board shall order that the repairs it deems desirable and feasible be made. Any interested party has the right of appeal from such orders in the manner provided in this subchapter, parts 1 through 5.

d. The right of remonstrance does not apply to repairs as defined in this section.

2. In the case of minor repairs, or in the eradication of brush and weeds along the open ditches, not in excess of ten thousand dollars where the board finds that a saving to the district will result the board may cause the repairs or eradication to be done by secondary road equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road fund or the weed fund from the fund of the drainage district thus benefited.

3. When the board deems it necessary it may repair or reconstruct the outlet of any private tile line which empties into a drainage ditch of any district and assess the costs in each case against the land served by the private tile line.

4. For the purpose of this subsection, an *"improvement"* in a drainage or levee district in which any ditch, tile drain or other facility has previously been constructed is a project intended to expand, enlarge or otherwise increase the capacity of any existing ditch, drain or other facility above that for which it was designed.

a. When the board determines that improvements are necessary or desirable, the board shall appoint an engineer to make surveys as seem appropriate to determine the nature and extent of the needed improvements, and to file a report showing what improvements are recommended and their estimated costs, which report may be amended before final action. If the estimated cost of the improvements does not exceed ten thousand dollars, or twenty-five percent of the original cost of the district and subsequent improvements, whichever is the greater amount, the board may order the work done without notice. The board shall not divide proposed improvements into separate programs in order to avoid the limitation for making improvements without notice. If the board deems it desirable to make improvements where the estimated cost exceeds the ten thousand dollar or twenty-five percent limit, the board shall set a date for a hearing on the matter of constructing the proposed improvements and also on the matter of whether there shall be a reclassification of benefits for the cost of the proposed improvements, and shall give notice as provided in sections 468.14 through 468.18. At the hearing the board shall hear objections to the feasibility of the proposed improvements and arguments for or

against a reclassification presented by or for any taxpayer of the district. Following the hearing the board shall order that the improvements it deems desirable and feasible be made, and shall also determine whether there should be a reclassification of benefits for the cost of improvements. If it is determined that a reclassification of benefits should be made the board shall proceed as provided in section 468.38. In lieu of publishing the notice of a hearing as provided by this subsection the board may mail a copy of the notice to each address where a landowner in the district resides by first class mail if the cost of mailing is less than publication of the notice. The mailing shall be made during the time the notice would otherwise be required to be published.

b. If the estimated cost of the improvements as defined in this subsection exceeds twenty thousand dollars, or the original cost of the district plus the cost of subsequent improvements in the district, whichever is the greater amount, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in the district, may file a written remonstrance against the proposed improvements, at or before the time fixed for hearing on the proposed improvements, with the county auditor, or auditors in case the district extends into more than one county. If a remonstrance is filed, the board shall discontinue and dismiss all further proceedings on the proposed improvements and charge the costs incurred to date for the proposed improvements to the district. Any interested party may appeal from such orders in the manner provided in this subchapter, parts 1 through 5. However, this section does not affect the procedures of section 468.132 covering the common outlet.

5. Where under the laws in force prior to 1904, drainage ditches and levees were established and constructed without fixing at the time of establishment a definite boundary line for the body of land to be assessed for the cost thereof, the body of land which was last assessed to pay for the repair thereof shall also be considered as the established district for the purpose of this section.

6. The governing body of the district may, by contract or conveyance, acquire, within or without the district, the necessary lands or easements for making repairs or improvements under this section, including easements for borrow and easements for meander, and in addition thereto, the same may be obtained in the manner provided in the original establishment of the district, or by exercise of the power of eminent domain as provided for in chapter 6B. If additional right of way is required for any repair or improvement under this section, the same may be acquired in the same manner as provided for the acquisition of right of way in the original establishment of a district, except that where notice and hearing are not otherwise required under this section notice as provided in this subchapter, parts 1 through 5, to owners, lienholder of record, and occupants of the land from which right of way is to be acquired shall suffice.

7. In existing districts where the stream has by erosion appropriated lands beyond its original right of way and it is more economical and feasible to acquire an easement for such erosion and meander than to undertake containment of the stream in its existing right of way, the board may, in the discharge of the duties enjoined upon it by this section, effect such acquisition as to the whole or part of the course. Right of way so taken shall be classed an improvement for the purpose of procedure under this section.

8. If the drainage records on file in the auditor's office for a particular district do not define specifically the land taken for right-of-way for drainage purposes, the board may at any time upon its own motion employ a land surveyor to make a survey and report of the district and to actually define the right-of-way taken for drainage purposes. After the land surveyor has filed the survey and report with the board, the board shall fix a date for hearing on the report and shall serve notice of the hearing upon all landowners and lienholder of record and occupants of the lands traversed by the right-of-way in the manner and for the time required for service of original notices in the district court. At the hearing the board shall specifically define the land taken for the right-of-way. Once established, the right-of-way constitutes a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement and inspection. A person aggrieved by the action or failure to act of the board under this subsection may appeal only in compliance with sections 468.83 through 468.98.

[S13, §1989-a21; C24, 27, 31, 35, 39, §**7556, 7558 – 7561;** C46, §455.135, 455.137 – 455.140; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.135; 81 Acts, ch 150, §1]

85 Acts, ch 163, §8, 9; 87 Acts, ch 23, §15; 87 Acts, ch 143, §1; 89 Acts, ch 126, §2

CS89, §468.126

94 Acts, ch 1051, §7, 8

468.127 Payment.

The costs of the repair or improvements provided for in section 468.126 shall be paid for out of the funds of the levee or drainage district. If the funds on hand are not sufficient to pay such expenses, the board within two years shall levy an assessment sufficient to pay the outstanding indebtedness and leave the balance which the board determines is desirable as a sinking fund to pay maintenance and repair expenses. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars.

If the board deems that the costs of the repairs or improvements will create assessments against the lands in the district greater than should be borne in one year, it may levy the same at one time and provide for the payment of said costs and assessments in the manner provided in sections 468.57 through 468.61; provided that assessments may be collected in not more than twenty installments as the board may determine.

[S13, §1989-a21; C24, 27, 31, 35, 39, §**7557;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.136]
89 Acts, ch 126, §2
CS89, §468.127
94 Acts, ch 1051, §9; 98 Acts, ch 1048, §1

468.128 Impounding areas and erosion control devices.

Levee and drainage districts are empowered to construct impounding areas and other flood and erosion control devices to protect lands of the district and drainage structures and may provide ways for access to improvements for the operation or protection thereof, where the cost is not excessive in consideration of the value to the district. Necessary lands or easements may be acquired within or without the district by purchase, lease or agreement, or by exercise of the right of eminent domain and may be procured and construction undertaken either independently or in co-operation with other districts, individuals, or any federal or state agency or political subdivision.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.137]
89 Acts, ch 126, §2
CS89, §468.128

468.129 Revenues used for operation, maintenance and construction.

Levee and drainage districts may realize income from incidental uses of their improvements and rights of way which are not injurious to same or incompatible with the purposes of the district. Revenues derived therefrom may be expended for operating, maintenance or construction costs of the district as its governing body may elect.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.138]
89 Acts, ch 126, §2
CS89, §468.129

468.130 City may discharge treated sewage.

Any board, as defined in section 468.3, may by contract permit any city to discharge adequately treated sewage into drainage ditches. The contract shall fix the rental, make provision for termination, and shall provide that no nuisance shall be created.

[C58, 62, 66, 71, 73, §393.12; C75, 77, 79, 81, §455.139]
89 Acts, ch 126, §2
CS89, §468.130

468.131 Reclassification required.

When an assessment for improvements as provided in section 468.126, exceeds twenty-five percent of the original assessment and the original or subsequent assessment or report of the benefit commission as confirmed did not designate separately the amount each tract should pay for the main ditch and tile lateral drains then the board shall order a reclassification in accordance with the principles and rules set forth in section 468.41.

[C24, 27, 31, 35, 39, §**7562;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.141]
89 Acts, ch 126, §2
CS89, §468.131

468.132 Improvement of common outlet — notice of hearing.

When two or more drainage districts outlet into the same ditch, drain, or natural watercourse and the board determines that it is necessary to clean out, deepen, enlarge, extend, or straighten said ditch, drain, or natural watercourse in order to expeditiously carry off the combined waters of such districts, the board may proceed as provided in section 468.126. After said board has decided that such work should be done, it shall fix a date for hearing on its decision, and it shall give two weeks' notice thereof by certified mail to the auditor of the county wherein the land to be assessed for such work is located, and said county auditor shall thereupon immediately notify by certified mail the board or boards of trustees of the districts having supervision thereof, as to said hearing on said contemplated work. In those instances where two or more districts involved are under the supervision of the same board, or joint board if the district is intercounty, the notice shall be given to all landowners affected as prescribed for in sections 468.14 through 468.18. Each district shall be assessed for the cost of such work in proportion to the benefits derived. Common outlet for the purpose of this section shall mean an outlet where two adjacent districts have an outlet common to both of said districts and which districts are also contiguous, one to the other.

[S13, §1989-a24; C24, 27, 31, 35, 39, §**7563;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.142]
89 Acts, ch 126, §2
CS89, §468.132

468.133 Commissioners to apportion benefits — interest prohibited.

For the purpose of ascertaining the proportionate benefits, the board shall appoint commissioners having the qualifications of benefit commissioners, one of whom shall be an engineer. Such commissioners appointed shall not be residents of any of the districts affected, nor shall any member thereof have any interest in land in any districts affected by the contemplated work. Such commission shall determine the percentage of benefits and the sum total to be assessed to each district for

the improvement.

In the event that one of the districts to be assessed under this statute shall have any improvement such as a settling basin which reduces the quality and quantity of flow or sediment, such commission may give consideration to the existence of such an improvement when they determine the percentage of benefits and the sum total to be assessed to each district for the improvement.

[C24, 27, 31, 35, 39, §**7564;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.143]

89 Acts, ch 126, §2

CS89, §468.133

468.134 Time of report — notice of hearing.

When said commissioners are appointed, the board shall, by proper order, fix the time when the commissioners shall report their findings, but a report filed within thirty days of the time so fixed shall be deemed a compliance with said order. On the filing of said report, the board shall fix a time for hearing thereon, and it shall give notice thereof to the auditor of the county in which the land to be assessed for such work is located by certified mail; said county auditor shall thereupon immediately notify by certified mail the board of supervisors, and board or boards of trustees of the districts having supervision thereof, as to said hearing on said commissioner's report. In those instances where two or more districts are under the supervision of the same board, or joint board if the district is intercounty, the notice shall be given to all landowners affected as prescribed in sections 468.14 through 468.18.

[C24, 27, 31, 35, 39, §**7565;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.144]

89 Acts, ch 126, §2

CS89, §468.134

468.135 Report and review — appeal.

The commissioners shall file with the board a detailed report of their findings. Said board shall review said report and may, by proper order, increase or decrease the amount which shall be charged to each district. After the final order of the board herein has been made, said board shall notify the county auditor, in the time and manner as provided in sections 468.133 and 468.134, of said order, and said county auditor shall notify by certified mail the board of supervisors, and said board or boards of trustees, of said final order. Said board of supervisors and said board or boards of trustees, if aggrieved by said final order, may appeal therefrom to the district court of the county in which any of the improvement proposed or done is located.

Any such appeal shall be taken, perfected and conducted in the time and manner provided in section 468.83, subsection 1, and sections 468.84 through 468.88, for appeals contemplated by said sections.

[C24, 27, 31, 35, 39, §**7566;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.145]

89 Acts, ch 126, §2

CS89, §468.135

468.136 Levy under original classification.

If the amount finally charged against a district does not exceed twenty-five percent of the original cost of the improvement in the district, the board shall proceed to levy the amount against all lands, highways, and railway rights of way and property within the district, in accordance with the original classification and apportionment. Any assessment made under this section on any tract, parcel, or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars.

[C24, 27, 31, 35, 39, §**7567;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.146]

89 Acts, ch 126, §2

CS89, §468.136

94 Acts, ch 1051, §10

468.137 Levy under reclassification.

If the amount finally charged against a district exceeds twenty-five percent of the original cost of the improvement, the board may order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy that amount upon all lands, highways, and railway rights of way and property within the district, in accordance with the new classification and apportionment. An assessment made under this section on a tract, parcel, or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars.

[C24, 27, 31, 35, 39, §**7568;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.147]

85 Acts, ch 163, §10; 89 Acts, ch 126, §2

CS89, §468.137

94 Acts, ch 1051, §11

468.138 Removal of obstructions.

The board shall cause to be removed from the ditches, drains, and laterals of any district any obstructions which interfere with the flow of the water, including trees, hedges, or shrubbery and the roots thereof, and may cause any tile drain so obstructed to be relaid in concrete or any other adequate protection, such work to be paid for from the drainage funds of the district.

[C24, 27, 31, 35, 39, §**7569;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.148]

89 Acts, ch 126, §2

CS89, §468.138

468.139 Trees and hedges.

When it becomes necessary to destroy any trees or hedges outside the right of way of any ditch, lateral, or drain in order to prevent obstruction by the roots thereof, if the board and the owners of such trees or hedges cannot agree upon the damage for the destruction thereof, the board may proceed to acquire the right to destroy and remove such trees or hedges by the same proceedings provided for acquiring right of way for said drainage improvement in the first instance.

[C24, 27, 31, 35, 39, §**7570;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.149]

89 Acts, ch 126, §2

CS89, §468.139

Condemnation procedure, chapter 6B

Similar provision, §468.347

468.140 Outlet for lateral drains — specifications.

The owner of any premises assessed for the payment of the costs of location and construction of any ditch, drain, or watercourse as in this subchapter, parts 1 through 5, provided, shall have the right to use the same as an outlet for lateral drains from the premises. The board of supervisors shall make specifications covering the manner in which such lateral drains shall be connected with the main ditches or other laterals and be maintained, and the owner shall follow such specifications in making and maintaining any such connection.

[S13, §1989-a22; C24, 27, 31, 35, 39, §**7571;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.150]

89 Acts, ch 126, §2

CS89, §468.140

468.141 Subdistricts in intercounty districts.

The board of supervisors of any county shall have jurisdiction to establish subdrainage districts of lands included within a district extending into two or more counties when the lands to compose such subdistricts lie wholly within such county, and to make improvements therein, repair and maintain the same, fix and levy assessments for the payment thereof, and the provisions of this section shall apply to all such drainage subdistricts, the lands of which lie wholly within one county. The proceedings for all such purposes shall be the same as for the establishment, construction, and maintenance of an original levee or drainage district the lands of which lie wholly within one county, so far as applicable, except that one or more persons may petition for a subdistrict as provided in section 468.63.

[S13, §1989-a37; C24, 27, 31, 35, 39, §**7572;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.151]

89 Acts, ch 126, §2

CS89, §468.141

468.142 District by mutual agreement — presumption.

The owners of lands may provide by mutual agreement in writing duly signed, acknowledged, and filed with the auditor for combined drainage of their lands by the location and establishment of a drainage district for such purposes and the construction of drains, ditches, settling basins, and watercourses upon and through their said lands. Such drainage district shall be presumed to be conducive to the public welfare, health, convenience, or utility.

[S13, §1989-a28; C24, 27, 31, 35, 39, §**7573;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.152]

89 Acts, ch 126, §2

CS89, §468.142

468.143 What the agreement shall contain.

Such agreements shall contain the following:

1. A description of the lands by congressional divisions, metes and bounds, or other intelligible manner, together with the names of the owners of all said lands.
2. The location of the drains and ditches to be constructed, describing their sources and outlets and the courses thereof.
3. The character and extent of drainage improvement to be constructed, including settling basins, if any.
4. The assessment of damages, if any.
5. The classification of the lands included in such district, the amount of drainage taxes or special assessments to be levied upon and against the several tracts, and when the same shall be levied and paid.
6. Such other provisions as the board deems necessary.

[S13, §1989-a28; C24, 27, 31, 35, 39, §**7574;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.153]

89 Acts, ch 126, §2

CS89, §468.143

468.144 Board to establish.

When such agreement is filed, the auditor shall record it in the drainage record. The board shall at a regular, special, or adjourned session thereafter locate and establish a drainage district and locate the ditches, drains, settling basins, and watercourses thereof as provided in said agreement, and enter of record an order accordingly. The board thereafter shall carry out the object, purpose, and intent of such agreement and cause to be completed and constructed the said improvement and shall retain jurisdiction of the same as fully as in districts established in any other manner. It shall cause to be levied upon and against the lands of such district, the drainage taxes and assessments according to said agreement and when collected said taxes and assessments shall constitute the drainage funds of said district to be applied

upon order of the board as in said agreement provided.

[S13, §1989-a28; C24, 27, 31, 35, 39, §**7575;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.154]

89 Acts, ch 126, §2

CS89, §468.144

468.145 Procedure.

The board shall proceed to carry out the provisions of the agreement, advertising for and receiving bids, letting the work, making contracts, levying assessments, paying on estimates, issuing warrants, improvement certificates, or drainage bonds as the case may be, in the same manner as in districts established on petition, except as in said mutual agreement otherwise provided.

[S13, §1989-a28; C24, 27, 31, 35, 39, §**7576;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.155]

89 Acts, ch 126, §2

CS89, §468.145

468.146 Outlet in adjoining county or in another state.

1. When a drainage district is established and a satisfactory outlet cannot be obtained except through lands in an adjoining county, or when an improved outlet cannot be obtained except through lands downstream from the district boundary, the board shall have the power to purchase a right of way, to construct and maintain such outlets, and to pay all necessary costs and expenses out of the district funds. The board shall have similar authority relative to the construction and maintenance of silt basins upstream from the district boundary. In case the board and the owners of the land required for such outlet or silt basin cannot agree upon the price to be paid as compensation for the land taken or used, the board is hereby empowered to exercise the right of eminent domain in order to procure such necessary right of way.

2. When a district is, or has been established in this state and no practicable outlet therefor can be obtained except through lands in an adjoining state, the board of supervisors of the county where said district is situated shall, as drainage commissioners, have power to purchase a right of way and to construct a ditch for such outlet in an adjoining state or to contribute to the construction of such a ditch, in an adjoining state and to pay for the same out of the funds of such district. Provided, however, that no drainage district or districts shall be charged or assessed any of the cost for land or work done unless previously agreed to by the board of supervisors or trustees of all of the drainage districts which will be assessed.

[S13, §1989-a39, -a55; C24, 27, 31, 35, 39, §**7577, 7578;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.156, 455.157]

89 Acts, ch 126, §2

CS89, §468.146

Condemnation procedure, chapter 6B

468.147 Tax.

The board of supervisors shall have authority to levy a tax on the lands in said drainage district established in this state to provide funds from which to pay for the improvement referred to in section 468.146, subsection 2, should such levy be necessary.

[C31, 35, §7578-c1; C39, §**7578.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.158]

89 Acts, ch 126, §2

CS89, §468.147

468.148 Injuring or diverting — damages.

Any person who shall willfully break down or through or injure any levee or bank of a settling basin, or who shall dam up, divert, obstruct, or willfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person, the person shall be liable in treble the amount of such damages.

[C73, §1227; C97, §1961; C24, 27, 31, 35, 39, §**7579;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.159]

89 Acts, ch 126, §2

CS89, §468.148

468.149 Obstructing or damaging.

Any person or persons willfully diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse or breaking down or injuring any levee or the bank of any settling basin, established, constructed, and maintained under any provision of law, or obstructing, or engaging in travel or agricultural practices upon the improvement or rights of way of a levee or drainage district which the governing body thereof has, by resolution, determined to be injurious to such improvement or to interfere with its proper preservation, operation or maintenance, and has prohibited, shall be deemed guilty of a serious misdemeanor and any such unlawful act as above described is hereby declared to be a nuisance and may be abated as such.

Said governing body shall also have the power to repair any ditch, drain or watercourse, or any levee or bank of any settling basin damaged by any person or persons in violation of the resolution of said governing body, after three days' notice to such person or persons to make such repair, in the event that there is a failure to do so, and the expense thereof shall be assessed to such person or

persons and shall be certified and collected as other taxes.

[C24, 27, 31, 35, 39, §**7580;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.160]

89 Acts, ch 126, §2

CS89, §468.149

468.150 Nuisance — abatement.

Any ditch, drain, or watercourse which is now or hereafter may be constructed so as to prevent the surface and overflow water from the adjacent lands from entering and draining into and through the same is hereby declared a nuisance and may be abated as such.

[S13, §1989-a15; C24, 27, 31, 35, 39, §**7581;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.161]

89 Acts, ch 126, §2

CS89, §468.150

Nuisances, chapter 657

468.151 Actions — settlement — counsel.

Levee or drainage districts through their governing bodies are authorized to maintain actions in law or equity for the purposes of preventing or recovering damages that may accrue to such districts on account of the impairment of their functions, or the increase in the cost of maintenance or operation of such districts, or on account of damages to property owned by such districts, resulting from the construction or operation of locks, dams and pools in the Mississippi or Missouri rivers; they may make settlements and adjustments of such damages and written contracts with relation thereto, and receive any appropriations that may be made by the Congress of the United States for the increased cost to drainage or levee districts and may agree to the construction and maintenance of present equipment and of new or remedial works, improvements and equipment as a part of such damages, or as a means of lessening the damages which will be suffered by the said districts. Said districts are further authorized to employ legal and engineering counsel for such purposes and to pay for the same out of the award of damages or out of the maintenance funds of the district.

If a lump sum settlement is made between the United States and the district to provide an annual payment of income therefrom, the county treasurer of the county in which the greater portion of the district is situated shall be custodian of such principal fund. The governing body of the district shall apply to the district court for authority to invest said fund as provided by section 636.23, in addition to the investments therein approved the court may authorize investment of said fund in interest-bearing bonds or warrants of said district. The income from said fund shall be disbursed by direction of the governing body of the district.

[C39, §**7581.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.162]

89 Acts, ch 126, §2

CS89, §468.151

468.152 Waste banks — private use.

The landowner may have any beneficial use of the land to which the landowner has fee title and which is occupied by the waste banks of an open ditch when such use does not interfere in any way with the easement or rights of the drainage district as contemplated by this subchapter, parts 1 through 5. For the purpose of gaining such use the landowner may smooth said waste banks, but in doing so the landowner must preserve the berms of such open ditch without depositing any additional dirt upon them.

[C24, 27, 31, 35, 39, §**7582;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.163]

89 Acts, ch 126, §2

CS89, §468.152

468.153 Preliminary expenses — how paid.

If the proposed district is all in one county, the board of supervisors may pay all necessary preliminary expenses in connection with the district. If it extends into other counties, the boards of the respective counties may pay a proportion of the expenses as the work done or expenses created in each county bears to the whole amount of work done or expenses created. The amounts shall be ascertained and reported by the engineer in charge of the work and be approved by the respective boards which shall, as soon as paid, charge the amount to the district, as their interests may appear, as soon as the district is established. If the district is not established, the amounts shall be collected upon the bond or bonds of the petitioners.

[S13, §1989-a48; C24, 27, 31, 35, 39, §**7583;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.164]

83 Acts, ch 123, §185, 209; 89 Acts, ch 126, §2

CS89, §468.153

468.154 Additional help for auditor.

If the work in the office of the auditor by reason of the existence of drainage districts is so increased that the regular officer is unable by diligence to do the same, the board of supervisors may employ such additional help as may be necessary to keep the records and transact the business of the drainage districts. The expense of such help shall be paid by the districts in proportion to the amount of work done therefor.

[S13, §1989-a42; C24, 27, 31, 35, 39, §**7584;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.165]

89 Acts, ch 126, §2

CS89, §468.154

468.155 Employment of counsel.

The board is authorized to employ counsel to advise and represent it and drainage districts in any

matter in which they are interested. Attorney's fees and expenses shall be paid out of the drainage fund of the district for which the services are rendered, or may be apportioned equitably among two or more districts. Such attorneys shall be allowed reasonable compensation for their services, also necessary traveling expenses while engaged in such business. Attorneys rendering such services shall file with the auditor an itemized, verified account of all claims therefor, and statement of expenses, and the same shall be audited and allowed by the board in the amount found to be due.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7585;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.166]
89 Acts, ch 126, §2
CS89, §468.155

468.156 Compensation of appraisers.

Persons appointed to appraise and award damages and make classification of lands and assess benefits, other than the engineer, shall receive such compensation as the board may fix and in addition thereto, the necessary expense of transportation of said persons while engaged upon their work. They shall file with the auditor an itemized, verified account of the amount of time employed upon said work and their expenses.

[S13, §1989-a41; C24, 27, 31, 35, 39, §**7586;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.167]
89 Acts, ch 126, §2
CS89, §468.156

468.157 Payment.

All compensation for services rendered, fees, costs, and expenses when properly shown by itemized and verified statement shall be filed with the auditor and allowed by the board in such amounts as shall be just and true, and when so allowed shall be paid on order of the board from the levee or drainage funds of the district for which such services were rendered or expenses incurred, by warrants drawn on the treasurer by the auditor.

[S13, §1989-a41; C24, 27, 31, 35, 39, §**7588;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.169]
89 Acts, ch 126, §2
CS89, §468.157

468.158 Purchase at tax sale.

When land in a levee, drainage, or improvement district is being sold at a tax sale for delinquent taxes or assessment, the board of supervisors or the district trustees, as the case may be, shall have authority to bid in such land or any part of it, paying the amount of the bid from the funds of the district, and taking the certificate of sale in their names as trustees for such district, and may thereafter pay any assessments for taxes or benefits levied against said premises from the district funds. The amount paid for redemption which shall include such additional payment, shall be credited to the district.

[C24, 27, 31, 35, 39, §**7589;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.170]
89 Acts, ch 126, §2
CS89, §468.158
Similar provisions, chapter 569

468.159 Tax deed — sale or lease.

If no redemption shall be made the board of supervisors or trustees, as the case may be, shall receive the tax deed as trustees for the district. They shall credit the district with all income from said property. They may lease or sell and convey said property as trustees for such district and shall deposit all money received therefrom to the credit of such district. The board of trustees may also lease or sell and convey such other property of the district, both real and personal, as is no longer needed for the purposes for which the district was established, and any such leases, sales and conveyances prior to July 1, 1970, are hereby legalized and declared to be valid and binding.

This amendment in 1978 shall not be construed to affect any litigation involving the lease, sale or conveyance of property by the board of supervisors or board of trustees, as the case may be, of a drainage or levee district, which litigation is pending on July 1, 1978.

[C24, 27, 31, 35, 39, §**7590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.171]
89 Acts, ch 126, §2
CS89, §468.159

468.160 Purchase of tax certificate.

When land in a drainage or levee district, or subdistrict, is subject to an unpaid assessment and levy for drainage purposes and has been sold for taxes the board of supervisors of that county, or if control of the district has passed to trustees then such trustees, may purchase the certificate of sale issued by the county treasurer by depositing with the county treasurer the amount of money to which the holder of the certificate would be entitled if redemption was made at that time, and thereupon the rights of the holder of the certificate and the ownership thereof shall vest in the board of supervisors, or the trustees of that district, as the case may be, in trust for said drainage district or subdistrict.

[C31, 35, §7590-c1; C39, §**7590.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.172]
89 Acts, ch 126, §2
CS89, §468.160
97 Acts, ch 121, §27

468.161 Terms of redemption.

Redemption from said tax sale shall be made on such terms as may be agreed upon between such board of supervisors or such trustees and the owner of the land involved; but in any case in which the owner of said land will pay as much as fifty percent

of the value of the land at the time of redemption the owner shall be permitted to redeem. If the parties cannot agree upon such value, either of them may bring an action against the other in the district court of the county where the land is situated, and the court shall determine the matter. The proceeding shall be triable in equity.

[C31, 35, §7590-c2; C39, §**7590.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.173]
89 Acts, ch 126, §2
CS89, §468.161

468.162 Payment — assignment of certificate.

When such money is deposited with the county treasurer, the treasurer shall by mail notify the purchaser at the tax sale, or the latter's assignee if of record, and shall pay to the holder of such certificate the sum of money deposited with the treasurer for that purpose on surrender of the certificate with proper assignment thereon to the board of supervisors, or to the trustees of the district, as the case may be, as trustee for the district.

[C31, 35, §7590-c3; C39, §**7590.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.174]
89 Acts, ch 126, §2
CS89, §468.162
97 Acts, ch 121, §28

468.163 Funds.

Payment to the county treasurer for such certificate shall be from the fund of said drainage or levee district, or subdistrict, on a warrant issued against that fund which shall have precedence over all other outstanding warrants drawn against that fund in the order of their payment. Should there not be a sufficient amount in the fund of said district, or subdistrict, to pay said warrant then the board of supervisors, or the trustees of the district, as the case may be, are authorized to borrow a sum of money sufficient for that purpose on a warrant for that amount on the fund of the district, or subdistrict, which warrant shall bear interest from date at a rate not exceeding that permitted by chapter 74A and shall have preference in payment over all other unpaid warrants on said fund, and the county treasurer shall so enter the same on the list of warrants in the treasurer's office and call the same for payment as soon as there is sufficient money in said fund.

[C31, 35, §7590-c4; C39, §**7590.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.175]
89 Acts, ch 126, §2
CS89, §468.163
97 Acts, ch 121, §29

468.164 Lease or sale of land.

If said certificate goes to deed to the board or to the trustees, all leases and sales of the land shall be effected and record thereof made in the same manner in which leases and sales are effected and record thereof made when the county acquires title as a purchaser under execution sale.

[C31, 35, §7590-c5; C39, §**7590.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.176]
89 Acts, ch 126, §2
CS89, §468.164

468.165 Duty of treasurer.

When any lands in a drainage or levee district, or subdistrict, are subject to an unpaid assessment and levy for drainage purposes and are sold at tax sale for the amount of delinquent taxes, the county treasurer shall immediately report that fact to the board of supervisors, or to the trustees for the district, as the case may be.

[C31, 35, §7590-c6; C39, §**7590.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.177]
89 Acts, ch 126, §2
CS89, §468.165
97 Acts, ch 121, §30

468.166 Purchase by bondholder.

In any event where upon the request of the holder of any bond or bonds issued by any drainage district the board of supervisors shall fail, neglect or refuse to purchase the certificate of sale issued by the county treasurer and referred to in section 468.160 in manner and form as permitted by said section, the holder of such bond or bonds may, upon filing with the county auditor a sworn statement as to the making of such written request upon the board of supervisors and a recital of the failure of such board to act in the premises by complying with the provisions of said section, in the same manner and form purchase such certificate and the ownership thereof shall thereupon vest in such holder of such bond or bonds in trust for said drainage district or subdistrict, provided, however, that the holder shall have a lien upon said certificate and any beneficial interest arising therefrom for the holder's actual outlays including the holder's reasonable expenses and attorney's fees, if any, incurred in the premises. In the event any such holder of any bond or bonds shall acquire title the holder shall have a right to lease or convey said premises, upon giving thirty days' written notice to the board of supervisors by filing the same with the county auditor and in the event said board shall not approve said lease or sale, the same shall be referred to the district court of the county where the land is situated and there tried and determined in the manner prescribed in section 468.160. Any funds realized from the lease or sale of said land shall be first applied in extinguishing the lien of the holder of the certificate herein provided for and the balance shall be paid to the said drainage bond fund of said district.

[C35, §7590-g1; C39, §**7590.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.178]
89 Acts, ch 126, §2
CS89, §468.166

468.167 Voting power.

In case any proposition arises in said district to be determined by the vote of parties owning land therein, notice of such hearing shall be given and the board of supervisors or trustees, as the case may be, while holding title in trust to any such land, shall have the same right to vote for or against such proposition as the former owner would have had if the former owner had not been divested of the title to said land.

[C24, 27, 31, 35, 39, §**7591;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.179]

89 Acts, ch 126, §2

CS89, §468.167

468.168 Inspection of improvements.

The board of any county into which a levee or drainage improvement extends shall cause a competent engineer to inspect such levee or drainage improvement as often as it deems necessary for the proper maintenance and efficient service thereof. The engineer shall make report to the board of the condition of the improvement, together with such recommendations as the engineer deems necessary. For any claim for services and expenses of inspection, the engineer shall file with the auditor an itemized and verified account of such service and expense to be allowed by the board in such amount as it shall find due and paid out of the drainage funds of the district. If the district extends into two or more counties, such action shall be had jointly by the several boards, and the expenses equitably apportioned among the lands in the different counties.

[S13, §1989-a44; C24, 27, 31, 35, 39, §**7592;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.180]

89 Acts, ch 126, §2

CS89, §468.168

468.169 Watchpersons.

When a levee has been established and constructed in any county, the board shall be empowered to employ one or more watchpersons, and fix their compensation, whose duty it shall be to watch such levee and make repairs thereon in case of emergency. Such employee shall file with the auditor an itemized, verified account for services rendered, and cost and expense incurred in watching or repairing such levee, and the same shall be audited and allowed by the board as other claims and paid by the county from funds belonging to such district.

[S13, §1989-a40; C24, 27, 31, 35, 39, §**7593;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.181]

89 Acts, ch 126, §2

CS89, §468.169

468.170 Technical defects.

The collection of drainage taxes and assessments shall not be defeated where the board has acquired jurisdiction of the interested parties and the subject matter, on account of technical defects and irregularities in the proceedings occurring prior to the order of the board locating and establishing the district and the improvements therein.

[S13, §1989-a46; C24, 27, 31, 35, 39, §**7595;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.183]

89 Acts, ch 126, §2

CS89, §468.170

468.171 Conclusive presumption of legality.

The final order establishing such district when not appealed from, shall be conclusive that all prior proceedings were regular and according to law.

[S13, §1989-a46; C24, 27, 31, 35, 39, §**7596;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.184]

89 Acts, ch 126, §2

CS89, §468.171

468.172 Drainage record.

The board shall provide a drainage record book, which shall be in the custody of the auditor, who shall keep a full and complete record therein of all proceedings relating to drainage districts, so arranged and indexed as to enable any proceedings relative to any particular district to be examined readily.

[S13, §1989-a14, -a42; C24, 27, 31, 35, 39, §**7597;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.185]

89 Acts, ch 126, §2

CS89, §468.172

468.173 Records belong to district.

All reports, maps, plats, profiles, field notes, and other documents pertaining to said matters, including all schedules, and memoranda relating to assessment of damages and benefits, shall belong to the district to which they relate, remain on file in the office of the county auditor, and be matters of permanent record of drainage proceedings.

[C24, 27, 31, 35, 39, §**7598;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.186]

89 Acts, ch 126, §2

CS89, §468.173

468.174 Membership in the National Drainage Association.

Any drainage district may join and become a member of the National Drainage Association. A drainage district may pay a membership fee and annual dues upon the approval of the drainage board of such district, but not in excess of the following:

One hundred dollars for drainage districts having indebtedness in excess of one million dollars.

Fifty dollars for drainage districts having an indebtedness of five hundred thousand dollars and less than one million dollars.

Twenty-five dollars for drainage districts hav-

ing an indebtedness of two hundred fifty thousand dollars and less than five hundred thousand dollars.

Ten dollars for drainage districts having an indebtedness less than two hundred fifty thousand dollars.

The annual dues for any district shall not exceed one-twentieth of one percent of the outstanding indebtedness of the district.

[C31, 35, §7598-c1; C39, §**7598.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.187]
89 Acts, ch 126, §2
CS89, §468.174

468.175 Membership fee.

The cost of membership fees and dues shall be assessed against the land in the drainage district and collected in the same manner and in the same ratio as assessments for the cost and maintenance of the drainage district.

[C31, 35, §7598-c2; C39, §**7598.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.188]
89 Acts, ch 126, §2
CS89, §468.175

468.176 Other associations.

Levee or drainage districts are authorized to become members of drainage associations for their mutual protection and benefit, and may pay dues and membership fees therein out of the maintenance funds.

[C39, §**7598.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.189]
89 Acts, ch 126, §2
CS89, §468.176

468.177 Receiver authorized.

Whenever the governing board of any drainage or levee district becomes the owner of a tax sale certificate, for any tract of land within the district, and one or more year's taxes subsequent to the tax certificate have gone delinquent, the said governing board may, on behalf of such district, make application to the district court of the county within which such real estate or a part thereof is situated, for the appointment of a receiver to take charge of said delinquent real estate.

[C35, §7598-e1; C39, §**7598.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.190]
89 Acts, ch 126, §2
CS89, §468.177

468.178 Hearing and notice thereof.

Upon the filing of the petition for such appointment, the court shall fix a time and place of hearing thereon, and shall prescribe and direct the manner for the service of notice upon the owner, lienholders and persons in possession of said real estate, of the pendency of said application.

[C35, §7598-e2; C39, §**7598.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.191]
89 Acts, ch 126, §2
CS89, §468.178

468.179 Appointment — grounds.

Said application shall be heard by the court, at the time and place so designated, and after hearing thereon the court may appoint one of the members of the governing board of said drainage or levee district as receiver for said real estate, on the grounds that the said real estate is producing returns, and that the general and special taxes against the same are not being paid, and direct the receiver to forthwith take possession of the same and to collect the rents, issues and profits therefrom.

[C35, §7598-e3; C39, §**7598.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.192]
89 Acts, ch 126, §2
CS89, §468.179

468.180 Bond.

The cost of the premium of the bond of such receiver shall be paid for out of the general funds of the drainage or levee district, and no charge shall be made by the receiver for compensation in said cause.

[C35, §7598-e4; C39, §**7598.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.193]
89 Acts, ch 126, §2
CS89, §468.180

468.181 Avoidance of receivership.

The owner of any such tract of real estate may avoid the appointment of such receiver, either before or after the action is commenced, by entering into a good and sufficient written instrument with the governing board of such district, agreeing to apply the rent share of the products of said land, or its equivalent to the payment of taxes thereon.

[C35, §7598-e5; C39, §**7598.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.194]
89 Acts, ch 126, §2
CS89, §468.181

468.182 Preference in leasing.

In the event a receiver is appointed for any tract of land, the owner if actually in possession thereof, shall have the preference to rent the same.

[C35, §7598-e6; C39, §**7598.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.195]
89 Acts, ch 126, §2
CS89, §468.182

468.183 Rents — application of.

The rents, issues and profits of the real estate when collected by the receiver, shall be applied as follows:

1. To the payment of the costs and expenses of the receivership.
2. To the payment of current general taxes

against said real estate.

3. To the payment of any current special taxes against said real estate.

4. The surplus shall be applied upon any delinquent taxes or tax certificates, and the remainder, if any, shall be paid to the owner of said real estate.

[C35, §7598-e7; C39, §**7598.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.196]

89 Acts, ch 126, §2

CS89, §468.183

468.184 Land classification and assessment in district.

1. *a.* When a levee district shall have been located and finally established; or

b. When the required proceedings have been taken to enlarge, extend, strengthen, raise, relocate, reconstruct, or improve any existing levee; or

c. When the required proceedings have been held to annex additional lands to said levee district or to exclude or eliminate lands from said levee district; or

d. When a plan of the United States government for the construction of any levee, or a portion of a levee, in said levee district, or for the enlarging, extending, strengthening, raising, relocating, reconstructing, or improving any existing levee, or a portion thereof, in accordance with any such plan in said levee district, has been heretofore or hereafter adopted by such levee district under the provisions of sections 468.201 through 468.216; or

e. When the board shall, as authorized by section 468.65, determine that the assessments of benefits of said levee district against the lands in said levee district are generally inequitable the board may by resolution, or if a petition is filed by more than one-third of the owners, including corporations, of land within said levee district and who in the aggregate own more than one-third of the value of the land and land improvements in said levee district as the value thereof is then shown by the general tax records of the county or counties in which such land and land improvements are located, requesting the board to do so, the board shall order the lands in said levee district and the improvements on the land in said levee district classified or reclassified in accordance with the assessed taxable value of said land and land improvements as the same are then shown and as the same may be thereafter shown by the assessment roll of the county or counties in which said land and land improvements are located.

The assessed taxable value of any land, including land improvements exempt from general taxation but subject to assessment for levee purposes, shall be determined by the county assessor who shall make such determination in accordance with the rules of assessment applicable to adjacent lands and without any additional compensation therefor.

2. If the board orders classification or reclassification of lands as authorized in subsection 1 of this section, the board shall fix a time and place for a hearing to be held upon the action of the board in ordering such classification or reclassification, which hearing shall be held at the county seat of the county having the largest acreage in said levee district. The board shall cause notice of the time and place of such hearing to be served by the county auditor or auditors upon each person whose name appears as owner of lands or land improvements within the levee district in the transfer books of the auditor's office in the county or counties in which said levee district is located, naming that person, and also upon the person or persons in actual occupancy of any tract of land or land improvements located in said levee district, without naming that person or persons. Such notice shall be for the same time and served in the same manner as is provided for the establishment of a levee district, and such notice shall state:

a. The aggregate estimated costs and expenses which the board proposes to assess under such classification or reclassification;

b. The total aggregate assessed taxable value of all lands and land improvements in said levee district;

c. That the said classification or reclassification of benefits will be based on the assessed taxable value of all lands and improvements to lands located in said levee district;

d. That each tract of land and each land improvement in said levee district will be assessed for its pro rata share of said costs and expenses based upon the ratio that the assessed value of each tract of land and the assessed value of each land improvement bears to the total assessed taxable value of all lands and all land improvements in said district; and

e. That all objections to said method of classification or reclassification shall be in writing and filed with the auditor of the county in which said land or land improvements are located before the time set for said hearing or with the board of trustees of said district at or before the time set for such hearing.

The notice need not show the amount of such costs and expenses to be apportioned to each such owner or to any particular tract of land or land improvement within such levee district.

3. If at or before the time set for said hearing as to such classification or reclassification, there shall have been filed with the county auditor, or auditors in case the district extends into more than one county, or with said board, a remonstrance or remonstrances or objections to such method of classification or reclassification signed by owners of land and land improvements in the levee district aggregating sixty percent of the total assessed value of the lands plus land improvements in said district as shown by the taxing records in said county or counties in which said district is located, the board shall abandon the alternative method of classification or reclassification

herein authorized. The board may then proceed to classify the lands in said levee district as authorized under sections 468.38 through 468.44 or may proceed to reclassify the same as authorized under section 468.65 unless said remonstrances and objections filed as above provided are filed by a majority of the landowners in the levee district and these remonstrants and objectors in the aggregate own seventy percent or more of the acreage of lands in the levee district and, in writing, object to any reclassification of any kind, then the board shall not reclassify the lands within the district under the provision of this section nor shall the same be reclassified under the provisions of section 468.65.

4. At the time fixed or at any adjourned hearing if the remonstrances and objections filed at or before the hearing are not signed by sufficient number of owners, or the owners signing such remonstrances and objections do not meet the requirements hereinabove provided, then the board shall fully consider all objections and remonstrances and shall make a determination as to whether or not the costs and expenses shall be assessed:

a. By the alternative method hereinabove set forth; or

b. As provided by sections 468.38 through 468.44; or

c. That the land should be reclassified as provided in section 468.65; or

d. On the basis of a then existing classification of lands.

5. If the board shall determine that the cost and expenses shall be assessed on the basis of assessed taxable value as hereinabove provided, then such basis shall be used for all future assessments made for the purposes of said levee district except if said assessed taxable value of lands and land improvements in said levee district may be changed or revised by the county assessor in the county or counties in which the same are located for general tax purposes, then any such revision made in the assessed taxable value by any such county assessor shall automatically constitute a revision of the classification of such land or land improvements for future assessments made by the board for the purpose of said levee district.

6. In lieu of the hearing provided for in the preceding subsections, the board may, and if the petition of owners provided for in the preceding subsections so asks, the board shall call for an election for the purpose of determining the question of classification on the basis of assessed value of lands and land improvements. The question may be submitted at a regular election of the district or at a special election called for that purpose. It shall not be mandatory for the county commissioner of elections to conduct the elections, however provisions of sections 49.43 through 49.47 and of subchapter III of this chapter, insofar as the same are applicable, shall govern all such elections, and the question to be submitted shall be set forth in the notice of election. If sixty percent of the votes cast be in favor of the proposed change in assessment, it shall become effective for all future assessments as heretofore provided in this section. If the question should fail, no new election on the subject may be called for a period of one year.

7. When a levee district has been established and constructed, as an alternative to the other methods prescribed by law, upon reclassification, the levee district may adopt a method of classification and assessment uniform as to all land in the district, including railroad land, public highways and other public land and land exempt from general taxation, based on the total amount to be assessed divided by the total acres within the district. This method of classification and assessment may be adopted either by hearing or by election and shall become effective as heretofore provided in this section.

8. When a drainage district or drainage and levee district has been established and constructed, and after the lands therein have been classified in accordance with the provisions of sections 468.39, 468.40, and 468.41 or reclassified in accordance with section 468.65, the district may adopt methods of assessment for maintenance, repair, and operation of said district uniform as to all land in the district in the same manner and by the same procedures as prescribed in subsections 1 through 7 of this section. Provided, however, that only those lands drained by respective mains and laterals shall be assessed for maintenance, repair, and operation of said mains and laterals, and provided further that this alternate method of assessment shall not be applied to making improvements in the drainage system.

9. Following the adoption of any alternative method of classification or assessment as provided in this section, the same shall continue in effect until such time as the method is changed pursuant to this section or to section 468.65.

10. All proceedings taken prior to July 1, 1968, purporting to establish or re-establish a drainage or levee district or districts, or to enlarge or change the boundaries of any drainage or levee district, and any assessments not heretofore declared invalid by any court, are hereby legalized, validated, and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the establishment, re-establishment, enlargement, or change in boundaries or any assessments of drainage or levee districts.

[C71, 73, 75, 77, 79, 81, §455.197]
89 Acts, ch 126, §2
CS89, §468.184

468.185 Warrants not paid for want of funds. Repealed by 96 Acts, ch 1033, § 1.

468.186 Easements through a drainage district.

As used in this section, *"person"* shall mean any individual or group of individuals, corporation, firm, company, or association, except a railroad company.

1. When any person proposes to construct a pipeline, electric transmission line, communication line, underground service line, or other similar installations on, over, across, or beneath the right of way of any drainage or levee district, such person shall, before beginning construction, obtain from the drainage or levee district an easement to cross the district's right of way. The governing body of the district shall require such person to agree to comply with subsection 3 of this section and may, as a condition of granting such easement, attach thereto such additional conditions as they deem necessary. When the necessary easement has been obtained, such person shall construct the installation at the person's own expense and shall pay all costs of any reconstruction, relocation, modification, or reinstallation of the drainage or levee district's facility which may be necessary as a result of construction of the installation for which the easement was granted.

2. After construction of the installation has been completed in accordance with all conditions under which the easement is granted, the drainage or levee district shall maintain its facility at its own expense, and the person who constructed the installation, or the person's successors in interest, shall maintain the installation at the person's or successor's own expense. If the drainage or levee district subsequently undertakes any maintenance, improvement, or reconstruction of its facility which requires the modification, relocation, or reconstruction of the installation, the expense of such modification, relocation, or reconstruction shall be borne by the person who constructed the installation or the person's successors in interest.

3. When the construction of a public highway, or any installation for which an easement has been obtained under subsection 1 of this section, on, over, across, or beneath the right of way of any drainage or levee district disturbs or requires replacement of any portion of a tile drain less than twenty inches in diameter, and a portion of such drain will remain wholly or partially exposed after the construction project has been completed, the portion which is to remain exposed and not less than three feet of such drain immediately on either side of the portion which is to remain exposed, shall be replaced either with steel pipe of not less than sixteen gauge or polyvinyl chloride pipe conforming to current industry standards regarding diameter and wall thickness.

[C71, 73, 75, 77, 79, 81, §455.199]
89 Acts, ch 126, §2
CS89, §468.186

468.187 Agreements with outside owners or other districts.

Levee and drainage districts are empowered to enter into agreements with the owners of lands lying outside of said districts, or with other levee and drainage districts or municipalities, to provide levee protection or drainage for such lands on such terms as the board may agree and subject to the following terms and conditions:

1. The facilities of the district furnishing the service shall not be overburdened.

2. There shall be no additional cost to the district furnishing the service.

3. The agreement shall be in writing, be made a part of the drainage records and shall include the following:

a. The description of the lands to be served;

b. The location of tile lines constructed or to be constructed;

c. The consideration to be paid to the district furnishing the service and the classification of the lands to be served; and

d. Such other provisions as the board deems necessary.

[C71, 73, 75, 77, 79, 81, §455.200]
89 Acts, ch 126, §2
CS89, §468.187

468.188 Public improvements which divide a district — procedure.

If it should develop that any type of public improvement, other than the forces of nature, has caused such a change in the district as to effectively sever and cut off some of the land in the district from other lands in the district and from the improvements in the district in such a way as to deprive the land of any further benefits from the improvement, or in some manner to divide the benefits that may be derived from two separated portions of the improvement, then the board of supervisors or the board of trustees in charge may upon notice to interested parties and hearing as provided by this subchapter, parts 1 through 5, for the original establishment of a district make an order to remove lands so deprived of benefits from the district without any reclassification, or may subdivide the district into two separate entities if the public improvement splits the district into two separate units, each of which may still derive some separate benefits from the separated portions of the district.

If the public improvement is such as to leave two separate portions of the improvement that are still operable and of benefit to the land on each side of the division made by the public improvement, then the board may divide the district into two separate units so that each may perform further work on the improvements in their respective

parts, but neither shall be charged for work completed on the opposite side of the new improvement that divides them and may only be charged for the work done in that portion of the district remaining on their side of the division.

The same authority provided in this section shall vest in the board of supervisors or the board of trustees in the event a drainage district in any manner relinquishes its control over any portion of its improvements or its obligation to maintain same to another district and lands may be removed from the district or the district may be divided as provided in this section.

The board may further in dividing the district award to each of the separated portions of the district the improvement remaining in each portion, determine the value of the improvement so remaining on each side and secondly determine the contributions of the lands in the separated portions to the improvements and the upkeep of the earlier district, and if the contribution is proportionate neither side shall owe the other portion of the district any money, but if contribution is disproportionate, the board shall determine an equitable adjustment and the amount of payment required for one portion to pay to the other to buy the existing improvement.

If land is eliminated from any further benefits, there need not be any reclassification and the board may remove the same from the district in the same manner as if the land has been destroyed in whole by the erosion of a river and spread any deficiency in assessment among the remaining lands as provided by section 468.49.

"Type of public improvement" for the purpose of this section includes drainage or levee improvements or new highways.

[C71, 73, 75, 77, 79, 81, §455.201]
89 Acts, ch 126, §2
CS89, §468.188

468.189 Closing agricultural drainage wells — assessment of costs within a drainage district.

The costs of closing an agricultural drainage well and constructing an alternative drainage system as part of a drainage district shall be assessed as a special assessment by the board as provided in this chapter.

97 Acts, ch 193, §11

468.190 through 468.200 Reserved.

PART 2

FEDERAL FLOOD CONTROL CO-OPERATION

468.201 Plan of improvement.

1. Whenever the government of the United States acting through its proper agencies or instrumentalities will undertake the original construction of improvements or the repair or alteration of existing improvements which will accomplish the purposes for which the district was established or aid in the accomplishment thereof and shall cause to be filed in the office of the auditor of the county in which said district is located a plan of such improvement or for the repair or alteration of existing improvements, the board shall have jurisdiction, power and authority, upon the notice, hearing and determination hereinafter provided, to adopt such plan of improvement or of repair or alteration of existing improvements and to provide necessary right of way therefor; and to pay such portion of all costs and damages incident to the adoption of such plan, the construction thereunder and the maintenance and operation of the works as will not be discharged by the federal government under legislation existing at the time of adoption; also to enter into such agreements with the United States government as may be necessary to meet federal requirements including the taking over, repair and maintenance of the works and to perform under such agreements.

2. If the cost to the district of the repair or alteration of existing improvements contemplated by this section does not exceed twenty-five percent of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions, the board may proceed under the provisions of section 468.126, without notice and hearing, and without appraisement as contemplated by section 468.210, but the remaining provisions of this section and sections 468.202 through 468.216 that are not in conflict with section 468.126 shall remain applicable.

If the federal program divides a project into separate phases, each phase shall be considered a separate program as described in section 468.126, subsection 4, and shall in no event be construed as an unauthorized division into separate programs to avoid the twenty-five percent limitation prescribed for making improvements under said section 468.126, subsection 4, without notice and hearing.

[C50, 54, 58, 62, 66, §455.201; C71, 73, 75, 77, 79, 81, §455.202]
89 Acts, ch 126, §2
CS89, §468.201

468.202 Agreement in advance.

The agreement with the federal government contemplated in section 468.201 may be entered into by the board in advance of the filing of the plan — such agreement to be effective if the plan is finally adopted. If the plan is approved the board shall make a record of any such co-operative agreement.

[C50, 54, 58, 62, 66, §455.202; C71, 73, 75, 77, 79, 81, §455.203]
89 Acts, ch 126, §2
CS89, §468.202

468.203 Engineer appointed.

After the filing of the plan contemplated in section 468.201 the board shall, at its first session thereafter, regular, special or adjourned, appoint a disinterested and competent civil or drainage engineer who shall give bond in an amount to be fixed by the board conditioned for the faithful and competent performance of the engineer's duties.

[C50, 54, 58, 62, 66, §455.203; C71, 73, 75, 77, 79, 81, §455.204]

89 Acts, ch 126, §2

CS89, §468.203

468.204 Engineer's report.

The engineer shall examine the plan filed by the federal agency and the lands affected thereby and shall make and file with the county auditor a full written report which, together with the federal plan, will show the following:

1. The character and location of all contemplated improvements, and the plats, profiles and specifications thereof.

2. The particular description and acreage of land required from each forty-acre tract or fraction thereof for right of way, borrow pits or other purposes together with congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

3. A particular description of each forty-acre tract or fraction thereof that will be excluded from benefit by adoption of the plan as filed, together with the name of the owners thereof as shown by the transfer books in the office of the auditor.

4. A particular description of each forty-acre tract or fraction thereof outside the district which will benefit from adoption of the plan as filed and the name of the owner thereof as shown by the transfer books in the office of the auditor.

5. Such rights of way or portions thereof previously established or acquired as will be rendered unnecessary by adoption of the federal plan and any unpaid damages awarded therefor.

6. Such other damages previously awarded as will be affected by adoption of the federal plan.

7. The recommendation of the engineer with respect to the adoption of the plan.

[C50, 54, 58, 62, 66, §455.204; C71, 73, 75, 77, 79, 81, §455.205]

89 Acts, ch 126, §2

CS89, §468.204

468.205 Supplemental reports.

Upon the filing of such report the board shall examine and consider the same together with the plan and the commitments involved in its adoption and may require supplemental reports of the engineer or of another disinterested engineer with such data as they may deem necessary or desirable including recommendations for any change or modification, negotiate with the federal agency involved and amend the plan in such manner as may be mutually agreed upon. The engineer shall make such supplemental reports as may be required by the board or necessitated by amendment of plan.

[C50, 54, 58, 62, 66, §455.205; C71, 73, 75, 77, 79, 81, §455.206]

89 Acts, ch 126, §2

CS89, §468.205

468.206 Notice and hearing.

If upon consideration of the plan or amended plan and the report or reports of the engineer and the commitments involved in the adoption of the plan the board finds that the district will benefit therefrom or the purposes for which the district was established will be promoted thereby, the board shall adopt the same as a tentative plan, entering order to that effect and fixing a date for hearing thereon not less than thirty days thereafter and directing the auditor to cause notice to be given of such hearing as hereinafter provided.

[C50, 54, 58, 62, 66, §455.206; C71, 73, 75, 77, 79, 81, §455.207]

89 Acts, ch 126, §2

CS89, §468.206

468.207 Form of notice.

Such notice shall be captioned in the name of the district and shall be directed to the owners of each tract or lot within said levee or drainage district, including railroad companies having rights of way, lienholders and encumbrancers, and to all owners, lienholders or encumbrancers of lands which an adoption of the plan would exclude from benefits and of lands outside the district which will benefit therefrom and to all other persons whom it may concern and, without naming them, to the occupants of all lands affected and shall set forth that there is on file in the office of the auditor a plan of construction of the federal agency (naming it), together with reports of an engineer thereon, which the board has tentatively approved, and that such plan may be amended before final action; also the day and hour set for hearing on the adoption of said plan, and that all claims for damages, except claims for land required for right of way or construction, and all objections to the adoption of said plan for any reason must be made in writing and filed in the office of the auditor at or before the time set for hearing. Provisions of this subchapter, parts 1 through 5, for giving notice, waiver of notice, waiver of objection and damages and adjournment for service contained in sections 468.15 through 468.20 shall apply.

[C50, 54, 58, 62, 66, §455.207; C71, 73, 75, 77, 79, 81, §455.208]

89 Acts, ch 126, §2

CS89, §468.207

468.208 Amendment — new parties.

The board may continue the hearing pending decision and may amend the plan but in the event of amendment the board shall continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing but any new parties rendered necessary by the modification or change of plans shall be served with notice as for the original hearing.

[C50, 54, 58, 62, 66, §455.208; C71, 73, 75, 77, 79, 81, §455.209]

89 Acts, ch 126, §2

CS89, §468.208

468.209 Entry of order — effect.

If the board, after consideration of the subject matter, including all objections filed to the adoption of the plan and all claims for damages, shall find that the district will be benefited by adoption of the plan or the purposes for which the district was established is furthered thereby, they shall enter order approving and adopting such final plan. Such order shall have the effect of:

1. Altering the boundaries of the district to conform to the changes effected by the plan adopted.

2. Canceling all existing awards for damages for property not appropriated for right of way or construction and rendered unnecessary by the plan so adopted.

3. Canceling all awards previously made for damages other than for right of way or construction but reinstating the claims for such damages which said claims may be amended by the claimants within ten days thereafter.

4. Canceling all unpaid assessments for benefits on lands excluded from the district by adoption of the plan. The assessments so canceled shall become part of the costs of the improvement.

5. Establishing as benefited thereby the lands added to the district by adoption of the plan and rendering same subject to classification and assessment.

6. Whenever a plan has been adopted as contemplated by this section, modification and changes can be made therein without further notice or hearing, provided the same do not increase or decrease the estimated cost of the plan to the district by more than twenty-five percent.

[C50, 54, 58, 62, 66, §455.209; C71, 73, 75, 77, 79, 81, §455.210]

89 Acts, ch 126, §2

CS89, §468.209

468.210 Appraisement.

The board shall thereupon appoint three appraisers of the qualifications prescribed in section 468.24, who shall qualify in the manner therein provided, and shall fix a time for hearing on their report of which all interested parties shall take notice. The appraisers shall view the premises and fix and determine the damages to which each claimant is entitled, including claimants whose awards for damages were canceled by the order of adoption, and shall place a separate valuation upon the acreage of each owner taken for right of way or other purposes necessitated by adoption of the plan and shall file a report thereof in writing in the office of the auditor at least five days before the date fixed by the board for hearing thereon. Should the report not be filed on time or should good cause for delay exist the board may postpone the time for final action on the subject and, if necessary, may appoint other appraisers. Thereafter the provisions of section 468.26 shall apply.

[C50, 54, 58, 62, 66, §455.210; C71, 73, 75, 77, 79, 81, §455.211]

89 Acts, ch 126, §2

CS89, §468.210

468.211 Assessment of benefits.

Appointment of commissioners to assess benefits and classify lands within the district and all proceedings relative to such assessment and classification shall be as otherwise provided in this subchapter, parts 1 through 5, except that when the lands of the district have previously been classified, the commissioners shall classify and assess only such lands as have been added to the district by adoption of the plan and recommend such changes in existing classifications as are materially affected by the plan so adopted. The board may, upon hearing, adjust the classification of lands affected by the plan.

[C50, 54, 58, 62, 66, §455.211; C71, 73, 75, 77, 79, 81, §455.212]

89 Acts, ch 126, §2

CS89, §468.211

468.212 Installments — warrants.

The board shall levy the costs contemplated in section 468.201 upon all of the lands of the district on the basis of the classification for benefits as finally established and the assessments so levied shall be paid in one installment unless the board in its discretion shall provide for the payment thereof in not more than twenty equal installments with interest at a rate determined by the board notwithstanding chapter 74A. The board may issue anticipatory warrants bearing interest at a rate determined by the board, notwithstanding chapter 74A. The warrants may be numbered and state a maturity date. The warrants may be sold by the board for cash in an amount not less than the face value thereof, together with accrued interest, if any.

[C50, 54, 58, 62, 66, §455.212; C71, 73, 75, 77, 79,

81, §455.213]
89 Acts, ch 126, §2
CS89, §468.212
94 Acts, ch 1035, §6

468.213 Subsequent levies.
The board shall make such subsequent levies as may be necessary to meet the expenses of the district including costs of maintenance, repair and operation of the works.
[C50, 54, 58, 62, 66, §455.213; C71, 73, 75, 77, 79, 81, §455.214]
89 Acts, ch 126, §2
CS89, §468.213

468.214 Applicable statutes.
Except as otherwise provided herein all provisions of this chapter relative to assessment of damages, appointment of an engineer, employment of counsel, payment for work, levy and collection of drainage and levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof and all other proceedings relating thereto shall apply.
[C50, 54, 58, 62, 66, §455.214; C71, 73, 75, 77, 79, 81, §455.215]
89 Acts, ch 126, §2
CS89, §468.214

468.215 Scope of plan.
The provisions of this part shall be applicable to districts organized or established under the provisions of subchapters II and III.
[C50, 54, 58, 62, 66, §455.215; C71, 73, 75, 77, 79, 81, §455.216]
89 Acts, ch 126, §2
CS89, §468.215

468.216 Districts under trustees.
When a district is in the management of trustees as provided in subchapter III the board of trustees shall have the jurisdiction to adopt the federal plan as provided herein and to exercise all other powers herein granted except that any levy shall be made by the board of supervisors upon certificate of the amount necessary by the trustees as provided in section 468.527.
[C50, 54, 58, 62, 66, §455.216; C71, 73, 75, 77, 79, 81, §455.217]
89 Acts, ch 126, §2
CS89, §468.216

468.217 through 468.219 Reserved.

PART 3

STATE LANDS

468.220 Occupancy and use permitted — assessments paid.
Any levee or drainage district organized, or in the process of being organized, under the laws of this state may occupy and use for any lawful levee or drainage purpose land owned by the state of Iowa, upon first obtaining permission to do so from the state or state agency controlling the same.
In the case of lands lying within the beds of meandered streams and border streams the permission shall be obtained from the natural resource commission of the department of natural resources. In the case of lands that are under the control of no office or agency of the state, then the permission shall be obtained from the executive council.
Such permission shall not be unreasonably withheld and shall be in the form of an easement executed by the governor or in the case of an agency, by the chairperson or presiding officer thereof, and when once granted shall be perpetual, except that if no use is made of the same for a period of five years such permission shall immediately thereafter expire.
All uses and occupancies as contemplated by this section existing on July 4, 1961, are hereby legalized.
The state of Iowa, its agencies and subdivisions shall be financially responsible for drainage and special assessments against land which they own, or hold title to, within existing drainage districts.
[C62, 66, §455.217; C71, 73, 75, 77, 79, 81, §455.218]
89 Acts, ch 126, §2
CS89, §468.220

468.221 through 468.229 Reserved.

PART 4

BOARD OF COUNTY DRAINAGE ADMINISTRATORS

468.230 Administrators appointed.
The county board of supervisors of any county of this state in which one or more drainage districts are established may by resolution establish a board of county drainage administrators. All of the powers, duties, and responsibilities now or hereafter conferred on county boards of supervisors in this chapter shall thereupon be transferred to and thereafter exercised by the board of county drainage administrators. A drainage or levee district may be established pursuant to subchapter III.
[C71, 73, 75, 77, 79, 81, §455.219]
89 Acts, ch 126, §2
CS89, §468.230

468.231 Administrator areas.

When establishing a board of county drainage administrators, the board of supervisors shall divide the county, along township lines, into three drainage administrator areas of approximately equal territory. The board of county drainage administrators shall consist of one resident freeholder appointed by the county board of supervisors from each area, and at least two of the administrators shall be agricultural landowners. The members first appointed shall hold office for terms of one, two, and three years respectively, as indicated and fixed by the county board of supervisors. Thereafter, succeeding members shall be appointed for a term of three years, except that vacancies occurring otherwise than by expiration of a term shall be filled by appointment for the unexpired term. Any member of the board of county drainage administrators who shall cease to have any of the qualifications prescribed by this section shall thereupon be disqualified as a member of the board and the office shall be deemed vacant. Members of the board of county drainage administrators may be removed by the county board of supervisors for cause, but every such removal shall be by written order which shall be filed with the county auditor.

[C71, 73, 75, 77, 79, 81, §455.220]
89 Acts, ch 126, §2
CS89, §468.231

468.232 Compensation.

The members of the board of county drainage administrators shall each receive compensation at an hourly rate established by the county board of supervisors for time actually devoted to the duties of their office, and reimbursement at the rate established by section 70A.9 for travel to and from meetings of, or other places of performing the duties of, the board, and other actual and necessary expenses incurred in the performance of their duties.

[C71, 73, 75, 77, 79, 81, §455.221]
89 Acts, ch 126, §2
CS89, §468.232

468.233 How paid.

The compensation and expenses of the county board of drainage administrators, for each day or portion thereof necessarily expended in the transaction of the business of a drainage or levee district, shall be paid out of the funds of the district served. The administrators shall file with the auditor or auditors, as the case may be, itemized, verified statements of their time devoted to the business of the district and the expenses incurred. If the administrators transact business of more than one district on a given day, they shall prorate their claims for compensation proportionately among the districts served on that day, but in no case shall a member of the board of county drainage administrators claim or receive a sum in excess of seventeen dollars and fifty cents, plus actual and necessary expenses, for a single day.

[C71, 73, 75, 77, 79, 81, §455.222]
89 Acts, ch 126, §2
CS89, §468.233

468.234 Soil and water conservation districts.

The governing board of every drainage or levee district organized under the laws of this state shall take notice of the district plan, and shall conform to the duly adopted rules, of the soil and water conservation district or districts in which the drainage or levee district is located. However, this section does not grant authority not otherwise granted by law to the governing boards of drainage or levee districts.

[C73, 75, 77, 79, 81, §455.223]
86 Acts, ch 1238, §61; 89 Acts, ch 83, §53; 89 Acts, ch 126, §2
CS89, §468.234

468.235 through 468.239 Reserved.

PART 5

COUNTY-CITY DRAINAGE DISTRICT

468.240 Supervisors of county over two hundred thousand may establish.

The board of a county with a population of two hundred thousand persons or more that has established a drainage district located partly within the corporate limits of a city may expend federal grants or revenue sharing money or other funds not derived from local tax levies in amounts as the board deems proper to pay any part of the cost of improvements authorized in this subchapter, parts 1 through 5. The board may issue general obligation bonds to pay any part of the cost of improvements authorized in this subchapter, parts 1 through 5. The bonds shall be issued according to the provisions of chapter 384, division III, relating to general obligation bonds for essential corporate purposes.

[C77, 79, 81, §455.225]
89 Acts, ch 126, §2
CS89, §468.240

468.241 through 468.249 Reserved.

PART 6

DISSOLUTION OF DRAINAGE DISTRICTS

468.250 Jurisdiction to dissolve districts and abandon or transfer improvements.

Drainage or levee districts may be dissolved and abandoned or assimilated by the procedures pre-

scribed by this part.

1. When any drainage or levee district is free from indebtedness and it shall appear that the necessity therefor no longer exists or that the expense of the continued maintenance of the ditch or levee is in excess of the benefits to be derived therefrom, the board of supervisors or board of trustees, as the case may be, shall have power and jurisdiction, upon petition of a majority of the landowners, who, in the aggregate, own sixty percent of all land in such district, to abandon the same and dissolve and discontinue such districts in the manner prescribed by sections 468.251 through 468.255. Nothing in this subsection shall prevent the board from eliminating land from a drainage district as permitted under section 468.188.

2. When one drainage or levee district, either intracounty or intercounty, includes within its territory all of the territory of one or more other drainage or levee districts, and it appears that one assessment and one governing body would be to the benefit of the owners and occupants of the land within the mutual jurisdiction of the overlying and the contained districts, the board of supervisors or board of trustees may effect the dissolution of a contained district and the transfer of jurisdiction and control over that contained district's improvements to the overlying district, in the manner prescribed by sections 468.256 through 468.261.

[C35, §7598-g1; C39, §**7598.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.1]
89 Acts, ch 126, §2
CS89, §468.250

468.251 Notice of hearing.

Upon the filing of such petition the board shall enter an order fixing the date for hearing thereon not less than forty days from the date of the filing thereof and shall enter an order directing the county auditor, if such district is under the control of the board of supervisors, or the clerk of the board, if under the control of a board of trustees, to immediately cause notice of hearing thereon to be served on the owners of lands in such district as may then be provided by law in proceedings for the establishment of a drainage or levee district.

[C35, §7598-g2; C39, §**7598.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.2]
89 Acts, ch 126, §2
CS89, §468.251

468.252 Hearing on petition.

At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition as to form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the abandonment and dissolution of such district. If it shall find that such district is free from indebtedness and that the necessity for the continued maintenance thereof no longer exists or that the expense of the continued maintenance of such district is not commensurate with the benefits derived therefrom, it shall enter an order abandoning and dissolving such district, which order shall be filed with the county auditor of the county or counties in which such district is situated and noted on the drainage record.

[C35, §7598-g3; C39, §**7598.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.3]
89 Acts, ch 126, §2
CS89, §468.252

468.253 Appeal.

Appeal may be taken from the order of the board to the district court of the county in which such district or a part thereof is situated, in the same time and manner as appeal may be taken from an order of the board of supervisors establishing a district.

[C35, §7598-g4; C39, §**7598.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.4]
89 Acts, ch 126, §2
CS89, §468.253
Appeals, §468.83 et seq.

468.254 Expense — refund.

In case there are sufficient funds on hand in such district, or there are unpaid assessments outstanding or other property belonging to such district in an amount sufficient to pay such expense, the expense of abandonment and dissolution shall be paid out of such funds or out of funds realized by the sale of such property. Where such district is free of indebtedness but there are not sufficient funds on hand or unpaid assessments outstanding or other assets to pay such expense the board shall assess such expense against the property in the district in the same proportions as the last preceding assessments of benefits. Any excess remaining to the credit of such district after sale of its assets and after payment of such expenses shall be prorated back to the property owners in the district in the proportions according to class and benefits as last assessed. If the petition is denied, the costs of said proceedings shall be paid by the petitioning owners.

[C35, §7598-g5; C39, §**7598.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.5]
89 Acts, ch 126, §2
CS89, §468.254

468.255 Abandonment of rights of way.

If a dissolution is effected pursuant to section 468.250, subsection 1, and sections 468.251 through 468.254, the rights of way of the district for all purposes of the district shall be deemed abandoned.

[C35, §7598-g6; C39, §**7598.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.6]
89 Acts, ch 126, §2
CS89, §468.255

468.256 Initiating dissolution of contained district.

To initiate the dissolution of a contained district under the circumstances described in section 468.250, subsection 2:

1. The board of supervisors or board of trustees of the district proposed to be dissolved shall enter an order for the proposed dissolution of that district and the surrender of its improvements and rights of way to the overlying district.

2. The board of supervisors or board of trustees of the overlying district shall enter an order approving the proposed acceptance of those improvements and rights of way.

[C81, §456.11]
89 Acts, ch 126, §2
CS89, §468.256

468.257 Procedure for notice of hearing.

1. The board of the overlying district shall enter an order fixing a place and a time, not less than forty days after the date of the later of the two orders required by section 468.256, for a hearing on the proposals described in the two orders.

2. The auditor, or auditors if the overlying district includes land lying in two or more counties, shall cause notice of the proposals and of the hearing to be given immediately upon the entry of an order under subsection 1. The notice must:

a. Include the texts of the orders entered pursuant to section 468.256, the date, time and place of the hearing, and a statement that all objections to the proposals embodied in the orders must be made in writing and filed in the office of the auditor at or before the time set for the hearing.

b. Be directed to all of the following:

(1) The owner of each tract of land or lot within the overlying district, as shown by the transfer books of the auditor's office, including railway companies having right of way in the district.

(2) All lienholders or encumbrancers of land within the overlying district, without naming them.

(3) All actual occupants of land in the overlying district, without naming individuals.

(4) All other persons whom it may concern.

3. Except as otherwise required by section 468.16, the notice required by this section shall be served by publication once in a newspaper of general circulation in each county in which the overlying district's land is situated. The publication shall be made not less than twenty days prior to the day set for the hearing. Proof of service shall be made by affidavit of the publisher.

[C81, §456.12]
89 Acts, ch 126, §2
CS89, §468.257

468.258 Procedure at hearing.

The hearing shall be convened at the time and place fixed in accordance with section 468.257, subsection 1, and the procedure at the hearing shall be as prescribed by this section.

1. The board of the contained district shall first hear all objections filed against the dissolution of the district and the surrender of its improvements to the overlying district. If, at the conclusion of that portion of the hearing, that board finds that the contained district is free of debt, that the economic benefits of the continued maintenance of that district would not be commensurate with its cost, and that it would be advantageous to dissolve and discontinue the contained district and surrender its improvements and rights of way to the overlying district, it shall enter an order dissolving the contained district and directing the surrender of its improvements and rights of way, conditioned on acceptance by the overlying district.

2. Immediately thereafter, the board of the overlying district shall hear all objections filed against the acceptance of the contained district's improvements and their maintenance. If it finds that the improvements are conducive to the drainage of surface waters from agricultural lands and all other lands in the overlying district or the protection of the lands from overflow, it shall enter an order accepting the improvements and rights of way of the contained district.

3. Orders issued pursuant to subsections 1 and 2 shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

4. If at or before the time set for the hearing there have been filed with the county auditor or auditors, if either the contained or overlying district extends into more than one county, or with the board of either district, one or more remonstrances or objections to the dissolution of the contained district, or to the acceptance of that district's improvements and rights of way by the overlying district, signed by owners of land and land improvements in either district aggregating sixty percent of the total assessed value of the land in that district as shown by the taxing records in the county or counties in which that district is located, the board to which the remonstrances or objections have been made shall abandon its proposed action.

[C81, §456.13]
89 Acts, ch 126, §2
CS89, §468.258

468.259 Election in lieu of hearings.

In lieu of the hearings provided for in section 468.258, the board of either district may call an election for the purpose of determining the dissolution of the contained district or the acceptance of that district's improvements and rights of way by the overlying district. The questions may be submitted at a regular election of the district or at a special election called for that purpose. It is not mandatory for the county commissioner of elec-

tions to conduct the elections, however the provisions of sections 49.43 to 49.47, and of subchapter III of this chapter, as they are applicable, shall govern the elections, and the question to be submitted shall be set forth in the notice of election.

1. If sixty percent or more of the votes cast are in favor of the proposed dissolution of the contained district involved, the board of that district shall enter an order dissolving the contained district and directing the surrender of its improvements and rights of way, conditioned on acceptance by the overlying district.

2. If sixty percent or more of the votes cast in the overlying district are in favor of the proposed acceptance by that district of the contained district's improvements and rights of way, the board of the overlying district shall enter an order accepting the improvements and rights of way of the contained district.

3. Orders issued pursuant to subsections 1 and 2 shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

[C81, §456.14]
89 Acts, ch 126, §2
CS89, §468.259

468.260 Effect of dissolution, surrender and acceptance.

When a contained district dissolves and surrenders its improvements and rights of way to the jurisdiction and control of an overlying district, and the overlying district accepts those improvements and rights of way, in accordance with sections 468.256 through 468.259:

1. It is presumed that the classification of the lands which were included in the dissolved district, as previously determined by the commissioners in the classification of those lands as a part of the overlying district, remains equitable and no reclassification of the overlying district or any part of it is necessary.

2. The improvements surrendered and accepted are at all times under the supervision of the board of the overlying district, and it is the duty of that board to keep the improvements in repair as provided in section 468.126 as fully and completely as though the improvements were a part of the original construction or improvements in the overlying district.

3. It is presumed that:

a. The improvements surrendered and accepted are an integral part of the overlying district's improvements, and are a public benefit and conducive to the public health, convenience and welfare.

b. No value is taken into consideration for the existing improvements nor is credit given to the parties owning them, and they shall not be considered an asset of the district that is dissolved.

4. The original cost and the subsequent cost of improvements in the district that has been dissolved are added to and become a part of the original cost and the subsequent cost of improvements in the overlying district.

[C81, §456.15]
89 Acts, ch 126, §2
CS89, §468.260

468.261 Costs borne by overlying district.

The overlying district shall pay all costs of the proceedings held pursuant to sections 468.256 through 468.259.

[C81, §456.16]
89 Acts, ch 126, §2
CS89, §468.261

468.262 through 468.269 Reserved.

SUBCHAPTER II

JURISDICTIONS

PART 1

INTERCOUNTY LEVEE OR DRAINAGE DISTRICTS

468.270 Petition and bond.

When the levee or drainage district embraces land in two or more counties, a duplicate of the petition of any owner of land to be affected or benefited by such improvement shall be filed with the county auditor of each county into which said levee or drainage district will extend, accompanied by a duplicate bond to be filed with the auditor of each of the said counties as provided when the district is wholly within one county, in an amount and with sureties approved by the auditor of the county in which the largest acreage of the district is situated, which bond shall run in favor of the several counties in which it is filed.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7599;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.1]
89 Acts, ch 126, §2
CS89, §468.270

Procedure for converting several intracounty districts into one intercounty district, chapter 468, subchapter II, part 2

468.271 Commissioners.

Upon the filing of such petition in each county and the approval of such duplicate bond by the proper auditor, the board of each of such counties shall appoint a commissioner and the joint boards shall appoint a competent engineer who shall also act as a commissioner.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7600;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.2]
89 Acts, ch 126, §2
CS89, §468.271

468.272 Examination and report.

The commissioners thus appointed shall examine the application and make an inspection of all the lands embraced in the proposed district and

shall determine what improvements in the way of levees, ditches, drains, settling basins, or change of natural watercourse are necessary for the drainage of the lands described in the petition. Such commissioners, including the engineer, shall file a detailed report of their examination and their findings and file a duplicate thereof in the office of the auditor of each of said counties.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7601;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.3]
89 Acts, ch 126, §2
CS89, §468.272

468.273 Duty of engineer.

In addition to the report of the commissioners as a whole, the engineer so appointed shall perform the same duties and in the same manner required of the engineer by subchapter I, parts 1 through 5 when the proposed district is located wholly within one county, and the engineer's surveys, plats, profiles, field notes, and reports of the engineer's surveys shall be made and filed in duplicate in each county.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7602;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.4]
89 Acts, ch 126, §2
CS89, §468.273

468.274 Notice.

Immediately upon the filing of the report of the commissioners and the engineer, if the same recommends the establishment of such district, notice shall be given by the auditor of each county to the owners of all the lots and tracts of land in the auditor's own county respectively embraced within such district as recommended by the commissioners as shown by the transfer books in the office of the auditor of each of said counties, and also to the persons in actual occupancy of all the lots or tracts of land in such district, and also to each lienholder or encumbrancer of any of such lots or tracts as shown by the records of the respective counties.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7603;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.5]
89 Acts, ch 126, §2
CS89, §468.274

468.275 Contents of notice — service.

Such notice shall state the time and place, when and where the boards of the several counties will meet in joint session for the consideration of said petition and the report of the commissioners and engineer thereon, and shall in other respects be the same and served in the same time and manner as required when the district is wholly within one county, except that the auditor of each county shall give notice only to the owners, occupants, encumbrancers, and lienholders of the lots and tracts of land embraced within the proposed district in the auditor's own county as shown by the records of such county.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7604;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.6]
89 Acts, ch 126, §2
CS89, §468.275
Notice and service, §468.14 et seq.

468.276 Claims for damages — filing — waiver.

Any person filing objections or claiming damages or compensation on account of the construction of such improvement shall file the same in writing in the office of the auditor of the county in which the person's land is situated, at or before the time set for hearing. The person may, however, file it at the time and place of hearing. If the person shall fail to file such claim at the time specified the person shall be held to have waived the person's right thereto, but claims for land taken for right of way for any open ditch or for settling basins need not be filed.

[S13, §1989-a30; C24, 27, 31, 35, 39, §**7605;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.7]
89 Acts, ch 126, §2
CS89, §468.276

468.277 Organization and procedure — adjournments.

At the time set for hearing such petition, the boards of the several counties shall meet at the place designated in said notice. They shall organize by electing a chairperson and a secretary, and when deemed advisable may adjourn to meet at the call of such chairperson at such time and place as the chairperson may designate, or may adjourn to a time and place fixed by said joint boards. They shall sit jointly in considering the petition, the report and the recommendations of the engineer, in the same manner as if the district were wholly within one county.

[S13, §1989-a31; C24, 27, 31, 35, 39, §**7606;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.8]
89 Acts, ch 126, §2
CS89, §468.277

468.278 Tentative adoption of plans.

The said boards by their joint action may dismiss the petition and refuse to establish such district, or they may approve and tentatively adopt the plans and recommendations of the engineer for the said district.

[C24, 27, 31, 35, 39, §**7607;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.9]
89 Acts, ch 126, §2
CS89, §468.278

468.279 Appraisers.

If the said boards shall adopt a tentative plan for the district, the board of each county shall select an appraiser and the several boards by joint action shall employ an engineer, and the said appraisers and engineer shall constitute the appraisers to ap-

praise the damages and value of all right of way required for open ditches and of all lands required for settling basins.

[S13, §1989-a31; C24, 27, 31, 35, 39, §**7608;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.10]
89 Acts, ch 126, §2
CS89, §468.279

468.280 Duty of appraisers — procedure.

The appraisers shall proceed in the same manner and make return of their findings and appraisement the same as when the district is wholly within one county, except that a duplicate thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of the appraisers, all further proceedings shall be the same as where the district is wholly within one county, except as otherwise provided.

[S13, §1989-a31; C24, 27, 31, 35, 39, §**7609;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.11]
89 Acts, ch 126, §2
CS89, §468.280
Procedure, §468.24 et seq.

468.281 Meetings of joint boards.

The board of supervisors of any county in which a petition for the establishment of a levee or drainage district to extend into or through two or more counties is on file, may meet with the board or boards of any other county or counties in which such petition is on file, for the purpose of acting jointly with such other board or boards in reference to said petition or any business relating to such district. Any such joint meetings held in either of the counties in which such petition is on file shall constitute a valid and legal meeting of said joint boards for the transaction of any business pertaining to said petition or to the business of such district.

[S13, §1989-a37; C24, 27, 31, 35, 39, §**7610;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.12]
89 Acts, ch 126, §2
CS89, §468.281

468.282 Equalizing voting power.

When the boards are of unequal membership, for the purpose of equalizing their voting power each member of the smallest board shall cast a full vote and each member of a larger board shall cast such fractional part of a vote as results from dividing the smallest number by such larger number.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7611;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.13]
89 Acts, ch 126, §2
CS89, §468.282

468.283 Commissioners to classify and assess.

If the boards of the several counties acting jointly shall establish the district, they shall appoint a commission consisting of one from each county, and in addition thereto a competent engineer who shall within twenty days begin to inspect the premises and classify the lands in said district fixing the percentages and assessments of benefits and the apportionment of costs and expenses and shall complete said work within the time fixed by the boards. The qualifications of said commissioners, their classification of lands, fixing percentages and assessments of benefits and apportionment of costs and the report thereof in all details shall be governed in all respects by the provisions of subchapter I, parts 1 through 5, for districts wholly within one county.

[S13, §1989-a32; C24, 27, 31, 35, 39, §**7612;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.14]
89 Acts, ch 126, §2
CS89, §468.283

468.284 Notice and service thereof — objections.

Upon the filing of the report of the commissioners to classify lands, fix and assess benefits and apportion costs and expenses, the auditors of the several counties, acting jointly, shall cause notice to be served upon all interested parties of the time when and the place where the boards will meet and consider such report and make a final assessment of benefits and apportionment of costs, which notice shall be the same and served for the time and in the manner and all proceedings thereon shall be the same as provided in subchapter I, parts 1 through 5, in districts wholly within one county, except publication of notice as provided in section 468.15 shall be in each of the counties into which the district extends, and also except that said notice to be published in each of the several counties shall contain only the names of the owners of each tract of land or lot in the district located within the respective county in which said notice is to be published and the total amount of all proposed assessments on the lands located in each of the other counties into which the district extends, and except further that the objections not filed prior to the date of the hearing shall be filed with the boards at the time and place of such hearing.

[S13, §1989-a32; C24, 27, 31, 35, 39, §**7613;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.15]
89 Acts, ch 126, §2
CS89, §468.284

468.285 Levies — certificates and bonds.

After the amount to be assessed and levied against the several tracts of land shall have been finally determined, the several boards, acting separately, and within their own counties, shall levy and collect the taxes apportioned and levied in their respective counties. They may issue warrants, improvement certificates, or bonds for the payment of the cost of such improvement within their respective counties, with the same right of

landowners to pay without interest or in installments all as provided where the district is wholly within one county.

[S13, §1989-a32; C24, 27, 31, 35, 39, §**7614;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.16]

89 Acts, ch 126, §2

CS89, §468.285

Payment, §468.56 et seq.

468.286 Bonds or proceeds made available.

When drainage bonds are to be issued under the provisions of section 468.285 they shall be issued at such time that they or the proceeds thereof shall be available for the use of the district at a date not later than ninety days after the actual commencement of the work on the improvement as provided in relation to districts wholly within one county.

[C24, 27, 31, 35, 39, §**7615;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.17]

89 Acts, ch 126, §2

CS89, §468.286

468.287 Supervising engineer.

At the time of finally establishing the district, the boards of the several counties, acting jointly, shall employ a competent engineer to have charge and supervision of the construction of the improvement and they shall fix the engineer's compensation and the engineer shall, before entering upon said work, give a bond running to the several counties for the use and benefit of the district in the same amounts and of like tenor and effect as is provided in districts wholly within one county. A duplicate of such bond shall be filed with the auditor of each of said counties.

[S13, §1989-a34; C24, 27, 31, 35, 39, §**7616;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.18]

89 Acts, ch 126, §2

CS89, §468.287

Bond, §468.33

468.288 Duty of engineer.

The duties of the supervising engineer shall be the same in all respects as is provided by subchapter I, parts 1 through 5, for districts wholly within one county.

[S13, §1989-a34; C24, 27, 31, 35, 39, §**7617;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.19]

89 Acts, ch 126, §2

CS89, §468.288

468.289 Notice of letting work — applicable procedure.

If the boards, acting jointly, shall establish such district, the auditors of the several counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting contracts for the construction of the improvement. The notices, bids, bonds, and all other proceedings in relation to letting contracts shall be the same as provided where the district is wholly within one county, but duplicates of contractors' bonds shall be filed with the auditor of each county.

[S13, §1989-a33; C24, 27, 31, 35, 39, §**7618;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.20]

89 Acts, ch 126, §2

CS89, §468.289

468.290 Contracts.

All contracts made for engineering work and the work of constructing improvements of an intercounty district shall be made by written contract executed by the contractor and such person as may be authorized by the boards of the several counties and by joint resolution and shall specify the work to be done, the amount of compensation therefor and the times and manner of payment, all as provided in relation to districts wholly within one county.

[S13, §1989-a33; C24, 27, 31, 35, 39, §**7619;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.21]

89 Acts, ch 126, §2

CS89, §468.290

468.291 Monthly estimate — payment.

The engineer in charge of the work shall furnish the contractor a monthly statement estimating the amount of work done on each section and in each county. A duplicate copy of the statement shall be filed with the auditor of each county where the work is done. When the auditor files the statement, the auditor shall draw a warrant for the contractor or give the contractor an order directing the treasurer to deliver to the contractor improvement certificates or drainage bonds, as the case may be, in favor of the contractor for ninety percent of the amount due from the auditor's county. Drainage warrants, bonds, or improvement certificates when so issued shall be in such amounts as the auditor determines, but shall not be in amounts in excess of one thousand dollars.

[S13, §1989-a34; C24, 27, 31, 35, 39, §**7620;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.22]

89 Acts, ch 126, §2

CS89, §468.291

94 Acts, ch 1051, §12

468.292 Final settlement.

When the work to be done on any contract is completed to the satisfaction of the supervising engineer the engineer shall so report and certify to the boards of the several counties, and the auditors of the county shall fix a day to consider said report, and all the provisions shall apply in relation to objections to said report and the approval of the same and the completion of any unfinished or abandoned work as is provided in subchapter I, parts 1 through 5, relating to completion of work and final settlement in districts wholly within one county, except that, when the completed work is

accepted by the joint action of the boards of supervisors of the several counties into which the district extends such acceptance shall be certified to the auditor of each county who shall draw a warrant for the contractor or give the contractor an order directing the treasurer to deliver to the contractor improvement certificates or drainage bonds, as the case may be, for the balance due from the portion of the district in such county.

[S13, §1989-a34; C24, 27, 31, 35, 39, §**7621;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.23]
89 Acts, ch 126, §2
CS89, §468.292

468.293 Failure of board to act.

When the establishment of a district, extending into two or more counties, is petitioned for as hereinbefore provided and one or more of such boards fails to take action thereon, the petitioners may cause notice in writing to be served upon the chairperson of each board demanding that action be taken upon the petition within twenty days from and after the service of such notice.

[S13, §1989-a36; C24, 27, 31, 35, 39, §**7622;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.24]
89 Acts, ch 126, §2
CS89, §468.293

468.294 Transfer to district court.

If such boards shall fail to take action thereon within the time named, or fail to agree, the petitioners may cause such proceedings to be transferred to the district court of any of the counties into which such proposed district extends by serving notice upon the auditors of the several counties within ten days after the expiration of said twenty days' notice, or after the failure of such boards to agree.

[S13, §1989-a36; C24, 27, 31, 35, 39, §**7623;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.25]
89 Acts, ch 126, §2
CS89, §468.294

468.295 Transcript, docket and trial.

Within thirty days after completion of notice, the auditor shall, acting jointly, prepare and certify to the clerk of the district court a full and complete transcript of all proceedings had in such case. The clerk of the district court shall thereupon docket the case and same shall be triable in equity at any time after the expiration of twenty days thereafter.

[S13, §1989-a36; C24, 27, 31, 35, 39, §**7624;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.26]
89 Acts, ch 126, §2
CS89, §468.295

468.296 Decree.

The court shall enter judgment and decree dismissing the case or establishing such district and may by proper orders and writs enforce the same.

[S13, §1989-a36; C24, 27, 31, 35, 39, §**7625;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.27]
89 Acts, ch 126, §2
CS89, §468.296

468.297 Law applicable.

Except as otherwise stipulated in this part the provisions and procedure set forth in subchapter I, parts 1 through 5, shall govern and apply to the formation, establishment, and conduct of every levee or drainage district extending into two or more counties, the petition therefor, the giving or publication or service of notice therein, the appointment and duties of all officers or appraisers or commissioners, the making or filing of waivers, reports, plats, profiles, recommendations, notices, contracts, and papers, the classification and apportionment and assessment of lands and all other property, the taking and hearing of appeals, the issuance and delivery of warrants, bonds and assessment certificates, the payment of taxes and assessments, the making of improvements, ditches, drains, settling basins, changes, enlargements, extensions, and repairs, the inclusion of lands, and the making or performance of every other matter or thing whatsoever relevant to or in any wise connected with such joint drainage or levee district, and the rights, privileges, and duties of all persons, landowners, officers, appellants, and courts.

[S13, §1989-a37; C24, 27, 31, 35, 39, §**7626;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.28]
89 Acts, ch 126, §2
CS89, §468.297

468.298 Records of intercounty districts.

A record of all proceedings of an intercounty levee or drainage district shall be maintained by the auditor of each county in which a portion of the district lies, as provided by sections 468.172 and 468.173, but the records in the office of the auditor of the county having the largest acreage in the district shall be the official records of said district.

[C71, 73, 75, 77, 79, 81, §457.29]
89 Acts, ch 126, §2
CS89, §468.298

468.299 County with largest acreage to keep funds.

When an intercounty district has been finally established and original construction completed and final settlement made with the contractor, as provided by section 468.292, the treasurer of the county having the largest acreage of the district shall be the depository for all funds of the district and the treasurer of the other counties in which the district is situated shall periodically, at least annually, pay over all district funds received within said period to the treasurer of the county with the largest acreage, except that funds payable on improvement certificates or bonds shall be dis-

bursed to the holders of the certificates or bonds by the treasurer of the county in which the land encumbered is located.
[C71, 73, 75, 77, 79, 81, §457.30]
89 Acts, ch 126, §2
CS89, §468.299

468.300 through 468.304 Reserved.

PART 2

CONVERTING INTRACOUNTY DISTRICTS INTO INTERCOUNTY DISTRICT

468.305 Intracounty districts converted into intercounty district.
Whenever one or more drainage districts in one county outlet into a ditch, drain, or natural watercourse, which ditch, drain, or natural watercourse is the common carrying outlet for one or more drainage districts in another county, the boards of supervisors of such counties acting jointly may by resolution, and on petition of the trustees of any one of such districts or one or more landowners therein, in either case such petition to be accompanied by a bond as provided in section 468.270, must initiate proceedings for the establishment of an intercounty drainage district by appointing commissioners as provided in section 468.271 and by requiring a bond as provided in section 468.270 and by proceeding as provided by subchapter II, part 1, and all powers, duties, limitations, and provisions of this part and subchapter II, part 1, shall be applicable thereto.
[C27, 31, 35, §7626-a1; C39, §**7626.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.1]
89 Acts, ch 126, §2
CS89, §468.305

468.306 Benefited land only included.
Neither any land nor any previously organized drainage district shall be included within, or assessed for, the proposed new intercounty district unless such land or unless such previously organized district shall receive special benefits from the improvements in the proposed new intercounty district.
[C27, 31, 35, §7626-a2; C39, §**7626.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.2]
89 Acts, ch 126, §2
CS89, §468.306

468.307 Appeal by landowner.
Any landowner affected by the establishment of the new intercounty district may appeal to the district court of the county where the owner's land lies from the action of the joint boards in establishing the new district or in including the owner's land within it.
[C27, 31, 35, §7626-a3; C39, §**7626.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.3]
89 Acts, ch 126, §2
CS89, §468.307

468.308 Procedure on appeal.
The procedure for taking such appeal and for hearing and determining it shall be that provided for similar appeals in subchapter I, parts 1 through 5.
[C27, 31, 35, §7626-a4; C39, §**7626.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.4]
89 Acts, ch 126, §2
CS89, §468.308

468.309 Appeal by trustees or boards.
Trustees or boards of supervisors having charge of any previously organized district which is proposed to be included (either in whole or in part) within the new intercounty district may, in the same manner and under the same procedure appeal to the district court from the action of the joint boards in establishing the new district or in including therein the previously organized district or any part thereof.
[C27, 31, 35, §7626-a5; C39, §**7626.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.5]
89 Acts, ch 126, §2
CS89, §468.309

468.310 through 468.314 Reserved.

PART 3

DRAINAGE DISTRICTS EMBRACING PART OR WHOLE OF CITY

468.315 Authority to include city.
The board of any county shall have the same power to establish a drainage district that includes the whole or any part of any city as they have to establish districts wholly outside of such cities, including assessment of damages and benefits within such cities, but no board of supervisors shall have power or authority to establish a drainage or levee district which lies wholly within the corporate limits of any city, nor in any case to establish any district for sewer purposes.
[S13, §1989-a38; C24, 27, 31, 35, 39, §**7627;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.1]
89 Acts, ch 126, §2
CS89, §468.315

468.316 Inclusion of city — notice.
Notice of the filing of the petition for such district and the time of hearing thereon, shall set forth the boundaries of the territory included within such city and directed to the city clerk and the owners and lienholders of the property within such boundaries without naming individuals, to be served in the same manner as notices where the district is wholly outside of such city.

[S13, §1989-a38; C24, 27, 31, 35, 39, §**7628;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.2]
89 Acts, ch 126, §2
CS89, §468.316
Service of notice, §468.15 et seq.

468.317 Assessments — notice.
When the streets, alleys, public ways, or parks or lots or parcels including railroad rights of way of any city, or city under special charter, so included within a levee or drainage district, will be beneficially affected by the construction of any improvement in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to estimate and return in their report the percentage and assessment of benefits to such streets, alleys, public ways, and parks, or lots or parcels including railroad rights of way and notice thereof shall be served upon the clerk of such city, irrespective of the form of government, and upon owners of lots, parcels, and railroad rights of way so assessed.
[S13, §1989-a38; C24, 27, 31, 35, 39, §**7629;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.3]
89 Acts, ch 126, §2
CS89, §468.317

468.318 Objections — appeal.
The council or clerk of such city or individual owners may file objections to such percentage and assessment of benefits in the time and manner provided in case of landowners outside such city, and they shall have the same right to appeal from the finding of the board with reference to such assessment.
[S13, §1989-a38; C24, 27, 31, 35, 39, §**7630;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.4]
89 Acts, ch 126, §2
CS89, §468.318
Objections, §468.45; appeals, §468.83 et seq.

468.319 Assessments — interest.
Such assessment as finally made shall draw interest at the same rate and from the same time as assessment against lands.
[S13, §1989-a38; C24, 27, 31, 35, 39, §**7631;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.5]
89 Acts, ch 126, §2
CS89, §468.319

468.320 Bonds, certificates and waivers.
The board of supervisors and the city council shall have the same power in reference to issuing improvement certificates or drainage bonds and executing waivers on account of such assessment for benefits to streets, alleys, public ways, parks, and other lands as is herein conferred upon the board of supervisors in reference to assessment for benefits to highways.
[S13, §1989-a38; C24, 27, 31, 35, 39, §**7632;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.6]
89 Acts, ch 126, §2
CS89, §468.320
Certificates and bonds, §468.70 et seq.

468.321 Funding bonds.
Such cities may issue their funding bonds for the purpose of securing money to pay any assessment against it as provided by law.
[C24, 27, 31, 35, 39, §**7633;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.7]
89 Acts, ch 126, §2
CS89, §468.321

468.322 Jurisdiction relinquished.
If the board of supervisors of any county at any time finds that twenty-five percent or more of the total area of any established drainage district is located within the corporate limits of any city, that the district's drains are wholly or partially constructed of sewer tile, and that the district's drain or drains are needed or being used by the city for storm sewer or drainage purposes, the board may by resolution transfer to the city control of the entire drainage district, including the portion outside the corporate limits of the city.
[C24, 27, 31, 35, 39, §**7634;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.8]
89 Acts, ch 126, §2
CS89, §468.322

468.323 Request for relinquishment.
When a county board of supervisors elects to transfer control of a drainage district to a city, as provided in section 468.322, the resolution effecting the transfer shall state a time not less than thirty nor more than ninety days after adoption of the resolution when the transfer of control shall take effect. The resolution shall be certified to the governing body of the city and a copy thereof filed by the county auditor, who shall spread the same upon the records of the drainage district.
[C24, 27, 31, 35, 39, §**7635;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.9]
89 Acts, ch 126, §2
CS89, §468.323

468.324 Duty to accept.
It shall be the duty of the governing body of any city to accept control of and thereafter to administer a drainage district properly transferred to the city, commencing on the date specified in the resolution of the county board of supervisors certified to the governing body as provided in section 468.323, or at such later date as may be agreed to by the county board upon request of the governing body.
[C24, 27, 31, 35, 39, §**7636;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.10]
89 Acts, ch 126, §2
CS89, §468.324

468.325 Jurisdiction of municipality.
After the drainage district has been taken over by the city, it shall have complete control thereof, and may use the same for any purpose that said city through its city council deems proper and necessary for the advancement of the city or its health or welfare, and the city shall be responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors to the city.
[C24, 27, 31, 35, 39, §**7637;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.11]
89 Acts, ch 126, §2
CS89, §468.325

468.326 City council to control district.
The council of any city acting under the provisions of this part shall have control, supervision and management of the district, and shall be vested with all of the powers which are now or may hereafter be conferred on the board of supervisors for the control, supervision and management of drainage districts under the laws of this state within the said district unless otherwise specifically provided.
[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.12]
89 Acts, ch 126, §2
CS89, §468.326

468.327 Trustee control.
A district formed pursuant to this part, under the control of a city council, may be placed under the control and management of a board of trustees as provided in subchapter III of this chapter. Each trustee shall be a citizen of the United States not less than eighteen years of age and a bona fide owner of benefited land in the district for which the trustee is elected. If the owner is a family farm corporation as defined by section 9H.1, subsection 15, a business corporation organized and existing under chapter 490 or 491, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.
84 Acts, ch 1040, §1
C85, §459.13
89 Acts, ch 126, §2
CS89, §468.327
90 Acts, ch 1205, §14; 93 Acts, ch 126, §4

468.328 through 468.334 Reserved.

PART 4

HIGHWAY DRAINAGE DISTRICTS

468.335 Establishment.
Whenever, in the opinion of the board of supervisors, it is necessary to drain any part of any public highway under its jurisdiction, and any land abutting upon or adjacent thereto, it may proceed without petition or bond to establish a highway drainage district by proceeding in all other respects as provided in subchapter I, parts 1 through 5.
[SS15, §1989-b, -b2 – b6, -b8, -b12, -b13; C24, 27, 31, 35, 39, §**7638;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.1]
89 Acts, ch 126, §2
CS89, §468.335

468.336 Powers.
Such district, when established, shall have the powers granted to drainage and levee districts, and all parties interested shall have the same rights so far as applicable.
[SS15, §1989-b, -b2 – b6, -b8, -b12, -b13; C24, 27, 31, 35, 39, §**7639;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.2]
89 Acts, ch 126, §2
CS89, §468.336

468.337 Initiation without petition.
When the board of supervisors determines on its own action to proceed to the establishment of a highway drainage district, it shall do so by the adoption of a resolution of necessity to be placed upon its records, in which it shall describe in a general way the portion of any highway or highways to be included in such district, together with the description of abutting or adjacent land and railroad rights of way to be included in such district and made subject to assessment for such improvement.
[SS15, §1989-b; C24, 27, 31, 35, 39, §**7640;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.3]
89 Acts, ch 126, §2
CS89, §468.337

468.338 Engineer.
The board shall appoint a competent engineer for the district. If the county engineer is appointed, the engineer shall serve without additional compensation. In no case shall the county engineer act as a member of the assessment commission in a drainage district provided for in this part.
[SS15, §1989-b, -b11; C24, 27, 31, 35, 39, §**7641;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.4]
89 Acts, ch 126, §2
CS89, §468.338

468.339 Survey and report.
The engineer shall make a survey of the proposed district and report the same to the board, being governed in all respects as provided by sections 468.11 and 468.12 and designate particularly any portion of the secondary road system, or the primary road system, or any portion of either or both of said systems, as well as all lands adjoining and adjacent thereto, including lands and rights of

way of railway companies which in the engineer's judgment will be benefited by drainage of highways in such district, and which should be embraced within the boundaries of such district.

[SS15, §1989-b1; C24, 27, 31, 35, 39, §**7642;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.5]

89 Acts, ch 126, §2

CS89, §468.339

468.340 Assessment — report.

The commission for assessment of benefits and classification of the property assessed shall determine and report:

1. The separate amount which shall be paid by the county on account of the secondary road system.

2. The separate amount which shall be paid by the state on account of the primary road system.

3. The amounts which shall be assessed against the right of way or other real estate of each railway company within such district.

4. The amounts which shall be assessed against each forty-acre tract or less within such district.

[SS15, §1989-b5; C24, 27, 31, 35, 39, §**7643;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.6]

89 Acts, ch 126, §2

CS89, §468.340

468.341 Advanced payments.

The board on construction of the improvement may advance that portion to be collected by special assessment, the amount so advanced to be replaced as the first special assessments are collected. The board may in lieu of making advancements, issue warrants to be known as "Drainage Warrants", the warrants to bear interest at a rate not exceeding that permitted by chapter 74A payable annually from the date of issue and to be paid out of the special assessments levied, when they are collected.

[SS15, §1989-b7; C24, 27, 31, 35, 39, §**7644;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.7]

83 Acts, ch 123, §186, 209; 89 Acts, ch 126, §2

CS89, §468.341

468.342 Payment from road funds.

The amount fixed by the final order of the board of supervisors to be paid:

1. On account of the primary road system, shall be payable by the state department of transportation on due certification of the amount by the county treasurer to the state department of transportation out of the primary road fund.

2. On account of the secondary road system, is payable from county funds.

[SS15, §1989-b5; C24, 27, 31, 35, 39, §**7645;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.8]

83 Acts, ch 123, §187, 209; 89 Acts, ch 126, §2

CS89, §468.342

468.343 Dismissal — costs.

If such proceedings are dismissed or said improvement abandoned, all costs of such proceedings shall be paid out of the fund of the road system for the benefit of which said proceeding was initiated.

[SS15, §1989-b10; C24, 27, 31, 35, 39, §**7646;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.9]

89 Acts, ch 126, §2

CS89, §468.343

468.344 Condemnation of right of way.

When in the judgment of the board of supervisors, it is inadvisable to establish a drainage district but necessary to acquire right of way through private lands for the construction of ditches or drains as outlets for the drainage of highways, the board of supervisors may cause such right of way to be condemned by proceedings in the manner required for the exercise of the right of eminent domain as for works of internal improvement, except that no attorney fee shall be taxed, and pay the costs and expense of such condemnation from either or both of said secondary road funds.

[S13, §1989-a43; C24, 27, 31, 35, 39, §**7647;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.10]

89 Acts, ch 126, §2

CS89, §468.344

Condemnation procedure, chapter 6B

468.345 Laws applicable.

All proceedings for the construction and maintenance of highway drainage districts except as provided for in this chapter shall be as provided for in subchapter I, parts 1 through 5, and subchapter II, parts 1 through 3.

[C24, 27, 31, 35, 39, §**7648;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.11]

83 Acts, ch 101, §98; 89 Acts, ch 126, §2

CS89, §468.345

468.346 Removal of trees from highway.

When the roots of trees located within a highway obstruct the ditches or tile drains of such highway, the board of supervisors shall remove such trees from highways, except shade or ornamental trees adjacent to a dwelling house or other farm buildings or feedlots, or any tree or trees for windbreaks upon cultivated lands consisting of sandy or other light soils.

[C24, 27, 31, 35, 39, §**7649;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.12]

89 Acts, ch 126, §2

CS89, §468.346

468.347 Trees outside of highways.

When the roots of trees and hedges growing outside a highway obstruct the ditches or tile drains of any highway, the board of supervisors may acquire the right to destroy such trees in the manner provided for taking private property for public use. Ornamental trees adjacent to any dwelling, or-

chard trees and trees used as windbreaks for a dwelling house, outbuildings, barn or feedlots, shall be exempt from the provisions of this section.

[C24, 27, 31, 35, 39, §**7650;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.13]

89 Acts, ch 126, §2

CS89, §468.347

Condemnation procedure, chapter 6B

Similar provision, §468.139

468.348 through 468.354 Reserved.

PART 5

DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

468.355 Authorization.

The board of supervisors of any county or counties in which a drainage or levee district has been organized as by law provided, may establish and maintain a pumping station or stations, when and where the same may be necessary to secure a proper outlet for the drainage of the land comprising the district or any portion thereof, and the cost of construction and maintenance of said pumping station or stations shall be levied upon and collected from the lands in the district benefited by such pumping station or stations, in the same manner as provided for in the construction and maintenance of said districts.

[S13, §1989-a49, -a52; C24, 27, 31, 35, 39, §**7651;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.1]

89 Acts, ch 126, §2

CS89, §468.355

468.356 Petition — procedure — emergency pumping station.

Such pumping station shall not be established or maintained unless a petition therefor shall be presented to the board signed by not less than one-third of the owners of lands benefited thereby. The lands benefited by such pumping station shall be determined by the board on said petition and report of the engineer, and such other evidence as it may hear. No additional land shall be taken into any such drainage district after the improvements therein have been substantially completed, unless one-third of the owners of the land proposed to be annexed have petitioned therefor or consented in writing thereto.

However, the board of supervisors may install a temporary portable pumping station to remove flood waters in an emergency. The board of supervisors shall levy and collect the cost of the purchase, operation and maintenance of the pumping station from the lands in the district benefited by the pumping station in the same manner as provided for in the construction and maintenance of a drainage or levee district. For the purpose of this paragraph an emergency occurs when ponded or standing water does not freely flow to the outlet ditch and the capacity of the outlet ditch is not fully used.

[S13, §1989-a49; C24, 27, 31, 35, 39, §**7652;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.2]

85 Acts, ch 166, §1; 89 Acts, ch 126, §2

CS89, §468.356

468.357 Additional pumping station.

After the establishment of a drainage district, including a pumping plant, and before the completion of the improvement therein, the board or boards may, if deemed necessary to fully accomplish the purposes of said improvement, by resolution authorize the establishment and maintenance of such additional pumping station or stations as the engineer may recommend, and if a petition is filed by one-third of the owners of land within such district asking the establishment of such pumping plant or plants, the board or boards must direct the engineer to investigate the advisability of the establishment thereof and upon the report of said engineer the board or boards shall determine whether such additional pumping plant or plants shall be established.

[C24, 27, 31, 35, 39, §**7653;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.3]

89 Acts, ch 126, §2

CS89, §468.357

468.358 Transfer of pumps.

If the board or boards determine that additional pumping plant or plants shall be established and maintained, a pump or pumps may be removed from any pumping station already established and may be installed in any such additional plant, if such removal can be made without injuring the efficient operation of the plant from which removed.

[C24, 27, 31, 35, 39, §**7654;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.4]

89 Acts, ch 126, §2

CS89, §468.358

468.359 Costs.

1. The cost of the establishment of such additional pumping plant or plants shall be paid in the same manner and upon the same basis as is provided for the cost of the original improvement.

2. The board of supervisors or the board of trustees, as the case may be, where the district has been established and the original improvement constructed, may proceed with the further improvement of the original project in the manner provided in section 468.126, provided, however, that the cost of such further improvement does not exceed twenty-five percent of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions.

For the purpose of this section the word *"improvement"* shall include the construction, recon-

struction, enlargement and relocation of levees and acquisition of rights of way therefor.

[C24, 27, 31, 35, 39, §**7655;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.5]

89 Acts, ch 126, §2

CS89, §468.359

468.360 Dividing districts.

When a drainage district has been created and more than one pumping plant is established therein, the board or boards of supervisors may, and upon petition of one-third of the owners of land within said district shall, appoint an engineer to investigate the advisability of dividing said district into two or more districts so as to include at least one pumping plant in each of such districts.

[C24, 27, 31, 35, 39, §**7656;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.6]

89 Acts, ch 126, §2

CS89, §468.360

468.361 Notice — publication.

If the engineer recommends such division the board of supervisors shall fix a time for hearing upon the question of such division and shall publish notice directed to all whom it may concern of the time and place of such hearing, for the time and in the manner as is required for the publication of notice of the establishment of said district, except that said notice need not name the owners and lienholders.

[C24, 27, 31, 35, 39, §**7657;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.7]

89 Acts, ch 126, §2

CS89, §468.361

468.362 Hearing — jurisdiction of divided districts.

At the time fixed, the board shall determine the advisability of such division and shall make such order with reference thereto as shall be deemed proper, having consideration for the interests of all concerned. If such division is made, the board or boards having jurisdiction of the original district shall retain jurisdiction of the new districts created by such division for the purpose of collecting assessments theretofore made and making such additional assessments as are necessary to pay the obligations theretofore contracted. For all other purposes, each division shall be under the jurisdiction of the board or boards of supervisors which would have had jurisdiction thereof if originally established as an independent district.

[C24, 27, 31, 35, 39, §**7658;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.8]

89 Acts, ch 126, §2

CS89, §468.362

468.363 Division in other cases.

After a levee or drainage district operating a pumping plant shall have been established and the improvement constructed and accepted, if it shall become apparent that the lands can be more effectually drained, managed, or controlled by a division thereof, then the said board or boards, or trustees, may, and if the district is divided by a stream, they shall, divide the district.

[C24, 27, 31, 35, 39, §**7659;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.9]

89 Acts, ch 126, §2

CS89, §468.363

468.364 Assessments not affected — maintenance tax.

Each district after the division shall be conducted as though established originally as a district. Nothing herein shall affect the legality or collection of any assessments levied before the division; but the maintenance tax, if any, shall be divided in proportion to the amount paid in by each district.

[C24, 27, 31, 35, 39, §**7660;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.10]

89 Acts, ch 126, §2

CS89, §468.364

468.365 Election and apportionment of trustees.

If said district, before the division was made, was under the control and management of trustees, then each trustee shall continue to serve in the district in which the trustee is situated, and other trustees shall be elected in each new district. The election for said new trustees shall be called by the old board of trustees in each district within ten days after said division is made and shall be conducted as provided for the election of trustees.

[C24, 27, 31, 35, 39, §**7661;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.11]

89 Acts, ch 126, §2

CS89, §468.365

Election of trustees, subchapter III

468.366 Settling basin — condemnation.

If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams running into, through, or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided for the exercise of the right of eminent domain.

[C24, 27, 31, 35, 39, §**7662;** C46, 50, 54, 58, 62,

66, 71, 73, 75, 77, 79, 81, §461.12]
89 Acts, ch 126, §2
CS89, §468.366
Condemnation procedure, chapter 6B

468.367 Funding bonds.
When the owners of ten percent of the land in a drainage or levee district having and operating a pumping station shall petition the board of supervisors to extend the time of payment of the taxes assessed against the lands within said district for a period not exceeding twenty years, under such rules and regulations as said board may direct, the interest on such assessments to be paid annually the same as other taxes levied against the property, not less than one-twentieth of the principal of said extended tax to be paid each year until the entire tax is paid, and the lien of such tax to continue until fully paid, the board of supervisors may settle, adjust, renew, or extend the legal indebtedness of such district as shown by the assessments levied against the lands therein whether evidenced by certificates, warrants, bonds, or judgments by refunding all such indebtedness and issuing coupon bonds therefor when such indebtedness amounts to one thousand dollars or upwards, but for no other purpose.
[C24, 27, 31, 35, 39, §**7663;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.13]
89 Acts, ch 126, §2
CS89, §468.367
Refunding bonds, subchapter IV, part 1

468.368 Form of bonds.
Such bonds shall be issued in sums of not less than one hundred dollars or more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding that permitted by chapter 74A, payable annually or semiannually, and shall be substantially in the form provided by law for funding bonds issued for drainage purposes.
[C24, 27, 31, 35, 39, §**7664;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.14]
89 Acts, ch 126, §2
CS89, §468.368
Form of bond, §468.75

468.369 Formal execution.
Such bonds shall be numbered consecutively, signed by the chairperson of the board of supervisors, attested by the county auditor. The interest coupons attached thereto shall be executed in the same manner.
[C24, 27, 31, 35, 39, §**7665;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.15]
89 Acts, ch 126, §2
CS89, §468.369

468.370 Resolution — requisites — record.
All bonds issued under the provisions of this part shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear and whether payable annually or semiannually, the place where the principal and interest shall be payable and when it becomes due, and such other provisions not inconsistent with law in reference thereto as the board of supervisors shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the said board and a complete copy thereof printed on the back of each bond, which resolution shall constitute a contract between the drainage district and the purchasers or holders of said bonds.
[C24, 27, 31, 35, 39, §**7666;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.16]
89 Acts, ch 126, §2
CS89, §468.370

468.371 Registration.
When bonds have been executed as aforesaid they shall be delivered to the county treasurer and the treasurer's receipt taken therefor. The county treasurer shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of debt were received therefor, which record shall at all times be open to the inspection of the owners of property within the district. The treasurer shall thereupon certify on the back of each bond as follows:

This bond duly and properly registered in my office this . . . . . day of . . . . . (month), ... (year).

. . . . . .
Treasurer of the county of
. . . . . .

[C24, 27, 31, 35, 39, §**7667;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.17]
89 Acts, ch 126, §2
CS89, §468.371
2000 Acts, ch 1058, §56

468.372 Liability of treasurer — reports.
The treasurer shall stand charged on the treasurer's official bond with all bonds so delivered to the treasurer and the proceeds thereof. The treasurer shall report under oath to the board of supervisors, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by the treasurer since the treasurer's last report and the date of such sale or exchange and

when exchanged a description of the indebtedness for which exchanged.

[C24, 27, 31, 35, 39, §**7668;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.18]

89 Acts, ch 126, §2

CS89, §468.372

468.373 Sale — application of proceeds.

The county treasurer shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for a legal indebtedness of the said district evidenced by bonds, warrants, or judgments outstanding at the date of the passage of the resolution authorizing the issue thereof, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued at the date of sale or exchange. After registration the treasurer shall deliver said bonds to the purchaser thereof and when exchanged for indebtedness of said district shall at once cancel all warrants or bonds or secure proper credits therefor on judgments.

[C24, 27, 31, 35, 39, §**7669;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.19]

89 Acts, ch 126, §2

CS89, §468.373

468.374 Levy.

Drainage districts issuing funding or refunding bonds under this part shall levy taxes for the payment of the principal and interest thereof, where there has not been a prior levy covering same, in accordance with the provisions of the law relating to taxation.

[C24, 27, 31, 35, 39, §**7670;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.20]

89 Acts, ch 126, §2

CS89, §468.374

468.375 Scope of Act.

Refunding bonds for the purposes set out in this part may be issued to pay off and take up bonds issued in payment for drainage improvements under prior laws or to refund any part thereof. Bonds thus issued shall substantially conform to the provisions of the law relating to drainage bonds and the face amount thereof shall be limited to the amount of the unpaid assessments, with interest thereon, applicable to the payment of the bonds so taken up.

[C24, 27, 31, 35, 39, §**7671;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.21]

89 Acts, ch 126, §2

CS89, §468.375

468.376 Funds available to pay bonds.

When refunding bonds shall be issued to pay for drainage improvements under the provisions of this part, all special assessments, taxes, and sinking funds applicable to the payment of such bonds previously issued shall be applicable in the same manner and the same extent to the payment of the refunding bonds issued hereunder, and all the powers and duties to levy and collect special assessments and taxes or create liens upon property shall continue until all refunding bonds shall be paid.

The drainage district shall collect the special assessments out of which the said bonds are payable and hold the same separate and apart in trust for the payment of said refunding bonds but the provisions of this part shall not apply to assessments or bonds adjudicated to be void.

[C24, 27, 31, 35, 39, §**7672;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.22]

89 Acts, ch 126, §2

CS89, §468.376

468.377 Limitation of actions.

No action shall be brought questioning the validity of any of the bonds authorized by this part from and after three months from the time the same are ordered issued by the proper authorities.

[C24, 27, 31, 35, 39, §**7673;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.23]

89 Acts, ch 126, §2

CS89, §468.377

Similar provisions, §468.562, 468.581

468.378 Bankruptcy proceedings.

All drainage districts with pumping plant and levee, which have power to incur indebtedness, through action of their own governing bodies are hereby authorized to proceed under and take advantage of all laws enacted by the Congress of the United States under the federal bankruptcy powers, which laws have for their object the relief of municipal indebtedness, including 48 Stat. L. ch 345, entitled *"An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto"*, approved May 24, 1934, and the officials and governing bodies of such drainage, pumping plant and levee districts, are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such drainage, pumping plant, and levee districts, of the provisions of such Acts of Congress.

[C35, §7673-g1; C39, §**7673.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.24]

89 Acts, ch 126, §2

CS89, §468.378

468.379 Part applicable to districts with pumping stations.

The provisions of this part so far as applicable shall apply to all levee districts maintaining levees for the protection of any drainage district or

districts having pumping stations.
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §461.25]
89 Acts, ch 126, §2
CS89, §468.379

468.380 Construction near levee prohibited.
No person, firm or corporation shall hereafter erect, alter, or maintain any building or other structure, except necessary public utility structures, or construct, alter, or maintain any ditch, or remove any earth within three hundred feet of the center line of any levee maintained by a drainage or levee district with pumping stations without first securing permission to so do from the governing board of said drainage or levee district with pumping stations. Such permission may be granted at any regular meeting thereof, and after written application is made therefor upon the form prescribed by said governing board.
[C62, 66, 71, 73, 75, 77, 79, 81, §461.26]
89 Acts, ch 126, §2
CS89, §468.380

468.381 Penalty.
Every person who shall violate any provisions of this part shall be guilty of a misdemeanor punishable by a fine of not more than one hundred dollars, and in default of payment thereof, by imprisonment in the county jail for not more than thirty days.
[C62, 66, 71, 73, 75, 77, 79, 81, §461.27]
89 Acts, ch 126, §2
CS89, §468.381

468.382 Action to restrain or abate.
In the event that any building or other structure, or any ditch is constructed, altered or maintained, or any earth removed in violation of any provisions of this part, the governing board of said drainage or levee district with pumping stations maintaining said levee, may institute an appropriate action or proceeding to prevent such unlawful construction, alteration, or maintenance, or earth removal and to restrain, correct, or abate such violation, and may by petition duly verified, setting forth the facts, apply to the district court for an order enjoining all persons, firms or corporations from such construction, alteration, maintenance, or earth removal, until the entry of the final judgment or order.
[C62, 66, 71, 73, 75, 77, 79, 81, §461.28]
89 Acts, ch 126, §2
CS89, §468.382

468.383 Liability for damage.
In addition to all other penalties contained herein, any person, firm or corporation who shall construct, alter or maintain any building, other structure, or any ditch, or remove earth, in violation of this part, shall be liable to the drainage or levee district with pumping stations maintaining said levee, for all damage sustained by the drainage or levee district resulting from the violation, and in the event of flood, or other emergency so declared by resolution of the governing body, any building or other structure, or ditch so constructed without permission of the governing board, as required herein, and within three hundred feet of the center line of any levee, may be removed, or the ditch filled in, without prior notice thereof to the owner.
[C62, 66, 71, 73, 75, 77, 79, 81, §461.29]
89 Acts, ch 126, §2
CS89, §468.383

468.384 through 468.389 Reserved.

PART 6

DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES

468.390 United States levees — co-operation of board.
In any case where the United States has built or shall build a levee along or near the bank of a navigable stream forming a part of the boundary of this state, the board of supervisors of any county through which the same may pass shall have the power to aid in procuring the right of way for and maintaining said levee, and providing a system of internal drainage made necessary or advisable by the construction thereof. Such improvement shall be presumed to be conducive to the public health, convenience, welfare, or utility.
[C97, §1975; C24, 27, 31, 35, 39, §**7744;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.1]
89 Acts, ch 126, §2
CS89, §468.390

468.391 Manner of co-operation.
Any United States government levee under the conditions mentioned in section 468.390 may be taken into consideration by the board as a part of the plan of any levee or drainage district and improvements therein, and such board may, by agreement with the proper authorities of the United States government, provide for payment of such just and equitable portion of the costs of procuring the right of way and maintenance of such levee as shall be conducive to the public welfare, health, convenience, or utility.
[C97, §1975; C24, 27, 31, 35, 39, §**7745;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.2]
89 Acts, ch 126, §2
CS89, §468.391

468.392 Report of engineer — payment authorized.
In the proceedings to establish such a district the engineer shall set forth in the engineer's re-

port, separately from other items, the amount of the cost for the right of way of such levee, of constructing and maintaining the same; and if the plan is approved and the district finally established in connection with such levee, the board shall make a record of any such co-operative arrangement and may use such part of the funds of the district as may be necessary to pay the amount so agreed upon toward the right of way and maintenance of such levee.

[C97, §1976; C24, 27, 31, 35, 39, §**7746;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.3]

89 Acts, ch 126, §2

CS89, §468.392

468.393 Costs assessed.

If said district is established, the entire costs and expenses incurred under this part shall be assessed against and collected from the lands lying within such district, by the levy of a rate upon the assessable value of the land and improvements within such district, sufficient to raise the required sum; provided the board may, in their discretion, classify the land within such district and graduate the tax thereon, as provided in subchapter I.

[C97, §1982; S13, §1982; C24, 27, 31, 35, 39, §**7747;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.4]

89 Acts, ch 126, §2

CS89, §468.393

468.394 Annual installments.

If the proposed improvement is the maintenance of a levee, the amount collected in any one year shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of the assessment valuation, which said assessment shall be levied at a level rate on the assessable value of the said lands, improvements, easements, and railroads within the district. If the amount necessary to pay for the improvement exceeds said sum, it shall be levied and collected in annual installments of twenty or less. For all other improvements, the board shall levy a rate sufficient to pay for the same, and may, at their discretion, make the same payable in annual installments of twenty or less.

[C97, §1984; C24, 27, 31, 35, 39, §**7748;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.5]

89 Acts, ch 126, §2

CS89, §468.394

468.395 Collection of tax.

The assessment required under sections 468.393 and 468.394 shall be made by the board of supervisors at the time of levying general taxes, after the work has been authorized, and the assessment shall be entered on the records of the board of supervisors, then entered on the tax books by the county auditor as drainage taxes, and shall be collected by the county treasurer at the same time, in the same manner, and with the same interest, as general taxes. If the assessment is not paid the treasurer shall sell all lands upon which the assessment remains unpaid, at the same time, and in the same manner, as is now by law provided for the sale of lands for delinquent taxes, including all steps up to the execution and delivery of the tax deed. The landowners shall take notice of and pay the assessments without other or further notice than as is provided for in this part. The funds realized from the assessments shall constitute the drainage fund, as contemplated in this part, and shall be disbursed on warrants drawn against that fund by the county auditor, on the order of the board of supervisors.

[C97, §1983; C24, 27, 31, 35, 39, §**7749;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.6]

89 Acts, ch 126, §2

CS89, §468.395

92 Acts, ch 1016, §38

468.396 Cost of maintaining.

The board of supervisors shall have the right and power to keep and maintain any such levee, ditches, drains, or system of drainage, either in whole or in part, established under sections 468.390 through 468.395, as may in their judgment be required, and to levy the expense thereof upon the real estate within such drainage district as herein provided for, and collect and expend the same; provided, however, that no such work which shall impose a tax exceeding three dollars and thirty-seven and one-half cents per thousand dollars on the assessable value of the lands and improvements within the district shall be authorized by them, unless the same is first petitioned for and authorized in substantially the manner required by this part for the inauguration of new work except that if such work is of the kinds contemplated by section 468.126, and the cost thereof is within the limitations of said section, or is of the kinds contemplated by section 468.188, and the cost thereof is within the limitations of said section, then the provisions of section 468.126 or section 468.188 shall supersede the limitations of this section.

[C97, §1986; C24, 27, 31, 35, 39, §**7750;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.7]

89 Acts, ch 126, §2

CS89, §468.396

468.397 Laws applicable.

In the establishment and maintenance of levee and drainage districts in co-operation with the United States as in this part provided, all the proceedings in the filing and the form and substance of the petition, assessment of damages, appointment of an engineer, the engineer's surveys, plats, profiles, and report, notice of hearings, filing of claims and objections, hearings, appointment of commissioners to classify lands, assess benefits,

and apportion costs and expenses, report, notice and hearing on the report, the appointment of a supervising engineer, the engineer's duties, the letting of work and making contracts, payment for work, levy and collection of drainage or levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial of appeals, and all other proceedings relating to the district shall be as provided in subchapter I, subchapter II, parts 1 through 5, subchapter III, subchapter IV, parts 1 and 2, and subchapter V except as otherwise in this part provided.

[C97, §1976 – 1989; S13, §1976, 1977, 1979, 1981, 1982, 1984, 1985, 1985-a, 1986, 1989; C24, 27, 31, 35, 39, §**7751;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.8]

83 Acts, ch 101, §101; 89 Acts, ch 126, §2

CS89, §468.397

468.398 and 468.399 Reserved.

PART 7

INTERSTATE DRAINAGE DISTRICTS

468.400 Co-operation — procedure.

When proceedings for the drainage of lands bordering upon the state line are had and the total cost of constructing the improvement in this state, including all damage, has been ascertained, and the engineer in charge, before the final establishment of the district, reports that the establishment and construction of such improvement ought to be jointly done with like proceedings for the drainage of lands in the same drainage area in such an adjoining state and that drainage proceedings are pending in such state for the drainage of such lands, the said authorities of this state may enter an order continuing the hearing on the establishment of such district to a fixed date, of which all parties shall take notice.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7752;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.1]

89 Acts, ch 126, §2

CS89, §468.400

468.401 Agreement as to costs.

The board shall have power, when the total cost, including damages, of constructing the improvement in such other state has been ascertained by the authorities of such other state, to enter into an agreement as to the separate amounts which the property owners of each state should in equity pay toward the construction of the joint undertaking. When such amount is thus determined, the board or boards having jurisdiction in this state shall enter the same in the minutes of their proceedings and shall proceed therewith as though such amount to be paid by the portion of the district in this state had been originally determined by them as the cost of constructing the improvement in this state.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7753;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.2]

89 Acts, ch 126, §2

CS89, §468.401

468.402 Contracts let by joint agreement.

When the bids for construction are opened, unless the construction work on each side of the line can go forward independently, no contract shall be let by the authorities in this state, unless the acceptance of a bid or bids for the construction of the whole project is first jointly agreed upon by the authorities of both states.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7754;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.3]

89 Acts, ch 126, §2

CS89, §468.402

468.403 Separate contracts.

The contract or contracts for the construction of that portion of the improvement within this state shall be entirely distinct and separate from the contract or contracts let by the authorities of the neighboring state; but the aggregate amount of the contract or contracts for the construction of the work within this state shall not exceed an amount equal to the amount of the benefits assessed in this state including damages and other expenses.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7755;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.4]

89 Acts, ch 126, §2

CS89, §468.403

468.404 Conditions precedent.

No contract shall be let until the improvement shall be finally established in both states, and after the final adjustment in both states of damages and benefits. No bonds shall be issued until all litigation in both states arising out of said proceedings has been finally terminated by actual trial or agreements, or the expiration of all right of appeal.

[SS15, §1989-a78; C24, 27, 31, 35, 39, §**7756;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.5]

89 Acts, ch 126, §2

CS89, §468.404

468.405 Assessments, bonds and costs — limitation.

All proceedings except as provided in this part in relation to the establishment, construction, and management of interstate drainage districts shall be as provided for the establishment and construction of districts wholly within this state as provided in subchapter I. All such proceedings shall relate only to the lands of such district which are located wholly within this state. Boards having jurisdiction in this state may make just and equitable agreements with like authorities in such ad-

joining state for the joint management, repair, and maintenance of the entire improvement, after the establishment and completed construction thereof.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7757;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.6]

89 Acts, ch 126, §2

CS89, §468.405

468.406 through 468.499 Reserved.

SUBCHAPTER III

MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

468.500 Trustees authorized.

In the manner provided in this subchapter, any drainage or levee district in which the original construction has been completed and paid for by bond issue or otherwise, may be placed under the control and management of a board of three trustees to be elected by the persons owning land in the district that has been assessed for benefits.

A district under the control of a city council as provided in subchapter II, part 3, may be placed under the control and management of a board of trustees by the city council following the procedures provided in this subchapter for the county board of supervisors.

[SS15, §1989-a52a, -a61; C24, 27, 31, 35, 39, §**7674;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.1]

83 Acts, ch 163, §1; 89 Acts, ch 126, §2

CS89, §468.500

468.501 Petition.

A petition shall be filed in the office of the auditor signed by a majority of the persons including corporations owning land within the district assessed for benefits.

[S13, §1989-a52b; SS15, §1989-a52a; C24, 27, 31, 35, 39, §**7675;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.2]

89 Acts, ch 126, §2

CS89, §468.501

468.502 Election.

The board, at the next regular, adjourned, or special session shall canvass the petition and if signed by the requisite number of landowners, it shall order an election to be held at some convenient place in the district not less than forty nor more than sixty days from the date of such order, for the election of three trustees of such district. It shall appoint from the freeholders of the district who reside in the county or counties, three judges and two clerks of election. It shall not be mandatory for the county commissioner of elections to conduct elections held pursuant to this subchapter, but they shall be conducted in accordance with the provisions of chapter 49 where not in conflict with this subchapter.

[S13, §1989-a52b; SS15, §1989-a63; C24, 27, 31, 35, 39, §**7676;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.3]

89 Acts, ch 126, §2

CS89, §468.502

468.503 Intercounty district.

If the district extends into two or more counties, a duplicate of the petition shall be filed in the office of the auditor of each county. The boards of supervisors shall, within thirty days after the filing of such petition, meet in joint session and canvass the same, and if found to be signed by a majority of the owners of land in the district assessed for benefits, they shall by joint action order such election and appoint judges and clerks of election as provided in section 468.502.

[S13, §1989-a52b; SS15, §1989-a62, -a63; C24, 27, 31, 35, 39, §**7677;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.4]

89 Acts, ch 126, §2

CS89, §468.503

468.504 Election districts.

When a petition has been filed for the election of trustees to manage a district containing twenty thousand acres or more, the board, or, if the district extends into more than one county, the boards of the counties by joint action, shall, before the election, divide the district into three election districts for the purpose of securing a proper distribution of trustees in the district, and the division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After the division is made there shall be elected one trustee for each of the election districts, but at the election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purposes only of a proper distribution of trustees in the district and shall not otherwise affect the district or its management and control.

[C24, 27, 31, 35, 39, §**7678;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.5]

89 Acts, ch 126, §2

CS89, §468.504

2001 Acts, ch 89, §1

468.505 Record and plat of election districts.

At the time of making a division into election districts, as provided in section 468.504, the board or boards shall designate by congressional divisions, subdivisions, metes and bounds, or other intelligible description, the lands embraced in each election district, and the auditor, or auditors if more than one county shall make a plat thereof in the drainage record of the district indicating

thereon the boundary lines of each election district, numbering them, one, two, and three, respectively.

[C24, 27, 31, 35, 39, §**7679;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.6]
89 Acts, ch 126, §2
CS89, §468.505

468.506 Eligibility of trustees.

Each trustee shall be a citizen of the United States not less than eighteen years of age, and one of the following:

1. The bona fide owner of agricultural land in the election district for which the trustee is elected, and a resident of the county in which that district is located or of a county which is contiguous to or corners on that county.

2. The bona fide owner of nonagricultural land in the election district for which the trustee is elected, and a resident of that district. This subsection applies only when the election district is wholly within the corporate limits of a city.

3. A stockholder of a family farm corporation as defined in section 9H.1, subsection 15, which owns land in the election district who is a resident of the county in which that district is located or of a county which is contiguous to or corners on that county.

4. In a district which is a levee and drainage district which has eighty-five percent of its acreage within the corporate limits of a city and has been under the control of a city under subchapter II, part 3, a bona fide owner of benefited land in the district. If the owner is a family farm corporation as defined by section 9H.1, subsection 15, a business corporation organized and existing under chapter 490 or 491, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.

[C24, 27, 31, 35, 39, §**7680;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.7]
83 Acts, ch 163, §2; 89 Acts, ch 126, §2
CS89, §468.506
90 Acts, ch 1205, §15; 93 Acts, ch 126, §5

468.507 Notice of election.

The board, or, if in more than one county, the boards acting jointly, shall cause notice of said election to be given, setting forth the time and place of holding the same and the hours when the polls will open and close. Such notice shall be published for two consecutive weeks in a newspaper in which the official proceedings of the board are published in the county, or if the district extends into more than one county, then in such newspaper of each county. The last of such publications shall not be less than ten days before the date of said election.

[S13, §1989-a52b; SS15, §1989-a63; C24, 27, 31, 35, 39, §**7681;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.8]
89 Acts, ch 126, §2
CS89, §468.507

468.508 Assessment to determine right to vote.

Before any election is held, the election board shall obtain from the county auditor or auditors a certified copy of so much of the record of the establishment of such district as will show the lands embraced therein, the assessment and classification of each tract, and the name of the person against whom the same was assessed for benefits, and the present record owner, and such certified record shall be kept by the trustees after they are elected, for use in subsequent elections. They shall, preceding each subsequent election, procure from the county auditor or auditors additional certificates showing changes of title of land assessed for benefits and the names of the new owners.

[SS15, §1989-a75; C24, 27, 31, 35, 39, §**7682;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.9]
89 Acts, ch 126, §2
CS89, §468.508

468.509 New owner entitled to vote.

Anyone who has acquired ownership of assessed lands since the latest certificate from the auditor shall be entitled to vote at any election if the person presents to the election board for its inspection at the time the person demands the right to vote evidence showing that the person has title.

[SS15, §1989-a75; C24, 27, 31, 35, 39, §**7683;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.10]
89 Acts, ch 126, §2
CS89, §468.509

468.510 Qualifications of voters.

Each landowner eighteen years of age or over without regard to sex and any railway or other corporation owning land in said district assessed for benefits shall be entitled to one vote only, except as provided in section 468.511.

[SS15, §1989-a73; C24, 27, 31, 35, 39, §**7684;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.11]
89 Acts, ch 126, §2
CS89, §468.510

468.511 Votes determined by assessment.

1. When a petition asking for the right to vote in proportion to assessment of benefits at all elections for any purpose thereafter to be held within said district, signed by a majority of the landowners owning land within said district assessed for benefits, is filed with the board of trustees, then, in all elections of trustees thereafter held within said district, any person whose land is assessed for benefits without regard to age, sex, or condition shall be entitled to one vote for each ten dollars or

fraction thereof of the original assessment under the current classification against the land actually owned by the person in said district at the time of the election, but in order to have such ballot counted for more than one vote the voter shall write the voter's name upon the ballot. The vote of any landowner of the district may be cast by absent voters ballot as provided in chapter 53 except that the form of the applications for ballots, the voters' affidavits on the envelopes, and the endorsement of the carrier envelope for preserving the ballot shall be substantially in the form provided in subsections 2, 3 and 4, below. Application blanks, envelopes and ballots shall be provided by and submitted to the office of the county auditor in which the election is held. The cost of such blanks, envelopes, ballots and postage shall be paid by the district. For the purpose of this subchapter all landowners of the district shall be considered qualified voters, regardless of their place of residence.

2. For the purpose of this subchapter, applications for ballots shall be made on blanks substantially in the following form:

Application for ballot to be voted at the
. . . . . (Name of District) District Election
on . . . . . (Date)

State of . . . . .)
. . . . . County) ss.

I, ... (Applicant), do solemnly swear that I am a landowner in the . . . . . (Name of District) District and that I am a duly qualified voter entitled to vote in said election, and that on account of . . . . . (business, illness, residence outside of the county, etc.) I cannot be at the polls on election day, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same before the day of said election.

Signed . . . . . .
Date . . . . . .
Residence (street number if any) . . . . . .
City . . . . . State . . . . . .

Subscribed and sworn to before me this . . . . . day of . . . . . (month), ... (year)

3. For the purpose of this subchapter, the affidavit on the reverse side of the envelopes used for enclosing the marked ballots shall be substantially as follows:

State of . . . . .)
. . . . . County) ss.

I, ... (Applicant), do solemnly swear that I am a landowner in the . . . . . (Name of District) District and that I am a duly qualified voter to vote in the election of trustees of said district and that I shall be prevented from attending the polls on the day of election because of . . . . . (business, illness, residence outside of the county, etc.) and that I have marked the enclosed ballot in secret.

Signed . . . . . .

Subscribed and sworn to before me this . . . . . day of . . . . . (month), ... (year), and that I hereby certify that the affiant exhibited the enclosed ballot to me unmarked; that the affiant then in my presence and in the presence of no other person and in such manner that I could not see the affiant's vote, marked such ballot, enclosed and sealed the same in this envelope; and that the affiant was not solicited or advertised by me for or against any candidate or measure.

. . . . . .
. . . . . .
(Official Title)

4. For the purposes of this subchapter, upon receipt of the ballot, the auditor shall at once enclose the same, unopened, together with the application made by the voter in a large carrier envelope, securely seal the same, and endorse thereon over the auditor's official signature, the following:

a. Name of the district in which the voter is a landowner.

b. Date of the election for which the ballot is cast.

c. Location of the polling place at which the ballot would be legally and properly cast if voted in person.

d. Names of the judges of the election of that polling place, and the statement that this envelope contains an absent voters ballot and must be opened only at the polls on election day while said polls are open.

[SS15, §1989-a73; C24, 27, 31, 35, 39, §**7685;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.12]

89 Acts, ch 126, §2
CS89, §468.511
2000 Acts, ch 1058, §63

468.512 Vote by agent.

Except where the provisions of section 468.511, providing for vote in proportion to assessment are invoked, any person or corporation owning land or right of way within the district and assessed for benefits may have the person's or the corporation's vote cast by the person's or the corporation's agent or proxy authorized to cast such vote by a power of attorney signed and acknowledged by such person

or corporation, and filed before such vote is cast in the auditor's office of the county in which such election is held. Every such power of attorney shall specify the particular election for which it is to be used, indicating the day, month, and year of such election, and shall be void for all elections subsequently held. The vote of the owner of any land in a drainage or levee district in any election, where the vote is not determined by assessment, may be cast by absent voters ballot in the same manner and form and subject to the same rights and restrictions as is provided in section 468.511 relating to vote by absentee ballot when votes are determined by assessment.

[SS15, §1989-a73; C24, 27, 31, 35, 39, §**7686;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.13]

89 Acts, ch 126, §2

CS89, §468.512

468.513 Vote of minor or person under legal incompetency.

The vote of any person who is a minor or under legal incompetency shall be cast by the parent, guardian, or other legal representative of the person. The person casting the vote shall deliver to the judges and clerks of election a written sworn statement giving the name, age, and place of residence of the minor or person under legal incompetency, and any false statement knowingly made to secure permission to cast such vote shall render the party so making it guilty of the crime of perjury.

[C24, 27, 31, 35, 39, §**7687;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.14]

89 Acts, ch 126, §2

CS89, §468.513

96 Acts, ch 1129, §95

Perjury, punishment, §720.2

468.514 Ballots — petition for printed ballots.

Candidates for drainage district trustee shall have their names placed on printed ballots provided a petition therefor is signed by ten qualified voters of the district and filed with the clerk of the board at least twenty-five days but not more than sixty-five days before the election. Space shall also be provided on the ballot for write-in votes.

[C24, 27, 31, 35, 39, §**7688;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.15]

86 Acts, ch 1099, §3; 89 Acts, ch 126, §2

CS89, §468.514

2001 Acts, ch 56, §36

468.515 Candidates voted for.

Each qualified voter for the whole district shall be entitled to vote for one candidate for each district for which a trustee is to be elected.

[C24, 27, 31, 35, 39, §**7689;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.16]

89 Acts, ch 126, §2

CS89, §468.515

468.516 Election — canvass of votes — returns.

On the day designated for said election the polls shall open at one o'clock p.m. and remain open until five o'clock p.m. unless otherwise provided under section 468.522. If no convenient polling place is to be found within the district, the election may be held at some convenient place outside the district. The judges of election shall canvass the vote and certify the result, and deposit with the auditor the ballots cast, together with the pollbooks showing the names of the voters; but if there is more than one county in the district, the returns shall be filed with the auditor of the county having the greatest acreage of said district.

[S13, §1989-a52c; SS15, §1989-a64; C24, 27, 31, 35, 39, §**7690;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.17]

89 Acts, ch 126, §2

CS89, §468.516

91 Acts, ch 54, §1

468.517 Canvass — certificates of election.

The canvass of the returns by the board or boards of supervisors shall be on the next Monday following the election. If the district is in more than one county, the board of supervisors of the county with the greatest acreage in the district shall canvass the vote. The board of supervisors of the other counties in which the district is located may attend and participate in the canvass of the returns. It or they shall make a return of the results of the canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue the certificates and certify an abstract of the canvass to each other county in which the district is located.

[S13, §1989-a52c; SS15, §1989-a64; C24, 27, 31, 35, 39, §**7691;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.18]

85 Acts, ch 163, §11; 89 Acts, ch 126, §2

CS89, §468.517

468.518 Tenure of office.

The trustees so elected shall hold office until the fourth Saturday in January next succeeding their election and until their successors are elected and qualify. On the third Saturday in the January next succeeding their original election, an election shall be held at which three trustees shall be chosen, one for one year, one for two years, and one for three years, and each shall qualify and enter upon the duties of the office on the fourth Saturday of the same January. On the third Saturday in each

succeeding January, an election shall be held to choose a successor to the trustee whose term is about to expire, and the term of the trustee's office shall be for three years and until a successor has qualified.

[SS15, §1989-a52d, -a65 – a67; C24, 27, 31, 35, 39, §**7692;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.19]

89 Acts, ch 126, §2

CS89, §468.518

468.519 Levee and pumping station districts.

In levee and drainage districts having pumping stations trustees shall hold office until the fourth Saturday in January three years after election. On the third Saturday in January of each year a trustee shall be elected for a term of three years to succeed the member of the board whose term will expire on the following Saturday. At the election there shall also be elected, if necessary, a trustee to fill any vacancy which occurred before the election.

[S13, §1989-a52e; SS15, §1989-a52d; C24, 27, 31, 35, 39, §**7693;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.20]

83 Acts, ch 101, §99; 89 Acts, ch 126, §2

CS89, §468.519

468.520 Division of districts under trustees.

When a trustee is to be elected, it shall be for a specified election district within the district.

[C24, 27, 31, 35, 39, §**7694;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.21]

83 Acts, ch 101, §100; 89 Acts, ch 126, §2

CS89, §468.520

468.521 Elections — how conducted.

After the first election of trustees, the trustees shall act as judges of election; however, a trustee standing for election shall not serve as a judge and shall be replaced as judge by a person not standing for election who is eligible to be elected as a trustee. The clerk of the board shall act as one of the clerks and some owner of land in the district shall be appointed by the board to act as another clerk. The trustees shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county.

[SS15, §1989-a69; C24, 27, 31, 35, 39, §**7695;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.22]

85 Acts, ch 163, §12; 89 Acts, ch 126, §2

CS89, §468.521

468.522 Change of date and time.

The date on which the annual election shall be held and the polling hours may be changed by the choice of a majority of electors of the district expressed by ballot at any annual election, and the return of the vote shall be certified in the same manner as the returns for election of trustees. The polling hours may vary from the requirements of section 468.516, but the polls shall be open for at least three consecutive hours between the hours of 8:00 a.m. and 5:00 p.m. on the election day.

[S13, §1989-a52e; C24, 27, 31, 35, 39, §**7696;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.23]

89 Acts, ch 126, §2

CS89, §468.522

91 Acts, ch 54, §2

468.523 Vacancies.

If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board shall have power to fill such vacancies by appointment of persons having the same qualifications as themselves. The persons so appointed shall qualify in the same manner and hold office until the next annual election when their successors shall be elected. In the event that all places on the board become vacant, then a new board shall be appointed by the auditor, or if more than one county, then by the auditor of the county in which the greater acreage of the district is located. The persons so appointed shall hold office until the next annual election and until their successors are elected and qualify.

[SS15, §1989-a68; C24, 27, 31, 35, 39, §**7697;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.24]

89 Acts, ch 126, §2

CS89, §468.523

468.524 Bonds.

The trustees shall qualify by giving a bond in the sum of not less than one thousand dollars or more than five thousand dollars each, conditioned for the faithful discharge of their duties, said bond to be fixed and approved by the auditor of the county, and if more than one, then of the county in which the greater acreage of the district is located.

[SS15, §1989-a52f, -a71; C24, 27, 31, 35, 39, §**7698;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.25]

89 Acts, ch 126, §2

CS89, §468.524

468.525 Organization.

As soon as the trustees have qualified, they shall organize by electing one of their own number as chairperson and may select some other competent person as clerk of the board who shall serve during the pleasure of the board of trustees.

[SS15, §1989-a70; C24, 27, 31, 35, 39, §**7699;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81,

§462.26]
89 Acts, ch 126, §2
CS89, §468.525

468.526 Powers and duties of trustees.
Trustees shall have control, supervision, and management of the district for which they are elected and shall be clothed with all of the powers now conferred on the board or boards of supervisors for the control, management, and supervision of drainage and levee districts under the laws of the state, including the power to acquire lands by conveyance, lease, or by the exercise of the power of eminent domain as provided for in chapter 6B for right of way for levees, ditches and settling basins within or without the district and to annex lands to the district, except as provided in section 468.527. Such authority shall extend only to the district for which they are elected.
[SS15, §1989-a52f, -a71; C24, 27, 31, 35, 39, §**7700;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.27]
89 Acts, ch 126, §2
CS89, §468.526

468.527 Costs and expenses.
All costs and expenses necessary to discharge the duties by this subchapter conferred upon trustees shall be levied and collected as provided by law and such levy shall be upon certificate by the trustees to the board or boards of supervisors of the amount necessary for such levy.
[SS15, §1989-a52f, -a71; C24, 27, 31, 35, 39, §**7701;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.28]
89 Acts, ch 126, §2
CS89, §468.527

468.528 Disbursement of funds.
Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it is collected, shall be expended only upon the orders of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer.
[SS15, §1989-a52f; C24, 27, 31, 35, 39, §**7702;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.29]
89 Acts, ch 126, §2
CS89, §468.528

468.529 Certificates and bonds.
The board of trustees of any district shall have the same power to issue improvement certificates and levee and drainage bonds under the same conditions and with like tenor and effect as is provided by subchapter I, parts 1 through 5, for such issuance by the board of supervisors, except that in case of the issue of levee or drainage bonds, the same shall be approved by a judge of the district court in and for the county or counties in which such district lies, which approval shall be printed upon such bonds before the same are negotiated.
[SS15, §1989-a52f; C24, 27, 31, 35, 39, §**7703;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.30]
89 Acts, ch 126, §2
CS89, §468.529

468.530 Report to auditor.
Such trustees shall, from time to time, and with reasonable promptness, furnish the auditor of each county in which any part of said district is situated, with a correct report of their acts and proceedings, which report shall be signed by the chairperson and the clerk of the board and shall be recorded by the auditor in the drainage record, and shall be published in one official paper in the county having a general circulation in the district.
[S13, §1989-a52g; SS15, §1989-a72; C24, 27, 31, 35, 39, §**7707;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.34]
89 Acts, ch 126, §2
CS89, §468.530

468.531 Compensation — statements required.
The compensation of the trustees and the clerk of the board is hereby fixed at forty dollars per day each and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. The board of trustees of a district may by resolution establish for themselves and for the clerk of the district a lower rate of pay than is fixed by this section. They shall file with the auditor or auditors, if more than one county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred.
[SS15, §1989-a52f, -a74; C24, 27, 31, 35, 39, §**7708;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.35]
89 Acts, ch 126, §2
CS89, §468.531

468.532 Change to supervisor management.
Any district which has been placed under the management of trustees may be placed back under the management of the board or boards of supervisors in the manner provided in section 468.533.
[C24, 27, 31, 35, 39, §**7709;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.36]
89 Acts, ch 126, §2
CS89, §468.532

468.533 Petition — canvass.

For such purposes a petition signed by a majority of persons, including corporations, owning land within the district assessed for benefits and who in the aggregate own more than one-half the acreage of such lands, may be filed in the office of the auditor and if more than one county, then a duplicate shall be filed in the office of the auditor of each county.

The trustees shall fix a date not less than ten nor more than thirty days from the date such petition is filed for the canvass of such petition, and the trustees and auditor or auditors shall canvass said petition and certify and record in the drainage record the result.

[C24, 27, 31, 35, 39, §**7710;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.37]

89 Acts, ch 126, §2

CS89, §468.533

468.534 Remonstrance.

Remonstrances signed by the same persons who are qualified to sign the petition may be filed in the office of the auditor and if the same persons petition and remonstrate they shall be counted on the remonstrance only. Such remonstrances shall be filed not less than five days before the time set for hearing.

[C24, 27, 31, 35, 39, §**7711;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.38]

89 Acts, ch 126, §2

CS89, §468.534

468.535 When change effective.

If the result of the canvass shows a majority in favor of such change, then it shall become effectual on the date at which the next annual election of trustees would be held, and on such date the trustees shall surrender and turn over to the board or boards of supervisors the full and complete management and control of such district, together with all books, contracts, and other documents relating thereto.

[C24, 27, 31, 35, 39, §**7712;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.39]

89 Acts, ch 126, §2

CS89, §468.535

468.536 Final report of trustees.

On or before the date such change becomes effective, the said trustees shall make and file with the auditor, or if more than one county, a duplicate with each auditor, a final report setting forth:

1. The amount of cash funds on hand or to the credit of the district.

2. The amount of outstanding indebtedness of the district, and the form thereof, whether in warrants, improvement certificates, or bonds and the amount of each.

3. Any outstanding contracts for repairs or other work to be done.

4. A statement showing the condition of the improvements of the district, and specifying any portion thereof in need of repair.

[C24, 27, 31, 35, 39, §**7713;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.40]

89 Acts, ch 126, §2

CS89, §468.536

468.537 Management by supervisors.

After such change is made it shall be the duty of the board or boards of supervisors to manage and control the affairs of said district as fully and to the same extent as if it had never been under trustee management. They shall carry out any pending contracts lawfully made by the trustees as fully as if made by the board.

[C24, 27, 31, 35, 39, §**7714;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.41]

89 Acts, ch 126, §2

CS89, §468.537

468.538 and 468.539 Reserved.

SUBCHAPTER IV

FINANCING

PART 1

DRAINAGE REFUNDING BONDS

468.540 Refunding bonds.

The board of supervisors of any county may extend the time of the payment of any of its outstanding drainage bonds issued in anticipation of the collection of drainage assessments levied upon property within a drainage district, and may extend the time of payment of any unpaid assessment, or any installment or installments thereof, and may renew or extend the time of payment of such legal bonded indebtedness, or any part thereof, for account of such drainage district, and may refund the same and issue drainage refunding bonds therefor subject to the limitation and in the manner hereinafter provided.

[C27, 31, 35, §7714-b1; C39, §**7714.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.1]

89 Acts, ch 126, §2

CS89, §468.540

Similar provision, §468.367

468.541 Petition for refunding.

Before the time of payment of said assessments or any installment or installments thereof shall be extended and before the board shall institute proceedings for the issuance of drainage refunding bonds, the owners of not less than fifteen percent of the land within a drainage district as shown by the transfer books in the auditor's office upon which drainage assessments are unpaid, shall file a petition with the board requesting the extension

of the time of payment of assessments levied in said drainage district or of any installment or installments thereof, setting forth the date said assessments to be extended were levied, the aggregate amount thereof unpaid, and requesting the issuance of drainage refunding bonds, stating the amount and purpose of said bonds.

[C27, 31, 35, §7714-b2; C39, §**7714.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.2]

89 Acts, ch 126, §2

CS89, §468.541

468.542 Sufficiency of petition — hearing.

Upon the receipt of any such petition the board shall, at the next regular meeting or regular adjourned meeting, determine the sufficiency thereof and fix a date of meeting of the board at which it is proposed to extend the time of payment of said unpaid assessments and to take action for the issuance of drainage refunding bonds.

[C27, 31, 35, §7714-b3; C39, §**7714.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.3]

89 Acts, ch 126, §2

CS89, §468.542

468.543 Notice.

The board shall give ten days' notice of said meeting as required in relation to the issuance of bonds under chapter 73A.

[C27, 31, 35, §7714-b4; C39, §**7714.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.4]

89 Acts, ch 126, §2

CS89, §468.543

468.544 Requirements of notice.

Said notice shall be directed to each person whose name appears upon the transfer books in the auditor's office as owner of lands within said drainage district upon which said drainage assessments are unpaid, naming the owner, and also to the person or persons in actual occupancy of any of said tracts of land without naming them, and shall state the amount of unpaid assessments upon each forty-acre tract of land or less, and that all of said unpaid assessments, installment or installments thereof as proposed to be extended, may be paid in cash on or before the time fixed for said hearing, and that after the expiration of such time no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issuance of said drainage refunding bonds.

[C27, 31, 35, §7714-b5; C39, §**7714.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.5]

89 Acts, ch 126, §2

CS89, §468.544

468.545 Extending payment of assessments.

If no appeal is taken to the issuance of bonds, as provided by chapter 73A, the board may extend the time of payment of the unpaid assessment or an installment or installments of it as requested in the petition and may issue drainage refunding bonds, or, in case of an appeal, the board may issue the bonds in accordance with the decision of the appeal board provided the assessments, installment, or installments have not been entered on the delinquent tax lists and have not been previously extended.

[C27, 31, 35, §7714-b6; C39, §**7714.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.6]

88 Acts, ch 1158, §76; 89 Acts, ch 126, §2

CS89, §468.545

468.546 Appeal.

Any person aggrieved by the final action of the board extending the time of payment of said unpaid assessment, installment or installments thereof may appeal therefrom to the district court of the county in which such action was taken.

[C27, 31, 35, §7714-b7; C39, §**7714.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.7]

89 Acts, ch 126, §2

CS89, §468.546

468.547 Time and manner of appeal.

All appeals shall be taken in the manner provided in section 468.84 except that said appeal shall be taken within ten days after the date of the final action of the board.

[C27, 31, 35, §7714-b8; C39, §**7714.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.8]

89 Acts, ch 126, §2

CS89, §468.547

468.548 Maximum extension.

The unpaid assessments against said lands within said drainage district shall not be extended for a period exceeding forty years from the time any assessment, installment or installments thereof to be extended become due. The board shall fix the amount that shall be levied and collected each year and may issue drainage refunding bonds covering all said unpaid assessments.

[C27, 31, 35, §7714-b9; C39, §**7714.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.9]

89 Acts, ch 126, §2

CS89, §468.548

468.549 Form of bonds.

Drainage refunding bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, each, running not more than forty years, bearing interest at a rate not exceeding that permitted by chapter 74A, payable semiannually, and shall be substantially in the form provided by law relating to drain-

age bonds, with such changes as shall be necessary to conform with this part.

[C27, 31, 35, §7714-b10; C39, §**7714.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.10]

89 Acts, ch 126, §2

CS89, §468.549

468.550 Numbering, signing and attestation.

Said bonds shall be numbered consecutively, signed by the chairperson of the board and attested by the county auditor with the seal of the county affixed. The interest coupons attached thereto shall be executed by the county auditor.

[C27, 31, 35, §7714-b11; C39, §**7714.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.11]

89 Acts, ch 126, §2

CS89, §468.550

468.551 Resolution required.

All bonds issued under the provisions of this part shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors which shall specify the amount of unpaid assessments to be extended, the times when the installment or installments of extended assessments shall become due, the amount of drainage refunding bonds authorized to be issued, the purpose for which issued, the rate of interest they shall bear, the place where the principal and interest shall be payable and the time or times when they shall become due, and such other provisions not inconsistent with law in reference thereto, as the board shall deem proper.

[C27, 31, 35, §7714-b12; C39, §**7714.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.12]

89 Acts, ch 126, §2

CS89, §468.551

468.552 Record of resolution.

Said resolution shall be entered of record upon the minutes of proceedings of said board and shall constitute a contract between the drainage district and the purchasers or holders of said bonds and shall be full authority for the revision of the tax rolls to accord therewith.

[C27, 31, 35, §7714-b13; C39, §**7714.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.13]

89 Acts, ch 126, §2

CS89, §468.552

468.553 Record of bonds.

When the bonds have been executed as aforesaid they shall be delivered to the county treasurer and the treasurer's receipt taken therefor. The treasurer shall register said bonds in a book provided for that purpose which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of indebtedness were received therefor, which record shall at all times be open to the inspection of the owners of property within said drainage district. The treasurer shall thereupon certify on the back of each bond as follows:

This bond duly and properly registered in my office this . . . . . day of . . . . . (month), ... (year).

. . . . . .
Treasurer of the County of
. . . . . .

[C27, 31, 35, §7714-b14; C39, §**7714.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.14]

89 Acts, ch 126, §2

CS89, §468.553

2000 Acts, ch 1058, §56

468.554 Liability of treasurer — reports.

The treasurer shall stand charged on the treasurer's official bond with all bonds so delivered to the treasurer and the proceeds thereof. The treasurer shall report under oath to the board, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by the treasurer since the treasurer's last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged.

[C27, 31, 35, §7714-b15; C39, §**7714.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.15]

89 Acts, ch 126, §2

CS89, §468.554

468.555 Sale, exchange and cancellation.

The county treasurer shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for the legal indebtedness of the said drainage district evidenced by the outstanding drainage bonds, authorized to be refunded by the resolution authorizing the issue of said refunding bonds, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued. After registration the treasurer shall deliver said refunding bonds to the purchaser thereof and when exchanged for said bonded indebtedness of said district, shall at once cancel a like amount of said drainage bonds.

[C27, 31, 35, §7714-b16; C39, §**7714.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.16]

89 Acts, ch 126, §2

CS89, §468.555

468.556 Redemption from tax sale.

In case any land within such drainage district shall have been sold at tax sale for failure of the owner thereof to pay any drainage assessments

levied thereon, and before any tax deed has been issued, then on application of the owner of such land, the board of supervisors may effect a redemption thereof for such owner out of the proceeds of any refunding bond issue and add the cost of such redemption to the amount of the unpaid assessments against such land, payment thereof to be extended in manner and as a part of the remaining unpaid assessments thereon.

[C35, §7714-f1; C39, §**7714.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.17]
89 Acts, ch 126, §2
CS89, §468.556

468.557 Effect of extension.

The extension of the time of payment of any unpaid assessments or installment or installments thereof, in the manner aforesaid shall in no way impair the lien of said assessments as originally levied or the priority thereof, nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of said drainage refunding bonds.

[C27, 31, 35, §7714-b17; C39, §**7714.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.18]
89 Acts, ch 126, §2
CS89, §468.557

468.558 Additional assessments.

If said assessments should for any reason be insufficient to meet the interest and principal of said drainage refunding bonds additional assessments shall be made to provide for such deficiency.

[C27, 31, 35, §7714-b18; C39, §**7714.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.19]
89 Acts, ch 126, §2
CS89, §468.558

468.559 Applicability of funds.

All special assessments, taxes, and sinking funds applicable to the payment of the indebtedness refunded by said drainage bonds shall be applicable in the same manner and to the same extent to the payment of such refunding bonds issued hereunder, and the powers, rights, and duties to levy and collect special assessments or taxes, or create liens upon property shall continue until all refunding bonds shall be paid.

[C27, 31, 35, §7714-b19; C39, §**7714.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.20]
89 Acts, ch 126, §2
CS89, §468.559

468.560 Trust fund.

The special assessments out of which said bonds are payable shall be collected and held separate and apart in trust for the payment of said refunding bonds.

[C27, 31, 35, §7714-b20; C39, §**7714.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.21]
89 Acts, ch 126, §2
CS89, §468.560

468.561 Liens unimpaired.

When drainage refunding bonds are issued hereunder, nothing in this part shall be construed as impairing the lien of any unpaid drainage assessments or installments in such drainage district, the time of payment of which is not extended, nor shall this part be construed as impairing the priority of the lien thereof nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of outstanding drainage bonds issued in anticipation of the collection thereof.

[C27, 31, 35, §7714-b21; C39, §**7714.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.22]
89 Acts, ch 126, §2
CS89, §468.561

468.562 Limitation of action.

No action shall be brought questioning the validity of any of the bonds authorized by this part from and after three months from the time the same are ordered issued by the proper authorities.

[C27, 31, 35, §7714-b22; C39, §**7714.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.23]
89 Acts, ch 126, §2
CS89, §468.562
Similar provisions, §468.377, 468.581

468.563 Void bonds or assessments.

The provisions of this part shall not apply to bonds or assessments adjudicated to be void.

[C27, 31, 35, §7714-b23; C39, §**7714.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.24]
89 Acts, ch 126, §2
CS89, §468.563

468.564 Interpretative clause.

This part shall be construed as granting additional power without limiting the power already existing for the extension of the time of payment of drainage assessments and the issuance of drainage bonds.

[C27, 31, 35, §7714-b24; C39, §**7714.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.25]
89 Acts, ch 126, §2
CS89, §468.564

468.565 Composition with creditors — federal loans.

For the purpose of refinancing, adjusting, composing and refunding in such adjusted amount the indebtedness of any drainage districts or levee districts, found to be in financial distress, the governing body thereof, or board of supervisors as the case may be, upon its own motion, is authorized to enter into agreements with the creditors of said district, for the reduction and composition of its

outstanding indebtedness, and to make application for and negotiate with the Reconstruction Finance Corporation, or any other loaning agency, for the borrowing of funds for such purposes.

[C35, §7714-g1; C39, §**7714.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.26]

89 Acts, ch 126, §2

CS89, §468.565

468.566 Refinancing powers.

In order to effect such loan, the governing body of such district, or board of supervisors, is authorized to execute such agreements and contracts, and to fulfill such requirements of the loaning agency as are not inconsistent with this part; and to issue, and pledge or sell such bonds at their face value to the said Reconstruction Finance Corporation, or other loaning agency, furnishing the funds for such debt readjustment, in the amount required for such adjustment.

The governing body, or board of supervisors, shall also have the authority as a part of such plan of refinancing, adjusting, composing, and refunding its indebtedness, to cancel the old assessments collectible against the land within the district, pledged to the payment of its outstanding indebtedness and proportionately and equitably relevy the same, with interest, over the period covered by the new bonds, in an amount sufficient to pay said new bonds and interest thereon, provided, however, that the new assessments thereby created against any tract of land within the district shall not be in excess of the unpaid assessments against such tract before the readjustment or composition is made, and provided further, that such new and extended assessment against such tract shall fully replace the old assessment.

[C35, §7714-g2; C39, §**7714.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.27]

89 Acts, ch 126, §2

CS89, §468.566

468.567 Report and hearing — appeal.

At the direction of the governing board of such district, or board of supervisors, the county auditor of the county within which the land on which the indebtedness is being adjusted is situated, shall compile a tabulated report as to the lands within the said district, setting forth:

1. The name of the owner of each assessed tract as shown by the transfer books in the county auditor's office.

2. The amount of the unpaid old assessments against each of said tracts.

3. The amount of the new assessment required to pay the new bonds to be issued, together with the installments to be paid thereon annually of principal and interest, and the maximum period of time over which such assessments shall be paid.

After such report is tabulated and filed, a hearing upon the contemplated action of the governing body of such district, or board of supervisors, to make the proposed adjustment, composition, renewal and refunding in such adjusted amount of its outstanding indebtedness, together with the issuance of bonds and the levying of assessments therefor, shall be had in the manner and upon the same notice as is prescribed in sections 468.543 through 468.545 and appeal may be made therefrom as provided in this part.

[C35, §7714-g3; C39, §**7714.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.28]

89 Acts, ch 126, §2

CS89, §468.567

468.568 and 468.569 Reserved.

PART 2

DEFAULTED DRAINAGE BONDS

468.570 Extension of payment — application.

When drainage district bonds have been issued in anticipation of the collection of drainage district assessments levied on real estate within such drainage district are in default, either for failure to pay principal installments or accrued interest thereon, and funds are not on hand within thirty days after such default, ten owners of real estate in such district or the owners of not less than ten percent in amount of the outstanding drainage bonds of such district may make application to the district court of the county wherein said drainage district is located, asking for an extension of time of payment, and a reamortization of the assessments on the real estate within such drainage district, which was in default, and a new schedule of payments of the bonds and other indebtedness, and the issuance of new bonds as provided by this part.

[C35, §7714-f2; C39, §**7714.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.1]

89 Acts, ch 126, §2

CS89, §468.570

468.571 Petition.

Ten owners of real estate in such district, or the owners of not less than ten percent in amount of the outstanding drainage bonds of such drainage district, may institute proceedings in the district court of the county issuing such bonds wherein the drainage district is located, by filing a petition which shall set forth the names and addresses of the ten petitioning real estate owners or the names and addresses of the petitioning owners of ten percent in amount of the drainage bonds of said district, that said bonds are in default as defined in section 468.570, that the petitioners have good reason to believe that said default cannot, or will not, be removed by payment under the present schedule of said district, and asking that the mat-

ters herein presented be reviewed by the court, and determined as provided by this part.

[C35, §7714-f3; C39, §**7714.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.2]

89 Acts, ch 126, §2

CS89, §468.571

468.572 Hearing.

On the filing of such petition the court shall enter an order fixing the date for hearing, which date shall be at least four weeks subsequent to the date of the filing of the order.

[C35, §7714-f4; C39, §**7714.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.3]

89 Acts, ch 126, §2

CS89, §468.572

468.573 Parties — notice — service.

The board of supervisors of such county or counties wherein the drainage district is located, shall be notified of the proceeding and hearing by original notice served in the same manner as in civil actions; notice of said hearing shall be served upon all owners of each tract of land or lot within such drainage district, as shown by the transfer books in the county auditor's office, upon each lienholder or encumbrancer of any land within the said drainage district as shown by the county records, and upon all persons holding claims against said drainage district, as shown by the county records, and also upon all other persons whom it may concern, including bondholders and actual occupants of the land within said drainage district, without naming individuals, by publication thereof, once each week for two consecutive weeks, in some newspaper of general circulation in the county or counties where said drainage district is located, the last of which publications shall be not less than twenty days prior to the date set for hearing on the said petition and a copy of such notice shall also be sent by ordinary mail to the person's last known address unless there is on file an affidavit of one of the petitioners or the petitioner's attorney stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days prior to the date set for hearing. Proof of publication and mailing shall be by affidavit and shall be included in the records of the proceedings.

[C35, §7714-f5; C39, §**7714.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.4]

89 Acts, ch 126, §2

CS89, §468.573

Service of original notice, R.C.P. 1.302 – 1.315

468.574 Jurisdiction of court.

The district court shall have jurisdiction and power to adjudicate all the rights and issues between the drainage district, and the landowners, bondholders, lienholders, encumbrancers, claimants and creditors of the drainage district, and in determining the rights of the parties, shall take into consideration, the maturity of the bonds, the interest rate of the bonds, the present schedule and classification of assessments on the real estate, the ratio between the amount in default, and the amount of unpaid assessments in the drainage district, the gross amount needed to retire the bonds now outstanding and in default, the current retirement schedule on other indebtedness of the drainage district, the general tax structure of the drainage district, the unpaid taxes in the drainage district, the default by the drainage district in the payment of its bonded indebtedness, and the current financial condition of the taxpayers.

[C35, §7714-f6; C39, §**7714.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.5]

89 Acts, ch 126, §2

CS89, §468.574

468.575 Conservator appointed.

If the court finds that the necessary parties have instituted the proceedings, and that all necessary parties have been properly served with notice, and the order of the court, and that the drainage district is in default in the payment of its installment assessments, or the interest thereon, the court shall enter an order appointing the county auditor of the county in which such drainage district is located, or if such drainage district is located in more than one county, the county auditor of the county wherein the greater portion of the lands within said drainage district are located, receiver for the said drainage district, said receiver being hereafter called "conservator", and the said conservator shall be under the court's direction. The conservator shall be allowed such compensation as may be determined by the court, and said conservator may employ, under the direction and approval of the court, an attorney, and such assistants as may be necessary to perform the duties required by the conservator under the law, and orders of court.

[C35, §7714-f7; C39, §**7714.34;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.6]

89 Acts, ch 126, §2

CS89, §468.575

468.576 Report — hearing thereon.

The conservator shall, within thirty days from the date of the conservator's appointment, prepare and file with the clerk of the district court, a full report, giving in detail, the bonded indebtedness of said drainage district, the accrued interest thereon, and any and all other indebtedness owing by said drainage district; a full and complete schedule of all lands sold at tax sale, including the amount of drainage assessments thereon; a list of all real estate within the drainage district, showing the unpaid assessments thereon; also said conservator shall set forth a schedule, under which the bonded indebtedness of said drainage district may be reamortized; also a schedule under which

all other indebtedness of said drainage district may be paid or reamortized. Upon the filing of the report by the conservator, the court shall set a date for hearing thereon, which date shall not be less than ten or more than fifteen days, from the filing thereof.

[C35, §7714-f8; C39, §**7714.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.7]

89 Acts, ch 126, §2

CS89, §468.576

468.577 Adjudication on report.

At the hearing of the conservator's report, the court shall fix and determine the amount of money in the hands of the county treasurer belonging to the drainage district; the amount of the indebtedness of the drainage district; and to whom the indebtedness is due, and shall fix and determine the time, manner, and priority of payment of the indebtedness. The court shall fix and determine the amount of unpaid assessment or assessments against each tract of land within the drainage district, and may extend the time of payment, and reamortize and reallocate the assessments upon each tract of land within the drainage district. If the court finds that the assessments as levied against each tract of land within the drainage district are not sufficient to pay the indebtedness due and owing by the drainage district, the court may order the board of supervisors of the county within which the drainage district is located, to levy an assessment against the lands within the drainage district, in an amount to pay the deficit. However, assessment for the payment of drainage bonds or improvement certificates shall not be levied against any tract of land if the owner of the land is not delinquent in payment of any assessment. The amount of the reassessment on a particular piece of land shall be in direct proportion to the amount of unpaid assessments on the land. The assessment or expenses incidental thereto, for the payment of drainage bonds or improvement certificates under this part, shall not be levied against any tract of land if the owner of the land had previously paid all of the owner's assessment. The assessment shall be assessed and levied by the board of supervisors upon the lands within the drainage district, in the same proportion as the original assessment. A copy of the order entered by the court shall be filed by the clerk of the district court with the county auditor, and the schedule of payments of the indebtedness of the drainage district as fixed and determined by the court shall be entered upon the drainage records of the drainage district and also spread upon the tax records of the county, and shall become due and payable at the same time as ordinary taxes, and shall be collected in the same manner with the same interest for delinquency, and the same manner of enforcing collection by tax sale. The court may apportion the costs between the creditors of the drainage district and the drainage district.

[C35, §7714-f9; C39, §**7714.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.8]

89 Acts, ch 126, §2

CS89, §468.577

92 Acts, ch 1016, §39

468.578 Refunding bonds.

The court shall direct the board of supervisors to issue bonds in lieu of the outstanding drainage bonds for said drainage district, and additional bonds for the accrued interest and other indebtedness of said drainage district. Said bonds shall be payable in amounts, and at the time and manner, and with priority of payments as has been determined by order of court, as provided by section 468.577, and shall be called "conservator's drainage district bonds". Each bond shall be numbered and shall state on its face that it is a conservator's drainage district bond; that it is issued in pursuance of a resolution adopted by the board of supervisors, under order of court, and giving the name of the court and the county where such court is held; that it is issued to pay indebtedness of the drainage district; shall state the county where such district is located, and the number of the drainage district for which it is issued; shall state the date of maturity of the bond, the rate of interest thereon, which rate shall not exceed that permitted by chapter 74A, and that the bond is to be paid only from taxes assessed, levied and collected on the lands within the drainage district for which the bond is issued subject to the provisions of section 468.577. All bonds shall be signed by the chairperson of the board of supervisors and countersigned by the conservator designated as such. The interest coupons attached to said bonds shall be attested by the signature of the conservator or a facsimile thereof. When the bonds have been executed as herein required, the conservator may sell said bonds at not less than par with accrued interest thereon, and pay the indebtedness of said drainage district, or may exchange said bonds with the creditors of said drainage district in amounts as have been fixed and determined by the court, and the conservator shall cancel all drainage bonds, improvement certificates, warrants or other evidence of indebtedness received by the conservator in lieu of the conservator's bonds.

[C35, §7714-f10; C39, §**7714.37;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.9]

89 Acts, ch 126, §2

CS89, §468.578

468.579 Lien.

When conservator's drainage district bonds are issued hereunder, nothing herein shall be construed as impairing the lien of all unpaid assessments upon the real estate within said drainage district, nor shall this part be construed as impairing the priority of the lien thereof, nor the right, duty and power of the officer authorized by law, to

levy, collect and apply the proceeds thereof, to the payment of outstanding drainage bonds issued in anticipation of the collection thereof.

[C35, §7714-f11; C39, §**7714.38;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.10]

89 Acts, ch 126, §2

CS89, §468.579

468.580 Trustees as parties.

Should a drainage district in default be managed by drainage district trustees, said trustees shall also be named as proper and necessary parties defendant.

[C35, §7714-f12; C39, §**7714.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.11]

89 Acts, ch 126, §2

CS89, §468.580

468.581 Limitation of action.

No action shall be brought, questioning the validity of any conservator's drainage district bond issued under this part from and after three months from the date of the order causing the said bonds to be issued.

[C35, §7714-f13; C39, §**7714.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.12]

89 Acts, ch 126, §2

CS89, §468.581

Similar provisions, §468.377, 468.562

468.582 through 468.584 Reserved.

PART 3

FUNDING OF COUNTY DRAINAGE DISTRICTS

468.585 Definitions.

As used in this part, unless the context otherwise requires:

1. *"Drainage improvement"* includes the construction, improvement, or repair of the principal structures, works, component parts and accessories of a storm sewer, drainage conduit, channel, or levee for the collection, detention, or discharge of drainage or surface waters.

2. *"Urban drainage district"* or *"district"* means a district defined by a county and one or more cities within the county pursuant to an agreement entered into by the county and cities in accordance with chapter 28E and this part with respect to drainage improvements which the county and cities determine benefit the property located in the cities and the designated unincorporated area of the county.

3. *"Cost"* means the same as defined in section 384.37, subsection 26.

85 Acts, ch 144, §1

CS85, §331.485

89 Acts, ch 126, §2

CS89, §468.585

468.586 Assessment of costs of drainage improvements.

A county may assess to property within an urban drainage district the cost of a drainage improvement within the county and drainage facilities extending outside the county. A county is empowered to proceed and construct and to assess the cost of a drainage improvement within a district in the same manner as a city may proceed under division IV of chapter 384 and the provisions of division IV of chapter 384 apply to counties with respect to drainage improvements, the assessment of their costs and the issuance of bonds for the improvements. A county may contract for a drainage improvement within a district under this part pursuant to part 3 of division III of chapter 331.

85 Acts, ch 144, §1

CS85, §331.486

89 Acts, ch 126, §2

CS89, §468.586

468.587 Special assessment bonds.

A county may issue special assessment bonds in anticipation of the collection of special assessments for the cost of drainage improvements within a district in the same manner as provided for cities under division IV of chapter 384.

85 Acts, ch 144, §1

CS85, §331.487

89 Acts, ch 126, §2

CS89, §468.587

468.588 Chapter 28E agreement.

An agreement entered into between a city and a county in accordance with chapter 28E with respect to a drainage improvement may include among others the following provisions:

1. The sharing of the total cost of the drainage improvement between the city and the county.

2. The amount of total assessments against private property within the city and within the unincorporated area of the county included within the district.

3. The method of specially assessing and determining benefits.

4. The amount of funds, if any, to be contributed by the city and county to the project other than special assessments.

5. The rates to be established and imposed upon property within the drainage district to pay the expenses of operation and maintenance of the drainage improvements.

6. The reduction of the county's debt service tax levy rate against property within a city which is a party to the joint agreement.

85 Acts, ch 144, §1
CS85, §331.488
89 Acts, ch 126, §2
CS89, §468.588

468.589 Rates and charges for services and connection.

If a county and city have entered into an agreement pursuant to chapter 28E to create an urban drainage district, the county or city or both may, to the extent and in the manner provided in the agreement, establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of a drainage improvement against property within the district and establish, impose, adjust, and provide for the collection of charges for connection to a drainage improvement. Rates and charges must be established by ordinance of the governing body of the county or city imposing the rates or charges. Rates or charges for the services of and connection to the drainage improvement if not paid as provided by the ordinance of the governing body, are a lien upon the premises served or benefited by that improvement and may be certified to the county treasurer and collected in the same manner as other taxes.

85 Acts, ch 144, §1
CS85, §331.489
89 Acts, ch 126, §2
CS89, §468.589
93 Acts, ch 73, §13

468.590 Cities subject to debt service tax levy — rates.

If a county and city have entered into a joint agreement pursuant to chapter 28E to create a district and issue county general obligation bonds to fund the costs of a drainage improvement in that district, the county's debt service tax levy for the county general obligation bonds shall not be levied against property located in any city except a city which has entered into the joint agreement.

The county and the cities entering into the joint agreement may provide in the joint agreement for a different rate of the county's debt service tax levy against property in unincorporated areas of the county and property within those cities.

85 Acts, ch 144, §1
CS85, §331.490
89 Acts, ch 126, §2
CS89, §468.590

468.591 Authority.

The authority of a city or county under this part with respect to districts and the financing of drainage improvements is in addition to any other authority of a city or county to contract, and levy special assessments and issue bonds to fund the costs.

85 Acts, ch 144, §1
CS85, §331.491
89 Acts, ch 126, §2
CS89, §468.591

468.592 through 468.599 Reserved.

SUBCHAPTER V

INDIVIDUAL DRAINAGE RIGHTS

468.600 Drainage through land of others — application.

When the owner of any land desires to construct any levee, open ditch, tile or other underground drain, for agricultural or mining purposes, or for the purposes of securing more complete drainage or a better outlet, across the lands of others or across the right of way of a railroad or highway, or when two or more landowners desire to construct a drain to serve their lands, the landowner or landowners may file with the auditor of the county in which any such land or right of way is situated, an application in writing, setting forth a description of the land or other property through which the landowner is desirous of constructing any such levee, ditch, or drain, the starting point, route, terminus, character, size, and depth thereof. The auditor shall collect a fee of one dollar for filing each application for a ditch or drain.

[C73, §1217; C97, §1955; S13, §1955; C24, 27, 31, 35, 39, §**7715;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.1]

89 Acts, ch 126, §2
CS89, §468.600

468.601 Notice of hearing — service.

Upon the filing of any such application, the auditor shall forthwith fix a time and place for hearing thereon before the county board of supervisors, which hearing shall be not more than ninety days nor less than thirty days from the time of the filing of such application, and cause notice in writing to be served upon the owner of each tract of land across which any such levee, ditch, or drain is proposed to be located, as shown by the transfer books in the office of the county auditor, and also upon the person in actual occupancy of any such lands, of the pendency and prayer of such application and the time and place set for hearing on the same before the board of supervisors, which notice, as to residents of the county and railroad companies, shall be served not less than ten days before the time set for such hearing, in the manner that original notices are required to be served. Notice to a railroad company may be served upon any station agent.

[C73, §1218; C97, §1955; S13, §1955; C24, 27, 31, 35, 39, §**7716;** C46, 50, 54, 58, 62, 66, 71, 73, 75,

77, 79, 81, §465.2]
89 Acts, ch 126, §2
CS89, §468.601
Manner of service, R.C.P. 1.302 – 1.315

468.602 Service upon nonresident.
In case any such owner is a nonresident of the county the owner may be personally served in the manner required for original notices or, in lieu thereof, the owner may be given notice as provided in section 468.15.
[C73, §1218; C97, §1955; S13, §1955; C24, 27, 31, 35, 39, §**7717;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.3]
89 Acts, ch 126, §2
CS89, §468.602

468.603 Service on omitted parties — adjournment.
If at the hearing it should appear that any person entitled to notice has not been served with notice, the board may postpone such hearing and fix a new time for the same, and notice of such new time of hearing may be served on such omitted persons in the manner and for the time provided by law and by fixing such new time for hearing and by adjournment to such time, the board shall not lose jurisdiction of the subject matter of such proceeding nor of any persons previously served with notice.
[S13, §1955; C24, 27, 31, 35, 39, §**7718;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.4]
89 Acts, ch 126, §2
CS89, §468.603

468.604 Claims for damages — waiver.
Any person or corporation claiming damages or compensation for or on account of the construction of any such improvement, shall file a claim in writing therefor with the auditor at or before the time fixed for hearing on the application. A failure to file such claim at the time specified shall be deemed to be a waiver of the right to claim or recover such damage.
[S13, §1955; C24, 27, 31, 35, 39, §**7719;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.5]
89 Acts, ch 126, §2
CS89, §468.604

468.605 Hearing — sufficiency of application — damages.
At the time set for hearing on the application, if the board shall find that all necessary parties have been served with notice as required, they shall proceed to hear and determine the sufficiency of the application as to form and substance, which application may be amended both as to form and substance before final action thereon. They shall also determine the merits of the application, all objections thereto, and all claims filed for damages or compensation, and may view the premises. The board may adjourn the proceedings from day to day, but no adjournment shall be for a longer period than ten days.
[C73, §1219; C97, §1956; S13, §1956; C24, 27, 31, 35, 39, §**7720;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.6]
89 Acts, ch 126, §2
CS89, §468.605

468.606 Shall locate when — specifications.
If the supervisors find that the levee, ditch, or drain petitioned for will be beneficial for sanitary, agricultural, or mining purposes, they shall locate the same and fix the points of entrance and exit on such land or property, the course of the same through each tract of land, the size, character, and depth thereof, when and in what manner the same shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such land or property for damages by reason of the construction of any such improvements, and any other question arising in connection therewith.
[C73, §1220; C97, §1956; S13, §1956; C24, 27, 31, 35, 39, §**7721;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.7]
89 Acts, ch 126, §2
CS89, §468.606

468.607 Findings — record.
The board shall reduce its findings, decision, and determination to writing, which shall be filed with the auditor, who shall record it in the official record of the board's proceedings, together with the application and all other papers filed in connection therewith, and the auditor shall cause the findings and decision of the board to be recorded in the office of the recorder of the county in which such land is situated and said decision shall be final unless appealed from as provided in section 468.608.
[C73, §1220; C97, §1956; S13, §1956; C24, 27, 31, 35, 39, §**7722;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.8]
89 Acts, ch 126, §2
CS89, §468.607

468.608 Appeal — notice.
Either party may appeal to the district court from any such decision by causing to be served, within ten days from the time it was filed with the auditor, a notice in writing upon the opposite party of the taking of such appeal, which notice shall be served in the same manner as is provided for the service of original notices. If the appellant is the party petitioning for the drain, the appellant shall also file a bond, conditioned to pay all costs of appeal that may be assessed against the appellant, which bond, if good and sufficient, shall be approved by the auditor.
[C73, §1223; C97, §1957; C24, 27, 31, 35, 39,

§**7723;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.9]
89 Acts, ch 126, §2
CS89, §468.608
Manner of service, R.C.P. 1.302 – 1.315
Presumption of approval of bond, §636.10

468.609 Transcript.
In case of appeal, the auditor shall certify to the district court a transcript of the proceedings before the board, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal, as in other cases.
[C97, §1958; C24, 27, 31, 35, 39, §**7724;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.10]
89 Acts, ch 126, §2
CS89, §468.609

468.610 Appeal — how tried — costs.
The cause shall be tried in the district court by ordinary proceedings, upon such pleading as the court may direct, each party having the right to offer such testimony as shall be admissible under the rules of law. If the appellant does not recover a more favorable judgment in the district court than the appellant received in the decision of the board, the appellant shall pay all the costs of appeal.
[C97, §1957; C24, 27, 31, 35, 39, §**7725;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.11]
89 Acts, ch 126, §2
CS89, §468.610

468.611 Parties — judgment — orders.
The party claiming damages shall be the plaintiff and the applicant shall be the defendant; and the court shall render such judgment as shall be warranted by the verdict, the facts, and the law upon all the matters involved, and make such orders as will cause the same to be carried into effect.
[C73, §1224; C97, §1958; C24, 27, 31, 35, 39, §**7726;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.12]
89 Acts, ch 126, §2
CS89, §468.611

468.612 Costs and damages — payment.
The applicant shall pay the costs of the board and auditor and for the serving of notices for hearing, the fees of witnesses summoned by the board on said hearing, and the recording of the finding of the board by the county recorder.
[C73, §1221; C97, §1959; S13, §1959; C24, 27, 31, 35, 39, §**7727;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.13]
89 Acts, ch 126, §2
CS89, §468.612
Service of notice fees, §331.655(1)
Witness fees, §622.69 et seq.

468.613 Construction.
Before entering on the construction of the drain, the party applying therefor shall pay to the party through whose land said drain is to be constructed the damages awarded to that party, or shall pay the same to the board for that party's use. The applicant may proceed to construct said drain in accordance with the decision of the board, and the taking of an appeal shall not delay such work.
[C97, §1959; S13, §1959; C24, 27, 31, 35, 39, §**7728;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.14]
89 Acts, ch 126, §2
CS89, §468.613

468.614 Construction through railroad property.
If any such ditch or drain shall be located through or across the right of way or other land of a railroad company, the board shall determine the cost of constructing the same and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the board and recover the costs thereof as fixed by the board. Such railroad company before it may exercise such privilege shall file its election to that effect with the auditor within five days after the decision of the board is filed.
[S13, §1959; C24, 27, 31, 35, 39, §**7729;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.15]
89 Acts, ch 126, §2
CS89, §468.614

468.615 Deposit.
In case such election is filed the applicant shall within ten days thereafter pay to the auditor, for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages, and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the auditor such cost.
[S13, §1959; C24, 27, 31, 35, 39, §**7730;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.16]
89 Acts, ch 126, §2
CS89, §468.615

468.616 Failure to construct.
If the railroad company shall fail to so construct the improvement for a period of thirty days after filing its election so to do, the applicant may proceed to do so and may have returned to the applicant the cost thereof deposited with the auditor.
[S13, §1959; C24, 27, 31, 35, 39, §**7731;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.17]
89 Acts, ch 126, §2
CS89, §468.616

468.617 Repairs.

In case any dispute shall thereafter arise as to the repair of any such drain, the same shall be determined by the county board of supervisors upon application in substantially the same manner as in the original construction thereof.

[C73, §1226; C97, §1960; C24, 27, 31, 35, 39, §**7732;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.18]

89 Acts, ch 126, §2

CS89, §468.617

468.618 Obstruction.

Any person who shall dam up, obstruct, or in any way injure any ditch or drain so constructed, shall be liable to pay to the person owning or possessing the swamp, marsh, or other lowlands, for the draining of which such ditch or ditches have been opened, double the damages that shall be sustained by the owner, and, in case of a second or subsequent offense by the same person, treble such damages.

[C73, §1227; C97, §1961; C24, 27, 31, 35, 39, §**7733;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.19]

89 Acts, ch 126, §2

CS89, §468.618

468.619 Drains on abutting boundary lines.

When any watercourse or natural drainage line crosses the boundary line between two adjoining landowners and both parties desire to drain their land along such watercourse or natural drainage line, but are unable to agree as to the junction of the lines of drainage at such boundary line, the board of supervisors of the county in which said land is located shall have full power and authority upon the application of either party to hear and determine all questions arising between such parties after giving due notice to each of the time and place of such hearing, and may render such decision thereon as to said board shall seem just and equitable.

[C97, §1962; C24, 27, 31, 35, 39, §**7734;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.20]

89 Acts, ch 126, §2

CS89, §468.619

468.620 Boundary between two counties.

If any controversy referred to in section 468.619 relates to a boundary line between adjoining owners which is also the boundary line between two counties, then such controversy shall be determined by the joint action of the boards of supervisors in said two adjoining counties, and all the proceedings shall be the same as provided in section 468.619 except that it shall be by the joint action of the boards of the two counties.

[C24, 27, 31, 35, 39, §**7735;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.21]

89 Acts, ch 126, §2

CS89, §468.620

468.621 Drainage in course of natural drainage — reconstruction — damages.

Owners of land may drain the land in the general course of natural drainage by constructing or reconstructing open or covered drains, discharging the drains in any natural watercourse or depression so the water will be carried into some other natural watercourse, and if the drainage is wholly upon the owner's land the owner is not liable in damages for the drainage unless it increases the quantity of water or changes the manner of discharge on the land of another. An owner in constructing a replacement drain, wholly on the owner's land, and in the exercise of due care, is not liable in damages to another if a previously constructed drain on the owner's own land is rendered inoperative or less efficient by the new drain, unless in violation of the terms of a written contract. This section does not affect the rights or liabilities of proprietors in respect to running streams.

[S13, §1989-a53; C24, 27, 31, 35, 39, §**7736;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.22]

87 Acts, ch 225, §306; 89 Acts, ch 126, §2

CS89, §468.621

468.622 Drainage connection with highway.

When the course of natural drainage of any land runs to a public highway, the owner of such land shall have the right to enter upon such highway for the purpose of connecting the owner's drain or ditch with any drain or ditch constructed along or across the said highway, but in making such connections, the owner shall do so in accordance with specifications furnished by the highway authorities having jurisdiction thereof, which specifications shall be furnished to the owner on application. The owner shall leave the highway in as good condition in every way as it was before the said work was done.

If a tile line or drainage ditch must be projected across the right of way to a suitable outlet, the expense of both material and labor used in installing the tile line or drainage ditch across the highway and any subsequent repair thereof shall be paid from funds available for the highways affected.

[C97, §1963; C24, 27, 31, 35, 39, §**7737;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.23]

89 Acts, ch 126, §2

CS89, §468.622

468.623 Private drainage system — record.

Any person who has provided a system of drainage on land owned by the person may have the same made a matter of record in the office of the county recorder of the county in which the drain-

age system is located, provided any drainage system constructed after July 1, 1969, shall be made a matter of record, as is hereinafter provided.

[C24, 27, 31, 35, 39, §**7738;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.24]

89 Acts, ch 126, §2

CS89, §468.623

468.624 Drainage plat book.

The county recorder shall be provided with a loose-leaf plat book, made to scale, for each section of the land within the county in which such records shall be made. Such plat book shall consist of sheets of paper interbound by sheets of tracing cloth with proper heading, margin, and binding edge. Said plat book shall be used for keeping a record of drainage systems filed by any landowner. Plats so offered for record shall be drawn to scale on paper measuring eight and one-half by eleven inches, giving distances in feet and indicating the size of tile used, length and location of tile lines as installed with reference to government corners and subdivisions.

[C24, 27, 31, 35, 39, §**7739;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.25]

89 Acts, ch 126, §2

CS89, §468.624

468.625 Record book and index.

The county recorder shall also be provided with a record book and index referring to the plats provided for in section 468.624, and which may be used to give the owner's name, description of tracts of land drained, stating the time when drainage system was established, the kind, quality, and brand of tile used, the name and place of manufacturing plant, the name of contractors who laid the tile, the name of the engineer in charge of the survey and installation, the cost of tile, delivery, installation, and engineering expense, depths, grades, outlets, connections, contracts for agreements with adjoining landowners as to connections, and any other matters or information that may be considered of value, all of said information to be furnished by the landowner or the engineer having charge of the installation of the same and certified to under oath.

[C24, 27, 31, 35, 39, §**7740;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.26]

89 Acts, ch 126, §2

CS89, §468.625

468.626 Original plat filed.

In lieu of making the record as herein provided any landowner may file with the county recorder the original plat used in the establishment of said drainage system, or a copy thereof, which shall be certified by the engineer having made the same.

[C24, 27, 31, 35, 39, §**7741;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.27]

89 Acts, ch 126, §2

CS89, §468.626

468.627 Record not part of title.

The drainage records herein provided for shall not be construed as an essential part of the title to said lands, but may upon request be set out by abstracters as part of the record title of said lands.

[C24, 27, 31, 35, 39, §**7742;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.28]

89 Acts, ch 126, §2

CS89, §468.627

468.628 Fees for record and copies.

The county recorder shall be entitled to collect fees for the filing and information heretofore provided for, and for the making of copies of such records the same as is provided for other work of a similar nature.

[C24, 27, 31, 35, 39, §**7743;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.29]

89 Acts, ch 126, §2

CS89, §468.628

468.629 Lost records — hearing.

When the records of any mutual drain are incomplete or have been lost, or when the owner of any land affected by such mutual drain believes that the apportionment of costs or damages is inequitable or that repair or reconstruction is needed, such owner may petition the board of supervisors for relief. The board shall notify all affected parties of such petition, and set a date for a hearing on the petition. The board may adjourn the proceedings from day to day, but no adjournment shall be for more than ten days, and may order such engineering examinations, reclassifications of lands and appraisals of damages as they deem necessary. At the completion of the hearing the supervisors shall re-establish the original records or establish a revised record and basis for apportionment of costs and damages as they find equitable and advisable, and may order such repairs or reconstruction as they find to be needed. All cost of such re-establishment or revisions of records, and of the needed repair or reconstruction shall be apportioned in accordance with the basis established.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.30]

89 Acts, ch 126, §2

CS89, §468.629

468.630 Mutual drains — establishment as district.

Whenever a landowner fails to pay the cost apportioned as provided in section 468.629, or whenever a repair or reconstruction ordered as provided in said section is not made within reasonable time, and in such other instances as the board of

supervisors desires, the board by resolution shall establish such mutual drain as a drainage district; all proceedings thereafter shall be as provided for other legally established districts.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.31]

89 Acts, ch 126, §2

CS89, §468.630

468.631 Appeal.

The decisions and actions of the board of supervisors under section 468.630 may be appealed as provided in sections 468.608 through 468.610.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.32]

89 Acts, ch 126, §2

CS89, §468.631

468.632 Record filed with established district.

When the lands served by a mutual drain are within the boundary of an established drainage district, a complete record of the proceeding relating to such mutual drain shall be filed with and as a part of, the records of such established district.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.33]

89 Acts, ch 126, §2

CS89, §468.632

468.633 Lost or incomplete records.

If the records referred to in section 468.632 are incomplete or have been lost, the board may re-establish such records so as to proportion future costs and damages in proportion to the benefits and damages received because of the construction of such mutual drains and improvements thereof, and may order such surveys, engineering reports, reclassification of lands and appraisal of damages as they deem necessary. All costs of such proceedings shall be assessed against the benefited lands.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.34]

89 Acts, ch 126, §2

CS89, §468.633

468.634 Petition to combine with established district.

Upon receipt of a petition, signed by the owners of the lands served by a mutual drain, requesting that such drain be combined with an established drainage district, the board shall hold a hearing with due notice to the owners of all lands affected by said mutual drain, and if the board finds it desirable it may by resolution make such mutual drains a part of the established district. Such hearing and resolution may be continued as the board deems necessary for the collection of additional information as provided in section 468.633. Such combination with an established district shall constitute dissolution of the mutual drain, and shall be so recorded, after which such mutual drain shall be a part of the district drain in all respects.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.35]

89 Acts, ch 126, §2

CS89, §468.634

SUBTITLE 4

ENERGY

CHAPTER 469

DAMS

Transferred to chapter 464B

CHAPTER 469A

HYDROELECTRIC PLANTS

469A.1 Certificate of convenience and necessity.
469A.2 Public hearing.
469A.3 Public welfare promoted.
469A.4 Rules imposed.
469A.5 Costs advanced.
469A.6 Amendment or revocation.
469A.7 Penalty.
469A.8 Unlawful combination — receivership.

469A.1 Certificate of convenience and necessity.

It shall be unlawful for any person, firm, association or corporation to engage in the business of constructing, maintaining or operating within this state any hydroelectric generating plant or project without first having obtained from the executive council of Iowa a certificate of convenience and necessity declaring that the public convenience and necessity require such construction, maintenance or operation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.1]

469A.2 Public hearing.

No certificate of convenience and necessity shall be issued by the executive council except after a public hearing thereon. The executive council shall, upon the filing of an application for such a certificate, fix the time of the public hearing thereon and shall prescribe the notice which shall be given by the applicant. Any interested person, firm, association, corporation, municipality, state board or commission may intervene and participate in such proceeding and at such hearing.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.2]

469A.3 Public welfare promoted.

Before the executive council shall issue a certificate of convenience and necessity, it shall first be satisfied that the public convenience and necessity will be promoted thereby, that the applicant has the financial ability to carry out the terms and conditions imposed, and the applicant has in writing agreed to accept, abide by and comply with such reasonable terms and conditions as the executive council may require and impose.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.3]

469A.4 Rules imposed.

The executive council shall prescribe such rules as it may determine necessary for the administration of the provisions of this chapter and may amend such rules at any time.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.4]

469A.5 Costs advanced.

The executive council shall, upon the filing of an application, require the applicant to deposit with the secretary of the executive council such amount as the council shall determine, to pay the expenses to be incurred by the executive council in its investigations and in conducting the proceedings, and the executive council may, from time to time as it deems necessary, require the deposit of additional amounts for such purpose.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.5]

469A.6 Amendment or revocation.

The executive council may at any time for just cause or upon the failure of the applicant to comply with and to obey the terms and conditions attached to the issuance of any certificate, or when the public convenience and necessity demands, alter, amend or revoke any certificate issued under

the provisions of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.6]

469A.7 Penalty.

Any person, firm, association or corporation who shall violate the provisions of section 469A.1, shall be guilty of a serious misdemeanor. Each separate day that a violation occurs shall constitute a separate offense.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.7]

469A.8 Unlawful combination — receivership.

The state may take possession of a dam for which a permit has been issued under section 455B.275 through receivership proceedings, if the dam becomes owned, leased, trusteed, possessed, or controlled by a person in a manner constituting an unlawful combination or trust, or if the dam is the subject or part of the subject of an agreement to limit the output of hydraulic or hydroelectric power derived from the dam for the purpose of price fixing. The receivership proceedings must be instituted by the executive council, and shall be conducted for the purpose of disposing of the dam for a lawful use. The proceeds from the disposition shall be used to reimburse the state for expenses incurred in the receivership. The remaining proceeds shall be awarded to persons found by the court to be entitled to the proceeds.

90 Acts, ch 1108, §5

CHAPTER 470

LIFE CYCLE COST ANALYSIS OF PUBLIC FACILITIES

470.1 Definitions.
470.2 Policy — analysis required.
470.3 Elements of analysis.
470.4 Analysis approved.
470.5 Exceptions.
470.6 Restriction on use of public funds.
470.7 Life cycle cost analysis — approval.
470.8 Life cycle cost analysis — implementation and exemptions.

470.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commissioner"* means the state building code commissioner.
2. *"Department"* means the department of natural resources.
3. *"Director"* means the director of the department of natural resources.
4. *"Economic life"* means the projected or anticipated useful life of a facility as expressed by a term of years.
5. *"Energy system"* includes but is not limited to the following equipment or measures:
   a. Equipment used to heat or cool the facility.
   b. Equipment used to heat water in the facility.
   c. On-site equipment used to generate electricity for the major facility.
   d. On-site equipment that uses the sun, wind, oil, natural gas, coal or electricity as a power source.
   e. Energy conservation measures in the facility design and construction that decrease the energy requirements of the facility.
6. *"Facility"* means a building having twenty thousand square feet or more of usable floor space that is heated or cooled by a mechanical or electrical system or any building, system, or physical operation which consumes more than forty thousand British thermal units (BTUs) per square foot per year.
7. *"Initial cost"* means the moneys required for the capital construction or renovation of a facility.
8. *"Life cycle cost analysis"* means an analytical technique that considers certain costs of owning, using and operating a facility over its economic life including but not limited to the following:
   a. Initial costs.
   b. System repair and replacement costs.
   c. Maintenance costs.
   d. Operating costs, including energy costs.
   e. Salvage value.
9. *"Public agency"* means a state agency, political subdivision of the state, school district, area education agency, or community college.
10. *"Renovation"* means a project where additions or alterations exceed fifty percent of the value of a facility and will affect an energy system.

[C81, §470.1]

91 Acts, ch 253, §17, 18

470.2 Policy — analysis required.

The general assembly declares that energy management is of primary importance in the design of publicly owned facilities. Commencing January 1, 1980, a public agency responsible for the construction or renovation of a facility shall, in a design begun after that date, include as a design criterion the requirement that a life cycle cost analysis be conducted for the facility. The objectives of the life cycle cost analysis are to optimize energy efficiency at an acceptable life cycle cost. The life cycle cost analysis shall meet the requirements of section 470.3.

[C81, §470.2]

470.3 Elements of analysis.

1. A life cycle cost analysis shall include but is not limited to the following elements:

a. Specification of energy management objectives and health, safety and functional constraints. The facility design shall comply with applicable state or local building code requirements.

b. Identification of the energy needs of the facility and energy system alternatives to meet those needs.

c. Cost of the energy system alternatives identified in paragraph *"b"* of this subsection.

d. Determination of amounts and timing of cash flow.

e. Calculation of life cycle cost using an economic model such as, but not limited to, rate of return, annual equivalent cost or present equivalent cost.

f. Evaluation of design and system alternatives using a method such as, but not limited to, design matrixes, ranking tables or network analysis.

2. A public agency or a person preparing a life cycle cost analysis for a public agency shall consider the methods and analytical models provided by the department and available through the commissioner, which are suited to the purpose for which the project is intended. Within sixty days of final selection of a design architect or engineer, a public agency, which is also a state agency under section 7D.34, shall notify the commissioner and the department of the methodology to be used to perform the life cycle cost analysis, on forms provided by the department.

[C81, §470.3]

88 Acts, ch 1179, §6; 91 Acts, ch 253, §19

470.4 Analysis approved.

The life cycle cost analysis shall be approved by the public agency before contracts for the construction or renovation are let. A public agency may accept a facility design and shall meet the requirements of this chapter if the design meets the operational requirements of the agency and provides the optimum life cycle cost. The public agency shall retain a copy of the life cycle cost analysis and a statement justifying a design decision both of which shall be available for public inspection at reasonable hours.

[C81, §470.4]

470.5 Exceptions.

This chapter does not apply to buildings used on January 1, 1980 by the division of adult corrections of the department of human services as maximum security detention facilities or to the renovation of property nominated to, or entered in the national register of historic places, designated by statute, or included in an established list of historic places compiled by the historical division of the department of cultural affairs.

[C81, §470.5; 82 Acts, ch 1238, §22]

83 Acts, ch 96, §157, 159

470.6 Restriction on use of public funds.

Public funds shall not be used for the construction or renovation of a facility unless the design for the work is prepared in accordance with this chapter and the actual construction or renovation meets the requirements of the design.

[C81, §470.6]

470.7 Life cycle cost analysis — approval.

The public agency responsible for the new construction or renovation of a public facility shall submit a copy of the life cycle cost analysis for review by the commissioner who shall consult with the department. If the public agency is also a state agency under section 7D.34, comments by the department or the commissioner, including any recommendation for changes in the analysis, shall, within thirty days of receipt of the analysis, be forwarded in writing to the public agency. If either the department or the commissioner disagrees with any aspects of the life cycle cost analysis, the public agency affected shall timely respond in writing to the commissioner and the department. The response shall indicate whether the agency intends to implement the recommendations and, if the agency does not intend to implement them, the public agency shall present its reasons. The reasons may include, but are not limited to, a description of the purpose of the facility or renovation, preservation of historical architectural features, architectural and site considerations, and health and safety concerns.

Within thirty days of receipt of the response of the public agency affected, the department, the commissioner, or both, shall notify in writing the public agency affected of the department's, the commissioner's, or both's agreement or disagreement with the response. In the event of a disagreement, the department, the commissioner, or both, shall at the same time transmit the notification of disagreement with response and related papers to the executive council for resolution pursuant to section 7D.34. The life cycle cost analysis process,

including submittal and approval, and implementation exemption requests pursuant to section 470.8, shall be completed prior to the letting of contracts for the construction or renovation of a facility.

88 Acts, ch 1179, §7; 89 Acts, ch 315, §28; 91 Acts, ch 253, §20

470.8 Life cycle cost analysis — implementation and exemptions.

The public agency responsible for the new construction or renovation of a public facility shall implement the recommendations of the life cycle cost analysis.

The commissioner, in consultation with the director, shall, by rule, develop criteria to exempt facilities from the implementation requirements of this section. Using the criteria, the commissioner, in cooperation with the director, shall exempt facilities on a case by case basis. Factors to be considered when developing the exemption criteria shall include, but not be limited to, a description of the purpose of the facility or renovation, the preservation of historical architectural features, site considerations, and health and safety concerns. The commissioner and the director shall grant or deny a request for exemption from the requirements of this section within thirty days of receipt of the request.

91 Acts, ch 253, §21

CHAPTER 471

EMINENT DOMAIN

Transferred to chapter 6A

CHAPTER 472

PROCEDURE UNDER POWER OF EMINENT DOMAIN

Transferred to chapter 6B

CHAPTER 473

ENERGY DEVELOPMENT AND CONSERVATION

This chapter not enacted as a part of this title;
transferred from chapter 93 in Code 1993

473.1 Definitions.
473.2 Findings.
473.3 Energy efficiency goal.
473.4 through 473.6 Reserved.
473.7 Duties of the department.
473.8 Emergency powers.
473.9 Set-aside definitions.
473.10 Reserve required.
473.11 Energy conservation trust established — receipts and disbursements.
473.12 Implementation of energy conservation measures — state board of regents.
473.13 Implementation of energy conservation measures — state department of transportation.
473.13A Energy conservation measures identified and implemented.
473.14 Reserved.
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473.16 Additional funds.
473.17 Review.
473.18 Reserved.
473.19 Energy bank program.
473.20 Energy loan fund.
473.20A Self-liquidating financing.
473.21 through 473.39 Reserved.
473.40 Statewide building energy efficiency rating system.
473.41 Reserved.
473.42 Exit signs — standards.
473.43 Reserved.
473.44 Plumbing products efficiency standards — penalty.

473.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the environmental protection commission of the department.

2. *"Department"* means the department of nat-

ural resources created under section 455A.2.

3. *"Director"* means the director of the department or a designee.

4. *"Energy"* or *"energy sources"* means gasoline, fuel oil, natural gas, propane, coal, special fuels and electricity.

5. *"Supplier"* means any person engaged in the business of selling, importing, storing or generating energy sources in Iowa.

[C75, 77, 79, 81, §93.1]
86 Acts, ch 1245, §1817 – 1819
C93, §473.1

473.2 Findings.

The general assembly finds that the health, welfare, and prosperity of all Iowans require the provision of adequate, efficient, reliable, environmentally safe, and least-cost energy at prices which accurately reflect the long-term cost of using such energy resources and which are equitable to all Iowans. The goals and objectives of this policy are to ensure the following:

1. *Efficiency.* The provision of reliable energy at the least possible cost to Iowans in such manner that:

a. Physical, human, and financial resources are allocated efficiently.

b. All supply and demand options are considered and evaluated using comparable terms and methods in order to determine how best to meet consumers' demands for energy at the least cost.

2. *Environmental quality.* The protection of the environment from the adverse external costs of an energy resource utilization so that:

a. Environmental costs of proposed actions having a significant impact on the environment and the environmental impact of the alternatives are identified, documented, and considered in the resource development.

b. The prudently and reasonably incurred costs of environmental controls are recovered.

88 Acts, ch 1179, §1
C89, §93.2
C93, §473.2
See also chapter 470 for life cycle cost analysis provisions

473.3 Energy efficiency goal.

The goal of this state is to more efficiently utilize energy resources, especially those that are nonrenewable or that have negative environmental impacts, in order to enhance the economy of the state and to decrease the state's dependence on energy resources from outside the state by reducing the amount of energy used. This goal is to be implemented through the development of programs that promote energy efficiency and energy conservation by all Iowans, through the development and enhancement of an energy efficiency industry, through the development of indigenous energy resources that are economically and environmentally viable, and through the development and implementation of effective public information and education programs.

State government shall be a model and testing ground for the use of energy efficiency systems.

90 Acts, ch 1252, §6
C91, §93.3
C93, §473.3

473.4 through 473.6 Reserved.

473.7 Duties of the department.

The department shall:

1. Deliver to the general assembly by January 15, 1990, a plan for the development, management, and efficient utilization of all energy resources in the state. The plan shall evaluate existing energy utilization with regard to energy efficiency and shall evaluate the future energy needs of the state. The plan shall include but is not limited to the following elements:

a. The historical use and distribution of energy in Iowa.

b. The growth rate of energy consumption in Iowa.

c. A projection of Iowa's energy needs at a minimum of ten years into the future.

d. The impact of meeting Iowa's energy needs on the economy of the state.

e. The impact of meeting Iowa's energy needs on the environment of the state.

f. An evaluation of alternative sources and uses of energy.

g. Legislative recommendations that may be necessary as a basis for a state policy for the development and efficient utilization of energy resources.

h. An evaluation of the ability of existing laws and regulations surrounding the utilization of energy resources.

The department shall develop the plan with the assistance of, and in consultation with, representatives of the energy industry, economic interests, the public, and other interested parties. The department shall submit a report to the general assembly concerning the status and implementation of the plan on a biennial basis. The biennial update shall contain an evaluation of all state energy programs including expected versus actual benefits and forecasts of future energy demand in Iowa.

2. Identify a state facility in the state to be used as a marketing tool to promote energy conservation by providing a showcase for the department to demonstrate energy efficiency.

3. The department shall exchange information with other states on energy and especially on the allocation of fuel and shall request all information necessary to determine the reasonableness of any reduction of Iowa's fuel allocation.

4. Establish a central depository within the state for energy data. The central depository shall be located at or accessible through a library which

is a member of an interlibrary loan program to facilitate access to the data and information contained in the central depository. The department shall collect data necessary to forecast future energy demands in the state. The department may require a supplier to provide information pertaining to the supply, storage, distribution and sale of energy sources in this state. The information shall be furnished on a periodic basis, shall be of a nature which directly relates to the supply, storage, distribution and sale of energy sources, and shall not include any records, documents, books or other data which relate to the financial position of the supplier. Provided the department, prior to requiring any supplier to furnish it with such information, shall make every reasonable effort to determine if the same is available from any other governmental source. If it finds such information is available, the department shall not require submission of the same from a supplier. Notwithstanding the provisions of chapter 22, information and reports obtained under this section shall be confidential except when used for statistical purposes without identifying a specific supplier and when release of the information will not give an advantage to competitors and serves a public purpose. The department shall use this data to conduct energy forecasts which shall be included in the biennial update required by this section.

The department may subpoena witnesses, administer oaths and require the production of records, books, and documents for examination in order to obtain information required to be submitted under this section. In case of failure or refusal on the part of any person to comply with a subpoena issued by the department, or in case of the refusal of any witness to testify as to any matter regarding which the witness may be interrogated under this chapter, the district court, upon the application of the department, may order the person to show cause why the person should not be held in contempt for failure to testify or comply with a subpoena, and may order the person to produce the records, books, and documents for examination, and to give testimony. The courts may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify.

5. Develop, recommend, and implement with appropriate agencies public and professional education and communication programs in energy efficiency, energy conservation, and conversion to alternative sources of energy.

6. When necessary to carry out its duties under this chapter, enter into contracts with state agencies and other qualified contractors.

7. Receive and accept grants made available for programs relating to duties of the department under this chapter.

8. Promulgate rules necessary to carry out the provisions of this chapter, subject to review in accordance with chapter 17A. Rules promulgated by the governor pursuant to a proclamation issued under the provisions of section 473.8 shall not be subject to review or a public hearing as required in chapter 17A; however, agency rules for implementation of the governor's proclamation are subject to the requirements of chapter 17A.

9. Examine and determine whether additional state regulatory authority is necessary to protect the public interest and to promote the effective development, utilization and conservation of energy resources. If the department finds that additional regulatory authority is necessary, the department shall submit recommendations to the general assembly concerning the nature and extent of such regulatory authority and which state agency should be assigned such regulatory responsibilities.

10. Develop and assist in the implementation of public education and communications programs in energy development, use and conservation, in co-operation with the department of education, the state university extension services and other public or private agencies and organizations as deemed appropriate by the department.

11. Develop a program to annually give public recognition to innovative methods of energy conservation.

12. Administer and coordinate federal funds for energy conservation programs including, but not limited to, the institutional conservation program, state energy conservation program, and energy extension service program, and related programs which provide energy management and conservation assistance to schools, hospitals, health-care facilities, communities, and the general public.

13. Administer and coordinate the state building energy management program including projects funded through private financing.

14. Perform monthly fuel surveys which establish a statistical average of motor fuel prices for various motor fuels provided throughout the state. Additionally, the department shall perform monthly fuel surveys in cities with populations of over fifty thousand which establish a statistical average of motor fuel prices for various motor fuels provided in those individual cities. The survey results shall be publicized in a monthly press release issued by the department.

15. Conduct a study on activities related to energy production and use which contribute to global climate change and the depletion of the stratospheric ozone layer. The study shall identify the types and relative contributions of these activities in Iowa. The department shall develop a strategy to reduce emissions from activities identified as having an adverse impact on the global climate and the stratospheric ozone layer. The department shall submit a report containing its findings and recommendations to the governor and general

assembly by January 1, 1992.

[C75, 77, 79, 81, §93.7; 82 Acts, ch 1081, §1, 2, ch 1199, §92, 96]

86 Acts, ch 1245, §1820 – 1822; 88 Acts, ch 1179, §2; 88 Acts, ch 1281, §7; 89 Acts, ch 152, §1; 89 Acts, ch 297, §2; 90 Acts, ch 1252, §7 – 10

C93, §473.7

473.8 Emergency powers.

If the department by resolution determines the health, safety, or welfare of the people of this state is threatened by an actual or impending acute shortage of usable energy, it shall transmit the resolution to the governor together with its recommendation on the declaration of an emergency by the governor and recommended actions, if any, to be undertaken. Within thirty days of the date of the resolution, the governor may issue a proclamation of emergency which shall be filed with the secretary of state. The proclamation shall state the facts relied upon and the reasons for the proclamation.

Pursuant to the proclamation of an emergency or in response to a declaration of an energy emergency by the president of the United States under the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102, the governor by executive order may:

1. Regulate the operating hours of energy consuming instrumentalities of state government, political subdivisions, private institutions and business facilities to the extent the regulation is not hazardous or detrimental to the health, safety, or welfare of the people of this state. However, the governor shall have no authority to suspend, amend or nullify any service being provided by a public utility pursuant to an order or rule of a federal agency which has jurisdiction over the public utility.

2. Establish a system for the distribution and supply of energy. The system shall not include a coupon rationing program, unless the program is federally mandated.

3. Curtail public and private transportation utilizing energy sources. Curtailment may include measures designed to promote the use of car pools and mass transit systems.

4. Delegate any administrative authority vested in the governor to the department or the director.

5. Provide for the temporary transfer of directors, personnel, or functions of state departments and agencies, for the purpose of performing or facilitating emergency measures pursuant to subsections 1 and 2.

6. Accept the delegation of other mandatory measures as allowed by the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102.

If the general assembly is in session, it may revoke by concurrent resolution any proclamation of emergency issued by the governor. If the general assembly is not in session, the proclamation of emergency by the governor may be revoked by a majority vote of the standing membership of the legislative council. Such revocation shall be effective upon receipt of notice of the revocation by the secretary of state and any functions being performed pursuant to the governor's proclamation shall cease immediately.

A violation of an executive order of the governor issued pursuant to this section is a scheduled violation as provided in section 805.8C, subsection 1. If the violation is continuous and stationary in its nature and subsequent compliance can easily be ascertained, an officer may issue a memorandum of warning in lieu of a citation providing a reasonable amount of time not exceeding fourteen days to correct the violation and to comply with the requirements of the executive order.

[C75, 77, 79, 81, §93.8]

86 Acts, ch 1245, §1822

C93, §473.8

2001 Acts, ch 137, §5

473.9 Set-aside definitions.

As used in section 473.10 unless the context otherwise requires:

1. *"Hardship"* means a situation involving or potentially involving substantial discomfort or danger or economic dislocation caused by a shortage or distribution imbalance of a liquid fossil fuel.

2. *"Liquid fossil fuel"* means heating oils, diesel oil, motor gasoline, propane, residual fuel oils, kerosene, and aviation fuels.

3. *"Prime supplier"* means an individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision or other legal entity that makes the first sale of a liquid fossil fuel into the state distribution system for consumption within the state.

[81 Acts, ch 32, §3]

C83, §93.9

C93, §473.9

473.10 Reserve required.

1. If the department or the governor finds that an impending or actual shortage or distribution imbalance of liquid fossil fuels may cause hardship or pose a threat to the health and economic well-being of the people of the state or a significant segment of the state's population, the department or the governor may authorize the director to operate a liquid fossil fuel set-aside program as provided in subsection 2.

2. Upon authorization by the department or the governor the director may require a prime supplier to reserve a specified fraction of the prime supplier's projected total monthly release of liquid fossil fuel in Iowa. The director may release any or all of the fuel required to be reserved by a prime supplier to end-users or to distributors for release through normal retail distribution channels to re-

tail customers. However, the specified fraction required to be reserved shall not exceed three percent for propane, aviation fuel and residual oil, and five percent for motor gasoline, heating oil, and diesel oil.

3. The department shall periodically review and may terminate the operation of a set-aside program authorized by the department under subsection 1 when the department finds that the conditions that prompted the authorization no longer exist. The governor shall periodically review and may terminate the operation of a set-aside program authorized by the governor under subsection 1 when the governor finds that the conditions that prompted the authorization no longer exist.

4. The director shall adopt rules to implement this section.

[81 Acts, ch 32, §4]
C83, §93.10
86 Acts, ch 1245, §1822
C93, §473.10

473.11 Energy conservation trust established — receipts and disbursements.

1. *a.* The energy conservation trust is created within the state treasury. This state, on behalf of itself, its citizens, and its political subdivisions accepts any moneys awarded or allocated to the state, its citizens, and its political subdivisions as a result of the federal court decisions and United States department of energy settlements resulting from alleged violations of federal petroleum pricing regulations and deposits the moneys in the energy conservation trust.

b. The energy conservation trust is established to provide for an orderly, efficient, and effective mechanism to make maximum use of moneys available to the state, in order to increase energy conservation efforts and thereby to save the citizens of this state energy expenditures. The moneys in the funds in the trust shall be expended only upon appropriation by the general assembly and only for programs which will benefit citizens who may have suffered economic penalties resulting from the alleged petroleum overcharges.

c. The moneys awarded or allocated from each court decision or settlement shall be placed in a separate fund in the energy conservation trust. Notwithstanding section 12C.7, interest and earnings on investments from moneys in the trust shall be credited proportionately to the funds in the trust.

d. Unless prohibited by the conditions applying to a settlement, the petroleum overcharge moneys in the energy conservation trust may be used for the payment of attorney fees and expenses incurred by the state to obtain the moneys and shall be paid by the director of revenue and finance from the available moneys in the trust subject to the approval of the attorney general.

e. However, petroleum overcharge moneys received pursuant to claims filed on behalf of the state, its institutions, departments, agencies, or political subdivisions shall be deposited in the general fund of the state to be disbursed directly to the appropriate claimants in accordance with federal guidelines and subject to the approval of the attorney general.

f. The moneys deposited under section 473.16 in the general fund of the state shall be used for research and development of selected projects to improve Iowa's energy independence by developing improved methods of energy efficiency, or by increased development and use of Iowa's renewable nonresource-depleting energy resources. The moneys credited to the general fund of the state under section 556.18, subsection 3, shall be used for energy conservation and alternative energy resource projects. The projects shall be selected by the director and administered by the department. Selection criteria for funded projects shall include consideration of indirect restitution to those persons in the state in the utility customer classes and the utility service territories affected by unclaimed utility refunds or deposits.

Moneys deposited into the general fund of the state under sections 473.16, 476.51, and 556.18, subsection 3, are subject to the requirements of section 8.60.

2. The treasurer of state shall be the custodian of the energy conservation trust and shall invest the moneys in the trust, in consultation with the energy fund disbursement council established in subsection 3 and the investment board of the Iowa public employees' retirement system, in accordance with the following guidelines:

a. To maximize the rate of return on moneys in the trust while providing sufficient liquidity to make fund disbursements, including contingency disbursements.

b. To absolutely insure the trust against loss.

c. To use such investment tools as are necessary to achieve these purposes.

3. An energy fund disbursement council is established. The council shall be composed of the governor or the governor's designee, the director of the department of management, who shall serve as the council's chairperson, the administrator of the division of community action agencies of the department of human rights, a designee of the director of the department of natural resources who is knowledgeable in the field of energy conservation, and a designee of the director of transportation who is knowledgeable in the field of energy conservation. The council shall include as nonvoting members two members of the senate appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and two members of the house of representatives appointed by the speaker of the house, after consultation with the majority leader and the minority leader of the house. The legislative members shall be appointed upon the

convening and for the period of each general assembly. Not more than one member from each house shall be of the same political party. The council shall be staffed by the department of natural resources. The attorney general shall provide legal assistance to the council.

The council shall do all of the following:

a. Oversee the investment of moneys deposited in the energy conservation trust.

b. Make recommendations to the governor and the general assembly regarding annual appropriations from the energy conservation trust.

c. Work with the department of natural resources in adopting administrative rules necessary to administer expenditures from the trust, encourage applications for grants and loans, review and select proposals for the funding of competitive grants and loans from the energy conservation trust, and evaluate their comparative effectiveness.

d. Monitor expenditures from the trust.

e. Approve any grants or contracts awarded from the energy conservation trust in excess of five thousand dollars.

f. Prepare, in conjunction with the department of natural resources, an annual report to the governor and the general assembly regarding earnings of and expenditures from the energy conservation trust.

4. The director of the department of natural resources or the director's designee shall be the administrator of the energy conservation trust. The administrator shall disburse moneys appropriated by the general assembly from the funds in the trust in accordance with the federal court orders, law and regulation, or settlement conditions applying to the moneys in that fund, and subject to the approval of the energy fund disbursement council if such approval is required. The council, after consultation with the attorney general, shall immediately approve the disbursement of moneys from the funds in the trust for projects which meet the federal court orders, law and regulations, or settlement conditions which apply to that fund.

5. The following funds are established in the energy conservation trust:

a. The Warner/Imperial fund.

b. The Exxon fund.

c. The Stripper Well fund.

d. The Diamond Shamrock fund.

e. The office of hearings and appeals second-stage settlement fund.

6. The moneys in the fund in the energy conservation trust distributed to the state as a result of the federal court decisions finding oil companies in violation of federal petroleum pricing regulations shall be expended expeditiously, until all the receipts are depleted and shall be disbursed for projects which meet the strict guidelines of the five existing federal energy conservation programs specified in Pub. L. No. 97-377, § 155, 96 Stat. 1830, 1919 (1982). The council shall approve the disbursement of moneys from the fund in the trust for other projects only if the projects meet one or more of the following conditions:

a. The projects meet the guidelines for allowable projects under a modification order entered by the federal court in the case involving Exxon corporation.

b. The projects meet the guidelines for allowable projects under a directive order entered by the federal court in the case involving Exxon corporation.

c. The projects meet the guidelines for allowable projects under the regulations adopted or written clarifications issued by the United States department of energy.

d. The projects meet the guidelines for allowable projects under the petroleum violation settlement agreement expenditure plan approved by the United States department of energy.

7. On June 30, 2003, the energy fund disbursement council established in subsection 3 shall be dissolved. At that time, the department of natural resources shall be responsible for the disbursement of any funds either received or remaining in the energy conservation trust. These disbursements shall be for projects and programs consistent with the allowable uses for the energy conservation trust. Also, at that time, and annually thereafter, the state department of transportation shall report to the department of natural resources on the status of the intermodal revolving loan fund established in the department. In the fiscal year beginning July 1, 2019, the department of natural resources shall assume responsibility for funds remaining in the intermodal revolving loan fund and disburse them for energy conservation projects and programs consistent with the allowable uses for the energy conservation trust.

93 Acts, ch 11, §1 – 3; 93 Acts, ch 131, §19; 94 Acts, ch 1107, §76, 77; 98 Acts, ch 1211, §2, 3; 2002 Acts, ch 1162, §67 – 69

Subsection 3, unnumbered paragraph 1 and paragraphs c and f amended

Subsection 4 amended

473.12 Implementation of energy conservation measures — state board of regents.

1. The state board of regents shall cause to be performed comprehensive engineering analyses of facilities under the control of the state board of regents and shall implement the energy conservation measures identified in the analyses which are economically feasible and practical and which do not require more than an aggregate period of six years for the recoupment of the cost of construction of the improvements used to secure the implementation of the energy conservation measure. The comprehensive engineering analyses shall be completed no later than June 30, 1989.

2. The department may, pursuant to section 7D.34, reduce the cost of financing for imple-

mentation of the energy conservation measures identified, through funds deposited in the state of Iowa facilities improvement corporation established by the department. In order for the state board of regents to receive financing under section 7D.34, the department shall require completion of an energy management plan, including an energy audit and a comprehensive engineering analysis.

3. The state board of regents shall annually report on October 1 to the department the status of all energy conservation measures identified in their comprehensive engineering analysis, whether or not the measures have been acquired or implemented, and the results of energy usage analyses of the board's facilities.

88 Acts, ch 1179, §3
C89, §93.12
C93, §473.12

473.13 Implementation of energy conservation measures — state department of transportation.

1. The state department of transportation utilizing the services of the state of Iowa facilities improvement corporation shall cause to be performed comprehensive engineering analyses of facilities under the control of the state department of transportation and shall implement the energy conservation measures identified in the analyses which do not require more than an aggregate period of six years for the recoupment of the cost of construction of the improvements used to secure the implementation of the energy conservation measures. The comprehensive engineering analyses shall be completed no later than December 31, 1988.

2. The department may, pursuant to section 7D.34, reduce the cost of financing for implementation of the energy conservation measures identified, through funds deposited in the state of Iowa facilities improvement corporation established by the department. In order for the state department of transportation to receive financing, the department shall require completion of an energy management plan, including an energy audit and a comprehensive engineering analysis.

88 Acts, ch 1179, §4
C89, §93.13
C93, §473.13

473.13A Energy conservation measures identified and implemented.

The state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges shall identify and implement, through energy audits and engineering analyses, all energy conservation measures identified for which financing is made available by the department to the entity. The energy conservation measure financings shall be supported through payments from energy savings.

The department shall not require a school district, community college, area education agency, city, or county to perform an engineering analysis if the school district, community college, area education agency, city, or county demonstrates to the department that the facility which is the subject of the proposed engineering analysis at issue is unlikely to be in use or operation in six years by the governmental entity currently using or occupying the facility.

89 Acts, ch 297, §3
CS89, §93.13A
90 Acts, ch 1252, §11; 91 Acts, ch 253, §6
C93, §473.13A

473.14 Reserved.

473.15 Annual report.

The department shall include in the annual report required under section 455A.4 an assessment of the progress achieved by public agencies in implementing energy life cycle cost analyses.

88 Acts, ch 1179, §5
C89, §93.15
C93, §473.15

473.16 Additional funds.

The department may accept funds from state and local sources and shall take steps necessary to obtain federal funds allotted and appropriated for the purpose of the above described energy-related programs. These funds shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. Federal funds received under the provisions of this section are appropriated for the purposes set forth in the federal grants.

[C77, 79, 81, §93.15]
86 Acts, ch 1245, §1822; 91 Acts, ch 260, §1204; 92 Acts, ch 1163, §21
C93, §473.16
94 Acts, ch 1107, §78

473.17 Review.

The first session of the Seventy-second General Assembly meeting in the year 1987 shall review the activities and performance of the department and shall not later than July 1, 1987 make a determination concerning the status and duties of the department.

[C77, 79, 81, §93.16; 82 Acts, ch 1081, §3]
C85, §93.17
86 Acts, ch 1245, §1822
C93, §473.17

473.18 Reserved.

473.19 Energy bank program.

The energy bank program is established by the department. The energy bank program consists of the following forms of assistance for the state,

state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations:

1. Providing moneys from the petroleum overcharge fund for conducting energy audits for school districts under section 279.44, for conducting comprehensive engineering analyses for school districts and for conducting energy audits and comprehensive engineering analyses for state agencies, and political subdivisions of the state.

2. Providing loans, leases, and other methods of alternative financing from the energy loan fund established in section 473.20 and section 473.20A for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations to implement energy conservation measures.

3. Serving as a source of technical support for energy conservation management.

4. Providing assistance for obtaining insurance on the energy savings expected to be realized from the implementation of energy conservation measures.

5. Providing self-liquidating financing for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations pursuant to section 473.20A.

For the purpose of this section, section 473.20, and section 473.20A, *"energy conservation measure"* means construction, rehabilitation, acquisition, or modification of an installation in a facility or vehicle which is intended to reduce energy consumption, or energy costs, or both, or allow the use of an alternative energy source, which may contain integral control and measurement devices. *"Nonprofit organization"* means an organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

86 Acts, ch 1167, §2

C87, §93.19

87 Acts, ch 209, §1; 90 Acts, ch 1253, §120, 121; 91 Acts, ch 253, §7

C93, §473.19

473.20 Energy loan fund.

An energy loan fund is established in the office of the treasurer of state to be administered by the department.

1. The department may make loans to the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations for implementation of energy conservation measures identified in a comprehensive engineering analysis. Loans shall be made for all cost-effective energy management improvements. For the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations to receive a loan from the fund, the department shall require completion of an energy management plan including an energy audit and a comprehensive engineering analysis. The department shall approve loans made under this section.

2. Cities and counties shall repay the loans from moneys in their debt service funds. Area education agencies shall repay the loans from any moneys available to them.

School districts and community colleges may enter into financing arrangements with the department or its duly authorized agents or representatives obligating the school district or community college to make payments on the loans beyond the current budget year of the school district or community college. Chapter 75 shall not be applicable. School districts shall repay the loans from moneys in either their general fund or debt service fund. Community colleges shall repay the loans from their general fund. Other entities receiving loans under this section shall repay the loans from any moneys available to them.

3. The department may accept gifts, federal funds, state appropriations, and other moneys for deposit in the energy loan fund or may fund the energy loan fund in accordance with section 473.20A.

4. For the purpose of this section, *"loans"* means loans, leases, or alternative financing arrangements.

5. The state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges shall design and construct the most energy cost-effective facilities feasible and shall use the financing made available by the department to cover the incremental costs above minimum building code energy efficiency standards of purchasing energy efficient devices and materials unless other lower cost financing is available. As used in this section, *"facility"* means a structure that is heated or cooled by a mechanical or electrical system, or any system of physical operation that consumes energy to carry out a process.

6. The department shall not require the state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges to implement a specific energy conservation measure identified in a comprehensive engineering analysis if the entity which prepared the analysis demonstrates to the department that the facility which is the subject of the energy conservation measure is unlikely to be used or operated for the full period of the expected payback of the energy conservation measure.

86 Acts, ch 1167, §3

C87, §93.20

87 Acts, ch 209, §2; 90 Acts, ch 1252, §12; 90 Acts, ch 1253, §120; 91 Acts, ch 253, §8

C93, §473.20

94 Acts, ch 1029, §30; 2001 Acts, ch 60, §1

473.20A Self-liquidating financing.

1. The department of natural resources may enter into financing agreements with the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations in order to provide the financing to pay the costs of furnishing energy conservation measures. The provisions of section 473.20 defining eligible energy conservation measures and the method of repayment of the loans apply to financings under this section.

The financing agreement may contain provisions, including interest, term, and obligations to make payments on the financing agreement beyond the current budget year, as may be agreed upon between the department of natural resources and the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations.

2. For the purpose of funding its obligation to furnish moneys under the financing agreements, or to fund the energy loan fund created in section 473.20, the treasurer of state, with the assistance of the department of natural resources, or the treasurer of state's duly authorized agents or representatives, may incur indebtedness or enter into master lease agreements or other financing arrangements to borrow to accomplish energy conservation measures, or the department of natural resources may enter into master lease agreements or other financing arrangements to permit the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations to borrow sufficient funds to accomplish the energy conservation measure. The obligations may be in such form, for such term, bearing such interest and containing such provisions as the department of natural resources, with the assistance of the treasurer of state, deems necessary or appropriate. Funds remaining after the payment of all obligations have been redeemed shall be paid into the energy loan fund.

3. The state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations may enter into financing agreements and issue obligations necessary to carry out the provisions of the chapter. Chapter 75 shall not be applicable.

87 Acts, ch 209, §3
CS87, §93.20A
90 Acts, ch 1253, §120; 91 Acts, ch 253, §9
C93, §473.20A

473.21 through 473.39 Reserved.

473.40 Statewide building energy efficiency rating system.

1. The director shall adopt rules, pursuant to chapter 17A, establishing a statewide building energy efficiency rating system. The rating system shall apply to all new and existing public, commercial, industrial, and residential buildings in the state and shall be established subject to the following schedule:

a. Ratings for new residential buildings by July 1, 1992.

b. Ratings for existing residential buildings by July 1, 1993.

c. Ratings for new public buildings by July 1, 1994.

d. Ratings for existing public buildings by July 1, 1995.

e. Ratings for new commercial and industrial buildings by July 1, 1995.

f. Ratings for existing commercial and industrial buildings by July 1, 1995.

The director shall adopt a minimum acceptable energy efficiency standard for each class of new buildings.

2. *a.* The energy efficiency rating shall be disclosed at the request of the prospective purchaser according to the terms of the offer to purchase.

b. The energy efficiency rating shall be disclosed to a prospective lessee whose rent does not include energy cost upon request.

c. The designer of a new residential or commercial building shall state in writing to the department that to the best of the person's knowledge, information, and belief, the new building design is in substantial compliance with the minimum energy efficiency standards established by rule of the department.

d. Concurrent with the disclosure of an energy efficiency rating pursuant to paragraphs *"a"* through *"c"*, the prospective purchaser or lessee shall be provided with a copy of an information brochure prepared by the department which includes information relevant to that class of building, including, but not limited to:

(1) How to analyze the building's energy efficiency rating.

(2) Comparisons to statewide averages for new and existing construction of that class.

(3) Notice to the prospective purchaser that the seller must disclose a building's energy efficiency rating upon the prospective purchaser's request.

(4) Information concerning methods to improve a building's energy efficiency rating.

(5) A notice for residential buyers that qualifying income for mortgage loan purposes may be affected by the energy efficiency rating.

e. A new residential, commercial, or industrial building shall not be hooked up or connected to any provider of electricity, whether a regulated utility, rural electric cooperative, municipal utility, or otherwise; or natural gas, except liquid petroleum, unless the builder states in writing to the utility that to the best of the builder's knowledge, infor-

mation, and belief, the building was built in accordance with the construction documents.

f. Each public building proposed for construction, renovation, or acquisition shall be rated pursuant to the energy efficiency rating system provided in subsection 1 prior to contracting for the construction, renovation, or acquisition. The public body proposing to contract for construction, renovation, or acquisition for a public building shall consider the energy efficiency ratings of alternatives when contracting.

3. The energy efficiency rating system adopted by the department shall provide a means of analyzing and comparing the relative energy efficiency of buildings upon sale or lease of new or existing residential, commercial, or industrial buildings. The system shall provide for rating each public building in existence to assist public officials in decision making with regard to capital improvements and public energy costs.

4. The director shall establish a voluntary working group of persons and interest groups interested in the energy efficiency rating system or energy efficiency, including, but not limited to such persons as electrical engineers, mechanical engineers, architects, and builders. The interest group shall advise the department in the development of the energy efficiency rating system and shall assist the department in implementation of the rating system by coordinating education programs for designers, builders, businesses, and other interested persons to assist compliance and to facilitate incorporation of the rating system into existing practices. The intent of the general assembly is to encourage the consideration of the energy efficiency rating system in the market, so as to provide market rewards for energy efficient buildings and those designing, building, or selling energy efficient buildings.

5. All public buildings shall be analyzed for energy efficiency using this rating system by July 1, 1996. The results of that analysis shall be submitted to the department by August 1, 1996. The department shall submit a report to the governor and general assembly by January 15, 1997, that analyzes the results of this evaluation of public buildings and includes recommendations. The results of the analysis of each building shall be submitted to the public agency or governmental subdivision which owns or operates that building as well.

6. The director shall make available energy efficiency practices information to be used by individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments.

7. For purposes of this section:

a. *"Builder"* means the prime contractor that hires and coordinates building subcontractors or if there is no prime, the contractor that completes more than fifty percent of the total construction work performed on the building. Construction work includes, but is not limited to, foundation, framing, wiring, plumbing, and finishing work.

b. *"Designer"* means the architect, engineer, landscape architect, builder, interior designer or other person who performs the actual design work or under whose direct supervision and responsible charge the construction documents are prepared.

c. *"Public building"* means a building owned or operated by the state, a state agency, or a governmental subdivision, including but not limited to a city, county, or school district.

8. The director may report an architect, professional engineer, or landscape architect to the appropriate examining board if the director believes the person has engaged in fraudulent conduct in connection with an energy efficiency rating for a building. The director may report a builder to the division of labor, bureau of contractor registration, if the director believes the builder has engaged in fraudulent conduct in connection with an energy efficiency rating for a building.

90 Acts, ch 1252, §13
C91, §93.40
91 Acts, ch 97, §6
C93, §473.40

473.41 Reserved.

473.42 Exit signs — standards.

The department shall adopt rules which require the use of compact fluorescent bulbs in exit signs at the time of replacement, but no later than July 1, 2001. Prior to the adoption of rules, the department shall promote, through educational materials, the use of compact fluorescent bulbs or lighting of greater efficiency in exit signs.

91 Acts, ch 253, §10
CS91, §93.42
C93, §473.42

473.43 Reserved.

473.44 Plumbing products efficiency standards — penalty.

1. The department shall adopt rules which prescribe water use standards for each product classified as a covered product under this section. The standards adopted shall be designed to achieve the maximum efficiency of water use which the department determines is technologically and economically feasible. The department shall consult with the state building code commissioner, the Iowa department of public health, and the plumbing manufacturers' institute, and shall review all applicable provisions under chapter 103A and chapter 135 in establishing the standards.

2. A person who knowingly violates this section is subject to a civil penalty of not more than one hundred dollars for each violation. Local government subdivisions which enforce the stan-

dards adopted under this section may collect and utilize receipts from the penalties imposed for building code inspections and enforcement of this section.

3. For the purposes of this section, *"covered products"* means water closets, urinals, showerheads, lavatory faucets and replacement aerators, and kitchen faucets and replacement aerators.

91 Acts, ch 253, §11
CS91, §93.44
C93, §473.44

CHAPTER 473A

MIDWEST ENERGY COMPACT

This chapter not enacted as a part of this title;
transferred from chapter 93A in Code 1993

473A.1 Midwest energy compact.

473A.1 Midwest energy compact.

The midwest energy compact is enacted into law and entered into with all other states which legally join in the compact in substantially the following form:

INTERSTATE COMPACT ON ENERGY
ARTICLE I — PURPOSE

It is the purpose of this compact to protect, preserve, and enhance:

a. The economic and general welfare of citizens of the joining states by increasing energy efficiency and energy independence.

b. The economies and very existence of local communities in such states, the economies of which are dependent upon imported energy sources.

ARTICLE II — COMMISSION

a. Organization and management

1. There is hereby created an agency of the member states to be known as the interstate midwest energy commission, hereinafter called the commission. The commission shall consist of three residents of each member state who shall have a background in energy efficiency and who shall be appointed as follows: One member appointed by the governor, who shall serve at the pleasure of the governor; one senator appointed in the manner prescribed by the senate of the state, except that in Iowa the appointment shall be made by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and except that two senators may be appointed by the governor of the state of Nebraska from the unicameral legislature of the state of Nebraska; and one member of the house of representatives appointed in the manner prescribed by the house of representatives of the state. The member first appointed by the governor shall serve for a term of one year and the senator and representative first appointed shall each serve for a term of two years. Thereafter all members appointed shall serve for two-year terms. The attorneys general of member states or assistants designated by the attorneys general shall be nonvoting members of the commission.

2. Each member shall be entitled to one vote. A member must be present to vote and no voting by proxy shall be permitted. The commission shall not act unless a majority of the voting members are present, and no action shall be binding unless approved by a majority of the total number of voting members present.

3. The commission shall be a body corporate of each member state and shall adopt an official seal to be used as it may provide.

4. The commission shall hold an annual meeting and other regular meetings as its bylaws may provide and special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

5. The commission shall elect annually, from among its voting members, a chairperson, a vice chairperson, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and shall fix the duties and compensation of the director. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of those of its officers and employees as it may deem appropriate.

6. Irrespective of the civil service, personnel, or other merit system laws of any member state, the executive director shall appoint or discharge personnel as may be necessary for the performance of the functions of the commission and shall fix, with the approval of the commission, their duties and compensation. The commission bylaws shall provide for personnel policies and programs. The commission may establish and maintain, independently of or in conjunction with any one or more of the member states, a suitable retirement system for its full-time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivors insurance provided that the commission takes steps as may be necessary pursuant to federal law to participate in the program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in additional programs of employee benefits as may be appropriate. The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

7. The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

8. The commission may establish one or more offices for the transacting of its business.

9. The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the member states.

10. The commission annually shall make to the governor and legislature of each member state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

b. Committees

1. The commission may establish committees from its membership as its bylaws may provide for the carrying out of its functions.

ARTICLE III — POWERS AND DUTIES OF COMMISSION

a. The commission shall conduct comprehensive and continuing studies and investigations of energy efficiency measures and their relationship to and effect upon the citizens and economies of the member states.

b. The commission shall make recommendations for the correction of weaknesses and solutions to problems in present energy efficiency measures or the development of alternatives thereto, including the development, drafting, and recommendation of proposed state or federal legislation.

c. The commission is hereby authorized to do all things necessary and incidental to the administration of its functions under this compact.

ARTICLE IV — FINANCE

a. The commission shall submit to the governor of each member state a budget of its estimated expenditures for the period required by the laws of that state for presentation to the legislature of that state.

b. The moneys necessary to finance the general operations of the commission not otherwise provided for in carrying forth its duties, responsibilities, and powers as stated herein shall be appropriated to the commission by the member states, when authorized by the respective legislatures. Appropriations by member states for the financing of the operations of the commission in the initial biennium of the compact shall be in the amount of fifty thousand dollars for each member state. Thereafter the total amount of appropriations requested shall be apportioned among the member states in the manner determined by the commission. Failure of a member state to provide its share of financing is cause for the state to lose its membership in the compact.

c. The commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same, nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

d. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

e. The accounts of the commission shall be open for inspection at any reasonable time.

ARTICLE V — ELIGIBLE PARTIES, ENTRY INTO FORCE, WITHDRAWAL, AND TERMINATION

a. Any state contiguous to Iowa may become a member of this compact.

b. This compact shall become effective initially

when enacted into law by any five states and in additional states upon their enactment of the same into law.

c. Any member state may withdraw from this compact by enacting a statute repealing the compact, but such withdrawal shall not become effective until one year after the enactment of the repealing statute and the notification of the commission thereof by the governor of the withdrawing state. A withdrawing state shall be liable for any obligations which it incurred on account of its membership up to the effective date of withdrawal, and if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it shall remain liable to the extent of that obligation.

d. This compact shall terminate one year after the notification of withdrawal by the governor of any member state which reduces the total membership in the compact to less than five states.

91 Acts, ch 253, §12
CS91, §93A.1
C93, §473A.1

SUBTITLE 5

PUBLIC UTILITIES

CHAPTER 474

UTILITIES DIVISION

474.1 Creation of division and board — organization.
474.2 Certain persons barred from office.
474.3 Proceedings.
474.4 Quorum — personal interest.
474.5 Rules, forms and service.
474.6 Appearances — record of votes — public hearings.
474.7 Seal.
474.8 Office — time employed — expenses.
474.9 General jurisdiction of utilities board.
474.10 General counsel.
474.11 to 474.54 Transferred to chapter 327C.

474.1 Creation of division and board — organization.

A utilities division is created within the department of commerce. The policymaking body for the division is the utilities board which is created within the division. The board is composed of three members appointed by the governor and subject to confirmation by the senate, not more than two of whom shall be from the same political party. Each member appointed shall serve for six-year staggered terms beginning and ending as provided by section 69.19. Vacancies shall be filled for the unexpired portion of the term in the same manner as full-term appointments are made.

The utilities board shall organize by appointing an executive secretary, who shall take the same oath as the members. The board shall set the salary of the executive secretary within the limits of the pay plan for exempt positions provided for in section 19A.9, subsection 2, unless otherwise provided by the general assembly. The board may employ additional personnel as it finds necessary. Subject to confirmation by the senate, the governor shall appoint a member as the chairperson of the board. The chairperson shall be the administrator of the utilities division. The appointment as chairperson shall be for a two-year term which begins and ends as provided in section 69.19.

As used in this chapter and chapters 475A, 476, 476A, 478, 479, 479A, and 479B, *"division"* and *"utilities division"* mean the utilities division of the department of commerce.

[C97, §2111; C24, 27, 31, 35, 39, §**7866;** C46, 50, 54, 58, 62, 66, 71, 73, §474.2; C75, 77, 79, 81, §474.1]

83 Acts, ch 127, §6; 86 Acts, ch 1245, §740; 89 Acts, ch 296, §70; 95 Acts, ch 192, §3

Confirmation, see §2.32

474.2 Certain persons barred from office.

No person in the employ of any common carrier or other public utility, or owning any bonds, stock or property in any railroad company or other public utility shall be eligible to the office of utilities board member or secretary of the utilities board; and the entering into the employ of any common carrier or other public utility or the acquiring of any stock or other interest in any common carrier or other public utility by such member or secretary after appointment shall disqualify the member or secretary to hold the office or perform the duties thereof.

[C97, §2111; C24, 27, 31, 35, 39, §**7865;** C46, 50, 54, 58, 62, 66, 71, 73, §474.1; C75, 77, 79, 81, §474.2]

474.3 Proceedings.

The utilities board may in all cases conduct its proceedings, when not otherwise prescribed by law, in such manner as will best conduce to the proper dispatch of business and the attainment of justice.

[C97, §2142; C24, 27, 31, 35, 39, §**7867;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.3]

474.4 Quorum — personal interest.

A majority of the utilities board shall constitute a quorum for the transaction of business, but no member shall participate in any hearing or proceeding in which the member has any pecuniary interest.

[C97, §2142; C24, 27, 31, 35, 39, §**7868;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.4]

474.5 Rules, forms and service.

1. The utilities board may from time to time

make or amend its rules or orders as necessary for the preservation of order and the regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as may be to those in use in the courts of the state.

2. The utilities board shall adopt rules approving the types of city-owned or utility-owned lighting which shall be used in providing energy efficient exterior lighting under sections 364.23 and 476.62.

[C97, §2142; C24, 27, 31, 35, 39, §**7869;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.5]

89 Acts, ch 297, §8

Manner of commencing actions, chapter 617

474.6 Appearances — record of votes — public hearings.

Any party may appear before the utilities board and be heard in person or by attorney. Every vote and official action thereof shall be entered of record, and, upon the request of either party or person interested, its proceedings shall be public.

[C97, §2142; C24, 27, 31, 35, 39, §**7870;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.6]

474.7 Seal.

The utilities board shall have a seal, of which courts shall take judicial notice.

[C97, §2142; C24, 27, 31, 35, 39, §**7871;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.7]

474.8 Office — time employed — expenses.

The utilities board shall have an office at the seat of government and each member shall devote the member's whole time to the duties of the office, and the members and secretary and other employees shall receive their actual necessary traveling expenses while in the discharge of their official duties away from the general offices.

[C97, §2121; SS15, §2121; C24, 27, 31, 35, 39, §**7872;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.8]

474.9 General jurisdiction of utilities board.

The utilities board has general supervision of all pipelines and all lines for the transmission, sale, and distribution of electrical current for light, heat, and power pursuant to chapters 476, 476A, 478, 479, 479A, and 479B and has other duties as provided by law.

[S13, §2120-n; C24, 27, 31, 35, 39, §**7874;** C46, 50, 54, 58, 62, 66, 71, 73, §474.10; C75, 77, 79, 81, §474.9]

88 Acts, ch 1134, §90; 89 Acts, ch 296, §71; 95 Acts, ch 192, §4

474.10 General counsel.

The board shall employ a competent attorney to serve as its general counsel, and assistants to the general counsel as it finds necessary for the full and efficient discharge of its duties. The general counsel is the attorney for, and legal advisor of, the board and is exempt from the merit system provisions of chapter 19A. Assistants to the general counsel are subject to the merit system provisions of chapter 19A. The general counsel or an assistant to the general counsel shall provide the necessary legal advice to the board in all matters and represent the board in all actions instituted in a state or federal court challenging the validity of a rule or order of the board. The existence of a fact which disqualifies a person from election or from acting as a utilities board member disqualifies the person from employment as general counsel or assistant general counsel. The general counsel shall devote full time to the duties of the office. During employment the counsel shall not be a member of a political committee, contribute to a political campaign fund other than through the income tax checkoff for contributions to the Iowa election campaign fund and the presidential election campaign fund, participate in a political campaign, or be a candidate for a political office.

83 Acts, ch 127, §7; 86 Acts, ch 1245, §741; 88 Acts, ch 1158, §77

474.11 to 474.54 Transferred to chapter 327C.

CHAPTER 475

COMMERCE COUNSEL

Repealed by 83 Acts, ch 127, §46 – 49, 52; see §474.10, 475A.1 – 475A.4

CHAPTER 475A

CONSUMER ADVOCATE

475A.1 Consumer advocate.
475A.2 Duties.
475A.3 Office — employees — expenses.
475A.4 Utilities division records.
475A.5 Service.
475A.6 Certification of expenses to utilities division.
475A.7 Consumer advisory panel.

475A.1 Consumer advocate.

1. *Appointment.* The attorney general shall appoint a competent attorney to the office of consumer advocate, subject to confirmation by the senate, in accordance with section 2.32. The consumer advocate is the chief administrator of the consumer advocate division of the department of justice. The advocate's term of office is for four years. The term begins and ends in the same manner as set forth in section 69.19.

2. *Vacancy.* If a vacancy occurs in the office of consumer advocate, the vacancy shall be filled for the unexpired term in the same manner as an original appointment under the procedures of section 2.32.

3. *Disqualification.* The existence of a fact which disqualifies a person from election or acting as utilities board member under section 474.2 disqualifies the person from appointment or acting as consumer advocate.

4. *Political activity prohibited.* The consumer advocate shall devote the advocate's entire time to the duties of the office; and during the advocate's term of office the advocate shall not be a member of a political committee or contribute to a political campaign fund other than through the income tax checkoff for contributions to the Iowa election campaign fund and the presidential election campaign fund or take part in political campaigns or be a candidate for a political office.

5. *Removal.* The attorney general may remove the consumer advocate for malfeasance or nonfeasance in office, or for any cause which renders the advocate ineligible for appointment, or incapable or unfit to discharge the duties of the advocate's office; and the advocate's removal, when so made, is final.

83 Acts, ch 127, §8, 46; 86 Acts, ch 1245, §742, 743

475A.2 Duties.

The consumer advocate shall:

1. Investigate the legality of all rates, charges, rules, regulations, and practices of all persons under the jurisdiction of the utilities board, and institute civil proceedings before the board or any court to correct any illegality on the part of any such person. In any such investigation, the person acting for the office of the consumer advocate shall have the power to ask the board to issue subpoenas, compel the attendance and testimony of witnesses, and the production of papers, books, and documents, at the discretion of the board.

2. Act as attorney for and represent all consumers generally and the public generally in all proceedings before the utilities board.

3. Institute as a party judicial review of any decision of the utilities board, if the consumer advocate deems judicial review to be in the public interest.

4. Appear for all consumers generally and the public generally in all actions instituted in any state or federal court which involve the validity of a rule, regulation, or order of the utilities board.

5. Act as attorney for and represent all consumers generally and the public generally in proceedings before federal and state agencies and related judicial review proceedings and appeals, at the discretion of the consumer advocate.

6. Appear and participate as a party in the name of the office of consumer advocate in the performance of the duties of the office.

83 Acts, ch 127, §9

475A.3 Office — employees — expenses.

1. *Office.* The office of consumer advocate shall be a separate division of the department of justice and located at the same location as the utilities division of the department of commerce. Administrative support services may be provided to the consumer advocate division by the department of commerce.

2. *Employees.* The consumer advocate may employ attorneys, legal assistants, secretaries, clerks, and other employees the consumer advocate finds necessary for the full and efficient discharge of the duties and responsibilities of the office. The consumer advocate may employ consultants as expert witnesses or technical advisors pursuant to contract as the consumer advocate finds necessary for the full and efficient discharge of the duties of the office. Employees of the consumer advocate division, other than the consumer advocate, are subject to merit employment, except as provided in section 19A.3.

3. *Salaries, expenses, and appropriation.* The

salary of the consumer advocate shall be fixed by the attorney general within the salary range set by the general assembly. The salaries of employees of the consumer advocate shall be at rates of compensation consistent with current standards in industry. The reimbursement of expenses for the employees and the consumer advocate is as provided by law. The appropriation for the office of consumer advocate shall be a separate line item contained in the appropriation from the general fund of the state.

83 Acts, ch 127, §10, 46; 86 Acts, ch 1244, §59; 86 Acts, ch 1245, §744; 89 Acts, ch 158, §1; 94 Acts, ch 1107, §79

475A.4 Utilities division records.

The consumer advocate has free access to all the files, records, and documents in the office of the utilities division except:

1. Personal information in confidential personnel records of the utilities division.

2. Records which represent and constitute the work product of the general counsel of the utilities board, and records of confidential communications between utilities board members and their general counsel, where the records relate to a proceeding before the board in which the consumer advocate is a party or a proceeding in any state or federal court in which both the board and the consumer advocate are parties.

3. Customer information of a confidential nature which could jeopardize the customer's competitive status and is provided by the utility to the division. Such information shall be provided to the consumer advocate by the division, if the board determines it to be in the public interest.

83 Acts, ch 127, §11; 88 Acts, ch 1134, §91; 89 Acts, ch 158, §2

475A.5 Service.

The consumer advocate is entitled to service of all documents required by statute or rule to be served on parties in proceedings before the utilities board and all notices, petitions, applications, complaints, answers, motions, and other pleadings filed pursuant to statute or rule with the board.

83 Acts, ch 127, §12

475A.6 Certification of expenses to utilities division.

The consumer advocate shall determine the advocate's expenses, including a reasonable allocation of general office expenses, directly attributable to the performance of the advocate's duties involving specific persons subject to direct assessment, and shall certify the expenses to the utilities division not less than quarterly. The expenses shall then be includable in the expenses of the division subject to direct assessment under section 476.10.

The consumer advocate shall annually, within ninety days after the close of each fiscal year, determine the advocate's expenses, including a reasonable allocation of general office expenses, attributable to the performance of the advocate's duties generally, and shall certify the expenses to the utilities division. The expenses shall then be includable in the expenses of the division subject to remainder assessment under section 476.10.

The consumer advocate is entitled to notice and opportunity to be heard in any utilities board proceeding on objection to an assessment for expenses certified by the consumer advocate. Expenses assessed under this section shall not exceed the amount appropriated for the consumer advocate division of the department of justice.

The office of consumer advocate may expend additional funds, including funds for outside consultants, if those additional expenditures are actual expenses which exceed the funds budgeted for the performance of the advocate's duties. Before the office expends or encumbers an amount in excess of the funds budgeted, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly to the office of consumer advocate and that the office does not have other funds from which such expenses can be paid. Upon approval of the director of the department of management, the office may expend and encumber funds for excess expenses. The amounts necessary to fund the excess expenses shall be collected from those utilities or persons which caused the excess expenditures, and the collections shall be treated as repayment receipts as defined in section 8.2, subsection 8.

83 Acts, ch 127, §13; 90 Acts, ch 1247, §10; 99 Acts, ch 20, §1, 6

475A.7 Consumer advisory panel.

The attorney general shall appoint five members and the governor shall appoint four members to a consumer advisory panel to meet at the request of the consumer advocate for consultation regarding public utility regulation. A member shall be appointed from each congressional district with the appointee residing within the congressional district at the time of appointment. The remaining appointees shall be members at large. No more than five members shall belong to the same political party as provided in section 69.16. Not more than a simple majority of the members shall be of the same gender. The members appointed by the attorney general shall serve four-year terms at the pleasure of the attorney general and their appointments are not subject to confirmation. The members appointed by the governor shall serve four-year terms at the pleasure of the governor and their appointments are not subject to confirmation. The governor or attorney

general shall fill a vacancy in the same manner as the original appointment for the unexpired portion of the member's term. Members of the consumer advisory panel shall serve without compensation, but shall be reimbursed for actual expenses from funds appropriated to the consumer advocate division.

83 Acts, ch 127, §14, 47; 86 Acts, ch 1244, §60; 86 Acts, ch 1245, §746

CHAPTER 476

PUBLIC UTILITY REGULATION

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476.101 Local exchange competition.

UNIVERSAL SERVICE

476.102 Universal service.

CHANGE IN SERVICE

476.103 Unauthorized change in service — civil penalty.

REGULATION AUTHORITY

476.1 Applicability of authority.

The utilities board within the utilities division of the department of commerce shall regulate the rates and services of public utilities to the extent and in the manner hereinafter provided.

As used in this chapter, *"board"* or *"utilities board"* means the utilities board within the utilities division of the department of commerce.

As used in this chapter, *"public utility"* shall include any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for:

1. Furnishing gas by piped distribution system or electricity to the public for compensation.

2. Furnishing communications services to the public for compensation.

3. Furnishing water by piped distribution system to the public for compensation.

Mutual telephone companies in which at least fifty percent of the users are owners, co-operative telephone corporations or associations, telephone companies having less than fifteen thousand customers and less than fifteen thousand access lines, municipally owned utilities, and unincorporated villages which own their own distribution systems are not subject to the rate regulation provided for in this chapter.

This chapter does not apply to waterworks having less than two thousand customers, municipally owned waterworks, joint water utilities established pursuant to chapter 389, rural water districts incorporated and organized pursuant to chapters 357A and 504A, cooperative water associations incorporated and organized pursuant to chapter 499, or to a person furnishing electricity to five or fewer customers either by secondary line or from an alternate energy production facility or small hydro facility, from electricity that is produced primarily for the person's own use.

A telephone company otherwise exempt from rate regulation and having telephone exchange facilities which cross state lines may elect, in a writing filed with the board, to have its rates regulated

by the board. When a written election has been filed with the board, the board shall assume rate regulation jurisdiction over the company.

The jurisdiction of the board under this chapter shall include efforts designed to promote the use of energy efficiency strategies by rate or service-regulated gas and electric utilities.

[C66, 71, 73, 75, §490A.1; C77, 79, 81, §476.1; 81 Acts, ch 156, §4]

83 Acts, ch 127, §15, 16; 84 Acts, ch 1031, §1; 88 Acts, ch 1172, §2; 90 Acts, ch 1252, §18; 91 Acts, ch 150, §1; 91 Acts, ch 168, §9; 96 Acts, ch 1196, §1

476.1A Applicability of authority — certain electric utilities.

Electric public utilities having fewer than ten thousand customers and electric cooperative corporations and associations are not subject to the rate regulation authority of the board. Such utilities are subject to all other regulation and enforcement activities of the board, including:

1. Assessment of fees for the support of the division.
2. Safety and engineering standards for equipment, operations, and procedures.
3. Assigned area of service.
4. Pilot projects of the board.
5. Assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research established by the state board of regents.
6. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.
7. Filing energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may permit these utilities to file joint plans.

The board may waive all or part of the energy efficiency filing and review requirements for electric cooperative corporations and associations and electric public utilities which demonstrate superior results with existing energy efficiency efforts.

However, sections 476.20, 476.21, 476.41 through 476.44, 476.51, 476.56, 476.62, and 476.66 and chapters 476A and 478, to the extent applicable, apply to such electric utilities.

Electric cooperative corporations and associations and electric public utilities exempt from rate regulation under this section shall not make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

The board of directors or the membership of an electric cooperative corporation or association otherwise exempt from rate regulation may elect to have the cooperative's rates regulated by the board. The board shall adopt rules prescribing the manner in which the board of directors or the membership of an electric cooperative may so elect. If the board of directors or the membership of an electric cooperative has elected to have the cooperative's rates regulated by the board, after two years have elapsed from the effective date of such election the membership of the electric cooperative may elect to exempt the cooperative from the rate regulation authority of the board.

86 Acts, ch 1039, §1; 88 Acts, ch 1174, §1; 88 Acts, ch 1175, §1; 89 Acts, ch 297, §9; 90 Acts, ch 1252, §19; 96 Acts, ch 1196, §2, 3; 2001 Acts, 1st Ex, ch 4, §8, 36

476.1B Applicability of authority — municipally owned utilities.

1. Unless otherwise specifically provided by statute, a municipally owned utility furnishing gas or electricity is not subject to regulation by the board under this chapter, except for regulatory action pertaining to:

a. Assessment of fees for the support of the division and the office of consumer advocate, as set forth in section 476.10.

b. Safety standards.

c. Assigned areas of service, as set forth in sections 476.22 through 476.26.

d. Enforcement of civil penalties pursuant to section 476.51.

e. Disconnection of service, as set forth in section 476.20.

f. Discrimination against users of renewable energy resources, as set forth in section 476.21.

g. Encouragement of alternate energy production facilities, as set forth in sections 476.41 through 476.45.

h. Enforcement of section 476.56.

i. Enforcement of section 476.66.

j. Enforcement of section 476.62.

k. Assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research created by the state board of regents.

l. Filing energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may permit these utilities to file joint plans.

m. An electric power agency as defined in chapters 28F and 476A that includes as a member a city or municipally owned utility that builds transmission facilities after July 1, 2001, is subject to applicable transmission reliability rules or standards adopted by the board for those facilities.

n. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.

2. The board may waive all or part of the energy efficiency filing and review requirements for municipally owned utilities which demonstrate superior results with existing energy efficiency efforts.

3. Unless otherwise specifically provided by statute, a municipally owned utility providing local exchange services is not subject to regulation

by the board under this chapter except for regulatory action pertaining to the enforcement of sections 476.11, 476.29, 476.95, 476.96, 476.100, 476.101, and 476.102.

86 Acts, ch 1162, §1; 88 Acts, ch 1174, §2; 88 Acts, ch 1175, §2; 89 Acts, ch 297, §10; 90 Acts, ch 1252, §20; 96 Acts, ch 1196, §4, 5; 97 Acts, ch 81, §1, 2, 6; 99 Acts, ch 63, §7, 8; 2001 Acts, 1st Ex, ch 4, §9, 36

1999 amendment to subsection 3 applies retroactively to July 1, 1993; 99 Acts, ch 63, §8

476.1C Applicability of authority — certain gas utilities.

1. Gas public utilities having fewer than two thousand customers are not subject to the regulation authority of the utilities board under this chapter unless otherwise specifically provided. Sections 476.10, 476.20, 476.21, and 476.51 apply to such gas utilities.

Gas public utilities having fewer than two thousand customers shall be subject to the assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research created by the state board of regents and shall file energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may waive all or part of the energy efficiency filing requirements if the gas utility demonstrates superior results with existing energy efficiency efforts.

Gas public utilities having fewer than two thousand customers shall keep books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board. The board may inspect the accounts of the utility at any time.

A gas public utility having fewer than two thousand customers may make effective a new or changed rate, charge, schedule, or regulation after giving written notice of the proposed new or changed rate, charge, schedule, or regulation to all affected customers served by the public utility. The notice shall inform the customers of their right to petition for a review of the proposal to the utilities board within sixty days after notice is served if the petition contains the signatures of at least one hundred of the gas utility's customers. The notice shall state the address of the utilities board. The new or changed rate, charge, schedule, or regulation takes effect sixty days after such valid notice is served unless a petition for review of the new or changed rate, charge, schedule, or regulation signed by at least one hundred of the gas utility's customers is filed with the board prior to the expiration of the sixty-day period.

If such a valid petition is filed with the board within the sixty-day period, any new or changed rate, charge, schedule, or regulation shall take effect, under bond or corporate undertaking, subject to refund of all amounts collected in excess of those amounts which would have been collected under the rates or charges finally approved by the board. The board shall within five months of the date of filing make a determination of just and reasonable rates based on a review of the proposal, applying established regulatory principles. The board may call upon the gas public utility and its customers to furnish factual evidence in support of or opposition to the new or changed rate, charge, schedule, or regulation. If the gas public utility disputes the finding, the utility may within twenty days file for further review, and the board shall docket the case as a formal proceeding under section 476.6, subsection 7, and set the case for hearing. The gas public utility shall submit factual evidence and written argument in support of the filing.

A gas public utility having fewer than two thousand customers shall not make effective a new or changed rate, charge, schedule, or regulation which relates to services for which a rate change is pending within twelve months following the date the petition to review the prior proposed rate, charge, schedule, or regulation was filed with the board or until the board has made its determination of just and reasonable rates, whichever date is earlier, unless the utility applies to the board for authority and receives authority to make a subsequent rate change at an earlier date.

Gas public utilities having fewer than two thousand customers shall not make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage. Rates charged by a gas public utility having less than two thousand customers for transportation of customer-owned gas shall not exceed the actual cost of such transportation services including a fair rate of return.

2. If, as a result of a review of a proposed new or changed rate, charge, schedule, or regulation of a gas public utility having fewer than two thousand customers, the consumer advocate alleges in a filing with the board that the utility rates are excessive, the disputed amounts shall be specified by the consumer advocate in the filing. The gas public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of the filing which are in excess of rates or charges finally determined by the board to be lawful. If after formal proceeding and hearing pursuant to section 476.6 the board finds that the utility rates are unlawful, the board shall order a refund, with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest. If the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the ex-

piration of that ten-month period and prior to the date the decision is rendered.

87 Acts, ch 21, §1; 90 Acts, ch 1252, §21; 96 Acts, ch 1196, §6

476.1D Regulation and deregulation of communications services.

1. Except as provided in this section, the jurisdiction of the board as to the regulation of communications services is not applicable to a service or facility that is provided or is proposed to be provided by a telephone utility that is or becomes subject to effective competition, as determined by the board. In determining whether a service or facility is or becomes subject to effective competition, the board shall consider, among other factors, whether a comparable service or facility is available from a supplier other than the telephone utility and whether market forces are sufficient to assure just and reasonable rates without regulation.

2. Deregulation of a service or facility for a utility is effective only after all of the following:

a. A finding of effective competition by the board.

b. Election by a utility providing the service or facility to file a deregulation accounting plan.

c. Approval of a utility's deregulation accounting plan by the board.

3. If the board determines a service or facility is subject to effective competition and approves the utility's deregulation accounting plan, the board shall deregulate the service or facility within a reasonable time.

4. Upon deregulation, all investment, revenues, and expenses associated with the service or facility shall be removed from the telephone utility's regulated operations and shall not be considered by the board in setting rates for the telephone utility unless they continue to affect the utility's regulated operations. If the board considers investment, revenues, and expenses associated with unregulated services or facilities in setting rates for the telephone utility, the board shall not use any profits or costs from such unregulated services or facilities to determine the rates for regulated services or facilities. This section does not preclude the board from considering the investment, revenues, and expenses associated with the sale of classified directory advertising by a telephone utility in determining rates for the telephone utility.

5. Notwithstanding the presence of effective competition, if the board determines a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation, the board shall deregulate rates and may continue service regulation.

6. The board may reimpose rate and service regulation on a deregulated service or facility if it determines the service or facility is no longer subject to effective competition.

7. The board may reimpose service regulation only on a deregulated service or facility if the board determines the service or facility is an essential communications service or facility and the public interest warrants service regulation, notwithstanding the presence of effective competition.

8. If the board reimposes regulation pursuant to subsection 6 or 7, the reimposition of regulation shall apply to all providers of the service or facility.

9. The board may investigate and obtain information from providers of deregulated services or facilities to determine whether the services or facilities are subject to effective competition or whether the service or facility is an essential communications service or facility and the public interest warrants service regulation. However, the board shall not, for purposes of this subsection, request or obtain information related to the provider's costs or earnings.

10. The board, at the request of a long distance telephone company, shall classify such company as a competitive long distance telephone company if more than half of the company's revenues from its Iowa intrastate telecommunications services and facilities are received from services and facilities that the board has determined to be subject to effective competition, or if more than half of the company's revenues from its Iowa intrastate telecommunications services and facilities are received from intralata interexchange services and facilities. For purposes of this subsection, *"intralata interexchange services"* means those interexchange services that originate and terminate within the same local access transport area.

The board shall promptly notify the director of revenue and finance that a long distance telephone company has been classified as a competitive long distance telephone company. Upon such notification by the board, the director of revenue and finance shall assess the property of such competitive long distance telephone company, which property is first assessed for taxation in this state on or after January 1, 1996, in the same manner as all other property assessed as commercial property by the local assessor under chapters 427, 427A, 427B, 428, and 441. As used in this section, *"long distance telephone company"* means an entity that provides telephone service and facilities between local exchanges, but does not include a cellular service provider or a local exchange utility holding a certificate issued under section 476.29, subsection 12.

91 Acts, ch 150, §2; 95 Acts, ch 199, §1; 96 Acts, ch 1219, §73

476.2 Board powers and rules — utility's Iowa office.

1. The board shall have broad general powers to effect the purposes of this chapter notwithstanding the fact that certain specific powers are hereinafter set forth. The board shall have authority to issue subpoenas and to pay the same

fees and mileage as are payable to witnesses in the courts of record of general jurisdiction and shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers provided for in this chapter or in the board's rules. In the establishment, amendment, alteration or repeal of any of such rules, the board shall be subject to the provisions of chapter 17A.

2. The board shall employ at rates of compensation consistent with current standards in industry such professionally trained engineers, accountants, attorneys, and skilled examiners and inspectors, secretaries, clerks, and other employees as it may find necessary for the full and efficient discharge of its duties and responsibilities as required by this chapter.

3. The board may intervene in any proceedings before the federal energy regulatory commission or any other federal or state regulatory body when it finds that any decision of that tribunal would adversely affect the costs of any public utility service within the state of Iowa.

4. The board shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and may obtain from any public utility all necessary information to enable the board to perform its duties.

5. Each rate-regulated gas and electric utility operating within the state shall maintain within the state the utility's principal office for Iowa operations. The principal office shall be subject to the jurisdiction of the board and shall house those books, accounts, papers, and records of the utility deemed necessary by the board to be housed within the state. The utility shall maintain within the state administrative, technical, and operating personnel necessary for the delivery of safe and reasonably adequate services and facilities as required pursuant to section 476.8. A public utility which violates this section shall be subject to the penalties provided in section 476.51 and shall be denied authority to recover, for a period determined by the board, the costs of an energy efficiency plan pursuant to section 476.6, subsection 11.

6. The board shall provide the general assembly with a report on the energy efficiency planning efforts undertaken by utilities required to offer energy efficiency plans pursuant to section 476.6, subsection 17. The report shall be completed by January 1, 1998.

[C66, 71, 73, 75, §490A.2; C77, 79, 81, §476.2]

90 Acts, ch 1168, §51; 90 Acts, ch 1252, §22; 96 Acts, ch 1196, §7

476.3 Complaints — investigation — refunds.

1. A public utility shall furnish reasonably adequate service at rates and charges in accordance with tariffs filed with the board. When there is filed with the board by any person or body politic, or filed by the board upon its own motion, a written complaint requesting the board to determine the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by a public utility subject to this chapter in contravention of this chapter, the written complaint shall be forwarded by the board to the public utility, which shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be specified by the board. Copies of the written complaint forwarded by the board to the public utility and copies of all correspondence from the public utility in response to the complaint shall be provided by the board in an expeditious manner to the consumer advocate. If the board determines the public utility's response is inadequate and there appears to be any reasonable ground for investigating the complaint, the board shall promptly initiate a formal proceeding. If the consumer advocate determines the public utility's response to the complaint is inadequate, the consumer advocate may file a petition with the board which shall promptly initiate a formal proceeding if the board determines that there is any reasonable ground for investigating the complaint. The complainant or the public utility also may petition the board to initiate a formal proceeding which petition shall be granted if the board determines that there is any reasonable ground for investigating the complaint. The formal proceeding may be initiated at any time by the board on its own motion. If a proceeding is initiated upon petition filed by the consumer advocate, complainant, or the public utility, or upon the board's own motion, the board shall set the case for hearing and give notice as it deems appropriate. When the board, after a hearing held after reasonable notice, finds a public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.

2. If, as a result of a review procedure conducted under section 476.31, a review conducted under section 476.32, a special audit, an investigation by division staff, or an investigation by the consumer advocate, a petition is filed with the board by the consumer advocate, alleging that a utility's rates are excessive, the disputed amount shall be specified in the petition. The public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of filing of the petition in excess of rates or charges finally determined by the board to be lawful. If upon hearing the board finds that the utility's rates are unlawful, the board shall order a refund,

with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest, and if the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the expiration of that ten-month period and prior to the date the decision is rendered.

Notwithstanding the provisions of this subsection, the consumer advocate shall not file a petition under this subsection that alleges a local exchange carrier's rates are excessive while the local exchange carrier is participating in a price regulation plan approved by the board pursuant to section 476.97.

3. A determination of utility rates by the board pursuant to this section that is based upon a departure from previously established regulatory principles shall apply prospectively from the date of the decision.

[C66, 71, 73, 75, §490A.3; C77, 79, 81, §476.3; 81 Acts, ch 156, §5, 9]

83 Acts, ch 127, §17, 18; 89 Acts, ch 59, §1; 89 Acts, ch 97, §1; 95 Acts, ch 199, §2

476.4 Tariffs filed.

Every public utility shall file with the board tariffs showing the rates and charges for its public utility services and the rules and regulations under which such services were furnished, on April 1, 1963, which rates and charges shall be subject to investigation by the board as provided in section 476.3, and upon such investigation the burden of establishing the reasonableness of such rates and charges shall be upon the public utility filing the same. These filings shall be made under such rules as the board may prescribe within such time and in such form as the board may designate. In prescribing rules and regulations with respect to the form of tariffs, the board shall, in the case of public utilities subject to regulation by any federal agency, give due regard to any corresponding rules and regulations of such federal agency, to the end that unnecessary duplication of effort and expense may be avoided so far as reasonably possible. Each public utility shall keep copies of its tariffs open to public inspection under such rules as the board may prescribe.

Every rate, charge, rule and regulation contained in any filing made with the commission on or prior to July 4, 1963, shall be effective as of such date, subject, however, to investigation as herein provided. If any such filing is made prior to the time the commission prescribes rules as aforesaid, and if such filing does not comply as to form or substance with such rules, then the public utility which filed the same shall within a reasonable time after the adoption of such rules make a new filing or filings complying with such rules, which new filing or filings shall be deemed effective as of July 4, 1963.

[C66, 71, 73, 75, §490A.4; C77, 79, 81, §476.4]

476.4A Exemption from tariff filings for telephone utilities.

Notwithstanding contrary provisions of this chapter, a telephone utility may offer centron, centrex, intraexchange private line, or multiline variety package service without filing a tariff unless the board determines such a procedure is not in the public interest. The telephone utility shall offer each service which is exempt from a tariff filing at a rate which exceeds the cost of the service. A telephone utility offering its services without filing a tariff shall not discriminate in an unreasonable manner for or against any customer.

A telephone utility shall provide the board with at least thirty days notice prior to a request to offer service without filing a tariff. The board may require the telephone utility to file its price lists, contracts, or cost allocations for services offered without a tariff. Any such price lists, contracts, or cost allocations so filed shall be afforded rebuttable presumptions that they meet the requirements of section 22.7, subsection 6.

The board shall consider the revenues, expenses and investment related to telephone utility services offered without a filed tariff in proceedings under section 476.3, 476.6 and 476.7.

84 Acts, ch 1267, §1

476.5 Adherence to schedules — discounts.

No public utility subject to rate regulation shall directly or indirectly charge a greater or less compensation for its services than that prescribed in its tariffs, and no such public utility shall make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

Nothing in this section shall be construed to prohibit any public utility furnishing communications services from providing any service rendered by it without charge or at reduced rate to any of its active or retired officers, directors, or employees, or such officers, directors or employees of other public utilities furnishing communications services. Provided, however, said service is for personal use, and not for engaging in a business for profit.

[C66, 71, 73, 75, §490A.5; C77, 79, 81, §476.5]

476.6 Changes in rates, charges, schedules and regulations — supply and cost review — water costs for fire protection.

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new

or changed rate, charge, schedule or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 11 and 13.

A subscriber of a telephone exchange or service, who is declared to be legally blind under section 422.12, subsection 1, paragraph *"e"*, is exempt from any charges for telephone directory assistance that may be approved by the board.

2. *Telephone directory assistance charges — record provided.* The board shall not approve a schedule of directory assistance charges unless the schedule provides that residential customers be provided a record of the date and time of each directory assistance call made from their residence.

3. *Telephone directory assistance charges — approval by board.* Notwithstanding contrary provisions of this section, a public utility shall not implement a charge for telephone directory assistance or implement a new or changed rate for telephone directory assistance except pursuant to a tariff that has been filed with the board and finally approved by the board.

4. *First seven calls exempted.* A telephone directory assistance tariff that is approved by the board on or after July 1, 1981, shall be subject to the limitation that a subscriber shall not be charged for the first seven directory assistance calls made from the subscriber's station during each of the first twelve months in which the tariff is in effect, and a charge made in violation of this limitation is an unlawful charge within the meaning of this chapter.

5. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

6. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

7. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. However, if an application presents no material issue of fact subject to dispute, and the board determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 13.

8. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 7, the public utility, within a reasonable time thereafter, shall file with the board a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 9, the board shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

9. *Finding by board.* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the board and placed in effect,

will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

10. *Limitation on filings.* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

11. *Automatic adjustments permitted.* This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the board.

12. *Rate levels for telephone utilities.* The board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

13. *Temporary authority.* Upon the request of a public utility, the board shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules or regulations by filing with the board a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the board. In determining that portion of the new or changed rates, charges, schedules or regulations to be placed in effect prior to a final decision, the board shall apply previously established regulatory principles and shall, at a minimum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the board held reasonable and just in the most recent rate case involving the same utility or the same type of utility service, provided that if the most recent final decision of the board in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the board shall in addition consider financial market data that is filed or that is otherwise available to the board and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The board shall render a decision on a request for temporary authority within ninety days after the date of filing of the request. The decision shall be effective immediately. If the board has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the board on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the board any portion of the suspended rates, charges, schedules or regulations not previously approved on a temporary basis by filing with the board a bond or other undertaking approved by the board.

If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules or regulations shall, for purposes of computing the ninety-day and ten-month limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

14. *Refunds passed on to customers.* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state re-

ceives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

15. *Natural gas supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The utilities shall file information as the board deems appropriate.

During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

16. *Electric energy supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The evaluation may review the reasonableness and prudence of actions taken by a rate-regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been incurred under reasonable and prudent policies and practices.

17. *Energy efficiency plans.* Electric and gas public utilities shall offer energy efficiency programs to their customers through energy efficiency plans. An energy efficiency plan as a whole shall be cost-effective. In determining the cost-effectiveness of an energy efficiency plan, the board shall apply the societal test, utility cost test, ratepayer impact test, and participant test. Energy efficiency programs for qualified low-income persons and for tree planting programs need not be cost-effective and shall not be considered in determining cost-effectiveness of plans as a whole. The energy efficiency programs in the plans may be provided by the utility or by a contractor or agent of the utility.

18. *Water costs for fire protection in certain cities.*

a. Application. A city furnished water by a public utility subject to rate regulation may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

b. Review. The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to paragraph *"a"*, including, but not limited to, soliciting oral or written testimony from other interested parties.

c. Notice. Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 5, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

d. Conditions for approval. As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met:

(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water-related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers.

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph *"a"*.

(4) That written notice has been provided pursuant to paragraph *"c"* and that the costs of the notice have been paid by the applicant.

e. Inclusion within rates or charges. If the board affirmatively determines that the conditions of paragraph *"d"* are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by

the applicant's fire protection service.

f. Written order. The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application.

19. *Energy efficiency implementation, cost review, and cost recovery.*

a. Gas and electric utilities required to be rate-regulated under this chapter shall file energy efficiency plans with the board. An energy efficiency plan and budget shall include a range of programs, tailored to the needs of all customer classes, including residential, commercial, and industrial customers, for energy efficiency opportunities. The plans shall include programs for qualified low-income persons including a cooperative program with any community action agency within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low-income persons. Rate-regulated gas and electric utilities shall utilize Iowa agencies and Iowa contractors to the maximum extent cost-effective in their energy efficiency plans filed with the board.

b. A gas and electric utility required to be rate-regulated under this chapter shall assess potential energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings. The utility shall submit the assessment to the board. Upon receipt of the assessment, the board shall consult with the department of natural resources to develop specific capacity and energy savings performance standards for each utility. The utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards.

c. The board shall conduct contested case proceedings for review of energy efficiency plans and budgets filed by gas and electric utilities required to be rate-regulated under this chapter. The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section 17A.19, subsection 5, in an application for judicial review of the board's decision concerning a utility's energy efficiency plan or budget, the reviewing court shall not order a stay. Whenever a request to modify an approved plan or budget is filed subsequently by the office of consumer advocate or a gas or electric utility required to be rate-regulated under this chapter, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board-approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate.

d. Notice to customers of a contested case proceeding for review of energy efficiency plans and budgets shall be in a manner prescribed by the board.

e. A gas or electric utility required to be rate-regulated under this chapter may recover, through an automatic adjustment mechanism filed pursuant to subsection 11, over a period not to exceed the term of the plan, the costs of an energy efficiency plan approved by the board, including amounts for a plan approved prior to July 1, 1996, in a contested case proceeding conducted pursuant to paragraph *"c"*. The board shall periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of the utility's implementation of an approved energy efficiency plan and budget. If a utility is not taking all reasonable actions to cost-effectively implement an approved energy efficiency plan, the board shall not allow the utility to recover from customers costs in excess of those costs that would be incurred under reasonable and prudent implementation and shall not allow the utility to recover future costs at a level other than what the board determines to be reasonable and prudent. If the result of a contested case proceeding is a judgment against a utility, that utility's future level of cost recovery shall be reduced by the amount by which the programs were found to be imprudently conducted. The utility shall not represent energy efficiency in customer billings as a separate cost or expense unless the board otherwise approves.

f. A rate-regulated utility required to submit an energy efficiency plan under this subsection shall, upon the request of a state agency or political subdivision to which it provides service, provide advice and assistance regarding measures which the state agency or political subdivision might take in achieving improved energy efficiency results. The cooperation shall include assistance in accessing financial assistance for energy efficiency measures.

20. *Filing of forecasts.* The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board shall evaluate the forecast. The forecast shall include, but is not limited to, a forecast of the requirements of its customers, its anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs.

21. *Energy efficiency program financing.* The board may require each rate-regulated gas or electric public utility to offer qualified customers the opportunity to enter into an agreement for the amount of moneys reasonably necessary to finance cost-effective energy efficiency improvements to the qualified customers' residential dwellings or businesses.

22. *Allocation of replacement tax costs.* The costs of the replacement tax imposed pursuant to

chapter 437A shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on January 1, 1999.

The cost of the replacement taxes imposed by chapter 437A shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent practicable.

Upon the restructuring of the electric industry in this state so that individual consumers are given the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether the base rates or some other form of rate is most appropriate for recovery of the costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

23. *Replacement tax study committee.* On or before July 1, 2000, the utilities board, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a replacement tax study committee and provide staffing assistance to the committee. It is the intent of the general assembly that the committee include representatives of the utilities board, department of revenue and finance, department of management, investor-owned utilities, municipal utilities, cooperative utilities, local governments, major customer classes, and other stakeholders.

The committee shall study the effects of the replacement tax on both restructuring and the development of competition in the gas and electric industries in this state. The board shall report to the general assembly by January 1 of each year through 2003, the results of the study, and the committee's recommendations as to whether the replacement tax, in its then present form, should be continued, whether a different form of taxation of electric and gas utilities should be adopted in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, whether a different basis for determination of the generation, transmission, and delivery taxes should be adopted or whether the relative share of the total replacement tax burden imposed on each of the generation, transmission, and delivery functions should be modified in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, and whether the replacement tax in its then present form, appropriately accounts for the decline in value of electric power generating plants. The replacement tax study committee shall reconvene by January 1, 2006, to further study these same issues, and the board shall report the results of the study and the committee's recommendations to the general assembly by January 1, 2008.

Upon recommendation of the committee, the board may contract for services necessary to the implementation of this subsection with persons who are not state employees, including, but not limited to, facilitators, consultants, and other experts required to assist the committee. The cost of contracted services shall not be paid from appropriated funds, but shall be assessed to entities paying replacement tax pursuant to chapter 437A, subchapter II, pro rata, based on the amount of tax paid.

24. *Recovery of management costs.* A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

25. *Electric power generating facility emissions.*

a. It is the intent of the general assembly that the state, through a collaborative effort involving state agencies and affected generation owners, provide for compatible statewide environmental and electric energy policies with respect to regulated emissions from rate-regulated electric power generating facilities in the state that are fueled by coal. Each rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.

(1) The initial multiyear plan and budget shall be filed with the board by April 1, 2002. Updates to the plan and budget shall be filed at least every twenty-four months.

(2) Copies of the initial plan and budget, as well as any subsequent updates, shall be served on the department of natural resources.

(3) The initial multiyear plan and budget and any subsequent updates shall be considered in a

contested case proceeding pursuant to chapter 17A. The department of natural resources and the consumer advocate shall participate as parties to the proceeding.

(4) The department of natural resources shall state whether the plan or update meets applicable state environmental requirements for regulated emissions. If the plan does not meet these requirements, the department shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements.

b. The board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state.

c. The board shall review the plan or update and the associated budget, and shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. In reaching its decision, the board shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

d. The board shall issue an order approving or rejecting a plan, update, or budget within one hundred eighty days after the public utility's filing is deemed complete; however, upon good cause shown, the board may extend the time for issuing the order as follows:

(1) The board may grant an extension of thirty days.

(2) The board may grant more than one extension, but each extension must rely upon a separate showing of good cause.

(3) A subsequent extension must not be granted any earlier than five days prior to the expiration of the original one-hundred-eighty-day period, or the current extension.

e. The reasonable costs incurred by a rate-regulated public utility in preparing and filing the plan, update, or budget and in participating in the proceedings before the board and the reasonable costs associated with implementing the plan, update, or budget shall be included in its regulated retail rates.

f. It is the intent of the general assembly that the board, in an environmental plan, update, or associated budget filed under this section by a rate-regulated public utility, may limit investments or expenditures that are proposed to be undertaken prior to the time that the environmental benefit to be produced by the investment or expenditure would be required by state or federal law.

g. The board shall report to the general assembly by January 21, 2003, on the appropriateness and desirability of requiring the municipal utilities and the rural electric cooperatives to file multiyear plans and budgets for managing regulated emissions from their electric power generating facilities fueled by coal and located in this state, similar to the process required for rate-regulated public utilities under this subsection.

[C66, 71, 73, 75, §490A.6; C77, 79, 81, §476.6; 81 Acts, ch 156, §6, 9, ch 157, §1 – 3; 82 Acts, ch 1100, §23]

83 Acts, ch 127, §19 – 26, 51; 84 Acts, ch 1023, §1; 87 Acts, ch 21, §2; 89 Acts, ch 58, §1; 89 Acts, ch 148, §1; 89 Acts, ch 321, §29; 90 Acts, ch 1103, §1; 90 Acts, ch 1252, §23 – 27; 91 Acts, ch 253, §22; 93 Acts, ch 68, §1; 96 Acts, ch 1196, §8, 9; 98 Acts, ch 1013, §1; 98 Acts, ch 1148, §2, 9; 98 Acts, ch 1194, §37, 40; 2001 Acts, 1st Ex, ch 4, §10, 36; 2002 Acts, ch 1162, §70, 71

Subsection 19, paragraph b amended

Subsection 25, paragraph a, subparagraphs (2) and (3) amended

476.7 Application by utility for review.

If there shall be filed with the board by any public utility an application requesting the board to determine the reasonableness of the utility's rates, charges, schedules, service or regulations, the board shall promptly initiate a formal proceeding. Such a formal proceeding may be initiated at any time by the board on its own motion. Whenever such a proceeding has been initiated upon application or motion, the board shall set the case for hearing and give such notice thereof as it deems appropriate. Whenever the board, after a hearing held after reasonable notice, finds any public utility's rates, charges, schedules, service or regulations are unjust, unreasonable, insufficient, discriminatory or otherwise in violation of any provision of law, the board shall determine just, reasonable, sufficient and nondiscriminatory rates, charges, schedules, service or regulations to be thereafter observed and enforced.

[C66, 71, 73, 75, §490A.7; C77, 79, 81, §476.7]

476.8 Utility charges and service.

Every public utility is required to furnish reasonably adequate service and facilities. *"Reasonably adequate service and facilities"* for public utilities furnishing gas or electricity includes programs for customers to encourage the use of energy efficiency and renewable energy sources. The charge made by any public utility for any heat, light, gas, energy efficiency and renewable energy programs, water or power produced, transmitted, delivered or furnished, or communications services, or for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful. In determining reasonable and just rates, the board shall consider all factors relating to value and shall not be bound by rate base decisions or

rulings made prior to the adoption of this chapter.

The board, in determining the value of materials or services to be included in valuations or costs of operations for rate-making purposes, may disallow any unreasonable profit made in the sale of materials to or services supplied for any public utility by any firm or corporation owned or controlled directly or indirectly by such utility or any affiliate, subsidiary, parent company, associate or any corporation whose controlling stockholders are also controlling stockholders of such utility. The burden of proof shall be on the public utility to prove that no unreasonable profit is made.

[C66, 71, 73, 75, §490A.8; C77, 79, 81, §476.8]
83 Acts, ch 127, §27; 90 Acts, ch 1252, §28

476.8A Tax reform act rate adjustment. Repealed by 90 Acts, ch 1168, § 64.

476.9 Accounts rendered to board.

1. Every public utility shall keep and render to the board in the manner and form prescribed by the board uniform accounts of all business transacted.

2. Every public utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of heat, light, water or power or furnishing communications services to the public shall, if required by the board, keep and render separately to the board in like manner and form the accounts of all such other business, in which case all the provisions of this chapter shall apply to the books, accounts, papers and records of such other business and all profits and losses may be taken into consideration by the board if deemed relevant to the general fiscal condition of the public utility.

3. Every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board, and to comply with all directions of the board relating to such books, accounts, papers and records.

4. The board shall consult with other state and federal regulatory bodies for the purpose of eliminating accounting discrepancies with regard to the keeping of public utility accounts before prescribing any system of accounts to be kept by the public utility.

[C66, 71, 73, 75, §490A.9; C77, 79, 81, §476.9]

476.10 Investigations — expense — appropriation.

In order to carry out the duties imposed upon it by law, the board may, at its discretion, allocate and charge directly the expenses attributable to its duties to the person bringing a proceeding before the board or to persons participating in matters before the board. The board shall ascertain the certified expenses incurred and directly chargeable by the consumer advocate division of the department of justice in the performance of its duties. The board and the consumer advocate separately may decide not to charge expenses to persons who, without expanding the scope of the proceeding or matter, intervene in good faith in a board proceeding initiated by a person subject to the board's jurisdiction, the consumer advocate, or the board on its own motion. For assessments in any proceedings or matters before the board, the board and the consumer advocate separately may consider the financial resources of the person, the impact of assessment on participation by intervenors, the nature of the proceeding or matter, and the contribution of a person's participation to the public interest. The board may present a bill for expenses under this paragraph to the person, either at the conclusion of a proceeding or matter, or from time to time during its progress. Presentation of a bill for expenses under this paragraph constitutes notice of direct assessment and request for payment in accordance with this section.

The board shall ascertain the total of the division's expenses incurred during each fiscal year in the performance of its duties under law. The board shall add to the total of the division's expenses the certified expenses of the consumer advocate as provided under section 475A.6. The board shall deduct all amounts charged directly to any person from the total expenses of the board and the consumer advocate. The board may assess the amount remaining after the deduction to all persons providing service over which the board has jurisdiction in proportion to the respective gross operating revenues of such persons from intrastate operations during the last calendar year over which the board has jurisdiction. For purposes of determining gross operating revenues under this section, the board shall not include gross receipts received by a cooperative corporation or association for wholesale transactions with members of the cooperative corporation or association, provided that the members are subject to assessment by the board based upon the members' gross operating revenues, or provided that such a member is an association whose members are subject to assessment by the board based upon the members' gross operating revenues. If any portion of the remainder can be identified with a specific type of utility service, the board shall assess those expenses only to the entities providing that type of service over which the board has jurisdiction. The board may make the remainder assessments under this paragraph on a quarterly basis, based upon estimates of the expenditures for the fiscal year for the utilities division and the consumer advocate. Not more than ninety days following the close of the fiscal year, the utilities division shall conform the amount of the prior fiscal year's assessments to the requirements of this paragraph. For gas and electric public utilities exempted from rate regulation pursuant to this chapter, the remainder assessments under this paragraph shall

be computed at one-half the rate used in computing the assessment for other persons.

A person subject to a charge or assessment shall pay the division the amount charged or assessed against the person within thirty days from the time the division provides notice to the person of the amount due, unless the person files an objection in writing with the board setting out the grounds upon which the person claims that such charge or assessment is excessive, unreasonable, erroneous, unlawful, or invalid. Upon receipt of an objection, the board shall set the matter for hearing and issue its order in accordance with its findings in the proceeding.

The order shall be subject to review in the manner provided in this chapter. All amounts collected by the division pursuant to the provisions of this section shall be deposited with the treasurer of state and credited to the general fund of the state. Such amounts shall be spent in accordance with the provisions of chapter 8.

Whenever the board shall deem it necessary in order to carry out the duties imposed upon it in connection with rate regulation under section 476.6, investigations under section 476.3, or review proceedings under section 476.31, the board may employ additional temporary or permanent staff, or may contract with persons who are not state employees for engineering, accounting, or other professional services, or both. The costs of these additional employees and contract services shall be paid by the public utility whose rates are being reviewed in the same manner as other expenses are paid under this section. Beginning on July 1, 1991, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this section. The board shall increase quarterly assessments specified in unnumbered paragraph 2, by amounts necessary to enable the board to hire additional staff and contract for services under this section. The authority to hire additional temporary or permanent staff that is granted to the board by this section shall not be subject to limitation by any administrative or executive order or decision that restricts the number of state employees or the filling of employee vacancies, and shall not be subject to limitation by any law of this state that restricts the number of state employees or the filling of employee vacancies unless that law is made applicable to this section by express reference to this section. Before the board expends or encumbers an amount in excess of the funds budgeted for rate regulation and before the board increases quarterly assessments pursuant to this paragraph, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly to the board for rate regulation and that the board does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management the board may expend and encumber funds for the excess expenses, and increase quarterly assessments to raise the additional funds. The board and the office of consumer advocate may add additional personnel or contract for additional assistance to review and evaluate energy efficiency plans and the implementation of energy efficiency programs including, but not limited to, professionally trained engineers, accountants, attorneys, skilled examiners and inspectors, and secretaries and clerks. The board and the office of consumer advocate may also contract for additional assistance in the evaluation and implementation of issues relating to telecommunication competition. The board and the office of the consumer advocate may expend additional sums beyond those sums appropriated. However, the authority to add additional personnel or contract for additional assistance must first be approved by the department of management. The additional sums for energy efficiency shall be provided to the board and the office of the consumer advocate by the utilities subject to the energy efficiency requirements in this chapter. Telephone companies shall pay any additional sums needed for assistance with telecommunication competition issues. The assessments shall be in addition to and separate from the quarterly assessment.

Fees paid to the utilities division shall be deposited in the general fund of the state. These funds shall be used for the payment, upon appropriation by the general assembly, of the expenses of the utilities division and the consumer advocate division of the department of justice. Subject to this section, the utilities division or the consumer advocate division may keep on hand with the treasurer of state funds in excess of the current needs of the utilities division or the consumer advocate division.

The administrator and consumer advocate shall account for receipts and disbursements according to the separate duties imposed upon the utilities and consumer advocate divisions by the laws of this state and each separate duty shall be fiscally self-sustaining.

All fees and other moneys collected under this section and sections 478.4, 479.16, and 479A.9 shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes. Moneys deposited into the general fund of the state pursuant to this section and sections 478.4, 479.16, and 479A.9 shall be subject to the requirements of section 8.60.

[C66, 71, 73, 75, §490A.10; C77, 79, 81, §476.10; 81 Acts, ch 156, §7, ch 158, §1]

83 Acts, ch 127, §28; 86 Acts, ch 1246, §613, 614; 89 Acts, ch 103, §1; 89 Acts, ch 296, §72; 89 Acts, ch 321, §30; 90 Acts, ch 1247, §11; 90 Acts, ch 1252,

§29; 91 Acts, ch 260, §1236, 1237; 93 Acts, ch 131, §20, 21; 94 Acts, ch 1107, §80; 95 Acts, ch 199, §3; 2001 Acts, ch 9, §1, 3

476.10A Funding for Iowa energy center and center for global and regional environmental research.

1. *a.* The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

b. The amounts collected pursuant to this section shall be in addition to the amounts permitted to be assessed pursuant to section 476.10. The board shall allow inclusion of these amounts in the budgets approved by the board pursuant to section 476.6, subsection 19, paragraph *"c"*.

c. (1) Eighty-five percent of the remittances collected pursuant to this section is appropriated to the Iowa energy center created in section 266.39C.

(2) Fifteen percent of the remittances collected pursuant to this section is appropriated to the center for global and regional environmental research established by the state board of regents.

2. Notwithstanding section 8.33, any unexpended moneys remitted to the treasurer of state under this section shall be retained for the purposes designated. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys remitted under this section shall be retained and used for the purposes designated, pursuant to section 476.46.

3. The Iowa energy center and the center for global and regional environmental research shall each provide a written annual report to the utilities board that describes each center's activities and the results that each center has accomplished. Each report shall include an explanation of initiatives and projects of importance to the state of Iowa.

90 Acts, ch 1252, §30; 91 Acts, ch 253, §23; 96 Acts, ch 1196, §10; 2002 Acts, ch 1109, §3

Section amended

476.11 Telephone toll connections.

Whenever toll connection between the lines or facilities of two or more telephone companies has been made, or is demanded under the statutes of this state and the companies concerned cannot agree as to the terms and procedures under which toll communications shall be interchanged, the board upon complaint in writing, after hearing had upon reasonable notice, shall determine such terms and procedures.

The board may resolve complaints, upon notice and hearing, that a utility, operating under section 476.29, has failed to provide just, reasonable, and nondiscriminatory arrangements for interconnection of its telecommunications services with another telecommunications provider.

[C66, 71, 73, 75, §490A.11; C77, 79, 81, §476.11]
95 Acts, ch 199, §4

476.12 Rehearings before board.

Notwithstanding the Iowa administrative procedure Act, any party, as defined in the rules and regulations promulgated by the board as provided in section 476.2, to a contested case before the board may within twenty days after the issuance of the final decision apply for a rehearing. The board shall either grant or refuse an application for rehearing within thirty days after the filing of the application, or may after giving the interested parties notice and opportunity to be heard and after consideration of all the facts, including those arising since the making of the order, abrogate or modify its order. A failure by the board to act upon the application for rehearing within the above period shall be deemed a refusal of the application. Neither the filing of an application for rehearing nor the granting of the application shall stay the effectiveness of an order unless the board so directs.

[C66, 71, 73, 75, §490A.12; C77, 79, 81, §476.12]
88 Acts, ch 1100, §2

476.13 Judicial review.

1. Notwithstanding the Iowa administrative procedure Act, the district court for Polk county or for the county in which a public utility maintains its principal place of business has exclusive venue for the judicial review under chapter 17A of actions of the board pursuant to rate-regulatory powers over that public utility.

2. Upon the filing of a petition for judicial review in an action referred to in subsection 1, the clerk of the district court shall notify the chief justice of the supreme court for purposes of assignment of a district judge under section 602.1212. The judicial review proceeding shall be heard by the district judge appointed by the supreme court under section 602.1212, but in the county of venue under subsection 1.

3. Notwithstanding the Iowa administrative procedure Act, if a public utility seeks judicial review of an order approving rates for the public utility, the level of rates that may be collected, under bond and subject to refund, while the appeal is pending shall be limited to the level of the temporary rates set by the board, or the level of the final rates set by the board, whichever is greater. During the period the judicial review proceeding is pending, the board shall retain jurisdiction to determine the rate of interest to be paid on any refunds eventually required on rates collected during judicial review.

[C66, 71, 73, 75, §490A.13; C77, 79, 81, §476.13]
83 Acts, ch 127, §29

See §478.32, 479.32

476.14 Violations stopped.

Whenever the board shall be of the opinion that any public utility or any other person is violating this chapter or any order of the board, the board may commence an action in the district court for the county in which such violation is alleged to have occurred, to have such violation stopped and prevented by injunction, mandamus or other appropriate remedy.

[C66, 71, 73, 75, §490A.20; C77, 79, 81, §476.14]

476.15 Extent of jurisdiction.

The jurisdiction and powers of the board shall extend as hereinbefore provided to the utility business of public utilities operating within this state to the full extent permitted by the Constitution and laws of the United States.

[C66, 71, 73, 75, §490A.21; C77, 79, 81, §476.15]

476.16 Annual report.

The board shall include in its annual report required under sections 7A.1 and 7A.10 among other matters, to the extent such regulation is conferred upon the board by this chapter, the following:

1. A complete financial report of receipts and expenditures, including list of public utilities and separately the amount of total fees and assessments paid by each.

2. A list of the applications, subject and disposition of each docket number under this chapter, including board fees for such docket assessed by the board.

[C66, 71, 73, 75, §490A.22; C77, 79, 81, §476.16]

476.17 Peak-load energy conservation.

1. The board may promulgate rules pursuant to chapter 17A which require or authorize a public utility to establish peak-load management procedures.

2. Rules of the board shall relate to reducing or limiting the peak-load period consumption.

3. In promulgating rules under this section, the board is not bound by decisions, rulings or orders which relate to the definitions of types or classes of customers and which were issued by the Iowa state commerce commission prior to July 1, 1980.

[C81, §476.17]

476.18 Impermissible charges.

1. Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of lobbying.

2. Legal costs and attorney fees incurred by a public utility subject to rate regulation in an appeal in state or federal court involving the validity of any action of the board shall not be included either directly or indirectly in the public utility's charges or rates to customers except to the extent that recovery of legal costs and attorney fees is allowed by the board. The board shall allow a public utility to recover reasonable legal costs and attorney fees incurred in the appeal. The board may consider the degree of success of the legal arguments of the public utility in determining the reasonable legal costs and attorney fees to be allowed.

3. Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of advertising other than advertising which is required by the board or by other state or federal regulation. However, this subsection does not apply to a utility's advertising which is deemed by the board to be necessary for the utility's customers and which is approved by the board.

Every ad which is published, broadcast, or otherwise displayed or disseminated to the public by a public utility which is to be charged to the customers of the public utility and which is not required by the board or by other state or federal regulation shall include a statement in the ad that the costs of the ad are being charged to the customers of the public utility. This paragraph does not apply to a utility's product or service that is or becomes subject to competition as determined by the board.

4. This section does not apply to a rural electric cooperative.

83 Acts, ch 127, §30; 84 Acts, ch 1225, §1

476.19 Construction of statutes.

Nothing herein contained shall be construed to invalidate any proceedings under statutes existing prior to the enactment of this chapter; nor shall any action, litigation or appeal pending prior to the effective date of rate regulation of this chapter be affected hereby.

[C66, 71, 73, 75, §490A.25; C77, 79, 81, §476.19]

476.20 Disconnection limited — notice — moratorium — deposits.

1. A utility shall not, except in cases of emergency, discontinue, reduce, or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless and until permission to do so is obtained from the board.

2. The board shall establish rules requiring a regulated public utility furnishing gas or electricity to include in the utility's notice of pending disconnection of service a written statement advising the customer that the customer may be eligible to participate in the low income home energy assistance program or weatherization assistance program administered by the division of community action agencies of the department of human rights. The written statement shall list the address and telephone number of the local agency which is administering the customer's low income home energy assistance program and the weatherization assistance program. The written statement shall also state that the customer is ad-

vised to contact the public utility to settle any of the customer's complaints with the public utility, but if a complaint is not settled to the customer's satisfaction, the customer may file the complaint with the board. The written statement shall include the address and phone number of the board. If the notice of pending disconnection of service applies to a residence, the written statement shall advise that the disconnection does not apply from November 1 through April 1 for a resident who is a *"head of household"*, as defined by law, and who has been certified to the public utility by the local agency which is administering the low income home energy assistance program and weatherization assistance program as being eligible for either the low income home energy assistance program or weatherization assistance program, and that if such a resident resides within the serviced residence, the customer should promptly have the qualifying resident notify the local agency which is administering the low income home energy assistance program and weatherization assistance program. The board shall establish rules requiring that the written notice contain additional information as it deems necessary and appropriate.

3. The board shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to disconnection of service. This subsection applies both to regulated utilities and to municipally owned utilities and unincorporated villages which own their own distribution systems, and violations of this subsection subject the utilities to civil penalties under section 476.51.

A qualified applicant for the low income home energy assistance program or the weatherization assistance program who is also a *"head of household"*, as defined in section 422.4, subsection 7, shall be promptly certified by the local agency administering the applicant's program to the applicant's public utility that the resident is a *"head of household"* as defined in section 422.4, subsection 7, and is qualified for the low income home energy assistance program or weatherization assistance program. Notwithstanding subsection 1, a public utility furnishing gas or electricity shall not disconnect service from November 1 through April 1 to a residence which has a resident that has been certified under this paragraph.

4. A public utility which violates a provision of this section relating to the disconnection of service or which violates a rule of the board relating to disconnection of service is subject to civil penalties imposed by the board under section 476.51.

5. The board shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to deposits which may be required by the public utility for the initiation or reinstatement of service.

a. The deposit for a residential or commercial customer for a place which has previously received service shall not be greater than the highest billing of service for one month for the place in the previous twelve-month period.

b. The deposit for a residential or a commercial customer for a place which has not previously received service or for an industrial customer shall be the customer's projected one month's usage for the place to be serviced as determined by the public utility according to rules established by the board.

This subsection does not prohibit a public utility from requiring payment of a customer's past due account with the utility prior to reinstatement of service.

The rules shall allow a person other than the customer to pay the customer's deposit. Upon termination of service to such a customer, the deposit plus accumulated interest less any unpaid utility bill of the customer, shall be reimbursed to the person who made the deposit.

[C66, 71, 73, 75, §490A.26; C77, 79, 81, §476.20]
83 Acts, ch 127, §31; 84 Acts, ch 1131, §1; 84 Acts, ch 1273, §1

476.21 Discrimination prohibited.

A municipality, corporation or co-operative association providing electrical or gas service shall not consider the use of renewable energy sources by a customer as a basis for establishing discriminatory rates or charges for any service or commodity sold to the customer or discontinue services or subject the customer to any other prejudice or disadvantage based on the customer's use or intended use of renewable energy sources. As used in this section, *"renewable energy sources"* includes but is not limited to, solar heating, wind power and the conversion of urban and agricultural organic wastes into methane gas and liquid fuels.

[C79, 81, §476.21]

ASSIGNED AREA OF SERVICE

476.22 Definition.

As used in sections 476.23 to 476.26, unless the context otherwise requires, *"electric utility"* includes a public utility furnishing electricity as defined in section 476.1 and a city utility as defined in section 390.1.

[C77, 79, 81, §476.22]

476.23 Electric service conflicts — certificates of authority.

1. An electric utility shall not construct or extend facilities or furnish or offer to furnish electric service to the existing point of delivery of any customer already receiving electric service from another electric utility without having first filed with the board the express written agreement of the electric utility presently serving this customer, except as otherwise provided in this section. Any municipal corporation, after being authorized by a

vote of the people, or any electric utility may file a petition with the board requesting a certificate of authority to furnish electric service to the existing point of delivery of any customer already receiving electric service from another electric utility. If, after notice by the board to the electric utility currently serving the customer, objection to the petition is not filed and investigation is not deemed necessary, the board shall issue a certificate within thirty days of the filing of the petition. When an objection is filed, if the board, after notice and opportunity for hearing, determines that service to the customer by the petitioner is in the public interest, including consideration of any unnecessary duplication of facilities, it shall grant this certificate in whole or in part, upon such terms, conditions, and restrictions as may be justified. Whether or not an objection is filed, any certificate issued shall require that the petitioner pay to the electric utility presently serving the customer, the reasonable price for facilities serving the customer. This price determination by the board shall include due consideration of the cost of the facilities being acquired, any necessary generating capacity and transmission capacity dedicated to the customer, depreciation, loss of revenue, and the cost of facilities necessary to reintegrate the system of the utility after detaching the portion sold.

2. An electric utility shall not construct or extend facilities or furnish electric service to a prospective customer not presently being served, unless its existing service facilities are nearer the proposed point of delivery than the service facilities of any other utility. However, an electric utility may extend electric service and transmission lines if the electric utility closest to the delivery point consents to this extension in writing and a copy of the agreement is filed with the board or, if the board, after notice and opportunity for hearing and after giving due consideration to the prevention of unnecessary duplication of facilities, finds that service from an electric utility, other than the closest utility, is in the public interest. This subsection shall not apply if the prospective customers are within an exclusive service area assigned to an electric utility as provided in this division.

3. Notwithstanding subsections 1 and 2 of this section, any electric utility may extend electric service and transmission lines to its own utility property and facilities.

4. If not inconsistent with the provisions of this division:

a. All rights of municipal corporations under chapter 364 to grant a person a franchise to erect, maintain, and operate plants and systems for electric light and power within the corporate boundaries, and rights acquired by franchise or agreement shall be preserved in these municipal corporations;

b. All rights of city utilities under the city code shall be preserved in these city utilities;

c. All rights of city utilities and joint electric utilities under chapter 390 shall be preserved in these city utilities and joint electric utilities; and

d. All rights of cities under chapter 6B are preserved. However, prior to the institution of condemnation proceedings, the city shall obtain a certificate of authority from the board in accordance with this division and the board's determination of price under this division shall be conclusive evidence of damages in these condemnation proceedings.

[C66, 71, 73, 75, §490A.23, 490A.24; C77, 79, 81, §476.23]

476.24 Electric utility service area maps.

1. On or before July 1, 1977, and subsequently whenever requested by the board, electric utilities furnishing electricity to the public for compensation in this state shall file, jointly or severally, with the board detailed maps of their service area drawn to a scale of not less than one inch per mile or drawn to a larger scale if required for clarity showing all of the following:

a. The locations of an electric utility's generation, franchised transmission lines, distribution lines, and related facilities as of January 1, 1976.

b. All state and federal highways and other public roads within the electric utility's service area.

c. All section lines and numbers and township and range numbers within the electric utility's service area.

d. The corporate boundaries of all cities within the electric utility's service area.

e. All lakes and rivers within the electric utility's service area.

f. All railroads within the electric utility's service area.

g. Any additional information requested by the board.

2. On or before July 1, 1978, and subsequently when deemed by the board to be necessary, the board shall prepare or cause to have prepared a composite map of this state showing the service areas of electric utilities as submitted by the electric utilities. The form and detail of all maps shall be determined by the board.

[C77, 79, 81, §476.24]

476.25 Assigned service areas — electric utilities — legislative policy.

It is declared to be in the public interest to encourage the development of co-ordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public. In order to effect that public interest, the board may establish service areas within which specified electric utilities shall provide electric service to customers on an exclusive basis. Except for good cause expressed through formal public statement, the board shall establish these exclusive service areas

on or before July 1, 1979. These exclusive service area boundaries shall be established by the board upon the following basis:

1. The service area boundaries shall be in a line approximately equidistant between the electric distribution lines of adjacent electric utilities as they existed on January 1, 1976, and as shown by the maps filed in accordance with this division. However, those boundaries may be modified by the board to promote the public interest, to preserve existing service areas and electric utilities' rights to serve existing customers, and to prevent unnecessary duplication of facilities, to take account of natural and physical barriers which would make electric service beyond these barriers uneconomic and impractical and those boundaries shall be modified by the board to take account of the contracts between electric utilities which have been approved by the board pursuant to subsection 2 of this section. When an electric utility's exclusive service area is established by the board to include existing customers presently served by the facilities of another electric utility, unless a voluntary exchange of facilities is agreed upon by the electric utilities involved and approved by the board, the board after notice and opportunity for hearing, shall require the purchase of those facilities presently serving these customers at a reasonable price to be determined by the board. The board, on its own motion or at the request of an electric utility or municipal corporation, after notice and opportunity for hearing, may modify the boundaries of an electric utility exclusive service area which it has previously established if this modification, including consideration of the factors noted in this subsection, is found to be in the public interest.

2. Contracts between electric utilities to designate service areas and customers to be served by the electric utilities or for the exchange of customers between electric utilities, when approved by the board, shall be valid and enforceable and shall be incorporated into the appropriate exclusive service areas established pursuant to subsection 1 of this section. The board shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected, will promote the efficient and economical use and development of the electric systems of the contracting electric utilities, and is in the public interest.

3. An electric utility shall not serve or offer to serve electric customers in an exclusive service area assigned to another electric utility, nor shall an electric utility construct facilities to serve electric customers in an exclusive service area assigned to another electric utility. The state, an electric utility, or any other person who is injured or threatened with injury by conduct prohibited by this section may initiate a contested case proceeding with the board under chapter 17A. Upon finding a violation of this section the board shall order appropriate corrective action including discontinuance of the unlawful service to electric customers, removal of the unlawful facility, or other disposition the board deems just and reasonable.

[C77, 79, 81, §476.25]

84 Acts, ch 1101, §1

476.26 Effect of incorporation, annexation or consolidation.

The inclusion by incorporation, consolidation, or annexation of any facilities or service area of an electric utility within the boundaries of any city shall not by such inclusion impair or affect in any respect the rights of the electric utility to continue to provide electric utility service and to extend service to prospective customers in accordance with the provisions of this division.

[C66, 71, 73, 75, §490A.23; C77, 79, 81, §476.26]

CROSSINGS — RAILROAD RIGHTS-OF-WAY

476.27 Public utility crossing — railroad rights-of-way.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. *"Board"* means the Iowa utilities board.

b. *"Crossing"* means the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right-of-way by a public utility.

c. *"Direct expenses"* includes, but is not limited to, any or all of the following:

(1) The cost of inspecting and monitoring the crossing site.

(2) Administrative and engineering costs for review of specifications; for entering a crossing on the railroad's books, maps, and property records; and other reasonable administrative and engineering costs incurred as a result of the crossing.

(3) Document and preparation fees associated with a crossing, and any engineering specifications related to the crossing.

(4) Damages assessed in connection with the rights granted to a public utility with respect to a crossing.

d. *"Facility"* means any cable, conduit, wire, pipe, casing pipe, supporting poles and guys, manhole, or other material and equipment, that is used by a public utility to furnish any of the following:

(1) Communications services.

(2) Electricity.

(3) Gas by piped system.

(4) Sanitary and storm sewer service.

(5) Water by piped system.

e. *"Public utility"* means a public utility as defined in section 476.1, except that, for purposes of this section, *"public utility"* also includes all mutual telephone companies, municipally owned facili-

ties, unincorporated villages, waterworks, municipally owned waterworks, joint water utilities, rural water districts incorporated under chapter 357A or 504A, cooperative water associations, franchise cable television operators, and persons furnishing electricity to five or fewer persons.

f. "Railroad" or *"railroad corporation"* means a railroad corporation as defined in section 321.1, which is the owner, operator, occupant, manager, or agent of a railroad right-of-way or the railroad corporation's successor in interest. *"Railroad"* and *"railroad corporation"* include an interurban railway.

g. "Railroad right-of-way" means one or more of the following:

(1) A right-of-way or other interest in real estate that is owned or operated by a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation.

(2) A right-of-way or other interest in real estate that is occupied or managed by or on behalf of a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation, including an abandoned railroad right-of-way that has not otherwise reverted pursuant to chapter 327G.

(3) Another interest in a former railroad right-of-way that has been acquired or is operated by a land management company or similar entity.

h. "Special circumstances" means either or both of the following:

(1) The existence of characteristics of a segment of railroad right-of-way or of a proposed utility facility that increase the direct expenses associated with a proposed crossing.

(2) A proposed crossing that involves a significant and imminent likelihood of danger to the public health or safety, or that is a serious threat to the safe operations of the railroad, or to the current use of the railroad right-of-way, necessitating additional terms and conditions associated with the crossing.

2. *Rulemaking and standard crossing fee.* The board, in consultation with the state department of transportation, shall adopt rules pursuant to chapter 17A prescribing the terms and conditions for a crossing. The rules shall provide that any crossing be consistent with the public convenience and necessity and reasonable service to the public. The rules, at a minimum, shall address the following:

a. The terms and conditions applicable to a crossing including, but not limited to, the following:

(1) Notification required prior to the commencement of any crossing activity.

(2) A requirement that the railroad and the public utility each maintain and repair the person's own property within the railroad right-of-way, and bear responsibility for each person's own acts and omissions; except that the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

(3) The amount and scope of insurance or self-insurance required to cover risks associated with a crossing.

(4) A procedure to address the payment of costs associated with the relocation of public utility facilities within the railroad right-of-way necessary to accommodate railroad operations.

(5) Terms and conditions for securing the payment of any damages by the public utility before it proceeds with a crossing.

(6) Immediate access to a crossing for repair and maintenance of existing facilities in case of emergency.

(7) Engineering standards for utility facilities crossing railroad rights-of-way.

(8) Provision for expedited crossing, absent a claim of special circumstances, after payment by the public utility of the standard crossing fee, if applicable, and submission of completed engineering specifications to the railroad.

(9) Other terms and conditions necessary to provide for the safe and reasonable use of a railroad right-of-way by a public utility, and consistent with rules adopted by the board, including any complaint procedures adopted by the board to enforce the rules.

b. Unless otherwise agreed by the parties and subject to subsection 4, a public utility that locates its facilities within the railroad right-of-way for a crossing, other than a crossing along the public roads of the state pursuant to chapter 477, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard crossing fee shall be in lieu of any license or any other fees or charges to reimburse the railroad for the direct expenses incurred by the railroad as a result of the crossing. The public utility shall also reimburse the railroad for any actual flagging expenses associated with a crossing in addition to the standard crossing fee.

3. *Powers not limited. a.* Notwithstanding subsection 2, rules adopted by the board shall not prevent a railroad and a public utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to such crossing.

b. Notwithstanding paragraph *"a"*, neither this subsection nor this section shall impair the authority of a public utility to secure crossing rights by easement pursuant to the exercise of the power of eminent domain.

4. *Special circumstances. a.* A railroad or public utility that believes special circumstances exist for a particular crossing may petition the board for relief.

(1) If a petition for relief is filed, the board shall determine whether special circumstances exist that necessitate either a modification of the direct expenses to be paid, or the need for addition-

al terms and conditions.

(2) The board may make any necessary findings of fact and determinations related to the existence of special circumstances, as well as any relief to be granted.

(3) A determination of the board, except for a determination on the issue of damages for the rights granted to a public utility with respect to a crossing, shall be considered final agency action subject to judicial review under chapter 17A.

(4) The board shall assess the costs associated with a petition for relief equitably against the parties.

b. A railroad or public utility that claims to be aggrieved by a determination of the board on the issue of damages for the rights granted to a public utility with respect to a crossing may seek judicial review as provided in subsection 5.

5. *Appeals. a.* A railroad or public utility that claims to be aggrieved by the board's determination of damages for rights granted to a public utility may appeal the board's determination to the district court in the same manner as provided in section 6B.18 and sections 6B.21 through 6B.23. In any appeal of the determination of damages, the public utility shall be considered the applicant, and the railroad shall be considered the condemnee. References in sections 6B.18 and 6B.21 to *"compensation commission"* mean the board as defined in this section, or appointees of the board.

b. An appeal of any determination of the board other than the issues of damages for rights granted to a public utility shall be pursuant to chapter 17A.

6. *Authority to cross — emergency relief.* Pending board resolution of a claim of special circumstances raised in a petition, a public utility may, upon securing the payment of any damages, and upon submission of completed engineering specifications to the railroad, proceed with a crossing in accordance with the rules adopted by the board, unless the board, upon application for emergency relief, determines that there is a reasonable likelihood that either of the following conditions exist:

a. That the proposed crossing involves a significant and imminent likelihood of danger to the public health or safety.

b. That the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

If the board determines that there is a reasonable likelihood that the proposed crossing meets either condition, then the board shall immediately intervene to prevent the crossing until a factual determination is made.

7. *Conflicting provisions.* Notwithstanding any provision of the Code to the contrary, this section shall apply in all crossings of railroad rights-of-way involving a public utility as defined in this section, and shall govern in the event of any conflict with any other provision of law.

2001 Acts, ch 138, §1, 2; 2002 Acts, ch 1119, §62

Applicability to crossings commenced prior to, on, or after July 1, 2001; 2001 Acts, ch 138, §2

Subsection 1, paragraph g, subparagraph (2) amended

476.28 Reserved.

LOCAL TELEPHONE SERVICE

476.29 Certificates for providing local telecommunications services.

1. After September 30, 1992, a utility must have a certificate of public convenience and necessity issued by the board before furnishing land-line local telephone service in this state. No lines or equipment shall be constructed, installed, or operated for the purpose of furnishing the service before a certificate has been issued.

2. Except as provided in subsection 12, a certificate shall be issued by the board, after notice and opportunity for hearing, if the board determines that the service proposed to be rendered will promote the public convenience and necessity, provided that an applicant other than a local exchange carrier, as defined in section 476.96, shall not be denied a certificate if the board finds that the applicant possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with the public interest. The board shall make a determination within ninety days of the submission by the applicant of evidence of its technical, financial, and managerial ability, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days. The board may establish reasonable conditions or restrictions on the certificate at the time of issuance.

3. A certificate is transferable, subject to approval of the board pursuant to section 476.20, subsection 1, and for purposes of a rate-regulated local exchange utility shall be treated by the board in the same manner as a reorganization pursuant to sections 476.76 and 476.77.

4. Each certificate shall define the service territory in which land-line local telephone service will be provided. The service territory shall be shown on maps and other documentation as the board may require to be filed with the board. The board shall, by rule, specify the style, size, and kind of map or other documentation, and the information to be shown.

5. Each local exchange utility has an obligation to serve all eligible customers within the utility's service territory, unless explicitly excepted from this requirement by the board.

6. The certificate and tariffs approved by the board are the only authority required for the util-

ity to furnish land-line local telephone service. However, to the extent not inconsistent with this section, the power to regulate the conditions required and manner of use of the highways, streets, rights-of-way, and public grounds remains in the appropriate public authority.

7. The inclusion of any facilities or service territory of a local exchange utility within the boundaries of a city does not impair or affect the rights of the utility to provide land-line local telephone service in the utility's service territory.

8. An agreement between local exchange utilities to designate service territory boundaries and customers to be served by the utilities, or for exchange of customers between utilities, when approved by the board after notice to affected persons and opportunity for hearing, is valid and enforceable and shall be incorporated into the appropriate certificates. The board shall approve an agreement if the board finds the agreement will result in adequate service to all areas and customers affected and is in the public interest.

9. A certificate may, after notice and opportunity for hearing, be revoked by the board for failure of a utility to furnish reasonably adequate telephone service and facilities. The board may also order a revocation affecting less than the entire service territory, or may place appropriate conditions on a utility to ensure reasonably adequate telephone service. Prior to revocation proceedings, the board shall notify the utility of any inadequacies in its service and facilities and allow the utility a reasonable time to eliminate the inadequacies.

10. In the event that eighty percent or more of the subscribers in a community served by a local exchange utility sign a petition indicating they are adversely affected by school reorganization or economic dislocation and prefer to have their local telephone service provided by a different local exchange utility and file that petition with the board, the board, after notice and opportunity for hearing, shall determine whether the certificate held by the local exchange utility shall be revoked or conditioned as provided in subsection 9.

11. The board shall assure that all territory in the state is served by a local exchange utility. If at any time due to certificate revocation proceedings, discontinuance of service proceedings, or any other reason, it appears that a particular territory may not be served by any local exchange utility, the board may, after notice to interested persons and opportunity for hearing, include all or part of the territory in the certificate of another local exchange utility or utilities. In determining the local exchange utility or utilities to be authorized or required to serve, the board shall consider the willingness and ability of the utilities to serve, the location of existing service facilities, the community of interest of the customers involved, and any other factors deemed relevant to the public interest.

12. The board, on or prior to September 30, 1992, shall issue to each local exchange utility in the state, without a contested case proceeding, a nonexclusive certificate to serve the area included within the utility's service territory boundaries as shown by the service territory boundary maps on record with the board on January 1, 1992. The board shall adopt rules pursuant to chapter 17A to implement the issuance of certificates.

a. A customer served by a local exchange utility, but outside the service territory of that utility when the utility's certificate is issued, shall continue to be served by that utility for as long as that customer remains eligible to receive and requests service.

b. If more than one utility has on file maps indicating service in the same territory, the board shall request the involved utilities to resolve the overlap. If the overlap is not resolved in a reasonable time, the board, after notice to interested persons and opportunity for hearing, shall determine the boundary, taking into consideration the criteria listed in subsection 11.

13. Notwithstanding other provisions of this section, approval by the voters of a city pursuant to section 388.2 of a proposal to establish or acquire a public utility providing communications services is conclusive evidence of the fact that the city has the technical, financial, and managerial ability to provide such service. Following the notice and opportunity for hearing in subsection 2, an applicant shall not be denied a certificate if the board finds the proposed service is consistent with the public interest.

14. This section does not prevent the board from adopting rules requiring or allowing local exchange utilities to provide extended area service or adjacent exchange service.

15. The board shall provide a written report to the general assembly no later than January 20, 2005, describing the current status of local telephone service in this state. The report shall include at a minimum the number of certificates of convenience issued, the number of current providers of local telephone service, and any other information deemed appropriate by the board.

92 Acts, ch 1058, §1 – 3; 95 Acts, ch 199, §5; 97 Acts, ch 81, §3, 6

Section repealed effective July 1, 2007; 92 Acts, ch 1058, §3

476.30 Reserved.

RULES

476.31 Continuing audit of operation.

The board shall adopt not later than July 1, 1983, rules and policies to implement a program for the continuous review of operations of rate-regulated public utilities with respect to all matters that affect rates or charges for utility service.

[81 Acts, ch 156, §1]

476.32 Review of annual reports.

The board shall review annual reports submitted by rate-regulated public utilities. The board shall commence rate-review proceedings under this chapter if an annual report indicates that the earnings of the public utility are excessive.

[81 Acts, ch 156, §2]

476.33 Rules governing hearings.

1. The board shall adopt rules pursuant to chapter 17A to provide for the completion of proceedings under section 476.3 within ten months after the date of the filing of a petition under section 476.3, subsection 2, and to provide for the completion of proceedings under section 476.6 within ten months after the date of filing of the new or changed rates, charges, schedules, or regulations under that section. These rules shall include reasonable time limitations for the submission or completion of comments and testimony, and exhibits, briefs, and hearings, and may provide for the granting of additional time upon the request of a party to the proceeding for good cause shown.

2. Additional time granted to a party under subsection 1 shall not extend the amount of time for which a utility is required to file a bond or other undertaking conditioned upon refund under section 476.3, subsection 2.

3. If in a proceeding under section 476.6 additional time is granted to a party under subsection 1, the board may extend the ten-month period during which a utility is prohibited from placing its entire rate increase request into effect under section 476.6, but an extension shall not exceed the aggregate amount of all additional time granted under subsection 1.

4. The board shall adopt rules that require the board, in rate regulatory proceedings under sections 476.3 and 476.6, to consider the use of the most current test period possible in determining reasonable and just rates, subject only to the availability of existing and verifiable data respecting costs and revenues, and in addition to consider verifiable data that exists as of the date of commencement of the proceedings respecting known and measurable changes in costs not associated with a different level of revenue, and known and measurable revenues not associated with a different level of costs, that are to occur at any time within twelve months after the date of commencement of the proceedings. For purposes of this subsection, a proceeding commences under section 476.6 upon the filing date of new or changed rates, charges, schedules or regulations. This subsection does not limit the authority of the board to consider other evidence in proceedings under sections 476.3 and 476.6.

[81 Acts, ch 156, §3]

83 Acts, ch 127, §32, 33; 89 Acts, ch 97, §2; 90 Acts, ch 1168, §52

476.34 to 476.40 Reserved.

ALTERNATE ENERGY PRODUCTION FACILITIES

476.41 Purpose.

It is the policy of this state to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use.

83 Acts, ch 182, §2

476.42 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Alternate energy production facility"* means any or all of the following:

a. A solar, wind turbine, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or woodburning facility.

b. Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.

c. Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

A facility which is a qualifying facility under 18 C.F.R. part 292, subpart B is not precluded from being an alternate energy production facility under this division.

2. *"Electric utility"* means a public utility that furnishes electricity to the public for compensation.

3. *"Next generating plant"* means an electric utility's assumed next coal-fired base load electric generating plant, whether planned or not, based on current technology and undiscounted current cost.

4. *"Small hydro facility"* means any or all of the following:

a. A hydroelectric facility at a dam.

b. Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.

c. Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

A facility which is a qualifying facility under 18 C.F.R. part 292, subpart B is not precluded from being a small hydro facility under this division.

83 Acts, ch 182, §3; 90 Acts, ch 1252, §31 – 33; 92 Acts, ch 1017, §1

476.43 Rates for alternate energy production facilities.

1. Subject to section 476.44, the board shall re-

quire electric utilities to enter into long-term contracts to do the following:

a. Purchase or wheel electricity from alternate energy production facilities or small hydro facilities located in the utility's service area under the terms and conditions that the board finds are just and economically reasonable to the electric utilities' ratepayers, are nondiscriminatory to alternate energy producers and small hydro producers and will further the policy stated in section 476.41.

b. Provide for the availability of supplemental or backup power to alternate energy production facilities or small hydro facilities on a nondiscriminatory basis and at just and reasonable rates.

2. Upon application by the owner or operator of an alternate energy production facility or small hydro facility or any interested party, the board shall establish for the affected public utility just and economically reasonable rates for electricity purchased under subsection 1, paragraph *"a"*. The rates shall be established at levels sufficient to stimulate the development of alternate energy production and small hydro facilities in Iowa and to encourage the continuation of existing capacity from those facilities.

3. The board may adopt individual utility or uniform statewide facility rates. The board shall consider the following factors in setting individual or uniform rates:

a. The estimated capital cost of the next generating plant, including related transmission facilities, to be placed in service by the electric utility serving the area.

b. The term of the contract between the electric utility and the seller.

c. A levelized annual carrying charge based upon the term of the contract and determined in a manner consistent with both the methods and the current interest or return requirements associated with the electric utility's new construction program.

d. The electric utility's annual energy costs, including current fuel costs, related operation and maintenance costs, and other energy-related costs considered appropriate by the board.

e. External factors, including but not limited to, environmental and economic factors.

f. Other relevant factors.

g. If the board adopts uniform statewide rates, the board shall use representative data in lieu of utility specific information in applying the factors listed in paragraphs *"a"* through *"f"*.

4. In the case of a utility that purchases all or substantially all of its electricity requirements, the rates established under this section must be based on the electric utility's current purchased power costs.

5. In lieu of the other procedures provided by this section, an electric utility and an owner or operator of an alternate energy production facility or small hydro facility may enter into a long-term contract in accordance with subsection 1 and may agree to rates for purchase and sale transactions. A contract entered into under this subsection must be filed with the board in the manner provided for tariffs under section 476.4.

6. This section does not require an electric utility to construct additional facilities unless those facilities are paid for by the owner or operator of the affected alternate energy production facility or small hydro facility.

83 Acts, ch 182, §4, 7; 90 Acts, ch 1252, §34 – 37

476.44 Exceptions.

1. The board shall not require an electric utility to purchase or wheel electricity from an alternate energy production facility or small hydro facility unless the facility is owned or operated by an individual, firm, copartnership, corporation, company, association, joint stock association, city, town, or county that meets both of the following:

a. Is not primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy other than electricity, gas, or useful thermal energy sold solely from alternate energy production facilities or small hydro facilities.

b. Does not sell electricity, gas, or useful thermal energy to residential users other than the tenants or the owner or operator of the facility.

2. An electric utility subject to this division, except a utility which elects rate regulation pursuant to section 476.1A, shall not be required to purchase, at any one time, more than its share of one hundred five megawatts of power from alternative energy production facilities or small hydro facilities at the rates established pursuant to section 476.43. The board shall allocate the one hundred five megawatts based upon each utility's percentage of the total Iowa retail peak demand, for the year beginning January 1, 1990, of all utilities subject to this section. If a utility undergoes reorganization as defined in section 476.76, the board shall combine the allocated purchases of power for each utility involved in the reorganization.

Notwithstanding the one hundred five megawatt maximum, the board may increase the amount of power that a utility is required to purchase at the rates established pursuant to section 476.43 if the board finds that a utility, including a reorganized utility, exceeds its 1990 Iowa retail peak demand by twenty percent and the additional power the utility is required to purchase will encourage the development of alternate energy production facilities and small hydro facilities. The increase shall not exceed the utility's increase in peak demand multiplied by the ratio of the utility's share of the one hundred five megawatt maximum to its 1990 Iowa retail peak demand.

83 Acts, ch 182, §5; 90 Acts, ch 1252, §38; 92 Acts, ch 1163, §97; 92 Acts, ch 1166, §1

476.45 Exemption from excess capacity.

Capacity purchased from an alternate energy production facility or small hydro facility shall not

be included in a calculation of an electric utility's excess generating capacity for rate-making purposes.

83 Acts, ch 182, §6

476.46 Alternate energy revolving loan program.

1. The Iowa energy center created under section 266.39C shall establish and administer an alternate energy revolving loan program to encourage the development of alternate energy production facilities and small hydro facilities within the state.

2. *a.* An alternate energy revolving loan fund is created in the office of the treasurer of state to be administered by the Iowa energy center.

b. The fund shall include moneys remitted to the fund pursuant to subsection 3 and any other moneys appropriated or otherwise directed to the fund.

c. Moneys in the fund shall be used to provide loans for the construction of alternate energy production facilities or small hydro facilities as defined in section 476.42.

d. (1) A gas or electric utility that is not required to be rate-regulated shall not be eligible for a loan under this section.

(2) A facility shall be eligible for no more than two hundred fifty thousand dollars in loans outstanding at any time under this program.

e. (1) Each loan shall be for a period not to exceed twenty years, shall bear no interest, and shall be repayable to the fund created under this section in installments as determined by the Iowa energy center. The interest rate upon delinquent payments shall accelerate immediately to the current legal usury limit.

(2) Any loan made pursuant to this program shall become due for payment upon sale of the facility for which the loan was made.

(3) Interest on the fund shall be deposited in the fund. A portion of the interest on the fund, not to exceed fifty percent of the total interest accrued, shall be used for promotion and administration of the fund.

f. Section 8.33 shall not apply to the moneys in the fund.

3. The board shall direct all gas and electric utilities required to be rate-regulated to remit to the treasurer of state by July 1, 1996, eighty-five one-thousandths of one percent of the total gross operating revenues during calendar year 1995 derived from their intrastate public utility operations, by July 1, 1997, eighty-five one-thousandths of one percent of the total gross operating revenues during calendar year 1996 derived from their intrastate public utility operations and by July 1, 1998, eighty-five one-thousandths of one percent of the total gross operating revenues during calendar year 1997 derived from their intrastate public utility operations. The amounts collected pursuant to this section shall be in addition to the amounts permitted to be assessed pursuant to section 476.10 and the amounts assessed pursuant to section 476.10A. The board shall allow inclusion of these amounts in the budgets approved by the board pursuant to section 476.6, subsection 19, paragraph *"c"*.

96 Acts, ch 1196, §11; 2002 Acts, ch 1109, §4
Subsection 2 amended

476.47 Alternate energy purchase programs.

1. Beginning January 1, 2004, an electric utility, whether or not rate-regulated under this chapter, shall offer an alternate energy purchase program to customers, based on energy produced by alternate energy production facilities in Iowa.

2. The board shall require electric utilities to file plans for alternate energy purchase programs offered pursuant to this section.

a. Rate-regulated electric utilities shall file plans for alternate energy purchase programs that allow customers to contribute voluntarily to the development of alternate energy in Iowa, and shall file tariffs as required by the board by rule.

b. Electric utilities that are not rate-regulated shall offer alternate energy purchase programs at rates determined by their governing authority, and shall file tariffs with the board for informational purposes only.

3. The electric utility shall notify consumers of its alternate energy purchase program and any proposed modifications to such program at least sixty days prior to implementation of the program or any modification.

4. For purposes of this section, an electric utility may base its program on energy produced by alternate energy production facilities located outside of Iowa under any of the following circumstances:

a. The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility.

b. The electric utility has a financial interest, as of July 1, 2001, in the alternate energy production facility that is located outside of Iowa, or in an entity that has a financial interest in an alternate energy production facility located outside of Iowa.

c. The energy is purchased by an electric utility that is not rate-regulated and that is required to purchase all of its electric power requirements from a single supplier that is physically located outside of Iowa.

5. This section shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

6. Any consumer-owned utility may apply to the board for a waiver under this section, and the

board, for good cause, may grant the waiver.
2001 Acts, 1st Ex, ch 4, §11, 36

476.48 through 476.50 Reserved.

PENALTY

476.51 Civil penalty.

A public utility which, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one hundred dollars nor more than two thousand five hundred dollars per violation.

A public utility which willfully, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one thousand dollars nor more than ten thousand dollars per violation. For the purposes of this section, *"willful"* means knowing and deliberate, with a specific intent to violate.

Each violation is a separate offense. In the case of a continuing violation, each day a violation continues, after the time specified for compliance in the written notice by the board, is a separate and distinct offense. Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the appropriateness of the penalty in relation to the size of the public utility, the gravity of the violation, and the good faith of the public utility in attempting to achieve compliance following notification of a violation, and any other relevant factors.

The written notice given by the board to a public utility under this section shall specify an appropriate time for compliance.

Civil penalties collected pursuant to this section shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the division of community action agencies of the department of human rights. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

83 Acts, ch 127, §34; 88 Acts, ch 1134, §92; 91 Acts, ch 260, §1238; 92 Acts, ch 1084, §1; 94 Acts, ch 1107, §81

POLICIES

476.52 Management efficiency.

It is the policy of this state that a public utility shall operate in an efficient manner. If the board determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in an inefficient manner, or is not exercising ordinary, prudent management, or in comparison with other utilities in the state the board determines that the utility is performing in a less beneficial manner than other utilities, the board may reduce the level of profit or adjust the revenue requirement for the utility to the extent the board believes appropriate to provide incentives to the utility to correct its inefficient operation. If the board determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in such an extraordinarily efficient manner that tangible financial benefits result to the ratepayer, the board may increase the level of profit or adjust the revenue requirement for the utility. In making its determination under this section, the board may also consider a public utility's pursuit of energy efficiency programs. The board shall adopt rules for determining the level of profit or the revenue requirement adjustment that would be appropriate.

The board shall also adopt rules establishing a methodology for an analysis of a utility's management efficiency.

83 Acts, ch 127, §35; 89 Acts, ch 297, §11

476.53 Electric generating and transmission facilities.

1. It is the intent of the general assembly to attract the development of electric power generating and transmission facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and provide economic benefits to the state.

2. The general assembly's intent with regard to the development of electric power generating and transmission facilities, as provided in subsection 1, shall be implemented in a manner that is cost-effective and compatible with the environmental policies of the state, as expressed in Title XI.

3. *a.* If a rate-regulated public utility files an application pursuant to section 476A.3 to construct in Iowa a baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or an alternate energy production facility as defined in section 476.42, or if a rate-regulated public utility leases or owns in Iowa, in whole or in part, a new baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or a new alternate energy production facility as de-

fined in section 476.42, the board shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the facility are included in regulated electric rates.

b. In determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms.

c. In determining the applicable ratemaking principles, the board shall make the following findings:

(1) The rate-regulated public utility has in effect a board-approved energy efficiency plan as required under section 476.6, subsection 19.

(2) The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. The rate-regulated public utility may satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility or lease is a reasonable alternative to meet its electric supply needs.

d. The applicable ratemaking principles shall be determined in a contested case proceeding, which proceeding may be combined with the proceeding for issuance of a certificate conducted pursuant to chapter 476A.

e. The order setting forth the applicable ratemaking principles shall be issued prior to the commencement of construction or lease of the facility.

f. Following issuance of the order, the rate-regulated public utility shall have the option of proceeding with construction or lease of the facility in Iowa, or withdrawing its application for a certificate under chapter 476A.

g. Notwithstanding any provision of this chapter to the contrary, the ratemaking principles established by the order issued pursuant to paragraph *"e"* shall be binding with regard to the specific electric power generating facility in any subsequent rate proceeding.

4. The utilities board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and the consumer advocate deem necessary to perform required functions as provided in this section, including but not limited to review of power purchase contracts, review of emission plans and budgets, and review of ratemaking principles proposed for construction or lease of a new generating facility. Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board and the consumer advocate to hire additional staff and contract for services under this section. The costs of the additional staff and services shall be assessed to the utilities pursuant to the procedure in section 476.10 and section 475A.6.

83 Acts, ch 127, §36, 50; 2001 Acts, 1st Ex, ch 4, §12, 36; 2002 Acts, 2nd Ex, ch 1003, §31, 35
NEW subsection 4

476.54 Delayed payment charges.

A public utility shall not apply delayed payment charges on a customer's account if the scheduled payment was made by the customer within twenty days from the date the billing was sent to the customer. Delayed payment charges on a customer's account shall not exceed one and one-half percent per month of the past-due amount.

83 Acts, ch 127, §37

476.55 Complaint of antitrust activities.

An application for new or changed rates, charges, schedules or regulations filed under this chapter, or an application for a certificate or an amendment to a certificate submitted under chapter 476A, by an electric transmission line utility or a gas pipeline utility or a subsidiary of either shall not be approved by the board if, upon complaint by an Iowa electric or gas utility, the board finds activities which create or maintain a situation inconsistent with antitrust laws and the policies which underlie them. The board may grant the rate or facility certification request once it determines that those activities which led to the antitrust complaint have been eliminated. However, this subsection does not apply to an application for new or changed rates, charges, schedules or regulations after the expiration of the ten-month limitation and applicable extensions.

83 Acts, ch 127, §38

476.56 Energy costs provided.

A gas or electric public utility shall provide, upon the request of a person who states in writing that the person is an owner of real property, or an interested prospective purchaser or renter of the property, which is or has been receiving gas or electric service from the public utility, the annual gas or electric energy costs for the property.

88 Acts, ch 1174, §3

476.57 Limitations on use of ADAD equipment — penalty.

1. *Definition.* As used in this section, *"ADAD equipment"* means automatic dialing-announcing device equipment which is a device or system of devices used, either alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers without the use of a live operator to disseminate prerecorded messages to the numbers selected or dialed.

2. *Prohibition.*

a. Except as provided in paragraph *"b"*, a person shall not use, employ, or direct another person to use, or contract for the use of ADAD equipment.

b. Except for ADAD equipment which ran-

domly or sequentially selects the telephone numbers for calling, the prohibition in paragraph *"a"* does not apply to any of the following:

(1) Calls made with ADAD equipment by a nonprofit organization or by an individual using the calls other than for commercial profit-making purposes or fund-raising, if the calls do not involve the advertisement or offering for sale, lease, or rental of goods, services, or property.

(2) Calls made with ADAD equipment relating to payment for, service of, or warranty coverage of previously ordered or purchased goods or services or to persons or organizations with a prior business relationship with the persons or organizations using the calls.

(3) Calls made with ADAD equipment relating to the collection of lawful debts.

(4) Calls made with ADAD equipment to members or employees of the organization making the calls.

(5) Calls made with ADAD equipment which use an initial prerecorded message of a duration no greater than seven seconds prior to a live operator intercept, or calls which involve an initial message from a live operator.

3. *Termination.* Calls made with ADAD equipment must terminate the connection with any call within ten seconds after the person receiving the call acts to disconnect the call.

4. *Penalty.* A violation of this section is a serious misdemeanor.

91 Acts, ch 141, §1

476.58 through 476.60 Reserved.

ENERGY EFFICIENCY PROGRAMS

476.61 Energy conservation improvements — pilot programs. Repealed by 86 Acts, ch 1134, § 1. For termination procedures see 86 Acts, ch 1134, § 2.

476.62 Energy efficient lighting required.

All public utility-owned exterior flood lighting, including but not limited to street and security lighting, shall be replaced when worn-out exclusively with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the board.

89 Acts, ch 297, §12

476.63 Energy efficiency programs.

The division shall consult with the department of natural resources in the development and implementation of public utility energy efficiency programs.

89 Acts, ch 297, §13; 90 Acts, ch 1252, §39

476.64 Reserved.

476.65 Energy audits. Repealed by 96 Acts, ch 1196, § 14.

CUSTOMER CONTRIBUTION FUND

476.66 Customer contribution fund.

1. The utilities board shall adopt rules which shall require each electric and gas public utility to establish a fund whose purposes shall include the receiving of contributions to assist the utility's low-income customers with weatherization measures to improve energy efficiency related to winter heating and summer cooling, and to supplement the energy assistance received under the federal low-income home energy assistance program for the payment of winter heating electric or gas utility bills.

2. The rules shall require each utility to periodically notify its customers of the availability and purpose of the fund and to provide them with forms on which they can authorize the utility to bill their contribution to the fund on a monthly basis.

3. The rules shall permit the fund to accept matching funds from persons or organizations who wish to provide assistance for customers of the utility.

4. The utility may be reimbursed by the fund for the administrative costs of the billings, disbursements, notices to customers, and financial recordkeeping. However, such reimbursement shall not exceed five percent of the total revenues collected.

5. The utility shall establish a board or committee to determine the appropriate distribution of the funds. The board or committee shall include representatives from community or regional organizations which are active in assisting citizens with payment of their winter heating bills.

6. The rules established by the utilities board shall require an annual report to be filed for each fund. The utilities board shall compile an annual statewide report of the fund results. The division of community action agencies of the department of human rights shall prepare an annual report of the unmet need for energy assistance and weatherization. Both reports shall be submitted to the appropriations committees of the general assembly on the first day of the following session.

7. Existing programs to receive customer contributions established by public utilities shall be construed to meet the requirements of this section. Such plans shall be subject to review by the utilities board.

88 Acts, ch 1175, §3; 92 Acts, ch 1155, §1; 2002 Acts, ch 1119, §177

Subsections 1 and 7 amended

476.67 through 476.70 Reserved.

PUBLIC UTILITY AFFILIATES

476.71 Purpose.

It is the intent of the general assembly that a public utility should not directly or indirectly include in regulated rates or charges any costs or expenses of an affiliate engaged in any business other than that of utility business unless the affiliate provides goods or services to the public utility. The costs that are included should be reasonably necessary and appropriate for utility business. It is also the intent of the general assembly that a public utility should only provide nonutility services in a manner that minimizes the possibility of cross-subsidization or unfair competitive advantage.

89 Acts, ch 103, §2

476.72 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Affiliate"* means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.

2. *"Control"* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.

3. *"Nonutility service"* includes the sale, lease, or other conveyance of commercial and residential gas or electric appliances, interior lighting systems and fixtures, or heating, ventilating, or air conditioning systems and component parts or the servicing, repair, or maintenance of such equipment.

4. *"Public utility"* includes only gas or electric rate-regulated public utilities and rate-regulated telephone utilities providing local exchange telecommunication service.

5. *"Utility business"* means the generation or transmission of electricity or furnishing of gas or furnishing electricity or furnishing rate-regulated communications services to the public for compensation.

89 Acts, ch 103, §3

476.73 Affiliate records.

1. *Access to records.* Every public utility and affiliate through the public utility shall provide the board with access to books, records, accounts, documents, and other data and information which the board finds necessary to effectively implement and effectuate the provisions of this chapter.

2. *Separate records.* The board may require affiliates of a public utility to keep separate records and the board may provide for the examination and inspection of the books, accounts, papers, and records, as may be necessary to enforce this chapter.

3. *Allocation permitted.* The board may inquire as to and prescribe, for ratemaking purposes, the allocation of capitalization, earnings, debts, and expenses related to ownership, operation, or management of affiliates.

89 Acts, ch 103, §4

476.74 Affiliate information required to be filed.

1. *Goods and services.* All contracts or arrangements providing for the furnishing or receiving of goods and services including but not limited to the furnishing or receiving of management, supervisory, construction, engineering, accounting, legal, financial, marketing, data processing, or similar services made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

2. *Sales, purchases, and leases.* All contracts or arrangements for the purchase, sale, lease, or exchange of any property, right, or thing made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

3. *Loans.* All contracts or arrangements providing for any loan of money or an extension or renewal of any loan of money or any similar transaction made or entered into on or after July 1, 1989, between a public utility and any affiliate, whether as guarantor, endorser, surety, or otherwise, shall be filed annually with the board.

4. *Verified copies required.* Every public utility shall file with the board a verified copy of the contract or arrangement referred to in this section, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements or a verified summary of the unwritten contracts or arrangements, whether written or unwritten, entered into prior to July 1, 1989, and in force and effect at that time. Any contract or agreement determined by the board to be a confidential record pursuant to section 22.7 shall be returned to the public utility filing the confidential record within sixty days after the contract or agreement is filed.

5. *Exemption.* The provisions of this section requiring filing of contracts or agreements with the board shall not apply to transactions with an affiliate where the amount of consideration involved is not in excess of fifty thousand dollars or five percent of the capital equity of the utility, whichever is smaller. However, regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within this exemption. In any proceeding involving the rates, charges or practices of the public utility, the board may exclude from the accounts of the public utility any unreasonable payment or compensation made pursuant to any contract or arrangement which is

not required to be filed under this subsection.

6. *Continuing jurisdiction.* The board shall have the same jurisdiction over modifications or amendments of contracts or arrangements in this section as it has over the original contracts or arrangements. Any modification or amendment of contracts or arrangements shall also be filed annually with the board.

7. *Sanction.* For ratemaking purposes, the board may exclude the payment or compensation to an affiliate or adjust the revenue received from an affiliate associated with any contract or arrangement required to be filed with the board if the contract or arrangement is not so filed.

8. *Alternative information.* The board shall consult with other state and federal regulatory agencies for the purpose of eliminating duplicate or conflicting filing requirements and may adopt rules which provide that comparable information required to be filed with other state or federal regulatory agencies may be accepted by the board in lieu of information required by this section.

9. *Reasonableness required.* In any proceeding, whether upon the board's own motion or upon application or complaint involving the rates, charges, or practices of any public utility, the board, for ratemaking purposes may exclude from the accounts of the public utility or adjust any payment or compensation related to any transaction with an affiliate for any services rendered or for any property or service furnished or received, as described in this section, under contracts or arrangements with an affiliate unless and upon inquiry the public utility shall establish the reasonableness of the payment or compensation.

10. *Exemption by rule or waiver.* The board may adopt rules which exempt any public utility or class of public utility or class of contracts or arrangements from this section or waive the requirements of this section if the board finds that the exemption or waiver is in the public interest.

89 Acts, ch 103, §5

476.75 Audits required.

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the transactions between a public utility and its affiliates. An affiliate transaction audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, §6

476.76 Reorganization defined.

For purposes of this division unless the context otherwise requires, *"reorganization"* means either of the following:

1. The acquisition, sale, lease, or any other disposition, directly or indirectly, including by merger or consolidation, of the whole or any substantial part of a public utility's assets.

2. The purchase or other acquisition or sale or other disposition of the controlling capital stock of any public utility, either directly or indirectly.

89 Acts, ch 103, §7

476.77 Time and standards for review.

1. A reorganization shall not take place if the board disapproves. Prior to reorganization, the applicant shall file with the board a proposal for reorganization with supporting testimony and evidence to establish that the reorganization is not contrary to the interests of the public utility's ratepayers and the public interest.

2. A proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within ninety days after its filing. The board, for good cause shown, may extend the deadline for acting on an application for an additional period not to exceed ninety days. However, the board shall not disapprove a proposal for reorganization without providing for notice and opportunity for hearing. The notice of hearing shall be provided no later than fifty days after the proposal for reorganization has been filed.

3. In its review of a proposal for reorganization, the board may consider all of the following:

a. Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates.

b. Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is impaired.

c. Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired.

d. Whether ratepayers are detrimentally affected.

e. Whether the public interest is detrimentally affected.

4. The board may adopt rules which exempt a public utility or class of public utility or class of reorganization from this section if the board finds that with respect to the public utility or class of public utility or class of reorganization review is not necessary in the public interest. The board may adopt rules necessary to protect the interest of the customers of the exempt public utility. These rules may include, but are not limited to, notification of a proposed sale or transfer of assets or stock. The board may waive the requirements of this section, if the board finds that board review is not necessary in the public interest.

89 Acts, ch 103, §8; 91 Acts, ch 68, §1; 98 Acts, ch 1097, §1, 2

476.78 Cross-subsidization prohibited.

A rate-regulated gas or electric public utility shall not directly or indirectly include any costs or expenses attributable to providing nonutility service in regulated rates or charges. Except for contracts existing as of July 1, 1996, a rate-regulated gas or electric public utility or its affiliates shall not use vehicles, service tools and instruments, or employees, the costs, salaries, or benefits of which are recoverable in the regulated rates for electric service or gas service to install, service, or repair residential or commercial gas or electric heating, ventilating, or air conditioning systems, or interior lighting systems and fixtures; or to sell at retail heating, ventilating, air conditioning, or interior lighting equipment. For the purpose of this section, *"commercial"* means a place of business primarily used for the storage or sale, at wholesale or retail, of goods, wares, services, or merchandise. Nothing in this section shall be construed to prohibit a rate-regulated gas or electric public utility from using its utility vehicles, service tools and instruments, and employees to market systems, services, and equipment, to light pilots, or to eliminate a customer emergency or threat to public safety.

89 Acts, ch 103, §9; 96 Acts, ch 1196, §12

476.79 Provision of nonutility service.

1. A rate-regulated gas or electric public utility providing any nonutility service to its customers shall keep and render to the board separate records of the nonutility service. The board may provide for the examination and inspection of the books, accounts, papers, and records of the nonutility service, as may be necessary, to enforce any provisions of this chapter.

2. The board shall adopt rules which specify the manner and form of the accounts relating to providing nonutility services which the rate-regulated gas or electric utility shall maintain.

89 Acts, ch 103, §10

476.80 Additional requirements.

A rate-regulated gas or electric public utility which engages in a systematic marketing effort as defined by the board, other than on an incidental or casual basis, to promote the availability of nonutility service from the public utility shall make available at reasonable compensation on a nondiscriminatory basis to all persons engaged primarily in providing the same competitive nonutility services in that area all of the following services to the same extent utilized by the public utility in connection with its nonutility services:

1. Access to and use of the public utility's customer lists.

2. Access to and use of the public utility's billing and collection system.

3. Access to and use of the public utility's mailing system.

89 Acts, ch 103, §11

476.81 Audit required.

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the nonutility services provided by a rate-regulated gas or electric public utility subject to the provisions of section 476.80. A nonutility service audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, §12

476.82 Exemption — energy efficiency.

Notwithstanding any language to the contrary, nothing in this division shall prohibit a public utility from participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute. A public utility participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute shall not be subject to the provisions of sections 476.80 and 476.81 for those energy efficiency projects or programs.

89 Acts, ch 103, §13

476.83 Complaints.

Any person may file a written complaint with the board requesting that the board determine compliance by a rate-regulated gas or electric public utility with the provisions of section 476.78, 476.79, or 476.80, or any validly adopted rules to implement these sections. Upon the filing of a complaint, the board may promptly initiate a formal complaint proceeding and give notice of the proceeding and the opportunity for hearing. The formal complaint proceeding may be initiated at any time by the board on its own motion. The board shall render a decision in the proceeding within ninety days after the date the written complaint was filed, unless additional time is requested by the complainant.

89 Acts, ch 103, §14; 96 Acts, ch 1196, §13

476.84 and 476.85 Reserved.

COMPETITIVE NATURAL GAS PROVIDERS

476.86 Definitions.

As used in this section and section 476.87, unless the context otherwise requires:

1. *"Aggregator"* means a person who combines

retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services.

2. *"Competitive natural gas provider"* means a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa. *"Competitive natural gas provider"* includes an affiliate of an Iowa gas utility.

"Competitive natural gas provider" does not include the following:

a. A public utility which is subject to rate regulation under this chapter.

b. A municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in section 437A.3, subsection 21, paragraph *"a"*, subparagraph (1), in which the municipally owned utility is located.

99 Acts, ch 20, §2, 6; 99 Acts, ch 208, §57, 74

476.87 Certification of competitive natural gas providers.

1. The board shall certify all competitive natural gas providers and aggregators providing natural gas services in this state. In an application for certification, a competitive natural gas provider or aggregator must reasonably demonstrate managerial, technical, and financial capability sufficient to obtain and deliver the services such provider or aggregator proposes to offer. The board may establish reasonable conditions or restrictions on the certificate at the time of issuance. The board shall adopt rules to establish specific criteria for certification. The board shall make a determination on an application for certification within ninety days of its submission, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days.

2. The board may resolve disputes involving the provision of natural gas services by a competitive natural gas provider or aggregator.

3. The board shall allocate the costs and expenses reasonably attributable to certification and dispute resolution in this section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and the expenses of certification and dispute resolution shall be remitted to the treasurer of state for deposit in the general fund of the state as provided in section 476.10.

99 Acts, ch 20, §3, 6

476.88 through 476.90 Reserved.

ALTERNATIVE OPERATOR SERVICES

476.91 Alternative operator services.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Alternative operator services company" means a nongovernmental company which receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. The definition is further limited to include only companies which provide operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, and does not include services provided under contract to rate-regulated local exchange utilities.

b. "Contracting entity" means an entity providing telephones other than ordinary residence or business telephones for use by end-user customers which has contracted with an alternative operator services company to provide telecommunications services to those telephones.

c. "End-user customer" means a person who places a local or toll call.

d. "Other than ordinary residence or business telephones" means telephones other than the residence or business telephones of the customary users of the telephones, including but not limited to pay telephones and telephones in motel, hotel, hospital, and college dormitory rooms.

2. *Jurisdiction.* Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, all intrastate telecommunications services provided by alternative operator services companies to end-user customers, using other than ordinary residence or business telephones, are subject to the jurisdiction of the board and shall be rendered pursuant to tariffs approved by the board. Alternative operator services companies shall be subject to all requirements and sanctions provided in this chapter. Contracting entities shall be subject to the requirements of any board regulations concerning telecommunications services provided by alternative operator services companies.

3. *Requirements.* The board shall adopt and enforce requirements for the provision of services by alternative operator services companies and contracting entities.

4. *Billing by local exchange utilities.* Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, a regulated local exchange utility shall not perform billing and collection functions relating to regulated telecommunications services provided by an alternative operator services company, unless the alternative operator services company has filed a

statement with the local exchange utility signed by a corporate officer, or other authorized person having personal knowledge, that all regulated telecommunications services to be billed shall be rendered pursuant to tariffs approved by the board.

89 Acts, ch 95, §1

476.92 through 476.94 Reserved.

PRICE REGULATION FOR TELECOMMUNICATIONS SERVICES PROVIDERS

476.95 Findings — statement of policy.

The general assembly finds all of the following:

1. Communications services should be available throughout the state at just, reasonable, and affordable rates from a variety of providers.

2. In rendering decisions with respect to regulation of telecommunications companies, the board shall consider the effects of its decisions on competition in telecommunications markets and, to the extent reasonable and lawful, shall act to further the development of competition in those markets.

3. In order to encourage competition for all telecommunications services, the board should address issues relating to the movement of prices toward cost and the removal of subsidies in the existing price structure of the incumbent local exchange carrier.

4. Regulatory flexibility is appropriate when competition provides customers with competitive choices in the variety, quality, and pricing of communications services, and when consistent with consumer protection and other relevant public interests.

5. The board should respond with speed and flexibility to changes in the communications industry.

6. Economic development can be fostered by the existence of advanced communications networks.

95 Acts, ch 199, §6

476.96 Definitions.

As used in section 476.95, this section, and sections 476.97 through 476.102, unless the context otherwise requires:

1. *"Basic communications service"* includes at a minimum, basic local telephone service, switched access, 911 and E-911 services, and dual party relay service. The board is authorized to classify by rule at any time, any other two-way switched communications services as basic communications services consistent with community expectations and the public interest.

2. *"Basic local telephone service"* means the provision of dial tone access and usage, for the transmission of two-way switched communications within a local exchange area, including, but not limited to, the following:

a. Residence service and business services, including flat rate or local measured service, private branch exchange trunks, trunk type hunting services, direct inward dialing, and the network access portion of central office switched exchange service.

b. Extended area service.

c. Touch tone service when provided separately.

d. Call tracing.

e. Calling number blocking on either a per call or a per line basis.

f. Local exchange white pages directories.

g. Installation and repair of local network access.

h. Local operator services, excluding directory assistance.

i. Toll service blocking and 1-900 and 1-976 access blocking.

3. *"Competitive local exchange service provider"* means any person, including a municipal utility, that provides local exchange services, other than a local exchange carrier or a nonrate-regulated wireline provider of local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

4. *"Interim number portability"* means one or more mechanisms by which a local exchange customer at a particular location may change the customer's local exchange services provider without any change in the local exchange customer's telephone number, while experiencing as little loss of functionality as is feasible using available technology.

5. *"Local exchange carrier"* means any person that was the incumbent and historical rate-regulated wireline provider of local exchange services or any successor to such person that provides local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

6. *"Nonbasic communications services"* means all communications services subject to the board's jurisdiction which are not deemed either by statute or by rule to be basic communications services, including any service offered by the local exchange carrier for the first time after July 1, 1995. A service is not considered new if it constitutes the bundling, unbundling, or repricing of an already existing service. Consistent with community expectations and the public interest, the board may reclassify by rule as nonbasic those two-way switched communications services previously classified by rule as basic.

7. *"Provider number portability"* means the ca-

pability of a local exchange customer to change the customer's local exchange services provider at the customer's same location without any change in the local exchange customer's telephone number, while preserving the full range of functionality that the customer currently experiences. *"Provider number portability"* includes the equal availability of information concerning the local exchange provider serving the number to all carriers, and the ability to deliver traffic directly to that provider without having first to route traffic to the local exchange carrier or otherwise use the services, facilities, or capabilities of the local exchange carrier to complete the call, and without the dialing of additional digits or access codes.

95 Acts, ch 199, §7; 97 Acts, ch 81, §4, 6

476.97 Price regulation.

1. Notwithstanding contrary provisions of this chapter relating to rate regulation, the board may approve a plan for price regulation submitted by a rate-regulated local exchange carrier. The plan for price regulation is not effective until the approval by the board of tariffs implementing the unbundling of essential facilities pursuant to section 476.101, subsection 4, except for a local exchange carrier with less than seventy-five thousand access lines whose plan for price regulation will be effective concurrent with the approval of its plan. The board may approve a plan for price regulation prior to the adoption of rules related to the unbundling of essential facilities or concurrent with a rate proceeding under section 476.3, 476.6, or 476.7. During the term of the plan, the board shall regulate the prices of the local exchange carrier's basic and nonbasic communications services pursuant to the requirements of the price regulation plan approved by the board. The local exchange carrier shall not be subject to rate of return regulation during the term of the plan.

2. The board, after notice and opportunity for hearing, may approve, modify, or reject the plan. The board shall approve, modify, or reject the plan by no later than ninety days after the date the plan is filed. The local exchange carrier shall have ten days to accept or reject any board modifications to its plan. If the local exchange carrier rejects a modification to its plan, the board shall reject the plan without prejudice to the local exchange carrier to submit another plan.

3. A price regulation plan, at a minimum, shall include provisions, consistent with the provisions of this section and any rules adopted by the board, for the following:

a. (1) Establishing and changing prices, terms, and conditions for basic communications services. The initial plan for price regulation must include a proposal, which the board shall approve, for reducing the local exchange carrier's average intrastate access service rates to the local exchange carrier's average interstate access service rates in effect as of the last day of the calendar year immediately preceding the date of filing of the plan, as follows:

(a) A local exchange carrier with five hundred thousand or more access lines in this state shall reduce its average intrastate access service rates by at least one hundred percent of the difference between average intrastate access service rates and average interstate access service rates as of the date that the plan becomes effective.

(b) A local exchange carrier with fewer than five hundred thousand but seventy-five thousand or more access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates in increments of at least twenty-five percent, with the initial reduction to take effect on approval of the plan and equal annual reductions on each anniversary of the approval during the first three years that its plan is in effect.

(c) A local exchange carrier with fewer than seventy-five thousand access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates with equal annual reductions during a period beginning no more than two years and ending no more than five years from the plan's inception.

(2) The board, during the term of the plan for a local exchange carrier with five hundred thousand or more access lines in this state, may consider further reductions toward economic costs in the local exchange carrier's average intrastate access service rates. The board may consider offsetting such reductions by an explicit subsidy replacement to the extent that such offsets are competitively neutral. In determining economic costs of access service the board shall consider all relevant costs of the service including shared and common costs of the local exchange carrier.

(3) This section shall not be construed to do either of the following:

(a) Prohibit an additional decrease in a carrier's average intrastate access service rate during the term of the plan.

(b) Permit any increase in a carrier's average intrastate access service rates during the term of the plan.

(4) The plan shall also provide that the initial prices for basic communications services shall be three percent less than the rates approved and in effect at the time the local exchange carrier files its plan. A local exchange carrier which elects to reduce its rates by three percent shall not, at a later time, increase its rates for basic communications services as a result of the carrier's compliance with the board's rules relating to unbundling. In lieu of the three percent reduction, and prior to the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph *"a"*, subparagraph (1), the local exchange carrier may request and the board may establish a regulated revenue requirement in a rate proceeding

under section 476.3 or 476.6 commenced after July 1, 1995. After the determination of the local exchange carrier's regulated revenue requirement pursuant to the rate proceeding, the local exchange carrier shall not immediately implement rates designed to recover that regulated revenue requirement. Following the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph *"a"*, subparagraph (1), the local exchange carrier shall commence a tariff proceeding for the approval of tariffs implementing such unbundling. The board has six months to complete this tariff proceeding and determine the local exchange carrier's final unbundled rates. The local exchange carrier shall carry forward the regulated revenue requirement determined by the board pursuant to the rate proceeding and design rates that comply with the board's rules relating to unbundling that recover the regulated revenue requirement, and that implement the board's approved rate design established in the tariff proceeding.

In lieu of taking the three percent reduction, a local exchange carrier that submits a plan for price regulation after the board adopts rules relating to unbundling may file a rate proceeding under section 476.3 or 476.6 and the board may approve rates designed to comply with those rules which allow the carrier to recover the established regulated revenue requirement and that implement the board's approved rate design established in the tariff proceeding.

(5) The plan shall provide for both increases and decreases in the prices for basic communications services reflecting annual changes in inflation and productivity. Prior to January 1, 2000, the board shall use the gross domestic product price index, as published by the federal government, for an inflation measure, and two and sixtenths percentage points for a productivity measure. On or after January 1, 2000, the board by rule may adopt current measures of inflation and productivity.

(6) The plan may provide that price increases for basic communications services which are permitted under this section may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this section shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier.

b. Establishing and changing prices, terms, and conditions for nonbasic communications services.

c. Reporting new service offerings to the board.

d. Reflecting in rates any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier.

e. Providing notice to customers, the board, and the consumer advocate of changes in prices, terms, or conditions for basic and nonbasic communications services.

4. The board shall consider the extent to which a proposed plan complies with the requirements of subsection 3 and achieves the following:

a. Just, nondiscriminatory, and reasonable rates.

b. High quality, universally available communications services.

c. Encouragement of investment in communications infrastructure, efficiency improvements, and technological innovation.

d. The introduction of new communications products and services from a variety of sources.

e. Regulatory efficiency including reduction of regulatory costs and delays. A plan shall not provide for waiver of, release from, or delay in implementing the provisions of this section, section 476.101 or 476.102 or any rules adopted by the board pursuant to those sections.

5. Notwithstanding an approved plan for price regulation, the board shall continue to have regulatory authority over the following:

a. The level, extent, and timing of the unbundling of essential facilities offered by a local exchange carrier.

b. Ensuring against cross-subsidization between nonbasic communications services and basic communications services.

6. Any person, including the consumer advocate, a body politic, or the board on its own motion, may file a written complaint pursuant to section 476.3, subsection 1, regarding a local exchange carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan.

7. The consumer advocate may represent consumers before the board regarding any rule, order, or proceeding pertaining to price regulation. The consumer advocate may act as attorney for and represent consumers generally before any state or federal court concerning a board rule, order, or proceeding pertaining to price regulation.

8. In implementing price regulation, the board shall consider competitively neutral methods to assist lower-income Iowans to secure and retain telephone services.

9. The board shall determine the duration of any plan. The board shall review a local exchange carrier's operation under its plan, with notice and an opportunity for hearing, within four years of the initiation of the plan and prior to the termination of the plan. The local exchange carrier, consumer advocate, or any person may propose, and

the board may approve, any reasonable modifications to a local exchange carrier's plan as a result of the review, except that such modifications shall not require a reduction in the rates for any basic communications service.

10. The board, in determining whether to file a written complaint pursuant to subsection 6 or prior to reviewing a local exchange carrier's operation pursuant to subsection 9, may request that such carrier provide any information which the board deems necessary to make such determination or conduct such review. The carrier shall provide the requested information upon receipt of the request from the board.

11. *a.* Notwithstanding subsections 1 through 10, a local exchange carrier with fewer than five hundred thousand access lines in this state shall have the option to be regulated pursuant to subsections 1 through 10 or pursuant to this subsection. A local exchange carrier which elects to become price regulated under this subsection shall also be subject to subsections 5 through 8 and subsection 10 in the same manner as a local exchange carrier which operates under an approved plan of price regulation submitted pursuant to subsection 1.

b. A local exchange carrier which elects to become price regulated under this subsection shall give written notice to the board of such election not less than thirty days prior to the date such regulation is to commence.

c. Upon election of a local exchange carrier to become price-regulated under this subsection, the carrier shall reduce its rates for basic local telephone service an average of three percent. In lieu of the three percent reduction, the local exchange carrier may establish its rates for basic local telephone service in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995.

d. Initial prices for basic communications services, other than basic local telephone service, shall be set at the rates in effect as of the first of July prior to the date such regulation is to commence.

e. (1) A price-regulated local exchange carrier shall not increase its rates for basic communications services for a period of twelve months after electing to become price regulated. To the extent necessary, rates for basic services may be increased to carry out the purpose of any rules that may be adopted by the board relating to the terms and conditions of unbundled services and interconnection. A price-regulated local exchange carrier may increase its rates for basic communications services following the initial twelve-month period to the extent that the change in its aggregate revenue weighted prices does not exceed the most recent annual change in the gross domestic product price index, as published by the federal government. If application of that formula achieves a negative result, prices shall be reduced so that the cumulative price change for basic services, including prior price reductions in these services, achieves the negative result. The board by rule may adopt different measures of inflation if they are found to be more reflective of the individual price-regulated carriers.

(2) Price increases for basic communications services which are permitted under this subsection may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this subsection shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier. A rate change pursuant to this subsection may take effect thirty days after the notification of the board and consumers.

(3) A price-regulated local exchange carrier shall not increase its aggregate revenue weighted prices for nonbasic communications services more than six percent in any twelve-month period.

(4) A price-regulated local exchange carrier may reduce the price for any basic communications service, to an amount not less than the total service long-run incremental cost for such service on one day's notice filed with the board. For purposes of this subsection, *"total service long-run incremental costs"* means the difference between the company's total cost and the total cost of the company less the applicable service, feature, or function.

(5) A price-regulated local exchange carrier may offer new service alternatives for any basic communications services on thirty days prior notice to the board, provided that the preexisting basic communications service rate structure continues to be offered to customers. New telecommunications services shall be considered nonbasic communications services as defined in section 476.96, subsection 6.

(6) A price-regulated local exchange carrier must reduce the average intrastate access service rates to the carrier's average interstate access service rates. Such carrier shall reduce the average intrastate access service rates by at least twenty-five percent of the difference of such rates within ninety days of the election to be price-regulated and twenty-five percent each of the next three years.

f. A local exchange carrier shall notify customers of a rate change under this subsection at least thirty days prior to the effective date of the rate change.

g. A local exchange carrier which elects to become price regulated under this subsection shall

also be subject to the following:

(1) The local exchange carrier shall not be subject to rate-of-return regulation while operating under price regulation.

(2) All regulated services shall be provided pursuant to board-approved tariffs.

(3) All new regulated service offerings shall be reported to the board.

(4) Rates may be adjusted by the board to reflect any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier, including, but not limited to, the effects of local competition. The board shall have one hundred eighty days to consider rate changes proposed under this subparagraph, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days.

h. The board may review a local exchange carrier's operation under this subsection, with notice and an opportunity for hearing, after four years of the carrier's election to be price-regulated. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to the price regulation requirements in this subsection as a result of the specific carrier review, with the following limitations:

(1) Such modifications shall not require a reduction in the rates for any basic communications service or a return to rate-base, rate-of-return regulation.

(2) Such proposals for modifications under this paragraph *"h"* are limited to no more than one every three years.

The board shall approve, or approve subject to modification, a proposal for modification within one hundred eighty days of filing, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days. Reasonable modifications may include increases without offsetting decreases in any rate for basic and nonbasic communications service of the carrier. In reviewing the carrier's proposal, the board shall consider, but not be limited to, potential rate consolidations, the impact of competition or other external factors since election of price regulation, the impact of the proposal on the carrier's ability to attract capital, and the impact of the proposal on the ability of the carrier to deploy advanced telecommunications services.

i. This subsection shall not be construed to prohibit an additional decrease or to permit any increase in a local exchange carrier's average intrastate access service rates during the term of the local exchange carrier's operation under price regulation.

j. Upon the request of a local exchange carrier, the board shall, when required by this subsection, grant the carrier temporary authority to place in effect seventy-five percent, or such lesser amount as the carrier may request, of the requested increases in rates, charges, schedules, or regulations by filing with the board a bond conditioned upon the refund in a manner to be prescribed by the board of any amounts collected from any customer class in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. The board shall approve a request for temporary authority within thirty days after the date of filing of the request. The decision shall be effective immediately.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is one percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

k. The board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and consumer advocate deem necessary to review a local exchange carrier's operations, proposal for modifications, rate change proposal, or proposed changes in aggregate revenue weighted prices pursuant to this subsection. Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this subsection. The costs of the additional staff and services shall be assessed to the local exchange carrier pursuant to the procedures in sections 475A.6 and 476.10.

95 Acts, ch 199, §8; 98 Acts, ch 1151, §1 – 3; 2002 Acts, ch 1060, §1 – 5; 2002 Acts, ch 1175, §36

For provision in effect from April 4, 2002, to July 1, 2002, relating to the board's consideration of rate changes due to exogenous factors beyond control of the local exchange carrier, see 2002 Acts, ch 1060, §2, 5

Subsection 11, paragraph e, subparagraph (1) stricken and rewritten
Subsection 11, paragraph g, subparagraph (4) stricken and rewritten
Subsection 11, paragraph h amended
Subsection 11, NEW paragraphs j and k

476.98 Earnings calculation and report.

The consumer advocate shall calculate an estimate of the return of a local exchange carrier operating under price regulation pursuant to section 476.97 as if the carrier were subject to rate-of-return regulation. The calculation shall be based upon the annual report of such carrier and other information provided to the consumer advocate by the carrier. The calculation shall be made every two years beginning following the end of the second calendar year after the year in which the plan becomes effective. Notwithstanding section

476.1D, subsection 4, the consumer advocate shall make two calculations pursuant to this section with one calculation taking into account the investment, revenues, and expenses associated with the sale of classified directory advertising, and one calculation not taking into account such investment, revenues, and expenses. The consumer advocate shall provide a written report to the general assembly including the results of this calculation on or before July 1 of the year immediately following the two-year period for which a calculation is made. If, after a review of the information used to make the calculation required in this section, the consumer advocate determines that the public interest would be better served by a different form of rate regulation, the consumer advocate shall provide a recommendation that the general assembly direct the utilities board to implement a different form of rate regulation.

95 Acts, ch 199, §9; 98 Acts, ch 1151, §4

476.99 Additional price regulation plan provisions.

In addition to the provisions required in section 476.97, a local exchange carrier, prior to operating under price regulation, shall make provision for the following:

1. Reflecting in rates any changes due to changes in the average cost of the local exchange carrier resulting from the sale of an exchange in this state.

2. Encouraging modernization of the local exchange carrier's telecommunications infrastructure. This provision shall include a requirement that the local exchange carrier develop and file with the board an increased modernization plan.

95 Acts, ch 199, §10

LOCAL EXCHANGE COMPETITION

476.100 Prohibited acts.

A local exchange carrier shall not do any of the following:

1. Discriminate against another provider of communications services by refusing or delaying access to the local exchange carrier's services.

2. Discriminate against another provider of communications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the local exchange carrier's network is an essential facility if all of the following apply:

a. Competitors cannot practically or economically duplicate the facility, feature, function, or capability, or obtain the facility, feature, function, or capability from another source.

b. The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.

c. Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.

d. The facility, feature, function, or capability will enable competition.

3. Degrade the quality of access or service provided to another provider of communications services.

4. Fail to disclose in a timely manner, upon reasonable request and pursuant to a protective agreement concerning proprietary information, all information reasonably necessary for the design of network interface equipment, network interface services, or software that will meet the specifications of the local exchange carrier's local exchange network.

5. Unreasonably refuse or delay interconnections or provide inferior interconnections to another provider.

6. Use basic exchange service rates, directly or indirectly, to subsidize or offset the costs of other products or services offered by the local exchange carrier.

7. Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service.

95 Acts, ch 199, §11

476.101 Local exchange competition.

1. A certificate of public convenience and necessity to provide local telephone service shall not be interpreted as conveying a monopoly, exclusive privilege, or franchise. A competitive local exchange service provider shall not be subject to the requirements of this chapter, except that a competitive local exchange service provider shall obtain a certificate of public convenience and necessity pursuant to section 476.29, file tariffs, notify affected customers prior to any rate increase, file reports, information, and pay assessments pursuant to section 476.2, subsection 4, and sections 476.9, 476.10, 476.16, 476.102, and 477C.7, and shall be subject to the board's authority with respect to adequacy of service, interconnection, discontinuation of service, civil penalties, and complaints. If, after notice and opportunity for hearing, the board determines that a competitive local exchange service provider possesses market power in its local exchange market or markets, the board may apply such other provisions of this chapter to a competitive local exchange service provider as it deems appropriate.

2. The duty of a local exchange carrier includes the duty, in accordance with requirements prescribed by the board pursuant to subsection 3 and other laws, to provide equal access to, and interconnection with, its facilities so that its network is fully interoperable with the telecommunications services and information services of other providers, and to offer unbundled essential facilities.

3. A local exchange carrier shall provide rea-

sonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier to which reasonable access is necessary to a competitive local exchange service provider in order for a competitive local exchange service provider to provide service and is feasible for the local exchange carrier.

Upon application of a local exchange carrier or a competitive local exchange service provider, the board shall determine any matters concerning reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier upon which agreement cannot be reached, including but not limited to, matters regarding valuation, space, and capacity restraints, and compensation for access.

4. *a.* Prior to September 1, 1995, the board shall initiate a rulemaking proceeding to adopt rules that satisfy the requirements enumerated in subparagraphs (1) through (4). The rulemaking proceeding shall be completed as promptly as possible. The board, upon petition or on its own motion, may conduct a separate evidentiary hearing on the same or related subjects. The evidence from a hearing may be considered by the board during the rulemaking proceeding, provided that the board announces its intention to do so prior to the oral presentation in the rulemaking proceeding. The rules shall do the following:

(1) Require a local exchange carrier to provide unbundled essential facilities of its network, and allow reasonable and nondiscriminatory equal access to, use of, and interconnection with, those unbundled essential facilities on reasonable, cost-based, and tariffed terms and conditions. The board's rules must require a local exchange carrier, including those operating under a plan of price regulation, to file tariffs implementing the unbundled essential facilities within ninety days of the board's final order adopting such rules, except for local exchange carriers with less than seventy-five thousand access lines which must file such tariffs within two years of July 1, 1995. Such access, use, and interconnection shall be on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates for the provision of local exchange, access, and toll services. This subsection shall not be construed to establish a presumption as to the level of interconnection charges, if any, to be determined by the board pursuant to subparagraph (2).

(2) Establish reciprocal cost-based compensation for termination of telecommunications services between local exchange carriers and competitive local exchange service providers.

(3) Require local exchange carriers to make interim number portability available on request of a competitive local exchange service provider, and to implement provider number portability as soon as the availability of necessary technology makes provider number portability economically and technically feasible, as determined by the board. The rules shall also devise a reasonable and nondiscriminatory mechanism for the recovery of all recurring and nonrecurring costs of interim and provider number portability.

(4) Develop the cost methodology appropriate for a competitive telecommunications environment.

b. The rules adopted in paragraph *"a"*, subparagraphs (2) and (3), do not apply to local exchange carriers with less than seventy-five thousand access lines until a competitive local exchange service provider has filed for a certificate to provide basic communications services in an exchange or exchanges of the local exchange carrier, or the board determines that competitive necessity requires the implementation of the rules in paragraph *"a"*, subparagraphs (2) and (3), by the local exchange carrier.

5. Local exchange carriers shall file tariffs or price lists in accordance with board rules with respect to the services, features, functions, and capabilities offered to comply with board rules on unbundling of essential facilities and interconnection. Local exchange carriers shall submit with the tariffs or price lists for basic communications services and toll services supporting information that is sufficient for the board to determine the relationship between the proposed charges and the costs of providing such services, features, functions, or capabilities, including the imputed cost of intrastate access service rates in toll service rates pursuant to existing board orders. The board shall review the tariffs or price lists to ensure that the charges are cost-based and that the terms and conditions contained in the tariffs or price lists unbundle any essential facilities in accordance with the board's rules and any other applicable laws.

6. This section shall not be construed to prohibit the board from enforcing rules or orders entered in contested cases pending on July 1, 1995, to the extent that such rules and orders are consistent with the provisions of this section.

7. Except as provided under section 476.29, subsection 2, and this section, the board shall not impose or allow a local exchange carrier to impose restrictions on the resale of local exchange services, functions, or capabilities. The board may prohibit residential service from being resold as a different class of service.

8. Any person may file a written complaint with the board requesting the board to determine compliance by a local exchange carrier with the provisions of sections 476.96 through 476.100, 476.102, and this section, or any board rules implementing those sections. Upon the filing of such complaint, the board may promptly initiate a formal complaint proceeding and give notice of the proceeding and the opportunity for hearing. The formal complaint proceeding may be initiated at any time by the board on its own motion. The board shall render a decision in the proceeding within ninety days after the date the written com-

plaint was filed.

9. A telecommunications carrier, as defined in the federal Telecommunications Act of 1996, shall not do any of the following:

a. Use customer information in a manner which is not in compliance with 47 U.S.C. § 222.

b. Disparage the services offered by another telecommunications carrier through false or misleading statements.

c. Take any action that disadvantages a customer who has chosen to receive services from another telecommunications carrier.

10. In a proceeding associated with the granting of a certificate under section 476.29, approving maps and tariffs for competitive local exchange providers provided for in this section, or in resolving a complaint filed pursuant to subsection 8 and proceedings under 47 U.S.C. § 251-254, the board shall allocate the costs and expenses of the proceedings to persons identified as parties in the proceeding who are engaged in or who seek to engage in providing telecommunications services or other persons identified as participants in the proceeding. The funds received for the costs and the expenses shall be remitted to the treasurer of state for deposit in the general fund of the state as provided in section 476.10.

95 Acts, ch 199, §12; 98 Acts, ch 1151, §5; 99 Acts, ch 20, §4, 6

UNIVERSAL SERVICE

476.102 Universal service.

1. The board shall initiate a proceeding to preserve universal service such that it shall be maintained in a competitively neutral fashion. As a part of this proceeding, the board shall determine the difference between the cost of providing universal service and the prices determined to be appropriate for such service.

2. The board shall base policies for the preservation of universal service on the following principles:

a. A plan adopted by the board should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

b. The plan should define the nature and extent of the service encompassed within any entities' universal service obligations.

c. The plan should establish specific and predictable mechanisms to provide competitively neutral support for universal service. Those mechanisms shall include a nondiscriminatory mechanism by which funds to support universal service shall be collected, and a mechanism for disbursement of support funds to eligible subscribers, either directly to those subscribers, or to the subscriber's provider of local exchange services chosen by the subscriber.

d. The plan should be based on other principles as the board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of sections 476.95 through 476.101 and this section.

95 Acts, ch 199, §13

CHANGE IN SERVICE

476.103 Unauthorized change in service — civil penalty.

1. Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.

2. As used in this section, unless the context otherwise requires:

a. *"Change in service"* means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. *"Consumer"* means a person other than a service provider who uses a telecommunications service.

c. *"Executing service provider"* means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider.

d. *"Service provider"* means a person providing a telecommunications service.

e. *"Submitting service provider"* means a service provider who requests another service provider to execute a change in service.

f. *"Telecommunications service"* means a local exchange or long distance telephone service other than commercial mobile radio service.

3. The board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service. The rules, at a minimum, shall provide for all of the following:

a. (1) A submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service.

(2) Verification appropriate under the circumstances for all other changes in service.

(3) The verification may be in written, oral, or electronic form and may be performed by a qualified third party.

(4) The reasonable time period during which the verification is to be retained, as determined by the board.

b. A customer shall be notified of any change in service.

c. Appropriate compensation for a customer affected by an unauthorized change in service.

d. Board determination of potential liability, including assessment of damages, for unauthorized changes in service among the customer, previous service provider, executing service provider, and submitting service provider.

e. A provision encouraging service providers to resolve customer complaints without involvement of the board.

f. The prompt reversal of unauthorized changes in service.

g. Procedures for a customer, service provider, or the consumer advocate to submit to the board complaints of unauthorized changes in service.

4. *a.* In addition to any applicable civil penalty set out in section 476.51, a service provider who violates a provision of this section, a rule adopted pursuant to this section, or an order lawfully issued by the board pursuant to this section, is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

b. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. A civil penalty collected pursuant to this subsection shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for consumer education programs administered by the board.

d. A penalty paid by a rate-of-return regulated utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

e. The board shall not commence an administrative proceeding to impose a civil penalty under this section for acts subject to a civil enforcement action pending in court under section 714D.7.

5. If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to this section, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph *"a"* or *"b"* to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

6. The board has primary jurisdiction over a complaint pursuant to this section initiated by a service provider.

7. Subsection 6 does not preclude proceedings before the federal communications commission to enforce applicable federal law. However, a service provider or a consumer, for the same alleged acts, shall not pursue a complaint both before the federal communications commission and pursuant to this section.

8. The board shall adopt competitively neutral rules establishing procedures for the solicitation, imposition, and lifting of preferred carrier freezes. A valid preferred carrier freeze prevents a change in service unless the subscriber gives the service provider from whom the freeze was requested the subscriber's express consent.

99 Acts, ch 16, §1

CHAPTER 476A

ELECTRIC POWER GENERATION AND TRANSMISSION

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SUBCHAPTER I

ELECTRIC POWER GENERATING FACILITIES

476A.1 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Agency"* means an agency as defined in section 17A.2, subsection 1.

2. *"Board"* means the utilities board within the utilities division of the department of commerce.

3. *"Certificate"* means a certificate of public convenience, use and necessity issued pursuant to section 476A.6.

4. *"Commence to construct"* means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies or acquisition of a site for a facility.

5. *"Facility"* means any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected primary transmission system or both. Transmission lines subject to the provisions of this subchapter shall not require a franchise under chapter 478.

6. *"Regulatory agency"* means an agency which issues licenses or permits required for the construction, operation or maintenance of a facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the utilities board.

[C77, 79, 81, §476A.1]

90 Acts, ch 1252, §41; 2001 Acts, 1st Ex, ch 4, §35, 36

476A.2 Certificate required.

1. Commencing January 1, 1977, a person shall not commence to construct a facility except as provided in section 476A.9 unless a certificate for the facility has been issued by the board. This subchapter shall not apply to persons who prior to July 1, 1976:

a. Have acquired a site for a facility; and,

b. Have publicly announced the intention to construct a facility; and,

c. Have let contracts for major components of a facility.

2. Any significant alteration, as determined by the board, in the location, construction, maintenance, or operation of a facility whether constructed before or after July 1, 1976, shall require an application for an amendment to a certificate or a certificate, whichever is appropriate. "Significant alteration" shall include but shall not be limited to a change in the type of fuel used by the major electric generating facility.

3. Any person required to obtain a certificate or an amendment to a certificate shall construct, operate and maintain the facility according to the terms of the certificate and any amendments to the certificate. A certificate shall only be issued pursuant to this subchapter.

4. This subchapter shall not apply to an electric power generating plant, or combination of plants at a single site, with a total capacity of more than twenty-five but less than one hundred megawatts of electricity if the owner or operator prior to January 1, 1990, has met all of the following conditions:

a. Acquired a site for the facility.

b. Publicly announced the intention to construct a facility at that site.

c. Let contracts for major components of the facility.

[C77, 79, 81, §476A.2]

90 Acts, ch 1252, §42; 2001 Acts, 1st Ex, ch 4, §35, 36

476A.3 Application submitted — review.

An application for a certificate or an amendment to a certificate shall be submitted to the board on such forms as the board may prescribe. Copies of the application shall be forwarded to regulatory agencies. Regulatory agencies receiving a copy of the application shall conduct a preliminary review of the contents and shall evaluate the application for completeness and compliance with the regulatory agency's permit and licensing requirements within a reasonable amount of time.

[C77, 79, 81, §476A.3]

476A.4 Hearing scheduled — notice.

1. The proceeding for the issuance of a certificate or an amendment to a certificate shall be treated in the same manner as a contested case pursuant to the provisions of chapter 17A. Upon acceptance of an application by the board, a public hearing shall be scheduled.

2. The board shall serve notice of the proceeding on the following:

a. Interested agencies, as determined by the board, and regulatory agencies.

b. County and city zoning authorities from the area in which the proposed site is located.

c. Owners of record of real property located within one thousand linear feet of the proposed site.

3. Notice of the proceeding in the form provided in section 17A.12, subsection 2, shall be published in a newspaper of general circulation in each county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing. The board shall be responsible for publication and delivery of notices required by this section.

4. The board shall conduct the hearing, as described in subsection 1, in the county in which the construction of the greater portion of the facility is being proposed.

5. A proceeding for the issuance of a certificate under section 476A.5 may be consolidated with a contested case proceeding for determination of applicable ratemaking principles under section 476.53.

[C77, 79, 81, §476A.4]

2001 Acts, 1st Ex, ch 4, §13, 36

476A.5 Proceeding — role of regulatory agencies and local authorities.

1. The board shall conduct the contested case proceeding. Regulatory agencies which appear on record at the proceeding shall state whether the application meets their permit and licensing requirements. If the application does not meet such requirements, the regulatory agency shall recommend amendments to the application which outline actions necessary to bring the applicant in compliance with the regulatory agency's permit and licensing requirements. The board shall not issue a certificate for a facility which does not meet the permit and licensing requirements of a regulatory agency.

2. If a regulatory agency which received notice pursuant to section 476A.4 fails to appear of record in the contested case proceeding, the board shall conclusively presume that the facility meets the regulatory agency's permit and licensing requirements and the regulatory agency shall immediately issue any license or permit required for the construction, operation or maintenance of the facility.

3. City and county zoning authorities designated as parties to the proceeding may appear on record and may state whether the facility meets city, county and airport zoning requirements. The failure of a facility to meet zoning requirements established pursuant to chapters 329, 335 and 414 shall not preclude the board from issuing the certificate and to that extent the provisions of this subsection shall supersede the provisions of chapters 329, 335 and 414.

[C77, 79, 81, §476A.5]

476A.6 Decision — criteria.

The board shall render a decision on the application in an expeditious manner. A certificate shall be issued to the applicant if the board finds all of the following:

1. The services and operations resulting from the construction of the facility are consistent with legislative intent as expressed in section 476.53 and the economic development policy of the state as expressed in Title I, subtitle 5, and will not be detrimental to the provision of adequate and reliable electric service.

2. The applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate and this subchapter.

3. The construction, maintenance, and operation of the facility will be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives.

[C77, 79, 81, §476A.6]

83 Acts, ch 127, §39; 90 Acts, ch 1252, §43 – 46; 2001 Acts, 1st Ex, ch 4, §14, 35, 36

476A.7 Issuance of certificate — effect.

1. Issuance of a certificate by the board:

a. Authorizes construction of the facility on the site designated in the certificate according to the terms and conditions stated in the certificate and licenses and permits issued by regulatory agencies during the proceeding; and,

b. Gives the applicant the power of eminent domain to the extent and under such conditions as the board may approve, prescribe and find necessary for the public convenience, use and necessity, proceeding in the manner of works of internal improvement under chapter 6B. The burden of proving the necessity for the exercise of the power of eminent domain shall be on the person issued the certificate.

2. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms of the certificate including any amendments to the certificate. Certificates shall be transferable by operation of law to any receiver, trustee or similar assignee under a mortgage, deed of trust or similar instrument.

3. Pursuant to the provisions of section 476.53, a rate-regulated public utility shall have the option of withdrawing its application for issuance of a certificate at any time prior to the issuance of the certificate, or after the certificate has been issued.

[C77, 79, 81, §476A.7]

2001 Acts, 1st Ex, ch 4, §15, 36

476A.8 Further approvals prohibited — exception.

Upon issuance of a certificate, notwithstanding any provision of law except statutory requirements relating to the protection of employees engaged in the construction of the facility, a regulatory agency, city or county shall not require any further approval, permit or license for the construction of the facility.

[C77, 79, 81, §476A.8]

476A.9 Advance site preparation.

Subsequent to the hearing held pursuant to section 476A.5 and in the event of extensive delay in the issuance of a certificate, the board may permit an applicant having an application docketed for hearing to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this section shall have no probative value in the board's decision concerning the actual issuance of a certificate.

[C77, 79, 81, §476A.9]

476A.10 Costs of proceeding.

The applicant for a certificate, or an amendment to certificate, shall pay all the costs and expenses incurred by the division in reaching a decision on the application including the costs of examinations of the site, the hearing, publishing of notice, division staff salaries, the cost of consultants employed by the division, and other expenses reasonably attributable to the proceeding.

[C77, 79, 81, §476A.10]

476A.11 Single hearing — judicial review.

Notwithstanding the provisions of chapter 17A:

1. Any proceeding or oral presentation held on an application for a certificate or an amendment to a certificate shall be held in lieu of any other proceeding or oral presentation required for a license or permit necessary for the construction, maintenance or operation of a facility.

2. The decision of the board shall be considered a single agency action. The agency action shall be subject to judicial review in the manner provided in chapter 17A.

3. Only parties to the proceeding before the board may seek judicial review of the final order of the board.

[C77, 79, 81, §476A.11]

476A.12 Rules.

The board shall adopt rules pursuant to chapter 17A necessary to implement the provisions of this subchapter including but not limited to the promulgation of facility siting criteria, the form for an application for a certificate and an amendment to a certificate, the description of information to be furnished by the applicant, the determination of what constitutes a significant alteration to a facility, and the establishment of minimum guidelines for public participation in the proceeding.

[C77, 79, 81, §476A.12]

2001 Acts, 1st Ex, ch 4, §35, 36

476A.13 Staff assistance — federal preemption.

1. The board may request staff assistance from other federal, state and local agencies, pursuant to chapter 28D, to assist in discharging the responsibilities assigned to the board pursuant to this subchapter. The board may exercise the powers and responsibilities assigned to the board under this subchapter jointly with other governmental agencies pursuant to chapter 28E.

2. This subchapter shall not apply to any facility over which an agency of the federal government has exclusive jurisdiction. When concurrent jurisdiction exists with certain powers reserved to the state, the state shall exercise those powers with respect to facilities operating within this state to the full extent permitted by the Constitution and the laws of the United States.

[C77, 79, 81, §476A.13]

2001 Acts, 1st Ex, ch 4, §35, 36

476A.14 Penalties.

1. Any person who commences to construct a facility as provided in this subchapter without having first obtained a certificate, or who

constructs, operates or maintains any facility other than in compliance with a certificate issued by the board or a certificate amended pursuant to this subchapter, or who causes any of these acts to occur, shall be liable for a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the general fund of the state.

2. The district court shall have exclusive jurisdiction to grant restraining orders and temporary or permanent injunctive relief as may be necessary to obtain compliance with this subchapter.

3. Persons convicted of violating any provision of this subchapter shall be guilty of a simple misdemeanor.

[C77, 79, 81, §476A.14]

2001 Acts, 1st Ex, ch 4, §35, 36

476A.15 Waiver.

The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this subchapter.

83 Acts, ch 127, §40; 90 Acts, ch 1252, §47; 2001 Acts, 1st Ex, ch 4, §16, 35, 36

476A.16 through 476A.19 Reserved.

SUBCHAPTER II

ELECTRIC POWER AGENCIES

476A.20 Definitions.

For purposes of this subchapter, unless the context otherwise requires:

1. *"Electric power agency"* means an entity as defined in section 28F.2.

2. *"Facility"* means an electric power generating plant, or transmission line or system, as defined in section 476A.1.

3. *"Public bond or obligation"* means an obligation as defined in section 76.14.

2001 Acts, 1st Ex, ch 4, §17, 36

476A.21 Electric power agency — general authority.

In addition to other powers conferred upon an electric power agency by chapter 28F or other applicable law, an electric power agency may enter into and carry out joint agreements with other participants for the acquisition of ownership of a joint facility and for the planning, financing, operation, and maintenance of the joint facility, as provided in this subchapter.

2001 Acts, 1st Ex, ch 4, §18, 36

476A.22 Electric power agency — authority — conflicting provisions.

1. In addition to any powers conferred upon an electric power agency under chapter 28F or other applicable law, an electric power agency may exercise all other powers reasonably necessary or appropriate for or incidental to the effectuation of the electric power agency's authorized purposes, including without limitation the powers enumerated in chapters 6A and 6B for purposes of constructing or acquiring an electric power facility.

2. An electric power agency, in connection with its property and affairs, and in connection with property within its control, may exercise any and all powers that might be exercised by a natural person or a private corporation in connection with similar property and affairs.

3. The enumeration of specified powers and functions of an electric power agency in this subchapter is not a limitation of the powers of an electric power agency, but the procedures prescribed for exercising the powers and functions enumerated in this subchapter control and govern in the event of any conflict with any other provision of law.

4. The authority conferred pursuant to this subchapter applies to electric power agencies, notwithstanding any contrary provisions of section 28F.1.

2001 Acts, 1st Ex, ch 4, §19, 36

Eminent domain and eminent domain procedures; chapters 6A and 6B

476A.23 Issuance of public bonds or obligations — purposes — limitations.

1. An electric power agency may from time to time issue its public bonds or obligations in such principal amounts as the electric power agency deems necessary to provide sufficient funds to carry out any of its purposes and powers, including but not limited to any of the following:

a. The acquisition or construction of any project to be owned or leased by the electric power agency, or the acquisition of any interest in such project or any right to the capacity of such project, including the acquisition, construction, or acquisition of any interest in an electric power generating plant to be constructed in this state, or the acquisition, construction, or acquisition of any interest in a transmission line or system.

b. The funding or refunding of the principal of, or interest or redemption premiums on, any public bonds or obligations issued by the electric power agency whether or not the public bonds or obligations or interest to be funded or refunded have become due.

c. The establishment or increase of reserves to secure or to pay the public bonds or obligations or interest on the public bonds or obligations.

d. The payment of all other costs or expenses of the electric power agency incident to and necessary to carry out its purposes and powers.

2. Notwithstanding anything in this subchapter or chapter 28F to the contrary, a facility shall not be financed with the proceeds of public bonds

or obligations, the interest on which is exempt from federal income tax, unless the public issuer of such public bonds or obligations covenants that the issuer shall comply with the requirements or limitations imposed by the Internal Revenue Code or other applicable federal law to preserve the tax exemption of interest payable on the bonds or obligations.

3. Notwithstanding anything in this subchapter or chapter 28F to the contrary, an electric power generating facility shall not be financed under this subchapter unless all of the following conditions are satisfied:

a. The portion of the electric power generating facility financed by the electric power agency is not designed to serve the electric power requirements of retail customers of members that are municipal electric utilities established in the state after January 1, 2001.

b. The electric power agency annually files with the board, in a manner to be determined by the board, information regarding sales from the electric power generating facility in sufficient detail to determine compliance with these provisions.

The board shall report to the general assembly if any of the provisions are being violated.

2001 Acts, 1st Ex, ch 4, §20, 36

476A.24 Public bonds or obligations authorized by resolution of board of directors — terms.

1. The board of directors of an electric power agency, by resolution, may authorize the issuance of public bonds or obligations of the electric power agency.

2. The public bonds or obligations may be issued in one or more series under the resolution or under a trust indenture or other security agreement.

3. The resolution, trust indenture, or other security agreement, with respect to such public bonds or obligations, shall provide for all of the following:

a. The date on the public bonds or obligations.

b. The time of maturity.

c. The rate of interest.

d. The denomination.

e. The form, either coupon or registered.

f. The conversion, registration, and exchange privileges.

g. The rank or priority.

h. The manner of execution.

i. The medium of payment, including the place of payment, either within or outside of the state.

j. The terms of redemption, either with or without premium.

k. Such other terms and conditions as set forth by the board in the resolution, trust indenture, or other security agreement.

4. Public bonds or obligations authorized by the board of directors shall not be subject to any restriction under other law with respect to the amount, maturity, interest rate, or other terms of obligation of a public agency or private person.

5. Chapter 75 shall not apply to public bonds or obligations authorized by the board of directors as provided in this section.

2001 Acts, 1st Ex, ch 4, §21, 36

476A.25 Public bonds or obligations payable solely from agency revenues or funds.

1. The principal of and interest on any public bonds or obligations issued by an electric power agency shall be payable solely from the revenues or funds pledged or available for their payment as authorized in this subchapter.

2. Each public bond or obligation shall contain all of the following terms:

a. That the principal of or interest on such public bonds or obligations is payable solely from revenues or funds of the electric power agency.

b. That neither the state or a political subdivision of the state other than the electric power agency, nor a public agency that is a member of the electric power agency is obligated to pay the principal or interest on such public bonds or obligations.

c. That neither the full faith and credit nor the taxing power of the state, of any political subdivision of the state, or of any such public agency is pledged to the payment of the principal of or the interest on the public bonds or obligations.

2001 Acts, 1st Ex, ch 4, §22, 36

476A.26 Public bonds or obligations — types — sources for payment — security.

1. Except as otherwise expressly provided by this subchapter or by the electric power agency, every issue of public bonds or obligations of the electric power agency shall be payable out of any revenues or funds of the electric power agency, subject only to any agreements with the holders of particular public bonds or obligations pledging any particular revenues or funds.

2. An electric power agency may issue types of public bonds or obligations as it may determine, including public bonds or obligations as to which the principal and interest are payable exclusively from the revenues from one or more projects, or from an interest in such project or projects, or a right to capacity of such project or projects, or from any revenue-producing contract made by the electric power agency with any person, or from its revenues generally.

3. Any public bonds or obligations may be additionally secured by a pledge of any grant, subsidy, or contribution from any public agency or other person, or a pledge of any income or revenues, funds, or moneys of the electric power agency from any other source.

2001 Acts, 1st Ex, ch 4, §23, 36

476A.27 Public bonds or obligations and rates for debt service not subject to state approval.

Public bonds or obligations of an electric power agency may be issued under this subchapter, and rents, rates, and charges may be established in the same manner as provided in section 28F.5 and pledged for the security of public bonds or obligations and interest and redemption premiums on such public bonds or obligations, without obtaining the consent of any department, division, commission, board, bureau, or agency of the state and without any other proceeding or the happening of any other condition or occurrence, except as specifically required by this subchapter.

2001 Acts, 1st Ex, ch 4, §24, 36

476A.28 Public bonds or obligations to be negotiable.

All public bonds or obligations of an electric power agency shall be negotiable within the meaning and for all of the purposes of the uniform commercial code, chapter 554, subject only to the registration requirement of section 76.10.

2001 Acts, 1st Ex, ch 4, §25, 36

476A.29 Validity of public bonds or obligations at delivery — temporary bonds.

1. Any public bonds or obligations may be issued and delivered, notwithstanding that one or more of the officers executing them shall have ceased to hold office at the time when the public bonds or obligations are actually delivered.

2. Pending preparation of definitive bonds or obligations, an electric power agency may issue temporary bonds or obligations that shall be exchanged for the definitive bonds or obligations upon their issuance.

2001 Acts, 1st Ex, ch 4, §26, 36

476A.30 Public or private sale of bonds and obligations.

Public bonds or obligations of an electric power agency may be sold at public or private sale for a price and in a manner determined by the electric power agency.

2001 Acts, 1st Ex, ch 4, §27, 36

476A.31 Public bonds or obligations as suitable investments for governmental units, financial institutions, and fiduciaries.

The following persons may legally invest any debt service funds, money, or other funds belonging to such person or within such person's control in any public bonds or obligations issued pursuant to this subchapter:

1. A bank, trust company, savings association, building and loan association, savings and loan association, or investment company.

2. An insurance company, insurance association, or any other person carrying on an insurance business.

3. An executor, administrator, conservator, trustee, or other fiduciary.

4. Any other person authorized to invest in bonds or obligations of the state.

2001 Acts, 1st Ex, ch 4, §28, 36

Investment of public funds; §12B.10
Insurance companies; §511.8, 515.35
Banks; §524.901
Savings and loan associations; §534.213
Investments by fiduciaries; §636.23

476A.32 Resolution, trust indenture, or security agreement constitutes contract — provisions.

The resolution, trust indenture, or other security agreement under which any public bonds or obligations are issued shall constitute a contract with the holders of the public bonds or obligations, and may contain provisions, among others, prescribing any of the following terms:

1. The terms and provisions of the public bonds or obligations.

2. The mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenue from any project or any revenue producing contract made by the electric power agency with any person to secure the payment of public bonds or obligations, subject to any agreements with the holders of public bonds or obligations which might then exist.

3. The custody, collection, securing, investment, and payment of any revenues, assets, money, funds, or property with respect to which the electric power agency may have any rights or interest.

4. The rates or charges for electric energy sold by, or services rendered by, the electric power agency, the amount to be raised by the rates or charges, and the use and disposition of any or all revenue.

5. The creation of reserves or debt service funds and the regulation and disposition of such reserves or funds.

6. The purposes to which the proceeds from the sale of any public bonds or obligations to be issued may be applied, and the pledge of the proceeds to secure the payment of the public bonds or obligations.

7. Limitations on the issuance of any additional public bonds or obligations, the terms upon which additional public bonds or obligations may be issued and secured, and the refunding of outstanding public bonds or obligations.

8. The rank or priority of any public bonds or obligations with respect to any lien or security.

9. The creation of special funds or moneys to be held for operating expenses, payment, or redemption of public bonds or obligations, reserves or other purposes, and the use and disposition of moneys held in these funds.

10. The procedure by which the terms of any

contract with or for the benefit of the holders of public bonds or obligations may be amended or abrogated, the amount of public bonds or obligations the holders of which must consent to such amendment or abrogation, and the manner in which consent may be given.

11. The definition of the acts or omissions to act that constitute a default in the duties of the electric power agency to holders of its public bonds or obligations, and the rights and remedies of the holders in the event of default including, if the electric power agency so determines, the right to accelerate the date of the maturation of the public bonds or obligations or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution, trust indenture, or other security agreement.

12. Any other or additional agreements with or for the benefit of the holders of public bonds or obligations or any covenants or restrictions necessary or desirable to safeguard the interests of the holders.

13. The custody of any of the electric power agency's property or investments, the safekeeping of such property or investments, the insurance to be carried on such property or investments, and the use and disposition of insurance proceeds.

14. The vesting in a trustee or trustees, within or outside the state, of such property, rights, powers, and duties as the electric power agency may determine; or the limiting or abrogating of the rights of the holders of any public bonds or obligations to appoint a trustee, or the limiting of the rights, powers, and duties of such trustee.

15. The appointment of and the establishment of the duties and obligations of any paying agent or other fiduciary within or outside the state.

2001 Acts, 1st Ex, ch 4, §29, 36

476A.33 Mortgage or trust deed to secure bonds.

For the security of public bonds or obligations issued or to be issued by an electric power agency, the electric power agency may mortgage or execute deeds of trust of the whole or any part of its property.

2001 Acts, 1st Ex, ch 4, §30, 36

476A.34 No personal liability on public bonds or obligations.

An official, director, member of an electric power agency, or any person executing public bonds or obligations shall not be liable personally on the public bonds or obligations or be subject to any personal liability or accountability by reason of the issuance of such public bonds or obligations.

2001 Acts, 1st Ex, ch 4, §31, 36

476A.35 Repurchase of securities.

An electric power agency may purchase public bonds or obligations out of any funds available for such purchase, and hold, pledge, cancel, or resell the public bonds or obligations, subject to and in accordance with any agreements with the holders.

2001 Acts, 1st Ex, ch 4, §32, 36

476A.36 Pledge of revenue as security.

An electric power agency may pledge its rates, rents, and other revenues, or any part of such rates, rents, and revenues, as security for the repayment, with interest and redemption premiums, if any, of the moneys borrowed by the electric power agency or advanced to the electric power agency for any of its authorized purposes and as security for the payment of moneys due and owed by the electric power agency under any contract.

2001 Acts, 1st Ex, ch 4, §33, 36

CHAPTER 477

TELEGRAPH AND TELEPHONES — CABLE SYSTEMS

477.1 Right-of-way.
477.2 Removal of lines and cable systems.
477.3 Construction — installation — damages.
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477.5 Equal facilities — delay.
477.6 Delay — willful error — revealing contents.
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477.9 Presentation of claim.
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RECIPROCAL SERVICE

477.10 Definitions.
477.11 Facilities to local exchange.
477.12 Transmission of messages.
477.13 Facilities to long distance companies.
477.14 Violations — effect.

477.1 Right-of-way.

Any person, firm, and corporation, within or without the state, may construct a telegraph or telephone line or cable system along the public roads of the state, or across or under the rivers or over, under, or through any lands belonging to the

state or any private individual, and may erect or install necessary fixtures. However, construction of a telegraph or telephone line or cable system along a primary road is subject to rules adopted by the state department of transportation.

[C51, §780; R60, §1348; C73, §1324; C97, §2158; C24, 27, 31, 35, 39, §**8300;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.1; C77, 79, 81, §477.1]

88 Acts, ch 1173, §1

Authorization in cities, §364.2
Removal, chapter 319

477.2 Removal of lines and cable systems.

When any road along which the telegraph or telephone line or cable system has been constructed or installed is changed, the person, firm or corporation shall, upon ninety days' notice in writing, remove the telegraph or telephone lines or cable system to the road as established. The notice may be served upon any agent or operator in the employ of the person, firm or corporation.

[C73, §1324; C97, §2158; C24, 27, 31, 35, 39, §**8301;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.2; C77, 79, 81, §477.2]

88 Acts, ch 1173, §2

477.3 Construction — installation — damages.

The fixtures shall not be constructed or installed in a manner which causes inconvenience to the public in the use of any road or in the navigation of any stream; nor shall they be erected or installed on the private grounds of any individual without paying the individual a just equivalent for the damage the individual sustains by the construction or installation.

[C51, §781; R60, §1349; C73, §1325; C97, §2159; C24, 27, 31, 35, 39, §**8302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.3; C77, 79, 81, §477.3]

88 Acts, ch 1173, §3

477.4 Condemnation.

If the person over or through whose lands this telegraph or telephone line or cable system passes claims more damages than the proprietor of the line or cable system is willing to pay, the amount of damages sustained may be determined in the same manner as provided for taking private property for works of internal improvement.

[C51, §782; R60, §1350; C73, §1326; C97, §2160; C24, 27, 31, 35, 39, §**8303;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.4; C77, 79, 81, §477.4]

88 Acts, ch 1173, §4

Condemnation procedure, chapter 6B

477.5 Equal facilities — delay.

If the proprietor of any telegraph or telephone line within the state, or the person having the control and management thereof, refuses to furnish equal facilities to the public and to all connecting lines for the transmission of communications in accordance with the nature of the business which it undertakes to carry on, or to transmit the same with fidelity and without unreasonable delay, the law in relation to limited partnerships, corporations, and to the taking of private property for works of internal improvement, shall not longer apply to them, and property taken for the use thereof without the consent of the owner may be recovered by the owner.

[C51, §783; R60, §1351; C73, §1327; C97, §2161; C24, 27, 31, 35, 39, §**8304;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.5; C77, 79, 81, §477.5]

Eminent domain, chapter 6A

477.6 Delay — willful error — revealing contents.

Any person employed in transmitting messages by telegraph or telephone must do so with fidelity and without unreasonable delay, and if anyone willfully fails thus to transmit them, or intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person except the person to whom it is addressed, or such person's agent or attorney, or willfully and wrongfully takes or receives any telegraph or telephone message, the person is guilty of a simple misdemeanor.

[C51, §784; R60, §1352; C73, §1328; C97, §2162; C24, 27, 31, 35, 39, §**8305;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.6; C77, 79, 81, §477.6]

477.7 Mistakes and delays.

The proprietor of a telegraph or telephone line is liable for all mistakes in transmitting or receiving messages made by any person in the proprietor's employment, or for any unreasonable delay in their transmission or delivery, and for all damages resulting from failure to perform the foregoing or any other duty required by law, the provisions of any contract to the contrary notwithstanding.

[C51, §785; R60, §1353; C73, §1329; C97, §2163; C24, 27, 31, 35, 39, §**8306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.7; C77, 79, 81, §477.7]

477.8 Negligence presumed.

In any action against any telegraph or telephone company for damages caused by erroneous transmission of a message, or by unreasonable delay in delivery of a message, negligence on the part of the telegraph or telephone company shall be presumed upon proof of erroneous transmission or of unreasonable delay in delivery, and the burden of proof that such error or delay was not due to negligence upon its part shall rest upon such company.

[C97, §2164; C24, 27, 31, 35, 39, §**8307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.8; C77, 79, 81, §477.8]

477.9 Presentation of claim.

No action for the recovery of such damages shall

be maintained unless a claim therefor is presented in writing to such company, officer or agent thereof within sixty days from time cause of action accrues.

[C97, §2164; C24, 27, 31, 35, 39, §**8308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.9; C77, 79, 81, §477.9]

477.9A Deregulated services.

A telegraph or telephone company whose services are deregulated by the board under section 476.1D may use public notice as a means of conveying terms and conditions to customers where identification of those customers is infeasible or impractical. Public notice may also be used to convey changes in terms and conditions, other than price increases or limitations of liability, to all other customers, but only if those customers were put on notice that this means would be used to convey subsequent changes. Notwithstanding section 477.7, when services are deregulated by the board under section 476.1D, a telegraph or telephone company, in any contract, agreement, or by means of public notice, may reasonably limit its liability under section 477.7 in the course of providing the deregulated communications services to its customers, except for acts of willful misconduct. However, this section does not allow a greater limitation on liability than exists in any contract or approved tariff as of the effective date of the deregulation of the services.

89 Acts, ch 321, §31; 92 Acts, ch 1163, §98

RECIPROCAL SERVICE

477.10 Definitions.

1. *"Local exchange",* within the meaning of this Act,* shall refer to a telephone line or lines or to a telephone switchboard or switchboards operating by virtue of a franchise granted by a city furnishing telephonic communication between two or more members of the public within the same city, village, community, locality or neighborhood, which said line or lines or switchboard or switchboards shall be under the same management and control.

"Local exchange" within the meaning of this Act shall not include or refer to privately owned or leased lines or switchboards, operated and used by members of the public other than telephone or telegraph companies as a public utility by which the public is offered telephonic service.

2. *"Local exchange company"* within the meaning of this Act, shall refer to any one or more individuals, firms or corporations operating one or more local exchanges as herein defined.

3. *"Long distance company"* within the meaning of this Act shall refer to and include one or more persons, firms or corporations operating connecting lines between two or more local exchanges, one or more of which local exchanges are owned by a local telephone company other than such person, firm or corporation, over which line or lines telephonic communication is had between members of the public connected with said local exchanges.

[C35, §8308-f1; C39, §**8308.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.10; C77, 79, 81, §477.10]

*See 45 ExGA, ch 102

477.11 Facilities to local exchange.

Long distance companies shall furnish equal facilities to any local exchange within the state desiring same, and to that end shall immediately make, or at the option of the long distance company, shall immediately permit to be made under its direction and at reasonably accessible places to be designated by such long distance company, the necessary connections between said local exchange and said long distance company telephone system to effect the furnishing of equal facilities to such local exchange.

[C35, §8308-f2; C39, §**8308.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.11; C77, 79, 81, §477.11]

477.12 Transmission of messages.

After such connection has been made said long distance company shall transmit communications and messages to, from and through all local exchanges connected with its system when requested, with fidelity and equality and without discrimination or unreasonable delay.

[C35, §8308-f3; C39, §**8308.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.12; C77, 79, 81, §477.12]

477.13 Facilities to long distance companies.

A connected local exchange company shall accept and furnish telephonic connection for all messages offered over the lines or through the system of any long distance company without discrimination or unreasonable delay, and with equality.

[C35, §8308-f4; C39, §**8308.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.13; C77, 79, 81, §477.13]

477.14 Violations — effect.

Should any local exchange company or long distance company refuse or fail to furnish the connection or service above required, the law in relation to limited partnerships, corporations, or the taking of private property for works of internal improvement shall no longer apply to them and property taken for the use thereof without the consent of the owner may be recovered by the owner.

[C35, §8308-f5; C39, §**8308.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.14; C77, 79, 81, §477.14]

Eminent domain, chapter 6A

CHAPTER 477A

EMERGENCY TELEPHONE NUMBER (911)

Transferred to chapter 34
Former sections 477A.3 through 477A.5 repealed effective July 1, 1992;
86 Acts, ch 1246, §768

CHAPTER 477B

ENHANCED 911 EMERGENCY TELEPHONE COMMUNICATION SYSTEMS

Transferred to chapter 34A

CHAPTER 477C

DUAL PARTY RELAY SERVICE

477C.1 Dual party relay service — purpose.
477C.2 Definitions.
477C.3 Dual party relay service.
477C.4 Telecommunications devices for the deaf.
477C.5 Dual party relay council.
477C.6 Budget.
477C.7 Funding.

477C.1 Dual party relay service — purpose.

The general assembly finds that the provision of a statewide dual party relay service will further the public interest and protect the health, safety, and welfare of the people of Iowa through an increase in the usefulness and availability of the telephone system. Many persons who are deaf, hard-of-hearing, or have speech impairments are not able to utilize the telephone system without this type of service. Therefore, it is the purpose of this chapter to enable the orderly development, operation, promotion, and funding of a statewide dual party relay service.

91 Acts, ch 194, §1; 93 Acts, ch 75, §6; 96 Acts, ch 1129, §96

477C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the utilities board within the department of commerce created in section 474.1.

2. *"Communication impairment"* means the inability to use the telephone for communication without a telecommunications device for the deaf.

3. *"Council"* means the dual party relay council established in section 477C.5.

4. *"Dual party relay service"* or *"relay service"* means a communication service which provides communication-impaired persons access to the telephone system functionally equivalent to the access available to persons not communication-impaired.

5. *"Telecommunications device for the deaf"* means any specialized or supplemental telephone equipment used by communication-impaired persons to provide access to the telephone system.

91 Acts, ch 194, §2

477C.3 Dual party relay service.

With the advice of the council, the board shall plan, establish, administer, and promote a statewide program to provide dual party relay service as follows:

1. The board may enter into the necessary contracts and arrangements with private entities to provide for the delivery of relay service.

2. The relay service, to the extent reasonably possible, shall allow persons with communication impairments to use the telephone system in a manner and at a rate equivalent to persons without communication impairments.

3. The relay service may be provided on a stand-alone basis within the state, with other states, or with telephone utilities providing relay service in other states.

4. The board may employ additional personnel, pursuant to section 476.10, to plan, establish, administer, and promote the relay service.

91 Acts, ch 194, §3

477C.4 Telecommunications devices for the deaf.

With the advice of the council, the board may plan, establish, administer, and promote a program to secure, finance, and distribute telecommunications devices for the deaf. The board may establish eligibility criteria for persons to receive telecommunications devices for the deaf, including, but not limited to, requiring certification that the recipient cannot use the telephone for communication without a telecommunications device for the deaf.

91 Acts, ch 194, §4

477C.5 Dual party relay council.

1. A dual party relay council is established, consisting of eleven members appointed by the board. The council shall advise the board on all matters concerning relay service and equipment distribution programs.

2. The council shall consist of:

a. Six consumers who have communication impairments.

b. Two representatives from telephone companies.

c. One representative from the division of deaf services of the department of human rights.

d. One representative from the office of the consumer advocate of the department of justice.

e. One member of the board or a designee of the board.

3. Council members who are not state or local government officers or employees shall be reimbursed for their necessary and actual expenses incurred in performance of their duties and shall receive a per diem of fifty dollars when the council is meeting, payable from moneys available to the board pursuant to section 477C.7.

91 Acts, ch 194, §5; 94 Acts, ch 1023, §57

477C.6 Budget.

The board shall review and approve the proposed annual budget of the relay service program authorized in section 477C.3 and the equipment distribution program authorized in section 477C.4.

91 Acts, ch 194, §6

477C.7 Funding.

The board shall impose an annual assessment to fund the programs upon all telephone utilities providing service in the state as follows:

1. The total assessment shall be allocated one-half to local exchange telephone utilities and one-half to the following telephone utilities:

a. Interexchange carriers.

b. Centralized equal access providers.

c. Alternative operator services companies.

2. The assessment shall be levied upon revenues from all intrastate regulated, deregulated, and exempt telephone services under sections 476.1 and 476.1D.

3. The telephone utilities shall remit the assessed amounts quarterly to a special fund, as defined under section 8.2, subsection 9. The moneys in the fund are appropriated solely to plan, establish, administer, and promote the relay service and equipment distribution programs.

4. The telephone utilities subject to assessment shall provide the information requested by the board necessary for implementation of the assessment.

5. The local exchange telephone utilities shall not recover from intrastate access charges any portion of such utilities assessment imposed under this section.

91 Acts, ch 194, §7; 92 Acts, ch 1163, §99

CHAPTER 478

ELECTRIC TRANSMISSION LINES

478.1 Franchise.
478.2 Petition for franchise — informational meetings held.
478.3 Petition — requirements.
478.4 Franchise — hearing.
478.5 Notice — objections filed.
478.6 Taking under eminent domain.
478.7 Form of franchise.
478.8 Valuation of franchise.
478.9 Exclusive rights — duration of franchise.
478.10 Franchise transferable — notice.
478.11 Record of franchises.
478.12 Acceptance of franchise.
478.13 Extension of franchise — public notice.
478.14 Service furnished.
478.15 Eminent domain — procedure — entering on land — reversion on nonuse.
478.16 Injury to person or property. Repealed by 86 Acts, ch 1198, §1.
478.17 Access to lines — damages.
478.18 Supervision of construction — location.
478.19 Manner of construction.
478.20 Distance from buildings.
478.21 Nonuse — revocation of franchise — extensions of time.
478.22 Action for violation.
478.23 Prior franchises — legislative control.
478.24 Violations.
478.25 Wire crossing railroads — supervision.
478.26 Wires across railroad right of way at highways.
478.27 Wires — how strung.
478.28 Examination of existing wires.
478.29 Civil penalties.

478.30 Crossing highway.
478.31 Temporary permits for lines less than one mile.
478.32 Rehearing — judicial review.
478.33 Cancellation.
478.34 and 478.35 Reserved.
478.36 Subsequent construction near buried line. Repealed by 92 Acts, ch 1103, §11, 12.

478.1 Franchise.

1. A person shall not construct, erect, maintain, or operate a transmission line, wire, or cable that is capable of operating at an electric voltage of sixty-nine kilovolts or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current without first procuring from the utilities board within the utilities division of the department of commerce a franchise granting authority as provided in this chapter.

2. A franchise shall not be required for electric lines constructed entirely within the boundaries of property owned by a person primarily engaged in the transmission or distribution of electric power or entirely within the boundaries of property owned by the end user of the electric power.

3. If the transmission line, wire, or cable is capable of operating only at an electric voltage of less than sixty-nine kilovolts, no franchise is required. However, the utilities board shall retain jurisdiction over all such lines, wires, or cables.

4. A person who seeks to construct, erect, maintain, or operate a transmission line, wire, or cable that will operate at an electric voltage of less than sixty-nine kilovolts outside of cities and that cannot secure the necessary voluntary easements to do so may petition the board pursuant to section 478.3, subsection 1, for a franchise granting authority for such construction, erection, maintenance, or operation, and for the use of the right of eminent domain.

[S13, §1527-c, 2120-n; C24, 27, 31, 35, 39, §**8309;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §489.1; C77, 79, 81, §478.1]

84 Acts, ch 1101, §2; 94 Acts, ch 1136, §1; 97 Acts, ch 113, §1; 2002 Acts, ch 1048, §1, 5

Authorization in cities, §364.2
Section amended

478.2 Petition for franchise — informational meetings held.

1. Any person authorized to transact business in the state including cities may file a verified petition asking for a franchise to erect, maintain, and operate a line or lines for the transmission, distribution, use, and sale of electric current outside cities and for such purpose to erect, use, and maintain poles, wires, guy wires, towers, cables, conduits, and other fixtures and appliances necessary for conducting electric current for light, heat, or power over, along, and across any public lands, highways, streams, or the lands of any person, company, or corporation, and to acquire necessary interests in real estate for such purposes.

2. As conditions precedent to the filing of a petition with the utilities board requesting a franchise for a new transmission line, and not less than thirty days prior to the filing of such petition, the person shall hold informational meetings in each county in which real property or rights will be affected.

a. A member of the board, the counsel of the board, or a hearing examiner designated by the board shall serve as the presiding officer at each meeting, shall present an agenda for such meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section 6B.2A, subsection 1. A formal record of the meeting shall not be required.

b. The meeting shall be held at a location reasonably accessible to all persons that may be affected by the granting of the franchise.

3. The person seeking the franchise for a new transmission line shall give notice of the informational meeting to each person, company, or corporation determined to be the landowner affected by the proposed project and any person, company, or corporation in possession of or residing on the property.

a. For the purposes of this section, unless the context otherwise requires:

(1) *"Landowner"* means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property.

(2) *"Transmission line"* means any line capable of operating at sixty-nine kilovolts or more and extending a distance of not less than one mile across privately owned real estate.

b. The notice shall contain the following:

(1) The name of the applicant.

(2) The applicant's principal place of business.

(3) A general description and purpose of the proposed project.

(4) The general nature of the right-of-way desired.

(5) The possibility that the right-of-way may be acquired by condemnation if approved by the utilities board.

(6) A map showing the route of the proposed project.

(7) A description of the process used by the uti-

lities board in making a decision on whether to approve a franchise or grant the right to take property by eminent domain.

(8) A statement that the landowner has the right to be present at such meetings and to file objections with the utilities board.

(9) The place and time of the meeting.

c. The notice shall be served not less than thirty days prior to the time set for the meeting by certified mail with return receipt requested and shall be published once in a newspaper of general circulation in the county at least one week and not more than three weeks before the time of the meeting and such publication shall be considered notice to landowners whose residence is not known.

4. A person seeking rights under this chapter shall not negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

[S13, §2120-n; C24, 27, 31, 35, 39, §**8310;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §489.2; C77, 79, 81, §478.2]

94 Acts, ch 1136, §2; 2000 Acts, ch 1179, §22, 30; 2002 Acts, ch 1048, §2, 5

Section amended

478.3 Petition — requirements.

1. All petitions shall set forth:

a. The name of the individual, company, or corporation asking for the franchise.

b. The principal office or place of business.

c. The starting points, routes, and termini of the proposed lines, accompanied with a map or plat showing such details.

d. A general description of the public or private lands, highways, and streams over, across, or along which any proposed line will pass.

e. General specifications as to materials and manner of construction.

f. The maximum voltage to be carried over each line.

g. Whether or not the exercise of the right of eminent domain will be used and, if so, a specific reference to the lands described in paragraph *"d"* which are sought to be subject thereto.

h. An allegation that the proposed construction is necessary to serve a public use.

2. Petitions for transmission lines capable of operating at sixty-nine kilovolts or more and extending a distance of not less than one mile across privately owned real estate shall also set forth an allegation that the proposed construction represents a reasonable relationship to an overall plan of transmitting electricity in the public interest and substantiation of such allegations, including but not limited to, a showing of the following:

a. The relationship of the proposed project to present and future economic development of the area.

b. The relationship of the proposed project to comprehensive electric utility planning.

c. The relationship of the proposed project to the needs of the public presently served and future projections based on population trends.

d. The relationship of the proposed project to the existing electric utility system and parallel existing utility routes.

e. The relationship of the proposed project to any other power system planned for the future.

f. The possible use of alternative routes and methods of supply.

g. The relationship of the proposed project to the present and future land use and zoning ordinances.

h. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

The utilities board may waive the proof required for such allegations which are not applicable to a particular proposed project.

The petition shall contain an affidavit stating that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

3. For the purpose of this section, the term *"public"* shall not be interpreted to be limited to consumers located in this state.

[S13, §2120-n; C24, 27, 31, 35, 39, §**8311;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §489.3; C77, 79, 81, §478.3]

94 Acts, ch 1136, §3; 2001 Acts, 1st Ex, ch 4, §34, 36; 2002 Acts, ch 1048, §3, 5

Subsection 2, unnumbered paragraph 1 amended

478.4 Franchise — hearing.

The utilities board shall consider the petition and any objections filed to it in the manner provided. It shall examine the proposed route or cause any engineer selected by it to do so. If a hearing is held on the petition it may hear testimony as may aid it in determining the propriety of granting the franchise. It may grant the franchise in whole or in part upon the terms, conditions, and restrictions, and with the modifications as to location and route as may seem to it just and proper. Before granting the franchise, the utilities board shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. A franchise shall not become effective until the petitioners shall pay, or file an agreement to pay, all costs and expenses of the franchise proceeding, whether or not objections are filed, including costs of inspections or examinations of the route, hearing, salaries, publishing of notice, and any other expenses reasonably attributable to it. The funds received for the costs and the expenses of the franchise proceeding shall be remitted to the treasurer of state for deposit in the general fund of the state as provided in section 476.10.

[S13, §2120-n; C24, 27, 31, 35, 39, §**8312, 8313;** C46, 50, 54, 58, 62, §489.4, 489.5; C66, 71, 73, 75,

§489.4; C77, 79, 81, §478.4]
87 Acts, ch 234, §431; 94 Acts, ch 1107, §82

478.5 Notice — objections filed.
Upon the filing of such petition, the utilities board shall cause a notice, addressed to the citizens of each county through which the proposed line or lines will extend, to be published in a newspaper located in each such county for two consecutive weeks. Said notice shall contain a general statement of the contents and purpose of the petition, a general description of the lands and highways to be traversed by the proposed line or lines, and shall state that any objections thereto must be filed in writing with the board not later than twenty days after the date of last publication of the notice. Any person, company, city or corporation whose rights may be affected, shall have the right to file written objections to the proposed improvement or to the granting of such franchise; such objections shall be filed with the board not later than twenty days after the date of last publication and shall state the grounds therefor. The board may allow objections to be filed later in which event the applicant must be given reasonable time to meet such late objections.
[S13, §2120-n; C24, 27, 31, 35, 39, §**8312, 8313;** C46, 50, 54, 58, 62, §489.4, 489.5; C66, 71, 73, 75, §489.5; C77, 79, 81, §478.5]

478.6 Taking under eminent domain.
Upon the filing of objections or when a petition involves the taking of property under the right of eminent domain, the utilities board shall set the matter for hearing and fix a time and place for the hearing. The hearing shall be not less than thirty days from the date of last publication and, where a new proposed transmission line exceeds one mile in length, shall be held in the county seat of the county located at the midpoint of the proposed electric transmission line. Written notice of the time and place of the hearing shall be served by the board, by ordinary mail, on the applicant, and those having filed objections. If no objections are filed and the petition does not involve the taking of property under the right of eminent domain, the board may grant a franchise without a hearing; however, the board may conduct a hearing if the board deems it necessary.
Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. The notice shall include the statement of individual rights required pursuant to section 6B.2A, subsection 1.
When the board grants a franchise to any person, company, or corporation for the construction, erection, maintenance, and operation of transmission lines, wires, and cables for the transmission of electricity, such person, company, or corporation shall be vested with the power of condemnation to such extent as the board may approve and find necessary for public use.
[C66, 71, 73, 75, §489.6; C77, 79, 81, §478.6; 81 Acts, ch 159, §1]
2000 Acts, ch 1179, §23, 30

478.7 Form of franchise.
The general counsel for the utilities board shall prepare a blank form of franchise, which shall provide space for a general description of the improvement authorized, the name and address of the person or corporation to whom granted, the general terms and conditions upon which the franchise is granted, and other things as necessary. This blank form shall be filled out and signed by the chairperson of the utilities board which grants the franchise, and the official seal shall be attached. The franchise is subject to regulations and restrictions as the general assembly prescribes, and to rules, not inconsistent with statutes, as the utilities board may establish.
[S13, §2120-n; C24, 27, 31, 35, 39, §**8314;** C46, 50, 54, 58, 62, §489.6; C66, 71, 73, 75, §489.7; C77, 79, 81, §478.7]
83 Acts, ch 127, §41
Legislative control in general, §491.39

478.8 Valuation of franchise.
No financial consideration shall be charged for such franchise. In fixing the value for rate-making purposes of the property of any person, company, or corporation owning it or operating under it no account shall be taken of, and no increased value shall be allowed for, any such franchise, except that the reasonable cost to the petitioners of obtaining said franchise may be included in the cost of constructing said line.
[C24, 27, 31, 35, 39, §**8315;** C46, 50, 54, 58, 62, §489.7; C66, 71, 73, 75, §489.8; C77, 79, 81, §478.8]

478.9 Exclusive rights — duration of franchise.
No exclusive right shall ever be given by franchise or otherwise to any person, company, corporation or city to conduct electrical energy, or to place electric wires, along or over or across any public highway or public place or ground; and no franchise or privilege shall ever be granted for any such purpose for a longer period than twenty-five years.
[C24, 27, 31, 35, 39, §**8316;** C46, 50, 54, 58, 62, §489.8; C66, 71, 73, 75, §489.9; C77, 79, 81, §478.9]

478.10 Franchise transferable — notice.
When any such electric transmission line or lines are sold and transferred either by voluntary or judicial sale, such transfer shall carry with it the franchise under which the said improvement is owned, maintained, or operated. If a transfer of

such franchise is made before the improvement for which it was issued is constructed, in whole or in part, such transfer shall not be effective till the person, company, or corporation to whom it was issued shall file in the office of the utilities board granting the franchise a notice in writing stating the date of such transfer and the name and address of the transferee.

[C24, 27, 31, 35, 39, §**8317;** C46, 50, 54, 58, 62, §489.9; C66, 71, 73, 75, §489.10; C77, 79, 81, §478.10]

478.11 Record of franchises.

The utilities board shall keep a record of all such franchises granted and issued by it, when and to whom issued, with a general statement of the location, route, and termini of the transmission line or lines covered thereby. When any transfer of such franchise has been made as provided in this chapter, the board shall also make note upon its record of the date of such transfer and the name and address of the transferee.

[C24, 27, 31, 35, 39, §**8318;** C46, 50, 54, 58, 62, §489.10; C66, 71, 73, 75, §489.11; C77, 79, 81, §478.11]

478.12 Acceptance of franchise.

Any person, company, or corporation obtaining a franchise as in this chapter provided, or owning or operating under one, shall be conclusively held to an acceptance of the provisions thereof and of all laws relating to the regulation, supervision, or control thereof which are now in force or which may be hereafter enacted, and to have consented to such reasonable regulation as the utilities board may, from time to time, prescribe. The provisions of this chapter shall apply equally to assignees as well as to original owners.

[S13, §2120-p; C24, 27, 31, 35, 39, §**8319;** C46, 50, 54, 58, 62, §489.11; C66, 71, 73, 75, §489.12; C77, 79, 81, §478.12]

478.13 Extension of franchise — public notice.

1. Any person, firm, or corporation owning a franchise granted under this chapter or previously existing law may petition the utilities board for an extension of the franchise. The board shall adopt rules governing extension applications and proceedings with the intent that the extension applications and proceedings are less extensive than original applications and proceedings. Assessment of costs shall be as provided in section 478.4.

2. If the extension of franchise is sought for all lines in a given county or counties, the published notice need not contain a general description of the lands and highways traversed by the lines, but in lieu of containing such description the petitioner may offer to provide to any interested party, free of charge and within ten working days, a current, accurate map showing the location of the lines for which the franchise extension is sought. The public notice shall advise the citizens of the county or counties affected of the availability of such map. If this alternate procedure is not followed, the publication of the description of the lands and highways traversed by the lines shall be done in the manner as in an original application for franchise.

3. An extension under this section shall be granted only for a valid, existing franchise, and the lands, roads, or streams covered by the franchise over, through, or upon which electric transmission lines have in fact been erected or constructed and are in use or operation at the time of the application for the extension of the franchise.

4. The application for the extension of the franchise shall be accompanied by the written consent of the applicant that the provisions of all laws relating to public utilities, franchises, and transmission lines, or to the regulation, supervision, or control thereof which are then in force or which may be thereafter enacted, shall apply to its existing line or lines, franchises, and rights as if the franchise had been granted, the lines had been constructed, or rights had been obtained under the provisions of this chapter.

5. An extension of a franchise is not required for an electric transmission line that has been permanently retired from operation at sixty-nine kilovolts or more but that remains in service at a lower voltage. The board shall be notified of changes in operating status.

[S13, §2120-o; C24, 27, 31, 35, 39, §**8320;** C46, 50, 54, 58, 62, §489.12; C66, 71, 73, 75, §489.13; C77, 79, 81, §478.13]

94 Acts, ch 1136, §4; 97 Acts, ch 63, §1; 2002 Acts, ch 1048, §4, 5; 2002 Acts, ch 1097, §1

See Code editor's note to §8.55 at the end of Vol IV

Section amended

478.14 Service furnished.

Any city which owns or operates a system for the distribution of electric light or power, and which has obtained electric energy for such distribution from any person or firm or corporation owning or operating an electric light and power plant or transmission line, shall be entitled to have the service reasonably needed by such municipality and its patrons continued at and for a reasonable rate and charge and under reasonable rules of service.

It shall be unlawful for the owner or operator of such light and power plant or transmission line to disconnect or discontinue such service (except during nonpayment of reasonable charges) so long as such operator holds or enjoys any franchise to go upon or use any public streets, highways, or grounds.

Until the municipality and the operator shall agree upon a rate or charge for such service the municipality shall pay and the operator shall accept the rate provided in the expired contract if any existed, and if none existed then the rate before paid. This shall be without prejudice, howev-

er, to the right of either party to test in court or before any lawfully constituted rate-making tribunal the reasonableness of such rate.

This section shall not apply if the original service to the municipality was given in case of emergency or for any other temporary purpose.

[C24, 27, 31, 35, 39, §**8321;** C46, 50, 54, 58, 62, §489.13; C66, 71, 73, 75, §489.14; C77, 79, 81, §478.14]

478.15 Eminent domain — procedure — entering on land — reversion on nonuse.

Any person, company, or corporation having secured a franchise as provided in this chapter, shall thereupon be vested with the right of eminent domain to such extent as the utilities board may approve, prescribe and find to be necessary for public use, not exceeding one hundred feet in width for right of way and not exceeding one hundred sixty acres in any one location, in addition to right of way, for the location of electric substations to carry out the purposes of said franchise; provided however, that where two hundred K V lines or higher voltage lines are to be constructed, the person, company, or corporation may apply to the board for a wider right of way not to exceed two hundred feet, and the board may for good cause extend the width of such right of way for such lines to the person, company, or corporation applying for the same. The burden of proving the necessity for public use shall be on the person, company or corporation seeking the franchise. A homestead site, cemetery, orchard or schoolhouse location shall not be condemned for the purpose of erecting an electric substation. If agreement cannot be made with the private owner of lands as to damages caused by the construction of said transmission line, or electric substations, the same proceedings shall be taken as provided for taking private property for works of internal improvement.

Any person, company or corporation proposing to construct a transmission line or other facility which involves the taking of property under the right of eminent domain and desiring to enter upon the land, which it proposes to appropriate, for the purpose of examining or surveying the same, shall first file with the utilities board, a written statement under oath setting forth the proposed routing of the line or facility including a description of the lands to be crossed, the names and addresses of owners, together with request that a permit be issued by said board authorizing said person, company or corporation or its duly appointed representative to enter upon the land for the purpose of examining and surveying and to take and use thereon any vehicle and surveying equipment necessary in making the survey. Said board shall within ten days after said request issue a permit, accompanied by such bond in such amount as the board shall approve, to the person, company or corporation making said application, if in its opinion the application is made in good faith and not for the purpose of harassing the owner of the land. If the board is of the opinion that the application is not made in good faith or made for the purpose of harassment to the owner of said land it shall set the matter for hearing and it shall be heard not more than twenty days after filing said application. Notice of the time and place of hearing shall be given by said board, to the owner of said land by registered mail with a return receipt requested, not less than ten days preceding date of hearing.

Any person, company or corporation that has obtained a permit in the manner herein prescribed may enter upon said land or lands, as above provided, and shall be liable for actual damages sustained in connection with such entry. An action in damages shall be the exclusive remedy.

If an electric transmission line right of way, or any part thereof, is wholly abandoned for public utility purposes by the relocation of the transmission lines, is not used or operated for a period of five years, or if its construction has been commenced and work has ceased and has not in good faith been resumed for five years, the right of way shall revert to the person or persons who, at the time of the abandonment or reversion, are the owners of the tract from which such right of way was taken. Following such abandonment of right of way, the owner or holder of purported fee title to such real estate may serve notice upon the owner of such right of way easement, or the owner's successor in interest, and upon any party in possession of said real estate, a written notice which shall (1) accurately describe the real estate in question, (2) set out the facts concerning ownership of the fee, ownership of the right of way easement, and the period of abandonment, and (3) notify said parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless said parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in said notice.

Said notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication no affidavit therefor shall be required before publication. If no affidavit disputing the facts contained in the notice is filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached thereto or endorsed thereon, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

[S13, §2120-q; C24, 27, 31, 35, 39, §**8322;** C46, 50, 54, 58, 62, §489.14; C66, 71, 73, 75, §489.15;

C77, 79, 81, §478.15]
Condemnation procedure, chapter 6B

478.16 Injury to person or property. Repealed by 86 Acts, ch 1198, § 1.

478.17 Access to lines — damages.
Individuals or corporations operating such transmission lines shall have reasonable access to the same for the purpose of constructing, reconstructing, enlarging, repairing, or locating the poles, wires, or construction and other devices used in or upon such line, but shall pay to the owner of such lands and of crops thereon all damages to said lands or crops caused by entering, using, and occupying said lands for said purposes. Nothing herein contained shall prevent the execution of an agreement between the person or company owning or operating such line and the owner of said land or crops with reference to the use thereof.
[S13, §2120-t; C24, 27, 31, 35, 39, §**8324;** C46, 50, 54, 58, 62, §489.16; C66, 71, 73, 75, §489.17; C77, 79, 81, §478.17]

478.18 Supervision of construction — location.
1. The utilities board shall have power of supervision over the construction of a transmission line and over its future operation and maintenance.
2. A transmission line shall be constructed near and parallel to roads, to the right-of-way of the railways of the state, or along the division lines of the lands, according to the government survey, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.
[S13, §2120-r; C24, 27, 31, 35, 39, §**8325;** C46, 50, 54, 58, 62, §489.17; C66, 71, 73, 75, §489.18; C77, 79, 81, §478.18]
2002 Acts, ch 1097, §2
Removal from highway, chapter 319
Section amended

478.19 Manner of construction.
Such lines shall be built of strong and proper wires attached to strong and sufficient supports properly insulated at all points of attachment; all wires, poles, and other devices which by ordinary wear or other causes are no longer safe shall be removed and replaced by new wires, poles, or other devices, as the case may be, and all abandoned wires, poles, or other devices shall be at once removed. Where wires carrying current are carried across, either above or below wires used for other service, the said transmission line shall be constructed in such manner as to eliminate, so far as practicable, damages to persons or property by reason of said crossing. There shall also be installed sufficient devices to automatically shut off electric current through said transmission line whenever connection is made whereby current is transmitted from the wires of said transmission line to the ground, and there shall also be provided a safe and modern improved device for the protection of said line against lightning. The utilities board shall have power to make and enforce such further and additional rules relating to location, construction, operation and maintenance of said transmission line as may be reasonable.
All transmission lines, wires or cables outside of cities for the transmission, distribution or sale of electric current at any voltage shall be constructed and maintained in accordance with standards adopted by rule by the utilities board.
[S13, §2120-r; C24, 27, 31, 35, 39, §**8326;** C46, 50, 54, 58, 62, §489.18; C66, 71, 73, 75, §489.19; C77, 79, 81, §478.19]
84 Acts, ch 1101, §3

478.20 Distance from buildings.
No transmission line shall be constructed, except by agreement, within one hundred feet of any dwelling house or other building, except where said line crosses or passes along a public highway or is located alongside or parallel with the right of way of any railway company. In addition to the foregoing, each person, company, or corporation shall conform to any other rules, regulations, or specifications established by the utilities board, in the construction, operation, or maintenance of such lines.
[S13, §2120-r; C24, 27, 31, 35, 39, §**8327;** C46, 50, 54, 58, 62, §489.19; C66, 71, 73, 75, §489.20; C77, 79, 81, §478.20]

478.21 Nonuse — revocation of franchise — extensions of time.
1. If the improvement for which a franchise is granted is not constructed in whole or in part within two years from the date the franchise is granted, or within two years after final unappealable disposition of judicial review of a franchise order or of condemnation proceedings, the franchise shall be forfeited and the utilities board which granted the franchise shall revoke the franchise and make a record of the revocation, unless the person holding the franchise petitions the board for an extension of time.
2. Upon a showing of sufficient justification for the delay of construction, the board may grant one or more extensions of time for periods up to two years for each extension.
[C24, 27, 31, 35, 39, §**8329;** C46, 50, 54, 58, 62, §489.20; C66, 71, 73, 75, §489.21; C77, 79, 81, §478.21]
94 Acts, ch 1136, §5; 2002 Acts, ch 1097, §3
Section amended

478.22 Action for violation.

When the board determines that a person is in violation of this chapter, the board may commence an action in the district court of the county in which the violation is alleged to have occurred, for injunctive relief or other appropriate remedy.

[C24, 27, 31, 35, 39, §**8330;** C46, 50, 54, 58, 62, §489.21; C66, 71, 73, 75, §489.22; C77, 79, 81, §478.22]

91 Acts, ch 112, §1

478.23 Prior franchises — legislative control.

Any such franchise heretofore granted under previously existing law shall not be abrogated by the provisions of this chapter, but all such franchises and all franchises granted under the provisions of this chapter shall be subject to further legislative control.

[C24, 27, 31, 35, 39, §**8331;** C46, 50, 54, 58, 62, §489.22; C66, 71, 73, 75, §489.23; C77, 79, 81, §478.23]

478.24 Violations.

Any person, company or corporation constructing or undertaking to construct or maintain any electric transmission line, without first procuring a franchise for such purpose in accordance with the provisions of this chapter, shall be guilty of a serious misdemeanor; and for violating any of the other provisions of this chapter relating to electric transmission lines or disobeying any order or rule made by the utilities board in relation thereto, shall be guilty of a simple misdemeanor.

[S13, §1527-d; C24, 27, 31, 35, 39, §**8332;** C46, 50, 54, 58, 62, §489.23; C66, 71, 73, 75, §489.24; C77, 79, 81, §478.24]

478.25 Wire crossing railroads — supervision.

The utilities board shall have general supervision over any and all wires whatsoever crossing under or over any railway track and shall make rules prescribing the manner in which such wires shall cross such track; but in no case shall the board prescribe a less height for any wire than twenty-two feet above the top of the rails of any railroad track.

[S13, §2120-d, -e, -h; C24, 27, 31, 35, 39, §**8333;** C46, 50, 54, 58, 62, §489.24; C66, 71, 73, 75, §489.25; C77, 79, 81, §478.25]

478.26 Wires across railroad right of way at highways.

The utilities board shall prescribe the manner for the crossing of wires over and across railroad rights of way at highways and other places within the state.

[S13, §2120-i; C24, 27, 31, 35, 39, §**8334;** C46, 50, 54, 58, 62, §489.25; C66, 71, 73, 75, §489.26; C77, 79, 81, §478.26]

478.27 Wires — how strung.

No corporation or person shall place or string any such wire for transmitting electric current or any wire whatsoever across any track of a railroad except in the manner prescribed by the utilities board.

[S13, §2120-f; C24, 27, 31, 35, 39, §**8335;** C46, 50, 54, 58, 62, §489.26; C66, 71, 73, 75, §489.27; C77, 79, 81, §478.27]

478.28 Examination of existing wires.

The utilities board shall, either by personal examination or otherwise, obtain information where railroad tracks are crossed by wires contrary to, or not in compliance with, the rules prescribed by it. It shall order such change or changes to be made by the persons or corporations owning or operating such wires as may be necessary to make the same comply with said rules and within such reasonable time as it may prescribe.

[S13, §2120-g; C24, 27, 31, 35, 39, §**8336;** C46, 50, 54, 58, 62, §489.27; C66, 71, 73, 75, §489.28; C77, 79, 81, §478.28]

478.29 Civil penalties.

A person who violates a provision of this chapter is subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater. Civil penalties collected pursuant to this section shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the Iowa energy center created in section 266.39C.

Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation.

[S13, §2120-j; C24, 27, 31, 35, 39, §**8337;** C46, 50, 54, 58, 62, §489.28; C66, 71, 73, 75, §489.29; C77, 79, 81, §478.29]

83 Acts, ch 127, §42; 91 Acts, ch 112, §2

478.30 Crossing highway.

Nothing in this chapter shall prevent any such individual or corporation having its high tension line on its own private right of way on both sides of any highway, from crossing such public highway under such rules and regulations as the utilities board may prescribe, and subject from time to time to legislative control as to duration and use.

[C24, 27, 31, 35, 39, §**8338;** C46, 50, 54, 58, 62, §489.29; C66, 71, 73, 75, §489.30; C77, 79, 81, §478.30]

478.31 Temporary permits for lines less than one mile.

Notwithstanding the provisions of section 478.1 any person, company or corporation proposing to construct an electric transmission line not exceeding one mile in length and which does not involve the taking of property under the right of eminent domain may obtain a temporary construction permit from the utilities board by proceeding in the manner hereinafter set forth. Said person, company or corporation shall first file with the board a verified petition setting forth the requirements of section 478.3, subsection 1, paragraphs *"a"* through *"h"*, with the further allegation that the petitioner is the nearest electric utility to the proposed point of service.

The petition shall also state that the filing thereof constitutes an application for a temporary construction permit and shall also have endorsed thereon the approval of the appropriate highway authority or railroad concerned if such line is to be constructed over, across or along a public highway or railroad.

Upon receipt of such petition the utilities board shall consider same and may grant a temporary construction permit in whole or in part or upon such terms, conditions and restrictions, and with such modifications as to location as may seem to it just and proper, however, no finding of public use will be made at the time of the issuance of the permit, such finding to be made, if substantiated by petitioner, at the subsequent consideration of the propriety of granting a franchise for the line subject to the permit. The signature of one utilities board member on such permit shall be sufficient. The issuance of such permit shall constitute temporary authority for the permit holder to construct the line for which the permit is granted.

Upon the granting of such temporary construction permit the utilities board shall cause the publication of notice required by section 478.5 and all other requirements shall be complied with as in the manner provided for the granting of a franchise. If a hearing is required then the petitioner shall make a sufficient and proper showing thereat before a franchise will be issued for the line. Any franchise issued will be subject to all applicable provisions of this chapter.

Notwithstanding anything foregoing, if the utilities board shall determine that a franchise should not be granted, or that further restrictions, conditions or modifications are required, or if the petitioner shall fail to make a sufficient and proper showing of the necessity for the granting of a franchise within six months of the granting of the temporary construction permit, the permit issued hereunder shall become null and void and the permit holder may be required to take such action deemed necessary by the board to remove, modify or relocate the construction undertaken by virtue of the temporary permit issued hereunder.

[C66, 71, 73, 75, §489.31; C77, 79, 81, §478.31]

478.32 Rehearing — judicial review.

Any person, company, or corporation aggrieved by the action of the utilities board in granting or failing to grant a franchise under the provisions of this chapter, shall be entitled to the rehearing procedure provided in section 476.12. Judicial review of actions of the board may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C71, 73, 75, §489.32; C77, 79, 81, §478.32]

See §476.13

478.33 Cancellation.

A person seeking to acquire an easement or other property interest for the construction, maintenance or operation of an electric transmission line shall:

1. Allow the landowner or a person serving in a fiduciary capacity in the landowner's behalf to cancel any agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract and inform the landowner or such fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or such fiduciary.

2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.

3. Not record any agreement until after the period for cancellation has expired.

4. Not include in the agreement any waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each transmission line project.

[C81, §478.33]

478.34 and 478.35 Reserved.

478.36 Subsequent construction near buried line. Repealed by 92 Acts, ch 1103, § 11, 12. See chapter 480.

CHAPTER 478A

GAS LAMPS

478A.1 to 478A.6 Repealed by 82 Acts, ch 1163, §1.
478A.7 Decorative gas lamps.

478A.1 to 478A.6 Repealed by 82 Acts, ch 1163, § 1.

478A.7 Decorative gas lamps.

1. Commencing January 1, 1979 a person shall not sell or offer for sale in this state a decorative gas lamp manufactured after December 31, 1978.

2. As used in this section *"decorative gas lamp"* means a device installed for the purpose of producing illumination by burning natural, mixed or liquid petroleum gas and utilizing either a mantle or an open flame, but does not include portable camp lanterns or gas lamps.

3. Persons convicted of violating this section shall be guilty of a simple misdemeanor.

4. Notwithstanding subsection 1, commencing January 1, 1990, a person may sell or offer for sale in this state a decorative gas lamp manufactured after December 31, 1978, if the utilities board within the utilities division of the department of commerce determines, after notice and an opportunity for interested persons to comment at an oral presentation, that the sale or offer for sale of decorative gas lamps does not violate the public interest.

[C79, 81, §478A.7]
89 Acts, ch 297, §14

CHAPTER 479

PIPELINES AND UNDERGROUND GAS STORAGE

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479.1 Purpose — applicability.

It is the purpose of the general assembly in enacting this law to confer upon the utilities board the power and authority to supervise the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state by pipeline, whether specifically mentioned in this chapter or not, and the power

and authority to supervise the underground storage of gas, to protect the safety and welfare of the public in its use of public or private highways, grounds, waters, and streams of any kind in this state. However, this chapter does not apply to interstate natural gas or hazardous liquid pipelines, pipeline companies, and underground storage, as these terms are defined in chapters 479A and 479B.

[C35, §8338-f14; C39, §**8338.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.1; C77, 79, 81, §479.1]

88 Acts, ch 1074, §27; 95 Acts, ch 192, §5

479.2 Definitions.

As used in this chapter:

1. *"Board"* means the utilities board within the utilities division of the department of commerce.

2. *"Pipeline"* means a pipe, pipes, or pipelines used for the transportation or transmission of a solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas or hazardous liquids.

3. *"Pipeline company"* means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include a person owning, operating, or controlling interstate pipelines for the transportation or transmission of natural gas or hazardous liquids.

4. *"Underground storage"* means storage of gas in a subsurface stratum or formation of the earth.

[C31, §8338-d1; C35, §8338-f15; C39, §**8338.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.2; C77, 79, 81, §479.2]

88 Acts, ch 1074, §28; 95 Acts, ch 192, §6

479.3 Conditions attending operation.

No pipeline company shall construct, maintain or operate any pipeline or lines under, along, over or across any public or private highways, grounds, waters or streams of any kind in this state except in accordance with the provisions of this chapter.

[C31, §8338-d2; C35, §8338-f16; C39, §**8338.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.3; C77, 79, 81, §479.3]

479.4 Dangerous construction — inspection.

The board is vested with power and authority and it shall be its duty to supervise all pipelines and underground storage and pipeline companies and shall from time to time inspect and examine the construction, maintenance and the condition of said pipelines and underground storage facilities and whenever said board shall determine that any pipeline and underground storage facilities or any apparatus, device or equipment used in connection therewith is unsafe and dangerous it shall immediately in writing notify said pipeline company, constructing or operating said pipeline and underground storage facilities, device, apparatus or other equipment to repair or replace any defective or unsafe part or portion of said pipeline and underground storage facilities, device, apparatus or equipment.

All faulty construction, as determined by the inspector, shall be repaired immediately by the contractor operating for the pipeline company and the cost of such repairs shall be paid by said contractor. If such repairs are not made by contractor, the board shall proceed to collect under the provisions of section 479.26.

[C31, §8338-d29; C35, §8338-f17; C39, §**8338.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.4; C77, 79, 81, §479.4]

See also §479.29

479.5 Application for permit.

A pipeline company doing business in this state shall file with the board its verified petition asking for a permit to construct, maintain and operate its pipeline or lines along, over or across the public or private highways, grounds, waters and streams of any kind of this state. Any pipeline company now owning or operating a pipeline in this state shall be issued a permit by the board upon supplying the information as provided for in section 479.6.

A pipeline company doing business in this state and proposing to engage in underground storage of gas within this state shall file with the board its verified petition asking for a permit to construct, maintain and operate facilities for the underground storage of gas to include the construction, placement, maintenance and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance and operation of the gas underground storage facilities.

A pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board or a person designated by the board shall serve as the presiding officer at each meeting, shall present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section 6B.2A. A formal record of the meeting shall not be required.

The meeting shall be held at a location reasonably accessible to all persons, companies, or corporations which may be affected by the granting of the permit.

The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each person determined to be a land-

owner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, *"landowner"* means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and *"pipeline"* means a line transporting a solid, liquid, or gaseous substance, except water, under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

The notice shall set forth the name of the applicant; the applicant's principal place of business; the general description and purpose of the proposed project; the general nature of the right-of-way desired; the possibility that the right-of-way may be acquired by condemnation if approved by the utilities board; a map showing the route of the proposed project; a description of the process used by the utilities board in making a decision on whether to approve a permit including the right to take property by eminent domain; that the landowner has a right to be present at such meeting and to file objections with the board; and a designation of the time and place of the meeting. The notice shall be served by certified mail with return receipt requested not less than thirty days previous to the time set for the meeting, and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

A pipeline company seeking rights under this chapter shall not negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

[C31, §8338-d3; C35, §8338-f18; C39, §**8338.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.5; C77, 79, 81, §479.5]

88 Acts, ch 1074, §29; 95 Acts, ch 192, §7; 2000 Acts, ch 1179, §24, 30

479.6 Petition.

Said petition shall state:

1. The name of the individual, firm, corporation, company, or association asking for said permit.

2. The applicant's principal office and place of business.

3. A legal description of the route of said proposed line or lines, together with a map thereof.

4. A general description of the public or private highways, grounds and waters, streams and private lands of any kind along, over or across which said proposed line or lines will pass.

5. The specifications of material and manner of construction.

6. The maximum and normal operating pressure under which it is proposed to transport any solid, liquid, or gaseous substance, except water.

7. If permission is sought to construct, maintain and operate facilities for the underground storage of gas said petition shall include the following information in addition to that stated above:

a. A description of the public or private highways, grounds and waters, streams and private lands of any kind under which such storage is proposed, together with a map thereof.

b. Maps showing the location of proposed machinery, appliances, fixtures, wells and stations necessary for the construction, maintenance and operation of such gas underground storage facilities.

8. The possible use of alternative routes.

9. The relationship of the proposed project to the present and future land use and zoning ordinances.

10. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

11. By affidavit, that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

[C31, §8338-d4; C35, §8338-f19; C39, §**8338.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.6; C77, 79, 81, §479.6]

479.7 Hearing — notice.

Upon the filing of said petition the board shall fix a date for hearing thereon and shall cause notice thereof to be published in some newspaper of general circulation in each county through which said proposed line or lines or gas storage facilities will extend; said notice to be published for two consecutive weeks.

Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. The notice shall include the statement of individual rights required pursuant to section 6B.2A.

[C31, §8338-d5; C35, §8338-f20; C39, §**8338.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.7; C77, 79, 81, §479.7]

2000 Acts, ch 1179, §25, 30

479.8 Time and place.

The hearing shall not be less than ten days nor more than thirty days from the date of the last publication and where the proposed new pipeline would operate under pressure exceeding one hundred fifty pounds per square inch and exceed five miles in length, shall be held in the county seat of the county located at the midpoint of the proposed

line or lines or the county in which the proposed gas storage facility would be located.

[C31, §8338-d6; C35, §8338-f21; C39, §**8338.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.8; C77, 79, 81, §479.8; 81 Acts, ch 159, §10]

479.9 Objections.

Any person, corporation, company or city whose rights or interests may be affected by said pipeline or lines or gas storage facilities may file written objections to said proposed pipeline or lines or gas storage facilities or to the granting of said permit.

[C31, §8338-d7; C35, §8338-f22; C39, §**8338.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.9; C77, 79, 81, §479.9]

479.10 Filing.

All such objections shall be on file in the office of said board not less than five days before the date of hearing on said application but said board may permit the filing of said objections later than five days before said hearing, in which event the applicant must be granted a reasonable time to meet said objections.

[C31, §8338-d8; C35, §8338-f23; C39, §**8338.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.10; C77, 79, 81, §479.10]

479.11 Examination — testimony.

The said board may examine the proposed route of said pipeline or lines and location of said gas storage area, or may cause such examination to be made by an engineer selected by it. At said hearing the said board shall consider said petition and any objections filed thereto and may in its discretion hear such testimony as may aid it in determining the propriety of granting such permit.

[C31, §8338-d9; C35, §8338-f24; C39, §**8338.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.11; C77, 79, 81, §479.11]

479.12 Final order — condition.

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to safety requirements and as to location and route as determined by it to be just and proper. Before a permit is granted to a pipeline company, the board, after a public hearing as provided in this chapter, shall determine whether the services proposed to be rendered will promote the public convenience and necessity, and an affirmative finding to that effect is a condition precedent to the granting of a permit.

[C31, §8338-d10; C35, §8338-f25; C39, §**8338.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.12; C77, 79, 81, §479.12]

88 Acts, ch 1074, §30

479.13 Costs and fees.

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to construction inspections conducted by the board or the board's designee.

[C31, §8338-d11, -d12; C35, §8338-f26; C39, §**8338.34;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.13; C77, 79, 81, §479.13]

88 Acts, ch 1074, §31

479.14 Inspection fee.

A pipeline company shall pay an annual inspection fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state, the inspection fee to be paid to the board for the calendar year in advance between January 1 and February 1 of each year.

[C31, §8338-d13; C35, §8338-f27; C39, §**8338.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.14; C77, 79, 81, §479.14]

88 Acts, ch 1074, §32

479.15 Failure to pay.

It shall be the duty of the board to collect all inspection fees provided in this chapter, and failure to pay any such inspection fee within thirty days after the time the same shall become due shall be cause for revocation of the permit.

[C35, §8338-f28; C39, §**8338.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.15; C77, 79, 81, §479.15]

479.16 Receipt of funds.

All moneys received under this chapter shall be remitted monthly to the treasurer of state and credited to the general fund of the state as provided in section 476.10.

[C31, §8338-d14; C35, §8338-f29, -f30; C39, §**8338.37, 8338.38;** C46, 50, 54, 58, 62, 66, 71, §490.16, 490.17; C73, 75, §490.17; C77, 79, 81, §479.16]

87 Acts, ch 234, §432; 94 Acts, ch 1107, §83

479.17 Rules.

The said board shall have full authority and power to promulgate such rules as it deems proper and expedient to insure the orderly conduct of the hearings herein provided for and also to prescribe rules for the enforcement of this chapter.

[C31, §8338-d15; C35, §8338-f31; C39, §**8338.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.18; C77, 79, 81, §479.17]

479.18 Permit.

The board shall prepare and issue any permit granted in accordance with section 479.12. Said permit shall show the name and address of the pipeline company to which it is issued and identify by reference thereto the decision and order of the board under which said permit is issued. It shall be signed by the chairperson of the board and the

official seal of the board shall be affixed thereto.

[C31, §8338-d16; C35, §8338-f32; C39, §**8338.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.19; C77, 79, 81, §479.18]

479.19 Limitation on grant.

No exclusive right shall ever be granted to any pipeline company to construct, maintain, and operate its pipeline or lines along, over or across any public highway, grounds or waters and no such permit shall ever be granted for a longer period than twenty-five years.

[C31, §8338-d17; C35, §8338-f33; C39, §**8338.41;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.20; C77, 79, 81, §479.19]

479.20 Sale of permit.

No permit shall be sold until the sale is approved by the board.

[C35, §8338-f34; C39, §**8338.42;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.21; C77, 79, 81, §479.20]

479.21 Transfer of permit.

If a transfer of such permit is made before the construction for which it was issued is completed in whole or in part such transfer shall not be effective until the person, company or corporation to whom it was issued shall file in the office of said board a notice in writing stating the date of such transfer and the name and address of said transferee.

[C31, §8338-d11; C35, §8338-f35; C39, §**8338.43;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.22; C77, 79, 81, §479.21]

479.22 Records.

The board shall keep a record of all permits granted and issued by it, showing when and to whom issued and the location and route of said pipeline or lines or gas storage area covered thereby. When any transfer of such permit has been made as provided in this chapter the said board shall also note upon its record the date of such transfer and the name and address of such transferee.

[C31, §8338-d20; C35, §8338-f36; C39, §**8338.44;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.23; C77, 79, 81, §479.22]

479.23 Extension of permit.

A pipeline company may petition the board for the extension of a permit granted under this chapter by filing a petition containing the information required by section 479.6, subsections 1 through 4, 6, and 7, and section 479.26.

[C31, §8338-d22; C35, §8338-f37; C39, §**8338.45;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.24; C77, 79, 81, §479.23]

95 Acts, ch 192, §8

479.24 Eminent domain.

A pipeline company granted a pipeline permit under this chapter shall be vested with the right of eminent domain* to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

A pipeline company having secured a permit for underground storage of gas shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of gas any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of gas, and may appropriate other interests in property, as may be required to adequately examine, prepare, maintain, and operate the underground gas storage facilities. This chapter does not authorize the construction of a pipeline longitudinally on, over or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

[C31, §8338-d23; C35, §8338-f38; C39, §**8338.46;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.25; C77, 79, 81, §479.24]

95 Acts, ch 192, §9

*See 253 Iowa 1143

Eminent domain, chapter 6A et seq.

479.25 Damages.

A pipeline company operating a pipeline or a gas storage area shall have reasonable access to the pipeline or gas storage area for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus or other stations, wells, devices, or equipment used in or upon the pipeline or gas storage area; shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the land; and shall pay to the owner all damages caused by the completion of construction of the pipeline due to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipe-

line. However, this section shall not prevent the execution of an agreement between the pipeline company and the owner of land or crops with reference to the use of the land.

[C31, §8338-d26; C35, §8338-f39; C39, §**8338.47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.26; C77, 79, 81, §479.25]

95 Acts, ch 192, §10

479.26 Financial condition of permittee — bond.

Before any permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction or operation of its pipeline and gas storage facilities in the state of Iowa. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

[C31, §8338-d27; C35, §8338-f40; C39, §**8338.48;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.27; C77, 79, 81, §479.26; 81 Acts, ch 159, §11]

479.27 Venue.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located shall have jurisdiction.

[C31, §8338-d28; C35, §8338-f41; C39, §**8338.49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.28; C77, 79, 81, §479.27]

95 Acts, ch 192, §11

479.28 Orders — enforcement.

If said pipeline company fails to obey an order within a time prescribed by the said board the said board may commence an equitable action in the district court of the county where said defective, unsafe, or dangerous portion of said pipeline, device, apparatus or equipment is located to compel compliance with its said order. If, after due trial of said action the court finds that said order is reasonable, equitable and just, it shall decree a mandatory injunction compelling obedience to and compliance with said order and may grant such other relief as may be just and proper. Appeal from said decree may be taken in the same manner as in other actions.

[C31, §8338-d30; C35, §8338-f42; C39, §**8338.50;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.29; C77, 79, 81, §479.28]

Appeal in civil actions, chapter 625A

479.29 Land restoration.

1. The board shall, pursuant to chapter 17A, adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

a. Topsoil separation and replacement.

b. Temporary and permanent repair to drain tile.

c. Removal of rocks and debris from the right-of-way.

d. Restoration of areas of soil compaction.

e. Restoration of terraces, waterways, and other erosion control structures.

f. Revegetation of untilled land.

g. Future installation of drain tile or soil conservation structures.

h. Restoration of land slope and contour.

i. Restoration of areas used for field entrances and temporary roads.

j. Construction in wet conditions.

k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance

with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration or line location executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479.31.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to insure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The petitioners shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For purposes of this section, *"construction"* includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

[C73, 75, 77, 79, §479.4; C81, §479.29; 81 Acts, ch 159, §12, 13]

95 Acts, ch 192, §12; 99 Acts, ch 85, §1, 11

479.30 Entry for land surveys.

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine the direction or depth of a pipeline by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479.5 and to any person residing on or in possession of the land. The entry for land surveys authorized in this section shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

[C81, §479.30]

95 Acts, ch 192, §13

479.31 Civil penalty.

A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board not to exceed ten thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the Iowa energy center created in section 266.39C.

Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

[C71, 73, 75, §490.31; C77, 79, §479.29; C81, §479.31]

91 Acts, ch 112, §3; 95 Acts, ch 192, §14

479.32 Rehearing — judicial review.

Rehearing procedure for any person, company or corporation aggrieved by the action of the board in granting or failing to grant a permit under the provisions of this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C71, 73, 75, §490.32; C77, 79, §479.30; C81, §479.32]

See §476.13

479.33 Authorized federal aid.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. § 60101 – 60125.

[C71, 73, 75, §490.33; C77, 79, §479.31; C81, §479.33]

88 Acts, ch 1074, §33; 95 Acts, ch 49, §13

479.34 Cancellation.

A person seeking to acquire an easement or other property interest for the construction, maintenance or operation of a pipeline shall:

1. Allow the landowner or a person serving in a fiduciary capacity in the landowner's behalf to cancel an agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract and inform the landowner or such fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or such fiduciary.

2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.

3. Not record any agreement until after the period for cancellation has expired.

4. Not include in the agreement any waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

[C81, §479.34]

479.35 to 479.40 Reserved.

479.41 Arbitration agreements.

If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a judicial magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the judicial magistrate by restricted certified mail to the other party and file proof of mailing with the petition. If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, *"landowner"* means the persons who signed the easement or other written agreement, their heirs, successors, and assigns.

[81 Acts, ch 159, §2, 3]

95 Acts, ch 192, §15

479.42 Subsequent pipelines.

A pipeline company shall not install a subsequent pipeline upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved, unless the damage claim is under litigation, arbitration, or a proceeding pursuant to section 479.46.

With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit in writing their claims for damages caused by installation of the pipeline within one year of final cleanup on the real property.

[81 Acts, ch 159, §2, 4]

95 Acts, ch 192, §16

479.43 Damage agreement.

A pipeline company shall not install a pipeline until there is a written statement on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The company shall provide a copy of the statement to the landowner.

[81 Acts, ch 159, §2, 5]

479.44 Negotiated fee.

In lieu of a one-time lump sum payment for an

easement or other property interest allowing a pipeline to cross the property, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

[81 Acts, ch 159, §2, 6]

479.45 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the company in writing fourteen days prior to harvest in each year to assess crop deficiency.

[81 Acts, ch 159, §2, 7]
99 Acts, ch 85, §2, 11

479.46 Determination of installation damages.

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or a pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from the installation of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

The application shall contain the following:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating the following:

a. That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.

b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

c. The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or the landowner may appear before the commissioners.

If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisement of damages shall be consolidated into one application, notice, and appraisement. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline and they shall file their report with the sheriff. The appraisement of damages returned by the commissioners is final unless appealed. After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisement of damages was made, the amount of the appraisement, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisement of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, *"damages"* means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures but does not include compensation for a property interest, and *"landowner"* includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

[81 Acts, ch 159, §2, 8]

95 Acts, ch 192, §17; 2000 Acts, ch 1179, §26, 30

479.47 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

[81 Acts, ch 159, §2, 9]

83 Acts, ch 128, §1, 2; 87 Acts, ch 23, §56; 92 Acts, ch 1103, §9; 95 Acts, ch 192, §18

479.48 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of a pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479.49, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479.47, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the

responsibilities of this subsection.

99 Acts, ch 85, §3, 11; 2000 Acts, ch 1139, §1

479.49 Farmland improvements.

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

2000 Acts, ch 1139, §2

CHAPTER 479A

INTERSTATE NATURAL GAS PIPELINES

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479A.1 Purpose.

It is the purpose of the general assembly in enacting this law to confer upon the utilities board the power and authority to implement certain controls over the transportation of natural gas to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a pipeline within the state. It is also the purpose of the general assembly in enacting this law to provide for the board to act as an agent for the federal government in determining pipeline company compliance with the standards of the federal government for pipelines within the boundaries of the state.

88 Acts, ch 1074, §1

479A.2 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Board"* means the utilities board within the utilities division of the department of commerce.

2. *"Pipeline"* means an interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas within or through this state.

3. *"Pipeline company"* means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines.

4. *"Underground storage"* means the storage of natural gas in a subsurface stratum or formation of the earth by a pipeline company.

88 Acts, ch 1074, §2

479A.3 Conditions attending operation.

A pipeline company shall not construct, maintain, or operate pipeline under, along, over, or across any public or private highways, grounds, waters, or streams of any kind in this state except in accordance with this chapter.

88 Acts, ch 1074, §3

479A.4 Construction inspection.

The board shall supervise pipelines, pipeline companies, and underground storage, and shall inspect the construction, maintenance, and condition of pipelines and underground storage facilities in accordance with section 479A.18. When inspecting for safety standard compliance, the board

shall apply only United States department of transportation safety standards.

88 Acts, ch 1074, §4

479A.5 Notice prior to construction.

Before beginning construction in this state, a pipeline company shall provide an adequate opportunity for state inspection, by giving written notice to the chairperson of the board stating the time, date, location, and nature of the construction. The notice shall be filed with the chairperson of the board not less than five business days before commencement of the construction.

88 Acts, ch 1074, §5

479A.6 Cost of construction inspection.

A pipeline company shall pay actual unrecovered costs directly attributable to construction inspections conducted by the board or the board's designee.

88 Acts, ch 1074, §6

479A.7 Annual inspection fee.

A pipeline company shall pay an annual inspection fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in this state. The annual inspection fee shall be paid for the calendar year in advance between January 1 and February 1 of each year.

88 Acts, ch 1074, §7

479A.8 Failure to pay — penalties.

The board shall collect the inspection fees, and failure to pay an inspection fee within thirty days after the time the fee becomes due is cause for the assessment of civil penalties in accordance with section 479A.16.

88 Acts, ch 1074, §8

479A.9 Deposit of funds.

Moneys received under this chapter shall be credited to the general fund of the state as provided in section 476.10.

88 Acts, ch 1074, §9; 94 Acts, ch 1107, §84; 99 Acts, ch 85, §10, 11

479A.10 Rules.

The board shall adopt rules, pursuant to chapter 17A for the enforcement of this chapter.

88 Acts, ch 1074, §10

479A.11 Damages.

A pipeline company operating pipelines or underground storage shall be given reasonable access to the pipelines and storage areas for the purpose of constructing, operating, maintaining, or locating their pipes, pumps, pressure apparatus, or other stations, wells, devices, or equipment used in or upon a pipeline or storage area, but shall pay the owner of the lands for the right of entry and the owner of crops on the land all damages caused by entering, using, or occupying the lands for these purposes; and shall pay to the owner of the lands, after the completion of construction of the pipeline or storage, all damages caused by settling of the soil along and above the pipeline, and wash or erosion of the soil along the pipeline due to the construction of the pipeline. However, this section does not prevent the execution of an agreement with other terms between the pipeline company and the owner of the land or crops with reference to their use.

88 Acts, ch 1074, §11; 95 Acts, ch 192, §19

479A.12 Financial condition of company — bond or other security.

Before construction is begun by a pipeline company, the company shall satisfy the board that the company has property subject to execution within this state other than pipelines, of a value in excess of two hundred fifty thousand dollars, or the company must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the company will pay any and all damages legally recovered against it growing out of the construction, abandonment, or operation of its pipeline and underground storage facilities in this state, or the company shall deposit with the board security satisfactory to the board as a guaranty for the payment of that amount of damages, or furnish to the board satisfactory proofs of its solvency and financial ability to pay that amount of damages.

88 Acts, ch 1074, §12; 98 Acts, ch 1093, §1

479A.13 Jurisdiction.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located has jurisdiction of a case involving that company.

88 Acts, ch 1074, §13; 95 Acts, ch 192, §20

479A.14 Land restoration — standards — inspection.

1. The board shall adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. A county board of supervisors may, under chapter 17A and subsequent to the rulemaking proceedings, petition for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the

land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

a. Topsoil separation and replacement.

b. Temporary and permanent repair to drain tile.

c. Removal of rocks and debris from the right-of-way.

d. Restoration of areas of soil compaction.

e. Restoration of terraces, waterways, and other erosion control structures.

f. Revegetation of untilled land.

g. Future installation of drain tile or soil conservation structures.

h. Restoration of land slope and contour.

i. Restoration of areas used for field entrances and temporary roads.

j. Construction in wet conditions.

k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company, and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of a pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479A.16.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline before commencing trenching operations to ensure that construction takes place in the proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted under this chapter, the land restoration plan approved by the board, or the terms of an independent agreement with the pipeline company regarding line location or land restoration executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the county board of supervisors regarding the content of this chapter and the standards and the inspectors' responsibility to require construction conforming with them.

9. Prior to the initiation of construction, the pipeline company shall file a written land restoration plan with the board describing the methods and procedures by which compliance with this section and the standards adopted under this section will be achieved. The board shall review this plan to insure that the requirements of this section and rules adopted pursuant to this section are met. After board review, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction. The requirements of this subsection may be waived by the board to the extent an environmental impact statement addressing the land restoration subjects in subsection 1 was prepared by the federal energy regulatory commission.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan if the alternative provisions are contained in agreements independently executed by the pipeline company and the landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For the purposes of this section, *"construction"* includes the removal of a previously constructed pipeline.

88 Acts, ch 1074, §14; 95 Acts, ch 192, §21; 99 Acts, ch 85, §4, 11; 2000 Acts, ch 1080, §1

479A.15 Entry for land surveys.

A pipeline company may enter upon private land for the purpose of surveying and examining the land to determine direction or depth of a pipe-

line by giving ten days' written notice by restricted certified mail to the landowner and to any person residing on or in possession of the land. For purposes of this section only, *"landowner"* means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property. The entry for land surveys authorized in this section is not a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry and survey.

88 Acts, ch 1074, §15; 95 Acts, ch 192, §22

479A.16 Civil penalty.

A person who violates this chapter or a rule or an order issued pursuant to this chapter is subject to a civil penalty levied by the board not to exceed one thousand dollars for each violation. Each day that the violation continues constitutes a separate offense. However, the civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the Iowa energy center created in section 266.39C.

A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

88 Acts, ch 1074, §16; 95 Acts, ch 192, §23

479A.17 Rehearing — judicial review.

Rehearing procedure for a person aggrieved by the action of the board in assessing or failing to assess civil penalties under this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with chapter 17A.

88 Acts, ch 1074, §17

479A.18 Federal inspection.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. § 60101 – 60125.

88 Acts, ch 1074, §18; 95 Acts, ch 49, §14

479A.19 Right to cancel agreement.

1. A person seeking to acquire an easement or other property interest for the construction, maintenance, or operation of a pipeline shall allow the landowner or a person serving in a fiduciary capacity in the landowner's behalf to cancel an agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract; shall inform the landowner or fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or fiduciary; and shall provide the landowner or fiduciary with a form in duplicate for the notice of cancellation.

2. A person seeking to acquire an easement or other property interest for the construction, maintenance, or operation of a pipeline shall not record an agreement until after the period for cancellation has expired, and shall not include in an agreement a waiver of the right to cancel in accordance with this section.

3. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

88 Acts, ch 1074, §19

479A.20 Arbitration agreements.

Notwithstanding conflicting provisions of chapter 679A, if an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a magistrate in the county where the real property is located for the appointment of an arbitrator to serve in place of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the magistrate by restricted certified mail to the other party and file proof of mailing with the petition. If, after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, *"landowner"* means the persons who signed the easement or other written agreement, their heirs, successors, and assigns.

88 Acts, ch 1074, §20; 95 Acts, ch 192, §24

479A.21 Subsequent pipelines.

A pipeline company shall not install a subsequent pipeline upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved unless that claim is under litigation or arbitration or is the subject of a proceeding pursuant to section 479A.25.

88 Acts, ch 1074, §21; 95 Acts, ch 192, §25

479A.22 Damage statement.

A pipeline company shall not install a pipeline unless there is a written statement on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The company shall provide a copy of the statement to the landowner.

88 Acts, ch 1074, §22

479A.23 Negotiated annual fee.

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross property, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

88 Acts, ch 1074, §23

479A.24 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by, or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the company in writing fourteen days prior to harvest in each year to assess crop deficiency.

3. With the exception of claims for damage to drain tile and future crop deficiency, landowners and tenants must submit in writing their claims for damages caused by installation of the pipeline within one year of completion of installation of a pipeline as determined by the county board of supervisors.

88 Acts, ch 1074, §24; 99 Acts, ch 85, §5, 11

479A.25 Determination of installation damages.

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or the pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from the installation of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

The application shall contain all of the following:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating all of the following:

a. That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.

b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

c. The place, date, and time when the commissioners will view the premises and proceed to ap-

praise the damages and that the pipeline company or landowner may appear before the commissioners.

If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisement of damages shall be consolidated into one application, notice, and appraisement. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline. The commissioners shall file their report with the sheriff. The appraisement of damages returned by the commissioners is final unless appealed. After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisement of damages was made, the amount of the appraisement, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisement of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners, if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages. If the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, *"damages"* means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures but does not include compensation for a property interest, and *"landowner"* includes a tenant.

8. This section does not apply if the easement provides for any other means of negotiation or arbitration.

88 Acts, ch 1074, §25; 95 Acts, ch 192, §26; 2000 Acts, ch 1179, §27, 30

479A.26 Subsequent tiling.

Additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

88 Acts, ch 1074, §26; 92 Acts, ch 1103, §10; 95 Acts, ch 192, §27

479A.27 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of a pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. Abandonment of pipeline facilities requires approval from the federal energy regulatory commission prior to this provision taking effect.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the

facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property to the extent such removal is in accordance with the terms of the abandonment authority from the federal energy regulatory commission. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479A.28, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479A.26, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §6, 11; 2000 Acts, ch 1139, §3

479A.28 Farmland improvements.

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

2000 Acts, ch 1139, §4

CHAPTER 479B

HAZARDOUS LIQUID PIPELINES AND STORAGE FACILITIES

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479B.1 Purpose — authority.

It is the purpose of the general assembly in enacting this law to grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary.

95 Acts, ch 192, §28

479B.2 Definitions.

As used in this chapter, unless the context appears otherwise:

1. *"Board"* means the utilities board within the utilities division of the department of commerce.

2. *"Hazardous liquid"* means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

3. *"Pipeline"* means an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids.

4. *"Pipeline company"* means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any hazardous liquid or underground storage facilities for the underground storage of any hazardous liquid.

5. *"Underground storage"* means storage of hazardous liquid in a subsurface stratum or formation of the earth.

6. *"Utilities division"* means the utilities division of the department of commerce.

95 Acts, ch 192, §29

479B.3 Conditions attending operation.

A pipeline company shall not construct, maintain, or operate a pipeline or underground storage facility under, along, over, or across any public or private highways, grounds, waters, or streams of any kind in this state except in accordance with this chapter.

95 Acts, ch 192, §30

479B.4 Application for permit — informational meeting — notice.

A pipeline company doing business in this state shall file a verified petition with the board asking for a permit to construct, maintain, and operate a new pipeline along, over, or across the public or private highways, grounds, waters, and streams of any kind in this state. Any pipeline company now owning or operating a pipeline or underground storage facility in this state shall be issued a permit by the board upon supplying the information as provided for in section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

A pipeline company doing business in this state and proposing to store hazardous liquid underground within this state shall file with the board a verified petition asking for a permit to construct, maintain, and operate facilities for the underground storage of hazardous liquid which includes the construction, placement, maintenance, and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance, and operation of the underground storage facilities.

The pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board, or a person designated by the board, shall serve as the presiding officer at each meeting and present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners. No formal record of the meeting shall be required. The meeting shall be held at a location reasonably accessible to all persons who may be affected by granting the permit.

The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each landowner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, *"landowner"* means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and *"pipeline"* means a line transporting a hazardous liquid under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

The notice shall set forth the following: the name of the applicant, the applicant's principal place of business, the general description and purpose of the proposed project, the general nature of the right-of-way desired, a map showing the route or location of the proposed project, that the landowner has a right to be present at the meeting and to file objections with the board, and a designation of the time and place of the meeting. The notice shall be sent by restricted certified mail and shall be published once in a newspaper of general circulation in the county not less than thirty days before the date set for the meeting. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

A pipeline company seeking rights under this chapter shall not negotiate or purchase an easement or other interest in land in a county known to be affected by the proposed project prior to the informational meeting.

95 Acts, ch 192, §31

479B.5 Petition.

A petition for a permit shall state all of the following:

1. The name of the individual, firm, corporation, company, or association applying for the permit.

2. The applicant's principal office and place of business.

3. A legal description of the route of the pro-

posed pipeline and a map of the route.

4. A general description of the public or private highways, grounds, waters, streams, and private lands of any kind along, over, or across which the proposed pipeline will pass.

5. If permission is sought to construct, maintain, and operate facilities for the underground storage of hazardous liquids the petition shall include the following additional information:

a. A description and a map of the public or private highways, grounds, waters, streams, and private lands of any kind under which the storage is proposed.

b. Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the hazardous liquid storage facilities.

6. The possible use of alternative routes.

7. The relationship of the proposed project to the present and future land use and zoning ordinances.

8. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

9. An affidavit attesting to the fact that informational meetings were held in each county affected by the proposed project and the time and place of each meeting.

95 Acts, ch 192, §32

479B.6 Hearing — notice.

After the petition is filed, the board shall fix a date for a hearing and shall publish notice for two consecutive weeks, in a newspaper of general circulation in each county through which the proposed pipeline or hazardous liquid storage facilities will extend.

The hearing shall not be less than ten days nor more than thirty days from the date of the last publication of the notice. If the pipeline exceeds five miles in length, the hearing shall be held in the county seat of the county located at the midpoint of the proposed pipeline or the county in which the proposed hazardous liquid storage facility would be located.

95 Acts, ch 192, §33

479B.7 Objections.

A person, including a governmental entity, whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections.

All objections shall be on file with the board not less than five days before the date of hearing on the application. However, the board may permit the filing of the objections later than five days before the hearing, in which event the applicant must be granted a reasonable time to meet the objections.

95 Acts, ch 192, §34

479B.8 Examination — testimony.

The board may examine the proposed route of the pipeline and location of the underground storage facility. At the hearing the board shall consider the petition and any objections and may hear testimony to assist the board in making its determination regarding the application.

95 Acts, ch 192, §35

479B.9 Final order — condition.

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper. A permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity.

95 Acts, ch 192, §36

479B.10 Costs and fees.

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to inspections conducted by the board.

95 Acts, ch 192, §37

479B.11 Inspection fee.

If the board enters into agreements with the United States department of transportation pursuant to section 479B.23, a pipeline company shall pay an annual fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state. The inspection fee shall be paid to the board between January 1 and February 1 for the calendar year.

The board shall collect all fees. Failure to pay any fee within thirty days from the due date shall be grounds for revocation of the permit or assessment of civil penalties.

95 Acts, ch 192, §38

479B.12 Use of funds.

All moneys received under this chapter, other than civil penalties collected pursuant to section 479B.21, shall be remitted monthly to the treasurer of state and credited to the general fund of the state.

95 Acts, ch 192, §39

479B.13 Financial condition of permittee — bond.

Before a permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines or underground storage facilities, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dol-

lars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction, maintenance, or operation of its pipeline or underground storage facilities in this state. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

95 Acts, ch 192, §40

479B.14 Permits — limitations — sale or transfer — records — extension.

The board shall prepare and issue permits. The permit shall show the name and address of the pipeline company to which it is issued and identify the decision and order of the board under which the permit is issued. The permit shall be signed by the chairperson of the board and the official seal of the board shall be affixed to it.

The board shall not grant an exclusive right to any pipeline company to construct, maintain, or operate its pipeline along, over, or across any public or private highway, grounds, waters, or streams. The board shall not grant a permit for longer than twenty-five years.

A permit shall not be sold until the sale is approved by the board.

If a transfer of a permit is made before the construction for which it was issued is completed in whole or in part, the transfer shall not be effective until the pipeline company to which it was issued files with the board a notice in writing stating the date of the transfer and the name and address of the transferee.

The board shall keep a record of all permits granted by it, showing when and to whom granted and the location and route of the pipeline or underground storage facility, and if the permit has been transferred, the date and the name and address of the transferee.

A pipeline company may petition the board for an extension of a permit granted under this section by filing a petition containing the information required by section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

95 Acts, ch 192, §41

479B.15 Entry for land surveys.

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine direction or depth of pipelines by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479B.4 and to any person residing on or in possession of the land. The entry for land surveys shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

95 Acts, ch 192, §42

479B.16 Eminent domain.

A pipeline company granted a pipeline permit shall be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

A pipeline company granted a permit for underground storage of hazardous liquid shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of hazardous liquid any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of hazardous liquid, and may appropriate other interests in property, as may be required adequately to examine, prepare, maintain, and operate the underground storage facilities.

This chapter does not authorize the construction of a pipeline longitudinally on, over, or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

95 Acts, ch 192, §43

479B.17 Damages.

A pipeline company operating a pipeline or an underground storage facility shall have reasonable access to the pipeline or underground storage facility for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus, or other stations, wells, devices, or equipment used in or upon the pipeline or underground storage facility. A pipeline company shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the lands and shall pay to

the owner all damages caused by the completion of construction of the pipeline due to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipeline. However, this section does not prevent the execution of an agreement between the pipeline company and the owner of the land or crops with reference to the use of the land.

95 Acts, ch 192, §44, 62

479B.18 Venue.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located has jurisdiction of a case involving the pipeline company.

95 Acts, ch 192, §45

479B.19 Orders — enforcement.

If the pipeline company fails to obey an order within the period of time determined by the board, the board may commence an equitable action in the district court of the county where the pipeline, device, apparatus, equipment, or underground storage facility is located to compel compliance with its order. If, after trial, the court finds that the order is reasonable, equitable, and just, the court shall decree a mandatory injunction compelling obedience to and compliance with the order and may grant other relief as may be just and proper. Appeal from the decree may be taken in the same manner as in other actions.

95 Acts, ch 192, §46

479B.20 Land restoration standards.

1. The board, pursuant to chapter 17A, shall adopt rules establishing standards for the restoration of agricultural lands during and after pipeline or underground storage facility construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

a. Topsoil separation and replacement.

b. Temporary and permanent repair to drain tile.

c. Removal of rocks and debris from the right-of-way.

d. Restoration of areas of soil compaction.

e. Restoration of terraces, waterways, and other erosion control structures.

f. Revegetation of untilled land.

g. Future installation of drain tile or soil conservation structures.

h. Restoration of land slope and contour.

i. Restoration of areas used for field entrances and temporary roads.

j. Construction in wet conditions.

k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be paid by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of the pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan or line location, or with an independent agreement on land restoration executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties under section 479B.21.

6. The pipeline company shall allow landowners and the inspector to view the proposed center

line of the pipeline prior to commencing trenching operations to ensure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The company shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted under this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and the landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For the purposes of this section, *"construction"* includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

95 Acts, ch 192, §47; 99 Acts, ch 85, §7, 11

479B.21 Civil penalty.

A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board in an amount not to exceed one thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be credited to and are appropriated for the use of the Iowa energy center created in section 266.39C.

A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the pipeline company charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

95 Acts, ch 192, §48

479B.22 Rehearing — judicial review.

Rehearing procedure for any person aggrieved by actions of the board under this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of chapter 17A.

95 Acts, ch 192, §49

479B.23 Authorized federal aid.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by 49 U.S.C. § 60101 et seq.

95 Acts, ch 192, §50

479B.24 Cancellation.

A pipeline company seeking to acquire an easement or other property interest for the construction, maintenance, or operation of a pipeline or underground storage facility shall do all of the following:

1. Allow the landowner or a person serving in a fiduciary capacity on the landowner's behalf to cancel an agreement granting an easement or other interest by restricted certified mail to the pipeline company's principal place of business if received by the pipeline company within seven days, excluding Saturday and Sunday, of the date of the agreement and inform the landowner or the fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or the fiduciary.

2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.

3. Not record an agreement until after the period for cancellation has expired.

4. Not include in the agreement a waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

95 Acts, ch 192, §51

479B.25 Arbitration agreements.

If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline or underground storage facility, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the magistrate by restricted certified mail to the other party and file proof of mailing with the petition.

If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

For purposes of this section only, *"landowner"* means the person who signed the easement or other written agreement, or the person's heirs, successors, and assigns.

95 Acts, ch 192, §52, 62

479B.26 Subsequent pipeline or underground storage facility.

A pipeline company shall not construct a subsequent pipeline or underground storage facility upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved unless that claim is under litigation or arbitration, or is the subject of a proceeding pursuant to section 479B.30.

With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit their claims in writing for damages caused by construction of the pipeline or underground storage facility within one year of final cleanup on the real property by the pipeline company.

95 Acts, ch 192, §53

479B.27 Damage agreement.

A pipeline company shall not construct a pipeline or underground storage facility until a written statement is on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The pipeline company shall provide a copy of the statement to the landowner.

95 Acts, ch 192, §54

479B.28 Negotiated fee.

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross property or allowing underground storage of hazardous liquids, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

95 Acts, ch 192, §55

479B.29 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the pipeline company in writing fourteen days prior to harvest in each year to assess crop deficiency.

95 Acts, ch 192, §56, 62; 99 Acts, ch 85, §8, 11

479B.30 Determination of construction damages.

1. The county board of supervisors shall determine when construction of a pipeline or under-

ground storage facility has been completed in that county for the purposes of this section. Not less than ninety days after the completion of construction and if an agreement cannot be made as to damages, a landowner whose land was affected by the construction of the pipeline or underground storage facility or the pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from construction of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district for the county for the appointment of a compensation commission as provided in section 6B.4. The application shall contain all of the following information:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating all of the following:

a. That a compensation commission has been appointed to determine the damages caused by the construction of the pipeline or underground storage facility.

b. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

c. The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or landowner may appear before the commissioners.

If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisement of damages shall be consolidated into one application, notice, and appraisement. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the construction of the pipeline or underground storage facility and they shall file their report with the sheriff. The appraisement of damages returned by the commissioners is final unless appealed. After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisement of damages was made, the amount of the appraisement, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisement of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages; if the award does not exceed one hundred ten percent, the landowners shall pay the fees and costs incurred by the pipeline company. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, *"damages"* means compensation for damages to the land, crops, and other personal property caused by the construction of a pipeline and its attendant structures or underground storage facility but does not include compensation for a property interest, and *"landowner"* includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

95 Acts, ch 192, §57, 62; 2000 Acts, ch 1179, §28, 30

479B.31 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline or underground storage facility shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of

the tiling project.

95 Acts, ch 192, §58, 62

479B.32 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of the pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479B.33, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479B.31, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §9, 11; 2000 Acts, ch 1139, §5

479B.33 Farmland improvements.

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

2000 Acts, ch 1139, §6

CHAPTER 480

UNDERGROUND FACILITIES INFORMATION

480.1 Definitions.
480.1A Applicability — prohibition.
480.2 Public deposit of location information. Repealed by 92 Acts, ch 1103, §11, 12.
480.3 Notification center established — participation.
480.4 Required notice — location and marking of underground facilities — exception.
480.5 Damage to underground facility — report to operator.
480.6 Civil penalties.
480.7 Injunction.
480.8 Local ordinances and regulations unaffected.
480.9 Liability for owner of farmland.

480.1 Definitions.

1. *"Board"* means the board of directors of the notification center.

2. *"Damage"* means any impact with, destruction, impairment, or penetration of, or removal of support from an underground facility, including damage to its protective coating, housing, or device.

3. *"Emergency"* means a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property.

4. *"Excavation"* means an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures.

"Excavation" does not include normal farming operations, residential, commercial, or similar gardening, the opening of a grave site in a cemetery, normal activities involved in land surveying pursuant to chapter 542B, operations in a solid waste disposal site which has planned for underground facilities, the replacement of an existing traffic sign at its current location and at no more than its current depth, and normal road or highway maintenance which does not change the original grade of the roadway or the ditch.

5. *"Excavator"* means a person proposing to engage or engaging in excavation.

6. *"Normal farming operations"* means plowing, cultivation, planting, harvesting, and similar operations routine to most farms, but excludes chisel plowing, sub-soiling, or ripping more than fifteen inches in depth, drain tile excavating, terracing, digging or driving a post in a new location other than replacing a post while repairing a fence in its existing location, and similar operations.

7. *"Notification center"* means the statewide notification center established in section 480.3.

8. *"Operator"* means a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property.

9. *"Person"* means a person as defined in section 4.1, subsection 20.

10. *"Underground facility"* means an item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties.

87 Acts, ch 135, §1; 92 Acts, ch 1103, §1

480.1A Applicability — prohibition.

This chapter applies to any excavation unless otherwise provided by law. A person shall not engage in any excavation unless the requirements of this chapter have been satisfied.

92 Acts, ch 1103, §2

480.2 Public deposit of location information. Repealed by 92 Acts, ch 1103, § 11, 12.

480.3 Notification center established — participation.

1. *a.* A statewide notification center is established and shall be organized as a nonprofit corporation pursuant to chapter 504A.

(1) The center shall be governed by a board of directors which shall represent and be elected by operators, excavators, and other persons who participate in the center. The board, with input from all interested parties, shall determine the operating procedures and technology needed for a single statewide notification center and establish a notification process.

(2) In addition, the board shall either establish a competitive bidding procedure to select a vendor to provide the notification service or retain sufficient and necessary staff to provide the notification service.

(a) If a vendor is selected, the vendor contract shall be for a three-year period, which may be extended upon the approval of the board for a period not exceeding an additional three years. The terms of the vendor contract may be modified from time to time by the board and the vendor. The contract shall be reviewed, with an opportunity to receive new bids, at the end of the term of the contract.

(b) If the board retains staff to provide the notification service, the board, at the board's discretion, may review the notification service at any time and make a determination to use the competitive bidding procedure to select a vendor.

b. Upon the selection of a vendor pursuant to paragraph *"a"*, the board shall notify the chairperson of the utilities board in writing of the selection. The board shall submit an annual report to the chairperson of the utilities board including an annual audit and review of the services provided by the notification center and the vendor.

c. The board is subject to chapters 21 and 22.

2. The board shall implement the latest and

most cost-effective technological improvements for the center in order to provide operators and excavators with the most accurate data available and in a timely manner to allow operators and excavators to perform their responsibilities with the minimum amount of interruptions.

3. Every operator shall participate in and share in the costs of the notification center. The financial condition and the transactions of the notification center shall be audited at least once each year by a certified public accountant. The notification center shall not provide any form of aid or make a contribution to a political party or to the campaign of a candidate for political or public office. In addition to any applicable civil penalty, as provided in section 480.6, a violation of this section constitutes a simple misdemeanor.

87 Acts, ch 135, §3; 92 Acts, ch 1103, §3; 95 Acts, ch 112, §1; 98 Acts, ch 1049, §1; 2002 Acts, ch 1054, §1

Subsection 1, paragraph a amended

480.4 Required notice — location and marking of underground facilities — exception.

1. *a.* Except as otherwise provided in this section, prior to any excavation, an excavator shall contact the notification center and provide notice of the planned excavation. This notice must be given at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays. The notification center shall establish a toll-free telephone number to allow excavators to provide the notice required pursuant to this subsection.

b. A notice provided pursuant to this subsection for a location within a city shall include the following information:

(1) A street address or block and lot numbers, or both, of the proposed area of excavation.

(2) The name and address of the excavator.

(3) The excavator's telephone number.

(4) The type and extent of the proposed excavation.

(5) Whether the discharge of explosives is anticipated.

(6) The date and time when excavation is scheduled to begin.

(7) Approximate location of the excavation on the property.

(8) If known, the name of the housing development and property owner.

c. A notice provided pursuant to this subsection for a location outside a city shall include the following information:

(1) The name of the county, township, range, and section.

(2) The name and address of the excavator.

(3) The excavator's telephone number.

(4) The type and extent of the proposed excavation.

(5) Whether the discharge of explosives is anticipated.

(6) The date and time when excavation is scheduled to begin.

(7) Approximate location of the excavation on the property.

(8) If known, the quarter section, E911 address and global positioning system coordinate, name of property owner, name of housing development with street address or block and lot numbers, or both.

d. For purposes of the requirements of this section, an excavation commences the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

2. The notification center, upon receiving notice from an excavator, shall immediately transmit the information contained in the notice to each operator in the area of the proposed excavation and provide the names of all operators in that area to the excavator. The notification center shall assign an inquiry identification number to each notice and shall maintain a record of each notice for at least six years from the date the notice is received. The notification center shall not assess an operator who requests in writing not to receive a notification of its own excavations for any portion of the costs associated with such excavations.

3. *a.* (1) An operator who receives notice from the notification center shall mark the horizontal location of the operator's underground facility and the excavator shall use due care in excavating in the marked area to avoid damaging the underground facility. The operator shall complete such locating and marking within forty-eight hours after receiving the notice, excluding Saturdays, Sundays, and legal holidays, unless otherwise agreed by the operator and the excavator. The locating and marking of the underground facilities shall be completed at no cost to the excavator. If, in the opinion of the operator, the planned excavation requires that the precise location of the underground facilities be determined, the excavator, unless otherwise agreed upon between the excavator and the operator, shall hand dig test holes to determine the location of the facilities unless the operator specifies an alternate method.

(2) The marking required under this subsection shall be done in a manner that will last for a minimum of five working days on any nonpermanent surface, or a minimum of ten working days on any permanent surface. If the excavation will continue for any period longer than such periods, the operator shall remark the location of the underground facility upon the request of the excavator. The request shall be made through the notification center.

b. An operator who receives notice from the notification center and who determines that the operator does not have any underground facility

located within the proposed area of excavation shall notify the excavator concerning this determination prior to the indicated date of commencement of excavation.

c. For purposes of this chapter, the *"horizontal location of any underground facility"* is defined as including an area eighteen inches on either side of the underground facility.

4. An excavator is responsible for preserving the markings required in subsection 3 at all times during the excavation. If the markings will be destroyed or otherwise altered during the excavation, the excavator must establish suitable reference points which will enable the excavator to locate the underground facility at all times during the excavation.

5. The operator shall mark the location of any underground facility to conform with the uniform color code established by the American public works association's utility location and coordination council.

6. The only exception to this section shall be when an emergency exists. Under such conditions, excavation operations can begin immediately, provided reasonable precautions are taken to protect the underground facilities. The excavator shall notify the notification center of the excavation as soon as practical.

92 Acts, ch 1103, §4; 98 Acts, ch 1049, §2

480.5 Damage to underground facility — report to operator.

An excavator shall as soon as practical notify the operator when any damage occurs to an underground facility as a result of an excavation. The notice shall include the type of facility damaged and the extent of the damage. If damage occurs, an excavator shall refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise.

If the damage results in an emergency, the excavator shall take all reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area. The excavator shall leave all equipment situated where the equipment was at the time the emergency was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies.

92 Acts, ch 1103, §5

480.6 Civil penalties.

1. A person who violates a provision of this chapter is subject to a civil penalty as follows:

a. For a violation related to natural gas and hazardous liquid pipelines, an amount not to exceed ten thousand dollars for each violation for each day the violation continues, up to a maximum of five hundred thousand dollars.

b. For a violation related to any other underground facility, an amount not to exceed one thousand dollars for each violation for each day the violation continues, up to a maximum of twenty thousand dollars.

2. The attorney general, upon the receipt of a complaint, may institute any legal proceedings necessary to enforce the penalty provisions of this chapter.

3. All amounts collected pursuant to this section shall be remitted to the treasurer of state, who shall deposit the amount in the general fund of the state.

92 Acts, ch 1103, §6

480.7 Injunction.

Any affected person may make application to the district court for injunctive relief from any violation of this chapter.

92 Acts, ch 1103, §7

480.8 Local ordinances and regulations unaffected.

This chapter does not affect or impair any local ordinances or other provisions of law requiring permits to be obtained before excavation. However, a permit issued by any governing body does not relieve the excavator from complying with the requirements of this chapter, unless the governing body is the excavator and the governing body and the operator have agreed in writing to waive notification under this chapter. However, such an agreement shall not be considered in the issuance of any required permit.

92 Acts, ch 1103, §8

480.9 Liability for owner of farmland.

An owner of farmland used in a farm operation, as defined in section 352.2, who complies with the requirements of this chapter shall not be held responsible for any damages to an underground facility, including fiber optic cable, if the damage occurred on the farmland in the normal course of the farm operation, unless the owner intentionally damaged the underground facility or acted with wanton disregard or recklessness in causing the damage to the underground facility. For purposes of this section, an *"owner"* includes a family member, employee, or tenant of the owner.

95 Acts, ch 192, §59

CHAPTER 480A

PUBLIC UTILITIES IN PUBLIC RIGHTS-OF-WAY

480A.1 Purpose.
480A.2 Definitions.
480A.3 Fees.
480A.4 In-kind services.
480A.5 Arbitration.
480A.6 Franchise ordinance not superseded.

480A.1 Purpose.

The general assembly finds that it is in the public interest to define the right of local governments to charge public utilities for the location and operation of public utility facilities in local government rights-of-way.

98 Acts, ch 1148, §3, 9

480A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Local government"* means a county, city, township, school district, or any special-purpose district or authority.

2. *"Management costs"* means the reasonable costs a local government actually incurs in managing public rights-of-way.

3. *"Public right-of-way"* means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcasts service or utility poles owned by a local government or a municipal utility.

4. *"Public utility"* means a person owning or operating a facility used for furnishing natural gas by piped distribution system, electricity, communications services not including cable television systems, or water by piped distribution system, to the public for compensation.

98 Acts, ch 1148, §4, 9

480A.3 Fees.

A local government shall not recover any fee from a public utility for the use of its right-of-way, other than a fee for its management costs. A local government may recover from a public utility only those management costs caused by the public utility's activity in the public right-of-way. A fee or other obligation under this section shall be imposed on a competitively neutral basis. When a local government's management costs cannot be attributed to only one entity, those costs shall be allocated among all users of the public rights-of-way, including the local government itself. The allocation shall reflect proportionately the costs incurred by the local government as a result of the various types of uses of the public rights-of-way.

This section does not prohibit the collection of a franchise fee as permitted in section 480A.6.

98 Acts, ch 1148, §5, 9

480A.4 In-kind services.

A local government, in lieu of a fee imposed under this chapter, shall not require in-kind services by a public utility right-of-way user, or require in-kind services as a condition of the use of the local government's public right-of-way.

98 Acts, ch 1148, §6, 9

480A.5 Arbitration.

1. A public utility that is denied registration, denied a right-of-way permit, that has its right-of-way permit revoked, or that believes that the fees imposed on such user by the local government do not conform to the requirements of this chapter may request in writing that such denial, revocation, or fee imposition be reviewed by the governing body of the local government. The governing body of the local government shall act within sixty days on a timely written request. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

2. Upon affirmation by the governing body of the denial, revocation, or fee imposition, the public utility may do either of the following:

a. With the consent of the governing body, have the matter finally resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the local government and the public utility. If the parties are unable to agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel made up of one arbitrator selected by the local government, one arbitrator selected by the public utility, and one arbitrator selected by the other two arbi-

trators. The cost and expense of a single arbitrator shall be borne equally by the local government and the public utility. If a three-person arbitration panel is selected, each party shall bear the expense of its own arbitrator and the parties shall jointly and equally bear the cost and expense of the third arbitrator, and of the arbitration. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

b. Bring an action in district court to review a decision of the governing body made under this section.

98 Acts, ch 1148, §7, 9

480A.6 Franchise ordinance not superseded.

This chapter does not modify or supersede the rights and obligations of a local government and the public utility established by the terms of any existing or future franchise granted, approved, and accepted pursuant to section 364.2, subsection 4. A city which collects a city franchise fee from an entity pursuant to section 364.2, subsection 4, under an existing or future franchise, shall not also collect a fee from that entity under section 480A.3.

98 Acts, ch 1148, §8, 9

SUBTITLE 6

WILDLIFE

CHAPTER 481

PRIVATE BUILDINGS AND SPUR TRACKS

Transferred to chapter 327G, Div. II

CHAPTER 481A

WILDLIFE CONSERVATION

This chapter not enacted as a part of this title;
transferred from chapter 109 in Code 1993

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481A.1 Definitions.

Words and phrases as used in this chapter and chapters 350, 456A, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481B, 482, 483A, 484A, and 484B and such other chapters as relate to the subject matter of these chapters shall be construed as follows:

1. *"Alien"* shall not be construed to mean any person who has applied for naturalization papers.

2. *"Amphibian"* means a member of the class

Amphibia.

3. *"Aquaculture"* means the controlled propagation, growth, and harvest of aquatic organisms, including, but not limited to fish, amphibians, reptiles, mollusks, crustaceans, gastropods, algae, and other aquatic plants, by an aquaculturist.

4. *"Aquaculture unit"* means all private waters for aquaculture with or without buildings, used for the purpose of propagating, raising, holding, or harvesting aquatic organisms for commercial purposes.

5. *"Aquaculturist"* means an individual involved in producing, transporting, or marketing aquatic products from private waters for commercial purposes.

6. *"Bag limit"* or *"possession limit"* is the number of any kind of game, fish, bird or animal or other wildlife form permitted to be taken or held in a specified time.

7. *"Bait"* includes, but is not limited to, minnows, green sunfish, orange-spotted sunfish, gizzard shad, frogs, crayfish, salamanders, and mussels.

8. *"Biological balance"* means that condition when the number of animals present over the long term is at or near the number of animals of a particular species that the available habitat is capable of supporting.

9. *"Bird"* means a member of the class Aves.

10. *"Buy"* means to purchase, offer to purchase, barter for, trade for, or lease.

11. *"Closed season"* is that period of time during which hunting, fishing, trapping or taking is prohibited.

12. *"Commercial purposes"* means selling, giving, or furnishing to others.

13. *"Commission"* means the natural resource commission.

14. *"Contraband"* as used in the laws pertaining to the work of the commission shall mean anything, the possession of which was illegally procured, or the possession of which is unlawful.

15. *"Department"* means the department of natural resources.

16. *"Director"* means the director of the department or the director's designee.

17. *"Fish"* means a member of the class Pisces.

18. *"Frog"* means a member of the order Anura.

19. *"Fur-bearing animals"* means the following which are declared to be fur-bearing animals for the purpose of regulation and protection under the Code: beaver, badger, mink, otter, muskrat, raccoon, skunk, opossum, spotted skunk or civet cat, weasel, coyote, bobcat, wolf, groundhog, red fox, and gray fox. This chapter does not apply to domesticated fur-bearing animals.

20. *"Game"* means all of the animals specified in this subsection except those designated as not protected, and includes the heads, skins, and any other parts, and the nests and eggs of birds and their plumage.

a. The Anatidae: such as swans, geese, brant, and ducks.

b. The Rallidae: such as rails, coots, mudhens, and gallinules.

c. The Limicolae: such as shorebirds, plovers, surfbirds, snipe, woodcock, sandpipers, tattlers, godwits, and curlews.

d. The Gallinae: such as wild turkeys, grouse, pheasants, partridges, and quail.

e. The Columbidae: such as mourning doves and wild rock doves only.

f. The Sciuridae: such as gray squirrels and fox squirrels.

g. The Leporidae: cottontail rabbits and jackrabbits only.

h. The Cervidae: such as elk or deer, other than farm deer. As used in this paragraph, *"farm deer"* means an animal belonging to the cervidae family and classified as part of the dama species of the dama genus, commonly referred to as fallow deer; part of the elaphus species of the cervus genus, commonly referred to as red deer or elk; or part of the nippon species of the cervus genus, commonly referred to as sika. However, a farm deer does not include any unmarked free-ranging elk.

21. *"Measurement of fish"* is the length from end of nose to longest tip of tail.

22. *"Minnows"* means chubs, suckers, shiners, dace, stonerollers, mud minnows, redhorse, bluntnose, and fathead minnows.

23. *"Mussels"* means the pearly fresh water mussels, clams or naiads, and their shells.

24. *"Open season"* is that period of time during which hunting, fishing, trapping or taking is permitted.

25. *"Person"* shall mean any person, firm, partnership or corporation.

26. *"Possession"* is both active and constructive possession and any control of things referred to.

27. *"Private waters for aquaculture"* means waters confined within an artificial containment, such as man-made ponds, vats, tanks, raceways, and other indoor or outdoor facilities constructed wholly within or on the land of an owner or lessee and used for aquaculture.

28. *"Reptile"* means a member of the class Reptilia.

29. *"Sell"* or *"sale"* is selling, bartering, exchanging, offering or exposing for sale.

30. *"Spawn"* means any of the eggs of any fish, amphibian, or mussel.

31. *"Take"* or *"taking"* or *"attempting to take"* or *"hunt"* is any pursuing, or any hunting, fishing, killing, trapping, snaring, netting, searching for or shooting at, stalking or lying in wait for any game, animal, bird, or fish protected by the state laws or rules adopted by the commission whether or not such animal be then subsequently captured, killed, or injured.

32. *"Transport"* or *"transportation"* is all carry-

ing or moving or causing to be carried or moved.

33. *"Turtle"* means any member of the order Testudines.

34. *"Wild animal"* means a wild mammal, bird, fish, amphibian, reptile, or other wildlife found in this state, whether game or nongame, migratory or nonmigratory, the ownership and title to which is claimed by this state.

35. *"Wild mammal"* means a member of the class Mammalia.

[C39, §**1703.60;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.1]

83 Acts, ch 168, §5; 86 Acts, ch 1245, §1850 – 1852; 88 Acts, ch 1216, §1, 2; 92 Acts, ch 1160, §17; 92 Acts, ch 1186, §1; 92 Acts, ch 1216, §1

C93, §481A.1

93 Acts, ch 99, §1; 95 Acts, ch 134, §5

481A.2 State ownership and title — exceptions.

The title and ownership of all fish, mussels, clams, and frogs in any of the public waters of the state, and in all ponds, sloughs, bayous, or other land and waters adjacent to any public waters stocked with fish by overflow of public waters, and of all wild game, animals, and birds, including their nests and eggs, and all other wildlife, found in the state, whether game or nongame, native or migratory, except deer in parks and in public and private preserves, the ownership of which was acquired prior to April 19, 1911, are hereby declared to be in the state, except as otherwise provided in this chapter. The title and ownership of all aquatic organisms in aquaculture units and private aquacultural waters shall be in private persons.

[S13, §2562-c, 2563-j; SS15, §2562-b; C24, 27, 31, 35, 39, §**1704;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.2]

90 Acts, ch 1044, §1; 92 Acts, ch 1216, §2

C93, §481A.2

481A.3 Conclusive presumption.

Any person catching, taking, killing, or having in possession any of such fish, mussels, clams, frogs, game, animals, or birds, their nests or eggs, or other wildlife in violation of the provisions of this chapter, shall be held to consent that the title to the same shall be and remain in the state for the purpose of regulating and controlling the catching, taking, or having in possession the same, and disposing thereof after such catching, taking, or killing.

[S13, §2562-c; SS15, §2562-b; C24, 27, 31, 35, 39, §**1705;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.3]

C93, §481A.3

481A.4 Fish hatcheries — game farms.

The commission may establish and control the state hatcheries and game farms, which shall be used for the purpose of stocking the waters of the state with fish and the natural covers with game birds to the extent of the means provided for that purpose; and impartially and equitably distribute all birds, eggs, and fry raised by or furnished to the state, or for it through other sources, in the streams, lakes, and natural covers of the state.

[C97, §2539; SS15, §2539; C24, 27, 31, 35, 39, §**1709;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.4]

C93, §481A.4

481A.5 State game refuges.

1. The commission may establish state game refuges or sanctuaries on any land owned by the state of Iowa suitable for this purpose when necessary for the preservation of biological balance pursuant to the provisions of section 481A.39, for the protection of public parks, for the protection of the public health, safety and welfare, or to effect sound wildlife management.

2. In emergency situations when the maintenance of the biological balance as provided in section 481A.39 is threatened, the director may establish temporary state game refuges in conformity with sound wildlife management. The establishment of a temporary refuge shall be accomplished by posting notices in conspicuous places around the refuge. The establishment of a temporary refuge by the director shall be effective until five days after the next meeting of the commission or for such longer time as the commission may determine is necessary to maintain a biological balance as provided in section 481A.39 and to effect sound wildlife management.

[C27, 31, 35, §1709-a1; C39, §**1709.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.5]

C93, §481A.5

481A.6 Game management area.

The commission may establish a game management area upon any public lands or waters, or with the consent of the owner upon any private lands or waters, when necessary to maintain a biological balance as provided in section 481A.39 or to provide for public hunting, fishing, or trapping in conformity with sound wildlife management; and when a game management area is established, the commission shall with the consent of the owner, if any, have the right to post and prohibit, and to regulate or limit the lands or waters against trespassing, hunting, fishing, or trapping, and any violation of the regulations is unlawful.

[C35, §1709-e1; C39, §**1709.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.6]

90 Acts, ch 1216, §6

C93, §481A.6

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.7 Hunting on game refuges.

1. It shall be unlawful to hunt, pursue, kill,

trap or take any wild animal, bird, or game on any state game refuge so established at any time of the year, and no one shall carry firearms thereon, providing, however, that predatory birds and animals may be killed or trapped under the authority and direction of the director.

2. The commission may specify the distance from a state game refuge where shooting is prohibited, and shall have notice of same posted at such distance in conspicuous places around the refuge, provided, however, this prohibition shall not apply to owners or tenants hunting on their own land outside of a state game refuge. The commission may prohibit shooting at any reasonable distance from a state game refuge deemed necessary to accomplish the purposes for which the refuge is established.

[C27, 31, 35, §1709-a2; C39, §**1709.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.7]

86 Acts, ch 1245, §1855

C93, §481A.7

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.8 Notice of establishment.

When any such refuge or preserve is established by the commission, it shall post notices of such establishment in conspicuous places around the refuge.

[C27, 31, 35, §1709-a3; C39, §**1709.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.8]

C93, §481A.8

481A.9 Spawning grounds.

To effect sound wildlife management and maintain biological balance as provided in section 481A.39, the commission may set aside certain portions of any state waters for spawning grounds where the same are suitable for this purpose for such length of time as it may deem advisable by the posting of notices in conspicuous places around such area, and it shall be unlawful for any person to fish or to in any manner interfere with the spawning of fish in this area. Any person violating any of the provisions of this section shall be guilty of a simple misdemeanor.

[C31, 35, §1709-c1; C39, §**1709.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.9]

C93, §481A.9

481A.10 Reports and accounting.

At the time provided by law, the director shall make a report to the governor of the director's doings for the preceding biennial period, including therein an itemized statement of all receipts and disbursements; also all contracts for the taking of soft fish from the waters of this state, with the profits accruing from such contracts; also such other information upon the subject of the culture of fish and the protection of game as may be of value. All funds derived under said contracts shall be paid into the state fish and game protection fund.

[C97, §2539; SS15, §2539; C24, 27, 31, 35, 39, §**1710;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.10]

C93, §481A.10

481A.10A Farmer advisory committee.

The director shall establish a farmer advisory committee for the purpose of providing information to the department regarding crop and tree damage caused by deer, wild turkey, and other predators. The committee shall serve without compensation or reimbursement for expenses.

87 Acts, ch 233, §224

CS87, §109.10A

C93, §481A.10A

481A.11 Confiscated or accidentally killed game.

Except as provided in section 481A.13, any game or fish seized by the commission under section 481A.12 or any game accidentally killed by a motor vehicle on a public highway shall, when salvageable, be disposed of as determined by the commission or its designee.

[C77, 79, 81, §109.11]

C93, §481A.11

481A.12 Seizure of wildlife taken or handled illegally.

The director or any peace officer shall seize with or without warrant and take possession of, or direct the disposal of, any fish, furs, birds, or animals, or mussels, clams, or frogs, which have been caught, taken, or killed at a time, in a manner, or for a purpose, or had in possession or under control, or offered for shipment, or illegally transported in the state or to a point beyond its borders, contrary to the Code. All fish, furs, birds, or animals, or mussels, clams, or frogs seized under this section may be relinquished to a representative of the commission or disposed of.

[SS15, §2539; C24, 27, 31, 35, 39, §**1714;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.12]

88 Acts, ch 1216, §3

C93, §481A.12

94 Acts, ch 1148, §1

481A.13 Search warrants.

Any court having jurisdiction of the offense, upon receiving proof of probable cause for believing that any fish, mussels, clams, frogs, birds, furs, or animals caught, taken, killed, had in possession, under control, or shipped, contrary to the Code, or hidden or concealed in any place, shall issue a search warrant and cause a search to be made in any place therefor. The property so seized under warrant shall be safely kept under the direction of the court so long as necessary for the purpose of being used as evidence in any trial, and if a trial results in a conviction the property seized shall be confiscated by the director or the direc-

tor's officers.

[SS15, §2539; C24, 27, 31, 35, 39, §**1716;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.13]

88 Acts, ch 1216, §4

C93, §481A.13

Search warrant proceedings, chapters 808 and 809

481A.14 Dams — fishways.

It shall be unlawful for any person, firm, or corporation to place, erect, or cause to be placed or erected, any dam or other device or contrivance in such manner as to hinder or obstruct the free passage of fish up, down, or through such waters, except as otherwise provided in this chapter. Dams for manufacturing or other lawful purposes may be erected across the waters of the state. No permanent dam or obstruction across such waters shall be erected or maintained which is not provided with a fishway, except by written approval of the director, nor shall any pumping station or plant except sand pumping and dredging machines, in or connected with such waters be constructed or operated except by written approval of the director, which is not provided with screens to prevent fish from entering the pumping station or plant. Such fishways and screens shall be constructed and used according to the plans and specifications prepared and furnished by the director. Any dam, obstruction, or pumping plant which is not so constructed is a public nuisance and may be abated accordingly.

[C97, §2540, 2547, 2548; S13, §2547; SS15, §2540, 2548; C24, 27, 31, 35, 39, §**1741;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.14]

86 Acts, ch 1245, §1855

C93, §481A.14

Nuisances in general, chapter 657

481A.15 Destruction or alteration of dam.

It is unlawful for any owner or the owner's agent to remove or destroy any existing dam, or alter it in a way so as to lower the water level, without having received written approval from the environmental protection commission of the department.

[C24, 27, 31, 35, 39, §**1742;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.15; 82 Acts, ch 1199, §54, 96]

86 Acts, ch 1245, §1853

C93, §481A.15

481A.16 Taking by director for stocking and exchange.

The director may take from the public waters of the state, at any time and in any manner, any fish for the purpose of propagating or restocking other waters, or exchanging with fish and wildlife agencies of other states, the federal government, or private fish hatcheries.

[C97, §2546; S13, §2546; C24, 27, 31, 35, 39, §**1744;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.16]

83 Acts, ch 110, §1

C93, §481A.16

481A.17 Reserved.

481A.18 Hunting accidents — mandatory reporting.

A person who is involved in a hunting accident with a firearm and the accident results in injury to a person or property damage exceeding one hundred dollars, shall report the accident to the sheriff's office in the county where the accident occurred or to the department within twelve hours after the accident occurred. If an injury in the accident prevents timely reporting, the report shall be made as soon as practicable. Failure to report as required in this section is a simple misdemeanor.

90 Acts, ch 1198, §1

C91, §109.18

C93, §481A.18

481A.19 Reciprocity of states.

Any person licensed by the authorities of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, and South Dakota to take fish, game, mussels, or fur-bearing animals from or in the waters forming the boundary between such states and Iowa, may take them from that portion of said waters lying within the territorial jurisdiction of this state, without having procured a license therefor from the director of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota, respectively, extend a similar privilege to persons so licensed under the laws of Iowa.

[C24, 27, 31, 35, 39, §**1762;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.19]

86 Acts, ch 1245, §1855

C93, §481A.19

481A.20 Parrots and canaries.

This chapter shall not be construed to forbid the selling or shipping of parrots, canaries, or any other cage birds which are imported from other countries or not native to any part of the United States.

[S13, §2563-r; C24, 27, 31, 35, 39, §**1777;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.20]

C93, §481A.20

481A.21 Birds as targets.

A person shall not keep or use any live pigeon or other bird as a target, to be shot at for amusement or as a test of skill in marksmanship, or shoot at a bird kept or used for such purpose, or be a party to such shooting, or lease any building, room, field, or premises, or knowingly permit the use thereof, for the purpose of such shooting. This section does not prevent any person from shooting at live pigeons, sparrows, and starlings when used in the

training of hunting dogs.

[S13, §2563-i; C24, 27, 31, 35, 39, §**1778;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.21]

88 Acts, ch 1216, §5

C93, §481A.21

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.22 Field and retriever meets — permit required.

All officially sanctioned field meets or trials and retriever meets or trials where the skill of dogs is demonstrated in pointing, retrieving, trailing, or chasing any game bird, game animal, or fur-bearing animal shall require a field trial permit. Except as otherwise provided by law, it shall be unlawful to kill any wildlife in such events. Notwithstanding the provisions of section 481A.21 it shall be lawful to hold field meets or trials and retriever meets or trials where dogs are permitted to work in exhibition or contest whereby the skill of dogs is demonstrated by retrieving dead or wounded game birds which have been propagated by licensed game breeders within the state or secured from lawful sources outside the state and lawfully brought into the state. All such birds must be released on the day of trials on premises where the trials are held.

Such birds released may be shot by official guns after having secured a permit as herein provided.

Such permits may be issued by the director of the department upon proper application and the payment of a fee of two dollars for each trial held. A representative of the department shall attend all such trials and enforce the laws and regulations governing same.

The person or persons designated by the committee in charge to do the shooting for such trials shall be known as the official guns, and no other person shall be permitted to kill or attempt to kill any of the birds released for such trials.

Before any birds are released under this section, they must each have attached a tag provided by the department and attached by a representative of the department at a cost of not more than ten cents for each tag. All tags are to remain attached to birds until prepared for consumption.

It is unlawful for any person to hold, conduct, or to participate in a field or retriever trial before the permit required by this section has been secured or for any person to possess or remove from the trial grounds any birds which have not been tagged as herein required.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.22]

86 Acts, ch 1244, §24; 90 Acts, ch 1216, §7

C93, §481A.22

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.23 Transportation for sale prohibited.

It shall be unlawful for any person, firm, or corporation, except as otherwise provided, to offer for transportation or to transport by common carrier or vehicle of any kind, to any place within or without the state, for the purposes of sale, any of the fish, game, animals, or birds taken, caught, or killed within the state, or to peddle any of such fish, game, animals, or birds.

[C97, §2555; SS15, §2540, 2555; C24, 27, 31, 35, 39, §**1780;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.23]

C93, §481A.23

Analogous provision, §481A.38

481A.24 Use of mobile radio transmitter prohibited — exceptions.

1. For the purposes of this section:

a. "One-way mobile radio transmitter" means a radio capable of transmitting a signal only but not capable of transmitting a voice signal. The signal may be tracked or located by radio telemetry or located by an audible sound.

b. "Two-way mobile radio transmitter" means a radio capable of transmitting and receiving voice messages including, but not limited to, a citizen band radio or a cellular telephone.

2. Except as otherwise provided in this section, a person who is hunting shall not use a one-way or two-way mobile radio transmitter to communicate the location or direction of game or fur-bearing animals or to coordinate the movement of other hunters. This subsection does not apply to the hunting of coyotes except during the shotgun deer season as set by the commission under section 481A.38.

3. A licensed falconer may use a one-way mobile radio transmitter to recover a free-flying bird of prey properly banded and covered on the falconry permit.

4. A person hunting with the aid of a dog may use at any time a one-way mobile transmitter designed to track or aid in the recovery of the dog.

[C79, 81, §109.24]

88 Acts, ch 1216, §6

C93, §481A.24

93 Acts, ch 119, §1; 94 Acts, ch 1147, §1

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.25 Reserved.

481A.26 Unlawful transportation.

No person, except as otherwise provided, shall ship, carry or transport in any one day, game, fish, birds, or animals, except fur-bearing animals in excess of the number legally permitted to be in possession of such a person.

[C97, §2555; SS15, §2555; C24, 27, 31, §1783; C35, §1782-e1; C39, §**1782.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.26]

C93, §481A.26

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

481A.27 through 481A.29 Reserved.

481A.30 Entire shipment contraband.

In the shipping of fish, game, animals, birds, or furs, whenever a container includes one or more fish, game, animals, birds or furs that are contraband, the entire contents of the container shall be deemed contraband, and shall be seized by the director or the director's officers.

[C24, 27, 31, 35, 39, §**1787;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.30]

C93, §481A.30

481A.31 Game brought into the state.

It shall be lawful for any person, firm, or corporation to have in possession any fish or game lawfully taken outside the state and lawfully brought into the state, but the burden of proof shall be upon the person in such possession to show that such fish or game was lawfully killed and lawfully brought into the state.

[SS15, §2555; C24, 27, 31, 35, 39, §**1788;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.31]

C93, §481A.31

481A.32 Violations — penalties.

Whoever shall take, catch, kill, injure, destroy, have in possession, buy, sell, ship, or transport any frogs, fish, mussels, birds, their nests, eggs, or plumage, fowls, game, or animals or their fur or raw pelt in violation of the provisions of this chapter or of administrative rules of the commission or whoever shall use any device, equipment, seine, trap, net, tackle, firearm, drug, poison, explosive, or other substance or means, the use of which is prohibited by this chapter, or use the same at a time, place, or in a manner or for a purpose prohibited, or do any other act in violation of the provisions of this chapter or of administrative rules of the commission for which no other punishment is provided, is guilty of a simple misdemeanor and shall be assessed a minimum fine of twenty dollars for each offense.

Each fish, fowl, bird, bird's nest, egg, or plumage, and animal unlawfully caught, taken, killed, injured, destroyed, possessed, bought, sold, or shipped shall be a separate offense.

A person convicted of taking a deer, antelope, moose, buffalo, or elk with a prohibited weapon as defined by rules of the department, is subject to a fine of one hundred dollars for each offense committed while taking the animal with the prohibited weapon.

[R60, §4381 – 4383; C73, §4048, 4053, 4063; C97, §2543, 2544, 2551, 2552, 2556, 2558, 2561; S13, §2547-e, 2551-b, 2561, 2563-a8, -i, -o, -s, -v; SS15, §2540-a, 2544, 2551, 2552, 2556; C24, 27, 31, 35, 39, §**1789;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.32]

88 Acts, ch 1216, §7, 8

C93, §481A.32

2002 Acts, ch 1147, §1

See also §481A.38 and applicable scheduled fine under §805.8B, subsection 3, paragraphs f and g

Unnumbered paragraph 1 amended

481A.33 Violations relating to dams.

Whoever shall erect any dam or other obstruction prohibited by this chapter or at a place or in a manner prohibited shall be guilty of a simple misdemeanor, or shall injure or destroy any dam lawfully erected, shall be guilty of an aggravated misdemeanor.

[C97, §2548, 2550; SS15, §2548; C24, 27, 31, 35, 39, §**1790;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.33]

C93, §481A.33

481A.34 Violations by common carrier.

A common carrier which violates any of the provisions of this chapter relating to receiving, having in possession, shipping, or delivering any fish, fowl, birds, birds' nests, eggs, or plumage, fur, raw pelts, game, or animals, in violation of the provisions of the Code or contrary to the regulations and restrictions provided in this chapter, and any agent, employee, or servant of a common carrier violating such provisions, is guilty of a simple misdemeanor.

[C73, §4049; C97, §2557; C24, 27, 31, 35, 39, §**1791;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.34]

88 Acts, ch 1216, §9

C93, §481A.34

481A.35 Attorney general and county attorneys.

It shall be the duty of the attorney general, when requested by the director, to give the attorney general's opinion in writing upon any question of law arising under this chapter; and it shall be the duty of all county attorneys in this state when requested by the director or any officer appointed by the commission, to prosecute all criminal actions brought in their respective counties for violations of the provisions of this chapter. Nothing in this chapter shall be construed as prohibiting any person from instituting legal proceedings for the enforcement of any of the provisions thereof.

[R60, §4385; C73, §4051; C97, §2559; SS15, §2559; C24, 27, 31, 35, 39, §**1792;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.35]

C93, §481A.35

481A.36 Information — venue.

In all prosecutions under this chapter, any number of violations may be charged in one information, but each charge shall be set out in a separate

count if more than one charge is included in one information.

Prosecutions for violations may be brought in the county in which any fish, fowl, bird, bird's nest, eggs, or plumage, or animals protected by this chapter were unlawfully caught, taken, killed, trapped, ensnared, bought, sold, or shipped unlawfully, or in any county into or through which they were received, transported, or found in possession of any person.

[R60, §4385; C73, §4051; C97, §2559; SS15, §2559; C24, 27, 31, 35, 39, §**1793;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.36]

C93, §481A.36

481A.37 Presumptive evidence.

It shall be presumptive evidence of a violation of the provisions of this chapter for any person to:

1. Have in possession any fish, game, furs, birds, birds' nests, eggs or plumage, or animals, which have been unlawfully caught, taken, or killed.

2. Be in possession of such fish, game, furs, birds, or animals at a time when or place where it shall be unlawful to take, catch, or kill the same, except game, birds or animals, during the first ten days of the closed season.

3. Have in possession any implements, devices, equipment, or means whatever of taking fish, birds, or animals protected by the Code at any place where the possession or use thereof is prohibited.

[C97, §2554; S13, §2563-a10; SS15, §2554, 2555; C24, 27, 31, 35, 39, §**1794;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.37]

88 Acts, ch 1216, §10, 11

C93, §481A.37

PROPAGATION AND PROTECTION OF FISH, GAME, WILD BIRDS, AND ANIMALS

481A.38 Prohibited acts — restrictions on the taking of wildlife — special licenses.

It is unlawful for a person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected nongame animals, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish or any part thereof, except upon the terms, conditions, limitations, and restrictions set forth herein, and administrative rules necessary to carry out the purposes set out in section 481A.39, or as provided by the Code.

1. The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking wild mammals, birds subject to section 481A.48, fish, reptiles, and amphibians, if the investigation reveals that the action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by means found advisable to salvage imperiled fish populations.

The commission shall adopt a rule permitting a crossbow to be used only by individuals with disabilities who are physically incapable of using a bow and arrow under the conditions in which a bow and arrow is permitted. The commission shall prepare an application to be used by an individual requesting the status. The application shall require the individual's physician to sign a statement declaring that the individual is not physically able to use a bow and arrow.

2. If the commission finds that the number of hunters licensed or the type of license issued to take deer or wild turkey should be limited or further regulated, the commission shall adopt procedures, by rule, for issuing the licenses. This subsection does not apply to the hunting of wild turkey on a hunting preserve licensed under chapter 484B.

3. The department and the commission shall exercise regulatory authority regarding seasons, bag limits, possession limits, locality, the method of taking, or the taking of fish and wildlife by members of the Sac and Fox tribe of the Mississippi in Iowa within the boundaries of the Sac and Fox tribe settlement in Tama county only to the extent provided in a written agreement between the tribal council of the Sac and Fox tribe of the Mississippi in Iowa and the department. The written agreement shall not be construed to supersede or impair the regulatory authority exercised by the commission pursuant to the federal Migratory Bird Treaty Act, the federal Migratory Bird Stamp Hunting Act, the federal Endangered Species Act, or other federal law. The department and the commission shall not unreasonably fail to enter into an agreement and shall pursue such an agreement in an expedient manner. This subsection shall become effective upon signing of the written agreement by the director of the department and the chairperson of the Sac and Fox tribe of the Mississippi in Iowa.

[R60, §4381; C73, §4048; C97, §2551, 2555; S13, §2562-c, 2563-j, -k, -m, -n; SS15, §2540, 2551, 2555, 2562-b, -c, 2563-a1, -a2, -u; C24, 27, 31, §1718, 1719, 1755, 1767, 1774; C35, §1718-c1; C39, §**1794.001;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.38; 82 Acts, ch 1037, §1]

84 Acts, ch 1213, §1; 84 Acts, ch 1260, §1; 88 Acts, ch 1216, §12; 89 Acts, ch 87, §1; 90 Acts, ch 1109, §1; 92 Acts, ch 1160, §18

C93, §481A.38

96 Acts, ch 1129, §97; 99 Acts, ch 39, §1; 2001 Acts, ch 134, §1, 2

For applicable scheduled fines, see §805.8B, subsection 3, paragraphs f and g

481A.39 Biological balance maintained.

The commission is designated the sole agency to determine the facts as to whether biological balance does or does not exist. The commission shall, by administrative rule, extend, shorten, open, or close seasons and set, increase, or reduce catch limits, bag limits, size limits, possession limits, or territorial limitations or further regulate taking conditions in accordance with sound fish and wildlife management principles.

[C39, §**1794.002;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.39]

88 Acts, ch 1216, §13

C93, §481A.39

481A.40 and 481A.41 Reserved.

481A.42 Nongame protected — exclusion.

Protected nongame species include wild fish, wild birds, wild bats, wild reptiles, and wild amphibians, an egg, a nest, a dead body or part of a dead body, and a product made from part of a body of a wild fish, wild bird, wild bat, wild reptile, or wild amphibian. However, nongame does not include game, fish that may be taken pursuant to regulations established under the Code or departmental rule, fur-bearing animals, turtles, or frogs, as defined in this chapter. The commission shall designate by rule those species of nongame which by their abundance or habits are declared a nuisance, and these species shall not be protected. Rules adopted shall include, but are not limited to, a provision that states that any bat, except for the Indiana bat, which is found within a building that is occupied by human beings is not a protected nongame species.

[S13, §2563-q; C24, 27, 31, §1776; C39, §**1794.005;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.42]

83 Acts, ch 168, §6; 92 Acts, ch 1107, §1

C93, §481A.42

93 Acts, ch 20, §1

481A.43 through 481A.46 Reserved.

481A.47 Importing fish and game — permits.

It shall be unlawful except as otherwise provided for any person, firm or corporation, to bring into the state of Iowa for the purpose of propagating or introducing, or to place or introduce into any of the inland or boundary waters of the state, any fish or spawn thereof that are not native to such waters, or introduce or stock any bird or animal unless application is first made in writing to the commission for a permit therefor and such permit granted. Such permit shall be granted only after the commission has made such investigation or inspection of the fish, birds or animals as it may deem necessary to determine whether or not such fish, birds or animals are free from disease and whether or not such introduction will be beneficial or detrimental to the native wildlife and the people of the state, and may or may not approve such planting, releasing or introduction according to its findings. Nothing in the above shall prohibit licensed game breeders from securing native or exotic birds or animals from outside the state and bringing them into the state and they shall not be required to have a permit as provided above when such birds or animals are not released to the wild but are held on the game breeder's premises as breeding stock.

[C39, §**1794.010;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.47]

C93, §481A.47

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

TERRITORIES, OPEN SEASONS, BAG AND POSSESSION LIMITS FOR GAME

481A.48 Restrictions on game birds and animals.

1. No person, except as otherwise provided by law, shall willfully disturb, pursue, shoot, kill, take or attempt to take or have in possession any of the following game birds or animals except within the open season established by the commission: Gray or fox squirrel, bobwhite quail, cottontail or jack rabbit, duck, snipe, pheasant, goose, woodcock, partridge, coot, rail, ruffed grouse, wild turkey, pigeons, or deer. The seasons, bag limits, possession limits and locality shall be established by the department or commission under the authority of sections 456A.24, 481A.38, and 481A.39.

2. The commission may adopt rules for the taking and possession of migratory birds which are subject to the federal "Migratory Bird Treaty Act" and "Migratory Bird Stamp Hunting Act" during the time and in the manner permitted under those federal Acts. The commission shall not adopt a rule for the taking or possession of a migratory bird for which an open season is not authorized by another paragraph of this section.

3. The commission may by rule permit the taking and possession of designated raptors and crows during the time and in the manner permitted under the federal "Migratory Bird Treaty Act".

4. The commission shall establish methods by which pigeons may be taken which may include, but are not limited to, the use of trapping, chemical repellants, or toxic perches.

5. The commission shall establish one or more pistol or revolver seasons for hunting deer as separate firearm seasons or to coincide with one or more other firearm deer hunting seasons. Any pistol or revolver firing a magnum three hundred fifty-seven thousandths of one inch caliber or larger, centerfire, straight wall ammunition propelling an expanding-type bullet is legal for hunting

deer during the pistol or revolver seasons. The commission shall adopt rules to allow black powder pistols or revolvers for hunting deer. The rules shall not allow pistols or revolvers with shoulder stock or long-barrel modifications. The barrel length of a pistol or revolver used for deer hunting shall be at least four inches. The rules may limit types of ammunition. A person who is sixteen years of age or less shall not hunt deer with a pistol or revolver. A person possessing a prohibited pistol or revolver while hunting deer commits a scheduled violation under section 805.8B, subsection 3, paragraph *"h"*, subparagraph (5).

[R60, §4381; C73, §4048; C97, §2551, 2552; S13, §2563-q; SS15, §2551, 2552, 2563-u; C24, §1767, 1768, 1776; C27, 31, §1767, 1767-a1, 1768, 1776; C39, §**1794.011;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.48]

86 Acts, ch 1133, §2, 3

C93, §481A.48

97 Acts, ch 141, §1; 2001 Acts, ch 137, §5

For applicable scheduled fines, see §805.8B, subsection 3, paragraph h

481A.49 Reserved.

481A.50 Selling birds.

No part of the plumage, skin or body of any bird protected by this chapter shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state, except as otherwise provided.

[C39, §**1794.013;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.50]

C93, §481A.50

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

481A.51 Hunting license not trapping license.

A hunting license shall not permit the holder to trap any fur-bearing animal as defined in this chapter.

[SS15, §2563-a1; C24, 27, §1718; C31, §1718-c1; C39, §**1794.014;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.51]

C93, §481A.51

481A.52 Exhibiting catch to officer.

A person who has in possession any game bird or game animal, fish or fur or part thereof shall upon request of the director or any officer appointed by the department exhibit it to the director or officer, and a refusal to do so is a violation of the Code.

[C31, §1768-c1; C39, §**1794.015;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.52]

88 Acts, ch 1216, §14

C93, §481A.52

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.53 Chasing from dens.

It is unlawful to have in possession while hunting or to use while hunting any ferret or any device or any substance to be used for chasing animals from their dens.

[C31, §1767-c1; C39, §**1794.016;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.53]

88 Acts, ch 1216, §15

C93, §481A.53

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.54 Shooting rifle, shotgun, pistol, or revolver over water, highway, or railroad right-of-way.

1. A person shall not shoot any rifle on or over any of the public waters or public highways of the state or any railroad right-of-way.

2. A person shall not shoot a shotgun with a slug load, pistol, or revolver on or over a public roadway as defined in section 321.1, subsection 65.

3. This section does not apply to any peace officers or military personnel in the performance of their official duties.

[C31, §1772-c2; C39, §**1794.017;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.54]

91 Acts, ch 234, §1

C93, §481A.54

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

481A.55 Selling game.

1. Except as otherwise provided, a person shall not buy or sell, dead or alive, a bird or animal or any part of one which is protected by this chapter, but this section does not apply to fur-bearing animals, and the skins, plumage, and antlers of legally taken game. This section does not prohibit the purchase of jackrabbits from sources outside this state. A person shall not purchase, sell, barter, or offer to purchase, sell, or barter for millinery or ornamental use the feathers of migratory game birds; and a person shall not purchase, sell, barter, or offer to purchase, sell, or barter mounted specimens of migratory game birds.

2. Section 481A.50 and this section do not apply to a game species, fur-bearing animal species, or variety of fish protected under this chapter which is sold by a nonprofit corporation as a part of a meal. The number of game of a game species or fur-bearing animal species, or a variety of fish protected by this chapter which are donated by a person to a nonprofit corporation plus any additional game of the same species or same variety of fish in the person's possession must not exceed the person's legal possession limit.

[C97, §2554; SS15, §2554; C24, 27, 31, §1769; C39, §**1794.018;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.55]

87 Acts, ch 176, §1; 88 Acts, ch 1216, §16

C93, §481A.55

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.56 Training dogs.

1. A person having a valid hunting license may train a bird dog on any game birds and a person

having a valid fur harvester license may train a coonhound, foxhound, or trailing dog on any fur-bearing animals at any time of the year including during the closed season on such birds or animals. However, the animals when pursued to a tree or den shall not be further chased or removed in any manner from the tree or den. A person having a hunting license may train a dog on coyote or groundhog.

Only a pistol, revolver, or other gun shooting blank cartridges shall be used while training dogs during closed season except as provided in subsection 2 of this section.

2. Any pen-raised game bird may be used and may be shot in the training of bird dogs. Before any bird is released or used in the training of dogs, the bird shall have attached a band procured from the commission. The commission may charge a fee for such bands but the fee shall not exceed ten cents for each band.

3. A call back pen or live trap may be used for the purpose of retrieving banded birds when released in the wild for training purposes. Any bird not so banded when taken in a call back pen or trap shall be immediately returned unbanded to the wild. All call back pens or live traps when in use shall have attached a metal tag plainly labeled with the owner's name and address. Conservation officers shall have authority to confiscate such traps when found in use and not properly labeled.

4. The commission shall have the power to adopt rules prohibiting the training of any hunting dog on any game bird, game animal, or fur-bearing animal in the wild at any time when it has been determined that such training might have an adverse effect on the populations of these species.

[C39, §**1794.019;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.56]

85 Acts, ch 10, §1; 86 Acts, ch 1245, §1854; 88 Acts, ch 1216, §17

C93, §481A.56

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.57 Possession and storage.

A person having lawful possession of game or fur-bearing animals or their pelts, except deer venison, may hold them for not to exceed thirty days after the close of the open season for such game or furbearers. A person having lawful possession of deer venison which is taken with a valid deer hunting license, may hold the deer venison from the date of taking until the following September 1. From September 1 until the first day of the next deer open season for which the person holds a valid deer hunting license, the person shall not possess more than twenty-five pounds of deer venison. Any person may possess up to twenty-five pounds of deer venison if the deer was obtained from a lawful source. A permit to hold for a longer period may be granted by the department.

[C39, §**1794.020;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.57]

88 Acts, ch 1216, §18

C93, §481A.57

2002 Acts, ch 1147, §2

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

Section amended

481A.58 Trapping birds or poisoning animals.

No person except those acting under the authority of the director shall capture or take or attempt to capture or take, with any trap, snare or net, any game bird, nor shall any person use any poison or any medicated or poisoned food or any other substance for the killing, capturing or taking of any game bird or animal.

[R60, §4381; C73, §4048; C97, §2551; SS15, §2539, 2551; C24, 27, 31, §1773; C39, §**1794.021;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.58]

86 Acts, ch 1245, §1855

C93, §481A.58

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.59 Pigeons — interference prohibited.

It shall be unlawful for any person or persons, except the owner or the owner's representatives, to shoot, kill, maim, injure, steal, capture, detain, or to interfere with any homing pigeon, commonly called *"carrier pigeon"*, which shall at the time, have the name, initials, or other identification of its owner, stamped, marked, or attached thereon; or to remove any mark, band, or other means of identification from such pigeon which has the name, initials, or emblem of the owner stamped or marked upon it.

Whoever shall violate the provisions of this section shall be punished as is provided in section 481A.32.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.59]

C93, §481A.59

GAME BREEDERS

481A.60 Raising game — rulemaking authority.

A person shall not raise or sell game or fur-bearing animals of the kinds protected by this chapter, except rock doves and pigeons, without first procuring a game breeder's license as provided by law. The commission may adopt rules which ensure that all game birds, game animals, and fur-bearing animals handled and confined by licensed game breeders are provided with humane care and treatment. A violation of a rule adopted by the commission is a cause for license revocation. This section does not apply to governmental zoos and exhibits.

[C39, §**1794.022;** C46, 50, 54, 58, 62, 66, 71, 73,

75, 77, 79, 81, §109.60]
88 Acts, ch 1216, §19; 91 Acts, ch 237, §1
C93, §481A.60
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.61 Licensed game breeders — marketing game — penalty.

1. Except as otherwise provided by law, a licensed game breeder whose original stock is obtained from a lawful source may possess any game bird, game animal, or fur-bearing animal, or any of their parts. Possession and use of the game birds, game animals, or fur-bearing animals obtained from a licensed game breeder are lawful.

2. Fur-bearing animals shall not be acquired for breeding or propagating purposes from any source unless they have been pen-raised for at least two successive generations.

3. A game breeder's license is not a license to possess, breed, propagate, sell, or dispose of any species which is defined as endangered or threatened under state law unless the species is listed on the license. Its possession, breeding, propagation, sale, and disposal are subject to all applicable state and federal statutes.

4. A licensed game breeder shall not acquire protected live game animals, game birds, their eggs, or fur-bearing animals taken from the wild within this state.

5. Game birds or game animals may be sold for food only under the following conditions:

a. The licensed game breeder shall file with the commission a facsimile of a stamp of similar type to that used by the United States department of agriculture in grading meat.

b. Licensed game breeders may sell dressed game birds or game animals to markets for resale providing each game bird or game animal has affixed upon it in a conspicuous and legible manner the imprint of the game breeder's stamp.

c. The stamp shall bear the name and number of the game breeder in letters of at least twelve-point type size.

6. Markets selling stamped game shall:

a. Maintain the stamp on each game bird or game animal until the bird or animal is disposed of or sold.

b. Keep a record showing the total number of game birds or game animals sold together with the name and address of the game breeder from whom purchased and the number of game birds and animals in each purchase.

7. Markets selling stamped game, together with their records, are subject to inspection by an authorized representative of the commission at any reasonable time.

8. Violation of a provision of this section may be cause for license revocation.

[C39, §**1794.023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.61]
86 Acts, ch 1245, §1854; 88 Acts, ch 1216, §20
C93, §481A.61
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.62 Records — reports — inspection.

1. A holder of a game breeder's license shall keep the records and make the reports required by this section on forms provided by the department. The records shall be open for inspection at any reasonable time by the department or its authorized agents.

2. At the time of every sale or conveyance of an animal, animal parts, or products, the licensee shall complete a game breeder's sales receipt on forms provided by the department. The forms shall require the following information:

a. The name, address, county, and license number assigned to the breeder.

b. The name and address of the purchaser.

c. The number, species, sex, and age of the animals or birds conveyed.

3. Licensees shall maintain business records for all species in an annual report record book. The records shall include the following information:

a. For each animal acquired other than by birth on the licensee's game farm, the sex and species, the date of acquisition, the number acquired, and the name and address of the source from which acquired.

b. For each animal born on the licensee's game farm, the sex, species, date of birth, and number of any band, tag, or tattoo subsequently attached to the animal.

c. For each animal sold or disposed of other than by death the same information required by the game breeder's sales receipt.

d. For each animal which dies, disappears, or is destroyed on the licensee's game farm, the sex, species, date of death, and the number of any band, tag, or tattoo attached to the animal.

The licensee's copies of the required sales receipts shall be kept with the record book and are considered a part of it.

Records required by this section shall be entered in the annual report record book within forty-eight hours of the event.

4. Each licensee shall file an annual report with the commission on or before January 31. The report shall detail the game breeder's operations during the preceding license year. The original report shall be forwarded to the department and a copy shall be retained in the breeder's file for a period of three years from the date of expiration of the breeder's last license issued. Failure to keep or submit the required records and report are grounds for a refusal to renew a license for the succeeding year.

5. An on-site inspection of facilities shall be conducted by an officer of the commission prior to the initial issuance of a game breeder's license.

The facilities may be reinspected by an officer of the commission at any reasonable time.

6. Any officer of the commission may enter any place where any game bird, game animal, or fur-bearing animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease.

7. For the purpose of this section, infectious and contagious disease includes rabies, hoof-and-mouth disease, leptospirosis, blackhead, or any other communicable disease so designated by the commission.

8. The commission may regulate or prohibit the importation into the state and exportation from the state of any species of game bird, game animal, or fur-bearing animal, domesticated or not, which in its opinion, for any reason, is determined to be detrimental to the health of animals within or without the state.

9. The commission may quarantine or destroy any game bird, game animal, or fur-bearing animal which is found to be infected with any contagious or infectious disease.

10. A licensed game breeder or other person having control of any game bird, game animal, or fur-bearing animal shall not knowingly offer for sale, sell, or barter such birds or animals which have an infectious or contagious disease, or allow those birds or animals to run at large or come in contact with any other game birds, game animals, or fur-bearing animals.

[C39, §**1794.024;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.62]

88 Acts, ch 1216, §21

C93, §481A.62

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.63 Sale of bait — license. Repealed by 93 Acts, ch 99, § 6. See § 481A.144.

481A.64 Reserved.

SCIENTIFIC COLLECTING

481A.65 Licenses.

The director, after investigation, may issue to any person a scientific collector's license, a wildlife salvage permit, educational project permit, or a wildlife rehabilitation permit. A scientific collector's license will authorize the licensee to collect for scientific purposes only, any birds, nests, eggs, or wildlife. A wildlife salvage permit will authorize the permittee to salvage for educational purposes, any birds, nests, eggs, or animals according to the rules of the department. An educational project permit authorizes the permittee to collect, keep, or possess for educational purposes birds, fish, or wildlife which are not endangered, threatened, or otherwise specially managed according to the rules of the department. A wildlife rehabilitation permit will authorize the permittee to possess for rehabilitation purposes only, any orphaned or injured wildlife according to the rules of the department. A person to whom a license or permit is issued shall not dispose of any birds, nests, eggs, or wildlife or their parts except upon written permission of the director. The application for such licenses and permits shall be made upon blanks furnished by the department. The commission shall establish, by rule, the tenure and applicable fee for each permit authorized in this section. Each holder of a license or permit shall, by January 31 of each year, file with the department a report showing all specimens collected or possessed under authority of the license or permit. Upon a showing of cause the department may enter and inspect the premises and collections authorized by this section. A license or permit may be revoked by the director, after due notice, at any time for cause.

[S13, §2563-o, -p; C24, 27, 31, §1779; C39, §**1794.027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.65]

88 Acts, ch 1216, §23

C93, §481A.65

95 Acts, ch 46, §1

481A.66 Banding or marking.

It shall be unlawful for any person to capture birds or animals for banding purposes except that the commission may, after investigation, issue a permit to any person permitting the person to capture birds or animals for the purpose of banding or marking same for scientific study, but no such birds or animals may be killed or injured or retained in possession, but must be liberated safely and promptly. Such permit may be revoked at any time for cause. Each holder of such permit shall report to the commission once each month the number, kind of birds or animals banded, and the band numbers.

[C39, §**1794.028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.66]

C93, §481A.66

ANGLING LAWS

481A.67 Seasons and limits.

It is unlawful for a person, except as otherwise expressly provided, to take, capture, or kill fish, frogs, or turtles except during the open season established by the commission. It is unlawful during open season to take in any one day an amount in excess of the daily catch limit designated for each variety or each locality, or have in possession any variety of fish, frog, or turtle in excess of the possession limit, or have in possession any frog, fish, or turtle at any time under the minimum length or weight. The open season, possession limit, daily

catch limit, and the minimum length or weight for each variety of fish, frog, or turtle shall be established by rule of the department or commission under the authority of sections 456A.24, 481A.38, 481A.39 and 482.1.

[C97, §2540; SS15, §2540; C24, 27, 31, §1731, 1732, 1733; C39, §**1794.029;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.67]

86 Acts, ch 1245, §1854; 88 Acts, ch 1216, §24

C93, §481A.67

For applicable scheduled fines, see §805.8B, subsection 3, paragraph i

481A.68 Tip-up fishing device.

1. As used in this section, *"tip-up fishing device"* means an ice fishing mechanism with an attached flag or signal to indicate fishing action, used to hold a fishing rod or pole with line and hook.

2. A person shall not use more than three tip-up fishing devices for fishing in the waters of the Mississippi river and its connected backwater. A person may use two or three hooks on the same line, but the total number of hooks used by each person shall not exceed three. Each tip-up fishing device used in fishing shall have attached a tag plainly labeled with the owner's name and address. A person shall not use a tip-up fishing device for fishing within three hundred feet of a dam or spillway or in a part of the river which is closed or posted against use of the device. Three tip-up fishing devices may be used in addition to the two lines with no more than two hooks per line, as specified in section 481A.72.

3. An untagged tip-up fishing device found in use shall be confiscated by any officer appointed pursuant to section 456A.13 or 456A.14.

88 Acts, ch 1041, §1

C89, §109.68

C93, §481A.68

481A.69 Fish designated.

The commission may adopt rules designating game fish, commercial fish, and rough fish.

88 Acts, ch 1216, §25

C89, §109.69

C93, §481A.69

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

481A.70 Reserved.

481A.71 Releasing unlawful catch.

Any fish caught that is less than lawful minimum length or weight shall be handled with wet hands and released under water immediately with as little injury as possible.

[C39, §**1794.033;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.71]

C93, §481A.71

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b

481A.72 Hooks.

A person shall not at any time take from the waters of the state any fish, except as otherwise provided in this chapter, except with hook, line, and bait, nor shall a person use more than two lines nor more than two hooks on each line in still fishing or trolling, and in fly fishing not more than two flies may be used on one line, and in trolling and bait casting not more than two trolling spoons or artificial bait may be used on one line. A person shall not leave fish line or lines and hooks in the water unattended by being out of visual sight of the lines and hooks. One hook means a single, double, or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one hook.

88 Acts, ch 1216, §26

C89, §109.72

C93, §481A.72

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

481A.73 Trotlines and tagged lines.

In the waters of the state open to their use, a person shall not use more than five tagged lines set to take fish such as trotlines or throw lines. Such tagged lines shall not have in the aggregate more than fifteen hooks. Each separate line when in use shall have attached a tag plainly labeled with the owner's name and address, shall be checked at least once each twenty-four hours, and a person shall not use tagged lines in a stocked lake or within three hundred feet of a dam or spillway or in a stream or portion of stream, which is closed or posted against the use of such tackle. One end of such lines shall be set from the shore and be visible above the shore waterline, but no such line shall be set entirely across a stream or body of water. Any untagged or unlawful lines when found in use shall be confiscated by any officer appointed by the director.

[C73, §4052; C97, §2540, 2542; SS15, §2540; C24, 27, 31, §1734; C39, §**1794.035, 1794.037;** C46, 50, 54, 58, 62, 66, 71, 73, §109.73, 109.75; C75, 77, 79, 81, §109.73]

88 Acts, ch 1216, §27

C93, §481A.73

For applicable scheduled fines, see §805.8B, subsection 3, paragraph j

481A.74 Where permitted.

Trotlines and throw lines may be used in the border rivers of the state and in the inland waters. However, the commission may by rule prohibit the use of trotlines or throw lines in certain inland waters.

[C73, §4052; C97, §2540, 2542; C24, 27, 31, §1734; C39, §**1794.036;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.74]

C93, §481A.74

481A.75 Reserved.

481A.76 Unlawful means — exception.

It is unlawful, except as otherwise provided, to use on or in the waters of the state any grabhook, snaghook, any kind of a net, seine, trap, firearm, dynamite, or other explosives, or poisonous or stupefying substances, lime, ashes, electricity, or hand fishing in the taking or attempting to take any fish, except that gaffhooks or landing nets may be used to assist in landing fish. The commission may permit designated fish to be taken by hand fishing, by snagging, by spearing, by bow and arrow, and with artificial light at the times and at the places as determined by rules of the commission.

[C97, §2540; SS15, §2540; C24, 27, 31, §1735; C39, §**1794.038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.76]

88 Acts, ch 1216, §28

C93, §481A.76

2000 Acts, ch 1116, §1

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.77 Reserved.

481A.78 Stocking private water.

No private water may be stocked by the commission unless the owner agrees that such waters shall be open to the public for fishing, except that the commission may, after investigation to determine their suitability as to size, depth, living conditions for fish, and management, provide a breeding stock of fish for privately owned farm ponds on request of the owner.

[C39, §**1794.040;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.78]

C93, §481A.78

481A.79 Reserved.

481A.80 Minnows and other bait — violations — limitations. Repealed by 93 Acts, ch 99, § 6. See § 481A.1, 481A.144, and 481A.145.

481A.81 Selling minnows outside state. Repealed by 93 Acts, ch 99, § 6. See § 481A.145.

481A.82 Prohibited bait. Repealed by 93 Acts, ch 99, § 6. See § 481A.145.

481A.83 Prohibited stocking.

A person shall not stock or introduce into the waters of the state a live fish, except for hooked bait, without the permission of the director. This section does not apply to privately owned ponds and lakes.

88 Acts, ch 1216, §30

C89, §109.83

C93, §481A.83

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

481A.84 Frogs — catching — selling.

1. Frogs may be taken by holders of a fishing license only and they may be used for bait or food purposes, but no person shall take more than four dozen frogs in any one day or have in possession at any one time more than eight dozen frogs. Licensed bait dealers authorized by law to sell bait may have in their possession to supply the bait needs of their customers, not more than twenty dozen frogs.

2. No person shall use any device, net, barrier or fence of any kind which prevents frogs from having free access to and egress from the water.

3. Transportation out of the state in any manner or for any purposes, of frogs taken in Iowa, is prohibited.

4. Nothing in this chapter shall be construed to prevent the purchase, sale or possession of frogs or any portion of the carcasses of frogs that have been legally taken and shipped in from without the state.

5. Nothing herein shall prevent any person from catching frogs on the person's own premises for the person's private use.

[C39, §**1794.046;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.84]

C93, §481A.84

See §481A.67

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.85 Prohibited areas.

It shall be unlawful for any person at any time, except as otherwise provided, to take any fish, minnows, frogs, or other aquatic, biological life from any state fish hatchery, nursery or other area under the jurisdiction of the commission operated for fish production purposes.

[C39, §**1794.047;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.85]

C93, §481A.85

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

481A.86 Federal employees excepted.

Authorized employees of the United States bureau of sport fisheries and wildlife are hereby authorized to conduct fish culture operations, rescue work on the boundary waters of the state, and other operations necessary for rescue and hatchery work.

[C39, §**1794.048;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.86]

C93, §481A.86

TRAPPING OR HUNTING OF
FUR-BEARING ANIMALS

481A.87 Open seasons.

Except as otherwise provided, a person shall not take, capture, kill, or have in possession a furbearing animal or any of its parts at any time except during the open season as set by the commis-

sion except where the killing, trapping, or ensnaring is for the protection of a person or public or private property with the prior permission of a duly appointed representative of the commission. If prior permission is impractical or impossible to obtain and the fur-bearing animal represents a threat to a person, domestic animal, or private property, the fur-bearing animal may be taken without prior permission. All fur-bearing animals and all parts thereof taken as provided in this section shall be disposed of on the site or shall be relinquished to a representative of the commission.

[C97, §2553; SS15, §2553; C24, §1766; C27, 31, §1766, 1766-a1; C39, §**1794.049;** C46, §109.87, 109.93; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.87]

88 Acts, ch 1216, §31

C93, §481A.87

94 Acts, ch 1148, §2

For applicable scheduled fines, see §805.8B, subsection 3, paragraph l

481A.88 Reserved.

481A.89 Permit to hold hides.

Upon application, which shall be filed with the commission within ten days after the close of the open season, any person may be permitted to hold hides or skins of fur-bearing animals lawfully taken for a longer time than specified above. Such application shall be verified and shall show the number and varieties of the skins or hides to be held by the applicant. The commission shall thereupon issue a permit to such applicant to hold such skins or hides, which permit shall authorize the holder to sell or otherwise dispose of such skins or hides.

[C31, §1766-c4; C39, §**1794.051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.89]

C93, §481A.89

481A.90 Disturbing dens.

1. A person shall not molest or disturb, in any manner, any den, lodge, or house of a fur-bearing animal or beaver dam except by written permission of an officer appointed by the director.

2. This section does not prohibit the owner from destroying a den to protect the owner's property.

[C39, §**1794.052;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.90]

88 Acts, ch 1216, §32; 89 Acts, ch 83, §23

C93, §481A.90

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.91 Shooting or spearing.

No person shall kill with shotgun, or spear any beaver, mink, otter, or muskrat, or have in possession any of said animals or the carcasses, skins or parts thereof that have been killed with shotgun or spear.

[C31, §1767-c2; C39, §**1794.053;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.91]

C93, §481A.91

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.92 Traps — disturbing dens — tags for traps.

1. A person shall not use or attempt to use colony traps in taking, capturing, trapping, or killing any game or fur-bearing animals except muskrats as determined by rule of the commission. Box traps capable of capturing more than one game or fur-bearing animal at each setting are prohibited. A valid hunting license is required for box trapping cottontail rabbits and squirrels. All traps and snares used for the taking of fur-bearing animals shall have a metal tag attached plainly labeled with the user's name and address. All traps and snares, except those which are placed entirely under water, shall be checked at least once every twenty-four hours. Officers appointed by the department may confiscate such traps and snares found in use that are not properly labeled or checked.

2. Except as otherwise provided, a person shall not use chemicals, explosives, smoking devices, mechanical ferrets, wire, tool, instrument, or water to remove fur-bearing animals from their dens. Humane traps, or traps designed to kill instantly, with a jaw spread, as originally manufactured, exceeding eight inches are unlawful to use except when placed entirely under water.

3. Conibear type traps and snares shall not be set on the right-of-way of a public road within two hundred yards of the entry to a private drive serving a residence without the permission of the occupant.

4. A snare when set shall not have a loop larger than eight inches in horizontal measurement except for a snare set with at least one-half of the loop under water. A snare set on private land other than roadsides within thirty yards of a pond, lake, creek, drainage ditch, stream, or river shall not have a loop larger than eleven inches in horizontal measurement.

5. All snares shall have a functional deer lock which will not allow the snare loop to close smaller than two and one-half inches in diameter.

[R60, §4381; C73, §4048; C97, §2551, 2558; SS15, §2539, 2551; C24, 27, 31, §1771, 1773; C39, §**1794.054;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.92]

88 Acts, ch 1216, §33

C93, §481A.92

99 Acts, ch 40, §1

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.93 Hunting by artificial light.

1. A person shall not throw or cast the rays of a spotlight, headlight, or other artificial light on a highway, or in a field, woodland, or forest for the purpose of spotting, locating, or taking or attempting to take or hunt a bird or animal, except rac-

coons or other fur-bearing animals when treed with the aid of dogs, while having in possession or control, either singly or as one of a group of persons, any firearm, bow, or other implement or device whereby a bird or animal could be killed or taken.

2. This section does not apply to deer being taken by or under the control of a local governmental body within its corporate limits pursuant to an approved special deer population control plan.

[C62, 66, 71, 73, 75, 77, 79, 81, §109.93]
88 Acts, ch 1216, §34
C93, §481A.93
98 Acts, ch 1203, §1
For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

FUR DEALERS

481A.94 Definition.

The term *"fur dealer"* as used in this chapter shall mean any person, firm, partnership, or corporation engaged in the business of buying, bartering, trading or otherwise obtaining raw hides or skins of fur-bearing animals.

[C39, §**1794.055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.94]
C93, §481A.94

481A.95 License — reciprocity.

1. A license shall be required of each fur dealer and each employee, agent, or representative of a fur dealer except when the employee, agent, or representative is operating solely on the premises of a licensed fur dealer. A fur dealer shall conduct business only at the location specified on the dealer's license, at an established fur auction, at the nonadvertised residence of a licensed fur harvester, or at the place of business specified on the license of any fur dealer. A nonresident licensed fur dealer may purchase location permits to operate at locations other than at the location specified on the fur dealer's license. A resident licensed fur dealer may obtain location permits without fee. Each location permit shall be valid only for the one location specified on the location permit and shall entitle the fur dealer and employee, agent, or representative of the licensed fur dealer to operate at that location. The commission shall, upon application and the payment of the required license fee, if any, furnish the proper license and location permits to the dealer.

2. A resident of another state shall pay the fee provided by statute for the nonresident fur dealer's license unless that state has a reciprocity agreement with this state. The reciprocity agreement must provide that each state will charge nonresidents from the other state the same fee for the nonresident fur dealer's license and the fee under the agreement must be less than the statutory fee of this state for nonresidents and higher than the statutory fee of this state for residents.

[C31, §1766-c3; C35, §1794-e1; C39, §**1794.056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.95]
84 Acts, ch 1199, §1; 89 Acts, ch 90, §1; 91 Acts, ch 237, §2
C93, §481A.95
For applicable scheduled fines, see §805.8B, subsection 3, paragraph e

481A.96 Possession by dealer.

A licensed fur dealer may have in possession at any time skins or hides of animals which have been lawfully taken.

[C31, §1766-c4; C39, §**1794.058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.96]
C93, §481A.96

481A.97 Reports.

Fur dealers shall keep accurate, current records of their transactions. The records shall show the number and kinds of hides and skins which have been purchased, the date of purchase, and the name and address of the seller. Such records shall be open at all reasonable times to inspection by the commission. On or before May 15 of each year, each fur dealer shall file a verified inventory with the commission. The inventory shall include all transactions for the preceding year.

[C31, §1766-c1; C39, §**1794.059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.97]
C93, §481A.97
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.98 Reporting violations.

Each fur dealer shall report to the commission, the name of any person if known to the dealer, who attempts to sell any skins or hides which appear to have been unlawfully taken, or possessed by that person.

[C31, §1766-c2; C39, §**1794.060;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.98]
88 Acts, ch 1216, §35
C93, §481A.98

481A.99 through 481A.119 Reserved.

PROHIBITED ACTS

481A.120 Hunting from aircraft or snowmobiles prohibited.

A person, either singly or as one of a group of persons, shall not intentionally kill or wound, attempt to kill or wound, or pursue any animal, fowl, or fish from or with an aircraft in flight or from or with any self-propelled vehicles designed for travel on snow or ice which utilize sled type runners, or skis, or an endless belt tread, or wheel or any combination thereof and which are commonly known as snowmobiles.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81,

§109.120]
88 Acts, ch 1216, §36
C93, §481A.120
For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

481A.121 Turtles and crayfish — taking by nonresidents or aliens.

It shall be unlawful for any nonresident or alien to take turtles or crayfish in Iowa, by any means or method, except from the Missouri and Mississippi rivers and the Big Sioux river.
[C62, 66, 71, 73, 75, 77, 79, 81, §109.121]
C93, §481A.121

481A.122 Deer hunters' orange apparel.

A person shall not hunt deer with firearms unless the person is at the time wearing one or more of the following articles of visible, external apparel: A vest, coat, jacket, sweatshirt, sweater, shirt or coveralls, the color of which shall be solid blaze orange.
[C71, 73, 75, 77, 79, 81, §109.122]
88 Acts, ch 1216, §37
C93, §481A.122
For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.123 Prohibited hunting near buildings, feedlots.

1. A person shall not discharge a firearm or shoot or attempt to shoot a game or fur-bearing animal within two hundred yards of a building inhabited by people or domestic livestock or within two hundred yards of a feedlot unless the owner or tenant has given consent. However, within the corporate limits of a city, a person may take deer with a firearm within fifty yards of a building inhabited by people or domestic livestock, or a feedlot pursuant to an approved special deer population control plan, if the person obtains permission of the owner or tenant of the building or feedlot.

2. As used in this section, *"feedlot"* means a lot, yard, corral, or other area in which livestock are present and confined, for the purposes of feeding and growth before slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.
[C77, 79, 81, §109.123]
88 Acts, ch 1216, §38; 90 Acts, ch 1194, §1; 92 Acts, ch 1149, §1
C93, §481A.123
2000 Acts, ch 1116, §2
For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

481A.124 Taking predominantly white deer of the whitetail species prohibited.

1. A person shall not take a predominantly white deer in this state.

2. This section applies to deer of the species whitetail only.

3. A person violating subsection 1 is guilty of a simple misdemeanor.
88 Acts, ch 1184, §1
C89, §109.124
C93, §481A.124

481A.125 Intentional interference with lawful hunting, fishing, or fur-harvesting activities — penalties.

1. As used in this section, *"interfere with hunting, fishing, or fur-harvesting activities"* means one or more of the following:

a. To intentionally place oneself in a location where a human presence may affect the behavior of a fur-bearing animal, game, bird, or fish or the feasibility of killing or taking a fur-bearing animal, game, bird, or fish with the intent of obstructing or harassing another person who is lawfully hunting, fishing, or fur harvesting.

b. To intentionally create a visual, aural, olfactory, or physical stimulus for the purpose of affecting the behavior of a fur-bearing animal, game, bird, or fish with the intent of obstructing or harassing another person who is lawfully hunting, fishing, or fur harvesting.

c. To intentionally affect the condition or alter the placement of personal property used for the purpose of killing or taking a fur-bearing animal, game, bird, or fish with the intent of obstructing or harassing another person who is lawfully hunting, fishing, or fur harvesting.

2. A person shall not interfere with the lawful hunting, fishing, or fur-harvesting activities of another person in an area where hunting, fishing, or fur harvesting is authorized by a custodian of public property or an owner or lessee of private property.

3. A person who commits:

a. A first offense of interfering with hunting, fishing, or fur-harvesting activities is guilty of a simple misdemeanor.

b. A second or subsequent offense is punishable as a serious misdemeanor.

4. If a person who commits interfering with hunting, fishing, or fur-harvesting activities possesses a license, certificate, or permit issued by the department, the license, certificate, or permit is subject to suspension or revocation pursuant to section 481A.134.

5. This section shall not prohibit a landowner, tenant, or an employee of a landowner or tenant from performing normal agricultural operations or a law enforcement officer from performing official duties.
91 Acts, ch 234, §2
CS91, §109.125
C93, §481A.125
2000 Acts, ch 1076, §1; 2000 Acts, ch 1232, §76, 77

TAXIDERMY

481A.126 Taxidermy.

1. *"Taxidermist"* as used in this section means a person engaged in the business of preserving or mounting game, fish, or fur-bearing animals as defined in this chapter.

2. A license is required for the practice of taxidermy. The commission, upon application and payment of the required license fee, shall furnish proper certificates to the applicant. The director may revoke the license for good cause.

3. A licensed taxidermist may possess at any time game, fish, or fur-bearing animals which have been lawfully taken.

4. A taxidermist shall keep accurate records of its transactions showing the numbers and kinds of specimens received for preserving, the date of acquisition, and the name and address of the owner of the specimens.

5. A person shall not put or leave any game, fish, or fur-bearing animal in the custody of another person for the purpose of having taxidermy services performed unless each specimen has a tag attached which is signed by the possessor and states the address of the possessor, the total number and species of the specimens and the date the specimens were killed.

6. All transactions, tags, and specimens left in the custody of the taxidermist by another person shall be open to inspection by a conservation officer at any reasonable hour.

[82 Acts, ch 1010, §1]
C83, §109.126
88 Acts, ch 1216, §39, 40
C93, §481A.126
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.127 through 481A.129 Reserved.

CIVIL DAMAGES — SUSPENSIONS

481A.130 Damages in addition to penalty — animals — ginseng.

1. In addition to the penalties for violations of this chapter and chapters 350, 461A, 481B, and 482, a person convicted of unlawfully selling, taking, catching, killing, injuring, destroying, or having in possession any animal, shall reimburse the state for the value of such as follows:

a. For each elk, antelope, buffalo, or moose, two thousand five hundred dollars.

b. For each wild turkey, two hundred dollars.

c. For each bird or animal or the raw pelt or plumage of such bird or animal for which damages are not otherwise prescribed, fifty dollars.

d. For each fish, reptile, mussel, or amphibian, fifteen dollars.

e. For each beaver, mink, otter, red fox, gray fox, or raccoon, two hundred dollars.

f. For each animal classified by the commission as an endangered or threatened species, one thousand dollars.

g. For each antlered deer during September, October, November, or December before the regular gun season, two thousand dollars and eighty hours of community service or, in lieu of the community service, a total of four thousand dollars.

h. For each deer, except as provided in paragraph *"g"*, and for each swan or crane, one thousand five hundred dollars.

2. In addition to any other penalty, a person convicted of unlawfully harvesting wild ginseng in violation of section 456A.24 shall reimburse the state at one hundred fifty percent of the ginseng's market value, as determined by the department.

[C75, 77, 79, 81, §109.130; 82 Acts, ch 1211, §1 – 3]
88 Acts, ch 1216, §41; 90 Acts, ch 1142, §1; 92 Acts, ch 1186, §2
C93, §481A.130
93 Acts, ch 38, §2; 98 Acts, ch 1203, §2, 3; 99 Acts, ch 58, §1

481A.131 Judgment — execution.

In each case of conviction of unlawfully taking, catching, killing, injuring, destroying or having in possession any fish, game or fur-bearing animal, the court shall enter a judgment in favor of the state of Iowa for liquidated damages in an amount as provided in section 481A.130, and it shall be the duty of the commission and the prosecuting attorney or attorney general, to collect the liquidated damages by execution or otherwise. If two or more persons who have acted together are convicted of the unlawful taking, catching, killing, injuring, destroying or having possession of any fish, game or fur-bearing animal, the judgment shall be entered against them jointly. Any liquidated damages received under this section and section 481A.130 shall be remitted to the treasurer of state who shall credit such damages to the state fish and game protection fund.

The return of any uninjured fish, game or fur-bearing animal which has been unlawfully taken, caught, or possessed, to the place where taken or caught or to any other place approved by the commission, shall constitute the discharge of any liquidated damages provided under section 481A.130.

Civil suits for the collection of judgments may be prosecuted by the attorney general or by county attorneys.

[C75, 77, 79, 81, §109.131; 82 Acts, ch 1211, §4]
86 Acts, ch 1245, §1854
C93, §481A.131

481A.132 Service of process or arrest — pendency of damage claim.

Service of process upon or arrest of any person charged with provisions of this chapter for which

damages may be assessed pursuant to section 481A.130, shall serve as notice of the pendency of the liquidated damage claim. Trial on the criminal charge may be separated from the determination of the liquidated damage claim in the discretion of the court or by the request of the defendant, but upon conviction of the defendant in the criminal case, the only issue to be determined by the court on the liquidated damage claim is the fact of such conviction.

[C77, 79, 81, §109.132]
C93, §481A.132

481A.133 Suspension of licenses, certificates, and permits.

A person who is assessed damages pursuant to section 481A.130 shall immediately surrender all licenses, certificates, and permits to hunt, fish, or trap in the state to the department. The licenses, permits, and certificates, and the privileges associated with them shall remain suspended until the assessed damages and any accrued interest are paid or a payment schedule is established by the court. Upon payment of the assessed damages and any accrued interest, the suspension shall be lifted. If a payment schedule is established, the suspension shall be lifted and remain so unless the person fails to make a payment pursuant to that schedule. Failure to make a payment shall cause the suspension to be renewed.

90 Acts, ch 1198, §2
C91, §109.133
C93, §481A.133

SUSPENSIONS, REVOCATIONS, AND PENALTIES

481A.134 Authority to suspend or revoke license — point system.

The department shall establish rules pursuant to chapter 17A providing for the suspension or revocation of licenses issued by the department. For purposes of determining when to suspend or revoke a license issued by the department under this section, the department shall adopt a point system pursuant to chapter 17A for the purpose of weighing the seriousness of violations of the provisions of this chapter or chapter 481B, 482, 483A, 484A, or 484B. The weighted scale may be amended from time to time as experience dictates.

90 Acts, ch 1198, §3
C91, §109.134
92 Acts, ch 1160, §19
C93, §481A.134

481A.135 Repeat offender — records, enforcement, and penalties.

1. The commission shall establish by rule, a recordkeeping system and other administrative procedures necessary to administer this section.

2. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B while the person's license or licenses are suspended or revoked is guilty of a simple misdemeanor if the person has no other violations within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

3. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B while the person's license or licenses are suspended or revoked is guilty of a serious misdemeanor if the person has one other violation within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

4. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B while the person's license or licenses are suspended or revoked is guilty of an aggravated misdemeanor when the person has had two or more convictions within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

90 Acts, ch 1198, §4
C91, §109.135
92 Acts, ch 1160, §20
C93, §481A.135

481A.136 Unlawful commercialization of wildlife — penalty.

1. A person shall not buy or sell a wild animal or part of a wild animal if the wild animal is taken, transported, or possessed in violation of the laws of this state, or a rule adopted by the department.

2. A person violating subsection 1 is guilty of a serious misdemeanor.

92 Acts, ch 1186, §3

481A.137 Abandonment of dead or injured wildlife.

1. While taking or attempting to take game or fur-bearing animals, a person shall not abandon an injured game or fur-bearing animal without making a reasonable effort to retrieve the animal from the field. A person shall not leave a useable portion of game or a fur-bearing animal in the field.

2. A person violating subsection 1 is subject to a scheduled fine as provided in section 805.8B, subsection 3, paragraph e.

3. As used in this section, *"useable portion"* means the following:

a. For game, that part of an animal which is customarily processed for human consumption.

b. For a fur-bearing animal, the fur or hide of the animal.

4. This section does not apply to pigeons or crows.

92 Acts, ch 1149, §2; 2001 Acts, ch 137, §5

481A.138 through 481A.140 Reserved.

AQUACULTURE

481A.141 Aquaculture — license required.

1. A person shall not engage in the business of aquaculture until that person has applied for and has been issued an aquaculture unit license from the department. The application period extends from January 1, or the date of the application, through December 31. A license shall not be issued to operate an aquaculture unit on private or nonmeandered lakes and streams and ponds that may become stocked with fish from public waters or natural migration. A pond stocked by the department pursuant to section 481A.78 shall not be used for aquaculture purposes.

2. The following persons must obtain an aquaculture unit license:

a. A person who, for commercial purposes, rears or maintains live animals or plants for food, bait, or for stocking in waters of the state.

b. An owner or operator of a pond where guests or customers are allowed to fish for a fee, or allowed to take fish without regard to angling licenses, seasons, gear restrictions, or bag limits.

3. The cultivation and sale of tropical fish species or ornamental aquatic plants or animals, not utilized for human consumption or bait purposes, but maintained in closed systems and utilized by the pet industry or hobbyists are exempt from license requirements.

92 Acts, ch 1216, §3

481A.142 Licensed aquaculture units — activities allowed.

A holder of an aquaculture unit license may:

1. Possess, propagate, buy, sell, deal in, and transport the aquatic organisms produced from breeding stock legally acquired, including minnows.

2. Sell fish for stocking purposes within or outside the state. Fish which are nonindigenous to Iowa shall not be received or sold in the state unless the aquaculture unit has obtained an importation permit from the department. The department shall establish, by rule, requirements governing importation, and shall include a list of approved aquaculture species. Failure to comply with this subsection will result in loss of license and a violator is subject to the scheduled fine provided in section 805.8B.

3. Hold, feed, and sell carp, buffalofish, and other fish legally taken by commercial fishers.

4. Harvest aquatic life on land under control of the aquaculture unit with commercial devices without obtaining any permits for the devices.

5. Sell bait, including minnows, frogs, and clams, propagated or raised within the licensed unit without having to obtain a bait dealer's license. However, aquaculture units wishing to take bait from areas other than their licensed units must also obtain a bait dealer's license.

6. Take any gull, tern, or merganser within the bounds of the unit. An owner or operator of the licensed aquaculture unit, however, must first obtain a permit for this activity from the department or the United States fish and wildlife service. Each permittee shall file an annual report with the department which itemizes the birds taken during the period covered by the permit, and dispose of birds taken according to methods established by the department. The department shall not issue a subsequent permit to any person failing to file this report.

92 Acts, ch 1216, §4; 2001 Acts, ch 137, §5

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.143 Licensed aquaculture units — requirements.

1. Each licensed aquaculture unit shall prepare an annual report of all fish bought, sold, and shipped. The records shall include species name as well as the weight, volume, or count of fish involved. Reports shall be filed on or before December 31 of each year for the preceding year. The department may refuse to renew a unit license if the annual report is not provided.

2. Each licensed aquaculture unit shall secure its breeding stock from licensed aquaculture units or licensed aquaculturists in the state or from lawful sources outside the state. An aquaculture unit shall not secure stock in any other manner.

3. A shipment of fish must be accompanied by a duplicate of the sales invoice showing the name and address of the producer, date of shipment, the species being transported, the weight, volume, or count of each species being shipped and the name and address of the consignee. A duplicate of the sales invoice must be retained by the aquaculture unit or aquaculturist for one year following the sale.

4. A licensed aquaculture unit shall comply with all state laws pertaining to possession, taking, or selling of bait which it handles. The director may revoke the unit license of any person violating this subsection or a rule adopted by the department.

5. Minnow and bait boxes and tanks within licensed aquaculture units shall be open for inspection by the department at all times.

6. Aquaculture units shall not import live fish, viable eggs, or semen of any species of the salmonid family (trout, salmon, or char) and ictalurid family (catfishes and bullheads), including hybrids, unless the owner or operator possesses a fish importation permit. For the species listed in this subsection only, importation permits shall not be issued unless the fish, eggs, or semen have been inspected by the department and found to be free of disease detrimental to the state's fishery re-

sources. The owner or operator of an aquaculture unit must provide a statement certifying the fish listed in this subsection or their eggs or semen to be disease free, and include the date of inspection. Certification is not required for other fish species, but the department may require inspection at any time. The department shall establish, by rule, those diseases detrimental to the state's fishery resources and the location of authorized certified pathologists for inspection.

92 Acts, ch 1216, §5

481A.144 Licensed bait dealers — requirements.

1. A person shall not sell minnows, frogs, crayfish, salamanders, and mussels for fish bait without first obtaining a bait dealer's license from the department upon payment of the license fee. A licensee shall comply with all laws pertaining to taking, possessing, and selling of bait handled by the licensee. If convicted of violating a provision of this chapter or a rule adopted pursuant to this chapter, a licensee shall forfeit the licensee's bait dealer license upon demand of the director.

2. When taking bait from lakes and streams, bait dealers shall take only the size of bait which they can use, and shall return all small minnows and frogs to the water immediately.

3. A minnow and bait box and a tank shall be open to inspection by the department at all times. A licensee shall have tanks and bait boxes of sufficient size and with proper aeration to keep the bait alive and prevent substantial loss.

4. A person shall not take or attempt to take minnows for commercial purposes from any waters of the state or shall not transport minnows without first obtaining a bait dealer's license. However, a person taking or transporting minnows for personal use is not required to have a bait dealer's license.

92 Acts, ch 1216, §6; 93 Acts, ch 99, §2

For applicable scheduled fines, see §805.8B, subsection 3, paragraph k

481A.145 Taking and selling of minnows and other bait — regulations.

1. Except for species listed as threatened or endangered under chapter 481B, a licensed bait dealer may take sufficient bait from lakes and streams of this state that are not closed to the taking of bait, to supply the licensee's customers for hook and line fishing if the licensee is present while the bait is being taken.

2. Except as otherwise provided in this chapter, a person shall not carry, transport, ship, or cause to be carried, transported, or shipped, any minnows for the purpose of sale beyond the boundaries of the state. Minnows which are bred, hatched, propagated, or raised on a licensed aquaculture unit may be transported outside the state.

3. A person shall not transport, use, sell or offer to sell for bait or introduce into any inland waters of this state or into any waters from which the waters of the state may become stocked, any minnows or fish of the carp, quillback, gar, or dogfish species. Fish of the carp, quillback, gar, or dogfish species may be returned to the waters from which they are taken. A person shall not possess live gizzard shad at any lake in this state.

4. Minnow traps not exceeding thirty-six inches in length may be used when the taking of minnows is allowed. Each trap, when in use, shall have a metal tag attached plainly labeled with the owner's name and address.

5. A person shall not use a minnow dip net which exceeds four feet in diameter, a cast net which exceeds ten feet in diameter, or a minnow seine which exceeds twenty feet in length or has a mesh size smaller than one-quarter inch bar measure. Licensed bait dealers may obtain a permit from the department to use minnow seines longer than twenty feet, but not exceeding fifty feet in length.

6. The department may designate certain lakes and streams, and parts of them, from which minnow populations should be protected for the best management of the lakes or streams. If an investigation of a lake or stream or a portion of a lake or stream by the department indicates that the minnow population should be protected, the lake or stream or a portion of the lake or stream shall be closed to the taking of minnows for a period of time deemed advisable by the department.

92 Acts, ch 1216, §7; 93 Acts, ch 99, §3 – 5

For applicable scheduled fines, see §805.8B, subsection 3, paragraphs c, d, and k

481A.146 Authority of the director.

The director may take any fish from the public waters of the state, at any time and in any manner, for the purpose of propagation or restocking other waters, or exchanging with fish and wildlife agencies of other states, the federal government, or licensed aquaculture units.

92 Acts, ch 1216, §8

481A.147 Theft of fish.

All fish in an aquaculture unit are private property and are not the property of the state, and the theft of fish from an aquaculture unit is punishable as provided in section 714.2.

92 Acts, ch 1216, §9

481A.148 through 481A.150 Reserved.

POLLUTION — RESTITUTION

481A.151 Restitution for pollution causing injury to wild animals.

1. A person who is liable for polluting a water of this state in violation of state law, including this chapter, shall also be liable to pay restitution to the department for injury caused to a wild animal

by the pollution. The amount of the restitution shall also include the department's administrative costs for investigating the incident. The administration of this section shall not result in a duplication of damages collected by the department under section 455B.392, subsection 1, paragraph *"c"*.

2. The commission shall adopt rules providing for procedures for investigations and the administrative assessment of restitution amounts. The rules shall establish an opportunity to appeal a departmental action including by a contested case proceeding under chapter 17A. A final administrative decision assessing an amount of restitution may be enforced by the attorney general at the request of the director.

3. Rules adopted by the commission shall provide for methods used to determine the extent of an injury and the monetary values for the loss of injured wild animals based on species.

a. The rules shall provide for methods used to count dead fish and to calculate restitution values. The rules may incorporate methods and values published by the American fisheries society. To every extent practicable, the values shall be based on the estimates of lost recreational angler opportunities where applicable. As an alternative method of valuation, the rules may provide that for fish species that are protected by catch limits, possession limits, size limits, or closed seasons applicable to anglers, liquidated damages apply. The amount of the liquidated damages shall not exceed fifteen dollars per fish. For fish species that are classified by the commission as endangered or threatened, the rules may establish liquidated damages not to exceed one thousand dollars per fish.

b. The rules shall provide guidelines for estimating the extent of loss of a species that is affected by a pollution incident but which would not be practical to count in sample areas. The rules may establish liquidated damage amounts for species whose replacement cost is difficult to determine.

4. Moneys collected by the department in restitution shall be deposited into the state fish and game protection fund. The moneys shall be used exclusively to support restoration or improvement of fisheries, including but not limited to aquatic habitat improvement projects as provided in rules adopted by the commission. However, moneys collected from restitution paid for investigative costs shall be used as determined by the director.

2002 Acts, ch 1137, §58, 71
NEW section

CHAPTER 481B

ENDANGERED PLANTS AND WILDLIFE

This chapter not enacted as a part of this
title; transferred from chapter 109A in Code 1993
See §481A.134 and 481A.135 for point system and additional penalties

481B.1 Definitions.
481B.2 Co-operation with federal government.
481B.3 Investigations.
481B.4 Programs.
481B.5 Prohibitions.
481B.6 Species not on list.
481B.7 Special care to ensure survival.
481B.8 Damage to property or human life.
481B.9 Exemptions.
481B.10 Penalties.

481B.1 Definitions.

As used in this chapter:

1. *"Commission"* means the natural resource commission.

2. *"Director"* means the director of the department of natural resources.

3. *"Endangered species"* means any species of fish, plant life, or wildlife which is in danger of extinction throughout all or a significant part of its range. "Endangered species" does not include a species of insecta determined by the commission or the secretary of the United States department of interior to constitute a pest whose protection under this chapter would present an overwhelming and overriding risk to humans.

4. *"Fish or wildlife"* means any member of the animal kingdom, including any mammal, fish, amphibian, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring, or the dead body of parts thereof. Fish or wildlife includes migratory birds, nonmigratory birds, or endangered birds for which protection is afforded by treaty or other international agreement.

5. *"Import"* means to bring into, or introduce into, or attempt to bring into, or attempt to introduce into, any place subject to the jurisdiction of this state.

6. *"Person"* means person as defined in section 4.1, subsection 20.

7. *"Plant"* or *"plant life"* means any member of the plant kingdom, including seeds, roots, and other parts thereof.

8. *"Species"* includes any subspecies of fish, plant life, or wildlife and any other group of fish, plants, or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed or cross-pollinate when mature.

9. *"Take"*, in reference to fish and wildlife, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect and it includes an attempt to engage in any such conduct.

10. *"Take"*, in reference to plants, means to collect, pick, cut, dig up or destroy in any manner.

11. *"Threatened species"* means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

[C77, 79, 81, §109A.1]
86 Acts, ch 1245, §1856, 1857
C93, §481B.1

481B.2 Co-operation with federal government.

The commission shall perform those acts necessary for the conservation, protection, restoration, and propagation of endangered and threatened species in co-operation with the federal government, pursuant to Public Law 93-205, and pursuant to rules promulgated by the secretary of the interior.

[C77, 79, 81, §109A.2]
C93, §481B.2

481B.3 Investigations.

The director shall conduct investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations and other available scientific and commercial data, which may include consultation with scientists and others who may have specialized knowledge, learning, or experience, the commission shall pursuant to chapter 17A promulgate a rule listing those species of fish, plants, and wildlife which are determined to be endangered or threatened within the state.

The commission shall review the state list of endangered and threatened species at least every two years and may amend the list.

[C77, 79, 81, §109A.3]
C93, §481B.3

481B.4 Programs.

The director shall establish programs, including acquisition of land or aquatic habitat, necessary for the management of endangered or threatened species.

In carrying out the programs authorized by this section, the commission may enter into co-operative agreements with federal and state agencies, political subdivisions of the state, or with private persons for the administration and management of any area or program established under this section or for investigation as outlined in section 481B.3.

[C77, 79, 81, §109A.4]
C93, §481B.4

481B.5 Prohibitions.

Except as otherwise provided in this chapter or by rule, a person shall not take, possess, transport, import, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists which shall be adopted by rule of the commission:

1. The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 481B.3.

2. The United States list of endangered or threatened native fish and wildlife as contained in the Code of Federal Regulations, Title 50, part 17 as amended to December 30, 1991.

3. The United States list of endangered or threatened plants as contained in the Code of Federal Regulations, Title 50, part 17 as amended to December 30, 1991.

4. The United States list of endangered or threatened foreign fish and wildlife as contained in the Code of Federal Regulations, Title 50, part 17 as amended to December 30, 1991.

[C77, 79, 81, §109A.5]
92 Acts, ch 1133, §1, 2
C93, §481B.5
For applicable scheduled fines, see §805.8B, subsection 3, paragraph e

481B.6 Species not on list.

The commission may, by rule, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 481B.3 if it finds that the species so closely resembles in appearance a species which is listed pursuant to section 481B.3 and that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species, and the effect of this substantial difficulty is an additional threat to an endangered or threatened species, or finds that the treatment

of an unlisted species will substantially facilitate the enforcement and further the intent of this chapter.

[C77, 79, 81, §109A.6]
C93, §481B.6

481B.7 Special care to ensure survival.

The director may permit the taking, possession, purchase, sale, transportation, importation, exportation, or shipment of endangered or threatened species which appear on the state list for scientific, zoological, or educational purposes, for propagation in captivity of such fish, plants, or wildlife, to ensure their survival.

[C77, 79, 81, §109A.7]
C93, §481B.7

481B.8 Damage to property or human life.

Upon good cause shown and where necessary to reduce damage to property or to protect human health, endangered or threatened species found on the state list may be removed, captured, or destroyed, but only pursuant to a permit issued by the director.

[C77, 79, 81, §109A.8]
C93, §481B.8

481B.9 Exemptions.

A species of fish, plant, or wildlife appearing on any of the lists of endangered species or threatened species which enters the state from another state or from outside the territorial limits of the United States may enter, be transported, possessed, and sold in accordance with rules adopted by the commission.

[C77, 79, 81, §109A.9]
92 Acts, ch 1133, §3
C93, §481B.9

481B.10 Penalties.

Whoever violates any of the provisions of this chapter shall be guilty of a simple misdemeanor.

[C77, 79, 81, §109A.10]
C93, §481B.10

CHAPTER 481C

WILD ANIMAL DEPREDATION PROCEDURES

481C.1 Wild animal depredation unit.
481C.2 Duties.
481C.3 Funding.

481C.1 Wild animal depredation unit.

A wild animal depredation unit is established within the department of natural resources. The unit shall be comprised of two wild animal depredation biologists.

97 Acts, ch 180, §2; 2002 Acts, ch 1162, §72
Section amended

481C.2 Duties.

The director of the department of natural resources shall enter into a memorandum of agreement with the United States department of agriculture, animal damage control division. The wild animal depredation unit shall serve and act as the liaison to the department for the producers in the state who suffer crop and nursery damage due to wild animals. The department shall issue depredation permits to any landowner who incurs crop and nursery damage of one thousand dollars or more due to wild animals. The criteria for issuing depredation permits shall be established in administrative rules in consultation with the farmer advisory committee created in section 481A.10A. The administrative rules adopted pursuant to this section shall not require a producer to erect or maintain fencing at a cost exceeding one thousand dollars as a requisite for receiving a depredation permit or for participation in a depredation plan.

97 Acts, ch 180, §3; 98 Acts, ch 1203, §4

481C.3 Funding.

The revenue from nonresident deer and wild turkey hunting licenses shall be used to pay the salaries, support, and maintenance of the wild animal depredation unit established pursuant to section 481C.1.

97 Acts, ch 180, §4; 2000 Acts, ch 1154, §33

CHAPTER 482

COMMERCIAL FISHING

This chapter not enacted as a part of this title;
transferred from chapter 109B in Code 1993
See §481A.134 and 481A.135 for point system and additional penalties

482.1 Authority of the commission.
482.2 Definitions.
482.3 Commercial fishing — where permitted.
482.4 Commercial licenses and gear tags.
482.5 Commercial gear.
482.6 Tagging of commercial gear.
482.7 Gear attendance.
482.8 Baits.
482.9 Unlawful methods.
482.10 Sale of commercial fish.
482.11 Turtles.
482.12 Freshwater mussels.
482.13 Reciprocity for commercial fishing and commercial turtle fishing.
482.14 Reports required.
482.15 Penalties.

482.1 Authority of the commission.

The natural resource commission shall observe, administer, and enforce this chapter. The natural resource commission may adopt and enforce rules under chapter 17A as necessary to carry out this chapter.

The natural resource commission may:

1. Remove or cause to be removed from the waters of the state any aquatic species that in the judgment of the commission is an underused renewable resource or has a detrimental effect on other aquatic populations. All proceeds from a sale of these aquatic organisms shall be credited to the state fish and game protection fund.

2. Issue to any person a permit or license authorizing that person to take, possess, and sell underused, undesirable, or injurious aquatic organisms from the waters of the state. The person receiving a permit or license shall comply with the applicable provisions of this chapter.

3. Authorize the director to enter into written contracts for the removal of underused, undesirable, or injurious organisms from the waters of the state. The contracts shall specify all terms and conditions desired. Sections 482.4, 482.6, and 482.14 do not apply to these contracts.

4. Prohibit, restrict, or regulate commercial fishing, commercial turtle fishing, and commercial mussel fishing in any waters of the state.

5. Revoke the license of a licensee and the licensee's designated operators for up to one year if the licensee or any designated operator has been convicted of a violation of chapter 481A, 482, or 483A.

6. Regulate the numbers of commercial fishers, commercial turtle fishers, and commercial mussel fishers and the amount, type, seasonal use, mesh size, construction and design, manner of use, and other criteria relating to the use of commercial gear for any body of water or part thereof.

7. Establish catch quotas, seasons, size limits, and other regulations for any species of commercial fish, turtles, or mussels for any body of water or part thereof.

8. Designate by listing species as commercial fish, turtles, or mussels.

9. Designate any body of water or its part as protected habitat and restrict, prohibit, or otherwise regulate the taking of commercial fish, turtles, and mussels in protected habitat areas.

Employees of the commission may lift and inspect any commercial gear at any time when being used and may inspect commercial catches, commercial markets, and landings, and examine catch records of commercial fishers, commercial turtle fishers, and commercial mussel fishers upon demand.

Officers of the commission may seize and retain as evidence any illegal fish, turtles, or mussels, or any illegal commercial gear, or any other personal property used in violation of any provision of the Code, and may confiscate any untagged or illegal commercial gear as contraband.

86 Acts, ch 1141, §1
C87, §109B.1
87 Acts, ch 115, §19
C93, §482.1

482.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Boundary waters"* means the waters of the Mississippi, Missouri, and Big Sioux rivers.

2. *"Commercial fisher"* means a person who is licensed to take and sell fish from waters of the state.

3. *"Commercial fishing"* means taking, attempting to take, or transporting of fish for the purpose of selling, bartering, exchanging, offering, or exposing for sale.

4. *"Commercial gear"* means the capturing equipment used by commercial fishers, commer-

cial turtle fishers, and commercial mussel fishers.

5. *"Commercial mussel fisher"* means a person who is licensed to take and sell freshwater mussels from waters of the state. A resident commercial mussel license holder must have resided in this state for one year preceding the person's application for a commercial mussel fishing license.

6. *"Commercial mussel fishing"* means taking, attempting to take, or transporting of freshwater mussels for the purpose of selling, bartering, exchanging, offering, or exposing for sale.

7. *"Commercial species"* means species of fish, turtles, and freshwater mussels which may be lawfully taken and sold by commercial fishers, commercial turtle fishers, and commercial mussel fishers, as established by rule by the commission.

8. *"Commercial turtle fisher"* means a person who is licensed to take and sell turtles from the waters of the state.

9. *"Commercial turtle fishing"* means taking, attempting to take, or transporting of turtles for the purpose of selling, bartering, exchanging, offering, or exposing for sale.

10. *"Constant attendance"* means the presence of a commercial fisher or a designated operator whenever commercial gear is in use.

11. *"Director"* means the director of the department of natural resources, and the director's duly authorized assistants, deputies, or agents.

12. *"Game fish"* means all species and size categories of fish not included as "commercial species" or minnows.

13. *"Inland waters of the state"* means all public waters of the state excluding the boundary waters of the Mississippi, Big Sioux, and Missouri rivers.

14. *"Licensed commercial gear"* means any commercial gear that is licensed as provided in this chapter and that, when in use, has attached the proper tags as provided by this chapter.

15. *"Nonresident or alien"* means a person who does not qualify as a resident of the state of Iowa either because of a bona fide residence in another state or because of citizenship of a country other than the United States. However, "alien" does not include a person who has applied for naturalization papers.

16. *"Resident"* means a person who is legally subject to motor vehicle registration and driver's license laws of this state, or who is qualified to vote in an election of this state.

17. *"Waters of the state"* means all of the waters under the jurisdiction of the state.

86 Acts, ch 1141, §2
C87, §109B.2
91 Acts, ch 170, §1
C93, §482.2

482.3 Commercial fishing — where permitted.

It is unlawful to use commercial gear in the taking of commercial fish, turtles, and mussels from the waters of the state, except as otherwise provided by statute or administrative rules of the commission.

86 Acts, ch 1141, §3
C87, §109B.3
C93, §482.3
For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

482.4 Commercial licenses and gear tags.

1. A person shall not use or operate commercial gear unless at least one individual at the site where the commercial gear is being operated possesses an appropriate valid commercial license, or a designated operator's license. A license is valid from the date of issue to January 10 of the succeeding calendar year.

2. A commercial fisher may designate a person as a designated operator to lift and to fish with any licensed commercial fishing gear owned by the commercial fisher. A commercial fisher shall not have more than five designated operators. A designated operator's license shall be assigned to not more than three operators during a year and a designated operator's license shall be valid for use only by an operator who possesses the license and has signed the license. The signature of any preceding designated operator who possessed the license shall be crossed out. A designated operator shall not lift or fish any commercial fishing gear without possessing a designated operator's license which is signed by the operator. A designated operator's license which is not signed by the operator in possession of the license is forfeited to the state.

3. A boundary water annual sport trotline license permits the licensee to use a maximum of four trotlines with two hundred hooks in the aggregate. All boundary water sport trotlines shall be tagged with the name and address of the licensee on a metal tag affixed above the waterline.

4. Commercial fishers and turtle fishers shall purchase gear tags from the commission to be affixed to each piece of gear in use. Notwithstanding the fee rates for gear tags of subsection 7, the minimum fee for a gear tag is five dollars. All tags are valid for ten years from the date of issue. In addition to the gear tags, all gear shall be tagged with a metal tag showing the name and address of the licensee and whether the gear is fish or turtle gear.

5. All numbered fish gear tags are interchangeable among the different types of commercial fishing gear.

6. Annual license fees are as follows:

a. Commercial fishing, resident . . . . . $ 200.00

b. Commercial fishing, nonresident . . . . . $ 400.00

c. Designated operator, resident . . . . . $ 50.00

d. Designated operator, nonresident . . . . . $ 100.00

e. Commercial turtle, resident ..... $ 50.00
f. Commercial turtle, nonresident ..... $ 100.00
g. Commercial mussel fisher, resident ..... $ 100.00
h. Commercial mussel buyer, resident ..... $ 1,000.00
i. Commercial mussel buyer, nonresident ..... $ 5,000.00
j. Boundary water sport trotline, resident ..... $ 10.00
k. Boundary water sport trotline, nonresident ..... $ 20.00
l. Commercial mussel fisher, nonresident ..... $ 2,500.00
m. Commercial mussel helper, resident ..... $ 50.00
n. Commercial mussel helper, nonresident ..... $ 200.00

7. Commercial fish gear tags are required on the following units of commercial fishing gear at the listed fee:

a. Seine, resident, one gear tag for each 100 feet or fraction thereof ..... $ 1.00
b. Seine, nonresident, one gear tag for each 100 feet or fraction thereof ..... $ 2.00
c. Trammel net, resident, one gear tag for each 100 feet or fraction thereof .... $ 1.00
d. Trammel net, nonresident, one gear tag for each 100 feet or fraction thereof $ 2.00
e. Gill net, resident, one gear tag for each 100 feet or fraction thereof ..... $ 1.00
f. Gill net, nonresident, one gear tag for each 100 feet or fraction thereof ..... $ 2.00
g. Entrapment nets, resident, one gear tag per net ..... $ 1.00
h. Entrapment nets, nonresident, one gear tag per net ..... $ 2.00
i. Commercial trotline, resident, one gear tag for each 50 hooks or less ..... $ 1.00
j. Commercial trotline, nonresident, one gear tag for each 50 hooks or less ..... $ 2.00

8. Turtle trap gear tags are not interchangeable with other commercial gear. Turtle trap gear tag fees are as follows:

a. Commercial turtle trap, resident, one gear tag per trap ..... $ 1.00
b. Commercial turtle trap, nonresident, one gear tag per trap ..... $ 2.00

86 Acts, ch 1141, §4
C87, §109B.4
89 Acts, ch 119, §1; 89 Acts, ch 192, §1, 2; 91 Acts, ch 170, §2, 3
C93, §482.4
For applicable scheduled fines, see §805.8B, subsection 3, paragraph m

482.5 Commercial gear.

It is lawful for a person who is legally licensed to commercial fish to use the commercial fishing gear of a design, construction, size, season and all other criteria established by the commission for taking those species of fish and turtles designated by the commission by rule.

86 Acts, ch 1141, §5
C87, §109B.5
C93, §482.5

482.6 Tagging of commercial gear.

Each trotline shall have the tags affixed to one end. Each hoop net, slat net, trap net, and turtle trap shall have the appropriate tag affixed to the end nearest the pot. Each gill net and each trammel net shall have the tags affixed to the float line nearest the shore stake, but when fished under ice, the tags shall be affixed to the float line nearest the take-out hole. Each seine shall have the tags affixed to one end.

86 Acts, ch 1141, §6
C87, §109B.6
C93, §482.6
For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

482.7 Gear attendance.

The licensee or a designated operator must be present when lifting commercial gear. Commercial gear shall be lifted and emptied of catch as provided by the rules of the commission. Constant attendance by the licensee or a designated operator of seines, trammel nets, and gill nets is required when the gear is fished by driving, drive-seining, seining, floating, or drifting methods. Officers of the commission shall grant a reasonable extension of gear attendance intervals in cases of inclement weather or unsafe conditions.

86 Acts, ch 1141, §7
C87, §109B.7
C93, §482.7
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

482.8 Baits.

1. It is lawful for licensed commercial fishers, designated operators, commercial turtle fishers, and licensed sport trotline fishers to pursue, take, possess, and transport any commercial fish or their parts, bait fish, turtles, frogs, salamanders, leeches, crayfish, or any other aquatic invertebrates for bait unless otherwise prohibited by law.

2. It is lawful to use any member of the following families as bait fish in boundary waters: Cyprinidae, the minnows; Catostomidae, the suckers; Umbridae, the mudminnows; Clupeidae, the herrings; Hiodontidae, the mooneyes; Amiidae, the bowfin unless otherwise prohibited by law.

3. It is lawful to use green sunfish, Lepomis cyanellus, and orange-spotted sunfish, Lepomis humilis, for bait fish.

4. It is lawful to use minnow seines for taking bait in the boundary waters. Minnow seines may not exceed fifty feet in length and eight feet in depth.

86 Acts, ch 1141, §8
C87, §109B.8
C93, §482.8
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

482.9 Unlawful methods.

It is unlawful:

1. To use commercial gear which is not in accordance with this chapter or the rules of the commission.

2. To use commercial gear within nine hundred feet from a navigation dam on the boundary waters.

3. To use commercial gear within three hundred feet from the mouth of a tributary stream emptying into the boundary waters.

4. For a person to lift or to fish licensed commercial gear of another person, except by the licensee and the licensee's designated operators.

5. To employ chemicals, electricity, or explosives into the water for taking fish, turtles, or freshwater mussels except as authorized by the director.

6. To have in one's possession game fish or other fish, turtles, or mussels deemed illegal by other provisions of law while engaged in commercial activities. A fish caught in commercial fishing that is not lawful to possess shall be handled with wet hands and immediately released under water with as little injury as possible.

7. To block or inhibit navigation through channels with commercial fishing gear unless a minimum of three feet of water depth is maintained over float lines of any entanglement gear or leads to trap nets. Gear shall not block over one-half the width of a navigable channel if there is less than three feet of water over the gear.

86 Acts, ch 1141, §9
C87, §109B.9
C93, §482.9
For applicable scheduled fines, see §805.8B, subsection 3, paragraph e

482.10 Sale of commercial fish.

1. A person possessing a commercial fishing license or designated operator's license may possess and sell any commercial fish, turtles, or freshwater mussels, or their parts, which have been lawfully taken.

2. All intrastate and interstate shipments of commercial fish or turtles must be accompanied by a label which shows the name and address of the seller and the kinds and pounds of the catches being sold. Individuals purchasing fish, turtles, or mussels from a commercial fisher, turtle fisher, or mussel fisher need not possess a license.

86 Acts, ch 1141, §10
C87, §109B.10
C93, §482.10

482.11 Turtles.

1. A person shall not take, possess, or sell turtles from the waters of the state without an appropriate license.

a. A valid sport fishing license entitles a person to take and possess a maximum of one hundred pounds of live turtles or fifty pounds of dressed turtles. The sale of live or dressed turtles is not permitted with a sport fishing license.

b. A commercial turtle license is required to take and possess more than one hundred pounds of live or fifty pounds of dressed turtles. The holder of a commercial turtle license may sell live or dressed turtles.

c. A commercial fishing license or a designated operator's license entitles fishers to operate any licensed commercial fishing gear for taking, possessing, or selling turtles.

d. An individual possessing a valid commercial turtle license may have the assistance of one unlicensed individual in the commercial taking of turtles.

2. It is unlawful to take, possess, or sell any species of turtles except those designated by the commission by rule.

3. The method of taking turtles shall only be by hand, turtle hook, turtle trap, licensed commercial fishing gear, or other means designated by commission rules. Sport fishers may also use hook-and-line in catching turtles.

4. Any unattended fishing gear used to take turtles on a sport fishing license shall have affixed a metal tag provided by the owner bearing the owner's name and address.

86 Acts, ch 1141, §11
C87, §109B.11
89 Acts, ch 192, §3
C93, §482.11
For applicable scheduled fines, see §805.8B, subsection 3, paragraph n

482.12 Freshwater mussels.

1. A person shall not take, possess, or sell freshwater mussels from the waters of the state without an appropriate license.

a. A sport fishing license entitles a person to take and possess a maximum of twenty pounds of mussels or shells daily. The possession limit for each licensee is twenty pounds of live mussels or shells. Sale of mussels or shells is not permitted with a sport fishing license.

b. A commercial mussel license is required to take more than twenty pounds of mussels or shells daily, or possess more than twenty pounds of mussels or shells. The holder of a commercial mussel license may sell mussels or shells.

c. A commercial mussel buyer license is required to buy mussels or shells.

d. A commercial mussel helper license is required to assist commercial mussel fishers in the possessing, processing, or transporting of commercial freshwater mussels. The taking or sale of mussels or shells is not permitted with a commercial mussel helper license.

2. A person may take all species of freshwater mussels, or their parts, except where otherwise prohibited by rules of the commission.

3. The method of taking freshwater mussels shall only be by hand, by diving, or by crowfoot bar, a device designed to catch mussels by inserting

hooks between the shells, or by other means designated by rules of the commission. A crowfoot bar shall not exceed twenty feet in length and a licensee shall not fish more than three bars.

86 Acts, ch 1141, §12
C87, §109B.12
89 Acts, ch 192, §4; 91 Acts, ch 170, §4
C93, §482.12
For applicable scheduled fines, see §805.8B, subsection 3, paragraph o

482.13 Reciprocity for commercial fishing and commercial turtle fishing.

1. Reciprocal commercial fishing and commercial turtle fishing privileges are contingent upon a grant of similar privileges by the appropriate state to residents of this state.

2. The commission may negotiate commercial reciprocity agreements with other states.

86 Acts, ch 1141, §13
C87, §109B.13
91 Acts, ch 170, §5, 6
C93, §482.13

482.14 Reports required.

All commercial fishers, commercial turtle fishers, commercial mussel fishers, and commercial mussel buyers shall submit a monthly report supplying all information requested on forms furnished by the commission. Reports must be received by the commission no later than the fifteenth day of the following month.

86 Acts, ch 1141, §14
C87, §109B.14
91 Acts, ch 170, §7
C93, §482.14

482.15 Penalties.

A person who violates this chapter or a rule issued under this chapter is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8B, subsection 3, paragraph *"e"*. However, the scheduled fine specified in section 805.8B, subsection 3, paragraph *"e"*, does not apply to a violation of this chapter or a rule for which another scheduled fine is specified in section 805.8B, subsection 3.

86 Acts, ch 1141, §15
C87, §109B.15
C93, §482.15
2000 Acts, ch 1203, §23; 2001 Acts, ch 130, §1; 2001 Acts, ch 137, §5

CHAPTER 483

RESERVED

CHAPTER 483A

FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS

This chapter not enacted as a part of this title;
transferred from chapter 110 in Code 1993
See §481A.134 and 481A.135 for point system and additional penalties

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483A.1 Licenses — fees.

Except as otherwise provided in this chapter, a person shall not fish, trap, hunt, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and the payment of a fee as follows:

1. Residents:

a. Fishing license ..... $ 10.50
b. Fishing license, lifetime, sixty-five years or older ..... $ 50.50
c. Hunting license ..... $ 17.00
d. Hunting license, lifetime, sixty-five years or older ..... $ 50.50
e. Deer hunting license ..... $ 25.50
f. Wild turkey hunting license .... $ 22.50
g. Fur harvester license, sixteen years or older ..... $ 20.50
h. Fur harvester license, under sixteen years of age ..... $ 5.50
i. Fur dealer license $225.50
j. Aquaculture unit license ..... $ 25.50
k. Bait dealer license ..... $ 30.50
l. Fishing license, seven-day ..... $ 8.50
m. Trout fishing fee ..... $ 10.50
n. Game breeder license ..... $ 15.50
o. Taxidermy license ..... $ 15.50
p. Falconry license ..... $ 20.50
q. Wildlife habitat fee ..... $ 8.00
r. Migratory game bird fee ..... $ 8.00
s. Fish habitat fee ..... $ 3.00

2. Nonresidents:

a. Fishing license, annual ..... $ 36.00
b. Fishing license, seven-day ..... $ 27.00
c. Hunting license, eighteen years of age or older ..... $ 80.00
d. Hunting license, under eighteen years of age ..... $ 30.00
e. Deer hunting license, antlered or any sex deer $220.00
f. Deer hunting license, antlerless deer only $150.00
g. Wild turkey hunting license $100.00
h. Fur harvester license $200.00
i. Fur dealer license $501.00
j. Location permit for fur dealers .. $ 56.00
k. Aquaculture unit license ..... $ 56.00
l. Bait dealer license ..... $ 66.00
m. Trout fishing fee ..... $ 13.00
n. Game breeder license ..... $ 26.00
o. Taxidermy license ..... $ 26.00
p. Falconry license ..... $ 26.00
q. Wildlife habitat fee ..... $ 8.00
r. Migratory game bird fee ..... $ 8.00
s. Fish habitat fee ..... $ 3.00

[S13, §2563-a2, -o, -p; SS15, §2547-a, 2562-b, 2563-a1; C24, §1706, 1718, 1719, 1748, 1752, 1756, 1779; C27, §1706, 1718, 1719, 1719-a1, 1748, 1752, 1756, 1779; C31, §1706, 1718, 1718-c1, 1719, 1719-a1, 1748, 1752, 1756, 1766-c3, 1779; C35, §1794-e1; C39, §**1794.082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §110.1]

84 Acts, ch 1199, §2; 84 Acts, ch 1260, §2; 86 Acts, ch 1114, §1; 86 Acts, ch 1141, §17; 86 Acts, ch 1240, §1; 89 Acts, ch 90, §2; 89 Acts, ch 237, §1; 89 Acts, ch 238, §1; 91 Acts, ch 237, §3; 92 Acts, ch 1216, §10, 11

C93, §483A.1

95 Acts, ch 12, §1; 95 Acts, ch 46, §2; 98 Acts, ch 1199, §5, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 137, §5; 2001 Acts, ch 148, §1 – 3, 9; 2002 Acts, ch 1141, §1

Commercial fishing licenses, see §482.4

For applicable scheduled fines, see §805.8B, subsection 3, paragraph p

2001 amendments take effect December 15, 2001, and apply to licenses and fees for years beginning on or after January 1, 2002; 2001 Acts, ch 148, §9

Subsection 1, paragraph c amended

483A.1A Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.

2. *"Department"* means the department of natural resources created under section 455A.2.

3. *"Director"* means the director of the department.

4. *"License"* means a privilege granted by the commission to fish, hunt, fur harvest, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or part of a wild animal, bird, game, or fish, including any privilege related to a license granted by issuance of a stamp or a payment of a fee.

5. *"License agent"* means an individual, business, or governmental agency authorized to sell a license.

6. *"License document"* means an authorization, certificate, or permit issued by the department or a license agent that lists and confers one or more license privileges.

7. *"Resident"* means a natural person who meets any of the following criteria:

a. Has physically resided in this state at least thirty consecutive days immediately before applying for or purchasing a resident license under this chapter and has been issued an Iowa driver's license or an Iowa nonoperator's identification card.

b. Is a full-time student at an educational institution located in this state and resides in this state while attending the educational institution. A student qualifies as a resident pursuant to this paragraph only for the purpose of purchasing any resident license specified in section 483A.1 or 484A.2.

c. Is a nonresident under eighteen years of age whose parent is a resident of this state.

d. Is a member of the armed forces of the United States serving on active duty, claims residency in this state, and has filed a state individual income tax return as a resident pursuant to chapter 422, division II, for the preceding tax year.

e. Is registered to vote in this state.

86 Acts, ch 1245, §1858

C87, §110.1A

C93, §483A.1A

95 Acts, ch 76, §1; 2000 Acts, ch 1116, §3 – 5; 2000 Acts, ch 1175, §1, 2; 2001 Acts, ch 134, §3

483A.2 Dual residency.

A resident license shall be limited to persons who do not claim any resident privileges, except as defined in section 483A.1A, subsection 7, paragraphs *"b"*, *"c"*, and *"d"*, in another state or country. A person shall not purchase or apply for any resident license or permit if that person has claimed residency in any other state or country.

2000 Acts, ch 1116, §6

483A.3 Wildlife habitat fee.

1. A resident or nonresident person required to have a hunting or fur harvester license shall not hunt or trap unless the person has paid the wildlife habitat fee. This section shall not apply to residents who have permanent disabilities or who are younger than sixteen or older than sixty-five years of age. Wildlife habitat fees shall be administered in the same manner as hunting and fur harvester licenses except all revenue derived from wildlife habitat fees shall be used within the state of Iowa for habitat development and shall be deposited in the state fish and game protection fund, except as provided in subsection 2. The revenue may be used for the matching of federal funds. The revenues and any matched federal funds shall be used for acquisition of land, leasing of land, or obtaining of easements from willing sellers for use as wildlife habitats. Notwithstanding the exemption provided by section 427.1, any land acquired with the revenues and matched federal funds shall be subject to the full consolidated levy of property taxes which shall be paid from those revenues. In addition the revenue may be used for the development and enhancement of wildlife lands and habitat areas. Not less than fifty percent of all revenue from wildlife habitat fees shall be used by the commission to enter into agreements with county conservation boards or other public agencies in order to carry out the purposes of this section. The state share of funding of those agreements provided by the revenue from wildlife habitat fees shall not exceed seventy-five percent.

2. Up to sixty percent of the revenues from wildlife habitat fees which are not required under subsection 1 to be used by the commission to enter into agreements with county conservation boards or other public agencies may be credited to the wildlife habitat bond fund as provided in section 483A.53.

[C79, 81, §110.3]

84 Acts, ch 1260, §3; 86 Acts, ch 1114, §2; 86 Acts, ch 1231, §1

C93, §483A.3

96 Acts, ch 1129, §98; 98 Acts, ch 1199, §6, 27; 98 Acts, ch 1223, §30

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

483A.3A Fish habitat fee.

A resident or nonresident required to have a fishing license shall not fish unless the person has paid the fish habitat fee. Fish habitat fees shall be administered in the same manner as fishing licenses except that all revenue derived from fish habitat fees shall be deposited in the state fish and game protection fund and shall be used within this state for fish habitat development. Not less than fifty percent of the revenue from fish habitat fees shall be used by the commission to enter into agreements with county conservation boards to carry out the purposes of this section. This section shall not apply to residents who are younger than sixteen years of age or are sixty-five years of age or more, or to residents or nonresidents when fish-

ing in privately owned farm ponds or lakes.

2001 Acts, ch 148, §4, 9

Section takes effect December 15, 2001, and applies to licenses and fees for years beginning on or after January 1, 2002; 2001 Acts, ch 148, §9

483A.4 "Permanent disability" defined.

For the purpose of obtaining a license, a person has a permanent disability if any of the following apply:

1. The person has been found under the provisions of the federal Social Security Act, Title II, or any other public or private pension system to have a total, permanent physical or mental condition which prevents that person from engaging in the person's occupation or qualifies that person for retirement.

2. The person has a severe physical disability and has qualified for a special license under section 483A.24.

[C79, 81, §110.4]

84 Acts, ch 1260, §4

C93, §483A.4

96 Acts, ch 1129, §99

483A.5 License for fur-bearing animals.

A fur harvester license is required to hunt and to trap any fur-bearing animal. A hunting license is not required when hunting furbearers with a fur harvester license. However, coyote and groundhog may be hunted with a hunting or a fur harvester license.

84 Acts, ch 1260, §12

C85, §110.5

85 Acts, ch 10, §2; 86 Acts, ch 1114, §3

C93, §483A.5

98 Acts, ch 1199, §7, 27; 98 Acts, ch 1223, §30

483A.6 Trout fishing fee.

Any person required to have a fishing license shall not possess trout unless that person has paid the trout fishing fee. The proceeds from the fee shall be used exclusively for the trout program designated by the commission. The commission may grant a permit to a community event in which trout will be stocked in water which is not designated trout water and a person may catch and possess trout during the period and from the water covered by the permit without having paid the trout fishing fee.

[C62, 66, 71, 73, 75, 77, §110.1; C79, 81, §110.6]

86 Acts, ch 1240, §2; 86 Acts, ch 1245, §1877

C93, §483A.6

98 Acts, ch 1199, §8, 27; 98 Acts, ch 1223, §30

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b

483A.7 Wild turkey license and tag.

1. A resident hunting wild turkey who is required to have a license must have a resident hunting license in addition to the wild turkey hunting license and must pay the wildlife habitat fee. Upon application and payment of the required fees for archery-only licenses, a resident archer shall be issued two wild turkey licenses for the spring season.

2. The wild turkey hunting license shall be accompanied by a tag designed to be used only once. If a wild turkey is taken, the wild turkey shall be tagged and the tag shall be dated.

3. A nonresident wild turkey hunter is required to have a nonresident hunting license and a nonresident wild turkey hunting license and pay the wildlife habitat fee. The commission shall annually limit to two thousand three hundred licenses the number of nonresidents allowed to have wild turkey hunting licenses. Of the two thousand three hundred licenses, one hundred fifty licenses shall be valid for hunting with muzzle loading shotguns only. The commission shall allocate the nonresident wild turkey hunting licenses issued among the zones based on the populations of wild turkey. A nonresident applying for a wild turkey hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

86 Acts, ch 1240, §3

C87, §110.7

89 Acts, ch 237, §2; 90 Acts, ch 1003, §1

C93, §483A.7

94 Acts, ch 1111, §1; 98 Acts, ch 1199, §9, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §4; 2001 Acts, ch 148, §5, 9; 2002 Acts, ch 1119, §63

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

2001 amendment to subsection 3 takes effect December 15, 2001, and applies to licenses and fees for years beginning on or after January 1, 2002; 2001 Acts, ch 148, §9

Subsection 3 amended

483A.8 Deer license and tag.

1. A resident hunting deer who is required to have a hunting license must have a resident hunting license in addition to the deer hunting license and must pay the wildlife habitat fee.

2. The deer hunting license shall be accompanied by a tag designed to be used only once. When a deer is taken, the deer shall be tagged and the tag shall be dated.

3. A nonresident hunting deer is required to have a nonresident hunting license and a nonresident deer license and must pay the wildlife habitat fee. The commission shall annually limit to eight thousand five hundred licenses the number of nonresidents allowed to have deer hunting licenses. Of the first six thousand nonresident deer licenses issued, not more than thirty-five percent of the licenses shall be bow season licenses and, after the first six thousand nonresident deer licenses have been issued, all additional licenses shall be issued for antlerless deer only. The commission shall allocate the nonresident deer hunting licenses issued among the zones based on the populations of deer. However, a nonresident applicant may request one or more hunting zones, in or-

der of preference, in which the applicant wishes to hunt. If the request cannot be fulfilled, the applicable fees shall be returned to the applicant. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

4. The commission may provide, by rule, for the issuance of an additional antlerless deer license to a person who has been issued an antlerless deer license. The rules shall specify the number of additional antlerless deer licenses which may be issued, and the season and zone in which the license is valid. The fee for an additional antlerless deer license shall be ten dollars for residents.

5. A nonresident owning land in this state may apply for one of the first six thousand nonresident deer licenses not limited to antlerless deer, and the provisions of subsection 3 shall apply. However, if a nonresident owning land in this state is unsuccessful in obtaining one of the first six thousand nonresident deer licenses, the landowner shall be given preference for one of the two thousand five hundred antlerless only nonresident deer licenses. A nonresident owning land in this state shall pay the fee for a nonresident antlerless only deer license and the license shall be valid to hunt on the nonresident's land only. A nonresident owning land in this state is eligible for only one nonresident deer license annually. If one or more parcels of land have multiple nonresident owners, only one of the nonresident owners is eligible for a nonresident antlerless only deer license. If a nonresident jointly owns land in this state with a resident, the nonresident shall not be given preference for a nonresident antlerless only deer license. The department may require proof of land ownership from a nonresident landowner applying for a nonresident antlerless only deer license.

[C79, 81, §110.8]

86 Acts, ch 1240, §4; 89 Acts, ch 237, §3; 90 Acts, ch 1003, §2

C93, §483A.8

94 Acts, ch 1111, §2; 98 Acts, ch 1199, §10, 27; 98 Acts, ch 1203, §5 – 7; 98 Acts, ch 1223, §28 – 30; 2001 Acts, ch 134, §5; 2001 Acts, ch 148, §6, 7, 9; 2002 Acts, ch 1119, §64

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

2001 amendments to subsection 3 and adding subsection 5 take effect December 15, 2001, and apply to licenses and fees for years beginning on or after January 1, 2002; 2001 Acts, ch 148, §9

Subsections 3 and 5 amended

483A.9 Blanks.

The director shall provide blanks for, and determine the method, means, and requirements of issuing licenses including the issuance of licenses by electronic means.

[S13, §2563-a3; C24, 27, 31, §1722; C35, §1794-e2; C39, §**1794.083;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.2; C79, 81, §110.9]

86 Acts, ch 1245, §1878

C93, §483A.9

98 Acts, ch 1199, §11, 27; 98 Acts, ch 1223, §30

483A.10 Issuance of licenses.

The licenses issued pursuant to this chapter shall be issued by the department or the license agents as specified by rules of the commission. A county recorder may issue licenses subject to the rules of the commission. The rules shall include the application procedures as necessary. The licenses shall show the total cost of the license including a writing fee to be retained by the license agent and any administrative fees to be forwarded to the department, if applicable. A person authorized to issue a license or collect a fee pursuant to this chapter or chapter 484A shall charge the fee specified in this chapter or chapter 484A only plus a writing fee and administrative fee, if applicable.

[SS15, §2563-a4; C24, 27, 31, §1724; C35, §1794-e3; C39, §**1794.084;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.3; C79, 81, §110.10]

84 Acts, ch 1260, §5

C93, §483A.10

98 Acts, ch 1199, §12, 27; 98 Acts, ch 1223, §30; 2000 Acts, ch 1019, §3; 2001 Acts, ch 134, §6

483A.11 License agents.

The director may designate license agents for the sale of licenses, but in so doing the interest of the state shall be fully protected.

[C31, §1724-c1; C35, §1794-e4; C39, §**1794.085;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.4; C79, 81, §110.11]

84 Acts, ch 1260, §6

C93, §483A.11

98 Acts, ch 1199, §13, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §7

483A.12 Fees.

The license agent shall be responsible for all fees for the issuance of hunting, fishing, and fur harvester licenses sold by the license agent. All unused license blanks shall be surrendered to the department upon the department's demand.

A license agent shall retain a writing fee of fifty cents from the sale of each license except that the writing fee for a free deer or wild turkey license as authorized under section 483A.24, subsection 2, shall be one dollar. If a county recorder is a license agent, the writing fees retained by the county recorder shall be deposited in the general fund of the county.

[C31, §1724-c1; C35, §1794-e5; C39, §**1794.086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.5; C79, 81, §110.12]

83 Acts, ch 123, §56, 209; 84 Acts, ch 1260, §7

C93, §483A.12

98 Acts, ch 1199, §14, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §8

483A.13 Destroyed blanks.

When license blanks in the possession of a license agent are accidentally destroyed, the holder of the blanks shall only be relieved from accountability upon the presentation of satisfactory explanation and the filing of a bond to the director that the blanks have actually been so destroyed. The commission may determine by rule what shall constitute a satisfactory explanation of the occurrence.

[C35, §1794-e6; C39, §**1794.087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.6; C79, 81, §110.13]

C93, §483A.13

2001 Acts, ch 134, §9

483A.14 Duplicate licenses and permits.

When any license for which a fee has been set has been lost, destroyed, or stolen, the director or a license agent may issue a replacement license, if evidence is available to demonstrate issuance of the original license and a fee of two dollars is paid, to be placed in the fish and game protection fund. If, on examination of the evidence, the director or the license agent, as the case may be, is satisfied that the license has been lost, destroyed, or stolen, the director or the license agent shall issue a duplicate license which shall be plainly marked "duplicate" and the duplicate shall serve in lieu of the original license and it shall contain the same information and signature as the original. The license agent shall charge a writing fee of one dollar and the departmental administrative fee for each duplicate license issued pursuant to this section. The license agent shall retain the writing fee.

[C39, §**1794.088;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.7; C79, 81, §110.14]

C93, §483A.14

98 Acts, ch 1199, §15, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §10

483A.15 Accounting.

The director shall establish, by rule, specific requirements for remittance of funds, and the necessary accounting and reporting for all types of licenses issued based on the manner and location of the issuance.

[SS15, §2563-a4; C24, 27, 31, §1725; C35, §1794-e7; C39, §**1794.089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.8; C79, 81, §110.15]

C93, §483A.15

98 Acts, ch 1199, §16, 27; 98 Acts, ch 1223, §30

483A.16 Duplicate issuance. Repealed by 98 Acts, ch 1199, § 26, 27; 98 Acts, ch 1223, § 30.

483A.17 Tenure of license.

Every license, except as otherwise provided in this chapter, is valid from the date issued to January 10 of the succeeding calendar year for which it is issued. A license shall not be issued prior to December 15 for the subsequent calendar year.

[S13, §2563-a8; C24, 27, 31, §1727; C35, §1794-e9; C39, §**1794.091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.10; C79, 81, §110.17]

84 Acts, ch 1260, §8

C93, §483A.17

95 Acts, ch 46, §3; 2001 Acts, ch 134, §11

483A.18 Form of licenses.

All hunting, fishing, and fur harvester licenses shall contain a general description of the licensee. Such licenses shall be upon such forms as the commission shall adopt. The address and the signature of the applicant and all signatures and other writing shall be in ink. All licenses shall clearly indicate the nature of the privilege granted.

[S13, §2563-a3, -a8; C24, 27, 31, §1722, 1727; C35, §1794-e10; C39, §**1794.092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.11; C79, 81, §110.18]

84 Acts, ch 1260, §9

C93, §483A.18

483A.19 Showing license document to officer.

Every person shall, while fishing, hunting, or fur harvesting, show the person's license document to any peace officer or the owner or person in lawful control of the land or water upon which licensee may be hunting, fishing, or fur harvesting when requested by the persons to do so. Any failure to so carry or refusal to show or so exhibit the person's license document shall be a violation of this chapter. However, except for possession and exhibition of deer licenses and tags or wild turkey licenses and tags, a person charged with violating this section shall not be convicted if the person produces in court, within a reasonable time, a license document for hunting, fishing, or fur harvesting issued to that person and valid when the person was charged with a violation of this section.

[C39, §**1794.093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.12; C79, 81, §110.19]

C93, §483A.19

96 Acts, ch 1034, §46; 98 Acts, ch 1199, §17, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §12

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

483A.20 Reciprocity.

Licenses for bait dealers or for fishing, hunting, or fur harvesting shall not be issued to residents of states that do not sell similar licenses or certificates to residents of Iowa. However, the licensing of nonresident bait dealers who sell at wholesale to licensed dealers in Iowa for resale is permitted.

86 Acts, ch 1141, §16

C87, §110.20

C93, §483A.20

96 Acts, ch 1034, §47

483A.21 Revocation or suspension.

Upon the conviction of a licensee of any violation

of chapter 481A, or of this chapter, or of any administrative order adopted and published by the commission, the magistrate may, as a part of the judgment, revoke one or more license privileges of the licensee, or suspend the privileges for any definite period.

The magistrate shall revoke the hunting license or suspend the privilege of procuring a hunting license for a period of one year of any person who has been convicted twice within a year of trespassing while hunting. If any of the license privileges of a licensee who purchased more than one license privilege is revoked, the remaining license privileges of the licensee shall still be valid and the magistrate shall enter on the license document the privilege that is revoked. A person shall not purchase a license for a privilege that was revoked or suspended during the period of revocation or suspension.

In addition to other civil and criminal penalties imposed for illegally taking or possessing an elk, antelope, buffalo, or moose, the court shall revoke the hunting license of a violator. The violator shall not be allowed to procure a hunting license for the next two calendar years.

[S13, §2563-a9; C24, 27, 31, §1729; C35, §1794-e12; C39, §**1794.095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.14; C79, 81, §110.21]

86 Acts, ch 1245, §1877; 90 Acts, ch 1142, §2

C93, §483A.21

2001 Acts, ch 134, §13

483A.22 Record of revocation.

When a license is revoked, the date, cause, and tenure of such revocation shall be kept on file with the license records of the commission. The commission may refuse the issuance of a new license to any person whose license has been revoked.

[S13, §2563-a7; C24, 27, 31, §1726; C35, §1794-e13; C39, §**1794.096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.15; C79, 81, §110.22]

C93, §483A.22

2001 Acts, ch 134, §14

483A.22A Sale of license lists.

The department may establish, by rule, fees for lists of licensees. Notwithstanding section 22.3, the fee for a list of licensees may exceed the cost of preparing the list and providing the copying service.

98 Acts, ch 1199, §18, 27; 98 Acts, ch 1223, §30

483A.23 Game birds or animals as pets.

Any person may possess not more than two game birds or fur-bearing animals confined as pets without being required to purchase a license as a game breeder, but the person shall not be allowed to increase the person's stock beyond the original number nor shall the person be allowed to kill or sell such stock. Game birds or animals confined as authorized in this section must be obtained from a licensed game breeder or a legal source outside of this state.

[C24, 27, 31, §1720; C35, §1794-e14; C39, §**1794.097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.16; C79, 81, §110.23]

C93, §483A.23

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

483A.24 When license not required — special licenses.

1. Owners or tenants of land, and their juvenile children, may hunt, fish or trap upon such lands and may shoot by lawful means ground squirrels, gophers, or woodchucks upon adjacent roads without securing a license so to do; except, special licenses to hunt deer and wild turkey shall be required of owners and tenants but they shall not be required to have a special wild turkey hunting license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

2. *a.* As used in this subsection:

(1) *"Family member"* means a resident of Iowa who is the spouse or child of the owner or tenant and who resides with the owner or tenant.

(2) *"Farm unit"* means all parcels of land, not necessarily contiguous, which are operated as a unit for agricultural purposes and which are under the lawful control of the owner or tenant.

(3) *"Owner"* means an owner of a farm unit who is a resident of Iowa and who is one of the following:

(a) Is the sole operator of the farm unit.

(b) Makes all of the farm operation decisions but contracts for custom farming or hires labor for all or part of the work on the farm unit.

(c) Participates annually in farm operation decisions or cropping practices on specific fields of the farm unit that are rented to a tenant.

(d) Raises specialty crops on the farm unit including, but not limited to, orchards, nurseries, or tree farms that do not always produce annual income but require annual operating decisions about maintenance or improvement.

(e) Has all or part of the farm unit enrolled in a long-term agricultural land retirement program of the federal government.

An *"owner"* does not mean a person who owns a farm unit and who employs a farm manager or third party to operate the farm unit, or a person who owns a farm unit and who rents the entire farm unit to a tenant who is responsible for all farm operations. However, this paragraph does not apply to an owner who is a parent of the tenant and who resides in this state.

(4) *"Tenant"* means a person who is a resident of Iowa and who rents and actively farms a farm unit owned by another person. A member of the owner's family may be a tenant. A person who works on the farm for a wage and is not a family member does not qualify as a tenant.

b. Upon written application on forms furnished by the department, the department shall

issue annually without fee one deer or one wild turkey license, or both, to the owner of a farm unit or to a member of the owner's family, but not to both, and to the tenant or to a member of the tenant's family, but not to both. The deer hunting license or wild turkey hunting license issued shall be valid only on the farm unit for which an applicant qualifies pursuant to this subsection and shall be equivalent to the least restrictive license issued under section 481A.38. The owner or the tenant need not reside on the farm unit to qualify for a free license to hunt on that farm unit. A free deer hunting license issued pursuant to this subsection shall be valid during all shotgun deer seasons.

c. In addition to the free deer hunting license received, an owner of a farm unit or a member of the owner's family and the tenant or a member of the tenant's family may purchase a deer hunting license for any option offered to paying deer hunting licensees. An owner of a farm unit or a member of the owner's family and the tenant or a member of the tenant's family may also purchase two additional antlerless deer hunting licenses which are valid only on the farm unit for a fee of ten dollars each.

d. If the commission establishes a deer hunting season to occur in the first quarter of a calendar year that is separate from a deer hunting season that continues from the last quarter of the preceding calendar year, each owner and each tenant of a farm unit located within a zone where a deer hunting season is established, upon application, shall be issued a free deer hunting license for each of the two calendar quarters. Each license is valid only for hunting on the farm unit of the owner and tenant.

3. The director shall provide up to twenty-five nonresident deer hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.8. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident deer hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to deer hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

4. The director shall provide up to twenty-five nonresident wild turkey hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.7. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident wild turkey hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to wild turkey hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

5. A resident or nonresident of the state under sixteen years of age is not required to have a license to fish in the waters of the state. However, residents and nonresidents under sixteen years of age must pay the trout fishing fee to possess trout or they must fish for trout with a licensed adult who has paid the trout fishing fee and limit their combined catch to the daily limit established by the commission.

6. A license shall not be required of minor pupils of the state school for the blind, state school for the deaf, or of minor residents of other state institutions under the control of an administrator of a division of the department of human services. In addition, a person who is on active duty with the armed forces of the United States, on authorized leave from a duty station located outside of this state, and a resident of the state of Iowa shall not be required to have a license to hunt or fish in this state. The military person shall carry the person's leave papers and a copy of the person's current earnings statement showing a deduction for Iowa income taxes while hunting or fishing. In lieu of carrying the person's earnings statement, the military person may also claim residency if the person is registered to vote in this state. If a deer or wild turkey is taken, the military person shall immediately contact a state conservation officer to obtain an appropriate tag to transport the animal. A license shall not be required of residents of county care facilities or any person who is receiving old-age assistance under chapter 249.

7. A resident of the state under sixteen years of age is not required to have a hunting license to hunt game if accompanied by the minor's parent or guardian or in company with any other competent adult with the consent of the minor's parent or guardian, if the person accompanying the minor possesses a valid hunting license; however, there

must be one licensed adult accompanying each person under sixteen years of age. The minor must have a deer hunting license to hunt deer and a wild turkey hunting license to hunt wild turkey.

8. A person having a dog entered in a licensed field trial is not required to have a hunting license or fur harvester license to participate in the event or to exercise the person's dog on the area on which the field trial is to be held during the twenty-four hour period immediately preceding the trial.

9. The commission shall issue without charge a special fishing license to residents of Iowa sixteen years or more of age who the commission finds have severe mental or physical disabilities. The commission is hereby authorized to prepare an application to be used by the person requesting the special license, which would require that the person's attending physician sign the form declaring that the person has a severe mental or physical disability and is eligible for exempt status.

10. No person shall be required to have a special wild turkey license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

11. A lessee of a camping space at a campground may fish on a private lake or pond on the premises of the campground without a license if the lease confers an exclusive right to fish in common with the rights of the owner and other lessees.

12. The department may issue a permit, subject to conditions established by the department, which authorizes patients of a substance abuse facility, residents of health care facilities licensed under chapter 135C, and persons cared for in juvenile shelter care homes as provided for in chapter 232 to fish without a license as a supervised group.

13. Upon payment of the fee of thirty dollars for a lifetime hunting and fishing combined license, the department shall issue a hunting and fishing combined license to a resident of Iowa who is a veteran, as defined in section 35.1, who was disabled or was a prisoner of war during that veteran's military service. The department shall prepare an application to be used by a person requesting a hunting and fishing combined license under this subsection. The commission of veterans affairs shall assist the department in verifying the status or claims of applicants under this subsection. As used in this subsection, *"disabled"* means entitled to compensation under the United States Code, Title 38, ch. 11.

14. The department shall issue without charge a special annual fishing or combined hunting and fishing license to residents of this state who have permanent disabilities and whose income falls below the federal poverty guidelines as published by the United States department of health and human services or residents of this state who are sixty-five years of age or older and whose income falls below the federal poverty guidelines as published by the United States department of health and human services. The commission shall provide for, by rule, an application to be used by an applicant requesting a special license. The commission shall require proof of age, income, and proof of permanent disability.

[S13, §2563-a3; C24, 27, 31, §1720, 1723; C35, §1794-e15; C39, §**1794.098;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.17; C79, 81, §110.24; 82 Acts, ch 1260, §16]

83 Acts, ch 96, §59, 159; 84 Acts, ch 1260, §10; 85 Acts, ch 10, §3; 85 Acts, ch 67, §15; 86 Acts, ch 1240, §5 – 7; 86 Acts, ch 1245, §1877; 88 Acts, ch 1216, §42; 89 Acts, ch 74, §1; 89 Acts, ch 87, §2, 3; 90 Acts, ch 1178, §1, 2; 91 Acts, ch 237, §4, 5; 92 Acts, ch 1140, §12

C93, §483A.24

94 Acts, ch 1018, §1; 94 Acts, ch 1023, §58; 96 Acts, ch 1129, §100; 96 Acts, ch 1172, §1; 97 Acts, ch 180, §6; 98 Acts, ch 1199, §19, 20, 27; 98 Acts, ch 1223, §30; 99 Acts, ch 180, §20; 2000 Acts, ch 1175, §3; 2001 Acts, ch 134, §15; 2001 Acts, ch 148, §8, 9

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

2001 amendment to subsection 2, paragraph c, takes effect December 15, 2001, and applies to licenses and fees for years beginning on or after January 1, 2002; 2001 Acts, ch 148, §9

483A.25 Pheasant and quail restoration program — appropriations.

The revenue received from the resident hunting license fee increase in 2002 Acts, chapter 1141,* for each fiscal year of the fiscal period beginning July 1, 2002, and ending June 30, 2007, is appropriated to the department. Of the amount appropriated to the department pursuant to this section, at least sixty percent shall be used to fund a pheasant and quail restoration program. The department shall submit a report annually on the pheasant and quail restoration program to the chairpersons of the house committee on natural resources and the senate committee on natural resources and environment not later than January 1, 2004, and not later than January 1 of each subsequent year.

2002 Acts, ch 1141, §2

*See §483A.1, subsection 1, paragraph c, for increased resident hunting license fee

NEW section

483A.26 False claims.

A nonresident shall not obtain a resident license by falsely claiming residency in the state. The use of a license by a person other than the person to whom the license is issued is unlawful and nullifies the license.

[82 Acts, ch 1013, §1]

C83, §110.26

84 Acts, ch 1260, §11; 90 Acts, ch 1216, §8

C93, §483A.26

95 Acts, ch 76, §2

For applicable scheduled fines, see §805.8B, subsection 3, paragraph q

483A.27 Hunter safety and ethics education program — license requirement.

1. A person born after January 1, 1967, shall

not obtain a hunting license unless the person has satisfactorily completed a hunter safety and ethics education course approved by the commission. A person who is eleven years of age or more may enroll in an approved hunter safety and ethics education course, but a person who is eleven years of age and who has successfully completed the course shall be issued a certificate of completion which becomes valid on the person's twelfth birthday. A certificate of completion from an approved hunter safety and ethics education course issued in this state since 1960, by another state, or by a foreign nation, is valid for the requirements of this section.

2. A certificate of completion shall not be issued to a person who has not satisfactorily completed a minimum of ten hours of training in an approved hunter safety and ethics education course. The department shall establish the curriculum for the first ten hours of an approved hunter safety and ethics education course offered in this state. Upon completion of the ten-hour curriculum, each person shall pass an individual oral test or a written test provided by the department. The department shall establish the criteria for successfully passing the tests. Based on the results of the test and demonstrated safe handling of a firearm, the instructor shall determine the persons who shall be issued a certificate of completion.

3. The department shall provide a manual on hunter safety education which shall be used by all instructors and persons receiving hunter safety and ethics education training in this state.

4. The department shall provide for the certification of persons who wish to become hunter safety and ethics instructors. A person shall not act as an instructor in hunter safety and ethics education as provided in this section without first obtaining an instructor's certificate from the department.

5. An officer of the department or a certified instructor may issue a certificate to a person who has not completed the hunter safety and ethics education course but meets the criteria established by the commission.

6. A public or private school or organization approved by the department may co-operate with the department in providing a course in hunter safety and ethics education as provided in this section.

7. A hunting license obtained under this section by a person who gave false information or presented a fraudulent certificate of completion shall be revoked and a new hunting license shall not be issued for at least two years from the date of conviction. A hunting license obtained by a person who was born after January 1, 1967, but has not satisfactorily completed the hunter safety and ethics education course or has not met the requirements established by the commission, shall be revoked.

8. The commission shall adopt rules in accordance with chapter 17A as necessary to carry out the administration of this section.

9. The initial hunter safety certificate shall be issued without cost. A duplicate certificate shall be issued at a cost of three dollars.

10. A person under eighteen years of age who is required to exhibit a valid hunting license, shall also exhibit a valid certificate of completion from a state approved hunter safety and ethics education course upon request of an officer of the department. A failure to carry or refusal to exhibit the certificate of completion as provided in this subsection is a violation of this chapter. A violator is guilty of a simple misdemeanor as provided in section 483A.42.

11. A hunter safety and ethics instructor certified by the department shall be allowed to conduct an approved hunter safety and ethics education course on public school property with the approval of a majority of the board of directors of the school district. The conduct of an approved hunter safety and ethics education course is not a violation of any public policy, rule, regulation, resolution, or ordinance which prohibits the possession, display, or use of a firearm, bow and arrow, or other hunting weapon on public school property or other public property in this state.

[82 Acts, ch 1035, §1]
C83, §110.27
85 Acts, ch 104, §1; 86 Acts, ch 1240, §8; 86 Acts, ch 1245, §1877; 91 Acts, ch 235, §1, 2
C93, §483A.27
97 Acts, ch 96, §1, 2; 2001 Acts, ch 176, §43
For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

483A.28 and 483A.29 Reserved.

483A.30 Nonresident deer and turkey license fees. Repealed by 97 Acts, ch 180, § 7.

483A.31 Reciprocal fishing privileges authorized.

1. Reciprocal fishing privileges are contingent upon a grant of similar privileges by another state to residents of this state.

2. The commission may negotiate fishing reciprocity agreements with other states.

3. When another state confers upon fishing licensees of this state reciprocal rights, privileges, and immunities, a fishing license issued by that state entitles the licensee to all rights, privileges, and immunities in the public waters of this state enjoyed by the holders of equivalent licenses issued by this state, subject to duties, responsibilities, and liabilities imposed on its own licensees by the laws of this state.

90 Acts, ch 1178, §3
C91, §110.31
C93, §483A.31

CONTRABAND ARTICLES

483A.32 Public nuisance.

Any device, contrivance, or material used to violate a rule adopted by the commission, or any other provision of this chapter or chapter 481A, 481B, 482, 484A, or 484B, is a public nuisance and may be condemned by the state. The director, the director's officers, or any peace officer, shall seize the devices, contrivances, or materials used as a public nuisance, without warrant or process, and deliver them to a magistrate having jurisdiction. An automobile shall not be construed to be a public nuisance under this section.

[C73, §4052; C97, §2540; SS15, §2539, 2540; C24, 27, 31, §1715; C35, §1794-e16; C39, §**1794.099;** C46, 50, 54, 58, 62, 66, §110.18; C71, 73, 75, 77, §110.19; C79, 81, §110.32]

86 Acts, ch 1240, §9; 86 Acts, ch 1245, §1878

C93, §483A.32

98 Acts, ch 1125, §1

483A.33 Disposition of property seized as public nuisance.

The disposition of property seized pursuant to section 483A.32 shall be conducted as follows:

1. The officer taking possession of property seized as a public nuisance shall make a written inventory of the property and deliver a copy of the inventory to the person from whom the property was seized. The inventory shall include the name of the person taking custody of the seized property, the date and time of seizure, location of the seizure, and the name of the seizing public agency. Property which has been seized shall be safely secured and stored by the public agency which caused its seizure unless directed otherwise by the county attorney of the county where the property was seized or by the attorney general.

2. *a.* The county attorney or attorney general may file with the clerk of the district court for the county in which the property was seized a notice of condemnation which shall include a description of the property claimed to be condemned by the state, the grounds upon which the state claims that the property has been condemned, the date and place of seizure, and the name of the person from whom the property was seized.

b. The notice shall be filed not later than six months after the property was seized. Failure to file within the time limit terminates the state's right to claim a condemnation of the property.

c. The state shall give notice of condemnation to the person from whom the property was seized and any person identified as an owner or lien holder, by certified mail, personal service, or publication.

3. *a.* The person from whom the property was seized may make application for its return in the office of the clerk of the district court for the county in which the property was seized. The application shall be filed within thirty days after the receipt of the notice of condemnation. Failure to file the application within this time period terminates the interest of the person and the ownership of the property shall be transferred to the state.

b. The application for return of condemnable property shall be written and shall state the specific item or items sought, the nature and the source of the claimant's interest in the property, and the grounds upon which the claimant seeks to avoid condemnation. The ownership of property is not sufficient grounds for its return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set forth in the application for return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If specific grounds for return are not provided in the application for return, or the grounds are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

4. If an application for return of condemnable property is timely and of sufficient grounds, the claim shall be set for hearing. The hearing shall be held not less than ten nor more than thirty days after the filing of the claim. The proceeding shall be conducted by a magistrate or a district associate judge. All claims to the same property shall be heard in one proceeding, unless it is shown that the proceeding would result in prejudice to one or more of the parties.

5. *a.* Upon a finding by the court that the property is condemnable, the court shall enter an order transferring title of the property to the state, and placed at the disposal of the director, who may use or sell the property, depositing the proceeds of the sale in the state fish and game protection fund.

b. Upon a finding by the court that the property should not be condemned, the property shall be returned to the person from whom it was seized. If the property is necessary for use as evidence in a criminal proceeding, the property shall not be returned until its use as evidence is no longer required.

[C35, §1794-e17,-e18; C39, §**1794.100, 1794.101;** C46, 50, 54, 58, 62, 66, §110.19, 110.20; C71, 73, 75, 77, §110.20, 110.21; C79, 81, §110.33]

C93, §483A.33

98 Acts, ch 1125, §2

483A.34 Right to appeal.

An appeal from a denial of an application for return of condemnable property, or from an order for return of condemnable property, shall be made within ten days after the entry of a judgment order and shall be conducted in the same manner as an appeal in a small claims action. The appellant, other than the state, shall post a bond of a reasonable amount as the court may fix and approve, conditioned to pay all costs of the proceedings if the

appellant is unsuccessful on appeal.

[C35, §1794-e19; C39, §**1794.102;** C46, 50, 54, 58, 62, 66, §110.21; C71, 73, 75, 77, §110.22; C79, 81, §110.34]

C93, §483A.34

98 Acts, ch 1125, §3

GUNS

483A.35 "Gun" defined.

The word *"gun"* as used in this chapter shall include every kind of a gun or rifle, except a revolver or pistol, and shall include those provided with pistol mountings which are designed to shoot shot cartridges.

[C31, §1772-c1; C35, §1794-e20; C39, §**1794.103;** C46, 50, 54, 58, 62, 66, §110.22; C71, 73, 75, 77, §110.23; C79, 81, §110.35]

C93, §483A.35

483A.36 Manner of conveyance.

No person, except as permitted by law, shall have or carry a gun in or on a vehicle on a public highway, unless the gun is taken down or totally contained in a securely fastened case, and its barrels and magazines are unloaded.

[C24, 27, 31, §1772; C35, §1794-e21; C39, §**1794.104;** C46, 50, 54, 58, 62, 66, §110.23; C71, 73, 75, 77, §110.24; C79, 81, §110.36]

86 Acts, ch 1240, §10

C93, §483A.36

For applicable scheduled fine, see §805.8B, subsection 3, paragraph r

483A.37 Prohibited guns.

No person shall use a swivel gun, nor any other firearm, except such as is commonly shot from the shoulder or hand in the hunting, killing or pursuit of game, and no such gun shall be larger than number 10 gauge.

[C97, §2558; C24, 27, 31, §1771; C35, §1794-e22; C39, §**1794.105;** C46, 50, 54, 58, 62, 66, §110.24; C71, 73, 75, 77, §110.25; C79, 81, §110.37]

C93, §483A.37

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

483A.38 Free fishing days.

The commission may designate one period of the year of not more than three days as free fishing days and during that period the residents may fish and lawfully possess fish without a license.

86 Acts, ch 1240, §11

C87, §110.38

C93, §483A.38

483A.39 through 483A.41 Reserved.

PENAL PROVISION

483A.42 Penalties.

A person who violates this chapter is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8B, subsection 3, paragraph *"e"*. However, the scheduled fine specified in section 805.8B, subsection 3, paragraph *"e"*, does not apply to a violation of this chapter for which another scheduled fine is specified in section 805.8B, subsection 3.

[C46, 50, 54, 58, 62, 66, §110.25; C71, 73, 75, 77, §110.26; C79, 81, §110.42]

86 Acts, ch 1240, §12

C93, §483A.42

2000 Acts, ch 1203, §24; 2001 Acts, ch 130, §2; 2001 Acts, ch 137, §5

483A.43 through 483A.49 Reserved.

WILDLIFE HABITAT BONDS

483A.50 Definitions.

When used in this division, unless the context otherwise requires:

1. *"Bonds"* means negotiable wildlife habitat bonds of the commission issued pursuant to this division and includes all bonds, notes, and other obligations issued in anticipation of these bonds or as refunding bonds pursuant to this division.

2. *"Treasurer"* means the treasurer of state of the state of Iowa.

3. *"Wildlife habitat bond fund"* means the fund created by section 483A.53.

86 Acts, ch 1231, §2

C87, §110.50

C93, §483A.50

483A.51 Bonds issued by the commission.

1. The commission may issue its negotiable bonds in principal amounts as, in the opinion of the commission, are necessary to provide funds for the acquisition of real property for the development and enhancement of wildlife lands and habitat areas, the payment of interest on its bonds and all other expenditures of the commission incident to and necessary or convenient to carry out the acquisition. However, the commission shall not have a total principal amount of bonds outstanding at any time in excess of eight million dollars. The bonds shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of chapter 554, the uniform commercial code.

2. Bonds issued by the commission are payable solely and only from the revenues credited to the wildlife habitat bond fund. Taxes or appropriations shall not be pledged for the payment of the bonds. Bonds are not an obligation of this state or any political subdivision of this state other than the commission within the meaning of any consti-

tutional or statutory debt limitations, but are special obligations of the commission payable solely and only from the sources provided in this division, and the commission shall not pledge the general credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except those of the wildlife habitat bond fund.

3. Bonds must be authorized by a resolution of the commission. However, a resolution authorizing the issuance of obligations may delegate to an officer of the commission the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. The bond proceedings shall provide for the purpose of the bonds, principal amount and principal maturity or maturities, the interest rate or rates or the maximum interest rate, the date of the bonds and the dates of payment of interest on the bonds, their denomination, the terms and conditions upon which parity bonds may be issued, and the establishment within or without the state of a place or places of payment of principal of and interest on the bonds. The purpose of the bonds may be stated in the bond proceedings in terms describing the general purpose or purposes to be served. The commission may cause to be issued a prospectus or official statement in connection with the offering of the bonds. Bonds may be issued in coupon or in registered form, or both. Provision may be made for the registration of bonds with coupons attached as to principal alone, or as to both principal and interest, their exchange for bonds so registered, and for the conversion or reconversion into bonds with coupons attached of any bonds registered as to both principal and interest, and for reasonable charges for registration, exchange, conversion, and reconversion. Bonds shall be sold in the manner and at the time determined by the commission. Chapter 75 and sections 73A.12 through 73A.16 do not apply to these bonds. The bonds are negotiable instruments. The bond proceedings may contain additional provisions as to:

a. The redemption of bonds prior to maturity at the option of the commission at the price and on the terms and conditions provided in the bond proceedings.

b. Other terms of the bonds and concerning execution and delivery of the bonds.

c. The delegation of responsibility for any act relating to the issuance, execution, sale, redemption, or other matter pertaining to the bonds to any other officer, agency of the state, or other person or body.

d. Additional agreements with the bondholders relating to the bonds.

e. Payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the commission in the issuance, sale, delivery, and payment of the bonds.

f. Other matters, alike or different, which may in any way affect the security of the bonds and the protection of the bondholders.

5. The power to issue bonds includes the power to issue obligations in the form of bond anticipation notes or other forms of short-term indebtedness and to renew these notes by the issuance of new notes. The holders of notes or interest coupons of notes have a right to be paid solely from those revenues credited to the wildlife habitat bond fund which were pledged to the payment of the bonds anticipated, or from the proceeds of those bonds or renewal notes, or both, as the commission provides in the bond proceedings authorizing the notes. The notes may be additionally secured by covenants of the commission to the effect that the commission will do those acts authorized by this division and necessary for the issuance of the bonds or renewal notes in appropriate amount, and either exchange the bonds or renewal notes for the notes, or apply the proceeds of the notes, to the extent necessary, to make full payment of the principal of and interest on the notes at the time contemplated, as provided in the bond proceedings. For this purpose, the commission may issue bonds or renewal notes in a principal amount and upon terms as authorized by this division and as necessary to provide funds to pay when required the principal of and interest on the outstanding notes. All provisions for and references to bonds in this division are applicable to notes authorized under this subsection to the extent not inconsistent with this subsection.

6. The commission may authorize and issue bonds for the refunding, including funding and retirement, and advance refunding with or without payment or redemption prior to maturity, of bonds previously issued by the commission. These bonds may be issued in amounts sufficient for payment of the principal amount of the prior bonds, any redemption premiums on the prior bonds, principal maturities of bonds maturing prior to the redemption of the remaining bonds on a parity with them, interest accrued or to accrue to the maturity date or dates of redemption of the bonds, and project costs including expenses incurred or to be incurred in connection with this issuance, refunding, funding, and retirement. Subject to the bond proceedings, the portion of proceeds of the sale of bonds issued under this subsection to be applied to principal of and interest on the prior bonds shall be credited to the appropriate account for the prior bonds. Bonds authorized under this subsection shall be deemed to be issued for those purposes for which the prior bonds were issued and are subject to the provisions of this division pertaining to other bonds. Refunding bonds may be issued without regard to whether or not the bonds to be refunded are payable on the same date or different dates or due serially or otherwise.

86 Acts, ch 1231, §3
C87, §110.51
C93, §483A.51

483A.52 Additional powers of commission.

In connection with the issuance of the bonds or in order to secure the payment of the bonds and interest on the bonds, the commission may by resolution:

1. Provide that the bonds be secured by a first lien on the revenues and receipts received or to be received into the wildlife habitat bond fund from income from the investment of the wildlife habitat bond fund, from moneys received from the sale of bonds, and from any other moneys which are available for the payment of bond service charges.

2. Pledge for the benefit of the bondholders any part of the receipts in the wildlife habitat bond fund. The pledge shall be effective without physical delivery or further act and moneys in the fund may be applied for the purposes as pledged without the necessity of an Act of appropriation.

3. Establish, authorize, set aside, regulate, and dispose of reserves and sinking funds.

4. Provide that sufficient amounts of the proceeds of the sale of the bonds may be used to fully or partially fund any and all reserves or sinking funds set out by the bond resolution.

5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of the bonds whose holders must consent thereto, and the manner in which the consent may be given.

6. Purchase bonds, out of funds available for that purpose, which shall be canceled, at a price not exceeding either of the following:

a. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.

b. If the bonds are not then redeemable, the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption plus accrued interest to that date.

86 Acts, ch 1231, §4
C87, §110.52
C93, §483A.52

483A.53 Payment of bonds.

A wildlife habitat bond fund is created in the state treasury. At the direction of the commission as provided in the bond proceedings or pursuant to section 483A.52, subsection 1 or 2, and as certified by the director, the treasurer of state shall credit to the wildlife habitat bond fund from the revenues received from the sale of wildlife habitat stamps a sum at least sufficient to pay interest on the bonds in each fiscal year and principal on the bonds that mature during each fiscal year. In each fiscal year after July 1, 1986 and after bonds are issued, and until all the bonds issued have been retired, in order to provide for the payment of principal of the bonds issued and sold and the interest on them as the same become due and mature, there is pledged and annually appropriated out of the revenues to be credited to the wildlife habitat bond fund an amount sufficient to pay principal and interest on the bonds issued for each of the years the bonds are outstanding. The director shall annually certify to the treasurer the amount of funds required to pay interest on the bonds in the ensuing fiscal year and the principal on the bonds that mature during the ensuing fiscal year.

86 Acts, ch 1231, §5
C87, §110.53
C93, §483A.53

483A.54 Nonliability of the state and its officials.

Bonds issued are special limited obligations of the commission and are not a debt or liability of the state or any other political subdivision within the meaning of any constitutional or statutory debt limitation and are not a pledge of the state's credit or taxing power within the meaning of any constitutional or statutory limitation or provision and, except as provided in this division, an appropriation shall not be made, directly or indirectly, by the state or any political subdivision of the state for the payment of bonds. The bonds are special obligations of the commission payable solely from the wildlife habitat bond fund. Funds from the general fund of the state shall not be used to pay interest or principal on the bonds if revenues deposited in the wildlife habitat bond fund are insufficient.

The members of the commission or other person executing the bonds is not personally liable for the payment of the bonds. The bonds are valid and binding obligations of the commission notwithstanding the fact that before the delivery of the bonds any of the officers whose signatures appear on the bonds cease to be officers of the state. From and after the sale and delivery of the bonds, they shall be incontestable by the commission.

86 Acts, ch 1231, §6
C87, §110.54
C93, §483A.54

483A.55 Bonds as legal investments.

Bonds are securities in which all public officers and bodies of the state and all municipalities and political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries and all other persons who are now or may be authorized to invest in bonds or other obligations of this state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also securities which may be deposited with

and may be received by all public officers and bodies of the state and all municipalities and legal subdivisions of this state for any purpose for which the deposit of bonds or other obligations of the state is now or may be authorized.

86 Acts, ch 1231, §7
C87, §110.55
C93, §483A.55

483A.56 Rights of bondholders.

The bond proceedings may provide that a holder of bonds or a trustee under the bond proceedings, except to the extent that the holder's rights are restricted by the bond proceedings, may by legal proceedings, protect and enforce any rights under the laws of this state or granted by the bond proceedings. These rights include the right to compel the performance of all duties of the commission required by this division or the bond proceedings; to enjoin unlawful activities; and in the event of default with respect to the payment of any principal of or interest on bonds or in the performance of a covenant or agreement on the part of the commission in bond proceedings, to apply to a court to appoint a receiver to receive and administer the funds which are pledged to the payment of bonds or which are the subject of the covenant or agreement, with full power to pay and to provide for payment of any principal of or interest on bonds and with powers accorded receivers in general equity cases, excluding power to pledge additional funds or other income or moneys of the commission, the state, or governmental agencies of the state to the payment of the bonds.

86 Acts, ch 1231, §8
C87, §110.56
C93, §483A.56

CHAPTER 484

INTERURBAN RAILWAYS

Repealed by 75 Acts, ch 170, §34

CHAPTER 484A

MIGRATORY GAME BIRDS

This chapter not enacted as a part of this title;
transferred from chapter 110B in Code 1993
See §481A.134 and 481A.135 for point system and additional penalties

484A.1 Definitions.
484A.2 Fee required.
484A.3 Fee. Repealed by 98 Acts, ch 1199, §26, 27; 98 Acts, ch 1223, §30.
484A.4 Use of revenue.
484A.5 Projects approved.
484A.6 Penalty.

484A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.

2. *"Migratory game bird"* means any wild goose, brant, wild duck, snipe, rail, woodcock, or coot.

[C73, 75, 77, 79, 81, §110B.1]
86 Acts, ch 1245, §1860
C93, §484A.1
98 Acts, ch 1199, §21, 22, 27; 98 Acts, ch 1223, §30

484A.2 Fee required.

A person sixteen years of age or older shall not hunt or take any migratory game bird within this state without first paying a migratory game bird fee. The director shall determine the means and method of collecting the migratory game bird fees.

[C73, 75, 77, 79, 81, §110B.2]
C93, §484A.2
98 Acts, ch 1199, §23, 27; 98 Acts, ch 1223, §30
For applicable scheduled fine, see §805.8B, subsection 3, paragraph a

484A.3 Fee. Repealed by 98 Acts, ch 1199, § 26, 27; 98 Acts, ch 1223, § 30.

484A.4 Use of revenue.

All revenue generated from the migratory game bird fee shall be used for projects approved by the commission for the purpose of protecting and propagating migratory game birds and for the ac-

quisition, development, restoration, maintenance or preservation of wetlands, except for that part which is specified by the commission for use in paying administrative expenses as provided in section 456A.17.

The commission may enter into contracts with nonprofit organizations for the use of fifteen percent of such funds outside the United States if the commission finds that such contracts are necessary for carrying out the purposes of this chapter.

[C73, 75, 77, 79, 81, §110B.4]
C93, §484A.4
98 Acts, ch 1199, §24, 27; 98 Acts, ch 1223, §30

484A.5 Projects approved.

Before approving and allocating funds for a proposed project to be undertaken outside this state or outside the United States, the commission shall obtain evidence that the project is acceptable to the government agency having jurisdiction over the lands and waters affected by the project.

[C73, 75, 77, 79, 81, §110B.5]
C93, §484A.5

484A.6 Penalty.

Any person violating any of the provisions of this chapter shall be guilty of a simple misdemeanor.

[C77, 79, 81, §110B.6]
C93, §484A.6

CHAPTER 484B

HUNTING PRESERVES

See §481A.134 and 481A.135 for point system and additional penalties

484B.1 Definitions.
484B.2 Rules.
484B.3 Authority of the director.
484B.4 Application and license requirements.
484B.5 Boundaries signed — fenced.
484B.6 Game birds released.
484B.7 Records — reports — inspections.
484B.8 Game bird transportation tags — markings.
484B.9 Ungulate transportation tags — markings.
484B.10 Season — hunting license.
484B.11 Health requirements — game birds.
484B.12 Health requirements — ungulates.
484B.13 License refusal.
484B.14 Penalties.

484B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.
2. *"Department"* means the department of natural resources.
3. *"Director"* means the director of the department.
4. *"Game birds"* means pen-reared birds of the family gallinae and mallard ducks.
5. *"Hunting preserve"* means property and facilities either privately owned or leased for holding, rearing, releasing, or processing captive-raised game for the purpose of hunting, for a fee, over an extended season.
6. *"Livestock"* means the same as defined in section 717.1.
7. *"Pen-reared"* means the propagation and holding of game birds and game animals whose origins are from captive populations.
8. *"Season"* means hunting preserve season.
9. *"Ungulate"* means hoofed nondomesticated mammal other than livestock.

92 Acts, ch 1160, §1; 2000 Acts, ch 1038, §2, 3

484B.2 Rules.

The commission may adopt rules under chapter 17A as necessary to carry out this chapter.

92 Acts, ch 1160, §2

484B.3 Authority of the director.

The director shall develop, administer, and enforce hunting preserve programs and requirements within the state which implement the provisions of this chapter and the rules adopted by the commission.

92 Acts, ch 1160, §3

484B.4 Application and license requirements.

1. A person who owns or controls by lease or otherwise for five or more years, a contiguous tract of land having an area of not less than three hundred twenty acres, and who desires to establish a

hunting preserve, to propagate and sell game birds and their young or unhatched eggs, and shoot game birds and ungulates on the land, under this chapter or the rules of the commission, shall make application to the department for an operator's license. The application shall be made under oath of the applicant or under oath of one of its principal officers if the applicant is an association, corporation, or copartnership. Under the authority of this license, any property or facilities to be used for propagating, holding, processing, or pasturing of game birds or ungulates shall not be required to be contained within the contiguous land area used for hunting purposes. The application shall be accompanied by an operator's license fee of two hundred dollars.

2. Upon receipt of an application, the department or its authorized agent shall inspect the proposed hunting preserve and facilities described in the application. If the department finds that the proposed hunting preserve meets the following requirements, the department may approve the application and issue a hunting preserve operator's license for the operation of the property and facilities described in the application with the rights and subject to the limitations in this chapter and the rules adopted by the commission:

a. The proposed hunting preserve contains at least three hundred twenty acres but not more than two thousand five hundred sixty acres.

b. The area of the proposed hunting preserve is contiguous.

c. The total area of all licensed hunting preserves and the proposed hunting preserve will not exceed three percent of the land area of the county.

d. The game birds or ungulates released on the preserve will not be detrimental to wildlife.

e. The proposed hunting preserve will not interfere with the normal activities of migratory birds.

3. All hunting preserve operator's licenses shall expire on March 31 of each year.

92 Acts, ch 1160, §4; 99 Acts, ch 208, §36

484B.5 Boundaries signed — fenced.

Upon receipt of a hunting preserve license, the licensee shall promptly sign the licensed property with signs prescribed by the department. A licensee holding and releasing ungulates shall construct and maintain boundary fences prescribed by the department so as to enclose and contain all released ungulates and exclude all ungulates which are property of the state from becoming a part of the hunting preserve enterprise.

92 Acts, ch 1160, §5

484B.6 Game birds released.

The licensee of a licensed hunting preserve may take, or authorize to be taken within the season, the numbers of game birds as provided in this section:

1. A licensed hunting preserve may take up to eighty percent of the total number of pheasant and quail released. One hundred percent of all other game birds released may be taken.

2. A minimum of five hundred game birds shall be released during the hunting preserve season by each licensed hunting preserve authorized to release game birds.

3. A licensee operating two or more licensed hunting preserve areas shall release a cumulative minimum of eight hundred game birds during the hunting preserve season.

4. If hen ring-necked pheasants are shot on the licensed hunting preserve, no less than thirty-five percent of all ring-necked pheasants released shall be hens.

92 Acts, ch 1160, §6

484B.7 Records — reports — inspections.

1. Each hunting preserve licensee shall keep the records and make the reports required on forms prepared and provided by the department. All records shall be open for inspection at any reasonable time by the department or its authorized agents.

2. Each licensee shall file an annual report with the department on or before April 30. The report shall detail the hunting preserve operations during the preceding license year. The original report shall be forwarded to the department and a copy shall be retained in the hunting preserve's file for three years from the date of expiration of the hunting preserve's last license issued. Records required by this section shall be entered in the annual report record within twenty-four hours of the event. Failure to keep or submit the required records and reports is grounds for refusal to renew a license for the succeeding year. An on-site inspection of property and facilities shall be conducted by an authorized agent of the department prior to the initial issuance of a hunting preserve license. The hunting preserve may be reinspected by an agent of the department at any reasonable time. A licensed hunting preserve shall maintain adequate facilities for all designated birds and ungulates held under the hunting preserve license.

92 Acts, ch 1160, §7

484B.8 Game bird transportation tags — markings.

The department shall prepare transportation tags suitable for use upon the legs of game birds described in this chapter. The tags shall be of a type which are not removable without breaking and mutilating the tag. The tags shall be used to designate all game birds taken by hunters upon a licensed hunting preserve. The department shall provide licensees with the tags. All dead game birds removed from a licensed hunting preserve shall have a hunting preserve tag affixed to one leg prior to being transported from the licensed hunting preserve, except as otherwise provided by rule

of the commission. All mallards released for hunting purposes shall be physically marked by the removal of the hind toe from the right foot at not more than four weeks of age, so as to provide for permanent identification. Game bird tags issued to a hunting preserve are not transferable.

92 Acts, ch 1160, §8

484B.9 Ungulate transportation tags — markings.

The department shall prepare transportation tags suitable for use upon the carcass of ungulates described in this chapter. The tags shall be used to designate all ungulates taken by hunters upon a licensed hunting preserve. The department shall provide licensees with the tags. All ungulates taken on a licensed hunting preserve shall be tagged with a numbered tag prior to being removed from the hunting preserve. The hunter shall tag the ungulate taken in accordance with the rules as determined by the department. The tag shall remain attached to the carcass of the dead ungulate until processed for consumption. The hunter shall be provided with a bill of sale by the licensee. The bill of sale shall remain in the possession of the hunter. Ungulate tags issued to a hunting preserve are not transferable.

92 Acts, ch 1160, §9

484B.10 Season — hunting license.

1. A person shall not take a game bird or ungulate upon a hunting preserve, by shooting in any manner, except during the established season or as authorized by section 481A.56. The established season shall be September 1 through March 31 of the succeeding year, both dates inclusive. The owner of a hunting preserve shall establish the hunting season for nonnative, pen-reared ungulates on the hunting preserve.

2. Waterfowl shall not be shot over any area where pen-reared mallards may serve as live decoys for wild waterfowl. All persons hunting game birds or ungulates upon a licensed hunting preserve shall secure a hunting license to do so in accordance with the game laws of Iowa, with the exception that an unlicensed person may secure an annual hunting preserve license restricted to hunting preserves only for a license fee of five dollars. All persons who hunt on hunting preserves shall pay the wildlife habitat fee.

92 Acts, ch 1160, §10; 96 Acts, ch 1072, §1; 98 Acts, ch 1199, §25, 27; 98 Acts, ch 1223, §30

484B.11 Health requirements — game birds.

All game birds, including breeders and nonbreeders; or their chicks or unhatched eggs either purchased, propagated, confined, released, or sold by a licensed hunting preserve shall be free of diseases considered significant for wildlife, poultry, or livestock and shall comply with all game bird, mallard, and turkey requirements as designated by the national poultry improvement plan (NPIP) and in accordance with the United States department of agriculture and requirements of the Iowa department of agriculture and land stewardship.

92 Acts, ch 1160, §11

484B.12 Health requirements — ungulates.

All ungulates which are purchased, propagated, confined, released, or sold by a licensed hunting preserve shall be free of diseases considered significant for wildlife, poultry, or livestock.

92 Acts, ch 1160, §12; 2000 Acts, ch 1038, §4

484B.13 License refusal.

The department may either refuse to issue, refuse to renew, or suspend or revoke a hunting preserve license if the department finds that the licensed area or the operator or employees of the licensed area are not in compliance with this chapter, or that the property or area is operated in violation of this chapter or administrative rules adopted under this chapter.

92 Acts, ch 1160, §13

484B.14 Penalties.

A person who violates a provision of this chapter or a rule adopted under this chapter is guilty of a simple misdemeanor.

92 Acts, ch 1160, §14

CHAPTER 485

INTERURBAN RAILWAYS IN CERTAIN CITIES

Repealed by 75 Acts, ch 170, §34

TITLE XII

BUSINESS ENTITIES

SUBTITLE 1

PARTNERSHIPS

CHAPTER 486

UNIFORM PARTNERSHIP LAW

Repealed effective January 1, 2001, by
98 Acts, ch 1201, §78; see chapter 486A

CHAPTER 486A

UNIFORM PARTNERSHIP ACT

This chapter applies to all partnerships on and after
January 1, 2001; 98 Acts, ch 1201, §79
For provisions applicable to partnerships prior to
January 1, 2001, see chapter 486, Code 1999

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ARTICLE 1

GENERAL PROVISIONS

486A.101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Business"* includes every trade, occupation, and profession.

2. *"Debtor in bankruptcy"* means a person who is the subject of any of the following:

a. An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

b. A comparable order under federal, state, or foreign law governing insolvency.

3. *"Distribution"* means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

4. *"Foreign limited liability partnership"* means a partnership that satisfies both of the following:

a. The partnership is formed under laws other than the laws of this state.

b. The partnership has the status of a limited liability partnership under those laws.

5. *"Limited liability partnership"* means a

partnership that has filed a statement of qualification under section 486A.1001 and does not have a similar statement in effect in any other jurisdiction.

6. *"Partnership"* means an association of two or more persons to carry on as co-owners a business for profit formed under section 486A.202, predecessor law, or comparable law of another jurisdiction.

7. *"Partnership agreement"* means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

8. *"Partnership at will"* means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

9. *"Partnership interest"* or *"partner's interest in the partnership"* means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

10. *"Person"* means as defined in section 4.1.

11. *"Property"* means all property, real, personal, or mixed, tangible or intangible, or any interest in such property.

12. *"State"* means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

13. *"Statement"* means a statement of partnership authority under section 486A.303, a statement of denial under section 486A.304, a statement of dissociation under section 486A.704, a statement of dissolution under section 486A.805, a statement of merger under section 486A.907, a statement of qualification under section 486A.1001, a statement of foreign qualification under section 486A.1102, or an amendment or cancellation of any of the foregoing.

14. *"Transfer"* includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

98 Acts, ch 1201, §1, 79, 82

486A.102 Knowledge and notice.

1. A person knows a fact if the person has actual knowledge of it.

2. A person has notice of a fact if any of the following apply:

a. The person knows of it.

b. The person has received a notification of it.

c. The person has reason to know it exists from all of the facts known to the person at the time in question.

3. A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

4. A person receives a notification when any of the following occur:

a. The notification comes to the person's attention.

b. The notification is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

5. Except as otherwise provided in subsection 6, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

6. A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

98 Acts, ch 1201, §2, 79, 82

486A.103 Effect of partnership agreement — nonwaivable provisions.

1. Except as otherwise provided in subsection 2, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

2. The partnership agreement shall not do any of the following:

a. Vary the rights and duties under section 486A.105 except to eliminate the duty to provide copies of statements to all of the partners.

b. Unreasonably restrict the right of access to books and records under section 486A.403, subsection 2.

c. Eliminate the duty of loyalty under section 486A.404, subsection 2, or 486A.603, subsection 2, paragraph *"c"*, except as follows:

(1) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(2) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

d. Unreasonably reduce the duty of care under section 486A.404, subsection 3, or 486A.603, subsection 2, paragraph *"c"*.

e. Eliminate the obligation of good faith and fair dealing under section 486A.404, subsection 4, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

f. Vary the power to dissociate as a partner under section 486A.602, subsection 1, except to require the notice under section 486A.601, subsection 1, to be in writing.

g. Vary the right of a court to expel a partner in the events specified in section 486A.601, subsection 5.

h. Vary the requirement to wind up the partnership business in cases specified in section 486A.801, subsection 4, 5, or 6.

i. Vary the law applicable to a limited liability partnership under section 486A.106, subsection 2.

j. Restrict rights of third parties under this chapter.

98 Acts, ch 1201, §3, 79, 82

486A.104 Supplemental principles of law.

1. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

2. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section 535.3.

98 Acts, ch 1201, §4, 79, 82

486A.105 Execution, filing, and recording of statements.

1. A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

2. A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in this chapter.

3. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

4. A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

5. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

6. The secretary of state may collect a fee for filing or providing a certified copy of a statement. The county recorder may collect a fee for recording a statement.

98 Acts, ch 1201, §5, 79, 82

486A.106 Governing law.

1. Except as otherwise provided in subsection 2, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

2. The law of this state governs relations among the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

98 Acts, ch 1201, §6, 79, 82

486A.107 Partnership subject to amendment or repeal of chapter.

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

98 Acts, ch 1201, §7, 79, 82

ARTICLE 2

NATURE OF PARTNERSHIP

486A.201 Partnership as entity.

1. A partnership is an entity distinct from its partners.

2. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 486A.1001.

98 Acts, ch 1201, §8, 79, 82

486A.202 Formation of partnership.

1. Except as otherwise provided in subsection 2, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

2. An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

3. In determining whether a partnership is formed, the following rules apply:

a. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

b. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

c. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment of or for any of the following:

(1) Of a debt by installments or otherwise.

(2) For services as an independent contractor or of wages or other compensation to an employee.

(3) Of rent.

(4) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner.

(5) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral.

(6) For the sale of the goodwill of a business or other property by installments or otherwise.

98 Acts, ch 1201, §9, 79, 82

486A.203 Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually.

98 Acts, ch 1201, §10, 79, 82

486A.204 When property is partnership property.

1. Property is partnership property if acquired in the name of any of the following:

a. The partnership.

b. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

2. Property is acquired in the name of the partnership by a transfer to any of the following:

a. The partnership in its name.

b. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

3. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

4. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

98 Acts, ch 1201, §11, 79, 82

ARTICLE 3

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

486A.301 Partner agent of partnership.

Subject to the effect of a statement of partnership authority under section 486A.303:

1. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

2. An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

98 Acts, ch 1201, §12, 79, 82

486A.302 Transfer of partnership property.

1. Partnership property may be transferred as follows:

a. Subject to the effect of a statement of partnership authority under section 486A.303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

b. Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to the partners of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

c. Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to the partners of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

2. A partnership may recover partnership property from a transferee only if it proves that ex-

ecution of the instrument of initial transfer did not bind the partnership under section 486A.301 and if one of the following applies:

a. As to a subsequent transferee who gave value for property transferred under subsection 1, paragraphs *"a"* and *"b"*, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

b. As to a transferee who gave value for property transferred under subsection 1, paragraph *"c"*, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

3. A partnership shall not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection 2, from any earlier transferee of the property.

4. If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

98 Acts, ch 1201, §13, 79, 82

486A.303 Statement of partnership authority.

1. A partnership may file a statement of partnership authority as provided in this subsection.

a. The statement of partnership authority must include all of the following:

(1) The name of the partnership.

(2) The street address of its chief executive office and of one office in this state, if there is one.

(3) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection 2.

(4) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership.

b. The statement of partnership authority may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

2. If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

3. If a filed statement of partnership authority is executed pursuant to section 486A.105, subsection 3, and states the name of the partnership but does not contain all of the other information required by subsection 1, the statement nevertheless operates with respect to a person not a partner as provided in subsections 4 and 5.

4. Except as otherwise provided in subsection 7, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

a. Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

b. A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

5. A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

6. Except as otherwise provided in subsections 4 and 5 and sections 486A.704 and 486A.805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

7. Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the secretary of state.

98 Acts, ch 1201, §14, 79, 82

486A.304 Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to section 486A.303, subsection 2, may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 486A.303, subsections 4 and 5.

98 Acts, ch 1201, §15, 79, 82

486A.305 Partnership liable for partner's actionable conduct.

1. A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

2. If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

98 Acts, ch 1201, §16, 79, 82

486A.306 Partner's liability.

1. Except as otherwise provided in subsections 2 and 3, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

2. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

3. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under section 486A.1001, subsection 2.

98 Acts, ch 1201, §17, 79, 82

486A.307 Actions by and against partnership and partners.

1. A partnership may sue and be sued in the name of the partnership.

2. An action may be brought against the partnership and, to the extent not inconsistent with section 486A.306, any or all of the partners in the same action or in separate actions.

3. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership shall not be satisfied from a partner's assets unless there is also a judgment against the partner.

4. A judgment creditor of a partner shall not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 486A.306 and one or more of the following apply:

a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

b. The partnership is a debtor in bankruptcy.

c. The partner has agreed that the creditor need not exhaust partnership assets.

d. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

e. Liability is imposed on the partner by law or contract independent of the existence of the partnership.

5. This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 486A.308.

98 Acts, ch 1201, §18, 79, 82

486A.308 Liability of purported partner.

1. If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

2. If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind the persons to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

3. A person is not liable as a partner merely because the person is named by another in a state-

ment of partnership authority.

4. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

5. Except as otherwise provided in subsections 1 and 2, persons who are not partners as to each other are not liable as partners to other persons.

98 Acts, ch 1201, §19, 79, 82

ARTICLE 4

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

486A.401 Partner's rights and duties.

1. Each partner is deemed to have an account subject to the following:

a. The account is credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits.

b. The account is charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

2. Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

3. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property, if such payments were made or liabilities incurred without violation of the partner's duties to the partnership or the other partners.

4. A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

5. A payment or advance made by a partner which gives rise to a partnership obligation under subsection 3 or 4 constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

6. Each partner has equal rights in the management and conduct of the partnership business.

7. A partner may use or possess partnership property only on behalf of the partnership.

8. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

9. A person may become a partner only with the consent of all of the partners.

10. A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

11. This section does not affect the obligations of a partnership to other persons under section 486A.301.

98 Acts, ch 1201, §20, 79, 82

486A.402 Distributions in kind.

A partner has no right to receive, and shall not be required to accept, a distribution in kind.

98 Acts, ch 1201, §21, 79, 82

486A.403 Partner's rights and duties with respect to information.

1. A partnership shall keep its books and records, if any, at its chief executive office.

2. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which the former partners were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

3. Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability, all of the following:

a. Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter.

b. On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

98 Acts, ch 1201, §22, 79, 82

486A.404 General standards of partner's conduct.

1. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections 2 and 3.

2. A partner's duty of loyalty to the partnership and the other partners is limited to the following:

a. To account to the partnership and hold as trustee for the partnership any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity.

b. To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership.

c. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

3. A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

4. A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

5. A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

6. A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

7. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

98 Acts, ch 1201, §23, 79, 82

486A.405 Actions by partnership and partners.

1. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

2. A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to do any of the following:

a. Enforce the partner's rights under the partnership agreement.

b. Enforce the partner's rights under this chapter, including any or all of the following:

(1) The partner's rights under section 486A.401, 486A.403, or 486A.404.

(2) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 486A.701 or enforce any other right under article 6 or 7.

(3) The partner's right to compel a dissolution and winding up of the partnership business under section 486A.801 or enforce any other right under article 8.

c. Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

3. The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

98 Acts, ch 1201, §24, 79, 82

486A.406 Continuation of partnership beyond definite term or particular undertaking.

1. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

2. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

98 Acts, ch 1201, §25, 79, 82

ARTICLE 5

TRANSFEREES AND CREDITORS OF PARTNER

486A.501 Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

98 Acts, ch 1201, §26, 79, 82

486A.502 Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

98 Acts, ch 1201, §27, 79, 82

486A.503 Transfer of partner's transferable interest.

1. A transfer, in whole or in part, of a partner's transferable interest in the partnership is or does all of the following:

a. Is permissible.

b. Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business.

c. Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership

business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

2. A transferee of a partner's transferable interest in the partnership has a right to all of the following:

a. To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

b. To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor.

c. To seek under section 486A.801, subsection 6, a judicial determination that it is equitable to wind up the partnership business.

3. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

4. Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

5. A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

6. A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

98 Acts, ch 1201, §28, 79, 82

486A.504 Partner's transferable interest subject to charging order.

1. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

2. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

3. At any time before foreclosure, an interest charged may be redeemed by or with any of the following:

a. By the judgment debtor.

b. With property other than partnership property, by one or more of the other partners.

c. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

4. This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

5. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

98 Acts, ch 1201, §29, 79, 82

ARTICLE 6

PARTNER'S DISSOCIATION

486A.601 Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

1. The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner.

2. An event agreed to in the partnership agreement as causing the partner's dissociation.

3. The partner's expulsion pursuant to the partnership agreement.

4. The partner's expulsion by the unanimous vote of the other partners if any of the following apply:

a. It is unlawful to carry on the partnership business with that partner.

b. There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed.

c. Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business.

d. A partnership, limited partnership, or limited liability company that is a partner has been dissolved and its business is being wound up.

5. On application by the partnership or another partner, the partner's expulsion by judicial determination because of any of the following:

a. The partner engaged in wrongful conduct that adversely and materially affected the partnership business.

b. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 486A.404.

c. The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner.

6. The partner's actions constituting any of the following:

a. Becoming a debtor in bankruptcy.

b. Executing an assignment for the benefit of creditors.

c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property.

d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated.

7. In the case of a partner who is an individual any of the following:

a. The partner's death.

b. The appointment of a general guardian or general conservator for the partner.

c. A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement.

8. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee.

9. In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative.

10. Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

98 Acts, ch 1201, §30, 79, 82

486A.602 Partner's power to dissociate — wrongful dissociation.

1. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 486A.601, subsection 1.

2. A partner's dissociation is wrongful only if any of the following applies:

a. It is in breach of an express provision of the partnership agreement.

b. In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following occur:

(1) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under section 486A.601, subsections 6 through 10, or wrongful dissociation under this subsection.

(2) The partner is expelled by judicial determination under section 486A.601, subsection 5.

(3) The partner is dissociated by becoming a debtor in bankruptcy.

(4) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

3. A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

98 Acts, ch 1201, §31, 79, 82

486A.603 Effect of partner's dissociation.

1. If a partner's dissociation results in a dissolution and winding up of the partnership business, article 8 applies; otherwise, article 7 applies.

2. Upon a partner's dissociation all of the following apply:

a. The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 486A.803.

b. The partner's duty of loyalty under section 486A.404, subsection 2, paragraph *"c"*, terminates.

c. The partner's duty of loyalty under section 486A.404, subsection 2, paragraphs *"a"* and *"b"*, and duty of care under section 486A.404, subsection 3, continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 486A.803.

98 Acts, ch 1201, §32, 79, 82

ARTICLE 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

486A.701 Purchase of dissociated partner's interest.

1. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 486A.801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection 2.

2. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 486A.807, subsection 2, if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

3. Damages for wrongful dissociation under

section 486A.602, subsection 2, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

4. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 486A.702.

5. If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection 3.

6. If a deferred payment is authorized under subsection 8, the partnership may tender a written offer to pay the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets under subsection 3, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

7. The payment or tender required by subsection 5 or 6 must be accompanied by all of the following:

a. A written statement of partnership assets and liabilities as of the date of dissociation.

b. The latest available partnership balance sheet and income statement, if any.

c. A written explanation of how the estimated amount of the payment was calculated.

d. Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection 3, or other terms of the obligation to purchase.

8. A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

9. A dissociated partner may maintain an action against the partnership, pursuant to section 486A.405, subsection 2, paragraph *"b"*, subparagraph (2), to determine the buyout price of that partner's interest, any offsets under subsection 3, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection 3, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection 8, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection 7.

98 Acts, ch 1201, §33, 79, 82

486A.702 Dissociated partner's power to bind and liability to partnership.

1. For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under article 9, is bound by an act of the dissociated partner which would have bound the partnership under section 486A.301 before dissociation only if at the time of entering into the transaction all of the following apply:

a. The other party reasonably believed that the dissociated partner was then a partner.

b. The other party did not have notice of the partner's dissociation.

c. The other party is not deemed to have had knowledge under section 486A.303, subsection 5, or notice under section 486A.704, subsection 3.

2. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection 1.

98 Acts, ch 1201, §34, 79, 82

486A.703 Dissociated partner's liability to other persons.

1. A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection 2.

2. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under article 9, within two years after the partner's dissociation, only if the partner is liable for the obligation under section 486A.306 and at the time of entering into the transaction all of the following apply:

a. The other party reasonably believed that the dissociated partner was then a partner.

b. The other party did not have notice of the partner's dissociation.

c. The other party is not deemed to have had knowledge under section 486A.303, subsection 5, or notice under section 486A.704, subsection 3.

3. By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

4. A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

98 Acts, ch 1201, §35, 79, 82

486A.704 Statement of dissociation.

1. A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

2. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section 486A.303, subsections 4 and 5.

3. For the purposes of section 486A.702, subsection 1, paragraph *"c"*, and section 486A.703, subsection 2, paragraph *"c"*, a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

98 Acts, ch 1201, §36, 79, 82

486A.705 Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part of a partnership name, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

98 Acts, ch 1201, §37, 79, 82

ARTICLE 8

WINDING UP PARTNERSHIP BUSINESS

486A.801 Events causing dissolution and winding up of partnership business.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 486A.601, subsections 2 through 10, of that partner's express will to withdraw as a partner, or on a later date specified by the partner.

2. In a partnership for a definite term or particular undertaking if any of the following occur or are present:

a. The expiration of ninety days after a partner's dissociation by death or otherwise under section 486A.601, subsections 6 through 10, or wrongful dissociation under section 486A.602, subsection 2, unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to section 486A.602, subsection 2, paragraph *"b"*, subparagraph (1), agree to continue the partnership.

b. The express will of all of the partners to wind up the partnership business.

c. The expiration of the term or the completion of the undertaking.

3. An event agreed to in the partnership agreement resulting in the winding up of the partnership business.

4. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section.

5. On application by a partner, a judicial determination that concludes any of the following:

a. The economic purpose of the partnership is likely to be unreasonably frustrated.

b. Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner.

c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business at any of the following times:

a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer.

b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

98 Acts, ch 1201, §38, 79, 82

486A.802 Partnership continues after dissolution.

1. Subject to subsection 2, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

2. At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the

partnership's business wound up and the partnership terminated. In that event all of the following apply:

a. The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred.

b. The rights of a third party accruing under section 486A.804, subsection 1, or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

98 Acts, ch 1201, §39, 79, 82

486A.803 Right to wind up partnership business.

1. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the court, for good cause shown, may order judicial supervision of the winding up.

2. The legal representative of the last surviving partner may wind up a partnership's business.

3. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 486A.807, settle disputes by mediation or arbitration, and perform other necessary acts.

98 Acts, ch 1201, §40, 79, 82

486A.804 Partner's power to bind partnership after dissolution.

Subject to section 486A.805, a partnership is bound by a partner's act after dissolution that meets any of the following criteria:

1. Is appropriate for winding up the partnership business.

2. Would have bound the partnership under section 486A.301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

98 Acts, ch 1201, §41, 79, 82

486A.805 Statement of dissolution.

1. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

2. A statement of dissolution cancels a filed statement of partnership authority for the purposes of section 486A.303, subsection 4, and is a limitation on authority for the purposes of section 486A.303, subsection 5.

3. For the purposes of sections 486A.301 and 486A.804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

4. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in section 486A.303, subsections 4 and 5, in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

98 Acts, ch 1201, §42, 79, 82

486A.806 Partner's liability to other partners after dissolution.

1. Except as otherwise provided in subsection 2 and section 486A.306, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 486A.804.

2. A partner who, with knowledge of the dissolution, incurs a partnership liability under section 486A.804, subsection 2, by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

98 Acts, ch 1201, §43, 79, 82

486A.807 Settlement of accounts and contributions among partners.

1. In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection 2.

2. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 486A.306.

3. If a partner fails to contribute the full amount required under subsection 2, all of the other partners shall contribute, in the proportions in which those partners share partnership losses,

the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 486A.306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 486A.306.

4. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 486A.306.

5. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

6. An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

98 Acts, ch 1201, §44, 79, 82

ARTICLE 9

CONVERSIONS AND MERGERS

486A.901 Definitions.

In this article:

1. *"General partner"* means a partner in a partnership and a general partner in a limited partnership.

2. *"Limited partner"* means a limited partner in a limited partnership.

3. *"Limited partnership"* means a limited partnership created under chapter 487, predecessor law, or comparable law of another jurisdiction.

4. *"Partner"* includes both a general partner and a limited partner.

98 Acts, ch 1201, §45, 79, 82

486A.902 Conversion of partnership to limited partnership.

1. A partnership may be converted to a limited partnership pursuant to this section.

2. The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

3. After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include all of the following:

a. A statement that the partnership was converted to a limited partnership from a partnership.

b. Its former name.

c. A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

4. The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

5. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter 487.

98 Acts, ch 1201, §46, 79, 82

486A.903 Conversion of limited partnership to partnership.

1. A limited partnership may be converted to a partnership pursuant to this section.

2. Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

3. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

4. The conversion takes effect when the certificate of limited partnership is canceled.

5. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in section 486A.306, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

98 Acts, ch 1201, §47, 79, 82

486A.904 Effect of conversion — entity unchanged.

1. A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

2. When a conversion takes effect all of the following apply:

a. All property owned by the converting partnership or limited partnership remains vested in the converted entity.

b. All obligations of the converting partnership or limited partnership continue as obliga-

tions of the converted entity.

c. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

98 Acts, ch 1201, §48, 79, 82

486A.905 Merger of partnerships.

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more partnerships or limited partnerships.

2. The plan of merger must set forth all of the following:

a. The name of each partnership or limited partnership that is a party to the merger.

b. The name of the surviving entity into which the other partnerships or limited partnerships will merge.

c. Whether the surviving entity is a partnership or a limited partnership and the status of each partner.

d. The terms and conditions of the merger.

e. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part.

f. The street address of the surviving entity's chief executive office.

3. The plan of merger must be approved as follows:

a. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement.

b. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

4. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

5. The merger takes effect on the later of any of the following:

a. The approval of the plan of merger by all parties to the merger, as provided in subsection 3.

b. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger.

c. Any effective date specified in the plan of merger.

98 Acts, ch 1201, §49, 79, 82

486A.906 Effect of merger.

1. When a merger takes effect all of the following apply:

a. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases.

b. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity.

c. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity.

d. An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

3. A partner of the surviving partnership or limited partnership is liable for all of the following:

a. All obligations of a party to the merger for which the partner was personally liable before the merger.

b. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the surviving entity.

c. Except as otherwise provided in section 486A.306, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the surviving entity if the partner is a limited partner.

4. If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 486A.807 or in chapter 487 or under the law of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

5. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 486A.701 or another statute specifically applicable to that partner's in-

terest with respect to a merger. The surviving entity is bound under section 486A.702 by an act of a general partner dissociated under this subsection, and the partner is liable under section 486A.703 for transactions entered into by the surviving entity after the merger takes effect.

98 Acts, ch 1201, §50, 79, 82; 99 Acts, ch 114, §40

486A.907 Statement of merger.

1. After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

2. A statement of merger must contain all of the following:

a. The name of each partnership or limited partnership that is a party to the merger.

b. The name of the surviving entity into which the other partnerships or limited partnership were merged.

c. The street address of the surviving entity's chief executive office and of an office in this state, if any.

d. Whether the surviving entity is a partnership or a limited partnership.

3. Except as otherwise provided in subsection 4, for the purposes of section 486A.302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

4. For the purposes of section 486A.302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

5. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to section 486A.105, subsection 3, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection 2, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections 3 and 4.

98 Acts, ch 1201, §51, 79, 82

486A.908 Nonexclusive.

This article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

98 Acts, ch 1201, §52, 79, 82

ARTICLE 10

LIMITED LIABILITY PARTNERSHIP

486A.1001 Statement of qualification.

1. A partnership may become a limited liability partnership pursuant to this section.

2. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, by the vote necessary to amend those provisions.

3. After the approval required by subsection 2, a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain all of the following:

a. The name of the partnership.

b. The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any.

c. The address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership is required to maintain as provided in section 486A.1211.

d. A statement that the partnership elects to be a limited liability partnership.

e. A deferred effective date, if any.

4. The statement shall be executed by one or more partners authorized to execute the statement on behalf of the partnership.

5. The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until the statement is canceled pursuant to section 486A.105, subsection 4.

6. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection 3.

7. The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

8. An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

98 Acts, ch 1201, §53, 79, 82

486A.1002 Name.

The name of a limited liability partnership must

end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

98 Acts, ch 1201, §54, 79, 82

ARTICLE 11

FOREIGN LIMITED LIABILITY PARTNERSHIP

486A.1101 Law governing foreign limited liability partnership.

1. The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

2. A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

3. A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership.

98 Acts, ch 1201, §55, 79, 82

486A.1102 Statement of foreign qualification.

1. Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain all of the following:

a. The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

b. The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any.

c. If there is no office of the partnership in this state, the name and street address of the partnership's agent for service of process.

d. A deferred effective date, if any.

2. The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

3. The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to section 486A.105, subsection 4.

4. An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

98 Acts, ch 1201, §56, 79, 82; 2002 Acts, ch 1119, §178

Subsection 2 amended

486A.1103 Effect of failure to qualify.

1. A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

2. The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

3. A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

4. If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the secretary of state is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

98 Acts, ch 1201, §57, 79, 82

486A.1104 Activities not constituting transacting business.

1. Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this article include all of the following:

a. Maintaining, defending, or settling an action or proceeding.

b. Holding meetings of its partners or carrying on any other activity concerning its internal affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contracts.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property.

h. Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired.

i. Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions.

j. Transacting business in interstate commerce.

2. For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this state.

3. This section does not apply in determining the contracts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state.

98 Acts, ch 1201, §58, 79, 82

486A.1105 Action by attorney general.

The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this article.

98 Acts, ch 1201, §59, 79, 82

ARTICLE 12

FILING PROVISIONS

486A.1201 Filing requirements.

1. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document shall be filed in the office of the secretary of state.

3. The document shall contain the information required by this chapter. The document may contain other information as well.

4. The document shall be typewritten or printed. The typewritten or printed portion shall be black. Manually signed photocopies, or other reproduced copies, including facsimiles or other electronically or computer-generated copies of typewritten or printed documents may be filed.

5. The document shall be in the English language. A limited partnership name need not be in English if written in English letters or arabic or roman numerals.

6. Except as otherwise provided in this chapter, the document shall be executed by one of the following methods:

a. By two or more partners.

b. By a person authorized under this chapter, the partnership agreement, or other law to execute the document.

c. If the partnership is in the hands of a receiver, trustee, or other court-appointed fiduciary, by such receiver, trustee, or fiduciary.

d. If the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity.

7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The secretary of state may accept for filing a document containing a copy of a signature, however made.

8. If, pursuant to any provision of this chapter, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

9. The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by the correct filing fee.

10. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

98 Acts, ch 1201, §60, 79, 82

486A.1202 Fees.

1. The secretary of state shall collect fees for documents described in this subsection which are delivered to the secretary's office for filing as follows:

DOCUMENT	FEE
a. Statement of qualification	$ 50
b. Statement of foreign qualification	$100
c. Amendment to statement of qualification	$ 20
d. Amendment to statement of foreign qualification	$ 20
e. Cancellation of statement of qualification	$ 20
f. Cancellation of statement of foreign qualification	$ 20
g. Application for certificate of existence or qualification	$ 5
h. Any other statement or document required or permitted to be filed	$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect fees for copying and certifying the copy of any filed document relating to a domestic or foreign partnership as follows:

a. One dollar a page for copying.

b. Five dollars for the certificate.

98 Acts, ch 1201, §61, 79, 82

486A.1203 Effective time and date of documents.

1. Except as provided in subsection 2 and section 486A.1204, subsection 3, a document accepted for filing is effective at the later of the following:

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

98 Acts, ch 1201, §62, 79, 82

486A.1204 Correcting filed documents.

1. A partnership may correct a document filed by the secretary of state if the document satisfies one or both of the following:

a. The document contains an incorrect statement.

b. The document was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by complying with both of the following:

a. By preparing a statement of correction that satisfies all of the following:

(1) The statement describes the document, including its filing date, or a copy of the document is attached to the statement.

(2) The statement specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.

(3) The statement corrects the incorrect statement or defective execution.

b. By delivering the statement to the secretary of state for filing.

3. Statements of corrections are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, statements of correction are effective when filed.

98 Acts, ch 1201, §63, 79, 82

486A.1205 Filing duty of secretary of state.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 486A.1201, the secretary of state shall file it and issue any necessary certificate.

2. The secretary of state files a document by stamping or otherwise endorsing "filed", together with the secretary of state's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee. After filing a document, and except as provided in sections 486A.304 and 486A.1213, the secretary of state shall deliver the document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached, to the domestic or foreign partnership or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign partnership or its representative within ten days after the document was received by the secretary of state, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not do any of the following:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

98 Acts, ch 1201, §64, 79, 82

486A.1206 Appeal from secretary of state's refusal to file document.

1. If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign partnership may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the partnership's principal office is located or, if none is located in this state, for the county in which its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

98 Acts, ch 1201, §65, 79, 82

486A.1207 Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of the secretary of state, is conclusive evidence that the original document is on file with the secretary of state.

98 Acts, ch 1201, §66, 79, 82

486A.1208 Certificates issued by secretary of state.

1. The secretary of state shall issue to any person, upon request, a certificate that sets forth any facts recorded in the office of the secretary of state.

2. A certificate issued by the secretary of state may be relied upon, subject to any qualification stated in the certificate, as prima facie evidence of the facts set forth in the certificate.

98 Acts, ch 1201, §67, 79, 82

486A.1209 Penalty for signing false document.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine not to exceed one thousand dollars.

98 Acts, ch 1201, §68, 79, 82

486A.1210 Secretary of state powers.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

98 Acts, ch 1201, §69, 79, 82

486A.1211 Registered office and registered agent.

Each partnership that is qualified under section 486A.1001 shall continuously maintain in this state the following:

1. A registered office.

2. A registered agent, who is one of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation whose business office is identical with the registered office.

c. A foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

98 Acts, ch 1201, §70, 79, 82

486A.1212 Change of registered office or registered agent.

1. A partnership may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the partnership.

b. The street address of its current registered office.

c. If the registered office is to be changed, the street address of the new registered office.

d. The name of its current registered agent.

e. If the registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent to the appointment, either on the statement of change or in an accompanying document.

f. That, after the change or changes are made, the street addresses of its registered office and of the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any partnership for which the registered agent is the registered agent by giving written notice to the partnership of the change and executing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that notice of the change has been given to the partnership.

98 Acts, ch 1201, §71, 79, 82

486A.1213 Resignation of registered agent.

1. The registered agent of a partnership may resign the agency by delivering to the secretary of state for filing a statement of resignation, which shall be accompanied by two exact or conformed copies of such statement. The statement of resignation may include a statement that the registered office is also discontinued.

2. After filing the statement of resignation, the secretary of state shall deliver one copy to the registered office of the partnership and the other copy to the chief executive office of the partnership.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement of resignation was filed.

98 Acts, ch 1201, §72, 79, 82

486A.1214 Service on partnership.

1. A partnership's registered agent is the partnership's agent for service of any process, notice, or demand required or permitted by law to be served on the partnership.

2. If a partnership has no registered agent, or the registered agent cannot with reasonable diligence be served, the partnership may be served by registered or certified mail, return receipt requested, addressed to the partnership at its chief executive office. Service is perfected under this subsection at the earliest of the following:

a. The date the partnership receives the process, notice, or demand.

b. The date shown on the return receipt, if signed on behalf of the partnership.

c. Five days after mailing.

3. This section does not prescribe the only means, or necessarily the required means, of serving a partnership.

98 Acts, ch 1201, §73, 79, 82

ARTICLE 13

MISCELLANEOUS PROVISIONS

486A.1301 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

98 Acts, ch 1201, §74, 79, 82

486A.1302 Short title.
This chapter may be cited as the *"Uniform Partnership Act"*.
98 Acts, ch 1201, §75, 79, 82

CHAPTER 487

UNIFORM LIMITED PARTNERSHIP LAW

This chapter not enacted as a part of this title; transferred from chapter 545 in Code 1993

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ARTICLE 13

LIMITED LIABILITY LIMITED PARTNERSHIPS

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ARTICLE 1

GENERAL PROVISIONS

487.101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Certificate of limited partnership"* means the certificate referred to in section 487.201, and the certificate as amended or restated.

2. *"Contribution"* means cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in the partner's capacity as a partner.

3. *"Event of withdrawal of a general partner"* means an event that causes a person to cease to be a general partner as provided in section 487.402.

4. *"Foreign limited partnership"* means a partnership formed under the laws of a state other than this state and having as partners one or more general partners and one or more limited partners.

5. *"General partner"* means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

6. *"Limited partner"* means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

7. *"Limited partnership"* and *"domestic limited partnership"* mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

8. *"Partner"* means a limited or general partner.

9. *"Partnership agreement"* means a valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

10. *"Partnership interest"* means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

11. *"Person"* means as defined in section 4.1.

12. *"State"* means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

[C24, 27, 31, 35, 39, §**9806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.1; 82 Acts, ch 1103, §101]
C93, §487.101
97 Acts, ch 188, §1, 2

487.102 Name.

The name of each limited partnership as set forth in its certificate of limited partnership:

1. Shall contain the words "limited partnership" or the abbreviation "L.P.".

2. Shall not contain the name of a limited partner unless either or both of the following apply:

a. That name is also the name of a general partner or the corporate name of a corporate general partner.

b. The business of the limited partnership had been carried on under that name before admission of that limited partner.

3. Shall be distinguishable upon the records of the secretary of state from the name of a registered limited liability partnership, corporation, limited liability company, or limited partnership organized under the law of this state or licensed or registered as a foreign registered limited liability partnership, foreign corporation, foreign limited liability company, or foreign limited partnership in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, without the written consent of the registered limited liability partnership, corporation, limited liability company, or limited partnership, which consent shall be filed with the secretary of state, and provided the name is not identical.

4. Shall not contain either the word "corporation" or the word "incorporated" or an abbreviation of either.

5. This chapter does not control the use of fictitious names. However, a limited partnership which uses a fictitious name in this state shall deliver to the secretary of state for filing a copy of the resolution of the limited partnership certified by its general partners, adopting the fictitious name.

[C24, 27, 31, 35, 39, §**9811;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.6; 82 Acts, ch 1103, §102]
83 Acts, ch 144, §9, 12; 89 Acts, ch 288, §194
C93, §487.102
97 Acts, ch 188, §3 – 5

487.103 Reservation of name.

1. The exclusive right to the use of a name may be reserved by any of the following:

a. A person intending to organize a limited partnership under this chapter and to adopt that name.

b. A domestic limited partnership or a foreign limited partnership registered in this state which, in either case, intends to adopt that name.

c. A foreign limited partnership intending to register in this state and adopt that name.

d. A person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

2. The reservation shall be made by filing with the secretary of state an application to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, the secretary shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

[82 Acts, ch 1103, §103]
C83, §545.103
C93, §487.103
97 Acts, ch 188, §6

487.104 Specified office and agent — service of process.

1. A limited partnership shall continuously maintain in this state both of the following:

a. An office, which may, but need not be, a place of its business in this state. The records required to be maintained by section 487.105 shall be kept at the office.

b. An agent for service of process on the limited partnership. The agent shall be either an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

2. In addition to other statutory provisions relating to venue, an action may be brought against a limited partnership in the county where its office is maintained or, if a limited partnership fails to maintain an office in this state, then in any county within the state.

3. An agent for service of process may resign as agent by signing and delivering to the secretary of state an original statement of resignation for filing in accordance with section 487.108. The agent shall send a copy of the statement of resignation by certified mail to the limited partnership at its principal place of business. The agent shall certify to the secretary of state that the copy has been sent to the limited partnership, including the date the copy was sent. The appointment of the agent terminates on the date on which the statement is filed by the secretary of state.

4. If a limited partnership fails to appoint or maintain an agent for service of process or if its agent cannot with reasonable diligence be found at the address of the agent recorded with the secretary of state, then the secretary of state is an agent of the limited partnership upon whom any process, notice, or demand may be served. Service may be made by delivering to the secretary of state duplicate copies of the process, notice, or demand.

If the process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause one of the copies to be forwarded by certified mail, addressed to the limited partnership at its principal place of business. A limited partnership served in accordance with this subsection is not in default until thirty days have elapsed following the service on the secretary of state.

The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this subsection, and shall record the time of the service and the action taken.

This subsection does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited partnership in any other manner permitted by law.

[82 Acts, ch 1103, §104]
C83, §545.104
86 Acts, ch 1173, §16
C93, §487.104
97 Acts, ch 107, §1; 97 Acts, ch 188, §7

487.104A Change of registered office or registered agent.

1. A limited partnership may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the limited partnership.

b. If the current registered office is to be changed, the street address of the new registered office.

c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

d. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited partnership for which the person is the registered agent by notifying the limited partnership in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the limited partnership has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each limited partnership, or a single statement for all limited partnerships named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph *"c"*, and must recite that a copy of the statement has been mailed to each limited partnership named in the notice.

4. A document delivered to the secretary of state for the purpose of changing a limited partnership's registered agent or registered office may be executed by a general partner.

93 Acts, ch 126, §6; 97 Acts, ch 107, §2

487.105 Records to be kept.

A limited partnership shall keep at the office required under section 487.104, subsection 1, all of the following:

1. A current list of the full name and last known business address of each partner, separately identifying the general partners and the limited partners, each list being in alphabetical order.

2. A copy of the certificate of limited partnership and all certificates of amendment to the certificate of limited partnership, together with executed copies of any powers of attorney pursuant to which any certificate has been executed.

3. Copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years.

4. Copies of any currently effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years.

5. Unless contained in a written partnership agreement, a writing setting out all of the following:

a. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute.

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made.

c. Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution.

d. Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

[C24, 27, 31, 35, 39, §**9817;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.12; 82 Acts, ch 1103, §105]
C93, §487.105
97 Acts, ch 188, §8

487.106 Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on.

[C24, 27, 31, 35, 39, §**9809;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.4; 82 Acts, ch 1103, §106]
C93, §487.106

487.107 Business transactions of partner with partnership.
Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect to such transactions as a person who is not a partner.
[C24, 27, 31, 35, 39, §**9822;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.17; 82 Acts, ch 1103, §107]
C93, §487.107

487.108 Filing requirements.
1. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.
2. The document shall be filed in the office of the secretary of state.
3. The document shall contain the information required by this chapter. It may contain other information as well.
4. The document shall be typewritten or printed. The typewritten or printed portion shall be black. Manually signed photocopies, or other reproduced copies, including facsimiles or other electronically or computer-generated copies of typewritten or printed documents, may be filed.
5. The document shall be in the English language. A limited partnership name need not be in English if written in English letters or Arabic or Roman numerals.
6. Except as provided in section 487.205, the document shall be executed by one of the following methods:
a. If a domestic limited partnership, the documents shall be executed by all of its general partners.
b. If a foreign limited partnership, the document shall be subscribed and sworn to by a general partner.
c. If the general partner is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The secretary of state may accept for filing a document containing a copy of a signature, however made.
8. If, pursuant to any provision of this chapter, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.
9. The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by the correct filing fee.
10. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.
97 Acts, ch 188, §9

487.109 Fees.
1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

a. Certificate of limited partnership $100
b. Application for registration of foreign limited partnership and also issuance of a certificate of registration to transact business in this state $100
c. Amendment to certificate of limited partnership $100
d. Amendment to application for registration of foreign limited partnership $100
e. Cancellation of certificate of limited partnership . . . . . $ 20
f. Cancellation of registration of foreign limited partnership . . . . . $ 20
g. A consent required to be filed under this chapter . . . . . $ 20
h. Application to reserve a limited partnership name . . . . . $ 10
i. A notice of transfer of reservation of name . . . . . $ 10
j. Articles of correction . . . . . $ 5
k. Application for certificate of existence or registration . . . . . $ 5
l. Statement of qualification of limited liability limited partnership . . . . . $ 50
m. Amendment to statement of qualification of limited liability limited partnership . . $ 20
n. Cancellation of statement of qualification . . . . . $ 20
o. Application for registration of foreign limited liability limited partnership and also issuance of a certificate of registration to transact business in this state $100
p. Amendment to application for registration of foreign limited liability limited partnership $100
q. Cancellation of registration of foreign limited liability limited partnership . . . . . $ 20
r. Any other document required or permitted to be filed . . . . . $ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.
3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or for-

eign limited partnership:

a. One dollar per page for copying.

b. Five dollars for the certificate.

97 Acts, ch 188, §10; 2000 Acts, ch 1024, §3

487.110 Effective time and date of documents.

1. Except as provided in subsection 2 and section 487.112, subsection 3, a document accepted for filing is effective at the later of the following times:

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

97 Acts, ch 188, §11

487.111 Correcting filed documents.

1. A domestic or foreign limited partnership may correct a document filed by the secretary of state if the document satisfies one or both of the following requirements:

a. Contains an incorrect statement.

b. Was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by preparing articles of correction that satisfy all of the following requirements:

a. Describe the document, including its filing date, or attach a copy of it to the articles.

b. Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.

c. Correct the incorrect statement or defective execution.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

97 Acts, ch 188, §12

487.112 Filing duty of secretary of state.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 487.108, the secretary of state shall file it.

2. The secretary of state files a document by stamping or otherwise endorsing "filed", together with the secretary's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee. After filing a document, and except as provided in section 487.104A, subsection 3, and section 487.909, the secretary of state shall deliver the document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached, to the domestic or foreign limited partnership or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign limited partnership or its representative within ten days after the document was received by the secretary of state, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not do any of the following:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

97 Acts, ch 188, §13

487.113 Appeal from secretary of state's refusal to file document.

1. If the secretary of state refuses to file a document delivered to the secretary's office for filing, the domestic or foreign limited partnership may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the limited partnership's principal office or, if none in this state, its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

97 Acts, ch 188, §14

487.114 Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of the secretary of state, is conclusive evidence that the original document is on file with the secretary of state.

97 Acts, ch 188, §15

487.115 Certificate of existence.

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic limited partnership or a certificate of registration

for a foreign limited partnership.

2. A certificate of existence or a certificate of registration shall set forth all of the following:

a. The domestic limited partnership's name or the foreign limited partnership's name used in this state.

b. That one of the following applies:

(1) If it is a domestic limited partnership, that it is duly organized under the law of this state, the date of its organization, and the period of its duration.

(2) If it is a foreign limited partnership, that it is authorized to transact business in this state.

c. That all fees required by this chapter have been paid.

d. That a certificate of cancellation has not been filed.

e. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or certificate of registration issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign limited partnership is in existence or is registered to transact business in this state.

97 Acts, ch 188, §16

487.116 Penalty for signing false document.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

97 Acts, ch 188, §17

487.117 Secretary of state — powers.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

97 Acts, ch 188, §18

ARTICLE 2

FORMATION — CERTIFICATE

487.201 Certificate of limited partnership.

1. In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate shall set forth all of the following:

a. The name of the limited partnership.

b. The address of the office and the name and address of the agent for service of process required to be maintained by section 487.104, subsection 1.

c. The name and the business address of each general partner.

d. The latest date upon which the limited partnership is to dissolve.

e. Any other matters the general partners determine to include in the certificate.

2. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at a later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

[C24, 27, 31, 35, 39, §**9807, 9808;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.2, 545.3; 82 Acts, ch 1103, §201]

C93, §487.201

97 Acts, ch 188, §19

487.202 Amendment to certificate.

1. A certificate of limited partnership is amended by filing a certificate of amendment to the certificate of limited partnership in the office of the secretary of state. The certificate of amendment shall set forth both of the following:

a. The name of the limited partnership.

b. The amendment to the certificate.

2. Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event shall be filed:

a. The admission of a new general partner.

b. The withdrawal of a general partner.

c. The continuation of the business under section 487.801 after an event of withdrawal of a general partner.

3. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

4. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

5. A person is not liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection 2 if the amendment is filed within the thirty-day period specified in subsection 2.

6. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment. The restated certificate must contain the information required in section 487.201 and may set forth any other provision consistent with law.

[C24, 27, 31, 35, 39, §**9850, 9851;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.45, 545.46; 82 Acts, ch 1103, §202]

C93, §487.202

97 Acts, ch 171, §2; 97 Acts, ch 188, §20

487.203 Cancellation of certificate.

A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the secretary of state and shall set forth all of the following:

1. The name of the limited partnership.
2. The reason for filing the certificate of cancellation.
3. The effective date, which shall be a date certain, of cancellation if it is not to be effective upon the filing of the certificate.
4. Other information the general partners filing the certificate determine.

[C24, 27, 31, 35, 39, §**9849;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.44; 82 Acts, ch 1103, §203]

C93, §487.203

97 Acts, ch 171, §3

487.204 Execution of certificates.

1. Each certificate required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner:

a. A certificate of limited partnership shall be signed by all general partners.

b. A certificate of amendment shall be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner.

c. A certificate of cancellation shall be signed by all general partners.

2. A person may sign a certificate by an attorney-in-fact.

3. The execution of a certificate by a general partner is the making of a statement under oath or affirmation in a matter in which statements under oath or affirmation are required, within the meaning of section 720.2.

[C24, 27, 31, 35, 39, §**9851, 9852;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.46, 545.47; 82 Acts, ch 1103, §204]

C93, §487.204

97 Acts, ch 188, §21

487.205 Amendment or cancellation by judicial act.

If a person required by section 487.204 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Iowa district court for the county in which the office described in section 487.104 is located to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, the court shall order the secretary of state to accept for filing an appropriate certificate.

[C24, 27, 31, 35, 39, §**9853, 9854;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.48, 545.49; 82 Acts, ch 1103, §205]

C93, §487.205

97 Acts, ch 188, §22

487.206 Filing with secretary of state. Repealed by 97 Acts, ch 188, § 74. See § 487.108.

487.207 Liability for false statement in certificate.

If a certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from either of the following:

1. A person who executes the certificate, or causes another to execute it on the person's behalf, and knew, and a general partner who knew or should have known, the statement to be false at the time the certificate was executed.

2. A general partner who knows or should have known that an arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under section 487.205.

[C24, 27, 31, 35, 39, §**9813;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.8; 82 Acts, ch 1103, §207]

C93, §487.207

487.208 Scope of notice.

The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in such certificate as general partners are general partners, but it is not notice of any other fact.

[82 Acts, ch 1103, §208]

C83, §545.208

C93, §487.208

97 Acts, ch 188, §23

ARTICLE 3

LIMITED PARTNERS

487.301 Admission of limited partners.

1. A person becomes a limited partner at either of the following times:

a. At the time the limited partnership is formed.

b. At any later time specified in the records of the limited partnership for becoming a limited partner.

2. After the filing of a limited partnership's original certificate of limited partnership, a per-

son may be admitted as a new limited partner under the following conditions:

a. In the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners.

b. In the case of an assignee of a partnership interest of a partner who has the power, as provided in section 487.704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

[C24, 27, 31, 35, 39, §**9815;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.10; 82 Acts, ch 1103, §301]

C93, §487.301

97 Acts, ch 188, §24

487.302 Voting.

Subject to section 487.303, the partnership agreement may grant all or a specified group of the limited partners the right to vote on a per capita or other basis upon any matter.

[82 Acts, ch 1103, §302]

C83, §545.302

C93, §487.302

487.303 Liability to third parties.

1. Except as provided in subsection 4, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

2. A limited partner does not participate in the control of the business within the meaning of subsection 1 solely by doing one or more of the following:

a. Being a contractor for or an agent or employee of the limited partnership.

b. Being a contractor for or an agent, employee, manager, member, director, officer, or shareholder of or a limited partner of a general partner, or a partner in a limited liability partnership that is a general partner.

c. Consulting with and advising a general partner with respect to the business of the limited partnership.

d. Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership.

e. Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership.

f. Requesting or attending a meeting of partners.

g. Proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(1) The dissolution and winding up of the limited partnership.

(2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all the assets of the limited partnership.

(3) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business.

(4) A change in the nature of the business.

(5) The admission or removal of a general partner.

(6) The admission or removal of a limited partner.

(7) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners.

(8) An amendment to the partnership agreement or certificate of limited partnership.

(9) Matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners.

h. Winding up the limited partnership pursuant to section 487.803.

i. Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

3. The enumeration in subsection 2 does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

4. A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by section 487.102, subsection 2, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

[C24, 27, 31, 35, 39, §**9812, 9814;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.7, 545.9; 82 Acts, ch 1103, §303]

C93, §487.303

97 Acts, ch 188, §25

487.304 Erroneous belief of limited partner status — effect on liability as general partner.

1. Except as provided in subsection 2, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making

the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, the person does either of the following:

a. Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed.

b. Withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

2. A person who makes a contribution of the kind described in subsection 1 is liable as a general partner to a third party who transacts business with the enterprise before either of the following:

a. The person withdraws and an appropriate certificate is filed to show the withdrawal.

b. An appropriate certificate is filed to show that the person is not a general partner.

However, in either case referred to in paragraph *"a"* or *"b"*, the person is liable as a general partner only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

[C24, 27, 31, 35, 39, §**9819;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.14; 82 Acts, ch 1103, §304]

C93, §487.304

97 Acts, ch 188, §26

487.305 Information.

Each limited partner may:

1. Inspect and copy the partnership records required to be maintained by section 487.105 and any of the partnership books.

2. Obtain from the general partners upon reasonable demand the following:

a. True and full information regarding the state of the business and financial condition of the limited partnership.

b. Copies of the limited partnership's federal, state, and local tax returns.

c. Other information regarding the affairs of the limited partnership as is just and reasonable.

[C24, 27, 31, 35, 39, §**9817;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.12; 82 Acts, ch 1103, §305]

C93, §487.305

ARTICLE 4

GENERAL PARTNERS

487.401 Admission of additional general partners.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

[C24, 27, 31, 35, 39, §**9816;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.11; 82 Acts, ch 1103, §401]

C93, §487.401

97 Acts, ch 188, §27

487.402 Events of withdrawal.

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

1. The general partner withdraws from the limited partnership as provided in section 487.602.

2. The general partner ceases to be a member of the limited partnership as provided in section 487.702.

3. The general partner is removed as a general partner in accordance with the partnership agreement.

4. Unless otherwise provided in writing in the partnership agreement, the general partner does any of the following:

a. Makes an assignment for the benefit of creditors.

b. Files a voluntary petition in bankruptcy.

c. Is adjudicated a bankrupt or insolvent.

d. Files a petition or answer seeking for the general partner reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation.

e. Files an answer or other pleading admitting or failing to contest material allegations of a petition filed against the general partner in a proceeding of a nature specified in paragraph *"d"*.

f. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties.

5. Unless otherwise provided in writing in the partnership agreement, upon the expiration of the following time periods:

a. One hundred twenty days after the commencement of a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, under any statute, law, or regulation, if the proceeding has not been dismissed within that time.

b. Ninety days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties, if the appointment is not vacated or stayed within that time.

c. If an appointment of the nature specified in paragraph *"b"* is stayed and if the appointment is not then vacated, ninety days after the expiration of the stay.

6. If the general partner is a natural person

when either of the following occur:

a. The general partner dies.

b. The district court finds the general partner incapable of managing the general partner's person or property.

7. If the general partner is acting as a general partner by virtue of being a trustee of a trust, when the trust terminates. Substitution of a new trustee is not termination of the trust.

8. If the general partner is a separate partnership, the dissolution and commencement of winding up of the separate partnership.

9. If the general partner is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or revocation of the corporation's charter.

10. If the general partner is a limited liability company, the filing of a certificate of dissolution, or its equivalent, for the limited liability company or revocation of the limited liability company's charter.

11. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

[C24, 27, 31, 35, 39, §**9816;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.11; 82 Acts, ch 1103, §402]

C93, §487.402

97 Acts, ch 188, §28

487.403 General powers and liabilities.

1. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

2. Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

[C24, 27, 31, 35, 39, §**9816;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.11; 82 Acts, ch 1103, §403]

C93, §487.403

97 Acts, ch 188, §29

487.404 Contributions by general partner.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of the person's participation in the partnership as a limited partner.

[C24, 27, 31, 35, 39, §**9820, 9821;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.15, 545.16; 82 Acts, ch 1103, §404]

C93, §487.404

487.405 Voting.

The partnership agreement may grant to all or certain identified general partners the right to vote on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

[82 Acts, ch 1103, §405]

C83, §545.405

C93, §487.405

97 Acts, ch 188, §30

ARTICLE 5

FINANCE

487.501 Form of contribution.

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

[C24, 27, 31, 35, 39, §**9810;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.5; 82 Acts, ch 1103, §501]

C93, §487.501

487.502 Liability for contribution.

1. A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

2. Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services even if the partner is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to section 487.105, of the stated contribution which has not been made.

3. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. Notwithstanding the compromise, a creditor of a limited partnership who extends

credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation of such obligation to reflect the compromise may enforce the original obligation.

[C24, 27, 31, 35, 39, §**9830;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.25; 82 Acts, ch 1103, §502]

C93, §487.502

97 Acts, ch 188, §31

487.503 Sharing of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to section 487.105, of the contributions made by each partner to the extent the contributions have been received by the partnership and have not been returned.

[C24, 27, 31, 35, 39, §**9818;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.13; 82 Acts, ch 1103, §503]

C93, §487.503

97 Acts, ch 188, §32

487.504 Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to section 487.105, of the contributions made by each partner to the extent the contributions have been received by the partnership and have not been returned.

[C24, 27, 31, 35, 39, §**9824, 9848;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.19, 545.43; 82 Acts, ch 1103, §504]

C93, §487.504

97 Acts, ch 188, §33

ARTICLE 6

DISTRIBUTIONS AND WITHDRAWALS

487.601 Interim distributions.

Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up of the partnership to the extent and at the times or upon the happening of the events specified in the partnership agreement.

[82 Acts, ch 1103, §601]

C83, §545.601

C93, §487.601

97 Acts, ch 188, §34

487.602 Withdrawal of general partner.

A general partner may withdraw from a limited partnership by giving written notice to the other partners, but, if the withdrawal violates the partnership agreement, in addition to its other remedies the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to the partner.

[82 Acts, ch 1103, §602]

C83, §545.602

C93, §487.602

487.603 Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in the partnership agreement.

[C24, 27, 31, 35, 39, §**9827;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.22; 82 Acts, ch 1103, §603]

C93, §487.603

97 Acts, ch 188, §35

487.604 Distribution upon withdrawal.

Except as provided in this article, upon withdrawal a partner is entitled to receive any distribution to which the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the partner's interest in the limited partnership as of the date of withdrawal, based upon the partner's right to share in distributions from the limited partnership.

[82 Acts, ch 1103, §604]

C83, §545.604

C93, §487.604

487.605 Distribution in kind.

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner shall not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset which is equal to the percentage

in which the partner shares in distributions from the limited partnership.

[C24, 27, 31, 35, 39, §**9828;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.23; 82 Acts, ch 1103, §605]

C93, §487.605

97 Acts, ch 188, §36

487.606 Right to distribution.

When a partner becomes entitled to receive a distribution, the partner has the status of a creditor of the limited partnership and is entitled to all remedies available to a creditor with respect to the distribution.

[82 Acts, ch 1103, §606]

C83, §545.606

C93, §487.606

487.607 Limitations on distribution.

A partner shall not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

[C24, 27, 31, 35, 39, §**9825, 9826;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.20, 545.21; 82 Acts, ch 1103, §607]

C93, §487.607

97 Acts, ch 188, §37

487.608 Liability upon return of contribution.

1. If a partner has received the return of a part of the partner's contribution without violation of the partnership agreement or this chapter, for one year after the return, the partner is liable to the limited partnership for the amount of the returned contribution to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

2. If a partner has received the return of any part of the partner's contribution in violation of the partnership agreement or this chapter, for six years after the return, the partner is liable to the limited partnership for the amount of the contribution wrongfully returned.

3. A partner receives a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept pursuant to section 487.105, of the partner's contribution which has not been distributed to the partner.

[C24, 27, 31, 35, 39, §**9832;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.27; 82 Acts, ch 1103, §608]

C93, §487.608

97 Acts, ch 188, §38

ARTICLE 7

ASSIGNMENT OF PARTNERSHIP INTERESTS

487.701 Nature of partnership interest.

A partnership interest is personal property.

[C24, 27, 31, 35, 39, §**9834;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.29; 82 Acts, ch 1103, §701]

C93, §487.701

487.702 Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all the partner's partnership interest.

[C24, 27, 31, 35, 39, §**9834, 9836;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.29, 545.31; 82 Acts, ch 1103, §702]

C93, §487.702

97 Acts, ch 188, §39

487.703 Rights of creditor.

A judgment creditor of a partner may bring an action in the district court charging the partnership interest of the partner with payment of the unsatisfied amount of the judgment. To the extent the court so charges, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive a partner of the benefit of exemption laws applicable to the partner's interest.

[C24, 27, 31, 35, 39, §**9833, 9844;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.28, 545.39; 82 Acts, ch 1103, §703]

C93, §487.703

487.704 Right of assignee to become limited partner.

1. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that either of the following applies:

a. The assignor gives the assignee that right in accordance with authority described in the partnership agreement.

b. All other partners consent.

2. An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of the assignor to make and return contributions as provided in articles 5 and 6 of this chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner.

3. The fact that an assignee of a partnership interest has become a limited partner does not release the assignor from the assignor's liability to the limited partnership under sections 487.207 and 487.502.

[C24, 27, 31, 35, 39, §**9835, 9837, 9839, 9840;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.30, 545.32, 545.34, 545.35; 82 Acts, ch 1103, §704]

C93, §487.704

97 Acts, ch 188, §40

487.705 Power of estate of deceased or incompetent partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner incapable of managing the partner's person or property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling the estate or administering the property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

[C24, 27, 31, 35, 39, §**9842, 9843;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.37, 545.38; 82 Acts, ch 1103, §705]

C93, §487.705

ARTICLE 8

DISSOLUTION

487.801 Nonjudicial dissolution.

1. A limited partnership is dissolved and its affairs shall be wound up when any of the following occur:

a. When events specified in the certificate of limited partnership occur.

b. When events specified in the partnership agreement occur.

c. When all partners consent in writing to the dissolution.

d. When a general partner withdraws unless at the time there is at least one other general partner and the provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and the remaining partner does so.

e. When a decree of judicial dissolution is entered under section 487.802.

2. When a general partner withdraws, the limited partnership is not dissolved and is not required to dissolve under either of the following conditions:

a. If all partners previously have consented to the designation of a person as a general partner as provided in section 487.401.

b. If all partners, within ninety days after the withdrawal, agree in writing to continue the business of the limited partnership and to the appointment of one or more additional partners as necessary or desired.

[C24, 27, 31, 35, 39, §**9841;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.36; 82 Acts, ch 1103, §801]

C93, §487.801

97 Acts, ch 188, §41

487.802 Judicial dissolution.

On application by or for a partner, the district court for the county in which the office described in section 487.104 is located may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business of the limited partnership in conformity with the partnership agreement.

[C24, 27, 31, 35, 39, §**9817, 9829;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.12, 545.24; 82 Acts, ch 1103, §802]

C93, §487.802

487.803 Winding up.

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs. Also, upon application of a partner, a partner's legal representative, or a partner's assignee, the district court for the county in which the office described in section 487.104 is located may wind up the limited partnership's affairs.

[C24, 27, 31, 35, 39, §**9817, 9829;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.12, 545.24; 82 Acts, ch 1103, §803]

C93, §487.803

487.804 Order of distribution of assets.

Upon the winding up of a limited partnership, the assets shall be distributed in the following order:

1. To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section 487.601 or 487.604.

2. Except as provided in the partnership agreement, to partners and former partners in

satisfaction of liabilities for distributions under section 487.601 or 487.604.

3. Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

[C24, 27, 31, 35, 39, §**9847;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.42; 82 Acts, ch 1103, §804]

C93, §487.804

487.805 through 487.809 Reserved.

487.810 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 487.811 to administratively dissolve a limited partnership if any of the following apply:

1. The limited partnership is without a registered agent or registered office in this state for sixty days or more.

2. The limited partnership does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

97 Acts, ch 188, §42

487.811 Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under section 487.810 for dissolving a limited partnership, the secretary of state shall serve the limited partnership with written notice of the secretary of state's determination under section 487.104.

2. If the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state to exist does not exist within sixty days after service of the notice is perfected under section 487.104, the secretary of state shall administratively dissolve the limited partnership by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the limited partnership under section 487.104.

3. A limited partnership administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 487.803.

4. The administrative dissolution of a limited partnership does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a limited partnership pursuant to this section appoints the secretary of state the limited partnership's agent for service of process in any proceeding based on a cause of action which arose during the time the limited partnership was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the limited partnership. Upon receipt of process, the secretary of state shall serve a copy of the process on the limited partnership as provided in section 487.104. This subsection does not preclude service on the limited partnership's registered agent, if any.

97 Acts, ch 188, §43

487.812 Reinstatement following administrative dissolution.

1. A limited partnership administratively dissolved under section 487.811 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the limited partnership at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. State a name that satisfies the requirements of section 487.102.

2. If the secretary of state determines that the application contains the information required by subsection 1, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited partnership under section 487.104. If the limited partnership's name in subsection 1, paragraph *"c"*, is different than the limited partnership's name in subsection 1, paragraph *"a"*, the certificate of reinstatement shall constitute an amendment to the articles of limited partnership insofar as it pertains to the limited partnership's name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

97 Acts, ch 188, §44

487.813 Appeal from denial of reinstatement.

1. If the secretary of state denies a limited partnership's application for reinstatement following administrative dissolution, the secretary of state shall serve the limited partnership under section 487.104 with a written notice that explains the reason or reasons for denial.

2. The limited partnership may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The limited partnership appeals by

petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the limited partnership's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved limited partnership or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

97 Acts, ch 188, §45

ARTICLE 9

FOREIGN LIMITED PARTNERSHIPS

487.901 Law governing.

The laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners. A foreign limited partnership shall not be denied registration by reason of a difference between those laws and the laws of this state.

[82 Acts, ch 1103, §901]
C83, §545.901
C93, §487.901

487.902 Registration.

Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth all of the following:

1. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state.

2. The state and date of its formation.

3. The name and address of an agent for service of process on the foreign limited partnership. The agent shall be either an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in and authorized to do business in this state.

4. A statement that the secretary of state is the agent of the foreign limited partnership for service of process if the registered agent has resigned and an agent has not been appointed under subsection 3 or, if appointed, the agent's authority has been revoked, or if the agent cannot be found or served with the exercise of reasonable diligence.

5. The address of the office required to be maintained in the state of its organization by the laws of that state or, if such an office is not required, the address of the principal office of the foreign limited partnership.

6. The name and business address of each general partner.

7. The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

[82 Acts, ch 1103, §902]
C83, §545.902
C93, §487.902
97 Acts, ch 107, §3; 97 Acts, ch 188, §46, 47

487.903 Issuance of registration. Repealed by 97 Acts, ch 188, § 74. See § 487.112.

487.904 Name.

A foreign limited partnership may register with the secretary of state under any name that could be registered by a domestic limited partnership even if it is not the name under which it is registered in its state of organization.

[82 Acts, ch 1103, §904]
C83, §545.904
C93, §487.904

487.905 Amended registration.

1. A foreign limited partnership registered to transact business in this state shall obtain an amended certificate of registration from the secretary of state if either of the following conditions exist:

a. A statement in the application for registration was false when made.

b. An arrangement or other fact described in the application for registration has changed making the application inaccurate in any respect.

2. The requirements of section 487.902 for obtaining an original certificate of registration apply to obtaining an amended certificate under this section.

[82 Acts, ch 1103, §905]
C83, §545.905
C93, §487.905
97 Acts, ch 188, §48

487.906 Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in this state.

[82 Acts, ch 1103, §906]
C83, §545.906
C93, §487.906

487.907 Transaction of business without registration.

1. A foreign limited partnership transacting business in this state shall not maintain a pro-

ceeding in the courts of this state until the partnership has registered in this state.

2. The failure of a foreign limited partnership to register in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending a proceeding in the courts of this state.

3. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in the state without registration.

4. A foreign limited partnership, by transacting business in this state without registration, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

[82 Acts, ch 1103, §907]
C83, §545.907
C93, §487.907

487.908 Actions by the attorney general.

The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this chapter.

[82 Acts, ch 1103, §908]
C83, §545.908
C93, §487.908

487.909 Resignation of agent for service of process.

An agent for service of process of a foreign limited partnership may resign as agent by signing and delivering to the secretary of state an original statement of resignation for filing in accordance with section 487.108. The agent shall send a copy of the statement of resignation by certified mail to the foreign limited partnership at its principal place of business. The agent shall certify to the secretary of state that the copy has been sent to the limited partnership, including the date the copy was sent. The appointment of the agent terminates on the date on which the statement is filed by the secretary of state.

86 Acts, ch 1173, §17
C87, §545.909
C93, §487.909
97 Acts, ch 107, §4; 98 Acts, ch 1100, §65

487.910 Service of process on foreign limited partnership.

If a foreign limited partnership registered with the secretary of state fails to appoint or maintain an agent for service of process in this state or if its agent cannot with reasonable diligence be found, then service of process may be made upon the secretary of state in accordance with section 487.104, subsection 4.

86 Acts, ch 1173, §18
C87, §545.910
C93, §487.910

487.911 Change of registered office or registered agent.

1. A foreign limited partnership may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the foreign limited partnership.

b. If the current registered office is to be changed, the street address of the new registered office.

c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to the statement.

d. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign limited partnership for which the person is the registered agent by notifying the foreign limited partnership in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the foreign limited partnership has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each foreign limited partnership, or a single statement for all foreign limited partnerships named in the notice, except that the statement need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph *"c"*, and must recite that a copy of the statement has been mailed to each foreign limited partnership named in the notice.

4. A document delivered to the secretary of state for the purpose of changing a foreign limited partnership's registered agent or registered office may be executed by a general partner.

97 Acts, ch 107, §5

ARTICLE 10

DERIVATIVE ACTIONS

487.1001 Right of action.

A limited partner has standing to bring an ac-

tion to recover a judgment in the limited partnership's favor if general partners with authority to bring the action have refused to do so or if an effort to cause those general partners to bring the action is not likely to succeed.

[C24, 27, 31, 35, 39, §**9857;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.52; 82 Acts, ch 1103, §1001]

C93, §487.1001

487.1002 Proper plaintiff.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and either must have been a partner at the time of the transaction of which the partner complains or must have acquired the status of partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction of which the partner complains.

[82 Acts, ch 1103, §1002]

C83, §545.1002

C93, §487.1002

97 Acts, ch 188, §49

487.1003 Pleading.

In a derivative action, the petition shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

[82 Acts, ch 1103, §1003]

C83, §545.1003

C93, §487.1003

487.1004 Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited partnership the remainder of those proceeds received by the plaintiff.

[82 Acts, ch 1103, §1004]

C83, §545.1004

C93, §487.1004

ARTICLE 11

MISCELLANEOUS

487.1101 Construction and application.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to limited partnerships among states enacting it.

[C24, 27, 31, 35, 39, §**9859;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.54; 82 Acts, ch 1103, §1101]

C93, §487.1101

487.1102 Short title.

This chapter may be cited as the *"Iowa Uniform Limited Partnership Act"*.

[C24, 27, 31, 35, 39, §**9858;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.53; 82 Acts, ch 1103, §1102]

C93, §487.1102

487.1103 Cases not provided for in this chapter.

In a case not provided for in this chapter, chapter 486A governs.

[C24, 27, 31, 35, 39, §**9861;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.56; 82 Acts, ch 1103, §1103]

C93, §487.1103

2000 Acts, ch 1024, §4, 8

487.1104 Effect on existing limited partnerships.

Except as specifically provided in this section, this chapter applies to all limited partnerships in existence on July 1, 1997, and does not invalidate provisions in limited partnership agreements or certificates executed prior to July 1, 1997. Unless otherwise agreed to by the partners, the applicable provisions of existing law, in effect prior to July 1, 1997, governing events of withdrawal of a general partner, withdrawal of a limited partner, and assignment of a partnership interest, govern limited partnerships formed before July 1, 1997.

[C24, 27, 31, 35, 39, §**9862, 9863;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §545.57, 545.58; 82 Acts, ch 1103, §1104]

C93, §487.1104

97 Acts, ch 188, §50

487.1105 Fees. Repealed by 97 Acts, ch 188, § 74. See § 487.109.

487.1106 Savings clause.

The repeal of any statutory provision effective July 1, 1997, does not impair or otherwise affect the organization or the continued existence of a limited partnership existing on July 1, 1997, nor does the repeal of any existing statutory provision effective July 1, 1997, impair any contract or any right accrued before July 1, 1997.

97 Acts, ch 188, §51

ARTICLE 12

MERGERS

487.1201 Merger.

1. Any one or more limited partnerships may merge with or into any one or more limited partnerships, limited liability companies, or corporations, provided that no limited partner of a limited partnership that is a party to the merger will, as a result of the merger, become personally liable for

the liabilities or obligations of any other person or entity unless that limited partner approves the plan of merger or otherwise consents to becoming personally liable.

2. Unless otherwise provided in the partnership agreement, each domestic limited partnership which is to merge must approve the merger by approval of all general partners, and by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners. If more than one class or group of limited partners exists, the merger must be approved by the limited partners in each class or group who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners of such class or group.

3. In connection with a merger under this section, rights or securities of, or interests in, a limited partnership, limited liability company, or corporation which is a constituent party to the merger may be exchanged for or converted into cash, property, rights, or securities of, or interest in, a limited partnership, limited liability company, or corporation which is the surviving entity or, in addition to or in lieu of such cash, property, rights, securities, or interests, may be exchanged for or converted into cash, property, rights, or securities of, or interest in, a limited partnership, limited liability company, or corporation other than the surviving entity.

98 Acts, ch 1098, §1

487.1202 Plan of merger.

1. Each constituent party to the merger must enter into a written plan of merger, which must be approved in accordance with section 487.1203.

2. The plan of merger must set forth all of the following:

a. The name of each constituent party to the merger and the name of the surviving entity into which each other constituent party proposes to merge.

b. The terms and conditions of the proposed merger.

c. The manner and basis of converting the interests in each constituent party to the merger into interests, shares, or other securities or obligations of the surviving entity, or of any other entity, or, in whole or in part, into cash or other property.

d. Such amendments to the certificate of limited partnership of a limited partnership, articles of organization of a limited liability company, or articles or certificate of incorporation of a corporation, as the case may be, of the surviving entity as are desired to be effected by the merger, or that such changes are not desired.

e. Other provisions relating to the proposed merger as are deemed necessary or desirable.

98 Acts, ch 1098, §2

487.1203 Action on plan.

1. A proposed plan of merger complying with the requirements of section 487.1202 shall be approved in the manner provided by this section:

a. A limited partnership which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required in section 487.1201.

b. A limited liability company which is a party to a proposed merger shall have the plan of merger authorized and approved as required by chapter 490A.

c. A corporation which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by chapter 490.

2. After a merger is authorized, unless the plan of merger provides otherwise, and at any time before articles of merger as provided for in section 487.1204 are filed, the plan of merger may be abandoned subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in one of the following ways:

a. By the limited partners of any limited partnership that is a constituent party as provided in section 487.1201.

b. By the majority consent of the members of each limited liability company that is a constituent party, unless the articles of organization or an operating agreement of such limited liability company provides otherwise.

c. In the manner determined by the board of directors of any corporation that is a constituent entity.

98 Acts, ch 1098, §3

487.1204 Articles of merger — effective date of merger.

1. After a plan of merger is approved as provided in section 487.1203, the surviving entity shall deliver to the secretary of state for filing articles of merger duly executed by each constituent party setting forth all of the following:

a. The name of each constituent party.

b. The plan of merger.

c. The effective date of the merger if later than the date of filing of the articles of merger.

d. The name of the surviving entity.

e. A statement that the plan of merger was duly authorized and approved by each constituent party as provided in section 487.1203.

2. A merger takes effect upon the later of the effective date of the filing of the articles of merger or the date set forth in the plan of merger.

98 Acts, ch 1098, §4

487.1205 Effect of merger.

When a merger takes effect all of the following

apply:

1. Every other constituent party merges into the surviving entity and the separate existence of every constituent party except the surviving entity ceases.

2. The title to all real estate and other property owned by each constituent party is vested in the surviving entity without reversion or impairment.

3. The surviving entity has all liabilities of each constituent party.

4. A proceeding pending against any constituent party may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the constituent party whose existence ceased.

5. The articles or limited partnership agreement of the surviving entity are amended to the extent provided in the plan of merger.

6. The shares or interests of each constituent party that are to be converted into shares, obligations, or other securities of the surviving or any other entity or into cash or other property are converted, and the former holders of the shares or interests are entitled only to the rights provided in the articles of merger except for dissenters' rights provided by law.

7. Except as provided by agreement with a person to whom a general partner of a limited partnership is obligated, a merger of a limited partnership that has become effective shall not affect any obligation of liability existing at the time of such merger of a general partner of a limited partnership which is merging.

8. If a limited partnership is a constituent party to a merger that becomes effective, but the limited partnership is not the surviving entity of the merger, a judgment creditor of a general partner of such limited partnership may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the surviving entity of the merger unless any of the following applies:

a. A judgment based on the same claim has been obtained against the surviving entity of the merger and a writ of execution on the judgment is returned unsatisfied in whole or in part.

b. The surviving entity of the merger is a debtor in bankruptcy.

c. The general partner agrees that the creditor need not exhaust the assets of the limited partnership that was not the surviving entity of the merger.

d. The general partner agrees that the creditor need not exhaust the assets of the surviving entity of the merger.

e. A court grants permission to the judgment creditor to levy execution against the assets of the general partner based on a finding that the assets of the surviving entity of the merger that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving entity of the merger is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

f. Liability is imposed on the general partner by law or contract independent of the existence of the surviving entity of the merger.

98 Acts, ch 1098, §5

487.1206 Merger with foreign entity.

1. Any one or more limited partnerships of this state may merge with or into one or more foreign limited partnerships, foreign limited liability companies, or foreign corporations, or any one or more foreign limited partnerships, foreign limited liability companies, or foreign corporations may merge with or into any one or more limited partnerships of this state, if all of the following apply:

a. The merger is permitted by the law of the state or jurisdiction under whose law each foreign constituent party is organized or formed and each foreign constituent party complies with that law in effecting the merger.

b. The foreign constituent party complies with section 487.1204 if it is the surviving entity.

c. Each domestic constituent party complies with the applicable provisions of sections 487.1202 and 487.1203 and, if it is the surviving entity, with section 487.1204.

2. Upon a merger involving one or more domestic limited partnerships taking effect, if the surviving entity is to be governed by the law of any state other than this state or of any foreign country, the surviving entity shall agree to both of the following:

a. That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent party to the merger that was organized under the law of this state, as well as for enforcement of any obligation of the surviving entity arising from the merger.

b. To irrevocably appoint the secretary of state as its agent for service of process in any such proceeding, and the surviving entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

3. The effect of the merger shall be as provided in section 487.1205, if the surviving entity is to be governed by the law of this state. If the surviving entity is to be governed by the law of any jurisdiction other than this state, the effect of the merger shall be the same as provided in section 487.1205, except insofar as the law of the other jurisdiction provides otherwise.

98 Acts, ch 1098, §6

ARTICLE 13

LIMITED LIABILITY LIMITED PARTNERSHIPS

487.1301 Limited liability limited partnership.

1. A limited partnership may become a limited liability limited partnership pursuant to this section.

2. The terms and conditions on which a limited partnership becomes a limited liability limited partnership must be approved by the vote necessary to amend the limited partnership agreement except, in the case of a limited partnership agreement that expressly considers obligations to contribute to the limited partnership, by the vote necessary to amend those provisions.

3. After the approval required by subsection 2, a limited partnership may become a limited liability limited partnership by filing a statement of qualification. The statement must contain all of the following:

a. The name of the limited partnership.

b. The street address of the limited partnership's chief executive office and, if different, the street address of an office in this state, if any.

c. The address of a registered office and the name and address of a registered agent for service of process in this state, which the limited partnership is required to maintain as provided in section 487.104.

d. A statement that the limited partnership elects to be a limited liability limited partnership.

e. A deferred effective date, if any.

4. The filing of a statement of qualification establishes that a limited partnership has satisfied all conditions precedent to the qualification of the limited partnership as a limited liability limited partnership.

5. A limited liability limited partnership continues to be the same entity that existed before the filing of the statement of qualification under subsection 3.

6. Section 486A.306, subsection 3, and section 486A.307, subsection 4, apply to both general and limited partners of a limited liability limited partnership in the same manner as those provisions apply to a partnership and a partner under chapter 486A.

2000 Acts, ch 1024, §5

487.1302 Name.

The name of a limited liability limited partnership must end with "Registered Limited Liability Limited Partnership", "Limited Liability Limited Partnership", "R.L.L.L.P.", "L.L.L.P.", "RLLLP", or "LLLP".

2000 Acts, ch 1024, §6

487.1303 Foreign limited liability limited partnership.

Sections 487.901 through 487.911 shall apply to a foreign limited liability limited partnership in the same manner as those sections apply to a foreign limited partnership. For purposes of section 487.904, a foreign limited liability limited partnership may register with the secretary of state under a name that could be registered by a domestic limited liability limited partnership even if it is not the name under which the foreign limited liability limited partnership is registered in its state of organization.

2000 Acts, ch 1024, §7

CHAPTER 488

TELEGRAPH AND TELEPHONE LINES AND COMPANIES

Transferred to chapter 477

CHAPTER 489

ELECTRIC TRANSMISSION LINES

Transferred to chapter 478

SUBTITLE 2

BUSINESS AND PROFESSIONAL CORPORATIONS AND COMPANIES

CHAPTER 490

BUSINESS CORPORATIONS

Chapter effective December 31, 1989; 89 Acts, ch 288, §196
Transition; application to existing corporations; §490.1701 – 490.1705

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This chapter is entitled and may be cited as the *"Iowa Business Corporation Act"*.

89 Acts, ch 288, §1

490.102 Reservation of power to amend or repeal.

The general assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by an amendment or repeal.

89 Acts, ch 288, §2

490.103 through 490.119 Reserved.

PART B

490.120 Filing requirements.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be filed in the office of the secretary of state.

3. The document must contain the information required by this chapter. It may contain other information as well.

4. The document must be typewritten or printed. If the document is electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

5. The document must be in the English language. A corporate name need not be in English

if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. Except as provided in section 490.1622, subsection 2, the document must be executed by one of the following methods:

a. The chairperson of the board of directors of a domestic or foreign corporation, its president, or another of its officers.

b. If directors have not been selected or the corporation has not been formed, by an incorporator.

c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The document may, but need not, contain a corporate seal, attestation, acknowledgment, or verification.

The secretary of state may accept for filing a document containing a copy of a signature, however made.

8. If the secretary of state has prescribed a mandatory form for the document under section 490.121, the document must be in or on the prescribed form.

9. The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document, except as provided in sections 490.503 and 490.1509.

10. When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, or penalty, shall be paid in a manner permitted by the secretary of state.

11. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

89 Acts, ch 288, §3; 90 Acts, ch 1205, §16; 2002 Acts, ch 1154, §1, 2, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsections 4, 7, and 9 amended

NEW subsection 10 and former subsection 10 renumbered as 11

490.121 Forms.

1. The secretary of state may prescribe and furnish on request forms including but not limited to the following:

a. A foreign corporation's application for a certificate of authority to transact business in this state.

b. A foreign corporation's application for a certificate of withdrawal.

c. The biennial report.

If the secretary of state so requires, use of these listed forms prescribed by the secretary of state is mandatory.

2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

89 Acts, ch 288, §4; 96 Acts, ch 1170, §2; 97 Acts, ch 171, §5

490.122 Filing, service, and copying fees.

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

DOCUMENT	FEE
a. Articles of incorporation	$ 50
b. Application for use of indistinguishable name	$ 10
c. Application for reserved name	$ 10
d. Notice of transfer of reserved name	$ 10
e. Application for registered name per month or part thereof	$ 2
f. Application for renewal of registered name	$ 20
g. Corporation's statement of change of registered agent or registered office or both	No fee
h. Agent's statement of change of registered office for each affected corporation	No fee
i. Agent's statement of resignation	No fee
j. Amendment of articles of incorporation	$ 50
k. Restatement of articles of incorporation with amendment of articles	$ 50
l. Articles of merger or share exchange	$ 50
m. Articles of dissolution	$ 5
n. Articles of revocation of dissolution	$ 5
o. Certificate of administrative dissolution	No fee
p. Application for reinstatement following administrative dissolution	$ 5
q. Certificate of reinstatement	No fee
r. Certificate of judicial dissolution	No fee
s. Application for certificate of authority	$100
t. Application for amended certificate of authority	$100
u. Application for certificate of withdrawal	$ 10
v. Certificate of revocation of authority to transact business	No fee
w. Articles of correction	$ 5

x. Application for certificate of existence or authorization ..... $ 5

y. Any other document required or permitted to be filed by this chapter ..... $ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

a. $1.00 a page for copying.

b. $5.00 for the certificate.

89 Acts, ch 288, §5; 90 Acts, ch 1205, §17; 97 Acts, ch 171, §6

Filing fee for biennial report; §490.1622

Authority to refund fees; 2002 Acts, 2nd Ex, ch 1003, §24, 35

490.123 Effective time and date of documents.

1. Except as provided in subsection 2 and section 490.124, subsection 3, a document accepted for filing is effective at the later of the following times:

a. At the date and time of filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of filing.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

89 Acts, ch 288, §6; 2002 Acts, ch 1154, §3, 125

2002 amendments to subsection 1 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 1 amended

490.124 Correcting filed documents.

1. A domestic or foreign corporation may correct a document filed by the secretary of state if the document satisfies one of the following:

a. The document contains an inaccuracy.

b. The document was defectively executed, attested, sealed, verified, or acknowledged.

c. The electronic transmission was defective.

2. A document is corrected by complying with both of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attach a copy of it to the articles.

(2) Specify the inaccuracy or defect to be corrected.

(3) Correct the inaccuracy or defect.

b. By delivering the articles to the secretary of state for filing.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

89 Acts, ch 288, §7; 2002 Acts, ch 1154, §4, 125

2002 amendments to subsections 1 and 2 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsections 1 and 2 amended

490.125 Filing duty of secretary of state.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 490.120, the secretary of state shall file it.

2. The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, except the biennial report required by section 490.1622, and except as provided in sections 490.503 and 490.1509, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgement of the date and time of filing.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

89 Acts, ch 288, §8; 96 Acts, ch 1170, §3; 97 Acts, ch 171, §7; 2002 Acts, ch 1154, §5, 125

2002 amendments to subsection 2 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 2 amended

490.126 Appeal from secretary of state's refusal to file document.

1. If the secretary of state refuses to file a document delivered to the secretary's office for filing, the domestic or foreign corporation may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the corporation's principal office or, if none in this state, its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secre-

tary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

89 Acts, ch 288, §9

490.127 Evidentiary effect of copy of filed document.

A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

89 Acts, ch 288, §10; 90 Acts, ch 1205, §18; 2002 Acts, ch 1154, §6, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.128 Certificate of existence.

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

2. A certificate of existence or authorization must set forth all of the following:

a. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

b. That one of the following apply:

(1) If it is a domestic corporation, that it is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual.

(2) If it is a foreign corporation, that it is authorized to transact business in this state.

c. That all fees required by this chapter have been paid.

d. That its most recent biennial report required by section 490.1622 has been filed by the secretary of state.

e. If it is a domestic corporation, that articles of dissolution have not been filed.

f. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

89 Acts, ch 288, §11; 90 Acts, ch 1205, §19; 97 Acts, ch 171, §8

490.129 Penalty for signing false document.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

89 Acts, ch 288, §12

490.130 Recording of documents with county recorder. Repealed by 91 Acts, ch 211, § 13. See § 9.7.

490.131 through 490.134 Reserved.

PART C

490.135 Secretary of state — powers.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

89 Acts, ch 288, §14

490.136 through 490.139 Reserved.

PART D

490.140 Definitions.

In this chapter, unless the context requires otherwise:

1. *"Articles of incorporation"* include amended and restated articles of incorporation and articles of merger.

2. *"Authorized shares"* means the shares of all classes a domestic or foreign corporation is authorized to issue.

3. *"Conspicuous"* means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

4. *"Cooperative association"* means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

5. *"Corporation"* or *"domestic corporation"* means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.

6. *"Deliver"* or *"delivery"* means any method of delivery used in conventional commercial practice, including delivery in person, by mail, commercial delivery, and electronic transmission.

7. *"Distribution"* means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

8. *"Effective date of notice"* is defined in section 490.141.

9. *"Electronic transmission"* or *"electronically transmitted"* means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

10. *"Employee"* includes an officer but not a director. A director may accept duties that make the director also an employee.

11. *"Entity"* includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

12. *"Foreign corporation"* means a corporation for profit incorporated under a law other than the law of this state.

13. *"Governmental subdivision"* includes authority, city, county, district, township, and other political subdivision.

14. *"Includes"* denotes a partial definition.

15. *"Individual"* includes the estate of an incompetent, a ward, or a deceased individual.

16. *"Means"* denotes an exhaustive definition.

17. *"Notice"* is defined in section 490.141.

18. *"Person"* means a person as defined in section 4.1.

19. *"Principal office"* means the office, in or out of this state, so designated in the biennial report, where the principal executive offices of a domestic or foreign corporation are located.

20. *"Proceeding"* includes civil suit and criminal, administrative, and investigatory action.

21. *"Record date"* means the date established under division VI or VII on which a corporation determines the identity of its shareholders for purposes of this chapter.

22. *"Secretary"* means the corporate officer to whom the board of directors has delegated responsibility under section 490.840, subsection 3, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

23. *"Share"* means the unit into which the proprietary interests in a corporation are divided.

24. *"Shareholder"* means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

25. *"Sign"* or *"signature"* includes any manual, facsimile, conformed, or electronic signature.

26. *"State"*, when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions, of the United States.

27. *"Subscriber"* means a person who subscribes for shares in a corporation, whether before or after incorporation.

28. *"United States"* includes a district, authority, bureau, commission, department, and any other agency of the United States.

29. *"Voting group"* means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

30. *"Voting power"* means the current power to vote in the election of directors.

89 Acts, ch 288, §15; 91 Acts, ch 211, §3; 97 Acts, ch 171, §9; 2001 Acts, ch 142, §1; 2002 Acts, ch 1154, §7, 8, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 6 amended

NEW subsection 9 and former subsections 9 – 23 renumbered as 10 – 24

NEW subsection 25 and former subsections 24 – 27 renumbered as 26 – 29

NEW subsection 30

490.141 Notice.

1. Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

2. Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail, or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

3. Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective according to one of the following:

a. Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

b. When electronically transmitted to the shareholder in a manner authorized by the shareholder.

4. Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

5. Except as provided in subsection 3, written notice, if in a comprehensible form, is effective at the earliest of the following:

a. When received.

b. Five days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

c. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

6. Oral notice is effective when communicated if communicated in a comprehensible manner.

7. If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

89 Acts, ch 288, §16; 97 Acts, ch 171, §10; 2002 Acts, ch 1154, §9, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsections 1 – 3 and 5 amended

490.142 Number of shareholders.

1. For purposes of this chapter, any of the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

a. Three or fewer co-owners.

b. A corporation, partnership, trust, estate, or other entity.

c. The trustees, guardians of the property, custodians, or other fiduciaries of a single trust, estate, or account.

2. For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

89 Acts, ch 288, §17

DIVISION II

INCORPORATION

490.201 Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by executing and delivering articles of incorporation to the secretary of state for filing.

89 Acts, ch 288, §18

490.202 Articles of incorporation.

1. The articles of incorporation must set forth all of the following:

a. A corporate name for the corporation that satisfies the requirements of section 490.401.

b. The number of shares the corporation is authorized to issue.

c. The street address of the corporation's initial registered office and the name of its initial registered agent at that office.

d. The name and address of each incorporator.

2. The articles of incorporation may set forth any or all of the following:

a. The names and addresses of the individuals who are to serve as the initial directors.

b. Provisions not inconsistent with law regarding:

(1) The purpose or purposes for which the corporation is organized.

(2) Managing the business and regulating the affairs of the corporation.

(3) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders.

(4) A par value for authorized shares or classes of shares.

(5) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

c. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

d. A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(1) The amount of a financial benefit received by a director to which the director is not entitled.

(2) An intentional infliction of harm on the corporation or the shareholders.

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

e. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 490.850, subsection 5, to any person for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(1) Receipt of a financial benefit to which the person is not entitled.

(2) An intentional infliction of harm on the corporation or its shareholders.

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

f. A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(1) The amount of a financial benefit received by a director to which the director is not entitled.

(2) An intentional infliction of harm on the corporation or the shareholders.

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

3. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

89 Acts, ch 288, §19; 2002 Acts, ch 1154, §10, 125

2002 amendments to subsection 2 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 2 amended

490.203 Incorporation.

1. Unless a delayed effective date or time is specified, the corporate existence begins when the articles of incorporation are filed.

2. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

89 Acts, ch 288, §20

490.204 Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

89 Acts, ch 288, §21

490.205 Organization of corporation.

1. After incorporation:

a. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.

b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:

(1) Elect directors and complete the organization of the corporation.

(2) Elect a board of directors who shall complete the organization of the corporation.

2. Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

3. An organizational meeting may be held in or out of this state.

89 Acts, ch 288, §22

490.206 Bylaws.

1. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

2. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

89 Acts, ch 288, §23

490.207 Emergency bylaws.

1. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection 4. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

a. Procedures for calling a meeting of the board of directors.

b. Quorum requirements for the meeting.

c. Designation of additional or substitute directors.

2. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

3. Corporate action taken in good faith in accordance with the emergency bylaws has both of the following effects:

a. The action binds the corporation.

b. The action shall not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

89 Acts, ch 288, §24

DIVISION III

PURPOSES AND POWERS

490.301 Purposes.

1. A corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

2. A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

89 Acts, ch 288, §25

490.302 General powers.

Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to do all of the following:

1. Sue and be sued, complain, and defend in its corporate name.

2. Have a corporate seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

3. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws

of this state, for managing the business and regulating the affairs of the corporation.

4. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.

7. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

8. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

10. Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

11. Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit.

12. Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

13. Make donations for the public welfare or for charitable, scientific, or educational purposes.

14. Transact any lawful business that will aid governmental policy.

15. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

89 Acts, ch 288, §26

490.303 Emergency powers.

1. In anticipation of or during an emergency as defined in subsection 4, the board of directors of a corporation may do either or both of the following:

a. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

b. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

2. During an emergency defined in subsection 4, unless emergency bylaws provide otherwise:

a. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.

b. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

3. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation shall both:

a. Bind the corporation.

b. Not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

89 Acts, ch 288, §27

490.304 Ultra vires.

1. Except as provided in subsection 2, the validity of corporate action is not challengeable on the ground that the corporation lacks or lacked power to act.

2. A corporation's power to act may be challenged in any of the following proceedings:

a. By a shareholder against the corporation to enjoin the act.

b. By the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation.

c. By the attorney general under section 490.1430.

3. In a shareholder's proceeding under subsection 2, paragraph *"a"*, to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

89 Acts, ch 288, §28

DIVISION IV

NAMES

490.401 Corporate name.

1. A corporate name:

a. Must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of like import in another language.

b. Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 490.301 and its articles of incorporation.

2. Except as authorized by subsections 3 and

4, a corporate name must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved or registered under section 490.402, 490.403, or 504A.7.

c. The fictitious name adopted by a foreign corporation or a not-for-profit foreign corporation authorized to transact business in this state because its real name is unavailable.

d. The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation submits documentation to the satisfaction of the secretary of state establishing one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation or a foreign corporation uses a fictitious name in this state it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

89 Acts, ch 288, §29; 90 Acts, ch 1205, §20 – 22; 96 Acts, ch 1170, §4

490.402 Reserved name.

1. A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

2. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

89 Acts, ch 288, §30

490.403 Registered name.

1. A foreign corporation may register its corporate name, or its corporate name with any addition required by section 490.1506, if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under section 490.401, subsection 2, paragraph *"b"*.

2. A foreign corporation registers its corporate name, or its corporate name with any addition required by section 490.1506, by delivering to the secretary of state for filing an application:

a. Setting forth its corporate name, or its corporate name with any addition required by section 490.1506, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged.

b. Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

3. The name is registered for the applicant's exclusive use upon the effective date of the application.

4. A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application which complies with the requirements of subsection 2 between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

5. A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The first registration terminates when the domestic corporation is incorporated with that name or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

89 Acts, ch 288, §31

DIVISION V

REGISTERED OFFICE AND AGENT — SERVICE

490.501 Registered office and registered agent.

Each corporation must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

89 Acts, ch 288, §32

490.502 Change of registered office or registered agent.

1. A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the corporation.

b. If the current registered office is to be changed, the street address of the new registered office.

c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

d. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the person is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each corporation, or a single statement for all corporations named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph *"c"*, and must recite that a copy of the statement has been mailed to each corporation named in the notice.

4. A corporation may also change its registered office or registered agent in its biennial report as provided in section 490.1622.

89 Acts, ch 288, §33; 96 Acts, ch 1170, §5; 97 Acts, ch 171, §11

490.503 Resignation of registered agent.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

89 Acts, ch 288, §34; 96 Acts, ch 1170, §6

490.504 Service on corporation.

1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

a. The date the corporation receives the mail.

b. The date shown on the return receipt, if signed on behalf of the corporation.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. A corporation may be served pursuant to this section, as provided in other provisions of this chapter, or as provided in sections 617.3 through 617.6, unless the manner of service is otherwise specifically provided for by statute.

89 Acts, ch 288, §35; 96 Acts, ch 1170, §7

DIVISION VI

SHARES AND SHAREHOLDERS' RIGHTS

PART A

490.601 Authorized shares.

1. The articles of incorporation must prescribe

the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 490.602.

2. The articles of incorporation must authorize both of the following:

a. One or more classes of shares that together have unlimited voting rights.

b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

3. The articles of incorporation may authorize one or more classes of shares that have any of the following qualities:

a. Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.

b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:

(1) At the option of the corporation, the shareholders, or another person or upon the occurrence of a designated event.

(2) For cash, indebtedness, securities, or other property.

(3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

c. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

d. Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

4. The description of the designations, preferences, limitations, and relative rights of share classes in subsection 3 is not exhaustive.

89 Acts, ch 288, §36

490.602 Terms of class or series determined by board of directors.

1. If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in section 490.601, of either of the following:

a. Any class of shares before the issuance of any shares of that class.

b. One or more series within a class before the issuance of any shares of that series.

2. Each series of a class must be given a distinguishing designation.

3. All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

4. Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth all of the following:

a. The name of the corporation.

b. The text of the amendment determining the terms of the class or series of shares.

c. The date it was adopted.

d. A statement that the amendment was duly adopted by the board of directors.

89 Acts, ch 288, §37

490.603 Issued and outstanding shares.

1. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

2. The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection 3 and to section 490.640.

3. At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

89 Acts, ch 288, §38

490.604 Fractional shares.

1. A corporation may:

a. Issue fractions of a share or pay in money the value of fractions of a share.

b. Arrange for disposition of fractional shares by the shareholders.

c. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

2. Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 490.625, subsection 2.

3. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

4. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

a. That the scrip will become void if not exchanged for full shares before a specified date.

b. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scrip holders.

89 Acts, ch 288, §39

490.605 through 490.619 Reserved.

PART B

490.620 Subscription for shares before incorporation.

1. A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

5. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 490.621.

89 Acts, ch 288, §40

490.621 Issuance of shares.

1. The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

2. The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

3. Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

4. When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for that consideration are fully paid and nonassessable.

5. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

6. *a.* An issuance of shares or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders, at a meeting at which a quorum exists consisting of at least a majority of the votes entitled to be cast on the matter, if both of the following conditions are satisfied:

(1) The shares, other securities, or rights are issued for consideration other than cash or cash equivalents.

(2) The voting power of shares that are issued and issuable as a result of the transaction or series of integrated transactions will comprise more than twenty percent of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

b. For purposes of this subsection, the following shall apply:

(1) For purposes of determining the voting power of shares issued and issuable as a result of a transaction or series of integrated transactions, the voting power of shares shall be the greater of the following:

(a) The voting power of the shares to be issued.

(b) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.

(2) A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.

89 Acts, ch 288, §41; 2002 Acts, ch 1154, §11, 125

Subsection 6 is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW subsection 6

490.622 Liability of shareholders.

1. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 490.621, or specified in the subscription agreement authorized under section 490.620.

2. Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation.

89 Acts, ch 288, §42

490.623 Share dividends.

1. Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

2. Shares of one class or series shall not be issued as a share dividend in respect of shares of another class or series unless one or more of the following conditions are met:

a. The articles of incorporation so authorize.

b. A majority of the votes entitled to be cast by the class or series to be issued approve the issue.

c. There are no outstanding shares of the class or series to be issued.

3. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

89 Acts, ch 288, §43

490.624 Share options.

A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

89 Acts, ch 288, §44

490.624A Poison pill defense authorized.

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

89 Acts, ch 288, §45

490.625 Content of certificates.

1. Shares may be, but need not be, represented by certificates. Unless this chapter or another section expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

2. At a minimum each share certificate must state on its face all of the following:

a. The name of the issuing corporation and that it is organized under the law of this state.

b. The name of the person to whom issued.

c. The number and class of shares and the designation of the series, if any, the certificate represents.

3. If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class, the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

4. Each share certificate:

a. Must be signed either manually or in facsimile by two officers designated in the bylaws or by the board of directors.

b. May bear the corporate seal or its facsimile.

5. If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

89 Acts, ch 288, §46

490.626 Shares without certificates.

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

2. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 490.625, subsections 2 and 3, and, if applicable, section 490.627.

89 Acts, ch 288, §47

490.627 Restriction on transfer of shares and other securities.

1. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

2. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the infor-

mation statement required by section 490.626, subsection 2. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

3. A restriction on the transfer or registration of transfer of shares is authorized for any of the following purposes:

a. To maintain the corporation's status when it is dependent on the number or identity of its shareholders.

b. To preserve exemptions under federal or state securities law.

c. For any other reasonable purpose.

4. A restriction on the transfer or registration of transfer of shares may do any of the following:

a. Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares.

b. Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares.

c. Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable.

d. Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

5. For purposes of this section, *"shares"* includes a security convertible into or carrying a right to subscribe for or acquire shares.

89 Acts, ch 288, §48

490.628 Expense of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

89 Acts, ch 288, §49

490.629 Reversion of disbursements to cooperative associations.

1. As used in this section, *"disbursement"* means an amount of any distribution or any other increment or sum realized or accruing from stock or other equity interest in a cooperative association organized under this chapter.

2. Once a person's stock or other equity interest in a cooperative association organized under this chapter is deemed abandoned under section 556.5, any disbursement held by the cooperative association for or owing to the person shall be subject to the same requirements as provided in section 499.30A that apply to a cooperative association organized under chapter 499, including all of the following:

a. The retention of the disbursement in a reversion fund established by the cooperative association or the delivery of the disbursement to the treasurer of state.

b. The payment of the disbursement to a person filing a claim with the cooperative association who asserts an interest in the disbursement.

c. The forfeiture of the disbursement to the cooperative association, and the use of the forfeited disbursement by the cooperative association in order to teach and promote cooperation or provide for economic development, including creating economic opportunities for its shareholders.

2001 Acts, ch 142, §2

PART C

490.630 Shareholders' preemptive rights.

1. Unless section 490.1704 is applicable to the corporation, the shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

2. A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

a. The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

b. A shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

c. There is no preemptive right with respect to:

(1) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation.

(4) Shares sold otherwise than for money.

d. Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

e. Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

f. Shares subject to preemptive rights that are

not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

3. For purposes of this section, *"shares"* includes a security convertible into or carrying a right to subscribe for or acquire shares.

89 Acts, ch 288, §50

490.631 Corporation's acquisition of its own shares.

1. A corporation may acquire its own shares and, except as may be otherwise provided pursuant to section 490.632, shares so acquired constitute authorized but unissued shares.

2. If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

89 Acts, ch 288, §51; 90 Acts, ch 1205, §23; 2002 Acts, ch 1154, §12, 125

2002 amendments to subsection 2 and striking subsection 3 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 2 amended

Subsection 3 stricken

490.632 Reacquired shares as issued but not outstanding shares.

1. A corporation which, as of December 30, 1989, treated any of its shares which it had reacquired as issued but not outstanding shares may continue to treat those shares as issued but not outstanding shares.

2. If a corporation reacquires its own shares after December 30, 1989, but before January 1, 1991, those shares constitute issued but not outstanding shares as of and after their reacquisition if either of the following is applicable:

a. When the shares are reacquired, the articles of incorporation contain a provision specifying that reacquired shares constitute issued but not outstanding shares.

b. Prior to January 1, 1991, the board of directors adopts a resolution specifying that shares reacquired after December 30, 1989, and prior to January 1, 1991, constitute issued but not outstanding shares.

3. If a corporation reacquires its own shares after December 31, 1990, those shares constitute issued but not outstanding shares if, at the time they are reacquired by the corporation, either of the following is applicable:

a. The articles of incorporation contain a provision specifying that reacquired shares constitute issued but not outstanding shares.

b. The board of directors has adopted a resolution specifying that reacquired shares constitute issued but not outstanding shares.

4. Unless otherwise provided in its articles of incorporation, a corporation may at any time, by resolution adopted by its board of directors, cancel or otherwise restore to the status of authorized but unissued shares any of its shares which it has previously reacquired and treated as issued but not outstanding shares.

90 Acts, ch 1205, §24; 91 Acts, ch 97, §54

490.633 through 490.639 Reserved.

PART D

490.640 Distribution to shareholders.

1. A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection 3.

2. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a repurchase or reacquisition of shares, it is the date the board of directors authorizes the distribution.

3. No distribution may be made if, after giving it effect either of the following would result:

a. The corporation would not be able to pay its debts as they become due in the usual course of business.

b. The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

4. The board of directors may base a determination that a distribution is not prohibited under subsection 3 either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

5. The effect of a distribution under subsection 3 is measured:

a. In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(1) The date money or other property is transferred or debt incurred by the corporation.

(2) The date the shareholder ceases to be a shareholder with respect to the acquired shares.

b. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed.

c. In all other cases, as of:

(1) The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization.

(2) The date the payment is made if it occurs more than one hundred twenty days after the date

of authorization.

6. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

7. This section shall not apply to distributions in liquidation under division XIV.

89 Acts, ch 288, §52; 2002 Acts, ch 1154, §13, 125
Subsection 7 is effective January 1, 2003; 2002 Acts, ch 1154, §125
NEW subsection 7

DIVISION VII

MEETINGS — NOTICE — VOTING

PART A

490.701 Annual meeting.

1. A corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders.

2. Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

3. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

89 Acts, ch 288, §53

490.702 Special meeting.

1. Except as provided in subsection 5, a corporation shall hold a special meeting of shareholders upon the occurrence of either of the following:

a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the shareholders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

2. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

3. Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

4. Only business with the purpose or purposes described in the meeting notice required by section 490.705, subsection 3, may be conducted at a special shareholders' meeting.

5. Notwithstanding subsections 1 through 4, a corporation which has a class of voting stock that is listed on a national securities exchange, authorized for quotation on the national association of securities dealers automated quotations – national market system, or held of record by more than two thousand shareholders, is required to hold a special meeting only upon the occurrence of either of the following:

a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the holders of at least fifty percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

89 Acts, ch 288, §54; 97 Acts, ch 117, §1, 2; 2002 Acts, ch 1154, §14, 125
2002 amendments to subsection 1 are effective January 1, 2003; 2002 Acts, ch 1154, §125
Subsection 1 amended

490.703 Court-ordered meeting.

1. The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held either:

a. On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting.

b. On application of a shareholder who signed a demand for a special meeting valid under section 490.702 if either:

(1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary.

(2) The special meeting was not held in accordance with the notice.

2. The court may fix the time and place of the meeting, ascertain the shares entitled to participate in the meeting, specify a record date for ascertaining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting

or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

89 Acts, ch 288, §55

490.704 Action without meeting.

1. Unless otherwise provided in the articles of incorporation, any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting or vote, and, except as provided in subsection 5, without prior notice, if one or more written consents describing the action taken are signed by the holders of outstanding shares having not less than ninety percent of the votes entitled to be cast at a meeting at which all shares entitled to vote on the action were present and voted, and are delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A written consent shall bear the date of signature of each shareholder who signs the consent and no written consent is effective to take the corporate action referred to in the consent unless, within sixty days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders to take action are delivered to the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

3. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection 1.

4. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

5. If this chapter requires that notice of proposed action be given to shareholders not entitled to vote and the action is to be taken by consent of the voting shareholders, the corporation must give all shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to shareholders not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

6. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those shareholders who have not consented in writing. If the taking of that corporate action requires the giving of notice under section 490.1320, subsection 2, the notice of the action shall set forth the matters described in section 490.1322.

89 Acts, ch 288, §56; 2002 Acts, ch 1154, §15, 125

2002 amendments to subsection 2 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 2 amended

490.705 Notice of meeting.

1. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

2. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

4. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

5. Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 490.707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

89 Acts, ch 288, §57

490.706 Waiver of notice.

1. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A shareholder's attendance at a meeting:

a. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon the shareholder's arrival objects to holding the meeting or transacting business at the meeting.

b. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

89 Acts, ch 288, §58

490.707 Record date.

1. The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

2. A record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of shareholders.

3. A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

4. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

89 Acts, ch 288, §59

490.708 Conduct of the meeting.

1. At each meeting of shareholders, a chairperson shall preside. The chairperson shall be appointed as provided in the bylaws or, in the absence of such provisions, by the board.

2. The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

3. Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

4. The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes nor any revocations or changes to any ballots, proxies, or votes may be accepted.

2002 Acts, ch 1154, §16, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.709 through 490.719 Reserved.

PART B

490.720 Shareholders' list for meeting.

1. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

2. The shareholders' list must be available for inspection by any shareholder beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, or a shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements of section 490.1602, subsection 3, to copy the list, during regular business hours and at the person's expense, during the period it is available for inspection.

3. The corporation shall make the shareholders' list available at the meeting, and any shareholder, or a shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

4. If the corporation refuses to allow a shareholder, or a shareholder's agent or attorney, to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection 2, the district court of the county where a corporation's principal office or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

5. Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

89 Acts, ch 288, §60; 91 Acts, ch 211, §4

490.721 Voting entitlement of shares.

1. Except as provided in subsections 2 and 3 or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

2. Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

3. Subsection 2 does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

4. Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on

surrender of the shares.

89 Acts, ch 288, §61

490.722 Proxies.

1. A shareholder may vote the shareholder's shares in person or by proxy.

2. A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the electronic transmission.

3. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment.

4. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of:

a. A pledgee.

b. A person who purchased or agreed to purchase the shares.

c. A creditor of the corporation who extended it credit under terms requiring the appointment.

d. An employee of the corporation whose employment contract requires the appointment.

e. A party to a voting agreement created under section 490.731.

5. The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

6. An appointment made irrevocable under subsection 4 is revoked when the interest with which it is coupled is extinguished.

7. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

8. Subject to section 490.724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

89 Acts, ch 288, §62; 2002 Acts, ch 1154, §17, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsections 2 – 4 and 8 amended

490.723 Shares held by nominees.

1. A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

2. The procedure may set forth:

a. The types of nominees to which it applies.

b. The rights or privileges that the corporation recognizes in a beneficial owner.

c. The manner in which the procedure is selected by the nominee.

d. The information that must be provided when the procedure is selected.

e. The period for which selection of the procedure is effective.

f. Other aspects of the rights and duties created.

89 Acts, ch 288, §63

490.724 Corporation's acceptance of votes.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

2. If the name signed on a voted consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

a. The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.

b. The name signed purports to be that of an administrator, executor, guardian of the property, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

c. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent,

waiver, or proxy appointment.

e. Two or more persons are the shareholder as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

3. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

4. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or section 490.722, subsection 2, are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section or section 490.722, subsection 2, is valid unless a court of competent jurisdiction determines otherwise.

89 Acts, ch 288, §64; 2002 Acts, ch 1154, §18, 125

2002 amendments to subsections 4 and 5 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsections 4 and 5 amended

490.725 Quorum and voting requirements for voting groups.

1. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

2. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

3. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

4. An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection 2 or 3 is governed by section 490.727.

5. The election of directors is governed by section 490.728.

89 Acts, ch 288, §65

490.726 Action by single or multiple groups.

1. If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 490.725.

2. If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 490.725. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

89 Acts, ch 288, §66

490.727 Greater quorum or voting requirements.

1. The articles of incorporation or bylaws may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this chapter.

2. An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

89 Acts, ch 288, §67; 2002 Acts, ch 1154, §19, 125

2002 amendment to subsection 1 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 1 amended

490.728 Voting for directors — cumulative voting.

1. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

2. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

3. A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors", or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

89 Acts, ch 288, §68; 90 Acts, ch 1205, §25; 2002 Acts, ch 1154, §20, 125

2002 amendment to subsection 1 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 1 amended

490.729 Inspectors of election.

1. A corporation having any shares listed on a

national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

2. The inspectors shall do all of the following:

a. Ascertain the number of shares outstanding and the voting power of each.

b. Determine the shares represented at a meeting.

c. Determine the validity of proxies and ballots.

d. Count all votes.

e. Determine the result.

3. An inspector may be an officer or employee of the corporation.

2002 Acts, ch 1154, §21, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

PART C

490.730 Voting trusts.

1. One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

2. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection 3.

3. All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

89 Acts, ch 288, §69

490.731 Voting agreements.

1. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to section 490.730.

2. A voting agreement created under this section is specifically enforceable.

89 Acts, ch 288, §70

490.732 Shareholder agreements.

1. An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it does one of the following:

a. Eliminates the board of directors or restricts the discretion or powers of the board of directors.

b. Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 490.640.

c. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal.

d. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies.

e. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation, or among any of them.

f. Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders.

g. Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency.

h. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

2. An agreement authorized by this section must satisfy all of the following requirements:

a. Be set forth in one of the following places and manners:

(1) The articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement.

(2) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation.

b. Be subject to amendment only by all persons who are shareholders at the time of the amend-

ment, unless the agreement provides otherwise.

c. Be valid for ten years, unless the agreement provides otherwise.

3. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by section 490.626, subsection 2. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to recision of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of recision authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

4. An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

5. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

6. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

7. Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

2002 Acts, ch 1154, §22, 125; 2002 Acts, ch 1175, §88

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.733 through 490.739 Reserved.

PART D

490.740 Definitions.

In this part, unless the context otherwise requires:

1. *"Derivative proceeding"* means a civil suit in the right of a domestic corporation or, to the extent provided in section 490.747, in the right of a foreign corporation.

2. *"Shareholder"* includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

89 Acts, ch 288, §71; 2002 Acts, ch 1154, §23, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.741 Standing.

A shareholder shall not commence or maintain a derivative proceeding unless the shareholder satisfies both of the following:

1. Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time.

2. Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

2002 Acts, ch 1154, §24, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.742 Demand.

A shareholder shall not commence a derivative proceeding until both of the following have occurred:

1. A written demand has been made upon the corporation to take suitable action.

2. Ninety days have expired from the date the demand was made, unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

2002 Acts, ch 1154, §25, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.743 Stay of proceedings.

If the corporation commences an inquiry into the allegations made in the demand or complaint,

the court may stay any derivative proceeding for a period of time as the court deems appropriate.

2002 Acts, ch 1154, §26, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.744 Dismissal.

1. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection 2 or 6 has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation. A corporation moving to dismiss on this basis shall submit in support of the motion a short and concise statement of the reasons for its determination.

2. Unless a panel is appointed pursuant to subsection 6, the determination in subsection 1 shall be made by one of the following:

a. A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum.

b. A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum.

3. None of the following shall by itself cause a director to be considered not independent for purposes of this section:

a. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.

b. The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.

c. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

4. If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing one of the following:

a. That a majority of the board of directors did not consist of independent directors at the time the determination was made.

b. That the requirements of subsection 1 have not been met.

All discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

5. If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection 1 have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.

6. The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.

2002 Acts, ch 1154, §27, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.745 Discontinuance or settlement.

A derivative proceeding shall not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

2002 Acts, ch 1154, §28, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.746 Payment of expenses.

On termination of the derivative proceeding, the court may do either of the following:

1. Order the corporation to pay the plaintiff's reasonable expenses, including attorney fees incurred in the proceeding, if it finds that the proceeding has resulted in a substantial benefit to the corporation.

2. Order the plaintiff to pay any defendant's reasonable expenses, including attorney fees incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

2002 Acts, ch 1154, §29, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.747 Applicability to foreign corporations.

In any derivative proceeding in the right of a foreign corporation, the matters covered by this part shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 490.743, 490.745, and 490.746.

2002 Acts, ch 1154, §30, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

DIVISION VIII

DIRECTORS AND OFFICERS

PART A

490.801 Requirement for and duties of board of directors.

1. Except as provided in section 490.732, each corporation must have a board of directors.

2. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation, or in an agreement authorized under section 490.732.

89 Acts, ch 288, §72; 2002 Acts, ch 1154, §31, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.802 Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

89 Acts, ch 288, §73

490.803 Number and election of directors.

1. A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

2. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

3. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 490.806.

89 Acts, ch 288, §74; 91 Acts, ch 211, §5; 2002 Acts, ch 1154, §32, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 2 amended

Subsection 3 stricken and former subsection 4 renumbered as 3

490.804 Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

89 Acts, ch 288, §75

490.805 Terms of directors generally.

1. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

2. The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 490.806.

3. A decrease in the number of directors does not shorten an incumbent director's term.

4. The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

5. Despite the expiration of a director's term, the director continues to serve until a successor for that director is elected and qualifies or until there is a decrease in the number of directors.

89 Acts, ch 288, §76

490.806 Staggered terms for directors.

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

89 Acts, ch 288, §77

490.807 Resignation of directors.

1. A director may resign at any time by delivering written notice to the board of directors, its chairperson, or to the corporation.

2. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

89 Acts, ch 288, §78

490.808 Removal of directors by shareholders.

1. The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

2. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

3. If cumulative voting is authorized, a director shall not be removed if the number of votes sufficient to elect that director under cumulative voting is voted against the director's removal. If cu-

mulative voting is not authorized, a director may be removed only if the number of votes cast to remove that director exceeds the number of votes cast not to remove the director.

4. A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and after notice stating that the purpose, or one of the purposes, of the meeting is removal of the director. A director shall not be removed pursuant to written consents under section 490.704 unless written consents are obtained from the holders of all the outstanding shares of the corporation entitled to vote on the removal of the director.

89 Acts, ch 288, §79; 91 Acts, ch 211, §6

490.809 Removal of directors by judicial proceeding.

1. The district court of the county where a corporation's principal office or, if none in this state, its registered office is located may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that both of the following apply:

a. The director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation.

b. Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

2. A shareholder proceeding on behalf of the corporation under subsection 1 shall comply with all of the requirements of division VII, part D, except section 490.741.

3. The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

4. This section does not limit the equitable powers of the court to order other relief.

89 Acts, ch 288, §80; 2002 Acts, ch 1154, §33, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.810 Vacancy on board.

1. Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled in any of the following manners:

a. The shareholders may fill the vacancy.

b. The board of directors may fill the vacancy.

c. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

2. If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

3. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 490.807, subsection 2 or otherwise, may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs.

89 Acts, ch 288, §81

490.811 Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

89 Acts, ch 288, §82

490.812 through 490.819 Reserved.

PART B

490.820 Meetings.

1. The board of directors may hold regular or special meetings in or out of this state.

2. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

89 Acts, ch 288, §83

490.821 Action without meeting.

1. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

2. Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken is to be effective. A director's consent may be withdrawn by revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

3. A consent signed under this section has the effect of an action taken at a meeting of the board of directors and may be described as such in any document.

89 Acts, ch 288, §84; 2002 Acts, ch 1154, §34, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.822 Notice of meeting.

1. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

2. Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

89 Acts, ch 288, §85

490.823 Waiver of notice.

1. A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection 2, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

2. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

89 Acts, ch 288, §86

490.824 Quorum and voting.

1. Unless the articles of incorporation or bylaws require a different number, or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of either:

a. A majority of the fixed number of directors if the corporation has a fixed board size.

b. A majority of the number of directors prescribed, or, if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

2. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection 1.

3. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

4. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless one or more of the following occurs:

a. The director objects at the beginning of the meeting or promptly upon the director's arrival to holding it or transacting business at the meeting.

b. The director's dissent or abstention from the action taken is entered in the minutes of the meeting.

c. The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

The right of dissent or abstention is not available to a director who votes in favor of the action taken.

89 Acts, ch 288, §87; 2002 Acts, ch 1154, §35, 125

2002 amendment to subsection 1, unnumbered paragraph 1, is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 1, unnumbered paragraph 1 amended

490.825 Committees.

1. Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any committee.

2. Unless this chapter provides otherwise, the creation of a committee and appointment of members to it must be approved by the greater of either:

a. A majority of all the directors in office when the action is taken.

b. The number of directors required by the articles of incorporation or bylaws to take action under section 490.824.

3. Sections 490.820 through 490.824 apply both to committees of the board and to their members.

4. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under section 490.801.

5. A committee shall not, however:

a. Authorize or approve distributions, except according to formula or method, or within limits, prescribed by the board of directors.

b. Approve or propose to shareholders action that this chapter requires be approved by shareholders.

c. Fill vacancies on the board of directors or, subject to subsection 7, on any of its committees.

d. Adopt, amend, or repeal bylaws.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 490.830.

7. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may

appoint another director to act in place of the absent or disqualified member.

89 Acts, ch 288, §88; 2002 Acts, ch 1154, §36, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.826 through 490.829 Reserved.

PART C

490.830 Standards of conduct for directors.

1. Each member of the board of directors, when discharging the duties of a director, shall act in conformity with all of the following:

a. In good faith.

b. In a manner the director reasonably believes to be in the best interests of the corporation.

2. The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

3. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection 5, paragraph *"a"*, to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

4. In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the persons specified in subsection 5.

5. A director is entitled to rely, in accordance with subsection 3 or 4, on any of the following:

a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided.

b. Legal counsel, public accountants, or other persons as to matters involving skills or expertise the director reasonably believes are either of the following:

(1) Matters within the particular person's professional or expert competence.

(2) Matters as to which the particular person merits confidence.

c. A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

89 Acts, ch 288, §89; 2002 Acts, ch 1154, §37, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.831 Standards of liability for directors.

1. A director shall not be liable to the corporation or its shareholders for any decision as director to take or not to take action, or any failure to take any action, unless the party asserting liability in a proceeding establishes both of the following:

a. That any provision in the articles of incorporation authorized by section 490.202, subsection 2, paragraph *"d"*, or the protection afforded by section 490.832 if interposed as a bar to the proceeding by the director, does not preclude liability.

b. That the challenged conduct consisted or was the result of one of the following:

(1) Action not in good faith.

(2) A decision that satisfies one of the following:

(a) That the director did not reasonably believe to be in the best interests of the corporation.

(b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances.

(3) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct, which also meets both of the following criteria:

(a) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation.

(b) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation.

(4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for such oversight, attention, or inquiry.

(5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

2. *a.* A party seeking to hold the director liable for money damages shall also have the burden of establishing both of the following:

(1) That harm to the corporation or its shareholders has been suffered.

(2) The harm suffered was proximately caused

by the director's challenged conduct.

b. A party seeking to hold the director liable for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances.

c. A party seeking to hold the director liable for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

3. This section shall not do any of the following:

a. In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 490.861, subsection 2, paragraph *"c"*, alter the burden of proving the fact or lack of fairness otherwise applicable.

b. Alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under section 490.833 or a transactional interest under section 490.861.

c. Affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

89 Acts, ch 288, §90; 2002 Acts, ch 1154, §38, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.832 Director conflict of interest.

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction.

b. The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and the shareholders authorized, approved, or ratified the transaction.

c. The transaction was fair to the corporation.

2. For purposes of this section, a director of the corporation has an indirect interest in a transaction if either of the following is true:

a. Another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction.

b. Another entity of which the director is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

3. For purposes of subsection 1, paragraph *"a"*, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 1, paragraph *"a"*, if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

4. For purposes of subsection 1, paragraph *"b"*, a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection 2, paragraph *"a"*, shall not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 1, paragraph *"b"*. The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

89 Acts, ch 288, §91; 90 Acts, ch 1205, §26; 2002 Acts, ch 1154, §39, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.833 Liability for unlawful distribution.

1. A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to section 490.640, subsection 1, or section 490.1409, subsection 1, is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 490.640, subsection 1, or section 490.1409, subsection 1, if the party asserting liability establishes that when taking the action the director did not comply with section 490.830.

2. A director held liable for an unlawful distribution under subsection 1 is entitled to both of

the following:

a. Contribution from every other director who could be held liable under subsection 1 for the unlawful distribution.

b. Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of section 490.640, subsection 1, or section 490.1409, subsection 1.

3. *a.* A proceeding to enforce the liability of a director under subsection 1 is barred unless it is commenced within two years after one of the following dates:

(1) The date on which the effect of the distribution was measured under section 490.640, subsection 5 or 7.

(2) The date as of which the violation of section 490.640, subsection 1, occurred as the consequence of disregard of a restriction in the articles of incorporation.

(3) The date on which the distribution of assets to shareholders under section 490.1409, subsection 1, was made.

b. A proceeding to enforce contribution or recoupment under subsection 2 is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection 1.

89 Acts, ch 288, §92; 2002 Acts, ch 1154, §40, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.834 through 490.839 Reserved.

PART D

490.840 Officers.

1. A corporation has the offices described in its bylaws or designated by the board of directors in accordance with the bylaws.

2. The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

3. The bylaws or the board of directors shall assign to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under section 490.1601, subsections 1 and 5.

4. The same individual may simultaneously hold more than one office in a corporation.

89 Acts, ch 288, §93; 2002 Acts, ch 1154, §41, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.841 Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

89 Acts, ch 288, §94

490.842 Standards of conduct for officers.

1. An officer when performing in such capacity shall act in conformity with all of the following:

a. In good faith.

b. With the care that a person in a like position would reasonably exercise under similar circumstances.

c. In a manner the officer reasonably believes to be in the best interests of the corporation.

2. In discharging the officer's duties an officer, who does not have knowledge that makes reliance unwarranted, is entitled to rely on any of the following:

a. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated.

b. Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

c. Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters within the particular person's professional or expert competence, or as to which the particular person merits confidence.

3. An officer shall not be liable as an officer to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, if the duties of the officer are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of section 490.831 that have relevance.

89 Acts, ch 288, §95; 2002 Acts, ch 1154, §42, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.843 Resignation and removal of officers.

1. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or appointing officer provides that the suc-

cessor does not take office until the effective time.

2. An officer may be removed at any time with or without cause by any of the following:

a. The board of directors.

b. The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise.

c. Any other officer if authorized by the bylaws or the board of directors.

3. In this section, *"appointing officer"* means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

89 Acts, ch 288, §96; 91 Acts, ch 211, §7; 2002 Acts, ch 1154, §43, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.844 Contract rights of officers.

1. The appointment of an officer does not itself create contract rights.

2. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

89 Acts, ch 288, §97

490.845 through 490.849 Reserved.

PART E

490.850 Definitions.

As used in this part of this chapter, unless the context otherwise requires:

1. *"Corporation"* includes any domestic or foreign predecessor entity of a corporation in a merger.

2. *"Director"* or *"officer"* means an individual who is or was a director or officer, respectively, of a corporation who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, that director to the plan or to participants in or beneficiaries of the plan. *"Director"* or *"officer"* includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

3. *"Disinterested director"* means a director who at the time of a vote referred to in section 490.853, subsection 3, or a vote or selection referred to in section 490.855, subsection 2 or 3, is not either of the following:

a. A party to the proceeding.

b. An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

4. *"Expenses"* includes counsel fees.

5. *"Liability"* means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

6. *"Official capacity"* means:

a. When used with respect to a director, the office of director in a corporation.

b. When used with respect to an officer, as contemplated in section 490.856, the office in a corporation held by the officer.

"Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

7. *"Party"* means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

8. *"Proceeding"* means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

89 Acts, ch 288, §98; 2002 Acts, ch 1154, §44, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.851 Permissible indemnification.

1. Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if all of the following apply:

a. The individual acted in good faith.

b. The individual reasonably believed:

(1) In the case of conduct in the individual's official capacity, that the individual's conduct was in the best interests of the corporation.

(2) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation.

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful, or the individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by section 490.202, subsection 2, paragraph *"e"*.

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1,

paragraph *"b"*, subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

4. Unless ordered by a court under section 490.854, subsection 1, paragraph *"c"*, a corporation shall not indemnify a director under this section in either of the following circumstances:

a. In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1.

b. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

89 Acts, ch 288, §99; 2002 Acts, ch 1154, §45, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.852 Mandatory indemnification.

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

89 Acts, ch 288, §100; 2002 Acts, ch 1154, §46, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.853 Advance for expenses.

1. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the person is a director if the person delivers all of the following to the corporation:

a. A written affirmation of the director's good faith belief that the director has met the relevant standard of conduct described in section 490.851 or that the proceeding involved conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by section 490.202, subsection 2, paragraph *"d"*.

b. The director's written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section 490.852 and it is ultimately determined under section 490.854 or section 490.855 that the director has not met the relevant standard of conduct described in section 490.851.

2. The undertaking required by subsection 1, paragraph *"b"*, must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

3. Authorizations under this section shall be made according to one of the following:

a. By the board of directors:

(1) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote.

(2) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with section 490.824, subsection 3, in which authorization directors who do not qualify as disinterested directors may participate.

b. By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

89 Acts, ch 288, §101; 2002 Acts, ch 1154, §47, 125; 2002 Acts, ch 1175, §89

2002 amendments to this section by 2002 Acts, ch 1154, are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.854 Court-ordered indemnification.

1. A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application, and after giving any notice it considers necessary, the court shall do one of the following:

a. Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 490.852.

b. Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 490.858, subsection 1.

c. Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to do one of the following:

(1) To indemnify the director.

(2) To advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section 490.851, subsection 1, failed to comply with section 490.853 or was adjudged liable in a proceeding referred to in subsection 490.851, subsection 4, paragraph *"a"* or *"b"*, but if the director was adjudged so liable the director's indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

2. If the court determines that the director is entitled to indemnification under subsection 1,

paragraph *"a"*, or to indemnification or advance for expenses under subsection 1, paragraph *"b"*, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection 1, paragraph *"c"*, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

89 Acts, ch 288, §102; 2002 Acts, ch 1154, §48, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.855 Determination and authorization of indemnification.

1. A corporation shall not indemnify a director under section 490.851 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in section 490.851.

2. The determination shall be made by any of the following:

a. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote.

b. By special legal counsel:

(1) Selected in the manner prescribed in paragraph *"a"*.

(2) If there are fewer than two disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate.

c. By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director shall not be voted on the determination.

3. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subsection 2, paragraph *"b"*, to select special legal counsel.

89 Acts, ch 288, §103; 2002 Acts, ch 1154, §49, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.856 Indemnification of officers.

1. A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to the proceeding because the person is an officer, according to all of the following:

a. To the same extent as to a director.

b. If the person is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract, except for either of the following:

(1) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.

(2) Liability arising out of conduct that constitutes any of the following:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled.

(b) An intentional infliction of harm on the corporation or the shareholders.

(c) An intentional violation of criminal law.

2. The provisions of subsection 1, paragraph *"b"*, shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an act or omission solely as an officer.

3. An officer of a corporation who is not a director is entitled to mandatory indemnification under section 490.852, and may apply to a court under section 490.854 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

89 Acts, ch 288, §104; 2002 Acts, ch 1154, §50, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.857 Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to that individual against the same liability under this part.

89 Acts, ch 288, §105; 2002 Acts, ch 1154, §51, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.858 Variation by corporate action — application of part.

1. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 490.851 or advance funds to pay for or reimburse expenses in accordance with section 490.853. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 490.853, subsection 3, and in section 490.855, subsection 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 490.853 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. Any provision pursuant to subsection 1 shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 490.1106, subsection 1, paragraph *"c"*.

3. A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

4. This part does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.

5. This part does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

89 Acts, ch 288, §106; 2002 Acts, ch 1154, §52, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.859 Exclusivity of part.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this part.

2002 Acts, ch 1154, §53, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

DIVISION IX

SPECIAL CLASSES

490.901 Foreign-trade zone corporation.

A corporation may be organized under the laws of this state for the purpose of establishing, operating, and maintaining a foreign-trade zone as defined in 19 U.S.C. § 81(a). A corporation organized for the purposes set forth in this section has all powers necessary or convenient for applying for a grant of authority to establish, operate, and maintain a foreign-trade zone under 19 U.S.C. § 81(a), et seq., and regulations promulgated under that law, and for establishing, operating, and maintaining a foreign-trade zone pursuant to that grant of authority.

89 Acts, ch 288, §107

490.902 Foreign insurance companies becoming domestic.

The secretary of state, upon a corporation complying with this section and upon the filing of articles of incorporation and upon receipt of the fees as provided in this chapter, shall issue an acknowledgment of receipt of document as of the date of the filing of the articles of incorporation with the secretary of state. The acknowledgment of receipt of document shall state on its face that it is issued in accordance with this section. The secretary of state shall then notify the appropriate officer of the state or country of the corporation's last domicile that the corporation is now a domestic corporation domiciled in this state. This section applies to life insurance companies, and to insurance companies doing business under chapter 515.

89 Acts, ch 288, §108; 96 Acts, ch 1170, §8

DIVISION X

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

PART A

490.1001 Amendment of articles of incorporation — authority to amend.

1. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

2. A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

89 Acts, ch 288, §109; 2002 Acts, ch 1154, §54, 125

2002 amendments to subsection 1 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 1 amended

490.1002 Amendment before issuance of shares.

If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

89 Acts, ch 288, §110; 2002 Acts, ch 1154, §55, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1003 Amendment by board of directors and shareholders.

If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

1. The proposed amendment must be adopted by the board of directors.

2. Except as provided in sections 490.1005, 490.1007, and 490.1008, after adopting the proposed amendment, the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for the determination.

3. The board of directors may condition its submission of the amendment to the shareholders on any basis.

4. If the amendment is required to be approved by the shareholders, and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy of the amendment.

5. Unless the articles of incorporation, bylaws, or the board of directors acting pursuant to subsection 3 requires a greater vote or greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in section 490.1004, subsection 3, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

89 Acts, ch 288, §111; 2002 Acts, ch 1154, §56, 125; 2002 Acts, ch 1175, §90

2002 amendments to this section by 2002 Acts, ch 1154, are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1004 Voting on amendments by voting groups.

1. If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment to the articles of incorporation if the amendment would do any of the following:

a. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.

b. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class.

c. Change the rights, preferences, or limitations of all or part of the shares of the class.

d. Change the shares of all or part of the class into a different number of shares of the same class.

e. Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class.

f. Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class.

g. Limit or deny an existing preemptive right of all or part of the shares of the class.

h. Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

2. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection 1, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

3. If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

4. A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

89 Acts, ch 288, §112; 2002 Acts, ch 1154, §57, 125

2002 amendments to subsections 1 – 3 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsections 1 – 3 amended

490.1005 Amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval for any of the following purposes:

1. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

2. To delete the names and addresses of the initial directors.

3. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.

4. If the corporation has only one class of shares outstanding:

a. To change each issued and unissued authorized share of the class into a greater number of whole shares of that class.

b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.

5. To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name.

6. To reflect a reduction in authorized shares, as a result of the operation of section 490.631, subsection 2, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares.

7. To delete a class of shares from the articles of incorporation, as a result of the operation of section 490.631, subsection 2, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares.

8. To make any change expressly permitted by section 490.602, subsection 4, to be made without shareholder approval.

89 Acts, ch 288, §113; 2002 Acts, ch 1154, §58, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1006 Articles of amendment.

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the corporation shall deliver to the secretary of state, for filing, articles of amendment, which shall set forth the following:

1. The name of the corporation.

2. The text of each amendment adopted.

3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.

4. The date of each amendment's adoption.

5. If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required.

6. If an amendment required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.

89 Acts, ch 288, §114; 2002 Acts, ch 1154, §59, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1007 Restated articles of incorporation.

1. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder approval, to consolidate all amendments into a single document.

2. If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in section 490.1003.

3. A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate that states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, that also include the statements required under section 490.1006.

4. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles of incorporation.

5. The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the certificate information required by subsection 3.

89 Acts, ch 288, §115; 2002 Acts, ch 1154, §60, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1008 Amendment pursuant to reorganization.

1. A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of law of the United States.

2. The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

a. The name of the corporation.

b. The text of each amendment approved by the court.

c. The date of the court's order or decree approving the articles of amendment.

d. The title of the reorganization proceeding in which the order or decree was entered.

e. A statement that the court had jurisdiction of the proceeding under federal statute.

3. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

89 Acts, ch 288, §116; 2002 Acts, ch 1154, §61, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 1 amended

Subsection 3 stricken and former subsection 4 amended and renumbered as 3

490.1009 Effect of amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

89 Acts, ch 288, §117; 2002 Acts, ch 1154, §62, 125

2002 amendment to this section is effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1010 through 490.1019 Reserved.

PART B

490.1020 Amendment of bylaws by board of directors or shareholders.

1. A corporation's shareholders may amend or repeal the corporation's bylaws.

2. A corporation's board of directors may amend or repeal the corporation's bylaws unless either of the following apply:

a. The articles of incorporation or section 490.1021 reserve that power exclusively to the shareholders in whole or in part.

b. The shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors shall not amend, repeal, or reinstate that bylaw.

89 Acts, ch 288, §118; 2002 Acts, ch 1154, §63, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1021 Bylaw increasing quorum or voting requirement for directors.

1. A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed as follows:

a. If adopted by the shareholders, only by the shareholders, unless the bylaws otherwise provide.

b. If adopted by the board of directors, either by the shareholders or by the board of directors.

2. A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

3. Action by the board of directors under subsection 1 to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

89 Acts, ch 288, §119; 2002 Acts, ch 1154, §64, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1022 Bylaw increasing quorum or voting requirement for directors. Repealed by 2002 Acts, ch 1154, § 123, 125.

Repeal is effective January 1, 2003; 2002 Acts, ch 1154, §125

DIVISION XI

MERGER AND SHARE EXCHANGE

490.1101 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Interests"* means the proprietary interests in an other entity.

2. *"Merger"* means a business combination pursuant to section 490.1102.

3. *"Organizational documents"* means the basic document or documents that create, or determine the internal governance of, an other entity.

4. *"Other entity"* means any association or legal entity, other than a domestic or foreign corporation, organized to conduct business, including, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.

5. *"Party to a merger"* or *"party to a share exchange"* means any domestic or foreign corporation or other entity that will accomplish one of the following during a merger:

a. Merge under a plan of merger.

b. Acquire shares or interests of another corporation or an other entity in a share exchange.

c. Have all of its shares or interests or all of one or more classes or series of its shares or interests acquired in a share exchange.

6. *"Share exchange"* means a business combination pursuant to section 490.1103.

7. *"Survivor"* in a merger means the corporation or other entity into which one or more other corporations or other entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

89 Acts, ch 288, §121; 97 Acts, ch 117, §3; 97 Acts, ch 171, §12; 2002 Acts, ch 1154, §65, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1102 Merger.

1. One or more domestic corporations may merge with a domestic or foreign corporation or other entity pursuant to a plan of merger.

2. A foreign corporation, or domestic or foreign other entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if both of the following are satisfied:

a. The merger is permitted by the laws under which the corporation or other entity is organized or by which it is governed.

b. In effecting the merger, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

3. The plan of merger must include all of the following:

a. The name of each corporation or other entity that will merge and the name of the corporation or other entity that will be the survivor of the merger.

b. The terms and conditions of the merger.

c. The manner and basis of converting the shares of each merging corporation and interests of each merging other entity into shares, or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing.

d. The articles of incorporation of any corporation, or the organizational documents of any other entity, to be created by the merger, or if a new corporation or other entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organizational documents.

e. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any such party.

4. The terms described in subsection 3, paragraphs *"b"* and *"c"*, may be made dependent on facts ascertainable outside the plan of merger, provided that those facts are objectively ascertainable. The term *"facts"* includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

5. The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the secretary of state, provided that if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan shall not be amended to change any of the following:

a. Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan.

b. Change the articles of incorporation of any corporation, or the organizational documents of any other entity, that will survive or be created as a result of the merger, except for changes permitted by section 490.1005 or by comparable provisions of the laws under which the foreign corporation or other entity is organized or governed.

c. Change any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

89 Acts, ch 288, §122; 97 Acts, ch 117, §4; 2002 Acts, ch 1154, §66, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1103 Share exchange.

1. Either of the following may occur through a share exchange:

a. A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

b. All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

2. A foreign corporation, or a domestic or foreign other entity, may be a party to the share exchange only if both of the following conditions are met:

a. The share exchange is permitted by the

laws under which the corporation or other entity is organized or by which it is governed.

b. In effecting the share exchange, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

3. The plan of share exchange must include all of the following:

a. The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests.

b. The terms and conditions of the share exchange.

c. The manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing.

d. Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organizational documents of any such party.

4. The terms described in subsection 3, paragraphs *"b"* and *"c"*, may be made dependent on facts ascertainable outside the plan of share exchange, provided that those facts are objectively ascertainable. The term *"facts"* includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

5. The plan of share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the secretary of state, provided that if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan shall not be amended to change either of the following:

a. The amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received by the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interests under the plan.

b. Any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

6. This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in an other entity in a transaction other than a share exchange.

89 Acts, ch 288, §123; 2002 Acts, ch 1154, §67, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1104 Action on a plan of merger or share exchange.

In the case of a domestic corporation that is a party to a merger or share exchange:

1. The plan of merger or share exchange must be adopted by the board of directors.

2. Except as provided in subsection 7 and in section 490.1105, after adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

3. The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

4. If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of the new corporation or other entity.

5. Unless the articles of incorporation, bylaws, or the board of directors require a greater vote or a greater number of votes to be present, the approval of the plan of merger or share exchange shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

6. Separate voting by voting groups is required for each of the following:

a. On a plan of merger, by each class or series of shares that are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to ac-

quire shares or other securities, cash, other property, or any combination of the foregoing, or would have a right to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under section 490.1004.

b. On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

c. On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

7. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if all of the following conditions are satisfied:

a. The corporation will survive the merger or is the acquiring corporation in a share exchange.

b. Except for amendments permitted by section 490.1005, its articles of incorporation will not be changed.

c. Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change.

d. The issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under section 490.621, subsection 6.

8. If, as a result of a merger or share exchange, one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or other entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.

89 Acts, ch 288, §124; 2002 Acts, ch 1154, §68, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1105 Merger between parent and subsidiary or between subsidiaries.

1. A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

2. If under subsection 1 approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within ten days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

3. Except as provided in subsections 1 and 2, a merger between a parent and subsidiary shall be governed by the provisions of this division, applicable to mergers generally.

89 Acts, ch 288, §125; 2002 Acts, ch 1154, §69, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1106 Articles of merger or share exchange.

1. After a plan of merger or share exchange has been adopted and approved as required by this chapter, articles of merger or share exchange shall be executed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth the following:

a. The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective.

b. If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation.

c. If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this chapter and the articles of incorporation.

d. If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect.

e. As to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the corporation or other entity is organized or by which it is governed, and by its articles of incorporation or organizational documents.

2. Articles of merger or share exchange shall be delivered to the secretary of state for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect on

the effective date of the merger or share exchange.

89 Acts, ch 288, §126; 2002 Acts, ch 1154, §70, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1107 Effect of merger or share exchange.

1. When a merger becomes effective, certain acts shall occur as follows:

a. The corporation or other entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be.

b. The separate existence of every corporation or other entity that is merged into the survivor ceases.

c. All property owned by, and every contract right possessed by, each corporation or other entity that merges into the survivor is vested in the survivor without reversion or impairment.

d. All liabilities of each corporation or other entity that is merged into the survivor are vested in the survivor.

e. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger.

f. The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger.

g. The articles of incorporation or organizational documents of a survivor that is created by the merger become effective.

h. The shares of each corporation that is a party to the merger, and the interests in another entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under division XIII.

2. When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or securities, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under division XIII.

3. Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

4. Upon a merger becoming effective, a foreign corporation, or a foreign other entity, that is the survivor of the mergers, is deemed to do both of the following:

a. Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights.

b. Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under division XIII.

89 Acts, ch 288, §127; 2002 Acts, ch 1154, §71, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1108 Abandonment of a merger or share exchange.

1. Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign other entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this division, and at any time before the merger or share exchange has become effective, it may be abandoned by any party to the merger or share exchange without action by the party's shareholders or owners of interests, in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of a corporation, or the managers of any other entity, subject to any contractual rights of other parties to the merger or share exchange.

2. If a merger or share exchange is abandoned under subsection 1 after articles of merger or share exchange have been filed with the secretary of state but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

89 Acts, ch 288, §128; 2002 Acts, ch 1154, §72, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1108A Consideration of acquisition proposals — community interests.

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider

any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.

b. The effects of the action on the communities in which the corporation operates.

c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in subsection 1, the board of directors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

2002 Acts, ch 1154, §73, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.1109 Qualified merger — corporation and cooperative association.

A corporation and a cooperative association organized under chapter 499 may merge as provided in section 499.69A.

97 Acts, ch 17, §1

490.1110 Business combinations with interested shareholders.

1. Notwithstanding any other provision of this chapter, a corporation shall not engage in any business combination with an interested shareholder for a period of three years following the time that the shareholder became an interested shareholder, unless any of the following apply:

a. Prior to the time the shareholder became an interested shareholder, the board of directors of the corporation approved either the business combination or the transaction which resulted in the shareholder becoming an interested shareholder.

b. Upon consummation of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least eighty-five percent of the voting stock of the corporation outstanding at the time the transaction commenced, excluding, for purposes of determining the number of shares outstanding, those shares owned by persons who are directors and officers, and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer.

c. At or subsequent to the time the shareholder became an interested shareholder, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders by the affirmative vote of at least sixty-six and two-thirds percent of the outstanding voting stock which is not owned by the interested shareholder. Such approval shall not be by written consent.

2. This section does not apply in any of the following circumstances:

a. The corporation does not have a class of voting stock that is listed on a national securities exchange, authorized for quotation on the national association of securities dealers automated quotations – national market system, or held of record by more than two thousand shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder.

b. The corporation's original articles of incorporation contain a provision expressly electing not to be governed by this section.

c. The corporation, by action of its board of directors, adopts an amendment to its bylaws by no later than September 29, 1997, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors.

d. The corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by this section, provided that, in addition to any other vote required by law, such amendment to the articles of incorporation or bylaws must be approved by the affirmative vote of a majority of the shares entitled to vote. An amendment adopted pursuant to this paragraph is effective immediately in the case of a corporation that has never had a class of voting stock that falls within any of the three categories set out in paragraph *"a"* and has not elected by a provision in its original articles of incorporation or any amendment to such articles to be governed by this section. In all other cases, an amendment adopted pursuant to this paragraph is not effective until twelve months after the adoption of the amendment and does not apply to any business combination between the corporation and any person who became an interested shareholder of the corporation on or prior to such adoption.

An amendment to the bylaws adopted pursuant to this paragraph shall not be further amended by the board of directors.

e. A shareholder becomes an interested shareholder inadvertently and both of the following apply:

(1) As soon as practicable the shareholder divests itself of ownership of sufficient shares so that the shareholder ceases to be an interested shareholder.

(2) The shareholder would not, at any time within the three-year period immediately prior to a business combination between the corporation and such shareholder, have been an interested shareholder but for the inadvertent acquisition of ownership.

f. (1) The business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required in this paragraph of a proposed transaction which satisfies all of the following:

(a) Constitutes a transaction described in subparagraph (2).

(b) Is with or by a person who either was not an interested shareholder during the previous three years or who became an interested shareholder with the approval of the corporation's board of directors or who became an interested shareholder during the time period described in paragraph *"g"*.

(c) Is approved or not opposed by a majority of the members of the board of directors then in office who were directors prior to any person becoming an interested shareholder during the previous three years, or who were recommended for election or elected to succeed such directors by a majority of such directors.

(2) A proposed transaction under subparagraph (1) is limited to the following:

(a) A merger of the corporation, other than a merger pursuant to section 490.1105.

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions and whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to a direct or indirect wholly owned subsidiary of the corporation or to the corporation itself, which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(c) A proposed tender or exchange offer for fifty percent or more of the outstanding voting stock of the corporation.

(3) The corporation shall give no less than twenty days' notice to all interested shareholders prior to the consummation of any of the transactions described in subparagraph (2), subparagraph subdivision (a) or (b).

g. The business combination is with an interested shareholder who becomes an interested shareholder of the corporation at a time when the corporation is not subject to this section pursuant to paragraph *"a"*, *"b"*, *"c"*, or *"d"*.

Notwithstanding paragraphs *"a"* through *"d"*, a corporation may elect under its original articles of incorporation or any amendment to such articles to be subject to this section. However, such amendment shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became such prior to the effective date of the amendment.

3. As used in this section, unless the context otherwise requires:

a. *"Affiliate"* means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

b. *"Associate"*, when used to indicate a relationship with a person, means any of the following:

(1) A corporation, partnership, unincorporated association, or other entity of which the person is a director, officer, or partner or is, directly or indirectly, the owner of twenty percent or more of any class of voting stock.

(2) A trust or other estate in which the person has at least a twenty percent beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity.

(3) A relative or spouse of the person, or any relative of the spouse, who has the same residence as the person.

c. *"Business combination"*, with respect to a corporation and an interested shareholder of such corporation, means any of the following:

(1) A merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with the interested shareholder, or with any other corporation, partnership, unincorporated association, or other entity if the merger or consolidation is caused by the interested shareholder and as a result of such merger the surviving entity is not subject to subsection 1.

(2) A sales, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of such corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to ten percent or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation.

(3) A transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested shareholder, except for the following:

(a) Pursuant to the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of the corporation or

such subsidiary which securities were outstanding prior to the time that the interested shareholder became an interested shareholder.

(b) Pursuant to a merger under section 490.1105.

(c) Pursuant to a distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of such corporation or any such subsidiary, which stock is distributed pro rata to all holders of a class or series of stock of the corporation subsequent to the time the interested shareholder became an interested shareholder.

(d) Pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of the stock.

(e) Any issuance or transfer of stock by the corporation, provided, however, that in no case under subparagraph subdivisions (c) and (d) and this subparagraph subdivision shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of the voting stock of the corporation.

(4) A transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder.

(5) The receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of such corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs (1) through (4), provided by or through the corporation or any direct or indirect majority-owned subsidiary.

d. "Control", including the terms *"controlling"*, *"controlled by"*, and *"under common control with"*, means the ability, directly or indirectly, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of twenty percent or more of the outstanding voting stock of any corporation, partnership, unincorporated association, or other entity is presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding this paragraph, a presumption of control shall not apply where a person holds voting stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian, or trustee for one or more owners who do not individually or as a group have control of such entity.

e. "Interested shareholder" means any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that is the owner of ten percent or more of the outstanding voting stock of the corporation, or is an affiliate or associate of the corporation and was the owner of ten percent or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder, and the affiliates and associates of such person. *"Interested shareholder"* does not include a person whose ownership of shares in excess of the ten percent limitation is the result of action taken solely by the corporation, provided that such person is an interested shareholder if, after such action by the corporation, the person acquires additional shares of voting stock of the corporation, other than as a result of further corporate action not caused, directly or indirectly, by such person.

For purposes of determining whether a person is an interested shareholder, the outstanding voting stock of the corporation does not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

f. "Owner", including the terms *"own"* and *"owned"* when used with respect to any stock, means a person that individually or with or through any of such person's affiliates or associates satisfies any of the following:

(1) Beneficially owns such stock, directly or indirectly.

(2) Has the right to do either of the following:

(a) Acquire such stock, whether such right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise. However, a person is not deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange.

(b) Vote such stock pursuant to any agreement, arrangement, or understanding. However, a person is not deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement, or understanding to vote such stock arises solely from the revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons.

(3) Has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of such stock with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirect-

ly, such stock. However, an agreement, arrangement, or understanding for the purpose of voting such stock does not include voting pursuant to a revocable proxy or consent under subparagraph (2), subparagraph subdivision (b).

g. "Person" means any individual, corporation, partnership, unincorporated association, or other entity.

h. "Stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

i. "Voting stock" means, with respect to any corporation, stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity.

4. The articles of incorporation or bylaws shall not require, for any vote of shareholders required by this section, a greater vote of shareholders than that specified in this section.

97 Acts, ch 117, §5; 97 Acts, ch 188, §52; 98 Acts, ch 1100, §66; 2002 Acts, ch 1154, §74, 75, 125

2002 amendments to subsections 2 and 3 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 2, paragraph f, subparagraph (2), subparagraph subdivision (a) amended

Subsection 3, paragraph c, subparagraph (3), subparagraph subdivision (b) amended

DIVISION XII

DISPOSITION OF ASSETS

490.1201 Disposition of assets not requiring shareholder approval.

Approval of the shareholders of a corporation is not required to do any of the following, unless the articles of incorporation otherwise provide:

1. To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business.

2. To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business.

3. To transfer any or all of the corporation's assets to one or more corporations or other entities, all of the shares or interests of which are owned by the transferring corporation.

4. To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

89 Acts, ch 288, §129; 2002 Acts, ch 1154, §76, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1202 Shareholder approval of certain dispositions.

1. A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 490.1201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity; but no presumption that the disposition will leave the corporation without a significant continuing business activity shall arise from the fact that the corporation's continuing business activity does not equal or exceed any of these percentages.

2. A disposition that requires approval of the shareholders under subsection 1 shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

3. The board of directors may condition its submission of a disposition to the shareholders under subsection 2 on any basis.

4. If a disposition is required to be approved by the shareholders under subsection 1, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

5. Unless the articles of incorporation, bylaws, or the board of directors acting pursuant to subsection 3 require a greater vote or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

6. After a disposition has been approved by the shareholders under subsection 2, and at any time before the disposition has been consummated, it may be abandoned by the corporation without ac-

tion by the shareholders, subject to any contractual rights of other parties to the disposition.

7. A disposition of assets in the course of dissolution under division XIV is not governed by this section.

8. The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

89 Acts, ch 288, §130; 2002 Acts, ch 1154, §77, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

DIVISION XIII

APPRAISAL RIGHTS

PART A

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

490.1301 Definitions.

In this division, unless the context otherwise requires:

1. *"Affiliate"* means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of section 490.1302, subsection 2, paragraph *"d"*, a person is deemed to be an affiliate of its senior executives.

2. *"Beneficial shareholder"* means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

3. *"Corporation"* means the issuer of the shares held by a shareholder demanding appraisal. In addition, for matters covered in sections 490.1322 through 490.1331, *"corporation"* includes the surviving entity in a merger.

4. *"Fair value"* means the value of the corporation's shares determined according to the following:

a. Immediately before the effectuation of the corporate action to which the shareholder objects.

b. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal.

c. Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to section 490.1302, subsection 1, paragraph *"e"*.

With respect to shares of a corporation that is a bank holding company as defined in section 524.1801, the factors identified in section 524.1406, subsection 3, paragraph *"a"*, shall also be considered in determining fair value.

5. *"Interest"* means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

6. *"Preferred shares"* means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

7. *"Record shareholder"* means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

8. *"Senior executive"* means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

9. *"Shareholder"* means both a record shareholder and a beneficial shareholder.

89 Acts, ch 288, §131; 2000 Acts, ch 1211, §2; 2002 Acts, ch 1154, §78, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1302 Shareholders' right to appraisal.

1. A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of the shareholder's shares, in the event of any of the following corporate actions:

a. Consummation of a merger to which the corporation is a party if either of the following apply:

(1) Shareholder approval is required for the merger by section 490.1104 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger.

(2) The corporation is a subsidiary and the merger is governed by section 490.1105.

b. Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged.

c. Consummation of a disposition of assets pursuant to section 490.1202 if the shareholder is entitled to vote on the disposition.

d. An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created.

e. Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors.

2. Notwithstanding subsection 1, the availability of the appraisal rights under subsection 1,

paragraphs *"a"* through *"d"*, shall be limited in accordance with the following provisions:

a. Appraisal rights shall not be available for the holders of shares of any class or series of shares:

(1) Listed on the New York stock exchange or the American stock exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, inc.

(2) Not so listed or designated, but has at least two thousand shareholders and the outstanding shares of such class or series has a market value of at least twenty million dollars, exclusive of the value of such shares held by its subsidiaries, senior executives, directors, and beneficial shareholders owning more than ten percent of such shares.

b. The applicability of paragraph *"a"* shall be determined according to the following:

(1) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights.

(2) The day before the effective date of such corporate action if there is no meeting of shareholders.

c. Paragraph *"a"* shall not be applicable and appraisal rights shall be available pursuant to subsection 1 for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph *"a"*, at the time the corporate action becomes effective.

d. Paragraph *"a"* shall not be applicable and appraisal rights shall be available pursuant to subsection 1 for the holders of any class or series of shares where any of the following applies:

(1) Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who fulfills either of the following:

(a) Is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of twenty percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(b) Directly or indirectly has, or at any time in the one-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of twenty-five percent or more of the directors to the board of directors of the corporation.

(2) Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the one-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than any of the following:

(a) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action.

(b) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 490.832.

(c) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

e. For the purposes of paragraph *"d"* only, the term *"beneficial owner"* means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by such member on behalf of another person solely because the member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

3. Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimina-

tion contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment, shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

4. A shareholder entitled to appraisal rights under this chapter is not entitled to challenge a completed corporate action for which appraisal rights are available unless such corporate action meets one of the following standards:

a. It was not effectuated in accordance with the applicable provisions of division X, XI, or XII or the corporation's articles of incorporation, bylaws, or board of directors' resolution authorizing the corporate action.

b. It was procured as a result of fraud or material misrepresentation.

89 Acts, ch 288, §132; 2002 Acts, ch 1154, §79, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1303 Assertion of rights by nominees and beneficial owners.

1. A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

2. A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder does both of the following:

a. Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in section 490.1322, subsection 2, paragraph *"b"*, subparagraph (2).

b. Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

89 Acts, ch 288, §133; 2002 Acts, ch 1154, §80, 125; 2002 Acts, ch 1175, §91

2002 amendments to this section by 2002 Acts, ch 1154, are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1304 through 490.1319 Reserved.

PART B

PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

490.1320 Notice of appraisal rights.

1. If proposed corporate action described in section 490.1302, subsection 1, is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under this part. If the corporation concludes that appraisal rights are or may be available, a copy of this part must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

2. In a merger pursuant to section 490.1105, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in section 490.1322.

89 Acts, ch 288, §134; 2002 Acts, ch 1154, §81, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1321 Notice of intent to demand payment.

1. If proposed corporate action requiring appraisal rights under section 490.1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must do all of the following:

a. Deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated.

b. Not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

2. A shareholder who does not satisfy the requirements of subsection 1 is not entitled to payment under this part.

89 Acts, ch 288, §135; 2002 Acts, ch 1154, §82, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1322 Appraisal notice and form.

1. If proposed corporate action requiring appraisal rights under section 490.1302, subsection 1, becomes effective, the corporation must deliver a written appraisal notice and form required by subsection 2, paragraph *"a"*, to all shareholders who satisfied the requirements of section 490.1321. In the case of a merger under section 490.1105, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

2. The appraisal notice must be sent no earlier than the date the corporate action became effective and no later than ten days after such date and must do all of the following:

a. Be accompanied by a form that specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action and requires the shareholder asserting appraisal rights to certify whether or not beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date, and that the shareholder did not vote for the transaction.

b. State all of the following:

(1) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date shall not be earlier than the date for receiving the required form under subparagraph (2).

(2) A date by which the corporation must receive the form, which date shall not be fewer than forty nor more than sixty days after the date the appraisal notice and form are sent under subsection 1, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date.

(3) The corporation's estimate of the fair value of the shares.

(4) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten days after the date specified in subparagraph (2) the number of shareholders who return the forms by the specified date and the total number of shares owned by them.

(5) The date by which the notice to withdraw under section 490.1323 must be received, which date must be within twenty days after the date specified in subparagraph (2).

c. Be accompanied by a copy of this division.

89 Acts, ch 288, §136; 91 Acts, ch 211, §8; 2002 Acts, ch 1154, §83, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1323 Perfection of rights — right to withdraw.

1. A shareholder who receives notice pursuant to section 490.1322 and who wishes to exercise appraisal rights must certify on the form sent by the corporation whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to section 490.1322, subsection 2, paragraph *"a"*. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 490.1325. In addition, a shareholder who wishes to exercise appraisal rights must execute and return the form and, in a case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 490.1322, subsection 2, paragraph *"b"*, subparagraph (2). Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection 2.

2. A shareholder who has complied with subsection 1 may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to section 490.1322, subsection 2, paragraph *"b"*, subparagraph (5). A shareholder who fails to so withdraw from the appraisal process shall not thereafter withdraw without the corporation's written consent.

3. A shareholder who does not demand payment or execute and return the form and, in the case of certificated shares, deposit the shareholder's share certificates where required, each by the date set forth in the dissenters' notice described in section 490.1322, subsection 2, shall not be entitled to payment for the shareholder's shares under this division.

89 Acts, ch 288, §137; 2002 Acts, ch 1154, §84, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1324 Payment.

1. Except as provided in section 490.1325, within thirty days after the form required by section 490.1322, subsection 2, paragraph *"b"*, subparagraph (2), is due, the corporation shall pay in cash to those shareholders who complied with section 490.1323, subsection 1, the amount the corporation estimates to be the fair value of their shares, plus interest.

2. The payment to each shareholder pursuant to subsection 1 must be accompanied by all of the following:

a. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a

statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any.

b. A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to section 490.1322, subsection 2, paragraph *"b"*, subparagraph (3).

c. A statement that shareholders described in subsection 1 have the right to demand further payment under section 490.1326 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this chapter.

89 Acts, ch 288, §138; 2002 Acts, ch 1154, §85, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1325 After-acquired shares.

1. A corporation may elect to withhold payment required by section 490.1324 from any shareholder who did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to section 490.1322, subsection 2, paragraph *"a"*.

2. If the corporation elects to withhold payment under subsection 1, it must within thirty days after the form required by section 490.1322, subsection 2, paragraph *"b"*, subparagraph (2), is due, notify all shareholders who are described in subsection 1 regarding all of the following:

a. Of the information required by section 490.1324, subsection 2, paragraph *"a"*.

b. Of the corporation's estimate of fair value pursuant to section 490.1324, subsection 2, paragraph *"b"*.

c. That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 490.1326.

d. That those shareholders who wish to accept such offer must notify the corporation of their acceptance of the corporation's offer within thirty days after receiving the offer.

e. That those shareholders who do not satisfy the requirements for demanding appraisal under section 490.1326 shall be deemed to have accepted the corporation's offer.

3. Within ten days after receiving the shareholder's acceptance pursuant to subsection 2, the corporation must pay in cash the amount it offered under subsection 2, paragraph *"b"*, to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

4. Within forty days after sending the notice described in subsection 2, the corporation must pay in cash the amount it offered to pay under subsection 2, paragraph *"b"*, to each shareholder described in subsection 2, paragraph *"e"*.

89 Acts, ch 288, §139; 91 Acts, ch 211, §9; 2002 Acts, ch 1154, §86, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1326 Procedure if shareholder dissatisfied with payment or offer.

1. A shareholder paid pursuant to section 490.1324 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest, less any payment under section 490.1324. A shareholder offered payment under section 490.1325 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

2. A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection 1 within thirty days after receiving the corporation's payment or offer of payment under section 490.1324 or 490.1325, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

89 Acts, ch 288, §140; 91 Acts, ch 211, §10; 97 Acts, ch 171, §13; 2002 Acts, ch 1154, §87, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section stricken and rewritten

490.1327 After-acquired shares. Repealed by 2002 Acts, ch 1154, § 123, 125.

Repeal is effective January 1, 2003; 2002 Acts, ch 1154, §125

490.1328 Procedure if shareholder dissatisfied with payment or offer. Repealed by 2002 Acts, ch 1154, § 123, 125.

Repeal is effective January 1, 2003; 2002 Acts, ch 1154, §125

490.1329 Reserved.

PART C

490.1330 Court action.

1. If a shareholder makes a demand for payment under section 490.1326 that remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 490.1326 plus in-

terest.

2. The corporation shall commence the proceeding in the district court of the county where the corporation's principal office or, if none, its registered office, in this state is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

3. The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled, parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

5. Each shareholder made a party to the proceeding is entitled to judgment for either of the following:

a. The amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares.

b. The fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 490.1325.

6. Notwithstanding the provisions of this division, if the corporation is a bank holding company as defined in section 524.1801, fair value, at the election of the bank holding company, may be determined as provided in section 524.1406, subsection 3, prior to giving notice under section 490.1320 or 490.1322. The fair value as determined shall be included in any notice under section 490.1320 or 490.1322, and section 490.1326 shall not apply.

89 Acts, ch 288, §143; 2000 Acts, ch 1211, §1; 2002 Acts, ch 1154, §88, 125

2002 amendments to this section take effect January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1331 Court costs and counsel fees.

1. The court in an appraisal proceeding commenced under section 490.1330 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this division.

2. The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable, for either of the following:

a. Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of section 490.1320, 490.1322, 490.1324, or 490.1325.

b. Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

3. If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.

4. To the extent the corporation fails to make a required payment pursuant to section 490.1324, 490.1325, or 490.1326, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

89 Acts, ch 288, §144; 2002 Acts, ch 1154, §89, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

DIVISION XIV

DISSOLUTION

PART A

490.1401 Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the corporation.
2. The date of its incorporation.
3. Either of the following:

a. That none of the corporation's shares has been issued.

b. That the corporation has not commenced business.

4. That no debt of the corporation remains unpaid.

5. That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.

6. That a majority of the incorporators or initial directors authorized the dissolution.

89 Acts, ch 288, §145

490.1402 Dissolution by board of directors and shareholders.

1. A corporation's board of directors may propose dissolution for submission to the shareholders.

2. For a proposal to dissolve to be adopted both of the following must apply:

a. The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders.

b. The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection 5.

3. The board of directors may condition its submission of the proposal for dissolution on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

5. Unless the articles of incorporation, bylaws, or the board of directors acting pursuant to subsection 3 requires a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which the quorum consisting of at least a majority of the votes entitled to be cast exists.

89 Acts, ch 288, §146; 2002 Acts, ch 1154, §90, 125

2002 amendments to subsections 4 and 5 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsections 4 and 5 amended

490.1403 Articles of dissolution.

1. At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth all of the following:

a. The name of the corporation.

b. The date dissolution was authorized.

c. If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.

2. A corporation is dissolved upon the effective date of its articles of dissolution.

3. For purposes of this division, *"dissolved corporation"* means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

89 Acts, ch 288, §147; 2002 Acts, ch 1154, §91, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1404 Revocation of dissolution.

1. A corporation may revoke its dissolution within one hundred twenty days of its effective date.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

3. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the corporation.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If shareholder action was required to revoke the dissolution, the information required by section 490.1403, subsection 1, paragraph *"c"*.

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

89 Acts, ch 288, §148; 2002 Acts, ch 1154, §92, 125

2002 amendment to subsection 3, paragraph f, is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 3, paragraph f amended

490.1405 Effect of dissolution.

1. A dissolved corporation continues its corporate existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

a. Collecting its assets.

b. Disposing of its properties that will not be distributed in kind to its shareholders.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property among its shareholders according to their interests.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a corporation does not do any of the following:

a. Transfer title to the corporation's property.

b. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records.

c. Subject its directors or officers to standards of conduct different from those prescribed in division VIII.

d. Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

e. Prevent commencement of a proceeding by or against the corporation in its corporate name.

f. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

g. Terminate the authority of the registered agent of the corporation.

89 Acts, ch 288, §149

490.1406 Known claims against dissolved corporation.

1. A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

2. The written notice must do all of the following:

a. Describe information that must be included in a claim.

b. Provide a mailing address where a claim may be sent.

c. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim.

d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved corporation is barred if either of the following occur:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline.

b. A claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, *"claim"* does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

89 Acts, ch 288, §150; 2002 Acts, ch 1154, §93, 125

2002 amendments to subsections 1 and 2 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsections 1 and 2 amended

490.1407 Other claims against dissolved corporation.

1. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

2. The notice must meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

3. If the dissolved corporation publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the publication date of the newspaper notice:

a. A claimant who was not given written notice under section 490.1406.

b. A claimant whose claim was timely sent to the dissolved corporation but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim that is not barred by section 490.1406, subsection 2, or subsection 3 of this section, may be enforced in either of the following ways:

a. Against the dissolved corporation, to the extent of its undistributed assets.

b. Except as provided in section 490.1408, subsection 4, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the shareholder in liquidation.

89 Acts, ch 288, §151; 2002 Acts, ch 1154, §94, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1408 Court proceedings.

1. A dissolved corporation that has published a notice under section 490.1407 may file an application with the district court of the county where the dissolved corporation's principal office or, if none in this state, its registered office is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 490.1407, subsection 3.

2. Within ten days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

3. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

4. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection 1, shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims shall not be enforced against a shareholder who received assets in liquidation.

2002 Acts, ch 1154, §95, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.1409 Director duties.

1. Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

2. Directors of a dissolved corporation which has disposed of claims under section 490.1406, 490.1407, or 490.1408 shall not be liable for breach of subsection 1, with respect to claims against the dissolved corporation that are barred or satisfied under section 490.1406, 490.1407, or 490.1408.

2002 Acts, ch 1154, §96, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.1410 through 490.1419 Reserved.

PART B

490.1420 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 490.1421 to administratively dissolve a corporation if any of the following apply:

1. The corporation has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 490.1622, within sixty days after it is due, or has not paid the filing fee as determined by the secretary of state, within sixty days after it is due.

2. The corporation is without a registered agent or registered office in this state for sixty days or more.

3. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

4. The corporation's period of duration stated in its articles of incorporation expires.

89 Acts, ch 288, §152; 96 Acts, ch 1170, §9, 10; 97 Acts, ch 171, §14

490.1421 Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under section 490.1420 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the secretary of state's determination under section 490.504.

2. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 490.504, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under section 490.504.

3. A corporation administratively dissolved continues its corporate existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 490.1405 and notify claimants under sections 490.1406 and 490.1407.

4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a corporation pursuant to this section appoints the secretary of state the corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the corporation was authorized to transact

business in this state. Service of process on the secretary of state under this subsection is service on the corporation. Upon receipt of process, the secretary of state shall serve a copy of the process on the corporation as provided in section 490.504. This subsection does not preclude service on the corporation's registered agent, if any.

89 Acts, ch 288, §153; 96 Acts, ch 1170, §11

490.1422 Reinstatement following administrative dissolution.

1. A corporation administratively dissolved under section 490.1421 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. State a corporate name that satisfies the requirements of section 490.401.

d. State the federal tax identification number of the corporation.

2. *a.* The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the department of revenue and finance. The department of revenue and finance shall report to the secretary of state the tax status of the corporation. If the department reports to the secretary of state that a filing delinquency or liability exists against the corporation, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph *"a"* of this subsection has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 490.504. If the corporate name in subsection 1, paragraph *"c"*, is different than the corporate name in subsection 1, paragraph *"a"*, the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

4. Notwithstanding the reinstatement period established in subsection 1, a corporation administratively dissolved after December 31, 1984, which files an application for reinstatement prior to January 1, 1996, containing the information required under subsection 1, shall be treated as if its application had been timely filed under subsection 1. In this case, the secretary of state shall process the application pursuant to subsection 2 and, if a certificate of reinstatement is issued, the provisions of subsection 3 shall apply.

89 Acts, ch 288, §154; 92 Acts, ch 1244, §46; 93 Acts, ch 17, §1; 93 Acts, ch 126, §7, 8; 94 Acts, ch 1053, §1; 96 Acts, ch 1170, §12, 13

490.1423 Appeal from denial of reinstatement.

1. If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under section 490.504 with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

89 Acts, ch 288, §155

490.1424 through 490.1429 Reserved.

PART C

490.1430 Grounds for judicial dissolution.

The district court may dissolve a corporation in any of the following ways:

1. A proceeding by the attorney general, if it is established that either of the following apply:

a. The corporation obtained its articles of incorporation through fraud.

b. The corporation has continued to exceed or abuse the authority conferred upon it by law.

2. A proceeding by a shareholder if it is established that any of the following conditions exist:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and either irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

b. The directors or those in control of the corporation have acted, are acting, or will act in a

manner that is illegal, oppressive, or fraudulent.

c. The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

d. The corporate assets are being misapplied or wasted.

3. A proceeding by a creditor if it is established that either of the following apply:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

4. A proceeding by the corporation to have its voluntary dissolution continued under court supervision.

89 Acts, ch 288, §156

490.1431 Procedure for judicial dissolution.

1. Venue for a proceeding by the attorney general to dissolve a corporation lies in Polk county. Venue for a proceeding brought by any other party named in section 490.1430 lies in the county where a corporation's principal office or, if none in this state, its registered office is or was last located.

2. It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

4. Within ten days of the commencement of a proceeding under section 490.1430, subsection 2, to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities exchange, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 490.1434, and a copy of section 490.1434.

89 Acts, ch 288, §157; 2002 Acts, ch 1154, §97, 125

Subsection 4 is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW subsection 4

490.1432 Receivership or custodianship.

1. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

a. The receiver may do either or both of the following:

(1) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.

b. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

89 Acts, ch 288, §158

490.1433 Decree of dissolution.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 490.1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 490.1405 and the notification of claimants in accordance with sections 490.1406 and 490.1407.

89 Acts, ch 288, §159

490.1434 Election to purchase in lieu of dissolution.

1. In a proceeding under section 490.1430, subsection 2, to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

2. An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under section 490.1430, subsection 2, or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under section 490.1430, subsection 2, shall not be discontinued or settled, nor shall the petitioning shareholder sell or otherwise dispose of the shareholder's shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

3. If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the parties.

4. If the parties are unable to reach an agreement as provided for in subsection 3, the court, upon application of any party, shall stay the section 490.1430, subsection 2, proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under section 490.1430, subsection 2, was filed or as of such other date as the court deems appropriate under the circumstances.

5. Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder has probable grounds for relief under section 490.1430, subsection 2, paragraph *"b"* or *"d"*, it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the shareholder.

6. Upon entry of an order under subsection 3 or 5, the court shall dismiss the petition to dissolve the corporation under section 490.1430, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to the shareholder by the order of the court which shall be enforceable in the same manner as any other judgment.

7. The purchase ordered pursuant to subsection 5 shall be made within ten days after the date the order becomes final, unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 490.1402 and 490.1403, which articles must then be adopted and filed within fifty days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of sections 490.1405 through 490.1407, and the order entered pursuant to subsection 5 shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection 5 and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

8. Any payment by the corporation pursuant to an order under subsection 3 or 5, other than an award of fees and expenses pursuant to subsection

5, is subject to the provisions of section 490.640.

2002 Acts, ch 1154, §98, 125

Effective date of notice, see §490.141

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.1435 through 490.1439 Reserved.

PART D

490.1440 Deposit with state treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or shareholder or that person's representative that amount.

89 Acts, ch 288, §160

DIVISION XV

FOREIGN CORPORATIONS

PART A

490.1501 Authority to transact business required.

1. A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

a. Maintaining, defending, or settling any proceeding.

b. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

i. Owning, without more, real or personal property.

j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.

k. Transacting business in interstate commerce.

3. The list of activities in subsection 2 is not exhaustive.

89 Acts, ch 288, §161

490.1502 Consequences of transacting business without authority.

1. A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

4. A foreign corporation is liable for a civil penalty of not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

89 Acts, ch 288, §162

490.1503 Application for certificate of authority.

1. A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth all of the following:

a. The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 490.1506.

b. The name of the state or country under whose law it is incorporated.

c. Its date of incorporation and period of duration.

d. The street address of its principal office.

e. The address of its registered office in this state and the name of its registered agent at that

office.

f. The names and usual business addresses of its current directors and officers.

2. The foreign corporation shall deliver the completed application to the secretary of state, and also deliver to the secretary of state a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated which is dated no earlier than ninety days prior to the date the application is filed with the secretary of state.

89 Acts, ch 288, §163; 96 Acts, ch 1170, §14

490.1504 Amended certificate of authority.

1. A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes any of the following:

a. Its corporate name.

b. The period of its duration.

c. The state or country of its incorporation.

2. The requirements of section 490.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

89 Acts, ch 288, §164

490.1505 Effect of certificate of authority.

1. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

2. A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided in this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

3. This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

89 Acts, ch 288, §165

490.1506 Corporate name of foreign corporation.

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 490.401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may do either of the following:

a. Add the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", to its corporate name for use in this state.

b. Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2. Except as authorized by subsections 3 and 4, the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved or registered under section 490.402 or 490.403.

c. The fictitious name of another foreign corporation authorized to transact business in this state.

d. The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this state that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if either of the following apply:

a. The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has filed documentation satisfactory to the secretary of state of the occurrence of any of the following:

a. The foreign corporation has merged with the other corporation.

b. The foreign corporation has been formed by reorganization of the other corporation.

c. The foreign corporation has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 490.401, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 490.401 and obtains an amended certificate of au-

thority under section 490.1504.

89 Acts, ch 288, §166; 96 Acts, ch 1170, §15

490.1507 Registered office and registered agent of foreign corporation.

A foreign corporation authorized to transact business in this state must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

89 Acts, ch 288, §167

490.1508 Change of registered office or registered agent of foreign corporation.

1. A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

a. Its name.

b. If the current registered office is to be changed, the street address of its new registered office.

c. If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

d. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. A corporation may also change its registered office or registered agent in its biennial report as provided in section 490.1622.

89 Acts, ch 288, §168; 96 Acts, ch 1170, §16; 97 Acts, ch 171, §15

490.1509 Resignation of registered agent of foreign corporation.

1. The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

89 Acts, ch 288, §169; 96 Acts, ch 1170, §17

490.1510 Service on foreign corporation.

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report if the foreign corporation meets any of the following conditions:

a. Has no registered agent or its registered agent cannot with reasonable diligence be served.

b. Has withdrawn from transacting business in this state under section 490.1520.

c. Has had its certificate of authority revoked under section 490.1531.

3. Service is perfected under subsection 2 at the earliest of:

a. The date the foreign corporation receives the mail.

b. The date shown on the return receipt, if signed on behalf of the foreign corporation.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

4. A foreign corporation may also be served in any other manner permitted by law.

89 Acts, ch 288, §170; 97 Acts, ch 171, §16

490.1511 through 490.1519 Reserved.

PART B

490.1520 Withdrawal of foreign corporation.

1. A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal

from the secretary of state.

2. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth all of the following:

a. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.

b. That it is not transacting business in this state and that it surrenders its authority to transact business in this state.

c. That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph *"c"*.

3. After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection 2.

89 Acts, ch 288, §171; 96 Acts, ch 1170, §18

490.1521 through 490.1529 Reserved.

PART C

490.1530 Grounds for revocation.

The secretary of state may commence a proceeding under section 490.1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

1. The foreign corporation does not deliver its biennial report to the secretary of state in a form that meets the requirements of section 490.1622 within sixty days after it is due.

2. The foreign corporation is without a registered agent or registered office in this state for sixty days or more.

3. The foreign corporation does not inform the secretary of state under section 490.1508 or 490.1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance.

4. An incorporator, director, officer, or agent of the foreign corporation signed a document that person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.

5. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

89 Acts, ch 288, §172; 90 Acts, ch 1205, §27; 96 Acts, ch 1170, §19; 97 Acts, ch 171, §17

490.1531 Procedure for and effect of revocation.

1. If the secretary of state determines that one or more grounds exist under section 490.1530 for revocation of a certificate of authority, the secretary of state shall serve the foreign corporation with written notice of the secretary's determination under section 490.1510.

2. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 490.1510, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 490.1510.

3. The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

4. The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent biennial report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

5. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

89 Acts, ch 288, §173; 97 Acts, ch 171, §18

490.1532 Appeal from revocation.

1. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty days after service of the certificate of revocation is perfected under section 490.1510. The foreign corporation appeals by petitioning the court to set aside the re-

vocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

2. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

89 Acts, ch 288, §174

DIVISION XVI

RECORDS AND REPORTS

PART A

490.1601 Corporate records.

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of the following records:

a. Its articles or restated articles of incorporation and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

d. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years.

e. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 490.1620.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent biennial report delivered to the secretary of state under section 490.1622.

89 Acts, ch 288, §175; 97 Acts, ch 171, §19

490.1602 Inspection of records by shareholders.

1. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 490.1601, subsection 5, if the shareholder gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

2. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection 3 and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection 1 of this section.

b. Accounting records of the corporation.

c. The record of shareholders.

3. A shareholder may inspect and copy the records described in subsection 2 only if:

a. The shareholder's demand is made in good faith and for a proper purpose.

b. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect.

c. The records are directly connected with the shareholder's purpose.

4. The right of inspection granted by this section shall not be abolished or limited by a corporation's articles of incorporation or bylaws.

5. This section does not affect either of the following:

a. The right of a shareholder to inspect records under section 490.720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

89 Acts, ch 288, §176

490.1603 Scope of inspection right.

1. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

2. The right to copy records under section 490.1602 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission

if available and so requested by the shareholder.

3. The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under section 490.1602, subsection 2, paragraph *"c"*, by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

4. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge shall not exceed the estimated cost of production, reproduction, or transmission of the records.

89 Acts, ch 288, §177; 2002 Acts, ch 1154, §99, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

490.1604 Court-ordered inspection.

1. If a corporation does not allow a shareholder who complies with section 490.1602, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

2. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other records, the shareholder who complies with section 490.1602, subsections 2 and 3 may apply to the district court in the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

89 Acts, ch 288, §178

490.1605 Inspection of records by directors.

1. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

2. The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

3. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

2002 Acts, ch 1154, §100, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.1606 Exception to notice requirement.

1. Whenever notice is required to be given under any provision of this chapter to any shareholder, such notice shall not be required to be given if either of the following applies:

a. Notice of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable.

b. All, but not less than two, payments of dividends on securities during a twelve-month period, or two consecutive payments of dividends on securities during a period of more than twelve months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable.

2. If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then-current address, the requirement that notice be given to such shareholder shall be reinstated.

2002 Acts, ch 1154, §101, 125

Section is effective January 1, 2003; 2002 Acts, ch 1154, §125

NEW section

490.1607 through 490.1619 Reserved.

PART B

490.1620 Financial statements for shareholders.

A corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. Upon written request from a shareholder, a corporation, at its expense, shall furnish to that shareholder the financial statements requested. If the annual financial statements are reported upon by a public accountant, that report must accompany them.

89 Acts, ch 288, §179

490.1621 Other reports to shareholders. Repealed by 2002 Acts, ch 1154, § 123, 125.

Repeal is effective January 1, 2003; 2002 Acts, ch 1154, §125

490.1622 Biennial report for secretary of state.

1. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report that sets forth all of the following:

a. The name of the corporation and the state or country under whose law it is incorporated.

b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of its principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the biennial report must be current as of the first day of January of the year in which the report is due. The report shall be executed on behalf of the corporation and signed as provided in section 490.120 or by any other person authorized by the board of directors of the corporation.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following even-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state. For purposes of this section, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

4. If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in section 490.502 or 490.1508. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 490.502 or 490.1508 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 490.123, before returning the biennial report to the corporation as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

89 Acts, ch 288, §181; 96 Acts, ch 1170, §20, 21; 97 Acts, ch 171, §20

DIVISION XVII

TRANSITION PROVISIONS

490.1701 Application to existing corporations.

1. Except as provided in this subsection or chapter 504 or 504A, this chapter does not apply to or affect entities subject to chapter 504 or 504A. Such entities continue to be governed by all laws of this state applicable to them before December 31, 1989, as those laws are amended. This chapter does not derogate or limit the powers to which such entities are entitled.

2. Unless otherwise provided, this chapter does not apply to an entity subject to chapter 174, 176, 497, 498, 499, 499A, 524, 533, or 534 or a corporation organized on the mutual plan under chapter 491, or a telephone company organized as a corporation under chapter 491 qualifying pursuant to an internal revenue service letter ruling under Internal Revenue Code § 501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to a chapter 499 corporation, unless such entity voluntarily elects to adopt the provisions of this chapter and complies with the procedure prescribed by subsection 3 of this section.

3. The procedure for the voluntary election referred to in subsection 2 is as follows:

a. The corporation shall amend or restate its articles of incorporation to indicate that the corporation adopts this chapter and to designate the address of its initial registered office and the name of its registered agent or agents at that office and, if the name of the corporation is not in compliance

with the requirements of this chapter, to change the name of the corporation to one complying with the requirements of this chapter.

b. The instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office, and shall be filed and recorded in the office of the county recorder. The corporation shall at the time it files the instrument with the secretary of state deliver also to the secretary of state for filing in the secretary of state's office any biennial report which is then due.

If the county of the initial registered office as stated in the instrument is one which is other than the county where the principal place of business of the corporation, as designated in its articles of incorporation, was located, the corporation shall forward to the county recorder of the county in which the principal place of business of the corporation was located a copy of the instrument and the corporation shall forward to the recorder of the county in which the initial registered office of the corporation is located, in addition to a copy of the original instrument, a copy of the articles of incorporation of the corporation together with all amendments to them as then on file in the secretary of state's office. The corporation shall, through an officer or director, certify to the secretary of state that a copy has been sent to each applicable county recorder, including the date each copy was sent.

c. Upon the filing of the instrument by a corporation all of the following apply:

(1) All of the provisions of this chapter apply to the corporation.

(2) The secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative.

(3) The secretary of state shall not file the instrument with respect to a corporation unless at the time of filing the corporation is validly existing and in good standing in that office under the chapter under which it is incorporated. The corporation shall be considered validly existing and in good standing for the purpose of this chapter for a period of three months following the expiration date of the corporation, provided all biennial reports due have been filed and all fees due in connection with the biennial reports have been paid.

d. The provisions of this chapter becoming applicable to a corporation voluntarily electing to be governed by this chapter do not affect any right accrued or established, or any liability or penalty incurred, under the chapter under which it is incorporated prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election by the corporation to adopt the provisions of this chapter as provided in this subsection.

4. Except as specifically provided in this chapter, this chapter applies to all domestic corporations in existence on December 31, 1989, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

5. A corporation subject to this chapter which does not have a registered office or registered agent or both designated on the records of the secretary of state is subject to all of the following provisions:

a. The office of the corporation set forth in its first biennial report filed under this chapter shall be deemed its registered office until December 31, 1990, or until it files a designation of registered office with the secretary of state, whichever is earlier.

b. The person signing the first biennial report of the corporation filed under this chapter shall be deemed the registered agent until December 31, 1990, or a statement designating a registered agent has been filed with the secretary of state, whichever is earlier.

c. Section 490.502 does not apply to the corporation until December 31, 1990, or until the corporation files a designation of registered office and registered agent at that office with the secretary of state, whichever is earlier.

6. A corporation subject to this chapter is not subject to chapter 491, 492, 493, or 495.

89 Acts, ch 288, §182; 93 Acts, ch 126, §9; 97 Acts, ch 107, §6; 97 Acts, ch 171, §21 – 24

For future amendment to subsection 2 effective July 1, 2005, see 2002 Acts, ch 1017, §5, 8

490.1702 Application to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on December 31, 1989, is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

89 Acts, ch 288, §183

490.1703 Savings provisions.

1. Except as provided in subsection 2, the repeal of a statute by 1989 Iowa Acts, chapter 288, does not affect:

a. The operation of the statute or any action taken under it before its repeal.

b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal.

c. Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.

d. Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

2. If a penalty or punishment imposed for violation of a statute repealed by 1989 Iowa Acts,

chapter 288, is reduced by 1989 Iowa Acts, chapter 288, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

89 Acts, ch 288, §184; 90 Acts, ch 1168, §53

490.1704 Preemptive rights for existing corporations.

Notwithstanding any other provision of this chapter, a corporation which was incorporated under, or which elected to be governed by, former chapter 496A prior to December 31, 1989, shall be governed by the following until December 31, 1992:

Except to the extent limited or denied by this section or by the articles of incorporation, shareholders have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

Unless otherwise provided in the articles of incorporation:

1. No preemptive right exists:

a. To acquire any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan approved by such a vote of shareholders.

b. To acquire any shares sold otherwise than for cash.

c. To acquire treasury shares of the corporation.

2. Holders of shares of any class that is preferred or limited as to dividends or assets are not entitled to any preemptive right.

3. Holders of shares of common stock are not entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

4. Holders of common stock without voting power have no preemptive right to shares of common stock with voting power.

5. The preemptive right is only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of the right.

89 Acts, ch 288, §185

490.1705 Reinstatement of corporations existing prior to December 31, 1989.

1. A corporation subject to this chapter, whose certificate of incorporation was canceled pursuant to former section 496A.130 after December 30, 1981, and before December 31, 1989, may apply to the secretary of state for reinstatement pursuant to section 490.1422 on or before December 31, 1991.

2. A corporation whose certificate of incorporation was canceled pursuant to former section 496A.130 after December 30, 1979, and before December 31, 1981, may apply to the secretary of state for reinstatement pursuant to section 490.1422 at any time within ten years of the date of the issuance of the certificate of cancellation.

3. A corporation whose corporate rights have been canceled and forfeited in the manner provided in former section 496.9 prior to December 31, 1989, or which has a right to renew pursuant to sections 491.25 through 491.28, may apply to the secretary of state for reinstatement pursuant to section 490.1422 on or before December 31, 1991.

4. This section applies to all reinstatements delivered to the office of the secretary of state for filing on or after December 31, 1989.

90 Acts, ch 1205, §28

CHAPTER 490A

LIMITED LIABILITY COMPANIES

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SUBCHAPTER I

GENERAL PROVISIONS

PART 1

490A.100 Short title.

This chapter is entitled and may be cited as the *"Iowa Limited Liability Company Act."*

92 Acts, ch 1151, §8

490A.101 Reservation of power to amend or repeal.

The general assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

92 Acts, ch 1151, §9

490A.102 Definitions.

In this chapter, unless the context otherwise requires:

1. *"Articles of organization"* means documents filed under section 490A.301 for the purpose of forming a limited liability company and includes amended and restated articles of organization, and articles of merger.

2. *"Bankruptcy"* means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

3. *"Capital contribution"* means any cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of a member.

4. *"Constituent entity"* means each limited liability company, limited partnership, or corporation which is party to a plan of merger pursuant to subchapter XII.

5. *"Corporation"* means a domestic corporation formed under the law of this state or subject to the law of this state, or a foreign corporation as defined in this chapter.

6. *"Court"* includes every court having jurisdiction of the case.

7. *"Distribution"* means a direct or indirect transfer of money or other property, or incurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of their interests.

8. *"Entity"* includes corporation and foreign corporation; nonprofit corporation; profit and nonprofit unincorporated association; business trust, estate, partnership, limited liability company, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

9. *"Foreign corporation"* means a corporation for profit incorporated under a law other than the law of this state.

10. *"Foreign limited liability company"* means a limited liability company organized under a law other than the law of this state.

11. *"Foreign limited partnership"* means a limited partnership organized under a law other than the law of this state.

12. *"Individual"* includes the estate of an incompetent, a ward, or a deceased individual.

13. *"Limited liability company"* or *"domestic limited liability company"* means an unincorporated association having one or more members, and organized under or subject to this chapter.

14. *"Limited partnership"* means a limited partnership organized under the law of this state or a foreign limited partnership as defined in this section.

15. *"Manager"* or *"managers"* means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement.

16. *"Member"* means a person with a membership interest in a limited liability company under this chapter or, with respect to a foreign limited liability company, under the laws of the state, foreign country, or other foreign jurisdiction under which such company is organized.

17. *"Membership interest"* or *"interest"* means a member's share of the profits and the losses of the limited liability company and the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management.

18. *"Operating agreement"* means any agreement, written or oral, of the members as to the affairs of a limited liability company and the conduct of its business.

19. *"Person"* has the same meaning as specified in section 4.1, subsection 20.

20. *"Principal office"* means the office, in or out of this state, where the principal executive offices of a domestic or foreign limited liability company are located.

21. *"Secretary of state"* means the Iowa secretary of state.

22. *"State,"* when referring to a part of the United States, includes a state, commonwealth, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

23. *"Surviving entity"* means the constituent entity surviving the merger, as identified in the articles of merger provided for in subchapter XII.

24. *"United States"* includes a district, authority, bureau, commission, department, and any other agency of the United States.

92 Acts, ch 1151, §10; 97 Acts, ch 188, §53

PART 2

490A.120 Filing requirements.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be one that this chapter requires or permits to be filed with the secretary of state.

3. The document must contain the information required by this chapter. It may contain other information as well.

4. The document must be typewritten or printed. The typewritten or printed portion shall be in black. Manually signed photocopies, or other reproduced copies, including facsimiles and other electronically or computer-generated copies of typewritten or printed documents may be filed.

5. The document must be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

6. The document must be executed by one of the following persons:

a. A manager, or if no managers have been selected, by any member of the limited liability company.

b. If the limited liability company has not been formed, by the person forming the limited liability company.

c. If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, that fiduciary.

7. The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs.

8. If, pursuant to any provision of this chapter, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

9. The document must be delivered to the secretary of state for filing and must be accompanied by the correct filing fee.

92 Acts, ch 1151, §11

490A.121 Filing duty of secretary of state.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 490A.120, the secretary of state shall file it and issue any necessary certificate.

2. The secretary of state files a document by stamping or otherwise endorsing *"filed"*, together

with the secretary of state's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee, and recording the document in the records of the secretary of state. After filing a document, and except as provided in section 490A.503, the secretary of state shall deliver the document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached, to the domestic or foreign limited liability company or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign limited liability company or its representative within ten days after the document was received by the secretary of state, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

92 Acts, ch 1151, §12

490A.122 Effective time and date of documents.

1. Except as provided in subsection 2 and section 490A.123, subsection 3, a document accepted for filing is effective at the later of the following times:

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

92 Acts, ch 1151, §13

490A.123 Correcting filed documents.

1. A domestic or foreign limited liability company may correct a document filed by the secretary of state if the document satisfies one or both of the following requirements:

a. Contains an incorrect statement.

b. Was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by complying with both of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attach a copy of it to the articles.

(2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.

(3) Correct the incorrect statement or defective execution.

b. By delivering the articles to the secretary of state for filing.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

92 Acts, ch 1151, §14

490A.124 Fees.

1. The secretary of state shall collect the following fees when documents described in this subsection are delivered to the secretary's office for filing:

a. Articles of organization ..... $ 50

b. Application for use of indistinguishable name ..... $ 10

c. Application for reserved name .... $ 10

d. Notice of transfer of reserved name .... $ 10

e. Application for registered name per month or part thereof ..... $ 2

f. Application for renewal of registered name ..... $ 20

g. Statement of change of registered agent or registered office or both ..... No fee

h. Agent's statement of change of registered office for each affected limited liability company ..... No fee

i. Agent's statement of resignation No fee

j. Amendment of articles of organization .... $ 50

k. Restatement of articles of organization with amendment of articles ..... $ 50

l. Articles of merger ..... $ 50

m. Articles of dissolution ..... $ 5

n. Articles of revocation of dissolution .... $ 5

o. Certificate of administrative dissolution .. .. No fee

p. Application for reinstatement following administrative dissolution ..... $ 5

q. Certificate of reinstatement .... No fee

r. Certificate of judicial dissolution .... No fee

s. Application for certificate of authority $100

t. Application for amended certificate of authority $100

u. Application for certificate of cancellation ..... $ 10

v. Certificate of revocation of authority to transact business ..... No fee

w. Articles of correction ..... $ 5
x. Application for certificate of existence or authorization ..... $ 5
y. Any other document required or permitted to be filed by this chapter ..... $ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

a. One dollar a page for copying.

b. Five dollars for the certificate.

92 Acts, ch 1151, §15; 93 Acts, ch 39, §21

490A.125 Forms.

1. The secretary of state may prescribe and furnish on request forms including but not limited to the following:

a. An application for a certificate of existence.

b. A foreign limited liability company's application for a certificate of authority to transact business in this state.

c. A foreign limited liability company's application for a certificate of withdrawal.

If the secretary of state so requires, use of these listed forms prescribed by the secretary of state is mandatory.

2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

92 Acts, ch 1151, §16

490A.126 Appeal from secretary of state's refusal to file document.

1. If the secretary of state refuses to file a document delivered to the secretary's office for filing, the domestic or foreign limited liability company may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the limited liability company's principal office or, if none in this state, its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

92 Acts, ch 1151, §17

490A.127 Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of the secretary of state, is conclusive evidence that the original document is on file with the secretary of state.

92 Acts, ch 1151, §18

490A.128 Certificate of existence.

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.

2. A certificate of existence or authorization must set forth all of the following:

a. The domestic limited liability company's name or the foreign limited liability company's name used in this state.

b. That one of the following applies:

(1) If it is a domestic limited liability company, that it is duly organized under the law of this state, the date of its organization, and the period of its duration.

(2) If it is a foreign limited liability company, that it is authorized to transact business in this state.

c. That all fees required by this chapter have been paid.

d. That articles of dissolution have not been filed.

e. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state.

92 Acts, ch 1151, §19

490A.129 Penalty for signing false document.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

92 Acts, ch 1151, §20

490A.130 Secretary of state — powers.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

92 Acts, ch 1151, §21

SUBCHAPTER II

PURPOSES AND POWERS

490A.201 Purposes.

1. A limited liability company organized under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

2. A limited liability company engaging in a business that is subject to regulation under another statute of this state may organize under this chapter only if permitted by, and subject to all limitations of, the other statute.

92 Acts, ch 1151, §22

490A.202 Powers.

Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to do all of the following:

1. Sue and be sued, complain, and defend in its name.

2. Transact its business, carry on its operations, and have and exercise the powers granted by this chapter in any state and in any foreign country.

3. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

4. Sell, convey, transfer, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

5. Purchase, receive, subscribe for, or otherwise acquire and hold, to sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any other person.

6. Make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by mortgage, deed of trust, or pledge of any of its property, franchises, or income.

7. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

8. Elect and appoint managers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit.

9. Pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of its current or former members, managers, employees, and agents.

10. Make donations for the public welfare or for religious, charitable, scientific, or educational purposes.

11. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company.

12. Cease its activities and dissolve.

13. Be a promoter, stockholder, partner, member, associate, agent, or manager of any corporation, partnership, limited liability company, joint venture, trust, or other entity.

14. Make and amend operating agreements, not inconsistent with its articles of organization or with the law of this state, for the administration and regulation of its affairs.

15. Transact any lawful business that a corporation, partnership, or other entity may conduct under the law of this state subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership, or other entity.

16. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized.

17. Indemnify and hold harmless a member, manager, or other person against a claim, liability, or other demand, as provided in an operating agreement.

92 Acts, ch 1151, §23; 93 Acts, ch 39, §22; 95 Acts, ch 138, §1; 97 Acts, ch 188, §54

SUBCHAPTER III

FORMATION

490A.301 Formation.

One or more persons may form a limited liability company by executing and delivering articles of organization to the secretary of state for filing. Such person or persons need not be members of the limited liability company after formation has occurred.

92 Acts, ch 1151, §24

490A.302 Liability.

All persons purporting to act as or on behalf of a limited liability company, knowing there is no organization under this chapter, are jointly and severally liable for all liabilities created while so acting.

92 Acts, ch 1151, §25

490A.303 Articles of organization.

1. The articles of organization must set forth all of the following:

a. A name for the limited liability company that satisfies the requirements of section 490A.401.

b. The street address of the limited liability company's initial registered office and the name of its initial registered agent at that office.

c. The street address of the principal office of the limited liability company, which may be the same as the registered office, but need not be within this state.

d. The period of its duration, which may be perpetual.

2. The articles of organization may set forth any other provision not inconsistent with law, including, but not limited to, a statement of whether there are limitations on the authority of members to bind the limited liability company.

3. The articles of organization need not set forth any of the powers enumerated in this chapter.

4. The articles of organization or an operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and may also provide for assignment or transfer of any membership interest represented by such a certificate and make other provisions with respect to such a certificate.

92 Acts, ch 1151, §26; 97 Acts, ch 188, §55

490A.304 Conversion of certain entities to a limited liability company.

1. As used in this section, the term *"other entity"* means a corporation, business trust or association, real estate investment trust, common-law trust, or any other unincorporated business, including any partnership, whether general or limited, or a foreign limited liability company.

2. Any other entity may convert to a domestic limited liability company by complying with subsection 8 and filing in the office of the secretary of state both of the following:

a. Articles of conversion to a limited liability company executed by one or more authorized persons.

b. Articles of organization executed by one or more authorized persons.

3. The articles of conversion to a limited liability company shall state all of the following:

a. The date on which, and jurisdiction where, the converting entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited liability company.

b. The name of the converting entity immediately prior to the filing of the articles of conversion to a limited liability company.

c. The name of the limited liability company.

d. The future effective date or time certain of the conversion to a limited liability company if it is not to be effective upon the filing of the articles of conversion and the articles of organization.

4. Upon the filing in the office of the secretary of state of the articles of conversion and the articles of organization or upon the future effective date or time of the articles of conversion and the articles of organization, the converting entity shall be converted into a domestic limited liability company and the limited liability company, from that date or time, is subject to this chapter, except that the existence of the limited liability company is deemed to have commenced on the date the converting entity commenced its existence in the jurisdiction in which the converting entity was first created, formed, incorporated, or otherwise came into being.

5. The conversion of an entity into a domestic limited liability company does not affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company, or the personal liability of any person incurred prior to such conversion.

6. When a conversion is effective, for all purposes of the laws of this state, all of the rights, privileges, and powers of the converting entity, and all property, real, personal, and mixed, and all debts due to the converting entity, as well as all other things and causes of action belonging to such entity, are vested in the domestic limited liability company and are the property of the domestic limited liability company as they were of the converting entity. The title to any real property vested by deed or otherwise in the converting entity shall not revert or be in any way impaired by reason of this chapter, and all rights of creditors and all liens upon any property of such other entity are preserved unimpaired, and all debts, liabilities, and duties of the converting entity shall attach to the domestic limited liability company, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the domestic limited liability company.

7. Unless otherwise agreed, or as required under the laws of a jurisdiction other than this state, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion does not constitute a dissolution of the converting entity.

8. Prior to filing the articles of conversion to a limited liability company with the office of the secretary of state, an operating agreement must be approved in the manner provided for by the documents, instrument, agreement, or other writing, as the case may be, governing the internal affairs of the converting entity and the conduct of its business or by applicable law, as appropriate.

9. This section shall not be construed to limit the ability to change the law governing, or the domicile of, a converting entity to this state by any other means provided for in an operating agreement or as otherwise permitted by law, including by the amendment of an operating agreement.

97 Acts, ch 188, §56

490A.305 Series of members, managers, or membership interests.

1. An operating agreement may establish or provide for the establishment of designated series

of members, managers, or membership interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.

2. Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally, if all of the following apply:

a. The operating agreement creates one or more series.

b. Separate and distinct records are maintained for the series and the assets associated with the series are held and accounted for separately from the other assets of the limited liability company, or from any other series of the limited liability company.

c. The operating agreement provides for such limitation on liabilities.

d. Notice of the limitation on liabilities of a series is set forth in the articles of organization of the limited liability company. Filing of articles of organization containing a notice of the limitation on liabilities of a series in the office of the secretary of state constitutes notice of the limitation on liabilities of such series.

3. Notwithstanding section 490A.601, or a contrary provision in an operating agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, or liabilities of one or more series.

4. An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as the operating agreement may provide. The operating agreement may provide for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including all action to create under the provisions of the operating agreement a class or group of the series of membership interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members associated with a series have no voting rights.

5. An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group, or other basis.

6. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series in proportion to the then-current percentage or other interest of members in the profits of the series owned by all of the members associated with such series. The decision of members owning more than fifty percent of the series or other interest in the profits shall control. However, if an operating agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, is vested in the manager who shall be chosen as provided in the operating agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to managers as set forth in the operating agreement. A series may have more than one manager. A manager shall cease to be a manager with respect to a series as provided in the operating agreement. Except as otherwise provided in the operating agreement, an event under this chapter or identified in an operating agreement that causes a manager to cease to be a manager with respect to a series, by itself, shall not cause the manager to cease to be a manager of the limited liability company or with respect to any other series of the limited liability company.

7. Notwithstanding any other provision of this chapter, except subsections 8 and 11 and unless otherwise provided in an operating agreement, at the time a member associated with a series that has been established pursuant to subsection 1 becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to, all remedies available to a creditor of the series with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

8. Notwithstanding any other provision of this chapter, a limited liability company may make a distribution with respect to a series that has been established pursuant to subsection 1. However, a limited liability company shall not make a distribution with respect to a series that has been established pursuant to subsection 1 to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their membership interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series. However, the fair value of an asset of the series that is subject to a liability for

which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that asset exceeds that liability. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, is liable for the amount of the distribution. Subject to section 490A.807, which applies to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

9. Unless otherwise provided in the operating agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's membership interest with respect to such series. Except as otherwise provided in an operating agreement, an event under this chapter or identified in an operating agreement that causes a member to cease to be associated with a series, by itself, shall not cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company.

10. Subject to section 490A.1301, except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established pursuant to subsection 1 shall not affect the limitation on liabilities of such series provided by subsection 2. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under section 490A.1301 or otherwise upon the first to occur of the following:

a. At the time specified in the operating agreement.

b. Upon the happening of events specified in the operating agreement.

c. Unless otherwise provided in the operating agreement, upon the written consent of all members associated with such series.

d. The termination of such series under subsection 10.

11. Notwithstanding section 490A.1303, unless otherwise provided in the operating agreement, any of the following persons may wind up the affairs of the series:

a. A manager associated with a series who has not wrongfully terminated the series.

b. If there is no manager of a series, the members associated with the series or a person approved by the members associated with the series.

c. If there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than fifty percent of the then-current percentage or other interest in the profits of the series owned by all of the members associated with the series or by the members of each class or group associated with the series.

However, if the series has been established pursuant to subsection 1, the district court of the county in which the limited liability company has its principal place of business, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series or the member's legal representative or assignee, and in connection with such winding up, may appoint a liquidating trustee. The persons winding up the affairs of a series, in the name of the limited liability company and for and on behalf of the limited liability company and such series, may take all actions with respect to the series as are permitted under section 490A.1303. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in section 490A.1304 and distribute the assets of the series as provided in section 490A.1304. Actions taken pursuant to this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

12. On application by or for a member or manager associated with a series established pursuant to subsection 1, the district court in the county in which the limited liability company has its principal place of business may enter an order for dissolution of such series if it is not reasonably practicable to carry on the business of the series in conformity with the operating agreement.

13. A foreign limited liability company that is registering to do business in this state under this chapter which is governed by an operating agreement that establishes or provides for the establishment of designated series of members, managers, or membership interests having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company, or profits and losses associated with the specified property or obligations, shall indicate that fact on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on the application whether the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series, if any, are enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally.

97 Acts, ch 188, §57

490A.306 Admission of members.

1. In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of the following:

a. The formation of the limited liability company.

b. The time provided in, and upon compliance with, the operating agreement or, if the operating agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

2. After the formation of a limited liability company, a person is admitted as a member of the limited liability company as follows:

a. In the case of a person who is not an assignee of a membership interest, including a person acquiring a membership interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a membership interest in the limited liability company, at the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the consent of all members and the person's admission being reflected in the records of the limited liability company.

b. In the case of an assignee of a membership interest, as provided in section 490A.903 and at the time provided in and upon compliance with the operating agreement, or if the operating agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company.

c. Unless otherwise provided in an agreement of merger, in the case of a person acquiring a membership interest in a surviving or resulting limited liability company pursuant to a merger approved pursuant to section 490A.1203, at the time provided in and upon compliance with the operating agreement of the surviving or resulting limited liability company.

3. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in an operating agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company.

97 Acts, ch 188, §58

490A.307 Classes and voting.

1. An operating agreement may provide for classes or groups of members and the relative rights, powers, and duties of such members, and may provide for the future creation of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. An operating agreement may provide for taking action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members, including an action to create a class or group of membership interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members has no voting rights.

2. An operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of members or managers on any matter. Voting by members may be on a per capita, number, financial interest, class, group, or any other basis.

3. An operating agreement which grants a right to vote may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any notice, action by consent without meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

97 Acts, ch 188, §59

SUBCHAPTER IV

NAMES

490A.401 Name.

1. A limited liability company name must contain the words "Limited Company" or "Limited Liability Company" or the abbreviation "L.C." or "L.L.C." or words or abbreviations of like import in another language.

2. A limited liability company name shall not contain any of the following:

a. The words "Corporation", "Incorporated", "Limited Partnership" or the abbreviations "Corp.", "Inc." or "L.P." or words or abbreviations of like import in another language.

b. Any word or phrase the use of which is prohibited by law for such a limited liability company.

3. Except as authorized by subsections 4 and 5, a limited liability company name must be distinguishable upon the records of the secretary of state from all of the following:

a. The name of a limited liability company, limited partnership, or corporation organized under the law of this state or registered as a foreign limited liability company, foreign limited partnership, or foreign corporation in this state.

b. A name reserved in the manner provided under the law of this state.

c. The fictitious name adopted by a foreign corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this state, because its real name is unavailable.

d. The corporate name of a nonprofit corporation incorporated or authorized to transact busi-

ness in this state.

4. A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 3. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other entity consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

5. A limited liability company may use the name, including the fictitious name, of another entity that is used in this state if the other entity is formed under the law of this state or is authorized to transact business in this state and the proposed user limited liability company meets one of the following conditions:

a. Has merged with the other entity.

b. Has been formed by reorganization of the other entity.

c. Has acquired all or substantially all of the assets, including the name, of the other entity.

6. This chapter does not control the use of fictitious names; however, if a limited liability company uses a fictitious name in this state it shall deliver to the secretary of state for filing a certified copy of the resolution of the limited liability company adopting the fictitious name.

92 Acts, ch 1151, §27; 95 Acts, ch 138, §2

490A.402 Reserved name.

1. A person may reserve the exclusive use of a limited liability company name, including a fictitious name for a foreign limited liability company whose limited liability company name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the limited liability company name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

2. The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

92 Acts, ch 1151, §28

SUBCHAPTER V

REGISTERED OFFICE AND AGENT

490A.501 Registered office and registered agent.

Each limited liability company must continuously maintain in this state each of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent who may be any of the following:

a. An individual who is a resident of this state and whose business office is identical with the registered office.

b. A domestic corporation, domestic limited liability company, or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation, foreign limited liability company, or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

92 Acts, ch 1151, §29

490A.502 Change of registered office or registered agent.

1. Each limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

a. The name of the limited liability company or foreign limited liability company.

b. If the current registered office is to be changed, the street address of the new registered office.

c. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent either on the statement or attached to it, to the appointment.

d. That after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical.

2. A statement of change shall forthwith be filed in the office of the secretary of state by a limited liability company whenever its registered agent dies, resigns, or ceases to satisfy the requirements of section 490A.501.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 1 for each limited liability company, or a single statement for all limited liability companies named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph *"c"*, and must recite that a copy of the statement has been mailed to each limited liability company named in the notice.

4. The change of address of a registered office or the change of registered agent becomes effective upon the filing of such statement by the secretary of state.

92 Acts, ch 1151, §30; 97 Acts, ch 107, §7, 8

490A.503 Resignation of registered agent — discontinuance of registered office — statement.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing an original statement of resignation. The statement may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation to the registered office, if not discontinued, and to the limited liability company at its principal office. The agent shall certify to the secretary of state that the copy has been sent to the limited liability company, including the date the copy was sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

92 Acts, ch 1151, §31; 97 Acts, ch 107, §9

490A.504 Service on limited liability company.

1. A domestic or foreign limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

2. If a limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, the limited liability company may be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service is perfected under this subsection at the earliest of:

a. The date the limited liability company receives the mail.

b. The date shown on the return receipt, if signed on behalf of the limited liability company.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a domestic or foreign limited liability company.

92 Acts, ch 1151, §32

SUBCHAPTER VI

RELATIONSHIP OF A
LIMITED LIABILITY COMPANY
AND ITS MEMBERS TO THIRD PERSONS

490A.601 Liability to third parties.

Except as otherwise provided by this chapter or as expressly provided in the articles of organization, no member or manager of a limited liability company is personally liable for the acts or debts of the limited liability company.

92 Acts, ch 1151, §33

490A.602 Parties to actions.

A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, except where either of the following applies:

1. The object is to enforce a member's right against or liability to the limited liability company.

2. As provided in subchapter X.

92 Acts, ch 1151, §34

490A.603 Liability of members.

1. Except as otherwise provided in this chapter or by written agreement of a member, a member or manager of a limited liability company is not personally liable solely by reason of being a member or manager of the limited liability company under any judgment, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise.

2. A member of a limited liability company is personally liable under a judgment or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any debt, obligation, or liability of the limited liability company.

3. Nothing in this section shall be construed to affect the liability of a member of a limited liability company to third parties for the member's participation in tortious conduct.

97 Acts, ch 188, §60

SUBCHAPTER VII

RELATIONSHIP OF MEMBERS TO EACH OTHER

490A.701 Voting rights of members.

1. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company shall vote in proportion to their capital contributions to the limited liability company, as adjusted from time to time to reflect any additional contributions or withdrawals.

2. Unless otherwise provided in the articles of organization or an operating agreement, a major-

ity vote shall be required to approve the following matters:

a. The dissolution and winding up of the limited liability company.

b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company other than in the ordinary course of business.

c. Merger of the limited liability company with another entity.

3. Unless otherwise provided in the articles of organization or an operating agreement, a unanimous vote shall be required to approve an amendment to the articles of organization or operating agreement.

92 Acts, ch 1151, §35; 93 Acts, ch 39, §23, 24

490A.702 Management of limited liability company.

1. Unless the articles of organization or an operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

2. Unless otherwise provided in the articles of organization and except as provided in subsection 3, every member is an agent of the limited liability company for the purpose of its business or affairs. The act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

3. If the articles of organization provide that management of the limited liability company is vested in a manager or managers the following apply:

a. A member, acting solely in the capacity as a member, is not an agent of the limited liability company.

b. Every manager is an agent of the limited liability company for the purpose of its business or affairs, unless otherwise provided in the articles of organization or an operating agreement. The act of any manager with agency authority, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

4. Except as provided in subsection 5, the validity of an act of a limited liability company is not challengeable on the ground that the limited liability company lacks or lacked the power or authority to act.

5. A limited liability company's power to act may be challenged in the following proceedings:

a. In an action by a member against the limited liability company to enjoin an unauthorized act.

b. In an action by the limited liability company against an incumbent or former manager, employee, or agent of the limited liability company, either directly, derivatively, or through a receiver, trustee, or other legal representative.

c. By the attorney general under section 490A.1409.

6. In a member's proceeding under subsection 5, paragraph *"a"*, to enjoin an unauthorized act, the court may enjoin or set aside the act if equitable and if all affected persons are parties to the proceeding. The court may award damages, other than anticipated profits, for loss suffered by the limited liability company or another party as a result of the unauthorized act being enjoined.

7. An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

92 Acts, ch 1151, §36; 93 Acts, ch 39, §25; 95 Acts, ch 138, §3, 4; 97 Acts, ch 188, §61, 62; 2000 Acts, ch 1041, §1

490A.703 Operating agreement.

1. The members of a limited liability company may enter into an operating agreement to establish or regulate the affairs of the limited liability company, the conduct of its business and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with law or the articles of organization.

2. An operating agreement must initially be agreed to by all of the members. Unless the articles of organization specifically permit otherwise, an operating agreement shall be in writing.

3. *a.* A written operating agreement or other writing may provide for a person to be admitted as a member of a limited liability company, or to become an assignee of a limited liability company membership interest or other rights or powers of a member, to the extent that either of the following occurs:

(1) If the person, or a representative authorized by the person orally, in writing, or by other action such as payment for a limited liability company interest, executes the operating agreement or any other writing evidencing the intent of such person to become a member or assignee.

(2) Without execution of the operating agree-

ment or similar writing, if the person or such authorized representative of the person complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing and requests orally, in writing, or by other action such as payment for a limited liability company interest, that the records of the limited liability company reflect such admission or assignment.

b. A written operating agreement or another written agreement or writing is not unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee, or the member's or assignee's representative, as provided in paragraph *"a"*.

4. A court may enforce an operating agreement by injunction or by other relief that the court determines to be fair and appropriate in the circumstances. As an alternative to injunctive or other equitable relief, when the provisions of section 490A.1302 are applicable, the court may order dissolution of the limited liability company.

92 Acts, ch 1151, §37; 97 Acts, ch 188, §63

490A.704 Withdrawal of member.

A member may withdraw from a limited liability company at the time or upon the happening of events specified in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not specify in writing the time or the events upon the happening of which a member may withdraw, a member may withdraw upon not less than six months' prior written notice to each member at the member's address on the books of the limited liability company. The articles of organization or an operating agreement may prohibit withdrawal by a member.

92 Acts, ch 1151, §38; 93 Acts, ch 39, §26

490A.704A Resignation or withdrawal of member.

1. *a.* This section applies to a limited liability company whose original articles of organization are filed with the secretary of state on or after July 1, 1997.

b. This section applies to a limited liability company whose original articles of organization are filed with the secretary of state and effective on or prior to June 30, 1997, if such company's operating agreement provides that it is subject to this section.

c. If no provision is made in the operating agreement, a limited liability company whose original articles of organization were filed with the secretary of state and effective on or prior to June 30, 1997, is subject to section 490A.704.

2. A member may resign or withdraw from a limited liability company only at the time or upon the happening of an event specified in an operating agreement and pursuant to the operating agreement.

3. Unless an operating agreement provides otherwise, a member may not resign or withdraw from a limited liability company prior to the dissolution and winding up of the limited liability company. However, if the articles of organization or an operating agreement do not specify the time or the events upon the happening of which a member may resign or withdraw, a member may resign or withdraw from the limited liability company in the event any amendment to the articles of organization or operating agreement that is adopted over the member's written dissent adversely affects the rights or preferences of the dissenting member's membership interest in any of the ways described in paragraphs *"a"* through *"e"*. A resignation or withdrawal in the event of such dissent and adverse effect is deemed to have occurred as of the effective date of the amendment, if the member gives notice to the limited liability company not more than sixty days after the date of the amendment. In valuing the member's distribution pursuant to this subsection, any depreciation in anticipation of the amendment shall be excluded. An amendment that does any of the following is subject to this subsection:

a. Alters or abolishes a member's right to receive a distribution.

b. Alters or abolishes a member's right to voluntarily withdraw or resign.

c. Alters or abolishes a member's right to vote on any matter, except as the rights may be altered or abolished through the acceptance of contributions or the making of contribution agreements.

d. Alters or abolishes a member's preemptive right to make contributions.

e. Establishes or changes the conditions for or consequences of expulsion.

4. A member withdrawing under this section is not liable for damages for the breach of any agreement not to withdraw.

5. An operating agreement may provide that a membership interest may be assigned prior to the dissolution and winding up of the limited liability company.

97 Acts, ch 188, §64

490A.705 Management of a limited liability company by a manager or managers.

1. The articles of organization or an operating agreement of a limited liability company may apportion responsibility for managing a limited liability company among one or more managers who may be, but need not be, members.

2. The articles of organization or an operating agreement may prescribe qualifications for managers.

3. The number of managers shall be fixed by or in the manner provided in the articles of organization or an operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the

articles of organization or an operating agreement.

4. Unless otherwise provided in the articles of organization or an operating agreement, managers shall be elected by the majority vote of the members.

5. Unless otherwise provided in the articles of organization or an operating agreement, any vacancy occurring in the office of manager shall be filled by a majority vote of the members.

6. All managers or any lesser number may be removed in the manner provided in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not provide for the removal of managers, then all managers or any lesser number may be removed with or without cause by a majority vote of the members.

7. Unless otherwise provided in the articles of organization or an operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be by majority vote of the managers.

8. Unless the articles of organization or an operating agreement require a different number, a quorum for a meeting of managers consists of a majority of the managers.

92 Acts, ch 1151, §39

490A.705A Classes of managers and voting.

1. An operating agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the operating agreement may provide, and may make provision for the future creation of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers. An operating agreement may provide for taking action, including the amendment of the operating agreement, without the vote or approval of any manager or class or group of managers, including an action to create a class or group of membership interests that was not previously outstanding.

2. An operating agreement may grant to all or certain identified managers or a specified class or group of managers the right to vote on any matter, separately or with all or any class or group of managers or members. Voting by managers may be on a per capita, number, financial interest, class, group, or any other basis.

3. An operating agreement which grants a right to vote may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

97 Acts, ch 188, §65

490A.706 General standards of conduct for managers.

1. A manager shall discharge that manager's duties as a manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner the manager believes to be in the best interests of the limited liability company.

2. In discharging the manager's duties, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

a. One or more managers or employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented.

b. Legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence.

c. A committee of managers of which the manager is not a member if the manager reasonably believes the committee merits confidence.

3. A manager is not acting in good faith if the manager has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. A manager is not liable for any action taken as a manager or any failure to take any action, if the manager performed the duties of the manager's office in compliance with this section, or if, and to the extent that, liability for any such action or failure to act has been limited by the articles of organization pursuant to section 490A.707.

92 Acts, ch 1151, §40

490A.707 Limitation of liability of managers.

The articles of organization may contain a provision eliminating or limiting the personal liability of a manager to the limited liability company or to its members or of the members with whom the management of the limited liability company is vested pursuant to section 490A.702, to the limited liability company or to its members for monetary damages for breach of fiduciary duty as a manager or a member with whom management of the limited liability company is vested, if the provision does not eliminate or limit the liability of a manager or a member with whom management of the limited liability company is vested for any of the following:

1. Breach of the manager's or member's duty of loyalty to the limited liability company or to its members.

2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing viola-

tion of law.

3. Transaction from which the manager or member derives an improper personal benefit or a wrongful distribution in violation of section 490A.807.

A provision shall not eliminate or limit the liability of a manager or member with whom management of the limited liability company is vested for an act or omission occurring prior to the date when the provision in the articles of organization becomes effective.

92 Acts, ch 1151, §41; 93 Acts, ch 39, §27

490A.708 Business transactions of managers with the limited liability company.

1. A conflict of interest transaction is a transaction with the limited liability company in which a manager of the limited liability company has a direct or indirect interest. A conflict of interest transaction is not voidable by the limited liability company solely because of the manager's interest in the transaction if any one of the following is true:

a. The material facts of the transaction and the manager's interest were disclosed or known to the managers or a committee of managers and the managers or a committee of managers authorized, approved, or ratified the transaction.

b. The material facts of the transaction and the manager's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction.

c. The transaction was fair to the limited liability company.

2. For purposes of this section, a manager of the limited liability company has an indirect interest in a transaction if either:

a. Another entity in which the manager has a material financial interest or in which the manager is a general partner is a party to the transaction.

b. Another entity of which the manager is a director, officer, manager, or trustee is a party to the transaction and the transaction is or should be considered by the limited liability company.

3. For purposes of subsection 1, paragraph *"a"*, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the managers or of the committee of managers, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single manager. If a majority of the managers who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a manager with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 1, paragraph *"a"*, if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

4. For purposes of subsection 1, paragraph *"b"*, a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the members entitled to vote under this subsection. Interests owned by or voted under the control of a manager who has a direct or indirect interest in the transaction, and interests owned by or voted under the control of an entity described in subsection 2, paragraph *"a"*, shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 1, paragraph *"b"*. The vote of those members, however, is counted in determining whether the transaction is approved under other sections of this chapter. Members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitute a quorum for the purpose of taking action under this section.

92 Acts, ch 1151, §42

490A.709 Information and records.

1. Each limited liability company shall keep at its principal office the following:

a. A current list of the full name and last known business address of each member and manager.

b. A copy of the articles of organization and all articles of amendment thereto.

c. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years.

d. Copies of any then-effective written operating agreement and of any financial statements of the limited liability company for the three most recent years.

e. Unless contained in a written operating agreement, a writing setting out:

(1) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute.

(2) The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made.

(3) Any right of a member to receive, or of the limited liability company to make, distributions to a member which include a return of all or any part of the member's contribution.

(4) Any events upon the happening of which the limited liability company is to dissolve and its affairs be wound up.

2. Each member has the right for any purpose reasonably related to the member's interest as a member of the limited liability company, upon reasonable request and subject to reasonable standards as may be set forth in an operating agreement, to do any of the following:

a. Inspect and copy any of the limited liability company records required to be maintained by this section; and

b. Obtain from the manager or managers, or if the limited liability company has no manager or managers, from any member or other person with access to such information, from time to time upon reasonable demand any of the following:

(1) True and full information regarding the state of the business and financial condition of the limited liability company.

(2) Promptly after it becomes available, a copy of the limited liability company's federal, state, and local income tax returns for each year.

(3) Other information regarding the affairs of the limited liability company as is just and reasonable.

92 Acts, ch 1151, §43; 97 Acts, ch 188, §66

490A.710 Delegation of rights and powers to manage.

Unless otherwise provided in the operating agreement, a member or manager of a limited liability company may delegate to one or more other persons the member's or manager's rights and powers to manage and control the business and affairs of the limited liability company, including to agents and employees of a member or manager of the limited liability company, and to delegate by a management agreement or another agreement with other persons. Unless otherwise provided in the operating agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager of the limited liability company.

97 Acts, ch 188, §67

490A.711 Contractual appraisal rights.

An operating agreement or an agreement of merger may provide that contractual appraisal rights with respect to a membership interest or another interest in a limited liability company are available for any class or group of members or membership interests in connection with an amendment of an operating agreement, a merger in which the limited liability company is a constituent party to the merger, or the sale of all or substantially all of the limited liability company's assets. The district court of the county in which the limited liability company has its principal place of business has jurisdiction to hear and determine any matter relating to such appraisal rights.

97 Acts, ch 188, §68

490A.712 Cessation of membership.

A person ceases to be a member of a limited liability company upon the occurrence of any of the following events:

1. The person withdraws or resigns from the limited liability company.

2. The person is removed as a member pursuant to the operating agreement.

3. Unless otherwise provided in the operating agreement or with the consent of all other members, the person does any of the following:

a. Makes an assignment for the benefit of creditors.

b. Files a voluntary petition in bankruptcy.

c. Is adjudged bankrupt or insolvent or has entered against the person an order for relief in any bankruptcy or insolvency proceeding.

d. Files a petition or answer seeking for that person any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute or rule.

e. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator for the member or for all or any substantial part of the member's properties.

f. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the person in any proceeding described in this subsection.

4. Unless otherwise provided in the operating agreement, or with the consent of all other members, the continuation of any proceeding against the person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute or rule for one hundred twenty days after the commencement of such proceeding, or the appointment of a trustee, receiver, or liquidator for the member or for all or any substantial part of the member's properties without the member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty days or, if the appointment is stayed, for one hundred twenty days after the expiration of the stay during which period the appointment is not vacated.

5. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member who is an individual, the individual's death or adjudication by a court of competent jurisdiction as incompetent to manage the individual's person or property.

6. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member who is acting as a member by virtue of being a trustee of a trust, the termination of the trust.

7. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member that is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company.

8. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member that is a corporation, the dissolution of the corporation or the revocation of its articles of incorporation.

9. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member that is an estate, the distribution by the fiduciary of the estate's entire

interest in the limited liability company.
97 Acts, ch 188, §69

SUBCHAPTER VIII

FINANCE

490A.801 Contributions — penalties.
1. The contributions of a member to a limited liability company may be in cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.
2. Unless otherwise provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the contribution, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the value of the contribution that has not been made as stated in the limited liability company records required to be kept by section 490A.709. A promise by a member to contribute to a limited liability company is not enforceable unless set out in a writing signed by the member.
3. Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation.
4. An operating agreement may provide that the interest of any member who fails to make a contribution that the member is obligated to make is subject to specified penalties for, or specified consequences of, such failure. The penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's membership interest to that of a nondefaulting member, a forced sale of the member's membership interest, forfeiture of the member's membership interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's membership interest by appraisal or by formula and redemption, or sale of the member's membership interest at such value or other penalty or consequence.
92 Acts, ch 1151, §44; 97 Acts, ch 188, §70

490A.802 Sharing of profits and losses.
The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, profits and losses shall be allocated on the basis of their respective capital contributions, as adjusted from time to time to reflect any additional contributions or withdrawals.
92 Acts, ch 1151, §45

490A.803 Sharing of distributions.
Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, distributions shall be made on the basis of their respective capital contributions, as adjusted from time to time to reflect any additional contributions or withdrawals.
92 Acts, ch 1151, §46

490A.804 Interim distributions.
Except as otherwise provided in this chapter, a member is entitled to receive distributions from a limited liability company before the member's withdrawal from the limited liability company and before the dissolution and winding up of the company to the extent and at the times or upon the happening of the events specified in the articles of organization or an operating agreement.
92 Acts, ch 1151, §47

490A.805 Distribution upon withdrawal.
Except as otherwise provided in this chapter, upon withdrawal, a withdrawing member is entitled to receive any distribution to which the member is entitled under the articles of organization or an operating agreement. If not otherwise provided in the articles of organization or an operating agreement, the member is entitled to receive, within a reasonable time after withdrawal, the fair value of the member's membership interest as of the date of withdrawal, based on the member's right to share in distributions from the limited liability company.
92 Acts, ch 1151, §48

490A.806 Distribution in kind.
Unless otherwise provided in the articles of organization or an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Unless otherwise provided in the articles of organization or an operating agreement, a member shall not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the per-

centage of the asset distributed to the member exceeds the percentage of the member's membership interest in the limited liability company.

92 Acts, ch 1151, §49

490A.807 Restrictions on making distribution.

1. A distribution shall not be made if, after giving it effect, either of the following would result:

a. The limited liability company would not be able to pay its debts as they became due in the usual course of business.

b. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or an operating agreement permit otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

2. The limited liability company may base a determination that a distribution is not prohibited under subsection 1 of this section on either of the following:

a. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.

b. A fair valuation or other method that is reasonable in the circumstances.

3. The effect of a distribution under subsection 1 of this section is measured as of one of the following:

a. The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization.

b. The date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

4. A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.

92 Acts, ch 1151, §50

490A.808 Liability upon wrongful distribution.

If a member has received a distribution in violation of the articles of organization or an operating agreement or in violation of section 490A.807 of this chapter, then the member is liable to the limited liability company for a period of five years thereafter for the amount of the distribution wrongfully made.

92 Acts, ch 1151, §51

490A.809 Right to distribution.

Subject to sections 490A.807 and 490A.1304, and unless otherwise provided in an operating agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

97 Acts, ch 188, §71

SUBCHAPTER IX

RIGHTS OF AND
ASSIGNMENT BY MEMBERS

490A.901 Nature of interest in limited liability company.

A membership interest in a limited liability company is personal property.

92 Acts, ch 1151, §52

490A.902 Assignment of interest.

Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of an interest in a limited liability company does not dissolve the limited liability company. Except as provided in the articles of organization or an operating agreement, an assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Except as provided in the articles of organization or an operating agreement, an assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the articles of organization or an operating agreement, a member ceases to be a member upon assignment of the member's entire membership interest.

Unless otherwise provided in the articles of organization or an operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the membership interest of a member shall not cause the member to cease to be a member and shall not deprive the member of the power to exercise any rights or powers of a member.

Unless otherwise provided in the articles of organization or an operating agreement and except to the extent assumed by agreement, until an assignee of a membership interest becomes a member, the assignee shall have no liability as a member as a result of the assignment except for liability for a wrongful distribution to the assignee described in section 490A.808.

92 Acts, ch 1151, §53; 97 Acts, ch 188, §72

490A.903 Right of assignee to become member.

1. Unless otherwise provided in the articles of organization or an operating agreement, an assignee of an interest in a limited liability company may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in the articles of organization or an operating agreement. In the absence of such specification consent shall be evidenced by a written instrument, dated and signed by the requisite number of members, or evidenced by a vote taken at a meeting of members called for that purpose.

2. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, an operating agreement, and this chapter. An assignee who becomes a member is liable for any obligations of the member's assignor to make and return contributions as provided in subchapters VII and VIII. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to the assignee at the time the assignee became a member, and which could not be ascertained from the articles of organization or an operating agreement.

3. If an assignee of an interest in a limited liability company becomes a member, the assignor is not released from liability to the limited liability company under sections 490A.801 and 490A.808.

92 Acts, ch 1151, §54

490A.904 Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the interest of the member in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent of the amounts so charged, the judgment creditor has only the rights of an assignee of the interest in the limited liability company. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's interest in the limited liability company.

92 Acts, ch 1151, §55

490A.905 Powers of estate of a deceased or incompetent member.

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power under the articles of organization or an operating agreement of an assignee to become a member. If a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

92 Acts, ch 1151, §56

SUBCHAPTER X

DERIVATIVE ACTIONS

490A.1001 Right of member to bring derivative action.

A member may bring an action in the right of the limited liability company to recover a judgment in its favor if all of the following conditions are met:

1. Either management of the limited liability company is vested in a manager or managers who have the sole authority to cause the limited liability company to sue in its own right or management of the limited liability company is reserved to the members but the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of the articles of organization or an operating agreement.

2. The plaintiff has made demand on those managers or those members with such authority requesting that such managers or such members cause the limited liability company to sue in its own right.

3. The members or managers with such authority have wrongfully refused to bring the action or, after adequate time to consider the demand, have failed to respond to the demand.

4. The plaintiff is a member of the limited liability company at the time of bringing the action and was a member of the limited liability company at the time of the transaction of which the plaintiff complains, or the plaintiff's status as a member of the limited liability company thereafter devolved upon the plaintiff pursuant to the terms of the articles of organization or an operating agreement from a person who was a member at such time.

5. The plaintiff fairly and adequately represents the interests of the members in enforcing the right of the limited liability company.

92 Acts, ch 1151, §57

SUBCHAPTER XI

AMENDMENT OF ARTICLES OF ORGANIZATION

490A.1101 Amendment of articles of organization.

1. A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles of organization or to delete a provision not required in the articles of organization by delivering articles of amendment to the secretary of state for filing. Whether a provision is required or permitted for the articles of organization is determined as of the effective date of the amendment.

2. To amend its articles of organization, a lim-

ited liability company shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

a. The name of the limited liability company.

b. The text of each amendment adopted.

c. The date of each amendment's adoption.

d. A statement that the amendment was adopted by a vote of the members in accordance with this chapter.

92 Acts, ch 1151, §58

490A.1102 Restated articles of organization.

1. A limited liability company may restate its articles of organization at any time.

2. The restatement may include one or more amendments to the articles. The restatement must be adopted by a vote of the members as provided by this chapter.

3. A limited liability company restating its articles of organization shall deliver to the secretary of state for filing articles of restatement setting forth the name of the limited liability company and the text of the restated articles of organization together with a certificate setting forth the information required by section 490A.1101, subsection 2.

4. Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

5. The secretary of state may certify restated articles of organization, as the articles of organization currently in effect, without including the certificate information required by subsection 3.

92 Acts, ch 1151, §59

490A.1103 Amendment pursuant to reorganization.

1. A limited liability company's articles of organization may be amended without action by the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of organization after amendment contain only provisions required or permitted by section 490A.303.

2. The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

a. The name of the limited liability company.

b. The text of each amendment approved by the court.

c. The date of the court's order or decree approving the articles of amendment.

d. The title of the reorganization proceeding in which the order or decree was entered.

e. A statement that the court had jurisdiction of the proceeding under federal statute.

3. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

92 Acts, ch 1151, §60

490A.1104 Effect of amendment.

An amendment to articles of organization does not affect a cause of action existing against or in favor of the limited liability company, a proceeding to which the limited liability company is a party, or the existing rights of persons other than members of the limited liability company. An amendment changing a limited liability company's name does not abate a proceeding brought by or against the limited liability company in its former name.

92 Acts, ch 1151, §61

SUBCHAPTER XII

MERGER

490A.1201 Merger.

Any one or more limited liability companies may merge with or into any one or more limited liability companies, limited partnerships, or corporations, provided that no member of a limited liability company that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the plan of merger or otherwise consents to becoming personally liable.

92 Acts, ch 1151, §62

490A.1202 Plan of merger.

1. Each constituent entity must enter into a written plan of merger, which must be approved in accordance with section 490A.1203.

2. The plan of merger must set forth all of the following:

a. The name of each constituent entity in the merger and the name of the surviving entity into which each other constituent entity proposes to merge.

b. The terms and conditions of the proposed merger.

c. The manner and basis of converting the interests in each constituent entity in the merger into interests, shares, or other securities or obligations of the surviving entity, or of any other entity, or, in whole or in part, into cash or other property.

d. Such amendments to the articles of organization of a limited liability company, articles or certificate of incorporation of a corporation, or certificate of limited partnership of a limited partnership, as the case may be, of the surviving entity as are desired to be effected by the merger, or that no such changes are desired.

e. Other provisions relating to the proposed merger as are deemed necessary or desirable.

92 Acts, ch 1151, §63

490A.1203 Action on plan.

1. A proposed plan of merger complying with

the requirements of section 490A.1202 shall be approved in the manner provided by this section:

a. A limited liability company which is a party to a proposed merger shall have the plan of merger authorized and approved as required by section 490A.701.

b. A corporation which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by chapter 490.

c. A limited partnership which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by its partnership agreement and in accordance with chapter 487.

2. After a merger is authorized, unless the plan of merger provides otherwise, and at any time before articles of merger as provided for in section 490A.1204 are filed, the plan of merger may be abandoned subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in one of the following ways:

a. By the majority consent of the members of each limited liability company that is a constituent entity, unless the articles of organization or an operating agreement of any such limited liability company provides otherwise.

b. In the manner determined by the board of directors of any corporation that is a constituent entity.

c. By the limited partners of any limited partnership that is a constituent entity by the vote, if any, required by its limited partnership agreement and in accordance with the law of this state.

92 Acts, ch 1151, §64; 93 Acts, ch 39, §28

490A.1204 Articles of merger.

1. After a plan of merger is approved as provided in section 490A.1203, the surviving entity shall deliver to the secretary of state for filing articles of merger duly executed by each constituent entity setting forth all of the following:

a. The name of each constituent entity.

b. The plan of merger.

c. The effective date of the merger if later than the date of filing of the articles of merger.

d. The name of the surviving entity.

e. A statement that the plan of merger was duly authorized and approved by each constituent entity in accordance with section 490A.1203.

2. A merger takes effect upon the later of the effective date of the filing of the articles of merger or the date set forth in the plan of merger.

92 Acts, ch 1151, §65

490A.1205 Effect of merger.

When a merger takes effect all of the following apply:

1. Every other constituent entity merges into the surviving entity and the separate existence of every constituent entity except the surviving entity ceases.

2. The title to all real estate and other property owned by each constituent entity is vested in the surviving entity without reversion or impairment.

3. The surviving entity has all liabilities of each constituent entity.

4. A proceeding pending against any constituent entity may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the constituent entity whose existence ceased.

5. The articles or limited partnership agreement of the surviving entity are amended to the extent provided in the plan of merger.

6. The shares or interests of each constituent entity that are to be converted into shares, obligations, or other securities of the surviving or any other entity or into cash or other property are converted, and the former holders of the shares or interests are entitled only to the rights provided in the articles of merger except for dissenters' rights provided by law.

92 Acts, ch 1151, §66

490A.1206 Merger with foreign entity.

1. Any one or more limited liability companies of this state may merge with or into one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships, or any one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships may merge with or into any one or more limited liability companies of this state, if all of the following apply:

a. The merger is permitted by the law of the state or jurisdiction under whose law each foreign constituent entity is organized or formed and each foreign constituent entity complies with that law in effecting the merger.

b. The foreign constituent entity complies with section 490A.1204 of this division if it is the surviving entity.

c. Each domestic constituent entity complies with the applicable provisions of sections 490A.1202 and 490A.1203 and, if it is the surviving entity, with section 490A.1204.

2. Upon a merger involving one or more domestic limited liability companies taking effect, if the surviving entity is to be governed by the law of any state other than this state or of any foreign country, then the surviving entity shall agree to both of the following:

a. That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent entity, who was a party to the merger, that was organized under the law of this state, as well as for enforcement of any obligation of the surviving entity arising from the merger.

b. To irrevocably appoint the secretary of state as its agent for service of process in any such pro-

ceeding, and the surviving entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

3. The effect of the merger shall be as provided in section 490A.1205, if the surviving entity is to be governed by the law of this state. If the surviving entity is to be governed by the law of any jurisdiction other than this state, the effect of the merger shall be the same as provided in subsection 2 of this section, except insofar as the law of the other jurisdiction provides otherwise.

92 Acts, ch 1151, §67; 93 Acts, ch 39, §29

SUBCHAPTER XIII

DISSOLUTION

490A.1301 Dissolution — general provisions.

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of an event specified in this chapter or in the articles of organization or an operating agreement to cause dissolution.

2. Upon the unanimous written consent of the members.

3. The entry of a decree of judicial dissolution under section 490A.1302.

92 Acts, ch 1151, §68; 93 Acts, ch 39, §30, 31; 95 Acts, ch 138, §5; 96 Acts, ch 1170, §22; 97 Acts, ch 188, §73

490A.1302 Judicial dissolution.

On application by or for a member, the district court of the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.

92 Acts, ch 1151, §69

490A.1303 Winding up.

Unless otherwise provided in the articles of organization or an operating agreement, members who have not wrongfully dissolved a limited liability company may wind up the limited liability company's affairs; but the district court of the county in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, member's legal representative, or member's assignee.

92 Acts, ch 1151, §70

490A.1304 Distribution of assets upon dissolution.

Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed in the order as follows:

1. To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than for distributions to members under section 490A.803 or section 490A.805.

2. Unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under section 490A.803 or section 490A.805.

3. Unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their capital contributions and second with respect to their interests in the limited liability company, in the proportions in which the members share in distributions.

92 Acts, ch 1151, §71

490A.1305 Articles of dissolution.

1. Upon the completion of winding up of the limited liability company, articles of dissolution shall be delivered to the secretary of state for filing. The winding up of a limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the limited liability company have been distributed to the members. The articles of dissolution shall set forth all of the following:

a. The name of the limited liability company.

b. The date of filing of the articles of organization and each amendment thereto.

c. The reason for filing the articles of dissolution.

d. The effective date of dissolution if it is not to be effective on the filing of the articles of dissolution.

e. Any other information the members or managers determine to include.

2. The limited liability company is dissolved upon the effective date of its articles of dissolution.

92 Acts, ch 1151, §72

490A.1306 Known claims against dissolved limited liability companies.

A dissolved limited liability company may dispose of the known claims against it in accordance with this section.

1. The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must do all of the following:

a. Describe information that must be included in a claim.

b. Provide a mailing address where a claim

may be sent.

c. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved limited liability company must receive the claim.

d. State that the claim will be barred if not received by the deadline.

2. A claim against the dissolved limited liability company is barred if either of the following occurs:

a. A claimant who was given written notice under subsection 1 does not deliver the claim to the dissolved limited liability company by the deadline.

b. A claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

3. For purposes of this section, *"claim"* does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

92 Acts, ch 1151, §73

490A.1307 Unknown claims against dissolved limited liability company.

1. A dissolved limited liability company may also publish notice of its dissolution and request that persons with claims against the limited liability company present them in accordance with the notice.

2. The notice shall meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office or, if none in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

3. If the dissolved limited liability company publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 490A.1306.

b. A claimant whose claim was timely sent to the dissolved limited liability company but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section in either of the following ways:

a. Against the dissolved limited liability company, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the limited liability company assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section shall not exceed the total amount of assets distributed to the member in liquidation.

92 Acts, ch 1151, §74

SUBCHAPTER XIV

FOREIGN LIMITED LIABILITY COMPANIES

490A.1401 Law governing.

The law of the state or other jurisdiction under which a foreign limited liability company is formed governs its formation and internal affairs and the liability of its members and managers. A foreign limited liability company shall not be denied registration by reason of any difference between those laws and the laws of this state. A foreign limited liability company holding a valid registration in this state shall have no greater rights and privileges than a domestic limited liability company. The registration shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

92 Acts, ch 1151, §75

490A.1402 Registration.

A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. An application for registration as a foreign limited liability company shall set forth all of the following:

1. The name of the foreign limited liability company and, if different, the name under which it proposes to register and transact business in this state.

2. The state or other jurisdiction in which the foreign limited liability company was formed and the date of its formation.

3. The street address of the registered office of the foreign limited liability company in this state, the name of the registered agent at the office, and a statement that the registered office and registered agent comply with the requirements of section 490A.501.

4. The address of the office required to be maintained in the state or other jurisdiction of its formation by the law of that state or jurisdiction or, if not so required, of the principal office of the

foreign limited liability company.

5. A copy of the articles of organization filed in the foreign limited liability company's state or other jurisdiction of formation authorizing it to do business in that state or other jurisdiction, duly authenticated by the proper officer of the state or other jurisdiction of its formation.

92 Acts, ch 1151, §76; 93 Acts, ch 39, §32

490A.1403 Service on foreign limited liability company.

1. The registered agent of a foreign limited liability company authorized to transact business in this state is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

2. A foreign limited liability company may be served by registered or certified mail, return receipt requested, addressed to the foreign limited liability company at its principal office shown in its application for a certificate of authority if the foreign limited liability company meets any of the following conditions:

a. Has no registered agent or its registered agent cannot with reasonable diligence be served.

b. Has withdrawn from transacting business in this state under section 490A.1406.

c. Has had its certificate of authority revoked under section 490A.1410.

3. Service is perfected under subsection 2 at the earliest of:

a. The date the foreign limited liability company receives the mail.

b. The date shown on the return receipt, if signed on behalf of the foreign limited liability company.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

4. A foreign limited liability company may also be served in any other manner permitted by law.

92 Acts, ch 1151, §77

490A.1404 Name.

A certificate of registration shall not be issued to a foreign limited liability company unless the name of the limited liability company satisfies the requirements of section 490A.401. To obtain or maintain a certificate of registration the company shall comply with the following:

1. The foreign limited liability company shall add the words "Limited Company" or the abbreviation "L.C." to its name for use in this state.

2. If its real name is unavailable in this state, the foreign limited liability company shall use a fictitious name that is available, and which satisfies the requirements of section 490A.401, and shall inform the secretary of state of the fictitious name.

92 Acts, ch 1151, §78; 94 Acts, ch 1023, §59

490A.1405 Change and amendment.

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly deliver to the secretary of state for filing articles of correction correcting such statement as required by section 490A.123.

92 Acts, ch 1151, §79

490A.1406 Cancellation of certificate of authority.

1. A foreign limited liability company may cancel its certificate of authority by delivering to the secretary of state for filing a certificate of cancellation which shall set forth all of the following:

a. The name of the foreign limited liability company and the name of the state or other jurisdiction under whose jurisdiction it was formed.

b. That the foreign limited liability company is not transacting business in this state and that it surrenders its registration to transact business in this state.

c. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph *"c"* of this subsection.

e. A commitment to notify the secretary of state in the future of any change in the mailing address of the foreign limited liability company.

2. The certificate of registration shall be canceled upon the filing of the certificate of cancellation by the secretary of state.

92 Acts, ch 1151, §80; 93 Acts, ch 39, §33; 94 Acts, ch 1023, §60

490A.1407 Authority to transact business required.

1. A foreign limited liability company shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

a. Maintaining, defending, or settling any proceeding.

b. Holding meetings of the members or managers or carrying on other activities concerning internal company affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or main-

taining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

i. Owning, without more, real or personal property.

j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.

k. Transacting business in interstate commerce.

3. The list of activities in subsection 2 is not exhaustive.

92 Acts, ch 1151, §81; 93 Acts, ch 39, §34; 94 Acts, ch 1023, §61

490A.1408 Consequences of transacting business without authority.

1. A foreign limited liability company transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign limited liability company, its successor, or assignee until it determines whether the foreign limited liability company or its successor or assignee requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign limited liability company or its successor or assignee obtains the certificate.

4. A foreign limited liability company is liable for a civil penalty not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its official acts or prevent it from defending any proceeding in this state.

92 Acts, ch 1151, §82

490A.1409 Actions by attorney general.

The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

92 Acts, ch 1151, §83

490A.1410 Revocation of certificate of authority.

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of any of the following:

a. The foreign limited liability company has failed to:

(1) Pay any fees or penalties prescribed by this chapter.

(2) Appoint and maintain a registered agent as required under section 490A.1402.

(3) Deliver for filing to the secretary of state a report upon any change in the name or address of the registered agent.

(4) Deliver to the secretary of state for filing articles of correction required under section 490A.1405.

b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other documents submitted by the foreign limited liability company under this subchapter.

2. A certificate of registration of a foreign limited liability company shall not be revoked by the secretary of state, unless both of the following apply:

a. The secretary of state has given the foreign limited liability company not less than sixty days' notice thereof by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the office required to be maintained pursuant to section 490A.1402.

b. During the sixty-day period, the foreign limited liability company has failed to pay such fees or penalties prescribed by this chapter, to file a report of change regarding the registered agent, to file any necessary articles of correction, or to correct any such misrepresentation.

3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state shall cease.

92 Acts, ch 1151, §84; 93 Acts, ch 39, §35

SUBCHAPTER XV

PROFESSIONAL LIMITED LIABILITY COMPANIES

490A.1501 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Employees"* or *"agents"* does not include clerks, stenographers, secretaries, bookkeepers,

technicians, or other persons who are not usually and ordinarily considered by custom and practice to be practicing a profession nor any other person who performs all that person's duties for the professional limited liability company under the direct supervision and control of one or more managers, employees, or agents of the professional limited liability company who are duly licensed in this state to practice a profession which the limited liability company is authorized to practice in this state. This chapter does not require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state.

2. *"Foreign professional limited liability company"* means a limited liability company organized under laws other than the laws of this state for a purpose for which a professional limited liability company may be organized under this chapter.

3. *"Licensed"* includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

4. *"Profession"* means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, psychology, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathy, osteopathic medicine and surgery, accounting practitioner, podiatry, speech pathology, audiology, veterinary medicine, pharmacy, nursing, and marriage and family therapy, provided that the marriage and family therapist is licensed under chapters 147 and 154D.

5. *"Professional limited liability company"* means a limited liability company subject to this subchapter, except a foreign professional limited liability company.

6. *"Regulating board"* means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. *"Voluntary transfer"* includes a sale, voluntary assignment, gift, pledge, or encumbrance; a voluntary change of legal or equitable ownership or beneficial interest; or a voluntary change of persons having voting rights with respect to any membership interest, except as proxies; but does not include a transfer of an individual's membership interest or other property to a guardian or conservator appointed for that individual or the individual's property.

92 Acts, ch 1151, §85; 95 Acts, ch 138, §6

490A.1502 Purposes and powers.

A professional limited liability company shall be organized only for the purpose of engaging in the practice of one specific profession, or two or more specific professions which could lawfully be practiced in combination by a licensed individual or a partnership of licensed individuals, and for the additional purpose of doing all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. The articles of organization of a professional limited liability company shall state in substance that the purposes for which the professional limited liability company is organized are to engage in the general practice of a specified profession or professions, or one or more specified branches or divisions thereof, and to do all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions.

92 Acts, ch 1151, §86

490A.1503 Name.

The name of a professional limited liability company, the name of a foreign professional limited liability company or its name as modified for use in this state, and any fictitious name or trade name adopted by a professional limited liability company or foreign professional limited liability company shall contain the words "Professional Limited Company" or the abbreviation "P.L.C.", and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the professional limited liability company is authorized to practice. Each regulating board may by rule adopt additional requirements as to the corporate names and fictitious or trade names of professional limited liability companies and foreign professional limited liability companies which are authorized to practice a profession which is within the jurisdiction of the regulating board.

92 Acts, ch 1151, §87

490A.1504 Who may organize.

One or more individuals having capacity to contract and licensed to practice a profession in this state in which the professional limited liability company is to be authorized to practice, may organize a professional limited liability company.

92 Acts, ch 1151, §88; 99 Acts, ch 208, §37

490A.1505 Practice by professional limited liability company.

Notwithstanding any other statute or rule of law, a professional limited liability company may practice a profession, but may do so in this state only through members, managers, employees, and agents who are licensed to practice the same profession in this state. In its practice of a profession, no professional limited liability company shall do any act which could not lawfully be done by individuals licensed to practice the profession which the professional limited liability company is au-

thorized to practice.
92 Acts, ch 1151, §89

490A.1506 Professional regulation.
A professional limited liability company shall not be required to register with or to obtain any license, registration, certificate, or other legal authorization from a regulating board in order to practice a profession. Except as provided in this section, this subchapter does not restrict or limit in any manner the authority or duties of any regulating board with respect to individuals practicing a profession which is within the jurisdiction of the regulating board, even if the individual is a member, manager, employee, or agent of a professional limited liability company or foreign professional limited liability company and practices the individual's profession through such professional limited liability company.
92 Acts, ch 1151, §90

490A.1507 Relationship and liability to persons served.
This subchapter does not modify any law applicable to the relationship between an individual practicing a profession and a person receiving professional services, including, but not limited to, any liability arising out of such practice and any law respecting privileged communications. This chapter does not modify or affect the ethical standards or standards of conduct of any profession, including, but not limited to, any standards prohibiting or limiting the practice of the profession by a limited liability company or prohibiting or limiting the practice of two or more professions in combination. All such standards shall apply to the members, managers, employees, and agents through whom a professional limited liability company practices any profession in this state, to the same extent that the standards apply to an individual practitioner.
92 Acts, ch 1151, §91

490A.1508 Issuance of membership interests.
Membership interests of a professional limited liability company shall be issued only to individuals who are licensed to practice in any state a profession which the professional limited liability company is authorized to practice. Membership interests of a professional limited liability company shall not at any time be issued in, transferred into, or held in joint tenancy, tenancy in common, or any other form of joint ownership or co-ownership. The Iowa uniform securities Act shall not be applicable to nor govern any transaction relating to any membership interests of a professional limited liability company.
92 Acts, ch 1151, §92

490A.1509 Assignment of membership interests.
A member or other person shall not make a voluntary assignment of a membership interest in a professional limited liability company to any person, except to the professional limited liability company or to an individual who is licensed to practice in this state a profession which the limited liability company is authorized to practice. The articles of organization or operating agreement of the professional limited liability company may contain any additional provisions restricting the assignment of membership interests. Unless the articles of organization or an operating agreement otherwise provide, a voluntary assignment requires the unanimous consent of the members.
92 Acts, ch 1151, §93

490A.1510 Convertible membership interests — rights and options.
A professional limited liability company shall not create or issue any interest convertible into a membership interest of the professional limited liability company. The provisions of this subchapter with respect to the issuance and transfer of membership interests apply to the creation, issuance, and transfer of any rights or options entitling the holder to purchase from a professional limited liability company any membership interests of the professional limited liability company. Rights or options shall not be transferable, whether voluntarily, involuntarily, by operation of law, or in any other manner. Upon the death of the holder, or when the holder ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the rights or options shall expire.
92 Acts, ch 1151, §94

490A.1511 Voting trust — proxy.
A member of a professional limited liability company shall not create or enter into a voting trust or any other agreement conferring upon any other person the right to vote or otherwise represent any membership interests of a professional limited liability company, and no such voting trust or agreement is valid or effective. Any proxy of a member of a professional limited liability company shall be an individual licensed to practice a profession in this state which the professional limited liability company is authorized to practice. Any provision in any proxy instrument denying the right of the member to revoke the proxy at any time or for any period of time is not valid or effective. This section does not otherwise limit the right of a member to vote by proxy, but the articles of organization or operating agreement of the professional limited liability company may further limit or deny the right to vote by proxy.
92 Acts, ch 1151, §95

490A.1512 Required purchase by professional limited liability company of its own membership interests.

1. Notwithstanding any other statute or rule of law, a professional limited liability company shall purchase its own membership interests as provided in this section; and the members of a professional limited liability company and their executors, administrators, legal representatives, and successors in interest, shall sell and transfer the membership interests held by them as provided in this section.

2. Upon the death of a member, the professional limited liability company shall immediately purchase all membership interests held by the deceased member.

3. In order to remain a member of a professional limited liability company, a member shall at all times be licensed to practice in this state a profession which the professional limited liability company is authorized to practice. When a member does not have or ceases to have this qualification, the professional limited liability company shall immediately purchase all membership interests held by that member.

4. When a person other than a member of record becomes entitled to have membership interests of a professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to membership interests of the professional limited liability company, the professional limited liability company shall immediately purchase the membership interests. Without limiting the generality of the foregoing, this section shall be applicable whether the event occurs as a result of appointment of a guardian or conservator for a member or the member's property, transfer of membership interests by operation of law, involuntary transfer of membership interests, judicial proceedings, execution, levy, bankruptcy proceedings, receivership proceedings, foreclosure or enforcement of a pledge or encumbrance, or any other situation or occurrence. However, this section does not apply to any voluntary transfer of membership interests as defined in this chapter.

5. Membership interests purchased by the professional limited liability company under this section shall be transferred to the professional limited liability company as of the close of business on the date of the death or other event which requires purchase. The member and the member's executors, administrators, legal representatives, or successors in interest, shall promptly do all things which may be necessary or convenient to cause transfer to be made as of the transfer date. However, the membership interests shall promptly be transferred on the books and records of the professional limited liability company as of the transfer date, notwithstanding any delay in transferring or surrendering the membership interests or certificates representing the membership interests, and the transfer shall be valid and effective for all purposes as of the close of business on the transfer date. The purchase price for such membership interests shall be paid as provided in this chapter, but the transfer of membership interests to the professional limited liability company as provided in this section shall not be delayed or affected by any delay or default in making payment.

6. Notwithstanding subsections 1 through 5, purchase by the professional limited liability company is not required upon the occurrence of any event other than death of a member, if the professional limited liability company is dissolved within sixty days after the occurrence of the event. The articles of organization or operating agreement of the professional limited liability company may provide that purchase is not required upon the death of a member, if the professional limited liability company is dissolved within sixty days after the date of the member's death.

7. Unless otherwise provided in the articles of organization or an operating agreement of the professional limited liability company or in an agreement among all members of the professional limited liability company all of the following apply:

a. The purchase price for membership interests shall be their book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional limited liability company in accordance with the regular method of accounting used by the professional limited liability company, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable. A final determination of book value made in good faith by an independent certified public accountant or firm of certified public accountants employed by the professional limited liability company for the purpose shall be conclusive on all persons.

b. The purchase price shall be paid in cash as follows:

(1) Upon the death of a member, thirty percent of the purchase price shall be paid within ninety days after death, and the balance shall be paid in three equal annual installments on the first three anniversaries of the death.

(2) Upon the happening of any other event referred to in this section, one-tenth of the purchase price shall be paid within ninety days after the date of the event, and the balance shall be paid in three equal annual installments on the first three anniversaries of the date of the event.

c. Interest from the date of death or other event shall be payable annually on principal payment dates, at the rate of six percent per annum on the unpaid balance of the purchase price.

d. All persons who are members of the profes-

sional limited liability company on the date of death or other event, and their executors, administrators, and legal representatives, shall, to the extent the professional limited liability company fails to meet its obligations under this section, be jointly liable for the payment of the purchase price and interest in proportion to their percentage of ownership of the professional limited liability company's membership interests, disregarding membership interests of the deceased or withdrawing member.

e. The part of the purchase price remaining unpaid after the initial payment shall be evidenced by a negotiable promissory note, which shall be executed by the professional limited liability company and all members liable for payment. Any person liable on the note shall have the right to prepay the note in full or in part at any time.

f. If the person making any payment is not reasonably able to determine which of two or more persons is entitled to receive a payment, or if the payment is payable to a person who is unknown, or who is under disability and there is no person legally competent to receive the payment, or who cannot be found after the exercise of reasonable diligence by the person making the payment, it shall be deposited with the treasurer of state and shall be subject to the provisions of section 490.1440 with respect to funds deposited with the treasurer of state upon the voluntary or involuntary dissolution of a business corporation.

8. Notwithstanding the other provisions of this section, no part of the purchase price shall be required to be paid until the certificates, if any, representing the membership interests have been surrendered to the professional limited liability company.

9. Notwithstanding the other provisions of this section, payment of any part of the purchase price for membership interests of a deceased member shall not be required until the executor or administrator of the deceased member provides any indemnity, release, or other document from any taxing authority, which is reasonably necessary to protect the professional limited liability company against liability for estate, inheritance, and death taxes.

10. The articles of organization or an operating agreement of the professional limited liability company or an agreement among all members of a professional limited liability company may provide for a different purchase price, a different method of determining the purchase price, a different interest rate or no interest, and other terms, conditions, and schedules of payment.

11. The articles of organization or an operating agreement of the professional limited liability company or an agreement among all members of a professional limited liability company may provide for the optional or mandatory purchase of its own membership interests by the professional limited liability company in other situations, subject to any applicable law regarding such a purchase.

92 Acts, ch 1151, §96

490A.1513 Certificates representing membership interests.

Each certificate representing membership interests of a professional limited liability company shall state in substance that the certificate represents membership interests in a professional limited liability company and is not transferable except as expressly provided in this chapter and in the articles of organization or an operating agreement of the professional limited liability company.

92 Acts, ch 1151, §97

490A.1514 Management.

All managers of a professional limited liability company shall at all times be individuals who are licensed to practice a profession in this state which the limited liability company is authorized to practice. A person who is not licensed shall have no authority or duties in the management or control of the limited liability company. If a manager ceases to have this qualification, the manager shall immediately and automatically cease to hold such management position.

92 Acts, ch 1151, §98

490A.1515 Merger.

A professional limited liability company shall not merge with any entity except another professional limited liability company subject to this subchapter or a professional corporation subject to chapter 496C. Merger is not permitted unless the surviving or new professional limited liability company is a professional limited liability company which complies with all requirements of this subchapter.

92 Acts, ch 1151, §99

490A.1516 Dissolution or liquidation.

Violation of any provision of this subchapter by a professional limited liability company or any of its members or managers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in section 490A.1302. Upon the death of the last remaining member of a professional limited liability company, or when the last remaining member is not licensed or ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to practice, or when any person other than the member of record becomes entitled to have all membership interests of the last remaining member of the professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such membership interests, the professional limited liability company

shall not practice any profession and it shall be promptly dissolved. However, if prior to dissolution all outstanding membership interests of the professional limited liability company are acquired by two or more persons licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the professional limited liability company need not be dissolved and may practice the profession as provided in this subchapter.

92 Acts, ch 1151, §100; 93 Acts, ch 39, §36

490A.1517 Foreign professional limited liability company.

A foreign professional limited liability company may practice a profession in this state if it complies with the provisions of this chapter and this subchapter. The secretary of state may prescribe forms for this purpose. A foreign professional limited liability company may practice a profession in this state only through members, managers, employees, and agents who are licensed to practice the profession in this state. The provisions of this subchapter with respect to the practice of a profession by a professional limited liability company apply to a foreign professional limited liability company. This subchapter does not prohibit the practice of a profession in this state by an individual who is a member, manager, employee, or agent of a foreign professional limited liability company, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional limited liability company. The preceding sentence applies regardless of whether or not the foreign professional limited liability company is authorized to practice a profession in this state.

92 Acts, ch 1151, §101

490A.1518 Limited liability companies organized under other laws.

This chapter does not apply to or interfere with the practice of any profession by or through any professional limited liability company organized after July 1, 1992, under any other law of this state or any other state or country, if the practice is lawful under any other statute or rule of law of this state. Any such professional limited liability company may voluntarily elect to adopt this subchapter and become subject to its provisions, by amending its articles of organization to be consistent with all provisions of this subchapter and by stating in its amended articles of organization that the limited liability company has voluntarily elected to adopt this subchapter. Any limited liability company organized under any law of any other state or country may become subject to the provisions of this subchapter by complying with all provisions of this subchapter with respect to foreign professional limited liability companies.

92 Acts, ch 1151, §102

490A.1519 Conflicts with other provisions of this chapter.

The provisions of this subchapter shall prevail over any inconsistent provisions of this chapter.

92 Acts, ch 1151, §103

SUBCHAPTER XVI

PROPERTY TITLE RECORDS

490A.1601 Property title records.

When by merger or amendment to the articles of organization the name of any domestic or foreign limited liability company is changed, a certificate reciting the change or succession shall be issued by the secretary of state upon request and payment of any applicable fee and the certificate may be admitted to record upon payment of any applicable fee in any recording office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records, but no transfer tax shall be due thereon. If a limited liability company or other entity is not a domestic limited liability company or other entity or a foreign limited liability company or other entity authorized to do business in this state, a similar certificate by any competent authority of the state of organization or formation of the limited liability company or other entity may be admitted to record in any recording office within the jurisdiction of which any property of the limited liability company or other entity is located in order to maintain the continuity of title records upon payment of any applicable fee, but no transfer tax shall be due thereon.

92 Acts, ch 1151, §104

CHAPTER 491

CORPORATIONS FOR PECUNIARY PROFIT

Applicable to domestic corporations organized prior to July 1, 1971; §491.1

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CORPORATION MERGER OR CONSOLIDATION

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491.1 Who may incorporate.

Any number of persons may become incorporated under this chapter prior to July 1, 1971, for the transaction of any lawful business, but the incorporation confers no power or privilege not possessed by natural persons, except as provided in this chapter. All domestic corporations shall be organized under chapter 490, except as expressly provided otherwise in chapter 490.

[C51, §673; R60, §1150; C73, §1058; C97, §1607; C24, 27, 31, 35, 39, §**8339;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.1]

83 Acts, ch 101, §106; 89 Acts, ch 83, §65; 89 Acts, ch 288, §186

491.2 Single person.

Except as otherwise provided by law, a single person may incorporate under the provisions of this chapter, thereby entitling that person to all the privileges and immunities provided herein, but if the person adopts the name of an individual or individuals as that of the corporation, the per-

son must add thereto the word "incorporated".

[C51, §702; R60, §1179; C73, §1088; C97, §1608; C24, 27, 31, 35, 39, §**8340;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.2]

491.3 Powers.

Among the powers of such corporations are the following:

1. To have perpetual succession.
2. To sue and be sued by its corporate name.
3. To have a common seal, which it may alter at pleasure.
4. To render the interests of the stockholders transferable.
5. To exempt the private property of its members from liability for corporate debts, except as otherwise declared.
6. To make contracts, acquire and transfer property — possessing the same powers in such respects as natural persons.
7. To establish bylaws, and make all rules and regulations necessary for the management of its affairs.
8. A corporation organized under or subject to this chapter may make indemnification as provided in sections 490.850 through 490.859.

[C51, §674; R60, §1151; C73, §1059; C97, §1609; C24, 27, 31, 35, 39, §**8341;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.3]

83 Acts, ch 71, §2; 90 Acts, ch 1205, §29; 2002 Acts, ch 1154, §102, 125

2002 amendment to subsection 8 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 8 amended

491.4 Index book. Repealed by 94 Acts, ch 1055, § 16.

491.5 Articles adopted and filed.

Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators. Said articles shall then be forwarded to the secretary of state. Upon the filing of such articles, the secretary of state shall issue a certificate of incorporation and record said articles in a book kept for that purpose.

Such articles shall contain:

1. Name of corporation and its principal place of business.
2. The objects for which it is formed.
3. The amount of authorized capital stock, the classes of stock and number of shares authorized, with the par value and conditions of each class of such shares, and the time when and conditions under which it is to be paid in.
4. The time of commencement and existence of the corporation.
5. The names and addresses of the incorporators and the officers or persons its affairs are to be conducted by, and the times when and manner in which such officers will be elected.
6. Whether private property is to be exempt from corporate debts.
7. The manner in which the articles may be amended.
8. Any provision eliminating or limiting the personal liability of a director to the corporation or its shareholders or members for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for any breach of the director's duty of loyalty to the corporation or its shareholders or members, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or for any transaction from which the director derives an improper personal benefit. A provision in the articles of incorporation shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

[C51, §675; R60, §1152; C73, §1060; C97, §1610; S13, §1610; C24, 27, 31, 35, 39, §**8343;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.5]

87 Acts, ch 212, §2; 88 Acts, ch 1170, §3; 94 Acts, ch 1055, §4

491.6 Filing or refusal to file.

When articles of incorporation are presented to the secretary of state for the purpose of being filed, if the secretary is satisfied that they are in proper form to meet the requirements of law, that their object is a lawful one and not against public policy, that their plan for doing business, if any be provided for, is honest and lawful, the secretary shall file them; but if the secretary is of the opinion that they are not in proper form to meet the requirements of the law, or that their object is an unlawful one, or against public policy, or that their plan for doing business is dishonest or unlawful, the secretary shall refuse to file them.

[S13, §1610; C24, 27, 31, 35, 39, §**8344;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.6]

491.7 Question of legality submitted.

Should a question of doubt arise as to the legality of the articles, the secretary of state shall submit them to the attorney general whose duty it shall be to forthwith examine and return them with an opinion in writing touching the point or points concerning which inquiry has been made of the attorney general.

[S13, §1610; C24, 27, 31, 35, 39, §**8345;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.7]

491.8 Action on opinion.

If such opinion is in favor of the legality of the articles, and no other objections are apparent, they shall then, upon payment of the proper fee, be filed and otherwise dealt with as the law provides. If, however, such opinion be against their legality they shall not be filed.

[S13, §1610; C24, 27, 31, 35, 39, §**8346;** C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.8]

491.9 Submission to executive council.

Upon the rejection of any articles of incorporation by the secretary of state, except for the reason that they have been held by the attorney general to be illegal, they shall, if the person or persons presenting them so request, be submitted to the executive council, which shall, as soon as practicable, consider the said articles and if the council determines that the articles are in proper form, of honest purpose, not against public policy, nor otherwise objectionable, it shall so advise the secretary of state in writing, whereupon the secretary shall, upon the payment of the proper fees, file the same and proceed otherwise as the law directs; but if the council sustains the previous action of the secretary of state in rejecting said articles, such decision by the council shall be reported to the secretary of state in writing, and the secretary shall then return said articles to the person or persons presenting them with such explanation as shall be proper in the case.

[C13, §1610; C24, 27, 31, 35, 39, §**8347;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.9]

491.10 Interpretative clause.

Nothing in sections 491.5 to 491.9 shall be construed as repealing or modifying any statute now in force in respect to the approval of articles of incorporation relating to insurance companies, building and loan associations or investment companies.

[S13, §1610; C24, 27, 31, 35, 39, §**8348;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.10]

491.11 Incorporation fee.

Corporations organized for a period of years shall pay the secretary of state, before a certificate of incorporation is issued, a fee of fifty dollars.

[C97, §1610; S13, §1610; C24, 27, 31, 35, 39, §**8349;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.11]

93 Acts, ch 126, §10

See §491.28

491.12 Exemption from fee. Repealed by 93 Acts, ch 126, § 35.

491.13 Place of business.

Any corporation organized under the laws of this state shall fix upon and designate in its articles of incorporation its principal place of business which must be in this state, and if outside the limits of a city then its post-office address must be given. The place of business so designated shall not be changed except through an amendment to its articles of incorporation.

When a corporation changes its principal place of business from one county to another, an amendment for this purpose shall be filed with the secretary of state, recorded in the office of the recorder of deeds of the county of the previous place of business, and then said amendment together with the articles of incorporation and all amendments thereto shall be filed with the recorder of deeds of the county to which said corporation's principal place of business is changed.

[C97, §1612; S13, §1612; C24, 27, 31, 35, 39, §**8353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.13]

491.14 Custody of office — business maintained.

Its place of business shall be in charge of an agent of the corporation and shall be the place where it shall hold its stockholders' meetings, keep a record of its proceedings and its stock and transfer books. The board of directors may designate by resolution some other place in the county where business of the corporation is transacted as the place for holding a stockholders' meeting if notice is mailed to the stockholders at least twenty days prior to each meeting informing the stockholders of the place, date, and hour of the stockholders' meeting.

[C97, §1612; S13, §1612; C24, 27, 31, 35, 39, §**8354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.14]

491.15 Service of original notice — secretary of state.

Any corporation organized under the laws of this state that does not maintain an office in the county of its organization may file with the secretary of state a certified copy of a resolution of the board of directors of said corporation giving name and address in Iowa of a resident agent on whom the service of original notice of civil suit in the courts of this state may be served, or file with the secretary of state a written instrument duly signed and acknowledged authorizing the secretary of state to acknowledge service of notice or process for and in behalf of such corporation in this state and consenting that service of notice or process may be made upon the secretary of state. Failing which, or in the event such agent may not be found within the state, service of such process may then be made upon said corporation through the secretary of state by sending the original and two copies thereof to the secretary, and the secretary shall immediately upon its receipt acknowledge service thereon in behalf of the defendant corporation by writing thereon, giving the date thereof, and shall immediately return such notice or process by certified mail to the clerk of the court in which the suit is pending, addressed by the clerk's official title, and shall also forthwith mail a copy with a copy of the secretary's acknowledgment of service written thereon, by certified mail addressed to the corporation at the address of its principal place of business as shown by the records

in the secretary of state's office, and shall retain the second copy for the secretary's files.

[C97, §1612; S13, §1612; C24, 27, 31, 35, 39, §**8355, 8356;** C46, 50, §491.15, 491.16; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.15]

491.16 Indemnification of officers, directors, employees, and agents — insurance.

Sections 490.850 through 490.859 apply to corporations organized under or subject to this chapter.

[C71, 73, 75, 77, 79, 81, §491.16]

83 Acts, ch 71, §3; 90 Acts, ch 1205, §30; 2002 Acts, ch 1154, §103, 125

2002 amendment to this section is effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

491.17 Notice of incorporation.

A notice must be published once each week for four weeks in succession in some newspaper as convenient as practicable to the principal place of business, which must contain:

1. The name of the corporation and its principal place of business.
2. The general nature of the business to be transacted.
3. The amount of capital stock authorized, and the times and conditions on which it is to be paid in.
4. The time of the commencement and existence of the corporation.
5. By what officers or persons its affairs are to be conducted, and the times when and manner in which they will be elected.
6. Whether private property is to be exempt from corporate debts.

[C51, §677, 678; R60, §1154, 1155; C73, §1062, 1063; C97, §1613; S13, §1613; C24, 27, 31, 35, 39, §**8357;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.17]

Legalizing Acts, chapter 591

491.18 Proof of publication — filing.

Proof of such publication, by affidavit of the publisher of the newspaper in which it is made, shall be filed with the secretary of state, and shall be evidence of the fact.

[C97, §1613; S13, §1613; C24, 27, 31, 35, 39, §**8358;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.18]

491.19 Commencement of business.

The corporation may commence business as soon as the certificate is issued by the secretary of state, and its acts shall be valid if the publication in a newspaper is made within three months from the date of such certificate; providing that when the notice is not published within the time herein prescribed, but is subsequently published for the required time, and proof of the publication thereof filed with the secretary of state, the acts of such corporation after such publication shall be valid.

[C51, §679; R60, §1156; C73, §1064; C97, §1614; C24, 27, 31, 35, 39, §**8359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.19]

491.20 Amendments — fees.

Amendments to articles of incorporation making changes in any of the provisions of the articles may be made at any annual meeting of the stockholders or special meeting called for that purpose, and they shall be valid only when recorded, approved and published as the original articles are required to be, except where the amendment provides for changing the principal place of business from one county to another, in which event said amendment shall be published in both the counties of the former and new place of business. Publication shall be by notice setting out the substance of the amendment and, in the case of amended and substituted articles, said notice shall contain the matters and things required to be published by section 491.17, relating to original incorporations. If no increase is made in the amount of capital stock, a certificate fee of one dollar and a recording fee of fifty cents per page must be paid. Where capital stock is increased the certificate fee shall be omitted but there shall be paid a recording fee of fifty cents per page and in addition a filing fee which in case of corporations existing for a period of years shall be one dollar per thousand of such increase and in case of corporations empowered to exist perpetually shall be one dollar and ten cents per thousand of such increase. Corporations providing for perpetual existence by amendment to its articles shall, at the time of filing such amendment, pay to the secretary of state a fee of one hundred dollars together with a recording fee of fifty cents per page, and, for all authorized capital stock in excess of ten thousand dollars, an additional fee of one dollar ten cents per thousand.

Its articles of incorporation to the contrary notwithstanding, if three-fourths of the voting stock of any corporation organized under the provisions of this chapter, with assets of the value of one million dollars or more, is owned by individuals owning not more than one share each of the voting stock thereof, said articles may be amended at any regular or special meeting of stockholders, when a notice in writing of the substance of the proposed amendment has been mailed by ordinary mail to each voting stockholder of such corporation not more than ninety nor less than sixty days prior to said meeting, by the affirmative vote of two-thirds of the voting stock represented at said meeting when said amendment is approved by the affirmative vote of two-thirds of the members of the board of directors at a meeting prior to the mailing of said notice.

If such corporation is renewed under the provisions of section 491.25, the voting stock of dissent-

ing stockholders or any portion thereof may be purchased by the corporation at its option as provided in said section.

[C51, §680; R60, §1157; C73, §1065; C97, §1615; S13, §1615; C24, 27, 31, 35, 39, §**8360;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.20]

Notice of amendment legalized, §591.11

491.21 Signing and acknowledging of amendments.

Such amendments need only be signed and acknowledged by such officers of the corporation as may be designated by the stockholders to perform such act.

[C97, §1615; S13, §1615; C24, 27, 31, 35, 39, §**8361;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.21]

491.22 Individual property liable.

A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but corporators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein.

[C51, §689; R60, §1166, 1338; C73, §1068; C97, §1616; C24, 27, 31, 35, 39, §**8362;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.22]

491.23 Dissolution — notice — filing with secretary of state.

A corporation may be dissolved prior to the period fixed in the articles of incorporation, by unanimous consent, or in accordance with the provisions of its articles, and notice thereof must be given in the same manner and for the same time as is required for its organization; provided, however, that the notice of such dissolution shall be deemed sufficient if signed by the officers of such corporation and published as required by law. Notice thereof shall also be given by the filing in the office of the secretary of state the proof of publication of notice of dissolution and said proof shall be recorded by the secretary of state in the same manner as the recording of amendments, and a recording fee of one dollar shall apply thereto.

[C51, §682, 683; R60, §1159, 1160; C73, §1066, 1067; C97, §1617; C24, 27, 31, 35, 39, §**8363;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.23]

94 Acts, ch 1055, §5

491.24 Duration.

Corporations for the construction and operation, or the operation alone, of steam railways, interurban railways, and street railways, or for the transaction of the business of life insurance, may be formed to endure fifty years; those for other purposes, not to exceed twenty years; provided, however, that in addition to the power herein granted to incorporate for a period of years, corporations hereafter organized or now existing may have perpetual existence by so providing in the articles of incorporation or by amendment thereto pursuant to section 491.20.

[C51, §681; R60, §1158; C73, §1069; C97, §1618; S13, §1618; C24, 27, 31, 35, 39, §**8364;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.24]

491.25 Renewal — conditions.

Corporations existing for a period of years may be renewed from time to time for the same or shorter periods, or may be renewed to exist perpetually, upon compliance with the provisions of this section and other applicable statutes.

The right of renewal is vested in the stockholders and shall be exercised by a resolution thereof adopted at any regular meeting or at any special meeting called for that purpose. Such resolution must be adopted by a majority of all the votes cast at such meeting, or by such other vote as is authorized or required in the company's existing articles of incorporation.

If the renewal instrument in proper form and the necessary fees are tendered to the secretary of state for filing three months or less either prior or subsequent to the corporation's expiration date, such renewal shall take effect immediately upon the expiration of the corporation's previous period of existence, and in such case, the corporate existence shall be considered as having been extended without interruption. If the renewal is filed more than three months before or after the expiration date, such renewal shall take effect upon the date such renewal with necessary fees is accepted and filed by the secretary of state; and in cases where filed more than three months after the expiration date, shall not be in legal effect a renewal unless the procedure provided for and the additional fees provided for in section 491.28 are fully complied with and paid.

In all cases of renewal, those stockholders voting for such renewal must purchase at its real value the stock voted against such renewal, and shall have three years from the date such action for renewal was taken in which to purchase and pay for the stock voting against such renewal, which purchase price shall bear interest at the rate of five percent per annum from the date of such renewal action until paid.

[C51, §681; R60, §1158; C73, §1069; C97, §1618; S13, §1618; C24, 27, 31, 35, 39, §**8365, 8366;** C46, 50, §491.25, 491.26; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.25]

491.26 Stock of dissenting holders.

The provisions of section 491.25 shall not apply to any renewal voted before July 4, 1951, but all rights of any corporation described or referred to in the last two paragraphs of section 491.20 to purchase stock of dissenting stockholders or any por-

tion thereof are preserved to said corporation both before and after this section becomes operative.

[S13, §1618; C24, 27, 31, 35, 39, §**8366;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.26]

491.27 Execution of renewal — record required.

After the action of the stockholders for the renewal of any corporation, a certificate, showing the proceedings resulting in the renewal, sworn to by the president and secretary of the corporation, or by other officers as may be designated by the stockholders, together with the articles of incorporation, which may be the original articles of incorporation or amended and substituted articles, shall be filed with the secretary of state and be recorded by the secretary in a book kept for that purpose.

[S13, §1618; C24, 27, 31, 35, 39, §**8367;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.27]

94 Acts, ch 1055, §6

491.28 Filing with secretary of state — fees — certificate of renewal.

Upon filing with the secretary of state the said certificate and articles of incorporation, and upon the payment to the secretary of state of the fees prescribed by section 491.11 for newly organized corporations, the secretary of state shall issue a proper certificate for the renewal of the corporation.

Whenever, after timely notice has been received that its articles of incorporation will expire and the corporate existence of any corporation has expired and not been renewed within the period prescribed by statute, said corporation thereafter files with the secretary of state amended and substituted articles of incorporation for the purpose of renewing and extending its corporate existence, the secretary of state shall cause said corporation to file satisfactory proof that no judgments against said corporation or the stockholders thereof are outstanding which may be liens against said corporation and that there is no pending litigation involving said corporation or the corporate existence of said corporation. Upon the filing of said proof the secretary of state may acknowledge and file for record the amended and substituted articles of said corporation and issue a certificate of renewal upon the payment of the renewal fees required by statute, however, the secretary of state shall charge and collect an additional ten percent of said renewal fees for each month or major fraction thereof said corporation was delinquent in renewal of its corporate existence as a penalty, but in no instance shall such additional delinquency fee be less than one hundred dollars and not more than one thousand dollars. Said certificate of renewal when issued shall have the same force and effect as though issued upon proper and timely application by said corporation and it shall date from the expiration of the corporate period which it succeeds.

[S13, §1618; C24, 27, 31, 35, 39, §**8368;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.28]

491.29 Erroneous certificate — correction.

In all cases wherein the secretary of state has prior to April 10, 1931 issued to a corporation organized or purporting to have been organized under the laws of this state a certificate renewing and extending its corporate existence from an erroneous date or for a period of time in excess of that provided by law, the secretary of state shall, upon the surrender of such certificate, issue to such corporation a new certificate, extending and renewing the corporate existence thereof from the correct date or for the period of time provided by law.

[C31, 35, §8368-d1; C39, §**8368.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.29]

491.30 Perpetual corporations — periodic fees. Repealed by 93 Acts, ch 126, § 35.

491.31 Exemption from fee. Repealed by 93 Acts, ch 126, § 35.

491.32 Notice of renewal — publication.

Within three months after the filing of the certificate and articles of incorporation with the secretary of state, the corporation so renewed shall publish a notice of renewal. Said notice shall be published once each week for four weeks in succession in a newspaper as convenient as practicable to the principal place of business of the corporation, and proof of publication filed in the office of the secretary of state, and shall contain the matters and things required to be published by section 491.17, relating to original incorporations.

[S13, §1618; C24, 27, 31, 35, 39, §**8370;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.32]

Notice of renewal legalized, §591.10

491.33 Foreign insurance companies becoming domestic.

The secretary of state upon a corporation complying with the provisions of this section and upon the filing of articles of incorporation and upon receipt of the fees as provided in this chapter shall issue a certificate of incorporation as of the date of the corporation's original incorporation in its state of original incorporation. The certificate of incorporation shall state on its face that it is issued in accordance with the provisions of this section. The secretary of state shall then notify the appropriate officer of the state or country of the corporation's last domicile that the corporation is now a domestic corporation domiciled in this state. This section applies to life insurance companies, and to insurance companies doing business under chapter 515.

[C75, 77, 79, 81, §491.33; 81 Acts, ch 161, §1]
94 Acts, ch 1055, §7

491.34 and 491.35 Repealed by 69 Acts, ch 273, § 1827 – 1829. See § 524.106.

491.36 Foreign-trade zone corporation.
A corporation may be organized under the laws of this state for the purpose of establishing, operating and maintaining a foreign-trade zone as defined in 19 United States Code, § 81(a). A corporation organized for the purposes set forth in this section has all powers necessary or convenient for applying for a grant of authority to establish, operate and maintain a foreign-trade zone under the provisions of 19 United States Code § 81(a), et seq., and rules promulgated thereunder, and for establishing, operating and maintaining a foreign-trade zone pursuant to that grant of authority.
[C81, §491.36]

491.37 Repealed by 69 Acts, ch 273, § 1830. See § 524.106.

491.38 Consolidation of interstate bridge companies.
Any corporation heretofore or hereafter organized under the laws of this state for the purpose of constructing and/or operating a bridge, one extremity of which shall rest in an adjacent state, may merge and/or consolidate the stock, property, rights, franchises, privileges, assets and liabilities of such corporation with the stock, property, rights, franchises, privileges, assets and liabilities of a corporation organized for a similar purpose under the laws of such adjacent state, upon such terms not in conflict with law as may be mutually agreed upon, and thereafter such merged and/or consolidated corporations shall be one corporation with such name as may be agreed upon, and shall have all of the property, rights, privileges, assets and franchises, and be subject to all of the liabilities, of the merging or consolidating corporations.
[C31, 35, §8375-d1; C39, §**8375.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.38]

491.39 Legislative control.
The articles of incorporation, bylaws, rules and regulations of corporations hereafter organized under the provisions of either Title XII, subtitles 2 through 5, or Title XIII, subtitle 1 or 2, or whose organization may be adopted or amended thereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used, or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good.
[C73, §1090; C97, §1619; C24, 27, 31, 35, 39, §**8376;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.39]
Constitution, Iowa, Art. I, §21; Art. VIII, §12
Constitution, U. S., Art. I, §10

491.40 Fraud — penalty for.
Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a fraudulent practice. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud.
[C51, §686; R60, §1163; C73, §1071; C97, §1620; C24, 27, 31, 35, 39, §**8377;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.40]

491.41 Diversion of funds — unlawful dividends.
The diversion of the funds of the corporation to other objects than those mentioned in its articles and in the notice published, if any person be injured thereby, and the payment of dividends which leaves insufficient funds to meet the liabilities thereof, shall be such fraud as will subject those guilty thereof to the penalties of section 491.40; and such dividends, or their equivalent, in the hands of stockholders, shall be subject to such liabilities. If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers, or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of this section.
[C51, §687, 688; R60, §1164, 1165; C73, §1072, 1073; C97, §1621; C24, 27, 31, 35, 39, §**8378;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.41]

491.42 Forfeiture.
Any intentional violation by the board of directors or the managing officers of the corporation of the provisions of sections 491.40 and 491.41 shall work a forfeiture of the corporate privileges, to be enforced as provided by law.
[C51, §690; R60, §1167; C73, §1074; C97, §1622; C24, 27, 31, 35, 39, §**8379;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.42]

491.43 Keeping false accounts.
The intentional keeping of false books or accounts shall be a fraudulent practice on the part of any officer, agent, or employee of the corporation

guilty thereof, or of anyone whose duty it is to see that such books or accounts are correctly kept.

[C51, §691; R60, §1168; C73, §1075; C97, §1623; C24, 27, 31, 35, 39, §**8381;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.43]

491.44 and 491.45 Repealed by 51 Acts, ch 180, § 1.

491.46 Books to show names of stockholders.

The books of the corporation shall be kept to show the amount of capital stock actually paid in, the number of shares of stock issued, the original stockholders, and all transfers of shares of stock, and there shall be entered upon the books of the corporation the name of the person by and to whom stock is transferred, the numbers or other designations of the shares of stock and the date of transfer. This section does not create any rights or impose any duties inconsistent with the provisions of chapter 554.

[C51, §692; R60, §1169; C73, §1078; C97, §1626; C24, 27, 31, 35, 39, §**8385;** C46, 50, §491.47; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.46]

491.47 Names exhibited at meetings.

It shall be the duty of the officer or agent of any corporation organized under the laws of the state of Iowa, or any foreign corporation qualified to do business in the state of Iowa and holding a meeting of its stockholders in the state of Iowa, who has charge of the stock records of such corporation to prepare and make, at least ten days before the holding of such meeting, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order. Such list shall be open and available at the place where said meeting is to be held for said ten days to the examination of any stockholder, and shall be kept at the time and place of meeting during the whole time thereof, and subject to the inspection of any stockholder who may be present at said meeting. The original or duplicate stock ledger of the corporation shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the corporation or to vote in person or by proxy at such meeting. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting. An officer or agent having charge of the transfer books who shall fail to prepare the list of stockholders, or keep the same on file for a period of ten days, or produce and keep the same open for inspection at the meeting, as provided in this section, shall be liable to any stockholder suffering damage on account of such failure, to the extent of such damage.

[C24, 27, 31, 35, 39, §**8384;** C46, 50, §491.46; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.47]

491.48 Stock certificates — signing.

A corporation organized and existing under the laws, either general or special, of this state, may designate in its articles or bylaws the officer or officers who shall be empowered to sign stock certificates issued by the corporation. If the articles or bylaws provide for the signature of a registrar or the signature or countersignature of a transfer agent on stock certificates issued by it, the corporation may likewise provide in the articles or bylaws that in lieu of the actual signature of the officer or officers authorized to sign stock certificates, the facsimile thereof may be either engraved or printed thereon.

[C31, 35, §8385-d1; C39, §**8385.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.48]

491.49 Repealed by 65 Acts, ch 413, § 10102.

491.50 Examination by stockholder.

Any person who shall be a stockholder of record of any corporation organized under the laws of the state of Iowa or any foreign corporation authorized to transact business in the state of Iowa and maintaining its books and records in the state of Iowa shall have the right to examine in person or by duly authorized agent or attorney at any reasonable time or times and for any proper purpose the stock records, minutes and records of stockholders' meetings, and the books and records of account and to make extracts therefrom.

The provisions of sections 491.46 and 491.47 and this section shall not apply to building and loan associations, savings and loan associations, deposit, loan and investment records of banks and trust companies, or insurance companies organized under the laws of the state of Iowa, and to whom the provisions of this chapter would otherwise be applicable.

[C51, §692; R60, §1169; C73, §1078; C97, §1626; C24, 27, 31, 35, 39, §**8385, 8386;** C46, 50, §491.47, 491.50; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.50]

491.51 to 491.53 Repealed by 65 Acts, ch 413, § 10102.

491.54 Liability of collateral holder.

No holder of stock as collateral security shall be liable for assessments on the same.

[C97, §1626; C24, 27, 31, 35, 39, §**8390;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.54]

491.55 Right to vote stock — attachment.

Every executor, administrator, guardian, or trustee shall represent the stock in the person's hands at all corporate meetings, and may vote the same as a stockholder.

Every person who shall pledge the person's stock, in the absence of a written agreement to the contrary, may represent the same at all such meet-

ings and vote accordingly.

The owner of corporate stock levied upon by attachment or other proceeding shall have the right to vote the same at all corporate meetings, until such time as the owner shall have been divested of title thereto by execution sale.

Nothing contained in this section shall in any manner conflict with any provision in the articles of incorporation, or the bylaws of the corporation issuing the stock.

[S13, §1641-a; C24, 27, 31, 35, 39, §**8391;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.55]

491.56 Expiration and closing of business.

Corporations whose charters expire by limitation or the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their affairs.

[C51, §694; R60, §1171; C73, §1080; C97, §1629; C24, 27, 31, 35, 39, §**8392;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.56]

491.57 Sinking fund and loaning thereof.

For the purpose of repairs, rebuilding, enlarging, or to meet contingencies, or for the purpose of creating a sinking fund, the corporation may set apart a sum which it may loan, and take proper securities therefor.

[C51, §699; R60, §1176; C73, §1081; C97, §1630; C24, 27, 31, 35, 39, §**8393;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.57]

491.58 Liability of stockholders.

Neither anything in this chapter contained, nor any provisions in the articles of corporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and execution against the company may, to that extent, be levied upon the private property of any such individual. The foregoing provisions shall not apply to building and loan associations, and savings and loan associations.

[C51, §695; R60, §1172; C73, §1082; C97, §1631; C24, 27, 31, 35, 39, §**8394;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.58]

491.59 Levy on private property.

In none of the cases contemplated in this chapter can the private property of the stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and the officer neglects to point out any such property.

[C97, §1631; C24, 27, 31, 35, 39, §**8395;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.59]

491.60 Suit by creditor — measure of recovery.

In suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by the stockholder to the corporation for said stock and the face value thereof.

[C97, §1631; C24, 27, 31, 35, 39, §**8396;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.60]

491.61 Corporate property exhausted.

Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against the stockholder, in any stage of which the stockholder may point out corporate property subject to levy; and, upon the stockholder's satisfying the court of the existence of such property, by affidavit or otherwise, the cause may be continued, or execution against the stockholder stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but if a demand of property has been made as contemplated in section 491.59, the costs of said action shall, in any event, be paid by the company or the defendant therein, but the stockholder shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion.

[C51, §696, 697; R60, §1173, 1174; C73, §1083, 1084; C97, §1632; C24, 27, 31, 35, 39, §**8397;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.61]

491.62 Indemnity — contribution.

When the property of a stockholder is taken for a corporate debt, the stockholder may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution.

[C51, §698; R60, §1175; C73, §1085; C97, §1633; C24, 27, 31, 35, 39, §**8398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.62]

491.63 Franchise sold on execution.

The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisement.

[C51, §700; R60, §1177; C73, §1086; C97, §1634;

C24, 27, 31, 35, 39, §**8399;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.63]

491.64 Production of books.

In proceedings by or against a corporation or a stockholder to charge the stockholder's private property, or the dividends received by the stockholder, the court may, upon motion of either party, upon cause shown for that purpose, compel the officers or agents of the corporation to produce the books and records of the corporation.

[C51, §701; R60, §1178; C73, §1087; C97, §1635; C24, 27, 31, 35, 39, §**8400;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.64]

Similar provision, R.C.P. 1.512 et seq.

491.65 Estoppel.

No person or persons acting as a corporation shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such an acting corporation, or sued for an injury to its property, or a wrong done to its interests, be permitted to set up a want of such legal organization in the person's defense.

[C51, §704; R60, §1181; C73, §1089; C97, §1636; C24, 27, 31, 35, 39, §**8401;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.65]

491.66 Dissolution — receivership.

Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the state of Iowa. An action therefor may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them.

[C97, §1640; C24, 27, 31, 35, 39, §**8402;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.66]

491.67 Repealed by 79 Acts, ch 133, § 13. See § 9I.2.

491.68 False statements or pretenses.

Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting, either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, is guilty of a fraudulent practice.

[S13, §1641-g; C24, 27, 31, 35, 39, §**8404;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.68]

491.69 to 491.71 Repealed by 75 Acts, ch 57, § 17.

491.72 to 491.100 Reserved.

CORPORATION MERGER OR CONSOLIDATION

491.101 Definitions.

1. *"Merger"* means the uniting of two or more corporations into one corporation in such manner that the corporation resulting from the merger retains its corporate existence and absorbs the other constituent corporation or corporations which thereby lose their or its corporate existence.

2. *"Consolidation"* means the uniting of two or more corporations into a single new corporation, all of the constituent corporations thereby ceasing to exist as separate entities.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.101]

491.101A Poison pill defense authorized.

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

89 Acts, ch 288, §187

491.101B Consideration of community interests in consideration of acquisition proposals.

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.

b. The effects of the action on the communities in which the corporation operates.

c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in subsection 1, the board of direc-

tors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

89 Acts, ch 288, §188

491.102 Procedure for merger.

Any two or more corporations whether heretofore or hereafter organized may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of mergers setting forth:

1. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.
2. The terms and conditions of the proposed merger.
3. The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.
4. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.
5. Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.102]

491.103 Procedure for consolidation.

Any two or more corporations whether heretofore or hereafter organized may consolidate into a new corporation in the following manner:

The board of directors of each corporation, shall, by a resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

1. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.
2. The terms and conditions of the proposed consolidation.
3. The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation.
4. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.
5. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.103]

491.104 Meetings of shareholders.

The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be delivered not less than twenty days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state the place, day, hour and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.104]

491.105 Approval by shareholders.

At each such meeting, a vote of the shareholders entitled to vote thereat shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting, of each of such corporations, unless any class of shares of any such corporations is entitled to vote as a class in respect thereof in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares of each such class of shares entitled to vote as a class in respect thereof and two-thirds of the total outstanding shares entitled to vote at such meeting. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.105]

491.106 Articles of merger or consolidation.

Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and verified by that person, attested by its secretary or an assistant secretary, and shall be acknowledged and shall set forth:

1. The plan of merger or the plan of consolidation.

2. As to each corporation, the number of shares outstanding, and the number of shares entitled to vote, and, if the shares of any class are entitled to vote as a class, the designation of each such class and the number of outstanding shares thereof entitled to vote.

3. As to each corporation, the number of shares voted for and against such plan respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.106]

491.107 Filing articles of merger or consolidation.

A duly executed and acknowledged copy of the articles of merger or consolidation shall be forwarded to the secretary of state for filing and recording as provided in section 491.5.

The procedure set forth in sections 491.6 to 491.9 of this chapter shall be applicable to the filing of articles of consolidation or merger.

If as the result of a consolidation a new Iowa corporation is formed then the fees provided for in section 491.11 shall be applicable. If as the result of a merger an existing Iowa corporation becomes the survivor the articles of merger shall be deemed an amendment to its articles of incorporation and section 491.20 shall be applicable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.107]

94 Acts, ch 1055, §8

491.108 Effective date of merger or consolidation.

Upon the payment of all fees and charges and upon the filing of the articles of consolidation or merger with the secretary of state the secretary of state shall issue to the corporation or its representative a certificate of consolidation or a certificate of merger and upon the issuance of said certificate the merger or consolidation shall be effected.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.108]

491.109 Notice.

Notice of the articles of consolidation or merger shall be given as provided in section 491.17.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.109]

491.110 Effect of merger or consolidation.

When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

3. Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

5. Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

6. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

7. The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.110]

491.111 Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations whether heretofore or hereafter organized may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

1. Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of the statutes of the state of Iowa with respect to foreign corporations if it is to do business in this state, and in every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

b. The appointment of a resident agent as provided for in section 490.501.

c. An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this division with respect to the rights of dissenting shareholders.

Insofar as the state of Iowa is concerned, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.111]

93 Acts, ch 126, §11

491.112 Rights of dissenting shareholders.

If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of the shareholder's shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing said shares, such fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty-day period shall be conclusively presumed to have consented to the merger or consolidation and shall be bound by the terms thereof.

If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of the certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the state and judicial subdivision thereof in which the registered office or the principal place of business of the surviving or new corporation is situated, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of five percent per annum to the date of such judgment. The action shall be prosecuted as an equitable action and the practice and procedure shall conform to the practice and procedure in equity cases. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under the shareholder shall be conclusively presumed to have approved and ratified the merger or consolidation and shall be bound by

the terms thereof.

The right of a dissenting shareholder to be paid the fair value of the shareholder's shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation.

Shares acquired by the corporation pursuant to the payment of the agreed value thereof or to the payment of judgment entered therefor as in this section provided may be held and disposed of by the corporation as it shall see fit.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.112]

491.113 Issuance of stock.

All stock issued in connection with such merger or consolidation shall be issued pursuant to the provisions of chapter 492 and nothing in this amendment shall be construed as eliminating the requirements of said chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.113]

491.114 Amana stock.

Notwithstanding anything contained in this chapter and chapters 492 and 502, a corporation organized under the laws of the state of Iowa having assets of the value of one million dollars or more, the articles of which provide that an individual may not vote more than one share of the common voting shares of stock of the corporation, and which give to children of the owners of shares of the common voting stock the right to purchase one common voting share of stock in the corporation upon attaining majority or within a fixed period thereafter, and which authorize the issuance, sale and delivery of not to exceed one share of the common voting stock to any one individual, may issue, sell and deliver its shares of common voting stock, whether held by it as treasury stock or whether issued as an original issue, for the following considerations and upon the following terms and conditions, and with the following limitations:

1. Such common voting stock may be issued, sold and delivered by the corporation either for cash or upon credit or time payments or installment payments or for a consideration evidenced in part or in whole by the written agreement of the purchaser thereof to pay for the same, payment of said purchase price to be secured by a lien on said stock.

2. No such stock shall be issued, sold and delivered for a price less than the par value thereof at the time of such issuance, sale and delivery.

3. Not more than one share of said stock shall be so issued, sold and delivered to any one individual, but when issued, sold and delivered, said stock may be voted by the owner thereof, if the articles of incorporation or bylaws of such corporation, whether now in effect or hereafter adopted or amended, so provide, although a part or all of the price to be paid therefor may be owing to the corporation under said written agreement of the purchaser to pay for the same.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.114]

491.115 Repealed by 77 Acts, ch 127, § 9.

CHAPTER 492

CAPITAL STOCK

492.1 Endorsement of amount paid.
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492.7 Executive council to fix amount.
492.8 Elements considered in fixing amount.
492.9 Certificate of issuance of stock.
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492.12 Violation.

492.1 Endorsement of amount paid.

No certificate or shares of stock shall be issued, delivered, or transferred by any corporation, officer or agent thereof, or by the owner of such certificate or shares without having endorsed on the face thereof what amount or portion of the par value has been paid to the corporation issuing the same, and whether such payment has been in money or property.

[C97, §1627; S13, §1627; C24, 27, 31, 35, 39, §**8408;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.1]

492.2 Effect of violation.

Any certificate of stock issued, delivered, or transferred in violation of section 492.1 when the corporation has not received payment therefor at par in money or property at a valuation approved by the executive council, shall be void, and the issuance, delivery, or transfer of each certificate

shall be considered a separate transaction.

[C24, 27, 31, 35, 39, §**8409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.2]

492.3 Penalties.

Any person violating the provisions of sections 492.1 and 492.2, or knowingly making a false statement on such certificate, shall be guilty of a fraudulent practice.

[C97, §1627; S13, §1627; C24, 27, 31, 35, 39, §**8410;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.3]

492.4 Certain corporations excepted.

Sections 492.1 to 492.3 shall not apply to railway or quasi-public corporations organized before October 1, 1897.

[S13, §1627; C24, 27, 31, 35, 39, §**8411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.4]

492.5 Par value required.

No corporation organized under the laws of this state, except building and loan associations, shall issue any certificate of a share of capital stock, or any substitute therefor, until the corporation has received the par value thereof.

[S13, §1641-b; C24, 27, 31, 35, 39, §**8412;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.5]

492.6 Payment in property other than cash.

If it is proposed to pay for said capital stock in property or in any other thing than money, the corporation proposing the same must, before issuing capital stock in any form, apply to the executive council of the state for leave so to do. Such application shall state the amount of capital stock proposed to be issued for a consideration other than money, and set forth specifically the property or other thing to be received in payment for such stock, providing that the foregoing provision shall not apply to trust companies or insurance companies organized under the laws of this state.

Any insurance company proposing to issue capital stock for property or any thing other than money, before issuing the capital stock in any form, shall apply to the commissioner of insurance for leave so to do. Such application to the commissioner of insurance shall state the amount of capital stock proposed to be issued for a consideration other than money and set forth specifically the property or other thing to be received in payment for such stock.

[S13, §1641-b; C24, 27, 31, 35, 39, §**8413;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.6]

492.7 Executive council to fix amount.

The executive council or the commissioner of insurance as the case may be, shall make investigation, under such rules as it may prescribe, and ascertain the real value of the property or other thing which the corporation is to receive for the stock. It shall enter its finding, fixing the value at which the corporation may receive the same in payment for capital stock; and no corporation shall issue capital stock for the said property or thing in a greater amount than the value so fixed.

[S13, §1641-b; C24, 27, 31, 35, 39, §**8414;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.7]

492.8 Elements considered in fixing amount.

For the purpose of encouraging the construction of new steam or electric railways, and manufacturing industries within this state, the labor performed in effecting the organization and promotion of such corporation, and the reasonable discount allowed or reasonable commission paid in negotiating and effecting the sale of bonds for the construction and equipment of such railroad or manufacturing plant, shall be taken into consideration by said council as elements of value in fixing the amount of capital stock that may be issued.

[S13, §1641-b; C24, 27, 31, 35, 39, §**8415;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.8]

492.9 Certificate of issuance of stock.

It shall be the duty of every corporation, except corporations qualified under chapter 534, to file a certificate under oath with the secretary of state, within thirty days after the issuance of any capital stock, stating the date of issue, the amount issued, the sum received therefor, if payment be made in money, or the property or thing taken, if such be the method of payment. If the corporation fails to file said certificate of issuance of stock within the thirty-day period herein provided, it may thereafter file the same upon first paying to the secretary of state a penalty of ten dollars when the said certificate is offered for filing. Provided further that the penalty herein provided for is first paid and provided the said report contains the specific information required by this section as to the issuance of any capital stock not previously reported, then the first annual report filed by such corporation following such failure to comply with the provisions of this section, shall be received by the secretary of state as a compliance with this section.

[S13, §1641-c; C24, 27, 31, 35, 39, §**8416;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.9]

93 Acts, ch 126, §12

492.10 Cancellation of stock — reimbursement.

The capital stock of any corporation issued in violation of the terms and provisions of sections 492.5 to 492.8 shall be void, and in a suit brought by the attorney general on behalf of the state in any court having jurisdiction, a decree of cancellation shall be entered; and if the corporation has received any money or thing of value for the said

stock, such money or thing of value shall be returned to the individual, firm, company, or corporation from whom it was received, and if represented by labor or other service of intangible nature, the value thereof shall constitute a claim against the corporation issuing stock in exchange therefor.

[S13, §1641-d; C24, 27, 31, 35, 39, §**8417;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.10]

492.11 Dissolution — distribution of assets.

Any corporation violating the provisions of sections 492.5 to 492.8 shall, upon the application of the attorney general, in behalf of the state, made to any court of competent jurisdiction, be dissolved, its affairs wound up, and its assets distributed among the stockholders other than those who have received the stock so unlawfully issued.

[S13, §1641-e; C24, 27, 31, 35, 39, §**8418;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.11]

492.12 Violation.

Any officer, agent or representative of a corporation who violates any of the provisions of sections 492.5 to 492.8 shall be guilty of a simple misdemeanor.

[S13, §1641-f; C24, 27, 31, 35, 39, §**8419;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §492.12]

CHAPTER 493

STOCK WITHOUT PAR VALUE

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493.11 Incorporation fee — computation.
493.12 Applicability of statutes.

493.1 Authorization.

Any corporation, heretofore or hereafter organized for pecuniary profit under the laws of this state, except state banks, trust companies, building and loan associations and insurance companies, may create one or more classes of stock without any nominal or par value, with such rights, preferences, privileges, voting powers, limitations, restrictions and qualifications thereon not inconsistent with law as shall be expressed in its articles of incorporation, or any amendment thereto. Stock without par value which is preferred as to dividends, or as to its distributive share of the assets of the corporation upon dissolution, may be made subject to redemption at such times and prices as may be determined in such articles of incorporation, or any amendment thereto. In the case of stock without par value which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount of such preference shall be stated in the articles of incorporation, or any amendment thereto.

[C31, 35, §8419-c1; C39, §**8419.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.1]

493.2 Par value — method of stating.

In any case, in which the par value of the shares of stock of a corporation shall be required to be stated in the articles of incorporation, or any amendment thereto, or in any other place, it shall be stated in respect to shares without par value that such shares are without par value, and when the amount of such stock authorized, issued or outstanding shall be required to be stated, the number of shares thereof authorized, issued or outstanding, as the case may be, shall be stated, and it shall also be stated that such shares are without par value.

[C31, 35, §8419-c2; C39, §**8419.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.2]

493.3 Amount of stock.

For the purpose of any rule of law or of any statutory provision relating to the amount of capital stock issued and represented by shares of stock without par value except as otherwise provided in this chapter such amounts shall be taken to be the amount of money or the actual value of the consideration, as fixed by the directors or otherwise, in accordance with law, as the case may be, for which such shares of stock shall have been issued. In any such case in which stock having a par value shall have been issued with stock without par value for a specified combined consideration, in determining the amount of the capital stock issued and represented by shares of stock without par value the then book value of such stock having a par value shall first be deducted from the amount of the money or actual value of the consideration deter-

mined as aforesaid, and the excess thereof, if any, shall be taken to be the amount of capital stock represented by the shares of stock without par value so issued.

[C31, 35, §8419-c3; C39, §**8419.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.3]

493.4 Sale value.

Subject to any limitations and restrictions set forth in the articles of incorporation, or amendment thereto, any such corporation may issue its authorized capital stock without par value for such consideration as may be prescribed in the articles of incorporation, or amendment thereto, or, if not prescribed, then for such consideration as may be fixed by resolution passed by the stockholders of such corporation at any annual meeting thereof, or at any special meeting thereof duly called for that purpose, or by the board of directors acting under authority of such stockholders given in like manner. In the absence of fraud in the transaction, the judgment of the board of directors in fixing and determining such sale value shall be conclusive as to the creditors and stockholders. Nothing in this chapter shall be so construed as to repeal the law as it now appears in sections 492.6, 492.7, and 492.8.

[C31, 35, §8419-c4; C39, §**8419.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.4]

493.5 Liability of holder.

Any and all shares without par value issued for the consideration as prescribed or fixed in section 493.4 shall be deemed fully paid and nonassessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto.

[C31, 35, §8419-c5; C39, §**8419.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.5]

493.6 Status of stock.

Except as to any preferences, rights, limitations, privileges and restrictions, lawfully granted or imposed with respect to any stock or class thereof, shares of stock without nominal or par value shall be deemed to be an aliquot part of the aggregate capital of the corporation issuing the same and equal to every other share of stock of the same class.

[C31, 35, §8419-c6; C39, §**8419.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.6]

493.7 Certificates of stock.

Each stock certificate issued for shares without nominal or par value shall have plainly written or printed upon its face the number of shares which it represents, and the number of such shares the corporation is authorized to issue, and no such certificate shall state any nominal or par value of such shares or express any rate of dividend to which it shall be entitled in terms of percentage of any par or other value.

[C31, 35, §8419-c7; C39, §**8419.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.7]

493.8 Number of shares.

The number of authorized shares of stock without par value may be increased or reduced in the manner and subject to the conditions provided by law for the increase or reduction of the capital stock of a similar corporation having shares with par value. All other statutory provisions relating to stock having a par value shall also apply to stock without par value, so far as the same may be legally, necessarily or practically applicable to, and not inconsistent with, the provisions of this chapter.

[C31, 35, §8419-c8; C39, §**8419.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.8]

493.9 Change in stock.

Any such corporation may, by appropriate amendments to its articles of incorporation, adopted by a two-third affirmative vote of each class of stock then issued and outstanding and affected by such amendment, change its stock (common or preferred) having a par value to an equal, greater or less number of shares of stock having no par value, and, in connection therewith, may fix the amount of capital represented by such shares of stock without par value.

[C31, 35, §8419-c9; C39, §**8419.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.9]

493.10 Convertibility.

The articles of incorporation, or any amendment thereto, of any such corporation may provide that shares of stock of any class shall be convertible into shares of stock of any other class upon such terms and conditions as may be therein stated.

[C31, 35, §8419-c10; C39, §**8419.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.10]

493.11 Incorporation fee — computation.

For the purpose of computing the statutory fee for incorporating or for any other statutory provision based on the par value of shares of stock, but for no other purpose, each share of stock without par value shall be considered equivalent to a share having a nominal or par value of one hundred dollars.

[C31, 35, §8419-c11; C39, §**8419.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.11]

493.12 Applicability of statutes.

Except as otherwise provided by this chapter, such corporations issuing shares without par value, under the provisions hereof, shall be and remain subject to the laws of this state, now or hereafter in force, relating to the formation, regulation, consolidation, or merger, rights, powers and privileges of corporations organized for pecuniary

profit, and all other laws applicable thereto.

All acts or parts of acts providing for the incorporation, organization, administration and management of the affairs of corporations organized for pecuniary profit and having shares of stock with a par value are hereby made applicable to corporations having shares of stock without par value, except where the same are inconsistent with the provisions of this chapter.

[C31, 35, §8419-c12; C39, §**8419.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §493.12]

CHAPTER 493A

UNIFORM STOCK TRANSFER ACT

Repealed by 65 Acts, ch 413, §10102; see chapter 554

CHAPTER 494

FOREIGN CORPORATIONS

Repealed by 93 Acts, ch 126, §36; see chapter 490

CHAPTER 495

FOREIGN PUBLIC UTILITY CORPORATIONS

495.1 Capital stock and permit.
495.2 Holding companies.
495.3 Biennial report — fee.
495.4 Sale of capital stock.
495.5 Violations — stock void.
495.6 Dissolution — receiver.

495.1 Capital stock and permit.

Sections 492.5 to 492.9 are applicable to any foreign corporation which directly or indirectly owns, uses, operates, controls, or is concerned in the operation of any public gasworks, electric light plant, heating plant, waterworks, interurban or street railway located within the state, or the carrying on of any gas, electric light, electric power, heating business, waterworks, interurban or street railway business within the state, or that owns or controls, directly or indirectly, any of the capital stock of any corporation which owns, uses, operates or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located within the state, or any foreign corporation that exercises any control in any way or in any manner over any of such works, plants, interurban or street railways or the business carried on by such works, plants, interurban or street railways by or through the ownership of the capital stock of any corporation or corporations or in any other manner whatsoever, and the ownership, operation, or control of any such works, plants, interurban or street railways or the business carried on by any of such works or plants or the ownership or control of the capital stock in any corporation owning or operating any of such works, plants, interurban or street railways by any foreign corporation in violation of this chapter is unlawful.

[S13, §1641-1; C24, 27, 31, 35, 39, §**8433;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.1]

93 Acts, ch 126, §13

495.2 Holding companies.

The provisions of this chapter are hereby made applicable to all corporations, including so-called "holding companies" which by or through the ownership of the capital stock in any other corporation or corporations or a series of corporations owning or controlling the capital stock of each other can or may exercise control over the capital stock of any corporation which owns, uses, operates, or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located in the state, or the business carried on by such works or plants.

[S13, §1641-m; C24, 27, 31, 35, 39, §**8434;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.2]

495.3 Biennial report — fee.

All corporations subject to the provisions of this chapter are hereby required to pay the fee and to

make the biennial report in the form and manner and at the time as specified in chapter 490.

[S13, §1641-n; C24, 27, 31, 35, 39, §**8435;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.3]

2000 Acts, ch 1022, §3

495.4 Sale of capital stock.

The provisions of this chapter are hereby made applicable to the sale of its own capital stock by any corporation subject to the provisions of this chapter, whether said capital stock has been heretofore issued by said corporation or not, including the sale of so-called "treasury stock" or stock of the corporation in the hands of a trustee or where the corporation participates in any way or manner in the benefits of said sales, and also to the sale of any of the obligations of any corporation subject to the provisions of this chapter, the payment of which is secured by the deposit or pledge of any of the capital stock of said corporation.

[S13, §1641-o; C24, 27, 31, 35, 39, §**8436;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.4]

495.5 Violations — stock void.

Shares of capital stock of any corporation owned or controlled in violation of this chapter shall be void and the holder of such shares shall not be entitled to exercise the powers of a shareholder of the corporation or permitted to participate in or be entitled to any of the benefits accruing to shareholders of the corporation. This chapter shall be construed so as to prevent evasion and to accomplish the intents and purposes of this chapter.

[S13, §1641-p; C24, 27, 31, 35, 39, §**8437;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.5]

93 Acts, ch 126, §14

495.6 Dissolution — receiver.

Courts of equity shall have full power to dissolve, close up, or dispose of any business or property owned, operated, or controlled in violation of the provisions of this chapter; to dissolve any corporation owning or controlling the capital stock of any other corporation in violation of the provisions of this chapter and to close up or dispose of the business or property of said corporation; and if the court finds that, in order to carry out the purposes of this chapter, it is necessary so to do, it may dissolve the corporation issuing the stock which is owned in violation of the provisions of this chapter, close up the business of said corporation and dispose of its property, and the court may also appoint a receiver who shall be a resident of Iowa for any business or for any corporation which has violated the provisions thereof or of the corporation issuing the stock which is held in violation thereof. Any action to enforce the provisions of this chapter may be instituted by the attorney general in the name of the state of Iowa or by a citizen in the name of the state of Iowa at the citizen's own proper cost and expense, reserving, however, to the stockholders owning capital stock not held in violation of this chapter all rights possessed by them.

[S13, §1641-q; C24, 27, 31, 35, 39, §**8438;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §495.6]

CHAPTER 496

ANNUAL REPORTS OF CORPORATIONS

Repealed by 90 Acts, ch 1205, §62
Biennial reports, §490.1622

CHAPTER 496A

BUSINESS CORPORATIONS

Repealed effective December 31, 1989, by 89 Acts, ch 288, §195, 196; see chapter 490; transition and savings provisions, §490.1701 – 490.1705

CHAPTER 496B

ECONOMIC DEVELOPMENT CORPORATIONS

496B.1 Title of Act.
496B.2 Definitions.
496B.3 Authorized corporations.
496B.4 Offices.
496B.5 Purposes.
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496B.13 Board of directors.
496B.14 Earned surplus set aside.
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496B.17 Certificate to do business.
496B.18 Repealed by 79 Acts, ch 120, §18.
496B.19 Dissolution.
496B.20 State credit not available.

496B.1 Title of Act.

This chapter shall be known and may be cited as the *"Iowa Economic Development Act"*.

[C66, 71, 73, 75, 77, 79, 81, §496B.1]

496B.2 Definitions.

As used in this chapter, unless the context otherwise requires, the term:

1. *"Board of directors"* means members of the board of directors of a development corporation constituted under section 496B.13 in office from time to time.

2. *"Department"* means the Iowa department of economic development of the state of Iowa, or any agency which succeeds to the functions of the Iowa department of economic development.

3. *"Development corporation"* means any corporation organized pursuant to this chapter and for the purpose of developing businesses, industries, and enterprises in the state of Iowa by the loaning of money thereto and investing money therein, and otherwise organizing for the purposes in section 496B.5.

4. *"Financial institution"* means any bank, trust company, savings and loan association, insurance company or related corporation, partnership, foundation or other institution licensed to do business in the state of Iowa and engaged primarily in lending or investing funds.

5. *"Loan limit"* means, for any member, the maximum amount permitted to be outstanding at any one time on loans made by any such member to a development corporation, as determined herein.

6. *"Member"* means any financial institution which shall undertake to lend money to a development corporation upon its call and in accordance with the provision of section 496B.9.

[C66, 71, 73, 75, 77, 79, 81, §496B.2]

496B.3 Authorized corporations.

There is hereby authorized to be incorporated under the Iowa business corporation Act, chapter 490, development corporations which meet and comply with the requirements of this chapter. Such corporations shall be subject to and have the powers and privileges conferred by the provisions of this chapter and those provisions of the Iowa business corporation Act, chapter 490, which are not inconsistent with and to the extent not restricted or limited by the provisions of this chapter. No corporation shall be deemed incorporated pursuant to and under the provisions of this chapter unless the same is approved by the department and unless its articles of incorporation provide that it is incorporated pursuant to this chapter. To assure a broad base from which development corporations may obtain loans from members, the department at its discretion may limit the number of development corporations organized and existing pursuant to this chapter to one or more such corporations.

[C66, 71, 73, 75, 77, 79, 81, §496B.3]
2001 Acts, ch 24, §63

496B.4 Offices.

A development corporation may have offices in such places within the state of Iowa as may be fixed by the board of directors.

[C66, 71, 73, 75, 77, 79, 81, §496B.4]

496B.5 Purposes.

The purposes of a development corporation shall be limited to those provided in this section and shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of the state of Iowa and its citizens; to encourage and assist through loans, investments, or other business transactions, the location of new business and industry in the state; to rehabilitate and assist existing business and industry in this state; to stimulate and assist in the expansion of any kind of business activity which would tend to promote business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; to co-operate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

[C66, 71, 73, 75, 77, 79, 81, §496B.5]

496B.6 Powers.

Any development corporation shall, subject to the restrictions and limits herein contained, have the following powers:

1. To make contracts and incur liabilities for any of the purposes of the development corporation; provided that no development corporation

shall incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association, or trust, or in any other manner.

2. To borrow money either from its members or pursuant to lending arrangements entered into under the authority granted in subsection 7 of this section, or both from its members and pursuant to said lending arrangements, and to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and when necessary to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing shareholder or member approval; provided, that no loan to a development corporation shall be secured in any manner unless all outstanding loans to such corporation, and for which loan or loans no subordination agreement has been entered into between the respective loan maker and the development corporation, shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

3. To make loans to any person, firm, corporation, joint stock company, association, or trust and to establish and regulate the terms and conditions with respect to any such loans, and the charges for interest and service connected therewith.

4. To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, association, or trust; to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants and business establishments.

5. To cooperate with and avail itself of the facilities of the department and to cooperate with and assist and otherwise encourage organizations in the various communities of the state of Iowa in the promotion, assistance, and development of business prosperity and economic welfare of such communities or of this state or any part thereof.

6. To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter and such other powers not in conflict herewith granted under the Iowa business corporation Act, chapter 490.

7. To enter into lending arrangements with state and federal agencies or instrumentalities whereby the development corporation may participate in lending operations or secure guarantees or qualify under applicable laws to further state or federal lending programs by becoming a participant therein.

[C66, 71, 73, 75, 77, 79, 81, §496B.6]

2001 Acts, ch 24, §64

496B.7 Stock — limitations.

Capital stock shall be issued only on receipt by each development corporation of cash in such amount not less than the par value thereof as may be determined by the board of directors. No shareholder of any development corporation shall be entitled as of right to purchase or subscribe for any unissued or treasury shares of the corporation, and no such shareholder shall be entitled as of right to purchase or subscribe for any bonds, notes, certificates of indebtedness, debentures, or other obligations convertible into shares of the development corporation.

[C66, 71, 73, 75, 77, 79, 81, §496B.7]

496B.8 Stockholders' privileges.

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective articles of incorporation, agreements of association, or trust indentures:

1. Any person, as defined in the Iowa business corporation Act, chapter 490, is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bond, security or other evidences of indebtedness created by, or the shares of the capital stock of, development corporations, and while owners of said shares to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state.

2. Any financial institution is hereby authorized to become a member of a development corporation and to make loans to such corporation.

3. Any financial institution which does not become a member of a development corporation shall not be permitted to acquire any shares of the capital stock of such development corporation.

4. Each financial institution which becomes a member of a development corporation is hereby authorized to acquire, purchase, hold, sell, assign, mortgage, pledge, or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the development corporation of which it is a member, and while owners of such shares to exercise all rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state; provided that the amount of the capital stock of any development corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten percent of the loan limit of such member. The amount of capital stock of a development corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in other corporations which such member may otherwise be authorized to acquire.

[C66, 71, 73, 75, 77, 79, 81, §496B.8]
89 Acts, ch 180, §2; 2001 Acts, ch 24, §64

496B.9 Loan procedures.

A financial institution may request membership in a development corporation by making application to the board of directors thereof on such form and in such manner as such board of directors may require, and membership shall become effective upon acceptance of such application by said board. Each member of any development corporation shall make loans to such development corporation as and when called upon by that corporation to do so on such terms and conditions as shall be approved from time to time by the board of directors subject to the following:

1. All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with the provisions of this section.

2. No loan to a development corporation shall be made if immediately thereafter the total amount of the obligations of the development corporation calling for the loan would exceed ten times the amount then paid in on the outstanding capital stock of such corporation.

3. The total amount outstanding at any one time on loans to a development corporation made by a member thereof when added to the amount of the investment in the capital stock of such corporation and held by such member, shall not exceed the lesser of:

a. Twenty percent of the total amount then outstanding on loans to such development corporation by all members thereof, including in said total amount outstanding amounts validly called for loan but not yet loaned.

b. The limit, to be determined as of the time such member becomes a member, on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, as follows:

(1) Banks and trust companies — two percent of the paid-in capital, surplus, and undivided profits.

(2) Savings and loan associations — two percent of the general reserve account, surplus and undivided profits.

(3) Stock life insurance companies — one percent of capital and unassigned surplus.

(4) Mutual life insurance companies — one percent of the unassigned surplus.

(5) All other insurance companies — one-tenth of one percent of the assets.

(6) Other financial institutions — such limits as may be approved by the board of directors of the development corporation.

Provided that the lending limit of any one member shall not exceed two hundred fifty thousand dollars.

4. Each call for loan shall be prorated among the members in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding obligations of the corporation to such member and the investment in capital stock of the corporation held by such member at the time of such call.

5. All loans to a development corporation by a member shall be evidenced by registered bonds, debentures, notes, or other evidences of indebtedness of the development corporation, which shall be freely transferable by the registered holder thereof on the books of the corporation.

[C66, 71, 73, 75, 77, 79, 81, §496B.9]

496B.10 Duration of membership.

Membership in any development corporation shall be for the duration of the respective development corporation; provided, however, that upon written notice given to the development corporation five years in advance a member thereof may withdraw from membership in such corporation at the expiration date of such notice. Provided that a financial institution may at any time withdraw from membership without such notice in the event of its merger with another financial institution, after commencement of proceedings for voluntary or involuntary dissolution, receivership, or reorganization pursuant to or by operation of federal or state law or in the event of conversion from a state financial institution to a federal financial institution or the reverse. If there shall be a legislative amendment of this chapter affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation of such corporation which shall not have been approved by the members and shareholders within the time set forth and in the manner provided in this chapter, any member not approving such amendment may immediately withdraw from membership upon giving written notice to the corporation not later than ninety days from the effective date of the amendment. A member shall not be obligated to make any loans to a development corporation pursuant to calls made subsequent to the withdrawal of said member therefrom.

[C66, 71, 73, 75, 77, 79, 81, §496B.10]

496B.11 Powers of shareholders.

The shareholders and the members of the development corporation shall have the following powers of such corporation:

1. Those powers granted in the Iowa business corporation Act, chapter 490, which are not inconsistent with the provisions of this chapter.

2. To determine the number and elect directors as provided herein.

3. To amend the articles of incorporation as provided herein.

4. To dissolve the corporation as provided

herein.

5. To exercise such other of the powers of the corporation as may be conferred on the shareholders and the members by the bylaws. As to all matters requiring action by the shareholders and the members of the corporation, such shareholders and such members shall vote separately thereon by classes and, except as may be otherwise herein provided, approval of such matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting are entitled, and the affirmative vote of a majority of the votes to which the members present or represented at the meeting are entitled. Each shareholder shall have one vote, in person or by proxy, for each share of capital stock held by the shareholder, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars shall have one additional vote, in person or by proxy, for each additional one thousand dollars which such member is authorized to have outstanding on loans to the corporation at any one time as determined herein.

[C66, 71, 73, 75, 77, 79, 81, §496B.11]
2001 Acts, ch 24, §62

496B.12 Articles amended.

The articles of incorporation of any development corporation may be amended by the votes of the shareholders and the members thereof voting separately by classes. Any amendment shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled and two-thirds of the votes to which the members shall be entitled. No amendment, however, shall be made which: (1) is inconsistent with this chapter; (2) authorizes any additional class or classes of shares of capital stock; (3) eliminates or curtails the authority of the department with respect to the corporation. Without the consent of each of the members affected, no amendment shall be made which: (1) increases the obligation of a member to make loans to the corporation; (2) makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation; (3) affects a member's right to withdraw from membership, as provided herein, or (4) affects a member's voting rights in the corporation. Within thirty days after any meeting at which amendment of any such articles has been adopted, articles of amendment signed and sworn to by the president, secretary, and majority of the directors, setting forth such amendment and the due adoption thereof, shall be submitted to the director of the department who shall examine them, and if the director finds that they conform to the requirements of this chapter, shall so certify and endorse the director's approval thereof. Thereupon, the articles of amendment shall be filed in the office of the secretary of state in the manner set forth and as provided in the Iowa business corporation Act, chapter 490, and no such amendment shall take effect until such articles of amendment shall have been approved and filed as aforesaid. Within sixty days after the effective date of any legislative amendment affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation, the approval of such legislative amendments shall be voted on by the shareholders and the members of the development corporation at a meeting duly called for that purpose. If such legislative amendment is not approved by the affirmative vote of two-thirds of the votes to which such shareholders shall be entitled and two-thirds of the votes to which such members shall be entitled, any such member voting against the approval of such legislative amendment shall have the right to withdraw from membership as provided in this chapter. Within thirty days after any meeting at which a legislative amendment affecting the articles of incorporation of a development corporation has been voted on, a certificate filed and sworn to by the secretary or other recording officer of such corporation setting forth the action taken at such meeting with respect to such amendment shall be submitted to the director of the department and upon receipt of such approval shall be filed in the office of the secretary of state.

[C66, 71, 73, 75, 77, 79, 81, §496B.12]
2001 Acts, ch 24, §62

496B.13 Board of directors.

The board of directors shall consist of such number not less than fifteen as shall be determined in the first instance by the incorporators and thereafter annually by the members and the shareholders at each annual meeting or at any special meeting held in lieu of the annual meeting. At each annual meeting or at any special meeting held in lieu of the annual meeting, the members of each corporation shall elect two-thirds of the board of directors and the shareholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election, and until their successors are elected and qualify unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders.

Notwithstanding any provisions of law to the contrary, officers and directors of insurance companies and other financial institutions may be members of the board of directors of any corporation organized for the purposes of this chapter to which the insurance company or other financial institution may make a loan or may make an in-

vestment.
[C66, 71, 73, 75, 77, 79, 81, §496B.13]

496B.14 Earned surplus set aside.
Each year each development corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.
[C66, 71, 73, 75, 77, 79, 81, §496B.14]

496B.15 Deposit of funds.
No development corporation shall deposit any of its funds in any financial institution unless such institution has been designated as a depository by a vote of a majority of the directors present at any authorized meeting of the board of directors exclusive of any director who is an officer or director of the depository so designated. No development corporation shall receive money on deposit.
[C66, 71, 73, 75, 77, 79, 81, §496B.15]

496B.16 Reports to department of economic development.
Each development corporation is subject to the examination of the department and shall make reports of its condition not less than annually to the department. The department shall make copies of the reports available to the commissioner of insurance and the superintendent of banking. Each development corporation shall also furnish other information as the department may require. The department may request the superintendent of banking to examine the condition of a development corporation and to submit a report on the examination to the department and the commissioner of insurance.
[C66, 71, 73, 75, 77, 79, 81, §496B.16]
83 Acts, ch 103, §1

496B.17 Certificate to do business.
Upon the approval of the department as required in this chapter and the issuance of a certificate as provided in the Iowa business corporation Act, chapter 490, a development corporation shall then be authorized to commence business and to issue stock thereof to the extent authorized in its articles of incorporation.
[C66, 71, 73, 75, 77, 79, 81, §496B.17]
2001 Acts, ch 24, §64

496B.18 Repealed by 79 Acts, ch 120, § 18. See § 502.202(13).

496B.19 Dissolution.
A development corporation may be dissolved upon the affirmative vote of two-thirds of the votes to which the shareholders thereof shall be entitled and two-thirds of the votes to which the members shall be entitled. Upon any dissolution of a development corporation, none of the corporation's assets shall be distributed to the shareholders until all sums due the members of the corporation as creditors thereof have been paid in full.
[C66, 71, 73, 75, 77, 79, 81, §496B.19]

496B.20 State credit not available.
Under no circumstances is the credit of the state of Iowa pledged herein.
[C66, 71, 73, 75, 77, 79, 81, §496B.20]

CHAPTER 496C

PROFESSIONAL CORPORATIONS

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496C.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Professional Corporation Act"*.

[C71, 73, 75, 77, 79, 81, §496C.1]

496C.2 Definitions.

For words used in this chapter, unless the context otherwise requires, the definitions contained in the Iowa business corporation Act, chapter 490, apply, and:

1. *"Employees"* or *"agents"* does not include clerks, stenographers, secretaries, bookkeepers, technicians, or other persons who are not usually and ordinarily considered by custom and practice to be practicing a profession, nor any other person who performs all that person's duties for the professional corporation under the direct supervision and control of one or more officers, employees, or agents of the professional corporation who are duly licensed in this state to practice a profession which the corporation is authorized to practice in this state. This chapter shall not be construed to require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state.

2. *"Foreign professional corporation"* means a corporation organized under laws other than the laws of this state for a purpose for which a professional corporation may be organized under this chapter.

3. *"Licensed"* includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

4. *"Profession"* means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, psychology, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathy, osteopathic medicine and surgery, accounting practitioner, podiatry, speech pathology, audiology, veterinary medicine, pharmacy and the practice of nursing.

5. *"Professional corporation"* means a corporation subject to this Act, except a foreign professional corporation.

6. *"Regulating board"* means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. *"Voluntary transfer"* includes any sale, voluntary assignment, gift, pledge, or encumbrance; any voluntary change of legal or equitable ownership or beneficial interest; or any voluntary change of persons having voting rights with respect to any shares, except as proxies; but does not include any transfer of an individual's shares or other property to a guardian or conservator appointed for such individual or the individual's property.

[C71, 73, 75, 77, 79, 81, §496C.2]
90 Acts, ch 1205, §31

496C.3 Applicability of Iowa business corporation Act.

The Iowa business corporation Act, chapter 490, shall be construed as part of this chapter and shall apply to professional corporations, including, but not limited to, their organization, reports, fees, authority, powers, rights, and the regulation and conduct of their affairs. The provisions of the Iowa business corporation Act, chapter 490, on foreign corporations shall apply to foreign professional corporations. The provisions of this chapter shall prevail over any inconsistent provisions of the Iowa business corporation Act, chapter 490, or any other law.

[C71, 73, 75, 77, 79, 81, §496C.3]
2001 Acts, ch 24, §62

496C.4 Purposes and powers.

A professional corporation shall be organized only for the purpose of engaging in the practice of one specific profession, or two or more specific professions which could lawfully be practiced in combination by a licensed individual or a partnership of licensed individuals, and for the additional purpose of doing all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. The articles of incorporation shall state in substance that the purposes for which the corporation is organized are to engage in the general practice of a specified profession or professions, or one or more specified branches or divisions thereof, and to do all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. Each professional corporation, unless otherwise provided in its articles of incorporation or unless expressly prohibited by this chapter, shall have all powers granted to corporations by the Iowa business corporation Act, chapter 490.

[C71, 73, 75, 77, 79, 81, §496C.4]
2001 Acts, ch 24, §64

496C.5 Corporate name.

The corporate name of a professional corporation, the corporate name of a foreign professional corporation or its name as modified for use in this state, and any fictitious name or trade name adopted by a professional corporation or foreign professional corporation shall contain the words "professional corporation" or the abbreviation "P.C.", and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the corporation is authorized to practice. Each regulating board may by rule or regulation adopt additional require-

ments as to the corporate names and fictitious or trade names of professional corporations and foreign professional corporations which are authorized to practice a profession which is within the jurisdiction of the regulating board.

[C71, 73, 75, 77, 79, 81, §496C.5]
90 Acts, ch 1205, §32

496C.6 Who may incorporate.

One or more individuals having capacity to contract, each of whom is licensed to practice in this state a profession which the professional corporation is to be authorized to practice, may act as incorporators of a professional corporation.

[C71, 73, 75, 77, 79, 81, §496C.6]

496C.7 Practice by professional corporation.

Notwithstanding any other statute or rule of law, a professional corporation may practice a profession, but may do so in this state only through shareholders, directors, officers, employees, and agents who are licensed to practice the same profession in this state.

In its practice of a profession, no professional corporation shall do any act which could not lawfully be done by individuals licensed to practice the profession which the professional corporation is authorized to practice.

[C71, 73, 75, 77, 79, 81, §496C.7]

496C.8 Professional regulation.

No professional corporation shall be required to register with or to obtain any license, registration, certificate, or other legal authorization from any regulating board in order to practice a profession. Except as provided in this section, nothing in this chapter shall restrict or limit in any manner the authority or duties of any regulating board with respect to individuals practicing any profession which is within the jurisdiction of the regulating board, even if the individual is a shareholder, director, officer, employee, or agent of a professional corporation or foreign professional corporation and practices the individual's profession through such corporation.

[C71, 73, 75, 77, 79, 81, §496C.8]

496C.9 Relationship and liability to persons served.

This chapter does not modify any law applicable to the relationship between an individual practicing a profession and a person receiving professional services, including, but not limited to, any liability arising out of such practice and any law respecting privileged communications.

This chapter does not modify or affect the ethical standards or standards of conduct of any profession, including, but not limited to, any standards prohibiting or limiting the practice of the profession by a corporation or prohibiting or limiting the practice of two or more professions in combination. All such standards shall apply to the shareholders, directors, officers, employees, and agents through whom a professional corporation practices any profession in this state, to the same extent that the standards apply to an individual practitioner.

Unless otherwise provided in the articles of incorporation, the liability of the shareholders of a professional corporation, as shareholders, shall be limited in the same manner and to the same extent as in the case of a corporation organized under the Iowa business corporation Act, chapter 490.

[C71, 73, 75, 77, 79, 81, §496C.9]
2001 Acts, ch 24, §64

496C.10 Issuance of shares.

Shares of a professional corporation may be issued, and treasury shares may be disposed of, only to individuals who are licensed to practice in this state, or in any other state or territory of the United States or in the District of Columbia, a profession which the corporation is authorized to practice.

Unless otherwise provided in the articles of incorporation or bylaws, the affirmative vote or consent in writing of all of the outstanding shareholders entitled to vote, or such lesser proportion as may be provided in the articles or bylaws, is necessary in order to authorize the issuance of any shares or the disposal of any treasury shares, and to fix the consideration for shares or treasury shares.

No shares of a professional corporation shall at any time be issued in, transferred into, or held in joint tenancy, tenancy in common, or any other form of joint ownership or co-ownership.

The Iowa securities law shall not be applicable to nor govern any transaction relating to any shares of a professional corporation.

[C71, 73, 75, 77, 79, 81, §496C.10]

496C.11 Transfer of shares.

No shareholder or other person shall make any voluntary transfer of any shares in a professional corporation to any person, except to the professional corporation or to an individual who is licensed to practice in this state a profession which the corporation is authorized to practice.

Unless otherwise provided in the articles of incorporation or bylaws, the affirmative vote or consent in writing of all of the outstanding shareholders entitled to vote, or such lesser proportion as may be provided in the articles or bylaws, is necessary in order to authorize any voluntary transfer of any shares of a professional corporation.

The articles of incorporation or bylaws may contain any additional provisions restricting the transfer of shares.

[C71, 73, 75, 77, 79, 81, §496C.11]

496C.12 Convertible securities — stock rights and options.

No professional corporation shall create or issue any securities convertible into shares of the professional corporation. The provisions of this chapter with respect to the issuance and transfer of shares and disposal of treasury shares apply to the creation, issuance, and transfer of any rights or options entitling the holder to purchase from a professional corporation any shares of the corporation, including treasury shares. Rights or options shall not be transferable, whether voluntarily, involuntarily, by operation of law, or in any other manner. Upon the death of the holder, or whenever the holder ceases to be licensed to practice in this state a profession which the corporation is authorized to practice, the rights or options shall expire.

[C71, 73, 75, 77, 79, 81, §496C.12]

496C.13 Voting trust — proxy.

No shareholder of a professional corporation shall create or enter into a voting trust or any other agreement conferring upon any other person the right to vote or otherwise represent any shares of a professional corporation, and no such voting trust or agreement is valid or effective. Any proxy of a shareholder of a professional corporation shall be an individual licensed to practice in this state a profession which the corporation is authorized to practice. Any provision in any proxy instrument denying the right of the shareholder to revoke the proxy at any time or for any period of time is not valid or effective. This section does not otherwise limit the right of a shareholder to vote by proxy, but the articles of incorporation or bylaws may further limit or deny the right to vote by proxy.

[C71, 73, 75, 77, 79, 81, §496C.13]

496C.14 Required purchase by professional corporation of its own shares.

Notwithstanding any other statute or rule of law, a professional corporation shall purchase its own shares as provided in this section; and the shareholders of a professional corporation and their executors, administrators, legal representatives, and successors in interest shall sell and transfer the shares held by them as provided in this section.

The corporation may validly purchase its own shares even though its net assets are less than its stated capital, or even though by so doing its net assets would be reduced below its stated capital.

Upon the death of a shareholder, the professional corporation shall immediately purchase all shares held by the deceased shareholder.

In order to remain a shareholder of a professional corporation, a shareholder shall at all times be licensed to practice in this state a profession which the corporation is authorized to practice. Whenever any shareholder does not have or ceases to have this qualification, the corporation shall immediately purchase all shares held by that shareholder.

Whenever any person other than the shareholder of record becomes entitled to have shares of a corporation transferred into that person's name or to exercise voting rights, except as a proxy, with respect to shares of the corporation, the corporation shall immediately purchase such shares. Without limiting the generality of the foregoing, this section shall be applicable whether the event occurs as a result of the appointment of a guardian or conservator for a shareholder or the shareholder's property, transfer of shares by operation of law, involuntary transfer of shares, judicial proceedings, execution, levy, bankruptcy proceedings, receivership proceedings, foreclosure or enforcement of a pledge or encumbrance, or any other situation or occurrence. However, this section does not apply to any voluntary transfer of shares as defined in this chapter.

Shares purchased by the corporation under the provisions of this section shall be transferred to the corporation as of the close of business on the date of the death or other event which requires purchase. The shareholder and the shareholder's executors, administrators, legal representatives, or successors in interest shall promptly do all things which may be necessary or convenient to cause transfer to be made as of the transfer date. However, the shares shall promptly be transferred on the stock transfer books of the corporation as of the transfer date, notwithstanding any delay in transferring or surrendering the shares or certificates representing the shares, and the transfer shall be valid and effective for all purposes as of the close of business on the transfer date. The purchase price for such shares shall be paid as provided in this chapter, but the transfer of shares to the corporation as provided in this section shall not be delayed or affected by any delay or default in making payment.

Notwithstanding the foregoing provisions of this section, purchase by the corporation is not required upon the occurrence of any event other than death of a shareholder if the corporation is dissolved within sixty days after the occurrence of the event. The articles of incorporation or bylaws may provide that purchase is not required upon the death of a shareholder if the corporation is dissolved within sixty days after the death.

Unless otherwise provided in the articles of incorporation or bylaws or in an agreement among all shareholders of the professional corporation:

1. The purchase price for shares shall be their book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the corporation, uniformly and consistently applied. Adjustments to book value

shall be made, if necessary, to take into account work in process and accounts receivable. Any final determination of book value made in good faith by any independent certified public accountant or firm of certified public accountants employed by the corporation for the purpose shall be conclusive on all persons.

2. The purchase price shall be paid in cash as follows: Upon the death of a shareholder, thirty percent of the purchase price shall be paid within ninety days after death, and the balance shall be paid in three equal annual installments on the first three anniversaries of the death. Upon the happening of any other event referred to in this section, one-tenth of the purchase price shall be paid within ninety days after the date of such event, and the balance shall be paid in three equal annual installments on the first three anniversaries of the date of the event.

3. Interest from the date of death or other event shall be payable annually on principal payment dates, at the rate of six percent per annum on the unpaid balance of the purchase price.

4. All persons who are shareholders of the professional corporation on the date of death or other event, and their executors, administrators, and legal representatives, shall, to the extent the corporation fails to meet its obligations hereunder, be jointly liable for the payment of the purchase price and interest in proportion to their percentage of ownership of the corporation's shares, disregarding shares of the deceased or withdrawing shareholder.

5. The part of the purchase price remaining unpaid after the initial payment shall be evidenced by a negotiable promissory note, which shall be executed by the corporation and all shareholders liable for payment. Any person liable on the note shall have the right to prepay the note in full or in part at any time.

6. If the person making any payment is not reasonably able to determine which of two or more persons is entitled to receive a payment, or if the payment is payable to a person who is unknown, or who is under disability and there is no person legally competent to receive the payment, or who cannot be found after the exercise of reasonable diligence by the person making the payment, it shall be deposited with the treasurer of state and shall be subject to the provisions of the Iowa business corporation Act, chapter 490, with respect to funds deposited with the treasurer of state upon the voluntary or involuntary dissolution of a corporation.

7. Notwithstanding the provisions of this section, no part of the purchase price shall be required to be paid until the certificates representing such shares have been surrendered to the corporation.

8. Notwithstanding the provisions of this section, payment of any part of the purchase price for shares of a deceased shareholder shall not be required until the executor or administrator of the deceased shareholder provides any indemnity, release, or other document from any taxing authority, which is reasonably necessary to protect the corporation against liability for estate, inheritance, and death taxes.

The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for a different purchase price, a different method of determining the purchase price, a different interest rate or no interest, and other terms, conditions, and schedules of payment.

The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for the optional or mandatory purchase of its own shares by the corporation in other situations, subject to any applicable law regarding such purchase.

[C71, 73, 75, 77, 79, 81, §496C.14]
2001 Acts, ch 24, §62

496C.15 Certificates representing shares.

Each certificate representing shares of a professional corporation shall state in substance that the certificate represents shares in a professional corporation and is not transferable except as expressly provided in this chapter and in the articles of incorporation and bylaws of the corporation.

[C71, 73, 75, 77, 79, 81, §496C.15]

496C.16 Management.

All directors of a professional corporation and all officers of a professional corporation except assistant officers, shall at all times be individuals who are licensed to practice in this state a profession which the corporation is authorized to practice. No person who is not licensed shall have any authority or duties in the management or control of the corporation. If any director or any officer ceases to have this qualification, the director or officer shall immediately and automatically cease to hold the directorship or office.

[C71, 73, 75, 77, 79, 81, §496C.16]

496C.17 Bylaws.

The initial bylaws of a professional corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws is reserved to and vested in the shareholders unless granted to the board of directors by the articles of incorporation.

[C71, 73, 75, 77, 79, 81, §496C.17]

496C.18 Merger or consolidation.

No professional corporation shall merge or consolidate with any other corporation except another professional corporation subject to this chapter. Merger or consolidation shall not be permitted unless the surviving or new corporation is a profes-

sional corporation which complies with all requirements of this chapter.

[C71, 73, 75, 77, 79, 81, §496C.18]

496C.19 Dissolution or liquidation.

Violation of any provision of this chapter by a professional corporation or any of its shareholders, directors, or officers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in the Iowa business corporation Act, chapter 490. Upon the death of the last remaining shareholder of a professional corporation, or whenever the last remaining shareholder is not licensed or ceases to be licensed to practice in this state a profession which the corporation is authorized to practice, or whenever any person other than the shareholder of record becomes entitled to have all shares of the last remaining shareholder of the corporation transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such shares, the corporation shall not practice any profession and it shall be promptly dissolved. However, if prior to such dissolution all outstanding shares of the corporation are acquired by one or more persons licensed to practice in this state a profession which the corporation is authorized to practice, the corporation need not be dissolved and may practice the profession as provided in this chapter.

[C71, 73, 75, 77, 79, 81, §496C.19]

2001 Acts, ch 24, §64

496C.20 Foreign professional corporation.

A foreign professional corporation may practice a profession in this state if it complies with the provisions of the Iowa business corporation Act, chapter 490, on foreign corporations. The secretary of state may prescribe forms for such purpose.

A foreign professional corporation may practice a profession in this state only through shareholders, directors, officers, employees, and agents who are licensed to practice the profession in this state. The provisions of this chapter with respect to the practice of a profession by a professional corporation apply to a foreign professional corporation.

The certificate of authority of a foreign professional corporation may be revoked by the secretary of state as provided in the Iowa business corporation Act, chapter 490, if the foreign professional corporation fails to comply with any provision of this chapter.

This chapter shall not be construed to prohibit the practice of a profession in this state by an individual who is a shareholder, director, officer, employee, or agent of a foreign professional corporation if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional corporation. The preceding sentence shall apply regardless of whether or not the foreign professional corporation is authorized to practice a profession in this state.

[C71, 73, 75, 77, 79, 81, §496C.20]

2001 Acts, ch 24, §62

496C.21 Biennial report.

Each biennial report of a professional corporation or foreign professional corporation shall, in addition to the information required by the Iowa business corporation Act, chapter 490, set forth:

1. The name and address of one shareholder.
2. In the case of a professional corporation, a statement under oath whether or not all shareholders, directors, and officers, except assistant officers, of the corporation are licensed to practice in this state a profession which the corporation is authorized to practice, and whether or not all employees and agents of the corporation who practice a profession in this state on behalf of the corporation are licensed to practice the profession in this state.
3. In the case of a foreign professional corporation, a statement under oath whether or not all shareholders, directors, officers, employees, and agents who practice a profession in this state on behalf of the corporation are licensed to practice the profession in this state.
4. Additional information necessary or appropriate to enable the secretary of state or regulating board to determine whether the professional corporation or foreign professional corporation is complying with this chapter.

Information shall be set forth on forms prescribed and furnished by the secretary of state.

A corporation subject to the provisions of this chapter shall pay the biennial filing fee and make the biennial report in a form and manner and at the time specified in chapter 490.

[C71, 73, 75, 77, 79, 81, §496C.21]

83 Acts, ch 144, §5; 97 Acts, ch 171, §25; 2000 Acts, ch 1022, §4, 5; 2001 Acts, ch 24, §64

496C.22 Corporations organized under other laws.

This chapter shall not apply to or interfere with the practice of any profession by or through any corporation hereafter organized under any other law of this state or any other state or country if such practice is lawful under any other statute or

rule of law of this state.

Any corporation subject to the provisions of the Iowa business corporation Act, chapter 490, may voluntarily elect to adopt this chapter and become subject to its provisions by amending its articles of incorporation to be consistent with all provisions of this chapter and by stating in its amended articles of incorporation that the corporation has voluntarily elected to adopt this chapter.

Any corporation organized under any law of any other state or country may become subject to the provisions of this chapter by complying with all provisions of this chapter with respect to foreign professional corporations.

[C71, 73, 75, 77, 79, 81, §496C.22]

2001 Acts, ch 24, §62

SUBTITLE 3

ASSOCIATIONS

CHAPTER 497

COOPERATIVE ASSOCIATIONS

Applicable only to associations originally chartered before July 4, 1935, §499.1
Option to come under chapter 499, §499.43

497.1 Purposes of cooperative.
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497.1 Purposes of cooperative.

Any number of persons, not less than five, may associate themselves as a cooperative association, society, company, or exchange, for the purpose of conducting any agricultural, dairy, ethanol production, mercantile, mining, manufacturing, or mechanical business on the cooperative plan. For the purposes of this chapter, the words *"association"*, *"company"*, *"corporation"*, *"exchange"*, *"society"*, or *"union"*, shall be construed to mean the same.

[SS15, §1641-r1; C24, 27, 31, 35, 39, §**8459;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.1]

92 Acts, ch 1099, §7

497.2 Articles of incorporation.

They shall sign and acknowledge written articles which shall contain the name of said association and the names and residences of the persons forming the same. Such articles shall also contain a statement of the purposes of the association, and shall designate the city or village where its principal place of business shall be located. Such articles shall also state the amount of capital stock, the number of shares, and the par value of each.

[SS15, §1641-r2; C24, 27, 31, 35, 39, §**8460;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.2]

497.3 Filing — certificate of incorporation.

The original articles of incorporation of associations organized under this chapter shall be filed with the secretary of state, and be by the secretary recorded in a book kept for that purpose; and if such articles comply with the provisions of sections 497.1 and 497.2, the secretary shall issue a certificate of incorporation to the association. No publication of notice of the incorporation of such an association shall be required.

[SS15, §1641-r3; C24, 27, 31, 35, 39, §**8461;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.3]

94 Acts, ch 1055, §9

497.4 Fee.

For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state ten dollars, and for the filing of an amendment to such articles, five dollars; provided that when the capital stock of such corporation shall be less than five hundred dollars, such fee for filing either the articles of incorporation or amendments thereto shall be one dollar. In all cases there shall be paid a recording fee of fifty cents per page.

[SS15, §1641-r4; C24, 27, 31, 35, 39, §**8462;** C46,

50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.4]
94 Acts, ch 1055, §10

497.5 Board of directors.
Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the stockholders at such time and for such term of office as the bylaws may prescribe, and shall hold office for the time for which elected and until their successors are elected and qualify.
[SS15, §1641-r5; C24, 27, 31, 35, 39, §**8463;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.5]

497.6 Removal.
A majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed, shall cease to be a director or officer of said corporation.
[SS15, §1641-r5; C24, 27, 31, 35, 39, §**8464;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.6]

497.7 Officers.
The officers of every such association shall be a president, one or more vice presidents, a secretary, and a treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The offices of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer.
[SS15, §1641-r5; C24, 27, 31, 35, 39, §**8465;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.7]

497.8 Amending articles.
The association may amend its articles of incorporation by a majority vote of its stockholders at any regular stockholders' meeting, or at any special stockholders' meeting called for that purpose, on ten days' notice to all stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares; provided the amount of the capital stock shall not be diminished below the amount of paid-up capital at the time the amendment is adopted.
[SS15, §1641-r6; C24, 27, 31, 35, 39, §**8466;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.8]

497.9 Record of amendments.
Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of the amendment adopted to be recorded in the office of the secretary of state.
[SS15, §1641-r6; C24, 27, 31, 35, 39, §**8467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.9]
94 Acts, ch 1055, §11

497.10 Powers.
An association created under this chapter shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing, or mechanical business, on the cooperative plan, and may buy, sell, and deal in the products of any other cooperative company heretofore or hereafter organized under the provisions hereof.
[SS15, §1641-r7; C24, 27, 31, 35, 39, §**8468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.10]

497.11 Ownership of shares and voting power limited.
No stockholder in any such association shall own shares of a greater aggregate par value than five thousand dollars, except as hereinafter provided, nor shall a stockholder be entitled to more than one vote.
[SS15, §1641-r8; C24, 27, 31, 35, 39, §**8469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.11]

497.12 Stockholding.
At any regular meeting, or any regularly called special meeting, at which at least a majority of all of its stockholders shall be present, or represented, an association organized under this chapter, may by a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund, not to exceed twenty-five percent of its capital, in the capital stock of any other cooperative association.
[SS15, §1641-r9; C24, 27, 31, 35, 39, §**8470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.12]

497.13 Issue of shares as payment.
Whenever an association created under this chapter shall purchase the business of another association, person, or persons, it may pay for the same in whole or in part by issuing to the selling association or person shares of its capital stock to an amount, which at fair market value as determined by the executive council, would equal the fair market value of the business so purchased as determined by the executive council as in cases of other corporations.
[SS15, §1641-r10; C24, 27, 31, 35, 39, §**8471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.13]
Payment in property other than money, §492.6 et seq.

497.14 May act as trustee.
In case the cash value of such purchased business exceeds one thousand dollars, the directors of the association are authorized to hold the shares in excess of one thousand dollars in trust for the vendor, and dispose of the same to such persons, and within such times, as may be mutually satisfactory to the parties in interest, and to pay the proceeds thereof as currently received to the former owner of said business.
[SS15, §1641-r11; C24, 27, 31, 35, 39, §**8472;**

C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.14]

497.15 Paid-up stock — right to vote.

Certificates of stock shall not be issued to any subscriber until fully paid, but the bylaws of the association may allow subscribers to vote as stockholders; provided part of the stock subscribed for has been paid in cash.

[SS15, §1641-r11; C24, 27, 31, 35, 39, §**8473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.15]

497.16 Voting by mail.

At any regularly called general or special meeting of the stockholders, a written vote received by mail from any absent stockholder, and signed by that stockholder, may be read in such meeting, and shall be equivalent to a vote of each of the stockholders so signing, provided the stockholder has been previously notified in writing by the secretary of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by the stockholder.

[SS15, §1641-r12; C24, 27, 31, 35, 39, §**8474;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.16]

497.17 Reserve fund.

The board of directors, subject to revision by the association at any general or special meeting, shall each year set aside not less than ten percent of the net profits for a reserve fund, until an amount has accumulated therein equal to fifty percent of the paid-up capital stock.

[SS15, §1641-r13; C24, 27, 31, 35, 39, §**8475;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.17]

497.18 Educational fund — dividends.

The board may each year, out of remaining net profits, subject to the approval of the association at any general or special meeting:

1. Provide an educational fund to be used in teaching cooperation, not exceeding five percent of the net profits.

2. Declare and pay a dividend on the stock, not exceeding ten percent.

[SS15, §1641-r13; C24, 27, 31, 35, 39, §**8476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.18]

497.19 Additional dividends.

The remainder of said net profits shall be distributed by uniform dividends upon the amount of purchases of shareholders, and upon the wages and salaries of employees. In producing associations, such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a producing concern, the dividends may be on both raw material delivered and goods purchased by patrons.

[SS15, §1641-r13; C24, 27, 31, 35, 39, §**8477;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.19]

497.20 When dividends distributed.

The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the bylaws shall prescribe, which shall be as often as once in twelve months.

[SS15, §1641-r14; C24, 27, 31, 35, 39, §**8478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.20]

497.21 Dissolution.

If such association, for five consecutive years, shall fail to declare a dividend upon the shares of its paid-up capital, five or more stockholders, by petition, setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

[SS15, §1641-r14; C24, 27, 31, 35, 39, §**8479;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.21]

497.22 Biennial report — penalty.

Sections 504A.83 and 504A.84 apply to a cooperative association organized under this chapter in the same manner as those sections apply to a corporation organized under chapter 504A. In addition to the information required to be set forth in the biennial report under section 504A.83, the cooperative association shall also set forth the total amount of business transacted, number of members, total expense of operation, total amount of indebtedness, and total profits or losses for each calendar or fiscal year of the two-year period which ended immediately preceding the first day of January of the year in which the report is filed.

A cooperative association which fails to comply with this section before April 1 of the year in which the report is due is subject to a penalty of ten dollars.

[SS15, §1641-r15; C24, 27, 31, 35, 39, §**8480;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.22]

97 Acts, ch 171, §26

497.23 Exemption from report.

Any corporation organized under the provisions of this chapter after the first day of January shall be exempt from the provisions of section 497.22 for the year in which incorporated, after which it shall, however, be subject to all of the provisions of

said section.

[C27, 31, 35, §8480-a1; C39, §**8480.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.23]

497.24 List of delinquents.

In the month of April of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in the secretary of state's office.

[C27, 31, 35, §8480-a2; C39, §**8480.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.24]

497.25 Notice to delinquents.

On or before the first day of May of the year the report is due the secretary of state shall mail to each delinquent association a notice of such delinquency and of the penalties provided in section 497.22.

[C27, 31, 35, §8480-a3; C39, §**8480.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.25]

97 Acts, ch 171, §27

497.26 Cancellation.

If the biennial report required is not filed and penalties paid on or before the last day of June the secretary of state shall, on the first day of July following, cancel the name of any delinquent corporation from the list of live corporations in the secretary of state's office, and enter such cancellation on the proper records.

[C27, 31, 35, §8480-a4; C39, §**8480.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.26]

2000 Acts, ch 1022, §6

497.27 Effect of cancellation.

When so canceled the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of the secretary of state's office.

[C27, 31, 35, §8480-a5; C39, §**8480.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.27]

497.28 Reinstatement of corporation.

Any corporation whose corporate rights have been canceled and forfeited in the manner provided herein may, however, before September 1 following such cancellation, make application to the secretary of state for reinstatement and upon being furnished good and sufficient reasons for not having filed its report the secretary shall, upon the filing of such report and the payment of the penalty, reinstate said corporation and the decree of cancellation shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation and the limitations prescribed by law.

[C27, 31, 35, §8480-a6; C39, §**8480.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.28]

497.29 Chapter extended to former companies.

All cooperative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state, amended and substituted articles of incorporation drawn in accordance with the provisions of this chapter and a written declaration, signed and sworn to by the president and secretary to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions hereof.

[SS15, §1641-r16; C24, 27, 31, 35, 39, §**8481;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.29]

94 Acts, ch 1055, §12

497.30 Use of term "cooperative" restricted.

No corporation or association organized after July 4, 1915, shall be entitled to use the term "cooperative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter, and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter.

[SS15, §1641-r17; C24, 27, 31, 35, 39, §**8482;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.30]

497.31 Use of funds.

None of the funds of any association organized under the provisions of this chapter shall be used in the payment of any promotion; as commissions, salaries or expenses of any kind, character, or nature whatsoever.

[SS15, §1641-r18; C24, 27, 31, 35, 39, §**8483;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.31]

497.32 Private property exempt.

The private property of the stockholders shall be exempt from execution for the debts of the corporation.

[SS15, §1641-r19; C24, 27, 31, 35, 39, §**8484;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §497.32]

497.33 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

87 Acts, ch 212, §6

497.34 Indemnification.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through 490.859, provided that where sections 490.850 through 490.859 provide for action by shareholders the sections are applicable to action by voting members of the cooperative association, and where sections 490.850 through 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

88 Acts, ch 1170, §6; 94 Acts, ch 1023, §62; 2002 Acts, ch 1154, §104, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

497.35 Statement to estate of stockholder.

The board of directors, upon receiving actual notice of a stockholder's death, shall provide a statement to the administrator or executor of the stockholder's estate, or to the attorney representing the stockholder's estate. The statement shall describe agricultural products owned by the stockholder which are in the possession of the association.

This section shall not require an association to conduct a search of the status of its stockholders. The association shall exercise reasonable diligence in determining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the stockholder's death within one year after the date of death, or by the date that the stockholder's estate is closed, whichever is later.

91 Acts, ch 230, §1

CHAPTER 498

NONPROFIT COOPERATIVE ASSOCIATIONS

Applicable only to associations originally chartered before July 4, 1935. See chapter 499
Permissible reorganization under later law, §499.43A

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498.1 Nature.

Associations organized under the provisions of this chapter are declared to be not for pecuniary profit.

[C27, 31, 35, §8485-b1; C39, §**8485.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.1]

498.2 Purposes of cooperative — limitation.

Any number of persons, not less than five, may associate themselves as a cooperative association, without capital stock, for the purpose of conducting any agricultural, livestock, horticultural, dairy, ethanol production, mercantile, mining, manufacturing, or mechanical business, or the constructing and operating of telephone and high tension electric transmission lines on the cooperative plan and of acting as a cooperative selling agency. Cooperative livestock shipping associations organized under this chapter shall do business with members only.

[C24, 27, 31, 35, 39, §**8486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.2]

92 Acts, ch 1099, §8

498.3 Terms defined — products of nonmembers.

For the purpose of this chapter, the words *"association"*, *"exchange"*, *"society"*, or *"union"*, shall be construed to mean the same and are defined to mean a corporate body composed of actual producers or consumers of the given commodity handled by the association, whose business is conducted for the mutual benefit of its members and not for the profit of stockholders, and control of which is vested in its members upon the basis of one vote to each member. Associations shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

[C24, 27, 31, 35, 39, §**8487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.3]

498.4 Articles — personal liability.

They shall sign and acknowledge written articles, which shall contain the name of the association and the names and residences of the incorporators. Such articles shall also contain a statement of the purposes of the association, the amount of the membership fee, and shall designate the city or village where its principal place of business shall be located, and the manner in which such articles may be amended, and any limitation which the members propose to place upon their personal liability for the debts of the association.

[C24, 27, 31, 35, 39, §**8488;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.4]

498.5 Filing — certificate of incorporation.

The original articles of incorporation shall be filed for record with the secretary of state. Upon approval of such articles, the secretary of state shall issue a certificate of incorporation.

[C24, 27, 31, 35, 39, §**8489;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.5]

498.6 Fees.

For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state five dollars, and for the filing of an amendment to such articles, two dollars. In all cases there shall be paid a recording fee of fifty cents per page.

[C24, 27, 31, 35, 39, §**8490;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.6]

498.7 Amendments.

Within thirty days after the adoption of any amendment to its articles of incorporation, the association shall cause a copy of such amendment to be recorded in the office of the secretary of state.

[C24, 27, 31, 35, 39, §**8491;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.7]

498.8 Board of directors — removals.

Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the members at such time and for such term of office as the articles may prescribe. They shall hold office until their successors are elected and qualify; but a majority of the members shall have the power at any regular or special meeting of the association legally called, to remove any director or officer for cause, and fill the vacancy.

[C24, 27, 31, 35, 39, §**8492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.8]

498.9 Officers.

The officers of every such association shall be a president, one or more vice presidents, a secretary, and treasurer, who shall be elected annually by the directors, from amongst their own number. The offices of secretary and treasurer may be held by the same person.

[C24, 27, 31, 35, 39, §**8493;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.9]

498.10 Admission of members.

Under the terms and conditions prescribed in its bylaws, an association may admit as members persons engaged in the production of the products, or in the use or consumption of the supplies, to be handled by or through the association, including the lessors and landlords of lands used for the production of such products, who receive as rent part of the crop raised on the leased premises.

[C24, 27, 31, 35, 39, §**8494;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.10]

498.11 Membership certificates.

Membership certificates in due form shall be issued to all charter members and to such others as shall subsequently be admitted by the association in accordance with its articles and bylaws.

[C24, 27, 31, 35, 39, §**8495;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.11]

498.12 Certificates nontransferable — surrender.

No such certificate shall be transferable by the member to any other person, but shall be surrendered to the association in case of the member's voluntary withdrawal.

[C24, 27, 31, 35, 39, §**8496;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.12]

498.13 Automatic cancellation — revocation.

It shall become void upon the member's death, or may be revoked by the directors upon proof duly made that the member has ceased to be a producer of products handled by or through the association, in the case of producing or selling associations or has ceased to be the user of products handled by or through the association in case of stores and supply associations, or for failure to observe its bylaws or the member's contractual obligations to it.

[C24, 27, 31, 35, 39, §**8497;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.13]

498.14 Conditions printed on certificates.

The conditions of membership specified in sections 498.12 and 498.13 shall be printed upon the face of every membership certificate.

[C24, 27, 31, 35, 39, §**8498;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.14]

498.15 Combinations of local associations.

Likewise, associations may be formed under this chapter whose membership shall consist of other associations formed under the provisions of this chapter, the purpose being to federate local associations into central cooperative associations for the more economical and efficient performance of their marketing or other operations.

[C24, 27, 31, 35, 39, §**8499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.15]

498.16 Powers of central associations.

Such central associations may enter into contracts, agreements and arrangements with their member associations. Each member association in such federated associations shall have an official representative chosen by its own board of directors, who shall cast one vote and no more at all business meetings of the federated association.

[C24, 27, 31, 35, 39, §**8500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.16]

498.17 Voting power.

Each member of an association shall be entitled to one vote and no more upon all questions affecting the control and management of the affairs of the association and in the selection of its board of directors.

[C24, 27, 31, 35, 39, §**8501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.17]

498.18 Proxies — voting by mail.

No vote by proxy shall be permitted, but a written vote received by mail from any absent member, and signed by that member, may be read and counted at any regular or special meeting of the association, provided that the secretary shall notify all members in writing of the exact motion or resolution upon which such vote is to be taken, and a copy of same shall be forwarded with and attached to the vote so mailed by the member.

[C24, 27, 31, 35, 39, §**8502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.18]

498.19 Power to compel sales and purchases — liquidated damages.

The association may require members to sell all or a stipulated part of their specifically enumerated products exclusively through the association or to buy specifically enumerated supplies exclusively through the association, but in such case, a reasonable period during each year shall be specified during which any member, by giving notice in prescribed form, may be released from such obligation thereafter. Where it is desired to enter into the exclusive arrangement provided in this section, the association shall execute a contract with each such member setting forth what goods or wares are to be handled and upon what terms. In order to protect itself in the necessary outlay, which it may make for the maintenance of its services, the association may stipulate that some regular charge shall be paid by the member for each unit of goods covered by such contract whether actually handled by the association or not, and in order to reimburse the association for any loss or damage which it or its members may sustain through the member's failure to deliver the member's products to or to procure the member's supplies from the association.

In case it is difficult or impracticable to determine the actual amount of damage suffered by the association or its members through such failure to comply with the terms of such a contract, the association and the member may agree upon a sum to be paid as liquidated damages for the breach of the member's contract, said amount to be stated in the contract.

[C24, 27, 31, 35, 39, §**8503;** C46, 50, 54, 58, 62,

66, 71, 73, 75, 77, 79, 81, §498.19]

498.20 Financial power.

Every association may borrow money necessary for the conduct of its business, and may issue notes, bonds, or debentures therefor, and may give security in the form of mortgage or otherwise for the repayment thereof.

[C24, 27, 31, 35, 39, §**8504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.20]

498.21 Personal liability.

Members of such association may limit their personal liability to the amount of their membership fee as provided in their articles of incorporation.

[C24, 27, 31, 35, 39, §**8505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.21]

498.22 Cost of service — dues.

Associations formed under this chapter shall perform services on a basis of the lowest practicable cost, and may provide for meeting the cost thereof through dues, assessments, or service charges, which shall be prescribed in the bylaws. Such charges shall be set high enough to provide a margin of safety above current operating costs and fixed charges upon borrowed capital.

[C24, 27, 31, 35, 39, §**8506;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.22]

498.23 Reserve and educational funds — patronage dividends.

Out of any surplus remaining in any given year, the directors shall each year set aside not less than ten percent of such savings for the accumulation of a reserve fund until such reserve shall equal at least forty percent of the invested capital of the association, not less than one percent nor more than five percent for a permanent educational fund from which expenditures shall be made annually at the discretion of the directors for the purpose of teaching co-operation, and the remainder to be returned to the members as a patronage dividend prorated on a uniform basis to each member upon the value of business done by that member through the association.

[C24, 27, 31, 35, 39, §**8507;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.23]

498.24 Biennial report — penalty.

Sections 504A.83 and 504A.84 apply to a cooperative association organized under this chapter in the same manner as those sections apply to a corporation organized under chapter 504A. In addition to the information required to be set forth in the biennial report under section 504A.83, the cooperative association shall also set forth the total amount of business transacted, number of members, total expense of operation, total amount of indebtedness, and total profits or losses for each calendar or fiscal year of the two-year period which ended immediately preceding the first day of January of the year in which the report is filed.

A cooperative association which fails to comply with this section before April 1 of the year in which the report is due is subject to a penalty of ten dollars.

[C24, 27, 31, 35, 39, §**8508;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.24]

97 Acts, ch 171, §28

498.25 Exemption from report.

Any corporation organized under the provisions of this chapter after the first day of January shall be exempt from the provisions of section 498.24 for the year in which incorporated, after which it shall, however, be subject to all of the provisions of said section.

[C27, 31, 35, §8508-a1; C39, §**8508.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.25]

498.26 List of delinquents.

In the month of April of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in the secretary of state's office.

[C27, 31, 35, §8508-a2; C39, §**8508.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.26]

498.27 Notice to delinquents.

On or before the first day of May of the year the report is due the secretary of state shall mail to each delinquent association a notice of such delinquency and of the penalties provided in section 498.24.

[C27, 31, 35, §8508-a3; C39, §**8508.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.27]

97 Acts, ch 171, §29

498.28 Cancellation.

If the biennial report required is not filed and penalties paid on or before the last day of June the secretary of state shall, on the first day of July following, cancel the name of any delinquent corporation from the list of live corporations in the secretary of state's office, and enter such cancellation on the proper records.

[C27, 31, 35, §8508-a4; C39, §**8508.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.28]

2000 Acts, ch 1022, §7

498.29 Effect of cancellation.

When so canceled the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of the secretary of state's office.

[C27, 31, 35, §8508-a5; C39, §**8508.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.29]

498.30 Reinstatement of corporation.

Any corporation whose corporate rights have

been canceled and forfeited in the manner provided herein may, however, before September 1 following such cancellation, make application to the secretary of state for reinstatement and upon being furnished good and sufficient reasons for not having filed its report the secretary shall, upon the filing of such report and the payment of the penalty, reinstate said corporation and the decree of cancellation shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period as fixed by its articles of incorporation and the limitations prescribed by law.

[C27, 31, 35, §8508-a6; C39, §**8508.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.30]

498.31 Chapter extended to former associations.

All corporations, or associations heretofore organized and doing business under prior statutes, or which have attempted so to organize and do business cooperatively, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state amended and substituted articles of incorporation drawn in accordance with the provisions of this chapter and a written declaration signed and sworn to by the president and secretary, to the effect that said company or association has, by a majority vote of its stockholders, decided to accept the benefits of and to be bound by the provisions of this chapter.

[C24, 27, 31, 35, 39, §**8509;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.31]

498.32 Use of term "cooperative" — injunction.

No corporation or association hereafter organized shall be entitled to use the term "cooperative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter or of chapter 497, and any corporation or association violating the provisions of this chapter may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter.

[C24, 27, 31, 35, 39, §**8510;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.32]

498.33 Use of funds — promotion expenses.

None of the funds of any association shall be used for purposes of any promotion as commissions, salaries, or expenses of any kind, character, or nature whatsoever, except that in the case of associations operating in more than one county, if the par value of securities to be sold is in excess of one hundred thousand dollars, a sum not to exceed five percent of the par value of bonds or debentures sold may be used by committees elected by the members for selling or soliciting for the sale of such securities or for hiring responsible salaried solicitors for that purpose.

[C24, 27, 31, 35, 39, §**8511;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.33]

498.34 Duration of incorporation — renewal.

Associations formed under the provisions of this chapter shall continue for a period of twenty-five years, unless earlier dissolved by order of its members or by other processes as by law provided, and the term of its existence may be renewed by the filing of new articles of association, as by law provided.

[C24, 27, 31, 35, 39, §**8512;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §498.34]

498.35 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the association, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

87 Acts, ch 212, §7

498.36 Indemnification.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through 490.859, provided that where sections 490.850 through 490.859 provide for action by shareholders the sections are applicable to action by voting members of the cooperative association, and where sections 490.850 through 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

88 Acts, ch 1170, §7; 94 Acts, ch 1023, §63; 2002 Acts, ch 1154, §105, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

498.37 Statement to estate of stockholder.

The board of directors, upon receiving actual notice of a member's death, shall provide a statement

to the administrator or executor of the member's estate, or to the attorney representing the member's estate. The statement shall describe agricultural products owned by the member which are in the possession of the association.

This section shall not require an association to conduct a search of the status of its members. The association shall exercise reasonable diligence in determining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the member's death within one year after the date of death, or by the date that the member's estate is closed, whichever is later.

91 Acts, ch 230, §2

CHAPTER 499

COOPERATIVE ASSOCIATIONS

Applicable to associations formed from and after July 4, 1935; §499.1
Applicable to associations electing to be under this chapter pursuant to §499.43 or 499.43A

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499.1 Applicable.

This chapter applies only to cooperative associations as defined in section 499.2. All such associations formed from and after July 4, 1935 must be organized under this chapter.

[C35, §8512-g1; C39, §**8512.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.1]

499.2 Definitions.

"Agricultural associations" are those formed to produce, grade, blend, preserve, process, store, warehouse, market, sell, or handle an agricultural product, or a by-product of an agricultural product; to produce ethanol; to purchase, produce, sell, or supply machinery, petroleum products, equipment, fertilizer, supplies, business services, or educational service to or for those engaged as bona fide producers of agricultural products; to finance any such activities; or to engage in any cooperative activity connected with or for any number of these purposes.

"Agricultural products" include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any other farm products.

"Association" means a corporation formed under this chapter.

A *"cooperative association"* is one which deals with or functions for its members at least to the extent required by section 499.3; and which distributes its net earnings among its members in proportion to their dealings with it, except for limited dividends or other items permitted in this chapter; and in which each voting member has one vote and no more.

"Local deferred patronage dividends" of an association means that portion of each member's deferred patronage dividends described in section 499.30 which the board of directors of the association has determined arise from earnings of the association other than earnings which have been allocated to the association but which have not been paid in cash to the association by other cooperative organizations of which the association is a member. However, if the board of directors fails to make a determination with respect to a deceased member's deferred patronage dividends prior to the member's death, then "local deferred patronage dividends" means that portion of the member's deferred patronage dividends which is proportional to the deferred patronage dividends described in section 499.30 less the amount of undistributed net earnings which have been allocated to the association by other cooperative organizations of which the association is a member, compared to all deferred patronage dividends of the association.

"Local deferred patronage preferred stock" of an association means preferred stock, if any, of an association which has been issued in exchange for local deferred patronage dividends. If preferred stock has been issued in exchange for deferred patronage dividends prior to the time the board of directors of the association has determined the portion of each member's deferred patronage dividend which represents local deferred patronage dividends, then the board of directors may reasonably determine what portion of the preferred stock was issued in exchange for local deferred patronage dividends and the portion which was issued for other deferred patronage dividends.

"Member" refers not only to members of nonstock associations but also to common stockholders of stock associations, unless the context of a particular provision otherwise indicates.

[C35, §8512-g2; C39, §**8512.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.2]

86 Acts, ch 1196, §1; 88 Acts, ch 1026, §1; 92 Acts, ch 1099, §9

499.3 Dealing with nonmembers.

A nonstock livestock shipping association shall not handle livestock of any nonmembers.

Any association may restrict the amount of business done with nonmembers and may limit its dealings or any class thereof to members only.

[C35, §8512-g3; C39, §**8512.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.3]
2001 Acts, ch 12, §1, 6

499.4 Use of term "cooperative" restricted.

No person or firm, and no corporation hereafter organized, which is not an association as defined in this chapter or a cooperative as defined in chapter 501, shall use the word "cooperative" or any abbreviation thereof in its name or advertising or in any connection with its business, except foreign associations admitted under section 499.54. The attorney general or any association or any member thereof may sue and enjoin such use.

This chapter does not control the use of fictitious names; however, if a cooperative association or a foreign cooperative association uses a fictitious name in this state, it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

[C35, §8512-g4; C39, §**8512.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.4]
97 Acts, ch 23, §56; 2001 Acts, ch 12, §2, 6

499.5 Permissible organizers.

1. Five or more individuals, or two or more associations, may organize an association.

2. All individual incorporators of agricultural associations must be engaged in producing agricultural products, which phrase includes landlords and tenants as specified in section 499.13.

3. A nonprofit water utility organized under chapter 357A or 504A may elect to become an association under this chapter upon majority vote of its members by filing with the secretary of state a statement confirming the election and appropriate articles of incorporation. However, the association is subject to the service limitation provisions contained in sections 357.1A and 357A.2.

4. A telephone company organized as a corporation under chapter 491 and qualifying pursuant to an internal revenue service letter ruling under Internal Revenue Code § 501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to an association under this chapter may reorganize as an association under this chapter upon the affirmative vote of two-thirds of the votes cast by the shares entitled to vote in an election at a meeting at which a majority of all shares entitled to vote cast a vote.

[C35, §8512-g5; C39, §**8512.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.5]
88 Acts, ch 1172, §3; 90 Acts, ch 1164, §1; 96 Acts, ch 1044, §1

499.5A Water utilities — members of federated associations.

Notwithstanding section 499.13, a water utility organized under this chapter, a municipal water utility, or a water district organized under chapter 357, 357A, or 504A may be a member of a federated association.

88 Acts, ch 1172, §4; 94 Acts, ch 1137, §2

499.6 Purposes.

A cooperative association may be organized under this chapter for any lawful purpose or purposes.

[C35, §8512-g6; C39, §**8512.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.6]
88 Acts, ch 1026, §2; 88 Acts, ch 1172, §5

499.7 Powers.

Except as expressly limited in its articles, each association has the following powers:

1. To conduct business, carry on operations, establish and operate offices, and exercise all powers granted by this chapter in or outside this state.

2. To borrow any amounts of money, and give any form of obligation or security therefor.

3. To make advances to patrons or members, or members of member-associations, and take any form of obligation or security therefor.

4. To acquire, hold, transfer or pledge any obligation or security representing funds actually advanced or used for any cooperative activity; or stock, memberships, bonds or obligations of any cooperative organization dealing in any product handled by the association, or any by-product thereof.

5. To make any contract, endorsement or guaranty it deems desirable incident to its transfer or pledge of any obligation or security.

6. To acquire, own or dispose of any real or personal property deemed convenient for its business, including patents, trademarks and copyrights.

7. To exercise any power, right or privilege suitable or necessary for, or incident to, promoting or accomplishing any of its powers, purposes or activities, or granted to ordinary corporations, save such as are inconsistent with this chapter.

8. To exercise any of its powers anywhere. No association organized under this chapter shall engage in the business of banking.

[C35, §8512-g7; C39, §**8512.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.7]
88 Acts, ch 1026, §3

499.8 Contracts authorized.

An agricultural association may contract with any member for the member's exclusive sale to or through it, of all or any part of the member's agricultural products or other designated commodities. Such contracts may permit the association to take and sell the property without acquiring title thereto, and pay the member the sale price less costs and expenses of selling, which may include the member's pro rata portion of the association's annual outlay for overhead, interest, preferred dividends, reserves or other specified charges. Such contracts must be for a specified time, not

less than one year. Each contract shall fix a period of at least ten days during each year after the first, within which either party may terminate it without affecting any liability previously accrued.

[C35, §8512-g8; C39, §**8512.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.8]

499.9 Penalties — performance — injunction — arbitration.

Contracts permitted by section 499.8 may provide that the member pay the association any sum, fixed in amount or by a specified method of computation, for each violation thereof; also all the association's expenses of any suit thereon, including bond premiums and attorney's fees. All such provisions shall be enforced as written, whether at law or in equity, and shall be deemed proper measurement of actual damages, and not penalties or forfeitures.

The association may obtain specific performance of any such contract, or enjoin its threatened or continued breach, despite the adequacy of any legal or other remedy.

If the association files a verified petition, showing an actual or threatened breach of any such contract and seeking any remedy therefor, the court shall, without notice or delay but on such bond as it deems proper, issue a temporary injunction against such breach or its continuance.

The parties to such contracts may agree to arbitrate any controversy subsequently arising thereunder, and fix the number of arbitrators and method of their appointment. Such agreements shall be valid and irrevocable, except on such grounds as invalidate contracts generally. If they specify no method for appointing arbitrators, or if either party fails to follow such method, or if for any reason arbitrators are not named or vacancies filled, either party may apply to the district court to designate the necessary arbitrator, who shall then act under the agreement with the same authority as if named in it. Unless otherwise agreed, there shall be but one arbitrator.

[C35, §8512-g9; C39, §**8512.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.9]

499.10 Cooperative agreements.

Any association may make any agreement or arrangement with any other association or cooperative organization for the cooperative or more economical carrying on of any of its business. Any number of such associations or organizations may unite to employ or use, or may separately employ or use, the same methods, means or agencies for conducting their respective businesses.

[C35, §8512-g10; C39, §**8512.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.10]

499.11 Legality declared.

No association, contract, method or act which complies with this chapter shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen business or fix prices arbitrarily, or to accomplish any improper or illegal purpose.

[C35, §8512-g11; C39, §**8512.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.11]

499.12 Exemption of private property.

The private property of the members or stockholders shall be exempt from execution for the debts of the corporation.

[C35, §8512-g12; C39, §**8512.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.12]

499.13 Membership — eligibility.

A membership or share of common stock shall not be issued to, or held by, any person unless the person is eligible for membership in the association under its articles. A person may be eligible only if the person is engaged in producing a product marketed by the association, the person customarily consumes or uses the supplies or commodities that the association handles, or the person uses the services that the association renders. A farm tenant or landlord who receives a share of agricultural products as rent may be eligible for membership in an agricultural association as a producer. A cooperative association engaged in any directly or indirectly related activity may be eligible for membership. An association may be formed which includes among its members cooperative associations or restricts its membership to cooperative associations.

[C35, §8512-g13; C39, §**8512.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.13]

97 Acts, ch 17, §2

499.14 Membership in nonstock associations.

Membership in associations without capital stock may be acquired by eligible parties in the manner provided in the articles, which shall specify the rights of members, the issuing price of memberships, if any, and what, if any, fixed dividends accrue thereon. If the articles so provide, membership shall be of two classes, voting and nonvoting. Voting members shall be agricultural producers, and all other members shall be nonvoting members. Nonvoting members shall have all the rights of membership except the right to vote.

[C35, §8512-g14; C39, §**8512.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.14]

2001 Acts, ch 12, §3, 6

499.14A Electric cooperative association memberships.

An electric cooperative association may have one or more classes of members. Qualifications, requirements, methods of acceptance, terms, conditions, termination, and other incidents of membership shall be set forth in the articles of incorpo-

ration of the association.

93 Acts, ch 94, §1; 2001 Acts, ch 12, §4, 6

499.15 Contents of certificates.

The association shall issue certificates of membership or stock, each of which states the fixed dividend, if any, and the restrictions or limitations upon its ownership, voting, transfer, redemption or cancellation.

[C35, §8512-g15; C39, §**8512.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.15]

499.16 Subscriptions — issuing certificates.

If permitted by the association's articles of incorporation, any eligible subscriber for common stock or membership may vote and be treated as a member after making part payment of the amount, if any, required to be paid for the common stock or membership in cash, giving the subscriber's note for the balance, and satisfying any other requirement for the subscription as set forth in the articles. A subscription may be forfeited as provided in section 499.32. Stock or a membership certificate shall not be issued until payment of the amount, if any, required to be paid for the stock or membership certificate is fully made. A subscriber shall not hold office until the subscriber's certificate has been issued.

[C35, §8512-g16; C39, §**8512.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.16]

97 Acts, ch 17, §3; 2001 Acts, ch 12, §5, 6

499.17 Transfer of stock or membership.

No common stock shall be transferable, unless the articles expressly provide for transfer to others eligible for membership. Such provision may require that the transfer be preceded by an offer to the association, or be otherwise restricted. No nonstock membership shall be transferable, and all certificates thereof shall be surrendered to the association on the member's voluntary withdrawal.

[C35, §8512-g17; C39, §**8512.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.17]

499.18 Expulsion of members.

The directors may expel any member if the member has attempted to transfer that member's membership or stock in violation of its terms, or has willfully violated any article or bylaw which provides for such penalty.

[C35, §8512-g18; C39, §**8512.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.18]

499.19 Cancellation of membership or stock.

If a common stockholder or member dies, or becomes ineligible, or is expelled, that person's stock or membership shall forthwith be canceled. In cases of expulsion the association shall pay the stockholder or member its value as shown by the books on the date of cancellation, but not more than its original issuing price, within sixty days thereafter. In cases of death or ineligibility, it shall pay such value to the stockholder or member or the stockholder's or member's personal representative within two years thereafter, without interest.

[C35, §8512-g19; C39, §**8512.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.19]

499.20 Withdrawal of members.

The articles may permit and regulate voluntary withdrawal of members and the resulting cancellation of their common stock and memberships.

[C35, §8512-g20; C39, §**8512.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.20]

499.21 Obligations not affected.

The death, expulsion or withdrawal of a member shall not impair the member's contracts, debts, or obligations to the association.

[C35, §8512-g21; C39, §**8512.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.21]

499.22 Capital stock.

An association with capital stock may divide the shares into common and preferred stock. Par value stock shall not be issued for less than par. The general corporation laws shall govern the consideration for which no-par stock is issued. If the articles so provide, common stock may be issued in two classes, voting and nonvoting. Voting stock shall be issued to all agricultural producers and nonvoting stock to all other members. Voting stock or nonvoting stock may be issued to a cooperative association as provided in the articles of incorporation of the association issuing the stock. Nonvoting stock shall have all privileges of membership except the right to vote. Preferred stock held by nonmembers shall not exceed in amount that held by members.

[C35, §8512-g22; C39, §**8512.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.22]

97 Acts, ch 17, §4; 98 Acts, ch 1100, §67

499.23 Dividends on common stock.

Unless the articles provide that common stock shall receive no dividends, the directors may declare noncumulative dividends thereon at such rate as they may fix, not exceeding eight percent per annum.

[C35, §8512-g23; C39, §**8512.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.23]

499.24 Preferred stock.

Preferred stock shall bear cumulative or noncumulative dividends as fixed by the articles, not exceeding eight percent per annum. It shall have no vote. It shall be issued and be transferable without regard to eligibility or membership, and be re-

deemable on terms specified in the articles and as provided for in this chapter. The directors shall determine the time and amount of its issue.

[C35, §8512-g24; C39, §**8512.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.24]

499.25 Issuing preferred stock in purchases.

An association may discharge all or any part of obligations incurred in purchasing any business, property or stock, or an interest therein, by issuing its authorized preferred stock in an amount not exceeding the fair market value of the thing purchased. Issuance of such stock shall be upon the fair market value of the property purchased, as determined through an appraisal made by the directors or a competent appraiser employed by the directors. Such preferred stock shall be valid as though paid for in cash.

[C35, §8512-g25; C39, §**8512.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.25]

90 Acts, ch 1164, §2

499.26 Service charges.

Unless the articles otherwise provide, the bylaws or the directors may prescribe charges to be made to each member for services rendered the member or upon products bought from or sold to the member, and the time and manner of their collection.

[C35, §8512-g26; C39, §**8512.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.26]

499.27 Meetings.

Regular meetings of members shall be held at least once each year, the first of which shall be on the date specified in its articles. Unless otherwise provided in the articles or bylaws, subsequent meetings shall be on the same date in each succeeding year.

Unless otherwise provided in the articles, the directors may call special meetings of members, and must do so upon written demand of twenty percent of the members.

Unless the member waives it in writing, each member shall have ten days' written notice of the time and place of all meetings, and of the purpose of all special meetings. Such notice shall be given to the member in person or by mail directed to the member's address as shown on the books of the association, or if the articles so provide, by publication in a regular publication of general circulation among its members, or a newspaper of general circulation published at the principal place of business of the association.

[C35, §8512-g27; C39, §**8512.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.27]

Articles of incorporation, §499.40

499.28 Number of votes.

No member may own more than one membership or share of common stock. Each voting member shall be entitled to one vote and no more at all corporate meetings.

[C35, §8512-g28; C39, §**8512.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.28]

499.29 Manner of voting.

Votes shall be cast in person, and not by proxy. The vote of a member-association shall be cast only by its representative duly authorized in writing. If the articles or bylaws permit, a member may cast that member's vote, in advance of the meeting, upon any proposition of which the member has been previously notified in writing.

[C35, §8512-g29; C39, §**8512.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.29]

96 Acts, ch 1115, §1

499.30 Distribution of earnings.

The directors shall annually dispose of the earnings of the association in excess of its operating expenses as follows:

1. To provide a reasonable reserve for depreciation, obsolescence, bad debts, or contingent losses or expenses.

2. *a.* To the extent that the cooperative association is operating on a pooling basis, the board of directors of the cooperative association shall determine the portion of the remaining earnings derived from the pool that will be added to the surplus. The cooperative association is operating on a pooling basis, if the association markets, sells, or handles an agricultural product and all of the following apply:

(1) The product is a pool composed by commingling units of the same kind of product which are contributed to the cooperative association by its members.

(2) The earnings of the association are computed without deducting a charge for products delivered by members of the association who are contributing units to be commingled in the product pool.

The board of directors may provide an advance payment to the members of the association contributing units of the product to be commingled in the product pool during the contribution period.

b. To the extent that the cooperative association is not operating on a pooling basis as provided in this subsection, at least ten percent of the remaining earnings must be added to surplus until surplus equals either thirty percent of the total of all capital paid in for stock or memberships, plus all unpaid patronage dividends, plus certificates of indebtedness payable upon liquidation, earnings from nonmember business, and earnings arising from the earnings of other cooperative organizations of which the association is a member, or one thousand dollars, whichever is greater. No additions shall be made to surplus when it exceeds

either fifty percent of the total, or one thousand dollars, whichever is greater, without the approval of the membership by a majority of votes cast.

3. Not less than one percent nor more than five percent of earnings in excess of reserves may be placed in an educational fund, to be used as the directors deem suitable for teaching or promoting cooperation.

4. After disposing of earnings as provided in subsections 1 and 2, the cooperative association shall pay any fixed dividends on stock or memberships.

5. Notwithstanding an association's articles of incorporation, for each taxable year of the association, the association shall allocate all remaining net earnings to the account of each member, including subscribers described in section 499.16, ratably in proportion to the business the member did with the association during that year. The directors shall determine, or the articles of incorporation or bylaws of the association may specify, the percentage or the amount of the allocation to be currently paid in cash. However, for a cooperative association other than a public utility as defined in section 476.1, the amount to be currently payable in cash shall not exceed twenty percent of the allocation during any period when unpaid local deferred patronage dividends of deceased members for prior years are outstanding. Notwithstanding the twenty percent allocation limitation, the directors of a cooperative association or the articles of incorporation or bylaws of the association may specify any percentage or amount to be currently paid in cash to the estates of deceased natural persons who were members. All the remaining allocation not paid in cash shall be transferred to a revolving fund as provided in section 499.33 and credited to the members and subscribers. The credits in the revolving fund are referred to in this chapter as deferred patronage dividends.

[C35, §8512-g30; C39, §**8512.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.30]

86 Acts, ch 1196, §2, 3; 94 Acts, ch 1058, §1; 95 Acts, ch 106, §1; 96 Acts, ch 1115, §2

499.30A Reversion of disbursements.

1. As used in this section, *"disbursement"* means an amount of any dividend, patronage dividend, distribution including earnings distribution, or any other increment or sum realized or accruing from a membership or stock, subscription, or other equity interest in a cooperative association.

2. Once a person's membership or stock, subscription, or other member's equity in a cooperative association is deemed abandoned under section 556.5, the cooperative association may retain any disbursement held by the cooperative association for or owing to the person. The cooperative association may also deliver the disbursement to the treasurer of state for disposition as abandoned property pursuant to sections 556.5 and 556.11.

3. If the cooperative association elects to retain the disbursement under this section, the disbursement shall be deposited into a reversion fund established by the cooperative association.

4. Any disbursement that is retained by the cooperative association shall be forfeited to the cooperative association if the cooperative association publishes at least one notice of the abandoned property in a publication regularly distributed to its membership or in a newspaper having a general circulation in the county where the cooperative association is located. The notice shall include all of the following:

a. The name and address of the cooperative association.

b. The name of the person who has an interest in the disbursement according to the records of the cooperative association.

c. A brief description of the type of disbursement retained by the cooperative association.

d. A statement that the disbursement will be forfeited to the cooperative association unless the person files a claim for the disbursement within the period provided for in this section.

5. *a.* Subject to this subsection, a person asserting an interest in the disbursement may file a claim for it with the cooperative association in a manner and according to procedures required by the cooperative association. If a person is entitled to an abandoned membership, stock, subscription, or other interest as provided in section 556.20 or 556.21, the cooperative association shall also pay the person the disbursement deposited in the reversion fund that is realized or accrued from the membership or stock, subscription, or other interest.

b. If a person has not filed a claim for the disbursement within six months after the first date that the notice of abandoned property is first published as provided in this section, the disbursement shall be forfeited to the cooperative association.

6. The disbursements deposited into the reversion fund that are forfeited to the cooperative association shall be used as provided in this subsection. The cooperative association may authorize the payment of forfeited disbursements to persons claiming interests in forfeited disbursements as provided in the cooperative association's articles of incorporation or bylaws. Otherwise, forfeited disbursements shall be used as the directors deem suitable for any of the following purposes:

a. Teaching and promoting cooperation. The directors may deposit the amounts of disbursements into the education fund as provided in section 499.30.

b. Economic development including private or joint public and private investments involving the creation of economic opportunities for its members or the retention of existing sources of income

that would otherwise be lost.
2001 Acts, ch 142, §3

499.31 Control of allocation by members.
The members may at any meeting control the amount to be allocated to surplus or educational fund, within the limits specified in section 499.30, or the amount to be allocated to reserves.
[C35, §8512-g31; C39, §**8512.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.31]

499.32 Patronage dividends of subscribers.
Patronage dividends to subscribers whose stock or membership is not fully paid in cash shall be applied toward such payment until it is completed. If the articles or bylaws so provide, subscriptions not fully paid within two years may be canceled and all payments or patronage dividends thereon forfeited.
[C35, §8512-g32; C39, §**8512.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.32]

499.33 Use of revolving fund.
1. The directors may use a revolving fund to pay the obligations or add to the capital of the association or retire its preferred stock. In that event the deferred patronage dividends credited to members constitute a charge on the revolving fund, on future additions to the revolving fund, and on the corporate assets, subordinate to existing or future creditors and preferred stockholders. Except as otherwise provided in subsection 2, deferred patronage dividends for any year have priority over those for subsequent years.
2. *a.* Prior to other payments of deferred patronage dividends or redemption of preferred stock held by members, the directors of a cooperative association, other than a cooperative association which is a public utility as defined in section 476.1, shall pay local deferred patronage dividends and redeem local deferred patronage preferred stock of deceased natural persons who were members, and may pay deferred patronage dividends or may redeem preferred stock of deceased natural persons who were members or of members who become ineligible, without reference to the order of priority.
b. The directors of a cooperative association which is a public utility as defined in section 476.1 may pay deferred patronage dividends and redeem preferred stock of deceased natural persons who were members, and may pay all other deferred patronage dividends or redeem preferred stock of members without reference to priority.
3. Payment of deferred patronage dividends or the redemption of preferred stock shall be carried out to the extent and in the manner specified in the bylaws of the association.
[C35, §8512-g33; C39, §**8512.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.33]
86 Acts, ch 1196, §4; 95 Acts, ch 106, §2

499.34 Patronage dividend certificates.
If its articles or bylaws so provide, an association may issue transferable or nontransferable certificates for deferred patronage dividends.
[C35, §8512-g34; C39, §**8512.34;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.34]

499.35 Time of payment.
Credits or certificates referred to in sections 499.33 and 499.34 shall not mature until the dissolution or liquidation of the association, but shall be callable by the association at any time in the order of priority specified in section 499.33.
[C35, §8512-g35; C39, §**8512.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.35]

499.36 Directors.
1. The affairs of each association shall be managed by a board of directors.
2. *a.* A director must be a member of the association or an officer or a member of a member-association. A director shall be elected by the members as prescribed by the association's articles of incorporation.
b. At least five directors shall serve on the association's board. The number of directors shall be established in accordance with the association's articles of incorporation or bylaws. If a board has the power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the members. Only the members may increase or decrease by more than thirty percent the number of directors last approved by the members.
c. The articles of incorporation may establish a variable range for the size of the board by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum number, by the members or the board. After shares are issued, only the members may change the range for the size of the board, change from a fixed to a variable-range-size board, or change from a variable-size to a fixed-size board.
3. *a.* Unless the articles or bylaws otherwise provide, if a vacancy occurs on the board, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by any of the following:
(1) The shareholders.
(2) The board.
(3) If the directors remaining in office constitute fewer than a quorum of the board, the directors may fill the vacancy by the affirmative vote of all the directors remaining in office.
b. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. The

new director shall not take office until the vacancy occurs.

4. The articles or bylaws may permit the directors to select an executive committee from their own number; and may prescribe its authority, which may be coextensive with that of the whole board.

5. Directors shall be elected by districts, if the articles specify the districts, the number of directors from each district, the manner of nomination, redistricting, or reapportionment, and whether directors are to be directly elected by the members or by delegates chosen by them. Districts shall be formed and redistricting shall be ordered, from time to time, so that the districts contain as nearly as possible an equal number of members. The bylaws shall describe the district boundaries currently in effect.

6. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting through the use of any means of communication by which all directors participating are able to simultaneously hear each other during the meeting. A director participating in a meeting pursuant to this subsection is deemed to be present in person at the meeting.

7. Unless the articles of incorporation or bylaws provide otherwise, an action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and filed with the corporate records reflecting the action taken. An action taken under this subsection is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this subsection is deemed to have the same effect as a meeting vote and may be described as such in any document.

[C35, §8512-g36; C39, §**8512.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.36]

86 Acts, ch 1196, §5; 92 Acts, ch 1147, §1; 94 Acts, ch 1023, §64; 97 Acts, ch 17, §5

499.37 Officers and employees.

The directors shall select from their own number a president, one or more vice presidents, a secretary-treasurer or a secretary and a treasurer, and shall fill vacancies in such offices. Unless the articles or bylaws otherwise provide, said officers shall be chosen for annual terms at the close of the first regular meeting of members in each year.

The directors shall also choose and may remove such other officers and employees as they deem proper, or as the articles or bylaws may prescribe.

[C35, §8512-g37; C39, §**8512.37;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.37]

499.38 Removal of officers and directors.

At any meeting called for that purpose, any officer or director may be removed by vote of a majority of all voting members of the association. A director chosen under section 499.36, subsection 5, may likewise be removed by vote of a majority of all members in the director's district.

[C35, §8512-g38; C39, §**8512.38;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.38]

499.39 Referendum.

If provided for in the articles of incorporation, any action of directors shall, on demand of one-third of the directors made and recorded at the same meeting, be referred to a regular or special meeting of members called for such purpose. Such action shall stand until and unless annulled by a majority of the votes cast at such meeting, which vote shall not impair rights of third parties previously acquired.

[C35, §8512-g39; C39, §**8512.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.39]

499.40 Articles.

Articles of incorporation must be signed and acknowledged by each incorporator. They may deal with any fiscal or internal affair of the association or any subject hereof in any manner not inconsistent with this chapter. All articles must state in the English language:

1. The name of the association, which must include the word "cooperative"; and the address of its principal office.

2. The purposes for which it is formed, and a statement that it is organized under this chapter.

3. Its duration, which may be perpetual.

4. The name, occupation and post-office address of each incorporator.

5. The following information regarding the directors:

a. Their number.

b. Whether there is a fixed number or a variable range as provided in section 499.36. If a variable range is established, the information shall include the minimum and maximum number.

c. Their qualifications.

d. Their terms of office.

e. How they shall be chosen and removed from office.

6. Who are eligible for membership, how members shall be admitted and membership lost, how earnings shall be distributed among members, how assets shall be distributed in liquidation, and, in addition, either:

a. That the association shall have capital stock; the classes, par value and authorized number of shares of each class thereof; how shares shall be issued and paid for; and what rights, limitations, conditions and restrictions pertain to the stock, which shall be alike as to all stock of the same class; or

b. That the association shall have no capital

stock, and what limitations, conditions, restrictions and rights pertain to membership; and if the rights are unequal, the rules respecting them shall be specifically stated.

7. The date of the first regular meeting of members.

8. The name and street address of the association's initial registered agent.

[C35, §8512-g40; C39, §**8512.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.40]

93 Acts, ch 126, §15; 97 Acts, ch 17, §6

499.41 Amendments.

Notwithstanding the provisions of the articles of incorporation of any association pertaining to amendment thereto now in effect, any association may amend its articles of incorporation by a vote of sixty-six and two-thirds percent of the members present, or represented by mailed ballots, and having voting privileges, at any annual meeting or any special meeting called for that purpose, provided that at least ten days before said annual meeting or special meeting a copy of the proposed amendment or summary thereof be sent to all members having voting rights; or said articles of incorporation may be amended in accordance with the amendment requirements contained in the articles or bylaws of said association that are adopted subsequent to July 4, 1963, or are in effect on or after July 4, 1964, provided said amendment requirements in the articles or bylaws are not less than established in this section.

Amendments shall be executed and filed as provided in section 499.44.

[C35, §8512-g41; C39, §**8512.41;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.41]

90 Acts, ch 1164, §3

499.42 Renewal.

An association may extend its duration perpetually, or for any definite time, by resolution adopted by a majority of all its members, or any different vote for which the articles may provide, at a meeting called for that purpose and held before its original expiration.

Unless the association has meanwhile wound up, its duration may be extended in like manner within three years after its original expiration, with the same effect as if done prior thereto, by a vote of two-thirds of all its members.

The resolution must state the name of the association, its original expiration date, and for how long thereafter its duration is extended, and must also adopt, and designate officers to execute, renewal articles of incorporation containing the things required in section 499.40.

The renewal articles shall be executed and filed as required by section 499.41. Renewal shall not relieve the association from fees, charges, or penalties which may have accrued against it.

[C35, §8512-g42; C39, §**8512.42;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.42]

90 Acts, ch 1164, §4

499.43 Existing corporations — option.

An existing Iowa cooperative corporation organized pursuant to chapter 497, by a majority vote of all its members, at a meeting called for that purpose and held before its present articles expire, may amend its articles to comply with this chapter and section 499.40, which may extend its corporate duration. The amended articles shall be executed and filed, and a certificate of incorporation issued, as required by section 499.44. Upon issuance of the certificate, the corporation shall be deemed an association under this chapter.

Any such existing corporation whose present articles have now expired, or will expire before January 1, 1938, may adopt this chapter as above provided at any time before that date, with the same effect as though done before such articles expired.

If any shareholder or member of such corporation vote against such amendment, those voting for it shall purchase that person's stock or interest at its real value, within two years from the date of such vote, paying interest thereon at the rate of six percent until paid. The association may retire the stock or interest thus purchased.

If any shareholder or member of such corporation shall not be eligible to continue membership under such amendment, the association shall within two years after the amendment is filed purchase and retire that person's stock or membership for its real value.

It shall be presumed that the real value of such stock or interest is its proportionate share of the corporate assets at book value less liabilities as shown by its books.

[C35, §8512-g43; C39, §**8512.43;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.43]

90 Acts, ch 1164, §5; 92 Acts, ch 1066, §1

499.43A Existing cooperatives organized under chapter 498 — option.

A cooperative association organized under chapter 498 may elect to be governed by and to comply with the provisions of this chapter. The election shall be governed by the following procedures:

1. The board of directors and members must adopt a resolution reciting that the cooperative association elects to be governed by and to comply with this chapter. The cooperative association, to the extent necessary, shall change its name to comply with the provisions of this chapter. The resolution shall be adopted according to the same procedures as provided in section 499.41. Upon the adoption of the resolution, the cooperative association shall execute an instrument on forms prescribed by the secretary of state. The instrument must be signed by the president and secretary and verified by one of the officers signing the instrument. The instrument shall include all of

the following:

a. The name of the cooperative association, before and after this election.

b. A description of each resolution adopted by the cooperative association pursuant to this section, including the date each resolution was adopted.

2. The instrument shall be filed with the secretary of state. The cooperative association shall amend its articles of incorporation pursuant to section 499.41 to comply with the provisions of this chapter. The secretary of state shall not file the instrument unless the cooperative association is in compliance with the provisions of chapter 498 at the time of filing. A cooperative association shall file a biennial report which is due pursuant to section 499.49. Upon filing the instrument with the secretary, all of the following shall apply:

a. The cooperative association shall be deemed to be organized under this chapter and the provisions of this chapter shall apply to the cooperative association.

b. The secretary of state shall issue a certificate to the cooperative association acknowledging that it is deemed to be organized under this chapter.

3. The application of this chapter to the cooperative association does not affect a right accrued or established, or liability or penalty incurred pursuant to chapter 498, prior to the filing of the instrument with the secretary of state.

92 Acts, ch 1066, §2; 94 Acts, ch 1055, §13; 2000 Acts, ch 1022, §8

499.44 Execution and filing of documents.

1. The secretary of state shall record all documents submitted to and required to be filed with the secretary under this chapter.

2. A document required to be filed with the secretary of state pursuant to this chapter must be executed. The person executing the document must be the association's presiding officer of the board of directors, or the association's president or other officer. However, if the board of directors has not been selected or the association has not been formed, the document must be signed by an incorporator of the association. If the association is under the control of a person acting as a fiduciary of the association, including a trustee or receiver, the document must be signed by the fiduciary.

A document required to be executed shall contain the printed name of the person executing the document and the capacity in which the person serves the association. The signature of the person must appear above or opposite the person's printed name and capacity. In the discretion of the secretary of state, a document containing a copy of the person's signature may be accepted for filing. The document may also contain a corporate seal, an attestation by the secretary of state or person charged by the secretary, or an acknowledgment, verification, or proof that the execution is valid.

3. Articles of incorporation, amendments to articles, or renewal of articles must be filed with the secretary of state, and recorded in the county where the association has its principal place of business, as required by the general corporation laws. The association's corporate existence shall begin upon approval by the secretary of state of the articles and issuance of the certificate of incorporation.

4. A document required to be filed with the secretary of state pursuant to this chapter is effective at the later of the following times:

a. The time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. The delayed effective time and date specified in the document. If a delayed effective date but no time is specified in the document, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

5. A document filed under this section may be corrected if the document contains an incorrect statement or the execution of the document was defective. A document is corrected by filing with the secretary articles of correction which describe the document to be corrected, including its filing date or a copy of the document. The articles must specify the incorrect statement or defective execution, and correct the incorrect statement or defective execution.

Articles of correction are deemed to be effective on the date that the document corrected took or takes effect. However, as applied to persons relying upon the uncorrected document or adversely affected by the articles of correction, the effective date of the articles of correction is the date that the articles are filed.

[C35, §8512-g44; C39, §**8512.44;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.44]

90 Acts, ch 1164, §6; 97 Acts, ch 65, §1

Filing and recording, §491.5

499.45 Fees.

A fee of twenty dollars shall be paid to the secretary of state upon filing articles of incorporation, amendments, or renewals.

Except as provided in this section, the association shall pay the fees prescribed by section 490.122 when the documents described in that section are delivered to the secretary of state for filing.

[C35, §8512-g45; C39, §**8512.45;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.45]

93 Acts, ch 126, §16; 94 Acts, ch 1107, §30; 97 Acts, ch 171, §30

499.46 Bylaws.

The directors, by a vote of seventy-five percent

of the directors, may adopt, alter, amend, or repeal bylaws for the association, which shall remain in force until altered, amended, or repealed by a vote of seventy-five percent of the members present or represented having voting privileges, at any annual meeting or special meeting of the membership, provided that at least ten days' prior written notice of the impending membership vote has been mailed to all members of the association with a copy or summary of the proposed adoption, alteration, amendment, or repeal of the bylaws. Proposals by members to adopt, alter, amend, or repeal bylaws by vote of the membership shall be presented to the association's registered office for mailing to the membership by the association at least twenty days prior to the meeting at which the proposed change is to be considered. Bylaws shall be kept by the secretary subject to inspection by any member at any time. Bylaws may deal with the fiscal or internal affairs of the association or any subject of this chapter in any manner not inconsistent with this chapter or the articles.

[C35, §8512-g46; C39, §**8512.46;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.46]

96 Acts, ch 1115, §3

499.47 Dissolution.

1. An association whose duration has expired, or which is sooner dissolved by voluntary act of its members, shall continue to exist for the purpose of winding up its affairs until its complete liquidation under subsection 3 hereof.

2. An association may be dissolved by two-thirds of all votes cast at any meeting called for that purpose at which a majority of all voting members vote.

3. Upon the expiration or voluntary dissolution of an association, the members shall designate three of their number as trustees to replace the officers and directors and wind up its affairs. The trustees shall have all the powers of the board, including the power to sell and convey real or personal property and execute conveyances. Within the time fixed in their designation, or any extension of that time, the trustees shall liquidate the association's assets, pay its debts and expenses, and distribute remaining funds among the members. Upon distribution of remaining assets the association shall stand dissolved and cease to exist. The trustees shall make and sign a duplicate report of the dissolution. One copy of the report shall be filed with the secretary of state and one copy of the report shall be filed with the recorder of the county where the articles were recorded.

4. The trustees and their successors in office shall be chosen, and the time for their action fixed and extended, by a majority of all votes cast at any meeting called for such purpose.

[C35, §8512-g47; C39, §**8512.47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.47]

90 Acts, ch 1164, §7

499.47A Sale or other disposition of assets in regular course of business and mortgage or pledge of assets.

The sale, lease, exchange, or other disposition of the property and assets of a cooperative association, when made in the usual and regular course of the business of the cooperative association, and the mortgage or pledge of any or all of the property and assets of the cooperative association, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation or cooperative association, domestic or foreign, as authorized by its board of directors; and in such case no authorization or consent of the members shall be required.

87 Acts, ch 88, §1

499.47B Sale or other disposition of assets other than in regular course of business.

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a cooperative association organized under this chapter, if not made in the usual and regular course of its business, may be made upon the terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other cooperative association organized under this chapter, as may be authorized in the following manner:

1. The board of directors shall adopt a resolution recommending the sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of the membership, which may either be an annual or a special meeting.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale, lease, exchange, or other disposition of substantially all of the property and assets of the cooperative association.

3. At the meeting the membership may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the cooperative association. Such authorization shall be approved if two-thirds of the members vote affirmatively on a ballot in which a majority of all voting members participate.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto,

without further action or approval by the members.

87 Acts, ch 88, §2

499.47C Sale or other disposition of assets in exchange for common stock.

In addition to the requirements of section 499.47B, in any case where a cooperative association issues its common stock or membership, or subscriptions for common stock or membership, or both, as a part or all of the consideration for the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of another cooperative association, the issuance of such common stock or membership, or subscriptions for common stock or membership, or both, shall be authorized by the issuing cooperative association in the following manner:

1. The board of directors shall adopt a resolution recommending the issuance of the common stock or membership, or subscriptions for common stock or membership, or both, and directing the submission thereof to a vote at a meeting of the membership, which may be either an annual or special meeting.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes of the meeting, is to consider the proposed issuance of common stock or membership, or subscriptions for common stock or membership, or both, as consideration for all or a part of the property and assets of the other cooperative association.

3. At the meeting the membership may authorize the issuance and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the property and assets to be received as consideration. Such authorization shall be approved if a majority of the voting members present vote in the affirmative.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the issuance, without further action or approval by the members.

If a cooperative association, in connection with its acquisition of property or assets of another cooperative association, agrees to solicit common stock or membership, or subscriptions for common stock or membership to the members of the cooperative association selling such property or assets, the agreement shall not itself constitute the issuance of common stock or membership, or subscriptions for common stock or membership as described in this section. This section shall not apply to a merger as defined in section 499.61.

87 Acts, ch 88, §3

499.48 Distribution in liquidation.

On dissolution or liquidation, the assets of the association shall be used to pay liquidation expenses first, next the association's obligations other than patronage dividends or patronage dividend certificates which it has issued, and the remainder shall be distributed in the following priority:

1. To pay to each person the full amount originally paid by that person in cash for stock or other equity interest in the association.

2. To pay to each person in proportion to the total of each person's revolving fund, stock, or other equity interest in the association remaining after the payment under subsection 1.

In applying subsections 1 and 2, all classes of stock, all revolving funds, and all other equity interests in the association shall be treated equally based on their stated values. However, an association may establish its own method of distributing the assets remaining, after paying liquidation expenses and obligations other than patronage dividends or patronage dividend certificates which it has issued, in articles of incorporation adopted, amended, or restated after July 1, 1986.

[C35, §8512-g48; C39, §**8512.48;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.48]

86 Acts, ch 1196, §6

499.49 Biennial report.

Sections 504A.83 and 504A.84 apply to a cooperative organized under this chapter in the same manner as those sections apply to a corporation organized under chapter 504A. In addition to the information required to be set forth in the biennial report under section 504A.83, the cooperative shall also set forth the number of members of the cooperative, the percentage of the cooperative's business done with or for its own members during each of the fiscal or calendar years of the preceding two-year period, the percentage of the cooperative's business done with or for each class of nonmembers specified in section 499.3, and any other information deemed necessary by the secretary of state to advise the secretary whether the cooperative is actually functioning as a cooperative.

[C35, §8512-g49; C39, §**8512.49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.49]

93 Acts, ch 126, §17; 97 Acts, ch 171, §31

499.50 Notice of delinquent reports. Repealed by 97 Acts, ch 171, § 49.

499.51 Forfeiture. Repealed by 93 Acts, ch 126, § 35. See § 499.76 et seq.

499.52 Reinstatement. Repealed by 93 Acts, ch 126, § 35. See § 499.76 et seq.

499.53 Quo warranto.

The right of an association to exist or continue

under this chapter may be inquired into by the attorney general, but not otherwise. If from its biennial report or otherwise, the secretary of state is informed that it is not functioning as a cooperative, the secretary shall so notify the attorney general who, if the attorney general finds reasonable cause so to believe, shall bring action to oust it and wind up its affairs.

[C35, §8512-g53; C39, §**8512.53;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.53]

2000 Acts, ch 1022, §9

499.54 Foreign associations.

Any foreign corporation organized under generally similar laws of any other state shall be admitted to do business in Iowa upon compliance with the general laws relating to foreign corporations and payment of the same fees as would be required under section 490.122 if the foreign cooperative corporation is a foreign corporation for profit seeking authority to transact business in Iowa under chapter 490. Upon the secretary of state being satisfied that the foreign corporation is so organized and has so complied, the secretary shall issue a certificate authorizing the foreign corporation to do business in Iowa.

Such a foreign corporation thus admitted shall be entitled to all remedies provided in this chapter, and to enforce all contracts theretofore or thereafter made by the foreign corporation which any association might make under this chapter.

If such a foreign corporation amends its articles it shall forthwith file a copy of the amendment with the secretary of state, certified by the secretary or other proper official of the state under whose laws it is formed, and shall pay the fees prescribed for amendments by section 490.122. Foreign corporations shall also file statements and pay fees otherwise prescribed by section 490.122.

[C35, §8512-g54; C39, §**8512.54;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.54]

93 Acts, ch 126, §18

Foreign public utility corporations, chapter 495

499.55 Individual exemptions applicable.

All exemptions or privileges applying to agricultural products in the possession or control of the individual producer shall apply to such products in the possession or control of any association which have been delivered to it by its members.

[C35, §8512-g55; C39, §**8512.55;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.55]

499.56 Conflicting laws.

Any law conflicting with any part of this chapter shall be construed as not applicable to associations formed hereunder.

[C35, §8512-g56; C39, §**8512.56;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.56]

499.57 State powers.

The state reserves the right to modify, amend or repeal this chapter, or any part hereof, and to cancel, modify, repeal or extend any grant, power, permit or franchise obtained or secured under this chapter, at any future time.

[C35, §8512-g57; C39, §**8512.57;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.57]

499.58 Limitation of promotion expense. Repealed by 92 Acts, ch 1147, § 5.

499.59 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the association, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

87 Acts, ch 212, §8; 88 Acts, ch 1134, §93

499.59A Indemnification.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through 490.859, provided that where sections 490.850 through 490.859 provide for action by shareholders the sections are applicable to action by voting members of the cooperative association, and where sections 490.850 through 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

88 Acts, ch 1170, §8; 94 Acts, ch 1023, §65; 2002 Acts, ch 1154, §106, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

499.60 Chapters inapplicable.

The provisions of chapters 497 and 498 are hereby declared inoperative as to corporations chartered from and after July 4, 1935, but said chapters shall continue in force and effect as to corporations organized or operating thereunder prior to July 4, 1935, so long as any such corporations elect to operate under or renew their charters under said chapters.

[C35, §8512-g61; C39, §**8512.60;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499.60]

MERGER AND CONSOLIDATION

499.61 Definitions.

When used in this division, unless the context otherwise requires:

1. *"Consolidation"* means the uniting of two or more cooperative associations into one cooperative association, in such manner that a new cooperative association is formed, and the new cooperative association absorbs the others, which cease to exist as separate entities.

2. *"Merger"* means the uniting of two or more cooperative associations into one cooperative association, in such manner that one of the merging associations retains its corporate existence and absorbs the others, which cease to exist as corporate entities. *"Merger"* does not include the acquisition, by purchase or otherwise, of the assets of one cooperative association by another, unless the acquisition only becomes effective by the filing of articles of merger by the associations and the issuance of a certificate of merger pursuant to sections 499.67 and 499.68.

3. *"New association"* is the cooperative association resulting from the consolidation of two or more cooperative associations.

4. *"Qualified corporation"* means a corporation organized and existing under chapter 490, which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a)(2) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141j(a) or 7 U.S.C. § 291.

5. *"Qualified merger"* means the uniting of one or more cooperative associations with one or more qualified corporations to form one cooperative association or qualified corporation, in such a manner that one entity participating in the merger continues to exist and absorbs the others, with the others ceasing to exist as cooperative or corporate entities.

6. *"Qualified survivor"* means the cooperative association or qualified corporation which continues to exist after a qualified merger.

7. *"Surviving association"* is the cooperative association resulting from the merger of two or more cooperative associations.

[C71, 73, 75, 77, 79, 81, §499.61]

87 Acts, ch 88, §4; 97 Acts, ch 17, §7

499.62 Merger.

Any two or more cooperative associations may merge into one cooperative association in the following manner:

The board of directors of each cooperative association shall, by resolution adopted by a majority vote of all members of each board, approve a plan of merger which shall set forth:

1. The names of the cooperative associations proposing to merge and the name of the surviving association.

2. The terms and conditions of the proposed merger.

3. A statement of any changes in the articles of incorporation of the surviving association.

4. Other provisions deemed necessary or desirable.

[C71, 73, 75, 77, 79, 81, §499.62]

499.63 Consolidation.

Any two or more cooperative associations may be consolidated into a new cooperative association in the following manner:

The board of directors of each cooperative association shall, by resolution adopted by a majority vote of all members of each board, approve a plan of consolidation setting forth:

1. The names of the cooperative associations proposing to consolidate and the name of the new association.

2. The terms and conditions of the proposed consolidation.

3. With respect to the new association, all of the statements required to be set forth in articles of incorporation for cooperative associations.

4. Other provisions deemed necessary or desirable.

[C71, 73, 75, 77, 79, 81, §499.63]

499.64 Vote of members.

The board of directors of a cooperative association, upon approving a plan of merger or consolidation, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. Written notice shall be given not less than twenty days prior to the meeting, either personally or by mail to each voting member and shareholder of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

At the meeting, a ballot of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved if two-thirds of the members vote affirmatively on a ballot in which a majority of all voting members participate. Voting may be by mail ballot notwithstanding any contrary provision in the articles of incorporation or bylaws.

[C71, 73, 75, 77, 79, 81, §499.64]

97 Acts, ch 17, §8

499.65 Objection of members — purchase of shares upon demand.

If a voting member or voting shareholder of a cooperative association which is a party to a merger or consolidation files with the cooperative associa-

tion, prior to or at the meeting of members at which the plan is submitted to a vote, a written objection to the plan of merger or consolidation, and votes in opposition to the plan, and the member or shareholder, within twenty days after the merger or consolidation is approved by the other members, makes written demand on the surviving or new association for payment of the fair value of that member's or shareholder's interest as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new association shall pay to the member or shareholder, upon surrender of that person's certificate of membership or shares of stock, the fair value of that person's interest as provided in section 499.66. A member or shareholder who fails to make demand within the twenty-day period is conclusively presumed to have consented to the merger or consolidation and is bound by its terms.

In the event that a dissenting member or shareholder does business with the surviving or new association before payment has been made for that person's membership or stock, the dissenting member or shareholder is deemed to have consented to the merger or consolidation and to have waived all further rights as a dissenting member or shareholder.

[C71, 73, 75, 77, 79, 81, §499.65]

86 Acts, ch 1196, §7; 92 Acts, ch 1147, §2

499.66 Value determined.

1. As used in this section:

a. "Dissenting member" means a voting member who votes in opposition to the plan of merger or consolidation and who makes a demand for payment of the fair value under section 499.65.

b. "Old association" means the association in which the member owns or owned a membership.

c. "New association" means the surviving or new association after the merger or consolidation.

d. "Issue price" means the amount paid for an interest in the old association or the amount stated in a notice of allocation of patronage dividends.

e. "Fair market value" means the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell.

2. Within twenty days after the merger or consolidation is effected, the new association shall make a written offer to each dissenting member to pay a specified sum deemed by the new association to be the fair value of that dissenting member's interest in the old association. This offer shall be accompanied by a balance sheet of the old association as of the latest available date, a profit and loss statement of the old association for the twelve-month period ending on the date of this balance sheet, and a list of the dissenting member's interests in the old association. If the dissenting member does not agree that the sum stated in this notice represents the fair value of the member's interest, then the member may file a written objection with the new association within twenty days after receiving this notice. A dissenting member who fails to file this objection within the twenty-day period is conclusively presumed to have consented to the fair value stated in the notice.

If the surviving or new association receives any objections to fair values, then within ninety days after the merger or consolidation is effected, the new association shall file a petition in the Iowa district court asking for a finding and determination of the fair value of each type of equity. The action shall be prosecuted as an equitable action.

The fair value of a dissenting member's interest in the old association shall be determined as of the day preceding the merger or consolidation by taking the lesser of either the issue price of the dissenting member's membership, common stock, deferred patronage dividends, and preferred stock, or the amount determined by subtracting the old association's debts from the fair market value of the old association's assets, dividing the remainder by the total issue price of all memberships, common stock, preferred stock, and revolving funds, and then multiplying the quotient from this division by the total issue price of a dissenting member's membership, common stock, preferred stock, and revolving fund interest.

3. The new association shall pay to each dissenting member in cash within sixty days after the merger or consolidation the amount paid in cash by the dissenting member for that member's interest in the old association. The new association shall pay the remainder of each dissenting member's fair value in ten annual equal payments. The final payment must be made not later than fifteen years after the merger or consolidation. The value of the deferred patronage dividends and preferred stock shall be considered a liability of the new association as reflected in the accounts of the new association until the value of the patronage dividends or preferred stock is paid in full to the dissenting member. A dissenting member who is a natural person who dies before receiving the fair value shall have all of the person's fair value paid with the same priority as if the person was a member at the time of death.

[C71, 73, 75, 77, 79, 81, §499.66]

86 Acts, ch 1196, §8; 87 Acts, ch 16, §1, 2; 92 Acts, ch 1147, §3

499.67 Articles of merger or consolidation.

Upon approval, articles of merger or articles of consolidation shall be executed by each cooperative association as provided in section 499.44. The articles must include the following:

1. The plan of merger or the plan of consolidation.

2. As to each cooperative association, the number of individuals or cooperative associations en-

titled to vote.

3. As to each cooperative association, the number of individuals or cooperative associations who voted for and against the plan at the meeting called for that purpose.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing.

The secretary of state, upon the filing of articles of merger or articles of consolidation, shall issue a certificate of merger or a certificate of consolidation, and send the certificate to the surviving or new association, or to its representative.

[C71, 73, 75, 77, 79, 81, §499.67]

90 Acts, ch 1164, §8, 9; 94 Acts, ch 1055, §14

499.68 When effective — effect.

A merger or consolidation shall become effective upon the date that the certificate of merger or the certificate of consolidation is issued by the secretary of state, or the effective date specified in the articles of merger or articles of consolidation, whichever is later.

When a merger or consolidation has become effective:

1. The several cooperative associations which are parties to the plan of merger or consolidation shall be a single cooperative association, which, in the case of a merger, shall be that cooperative association designated in the plan of merger as the surviving association, and, in the case of consolidation, shall be that cooperative association designated in the plan of consolidation as the new association.

2. The separate existence of all cooperative associations which are parties to the plan of merger or consolidation, except the surviving or new association, shall cease.

3. The surviving or new association shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative association organized under the laws of this state.

4. The surviving or new association shall possess all the rights, privileges, immunities, and franchises, public as well as private, of each of the merging or consolidating cooperative associations.

5. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the cooperative associations merged or consolidated, shall be transferred to and vested in the surviving or new association without further act or deed. The title to any real estate, or any interest in real estate vested in any of the cooperative associations merged or consolidated, shall not revert or be in any way impaired by reason of the merger or consolidation.

6. A surviving or new association shall be responsible and liable for all obligations and liabilities of each of the cooperative associations merged or consolidated.

7. Any claim existing or action or proceeding pending by or against any of the cooperative associations merged or consolidated may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new association may be substituted for the merged or consolidated association. Neither the rights of creditors nor any liens upon the property of any cooperative association shall be impaired by a merger or consolidation.

8. In the case of a merger, the articles of incorporation of the surviving association shall be deemed to be amended to the extent that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of incorporation of cooperative associations organized under the laws of the state of Iowa shall be deemed to be the original articles of incorporation of the new cooperative association.

9. The aggregate amount of the net assets of the merging or consolidating cooperative associations which was available for the payment of dividends immediately prior to the merger or consolidation, to the extent that the amount is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by the surviving or new association.

[C71, 73, 75, 77, 79, 81, §499.68]

97 Acts, ch 65, §2

499.69 Foreign and domestic mergers or consolidations.

One or more foreign cooperative associations and one or more domestic cooperative associations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each foreign cooperative association is organized:

1. Each domestic cooperative association shall comply with the provisions of this division with respect to the merger or consolidation of domestic cooperative associations, and each foreign cooperative association shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new association is to be governed by the laws of any state other than this state, it shall comply with the provisions of the laws of this state with respect to the qualifications of foreign cooperative associations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic cooperative association which is a party to the merg-

er or consolidation, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic cooperative association, against the surviving or new association.

b. An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any proceeding.

c. An agreement that it will promptly pay to the dissenting shareholders of any domestic cooperative association the amount to which they are entitled under the provisions of this division with respect to the rights of dissenters.

The effect of such merger or consolidation shall be the same as the effect of the merger or consolidation of domestic cooperative associations, if the surviving or new association is to be governed by the laws of this state. If the surviving or new association is to be governed by the laws of any other state, the effect of merger or consolidation shall be the same as in the case of the merger or consolidation of domestic cooperative associations, except as the laws of the other state otherwise provide.

[C71, 73, 75, 77, 79, 81, §499.69]

499.69A Qualified mergers.

1. One or more cooperative associations and one or more qualified corporations may participate in a qualified merger as provided in this section.

2. Each participating cooperative association and qualified corporation must approve a written plan of qualified merger.

a. The plan shall set forth all of the following:

(1) The name of each cooperative association and qualified corporation participating in the qualified merger, and the name of the qualified survivor.

(2) The terms and conditions of the qualified merger.

(3) The manner and basis of converting the interests, including shares or other securities, and obligations in each nonsurviving cooperative association or qualified corporation into the interests and obligations of the qualified survivor.

(4) Any amendments to the articles of incorporation of the qualified survivor as are desired to be effected by the qualified merger, or a statement that no amendment is desired.

(5) The date that the qualified merger becomes effective, if the date is different than the date when a certificate of merger is to be issued for a cooperative association, or if the date is different than the date when the articles of merger are filed with the secretary of state for a qualified corporation.

(6) Other provisions relating to the qualified merger as are deemed necessary or desirable.

b. A proposed plan for a qualified merger complying with the requirements of this section shall be approved as follows:

(1) For a cooperative association which is a party to the proposed qualified merger, the cooperative association shall approve the plan as provided in this chapter.

(2) For a qualified corporation which is a party to the proposed qualified merger, the qualified corporation shall approve the plan as provided in chapter 490.

c. After the proposed plan for the qualified merger is approved, a cooperative association or qualified corporation may abandon the merger in the manner provided in the plan, prior to the filing of the articles of merger.

3. After a proposed plan of the qualified merger is approved, the qualified survivor shall deliver articles of merger for the qualified merger to the secretary of state for filing. The articles of merger shall be executed by each cooperative association and qualified corporation which is a party to the qualified merger. The articles of merger shall set forth all of the following:

a. The name of each cooperative association and qualified corporation which is a party to the qualified merger.

b. The plan for the qualified merger.

c. The effective date of the qualified merger, if later than the date of filing the articles of merger.

d. The name of the qualified survivor.

e. A statement that the plan for the qualified merger was approved by each participating cooperative association and qualified corporation in a manner required for the cooperative association and qualified corporation as provided in this section.

4. For a surviving cooperative association, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state and the issuance of a certificate of merger pursuant to section 499.68 or the date stated in the articles of merger, whichever is later. For a surviving qualified corporation, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state pursuant to section 490.1106 or the date stated in the articles, whichever is later.

5. The effect of a qualified merger for a qualified survivor which is a cooperative association shall be as provided for in this chapter. The effect of a qualified merger for a qualified survivor which is a qualified corporation shall be as provided for corporations under chapter 490.

6. The provisions governing the right of a shareholder or member of a cooperative association to object to a merger or the right of a member to dissent and obtain payment of the fair value of an interest in the cooperative association in the case of a merger as provided in this chapter shall apply to a qualified merger. The provisions governing the right of a shareholder of a corporation to dissent from and obtain payment of the fair value of the shareholder's shares in the case of a merger as provided in division XIII of chapter 490 shall apply to a qualified merger.

7. A foreign cooperative association may participate in a qualified merger as provided in this section, if the foreign cooperative association complies with the requirements for a cooperative association under this section and the requirements for a foreign cooperative association under section 499.69. A foreign corporation may participate in a qualified merger as provided in this section if it complies with the requirements of a qualified corporation under this section and the requirements for a foreign corporation under section 490.1102.

97 Acts, ch 17, §9; 2002 Acts, ch 1154, §107, 125

2002 amendments to subsections 4 and 7 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsections 4 and 7 amended

499.70 Abandonment before filing.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

[C71, 73, 75, 77, 79, 81, §499.70]

499.71 Other laws applicable.

The provisions of this division shall also apply to cooperative associations organized under chapters 497 and 498.

[C71, 73, 75, 77, 79, 81, §499.71]

REGISTERED OFFICE AND REGISTERED AGENT

499.72 Registered office and registered agent.

Each association must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

93 Acts, ch 126, §19

499.73 Change of registered office or registered agent.

1. An association may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the association.

b. The street address of its current registered office.

c. If the current registered office is to be changed, the street address of the new registered office.

d. The name of its current registered agent.

e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any association for which the person is the registered agent by notifying the association in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the association has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each association, or a single statement for all associations named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph *"e"*, and must recite that a copy of the statement has been mailed to each association named in the notice.

4. An association may also appoint or change its registered office or registered agent in its biennial report.

93 Acts, ch 126, §20; 2000 Acts, ch 1022, §10

499.74 Resignation of registered agent.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

2. After filing the statement the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the association at its principal office.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

93 Acts, ch 126, §21

499.75 Service on association.

1. An association's registered agent is the association's agent for service of process, notice, or demand required or permitted by law to be served on the association.

2. If an association has no registered agent, or the agent cannot with reasonable diligence be served, the association may be served by registered or certified mail, return receipt requested, addressed to the secretary of the association at its principal office. Service is perfected under this subsection at the earliest of any of the following:

a. The date the association receives the mail.

b. The date shown on the return receipt, if signed on behalf of the association.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. This section does not prescribe the only means, or necessarily the required means, of serving an association.

93 Acts, ch 126, §22

ADMINISTRATIVE DISSOLUTION

499.76 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 499.77 to administratively dissolve an association if any of the following apply:

1. The association has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 499.49, within sixty days after it is due.

2. The association is without a registered agent or registered office in this state for sixty days or more.

3. The association does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

4. The association's period of duration stated in its articles of incorporation expires.

93 Acts, ch 126, §23; 97 Acts, ch 171, §32; 2000 Acts, ch 1022, §11

499.77 Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under section 499.76 for dissolving an association, the secretary of state shall serve the association by ordinary mail with written notice of the secretary of state's determination pursuant to section 499.75.

2. If the association does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected pursuant to section 499.75, the secretary of state shall administratively dissolve the association by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the association pursuant to section 499.75.

3. An association administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs and notify claimants.

4. The administrative dissolution of an association does not terminate the authority of its registered agent.

93 Acts, ch 126, §24

499.78 Reinstatement following administrative dissolution.

1. An association administratively dissolved under section 499.77 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the association at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

2. If the secretary of state determines that the application contains the information required by subsection 1 and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the association pursuant to section 499.75.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

93 Acts, ch 126, §25; 97 Acts, ch 171, §33

499.78A Appeal from denial of reinstatement.

1. If the secretary of state denies an association's application for reinstatement following administrative dissolution, the secretary of state shall serve the association pursuant to section 499.75 with a written notice that explains the reason or reasons for denial.

2. The association may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The association appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the association's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved association or may take other action the court considers appropriate.

4. The court's final decision may be appealed

as in other civil proceedings.
93 Acts, ch 126, §26

OTHER MATTERS

499.79 Statement to estate of members and stockholders.

The board of directors, upon receiving actual notice of the death of a member or stockholder, shall provide a statement to the administrator or executor of the member's or stockholder's estate, or to the attorney representing such estate. The statement shall describe agricultural products owned by the member or stockholder which are in the possession of the association.

This section shall not require an association to conduct a search of the status of its members or stockholders. The association shall exercise reasonable diligence in determining to whom the statement must be delivered. The statement shall be delivered to the administrator, executor, or attorney, within thirty days following a determination as to whom the statement must be delivered. A statement is not required to be prepared or delivered, if the association is not notified of the member's or stockholder's death within one year after the date of death, or by the date that the member's or stockholder's estate is closed, whichever is later.
91 Acts, ch 230, §3

499.80 Member information.

If a member of a cooperative association intends to distribute information to other members of a cooperative association and the member does not have a list of the members of the cooperative association, the member may request the board of directors to distribute the information for the member.

The board of directors shall adopt a policy which permits the distribution of materials or information to members of a cooperative association by request of a member when the purpose of the request concerns directly the action of the board of directors of the cooperative association.

The board of directors shall distribute for a member such material or information requested, provided that the board of directors may charge the member for the mailing costs incurred by the cooperative association in distributing the information.

Cooperative associations subject to regulation under chapter 476 are exempt from the provisions of this section.
92 Acts, ch 1147, §4

499.81 through 499.84 Repealed by 77 Acts, ch 127, § 9.

CHAPTER 499A

MULTIPLE HOUSING

1991 additions, amendments, and repeals apply to cooperatives organized on or after December 1, 1990; for prior law, see Code 1991; 91 Acts, ch 30, §18

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SUBCHAPTER I

499A.1 Articles.

Any two or more persons of full age, a majority of whom are citizens of the state, may organize themselves for the following or similar purposes: Ownership of residential, business property on a cooperative basis. A corporation is a person within the meaning of this chapter. The organizers shall adopt, and sign and acknowledge the articles of incorporation, stating the name by which the cooperative shall be known, the location of its principal place of business, its business or objects, the number of directors to conduct the cooperative's business or objects, the names of the directors for the first year, the time of the cooperative's annual meeting, the time of the annual meeting of its directors, and the manner in which the articles may be amended. The articles of incorporation shall be filed with the secretary of state who shall, if the secretary approves the articles, endorse the secretary of state's approval on the articles, record the articles, and forward the articles to the county recorder of the county where the principal place of business is to be located, and there the articles shall be recorded, and upon recording be returned to the cooperative. The articles shall not be filed by the secretary of state until a filing fee of five dollars together with a recording fee of fifty cents per page is paid, and upon the payment of the fees and the approval of the articles by the secretary of state, the secretary shall issue to the cooperative a certificate of incorporation as a cooperative not for pecuniary profit.

Amendments to the articles shall be filed and receive approval as provided in this chapter for articles, and the fee for amendments shall be five dollars in each instance. An amendment is not effective until the amendment is approved and the fee is paid.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.1]

91 Acts, ch 30, §1

499A.2 Powers — duration.

Upon filing such articles the persons signing and acknowledging the same and their associates and successors shall become a body corporate with the name therein stated and shall have power:

1. To have perpetual succession by its name, unless a limited period of duration is stated in its articles of incorporation, or they are sooner dissolved by three-fourths vote of all the members thereof, or by act of the general assembly or by operations of law.

2. To sue and be sued in its corporate name.

3. To build and construct apartment houses or dwellings.

4. To purchase, take, receive, lease as lessee, take by gift, devise or bequest, or otherwise acquire, and to own, hold, use and otherwise deal in and with any real or personal property or any interest therein.

5. To sell, convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets.

6. To make contracts and incur liabilities which may be appropriate to enable it to accomplish any or all of its purposes; to borrow money for its corporate purposes at such rates of interest as the cooperative may determine, to issue its notes, bonds and other obligations; and to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property.

7. To elect or appoint officers and agents of the cooperative, and to define their duties and fix their compensation.

8. To make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state, for the administration and the regulation of the affairs of the cooperative.

9. To cease its cooperative activities and surrender its cooperative franchise.

10. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the cooperative is organized.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.2]

91 Acts, ch 30, §16

499A.2A Bylaws.

The initial bylaws of the cooperative shall be adopted by the cooperative's board of directors. Prior to the admission of members to the cooperative, the power to alter, amend, or repeal the bylaws or adopt new bylaws is vested in the board of directors. Following the admission of members to the cooperative, the power to alter, amend, or repeal the bylaws or adopt new bylaws is vested in the members in accordance with the method set forth in the bylaws.

The bylaws may contain any provisions for the regulation and management of the affairs of the cooperative not inconsistent with law or the articles of incorporation. However, the bylaws must provide for:

1. The number of members of the board of di-

rectors and the term of the members.

2. The election of a president, vice president, treasurer, and secretary by the board of directors.

3. The qualifications, powers and duties, terms of office, and manner of electing and removing board members and officers and filling vacancies of such members.

4. The method of amending the bylaws.

91 Acts, ch 30, §7

499A.3 Members.

A cooperative shall have only one class of members. The designation of that class and the rights of the members of the class shall be set forth in the articles of incorporation or the bylaws. The cooperative must issue membership certificates evidencing the ownership interest of each member of the cooperative.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.3]

91 Acts, ch 30, §2

499A.3A Meetings of members.

Meetings of members may be held at such places as may be provided in the articles of incorporation or the bylaws, or as may be fixed from time to time in accordance with the provisions of the articles or the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the cooperative.

An annual meeting of the members shall be held at such time as may be provided in the articles of incorporation or the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the cooperative.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such officers or persons, or by a number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at the meeting.

91 Acts, ch 30, §8

499A.3B Notice of members meetings.

Unless the articles of incorporation or the bylaws otherwise provide, written notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each member entitled to vote at the meeting. If mailed, notice is deemed to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the cooperative, with postage prepaid.

91 Acts, ch 30, §9

499A.3C Voting.

Each member is entitled to one vote on each matter submitted to a vote of the members. A membership interest in the cooperative jointly owned by two or more persons is nevertheless entitled to one vote.

A member entitled to vote may vote in person or by proxy in the manner prescribed in the bylaws.

91 Acts, ch 30, §10

499A.4 Dividends.

A dividend or distribution of property among the members shall not be made until dissolution of the cooperative.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.4]

91 Acts, ch 30, §3

499A.5 Trustees or managers. Repealed by 91 Acts, ch 30, § 17, 18.

499A.6 Election of officers. Repealed by 91 Acts, ch 30, § 17, 18.

499A.7 Reorganizing prior to expiration of term.

The directors or members of any cooperative organized under this chapter may reorganize the cooperative, and all the property and rights of the cooperative shall vest in the cooperative as reorganized.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.7]

91 Acts, ch 30, §4

499A.8 Reorganizing after expiration of term.

When the term of a cooperative organized under this chapter has expired, but the organization has continued to act as such cooperative, the directors or members thereof may reorganize, and the property and rights therein shall vest in the reorganized cooperative for the use and benefit of all of the members in the original cooperative.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.8]

91 Acts, ch 30, §16

499A.9 Amendments of articles.

Any cooperative organized under this chapter may change its name or amend its articles of incorporation by a vote of a majority of the members, in such manner as may be provided in its articles; but if no such provision is made in the articles the same may be amended at any regular meeting or

special meeting called for that purpose by the president or secretary or a majority of the board of directors. Notice of any meeting at which it is proposed to amend the articles of incorporation, shall be given by mailing to each member at the member's last known post-office address at least ten days prior to such meeting, a notice signed by the secretary setting forth the proposed amendments in substance, or by two publications of said notice in some daily or weekly newspaper in general circulation in the county wherein said cooperative has its principal place of business. The last publication of said notice shall be not less than ten days prior to the date of said meeting. There shall be paid to the secretary of state at the time of the filing of such change or amendment a recording fee of fifty cents per page.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.9]

91 Acts, ch 30, §16

499A.10 Record — effect.

The change or amendment provided for in section 499A.9 shall be recorded as the original articles are recorded. From the date of filing such change or amendment for record, the provisions of said section having been complied with, the change or amendment shall take effect as a part of the original articles, and the cooperative thus constituted shall have the same rights, powers and franchises, be entitled to the same immunities, and liable upon all contracts to the same extent, as before such change or amendment.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.10]

91 Acts, ch 30, §16

499A.11 Ownership — certificate of membership.

The cooperative has the right to purchase real estate for the purpose of erecting, owning, and operating apartment houses or apartment buildings. The interest of each individual member in the cooperative shall be evidenced by the issuance of a certificate of membership. The certificate of membership is coupled with a possessory interest in the real and personal property of the cooperative, entitling each member to a proprietary lease with the cooperative under which each member has an exclusive possessory interest in an apartment unit and a possessory interest in common with all other members in that portion of the cooperative's real and personal property not constituting apartment units, and which creates a legal relationship of landlord and tenant between the cooperative and member. The certificate of membership shall be executed by the president of the cooperative and attested by its secretary in the name and in the behalf of the cooperative.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.11]

91 Acts, ch 30, §5

499A.12 Title in trustees. Repealed by 91 Acts, ch 30, § 17, 18.

499A.13 Sale and encumbrance of the premises. Repealed by 91 Acts, ch 30, § 17, 18.

499A.14 Taxation.

The real estate shall be taxed in the name of the cooperative, and each member of the cooperative shall pay that member's proportionate share of the tax in accordance with the proration formula set forth in the bylaws, and each member occupying an apartment as a residence shall receive that member's proportionate homestead tax credit and each veteran of the military services of the United States identified as such under the laws of the state of Iowa or the United States shall receive as a credit that member's veterans tax benefit as prescribed by the laws of the state of Iowa.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.14]

91 Acts, ch 30, §6

Homestead credit, chapter 425
Veterans exemption, §426A.11

499A.15 Rules. Repealed by 91 Acts, ch 30, § 17, 18. See § 499A.2A.

499A.16 Board of directors. Repealed by 91 Acts, ch 30, § 17, 18. See § 499A.18A and 499A.22.

499A.17 Contracts for utilities. Repealed by 91 Acts, ch 30, § 17, 18.

499A.18 Homestead.

Each individual apartment constitutes a homestead and is exempt from execution, provided the member otherwise qualifies within the laws of the state of Iowa for such exemption.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.18]

91 Acts, ch 30, §13

499A.18A Upkeep of the cooperative.

It is the duty of the cooperative to maintain generally all portions of the cooperative's real property other than the apartment units. The maintenance, repair, and replacement costs of the cooperative's real property shall be contributed to by each of the members in accordance with the proration formula set forth in the bylaws. Each member is responsible for maintenance and repair of the person's apartment unit in the manner provided for in the bylaws and as prescribed by each member's proprietary lease.

91 Acts, ch 30, §11

499A.19 Election of directors.

The directors shall be elected by the members of the cooperative. The election of officers shall be made by the board of directors. The annual election of the directors shall be held during the month of January of each year, and they shall serve until their successors are elected and qualified.

The board of directors shall elect as officers, a president, a vice president, a secretary, and a treasurer.

It is the duty of the secretary to keep the records of the cooperative, and a correct list of the members, and all such records shall be submitted to any member upon demand at any reasonable time.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.19]

91 Acts, ch 30, §14

499A.20 Title of Act. Transferred to § 499A.25.

499A.21 Execution exemption. Repealed by 91 Acts, ch 30, § 17, 18. See § 499A.22(6).

499A.22 Lien for assessments.

1. The cooperative has a lien on a member's interest in the cooperative for all operating charges or other assessments payable by the member pursuant to the member's proprietary lease from the time the operating charge or other assessment becomes due. If carrying charges and assessments are payable in installments, the full amount of the charge or assessment is a lien from the first time the first installment becomes due. Upon nonpayment of a carrying charge or assessment, the member may be evicted from the member's apartment unit in the same manner as provided by law in the case of an unlawful holdover by a tenant and the lien may be foreclosed by judicial sale in like manner as a mortgage on real estate, or may be foreclosed by the power of sale provided in this section.

A lien under this section is prior to all other liens and encumbrances on a member's cooperative interest except liens and encumbrances on the cooperative's real property which the cooperative creates, assumes, or takes subject to, and liens for real estate taxes and other governmental assessments or charges against the cooperative or the member's cooperative interest.

2. The cooperative, upon a member's nonpayment of carrying charges and assessments and the cooperative's compliance with this section, may sell the defaulting member's cooperative interest. Sale may be at a public sale or by private negotiation, and at any time and place, but every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The cooperative shall give to the member and any sublessees of the member reasonable written notice of the time and place of a public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice shall also be sent to any other person who has a recorded interest in the defaulting member's cooperative interest which would be extinguished by the sale. The notices required by this paragraph may be sent to any address reasonable under the circumstances. Sale may not be held until five weeks after the sending of the notice. The cooperative may buy at a public sale, and, if the sale is conducted by a fiduciary or other person not related to the cooperative, at a private sale.

3. The proceeds of a sale under the preceding paragraph shall be applied in the following order:

a. The reasonable expenses of sale.

b. The reasonable expenses of securing possession before sale, and the reasonable expenses of holding, maintaining, and preparing the cooperative interest for sale. These expenses include, but are not limited to, the payment of taxes and other governmental charges, premiums on liability insurance, and to the extent provided for by agreement between the cooperative and the member, reasonable attorneys' fees and other legal expenses incurred by the cooperative.

c. Satisfaction of the cooperative's lien.

d. Satisfaction in the order of priority of any subordinate claim of record.

e. Remittance of any excess to the member.

Unless otherwise agreed, the member is liable for any deficiency.

4. If a cooperative interest is sold pursuant to this section, a good faith purchaser for value acquires the member's interest in the cooperative free of the debt that gave rise to the lien under which the sale occurred, and free of any subordinate interest.

5. At any time before the cooperative has disposed of the cooperative interest or entered into a contract for its disposition under the power of sale, the member or the holder of any subordinate security interest may cure the member's default and prevent sale or other disposition by tendering the performance due, including any amounts due arising from the exercise of the rights under this section, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorneys' fees of the creditor.

6. The property of a member other than the member's membership interest in the cooperative is not subject to claims of the cooperative's creditors, whether or not the member's membership interest is subject to those claims.

91 Acts, ch 30, §12

499A.23 and 499A.24 Reserved.

499A.25 Title of Act.

This subchapter shall be known and cited as *"The Cooperative Housing Act."*

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §499A.20]
91 Acts, ch 30, §15
CS91, §499A.25

499A.26 through 499A.100 Reserved.

SUBCHAPTER II

499A.101 Definitions.
As used in this subchapter, unless the context otherwise requires:
1. *"Advisor"* means a member of the association's advisory committee.
2. *"Association"* means a sweat equity housing cooperative association created pursuant to this subchapter.
3. *"Authority"* means a local housing authority created pursuant to section 499A.102.
4. *"Low income"* means the income of *"very low income families"* as defined in section 16.1, subsection 40.
5. *"Partner"* means a low-income sweat equity member of the association, and member of the sweat equity partners' committee.
6. *"Sweat equity"* means any contribution made by a partner to the operations of the association, including but not limited to physical labor.
90 Acts, ch 1120, §1

499A.102 Local housing authority.
1. A local housing authority may be created to encourage and assist the formation of housing cooperatives under this chapter. The following persons are authorized to form an authority, separately, or in combination with other authorized persons:
a. A city.
b. A county.
c. A nonprofit community organization.
d. A nonprofit religious organization.
2. The local housing authority shall be funded from the following sources:
a. State grants, loans, or other appropriations administered by the Iowa finance authority.
b. Funds solicited from third parties by the local housing authority.
c. Local government appropriations to the local housing authority.
d. Any other available sources, including but not limited to bequests, devises, and federal moneys.
3. The Iowa finance authority may provide assistance for initial organization of local housing authorities.
90 Acts, ch 1120, §2

499A.103 Low-income participants.
The local housing authority shall recruit low-income persons to participate as sweat equity partners in a housing cooperative association organized by the local housing authority.
90 Acts, ch 1120, §3

499A.104 Sweat equity housing cooperative association.
1. The local housing authority may form one or more sweat equity housing cooperative associations under this chapter. A sweat equity housing cooperative association shall operate as a multiple housing cooperative association under subchapter I, except as specifically provided otherwise under this subchapter.
2. A sweat equity housing cooperative association shall meet the following additional conditions:
a. A sweat equity partners' committee shall be established, with each partner entitled to one vote on the committee.
b. The sweat equity committee shall hold twenty-five percent of the stock of the association upon incorporation of the association.
c. An advisory committee shall be established, made up of equity investors, skill contributors, and other community representatives including, but not limited to:
(1) Tradesperson volunteers.
(2) Community college trade representatives and business educators.
(3) Financial and legal advisors to association management.
d. The advisory committee shall hold seventy-five percent of the stock of the association upon incorporation of the association.
3. The association shall be controlled by the board of directors, with representation of partners and advisors on the board proportional to each group's equity interest at the time of the last election of directors to the board.
4. An association shall do all of the following:
a. Acquire existing housing or small business building stock in need of rehabilitation.
b. Establish a rehabilitation plan, which shall include, but not be limited to, all of the following elements:
(1) Statement of purpose.
(2) Financial plan.
(3) Construction timetable.
(4) Materials schedule.
(5) Construction training program schedule for partners. If a contract is executed with a person to perform skilled labor or to supervise skilled work, the person must be certified by an organization recognized as representing a membership of persons with common skills.
(6) Financial and managerial training program for partners.
(7) Bylaws of the association.
(8) A contract between the partners and advisors including the terms of transfer of stock from the advisory committee to the partners' committee.

c. Establish a program to ensure that partners are equipped with skills necessary for full participation in society.

d. Encourage participation by partners in the activities of the community.

90 Acts, ch 1120, §4; 2001 Acts, ch 61, §17

499A.105 Association financing.

1. *Organizational and construction phase.* Upon incorporation, and after adoption of a rehabilitation plan pursuant to section 499A.104, the association may apply to the Iowa finance authority or other sources for financial assistance. The Iowa finance authority shall review the rehabilitation plan, and subject to the availability of moneys, may approve for the association state grants, loans, or other appropriations administered by the Iowa finance authority.

2. *Stock transfer.* Advisory committee stock shall be transferred to the partners' committee for distribution to partners in accordance with the terms of the rehabilitation plan contract.

3. *Operational phase.* Upon completion of the rehabilitation plan and implementation of the contract, the association shall be wholly owned by partners. The partners shall rent space only to other association partners. New partners may be admitted subject to completion of required partner training programs and sweat equity contributions, as required by the association's bylaws. Partners shall make mortgage payments in proportion to their equity interest in the property, with total payments sufficient to repay the mortgage loan, maintain the property, and accumulate a capital reserve fund for future repairs and improvements. The capital reserve fund and enforcement of partner obligations is the responsibility of the board of directors.

90 Acts, ch 1120, §5

499A.106 Reimbursement of sweat equity contribution.

The association shall establish criteria for the reimbursement of a partner terminating membership in the association, in accordance with the partner's sweat equity contribution.

90 Acts, ch 1120, §6

CHAPTER 499B

HORIZONTAL PROPERTY (CONDOMINIUMS)

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499B.20 Conversions to meet building codes.

499B.1 Short title.

This chapter shall be known as the *"Horizontal Property Act."*

[C66, 71, 73, 75, 77, 79, 81, §499B.1]

499B.2 Definitions.

Unless it is plainly evident from the context that a different meaning is intended, as used herein:

1. *"Apartment"* means one or more rooms occupying all or a part of a floor or floors in a building of one or more floors or stories and notwithstanding whether the apartment be intended for use or used as a residence, office, for the operation of any industry or business or for any other use not prohibited by law.

2. *"Building"* means and includes one or more buildings, whether attached to one or more buildings or unattached; provided, however, that if there is more than one building, all such buildings shall be described and included in the declaration,

or an amendment thereto, and comprise an integral part of a single horizontal property regime.

3. *"Co-owner"* means a person, corporation, or other legal entity capable of holding or owning any interest in real property who owns all or an interest in an apartment within the building.

4. *"Council of co-owners"* means all the co-owners of the building. The business and affairs of the council of co-owners may be conducted by organizing a corporation not for pecuniary profit of which the co-owners are members.

5. *"General common elements",* unless otherwise provided in the declaration or lawful amendments thereto, means and includes:

a. The land on which the building is erected.

b. The foundations, basements, floors, exterior walls of each apartment and of the building, ceilings and roofs, halls, lobbies, stairways, and entrances and exits or communication ways, elevators, garbage incinerators and in general all devices or installations existing for common use.

c. Compartments or installations of central services for public utilities, common heating and refrigeration units, reservoirs, water tanks and pumps servicing other than one apartment.

d. Premises for lodging of service personnel engaged in performing services other than services within a single apartment.

6. *"Limited common elements"* means and includes those common elements which are specified in or determined under the declaration to be reserved for the use of one or more apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like.

7. *"Majority of co-owners"* or *"percent of co-owners"* means the owners of more than one-half or owners of that percent of interest in the building irrespective of the total number of co-owners.

8. *"Property"* includes the land whether committed to the horizontal property regime in fee or as a leasehold interest, the building, all other improvements located thereon, and all easements, rights and appurtenances belonging thereto.

9. All pronouns used herein include the male, female and neuter genders and include the singular or plural numbers, as the case may be.

[C66, 71, 73, 75, 77, 79, 81, §499B.2]

499B.3 Recording of declaration to submit property to regime.

When the sole owner or all of the owners, or the sole lessee or all of the lessees of a lease desire to submit a parcel of real property upon which a building is located or to be constructed to the horizontal property regime established by this chapter, a declaration to that effect shall be executed and acknowledged by the sole owner or lessee or all of such owners or lessees and shall be recorded in the office of the county recorder of the county in which such property lies.

If the declaration is to convert an existing structure, the declarant shall file the declaration of the horizontal property regime with the city in which the regime is located or with the county if not located within a city at least sixty days before being recorded in the office of the county recorder to enable the city or county, as applicable, to establish that the converted structure meets appropriate building code requirements as provided in section 499B.20. However, if the city or county, as applicable, does not have a building code, the declarant shall file the declaration with the state building code commissioner instead of the applicable city or county at least sixty days before the recording of the declaration to enable the commissioner to establish that the converted structure meets the state building code.

[C66, 71, 73, 75, 77, 79, 81, §499B.3]
2000 Acts, ch 1142, §1, 5

499B.4 Contents of declaration.

The declaration provided for in section 499B.3 shall contain:

1. A description of the land.

2. A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed.

3. The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, an immediate common area to which it has access, and any other data necessary for its proper identification.

4. A description of the general common elements and facilities.

5. A description of the limited common elements and facilities, if any, stating to which apartments their use is reserved.

6. The fractional or percentage interest which each apartment bears to the entire horizontal property regime. The sum of such shall be one if expressed in fractions and one hundred if expressed in percentage.

7. The provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property.

8. Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter.

9. The method by which the declaration may be amended, consistent with the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.4]

499B.5 Contents of deeds of apartments.

Deeds of apartments shall include the following particulars:

1. Description of land as provided in section

499B.4, including the book, page and date of recording of the declaration.

2. The apartment number of the apartment in the declaration and any other data necessary for its proper identification.

3. The percentage of undivided interest appertaining to the apartment in the common areas and facilities.

4. Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.5]

499B.6 Copy of the floor plans to be filed.

There shall be attached to the declaration, at the time it is filed, a full and an exact copy of the plans of the building, which copy shall be entered of record along with the declaration. The plans shall show graphically all particulars of the building including, but not limited to, the dimensions, area and location of common elements affording access to each apartment. Other common elements, both limited and general, shall be shown graphically insofar as possible and shall be certified to by an engineer, architect, or land surveyor, either of which is registered or licensed to practice that profession in this state.

[C66, 71, 73, 75, 77, 79, 81, §499B.6; 82 Acts, ch 1068, §1]

499B.7 Interest in common elements — reference to them in instrument.

1. The fractional or percentage interest in the general common elements and the fractional or percentage interest in the limited common elements where such exist are hereby declared to be appurtenant to each of the separate apartments.

2. Any conveyance, encumbrance, lien, alienation or devise of an apartment under a horizontal property regime by any instrument which describes the land and apartment as set forth in section 499B.4, shall also convey, encumber, alienate, devise or be a lien upon the fractional or percentage interest appurtenant to each such apartment under section 499B.4, subsection 6, to the general common elements, and the respective share or percentage interest to limited common elements where applicable, whether such general common elements or limited common elements are described as in section 499B.4, subsections 4 and 5, by general reference only, or not at all.

[C66, 71, 73, 75, 77, 79, 81, §499B.7]

499B.8 Removal from provisions of this chapter.

1. All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.

2. Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common area and facilities.

[C66, 71, 73, 75, 77, 79, 81, §499B.8]

499B.9 Removal no bar to subsequent resubmission.

The removal provided for in section 499B.8 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.9]

499B.10 Individual apartments and interest in common elements are alienable.

When real property containing a building is committed to a horizontal property regime, each individual apartment located in the building and the interests in the general common elements and limited common elements if any, appurtenant thereto, shall constitute for all purposes a separate parcel of real property and shall be as completely and freely alienable as any separate parcel of real property is or may be under the laws of this state, except as limited by the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.10]

2000 Acts, ch 1142, §2, 5

499B.11 Real property tax and special assessments — levy on each apartment.

1. All real property taxes and special assessments shall be assessed and levied on each apartment and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as these apartments and appurtenances are separately owned, and not on the entire horizontal property regime. The fair market value determined for an apartment includes the value of its appurtenant share or percentage of the land, general common elements, and limited common elements.

2. Any exemption from taxes that may exist on real property or the ownership thereof shall not be denied by virtue of the registration of the property under the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §499B.11]

99 Acts, ch 187, §1, 2; 2000 Acts, ch 1142, §3; 2001 Acts, ch 116, §26

499B.12 Liens against apartments — removal from lien — effect of part payment.

1. Subsequent to recording the declaration provided for in section 499B.3, and while the property remains enrolled in a horizontal property regime, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against the individual apartment and the general common elements and limited common elements where applicable, appurtenant to such apartment, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

2. In the event a lien against two or more apartments becomes effective, the owners of the separate apartments may remove their apartment and the general common elements and limited common elements where applicable appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the fractions or percentages appearing on the declaration provided for in section 499B.4, subsection 6. Subsequent to any such payment, discharge or other satisfaction the individual apartment and the general common elements and limited common elements applicable appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce the lienor's rights against any apartment and the general common elements, limited common elements where applicable appurtenant thereto not so paid, satisfied or discharged.

[C66, 71, 73, 75, 77, 79, 81, §499B.12]

499B.13 Limitation upon availability of partition — exception as to limitation of partition by joint ownership.

1. The provisions of chapter 651, relating to partition of real property shall not be available to any owner of any interest in real property included within a regime established under this chapter as against any other owner or owners of any interest or interests in the same regime, so as to terminate the regime.

2. Nothing contained in the chapter shall be construed as a limitation on partition by joint owners of one or more apartments in a regime as to individual ownership of such apartment or apartments without terminating the regime, or as to ownership of such apartment or apartments and lands outside the limits of the regime.

[C66, 71, 73, 75, 77, 79, 81, §499B.13]

499B.14 Bylaws.

The administration of every property shall be governed by bylaws, a true copy of which shall be annexed to the declaration and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

[C66, 71, 73, 75, 77, 79, 81, §499B.14]

499B.15 Contents of bylaws.

The bylaws must provide for at least the following:

1. The form of administration, indicating whether this shall be in charge of an administrator or of a board of administration, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof.

2. Method of calling or summoning the co-owners to assemble; what percentage, if other than a majority of apartment owners, shall constitute a quorum; who is to preside over the meeting and who will keep the minute book wherein the resolutions shall be recorded.

3. Maintenance, repair and replacement of the common areas and facilities and payments therefor including the method of approving payment vouchers.

4. Manner of collecting from the apartment owners their share of the common expenses.

5. Designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities.

6. The percentage of votes required to amend the bylaws.

[C66, 71, 73, 75, 77, 79, 81, §499B.15]

499B.16 Disposition of property — destruction or damage.

If within thirty days of the date of the damage or destruction to all or part of the property, it is not determined by the council of co-owners to repair, reconstruct or rebuild, then and in that event:

1. The property shall be deemed to be owned in common by the apartment owners;

2. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

3. Any liens affecting any of the apartments shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

4. The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in a per-

centage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the apartment owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each apartment owner.

[C66, 71, 73, 75, 77, 79, 81, §499B.16]

499B.17 Lien against owner of unit.

All sums assessed by the council of co-owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (1) tax liens on the apartment in favor of any assessing unit and special district, and (2) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the council of co-owners or the representatives thereof, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In the event of any such foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The council of co-owners or the representatives thereof, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

[C66, 71, 73, 75, 77, 79, 81, §499B.17]

499B.18 Common expenses before foreclosure.

Where the mortgagee of a first mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the first mortgage, such acquirer of title, the acquirer's successors and assigns, shall not be liable for the share of the common expenses or assessments by the council of co-owners chargeable to such apartment which became due prior to the acquisition of title to such apartment by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners including such acquirer, the acquirer's successors and assigns.

[C66, 71, 73, 75, 77, 79, 81, §499B.18]

499B.19 Common expenses after voluntary conveyance.

In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the council of co-owners or its representatives, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

[C66, 71, 73, 75, 77, 79, 81, §499B.19]

499B.20 Conversions to meet building codes.

After April 25, 2000, an existing structure shall not be converted to a horizontal property regime unless the converted structure meets local city or county, as applicable, building code requirements in effect on the date of conversion or the state building code requirements if the local city or county does not have a building code. For purposes of this section, if the structure is located in a city, the city building code applies and if the structure is located in the unincorporated area of the county, the county building code applies.

2000 Acts, ch 1142, §4, 5

CHAPTER 500

COLLECTIVE MARKETING

500.1 Authorization.
500.2 Liquidated damages.
500.3 Applicability of chapter.

500.1 Authorization.

Persons engaged in the conduct of any agricultural, horticultural, dairy, livestock, mercantile, mining, or manufacturing business in the manner provided in section 500.3 may act together in associations, corporate or otherwise, for the purpose of

collectively producing, processing, preparing for market, handling, and marketing the products of their members. Such persons may organize and operate such associations, and such associations may make the necessary contracts and agreements to effect that purpose, any law to the contrary notwithstanding.

[C24, 27, 31, 35, 39, §**8513;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §500.1]

500.2 Liquidated damages.

Contracts and agreements entered into between associations and the members thereof may, where damages that may be sustained for the breach thereof are difficult of ascertainment, provide for such penalties as may be agreed upon, which penalties, if the parties thereto so agree, shall be construed as liquidated damages and be enforceable in the full amount thereof both at law and in equity.

[C24, 27, 31, 35, 39, §**8514;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §500.2]

500.3 Applicability of chapter.

The provisions of this chapter shall apply:

1. To corporations organized under the provisions of chapter 497.

2. To other incorporated associations or companies organized without capital stock, not for pecuniary profit and for the mutual benefit of their members.

For purposes of this subsection, *"not for pecuniary profit"* includes but is not necessarily limited to an incorporated association organized to assist its members to make profits for themselves as producers by the means authorized in section 500.1, but not to make income or profit for distribution to its members, directors, or officers, except as provided in chapter 504A.

[C24, 27, 31, 35, 39, §**8515;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §500.3; 81 Acts, ch 162, §1]

CHAPTER 501

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SUBCHAPTER I

GENERAL PROVISIONS

501.101 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Articles"* means the cooperative's articles of association.

2. *"Authorized person"* means a person who is one of the following:

a. A farming entity.

b. A person who owns at least one hundred fifty acres of agricultural land and receives as rent a share of the crops or the animals raised on the land if that person is a natural person or a general partnership as organized under chapter 486, Code 1999, or chapter 486A in which all partners are natural persons.

c. An employee of the cooperative who performs at least one thousand hours of service for the cooperative in each calendar year.

3. *"Board"* means the cooperative's board of directors.

4. *"Cooperative"* means a cooperative association organized under this chapter or converted to this chapter pursuant to section 501.601.

5. *"Farming"* means the same as defined in section 9H.1.

6. *"Farming entity"* means any one of the following:

a. A natural person or a fiduciary for a natural person who regularly participates in physical labor or operations management in a farming operation and files schedule F as part of the person's annual form 1040 or form 1041 filing with the United States internal revenue service.

b. A family farm corporation, family farm limited liability company, family farm limited partnership, or family trust, as defined in section 9H.1.

c. A general partnership as organized under chapter 486, Code 1999, or chapter 486A in which all the partners are natural persons actively engaged in farming as provided in section 9H.1.

7. *"Interest"* means a voting interest or other interest in a cooperative as described in the cooperative's articles of association.

8. *"Interest holder"* means a person who owns an interest in a cooperative, whether or not that interest has voting rights.

9. *"Member"* means a person who owns a voting interest in a cooperative.

10. *"Membership"* means the interest established by a member owning a voting interest.

11. *"Voting interest"* means an interest in a cooperative that has voting rights.

96 Acts, ch 1010, §3; 98 Acts, ch 1152, §1 – 6, 69; 99 Acts, ch 96, §40, 41

501.102 Purposes and powers.

1. A cooperative organized under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles.

2. Unless its articles provide otherwise, a cooperative has perpetual duration and succession in its cooperative name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, but not limited to, all of the following:

a. Sue and be sued, complain, and defend in its name.

b. Have a seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

c. Make and amend bylaws, not inconsistent with its articles of association or with the laws of this state, for managing the business and regulating the affairs of the cooperative.

d. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

e. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

f. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.

g. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other interests of the cooperative, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

h. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

i. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

j. Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

k. Elect directors and appoint officers, employees, and agents of the cooperative, define their duties, fix their compensation, and lend them money and credit.

l. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

m. Make donations for the public welfare or for charitable, scientific, or educational purposes.

n. Transact any lawful business that will aid governmental policy.

o. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the cooperative.

96 Acts, ch 1010, §4; 98 Acts, ch 1152, §7, 69

501.103 Permissible members — limited farming activities.

1. Notwithstanding section 9H.4, any person or entity, subject to the limitations set forth in section 501.305, and subject to the cooperative's articles and bylaws, is permitted to own interests, including voting interests, in a cooperative.

2. Notwithstanding section 9H.4, a cooperative may, directly or indirectly, acquire or otherwise obtain or lease agricultural land in this state,

for as long as the cooperative continues to meet the following requirements:

a. Farming entities own sixty percent of the interests and are eligible to cast sixty percent of the votes at member meetings.

b. Authorized persons own at least seventy-five percent of the interests and are eligible to cast at least seventy-five percent of the votes at member meetings.

c. The cooperative does not, either directly or indirectly, acquire or otherwise obtain or lease agricultural land, if the total agricultural land either directly or indirectly owned or leased by the cooperative would then exceed six hundred forty acres.

3. A cooperative that claims that it is exempt from the restrictions of section 9H.4 pursuant to subsection 2 shall file an annual report with the secretary of state on or before March 31 of each year on forms supplied by the secretary of state. The report shall be signed by the president or the vice president of the cooperative and shall contain the following:

a. The cooperative's name and address.

b. A certification that the cooperative meets both of the requirements of subsection 2.

c. The number of acres of agricultural land owned, leased, or held by the cooperative, including the following:

(1) The total number of acres in the state.

(2) The number of acres in each county identified by county name.

(3) The number of acres owned.

(4) The number of acres leased.

(5) The number of acres held other than by ownership or lease.

(6) The number of acres used for the production of row crops.

4. The president or the vice president of the cooperative who falsifies a report is guilty of perjury as provided in section 720.2.

5. In the event of a transfer of an interest in a cooperative by operation of law as a result of death, divorce, bankruptcy, or pursuant to a security interest, the cooperative may disregard the transfer for purposes of determining compliance with subsection 2 for a period of two years after the transfer.

96 Acts, ch 1010, §5; 97 Acts, ch 171, §34; 98 Acts, ch 1152, §8, 69

Suspension of filing requirement, §10B.4A

501.104 Name.

The name of a cooperative organized under this chapter must contain the word *"cooperative"*, *"coop"*, or *"co-op"*, and the name must be distinguishable from the names of cooperatives organized under this chapter or another chapter, or foreign cooperatives authorized to do business in this state.

96 Acts, ch 1010, §6

501.105 Execution and filing of documents.

1. The secretary of state may prescribe and furnish on request forms for the proper administration of this chapter. If the secretary of state has prescribed a mandatory form for a document, then that form must be on the prescribed form.

2. Articles must be signed by all of the organizers; and all other documents filed with the secretary of state must be signed by one of the cooperative's officers. The printed name and capacity of each signatory must appear in proximity to the signatory's signature. The secretary of state may accept a document containing a copy of the signature. A document is not required to contain a seal, an acknowledgment, or a verification.

3. The secretary of state shall collect the following fees:

a. Twenty dollars upon the filing of original or amended articles or articles of merger.

b. Five dollars upon the filing of all other required documents.

c. Five dollars per document and fifty cents per page for copying and certifying a document.

4. A document is effective at the later of the following times:

a. The time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. The delayed effective time and date specified in the document. If a delayed effective date but no time is specified in the document, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

5. A document filed under this section may be corrected if the document contains an incorrect statement or the execution of the document was defective. A document is corrected by filing with the secretary of state articles of correction which describe the document to be corrected, including its filing date or a copy of the document. The articles must specify and correct the incorrect statement or defective execution. Articles of correction are effective on the effective date of the document it corrects except as to persons relying on the original document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

6. The secretary of state shall forward for recording a copy of each original, amended, and restated articles, articles of merger, articles of consolidation, and articles of dissolution to the recorder of the county in which the cooperative has its principal place of business, or in the case of a merger or consolidation, to the recorders of each of the counties in which the merging or consolidating cooperatives have their principal offices.

96 Acts, ch 1010, §7; 98 Acts, ch 1152, §9, 69

501.106 Registered office and registered agent.

1. A cooperative must continuously maintain in this state a registered office that may be the same as any of its places of business, and a registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

2. A cooperative may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the cooperative.

b. The street address of its current registered office.

c. If the street address of the current registered office is to be changed, the street address of the new registered office.

d. The name of its current registered agent.

e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

3. *a.* If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any cooperative for which the person is the registered agent by notifying the cooperative in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing, a statement that provides for a registered office and a registered agent as provided in this section, and which recites that the cooperative has been notified of the change.

b. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in paragraph *"a"* for each cooperative, or a single statement for all cooperatives named in the notice, except that it need be signed only by the registered agent or agents or be responsive to subsection 2, paragraph *"e"*. The statement must recite that a copy of the statement has been mailed to each cooperative named in the notice.

4. A cooperative may also change its registered office or registered agent in its biennial report.

5. *a.* A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the cooperative at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the cooperative, including the date the copies were sent.

b. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

6. *a.* A cooperative's registered agent is the cooperative's agent for service of process, notice, or demand required or permitted by law to be served on the cooperative.

b. If a cooperative has no registered agent, or the agent cannot with reasonable diligence be served, the cooperative may be served by registered or certified mail, return receipt requested, addressed to the secretary of the cooperative at its principal office. Service is perfected under this paragraph at the earliest of any of the following:

(1) The date that the cooperative receives the mail.

(2) The date shown on the return receipt, if signed on behalf of the cooperative.

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

c. A cooperative may be served pursuant to this section or as provided in other provisions of this chapter, unless the manner of service is otherwise specifically provided for by statute.

96 Acts, ch 1010, §8; 98 Acts, ch 1152, §10, 11, 69; 2000 Acts, ch 1022, §12

501.107 Records and reports. Repealed by 98 Acts, ch 1152, § 68, 69. See § 501.701 et seq.

501.108 Quo warranto.

The attorney general alone shall have the right to inquire into whether a cooperative has the right to exist or continue under this chapter. If the secretary of state is informed that a cooperative is not functioning as a cooperative, the secretary of state shall notify the attorney general. If the attorney general finds reasonable cause that the cooperative is not functioning as provided under this chapter, the attorney general shall bring action to wind up the affairs of the cooperative.

96 Acts, ch 1010, §10

SUBCHAPTER II

ARTICLES AND BYLAWS

501.201 Cooperative formation.

Three or more individuals may organize a cooperative under this chapter by executing and delivering articles to the secretary of state.

96 Acts, ch 1010, §11

501.202 Documents of organization.

1. The initial articles must set forth all of the following:

a. The name, address, and occupation of each organizer.

b. The names and addresses of the initial directors.

c. The street address of the cooperative's initial registered office and the name of its initial registered agent at that office.

2. The articles must set forth all of the following:

a. The name that satisfies the requirements of section 501.104.

b. A statement that it is organized under this chapter.

c. Its duration, which may be perpetual.

d. The classes of interests and the authorized number of interests of each class.

e. The quorum required for each member meeting.

f. The member voting rules.

3. The articles may set forth any other provision consistent with law.

96 Acts, ch 1010, §12; 98 Acts, ch 1152, §12, 13, 69

501.203 Amended and restated documents of organization.

1. A cooperative may amend its articles at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles.

2. A cooperative may restate its articles at any time. A restatement of the articles must contain the information required by section 501.202, subsection 2, and may set forth any other provision consistent with law.

3. If the board recommends the amendment or restatement to the members, the amendment or restatement must be adopted by the members by a vote of two-thirds of the votes cast.

4. If the board does not recommend the amendment or restatement to the members, then the amendment or restatement must be adopted by the members by a vote of two-thirds of the votes cast on a ballot in which a majority of all votes are cast.

96 Acts, ch 1010, §13

501.204 Bylaws.

The board may adopt or amend the cooperative's bylaws by a vote of three-fourths of the board. The members may adopt or amend the cooperative's bylaws by a vote of three-fourths of the votes cast on a ballot in which a majority of all votes are cast. A bylaw provision adopted by the members shall not be amended or repealed by the directors.

96 Acts, ch 1010, §14

SUBCHAPTER III

MEMBERS

501.301 Liability of members.

A member is not personally liable for the acts or debts of the cooperative.

96 Acts, ch 1010, §15

501.302 Calling and notice of meetings.

1. A cooperative shall hold an annual member meeting at a time and place fixed in accordance with the bylaws.

2. The board may call special member meetings, and the board shall call a special member meeting upon the written demand of twenty percent of the members.

3. A cooperative shall give each member at least ten days' advance notice of the time, place, and the issues to be considered at each member meeting. This notice may be given in person or by mail to the last known address of the member, or the notice requirement may be met by the member waiving the notice.

4. The record date for determining the members entitled to notice of and to vote at a member meeting is the close of business on the day before the first notices for the meeting are delivered or mailed.

96 Acts, ch 1010, §16

501.303 Conduct of meetings.

1. Only those issues included in the notice of a member meeting may be considered at that meeting.

2. A member may vote at a member meeting in person or by signed absentee ballot that specifies the issue and the member's vote on that issue. If the board makes available an absentee ballot form, then that form must be used to cast an absentee ballot on that issue.

96 Acts, ch 1010, §17

501.304 Member information.

1. Within ten days from receiving a demand of a member, the cooperative shall produce and furnish the member with the names and addresses of all members of the cooperative.

2. The board shall adopt a policy which permits the distribution of information to all of the members upon the request of a member when the

purpose of the request concerns directly the action of the board. Upon receipt of the information and the request of a member, the board shall distribute the information to all of the members. The cooperative may charge the requesting member the costs incurred by the cooperative in distributing the information.

96 Acts, ch 1010, §18

501.305 Multiple membership prohibited.

A person who is a member owning fifteen percent or more of a cooperative shall not be eligible to be a member of any other cooperative organized under this chapter. A person violating this section is subject to a civil penalty of not more than one hundred dollars. The person's membership in a cooperative shall terminate if the person's acquisition of an interest in that cooperative caused the person to be in violation of this section.

96 Acts, ch 1010, §19

501.306 Number of votes.

A person who is a member shall not own more than one membership. The person shall be entitled to cast not more than one vote regarding any matter in which a vote is conducted, including any matter subject to a vote during a cooperative meeting.

96 Acts, ch 1010, §20; 98 Acts, ch 1152, §14, 69

501.307 Financial information.

The cooperative shall make available financial information to its membership by doing either of the following:

1. Preparing and providing to its members a financial statement for the cooperative's last fiscal year.

a. The financial statement must be based upon an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, a qualification in an opinion is valid, if it is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited is invalid for purposes of this section.

b. The financial statement must disclose the assets, liabilities, and net worth of the cooperative. The financial statement must be prepared according to generally accepted accounting principles. Assets must be shown at original cost less depreciation, or based upon a valuation in accordance with a competent appraisal. Unpriced contracts for agricultural commodities or products must be shown as a liability and valued at the applicable current market price of the agricultural commodities or products as of the date the financial statement is prepared.

2. Honoring a demand to provide access at all reasonable hours at its offices to the books, records, accounts, papers, documents, and computer programs or other recordings relating to the property, assets, business, and financial affairs of the cooperative. The demand shall be in writing and signed by at least fifty percent of all the members of the cooperative. The cooperative shall honor the demand within one day from its receipt. Upon receipt of the demand, the cooperative must provide access to one or more persons selected by the fifty percent of the members to conduct the examination.

96 Acts, ch 1010, §21

SUBCHAPTER IV

DIRECTORS, OFFICERS, AND AGENTS

PART 1

GENERAL PROVISIONS

501.401 Number and election.

1. The affairs of a cooperative shall be managed by a board of not less than three directors.

2. The members shall elect the directors as prescribed in the articles or bylaws.

3. Each director shall serve the term prescribed in the articles or bylaws. The terms may be staggered.

96 Acts, ch 1010, §22

501.402 Vacancies.

1. A director may resign at any time by delivering written notice to the board chairperson or the board secretary. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

2. The members may remove one or more directors with or without cause unless the articles provide that directors may be removed only for cause.

3. The articles may authorize the board to remove a director for a cause specified in the articles.

4. Unless the articles or bylaws provide otherwise, the board shall fill each vacancy until the members elect a director to fill the vacancy at the next scheduled meeting of the members. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

96 Acts, ch 1010, §23

501.403 Board action.

1. The board may hold regular or special meetings in or out of this state. A quorum of the board consists of a majority of the directors.

2. Unless the articles or bylaws provide otherwise:

a. Regular board meetings may be held without notice of the date, time, place, or purpose of the

meeting.

b. Special board meetings must be preceded by at least two days' notice of the date, time, and place of the meeting; but the notice need not describe the purpose of the special meeting.

c. The board may create one or more committees composed of directors, and specify the duties and authority of each committee.

d. The board may permit any number of directors to participate in a regular or special meeting by, or conduct the meeting through, the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting.

e. Action required or permitted by this chapter to be taken at a board meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the cooperative's records reflecting the action taken. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

3. A director may waive any notice required by this chapter, the articles, or the bylaws before or after the date and time stated in the notice. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or records of the cooperative. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

96 Acts, ch 1010, §24; 98 Acts, ch 1152, §15, 16, 69

501.404 Director conflict of interest.

1. A conflict of interest transaction is a transaction with the cooperative in which a director has a direct or indirect interest. A director shall be deemed to have a conflict of interest in a matter concerning a transaction between the cooperative and another entity, if the director owns a twenty-five percent or greater ownership interest in the other entity. A conflict of interest transaction is not voidable by the cooperative solely because of the director's interest in the transaction if any one of the following is true:

a. The material facts of the transaction and the director's interest were disclosed or known to the board or a board committee and the board or committee authorized, approved, or ratified the transaction. For purposes of this paragraph, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this paragraph. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under this paragraph, if the transaction is otherwise authorized, approved, or ratified as provided in this paragraph.

b. The material facts of the transaction and the director's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction. For purposes of this paragraph, a conflict of interest transaction is authorized, approved, or ratified if it receives a majority of the votes entitled to be counted under this paragraph. Voting interests owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and voting interests owned by or voted under the control of an entity described in subsection 2, paragraph *"a"*, shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under this paragraph. The vote of those voting interests, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the votes, whether or not the members are present, that are entitled to be counted in a vote on the transaction under this paragraph constitutes a quorum for the purpose of taking action under this paragraph.

c. The transaction was fair to the cooperative.

2. For purposes of this section, a director of the cooperative has an indirect interest in a transaction if either:

a. Another entity in which the director has a material financial interest is a party to the transaction.

b. Another entity of which the director is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board.

96 Acts, ch 1010, §25; 97 Acts, ch 23, §57; 98 Acts, ch 1152, §17, 69

501.405 Officers.

A cooperative shall have officers described in its bylaws or appointed by the board in accordance with the bylaws. The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the cooperative. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the

extent consistent with the bylaws, the duties prescribed by the board. The same individual may simultaneously hold more than one office.

96 Acts, ch 1010, §26

501.406 Standards of conduct.

1. A director or officer shall discharge the director's or officer's duties in conformity with all of the following:

a. In good faith.

b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

c. In a manner the director or officer reasonably believes to be in the best interests of the cooperative.

2. In discharging duties by a director or officer, the director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

a. One or more officers or employees of the cooperative whom the director or officer reasonably believes to be reliable and competent in the matters presented.

b. A person, including but not limited to a legal counsel or public accountant, regarding a matter that the director or officer reasonably believes is within the person's professional or expert competence.

c. A committee of the board of which the director or officer is not a member if the director or officer reasonably believes the committee merits confidence.

3. A director or officer is not acting in good faith if the director or officer has knowledge concerning a matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. A director or officer is not liable for any action taken as a director or officer, or the failure to take action, if the director or officer performs the duties of the office in compliance with this section or if, and to the extent that, liability for the action or failure to act has been limited by the articles pursuant to section 501.407.

96 Acts, ch 1010, §27

501.407 Personal liability.

The articles may contain a provision eliminating or limiting the personal liability of a director, officer, or interest holder of the cooperative for monetary damages for breach of a fiduciary duty as a director, officer, or interest holder, provided that the provision does not eliminate or limit liability for any of the following:

1. A breach of the duty of loyalty to the cooperative or its interest holders.

2. An act or omission not in good faith or which involves intentional misconduct or a knowing violation of law.

3. A transaction from which the director, officer, or interest holder derives an improper personal benefit.

4. An act or omission occurring prior to the date when the provision in the articles becomes effective.

96 Acts, ch 1010, §28; 98 Acts, ch 1152, §18, 19, 69

501.408 Indemnification. Repealed by 98 Acts, ch 1152, § 68, 69. See § 501.411 et seq.

501.409 and 501.410 Reserved.

PART 2

INDEMNIFICATION

501.411 Definitions.

As used in this part, unless the context otherwise requires:

1. *"Cooperative"* includes any domestic or foreign predecessor entity of a cooperative in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

2. *"Director"* means an individual who is or was a director of a cooperative or an individual who, while a director of a cooperative, is or was serving at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the cooperative's request if the director's duties to the cooperative also impose duties on, or otherwise involve services by, that director to the plan or to participants in or beneficiaries of the plan. *"Director"* includes, unless the context requires otherwise, the estate or personal representative of a director.

3. *"Expenses"* includes counsel fees.

4. *"Liability"* means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

5. *"Official capacity"* means:

a. When used with respect to a director, the office of director in a cooperative.

b. When used with respect to an individual other than a director, as contemplated in section 501.417, the office in a cooperative held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the cooperative.

"Official capacity" does not include service for any other foreign or domestic cooperative or any corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise.

6. *"Party"* includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

7. *"Proceeding"* means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

98 Acts, ch 1152, §20, 69

501.412 Authority to indemnify.

1. Except as provided in subsection 4, a cooperative may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if all of the following apply:

a. The individual acted in good faith.

b. The individual reasonably believed either of the following:

(1) In the case of conduct in the individual's official capacity with the cooperative, that the individual's conduct was in the cooperative's best interests.

(2) In all other cases, that the individual's conduct was at least not opposed to the cooperative's best interests.

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1, paragraph *"b"*, subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

4. A cooperative shall not indemnify a director under this section in either of the following circumstances:

a. In connection with a proceeding by or in the right of the cooperative in which the director was adjudged liable to the cooperative.

b. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

5. Indemnification permitted under this section in connection with a proceeding by or in the right of the cooperative is limited to reasonable expenses incurred in connection with the proceeding.

98 Acts, ch 1152, §21, 69

501.413 Mandatory indemnification.

Unless limited by its articles of association, a cooperative shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the cooperative against reasonable expenses incurred by the director in connection with the proceeding.

98 Acts, ch 1152, §22, 69

501.414 Advance for expenses.

1. A cooperative may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if any of the following applies:

a. The director furnishes the cooperative a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 501.412.

b. The director furnishes the cooperative a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct described in section 501.412.

c. A determination is made pursuant to section 501.416 that the facts then known to those making the determination would not preclude indemnification under this part.

2. The undertaking required by subsection 1, paragraph *"b"*, must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

3. Determinations and authorizations of payments under this section shall be made in the manner specified in section 501.416.

98 Acts, ch 1152, §23, 69

501.415 Court-ordered indemnification.

Unless a cooperative's articles of association provide otherwise, a director of the cooperative who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines either of the following:

1. The director is entitled to mandatory indemnification under section 501.413, in which case the court shall also order the cooperative to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 501.412 or was adjudged liable as described in section 501.412, subsection 4, but if the director was adjudged so liable the director's indemnification is

limited to reasonable expenses incurred.
98 Acts, ch 1152, §24, 69

501.416 Determination and authorization of indemnification.

1. A cooperative shall not indemnify a director under section 501.412 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 501.412.

2. The determination shall be made by any of the following:

a. By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

b. If a quorum cannot be obtained under paragraph *"a"*, by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding.

c. By special legal counsel.

(1) The special legal counsel shall be selected by the board of directors or its committee in the manner prescribed in paragraph *"a"* or *"b"*.

(2) If a quorum of the board of directors cannot be obtained under paragraph *"a"* and a committee cannot be designated under paragraph *"b"*, the special legal counsel shall be selected by majority vote of the full board of directors, in which selection directors who are parties may participate.

d. By the members, but voting interests owned by or voted under the control of directors who are at the time parties to the proceeding shall not be voted on the determination.

3. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection 2, paragraph *"c"*, to select counsel.
98 Acts, ch 1152, §25, 69

501.417 Indemnification of officers, employees, and agents.

Unless a cooperative's articles of association provide otherwise, all of the following apply:

1. An officer of the cooperative who is not a director is entitled to mandatory indemnification under section 501.413, and is entitled to apply for court-ordered indemnification under section 501.415, in each case to the same extent as a director.

2. The cooperative may indemnify and advance expenses under this part to an officer, employee, or agent of the cooperative who is not a director to the same extent as to a director.

3. A cooperative may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent consistent with law that may be provided by its articles of association, bylaws, general or specific action of its board of directors, or contract.
98 Acts, ch 1152, §26, 69

501.418 Insurance.

A cooperative may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the cooperative, or who, while a director, officer, employee, or agent of the cooperative, is or was serving at the request of the cooperative as a director, officer, partner, trustee, employee, or agent of another foreign or domestic cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the cooperative would have power to indemnify that individual against the same liability under section 501.412 or 501.413.
98 Acts, ch 1152, §27, 69

501.419 Application of this part.

Except as limited in section 501.412, subsection 4, paragraph *"a"*, and subsection 5 with respect to proceedings by or in the right of the cooperative, the indemnification and advancement of expenses provided by, or granted pursuant to, sections 501.411 through 501.418 are not exclusive of any other rights to which persons seeking indemnification or advancement of expenses are entitled under a provision in the articles of association or bylaws, agreements, vote of the members or disinterested directors, or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding the office. However, such provisions, agreements, votes, or other actions shall not provide indemnification for a breach of a director's duty of loyalty to the cooperative or its interest holders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person seeking indemnification derives an improper personal benefit.
98 Acts, ch 1152, §28, 69

SUBCHAPTER V

CAPITAL STRUCTURE

501.501 Issuance and transfer of interests.

1. A cooperative may issue the number of interests of each class authorized by its articles. A cooperative may issue fractional interests. Inter-

ests may be represented by certificates or by entry on the cooperative's interest record books.

2. A member shall not sell or otherwise transfer voting interests to any person. A member may be restricted or limited from selling or otherwise transferring any other class of interests of the cooperative as provided by the cooperative's articles of association or bylaws or an agreement executed between the cooperative and the member.

3. A cooperative may acquire its own interests, and interests so acquired constitute authorized but unissued interests.

96 Acts, ch 1010, §30; 97 Acts, ch 16, §1; 98 Acts, ch 1152, §29, 69

501.502 Termination of membership.

1. A membership shall terminate upon the death of the member.

2. The articles or bylaws may authorize the board to terminate a membership for any of the following reasons:

a. The member has attempted to transfer any interest to a person who is not a member and has not been approved for membership.

b. The member has failed to meet the member's commitment to provide products to the cooperative or to buy the cooperative's products.

c. The member is no longer an authorized person.

d. The member is no longer a farming entity.

3. A member's right to vote at member meetings shall cease upon termination of the membership.

4. The cooperative shall redeem, without interest, the voting interest of a terminated member within one year after the termination of the membership for the fair market value of the interest. If the amount originally paid by the member for the voting interest was less than ten percent of the total amount the member paid for all classes of interests, the cooperative may redeem the voting interest for its issue price if the cooperative's articles of association grant the cooperative this authority.

5. The cooperative shall redeem, without interest, all of the terminated member's allocated patronage refunds and preferred interests originally issued as allocated patronage refunds for the issue price as follows:

a. If a terminated member's current equity is less than two percent of the cooperative's total members' equity, the cooperative shall either redeem the terminated member's equity within one year after the termination of the membership or redeem the terminated member's equity in annual amounts of not less than twenty percent of the total amount provided that the entire amount must be redeemed within five years after the termination of the membership.

b. If a terminated member's current equity equals or exceeds two percent of the cooperative's total members' equity, the cooperative shall redeem the terminated member's equity in annual amounts of not less than fifteen percent of the total amount provided that the entire amount must be redeemed within seven years after the termination of the membership.

96 Acts, ch 1010, §31; 97 Acts, ch 16, §2; 98 Acts, ch 1152, §30 – 32, 69

501.503 Distribution of net savings.

The board shall annually dispose of the cooperative's earnings in excess of its operating expenses as follows:

1. If the articles authorize the payment of distributions on a class of interests, then the directors may declare a distribution pursuant to the articles. Distributions shall not exceed eight percent of the value of the interest in each fiscal year. The members may control the amount that is allocated under this subsection.

2. To provide a reasonable reserve for depreciation, obsolescence, bad debts, or contingent losses or expenses. The members may control the amount that is allocated under this subsection.

3. To increase the cooperative's retained savings to the extent determined by the board to be necessary based on its evaluation of the future needs and the competitive position of the cooperative.

4. The cooperative shall have an unconditional binding obligation to distribute to the members all remaining net savings as determined under the United States Internal Revenue Code. These net savings shall be allocated to each member in proportion to the business the member did with the cooperative during the preceding fiscal year. The net savings may be separately calculated for two or more categories of business, and allocated to the members on the basis of business done within each of these categories. Net savings shall be distributed in the form of cash or interests, or a combination of cash and interests, as determined by the board.

96 Acts, ch 1010, §32; 98 Acts, ch 1152, §33, 69

SUBCHAPTER VI

CONVERSION, SALE, MERGER, AND CONSOLIDATION

PART 1

CONVERSION OF EXISTING ASSOCIATIONS AND SALE OF ASSETS

501.601 Existing associations.

1. As used in this section:

a. *"Dissenting member"* means a voting member who votes in opposition to the plan of conversion and who makes a demand for payment as provided in this section not later than the deadline for members to cast ballots on the vote to approve the plan of conversion.

b. *"Issue price"* means the amount paid for an interest in the association or the value stated in a notice of allocation of patronage refunds.

2. An association organized under chapter 497, 498, or 499 may adopt this chapter pursuant to the following procedures:

a. The board must adopt a plan of conversion that specifies the changes in the articles to comply with this chapter, the effect of the conversion on the association's outstanding members' equity, and the option or options available to the equity holders who do not want to continue their investment in the association.

b. The members must approve the plan of conversion by the vote of two-thirds of the votes cast on a ballot in which a majority of all votes are cast.

3. *a.* The cooperative shall redeem all of the members' equity held by dissenting members at its issue price within one year after the conversion to this chapter is effective.

b. An equity holder who is not a voting member shall have the same rights as a dissenting member if the equity holder makes a demand for payment pursuant to paragraph *"a"* not later than the deadline for members to cast ballots on the vote to approve the plan of conversion.

c. The association shall notify all equity holders of their rights pursuant to paragraph *"a"* at the same time the association notifies the members of the member meeting to vote on the plan of conversion.

96 Acts, ch 1010, §33

501.602 Merger and consolidation. Repealed by 98 Acts, ch 1152, § 68, 69. See § 501.611 et seq.

501.603 Sale of assets.

1. A cooperative may, on the terms and conditions and for the consideration determined by the board, mortgage, pledge, or otherwise encumber any or all of its property.

2. A cooperative may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, on the terms and conditions and for the consideration determined by the board, which consideration may include the interests of another cooperative, if the board recommends the proposed transaction to the members, and the members approve it by the vote of two-thirds of the votes cast on a ballot in which a majority of all votes are cast. The board may condition its submission of the proposed transaction on any basis.

96 Acts, ch 1010, §35; 98 Acts, ch 1152, §34, 69

501.604 Dissolution. Repealed by 98 Acts, ch 1152, § 68, 69. See § 501.801 et seq.

501.605 through 501.610 Reserved.

PART 2

MERGER AND CONSOLIDATION

501.611 Definitions.

When used in this part, unless the context otherwise requires:

1. *"Consolidation"* means the uniting of two or more cooperatives organized under this chapter into one cooperative organized under this chapter, in such manner that a new cooperative is formed, and the new cooperative absorbs the others, which cease to exist as separate entities.

2. *"Dissenting member"* means a voting member who votes in opposition to the plan of merger or consolidation and who makes a demand for payment of the fair value under section 501.615.

3. *"Fair value"* means the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell.

4. *"Issue price"* means the amount paid for an interest in the old cooperative or the amount stated in a notice of allocation of patronage distributions.

5. *"Merger"* means the uniting of two or more cooperatives organized under this chapter into one cooperative organized under this chapter, in such manner that one of the merging associations continues to exist and absorbs the others, which cease to exist as entities. *"Merger"* does not include the acquisition, by purchase or otherwise, of the assets of one cooperative by another, unless the acquisition only becomes effective by the filing of articles of merger by the cooperatives and the issuance of a certificate of merger pursuant to sections 501.617 and 501.618.

6. *"New cooperative"* is the cooperative resulting from the consolidation of two or more cooperatives organized under this chapter.

7. *"Old cooperative"* means the cooperative in which the member owns or owned a membership prior to merger or consolidation.

8. *"Surviving cooperative"* is the cooperative resulting from the merger of two or more cooperatives organized under this chapter.

98 Acts, ch 1152, §35, 69

501.612 Merger.

Any two or more cooperatives may merge into one cooperative in the manner provided in this section. The board of directors of each cooperative shall, by resolution adopted by a majority vote of all members of each board, approve a plan of merger which shall set forth all of the following:

1. The names of the cooperatives proposing to merge and the name of the surviving cooperative.

2. The terms and conditions of the proposed merger.

3. A statement of any changes in the articles of association of the surviving cooperative.

4. Other provisions deemed necessary or desirable.

98 Acts, ch 1152, §36, 69

501.613 Consolidation.

Any two or more cooperatives may be consolidated into a new cooperative as provided in this section. The board of directors of each cooperative shall, by resolution adopted by a majority vote of all members of each board, approve a plan of consolidation setting forth:

1. The names of the cooperatives proposing to consolidate and the name of the new cooperative.
2. The terms and conditions of the proposed consolidation.
3. With respect to the new cooperative, all of the statements required to be set forth in articles of association for cooperatives.
4. Other provisions deemed necessary or desirable.

98 Acts, ch 1152, §37, 69

501.614 Vote of members.

1. The board of directors of a cooperative, upon approving a plan of merger or consolidation, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. Written notice shall be given not less than twenty days prior to the meeting, either personally or by mail, to each voting member of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.
2. At the meeting, a ballot of the members who are entitled to vote in the affairs of the association shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved if two-thirds of the members vote affirmatively on a ballot in which a majority of all voting members participate. Voting may be by mail ballot notwithstanding any contrary provision in the articles of association or bylaws.

98 Acts, ch 1152, §38, 69

501.615 Objection of members — purchase of interests upon demand.

1. If a member of a cooperative which is a party to a merger or consolidation files with the cooperative, prior to or at the meeting of members at which the plan is submitted to a vote, a written objection to the plan of merger or consolidation, and votes in opposition to the plan, and the member, within twenty days after the merger or consolidation is approved by the other members, makes written demand on the surviving or new cooperative for payment of the fair value of that member's interest as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new cooperative shall pay to the member, upon surrender of that person's certificate of membership or interests in the cooperative, the fair value of that person's interest as provided in section 501.616. A member who fails to make demand within the twenty-day period is conclusively presumed to have consented to the merger or consolidation and is bound by its terms.
2. In the event that a dissenting member does business with the surviving or new cooperative before payment has been made for that person's membership, the dissenting member is deemed to have consented to the merger or consolidation and to have waived all further rights as a dissenting member.

98 Acts, ch 1152, §39, 69

501.616 Value determined.

1. Within twenty days after the merger or consolidation is effected, the surviving or new cooperative shall make a written offer to each dissenting member to pay a specified sum deemed by the surviving or new cooperative to be the fair value of that dissenting member's interest in the old cooperative. This offer shall be accompanied by a balance sheet of the old cooperative as of the latest available date, a profit and loss statement of the old cooperative for the twelve-month period ending on the date of the balance sheet, and a list of the dissenting member's interests in the old cooperative. If the dissenting member does not agree that the sum stated in the notice represents the fair value of the member's interest, then the member may file a written objection with the surviving or new cooperative within twenty days after receiving the notice. A dissenting member who fails to file the objection within the twenty-day period is conclusively presumed to have consented to the fair value stated in the notice.
2. If the surviving or new cooperative receives any objections to fair values, then within ninety days after the merger or consolidation is effected, the surviving or new cooperative shall file a petition in district court asking for a finding and determination of the fair value of each type of equity. The action shall be tried as an equitable action.
3. The fair value of a dissenting member's interest in the old cooperative shall be determined as of the day preceding the merger or consolidation by taking the lesser of either the issue price of the dissenting member's membership, deferred patronage, and any other interests in the cooperative, or the amount determined by subtracting the old cooperative's debts from the fair market value of the old cooperative's assets, dividing the remainder by the total issue price of all memberships, deferred patronage, and all other interests, and then multiplying the quotient from this division by the total issue price of a dissenting member's membership, deferred patronage, and other interests.
4. The surviving or new cooperative shall pay to each dissenting member in cash within sixty days after the merger or consolidation the amount paid in cash by the dissenting member for that

member's interest in the old cooperative. The surviving or new cooperative shall pay the remainder of each dissenting member's fair value in ten annual equal payments. The final payment must be made not later than fifteen years after the merger or consolidation. The value of the deferred patronage or interests issued to evidence deferred patronage shall be considered a liability of the surviving or new cooperative as reflected in the accounts of the surviving or new cooperative until the value of the deferred patronage or interests issued to evidence deferred patronage is paid in full to the dissenting member. A dissenting member who is a natural person who dies before receiving the fair value shall have all of the person's fair value paid with the same priority as if the person was a member at the time of death.

98 Acts, ch 1152, §40, 69

501.617 Articles of merger or consolidation.

Upon approval, articles of merger or articles of consolidation shall be executed by each cooperative as provided in section 501.105. The articles must include the following:

1. The plan of merger or the plan of consolidation.
2. As to each cooperative, the number of members.
3. As to each cooperative, the number of members who voted for and against the plan at the meeting called for that purpose.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing.

The secretary of state, upon the filing of articles of merger or articles of consolidation, shall issue a certificate of merger or a certificate of consolidation and send the certificate to the surviving or new cooperative, or to its representative.

98 Acts, ch 1152, §41, 69

501.618 Effective date — effect.

A merger or consolidation shall become effective upon the date that the certificate of merger or the certificate of consolidation is issued by the secretary of state, or the effective date specified in the articles of merger or articles of consolidation, whichever is later.

When a merger or consolidation has become effective:

1. The several cooperatives which are parties to the plan of merger or consolidation shall be a single cooperative, which, in the case of a merger, shall be that cooperative designated in the plan of merger as the surviving cooperative, and, in the case of consolidation, shall be that cooperative designated in the plan of consolidation as the new cooperative.
2. The separate existence of all cooperatives which are parties to the plan of merger or consolidation, except the surviving or new cooperative, shall cease.
3. The surviving or new cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under this chapter.
4. The surviving or new cooperative shall possess all the rights, privileges, immunities, and franchises, public as well as private, of each of the merging or consolidating cooperatives.
5. All property, real, personal, and mixed, and all debts due on whatever account, including all choses in action, and all and every other interest, of or belonging to or due to each of the cooperatives merged or consolidated, shall be transferred to and vested in the surviving or new cooperative without further act or deed. The title to any real estate, or any interest in real estate vested in any of the cooperatives merged or consolidated, shall not revert or be in any way impaired by reason of the merger or consolidation.
6. A surviving or new cooperative shall be responsible and liable for all obligations and liabilities of each of the cooperatives merged or consolidated.
7. Any claim existing or action or proceeding pending by or against any of the cooperatives merged or consolidated may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new cooperative may be substituted for the merged or consolidated cooperative. Neither the rights of creditors nor any liens upon the property of any cooperative shall be impaired by a merger or consolidation.
8. In the case of a merger, the articles of association of the surviving cooperative shall be deemed to be amended to the extent that changes in its articles of association are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of association of a cooperative shall be deemed to be the original articles of association of the new cooperative.
9. The aggregate amount of the net assets of the merging or consolidating cooperative which was available for the payment of distributions immediately prior to the merger or consolidation, to the extent that the amount is not transferred to stated capital by the issuance of interests or otherwise, shall continue to be available for the payment of distributions by the surviving or new cooperative.

98 Acts, ch 1152, §42, 69

501.619 Abandonment before filing.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

98 Acts, ch 1152, §43, 69

SUBCHAPTER VII

RECORDS AND REPORTS

PART 1

RECORDS

501.701 Records.

1. A cooperative shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the cooperative.

2. A cooperative shall maintain appropriate accounting records.

3. A cooperative or its agent shall maintain a record of its interest holders in a form that permits preparation of a list of the names and addresses of all interest holders in alphabetical order by class of interests showing the number and class of interests held by each.

4. A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A cooperative shall keep a copy of the following records:

a. Its articles or restated articles of association and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of interests, and fixing their relative rights, preferences, and limitations, if the interests issued pursuant to those resolutions are outstanding.

d. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years.

e. All written communications to interest holders generally within the past three years, including the financial statements furnished for the past three years under section 501.711.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent biennial report delivered to the secretary of state under section 501.713.

98 Acts, ch 1152, §44, 69; 99 Acts, ch 96, §42; 2000 Acts, ch 1022, §13

501.702 Inspection of records by interest holders.

1. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at the cooperative's principal office, any of the records of the cooperative described in section 501.701, subsection 5, if the interest holder gives the cooperative written notice of the interest holder's demand at least five business days before the date on which the interest holder wishes to inspect and copy.

2. An interest holder of a cooperative is entitled to inspect and copy, during regular business hours at a reasonable location specified by the cooperative, any of the following records of the cooperative if the interest holder meets the requirements of subsection 3 and gives the cooperative written notice of the interest holder's demand at least five business days before the date on which the interest holder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the cooperative, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection 1 of this section.

b. Accounting records of the cooperative.

c. The record of interest holders.

3. An interest holder may inspect and copy the records described in subsection 2 only if:

a. The interest holder's demand is made in good faith and for a proper purpose.

b. The interest holder describes with reasonable particularity the interest holder's purpose and the records the interest holder desires to inspect.

c. The records are directly connected with the interest holder's purpose.

4. The right of inspection granted by this section shall not be abolished or limited by a cooperative's articles of association or bylaws.

5. This section does not affect either of the following:

a. The right of a member to obtain information under section 501.304 or the right of an interest holder to obtain information, if the interest holder is in litigation with the cooperative, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of cooperative records for examination.

98 Acts, ch 1152, §45, 69; 99 Acts, ch 96, §43

501.703 Scope of inspection right.

1. An interest holder's agent or attorney has the same inspection and copying rights as the interest holder the agent or attorney represents.

2. The right to copy records under section 501.702 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other technological means.

3. The cooperative may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the interest holder. The charge shall not exceed the estimated cost of production or reproduction of the

records.

4. The cooperative may comply with an interest holder's demand to inspect the record of interest holders under section 501.702, subsection 2, paragraph *"c"*, by providing the interest holder with a list of its interest holders that was compiled no earlier than the date of the interest holder's demand.

98 Acts, ch 1152, §46, 69

501.704 Court-ordered inspection.

1. If a cooperative does not allow an interest holder who complies with section 501.702, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the cooperative's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the cooperative's expense upon application of the interest holder.

2. If a cooperative does not within a reasonable time allow an interest holder to inspect and copy any other records, the interest holder who complies with section 501.702, subsections 2 and 3, may apply to the district court in the county where the cooperative's principal office or, if not in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the cooperative to pay the interest holder's costs, including reasonable counsel fees, incurred to obtain the order unless the cooperative proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the interest holder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding interest holder.

98 Acts, ch 1152, §47, 69

501.705 through 501.710 Reserved.

PART 2

REPORTS

501.711 Financial statements for interest holders.

A cooperative shall prepare annual financial statements, which may be consolidated or combined statements of the cooperative and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. Upon written request from an interest holder, a cooperative, at its expense, shall furnish to that interest holder the financial statements requested. If the annual financial statements are reported upon by a public accountant, the report must accompany the financial statements.

98 Acts, ch 1152, §48, 69

501.712 Other reports to interest holders.

1. If a cooperative indemnifies or advances expenses to a director under sections 501.412 through 501.415 in connection with a proceeding by or in the right of the cooperative, the cooperative shall report the indemnification or advance in writing to the members with or before the notice of the next members' meeting.

2. If a cooperative issues or authorizes the issuance of interests for promissory notes or for promises to render services in the future, the cooperative shall report in writing to the members the number of interests authorized or issued, and the consideration received by the cooperative, with or before the notice of the next members' meeting.

98 Acts, ch 1152, §49, 69

501.713 Biennial report for secretary of state.

1. Each cooperative authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that sets forth all of the following:

a. The name of the cooperative.

b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of its principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the biennial report must be current as of the first day of January of the year in which the report is due. The report shall be executed on behalf of the cooperative and signed as provided in section 501.105 or by any other person authorized by the board of directors of the cooperative.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a cooperative was organized. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following even-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state.

4. If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting cooperative in writing and return the report to the cooperative for correction.

5. The secretary of state may provide for the

change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in section 501.106. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 501.106 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 501.105, before returning the biennial report to the cooperative as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

98 Acts, ch 1152, §50, 69; 99 Acts, ch 96, §44; 2000 Acts, ch 1022, §14, 15

SUBCHAPTER VIII

DISSOLUTION

PART 1

GENERAL PROVISIONS

501.801 Dissolution by organizers or initial directors.

A majority of the organizers or initial directors of a cooperative that has not issued interests or has not commenced business may dissolve the cooperative by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the cooperative.
2. The date of its organization.
3. Either of the following:

a. That none of the cooperative's interests have been issued.

b. That the cooperative has not commenced business.

4. That no debt of the cooperative remains unpaid.
5. That the net assets of the cooperative remaining after winding up have been distributed in accordance with this chapter and the articles of association of the cooperative.
6. That a majority of the organizers or initial directors authorized the dissolution.

98 Acts, ch 1152, §51, 69

501.802 Dissolution by board of directors and members.

1. A cooperative's board of directors may propose dissolution for submission to the members.
2. For a proposal to dissolve to be adopted both of the following must apply:

a. The board of directors must recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members.

b. The members entitled to vote must approve the proposal to dissolve as provided in subsection 5.

3. The board of directors may condition its submission of the proposal for dissolution on any basis.
4. The cooperative shall notify each member of a meeting to consider dissolution in accordance with section 501.302. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the cooperative.
5. Unless the articles of association or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the proposal to dissolve must be approved by a majority of all the votes entitled to be cast on that proposal in order to be adopted.

98 Acts, ch 1152, §52, 69

501.803 Articles of dissolution.

1. At any time after dissolution is authorized, the cooperative may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth all of the following:

a. The name of the cooperative.

b. The date dissolution was authorized.

c. If dissolution was approved by the members, both of the following:

(1) The number of votes entitled to be cast on the proposal to dissolve.

(2) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

2. A cooperative is dissolved upon the effective date of its articles of dissolution.

98 Acts, ch 1152, §53, 69

501.804 Revocation of dissolution.

1. A cooperative may revoke its dissolution within one hundred twenty days of the effective date of the dissolution.
2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without member action.
3. After the revocation of dissolution is authorized, the cooperative may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the cooperative.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the cooperative's board of directors or organizers revoked the dissolution, a statement to that effect.

e. If the cooperative's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If member action was required to revoke the dissolution, the information required by section 501.803, subsection 1, paragraph *"c"*.

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

98 Acts, ch 1152, §54, 69

501.805 Effect of dissolution.

1. A dissolved cooperative continues its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

a. Collecting its assets.

b. Disposing of its properties that will not be distributed in kind in accordance with this chapter and the cooperative's articles of association.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property in accordance with this chapter and the cooperative's articles of association.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a cooperative does not do any of the following:

a. Transfer title to the cooperative's property.

b. Prevent transfer of its interests, although the authorization to dissolve may provide for closing the cooperative's interest transfer records.

c. Subject its directors or officers to standards of conduct different from those prescribed in section 501.406.

d. Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

e. Prevent commencement of a proceeding by or against the cooperative in its name.

f. Abate or suspend a proceeding pending by or against the cooperative on the effective date of dissolution.

g. Terminate the authority of the registered agent of the cooperative.

98 Acts, ch 1152, §55, 69

501.806 Distribution of assets.

Upon the cooperative's dissolution, the cooperative's assets shall first be used to pay expenses necessary to carry out the dissolution and liquidation of assets, then be used to pay the cooperative's obligations other than the payment of deferred patronage or interests issued as deferred patronage, and the remainder shall be paid in the manner set forth in the cooperative's articles of association.

98 Acts, ch 1152, §56, 69

501.807 Known claims against dissolved cooperative.

1. A dissolved cooperative may dispose of the known claims against it by following the procedure described in this section.

2. The dissolved cooperative shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must do all of the following:

a. Describe information that must be included in a claim.

b. Provide a mailing address where a claim may be sent.

c. State the deadline, which shall not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved cooperative must receive the claim.

d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved cooperative is barred if either of the following occur:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved cooperative by the deadline.

b. A claimant whose claim was rejected by the dissolved cooperative does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, *"claim"* does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

98 Acts, ch 1152, §57, 69

501.808 Unknown claims against dissolved cooperative.

1. A dissolved cooperative may also publish notice of its dissolution and request that persons with claims against the cooperative present them in accordance with the notice.

2. The notice must meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved cooperative's principal office or, if not in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the cooperative will be barred unless a proceeding to enforce the

claim is commenced within five years after the publication of the notice.

3. If the dissolved cooperative publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved cooperative within five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 501.807.

b. A claimant whose claim was timely sent to the dissolved cooperative but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section in either of the following ways:

a. Against the dissolved cooperative, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against an interest holder of the dissolved cooperative to the extent of the interest holder's pro rata share of the claim or the cooperative assets distributed to the interest holder in liquidation, whichever is less, but an interest holder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the interest holder in liquidation.

98 Acts, ch 1152, §58, 69

501.809 and 501.810 Reserved.

PART 2

ADMINISTRATIVE DISSOLUTION

501.811 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 501.812 to administratively dissolve a cooperative if any of the following apply:

1. The cooperative has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 501.713, within sixty days after it is due, or has not paid the filing fee as determined by the secretary of state, within sixty days after it is due.

2. The cooperative is without a registered agent or registered office in this state for sixty days or more.

3. The cooperative does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

4. The cooperative's period of duration stated in its articles of association expires.

98 Acts, ch 1152, §59, 69; 2000 Acts, ch 1022, §16

501.812 Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under section 501.811 for dissolving a cooperative, the secretary of state shall serve the cooperative with written notice of the secretary of state's determination under section 501.106.

2. If the cooperative does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 501.106, the secretary of state shall administratively dissolve the cooperative by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the cooperative under section 501.106.

3. A cooperative administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 501.805 and notify claimants under sections 501.807 and 501.808.

4. The administrative dissolution of a cooperative does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a cooperative pursuant to this section appoints the secretary of state the cooperative's agent for service of process in any proceeding based on a cause of action which arose during the time the cooperative was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the cooperative. Upon receipt of process, the secretary of state shall serve a copy of the process on the cooperative as provided in section 501.106. This subsection does not preclude service on the cooperative's registered agent, if any.

98 Acts, ch 1152, §60, 69

501.813 Reinstatement following administrative dissolution.

1. A cooperative administratively dissolved under section 501.812 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the cooperative at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. State a name that satisfies the requirements of section 501.104.

d. State the federal tax identification number of the cooperative.

2. *a.* The secretary of state shall refer the federal tax identification number contained in the ap-

plication for reinstatement to the department of revenue and finance. The department of revenue and finance shall report to the secretary of state the tax status of the cooperative. If the department reports to the secretary of state that a filing delinquency or liability exists against the cooperative, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph *"a"* has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the cooperative under section 501.106. If the name of the cooperative as provided in subsection 1, paragraph *"c"*, is different than the name in subsection 1, paragraph *"a"*, the certificate of reinstatement shall constitute an amendment to the articles of association insofar as it pertains to the name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

98 Acts, ch 1152, §61, 69

501.814 Appeal from denial of reinstatement.

1. If the secretary of state denies a cooperative's application for reinstatement following administrative dissolution, the secretary of state shall serve the cooperative under section 501.106 with a written notice that explains the reason or reasons for denial.

2. The cooperative may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The cooperative appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the cooperative's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved cooperative or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

98 Acts, ch 1152, §62, 69

501.815 through 501.820 Reserved.

PART 3

JUDICIAL DISSOLUTION

501.821 Grounds for judicial dissolution.

The district court may dissolve a cooperative in any of the following ways:

1. A proceeding by the attorney general, if it is established that either of the following apply:

a. The cooperative obtained its articles of association through fraud.

b. The cooperative has continued to exceed or abuse the authority conferred upon it by law.

2. A proceeding by a member if it is established that any of the following conditions exist:

a. The directors are deadlocked in the management of the cooperative's affairs, the members are unable to break the deadlock, and either irreparable injury to the cooperative is threatened or being suffered, or the business and affairs of the cooperative can no longer be conducted to the advantage of the interest holders generally, because of the deadlock.

b. The directors or those in control of the cooperative have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

d. The cooperative's assets are being misapplied or wasted.

3. A proceeding by a creditor if it is established that either of the following apply:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the cooperative is insolvent.

b. The cooperative has admitted in writing that the creditor's claim is due and owing and the cooperative is insolvent.

4. A proceeding by the cooperative to have its voluntary dissolution continued under court supervision.

98 Acts, ch 1152, §63, 69

501.822 Procedure for judicial dissolution.

1. Venue for a proceeding by the attorney general to dissolve a cooperative lies in Polk county district court. Venue for a proceeding brought by any other party named in section 501.821 lies in the county where a cooperative's principal office or, if not in this state, its registered office is or was last located.

2. It is not necessary to make interest holders parties to a proceeding to dissolve a cooperative unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a cooperative may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action re-

quired to preserve the cooperative's assets wherever located, and carry on the business of the cooperative until a full hearing can be held.

98 Acts, ch 1152, §64, 69

501.823 Receivership or custodianship.

1. A court in a judicial proceeding brought to dissolve a cooperative may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the cooperative. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the cooperative and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time.

a. Among other powers, the receiver may do any of the following:

(1) Dispose of all or any part of the assets of the cooperative wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the cooperative in all courts of this state.

b. The custodian may exercise all of the powers of the cooperative, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the cooperative in the best interests of its interest holders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the cooperative, its interest holders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the cooperative or proceeds from the sale of the assets.

98 Acts, ch 1152, §65, 69

501.824 Decree of dissolution.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 501.821 exist, it may enter a decree dissolving the cooperative and specifying the effective date of the dissolution, and the clerk of the district court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the cooperative's business and affairs in accordance with section 501.805 and the notification of claimants in accordance with sections 501.807 and 501.808.

98 Acts, ch 1152, §66, 69

501.825 through 501.830 Reserved.

PART 4

DEPOSIT OF ASSETS

501.831 Deposit with state treasurer.

Assets of a dissolved cooperative that should be transferred to a creditor, claimant, or interest holder of the cooperative who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or interest holder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or interest holder or that person's representative the amount.

98 Acts, ch 1152, §67, 69

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SECURITIES

CHAPTER 502

UNIFORM SECURITIES ACT
(Blue Sky Law)

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PART I

SHORT TITLE AND DEFINITIONS

502.101 Short title.

This chapter may be cited as the *"Iowa Uniform Securities Act"*.

[C31, 35, §8581-c1; C39, §**8581.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.1; C77, 79, 81, §502.101]

502.102 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. An *"affiliate"* of, or a person *"affiliated"* with, a specified person, means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

3. *"Agent"* means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. *"Agent"* does not include an individual who represents:

a. An issuer in doing any of the following:

(1) Effecting transactions in a security exempted by section 502.202, subsection 1, 2, 3, 4, 6, 10, 11, 12, 13, or 16, or a security issued by an industrial loan company licensed under chapter 536A.

(2) Effecting transactions exempted by section 502.203.

(3) Effecting transactions in a federal covered security as described in sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933 as amended in Pub. L. No. 104-290, if a commission or other remuneration is not either directly or indirectly paid any person for soliciting in this state.

(4) Effecting transactions with an existing employee, member, manager, partner, or director of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

b. A broker-dealer in effecting a transaction in this state which is limited to a transaction provided in section 15(h)(2) of the Securities Exchange Act of 1934.

"Agent" also does not include any other individual who is not within the intent of this subsection whom the administrator by rule or order designates. A partner, member, manager, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

4. *"Agricultural cooperative association"* means any one of the following:

a. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

b. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and acting as a cooperative selling agency, as described in section 498.2.

c. An agricultural association as defined in section 499.2, and organized pursuant to chapter 499.

d. Any other entity which is organized on a cooperative basis under the laws of this state for the purpose of engaging in the activities of an agricultural association as defined in section 499.2.

5. *"Broker-dealer"* means any person engaged in the business of effecting transactions in securities for the account of others or for such person's own account. *"Broker-dealer"* does not include:

a. An agent;

b. An issuer;

c. A bank when acting on its own account or when exercising trust or fiduciary powers permitted for banks under applicable state or federal laws and regulations providing for the organization, operation, supervision, and examination of such banks;

d. An insurance company which effects transactions in its own accounts;

e. Other persons not within the intent of this subsection whom the administrator by rule or order designates.

6. *"Federal covered adviser"* means a person who is registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80(b) et seq. *"Federal covered adviser"* does not include a person who is excluded from the definition of *"investment adviser"* as provided in subsection 11, paragraph *"c"*, subparagraphs (1) through (7).

7. *"Federal covered security"* means any security that is a covered security under section 18(b) of the Securities Act of 1933 or rules or regulations adopted under the Securities Act of 1933.

8. *"Fraud"*, *"deceit"* and *"defraud"* are not limited to common law deceit.

9. *"Guaranteed"* means guaranteed as to pay-

ment of principal, interest or dividends.

10. *"Interest at the legal rate"* means the interest rate for judgments specified in section 535.3.

11. *a. "Investment adviser"* means any person who, for compensation, does any of the following:

(1) Engages in the business of providing investment advisory services by advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

(2) As a part of a regular business, issues or promulgates analyses or reports concerning securities.

b. "Investment adviser" includes a financial planner or other person who, as an integral component of other financially related services, does either of the following:

(1) Provides investment advisory services to others for compensation and as part of a business.

(2) Holds oneself out as providing investment advisory services to others for compensation.

c. "Investment adviser" does not include a person who is any of the following:

(1) An investment adviser representative.

(2) A bank, savings institution, or trust company.

(3) An attorney licensed to practice law in this state, a certified public accountant licensed pursuant to chapter 542, a professional engineer licensed pursuant to chapter 542B, or a certified teacher, if the person's performance of these services is solely incidental to the practice of the person's profession.

(4) An attorney licensed to practice law in this state or a certified public accountant licensed pursuant to chapter 542 who does not do any of the following:

(a) Exercise investment discretion regarding the assets of a client or maintain custody of the assets of a client for the purpose of investing the assets, except when the person is acting as a bona fide fiduciary in a capacity such as an executor, administrator, trustee, estate or trust agent, guardian, or conservator.

(b) Accept or receive directly or indirectly any commission, fee, or other remuneration contingent upon the purchase or sale of any specific security by a client of such person.

(c) Provide advice regarding the purchase or sale of specific securities. However, this subparagraph subdivision (c) shall not apply when the advice about specific securities is based on a financial statement analysis or tax considerations that are reasonably related to and in connection with the person's profession.

(5) A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them.

(6) A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.

(7) A person who is excluded from the definition of *"investment adviser"* under section 202(a)(11) of the Investment Advisers Act of 1940.

(8) A person who is a federal covered adviser.

(9) A person not within the intent of this subsection as the administrator may by rule or order designate.

d. As used in this subsection, *"compensation"* does not include a commission, fee, or a combination of a commission and a fee, which is paid to an insurance producer licensed under chapter 522B, if the insurance producer receives the commission, fee, or the combination of a commission and a fee, for the sale of insurance as regulated pursuant to Title XIII, subtitle 1.

12. *a. "Investment adviser representative"* means an individual including but not limited to a partner, officer, director, or an individual occupying a similar status or performing similar functions as a partner, officer, or director, except clerical or ministerial personnel, if both of the following apply:

(1) The individual is employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who is employed by or associated with a federal covered adviser.

(2) The individual does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities.

(b) Manages accounts or portfolios of clients.

(c) Determines which recommendation or advice regarding securities should be given.

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services.

(e) Supervises employees who perform any of the functions in subparagraphs (a) through (d).

b. "Investment adviser representative" does not include any other person not within the intent of this subsection as the administrator may by rule or order designate.

13. *"Issuer"* means any person who issues or proposes to issue any security, except that

a. With respect to certificates of deposit, voting trust certificates, or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term *"issuer"* means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and

b. With respect to a fractional undivided interest in an oil, gas, or other mineral lease or in

payments out of production under a lease, right, or royalty, the term *"issuer"* means the owner of an interest in the lease or payments out of production under a lease, right, or royalty, whether whole or fractional, who creates fractional interests for the purpose of sale.

c. With respect to a viatical settlement contract, *"issuer"* means a person involved in creating, transferring, or selling to an investor any interest in such a contract, including but not limited to fractional or pooled interests, but does not include an agent or a broker-dealer.

14. *"Nonissuer"* means not directly or indirectly for the benefit of the issuer.

15. *"Person"* means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, a fiduciary, an unincorporated organization, a government, or a political subdivision of a government.

16. *a.* *"Sale"* or *"sell"* includes every contract of sale of, contract to sell, or disposition or exchange of, a security or interest in a security for value.

b. *"Offer"* or *"offer to sell"* includes every attempt or offer to exchange or dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

c. A security given or delivered with, or as a bonus on account of, a purchase of a security or any other thing is offered and sold for value as part of the subject of the purchase.

d. A purported gift of assessable stock is considered to involve an offer and sale.

e. Except to the extent that the administrator provides otherwise by rule or order, an offer or sale of a security that is convertible into or entitles its holder to acquire another security of the same or another issuer is an offer also of the other security, whether the right to convert or acquire is exercisable immediately or in the future.

f. The terms defined in this subsection do not include:

(1) Any bona fide pledge or loan; or

(2) Any stock split, other than a reverse stock split, or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

17. *"Securities Act of 1933"*, *"Securities Exchange Act of 1934"*, *"Public Utility Holding Company Act of 1935"*, *"Investment Advisers Act of 1940"*, *"Investment Company Act of 1940"*, *"Internal Revenue Code"*, and *"Agricultural Marketing Act"* mean the federal statutes of those names.

18. *"Securities and exchange commission"* means the United States securities and exchange commission as established pursuant to 15 U.S.C. § 78(d).

19. *"Security"* means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement investment contract, or any fractional or pooled interest in such contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest; or, in general, any interest or instrument commonly known as a *"security"*, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. *"Security"* does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period. *"Security"* also does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability partnership. *"Security"* is any of the foregoing as provided in this subsection whether or not it is evidenced by a written instrument.

20. *"State"* means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

21. *"Viatical settlement investment contract"* means a contract entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in the death benefits of a life insurance policy, which contract is entered into for the purpose of deriving economic benefit.

22. For the purposes of sections 502.211 through 502.218, unless the context otherwise requires:

a. *"Associate"* means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

b. *"Beneficial owner"* includes, but is not limited to, any person who directly or indirectly,

through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

c. "Beneficial ownership" includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

d. "Equity security" means any stock or similar security, and includes the following:

(1) Any security convertible, with or without consideration, into a stock or similar security.

(2) Any warrant or right to subscribe to or purchase a stock of similar security.

(3) Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

(4) Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

e. "Offeree" means the beneficial owner, who is a resident of this state, of equity securities which an offeror offers to acquire in connection with a takeover offer.

f. "Offeror" means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

g. "Takeover offer":

(1) Means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either of the following are true:

(a) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(b) The beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent. However, this provision does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) Does not include the following:

(a) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(b) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(c) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

h. "Target company" means an issuer of publicly traded equity securities which has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

[C31, 35, §8581-c3; C39, §**8581.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.3; C77, 79, 81, §502.102; 81 Acts, ch 163, §1; 82 Acts, ch 1100, §24]

83 Acts, ch 169, §2; 85 Acts, ch 155, §23; 87 Acts, ch 53, §1, 2; 87 Acts, ch 181, §1; 91 Acts, ch 40, §3 – 5; 91 Acts, ch 230, §4, 5; 94 Acts, ch 1031, §6; 96 Acts, ch 1025, §1; 97 Acts, ch 114, §1 – 4; 98 Acts, ch 1106, §1, 2, 24; 99 Acts, ch 134, §1 – 3; 2001 Acts, ch 16, §5, 37; 2001 Acts, ch 55, §31, 38; 2001 Acts, ch 118, §1, 2; 2002 Acts, ch 1111, §2, 3

2001 amendment to subsection 11, paragraph d, takes effect January 1, 2002; 2001 Acts, ch 16, §37

2001 amendments to subsection 11, paragraph c, subparagraphs (3) and (4) are effective July 1, 2002; 2001 Acts, ch 55, §38

Subsection 11, paragraph c, subparagraphs (3) and (4) amended

Subsection 19 amended

Subsection 21 stricken and rewritten

PART II

REGISTRATION OF SECURITIES

502.201 Registration requirement.

It is unlawful for any person to offer or sell any security in this state unless one of the following applies:

1. It is registered under this chapter.

2. The security or transaction is exempted under section 502.202 or 502.203.

3. It is a federal covered security.

[C31, 35, §8581-c6; C39, §**8581.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.6; C77, 79, 81, §502.201]

97 Acts, ch 114, §5

502.202 Exempt securities.

The following securities are exempted from sections 502.201 and 502.602:

1. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing. However, this exemption shall not include any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such payments are or will be made or unconditionally guaranteed by a person whose securities are exempt from registration under this chapter by *(a)* subsection 7, 8, or 17, or *(b)* subsection 9, provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized and supervised under the laws of this state.

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association organized and supervised under the laws of this state.

5. Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do business in this state.

6. Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state.

7. Any security issued or guaranteed by a public utility or holding company which is any of the following:

a. A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act.

b. Regulated in respect of its rates and charges by a governmental authority of the United States or any state.

c. Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.

8. Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or any other national securities exchange registered under the Securities Exchange Act of 1934 and designated by rule of the administrator; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

9. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association; provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

10. Commercial paper which is a promissory note, draft, bill of exchange, or banker's acceptance which satisfies the following criteria:

a. It evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace.

b. It is issued in denominations of at least fifty thousand dollars.

c. It receives a rating in one of the three highest rating categories from a nationally recognized statistical rating organization.

The exemption under this subsection applies to a renewal of an obligation under this subsection which is likewise limited, and to a guarantee of such an obligation or of a renewal.

11. A security issued in connection with an employee stock purchase, option, savings, pension, profit sharing or similar benefit plan.

12. A stock or similar security, including a patronage refund certificate, issued by:

a. A cooperative housing corporation described in paragraph 1 of subsection "b" of section 216, of the Internal Revenue Code, if its activities are limited to the ownership, leasing, manage-

ment, or construction of residential properties for its members, and activities incidental thereto; or

b. A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapters 497, 498, 499, and 501 that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if:

(1) Such stock or similar security is part of a class issuable only to persons who deal in commodities with, or obtain goods or services from, the issuer;

(2) Such stock or similar security is transferable only to the issuer or a successor in interest of the transferor who qualifies for membership in such mutual or cooperative organization; and

(3) No dividends other than patronage refunds are payable to holders of such stock or similar security except on a complete or partial liquidation.

13. A security issued by an agricultural cooperative association, provided the following conditions are satisfied:

a. A commission or remuneration must not be paid or provided either directly or indirectly for the sale, except as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission or other remuneration.

b. If the securities to be issued are notes or other evidences of indebtedness and are issued after July 1, 1991, the issuer must file with the administrator a written notice specifying the name of the issuer, the date of the issuer's organization, the name of a contact person, a copy of the issuer's current audited financial statement, the types of security or securities to be offered, and the class of persons to whom the offer will be made in accordance with such rules as prescribed by the administrator.

14. Any security issued by a corporation formed under chapter 496B.

15. Any security issued by the agricultural development authority under chapter 175.

16. Any security representing a membership camping contract which is registered pursuant to section 557B.2 or exempt under section 557B.4.

17. On or after January 1, 1989, a security designated or approved for designation upon notice of issuance on the national association of securities dealers automated quotations — national market system (NASDAQ/NMS); any other security of the same issuer which is of senior or substantially equal rank; a security called for by subscription rights or warrants designated or approved for designation upon notice of issuance on the NASDAQ/NMS; or a warrant or right to purchase or subscribe to any of the foregoing categories in this subsection.

18. Any security representing a time-share interval as defined in section 557A.2.

19. A viatical settlement contract, or fractional or pooled interest in such contract, provided any of the following conditions are satisfied:

a. The assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract, is made by the viator to an insurance company as provided under Title 13, subtitle 1.

b. The assignment, transfer, sale, devise, or bequest of a life insurance policy or contract, for any value less than the expected death benefit, is made by the viator to a family member or other person who enters into no more than one such agreement in a calendar year.

c. A life insurance policy or contract is assigned to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan.

d. Accelerated benefits are exercised as provided in the life insurance policy or contract and consistent with applicable law.

e. The assignment, transfer, sale, devise, or bequest of the death benefit or ownership of a life insurance policy or contract made by the policyholder or contract owner to a viatical settlement provider, if the viatical settlement transaction complies with chapter 508E, including rules adopted pursuant to that chapter.

[SS15, §1920-u1; C24, 27, §8526; C31, 35, §8581-c4; C39, §**8581.04;** C46, 50, 54, 58, 62, §502.4; C66, 71, 73, 75, §496B.18, 502.4; C77, 79, §496B.18, 502.202; C81, §502.202]

83 Acts, ch 95, §1, 2; 83 Acts, ch 169, §3; 87 Acts, ch 181, §2; 88 Acts, ch 1020, §1; 91 Acts, ch 40, §6 – 9; 91 Acts, ch 230, §6, 7; 96 Acts, ch 1025, §2, 3; 97 Acts, ch 114, §6; 98 Acts, ch 1119, §2; 99 Acts, ch 134, §4; 99 Acts, ch 166, §1; 2000 Acts, ch 1147, §34

502.203 Exempt transactions.

The following transactions are exempted from sections 502.201 and 502.602:

1. Any isolated nonissuer transaction, whether effected through a broker-dealer or not.

2. Any nonissuer distribution of an outstanding security if:

a. A recognized securities manual approved by the administrator contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;

b. The security was issued by an issuer which has a class of securities subject to registration under section 12 of the Securities Exchange Act of 1934, and has been subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 for not less than ninety days before the transaction;

c. The security was issued by an issuer which has had or currently has a class of securities registered under this chapter, or under chapter 502 of the Code as it existed prior to January 1, 1976; or

d. The security was issued by an issuer which

is registered under the Investment Company Act of 1940.

3. Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the administrator may by rule require that the customer acknowledge that the sale was unsolicited in accordance with provisions of such rule.

4. Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

5. A sale of bonds or notes directly secured by a real estate mortgage, security interest, deed of trust, or agreement for the sale of real estate or chattels, if the entire mortgage, security interest, deed of trust, or agreement, together with all the bonds or notes secured thereby, is offered and sold as a unit; provided that the entire mortgage, security interest, deed of trust or agreement, together with all of the bonds or notes secured thereby, shall not be deemed to be sold as a unit if:

a. Such bonds or notes are part of a single issue including other bonds or notes secured by interests in real estate or chattels owned or developed by the same person or by persons affiliated with such person; or

b. Such bonds or notes are offered or sold with any right to have substitution by or recourse against, or with guarantee by, the real estate developer or any person other than the person primarily obligated on the bond or note.

6. Any judicial sale or any transaction executed by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, custodian or conservator without any purpose of evading this chapter.

7. Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

8. An offer or sale to a bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity. However, the administrator, by rule or order, may grant this exemption to a person or class of persons based upon the factors of financial sophistication, net worth, and the amount of assets under investment.

9. The sale, as part of a single issue, of securities by the issuer of the securities if all of the following conditions are satisfied:

a. Within any period of twelve consecutive months, sales are made to less than thirty-six purchasers in this state, exclusive of purchases by bona fide institutional investors for their own account for investment.

b. Unless permitted by the administrator by rule, or by order issued upon written application showing good cause for the allowance of the sale, the issue is not an issue of:

(1) Fractional undivided interests in oil, gas, or other mineral leases, rights, or royalties.

(2) Interests in a partnership organized under the laws of or having its principal place of business in a foreign jurisdiction.

c. The issuer reasonably believes that all the buyers in this state are purchasing for investment.

d. Commission or other remuneration is not paid or given, directly or indirectly, for the sale, except as may be permitted by the administrator by rule, or by order issued upon written application showing good cause for allowance of commission or other remuneration.

e. The issuer or a person acting on behalf of the issuer does not offer or sell the securities by any form of general solicitation or advertising.

10. Any offer or sale of a preorganization certificate or subscription if:

a. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

b. The number of subscribers does not exceed ten;

c. No payment is made by any subscriber; and

d. No public advertisement of the offer is made.

11. Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants, exercisable within not more than ninety days of their issuance, if:

a. A commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting a security holder in this state; or

b. The issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next ten days.

12. An offer, but not a sale, of a security for which a registration statement has been filed under this chapter or a written notice has been filed pursuant to section 502.202, subsection 1, 9, or 11 if no stop order or suspension or denial order is in effect and no proceeding is pending under this chapter.

13. Any transaction incident to a vote by security holders of a person or incident to a written consent or resolution of some or all security holders of a person, pursuant to the articles of incorporation of such person, or pursuant to the applicable corporate statute or other statute governing such person, or pursuant to such person's partnership agreement, declaration of trust, or trust indenture, or pursuant to any agreement among security holders of such person, on a reclassification of securities, reverse stock split, reorganization involving the exchange of securities, merger, consolidation, or sale of assets, in consideration, in whole

or in part, of the issuance of securities of such person or of any other person, if:

a. The securities to be distributed are registered under the Securities Act of 1933 before the consummation of the transaction; or

b. The securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction, a filing fee of fifty dollars, and a copy of the materials by which approval of the transaction will be solicited, are given to the administrator at least ten days before the consummation of the transaction, and the administrator does not disallow, by order, the exemption within the next ten days.

14. Any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

15. The distribution of securities as a dividend, where the corporation distributing the dividend is the issuer of the securities distributed, if the only value given by shareholders for the dividend is the surrender of a right to a cash or property dividend when each shareholder may elect to take the dividend.

a. In cash or property, or

b. In such securities.

16. The administrator may create by rule a limited offering transactional exemption which furthers the objectives of compatibility with federal exemptions and uniformity among the states and provides criteria to determine and assure the suitability of investors.

17. The offer or sale of securities by a small business investment company under the federal Small Business Investment Act of 1958 if:

a. The securities are offered or sold in compliance with 17 C.F.R. § 230.601 through 230.610a; and

b. The issuer has filed with the administrator the offering document to be used in connection with the offer and sale of the securities not later than the first use of the offering document in this state, the issuer has filed with the administrator a copy of the notification of form *"1-E"* required by 17 C.F.R. § 230.604 to be filed with the federal securities and exchange commission, and the issuer has paid the administrator a fee of one hundred dollars.

18. An offer or sale of securities which are exempt from registration under 15 U.S.C. § 77a-77aa pursuant to rule 801 or 802 promulgated by the securities and exchange commission as provided in the Securities Act of 1933.

19. Any other security or transaction or offering or class of securities or transactions or offers exempted or requirements for exemption waived, by the administrator by rule or order, from requirements provided in section 502.201 or 502.602.

[SS15, §1920-u1, -u13; C24, 27, §8526, 8554; C31, 35, §8581-c5; C39, §**8581.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.5; C77, 79, 81, §502.203]

83 Acts, ch 169, §4 – 7; 91 Acts, ch 40, §10 – 14; 96 Acts, ch 1025, §4, 5; 2001 Acts, ch 118, §3

502.204 Denial and suspension of exemptions.

The administrator may by order deny or revoke any exemption specified in sections 502.202 and 502.203 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated section 502.201 or 502.602 by reason of any offer or sale effected after the entry of an order under this section if such person sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the order.

[C31, 35, §8581-c4; C39, §**8581.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.4(5); C77, 79, 81, §502.204]

502.205 Burden of proof.

In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

[C31, 35, §8581-c15; C39, §**8581.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.19; C77, 79, 81, §502.205]

502.206 Registration by coordination.

1. Registration by coordination may be used for any offering for which a registration statement has been filed under the Securities Act of 1933, or for any proposed sale pursuant to the exemption contained in subsection "b" of section 3 of such Act where such registration statement or notification of proposed sale has not become effective.

2. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 502.208, subsection 3, and the consent to service of process

required by section 502.609:

a. Two copies of the most recent preliminary prospectus or offering circular filed under the Securities Act of 1933.

b. If the administrator by rule requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security.

c. If the administrator requests, any other information, or copies of any documents, filed under the Securities Act of 1933.

d. An undertaking to forward to the administrator all future amendments to the federal prospectus or offering circular, other than an amendment which merely delays the effective date of the registration statement, not later than the first business day after they are forwarded to or filed with the securities and exchange commission, or such longer period as the administrator permits.

3. Unless waived by a registrant, a registration statement under this section automatically becomes effective at the moment the federal registration statement or notification becomes effective if:

a. No stop order is in effect in this state and no proceeding is pending under section 502.209;

b. The registration statement has been on file with the administrator for at least twenty days;

c. A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for not less than two full business days, or such shorter period as the administrator permits; and

d. The offering is made within these limitations.

4. The registrant shall notify the administrator promptly in writing, which may be by electronic, telegraphic, or facsimile transmission, of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall file a post-effective amendment promptly containing the information and documents in the price amendment. *"Price amendment"* means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the administrator may enter a stop order, without notice or hearing, retroactively denying the effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection is effected, if the administrator promptly notifies the registrant of the issuance of such order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment the stop order shall be vacated as of the time of its entry. The administrator may by rule or order waive any of the conditions specified in subsection 2 or 3.

5. If the federal registration statement becomes effective before all conditions in this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether the administrator then contemplates the institution of a proceeding under section 502.209 but this advice by the administrator does not preclude the institution of such a proceeding at any time.

[C62, 66, 71, 73, 75, §502.7; C77, 79, 81, §502.206]

91 Acts, ch 40, §15; 96 Acts, ch 1025, §6

502.206A Federal covered securities.

1. The administrator, by rule or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

a. Prior to the initial offer of a federal covered security in this state, all documents that are part of a current federal registration statement filed with the United States securities and exchange commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and a filing fee calculated as specified in section 502.208, subsection 2.

b. After the initial offer of a federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the United States securities and exchange commission under the Securities Act of 1933.

c. To the extent necessary to compute fees, an annual or periodic report of the value of the federal covered securities offered or sold in this state together with the applicable filing fee, if any, calculated as specified in section 502.208, subsection 2.

2. With respect to any security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, the administrator, by rule or otherwise, may require the issuer to file a notice on Form D as promulgated by the securities and exchange commission and a consent to service of process signed by the issuer not later than fifteen days after the first sale of the federal covered security in this state together with a filing fee, as established by rule adopted by the administrator.

3. The administrator, by rule or otherwise, may require the filing of any document filed with the securities and exchange commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or (4) of the Se-

curities Act of 1933, together with a filing fee established by rule adopted by the administrator which shall not be more than one hundred dollars.

4. The administrator may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if the administrator finds that both of the following apply:

a. The order is in the public interest.

b. The person against whom the stop order is issued has failed to comply with a requirement provided in this section.

5. The administrator, by rule or otherwise, may waive any requirement of this section if the administrator finds good cause that the requirement is not necessary in order to carry out the purposes of the section.

97 Acts, ch 114, §7

502.207 Registration by qualification.

1. Any security may be registered by qualification.

2. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 502.208, subsection 3 and the consent to service of process required by section 502.609:

a. With respect to the issuer and any significant subsidiary: Its name, address and form of organization; the state or foreign jurisdiction under which it is organized; the date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: Such person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by such person as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which such person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected.

c. With respect to persons covered by paragraph *"b":* The remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer together with all predecessors, parents, subsidiaries and affiliates to all those persons in the aggregate.

d. With respect to any person owning of record, or beneficially if known, five percent or more of the outstanding shares of any class of equity security of the issuer: The information specified in paragraph *"b"* of this subsection other than occupation.

e. With respect to every promoter if the issuer was organized within the past three years: The information specified in paragraph *"b"* of this subsection, any amount paid within that period, or intended to be paid, to such person, and the consideration for any such payment.

f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: Such person's name and address; the amount of securities of the issuer held as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of reasons for making the offering.

g. The capitalization and long-term debt (on both a current and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.

h. The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement which terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

i. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be

raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property including goodwill otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition).

j. A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraphs *"b", "d", "e", "f",* or *"h"* of this subsection, and by any person who holds or will hold ten percent or more in the aggregate of any such options.

k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities.

l. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.

m. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture, or other instrument covering the security to be registered.

n. A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer.

o. The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by such person, if any of the foregoing persons is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement.

p. A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and statement of changes in financial position for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant, or such other financial statements as may be required pursuant to section 502.607, subsection 3.

q. Such other additional information as the administrator requires by rule or order.

3. Except as provided in this subsection, registration under this section shall become effective when the administrator so orders. If a registration statement has been on file for at least thirty days and all information required by the administrator has been furnished, the person filing the statement may at any time file a written request that the administrator, within ten days following the filing of such request, order that the registration statement become effective or deny or postpone effectiveness pursuant to section 502.209. If a request is filed, and the administrator fails to act thereon within such period, the registration shall become effective at the end of the ten-day period.

[SS15, §1920-u2, -u3, -u6, -u8; C24, 27, §8527, 8528, 8531, 8536, 8543; C31, 35, §8581-c8; C39, §**8581.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.7; C77, 79, 81, §502.207]

502.207A Expedited registration by filing for small issuers.

1. A security meeting the conditions set forth in this section may be registered by filing as provided in this section.

2. In order to register under this section, the issuer must meet all of the following conditions:

a. The issuer must be a corporation, limited liability company, or partnership organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production mining or other extractive industries.

b. The securities must be offered and sold only on behalf of the issuer, and must not be used by any selling security holder to register securities for resale.

3. In order to register under this section, all of the following conditions must be satisfied:

a. The offering price for common stock, the exercise price if the securities are options, warrants, or rights for common stock, or the conversion price if the securities are convertible into common stock must be equal to or greater than five dollars per share. The issuer must not split its common stock, or declare a stock dividend, for two years after effectiveness of the registration, except that in connection with a subsequent registered public offering, the issuer may upon application and consent

of the administrator take such action.

b. A commission, fee, or other remuneration shall not be paid or given, directly or indirectly, for the sale of the securities, except for a payment to a broker-dealer or agent registered under this chapter, or except for a payment as permitted by the administrator by rule or by order issued upon written application showing good cause for allowance of a commission, fee, or other remuneration.

c. The issuer or a broker-dealer offering or selling the securities is not or would not be disqualified under rule 505, 17 C.F.R. § 230.505 (2)(iii), adopted under the federal Securities Act of 1933.

d. The aggregate offering price of the offering of securities by the issuer within or outside this state must not exceed one million dollars, less the aggregate offering price for all securities sold within twelve months before the start of, and during the offering of, the securities under rule 504, 17 C.F.R. § 230.504, in reliance on any exemption under section 3(b) of the federal Securities Act of 1933 or in violation of section 5(a) of that Act; provided, that if rule 504, 17 C.F.R. § 230.504, adopted under the Securities Act of 1933, is amended after April 26, 1990, the administrator may by rule increase the limit under this paragraph to conform to that increased amount.

e. An offering document meeting the disclosure requirements of rule 502(b)(2), 17 C.F.R. § 230.502(b)(2), adopted under the Securities Act of 1933, must be delivered to each purchaser in the state prior to the sale of the securities, unless the administrator by rule or order provides for disclosure different from that rule.

f. The issuer must file with the administrator an application for registration and the offering document to be used in connection with the offer and sale of securities.

g. The issuer must pay to the administrator a fee of one hundred dollars and is not required to pay the filing fee set forth in section 502.208, subsection 2.

4. Unless the administrator issues a stop order denying the effectiveness of the registration, as provided in section 502.209, the registration becomes effective on the fifth business day after the registration has been filed with the administrator, or earlier if the administrator permits a shorter time period between registration and effectiveness.

5. In connection with an offering registered under this section, a person may be registered as an agent of the issuer under section 502.301 by the filing of an application by the issuer with the administrator for the registration of the person as an agent of the issuer and the paying of a fee of ten dollars. Notwithstanding any other provision of this chapter, the registration of the agent shall be effective until withdrawn by the issuer or until the securities registered pursuant to the registration statement have all been sold, whichever occurs first. The registration of an agent shall become effective when ordered by the administrator or on the fifth business day after the agent's application has been filed with the administrator, whichever occurs first, and the administrator shall not impose further conditions upon the registration of the agent. However, the administrator may deny, revoke, suspend, or withdraw the registration of the agent at any time as provided in section 502.304. An agent registered solely pursuant to this section is entitled to sell only securities registered under this section.

6. This section is not applicable to any of the following issuers:

a. An investment company, including a mutual fund.

b. An issuer subject to the reporting requirements of section 13 or 15(d) of the federal Securities Exchange Act of 1934.

c. A direct participation program, unless otherwise permitted by the administrator by rule or order for good cause.

d. A blind pool or other offering for which the specific business or properties cannot now be described, unless the administrator determines that the blind pool is a community development, seed, or venture capital fund for which the administrator permits a waiver.

7. Notwithstanding any other provision of this chapter, the administrator shall not deny effectiveness to or suspend or revoke the effectiveness of a registration under this section on the basis of section 502.209, subsection 1, paragraph *"h"*, and the administrator shall not impose the conditions specified in section 502.208, subsection 8, subsection 9, paragraph *"b"*, or subsection 12.

90 Acts, ch 1196, §3; 92 Acts, ch 1151, §105; 95 Acts, ch 67, §35; 97 Acts, ch 114, §8; 2001 Acts, ch 118, §4

502.207B Legislative review and oversight. Repealed by 2001 Acts, ch 118, § 58.

502.208 Provisions applicable to registration generally.

1. A registration statement or a notice filing made pursuant to section 502.206A may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

2. *a.* Except as provided in subsection 13 and section 502.207A, subsection 3, paragraph *"g"*, a person who files a registration statement or a notice filing shall pay a filing fee of one-tenth of one percent of the proposed aggregate sales price of the securities to be offered to persons in this state pursuant to the registration statement or notice filing. However, except as provided in paragraph *"c"* of this subsection, subsection 13, and section 502.207A, subsection 3, paragraph *"g"*, the annual filing fee shall not be less than fifty dollars or more than one thousand dollars.

b. The administrator shall retain the filing fee

even if the notice filing is withdrawn or the registration is withdrawn, denied, suspended, revoked, or abandoned.

c. A person who is the issuer of a federal covered security under section 18(b)(2) of the Securities Act of 1933 shall initially make a notice filing and annually renew a notice filing in this state for an indefinite amount or a fixed amount. The fixed amount must be for two hundred fifty thousand dollars. A notice filer shall pay a filing fee when the notice is filed. If the amount covered by the notice is indefinite, the notice filer shall pay a filing fee of one thousand dollars. If the amount covered by the notice is fixed, the notice filer shall pay a filing fee of two hundred fifty dollars, and the following shall apply:

(1) The notice filer shall file a sales report with the administrator or pay an additional filing fee of one thousand two hundred fifty dollars within ninety days after the notice filing's annual renewal date. If the notice filer files a sales report with the administrator, the notice filer shall pay an additional filing fee of one-tenth of one percent of the amount of securities sold in excess of two hundred fifty thousand dollars. The additional filing fee must be paid within ninety days after the notice filing's annual renewal date.

(2) The notice filing covering the additional securities shall be effective retroactively as of the effective date of the notice filing that is being amended.

3. Every registration statement shall specify:

a. The amount of securities to be offered in this state;

b. The states in which a registration statement or application in connection with the offering has been or is to be filed; and

c. Any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by any court or the securities and exchange commission, or any withdrawal of a registration statement or application relating to the offering.

4. Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement or notice filing may be incorporated by reference in the registration statement or notice filing to the extent that the document is currently accurate.

5. The administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement or notice filing.

6. In the case of a nonissuer distribution, information may not be required under section 502.207, or subsection 9, paragraph *"b"* of this section, unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

7. The administrator may by rule or order require as a condition of registration that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; or that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere; or the administrator may impose both such requirements. The administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but the administrator may not reject a depository solely because of location in another state.

8. The administrator may by rule require that registered securities of designated classes shall be issued under a trust indenture containing such provisions as the administrator determines.

9. *a.* A registration statement or notice filing shall remain effective for one year from its effective date unless it is renewed, extended, or amended by rule or order of the administrator. An initial notice filing or a renewal or amendment of a notice filing becomes effective on the date received by the administrator, or, if requested by the issuer, on the date that the initial notice filing, renewal, or amendment is effective with the securities and exchange commission. All outstanding securities of the same class as a registered security or a security for which a notice filing has been made are considered to be registered or covered by a notice filing for the purpose of any transaction by or on behalf of a person who is not the issuer, and who is not in control of the issuer or controlled by the issuer or under common control with the issuer, so long as the registration statement or notice filing is effective, unless otherwise prescribed by order. A registration statement or notice filing shall not be withdrawn after its effective date if any of the securities has been sold in this state, unless permitted by rule or order of the administrator. A registration statement is not effective during the time a stop order is in effect under section 502.209. A notice filing is not effective during the time that a stop order issued pursuant to section 502.206A is in effect. A registration statement which never became effective may be withdrawn without prejudice to the issuer upon request and for good cause as determined at the discretion of the administrator.

b. During the effective period of a registration statement, the administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering. If any of the securities registered has been sold in this state, the administrator may by rule or order extend the period for filing the reports for an additional period not exceeding two years from the date the registra-

tion became effective or from the date of its last amendment or extension.

10. The administrator may by rule or order require as a condition of registration by qualification, and at the expense of the applicant or registrant, that a report by an accountant, engineer, appraiser, or other professional person be filed. The administrator may also designate one or more employees of the securities bureau to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification, at the expense of the applicant or registrant.

11. Registration statements may be amended during the registration period to increase the amount of registered securities to be offered for sale to persons in this state.

a. The amendment to the registration statement becomes effective on the date ordered by the administrator.

b. Filing fees shall be calculated as specified by subsection 2, paragraph *"a"*, and subsection 13.

12. The administrator may by rule or order require as a condition of registration under this chapter that a prospectus containing any designated part of the information specified in section 502.207, subsection 2, or the final prospectus or offering circular required by section 502.206, subsection 2, be delivered to each person to whom an offer is made before or concurrently with

a. The first written offer made to the offeree otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken as a participant in the distribution;

b. The confirmation of any sale made by or for the account of any such person;

c. Payment pursuant to any such sale; or

d. Delivery of the security pursuant to any such sale, whichever first occurs.

13. A registrant who sold securities to persons in this state in excess of the amount of securities registered in this state at the time of the sale may file an amendment to its registration statement to register the additional securities. The following requirements shall apply:

a. If a registrant proposes to sell securities to persons in this state pursuant to a registration statement that is currently effective in this state in an amount that exceeds the amount registered in this state, the registrant must do both of the following:

(1) File an amendment to register the additional securities.

(2) Pay an additional filing fee in the same amount as specified by subsection 2, paragraph *"a"*, as though the amendment constitutes a separate issue.

b. If a registrant sold securities to persons in this state in excess of the amount registered in this state at that time, the registrant must do both of the following:

(1) File an amendment to register the additional securities.

(2) Pay an additional filing fee that is three times the amount specified in subsection 2, paragraph *"a"*, as though the amendment constitutes a separate issue.

c. The administrator may order the amendment effective retroactively as of the effective date of the registration statement that is being amended.

[SS15, §1920-u2, -u3, -u6, -u8; C24, 27, §8527, 8528, 8531, 8536, 8543; C31, 35, §8581-c8, -c12, -c16; C39, §**8581.07, 8581.12, 8581.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.7(3), 502.12, 502.20; C77, 79, 81, §502.208]

91 Acts, ch 40, §16, 17; 91 Acts, ch 258, §54; 94 Acts, ch 1031, §7 – 10; 97 Acts, ch 114, §9

502.209 Denial, suspension and revocation of registration.

1. The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the administrator finds that the order is in the public interest and that:

a. The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment filed under either subsection 9 or subsection 11 of section 502.208 as of its effective date, or any financial statement or report required under section 502.208, subsection 9 is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

b. Any provision of this chapter or any rule, order or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering, by:

(1) The person filing the registration statement;

(2) The issuer;

(3) Any partner, officer or director of the issuer, or any person occupying a similar status or performing similar functions;

(4) Any affiliate of the issuer, but only if the person filing the registration statement is an affiliate of the issuer; or

(5) Any broker-dealer;

c. The securities registered or sought to be registered are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state Act applicable to the offering; but the administrator may not institute a proceeding against an effective registration statement under this section more than one year from the date of the order or injunction relied on, and the administrator may not en-

ter an order under this section on the basis of an order or injunction entered under any other state Act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

d. The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

e. The issuance or sale of the securities has worked or tended to work a fraud upon purchasers or would so operate;

f. The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

g. Advertising has been used in connection with the offering contrary to the provisions of section 502.602;

h. The financial condition of the issuer affects or would affect the soundness of the securities, except that applications for registration of securities by companies which are in the development stage shall not be denied based solely upon the financial condition of the company. For purposes of this rule, a "development stage company" is defined as a company which has been in existence for five years or less.

i. A person who is an issuer, correspondent, or applicant, as listed on the uniform application to register securities form known as "Form U-1", failed to pay the proper filing fee. The administrator may enter only a denial order pursuant to this paragraph, and shall vacate any such order when the deficiency has been corrected.

j. A person who is an issuer, correspondent, or applicant, as listed on the uniform application to register securities form known as "Form U-1", has abandoned the registration statement. The administrator may enter an order pursuant to this paragraph if a notice of abandonment is sent to the last known address of each person, and the person fails to take corrective action within the time specified by the administrator. The notice of abandonment shall state the reasons for the administrator's action, specify the corrective action required, and specify the time period for submitting a response. However, the time specified shall not be less than fifteen days.

k. A person who is an issuer, correspondent, or applicant has failed to file a sales report with the administrator within ninety days after the registration statement's annual anniversary of its effectiveness or latest renewal.

2. The administrator may not institute a stop order proceeding against an effective registration statement on the basis of a fact known to the administrator when the registration statement became effective unless the proceeding is instituted within thirty days after effectiveness.

3. The administrator may issue a summary order revoking, withdrawing, postponing, suspending, or denying the effectiveness of a registration statement pending a final determination. Upon the entry of the order, the administrator shall promptly notify persons who are the issuer, correspondent, and applicant by restricted certified mail, sent to the last known address of each person. The notice shall state that the order has been entered, the reasons for the administrator's action, and that the matter will be set down for a hearing within fifteen days after the receipt of a written request, if the request is received by the administrator within fifteen days after receipt of the notice by the persons. The hearing shall be held within forty-five days after the date of the notice of hearing unless continued by the administrative law judge for good cause with at least fifteen days' notice to the parties. If a hearing is requested or ordered, the administrator, after notice of an opportunity for a hearing to each of the persons, may modify, extend, or vacate the order. If a hearing is not requested or ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator.

4. No stop order may be entered under any part of this section except the first sentence of subsection 3 without compliance with the Iowa administrative procedure Act.

5. The administrator may vacate or modify a stop order upon a finding that the conditions which promoted its entry have changed or that it is otherwise in the public interest to do so.

[SS15, §1920-u7; C24, 27, §8539, 8540; C31, 35, §8581-c10; C39, §**8581.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.10; C77, 79, 81, §502.209]

83 Acts, ch 169, §8, 20, 21; 91 Acts, ch 40, §18; 94 Acts, ch 1031, §11 – 13

502.210 Limits on securities registered by qualification. Repealed by 91 Acts, ch 40, § 36.

502.211 Registration requirements — hearing.

1. It is unlawful for a person to make a takeover offer or to acquire any equity securities pursuant to the offer unless the offer is valid under this section and sections 502.212 through 502.218. A takeover offer is effective when the offeror files with the administrator a registration statement containing the information prescribed in subsection 6. Not later than the date of filing of the registration statement, the offeror shall deliver a copy of the registration statement by certified mail to the target company at its principal office and publicly disclose the material terms of the proposed offer. Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers maintaining an office in this state currently quoting the security.

2. The registration statement shall be filed on forms prescribed by the administrator, and shall be accompanied by a consent by the offeror to ser-

vice of process and filing fee specified in section 502.216, and contain the following information:

a. All information specified in subsection 6.

b. Two copies of all solicitation materials intended to be used in the takeover offer, and in the form proposed to be published, sent, or delivered to offerees.

c. Additional information as prescribed by the administrator by rule, pursuant to chapter 17A, prior to the making of the offer.

3. Registration shall not be considered approval by the administrator, and any representation to the contrary is unlawful.

4. Within three calendar days of the date of filing of the registration statement, the administrator may, by order, summarily suspend the effectiveness of the takeover offer if the administrator determines that the registration does not contain all of the information specified in subsection 6 or that the takeover offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the takeover offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subsection 5.

5. A hearing shall be scheduled by the administrator for each suspension under this section, and the hearing shall be held within ten calendar days of the date of the suspension. The administrator's determination following the hearing shall be made within three calendar days after the hearing has been completed, but not more than sixteen days after the date of the suspension. The administrator may prescribe different time periods than those specified in the subsection by rule or order.

If, based upon the hearing, the administrator finds that the registration statement fails to provide for full and fair disclosure of all material information concerning the offer, or that the takeover is in violation of any of the provisions of this section and section 502.212 through 502.218, the administrator shall permanently suspend the effectiveness of the takeover offer, subject to the right of the offeror to correct disclosure and other deficiencies identified by the administrator and to reinstate the takeover offer by filing a new or amended registration statement pursuant to this section.

6. The form required to be filed by subsection 2, paragraph *"a"*, shall contain all of the following information:

a. The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected.

b. The source and amount of funds or other consideration used or to be used in acquiring any equity security including, if applicable, a statement describing any securities which are being offered in exchange for the equity securities of the target company and, if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements and the names of the parties from whom the funds were or are to be borrowed.

c. If the offeror is other than a natural person, information concerning its organization and operations, including the year, form and jurisdiction of its organization, a description of each class of equity security and long-term debt, a description of the business conducted by the offeror and its subsidiaries and any material changes in the offeror or subsidiaries during the past three years, a description of the location and character of the principal properties of the offeror and its subsidiaries, a description of any pending and material legal or administrative proceedings in which the offeror or any of its affiliates is a party, the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past five years, and financial statements of the offeror in a form and for periods of time as the administrator may, pursuant to chapter 17A and prior to the making of the offer, prescribe.

d. If the offeror is a natural person, information concerning the offeror's identity and background, including business activities and affiliations during the past five years and a description of any pending and material legal or administrative proceedings in which the offeror is a party.

e. If the purpose of the acquisition is to gain control of the target company, the material terms of any plans or proposals which the offeror has, upon gaining control, to liquidate the target company, sell its assets, effect its merger or consolidation, change the location of its principal executive office or of a material portion of its business activities, change its management or policies of employment, materially alter its relationship with suppliers or customers or the community in which it operates, or make any other major changes in its business, corporate structure, management or personnel, and other information which would materially affect the shareholders' evaluation of the acquisition.

f. The number of shares or units of any equity security of the target company owned beneficially by the offeror and any affiliate or associate of the offeror, together with the name and address of each affiliate or associate.

g. The material terms of any contract, arrangement, or understanding with any other person with respect to the equity securities of the target company by which the offeror has or will acquire any interest in additional equity securities of the target company, or is or will be obligated to transfer any interest in the equity securities to another.

h. Information required to be included in a tender offer statement pursuant to section 14(d) of the Securities Exchange Act of 1934 and the rules and regulations of the securities and exchange

commission issued pursuant to the Act.
[C79, 81, §502.211]
87 Acts, ch 53, §3

502.212 Filing of solicitation materials.
Copies of all advertisements, circulars, letters, or other materials disseminated by the offeror or the target company, soliciting or requesting the acceptance or rejection of a takeover offer shall be filed with the administrator and sent to the target company or offeror not later than the time the solicitation or request materials are first published, sent, or given to the offerees. The administrator may prohibit the use of any materials deemed false or misleading.
[C79, 81, §502.212]
87 Acts, ch 53, §4

502.213 Fraudulent, deceptive or manipulative acts and practices prohibited.
It is unlawful for an offeror, target company, affiliate or associate of an offeror or target company, or broker-dealer acting on behalf of an offeror or target company to engage in a fraudulent, deceptive, or manipulative act or practice in connection with a takeover offer. For purposes of this section, an unlawful act or practice includes, but is not limited to, the following:
1. The publication or use in connection with a takeover offer of a false statement of a material fact, or the omission of a material fact which renders the statements made misleading.
2. The purchase of any of the equity securities of an officer, director, or beneficial owner of five percent or more of the equity securities of the target company by the offeror or the target company for a consideration greater than that to be paid to other shareholders, unless the terms of the purchase are disclosed in a registration statement filed pursuant to section 502.211.
3. The refusal by a target company to permit an offeror who is a shareholder of record to examine or copy its list of shareholders, pursuant to the applicable corporation statutes, for the purpose of making a takeover offer.
4. The refusal by a target company to mail any solicitation materials published by the offeror to its security holders with reasonable promptness after receipt from the offeror of the materials, together with the reasonable expenses of postage and handling.
5. The solicitation of any offeree for acceptance or rejection of a takeover offer, or acquisition of any equity security pursuant to a takeover offer, when the offer is suspended under section 502.211, provided, however, that the target company may communicate during a suspension with its equity security holders to the extent required to respond to the takeover offer made pursuant to the Securities Exchange Act of 1934.
[C79, 81, §502.213]
87 Acts, ch 53, §5

502.214 Limitations on offers and offerors.
1. A takeover offer shall contain substantially the same terms for shareholders residing within and outside this state.
2. An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a takeover offer may be withdrawn by or on behalf of an offeree within seven days after the date the offer has become effective and after sixty days from the date the offer has become effective, or as otherwise determined by the administrator pursuant to a rule or order issued for the protection of the shareholders.
3. If an offeror makes a takeover offer for less than all the outstanding equity securities of any class and, within ten days after the offer has become effective and copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to equity security holders, the number of securities deposited or tendered pursuant to the offer is greater than the number of securities that the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered for each offeree.
4. If an offeror varies the terms of a takeover offer before the offer's expiration date by increasing the consideration offered to equity security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether the securities have been accepted by the offeror before or after the variation in the terms of the offer.
5. An offeror shall not make a takeover offer or acquire any equity securities in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.
6. An offeror shall not acquire, remove, or exercise control, directly or indirectly, over any target company assets located in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.
7. An offeror shall not acquire from a resident of this state an equity security of any class of a target company at any time within two years following the last purchase of securities pursuant to a takeover offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the holders of the equity securities are afforded, at the time of the acquisition, a reasonable opportunity to dispose of the securities to the offeror upon substantially equiva-

lent terms as those provided in the earlier takeover offer.

[C79, 81, §502.214]

87 Acts, ch 53, §6

502.215 Administration — rules and orders.

1. The administrator shall make and adopt rules and forms as the administrator determines are necessary to carry out the purposes of sections 502.211 through 502.218.

2. The administrator may by rule or order exempt from any provision of sections 502.211 through 502.218 the following:

a. A proposed takeover offer or a category or type of takeover offer which the administrator determines does not have the purpose or effect of changing or influencing the control of a target company.

b. A proposed takeover offer for which the administrator determines that compliance with the sections is not necessary for the protection of the offerees.

c. A person from the requirement of filing statements.

3. In the event of a conflict between the provisions of chapter 17A and the provisions of sections 502.211 through 502.218, the provisions of sections 502.211 through 502.218 shall prevail.

[C79, 81, §502.215]

87 Acts, ch 53, §7

502.216 Fees.

The administrator shall charge a nonrefundable filing fee of two hundred fifty dollars for a registration statement filed by an offeror.

87 Acts, ch 53, §8

502.217 Nonapplication of corporate takeover law.

If the target company is a public utility, public utility holding company, national banking association, bank holding company, or savings and loan association which is subject to regulation by a federal agency and the takeover of such company is subject to approval by the federal agency, sections 502.211 through 502.218 do not apply.

87 Acts, ch 53, §9

502.218 Application of securities law.

All of the provisions of this chapter which are not in conflict with sections 502.211 through 502.217 and this section, apply to any takeover offer involving a target company.

87 Acts, ch 53, §10

PART III

REGISTRATION OF BROKER-DEALERS AND AGENTS

502.301 Registration requirement.

1. It is unlawful for any person to transact business in this state as a broker-dealer or agent unless at least one of the following conditions is satisfied:

a. The person is registered under this chapter.

b. The person is a broker-dealer who has no place of business in this state and the broker-dealer satisfies one of the following requirements:

(1) The broker-dealer effects transactions in this state exclusively with or through the issuers of the securities involved in the transaction, other broker-dealers, banks, trust companies, insurance companies, or investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions, whether acting for themselves or as trustees;

(2) During any period of twelve consecutive months the broker-dealer does not effect transactions in this state in any manner with more than three persons other than those specified in subparagraph (1), whether or not the offeror or any of the offerees is then present in this state; or

(3) The administrator designates the broker-dealer as exempt from these requirements by either rule or order.

2. It is unlawful for any broker-dealer or issuer to employ an agent in this state unless the agent is registered. The registration of an agent is not effective during any period when the agent is not associated with a specified broker-dealer registered under this chapter or a specified issuer. Unless permitted by order of the administrator, no agent shall at any time represent more than one broker-dealer or issuer, except that where organizations affiliated by direct or indirect common control are registered as broker-dealers or are issuers of securities registered under this chapter, an agent may represent any such organization. When an agent begins or terminates employment with a broker-dealer or issuer or begins or terminates the activities which makes such person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator.

3. It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless one of the following applies:

a. The person is registered under this part.

b. The person has no place of business in this state, and either of the following applies:

(1) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associa-

tions, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the administrator.

(2) During the preceding twelve-month period the person has had no more than five clients, other than those specified in subparagraph (1), who are residents of this state.

4. It is unlawful for any of the following persons to do the following:

a. An investment adviser required to be registered to employ an investment adviser representative unless the investment adviser representative is registered under this chapter, provided that the registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by an investment adviser registered under this part.

b. A federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless the investment adviser representative is registered under this chapter, or is exempt from registration.

When an investment adviser representative begins or terminates employment or association with an investment adviser, the investment adviser in the case of paragraph *"a"*, or the investment adviser representative in the case of paragraph *"b"*, shall promptly notify the administrator.

5. Every registration or notice filing under this section expires December 31, unless renewed.

6. Except with respect to advisers whose only clients are those described in section 502.301, subsection 3, paragraph *"b"*, it is unlawful for any federal covered adviser to conduct advisory business in this state unless such person complies with the provisions of section 502.302, subsection 2.

[SS15, §1920-u15; C24, 27, §8561, 8563; C31, 35, §8581-c11; C39, §**8581.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11; C77, 79, 81, §502.301]

83 Acts, ch 169, §9; 91 Acts, ch 40, §19; 96 Acts, ch 1025, §7; 98 Acts, ch 1106, §3, 4, 24

502.302 Registration and notice filing procedures.

1. A broker-dealer, agent, investment adviser, or investment adviser representative may obtain an initial or renewal license by filing with the administrator, or person which the administrator by rule assigns as a designee, an application together with a consent to service of process pursuant to section 502.609 and the appropriate filing fee as required in this section. If the application is filed with a designee, the applicant must also pay any reasonable costs charged by the designee. The applicant may transmit the fee to the administrator through the designee according to rules adopted by the administrator. The application shall contain information the administrator requires by rule concerning the applicant's form and place of organization, proposed method of doing business and financial condition, and the qualifications and experience of the applicant. In the case of a broker-dealer or investment adviser, the application shall include the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the administrator determines are relevant to the application. In addition, in the case of an investment adviser, the application shall include any information to be furnished or disseminated to any client or prospective client, and any other information which the administrator determines is relevant to the application. If no denial order is in effect and no proceeding is pending under section 502.304, registration becomes effective at noon of the sixtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The administrator may by rule or order specify an earlier effective date.

2. Except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph *"b"*, a federal covered adviser shall file with the administrator, prior to acting as a federal covered adviser in this state, such documents as have been filed with the securities and exchange commission as the administrator, by rule or order, may require.

3. Every applicant for initial or renewal registration as a broker-dealer shall pay a filing fee of two hundred dollars. Every applicant for an initial or renewal registration as an investment adviser shall pay a filing fee of one hundred dollars. Every applicant for initial or renewal registration as an agent or investment adviser representative shall pay a filing fee of thirty dollars. However, an investment adviser representative is not required to pay a filing fee if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser. A filing fee is not refundable. Every person acting as a federal covered adviser in this state, except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph *"b"*, shall pay an initial and renewal notice filing fee of one hundred dollars.

4. A registered broker-dealer, federal covered adviser, or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

5. The administrator may by rule or order require a minimum capital for broker-dealers sub-

ject to the limitations of section 15 of the Securities Exchange Act of 1934. The administrator by rule or order may also establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of client funds or securities or who have discretionary authority over client funds or securities and those investment advisers who do not.

6. The administrator may by rule or order require investment advisers who have custody of or discretionary authority over client funds or securities to post bonds in amounts as the administrator may prescribe, subject to the limitations of section 222 of the Investment Advisers Act of 1940 and may determine conditions on the bonds. A bond shall not be required of any investment adviser whose minimum financial requirements, which may be defined by rule, exceed the amounts required by the administrator. Every bond shall provide for suit on the bond by the person who has a cause of action under this chapter and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that a suit shall not be maintained to enforce liability on the bond unless brought within the time limitations of section 502.504.

7. The administrator may by rule or order impose such other conditions in connection with registration under this chapter as are deemed appropriate, in the public interest or for the protection of investors.

[SS15, §1920-u15, -u16; C24, 27, §8561, 8563, 8571; C31, 35, §8581-c11, -c14; C39, §**8581.11, 8581.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.18; C77, 79, 81, §502.302; 82 Acts, ch 1003, §2]

83 Acts, ch 169, §10, 18; 91 Acts, ch 40, §20 – 22; 94 Acts, ch 1031, §14; 96 Acts, ch 1025, §8; 97 Acts, ch 114, §10; 98 Acts, ch 1106, §5, 24; 99 Acts, ch 166, §2; 2001 Acts, ch 118, §5

502.303 Post-registration provisions.

1. Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the administrator may prescribe by rule or order, except as provided by section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. All records required, with respect to an investment adviser, shall be preserved for a period as the administrator prescribes by rule or order.

2. With respect to investment advisers, the administrator may require that certain information be furnished or disseminated to clients or prospective clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined in the administrator's discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules under that Act may be used in whole or in partial satisfaction of this requirement.

3. Every registered broker-dealer and investment adviser shall file such financial reports as the administrator prescribes by rule or order, not to exceed the limitations provided in section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer, and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

4. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a registrant, or when such amendment is required to be filed with the securities and exchange commission, if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under section 502.301, subsection 2.

5. The administrator may make examinations, within or without this state, of the business and records of each registered broker-dealer or investment adviser, at the times and in the scope as the administrator determines. The examinations may be made without prior notice to the broker-dealer or investment adviser. The administrator may copy all records the administrator believes are necessary to conduct the examination. The expense reasonably attributable to an examination shall be paid by the broker-dealer or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the administrator by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the administrator may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. The administrator shall not make public the information obtained in the course of examinations, except when a duty under this chapter requires the administrator to take action regarding a broker-dealer or investment adviser or to make the information available to one of the agencies specified in this section, or except when the administrator is called as a witness in a criminal or civil proceeding.

[C31, §8581-c11, -c12; C35, §8581-c11, -c12, -f3; C39, §**8581.11, 8581.12, 8581.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.12, 502.15; C77, 79, 81, §502.303]

83 Acts, ch 169, §11; 91 Acts, ch 40, §23; 97 Acts,

ch 114, §11; 98 Acts, ch 1106, §6, 24

502.304 Denial, revocation, suspension, and withdrawal of registration.

1. The administrator may by order deny, suspend, or revoke a registration or may censure, impose a civil penalty upon, or bar an applicant, registrant, branch manager, assistant branch manager, supervisor, or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant. A person barred under this subsection may be prohibited by the administrator from employment with a registered broker-dealer or investment adviser. The administrator may restrict the person barred from engaging in any activity for which registration is required. Any action by the administrator under this subsection may be taken if the order is found to be in the public interest and it is found that the applicant or registrant or, in the case of a broker-dealer or investment adviser, a partner, an officer, or a director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser, or a branch manager, assistant branch manager, or supervisor:

a. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

b. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

c. Has been convicted within the past ten years of

(1) Any misdemeanor involving a security or any aspect of the securities business, or

(2) Any felony;

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, insurance, or commodities business;

e. Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, investment adviser representative, or insurance producer;

f. Is the subject of an adjudication or order entered after notice and opportunity for hearing, within the past ten years by a securities or commodities agency, an administrator of another state, or a court of competent jurisdiction, that reflects that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, a securities or commodities law of any other state, or a United States postal service fraud order. However, the administrator may not do either of the following:

(1) Institute a revocation or suspension proceeding under this paragraph more than one year from the final agency order relied on or, if the order has been appealed, the final court decision.

(2) Enter an order under this paragraph on the basis of an order under another state law unless that order was based on facts which would currently constitute a ground for an order under this section.

g. Has engaged in dishonest or unethical practices in the securities business;

h. Is insolvent, either in the equity or bankruptcy sense; but the administrator may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

i. Is not qualified on the basis of such factors as training, experience and knowledge of the securities business;

j. Has failed reasonably to supervise an agent or employee in the case of a broker-dealer, or an investment adviser representative or employee in the case of an investment adviser;

k. Has been denied the right to do business in the securities industry, or the person's authority to do business in the securities industry has been revoked for cause by another state, federal, or foreign governmental agency or by a self-regulatory organization; or

l. Has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the laws of this state or another state, federal, or foreign governmental unit.

m. Does any of the following:

(1) Has willfully violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities, insurance, or banking.

(2) Within the past five years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative.

(3) Is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self-regulatory organization.

n. Does either of the following:

(1) Refuses to allow or otherwise impedes the securities bureau from conducting an audit, examination, inspection, or investigation as provided under section 502.303 or 502.603, including by withholding or concealing records or refusing to furnish records, if the records are required to be

kept either under this chapter or under rules adopted under this chapter or by the securities bureau acting under this chapter.

(2) Refuses securities bureau access to any office or location within an office to conduct an audit, examination, inspection, or investigation.

o. Is the subject of a cease and desist order issued by the administrator under section 502.604, another state, or the securities and exchange commission.

2. The administrator may not institute a suspension or revocation proceeding under subsection 1, paragraphs *"c"* through *"f"*, on the basis of a fact known to the administrator when registration became effective unless the proceeding is instituted within ninety days after the effective date.

3. The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons for the postponement or suspension and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination. Section 17A.18A is inapplicable to a summary order issued under this subsection.

4. *a.* If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after search, the administrator may by order revoke the registration or application.

b. If the administrator finds that the applicant or registrant for registration has abandoned the application or registration, the administrator may enter an order of abandonment, and limit or eliminate further consideration of the application or registration, as provided by the administrator. The administrator may enter an order under this paragraph if notice is sent to the applicant or registrant, and either the administrator does not receive a response by the applicant or registrant within forty-five days from the date that the notice was delivered, or action is not taken by the applicant or registrant within the time specified by the administrator in the notice, whichever is later.

5. Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the administrator may by order determine, unless a proceeding to deny, suspend, or revoke a registration is pending when the application is filed or a proceeding to deny, suspend, or revoke a registration, or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under subsection 1 within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

6. A person who directly or indirectly controls a broker-dealer or agent is subject to the same sanctions applicable to an applicant or registrant under this section, unless the person proves that the person did not know, and was not grossly negligent in failing to know, of the existence of facts by reason of which the liability is alleged to exist.

7. No order may be entered under any part of this section except the first sentence of subsection 3 without compliance with the Iowa administrative procedure Act.

8. A civil penalty imposed under subsection 1 shall not exceed five thousand dollars per violation per person and shall not exceed five hundred thousand dollars in a single proceeding against any one person. Moneys received from the imposition of civil penalties shall be deposited in the general fund of the state.

[SS15, §1920-u15; C24, 27, §8562; C31, 35, §8581-c13; C39, §**8581.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.14; C77, 79, 81, §502.304]

83 Acts, ch 169, §12, 13; 91 Acts, ch 40, §24 – 30; 94 Acts, ch 1031, §15; 96 Acts, ch 1025, §9 – 12; 97 Acts, ch 114, §12; 98 Acts, ch 1106, §7 – 12, 24; 99 Acts, ch 166, §3, 4; 2000 Acts, ch 1147, §16; 2001 Acts, ch 16, §6, 37; 2001 Acts, ch 118, §6 – 8; 2002 Acts, ch 1111, §4

2001 amendment to subsection 1, paragraph e, takes effect January 1, 2002; 2001 Acts, ch 16, §37

Subsection 3 amended

502.305 Examination of investment adviser representative and exemption from examination.

The administrator may adopt rules requiring the passage of an examination by an individual who is required to be registered under this chapter as an investment adviser representative. However, a person who is registered as an investment adviser representative between January 1, 1999, and December 31, 1999, shall not be required to

pass an examination for as long as the person maintains a continuous registration.

98 Acts, ch 1106, §13, 24; 99 Acts, ch 166, §5

PART IV

PROHIBITION OF FRAUDULENT PRACTICES

502.401 Offers, sales and purchases.

It is unlawful for any person, in connection with the offer to sell, offer to purchase, sale or purchase of any security in this state, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;

2. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

3. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

[C31, 35, §8581-c17; C39, §**8581.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21; C77, 79, 81, §502.401]

502.402 Trading on inside information.

It is unlawful for any person who is or was an officer, director or affiliate of an issuer or any other person whose relationship to the issuer or to any of the foregoing persons gives or gave such person access, directly or indirectly, to material information which is of decisive importance about the issuer or the security not generally available to the public, to purchase or sell any security of the issuer in this state at a time when that person knows such information about the issuer or the security gained from such relationship, which information

1. Would significantly affect the market price of that security;

2. Is not generally available to the public; and

3. Such person knows is not intended to be so available, unless that person has reason to believe that the other party to such transaction is also in possession of such information.

[C77, 79, 81, §502.402]

502.403 Market manipulation.

It is unlawful for any person, directly or indirectly, in this state:

1. For the purpose of creating a false or misleading appearance of active trading in a security or a false or misleading appearance with respect to the market for a security:

a. To effect any transaction in the security which involves no change in the beneficial ownership thereof; or

b. To enter any order or orders for the purchase (or sale) of the security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price for the sale (or purchase) of the security have been or will be entered by or for the same or affiliated persons;

2. To effect, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others; or

3. To induce the purchase or sale of any security by the circulation or dissemination of information to the effect that the price of the security will or is likely to rise or fall because of market operations of one or more persons conducted for the purpose of raising or depressing the price of the security, if that person is receiving a consideration, directly or indirectly, from any such person, or is selling or offering to sell or purchasing or offering to purchase the security.

[C77, 79, 81, §502.403]

502.404 Prohibited transactions of broker-dealers and agents.

A broker-dealer or agent shall not effect a transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive or other fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this chapter or any rule or order hereunder. A broker-dealer or agent shall not recommend to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and other relevant information known by the broker-dealer.

[C77, 79, 81, §502.404]

83 Acts, ch 169, §14; 97 Acts, ch 23, §60

502.405 Misleading filings.

It is unlawful for any person to make or cause to be made, in any document filed with the administrator or in any proceeding under this chapter, any statement of a material fact which is, at the time and in the light of the circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

[SS15, §1920-u19; C24, 27, §8577; C31, 35, §8581-c21; C39, §**8581.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.26; C77, 79, 81, §502.405]

502.406 Misrepresentations of government approval.

1. It is unlawful for any person registered as a broker-dealer, agent, investment adviser, or investment adviser representative under this chap-

ter to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved or that the person's abilities or qualifications have in any respect been passed upon by the administrator. Nothing in this subsection prohibits a statement other than in a paid advertisement that a person is registered under this chapter, if such statement is true in fact and if the effect of such registration is not misrepresented.

2. *a.* The fact that an application for registration or notice filing under part III or a registration statement or a notice filing has been filed under this chapter or the fact that a person or the statement has become effective does not constitute a finding by the administrator that any document filed under this chapter is true, complete, or not misleading. Any such fact or the fact that an exemption is available for a security or a transaction does not mean that the administrator has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any person, security, or transaction.

b. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, client, or any other person, any representation inconsistent with paragraph *"a"*.

3. No state official or employee of the state shall use such person's name in an official capacity in connection with the endorsement or recommendation of the organization or the promotion of any issuer or in the sale to the public of its securities, nor shall anyone use the stationery of the state or of any official thereof in connection with any such transaction.

[C24, 27, §8580; C31, 35, §8581-c24; C39, §**8581.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.29; C77, 79, 81, §502.406]

97 Acts, ch 114, §13; 98 Acts, ch 1106, §14, 24

502.407 Misstatements in publicity prohibited.

It is unlawful for any person to make or cause to be made, in any public report or press release, or in other information which is either made generally available to the public or used in opposition to a tender offer, any statement of a material fact relating to a target company or made in connection with a tender offer which is, at the time and in the light of the circumstances under which it is made, false or misleading, if it is reasonably foreseeable that such statement will induce other persons to buy, sell or hold securities of the target company.

[SS15, §1920-u21; C24, 27, §8579; C31, 35, §8581-c23; C39, §**8581.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.28; C77, 79, 81, §502.407]

87 Acts, ch 53, §11

502.408 Advisory activities.

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to do any of the following:

a. Employ any device, scheme, or artifice to defraud the other person.

b. Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

c. Engage in dishonest or unethical practices as the administrator may define by rule.

2. In the solicitation of advisory clients, it is unlawful for a person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

3. Except as may be permitted by rule or order of the administrator, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing all of the following:

a. That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

b. That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.

c. That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

4. Subsection 3, paragraph *"a"*, does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. *"Assignment"*, as used in subsection 3, paragraph *"b"*, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. However, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

5. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if any of the following applies:

a. The administrator by rule prohibits custody.

b. In the absence of rule, the investment adviser fails to notify the administrator that it has or may have custody.

6. The administrator may by rule or order adopt exemptions from the requirements of subsection 1, paragraph *"c"*, and subsection 3, paragraphs *"a"*, *"b"*, and *"c"*, where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

98 Acts, ch 1106, §15, 24

PART V

CIVIL LIABILITY

502.501 Violation of registration and related requirements.

1. Any person who:

a. Violates section 502.201, subsection 1 or 2, or section 502.208, subsection 12, or section 502.406, subsection 2, paragraph *"b"*, or

b. Violates any material condition imposed under section 502.208, or

c. Violates section 502.301, or

d. Commits a material violation of any order issued by the administrator under this chapter,

shall be liable to the person purchasing the security offered or sold in connection with such violation, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less

(1) The value of the security when the purchaser disposed of it and

(2) Interest on said value at the legal rate from the date of disposition.

Any person on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this section, but in no event shall any underwriter be liable in any suit or suits authorized under this section for damages in excess of the total price at which the securities underwritten by it and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

2. Any person who violates section 502.211 shall be liable to the person selling the security to such violator, which seller may sue either at law or in equity to recover the security, costs and reasonable attorney's fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

3. In addition to other remedies provided in this chapter, in a proceeding alleging a violation of sections 502.211 through 502.218 the court may provide that all shares acquired from a resident of this state in violation of any provision of this chapter or rule or order issued pursuant to this chapter be denied voting rights for one year after acquisition, that the shares be nontransferable on the books of the target company, or that during this one-year period the target company have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption, which redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

[C77, 79, 81, §502.501]

87 Acts, ch 53, §12; 97 Acts, ch 114, §14; 98 Acts, ch 1106, §16, 24

502.502 Fraudulent practices.

1. Any person, other than an underwriter, who offers or sells a security in connection with an offering of securities (i) registered under section 502.207 or under the Securities Act of 1933, or (ii) pursuant to an exemption from registration under section 3(b) of the Securities Act of 1933, in violation of section 502.401, the purchaser not knowing of the violation, shall be liable to the purchaser, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less:

a. The value of the security when the purchaser disposed of it; and

b. Interest on said value at the legal rate from the date of disposition.

The persons on whose behalf an offering is made shall be jointly and severally liable under this subsection. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

2. Any underwriter and any person, other

than a person on whose behalf an offering described in subsection 1 is made, who offers or sells a security in violation of section 502.401, the purchaser not knowing of the violation, and who fails to sustain the burden of proof that the underwriter or person did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the purchaser, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less:

a. The value of the security when the purchaser disposed of it; and

b. Interest on said value at the legal rate from the date of disposition.

Any person liable under this subsection on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this subsection, but in no event shall any underwriter be liable in any suit or suits authorized under this subsection for damages in excess of the total price at which the securities underwritten by it and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

3. Any person who offers to purchase or purchases a security in violation of section 502.401, the seller not knowing of the violation, and who fails to sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the seller, who may sue either at law or in equity to recover the security, costs, and reasonable attorney's fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

4. Any person who willfully and knowingly participates in any act or transaction in violation of section 502.403, 502.404, 502.405, or 502.407 shall be liable to any other person who purchases or sells any security (but not a mere holder thereof) at a price which was affected by the act or transaction for the damages sustained as a result of such act or transaction. Damages shall not exceed the difference between the price at which the other person purchased or sold securities and the market value which the securities would have had at the time of such purchase or sale in the absence of the act or transaction, plus interest at the legal rate, costs and reasonable attorneys' fees.

5. Any person, referred to in this subsection as the "defendant", who violates section 502.402 shall be deemed to be unjustly enriched and liable to any person, referred to in this subsection as the "plaintiff", who purchased or may have purchased a security from, or sold or may have sold a security to, the defendant in connection with such violation, for damages equal to the difference between the price at which such security was purchased or sold and the market value which such security would have had at the time of the purchase or sale if the information known to the defendant had been publicly disseminated prior to that time and a reasonable time had elapsed for the market to absorb the information, plus interest at the legal rate, costs and reasonable attorneys' fees, unless the defendant proves that the plaintiff knew the information or that the plaintiff would have purchased or sold at the same price even if the information had been revealed to the plaintiff.

6. Any person who is aggrieved by a violation of section 502.407 may bring an action in the district court to enjoin the acts complained of and, upon proper showing, to require that correcting material be disseminated, and such person may be awarded costs and reasonable attorney's fees.

7. A copy of any suit or arbitration action filed under this section shall be served upon the administrator within twenty days of the filing in the form and manner prescribed by the administrator by rule or order, provided that the failure to comply with this provision shall not invalidate the action which is the subject of the suit.

[C31, 35, §8581-c18; C39, §**8581.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.23; C77, 79, 81, §502.502]

96 Acts, ch 1025, §13

502.502A Advisory misconduct.

1. A person shall be held civilly liable for doing any of the following:

a. Engaging in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities in violation of section 502.301, subsection 3 or 4; section 502.406, subsection 2; section 502.408; or of any rule or order under section 502.602.

b. Receiving directly or indirectly any consideration from another person for advice as to the

value of securities or their purchase or sale, whether through the issuance of analyses, reports, or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such other person. The person acting in violation of this section is liable to the other person who may sue either at law or in equity to recover the consideration paid for such advice and any loss due to such advice, together with interest at the legal rate per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

2. A person shall not base the civil action on a contract, if the person did any of the following:

a. Engaged in the performance of the contract in violation of any provision of this chapter, or any rule adopted or order issued under this chapter.

b. Acquired any purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation of any provision of this chapter or any rule adopted or order issued under this chapter.

98 Acts, ch 1106, §17, 24

502.503 Joint and several liability; contribution; indemnity.

1. Affiliates of a person liable under section 502.401, 502.501, 502.502, 502.502A, or 502.604, partners, principal executive officers or directors of such person, persons occupying a similar status or performing similar functions for such person, persons (whether employees of such person or otherwise) who materially aid and abet in the act or transaction constituting the violation, and broker-dealers or agents who materially aid and abet in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless one of the following applies:

a. With respect to section 502.501, section 502.502, subsections 1 and 5, or section 502.502A, a person liable under this subsection proves that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

b. With respect to section 502.401, section 502.502, subsections 2 and 3, and section 502.604 a person liable under this subsection proves that the person did not know, and was not grossly negligent in failing to know, of the existence of the facts by reason of which the liability is alleged to exist.

2. Any person liable under this chapter shall have a right of indemnification against any affiliate whose willful violation of any provision of this chapter gave rise to such liability. Any person liable under this chapter shall have a right of contribution against all other persons similarly liable, except that no person whose willful violation of any provision of this chapter has given rise to any civil liability shall have any right of contribution against any other person guilty merely of a negligent violation.

[C77, 79, 81, §502.503]

98 Acts, ch 1106, §18, 19, 24; 99 Acts, ch 166, §6

502.504 Time limitations on rights of action.

1. No action shall be maintained to enforce any liability created under either section 502.501 or section 502.503, subsection 1 insofar as it relates to section 502.501 unless brought within two years after the violation upon which it is based.

2. No action shall be maintained to enforce any liability created under either section 502.502 or section 502.503, subsection 1, insofar as it relates to section 502.502, unless brought within the shorter of the following two periods:

a. Five years after the act or transaction constituting the violation; or

b. Two years after the plaintiff receives actual notice of, or upon the exercise of reasonable diligence should have known of, the facts constituting the violation.

3. No action shall be maintained to enforce any right of indemnification or contribution created by section 502.503, subsection 2, unless brought within one year after final judgment based upon the liability for which the right of indemnification or contribution exists.

4. No purchaser may commence an action under section 502.501, 502.502 or 502.503 if:

a. Before suit is commenced, the purchaser has received a written offer:

(1) Stating in reasonable detail why liability under such section may have arisen and fairly advising the purchaser of the purchaser's rights;

(2) Offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received thereon or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 502.502, subsection 1; and

(3) Stating that the offer may be accepted by the purchaser at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the administrator may by rule prescribe; and

b. The purchaser has failed to accept such offer in writing within the specified period.

5. No seller may commence an action under section 502.501, 502.502 or 502.503 if:

a. Before suit is commenced, the seller has received a written offer:

(1) Stating in reasonable detail why liability under such section may have arisen and fairly ad-

vising the seller of the seller's rights;

(2) Offering to return the security plus the amount of any income or distributions, in cash or in kind, received thereon upon payment of the consideration received, or, if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 502.502, subsection 2; and

(3) Stating that the offer may be accepted by the seller at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the administrator may by rule prescribe; and

b. The seller has failed to accept the offer in writing within the specified period.

6. Offers under subsection 4 or 5 shall be in the form and contain the information the administrator by rule prescribes. Every offer under either subsection shall be delivered to the offeree personally or sent by certified mail addressed to the offeree at the offeree's last known address. If an offer is not performed in accordance with its terms, suit by the offeree under section 502.501, 502.502 or 502.503 shall be permitted without regard to subsections 4 and 5 of this section.

7. This section shall not apply to actions filed by the administrator pursuant to section 502.604.

[C77, 79, 81, §502.504]

99 Acts, ch 166, §7

502.505 Limitation on implied liability.

Except as explicitly provided in this chapter, no civil liability in favor of any person shall arise against any person by implication from or as a result of the violation of any provision of this chapter or any rule or order hereunder. Nothing in this chapter shall limit any liability which might exist by virtue of any other statute or under common law if this chapter were not in effect.

[C77, 79, 81, §502.505]

502.506 No waiver of right of action.

Any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or any rule or order hereunder is void.

[C77, 79, 81, §502.506]

502.507 Enforceability of illegal contracts.

It shall be a defense to an action based on a contract for the purchase or sale of a security that the plaintiff or the plaintiff's assignor entered into the transaction which gave rise to the contract under circumstances which would subject the plaintiff or the assignor to liability under section 502.501, 502.502, or 502.503.

[C77, 79, 81, §502.507]

PART VI

ADMINISTRATION AND ENFORCEMENT

502.601 Administration.

1. This chapter shall be administered by the commissioner of insurance of the state of Iowa. The administrator shall appoint a deputy administrator who shall be exempt from the merit system provided for in chapter 19A. The deputy administrator is the principal operations officer of the securities bureau and is responsible to the administrator for the routine administration of the chapter and the management of the securities bureau. In the absence of the administrator, whether because of vacancy in the office, by reason of absence, physical disability, or other cause, the deputy administrator shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the administrator. The administrator may by order from time to time delegate to the deputy administrator any or all of the functions assigned to the administrator in this chapter. The administrator shall employ officers, attorneys, accountants, and other employees as needed for the administration of the chapter.

2. It is unlawful for the administrator or any officer or employee of the securities bureau to use for personal benefit any information which is filed with or obtained by the administrator and which is not made public. This chapter does not authorize the administrator or any such officer or employee to disclose any such information except among themselves or to other securities administrators, regulatory authorities, or governmental agencies, or when necessary or appropriate in a proceeding or investigation under this chapter. This chapter neither creates nor derogates from any privileges which exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or any officer or employee of the securities bureau.

[SS15, §1920-u, -u10; C24, 27, §8525, 8550; C31, 35, §8581-c2; C39, §**8581.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.2; C77, 79, 81, §502.601]

83 Acts, ch 169, §15; 91 Acts, ch 258, §55

502.602 Filing of sales and advertising literature.

The administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security is a federal covered security or the transaction relates to a federal covered security or the security or transaction is exempted by section 502.202 or 502.203. The administrator may by rule or order prohibit the publication, circulation, or use of any advertising

deemed false or misleading.

[SS15, §1590-u2; C24, 27, §8527; C31, 35, §8581-c8; C39, §**8581.07(4);** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.7(2, d); C77, 79, 81, §502.602]

97 Acts, ch 114, §15; 98 Acts, ch 1106, §20, 24

502.603 Investigations and subpoenas.

1. The administrator may

a. Make such public or private investigations within or outside of this state as the administrator deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;

b. Require or permit any person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated; and

c. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the administrator determines that it is necessary or appropriate in the public interest or for the protection of investors, the administrator may share information with other securities administrators, regulatory authorities, or governmental agencies or may publish information concerning a violation of this chapter or a rule or order under this chapter.

2. *a.* For the purpose of any investigation or proceeding under this chapter, the administrator or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator deems relevant or material to the inquiry, all of which may be enforced in accordance with chapter 17A.

b. The administrator may issue and bring an action in district court to enforce subpoenas in this state at the request of a securities agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

3. A person is not excused from attending or testifying in a proceeding required by this section, or from producing any evidence, including a document or record in obedience to a subpoena of the administrator or any officer designated by the administrator, on the ground that the testimony or evidence required, whether documentary or otherwise, may tend to incriminate such person or subject such person to a penalty or forfeiture. If a person makes a claim against self-incrimination, the administrator may file a petition to compel compliance with this section in the district court for Polk county. The court may make a threshold determination on the applicability of the self-incrimination privilege. Any evidence compelled under order of the district court, or any information directly or indirectly derived from such evidence or other information, shall not be used against the person in any criminal case. The limitation on the use of evidence in a criminal proceeding contained in this section does not apply to any prosecution or proceeding for perjury or contempt of court committed in the course of giving or producing information, documents, testimony, or other evidence.

[C31, 35, §8581-c17; C39, §**8581.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21(1 – 4); C77, 79, 81, §502.603]

83 Acts, ch 169, §16; 91 Acts, ch 40, §31; 94 Acts, ch 1031, §16; 2001 Acts, ch 118, §9

502.603A Cooperation with other agencies.

1. To encourage uniform interpretation and administration of this chapter and effective securities regulation and enforcement, the administrator may cooperate with the securities agencies or administrators of any state, Canadian province or territory, another country, the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or regulatory agency.

2. The cooperation authorized by subsection 1 may include, but is not limited to, the following:

a. Establishing a central depository for licensing or registration under this chapter and for documents or records required or allowed to be maintained under this chapter.

b. Making a joint examination or investigation.

c. Holding a joint administrative hearing.

d. Filing and prosecuting a joint civil or administrative proceeding.

e. Sharing and exchanging personnel.

f. Sharing and exchanging information and documents subject to restriction of confidentiality in section 502.603, subsection 1.

g. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, guidelines, and interpretive opinions.

91 Acts, ch 40, §32

502.604 Summary orders — injunctions.

If it appears to the administrator that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or order adopted or issued pursuant to this chapter, the administrator may do any of the following:

1. Issue a summary order directed at the person requiring the person to cease and desist from engaging in such act or practice or to take other af-

firmative action as in the judgment of the administrator is necessary to comply with the requirements of this chapter.

a. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this subsection may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the administrator. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection.

b. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The administrator may petition the district court to enforce the order as certified by the administrator. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

2. Bring an action in the district court to enjoin the act or practice and to enforce compliance with this chapter or a rule or order adopted or issued pursuant to this chapter. Upon a proper showing, the court may do all of the following:

a. Grant a permanent or temporary injunction, restraining order, asset freeze, accounting, writ of attachment, writ of general or special execution, writ of mandamus, or other equitable or ancillary relief.

b. Appoint a receiver or conservator for the defendant or the defendant's assets.

c. Order the administrator to take charge and control of a party's property, including but not limited to managing rents and profits, collecting debts, and acquiring and disposing of property.

d. Order the rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this chapter, or a rule or order adopted or issued pursuant to this chapter.

e. Order the payment of prejudgment and postjudgment interest.

The administrator shall not be required to post a bond.

3. Assess a civil penalty against the person, if the violation was made knowingly or recklessly. The penalty shall be assessed as an agency action provided for under chapter 17A. The amount of the civil penalty shall not exceed five thousand dollars for each violation.

[C31, 35, §8581-c17; C39, §**8581.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.21(5); C77, 79, 81, §502.604]

91 Acts, ch 40, §33; 96 Acts, ch 1025, §14; 99 Acts, ch 166, §8; 2000 Acts, ch 1147, §17; 2001 Acts, ch 118, §10, 11

502.604A Court action.

If a person fails or refuses to file any statement or report or to produce any books, papers, correspondence, memoranda, agreements, or other documents or records, or to obey any subpoena issued by the administrator, the administrator may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any or all of the following:

1. Injunctive relief, restricting or prohibiting the offer or sale of securities.

2. Revocation or suspension of any license or registration.

3. Production of documents or records, including but not limited to books, papers, correspondence, memoranda, or agreements.

4. Such other relief as may be required.

Such an order shall be effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

91 Acts, ch 40, §34; 94 Acts, ch 1031, §17

502.604B Limited law enforcement authority.

The administrator or designee, when carrying out the provisions of section 502.603, 502.603A, or 502.604, may develop, share, and receive information related to any law enforcement purpose, including any criminal investigation. The administrator or designee shall not have the authority to issue criminal subpoenas or make arrests. The administrator or designee shall not be considered a peace officer, including as provided in chapter 801.

2001 Acts, ch 118, §12

502.605 Criminal penalties.

1. *a.* Except as provided in paragraph *"b"*, a person who willfully violates any provision of this chapter, or any rule or order under this chapter, is guilty of a class "D" felony.

b. A person who willfully violates section 502.401, 502.402, or 502.403, or section 502.408, subsection 1 or 2, resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony.

2. The administrator may refer such evidence as is available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper county attorney who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

3. Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

4. In a criminal proceeding brought under this chapter, the applicability of any exemption, excep-

tion, exclusion from a definition, or preemption shall be an affirmative defense. The defendant claiming such an exemption, exception, exclusion, or preemption has the burden of going forward with the evidence of the claim.

[SS15, §1920-u19, -u20, -u21; C24, 27, §8577 – 8579; C31, 35, §8581-c21, -c22, -c23; C39, §**8581.26 – 8581.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.26 – 502.28; C77, 79, 81, §502.605]

2000 Acts, ch 1147, §18; 2001 Acts, ch 118, §13, 14

502.606 Judicial review of orders.

Judicial review of actions of the administrator may be sought pursuant to the Iowa administrative procedure Act, upon execution of a bond in the penal sum of one thousand dollars to the state of Iowa, with sufficient surety, to be approved by the clerk of the court conditioned upon the faithful prosecution of such petition for judicial review, and the payment of all costs adjudged against the petitioner.

[SS15, §1920-u17; C24, 27, §8575; C31, 35, §8581-c19; C39, §**8581.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.24; C77, 79, 81, §502.606]

502.607 Rules, forms, orders and hearings.

1. Pursuant to chapter 17A, the administrator may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, notice filings, applications, and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the administrator may classify securities, persons, and other relevant matters, and prescribe different requirements for different classes.

2. No rule, form or order may be made, amended or rescinded unless the administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the administrator may co-operate with the securities administrators of the other states, the securities and exchange commission, and national securities exchanges and national securities associations registered under the Securities and Exchange Act of 1934, with a view to effectuating the policy of this statute to achieve maximum uniformity in form and content of registration statements, applications, and reports wherever practicable.

3. The administrator may by rule or order prescribe

a. The form and content of financial statements required under this chapter,

b. The circumstances under which consolidated financial statements shall be filed, and

c. Whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting principles.

4. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the administrator, notwithstanding that the rule, form or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

5. Every hearing in an administrative proceeding shall be public unless, in the exercise of discretion, the administrator grants a request joined in by all the respondents that the hearing be conducted privately.

[C35, §8581-f6; C39, §**8581.22;** C46, 50, 54, 58, 62, §502.22; C66, 71, 73, 75, §502.2, 502.22; C77, 79, 81, §502.607]

97 Acts, ch 114, §16

502.608 Administrative files and opinions.

1. A document is filed when it is received by the administrator, except that documents required to be filed under sections 502.202 and 502.203 shall be deemed to be filed with the administrator:

a. On the date received by the administrator.

b. If it has not been received by the administrator prior to the date by which the document must be filed, on the date the document is mailed with the United States postal service by registered or certified mail addressed to the administrator's office in Des Moines, Iowa.

2. The administrator shall keep a register of all applications for registration, notice filings, and registration statements that are or have been effective under this chapter and predecessor laws, and all censure, denial, suspension, or revocation orders that have been entered under this chapter and predecessor laws. All records may be maintained in an electronic or microfilm format or any other form of data storage. The register shall be open for public inspection. However, notwithstanding chapter 22, the administrator may keep confidential any social security number, residence address, and residence telephone number that is contained in these records if disclosure is not required in the performance of any duty or is not otherwise required under law.

3. The information contained in or filed with any registration statement, application, notice filing, or report may be made available to the public under such rules as the administrator prescribes.

4. Upon request and at such reasonable charges as may be prescribed, the administrator shall furnish to any person photostatic or other copies, certified if requested, of any entry in the

register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

5. The administrator may honor requests from interested persons for interpretative opinions.

[C31, 35, §8581-c11, -c26; C39, §**8581.11, 8581.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.11, 502.31; C77, 79, 81, §502.608]

83 Acts, ch 169, §17; 97 Acts, ch 114, §17; 98 Acts, ch 1106, §21, 24; 2002 Acts, ch 1111, §5

Subsection 2 amended

502.609 Service of process.

1. Every applicant for registration under this chapter, and every issuer which proposes to offer a security in this state, unless exempt under section 502.202 or 502.203 and the administrator by rule or order waives the filing, shall file with the administrator, in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or the administrator's successor in office to be such person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against such person or the successor, executor or administrator of such person which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent need not be filed by a person who has filed a consent in connection with a previous registration or notice filing which is then in effect. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless the plaintiff, including the administrator when acting as such does the following:

a. Promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at such person's last known address or takes other steps which are reasonably calculated to give actual notice; and

b. Files an affidavit of compliance with this subsection in the case on or before the return day of the process, or within such time as the court allows.

2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, has not filed a consent to service of process under subsection 1, and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the appointment by such person of the administrator or the administrator's successor in office to be that person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against that person or the successor, executor or administrator of that person which arises out of that conduct and which is brought under this chapter or by any rule or order hereunder, with the same validity as if served personally. Service may be made by leaving a copy of the process in the office of the administrator, and it is not effective unless the plaintiff, including the administrator when acting as such,

a. Promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at such person's last known address or takes other steps which are reasonably calculated to give actual notice; and

b. Files an affidavit of compliance with this subsection in the case on or before the return day of the process or within such time as the court allows.

3. When process is served under this section, the court, or the administrator in a proceeding before the administrator, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

[SS15, §1920-u5; C24, 27, §8534, 8535; C31, 35, §8581-c9; C39, §**8581.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §502.9; C77, 79, 81, §502.609]

91 Acts, ch 40, §35; 97 Acts, ch 114, §18; 2000 Acts, ch 1147, §19

502.610 Scope.

1. The provisions of this chapter concerning sales and offers to sell apply when a sale or an offer to sell is made in this state or when an offer to purchase is made and accepted in this state. The provisions concerning purchases and offers to purchase apply when a purchase or an offer to purchase is made in this state or an offer to sell is made and accepted in this state.

2. For the purpose of this section, an offer to sell or an offer to purchase is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state, but for the purpose of section 502.201 an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

3. For the purpose of this section, an offer to purchase or to sell is accepted in this state when acceptance is communicated to the offeror in this state, and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received by the offeror in this state.

4. Except when made in connection with a tender offer, an offer to sell or to purchase is not made in this state when made by means of either of the following:

a. Any bona fide newspaper or other publication of general, regular and paid circulation which

is not published in this state, or

b. A radio or television program originating outside this state which is received in this state.

5. Section 502.301, subsection 3, and section 502.408, and section 502.406 so far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

[C77, 79, 81, §502.610]

98 Acts, ch 1106, §22, 24

502.611 Statutory policy.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact the "Uniform Securities Act" and to co-ordinate the interpretation and administration of this chapter with the related federal regulation.

This chapter may be construed and implemented to effectuate its general purpose to protect investors, and consistent with that purpose, to encourage capital formation, job creation, and free and competitive securities markets and to minimize regulatory burdens on issuers and persons subject to this chapter, especially small businesses.

[C77, 79, 81, §502.611]

90 Acts, ch 1196, §5

502.612 Prior law. Repealed by 2002 Acts, ch 1119, § 110.

PART VII

JOINT INVESTMENT TRUSTS

502.701 Public joint investment trusts.

1. A joint investment trust organized pursuant to chapter 28E for the purposes of joint investment of public funds is subject to the jurisdiction and authority of the administrator, including all requirements of this chapter, except the registration provisions of section 502.201 and 502.218.

2. The administrator may make examinations within or without the state, of the business and records of each joint investment trust, at the times and in the scope as the administrator determines. The administrator shall have the authority to contract for outside professional services in the conduct of examinations. The examinations may be made without prior notice to the joint investment trust or the trust's investment advisor. The administrator may copy all records the administrator feels are necessary to conduct the examination. The expense reasonably attributable to the examination shall be paid by the joint investment trusts whose business is examined. For the purpose of avoiding unnecessary duplication of examinations, the administrator may cooperate with other regulatory authorities.

92 Acts, ch 1156, §41

CHAPTER 502A

COMMODITIES CODE

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SUBCHAPTER I

502A.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Administrator"* means the administrator of the securities bureau of the insurance division of the department of commerce.

2. *"Board of trade"* means a person or group of persons engaged in buying or selling any commod-

ity or receiving the same for sale on consignment, whether the person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

3. *"CFTC rule"* means a regulation or order of the commodity futures trading commission in effect on July 1, 1990, and all subsequent amendments, additions or other revisions to the regulation or order, unless the administrator, within ten days following the effective date of the amendment, addition, or revision, disallows the application to this chapter in whole or in part by rule or order.

4. *"Commodity"* means, except as otherwise specified by the administrator by rule or order: an agricultural, grain, or livestock product or byproduct; a metal or mineral, including a precious metal; a gem or gemstone, whether characterized as precious, semiprecious or otherwise; a fuel, whether liquid, gaseous or otherwise; a foreign currency; and all other goods, articles, products, or items of any kind.

The term commodity does not include any of the following:

a. A numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains.

b. Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property.

c. Any work of art offered or sold by art dealers, at public auction, or offered or sold through a private sale by the owner of the work of art.

5. *"Commodity contract"* means an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. A commodity contract offered or sold, in the absence of evidence to the contrary, shall be presumed to be offered or sold for speculation or investment purposes. A commodity contract does not include a contract or agreement which requires, and under which the purchaser receives, within twenty-eight days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

6. *"Commodity Exchange Act"* means the federal Commodity Exchange Act, as amended to July 1, 1990, codified at 7 U.S.C. § 1, et seq., and all subsequent amendments, additions, or other revisions to the Act, unless the administrator, within ten days following the effective date of the amendment, addition, or revision, disallows its application to this chapter in whole or in part by rule or order.

7. *"Commodity futures trading commission"* or *"CFTC"* means the independent regulatory agency established by the United States Congress to administer the Commodity Exchange Act.

8. *"Commodity merchant"* means any of the following as defined or described in the Commodity Exchange Act or by CFTC rule:

a. A futures commission merchant.

b. A commodity pool operator.

c. A commodity trading adviser.

d. An introducing broker.

e. A leverage transaction merchant.

f. An associated person of any of the persons listed in paragraphs *"a"* through *"e"*.

g. A floor broker.

h. Any other person, other than a futures association, required to register with the commodity futures trading commission.

9. *"Commodity option"* means an account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but shall not include an option traded on a national securities exchange registered with the United States securities and exchange commission.

10. *"Financial institution"* means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

11. *"Offer"* includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

12. *"Person"* means a person as defined in section 4.1, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse of the CFTC or a national securities exchange registered with the securities and exchange commission, or any employee, officer, or director of a contract market, clearinghouse, or exchange acting solely in that capacity.

13. *"Precious metal"* means one or more of the following in either coin, bullion, or other form:

a. Silver.

b. Gold.

c. Platinum.

d. Palladium.

e. Copper.

f. Such other items as the administrator may specify by rule or order.

14. *"Sale"* or *"sell"* includes every sale, contract of sale, contract to sell, or disposition, for value.

90 Acts, ch 1169, §1

502A.2 Unlawful commodity transactions.

Except as otherwise provided in section 502A.3 or 502A.4, a person shall not sell or purchase, or offer to sell or purchase, a commodity under a commodity contract, or under a commodity option, or offer to enter into, or enter into as seller or purchaser, a commodity contract or commodity option.

90 Acts, ch 1169, §2

502A.3 Exempt person transactions.

The prohibitions in section 502A.2 do not apply to a transaction in which any of the following persons, or any employee, officer, or director of a listed person acting solely in that capacity, is the purchaser or seller:

1. A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration.

2. A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration.

3. A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subsection 1 or 2.

4. A person who is a member of a contract market designated by the commodity futures trading commission, or any CFTC clearinghouse.

5. A financial institution.

6. A person registered under the laws of this state as a securities broker-dealer whose activities require such registration.

This exemption provided by this section does not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

90 Acts, ch 1169, §3

502A.4 Exempt transactions.

1. Section 502A.2 does not apply to any of the following:

a. An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act.

b. A commodity contract, offered or sold by a qualified seller as defined in subsection 2, for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by the payment. For purposes of this paragraph, physical delivery shall be deemed to have occurred if both of the following conditions are satisfied:

(1) Within twenty-eight days, the required quantity of precious metals purchased by the payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is any of the following:

(a) A financial institution.

(b) A depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission.

(c) A storage facility licensed or regulated by the United States or any agency of the United States.

(d) A depository designated by the administrator.

(2) The depository or a qualified seller issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the required quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser.

c. For the purposes of paragraph *"b"*, a depository other than the seller shall not include a financial institution which makes loans to enable the borrower to finance the purchase of one or more precious metals if any of the following apply:

(1) The financial institution knows that the seller arranged for a commission, brokerage, or referral fee for the extension of credit by the financial institution.

(2) The financial institution is a person related to the seller, unless the relationship is remote or is not a factor in the transaction.

(3) The seller guarantees the loan or otherwise assumes the risk of loss by the financial institution upon the loan.

(4) The financial institution directly supplies the seller with the contract document used by the borrower to evidence the loan, and the seller has knowledge of the credit terms and participates in the preparation of the document.

(5) The loan is conditioned upon the borrower's purchase of the precious metals from a particular seller, but the financial institution's payment of proceeds of the loan to the seller does not in itself establish that the loan was so conditioned.

(6) The financial institution otherwise knowingly participates with the seller in the sale. The fact that the financial institution takes a security interest in the precious metals sold or makes the proceeds of the loan payable to the seller does not in itself constitute knowing participation in the sale.

d. A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, the commodi-

ty which is the subject of the contract, or any by-product of the commodity.

e. A commodity contract under which the offeree or the purchaser is a person under section 502A.3, an insurance company, an investment company as defined in the federal Investment Company Act of 1940, or an employee pension and profit sharing or benefit plan other than a self-employed individual retirement plan, or individual retirement account.

2. For the purposes of subsection 1, paragraph *"b"*, a qualified seller is a person who satisfies all of the following conditions:

a. Is a seller of precious metals and has a tangible net worth of at least five million dollars, or has an affiliate who has unconditionally guaranteed the obligations and liabilities of the seller and the affiliate has a tangible net worth of at least five million dollars.

b. Has stored precious metals with one or more depositories on behalf of customers for at least the previous three years.

c. Prior to any offer, files with the administrator a sworn notice of intent to act as a qualified seller under subsection 1, paragraph *"b"*, and annually files a new notice. A notice of intent to act as a qualified seller must contain all of the following:

(1) The seller's name and address, names of its directors, officers, controlling shareholders, partners, principals, and other controlling persons.

(2) The address of its principal place of business, state and date of incorporation or organization, and the name and address of seller's registered agent in this state.

(3) A statement that the seller, or a person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, has a tangible net worth of at least five million dollars.

(4) Depository information including all of the following:

(a) The name and address of the depository or depositories that the seller intends to use.

(b) The name and address of each and every depository where the seller has stored precious metals on behalf of customers for the previous three years.

(c) Independent verification from each and every depository named in subparagraph subdivision (b) that the seller has in fact stored precious metals on behalf of the seller's customers for the previous three years and a statement of total deposits made during this period.

(5) Financial statements for the seller, or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, for the past three years, audited by an independent certified public accountant, together with the accountant's reports.

(6) A statement describing the details of all civil, criminal, or administrative proceedings currently pending or adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals, or other controlling persons during the past ten years including all of the following in subparagraph subdivisions (a) through (d), or if not applicable, subparagraph subdivision (e):

(a) Civil litigation and administrative proceedings involving securities or commodities violations, or fraud.

(b) Criminal proceedings.

(c) Denials, suspensions, or revocations of securities or commodities, licenses, or registrations.

(d) Suspensions or expulsions from membership in, or associations with, self-regulatory organizations registered under the Securities Exchange Act of 1934, or the Commodities Exchange Act.

(e) A statement that there were no such proceedings.

d. Notifies the administrator within fifteen days of any material changes in the information provided in the notice of intent.

e. Annually furnishes to each purchaser for whom the seller is then storing precious metals, and to the administrator, a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

3. The administrator may, upon request by the seller, waive any of the exempt transaction requirements of this section, conditionally or unconditionally.

4. The administrator may, by order, deny, suspend, revoke, or place limitations on the authority to engage in business as a qualified seller under subsection 1, paragraph *"b"* if the administrator finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants or employees, a person occupying a similar status or performing similar functions, a person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates or subsidiaries meets any of the following conditions:

a. Has filed a notice of intention under subsection 2 with the administrator or the designee of the administrator which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodity business.

c. Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice which injunction indicates a lack of fitness to engage in the investment commodities business.

d. Is the subject of an order of the administrator denying, suspending, or revoking the person's

license as a securities broker-dealer, sales representative, or investment adviser.

e. Is the subject of any of the following orders which are currently effective and which were issued within the last five years:

(1) An order by the securities agency or administrator of another state, Canadian province or territory, the securities and exchange commission, or the commodity futures trading commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms.

(2) Suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the federal Securities Exchange Act of 1934 or the Commodity Exchange Act.

(3) A United States postal service fraud order.

(4) A cease and desist order entered after notice and opportunity of hearing by the administrator or the securities agency or administrator of any other state, Canadian province or territory, the United States securities and exchange commission, or the commodity futures trading commission.

(5) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the Commodity Exchange Act.

f. Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business.

g. Has failed reasonably to supervise sales representatives or employees.

5. If the public interest or the protection of investors so requires, the administrator may, by order, summarily deny or suspend the exemption for a qualified seller. Upon the entry of the order, the administrator shall promptly notify the person claiming such status that an order has been entered and the reasons for the order and that within thirty days after the receipt of a written request the matter will be set for hearing. Section 502A.20 applies with respect to all subsequent proceedings.

6. If the administrator finds that any applicant or qualified seller is no longer in existence or has ceased to do business or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may, by order, deny or revoke the exemption for a qualified seller.

7. The administrator may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the Commodity Exchange Act, exempting and conditionally or unconditionally and otherwise implementing this chapter for the protection of purchasers and sellers of commodities.

90 Acts, ch 1169, §4

502A.5 Unlawful commodity activities.

1. A person shall not engage in a trade or business or otherwise act as a commodity merchant unless the person is either of the following:

a. Registered or temporarily licensed with the commodity futures trading commission for each activity constituting the person as a commodity merchant and the registration or temporary license has not expired, been suspended, or revoked.

b. Exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.

2. A board of trade shall not trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless the board of trade has been so designated for the commodity contract or commodity option and the designation has not been vacated, suspended, or revoked.

90 Acts, ch 1169, §5

502A.6 Fraudulent conduct.

A person shall not directly or indirectly do any of the following in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, a commodity contract or commodity option subject to section 502A.2, 502A.3, 502A.4, subsection 1, paragraph *"b"*, or section 502A.4, subsection 1, paragraph *"d"*:

1. Cheat or defraud, or attempt to cheat or defraud, another person or employ any device, scheme, or artifice to defraud another person.

2. Make a false report or enter a false record.

3. Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

4. Engage in a transaction, act, practice, or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person.

5. Misappropriate or convert the funds, security, or property of another person.

90 Acts, ch 1169, §6

502A.7 Liability of principals, controlling persons, and others.

1. The act, omission, or failure of an official, agent, or other person acting for an individual, association, partnership, corporation, or trust within the scope of the person's employment or office

shall be deemed the act, omission, or failure of the individual, association, partnership, corporation, or trust, as well as of the person.

2. A person who directly or indirectly controls another person liable under this chapter, a partner, officer, or director of the other person, a person occupying a similar status or performing similar functions, and an employee of such other person who materially aids in the violation, is liable jointly and severally with and to the same extent as the other person, unless the person who is liable by virtue of this provision sustains the burden of proof that the person did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

90 Acts, ch 1169, §7

502A.8 Securities laws unaffected.

This chapter does not impair, derogate, or otherwise affect the authority or powers of the administrator under chapter 502 or the application of any provision of chapter 502 to a person or transaction subject to that chapter.

90 Acts, ch 1169, §8

502A.9 Purpose.

This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement of those laws. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate this chapter.

90 Acts, ch 1169, §9

502A.10 Reserved.

SUBCHAPTER II

502A.11 Investigations.

1. The administrator may make investigations, within or without this state, as the administrator finds necessary or appropriate to do either or both of the following:

a. Determine whether any person has violated, or is about to violate this chapter or any rule or order of the administrator.

b. Aid in enforcement of this chapter.

2. The administrator may publish information concerning a violation of this chapter or any rule or order of the administrator.

3. For purposes of an investigation or proceeding under this chapter, the administrator or any officer or employee designated by rule or order, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator finds to be relevant or material to the inquiry.

4. *a.* If a person does not give testimony or produce the documents required by the administrator or a designated employee pursuant to an administrative subpoena, the administrator or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

b. The request for order of compliance may be addressed to either of the following:

(1) The Polk county district trial court or the district court where service may be obtained on the person refusing to testify or produce, if the person is within this state.

(2) The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

90 Acts, ch 1169, §10

502A.12 Enforcement of chapter.

1. If the administrator believes, whether or not based upon an investigation conducted under section 502A.11, that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or a rule or order issued under this chapter, the administrator may do any or all of the following:

a. Issue a cease and desist order.

b. Issue an order imposing a civil penalty in amount which may not exceed ten thousand dollars for a single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings.

c. Initiate any of the actions specified in subsection 2.

2. The administrator may institute any or all of the following actions in the appropriate courts of this state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

a. A declaratory judgment.

b. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or a rule or order of the administrator.

c. An action for disgorgement.

d. An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

e. An action for restitution.

90 Acts, ch 1169, §11

502A.13 Power of court to grant relief.

1. *a.* Upon a proper showing by the administrator that a person has violated, or is about to violate, this chapter or a rule or order of the administrator, a court of competent jurisdiction may grant appropriate legal or equitable remedies.

b. Upon showing of violation of this chapter or a rule or order of the administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant any or all of the following special remedies:

(1) Imposition of a civil penalty in amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings.

(2) Disgorgement.

(3) Declaratory judgment.

(4) Restitution to investors wishing restitution.

(5) Appointment of a receiver or conservator for the defendant or the defendant's assets.

c. Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the administrator shall be limited to any or all of the following:

(1) A temporary restraining order.

(2) A temporary or permanent injunction.

(3) A writ of prohibition or mandamus.

(4) An order appointing a receiver or conservator for the defendant or the defendant's assets.

2. The court shall not require the administrator to post a bond in any official action under this chapter.

3. *a.* Upon a proper showing by the administrator or securities or commodity agency of another state that a person, other than a government or governmental agency or instrumentality, has violated, or is about to violate, the commodity code of that state or a rule or order of the administrator or securities or commodity agency of that state, the district court may grant appropriate legal and equitable remedies.

b. Upon showing of a violation of the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant either or both of the following special remedies:

(1) Disgorgement.

(2) Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

c. Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state shall be limited to any or all of the following:

(1) A temporary restraining order.

(2) A temporary or permanent injunction.

(3) A writ of prohibition or mandamus.

(4) An order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

90 Acts, ch 1169, §12

502A.14 Criminal penalties.

1. A person who willfully violates either of the following shall, upon conviction, be fined not more than twenty thousand dollars or be imprisoned not more than ten years, or both, for each violation.

a. This chapter.

b. A rule or order of the administrator under this chapter.

2. A person convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the person proves the person had no knowledge of the rule or order.

3. The administrator may refer such evidence as is available concerning violations of this chapter or any rule or order of the administrator to the attorney general or the proper county attorney, who may, with or without such a reference from the administrator, institute the appropriate criminal proceedings under this chapter.

4. This chapter does not limit the power of the state to proceed against a person for conduct which constitutes a breach of duty, a crime, or a violation under common law, rule, or another statute. An action pursuant to this chapter is not an election of remedies, and an aggrieved person or the state retains any other common law or statutory causes of action which may exist against a person alleged to have violated this chapter or against a person convicted of such a violation.

90 Acts, ch 1169, §13

502A.15 Administration of chapter.

1. This chapter shall be administered by the administrator of the securities bureau of the insurance division of the department of commerce.

2. The administrator or any employees of the administrator shall not use any information which is filed with or obtained by the administrator which is not public information for personal gain or benefit, and the administrator or any employees of the administrator shall not conduct any securities or commodity dealings based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

3. *a.* Except as provided in paragraph *"b"*, all information collected, assembled, or maintained by the administrator is public information and is available for the examination of the public as provided by chapter 22.

b. The following are exceptions to paragraph *"a"* and are confidential:

(1) Information obtained in an investigation

pursuant to section 502A.11, unless published pursuant to section 502A.11, subsection 2.

(2) Information made confidential by chapter 22.

(3) Information obtained from federal agencies which cannot be disclosed under federal law.

c. The administrator in the administrator's discretion may disclose any information made confidential under paragraph *"b"* to persons identified in section 502A.16, subsection 1.

d. This chapter does not create or derogate any privilege which exists at common law, by statute or otherwise when documentary or other evidence is sought under subpoena directed to the administrator or any employee of the administrator.

90 Acts, ch 1169, §14

502A.16 Cooperation with other agencies.

1. To encourage uniform application and interpretation of this chapter and securities regulation and enforcement in general, the administrator and the employees of the administrator may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the commodity futures trading commission, the United States securities and exchange commission, any self-regulatory organization established under the Commodity Exchange Act or the federal Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

2. The cooperation authorized by subsection 1 shall include, but need not be limited to, any or all of the following:

a. Making joint examinations or investigations.

b. Holding joint administrative hearings.

c. Filing and prosecuting joint litigation.

d. Sharing and exchanging personnel.

e. Sharing and exchanging information and documents.

f. Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases.

g. Issuing and enforcing subpoenas at the request of the agency administering this chapter in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the United States securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

90 Acts, ch 1169, §15

502A.17 General authority to adopt rules, forms, and orders.

1. In addition to specific authority granted elsewhere in this chapter, the administrator may adopt rules and forms, pursuant to chapter 17A, and issue orders as are necessary to administer this chapter. Rules or forms to be adopted shall include, but need not be limited to, the following:

a. Rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter.

b. For the purpose of rules or forms, the administrator may classify commodities and commodity contracts, persons, and matters within the administrator's jurisdiction.

2. Unless specifically provided in this chapter, a rule, form, or order shall not be adopted or issued unless the administrator finds that the action is both of the following:

a. Necessary or appropriate in the public interest or for the protection of investors.

b. Consistent with the purposes fairly intended by the policy of this chapter.

3. All rules and forms of the administrator shall be published as provided in chapter 17A.

4. A provision of this chapter imposing any liability shall not apply to an act done or omitted in good faith in conformity with a rule or form adopted or order issued by the administrator, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

90 Acts, ch 1169, §16

502A.18 Consent to service of process.

When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the administrator, the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct and which is brought under this chapter or any rule or order of the administrator with the same force and validity as if served personally.

90 Acts, ch 1169, §17

502A.19 Chapter scope.

1. Sections 502A.2, 502A.5, and 502A.6 apply to a person who sells or offers to sell when either of the following occurs:

a. An offer to sell is made in this state.

b. An offer to buy is made and accepted in this state.

2. Sections 502A.2, 502A.5, and 502A.6 apply to a person who buys or offers to buy when either of the following occur:

a. An offer to buy is made in this state.

b. An offer to sell is made and accepted in this state.

3. For the purpose of this section, an offer to

sell or to buy is made in this state, whether or not either party is then present in this state, when either of the following occurs:

a. The offer originates from this state.

b. The offer is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

4. For the purpose of this section, an offer to buy or to sell is accepted in this state when the acceptance satisfies both of the following conditions:

a. The acceptance is communicated to the offeror in this state.

b. The acceptance has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

5. An offer to sell or to buy is not made in this state when either of the following occurs:

a. The publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

b. A radio or television program originating outside this state is received in this state.

90 Acts, ch 1169, §18

502A.20 Effect of pending judicial review.

The filing of a petition for judicial review pursuant to chapter 17A does not, unless specifically ordered by the court, operate as a stay of the administrator's order, and the administrator may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

90 Acts, ch 1169, §19

502A.21 Pleading exemptions.

It is not necessary for the state to plead the absence of an exemption under this chapter in a complaint, information, or indictment, or a writ or proceeding brought under this chapter. The burden of proof of a claimed exemption is upon the party claiming the exemption.

90 Acts, ch 1169, §20

502A.22 Affirmative defense.

It is an affirmative defense in a complaint, information, indictment, writ, or proceeding brought under this chapter alleging a violation of section 502A.2 based solely on the failure in an individual case to make physical delivery within the applicable time period under section 502A.1, subsection 5, or section 502A.4, subsection 1, paragraph *"b"* if both of the following apply:

1. Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates, subsidiaries, or successors.

2. Physical delivery was completed within a reasonable time under the applicable circumstances.

90 Acts, ch 1169, §21

CHAPTER 503

MEMBERSHIP SALES

Repealed by 93 Acts, ch 60, §26; see chapter 552A

SUBTITLE 5

NONPROFIT CORPORATIONS

CHAPTER 504

CORPORATIONS NOT FOR PECUNIARY PROFIT

Repealed by 90 Acts, ch 1164, §27.
See chapter 504A. Corporations existing under this chapter are subject to chapter 504A on July 1, 1990; exceptions; see §504A.100

CHAPTER 504A

IOWA NONPROFIT CORPORATION ACT

Corporations existing under chapter 504 are subject to this chapter on July 1, 1990; exceptions; see §504A.100

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504A.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Nonprofit Corporation Act."*

[C66, 71, 73, 75, 77, 79, 81, §504A.1]

504A.2 Definitions.

As used in this chapter, unless the context otherwise requires, the term:

1. *"Articles of incorporation"* means the original or restated articles of incorporation and all amendments thereto, and includes articles of merger.

2. *"Board of directors"* means the person or group of persons vested with the management of the affairs of the corporation irrespective of the name by which such person or group is designated.

3. *"Bylaws"* means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

4. *"Corporation"* or *"domestic corporation"* means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

5. *"Foreign corporation"* means a nonprofit corporation organized under laws other than the laws of this state.

6. *"Insolvent"* means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

7. *"Member"* means a person as herein defined having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

8. *"Nonprofit corporation"* means a corporation no part of the income or profit of which is distributable to its members, directors or officers except as provided in this chapter.

9. *"Person"* means an individual, a corporation (domestic or foreign, whether nonprofit or for profit), a partnership, an association, a trust or a fiduciary.

[C66, 71, 73, 75, 77, 79, 81, §504A.2]

504A.3 Purposes.

Subject to the provisions of section 504A.100, subsection 1, corporations may be organized under this chapter for any lawful purpose or purposes not for pecuniary profit.

[C66, 71, 73, 75, 77, 79, 81, §504A.3]

504A.4 General powers.

Each corporation, unless otherwise stated in its articles of incorporation, shall have power:

1. To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

2. To sue and be sued, complain and defend, in its corporate name.

3. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

4. To purchase, take, receive, lease, take by

gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

6. To lend money to its employees other than its officers and directors, and otherwise assist its employees, officers and directors.

7. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

8. To make contracts and guaranties and incur liabilities, borrow money at such lawful rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income, and to guarantee the obligations of other persons.

9. To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

10. To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.

11. To elect or appoint officers and agents of the corporation who may be directors or members, and define their duties and fix their compensation, and to pay pensions and establish pension plans, pension trusts, and other incentive, insurance and welfare plans for any or all of its directors, officers and employees.

12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

13. Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, eleemosynary, benevolent, scientific or educational purposes; and in time of war to make donations in aid of war activities.

14. A corporation operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through 490.859.

15. To cease its corporate activities and surrender its corporate franchise.

16. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

[C66, 71, 73, 75, 77, 79, 81, §504A.4]

87 Acts, ch 212, §10; 90 Acts, ch 1205, §33; 2002 Acts, ch 1154, §109, 125

2002 amendment to subsection 14 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 14 amended

504A.5 Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

1. In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfers sought to be enjoined are being or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through members in a representative suit, against the incumbent or former officers or directors of the corporation for exceeding their authority.

3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the attorney general.

[C66, 71, 73, 75, 77, 79, 81, §504A.5]

504A.6 Corporate name.

1. A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a nonprofit corporation or business corporation incorporated or au-

thorized to conduct affairs or do business in this state.

b. A corporate name reserved under section 504A.7, or reserved or registered under the Iowa business corporation Act, chapter 490.

c. The fictitious name of a foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state because its real name is unavailable.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to conduct affairs or transact business in this state and the proposed user corporation meets one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation or a foreign corporation uses a fictitious name in this state, it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

[C66, 71, 73, 75, 77, 79, 81, §504A.6]

83 Acts, ch 144, §6, 7; 88 Acts, ch 1077, §1; 89 Acts, ch 288, §189; 90 Acts, ch 1205, §34; 2001 Acts, ch 24, §64

504A.7 Reserved name.

The exclusive right to the use of a corporate name may be reserved by filing in the office of the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that such name is available for corporate use, the secretary shall reserve the same for the exclusive use of such applicant for a period of one hundred twenty days.

The right to the exclusive use of a specified corporate name so reserved may be assigned by filing in the office of the secretary of state a notice of such assignment, executed by the person for whom such name was reserved and specifying the name and address of the transferee.

[C66, 71, 73, 75, 77, 79, 81, §504A.7]

504A.8 Registered office and registered agent.

Each corporation shall have and continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its principal office.

2. A registered agent or agents who may be either an individual or individuals resident in this state, the business office of whom shall be identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office.

[C66, 71, 73, 75, 77, 79, 81, §504A.8]

504A.9 Change of registered office or registered agent.

1. A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

a. The name of the corporation.

b. If the current registered office is to be changed, the street address of the new registered office.

c. If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent to the appointment, either on the statement or attached to the statement.

d. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. The statement shall be delivered to the secretary of state for filing in the secretary of state's office.

3. If a registered agent changes the agent's business address to another place within the same county, the agent may change the address of the registered office of any corporations of which that person is a registered agent by filing a statement as required in subsection 1 for each corporation, or a single statement for all corporations named in the statement, except that the statement need be signed only by the registered agent and need not be responsive to subsection 1, paragraph *"c"*, but must recite that notification of such change has been mailed to each corporation named in the statement.

4. The change of address of registered office or the change of registered agent becomes effective

upon the filing of such statement by the secretary of state.

5. A registered agent of a corporation may resign as such agent by signing and delivering to the secretary of state for filing an original statement of resignation. The statement of resignation may also include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if the registered office is not discontinued. The appointment of the agent terminates on the date on which the statement is filed by the secretary of state. If the statement of resignation contains a statement that the registered office is discontinued, such office is discontinued on the date on which the statement of resignation is filed by the secretary of state.

6. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report pursuant to section 504A.83, provided that the form contains the information required in this section. If the secretary of state determines that a biennial report does not contain the information required by section 504A.83 but otherwise meets the requirements of this section for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent before returning the biennial report to the corporation pursuant to section 504A.84. A statement of change of registered office or registered agent pursuant to this paragraph shall be executed by a person authorized to execute the biennial report.

[C66, 71, 73, 75, 77, 79, 81, §504A.9]

89 Acts, ch 171, §1, 2; 90 Acts, ch 1164, §10 – 12; 93 Acts, ch 109, §3; 97 Acts, ch 107, §10; 97 Acts, ch 171, §35

504A.10 Service of process on corporation.

The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary, the secretary's deputy, or with any person having charge of the corporation department of the secretary of state's office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office. No corporation served in accordance with the procedure provided for by this paragraph shall be in default until thirty days have elapsed following such service on the secretary of state.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary under this section, and shall record therein the time of such service and the secretary's action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

[C66, 71, 73, 75, 77, 79, 81, §504A.10]

504A.11 Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

[C66, 71, 73, 75, 77, 79, 81, §504A.11]

504A.12 Bylaws.

The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the members, which shall, notwithstanding any different provision elsewhere in this chapter or in the articles of incorporation or bylaws, be operative during any emergency, in the conduct of the affairs of the corporation resulting from an attack on the United States or any nuclear or atomic disaster. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency including provisions that:

1. A meeting of the board of directors may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

2. The director or directors in attendance at

the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

3. The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary after the termination of the emergency) as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such an emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any such emergency and upon its termination the emergency bylaws shall cease to be operative.

Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during any such emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

To the extent required to constitute a quorum at any meeting of the board of directors during any such emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct. No officer, director or employee shall be liable for any action taken by that person in good faith in such an emergency in furtherance of the ordinary affairs of the corporation, even though not authorized by the bylaws then in effect.

[C66, 71, 73, 75, 77, 79, 81, §504A.12]

504A.13 Meetings of members.

Meetings of members may be held at such places, either within or without this state, as may be provided in the articles of incorporation or the bylaws, or as may be fixed from time to time in accordance with the provisions thereof. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the members shall be held at such time as may be provided in the articles of incorporation or the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

[C66, 71, 73, 75, 77, 79, 81, §504A.13]

504A.14 Notice of members' meetings.

Unless the articles of incorporation or the bylaws otherwise provide, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered no less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the corporation, with postage thereon prepaid.

[C66, 71, 73, 75, 77, 79, 81, §504A.14]

504A.15 Voting.

The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or, if the articles of incorporation so provide, by the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by the member's duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members the bylaws may provide that such elections may be conducted by mail.

The articles of incorporation may provide that in all elections for directors every member entitled to vote shall have the right to cumulate the member's vote and to give one candidate a number of votes equal to the member's vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

[C66, 71, 73, 75, 77, 79, 81, §504A.15]

504A.16 Quorum.

The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws.

[C66, 71, 73, 75, 77, 79, 81, §504A.16]

504A.17 Board of directors.

The affairs of a corporation shall be managed by a board of one or more directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

[C66, 71, 73, 75, 77, 79, 81, §504A.17]

504A.18 Number and election of directors.

The number of directors shall be fixed by the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in a manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which the director is elected or appointed and until the director's successor shall have been elected or appointed and qualified.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.

[C66, 71, 73, 75, 77, 79, 81, §504A.18]

504A.19 Vacancies.

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

Unless otherwise provided in the articles of incorporation or the bylaws, a director so elected or appointed shall be elected or appointed for the unexpired term of the director's predecessor in office or the full term of such new directorship.

[C66, 71, 73, 75, 77, 79, 81, §504A.19]

504A.20 Quorum of directors.

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the articles of incorporation or the bylaws.

[C66, 71, 73, 75, 77, 79, 81, §504A.20]

504A.21 Committees.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors; but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the members the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation, recommending to the members a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any

member thereof, of any responsibility imposed by law.

[C66, 71, 73, 75, 77, 79, 81, §504A.21]

504A.22 Place and notice of directors' meetings.

Meetings of the board of directors, regular or special, may be held either within or without this state, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors of any corporation, or any committee designated by the board of directors, may participate in a meeting of the board or committee by conference telephone or similar communications equipment. All persons participating in the meeting shall be able to hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at the meeting. Records of the meeting shall be kept as required in section 504A.25.

[C66, 71, 73, 75, 77, 79, 81, §504A.22]

504A.23 Officers.

The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. Any two or more offices may be held by the same person.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

[C66, 71, 73, 75, 77, 79, 81, §504A.23]

504A.24 Removal of officers.

Unless otherwise provided in the articles of incorporation, any officers elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

[C66, 71, 73, 75, 77, 79, 81, §504A.24]

504A.25 Books and records.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or the member's agent or attorney, for any proper purpose at any reasonable time.

[C66, 71, 73, 75, 77, 79, 81, §504A.25]

504A.25A Availability of certain information of nonprofit corporations and agencies.

A corporation organized pursuant to this chapter, or any other nonprofit agency, which receives federal or state funding, shall provide to any person, upon request, a list of the names of the members of the corporation's or agency's board of directors, and the salary of each officer and director's fee of each director of the corporation or nonprofit agency.

91 Acts, ch 135, §1

504A.26 Shares of stock and dividends prohibited.

A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit.

[C66, 71, 73, 75, 77, 79, 81, §504A.26]

504A.27 Loans to directors and officers prohibited.

No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

[C66, 71, 73, 75, 77, 79, 81, §504A.27]

504A.28 Incorporators.

One or more persons as defined in this chapter having capacity to contract may act as incorporators of a corporation by signing and delivering to the secretary of state articles of incorporation for the corporation.

[C66, 71, 73, 75, 77, 79, 81, §504A.28]
94 Acts, ch 1023, §66

504A.29 Articles of incorporation.

The articles of incorporation shall set forth:

1. The name of the corporation and the chapter of the Code or session laws under which incorporated.

2. The period of duration if for a limited period, but in the absence of any statement in the articles all corporations organized hereunder shall have perpetual duration.

3. The purpose or purposes for which the corporation is organized.

4. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation.

5. The address of its initial registered office including street and number, if any, the name of the county in which the registered office is located, and the name of its initial registered agent or agents at such address.

6. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors.

7. Any provision not inconsistent with law or the purposes for which the corporation is organized, which the incorporators elect to set forth; or any provision limiting any of the corporate powers enumerated in this chapter.

8. The date on which the corporate existence shall begin, which may be any date identified by year, month and day not more than ninety days in the future. In the absence of any statement in the articles as to date of beginning of corporate existence, such existence shall commence on the date on which the secretary of state issues the certificate of incorporation.

9. The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

[C66, 71, 73, 75, 77, 79, 81, §504A.29]

504A.30 Filing and recording of articles of incorporation.

The articles of incorporation shall be delivered to the secretary of state for filing and recording in the secretary of state's office. The secretary of state upon the filing of such articles shall issue a certificate of incorporation and send the certificate to the corporation or its representative.

[C66, 71, 73, 75, 77, 79, 81, §504A.30]
93 Acts, ch 109, §4

504A.31 Effect of issuance of certificate of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence shall begin unless the certificate in conformity with a provision in the articles provides that it shall begin on a stated day in the future in which event the corporate existence shall without further action by either the incorporators or the secretary of state begin on the day so stated. Such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

[C66, 71, 73, 75, 77, 79, 81, §504A.31]

504A.32 Procedure for filing and recording of documents.

1. If in this chapter, it is required that any document be:

a. Filed in the office of the secretary of state, the secretary of state, when the secretary finds that such document conforms to law and when all fees and taxes due the secretary have been paid as in this chapter prescribed, shall endorse on such document, the word "Filed", and the month, day and year of the filing thereof and file the same in the secretary of state's office;

b. Recorded in the office of the secretary of state, the secretary of state, upon filing thereof, shall record the same.

2. Except for a statement of change of registered office or registered agent filed pursuant to section 504A.9 or 504A.73, and a biennial report filed pursuant to section 504A.83, any instrument required to be filed and recorded in the office of the secretary of state only, shall be returned by the secretary to the corporation or its representative.

3. A document that is filed in the office of the secretary of state shall be executed:

a. By the presiding officer of the board of directors of the corporation or the foreign corporation, its president, or another of its officers.

b. If directors have not been selected or the

corporation has not been formed, by an incorporator.

c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

4. The person executing the document shall sign it and state beneath or opposite the signature, the person's name and the capacity in which the person signs. The secretary of state may accept for filing a document containing a copy of a signature, however made. The document may, but need not, contain:

a. The corporate seal.

b. An attestation by the secretary or an assistant secretary.

c. An acknowledgment, verification, or proof.

5. The secretary of state may adopt rules permitting the electronic filing of documents in the office of the secretary of state, and for the certification of copies of electronically filed documents.

[C66, 71, 73, 75, 77, 79, 81, §504A.32]

89 Acts, ch 171, §3; 90 Acts, ch 1164, §13; 93 Acts, ch 109, §5; 94 Acts, ch 1055, §15; 97 Acts, ch 171, §36

504A.32A Correcting filed documents.

1. A domestic or foreign corporation may correct a document filed by the secretary of state if the document satisfies one or both of the following requirements:

a. The document contains an incorrect statement.

b. The document was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by complying with both of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attach a copy of it to the articles.

(2) Specify the incorrect statement or manner in which the execution was defective.

(3) Correct the incorrect statement or defective execution.

b. By delivering the articles of correction to the secretary of state for filing.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to persons relying on the uncorrected document and adversely affected by the correction, the articles of correction are effective when filed by the secretary of state.

90 Acts, ch 1164, §14

504A.33 Organization meetings.

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation may be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers, if necessary, and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three days' notice, for such purposes as shall be stated in the notice of the meeting.

[C66, 71, 73, 75, 77, 79, 81, §504A.33]

504A.34 Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter.

[C66, 71, 73, 75, 77, 79, 81, §504A.34]

504A.35 Procedure to amend articles of incorporation.

Amendments to the articles of incorporation shall be made in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon which may be either an annual or a special meeting. Unless otherwise provided in the articles of incorporation, upon the written request of at least five percent of the members entitled to vote on amendments to articles of incorporation, the board of directors shall adopt a resolution setting forth the amendment proposed by such members and directing that it be submitted to the next meeting of the members entitled to vote thereon held not less than ninety days after the date of the filing of the request of the members with the secretary of the corporation. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

2. Where there are no members, or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting.

[C66, 71, 73, 75, 77, 79, 81, §504A.35]

504A.36 Articles of amendment.

The articles of amendment shall be executed by the corporation and shall set forth:

1. The name of the corporation.
2. The amendment so adopted.
3. Where there are members entitled to vote thereon, *(a)* a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or *(b)* a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
4. Where there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

[C66, 71, 73, 75, 77, 79, 81, §504A.36]
90 Acts, ch 1164, §15; 97 Acts, ch 171, §37

504A.37 Filing of articles of amendment.

The articles of amendment shall be delivered to the secretary of state for filing and recording in the secretary of state's office. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the certificate to the corporation or its representative.

[C66, 71, 73, 75, 77, 79, 81, §504A.37]
93 Acts, ch 109, §6

504A.38 Effect of certificate of amendment.

Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

[C66, 71, 73, 75, 77, 79, 81, §504A.38]

504A.39 Restated articles of incorporation.

A domestic corporation may at any time restate its articles of incorporation, which may be amended by such restatement, so long as its articles of incorporation as so restated contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such restatement, by the adoption of restated articles of incorporation, including any amendments to its articles of incorporation to be made thereby, in the following manner:

1. Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation, which may include an amendment or amendments to the corporation's articles of incorporation to be made thereby and directing that such restated articles, including such amendment or amendments be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.
2. Written or printed notice setting forth the proposed restated articles or a summary of the provisions thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. If the restated articles include an amendment or amendments to the articles of incorporation to be made thereby, the notice shall separately set forth such amendment or amendments or a summary of the changes to be effected thereby.
3. The proposed restated articles shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast, unless such restated articles include an amendment to the articles of incorporation to be made thereby which, if contained in a proposed amendment to the articles of incorporation to be made without restatement of the articles of incorporation, would entitle a class of members to vote as a class thereon, in which event the proposed restated articles shall be adopted upon receiving the affirmative vote of at least two-thirds of the members of each class entitled to vote thereon as a class, and of the total members entitled to vote thereon.
4. Where there are no members, or no members having voting rights, proposed restated articles of incorporation, which may include an amendment or amendments to the corporation's articles of incorporation to be made thereby shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon approval, restated articles of incorporation shall be executed by the corporation and shall set forth, as then stated in the corporation's articles of incorporation and, if the restated articles of incorporation include an amendment or amendments to the articles of incorporation to be made thereby, as so amended:

a. The name of the corporation;

b. If its duration is for a limited period, the date of expiration;

c. The purpose or purposes for which the corporation is organized;

d. If the members are divided into classes, the

designation of each class and a statement of the preferences, voting rights, if any, limitations and relative rights in respect of the members of each class;

e. Any other provisions, not inconsistent with law or the purposes which the corporation is authorized to pursue, which are to be set forth in articles of incorporation; except that it shall not be necessary to set forth in the restated articles of incorporation any of the corporate powers enumerated in this chapter nor any statement with respect to the chapter of the Code or session laws under which the corporation was incorporated, its registered office, registered agent, directors, or incorporators, or the date on which its corporate existence began.

The restated articles of incorporation shall also set forth a statement that they correctly set forth the provisions of the articles of incorporation as amended and that they have been duly adopted as required by law.

The restated articles of incorporation shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

The secretary of state upon filing the restated articles of incorporation shall issue a restated certificate of incorporation and send the same to the corporation or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation, including any amendment or amendments to the articles of incorporation made thereby, shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

[C66, 71, 73, 75, 77, 79, 81, §504A.39]

90 Acts, ch 1164, §16; 93 Acts, ch 109, §7; 97 Acts, ch 171, §38

504A.40 Procedure for merger.

Any two or more domestic corporations may merge into one of such corporations, pursuant to a plan of merger approved in the manner prescribed by this chapter.

Each corporation shall adopt a plan of merger setting forth:

1. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

2. The terms and conditions of the proposed merger.

3. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

4. Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

[C66, 71, 73, 75, 77, 79, 81, §504A.40]

504A.41 Procedure for consolidation.

Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner prescribed by this chapter.

Each such corporation shall adopt a plan of consolidation setting forth:

1. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

2. The terms and conditions of the proposed consolidation.

3. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

4. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

[C66, 71, 73, 75, 77, 79, 81, §504A.41]

504A.42 Approval of merger or consolidation.

A plan of merger or consolidation shall be adopted by each domestic corporation in the following manner:

1. Where the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote thereon at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

2. Where any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions thereof, if any, set forth in the plan of merger or consolidation.

[C66, 71, 73, 75, 77, 79, 81, §504A.42]

504A.43 Articles of merger or consolidation.

Upon approval, articles of merger or articles of consolidation shall be executed by each corporation and shall set forth:

1. The plan of merger or the plan of consolidation.

2. Where the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation *(a)* a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or *(b)* a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

3. Where any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

The articles of merger or articles of consolidation shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

The secretary of state upon the filing of the articles of merger or articles of consolidation shall issue a certificate of merger or a certificate of consolidation and send the same to the surviving or new corporation as the case may be, or to its representative.

[C66, 71, 73, 75, 77, 79, 81, §504A.43]
90 Acts, ch 1164, §17; 93 Acts, ch 109, §8

504A.44 Effect of merger or consolidation.

Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.

When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of consolidation, shall be the new corporation provided for in the plan of consolidation.

2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease except as provided in subsection 5.

3. Such surviving or new corporation, if to exist under the laws of this state, shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

5. A devise, bequest, gift or grant contained in a will or other instrument, made before or after the merger or consolidation, to or for the benefit of any of the merging or consolidating corporations, shall inure to the benefit of the surviving or new corporation. So far as is necessary for that purpose, the existence of each merging or consolidating corporation shall be deemed to continue in and through the surviving or new corporation.

6. Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

7. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

[C66, 71, 73, 75, 77, 79, 81, §504A.44]

504A.45 Merger or consolidation of domestic and foreign corporations.

One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

1. Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to qualification of foreign corporations if it is to conduct affairs in this state, and in every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

b. An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of the other state provide otherwise.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

[C66, 71, 73, 75, 77, 79, 81, §504A.45]

504A.46 Sale, lease, exchange, or mortgage of assets.

A sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

2. Where there are no members, or no members entitled to vote thereon, a sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

3. Unless otherwise provided in the articles of incorporation a mortgage or pledge of any or all property and assets of the corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in such case no authorization or consent of the members shall be required.

[C66, 71, 73, 75, 77, 79, 81, §504A.46]

504A.47 Voluntary dissolution.

A corporation may dissolve and wind up its affairs in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

2. Where there are no members, or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to

each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.

[C66, 71, 73, 75, 77, 79, 81, §504A.47]

504A.48 Distribution of assets.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

1. All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made therefor;

2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter;

4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in this chapter.

[C66, 71, 73, 75, 77, 79, 81, §504A.48]

504A.49 Plan of distribution.

A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

2. Where there are no members, or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

[C66, 71, 73, 75, 77, 79, 81, §504A.49]

504A.50 Revocation of voluntary dissolution proceedings.

A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation, in the following manner:

1. Where there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

2. Where there are no members, or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again conduct its affairs.

[C66, 71, 73, 75, 77, 79, 81, §504A.50]

504A.51 Articles of dissolution.

If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made for them, and all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with this chapter, articles of dissolution shall be executed by the corporation. The articles of dissolution shall set forth:

1. The name of the corporation.

2. Where there are members entitled to vote thereon, *(a)* a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or *(b)* a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

3. Where there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

4. That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

5. A copy of the plan of distribution, if any, as adopted by the corporation, or a statement that no plan was so adopted.

6. That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter.

7. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

[C66, 71, 73, 75, 77, 79, 81, §504A.51]
90 Acts, ch 1164, §18

504A.52 Filing of articles of dissolution.

Such articles of dissolution shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

The secretary of state upon filing the articles of dissolution shall issue a certificate of dissolution, and send the same to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter.

[C66, 71, 73, 75, 77, 79, 81, §504A.52]
93 Acts, ch 109, §9

504A.53 Involuntary dissolution.

A corporation may be dissolved involuntarily by a decree of the district court in an action filed by the attorney general when any of the following are established:

1. The corporation has failed to file its biennial report within the time required by this chapter.

2. The corporation procured its articles of incorporation through fraud.

3. The corporation has continued to exceed or abuse the authority conferred upon it by law.

4. The corporation has failed for ninety days to appoint and maintain a registered agent in this state.

5. The corporation has failed for ninety days after change of its registered agent to file in the office of the secretary of state a statement of such change.

[C66, 71, 73, 75, 77, 79, 81, §504A.53]
97 Acts, ch 171, §39

504A.54 Notification to attorney general. Repealed by 97 Acts, ch 171, § 49.

504A.55 Venue and process.

Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general in the district court of the county in which the registered office of the corporation is situated. Original notice shall be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice and in one petition the names of any number of corporations against which actions are then pending in the same county. The attorney general shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the original notice has been returned. Unless a corporation shall have been served with original notice, no default shall be taken against it earlier than thirty days after the last publication of such notice.

[C66, 71, 73, 75, 77, 79, 81, §504A.55]

504A.56 Jurisdiction of court to liquidate assets and affairs of corporation.

Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

1. In a suit by a member or director when it is established:

a. That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

b. That the acts of the directors or those in con-

trol of the corporation are illegal, oppressive or fraudulent; or

c. That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two years to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

d. That the corporate assets are being misapplied or wasted; or

e. That the corporation is unable to carry out its purposes.

2. In an action by a creditor:

a. When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

b. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

3. Upon application by a corporation to have its dissolution continued under the supervision of the court.

4. When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such suit or proceedings unless relief is sought against them personally.

[C66, 71, 73, 75, 77, 79, 81, §504A.56]

504A.57 Procedure in liquidation of corporation by court.

In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

1. All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

The court shall have power to allow, from time to time, as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in that person's own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

[C66, 71, 73, 75, 77, 79, 81, §504A.57]

504A.58 Qualification of receivers.

A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

[C66, 71, 73, 75, 77, 79, 81, §504A.58]

504A.59 Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

[C66, 71, 73, 75, 77, 79, 81, §504A.59]

504A.60 Discontinuance of liquidation proceedings.

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

[C66, 71, 73, 75, 77, 79, 81, §504A.60]

504A.61 Decree of dissolution.

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

[C66, 71, 73, 75, 77, 79, 81, §504A.61]

504A.62 Filing of decree of dissolution.

In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause certified copies of the decree to be filed with and recorded by the secretary of state.

[C66, 71, 73, 75, 77, 79, 81, §504A.62]

93 Acts, ch 109, §10

504A.63 Deposit with state treasurer.

1. Upon the voluntary or involuntary dissolution of a corporation the portion of the assets distributable to any person who is known, or who is under disability and there is no person legally competent to receive such distributive portion, or who cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets, shall be reduced to cash and deposited with the state treasurer, together with a statement giving the name of the person, if known, entitled to such fund, that person's last known address, the amount of that person's distributive portion, and such other information about such person as the state treasurer may reasonably require, whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. The state treasurer shall issue the treasurer of state's receipt for such fund and shall deposit same in a special account to be maintained by the treasurer.

2. On receipt of satisfactory written and verified proof of ownership of or right to such fund within twenty years from the date such fund was so deposited, the state treasurer shall certify such fact to the director of revenue and finance, who shall issue proper warrant therefor drawn on the state treasurer in favor of the person or persons then entitled thereto. If no claimant has made satisfactory proof of right to such fund within twenty years from the time of such deposit, the state treasurer shall then cause to be published in one issue of a newspaper of general circulation in the county of the last registered office of the corporation, as shown by the records of the secretary of state, a notice of the proposed escheat of such fund, giving the name of the person apparently entitled thereto, that person's last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the general fund of the state.

[C66, 71, 73, 75, 77, 79, 81, §504A.63]

504A.64 Survival of rights and remedies after dissolution or expiration.

The dissolution of a corporation or the expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution or expiration, if action or other proceeding thereon is commenced within two years after the date of such dissolution or expiration. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as

shall be appropriate to protect such remedy, right or claim. If the period of duration of a corporation has expired, it may amend its articles of incorporation at any time within five years after the date of such expiration so as to extend its period of duration.

A corporation which has been dissolved or the period of duration of which has expired by limitation or otherwise, may nevertheless continue to act for the purpose of conveying title to its property, real and personal, and otherwise winding up its affairs.

[C66, 71, 73, 75, 77, 79, 81, §504A.64]

504A.64A Reincorporation. Repealed by 95 Acts, ch 188, § 3.

504A.65 Admission of foreign corporation.

No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is prohibited from conducting. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
2. Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.
3. Maintaining bank accounts.
4. Creating evidences of debt, mortgages or liens on real or personal property.
5. Securing or collecting debts due to it or enforcing any rights in property securing the same.
6. Soliciting funds.
7. Conducting its affairs in interstate commerce.
8. Granting funds.
9. Distributing information to its members.
10. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

[C66, 71, 73, 75, 77, 79, 81, §504A.65]

504A.66 Powers of foreign corporation.

A foreign corporation which shall have received a certificate of authority under this chapter, shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

[C66, 71, 73, 75, 77, 79, 81, §504A.66]

504A.67 Name of a foreign corporation.

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 504A.6, the foreign corporation, to obtain or maintain a certificate of authority to conduct affairs in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2. Except as authorized by subsections 3 and 4, the corporate name, including a fictitious name, of a corporation must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a nonprofit or business corporation incorporated or authorized to conduct affairs or to transact business in this state.

b. A corporate name reserved under section 504A.7 or section 490.402, or registered under section 490.403.

c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business or conduct affairs in this state, that is not distinguishable upon the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the appli-

cant's right to use the name applied for in this state.

4. A foreign corporation may use in this state the name, including a fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business or conduct affairs in this state and the foreign corporation meets one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to conduct affairs in this state changes its corporate name to one that does not satisfy the requirements of section 504A.6, it shall not conduct affairs in this state under the changed name until it adopts a name satisfying the requirements of section 504A.6 and obtains an amended certificate of authority.

[C66, 71, 73, 75, 77, 79, 81, §504A.67]

83 Acts, ch 144, §8; 88 Acts, ch 1077, §3; 89 Acts, ch 288, §190

504A.68 Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state.

[C66, 71, 73, 75, 77, 79, 81, §504A.68]

504A.69 Application for certificate of authority.

A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

2. The date of incorporation and the period of duration of the corporation.

3. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

4. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent or agents in this state at such address.

5. The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.

6. The names and respective addresses of the directors and officers of the corporation.

7. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

The application shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation.

[C66, 71, 73, 75, 77, 79, 81, §504A.69]

89 Acts, ch 171, §4; 90 Acts, ch 1164, §19

504A.70 Filing of application for certificate of authority.

The application of the corporation for a certificate of authority, together with a certificate of good standing or existence, duly certified by the proper officer of the state or country under the laws of which it is incorporated, shall be delivered to the secretary of state for filing in the secretary of state's office.

Upon the filing of the application the secretary of state shall issue a certificate of authority to conduct affairs in this state to which the secretary shall affix the application, and send the same to the corporation or its representative.

[C66, 71, 73, 75, 77, 79, 81, §504A.70]

86 Acts, ch 1173, §10; 89 Acts, ch 171, §5

504A.71 Effect of certificate of authority.

Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter.

[C66, 71, 73, 75, 77, 79, 81, §504A.71]

504A.72 Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its principal office.

2. A registered agent or agents which may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office.

[C66, 71, 73, 75, 77, 79, 81, §504A.72]

504A.73 Change of registered office or registered agent of foreign corporation.

A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent or agents, or both office and agent or agents, upon filing in the office of

the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent or agents.
5. If its registered agent or agents are changed, the name of its successor registered agent or agents, and the new agent's or agents' written consent, either on the statement, or by attaching the agent's consent to the appointment.
6. That the address of its registered office and the address of the business office of its registered agent or agents, as changed, will be identical.

Such statement shall be executed by the corporation by its president or a vice president, and verified by that person, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary shall file such statement in the secretary of state's office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent or agents, or both, as the case may be, shall become effective.

If a registered agent or agents change the agent's or agents' business address to another place within the same county, the agent or agents may change such address and the address of the registered office of any corporations of which that person is registered agent by filing a statement as required above for each corporation, or a single statement for all corporations named therein, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 5 above, and must recite that notification of such change has been mailed to each such corporation. Such statement executed and filed by a registered agent shall become effective upon the filing thereof in the manner as required above for statements executed by the foreign corporation.

Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report pursuant to section 504A.83, provided that the form contains the information required in this section. If the secretary of state determines that a biennial report does not contain the information required by section 504A.83 but otherwise meets the requirements of this section for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent before returning the biennial report to the corporation pursuant to section 504A.84. A statement of change of registered office or registered agent pursuant to this paragraph shall be executed by a person authorized to execute the biennial report.

[C66, 71, 73, 75, 77, 79, 81, §504A.73]

89 Acts, ch 171, §6; 90 Acts, ch 1164, §20, 21; 93 Acts, ch 109, §11; 97 Acts, ch 171, §41

504A.74 Service of process on foreign corporation.

Each registered agent so appointed by a foreign corporation authorized to conduct affairs in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to conduct affairs in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the secretary of state of any such process, notice or demand shall be made by delivering to and leaving with the secretary, the secretary's deputy, or with any person having charge of the corporation department of the secretary of state's office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Process, notice or demand served on the secretary of state upon a foreign corporation which has withdrawn from this state shall be mailed in the manner provided by this section to the corporation at the address set forth in its application for withdrawal. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary under this section, and shall record therein the time of such service and the secretary's action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

[C66, 71, 73, 75, 77, 79, 81, §504A.74]

504A.75 Amendment to articles of incorporation of foreign corporations. Repealed by 86 Acts, ch 1173, § 20.

504A.76 Merger of foreign corporation authorized to conduct affairs in this state. Repealed by 86 Acts, ch 1173, § 20.

504A.77 Amended certificate of authority.

A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of the application, the manner of its execution, the filing of the application with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

[C66, 71, 73, 75, 77, 79, 81, §504A.77]
89 Acts, ch 171, §7

504A.78 Withdrawal of foreign corporation.

A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. That the corporation is not conducting affairs in this state.
3. That the corporation surrenders its authority to conduct affairs in this state.
4. That the corporation revokes the authority of its registered agent or agents in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on such corporation by service thereof on the secretary of state.
5. A post office address to which the secretary of state may mail a copy of any process against the corporation that may be served on the secretary.
6. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation.

[C66, 71, 73, 75, 77, 79, 81, §504A.78]
90 Acts, ch 1164, §22

504A.79 Filing of application for withdrawal.

The application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, the secretary shall, when all fees due the secretary have been paid as in this chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof.
2. File one of such duplicate originals in the secretary of state's office.
3. Issue a certificate of withdrawal to which the secretary of state shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this state shall cease.

[C66, 71, 73, 75, 77, 79, 81, §504A.79]
89 Acts, ch 171, §8

504A.80 Revocation of foreign corporation's certificate of authority.

The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon the conditions prescribed in this section upon the occurrence of any of the following:

1. The corporation has failed to file its biennial report within the time required by this chapter, or has failed to pay any fees or penalties prescribed by this chapter when the fees or penalties have become due and payable.
2. The corporation has failed to appoint and maintain a registered agent in this state as required by this chapter.
3. The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this chapter.
4. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the corporation pursuant to this chapter.

A certificate of authority of a foreign corporation shall not be revoked by the secretary of state unless the secretary has given the corporation not less than sixty days' notice by mail addressed to the principal office of the corporation in the state or country under the laws of which it is incorporated, and the corporation fails prior to revocation

to file the biennial report, or pay the fees or penalties, or file the required statement of change of registered agent or registered office, or correct the misrepresentation.

[C66, 71, 73, 75, 77, 79, 81, §504A.80]

86 Acts, ch 1173, §11, 12; 97 Acts, ch 171, §42

504A.81 Issuance of certificate of revocation.

Upon revoking any such certificate of authority, the secretary of state shall:

1. Issue a certificate of revocation in duplicate.
2. File one of such certificates in the secretary of state's office.
3. Mail to such corporation at the principal office of the corporation in the state or country under the laws of which it is incorporated a notice of such revocation accompanied by one of such certificates.

Upon the issuance of such certificate of revocation, the authority of the corporation to conduct affairs in this state shall cease.

[C66, 71, 73, 75, 77, 79, 81, §504A.81]

504A.82 Conducting affairs without certificate of authority.

No foreign corporation which is conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

A foreign corporation which conducts affairs in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it conducted affairs in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section. If any foreign corporation shall conduct affairs in this state without a certificate of authority, it shall by conducting such affairs be deemed thereby to have appointed the secretary of state its attorney for service of process.

[C66, 71, 73, 75, 77, 79, 81, §504A.82]

504A.83 Biennial report of domestic and foreign corporations.

Each domestic corporation, and each foreign corporation authorized to conduct affairs in this state, shall file, within the time prescribed by this chapter, a biennial report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. The address of the registered office of the corporation in this state, and the name of its registered agent or agents in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.
3. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

The biennial report shall be made on forms prescribed and furnished by the secretary of state, and the information contained in the report shall be given as of the date of the execution of the report. It shall be executed by the corporation by a representative duly authorized by the board of directors, or, if the corporation is in the hands of a receiver, trustee, or assignee for benefit of creditors, it shall be executed on behalf of the corporation by the receiver, trustee, or assignee.

[C66, 71, 73, 75, 77, 79, 81, §504A.83]

86 Acts, ch 1173, §13; 97 Acts, ch 171, §43

504A.84 Filing of biennial report of domestic and foreign corporations.

The first biennial report of a domestic or foreign corporation shall be delivered to the secretary of state between January 1 and April 1 of the first odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following odd-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state. For purposes of this section, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

The report shall be deemed filed within the required time if deposited in the United States mail with postage prepaid in a sealed envelope, properly addressed and postmarked on or prior to the thirty-first day of March of the year the report is due. If the secretary of state finds that the report conforms to the requirements of this chapter, the secretary shall file the report. If a biennial report does not contain the information required by this section, the secretary of state shall promptly

notify the reporting domestic or foreign corporation in writing and return the report to the corporation for correction.

[C66, 71, 73, 75, 77, 79, 81, §504A.84]

88 Acts, ch 1077, §4; 92 Acts, ch 1212, §37; 97 Acts, ch 171, §44

504A.85 Fees for filing documents and issuing certificates.

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, twenty dollars.
2. Filing statement of election to accept the chapter, five dollars.
3. Filing articles of amendment and issuing a certificate of amendment, ten dollars.
4. Filing restated articles of incorporation, twenty dollars.
5. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars.
6. Filing an application to reserve a corporate name, ten dollars.
7. Filing a notice of transfer of a reserved corporate name, ten dollars.
8. Filing articles of dissolution, five dollars.
9. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, twenty-five dollars.
10. Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, twenty-five dollars.
11. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars.
12. Filing any other statement or report, except a statement of change of registered office or registered agent, of a domestic or foreign corporation, five dollars.

[C66, 71, 73, 75, 77, 79, 81, §504A.85; 81 Acts, ch 21, §14]

86 Acts, ch 1173, §14, 15; 89 Acts, ch 171, §9, 10

Authority to refund fees; 2002 Acts, 2nd Ex, ch 1003, §24, 35

504A.86 Miscellaneous charges.

The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar per page and five dollars for the certificate and affixing the seal thereto; and for furnishing an uncertified copy, one dollar per page.
2. At the time of any service of process on the secretary of state as resident agent of a corporation, ten dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.
3. For a certificate of good standing, five dollars.

[C66, 71, 73, 75, 77, 79, 81, §504A.86; 81 Acts, ch 21, §15]

504A.87 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 504A.87A to administratively dissolve a corporation if any of the following apply:

1. The corporation does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other law.
2. The corporation has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 504A.83, within sixty days after it is due.
3. The corporation is without a registered agent or registered office in this state for sixty days or more.
4. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
5. The corporation's period of duration stated in its articles of incorporation expires.

[C66, 71, 73, 75, 77, 79, 81, §504A.87]

88 Acts, ch 1077, §5; 89 Acts, ch 171, §11; 90 Acts, ch 1164, §23, 24; 93 Acts, ch 109, §12; 93 Acts, ch 126, §27; 97 Acts, ch 171, §45

504A.87A Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under section 504A.87 for dissolving a corporation the secretary of state shall serve the corporation by ordinary mail with written notice of the secretary of state's determination.
2. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after the date of the notice, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation.
3. A corporation administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs and notify claimants.
4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

93 Acts, ch 126, §28

504A.87B Reinstatement following administrative dissolution.

1. A corporation administratively dissolved under section 504A.87A may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution either did not exist or have been eliminated.

2. If the secretary of state determines that the application contains the information required by subsection 1 and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

93 Acts, ch 126, §29

504A.87C Appeal from denial of reinstatement.

1. If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

93 Acts, ch 126, §30

504A.88 Penalties imposed upon officers and directors.

Each director and officer of a corporation, domestic or foreign, who willfully fails or refuses within the time prescribed by this chapter to answer truthfully and fully reasonable and proper interrogatories propounded to the director or officer by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §504A.88]

504A.89 Interrogatories by secretary of state.

The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the secretary to ascertain whether such corporation has complied with all the provisions of this chapter applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by that individual, and if directed to a corporation they shall be answered by the president, vice president, treasurer, assistant treasurer, secretary or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this chapter. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §504A.89]

504A.90 Information disclosed by interrogatories.

Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained therefrom except insofar as required in the performance of the secretary of state's official duties.

[C66, 71, 73, 75, 77, 79, 81, §504A.90]

504A.91 Powers of secretary of state.

The secretary of state shall have the power and authority reasonably necessary to enable the secretary to administer this chapter efficiently and to perform the duties therein imposed upon the secretary.

[C66, 71, 73, 75, 77, 79, 81, §504A.91]

504A.92 Judicial review.

If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in the secretary of state's office, the secretary shall, within ten days after the delivery thereof to the secretary, give written notice of the secretary's disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. Judicial review of the acts of the secretary of state may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct the secretary to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to conduct affairs in this state of any foreign corporation, pursuant to the provisions of this chapter, judicial review may be sought of such action in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where the registered office of such corporation in this state is situated.

[C66, 71, 73, 75, 77, 79, 81, §504A.92]

504A.93 Certificates and certified copies to be received in evidence.

All certificates issued by the secretary of state in accordance with the provisions of this chapter, and copies of all documents filed or recorded in the secretary of state's office in accordance with the provisions of this chapter when certified by the secretary, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the seal of the secretary of state's office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

[C66, 71, 73, 75, 77, 79, 81, §504A.93]

504A.94 Forms to be furnished by secretary of state.

All reports required by this chapter to be filed in the office of the secretary of state shall be made on forms which shall be prescribed and furnished by the secretary of state. Forms for other documents to be filed in the office of the secretary of state may be furnished by the secretary of state on request therefor, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory.

[C66, 71, 73, 75, 77, 79, 81, §504A.94]

504A.95 Voting requirements.

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation or bylaws require voting by classes of members or the vote or concurrence of a greater or lesser proportion of the directors or members or any class of members, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation or bylaws, as the case may be, shall control.

[C66, 71, 73, 75, 77, 79, 81, §504A.95]

504A.96 Waiver of notice.

Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[C66, 71, 73, 75, 77, 79, 81, §504A.96]

504A.97 Informal action by members or directors.

Any action required by this chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors or of a committee of directors, may be taken without a meeting if a consent in writing setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof or all of the directors or all of the members of the committee of directors, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this chapter. The provisions of this section shall be applicable whether or not this chapter requires that an action be taken by resolution.

[C66, 71, 73, 75, 77, 79, 81, §504A.97]

504A.98 Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or

arising as a result thereof.

[C66, 71, 73, 75, 77, 79, 81, §504A.98]

504A.99 Reservation of power.

The general assembly shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the general assembly shall have power to amend, repeal or modify this chapter at pleasure.

[C66, 71, 73, 75, 77, 79, 81, §504A.99]

504A.100 Application to existing corporations.

1. Except for this subsection, this chapter shall not apply to or affect corporations subject to the provisions of chapters 176, 497, 498, 499, or 512B. Such corporations shall continue to be governed by all laws of this state heretofore applicable thereto and as the same may hereafter be amended. This chapter shall not be construed as in derogation of or as a limitation on the powers to which such corporations may be entitled.

2. This chapter shall not apply to any domestic corporation heretofore organized or existing under the provisions of chapter 504 of the Code nor, for a period of two years from and after July 4, 1965, to any foreign corporation holding a permit under the provisions of said chapter on the said date, unless such domestic or foreign corporation shall voluntarily elect to adopt the provisions of this chapter and shall comply with the procedure prescribed by the provisions of subsection 3 of this section.

3. Any domestic corporation organized or existing under the provisions of chapter 504, Code 1989, may voluntarily elect to adopt the provisions of this chapter and thereby become subject to its provisions and, during the period of two years from and after the effective date of this chapter, any foreign corporation holding a permit under the provisions of said chapter on said date may voluntarily elect to adopt the provisions of this chapter and thereby become subject to the provisions of this chapter. The procedure for electing to adopt the provisions of this chapter shall be as follows:

a. A resolution reciting that the corporation voluntarily adopts this chapter and designating the address of its initial registered office and the name of its registered agent or agents at that address and, if the name of the corporation does not comply with this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the procedure prescribed by this chapter for the amendment of articles of incorporation. If the corporation has issued shares of stock, the resolution shall contain a statement of that fact including the number of shares authorized, the number issued and outstanding, and a statement that all issued and outstanding shares of stock have been delivered to the corporation to be canceled upon the adoption of this chapter by the corporation, or will be canceled upon receipt by the corporation, and that from and after the effective date of adoption the authority of the corporation to issue shares of stock is terminated. As to foreign corporations, a resolution shall be adopted by the board of directors, reciting that the corporation voluntarily adopts this chapter, and designating the address of its registered office in this state and the name of its registered agent or agents at that address and, if the name of the corporation does not comply with this chapter, setting forth the name of the corporation with the changes which it elects to make in the name conforming to the requirements of this chapter for use in this state.

b. Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation which shall set forth both of the following:

(1) The name of the corporation.

(2) Each such resolution adopted by the corporation and the date of its adoption.

c. As to domestic corporations such instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

d. As to foreign corporations, such instrument shall be delivered to the secretary of state for filing in the secretary of state's office and the corporation shall at the same time deliver also to the secretary of state for filing in the secretary of state's office any biennial report which is then due.

e. The secretary of state shall not file such instrument with respect to a domestic corporation unless at the time thereof such corporation is validly existing and in good standing in that office under the provisions of chapter 504, Code 1989. If the articles of incorporation of such corporation have not heretofore been filed in the office of the secretary of state, but are on file in the office of a county recorder, no such instrument of adoption shall be accepted by the secretary of state until the corporation shall have caused its articles of incorporation and all amendments duly certified by the proper county recorder to be recorded in the office of the secretary of state. Upon the filing of such instrument the secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative.

Upon the issuance of such certificate by the secretary of state:

(1) All of the provisions of this chapter shall thereafter apply to the corporation and thereupon every such foreign corporation shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter,

and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

(2) In the case of any corporation with issued shares of stock, the holders of such issued shares who surrender them to the corporation to be canceled upon the adoption of this chapter by the corporation becoming effective, shall be and become members of the corporation with one vote for each share of stock so surrendered until such time as the corporation by proper corporate action relative to the election, qualification, terms and voting power of members shall otherwise prescribe.

4. Any domestic corporation which elects to adopt the provisions of this chapter by complying with the provisions of subsection 3 of this section may, at the same time, amend or restate its articles of incorporation by complying with the provisions of this chapter with respect to amending articles of incorporation or restating articles of incorporation, as the case may be.

5. The provisions of this chapter becoming applicable to any domestic or foreign corporation shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of chapter 504, Code 1989, prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election of such corporation to adopt the provisions of this chapter as provided in subsection 3 of this section.

6. Except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to: all domestic corporations organized after the date on which this chapter became effective; domestic corporations organized or existing under chapter 504, Code 1989, which voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; all foreign corporations conducting or seeking to conduct affairs within this state and not holding, July 4, 1965, a valid permit so to do; foreign corporations holding, on the date the chapter becomes effective, a valid permit under the provisions of chapter 504, Code 1989, which, during the period of two years from and after said date, voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; and, upon the expiration of the period of two years from and after July 4, 1965, all foreign corporations holding such a permit on July 4, 1965.

7. Upon the expiration of a period of two years from and after the date on July 4, 1965, except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to every foreign corporation holding a valid permit to do business within this state or seeking to conduct affairs within this state. Every foreign corporation holding a valid permit to do business within this state on July 4, 1965, which has not meanwhile adopted this chapter by complying with the provisions of subsection 3 of this section, shall at the expiration of two years from and after said date be deemed to have elected to adopt this chapter by not voluntarily withdrawing from the state, and thereupon every such foreign corporation, subject to the limitations set forth in its certificate of authority, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

8. Within eight months after this chapter becomes applicable to any foreign corporation pursuant to the provisions of subsection 7, the board of directors of such foreign corporation shall adopt a resolution designating the address of its registered office in this state and the name of its registered agent or agents at such address and, if the name of the corporation does not comply with this chapter, setting forth the name of the corporation with the changes which the board elects to make to the name conforming to the requirements of this chapter for use in this state.

Upon adoption of the required resolution or resolutions, an instrument or instruments shall be executed by the foreign corporation by its president or a vice president and by its secretary or assistant secretary and verified by one of the officers signing such instrument, which shall set forth the name of the corporation, each resolution adopted as required by the provisions of this subsection, and the date of the adoption of each resolution. The instrument shall be delivered to the secretary of state for filing in the secretary of state's office. Upon the filing of such instrument by a foreign corporation the secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative. The secretary of state shall not file any biennial report of any foreign corporation subject to this subsection unless and until the corporation has fully complied with the provisions of this paragraph and, in such event, the foreign corporation is subject to the penalties prescribed in this chapter for failure to file the report within the time as provided in this chapter.

9. No corporation to which the provisions of this chapter apply shall be subject to the provisions of chapter 504, Code 1989.

10. The provisions of sections 504A.96 and 504A.97 shall apply to any action required or permitted to be taken under this section.

11. Except as otherwise provided in this section, existing corporations shall continue to be governed by the laws of this state heretofore applicable thereto.

12. Corporations existing under chapter 504, Code 1989, shall be subject to this chapter on July 1, 1990, except that the corporations shall be subject to sections 504A.8 and 504A.83 on January 1, 1997. A corporate existence of a corporation that is not in compliance on the records of the secretary of state with sections 504A.8 and 504A.83 on June 30, 1997, is terminated, effective July 1, 1997. A corporation whose existence is terminated pursuant to this subsection may be reinstated. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the termination of its corporate existence as if such termination had never occurred. The secretary of state shall adopt rules governing the reinstatement of a corporation pursuant to this subsection.

[C66, 71, 73, 75, 77, 79, 81, §504A.100]

88 Acts, ch 1077, §6; 90 Acts, ch 1164, §25, 26; 93 Acts, ch 109, §13; 95 Acts, ch 188, §2; 97 Acts, ch 171, §46 – 48; 99 Acts, ch 96, §45 – 47

For future amendment to subsection 1 effective July 1, 2005, see 2002 Acts, ch 1017, §6, 8

504A.101 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts nor obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

[C66, 71, 73, 75, 77, 79, 81, §504A.101]

87 Acts, ch 212, §11

504A.102 Farm aid associations — termination and election to be governed under the Iowa nonprofit corporation Act.

1. *Termination.* A corporation incorporated and governed under chapter 176 as an association organized under chapter 176 prior to July 1, 2005, that is not governed as a corporation under this chapter on or before June 30, 2005, as provided in this section is terminated on July 1, 2005.

2. *Election procedure.* A corporation incorporated and governed under chapter 176 as an association organized under chapter 176 prior to July 1, 2005, may elect to be governed as a corporation under this chapter. The association governed under chapter 176 shall be a corporation governed under this chapter by complying with all of the following requirements:

a. The adoption of a resolution or resolutions at a meeting of the board of directors upon receiving the vote of a majority of the directors in office and of the members of the association in the same manner as provided in section 504A.35. The resolution or resolutions shall recite that the association voluntarily elects to be governed as a corporation under this chapter. The resolution must designate the address of the association's initial registered office and the name of the association's registered agent or agents at that office, if any.

b. The adoption of articles of incorporation in compliance with section 504A.29 at a meeting of the board of directors upon receiving the vote of a majority of the directors in office and of the members of the association in the same manner as provided in section 504A.35. The articles of incorporation may be a restatement, substitution, or amendment of articles of incorporation adopted by the association pursuant to section 176.3. The articles of incorporation may be made part of the resolution or resolutions adopted by the association pursuant to paragraph *"a"* of this subsection.

c. Upon the adoption of a resolution or resolutions and articles of incorporation as provided in paragraphs *"a"* and *"b"* of this subsection, the president or vice president and secretary or an assistant secretary shall execute an instrument of verification. The instrument of verification shall certify all of the following:

(1) The association name as provided in the association's articles of incorporation pursuant to section 176.3 and the new corporation's corporate name, if different, as provided in section 504A.6.

(2) An identification of each resolution adopted under paragraph *"a"* of this subsection, including the date of each resolution's adoption, and a recitation that each resolution and the articles of incorporation for the new corporation are filed with the office of secretary of state.

(3) The address of the new corporation's registered office and the name of the new corporation's registered agent as provided in section 504A.8.

d. All of the following shall be delivered to the office of the secretary of state for filing and recording as provided in section 504A.30:

(1) Each resolution adopted pursuant to paragraph *"a"* of this subsection.

(2) The new corporation's articles of incorporation adopted pursuant to paragraph *"b"* of this subsection.

(3) The instrument of verification that is executed pursuant to paragraph *"c"* of this subsection.

3. *Certificate of incorporation.* Upon filing of the resolution or resolutions, the articles of incorporation, and the instrument of verification as provided in subsection 2, the office of secretary of state shall issue a certificate of incorporation and send the certificate to the corporation or its representative as provided in section 504A.30.

4. *Liabilities and rights prior to the election.* An association's election to be governed as a corporation under this chapter does not affect any right accrued or established, or any liability or penalty incurred, under the provisions of chapter

176, prior to filing of the resolution or resolutions, articles of incorporation, and instrument of verification by the association as provided in subsection 2.

5. *Repeal.* This section is repealed on July 1, 2005.

2002 Acts, ch 1017, §1
NEW section

CHAPTER 504B

NONPROFIT CORPORATIONS AND FEDERAL TAX LIABILITY

504B.1 Corporations applicable.
504B.2 Articles of incorporation — contents.
504B.3 Avoiding tax liability.
504B.4 Construction.
504B.5 Internal Revenue Code updated.
504B.6 Certain powers not limited.

504B.1 Corporations applicable.

This chapter shall apply to every corporation organized under chapter 504 or 504A, which corporation is deemed to be a private foundation as defined in section 509 of the Internal Revenue Code, which is incorporated in the state of Iowa after December 31, 1969, and as to any such corporation organized in this state before January 1, 1970, it shall apply only for its federal taxable years beginning on or after January 1, 1972.

[C73, 75, 77, 79, 81, §504B.1]

504B.2 Articles of incorporation — contents.

The articles of incorporation of every such corporation shall be deemed to contain provisions forbidding the corporation to:

1. Engage in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code;

2. Retain any excess business holdings, as defined in section 4943(c) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code;

3. Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and

4. Make any taxable expenditures, as defined in section 4945(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code.

[C73, 75, 77, 79, 81, §504B.2]

504B.3 Avoiding tax liability.

The articles of incorporation of every such corporation shall be deemed to contain a provision requiring such corporation to distribute, for the purposes specified in its articles of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code.

[C73, 75, 77, 79, 81, §504B.3]

504B.4 Construction.

Nothing in this chapter shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation.

[C73, 75, 77, 79, 81, §504B.4]

504B.5 Internal Revenue Code updated.

All references to sections of the Internal Revenue Code shall mean the Code as amended to and including January 1, 1971.

[C73, 75, 77, 79, 81, §504B.5]

504B.6 Certain powers not limited.

Nothing in this chapter shall limit the power of any nonprofit corporation organized under chapter 504 or organized under chapter 504A:

1. To at any time amend its articles of incorporation or other instrument governing such corporation by any amendment process allowable under the laws of this state to provide that some or all provisions of sections 504B.2 and 504B.3 shall have no application to such corporation, or

2. In the case of any such corporation formed after July 1, 1971, to include any specific provisions in its original articles of incorporation, which provide that some or all provisions of sections 504B.2 and 504B.3 shall have no application to such corporation.

[C73, 75, 77, 79, 81, §504B.6]

CHAPTER 504C

NONPROFIT CORPORATIONS — HOUSING FOR PERSONS WITH DISABILITIES

504C.1 Housing — persons with physical disabilities.

504C.1 Housing — persons with physical disabilities.

1. For the purposes of this chapter, *"physical disability"* means a physical impairment that results in significant functional limitations in one or more areas of major life activity and in the need for specialized care, treatment, or training services of extended duration.

2. Individuals with physical disabilities may form nonprofit corporations pursuant to chapter 504A for the sole purpose of establishing homes for persons with disabilities which are intended to serve two to five residents who are members of the nonprofit corporation.

3. A nonprofit corporation formed under this section may do any of the following:

a. Design, modify, or construct a specific housing facility to provide appropriate services and support to the residents of the specific housing facility. Local requirements shall not be more restrictive than the rules adopted for a family home, as defined in section 335.25 or 414.22, and the state building code requirements for single-family or multiple-family housing.

b. Contract for or employ staff for personal attendant needs and for the management and operation of the housing facility.

c. Purchase, modify, maintain, and operate transportation services for the use of the housing facility residents.

4. Residents of housing facilities established under this chapter shall be eligible to apply for or continue to receive funding provided through federal, state, and county funding sources, and assets of the members of the nonprofit corporation used in the establishment, management, and operation of the housing facility, including but not limited to provision of services to the residents of the facility, shall not be considered in determining a resident's eligibility for funding provided through sources otherwise available to the resident.

93 Acts, ch 90, §1

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VOLUME IV

CODE OF IOWA

2003

CONTAINING

ALL STATUTES OF A GENERAL AND PERMANENT NATURE

Including the Acts of a permanent nature
of the Seventy-ninth General Assembly, 2001, 2002

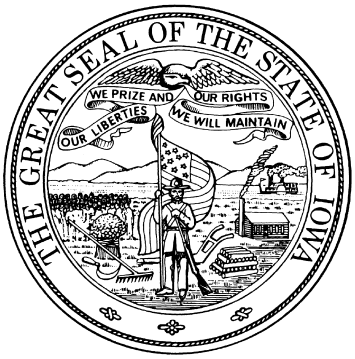

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PREFACE TO 2003 IOWA CODE

The 2003 Iowa Code is published pursuant to Code chapter 2B. Its form is substantially the same as the 2001 Iowa Code, and it covers the permanent enactments of the 2001 and 2002 sessions of the Seventy-ninth General Assembly. The 2003 Code is published in four textual volumes and one Tables and Index volume. A Skeleton and Popular Name Index printed on colored paper appears at the end of each volume.

ARRANGEMENTS OF CODE TITLES, SUBTITLES, AND CHAPTERS. The Table of Contents on page v enumerates the titles and subtitles found in the Code, and each volume contains an Analysis by Titles, Subtitles, and Chapters for that volume.

EDITORIAL DECISIONS. If multiple amendments were enacted to a section or part of a section, all changes that are duplicative or otherwise do not appear to conflict are harmonized as required by Code section 4.11. It is generally assumed that a strike or repeal prevails over an amendment to the same material and does not create an irreconcilable conflict, and that the substitution of the correct title of an officer or department as authorized by law does not create a conflict. Code sections 4.4 through 4.11 provide guidance for codifying conflicting provisions. References to the Iowa court rules have been updated to reflect changes made in the 4th edition of that publication. Code section 2B.13 governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of the changes. At the end of Volume IV are Code Editor's Notes which explain the major editorial decisions relating to enactments of the 2002 session. The Code Editor's Notes relating to enactments of the 2001 session appear at the end of the 2001 Code Supplement.

HISTORIES. Bracketed material at the end of many Code sections traces the history of the subject matter of those sections up through 1982. Beginning with the 1985 Code, that form of section history was not updated. An amendment to or enactment of a section which occurred during or after the 1983 legislative session is indicated by the addition of an Acts citation at the end of the section. If a section is transferred to a new location, the section history will indicate the Code or Code Supplement in which the transfer took place.

CONSTITUTIONS. A codified version of the 1857 Constitution of the State of Iowa, as well as the original version, is included with the introductory material at the beginning of Volume I.

TABLES. The tables appear at the beginning of the index volume which is entitled "Tables and Index."

The editorial staff of the Iowa Code welcomes your comments and suggestions for improvements.

Dennis C. Prouty, Acting Director
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DESIGNATION OF GENERAL ASSEMBLY

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2.2 Designation of general assembly.

Each regular session of the general assembly shall be designated by the year in which it convenes and by a number with a new consecutive number assigned with the session beginning in each odd-numbered year.

A special session of the general assembly shall be designated as an extraordinary session in the particular year of a numbered general assembly.

2B.17 Citations — official statutes.

1. The permanent and official printed versions of the Iowa Codes and Code Supplements published subsequent to the adjournment of the 1982 regular session of the Sixty-ninth General Assembly shall be known and may be cited as "Iowa Code chapter (or section) . . . . ", or "Iowa Code Supplement chapter (or section) . . . . ", inserting the appropriate chapter or section number. If the year of edition is needed, it may be inserted before or after the words "Iowa Code" or "Iowa Code Supplement". In Iowa publications, the word "Iowa" may be omitted if the meaning is clear.

2. The session laws of each general assembly shall be known as "Acts of the . . . . General Assembly, ... Session, Chapter (or File No.) . . . . , Section . . . . " (inserting the appropriate numbers) and shall be cited as " . . . . Iowa Acts, chapter . . . . , section . . . . " (inserting the appropriate year, chapter, and section number).

3. The official printed versions of the Iowa Code, Code Supplement, and session laws published under authority of the state are the only authoritative publications of the statutes of this state. No other publications of the statutes of the state shall be cited in the courts or in the reports or rules of the courts.

4. The Iowa administrative code and the Iowa administrative bulletin shall be cited as provided in section 17A.6.

5. The printed version of the Iowa administrative code is the permanent publication of administrative rules in this state and the Iowa administrative bulletin and the Iowa administrative code published pursuant to chapter 17A are the official publications of the administrative rules of this state, and are the only authoritative publications of the administrative rules of this state. Other publications of the administrative rules of this state shall not be cited in the courts or in the reports or rules of the courts.

Chapters of the Code are cited as whole numerals; as chapter 124 or chapter 124A.

Sections are cited as decimal numerals; as section 124.401 or section 124A.3. Occasionally, sections are divided into subsections as 1., 2., 3., etc.; subsections into paragraphs *a, b, c,* etc.; paragraphs into subparagraphs as (1), (2), (3), etc.; and subparagraphs into subparagraph subdivisions as (a), (b), (c), etc. Example: section 124.401, subsection 1, paragraph *"a"*, subparagraph (2), subparagraph subdivision (a). This may be abbreviated as 124.401(1)(*a*)(2)(a) or 124.401[1*a*(2)(a)].

ABBREVIATIONS

C51	Code of 1851
R60	Revision of 1860
C73	Code of 1873
C97	Code of 1897
S'02	Supplement of 1902
S'07	Supplement of 1907
S13	Supplement of 1913
SS15	Supplemental Supplement 1915
C24	Code of 1924
C27	Code of 1927
C31	Code of 1931
C35	Code of 1935
C39	Code of 1939
C46	Code of 1946
C50	Code of 1950
C54	Code of 1954
C58	Code of 1958
C62	Code of 1962
C66	Code of 1966
C71	Code of 1971
C73	Code of 1973
C75	Code of 1975
C77	Code of 1977
C79	Code of 1979
S79	Supplement of 1979
C81	Code of 1981
S81	Supplement of 1981
C83	Code of 1983
CS83	Supplement of 1983
C85	Code of 1985
CS85	Code Supplement of 1985
C87	Code of 1987
CS87	Code Supplement of 1987
C89	Code of 1989
CS89	Code Supplement of 1989
C91	Code of 1991
CS91	Code Supplement of 1991
C93	Code of 1993
CS93	Code Supplement of 1993
C95	Code of 1995
CS95	Code Supplement of 1995
C97	Code of 1997
CS97	Code Supplement of 1997
C99	Code of 1999
CS99	Code Supplement of 1999
C2001	Code of 2001
CS2001	Code Supplement of 2001
C2003	Code of 2003
GA	General Assembly
§ or Sec.	Section
Ch	Chapter
1st Ex	First Extra Session
2nd Ex	Second Extra Session
R (in tables)	Repealed
Vol	Volume
R.C.P.	Rules of Civil Procedure
R.Cr.P.	Rules of Criminal Procedure
R.App.P.	Rules of Appellate Procedure
Stat. L.	Statutes at Large (U. S.)
U.S.C.	United States Code
Pub. L. No.	Public Law Number (U. S.)
C.F.R.	Code of Federal Regulations (U. S.)

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TITLE XIII

COMMERCE

SUBTITLE 1

INSURANCE AND RELATED REGULATION

CHAPTER 505

INSURANCE DIVISION

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505.1 Insurance division created.

An insurance division is created within the department of commerce to regulate and supervise the conducting of the business of insurance in the state. The commissioner of insurance is the chief executive officer of the division. As used in this subtitle and chapter 502, *"division"* means the insurance division.

[S13, §1683-r, -r1; C24, 27, 31, 35, 39, §**8604;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.1]

86 Acts, ch 1245, §745; 93 Acts, ch 60, §6; 94 Acts, ch 1023, §113

505.2 Appointment and term of commissioner.

The governor shall appoint subject to confirmation by the senate, a commissioner of insurance, who shall be selected solely with regard to qualifications and fitness to discharge the duties of this position, devote the entire time to such duties, and serve for four years beginning and ending as provided by section 69.19. The governor may remove the commissioner for malfeasance in office, or for any cause that renders the commissioner ineligible, incapable, or unfit to discharge the duties of the office.

[S13, §1683-r; C24, 27, 31, 35, 39, §**8605;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.2]

86 Acts, ch 1245, §1989

Confirmation, see §2.32

505.3 Vacancies.

Vacancies shall be filled as regular appointments are made for the unexpired portion of the regular term.

[S13, §1683-r; C24, 27, 31, 35, 39, §**8607;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.3]

505.4 Deputy — assistants — bond.

The commissioner of insurance shall appoint a first and second deputy commissioner and such other clerks and assistants as shall be needed to assist the commissioner in the performance of the commissioner's duty, all of whom shall serve during the pleasure of the commissioner. Before entering upon the duties of their respective offices, deputy commissioners shall give a bond in the pe-

nal sum of ten thousand dollars.

The commissioner may appoint a deputy commissioner for supervision whom the commissioner may appoint as supervisory or special deputy pursuant to chapter 507C and who shall perform such other duties as may be assigned by the commissioner. The deputy commissioner for supervision shall receive a salary to be fixed by the commissioner. The deputy commissioner for supervision shall be an exempt employee under section 19A.3, subsection 17.

[S13, §1683-r2; C24, 27, 31, 35, 39, §**8608;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.4]

91 Acts, ch 26, §31

505.5 Expenses — salary.

The commissioner shall be entitled to reimbursement of actual necessary expenses in attending meetings of insurance commissioners of other states, and in the performance of the duties of the office. The commissioner's salary shall be as fixed by the general assembly.

[S13, §1683-r2; C24, 27, 31, 35, 39, §**8610;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.5]

505.6 Documents and records.

All books, records, files, documents, reports, and securities, and all papers of every kind and character relating to the business of insurance shall be delivered to, and filed or deposited with, the said commissioner of insurance.

[S13, §1683-r4; C24, 27, 31, 35, 39, §**8611;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.6]

505.7 Fees — expenses of division.

1. All fees and charges which are required by law to be paid by insurance companies, associations, and other regulated entities shall be payable to the commissioner of the insurance division of the department of commerce or department of revenue and finance, as provided by law, whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner provided by law for deposit in the general fund of the state.

2. The commissioner shall account for receipts and disbursements according to the separate inspection and examination duties imposed upon the commissioner by the laws of this state and each separate inspection and examination duty shall be fiscally self-sustaining.

3. Forty percent of the nonexamination revenues payable to the division of insurance or the department of revenue and finance in connection with the regulation of insurance companies or other entities subject to the regulatory jurisdiction of the division shall be subject to annual appropriation to the division for its operations and is also subject to expenditure under subsection 6.

4. Except as otherwise provided in subsection 6, the insurance division may expend additional funds if those additional expenditures are actual expenses which exceed the funds budgeted for statutory duties of the division and directly result from the statutory duties of the division. The amounts necessary to fund the excess division expenses shall be collected from additional fees and other moneys collected by the division. The division shall notify in writing the legislative fiscal bureau and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed to the general fund, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

5. The insurance division may transfer moneys between budgeted line items of its appropriation, but such transfers may not reduce moneys budgeted for examinations or professional services, including but not limited to actuarial and legal services.

6. The insurance division may expend additional funds, including funds for additional personnel if those additional expenditures are actual expenses which exceed the funds budgeted for insurance solvency oversight under the following conditions:

a. The division may exceed the line item budgets for examinations and professional services, including but not limited to legal and actuarial services, provided that the division funds the increased expenditures through assessments or increased nonexamination revenues payable to the division under subsection 1 or otherwise. The amounts necessary to fund the excess expenses may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

b. Before the division expends or encumbers an amount in excess of the funds budgeted for line items other than examinations and professional services, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses can be paid from nonexamination revenues payable to the division under subsection 1 or otherwise. Upon the approval of the director of the department of management the division may expend and encumber funds for the excess expenses. The amounts necessary to fund the excess expenses may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

The annual salaries of the deputy commissioner for supervision and the chief examiner appointed pursuant to section 507.5 shall be expenses of ex-

amination of insurance companies and shall be charged to insurance companies examined on a proportionate basis as provided by rule adopted by the commissioner. Insurance companies examined shall pay the proportion of the salaries of the deputy commissioner for supervision and the chief examiner charged to them as part of the costs of examination as provided in section 507.8.

7. The insurance division shall, by January 15 of each year, prepare estimates of projected receipts, refunds, and reimbursements to be generated by the examinations function of the division during the calendar year in which the report is due, and such receipts, refunds, and reimbursements shall be treated in the same manner as repayment receipts, as defined in section 8.2, subsection 8, and shall be available to the division to pay the expenses of the division's examination function.

8. The commissioner may assess the costs of an audit or examination to a health insurance purchasing cooperative, in the same manner as provided for insurance companies under sections 507.7 through 507.9, and may establish by rule reasonable filing fees to fund the cost of regulatory oversight.

[S13, §1683-r5; C24, 27, 31, 35, 39, §**8612;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.7]

86 Acts, ch 1246, §615; 87 Acts, ch 234, §433; 90 Acts, ch 1247, §12, 13; 91 Acts, ch 26, §32; 91 Acts, ch 260, §1239; 93 Acts, ch 88, §3; 94 Acts, ch 1176, §1, 2; 2002 Acts, 2nd Ex, ch 1003, §32, 35

Deposit of fees, §12.10
Subsection 4 stricken and rewritten

505.8 General powers and duties.

1. The commissioner of insurance shall be the head of the division, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to such insurance.

2. The commissioner shall, subject to chapter 17A, establish, publish, and enforce rules not inconsistent with law for the enforcement of this subtitle and for the enforcement of the laws, the administration and supervision of which are imposed on the division, including rules to establish fees sufficient to administer the laws, where appropriate fees are not otherwise provided for in rule or statute.

3. The commissioner shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corporations, and all transactions leading up to the organization of such corporations.

4. The commissioner shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing to engage in any insurance business.

5. The commissioner shall supervise all health insurance purchasing cooperatives providing services or operating within the state and the organization of domestic cooperatives. The commissioner may admit nondomestic health insurance purchasing cooperatives under the same standards as domestic cooperatives.

6. The commissioner shall adopt rules protecting the privacy of information held by an insurer or an agent consistent with the federal Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

7. Notwithstanding chapter 22, the commissioner may keep confidential any social security number, residence address, and residence telephone number that is contained in a record filed as part of a licensing, registration, or filing process if disclosure is not required in the performance of any duty or is not otherwise required under law.

[S13, §1683-r3; C24, 27, 31, 35, 39, §**8613;** C46, 50, 54, §505.8; C58, 62, §505.8, 522.3; C66, 71, 73, §505.8, 515.150, 522.3; C75, 77, 79, 81, §505.8]

83 Acts, ch 27, §10; 88 Acts, ch 1159, §2; 90 Acts, ch 1234, §2; 94 Acts, ch 1176, §3; 97 Acts, ch 23, §61; 98 Acts, ch 1119, §3; 99 Acts, ch 114, §41; 2000 Acts, ch 1023, §4, 5; 2002 Acts, ch 1111, §6

See also §523A.801
NEW subsection 7

505.9 Ex officio receiver.

The commissioner of insurance henceforth shall be the receiver and liquidating officer for any insurance company, association, or insurance carrier, and shall serve without compensation other than the stated compensation as commissioner of insurance, but the commissioner shall be allowed clerical and other expenses necessary for the conduct of such receivership.

[C31, 35, §8613-c1; C39, §**8613.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.9]

505.10 Expenses attending liquidation.

All expenses of supervision and liquidation shall be fixed by the commissioner of insurance, subject to approval by the court or a judge thereof, and shall, upon the commissioner's order, be paid out of the funds of such company, association, or insurance carrier in the commissioner's hands.

[C31, 35, §8613-c2; C39, §**8613.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.10]

505.11 Refunds.

Whenever it appears to the satisfaction of the commissioner of insurance that, because of error, mistake, or erroneous interpretation of statute, a foreign or domestic insurance corporation has paid to the state of Iowa taxes, fines, penalties, or license fees in excess of the amount legally chargeable against it, the commissioner of insurance shall have power to refund to such corporation any such excess by applying the amount of the excess payment toward the payment of taxes, fines, penalties, or license fees already due or which may become due, until such excess payments have been fully refunded.

[C31, 35, §8613-c3; C39, §**8613.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.11]
2001 Acts, ch 69, §2; 2002 Acts, ch 1050, §44
Section amended

505.12 Life insurance — annual report.
Before the first day of September the commissioner of insurance shall make an annual report to the governor of the general conduct and condition of the life insurance companies doing business in the state, and include therein an aggregate of the estimated value of all outstanding policies in each of the companies; and in connection therewith prepare a separate abstract thereof as to each company, and of all the returns and statements made to the commissioner by them.
[C73, §1176; C97, §1781; C24, 27, 31, 35, 39, §**8614;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.12]
88 Acts, ch 1112, §101

505.13 Other insurance — annual report by the division.
The commissioner shall annually cause the preparation and printing of a report to be delivered to the governor. The report shall contain information from the statements required of insurance companies, other than life insurance companies, organized or doing business in the state. The reports shall be delivered on or before the first day of September each year.
[C73, §1158; C97, §1720; S13, §1720-a; C24, 27, 31, 35, 39, §**8615;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §505.13]
87 Acts, ch 132, §1; 88 Acts, ch 1112, §102; 98 Acts, ch 1119, §4

505.13A Reserved.

505.14 Foreign insurers — reciprocal provisions.
When by the laws of any other state a premium or income or other taxes, or fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions are imposed upon Iowa insurance companies actually doing business in the other state, or upon the agents of the Iowa companies, which in the aggregate are in excess of the aggregate of the taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of the other state under the statutes of this state, the same obligations, prohibitions or restrictions of whatever kind are in the same manner and for the same purpose imposed upon insurance companies of the other state doing business in Iowa. Insurance premium taxes paid which were not paid under protest shall not be refunded if the refund claim is based upon an alleged error or mistake of law or erroneous interpretation of statute regarding the validity or legality of this section under the laws or constitutions of the United States or this state. For the purpose of this section, an alien insurer is deemed domiciled in a state designated by it wherein it has (1) established its principal office or agency in the United States, or (2) maintains the largest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States, or (3) in which it was admitted to do business in the United States. This section does not apply to ad valorem taxes on real or personal property or to personal income taxes.
[C46, 50, 54, §432.2; C58, 62, 66, 71, 73, 75, 77, 79, 81, §505.14; 81 Acts, ch 164, §1]

505.15 Actuarial staff.
The commissioner may appoint a staff of actuaries as necessary to carry out the duties of the division. The actuarial staff shall:
1. Perform analyses of rate filings.
2. Perform audits of submitted loss data.
3. Conduct rate hearings and serve as expert witnesses.
4. Prepare, review, and dispense data on the insurance business.
5. Assist in public education concerning the insurance business.
6. Identify any impending problem areas in the insurance business.
7. Assist in examinations of insurance companies.
87 Acts, ch 132, §2

505.16 Applications for insurance — test restrictions — duties of commissioner.
1. A person engaged in the business of insurance shall not require a test of an individual in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the individual provides a written release on a form approved by the insurance commissioner. The form shall include information regarding the purpose, content, use, and meaning of the test, disclosure of test results including information explaining the effect of releasing the information to a person engaged in the business of insurance, the purpose for which the test results may be used, and other information approved by the insurance commissioner. The form shall also authorize the person performing the test to provide the results of the test to the insurance company subject to rules of confidentiality, consistent with section 141A.9, approved by the insurance commissioner. As used in this section, *"a person engaged in the business of insurance"* includes hospital service corporations organized under chapter 514 and health maintenance organizations subject to chapter 514B.
2. The insurance commissioner shall approve

rules for carrying out this section including rules relating to the preparation of information to be provided before and after a test and the protection of confidentiality of personal and medical records of insurance applicants and policyholders.

88 Acts, ch 1234, §7; 99 Acts, ch 181, §17

505.17 Confidential information.

Information, records, and documents utilized for the purpose of, or in the course of, investigation, regulation, or examination of an insurance company or insurance holding company, received by the division from some other governmental entity which treats such information, records, and documents as confidential, are confidential and shall not be disclosed by the division and are not subject to subpoena. Such information, records, and documents do not constitute a public record under chapter 22.

The disclosure of confidential information, administrative or judicial orders which contain confidential information, or information regarding other action of the division which is not a public record subject to disclosure, to other insurance and financial regulatory officials may be permitted by the commissioner provided that those officials are subject to, or agree to comply with, standards of confidentiality comparable to those imposed on the commissioner.

94 Acts, ch 1176, §4; 99 Acts, ch 165, §1

505.18 and 505.19 Reserved.

505.20 Health accounting standards — duties of commissioner. Repealed by 99 Acts, ch 114, § 54.

505.21 Health care access — duties of commissioner — penalties.

1. The commissioner shall adopt rules establishing a requirement that an employer provide access to health care to the employees of the employer. The rules shall provide that an employer doing business within this state shall offer each employee, at a minimum, access to health insurance. The requirement contained in this section may be satisfied by offering any of the following:

a. Health care coverage through an insurer or health maintenance organization authorized to do business in this state.

b. Access to health benefits through a health benefits plan qualified under the federal Employee Retirement Income Security Act of 1974.

2. An employer may financially contribute toward the employee's health benefit plan. The employer shall offer payroll deduction of employee contributions and direct deposit of premium payments related to a health insurance purchasing cooperative or other health care coverage.

3. A violation of this section may be reported to the consumer and legal affairs bureau in the insurance division. The division may issue, upon a finding that an employer has failed to offer an employee access to health insurance, any of the following:

a. A cease and desist order instructing the employer to cure the failure and desist from future violations of this section.

b. An order requiring an employer who has previously been the subject of a cease and desist order to pay an employee's reasonable health insurance premiums necessary to prevent or cure a lapse in health care coverage arising out of the employer's failure to offer as required.

c. An order upon the employer assessing the reasonable costs of the division's investigation and enforcement action.

94 Acts, ch 1176, §6; 98 Acts, ch 1217, §38

505.22 Certain religious organization activities exempt from regulation.

A religious organization which, through its publication to subscribers, solicits funds for the payment of medical expenses of other subscribers, shall not be considered to be engaging in the business of insurance for purposes of this chapter or any other provision of this title, and shall not be subject to the jurisdiction of the commissioner of insurance, if all of the following apply:

1. The religious publication is provided by a nonprofit charitable organization described in section 501(c)(3) of the Internal Revenue Code.

2. Participation is limited to subscribers who are members of the same denomination or religion.

3. The publication is registered with the United States postal service and acts as an organizational clearinghouse for information between subscribers who have financial, physical, or medical needs, and subscribers who choose to assist with those needs, matching subscribers with the present ability to pay with subscribers with a present financial or medical need.

4. The organization, through its publication, provides for the payment for subscriber financial or medical needs through direct payments from one subscriber to another.

5. The organization, through its publication, suggests amounts to contribute that are voluntary among the subscribers, with no assumption of risk or promise to pay either among the subscribers or between the subscribers and the publication.

95 Acts, ch 185, §3

505.23 Hearings.

If an evidentiary hearing is conducted in a proceeding pursuant to section 508B.7, 515G.7, 521A.3, or 521A.14, or in a proceeding with respect to a merger or consolidation pursuant to chapter 521, the proceeding is a contested case subject to chapter 17A.

2000 Acts, ch 1023, §6

CHAPTER 506

DOMESTIC INSURANCE COMPANIES

506.1 Rules — limitations.
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506.5 Regulation by commissioner.
506.6 Promoters restricted.
506.7 Penalty.
506.8 Liability to stockholders.
506.9 Judicial review.
506.10 Sale of stock as inducement to insurance.
506.11 Securities law applicable.
506.12 Principal executive office.

506.1 Rules — limitations.

The commissioner of insurance shall promulgate such reasonable rules and regulations as the commissioner deems necessary to assure the proper operation of newly organized insurance companies but in no event shall the commissioner:

1. Require that more than twenty percent of the original capital and surplus of a stock corporation subject to the provisions of this chapter be invested by the organizers; or

2. Restrict the alienation of securities issued to organizers for a period of more than:

a. Five years, or

b. Until the operation of the insurance company produces earned surplus for two successive years.

[C66, 71, 73, 75, 77, 79, 81, §506.1]

506.2 Sale of securities restricted.

Neither the securities in a domestic insurance company, nor securities in a holding company, one of the purposes of which is to organize, purchase, or otherwise acquire control of a domestic insurance company, nor membership in an association in process of organization shall be sold or solicited until such company or association, and the promoters thereof, shall have first complied with all of the statutory provisions regulating the organization of such companies and associations, and also have secured from the commissioner of insurance a certificate indicating full compliance with the provisions of this chapter.

[S13, §1683-r3; C24, 27, 31, 35, 39, §**8616;** C46, 50, 54, 58, 62, §506.1; C66, 71, 73, 75, 77, 79, 81, §506.2]

88 Acts, ch 112, §501

506.3 Certificate of compliance.

Before the commissioner of insurance shall issue such certificate of compliance, the commissioner shall first be satisfied with the general plan of such organization and the character of the advertising to be used; the commissioner shall also see that all rules and regulations promulgated under this chapter have been complied with and fix the time within which such organization shall be completed; the commissioner shall also prescribe the method of keeping books and accounts of insurance companies and those of fiscal agents of corporations subject to the provisions of this chapter.

[S13, §1683-r3; C24, 27, 31, 35, 39, §**8617;** C46, 50, 54, 58, 62, §506.2; C66, 71, 73, 75, 77, 79, 81, §506.3]

506.4 Maximum promotion expense allowed.

The maximum promotion expense which may be incurred shall in no case exceed fifteen percent of the sale price of said stock, and no portion of such amount shall be used in the payment of salaries for officers and directors before the issuance, by the commissioner of insurance, of authority to transact an insurance business. Any amount paid to the company for stock above the par value of the stock shall constitute a contributed surplus but no dividends shall be paid by the company except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus.

[C24, 27, 31, 35, 39, §**8618;** C46, 50, 54, 58, 62, §506.3; C66, 71, 73, 75, 77, 79, 81, §506.4]

506.5 Regulation by commissioner.

The commissioner of insurance shall have power to regulate all other matters in connection with the organization of such domestic corporations, and the sale of stock or the issuing of certificates by all insurance corporations within the state, to the end that fraud may be prevented in the organization of such companies and the sale of their stocks and securities.

[S13, §1683-r3; C24, 27, 31, 35, 39, §**8619;** C46, 50, 54, 58, 62, §506.4; C66, 71, 73, 75, 77, 79, 81, §506.5]

506.6 Promoters restricted.

No company shall enter into any contract with any promoter, officer, director, or agent of the company or any other person to pay the person's expenses or to pay the person any commission or any

compensation for the person's services in promoting or organizing such company, or in selling its stock in excess of the amount authorized in section 506.4; nor shall it contract with any such person to pay the person any part of the premiums arising from the insurance it has written or may write as compensation, directly or indirectly, for aiding in the promotion or for aiding or effecting any consolidation of such company with any other company, without the approval of the commissioner of insurance.

[C24, 27, 31, 35, 39, §**8620;** C46, 50, 54, 58, 62, §506.5; C66, 71, 73, 75, 77, 79, 81, §506.6]

506.7 Penalty.

Any person who violates any of the provisions of the preceding sections of this chapter, or who violates any order of the commissioner of insurance made by authority thereof, shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §**8621;** C46, 50, 54, 58, 62, §506.6; C66, 71, 73, 75, 77, 79, 81, §506.7]

506.8 Liability to stockholders.

Any person, association, or corporation who sells or aids in selling or causes to be sold any stock, certificate of membership, or evidence of interest in any such corporation or association, in violation of law, shall be personally liable to any person to whom the person, association or certificate of membership or evidence of interest, in an amount equal to the price paid therefor by such person with legal interest, and suit to recover the same may be brought by such purchasers, jointly or severally, in any court of competent jurisdiction.

[C24, 27, 31, 35, 39, §**8622;** C46, 50, 54, 58, 62, §506.7; C66, 71, 73, 75, 77, 79, 81, §506.8]

506.9 Judicial review.

Judicial review of the acts of commissioner of insurance may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C24, 27, 31, 35, 39, §**8623;** C46, 50, 54, 58, 62, §506.8; C66, 71, 73, 75, 77, 79, 81, §506.9]

506.10 Sale of stock as inducement to insurance.

No insurance company shall issue in this state, or permit its agents, officers, or employees to issue in this state its own stock, agency company stock or other stock or securities, or any special or advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

No insurance company shall be authorized to do business in this state which issues or permits its agents, officers, or employees to issue in this state or in any other state or territory, agency company stock or other stock or securities, or any special advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

No corporation or stock company, acting as an agent of an insurance company, or any of its agents, officers, or employees, shall be permitted to agree to sell, offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature, promising returns and profits as an inducement to insurance, or in connection therewith.

Nothing herein contained shall impair or affect in any manner any such contracts issued or made as an inducement to insurance prior to the enactment of this section, or prevent the payment of the dividends or returns therein stipulated to be paid.

It shall be the duty of the commissioner upon being satisfied that any insurance company, or any agent thereof, has violated any of the provisions of this section, to revoke the certificate of authority of the company or agent so offending.

[C24, 27, 31, 35, 39, §**8624;** C46, 50, 54, 58, 62, §506.9; C66, 71, 73, 75, 77, 79, 81, §506.10]

506.11 Securities law applicable.

Nothing contained in this chapter shall be construed to exempt any corporation from the requirements of chapter 502.

[C66, 71, 73, 75, 77, 79, 81, §506.11]

506.12 Principal executive office.

An insurance company incorporated under the laws of this state for the purpose of engaging in the business of insurance shall maintain a principal executive office in this state unless otherwise allowed by the commissioner of insurance. The location of the principal executive office in this state of an insurance company incorporated under chapter 490 shall be identified in the insurance company's articles of incorporation.

92 Acts, ch 1162, §2

CHAPTER 507

EXAMINATION OF INSURANCE COMPANIES

507.1 Purpose — definitions.
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507.3 Conduct of examinations.
507.4 Examiners — salaries.
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507.6 Conflict of interest.
507.7 Expenses.
507.8 Payment by company.
507.9 Fees — accounting.
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507.13 Notice of application. Repealed by 92 Acts, ch 1117, §42.
507.14 Confidential documents — exceptions.
507.15 Transfer pending examination.
507.16 Unlawful solicitation of business.
507.17 Immunity from liability.
507.18 Repealed by 49 Acts, ch 213, §1.

507.1 Purpose — definitions.

1. The purpose of this chapter is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The chapter is intended to enable the commissioner to adopt a flexible system of examinations which directs resources as deemed appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

2. As used in this chapter, unless the context otherwise requires:

a. "Commissioner" means the commissioner of insurance of this state.

b. "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory, or taxing authority of the commissioner.

c. "Division" means the division of insurance of the department of commerce.

d. "Examiner" means any individual or firm authorized by the commissioner to conduct an examination pursuant to this chapter.

e. "Insurer" includes all companies or associations organized under chapter 508, 511, 512A, 512B, 514, 514B, 515, 515C, or 518A, associations subject to chapters 518 and 520, and companies or associations admitted or seeking to be admitted to this state under any of those chapters.

f. "Person" means any individual, aggregation of individuals, trust, association, partnership, or corporation or an affiliate of any of these.

[S13, §1821-i; C24, 27, 31, 35, 39, §**8625;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.1]

88 Acts, ch 1112, §301; 92 Acts, ch 1117, §1

507.2 Authority, scope, and scheduling of examinations.

1. The commissioner or any of the commissioner's examiners may conduct an examination under this chapter of any company as often as the commissioner deems appropriate, but at a minimum, shall conduct an examination of any domestic insurer licensed in this state no less than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

2. For purposes of completing an examination of any company pursuant to this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

3. In lieu of an examination under this chapter of any foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the regulatory authority for insurance for the company's state of domicile or port-of-entry state.

[C97, §1753; S13, §1821-a, -h; C24, 27, 31, 35, 39, §**8626, 8642, 9009, 9061;** C46, §507.2, 507.18, 515.130, 518.36; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.2]

92 Acts, ch 1117, §2; 95 Acts, ch 185, §4

507.3 Conduct of examinations.

1. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee may appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ other guidelines as the commissioner deems appropriate.

2. A company or person from whom information is sought and its officers, directors, and agents shall provide to the examiners appointed under subsection 1, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the

company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examinations or to comply with any reasonable written request of the examiners is grounds for suspension or revocation of, or nonrenewal of, any license or authority held by the company to engage in the business of insurance or other business subject to the commissioner's jurisdiction. Should a company decline or refuse to submit to an examination as provided in this chapter, the commissioner shall immediately revoke its certificate of authority, and if the company is organized under the laws of this state, the commissioner shall report the commissioner's action to the attorney general, who shall immediately apply to the district court for the appointment of a receiver to administer the final affairs of the company.

3. The commissioner or any of the commissioner's examiners may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

4. When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the company which is the subject of the examination.

5. This chapter does not limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are deemed to be prima facie evidence in any legal or regulatory action.

[S13, §1821-b; C24, 27, 31, 35, 39, §**8627;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.3]

92 Acts, ch 1117, §3; 97 Acts, ch 186, §2

507.4 Examiners — salaries.

The commissioner of insurance is hereby authorized to appoint insurance examiners, at least one of whom shall be an experienced actuary, and at least one of whom shall be an experienced and competent fire insurance accountant, and who, while conducting examinations, shall possess all the powers conferred upon the commissioner of insurance for such purposes. The entire time of the examiners shall be under the control of the said commissioner, and shall be employed as the commissioner may direct.

The said commissioner may, when in the commissioner's judgment it is advisable, appoint assistants to aid in making examinations. Said examiners shall be compensated on the basis of the normal work week of the insurance division at a salary to be fixed by the commissioner subject, however, to the provisions of section 505.14. Said compensation shall be paid from appropriations for such purposes upon certification of the commissioner, which shall be reimbursed as provided in sections 507.8 and 507.9.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8628;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.4]

507.5 Chief examiner.

The commissioner may appoint a chief examiner who shall supervise insurance company examinations and perform such other duties as may be assigned by the commissioner. The chief examiner shall receive a salary to be fixed by the commissioner. The chief examiner shall be an exempt employee under section 19A.3, subsection 17.

91 Acts, ch 26, §33

507.6 Conflict of interest.

1. An examiner shall not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being any of the following:

a. A policyholder or claimant under an insurance policy.

b. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business.

c. An investment owner in shares of regulated diversified investment companies.

d. A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

2. Notwithstanding the requirements of subsection 1, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though the persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

[C24, 27, 31, 35, 39, §**8630;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.6]

92 Acts, ch 1117, §4

507.7 Expenses.

Said examiners and assistants and the said commissioner shall receive actual and necessary

traveling, hotel, and other expenses while engaged in conducting examinations away from their respective places of residence.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8631;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.7]

507.8 Payment by company.

The commissioner shall upon the completion of an examination, or at such regular intervals prior to completion as the commissioner determines, prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the companies examined, and upon failure or refusal of any company examined to pay such bill or bills, the same may be recovered in an action brought in the name of the state, and the commissioner may also revoke the certificate of authority of such company to transact business within this state.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8632;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.8]

88 Acts, ch 1112, §302

507.9 Fees — accounting.

All fees collected under the provisions of this chapter shall be paid to the commissioner of insurance and shall be turned into the state treasury.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8633;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.9]

Deposit of fees, §12.10

507.10 Examination reports.

1. *General description.* All examination reports shall be comprised only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

2. *Filing of examination report.* No later than sixty days following completion of the examination, the examiner in charge shall file with the division a verified written report of examination. Upon receipt of the verified report and after administrative review, the division shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

3. *Adoption of report on examination.* Within twenty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order which does one of the following:

a. Adopts the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law or a rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

b. Rejects the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling pursuant to subsection 1 above.

c. Calls for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

4. *Orders and procedures.*

a. All orders entered pursuant to subsection 3, paragraph *"a"*, shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order is a final administrative decision and may be appealed pursuant to chapter 17A, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

b. Any hearing conducted under subsection 3, paragraph *"c"*, by the commissioner or an authorized representative, shall be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or indicated as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subsection 3, paragraph *"a"*.

(1) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's work papers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or a representative acting on the commissioner's behalf may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the division of insurance, the company, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or a representative acting on the commissioner's behalf shall be under oath and preserved for the record.

This section does not require the division of insurance to disclose any information or records which would indicate or show the existence of any investigation or activity of a criminal or juvenile justice agency.

(2) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter the company and the division may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or the commissioner's representative. The company and the division shall be permitted to make closing statements and may be represented by counsel.

5. *Publication and use.*

a. Upon the adoption of the preliminary examination report under subsection 3, paragraph *"a"*, the commissioner shall hold the content of the final examination report as private and confidential information not subject to disclosure and it is not a public record under chapter 22, for a period of twenty days except to the extent provided in subsection 2. After the twenty-day period has elapsed, the commissioner may open the final report for public inspection so long as no court of competent jurisdiction has stayed its publication.

b. The commissioner is not prevented from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to the report, to an insurance department of any other state or country, or to law enforcement officials of this or any other state or an agency of the federal government at any time, so long as such agency or office receiving the report, or matters relating to the report, agrees in writing to maintain the confidentiality of the report or such matters in a manner consistent with this chapter.

c. If the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceeding or action as provided by law.

[S13, §1821-d; C24, 27, 31, 35, 39, §**8634;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.10]

92 Acts, ch 1117, §5; 95 Acts, ch 191, §25; 2001 Acts, ch 69, §3

507.11 Procedure against nonlife companies. Repealed by 91 Acts, ch 26, § 61.

507.12 Procedure against life companies.

In case of companies organized under the provisions of chapter 508, the officers shall proceed as provided in sections 508.18 and 508.19.

[S13, §1821-d; C24, 27, 31, 35, 39, §**8636;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.12]

91 Acts, ch 26, §57

507.13 Notice of application. Repealed by 92 Acts, ch 1117, § 42.

507.14 Confidential documents — exceptions.

A preliminary report of an examination of a domestic or foreign insurer, and all notes, work papers, or other documents related to an examination of an insurer are not public records under chapter 22 except when sought by the insurer to whom they relate, an insurance regulator of another state, or the national association of insurance commissioners, and shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

1. An action commenced by the commissioner under chapter 507C.

2. An administrative proceeding brought by the insurance division under chapter 17A.

3. A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

4. An action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

5. An action brought in a shareholders' derivative suit against an insurer.

6. An action brought to recover moneys or to recover upon an indemnity bond for embezzlement, misappropriation, or misuse of insurer funds.

A report of an examination of a domestic or foreign insurer which is preliminary under the rules of the division is not a public record under chapter 22 except when sought by the insurer to which the report relates or an insurance regulator of another state, and is privileged and confidential in any judicial or administrative proceeding.

A financial statement filed by an employer self-insuring workers' compensation liability pursuant to section 87.11, or the working papers of an examiner or the division in connection with calculating appropriate security and reserves for the self-insured employer are not public records under chapter 22 except when sought by the employer to which the financial statement or working papers relate or an insurance or workers' compensation self-insurance regulator of another state, and are privileged and confidential in any judicial or administrative proceeding. The financial information of a nonpublicly traded employer which self-insures for workers' compensation liability pursuant to section 87.11 is protected as proprietary trade secrets to the extent consistent with the commissioner's duties to oversee the security of self-insured workers' compensation liability.

[S13, §1821-d; C24, 27, 31, 35, 39, §**8638;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.14]

90 Acts, ch 1234, §3; 91 Acts, ch 26, §34; 92 Acts, ch 1117, §6

507.15 Transfer pending examination.

Any transfer of stock of any company, pending an investigation, shall not release the party making the transfer from any liability for losses that

may have occurred previous to such transfer.

[S13, §1821-e; C24, 27, 31, 35, 39, §**8639;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.15]

507.16 Unlawful solicitation of business.

Any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, solicits insurance for said company, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said company, shall be deemed guilty of a serious misdemeanor, and the provisions of sections 511.16 and 511.17 are hereby extended to all companies contemplated by this chapter.

[S13, §1821-f; C24, 27, 31, 35, 39, §**8640;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.16]

507.17 Immunity from liability.

1. A cause of action does not arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representative, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

2. A cause of action does not arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative, or an examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

3. This section does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified in subsection 1.

4. A person identified in subsection 1 is entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if the proceeding has a reasonable basis in law or fact at the time that it is initiated.

[S13, §1821-g; C24, 27, 31, 35, 39, §**8641;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.17]

92 Acts, ch 1117, §7

507.18 Repealed by 49 Acts, ch 213, § 1. See § 507.2.

CHAPTER 507A

UNAUTHORIZED INSURERS

507A.1 Title.
507A.2 Purpose.
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507A.1 Title.

This chapter may be cited as the *"Iowa Unauthorized Insurers Act"*.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507A.1]

507A.2 Purpose.

The purpose of this chapter is to subject certain persons and insurers to the jurisdiction of the insurance commissioner and the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The general assembly hereby declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The general assembly further declares that it is also concerned with the protection of residents of this state against acts by persons

and insurers not authorized to do an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers which are subject to regulation from unfair competition by unauthorized persons and insurers, and by protecting against the evasion of the insurance regulatory laws of this state.

In furtherance of such state interest, the general assembly herein provides methods for substituted service of process upon such persons or insurers in any proceeding, suit or action in any court and substitute service of any notice, order, pleading or process upon such persons or insurers in any proceeding before the commissioner of insurance to enforce or effect full compliance with the insurance and tax laws of this state. In so doing, the state exercises its powers to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of Public Law 79-15, 79th Congress of the United States, Chapter 20, 1st Sess., S. 340, 59 Stat. L. 33; 15 U.S.C. 1011 to 1015, inclusive, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507A.2]

507A.3 Definitions — scope.

Unless otherwise indicated, *"insurer"* as used in this section includes all corporations, associations, partnerships and individuals engaged in the business of insurance. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized insurer is defined to be doing an insurance business in this state:

1. The making of or proposing to make, as an insurer, an insurance contract.

2. The taking or receiving of any application for insurance.

3. The receiving or collection of any premiums, membership fees, assessments, dues or other considerations for any insurance.

4. The issuance or delivery of contracts of insurance to residents of this state or to corporations or persons authorized to do business in this state.

5. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

6. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the insurance laws of this state.

7. Any other transactions of business relating directly to insurance in this state by an insurer.

The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect.

[C50, 54, 58, 62, 66, §507A.3(1); C71, 73, 75, 77, 79, 81, §507A.3; 81 Acts, ch 165, §1]

507A.4 Transactions where law not applicable.

The provisions of this chapter shall not apply to:

1. The lawful transaction of surplus lines insurance as permitted by sections 515.147 to 515.149.

2. The lawful transaction of reinsurance by insurers.

3. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

4. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state, covering subjects of insurance not resident located, or expressly to be performed in this state at the time of issue, and which transactions are subsequent to the issuance of the policy.

5. Transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.

6. Transactions in this state involving any policy of insurance issued prior to July 1, 1967.

7. Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

8. Transactions involving risks located in this state where the policy or contract of insurance for such risk was principally negotiated and delivered outside this state and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to do an insurance business, and where such insurer has no contact with this state except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in this state.

9. *a.* Transactions involving a multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, if the multiple employer welfare arrangement meets all of the following conditions:

(1) The arrangement is administered by an authorized insurer or an authorized third-party administrator.

(2) The arrangement has been in existence and provided health insurance in Iowa for at least five years prior to July 1, 1997.

(3) The arrangement was established by a trade, industry, or professional association of employers that has a constitution or bylaws, and has been organized and maintained in good faith for at least ten continuous years prior to July 1, 1997.

(4) The arrangement registers with and ob-

tains a certificate of registration issued by the commissioner of insurance.

(5) The arrangement is subject to the jurisdiction of the commissioner of insurance, including regulatory oversight and solvency standards as established by rules adopted by the commissioner of insurance pursuant to chapter 17A.

b. A multiple employer welfare arrangement registered with the commissioner of insurance that does not meet the solvency standards established by rule adopted by the commissioner of insurance is subject to chapter 507C.

c. A multiple employer welfare arrangement that meets all of the conditions of paragraph *"a"* shall not be considered any of the following:

(1) An insurance company or association of any kind or character under section 432.1.

(2) A member of the Iowa individual health benefit reinsurance association under section 513C.10.

(3) A member insurer of the Iowa life and health insurance guaranty association under section 508C.5, subsection 8.

d. A multiple employer welfare arrangement registered with the commissioner of insurance shall file with the commissioner of insurance on or before March 1 of each year a copy of the report required to be filed with the United States department of labor pursuant to 29 C.F.R. § 2520.101-2.

[C71, 73, 75, 77, 79, 81, §507A.4]

94 Acts, ch 1038, §1, 3; 95 Acts, ch 33, §1; 96 Acts, ch 1024, §1; 97 Acts, ch 67, §1, 2; 98 Acts, ch 1012, §1; 2001 Acts, ch 13, §1, 3 – 5; 2001 Acts, ch 69, §4, 39

2001 amendment striking subsection 9, paragraphs e and f, is effective July 1, 2002; 2001 Acts, ch 13, §4

Subsection 9, paragraphs e and f stricken

507A.5 Proscribed acts binding on insurer.

1. No person or insurer shall directly or indirectly perform any of the acts of doing an insurance business as defined in this chapter except as provided by and in accordance with the specific authorization by statute. However, should any unauthorized person or insurer perform any act of doing an insurance business as set forth in this chapter, it shall be equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon the person, the person's executor or administrator, or successor in interest if a corporation, of the commissioner of insurance or the commissioner's successor in office, to be the true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding in any court arising out of doing an insurance business in this state or instituted by or on behalf of an insured or beneficiary arising out of any such acts of doing an insurance business, except in an action, suit or proceeding by the commissioner of insurance or by the state. Any act of doing an insurance business by any unauthorized person or insurer shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such person or insurer.

2. Service of process shall be made by delivering to and leaving with the commissioner of insurance or some person in apparent charge of the commissioner's office two copies thereof and the payment to the commissioner of such fees as may be prescribed by law. The commissioner of insurance shall forthwith forward by certified mail one of the copies of such process to the defendant at the last known principal place of business and shall keep a record of all process so served. Such service of process shall be sufficient to provide notice if:

a. A copy of the process is sent within ten days thereafter by certified mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business.

b. The defendant's receipt or receipt issued by the post office showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed and an affidavit by the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

3. Service of process in any such action, suit, or proceeding shall in addition to the manner as provided in this chapter be valid if served upon any person within this state who, in this state on behalf of such insurer, is soliciting insurance, making, issuing, or delivering any contract of insurance, or collecting or receiving any premium, membership fee, assessment, or other consideration for insurance, and if:

a. A copy of such process is sent within ten days thereafter by certified mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant.

b. The defendant's receipt, or the receipt issued by the post office showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and an affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

4. No plaintiff shall be entitled to a judgment by default under this chapter until the expiration of thirty days from date of the filing of the affidavit of compliance.

5. Nothing in this section shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

[C50, 54, 58, 62, 66, §507A.3; C71, 73, 75, 77, 79, 81, §507A.5]

507A.6 Secretary of state as process agent.

1. Any act of doing an insurance business as set forth in this chapter by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person and insurer, binding upon the person or insurer, the person's or insurer's executor or administrator, or successor in interest if a corporation, of the secretary of state or the secretary of state's successor in office, to be the true and lawful attorney of such person or insurer upon whom may be served all legal process in any action, suit, or proceeding in any court by the commissioner of insurance or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner of insurance and which arises out of doing an insurance business in this state by such person or insurer. Any act of doing an insurance business in this state by any unauthorized person or insurer shall be signification of its agreement that any such legal process in such court action, suit, or proceeding and any such notice, order, pleading, or process in such administrative proceeding before the commissioner of insurance so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer.

2. Service of process in such action shall be made by delivering to and leaving with the secretary of state or some person in apparent charge of the secretary of state's office, two copies thereof. Service upon the secretary of state as such attorney shall be service upon the principal.

3. The secretary of state shall forthwith forward by certified mail one of the copies of such process or such notice, order, pleading, or process in proceedings before the commissioner to the defendant in such court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at the last known principal place of business and shall keep a record of all process so served on the secretary of state which shall show the day and hour of service. Such service is sufficient, provided:

a. Notice of such service and a copy of the court process or the notice, order, pleading, or process in such administrative proceeding is sent within ten days thereafter by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner of insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding.

b. The defendant's receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in court proceeding or of the commissioner of insurance in administrative proceeding, showing compliance therewith are filed with the clerk of the court in which such action, suit, or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or commissioner of insurance may allow.

4. No plaintiff shall be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading, or process in proceedings before the commissioner of insurance is served under this section until the expiration of forty-five days from the date of filing of the affidavit of compliance.

5. Nothing in this section shall limit or abridge the right to serve any process, notice, order, or demand upon any person or insurer in any other manner now or hereafter permitted by law.

[C50, 54, 58, 62, 66, §507A.3; C71, 73, 75, 77, 79, 81, §507A.6]

507A.7 Proceedings before commissioner — indemnifying bond.

1. Before any unauthorized person or insurer files or causes to be filed any pleading or process in an administrative proceeding before the commissioner of insurance, instituted against such person or insurer, by service made as provided in this chapter, such person or insurer shall either:

a. Deposit with the clerk of the court in which such action, suit, or proceeding is pending, or with the commissioner of insurance in administrative proceedings before the commissioner, cash or securities, or file with such clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding.

b. Procure a certificate of authority to transact the business of insurance in this state.

2. The court in any action, suit, or proceeding in which service is made as provided in subsections 2 and 3 of section 507A.6, or the commissioner of insurance in any administrative proceeding before the commissioner in which service is made as provided in subsections 2 and 3 of section 507A.6, may in the court's or commissioner's discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection 1 of this section and to defend such action.

3. Nothing in subsection 1 of this section shall be construed to prevent an unauthorized person or

foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in sections 507A.5 and 507A.6, on the ground that such unauthorized person or insurer has not done any of the acts enumerated in section 507A.3.

4. In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the person or insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was without reasonable cause.

[C50, 54, 58, 62, 66, §507A.4, 507A.5; C71, 73, 75, 77, 79, 81, §507A.7]

507A.8 Order by commissioner to produce contracts.

1. Whenever the commissioner of insurance has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the commissioner shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the commissioner the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation, or effectuation of such insurance.

2. Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the commissioner every insurance policy or contract which has been entered into by any insurer not authorized to transact such insurance in this state.

3. Every person who, for thirty days after receipt of written order pursuant to subsection 1 of this section, neglects to comply with the requirements of such order or who willfully makes a disclosure that is untrue, deceptive, or misleading shall forfeit fifty dollars.

[C71, 73, 75, 77, 79, 81, §507A.8]

507A.9 Premium tax on unauthorized insurers.

1. Effective with all premiums collected during the calendar year 1967, except premiums on lawfully procured surplus lines insurance, every unauthorized insurer shall pay to the commissioner of insurance before March 1, next succeeding the calendar year in which the insurance was so effectuated, continued, or renewed a premium tax of two percent of gross premiums charged for such insurance on subjects resident, located, or to be performed in this state. Such insurance whether procured through negotiation or an application, in whole or in part occurring or made within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured or continued in this state. The term *"premium"* includes all premiums, membership fees, assessments, dues, and any other consideration for insurance. If the tax prescribed by this section is not paid within the time stated, the tax shall be increased by a penalty of twenty-five percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

2. If the policy covers risks or exposures only partly in the state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in the state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

3. The attorney general, upon request of the commissioner of insurance, shall proceed in the courts of this state or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section.

[C71, 73, 75, 77, 79, 81, §507A.9]

507A.10 Cease and desist order — civil penalty.

Upon a determination by the commissioner, after a hearing conducted pursuant to chapter 17A, that a person or insurer has violated a provision of this chapter, the commissioner shall reduce the findings of the hearing to writing and deliver a copy of the findings to the person or insurer, may issue an order requiring the person or insurer to cease and desist from engaging in the conduct resulting in the violation, and may assess a civil penalty of not more than fifty thousand dollars against the person or insurer.

[C71, 73, 75, 77, 79, 81, §507A.10; 81 Acts, ch 165, §2]

95 Acts, ch 185, §5

507A.11 Reciprocal enforcement of court orders.

The attorney general upon request of the commissioner of insurance may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any

administrative proceeding before the commissioner of insurance.

1. As used in this section, unless the context otherwise requires:

a. *"Reciprocal state"* means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in said state or territory.

b. *"Foreign decree"* means any decree or order in equity of a court located in a reciprocal state, including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

c. *"Qualified party"* means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

2. The commissioner of insurance shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

3. A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk, upon verifying with the insurance commissioner that the decree or order qualifies as a foreign decree, shall treat the foreign decree in the same manner as a decree of a district court of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a district court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a district court of this state and may be enforced or satisfied in like manner.

4. *a.* At the time of the filing of the foreign decree, the attorney general shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

b. Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the insurance commissioner of this state and shall make a note of the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the insurance commissioner of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

c. No execution or other process for enforcement of a foreign decree filed under this section shall issue until thirty days after the date the decree is filed.

5. *a.* If the defendant shows the district court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

b. If the defendant shows the district court any ground upon which enforcement of a decree of any district court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

6. Any person filing a foreign decree shall pay to the clerk of court twenty-five dollars. Fees for docketing, transcription or other enforcement proceedings shall be as provided for decrees of the district court.

[C71, 73, §507A.6(6); C75, 77, 79, 81, §507A.11]

CHAPTER 507B

INSURANCE TRADE PRACTICES

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507B.1 Declaration of purpose.

The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945, Public Law 15, 79th Congress, 59 Stat. L. 33; 15 U.S.C. § 1011 to 1015, inc., by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.1]

507B.2 Definitions.

When used in this chapter:

1. *"Person"* shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, fraternal beneficiary association, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters. *"Person"* shall also mean any corporation operating under the provisions of chapter 514 and any benevolent association as defined and operated under chapter 512A. For purposes of this chapter, corporations operating under the provisions of chapter 514 and chapter 512A shall be deemed to be engaged in the business of insurance.

2. *"Commissioner"* shall mean the commissioner of insurance of this state.

3. *"Insurance policy"* or *"insurance contract"* shall mean any contract of insurance, indemnity, subscription, membership, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.2]

507B.3 Unfair competition or unfair and deceptive acts or practices prohibited.

A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance. The issuance of a qualified charitable gift annuity as provided in chapter 508F does not constitute a trade practice in violation of this chapter.

The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this section.

[C58, 62, 66, 71, §507B.3, 507B.5; C73, 75, 77, 79, 81, §507B.3]

2001 Acts, ch 28, §1

507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

1. *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

a. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

b. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

c. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

d. Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates.

e. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

f. Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

g. Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy.

h. Misrepresents any insurance policy as being shares of stock.

i. Misrepresents any insurance policy to consumers by using the terms *"burial insurance", "funeral insurance", "burial plan",* or *"funeral plan"* in its names or titles, unless the policy is made with a funeral provider as beneficiary who specifies and fixes a price under contract with an insurance company. This paragraph does not prevent insurers from stating or advertising that insurance benefits may provide cash for funeral or burial expenses.

j. Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase of an insurance policy.

2. *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive or misleading.

3. *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or

aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

4. *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. *False statements and entries.*

a. Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

b. Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

6. *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. *Unfair discrimination.*

a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

b. Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance other than life or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

c. Making or permitting any discrimination in the sale of insurance solely on the basis of domestic abuse as defined in section 236.2.

8. *Rebates.*

a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or any thing of value whatsoever not specified in the contract.

b. Nothing in subsection 7 or paragraph *"a"* of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

9. *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

f. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear, or

failing to include interest on the payment of claims when required under subsection 12 or section 511.38.

g. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.

i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured.

j. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made.

k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

l. Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

m. Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

o. Failing to comply with the procedures for auditing claims submitted by health care providers as set forth by rule of the commissioner. However, this paragraph shall have no applicability to liability insurance, workers' compensation or similar insurance, automobile or homeowners' medical payment insurance, disability income, or long-term care insurance.

10. *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

11. *Omission from insurance application.* Failing to designate on an insurance policy application the licensee who has solicited and written the policy.

12. *Payment of interest.* Failure of an insurer to pay interest at the rate of ten percent per annum on all health insurance claims that the insurer fails to timely accept and pay pursuant to section 507B.4A, subsection 2, paragraph *"d"*. Interest shall accrue commencing on the thirty-first day after receipt of all properly completed proof of loss forms.

For purposes of this subsection, *"insurer"* means an entity providing a plan of health insurance, health care benefits, or health care services, or an entity subject to the jurisdiction of the commissioner performing utilization review, including an insurance company offering sickness and accident plans, a health maintenance organization, an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the department of public health, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services. However, *"insurer"* does not include an entity that sells disability income or long-term care insurance.

13. *Rating organizations.* Any violation of section 515F.16.

14. *Minor traffic violations.* Failure of a person to comply with section 516B.3.

[C97, §1782; S13, §1782, 1820-b; SS15, §1758-f; C24, 27, 31, 35, 39, §**8666, 8759, 9022;** C46, 50, 54, §508.23, 511.20, 515.144; C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.4]

85 Acts, ch 229, §1; 87 Acts, ch 65, §2; 87 Acts, ch 120, §7; 89 Acts, ch 321, §32; 90 Acts, ch 1234, §64; 92 Acts, ch 1162, §3; 93 Acts, ch 88, §4; 95 Acts, ch 185, §6; 2001 Acts, ch 69, §5 – 7, 39; 2001 Acts, ch 118, §15, 56

See §513C.9 for additional unfair practices

507B.4A Duty to respond to inquiries and prompt payment of claim.

1. A person shall promptly respond to inquiries from the commissioner.

a. A person's actions are deemed untimely under this subsection if the person fails to respond to an inquiry from the commissioner within thirty days of the receipt of the inquiry, unless good cause exists for delay.

b. Failure to respond to inquiries from the commissioner pursuant to this subsection with such frequency as to indicate a general business practice shall subject the person to penalty under this chapter.

2. *a.* An insurer providing accident and sickness insurance under chapter 509, 514, or 514A; a health maintenance organization; an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the department of public health; or another entity providing health insurance or health benefits subject to state insurance regulation shall either accept and pay or deny a clean claim.

b. For purposes of this subsection, *"clean claim"* means a properly completed paper or elec-

tronic billing instrument containing all reasonably necessary information, that does not involve coordination of benefits for third-party liability, preexisting condition investigations, or subrogation, and that does not involve the existence of particular circumstances requiring special treatment that prevents a prompt payment from being made.

c. The commissioner shall adopt rules establishing processes for timely adjudication and payment of claims by insurers for health care benefits. The rules shall be consistent with the time frames and other procedural standards for claims decisions by group health plans established by the United States department of labor pursuant to 29 C.F.R. pt. 2560 in effect on January 1, 2002.

d. Payment of a clean claim shall include interest at the rate of ten percent per annum when an insurer or other entity as defined in this subsection that administers or processes claims on behalf of the insurer or other entity fails to timely pay a claim.

e. This subsection shall not apply to liability insurance, workers' compensation or similar insurance, automobile or homeowners' medical payment insurance, disability income, or long-term care insurance.

2001 Acts, ch 69, §8, 39; 2001 Acts, ch 176, §71

507B.5 Favored agent or insurer — coercion of debtors.

1. No person may do any of the following:

a. Require, as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers.

b. Unreasonably disapprove the insurance policy provided by a borrower for the protection of the property securing the credit or lien.

c. Require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another.

d. Use or disclose information resulting from a requirement that a borrower, mortgagor or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when such information is to the advantage of the mortgagee, vendor, or lender, or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with such a requirement.

2. Subsection 1, paragraph *"c"* of this section does not include the interest which may be charged on premium loans or premium advancements in accordance with the security instrument.

3. For purposes of subsection 1, paragraph *"b"* of this section, such disapproval shall be deemed unreasonable if it is not based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required.

4. If a violation of this section is found, the person in violation shall be subject to the same procedures and penalties as are applicable to other provisions of this chapter.

5. For purposes of this section, *"person"* includes any individual, corporation, association, partnership, or other legal entity.

[C73, 75, 77, 79, 81, §507B.5]

507B.6 Hearings, witnesses appearances, production of books and service of process.

1. Whenever the commissioner believes that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 507B.4, 507B.4A, or 507B.5 and that a proceeding by the commissioner in respect to such method of competition or unfair or deceptive act or practice would be in the public interest, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing on such charges to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service of such notice.

2. At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

3. Nothing contained in this chapter shall require the observance at any such hearing of formal rules of pleading or evidence.

4. The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which the commissioner deems relevant to the inquiry. The commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the com-

missioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which the person may be lawfully interrogated, the district court of Polk county or the county where such party resides, on application of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

5. Statements of charges, notices, orders, and other processes of the commissioner under this chapter may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by mailing a copy thereof by restricted certified mail to the person affected by such statement, notice, order, or other process at the person's residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return receipt for such statement, notice, order or other process, and mailed by restricted certified mail as aforesaid, shall be proof of the service of the same.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.6]
2001 Acts, ch 69, §9, 39

507B.7 Cease and desist orders and modifications thereof.

1. If, after such hearing, the commissioner determines that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings, an order requiring such person to cease and desist from engaging in such method of competition, act, or practice, and if the act or practice is a violation of section 507B.4, 507B.4A, or 507B.5, the commissioner may at the commissioner's discretion order any one or more of the following:

a. Payment of a civil penalty of not more than one thousand dollars for each act or violation, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of section 507B.4, 507B.4A, or 507B.5, in which case the penalty shall be not more than five thousand dollars for each act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. If the commissioner finds that a violation of section 507B.4, 507B.4A, or 507B.5 was directed, encouraged, condoned, ignored, or ratified by the employer of the person or by an insurer, the commissioner shall also assess a fine to the employer or insurer.

b. Suspension or revocation of the license of a person as defined in section 507B.2, subsection 1, if the person knew or reasonably should have known the person was in violation of section 507B.4, 507B.4A, or 507B.5.

c. Payment of interest at the rate of ten percent per annum if the commissioner finds that the insurer failed to pay interest as required under section 507B.4, subsection 12.

2. Until the expiration of the time allowed under section 507B.8 for filing a petition for review if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as the commissioner may deem proper, modify or set aside in whole or in part any order issued by the commissioner under this section.

3. After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by the commissioner under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.7; 81 Acts, ch 165, §3]
2001 Acts, ch 69, §10, 39

507B.8 Judicial review of cease and desist orders.

Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act. To the extent that an order of the commissioner is affirmed in any judicial review proceeding, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner.

After the period for judicial review of an order of the commissioner has expired and no petition for judicial review has been filed, the attorney general upon request of the commissioner of insurance shall proceed in the Iowa district court to enforce an order of the commissioner. The court shall enter its order commanding obedience to the terms of the commissioner's order.

No order of the commissioner under this chapter or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.8; 82 Acts, ch 1003, §3]

507B.9 Sale of duplicate coverage prohibited.

1. A person shall not knowingly engage in the sale of duplicate medicare supplement insurance coverage, as defined by rule of the commissioner.

2. The commissioner of insurance shall adopt rules pursuant to chapter 17A which define the sale of duplicate medicare supplement insurance coverage.

[C81, §507B.9]

507B.10 Repealed by 74 Acts, ch 1090, § 211.

507B.11 Penalty.

Any person who violates a cease and desist order of the commissioner under section 507B.7, and while such order is in effect, may after notice and hearing and upon order of the commissioner be subject at the discretion of the commissioner to any one or more of the following:

1. A monetary penalty of not more than ten thousand dollars for each and every act or violation.

2. Suspension or revocation of such person's license.

[C97, §1783; S13, §1820-c; SS15, §1758-f; C24, 27, 31, 35, 39, §**8667, 8760, 9022;** C46, 50, 54, §508.24, 511.21, 515.144; C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.11]

507B.12 Rules.

The commissioner may, after notice and hearing, promulgate reasonable rules, as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by section 507B.4, 507B.4A, or 507B.5, but the rules shall not enlarge upon or extend the provisions of such sections. Such rules shall be subject to review in accordance with chapter 17A.

The powers vested in the commissioner by this chapter shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.12]
2001 Acts, ch 69, §11, 39

507B.13 Immunity from prosecution.

If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, the person must nonetheless comply with such direction, but the person shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against the person upon any criminal action, investigation or proceeding, provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by the individual while so testifying and the testimony or evidence so given or produced shall be admissible against the individual upon any criminal action, investigation or proceeding concerning such perjury, nor shall the individual be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the insurance law of this state. Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony the individual may so give or evidence so produced.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §507B.13]

507B.14 Transfer of insurance stock.

When a controlling interest in two or more corporations, at least one of which is an insurance company domiciled in this state, is held by any person, group of persons, firm, or corporation, no exchange of stock, transfer or sale of securities, or loan based upon securities of any such corporation shall take place between such corporations, or between such person, group of persons, firm or corporation and such corporations, without first securing the approval of the insurance commissioner. If, in the opinion of the insurance commissioner, such sale, transfer, exchange, or loan would be improper and would work to the detriment of any such insurance company, the commissioner shall have the power to prohibit the transaction. Any person, firm or corporate officer or director aiding such transaction carried out without approval of the insurance commissioner shall be deemed guilty of a felony and upon conviction punished as provided in section 502.605.

For purposes of this section, controlling interest means actual control or the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a firm, partnership, corporation, association, or trust, whether through the ownership of voting securities, by contract, or otherwise.

[C66, 71, 73, 75, 77, 79, 81, §507B.14]

CHAPTER 507C

INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION

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DIVISION I

GENERAL PROVISIONS

507C.1 Short title — construction — purpose.

1. This chapter shall be cited as the *"Insurers Supervision, Rehabilitation, and Liquidation Act"*.

2. This chapter shall not be interpreted to limit the powers granted the commissioner by any other law.

3. This chapter shall be liberally construed to effect the purpose stated in subsection 4.

4. The purpose of this chapter is the protection of the interests of insureds, claimants, creditors, and the public, with minimum interference with the normal prerogatives of the owners and manag-

ers of insurers, through all of the following:

a. Early detection of a potentially dangerous condition in an insurer and prompt application of appropriate corrective measures.

b. Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry.

c. Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation.

d. Equitable apportionment of any unavoidable loss.

e. Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extending the scope of personal jurisdiction over debtors of the insurer outside this state.

f. Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

g. Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to this chapter as part of the regulation of the business of insurance, the insurance industry, and insurers in this state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

84 Acts, ch 1175, §1; 92 Acts, ch 1117, §8, 9

507C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Ancillary state"* means a state other than a domiciliary state.

2. *"Commissioner"* means the commissioner of insurance and any successor in office.

3. *"Creditor"* is a person having a claim against an insurer, whether the claim is matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

4. *"Delinquency proceeding"* means a proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving the insurer, and a summary proceeding under section 507C.9 or 507C.10. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

5. *"Doing business"* means any of the following acts, whether effected by mail or otherwise:

a. The issuance or delivery of contracts of insurance to persons resident in this state.

b. The solicitation of applications for the contracts, or other negotiations preliminary to the execution of the contracts.

c. The collection of premiums, membership fees, assessments, or other consideration for the contracts.

d. The transaction of matters subsequent to execution of the contracts and arising out of them.

e. Operating as an insurer under a license or certificate of authority issued by the division.

6. *"Domiciliary state"* means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

7. *"Fair consideration"* is given for property or obligation when either of the following is present:

a. When in good faith property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied in exchange for the property or obligation, as a fair equivalent therefor, and in good faith.

b. When the property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

8. *"Foreign country"* means another jurisdiction not in a state.

9. *"General assets"* means all real, personal, or other property, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, *"general assets"* includes all property or its proceeds in excess of the amount necessary to discharge the sum or sums secured by the property or its proceeds. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

10. *"Guaranty association"* means the Iowa insurance guaranty association created in chapter 515B, the Iowa life and health insurance guaranty association created in chapter 508C, and any other similar entity either presently existing or to be created by the general assembly for the payment of claims of insolvent insurers. *"Foreign guaranty association"* means a similar entity presently existing in or to be created in the future by the legislature of any other state.

11. *"Insolvency"* or *"insolvent"* means any of the following:

a. For an insurer issuing only assessable fire insurance policies, either of the following:

(1) The inability to pay any obligation within thirty days after it becomes payable.

(2) If an assessment is made, the inability to pay the assessment within thirty days following the date specified in the first assessment notice issued after the date of loss.

b. For any other insurer that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

(1) Any capital and surplus required by law for its organization.

(2) The total par or stated value of its authorized and issued capital stock.

c. As to an insurer licensed to do business in this state as of July 1, 1984, which does not meet

the standard established under paragraph *"b"*, the term *"insolvency"* or *"insolvent"* shall mean, for a period not to exceed three years from July 1, 1984, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.

For purposes of this subsection *"liabilities"* includes but is not limited to reserves required by statute or by the division's rules or specific requirements imposed by the commissioner upon a company at the time of or subsequent to admission.

12. *"Insurer"* means a person who has done, purports to do, is doing or is licensed to do insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by an insurance commissioner. For purposes of this chapter, any other person included under section 507C.3 is an insurer.

13. *"Preferred claim"* means a claim with respect to which the terms of this chapter accord priority of payment from the general assets of the insurer.

14. *"Receiver"* means receiver, liquidator, rehabilitator, or conservator as the context requires.

15. *"Reciprocal state"* means a state other than this state in which section 507C.18, subsection 1, sections 507C.52 and 507C.53 and sections 507C.55 through 507C.57 are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

16. *"Secured claim"* means a claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

17. *"Special deposit claim"* means a claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including a claim secured by general assets.

18. *"State"* means a state, district, or territory of the United States and the Panama Canal Zone.

19. *"Transfer"* shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest in the property, or with the possession of the property or of fixing a lien upon the property or upon an interest in the property, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by a debtor.

84 Acts, ch 1175, §2; 92 Acts, ch 1117, §10

507C.3 Applicability.

This chapter may be applied to any of the following:

1. Insurers who are doing or have done insurance business in this state, and against whom claims arising from that business may exist now or in the future.

2. Insurers who purport to do insurance business in this state.

3. Insurers who have insureds who are residents in this state.

4. Other persons organized or in the process of organizing with the intent to do insurance business in this state.

5. Nonprofit health service corporations and all fraternal benefit societies and beneficial societies subject to chapters 512A, 512B, and 514.

6. Prepaid health care delivery plans which are regulated by the commissioner.

84 Acts, ch 1175, §3; 93 Acts, ch 88, §5

507C.4 Jurisdiction and venue.

1. A delinquency proceeding shall not be commenced under this chapter by a person other than the commissioner. A court shall not have jurisdiction over a proceeding under this chapter commenced by a person other than the commissioner.

2. A court shall not have jurisdiction over a petition praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to or relating to such proceedings other than pursuant to this chapter.

3. A court having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Iowa rules of civil procedure or other applicable provisions in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state for any of the following:

a. In an action on or incident to an obligation if the person served is obligated to the insurer in any way as an incident to an agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker.

b. In an action on or incident to a reinsurance contract, if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer and the action results from or is incident to the relationship with the reinsurer.

c. In an action resulting from a relationship with the insurer, if the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced.

d. In an action if the person served is or was at the time of the institution of the delinquency pro-

ceeding against the insurer holding assets which are the subject of the proceeding and in which the receiver claims an interest on behalf of the insurer.

e. If the person served is obligated to the insurer in any way whatsoever, in an action on or incident to the obligation.

4. If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an order to stay the proceedings on the action in this state.

5. All action authorized in this chapter shall be brought in the district court in Polk county.

84 Acts, ch 1175, §4; 92 Acts, ch 1117, §11, 12

507C.5 Injunctions and orders.

1. A receiver appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders as necessary to prevent any of the following:

a. The transaction of further business.

b. The transfer of property.

c. Interference with the receiver or with a proceeding under this chapter.

d. Waste of the insurer's assets.

e. Dissipation and transfer of bank accounts.

f. The institution or further prosecution of any actions or proceedings.

g. The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders.

h. The levying of execution against the insurer, its assets or its policyholders.

i. The making of a sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer.

j. The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer.

k. Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of a proceeding under this chapter.

2. A receiver may apply to a court outside of the state for the relief described in subsection 1.

84 Acts, ch 1175, §5

507C.6 Cooperation of officers, owners, and employees — penalty.

1. An officer, manager, director, trustee, owner, employee, or agent of an insurer, or any other person with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under this chapter or any investigation preliminary to the proceeding. The term *"person"* as used in this section, shall include any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. *"To cooperate"* shall include, but shall not be limited to, the following:

a. To reply promptly in writing to any inquiry from the commissioner requesting a reply.

b. To make available to the commissioner any books, accounts, documents, or other records, information, or property of or pertaining to the insurer and in the person's possession, custody, or control.

2. A person shall not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding.

3. This section does not abridge otherwise existing legal rights, including the right to resist a petition for liquidation, other delinquency proceedings, or other orders.

4. A person included within subsection 1 who fails to cooperate with the commissioner, or a person who obstructs or interferes with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding, or who violates a valid order the commissioner issued under this chapter is:

a. Guilty of an aggravated misdemeanor; and

b. After a hearing, subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and subject to the revocation or suspension of insurance licenses issued by the commissioner.

84 Acts, ch 1175, §6; 90 Acts, ch 1234, §4

507C.7 Bonds.

In a proceeding under this chapter, the commissioner and the commissioner's deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may require an additional bond from the commissioner or the commissioner's deputies. The bonds shall be paid for out of the assets of the insurer as a cost of administration.

84 Acts, ch 1175, §7

507C.8 Continuation of delinquency proceedings.

A proceeding commenced before July 1, 1984 shall be deemed to have commenced under this chapter for the purpose of conducting the proceeding thereafter. However, in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have continued had this chapter not been enacted.

84 Acts, ch 1175, §8

507C.8A Condition on release from delinquency proceedings.

An insurer subject to a delinquency proceeding shall not be released from the delinquency proceeding unless the proceeding is converted into a rehabilitation or liquidation proceeding; shall not

be permitted to solicit or accept new business, or request or accept the restoration of any suspended or revoked license or certificate of authority; and shall not be returned to the control of the insurer's shareholders or private management, or have any of the insurer's assets returned to the control of its shareholders or private management, until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of such obligations and interest on all such payments and expenses, have been repaid to the guaranty association or a plan of repayment by the insurer is approved by the guaranty association.

92 Acts, ch 1117, §13

DIVISION II

SUMMARY PROCEEDINGS

507C.9 Summary orders and supervision proceedings — penalty.

1. If after a hearing held under subsection 5, the commissioner determines that a domestic insurer has committed or engaged in, or is about to commit or engage in, an act, practice, or transaction that would subject it to delinquency proceedings under this chapter, the commissioner may make and serve upon the insurer and any other persons involved orders as are reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground.

2. If the commissioner upon reasonable cause determines that a domestic insurer is in a condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance or if the domestic insurer gives its consent then the commissioner shall do both of the following:

a. Notify the insurer of the determination.

b. Furnish to the insurer a written list of the commissioner's requirements to abate the determination.

3. If the commissioner makes a determination to supervise an insurer subject to an order under subsection 1 or 2, the commissioner shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise the insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections 1 and 2 and may also require that during the period of supervision, the insurer shall not do any of the following without the prior approval of the commissioner or the commissioner's supervisor:

a. Dispose of, convey or encumber its assets or its business in force.

b. Withdraw from its bank accounts.

c. Lend its funds.

d. Invest its funds.

e. Transfer its property.

f. Incur any debt, obligation or liability.

g. Merge or consolidate with another company.

h. Enter into a new reinsurance contract or treaty.

i. Write new or renewal business.

4. An insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply, the commissioner may institute proceedings under section 507C.12 or 507C.17 to have a rehabilitator or liquidator appointed or extend the period of supervision.

5. The notice of hearing and any order issued pursuant to subsection 1 shall be served upon the insurer pursuant to chapter 17A. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner would base an order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten days nor more than thirty days after notice is served and shall be either in Polk county or in some other place convenient to the parties to be designated by the commissioner. All hearings under subsection 1 shall be confidential unless the insurer requests a public hearing.

6. *a.* An insurer subject to an order under subsection 2 may request a hearing to review that order. The hearing shall be held as provided in subsection 5. The request for a hearing shall not stay the effect of the order.

b. If the commissioner issues an order under subsection 2, the insurer may waive a commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, a party to the proceedings whose interests are substantially affected is entitled to judicial review of any order issued by the commissioner.

7. During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor by specifying the reasons the action complained of is believed not to be in the best interest of the insurer.

8. If a person has violated a supervision order issued under this section which was in effect, the person is liable to pay a civil penalty imposed by the district court not to exceed ten thousand dollars.

9. The commissioner may apply for and any court of general jurisdiction may grant restraining orders, preliminary and permanent injunctions, and other orders as necessary to enforce a supervision order.

84 Acts, ch 1175, §9

507C.10 Seizure order.

1. With respect to a domestic insurer the commissioner may file in the district court a petition alleging all of the following:

a. That there exist grounds that would justify a court order for a formal delinquency proceeding against an insurer under this chapter.

b. That the interests of policyholders, creditors, or the public will be endangered by delay.

c. The contents of an order deemed necessary by the commissioner.

2. Upon a filing under subsection 1, the court may issue, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business, and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposing of the insurer's property and from transacting of the insurer's business, except with the written consent of the commissioner.

3. The court shall specify in the order the duration of the order. The duration shall be the time the court deems necessary for the commissioner to ascertain the condition of the insurer. Upon motion or on its own, the court may from time to time hold hearings as it deems desirable after notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this chapter shall automatically vacate the seizure order.

4. Entry of a seizure order under this section is not an anticipatory breach of a contract of the insurer.

5. An insurer subject to an ex parte order under this section may petition the court after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this subsection may be held privately in chambers. Upon request of the insurer the hearing shall be held privately in chambers.

6. If at any time after the issuance of an order under this section it appears to the court that a person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

84 Acts, ch 1175, §10

507C.11 Confidentiality of hearings.

Notwithstanding chapter 22, in all administrative proceedings pursuant to sections 507C.9 and 507C.10 all records and documents pertaining to or a part of the record of the proceedings are confidential except as is necessary to obtain compliance with a proceeding. However, the records may be released if either of the following occurs:

1. The insurer requests that the records be made public.

2. After a hearing on the issue with the parties to the proceeding, the court orders that the records be made public. Until such court order, the clerk of court shall hold all papers filed in a confidential file.

84 Acts, ch 1175, §11; 92 Acts, ch 1117, §14

DIVISION III

FORMAL PROCEEDINGS

507C.12 Grounds for rehabilitation.

The commissioner may petition the district court for an order to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any of the following grounds:

1. The insurer is in a condition that the further transaction of business would be financially hazardous to its policyholders, creditors, or the public.

2. There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer.

3. The insurer has failed to remove a person, whether an officer, manager, general agent, employee, or other person, who in fact has executive authority in the insurer, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

4. Control of the insurer is in a person or persons found after notice and hearing to be untrustworthy. Control may be by stock ownership or by other means and may be direct or indirect.

5. A person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person has refused to be examined under oath by the commissioner concerning the insurer's affairs, in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and all the person's influence on management.

6. After demand by the commissioner under chapter 507 or under this chapter, the insurer has failed to promptly make available for examination any of its property, books, accounts, documents, or other records, or those of a subsidiary or related company within the control of the insurer, or those of a person having executive authority in the in-

surer so far as they pertain to the insurer.

7. Without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to chapter 521 or 521A, substantially its entire property or business, or has entered into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

8. The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer of its property other than as authorized under the insurance laws of this state, and the appointment has been made or is imminent, and the appointment might oust the court of this state of jurisdiction or might prejudice orderly delinquency proceedings under this chapter.

9. Within the previous three years the insurer has willfully violated its charter or articles of incorporation, its bylaws, an insurance law of this state, or a valid order of the commissioner under section 507C.9.

10. The insurer has failed to pay within sixty days after the due date an obligation to a state or any subdivision of a state or a judgment entered in a state, if the court in which the judgment was entered had jurisdiction over the subject matter. However, nonpayment shall not be a ground until sixty days after a good faith effort by the insurer to contest the obligation has been terminated whether the effort is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

11. The insurer has failed to file its annual report or other financial report required within the time allowed and, after written demand by the commissioner, has failed to immediately give an adequate explanation.

12. The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities request or consent to rehabilitation under this chapter.

If the petition alleges that extraordinary circumstances exist and that there is imminent substantial risk to the insurer's solvency if the insurer is not immediately placed into rehabilitation, the court may issue, ex parte and without a hearing, the requested order of rehabilitation. An insurer subject to an ex parte order under this section may petition the court after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this section may be held privately in chambers. Upon the request of the insurer, the hearing shall be held privately in chambers.

84 Acts, ch 1175, §12; 91 Acts, ch 26, §35

507C.13 Rehabilitation orders.

1. An order to rehabilitate the business of a domestic insurer or an alien insurer domiciled in this state shall appoint the commissioner as the rehabilitator. The order shall direct the rehabilitator to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court or recorder of deeds of the county in which the principal business of the insurer is conducted, or the county in which its principal office or place of business is located, is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds. The order to rehabilitate the insurer shall vest title to all assets of the insurer in the rehabilitator.

2. An order issued under this section requires accounting to the court by the rehabilitator. Accountings shall be at intervals the court specifies in the order. Each accounting must include a report concerning the rehabilitator's opinion as to whether a plan pursuant to section 507C.14, subsection 4, will be prepared. If the rehabilitator includes in any accounting that such a plan is likely, the accounting shall also include a proposed timetable for the preparation and implementation of the plan.

3. Entry of an order of rehabilitation is not an anticipatory breach of a contract of the insurer.

84 Acts, ch 1175, §13; 92 Acts, ch 1117, §15

507C.14 Powers and duties of the rehabilitator.

1. The commissioner as rehabilitator may appoint one or more special deputies. The special deputies shall have the powers and responsibilities of the rehabilitator granted under this section. The commissioner may employ counsel, clerks, and assistants as necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the division. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the division out of the first available money of the insurer.

2. The rehabilitator may take action as the rehabilitator deems necessary or appropriate to reform and revitalize the insurer. The rehabilitator

shall have the powers of the directors, officers, and managers of the insurer, whose authority shall be suspended, except as the powers are redelegated by the rehabilitator. The rehabilitator shall have power to direct and manage, to hire and discharge employees subject to contract rights the employees may have, and to deal with the property and business of the insurer.

3. If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of a contractual or fiduciary obligation by any person detrimental to the insurer, the rehabilitator may pursue appropriate legal remedies on behalf of the insurer.

4. If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect the changes. Upon application of the rehabilitator for approval of the plan, and after notice and hearings as the court may prescribe, the court may either approve, disapprove or modify the plan proposed. Before approving a plan, the court shall find that it is fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, if all rights of shareholders are first relinquished, the plan proposed may include the imposition of liens upon the policies of the company. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies.

5. The rehabilitator shall have the power under sections 507C.26 and 507C.27 to avoid fraudulent transfers.

84 Acts, ch 1175, §14; 92 Acts, ch 1117, §16; 93 Acts, ch 88, §6

507C.15 Actions by and against rehabilitator.

1. A court in this state, before which an action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered, shall stay the action or proceeding for ninety days and any additional time as necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take action respecting the pending litigation as necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

2. A statute of limitations or defense of laches shall not run in an action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. An action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator, upon the issuance of an order for rehabilitation pursuant to section 507C.13, may institute an action or proceeding on behalf of the insurer based upon a cause of action for which the period of limitation has not expired at the time of the filing of the petition for an order to rehabilitate. The action or proceeding by the rehabilitator may be instituted within one year or a longer period if provided by applicable law, of the issuance of the order for rehabilitation.

3. A guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in a court proceeding concerning the rehabilitation of a life or health insurer if the association is or may become liable to act as a result of the rehabilitation.

84 Acts, ch 1175, §15; 92 Acts, ch 1117, §17

507C.16 Termination of rehabilitation.

1. Whenever the commissioner determines that further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the commissioner may petition the district court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 507C.17. The court shall permit the directors of the insurer to take actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of costs and other expenses of defense as justice may require.

2. The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The directors of the insurer may petition the court for an order terminating rehabilitation of the insurer and the court may order payment from the estate of the insurer of costs and other expenses of the petition as justice may require. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 507C.12 no longer exist, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also terminate the rehabilitation at any time upon its own motion.

3. If the payment of obligations pursuant to a policy issued by the insurer is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator, and the rehabilitator has not filed an application for a plan pursuant to section 507C.14, subsection 4, the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.

84 Acts, ch 1175, §16; 92 Acts, ch 1117, §18

507C.17 Grounds for liquidation.

The commissioner may petition the district

court for an order directing the commissioner to liquidate a domestic insurer or an alien insurer domiciled in this state on any of the following grounds:

1. Any ground for an order of rehabilitation specified in section 507C.12 whether or not there has been a prior order directing the rehabilitation of the insurer.

2. That the insurer is insolvent.

3. That the insurer is in a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

84 Acts, ch 1175, §17

507C.18 Liquidation orders.

1. An order to liquidate the business of a domestic insurer shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

2. Upon issuance of the order, the rights and liabilities of an insurer and of its creditors, policyholders, shareholders, members, and other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in sections 507C.19 and 507C.37.

3. An order to liquidate the business of an alien insurer domiciled in this state must be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included in the order.

4. At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

5. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

6. *a.* Within five days of July 1, 1992, or, if later, within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. The plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

b. The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

c. Any such plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. If an order of liquidation is set aside upon an appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by a guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest, or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

84 Acts, ch 1175, §18; 92 Acts, ch 1117, §19

Judgment rate of interest, see §535.3

507C.19 Continuance of coverage.

1. Except for life or health insurance or annuities, policies in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

a. A period of thirty days from the date of entry of the liquidation orders.

b. The expiration of the policy coverage.

c. The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy.

d. The liquidator has effected a transfer of the policy obligation pursuant to section 507C.21, subsection 1, paragraph *"h"*.

2. An order or liquidation under section 507C.18 shall terminate coverages at the time specified in subsection 1 for purposes of any other statute.

3. Policies of life or health insurance or annuities shall continue in force for the period and under terms as is provided for by any applicable guaranty association or foreign guaranty association.

4. Policies of life or health insurance or annuities or any period or coverage of the policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections 1 and 2.

84 Acts, ch 1175, §19

507C.20 Dissolution or sale of insurer.

The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time the commissioner applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent. However, dissolution may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason. Notwithstanding the above, upon application by the commissioner and following notice as prescribed by the court and a hearing, the court may sell the corporation as an entity, together with any of its licenses to do business, despite the entry of an order of liquidation. The sale may be made on terms and conditions the court deems appropriate. However, the order approving the sale shall provide that the proceeds of the sale shall become part of the assets of the liquidation estate, to be distributed in the manner set forth in section 507C.42, and that the corporate entity and its licenses shall thereafter be free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders of the corporation under liquidation.

84 Acts, ch 1175, §20; 87 Acts, ch 168, §1; 88 Acts, ch 1112, §502

507C.20A Redomestication of foreign insurer.

The commissioner may petition the court for an ancillary receivership or for an order redomesticating a foreign insurer which is the subject of a liquidation or other delinquency order in a reciprocal state. Only the corporate charter and rights to the licenses under such charter shall be redomesticated to Iowa. All claims against the foreign insurer shall remain a part of and be administered through the reciprocal state liquidation or other delinquency proceeding. Following notice as prescribed by the court and a hearing, the court may sell the corporation as an entity, together with any of its licenses, free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders of the corporation under liquidation or other delinquency proceedings, wherever located. The sale may be made on terms and conditions the court deems appropriate. The proceeds of the sale, less court costs, attorney fees, broker's fees, and the commissioner's expenses in effectuating the sale, shall become part of the assets of the liquidation or other estate in the reciprocal state.

91 Acts, ch 213, §2

507C.21 Powers of liquidator.

1. The liquidator may:

a. Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

b. Hire employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

c. With the approval of the court fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants.

d. Pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of an appropriation for the maintenance of the division. Amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the division out of the first available moneys of the insurer.

e. Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records or other documents which the liquidator deems relevant to the inquiry.

f. Collect debts and moneys due and claims be-

longing to the insurer, wherever located. Pursuant to this paragraph, the liquidator may:

(1) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(2) Perform acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(3) Pursue any creditor's remedies available to enforce claims.

g. Conduct public and private sales of the property of the insurer.

h. Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 507C.42.

i. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the insurer at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

j. Borrow money on the security of the insurer's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this paragraph shall be repaid as an administrative expense and have priority over any other class 1 claims under the priority of distribution established in section 507C.42.

k. Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the insurer is a party.

l. Continue to prosecute and to institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 507C.20, the liquidator may apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as plaintiff.

m. Prosecute an action on behalf of the creditors, members, policyholders or shareholders of the insurer against an officer of the insurer, or any other person.

n. Remove records and property of the insurer to the offices of the commissioner or to other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. A guaranty association or foreign guaranty association shall have reasonable access to the records of the insurer as necessary to carry out the guaranty's statutory obligations.

o. Deposit in one or more banks in this state sums as are required for meeting current administration expenses and dividend distributions.

p. Unless the court orders otherwise, invest funds not currently needed.

q. File necessary documents for record in the office of a recorder of deeds or record office in this state or elsewhere where property of the insurer is located.

r. Assert defenses available to the insurer as against third persons including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of a defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. If a guaranty association or foreign guaranty association has an obligation to defend a suit, the liquidator shall defer to the obligation and may defend only in the absence of a defense by the guaranty association.

s. Exercise and enforce the rights, remedies, and powers of a creditor, shareholder, policyholder, or member, including the power to avoid a transfer or lien that may be given by the general law and that is not included with sections 507C.26 through 507C.28.

t. Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

u. Enter into agreements with a receiver or commissioner of insurance of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

v. Exercise powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this chapter.

w. Audit the books and records of all agents of the insurer which relate to the business of the insurer.

2. This section does not limit the liquidator or exclude the liquidator from exercising a power not listed in subsection 1 that may be necessary or appropriate to accomplish the purposes of this chapter.

84 Acts, ch 1175, §21; 85 Acts, ch 67, §48; 92 Acts, ch 1117, §20, 21

507C.22 Notice to creditors and others.

1. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

a. By first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business.

b. By first class mail to a guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation.

c. By first class mail to all insurance agents of the insurer.

d. By first class mail to all persons known or reasonably expected to have claims against the in-

surer, including policyholders, by mailing a notice to their last known address as indicated by the records of the insurer.

e. By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in other locations as the liquidator deems appropriate.

2. Notice to potential claimants under subsection 1 shall require claimants to file with the liquidator their claims together with proper proofs of the claim under section 507C.36 on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. Claimants shall keep the liquidator informed of changes of address.

3. *a.* Notice to agents of the insurer and potential claimants who are policyholders under subsection 1, where applicable, shall include notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

b. The liquidator shall promptly provide to the guaranty associations such information concerning the identities and addresses of the policyholders and their policy coverages as may be within the liquidator's possession or control, and otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits including, as applicable, coverage of claims and continuation or termination of coverage.

4. If notice is given pursuant to this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

84 Acts, ch 1175, §22; 92 Acts, ch 1117, §22

507C.23 Duties of agents.

1. A person, who receives notice in the form prescribed in section 507C.22 that an insurer which the person represents as an agent is the subject of a liquidation order, shall within fifteen days of the notice give notice to each policyholder or other person named in a policy issued through the agent by the insurer of the liquidation order. The notice shall be sent by first class mail to the last address contained in the agent's records if the agent has a record of the address of the policyholder or other person. A policy is issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the agent, identification of the policy impaired and the nature of the impairment including termination of coverage, as described in section 507C.19. Notice by a general agent satisfies the notice requirement for an agent under contract to the general agent. An agent obligated to give notice under this section shall file a report of compliance with the liquidator.

2. An agent failing to provide information as required in subsection 1 may be subject to payment of a penalty of not more than one thousand dollars and may have the agent's license suspended. The penalty is to be imposed only after a hearing held by the commissioner.

3. The liquidator may waive the duties imposed by this section if the liquidator determines that another notice to the policyholders of the insurer under liquidation is adequate.

84 Acts, ch 1175, §23; 92 Acts, ch 1117, §23

507C.24 Actions by and against liquidator.

1. After the issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, action at law or equity shall not be brought against the insurer or liquidator in this state or elsewhere, nor shall existing actions be maintained or further presented after issuance of the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the insurer or the continuation of existing actions against the liquidator or the insurer, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the insurer, an action in which the liquidator intervenes under this section.

2. Within two years or such additional time as applicable law may permit, the liquidator may, after the issuance of an order for liquidation, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the insurer, within a period of one hundred eighty days subsequent to

the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

3. A statute of limitations or defense of laches shall not run with respect to an action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

4. A guaranty association or foreign guaranty association shall have standing to appear in a court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation.

84 Acts, ch 1175, §24; 92 Acts, ch 1117, §24

507C.25 Collection and list of assets.

1. As soon as practicable after the liquidation order but not later than one hundred twenty days thereafter, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of the court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

2. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

3. A submission to the court for disbursement of assets in accordance with section 507C.34 fulfills the requirements of subsection 1.

84 Acts, ch 1175, §25

507C.26 Fraudulent transfers prior to petition.

1. A transfer made and an obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

2. *a.* A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under section 507C.28, subsection 3.

b. A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee.

c. A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

d. A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

e. This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

3. A transaction of the insurer with a reinsurer is fraudulent and may be avoided by the receiver under subsection 1 if both of the following exist:

a. The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release.

b. Part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

4. A person receiving property from an insurer or any benefit from an insurer which is a fraudulent transfer under subsection 1 is personally liable for the property or benefit and shall account to the liquidator.

84 Acts, ch 1175, §26; 93 Acts, ch 88, §7

507C.27 Fraudulent transfer after petition.

1. After a petition for rehabilitation or liquidation has been filed a transfer of real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the insurer within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the ju-

dicial sale.

2. After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

a. A transfer of the property, other than real property, of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

b. If acting in good faith, a person indebted to the insurer or holding property of the insurer may pay the debt or deliver the property, or any part thereof, to the insurer or upon the insurer's order as if the petition were not pending.

c. A person having actual knowledge of the pending rehabilitation or liquidation is not acting in good faith.

d. A person asserting the validity of a transfer under this section shall have the burden of proof. Except as provided in this section, a transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall not be valid against the liquidator.

3. A person receiving any property from the insurer or any benefit of the insurer which is a fraudulent transfer under subsection 1 is personally liable for the property or benefit and shall account to the liquidator.

4. This chapter shall not impair the negotiability of currency or negotiable instruments.

84 Acts, ch 1175, §27; 92 Acts, ch 1117, §25

507C.28 Voidable preferences and liens.

1. *a.* A preference is a transfer of the property of an insurer to or for the benefit of a creditor for an antecedent debt made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

b. A preference may be avoided by the liquidator if any of the following exist:

(1) The insurer was insolvent at the time of the transfer.

(2) The transfer was made within four months before the filing of the petition.

(3) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the insurer was insolvent or was about to become insolvent.

(4) The creditor receiving the transfer was an officer, or an employee, attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not the person held the position of an officer, or a shareholder directly or indirectly holding more than five per centum of a class of an equity security issued by the insurer, or other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

c. Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

2. *a.* A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

b. A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee.

c. A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

d. A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

e. This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

3. *a.* A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

b. A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection 2, if such consequences

would follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of subsection 2 through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

4. A transfer of property for or on account of a new and contemporaneous consideration, which is under subsection 2 made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

5. If a lien voidable under subsection 1, paragraph *"b"* has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon property of an insurer before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien is also voidable.

6. The property affected by a lien voidable under subsections 1 and 5 is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

7. The court shall have summary jurisdiction of a proceeding by the liquidator to hear and determine the rights of parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within time as the court shall fix.

8. The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under subsection 7, the liability of the surety shall be discharged to the extent of the amount paid to the liquidator.

9. If a creditor has been preferred for property which becomes a part of the insurer's estate, and afterward in good faith gives the insurer further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

10. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate an insurer directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the insurer or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provision of subsection 1, paragraph *"b"*, subparagraph (4).

11. *a.* An officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when the person has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

b. A person receiving property from the insurer or the benefit thereof as a preference voidable under subsection 1 is personally liable for the property and shall account to the liquidator.

c. This subsection shall not prejudice any other claim by the liquidator against any person.

84 Acts, ch 1175, §28

507C.29 Claims of holders of void or voidable rights.

1. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not

be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

2. A claim allowable under subsection 1 by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under section 507C.35 if filed within thirty days from the date of the avoidance or within the further time allowed by the court under subsection 1.

84 Acts, ch 1175, §29

507C.30 Setoffs.

1. Except as provided in subsection 2 and section 507C.33 mutual debts or mutual credits between the insurer and another person in connection with an action or proceeding under this chapter shall be set off and the balance only shall be allowed or paid.

2. *a.* A setoff shall not be allowed in favor of a person where any of the following are found:

(1) At the date of the filing of a petition for liquidation, the obligation of the insurer to the person would not entitle the person to share as a claimant in the assets of the insurer.

(2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff.

(3) The obligation of the insurer is owed to the affiliate of such person, or any other entity or association other than the person.

(4) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution.

(5) The obligation of the person is to pay earned premiums to the insurer.

b. Nothing in paragraph *"a"*, however, restricts the right of a person to set off premium due to or from the insurer pursuant to a reinsurance contract.

84 Acts, ch 1175, §30; 92 Acts, ch 1117, §26; 96 Acts, ch 1045, §1

507C.31 Assessments.

1. As soon as practicable but not more than two years from the date of an order of liquidation under section 507C.18 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth all of the following:

a. The reasonable value of the assets of the insurer.

b. The insurer's probable total liabilities.

c. The probable aggregate amount of the assessment necessary to pay claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment.

d. A recommendation as to whether an assessment should be made and, if so, in what amount.

2. *a.* Upon the basis of the report provided in subsection 1 and any supplement or amendment to the report, the court may levy one or more assessments against all members of the insurer who are subject to assessment.

b. Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets. Due regard shall be given to assessments that cannot be collected economically.

3. After levy of assessment under subsection 2, the liquidator shall issue an order directing a member who has not paid the assessment pursuant to the order to show cause why the liquidator should not pursue a judgment for the assessment.

4. The liquidator shall give notice of the order to show cause by publication and by first class mail to a member liable under the order. The notice shall be mailed to the member's last known address as it appears on the insurer's records at least twenty days before the return day of the order to show cause.

5. *a.* If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection 3, the court shall order the adjudging member to be liable for the amount of the assessment plus costs. The liquidator shall have a judgment against the member for the amount entered in the order.

b. If on or before the return day, the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. If the commissioner determines that the objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.

6. The liquidator may enforce an order or collect a judgment under subsection 5 by any lawful means.

84 Acts, ch 1175, §31

507C.32 Reinsurer's liability.

Notwithstanding a provision in the reinsurance contract or other agreement, the amount recoverable by the liquidator from reinsurers shall not be reduced as a result of delinquency proceedings. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when either of the following applies:

1. The contract or other written agreement specifically provides for another payee of the re-

insurance in the event of the insolvency of the ceding insurer.

2. The assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.

84 Acts, ch 1175, §32; 98 Acts, ch 1057, §2

507C.33 Recovery of premiums owed.

1. *a.* An agent, broker, premium finance company or any other person responsible for the payment of a premium is obligated to pay an unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from the person any part of an unearned premium that represents commission of the person. Credits or setoffs or both shall not be allowed to an agent, broker, or premium finance company for amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.

b. Notwithstanding paragraph *"a"*, the agent, broker, premium finance company, or other person, is not liable for uncollected unearned premium of the insurer. A presumption exists that the premium as shown on the books of the insurer is collected and the burden is upon the agent, broker, premium finance company, or other person to demonstrate by a preponderance of the evidence that the unearned premium was not actually collected. For purposes of this paragraph, *"unearned premium"* means that portion of an insurance premium covering the unexpired term of the policy or the unexpired period of the policy period.

c. An insured is obligated to pay an unpaid earned premium due the insurer as shown on the records of the insurer at the time of the declaration of insolvency.

2. Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:

a. Suspend or revoke or refuse to renew the licenses of the offending party or parties.

b. Impose a penalty of not more than one thousand dollars for each act in violation of this section by the party or parties.

3. Before the commissioner shall take any action as set forth in subsection 2, the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After such hearing, or upon failure of the accused to appear at the hearing, if a violation is found the commissioner shall impose those penalties under subsection 2 as deemed advisable.

4. When the commissioner shall take action in any or all of the ways set out in subsection 2, the party aggrieved may appeal from the action to court.

84 Acts, ch 1175, §33; 91 Acts, ch 213, §3

507C.34 Domiciliary liquidator's proposal to distribute assets.

1. Within one hundred twenty days of a final determination of insolvency under this chapter as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets to a guaranty association or foreign guaranty association having obligations because of the insolvency. An application and disbursement of assets shall be made from time to time as assets become available. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

2. The proposal shall at least include provisions for all of the following:

a. Reserving amounts for the payment of all the following:

(1) Expenses of administration.

(2) To the extent of the value of the security held, the payment of claims of secured creditors.

(3) Claims falling within the priorities established in section 507C.42, subsection 1.

b. Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled to disbursements.

d. The securing by the liquidator from each of the associations entitled to disbursements of an agreement to return to the liquidator the assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 507C.42 in accordance with the priorities. A bond shall not be required of an association.

e. A full report to be made by each association to the liquidator accounting for assets so disbursed to the association, all disbursements made from the assets, interest earned by the association on the assets and any other matter as the court may direct.

3. The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made for which the associations could assert a claim against the liquidator. The proposal shall provide that if the assets available for disbursement do not equal or exceed the amount of the claim payments made or to be made by the association then disbursements shall be in the amount of available assets.

4. With respect to an insolvent insurer writing life or health insurance or annuities, the liquidator's proposal shall provide for disbursements of assets to a guaranty association or a foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating the associations.

5. Notice of the application shall be given to the association in and to the commissioners of insurance of each of the states. Notice is given when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of the application to the court. Action on the application may be taken by the court provided the required notice has been given and that the liquidator's proposal complies with subsection 2, paragraphs *"a"* and *"b"*.

84 Acts, ch 1175, §34; 92 Acts, ch 1117, §27; 97 Acts, ch 186, §3

507C.35 Filing of claims.

1. Proof of all claims shall be filed with the liquidator in the form required by section 507C.36 on or before the last day for filing specified in the notice required under section 507C.22. However, proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

2. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

a. The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly thereafter as reasonably possible after learning of it.

b. A transfer to a creditor was avoided under sections 507C.26 through 507C.28, or was voluntarily surrendered under section 507C.29, and that the filing satisfies the conditions of section 507C.29.

c. The valuation under section 507C.41 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

3. The liquidator shall permit late filing claims to share in distributions, whether past or future, as if they were not late, if the claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where the payments were made and expenses incurred as provided by law.

4. The liquidator may consider any claim filed late which is not covered by subsection 2, and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

84 Acts, ch 1175, §35

507C.36 Proof of claim.

1. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

a. The particulars of the claim including the consideration given for it.

b. The identity and amount of the security on the claim.

c. The payments, if any, made on the debt.

d. A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

e. Any right of priority of payment or other specific right asserted by the claimant.

f. A copy of the written instrument which is the foundation of the claim.

g. The name and address of the claimant and the attorney who represents the claimant, if any.

2. A claim need not be considered or allowed if it does not contain all the information in subsection 1 which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

3. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection 1 and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

4. A judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, or a judgment or order against an insured or the insurer entered at any time by default or by collusion need not be considered as evidence of liability or of quantum of damages. A judgment or order against an insured or the insurer entered within four months before the filing of the petition need not be considered as evidence of liability or of the quantum of damages.

5. Claims of a guaranty association or foreign guaranty association shall be in the form and contain the substantiation as may be agreed to by the association and the liquidator.

84 Acts, ch 1175, §36

507C.37 Special claims.

1. The claim of a third party which is contingent only on the third party first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

2. A claim may be allowed even if contingent, if it is filed in accordance with section 507C.35. It may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

3. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

4. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of rehabilitation or liquidation under section 507C.13 or 507C.18.

84 Acts, ch 1175, §37

507C.38 Special provisions for third-party claims.

1. If a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

2. Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty days after mailing of the notice required by section 507C.22, whichever is later, the insured is an unexcused late filer.

3. The liquidator shall make recommendations to the court under section 507C.42, for the allowance of an insured's claim under subsection 2 after consideration of the probable outcome of a pending action against the insured on which the claim is based, the probable damages recoverable in the action and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. If it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend the recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it finds appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of:

a. The amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense.

b. The amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

4. If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection 3. If any insured's claim is subsequently reduced under subsection 3, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.

5. A claim may not be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

84 Acts, ch 1175, §38

507C.39 Disputed claims.

1. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant may not further object to the determination.

2. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

84 Acts, ch 1175, §39

507C.40 Claims of other person.

If a creditor, whose claim against an insurer is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the

creditor in trust for the other person. As used in this section, *"other person"* is not intended to apply to a guaranty association or foreign guaranty association.

84 Acts, ch 1175, §40; 92 Acts, ch 1117, §28

507C.41 Secured creditor's claims.

1. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

a. By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

b. By agreement, arbitration, compromise or litigation between the creditor and the liquidator.

2. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

84 Acts, ch 1175, §41

507C.42 Priority of distribution.

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is:

1. *Class 1.* The costs and expenses of administration, including but not limited to the following:

a. The actual and necessary costs of preserving or recovering the assets of the insurer.

b. Compensation for all authorized services rendered in the liquidation.

c. Necessary filing fees.

d. The fees and mileage payable to witnesses.

e. Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

f. The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

2. *Class 2.* Claims under policies, including claims of the federal or any state or local government, for losses incurred, including third-party claims, claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, claims of a guaranty association or foreign guaranty association, and claims for unearned premium. Claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of a loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. A payment by an employer to an employee is not a gratuity.

3. *Class 3.* Claims of the federal government except those under class 2.

4. *Class 4.* Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if the rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

5. *Class 5.* Claims of general creditors, including claims of ceding and assuming reinsurers in their capacity as such, and subrogation claims.

6. *Class 6.* Claims of any state or local government except those under class 2. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under subsection 9.

7. *Class 7.* Claims filed late or any other claims other than claims under subsections 8 and 9.

8. *Class 8.* Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.

9. *Class 9.* The claims of shareholders or other owners.

84 Acts, ch 1175, §42; 92 Acts, ch 1117, §29; 93 Acts, ch 88, §8; 94 Acts, ch 1023, §114; 97 Acts, ch 186, §4

507C.43 Liquidator's recommendations to the court.

1. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization, including a guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 507C.39. As soon as practicable, the liquidator

shall present to the court a report of the claims against the insurer with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

2. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to section 507C.39. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

84 Acts, ch 1175, §43

507C.44 Distribution of assets.

Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

84 Acts, ch 1175, §44

507C.45 Unclaimed and withheld funds.

1. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest, except in accordance with section 507C.42, to the person entitled or the person's legal representative upon proof satisfactory to the state treasurer of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be deposited with the general fund.

2. Funds withheld under section 507C.37 and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid in accordance with section 507C.42. Sums remaining which under section 507C.42 would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection 1, unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation under section 507C.47.

3. Notwithstanding any other provision of this chapter, funds as identified in subsection 1, with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds and shall pay without interest, except as provided in section 507C.42, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

84 Acts, ch 1175, §45; 92 Acts, ch 1117, §30

507C.46 Termination of proceedings.

1. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

2. Any other person may apply to the court at any time for an order under subsection 1. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application including a reasonable attorney's fee.

84 Acts, ch 1175, §46; 92 Acts, ch 1117, §31

507C.47 Reopening liquidation.

At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

84 Acts, ch 1175, §47

507C.48 Disposition of records during and after termination of liquidation.

If it appears to the commissioner that the records of an insurer in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what shall be destroyed.

84 Acts, ch 1175, §48

507C.49 External audit of the receiver's books.

The court may order audits to be made of the books of the commissioner relating to a receivership established under this chapter, and a report of each audit shall be filed with the commissioner

and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the receivership.

84 Acts, ch 1175, §49

DIVISION IV

INTERSTATE RELATIONS

507C.50 Conservation of property of foreign or alien insurers found in this state.

1. If a domiciliary liquidator has not been appointed, the commissioner may apply to the court by verified petition for an order directing the commissioner to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any of the following grounds:

a. Any of the grounds in section 507C.12.

b. That property has been sequestered by official action in the insurer's domiciliary state, or in any other state.

c. That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent.

d. That both of the following are found:

(1) That its certificate of authority to do business in this state has been revoked or that no certificate was ever issued.

(2) That there are residents of this state with outstanding claims or outstanding policies.

2. When an order is sought under subsection 1, the court shall cause the insurer to be given notice and time to respond to the petition as is reasonable under the circumstances.

3. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the clerk of court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

4. The conservator may at any time petition for and the court may grant an order under section 507C.51 to liquidate assets of a foreign or alien insurer under conservation, or, for an order under section 507C.53, to be appointed ancillary receiver.

5. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if the motion is denied costs shall be assessed against the party.

84 Acts, ch 1175, §50; 85 Acts, ch 67, §49

507C.51 Liquidation of property of foreign or alien insurers found in this state.

1. If a domiciliary receiver has not been appointed, the commissioner may apply to the court by verified petition for an order directing the commissioner to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state on any of the following grounds:

a. Any of the grounds in section 507C.12 or 507C.17.

b. Any of the grounds specified in section 507C.50, subsection 1, paragraphs *"b"* through *"d"*.

2. When an order is sought under subsection 1, the court shall cause the insurer to be given notice and time to respond to the petition as is reasonable under the circumstances.

3. If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the clerk of the court or the recorder of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, is same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

4. If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall act as ancillary receiver under section 507C.53. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under section 507C.53.

5. On the same grounds as are specified in subsection 1, the commissioner may petition an appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part that the commissioner deems desirable for the protection of the policyholders and creditors in this state.

6. When the commissioner has liquidated the assets of a foreign or alien insurer under this section, the court may order the commissioner to pay claims of residents of this state against the insurer under rules as to the liquidation of insurers under this chapter as are otherwise compatible with this section.

84 Acts, ch 1175, §51

507C.52 Domiciliary liquidators in other states.

1. Except as to special deposits and security on secured claims under section 507C.53, subsection

3, the domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested with the title to the assets, property, contracts, rights of action, agents' balances, books, accounts, and other records of the insurer located in this state. The date of vesting is the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting is the date of entry of the order directing possession to be taken. The domiciliary liquidator may immediately recover balances due from agents and obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator may also have the right to recover all other assets of the insurer located in this state, subject to section 507C.53.

2. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state shall be vested with the title to the property, contracts and rights of action, books, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under section 507C.50 or 507C.51, or for an ancillary receivership under section 507C.53, or after approval by the court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

3. Claimants residing in this state may file claims with the liquidator or ancillary receiver in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

84 Acts, ch 1175, §52; 92 Acts, ch 1117, §32

507C.53 Ancillary formal proceedings.

1. If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the court requesting appointment as ancillary receiver in this state if both of the following exist:

a. If the domiciliary liquidator finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver.

b. If the protection of creditors or policyholders in this state so requires.

2. The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The filing or recording of the order with the recorder of deeds in this state is the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds.

3. When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. As soon as practicable, the ancillary receiver shall liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state. The ancillary receiver shall pay the necessary expenses of the proceedings and shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and any deputies have the same powers and are subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

4. As to assets and books, accounts, and other records in their respective states, when a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have corresponding rights, duties and powers to those provided in subsection 3 for ancillary receivers appointed in this state.

84 Acts, ch 1175, §53

507C.54 Ancillary summary proceedings.

In the sole discretion of the commissioner, the commissioner may institute proceedings under sections 507C.9 through 507C.11 at the request of the commissioner or other appropriate insurance official of the domiciliary state of a foreign or alien insurer having property located in this state.

84 Acts, ch 1175, §54

507C.55 Claims of nonresidents against insurers domiciled in this state.

1. In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in nonreciprocal states shall file claims in this state, and claimants residing in reciprocal states shall file claims either with the ancillary receivers in their respective states or with the domiciliary liquidator. Claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.

2. Claims belonging to claimants residing in reciprocal states shall be proved either in the liquidation proceeding in this state as provided in this chapter or in ancillary proceedings in the reciprocal states, if a claim filing procedure is established in the ancillary proceeding. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in section 507C.56, subsection 2, with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but shall not be conclusive with respect to priorities against general assets under section 507C.42.

84 Acts, ch 1175, §55; 92 Acts, ch 1117, §33

507C.56 Claims of residents against insurers domiciled in reciprocal states.

1. Promptly after the appointment of the commissioner as ancillary receiver for an insurer not domiciled in this state, the commissioner shall determine whether there are claimants residing in this state who are not protected by guaranty funds and whether the protection of such claimants requires the establishing of a claim filing procedure in the ancillary proceeding. If a claim filing procedure is established, claimants against the insurer who reside within this state may file claims either with the ancillary receiver in this state, or with the domiciliary liquidator. Claims shall be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

2. Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings in this state, provided a claim filing procedure is established in the ancillary proceeding. If a claimant elects to prove the claim in this state, the claimant shall file the claim with the liquidator in the manner provided in sections 507C.35 and 507C.36. The ancillary receiver shall make a recommendation to the court as under section 507C.43. The ancillary receiver shall also arrange a date for hearing if necessary under section 507C.39 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least forty days prior to the date set for hearing. Within thirty days after the giving of the notice, if the domiciliary liquidator gives notice in writing either by certified mail or by personal service to the ancillary receiver and to the claimant of an intention to contest the claim, the domiciliary liquidator is entitled to appear or to be represented in a proceeding in this state involving the adjudication of the claim.

3. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

84 Acts, ch 1175, §56; 92 Acts, ch 1117, §34

507C.57 Attachment, garnishment, and levy of execution.

An action or proceeding in the nature of an attachment, garnishment, or levy of execution shall not be commenced or maintained in this state against the delinquent insurer or its assets during the pendency in this or any other state of a liquidation proceeding, whether called by that name or not.

84 Acts, ch 1175, §57

507C.58 Interstate priorities.

1. In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to claims of residents of this and reciprocal states. Claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where the assets are located.

2. The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state is given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in a deposit so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets. However, the sharing shall be deferred until general creditors and claimants against other special deposits who have received smaller percentages from their respective special deposits have been paid percentages of their claims equal to the percentage paid from the special deposit.

3. The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender the security and file the claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section 507C.41, in which case the deficiency shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

84 Acts, ch 1175, §58

507C.59 Subordination of claims for noncooperation.

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state assets within the ancillary receiver's control other than special deposits, diminished only by the expenses of the ancillary receivership, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 507C.42, subsection 8.

84 Acts, ch 1175, §59; 97 Acts, ch 186, §5

507C.60 Suspension of certificate of authority.

Without advance notice or a hearing, the commissioner may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state by the public insurance supervisory official of that state.

2002 Acts, ch 1111, §7
NEW section

CHAPTER 507D

INSURANCE ASSISTANCE

507D.1 Short title.
507D.2 Collection and analysis of information.
507D.3 Authorized assistance programs.
507D.4 Financing of assistance programs.
507D.5 Rate adjustment review.
507D.6 Continuing studies.

507D.1 Short title.

This chapter shall be known as the *"Insurance Assistance Act"*.

86 Acts, ch 1211, §26

507D.2 Collection and analysis of information.

The commissioner of insurance may adopt rules pursuant to chapter 17A for the collection of necessary additional information relating to the availability, obtainability, costs, profits, and losses associated with the provision of property, casualty, product, professional, or other liability insurance within the state, and relating to the feasibility and implementation of market assistance programs, mandatory risk allocation programs, risk-sharing programs, risk management programs, or any other authorized program under section 507D.3.

The commissioner shall provide for the analysis of such information gathered pursuant to this or any other section and shall make such analysis available to the general assembly on an annual basis.

86 Acts, ch 1211, §27

507D.3 Authorized assistance programs.

The commissioner of insurance is authorized to institute programs, order the institution of programs within the private sector, or to contract with or delegate authority to the department of general services for the institution of programs relating to insurance assistance including, but not limited to, the following:

1. The development and implementation of a market assistance program to facilitate, arrange, or provide for the acquisition of property, casualty, product, professional, or other liability insurance coverage for all persons or entities seeking such coverage but for which the coverage is presently unavailable or unobtainable to the person or entity.

2. The development and implementation of a mandatory risk allocation system for property, casualty, product, professional, or other liability insurance, except asbestos and environmental impairment liability, in order to assure that all persons or entities for which such insurance is essential may obtain such insurance from insurers authorized to do business within this state.

3. The development and implementation of a risk-sharing program to assist and advise persons or entities seeking property, casualty, product, professional, or other liability insurance, except asbestos and environmental impairment liability, on the most efficient manner in which to share or pool similar risks in order to obtain essential insurance coverage at the minimum cost.

4. The development and implementation of a risk management program for persons or entities to which property, casualty, product, professional, or other liability insurance is essential, such program to include at a minimum the following:

a. Assistance in developing and maintaining loss and loss exposure data on such liability risks.

b. Recommendations regarding risk reduction and risk elimination programs.

c. Recommendations of those practices which will permit protection against such losses at the lowest costs, consistent with good underwriting practices and sound risk management techniques.

5. Subsections 2 and 3 shall have no application or effect after July 1, 1991.

6. An assistance program for the facilitation of insurance and financial responsibility coverage for owners and operators of underground storage tanks which store petroleum shall not be affected by the exceptions of subsections 2 and 3.

86 Acts, ch 1211, §28; 87 Acts, ch 225, §601; 88 Acts, ch 1134, §94; 89 Acts, ch 76, §9

507D.4 Financing of assistance programs.

The insurance commissioner may, by rule, provide for the financing, as necessary, for any or all programs under sections 507D.2 and 507D.3 by the assessment of fees to insurers authorized to write property, casualty, product, professional, or other liability insurance within this state. The commissioner of insurance may assess fees and charges against persons or entities for costs incurred in providing assistance to the person or entity pursuant to section 507D.3. Fees collected pursuant to such rules shall be used solely for the purposes of the program for which assessed, and are not to be transmitted to the general fund or used for any other purposes.

86 Acts, ch 1211, §29

507D.5 Rate adjustment review.

The commissioner of insurance shall conduct a rate adjustment review for all insurers authorized to write property, casualty, product, professional, or other liability insurance within this state and who make a request for rate adjustment regarding such insurance. The commissioner of insurance may employ or contract with actuarial consultants as necessary to review the request. The person conducting the review shall report to the commissioner as to the advisability of the adjustment requested.

The reasonable fees and expenses of an actuarial consultant employed or contracted by the commissioner of insurance for purposes of a rate adjustment review shall be assessed against and paid by the person requesting such rate adjustment.

86 Acts, ch 1211, §30

507D.6 Continuing studies.

The commissioner of insurance is authorized to conduct such further surveys, market reviews, data collection and analysis, studies of a mandatory risk allocation system and a risk-sharing program and such other studies as the commissioner deems necessary for the proper implementation of this chapter.

86 Acts, ch 1211, §31

CHAPTER 507E

INSURANCE FRAUD

507E.1 Title.
507E.2 Purpose.
507E.3 Fraudulent submissions — penalty.
507E.4 Examination of information outside the state.
507E.5 Confidentiality.
507E.6 Duties of insurer.
507E.7 Immunity from liability.
507E.8 Peace officer status.

507E.1 Title.

This chapter may be cited as the *"Iowa Insurance Fraud Act"*.

94 Acts, ch 1072, §1, 9; 95 Acts, ch 185, §46

507E.2 Purpose.

An insurance fraud bureau is created within the insurance division. Upon a reasonable determination by the division, by its own inquiries or as a result of complaints filed with the division, that a person has engaged in, is engaging in, or may be engaging in an act or practice that violates this chapter or any other provision of the insurance code, the division may administer oaths and affirmations, serve subpoenas ordering the attendance of witnesses, and collect evidence related to such act or practice.

94 Acts, ch 1072, §2

507E.3 Fraudulent submissions — penalty.

1. For purposes of this chapter, *"statement"* includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damage, bill for services, diagnosis, prescription, hospital or physician record, X ray, test result, or other evidence of loss, injury, or expense.

2. A person commits a class "D" felony if the person, with the intent to defraud an insurer, does any of the following:

a. Presents or causes to be presented to an insurer, any written document or oral statement, including a computer-generated document, as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.

b. Assists, abets, solicits, or conspires with another to present or cause to be presented to an insurer, any written document or oral statement, including a computer-generated document, that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such document or statement contains any false information concerning a material fact.

c. Presents or causes to be presented to an insurer, any written document or oral statement, including a computer-generated document, as part of, or in, an application for insurance coverage, knowing that such document or statement contains false information concerning a material fact.

94 Acts, ch 1072, §3, 9; 95 Acts, ch 185, §46; 96 Acts, ch 1045, §2

507E.4 Examination of information outside the state.

The bureau shall seek to obtain by request, any

information related to the enforcement of this chapter in the possession of a person located outside the state. The bureau may designate a representative, including an official of the state where the information is located, to inspect the information on behalf of the bureau at the place where the information is located. The bureau may respond to similar requests from an official from another state.

94 Acts, ch 1072, §4

507E.5 Confidentiality.

Notwithstanding chapter 22, the papers, documents, reports, or evidence in the possession of the bureau which are related to the subject of an investigation under this chapter shall not be subject to public inspection as long as the bureau deems such confidentiality reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or not to be in the public interest. Additionally, such papers, documents, reports, or evidence related to the subject of an investigation under this chapter is not subject to subpoena until opened for public inspection by the bureau, upon the consent of the bureau, or until the court determines, after notice to the bureau and hearing, that the bureau would not be unnecessarily hindered by such subpoena. An investigator of the bureau is not subject to subpoena in a civil action concerning any matter of which the investigator has knowledge pursuant to a pending investigation by the bureau pursuant to this chapter.

94 Acts, ch 1072, §5

507E.6 Duties of insurer.

An insurer which believes that a claim is being made which is a violation of section 507E.3 shall provide, within sixty days of the receipt of such claim, written notification to the bureau of the claim on a form prescribed by the bureau, including any additional information requested by the bureau related to the claim or the party making the claim. The fraud bureau shall review each notification and determine whether further investigation is warranted. If the bureau determines that further investigation is warranted, the bureau shall conduct an independent investigation of the facts surrounding the claim to determine the extent, if any, to which fraud occurred in the submission of the claim. The bureau shall report any alleged violation of law disclosed by the investigation to the appropriate licensing agency or prosecuting authority having jurisdiction with respect to such violation.

94 Acts, ch 1072, §6

507E.7 Immunity from liability.

1. A person acting without malice, fraudulent intent, or bad faith is not liable civilly as a result of filing a report or furnishing, orally or in writing, other information concerning alleged acts in violation of this chapter, if the report or information is provided to or received from any of the following:

a. Law enforcement officials, their agents and employees.

b. The national association of insurance commissioners, the insurance division, a federal or state governmental agency or bureau established to detect and prevent fraudulent insurance acts, or any other organization established for such purpose, and their agents, employees, or designees.

c. An authorized representative of an insurer.

2. This section does not affect in any way any common law or statutory privilege or immunity applicable to such person or entity.

94 Acts, ch 1072, §7, 9; 95 Acts, ch 185, §46; 96 Acts, ch 1045, §3; 2002 Acts, ch 1111, §9

Subsection 3 stricken

507E.8 Peace officer status.

Bureau investigators shall have the power and status of peace officers when making arrests for criminal violations established as a result of their investigations pursuant to this chapter. The general laws applicable to arrests by peace officers of the state also apply to bureau investigators. Bureau investigators shall have the power to execute arrest warrants and search warrants for the same criminal violations, serve subpoenas issued for the examination, investigation, and trial of all offenses identified through their investigations, and arrest upon probable cause without warrant a person found in the act of committing a violation of the provisions of this chapter.

94 Acts, ch 1072, §8

CHAPTER 508

LIFE INSURANCE COMPANIES

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508.30 Liability.
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508.1 Level premium and natural premium plan companies.

Every life insurance company upon the level premium or the natural premium plan, created under the laws of this or any other state or country, shall, before issuing policies in the state, comply with the provisions of this chapter applicable to such companies.

[C73, §1161; C97, §1768; S13, §1768; C24, 27, 31, 35, 39, §**8643;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.1]

508.2 Approval of articles.

Before any such company shall be permitted to incorporate under the laws of this state, it shall present its articles of incorporation to the commissioner of insurance and the attorney general and have the same by them approved.

[S13, §1768; C24, 27, 31, 35, 39, §**8644;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.2]

508.3 Requirements of articles.

Such articles shall show the name, location of principal place of business, object, amount of capital, if a stock company, and shall contain such other provisions as may be necessary to a full understanding of the nature of the business to be transacted and the plan upon which the same is to be conducted.

[S13, §1768; C24, 27, 31, 35, 39, §**8645;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.3]

508.4 Approval of amendments to articles — bylaws.

All amendments to the articles of incorporation of companies already organized under the laws of this state shall be approved in like manner.

A company shall file with the commissioner bylaws and subsequent amendments to such bylaws within thirty days of the adoption of such bylaws and amendments.

[C97, §1768; C24, 27, 31, 35, 39, §**8646;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.4]

2000 Acts, ch 1023, §7

508.5 Capital and surplus required.

1. A stock life insurance company shall not be authorized to transact business under this chapter with less than five million dollars of capital and surplus paid in cash or invested as provided by law. A stock life insurance company shall not increase its capital stock unless the amount of the increase is fully paid in cash. A stock life insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

2. Notwithstanding subsection 1, a stock life insurance company, or any other life insurance company authorized to transact business under this chapter, shall comply with the minimum capital and surplus requirements of this chapter or chapter 521E, whichever is greater.

[C73, §1162; C97, §1769; C24, 27, 31, 35, 39, §**8647;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.5]

90 Acts, ch 1234, §5; 95 Acts, ch 185, §7; 96 Acts, ch 1046, §1, 21; 98 Acts, ch 1057, §3

508.6 Deposit of securities — certificate.

Securities in the amount of the capital and surplus required under section 508.5 shall be deposited with the commissioner of insurance or at such

places as the commissioner may designate. When the deposit is made and evidence furnished, by affidavit or otherwise, satisfactory to the commissioner, that the capital stock is all fully paid and the company possessed of the surplus required and that the company is the actual and unqualified owner of the securities representing the paid-up capital stock or other funds of the company, and all laws have been complied with, the commissioner shall issue the company the certificate provided for in this chapter.

[C73, §1162; C97, §1769; C24, 27, 31, 35, 39, §**8648;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.6; 82 Acts, ch 1095, §1]

85 Acts, ch 228, §1

508.7 Loans to officers.

Except as permitted in sections 508.8 and 508.8A, the capital or other funds shall not be loaned directly or indirectly to an officer, director, stockholder, or employee of the company or directly or indirectly to a relative of an officer or director of the company.

[C73, §1162; C97, §1769; C24, 27, 31, 35, 39, §**8649;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.7; 81 Acts, ch 166, §1]

91 Acts, ch 213, §4

508.8 Insurance company officers — conflicts of interest — exceptions.

A director or officer of a life insurance company shall not receive, in addition to fixed salary or compensation, money or other valuable thing, either directly or indirectly, or through a substantial interest in another corporation or business unit, for negotiating, procuring, recommending or aiding in the purchase or sale of property, or loan, made by the insurer or an affiliate or subsidiary of the insurer; nor shall a director or officer be pecuniarily interested, either as principal, coprincipal, agent or beneficiary, either directly or indirectly, or through a substantial interest in another corporation or business unit, in the purchase, sale or loan. However, a life insurance company, in connection with the relocation of the place of employment of an employee including relocation upon the initial employment of the employee, may do either of the following:

1. Make a mortgage loan on real property owned by the employee which is to serve as the employee's dwelling.

2. Acquire at not more than fair market value the dwelling which the employee vacates upon relocation.

As used in this section, *"employee"* includes but is not limited to the officers of a life insurance company.

[C24, 27, 31, 35, 39, §**8650;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.8; 81 Acts, ch 166, §2]

508.8A Loans to employees.

1. A life insurance company having a ratio of statutory surplus to admitted assets of at least four percent may make, acquire, and hold loans to employees, officers, and directors under the following terms and conditions:

a. The company may make a mortgage loan on real property owned by an employee of the company which is to serve as the employee's dwelling, provided the company is regularly and actively involved in making residential mortgage loans to the public.

b. The company may acquire a mortgage loan on real property owned by an employee of the company which is to serve as the employee's dwelling, provided the company acquiring such loan is regularly and actively involved in acquiring residential mortgage loans not involving employees from sources in the secondary market.

c. The company may acquire a mortgage loan on real property owned by an employee, officer, or director which is included in a portfolio of mortgages initiated by others and acquired by the life insurance company. The mortgage loans in any such acquired portfolio of mortgage loans must satisfy both of the following conditions:

(1) More than seventy-five percent of the dollar value of the mortgage loans must be for real property that is owned by persons who are not employees, officers, or directors of the company.

(2) More than seventy-five percent of the mortgage loans must be for real property that is owned by persons who are not employees, officers, or directors of the company.

d. The company may continue to hold a mortgage loan on real estate which is assumed by an employee, officer, or director if the mortgage was originally properly made or acquired by the life insurance company, provided that all terms and conditions of the mortgage loan remain unchanged and the mortgage loan is serviced in accordance with customary servicing practices of prudent lending institutions.

e. The company may continue to hold a mortgage on real estate owned by an officer or director which was properly made or acquired by the company before the officer or director became an officer or director of the company, provided that all terms and conditions of the mortgage loan remain unchanged and the mortgage loan is serviced in accordance with customary servicing practices of prudent lending institutions.

2. As used in this section, *"employee"* does not include officers or directors of a life insurance company.

91 Acts, ch 213, §5

508.9 Mutual companies — conditions.

1. Level premium and natural premium life insurance companies organized under the laws of this state upon the mutual plan shall, before issuing policies, have actual applications on at least

two hundred and fifty lives for an average amount of one thousand dollars each. A list of the applications giving the name, age, residence, amount of insurance, and annual premium of each applicant shall be filed with the commissioner of insurance, and a deposit made with the commissioner of an amount equal to three-fifths of the whole annual premium on the applications, in cash or the securities required by section 508.5. In addition, a deposit of cash or securities of the character provided by law for the investment of funds for life insurance companies in the sum of five million dollars shall be made with the commissioner, which shall constitute a security fund for the protection of policyholders. The contribution to the security fund shall not give to contributors to the fund or to other persons any voting or other power in the management of the affairs of the company. The security fund may be repaid to the contributors to the security fund with interest at six percent from the date of contribution, at any time, in whole or in part, if the repayment does not reduce the surplus of the company below the amount of five million dollars and then only if consent in writing for the repayment is obtained from the commissioner of insurance. Upon compliance with this section, the commissioner shall issue to the mutual company the certificate prescribed in this chapter. A mutual insurance company authorized to do business in Iowa that undergoes a change of control as defined in chapter 521A shall maintain the minimum surplus requirement mandated by this section.

2. Notwithstanding subsection 1, a mutual insurance company authorized to transact business under this chapter shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

[C73, §1163; C97, §1770; C24, 27, 31, 35, 39, §**8651;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.9]

90 Acts, ch 1234, §6; 92 Acts, ch 1162, §4; 95 Acts, ch 185, §8; 96 Acts, ch 1046, §2

508.10 Foreign companies — capital or surplus — investments.

No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital and surplus required of any company organized by the laws of this state, or, if it be a mutual company, of surplus equal in amount thereto, and the same is invested in bonds of the United States or of this state, or in interest-paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unencumbered real estate within this or the state where such company is located, worth one and one-third times the amount loaned thereon, which securities shall, at the time, be on deposit with the commissioner of insurance, auditor, director of revenue and finance, or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the commissioner of insurance is furnished with a certificate of such officer, under the officer's official seal, that the person as such officer holds in trust and on deposit for the benefit of all the policyholders of such company, the securities above mentioned. This certificate shall embrace the items of security so held, and show that such officer is satisfied that such securities are worth the amount stated in the certificate. Nothing herein contained shall invalidate the agency of any company incorporated in another state by reason of its having exchanged the bonds or securities so deposited with such officer for other bonds or securities authorized by this chapter, or by reason of its having drawn its interest and dividends on the same.

An alien insurer, with the approval of the commissioner, may be treated as a domestic insurer of this state in whole or in part, and if so approved is deemed to be organized under the laws of this state and is an Iowa domestic insurer as provided by rules adopted by the commissioner. The approval of the commissioner may be based upon such factors as:

1. Maintenance of an appropriate trust account, surplus account, or other financial mechanism in this state.
2. Maintenance of all books and records of United States operations in this state.
3. Maintenance of a separate financial reporting system for its United States operations.
4. Any other provisions deemed necessary by the commissioner.

A foreign company authorized to do business in this state shall not assumptively reinsure a block of business which includes policyholders residing in this state to a company not authorized to do business in this state without the prior written approval of the commissioner.

[C73, §1164; C97, §1772; C24, 27, 31, 35, 39, §**8652;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.10]

90 Acts, ch 1234, §69; 92 Acts, ch 1244, §47; 97 Acts, ch 186, §6

508.11 Annual statement.

The president or vice president and secretary or actuary, or a majority of the directors of each company organized under this chapter, shall annually, by the first day of March, prepare under oath and file in the office of the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, showing:

1. The name of the company and where located.
2. The names of officers.
3. The amount of capital, if a stock company.
4. The amount of capital paid in, if a stock company.

5. The value of real estate owned by the company.
6. The amount of cash on hand.
7. The amount of cash deposited in banks, giving the name of the bank or banks.
8. The amount of cash in the hands of agents, and in the course of transmission.
9. The amount of bank stock, with the name of each bank, giving par and market value of the same.
10. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts, with the par and market value of each kind.
11. The amount of loans secured by first mortgage on real estate, and where such real estate is situated.
12. The amount of all other bonds, loans, how secured, and the rate of interest.
13. The amount of premium notes and their value on policies in force, if a mutual company.
14. The amount of notes given for unpaid stock, and their value in detail, if a stock company.
15. The amount of assessments unpaid on stock or premium notes.
16. The amount of interest due and unpaid.
17. The amount of all other securities.
18. The amount of losses due and unpaid.
19. The amount of losses adjusted but not due.
20. The amount of losses unadjusted.
21. The amount of claims for losses resisted.
22. The amount of money borrowed and evidences thereof.
23. The amount of dividends unpaid on stock.
24. The amount of dividends unpaid on policies.
25. The amount required to safely reinsure all outstanding risks.
26. The amount of all other claims against the company.
27. The amount of net cash premiums received.
28. The amount of notes received for premiums.
29. The amount of interest received from all sources.
30. The amount received from all other sources.
31. The amount paid for losses.
32. The amount of dividends paid to policyholders, and the amount to stockholders, if a stock company.
33. The amount of commissions and salaries paid to agents.
34. The amount paid to officers for salaries and other compensation.
35. The amount paid for taxes.
36. The amount of all other payments and expenditures.
37. The greatest amount insured on any one life.
38. The amount deposited in other states or territories as security for policyholders therein, stating the amount in each state or territory.
39. The amount of premiums received in this state during the year.
40. The amount paid for losses in this state during the year.
41. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk.
42. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof.
43. All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

[C73, §1167; C97, §1773; C24, 27, 31, 35, 39, §**8653;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.11]

91 Acts, ch 26, §36

508.12 Redomestication of insurers.

An insurer which is organized under the laws of any state, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 490.902 or 491.33 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state, and, upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately preceding its becoming a domestic corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding poli-

cies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

[C75, 77, 79, 81, §508.12]

88 Acts, ch 1112, §503; 89 Acts, ch 288, §191

508.13 Annual certificate of authority.

On receipt of the deposit provided in section 511.8, subsection 16, and the statement, and the statement and evidence of investment of foreign companies, all of which shall be renewed annually, by the first day of March, the commissioner of insurance shall issue a certificate setting forth the corporate name of the company, its home office, that it has fully complied with the laws of the state and is authorized to transact the business of life insurance for the ensuing year, which certificate shall expire on the first day of June of the ensuing year, or sooner upon thirty days' notice given by the commissioner, of the next annual valuation of its policies. Such certificate shall be renewed annually, upon the renewal of the deposit and statement by a domestic company, or of the statement and evidence of investment by a foreign company, and compliance with the conditions above required, and be subject to revocation as the original certificate.

[C73, §1170; C97, §1775; C24, 27, 31, 35, 39, §**8657;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.13]

88 Acts, ch 1112, §103

508.14 Violation by domestic company — dissolution — administrative penalties.

1. Upon a failure of a company organized under the laws of this state to make the deposit provided in section 511.8, subsection 16, or file the statement in the time herein stated, or to file in a timely manner any financial statement required by rule of the commissioner of insurance, the commissioner of insurance shall notify the attorney general of the default, who shall at once apply to the district court of the county where the home office of the company is located for an order requiring the company to show cause, upon reasonable notice to be fixed by the court, why its business shall not be discontinued. If, upon the hearing, sufficient cause is not shown, the court shall decree its dissolution.

2. In lieu of a district court action authorized by this section, the commissioner may impose an administrative penalty of five hundred dollars upon the company. The right of the company to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with.

3. The commissioner may give notice to a company, which has failed to file evidence of deposit and all delinquent statements within the time fixed, that the company is in violation of this section. If the company fails to file evidence of deposit and all delinquent statements within ten days of the date of the notice, the company is subject to an additional administrative penalty of one hundred dollars for each day the failure continues.

4. Amounts received by the commissioner pursuant to subsections 2 and 3 shall be paid to the treasurer of state for deposit in the general fund of the state as provided in section 505.7.

[C73, §1171; C97, §1776; C24, 27, 31, 35, 39, §**8658;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.14]

89 Acts, ch 321, §33; 97 Acts, ch 186, §7

508.15 Violation by foreign company.

Companies organized and chartered by the laws of a foreign state or country, failing to file the evidence of investment and statement within the time fixed, or failing to timely file any financial statement required by rule of the commissioner of insurance, shall forfeit and pay five hundred dollars, to be collected in an action in the name of the state and paid to the treasurer of state for deposit in the general fund of the state as provided in section 505.7, and their right to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with. The commissioner may give notice to a company which has failed to file within the time fixed that the company is in violation of this section and if the company fails to file the evidence of investment and statement within ten days of the date of the notice the company shall forfeit and pay the additional sum of one hundred dollars for each day the failure continues, to be paid to the treasurer of state for deposit in the general fund of the state as provided in section 505.7.

[C73, §1171; C97, §1776; C24, 27, 31, 35, 39, §**8659;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.15]

83 Acts, ch 185, §48, 62; 83 Acts, ch 186, §10105, 10201, 10204; 89 Acts, ch 321, §34; 91 Acts, ch 213, §6

508.15A Suspension and summary suspension.

The commissioner may do one or more of the following:

1. For a violation of Title XIII, subtitle 1, after a hearing provided pursuant to chapter 17A, order the suspension of the license or authority to transact the business of insurance within the state.

2. Upon three days' notice, if the commissioner has reason to believe that there is imminent substantial risk to an insurer's solvency, order the insurer to appear before the commissioner and show cause why its license or authority to do insurance business within the state should not be suspended. At the hearing to show cause, the commissioner may summarily suspend the license or authority of the insurer to do business within the state.

3. Summarily order an insurer to cease and desist from a violation, anticipated violation, or suspected violation of chapter 507B, 510, or 513A, if a hearing is provided pursuant to chapter 17A within thirty days of the summary cease and desist order.

91 Acts, ch 213, §7

508.16 Examination.

The commissioner of insurance at any time may make a personal examination of the books, papers, securities, and business of any life insurance company doing business in this state, or authorize any other suitable person to make the same, and the commissioner or the person so authorized may examine under oath any officer or agent of the company, or others, relative to its business and management.

[C73, §1172; C97, §1777; C24, 27, 31, 35, 39, §**8660;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.16]

508.17 Injunction — receivership — dissolution. Repealed by 91 Acts, ch 26, § 61.

508.18 Decree.

The court, on the final hearing, may make decree subject to the provisions of section 508.19 as to the appointment of a receiver, the disposition of the deposits of the company in the hands of the commissioner, and its dissolution, if a domestic company.

[C73, §1172; C97, §1777; C24, 27, 31, 35, 39, §**8662;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.18]

508.19 Securities.

The securities that are on deposit of a defaulting or insolvent company, or a company against which proceedings are pending under section 508.18, shall vest in the state for the benefit of all policyholders of the company.

[C73, §1173; C97, §1778; C24, 27, 31, 35, 39, §**8663;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.19]

85 Acts, ch 228, §2; 91 Acts, ch 26, §58

508.20 Reinsurance securities — title vested in commissioner.

The title to all securities deposited with the commissioner of insurance by any domestic life insurance company or association which has been, or hereafter shall be, reinsured by a foreign life insurance company, shall be vested in the commissioner for the use and benefit of only the policies of the company reinsured in force at the date of such reinsurance agreement.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.20]

508.21 Amount to be deposited.

The reinsuring company shall at all times maintain such deposits in at least the amount of the net reserve, as determined by the commissioner of insurance, on all policies reinsured.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.21]

508.22 Insolvency of company — procedure.

In the event of insolvency or receivership of such reinsuring company or its successors, the commissioner shall be appointed by the district court of the state in and for Polk county as receiver of said insolvent reinsuring company, and shall proceed, subject to the court's approval, to reinsure said policies in another life insurance company or to liquidate the deposits for the sole benefit of the reinsured policies, and pending liquidation or reinsurance, shall have the sole right to collect premiums due on such policies.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.22]

508.23 and 508.24 Repealed by 55 Acts, ch 237, § 14, 15. See chapter 507B.

508.25 Policy forms — approval.

It shall be unlawful for any insurance company transacting business within this state, under the provisions of this chapter, to write or use any form of policy or contract of insurance, on the life of any individual in this state, until a copy of such form of policy or contract has been filed with and approved by the commissioner of insurance.

[S13, §1783-a; C24, 27, 31, 35, 39, §**8668;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.25]

508.26 Failure to file copy.

Should any company decline to file a copy of its form of policies or contracts, the commissioner of insurance shall suspend its authority to transact business within the state until such forms of policies or contracts have been so filed and approved.

[S13, §1783-c; C24, 27, 31, 35, 39, §**8669;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.26]

508.27 Violations.

Any company violating any of the provisions of section 508.25 shall be guilty of a simple misdemeanor, and the court may also revoke its authority to do business within this state.

[S13, §1783-c; C24, 27, 31, 35, 39, §**8670;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.27]

508.28 Approval by commissioner — contestability of policy.

The commissioner of insurance shall decline to approve any such form of policy or contract of insurance unless the same shall, in all respects, conform to the laws of this state applicable thereto.

The policy shall be incontestable after it shall have been in force during the lifetime of the insured for two years from its date, except for nonpayment of premiums.

[SS15, §1783-b; C24, 27, 31, 35, 39, §**8671;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.28]

508.29 Authority to write other insurance.

Any life insurance company organized on the stock or mutual plan and authorized by its charter or articles of incorporation so to do, may in addition to such life insurance, insure, either individually or on the group plan, the health of persons and against personal injuries, disablement or death, resulting from traveling or general accidents by land or water, and insure employers against loss in consequence of accidents or casualties of any kind to employees or other persons, or to property resulting from any act of the employee or any accident or casualty to persons or property, or both, occurring in or connected with the transaction of their business, or from the operation of any machinery connected therewith, but nothing herein contained shall be construed to authorize any life insurance company to insure against loss or injury to person, or property, or both, growing out of explosion or rupture of steam boilers. An insurer may contract with health care service providers and offer different levels of benefits to policyholders based upon the provider contracts.

A company insuring risks authorized by this section shall invest or hold in cash, funds equal to seventy-five percent of the aggregate reserves and policy and contract claims for such risks. Investments required by this paragraph shall only be made in securities enumerated in section 511.8, and are subject to the same limitations as provided for the investment of legal reserve, and are subject to section 511.8, subsections 16, 17, and 21.

[S13, §1783-d; C24, 27, 31, 35, 39, §**8672;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.29]

85 Acts, ch 239, §2; 92 Acts, ch 1162, §5

508.30 Liability.

Every life insurance company issuing a separate policy, or maintaining a separate department, for the purpose of writing any of the classes of insurance authorized by section 508.29 shall also be subject to all of the provisions applicable to companies authorized to write a similar kind of insurance under the provisions of chapter 515.

[C24, 27, 31, 35, 39, §**8673;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.30]

508.31 Annuities.

Any life insurance company organized on the stock or mutual plan may grant and sell annuities.

[C35, §8673-e1; C39, §**8673.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.31]

508.31A Funding agreements.

1. A life insurance company organized under this chapter may issue funding agreements. The issuance of a funding agreement under this section is deemed to be doing insurance business. For purposes of this section, *"funding agreement"* means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. A funding agreement does not constitute life insurance, an annuity, or other insurance authorized by section 508.29, and does not constitute a security as defined in section 502.102.

2. *a.* Funding agreements may be issued to the following:

(1) A person authorized by a state or foreign country to engage in an insurance business or a subsidiary of such business.

(2) A person for the purpose of funding any of the following:

(a) Benefits under an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.

(b) Activities of an organization exempt from taxation pursuant to section 501c of the Internal Revenue Code, or any similar organization in any foreign country.

(c) A program of the United States government, another state government or political subdivision of such state, or of a foreign country, or any agency or instrumentality of any such government, political subdivision, or foreign country.

(d) An agreement providing for periodic payments in satisfaction of a claim.

(e) A program of an institution which has assets in excess of twenty-five million dollars.

(3) A person other than a natural person that has assets of at least twenty-five million dollars.

b. A funding agreement shall be for a total amount of not less than one million dollars.

c. An amount under a funding agreement shall not be guaranteed or credited except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class. Such funding agreements shall not provide for payments to or by the insurer based on mortality or morbidity contingencies.

d. Amounts paid to the insurer pursuant to a funding agreement, and proceeds applied under optional modes of settlement, may be allocated by the insurer to one or more separate accounts pursuant to section 508A.1.

3. A funding agreement is a class 2 claim under section 507C.42, subsection 2.

4. The commissioner may adopt rules to implement funding agreements.

98 Acts, ch 1057, §4; 99 Acts, ch 3, §1, 2; 2002

Acts, ch 1111, §8
Subsection 2, paragraph a, NEW subparagraph (3)

508.32 Proceeds of policy held in trust.

Any life insurance company organized under the provisions of this chapter and doing business in this state, shall have the power to hold in trust the premiums or consideration paid for, or the proceeds of any life insurance policy or annuity contract, either individual or group, issued by it, upon such terms and subject to such limitations as to revocation or control by the policyholder or beneficiary thereunder, as shall have been agreed to in writing by such company and the policyholder; provided that the trust provisions herein contemplated shall in no manner subject said corporation to any of the provisions of the laws of Iowa relating to banks or trust companies; and provided further, that the trust or trusts for premiums or considerations may be invested by such company in the manner specified in the trust instruments or agreements and held in a separate or segregated account; and provided further, that the forms of such trust agreements for beneficiaries shall be first submitted to and approved by the commissioner of insurance. The word "trust" shall include, but not be limited to settlement options and contracts issued pursuant to policies or contracts, and funds held in a separate or segregated account in connection with pension or profit-sharing plans pursuant to agreements with the policyholders.

As used in this section, life insurance policies and annuity contracts include accident and health insurance policies and contracts, and include undertakings, duties, and obligations incidental to or in furtherance of any such policies or contracts. As used in this section, proceeds include additions and contributions. Funds held by an insurance company as authorized by this section may be held in a separate account established pursuant to section 508A.1, except that section 508A.1, subsection 5, shall not be applicable to such account. However, funds held by an insurance company as authorized in this section shall not be chargeable with liabilities arising out of any other business the company may conduct.

An instrument or agreement issued or used by an insurance company as authorized by this section does not constitute a security as defined in section 502.102.

[C24, 27, 31, 35, 39, §**8674;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §508.32]
97 Acts, ch 5, §1

508.32A Funds held in custodial or similar account.

A life insurance company organized under this chapter and doing business in this state may hold funds, including additions and contributions, as custodian in a custodial or similar account in conjunction with an accident and health insurance policy. Funds held by an insurance company as authorized by this section may be invested by such company in the manner specified in the account instrument or agreement, and may be held in a separate account established pursuant to section 508A.1. Funds held by an insurance company as authorized by this section shall not be chargeable with liabilities arising out of any other business the company may conduct.

An instrument or agreement issued or used by an insurance company as authorized by this section does not constitute a security as defined in section 502.102.

97 Acts, ch 5, §2

508.33 Subsidiary companies acquired.

Any life insurance company incorporated in this state may organize, or acquire by purchase, in whole or in part subsidiary insurance and investment companies in which it owns not less than fifty-one percent of the common stock, and notwithstanding any other provisions of this subtitle inconsistent herewith may (1) invest funds from surplus for such purpose, (2) make loans to such subsidiaries, and (3) permit all or part of its officers and directors to serve as officers or directors of such subsidiary companies.

[C66, 71, 73, 75, 77, 79, 81, §508.33]

508.34 Required to be separate company.

Any subsidiary company shall be a separate and distinct company, with neither the organizing or acquiring life company nor such subsidiary having any liability to the creditors, policyholders or stockholders, if any, of the other. The organizing or acquiring company may be either a mutual or stock company.

[C66, 71, 73, 75, 77, 79, 81, §508.34]

508.35 Qualifications to do business.

Any such subsidiary company organized by any such life insurance company shall comply with all the laws of the state of its incorporation pertaining to the organization and qualification to do business of its class or kind, and if incorporated outside of the state of Iowa shall be admitted to do business in this state only upon qualification under the laws of the state of Iowa relating to such foreign corporations.

[C66, 71, 73, 75, 77, 79, 81, §508.35]

508.36 Standard valuations.

This section shall be known as the *"Standard Valuation Law."*

1. *Reserve valuation.* The commissioner shall annually value, or cause to be valued, the reserve liabilities, referred to in this section as reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such re-

serves, specifying the mortality table or tables, rate or rates of interest, and the net level premium method or other methods used in the calculation of such reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required in this section of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard provided for in this section and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

2. *Actuarial opinion of reserves.* This subsection is effective January 1, 1996.

a. General. A life insurance company doing business in this state shall annually submit the written opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and are in compliance with applicable laws of this state. The commissioner shall define by rule the requirements and content of this opinion and add any other items deemed to be necessary.

b. Actuarial analysis of reserves and assets supporting such reserves.

(1) Unless exempted by rule, a life insurance company shall also annually include in the opinion required by paragraph *"a"*, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of policies and contracts specified by the commissioner by rule, when considered with respect to the assets held by the company associated with the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, are sufficient for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(2) The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

c. Requirements for actuarial analysis. An opinion required by paragraph *"b"* shall be governed by the following provisions:

(1) A memorandum, in form and substance acceptable to the commissioner as specified by rule, shall be prepared to support each actuarial opinion.

(2) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

d. Requirement for all opinions. An opinion required under this section is governed by the following provisions:

(1) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995.

(2) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(3) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.

(4) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(5) For the purposes of this section, *"qualified actuary"* means a member in good standing of the American academy of actuaries who meets the requirements of the commissioner as specified by rule.

(6) Except in cases of fraud or willful misconduct, a qualified actuary is not liable for damages to any person, other than to the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(7) Disciplinary action which may be taken by the commissioner against the company or the qualified actuary shall be defined in rules adopted by the commissioner.

(8) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the opinion, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules adopted pursuant to this section.

Notwithstanding this subparagraph, the memorandum or other material may be released by the commissioner if either of the following applies:

(a) The commissioner receives the written consent of the company with which the opinion is associated.

(b) The American academy of actuaries requests that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

Once any portion of the confidential memorandum is cited by the company in its marketing, is cited before any governmental agency other than a state insurance department, or is released by the company to the news media, all portions of the confidential memorandum are no longer confidential.

3. *Computations of minimum standards.* Except as otherwise provided in subsections 4, 5, and 12, the minimum standard for the valuation of all such policies and contracts issued prior to July 1, 1994, shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections 4, 5, and 12, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation methods defined in subsections 6, 7, 10, and 11, five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other policies and contracts, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1974, four percent interest for such policies issued prior to January 1, 1980, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on and after January 1, 1980, and the following tables:

a. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies, the following:

(1) The commissioners 1941 standard ordinary mortality table for policies issued prior to the operative date of section 508.37, subsection 5, paragraph *"a"*.

(2) The commissioners 1958 standard ordinary mortality table for such policies issued on or after the operative date of section 508.37, subsection 5, paragraph *"c"*, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured.

(3) For policies issued on or after the operative date of section 508.37, subsection 5, paragraph *"c"*, any of the following:

(a) The commissioners 1980 standard ordinary mortality table.

(b) At the election of the company for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors.

(c) Any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

b. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the following:

(1) For policies issued prior to the operative date of section 508.37, subsection 5, paragraph *"b"*, the 1941 standard industrial mortality table.

(2) For policies issued on or after the operative date of section 508.37, subsection 5, paragraph *"b"*, the commissioners 1961 standard industrial mortality table, or any industrial mortality table adopted after 1980 by the national association of insurance commissioners, that is approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

c. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

d. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, or a modification of the table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

e. For total and permanent disability benefits in or supplementary to ordinary policies or contracts, the following:

(1) For policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

(2) For policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either of the tables identified under subparagraph (1), or at the option of the company, the class (3) disability table (1926).

(3) For policies issued prior to January 1, 1961, the class (3) disability table (1926).

A table used under this paragraph *"e"* shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

f. For accidental death benefits in or supplementary to policies, the following:

(1) For policies issued on or after January 1, 1966, the 1959 accidental death benefits table, or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such policies.

(2) For policies issued on or after January 1, 1961, and prior to January 1, 1966, either of the tables identified under subparagraph (1), or at the option of the company, the intercompany double indemnity mortality table.

(3) For policies issued prior to January 1, 1961, the intercompany double indemnity mortality table.

A table used under this paragraph *"f"* shall be combined with a mortality table for calculating the reserves for life insurance policies.

g. For group life insurance, life insurance issued on the substandard basis, and other special benefits, tables approved by the commissioner.

4. *Computation for minimum standards for annuities.* Except as provided in subsection 5, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, and for all annuities and pure endowments purchased on or after the operative date of this subsection under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections 6 and 7, and the following tables and interest rates:

a. For individual annuity and pure endowment contracts issued prior to January 1, 1980, excluding any disability and accidental death benefits in such contracts, both of the following:

(1) The 1971 individual annuity mortality table, or any modification of this table approved by the commissioner.

(2) Six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

b. For individual single premium immediate annuity contracts issued on or after January 1, 1980, excluding any disability and accidental death benefits in such contracts, both of the following:

(1) One of the following tables:

(a) The 1971 individual annuity mortality table.

(b) An individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such contracts.

(c) A modification of the tables identified in subparagraph subdivisions (a) and (b) approved by the commissioner.

(2) Seven and one-half percent interest.

c. For individual annuity and pure endowment contracts issued on or after January 1, 1980, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, both of the following:

(1) One of the following tables:

(a) The 1971 individual annuity mortality table.

(b) An individual annuity mortality table adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such contracts.

(c) A modification of the tables identified in subparagraph subdivisions (a) and (b) approved by the commissioner.

(2) Five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts.

d. For all annuities and pure endowments purchased prior to January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, both of the following:

(1) The 1971 group annuity mortality table or any modification of this table approved by the commissioner.

(2) Six percent interest.

e. For all annuities and pure endowments purchased on or after January 1, 1980, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, both of the following:

(1) One of the following tables:

(a) The 1971 group annuity mortality table.

(b) A group annuity mortality table adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments.

(c) A modification of the tables identified in subparagraph subdivisions (a) and (b) approved by the commissioner.

(2) Seven and one-half percent interest.

After July 1, 1973, a company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this section for such company, provided, if a company makes no election, the effective date of this section for a company is January 1, 1979.

5. *Computation of minimum standard by calendar year of issue.*

a. Applicability of this subsection. The calendar year statutory valuation interest rates, as defined in this subsection, shall be used in determining the minimum standard for the valuation of all of the following:

(1) All life insurance policies issued in a particular calendar year, on or after the operative date of section 508.37, subsection 5, paragraph *"c"*.

(2) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1995.

(3) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1995, under group annuity and pure endowment contracts.

(4) The net increase, if any, in a particular calendar year on or after January 1, 1995, in amounts held under guaranteed interest contracts.

b. Calendar year statutory valuation interest rates.

(1) The calendar year statutory valuation interest rates, referred to in this paragraph as "I", shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

(a) For life insurance,

$$I \text{ equals } .03 + W(R1 - .03) + 2\,(R2 - .09),$$

where R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate defined in paragraph *"d"* of this subsection, and W is the weighting factor defined in paragraph *"c"* of this subsection.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I \text{ equals } .03 + W(R - .03),$$

where R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate defined in paragraph *"d"* of this subsection, and W is the weighting factor defined in paragraph *"c"* of this subsection.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph subdivision (b), the formula for life insurance stated in subparagraph subdivision (a) applies to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities stated in subparagraph subdivision (b) applies to annuities and guaranteed interest contracts with guarantee durations of ten years or less.

(d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph subdivision (b) applies.

(e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change-in-fund basis, the formula for single premium immediate annuities stated in subparagraph subdivision (b) applies.

(2) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined under subparagraph (1), subparagraph subdivision (a) without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of the operative date of section 508.37, subsection 5, paragraph *"c"*.

c. Weighting factors.

(1) The weighting factors referred to in paragraph *"b"* are given in the following tables:

(a) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy.

(b) The weighting factors for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is .80.

(c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph subdivision (b), shall be as specified in subparagraph subdivision parts (i), (ii), and (iii) of this subparagraph subdivision, according to the rules and definitions in subparagraph subdivision parts (iv), (v), and (vi) of this subparagraph subdivision:

(i) For annuities and guaranteed interest contracts valued on an issue-year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type A	B	C
5 or less	.80	.60	.50
More than 5, but not more than 10	.75	.60	.50
More than 10, but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

(ii) For annuities and guaranteed interest contracts valued on a change-in-fund basis, the factors shown in subparagraph subdivision part (i) of this subparagraph subdivision increased by:

Plan Type A	B	C
.15	.25	.05

(iii) For annuities and guaranteed interest contracts valued on an issue-year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change-in-fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in subparagraph subdivision part (i) of this subparagraph subdivision or derived in subparagraph subdivision part (ii) of this subparagraph subdivision increased by:

Plan Type A	B	C
.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee durations in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) *"Plan type"*, as used in subparagraph subdivision parts (i), (ii), and (iii) of this subparagraph subdivision, is defined as follows:

"Plan Type A": At any time, the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or may withdraw funds without that adjustment but in installments over five years or more, or may withdraw funds as in immediate life annuity; or no withdrawal is permitted.

"Plan Type B": Before expiration of the interest rate guarantee, the policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or may withdraw funds without that adjustment but in installments over five years or more; or no withdrawal is permitted. At the end of interest rate guarantee, funds may be withdrawn without adjustment in a single sum or installments over less than five years.

"Plan Type C": The policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change-in-fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue-year basis. As used in this section, an issue-year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change-in-fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

d. Reference interest rate. The reference interest rate referred to in paragraph *"b"* is defined as follows:

(1) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(2) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's

Investors Service, Inc.

(3) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph (2), with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph (2), with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(5) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(6) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change-in-fund basis, except as stated in subparagraph (2), the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

e. Alternative method for determining reference interest rates. In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc., or in the event that the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by rule adopted by the commissioner, may be substituted.

6. *Reserve valuation method — life insurance and endowment benefits.*

a. Except as otherwise provided in subsections 7, 10, and 12, reserves calculated according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of future guaranteed benefits provided for by such policies, over the present value, at the date of valuation, of any future modified net premiums for such policies. The modified net premiums for such policy is the uniform percentage of the respective contract premiums for the benefits such that the present value, at the date of issue of the policy, of all modified net premiums shall be equal to the sum of the present value, at the date of valuation, of such benefits provided for by the policy and the excess of the amount determined in subparagraph (1) over the amount determined in subparagraph (2), as follows:

(1) A net level annual premium equal to the present value at the date of issue, of the benefits provided for after the first policy year, divided by the present value at the date of issue, of an annuity of one per annum payable on the first, and each subsequent, anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year more than the age of the insured at issue of the policy.

(2) A net one-year term premium for the benefits provided for in the first policy year.

b. However, for a life insurance policy issued on or after January 1, 1998, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such additional premium and which provides an endowment benefit or a cash surrender value or a combination of such benefit or value in an amount greater than the additional premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such additional premium shall be, except as otherwise provided in subsection 10, the greater of the reserve as of such policy anniversary calculated as described in paragraph *"a"* and the reserve as of such policy anniversary calculated as described in paragraph *"a"*, but with the following modifications:

(1) The value defined in paragraph *"a"* being reduced by fifteen percent of the amount of such excess first year premium.

(2) All present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date.

(3) The policy being assumed to mature on such date as an endowment.

(4) The cash surrender value provided on such date being considered as an endowment benefit.

In making the above comparison the mortality and interest bases stated in subsections 4 and 5

shall be used.

c. Reserves according to the commissioner's reserve valuation method shall be calculated pursuant to a method consistent with this subsection for all of the following:

(1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums.

(2) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

(3) Disability and accidental death benefits in all policies and contracts.

(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

7. *Reserve valuation method — annuity and pure endowment benefits.* This subsection applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

8. *Minimum reserves.*

a. A company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of section 508.37, shall not be less than the aggregate reserves calculated in accordance with the methods set forth in subsections 6, 7, 10, and 11, and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

b. A company's aggregate reserves for all policies, contracts, and benefits shall not be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection 2.

9. *Optional reserve calculation.* Reserves for all policies and contracts issued prior to the operative date of section 508.37, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required prior to July 1, 1994.

Reserves for any category of policies, contracts, or benefits, as established by the commissioner, issued on or after the operative date of section 508.37, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard as provided in this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits as provided in this section.

A company which at any time adopts a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard as provided in this section may adopt, with the approval of the commissioner, any lower standard of valuation, not to be lower than the minimum as provided in this section, provided, however, that, for purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection 2 shall not be deemed to be the adoption of a higher standard of valuation.

10. *Reserve calculation — valuation net premium exceeding the gross premium charge.*

a. If in any contract year the gross premium charged by a life insurance company on a policy or contract is less than the valuation net premium for the policy or contract, as calculated by the method used in calculating the reserve for such policy or contract but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the

actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards established in subsections 4 and 5.

b. However, for any life insurance policy issued on or after January 1, 1998, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value, or a combination of such benefit and value, in an amount greater than the excess premium, the provisions of paragraph *"a"* apply as if the method actually used in calculating the reserve for such policy is the method established in subsection 6, excluding paragraph *"b"* of that subsection. The minimum reserve of the policy at each policy anniversary shall be the greater of the minimum reserve calculated pursuant to subsection 6 and the minimum reserve calculated in accordance with this subsection.

11. *Reserve calculation — indeterminate premium plans.* In the case of any plan of life insurance which provides for future premium determination, the amounts of such premium which are to be determined by the insurance company based on estimates of future experience, or in the case of any plan of life insurance or annuity, the minimum reserves of which cannot be determined by the methods established in subsections 6, 7, and 10, the reserves which are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and shall be computed by a method which is consistent with this section, as determined by rules adopted by the commissioner.

12. *Minimum standards for health (disability, accident, and sickness) plans.* The commissioner shall adopt rules containing the minimum standards applicable to the valuation of health, disability, and sickness and accident plans.

[C73, §1169; C97, §1774; C24, 27, 31, 35, 39, §**8654;** C46, 50, 54, 58, 62, §508.12; C66, 71, 73, 75, 77, 79, 81, §508.36; 82 Acts, ch 1072, §1, 2]

94 Acts, ch 1176, §7, 8; 95 Acts, ch 67, §36

508.37 Standard nonforfeitures — life insurance.

This section shall be known as the *"Standard Nonforfeiture Law for Life Insurance."*

1. In the case of policies issued on or after the operative date of this section as defined in subsection 11, a policy of life insurance shall not, except as stated in subsection 10, be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as the following provisions and are essentially in compliance with subsection 9:

a. That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of the due date of the premium in default, and of an amount as specified in this section. In lieu of the stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

b. That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of an amount as may be specified in this section.

c. That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make an election elects another available option not later than sixty days after the due date of the premium in default.

d. That, if the policy has become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of an amount as specified in this section.

e. In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first twenty policy years or during the term of the policy, whichever is shorter, the values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the

policy.

f. A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated in the policy, a statement that the method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

2. Any of the provisions or portions of provisions set forth in subsection 1 which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand with surrender of the policy.

3. *a.* Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection 1, shall be an amount not less than the excess, if any, of the present value, on that anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of the then present value of the adjusted premiums as defined in subsections 5 and 6, corresponding to premiums which would have fallen due on and after that anniversary, plus the amount of any indebtedness to the company on the policy.

b. However, for a policy issued on or after the operative date of subsection 6 as defined in paragraph *"k"* of that subsection, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in paragraph *"a"* shall be an amount not less than the sum of the cash surrender value as defined in that paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in that paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

c. Provided further that for a family policy issued on or after the operative date of subsection 6 as defined in paragraph *"k"* of that subsection, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash surrender value referred to in paragraph *"a"* shall be an amount not less than the sum of the cash surrender value as defined in paragraph *"a"* for an otherwise similar policy issued at the same age without term insurance on the life of the spouse and the cash surrender value as defined in paragraph *"a"* for a policy which provides only the benefits otherwise provided by the term insurance on the life of the spouse.

d. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection 1, shall be an amount not less than the present value, on the anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

4. Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of that anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

5. *a.* This subsection does not apply to policies issued on or after the operative date of subsection 6 as defined in paragraph *"k"* of that subsection. Except as provided in paragraph *"c"*, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums is equal to the sum of the following:

(1) The then present value of the future guaranteed benefits provided for by the policy.

(2) Two percent of the amount of the insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as defined in paragraph *"b"*, if the amount of insurance varies with duration of the policy.

(3) Forty percent of the adjusted premium for the first policy year.

(4) Twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

However, in applying the percentages specified in subparagraphs (3) and (4), no adjusted pre-

mium shall be deemed to exceed four percent of the amount of insurance or an equivalent uniform amount. The date of issue of a policy for the purpose of this subsection is the date as of which the rated age of the insured is determined.

b. In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by the policy at age ten.

c. The adjusted premiums for a policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (1) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by (2) the adjusted premiums for such term insurance, the foregoing items (1) and (2) being calculated separately and as specified in paragraphs *"a"* and *"b"* of this subsection except that, for the purposes of subparagraphs (2), (3) and (4) of paragraph *"a",* the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in item (2) in this paragraph shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in item (1) in this paragraph.

d. (1) All adjusted premiums and present values referred to in this section shall for policies of ordinary insurance be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. The calculations for all policies of industrial insurance issued before January 1, 1968 shall be made on the basis of the 1941 Standard Industrial Mortality Table, except that a company may file with the commissioner a written notice of its election that the adjusted premiums and present values shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table, after a specified date before January 1, 1968. Whether or not any election has been made, the Commissioners 1961 Standard Industrial Mortality Table shall be the basis for these calculations as to all policies of industrial insurance issued on or after January 1, 1968. All calculations shall be made on the basis of the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that the rate of interest shall not exceed three and one-half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 1, 1974, and prior to January 1, 1980, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after January 1, 1980.

(2) However, in calculating the present value under subparagraph (1) of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed in the case of policies of ordinary insurance, may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table, and in the case of policies of industrial insurance, may be not more than one hundred thirty percent of the rates of mortality according to the 1941 Standard Industrial Mortality Table, except that when the Commissioners 1961 Standard Industrial Mortality Table becomes applicable as specified in this paragraph, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. In addition, for insurance issued on a substandard basis, the calculation under subparagraph (1) of adjusted premiums and present values may be based on any other table of mortality that is specified by the company and approved by the commissioner.

6. *a.* This subsection applies to all policies issued on or after the operative date of this subsection, as defined in paragraph *"k"*. Except as provided in paragraph *"g",* the adjusted premiums for a policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums is equal to the sum of the following:

(1) The then present value of the future guaranteed benefits provided for by the policy.

(2) One percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years.

(3) One hundred twenty-five percent of the nonforfeiture net level premium, as defined in paragraph *"b"*. However, in applying this percent-

age a nonforfeiture net level premium shall not be deemed to exceed four percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years.

The date of issue of a policy for the purpose of this subsection is the date as of which the rated age of the insured is determined.

b. The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of the policy on which a premium falls due.

c. In the case of policies which on a basis guaranteed in the policy cause unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of a change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

d. Except as otherwise provided in paragraph *"g",* the recalculated future adjusted premiums for a policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all future adjusted premiums is equal to the excess of the sum of the then present value of the then future guaranteed benefits provided for by the policy plus the additional expense allowance, if any, over the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

e. The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of one percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy, plus one hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.

f. The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (1) by (2), where (1) and (2) are as follows:

(1) The sum of the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, plus the present value of the increase in future guaranteed benefits provided for by the policy.

(2) The present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

g. Notwithstanding any contrary provision of this subsection, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide those higher uniform amounts of insurance on the standard basis.

h. Adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of either the Commissioners 1980 Standard Ordinary Mortality Table or, at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in paragraph *"i"* for policies issued in that calendar year. However:

(1) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in paragraph *"i",* for policies issued in the immediately preceding calendar year.

(2) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection 1, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of the paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(3) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that

specified in the policy for calculating cash surrender values.

(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(5) For insurance issued on a substandard basis, the calculation of adjusted premiums and present values may be based on appropriate modifications of the tables referred to in this paragraph.

(6) Any ordinary mortality tables adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table.

(7) Any industrial mortality tables adopted after 1980 by the national association of insurance commissioners and approved by rule adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.

i. The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for the policy as defined in section 508.36, rounded to the nearest one quarter of one percent.

j. Notwithstanding any contrary provision of the insurance laws of this state, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

k. After the effective date of this subsection, a company may file with the commissioner a written notice of its election to comply with this subsection after a specified date before January 1, 1989, which shall be the operative date of this subsection for that company. If a company makes no election, the operative date of this subsection for the company is January 1, 1989.

7. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsection 1, 2, 3, 4, 5, or 6, then all of the following conditions must be met:

a. The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsection 1, 2, 3, 4, 5, or 6.

b. The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not misleading to prospective policyholders or insureds.

c. The cash surrender values and paid-up nonforfeiture benefits provided by the plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this section, as determined by rules adopted by the commissioner.

8. Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections 3, 4, 5, and 6 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide the additions. Notwithstanding subsection 3, additional benefits payable in the event of death or dismemberment by accident or accidental means, or in the event of total and permanent disability, or as reversionary annuity or deferred reversionary annuity benefits, or as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, or as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if the term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, or as other policy benefits additional to life insurance and endowment benefits, and the premiums for all of these additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and none of these additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

9. *a.* This subsection, in addition to all other applicable subsections of this section, applies to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of the

greater of zero and the basic cash value specified in paragraph *"b"* plus the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

b. The basic cash value shall be equal to the present value, on the anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as defined in paragraph *"c"*, corresponding to premiums which would have fallen due on and after the anniversary. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection 3 or 5, whichever is applicable, shall be the same as the effects specified in subsection 3 or 5, whichever is applicable, on the cash surrender values defined in that subsection.

c. (1) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection 5 or 6, whichever is applicable. Except as is required by subparagraph (2) of this paragraph, this percentage must satisfy both of the following requirements:

(a) It must be the same percentage for each policy year between the second policy anniversary and the later of the fifth policy anniversary or the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years.

(b) It must be such that no percentage after the later of the two policy anniversaries specified in subdivision (a) of this subparagraph may apply to fewer than five consecutive policy years.

(2) A basic cash value shall not be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsection 5 or 6, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

d. Adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this section. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

e. Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment, shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections 1, 2, 3, 4, 6, and 8. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those described in subsection 8 shall conform with the principles of this subsection.

10. *a.* This section does not apply to any of the following:

(1) Reinsurance.

(2) Group insurance.

(3) Pure endowment contracts.

(4) Annuity or reversionary annuity contracts.

(5) A term policy of uniform amount which provides no guaranteed nonforfeiture or endowment benefits, or a renewal thereof of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy.

(6) A term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in subsections 5 and 6, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy.

(7) A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections 3, 4, 5 and 6, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year.

(8) A policy delivered outside this state through an agent or other representative of the company issuing the policy.

b. For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

11. After July 4, 1963, a company may file with the commissioner a written notice of its election to comply with this section after a specified date before January 1, 1966. The date specified by the company in the notice shall be the operative date of this section for the company, and this section shall apply to policies issued after that date by the company. If a company makes no election, the operative date of this section for the company is January 1, 1966.

[C66, 71, 73, 75, 77, 79, 81, §508.37; 82 Acts, ch 1072, §3 – 7]

508.38 Standard nonforfeitures — deferred annuities.

This section shall be known as the *"Standard Nonforfeiture Law for Individual Deferred Annuities."*

1. This section does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the United States Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which is delivered outside this state through an agent or other representative of the company issuing the contract.

2. In the case of contracts issued on or after the operative date of this section as defined in subsection 11, no contract of annuity, except as stated in subsection 1, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

a. That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections 4, 5, 6, 7, and 9.

b. If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections 4, 5, 7, and 9. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract.

c. A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

d. A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection 2, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

3. The minimum values as specified in subsections 4, 5, 6, 7, and 9 of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

a. With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of one and one-half percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of (1) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of one and one-half percent per annum and (2) the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.

b. With respect to contracts providing for fixed

scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(1) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years; and

(2) The annual contract charge shall be the lesser of (i) thirty dollars or (ii) ten percent of the gross annual consideration.

c. With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars.

4. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

5. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

6. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

7. For the purpose of determining the benefits calculated under subsections 5 and 6, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

8. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

9. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

10. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections 4, 5, 6, 7, and 9, additional benefits payable *(a)* in the event of total and permanent disability; *(b)* as reversionary annuity or deferred reversionary annuity

benefits, or *(c)* as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

11. After January 1, 1980, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date but before January 1, 1981. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. The operative date of this section shall be January 1, 1981 for all companies which do not so elect an operative date which is earlier than January 1, 1981.

[C81, §508.38]

2002 Acts, ch 1111, §10

For future repeal of 2002 amendments to subsection 3, paragraph a, unnumbered paragraph 1, and any intervening amendments not specifically excluded, effective July 1, 2004, see 2002 Acts, ch 1111, §10, 36

Subsection 3, paragraph a, unnumbered paragraph 1 amended

508.39 Dividends.

The directors or managers of a stock company, incorporated under the laws of this state, shall make no dividends except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus.

88 Acts, ch 1112, §603

CHAPTER 508A

VARIABLE ANNUITIES AND LIFE INSURANCE

508A.1 Basic requirements.
508A.2 Statement of variables.
508A.3 License requirements.
508A.4 Authority of commissioner.
508A.5 Other provisions applicable.

508A.1 Basic requirements.

A domestic life insurance company organized under chapter 508 may establish one or more separate accounts, and may allocate to such accounts amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities, and benefits incidental to such life insurance or annuities, payable in fixed or variable amounts or both, and may hold and accumulate funds pursuant to funding agreements, subject to the following:

1. The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains or losses of the company.

2. Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection 3:

a. Amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of such life insurance companies; and

b. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of such company.

3. Except with the approval of the commissioner of insurance and under such conditions as to investments and other matters as the commissioner may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest shall not be maintained in a separate account.

4. Unless otherwise approved by the commissioner of insurance, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; however, unless otherwise approved by the commissioner of insurance, the portion, if any, of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subsection 3 shall be valued in accordance with the rules otherwise applicable to the company's assets.

5. Amounts allocated to a separate account in

the exercise of the power granted by this chapter shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts. Unless it is provided to the contrary under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

6. No sale, exchange or other transfer of assets may be made by such company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made by a transfer of cash, or by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the commissioner of insurance. The commissioner of insurance may approve other transfers among such accounts if, in the commissioner's opinion, such transfers would not be inequitable.

7. To the extent such company deems it necessary to comply with any applicable federal or state laws, such company, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

[C75, 77, 79, 81, §508A.1]

98 Acts, ch 1057, §5

508A.2 Statement of variables.

Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

[C75, 77, 79, 81, §508A.2]

508A.3 License requirements.

No company shall deliver or issue for delivery within this state variable contracts unless it is licensed or organized to do a life insurance or annuity business in this state, and the commissioner of insurance is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner of insurance shall consider among other things:

1. The history and financial condition of the company;

2. The character, responsibility and fitness of the officers and directors of the company; and

3. The law and regulation under which the company is authorized in the state of domicile to issue variable contracts. The state of entry of an alien company shall be deemed its place of domicile for that purpose. If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the commissioner of insurance to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements hereof.

[C75, 77, 79, 81, §508A.3]

508A.4 Authority of commissioner.

Notwithstanding any other provision of law, the commissioner of insurance shall have sole authority to regulate the issuance and sale of variable contracts, and to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of this chapter.

[C75, 77, 79, 81, §508A.4]

508A.5 Other provisions applicable.

Except for section 508.37 and section 509.2, subsection 1, and except as otherwise provided in this chapter, all pertinent provisions of chapters 508, 509, 511, and 522B shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance contract, delivered or issued for delivery in this state, shall contain nonforfeiture provisions appropriate to such a contract. Any group variable life insurance contract, delivered or issued for delivery in this state, shall contain a grace provision appropriate to such a contract. The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

[C75, 77, 79, 81, §508A.5]

2001 Acts, ch 16, §7, 37

2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37

CHAPTER 508B

CONVERSION FROM MUTUAL COMPANY TO STOCK COMPANY

Applies to plans of conversion established after July 1, 1985;
85 Acts, ch 127, §16

508B.1 Definitions.
508B.2 Mutual company becoming stock company — authorization.
508B.3 Conversion plans to be fair and equitable — alternative procedures and requirements.
508B.4 Eligible policyholders participation.
508B.5 Appointment of consultant.
508B.6 Approval of plan by policyholders — notice of election — effective date.
508B.7 Review of plan by commissioner — hearing authorized — approval.
508B.8 Payment of fees, salaries and costs.
508B.9 Act of conversion — continuation of company.
508B.10 Continuation of officers.
508B.11 Rules.
508B.12 Amendments — withdrawal.
508B.13 Prohibitions on certain offers to acquire shares.
508B.14 Limitation of actions — security for attorney fees.
508B.15 Duties of secretary of state.

508B.1 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. *"Commissioner"* means the commissioner of insurance.

2. *"Mutual life insurance company"* or *"mutual company"* means a level premium and natural premium life insurance company authorized under chapter 508 upon the mutual plan and includes a domestic company which meets the requirements of section 508.12.

3. *a.* *"Plan of conversion"* or *"conversion plan"* means a plan authorized by section 508B.3 and, in the case of plans authorized by section 508B.3, subsections 1 and 3, includes a procedure by which the mutual company's participating policies and contracts in force on the effective date of the conversion plan are operated by the reorganized company as a closed block of participating business for the exclusive benefit of the policies and contracts included, for dividend purposes only; to which are allocated assets of the mutual company in an amount which together with anticipated revenue from the business is reasonably expected to be sufficient to support the business; and which includes, but is not limited to, provisions for payment of claims and reasonable expenses, and provisions for continuation of current payable dividend scales if the experience underlying the scales continues, and a procedure for appropriate adjustments in the scales if the experience changes. However, at the option of the mutual company, some or all classes of group policies and contracts shall not be placed in the closed block but shall continue to be eligible to receive dividends based on the experience of the class or classes.

b. If any amount of the policyholders' consideration as specified in section 508B.3, subsection 3, paragraph *"b"*, for certain classes of policies or contracts is to be paid in the form of increased annual dividends to the policyholders in those classes, that amount is to be added to the assets allocated as provided in paragraph *"a"* and is to be paid to those classes.

4. *"Policyholder"* means a person, determined by the mutual company, who is the holder of a policy or annuity contract for the purposes of section 508B.3, subsection 1, 2, or 3.

5. *"Policyholders' membership interest"* means all policyholders' rights as members of the mutual company including, but not limited to, rights to vote and participate in any distribution of surplus whether or not incident to liquidation of the mutual company.

6. *"Reorganized company"* means the domestic stock company into which a mutual company has been converted, converted and merged, or converted and consolidated.

7. *"Stock life insurance company"* or *"stock company"* means a life insurance company authorized under chapter 508 upon the stock plan and includes a domestic company which meets the requirements of section 508.12.

85 Acts, ch 127, §1; 86 Acts, ch 1237, §30; 90 Acts, ch 1234, §7; 99 Acts, ch 165, §2

508B.2 Mutual company becoming stock company — authorization.

A mutual life insurance company may become a stock life insurance company pursuant to a plan of conversion established and approved in the manner provided by this chapter.

A plan of conversion may provide that a mutual company may convert into a domestic stock company, convert and merge, or convert and consolidate with a domestic stock company, as provided in chapter 490 or 491, whichever is applicable. However, the mutual company is not required to

comply with sections 491.102 through 491.105 or sections 490.1102 and 490.1104 relating to approval of merger or consolidation plans by boards of directors and shareholders, if at the time of approval of the plan of conversion the board of directors approves the merger or consolidation and if at the time of approval of the plan by policyholders as provided in section 508B.6, the policyholders approve the merger or consolidation. This chapter supersedes any conflicting provisions of chapters 521 and 521A. A mutual company may convert, merge, or consolidate as part of a plan of conversion in which a majority or all of the common shares of the stock company are acquired by another corporation, which may be a corporation organized for that purpose, or in which the new stock company consolidates with a stock company to form another stock company.

In lieu of selecting a plan of conversion provided for in this chapter, a mutual company may convert to a stock company pursuant to a plan approved by the commissioner. The commissioner or the mutual company may use any provisions or combination of provisions provided for a plan in this chapter and may adopt any other provisions which are not unfair or inequitable to the policyholders of the mutual company. If a mutual company selects this procedure for conversion purposes, the mutual company shall reimburse the state for expenses incurred by the division in connection with the conversion plan except for expenses that are normal operating expenses of the division.

85 Acts, ch 127, §2; 86 Acts, ch 1237, §31; 90 Acts, ch 1205, §35; 90 Acts, ch 1234, §8; 2002 Acts, ch 1154, §108, 125

2002 amendments to unnumbered paragraph 2 are effective January 1, 2003; 2002 Acts, ch 1154, §125

Unnumbered paragraph 2 amended

508B.3 Conversion plans to be fair and equitable — alternative procedures and requirements.

A plan of conversion shall be fair and equitable to policyholders. A plan of conversion is fair and equitable if it satisfies the conditions of subsection 1, 2, or 3. The commissioner may determine whether any other plan proposed by a mutual company is fair and equitable to its policyholders.

1. Subject to paragraph *"b"*, a plan of conversion under this subsection shall provide all of the following:

a. The policyholders' membership interest shall be exchanged, in a manner which takes into account the estimated proportionate contribution of surplus of each class of participating policies and contracts, for all of the common shares of the reorganized company or its parent company, if any, or for either or a combination of the common shares of the reorganized company or its parent company, if any, and consideration equal to the proceeds of the sale of the common shares by the issuer or by a trust or other entity existing for the exclusive benefit of policyholders and established solely for the purpose of effecting the conversion, to which trust or other entity the common shares, or the options to acquire or securities convertible into the common shares, shall be issued by the issuer on the effective date of the conversion. The consideration shall be distributed to policyholders during a process of conversion specified in the plan which shall not last more than ten years after the effective date of conversion or until the death of the policyholder, whichever occurs first.

b. Unless the anticipated issuance within a shorter period is disclosed, the issuer of common shares shall not, within two years after the effective date of reorganization, issue either of the following:

(1) Any of its common shares or any securities convertible with or without consideration into the common shares or carrying any warrant to subscribe to or purchase common shares.

(2) Any warrant, right or option to subscribe to or purchase the common shares or other securities described in subparagraph (1), except for the issue of common shares to or for the benefit of policyholders pursuant to the plan of conversion and the issue of stock in anticipation of options for the purchase of common shares being granted to officers or employees of the reorganized company or its parent company, if any, pursuant to this chapter.

c. Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares within two years of the effective date of the conversion or a longer period as disclosed in the plan of conversion. Within one year after the offering of stock other than the initial distribution, but no later than six years after the effective date of the conversion, the reorganized company shall offer to make available to policyholders who received and retained shares of stock with minimal values on conversion, a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees.

2. A plan of conversion under this subsection shall provide all of the following:

a. The mutual company's participating business, comprised of its participating policies and contracts in force on the effective date of the conversion, shall be operated by the reorganized insurer as a closed block of participating business. However, at the option of the mutual company, group policies and group contracts may be omitted from the closed block.

b. Assets of the mutual company shall be allocated to the closed block of participating business in an amount equal to the reserves and liabilities for the mutual life insurer's participating policies and contracts in force on the effective date of the conversion.

c. The consideration to be given in exchange for the policyholders' membership interest con-

sists of aggregate consideration in a form or forms selected by the mutual company having a value equal to the amount of the statutory surplus of the mutual life insurer.

d. The consideration is allocated among the policyholders in a manner which is fair and equitable to the policyholders.

e. The reorganized company or its parent corporation shall issue and sell shares of one or more classes having a total price equal to the estimated value in the market on the initial offering date of the shares.

f. The estimated value shall take into account all of the following:

(1) The consideration to be given to policyholders pursuant to paragraph *"c"*.

(2) The proceeds of the sale of the shares.

(3) Any additional value attributable to the shares as a result of a purchaser or a group of purchasers who acted in concert to obtain shares in the initial offering, attaining, through such purchase, control of the reorganized company or its parent corporation.

g. If a purchaser or a group of purchasers acting in concert is to attain such control in the initial offering, the mutual company shall not, directly or indirectly, pay for any of the costs or expenses of conversion of the mutual company, whether or not the conversion is effected.

h. The reorganized company may share in the profits of the closed block of participating business for the benefit of stockholders.

3. A plan of conversion under this subsection shall satisfy all of paragraphs *"a"* through *"j"* and may add or substitute, as applicable, the options provided in paragraphs *"k"* and *"l"*.

a. The reorganized company or its parent corporation shall issue and sell shares of one or more classes having a total price equal to the estimated market value on the initial offering taking into account the value to be given to participating policyholders pursuant to paragraph *"b"* and the proceeds of the sale.

b. The participating policyholders' consideration shall be based on the latest annual statement, updated to the effective date of the conversion plan, and filed prior to the effective date of the adoption by the board of directors of the plan of conversion. The policyholders' consideration shall be equal to the sum of the total amount of assets allocated to the participating business and an amount equal to reserves and other liabilities attributable to any group participating policies and contracts not included in the closed block of participating business.

c. The consideration to be given in exchange for the policyholders' membership interest shall consist of the participating policyholders' consideration and nontransferable preemptive subscription rights to purchase all of the common shares of the issuer and the establishment of a liquidation account for the benefit of the policyholders in the event of a subsequent complete liquidation of the reorganized company having the terms described in paragraph *"j"*.

d. The consideration and the preemptive subscription rights to purchase the common shares shall be allocated among the participating policyholders in a manner determined by the reorganized company which takes into account the estimated contribution of each class of participating policies and contracts to the total amount of the policyholders' consideration.

e. The number of the common shares which any person, together with any affiliates or group of persons acting in concert, may subscribe for or purchase in the reorganization shall be limited to not more than five percent of the common shares. For this purpose, neither the members of the board of directors of the reorganized company nor of its parent corporation, if any, shall be deemed to be affiliates or a group of persons acting in concert solely by reason of their board membership.

f. Unless the common shares have a public market when issued, officers and directors of the issuer and their affiliates shall not, for at least ninety days after the date of conversion, purchase common shares of the issuer, except in negotiated transactions involving more than ten percent of the outstanding common shares.

g. Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares.

h. The issuer shall not, for at least three years following the conversion, repurchase any of its common shares except pursuant to a pro rata tender offer to all shareholders.

i. Until the liquidation account has been reduced to zero, the issuer shall not declare or pay a cash dividend on, or repurchase any of, its common shares in an amount in excess of its cumulative earned surplus generated after the conversion determined in accordance with generally accepted accounting principles, if the effect would be to cause the amount of the statutory surplus of the reorganized company to be reduced below the then amount of the liquidation account.

j. The liquidation account referred to in paragraph *"c"* must be equal to the excess of the total amount of the assets of the mutual company as of the effective date of the conversion over the sum of the total amount of assets allocated to the closed block of participating business and the policyholders' consideration and other reserves and liabilities attributed to policies and contracts not included in the amount attributable to policies and contracts in force on that effective date. The determinations shall be based on the latest annual statement of the mutual company, updated to the effective date, and filed before the effective date of the conversion plan. The function of the liquidation account is solely to establish a priority on liquidation and its existence does not restrict the use

or application of the surplus of the reorganized company except as specified in paragraph *"i"*. The liquidation account shall be allocated equally as of the effective date of conversion among the then participating policyholders. The amount allocated to a policy or contract shall not increase and shall be reduced to zero when the policy or contract terminates. In the event of a complete liquidation of the reorganized company, the policyholders among which the liquidation account is allocated are entitled to receive a liquidation distribution in the then amount of the liquidation account before any liquidation distribution is made with respect to shares.

k. At the option of the mutual company, the consideration to be given in exchange for the policyholders' membership interests may consist of cash, securities of the reorganized company, securities of another institution, a certificate of contribution, additional life insurance, annuity benefits, increased dividends, or other consideration or any combination of forms of consideration. The consideration, if any, given to a class or category of policyholders may differ from the consideration given to another class or category of policyholders. The certificate of contribution shall be repayable in ten years, equal to one hundred percent of the value of the policyholders' membership interest, and bear interest at the highest rate charged by the reorganized company for policy loans on the effective date of the conversion.

l. At the option of the mutual company, a plan may provide that any shares of the stock of the reorganized company or its parent corporation included in the policyholders' consideration shall be placed on the effective date of the conversion in a trust or other entity existing for the exclusive benefit of the participating policyholders and established solely for the purpose of effecting the reorganization. Under this option, the shares placed in trust shall be sold over a period of not more than ten years and the proceeds of the shares shall be distributed using the distribution priorities prescribed in the plan.

85 Acts, ch 127, §3; 90 Acts, ch 1234, §9 – 14; 2000 Acts, ch 1023, §8, 60

508B.4 Eligible policyholders participation.

The policyholders who are entitled to notice of and to vote upon approval of a plan of conversion and entitled to notice of a public hearing are the policyholders whose policies or contracts are in force on the date of adoption of the plan of conversion. Each policyholder whose policy has been in force for at least one year prior to the date is entitled to the consideration, if any, provided for the policyholder in the plan based on the policyholder's membership interest determined pursuant to this chapter, but only if the policyholder's membership interest arose from a policy or contract in force on the effective date of the conversion and such membership interest has been held continuously for at least one year prior to the date of adoption of the plan. For this purpose, any changes in status of, or premiums in excess of, those required on the policies or contracts occurring or made after the date one year prior to the date of adoption of the plan shall be disregarded.

85 Acts, ch 127, §4; 2000 Acts, ch 1023, §9

508B.5 Appointment of consultant.

A plan may provide for the appointment by the mutual company of a person as defined in section 4.1, subsection 20, who is qualified to act as a consultant. The appointment of the consultant shall be reviewed by the commissioner and unless the commissioner finds the consultant unqualified, the consultant shall carry out the duties required by the mutual company and this chapter.

The consultant may assist in determining the equity of the policyholders or value of the mutual company. The consultant may consider the value of the consideration to be given to the participating policyholders in exchange for their membership interests and may consider the valuations necessary to carry out the plans provided for in section 508B.3. Valuations shall be made taking into account the latest filed annual statement of the mutual company, updated to the effective date of the conversion plan, and any significant developments occurring subsequent to the date of the statement.

The findings of the consultant may be modified by the mutual company at any time so long as the results are not unfair or inequitable to policyholders.

If it can be shown by the mutual company to the commissioner that an underwriter of the shares is a qualified person, the underwriter may be appointed as the consultant.

85 Acts, ch 127, §5; 90 Acts, ch 1234, §15

508B.6 Approval of plan by policyholders — notice of election — effective date.

The plan of conversion shall be submitted to and shall not take effect until approved by two-thirds of the policyholders of the mutual company voting on the plan. Notice of a meeting for the purpose of voting on the conversion plan shall be provided by mail to each policyholder entitled to vote in accordance with the articles of incorporation or bylaws of the mutual company. Each policyholder entitled to vote may cast one vote unless otherwise provided in the articles of incorporation or bylaws of the mutual company. Voting shall be by ballot, in person or by proxy. A quorum shall consist of a quorum as defined in the articles of incorporation or bylaws of the mutual company. A copy of the plan of conversion, or a summary of the plan of conversion, shall accompany the notice of meeting and election. The notice of meeting may contain the notice of any planned public hearing. An ap-

proved plan of conversion shall take effect on the date specified in the plan.

85 Acts, ch 127, §6; 99 Acts, ch 165, §3

508B.7 Review of plan by commissioner — hearing authorized — approval.

The commissioner of insurance shall review the plan. The commissioner shall approve the plan if the commissioner finds the plan complies with all provisions of law, the plan is fair and equitable to the mutual company and its policyholders, and that the reorganized company will have the amount of capital and surplus deemed by the commissioner to be reasonably necessary for its future solvency. The commissioner may order a hearing on the fairness and equity of the terms of the plan after giving written notice of the hearing to the mutual company, its policyholders, and other interested persons, all of whom have the right to appear at the hearing. Costs incurred in connection with the notice shall be paid by the company.

85 Acts, ch 127, §7; 90 Acts, ch 1234, §16; 2000 Acts, ch 1023, §10, 60

508B.8 Payment of fees, salaries and costs.

A director, officer, agent or employee of the mutual company shall not receive a fee, commission or other valuable consideration, other than regular salary and compensation, for aiding, promoting or assisting in the conversion except as set forth in the plan approved by the commissioner. This section does not prohibit the payment of reasonable fees and compensation to a consultant, attorneys at law, accountants, actuaries or other persons specifically employed for services performed in the practice of their professions while completing the plan of conversion, even if these persons are directors of the mutual company.

85 Acts, ch 127, §8

508B.9 Act of conversion — continuation of company.

When the commissioner and the policyholders approve the conversion plan as provided in this chapter, the commissioner shall issue a new certificate of authority to the reorganized company effective on the effective date of the conversion as provided in the plan. The reorganized company is a continuation of the mutual life insurance company and the conversion shall not annul or modify any of the mutual company's existing suits, contracts, or liabilities except as provided in the approved conversion plan. All rights, franchises, and interests of the mutual company in and to property, assets, and other interests shall be transferred to and shall vest in the reorganized company and the reorganized company shall assume all obligations and liabilities of the mutual company.

The reorganized company shall exercise all rights and powers and perform all duties conferred or imposed by law on life insurance companies writing the classes of insurance written by it, and shall retain the rights and contracts existing before conversion, subject to provisions of the plan.

85 Acts, ch 127, §9; 86 Acts, ch 1237, §32; 2000 Acts, ch 1023, §11

508B.10 Continuation of officers.

The directors and officers of the mutual company shall serve the reorganized company until new directors and officers are elected and qualify pursuant to the articles of incorporation and bylaws of the reorganized company.

85 Acts, ch 127, §10

508B.11 Rules.

The commissioner shall issue rules pursuant to chapter 17A to carry out the provisions of this chapter.

85 Acts, ch 127, §11

508B.12 Amendments — withdrawal.

At any time before the conversion, if done pursuant to rules issued by the commissioner or as may otherwise be required by the commissioner, the board of directors of a mutual company may amend the conversion plan. An amendment to a conversion plan is subject to the prior approval of the commissioner. The board of directors of a mutual company may withdraw the plan of conversion at any time prior to the conversion.

85 Acts, ch 127, §12; 99 Acts, ch 165, §4

508B.13 Prohibitions on certain offers to acquire shares.

Prior to and for a period of five years following the effective date of the conversion, and in the case of the plans of conversion specified in subsections 1 and 3 of section 508B.3, five years following the date of distribution of consideration to the policyholders in exchange for their membership interests, a person, other than the reorganized company, other than an employee benefit plan or employee benefit trust sponsored by the reorganized company, or as otherwise specifically provided for in the plan of conversion, shall not directly or indirectly acquire or offer to acquire the beneficial ownership of more than five percent of any class of voting security of the reorganized company, and a person, other than the reorganized company or other than an employee benefit plan or employee benefit trust sponsored by the reorganized company, who acquires five percent or more of any class of voting security of the reorganized company prior to the conversion or as specifically provided for in the plan of conversion, shall not directly or indirectly acquire or offer to acquire the beneficial ownership of additional voting securities of the reorganized company, unless the acquisition is ap-

proved by the commissioner as not being contrary to the interests of the policyholders of the reorganized company or its life insurance company subsidiary and by the board of directors of the reorganized company. The commissioner and the board of directors may consider the factors set forth in section 490.1108A. The provisions of section 521A.3, except subsection 4, paragraph *"a"*, shall be applicable to a proposed acquisition subject to this section. An approved plan of conversion may include a stock option plan. As used in this section, *"beneficial ownership"* means, with respect to a security, the sole or shared power to vote or direct the voting of the security or the sole power to dispose or direct the disposition of the security.

85 Acts, ch 127, §13; 90 Acts, ch 1234, §17; 99 Acts, ch 165, §5; 2002 Acts, ch 1154, §110, 125

2002 amendment to this section is effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

508B.14 Limitation of actions — security for attorney fees.

The commissioner's order approving or disapproving a plan of conversion shall be considered final agency action under chapter 17A.

An action challenging the validity of a conversion plan, or any part of a conversion plan, shall not be commenced more than thirty days following the date of approval by the commissioner, unless an application for rehearing is filed pursuant to section 17A.16, subsection 2. If an application for rehearing is filed, then such action must be filed within thirty days after that application is denied or deemed denied or, if the application is granted, within thirty days after the issuance of the commissioner's final decision on rehearing.

The reorganized company or a defendant may petition the court in such an action to give security for the reasonable attorney fees which may be incurred by any party to the action. The amount of the security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

85 Acts, ch 127, §14; 90 Acts, ch 1234, §18; 99 Acts, ch 165, §6; 2000 Acts, ch 1023, §12

508B.15 Duties of secretary of state.

After approval of the conversion plan by the commissioner and the policyholders, the secretary of state shall accept for filing a verified copy of the amended articles of incorporation.

85 Acts, ch 127, §15; 86 Acts, ch 1237, §33

CHAPTER 508C

IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

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508C.1 Title.

This chapter shall be cited as the *"Iowa Life and Health Insurance Guaranty Association Act"*.

87 Acts, ch 223, §1

508C.2 Purpose.

1. The purpose of this chapter is to protect, subject to certain limitations, the persons specified in section 508C.3, subsection 1, against failure in the performance of contractual obligations under life and health insurance policies and annuity contracts specified in section 508C.3, subsection 2, because of the impairment or insolvency of the member insurer which issued the policies or contracts.

2. To provide this protection, an association of insurers is created to enable the guaranty of payments of benefits and of continuation of coverages as limited in this chapter. Members of the association are subject to assessment to provide funds to

carry out the purpose of this chapter.

87 Acts, ch 223, §2

508C.3 Scope.

1. This chapter shall provide coverage under the policies and contracts specified in subsection 2 to all of the following:

a. Except for nonresident certificate holders under group policies or contracts, persons who are the beneficiaries, assignees, or payees of the persons covered under paragraph *"b"*.

b. Persons who are owners of the policies or contracts specified in subsection 2, or are insureds or annuitants under the policies or contracts, and who are either of the following:

(1) Residents of this state.

(2) Nonresidents of this state if all of the following conditions are met:

(a) The state in which the person resides has an association similar to the association created in this chapter.

(b) The person is not eligible for coverage by an association described in subparagraph part (a).

(c) The insurer which issued the policy or contract never held a license or certificate of authority in the state in which the person resides.

(d) The insurer is domiciled in this state.

2. This chapter shall provide coverage to the persons specified in subsection 1 under direct life insurance policies, health insurance policies, annuity contracts, supplemental contracts, certificates under group policies or contracts, and unallocated annuity contracts issued by member insurers.

3. This chapter does not apply to:

a. Any portion of a policy or contract to the extent that the rate of interest on which it is based, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average for the same four-year period or over such lesser period if the policy or contract was issued less than four years before the association became obligated; and on or after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available.

b. That portion or part of a policy or contract under which the risk is borne by the policyholder.

c. A policy or contract or part of a policy or contract assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

d. An unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation, which is not issued to or in connection with a specific employee, union, or association of natural persons, or any portion of a financial guarantee.

e. A policy or contract issued by a company which is licensed under chapter 509A, 512A, 512B, 514, 514B, 518, 518A, or 520.

f. Except for a policy issued pursuant to section 515.48, subsection 5, paragraph *"a"*, a policy or contract issued by a company which is licensed under chapter 515.

g. An insurer which was placed under an order of liquidation, rehabilitation, or conservation by a court prior to July 1, 1987, is not an impaired insurer or an insolvent insurer for the purposes of this chapter.

h. An annuity contract issued to a government lottery.

i. A funding agreement under section 508.31A.

j. An obligation that does not arise under the express written terms of a covered policy.

k. A contractual agreement that establishes a member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer.

l. A portion of a covered policy to the extent it provides for interest or other change in value to be determined by the use of an index or other external reference stated in the covered policy, but which has not been credited to the covered policy, or as to which the covered policy owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a covered policy's interest or change in value is credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under the covered policy, the interest or change in value determined by using the procedures defined in the covered policy will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

87 Acts, ch 223, §3; 88 Acts, ch 1135, §1 – 3; 89 Acts, ch 83, §67; 92 Acts, ch 1162, §6, 7; 98 Acts, ch 1057, §6; 2000 Acts, ch 1023, §13

508C.4 Construction.

This chapter shall be liberally construed to effect its purpose as provided under section 508C.2.

87 Acts, ch 223, §4

508C.5 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Account"* means any of the four accounts created under section 508C.6.

2. *"Association"* means the Iowa life and

health insurance guaranty association created in section 508C.6.

3. *"Commissioner"* means the commissioner of insurance.

4. *"Contractual obligation"* means an obligation under a covered policy.

5. *"Covered policy"* means a policy or contract within the scope of this chapter as provided under section 508C.3.

6. *"Impaired insurer"* means a member insurer which, after July 1, 1987, is either of the following:

a. Deemed by the commissioner to be potentially unable to fulfill its contractual obligations but is not an insolvent insurer.

b. Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

7. *"Insolvent insurer"* means a member insurer which, after July 1, 1987, becomes insolvent and is placed under a final order of liquidation by a court of competent jurisdiction.

8. *"Member insurer"* means a person licensed or who holds a certificate of authority to transact in this state any kind of insurance to which this chapter applies under section 508C.3, including a person whose license or certificate of authority has been suspended, revoked, not renewed, or voluntarily withdrawn.

9. *"Person"* means an individual, corporation, partnership, association, or voluntary organization.

10. *"Premiums"* means direct gross insurance premiums and annuity considerations received on covered policies, less return insurance premiums and annuity considerations and dividends paid or credited to policyholders on the direct business. *"Premiums"* do not include premiums and considerations on contracts between insurers and reinsurers.

11. *"Resident"* means a person who resides in this state, or if a corporation has its principal place of business in this state, at the time a member insurer is determined to be an impaired or insolvent insurer, and to whom contractual obligations are owed.

12. *"Supplemental contract"* means an agreement entered into for the distribution of policy or contract proceeds.

13. *"Unallocated annuity contract"* means a guaranteed investment contract, deposit administration contract, or any other annuity contract which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such a contract or certificate.

87 Acts, ch 223, §5; 88 Acts, ch 1135, §4 – 6; 90 Acts, ch 1234, §19, 20; 98 Acts, ch 1057, §7

508C.6 Creation of the association.

1. A nonprofit legal entity is created to be known as the Iowa life and health insurance guaranty association. All member insurers shall be and shall remain members of the association as a condition of their authority to transact insurance business in this state. The association shall perform its functions under the plan of operation established and approved under section 508C.10 and shall exercise its powers through the board of directors established in section 508C.7. For purposes of administration and assessment, the association shall maintain all of the following accounts:

a. A health insurance account.

b. A life insurance account.

c. An annuity account. A plan established under section 403(b) of the United States Internal Revenue Code shall be covered by the annuity account.

d. An unallocated annuity contract account.

2. The association is subject to the immediate supervision of the commissioner and the applicable provisions of the insurance laws of this state.

87 Acts, ch 223, §6; 88 Acts, ch 1135, §7, 8

508C.7 Board of directors.

1. The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers, subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer is entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.

2. In approving selections or in appointing members to the board, the commissioner shall consider, among other factors, whether all member insurers are fairly represented.

3. At the option of the association, members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors. However, members of the board shall not otherwise be compensated by the association for their services.

87 Acts, ch 223, §7

508C.8 Powers and duties of the association.

1. If a domestic, foreign, or alien insurer is an impaired insurer, the association, subject to conditions imposed by the association and approved by the impaired insurer and the commissioner, may:

a. Guarantee, assume, reinsure, or cause to be

guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer.

b. Provide moneys, pledges, notes, guarantees, or other means as proper to effectuate paragraph *"a"* and assure payment of the contractual obligations of the impaired insurer pending action under paragraph *"a"*.

c. Loan money to the impaired insurer and guarantee borrowings by the impaired insurer, provided the association has concluded, based on reasonable assumptions, that there is a likelihood of repayment of the loan and a probability that unless a loan is made the association would incur substantial liabilities under subsection 2.

1A. If a domestic, foreign, or alien insurer is an insolvent insurer, subject to the approval of the commissioner, the association shall:

a. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer.

b. Assure payment of the contractual obligations of the insolvent insurer.

c. Provide moneys, pledges, notes, guarantees, or other means as reasonably necessary to discharge the duties described in this subsection.

2. *a.* If a domestic, foreign, or alien insurer is an impaired insurer and the insurer is not paying claims timely, then, subject to the approval of the commissioner and to the preconditions specified in this subsection, the association may do either or both of the following:

(1) Take any of the actions specified in subsection 1, subject to the conditions in that subsection.

(2) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefits, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition for the benefits under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

b. The association is subject to this subsection only if all of the following conditions are met:

(1) The laws of the state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all interest on the payments and expenses have been repaid to the guaranty associations or a plan of repayment by the impaired insurer has been approved by the guaranty associations all of the following apply:

(a) The delinquency proceeding shall not be dismissed.

(b) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management.

(c) The impaired insurer shall not be permitted to solicit or accept new business or have any suspended or revoked license restored.

(2) If the impaired insurer is a domestic insurer it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or, if the impaired insurer is a foreign or alien insurer it has been prohibited from soliciting or accepting new business in this state, its certificate of authority has been suspended or revoked in this state, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state or nation of domicile by the commissioner of that state or similar authority in an alien nation.

3. *a.* In carrying out its duties under subsection 2, permanent policy liens or contract liens may be imposed in connection with a guarantee, assumption, or reinsurance agreement, if the court does both of the following:

(1) Finds either that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to the public interest to justify the imposition of policy or contract liens.

(2) Approves the specific policy liens or contract liens to be used.

b. Before being obligated under subsection 2, the association may request the imposition of a temporary moratorium, not exceeding three years, or liens on payments of cash values, termination values, and policy loans in addition to any contractual provisions for deferral of cash values, termination values, or policy loans. The temporary moratoriums and liens may be imposed by the court as a condition of the association's liability with respect to the insolvent insurer.

c. The obligations of the association under subsection 2 regarding a covered policy shall be reduced to the extent that the person entitled to the obligations has received payment of all or any part of the contractual benefits payable under the covered policy from any other source.

d. The association may offer modifications to the owners of policies or contracts or classes of policies or contracts issued by the insolvent insurer, if the association finds that under the policies or contracts the benefits provided, provisions pertaining to renewal, or the premiums charged or which may be charged are not reasonable. If the owner of a policy or contract to be modified fails or refuses to accept the modification as approved by the court, the association may terminate the policy or contract as of a date not less than one hundred eighty days after the modification is sent to the owner. The association shall have no liability under the policy or contract for any claim incurred or continuing beyond the termination date. However, this paragraph does not apply to interest adjustments made pursuant to section 508C.3, subsection 3, paragraph *"a"*.

4. If the association fails to act within a reasonable period of time as provided in subsection 2, the commissioner shall have the powers and du-

ties of the association under this chapter with respect to insolvent insurers.

5. Upon request the association may give assistance and advice to the commissioner concerning the rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

6. The association has standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. Standing shall extend to all matters germane to the powers and duties of the association including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

7. *a.* A person receiving benefits under this chapter is deemed to have assigned the rights under the covered policy to the association to the extent of the benefits received under this chapter, whether the benefits are payments of contractual obligations or a continuation of coverage. The association may require an assignment to the association of the rights by a payee, policyholder or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon the person. The association shall be subrogated to these rights against the assets of the insolvent insurer.

b. The subrogation rights of the association under this subsection have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

c. In addition to the rights pursuant to subsection 3, paragraphs *"a"* and *"b"*, the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the insolvent insurer or holder of a policy or contract.

8. The contractual obligations of the insolvent insurer, for which the association becomes or may become liable, are as great as but not greater than the contractual obligations of the insolvent insurer would have been in the absence of an insolvency, unless the obligations are reduced as permitted in this chapter. However, with respect to any one life, the aggregate liability of the association shall not exceed one hundred thousand dollars in cash and termination values, or three hundred thousand dollars for all benefits, including cash and termination values, death benefits, annuity payments, accident and health benefits, and all other amounts payable under all policies or contracts of the insolvent insurer. With respect to any one holder of an unallocated annuity contract, the aggregate liability of the association shall not exceed one million dollars of contract benefits, irrespective of the number of contracts held by the contract holder.

9. The association has no obligation for either of the following:

a. To continue coverage, or to pay a claim for benefits to any person under an individual accident, health, or disability policy accruing more than three years following the date the member insurer is adjudicated to be insolvent.

b. To issue a group conversion policy of any nature to a person or to continue a group coverage in force for more than sixty days following the date the member insurer was adjudicated to be insolvent.

10. The association may do any of the following:

a. Enter into contracts as necessary or proper to carry out this chapter.

b. Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 508C.9.

c. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association held by domestic insurers and not in default qualify as investments eligible for deposit under section 511.8, subsection 16.

d. Employ or retain persons as necessary to handle the financial transactions of the association, and to perform other functions as necessary or proper under this chapter.

e. Negotiate and contract with a liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

f. Take legal action as necessary to avoid payment of improper claims.

g. For the purposes of this chapter and to the extent approved by the commissioner, exercise the powers of a domestic life or health insurer. However, the association shall not issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

h. Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

87 Acts, ch 223, §8; 88 Acts, ch 1135, §9; 90 Acts, ch 1234, §21, 22; 91 Acts, ch 26, §37; 92 Acts, ch 1162, §8

508C.9 Assessments.

1. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account established pursuant to section 508C.6, at the time and for the amounts the board finds necessary. An assessment is due not less than thirty days after prior written notice has been sent to the member insurers and accrues interest at ten percent per annum commencing on the due date.

2. There are two classes of assessments as follows:

a. Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses and examinations conducted under section 508C.12, subsection 5, not related to a particular impaired or insolvent insurer.

b. Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 508C.8 with regard to an impaired domestic insurer or an insolvent domestic, foreign, or alien insurer.

3. *a.* The amount of a class A assessment shall be determined by the board and to the extent that class A assessments do not exceed one hundred dollars per company in any one calendar year may be made on a per capita basis. The amount of a class B assessment shall be allocated for assessment purposes among the accounts as the liabilities and expenses of the association, either experienced or reasonably expected, are attributable to those accounts, all as determined by the association and on as equitable a basis as is reasonably practical.

b. Class A assessments in excess of one hundred dollars per company per calendar year and class B assessments against member insurers for each account shall be in the proportion that the average of the aggregate premiums received on business in this state by each assessed member insurer on policies or contracts related to that account for the three most recent calendar years for which information is available, preceding the year in which the insurer became impaired or insolvent, is to the average of the aggregate premiums received on business in this state by all assessed member insurers on policies related to that account for the three most recent calendar years for which information is available preceding the assessment.

c. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this chapter. Classification of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

4. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

5. *a.* The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of the average of the insurer's premiums received in this state during the three most recent calendar years for which information is available, preceding the year in which the insurer becomes impaired or insolvent, on the policies related to that account. However, if two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation of this paragraph shall be equal, and limited, to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section. If the maximum assessment for an account, together with the other assets of the association in the account, does not provide in any one year in the account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed for the account in succeeding years as soon as permitted by this chapter.

b. If the maximum assessment under paragraph *"a"* for any account, other than the health insurance account, does not provide an amount sufficient to carry out the responsibilities of the association in any succeeding year, the board, pursuant to subsection 3, paragraph *"a"*, shall assess the necessary additional amount and allocate the amount for assessment among the accounts, other than the health insurance account, in the following sequence: from the life insurance account, to the annuity account, to the unallocated annuity contract account; from the annuity account, to the unallocated annuity contract account, to the life insurance account; from the unallocated annuity contract account, to the annuity account, to the life insurance account; provided that no amount shall be allocated to an account for assessment until the maximum amount has been allocated to the preceding account.

6. By an equitable method as established in the plan of operation, the board may refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account, including assets accruing from net realized gains and income from investments, exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

7. In determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this chapter, it is proper for a member insurer to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

8. The association shall issue to each insurer paying a class B assessment under this chapter, a certificate of contribution in a form prescribed by the commissioner for the amount of the assessment so paid. All outstanding certificates shall be

of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form, for the amount and for a period of time as the commissioner may approve.

87 Acts, ch 223, §9; 88 Acts, ch 1135, §10; 90 Acts, ch 1234, §23 – 25; 92 Acts, ch 1162, §9, 10; 2000 Acts, ch 1023, §14

508C.10 Plan of operation.

1. *a.* The association shall submit to the commissioner a plan of operation and any amendments to the plan of operation necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments to the plan are effective upon the commissioner's written approval.

b. If the association fails to submit a suitable plan of operation within one hundred eighty days following July 1, 1987, or if at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt rules pursuant to chapter 17A as necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. All member insurers shall comply with the plan of operation.

3. In addition to other requirements established in this chapter the plan of operation shall establish all of the following:

a. Procedures for handling the assets of the association.

b. The amount and method of reimbursing members of the board of directors under section 508C.7.

c. Regular places and times for meetings of the board of directors.

d. Procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

e. Procedures for selecting the board of directors and submitting the selections to the commissioner.

f. Any additional procedures for assessments under section 508C.9.

g. Additional provisions necessary or proper for the execution of the powers and duties of the association.

4. The plan of operation may provide that any powers and duties of the association, except those under section 508C.8, subsection 10, paragraph *"c"* and section 508C.9 are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner. The delegation shall be made only to a corporation, association, or organization which extends protection at least as favorable and effective as that provided by this chapter.

87 Acts, ch 223, §10

508C.11 Duties and powers of the commissioner.

1. The commissioner shall:

a. Upon request of the board of directors, provide the association with a statement of the premiums for each member insurer.

b. When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this chapter.

c. In a liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

2. After notice and hearing, the commissioner may suspend or revoke the certificate of authority to transact insurance in this state of a member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy an administrative penalty on any member insurer which fails to pay an assessment when due. The administrative penalty shall not exceed five percent of the unpaid assessment per month. However, an administrative penalty shall not be less than one hundred dollars per month.

3. An action of the board of directors or the association may be appealed to the commissioner by a member insurer if the appeal is taken within thirty days of the action being appealed. A final action or order of the commissioner is subject to judicial review pursuant to chapter 17A in a court of competent jurisdiction.

4. The liquidator, rehabilitator, or conservator of an impaired insurer may notify all interested persons of the effect of this chapter.

87 Acts, ch 223, §11; 88 Acts, ch 1112, §203

508C.12 Prevention of insolvencies.

1. To aid in the detection and prevention of insurer insolvencies or impairments the commissioner shall:

a. Notify the commissioners or insurance departments of other states or territories of the United States and the District of Columbia when any of the following actions against a member insurer is taken:

(1) A license is revoked.

(2) A license is suspended.

(3) A formal order is made that a company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

Notice shall be mailed to the commissioners or departments within thirty days following the earlier of when the action was taken or the date on which the action occurs. This subparagraph does not supersede section 507C.9, subsection 5.

b. Report to the board of directors when the commissioner has taken any of the actions set forth in paragraph *"a"* or has received a report from any other commissioner indicating that a member insurer is impaired or insolvent. Reports to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

c. Report to the board of directors when there is reasonable cause to believe from an examination, whether completed or in process, of a member company that the company may be an impaired or insolvent insurer.

d. Furnish to the board of directors the national association of insurance commissioners' early warning tests. The board may use the information in carrying out its duties and responsibilities under this section. The report and the information contained in the report shall be kept confidential by the board of directors until such time as it is made public by the commissioner or other lawful authority.

2. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this state.

3. The board of directors may upon majority vote make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of a member insurer or germane to the solvency of a company seeking to transact insurance business in this state. These reports and recommendations are not public records pursuant to chapter 22.

4. Upon majority vote, the board of directors shall notify the commissioner of any information indicating that a member insurer may be an impaired or insolvent insurer.

5. Upon majority vote, the board of directors may request that the commissioner order an examination of a member insurer which the board in good faith believes may be an impaired or insolvent insurer. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. The examination report shall not be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection 1. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it is not a public record pursuant to chapter 22 until the release of the examination report to the public.

6. Upon majority vote, the board of directors may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

7. At the conclusion of an insurer insolvency in which the association was obligated to pay covered claims, the board of directors shall prepare a report to the commissioner containing information as the board may have in its possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by other associations.

87 Acts, ch 223, §12; 88 Acts, ch 1112, §204

508C.13 Miscellaneous provisions.

1. This chapter does not reduce the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability other than the plan of this chapter.

2. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 508C.8. Records of the negotiations or meetings shall be made public pursuant to chapter 22 only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under section 508C.14.

3. For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled pursuant to its subrogation rights under section 508C.8, subsection 7. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. As used in this subsection,

"assets attributable to covered policies" means that proportion of the assets which the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

4. *a.* Prior to the termination of a liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, similar associations of other states, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. When considering the contributions, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

b. A distribution to stockholders, if any, of an impaired or insolvent insurer shall not be made until the total amount of valid claims of the association and of similar associations of other states for funds expended in carrying out its powers and duties under section 508C.8 with respect to the insurer have been fully recovered by the association and the similar associations.

5. *a.* Subject to the limitations of paragraphs *"b"*, *"c"*, and *"d"*, if an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order may recover, on behalf of the insurer, from any affiliate that controlled it, the amount of distributions other than stock dividends paid by the insurer on its capital stock made at any time during the five years preceding the petition for liquidation or rehabilitation.

b. Distributions are not recoverable if the insurer shows that when paid the distributions were lawful and reasonable and that the insurer did not know and could not reasonably have known that the distributions might adversely affect the ability of the insurer to fulfill its contractual obligations.

c. A person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. A person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions that would have been received if they had been paid immediately. If two persons are liable with respect to the same distributions, they are jointly and severally liable.

d. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

e. If a person liable under paragraph *"c"* is insolvent, all its affiliates that controlled it at the time the dividend was paid are jointly and severally liable for a resulting deficiency in the amount recovered from the insolvent affiliate.

87 Acts, ch 223, §13; 90 Acts, ch 1234, §26

508C.14 Examination of the association — annual report.

The association is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner by May 1 of each year, a financial report for the preceding calendar year and a report of its activities during the preceding calendar year. The financial report shall be in a form approved by the commissioner.

87 Acts, ch 223, §14

508C.15 Tax exemptions.

The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on the association's real property.

87 Acts, ch 223, §15

508C.16 Immunity — indemnification.

A member insurer and its agents and employees, the association and its agents and employees, members of the board of directors, and the commissioner and the commissioner's representatives are not liable for any action taken by them or omission by them while acting within the scope of their employment and in the performance of their powers and duties under this chapter.

Sections 490.850 through 490.859 apply to the association.

87 Acts, ch 223, §16; 88 Acts, ch 1170, §9; 91 Acts, ch 97, §55; 2002 Acts, ch 1154, §111, 125

2002 amendment to unnumbered paragraph 2 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Unnumbered paragraph 2 amended

508C.17 Stay of proceedings — reopening default judgments.

Proceedings in which the insolvent insurer is a party in a court in this state shall be stayed sixty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on matters germane to its powers or duties. The association may apply to have a judgment under a decision, order, verdict, or finding based on default, set aside by the same court that entered the judgment, and shall be permitted to defend against the suit on the merits.

87 Acts, ch 223, §17

508C.18 Prohibited advertisements.

A person, including an insurer, agent or affiliate of an insurer shall not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or

poster, or over a radio station or television station, or in any other way, an advertisement, announcement, or statement which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter. However, this section does not apply to the association or any other entity which does not sell or solicit insurance.

87 Acts, ch 223, §18

508C.19 Credits for assessments paid.

1. An insurer may offset an assessment made pursuant to section 508C.9 against its premium tax liability pursuant to chapter 432 to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If an insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

2. Sums acquired by refund from the association which have been written off by contributing insurers and offset against premium taxes as provided in subsection 1 and are not then needed for purposes of this chapter shall be paid by the association to the commissioner. The commissioner shall remit the moneys to the treasurer of state to deposit in the state general fund.

87 Acts, ch 223, §19

CHAPTER 508D

MULTISTATE LIFE AND HEALTH INSURANCE RESOLUTION FACILITY

508D.1 Title.
508D.2 Purpose.
508D.3 Definitions.
508D.4 Facility established.
508D.5 Board of directors.
508D.6 Powers and duties of the facility.
508D.7 Plan of operation.
508D.8 Costs and assessments.
508D.9 Miscellaneous provisions.

508D.1 Title.

This chapter shall be cited as the *"Multistate Life and Health Insurance Resolution Facility Act"*.

94 Acts, ch 1011, §1

508D.2 Purpose.

The purpose of this chapter is to authorize the formation of an entity by one or more state life and health insurance guaranty associations for the purpose of administering and disposing of the business of impaired or insolvent insurance companies assumed by or assigned to the entity by its member guaranty associations, or by impaired or insolvent insurers through the impaired or insolvent insurer's duly appointed receiver, liquidator, or rehabilitator, and to establish the conditions under which such an entity shall do business.

94 Acts, ch 1011, §2

508D.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Facility"* means the multistate life and health insurance resolution facility created pursuant to section 508D.4 as a legal entity domiciled in Iowa with its principal place of business and other business offices either within or without the state of Iowa as the board of directors may designate or as the business of the entity may require and established for the purpose set out in section 508D.2.

2. *"Member guaranty association"* means the Iowa life and health insurance guaranty association created pursuant to chapter 508C or any other state life and health insurance guaranty association which is or becomes a member of the facility pursuant to the plan of operation.

3. *"Oversight organization"* means the Iowa commissioner of insurance and the state insurance commissioner, or other state official charged with the responsibility of regulating the insurance industry in the same or similar manner as the Iowa commissioner of insurance, from the state of domicile of each member guaranty association.

94 Acts, ch 1011, §3

508D.4 Facility established.

The facility may be created by one or more life and health insurance guaranty associations for the purpose set out in section 508D.2. The name of the facility shall be the multistate life and health insurance resolution facility. A life and health insurance guaranty association or other entity as approved by the board may elect to become a member of the association. The facility shall perform its functions under a plan of operation established and approved under section 508D.7 and shall exercise its powers through a

board of directors established under section 508D.5. Only one facility shall be established pursuant to this chapter.

94 Acts, ch 1011, §4

508D.5 Board of directors.

1. The members of the board of directors shall be selected by the member guaranty associations. The number of members of the board and their terms shall be established in the plan of operation. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members. In determining voting rights, each member guaranty association shall be entitled to one vote in person or by proxy.

2. The initial board of directors of the facility shall be established by the Iowa life and health insurance guaranty association and shall consist of not less than five nor more than nine members. The initial board of directors shall adopt a plan of operation for the facility as provided in section 508D.7.

3. Members of the board of directors are entitled to reasonable compensation for expenses incurred in attending meetings of the board or while on business conducted on behalf of the facility. Members of the board may also be compensated by the facility for their services provided as members of the board as provided in the plan of operation.

94 Acts, ch 1011, §5

508D.6 Powers and duties of the facility.

1. The facility shall perform those duties of the member guaranty associations which are delegated to the facility as permitted under the enabling legislation of each member guaranty association and which are consistent with the plan of operation.

2. Except as otherwise provided in this chapter, the facility is granted specific authority to exercise the powers of a domestic life or health insurer.

3. The facility is not authorized to solicit, advertise, market, sell, underwrite, issue, insure, administer, or reinsure new insurance business or insurance business of insurance companies which are not impaired or insolvent according to the laws of their state of domicile.

4. The board of directors of the facility may enter into agreements with any interstate compact organization established for the purpose of administering impaired or insolvent insurance companies in this or any other state.

5. An activity involving the authority of the facility derived from chapter 507C or other law related to insurer supervision, rehabilitation, and liquidation shall be performed in compliance with the requirements of such law.

6. The facility established under this chapter is not subject to any insurance licensing requirements and an employee of the facility is not subject to any insurance licensing requirements for activities performed within the employee's scope of duties. All regulatory oversight of the facility shall be conducted by the oversight organization.

94 Acts, ch 1011, §6

508D.7 Plan of operation.

1. The facility shall submit to the oversight organization a plan of operation and any amendments to the plan of operation necessary or suitable to assure the fair, reasonable, and equitable administration of the facility's business. The plan of operation and any amendments to the plan are effective upon the oversight organization's written approval.

2. The plan of operation, in addition to other requirements established in this chapter, shall establish all of the following:

a. Procedures for administering the assets under the control of the facility.

b. Regular places and times for meetings of the board of directors.

c. Procedures for records to be kept of all financial transactions engaged in by the facility, the agents of the facility, and the board of directors.

d. Procedures for selecting the board of directors and submitting the selections to the oversight organization.

e. Procedures for permitting life and health insurance guaranty associations to become members of the facility.

f. Procedures for the assumption of the insurance business or the assignment of the insurance business to the facility by member guaranty associations.

g. Procedures for determining and making assessments against member guaranty associations by the board of directors.

h. Additional provisions necessary and proper for the execution of the powers and duties of the facility.

i. A description of staffing requirements and qualifications for positions within the facility.

3. The plan of operation may provide that any powers and duties of the facility, except the power to borrow money and the power to make assessments, may be delegated to a corporation, association, or other organization or individual which performs or will perform those functions. Such corporation, association, or other organization or individual shall be reimbursed for any payments made on behalf of the facility and shall be compensated for the performance of any permissible function, as directed by the facility. A delegation of any power or duty pursuant to this subsection takes effect only with the approval of the board of directors.

94 Acts, ch 1011, §7

508D.8 Costs and assessments.

1. Costs of administration shall be recorded separately for each impaired or insolvent company

and those costs shall be reimbursed from the assets of such company.

2. The board of directors of the facility shall assess the member guaranty associations at the time and for the amounts the board finds necessary to reimburse the facility for any additional costs not reimbursed from assets managed by the facility. Assessments made pursuant to this subsection shall be allocated among member guaranty associations pursuant to a formula adopted by the board and consistent with each individual guaranty association's liability for the facility's insurance business which is the subject of the assessment. An assessment is due not less than ninety days after prior written notice has been sent to the member guaranty association and accrues interest at ten percent per annum commencing on the due date.

3. The total of all assessments upon a member guaranty association shall not exceed in any one calendar year the limit set by the enabling legislation of the member guaranty association's state of domicile for assessments against insurance companies. If a maximum assessment in any one year does not provide an amount sufficient to carry out the responsibilities of the facility, the necessary additional funds shall be assessed in succeeding years as soon as permitted by this chapter and by the enabling legislation of the member guaranty association's state of domicile.

4. Notwithstanding subsection 3, the Iowa life and health insurance guaranty association shall levy additional assessments not to exceed one hundred dollars per company per year if necessary to fund organizational expenses of the facility.

94 Acts, ch 1011, §8

508D.9 Miscellaneous provisions.

1. Records shall be kept of all negotiations and meetings in which the facility or the facility's representatives are involved to discuss the activities of the facility in carrying out the powers and duties set out under section 508D.6. Records of negotiations or meetings shall be made public pursuant to chapter 22 only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurance company whose business was assumed by or assigned to the facility, upon the termination of the impairment or insolvency of the insurance company, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under subsection 2.

2. The facility is subject to examination and regulation by the oversight organization. The board of directors shall submit to the oversight organization by June 1 of each year a financial report for the preceding calendar year and a report of its activities during the preceding calendar year. The financial report shall be in a form approved by the oversight organization.

3. The facility is exempt from payment of all fees and taxes levied by this state or any of its subdivisions on insurance companies, except taxes levied on the real property of the facility.

4. A member guaranty association and its agents and employees, the facility and its agents and employees, members of the board of directors, and the oversight organization and its representatives are not liable for any acts or omissions while acting within the scope of their employment and in the performance of their powers and duties under this chapter, except for acts or omissions not in good faith which involve intentional misconduct or which involve a knowing violation of law.

94 Acts, ch 1011, §9

CHAPTER 508E

VIATICAL SETTLEMENT CONTRACTS

508E.1 Authority of the commissioner.
508E.2 Definitions.
508E.3 Viatical settlement contract limitations.
508E.3A Immunity from liability.
508E.4 Rulemaking authority.

508E.1 Authority of the commissioner.

The commissioner shall regulate, but not prohibit, the sale of viatical settlements as provided in this chapter.

2000 Acts, ch 1147, §35

508E.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Chronically ill"* means any of the following:

a. Being unable to perform or maintain at least two activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence.

b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

c. Having a level of disability similar to that described in paragraph *"a"* as determined by the United States secretary of health and human services.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Terminally ill"* means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.

4. *"Viatical settlement contract"* means a written agreement entered into between a viatical settlement provider and a person who owns or is insured under a life insurance policy or certificate, or who owns or is covered under a group life insurance policy. *"Viatical settlement contract"* does not mean a written agreement entered into between a viator and a person having an insurable interest in the viator's life.

5. *"Viator"* means a person selling a life insurance policy or certificate.

2000 Acts, ch 1147, §36

508E.3 Viatical settlement contract limitations.

1. *a.* Subject to paragraph *"b"*, a viatical settlement contract shall not be entered into until after the contestable period of the life insurance policy or certificate has expired.

b. If a viatical settlement contract is entered into during the contestable period of the life insurance policy or certificate, a rebuttable presumption arises that it was the intent of the person entering into such contract with a viatical settlement provider to enter into such contract at the time the life insurance policy or certificate was originally purchased. If such person fails to rebut the presumption, the viatical settlement contract is void.

2. A viatical settlement contract shall only be entered into with an individual who owns a life insurance policy or certificate which covers the life of an individual who is either terminally ill or chronically ill, or as otherwise provided pursuant to rules adopted by the commissioner.

2000 Acts, ch 1147, §37

508E.3A Immunity from liability.

1. A person acting without malice, fraudulent intent, or bad faith is not liable civilly as a result of filing a report, or otherwise furnishing, orally or in writing, other information concerning alleged acts in violation of this chapter, or the administrative rules that implement this chapter, if the report or information is provided to or received from any of the following:

a. Law enforcement officials, and their agents or employees.

b. The national association of insurance commissioners, the insurance division, a federal or state governmental agency or bureau established to detect and prevent fraudulent insurance or viatical settlement acts, or any other organization established for such purpose, and their agents, employees, or designees.

c. An authorized representative of the life insurer that issued the insurance policy covering the life of the insured.

2. This section does not affect in any way any common law or statutory privilege or immunity applicable to such person or entity.

2002 Acts, ch 1111, §11
NEW section

508E.4 Rulemaking authority.

The commissioner shall adopt rules as necessary to administer this chapter. Rules shall be adopted relating to all of the following:

1. Advertising standards.
2. Disclosure.
3. Examinations.
4. Insurance company practices.
5. License requirements.
6. Prohibited practices.
7. Refund provisions.
8. Reporting.
9. Standards for reasonableness of payment.
10. Unfair trade practices.
11. Viatical settlement contracts.

2000 Acts, ch 1147, §38

CHAPTER 508F

CHARITABLE GIFT ANNUITIES

508F.1 Definitions.
508F.2 Qualified charitable gift annuity is not insurance.
508F.3 Annuity agreement — notice to donor.
508F.4 Notice filed with the commissioner.
508F.5 Failure to comply with requirements.
508F.6 Penalties.
508F.7 Not unfair or deceptive trade practice.
508F.8 Rules.

508F.1 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. *"Charitable gift annuity"* means a transfer of property by a donor to a charitable organization in return for an annuity payable over one or two lives, if the actuarial value of the annuity is less than the value of the property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

2. *"Charitable organization"* means an entity described by any of the following:

a. Section 501(c)(3) of the Internal Revenue Code.

b. Section 170(c) of the Internal Revenue Code.

3. *"Commissioner"* means the commissioner of insurance.

4. *"Internal Revenue Code"* means the Internal Revenue Code of 1986 as designated by the Tax Reform Act of 1986, as amended to a date designated by rules adopted by the commissioner.

5. *"Property"* means anything of value that is subject to ownership, and includes but is not limited to property classified as real, personal, mixed, tangible or intangible, or any present or future interest in such property.

6. *"Qualified charitable gift annuity"* means a charitable gift annuity that is described by section 501(m)(5) or 514(c)(5) of the Internal Revenue Code, if all of the following apply:

a. The annuity agreement is issued by a charitable organization.

b. On the date that the annuity agreement is issued, the charitable organization has a minimum value of the lesser of three hundred thousand dollars or five times the face amount of total outstanding annuities in unrestricted cash, cash equivalents, or publicly traded securities. However, the total outstanding annuities as provided in this paragraph do not include assets funding the annuity agreement.

c. The charitable organization has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

2001 Acts, ch 28, §2

508F.2 Qualified charitable gift annuity is not insurance.

1. The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

2. A charitable gift annuity that meets the requirements of a qualified charitable gift annuity shall be deemed to be a qualified charitable gift annuity for purposes of this chapter, regardless of whether the charitable gift annuity was issued prior to July 1, 2001. The issuance of that charitable gift annuity shall not be construed as engaging in the business of insurance in this state.

2001 Acts, ch 28, §3

508F.3 Annuity agreement — notice to donor.

An agreement for a qualified charitable gift annuity executed by a charitable organization and a donor shall be in writing. The annuity agreement shall include a notice stating that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner or protected by an insurance guaranty fund or an insurance guaranty association. The notice required by this section shall be in a separate paragraph and in a type size no smaller than that generally used in the annuity agreement.

2001 Acts, ch 28, §4

508F.4 Notice filed with the commissioner.

1. A charitable organization that issues qualified charitable gift annuities in this state on and after July 1, 2001, shall file a notice with the commissioner in writing not later than the date on which it executes the organization's first qualified charitable annuity agreement. All of the following shall apply:

a. The notice must be signed by an officer or director of the charitable organization.

b. The notice must identify the name and address of the charitable organization.

c. The notice must include a copy of the determination letter issued by the internal revenue service.

d. The notice must certify that the charitable organization is a bona fide charitable organization and that the annuities issued by the charitable organization are qualified charitable gift annuities.

2. The charitable organization is not required to submit additional information, unless the information is to be used to determine appropriate penalties that may be applicable under section 508F.5.

2001 Acts, ch 28, §5

Transition provisions applicable to deadline for notice of annuity issuance; 2001 Acts, ch 28, §10

508F.5 Failure to comply with requirements.

1. The failure of a charitable organization to comply with the requirements of sections 508F.3 and 508F.4 does not prevent a charitable gift annuity that otherwise meets the requirements of this chapter from constituting a qualified charitable gift annuity.

2. The commissioner shall enforce performance of the requirements of sections 508F.3 and 508F.4. The commissioner may do any of the following:

a. Send a letter by restricted certified mail to the charitable organization demanding that the charitable organization comply with this chapter.

b. Establish and impose civil penalties on the charitable organization in an amount not to exceed one thousand dollars for each qualified charitable gift annuity issued until the charitable organization complies with the requirements of this chapter.

2001 Acts, ch 28, §6

Transition provisions applicable to deadline for notice of annuity issuance; 2001 Acts, ch 28, §10

508F.6 Penalties.

The commissioner may determine, after hearing, that the issuance of an annuity is not in compliance with this chapter and that the entity issuing the annuity is subject to the provisions and penalties of chapters 507A and 507B.

2001 Acts, ch 28, §7

508F.7 Not unfair or deceptive trade practice.

The issuance of a qualified charitable gift annuity does not constitute a violation of chapter 507B.

2001 Acts, ch 28, §8

508F.8 Rules.

The commissioner may adopt rules pursuant to chapter 17A necessary to administer and enforce this chapter.

2001 Acts, ch 28, §9

CHAPTER 509

GROUP INSURANCE

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509.1 Form of policy.

No policy of group life, accident or health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

1. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term *"employees"* shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term *"employees"* shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term *"employees"* shall include retired employees. The policy may also provide that the term *"employees"* shall include the board of directors if the employer is a corporation.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by the employer, or partly from such funds and partly from funds contributed by the insured employees. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

d. Group policies may include dependents of the employee, including the spouse.

e. The policy shall not exclude from coverage an employee or an employee's spouse or dependents on the basis of the eligibility of the employee or the employee's spouse or dependents for medical assistance under chapter 249A.

2. A policy issued to any one of the following to be considered the policyholder:

a. An advisory, supervisory, or governing body or bodies of a regularly organized religious denomination to insure its clergy, priests, or ministers of the gospel.

b. A teachers' association, to insure its members.

c. A lawyers' association, to insure its members.

d. A volunteer fire company, to insure all of its members.

e. A fraternal society or association, or any subordinate lodge or branch thereof, to insure its members.

f. A common principal of any group of persons similarly engaged between whom there exists a contractual relationship, to insure the members of such group.

g. An association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, to insure the members thereof. For the purpose of this paragraph the students, teachers, administrators or officials of or for any such school or college shall constitute an association.

Provided that the provisions and requirements of subsection 1 of this section shall apply to such policy and the policyholder and insured in like manner as said subsection 1 of this section applies to employers and employees, except that if a policy is issued to a volunteer fire company or an association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, the requirement for twenty-five members shall not apply, and, if issued to a teachers' association or lawyers' association, not less than sixty-five percent of the members thereof may be insured.

3. A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term *"debtors"* shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

d. The amount of insurance on the life of a debtor shall not exceed the amount owed by the debtor to the creditor, or the face amount of a totally or partially executed loan or loan commitment creating personal liability and made in good faith for general agricultural or horticultural purposes to a debtor with seasonal income. However, in no event shall the amount of insurance exceed two hundred thousand dollars.

e. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment. Provided that in the case of a debtor for agricultural or horticultural purposes of the type described in paragraph *"d",* the insurance in excess of indebtedness to the creditor, if any, shall be payable to a named beneficiary, to the estate of the debtor or under the provision of a facility of payment clause.

4. A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly

from funds contributed by the insured members specifically for their insurance. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least sixty-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten members at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage a member or a member's spouse or dependents on the basis of the eligibility of the member or the member's spouse or dependents for medical assistance under chapter 249A.

5. A policy issued to the trustees of a fund established by two or more employers in the same industry or by two or more labor unions or by one or more employers and by one or more labor unions which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term *"employees"* shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term *"employees"* shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term *"employees"* shall include retired employees. The policy may also provide that the term *"employees"* shall include the board of directors if the employer is a corporation.

b. The premium for the policy shall be paid by the trustees wholly from funds established by the employers of the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, if the funds are contributed wholly by the employer or unions.

c. The policy must cover at least one hundred persons at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage an employee or member or an employee's or member's spouse or dependents on the basis of the eligibility of the employee or member or employee's or member's spouse or dependents for medical assistance under chapter 249A.

6. A policy issued to any nonprofit industrial association (to be deemed the policyholder) incorporated for a period of at least ten years and organized for purposes other than obtaining insurance, subject to the following requirements:

a. If two or more members of the association, or any class or classes of members thereof determined by conditions pertaining to insurance, elect to insure their employees or any class or classes of employees determined by conditions pertaining to employment; and

b. The total number of insured employees must not be less than one thousand, and of these not less than seventy-five percent must be employees of members with at least twenty insured employees each, and further, not more than ten percent may be employees of members with less than ten insured employees each; and

c. The insurance premiums are paid by such members to the association; each member, insofar as applicable to the member's own employees, may collect part of the premium from insured employees, and the method of apportionment of the premium payment between the member and the member's employees may be varied as among individual members; and

d. Not less than seventy-five percent of the eligible employees of each participating member may be insured where the employees pay a part of the premium. The word "employees" as used in this subsection shall also include the individual members and employees of such association.

e. Policies may include dependents of the employees, including the spouse.

f. The policy shall not exclude from coverage an employee or an employee's spouse or dependents on the basis of the eligibility of the employee or the employee's spouse or dependents for medical assistance under chapter 249A. This paragraph shall also apply to corporations operating within the state who provide insurance coverage for their employees directly, and the commissioner shall have the authority to enforce the provisions of this paragraph.

7. A policy issued to the department of human

services, which shall be deemed the policyholder, to insure eligible persons for medical assistance, or for both medical assistance and additional medical assistance, as defined by chapter 249A as hereafter amended.

8. A policy issued to a resident of this state under a group life, accident, or health insurance policy issued to a group other than one described in subsections 1 through 7, subject to the following requirements:

a. The commissioner determines that all of the following apply:

(1) The issuance of the group policy is not contrary to the best interest of the public.

(2) The issuance of the group policy will result in economies of acquisition or administration.

(3) The benefits under the group policy are reasonable in relation to the premium charged.

b. The commissioner need not make a determination under paragraph *"a"* if the commissioner determines that the group insurance coverage offered in this state by an insurer or other person is offered under a policy issued in another state and that state or another state in which the policy is offered, having requirements substantially similar to those in paragraph *"a"*, has determined that the policy meets those requirements.

c. The premium for the policy shall be paid either from the policyholder's funds, or from funds contributed by the covered person, or both.

d. The insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

e. If compensation of any kind will or may be paid to the policyholder in connection with the group policy, the insurer shall provide to the prospective insured written notice that compensation will or may be paid. Notice shall be provided whether the compensation is direct or indirect, and whether the compensation is paid to or retained by the policyholder, or paid to or retained by a third party at the direction of the policyholder or any entity affiliated with the policyholder by ownership, contract, or employment. The notice shall be placed on or accompany any document designed for the enrollment of prospective insureds.

[C24, 27, 31, §8675, 8676; C35, §8684-e1 – 8684-e3; C39, §**8684.01 – 8684.03;** C46, §509.1 – 509.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.1]

83 Acts, ch 96, §157, 159; 85 Acts, ch 69, §1; 87 Acts, ch 63, §1; 91 Acts, ch 244, §25; 92 Acts, ch 1162, §11

509.2 Provisions as part of group life policy.

No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured, and more favorable to the policyholder, provided, however, that provisions of subsections 6 to 10, inclusive, of this section shall not apply to policies issued to a creditor to insure debtors of such creditor; that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

1. A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except that first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

2. A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to the person's insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime, nor unless it is contained in a written instrument signed by the person.

3. A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to the person's beneficiary.

4. A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the person's coverage.

5. A provision specifying an equitable adjustment of premiums or benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

6. A provision that any sum becoming due by

reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum, not exceeding five hundred dollars, to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

7. A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in subsections 8 to 10, inclusive, following if applicable.

8. A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to the person by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

a. The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

b. The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which matures on the date of such termination, or has matured prior thereto as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination, and

c. The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to the person's age attained on the effective date of the individual policy.

9. A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to the person by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by subsection 8 above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which the person is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and two thousand dollars.

10. A provision that if a person insured under the group policy dies during the period within which the person would have been entitled to have an individual policy issued to the person in accordance with subsection 8 or 9 above and before such an individual policy shall have become effective, the amount of life insurance which the person would have been entitled to have issued to the person under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

[C24, 27, 31, §8677, 8678; C35, §8684-e4, -e5; C39, §**8684.04, 8684.05;** C46, §509.4, 509.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.2]

509.3 Provisions as part of accident or health policy.

All policies of group accident or health insurance or combination thereof issued in this state shall contain in substance the following provisions:

1. The policy shall have a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person.

2. A provision that the company will issue to the policyholder for delivery to each person insured under such policy an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, to whom the insurance benefits are payable, and such provisions of the policy as are, in the opinion of the commissioner of insurance, necessary to inform the holder thereof as to the holder's rights under the policy.

3. A provision that to the group or class thereof originally insured shall be added, from time to time, all new persons eligible to insurance in such group or class.

4. A provision that if the insurance on a person or insurance on a person and the person's dependents covered by the policy ceases because of termination of employment or of membership in the class, the person and the person's dependents may

continue their accident or health insurance under the group policy and may subsequently apply for a converted policy without evidence of insurability, as provided in chapter 509B.

5. A provision shall be made available to policyholders, under group policies covering vision care services or procedures, for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154 if the care and treatment are provided within the scope of the optometrist's license and if the policy would pay for the care and treatment if the care and treatment were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148 or 150A. The policy shall provide that the policyholder may reject the coverage or provision if the coverage or provision for services which may be provided by an optometrist is rejected for all providers of similar vision care services as licensed under chapter 148, 150A, or 154. This subsection applies to group policies delivered or issued for delivery after July 1, 1983, and to existing group policies on their next anniversary or renewal date, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident only, limited or specified disease, or individual or group conversion policies, or policies designed only for issuance to persons for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

6. A provision shall be made available to policyholders under group policies covering diagnosis and treatment of human ailments for payment or reimbursement for necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151, if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the policy would pay or reimburse for the diagnosis or treatment by a person licensed under chapter 148, 150, or 150A of the human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or its diagnosis or its treatment. The policy shall provide that the policyholder may reject the coverage or provision if the coverage or provision for diagnosis or treatment of a human ailment by a chiropractor is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148, 150, 150A, or 151. A policy of group health insurance may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148, 150, 150A, and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based directly or indirectly upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This subsection applies to group policies delivered or issued for delivery after July 1, 1986, and to existing group policies on their next anniversary or renewal date, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident-only, limited or specified disease, or individual or group conversion policies, or policies under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

7. A provision shall be made available to policyholders, under group policies covering hospital, medical, or surgical expenses, for payment of covered services determined to be medically necessary provided by registered nurses certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the insurer and the policyholder, subject to utilization controls. This subsection shall not require payment for nursing services provided by a certified nurse practicing in a hospital, nursing facility, health care institution, physician's office, or other noninstitutional setting if the certified nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This subsection applies to group policies delivered or issued for delivery in this state on or after July 1, 1989, and to existing group policies on their next anniversary or renewal dates, or upon expiration of the applicable collective bargaining contract, if any, whichever is later. This subsection does not apply to blanket, short-term travel, accident only, limited or specified disease, or individual or group conversion policies, policies rated on a community basis, or policies designed only for issuance to persons for eligible coverage under Title XVIII of the federal Social Security Act, or any other similar coverage under a state or federal government plan.

In addition to the provisions required in subsections 1 through 7, the commissioner shall require provisions through the adoption of rules implementing the federal Health Insurance Portability and Accountability Act, Pub. L. No. 104-191.

[C24, 27, 31, §8677, 8678; C35, §8684-e4, -e6; C39, §**8684.04, 8684.06;** C46, §509.4, 509.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.3]

83 Acts, ch 166, §1; 84 Acts, ch 1290, §1; 86 Acts, ch 1124, §8; 86 Acts, ch 1180, §2; 89 Acts, ch 164, §2; 97 Acts, ch 103, §1; 99 Acts, ch 75, §2

509.4 Number insured.

An insurer may issue policies of individual life, accident, health, hospital, medical or surgical insurance or any combination thereof at reduced

rates to employees of a common employer including the state, a county, school district, city or institution supported in whole or in part by public funds, but the number of employees to be insured must be more than one. The premium for such policies may be paid wholly or in part by the employer. If such policies shall provide term life insurance renewable only during the continuance of employment with the employer they shall also provide for conversion to a level premium life policy substantially in accordance with the provisions of subsection 8 of section 509.2.

[C24, 27, 31, §8675, 8678; C35, §8684-e1, -e5; C39, §**8684.01, 8684.05;** C46, §509.1, 509.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.4]

509.5 Authorized companies.

1. Any level premium life insurance company, organized on the stock or mutual plan and authorized to transact business under the provisions of chapter 508 may, upon complying with the provisions of said chapter and of this chapter, issue contracts providing for group life, or health, or accident insurance, or combinations thereof as defined in this chapter.

2. A casualty company organized on the stock or mutual plan, or accident and health association authorized to transact business under chapter 515, or a reciprocal or interinsurance exchange organized under chapter 520, may, by complying with those chapters and this chapter, issue contracts providing for health or accident insurance, or combinations of health and accident insurance, as defined in this chapter.

[C24, 27, 31, §8677; C35, §8684-e4; C39, §**8684.04;** C46, §509.4; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.5]

89 Acts, ch 83, §68

509.6 Approval of commissioner.

No policy or certificate of group insurance shall be issued in this state until the form thereof has been filed with the commissioner of insurance and approved by the commissioner.

[C24, 27, 31, §8678; C35, §8684-e7; C39, §**8684.07;** C46, §509.7; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.6]

509.7 Grounds for revocation of authority.

Failure to comply with section 509.6 shall be deemed sufficient grounds for revocation of the certificate of authority of any company so violating.

[C35, §8684-e8; C39, §**8684.08;** C46, §509.8; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.7]

509.8 Foreign policies.

Policies of group insurance issued in other states or countries by companies organized in this state may contain any provision required by the laws of the state, territory, district, or country in which the same are issued, anything in section 509.6 to the contrary notwithstanding.

[C24, 27, 31, §8679; C35, §8684-e9; C39, §**8684.09;** C46, §509.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.8]

509.9 Foreign companies.

Policies of group insurance, when issued in this state by any company not organized under the laws of this state, may contain when issued any provision required by the law of the state, territory, or district of the United States under which the company is organized.

[C24, 27, 31, §8680; C35, §8684-e10; C39, §**8684.10;** C46, §509.10; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.9]

509.10 Other provisions in policies.

Any group policy may contain any other provisions which meet the approval of the commissioner of insurance, provided such provisions are not in conflict with the standard provisions of section 509.2 or 509.3.

[C24, 27, 31, §8681; C35, §8684-e11; C39, §**8684.11;** C46, §509.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.10]

509.11 Voting by policyholders.

If policyholders are entitled to vote at meetings of a domestic insurance company, each policyholder of a group policy shall be entitled to one vote.

[C24, 27, 31, §8682; C35, §8684-e12; C39, §**8684.12;** C46, §509.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.11]

509.12 Proceeds exempt from execution.

A policy of group insurance and the proceeds of the policy are exempt from execution and attachment to the same extent as provided in chapter 627.

[C24, 27, 31, §8683; C35, §8684-e13; C39, §**8684.13;** C46, §509.13; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.12]

88 Acts, ch 1255, §1

509.13 Rules.

The commissioner of insurance shall issue rules establishing minimum standards for group medicare supplement policies and minimum standards for benefits under coverages contained in group medicare supplement policies. These rules shall be consistent with those rules established for individual medicare supplement policies pursuant to chapter 514D. The commissioner also shall establish by rule reasonable and creditable anticipated minimum loss ratios for group medicare supplement policies. Rules issued by the commissioner shall give issuers of group medicare supplement policies a reasonable time to achieve compliance.

[81 Acts, ch 167, §1]

509.14 Group insurance on franchise plan.

It shall be lawful for an authorized insurer to issue life, accident and sickness insurance policies on a franchise plan at reduced rates, covering the members of an association, subject to the following:

1. An *"association"* as referred to herein shall consist of a labor union, trade association, association of employees, industrial association or professional association, which has been organized and operating more than two years for purposes other than procuring insurance.

2. A *"franchise plan"* as referred to herein shall consist of an insurance policy or policies covering the insurable members of an association, but in no case less than ten. Such policies may be written in the name of the association or may be written individually for the insured members, subject to the following:

a. A life insurance policy written in the name of the association, shall conform to the provisions of section 509.2.

b. An individual policy on the life of a member of an association, providing for term insurance renewable only during the continuation of membership, shall also provide in the event of termination of membership the same provision for conversion as set out in subsection 8 of section 509.2.

c. An individual life policy written on any basis other than term shall provide that the policyholder may elect to continue it in force upon the policyholder's termination of membership in the association by giving the insurer a notice in writing of such election within thirty days thereafter and paying therefor the renewal premium, which the insurer may increase to reflect the normal individual rate for the policyholder as determined by the policyholder's age and class at the date of issue of the policy.

d. If an accident and sickness policy is written in the name of the association, it shall conform to the provisions of section 509.3.

e. An individual accident and sickness policy shall be subject to the provisions of chapter 514A.

f. Premiums for such policies may be paid entirely from the funds of the association, entirely from the funds of the members or partly from the funds of each.

g. Accident and sickness policies may include the spouse and dependents of the insured.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §509.14]

509.15 Assignment of policy.

Any person insured under a group life insurance policy may assign the rights, benefits and all other incidents of ownership conferred on the person by any provision of such policy or by law, including specifically and not by way of limitation the right, if any, to have issued to the person an individual policy and the right to name a beneficiary. Subject to the terms of the policy or agreement between the insured, the group policyholder and the insurer, any such assignment, whether made before or after July 1, 1971, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all rights, benefits and incidents of ownership conferred upon the insured under the policy and shall entitle the insurer to deal with the assignee as the owner of such rights, benefits and incidents of ownership, provided the insurer shall not be affected by any assignment until the insurer has received written notice thereof. This section shall be construed as declaring the law as it existed prior to July 1, 1971 and not modifying it.

[C73, 75, 77, 79, 81, §509.15]

509.16 Premium rates approved.

An individual policy of credit life or credit accident and health insurance or certificate under a policy of group credit life or credit accident and health insurance shall not be issued for delivery or delivered in this state unless the premium rates charged for the insurance are approved by the commissioner of insurance.

The commissioner of insurance, after notice and hearing, may adopt rules as are necessary to identify specific methods of competition or acts or practices within the business of credit life and credit accident and health insurance which are unfair or deceptive.

[C75, 77, 79, 81, §509.16]
90 Acts, ch 1234, §27

509.17 Guidelines for rates.

Rates shall be made in accordance with the following provisions:

1. Rates shall not be excessive, inadequate or unfairly discriminatory.

2. Due consideration shall be given to past and prospective loss experience within and outside this state, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both countrywide and those especially applicable to this state, and to all other relevant factors within and outside this state.

3. The commissioner shall, after a public hearing, approve a reasonable charge or premium for credit accident and health insurance and for credit life insurance as the commissioner deems appropriate and necessary for the implementation of this section.

[C71, 73, §535.2; C75, 77, 79, 81, §509.17]
90 Acts, ch 1234, §28, 29

509.17A Small group rating. Repealed by 91 Acts, ch 244, § 27. See chapter 513B.

509.18 Prohibited deposit in financial institution.

A company or its agent licensed to sell a policy of credit life or credit accident and health insurance or certificate under a policy of group credit life or credit accident and health insurance shall not deposit or offer to deposit funds in a financial institution of this state in exchange for the privilege of selling such insurance to or on behalf of the financial institution. Any person violating the provisions of this section shall be guilty of a simple misdemeanor.

[C75, 77, 79, 81, §509.18]

509.19 Claims and premium disclosure.

1. *a.* A person issuing a policy or contract providing group health benefit coverages to a group of fifty-one or more eligible employees as defined in chapter 513B shall provide to the policyholder, contract holder, or sponsor of the group health benefit plan, upon request, annually, but not more than three months prior to the policy renewal date, the total amount of actual claims identified as paid or incurred and paid, and the total amount of premiums by line of coverage.

b. For purposes of this section, *"line of coverage"* includes medical, prescription drug card program, dental, vision, long-term disability, and short-term disability.

c. The information required by paragraph *"a"* shall be provided separately for the current policy year-to-date and for the prior policy year.

d. The information required by paragraph *"a"* shall not disclose any confidential information or otherwise disclose the identity of an individual insured, subscriber, or enrollee, who has submitted a claim within the time frame of the report.

2. For purposes of this section, *"person issuing a policy or contract providing group health benefit coverages"* includes all of the following:

a. A person issuing a group policy of accident or health insurance pursuant to this chapter.

b. A person issuing a group contract of a nonprofit health service corporation pursuant to chapter 514.

c. A person issuing a group contract of a health maintenance organization pursuant to chapter 514B.

d. An organized delivery system authorized under 1993 Iowa Acts, chapter 158, licensed by the director of public health.

e. A multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, that meets the requirements of section 507A.4, subsection 9, paragraph *"a"*.

f. A plan for public employees established pursuant to chapter 509A.

g. A person issuing or sponsoring an association group policy under section 509.14.

90 Acts, ch 1159, §1; 2002 Acts, ch 1111, §12
Section amended

CHAPTER 509A

GROUP INSURANCE FOR PUBLIC EMPLOYEES

509A.1 Authority of governing body.
509A.2 Sources of funds.
509A.3 Assessment of employees.
509A.4 Participation optional.
509A.5 Fund under control of governing body — interest earnings of certain funds.
509A.6 Contract with insurance carrier, health maintenance organization, or organized delivery system.
509A.7 Employee defined.
509A.8 Rules.
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509A.10 Decisions of governing body final.
509A.11 Definitions.
509A.12 Deferred compensation program for governmental employees.
509A.13 Continuation of group insurance.
509A.13A Continuation of group insurance covering spouses.
509A.14 Approval of self-insurance plans.
509A.15 Certification of self-insurance plans — exemption.

509A.1 Authority of governing body.

The governing body of the state, school district, or any institution supported in whole or in part by public funds may establish plans for and procure group insurance, health or medical service, or health flexible spending accounts as described in section 125 of the Internal Revenue Code of 1986 for the employees of the state, school district, or tax-supported institution.

[C50, 54, 58, 62, §365A.1; C66, §509.15; C71, 73, 75, 77, 79, 81, S81, §509A.1; 81 Acts, ch 117, §1085]
99 Acts, ch 200, §20

509A.2 Sources of funds.

The funds for such plans shall be created solely from the contributions of employees, or from con-

tributions wholly or in part by the governing body.

[C50, 54, 58, 62, §365A.2; C66, §509.16; C71, 73, 75, 77, 79, 81, §509A.2]

509A.3 Assessment of employees.

All employees participating in any such plan the fund of which is created under the provisions of section 509A.2 shall be assessed and required to pay an amount to be fixed by the governing body not to exceed the two percent which shall be contributed by the public body according to the plan adopted, and the amount so assessed shall be deducted and retained out of the wages or salaries of such employees.

Any employee may authorize deductions from the employee's wages or salary in payment for plans authorized in this chapter in the manner provided in section 514.16.

[C50, 54, 58, 62, §365A.3; C66, §509.17; C71, 73, 75, 77, 79, 81, §509A.3]

509A.4 Participation optional.

Participation in any such plan shall be optional with all employees eligible to the benefits thereof as provided by the rules adopted by the governing body pursuant thereto. Election to participate therein shall be in writing signed by the employee and filed with the governing body.

[C50, 54, 58, 62, §365A.4; C66, §509.18; C71, 73, 75, 77, 79, 81, §509A.4]

509A.5 Fund under control of governing body — interest earnings of certain funds.

The fund for each plan shall be under the control and shall be expended under the directions of the governing body and shall be used solely for the purpose of administering and carrying out the provisions of the plan adopted by the governing body.

Any interest earnings from investments or time deposits of the funds under the control of the state executive council shall be deposited to the credit of these funds.

[C50, 54, 58, 62, §365A.5; C66, §509.19; C71, 73, 75, 77, 79, 81, §509A.5]

84 Acts, ch 1071, §1; 85 Acts, ch 266, §2

509A.6 Contract with insurance carrier, health maintenance organization, or organized delivery system.

The governing body may contract with a nonprofit corporation operating under the provisions of this chapter or chapter 514 or with any insurance company having a certificate of authority to transact an insurance business in this state with respect of a group insurance plan, which may include life, accident, health, hospitalization and disability insurance during period of active service of such employees, with the right of any employee to continue such life insurance in force after termination of active service at such employee's sole expense; may contract with a nonprofit corporation operating under and governed by the provisions of this chapter or chapter 514 with respect of any hospital or medical service plan; and may contract with a health maintenance organization or an organized delivery system authorized to operate in this state with respect to health maintenance organization or organized delivery system activities.

[C50, 54, 58, 62, §365A.6; C66, §509.20; C71, 73, 75, 77, 79, 81, §509A.6]

95 Acts, ch 162, §10

509A.7 Employee defined.

The word *"employee"* as used in this chapter does not include temporary or retired employees except as otherwise provided in this chapter. However, this section does not prevent a retired employee sixty-five years of age or older from voluntarily continuing in force, at the employee's own expense, an existing contract.

[C50, 54, 58, 62, §365A.7; C66, §509.21; C71, 73, 75, 77, 79, 81, §509A.7; 82 Acts, ch 1101, §2]

84 Acts, ch 1285, §24

509A.8 Rules.

The governing body of public bodies establishing any such plan under this chapter shall administer such plan and formulate and establish rules for the operation thereof, not inconsistent with the provisions of this chapter.

[C50, 54, 58, 62, §365A.8; C66, §509.22; C71, 73, 75, 77, 79, 81, §509A.8]

509A.9 Exemption from debts.

All amounts payable to employees under and pursuant to the plan of group insurance established as herein provided shall be exempt from liability for debts of the person to or on account of whom the same is payable and shall not be subject to seizure upon execution or other process.

[C50, 54, 58, 62, §365A.9; C66, §509.23; C71, 73, 75, 77, 79, 81, §509A.9]

509A.10 Decisions of governing body final.

The decisions of the governing body upon all matters upon which the said governing body is empowered to act, under and pursuant to the provisions hereof, shall be final and conclusive, in the absence of fraud, and no appeal shall be allowed therefrom nor shall such decisions of the governing body, in the absence of fraud, be reviewed, enjoined or set aside by any court.

[C50, 54, 58, 62, §365A.10; C66, §509.24; C71, 73, 75, 77, 79, 81, §509A.10]

509A.11 Definitions.

For purposes of this chapter:

1. *"Governing body"* means the executive council of the state, the school boards of school districts, and the superintendent or other person in charge of an institution supported in whole or in part by public funds.

2. *"Public body"* means the state, a school district or an institution supported in whole or in part by public funds.

[C58, 62, §365A.11; C66, §509.25; C71, 73, 75, 77, 79, 81, S81, §509A.11; 81 Acts, ch 117, §1086]

509A.12 Deferred compensation program for governmental employees.

A governing body, county board of supervisors, or other public entity, to the extent allowed by law, may establish a deferred compensation program under this section. The contributions made on behalf of an employee who chooses to participate in the program shall be invested at the direction of the employee in a life insurance contract, annuity contract, mutual fund, security, or any other deferred payment contract offered as an investment option under the program. The contract acquired for an employee shall be in accordance with the plan document and shall be acquired from a company, or a salesperson for that company, that is authorized to do business in this state. When the state of Iowa acquires an investment product pursuant to the plan document the state does not become a shareholder, stockholder, or owner of a corporation in violation of Article VIII, section 3, of the Constitution of the State of Iowa or any other provision of law.

This section is in addition to any benefit program provided by law for employees of the state or its political subdivisions.

[C73, 75, 77, 79, 81, S81, §509A.12; 81 Acts, ch 117, §1087]

94 Acts, ch 1183, §80; 95 Acts, ch 162, §11; 97 Acts, ch 185, §10

509A.13 Continuation of group insurance.

If a governing body, a county board of supervisors, or a city council has procured for its employees accident, health, or hospitalization insurance, or a medical service plan, or has contracted with a health maintenance organization authorized to do business in this state, the governing body, county board of supervisors, or city council shall allow its employees who retired before attaining sixty-five years of age to continue participation in the group plan or under the group contract at the employee's own expense until the employee attains sixty-five years of age.

This section applies to employees who retired on or after January 1, 1981.

84 Acts, ch 1285, §25; 86 Acts, ch 1243, §32

Continuation of coverage for early termination program participants; 2001 Acts, 2nd Ex, ch 5, §4, 8; 2002 Acts, 2nd Ex, ch 1001, §50 – 52

509A.13A Continuation of group insurance covering spouses.

1. As used in this section, unless the context otherwise requires:

a. "Eligible retired state employee" means a former employee of the government of the state of Iowa, including but not limited to any departments, agencies, boards, bureaus, or commissions of the state of Iowa, who is receiving the minimum level of retirement benefits for eligibility under this section and who is participating in a state health or medical group insurance plan which covers the former employee and the former employee's spouse at the time of the death of the former employee.

b. "Minimum level of retirement benefits for eligibility under this section" means any of the following:

(1) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97A based upon the completion of at least twenty-two years of membership service.

(2) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97B.

(3) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 602, article 9.

c. "State health or medical group insurance plan" means a health or medical group insurance plan for employees of the state.

2. Notwithstanding any provision of law to the contrary, in the event of the death of an eligible retired state employee, the surviving spouse of the eligible retired state employee whose insurance would otherwise terminate because of the death of the eligible retired state employee may elect to continue to be a member of the state health or medical group insurance plan by requesting continuation in writing to the department of personnel within thirty-one days after the death of the eligible retired state employee. The surviving spouse shall pay the total premium for the state health or medical group insurance plan and shall have the same rights to change programs or coverage as state employees.

94 Acts, ch 1183, §81; 98 Acts, ch 1183, §71, 79; 99 Acts, ch 200, §21

Continuation of coverage for early termination program participants; 2001 Acts, 2nd Ex, ch 5, §4, 8; 2002 Acts, 2nd Ex, ch 1001, §50 – 52

509A.14 Approval of self-insurance plans.

The commissioner of insurance shall adopt rules for self-insurance plans for life insurance and accident and health insurance for a political subdivision of the state or a school corporation. The rules adopted shall include, but are not limited to, the following:

1. A requirement that the plan shall include all coverages and provisions that are required by law in insurance policies for the type of risk that

the self-insurance plan is intended to cover.

2. A requirement that if the resources of the plan are inadequate to fully cover a claim under the plan, then the public body is liable for any portion of the claim that is left unpaid.

85 Acts, ch 251, §2; 92 Acts, ch 1162, §12; 93 Acts, ch 88, §9

509A.15 Certification of self-insurance plans — exemption.

1. Within ninety days following the end of a fiscal year, the governing body of a self-insurance plan of a political subdivision or a school corporation shall file with the commissioner of insurance a certificate of compliance, actuarial opinion, and an annual financial report. The filing shall be accompanied by a fee of one hundred dollars. A penalty of fifteen dollars per day shall be assessed for failure to comply with the ninety-day filing requirement, except that the commissioner may waive the penalty upon a showing that special circumstances exist which justify the waiver. The certificate shall be signed and dated by the appropriate public official representing the governing body, and shall certify the following:

a. That the plan meets the requirements of this chapter and the applicable provisions of the Iowa administrative code.

b. That an actuarial opinion has been attached to the certificate which attests to the adequacy of reserves, rates, and financial condition of the plan. The actuarial opinion must include, but is not limited to, a brief commentary about the adequacy of the reserves, rates, and the financial condition of the plan, a test of the prior year claim reserve, a brief description of how the reserves were calculated, and whether or not the plan is able to cover all reasonably anticipated expenses. The actuarial opinion shall be prepared, signed, and dated by a person who is a member of the American academy of actuaries. If necessary, the actuary should assist the public body in preparing the annual financial report. The annual financial report shall be in a format as prescribed by the commissioner.

c. That a written complaint procedure has been implemented. The certificate shall also list the number of complaints filed by participants under the written complaint procedure, and the percentage of participants filing written complaints, in the prior fiscal year.

d. That the governing body has contracted or otherwise arranged with a third-party administrator who holds a current certificate of registration issued by the commissioner pursuant to section 510.21, or with a person not required to obtain the certificate as an administrator as defined in section 510.11, subsection 1.

2. The commissioner shall by rule require the maintenance of confidentiality of information held by the plan administrator.

3. The failure of the governing body to provide the certificate of compliance required by subsection 1, or the failure of the governing body or plan administrator to abide by a requirement of the plan, this chapter, or applicable rule, is grounds for action against the plan, including cause for disapproval or discontinuance of the plan.

4. One or more school corporations maintaining a self-insured dental insurance plan, with yearly claims which do not exceed one percent of the school corporation's general fund budget, shall be exempt from the following requirements with respect to that plan:

a. Maintaining aggregate excess loss coverage required by rules relating to the adequacy of reserves adopted pursuant to subsection 1, paragraph *"b"*.

b. Contracting with a third-party administrator pursuant to subsection 1, paragraph *"d"*.

The yearly claim amount shall be determined annually on the policy renewal date, or an alternative date established by rule, by a plan administrator or school corporation employee to be designated by the plan administrator. The exemption shall not apply for the year following a year in which yearly claims are determined to exceed one percent of the school corporation's general fund budget.

88 Acts, ch 1112, §104; 92 Acts, ch 1162, §14; 93 Acts, ch 88, §10; 2000 Acts, ch 1200, §1

CHAPTER 509B

CONTINUATION AND CONVERSION OF GROUP HEALTH INSURANCE

509B.1 Definitions.
509B.2 Persons included in this chapter.
509B.3 Continuation of benefits.
509B.4 Conversion of group policies.
509B.5 Notice of termination of membership or modification of coverage.

509B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Accident or health insurance"* means hospi-

tal, surgical, or major medical insurance, or a combination of these.

2. *"Commissioner"* means the state commissioner of insurance.

3. *"Group policy"* means a group accident or health insurance policy issued by an insurance company under chapter 509, a group accident or health contract issued by a health service corporation under chapter 514, or a plan for health care services provided by a health maintenance organization under chapter 514B, or issued or provided by any similar corporation or organization.

4. *"Individual policy"* or *"converted policy"* means an individual accident or health insurance policy issued by an insurance company, or an individual accident or health services contract issued by a health service corporation, or a plan for health care services provided by a health maintenance organization, or provided by any similar corporation or organization.

5. *"Insurance"*, *"insures"*, and *"insured"* refer to coverage under a group policy, individual policy, or converted policy on a premium-paying basis, and do not include coverage provided solely as an accrued liability or by reason of a disability extension.

6. *"Insurer"* means the entity issuing a group policy or an individual or converted policy.

7. *"Medicare"* means Title XVIII of the United States Social Security Act.

8. *"Premium"* includes any premium or payment or other consideration payable for coverage under a group or individual policy.

86 Acts, ch 1124, §1

509B.2 Persons included in this chapter.

1. As used in this chapter, *"termination of employment or membership"* includes but is not limited to termination because of permanent or temporary layoff or approved leave of absence. A provision in this chapter which relates to termination of insurance under a group policy of an employee or member and the employee's or member's covered dependents includes termination of insurance with respect to the surviving or former spouse or children of an employee or member whose insurance would terminate because of dissolution or annulment of the marriage of the employee or member, or would terminate because of death of the employee or member.

2. A provision in this chapter which relates to an employee or member includes the surviving or former spouse or children if termination occurs because of dissolution or annulment of a marriage or death of an employee or member.

86 Acts, ch 1124, §2

509B.3 Continuation of benefits.

A group policy delivered or issued for delivery in this state which insures employees or members for accident or health insurance on an expense-incurred or service basis, other than for specific diseases or for accidental injuries only, shall provide that employees or members whose coverage under the group policy would otherwise terminate because of termination of employment or membership may continue their accident or health insurance under that group policy, for themselves and their eligible dependents, subject to all of the group policy's terms and conditions applicable to those forms of insurance and subject to all of the following conditions:

1. Continuation shall only be available to an employee or member if the employee or member was continuously insured under the group policy, and for similar benefits under any group policy which it replaced, during the entire three months' period immediately preceding the termination.

2. Continuation shall not be available for a person who is or could be covered by medicare. Continuation shall not be available for a person who is or is eligible to be covered by another group insured or uninsured arrangement which provides accident or health coverage, unless the person was covered by that other group policy immediately prior to the termination.

3. Continuation may exclude dental care, vision care, or prescription drug benefits or other benefits provided under the group policy which benefits are in addition to accident or health benefits.

4. An employee or member who wishes continuation of coverage must request continuation in writing to the employer or group policyholder within the ten-day period following the later of either of the following:

a. The date of the termination.

b. The date the employee is given notice of the right of continuation as provided in section 509B.5 by either the employer or the group policyholder.

If proper notice is given, the employee or member is not eligible to elect continuation more than thirty-one days after the date of termination.

5. An employee or member electing continuation shall pay monthly to the employer or group policyholder, in advance, the amount of contribution required by the employer or group policyholder, but not more than the group rate otherwise due for the insurance being continued under the group policy. If proper notice is given, the election of continuation by the employee or member together with the first contribution required to establish contributions on a monthly basis in advance, shall be given to the employer or group policyholder within thirty-one days of the date the group insurance would otherwise terminate.

6. Continuation of insurance under the group policy for any person shall terminate when the person becomes eligible for medicare or another group insured or uninsured accident or health arrangement, or earlier, when any of the following first occurs:

a. Nine months after the date the employee's

or member's insurance under the policy would otherwise have terminated because of termination of employment or membership.

b. At the end of the period for which contributions were made if the employee or member fails to make timely payment of a required contribution and if proper notice is given as provided in section 509B.5, subsection 2.

c. If the person covered is a former spouse, upon the former spouse's remarriage.

d. The date on which the group policy is terminated or, in the case of an employee, the date the employer terminates participation under the group policy. However, if this paragraph applies and the coverage which would cease because of the employer's termination is replaced by similar coverage under a different group policy, all of the following apply:

(1) The employee, member, spouse, or eligible dependent may become covered under the different group policy, for the balance of the period that the employee or member would have remained covered under the prior group policy had a termination of the group policy as specified in paragraph *"d"* not occurred.

(2) The minimum level of benefits to be provided by the different group policy shall be the applicable level of benefits of the prior group policy, reduced by any benefits payable under the prior group policy.

(3) The prior group policy shall continue to provide benefits to the extent of its accrued liabilities and extensions of benefits as if the prior group policy had not been replaced by the different group policy.

7. A notification of the continuation privilege shall be included with or in each certificate of coverage and as otherwise provided in section 509B.5 and shall contain the time limits for requesting the continued coverage.

8. The spouse of an employee or member, and any covered dependent children of the employee or member, whose coverage under the group policy would otherwise terminate because of dissolution or annulment of marriage or death of the employee or member shall have the same contribution and notice responsibilities and privileges as provided under this chapter to the employee or member upon termination of employment or membership.

86 Acts, ch 1124, §3; 87 Acts, ch 115, §62

509B.4 Conversion of group policies.

A group policy delivered or issued for delivery in this state which insures employees or members for accident or health insurance on an expense-incurred or service basis, other than for specific diseases or for accidental injuries only, shall provide that an employee or member whose coverage under the group policy has been terminated is entitled to have a converted policy issued to the employee or member by the insurer without evidence of insurability, subject to the following:

1. A converted policy shall not be available to an employee or member if termination of insurance under the group policy occurred because of any of the following:

a. Termination of employment or termination of membership and the employee or member was not entitled to continuation of group coverage, or failed to elect continuation.

b. Failure to make timely payment of required premium after notice as required in section 509B.5, subsection 2.

c. Any other reason, if the employee or member was not continuously insured under the group policy, and for similar benefits under any group policy which it replaced, during the entire three months' period immediately preceding the termination.

d. The group policy terminated or an employer's or group policyholder's participation terminated, and the insurance is replaced by similar coverage under another group policy within thirty-one days of the date of termination.

2. If proper notice is given as required in section 509B.5, written application and the first premium payment for the converted policy shall be made to the insurer not later than thirty-one days after the termination. The converted policy's effective date shall be the day following the termination of insurance under the group policy.

3. The premium for the converted policy shall be determined in accordance with the insurer's table of premium rates applicable to the age and class of risk of each person to be covered under that policy and to the type and amount of insurance provided.

4. The converted policy shall cover the employee or member and dependents who were covered by the group policy on the date of termination of insurance. At the option of the insurer, a separate converted policy may be issued to cover any dependent.

5. The insurer is not required to issue a converted policy covering any person if the person is or is eligible to be covered by medicare. The insurer is not required to issue a converted policy covering any person if both paragraphs *"a"* and *"b"* apply:

a. If any of the following apply:

(1) The person is covered for similar benefits by another individual policy.

(2) The person is or is eligible to be covered for similar benefits under any arrangement of coverage for individuals in an employer group, whether insured or uninsured.

(3) The person is or is eligible to be covered for similar benefits under any other state or federal law.

b. The benefits provided under sources of the kind referred to in paragraph *"a"*, subparagraph (1), for the person, or the benefits provided or available under sources of the kind referred to in

paragraph *"a"*, subparagraphs (2) and (3), for the person, together with the converted policy's benefits, would result in overinsurance according to the insurer's standards for overinsurance.

6. A converted policy may provide that the insurer may at any time request information of a person covered as to whether the person is covered for similar benefits described in subsection 5, paragraph *"a"*, subparagraph (1) or is or is eligible to be covered for similar benefits described in subsection 5, paragraph *"a"*, subparagraphs (2) and (3). The converted policy may provide that as of any premium due date the insurer may refuse to renew the policy or the coverage of any insured person for any of the following reasons:

a. Either those similar benefits for which the person is or is eligible to be covered, together with the converted policy's benefits, would result in overinsurance according to the insurer's standards for overinsurance, or the policyholder of the converted policy fails to provide the requested information.

b. Fraud or material misrepresentation in applying for any benefits under the converted policy.

c. Eligibility of the insured person for coverage under medicare or under any other state or federal law providing for benefits similar to those provided by the converted policy.

d. Other reasons approved by the commissioner of insurance.

7. An insurer is not required to issue a converted policy providing benefits in excess of the accident and health insurance under the group policy from which conversion is made.

8. The converted policy shall not exclude, as a preexisting condition, any condition covered by the group policy. However, the converted policy may provide for a reduction of its accident and health benefits by the amount of the benefits payable under the group policy after the individual's insurance terminates under the group policy. The converted policy may also provide that during the first policy year, the benefits payable under the converted policy, together with the benefits payable under the group policy after its termination, shall not exceed those that would have been payable had the individual's insurance under the group policy remained in force and effect.

9. Subject to the other provisions of this chapter, if the group insurance policy from which conversion is made insures the employee or member for basic hospital and surgical insurance, the employee or member may exercise the option of obtaining a converted policy providing coverage on an expense-incurred basis under any of the following plans:

a. Plan A which covers all of the following:

(1) Hospital room and board daily expense benefits in a maximum dollar amount approximating the average semiprivate rate charged in the Polk county metropolitan area of this state for a maximum duration of seventy days.

(2) Miscellaneous hospital expense benefits up to a maximum amount of ten times the hospital room and board daily expense benefits.

(3) Surgical expense benefits according to a surgical procedures schedule consistent with those customarily offered by the insurer under group or individual health insurance policies and providing a maximum benefit of eight hundred dollars.

b. Plan B.

The same as plan A, except that the maximum hospital room and board daily expense benefits is seventy-five percent of the corresponding plan A maximum and the surgical schedule maximum is six hundred dollars.

c. Plan C.

The same as plan A, except that the maximum hospital room and board daily expense benefit is fifty percent of the corresponding plan A maximum and the surgical schedule maximum is four hundred dollars.

The maximum dollar amount for plan A's hospital room and board daily expense benefits shall be determined by the commissioner of insurance and may be redetermined by the commissioner from time to time as to converted policies issued subsequent to the redetermination. The redetermination shall not be made more often than once in three years. The plan A maximum, and the corresponding maximums in plans B and C, shall be rounded to the nearest multiple of ten dollars and that rounding may be to the next higher or lower multiple of ten dollars, if otherwise exactly midway between.

10. Subject to the other provisions and conditions of this chapter, if the group policy from which conversion is made insures the employee or member for major medical expense insurance, the employee or member may obtain a converted policy providing catastrophic or major medical coverage under a plan meeting the following requirements:

a. A maximum benefit at least equal to, at the option of the insurer, either of the following benefits:

(1) A maximum payment per covered person for all covered medical expenses incurred during that person's lifetime, equal to the smaller of the maximum benefit provided under the group policy or two hundred fifty thousand dollars.

(2) A maximum payment for each unrelated injury or sickness equal to the smaller of the maximum benefit provided under the group policy, or two hundred fifty thousand dollars.

b. Payment of benefits at the rate of eighty percent of covered medical expenses which are in excess of the deductible until twenty percent of the expenses in a benefit period reaches one thousand dollars, after which benefits will be paid at the rate of one hundred percent during the remainder of the benefit period. Payment of benefits for outpatient treatment of mental illness, if provided in the converted policy, may be at a lesser rate but not

less than fifty percent.

c. A deductible for each benefit period which, at the option of the insurer, shall be the sum of the benefits deductible and one hundred dollars or the corresponding deductible in the group policy. "Benefits deductible" means the value of any benefits provided on an expense-incurred basis which are provided with respect to covered medical expenses by any other group or individual accident or health insurance policy or medical practice or other prepayment plan, or any other plan or program whether insured or uninsured, or by reason of any state or federal law and if, pursuant to subsection 11, the converted policy provides both basic hospital and surgical coverage and major medical coverage, the value of the basic benefits. If the maximum benefit is determined by paragraph *"a"*, subparagraph (2), the insurer may require that the deductible be satisfied during a period of not less than three months if the deductible is one hundred dollars or less and not less than six months if the deductible exceeds one hundred dollars.

d. The *"benefit period"* shall be each calendar year when the maximum benefit is determined by paragraph *"a"*, subparagraph (1) or twenty-four months when the maximum benefit is determined by paragraph *"a"*, subparagraph (2).

e. *"Covered medical expenses"* includes at least, in the case of hospital room and board charges, the dollar amount in plan A of subsection 9, paragraph *"a"* and at least twice that amount for charges in an intensive care unit. Any surgical procedures schedule shall be consistent with those customarily offered by the insurer under group or individual health insurance policies and shall provide at least a one thousand two hundred dollar maximum benefit.

11. At the option of the insurer, the plans of benefits set forth in subsections 9 and 10 may be provided under separate policies, or may be provided by a policy of comprehensive medical expense benefits without first dollar coverage. The comprehensive policy shall conform to the requirements of subsection 10. However, an insurer electing to provide such a policy shall make available a low deductible option, not to exceed one hundred dollars, a high deductible option between five hundred dollars and one thousand dollars, and a third deductible option midway between the high and low deductible options. Alternatively, this policy may provide for deductible options equal to the greater of the benefits deductible and the amounts specified in this subsection.

12. The insurer may, at its option, offer alternative plans for group health and accident insurance conversion in addition to those required by this chapter. If an insurer customarily offers individual policies on a service basis, that insurer may, in lieu of converted policies on an expense-incurred basis, make available converted policies on a service basis which, in the opinion of the commissioner, satisfy the intent of this chapter.

13. If, under this chapter, coverage would be continued under the group policy on an employee or member following termination due to retirement prior to the time the employee or member is or could be covered by medicare, the employee or member may elect, in lieu of continuation of group insurance, and notwithstanding subsection 1, paragraph *"a"*, to have the same conversion rights as would apply if a continued policy were terminated at that time.

14. The converted policy may provide for reduction or termination of coverage of a person upon eligibility for coverage under medicare or under any other state or federal law providing for benefits similar to those provided by the converted policy.

15. Subject to any preceding conditions, conversion privileges are available to a surviving spouse at the death of the employee or member, with respect to the spouse and children whose coverage under the group policy terminates by reason of the death, or to each surviving child whose coverage under the group policy terminates by reason of death, or when continuation of dependent's coverage is accepted following the employee's or member's death, at the end of the continuation. Subject to any preceding conditions, the conversion privilege is available to the spouse of the employee or member upon termination of coverage of the spouse, by reason of dissolution or annulment of marriage or otherwise ceasing to be a qualified family member under the group policy, while the employee or member remains insured under the policy, or when continuation of dependent's coverage is elected following the dissolution or annulment of marriage, at the end of continuation. This conversion privilege includes children whose coverage under the group policy terminates at the same time. Subject to any preceding conditions, the conversion privilege is also available to a child solely with respect to the child upon termination of coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided within this section.

16. If the benefit levels in subsections 9 and 10 exceed the benefit levels provided under the group policy, the converted policy may offer benefits which are substantially similar to those provided under the group policy in lieu of those required in subsections 9 and 10.

17. The insurer may elect to provide group insurance coverage in lieu of the issuance of a converted individual policy.

18. A notification of the conversion privilege shall be included with or in each certificate of coverage.

19. A converted policy which is delivered outside this state may be on a form which could be delivered in such other jurisdiction as a converted policy had the group policy been issued in that ju-

risdiction.

86 Acts, ch 1124, §4

509B.5 Notice of termination of membership or modification of coverage.

1. Employers or group policyholders shall notify all employees or members of their continuation and conversion rights within ten days of termination of employment or membership. The notice shall be in writing and delivered in person or mailed to the person's last known address. However, continuation and conversion rights shall not be denied because of failure to provide proper notice. After receiving proper notice the employee or member may request and shall receive continuation or conversion coverage in accordance with this chapter within ten days of the request, notwithstanding any other time limitation provided by this chapter. Notification as provided in this section supersedes section 515.80 as that section relates to accident and health insurance.

2. If an employer or group policyholder terminates or substantially modifies an agreement to provide accident or health insurance for employees or members or if accident or health insurance for employees or members is terminated for failure to pay premiums or for another reason, the employer or group policyholder shall notify the employees or members, including persons being continued under the policy's continuation provisions, of the termination or substantial modification of their coverage. The notice shall be in writing and delivered in person to the entitled persons or mailed to their last known addresses at least ten days prior to the termination or substantial modification of the accident or health insurance coverage. The employer or group policyholder is solely liable for benefits, including extended benefits, other than extended benefits for which the insurer is liable in accordance with the provisions of the group policy, which would have been payable had the accident or health insurance remained in force or not been terminated or substantially modified during the period of time following the termination or substantial modification until the person entitled to notice is given notice by the employer or group policyholder as required by this subsection.

3. The employer or group policyholder is also solely liable for benefits, including extended benefits, which would have been payable had the accident or health insurance been in force and the employees or members been covered during the period of time the employer or group policyholder failed to implement the plan for accident or health insurance which the employer or group policyholder had agreed to provide, until the employer or group policyholder gives notice of its failure or inability to provide the agreed plan. The notice shall be in writing and delivered in person to the employees or members or mailed to their last known addresses.

4. The employer or group policyholder is also solely liable for benefits, including extended benefits, which would have been payable had the accident or health insurance been in force and the employees or members been covered by the accident or health insurance during a period of time for which the employer or group policyholder has collected contributions through payroll, withholding, or otherwise, but has failed to enroll the employees or members, unless the employer or group policyholder has given actual notice that enrollment in the plan will not become effective until a later date or until the employee's or member's application for enrollment has been approved.

86 Acts, ch 1124, §5

CHAPTER 510

MANAGING GENERAL AGENTS AND ADMINISTRATORS

MANAGING GENERAL AGENTS

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MANAGING GENERAL AGENTS

510.1 Definition. Repealed by 91 Acts, ch 26, § 61. See § 510.1B.

510.1A Short title.
This chapter may be cited as the *"Managing General Agents Act."*
91 Acts, ch 26, §1

510.1B Definitions.
As used in this chapter, unless the context otherwise requires:
1. *"Actuary"* means a person who is a member in good standing of the American academy of actuaries.
2. *"Commissioner"* means the commissioner of insurance.
3. *"Insurer"* means a person duly licensed in this state as an insurance company pursuant to this subtitle.
4. *a. "Managing general agent"* means any person who engages in all of the following:
(1) Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and who acts as an agent for such insurer whether known as a managing general agent, manager, or other similar term or title.
(2) With or without authority and either separately or together with affiliates, directly or indirectly produces, and underwrites, an amount of gross direct written premium equal to or greater than five percent of the policyholder surplus in any one quarter or year as reported in the last annual statement of the insurer.
(3) Engages in either or both of the following:
(a) Adjusts or pays claims in excess of an amount determined by the commissioner.
(b) Negotiates reinsurance on behalf of the insurer.
b. Managing general agent does not include any of the following:
(1) An employee of the insurer.
(2) A manager of a United States branch of an alien insurer who resides in this country.
(3) An underwriting manager who, pursuant to contract, manages all insurance operations of the insurer, who is under common control with the insurer, subject to chapter 521A relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.
(4) An insurance company, in connection with the acceptance or rejection of reinsurance on a block of business.
(5) The attorney-in-fact authorized by or acting for the subscribers of a reciprocal insurer or interinsurance exchange under power of attorney.
5. *"Underwrite"* means the authority to accept or reject risk on behalf of the insurer.
91 Acts, ch 26, §2

510.2 Contracts with managing general agents.
A domestic insurer shall not enter into a contract with a managing general agent unless the domestic insurer notifies the commissioner in writing of its intention to enter into the contract at least thirty days prior to entering into the contract or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the contracts within the time period. The commissioner shall not approve the contracts if the commissioner finds any of the following:
1. The service or management charges in the contract are based upon criteria unrelated either to the insurer's profits or to the reasonable, customary, and usual charges for such services to the company.
2. Management personnel or other employees of the insurance company are to be performing management functions and receiving any remuneration for those management functions through the contract in addition to the compensation received directly from the insurance company for their services.
3. The contract would transfer substantial control of the insurer or any of the powers vested in the board of directors, by statute, articles of incorporation, or bylaws, or substantially all of the basic functions of the insurer's management to the managing general agent.
4. The contract contains provisions which would be clearly detrimental to the best interest of policyholders, stockholders, or members of the company.
5. The officers and directors of the managing general agent firm are of known bad character or have been affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.
If the commissioner disapproves of a contract, notice of the disapproval shall be given to the insurer, specifying the reasons in writing. The commissioner shall grant any party to the contract a hearing on the disapproval upon request pursuant to chapter 17A.
89 Acts, ch 227, §2
Contracts; see also §510.5

510.3 Liability of managing general agents.
Notwithstanding any obligation of a director or officer of an insolvent insurer to the liquidator of the insolvent insurer, a managing general agent of a domestic insurer against whom an order of liqui-

dation has been entered is liable for fees paid to the managing general agent prior to the entry of the order of liquidation upon a finding that the rendering of services, or failure to render services contracted for, substantially caused or contributed to the insolvency of the domestic insurer, and was pursuant to a contract which had not been submitted to the commissioner, or which had been submitted to the commissioner and disapproved, or the services did not meet accepted standards for such services.

89 Acts, ch 227, §3

510.4 Licensure required — bond.

1. A person shall not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

2. A person shall not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of this chapter.

3. The commissioner may require a bond for each company represented by a managing general agent in an amount acceptable to the commissioner for the protection of the insurer.

4. The commissioner may require a managing general agent to maintain an errors and omissions policy.

91 Acts, ch 26, §3

510.5 Required contract provisions — limitations.

1. A person acting in the capacity of a managing general agent shall not place business with an insurer unless a written contract is in force between the parties which sets forth the responsibilities of each party. If both parties share responsibility for a particular function, the contract must specify the division of such responsibilities, and must contain, at a minimum, all of the following provisions:

a. The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of a managing general agent during the pendency of any dispute regarding the cause for termination. The insurer shall advise the commissioner of a termination or a suspension pursuant to this paragraph.

b. A managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

c. All funds collected for the account of an insurer shall be held by a managing general agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. A managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

d. Separate records of business written by a managing general agent shall be maintained. An insurer shall have access and a right to copy all accounts and records related to the insurer's business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts, and records of a managing general agent in a form usable by the commissioner. Such records shall be retained at least until after completion by the insurance division of the next triennial examination of the insurer.

e. Appropriate underwriting guidelines including, but not limited to, the following:

(1) The maximum annual premium volume.

(2) The basis of the rates to be charged.

(3) The types of risks which may be written.

(4) Maximum limits of liability.

(5) Applicable exclusions.

(6) Territorial limitations.

(7) Policy cancellation provisions.

(8) The maximum length or duration of the policy period.

The insurer may cancel or refuse to renew any policy of insurance produced or underwritten by a managing general agent, subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.

2. Permissible provisions in a contract and their requirements include the following:

a. If the contract permits a managing general agent to settle claims on behalf of the insurer all of the following requirements apply:

(1) All claims reported must be reported by the managing general agent to the insurer in a timely manner.

(2) A copy of the claim file must be sent to the insurer at its request or as soon as the managing general agent knows that the claim meets one or more of the following conditions:

(a) The claim has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less.

(b) The claim involves a coverage dispute.

(c) The claim may exceed the claims settlement authority of the managing general agent.

(d) The claim is open for more than six months.

(e) The claim is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(3) All claim files shall be the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the

managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

b. If electronic claims files are in existence, the contract must address the timely transmission or transfer of the data contained in the files.

c. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of interim profits by establishing loss reserves, by controlling claim payments, or by determining the amount of interim profits in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned for casualty insurance business, and not until the interim profits have been verified pursuant to section 510.6.

3. A managing general agent shall not do any of the following:

a. Bind reinsurance or retrocessions on behalf of the insurer, except that a managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

b. Commit the insurer to participate in insurance or reinsurance syndicates.

c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed.

d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which exceeds one percent of the policyholder's surplus of the insurer as of December 31 of the previous calendar year.

e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded by the managing general agent to the insurer.

f. Permit its subproducer to serve on the insurer's board of directors.

g. Jointly employ an individual who is employed by the insurer.

h. Appoint a submanaging general agent.

91 Acts, ch 26, §4

Contracts; see also §510.2

510.5A Unfair competition or unfair and deceptive acts or practices prohibited.

A managing general agent is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §11

510.6 Duties of insurers.

1. An insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which the insurer does or has done business.

2. If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by a managing general agent. This is in addition to any other required loss reserve certification.

3. An insurer shall periodically, but at least semiannually, conduct an on-site review of the underwriting and claims processing operations of each managing general agent with which the insurer is currently doing business.

4. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who is not affiliated with the managing general agent.

5. Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the commissioner. A notice of appointment of a managing general agent must include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

6. An insurer shall review its books and records each quarter and determine if any producer, as defined by section 510A.2, has become, by operation of section 510.1B, subsection 4, a managing general agent as defined in that section. If the insurer determines that a producer has become a managing general agent by operation of section 510.1B, subsection 4, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer shall fully comply with the provisions of this chapter within thirty days.

7. An insurer shall not appoint to its board of directors an officer, director, employee, producer, or controlling shareholder of a managing general agent of the insurer. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems, or, if applicable, by chapter 510A relating to the regulation of producer controlled property and casualty insurers.

91 Acts, ch 26, §5; 91 Acts, ch 258, §56

510.7 Examination authority.

The acts of a managing general agent are considered to be the acts of the insurer on whose behalf a managing general agent is acting. A manag-

ing general agent may be examined as if it were the insurer.

91 Acts, ch 26, §6

510.8 Penalties and liabilities.

1. If the commissioner finds, after a hearing conducted in accordance with chapter 17A, that any person has violated one or more provisions of this chapter, the commissioner may do one or more of the following:

a. For each separate violation, order the imposition of an administrative penalty of not more than ten thousand dollars.

b. Order the revocation or suspension of the producer's license.

c. Bring a civil suit seeking reimbursement by the managing general agent of the insurer, the rehabilitator, or the liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

2. The decision, determination, or order of the commissioner pursuant to subsection 1 is subject to judicial review pursuant to chapter 17A.

3. This section does not affect the right of the commissioner to impose any other penalties provided for under this subtitle.

4. This chapter is not intended to and shall not in any manner limit or restrict the rights of policyholders, claimants, and auditors.

91 Acts, ch 26, §7; 91 Acts, ch 213, §8

510.9 Rules.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient for the implementation and administration of this chapter.

91 Acts, ch 26, §8

510.10 Exemption.

A managing general agent who complies with sections 510.1A through 510.9 for a block of business, shall not also be required to comply with sections 510.20 and 510.21 with regard to the same block of business.

91 Acts, ch 26, §9; 91 Acts, ch 258, §57

ADMINISTRATORS

510.11 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Administrator"* means a person who collects charges or premiums from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities other than any of the following:

a. A union or association on behalf of its members.

b. An insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business.

c. An entity licensed under chapter 514 including its sales representatives licensed in this state when engaged in the performance of its duties as sales representatives.

d. A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust, its trustees, agents, and employees acting under the trust, established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, and employees acting under the trust.

h. A custodian, its agents, and employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.

i. A bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities.

j. A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims.

k. A person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney-at-law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.

2. *"Life or health insurance"* includes, but is not limited to, the following:

a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

c. An individual or group health maintenance organization contract regulated under chapter 514B.

d. An individual or group Medicare supplemental policy.

e. A long-term care policy.

f. An individual or group life insurance policy or annuity issued pursuant to chapter 508, 508A, or 509A.

89 Acts, ch 227, §4

510.12 Written agreement necessary.

A person shall not act as an administrator without a written agreement between the administrator and the insurer, and the written agreement shall be retained as part of the official records of both the insurer and the administrator for the

duration of the agreement plus five years. The written agreement shall contain provisions which include the requirements of sections 510.11 through 510.16, except insofar as those requirements do not apply to the functions performed by the administrator.

When a policy is issued to a trustee, a copy of the trust agreement and any amendments to the trust agreement shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy plus five years.

89 Acts, ch 227, §5

510.13 Payment to administrator.

If an insurer uses the services of an administrator under the terms of a written contract as required in section 510.12, payment to the administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator shall not be deemed payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from the administrator's failure to make payments to the insurer, insureds, or claimants.

89 Acts, ch 227, §6

510.14 Maintenance of information.

An administrator shall maintain at its principal administrative office for the duration of the written agreement referred to in section 510.12 plus five years, adequate books and records of all transactions between it, insurers, and insured persons. The administrator's books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Trade secrets contained in an administrator's books and records, including but not limited to the identity and addresses of policyholders and certificate holders, shall be confidential, except the commissioner may use trade secret information in any proceeding instituted against the administrator. The insurer retains the right to continuing access to the administrator's books and records sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in the administrator's books and records.

89 Acts, ch 227, §7

510.15 Approval of advertising.

An administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved by the insurer in advance of its use.

89 Acts, ch 227, §8

510.16 Underwriting provision.

The agreement shall provide for the underwriting or other standards pertaining to the business underwritten by the insurer.

89 Acts, ch 227, §9

510.17 Premium collection.

1. All insurance charges or premiums collected by an administrator on behalf of or for an insurer, and return premiums received from the insurer, shall be held by the administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled to them, or shall be deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer, the administrator shall cause the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all such records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for that insurer.

2. The administrator shall not pay a claim by withdrawal from the fiduciary account. Withdrawals from the fiduciary account shall be made, as provided in the written agreement between the administrator and the insurer, for any of the following:

a. Remittance to an insurer entitled thereto.

b. Deposit in an account maintained in the name of the insurer.

c. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in section 510.18.

d. Payment to a group policyholder for remittance to the insurer entitled thereto.

e. Payment to the administrator of its commission, fees, or charges.

f. Remittance of return premiums to the persons entitled thereto.

89 Acts, ch 227, §10

510.18 Payment of claims.

A claim paid by the administrator from funds collected on behalf of the insurer shall be paid only on a draft, check, or by electronic funds transfer as authorized by the insurer.

89 Acts, ch 227, §11; 96 Acts, ch 1122, §1

510.19 Claim adjustment and settlement.

The compensation paid to an administrator shall not be contingent on claim experience on pol-

icies for which the administrator adjusts or settles claims. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

89 Acts, ch 227, §12

510.20 Notification required.

When the services of an administrator are used, the administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of the identity of and relationship among the administrator, the policyholder, and the insurer. When an administrator collects funds, it must identify and state separately in writing to the person paying to the administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for such insurance coverage.

89 Acts, ch 227, §13

510.21 Certificate of registration required.

A person shall not act as or represent oneself to be an administrator in this state, other than an adjuster licensed in this state for the kinds of business for which the person is acting as an administrator, unless the person holds a current certificate of registration as an administrator issued by the commissioner of insurance. A certificate of registration as an administrator is renewable every three years. Failure to hold a certificate subjects the administrator to the sanctions set out in section 507B.7. The certificate shall be issued by the commissioner to an administrator unless the commissioner, after due notice and hearing, determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within the preceding five years.

An application for registration shall be accompanied by a filing fee of one hundred dollars. After notice and hearing, the commissioner may impose any or all of the sanctions set out in section 507B.7, upon finding that either the administrator violated any of the requirements of section 515.134 and sections 510.1A through 510.20 and this section, or the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

89 Acts, ch 227, §14

510.22 Waiving of requirements.

The commissioner may waive the requirements of section 510.21 for any person or class of persons. The factors taken into account in granting a waiver shall include, but are not limited to whether:

1. The person acting as an administrator is primarily in a business other than that of administrator.
2. The financial strength and history of the organization indicates stability in its continuity of doing business.
3. The regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of such requirements.

89 Acts, ch 227, §15

510.23 Unfair competition or unfair and deceptive acts or practices prohibited.

An administrator is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §12

CHAPTER 510A

BUSINESS PRODUCER CONTROLLED PROPERTY AND CASUALTY INSURERS

510A.1 Short title.
510A.2 Definitions.
510A.3 Applicability.
510A.4 Minimum standards.
510A.5 Disclosure.
510A.6 Penalties.

510A.1 Short title.

This chapter shall be known and may be cited as the *"Business Producer Controlled Property and Casualty Insurer Act."*

91 Acts, ch 26, §10; 92 Acts, ch 1117, §35

510A.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Accredited state"* means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established by the national association of insurance commissioners.
2. *"Control"* or *"controlled"* has the meaning ascribed in section 521A.1, subsection 3.

3. *"Controlled insurer"* means a licensed insurer which is controlled, directly or indirectly, by a producer.

4. *"Controlling producer"* means a producer who, directly or indirectly, controls an insurer.

5. *"Independent casualty actuary"* means a casualty actuary who is a member of the American academy of actuaries and who is not an employee, principal, the direct or indirect owner of, affiliated with, or in any way controlled by the insurer or producer.

6. *"Licensed insurer"* or *"insurer"* means any person duly licensed to transact a property and casualty insurance business in this state. The following are not licensed property and casualty insurers for the purposes of this chapter:

a. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. § 3901 et seq. (1982 & Supp. 1986), or chapter 515E.

b. All residual market pools and joint underwriting authorities or associations.

c. All captive insurers. For the purposes of this chapter, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of any group and association members and any affiliates.

7. *"Producer"* means an insurance broker or brokers or any other person when, for any compensation, commission, or other thing of value, the person acts or aids in any manner in soliciting, negotiating, or procuring the making of an insurance contract on behalf of an insured other than the person.

91 Acts, ch 26, §11; 92 Acts, ch 1117, §36

510A.3 Applicability.

This chapter applies to licensed insurers as defined in section 510A.2, either domiciled in this state or domiciled in a state that is not an accredited state and having a substantially similar law. All provisions of the insurance holding company Act, to the extent those provisions are not superseded by this chapter, continue to apply to all persons associated with holding companies subject to this chapter.

91 Acts, ch 26, §12; 92 Acts, ch 1117, §37

510A.4 Minimum standards.

1. *Applicability of section.*

a. This section applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the preceding year.

b. Notwithstanding paragraph *"a"*, this section does not apply if both of the following apply:

(1) The controlling producer does all of the following:

(a) Places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary, and receives no compensation based upon the amount of premiums written in connection with such insurance.

(b) Accepts insurance placements only from nonaffiliated subproducers and not directly from insureds.

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from the controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

2. *Required contract provisions.* A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party which has been approved by the board of directors of the controlled insurer and filed with the commissioner. The contract must contain, at a minimum, the following provisions:

a. The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

b. The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

c. The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract.

d. All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the require-

ments of the controlling producer's domiciliary jurisdiction.

e. The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

f. The contract shall not be assigned in whole or in part by the controlling producer.

g. The controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

h. The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph *"g"* of this subsection, *"comparable business"* includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

i. If the contract provides that the controlling producer, on insurance business placed with the controlled insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection 4, paragraph *"a"*.

j. A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer which would exceed the limit. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

k. The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

3. *Audit committee.* A controlled insurer must establish an audit committee of the board of directors composed of independent directors. Prior to approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner, to review the adequacy of the insurer's loss reserves.

4. *Reporting requirements.*

a. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or another independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the producer, including incurred but not reported losses.

b. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

91 Acts, ch 26, §13; 91 Acts, ch 213, §9; 92 Acts, ch 1117, §38

510A.5 Disclosure.

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has notified or will notify the insured.

92 Acts, ch 1117, §39

510A.6 Penalties.

1. If the commissioner believes that a controlling producer or any other person subject to this chapter has not materially complied with this chapter, or any rule adopted or order issued pursuant to this chapter, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer. Additionally, if the commissioner finds that because of such noncom-

pliance the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder, or for other appropriate relief.

2. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to chapter 507C, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter, or any rule adopted or order issued pursuant to this chapter, and that the insurer suffered any loss or damage as a result of the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

3. This section shall not be construed to affect or limit the right of the commissioner to impose any other penalties, as appropriate, which the commissioner is authorized to impose.

4. This section shall not be construed to affect or limit the rights of policyholders, claimants, creditors, or other third parties.

93 Acts, ch 88, §13

CHAPTER 511

PROVISIONS APPLICABLE TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

511.1 Annual statement of foreign companies.
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511.4 Advertisements — who deemed agent.
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511.22 May not advertise authorized capital.
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511.39 Charitable organizations — insurable interest.

511.1 Annual statement of foreign companies.

Every company or association organized under the laws of any other state or country and doing business in this state shall annually, by the first day of March, file with the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, in the same manner and form provided for similar companies or associations organized in this state.

[C73, §1166; C97, §1799; C24, 27, 31, 35, 39, §**8728;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.1]

511.2 Amended forms of statement.

The commissioner may amend the form of the annual statement required to be made by companies or associations doing business in this state, and propose and require such additional matter to be covered therein as the commissioner may think necessary to elicit a full exhibit of the standing of any such company or association.

[C73, §1168; C97, §1799; C24, 27, 31, 35, 39, §**8729;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.2]

511.3 Blanks for reports. Repealed by 85 Acts, ch 228, § 9.

511.4 Advertisements — who deemed agent.

The provisions of section 515.125 shall apply to life insurance companies and associations.

[C97, §1815; C24, 27, 31, 35, 39, §**8731;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.4]

2001 Acts, ch 16, §8, 37; 2001 Acts, ch 69, §12

2001 amendment striking the applicability of sections 515.123, 515.124, and 515.126 to life insurance companies and associations takes effect January 1, 2002; 2001 Acts, ch 16, §37

For provisions applicable from July 1, 2001, to January 1, 2002, see 2001 Acts, ch 69, §12

511.5 Repealed by 82 Acts, ch 1003, § 15.

511.6 Forfeitures. Repealed by 84 Acts, ch 1067, § 51.

511.7 Recovery of penalties.

Actions brought to recover any of the penalties provided for in this chapter shall be instituted in the name of the state by the county attorney of the county, under the direction and authority of the commissioner of insurance, and may be brought in the district court of any county in which the company or association proceeded against is engaged in the transaction of business, or in which the offending person resides, if it is against the person. The penalties, when recovered, shall be paid to the treasurer of state for deposit in the general fund of the state.

[C73, §1178; C97, §1802; C24, 27, 31, 35, 39, §**8734;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.7]

83 Acts, ch 185, §49, 62; 83 Acts, ch 186, §10106, 10201, 10204

511.8 Investment of funds.

A company organized under chapter 508 shall, at all times, have invested in the securities provided in this section, funds equivalent to its legal reserve. Legal reserve is the net present value of all outstanding policies and contracts involving life contingencies. This section does not prohibit a company or association from holding a portion of its legal reserve in cash.

The investment programs developed by companies shall take into account the safety of the company's principal, investment yield and return, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs and investment diversification.

1. *United States government obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

2. *State, District of Columbia, territorial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage, or other district located within any state, or insular or territorial possession of the United States of America, or by any civil subdivision or governmental authority of any such state, or insular or territorial possession, or by any instrumentality of any such state, or insular or territorial possession, civil subdivision, or governmental authority; provided that the obligations are valid, legally authorized and issued.

3. *Canadian government, provincial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality or district therein, provided that the obligations are valid, legally authorized and issued.

4. *International Bank bonds.* Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Inter-American Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report, by the Asian Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report or by the African Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report. However, the combined investment in bonds or evidences of indebtedness permitted by this subsection shall not exceed four percent of its total assets as shown by the last annual report.

5. *Corporate obligations.* Subject to the restrictions contained in subsection 8 hereof, bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. If fixed interest-bearing obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation applicable to such period, and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times its fixed charges for such year; or if, at the date of acquisition, the obliga-

tions are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant.

However, with respect to fixed interest-bearing obligations which are issued, assumed or guaranteed by a financial company, the net earnings by the financial company available for its fixed charges for the period of five fiscal years preceding the date of acquisition of the obligations by the insurance company shall have averaged per year not less than one and one-fourth times such average annual fixed charges of the issuing, assuming or guaranteeing financial company applicable to such period, and, during at least one of the last two years of the period, its net earnings shall have been not less than one and one-fourth times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and speculative elements are not predominant in their investment qualities and characteristics. As used in this paragraph, *"financial company"* means a corporation which on the average over its last five fiscal years preceding the date of acquisition of its obligations by the insurer, has had at least fifty percent of its net income, including income derived from subsidiaries, derived from the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, or from banking or factoring, or from similar or related lines of business.

b. If adjustment, income or other contingent interest obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation and its average annual maximum contingent interest applicable to such period and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year, or if, at the date of acquisition, the obligations are adequately secure and have investment qualities and characteristics and speculative elements are not predominant.

The term *"net earnings available for fixed charges"* as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes other than any income taxes, depreciation and depletion, but nonrecurring items of income or expense may be excluded.

The term *"fixed charges"* as used herein shall include interest on unfunded debt and funded debt on a parity with or having a priority to the obligation under consideration.

The term *"corporation"* as used in this chapter includes a joint stock association, a limited liability company, a partnership, or a trust.

The securities, real estate, and mortgages described in this section include participations, which means instruments evidencing partial or undivided collective interests in such securities, real estate, and mortgages.

6. *Preferred and guaranteed stocks.* Subject to the restrictions contained in subsection 8 hereof, preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. Preferred stocks.

(1) All of the obligations and preferred stocks of the issuing corporation, if any, prior to the preferred stock acquired must be eligible as investments under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges and preferred dividends of the issuing corporation shall have been, for each of the five fiscal years immediately preceding the date of acquisition, not less than one and one-half times the sum of the annual fixed charges and contingent interest, if any, and the annual preferred dividend requirements as of the date of acquisition.

The term *"preferred dividend requirements"* shall mean cumulative or noncumulative dividends whether paid or not.

The term *"fixed charges"* shall be construed in accordance with subsection 5 above. The term *"net earnings available for fixed charges and preferred dividends"* as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes, including any income taxes, depreciation and depletion, but nonrecurring items may be excluded.

b. Guaranteed stocks.

(1) All of the fixed interest-bearing obligations of the guaranteeing corporation, if any, must be eligible under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges of the guaranteeing corporation shall meet the requirements outlined in paragraph *"a"* of subsection 5 above, except that all guaranteed dividends shall be included in *"fixed charges"*.

Any investments in preferred stocks or guaranteed stocks made under the provisions of this subsection shall be considered as moneys and credits for purposes of taxation and their assessment shall be subject to deductions for indebtedness as provided by law in the case of assessment of moneys and credits in general. This provision shall be effective as to assessments made during the year 1947 and thereafter.

7. *Equipment trust obligations.* Subject to the restrictions contained in subsection 8, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used wholly or in part in the United States of America

or Canada, that provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue, and also provide:

a. For vesting of title to such equipment free from encumbrance in a corporate trustee, or

b. For creation of a first lien on such equipment.

8. *Further restrictions.* Securities included under subsections 5, 6, and 7 shall not be eligible:

a. If the corporation is in default on fixed obligations as of the date of acquisition. Securities provided in paragraph *"a"* of subsection 6 shall not be eligible if the issuing corporation is in arrears with respect to the payment of any preferred dividends as of the date of acquisition.

b. The investments of any company or association in such securities shall not be eligible in excess of the following percentages of the legal reserve of such company or association:

(1) With the exception of public securities, two percent of the legal reserve in the securities of any one corporation. Five percent of the legal reserve in the securities of any one public utility corporation.

(2) Seventy-five percent of the legal reserve in the securities described in subsection 5 issued by other than public utility corporations. Fifty percent of the legal reserve in the securities described in subsection 5 issued by public utility corporations.

(3) Ten percent of the legal reserve in the securities described in subsection 6.

(4) Ten percent of the legal reserve in the securities described in subsection 7.

c. Statements adjusted to show the actual condition at the time of acquisition or the effect of new financing, known commercially as pro forma statements, may be used in determining whether investments under subsections 5 and 6 are in compliance with requirements. Statements so adjusted or consolidated statements may be used in order to include the earnings of all predecessor, merged, consolidated, or purchased companies.

9. *Real estate bonds and mortgages.*

a. Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first or second lien upon otherwise unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property where fifty years or more of the term including renewals is unexpired, provided that at the date of acquisition the total indebtedness secured by the first or second lien shall not exceed ninety percent of the value of the property upon which it is a lien. However, a company or organization shall not acquire an indebtedness secured by a first or second lien upon a single parcel of real property, or upon a leasehold interest in a single parcel of real property, in excess of two percent of its legal reserve. These limitations do not apply to obligations described in paragraphs *"b", "c", "d", "e"* and *"f"* of this subsection.

Improvements and appurtenances to real property shall not be considered in estimating the value of the property unless the owner contracts to keep the property adequately insured during the life of the loan in some reliable fire insurance companies, or associations, the insurance to be made payable in case of loss to the mortgagee, trustee, or assignee as its interest appears at the time of the loss.

For the purpose of this subsection a mortgage or deed of trust is not other than a first or second lien upon property by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when the real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

b. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of Congress of the United States of America approved June 27, 1934, entitled the *"National Housing Act"**, as heretofore and hereafter amended.

c. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with the terms and provisions of Title III of an Act of Congress of the United States of America approved June 22, 1944, known as Public Law 346 — Seventy-eighth Congress, Chapter 268 — 2nd Session, cited as the *"Servicemen's Readjustment Act of 1944"***, as heretofore and hereafter amended.

d. Contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness, or in the acquisition or disposition of real property acquired pursuant to subsection 14.

e. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with Title I of the Bankhead-Jones Farm Tenant Act, an Act of the Congress of the United States, cited as the *"Farmers Home Administration Act of 1946"****, as heretofore or hereafter amended.

f. Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real property or both personal and real property, including a leasehold of real estate, within the United States of America, or any insular or

territorial possession of the United States of America, or the Dominion of Canada, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under subsection 1, 2 or 3 of this section, or to a corporation whose obligations qualify under paragraph *"a"* of subsection 5 of this section, if the terms of the bond, note or other evidence of indebtedness provide for the amortization during the initial, fixed period of the lease or contract of one hundred percent of the indebtedness and there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, ground rents and taxes other than the income taxes of the borrower; provided, however, that where the security consists of a first mortgage or deed of trust lien on a fee interest in real property only, the bond, note or other evidence of indebtedness may provide for the amortization during the initial, fixed period of the lease or contract of less than one hundred percent of the indebtedness if there is to be left unamortized at the end of such period an amount not greater than the appraised value of the land only, exclusive of all improvements, and if there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower. Investments made in accordance with the provisions of this paragraph shall not be eligible in excess of twenty-five percent of the legal reserve, nor shall any one such investment in excess of five percent of the legal reserve be eligible.

g. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of the federal Parliament of the Dominion of Canada approved March 18, 1954, cited as the *"National Housing Act, 1954"*, as heretofore and hereafter amended.

10. *Real estate.*

a. Real estate in this state which is necessary for the accommodation of the company or association as a home office or in the transaction of its business. In the erection of buildings for such purposes, there may be added rooms for rent. Before the company or association invests any of its funds in accordance with this paragraph it shall first obtain the consent of the commissioner. The maximum amount which a company or association shall be permitted to invest in accordance with these provisions shall not exceed ten percent of the legal reserve. However, a stock company may invest such portion of its paid-up capital, in addition to ten percent of the legal reserve, as is not held to constitute a part of its legal reserve, under section 508.36, and the total legal reserve of the company shall be equal to or exceed the amount of its paid-up capital stock.

b. Any real estate acquired through foreclosure, or in settlement or satisfaction of any indebtedness. Any company or association may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled.

11. *Certificates of sale.* Certificates of sale obtained through foreclosure of liens on real estate.

12. *Policy loans.* Loans upon the security of the policies of the company or association and constituting a lien thereon in an amount not exceeding the legal reserve thereon.

13. *Collateral loans.* Loans secured by collateral consisting of any securities qualified in this section, provided the amount of the loan is not in excess of ninety percent of the value of the securities.

Provided further that subsection 8 of this section shall apply to the collateral securities pledged to the payment of loans authorized in this subsection.

14. *Urban real estate and personal property.* Personal or real property or both located within the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income. However, personal property acquired under this subsection shall be acquired for the purpose of entering into a contract for the sale or for a use under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. Legal title to the real property may be acquired subject to a contract of sale. *"Real property"* as used in this subsection includes a leasehold of real estate, an undivided interest in a leasehold of real estate, and an undivided interest in the fee title of real estate. Investments under this subsection are not eligible in excess of ten percent of the legal reserve.

15. *Railroad obligations.* Bonds or other evidences of indebtedness which carry a fixed rate of interest and are issued, assumed or guaranteed by any railroad company incorporated under the laws of the United States of America, or of any state, district, insular or territorial possessions thereof, not in reorganization or receivership at the time of such investment, provided that the railroad company:

a. Shall have had for the three-year period immediately preceding investment, for which the necessary data for the railroad company shall

have been published, a balance of income available for fixed charges which shall have averaged per year not less than one and one-quarter times the fixed charges for the latest year of the period; and

b. Shall have had for the three-year period immediately preceding investment, for which the necessary data for both the railroad company and all class I railroads shall have been published:

(1) A balance of income available for the payment of fixed charges at least as many times greater than the fixed charges for the latest year of the period as the balance of income available for the payment of fixed charges of all class I railroads for the same three-year period is times greater than the amount of all fixed charges for such class I railroads for the latest year of the period; and

(2) An amount of railway operating revenues remaining after deduction of three times the fixed charges for the latest year of the period from the balance of income available for the payment of fixed charges for the three-year period, which amount is as great a proportion of its railway operating revenues for the same three-year period as is the proportion of railway operating revenues remaining for all class I railroads, determined in the same manner and for the same period as for the railroad.

The terms *"class I railroads", "balance of income available for the payment of fixed charges", "fixed charges"* and *"railway operating revenues"* when used in this subsection, are to be given the same meaning as in the accounting reports filed by a railroad company in accordance with the regulations for common carriers by rail of the Interstate Commerce Act; 24 Stat. L. 379; 49 U.S.C. § 1 to 40 inc., 1001 to 1100 inc., provided that the *"balance of income available for the payment of fixed charges"* and *"railway operating revenues remaining"*, as the terms are used in this subsection, shall be computed before deduction of federal income or excess profits taxes; and that in computing *"fixed charges"* there shall be excluded interest and amortization charges applicable to debt called for redemption or which will otherwise mature within six months from the time of investment and for the payment of which funds have been or currently are being specifically set aside.

The eligibility of railroad obligations described in the first sentence of this subsection shall be determined exclusively as provided herein, without regard to the provisions for qualification contained in subsections 5 and 8 of this section. Provisions for qualification contained in this section shall not be construed as applying to equipment trust obligations, guaranteed stocks, or contingent interest bonds of railroad companies. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

16. *Deposit of securities.* Securities in an amount not less than the legal reserve as defined in this section shall be deposited and the deposit maintained with the commissioner of insurance or at such places as the commissioner may designate as will properly safeguard them. There may be included in the deposit an amount of cash on hand not in excess of five percent of the deposit required, that deposit to be evidenced by a certified check, certificate of deposit, or other evidence satisfactory to the commissioner of insurance. Deposits of securities may be made in excess of the amounts required by this section. A stock company organized under the laws of this state shall not be required to make a deposit until the legal reserve, as ascertained by the commissioner, exceeds the amount deposited by it as capital. Real estate may be made a part of the deposit by furnishing evidence of ownership satisfactory to the commissioner and by conveying the real estate to the commissioner or the commissioner's successors in office by warranty deed. The commissioner and the successors in office shall hold the real estate in trust for the benefit of the policyholders of the company or members of the association. Real estate mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement is subject to check at the discretion of the commissioner.

The securities comprising the deposit of a company or association against which proceedings are pending under section 508.18 shall vest in the state for the benefit of all policyholders of the company or association.

Securities or title to real estate on deposit may be withdrawn at any time and other eligible securities may be substituted, provided the amount maintained on deposit is equal to the sum of the legal reserve and twenty-five thousand dollars. In the case of real estate the commissioner shall execute and deliver to the company or association a quitclaim deed to the real estate. Any company or association shall, if requested by the commissioner, at the time of withdrawing any securities on deposit, designate for what purpose the same are being withdrawn.

Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income from the deposit unless proceedings against the company or association are pending under section 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

Any company or association receiving payments or partial payments of principal on any securities deposited with the commissioner of insurance shall notify the commissioner of such fact at such times and in such manner as the commissioner may prescribe, giving the amount and date of payment.

The commissioner of insurance may receive on

deposit securities or title to real estate of alien companies authorized to do business in the state of Iowa, for the purpose of securing its policyholders in the state of Iowa and the United States. The provisions hereof not inconsistent with the deposit agreement shall apply to the deposits of such alien companies.

17. *Rules of valuation.*

a. All bonds or other evidences of debt having a fixed term and rate of interest, if amply secured and not in default as to principal or interest, may be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

In applying the above rule, the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

b. Certificates of sale obtained by foreclosure of liens on real estate shall be valued in an amount not greater than the unpaid principal of the defaulted indebtedness plus any amounts actually expended for taxes and acquisition costs.

c. All investments, except those for which a specific rule is provided in this subsection, shall be valued at their market value, or at their appraised value, or at prices determined by the commissioner of insurance as representing their fair market value, or at a value as determined under rules adopted by the national association of insurance commissioners.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rules, but no company or association shall be prevented from valuing any asset at an amount less than that provided by this subsection.

18. *Common stocks or shares.*

a. Common stocks or shares issued by solvent corporations or institutions are eligible if the total investment in stocks or shares in the corporations or institutions does not exceed ten percent of legal reserve, provided not more than one-half percent of the legal reserve is invested in stocks or shares of any one corporation. However, the stocks or shares shall be listed or admitted to trading on an established foreign securities exchange or a securities exchange in the United States or shall be publicly held and traded in the *"over-the-counter market"* and market quotations shall be readily available, and further, the investment shall not create a conflict of interest for an officer or director of the company between the insurance company and the corporation whose stocks or shares are purchased.

b. Common stocks or shares in a subsidiary corporation, the acquisition or purchase of which is authorized by section 508.33 are eligible if the total investment in these stocks or shares does not exceed five percent of the legal reserve. These stocks or shares are eligible even if the stocks or shares are not listed or admitted to trading on a securities exchange in the United States and are not publicly held and have not been traded in the *"over-the-counter market"*. The stocks or shares shall be valued at their book value.

19. *Other foreign government or corporate obligations.* Bonds or other evidences of indebtedness, not to include currency, issued, assumed, or guaranteed by a foreign government other than Canada, or by a corporation incorporated under the laws of a foreign government other than Canada. Such governmental obligations must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Such corporate obligations must meet the qualifications established in subsection 5 for bonds and other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada. Foreign investments authorized by this subsection are not eligible in excess of ten percent of the legal reserve of the life insurance company or association. Investments in obligations of a foreign government other than Canada are not eligible in excess of two percent of the legal reserve in the securities of foreign governments of any one foreign nation. Investments in a corporation incorporated under the laws of a foreign government other than Canada are not eligible in excess of two percent of the legal reserve in the securities of any one foreign corporation.

Eligible investments in foreign obligations under this subsection are limited to the types of obligations specifically referred to in this subsection. This subsection in no way limits or restricts investments in Canadian obligations and securities specifically authorized in other subsections of this section.

This subsection shall not authorize investment in evidences of indebtedness issued, assumed, or guaranteed by a foreign government which engages in a consistent pattern of gross violations of human rights.

20. *Venture capital funds.* Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the funds in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its legal reserve under this subsection. For purposes of this subsection, *"venture capital fund"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assis-

tance to, small businesses which meet the small business administration definition of small business. *"Equity interests"* means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

21. *Use of custodian banks, clearing corporations, and the federal reserve book-entry system.*

a. As used in this subsection:

(1) *"Clearing corporation"* means a corporation as defined in section 554.8102.

(2) *"Custodian bank"* means a federal or state bank or trust company regulated under the Iowa banking laws or the federal reserve system, which maintains an account in its name in a clearing corporation and acts as custodian of securities owned by a domestic insurer.

(3) *"Federal reserve book-entry system"* means the computerized system sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and its agencies and instrumentalities, in the federal reserve banks through national banks, state banks, or trust companies, which either are members of the federal reserve system or otherwise have access to the computerized systems.

b. Securities deposited by a domestic insurance company with a custodian bank, or redeposited by a custodian bank with a clearing corporation, or held in the federal reserve book-entry system may be used to meet the deposit requirements of subsection 16. The commissioner shall adopt rules necessary to implement this section which:

(1) Establish guidelines on which the commissioner determines whether a custodian bank qualifies as a bank in which securities owned by an insurer may be deposited for the purpose of satisfying the requirements of subsection 16.

(2) Designate those clearing corporations in which securities owned by insurers may be deposited.

(3) Set forth provisions that custodian agreements executed between custodian banks and insurers shall contain. These shall include provisions stating that minimum deposit levels shall be maintained and that the parties agree securities in deposits with custodian banks shall vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

(4) Establish other safeguards applicable to the use of custodian banks and clearing corporations by insurers which the commissioner believes necessary to protect the policyholders of the insurers.

c. A security owned by a domestic insurer and deposited in a custodian bank or clearing corporation does not qualify for purposes of its legal reserve deposit unless the custodian bank and clearing corporation are approved by the commissioner for that purpose.

22. *Financial instruments used in hedging transactions.*

a. As used in this subsection, unless the context otherwise requires:

(1) *"Financial instrument"* means an agreement, option, instrument, or any series or combination agreement, option, or instrument that provides for either of the following:

(a) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu of such delivery or relinquishment.

(b) Which has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(2) *"Financial instrument transaction"* means a transaction involving the use of one or more financial instruments.

(3) *"Hedging transaction"* means a financial instrument transaction which is entered into and maintained to reduce either of the following:

(a) The risk of a change in the value, yield, price, cash flow, or quality of assets or liabilities which the domestic insurer has acquired and maintains as qualified assets in its legal reserve deposit or which liabilities the domestic insurer has incurred and form the basis for calculation of its legal reserve.

(b) The currency exchange-rate risk or the degree of exposure as to assets or liabilities which the domestic insurer has acquired or incurred.

b. Financial instruments used in hedging transactions must meet the qualifications established in subsection 5 for bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada, or the qualifications established in subsection 19 for bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of a foreign government other than Canada.

c. Investments in financial instruments used in hedging transactions are not eligible in excess of two percent of the legal reserve in the financial instruments of any one corporation, less any securities of that corporation owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 when-

ever proceedings under that section are instituted.

d. Investments in financial instruments used in hedging transactions are not eligible in excess of ten percent of the legal reserve, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

e. Investments in financial instruments of foreign governments or foreign corporate obligations, other than Canada, used in hedging transactions are not eligible in excess of ten percent of the legal reserve, less any foreign investment authorized by subsection 19 owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

f. Prior to engaging in hedging transactions under this subsection, a domestic insurer shall develop and adequately document policies and procedures regarding hedging transaction strategies and objectives. Such policies and procedures shall address authorized hedging transactions, limitations, internal controls, documentation, and authorization and approval procedures. Such policies and procedures shall also provide for review of hedging transactions by the domestic insurer's board of directors or the board of directors' designee.

g. A domestic insurer shall be able to demonstrate to the commissioner the intended hedging characteristics of hedging transactions under this subsection and the ongoing effectiveness of each hedging transaction or combination of hedging transactions.

h. Financial instruments used in hedging transactions shall only be eligible in accordance with this subsection after the commissioner has adopted rules pursuant to chapter 17A regulating hedging transactions under this subsection.

[C73, §1179 – 1181; C97, §1791 – 1793, 1803, 1804, 1806, 1807; SS15, §1806; C24, 27, 31, 35, 39, §**8698 – 8701, 8735 – 8739, 8741, 8742, 8744, 8747;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.8; 81 Acts, ch 168, §1; 82 Acts, ch 1095, §2 – 5]

84 Acts, ch 1067, §40; 85 Acts, ch 136, §1; 85 Acts, ch 228, §4; 85 Acts, ch 252, §31; 87 Acts, ch 64, §1 – 4; 88 Acts, ch 1112, §205; 89 Acts, ch 83, §69; 89 Acts, ch 311, §29; 91 Acts, ch 26, §38, 59, 60; 96 Acts, ch 1013, §1; 96 Acts, ch 1138, §1, 84; 98 Acts, ch 1014, §1; 2000 Acts, ch 1023, §15 – 18, 60; 2002 Acts, ch 1119, §179

Similar provisions, §515.35

*48 Stat. L. 1246; 12 U.S.C. §1701 et seq.

**58 Stat. L. 291; recodified, 72 Stat. L. 1105, 1273; now covered by 38 U.S.C. §3701 et seq.

***60 Stat. L. 1062; repealed by Pub. L. No. 87-128, §341(a); see 7 U.S.C. §1921 et seq.

Subsection 22, paragraph d amended

511.8A Agricultural land.

Agricultural land, as defined in section 9H.1, acquired as provided in section 511.8, subsection 10, paragraph *"b"*, by a life insurance company or association incorporated by or organized under the laws of this or any other state, shall be sold or otherwise disposed of by the company or association within five years after title is vested in the company or association. A life insurance company or association is a corporation for purposes of chapter 9H.

89 Acts, ch 311, §30

511.9 Violations.

The commissioner shall have authority to suspend or revoke the certificate of authority of any company or association failing to comply with any of the provisions of section 511.8, or for violating the same.

[SS15, §1806; C24, 27, 31, 35, 39, §**8745;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.9]

511.10 Rule of valuation.

All bonds or other evidences of debt having a fixed term and rate, held by any fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows:

1. If purchased at par, at the par value.
2. If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

Provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule.

[C24, 27, 31, 35, 39, §**8746;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.10]

511.11 Prohibited loans.

No insurance company or association organized under the statutes of this state to transact an insurance business, shall invest its capital, surplus funds, or other assets, in or loan the same on property owned by any officer or director of such company or by any of the immediate members of the family of any such officer or director.

[C24, 27, 31, 35, 39, §**8748;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.11]

511.12 Officers not to profit by investments.

No such officer or director shall gain through the investment of funds of any such company.

[C24, 27, 31, 35, 39, §**8749;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.12]

511.13 Disbursements — vouchers — affidavit.

No domestic life insurance company shall make any disbursement of one hundred dollars or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements the voucher shall set forth the services rendered and an itemized statement of the disbursements made. When such voucher cannot be obtained the expenditure shall be evidenced by an affidavit of some officer or agent of said company describing the character and object of the expenditure and stating the reason for not obtaining such voucher.

[S13, §1820-a; C24, 27, 31, 35, 39, §**8750;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.13]

511.14 Taxes — from what funds payable.

In case this or any other state shall impose or levy any tax on any company or association, the same may be paid from any surplus or emergency fund of such company or association.

[C97, §1821; C24, 27, 31, 35, 39, §**8751;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.14]

511.15 Discrimination against domestic company. Repealed by 89 Acts, ch 83, § 87.

511.16 Illegal business.

Any officer, manager, or agent of any life insurance company or association who, with knowledge that it is doing business in an unlawful manner or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of an aggravated misdemeanor.

[C97, §1814; C24, 27, 31, 35, 39, §**8755;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.16]

511.17 Contracts void — recovery — damages — attorney fees.

All contracts, promises, and agreements made by any person to or with any such company or association concerning any premium, policy, or certificate of new business, after the revocation of its certificates or denial of authority to do business, shall be null and void, and all payments of premium or assessments advanced or made by any person on account of any such policy, certificate of new business, or upon any arrangement therefor, may be recovered from such company or association, or its agent to whom payment was advanced or made, or from both of them, and in addition thereto plaintiff may recover an equal amount as liquidated damages, together with a reasonable fee to plaintiff's attorney for services in the case.

[C97, §1814; C24, 27, 31, 35, 39, §**8756;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.17]

511.18 Fraud in procuring insurance.

Any agent, physician, or other person who shall knowingly, by means of concealment of facts or false statements, procure or assist in procuring from any life insurance organization any policy or certificate of insurance, shall be guilty of a fraudulent practice.

[C97, §1816; C24, 27, 31, 35, 39, §**8757;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.18]

511.19 Repealed by 76 Acts, ch 1245(4), § 525.

511.20 and 511.21 Repealed by 55 Acts, ch 237, § 16, 17. See chapter 507B.

511.22 May not advertise authorized capital.

No insurance company shall be permitted to advertise or publish an authorized capital, or to represent in any manner itself as possessed of any greater capital than that actually paid up and invested.

[S13, §1783-g; C24, 27, 31, 35, 39, §**8761;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.22]

511.23 Penalties.

Any person, firm, or corporation violating any of the provisions of section 511.22, or sections 515.8 to 515.11 or failing to comply with any of the provisions therein, shall be subjected to the penalties provided in sections 507.10 and 507.12.

[S13, §1783-h; C24, 27, 31, 35, 39, §**8762;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.23]

511.24 Fees from domestic and foreign companies.

When not otherwise provided, a foreign or domestic life insurance company doing business in this state shall pay to the commissioner of insurance the following fees:

1. For filing an application to do business, or an application to renew a certificate of authority, fifty dollars.
2. For issuing a certificate of authority to do business in this state, or for renewing a certificate, fifty dollars.
3. For filing amended articles of incorporation, fifty dollars.
4. For issuing an amended certificate of authority, twenty-five dollars.
5. For affixing the official seal to any paper filed with the division, ten dollars.

[C73, §1183; C97, §1818; C24, 27, 31, 35, 39, §**8763, 8764;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.24, 511.25; 82 Acts, ch 1003, §5]

88 Acts, ch 1112, §206, 303

511.25 Repealed by 82 Acts, ch 1003, § 15. See § 511.24.

511.26 Fee statute — applicability.

The provisions of the chapter on insurance other than life apply as to fees under this chapter and chapter 508 except as modified by section 511.24.

[C97, §1818; C24, 27, 31, 35, 39, §**8765;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.26]

83 Acts, ch 101, §107; 89 Acts, ch 83, §70

Insurance other than life, chapter 515

511.27 Commissioner as process agent.

Every life insurance company and association organized under the laws of another state or country shall, before receiving a certificate to do business in this state or any renewal thereof, file in the office of the commissioner of insurance an agreement in writing that thereafter service of notice or process of any kind may be made on the commissioner, and when so made shall be as valid, binding, and effective for all purposes as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service.

[C73, §1165; C97, §1808; C24, 27, 31, 35, 39, §**8766;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.27]

511.28 Service of process.

Any notice or process, with three copies of the notice or process, may be mailed to the commissioner at Des Moines, Iowa, in a certified mail letter addressed to the commissioner by the commissioner's official title. The commissioner shall acknowledge service on behalf of the defendant foreign insurance company by writing, giving the date of receipt of the notice or process, and shall return the notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to the clerk by the clerk's official title, and shall also mail a copy, with a copy of the commissioner's acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation named or designated by such company in the written instrument. Notice or process received prior to 10 a.m. shall be forwarded the same working day. Notice or process received after 10 a.m. shall be forwarded the next working day. A fee of fifteen dollars must accompany the request for notice or process.

[C73, §1165; C97, §1808; C24, 27, 31, 35, 39, §**8767;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.28]

92 Acts, ch 1162, §15; 99 Acts, ch 165, §7

511.29 Interpretation.

The provisions of sections 511.27 and 511.28 are merely additions to the general provisions of law on the subjects therein referred to, and are not to be construed to be exclusive.

[C97, §1809; C24, 27, 31, 35, 39, §**8768;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.29]

Service generally, chapter 617

511.30 Intoxication as defense.

In any action pending in any court of the state on any policy or certificate of life insurance, wherein the defendant seeks to avoid liability upon the alleged ground of the intemperate habits or habitual intoxication of the assured, it shall be a sufficient defense for the plaintiff to show that such habits or habitual intoxication of the assured were generally known in the community or neighborhood where the agent of the defendant resided or did business, if thereafter the company continued to receive the premiums falling due thereon.

[C97, §1811; C24, 27, 31, 35, 39, §**8769;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.30]

511.31 Physician's certificate — estoppel.

In any case where the medical examiner, or physician acting as such, of any life insurance company or association doing business in the state shall issue a certificate of health or declare the applicant a fit subject for insurance, or so report to the company or association or its agent under the rules and regulations of such company or association, it shall be thereby estopped from setting up in defense of the action on such policy or certificate that the assured was not in the condition of health required by the policy at the time of the issuance or delivery thereof, unless the same was procured by or through the fraud or deceit of the assured.

[C97, §1812; C24, 27, 31, 35, 39, §**8770;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.31]

511.32 Misrepresentation of age.

In all cases where it shall appear that the age of the person insured has been understated in the proposal, declaration or other instrument upon which a policy of life insurance has been founded or issued, then the amount payable under the policy shall be such as the premium paid would have purchased at the correct age; provided, however, that one who, by misstating one's age, obtains life insurance not otherwise obtainable shall be entitled to recover from the insurer on account of such policy only the aggregate premiums paid.

[C97, §1813; C24, 27, 31, 35, 39, §**8771;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.32]

511.33 Application for insurance — duty to attach to policy.

All life insurance companies or associations organized or doing business in this state under the provisions of the preceding chapters shall, upon the issue of any policy, attach to such policy, or endorse thereon, a true copy of any application or representation of the assured which by the terms of such policy are made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy, or, upon reinstatement of a lapsed policy, shall attach to the renewal receipt a true copy of all representations made by the assured upon which the renewal or reinstatement is made.

[C97, §1819; C24, 27, 31, 35, 39, §**8772;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.33]

Similar provisions, §515.94

511.34 Failure to attach — defenses — estoppel.

The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section 511.33, it shall forever be precluded from pleading, alleging, or proving such application or representations, or any part thereof, or the falsity thereof, or any part thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at the plaintiff's option.

[C97, §1819; C24, 27, 31, 35, 39, §**8773;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.34]

Similar provisions, §515.95

511.35 Limitation on proofs of loss.

No stipulation or condition in any policy or contract of insurance or beneficiary certificate issued by any company or association mentioned or referred to in this chapter, limiting the time to a period of less than one year after knowledge by the beneficiary within which notice or proofs of death or the occurrence of other contingency insured against must be given, shall be valid.

[C97, §1820; S13, §1820; C24, 27, 31, 35, 39, §**8774;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §511.35]

Similar provisions, §514A.3, 515.98, 518A.19

511.36 Interest rates on policy loans.

1. Life insurance policies issued after July 1, 1984 may provide interest rates on policy loans in accordance with either of the following:

a. A maximum interest rate of not more than eight percent per annum.

b. An adjustable maximum interest rate established as permitted under this section.

2. The rate of interest charged on a policy loan made under subsection 1, paragraph *"b"*, shall not exceed the greater of the following:

a. The published monthly average for the calendar month ending two months before the date on which the rate is determined. For purposes of this subsection, *"published monthly average"* means one of the following:

(1) Moody's corporate bond yield average-monthly average corporates as published in Moody's investors service, inc., or any successor to the investors service.

(2) If Moody's corporate bond yield average-monthly average corporates is no longer published, a substantially similar average established by rule issued by the commissioner of insurance.

b. The rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.

3. If the maximum rate of interest is determined under subsection 1, paragraph *"b"*, the policy shall state the frequency at which the rate is to be determined for that policy.

4. The maximum rate for the policy shall be determined at established intervals at least once every twelve months, but not more frequently than once every three months. At the intervals established in the policy the rate:

a. May be increased when an increase as determined under subsection 2 would increase the charged rate by one-half percent or more per annum.

b. Shall be reduced when a reduction as determined under subsection 2 would decrease the charged rate by one-half percent or more per annum.

5. When a cash loan is made, the insurer shall notify the policyholder of the initial interest rate on the loan. With respect to premium loans, the insurer shall notify the policyholder of the initial interest rate as soon as the insurer can reasonably do so after making the loan. An insurer need not inform the policyholder of the interest rate when an additional premium loan is made unless the interest rate increases. However, policyholders with either cash or premium loans shall receive reasonable advance notice of any increase in the interest

rate. Notices required under this subsection shall also contain the following information:

a. The maximum interest rate on the loan if the loan is a fixed rate loan.

b. The fact that the interest rate is adjustable if the loan is an adjustable rate loan.

c. The frequency at which the rate is to be determined for that policy or if an adjustable interest rate, the established intervals at which the rate may be adjusted.

6. A policy shall not terminate in a policy year solely as the result of change in the interest rate during that year. The life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

7. Policies of insurance upon which a loan can be made shall state the following:

a. Whether fixed rate loans or adjustable rate loans are permitted.

b. If fixed rate loans are permitted, the maximum rate of interest on those loans.

c. If adjustable rate loans are permitted, the established intervals at which the rate may be adjusted.

8. Unless the context otherwise requires, for purposes of this section:

a. The rate of interest on policy loans includes the interest rate charged on reinstatement of policy loans for the period during and after a lapse of the policy.

b. *"Policy loan"* includes a premium loan made under a policy to pay a premium that was not paid to the insurer when due.

c. *"Policyholder"* includes the owner of the policy or the person designated, on the records of the insurer, to pay premiums.

d. *"Policy"* includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

9. Other provisions of law do not apply to policy loan interest rates unless made specifically applicable to the rates.

84 Acts, ch 1017, §1; 97 Acts, ch 186, §8

511.37 Policy exempt from execution. Repealed by 88 Acts, ch 1255, § 8. See § 627.6.

511.38 Interest on delayed claims payments.

1. When an insurance policy provides for the payment of its proceeds to a beneficiary upon the death of an individual and, without the written consent of the beneficiary, the company fails or refuses to pay the proceeds within thirty days after receipt of satisfactory proof of death, the company shall pay interest on the proceeds or any amount of the proceeds not paid within the thirty days, provided, however, if the policy requires a beneficiary to survive for a designated period after the death of the insured, the company shall pay interest on the proceeds or any amount of the proceeds not paid within thirty days after the designated period.

2. The interest owed on any amount of the proceeds of a policy under this section shall be computed from the date of receipt of the proof of death. The rate of interest shall be the higher of the following:

a. The effective rate of interest charged by the company on policy loans under section 511.36 on the date of receipt of proof of death.

b. The effective rate of interest paid by the company on death proceeds left on deposit with the company.

3. A payment of interest shall not be required under this section in any case in which the beneficiary elects to receive the proceeds under the policy by any means other than a lump sum payment.

89 Acts, ch 321, §35

511.39 Charitable organizations — insurable interest.

A charitable organization described in section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3, has an insurable interest in the life of a person who, when purchasing a life insurance policy, makes a donation to the charitable organization or makes the charitable organization the beneficiary of all or a part of the proceeds of the policy or joins with a charitable organization in applying for an insurance policy which when issued will insure that person's life and name the organization as owner or beneficiary of all or any portion of the benefits of the life insurance policy.

92 Acts, ch 1162, §16

CHAPTER 512

FRATERNAL BENEFICIARY SOCIETIES, ORDERS OR ASSOCIATIONS

Repealed by 90 Acts, ch 1148, §38, 39, effective January 1, 1991;
see chapter 512B

CHAPTER 512A

BENEVOLENT ASSOCIATIONS

Benevolent associations not to be incorporated
on or after July 1, 1988; §512A.9

512A.1 Definitions.
512A.2 Rules promulgated.
512A.3 Incorporation mandatory.
512A.4 Records of transactions.
512A.5 Fees to commissioner.
512A.6 Contributions for expenses.
512A.7 Certificate of membership.
512A.8 Penalties.
512A.9 Incorporation of benevolent associations prohibited.
512A.10 Articles, amendments to articles, and bylaws.

512A.1 Definitions.

When used in this chapter:

1. A *"benevolent association"* shall mean any person, firm, company, partnership, association or corporation, organized to enroll persons as members of a group for the purpose of providing an agency by which persons so enrolled may in the event of the death of any other member of the group make voluntary contributions to be distributed in whole or in part by the benevolent association to the beneficiary of the deceased member, or to members as contribution towards expense incurred by accident or sickness.

2. A *"member"* shall be any person who participates in a plan or agreement to make voluntary contribution through a benevolent association.

3. *"Commissioner"* when used in this chapter shall mean the commissioner of insurance.

[C71, 73, 75, 77, 79, 81, §512A.1]

512A.2 Rules promulgated.

The commissioner shall promulgate such reasonable rules as the commissioner deems necessary to assure the proper operation of benevolent associations.

[C71, 73, 75, 77, 79, 81, §512A.2]

512A.3 Incorporation mandatory.

Before a benevolent association shall operate in this state it shall first incorporate in accordance with the laws of this state, and the articles of incorporation and bylaws shall be submitted to the commissioner. If the commissioner finds they conform to the requirements of the law and all rules and regulations promulgated under this chapter, the commissioner shall approve the articles of incorporation and file them with the secretary of state. Every benevolent association at the time of its incorporation shall submit its general plan of operation to the commissioner and if the commissioner finds it conforms to the requirements of the law and all reasonable rules and regulations promulgated under this chapter, the commissioner shall issue a license to expire on the first day of June after issuance. The license shall be renewed from year to year upon application of the association, if the commissioner finds from examination that it has conformed to the requirements of all laws and regulations applicable thereto.

[C71, 73, 75, 77, 79, 81, §512A.3]
88 Acts, ch 1112, §106

512A.4 Records of transactions.

The association shall keep a record of all its transactions and shall file an annual report thereof for the preceding calendar year on or before the first day of March on a form prescribed by the commissioner. The commissioner shall also prescribe the method of keeping books and accounts of benevolent associations.

[C71, 73, 75, 77, 79, 81, §512A.4]

512A.5 Fees to commissioner.

The following fees shall be paid to the commissioner for services required under this chapter, which shall be accounted for by the commissioner in the same manner as other fees received in the discharge of the duties of the office:

1. For filing and examination of amendments to the articles of incorporation in this state and the accompanying general plan of operation of any benevolent association, and the issuing of the permission to do business, twenty dollars.

2. For filing an annual statement of a benevolent association, and issuing the renewal of the permission required by law to authorize continuance in business, twenty-five dollars per existing unit, not to exceed three hundred dollars in the aggregate.

[C71, 73, 75, 77, 79, 81, §512A.5]
91 Acts, ch 213, §10

512A.6 Contributions for expenses.

Such associations may operate without the establishment of reserves or surplus except for current expenses. Contributions for expenses shall be added as a separate item to contributions for

membership benefits. A reasonable membership fee to cover initial expenses may be charged.

[C71, 73, 75, 77, 79, 81, §512A.6]

512A.7 Certificate of membership.

Within thirty days after acceptance to membership a certificate, the form of which has been approved by the commissioner, shall be delivered to each member. The certificate shall set forth the name of the association, the name of the member, a statement as to the benefits of membership, to whom such benefits are payable, and such other provisions as are, in the opinion of the commissioner, necessary to inform the member of the member's rights in the association. The commissioner before approving any certificate shall be satisfied that any benefits to be paid a member or the beneficiary of a member are reasonable in relationship to any and all charges made or assessed against the membership. The certificate shall not indicate therein that the plan or benefits constitute an insurance policy.

[C71, 73, 75, 77, 79, 81, §512A.7]

512A.8 Penalties.

Except as otherwise provided by law, it shall be unlawful for any person or corporation to operate a benevolent association in this state except as provided for in this chapter. Any person violating the provisions of this chapter shall be guilty of a serious misdemeanor.

[C71, 73, 75, 77, 79, 81, §512A.8]

512A.9 Incorporation of benevolent associations prohibited.

Notwithstanding any provision of this chapter to the contrary, a benevolent association shall not be incorporated or reincorporated in this state on or after July 1, 1988. A benevolent association incorporated before July 1, 1988, continues to be subject to the provisions of this chapter.

88 Acts, ch 1111, §1

512A.10 Articles, amendments to articles, and bylaws.

1. An organization shall present to the commissioner of insurance for approval its articles of incorporation and any subsequent amendment. The commissioner shall submit the articles of incorporation and any subsequent amendment to the attorney general for examination and, if found by the attorney general to be in accordance with this chapter and the constitution and laws of the state, the attorney general shall certify such fact on the articles of incorporation or amendment and return the articles or amendment to the commissioner. Articles of incorporation or an amendment to the articles shall not be approved by the commissioner or recorded unless certified by the attorney general.

2. The directors of a benevolent association shall have the authority to enact such bylaws and regulations not inconsistent with law as they consider necessary for the regulation and conduct of the business. A change in the bylaws shall not limit coverage under existing certificates. A benevolent association shall file with the commissioner bylaws and amendments to the bylaws within thirty days of adoption of such bylaws or amendments.

2000 Acts, ch 1023, §19

See §512A.3

CHAPTER 512B

FRATERNAL BENEFIT SOCIETIES

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SUBCHAPTER I

STRUCTURE AND PURPOSE

512B.1 Scope of chapter.

Except as otherwise provided in this chapter, societies are governed by this chapter and are exempt from all other insurance laws of this state unless expressly included in this chapter, or unless specifically made applicable by this chapter.

90 Acts, ch 1148, §1

512B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Alien society"* means an association organized under the laws of another country.

2. *"Benefit contract"* means the agreement for provision of benefits authorized by section 512B.16, as that agreement is described in section 512B.19, subsection 1.

3. *"Benefit member"* means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

4. *"Certificate"* means the document issued as written evidence of the benefit contract.

5. *"Commissioner"* means the commissioner of insurance or the commissioner's designee.

6. *"Domestic society"* means an association organized under the laws of this state.

7. *"Foreign society"* means an association organized under the laws of another state or territory of the United States.

8. *"Laws"* means the society's articles of incorporation, constitution, and bylaws, however designated.

9. *"Lodge"* means a subordinate member unit of the society, whether known as a camp, court, council, branch, or by any other designation.

10. *"Premium"* means a premium, rate, dues, or other required contribution by whatever name known, which is payable under the certificate.

11. *"Regulations"* means all regulations, or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.

12. *"Society"* means a fraternal benefit society, unless otherwise indicated.

90 Acts, ch 1148, §2

512B.3 Fraternal benefit societies — defined.

An incorporated society, order, or supreme lodge, without capital stock, including one exempted under section 512B.36, subsection 1, paragraph *"b"*, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with a ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is a fraternal benefit society.

90 Acts, ch 1148, §3

512B.4 Lodge system.

1. A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its laws, regulations, and ritual. Subordinate lodges shall be required by the laws of the society to hold regular meetings at least once in each month in furtherance of the purposes of the society.

2. A society may organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of children, nor shall children have a voice or vote in the management of the society.

90 Acts, ch 1148, §4

512B.5 Representative form of government.

A society has a representative form of government if all of the following apply:

1. It has a supreme governing body constituted in one of the following ways:

a. Assembly. The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates must constitute a majority of the delegates in number and have not less than two-thirds of the votes and not less than the number of votes required to amend the society's laws. The assembly must be elected and meet at least once every four years and must elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws. The board of directors may appoint the officers of the society if authorized to do so by the articles or bylaws of the society. A board of directors elected by an assembly shall have such powers authorized the board by the articles or bylaws of the society, and may or may not be a supreme governing body as described in paragraph *"b"*, depending upon the powers authorized by the articles or bylaws.

b. Direct election. The supreme governing body is a board of directors composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member must not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. The elected board members must constitute a majority of the board members in number and have not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board must meet at least quarterly to conduct the business of the society.

2. The officers of the society are elected by the supreme governing body or board of directors.

3. Only benefit members are eligible for election to the supreme governing body, board of directors, or any intermediate assembly.

4. Each voting member has one vote.

5. A voting member is not entitled to cast a vote by proxy.

90 Acts, ch 1148, §5

512B.6 Purposes and powers.

1. A society shall operate for the benefit of members and their beneficiaries by fulfilling both of the following purposes:

a. Providing benefits as specified in section 512B.16.

b. Operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members, which may also be extended to others.

The purposes listed in this subsection may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

2. A society may adopt laws and regulations for the government of the society, the admission of its members, and the management of its affairs. A society may amend its laws and regulations, and has other powers as necessary and incidental to carrying into effect the objects and purposes of the society.

90 Acts, ch 1148, §6

SUBCHAPTER II

MEMBERSHIP

512B.7 Qualifications for membership.

1. In its laws or regulations, a society shall at minimum specify all of the following:

a. Eligibility standards for each membership class. If benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age fifteen and not greater than age twenty-one.

b. The process for admission to membership for each membership class.

c. The rights and privileges of each membership class. Only benefit members shall have the right to vote on the management of the insurance affairs of the society.

2. A society may also admit social members. A social member shall have no voice or vote in the management of the insurance affairs of the society.

3. Membership rights in a society are personal to the member and are not assignable.

90 Acts, ch 1148, §7

512B.8 Location of office, meetings, communications to members, grievance procedures.

1. The principal office of a domestic society shall be located in this state. The meetings of its supreme governing body may be held anywhere

the society has at least one subordinate lodge, or in another location as determined by the supreme governing body, and all business transacted at a meeting held out of state shall be as valid in all respects as if the meeting were held in this state. The minutes of the proceedings of the supreme governing body and of the board of directors shall be in the English language.

2. *a.* A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Such required reports, notices, and statements shall be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

b. Not later than June 1 of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society disclosed in the annual statement shall be printed and mailed to each benefit member of the society or, in lieu of mailing, the synopsis may be published in the society's official publication.

3. A society may provide in its laws or regulations for grievance or complaint procedures for members.

90 Acts, ch 1148, §8

512B.9 Personal liability.

1. The officers and members of the supreme governing body or any subordinate body of a society are not personally liable for any benefits provided by a society.

2. A person may be indemnified and reimbursed by a society for expenses reasonably incurred by, and liabilities imposed upon, the person in connection with or arising out of a proceeding, whether civil, criminal, administrative, or investigative, or a threat of action in which the person is or may be involved by reason of the person being a director, officer, employee, or agent of the society or of any other legal entity or position which the person served in any capacity at the request of the society. However, a person shall not be so indemnified or reimbursed for either of the following:

a. In relation to any matter to which the person is finally adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society.

b. In relation to any matter which has been made the subject of a compromise settlement.

However, if the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in addition, in a criminal proceeding, had no reasonable cause to believe that the conduct was unlawful, paragraphs *"a"* and *"b"* do not apply. The determination whether the conduct of the person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in paragraph *"a"* or *"b"* may only be made by the supreme governing body by a majority vote of a quorum consisting of persons who were not parties to the proceeding or by a court of competent jurisdiction. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to a person, does not in itself create a conclusive presumption that the person met or did not meet the standard of conduct required in order to justify indemnification and reimbursement. The right of indemnification and reimbursement is not exclusive of other rights to which a person may be entitled as a matter of law and shall inure to the benefit of the person's heirs, executors, and administrators.

3. A society may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the society, or who is or was serving at the request of the society as a director, officer, employee, or agent of any other legal entity affiliated with the society against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status in relation to the society, whether or not the society would have the power to indemnify the person against such liability under this section.

4. A volunteer serving without compensation, a director, officer, employee, or member of a society, is not liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of that person for the society unless the act or omission alleged to be an exercise of judgment or discretion involved willful or wanton misconduct.

90 Acts, ch 1148, §9

512B.10 Waiver.

The laws of the society may provide that a subordinate body, or any of its subordinate officers or members, do not have the power or authority to waive any of the provisions of the laws of the society. A waiver prohibition provision is binding on the society and every member and beneficiary of a member.

90 Acts, ch 1148, §10

SUBCHAPTER III

GOVERNANCE

512B.11 Organization.

A domestic society organized on or after the effective date of this Act shall be formed as follows:

1. Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may sign and file with the secretary of state and commis-

sioner of insurance an original or copy of a document containing, at minimum, the following:

a. The proposed corporate name of the society, which shall not so closely resemble the name of any other society or insurance company as to be misleading or confusing.

b. The purposes for which the society is being formed and the mode in which its corporate powers are to be exercised. The purposes shall not include more liberal powers than are granted by this chapter.

c. The names and residences of the incorporators.

d. The names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which officers shall be elected by the supreme governing body, or board of directors, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

2. The articles of incorporation, duly certified copies of the society's regulations and laws, copies of all proposed forms of certificates, applications, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advance premiums if the organization is not completed within one year shall be filed with the commissioner of insurance, who may require further information as the commissioner deems necessary. The bond with sureties approved by the commissioner shall be in an amount, not less than three hundred thousand dollars nor more than one million five hundred thousand dollars, as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain and file the articles of incorporation, and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as provided in this chapter.

3. A preliminary certificate of authority granted under this section is not valid after one year from its date or after a further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the five hundred applicants required in this section have been secured and the organization has been completed as provided in this chapter. The articles of incorporation and all other proceedings become void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business as provided in this chapter.

4. Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount so collected. A society shall not incur a liability other than for the return of advance premiums, shall not issue a certificate, nor pay, allow, offer, or promise to pay or allow, a benefit to any person until all of the following conditions are satisfied:

a. Actual bona fide applications for benefits have been secured on not less than five hundred applicants, and any necessary evidence of insurability has been furnished to and approved by the society.

b. At least ten subordinate lodges have been established into which the five hundred applicants have been admitted.

c. A list of the applicants has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, giving the applicants' names and addresses, the date each applicant was admitted, the name and number of the subordinate lodge of which each applicant is a member, the amount of benefits to be granted, and the premiums for the benefits.

d. It has been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of the society, that at least one thousand applicants have each paid in cash at least one regular monthly premium, which premiums in the aggregate shall amount to at least three hundred thousand dollars. Advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within the time permitted by this section, each premium shall be returned to the respective applicant.

5. The commissioner may make an examination and require further information as the commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all applicable provisions of law, the commissioner shall issue to the society a certificate of authority and the society is then authorized to transact business pursuant to this chapter. A certificate of authority is prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall cause a record of each certificate of authority to be made. A certified copy of the record shall be accepted in evidence with like effect as the original certificate of authority.

6. An incorporated society authorized to transact business in this state on January 1, 1991, is not required to reincorporate. A certified copy of the current articles of incorporation of an existing society shall be filed with the commissioner and the commissioner may request additional records as the commissioner deems necessary before issuing a certificate of authority to an existing society.

90 Acts, ch 1148, §11

512B.12 Amendments to laws.

1. A domestic society may amend its laws in accordance with the provisions of its laws by action of its supreme governing body at any regular or special meeting or, if its laws so provide, by referendum. A referendum may be held in accordance with the provisions of the society's laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. An amendment submitted for adoption by referendum shall not be adopted unless, within six months from the date of submission of the referendum, a majority of the members voting have signified their consent to the amendment by one of the methods specified in this subsection.

2. An amendment to the laws of a domestic society shall not take effect unless approved by the commissioner. The commissioner shall approve an amendment if the commissioner finds that it has been duly adopted and is not inconsistent with the laws of this state or with the character, objects, and purposes of the society. An amendment shall be considered approved, unless the commissioner disapproves the amendment in writing, within thirty days after the filing of the amendment. The disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for disapproval shall be stated in the written notice.

3. Within ninety days from the approval of an amendment by the commissioner, the amendment, or a synopsis of it, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of an officer of the society or of anyone authorized by the society to mail an amendment or synopsis of an amendment, stating facts which demonstrate compliance with this subsection, is prima facie evidence that the amendment or synopsis has been furnished to the addressees.

4. A foreign or alien society authorized to do business in this state shall file with the commissioner a duly certified copy of all amendments of its laws within ninety days after their enactment.

5. Printed copies of the laws as amended, certified by the secretary, or corresponding officer of the society, are prima facie evidence of the legal adoption of the laws and amendments.

90 Acts, ch 1148, §12

512B.13 Institutions.

A society may create, maintain, and operate, or may establish organizations to operate, not-for-profit institutions to further the purposes permitted by section 512B.5, subsection 1, paragraph *"b"*. The institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held, or leased by the society for this purpose shall be reported in every annual statement. A not-for-profit institution so established is a charitable institution with all the rights, benefits, and privileges given to charitable institutions under the constitution and laws of this state. The commissioner may adopt appropriate rules and reporting requirements.

90 Acts, ch 1148, §13

512B.14 Reinsurance.

1. A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance agreements and authorized to do business in this state, or if not so authorized, one which is approved by the commissioner; but a society shall not reinsure substantially all of its insurance in force without the written permission of the commissioner. It may take credit for the reserves on ceded risks to the extent reinsured, but credit shall not be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after January 1, 1991, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

2. Notwithstanding the limitation in subsection 1, a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under section 512B.15.

90 Acts, ch 1148, §14

512B.15 Consolidations and mergers.

1. A domestic society may consolidate or merge with a domestic society, foreign society, or society chartered under the laws of Canada or a Canadian province or territory, by complying with this section. The society shall file with the commissioner all of the following:

a. A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger.

b. A sworn statement by the president and secretary, or corresponding officers of each society, showing the financial condition of the society on a date fixed by the commissioner.

c. A certificate of each officer submitting a sworn statement pursuant to paragraph *"b"*, duly verified, that the consolidation or merger contract has been approved by a two-thirds vote of the supreme governing body of each society, the vote having been conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail.

d. Evidence that at least sixty days prior to the action of the supreme governing body of each soci-

ety to approve the consolidation or merger contract, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

2. If the commissioner finds that the contract is in conformity with this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate to that effect. Upon the commissioner's approval, the contract shall be in full force and effect unless a society which is a party to the contract is incorporated under the laws of another state. In that event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of the other state and a certificate of approval has been filed with the commissioner of this state or, if the laws of the other state contain no equivalent provision for issuing a certificate of consolidation or merger, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of the other state and a certificate conforming with the laws of this state has been filed with the commissioner. If the contract is not approved it shall be inoperative, and the fact of submission and its contents shall not be disclosed by the commissioner. For the purposes of this subsection, *"state"* includes Canada and Canadian provinces and territories.

3. Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every kind of property, real, personal, or mixed, belonging to the societies shall be vested in the successor society without any other instrument, except that conveyances of real property may be evidenced by proper deeds. The title to real property or an interest in real property, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the successor society.

4. The affidavit of an officer of the society or of a person authorized by the society to mail a notice or document, stating that the notice or document has been duly addressed and mailed, is prima facie evidence that the notice or document has been furnished the addressees.

90 Acts, ch 1148, §15; 91 Acts, ch 97, §56

512B.15A Conversion of fraternal benefit society into a mutual life insurance company.

A domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the general insurance laws for mutual life insurance companies. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting is necessary for the approval of the plan of conversion. A conversion shall not take effect unless and until approved by the commissioner. The commissioner may give approval for the conversion if the commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

90 Acts, ch 1148, §16

SUBCHAPTER IV

CONTRACTUAL BENEFITS

512B.16 Benefits.

1. A society may provide any or all of the following contractual benefits in any form:

a. Death benefits.

b. Endowment benefits.

c. Annuity benefits.

d. Temporary or permanent disability benefits.

e. Hospital, medical, or nursing benefits.

f. Monument or tombstone benefits to the memory of deceased members.

g. Other benefits authorized for life insurers and which are not inconsistent with this chapter.

2. A society shall specify in its regulations those persons who may be issued, or covered by, the contractual benefits in subsection 1, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

90 Acts, ch 1148, §17

512B.17 Beneficiaries.

1. The owner of a benefit contract may change the beneficiary or beneficiaries in accordance with the laws or regulations of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or regulations, limit the scope of beneficiary designations and shall provide that a revocable beneficiary shall not have or obtain a vested interest in the proceeds of a certificate until the certificate has become due and payable in conformity with the benefit contract.

2. A society may make provision for the payment of funeral benefits to the extent of the portion of a payment under a certificate which reasonably appears to be due to a person equitably entitled to the benefit by reason of having incurred expense occasioned by the burial of the member. However, the portion so paid shall not exceed the sum of one thousand dollars.

3. If, at the death of a person insured under a

benefit contract, there is no lawful beneficiary to whom the proceeds are payable, the amount of the benefit, except to the extent that funeral benefits may be paid pursuant to subsection 2, shall be payable to the estate of the deceased insured the same as other property not exempt. However, if the owner of the certificate is other than the insured, the proceeds are payable to the owner.

90 Acts, ch 1148, §18

512B.18 Benefits not attachable.

Money or other benefit, charity, relief, or aid to be paid, provided, or rendered by a society, is not liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay a debt or liability of a member or beneficiary, or any other person who may have a derivative right, either before or after payment by the society, except as provided in sections 627.11 and 627.12.

90 Acts, ch 1148, §19

512B.19 The benefit contract.

1. A society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided pursuant to the benefit contract. The certificate, together with any riders or endorsements attached to the certificate, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments, constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. Statements on the application are representations and not warranties. A waiver of this provision is void.

2. Additions or amendments to the laws of a society duly made or enacted subsequent to the issuance of the certificate, bind the owner and the beneficiaries, and govern and control the benefit contract in all respects the same as though the additions or amendments had been made before and were in force at the time of the application for insurance, except that an addition or amendment shall not destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

3. A person upon whose life a benefit contract is issued before the person attains the age of majority is bound by the terms of the application and certificate and by all the laws and regulations of the society to the same extent as though the person had attained the age of majority at the time of application.

4. A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired, its supreme governing body or board of directors may require that there be paid by the owners to the society the amount of the owners' equitable proportion of the deficiency as ascertained by its governing body or board, and that if the payment is not made either of the following will apply:

a. The required payment or assessment shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates.

b. In lieu of or in combination with paragraph *"a"*, the owner may accept a proportionate reduction in benefits under the certificate.

The society may specify the manner of the election and which alternative is to be presumed if no election is made.

5. Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions of the documents.

6. A certificate shall not be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner in the manner provided for like policies issued by life insurers in this state. A life, accident, health, or disability insurance certificate and an annuity certificate issued on or after one year from January 1, 1991, shall meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or regulations in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, may maintain the certificate in force by continuing payment of the required premium.

7. A benefit contract issued on the life of a person below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government, and control of such certificates and the rights, obligations, and liabilities incident to, or connected with, the benefit contract. Ownership rights prior to a transfer shall be specified in the certificate.

8. A society may specify the terms and condi-

tions on which benefit contracts may be assigned.
90 Acts, ch 1148, §20

512B.20 Nonforfeiture benefits, cash surrender values, certificate loans, and other options.

1. For certificates issued before January 1, 1991, the value of every paid-up nonforfeiture benefit and the amount of any cash surrendered value, loan, or other option granted shall comply with chapter 512, Code 1989.

2. For certificates issued on or after January 1, 1991, for which reserves are computed on the commissioner's 1980 standard mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits based upon the same tables.
90 Acts, ch 1148, §21

SUBCHAPTER V

FINANCIAL REQUIREMENTS

512B.21 Investments.

A society shall invest its funds only as authorized by the laws of this state for the investment of assets of life insurers and subject to the same limitations. A foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state or nation in which it is incorporated, shall be held to meet the requirements of this section for the investment of funds. A society organized under the laws of this state shall deposit securities as required of life insurance companies pursuant to section 511.8, subsection 16.
90 Acts, ch 1148, §22

512B.21A Required reserves.

A society incorporated on or after July 1, 1993, shall have in cash, or in securities which are authorized for investment purposes for insurance companies pursuant to section 512B.21, surplus in an amount not less than five million dollars.
93 Acts, ch 88, §14

512B.22 Funds.

1. All assets shall be held, invested, and disbursed for the use and benefit of the society and a member or beneficiary shall not have or acquire individual rights in the society's assets or become entitled to an apportionment on the surrender of any part of the society's assets, except as provided in the benefit contract.

2. A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

3. A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the law regulating life insurers establishing equivalent accounts and issuing equivalent contracts. To the extent the society deems it necessary in order to comply with any applicable federal or state laws, regulations, or rules, the society may adopt special procedures for the conduct of the business and affairs of a separate account; may, for persons having beneficial interests in the account, provide special voting and other rights, including without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account; and may issue contracts on a variable basis to which section 512B.19, subsections 2 and 4 shall not apply.
90 Acts, ch 1148, §23

SUBCHAPTER VI

REGULATION

512B.23 Valuation.

1. Standards of valuation for certificates issued before January 1, 1991, are those provided by chapter 512, Code 1989.

2. The minimum standards of valuation for certificates issued on or after January 1, 1991, shall be based on the following tables:

a. For certificates of life insurance, the commissioner's 1980 standard ordinary mortality table or any more recent table made applicable to life insurers.

b. For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits, the tables authorized for use by life insurers in this state.

Paragraphs *"a"* and *"b"* are under valuation methods and standards, including interest assumptions, in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits.

3. The commissioner may, in the commissioner's discretion, accept another standard for valuation if the commissioner finds that the reserves produced by the other standard will not be less in the aggregate than reserves computed in accordance with the minimum valuation standards prescribed by subsection 2. The commissioner may, in the commissioner's discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.

4. A society, with the consent of the commissioner of insurance of the state of domicile of the society and under conditions which the commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves otherwise required, but the contractual rights of a benefit member shall not be affected by the excess reserves.

90 Acts, ch 1148, §24

512B.24 Reports.

Reports shall be filed in accordance with this section.

1. A society transacting business in this state, on or before March 1 annually, unless for cause shown the time has been extended by the commissioner, shall file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and shall pay a fee of fifty dollars. The statement may be in general form and content as approved by the national association of insurance commissioners for fraternal benefit societies and shall be supplemented by additional information as adopted by rule of the commissioner.

2. As part of the annual statement, a society shall, on or before March 1, file with the commissioner of insurance a valuation of its certificates in force on the last preceding December 31. However, the commissioner may, for cause shown, extend the time for filing the valuation for not more than two calendar months. The valuation shall be done in accordance with the standards specified in section 512B.23. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

3. A society failing to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars for each day during which the default continues, and, upon notice by the commissioner to that effect, the society's authority to do business in this state shall cease while the default continues.

90 Acts, ch 1148, §25; 92 Acts, ch 1162, §17

512B.25 Annual license.

A society which is authorized to transact business in this state on January 1, 1991, and a society licensed on or after January 1, 1991, may continue in business until June 1, 1991. The authority of the society may thereafter be renewed annually. A license terminates on the succeeding June 1. However, a license issued shall continue in full force and effect until a new license is issued or specifically refused. For each license or renewal the society shall pay the commissioner a fee of fifty dollars. A duly certified copy or duplicate of the license is prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

90 Acts, ch 1148, §26; 92 Acts, ch 1162, §18

512B.26 Examination of societies — no adverse publications.

1. The commissioner, or the commissioner's designee, may examine a domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized for examination of a domestic, foreign, or alien insurer. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers are also applicable to the examination of a society.

2. The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

90 Acts, ch 1148, §27

512B.27 Foreign or alien society — admission.

A foreign or alien society shall not transact business in this state without a license issued by the commissioner. A society desiring admission to this state shall substantially comply with the requirements and limitations of this chapter applicable to domestic societies. A society may be licensed to transact business in this state upon filing with the commissioner all of the following:

1. A duly certified copy of its articles of incorporation.
2. A copy of its bylaws, certified by its secretary or a corresponding officer.
3. A power of attorney to the commissioner of insurance as prescribed in section 512B.33.
4. A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its state of domicile, satisfactory to the commissioner.
5. Certification from the proper official of its state of domicile that the society is legally incorporated and licensed to transact business in that state.
6. Copies of its certificate forms.
7. Other information the commissioner requires.
8. A showing that its assets are invested in accordance with this chapter.

90 Acts, ch 1148, §28

512B.28 Injunction — liquidation — receivership of domestic society.

1. When the commissioner upon investigation finds that a domestic society has exceeded its powers; failed to comply with a provision of this chapter; failed to fulfill a contract in good faith; failed to maintain a membership of not less than four

hundred after an existence of one year or more; or conducted business fraudulently or in a manner hazardous to its members, creditors, the public, or the business, the commissioner shall notify the society of the deficiency or deficiencies and state in writing the reasons for the commissioner's dissatisfaction. The commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected. After the notice of deficiency the society has a thirty-day period in which to comply with the commissioner's request for correction, and if the society fails to comply the commissioner shall notify the society of a finding of noncompliance and require the society to show cause on or before a date named why it should not be enjoined from carrying on any business until the violation complained of has been corrected, or why an action seeking other legal or equitable relief should not be commenced against the society.

2. If by the date named to show cause the society does not present good and sufficient reasons why it should not be so enjoined or why an action should not be commenced, the commissioner may present the facts relating to the society to the attorney general who shall commence an action to enjoin the society from transacting business or other action requested by the commissioner.

3. The court in which an action is commenced pursuant to subsection 2 shall notify the officers of the society of a hearing. If after a full hearing it appears that the society should be enjoined or liquidated or a receiver appointed, or other legal or equitable relief awarded, the court shall enter the necessary order. A society so enjoined does not have the authority to do business unless and until all of the following conditions are satisfied:

a. The commissioner finds that the violation complained of has been corrected.

b. The costs of the action, including reasonable attorney fees for the state's attorneys and expenses related to the case in which the injunction was entered, have been paid by the society if the court finds that the society was in default as alleged.

c. The court has dissolved its injunction.

d. The commissioner has reinstated the certificate of authority of the society.

4. If the court orders the society liquidated, it shall be enjoined from carrying on any further business, and the receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled to them.

5. If a receiver is to be appointed for a domestic society, the court shall appoint the commissioner of insurance as the receiver.

6. The provisions of this section relating to hearing by the commissioner, action by the attorney general at the request of the commissioner, hearing by the court, injunction, and receivership are applicable to a society which voluntarily determines to discontinue business.

90 Acts, ch 1148, §29

512B.29 Suspension, revocation, or refusal of license of foreign or alien society.

1. When the commissioner upon investigation finds that a foreign or alien society transacting or applying to transact business in this state has exceeded its powers; failed to comply with a provision of this chapter; failed to fulfill a contract in good faith; or conducted its business fraudulently or in a manner hazardous to its members or creditors or the public, the commissioner shall notify the society of the deficiency or deficiencies and state in writing the alleged facts or circumstances constituting a deficiency. The commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected on or before thirty days from entry of the notice of deficiency. After notice the society has a thirty-day period in which to comply with the commissioner's request for correction, and if the society fails to comply the commissioner shall notify the society of a finding of noncompliance and require the society to show cause on or before a date named why its license should not be suspended, revoked, or refused. If, on or before the date named, the society does not present good and sufficient reason why its license to do business in this state should not be suspended, revoked, or refused, the commissioner may suspend or refuse the license of the society to do business in this state until evidence satisfactory to the commissioner is furnished to the commissioner that the suspension or refusal should be withdrawn or the commissioner may revoke the license of the society to do business in this state.

2. A society whose license to do business in this state is suspended, revoked, or refused pursuant to subsection 1 shall continue in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state. Lack of authority to transact business within the state is not a defense to an action by a person against the society to enforce a contract entered into by the society without compliance with this chapter, or prior applicable law.

90 Acts, ch 1148, §30

512B.30 Standing.

A petition or complaint for injunction against a domestic, foreign, or alien society, or lodge shall not be recognized in a court of this state unless made by the attorney general upon request of the commissioner.

90 Acts, ch 1148, §31

512B.31 Licensing of agents. Repealed by 2001 Acts, ch 16, § 36, 37. See chapter 522B.

512B.32 Unfair methods of competition and unfair and deceptive acts and practices.

A society is subject to chapter 507B relating to unfair insurance trade practices. However, chapter 507B does not apply to or affect the right of a society to determine its eligibility requirements for membership, and does not apply to or affect the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of a society.

90 Acts, ch 1148, §33

SUBCHAPTER VII

MISCELLANEOUS

512B.33 Service of process.

1. A foreign or alien society authorized to do business in this state shall appoint in writing the commissioner to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in the written consent to process that any lawful process against it which is served on the commissioner shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the appointment, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original may be admitted.

2. Service of process shall only be made upon the commissioner, or if absent, upon the person in charge of the commissioner's office. Service shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer of the society. Service shall not require a society to file its answer, pleading, or defense in less than thirty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner provided in this section.

90 Acts, ch 1148, §34

512B.34 Review.

All decisions and findings of the commissioner made under this chapter are subject to review pursuant to chapter 17A.

90 Acts, ch 1148, §35

512B.35 Penalties.

1. A person who knowingly makes a false or fraudulent statement or representation in or relating to an application for membership or for the purpose of obtaining money from or a benefit in a society, is guilty of a fraudulent practice.

2. A person who willfully makes a false or fraudulent statement in a verified report or declaration under oath required or authorized by this chapter, or of a material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate, is guilty of perjury.

3. A person who solicits membership for, or in any manner assists in procuring membership in, a society not licensed to do business in this state, is guilty of a serious misdemeanor.

4. A person guilty of a willful violation of, or neglect or refusal to comply with, a provision of this chapter for which a penalty is not otherwise prescribed, is guilty of a simple misdemeanor.

90 Acts, ch 1148, §36

512B.36 Exemption of certain societies.

1. This chapter does not affect or apply to any of the following:

a. Grand or subordinate lodges of societies, orders, or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges.

b. Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the spouses' societies or spouses' auxiliaries to such orders, societies, or associations.

c. Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house, or corporation which provide for a death benefit of not more than four hundred dollars or disability benefits of not more than three hundred fifty dollars to any person in any one year, or both.

d. Domestic societies or associations of a purely religious, charitable, or benevolent description, which provide for a death benefit of not more than four hundred dollars or for disability benefits of not more than three hundred fifty dollars to any one person in any one year, or both.

2. A society or association described in subsection 1, paragraph *"a"* or *"d"*, which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in paragraph *"d"* which has more than one thousand members, is not exempt from this chapter but shall comply with all requirements of this chapter.

3. A society which is exempt from the requirements of this chapter, except a society described in subsection 1, paragraph *"b"*, shall not give or allow, or promise to give or allow to any person any compensation for procuring new members.

4. A society which provides for benefits in case

of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits, has all of the privileges and is subject to all the applicable provisions of this chapter and rules adopted by the commission pursuant to this chapter except that the provisions relating to medical examination, valuations of benefit certificates, and incontestability, do not apply to such a society.

5. The commissioner may require from a society, by examination or otherwise, information that will enable the commissioner to determine whether the society is exempt from this chapter.

6. A society exempt under this section, is also exempt from all other provisions of the general insurance laws of this state.

90 Acts, ch 1148, §37

CHAPTER 513

EMPLOYEES MUTUAL INSURANCE

513.1 Exemption.
513.2 Power of commissioner.

513.1 Exemption.

Unless specific reference is made thereto, no provision of this subtitle shall include or apply to domestic societies which limit their membership to the employees of:

1. A particular city or
2. A designated firm, business house, or corporation.

[C24, 27, 31, 35, 39, §**8894;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §513.1]

513.2 Power of commissioner.

The commissioner of insurance may require from any society such information as will enable the commissioner to determine whether such society is exempt from the provisions of the laws relating to insurance or to fraternal benefit societies.

[C24, 27, 31, 35, 39, §**8895;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §513.2]

CHAPTER 513A

THIRD-PARTY PAYORS OF HEALTH CARE BENEFITS

513A.1 Purpose.
513A.2 Authority and jurisdiction of commissioner.
513A.3 How to show jurisdiction.
513A.4 Examination.
513A.5 Subject to state laws.
513A.6 Production agency or administrator — disclosure.
513A.7 Unfair competition or unfair and deceptive acts or practices prohibited.
513A.8 Exception to jurisdiction. Repealed by 97 Acts, ch 67, §3, 4.

513A.1 Purpose.

The purpose of this chapter is to give the commissioner jurisdiction over third-party payors of health care benefits, to indicate how a third-party payor of health care benefits may show the jurisdiction to which the third-party payor is subject, to allow for examinations by the commissioner if the third-party payor of health care benefits is unable to establish that a third-party payor is subject to another jurisdiction, to make a third-party payor of health care benefits subject to the laws of this state if the third-party payor cannot show that it is subject to another jurisdiction, and to disclose to purchasers of such health care benefits whether or not the plans are fully insured.

91 Acts, ch 213, §11

513A.2 Authority and jurisdiction of commissioner.

Except as provided in this chapter, a third-party payor providing coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether

the coverage is by direct payment, reimbursement, or otherwise, is presumed to be subject to the jurisdiction of the commissioner of insurance, unless the person shows that while providing such services the person is subject to the jurisdiction of another agency of the state or the federal government.

91 Acts, ch 213, §12

513A.3 How to show jurisdiction.

A third-party payor may establish that the third-party payor is subject to the jurisdiction of another agency of the state, any subdivision of the state, or the federal government, by providing to the insurance commissioner the appropriate certificate, license, or other document issued by the agency which permits or qualifies the third-party payor to provide those services.

91 Acts, ch 213, §13

513A.4 Examination.

A third-party payor unable to establish under section 513A.3 that the third-party payor is subject to the jurisdiction of another agency of the state, any subdivision of the state, or the federal government, shall submit to an examination by the insurance commissioner to determine the organization and solvency of the third-party payor or the entity, and to determine whether or not the third-party payor complies with the applicable provisions of state law.

91 Acts, ch 213, §14

513A.5 Subject to state laws.

A third-party payor unable to establish that the third-party payor is subject to the jurisdiction of another agency of the state, any subdivision of the state, or the federal government, is subject to all appropriate provisions of Title XIII, subtitle 1, regarding the conduct of the business of the third-party payor including, but not limited to, filing with and approval by the commissioner of the form of the health benefit policy, contract, or certificate.

91 Acts, ch 213, §15; 92 Acts, ch 1162, §19

513A.6 Production agency or administrator — disclosure.

A production agency or administrator which advertises, sells, transacts, or administers the coverage in this state as defined in section 513A.2 and which is required to submit to an examination by the insurance commissioner under section 513A.4, shall, if the coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer, nonprofit hospital service plan, or nonprofit health care plan, advise every purchaser, prospective purchaser, and covered person of the lack of insurance or other coverage.

An administrator which advertises or administers the coverage in this state as defined in section 513A.2 and which is required to submit to an examination by the insurance commissioner under section 513A.4, shall advise any production agency of the elements of the coverage, including the amount of stop-loss insurance in effect.

91 Acts, ch 213, §16

513A.7 Unfair competition or unfair and deceptive acts or practices prohibited.

A third-party payor of health care benefits is subject to chapter 507B relating to unfair insurance trade practices.

93 Acts, ch 88, §15

513A.8 Exception to jurisdiction. Repealed by 97 Acts, ch 67, § 3, 4.

CHAPTER 513B

SMALL GROUP HEALTH COVERAGE

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SUBCHAPTER I

RATING PRACTICES — AVAILABILITY

513B.1 Title — purpose.

1. This subchapter shall be known and may be cited as the *"Model Small Group Rating Law"*.

2. The intent of this subchapter is to promote the availability of health insurance coverage to small employers, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules for continuity of coverage for employers and covered individuals, and to improve the efficiency and fairness of the small group health insurance marketplace.

91 Acts, ch 244, §1; 93 Acts, ch 80, §1

513B.2 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Actuarial certification"* means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of section 513B.4, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the small employer carrier in establishing premium rates for applicable health insurance coverages.

2. *"Base premium rate"* means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers for health insurance plans with the same or similar coverage.

3. *"Basic health benefit plan"* means a plan established by the board of the small employer health reinsurance program pursuant to section 513B.13, subsection 8, paragraph *"a"*.

4. *"Carrier"* means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services.

5. *"Case characteristics"* means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the insurer in the determination of premium rates for the small employer. Claim experience, health status, and duration of coverage since issue are not case characteristics for the purpose of this subchapter.

6. *"Class of business"* means all or a distinct grouping of small employers as shown on the records of the small employer carrier.

a. A distinct grouping may only be established by the small employer carrier on the basis that the applicable health insurance coverages meet one or more of the following requirements:

(1) The coverages are marketed and sold through individuals and organizations which are not participating in the marketing or sales of other distinct groupings of small employers for the small employer carrier.

(2) The coverages have been acquired from another small employer carrier as a distinct grouping of plans.

(3) The coverages are provided through an association with membership of not less than fifty small employers which has been formed for purposes other than obtaining insurance.

b. A small employer carrier may establish no more than two additional groupings under each of the subparagraphs in paragraph *"a"* on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

c. The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace.

7. *"Commissioner"* means the commissioner of insurance.

8. *"Creditable coverage"* means health benefits or coverage provided to an individual under any of the following:

a. A group health plan.

b. Health insurance coverage.

c. Part A or Part B Medicare pursuant to Title XVIII of the federal Social Security Act.

d. Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.

e. 10 U.S.C. ch. 55.

f. A health or medical care program provided through the Indian health service or a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under 5 U.S.C. ch. 89.

i. A public health plan as defined under federal regulations.

j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. § 2504(e).

k. An organized delivery system licensed by the director of public health.

l. A short-term limited duration policy.

9. *"Division"* means the division of insurance.

10. *"Eligible employee"* means an employee who works on a full-time basis and has a normal work week of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under health insurance coverage of a small employer, but does not include an employee who works on a part-time, temporary, or substitute basis.

11. *a.* *"Group health plan"* means an employee welfare benefit plan as defined in section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

b. For purposes of this subsection, *"medical care"* means amounts paid for any of the following:

(1) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.

(2) Transportation primarily for and essential to medical care referred to in subparagraph (1).

(3) Insurance covering medical care referred to in subparagraph (1) or (2).

c. For purposes of this subsection, a partnership which establishes and maintains a plan, fund, or program to provide medical care to present or former partners in the partnership or to their dependents directly or through insurance, reimbursement, or other method, which would not be an employee benefit welfare plan but for this paragraph, shall be treated as an employee benefit welfare plan which is a group health plan.

(1) For purposes of a group health plan, an employer includes the partnership in relation to any partner.

(2) For purposes of a group health plan, the term *"participant"* also includes both of the following:

(a) An individual who is a partner in relation to a partnership which maintains a group health plan.

(b) An individual who is a self-employed individual in connection with a group health plan maintained by the self-employed individual where one or more employees are participants, if the individual is or may become eligible to receive a benefit under the plan or the individual's beneficiaries may be eligible to receive a benefit.

12. *a.* *"Health insurance coverage"* means benefits consisting of health care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as health care under a hospital or health service policy or certificate, hospital or health service plan contract, or health maintenance organization contract offered by a carrier.

b. *"Health insurance coverage"* does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

c. *"Health insurance coverage"* does not include benefits provided under a separate policy as follows:

(1) Limited scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

d. *"Health insurance coverage"* does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

e. *"Health insurance coverage"* does not include Medicare supplemental health insurance as defined under § 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55, and similar supplemental coverage provided to coverage under group health insurance coverage.

f. *"Group health insurance coverage"* means health insurance coverage offered in connection with a group health plan.

13. *"Index rate"* means, for each class of business for small employers, the average of the applicable base premium rate and the corresponding highest premium rate.

14. *"Late enrollee"* means an eligible employee or dependent who requests enrollment in a health

benefit plan of a small employer following the initial enrollment period for which such individual is entitled to enroll under the terms of the health benefit plan, provided the initial enrollment period is a period of at least thirty days. An eligible employee or dependent shall not be considered a late enrollee if any of the following apply:

a. The individual meets all of the following:

(1) The individual was covered under creditable coverage at the time of the initial enrollment.

(2) The individual lost creditable coverage as a result of termination of the individual's employment or eligibility, the involuntary termination of the creditable coverage, death of the individual's spouse, or the individual's divorce.

(3) The individual requests enrollment within thirty days after termination of the creditable coverage.

b. The individual is employed by an employer that offers multiple health insurance coverages and the individual elects a different coverage during an open enrollment period.

c. A court has ordered that coverage be provided for a spouse or minor or dependent child under a covered employee's health insurance coverage and the request for enrollment is made within thirty days after issuance of the court order.

d. The individual changes status and becomes an eligible employee and requests enrollment within sixty-three days after the date of the change in status.

e. The individual was covered under a mandated continuation of group health plan or group health insurance coverage plan until the coverage under that plan was exhausted.

15. *"New business premium rate"* means, for each class of business as to a rating period, the lowest premium rate charged or offered by the small employer carrier to small employers for newly issued health insurance coverages with the same or similar coverage.

16. *"Preexisting conditions exclusion"* means, with respect to health insurance coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

17. *"Rating period"* means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

18. *"Small employer"* means a person actively engaged in business who, on at least fifty percent of the employer's working days during the preceding year, employed not less than two and not more than fifty full-time equivalent eligible employees. In determining the number of eligible employees, companies which are affiliated companies or which are eligible to file a combined tax return for purposes of state taxation are considered one employer.

19. *"Small employer carrier"* means any carrier which offers health benefit plans covering the employees of a small employer.

20. *"Standard health benefit plan"* means a plan established by the board of the small employer health reinsurance program pursuant to section 513B.13, subsection 8, paragraph *"a"*.

91 Acts, ch 244, §2; 92 Acts, ch 1167, §1; 93 Acts, ch 80, §2, 3; 94 Acts, ch 1176, §9; 95 Acts, ch 185, §9; 97 Acts, ch 103, §2 – 11; 98 Acts, ch 1057, §8; 2000 Acts, ch 1023, §20; 2001 Acts, ch 69, §13, 39

513B.3 Applicability and scope.

This subchapter applies to a health benefit plan providing coverage to the employees of a small employer in this state if any of the following apply:

1. Any portion of the premium or benefits is paid by or on behalf of the small employer.

2. An eligible employee or dependent is reimbursed in any manner by or on behalf of the small employer for any portion of the premium or benefits.

3. The health insurance coverage is treated by the employer or any of the eligible employees or dependents as part of a coverage or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code as defined in section 422.3.

4. *a.* Except as provided in paragraph *"b"*, for purposes of this subchapter, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier and any restrictions or limitations imposed by this subchapter shall apply as if all health insurance coverages delivered or issued for delivery to small employers in this state by such carriers were issued by one carrier.

b. An affiliated carrier which is a health maintenance organization possessing a certificate of authority issued pursuant to chapter 514B shall be considered to be a separate carrier for the purposes of this subchapter.

c. Unless otherwise authorized by the commissioner, a small employer carrier shall not enter into one or more ceding arrangements with respect to health insurance coverages delivered or issued for delivery to small employers in this state if the arrangements would result in less than fifty percent of the insurance obligation or risk for such health insurance coverages being retained by the ceding carrier.

91 Acts, ch 244, §3; 92 Acts, ch 1167, §2; 97 Acts, ch 103, §12, 13

513B.4 Restrictions relating to the premium rates.

1. Premium rates for health benefit plans subject to this subchapter are subject to the following requirements:

a. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty

percent.

b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent of the index rate.

c. The percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

(1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health insurance coverage into which the small employer carrier is actively enrolling new insureds who are small employers.

(2) An adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business.

(3) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

d. Any adjustment in rates for claims experience, health status, and duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

2. This section does not affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status, or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

Case characteristics other than age, geographic area, family composition, and group size shall not be used by a small employer carrier without the prior approval of the commissioner.

Rating factors shall produce premiums for identical groups which differ only by amounts attributable to coverage design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans. A small employer carrier shall treat all health insurance coverages issued or renewed in the same calendar month as having the same rating period.

3. For purposes of this section, a health insurance coverage that contains a restricted network provision shall not be considered similar coverage to a health insurance coverage that does not contain such a provision, if the restriction of benefits to network providers results in substantial differences in claims costs.

4. A small employer shall not be involuntarily transferred by a small employer carrier into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration since issue.

5. Notwithstanding subsection 1, the commissioner, with the concurrence of the board of the Iowa small employer health reinsurance program established in section 513B.13, may by order reduce or eliminate the allowed rating bands provided under subsection 1, paragraphs *"a"*, *"b"*, and *"c"*, or otherwise limit or eliminate the use of experience rating.

91 Acts, ch 244, §4; 92 Acts, ch 1167, §3 – 7; 93 Acts, ch 80, §4; 94 Acts, ch 1176, §10 – 12; 97 Acts, ch 103, §14 – 17; 2001 Acts, ch 69, §14, 15, 39; 2002 Acts, ch 1111, §13

Subsection 1, NEW paragraph d

513B.4A Exemption from premium rate restrictions.

A Taft-Hartley trust or a carrier with the written authorization of such a trust may make a written request to the commissioner for an exemption from the application of any provisions of section 513B.4 with respect to health insurance coverage provided to such a trust. The commissioner may grant an exemption if the commissioner finds that application of section 513B.4 with respect to the trust would have a substantial adverse effect on the participants and beneficiaries of such trust, and would require significant modifications to one or more collective bargaining arrangements under which the trust is established or maintained. An exemption granted under this section shall not apply to an individual if the individual participates in a trust as an associate member of an employee organization.

93 Acts, ch 80, §5; 97 Acts, ch 103, §18

513B.5 Provisions on renewability of coverage.

1. Health insurance coverage subject to this chapter is renewable with respect to all eligible employees or their dependents, at the option of the small employer, except for one or more of the following reasons:

a. The health insurance coverage sponsor fails to pay, or to make timely payment of, premiums or contributions pursuant to the terms of the health

insurance coverage.

b. The health insurance coverage sponsor performs an act or practice constituting fraud or makes an intentional misrepresentation of a material fact under the terms of the coverage.

c. Noncompliance with the carrier's or organized delivery system's minimum participation requirements.

d. Noncompliance with the carrier's or organized delivery system's employer contribution requirements.

e. A decision by the carrier or organized delivery system to discontinue offering a particular type of health insurance coverage in the state's small employer market. Health insurance coverage may be discontinued by the carrier or organized delivery system in that market only if the carrier or organized delivery system does all of the following:

(1) Provides advance notice of its decision to discontinue such plan to the commissioner or director of public health. Notice to the commissioner or director, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph (2) to affected small employers, participants, and beneficiaries.

(2) Provides notice of its decision not to renew such plan to all affected small employers, participants, and beneficiaries no less than ninety days prior to the nonrenewal of the plan.

(3) Offers to each plan sponsor of the discontinued coverage, the option to purchase any other coverage currently offered by the carrier or organized delivery system to other employers in this state.

(4) Acts uniformly, in opting to discontinue the coverage and in offering the option under subparagraph (3), without regard to the claims experience of the sponsors under the discontinued coverage or to a health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for the coverage.

f. A decision by the carrier or organized delivery system to discontinue offering and to cease to renew all of its health insurance coverage delivered or issued for delivery to small employers in this state. A carrier or organized delivery system making such decision shall do all of the following:

(1) Provide advance notice of its decision to discontinue such coverage to the commissioner or director of public health. Notice to the commissioner or director, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph (2) to affected small employers, participants, and beneficiaries.

(2) Provide notice of its decision not to renew such coverage to all affected small employers, participants, and beneficiaries no less than one hundred eighty days prior to the nonrenewal of the coverage.

(3) Discontinue all health insurance coverage issued or delivered for issuance to small employers in this state and cease renewal of such coverage.

g. The membership of an employer in an association, which is the basis for the coverage which is provided through such association, ceases, but only if the termination of coverage under this paragraph occurs uniformly without regard to any health status-related factor relating to any covered individual.

h. The commissioner or director of public health finds that the continuation of the coverage is not in the best interests of the policyholders or certificate holders, or would impair the carrier's or organized delivery system's ability to meet its contractual obligations.

i. At the time of coverage renewal, a carrier or organized delivery system may modify the health insurance coverage for a product offered under group health insurance coverage in the small group market, for coverage that is available in such market other than only through one or more bona fide associations, if such modification is consistent with the laws of this state, and is effective on a uniform basis among group health insurance coverage with that product.

2. A carrier or organized delivery system that elects not to renew health insurance coverage under subsection 1, paragraph *"f"*, shall not write any new business in the small employer market in this state for a period of five years after the date of notice to the commissioner or director of public health.

3. This section, with respect to a carrier or organized delivery system doing business in one established geographic service area of the state, applies only to such carrier's or organized delivery system's operations in that service area.

91 Acts, ch 244, §5; 92 Acts, ch 1167, §8, 9; 93 Acts, ch 80, §6; 97 Acts, ch 103, §19

513B.6 Disclosure of rating practices and renewability provisions.

A small employer carrier or organized delivery system shall make reasonable disclosure in solicitation and sales materials provided to small employers of all of the following:

1. The extent to which premium rates for a specific small employer are established or adjusted due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer.

2. The provisions concerning the small employer carrier's or organized delivery system's right to change premium rates and factors, including case characteristics, which affect changes in premium rates.

3. The provisions relating to any preexisting condition provision.

4. The provisions relating to renewability of

coverage.

91 Acts, ch 244, §6; 92 Acts, ch 1167, §10; 97 Acts, ch 103, §20, 21

513B.7 Maintenance of records.

1. A small employer carrier or organized delivery system shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation which demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

2. A small employer carrier or organized delivery system shall file each March 1 with the commissioner or the director of public health an actuarial certification that the small employer carrier or organized delivery system is in compliance with this section and that the rating methods of the small employer carrier or organized delivery system are actuarially sound. A copy of the certification shall be retained by the small employer carrier or organized delivery system at its principal place of business.

3. A small employer carrier or organized delivery system shall make the information and documentation described in subsection 1 available to the commissioner or the director of public health upon request. The information is not a public record or otherwise subject to disclosure under chapter 22, and is considered proprietary and trade secret information and is not subject to disclosure by the commissioner or the director of public health to persons outside of the division or department except as agreed to by the small employer carrier or organized delivery system or as ordered by a court of competent jurisdiction.

91 Acts, ch 244, §7; 97 Acts, ch 103, §22; 98 Acts, ch 1100, §68

513B.8 Transferred to § 513B.17.

513B.9 Reserved.

513B.9A Eligibility to enroll.

1. A carrier or organized delivery system offering group health insurance coverage shall not establish rules for eligibility, including continued eligibility, of an individual to enroll under the terms of the coverage based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

a. Health status.

b. Medical condition, including both physical and mental conditions.

c. Claims experience.

d. Receipt of health care.

e. Medical history.

f. Genetic information.

g. Evidence of insurability, including conditions arising out of acts of domestic violence.

h. Disability.

2. Subsection 1 does not require group health insurance coverage to provide particular benefits other than those provided under the terms of the coverage, and does not prevent a coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the coverage.

3. Rules for eligibility to enroll under group health insurance coverage include rules defining any applicable waiting periods for such enrollment.

4. *a.* A carrier or organized delivery system offering health insurance coverage shall not require an individual, as a condition of enrollment or continued enrollment under the coverage, to pay a premium or contribution which is greater than a premium or contribution for a similarly situated individual enrolled in the coverage on the basis of a health status-related factor in relation to the individual or to a dependent of an individual enrolled under the coverage.

b. Paragraph *"a"* shall not be construed to do either of the following:

(1) Restrict the amount that an employer may be charged for health insurance coverage.

(2) Prevent a carrier or organized delivery system offering group health insurance coverage from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

97 Acts, ch 103, §23

513B.10 Availability of coverage.

1. *a.* A carrier or an organized delivery system that offers health insurance coverage in the small group market shall accept every small employer that applies for health insurance coverage and shall accept for enrollment under such coverage every eligible individual who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the health insurance coverage and shall not place any restriction which is inconsistent with eligibility rules established under this chapter.

b. A carrier or organized delivery system that offers health insurance coverage in the small group market through a network plan may do either of the following:

(1) Limit employers that may apply for such coverage to those with eligible individuals who live, work, or reside in the service area for such network plan.

(2) Deny such coverage to such employers within the service area of such plan if the carrier or organized delivery system has demonstrated to the applicable state authority both of the following:

(a) The carrier or organized delivery system will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees.

(b) The carrier or organized delivery system is applying this subparagraph uniformly to all employers without regard to the claims experience of those employers and their employees and their dependents, or any health status-related factor relating to such employees or dependents.

c. A carrier or organized delivery system, upon denying health insurance coverage in any service area pursuant to paragraph *"b"*, subparagraph (2), shall not offer coverage in the small group market within such service area for a period of one hundred eighty days after the date such coverage is denied.

d. A carrier or organized delivery system may deny health insurance coverage in the small group market if the issuer has demonstrated to the commissioner or director of public health both of the following:

(1) The carrier or organized delivery system does not have the financial reserves necessary to underwrite additional coverage.

(2) The carrier or organized delivery system is applying the provisions of this paragraph uniformly to all employers in the small group market in this state consistent with state law and without regard to the claims experience of those employers and the employees and dependents of such employers, or any health status-related factor relating to such employees and their dependents.

e. A carrier or organized delivery system, upon denying health insurance coverage pursuant to paragraph *"d"*, shall not offer coverage in connection with health insurance coverages in the small group market in this state for a period of one hundred eighty days after the date such coverage is denied or until the carrier or organized delivery system has demonstrated to the commissioner or director of public health that the carrier or organized delivery system has sufficient financial reserves to underwrite additional coverage, whichever is later. The commissioner or director may provide for the application of this paragraph on a service area-specific basis.

f. Paragraph *"a"* shall not be construed to preclude a carrier or organized delivery system from establishing employer contribution rules or group participation rules for the offering of health insurance coverage in the small group market.

2. A carrier or organized delivery system, subject to subsection 1, shall issue health insurance coverage to an eligible small employer that applies for the coverage and agrees to make the required premium payments and satisfy the other reasonable provisions of the health insurance coverage not inconsistent with this chapter. A carrier or organized delivery system is not required to issue health insurance coverage to a self-employed individual who is covered by, or is eligible for coverage under, health insurance coverage offered by an employer.

3. Health insurance coverage for small employers shall satisfy all of the following:

a. A carrier or organized delivery system offering group health insurance coverage, with respect to a participant or beneficiary, may impose a preexisting condition exclusion only as follows:

(1) The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period ending on the enrollment date. However, genetic information shall not be treated as a condition under this subparagraph in the absence of a diagnosis of the condition related to such information.

(2) The exclusion extends for a period of not more than twelve months, or eighteen months in the case of a late enrollee, after the enrollment date.

(3) The period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

b. A carrier or organized delivery system offering group health insurance coverage shall not impose any preexisting condition exclusion as follows:

(1) In the case of a child who is adopted or placed for adoption before attaining eighteen years of age and who, as of the last day of the thirty-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This subparagraph shall not apply to coverage before the date of such adoption or placement for adoption.

(2) In the case of an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage.

(3) Relating to pregnancy as a preexisting condition.

c. A carrier or organized delivery system shall waive any waiting period applicable to a preexisting condition exclusion or limitation period with respect to particular services under health insurance coverage for the period of time an individual was covered by creditable coverage, provided that the creditable coverage was continuous to a date not more than sixty-three days prior to the effective date of the new coverage. Any period that an individual is in a waiting period for any coverage under group health insurance coverage, or is in an affiliation period, shall not be taken into account in determining the period of continuous coverage. A health maintenance organization that does not use preexisting condition limitations in any of its health insurance coverage may impose an affiliation period. For purposes of this section, *"affilia-*

tion period" means a period of time not to exceed sixty days for new entrants and not to exceed ninety days for late enrollees during which no premium shall be collected and coverage issued is not effective, so long as the affiliation period is applied uniformly, without regard to any health status-related factors. This paragraph does not preclude application of a waiting period applicable to all new enrollees under the health insurance coverage, provided that any carrier or organized delivery system-imposed waiting period is no longer than sixty days and is used in lieu of a preexisting condition exclusion.

d. Health insurance coverage may exclude coverage for late enrollees for preexisting conditions for a period not to exceed eighteen months.

e. (1) Requirements used by a carrier or organized delivery system in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier or organized delivery system.

(2) In applying minimum participation requirements with respect to a small employer, a carrier or organized delivery system shall not consider employees or dependents who have other creditable coverage in determining whether the applicable percentage of participation is met.

(3) A carrier or organized delivery system shall not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

f. (1) If a carrier or organized delivery system offers coverage to a small employer, the carrier or organized delivery system shall offer coverage to all eligible employees of the small employer and the employees' dependents. A carrier or organized delivery system shall not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group.

(2) Except as provided under paragraphs *"a"* and *"d"*, a carrier or organized delivery system shall not modify health insurance coverage with respect to a small employer or any eligible employee or dependent through riders, endorsements, or other means, to restrict or exclude coverage or benefits for certain diseases, medical conditions, or services otherwise covered by the health insurance coverage.

g. A carrier or organized delivery system offering coverage through a network plan shall not be required to offer coverage or accept applications pursuant to subsection 1 with respect to a small employer where any of the following apply:

(1) The small employer does not have eligible individuals who live, work, or reside in the service area for the network plan.

(2) The small employer does have eligible individuals who live, work, or reside in the service area for the network plan, but the carrier or organized delivery system, if required, has demonstrated to the commissioner or the director of public health that it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees and that it is applying the requirements of this lettered paragraph uniformly to all employers without regard to the claims experience of those employers and their employees and the employees' dependents, or any health status-related factor relating to such employees and dependents.

(3) A carrier or organized delivery system, upon denying health insurance coverage in a service area pursuant to subparagraph (2), shall not offer coverage in the small employer market within such service area for a period of one hundred eighty days after the coverage is denied.

4. A carrier or organized delivery system shall not be required to offer coverage to small employers pursuant to subsection 1 for any period of time where the commissioner or director of public health determines that the acceptance of the offers by small employers in accordance with subsection 1 would place the carrier or organized delivery system in a financially impaired condition.

5. A carrier or organized delivery system shall not be required to provide coverage to small employers pursuant to subsection 1 if the carrier or organized delivery system elects not to offer new coverage to small employers in this state. However, a carrier or organized delivery system that elects not to offer new coverage to small employers under this subsection shall be allowed to maintain its existing policies in the state, subject to the requirements of section 513B.5.

6. A carrier or organized delivery system that elects not to offer new coverage to small employers pursuant to subsection 5 shall provide notice to the commissioner or director of public health and is prohibited from writing new business in the small employer market in this state for a period of five years from the date of notice to the commissioner or director.

92 Acts, ch 1167, §11; 93 Acts, ch 80, §7 – 9, 20; 97 Acts, ch 103, §24; 98 Acts, ch 1100, §69; 2001 Acts, ch 69, §16, 17, 39

513B.11 Notice of intent to operate as a risk-assuming carrier or reinsuring carrier.

1. *a.* Upon the approval of a plan of operation by the commissioner under section 513B.13, subsection 4, a small employer carrier authorized to transact the business of insurance in this state shall notify the commissioner of the carrier's intention to operate as a risk-assuming carrier or a reinsuring carrier. The notification shall be made as deemed appropriate by the commissioner. A small employer carrier seeking to operate as a risk-assuming carrier shall make an application pursuant to section 513B.12.

b. The notification of the commissioner con-

cerning the carrier's intention pursuant to paragraph *"a"* is binding for a five-year period from the date notification is given, except that the initial notification given by carriers after July 1, 1992, is binding for a two-year period. The commissioner may permit a carrier to modify the carrier's decision at any time for good cause.

c. The commissioner shall establish an application process for small employer carriers seeking to change their status pursuant to this subsection. If a small employer carrier has been acquired by another such carrier, the commissioner may waive or modify the time periods established in paragraph *"b"*.

2. A reinsuring carrier that applies and is approved to operate as a risk-assuming carrier shall not be permitted to continue to reinsure any health insurance coverage with the program. The carrier shall pay a prorated assessment based upon business issued as a reinsuring carrier for any portion of the year that the business was reinsured.

92 Acts, ch 1167, §12; 93 Acts, ch 80, §10; 97 Acts, ch 103, §25

513B.12 Application to become a risk-assuming carrier.

1. A small employer carrier may apply to become a risk-assuming carrier by filing an application with the commissioner in a form and manner prescribed by the commissioner.

2. In evaluating an application made pursuant to this section, the commissioner shall consider the following factors:

a. The carrier's financial condition.

b. The carrier's history of rating and underwriting small employer groups.

c. The carrier's commitment to market fairly to all small employers in the state or the carrier's established geographic service area, as applicable.

d. The carrier's experience with managing the risk of small employer groups.

3. The commissioner shall provide public notice of an application by a small employer carrier to be a risk-assuming carrier and shall provide at least a sixty-day period for public comment prior to making a decision on the application. If the application is not acted upon within ninety days of the receipt of the application by the commissioner, the carrier may request a hearing.

4. The commissioner may rescind the approval granted to a risk-assuming carrier under this section if the commissioner finds any of the following:

a. The carrier's financial condition will no longer support the assumption of risk from issuing coverage to small employers in compliance with section 513B.10 without the protection provided by the program.

b. The carrier has failed to market fairly to all small employers in the state or the carrier's established geographic service area, as applicable.

c. The carrier has failed to provide coverage to eligible small employers as required under section 513B.10.

5. A small employer carrier electing to be a risk-assuming carrier shall not be subject to the provisions of section 513B.13.

92 Acts, ch 1167, §13

513B.13 Small employer carrier reinsurance program.

1. A nonprofit corporation is established to be known as the Iowa small employer health reinsurance program.

2. A reinsuring carrier is subject to this program.

3. *a.* The program shall operate subject to the supervision and control of a board. Subject to the provisions of paragraph *"b"*, the board shall consist of nine members appointed by the commissioner, and the commissioner or the commissioner's designee, who shall serve as an ex officio member and as chairperson of the board.

b. In appointing the members of the board, the commissioner shall include representatives of small employers and small employer carriers and such other individuals as determined to be qualified by the commissioner. At least five of the members of the board shall be representatives of carriers and shall be selected from individuals nominated by small employer carriers in this state pursuant to procedures and guidelines provided by rule of the commissioner.

c. Members shall be appointed for terms of three years. A board member's term shall continue until the member's successor is appointed.

d. A vacancy in the board shall be filled by the commissioner for the remainder of the term. A member of the board may be removed by the commissioner for cause.

4. The board may submit a plan of operation to the commissioner. The commissioner, after notice and hearing, may approve a plan of operation if the commissioner determines that the plan is suitable to assure the fair, reasonable, and equitable administration of the program, and provides for the sharing of program gains and losses on an equitable and proportionate basis in accordance with the provisions of this section. A plan of operation is effective upon written approval of the commissioner.

5. The board may submit to the commissioner any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the program. The amendments shall be effective upon the written approval of the commissioner.

6. The plan of operation shall do all of the following:

a. Establish procedures for the handling and accounting of program assets and moneys, and for an annual fiscal reporting to the commissioner.

b. Establish procedures for selecting an administering carrier and setting forth the powers

and duties of the administering carrier.

c. Establish procedures for reinsuring risks in accordance with the provisions of this section.

d. Establish procedures for collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program.

e. Establish a methodology for applying the dollar thresholds contained in this section for carriers that pay or reimburse health care providers through capitation or a salary.

f. Provide for any additional matters necessary to implement and administer the program.

7. The same general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business in this state may be exercised by the board under the program, except the power to issue health insurance coverages directly to either groups or individuals. Additionally, the board is granted the specific authority to do all or any of the following:

a. Enter into contracts as necessary or proper to administer the provisions and purposes of this subchapter, including the authority, with the approval of the commissioner, to enter into contracts with similar programs in other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions.

b. Sue or be sued, including taking any legal action necessary or proper to recover any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers.

c. Take any legal action necessary to avoid the payment of improper claims made against the program.

d. Define the health insurance coverages for which reinsurance will be provided, and issue reinsurance policies, pursuant to this subchapter.

e. Establish rules, conditions, and procedures for reinsuring risks under the program.

f. Establish and implement actuarial functions as appropriate for the operation of the program.

g. Assess reinsuring carriers in accordance with the provisions of subsection 11, and make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the calendar year.

h. Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the program, policy and other contract design, and any other function within the authority of the program.

i. Borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

8. A reinsuring carrier may reinsure with the program as provided in this section.

a. The program shall reinsure up to the level of coverage provided in either a basic health benefit plan or standard health benefit plan established by the board.

b. A small employer carrier may reinsure an entire employer group within sixty days of the commencement of the group's coverage under health insurance coverage.

c. A reinsuring carrier may reinsure an eligible employee or dependent within a period of sixty days following the commencement of the coverage with the small employer. A newly eligible employee or dependent of a reinsured small employer may be reinsured within sixty days of the commencement of such person's coverage.

d. (1) The program shall not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the small employer carrier has incurred an initial level of claims for such employee or dependent of five thousand dollars in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for ten percent of the next fifty thousand dollars of incurred claims during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subparagraph shall not exceed a maximum limit of ten thousand dollars in any one calendar year with respect to any reinsured individual.

(2) The board annually shall adjust the initial level of claims and the maximum limit to be retained by the small employer carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "consumer price index for all urban consumers" of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

e. A small employer carrier may terminate reinsurance for one or more of the reinsured employees or dependents of a small employer on any plan anniversary date.

f. Premium rates charged for reinsurance by the program to a health maintenance organization that is federally qualified under 42 U.S.C. § 300c(c)(2)(A), and is thereby subject to requirements that limit the amount of risk that may be ceded to the program that are more restrictive than those specified in paragraph *"d"*, shall be reduced to reflect that portion of the risk above the amount set forth in paragraph *"d"* that may not be ceded to the program, if any.

9. *a.* The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall

include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of base reinsurance premium rates, which shall be multiplied by the factors set forth in paragraph *"b"* to determine the premium rates for the program. The base reinsurance premium rates shall be established by the board, subject to the approval of the commissioner, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health insurance coverages with benefits similar to the standard health benefit plan.

b. Premiums for the program shall be as follows:

(1) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection.

(2) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection.

c. The board periodically shall review the methodology established under paragraph *"a"*, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology which shall be subject to the approval of the commissioner.

10. If health insurance coverage for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued shall meet the requirements relating to premium rates set forth in section 513B.4.

11. *a.* Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

b. Any net loss for the year shall be recouped by assessments of reinsuring carriers.

(1) The board shall establish, as part of the plan of operation, a formula by which to make assessments against reinsuring carriers. The assessment formula shall be based on both of the following:

(a) Each reinsuring carrier's share of the total premiums earned in the preceding calendar year from health insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers.

(b) Each reinsuring carrier's share of the premiums earned in the preceding calendar year from newly issued health insurance coverages delivered or issued for delivery during such calendar year to small employers in this state by reinsuring carriers.

(2) The formula established pursuant to subparagraph (1) shall not result in any reinsuring carrier having an assessment share that is less than fifty percent nor more than one hundred fifty percent of an amount which is based on the proportion of the reinsuring carrier's total premiums earned in the preceding calendar year from health insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers to total premiums earned in the preceding calendar year from health insurance coverages delivered or issued for delivery to small employers in this state by all reinsuring carriers.

(3) The board, with approval of the commissioner, may change the assessment formula established pursuant to subparagraph (1) from time to time as appropriate. The board may provide for the shares of the assessment base attributable to premiums from all health insurance coverages and to premiums from newly issued health insurance coverages to vary during a transition period.

(4) Subject to the approval of the commissioner, the board shall make an adjustment to the assessment formula for reinsuring carriers that are approved health maintenance organizations which are federally qualified under 42 U.S.C. § 300 et seq., to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

(5) Premiums and benefits paid by a reinsuring carrier that are less than an amount determined by the board to justify the cost of collection shall not be considered for purposes of determining assessments.

c. (1) Prior to March 1 of each year, the board shall determine and file with the commissioner an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

(2) If the board determines that the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed the amount specified in subparagraph (3), the board shall evaluate the operation of the program and report its findings, including any recommendations for changes to the plan of operation, to the commissioner within ninety days following the end of the calendar year in which the losses were incurred. The evaluation shall include: an estimate of future assessments, the administrative costs of the program, the appropriateness of the premiums charged, and the level of insurer retention under the program and the costs of coverage for small employers. If the board fails to file the report with the commissioner within ninety days following the end of the applicable calendar year, the commissioner may evaluate the operations of the program and implement such amendments to the plan of operation the commissioner deems necessary to reduce future losses and assessments.

(3) For any calendar year, the amount speci-

fied in this subparagraph is five percent of total premiums earned in the previous year from health insurance coverages delivered or issued for delivery to small employers in this state by reinsuring carriers.

(4) If assessments in each of two consecutive calendar years exceed by ten percent the amount specified in subparagraph (3), the commissioner may relieve carriers from any or all of the regulations of this subchapter or take such other actions as the commissioner deems equitable and necessary to spread the risk of loss and assure portability of coverages and continuity of benefits so as to reduce assessments to ten percent or less of that amount specified in subparagraph (3).

d. If assessments exceed net losses of the program, the excess shall be held in an interest-bearing account and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, *"future losses"* includes reserves for incurred but not reported claims.

e. Each reinsuring carrier's proportion of the assessment shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the reinsuring carriers with the board.

f. The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.

g. A reinsuring carrier may seek from the commissioner a deferment from all or part of an assessment imposed by the board. The commissioner may defer all or part of the assessment of a reinsuring carrier if the commissioner determines that the payment of the assessment would place the reinsuring carrier in a financially impaired condition. If all or part of an assessment against a reinsuring carrier is deferred, the amount deferred shall be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The reinsuring carrier receiving such deferment shall remain liable to the program for the amount deferred and shall be prohibited from reinsuring any individuals or groups in the program until such time as it pays such assessments.

12. The participation in the program as reinsuring carriers, the establishment of rates, forms, or procedures, or any other joint or collective action required by this subchapter shall not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers either jointly or separately.

13. The program is exempt from any and all state or local taxes.

14. The board of the Iowa small employer health reinsurance program, on an ongoing basis, shall review the program and make recommendations as to the continued cost effectiveness of the program to the commissioner, which recommendations may include proposed modifications or suspension of operation of the program. In making such a review, the board shall consider such factors as the population reinsured by the program, the premiums and assessments paid to the program, the number and percentage of carriers electing to utilize the program, health care reform measures implemented in the state, as well as other factors deemed relevant by the board. The commissioner, upon finding that the program is not cost effective, may make modifications to the program or suspend the operation of the program by rule.

92 Acts, ch 1167, §14; 93 Acts, ch 80, §11, 12; 97 Acts, ch 103, §26 – 32; 99 Acts, ch 165, §8; 2001 Acts, ch 69, §18 – 22, 39

513B.14 Health benefit plan standards. Repealed by 2001 Acts, ch 69, § 38, 39.

513B.15 Periodic market evaluation.

The board shall study and report at least every three years to the commissioner on the effectiveness of this subchapter. The report shall analyze the effectiveness of the subchapter in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small group health insurance marketplace. The report shall address whether carriers and producers are fairly and actively marketing or issuing health insurance coverages to small employers in fulfillment of the purposes of this subchapter. The report may contain recommendations for market conduct or other regulatory standards or action.

92 Acts, ch 1167, §16; 97 Acts, ch 103, §33

513B.16 Applicability of certain state laws. Repealed by 2001 Acts, ch 69, § 38, 39.

513B.17 Discretion of the commissioner.

1. The commissioner may suspend all or any part of section 513B.4 as to the premium rates applicable to one or more small employers for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

2. The commissioner may suspend or modify the normal work week requirement of thirty or more hours under the definition of eligible employee upon a finding by the commissioner that the suspension would enhance the availability of health insurance to employees of small employers.

3. The commissioner may adopt, by rule or order, transition provisions to facilitate the imple-

mentation and administration of this chapter.

4. The commissioner may, with the concurrence of the board of the Iowa small employer health reinsurance program established in section 513B.13, extend the applicability of the provisions of this subchapter to employers employing up to fifty full-time equivalent employees upon a finding that the market for health insurance coverage for employer groups employing between twenty-five and fifty employees is constricted and not competitive, or upon a finding that the purpose of this subchapter will be furthered by such extension. The extension of the applicability of this subchapter may exclude section 513B.13 relating to reinsurance. Upon the extension of the applicability to employers employing up to fifty full-time equivalent employees the definition of *"small employer"* is deemed to include employers of up to fifty full-time equivalent employees.

91 Acts, ch 244, §8
CS91, §513B.8
92 Acts, ch 1167, §18
C93, §513B.17
93 Acts, ch 80, §14; 97 Acts, ch 103, §34

513B.17A Restoration of terminated coverage. Repealed by 2001 Acts, ch 69, § 38, 39.

513B.18 Effective date — applicability. Repealed by 2001 Acts, ch 69, § 38, 39.

513B.19 through 513B.30 Reserved.

SUBCHAPTER II

BASIC BENEFIT COVERAGE

513B.31 through 513B.43 Repealed by 2001 Acts, ch 69, § 38, 39.

CHAPTER 513C

INDIVIDUAL HEALTH INSURANCE MARKET REFORM

513C.1 Short title.
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513C.12 Commissioner's duties.

513C.1 Short title.

This chapter shall be known and may be cited as the *"Individual Health Insurance Market Reform Act"*.

95 Acts, ch 5, §3

513C.2 Purpose.

The purpose and intent of this chapter is to promote the availability of health insurance coverage to individuals regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding the renewal of coverage, to establish limitations on the use of preexisting condition exclusions, to assure fair access to health plans, and to improve the overall fairness and efficiency of the individual health insurance market.

95 Acts, ch 5, §4

513C.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Actuarial certification"* means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that an individual carrier is in compliance with the provisions of section 513C.5 which is based upon the actuary's or individual's examination, including a review of the appropriate records and the actuarial assumptions and methods used by the carrier in establishing premium rates for applicable individual health benefit plans.

2. *"Affiliate"* or *"affiliated"* means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

3. *"Basic or standard health benefit plan"* means the core group of health benefits developed pursuant to section 513C.8.

4. *"Block of business"* means all the individuals insured under the same individual health benefit plan.

5. *"Carrier"* means any entity that provides individual health benefit plans in this state. For purposes of this chapter, carrier includes an insur-

ance company, a group hospital or medical service corporation, a fraternal benefit society, a health maintenance organization, and any other entity providing an individual plan of health insurance or health benefits subject to state insurance regulation. *"Carrier"* does not include an organized delivery system.

6. *"Commissioner"* means the commissioner of insurance.

7. *"Director"* means the director of public health appointed pursuant to section 135.2.

8. *"Eligible individual"* means an individual who is a resident of this state and who either has qualifying existing coverage or has had qualifying existing coverage within the immediately preceding thirty days, or an individual who has had a qualifying event occur within the immediately preceding thirty days.

9. *"Established service area"* means a geographic area, as approved by the commissioner and based upon the carrier's certificate of authority to transact business in this state, within which the carrier is authorized to provide coverage or a geographic area, as approved by the director and based upon the organized delivery system's license to transact business in this state, within which the organized delivery system is authorized to provide coverage.

10. *"Filed rate"* means, for a rating period related to each block of business, the rate charged to all individuals with similar rating characteristics for individual health benefit plans.

11. *"Individual health benefit plan"* means any hospital or medical expense incurred policy or certificate, hospital or medical service plan, or health maintenance organization subscriber contract sold to an individual, or any discretionary group trust or association policy, whether issued within or outside of the state, providing hospital or medical expense incurred coverage to individuals residing within this state. Individual health benefit plan does not include a self-insured group health plan, a self-insured multiple employer group health plan, a group conversion plan, an insured group health plan, accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

12. *"Organized delivery system"* means an organized delivery system licensed by the director.

13. *"Premium"* means all moneys paid by an individual and eligible dependents as a condition of receiving coverage from a carrier or an organized delivery system, including any fees or other contributions associated with an individual health benefit plan.

14. *"Qualifying event"* means any of the following:

a. Loss of eligibility for medical assistance provided pursuant to chapter 249A or Medicare coverage provided pursuant to Title XVIII of the federal Social Security Act.

b. Loss or change of dependent status under qualifying previous coverage.

c. The attainment by an individual of the age of majority.

d. Loss of eligibility for the HAWK-I program authorized in chapter 514I.

15. *"Qualifying existing coverage"* or *"qualifying previous coverage"* means benefits or coverage provided under any of the following:

a. Any group health insurance that provides benefits similar to or exceeding benefits provided under the standard health benefit plan, provided that such policy has been in effect for a period of at least one year.

b. An individual health insurance benefit plan, including coverage provided under a health maintenance organization contract, a hospital or medical service plan contract, or a fraternal benefit society contract, that provides benefits similar to or exceeding the benefits provided under the standard health benefit plan, provided that such policy has been in effect for a period of at least one year.

c. An organized delivery system that provides benefits similar to or exceeding the benefits provided under the standard health benefit plan, provided that the benefits provided by the organized delivery system have been in effect for a period of at least one year.

16. *"Rating characteristics"* means demographic characteristics of individuals which are considered by the carrier in the determination of premium rates for the individuals and which are approved by the commissioner.

17. *"Rating period"* means the period for which premium rates established by a carrier are in effect.

18. *"Restricted network provision"* means a provision of an individual health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier or the organized delivery system to provide health care services to covered individuals.

95 Acts, ch 5, §5; 2002 Acts, ch 1111, §14

Organized delivery systems authorized; see 93 Acts, ch 158, §3

Subsection 14, NEW paragraph d

513C.4 Applicability and scope.

1. Except as provided in subsection 2, for purposes of this chapter, carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier and any restrictions or limitations imposed by this chapter shall apply as if all individual health benefit plans delivered or issued for delivery to residents of this state by such affiliated carriers were issued by one carrier.

2. An affiliated carrier that is a health maintenance organization having a certificate of authority under section 514B.5 shall be considered to be a separate carrier for the purposes of this chapter.

95 Acts, ch 5, §6; 96 Acts, ch 1034, §48

513C.5 Restrictions relating to premium rates.

1. Premium rates for any block of individual health benefit plan business issued on or after January 1, 1996, or the date rules are adopted by the commissioner of insurance and the director of public health and become effective, whichever date is later, by a carrier subject to this chapter shall be limited to the composite effect of allocating costs among the following:

a. After making actuarial adjustments based upon benefit design and rating characteristics, the filed rate for any block of business shall not exceed the filed rate for any other block of business by more than twenty percent.

b. The filed rate for any block of business shall not exceed the filed rate for any other block of business by more than thirty percent due to factors relating to rating characteristics.

c. The filed rate for any block of business shall not exceed the filed rate for any other block of business by more than thirty percent due to any other factors approved by the commissioner.

d. Premium rates for individual health benefit plans shall comply with the requirements of this section notwithstanding any assessments paid or payable by the carrier pursuant to any reinsurance program or risk adjustment mechanism.

e. An adjustment applied to a single block of business shall not exceed the adjustment applied to all blocks of business by more than fifteen percent due to the claim experience or health status of that block of business.

f. For purposes of this subsection, an individual health benefit plan that contains a restricted network provision shall not be considered similar coverage to an individual health benefit plan that does not contain such a provision, provided that the differential in payments made to network providers results in substantial differences in claim costs.

2. Notwithstanding subsection 1, the commissioner, with the concurrence of the board established under chapter 514E, may by order reduce or eliminate the allowed rating bands provided under subsection 1, paragraphs *"a"*, *"b"*, *"c"*, and *"e"*, or otherwise limit or eliminate the use of experience rating.

3. A carrier shall not transfer an individual involuntarily into or out of a block of business.

4. The commissioner may suspend for a specified period the application of subsection 1, paragraph *"a"*, as to the premium rates applicable to one or more blocks of business of a carrier for one or more rating periods upon a filing by the carrier requesting the suspension and a finding by the commissioner that the suspension is reasonable in light of the financial condition of the carrier.

5. A carrier shall make a reasonable disclosure at the time of the offering for sale of any individual health benefit plan of all of the following:

a. The extent to which premium rates for a specified individual are established or adjusted based upon rating characteristics.

b. The carrier's right to change premium rates, and the factors, other than claim experience, that affect changes in premium rates.

c. The provisions relating to the renewal of policies and contracts.

d. Any provisions relating to any preexisting condition.

e. All plans offered by the carrier, the prices of such plans, and the availability of such plans to the individual.

6. A carrier shall maintain at its principal place of business a complete and detailed description of its rating practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

7. A carrier shall file with the commissioner annually on or before March 15, an actuarial certification certifying that the carrier is in compliance with this chapter and that the rating methods of the carrier are actuarially sound. The certification shall be in a form and manner and shall contain information as specified by the commissioner. A copy of the certification shall be retained by the carrier at its principal place of business. Rate adjustments made in order to comply with this section are exempt from loss ratio requirements.

8. A carrier shall make the information and documentation maintained pursuant to subsection 6 available to the commissioner upon request. The information and documentation shall be considered proprietary and trade secret information and shall not be subject to disclosure by the commissioner to persons outside of the division except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

95 Acts, ch 5, §7; 2001 Acts, ch 125, §2; 2002 Acts, ch 1119, §65

Subsection 2 amended

513C.6 Provisions on renewability of coverage.

1. An individual health benefit plan subject to this chapter is renewable with respect to an eligible individual or dependents, at the option of the individual, except for one or more of the following reasons:

a. The individual fails to pay, or to make timely payment of, premiums or contributions pursuant to the terms of the individual health benefit plan.

b. The individual performs an act or practice constituting fraud or makes an intentional mis-

representation of a material fact under the terms of the individual health benefit plan.

c. A decision by the individual carrier or organized delivery system to discontinue offering a particular type of individual health benefit plan in the state's individual insurance market. An individual health benefit plan may be discontinued by the carrier or organized delivery system in that market with the approval of the commissioner or the director and only if the carrier or organized delivery system does all of the following:

(1) Provides advance notice of its decision to discontinue such plan to the commissioner or director. Notice to the commissioner or director, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph (2) to affected individuals.

(2) Provides notice of its decision not to renew such plan to all affected individuals no less than ninety days prior to the nonrenewal date of any discontinued individual health benefit plans.

(3) Offers to each individual of the discontinued plan the option to purchase any other health plan currently offered by the carrier or organized delivery system to individuals in this state.

(4) Acts uniformly in opting to discontinue the plan and in offering the option under subparagraph (3), without regard to the claims experience of any affected eligible individual or beneficiary under the discontinued plan or to a health status-related factor relating to any covered individuals or beneficiaries who may become eligible for the coverage.

d. A decision by the carrier or organized delivery system to discontinue offering and to cease to renew all of its individual health benefit plans delivered or issued for delivery to individuals in this state. A carrier or organized delivery system making such decision shall do all of the following:

(1) Provide advance notice of its decision to discontinue such plan to the commissioner or director. Notice to the commissioner or director, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph (2) to affected individuals.

(2) Provide notice of its decision not to renew such plan to all individuals and to the commissioner or director in each state in which an individual under the discontinued plan is known to reside, no less than one hundred eighty days prior to the nonrenewal of the plan.

e. The commissioner or director finds that the continuation of the coverage is not in the best interests of the individuals, or would impair the carrier's or organized delivery system's ability to meet its contractual obligations.

2. At the time of coverage renewal, a carrier or organized delivery system may modify the health insurance coverage for a policy form offered to individuals in the individual market so long as such modification is consistent with state law and effective on a uniform basis among all individuals with that policy form.

3. An individual carrier or organized delivery system that elects not to renew an individual health benefit plan under subsection 1, paragraph *"d"*, shall not write any new business in the individual market in this state for a period of five years after the date of notice to the commissioner or director.

4. This section, with respect to a carrier or organized delivery system doing business in one established geographic service area of the state, applies only to such carrier's or organized delivery system's operations in that service area.

5. A carrier or organized delivery system offering coverage through a network plan is not required to renew or continue in force coverage or to accept applications from an individual who no longer resides or lives in, or is no longer employed in, the service area of such carrier or organized delivery system, or no longer resides or lives in, or is no longer employed in, a service area for which the carrier is authorized to do business, but only if coverage is not offered or terminated uniformly without regard to health status-related factors of a covered individual.

6. A carrier or organized delivery system offering coverage through a bona fide association is not required to renew or continue in force coverage or to accept applications from an individual through an association if the membership of the individual in the association on which the basis of coverage is provided ceases, but only if the coverage is not offered or terminated under this paragraph uniformly without regard to health status-related factors of a covered individual.

95 Acts, ch 5, §8; 97 Acts, ch 103, §36

513C.7 Availability of coverage.

1. A carrier or an organized delivery system, as a condition of issuing individual health benefit plans in this state, shall make available a basic or standard health benefit plan to an eligible individual who applies for a plan and agrees to make the required premium payments and to satisfy other reasonable provisions of the basic or standard health benefit plan. A carrier or an organized delivery system is not required to issue a basic or standard health benefit plan to an individual who meets any of the following criteria:

a. The individual is covered or is eligible for coverage under a health benefit plan provided by the individual's employer or is covered as the spouse or dependent of another individual covered or eligible for coverage under a health benefit plan provided by that individual's employer.

b. An eligible individual who does not apply for a basic or standard health benefit plan within sixty-three days of a qualifying event or within sixty-three days upon becoming ineligible for qualifying existing coverage.

c. The individual is covered or is eligible for

any continued group coverage under section 4980b of the Internal Revenue Code, sections 601 through 608 of the federal Employee Retirement Income Security Act of 1974, sections 2201 through 2208 of the federal Public Health Service Act, or any state-required continued group coverage. For purposes of this subsection, an individual who would have been eligible for such continuation of coverage, but is not eligible solely because the individual or other responsible party failed to make the required coverage election during the applicable time period, is deemed to be eligible for such group coverage until the date on which the individual's continuing group coverage would have expired had an election been made.

2. A carrier or an organized delivery system shall issue the basic or standard health benefit plan to an individual currently covered by an underwritten benefit plan issued by that carrier or an organized delivery system at the option of the individual. This option must be exercised within sixty-three days of notification of a premium rate increase applicable to the underwritten benefit plan.

3. *a.* A carrier shall file with the commissioner, in a form and manner prescribed by the commissioner, the basic or standard health benefit plan. A basic or standard health benefit plan filed pursuant to this paragraph may be used by a carrier beginning thirty days after it is filed unless the commissioner disapproves of its use.

The commissioner may at any time, after providing notice and an opportunity for a hearing to the carrier, disapprove the continued use by a carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

b. An organized delivery system shall file with the director, in a form and manner prescribed by the director, the basic or standard health benefit plan to be used by the organized delivery system. A basic or standard health benefit plan filed pursuant to this paragraph may be used by the organized delivery system beginning thirty days after it is filed unless the director disapproves of its use.

The director may at any time, after providing notice and an opportunity for a hearing to the organized delivery system, disapprove the continued use by an organized delivery system of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

4. *a.* The individual basic or standard health benefit plan shall not deny, exclude, or limit benefits for a covered individual for losses incurred more than twelve months following the effective date of the individual's coverage due to a preexisting condition. A preexisting condition shall not be defined more restrictively than any of the following:

(1) A condition that would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment during the twelve months immediately preceding the effective date of coverage.

(2) A condition for which medical advice, diagnosis, care, or treatment was recommended or received during the twelve months immediately preceding the effective date of coverage.

(3) A pregnancy existing on the effective date of coverage.

b. A carrier or an organized delivery system shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in an individual health benefit plan for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than sixty-three days prior to the effective date of the new coverage. For purposes of this section, periods of coverage under medical assistance provided pursuant to chapter 249A or Medicare coverage provided pursuant to Title XVIII of the federal Social Security Act shall not be counted with respect to the sixty-three day requirement.

5. A carrier or an organized delivery system is not required to offer coverage or accept applications pursuant to subsection 1 from any individual not residing in the carrier's or the organized delivery system's established geographic access area.

6. A carrier or an organized delivery system shall not modify a basic or standard health benefit plan with respect to an individual or dependent through riders, endorsements, or other means to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

95 Acts, ch 5, §9; 97 Acts, ch 103, §37 – 39; 99 Acts, ch 165, §9, 10

513C.8 Health benefit plan standards.

The commissioner shall adopt by rule the form and level of coverage of the basic health benefit plan and the standard health benefit plan for the individual market which shall provide benefits substantially similar to those as provided for under chapter 513B with respect to small group coverage, but which shall be appropriately adjusted at least every three years to reflect the current state of the individual market.

95 Acts, ch 5, §10; 2001 Acts, ch 125, §3

513C.9 Standards to assure fair marketing.

1. A carrier or an organized delivery system issuing individual health benefit plans in this state shall make available the basic or standard health benefit plan to residents of this state. If a carrier or an organized delivery system denies other individual health benefit plan coverage to an eligible individual on the basis of the health status or claims experience of the eligible individual, or the

individual's dependents, the carrier or the organized delivery system shall offer the individual the opportunity to purchase a basic or standard health benefit plan.

2. A carrier, an organized delivery system, or an agent shall not do either of the following:

a. Encourage or direct individuals to refrain from filing an application for coverage with the carrier or the organized delivery system because of the health status, claims experience, industry, occupation, or geographic location of the individuals.

b. Encourage or direct individuals to seek coverage from another carrier or another organized delivery system because of the health status, claims experience, industry, occupation, or geographic location of the individuals.

3. Subsection 2, paragraph *"a"*, shall not apply with respect to information provided by a carrier or an organized delivery system or an agent to an individual regarding the established geographic service area of the carrier or the organized delivery system, or the restricted network provision of the carrier or the organized delivery system.

4. A carrier or an organized delivery system shall not, directly or indirectly, enter into any contract, agreement, or arrangement with an agent that provides for, or results in, the compensation paid to an agent for a sale of a basic or standard health benefit plan to vary because of the health status or permitted rating characteristics of the individual or the individual's dependents.

5. Notwithstanding subsection 4, a commission shall be paid to an agent related to the sale of a basic or standard health benefit plan under this chapter. A commission paid pursuant to this subsection shall not be considered by the board for purposes of section 513C.10, subsection 5.

6. Subsection 4 does not apply with respect to the compensation paid to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status or other permitted rating characteristics of the individual or the individual's dependents.

7. Denial by a carrier or an organized delivery system of an application for coverage from an individual shall be in writing and shall state the reason or reasons for the denial.

8. A violation of this section by a carrier or an agent is an unfair trade practice under chapter 507B.

9. If a carrier or an organized delivery system enters into a contract, agreement, or other arrangement with a third-party administrator to provide administrative, marketing, or other services related to the offering of individual health benefit plans in this state, the third-party administrator is subject to this section as if it were a carrier or an organized delivery system.

95 Acts, ch 5, §11; 97 Acts, ch 103, §40

513C.10 Iowa individual health benefit reinsurance association.

1. The Iowa individual health benefit reinsurance association is established as a nonprofit corporation.

a. All persons that provide health benefit plans in this state including insurers providing accident and sickness insurance under chapter 509, 514, or 514A; fraternal benefit societies providing hospital, medical, or nursing benefits under chapter 512B; and health maintenance organizations, organized delivery systems, and all other entities providing health insurance or health benefits subject to state insurance regulation shall be members of the association.

b. The association shall be incorporated under chapter 504A, shall operate under a plan of operation established and approved pursuant to chapter 504A, and shall exercise its powers through the board of directors established under chapter 514E.

2. Rates for basic and standard coverages as provided in this chapter shall be determined by each carrier or organized delivery system as the product of a basic and standard factor and the lowest rate available for issuance by that carrier or organized delivery system adjusted for rating characteristics and benefits. Basic and standard factors shall be established annually by the Iowa comprehensive health insurance association board with the approval of the commissioner. Multiple basic and standard factors for a distinct grouping of basic and standard policies may be established. A basic and standard factor is limited to a minimum value defined as the ratio of the average of the lowest rate available for issuance and the maximum rate allowable by law divided by the lowest rate available for issuance. A basic and standard factor is limited to a maximum value defined as the ratio of the maximum rate allowable by law divided by the lowest rate available for issuance. The maximum rate allowable by law and the lowest rate available for issuance is determined based on the rate restrictions under this chapter. For policies written after January 1, 2002, rates for the basic and standard coverages as provided in this chapter shall be calculated using the basic and standard factors and shall be no lower than the maximum rate allowable by law. However, to maintain assessable loss assessments at or below one percent of total health insurance premiums or payments as determined in accordance with subsection 6, the Iowa comprehensive health insurance association board with the approval of the commissioner may increase the value for any basic and standard factor greater than the maximum value.

The Iowa individual health benefit reinsurance association may, with the approval of the commissioner, increase cost sharing provisions including,

but not limited to, basic and standard plan deductibles, coinsurance, or copayments.

3. Following the close of each calendar year, the association, in conjunction with the commissioner, shall require each carrier or organized delivery system to report the amount of earned premiums and the associated paid losses for all basic and standard plans issued by the carrier or organized delivery system. The reporting of these amounts must be certified by an officer of the carrier or organized delivery system.

4. The board shall develop procedures and make assessments and distributions as required to equalize the individual carrier and organized delivery system gains or losses so that each carrier or organized delivery system receives the same ratio of paid claims to ninety percent of earned premiums as the aggregate of all basic and standard plans insured by all carriers and organized delivery systems in the state.

5. If the statewide aggregate ratio of paid claims to ninety percent of earned premiums is greater than one, the dollar difference between ninety percent of earned premiums and the paid claims shall represent an assessable loss.

6. The assessable loss plus necessary operating expenses for the association, plus any additional expenses as provided by law, shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year, or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer any part of the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against the members of the association to meet the operating expenses of the association until the next calendar year is completed.

7. The board shall develop procedures for distributing the assessable loss assessments to each carrier and organized delivery system in proportion to the carrier's and organized delivery system's respective share of premium for basic and standard plans to the statewide total premium for all basic and standard plans.

8. The board shall ensure that procedures for collecting and distributing assessments are as efficient as possible for carriers and organized delivery systems. The board may establish procedures which combine, or offset, the assessment from, and the distribution due to, a carrier or organized delivery system.

9. A carrier or an organized delivery system may petition the association board to seek remedy from writing a significantly disproportionate share of basic and standard policies in relation to total premiums written in this state for health benefit plans. Upon a finding that a carrier or organized delivery system has written a disproportionate share, the board may agree to compensate the carrier or organized delivery system either by paying to the carrier or organized delivery system an additional fee not to exceed two percent of earned premiums from basic and standard policies for that carrier or organized delivery system or by petitioning the commissioner or director, as appropriate, for remedy.

10. *a.* The commissioner, upon a finding that the acceptance of the offer of basic and standard coverage by individuals pursuant to this chapter would place the carrier in a financially impaired condition, shall not require the carrier to offer coverage or accept applications for any period of time the financial impairment is deemed to exist.

b. The director, upon a finding that the acceptance of the offer of basic and standard coverage by individuals pursuant to this chapter would place the organized delivery system in a financially impaired condition, shall not require the organized delivery system to offer coverage or accept applications for any period of time the financial impairment is deemed to exist.

95 Acts, ch 5, §12; 2000 Acts, ch 1023, §21; 2001 Acts, ch 125, §4 – 6; 2002 Acts, ch 1119, §66

Subsection 2, unnumbered paragraph 1 amended

513C.11 Self-funded employer-sponsored health benefit plan participation in reinsurance association.

1. A self-funded employer-sponsored health benefit plan qualified under the federal Employee Retirement Income Security Act of 1974 may voluntarily elect to participate in the Iowa individual health benefit reinsurance association established in section 513C.10 in accordance with the plan of operation and subject to such terms and conditions adopted by the board of the association established in section 514E.2 to provide portability and continuity to its covered employees and their covered spouses and dependents subject to the same terms and conditions as a participating insurer.

2. If the federal Employee Retirement Income Security Act of 1974 is amended such that the state may require the participation of a self-funded employer, the individual reinsurance requirements shall apply equally to such employers.

3. When and if the federal government imposes conditions of portability and continuity on self-funded employers qualified under the federal Employee Retirement Income Security Act of 1974 that the commissioner deems are substantially similar to those required of Iowa insurers, cover-

age under such qualified plans shall be deemed qualified prior coverage for purposes of chapter 513B and this chapter.

95 Acts, ch 5, §13; 2002 Acts, ch 1119, §67
Subsection 1 amended

513C.12 Commissioner's duties.

The commissioner shall adopt rules administering this chapter.

97 Acts, ch 103, §41

CHAPTER 514

NONPROFIT HEALTH SERVICE CORPORATIONS

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514.1 Applicability — definitions.

A corporation organized under former chapter 504 or chapter 504A for the purpose of establishing, maintaining, and operating a nonprofit hospital service plan, whereby hospital service may be provided by the corporation or by a hospital with which it has a contract for service, to the public who become subscribers to this plan under a contract which entitles each subscriber to hospital service; or a corporation organized for the purpose of establishing, maintaining, and operating a plan whereby health care service may be provided at the expense of this corporation, by licensed physicians and surgeons, dentists, podiatric physicians, osteopathic physicians, osteopathic physicians and surgeons or chiropractors, to subscribers under contract, entitling each subscriber to health care service, as provided in the contract; or a corporation organized for the purpose of establishing, maintaining, and operating a nonprofit pharmaceutical service plan or optometric service plan, whereby pharmaceutical or optometric service may be provided by this corporation or by a licensed pharmacy with which it has a contract for service, to the public who become subscribers to this plan under a contract which entitles each subscriber to pharmaceutical or optometric service; shall be governed by this chapter and is exempt from all other provisions of the insurance laws of this state, unless specifically designated in this chapter, not only in governmental relations with the state but for every other purpose, and additions enacted after the effective date of this chapter* shall not apply to these corporations unless they are expressly designated in the additions.

For the purposes of this chapter, *"subscriber"* means an individual who enters into a contract for health care services with a corporation subject to this chapter and includes a person eligible for medical assistance or additional medical assistance as defined under chapter 249A, with respect to whom the department of human services has entered into a contract with a firm operating under chapter 514. For purposes of this chapter, *"provider"* means a person as defined in section 4.1, subsection 20, which is licensed or authorized in this state to furnish health care services. *"Health care"* means that care necessary for the purpose of preventing, alleviating, curing, or healing human physical or mental illness, injury, or disability.

[C39, §**8895.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.1]

83 Acts, ch 27, §11; 83 Acts, ch 96, §157, 159; 84 Acts, ch 1122, §3; 86 Acts, ch 1180, §3; 96 Acts, ch 1034, §68

*Original enactment effective July 1, 1939; 1939 Acts, ch 222

514.2 Incorporation.

Persons desiring to form a nonprofit hospital service corporation, or a nonprofit medical service corporation, or a nonprofit pharmaceutical or optometric service corporation shall incorporate under the provisions of chapter 504 or chapter 504A,

as supplemented and amended herein and any acts amendatory thereof.

[C39, §**8895.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.2]

514.3 Approval by commissioner.

The articles of incorporation, and any subsequent amendments, of a corporation shall have endorsed on or annexed to those articles or amendments the approval of the commissioner of insurance before the same shall be filed for record. A corporation shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of the adoption of the bylaws and amendments.

[C39, §**8895.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.3]

2000 Acts, ch 1023, §22; 2002 Acts, ch 1119, §180
Section amended

514.4 Directors.

At least two-thirds of the directors of a hospital service corporation, medical service corporation, dental service corporation, or pharmaceutical or optometric service corporation subject to this chapter shall be at all times subscribers and not more than one-third of the directors shall be providers as provided in this section. The board of directors of each corporation shall consist of at least nine members.

A subscriber director is a director of the board of a corporation who is a subscriber and who is not a provider of health care pursuant to section 514B.1, subsection 7, a person who has material financial or fiduciary interest in the delivery of health care services or a related industry, an employee of an institution which provides health care services, or a spouse or a member of the immediate family of such a person. A subscriber director of a hospital or medical service corporation shall be a subscriber of the services of that corporation.

A provider director of a corporation subject to this chapter shall be at all times a person who has a material financial interest in or is a fiduciary to or an employee of or is a spouse or member of the immediate family of a provider having a contract with such corporation to render to its subscribers the services of such corporation or who is a hospital trustee.

A director may serve on a board of only one corporation at a time subject to this chapter.

The commissioner of insurance shall adopt rules pursuant to chapter 17A to implement the process of the election of subscriber directors of the board of directors of a corporation to ensure the representation of a broad spectrum of subscriber interest on each board and establish criteria for the selection of nominees. The rules shall provide for an independent subscriber nominating committee to serve until the composition of the board of directors meets the percentage requirements of this section. Once the composition requirements of this section are met, the nominations for subscriber directors shall be made by the subscriber directors of the board under procedures the board establishes which shall also permit nomination by a petition of at least fifty subscribers. The board shall also establish procedures to permit nomination of provider directors by petition of at least fifty participating providers. A member of the board of directors of a corporation subject to this chapter shall not serve on the independent subscriber nominating committee. The nominating committee shall consist of subscribers as defined in this section. The rules of the commissioner of insurance shall also permit nomination of subscriber directors by a petition of at least fifty subscribers, and nomination of provider directors by a petition of at least fifty participating providers. These petitions shall be considered only by the independent nominating committee during the duration of the committee. Following the discontinuance of the committee, the petition process shall be continued and the board of directors of the corporation shall consider the petitions. The independent subscriber nominating committee is not subject to chapter 17A. The nominating committee shall not receive per diem or expenses for the performance of their duties.

Population factors, representation of different geographic regions, and the demography of the service area of the corporation subject to this chapter shall be considered when making nominations for the board of directors of a corporation subject to this chapter.

A corporation serving states in addition to Iowa shall be required to implement this section only for directors who are residents of Iowa and elected as board members from Iowa.

[C39, §**8895.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.4]

83 Acts, ch 27, §12, 15; 84 Acts, ch 1282, §1; 91 Acts, ch 258, §58; 2000 Acts, ch 1023, §23

514.5 Contracts for service.

A hospital service corporation organized under former chapter 504 or chapter 504A may enter into contracts for the rendering of hospital service to any of its subscribers with hospitals maintained and operated by the state or any of its political subdivisions, or by any corporation, association, or individual. Such hospital service corporation may also contract with an ambulatory surgical facility to provide surgical services to the corporation's subscribers. Hospital service is meant to include bed and board, general nursing care, use of the operating room, use of the delivery room, ordinary medications and dressings and other customary routine care. Ambulatory surgical facility means a facility constructed and operated for the specific purpose of providing surgery to patients admitted to and discharged from the facility within the same day.

A medical service corporation organized under this chapter may enter into contracts with subscribers to furnish health care service through physicians and surgeons, dentists, podiatric physicians, osteopathic physicians, osteopathic physicians and surgeons, or chiropractors.

Any pharmaceutical or optometric service corporation organized under the provisions of said chapter may enter into contracts for the rendering of pharmaceutical or optometric service to any of its subscribers. Membership in any pharmaceutical service corporation shall be open to all pharmacies licensed under chapter 155A.

A hospital service corporation or medical service corporation organized under this chapter may enter into contracts with subscribers and providers to furnish health care services not otherwise allocated by this section.

[C39, §**8895.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.5]

83 Acts, ch 27, §13; 84 Acts, ch 1122, §4; 86 Acts, ch 1180, §4; 87 Acts, ch 215, §48; 96 Acts, ch 1034, §68

514.6 Rates — approval by commissioner.

The rates charged by any such corporation to the subscribers for health care service shall at all times be subject to the approval of the commissioner of insurance.

[C39, §**8895.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.6]

84 Acts, ch 1122, §5

514.7 Contracts — approval by commissioner — provisions to be available.

The contracts by any such corporation with the subscribers for health care service shall at all times be subject to the approval of the commissioner of insurance. The commissioner shall require that participating pharmacies be reimbursed by the pharmaceutical service corporation at rates or prices equal to rates or prices charged nonsubscribers, unless the commissioner determines otherwise to prevent loss to subscribers.

A provision shall be available in approved contracts with hospital and medical service corporate subscribers under group subscriber contracts or plans covering vision care services or procedures, for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154, if the care and treatment are provided within the scope of the optometrist's license and if the subscriber contract would pay for the care and treatment if it were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148 or 150A. The subscriber contract shall also provide that the subscriber may reject the coverage or provision if the coverage or provision for services which may be provided by an optometrist is rejected for all providers of similar vision care services as licensed under chapter 148, 150A, or 154. This paragraph applies to group subscriber contracts delivered after July 1, 1983, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

A provision shall be made available in approved contracts with hospital and medical subscribers under group subscriber contracts or plans covering diagnosis and treatment of human ailments, for payment or reimbursement for necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151 if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the subscriber contract would pay or reimburse for the diagnosis or treatment of the human ailments, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailments or their diagnosis or treatment, if it were provided by a person licensed under chapter 148, 150, or 150A. The subscriber contract shall also provide that the subscriber may reject the coverage or provision if the coverage or provision for diagnosis or treatment of a human ailment by a chiropractor is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148, 150, 150A, or 151. A group subscriber contract may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148, 150, 150A, and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This paragraph applies to group subscriber contracts delivered after July 1, 1986, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

A provision shall be available in approved contracts with hospital and medical service corporate subscribers under group subscriber contracts or plans covering medical and surgical service, for payment of covered services determined to be medically necessary provided by certified registered nurses certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules

adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the corporation and subscriber group, subject to utilization controls. This paragraph shall not require payment for nursing services provided by a certified registered nurse practicing in a hospital, nursing facility, health care institution, a physician's office, or other noninstitutional setting if the certified registered nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This paragraph applies to group subscriber contracts delivered in this state on or after July 1, 1989, and to group subscriber contracts on their anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to limited or specified disease or individual contracts or contracts designed only for issuance to subscribers eligible for coverage under Title XVIII of the federal Social Security Act, contracts which are rated on a community basis, or any other similar coverage under a state or federal government plan.

[C39, §**8895.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.7]

83 Acts, ch 166, §2; 84 Acts, ch 1122, §6; 84 Acts, ch 1290, §2; 86 Acts, ch 1180, §5; 89 Acts, ch 164, §3; 99 Acts, ch 75, §3; 2000 Acts, ch 1058, §46

514.8 Contracts with providers — approval.

The contracts by any such corporation with participating hospitals for hospital service or with participating physicians and surgeons, dentists, podiatric physicians, osteopathic physicians, or osteopathic physicians and surgeons for medical and surgical service, or with participating pharmacies for pharmaceutical service, or with participating optometrists for optometric service, or with other providers shall at all times be subject to the approval of the commissioner of insurance.

[C39, §**8895.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.8]

84 Acts, ch 1122, §7; 96 Acts, ch 1034, §68

514.9 Annual report.

Every such corporation shall annually, on or before the first day of March, file in the office of the commissioner of insurance a statement verified by at least two of the principal officers of said corporation showing its condition on the thirty-first day of December then next preceding, which shall be in such form and shall contain such matters as the commissioner of insurance shall prescribe.

[C39, §**8895.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.9]

514.10 Examination.

Every such corporation shall be subject to examination under the provisions of chapter 507 and any acts amendatory thereto, so far as the chapter may be applicable.

[C39, §**8895.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.10]

514.11 Costs approved.

All acquisition costs in connection with the solicitation of subscribers to such hospital service plan or medical service plan or pharmaceutical or optometric service plan, and administration costs including salaries paid its officers, if any, shall at all times be subject to the approval of the commissioner of insurance.

[C39, §**8895.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.11]

514.12 Investment of funds.

The funds of any corporation subject to the provisions of this chapter shall be invested only in securities permitted by the laws of this state for the investment of funds of life insurance companies.

[C39, §**8895.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.12]

514.13 Arbitration of disputes.

Any dispute arising between a corporation organized under this chapter and a provider may be submitted to the commissioner of insurance for a decision. All decisions and findings of the commissioner of insurance may be judicially reviewed in accordance with the terms of chapter 17A.

[C39, §**8895.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.13]

84 Acts, ch 1122, §8

514.14 Dissolution or merger.

Any dissolution, merger, or liquidation of a corporation organized under the provisions of said chapter shall be under the supervision of the commissioner of insurance who shall have all powers with respect thereto granted to the commissioner under the insurance laws of this state.

[C39, §**8895.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.14]

514.15 Nonexempt from taxation.

Every corporation organized under the provisions of this chapter is hereby declared to be a charitable and benevolent institution but its property and funds, including subscribers' contracts, shall not be exempt from taxation. For purposes of this section, the term "subscriber contract" shall mean only those benefit contracts issued or delivered in Iowa by corporations subject to this chapter, including certificates issued under such contracts, and which provide coverage to residents of Iowa on a risk basis.

[C39, §**8895.15;** C46, 50, 54, 58, 62, 66, 71, 73,

75, 77, 79, 81, §514.15; 82 Acts, ch 1003, §6]
85 Acts, ch 239, §3
Rate of tax; §432.2

514.16 Governmental employees included.

An employee or employees of the state, or of any county, city or of any institution supported in whole or in part by public funds, or any subdivisions thereof, may authorize the deduction from their salary or wages of the amount of their subscription payments to any corporation operating a nonprofit hospital service plan or medical service plan or pharmaceutical or optometric service plan, as provided in this chapter. The governing body of the state, or of the county, city or of any institution supported in whole or in part by public funds, or any subdivisions thereof, may authorize deductions from the salaries or wages of employees subscribing to such nonprofit hospital service plan or medical service plan or pharmaceutical or optometric service plan. The authorization by an employee or employees for deductions from the employee's or employees' salaries or wages shall be evidenced by a written request signed by the employee directed to and filed with the treasurer of the state, county, city or of any institution supported in whole or in part by public funds, or any subdivisions thereof, and said treasurer is authorized to draw and deliver checks in favor of the hospital service corporation or medical service corporation or pharmaceutical or optometric service corporation stipulated in such authorization for the amount covering the sum total of the deductions authorized. The foregoing provisions are not to be deemed an assignment of salaries or wages.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.16]

514.17 Physicians and surgeons, podiatric physicians, or dentists — number required.

No nonprofit medical service corporation shall be permitted to operate until it shall have entered into contracts with at least one hundred fifty physicians and surgeons licensed to practice medicine and surgery pursuant to chapter 148, or one hundred fifty dentists licensed to practice dentistry pursuant to chapter 153, or at least one hundred fifty physicians and surgeons licensed to practice osteopathy or osteopathy and surgery pursuant to chapter 150, or at least twenty-five podiatric physicians licensed to practice podiatry pursuant to chapter 149, who agree to furnish medical and surgical, podiatric, or dental service and be governed by the bylaws of the corporation.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514.17]
96 Acts, ch 1034, §68

514.18 Podiatric physicians.

Medical or surgical services or procedures constituting the practice of podiatry, also known as chiropody, as defined by chapter 149, and covered by the terms of any individual, group, blanket, or franchise policy providing accident or health benefits hereafter delivered or hereafter issued for delivery in Iowa and covering an Iowa risk may be performed by any practitioner, selected by the insured, licensed under chapter 149 to perform such medical or surgical services or procedures. Any provision of such policy or exclusion or limitation denying an insured the free choice of such licensed podiatric physician, also known as chiropodist, shall to the extent of the denial, be void, but such voidance shall not affect the validity of the other provisions of the policy.

[C66, 71, 73, 75, 77, 79, 81, §514.18]
95 Acts, ch 108, §18

514.19 Combined service corporations.

A corporation subject to this chapter may combine with any other corporation subject to this chapter as permitted under chapter 504A and upon the approval by the commissioner of insurance. Each corporation shall comply with chapter 504A, the corporation's articles of incorporation, and the corporation's bylaws. The combined service corporation shall continue the service benefits previously provided by each corporation and may, subject to the approval of the commissioner of insurance, offer other service benefits not previously provided by the corporations before combining, which are permitted under chapter 514.

83 Acts, ch 27, §14

514.20 Reserved.

514.21 Utilization review program.

A utilization review program shall be established for purposes of health care cost control, according to usual and customary third-party insurance payment or reimbursement procedures, by a corporation subject to this chapter and by physician providers as defined in section 135.1 and registered nurse providers licensed under chapter 152. This utilization review program shall not be used directly or indirectly to circumvent the provisions for payment or reimbursement to providers of health care services as provided in section 509.3, subsections 6 and 7, and section 514.7.

86 Acts, ch 1180, §9; 89 Acts, ch 164, §4
Utilization and cost control; see also chapter 514F

514.22 Reserved.

514.23 Mutualization plan.

1. A corporation organized and governed by this chapter may become a mutual insurer under a plan which is approved by the commissioner of insurance. The plan shall state whether the insur-

er will be organized as a for-profit corporation pursuant to chapter 490 or 491 or a nonprofit corporation pursuant to chapter 504A. Upon consummation of the plan, the corporation shall fully comply with the requirements of the law that apply to a mutual insurance company. If the insurer is to be organized under chapter 504A, then at least seventy-five percent of the initial board of directors of the mutual insurer so formed shall be policyholders who are also nonproviders of health care. All directors comprising this initial board of directors shall be selected by an independent committee appointed by the state commissioner of insurance. This independent committee shall consist of seven to eleven persons who are current policyholders, who are nonproviders of health care, and who are not directors of a corporation subject to this chapter. For purposes of this subsection, a *"nonprovider of health care"* is an individual who is not any of the following:

a. A "provider" as defined in section 514B.1, subsection 7.

b. A person who has material financial or fiduciary interest in the delivery of health care services or a related industry.

c. An employee of an institution which provides health care services.

d. A spouse or a member of the immediate family of a person described in paragraphs *"a"* through *"c"*.

2. A corporation organized and governed by this chapter which becomes a mutual insurer under this section shall continue as a mutual insurer to be governed by the provisions of section 514.7 and shall also be governed by section 509.3, subsection 6.

85 Acts, ch 239, §4; 86 Acts, ch 1180, §6; 90 Acts, ch 1205, §36

CHAPTER 514A

ACCIDENT AND HEALTH INSURANCE

514A.1 Definition of accident and sickness insurance policy.
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514A.1 Definition of accident and sickness insurance policy.

"Policy of accident and sickness insurance" as used in this chapter includes a policy or contract covering insurance against loss resulting from sickness, or from bodily injury or death by accident, or both. For the purposes of this chapter the words *"policy of accident and sickness insurance"* are interchangeable without deviation of meaning with the words *"policy of accident and health insurance"* or the words *"policy of accident or health insurance."* This chapter applies to all individual policies of such accident and sickness insurance written by Iowa or non-Iowa companies or associations duly licensed under chapter 508, 515, or 520 and, societies, orders, or associations licensed under chapter 512B writing sickness and accident policies providing benefits for loss of time.

Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business and the societies or auxiliaries to such orders shall not be subject to the provisions of this chapter nor shall any religious order be subject to the provisions of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.1]
89 Acts, ch 83, §72, 73

514A.2 Form of policy.

1. No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

a. The entire money and other considerations therefor are expressed therein; and

b. The time at which the insurance takes effect and terminates is expressed therein; and

c. It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and

d. The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

e. The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in section 514A.3, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "exceptions", or "exceptions and reductions", provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

f. Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

g. It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

2. If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the standards set forth in subsection 1 of this section and in section 514A.3.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.2]

514A.3 Accident and sickness policy provisions.

1. *Required provisions.* Except as provided in subsection 3 of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

Entire contract — changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

b. A provision as follows:

Time limit on certain defenses: (1) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of this two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of subsection 2, paragraphs *"a", "b", "c", "d"* and *"e",* in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium *(a)* until at least age fifty or, *(b)* in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestable":

After this policy has been in force for a period of two years during the lifetime of the insured, (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

(2) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

c. A provision as follows:

Grace period: A grace period of . . . . . (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in ac-

cordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

d. A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

e. A provision as follows:

Notice of claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at . . . . . (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.)

f. A provision as follows:

Claim forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

g. A provision as follows:

Proofs of loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

h. A provision as follows:

Time of payment of claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid . . . . . (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

i. A provision as follows:

Payment of claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $. . . . . (insert an amount which shall not exceed one thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

j. A provision as follows:

Physical examinations and autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

k. A provision as follows:

Legal actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

l. A provision as follows:

Change of beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

m. A provision as follows:

Right to return policy: The insured has the right, within ten days after receipt of this policy, to return it to the company at its home office or branch office or to the agent through whom it was purchased, and if so returned the premium paid will be refunded and the policy will be void from the beginning and the parties shall be in the same position as if a policy had not been issued.

The foregoing provision shall be prominently printed on the first page of the policy or attached to the policy.

The provisions of this paragraph *"m"* shall apply to any insurance policy which is delivered or issued for delivery or renewed in this state on or after July 1, 1978.

2. *Other provisions.* Except as provided in subsection 3 of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

a. A provision as follows:

Change of occupation: If the insured be injured or contract sickness after having changed the insured's occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes the insured's occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the in-

surer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

b. A provision as follows:

Misstatement of age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

c. A provision as follows:

Other insurance in this insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for . . . . . (insert type of coverage or coverages) in excess of $ . . . . . (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to the insured's estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, or the insured's beneficiary or estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

d. A provision as follows:

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase " — expense incurred benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

e. A provision as follows:

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase " — other benefits". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental

agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".)

f. A provision as follows:

Relation of earnings to insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

g. A provision as follows:

Unpaid premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

h. A provision as follows:

Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

i. A provision as follows:

Conformity with state statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

j. A provision as follows:

Illegal occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

k. A provision as follows:

Intoxicants and narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician. This provision shall not be used with respect to a medical expense policy. For purposes of this provision, *"medical expense policy"* means an accident and sickness insurance policy that provides hospital, medical, and surgical expense coverage.

3. *Inapplicable or inconsistent provisions.* If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

4. *Order of certain policy provisions.* The provisions which are the subject of subsections 1 and 2 of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsec-

tions or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

5. *Third party ownership.* The word *"insured"*, as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

6. *Requirements of other jurisdictions.*

a. Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this chapter and which is prescribed or required by the law of the state under which the insurer is organized.

b. Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

7. *Filing procedure.* The commissioner may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this chapter as are necessary, proper or advisable to the administration of this chapter. This provision shall not abridge any other authority granted the commissioner by law.

[S13, §1820; C24, 27, 31, 35, 39, §**8775;** C46, 50, §511.36; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.3]

90 Acts, ch 1234, §31; 2002 Acts, ch 1111, §15; 2002 Acts, ch 1119, §68

Subsection 1, paragraph m amended

Subsection 2, paragraph k stricken and rewritten

514A.4 Conforming to statute.

1. *Other policy provisions.* No policy provision which is not subject to section 514A.3 shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

2. *Policy conflicting with this chapter.* A policy delivered or issued for delivery to any person in this state in violation of this chapter shall be held valid but shall be construed as provided in this chapter. When any provision in a policy subject to this chapter is in conflict with any provision of this chapter, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.4]

514A.5 Application.

1. The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

2. No alteration of any written application for any such policy shall be made by any person other than the applicant without the applicant's written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

3. The falsity of any statement in the application for any policy covered by this chapter may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.5]

514A.6 Notice — waiver.

The acknowledgment by any insurer of the receipt of notice given under any policy covered by this chapter, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.6]

514A.7 Age limit.

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the

policy.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.7]

514A.8 Nonapplication to certain policies.

Nothing in this chapter shall apply to or affect (1) any policy of workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as *(a)* provide additional benefits in case of death or dismemberment or loss of sight by accident, or as *(b)* operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.8]

514A.9 Violation.

Any person, partnership or corporation willfully violating any provision of this chapter or order of the commissioner made in accordance with this chapter, shall forfeit to the people of the state a sum not to exceed one hundred dollars for each such violation, which may be recovered by a civil action. The commissioner may also suspend or revoke the license of an insurer or agent for any such willful violation.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.9]

514A.10 Judicial review.

Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.10]

514A.11 Inconsistent acts not applicable.

All acts or parts of acts inconsistent with this chapter shall not apply to the provisions hereof to the extent of said inconsistency.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.11]

514A.12 Title and effective date of chapter.

This chapter may be cited as the *"Uniform Individual Accident and Sickness Act."* This chapter shall take effect on the fourth day of July, 1951. A policy, filed with and approved by the insurance commissioner prior to the effective date of this chapter for use, delivery, or issue for delivery to any person in this state, may continue to be used, or delivered, or issued for delivery to any person in this state for a period of five years from and after said effective date without being subject to the provisions of sections 514A.2, 514A.3 and 514A.4; and any rider or endorsement filed with and approved by the insurance commissioner at any time may be used, or delivered, or issued for delivery to any person holding such a policy without being subject to the provisions of sections 514A.2, 514A.3 and 514A.4.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §514A.12]

514A.13 Filing requirement — prior approval.

A policy of insurance against loss or expense from sickness or from the bodily injury or death by accident of the insured shall not be issued or delivered to any person in this state and an application, rider, or endorsement shall not be used in connection with the policy until a copy of the policy form and of the classification of risks and the premium rates, or, in the case of cooperatives or assessment companies the estimated costs pertaining to the policy, have been filed with and approved by the commissioner.

A filing is deemed to be approved unless disapproved by the commissioner within thirty days of receipt of the filing by the commissioner. Subsequent rate changes are also subject to this section.

91 Acts, ch 213, §17; 92 Acts, ch 1162, §20

514A.14 Disapproval of filing.

1. The commissioner shall notify an insurer which has filed a policy form pursuant to section 514A.13 that does not comply with this chapter or chapter 514D, or rules adopted pursuant to those chapters. The notice shall inform the insurer that it is unlawful for the insurer to issue the form or use it in connection with any policy, if the commissioner finds upon review of the form, either of the following:

a. The benefits provided are unreasonable in relation to the premium charged.

b. The form contains a provision which is unjust, unfair, inequitable, misleading, deceptive, or which encourages misrepresentation of the policy.

2. In a notice provided under subsection 1, the commissioner shall specify the reasons for disapproval and state that a hearing will be granted within twenty days after request in writing by the insurer.

91 Acts, ch 213, §18

514A.15 Withdrawal of approval.

The commissioner may at any time, after opportunity for hearing, withdraw the commissioner's previously given approval of any such form on any of the grounds stated in section 514A.14. It shall be unlawful for the insurer to issue a form or use the form in connection with any policy after the effective date of the withdrawal of approval. The notice of any hearing granted under this section shall specify the matters to be considered at the hearing. Any decision affirming disapproval or direct-

ing withdrawal of approval under this section shall be in writing and shall specify the reasons for the disapproval or withdrawal of approval.

91 Acts, ch 213, §19

CHAPTER 514B

HEALTH MAINTENANCE ORGANIZATIONS

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514B.1 Definitions — services required or available.

As provided in this chapter, unless the context otherwise requires:

1. *"Basic health care services"* means services which an enrollee might reasonably require in order to be maintained in good health, including as a minimum, emergency care, inpatient hospital and physician care, and outpatient medical services rendered within or outside of a hospital.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Enrollee"* means an individual who is enrolled in a health maintenance organization.

4. *"Evidence of coverage"* means any certificate, agreement or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

5. *a. "Health care services"* means services included in the furnishing to any individual of medical or dental care, or hospitalization, or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of all other services for the purposes of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

b. The health care services available to enrollees under prepaid group plans covering vision care services or procedures, shall include a provision for payment of necessary medical or surgical care and treatment provided by an optometrist licensed under chapter 154, if performed within the scope of the optometrist's license, and the plan would pay for the care and treatment when the care and treatment were provided by a person engaged in the practice of medicine or surgery as licensed under chapter 148 or 150A. The plan shall provide that the plan enrollees may reject the coverage for services which may be provided by an optometrist if the coverage is rejected for all providers of similar vision care services as licensed under chapter 148, 150A, or 154. This paragraph applies to services provided under plans made after July 1, 1983, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to enrollees eligible for coverage under Title XVIII of the Social Security Act or any other similar coverage under a state or federal government plan.

c. The health care services available to enroll-

ees under prepaid group plans covering diagnosis and treatment of human ailments, shall include a provision for payment of necessary diagnosis or treatment provided by a chiropractor licensed under chapter 151 if the diagnosis or treatment is provided within the scope of the chiropractor's license and if the plan would pay or reimburse for the diagnosis or treatment of human ailment, irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human ailment or its diagnosis or its treatment, if it were provided by a person licensed under chapter 148, 150, or 150A. The plan shall also provide that the plan enrollees may reject the coverage for diagnosis or treatment of a human ailment by a chiropractor if the coverage is rejected for all providers of diagnosis or treatment for similar human ailments licensed under chapter 148, 150, 150A, or 151. A prepaid group plan of health care services may limit or make optional the payment or reimbursement for lawful diagnostic or treatment service by all licensees under chapters 148, 150, 150A, and 151 on any rational basis which is not solely related to the license under or the practices authorized by chapter 151 or is not dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees in describing human ailments or their diagnosis or treatment. This paragraph applies to services provided under plans made after July 1, 1986, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is the later. This paragraph does not apply to enrollees eligible for coverage under Title XVIII of the Social Security Act, or any other similar coverage under a state or federal government plan.

d. The health care services available to enrollees under prepaid group plans covering hospital, medical, or surgical expenses, may include, at the option of the employer purchaser, a provision for payment of covered services determined to be medically necessary provided by a certified registered nurse certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1, under terms and conditions agreed upon between the employer purchaser and the health maintenance organization, subject to utilization controls. This paragraph shall not require payment for nursing services provided by a certified registered nurse practicing in a hospital, nursing facility, health care institution, a physician's office, or other non-institutional setting if the certified registered nurse is an employee of the hospital, nursing facility, health care institution, physician, or other health care facility or health care provider. This paragraph applies to services provided under plans within this state made on or after July 1, 1989, and to existing group plans on their next anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is later. This paragraph does not apply to enrollees eligible for coverage under an individual contract or coverage designed only for issuance to enrollees eligible for coverage under Title XVIII of the federal Social Security Act, or under coverage which is rated on a community basis, or any other similar coverage under a state or federal government plan.

6. *"Health maintenance organization"* means any person, who:

a. Provides either directly or through arrangements with others, health care services to enrollees on a fixed prepayment basis;

b. Provides either directly or through arrangements with other persons for basic health care services; and,

c. Is responsible for the availability, accessibility and quality of the health care services provided or arranged.

7. *"Provider"* means any physician, hospital, or person as defined in chapter 4 which is licensed or otherwise authorized in this state to furnish health care services.

[C75, 77, 79, 81, §514B.1]

83 Acts, ch 166, §3; 84 Acts, ch 1290, §3; 86 Acts, ch 1180, §7; 89 Acts, ch 164, §5; 99 Acts, ch 75, §4

514B.2 Establishment of health maintenance organizations.

Any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person shall not establish or operate a health maintenance organization in this state, nor sell, offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate under this chapter.

[C75, 77, 79, 81, §514B.2]

514B.3 Application for a certificate of authority.

An application for a certificate of authority shall be verified by an officer or authorized representative of the health maintenance organization, shall be in a form prescribed by the commissioner, and shall set forth or be accompanied by the following:

1. A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all of its amendments.

2. A copy of the bylaws, rules or similar document, if any, regulating the conduct of the internal affairs of the applicant.

3. A list of the names, addresses and official

positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers if a corporation and the partners or members if a partnership or association.

4. A copy of any contract made or to be made between any providers or persons listed in subsection 3 and the applicant.

5. A statement generally describing the health maintenance organization including, but not limited to, a description of its facilities and personnel.

6. A copy of the form of evidence of coverage.

7. A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations.

8. Financial statements showing the applicant's assets, liabilities and sources of financial support. If the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall satisfy this requirement unless the commissioner directs that additional financial information is required for the proper administration of this chapter.

9. A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of operating results anticipated, and a statement as to the sources of funding.

10. A power of attorney executed by any applicant who is not domiciled in this state appointing the commissioner, the commissioner's successors in office and deputies as the true and lawful attorney of the applicant for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served.

11. A statement reasonably describing the geographic area to be served.

12. A description of the complaint procedures to be utilized as required under section 514B.14.

13. A description of the procedures and programs to be implemented to meet the requirements for quality of health care as determined by the director of public health under section 514B.4.

14. A description of the mechanism by which enrollees shall be allowed to participate in matters of policy and operation as required by section 514B.7.

15. Other information the commissioner finds reasonably necessary to make the determinations required in section 514B.5.

A health maintenance organization shall, unless otherwise provided for in this chapter, file notice with the commissioner and receive approval from the commissioner before modifying the operations described in the information required by this section.

Upon receipt of an application for a certificate of authority, the commissioner shall immediately transmit copies of the application and accompanying documents to the director of public health and the affected regional health planning council, as authorized by Public Law 89-749 (42 U.S.C. 246(b) 2b), for their nonbinding consultation and advice.

[C75, 77, 79, 81, §514B.3]

514B.3A Approval by commissioner and attorney general.

The articles of incorporation, and any subsequent amendment, of a corporation shall have endorsed on or annexed to such articles or amendment the approval of the commissioner of insurance and the attorney general before filing for record. A corporation shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of the adoption of the bylaws and amendments.

2000 Acts, ch 1023, §24

514B.4 Applicant for certificate of authority.

The commissioner shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

1. Has demonstrated the willingness and potential ability to assure the availability, accessibility, and continuity of service through adequate personnel and facilities.

2. Has arrangements established in accordance with rules adopted by the commissioner for a continuous review of health care processes and outcomes. If a health maintenance organization is accredited by the national committee on quality assurance, or another accreditation entity approved by the commissioner, an external peer review under rules of the commissioner shall not be applicable. However, at the discretion of the commissioner, an on-site inspection of the health maintenance organization may be conducted.

3. Has a procedure established in accordance with rules adopted by the commissioner to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and other matters as may be reasonably required by the commissioner.

The commissioner, in administering this section and sections 514B.25 and 514B.26, may contract with qualified persons to make recommendations concerning the determinations required to be made by the commissioner. Such recommendations may be accepted in full or in part by the commissioner.

[C75, 77, 79, 81, §514B.4]

92 Acts, ch 1162, §21; 99 Acts, ch 165, §11

514B.4A Direct provision of health care services.

1. An application for a certificate of authority to provide health care services, directly, shall be forwarded by the commissioner to the director of

public health for review, comment, and recommendation, with respect to the health care services to be provided directly, to assure that the applicant has demonstrated the willingness and potential ability to provide the health care services through adequate personnel and facilities.

2. Rules proposed by the commissioner for adoption for the direct provision of health care services by a health maintenance organization, shall be forwarded by the commissioner to the director of public health for review, comment, and recommendation, prior to submission to the administrative rules coordinator pursuant to section 17A.4.

3. The director of public health shall respond to the commissioner, with respect to an application or proposed rule, with any comments or recommendations within thirty days of the forwarding of the application or proposed rules to the director of public health.

92 Acts, ch 1237, §12

514B.5 Issuance and denial of a certificate of authority.

The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to section 514B.3 within a reasonable period of time. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in section 514B.22 if the commissioner is satisfied that the following conditions are met:

1. The persons responsible for the conduct of the affairs of the applicant are competent and trustworthy.

2. The commissioner finds that the health maintenance organization's proposed plan of operation meets the requirements of section 514B.4.

3. The health maintenance organization provides or arranges for the provision of basic health care services on a prepaid basis, except that the health maintenance organization may impose deductible and coinsurance charges subject to approval by the commissioner. The commissioner has the authority to promulgate rules pursuant to chapter 17A establishing reasonable maximum deductible and coinsurance charges which may be imposed by health maintenance organizations.

4. The health maintenance organization is fiscally sound and may reasonably be expected to meet its obligations to enrollees. In making this determination, the commissioner may consider:

a. The financial soundness of the health maintenance organization's arrangements for health care services in relation to its schedule of charges.

b. The adequacy of the health maintenance organization's working capital.

c. Any agreement made by the health maintenance organization with an insurer, a corporation authorized under chapter 514 or any other organization for insuring the payment of the cost of health care services or for providing immediate alternative coverage in the event of discontinuance of the health maintenance organization.

d. Any agreement made with providers for the provision of health care services.

e. Any surety bond or deposit of cash or securities submitted in accordance with section 514B.16.

5. The enrollees may participate in matters of policy and operation pursuant to section 514B.7.

6. Nothing in the proposed method of operation as shown by the information submitted pursuant to section 514B.3 or by independent investigation is contrary to the public interest.

A certificate of authority shall be denied only after compliance with the requirements of section 514B.26.

[C75, 77, 79, 81, §514B.5]

92 Acts, ch 1162, §22, 23

514B.6 Powers of health maintenance organizations.

The powers of a health maintenance organization include, but are not limited to, the following:

1. The purchase, lease, construction, renovation, operation or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for transacting the business of the organization.

2. The making of loans to a medical group under contract with it or to a corporation under its control for the purpose of acquiring or constructing medical facilities and hospitals or in furtherance of a program providing health care services to enrollees.

3. The furnishing of health care services to the public through providers which are under contract with or employed by the health maintenance organization.

4. The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration.

5. The contracting with an insurance company authorized to insure groups or individuals in this state for the cost of health care or with a corporation authorized under chapter 514 for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization.

6. The offering, in addition to basic health care services, of health care services and indemnity benefits to enrollees or groups of enrollees.

7. The acceptance from any person of payments covering all or part of the charges made to enrollees of the health maintenance organization.

A health maintenance organization shall file notice with the commissioner before the exercise of any power granted in subsections 1 and 2. The commissioner shall disapprove the exercise of power if in the commissioner's opinion it would substantially and adversely affect the financial soundness of the health maintenance organiza-

tion and endanger its ability to meet its obligations. The commissioner may adopt rules exempting from the filing requirement of this section those activities having a minimum effect.

[C75, 77, 79, 81, §514B.6]
92 Acts, ch 1162, §24

514B.7 Governing body.

The governing body of a health maintenance organization may include providers, other individuals, or both, but it shall establish a mechanism to allow a reasonable representation of enrollees to participate in matters of policy and operation. The commissioner shall establish guidelines to implement this section.

[C75, 77, 79, 81, §514B.7]
86 Acts, ch 1180, §8

514B.8 Fiduciary responsibilities.

Any director, officer or partner of a health maintenance organization who receives, collects, disburses or invests funds in connection with the activities of a health maintenance organization shall be responsible for these funds in a fiduciary relationship to the enrollees.

[C75, 77, 79, 81, §514B.8]

514B.9 Evidence of coverage.

Every enrollee shall receive an evidence of coverage and any amendments. If the enrollee obtains coverage through an insurance policy or a contract issued by a corporation authorized under chapter 514, the insurer or the corporation shall issue the evidence of coverage. No evidence of coverage or amendment shall be issued or delivered to any person in this state until a copy of the form of the evidence of coverage or amendment has been filed with and approved by the commissioner.

An evidence of coverage shall contain a clear and complete statement of:

1. The health care services and the insurance or other benefits, if any, to which the enrollee is entitled in the total context of the organizational structure of the health maintenance organization.
2. Any limitations on the services or benefits to be provided, including any deductible or coinsurance charges permitted under section 514B.5, subsection 3.
3. The manner in which information is available on the method of obtaining health care services.
4. The total amount of payment for health care services and indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan offered through the health maintenance organization is contributory or noncontributory with respect to group contracts.
5. The health maintenance organization's method for resolving enrollee complaints.
6. The mechanism by which enrollees shall be allowed to participate in matters of policy and operation.

A copy of the form of the evidence of coverage to be used in this state and any amendment shall be subject to the filing and approval requirements of this section unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or corporations authorized under chapter 514 in which event the filing and approval provisions of such laws apply. To the extent, however, that those provisions are less strict than those provided under this section, then the requirements of this section shall apply.

Enrollees shall be entitled to receive the most recent annual statement of the financial condition of the health maintenance organization in which they are enrolled, which statement shall include a balance sheet and summary of receipts and disbursements.

[C75, 77, 79, 81, §514B.9]

514B.10 Charges.

Charges to enrollees may be established in accordance with actuarial principles for various categories of enrollees, but the charges shall not be determined according to the status of an individual enrollee's health or sex and shall not be excessive, inadequate, or unfairly discriminatory.

[C75, 77, 79, 81, §514B.10]
95 Acts, ch 185, §10

514B.11 Disapproval of filings.

If the commissioner disapproves a filing made pursuant to sections 514B.9 and 514B.10, the commissioner shall notify the filer and in the notice specify the reasons for the disapproval. A hearing shall be granted by the commissioner within a reasonable period of time from the request for the hearing, which request must be made within thirty days after receipt by the filer of the notice of disapproval. The commissioner may require the submission of whatever relevant information the commissioner deems necessary in determining whether to disapprove a filing.

[C75, 77, 79, 81, §514B.11]

514B.12 Annual report.

A health maintenance organization shall annually before the first day of March file with the commissioner a report verified by at least two of its principal officers and covering the preceding calendar year. The report shall be on forms prescribed by the commissioner and shall include:

1. Financial statements of the organization including a balance sheet as of the end of the preceding calendar year and statement of profit and loss for the year then ended, certified by a certified public accountant or an independent public accountant.
2. Any material changes in the information submitted pursuant to section 514B.3.
3. The number of persons enrolled during the

year, the number of enrollees as of the end of the year and the number of enrollments terminated during the year.

4. Other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the commissioner's duties under this chapter.

[C75, 77, 79, 81, §514B.12]
92 Acts, ch 1162, §25

514B.13 Open enrollment.

After a health maintenance organization has been in operation twenty-four months, it shall have an annual open enrollment period of at least one month during which it accepts enrollees up to the limits of its capacity, as determined by the health maintenance organization, in the order in which they apply for enrollment. A health maintenance organization may apply to the commissioner for authorization to impose such underwriting restrictions upon enrollment as are necessary to preserve its financial stability, to prevent excessive adverse selection by prospective enrollees, or to avoid unreasonably high or unmarketable charges for enrollee coverage for health care services. The commissioner shall approve or deny the application made pursuant to this section within a reasonable period of time from the receipt of the application.

Health maintenance organizations providing services exclusively on a group contract basis may limit the open enrollment provided for in this section to all members of the group covered by the contract.

[C75, 77, 79, 81, §514B.13]

514B.14 Complaint system.

A health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner and which shall provide for the resolution of written complaints initiated by enrollees concerning health care services. A health maintenance organization shall submit to the commissioner an annual report in a form prescribed by the commissioner which shall include:

1. A description of the procedures of the complaint system.

2. The total number of complaints handled through the complaint system and a compilation of causes underlying the complaints filed.

3. The number, amount and disposition of malpractice claims settled during the year by the health maintenance organization and any of its providers.

The health maintenance organization shall maintain statistical information of written complaints filed with it concerning benefits over which the health maintenance organization does not have control and shall submit to the commissioner a summary report at the time and in the format that the commissioner may require. Complaints involving other persons shall be referred to those persons and a copy of the complaint sent to the commissioner.

[C75, 77, 79, 81, §514B.14]
92 Acts, ch 1162, §26

514B.15 Investments.

With the exception of investments made in accordance with section 514B.6, the investable funds of a health maintenance organization shall be invested only in securities or other investments permitted by section 511.8 for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the commissioner may permit. For purposes of this section, investable funds of a health maintenance organization are all moneys held in trust for the purpose of fulfilling the obligations incurred by a health maintenance organization in providing health care services to enrollees.

[C75, 77, 79, 81, §514B.15]

514B.16 Protection against insolvency.

A health maintenance organization shall furnish a surety bond in an amount satisfactory to the commissioner, or deposit with the commissioner cash or securities acceptable to the commissioner in at least the same amount, as a guarantee that its obligations to enrollees will be performed. The commissioner may waive this requirement when satisfied that the assets of the organization or its contracts with other organizations are sufficient to reasonably assure the performance of its obligations.

[C75, 77, 79, 81, §514B.16]

514B.17 Cancellation of enrollees.

1. An enrollee enrolled in a prepaid individual plan shall not be canceled except for the failure to pay the charges permitted under section 514B.10 or for other reasons stated in the rules adopted by the commissioner and subject to review in accordance with chapter 17A. Except as provided in subsection 2 concerning prepaid group plans, notice of cancellation to an enrollee shall not be effective unless delivered to the enrollee by the health maintenance organization in a manner prescribed by the commissioner and at least thirty days before the effective date of cancellation and unless accompanied by a statement of reason for cancellation. At any time before cancellation of the policy for nonpayment, the enrollee may pay to the health maintenance organization the full amount due, including court costs if any, and from the date of payment by the enrollee or the collection of the judgment, coverage shall revive and be in full force and effect.

2. The effect of cancellation of a prepaid group plan providing health care services to enrollees, and the duty to provide notice and liability for benefits, is the same as provided under section

509B.5, subsection 2, for the termination of accident or health insurance for employees or members.

[C75, 77, 79, 81, §514B.17]
95 Acts, ch 185, §11

514B.18 False representation.

A health maintenance organization, unless licensed as an insurer, shall not use in its name, contracts, or literature any words descriptive of an insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state. No health maintenance organization or any person on its behalf shall advertise or merchandise its services in a manner to misrepresent its services or capacity for service, nor shall it engage in misleading, deceptive or unfair practices with respect to advertising or merchandising. This section does not exempt health maintenance organizations which are engaged in the business of insurance from regulation under the provisions of chapter 507B.

[C75, 77, 79, 81, §514B.18]

514B.19 Regulation of insurance producers.

The commissioner may, after notice and hearing, promulgate such reasonable rules under the provisions of chapter 522B that are necessary to provide for the licensing of insurance producers who engage in solicitation or enrollment for a health maintenance organization.

[C75, 77, 79, 81, §514B.19]
2001 Acts, ch 16, §14, 37
2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37

514B.20 Powers of insurers and hospital and medical service corporations.

An insurance company authorized to engage in insuring individuals or groups for the cost of health care in this state or a corporation authorized under chapter 514 may either directly or through a subsidiary or affiliate do one or more of the following:

1. Organize and operate a health maintenance organization under the provisions of this chapter.
2. Contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through the health maintenance organization.
3. Contract with a health maintenance organization to provide coverage in the event of the failure of the health maintenance organization to meet its obligations.

Any two or more insurance companies, corporations, or their subsidiaries or affiliates may jointly organize and operate a health maintenance organization.

[C75, 77, 79, 81, §514B.20]

514B.21 Public employees included.

Any employee of the state, political subdivision of the state, or of any institution supported in whole or in part by public funds may authorize the deduction from the employee's salary or wages of the amount charged to the employee for any health care services provided through health maintenance organizations under this chapter in the manner provided in section 514.16.

[C75, 77, 79, 81, §514B.21]

514B.22 Fees.

Every health maintenance organization subject to this chapter shall pay to the commissioner the following fees:

1. For filing an application for a certificate of authority or an amendment to the certificate, one hundred dollars.
2. For filing each annual report, twenty-five dollars.

Fees charged under this section shall be remitted to the treasurer of state and credited by the treasurer to the general fund.

[C75, 77, 79, 81, §514B.22]

514B.23 Rules.

The commissioner shall adopt rules, pursuant to chapter 17A, as are necessary to administer this chapter.

[C75, 77, 79, 81, §514B.23]
92 Acts, ch 1162, §27

514B.24 Examinations permitted.

The commissioner shall make an examination of the affairs of a health maintenance organization and its providers as often as the commissioner deems necessary for the protection of the interests of the people of this state, but not less frequently than once every five years.

Every health maintenance organization and provider shall submit its books and records to the commissioner and in every way facilitate the examination. For the purpose of examinations, the commissioner may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of its providers concerning their business. The expenses of examinations under this section shall be assessed against the organization being examined and remitted to the commissioner.

In lieu of the examination required by this section, the commissioner may accept the report of an examination made by the appropriate departments in other states.

[C75, 77, 79, 81, §514B.24]
92 Acts, ch 1162, §28; 2000 Acts, ch 1023, §25

514B.25 Financially impaired or insolvent health maintenance organizations.

The provisions of chapter 507C shall apply to health maintenance organizations, which shall be

considered insurers for the purposes of chapter 507C.

[C75, 77, 79, 81, §514B.25]

91 Acts, ch 26, §39

514B.25A Insolvency protection — assessment.

1. Upon a health maintenance organization or organized delivery system authorized to do business in this state and licensed by the director of public health being declared insolvent by the district court, the commissioner may levy an assessment on each health maintenance organization or organized delivery system doing business in this state and licensed by the director of public health, as applicable, to pay claims for uncovered expenditures for enrollees. The commissioner shall not assess an amount in any one calendar year which is more than two percent of the aggregate premium written by each health maintenance organization or organized delivery system.

2. The commissioner may use funds obtained through an assessment under subsection 1 to pay claims for uncovered expenditures for enrollees of an insolvent health maintenance organization or organized delivery system and administrative costs. The commissioner, by rule, may prescribe the time, manner, and form for filing claims under this section. The commissioner may require claims to be allowed by an ancillary receiver or the domestic receiver or liquidator.

3. *a.* A receiver or liquidator of an insolvent health maintenance organization or organized delivery system shall allow a claim in the proceeding in an amount equal to uncovered expenditures and administrative costs paid under this section.

b. A person receiving benefits under this section for uncovered expenditures is deemed to have assigned the rights under the covered health care plan certificates to the commissioner to the extent of the benefits received. The commissioner may require an assignment of such rights by a payee, enrollee, or beneficiary, to the commissioner as a condition precedent to the receipt of such benefits. The commissioner is subrogated to these rights against the assets of the insolvent health maintenance organization or organized delivery system that are held by a receiver or liquidator of a foreign jurisdiction.

c. The assigned subrogation rights of the commissioner and allowed claims under this subsection have the same priority against the assets of the insolvent health maintenance organization or organized delivery system as those claims of persons entitled to receive benefits under this section or for similar expenses in the receivership or liquidation.

4. If funds assessed under subsection 1 are unused following the completion of the liquidation of an insolvent health maintenance organization or organized delivery system, the commissioner shall distribute the remaining amounts, if such amounts are not de minimis, to the health maintenance organizations or organized delivery systems that were assessed.

5. The aggregate coverage of uncovered expenditures under this section shall not exceed three hundred thousand dollars with respect to one individual. Continuation of coverage shall cease after the lesser of one year after the health maintenance organization or organized delivery system is terminated by insolvency or the remaining term of the contract. The commissioner may provide continuation of coverage on a reasonable basis, including, but not limited to, continuation of the health maintenance organization or organized delivery system contract or substitution of indemnity coverage in a form as determined by the commissioner.

6. The commissioner may waive an assessment of a health maintenance organization or organized delivery system if such organization or system is impaired financially or would be impaired financially as a result of such assessment. A health maintenance organization or organized delivery system that fails to pay an assessment within thirty days after notice of the assessment is subject to a civil forfeiture of not more than one thousand dollars for each day the failure continues, and suspension or revocation of its certificate of authority. An action taken by the commissioner to enforce an assessment under this section may be appealed by the health maintenance organization or organized delivery system pursuant to chapter 17A.

2000 Acts, ch 1023, §26

514B.26 Administrative procedures.

When the commissioner has cause to believe that grounds for the denial, suspension, or revocation of a certificate of authority exist, the commissioner shall notify the health maintenance organization in writing of the particular grounds for denial, suspension, or revocation and shall issue a notice of a time fixed for a hearing, which shall be held not less than ten days after the receipt by the health maintenance organization of the notice.

At the time and place fixed for a hearing, the person charged shall have an opportunity to be heard and to show cause why the order should not be made by the commissioner. Upon good cause shown, the commissioner may permit any person to intervene, appear and be heard at the hearing by counsel or in person. Nothing contained in this chapter shall require the observance at any hearing of formal rules of pleading or evidence. The provisions of section 507B.6, subsections 4 and 5, relating to the powers and duties of the commissioner in relation to the hearing and relating to the rights and obligations of persons upon whom the commissioner has served notice shall apply to this chapter.

After the hearing, or upon the failure of the

health maintenance organization to appear at the hearing, the commissioner shall take action as the commissioner deems advisable and which is permitted by the commissioner under the provisions of this chapter and shall reduce the findings to writing. Copies of the written findings shall be mailed to the health maintenance organization charged with violation of this chapter.

[C75, 77, 79, 81, §514B.26]
92 Acts, ch 1162 §29

514B.27 Judicial review.

The action of the commissioner under section 514B.26 is subject to judicial review in accordance with chapter 17A.

[C75, 77, 79, 81, §514B.27]
92 Acts, ch 1162, §30

514B.28 Injunction.

The commissioner may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against the person violating any provision of this chapter.

[C75, 77, 79, 81, §514B.28]

514B.29 Penalty.

Where no other penalty is provided for in this chapter, any person who violates any of the provisions of this chapter shall be guilty of a simple misdemeanor.

[C75, 77, 79, 81, §514B.29]

514B.30 Communications in professional confidence.

An officer, director, trustee, partner, or employee of a health maintenance organization shall not testify as to or make other public disclosure of any communication made to a provider and deemed privileged under section 622.10, and which communication has come into the knowledge or possession of such officer, director, trustee, partner, or employee by reason of employment with the health maintenance organization. To the extent necessary to effectuate the examinations provided in section 514B.24 only, the commissioner may examine medical or hospital records of a person receiving basic health care services under the provisions of this chapter but shall not testify as to such confidential communications or make other public disclosure thereof without the express consent of the person or the person's legal representative, if the person is deceased or incompetent. The provisions of section 622.10 respecting waiver shall apply to this section.

A health maintenance organization is hereby prohibited from releasing the names of its membership list of enrollees, whether or not for value or consideration, except to the extent necessary to effectuate the provisions of this chapter or to conduct research or analyses regarding cost or quality issues.

[C75, 77, 79, 81, §514B.30]
92 Acts, ch 1162, §31; 92 Acts, ch 1206, §6

514B.31 Taxation.

Payments received by a health maintenance organization for health care services, insurance, indemnity, or other benefits to which an enrollee is entitled through a health maintenance organization authorized under this chapter and payments by a health maintenance organization to providers for health care services, to insurers, or corporations authorized under chapter 514 for insurance, indemnity, or other service benefits authorized under this chapter are not premiums received and taxable under the provisions of section 432.1 for the first five years of the existence of the health maintenance organization, its successors or assigns. After the first five years, the payments received shall be considered premiums received and shall be taxable under the provisions of section 432.1, subsection 1. However, payments made by the United States secretary of health and human services under contracts issued under section 1833 or 1876 of the federal Social Security Act, section 4015 of the federal Omnibus Budget Reconciliation Act of 1987, or chapter 249A for enrolled members shall not be considered premiums received and shall not be taxable under section 432.1.

[C75, 77, 79, 81, §514B.31]
90 Acts, ch 1173, §1; 2002 Acts, ch 1158, §8
Section amended

514B.32 Construction.

1. Except as otherwise provided in this chapter, laws regulating the insurance business in this state and the operations of corporations authorized under chapter 514 shall not be applicable to any health maintenance organization granted a certificate of authority under this chapter with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

2. Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives does not violate any provision of law prohibiting solicitation or advertising by health professionals. Upon a prospective enrollee's request, a list of locations of services and a list of providers who have current agreements with the health maintenance organization shall be made available.

3. Any health maintenance organization authorized under this chapter is not practicing medicine and shall not be subject to the limitations provided in section 135B.26 on types of contracts entered into between doctors and hospitals.

4. A health maintenance organization authorized under this chapter shall be considered a person for purposes of chapter 507B.

[C75, 77, 79, 81, §514B.32]
83 Acts, ch 28, §1; 93 Acts, ch 88, §16

514B.33 Establishment of limited service organizations.

1. A person may apply to the commissioner for and obtain a certificate of authority to establish and operate a limited service organization in compliance with this chapter. A person shall not establish or operate a limited service organization in this state, or sell, offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a limited service organization without obtaining a certificate of authority under this chapter.

2. The commissioner shall adopt rules pursuant to chapter 17A establishing a certification process for limited service organizations.

3. *a.* For purposes of this section, *"limited service organization"* means an organization providing dental care services, vision care services, mental health services, substance abuse services, pharmaceutical services, podiatric care services, or such other services as may be determined by the commissioner.

b. *"Limited service organization"* does not include an organization providing hospital, medical, surgical, or emergency services, except as such services are provided incident to those services identified in paragraph *"a"*.

97 Acts, ch 186, §9

CHAPTER 514C

SPECIAL HEALTH AND ACCIDENT INSURANCE COVERAGES

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514C.1 Supplemental coverage for newly born.

1. Any policy of individual or group accident and sickness insurance providing coverage on an expense incurred basis, and any individual or group hospital or medical service contracts issued pursuant to chapters 509, 514, and 514A, which provide coverage for a family member of the insured or subscriber shall also provide that the health insurance benefits applicable for children shall be payable with respect to a newly born child of the insured or subscriber from the moment of birth.

2. The coverage for newly born children shall consist of coverage for injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities.

3. If payment of a specific premium or subscription fee is required to provide coverage for a newly born child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one days after the date of birth in order to have coverage continue beyond such thirty-one day period.

[C75, 77, 79, 81, §514C.1]

514C.2 Skilled nursing care covered in hospitals.

An insurer, a hospital service corporation, or a medical service corporation, which covers the costs of skilled nursing care under an individual or group policy of accident and health insurance regulated under chapter 509 or 514A, a nonprofit hos-

pital or medical and surgical service plan regulated under chapter 514, or a health care service contract regulated under chapter 514B, shall also cover the costs of skilled nursing care in a hospital if the level of care needed by the insured or subscriber has been reclassified from acute care to skilled nursing care and no designated skilled nursing care beds or swing beds are available in the hospital or in another hospital or health care facility within a thirty-mile radius of the hospital. The insurer or corporation shall reimburse the insured or subscriber based on the skilled nursing care rate.

84 Acts, ch 1034, §1; 95 Acts, ch 185, §12

514C.3 Dentist's services under accident and sickness insurance policies.

A policy of accident and sickness insurance issued in this state which provides payment or reimbursement for any service which is within the lawful scope of practice of a licensed dentist shall provide benefits for the service whether the service is performed by a licensed physician or a licensed dentist. As used in this section, *"licensed physician"* includes persons licensed under chapter 148, 150, or 150A and *"policy of accident and sickness insurance"* includes individual or group policies as defined in section 509B.1, subsections 3 and 4.

88 Acts, ch 1127, §1

514C.3A Disclosures relating to dental coverage reimbursement rates.

1. An individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, and delivered, amended, or renewed on or after July 1, 1995, that provides dental care benefits with a base payment for those benefits determined upon a usual and customary fee charged by licensed dentists, shall disclose all of the following:

a. The frequency of the determination of the usual and customary fee.

b. A general description of the methodology used to determine usual and customary fees, including geographic considerations.

c. The percentile that determines the maximum benefit that the insurer or nonprofit health service corporation will pay for any dental procedure, if the usual and customary fee is determined by taking a sample of fees submitted on actual claims from licensed dentists and then determining the benefit by selecting a percentile of those fees.

2. The disclosure shall be provided upon request to all group and individual policyholders and subscribers. All proposals for dental care benefits shall inform the prospective policyholder or subscriber that information regarding usual and customary fee determinations is available from the insurer or nonprofit health service corporation. All employee benefit descriptions or supplemental documents shall notify the employee that information regarding reimbursement rates is available from the employer.

95 Acts, ch 78, §1; 95 Acts, ch 209, §26

514C.4 Mandated coverage for mammography.

1. A policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide minimum mammography examination coverage, including, but not limited to, the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1989:

a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

c. An individual or group health maintenance organization contract regulated under chapter 514B.

d. An individual or group Medicare supplemental policy, unless coverage pursuant to such policy is preempted by federal law.

A long-term care policy or contract is specifically excluded from regulation under this section.

2. As used in this section, *"minimum mammography examination coverage"* means benefits which are better than or equal to the following minimum requirements:

a. One baseline mammogram for any woman who is thirty-five through thirty-nine years of age.

b. A mammogram every two years for any woman who is forty through forty-nine years of age, or more frequently if recommended by the woman's physician.

c. A mammogram every year for any woman who is fifty years of age or older.

3. Mammogram benefits may be subject to any policy or contract provisions which apply generally to other services covered by the policy or contract.

4. The commissioner of insurance shall adopt rules under chapter 17A necessary to implement this section no later than July 1, 1989.

89 Acts, ch 289, §1; 92 Acts, ch 1162, §32, 33

514C.5 Prescription drug benefit restrictions.

1. A group policy or contract providing for third-party payment or prepayment for prescription drugs shall not require a person covered under the policy or contract to obtain prescription drugs from a mail order pharmacy as a condition of obtaining benefits for prescription drugs if the pharmacy selected by the covered person agrees to provide pharmaceutical services under the same terms and conditions as those provided by the mail

order pharmacy.

2. Group third-party payor policies or contracts delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1990, are subject to this section, including but not limited to the following classes:

a. A group accident and sickness insurance policy.

b. A group hospital or medical service contract.

c. A group health maintenance organization contract.

d. A group medicare supplemental policy.

90 Acts, ch 1130, §1

514C.6 Uniformity of treatment — employee welfare benefit plans.

1. A statutory provision to mandate a health care coverage or service, or to mandate the offering of a health care coverage or service, applies to all state-regulated third-party payors and to employee welfare benefit plans described in 29 U.S.C. § 1001 et seq. However, if an employee welfare benefit plan subject to federal regulation is not subject to a substantially similar requirement, the statutory provision does not apply to a state-regulated third-party payor until the employee welfare benefit plans are subject to a substantially similar standard under federal regulations as determined by the commissioner.

2. For purposes of this section unless the context otherwise requires, a third-party payor means:

a. An accident and sickness insurer, subject to chapter 509 or 514A.

b. A nonprofit health service corporation, subject to chapter 514.

c. A health maintenance organization, subject to chapter 514B.

d. Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

91 Acts, ch 213, §20

514C.7 Prohibition on restricting coverage in certain instances involving a diagnosis of a fibrocystic condition.

Notwithstanding the uniformity of treatment requirements of section 514C.6, a third-party payor as defined in that section shall not deny or fail to renew, or include an exception to or exclusion of benefits in, a policy or contract of individual or group accident and sickness insurance solely based upon an insured being diagnosed as having a fibrocystic condition.

92 Acts, ch 1046, §1

514C.8 Coordination of health care benefits with state medical assistance.

1. An insurer, health maintenance organization, or hospital and medical service plan providing health care coverage to individuals in this state shall not consider the availability of or eligibility for medical assistance under Title XIX of the federal Social Security Act and chapter 249A, when determining eligibility of the individual for coverage or calculating payments to the individual under the health care coverage plan.

2. The state acquires the rights of an individual to payment from an insurer, health maintenance organization, or hospital or medical service plan to the extent payment for covered expenses is made pursuant to chapter 249A for health care items or services provided to the individual. Upon presentation of proof that payment was made pursuant to chapter 249A for covered expenses, the insurer, health maintenance organization, or hospital or medical service plan shall make payment to the state medical assistance program to the extent of the coverage provided in the policy or contract.

3. An insurer shall not impose requirements on the state with respect to the assignment of rights pursuant to this section that are different from the requirements applicable to an agent or assignee of a covered individual.

4. For purposes of this section, *"insurer"* means an entity which offers a health benefit plan, including a group health plan under the federal Employee Retirement Income Security Act of 1974.

95 Acts, ch 185, §13

514C.9 Medical support — insurance requirements.

1. An insurer shall not deny coverage or enrollment of a child under the health plan of the obligor upon any of the following grounds:

a. The child is born out of wedlock.

b. The child is not claimed as a dependent on the obligor's federal income tax return.

c. The child does not reside with the obligor or in the insurer's service area. This section shall not be construed to require a health maintenance organization regulated under chapter 514B to provide any services or benefits for treatment outside of the geographic area described in its certificate of authority which would not be provided to a member outside of that geographic area pursuant to the terms of the health maintenance organization's contract.

2. An insurer of an obligor providing health care coverage to the child for which the obligor is legally responsible to provide support shall do all of the following:

a. Provide information to the obligee or other legal custodian of the child as necessary for the child to obtain benefits through the coverage of the insurer.

b. Allow the obligee or other legal custodian of the child, or the provider with the approval of the obligee or other legal custodian of the child, to submit claims for covered services without the ap-

proval of the obligor.

c. Make payment on a claim submitted in paragraph *"b"* directly to the obligee or other legal custodian of the child, the provider, or the state medical assistance agency for claims submitted by the obligee or other legal custodian of the child, by the provider with the approval of the obligee or other legal custodian of the child, or by the state medical assistance agency.

3. If an obligor is required by a court order or administrative order to provide health coverage for a child and the obligor is eligible for dependent health coverage, the insurer shall do all of the following:

a. Allow the obligor to enroll under dependent coverage a child who is eligible for coverage pursuant to the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer without regard to an enrollment season restriction.

b. Enroll a child who is eligible for coverage under the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer, without regard to any time of enrollment restriction, under dependent coverage upon application by the obligee or other legal custodian of the child or by the department of human services in the event an obligor required by a court order or administrative order fails to apply for coverage for the child.

c. Maintain coverage and not cancel the child's enrollment unless the insurer obtains satisfactory written evidence of any of the following:

(1) The court order or administrative order is no longer in effect.

(2) The child is eligible for or will enroll in comparable health coverage through an insurer which shall take effect not later than the effective date of the cancellation of enrollment of the original coverage.

(3) The employer has eliminated dependent health coverage for its employees.

(4) The obligor is no longer paying the required premium because the employer no longer owes the obligor compensation, or because the obligor's employment has terminated and the obligor has not elected to continue coverage.

4. A group health plan shall establish reasonable procedures to determine whether a child is covered under a qualified medical child support order issued pursuant to chapter 252E. The procedures shall be in writing, provide for prompt notice of each person specified in the medical child support order as eligible to receive benefits under the group health plan upon receipt by the plan of the medical child support order, and allow an obligee or other legal custodian of the child under chapter 252E to designate a representative for receipt of copies of notices in regard to the medical child support order that are sent to the obligee or other legal custodian of the child and the department of human services' child support recovery unit.

5. For purposes of this section, unless the context otherwise requires:

a. *"Child"* means a person, other than an obligee's spouse or former spouse, who is recognized under a qualified medical child support order as having a right to enrollment under a group health plan as the obligor's dependent.

b. *"Court order"* or *"administrative order"* means a ruling by a court or administrative agency in regard to the support an obligor shall provide to the obligor's child.

c. *"Insurer"* means an entity which offers a health benefit plan.

d. *"Obligee"* means an obligee as defined in section 252E.1.

e. *"Obligor"* means an obligor as defined in section 252E.1.

f. *"Qualified medical child support order"* means a child support order which creates or recognizes a child's right to receive health benefits for which the child is eligible under a group health benefit plan, describes or determines the type of coverage to be provided, specifies the length of time for which the order applies, and specifies the plan to which the order applies.

95 Acts, ch 185, §14

514C.10 Coverage for adopted child.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. *"Child"* means, with respect to an adoption or a placement for adoption of a child, an individual who has not attained age eighteen as of the date of the issuance of a final adoption decree, or upon an interlocutory adoption decree becoming a final adoption decree, as provided in chapter 600, or as of the date of the placement for adoption.

b. *"Placement for adoption"* means the assumption and retention of a legal obligation for the total or partial support of the child in anticipation of the adoption of the child. The child's placement with a person terminates upon the termination of such legal obligation.

2. *Coverage required.* A policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits to a dependent child adopted by, or placed for adoption with, an insured or enrollee under the same terms and conditions as apply to a biological, dependent child of the insured or enrollee. The issuer of the policy or contract shall not restrict coverage under the policy or contract for a dependent child adopted by, or placed for adoption with, the insured or enrollee solely on the basis of a preexisting condition of such dependent child at the time that the child would otherwise become eligible for coverage under the plan, if the adoption or placement occurs while the insured or enrollee is eligible for coverage under the policy or contract. This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or re-

newed in this state on or after July 1, 1995:

a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

c. An individual or group health maintenance organization contract regulated under chapter 514B.

d. An individual or group Medicare supplemental policy, unless coverage pursuant to such policy is preempted by federal law.

e. An organized delivery system licensed by the director of public health.

95 Acts, ch 185, §15

514C.11 Services provided by licensed physician assistants and licensed advanced registered nurse practitioners.

Notwithstanding section 514C.6, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall include a provision for the payment of necessary medical or surgical care and treatment provided by a physician assistant licensed pursuant to chapter 148C, or provided by an advanced registered nurse practitioner licensed pursuant to chapter 152 and performed within the scope of the license of the licensed physician assistant or the licensed advanced registered nurse practitioner if the policy or contract would pay for the care and treatment if the care and treatment were provided by a person engaged in the practice of medicine and surgery or osteopathic medicine and surgery under chapter 148 or 150A. The policy or contract shall provide that policyholders and subscribers under the policy or contract may reject the coverage for services which may be provided by a licensed physician assistant or licensed advanced registered nurse practitioner if the coverage is rejected for all providers of similar services. A policy or contract subject to this section shall not impose a practice or supervision restriction which is inconsistent with or more restrictive than the restriction already imposed by law. This section applies to services provided under a policy or contract delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1996, and to an existing policy or contract, on the policy's or contract's anniversary or renewal date, or upon the expiration of the applicable collective bargaining contract, if any, whichever is later. This section does not apply to policyholders or subscribers eligible for coverage under Title XVIII of the federal Social Security Act or any similar coverage under a state or federal government plan. For the purposes of this section, third-party payment or prepayment includes an individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, an individual or group health maintenance organization contract issued and regulated under chapter 514B, an organized delivery system contract regulated under rules adopted by the director of public health, or a preferred provider organization contract regulated pursuant to chapter 514F. Nothing in this section shall be interpreted to require an individual or group health maintenance organization, an organized delivery system, or a preferred provider organization or arrangement to provide payment or prepayment for services provided by a licensed physician assistant or licensed advanced registered nurse practitioner unless the physician assistant's supervising physician, the physician-physician assistant team, the advanced registered nurse practitioner, or the advanced registered nurse practitioner's collaborating physician has entered into a contract or other agreement to provide services with the individual or group health maintenance organization, the organized delivery system, or the preferred provider organization or arrangement.

96 Acts, ch 1169, §1

514C.12 Postdelivery benefits and care.

1. Notwithstanding section 514C.6, a person who provides an individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 509A, 514, or 514A or an individual or group health maintenance organization contract issued and regulated under chapter 514B, which is delivered, amended, or renewed on or after July 1, 1996, and which provides maternity benefits, which are not limited to complications of pregnancy, or newborn care benefits, shall not terminate inpatient benefits or require discharge of a mother or the newborn from a hospital following delivery earlier than determined to be medically appropriate by the attending physician after consultation with the mother and in accordance with guidelines adopted by rule by the commissioner. The guidelines adopted by rule shall be consistent with or may adopt by reference the guidelines for perinatal care established by the American academy of pediatrics and the American college of obstetricians and gynecologists which provide that when complications are not present, the postpartum hospital stay ranges from a minimum of forty-eight hours for a vaginal delivery to a minimum of ninety-six hours for a cesarean birth, excluding the day of delivery. The guidelines adopted by rule by the commissioner shall also provide that in the event of a discharge from the hospital prior to the minimum stay established in the guidelines, a postdischarge follow-up visit shall be provided to the mother and newborn by providers competent in postpartum care and newborn assessment if determined medically appropriate as directed by the attending physician, in accordance with the guidelines.

2. When performing utilization review of inpa-

tient hospital services related to maternity and newborn care, including but not limited to length of postdelivery stay and postdischarge follow-up care, any person who provides an individual or group policy of accident or health insurance or individual or group hospital or health care service contract issued pursuant to chapter 509, 509A, 514, or 514A, or an individual or group health maintenance organization contract issued and regulated under chapter 514B, shall use the guidelines adopted by rule by the commissioner, and shall not deselect, require additional documentation, require additional utilization review, terminate services to, reduce payment to, or in any manner provide a disincentive to an attending physician solely on the basis that the attending physician provided or directed the provision of services in compliance with the guidelines adopted by rule.

3. Preauthorization or precertification for a hospital stay or for a postdischarge follow-up visit in accordance with the guidelines adopted by rule by the commissioner shall not be required.

96 Acts, ch 1202, §1

514C.13 Group managed care health plans — requirements attached to limited provider network plan offers.

1. As used in this section, unless the context otherwise requires:

a. "Carrier" means an entity that provides health benefit plans in this state. *"Carrier"* includes an insurance company, group hospital or medical service corporation, health maintenance organization, multiple employer welfare arrangement, and any other person providing health benefit plans in this state subject to regulation by the commissioner of insurance.

b. "Health benefit plan" means a policy, certificate, or contract providing hospital or medical coverage, benefits, or services rendered by a health care provider. *"Health benefit plan"* does not include a group conversion plan, accident-only, specific-disease, short-term hospital or medical hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

c. "Health care provider" means a hospital licensed pursuant to chapter 135B, a person licensed under chapter 148, 148C, 149, 150, 150A, 151, or 154, or a person licensed as an advanced registered nurse practitioner under chapter 152.

d. "Indemnity plan" means a hospital or medical expense-incurred policy, certificate, or contract, major medical expense insurance, or hospital or medical service plan contract.

e. "Large employer" means a person actively engaged in business who, during at least fifty percent of the employer's working days during the preceding calendar year, employed more than fifty full-time equivalent employees.

f. "Limited provider network plan" means a managed care health plan which limits access to or coverage for services to selected health care providers who are under contract with the managed care health plan.

g. "Managed care health plan" means a health benefit plan that selects and contracts with health care providers; manages and coordinates health care delivery; monitors necessity, appropriateness, and quality of health care delivered by health care providers; and performs utilization review and cost control.

h. "Organized delivery system" means an organized delivery system as defined in section 513C.3.

i. "Point of service plan option" means a provision in a managed care health plan that permits insureds, enrollees, or subscribers access to health care from health care providers who have not contracted with the managed care health plan.

j. "Small employer" means a person actively engaged in business who, during at least fifty percent of the employer's working days during the preceding calendar year, employed not less than two and not more than fifty full-time equivalent employees.

2. A carrier or organized delivery system which offers to a small employer a limited provider network plan to provide health care services or benefits to the small employer's employees shall also offer to the small employer a point of service option to the limited provider network plan.

3. A carrier or organized delivery system which offers to a large employer a limited provider network plan to provide health care services or benefits to the large employer's employees shall also offer to the large employer one or more of the following:

a. A point of service plan option to the limited provider network plan. The price of the point of service plan option shall be actuarially determined.

b. A managed care health plan that is not a limited provider network plan.

c. An indemnity plan.

4. A large employer that offers a limited provider network plan to its employees shall also offer to its employees one or more of the following:

a. A point of service plan option to the limited provider network plan.

b. A managed care health plan that is not a limited provider network plan.

c. An indemnity plan.

97 Acts, ch 88, §1

514C.14 Continuity of care — pregnancy.

1. Except as provided under subsection 2 or 3, a carrier, as defined in section 513B.2, an organized delivery system authorized under 1993 Iowa Acts, chapter 158, or a plan established pursuant

to chapter 509A for public employees, which terminates its contract with a participating health care provider, shall continue to provide coverage under the contract to a covered person in the second or third trimester of pregnancy for continued care from such health care provider. Such persons may continue to receive such treatment or care through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

2. A covered person who makes an involuntary change in health plans may request that the new health plan cover the services of the covered person's physician specialist who is not a participating health care provider under the new health plan, if the covered person is in the second or third trimester of pregnancy. Continuation of such coverage shall continue through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the new health plan contract.

3. A carrier, organized delivery system, or plan established under chapter 509A, which terminates the contract of a participating health care provider for cause shall not be liable to pay for health care services provided by the health care provider to a covered person following the date of termination.

99 Acts, ch 41, §1

514C.15 Treatment options.

A carrier, as defined in section 513B.2; an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the director of public health; or a plan established pursuant to chapter 509A for public employees, shall not prohibit a participating provider from, or penalize a participating provider for, doing either of the following:

1. Discussing treatment options with a covered individual, notwithstanding the carrier's, organized delivery system's, or plan's position on such treatment option.

2. Advocating on behalf of a covered individual within a review or grievance process established by the carrier, organized delivery system, or chapter 509A plan, or established by a person contracting with the carrier, organized delivery system, or chapter 509A plan.

99 Acts, ch 41, §2

514C.16 Emergency room services.

1. A carrier, as defined in section 513B.2; an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the director of public health; or a plan established pursuant to chapter 509A for public employees, which provides coverage for emergency services, is responsible for charges for emergency services provided to a covered individual, including services furnished outside any contractual provider network or preferred provider network. Coverage for emergency services is subject to the terms and conditions of the health benefit plan or contract.

2. Prior authorization for emergency services shall not be required. All services necessary to evaluate and stabilize an emergency medical condition shall be considered covered emergency services.

3. For purposes of this section, unless the context otherwise requires:

a. "Emergency medical condition" means a medical condition that manifests itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent person, possessing average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in one of the following:

(1) Placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(2) Serious impairment to bodily function.

(3) Serious dysfunction of a bodily organ or part.

b. "Emergency services" means covered inpatient and outpatient health care services that are furnished by a health care provider who is qualified to provide the services that are needed to evaluate or stabilize an emergency medical condition.

99 Acts, ch 41, §3

514C.17 Continuity of care — terminal illness.

1. Except as provided under subsection 2 or 3, if a carrier, as defined in section 513B.2, an organized delivery system authorized under 1993 Iowa Acts, chapter 158, or a plan established pursuant to chapter 509A for public employees, terminates its contract with a participating health care provider, a covered individual who is undergoing a specified course of treatment for a terminal illness or a related condition, with the recommendation of the covered individual's treating physician licensed under chapter 148, 150, or 150A, may continue to receive coverage for treatment received from the covered individual's physician for the terminal illness or a related condition, for a period of up to ninety days. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

2. A covered person who makes a change in health plans involuntarily may request that the new health plan cover services of the covered person's treating physician licensed under chapter 148, 150, or 150A, who is not a participating health care provider under the new health plan, if the covered person is undergoing a specified course of treatment for a terminal illness or a related condition. Continuation of such coverage shall continue for up to ninety days. Payment for covered bene-

fits and benefit levels shall be according to the terms and conditions of the contract.

3. Notwithstanding subsections 1 and 2, a carrier, organized delivery system, or plan established under chapter 509A which terminates the contract of a participating health care provider for cause shall not be required to cover health care services provided by the health care provider to a covered person following the date of termination.

99 Acts, ch 41, §4

514C.18 Diabetes coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits for the cost associated with equipment, supplies, and self-management training and education for the treatment of all types of diabetes mellitus when prescribed by a physician licensed under chapter 148, 150, or 150A. Coverage benefits shall include coverage for the cost associated with all of the following:

a. Blood glucose meter and glucose strips for home monitoring.

b. Payment for diabetes self-management training and education only under all of the following conditions:

(1) The physician managing the individual's diabetic condition certifies that such services are needed under a comprehensive plan of care related to the individual's diabetic condition to ensure therapy compliance or to provide the individual with necessary skills and knowledge to participate in the management of the individual's condition.

(2) The diabetic self-management training and education program is certified by the Iowa department of public health. The department shall consult with the American diabetes association, Iowa affiliate, in developing the standards for certification of diabetes education programs as follows:

(a) Initial training shall cover up to ten hours of initial outpatient diabetes self-management training within a continuous twelve-month period for each individual that meets any of the following conditions:

(i) A new onset of diabetes.

(ii) Poor glycemic control as evidenced by a glycosylated hemoglobin of nine and five-tenths or more in the ninety days before attending the training.

(iii) A change in treatment regimen from no diabetes medications to any diabetes medication, or from oral diabetes medication to insulin.

(iv) High risk for complications based on poor glycemic control; documented acute episodes of severe hypoglycemia or acute severe hyperglycemia occurring in the past year during which the individual needed third-party assistance for either emergency room visits or hospitalization.

(v) High risk based on documented complications of a lack of feeling in the foot or other foot complications such as foot ulcer or amputation, pre-proliferative or proliferative retinopathy or prior laser treatment of the eye, or kidney complications related to diabetes, such as macroalbuminuria or elevated creatinine.

(b) An individual who receives the initial training shall be eligible for a single follow-up training session of up to one hour each year.

2. *a.* This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1999:

(1) Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

(2) An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

(3) An individual or group health maintenance organization contract regulated under chapter 514B.

(4) Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

(5) A plan established pursuant to chapter 509A for public employees.

(6) An organized delivery system licensed by the director of public health.

b. This section shall not apply to accident only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

99 Acts, ch 75, §1; 99 Acts, ch 208, §58

514C.19 Prescription contraceptive coverage.

1. Notwithstanding the uniformity of treatment requirements of section 514C.6, a group policy or contract providing for third-party payment or prepayment of health or medical expenses shall not do either of the following:

a. Exclude or restrict benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and which are approved by the United States food and drug administration, or generic equivalents approved as substitutable by the United States food and drug administration, if such policy or contract provides benefits for other outpatient prescription drugs or devices.

b. Exclude or restrict benefits for outpatient contraceptive services which are provided for the

purpose of preventing conception if such policy or contract provides benefits for other outpatient services provided by a health care professional.

2. A person who provides a group policy or contract providing for third-party payment or prepayment of health or medical expenses which is subject to subsection 1 shall not do any of the following:

a. Deny to an individual eligibility, or continued eligibility, to enroll in or to renew coverage under the terms of the policy or contract because of the individual's use or potential use of such prescription contraceptive drugs or devices, or use or potential use of outpatient contraceptive services.

b. Provide a monetary payment or rebate to a covered individual to encourage such individual to accept less than the minimum benefits provided for under subsection 1.

c. Penalize or otherwise reduce or limit the reimbursement of a health care professional because such professional prescribes contraceptive drugs or devices, or provides contraceptive services.

d. Provide incentives, monetary or otherwise, to a health care professional to induce such professional to withhold from a covered individual contraceptive drugs or devices, or contraceptive services.

3. This section shall not be construed to prevent a third-party payor from including deductibles, coinsurance, or copayments under the policy or contract, as follows:

a. A deductible, coinsurance, or copayment for benefits for prescription contraceptive drugs shall not be greater than such deductible, coinsurance, or copayment for any outpatient prescription drug for which coverage under the policy or contract is provided.

b. A deductible, coinsurance, or copayment for benefits for prescription contraceptive devices shall not be greater than such deductible, coinsurance, or copayment for any outpatient prescription device for which coverage under the policy or contract is provided.

c. A deductible, coinsurance, or copayment for benefits for outpatient contraceptive services shall not be greater than such deductible, coinsurance, or copayment for any outpatient health care services for which coverage under the policy or contract is provided.

4. This section shall not be construed to require a third-party payor under a policy or contract to provide benefits for experimental or investigational contraceptive drugs or devices, or experimental or investigational contraceptive services, except to the extent that such policy or contract provides coverage for other experimental or investigational outpatient prescription drugs or devices, or experimental or investigational outpatient health care services.

5. This section shall not be construed to limit or otherwise discourage the use of generic equivalent drugs approved by the United States food and drug administration, whenever available and appropriate. This section, when a brand name drug is requested by a covered individual and a suitable generic equivalent is available and appropriate, shall not be construed to prohibit a third-party payor from requiring the covered individual to pay a deductible, coinsurance, or copayment consistent with subsection 3, in addition to the difference of the cost of the brand name drug less the maximum covered amount for a generic equivalent.

6. A person who provides an individual policy or contract providing for third-party payment or prepayment of health or medical expenses shall make available a coverage provision that satisfies the requirements in subsections 1 through 5 in the same manner as such requirements are applicable to a group policy or contract under those subsections. The policy or contract shall provide that the individual policyholder may reject the coverage provision at the option of the policyholder.

7. *a.* This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2000:

(1) Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

(2) An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

(3) An individual or group health maintenance organization contract regulated under chapter 514B.

(4) Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

(5) A plan established pursuant to chapter 509A for public employees.

(6) An organized delivery system licensed by the director of public health.

b. This section shall not apply to accident only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

2000 Acts, ch 1120, §1

514C.20 Mandated coverage for dental care — anesthesia and certain hospital charges.

1. Notwithstanding section 514C.6, and subject to the terms and conditions of the policy or contract, a policy or contract providing for third-party payment or prepayment of health or medical ex-

penses shall provide coverage for the administration of general anesthesia and hospital or ambulatory surgical center charges related to the provision of dental care services provided to any of the following covered individuals:

a. A child under five years of age upon a determination by a licensed dentist and the child's treating physician licensed pursuant to chapter 148, 150, or 150A, that such child requires necessary dental treatment in a hospital or ambulatory surgical center due to a dental condition or a developmental disability for which patient management in the dental office has proved to be ineffective.

b. Any individual upon a determination by a licensed dentist and the individual's treating physician licensed pursuant to chapter 148, 150, or 150A, that such individual has one or more medical conditions that would create significant or undue medical risk for the individual in the course of delivery of any necessary dental treatment or surgery if not rendered in a hospital or ambulatory surgical center.

2. Prior authorization of hospitalization or ambulatory surgical center for dental care procedures may be required in the same manner that prior authorization is required for hospitalization for other coverages under the contract or policy.

3. This section applies to the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 2000:

a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

c. An individual or group health maintenance organization contract regulated under chapter 514B.

d. Any other entity engaged in the business of insurance, risk transfer, or risk retention, which is subject to the jurisdiction of the commissioner.

e. A plan established pursuant to chapter 509A for public employees.

f. An organized delivery system licensed by the director of public health.

4. This section shall not apply to accident only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, basic hospital and medical-surgical expense coverage as defined by the commissioner, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

2000 Acts, ch 1193, §1

CHAPTER 514D

ACCIDENT AND SICKNESS INSURANCE POLICIES

514D.1 Purpose.
514D.2 Definitions.
514D.3 Standards for policies established.
514D.4 Standards for benefits established.
514D.5 Disclosure, medicare information, and advertising.
514D.6 Limitation on defenses.
514D.7 Exclusions.
514D.8 Title and effective date of chapter.
514D.9 Regulations regarding limitation on compensation.

514D.1 Purpose.

The purpose of this chapter is to provide reasonable standardization, simplification, and disclosure of the terms and coverages of individual accident and sickness insurance policies issued under chapter 514A and individual subscriber contracts issued under chapter 514, in order to facilitate public understanding and comparison and to eliminate provisions which may be misleading or unreasonably confusing in connection with the purchase of coverage or the settlement of claims.

[C81, §514D.1]

514D.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Accident and sickness insurance"* means individual accident and sickness insurance within the meaning of section 514A.1. "Accident and sickness insurance" also means individual subscriber contracts for hospital service, or medical and surgical service, or individual pharmaceutical or optometric service issued under chapter 514, and for purposes of this division, corporations issuing contracts under chapter 514 are deemed to be en-

gaged in the business of insurance.

2. *"Form"* means and includes policies, contracts, riders, endorsements and applications used in connection with the sale of accident and sickness insurance under chapter 514 or chapter 514A.

3. *"Medicare"* means the Health Insurance for the Aged Act, title XVIII of the United States Social Security Act added by the amendment of 1965 as amended on or before July 1, 1980.

4. *"Policy"* means the entire contract between the insurer and the insured, including the policy riders, endorsements, and the application, if attached, and includes individual subscriber contracts issued under chapter 514.

[C81, §514D.2]

514D.3 Standards for policies established.

1. The commissioner shall issue rules to establish specific standards, including standards of full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of policies of individual accident and sickness insurance and individual subscriber contracts which shall be in addition to and in accordance with applicable laws of this state, including but not limited to sections 514A.1 to 514A.12. These rules may include, but shall not be limited to, any of the following subjects:

a. Terms of renewability.

b. Initial and subsequent conditions of eligibility.

c. Nonduplication of coverage provisions.

d. Coverage of dependents.

e. Coverage of persons eligible for medicare by reason of age.

f. Pre-existing conditions.

g. Termination of insurance.

h. Probationary periods.

i. Limitations.

j. Exceptions.

k. Reductions.

l. Elimination periods.

m. Requirements for replacement.

n. Recurrent conditions.

o. The definition of terms, including but not limited to the following: Hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable, and noncancelable.

2. The commissioner may issue rules with respect to policies of individual accident and sickness insurance and individual subscriber contracts that specify prohibited policies or subscriber contracts, or prohibited policy or contract provisions which the commissioner finds to be unjust, unfair, or unfairly discriminatory to the policyholder or any person insured under the policy or any beneficiary. This subsection does not authorize the commissioner to prohibit a policy or policy provision or subscriber contract or contract provision which is specifically authorized by statute.

3. A rule issued by the commissioner under this section shall not apply to a conversion policy issued pursuant to a contractual conversion privilege under a group or individual policy of accident and sickness insurance when such group or individual contract contains provisions that are inconsistent with the requirements of this chapter or any rule issued under this chapter.

4. A rule issued by the commissioner under this section shall not apply to policies being issued to employees or members being added to a franchise plan, as defined in section 509.14, which is in existence on the effective date of the rule.

[C81, §514D.3]

514D.4 Standards for benefits established.

1. The commissioner shall issue rules to establish minimum standards for benefits under each of the following categories of coverage contained in policies of individual accident and sickness insurance or subscriber contracts:

a. Basic hospital expense coverage.

b. Basic medical-surgical expense coverage.

c. Hospital confinement indemnity coverage.

d. Major medical expense coverage.

e. Disability income protection coverage.

f. Accident only coverage.

g. Specified disease or specified accident coverage.

h. Medicare supplement coverage.

i. Limited benefit health coverage.

2. This section does not prohibit the issuance of a policy which combines two or more of the categories of coverage enumerated in paragraphs *"a"* to *"f"* of subsection 1. A category of coverage referred to in paragraph *"g"*, *"h"* or *"i"* of subsection 1 shall not be combined in a policy or contract either with another category of coverage referred to in paragraph *"g"*, *"h"* or *"i"* of subsection 1 or with a category of coverage referred to in any of paragraphs *"a"* to *"f"* of subsection 1 unless a rule issued by the commissioner specifically authorizes that combination of coverages.

3. The commissioner shall prescribe the method of identification of policies and contracts based upon coverages provided.

4. A policy of accident and sickness insurance or subscriber contract shall not be delivered or issued for delivery in this state unless the policy or contract meets the minimum standards prescribed under this section.

5. The commissioner may upon notice and hearing at any time after the initial filing or approval of any individual accident and sickness policy or subscriber contract form, withdraw approval or suspend further sale of the form if the benefits provided are unreasonable in relation to the premium charge. The commissioner shall establish reasonable and creditable anticipated

minimum loss ratios for medicare supplement and other accident and sickness insurance policies.

6. A rule issued by the commissioner under this section shall not apply to a conversion policy issued pursuant to a contractual conversion privilege under a group or individual policy of accident and sickness insurance when such group or individual contract contains provisions which are inconsistent with the requirements of this chapter or any rule issued under this chapter.

7. A rule issued by the commissioner under this section shall not apply to policies being issued to employees or members being added to a franchise plan, as defined in section 509.14, which is in existence on the effective date of the rule.

[C81, §514D.4; 81 Acts, ch 167, §2]
92 Acts, ch 1162, §34

514D.5 Disclosure, medicare information, and advertising.

1. Except as otherwise provided in subsection 3, in order to provide for full and fair disclosure in the sale of individual accident and sickness insurance policies or subscriber contracts a policy or contract shall not be delivered or issued for delivery in this state unless the outline of coverage described in subsection 2 either accompanies the policy or contract or is delivered to the applicant at the time application is made and unless an acknowledgment of receipt or certificate of delivery of the outline is provided the insurer. In the event the policy or contract is issued on a basis other than that applied for, the outline of coverage properly describing the policy or contract must accompany the policy or contract when it is delivered and must clearly state that it is not the policy or contract for which application was made.

2. The commissioner shall prescribe the format and content of the outline of coverage required by subsection 1. *"Format"* means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. The outline of coverage shall include all of the following:

a. A statement identifying the applicable category or categories of coverage provided by the policy or contract as prescribed in section 514D.4.

b. A description of the principal benefits and coverage provided in the policy or contract.

c. A statement of the exceptions, reductions, and limitations contained in the policy or contract.

d. A statement of the renewal provisions including any reservation by the insurer of a right to change premiums.

e. A statement that the outline is a summary of the policy or contract issued or applied for and that the policy or contract should be consulted to determine governing contractual provisions.

If payment will not be made for services performed by a chiropractor acting within the scope of the chiropractor's license when those services would be compensable if performed by a medical doctor, then a statement that services performed by a chiropractor are not compensable shall be included in the outline of coverage.

3. The commissioner after consultation with the commission of elder affairs shall prescribe disclosure rules for medicare supplement coverage which are determined to be in the public interest and which are designed to adequately inform the prospective insured of the need for and extent of coverage offered as medicare supplement coverage. For medicare supplement coverage, the outline of coverage required by subsection 2 shall be furnished to the prospective insured with the application form.

4. The commissioner after consultation with the commission of elder affairs shall further prescribe by rule a standard form for and the contents of an informational brochure for persons eligible for medicare by reason of age, which is intended to improve the buyer's ability to select the most appropriate coverage and to improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that this informational brochure be provided to prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that this brochure must be provided to prospective insureds eligible for medicare by reason of age upon request, but not later than at the time of delivery of the policy or contract. The commissioner shall provide the information received from insurers pursuant to subsection 3 and this subsection and information relating to section 231.59 to the director of the department of elder affairs.

5. The commissioner shall adopt rules prohibiting the advertising of forms titled as "nursing home" forms or inferring coverage for custodial care in a nursing facility as defined in section 135C.1 unless such forms provide coverage for custodial care in a nursing facility as defined in section 135C.1.

[C81, §514D.5]
86 Acts, ch 1045, §2; 90 Acts, ch 1039, §17

514D.6 Limitation on defenses.

Notwithstanding section 514A.3, subsection 1, paragraph *"b"*, subparagraph 2, or any contrary provision of chapter 514, if the issuer of the policy of accident and sickness insurance or subscriber contract elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy or contract must cover any loss occurring after twelve months from the date of issue of the policy or contract from any pre-existing condition not specifically excluded from coverage by terms of the

policy or contract, and, except as so provided, the policy or contract shall not include wording that would permit a defense based upon pre-existing conditions.

[C81, §514D.6]

514D.7 Exclusions.

This chapter does not apply to any of the following:

1. A policy of credit accident and health or credit accident and sickness insurance.
2. A policy of accident and sickness insurance which is exempt from the provisions of sections 514A.1 to 514A.12 by virtue of an exemption set forth in section 514A.1 or 514A.8.
3. Any evidence of coverage issued to an enrollee of a health maintenance organization under chapter 514B.

[C81, §514D.7]

514D.8 Title and effective date of chapter.

This chapter may be cited as the *"Uniform Individual Accident and Health Insurance Minimum Standards Act"*. This chapter takes effect July 1, 1980. Rules issued by the commissioner of insurance pursuant to this chapter shall be subject to the provisions of chapter 17A, and all rules issued by the commissioner of insurance shall give the issuers of policies and contracts a reasonable time to achieve compliance.

[C81, §514D.8]

514D.9 Regulations regarding limitation on compensation.

The commissioner shall issue rules to establish minimum standards to assure fair and reasonable benefits, claim payment, marketing practices, and compensation arrangements and reporting practices for the following classes of policies:

1. Medicare supplement insurance.
2. Nursing home insurance.
3. Long-term care insurance.

90 Acts, ch 1234, §32

CHAPTER 514E

IOWA COMPREHENSIVE HEALTH INSURANCE ASSOCIATION

514E.1 Definitions.
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514E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Association"* means the Iowa comprehensive health insurance association established by section 514E.2.
2. *"Association policy"* means an individual or group policy issued by the association that provides the coverage specified in section 514E.4.
3. *"Carrier"* means an insurer providing accident and sickness insurance under chapter 509, 514 or 514A and includes a health maintenance organization established under chapter 514B if payments received by the health maintenance organization are considered premiums pursuant to section 514B.31 and are taxed under chapter 432. *"Carrier"* also includes a corporation which becomes a mutual insurer pursuant to section 514.23 and any other person as defined in section 4.1, subsection 20, who is or may become liable for the tax imposed by chapter 432.
4. *"Church plan"* means the same as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 3(33).
5. *"Commissioner"* means the commissioner of insurance.
6. *"Creditable coverage"* means health benefits or coverage provided to an individual under any of the following:
   a. A group health plan.
   b. Health insurance coverage.
   c. Part A or Part B Medicare pursuant to Title

XVIII of the federal Social Security Act.

d. Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.

e. 10 U.S.C. ch. 55.

f. A health or medical care program provided through the Indian health service or a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under 5 U.S.C. ch. 89.

i. A public health plan as defined under federal regulations.

j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. § 2504(e).

k. An organized delivery system licensed by the director of public health.

l. The HAWK-I program authorized by chapter 514I.

7. *"Director"* means the director of public health.

8. *"Eligible expenses"* means the usual, customary and reasonable charges for the health care services specified in section 514E.4.

9. *"Federally eligible individual"* means an individual who satisfies the following:

a. For whom, as of the date on which the individual seeks coverage under this chapter, the aggregate of the periods of creditable coverage is eighteen or more months with no more than a sixty-three day lapse of coverage, and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan, or health insurance coverage offered in connection with any such plan.

b. Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the federal Social Security Act, or a state plan under Title XIX of that Act, or any successor program, and does not have other health insurance coverage.

c. With respect to whom the most recent coverage within the coverage period described in paragraph *"a"* was not terminated based on a nonpayment of premiums or fraud.

d. If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, and elected such coverage.

e. Who, if the individual elected continuation coverage as provided in paragraph *"d"*, has exhausted the continuation coverage under the provision or program.

10. *"Governmental plan"* means as defined under section 3(32) of the federal Employee Retirement Income Security Act of 1974 and any federal governmental plan.

11. *a.* *"Group health plan"* means an employee welfare benefit plan as defined in section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

b. For purposes of this subsection, *"medical care"* means amounts paid for any of the following:

(1) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.

(2) Transportation primarily for and essential to medical care referred to in subparagraph (1).

(3) Insurance covering medical care referred to in subparagraph (1) or (2).

c. For purposes of this chapter, the following apply:

(1) A plan, fund, or program established or maintained by a partnership which, but for this subsection, would not be an employee welfare benefit plan, shall be treated as an employee welfare benefit plan which is a group health plan to the extent that the plan, fund, or program provides medical care, including items and services paid for as medical care for present or former partners in the partnership or to the dependents of such partners, as defined under the terms of the plan, fund, or program, either directly or through insurance, reimbursement, or otherwise.

(2) With respect to a group health plan, the term *"employer"* includes a partnership with respect to a partner.

(3) With respect to a group health plan, the term *"participant"* includes the following:

(a) With respect to a group health plan maintained by a partnership, an individual who is a partner in the partnership.

(b) With respect to a group health plan maintained by a self-employed individual under which one or more of the self-employed individual's employees are participants, the self-employed individual, if that individual is, or may become, eligible to receive benefits under the plan or the individual's dependents may be eligible to receive benefits under the plan.

12. *"Health care facility"* means a health care facility as defined in section 135C.1, a hospital as defined in section 135B.1, or a community mental health center established under chapter 230A.

13. *"Health care services"* means services, the coverage of which is authorized under chapter 509, chapter 514, chapter 514A, or chapter 514B as limited by sections 514E.4 and 514E.5, and includes services for the purposes of preventing, alleviating, curing, or healing human illness, injury or physical disability.

14. *"Health insurance"* means accident and sickness insurance authorized by chapter 509, 514 or 514A.

15. *a.* *"Health insurance coverage"* means health insurance coverage offered to individuals.

b. *"Health insurance coverage"* does not include any of the following:

(1) Coverage for accident-only, or disability in-

come insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

c. "Health insurance coverage" does not include benefits provided under a separate policy as follows:

(1) Limited-scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

d. "Health insurance coverage" does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

e. "Health insurance coverage" does not include Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55 and similar supplemental coverage provided to coverage under group health insurance coverage.

16. *"Insured"* means an individual who is provided qualified comprehensive health insurance under an association policy, which policy may include dependents and other covered persons.

17. *"Involuntary termination"* includes, but is not limited to, termination of coverage when a conversion policy is not available or where benefits under a state or federal law providing for continuation of coverage upon termination of employment will cease or have ceased.

18. *"Medicaid"* means the federal-state assistance program established under Title XIX of the federal Social Security Act.

19. *"Medicare"* means the federal government health insurance program established under Title XVIII of the Social Security Act.

20. *"Organized delivery system"* means an organized delivery system as licensed by the director of the department of public health.

21. *"Policy"* means a contract, policy, or plan of health insurance.

22. *"Policy year"* means a consecutive twelve-month period during which a policy provides or obligates the carrier to provide health insurance.

23. *"Preexisting condition exclusion"*, with respect to coverage, means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

86 Acts, ch 1156, §1; 89 Acts, ch 304, §1003; 97 Acts, ch 103, §42, 43; 98 Acts, ch 1100, §70; 2000 Acts, ch 1058, §47; 2001 Acts, ch 69, §23; 2002 Acts, ch 1111, §16

Organized delivery systems authorized, see 93 Acts, ch 158, §3

Subsection 6, NEW paragraph l

514E.2 Iowa comprehensive health insurance association.

1. The Iowa comprehensive health insurance association is established as a nonprofit corporation. The association shall assure that health insurance, as limited by sections 514E.4 and 514E.5, is made available to each eligible Iowa resident and each federally eligible individual applying to the association for coverage. The association shall also be responsible for administering the Iowa individual health benefit reinsurance association pursuant to all of the terms and conditions contained in chapter 513C.

a. All carriers as defined in section 514E.1, subsection 3, and all organized delivery systems licensed by the director of public health providing health insurance or health care services in Iowa shall be members of the association.

b. The association shall operate under a plan of operation established and approved under subsection 3 and shall exercise its powers through a board of directors established under this section.

2. The board of directors of the association shall consist of all of the following:

a. Two members who shall be representatives of the two largest domestic carriers of individual health insurance in the state as of the calendar year ending December 31, 2000, based on earned premium standards.

b. Three members who shall be representatives of the three largest carriers of health insurance in the state, based on earned premium standards, excluding Medicare supplement coverage premiums, that are not otherwise represented.

c. Two members selected by the members of the association, one of whom shall be a representative from a corporation operating pursuant to chapter 514 on July 1, 1989, or any successor in interest, and one of whom shall be a representative of an organized delivery system or an insurer providing coverage pursuant to chapter 509 or 514A.

d. Four public members selected by the governor.

e. The commissioner or the commissioner's designee from the division of insurance.

f. Two members of the general assembly, one of whom shall be appointed by the speaker of the house and one of whom shall be appointed by the president of the senate, after consultation with

the majority leader and the minority leader of the senate, who shall be ex officio, nonvoting members.

The composition of the board of directors shall be in compliance with sections 69.16 and 69.16A. The governor's appointees shall be chosen from a broad cross-section of the residents of this state.

Members of the board may be reimbursed from the moneys of the association for expenses incurred by them as members, but shall not be otherwise compensated by the association for their services.

3. The association shall submit to the commissioner a plan of operation for the association and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation becomes effective upon approval in writing by the commissioner prior to the date on which the coverage under this chapter must be made available. After notice and hearing, the commissioner shall approve the plan of operation if the plan is determined to be suitable to assure the fair, reasonable, and equitable administration of the association, and provides for the sharing of association losses, if any, on an equitable and proportionate basis among the member carriers. If the association fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or if at any later time the association fails to submit suitable amendments to the plan, the commissioner shall adopt, pursuant to chapter 17A, rules necessary to implement this section. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. In addition to other requirements, the plan of operation shall provide for all of the following:

a. The handling and accounting of assets and moneys of the association.

b. The amount and method of reimbursing members of the board.

c. Regular times and places for meeting of the board of directors.

d. Records to be kept of all financial transactions, and the annual fiscal reporting to the commissioner.

e. Procedures for selecting the board of directors and submitting the selections to the commissioner for approval.

f. The periodic advertising of the general availability of health insurance coverage from the association.

g. Additional provisions necessary or proper for the execution of the powers and duties of the association.

4. The plan of operation may provide that the powers and duties of the association may be delegated to a person who will perform functions similar to those of the association. A delegation under this section takes effect only upon the approval of both the board of directors and the commissioner. The commissioner shall not approve a delegation unless the protections afforded to the insured are substantially equivalent to or greater than those provided under this chapter.

5. The association has the general powers and authority enumerated by this subsection and executed in accordance with the plan of operation approved by the commissioner under subsection 3. The association has the general powers and authority granted under the laws of this state to carriers licensed to issue health insurance. In addition, the association may do any of the following:

a. Enter into contracts as necessary or proper to carry out this chapter.

b. Sue or be sued, including taking any legal action necessary or proper for recovery of any assessments for, on behalf of, or against participating carriers.

c. Take legal action necessary to avoid the payment of improper claims against the association or the coverage provided by or through the association.

d. Establish or utilize a medical review committee to determine the reasonably appropriate level and extent of health care services in each instance.

e. Establish appropriate rates, scales of rates, rate classifications, and rating adjustments, which rates shall not be unreasonable in relation to the coverage provided and the reasonable operations expenses of the association.

f. Pool risks among members.

g. Issue association policies on an indemnity or provision of service basis providing the coverage required by this chapter.

h. Administer separate pools, separate accounts, or other plans or arrangements considered appropriate for separate members or groups of members.

i. Operate and administer any combination of plans, pools, or other mechanisms considered appropriate to best accomplish the fair and equitable operation of the association.

j. Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, policy and other contract design, and any other functions within the authority of the association.

k. Hire independent consultants as necessary.

l. Develop a method of advising applicants of the availability of other coverages outside the association, and shall promulgate a list of health conditions the existence of which would make an applicant eligible without demonstrating a rejection of coverage by one carrier.

m. Include in its policies a provision providing for subrogation rights by the association in a case in which the association pays expenses on behalf of an individual who is injured or suffers a disease under circumstances creating a liability upon an-

other person to pay damages to the extent of the expenses paid by the association but only to the extent the damages exceed the policy deductible and coinsurance amounts paid by the insured. The association may waive its subrogation rights if it determines that the exercise of the rights would be impractical, uneconomical, or would work a hardship on the insured.

6. Rates for coverages issued by the association shall not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing coverage. Separate scales of rates based on age may apply for individual risks. Rates must take into consideration the extra morbidity and administration expenses, if any, for risks insured in the association. The rates for a given classification shall not be more than one hundred fifty percent of the average premium or payment rate for that classification charged by the five carriers with the largest health insurance premium or payment volume in the state during the preceding calendar year. In determining the average rate of the five largest carriers, the rates or payments charged by the carriers shall be actuarially adjusted to determine the rate or payment that would have been charged for benefits similar to those issued by the association.

7. Following the close of each calendar year, the association shall determine the net premiums and payments, the expenses of administration, and the incurred losses of the association for the year. The association shall certify the amount of any net loss for the preceding calendar year to the commissioner of insurance and director of revenue and finance. Any loss shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer in any part the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against members of the association if necessary to assure the financial capability of the association to meet the incurred or estimated claims expenses or operating expenses of the association until the next calendar year is completed. Net gains, if any, must be held at interest to offset future losses or allocated to reduce future premiums.

8. The association shall conduct periodic audits to assure the general accuracy of the financial data submitted to the association, and the association shall have an annual audit of its operations, made by an independent certified public accountant.

9. The association is subject to examination by the commissioner of insurance. Not later than April 30 of each year, the board of directors shall submit to the commissioner a financial report for the preceding calendar year in a form approved by the commissioner.

10. The association is subject to oversight by the legislative fiscal committee of the legislative council. Not later than April 30 of each year, the board of directors shall submit to the legislative fiscal committee a financial report for the preceding year in a form approved by the committee.

11. All policy forms issued by the association must be filed with and approved by the commissioner before their use.

12. The association is exempt from payment of all fees and all taxes levied by this state or any of its political subdivisions.

13. A member who, after July 1, 1986, has paid one or more assessments levied under this chapter may take a credit against the premium taxes, or similar taxes, upon revenues or income of the member that are imposed by the state on health insurance premiums pursuant to chapter 432 or payments subject to taxation under section 514B.31, up to the amount of twenty percent of those taxes due, for each of the five calendar years following the year for which an assessment was paid, or until the aggregate of those assessments has been offset by credits against those taxes if this occurs first. If a member ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

86 Acts, ch 1156, §2; 89 Acts, ch 304, §1004 – 1006; 90 Acts, ch 1223, §28; 97 Acts, ch 103, §44 – 48; 2001 Acts, ch 125, §7

514E.3 Health insurance trust fund — deposit of moneys. Repealed by 97 Acts, ch 103, § 56.

514E.4 Association policy — coverage and benefit requirements — eligible expenses.

The association policy shall pay only the usual, customary and reasonable charges for medically necessary eligible health care services which exceed the deductible and coinsurance amounts applicable under section 514E.6. Eligible expenses are the charges for the following health care services furnished by a health care provider in an emergency situation or furnished or prescribed by a health care provider:

1. Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, but limited to a total of one hundred eighty days in a calendar year.

2. Professional services for the diagnosis or treatment of injuries, illnesses, or conditions, oth-

er than mental or dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered nurses, licensed practical nurses, or other health care providers.

3. The first twenty professional visits for the diagnosis or treatment of one or more mental conditions, rendered during a calendar year by one or more health care providers, or at their direction, by their staff of registered nurses, licensed practical nurses, or other health care providers.

4. Drugs and contraceptive devices requiring a prescription.

5. Services of a nursing facility as defined in section 135C.1, for not more than one hundred eighty days in a calendar year.

6. Homemaker-home health services up to one hundred eighty days of service in a calendar year.

7. Use of radium or other radioactive material.

8. Oxygen.

9. Anesthetics.

10. Prostheses, other than dental.

11. Rental of durable medical equipment, other than eye glasses and hearing aids, which have no personal use in the absence of the condition for which prescribed.

12. Diagnostic X rays and laboratory tests.

13. Oral surgery for any of the following:

a. Excision of partially or completely erupted impacted teeth.

b. Excision of a tooth root without the extraction of the entire tooth.

c. The gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth.

14. Services of a physical therapist and services of a speech therapist.

15. Professional ambulance services to the nearest health care facility qualified to treat the illness, injury, or condition.

16. Processing of blood, including but not limited to, collecting, testing, fractionating, and distributing blood.

86 Acts, ch 1156, §4; 90 Acts, ch 1039, §18

514E.5 Expenses excluded.

Eligible expenses shall not include an expense for any of the following:

1. Services for which a charge is not made in the absence of insurance or for which there is no legal obligation on the part of a patient to pay.

2. Services and charges made for benefits provided under the laws of the United States, excluding Medicare and Medicaid, military service-connected disabilities, but including medical services provided for members of the armed forces and their dependents or for employees of the armed forces of the United States, and medical services financed on behalf of all citizens by the United States.

However, the association policy shall pay benefits as a primary payer in any case where benefit coverage provided under the laws of the United States or under the laws of this state is, by rule or statute, secondary to all other coverages.

3. Benefits which would duplicate the provision of services or payment of charges for any care for an injury, disease, or condition for which either of the following applies:

a. It arises out of and in the course of an employment subject to a workers' compensation or similar law.

b. Benefits for it are payable without regard to fault under a coverage required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance. However, this does not authorize exclusion of charges that exceed the benefits payable under the applicable workers' compensation or no-fault coverage.

4. Care which is primarily for a custodial or domiciliary purpose.

5. Cosmetic surgery unless provided as the result of an injury or medically necessary surgical procedure.

6. Services the provision of which is not within the scope of the license or certificate of the institution or individual rendering the services.

7. That part of any charge for services or articles rendered or prescribed by a health care provider which exceeds the prevailing charge in the locality where the service is provided, or a charge for services or articles not medically necessary.

8. Services rendered prior to the effective date of coverage under this plan for the person on whose behalf the expense is incurred.

9. Routine physical examinations including examinations to determine the need for eye glasses and hearing aids.

10. Illness or injury due to an act of war.

11. Service of a blood donor and any fee for failure to replace the first three pints of blood provided to an eligible person each calendar year.

12. Personal supplies or services provided by a health care facility or any other nonmedical or nonprescribed supply or service.

13. Experimental services or supplies. *"Experimental"* means a service or supply not recognized by the appropriate medical board as normal mode of treatment for the illness or injury involved.

14. Eye surgery if corrective lenses would alleviate the problem.

The coverage and benefit requirements of this section for association policies shall not be altered by any other state law without specific reference to this chapter indicating a legislative intent to add or delete from the coverage requirements of this chapter.

This chapter does not prohibit the association from issuing additional types of health insurance policies with different types of benefits which, in the opinion of the board of directors, may be of benefit to the citizens of the state.

86 Acts, ch 1156, §5; 89 Acts, ch 321, §36; 97 Acts, ch 103, §49

514E.6 Policies, deductible and coinsurance requirements — limitations.

1. Except as provided in subsection 3, an association policy offered in accordance with this chapter shall include a deductible. Deductibles of five hundred dollars and one thousand dollars on a per person per calendar year basis shall be offered. The board may authorize deductibles in other amounts. The deductibles must be applied to the first five hundred dollars, one thousand dollars, or other authorized amount of eligible expenses incurred by the covered person.

2. Except as provided in subsection 3, a mandatory coinsurance requirement shall be imposed at the rate of twenty percent of eligible expenses in excess of the mandatory deductible.

3. The maximum aggregate out-of-pocket payments for eligible expenses by the insured in the form of deductibles and coinsurance shall not exceed in a policy year:

a. One thousand five hundred dollars for an individual five-hundred-dollar deductible policy.

b. Two thousand dollars for an individual one-thousand-dollar deductible policy.

c. Three thousand dollars for a family five-hundred-dollar deductible policy.

d. Four thousand dollars for a family one-thousand-dollar deductible policy.

e. An amount as determined by the association for any other association policy offered.

4. For a family policy, the maximum annual deductible under the policy shall be the deductible chosen for a maximum of two individuals under the policy.

5. Eligible expenses incurred by a covered person in the last three months of a calendar year, and applied toward a deductible, shall also be applied toward the deductible amount in the next calendar year.

6. The association, in addition to other policies, shall offer one which is comparable to the standard health benefit plan as defined in section 513B.2.

7. The association shall, in addition to other policies, offer Medicare supplement policies designed to supplement Medicare and provide coverage of at least fifty percent of the deductible and eighty percent of the covered expenses in section 514E.4. Medicare supplement plans are subject to the same limitations on premiums, deductibility, and annual out-of-pocket expenses as other association policies.

86 Acts, ch 1156, §6; 97 Acts, ch 103, §50, 51

514E.7 Policies — eligible persons — dependent coverage — preexisting conditions.

1. An individual who is and continues to be a resident is eligible for plan coverage if evidence is provided of any of the following:

a. A notice of rejection or refusal to issue substantially similar insurance for health reasons by one carrier or organized delivery system.

b. A refusal by a carrier or organized delivery system to issue insurance except at a rate exceeding the plan rate.

c. That the individual is a federally defined eligible individual.

A rejection or refusal by a carrier or organized delivery system offering only stoploss, excess of loss, or reinsurance coverage with respect to an applicant under paragraphs *"a"* and *"b"* is not sufficient evidence for purposes of this subsection.

2. An association policy shall provide that coverage of a dependent unmarried person terminates when the person becomes nineteen years of age or, if the person is enrolled full time in an accredited educational institution, terminates at twenty-five years of age. The policy shall also provide in substance that attainment of the limiting age does not operate to terminate coverage when the person is and continues to be both of the following:

a. Incapable of self-sustaining employment by reason of mental retardation or physical disability.

b. Primarily dependent for support and maintenance upon the person in whose name the contract is issued.

Proof of incapacity and dependency must be furnished to the carrier within one hundred twenty days of the person's attainment of the limiting age, and subsequently as may be required by the carrier, but not more frequently than annually after the two-year period following the person's attainment of the limiting age.

3. An association policy that provides coverage for a family member of the person in whose name the contract is issued shall also provide, as to the family member's coverage, that the health insurance benefits applicable for children include the coverage required under section 514C.1.

4. *a.* A preexisting condition exclusion shall not apply to a federally defined eligible individual.

b. Plan coverage shall not impose any preexisting condition exclusion as follows:

(1) In the case of a child who is adopted or placed for adoption before attaining eighteen years of age and who, as of the last day of the thirty-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This subparagraph shall not apply to coverage before the date of such adoption or placement for adoption.

(2) In the case of an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage.

(3) Relating to pregnancy as a preexisting condition.

c. Plan coverage shall exclude charges or ex-

penses incurred during the first six months following the effective date of coverage for preexisting conditions. Such preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage which was involuntarily terminated, provided both of the following apply:

(1) Application for association coverage is made no later than sixty-three days following such involuntary termination and, in such case, coverage under the plan is effective from the date on which such prior coverage was terminated.

(2) The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to plan coverage.

d. This subsection does not prohibit preexisting conditions coverage in an association policy that is more favorable to the insured than that specified in this subsection.

If the association policy contains a waiting period for preexisting conditions, an insured may retain any existing coverage the insured has under an insurance plan that has coverage equivalent to the association policy for the duration of the waiting period only.

5. An individual is not eligible for coverage by the association if any of the following apply:

a. The individual is at the time of application eligible for health care benefits under chapter 249A.

b. The individual has terminated coverage by the association within the past twelve months, except that this paragraph does not apply to an applicant who is a federally eligible individual.

c. The individual is an inmate of a public institution, except that this paragraph does not apply to an applicant who is a federally defined eligible individual.

d. The individual premiums are paid for or reimbursed under any government sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent of the employee, of a government agency or health care provider.

e. The individual, on the effective date of the coverage applied for, has not been rejected for, already has, or will have coverage similar to an association policy as an insured or covered dependent. This paragraph does not apply to an applicant who is a federally eligible individual.

86 Acts, ch 1156, §7; 90 Acts, ch 1163, §1 – 3; 96 Acts, ch 1129, §113; 97 Acts, ch 103, §52, 53; 98 Acts, ch 1100, §71

514E.8 Policies — renewal provisions — election to continue coverage upon death of policyholder.

1. An association policy shall contain provisions under which the association is obligated to renew the contract until the day on which the individual in whose name the contract is issued first becomes eligible for Medicare coverage, except that in a family policy covering both husband and wife, the age of the younger spouse shall be used as the basis for meeting the durational requirements of this subsection. However, when the individual in whose name the contract is issued becomes eligible for Medicare coverage, the person shall be eligible for the Medicare supplement plan offered by the association.

2. The association shall not change the rates for association policies except on a class basis with a clear disclosure in the policy of the association's right to do so.

3. An association policy shall provide that upon the death of the individual in whose name the policy is issued, every other individual then covered under the contract may elect, within a period specified in the policy, to continue coverage under the same or a different policy until such time as the person would have ceased to be entitled to coverage had the individual in whose name the policy was issued lived.

86 Acts, ch 1156, §8

514E.9 Rules.

Pursuant to chapter 17A, the commissioner and the director of public health shall adopt rules to provide for disclosure by carriers and organized delivery systems of the availability of insurance coverage from the association, and to otherwise implement this chapter.

86 Acts, ch 1156, §9; 97 Acts, ch 103, §54

514E.10 Collective action — immunity.

Neither the participation by carriers or members in the association, the establishment of rates, forms, or procedures for coverage issued by the association, nor any joint or collective action required by this chapter shall be the basis of any legal civil action, or criminal liability against the association or members of it either jointly or separately.

86 Acts, ch 1156, §10

514E.11 Notice of association policy.

Every carrier, including a health maintenance organization subject to chapter 514B and an organized delivery system, authorized to provide health care insurance or coverage for health care services in Iowa, shall provide a notice of the availability of coverage by the association to any person who receives a rejection of coverage for health insurance or health care services, or a notice to any person who is informed that a rate for health insurance or coverage for health care services will exceed the rate of an association policy, that per-

son is eligible to apply for health insurance provided by the association. Application for the health insurance shall be on forms prescribed by the board and made available to the carriers and organized delivery systems.

86 Acts, ch 1156, §11; 97 Acts, ch 103, §55

CHAPTER 514F

UTILIZATION AND COST CONTROL

514F.1 Utilization and cost control review committees.
514F.2 Utilization and cost control.
514F.3 Preferred providers.
514F.4 Utilization review requirements.
514F.5 Experimental treatment review.

514F.1 Utilization and cost control review committees.

The boards of examiners under chapters 148, 149, 150, 150A, 151, and 152 shall establish utilization and cost control review committees of licensees under the respective chapters, selected from licensees who have practiced in Iowa for at least the previous five years, or shall accredit and designate other utilization and cost control organizations as utilization and cost control committees under this section, for the purposes of utilization review of the appropriateness of levels of treatment and of giving opinions as to the reasonableness of charges for diagnostic or treatment services of licensees. Persons governed by the various chapters of Title XIII, subtitle 1, of the Code and self-insurers for health care benefits to employees may utilize the services of the utilization and cost control review committees upon the payment of a reasonable fee for the services, to be determined by the respective boards of examiners. The respective boards of examiners under chapters 148, 149, 150, 150A, 151, and 152 shall adopt rules necessary and proper for the implementation of this section pursuant to chapter 17A. It is the intent of this general assembly that conduct of the utilization and cost control review committees authorized under this section shall be exempt from challenge under federal or state antitrust laws or other similar laws in regulation of trade or commerce.

86 Acts, ch 1180, §10; 87 Acts, ch 115, §63; 88 Acts, ch 1199, §6; 89 Acts, ch 164, §6; 90 Acts, ch 1233, §32

514F.2 Utilization and cost control.

Nothing contained in the chapters of Title XIII, subtitle 1, of the Code shall be construed to prohibit or discourage insurers, nonprofit service corporations, health maintenance organizations, or self-insurers for health care benefits to employees from providing payments of benefits or providing care and treatment under capitated payment systems, prospective reimbursement rate systems, utilization control systems, incentive systems for the use of least restrictive and least costly levels of care, preferred provider contracts limiting choice of specific provider, or other systems, methods or organizations designed to contain costs without sacrificing care or treatment outcome, provided these systems do not limit or make optional payment or reimbursement for health care services on a basis solely related to the license under or the practices authorized by chapter 151 or on a basis that is dependent upon a method of classification, categorization, or description based upon differences in terminology used by different licensees under the chapters of Title IV, subtitle 3, of the Code in describing human ailments or their diagnosis or treatment.

86 Acts, ch 1180, §10

514F.3 Preferred providers.

The commissioner of insurance shall adopt rules for preferred provider contracts and organizations, both those that limit choice of specific provider and those that do not. The rules adopted shall include, but not be limited to, the following subjects: preferred provider arrangements and participation requirements, health benefit plans, and civil penalties.

88 Acts, ch 1112, §604

514F.4 Utilization review requirements.

1. A third-party payor which provides health benefits to a covered individual residing in this state shall not conduct utilization review, either directly or indirectly, under a contract with a third-party who does not meet the requirements established for accreditation by the utilization review accreditation commission, national committee on quality assurance, or another national accreditation entity recognized and approved by the commissioner.

2. This section does not apply to any utilization review performed solely under contract with the federal government for review of patients eli-

gible for services under any of the following:

a. Title XVIII of the federal Social Security Act.

b. The civilian health and medical program of the uniformed services.

c. Any other federal employee health benefit plan.

3. For purposes of this section, unless the context otherwise requires:

a. *"Third-party payor"* means:

(1) An insurer subject to chapter 509 or 514A.

(2) A health service corporation subject to chapter 514.

(3) A health maintenance organization subject to chapter 514B.

(4) A preferred provider arrangement.

(5) A multiple employer welfare arrangement.

(6) A third-party administrator.

(7) A fraternal benefit society.

(8) A plan established pursuant to chapter 509A for public employees.

(9) Any other benefit program providing payment, reimbursement, or indemnification for health care costs for an enrollee or an enrollee's eligible dependents.

b. *"Utilization review"* means a program or process by which an evaluation is made of the necessity, appropriateness, and efficiency of the use of health care services, procedures, or facilities given or proposed to be given to an individual within this state. Such evaluation does not apply to requests by an individual or provider for a clarification, guarantee, or statement of an individual's health insurance coverage or benefits provided under a health insurance policy, nor to claims adjudication. Unless it is specifically stated, verification of benefits, preauthorization, or a prospective or concurrent utilization review program or process shall not be construed as a guarantee or statement of insurance coverage or benefits for any individual under a health insurance policy.

99 Acts, ch 41, §5

514F.5 Experimental treatment review.

1. A carrier, as defined in section 513B.2, an organized delivery system authorized under 1993 Iowa Acts, chapter 158, or a plan established pursuant to chapter 509A for public employees, that limits coverage for experimental medical treatment, drugs, or devices, shall develop and implement a procedure to evaluate experimental medical treatments and shall submit a description of the procedure to the division of insurance. The procedure shall be in writing and must describe the process used to determine whether the carrier, organized delivery system, or chapter 509A plan will provide coverage for new medical technologies and new uses of existing technologies. The procedure, at a minimum, shall require a review of information from appropriate government regulatory agencies and published scientific literature concerning new medical technologies, new uses of existing technologies, and the use of external experts in making decisions. A carrier, organized delivery system, or chapter 509A plan shall include appropriately licensed or qualified professionals in the evaluation process. The procedure shall provide a process for a person covered under a plan or contract to request a review of a denial of coverage because the proposed treatment is experimental. A review of a particular treatment need not be reviewed more than once a year.

2. A carrier, organized delivery system, or chapter 509A plan that limits coverage for experimental treatment, drugs, or devices shall clearly disclose such limitations in a contract, policy, or certificate of coverage.

99 Acts, ch 41, §6

CHAPTER 514G

LONG-TERM CARE INSURANCE

514G.1 Purpose.
514G.2 Scope.
514G.3 Short title.
514G.4 Definitions.
514G.5 Limits of group long-term care insurance.
514G.6 Limitations on associations.
514G.7 Disclosure and performance standards for long-term care insurance.
514G.8 Administrative procedures.
514G.9 Reserved.
514G.10 Long-term care consumer guide.

514G.1 Purpose.

The purpose of this chapter is to promote the public interest, to promote the availability of long-term care insurance, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care in-

surance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.

87 Acts, ch 131, §1

514G.2 Scope.

This chapter applies to policies delivered or issued for delivery in this state on or after July 1, 1987. This chapter does not supersede the obligations of entities subject to this chapter to comply with the substance of other applicable insurance laws not in conflict with this chapter, except that laws and rules designated and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance. A policy which is not advertised, marketed, or offered as long-term care insurance or nursing home insurance need not meet the requirements of this chapter.

87 Acts, ch 131, §2

514G.3 Short title.

This chapter may be known and cited as the *"Long-Term Care Insurance Act"*.

87 Acts, ch 131, §3

514G.4 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Applicant"* means either of the following:

a. A person seeking to contract for an individual long-term care insurance policy for the benefit of that person.

b. The proposed certificate holder of a group long-term care insurance policy.

2. *"Certificate"* means a certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

3. *"Commissioner"* means the insurance commissioner.

4. *"Group long-term care insurance"* means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to any of the following:

a. One or more employers or labor organizations, or to a trust, or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations.

b. A professional, trade, or occupational association for its members or former or retired members, or a combination thereof, if the association is both:

(1) Composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation.

(2) Maintained in good faith for purposes other than obtaining insurance.

c. An association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations.

d. A group other than as described in paragraphs *"a"* through *"c"*, subject to a finding by the commissioner that all of the following are true:

(1) The issuance of a group policy is not contrary to the best interest of the public.

(2) The issuance of the group policy would result in economies of acquisition or administration.

(3) The benefits are reasonable in relation to the premiums charged.

5. *"Long-term care insurance"* means an insurance policy, insurance contract, insurance certificate, or rider, which is advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital; and includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or any similar organization. *"Long-term care insurance"* does not include an insurance policy which is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

6. *"Policy"* means a policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, or any similar organization.

87 Acts, ch 131, §4

514G.5 Limits of group long-term care insurance.

Group long-term care insurance coverage shall not be offered to a resident of this state under a group policy issued in another state to a group described in section 514G.4, subsection 4, paragraph *"d"*, unless this state or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this state has made a determination that long-term care insurance requirements have been met.

87 Acts, ch 131, §5

514G.6 Limitations on associations.

1. Prior to advertising, marketing, or offering a policy within this state, an association or a trust

or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations, or the insurer of the association or associations, shall file evidence with the commissioner that the association has at the outset a minimum of one hundred persons and has been organized and maintained in good faith for purposes other than that of obtaining insurance; has been in active existence for at least one year; and has a constitution and bylaws which provide all of the following:

a. The association must hold regular meetings not less than annually to further the purposes of the members.

b. Except for credit unions, the association must collect dues or solicit contributions from members.

c. The members must have voting privileges and representation on the governing board and committees.

2. Thirty days after such filing the association or associations will be deemed to satisfy such organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

87 Acts, ch 131, §6

514G.7 Disclosure and performance standards for long-term care insurance.

1. *Rules.* The commissioner may adopt rules for full and fair disclosure of the terms and benefits of a long-term care insurance policy, including but not limited to rules setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

2. *Prohibitions.* A long-term care insurance policy shall not:

a. Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder.

b. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

c. Provide coverage for skilled nursing care only, or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

d. Be issued to an individual without obtaining one or more of the following:

(1) A report of a physical examination.

(2) An assessment of functional capacity.

(3) An attending physician's statement.

(4) Copies of medical records.

3. *Preexisting conditions.*

a. A long-term care insurance policy or certificate shall not use a definition of preexisting condition which is more restrictive than the following: *"Preexisting condition"* means the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or a condition for which medical advice or treatment was recommended by or received from a provider of health care services within six months preceding the effective date of coverage of an insured person.

b. A long-term care insurance policy shall not exclude coverage for a loss or confinement which is the result of a preexisting condition unless the loss or confinement begins within six months following the effective date of coverage of an insured person.

c. The definition of *"preexisting condition"* does not prohibit either of the following:

(1) An insurer from using an application form designed to elicit the complete health history of an applicant.

(2) An insurer from underwriting in accordance with that insurer's established underwriting standards based on the answers on an application conforming with subparagraph (1).

4. *Prior hospitalization — institutionalization.*

a. Effective July 1, 1989, a long-term care insurance policy shall not be delivered or issued for delivery in this state if the policy does either of the following:

(1) Conditions eligibility for any benefits on a requirement of prior hospitalization.

(a) Effective July 1, 1991, any holder of a long-term care insurance policy, which is not noncancelable or guaranteed renewable, was issued before July 1, 1989, and conditions eligibility for benefits on a requirement of prior hospitalization, shall, unless it has previously been offered by the insurer, be offered by the insurer a rider or endorsement that waives the requirement of prior hospitalization. If the rider or endorsement results in a concomitant increase in premium during the policy term, then it must be agreed to in writing and signed by the insured to become effective.

(b) The rider or endorsement under subparagraph subdivision (a) shall be subject to the insurer's underwriting guidelines as proof of insurability at the time of application for the rider or endorsement.

(c) Effective July 1, 1991, any holder of a noncancelable or guaranteed renewable long-term care insurance policy issued before July 1, 1989, which conditions eligibility for benefits on a requirement of prior hospitalization, shall, unless the holder has previously been notified by the in-

surer, be notified by the insurer in writing prior to or at the time of delivery of the next premium statement of the existence of the condition and that new policies issued by any insurance carrier may not condition benefits on a requirement of prior hospitalization. The insurer shall not solicit the replacement of the noncancelable or guaranteed renewable policy at the same time as the delivery of notice under this subparagraph subdivision.

(2) Conditions eligibility for benefits covering care provided in an institutional care setting on the receipt of a higher level of institutional care.

b. Effective July 1, 1989, a long-term care insurance policy containing any limitations or conditions for eligibility, other than those prohibited in paragraph 1, shall clearly label such limitations or conditions in a separate paragraph of the policy or certificate entitled *"Limitations or Conditions on Eligibility for Benefits"*.

c. A long-term care insurance policy advertised, marketed, or offered as containing long-term care benefits at home shall not condition receipt of benefits on a requirement of prior hospitalization.

d. A long-term care insurance policy shall not condition eligibility for noninstitutional benefits on the prior receipt of institutional care.

5. *Rules.* The commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rules.

6. *Right to return after examination.* An individual long-term care insurance policyholder has the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies must have a notice prominently printed on the first page or attached to the first page stating in substance that the policyholder has the right to return the policy within thirty days of its delivery and to have the premium refunded as provided in this subsection.

7. *Outline of coverage.* An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application. An outline of coverage must include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of group coverage shall be specifically described.

d. A statement that the outline of coverage is a summary of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy should be consulted to determine governing contractual provisions.

e. A description of the terms by which the policy or certificate may be returned and premium refunded.

f. A description of the cost of care and benefits.

8. *Certificates.* A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this state shall include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement that the group master policy determines governing contractual provisions.

9. *Compliance required.* A policy shall not be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this chapter.

87 Acts, ch 131, §7; 89 Acts, ch 321, §37 – 39; 91 Acts, ch 213, §21 – 23; 95 Acts, ch 185, §16 – 18

514G.8 Administrative procedures.

Rules adopted pursuant to this chapter must be in accordance with the provisions of section 505.8.

87 Acts, ch 131, §8

514G.9 Reserved.

514G.10 Long-term care consumer guide.

An insurer offering a long-term care insurance policy to any person shall provide to the applicant the current long-term care insurance consumer guide prescribed by the insurance division of the department of commerce. The commissioner of insurance may by reference adopt or permit the use of the long-term care insurance consumer guide developed by the national association of insurance commissioners, the blue cross and blue shield association, or the health insurance association of America. Delivery of the long-term care insurance consumer guide shall be made if a policy is advertised, solicited, or issued as a policy as defined in this chapter, or if it is subject to this chapter, regardless of the label applied by the insurer. Except in the case of direct response insurers, delivery of the long-term care insurance consumer guide shall be made to the applicant at the time of application, and acknowledgment of receipt of the long-term care insurance consumer guide shall be obtained by the insurer. A direct response insurer shall deliver the long-term care insurance consumer guide to the applicant at the time the policy is delivered. An insurance company required to distribute the guide shall reimburse the state for all costs associated with the guide.

91 Acts, ch 213, §24

CHAPTER 514H

IOWA HEALTHY KIDS PROGRAM

Repealed by 98 Acts, ch 1196, §15, 16;
see chapter 514I

CHAPTER 514I

HEALTHY AND WELL KIDS IN IOWA PROGRAM

(HAWK-I program)
Establishment of HAWK-I trust fund in state
treasury; 98 Acts, ch 1218, §48

514I.1 Intent of the general assembly.
514I.2 Definitions.
514I.3 HAWK-I program — established.
514I.4 Director and department — duties — powers.
514I.5 HAWK-I board.
514I.6 Participating insurers.
514I.7 Administrative contractor.
514I.8 Eligible child.
514I.9 Program benefits.
514I.10 Cost sharing.
514I.11 HAWK-I trust fund.

514I.1 Intent of the general assembly.

1. It is the intent of the general assembly to provide health care coverage to eligible children that improves access to preventive, diagnostic, and treatment health services which result in improved health status using in part resources made available from the passage of Title XXI of the federal Social Security Act.

2. It is the intent of the general assembly that the program be implemented and administered in compliance with Title XXI of the federal Social Security Act. If, as a condition of receiving federal funds for the program, federal law requires implementation and administration of the program in a manner not provided in this chapter, during a period when the general assembly is not in session, the department, with the approval of the HAWK-I board, shall proceed to implement and administer those provisions, subject to review by the next regular session of the general assembly.

3. It is the intent of the general assembly, recognizing the importance of outreach to the successful utilization of the program by eligible children, that within the limitations of funding allowed for outreach and administration expenses, the maximum amount possible be used for outreach.

4. It is the intent of the general assembly that the HAWK-I program be an integral part of the continuum of health insurance coverage and that the program be developed and implemented in such a manner as to facilitate movement of families between health insurance providers and to facilitate the transition of families to private sector health insurance coverage.

98 Acts, ch 1196, §2, 16

514I.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrative contractor"* means the person with whom the department enters a contract to administer the HAWK-I program under this chapter.

2. *"Benchmark benefit package"* means any of the following:

a. The standard blue cross/blue shield preferred provider option service benefit plan, described in and offered under 5 U.S.C. § 8903(1).

b. A health benefits coverage plan that is offered and generally available to state employees in this state.

c. The plan of a health maintenance organization as defined in 42 U.S.C. § 300e, with the largest insured commercial, nonmedical assistance enrollment of covered lives in the state.

3. *"Cost sharing"* means the payment of a premium or copayment as provided for by Title XXI of the federal Social Security Act and section 514I.10.

4. *"Department"* means the department of human services.

5. *"Director"* means the director of human services.

6. *"Eligible child"* means an individual who meets the criteria for participation in the program under section 514I.8.

7. *"HAWK-I board"* or *"board"* means the entity which adopts rules and establishes policy for, and directs the department regarding, the HAWK-I program.

8. *"HAWK-I program"* or *"program"* means the healthy and well kids in Iowa program created in

this chapter to provide health insurance coverage to eligible children.

9. *"Health insurance coverage"* means health insurance coverage as defined in 42 U.S.C. § 300gg(91).

10. *"Participating insurer"* means any entity licensed by the division of insurance of the department of commerce to provide health insurance in Iowa or an organized delivery system licensed by the director of public health that has contracted with the department to provide health insurance coverage to eligible children under this chapter.

11. *"Qualified child health plan"* or *"plan"* means health insurance coverage provided by a participating insurer under this chapter.

98 Acts, ch 1196, §3, 16

514I.3 HAWK-I program — established.

1. The HAWK-I program, a statewide program designed to improve the health of children and to provide health insurance coverage to eligible children on a regional basis which complies with Title XXI of the federal Social Security Act, is established and shall be implemented January 1, 1999.

2. Health insurance coverage under the program shall be provided by participating insurers and through qualified child health plans.

3. The department of human services is designated to receive the state and federal funds appropriated or provided for the program, and to submit and maintain the state plan for the program, which is approved by the centers for Medicare and Medicaid services of the United States department of health and human services.

4. Nothing in this chapter shall be construed or is intended as, or shall imply, a grant of entitlement for services to persons who are eligible for participation in the program based upon eligibility consistent with the requirements of this chapter. Any state obligation to provide services pursuant to this chapter is limited to the extent of the funds appropriated or provided for this chapter.

5. Participating insurers under this chapter are not subject to the requirements of chapters 513B and 513C.

98 Acts, ch 1196, §4, 16; 2002 Acts, ch 1050, §45
Subsection 3 amended

514I.4 Director and department — duties — powers.

1. The director, with the approval of the HAWK-I board, shall implement this chapter. The director shall do all of the following:

a. At least every six months, evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing the program, and compare the probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period. The director shall report the findings of the evaluation to the board and shall annually report findings to the governor and the general assembly by January 1.

b. Establish premiums to be paid to participating insurers for provision of health insurance coverage.

c. Contract with participating insurers to provide health insurance coverage under this chapter.

d. Recommend to the board proposed rules necessary to implement the program.

e. Recommend to the board individuals to serve as members of the clinical advisory committee.

2. The director, with the concurrence of the board, shall enter into a contract with an administrative contractor. Such contract shall be entered into in accordance with the criteria established by the board.

3. The department may enter into contracts with other persons whereby the other person provides some or all of the functions, pursuant to rules adopted by the board, which are required of the director or the department under this section. All contracts entered into pursuant to this section shall be made available to the public.

4. The department shall do or shall provide for all of the following:

a. Develop a program application form not to exceed two pages in length, which is consistent with the rules of the board, which is easy to understand, complete, and concise, and which, to the greatest extent possible, coordinates with the medical assistance program.

b. Establish the family cost sharing amount, based on a sliding fee scale, if established by the board.

c. Perform other duties as determined by the department with the approval of the board.

98 Acts, ch 1196, §5, 16

514I.5 HAWK-I board.

1. A HAWK-I board for the HAWK-I program is established. The board shall meet not less than ten times annually, for the purposes of establishing policy for, directing the department on, and adopting rules for the program. The board shall consist of seven members, including all of the following:

a. The commissioner of insurance, or the commissioner's designee.

b. The director of the department of education, or the director's designee.

c. The director of public health, or the director's designee.

d. Four public members appointed by the governor and subject to confirmation by the senate. The public members shall be members of the general public who have experience, knowledge, or expertise in the subject matter embraced within this chapter.

e. Two members of the senate and two mem-

bers of the house of representatives, serving as ex officio members. The legislative members of the board shall be appointed by the majority leader of the senate, after consultation with the president of the senate, and by the minority leader of the senate, and by the speaker of the house, after consultation with the majority leader, and by the minority leader of the house of representatives. Legislative members shall receive compensation pursuant to section 2.12.

2. A public member shall not have a conflict of interest with the administrative contractor.

3. Members appointed by the governor shall serve two-year staggered terms as designated by the governor, and legislative members of the board shall serve two-year terms. The filling of positions reserved for the public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of the members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties. Public members of the board are also eligible to receive compensation as provided in section 7E.6. The members shall select a chairperson on an annual basis from among the membership of the board.

4. The board shall approve any contract entered into pursuant to this chapter. All contracts entered into pursuant to this chapter shall be made available to the public.

5. The department of human services shall act as support staff to the board.

6. The board may receive and accept grants, loans, or advances of funds from any person and may receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of the program.

7. The HAWK-I board shall do all of the following:

a. Develop the criteria to be included in a request for proposals for the selection of any administrative contractor for the program.

b. Define, in consultation with the department, the regions of the state for which plans are offered in a manner as to ensure access to services for all children participating in the program.

c. Approve the benefit package design, review the benefit package design on a periodic basis, and make necessary changes in the benefit design to reflect the results of the periodic reviews.

d. Develop, with the assistance of the department, an outreach plan, and provide for periodic assessment of the effectiveness of the outreach plan. The plan shall provide outreach to families of children likely to be eligible for assistance under the program, to inform them of the availability of and to assist the families in enrolling children in the program. The outreach efforts may include, but are not limited to, a comprehensive statewide media campaign, solicitation of cooperation from programs, agencies, and other persons who are likely to have contact with eligible children, including but not limited to those associated with the educational system, and the development of community plans for outreach and marketing.

e. In consultation with the clinical advisory committee, select a single, nationally recognized functional health assessment form for an initial assessment of all eligible children participating in the program, establish a baseline for comparison purposes, and develop appropriate indicators to measure the health status of eligible children participating in the program.

f. Review, in consultation with the department, and take necessary steps to improve interaction between the program and other public and private programs which provide services to the population of eligible children. The board, in consultation with the department, shall also develop and implement a plan to improve the medical assistance program in coordination with the HAWK-I program, including but not limited to a provision to coordinate eligibility between the medical assistance program and the HAWK-I program, and to provide for common processes and procedures under both programs to reduce duplication and bureaucracy.

g. By January 1, annually, prepare, with the assistance of the department, and submit a report to the governor, the general assembly, and the council on human services, concerning the board's activities, findings, and recommendations.

h. Solicit input from the public regarding the program and related issues and services.

i. Perform periodic random reviews of enrollee applications to assure compliance with program eligibility and enrollment policies. Quality assurance reports shall be made based upon the data maintained by the administrative contractor.

j. Establish and consult with a clinical advisory committee to make recommendations to the board regarding the clinical aspects of the HAWK-I program.

k. Prescribe the elements to be included in a health improvement program plan required to be developed by a participating insurer. The elements shall include but are not limited to health maintenance and prevention and health risk assessment.

l. Establish an advisory committee to make recommendations to the board and to the general assembly on or before January 1, 1999, concerning the provision of health insurance coverage to children with special health care needs under the program. The committee shall include individuals with experience in, knowledge of, or expertise in this area. The recommendations shall address, but are not limited to, all of the following:

(1) The definition of the target population of children with special health care needs for the purposes of determining eligibility under the program.

(2) Eligibility options for and assessment of

children with special health care needs for eligibility.

(3) Benefit options for children with special health care needs.

(4) Options for enrollment of children with special health care needs in and disenrollment of children with special health care needs from qualified child health plans utilizing a capitated fee form of payment.

(5) The appropriateness and quality of care for children with special health care needs.

(6) The coordination of health services provided for children with special health care needs under the program with services provided by other publicly funded programs.

8. The HAWK-I board, in consultation with the department of human services, shall adopt rules which address, but are not limited to addressing, all of the following:

a. Implementation and administration of the program.

b. The program application form. The form shall include a request for information regarding other health insurance coverage for each child.

c. Criteria for the selection of an administrative contractor for the program.

d. Qualifying standards for selecting participating insurers for the program.

e. The benefits to be included in a qualified child health plan which are those included in a benchmark or benchmark equivalent plan and which comply with Title XXI of the federal Social Security Act. Benefits covered shall include but are not limited to all of the following:

(1) Inpatient hospital services including medical, surgical, intensive care unit, mental health, and substance abuse services.

(2) Nursing care services including skilled nursing facility services.

(3) Outpatient hospital services including emergency room, surgery, lab, and x-ray services and other services.

(4) Physician services, including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits.

(5) Ambulance services.

(6) Physical therapy.

(7) Speech therapy.

(8) Durable medical equipment.

(9) Home health care.

(10) Hospice services.

(11) Prescription drugs.

(12) Dental services including preventive services.

(13) Medically necessary hearing services.

(14) Vision services including corrective lenses.

f. Standards for program eligibility. The standards shall not discriminate on the basis of diagnosis. Within a defined group of covered eligible children, the standards shall not cover children of higher income families without covering children of families with lower incomes. The standards shall not deny eligibility based on a child having a preexisting medical condition.

g. Presumptive eligibility criteria for the program.

h. The amount of any cost sharing under the program which shall be assessed on a sliding fee scale based on family income, which provides for a minimum amount of cost sharing, and which complies with federal law.

i. The reasons for disenrollment including, but not limited to, nonpayment of premiums, eligibility for medical assistance or other insurance coverage, admission to a public institution, relocation from the area, and change in income.

j. Conflict of interest provisions applicable to the administrative contractor and participating insurers, and between public members of the board and the administrative contractor and participating insurers.

k. Penalties for breach of contract or other violations of requirements or provisions under the program.

l. A mechanism for participating insurers to report any rebates received to the department.

m. The reasons allowed for approval of an application in cases in which prior employer-sponsored coverage ended less than six months prior to the determination of eligibility for the HAWK-I program. The reasons established by rule shall include, but are not limited to, all of the following:

(1) Loss of employment due to factors other than voluntary termination.

(2) Death of a parent.

(3) Change in employment to a new employer that does not provide an option for dependent coverage.

(4) Change of address so that no employer-sponsored coverage is available.

(5) Discontinuation of health benefits to all employees of the applicant's employer.

(6) Expiration of the coverage periods established by the federal Consolidated Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, as amended.

(7) Self-employment.

(8) Termination of health benefits due to a long-term disability.

(9) Termination of dependent coverage due to an extreme economic hardship on the part of either the employee or the employer, as determined by rule.

(10) Substantial reduction in either lifetime medical benefits or benefit category available to an employee and dependents under an employer's health care plan.

If the board determines that the allowance of the six-month period from the time of dropping coverage to be eligible for participation in the

HAWK-I program is insufficient to effectively deter applicants or employers of applicants from discontinuing employer-sponsored dependent care coverage for the purpose of participation in the HAWK-I program, the board may adopt rules to extend the time period to a period not to exceed twelve months.

n. The data to be maintained by the administrative contractor including data to be collected for the purposes of quality assurance reports.

98 Acts, ch 1196, §6, 16; 99 Acts, ch 208, §38; 2002 Acts, ch 1175, §37

Confirmation, see §2.32
Subsection 3 amended

514I.6 Participating insurers.

Participating insurers shall meet the qualifying standards established by rule under this chapter and shall perform all of the following functions:

1. Provide plan cards and membership booklets to qualifying families.

2. Provide or reimburse accessible, quality medical services.

3. Submit a marketing plan to the HAWK-I board which is consistent with the board's outreach plan, for approval by the board.

4. Require that any plan provided by the participating insurer establishes and maintains a conflict management system that includes methods for both preventing and resolving disputes involving the health care needs of eligible children, and a process for resolution of such disputes.

5. Provide the administrative contractor with all of the following information pertaining to the participating insurer's plan:

a. A list of providers of medical services under the plan.

b. Information regarding plan rules relating to referrals to specialists.

c. Information regarding the plan's conflict management system.

d. Other information as directed by the board.

6. Submit a plan for a health improvement program to the department, for approval by the board.

7. Develop a plan for provider network development including criteria for access to pediatric subspecialty services.

98 Acts, ch 1196, §7, 16

514I.7 Administrative contractor.

1. An administrative contractor shall be selected by the HAWK-I board through a request for proposals process.

2. The administrative contractor shall do all of the following:

a. Determine individual eligibility for program enrollment based upon review of completed applications and supporting documentation. The administrative contractor shall not enroll a child who has group health coverage or any child who has dropped coverage in the previous six months, unless the coverage was involuntarily lost or unless the reason for dropping coverage is allowed by rule of the board.

b. Enroll qualifying children in the program with maintenance of a supporting eligibility file or database.

c. Forward names of children who appear to be eligible for medical assistance or other public health insurance coverage to local department of human services offices or other appropriate person or agency for follow up and retain the identifying data on children who are referred.

d. Monitor and assess the medical care provided through or by participating insurers as well as complaints and grievances.

e. Verify and forward to the department participating insurers' payment requests.

f. Develop and issue appropriate approval, denial, and cancellation notifications to inform applicants and enrollees of the status of the applicant's or enrollee's eligibility to participate in the program. Additionally, the administrative contractor shall process applications, including verifications and mailing of approvals and denials, within ten working days of receipt of the application, unless the application cannot be processed within this period for a reason that is beyond the control of the administrative contractor.

g. Create and maintain eligibility files that are compatible with the data system of the department including, but not limited to, data regarding beneficiaries, enrollment dates, disenrollments, and annual financial redeterminations.

h. Make program applications available through the mail and through local sites, as determined by the department, including, but not limited to, schools, local health departments, local department of human services offices, and other locations.

i. Provide electronic access to the administrative contractor's database to the department.

j. Provide periodic reports to the department for administrative oversight and monitoring of federal requirements.

k. Perform annual financial reviews of eligibility for each beneficiary.

l. Receive completed applications and verifications at a central location.

m. Collect and track monthly family premiums to assure that payments are current.

n. Notify each participating insurer of new program enrollees who are enrolled by the administrative contractor in that participating insurer's plan.

o. Verify the number of program enrollees with each participating insurer for determination of the amount of premiums to be paid to each participating insurer.

p. Maintain data for the purpose of quality assurance reports as required by rule of the board.

98 Acts, ch 1196, §8, 16; 99 Acts, ch 208, §39

514I.8 Eligible child.

1. Effective July 1, 1998, and notwithstanding any medical assistance program eligibility criteria to the contrary, medical assistance shall be provided to, or on behalf of, an eligible child under the age of nineteen whose family income does not exceed one hundred thirty-three percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services. Additionally, effective July 1, 2000, and notwithstanding any medical assistance program eligibility criteria to the contrary, medical assistance shall be provided to, or on behalf of, an eligible infant whose family income does not exceed two hundred percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

2. A child may participate in the HAWK-I program if the child meets all of the following criteria:

a. Is less than nineteen years of age.

b. Is a resident of this state.

c. Is a member of a family whose income does not exceed two hundred percent of the federal poverty level, as defined in 42 U.S.C. § 9902(2), including any revision required by such section.

d. Is not eligible for medical assistance pursuant to chapter 249A.

e. Is not currently covered under or was not covered within the prior six months under a group health plan as defined in 42 U.S.C. § 300gg-91(a)(1) or other health benefit plan, unless the coverage was involuntarily lost or unless dropping the coverage is allowed by rule of the board.

f. Is not a member of a family that is eligible for health benefits coverage under a state health benefits plan on the basis of a family member's employment with a public agency in this state.

g. Is not an inmate of a public institution or a patient in an institution for mental diseases.

3. In accordance with the rules adopted by the board, a child may be determined to be presumptively eligible for the program pending a final eligibility determination. Following final determination of eligibility by the administrative contractor, a child shall be eligible for a twelve-month period. At the end of the twelve-month period, the administrative contractor shall conduct a review of the circumstances of the eligible child's family to establish eligibility and cost sharing for the subsequent twelve-month period.

4. Once an eligible child is enrolled in a plan, the eligible child shall remain enrolled in the plan unless a determination is made, according to criteria established by the board, that the eligible child should be allowed to enroll in another qualified child health plan or should be disenrolled. An enrollee may change plan enrollment once a year on the enrollee's anniversary date.

5. The board shall study and shall make recommendations to the governor and to the general assembly regarding the level of family income which is appropriate for application of the program, and the feasibility of allowing families with incomes above the level of eligibility for the program to purchase insurance for children through the program.

6. The board and the council on human services shall cooperate and seek appropriate coordination in administration of the program and the medical assistance program and shall develop a plan for a unified medical assistance and HAWK-I program system which includes the use of a single health insurance card by enrollees of either program.

98 Acts, ch 1196, §9, 16; 98 Acts, ch 1223, §34; 2000 Acts, ch 1221, §8, 9

514I.9 Program benefits.

1. Until June 30, 1999, the benefits provided under the program shall be those benefits established by rule of the board and in compliance with Title XXI of the federal Social Security Act.

2. On or before June 30, 1999, the HAWK-I board shall adopt rules to amend the benefits package based upon review of the results of the initial benefits package used.

3. Subsequent to June 30, 1999, the HAWK-I board shall review the benefits package annually and shall determine additions to or deletions from the benefits package offered. The HAWK-I board shall submit the recommendations to the general assembly for any amendment to the benefits package.

4. Benefits, in addition to those required by rule, may be provided to eligible children by a participating insurer if the benefits are provided at no additional cost to the state.

98 Acts, ch 1196, §10, 16

514I.10 Cost sharing.

1. Cost sharing for eligible children whose family income is at or below one hundred fifty percent of the federal poverty level shall not exceed the standards permitted under 42 U.S.C. § 1396(o)(a)(3) or § 1396(o)(b)(1).

2. Cost sharing for eligible children whose family income is between one hundred fifty percent and two hundred percent of the federal poverty level shall include a premium or copayment amount which is at least a minimum amount but which does not exceed five percent of the annual family income. The amount of the premium or the copayment amount shall be based on family income and size.

98 Acts, ch 1196, §11, 16; 2000 Acts, ch 1221, §10

514I.11 HAWK-I trust fund.

1. A HAWK-I trust fund is created in the state

treasury under the authority of the department of human services, in which all appropriations and other revenues of the program such as grants, contributions, and participant payments shall be deposited and used for the purposes of the program. The moneys in the fund shall not be considered revenue of the state, but rather shall be funds of the program.

2. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

99 Acts, ch 203, §52

CHAPTER 514J

EXTERNAL REVIEW OF HEALTH CARE COVERAGE DECISIONS

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514J.1 Legislative intent.

It is the intent of the general assembly to provide a mechanism for the appeal of a denial of coverage based on medical necessity.

99 Acts, ch 41, §7, 22

514J.2 Definitions.

1. *"Carrier"* means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, performing utilization review, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Coverage decision"* means a final adverse decision based on medical necessity. This definition does not include a denial of coverage for a service or treatment specifically listed in plan or evidence of coverage documents as excluded from coverage.

4. *"Enrollee"* means an individual, or an eligible dependent, who receives health care benefits coverage through a carrier or organized delivery system.

5. *"Independent review entity"* means a reviewer or entity, certified by the commissioner pursuant to section 514J.6.

6. *"Organized delivery system"* means an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the director of public health, and performing utilization review.

99 Acts, ch 41, §8, 22

514J.3 Exclusions.

This chapter does not apply to a hospital confinement indemnity, credit, dental, vision, long-term care, disability income insurance coverage, coverage issued as a supplement to liability insurance, workers compensation or similar insurance, or automobile medical payment insurance.

99 Acts, ch 41, §9, 22

514J.3A Notice.

When a claim is denied in whole or in part based on medical necessity, the carrier or organized delivery system shall provide a notice in writing to the enrollee of the internal appeal mechanism provided under the carrier or organized delivery system's plan or policy.

At the time of a coverage decision, the carrier or organized delivery system shall notify the enrollee in writing of the right to have the coverage decision reviewed under the external review process.

2001 Acts, ch 69, §24

514J.4 External review request — fee.

1. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, may file a written request for external review of the coverage decision with the commissioner. The request must be filed within sixty days of the receipt of the coverage decision. However, the enrollee's treating health care provider does not have a duty to request external review.

2. The request for external review must be accompanied by a twenty-five dollar filing fee. The commissioner may waive the filing fee for good cause. The filing fee shall be refunded if the enrollee prevails in the external review process.

99 Acts, ch 41, §10, 22; 2001 Acts, ch 69, §25

514J.5 Certification of request — eligibility.

1. The commissioner shall have two business days from receipt of a request for an external review to certify the request. The commissioner shall certify the request if all of the following criteria are satisfied:

a. The enrollee was covered by the carrier or organized delivery system at the time the service or treatment was proposed or received.

b. The enrollee has been denied coverage based on a determination by the carrier or organized delivery system that the proposed or received service or treatment does not meet the definition of medical necessity as defined in the carrier's or organized delivery system's plan or policy.

c. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, has exhausted all internal appeal mechanisms provided under the carrier's or the organized delivery system's plan or policy.

d. The written request for external review was filed within sixty days of receipt of the coverage decision.

2. The commissioner shall notify the enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, and the carrier or organized delivery system in writing of the certification.

3. The carrier or organized delivery system has three business days from the date of receipt to contest the commissioner's certification decision. If the commissioner finds that the request for external review is not eligible for certification, the commissioner, within two business days of the date of the request, shall notify the enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, in writing of the reasons that the request for external review is not eligible for certification.

If the commissioner finds that the request for external review is eligible for certification, notwithstanding the contest by the carrier or organized delivery system, the commissioner shall promptly notify the carrier or organized delivery system in writing of the reasons for upholding the certification.

99 Acts, ch 41, §11, 22; 2001 Acts, ch 69, §26; 2002 Acts, ch 1119, §69

Subsection 3 amended

514J.6 Independent review entities.

1. The commissioner shall solicit names of independent review entities from carriers, organized delivery systems, and medical and health care professional associations.

2. Independent review entities include, but are not limited to, the following:

a. Medical peer review organizations.

b. Nationally recognized health experts or institutions.

3. The commissioner shall certify independent review entities to conduct external reviews. An individual who conducts an external review as or as part of a certified independent review entity shall be a health care professional and satisfy both of the following requirements:

a. Hold a current unrestricted license to practice medicine or a health profession in the United States. A health care professional who is a physician shall also hold a current certification by a recognized American medical specialty board. A health care professional who is not a physician shall also hold a current certification by such professional's respective specialty board.

b. Have no history of disciplinary actions or sanctions, including, but not limited to, the loss of staff privileges or any participation restriction taken or pending by any hospital or state or federal government regulatory agency.

4. Each independent review entity shall have a quality assurance program on file with the commissioner that ensures the timeliness and quality of the reviews, the qualifications and independence of the experts, and the confidentiality of medical records and review materials.

5. The commissioner shall certify independent review entities every two years.

99 Acts, ch 41, §12, 22

514J.7 External review.

The external review process shall meet the following criteria:

1. The carrier or organized delivery system, within three business days of a receipt of an eligible request for an external review from the commissioner, or within three business days of receipt of the commissioner's denial of the carrier's or organized delivery system's contest of the certification of the request under section 514J.5, subsection 3, whichever is later, shall do all of the following:

a. Select an independent review entity from the list certified by the commissioner. The independent review entity shall be an expert in the treatment of the medical condition under review.

The independent review entity shall not be a subsidiary of, or owned or controlled by, the carrier or organized delivery system, or owned or controlled by a trade association of carriers or organized delivery systems of which the carrier or organized delivery system is a member.

b. Notify in writing the enrollee, and the enrollee's treating health care provider, of the name, address, and telephone number of the independent review entity and of the enrollee's and treating health care provider's right to submit additional information.

c. Notify the selected independent review entity by facsimile that the carrier or organized delivery system has chosen it to do the independent review and provide sufficient descriptive information to identify the type of experts needed to conduct the review.

d. Provide to the commissioner by facsimile a copy of the notices sent to the enrollee and to the selected independent review entity.

2. The independent review entity, within three business days of receipt of the notice, shall select a person to perform the external review and shall provide notice to the enrollee and the carrier containing a brief description of the person including the reasons the person selected is an expert in the treatment of the medical condition under review. The independent review entity does not need to disclose the name of the person. A copy of the notice shall be sent by facsimile to the commissioner. If the independent review entity does not have a person who is an expert in the treatment of the medical condition under review and certified by the commissioner to conduct an independent review, the independent review entity may either decline the review request or may request from the commissioner additional time to have such an expert certified. The independent review entity shall notify the commissioner by facsimile of its choice between these options within three business days of receipt of the notice from the carrier or organized delivery system. The commissioner shall provide a notice to the enrollee and carrier or organized delivery system of the independent review entity's decision and of the commissioner's decision as to how to proceed with the external review process within three business days of receipt of the independent review entity's decision.

3. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, may object to the independent review entity selected by the carrier or organized delivery system or to the person selected as the reviewer by the independent review entity by notifying the commissioner and carrier or organized delivery system within ten days of the mailing of the notice by the independent review entity. The commissioner shall have two business days from receipt of the objection to consider the reasons set forth in support of the objection to approve or deny the objection, to select an independent review entity if necessary, and to provide notice of the commissioner's decision to the enrollee, the enrollee's treating health care provider, and the carrier or organized delivery system.

4. The carrier or organized delivery system, within fifteen days of the mailing of the notice by the independent review entity, or within three business days of a receipt of notice by the commissioner following an objection by the enrollee, whichever is later, shall do all of the following:

a. Provide to the independent review entity any information submitted to the carrier or organized delivery system by the enrollee or the enrollee's treating health care provider in support of the request for coverage of a service or treatment under the carrier's or organized delivery system's appeal procedures.

b. Provide to the independent review entity any other relevant documents used by the carrier or organized delivery system in determining whether the proposed service or treatment should have been provided.

c. Provide to the commissioner a confirmation that the information required in paragraphs *"a"* and *"b"* has been provided to the independent review entity, including the date the information was provided.

5. The enrollee, or the enrollee's treating health care provider, may provide to the independent review entity any information submitted under any internal appeal mechanisms provided under the carrier's or organized delivery system's evidence of coverage, and other newly discovered relevant information. The enrollee shall have ten business days from the mailing date of the notification of the person selected as the reviewer by the independent review entity to provide this information. The independent review entity may reasonably decide whether to consider any information provided by the enrollee or the enrollee's treating health care provider after the ten-day period.

6. The independent review entity shall notify the enrollee and the enrollee's treating health care provider of any additional medical information required to conduct the review within five business days of receipt of the documentation required under subsection 4. The enrollee or the enrollee's treating health care provider shall provide the requested information to the independent review entity within five days after receipt of the notification requesting additional medical information. The independent review entity may decide whether it is reasonable to consider any information provided by the enrollee or the enrollee's treating health care provider after the five-day period. The independent review entity shall notify the commissioner and the carrier or organized delivery system of this request.

7. The independent review entity shall submit its external review decision as soon as possible, but not later than thirty days from the date the independent review entity received the information

required under subsection 4 from the carrier or organized delivery system. The independent review entity, for good cause, may request an extension of time from the commissioner. The independent review entity's external review decision shall be mailed to the enrollee or the treating health care provider acting on behalf of the enrollee, the carrier or organized delivery system, and the commissioner.

8. The confidentiality of any medical records submitted shall be maintained pursuant to applicable state and federal laws.

99 Acts, ch 41, §13, 22; 2001 Acts, ch 69, §27; 2002 Acts, ch 1119, §70 – 72

Subsection 1, paragraph b amended
Subsections 2 and 6 amended

514J.8 Expedited review.

An expedited review shall be conducted within seventy-two hours of notification to the commissioner if the enrollee's treating health care provider states that delay would pose an imminent or serious threat to the enrollee.

99 Acts, ch 41, §14, 22

514J.9 Funding.

All reasonable fees and costs of the independent review entity in conducting an external review shall be paid by the carrier or organized delivery system.

99 Acts, ch 41, §15, 22

514J.10 Reporting.

Each carrier and organized delivery system shall file an annual report with the commissioner containing all of the following:

1. The number of external reviews requested.
2. The number of the external reviews certified by the commissioner.
3. The number of coverage decisions which were upheld by an independent review entity.

The commissioner shall prepare a report by January 31 of each year.

99 Acts, ch 41, §16, 22

514J.11 Immunity.

An independent review entity conducting a review under this chapter is not liable for damages arising from determinations made under the review process. This does not apply to any act or omission by the independent review entity made in bad faith or involving gross negligence.

99 Acts, ch 41, §17, 22

514J.12 Standard of review.

Review by the independent review entity is de novo. The standard of review to be used by an independent review entity shall be whether the health care service or treatment denied by the carrier or organized delivery system was medically necessary as defined by the enrollee's evidence of coverage subject to Iowa law and consistent with clinical standards of medical practice. The independent review entity shall take into consideration factors identified in the review record that impact the delivery of or describe the standard of care for the medical service or treatment under review. The medical service or treatment recommended by the enrollee's treating health care provider shall be upheld upon review so long as it is found to be medically necessary and consistent with clinical standards of medical practice.

99 Acts, ch 41, §18, 22

514J.13 Effect of external review decision.

The review decision by the independent review entity conducting the review is binding upon the carrier or organized delivery system. The enrollee or the enrollee's treating health care provider acting on behalf of the enrollee may appeal the review decision by the independent review entity conducting the review by filing a petition for judicial review either in Polk county district court or in the district court in the county in which the enrollee resides. The petition for judicial review must be filed within fifteen business days after the issuance of the review decision. The findings of fact by the independent review entity conducting the review are conclusive and binding on appeal. The carrier or organized delivery system shall follow and comply with the review decision of the independent review entity conducting the review, or the decision of the court on appeal. The carrier or organized delivery system and the enrollee's treating health care provider shall not be subject to any penalties, sanctions, or award of damages for following and complying in good faith with the review decision of the independent review entity conducting the review or decision of the court on appeal. The enrollee or the enrollee's treating health care provider may bring an action in Polk county district court or in the district court in the county in which the enrollee resides to enforce the review decision of the independent review entity conducting the review or the decision of the court on appeal.

99 Acts, ch 41, §19, 22

514J.14 Rules.

The commissioner shall adopt rules pursuant to chapter 17A as are necessary to administer this chapter.

99 Acts, ch 41, §20, 22

514J.15 Penalties.

A carrier who fails to comply with this chapter or with rules adopted pursuant to this chapter is subject to the penalties provided under chapter 507B.

2001 Acts, ch 69, §28

CHAPTER 514K

HEALTH CARE PLAN INFORMATION

514K.1 Health care plan disclosures — information to enrollees.

514K.1 Health care plan disclosures — information to enrollees.

1. A health maintenance organization, an organized delivery system, or an insurer using a preferred provider arrangement shall provide to each of its enrollees at the time of enrollment, and shall make available to each prospective enrollee upon request, written information as required by rules adopted by the commissioner and the director of public health. The information required by rule shall include, but not be limited to, all of the following:

a. A description of the plan's benefits and exclusions.

b. Enrollee cost-sharing requirements.

c. A list of participating providers.

d. Disclosure of the existence of any drug formularies used and, upon request, information about the specific drugs included in the formulary.

e. An explanation for accessing emergency care services.

f. Any policies addressing investigational or experimental treatments.

g. The methodologies used to compensate providers.

h. Performance measures as determined by the commissioner and the director.

i. Information on how to access internal and external grievance procedures.

2. The commissioner and the director shall annually publish a consumer guide providing a comparison by plan on performance measures, network composition, and other key information to enable consumers to better understand plan differences.

99 Acts, ch 41, §21

CHAPTER 514L

UNIFORM PRESCRIPTION DRUG INFORMATION CARD

514L.1 Definitions.
514L.2 Uniform prescription drug information cards.
514L.3 Application — enforcement.

514L.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Guide"* means the most recent national council for prescription drug programs pharmacy identification card implementation guide, or its successor.

2. *"Prescription drug"* means prescription drug as defined in section 155A.3 and includes a device as defined in section 155A.3.

3. *"Provider of third-party payment or prepayment of prescription drug expenses"* or *"provider"* means a provider of an individual or group policy of accident or health insurance or an individual or group hospital or health care service contract issued pursuant to chapter 509, 514, or 514A, a provider of a plan established pursuant to chapter 509A for public employees, a provider of an individual or group health maintenance organization contract issued and regulated under chapter 514B, a provider of an organized delivery system contract regulated under rules adopted by the di-

rector of public health, a provider of a preferred provider contract issued pursuant to chapter 514F, a provider of a self-insured multiple employer welfare arrangement, and any other entity providing health insurance or health benefits which provide for payment or prepayment of prescription drug expenses coverage subject to state insurance regulation.

2001 Acts, ch 77, §1

514L.2 Uniform prescription drug information cards.

1. *a.* A provider of third-party payment or prepayment of prescription drug expenses, including the provider's agents or contractors and pharmacy benefits managers, that issues a card or other technology for claims processing and an administrator of the payor, excluding administrators of self-funded employer sponsored health benefit plans qualified under the federal Employee Retirement Income Security Act of 1974, shall issue to its insureds a card or other technology containing uniform prescription drug information. The commissioner of insurance shall adopt rules for the uniform prescription drug information card or technology applicable to those entities subject to regulation by the commissioner of insurance. The director of public health shall adopt rules for the uniform prescription drug information card or technology applicable to organized delivery systems. The rules shall require at least both of the following regarding the card or technology:

(1) With respect to the information required, be consistent with the guide, except that the address of the pharmacy benefits manager shall not be required.

(2) With respect to the location of the information required, be substantially consistent with the guide.

b. Any information on the card shall be formatted and arranged in a manner that corresponds to the current content and format required by the provider for processing of claims.

2. A new uniform prescription drug information card or technology, as required pursuant to subsection 1, shall be issued by a provider of third-party payment or prepayment or the provider's agents or contractors or pharmacy benefits managers upon enrollment and reissued upon any change in the insured's coverage that impacts data contained on the card or technology. The commissioner of insurance shall review the national council for prescription drug programs implementation guide or successor document on an ongoing basis to determine changes, and shall modify or adopt rules as determined appropriate.

3. The card or other technology may be used for any health insurance or health benefits coverage and nothing in this chapter shall require a provider to issue a separate card for prescription drug coverage if the card or other technology can accommodate the information necessary to process claims.

4. This chapter shall not apply to prescription drug coverage provided through or in conjunction with any of the following:

a. Accident-only or disability income insurance coverage.

b. Hospital confinement indemnity coverage.

c. Coverage issued as a supplement to liability insurance.

d. Basic hospital and medical-surgical expense coverage.

e. Liability insurance, including general liability insurance and automobile liability insurance.

f. Workers' compensation or similar insurance.

g. Automobile medical payment insurance.

h. Credit only insurance.

i. Coverage for on-site medical clinic care.

j. Dental or vision coverage.

k. Benefits for long-term care, nursing home care, or community-based care.

l. Short-term hospital, medical, or major medical coverage.

m. Medicare supplemental as defined pursuant to 42 U.S.C. § 1395ss(g)(1), coverage supplemental to the coverage provided under 10 U.S.C. § 1071-1109, and similar coverage that is supplemental to coverage under group health insurance coverage as defined by the commissioner of insurance.

n. Any other similar limited benefits as defined by the commissioner of insurance.

2001 Acts, ch 77, §2

514L.3 Application — enforcement.

1. A health insurance or health benefits policy or contract issued and delivered, amended, or renewed on or after July 1, 2003, shall comply with this chapter.

2. The commissioner of insurance shall enforce this chapter and shall adopt rules necessary to implement this chapter.

2001 Acts, ch 77, §3

CHAPTER 515

INSURANCE OTHER THAN LIFE

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515.1 Applicability.

Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter 490, chapter 491, or chapter 504A, except as modified by the provisions of this chapter.

[C73, §1122; C97, §1684; C24, 27, 31, 35, 39, §**8896;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.1]

85 Acts, ch 239, §5; 89 Acts, ch 288, §192

515.2 Articles — approval — bylaws.

Each such organization shall present to the commissioner of insurance its articles of incorporation, which shall show its name, objects, location of its principal place of business, and amount of its capital stock, who shall submit it to the attorney general for examination, and if found by the attorney general to be in accordance with the provisions of this title, the laws of the United States, and the Constitution and laws of the state, the attorney general shall certify such fact thereon and return the same to said commissioner, and no articles shall be approved by the commissioner or recorded unless accompanied with such certificate. A company shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of the adoption of the bylaws and amendments.

[C73, §1122; C97, §1685; C24, 27, 31, 35, 39, §**8897;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.2]

2000 Acts, ch 1023, §27

515.3 Certificate — recording.

If the commissioner of insurance approves them, the commissioner shall so certify, and the articles with the certificates of approval shall be recorded in the office of the secretary of state as articles of other corporations are, who shall endorse thereon the secretary of state's certificate thereof, as is required in case of other corporations for pecuniary profit.

[C73, §1123; C97, §1686; C24, 27, 31, 35, 39, §**8898;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.3]

Recording, §491.5

515.4 Name.

If the commissioner of insurance finds the name of the company to be so similar to one already appropriated by a corporation of the same character as to be likely to mislead the public or to cause inconvenience, the commissioner shall refuse the commissioner's certificate to its articles on that ground.

[C73, §1122; C97, §1687; C24, 27, 31, 35, 39,

§**8899;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.4]

515.5 Filing with commissioner.

The articles, when thus certified by the secretary of state as recorded in the secretary of state's office, or a copy thereof certified by the secretary of state as such, shall be filed in the office of the commissioner of insurance and remain therein.

[C73, §1123; C97, §1688; C24, 27, 31, 35, 39, §**8900;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.5]

515.6 Nature of organization entered on policy.

Every domestic and foreign insurance company organized and doing business under this chapter shall indicate upon the first page of every policy and renewal receipt that the policy is issued by a mutual company in case of a mutual company, and by a stock company in case of a stock company.

[C73, §1140; C97, §1689; S13, §1689; C24, 27, 31, 35, 39, §**8901;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.6]

515.7 Stock and mutual plan distinguished.

No company shall be organized to do business upon both stock and mutual plans; nor shall a company organized as a stock company do business upon the plan of a mutual company; nor shall a company organized upon the mutual plan do business or take risks upon the stock plan.

[C73, §1159; C97, §1690; C24, 27, 31, 35, 39, §**8902;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.7]

STOCK COMPANIES

515.8 Paid-up capital required.

1. An insurance company other than a life insurance company shall not be incorporated to transact business upon the stock plan with less than five million dollars of capital and surplus, the entire amount of which shall be fully paid up in cash and invested as provided by law. An insurance company other than a life insurance company shall not increase its capital stock unless the amount of the increase is fully paid up in cash. An insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

2. Notwithstanding subsection 1, an insurance company, other than a life insurance company, authorized to transact business under this chapter shall comply with the minimum capital requirements of this section or chapter 521E, whichever is greater.

[C73, §1124; C97, §1691; S13, §1783-e; C24, 27, 31, 35, 39, §**8903;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.8]

90 Acts, ch 1234, §33; 95 Acts, ch 185, §19; 96 Acts, ch 1046, §3; 98 Acts, ch 1057, §9

515.9 Reduction of capital or shares.

Any insurance company, other than life, may, upon the vote of a majority of its shares of stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof or the par value of the shares thereof, provided that the total amount of capital shall not be reduced to an amount less than the minimum required by law, but no part of its assets and property shall be distributed to its stockholders without the consent of the insurance commissioner.

[C27, 31, 35, §8903-b1; C39, §**8903.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.9]

515.10 Surplus required. Repealed by 98 Acts, ch 1057, § 13. See § 515.8.

515.11 Prohibited loans.

Capital, surplus, funds, or other assets, or any part of any or all of the foregoing, shall not be directly or indirectly loaned to an officer, director, stockholder, or employee of a company or to a relative of an officer or director of a company.

[S13, §1783-e; C24, 27, 31, 35, 39, §**8905;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.11]

88 Acts, ch 1112, §401; 90 Acts, ch 1234, §35

MUTUAL COMPANIES

515.12 Mutual companies — conditions.

No mutual company shall issue policies or transact any business of insurance unless it shall hold a certificate of authority from the commissioner of insurance authorizing the transaction of such business, which certificate of authority shall not be issued until and unless the company shall comply with the following conditions:

1. It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least two hundred policies issued to at least two hundred members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein; provided that not more than one hundred members shall be required for employer's liability and workers' compensation insurance.

2. The maximum single risk shall not exceed twenty percent of the admitted assets, or three times the average risk, or one percent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

3. It shall have collected a premium upon each application, which premium shall be held in cash or securities in which insurance companies are authorized to invest, which shall be equal, in case of fire insurance, to not less than twice the maximum single risk assumed subject to one fire nor less than ten thousand dollars; and in any other kind of insurance, to not less than five times the maximum single risk assumed; and, in case of employer's liability and workers' compensation insurance, to not less than fifty thousand dollars.

4. For the purpose of transacting employer's liability and workers' compensation insurance, the applications shall cover not less than one thousand five hundred employees, each such employee being considered a separate risk for determining the maximum single risk.

5. The mutual company shall have in cash or in securities in which insurance companies are authorized to invest, surplus in an amount not less than five million dollars. The surplus so required may be advanced in accordance with section 515.19. A mutual company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum surplus requirements mandated by this section.

However, the surplus requirements do not apply to a company which establishes and maintains a guaranty fund as provided by section 515.20.

[C73, §1124; C97, §1692; C24, 27, 31, 35, 39, §**8906;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.12]

90 Acts, ch 1234, §36; 95 Acts, ch 185, §21

515.12A Alternative minimum surplus levels.

A mutual company authorized to transact business under this chapter shall comply with the minimum surplus requirements of section 515.12 or chapter 521E, whichever is greater.

96 Acts, ch 1046, §7

515.13 Reservation.

None of the provisions of subsection 5 of section 515.12 shall apply to any company heretofore organized and approved by the commissioner of insurance, but which had not completed its organization on May 28, 1937, nor shall said subsection 5 apply to any company already licensed to issue policies.

[C39, §**8906.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.13]

515.14 Membership in mutuals.

Any public or private corporation, board, or association in this state, or elsewhere, may make applications, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or local representative of any such corporation, board, association, or estate may be recognized as acting for, or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this state to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

[C73, §1124; C97, §1693; C24, 27, 31, 35, 39, §**8907;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.14]

515.15 Voting power.

Every policyholder of such mutual company shall be a member of the company and shall be entitled to one vote, and such member may vote in person or by proxy as may be provided in the bylaws.

[C24, 27, 31, 35, 39, §**8908;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.15]

515.16 Maximum premium.

The maximum premium payable by any member of a mutual company shall be expressed in the policy and in the application for the insurance. Such maximum may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium, which premium may be made payable in installments or regular assessments. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock required, at the time of the organization of such mutual insurance company, of domestic stock insurance companies writing the same kind of insurance; but said surplus shall not be less than one hundred thousand dollars.

[C24, 27, 31, 35, 39, §**8909;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.16]

515.17 Unearned premiums.

Such mutual company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic insurance companies transacting the same kind of insurance; provided that any reserve for losses or claims based upon the premium income shall be computed upon the net premium income, after deducting any so-called dividend or premium returned or credited to the member.

[C24, 27, 31, 35, 39, §**8910;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.17]

515.18 Assessments.

Any such mutual company not possessed of assets at least equal to the unearned premium re-

serve and other liabilities shall make an assessment upon its members liable to assessment to provide for such deficiency, such assessment to be against each member in proportion to such liability as expressed in the member's policy; provided the commissioner may by written order, relieve the company from an assessment or other proceedings to restore such assets during the time fixed in such order.

[C24, 27, 31, 35, 39, §**8911;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.18]

515.19 Advancement of funds.

Any director, officer, or member of any such mutual company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business, or to enable it to comply with any of the requirements of the law, and such moneys and such interest thereon as may have been agreed upon, not exceeding the maximum statutory rate of interest, shall not be a liability or claim against the company or any of its assets, except as herein provided, and upon approval of the commissioner of insurance may be repaid, but only out of the surplus earnings of such company. No commissioner or promotion expenses shall be paid in connection with the advance of any such money to the company. The amount of such advance shall be reported in each annual statement.

[C24, 27, 31, 35, 39, §**8912;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.19]

515.20 Guaranty capital.

A mutual company organized under this chapter may establish and maintain guaranty capital of at least fifty thousand dollars made up of multiples of ten thousand dollars, divided into shares of not less than fifty dollars each, to be invested as provided for the investment of insurance capital and funds by section 515.35. Guaranty shareholders shall be members of the corporation, and provision may be made for representation of the shareholders of the guaranty capital on the board of directors of the corporation. The representation shall not exceed one-third of the membership of the board. Guaranty shareholders in a mutual company are subject to the same regulations of law relative to their right to vote as apply to its policyholders. The guaranty capital shall be applied to the payment of the legal obligations of the corporation only when the corporation has exhausted its assets in excess of the unearned premium reserve and other liabilities. If the guaranty capital is thus impaired, the directors may restore the whole, or any part of the capital, by assessment on the corporation's policyholders as provided for in section 515.18. By a legal vote of the policyholders of the corporation at any regular or special meeting of the policyholders of the corporation, the guaranty capital may be fully retired or may be reduced to an amount of not less than fifty thousand dollars, if the net surplus of the corporation together with the remaining guaranty capital is equal to or exceeds the amount of minimum assets required by this chapter for such companies, and if the commissioner of insurance consents to the action. Due notice of the proposed action on the part of the corporation shall be included in the notice given to policyholders and shareholders of any annual or special meeting and notice of the meeting shall also be given in accordance with the corporation's articles of incorporation. A company with guaranty capital, which has ceased to do business, shall not distribute among its shareholders or policyholders any part of its assets, or guaranty capital, until it has fully performed, or legally canceled, all of its policy obligations. Shareholders of the guaranty capital are entitled to interest on the par value of their shares at a rate to be fixed by the board of directors and approved by the commissioner, cumulative, payable semiannually, and payable only out of the surplus earnings of the company. However, the surplus account of the company shall not be reduced by the payment of the interest below the figure maintained at the time the guaranty capital was established. In addition, the interest payment shall not be made unless the surplus assets remaining after the payment of the interest at least equal the amount required by the statutes of Iowa to permit the corporation to continue in business. In the event of the dissolution and liquidation of a corporation having guaranty capital under this section, the shareholders of the capital are entitled, after the payment of all valid obligations of the company, to receive the par value of their respective shares, together with any unpaid interest on their shares, before there may be any distribution of the assets of the corporation among its policyholders. These provisions are in addition to and independent of the provisions contained in section 515.19.

[C35, §8912-f1; C39, §**8912.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.20]

86 Acts, ch 1038, §1; 87 Acts, ch 115, §64

515.21 Additional policy provisions.

Such mutual company may insert in any form of policy prescribed by the law of this state any additional provisions or conditions required by its plan of insurance if not inconsistent or in conflict with any law of this state.

[C24, 27, 31, 35, 39, §**8913;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.21]

515.22 Countersigning policies. Repealed by 98 Acts, ch 1057, § 13.

GENERAL PROVISIONS

515.23 Existing companies. Repealed by 91 Acts, ch 213, § 36.

515.24 Tax — computation.

For the purpose of determining the basis of any tax upon the "gross amount of premiums", or "gross receipts from premiums, assessments, fees, and promissory obligations", now or hereafter imposed upon any fire or casualty insurance company under any law of this state, such gross amount or gross receipts shall consist of the gross premiums or receipts for direct insurance, without including or deducting any amounts received or paid for reinsurance except that any company reinsuring windstorm or hail risks written by county mutual insurance associations shall be required to pay a two percent tax on the gross amount of reinsurance premiums received upon such risks, but with such other deductions as provided by law, and in addition deducting any so-called dividend or return of savings or gains to policyholders; provided that as to any deposits or deposit premiums received by any such company, the taxable premiums shall be the portion of such deposits or deposit premiums earned during the year with such deductions therefrom as provided by law.

[C24, 27, 31, 35, 39, §**8916;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.24]

2002 Acts, ch 1119, §181

Section amended

515.25 Subscriptions of stock — applications.

After compliance by the incorporators with sections 515.1 and 515.2, the secretary of state shall certify the articles of incorporation to the commissioner of insurance. When the commissioner of insurance is satisfied that all provisions of law in relation to the promotion and organization of said corporation, including sections 506.4 to 506.6, have been complied with, the commissioner shall issue a certificate to that effect, and thereupon such corporation may open books for subscriptions to the stock of stock companies or if a mutual company take applications and receive premiums for insurance at such times and places as it may find convenient, and may keep such books open until the full amount required is subscribed or taken, or the time granted therefor has expired, or until an order is issued by the commissioner of insurance to desist for failure to comply with the provisions of law in reference thereto.

[C73, §1125; C97, §1694; C24, 27, 31, 35, 39, §**8917;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.25]

515.26 Directors.

The affairs of a company organized as provided by this chapter shall be managed by a number of directors, of not less than five nor more than twenty-one. In the case of a mutual company, all such directors shall be policyholders.

[C73, §1126; C97, §1695; C24, 27, 31, 35, 39, §**8918;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.26]

91 Acts, ch 213, §25; 99 Acts, ch 165, §12

515.27 Election.

The annual meetings for the election of directors shall be held at such time as the articles of incorporation or bylaws of the company provide; but if for any cause no election is held, or there is a failure to elect at any annual meeting, then a special meeting for that purpose shall be held on the call of a majority of the directors, or of those persons holding a majority of the stock, or of a majority of policyholders if a mutual company, by giving thirty days' notice thereof in some newspaper of general circulation in the county in which the principal office of the company is located.

[C73, §1127; C97, §1696; C24, 27, 31, 35, 39, §**8919;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.27]

515.28 Term of office.

The directors chosen at any such annual or special meeting shall continue in office until the next annual meeting, and until their successors are elected and have accepted.

[C73, §1127; C97, §1696; C24, 27, 31, 35, 39, §**8920;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.28]

515.29 Classification of directors.

A company may in its articles of incorporation provide that the board of directors be divided into classes holding for a term of not to exceed five years and providing for the election of the members of one class at each annual meeting.

[C24, 27, 31, 35, 39, §**8921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.29]

96 Acts, ch 1045, §4

515.30 Election of officers.

The directors shall elect a president, a secretary, and such other officers as may be necessary for transacting the business of the company.

[C73, §1128, 1129; C97, §1697, 1698; C24, 27, 31, 35, 39, §**8922, 8923;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.30, 515.31; C77, 79, 81, §515.30]

515.31 Filling of vacancies.

The directors shall have authority to fill vacancies occurring on the board of directors, and shall fill vacancies of officers occurring between regular elections.

[C73, §1128; C97, §1697; C24, 27, 31, 35, 39, §**8922;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §515.30; C77, 79, 81, §515.31]

515.32 Bylaws.

It may adopt such bylaws and regulations not inconsistent with law as shall appear to them necessary for the regulation and conduct of the business.

[C73, §1129; C97, §1698; C24, 27, 31, 35, 39, §**8924;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.32]

515.33 Record and inspection.

The directors shall keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders if a stock company, or policyholders if a mutual company, and to the inspection of persons invested by law with the right thereof.

[C73, §1129; C97, §1698; C24, 27, 31, 35, 39, §**8925;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.33]

515.34 Repealed by 82 Acts, ch 1051, § 7. See § 515.35(4) *"h"*.

515.35 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

a. This section applies to the investments of insurance companies other than life insurance companies.

b. The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of companies organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the company's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs, and investment diversification.

c. Financial terms relating to insurance companies have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than insurance companies have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, a company may elect to hold the investment under the subsection of its choice. This section does not prevent a company from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. *"Admitted assets",* for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the company acquires the investment.

b. *"Clearing corporation"* means as defined in section 554.8102.

c. *"Custodian bank"* means a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

d. *"Issuer"* means as defined in section 554.8201.

e. *"Member bank"* means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. *"National securities exchange"* means an exchange registered under section 6 of the Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion of Canada.

g. *"Obligations"* includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

3. *Investments in name of company or nominee and prohibitions.*

a. A company's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely

to the company making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the company provides that adequate evidence of the deposit is to be obtained and retained by the company or a custodian bank.

(2) A company may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the Securities Exchange Act of 1934 or a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

If the loan is fully collateralized by cash, the reinvestment of the cash may be made in either individual securities or a pooled fund comprised of individual securities. If such reinvestment is made in individual securities, such securities must mature in less than ninety days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be less than ninety days. Individual securities and securities comprising the pooled fund shall be investment grade.

(b) That the loan may be terminated by the company at any time, and that the borrower will return the loaned stocks or obligations or equivalent stocks or obligations within five business days after termination.

(c) That the company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

(3) A company may participate through a member bank in the United States federal reserve book-entry system, and the records of the member bank shall at all times show that the investments are held for the company or for specific accounts of the company.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the company or the name of the custodian bank or the nominee of either and if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the company making the investment.

(5) Transfers of ownership of investments held as described in paragraph *"a",* subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4) may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificate, if any, evidencing the company's investment.

b. Except as provided in paragraph *"a",* subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and retained by the company, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the company.

4. *Investments.* Except as otherwise permitted by this section, a company organized under this chapter may invest in the following and no other:

a. United States government obligations. Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

b. Certain development bank obligations. Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. A company shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. State obligations. Obligations issued or guaranteed by a state of the United States, or a political subdivision of a state, or an instrumentality of a state or political subdivision of a state.

d. Canadian government obligations. Obligations issued or guaranteed by the Dominion of Canada, or by an agency or province of Canada, or by a political subdivision of a province, or by an instrumentality of any of those provinces or political subdivisions.

e. Corporate and business trust obligations. Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state of

the United States, or the laws of Canada or a province of Canada, provided that a company shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust.

Aggregate investments in below investment grade bonds shall not exceed five percent of assets.

f. Stocks. A company may invest in common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada.

(1) Stocks purchased under this section shall not exceed one hundred percent of capital and surplus. With the approval of the commissioner, a company may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) A company shall not invest more than ten percent of its capital and surplus in the stocks of any one corporation.

g. Real estate mortgages. Mortgages and other interest-bearing securities that are first liens upon real estate located within this state or any other state of the United States. However, a mortgage or other security does not qualify as an investment under this paragraph if at the date of acquisition the total indebtedness secured by the lien exceeds seventy-five percent of the value of the property that is subject to the lien. Improvements shall not be considered in estimating value unless the owner contracts to keep them insured during the life of the loan in one or more reliable fire insurance companies authorized to transact business in this state and for a sum at least equal to the excess of the loan above seventy-five percent of the value of the ground, exclusive of improvements, and unless this insurance is payable in case of loss to the company investing its funds as its interest may appear at the time of loss. For the purpose of this section, a lien upon real estate shall not be held or construed to be other than a first lien by reason of the fact that drainage or other improvement assessments have been levied against the real estate covered by the lien, whether or not the installment of the assessments have matured, but in determining the value of the real estate for loan purposes the amount of drainage or other assessment tax that is unpaid shall be first deducted.

h. Real estate.

(1) Except as provided in subparagraphs (2), (3), and (4) of this paragraph, a company may acquire, hold, and convey real estate only as follows:

(a) Real estate mortgaged to it in good faith as security for loans previously contracted, or for moneys due.

(b) Real estate conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(c) Real estate purchased at sales on judgments, decrees, or mortgages obtained or made for debts previously contracted in the course of its dealings.

(d) Real estate subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make under the contract.

All real estate specified in subdivisions (a), (b), and (c) of this subparagraph shall be sold and disposed of within three years after the company acquires title to it, or within three years after the real estate ceases to be necessary for the accommodation of the company's business, and the company shall not hold any of those properties for a longer period unless the company elects to hold the property under another paragraph of this section, or unless the company procures a certificate from the commissioner of insurance that its interest will suffer materially by the forced sale of those properties and that the time for the sale is extended to the time the commissioner directs in the certificate.

(2) A company may acquire, hold, and convey real estate as required for the convenient accommodation and transaction of its business.

(3) A company may acquire real estate or an interest in real estate as an investment for the production of income, and may hold, improve, or otherwise develop, subdivide, lease, sell, and convey real estate so acquired directly or as a joint venture or through a limited or general partnership in which the company is a partner.

(4) A company may also acquire and hold real estate if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this paragraph, and if the company expects the real estate so acquired to qualify under subparagraph (2) or (3) of this paragraph within three years after acquisition.

(5) A company may, after securing the written approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees. However, the company shall dispose of the real estate within three years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(6) A company shall not invest more than twenty-five percent of its total admitted assets in real estate. The cost of a parcel of real estate held for both the accommodation of business and for the production of income shall be allocated between the two uses annually. A company shall not invest more than ten percent of its total admitted assets

in real estate held under subparagraph (3) of this paragraph.

(7) A company is not required to divest itself of real estate assets owned or contracted for prior to July 1, 1982, in order to comply with the limitations established under this paragraph.

i. Foreign investments. Obligations of and investments in foreign countries, as follows:

(1) A company may acquire and hold other investments in foreign countries that are required to be held as a condition of doing business in those countries, so long as such investments are of substantially the same types as those eligible for investment under this section.

(2) A company shall not invest more than two percent of its admitted assets in the stocks or stock equivalents of foreign corporations or business trusts, other than the stocks or stock equivalents of foreign corporations or business trusts incorporated or formed under the laws of Canada, and then only if the stocks or stock equivalents of such foreign corporations or business trusts are regularly traded on the New York, London, Paris, Zurich, Hong Kong, Toronto, or Tokyo stock exchange, or a similar exchange approved by the commissioner by rule or order.

(3) A company may invest in the obligations of a foreign government other than Canada or of a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligation must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Any such corporate obligation must on the date of acquisition have investment qualities and characteristics, and must not have speculative elements which are predominant, as provided by rule. A company shall not invest more than two percent of its admitted assets in the obligations of a foreign government other than Canada. A company shall not invest more than two percent of its admitted assets in the obligations of a corporation incorporated under the laws of a foreign government other than a corporation incorporated under the laws of Canada.

(4) A company shall not invest more than ten percent of its admitted assets in foreign investments pursuant to this paragraph.

j. Personal property under lease. Personal property for intended lease or rental by the company in the United States or Canada. A company shall not invest more than five percent of its admitted assets under this paragraph.

k. Collateral loans. Obligations secured by the pledge of an investment authorized by paragraphs *"a"* through *"j"*, subject to the following conditions:

(1) The pledged investment shall be legally assigned or delivered to the company.

(2) The pledged investment shall at the time of purchase have a market value of at least one hundred ten percent of the amount of the unpaid balance of the obligations.

(3) The company shall reserve the right to declare the obligation immediately due and payable if at any time after purchase the security depreciates to the point where the investment would not qualify under subparagraph (2) of this paragraph. However, additional qualifying security may be pledged to allow the investment to remain qualified.

l. Options transactions.

(1) A domestic fire and casualty company may only engage in the following transactions in options on an exchange and only when in accordance with the rules of the exchange on which the transactions take place:

(a) The sale of exchange-traded covered options.

(b) The purchase of exchange-traded covered options solely in closing purchase transactions.

(2) The commissioner shall adopt rules pursuant to chapter 17A regulating option sales under this subparagraph.

m. Venture capital funds. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the investments by a company in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its capital and surplus under this paragraph. For purposes of this paragraph, *"venture capital fund"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. *"Equity interests"* means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

n. Other investments.

(1) A company organized under this chapter may invest up to five percent of its admitted assets in securities or property of any kind, without restrictions or limitations except those imposed on business corporations in general.

(2) A company organized under this chapter may invest its assets in any additional forms not specifically included in paragraphs *"a"* through *"o"* when authorized by rules adopted by the commissioner.

o. Rules. The commissioner may adopt rules pursuant to chapter 17A to carry out the purposes and provisions of this section.

[C73, §1130, 1137; C97, §1699, 1703; S13, §1699;

C24, 27, 31, 35, 39, §**8926, 8927;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.34, 515.35; 81 Acts, ch 169, §1; 82 Acts, ch 1051, §1]

85 Acts, ch 136, §2; 88 Acts, ch 1112, §402; 91 Acts, ch 26, §40; 96 Acts, ch 1138, §2, 84; 97 Acts, ch 186, §10; 98 Acts, ch 1014, §2; 99 Acts, ch 165, §13; 2001 Acts, ch 69, §29

Similar provisions, §511.8

515.36 Financial statements — mutual companies.

After complying with the requirements of the preceding sections of this chapter, the company shall file with the commissioner of insurance a satisfactory detailed statement showing the financial condition of the company, including all transactions had during its organization, together with a record of all moneys received and disbursed, a list of the stockholders, the amount of stock purchased by each, and the price paid. The incorporators or officers of such mutual company shall file the statement under oath required of stock companies.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8928, 8929;** C46, 50, 54, 58, 62, 66, §515.36, 515.37; C71, 73, 75, 77, 79, 81, §515.36]

515.37 Subsidiary companies.

Any insurance company incorporated in this state may organize, or acquire by purchase, in whole or in part, subsidiary insurance and investment companies in which it owns not less than fifty-one percent of the common stock, and, subject to the approval of the insurance commissioner and provided that no company invest an amount in excess of thirty percent of its capital and surplus in the stock of such subsidiary companies, may:

1. Invest funds from surplus for each purpose.
2. Make loans to such subsidiaries.
3. Permit all or part of its officers and directors to serve as officers or directors of any such subsidiary companies.

[C71, 73, 75, 77, 79, 81, §515.37]

515.38 Examination — certificate of compliance.

Such commissioner may appoint in writing some disinterested person to make an examination and if it shall be found that the capital or assets herein required of the company named, according to the nature of the business proposed to be transacted by such company, have been paid in, and are now possessed by it in money or such stock, bonds, and mortgages as are required by the preceding sections of this chapter, the commissioner shall so certify; but if the examination is made by another than the commissioner, the certificate shall be by that person, and under that person's oath.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8930;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.38]

515.39 Ownership of assets — oath.

The incorporators or officers of any such company, or proposed company, shall be required to state to the commissioner of insurance under oath that the capital or assets exhibited to the person making the examination are actually and in good faith the property of the company examined, and free and clear of any lien or claim on the part of any other person.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8931;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.39]

515.40 Form of certificate.

The certificate of examination of a mutual company shall be to the effect that it has received and has in its actual possession:

1. The cash premiums.
2. Actual contracts of insurance upon property, belonging to the signers thereof, and upon which the insurance applied for can properly be issued.
3. Other securities, as the case may be, to the extent and value hereinbefore required.

[C97, §1700; C24, 27, 31, 35, 39, §**8932;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.40]

515.41 Certificate of authority.

The certificate and statements above contemplated shall be filed in the division and the commissioner of insurance shall deliver to the company a copy of the report of the examination, in the event one is made, together with the commissioner's written permission for it to commence the business proposed in its articles of incorporation, which permission shall be its authority to commence business and issue policies.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8933;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.41]

515.42 Tenure of certificate — renewal — evidence.

Such certificate of authority shall expire on the first day of June next succeeding its issue, and shall be renewed annually so long as such company shall transact business in accordance with the requirements of law; a copy of which certificate, when certified to by the commissioner of insurance, shall be admissible in evidence for or against a company with the same effect as the original.

[C73, §1131; C97, §1700; C24, 27, 31, 35, 39, §**8934;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.42]

88 Acts, ch 1112, §107

515.43 Capital increased. Repealed by 88 Acts, ch 1112, § 207.

515.44 Dividends.

The directors or managers of a stock company,

incorporated under the laws of this state shall make no dividends except from the earned profits arising from their business, which shall not include contributed capital or contributed surplus.

[C73, §1136; C97, §1702; C24, 27, 31, 35, 39, §**8936;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.44]

515.45 Reserve fund required. Repealed by 2000 Acts, ch 1023, § 59, 60.

515.46 Forfeiture of certificate of authority.

Any dividend made contrary to the provisions of section 515.44 or rules adopted by the commissioner shall subject the company making it to forfeiture of its certificate of authority.

[C73, §1136; C97, §1702; C24, 27, 31, 35, 39, §**8938;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.46]

2000 Acts, ch 1023, §28, 60

515.47 Unearned premium reserve — computation. Repealed by 2000 Acts, ch 1023, § 59, 60.

515.48 Kinds of insurance.

Any company organized under this chapter or authorized to do business in this state may:

1. Insure dwelling houses, stores and all kinds of buildings and household furniture, and other property against direct or indirect or consequential loss or damage, including loss of use or occupancy and the depreciation of property lost or damaged by fire, smoke, smudge, lightning and other electrical disturbances, collision, falls, wind, tornado, cyclone, volcanic eruptions, earthquake, hail, frost, snow, sleet, ice, weather or climatic conditions, including excess or deficiency of moisture, flood, rain, or drought, rising of the waters of the ocean or its tributaries, bombardment invasion, insurrection, riot, strikes, labor disturbances, sabotage, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, and by explosion whether fire ensues or not, except explosion on risks specified in subsection 6 of this section, provided, however, that there may be insured hereunder the following:

a. Explosion of pressure vessels (not including steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four families;

b. Explosion of any kind originating outside of the insured building or outside of the building containing the property insured; and

c. Explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets; and also against loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing such crops or products; and against accidental injury to sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, ventilating, refrigerating, heating, lighting or cooking apparatus, or their connections, or conduits or containers of any gas, fluid or other substance; and against loss or damage to property of the insured caused by the breakage or leakage thereof; or by water, hail, rain, sleet or snow seeping or entering through water pipes, leaks or openings in buildings; and against loss of and damage to glass, including lettering and ornamentation thereon, and against loss or damage caused by the breakage of glass; and against loss or damage caused by railroad equipment, motor vehicles, airplanes, seaplanes, dirigibles or other aircraft.

d. Risks under a multiple peril nonassessable policy reasonably related to the ownership, use or occupancy of a private dwelling or dwellings.

Loss by depreciation as herein referred to may include the cost of repair and replacement.

2. Insure the fidelity of persons holding places of private or public trust, or execute any bond or other obligation whenever the performance or refraining from any contract, act, duty or obligation is required or permitted by law to be made, given, or filed, including all bonds in criminal causes, and insure the maker, drawer, drawee, or endorser of checks, drafts, bills of exchange, or other commercial paper against loss by reason of any alteration of such instruments.

3. Insure the safekeeping of books, papers, moneys, stocks, bonds and all kinds of personal property from loss, damage or destruction from any cause, and receive them on deposit.

4. Insure against loss or damage by theft, injury, sickness, or death of animals and to furnish veterinary service.

5. *a.* Insure any person, the person's family or dependents, against bodily injury or death by accident, or against disability on account of sickness, or accident, including the granting of hospital, medical, surgical and sick care benefits, but such benefits shall not include the furnishing or replacing in kind of whole human blood or blood products of any kind; however, this provision shall not prohibit payments of indemnity for human blood or blood products. An insurer may contract with health care services providers and offer different levels of benefits to policyholders based upon the provider contracts.

b. Insure against legal liability, and against loss, damage, or expense incident to a claim of such liability, arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as the result of error or negligence in rendering expert, fiduciary or professional service.

c. Insure against loss or damage to property

caused by the accidental discharge or leakage of water from automatic sprinkler system and against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of other apparatus or of water pipes or other conduits or containers or resulting from casual water entering into cracks or openings in buildings or by seepage through building walls, but not including loss or damage resulting from flood; and including insurance against accidental injury of such sprinklers, pumps, apparatus, conduits or containers.

d. Insure against loss in consequence of accidents or casualties of any kind to employees, including workers' compensation, or to persons or property resulting from any act of an employee, or any accident or casualty to person or property, or both, occurring in or connected with the transaction of insured's business, or from the operation of any machinery connected therewith; or to persons or property for which loss the insured is legally liable including an obligation of the insurer to pay medical, hospital, surgical, funeral or other benefits irrespective of legal liability of insured.

e. Insure against liability for loss or expense arising or resulting from accidents occurring by reason of the ownership, maintenance, or use of automobiles or other conveyances including aircraft, resulting in personal injuries or death, or damage to property belonging to others, or both, and for damages to assured's own automobile or aircraft when sustained through collision with another object, and insure the assured's own automobile or aircraft against loss or damage, including the loss of use thereof, by fire, lightning, windstorm, tornado, cyclone, hail, burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal, or concealment thereof, or any one or more of such hazards, whether said automobile or aircraft is held under conditional sale, contract, or subject to chattel mortgages.

f. Insure against loss of or damage to any property of the insured resulting from collision of any object with such property.

6. Insure against loss or injury to person or property, or both, and against loss of rents or use of buildings, and other property growing out of explosion or rupture of boilers, pipes, flywheels, engines, pressure containers, machinery, and similar apparatus of any kind including equipment used for creating, transmitting, or applying power, light, heat, steam, air conditioning or refrigeration.

7. Insure against loss or damage resulting from burglary or robbery, or attempt thereat, or larceny.

8. Insure or guarantee and indemnify merchants, traders, and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them, which business shall be known as credit insurance. Such insurance may cover losses, less a deduction of an agreed percentage, not to exceed ten percent, representing anticipated profits, and a further deduction not to exceed thirty-three and one-third percent, on losses on credits extended to risks who have inferior ratings, and less an agreed deduction for normal loss.

Such coinsurance percentages shall be deducted in advance of the agreed normal loss from the gross covered loss sustained by the insured.

9. Insure vessels, boats, cargoes, goods, merchandise, freights, specie, bullion, jewelry, jewels, profits, commissions, bank notes, bills of exchange, and other evidence of debt, bottomry, and respondentia interest and every insurance appertaining to or connected with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment, incident thereto, including marine builder's risks; and for loss or damage for which the insured is legally liable to persons or property in connection with or appertaining to marine, inland marine, transit, or transportation insurance, including liability for loss of or damage arising out of or in connection with the construction, repair, maintenance, storage or use of the subject matter of such insurance; and insure against loss or damage to silverware, musical instruments, furs, garments, fine arts, precious stones, jewels, jewelry, gold, silver, and other precious metals or valuable items whether used in business, transportation, trade or otherwise; and insure automobiles, airplanes, seaplanes, dirigibles or other aircraft, whether stationary or being operated under their own power, which include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, airplanes, seaplanes, dirigibles, or other aircraft, and loss by burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal or concealment of automobiles whether held under conditional sale, contract, or subject to chattel mortgage, or any one or more of such hazards, including insurance against loss by reason of bodily injury to the person including medical, hospital and surgical expense irrespective of legal liability of insured.

10. Insure any additional risk not specifically included within any of the foregoing classes, which is a proper subject for insurance, is not prohibited by law or contrary to sound public policy, and which, after public notice and hearing, is specifically approved by the commissioner of insurance, except title insurance or insurance against loss or damage by reason of defective title, encumbrances or otherwise. When such additional kind of insurance is approved by the commissioner, the com-

missioner shall designate within which classification of risks provided for in section 515.49 it shall fall.

[C73, §1132; C97, §1709; S13, §1709; C24, 27, 31, 35, 39, §**8940;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.48]

85 Acts, ch 239, §6

Action on liability policy, chapter 516

515.49 Limitation on risks.

A company shall not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its surplus to policyholders unless one of the following applies:

1. The excess is reinsured in some other good and reliable company licensed to sell insurance in this state.

2. The excess is reinsured by a group of individual unincorporated insurers who are authorized to sell insurance in at least one state of the United States and who possess assets which are held in trust for the benefit of the American policyholders in the sum of not less than fifty million dollars, and a certificate of such reinsurance shall be furnished to the insured.

3. The excess is reinsured with a company which has, with respect to the ceding insurer, created a trust fund, made a deposit, or obtained letters of credit, on terms satisfactory to the commissioner.

[C73, §1132; C97, §1710; S13, §1710; C24, 27, 31, 35, 39, §**8941;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.49]

88 Acts, ch 1112, §403

515.50 Loans — reinsurance.

Such company may lend money on bottomry or respondentia, and cause itself to be insured in companies or groups authorized to do business in this state, as set forth in section 515.49, against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property on account of any such loan, and generally to do and perform all other matters and things proper to promote these objects.

[C73, §1132; C97, §1711; S13, §1711; C24, 27, 31, 35, 39, §**8942;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.50]

515.51 Policies — execution — requirements.

All policies or contracts of insurance except surety bonds made or entered into by the company may be made either with or without the seal of the company, but shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and be attested to by the secretary or the secretary's designee of the company. A group motor vehicle or group homeowners policy shall not be written or delivered within this state unless such policy is an individual policy or contract form.

[C73, §1133; C97, §1712; C24, 27, 31, 35, 39, §**8943;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.51]

96 Acts, ch 1045, §5; 97 Acts, ch 186, §11; 2001 Acts, ch 69, §30

515.52 through 515.61 Repealed by 98 Acts, ch 1057, § 13.

515.62 Transfer of stock.

Transfers of stock made by any stockholder or the stockholder's legal representative shall be subject to the provisions of chapters 491 and 492 relative to transfer of shares, and to such restrictions as the directors shall establish in their bylaws, except as hereinafter provided.

[C73, §1134; C97, §1713; C24, 27, 31, 35, 39, §**8944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.62]

515.63 Annual statement.

The president or the vice president and secretary of each company organized or authorized to do business in the state shall annually before the first day of March of each year prepare under oath and file with the commissioner of insurance a full, true, and complete statement of the condition of such company on the last day of the preceding year, which shall exhibit the following items and facts:

1. First — The amount of capital stock of the company.

2. Second — The names of the officers.

3. Third — The name of the company and where located.

4. Fourth — The amount of its capital stock paid up.

5. Fifth — The property or assets held by the company, specifying:

a. The value of real estate owned by the company.

b. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank deposited.

c. The amount of cash in the hands of agents and in the course of transmission.

d. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon.

e. The amount of all other bonds and loans and how secured, with the rate of interest thereon.

f. The amount due the company on which judgment has been obtained.

g. The amount of bonds of the state, of the United States, of any county or municipal corporation of the state, and of any other bonds owned by the company, specifying the amount and number thereof, and par and market value of each kind.

h. The amount of bonds, stock, and other evidences of indebtedness held by such company as

collateral security for loans, with amount loaned on each kind, and its par and market value.

i. The amount of assessments on stock and premium notes, paid and unpaid.

j. The amount of interest actually due and unpaid.

k. All other securities and their value.

l. The amount for which premium notes have been given on which policies have been issued.

6. Sixth — Liabilities of such company, specifying:

a. Losses adjusted and due.

b. Losses adjusted and not due.

c. Losses unadjusted.

d. Losses in suspense and the cause thereof.

e. Losses resisted and in litigation.

f. Dividends in scrip or cash, specifying the amount of each, declared but not due.

g. Dividends declared and due.

h. The amount required to reinsure all outstanding risks on the basis of the unearned premium reserve as required by law.

i. The amount due banks or other creditors.

j. The amount of money borrowed and the security therefor.

k. All other claims against the company.

7. Seventh — The income of the company during the previous year, specifying:

a. The amount received for premiums, exclusive of premium notes.

b. The amount of premium notes received.

c. The amount received for interest.

d. The amount received for assessments or calls on stock notes, or premium notes.

e. The amount received from all other sources.

8. Eighth — The expenditures during the preceding year, specifying:

a. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which such losses were estimated in such statement.

b. The amount paid for dividends.

c. The amount paid for commissions, salaries, expenses, and other charges of agents, clerks, and other employees.

d. The amount paid for salaries, fees, and other charges of officers and directors.

e. The amount paid for local, state, national and other taxes and duties.

f. The amount paid for all other expenses, including printing, stationery, rents, furniture, or otherwise.

9. Ninth — The largest amount insured in any one risk.

10. Tenth — The amount of risks written during the year then ending.

11. Eleventh — The amount of risks in force having less than one year to run.

12. Twelfth — The amount of risks in force having more than one and not over three years to run.

13. Thirteenth — The amount of risks having more than three years to run.

14. Fourteenth — The dividends, if any, declared on premiums received for risks not terminated.

15. Fifteenth — All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

[C73, §1141; C97, §1714; C24, 27, 31, 35, 39, §**8945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.63]

91 Acts, ch 26, §41

515.64 Accident insurance — record.

Each accident insurance company, or company insuring against accidents, shall keep a register of tickets sold or policies issued by its officers or agents, which register shall show the name and residence of the person insured, the amount of insurance, the date of issue of such ticket or policy, and the time the same will remain in force; and the annual statement of each such company shall show the number of tickets sold and policies issued by it during the year, and the aggregate amount of insurance evidenced by such tickets and policies, classified as to the length of time for which such insurance is given.

[C73, §1141; C97, §1714; C24, 27, 31, 35, 39, §**8946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.64]

515.65 Certificate refused — administrative penalty.

The commissioner of insurance shall withhold the commissioner's certificate or permission of authority to do business from a company neglecting or failing to comply with this chapter. In addition, a company organized or authorized under this chapter which fails to file the annual statement referred to in section 515.63 in the time required shall pay and forfeit an administrative penalty in an amount of five hundred dollars to be collected in the name of the state for deposit in the general fund of the state as provided in section 505.7. The company's right to transact further new business in this state shall immediately cease until the company has fully complied with this chapter. The commissioner may give notice to a company which has failed to file within the time required that the company is in violation of this section and if the company fails to file the evidence of investment and statement within ten days of the date of the

notice the company shall forfeit and pay the additional sum of one hundred dollars for each day the failure continues, to be paid to the treasurer of state for deposit in the general fund of the state as provided in section 505.7.

[C97, §1715; C24, 27, 31, 35, 39, §**8947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.65]

85 Acts, ch 228, §6; 91 Acts, ch 213, §26

515.66 Annual statement of foreign company.

The annual statement of foreign companies doing business in this state shall also show, in addition to the foregoing matters, the amount of losses incurred and premiums received in the state during the preceding period, so long as such company continues to do business in this state.

[C73, §1146; C97, §1716; C24, 27, 31, 35, 39, §**8948;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.66]

515.67 Inquiry by commissioner.

The commissioner of insurance shall address any inquiries to any insurance company in relation to its doings and condition, or any other matter connected with its transactions, which the commissioner may deem it necessary for the public good, or for a proper discharge of the commissioner's duties, and any company so addressed shall promptly reply in writing thereto.

[C73, §1142; C97, §1718; C24, 27, 31, 35, 39, §**8949;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.67]

515.68 Changes in forms of statements.

The commissioner may from time to time make changes in the forms of statements required by this chapter which seem to the commissioner best adapted to elicit from the companies a true exhibit of their condition in respect to the several points enumerated in this chapter.

[C73, §1157; C97, §1719; C24, 27, 31, 35, 39, §**8950;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.68]

85 Acts, ch 228, §7

515.68A Foreign companies — reinsurance.

A foreign company authorized to do business in this state shall not assumptively reinsure a block of business which includes policyholders residing in this state to a company not authorized to do business in this state without the prior written approval of the commissioner.

97 Acts, ch 186, §12

515.69 Foreign companies — capital and surplus required.

1. A stock insurance company organized under or by the laws of any other state or foreign government for the purpose specified in this chapter, shall not, directly or indirectly, take risks or transact business of insurance in this state unless the company has two and one-half million dollars of actual paid-up capital, and a surplus in cash or invested in securities authorized by law of not less than two and one-half million dollars, exclusive of assets deposited in a state, territory, district, or country for the special benefit or security of those insured in that state, territory, district, or country.

2. Notwithstanding subsection 1, a stock insurance company authorized to transact business under this section shall comply with the minimum capital and surplus requirements of this section or chapter 521E, whichever is greater.

[C73, §1144; C97, §1721; SS15, §1721; C24, 27, 31, 35, 39, §**8951;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.69]

92 Acts, ch 1162, §36; 96 Acts, ch 1046, §5

515.70 Alien insurer defined.

An alien insurer is hereby defined to mean an insurance company incorporated or organized under the laws of any country other than the United States.

An alien insurer, with the approval of the commissioner, may be treated as a domestic insurer of this state in whole or in part. The approval of the commissioner may be based upon such factors as:

1. Maintenance of an appropriate trust account, surplus account, or other financial mechanism in this state.

2. Maintenance of all books and records of United States operations in this state.

3. Maintenance of a separate financial reporting system for its United States operations.

4. Any other provisions deemed necessary by the commissioner.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.70]

90 Acts, ch 1234, §37

515.71 Deposit of securities — amount.

Every alien insurer authorized to transact business in this state shall at all times maintain a deposit with the commissioner of insurance in cash or in securities in which insurance companies are authorized to invest, of a sum equal to the greater of the reserve on all policies covering risks located in this state or one million dollars. The securities shall be approved, and the amount of the deposit shall be determined, by the commissioner. The commissioner, in the commissioner's discretion, may permit the withdrawal of interest earnings.

In lieu of the deposit provided in this section, an alien insurer may file with the commissioner a bond of equal amount executed by a licensed United States surety company, so conditioned for the protection of Iowa creditors and policyholders.

An alien insurer shall not be granted a certificate of authority to transact business in this state, or a renewal of the certificate, until such deposit

is made, and the commissioner may revoke the certificate of authority of an alien insurer which fails to make the deposit within a reasonable period of time.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.71]

92 Acts, ch 1162, §37; 2000 Acts, ch 1023, §29, 60

515.72 Insolvency of company — procedure.

In the event of insolvency or receivership of any such alien insurer the title to the cash or securities so deposited shall vest in the commissioner of insurance for the use and benefit of the policies issued by said insurer and outstanding in this state, and in such event the commissioner shall be appointed receiver of said insurer by the district court, in and for Polk county, with the right, subject to the court's approval, to reinsure said policies in some insurance company or association authorized to do business in this state, or to liquidate said deposit for the sole benefit of the policies for which said deposit was made.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.72]

515.73 Commissioner as process agent.

Any foreign company desiring to transact the business of insurance under this chapter, by an agent or agents in the state, shall file with the commissioner of insurance a written instrument, duly signed and sealed, authorizing such commissioner to acknowledge service of notice or process for and in behalf of such company in this state, and consenting that service of notice or process may be made upon the said commissioner, and when so made shall be taken and held as valid as if served upon the company according to the laws of this or any other state, and waiving all claim, or right, of error, by reason of such acknowledgment of service.

[C73, §1144; C97, §1722; C24, 27, 31, 35, 39, §**8952;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.73]

515.74 Service of process.

Any notice or process, with three copies of the notice or process, may be mailed to the commissioner at Des Moines, Iowa, in a certified mail letter addressed to the commissioner by the commissioner's official title. The commissioner shall acknowledge service on behalf of the defendant foreign insurance company by writing, giving the date of receipt of the notice or process, and shall return the notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to the clerk by the clerk's official title, and shall also mail a copy, with a copy of the commissioner's acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation named or designated by such company in the written instrument. Notice or process received prior to 10 a.m. shall be forwarded the same working day. Notice or process received after 10 a.m. shall be forwarded the next working day. A fee of fifteen dollars must accompany the request for notice or process.

[C97, §1722; C24, 27, 31, 35, 39, §**8953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.74]

92 Acts, ch 1162, §38; 99 Acts, ch 165, §14

515.75 Additional statements — impaired capital.

Such company shall also file with the commissioner a certified copy of its charter or deed of settlement, together with a statement under oath of the president or vice president or other chief officer and the secretary of the company for which they may act, stating the name of the company, the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state, and a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities as specified in this chapter to the extent of twenty percent thereof, while such deficiency shall continue.

[C73, §1144; C97, §1722; C24, 27, 31, 35, 39, §**8954;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.75]

515.76 Foreign mutual companies — surplus.

1. Any mutual insurance company organized outside of this state and authorized to transact the business of insurance on the mutual plan in any other state of the United States or in the District of Columbia, may be admitted to this state and authorized to transact herein any of the kinds of insurance authorized by its charter or articles of incorporation, when so permitted by the provisions of this chapter, with the powers and privileges and subject to the conditions and limitations specified in said chapter; provided, however, such company has complied with all the statutory provisions which require stock companies to file papers and to furnish information and to submit to examination, and is also solvent according to the requirements of this chapter and is possessed of a surplus safely invested as follows:

a. In case of a mutual company issuing policies for a cash premium without an additional contingent liability equal to or greater than the cash premium, the surplus shall be at least two million dollars.

b. In case of any other such mutual company issuing policies for a cash premium or payment with an additional contingent liability equal to or greater than the cash premium or payment, the surplus shall be such an amount as the commis-

sioner of insurance of Iowa may require, but in no case less than three hundred thousand dollars, provided that the provisions of this section fixing a minimum surplus of three hundred thousand dollars shall not apply to companies now admitted to do business in Iowa; provided, further, that no such mutual company shall be authorized to transact compensation insurance without a surplus of at least three hundred thousand dollars unless all liability for each adjusted claim in this state, the payment of any part of which is deferred for more than one year, shall be provided for by a special deposit, in a trust company or a bank having fiduciary powers, located in this state, which shall be a trust fund applicable solely and exclusively to the payment of the compensation benefits for which such deposit is made, or shall be reinsured in an authorized stock company, or in an authorized mutual company with a surplus of at least three hundred thousand dollars.

2. Notwithstanding subsection 1, a mutual insurance company authorized to transact business under this section shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

[C73, §1144; C97, §1723; C24, 27, 31, 35, 39, §**8955;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.76]

96 Acts, ch 1046, §6

515.77 Certificate to foreign company.

When a foreign company has fully complied with the requirements of law and become entitled to do business, the commissioner of insurance shall issue to the company a certificate of that fact, which certificate shall be renewed annually on the first day of June, if the commissioner is satisfied that the capital, securities, and investments of the company remain unimpaired, and the company has complied with the provisions of law applicable to the company. However, the commissioner shall not grant or continue authority to transact insurance in this state to an insurer the management of which is found by the commissioner, after a hearing is provided, in which the commissioner shall establish and consider any prior criminal records or any other matters, to be untrustworthy or so lacking in insurance experience as to make the proposed operation hazardous to the insurance-buying public; or which, after a hearing is provided, the commissioner has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with a person whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation or dissipation of assets, or manipulation of accounts, or of reinsurance, or by similar injurious actions.

[C73, §1146; C97, §1724; C24, 27, 31, 35, 39, §**8956;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.77]

91 Acts, ch 213, §27

515.78 Agent's certificate of authority.

No agent shall directly or indirectly act for any insurance company referred to in this chapter, in taking risks or transacting business of insurance in the state, without procuring from the commissioner of insurance a certificate of authority to the effect that such company has complied with all the requirements of this chapter.

[C73, §1145; C97, §1725; C24, 27, 31, 35, 39, §**8957;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.78]

515.79 Notes taken for insurance.

All notes taken for policies of insurance in any company doing business in the state shall state upon their face that they have been taken for insurance, and shall not be collectible unless the company and its agents have fully complied with the laws of the state relative to insurance.

[C73, §1146; C97, §1726; C24, 27, 31, 35, 39, §**8958;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.79]

515.80 Forfeiture of policies — notice.

1. A policy or contract of insurance, unless otherwise provided in section 515.81A or 515.81B, provided for in this chapter shall not be forfeited, suspended, or canceled except by notice to the insured as provided in this chapter. A notice of cancellation is not effective unless mailed or delivered by the insurer to the named insured at least thirty days before the effective date of cancellation, or, where cancellation is for nonpayment of a premium, assessment, or installment provided for in the policy, or in a note or contract for the payment thereof, at least ten days prior to the date of cancellation. The notice may be made in person, or by sending by mail a letter addressed to the insured at the insured's address as given in or upon the policy, anything in the policy, application, or a separate agreement to the contrary notwithstanding.

2. An insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A notice of intention not to renew is not required if the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

If the reason does not accompany the notice of cancellation or nonrenewal, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation or nonrenewal.

[C97, §1727; C24, 27, 31, 35, 39, §**8959;** C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.80]

87 Acts, ch 132, §3; 88 Acts, ch 1112, §404; 90 Acts, ch 1234, §38; 2002 Acts, ch 1111, §17

See §515D.5, 515D.7

Section amended

515.81 Cancellation of policy — notice to insured or mortgagee.

Unless otherwise provided in section 515.81A or 515.81B, at any time after the maturity of a premium, assessment, or installment provided for in the policy, or a note or contract for the payment thereof, or after the suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured may pay to the company the customary short rates and costs of action, if one has been commenced or judgment rendered thereon, and may, if the insured so elects, have the policy and all contracts or obligations connected with the policy, whether in judgment or otherwise, canceled, and all such policy and contracts shall be void; and in case of suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured is not liable for a greater amount than the short rates earned at the date of the suspension, forfeiture, or cancellation and the costs of action provided for in this section. If the policy is canceled by the insurance company, the insurer may retain only the pro rata premium, and if the initial cash premium, or any part of the premium, has not been paid, the policy may be canceled by the insurance company by giving notice to the insured as provided in section 515.80 and ten days' notice to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part of the premium, anything to the contrary in the policy notwithstanding.

[C97, §1728; S13, §1728; C24, 27, 31, 35, 39, §**8960;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.81]

87 Acts, ch 132, §4; 88 Acts, ch 1112, §405; 90 Acts, ch 1234, §39

See §515D.5, 515D.7

515.81A Cancellation of commercial lines policies or contracts.

1. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, which has not been previously renewed may be canceled by the insurer if it has been in effect for less than sixty days at the time notice of cancellation is mailed or delivered.

2. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, which has been renewed or which has been in effect for more than sixty days shall not be canceled unless at least one of the following conditions occurs:

a. Nonpayment of premium.

b. Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or contract, when renewing the policy or contract, or in presenting a claim under the policy or contract.

c. Actions by the insured which substantially change or increase the risk insured.

d. Determination by the commissioner that the continuation of the policy will jeopardize the insurer's solvency or will constitute a violation of the law of this or any other state.

e. The insured has acted in a manner which the insured knew or should have known was in violation or breach of a policy or contract term or condition.

3. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, may be canceled at any time if the insurer loses reinsurance coverage which provides coverage to the insurer for a significant portion of the underlying risk insured and if the commissioner determines that cancellation because of loss of reinsurance coverage is justified. In determining whether a cancellation because of loss of reinsurance coverage is justified, the commissioner shall consider all of the following factors:

a. The volatility of the premiums charged for reinsurance in the market.

b. The number of reinsurers in the market.

c. The variance in the premiums for reinsurance offered by the reinsurers in the market.

d. The attempt by the insurer to obtain alternate reinsurance.

e. Any other factors deemed necessary by the commissioner.

4. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, shall not be canceled except by notice to the insured as provided in this subsection. A notice of cancellation shall include the reason for cancellation of the policy or contract. A notice of cancellation is not effective unless mailed or delivered to the named insured and a loss payee at least ten days prior to the effective date of cancellation, or if the cancellation is because of loss of reinsurance, at least thirty days prior to the effective date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing; however, such a certificate of mailing is not required if cancellation is for nonpayment of premium.

88 Acts, ch 1112, §406; 93 Acts, ch 88, §17

See §515D.5, 515D.7

515.81B Nonrenewal of commercial lines policies or contracts.

1. An insurer shall not fail to renew a commercial line policy or contract of insurance except by notice to the insured as provided in this section. Nonrenewal of a commercial line policy or contract includes a decision by the insurer not to renew the policy or contract, an increase in the premium of twenty-five percent or more, an increase in the de-

ductible of twenty-five percent or more, or a material reduction in the limits or coverage of the policy or contract. However, a premium charge which is assessed after the beginning date of the policy period for which the premium is due shall not be deemed a premium increase for the purpose of this section.

2. A notice of nonrenewal is not effective unless mailed or delivered by the insurer to the named insured and any loss payee at least forty-five days prior to the expiration date of the policy. If the insurer fails to meet the notice requirements of this section, the insured has the option of continuing the policy for the remainder of the notice period plus an additional thirty days at the premium rate of the existing policy or contract. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing.

3. This section applies to all forms of commercial property and casualty insurance written pursuant to this chapter. It does not apply if the insurer has offered to renew or if the insured fails to pay a premium due or any advance premium required by the insurer for renewal. A notice of nonrenewal is not required if the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

88 Acts, ch 1112, §407; 2002 Acts, ch 1111, §18
See §515D.7
Section amended

515.81C Cancellation or nonrenewal of commercial umbrella or excess policies or contracts.

1. As used in this section, *"umbrella or excess insurance policy"* means a commercial line policy or contract of insurance providing liability or property coverage over one or more underlying policies or over a specified amount of self-insured retention. Umbrella or excess insurance policy includes policies or contracts written over an umbrella or excess insurance policy or policies.

2. An umbrella or excess insurance policy which has not previously been renewed may be canceled by the insurer if it has been in effect for less than sixty days at the time notice of cancellation is mailed or delivered.

3. An umbrella or excess insurance policy which has been renewed or which has been in effect for sixty or more days shall not be canceled by the insurer, except as provided in section 515.81A, subsections 2 and 3, except by notice to the insured as required by this section or unless at least one of the following conditions occurs:

a. A material change in the limits, scope of coverage, or exclusions in one or more of the underlying policies.

b. Cancellation or nonrenewal of one or more of the underlying policies where the policies are not replaced without lapse.

c. A reduction in the financial rating or grade of one or more of the insurers insuring one or more of the underlying policies based on an evaluation by a recognized financial rating organization.

4. A notice of cancellation is not effective unless mailed by certified mail or delivered to the named insured and any loss payee at least ten days prior to the effective date of cancellation. A notice of cancellation shall include the reason for cancellation of the umbrella or excess insurance policy. A post office department certificate of mailing to the named insured at the address shown in the umbrella or excess policy is proof of receipt of the mailing; however, such a certificate of mailing is not required if cancellation is for nonpayment of premium.

5. An insurer shall not fail to renew an umbrella or excess insurance policy except by notice to the insured as provided in this section; however, an insurer may condition renewal of an umbrella or excess insurance policy upon requirements relating to the underlying policy or policies. If the requirements are not satisfied as of the expiration date of the umbrella or excess insurance policy, or thirty days after mailing or delivery of the notice, whichever is later, the conditional renewal notice shall be deemed to be an effective notice of nonrenewal. This subsection does not apply if the insurer has offered to renew or if the insured fails to pay a premium due or any advance premium required by the insurer for renewal.

6. A notice of nonrenewal is not effective unless mailed by certified mail or delivered to the named insured and any loss payee at least forty-five days prior to the expiration date of the umbrella or excess insurance policy. If the insurer fails to meet the notice requirements of this subsection the insured has the option of continuing the policy for the remainder of the notice period plus an additional thirty days at the premium rate of the existing umbrella or excess policy.

7. Section 515.81A and 515.81B are not applicable to umbrella or excess insurance policies except as provided in subsection 3.

90 Acts, ch 1234, §40

515.82 Short rates.

The commissioner of insurance shall prepare and promulgate tables of the short rates provided for in sections 515.80 and 515.81, for the various kinds and classes of insurance governed by the provisions of this chapter, which, when promulgated, shall be for the guidance of all companies covered in this chapter and shall be the rate to be given in any notice therein required. No company shall discriminate unfairly between like assureds in the rate or rates so provided.

[C97, §1729; C24, 27, 31, 35, 39, §**8961;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.82]

515.83 Policy restored.

At any time before cancellation of the policy for nonpayment of any premium, assessment, or installment provided for therein, or in any note or contract for the payment thereof, or after action commenced or judgment rendered thereon, the insured may pay to the insurer the full amount due, including court costs if any, and from the date of such payment, or the collection of the judgment, the policy shall revive and be in full force and effect, provided such payment is made during the term of the policy and before a loss occurs.

[C97, §1730; C24, 27, 31, 35, 39, §**8962;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.83]

515.84 Right of insured to cancel.

No provision, stipulation, or agreement to the contrary in or independent of the policy or contract of insurance shall avoid or defeat the right of any insured to pay short rates and costs of action, if any, and have the policy and all contracts connected therewith, including judgments rendered thereon, canceled.

[C97, §1730; C24, 27, 31, 35, 39, §**8963;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.84]

515.85 Examination — dissolution. Repealed by 91 Acts, ch 26, § 61. See chapter 507.

515.86 Requisition on stockholders — personal liability. Repealed by 91 Acts, ch 26, § 61.

515.87 Mutual companies — dissolution — personal liability. Repealed by 91 Acts, ch 26, § 61.

515.88 Transfers pending investigation.

Any transfer of the stock of any company organized under this chapter, made pending any investigation above required, shall not release the party making the transfer from any liability for losses which may have accrued previous to such transfer.

[C73, §1151; C97, §1734; C24, 27, 31, 35, 39, §**8967;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.88]

515.89 Revocation of certificate of foreign company.

The commissioner of insurance may examine the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under its laws, or cause such examination to be made by a person appointed by the commissioner having no interest in any insurance company; and if it appears to the commissioner's satisfaction that the affairs of a company are in an unsound condition or that a company has failed to maintain the capital and surplus required by section 515.69, the commissioner shall revoke or suspend the certificates granted in its behalf.

[C73, §1152; C97, §1735; C24, 27, 31, 35, 39, §**8968;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.89]

91 Acts, ch 213, §28

515.90 Suspension and summary suspension.

The commissioner may do one or more of the following:

1. For a violation of Title XIII, subtitle 1, after a hearing provided pursuant to chapter 17A, order the suspension of the license or authority to transact the business of insurance within the state.

2. Upon three days' notice, if the commissioner has reason to believe that there is imminent substantial risk to an insurer's solvency, order the insurer to appear before the commissioner and show cause why its license or authority to do insurance business within the state should not be suspended. At the hearing to show cause, the commissioner may summarily suspend the license or authority of the insurer to do business within the state.

3. Summarily order an insurer to cease and desist from a violation, anticipated violation, or suspected violation of chapter 507B, 510, or 513A, if a hearing is provided pursuant to chapter 17A within thirty days of the summary cease and desist order.

91 Acts, ch 213, §29

515.91 False statement of assets.

No company transacting the business of fire insurance within the state shall state or represent by advertisement in any newspaper, magazine, or periodical, or by any sign, circular, card, policy of insurance, or renewal certificate thereof or otherwise, any funds or assets to be in its possession and held available for the protection of holders of its policies unless so held, except the policy of insurance or certificate of renewal thereof may state, as a single item, the amount of capital set forth in the charter, or articles of incorporation, or association, or deed of settlement under which it is authorized to transact business.

[C97, §1738; C24, 27, 31, 35, 39, §**8971;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.91]

515.92 Statement of capital and surplus.

Every advertisement or public announcement, and every sign, circular, or card issued or published by a foreign company transacting the business of casualty insurance in the state, or by an officer, agent, or representative thereof, that purports to disclose the company's financial standing, shall exhibit the capital actually paid in in cash, and the amount of net surplus of assets over all its liabilities actually held and available for the pay-

ment of losses by fire and for the protection of holders of fire policies, and shall also exhibit the amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of fire policies in the United States, including in such liabilities the fund reserved for reinsurance of outstanding risks, and the same shall correspond with the latest verified statement made by the company or association to the commissioner of insurance. The company shall not write, place, or cause to be written or placed, a policy or contract for insurance upon property situated or located in this state except through its resident agent or agents.

[C97, §1739; C24, 27, 31, 35, 39, §**8972;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.92]

515.93 Violations.

A violation of sections 515.91 and 515.92 shall for the first offense subject the company, association, or individual guilty thereof to a penalty of five hundred dollars, to be recovered in the name of the state, with costs, in an action instituted by the county attorney, either in the county in which the company, association, or individual is located or transacts business, or in the county where the offense is committed, and the penalty, when recovered, shall be paid to the treasurer of state for deposit in the general fund of the state. Every subsequent violation of the sections subjects the company, association, or individual to a penalty of one thousand dollars, to be sued for, recovered, and disposed of in like manner.

[C97, §1740; C24, 27, 31, 35, 39, §**8973;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.93]

83 Acts, ch 185, §50, 62; 83 Acts, ch 186, §10107, 10201, 10204

515.94 Copy of application — duty to provide.

All insurance companies or associations shall, upon the issue or renewal of any policy, provide to the insured, a true copy of any application or representation of the insured which, by the terms of such policy, is made a part of the policy, or of the contract of insurance, or referred to in the contract of insurance, or which may in any manner affect the validity of such policy.

[C97, §1741; C24, 27, 31, 35, 39, §**8974;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.94]

95 Acts, ch 185, §22

Similar provision, §511.33

515.95 Failure to attach — effect.

The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section 515.94 it shall forever be precluded from pleading, alleging, or proving any such application or representations, or any part thereof, or falsity thereof, or any parts thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at the plaintiff's option.

[C97, §1741; C24, 27, 31, 35, 39, §**8975;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.95]

Similar provision, §511.34

515.96 Presumption as to value.

In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima facie evidence of the insurable value of the property at the date of the policy.

[C97, §1742; C24, 27, 31, 35, 39, §**8976;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.96]

Similar provision, §518A.23

515.97 Value of building — liability.

The insurance company or association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said insurance company or association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount stated in the policy.

[C97, §1742; C24, 27, 31, 35, 39, §**8977;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.97]

Similar provision, §518A.24

515.98 Prima facie right of recovery.

In an action on such policy it shall only be necessary for the assured to prove the loss of the building insured, and that the assured has given the company or association notice in writing of such loss, accompanied by an affidavit stating the facts as to how the loss occurred, so far as they are within the assured's knowledge, and the extent of the loss.

[C97, §1742; C24, 27, 31, 35, 39, §**8978;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.98]

Similar provisions, §511.35, 514A.3, 518A.19

515.99 Foreign companies may become domestic.

An insurer which is organized under the laws of any state, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 490.902 or 491.33 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state, and, upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately

preceding its becoming a domestic corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

[81 Acts, ch 161, §2]
89 Acts, ch 288, §193

515.100 Notice of loss of personal property by hail.

In case of loss to growing crops by hail, notice of such loss must be given to the company by the insured by mailing a certified mail letter within ten days from the time such loss or damage occurs.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.100]

515.101 Invalidating stipulations — avoidance.

Any condition or stipulation in an application, policy, or contract of insurance, making the policy void before the loss occurs, shall not prevent recovery thereon by the insured, if it shall be shown by the plaintiff that the failure to observe such provision or the violation thereof did not contribute to the loss.

[C97, §1743; S13, §1743; C24, 27, 31, 35, 39, §**8980;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.101]

515.102 Conditions invalidating policy.

Any condition or stipulation referring:

1. To any other insurance, valid or invalid, or
2. To vacancy of the insured premises, or
3. To the title or ownership of the property insured, or
4. To lien, or encumbrances thereon created by voluntary act of the insured and within the insured's control, or
5. To the suspension or forfeiture of the policy during default or failure to pay any written obligation given to the insurance company for the premium, or
6. To the assignment or transfer of such policy of insurance before loss without the consent of the insurance company, or
7. To the removal of the property insured, or
8. To a change in the occupancy or use of the property insured, if such change or use makes the risk more hazardous, or
9. To the fraud of the insured in the procurement of the contract of insurance — shall not be changed or affected by the provision of section 515.101.

[C97, §1743; S13, §1743; C24, 27, 31, 35, 39, §**8981;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.102]

515.103 and 515.104 Repealed by 47 Acts, ch 263, § 5. See § 515.138.

515.105 Pleadings.

Nothing in sections 515.101 and 515.102 shall be construed to change the limitations or restrictions respecting the pleading or proving of any defense by any insurance company to which it is subject by law.

[C97, §1743; S13, §1743; C24, 27, 31, 35, 39, §**8984;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.105]

515.106 Applicability of statute.

The provisions of sections 515.101, 515.102, and 515.105 shall apply to all contracts of insurance on real and personal property.

[C97, §1743; S13, §1743; C24, 27, 31, 35, 39, §**8985;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.106]

515.107 Repealed by 47 Acts, ch 263, § 5. See § 515.138.

515.108 More favorable conditions.

Nothing contained in section 515.138 shall be so construed as to prohibit any insurance company not required by the statutes of Iowa to issue a standard form of policy, from embodying, with the approval of the commissioner of insurance, in any insurance contract issued by it, provisions or conditions which are more favorable to the insured than those authorized in said statutes.

[C24, 27, 31, 35, 39, §**8987;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.108]

515.109 Forms of policies and endorsements — approval.

1. The form of all policies, and of applications, and of agreements or endorsements modifying the provisions of policies, and of all permits and riders used generally throughout the state, issued or proposed to be issued by any insurance company doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance.

2. The commissioner, upon a determination that the examination required under subsection 1

is unnecessary to achieve the purposes of this section, may exempt either of the following:

a. Any specified person by order, or any class of persons by rule.

b. Any specified risk by order, or any line or kind of insurance or subdivision of insurance or any class of risk or combination of classes of risks by rule.

[C97, §1745; S13, §1745; C24, 27, 31, 35, 39, §**8988;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.109]

95 Acts, ch 185, §23

515.110 Special policy requirements.

Such commissioner shall refuse to authorize it to do business or to renew its permission to do business when the form of policy issued or proposed to be issued does not provide for the cancellation of the same at the request of the insured upon equitable terms, and the return to the insured of any premium paid in excess of the customary short rates for the insurance up to the time of cancellation, or the release of the insured from any liability beyond such short rates, or for losses after the cancellation of the policy if the insurance be in a mutual company; and in case any company or association shall issue any policies not containing such provision, it shall be the duty of the commissioner to revoke the authority of such company or association to do business.

[C97, §1745; S13, §1745; C24, 27, 31, 35, 39, §**8989;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.110]

515.111 Coinsurance or contribution clause.

Contracts of insurance against loss or damage by fire or other perils may contain a coinsurance or contribution clause or clause having similar effect, provided the form setting up the terms of the same has been approved by the commissioner of insurance.

[C97, §1746; S13, §1746; C24, 27, 31, 35, 39, §**8990 – 8995, 8997;** C46, 50, 54, §515.111 – 515.116, 515.118; C58, 62, 66, 71, 73, 75, 77, 79, 81, §515.111]

515.112 to 515.116 Repealed by 55 Acts, ch 245, § 1. See § 515.111.

515.117 Repealed by 47 Acts, ch 263, § 5. See § 515.138.

515.118 Repealed by 55 Acts, ch 245, § 1. See § 515.111.

515.119 Compliance with law.

An insurance company organized under this chapter, or doing business in this state, or any foreign or alien company doing business in this state, shall conform to the provisions of this chapter and all other laws of this state applicable to the insurance company.

[C73, §1147; C97, §1747; C24, 27, 31, 35, 39, §**8998;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.119]

91 Acts, ch 26, §42; 91 Acts, ch 258, §59

515.120 Violations.

Any officer, manager, or agent of any insurance company or association who, with knowledge that it is doing business in an unlawful manner, or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of a serious misdemeanor.

[C73, §1147; C97, §1747; C24, 27, 31, 35, 39, §**8999;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.120]

515.121 Officers punished.

Any president, secretary, or other officer of any company organized under the laws of this state, or any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be guilty of a simple misdemeanor.

[C73, §1147; C97, §1748; C24, 27, 31, 35, 39, §**9000;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.121]

515.122 Advertisements. Repealed by 2001 Acts, ch 69, § 37.

515.123 and 515.124 Repealed by 2001 Acts, ch 16, § 36, 37.

515.125 Agency relationship.

Any officer, insurance producer, or representative of an insurance company doing business in this state who may solicit insurance, procure applications, issue policies, adjust losses, or transact the business generally of such companies, shall be held to be the agent of such insurance company with authority to transact all business within the scope of the agency relationship, anything in the application, policy, contract, bylaws, or articles of incorporation of such company to the contrary notwithstanding.

[C97, §1750; C24, 27, 31, 35, 39, §**9004;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.125]

2001 Acts, ch 16, §9, 37

Applicable to life companies, §511.4

2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37

515.125A Limitation on termination of independent producers.

An insurance company organized under this chapter or authorized to do business in this state shall not terminate a contract of an insurance producer who is an independent contractor but who is not an exclusive insurance producer as defined in section 522B.1 without at least one hundred eighty days' notice, except for loss of license, fraud, nonpayment of company premiums that are due and not in dispute by the producer, or the withdrawal of operations in the state by the insurance company. This section does not apply to insurance producers or a business entity whose contract with an insurer authorized to do business in this state contains a written provision expressly reserving to the insurer all right, title, and interest to the ownership or the use of insurance business written by such an insurance producer or business entity.

2002 Acts, ch 1111, §19
NEW section

515.126 Exceptions. Repealed by 2001 Acts, ch 16, § 36, 37.

515.127 Applicability to organizations and individuals.

The provisions of the foregoing sections relative to insurance companies shall apply to all such companies, partnerships, associations, or individuals, whether incorporated or not.

[C73, §1148; C97, §1751; C24, 27, 31, 35, 39, §**9006;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.127]

515.128 Fees.

Fees shall be paid to the commissioner of insurance as follows:

1. For filing an application to do business, including all documents submitted in connection with the application, by a foreign or domestic company, or for filing an application for renewed authority, fifty dollars.
2. For issuing to a foreign or domestic company a certificate of authority to do business or a renewed certificate of authority, fifty dollars.
3. For filing amended articles of incorporation, fifty dollars.
4. For issuing an amended certificate of authority, twenty-five dollars.
5. For affixing the official seal to any paper filed with the division, ten dollars.

[C73, §1153; C97, §1752; S13, §1752; C24, 27, 31, 35, 39, §**9007;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.128; 82 Acts, ch 1003, §7]

88 Acts, ch 1112, §304
Deposit of fees, §12.10

515.129 Expenses of examination.

The necessary expenses of any examination of any insurance company made or ordered to be made by the commissioner of insurance under this chapter shall be certified to by the commissioner, and paid on the commissioner's requisition by the company so examined; and in case of failure of the company to make such payment, the commissioner shall suspend such company from doing business in this state until such expenses are paid. If such expenses are not paid by the company, they shall be audited by the director of revenue and finance and paid out of the state treasury.

[C73, §1156; C97, §1753; C24, 27, 31, 35, 39, §**9008;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.129]

515.130 Rebates prohibited.

An insurance company or an employee of the insurance company, or an agent, shall not pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to purchase or acquire insurance or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement, not specified in the policy, except to the extent provided for in an applicable filing. An insured named in a policy, or an employee of the insured, shall not knowingly receive or accept, directly or indirectly, any rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

This section shall not be construed to prohibit the payment of commissions or other compensation to duly licensed agents, or to prohibit any insurer from allowing or returning to its participating policyholders, members, or subscribers, dividends, savings, or unabsorbed premium deposits. As used in this section, *"insurance"* includes suretyship and *"policy"* includes bond.

93 Acts, ch 88, §18

515.131 Unlawful combinations — exceptions.

It shall be unlawful for two or more insurance companies doing business in this state, or for the officers, agents, or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the insurance business within this state, but any number of insurance companies may appoint the same person or persons, who shall be residents of the state of Iowa, as their common agent or agents for the purpose of filing, in the manner prescribed by the insurance commission-

er of Iowa, the forms of policies and of all permits and riders used generally throughout the state, as required by the laws of this state to be examined and approved by the said commissioner.

[C97, §1754; C24, 27, 31, 35, 39, §**9010;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.131]

515.132 Violation.

Any such company, officer, agent, or employee violating the above provision shall be guilty of a simple misdemeanor.

[C97, §1754; C24, 27, 31, 35, 39, §**9011;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.132]

515.133 Examination of officers and employees.

The commissioner of insurance is authorized to summon before the commissioner, for examination under oath, any officer, agent, or employee of any such company suspected of violating any of the provisions of section 515.131, and, on complaint to the commissioner in writing by two or more residents of this state charging such company under oath upon their knowledge or belief with violating the provisions of said section, the commissioner shall summon any officer, agent, or employee of said company before the commissioner for examination under oath.

[C97, §1755; C24, 27, 31, 35, 39, §**9012;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.133]

515.134 Revocation of authority.

If upon such examination, and that of any other witness produced and examined, the commissioner shall determine that such company is guilty of a violation of any of the provisions of section 515.131, or if any such officer, agent, or employee after being duly summoned shall fail to appear or submit to examination, the commissioner shall forthwith issue an order revoking the authority of such company to transact business within this state, and it shall not thereafter be permitted to do the business of fire insurance in this state at any time within one year therefrom.

[C97, §1755; C24, 27, 31, 35, 39, §**9013;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.134]

515.135 Judicial review.

Judicial review of the actions of the commissioner of insurance may be sought in accordance with the terms of the Iowa administrative procedure Act, upon filing with the clerk of court a good and sufficient bond for the payment of all costs adjudged against the petitioner. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county where the decision of the commissioner, pursuant to section 515.134, was made.

[C97, §1756; C24, 27, 31, 35, 39, §**9014;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.135]

Presumption of approval of bonds, §636.10

515.136 Incrimination.

The statements and declarations made or testimony given by any such officer, agent or employee in the investigation before the commissioner of insurance, or upon the hearing on the petition for judicial review, as provided in sections 515.133 to 515.135, shall not be used against the person making the same in any criminal prosecution against the person.

[C97, §1757; C24, 27, 31, 35, 39, §**9015;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.136]

515.137 Insurance in unauthorized companies.

No action shall be maintained in any court in the state upon any policy or contract of fire insurance issued upon any property situated in the state by any company, association, partnership, individual, or individuals that have not been authorized by the commissioner of insurance to transact such insurance business, unless it shall be shown that the insurer or insured, within six months after the issuing of such policy or contract of insurance, has paid into the state treasury two percent of the gross premium paid or agreed to be paid for such policy or contract of insurance.

[C97, §1758; C24, 27, 31, 35, 39, §**9016;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.137]

515.138 Fire insurance contract — standard policy provisions — permissible variations.

First. The printed form of a policy of fire insurance as set forth in subsection sixth shall be known and designated as the "standard policy" to be used in the state of Iowa.

Second. Standard policy, additions, riders and clauses. It shall be unlawful for any insurance company to issue any policy of fire insurance upon any property in this state except upon automobiles, airplanes, seaplanes, dirigibles, or other aircraft, farm crops until stored, marine and inland marine risks other or different from the standard form of fire insurance policy herein set forth.

There shall be printed at the head of said policy the name of the insurer or insurers issuing the policy; the location of the home office thereof; a statement whether said insurer or insurers are stock or mutual corporations or are reciprocal insurers; and subject to the approval of the commissioner of insurance, there may be added thereto such device or devices as the insurer or insurers issuing said policy shall desire. Provided, however, that any company organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this state.

The standard policy provided for herein need not be used for effecting reinsurance between insurers.

If the policy is issued by a mutual, co-operative or reciprocal insurer having special regulations with respect to the payment by the policyholder of assessments, such regulations shall be printed upon the policy, and any such insurer may print upon the policy such regulations as may be required by its home state or appropriate to its form of organization.

Third. Binders or other contracts for temporary insurance may be made and shall be deemed to include all the terms of such standard policy and all such applicable endorsements as may be designated in such contract of temporary insurance; except that the cancellation clause of such standard policy, and the clause thereof specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.

Fourth. Two or more insurers authorized to do in this state the business of fire insurance, may, with the approval of the commissioner of insurance, issue a combination standard form of policy which shall contain the following:

a. A provision substantially to the effect that the insurers executing such policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of such insurance under such policy.

b. A provision substantially to the effect that service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing such policy, shall be deemed to be service upon all such insurers.

Fifth. Appropriate forms of other contracts or endorsements, insuring against one or more of the perils incident to the ownership, use or occupancy of said property, other than fire and lightning, which the insurer is empowered to assume, may be used in connection with the standard policy. Such forms of other contracts or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and rearranged to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsements attached or printed thereon, and such other data as may be included for duplication on daily reports for office records. An insurer may issue a policy, either on an unspecified basis as to coverage or for an indivisible premium, which contains coverage against the peril of fire and substantial coverage against other perils, if such policy includes provisions with respect to the peril of fire which are the substantial equivalent of the minimum provisions of such standard policy, provided further the policy is complete as to all its terms of coverage without reference to any other document and is approved in accordance with section 515.109.

Sixth. The form of the standard policy (with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer) shall be as follows:

FIRST PAGE OF STANDARD FIRE POLICY

No. . . . . .

(Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.)

(Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.)

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO AND OF . . . . . DOLLARS PREMIUM this company, for the term of . . . . . from the . . . . . day of . . . . . (month), ... (year), to the . . . . . day of . . . . . (month), ... (year), at noon, Standard Time, at location of property involved, to an amount not exceeding . . . . . Dollars, does insure . . . . . and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at . . . . . .

. . . . . .
Secretary.

. . . . . .
President.

Countersigned this . . . . . .
day of . . . . . (month), ... (year).

. . . . . .
Agent.

SECOND PAGE OF STANDARD FIRE POLICY

Concealment — fraud. This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included. This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: *(a)* Enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; *(b)* invasion; *(c)* insurrection; *(d)* rebellion; *(e)* revolution; *(f)* civil war; *(g)* usurped power; *(h)* order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; *(i)* neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; *(j)* nor shall this company be liable for loss by theft.

Other insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

a. While the hazard is increased by any means within the control or knowledge of the insured; or

b. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or

c. As a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

Cancellation of policy. This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be canceled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability. This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and un-

damaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amounts of loss claimed; AND WITHIN SIXTY DAYS AFTER THE LOSS, UNLESS SUCH TIME IS EXTENDED IN WRITING BY THIS COMPANY, THE INSURED SHALL RENDER TO THIS COMPANY A PROOF OF LOSS, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting the appraiser and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this company of any property.

When loss payable. The amount of loss for which this company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

Subrogation. This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

THIRD PAGE OF STANDARD FIRE POLICY

Attach Form Below This Line

FOURTH PAGE OF STANDARD FIRE POLICY

Standard Fire Insurance Policy

Expires .....
Property .....
Total
Amount $ ..... Premium $ .....
Insured .....

SEE INSIDE OF POLICY FOR PERILS COVERED
No.

(Space of approximately two (2) inches for use of Agent or Insurer.)

(Space of approximately two (2) inches for use of Agent or Insurer.)

It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once.

[C97, §1743, 1744, 1746; S13, §1742-a, 1743, 1744, 1746, 1758-a, 1758-b; C24, §8979, 8982, 8983, 8986, 8996, 9017, 9018; C27, 31, 35, §8979, 8982, 8983, 8986, 8996, 9017, 9018, 9021-a1; C39, §**8979, 8982, 8983, 8986, 8996, 9017, 9018,**

9021.1; C46, §515.99, 515.103, 515.104, 515.107, 515.117, 515.138, 515.139, 515.143; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.138]

2000 Acts, ch 1058, §56

515.139 Nuclear loss or damage excluded.

Insurers issuing the standard policy pursuant to section 515.138 are authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under said policy; provided, however, that nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination.

[C62, 66, 71, 73, 75, 77, 79, 81, §515.139]

515.140 Violations — status of policy.

Any insurance company, its officers or agents, or either of them, violating any of the provisions of section 515.138, by issuing, delivering, or offering to issue or deliver any policy of fire insurance on property in this state other or different from the standard form, herein provided for, shall be guilty of a simple misdemeanor, but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same, and such company shall, until the payment of such fine, be disqualified from doing any insurance business in this state; but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same.

[S13, §1758-c; C24, 27, 31, 35, 39, §**9019;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.140]

515.141 Existing statutes — waiver.

Nothing contained in sections 515.138 and 515.140, nor any provisions or conditions in the standard form of policy provided for in section 515.138, shall be deemed to repeal or in any way modify any existing statutes or to prevent any insurance company issuing such policy, from waiving any of the provisions or conditions contained therein, if the waiver of such provisions or conditions shall be in the interest of the insured.

[S13, §1758-d; C24, 27, 31, 35, 39, §**9020;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.141]

515.142 Policy — formal execution.

Every fire insurance company and association authorized to transact business in this state shall conduct its business in the name under which it is incorporated, and the policies issued by it shall be headed or entitled only by such name. There shall not appear on the face of the policy or on its filing back, anything that would indicate that it is the obligation of any other than the company responsible for the payment of losses under the policy, though it will be permissible to stamp or print on the bottom of the filing back, the name or names of the department or general agency issuing the same, and the group of companies with which the company is financially affiliated.

[SS15, §1758-e; C24, 27, 31, 35, 39, §**9021;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.142]

515.143 Repealed by 47 Acts, ch 263, § 5. See § 515.138.

515.144 Repealed by 55 Acts, ch 237, § 18.

515.145 Violation.

Any violation of section 515.142 shall constitute a simple misdemeanor.

[SS15, §1758-g; C24, 27, 31, 35, 39, §**9023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.145]

515.146 Advertisements by agents.

Nothing contained in section 515.142 shall be construed to prevent any representative of an insurance company from advertising the representative's own individual business without specific mention of the name of the company or companies which the person may represent.

[SS15, §1758-h; C24, 27, 31, 35, 39, §**9024;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515.146]

515.147 Business with nonadmitted insurers.

This chapter does not prevent a licensed resident or nonresident agent of this state, qualified to write excess and surplus lines insurance, from procuring insurance in certain nonadmitted insurers if such insurance is restricted to the type and kind of insurance authorized by this chapter, excluding insurance authorized under section 515.48, subsection 5, paragraph *"a"*, and the agent makes oath to the commissioner of insurance in the form prescribed by the commissioner that the agent has made diligent effort to place the insurance in authorized insurers and has either exhausted the capacity of all authorized insurers or has been unable to obtain the desired insurance in insurers licensed to transact business in this state. The procuring of a contract of insurance in a nonadmitted insurer makes the insurer liable for, and the agent shall pay, the taxes on the premiums as if the insurer were duly authorized to transact business in the state. A sworn report of all business transacted by agents of this state in nonadmitted insurers shall be made to the commissioner of insurance on or before March 1 of each year for the preceding calendar year, on the form required by the commissioner of insurance. The report shall be accompanied by a remittance to cover the taxes on the premiums. An agent who makes the oath, pays the taxes on the premiums,

and files the report has not written such contracts of insurance unlawfully, and is not personally liable for the contracts.

[C66, 71, 73, 75, 77, 79, 81, §515.147]

90 Acts, ch 1234, §41; 93 Acts, ch 88, §19

515.148 Banned companies.

An agent shall not knowingly place insurance, either directly or through an intermediary broker, in insurers who are insolvent or unsound financially; and shall not place or renew insurance with nonadmitted insurers found by the commissioner of insurance to have failed or refused to furnish, in the manner provided in section 515.149, information reasonably showing the ability or willingness of the insurers to satisfy obligations undertaken with respect to insurance issued by them.

[C66, 71, 73, 75, 77, 79, 81, §515.148]

90 Acts, ch 1234, §42

515.149 Information required.

The information required of nonadmitted insurers under section 515.148 may consist of a copy of such insurer's current annual statement, duly verified, or evidence of any trust funds or deposits maintained by such insurers for the protection of their policyholders, or both, or other material of such general description and relevancy, as the commissioner may require. Such information shall be furnished at the sole cost and expense of the unauthorized insurers either to the commissioner directly, or furnished to the National Association of Insurance Commissioners for the use of its members and their staffs, including the commissioner of insurance of this state and the commissioner's staff, or for dissemination to the commissioner by the Central Nonadmitted Insurers Information Bureau of the said association or by any other agency or instrumentality of that association designed to receive and disseminate such information. The provisions of this section and sections 515.147 and 515.148 shall not apply to insurance of vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

[C66, 71, 73, 75, 77, 79, 81, §515.149]

515.150 Demolition reserve on fire and casualty claims on property.

1. An insurer shall reserve ten thousand dollars or ten percent, whichever amount is greater, of the payment for damages to the property excluding personal property on which the insurer has issued a fire and casualty insurance policy as demolition cost reserve if the following are applicable:

a. The property is located within the corporate limits of a city.

b. The damage to the property renders it uninhabitable or unfit for the purpose for which it was intended, without repair.

c. Proof of loss has been submitted by the policyholder for a sum in excess of seventy-five percent of the face value of the policy covering the building or other insured structure.

2. An insurer which has received a proof of loss in excess of seventy-five percent of the face value of the policy covering a building or other insured structure, shall notify the city council of the city within which the property is located. The notice shall be made by certified mail within five working days after receipt of the proof of loss.

3. The city shall release all interest in the demolition cost reserve within one hundred eighty days after receiving notice of the existence of the demolition cost reserve unless the city has instituted legal proceedings for the demolition of the building or other insured structure, and has notified the insurer in writing of the institution of the legal proceedings. Failure of the city to notify the insurer of the legal proceedings terminates the city's claim to any proceeds from the reserve.

4. A reserve for demolition costs is no longer required if either of the following is true:

a. The insurer has received notice from both the insured and the city council that the insured has completed repairs to the property or has completed demolition of the property in compliance with all applicable statutes and local ordinances.

b. The city has failed to notify the insurer as provided under subsection 3.

5. If the city has instituted legal proceedings, undertaken emergency action, or is required to demolish the damaged property at city expense, the city shall present to the insurer costs incurred, since the date of the fire or other occurrence, including but not limited to legal costs, engineering costs, and demolition costs related directly to the enforcement of any local ordinance, and the insurer shall compensate the city for the incurred costs up to the amount in the demolition cost reserve. Any amount left from the demolition cost reserve after the cost of demolition of the property is paid to the city shall be paid to the insured if the insured is entitled to the remaining proceeds under the policy.

6. The insurer is not liable for any amount in excess of the limits of liability set out by the policy.

7. Insurers complying with this section or attempting in good faith to comply with this section shall be immune from civil and criminal liability.

88 Acts, ch 1176, §1; 89 Acts, ch 16, §1; 91 Acts, ch 59, §1; 92 Acts, ch 1163, §100

CHAPTER 515A

WORKERS' COMPENSATION LIABILITY INSURANCE

REGULATION OF RATES

515A.1 Purpose of chapter.
515A.2 Definitions — scope of chapter.
515A.3 Making of rates.
515A.4 Rate filings.
515A.5 Disapproval of filings.
515A.6 Rating organizations.
515A.7 Deviations.
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515A.10 Advisory organizations.
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515A.14 False or misleading information.
515A.15 Assigned risks.
515A.15A Deductible policies in workers' compensation.
515A.15B Applicants unable to procure insurance through ordinary methods.
515A.16 Premiums.
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515A.19 Laws affected.

RATE FILINGS IN COMPETITIVE MARKETS

515A.20 through 515A.25 Transferred to sections 515F.20 through 515F.25; 90 Acts, ch 1234, §77.

REGULATION OF RATES

515A.1 Purpose of chapter.

The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate co-operative action among insurers in rate making and in other matters within the scope of this chapter. Nothing in this chapter is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This chapter shall be liberally interpreted to carry into effect the provisions of this section.

[C50, 54, 58, 62, §515A.1, 515B.1; C66, 71, 73, 75, 77, 79, 81, §515A.1]

515A.2 Definitions — scope of chapter.

1. As used in this chapter:

a. *"Insurance"* means workers' compensation liability insurance.

b. *"Insurer"* means an insurer which issues a policy of workers' compensation liability insurance.

c. *"Policy"* means a policy of workers' compensation liability insurance.

d. *"Rate"* means a rate for workers' compensation liability insurance.

e. *"Rating organization"* means a workers' compensation rating organization licensed pursuant to this chapter.

f. *"Rate filing"* means a rate filing by a rating organization or an insurer.

2. This chapter applies only to workers' compensation liability insurance.

[C50, 54, 58, 62, §515A.2, 515B.2; C66, 71, 73, 75, 77, 79, 81, §515A.2]

90 Acts, ch 1234, §43

515A.3 Making of rates.

1. Rates shall be made in accordance with the following provisions:

a. Rates shall not be excessive, inadequate or unfairly discriminatory.

b. Due consideration shall be given to past and prospective loss experience within and outside this state, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

c. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the requirements of the operating methods of any such insurer or group of insurers with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

d. Risks may be grouped by classifications for the establishment of rates and minimum pre-

miums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

2. Except to the extent necessary to meet the provisions of paragraph *"a"* of subsection 1 of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

[C50, 54, 58, 62, §515A.3, 515B.3; C66, 71, 73, 75, 77, 79, 81, §515A.3]

515A.4 Rate filings.

1. Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this chapter, the commissioner shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include the experience or judgment of the insurer or rating organization making the filing, its interpretation of any statistical data it relies upon, the experience of other insurers or rating organizations, or any other relevant factors. A filing and any supporting information shall be open to public inspection upon filing. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

2. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

4. Subject to the exception specified in subsection 5 of this section, each filing shall be on file for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer or rating organization which made the filing that the commissioner needs additional time for the consideration of the filing. Upon written application by the insurer or rating organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension of the period. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within thirty days of receipt by the commissioner.

5. Specific inland marine rates on risks specially rated by a rating organization, or any specific filing with respect to a surety or guaranty bond required by law or by court or executive order, rule or regulation of a public body and not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

6. Under such rules and regulations as the commissioner shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such order, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as the commissioner may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph *"b"* of subsection 1 of section 515A.3.

7. Upon the written application of the insured, stating the insured's reasons therefor, filed with and approved by the commissioner a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

8. No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this chapter or in accordance with subsections 6 or 7 of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required.

9. If a hearing is requested pursuant to section 515A.6, subsection 7, a filing shall not take effect until thirty days after formal approval is given by the commissioner.

[C50, 54, 58, 62, §515A.4, 515B.4; C66, 71, 73, 75, 77, 79, 81, §515A.4]

87 Acts, ch 132, §5; 92 Acts, ch 1162, §39; 93 Acts, ch 88, §20

515A.5 Disapproval of filings.

1. If within the waiting period or any extension thereof as provided in subsection 4 of section 515A.4, the commissioner finds that a filing does not meet the requirements of this chapter, the commissioner shall send to the insurer or rating organization which made such filing, written notice of disapproval of such filing specifying therein in what respects the commissioner finds such filing fails to meet the requirements of this chapter and stating that such filing shall not become effective.

2. If within thirty days after a specific inland marine rate on a risk especially rated by a rating organization subject to subsection 5 of section 515A.4 has become effective or, if within thirty days after a special surety or guaranty filing subject to subsection 5 of section 515A.4 has become effective, the commissioner finds that such filing does not meet the requirements of this chapter, the commissioner shall send to the rating organization or insurer which made such filing written notice of disapproval of such filing specifying therein in what respects the commissioner finds that such filing fails to meet the requirements of this chapter and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in said notice.

3. If at any time subsequent to the applicable review period provided for in subsection 1 or 2 of this section, the commissioner finds that a filing does not meet the requirements of this chapter, the commissioner shall, after a hearing held upon not less than ten days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects the commissioner finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

4. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided, however, that the insurer that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant and such application must show that the person or organization making such application has a specific economic interest affected by the filing. If the commissioner shall find that the application is made in good faith, that the applicant has a specific economic interest, that the applicant would be so aggrieved if the applicant's grounds are established, and that such grounds otherwise justify holding such a hearing, the commissioner shall within thirty days after receipt of such application hold a hearing, upon not less than ten days' written notice to the applicant and to every insurer and rating organization which made such filing. No rating or advisory organization shall have any status under this chapter to make application for a hearing on any filing made by an insurer with the commissioner.

If, after such hearing, the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall issue an order specifying in what respects the commissioner finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

5. No filing shall be disapproved if the rates thereby produced meet the requirements of this chapter.

[C50, 54, 58, 62, §515A.5, 515B.5; C66, 71, 73, 75, 77, 79, 81, §515A.5]

515A.6 Rating organizations.

1. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith *(a)* a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business, *(b)* a list of its members and subscribers, *(c)* the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served and *(d)* a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, the commissioner shall issue a license specifying the kinds of insurance, or subdivisions or classes of risks or parts or combinations thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with the

commissioner. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for said license shall be twenty-five dollars. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in *(a)* its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, *(b)* its list of members and subscribers and *(c)* the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

2. Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, the commissioner shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, the commissioner shall order the rating organization to admit the insurer as a subscriber. If the commissioner finds that the action of the rating organization was justified the commissioner shall make an order affirming its action.

3. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

4. Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, the commissioner finds that any such activity or practices is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, the commissioner may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

5. Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

6. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

7. Notwithstanding any other provision of the Code, the commissioner of insurance shall provide for a hearing in a proceeding involving a workers' compensation insurance rate filing by a licensed rating organization in accordance with the provisions of this subsection and rules promulgated by the commissioner of insurance pursuant to chapter 17A. Except as otherwise provided herein, the provisions of this subsection shall not be subject to the requirements of chapter 17A. The procedures for such hearing shall be as follows:

a. The commissioner shall provide notice of the filing of the proposed rates at least thirty days before the effective date of the proposed rates by publishing a notice in the Iowa administrative bulletin.

b. A public hearing shall be held on the proposed rates by the commissioner of insurance if within fifteen days of the date of publication a workers' compensation policyholder or an established organization with one or more workers' compensation policyholders among its members files a written demand with the commissioner of insurance for a hearing on the proposed rates.

c. The commissioner of insurance shall hold the hearing within twenty days after receipt of the written demand for a hearing and shall give not less than ten days written notice of the time and place of the hearing to the person or association filing the demand, to the rating organization, and to any other person requesting such notice.

d. At any such hearing, the rating organization shall bear the burden of proof to support the proposed rates by a preponderance of the evidence. The person or association requesting the hearing, and any other person admitted as a party to the proceeding, shall be given the opportunity to respond and introduce evidence and arguments on all the issues involved.

e. Within fifteen days after the start of the hearing, the commissioner of insurance will approve or disapprove the proposed rates and specify the reasons therefor. The commissioner of insurance may suspend or postpone the effective date of the proposed rates pending the hearing and written decision thereon.

f. Judicial review of the decision of the commissioner of insurance on such rates may be sought in accordance with the provisions of chapter 17A.

[C50, 54, 58, 62, §515A.6, 515B.6; C66, 71, 73, 75, 77, 79, 81, §515A.6]

515A.7 Deviations.

Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any such insurer may make written application to the commissioner to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance, or combination thereof. Such application shall specify the basis for the modification and a copy shall also be sent simultaneously to such rating organization. In considering the application to file such deviation the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 515A.3. The commissioner shall issue an order permitting the deviation for such insurer to be filed if the commissioner finds it to be justified and it shall thereupon become effective. The commissioner shall issue an order denying such application if the commissioner finds that the deviation applied for does not meet the requirements of this chapter.

Each deviation permitted to be filed shall remain in effect for a period of not less than one year from the effective date unless sooner withdrawn by the insurer with the approval of the commissioner or until terminated in accordance with the provisions of section 515A.5.

[C50, 54, 58, 62, §515A.7, 515B.7; C66, 71, 73, 75, 77, 79, 81, §515A.7]

515A.8 Appeal by minority.

Any member or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hearing held upon not less than ten days' written notice to the appellant, and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, the commissioner may, in the event the commissioner finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with the findings, within a reasonable time after the issuance of such order.

If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber, which is based on a system of expense provisions which differs, in accordance with the right granted in paragraph *"c"* of subsection 1 of section 515A.3, from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if the commissioner grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal the commissioner shall apply the standards set forth in section 515A.3.

[C50, 54, 58, 62, §515A.8, 515B.8; C66, 71, 73, 75, 77, 79, 81, §515A.8]

515A.9 Information to be furnished insureds — hearings and appeals of insureds.

Every rating organization and every insurer which makes its own rate shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by the person's authorized representative, on the person's written request to review the manner in which such rating system has been applied in connection with the insurance afforded the person. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action.

[C50, 54, 58, 62, §515A.9, 515B.9; C66, 71, 73, 75, 77, 79, 81, §515A.9]

515A.10 Advisory organizations.

1. Every group, association or other organization of insurers, whether located within or outside of this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

2. Every advisory organization shall file with the commissioner *(a)* a copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities, *(b)* a list of its members, *(c)* the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at the commissioner's direction may be served, and *(d)* an agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 515A.12.

3. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, the commissioner may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such act or practice.

4. No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving such statistics or recommendations issued under subsection 3 of this section. If the commissioner finds such insurer or rating organization to be in violation of this subsection the commissioner may issue an order requiring the discontinuance of such violation.

[C50, 54, 58, 62, §515A.10, 515B.10; C66, 71, 73, 75, 77, 79, 81, §515A.10]

515A.11 Joint underwriting or joint reinsurance.

1. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of this chapter and, with respect to joint reinsurance, to sections 515A.12 and 515A.16 to 515A.19.

2. If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, the commissioner may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

[C50, 54, 58, 62, §515A.11, 515B.11; C66, 71, 73, 75, 77, 79, 81, §515A.11]

515A.12 Examinations.

The commissioner shall, at least once in five years, make or cause to be made an examination of each rating organization licensed in this state as provided in section 515A.6 and the commissioner may, as often as the commissioner may deem it expedient, make or cause to be made an examination of each advisory organization referred to in section 515A.10 and of each group, association or other organization referred to in section 515A.11. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

[C50, 54, 58, 62, §515A.12, 515B.12; C66, 71, 73, 75, 77, 79, 81, §515A.12]

515A.13 Rate administration.

1. *Recording and reporting of loss and expense experience.* The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with the commissioner, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the commissioner in determining whether rating systems comply with the standards set forth in section 515A.3. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss

experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more rating organizations or other agencies to assist in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

2. *Interchange of rating plan data.* Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

3. *Consultation with other states.* In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

4. *Rules and regulations.* The commissioner may make reasonable rules necessary to effect the purposes of this chapter.

5. *Prohibited release.* A person other than the commissioner or the commissioner's designee shall not release to another person, other than to the servicing insurer of the policy or to the commissioner or the commissioner's designee, experience, payroll, loss data, expiration date of a policy, or classification information without the prior written approval of the policyholder. A violation of this section shall be considered an unfair trade practice pursuant to chapter 507B.

[C50, 54, 58, 62, §515A.13, 515B.13; C66, 71, 73, 75, 77, 79, 81, §515A.13]

94 Acts, ch 1176, §13

515A.14 False or misleading information.

No person or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. A violation of this section shall subject the one guilty of such violation to the penalties provided in section 515A.17.

[C50, 54, 58, 62, §515A.14, 515B.14; C66, 71, 73, 75, 77, 79, 81, §515A.14]

515A.15 Assigned risks.

Agreements shall be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, the agreements and rate modifications to be subject to the approval of the commissioner.

For purposes of this section, *"insurer"* includes, in addition to insurers defined pursuant to section 515A.2, a self-insurance association formed on or after July 1, 1995, pursuant to section 87.4 except for an association comprised of cities or counties, or both, or an association comprised of community colleges as defined in section 260C.2, which have entered into an agreement pursuant to chapter 28E for the purpose of establishing a self-insured program for the payment of workers' compensation benefits.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §515A.15]

95 Acts, ch 185, §24

515A.15A Deductible policies in workers' compensation.

The commissioner may enter an order under section 515A.18 to assure availability within this state of a policy under this chapter which provides as part of the policy, or as an endorsement to the policy, an option for a deductible related to benefits payable under a policy issued pursuant to this chapter. The order may make provisions for changes in experience ratings, premium surcharges, or any other modification, as a result of issuance of a policy, or of an endorsement to the policy, pursuant to the order. Under an order entered pursuant to this section, the commissioner shall provide that if the policyholder selects a deductible option, the insured employer is liable for all of the amount of the deductible for benefits paid for each compensable claim of an employee under the policy.

92 Acts, ch 1053, §1

515A.15B Applicants unable to procure insurance through ordinary methods.

An agreement among licensed insurers to offer workers' compensation insurance for applicants unable to procure workers' compensation insurance through ordinary methods shall be administered by a rating organization licensed under this chapter.

98 Acts, ch 1057, §10

515A.16 Premiums.

An agent shall not knowingly charge, demand, or receive a premium for any policy of insurance except in accordance with the provisions of this chapter.

[C50, 54, 58, 62, §515A.16, 515B.15; C66, 71, 73, 75, 77, 79, 81, §515A.16]

93 Acts, ch 88, §21

515A.17 Penalties.

The commissioner may, if the commissioner finds that any person or organization has violated any provision of this chapter, impose a penalty of not more than fifty dollars for each such violation,

but if the commissioner finds such violation to be willful the commissioner may impose a penalty of not more than five hundred dollars for each such violation. Such penalties may be in addition to any other penalty provided by law.

The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating the commissioner's findings, made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violation.

[C50, 54, 58, 62, §515A.17, 515B.16; C66, 71, 73, 75, 77, 79, 81, §515A.17]

515A.18 Hearing procedure and judicial review.

1. Any person, insurer or rating organization to which the commissioner has directed an order made without a hearing may, within thirty days after notice to it of such order, make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within twenty days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing. Within fifteen days after such hearing the commissioner shall affirm, reverse or modify the previous action, specifying the commissioner's reasons therefor. Pending such hearing and decision thereon the commissioner may suspend or postpone the effective date of the commissioner's previous action.

2. Nothing contained in this chapter shall require the observance at any hearing of formal rules of pleading or evidence.

3. Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act.

The court shall determine whether the filing of the petition for such writ shall operate as a stay of any such order or decision of the commissioner. The court may, in disposing of the issue before it, modify, affirm or reverse the order or decision of the commissioner in whole or in part.

[C50, 54, 58, 62, §515A.18, 515B.17; C66, 71, 73, 75, 77, 79, 81, §515A.18]

515A.19 Laws affected.

Compliance with this chapter shall not be deemed to be a violation of section 515.131.

[C50, 54, 58, 62, §515A.19, 515B.18; C66, 71, 73, 75, 77, 79, 81, §515A.19]

RATE FILINGS IN
COMPETITIVE MARKETS

515A.20 through 515A.25 Transferred to sections 515F.20 through 515F.25; 90 Acts, ch 1234, § 77.

CHAPTER 515B

INSURANCE GUARANTY ASSOCIATION

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515B.1 Scope.

This chapter shall apply to all kinds of direct insurance authorized to be written by an insurer licensed to operate in this state under chapter 515

or chapter 520, but shall not be applicable to the following:

1. Life, annuity, health, or disability insurance.

2. Mortgage guaranty, financial guaranty, residual value, or other forms of insurance offering protection against investment risks.

3. Fidelity or surety bonds, or any other bonding obligations.

4. Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.

5. Insurance warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits.

6. Title insurance.

7. Ocean marine insurance.

8. A transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.

9. Insurance provided by or guaranteed by government.

[C71, 73, 75, 77, 79, 81, §515B.1]

86 Acts, ch 1184, §2; 88 Acts, ch 1112, §504; 97 Acts, ch 186, §13; 2001 Acts, ch 69, §31

515B.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Association"* means the Iowa insurance guaranty association created pursuant to section 515B.3.

2. *"Claimant"* means an insured making a first party claim or any person instituting a liability claim against an insolvent insurer. *"Claimant"* does not include a person who is an affiliate of an insolvent insurer.

3. *"Commissioner"* means the commissioner of insurance of this state.

4. *a. "Covered claim"* means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1970, and one of the following conditions exists:

(1) The claimant or insured is a resident of this state at the time of the insured event. Other than an individual, the residence of the claimant or insured is the state in which its principal place of business is located.

(2) The claim is a first party claim by an insured for damage to property permanently located in this state.

b. "Covered claim" does not include any amount as follows:

(1) That is due any reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, or indemnity recoveries, or otherwise.

(2) That constitutes the portion of a claim that is within an insured's deductible or self-insured retention.

(3) That is a claim for unearned premium calculated on a retrospective basis, experience-rated plan, or premium subject to adjustment after termination of the policy.

(4) That is due an attorney, adjuster, or witness as fees for services rendered to the insolvent insurer.

(5) That is a fine, penalty, interest, or punitive or exemplary damages.

(6) That constitutes a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of two hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if as of the deadline set for the filing of claims against the insolvent insurer of its liquidator, the insured is a debtor under 11 U.S.C. § 701 et seq.

(7) That would otherwise be a covered claim, but is an obligation to or on behalf of a person who has a net worth, on the date of the occurrence giving rise to the claim, greater than that allowed by the guarantee fund law of the state of residence of the claimant, and which state has denied coverage to that claimant on that basis.

(8) That is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

Notwithstanding the subparagraphs of this lettered paragraph, a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator, but the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

5. *"Insurer"* means an insurer licensed to transact insurance business in this state under either chapter 515 or chapter 520, either at the time the policy was issued or when the insured event occurred. It does not include county or state mutual insurance associations licensed under chapter 518 or chapter 518A, or fraternal benefit societies, orders, or associations licensed under chapter 512B, or corporations operating nonprofit service plans under chapter 514, or life insurance companies or

life, accident, or health associations licensed under chapter 508, or those professions under chapter 519.

6. *"Insolvent insurer"* means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 1980, by a court of competent jurisdiction of this state or of the state of the insurer's domicile.

7. *"Net direct written premiums"* means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

8. *"Person"* means any individual, corporation, partnership, association, or voluntary organization.

[C71, 73, 75, 77, 79, 81, §515B.2; 82 Acts, ch 1137, §2]

86 Acts, ch 1184, §3 – 5; 88 Acts, ch 1112, §505, 506; 89 Acts, ch 83, §74; 91 Acts, ch 26, §43; 93 Acts, ch 88, §22; 97 Acts, ch 186, §14; 2000 Acts, ch 1023, §30; 2001 Acts, ch 24, §55

515B.3 Creation of the association.

There is created a nonprofit unincorporated legal entity to be known as the Iowa insurance guaranty association. All insurers as defined in section 515B.2, subsection 5 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved pursuant to section 515B.6 and shall exercise its powers through a board of directors established under section 515B.4. Except as otherwise provided in such plan of operation, annual or special meetings of members of the association may be held on call as directed by the association's board of directors or by the commissioner of insurance, upon not less than ten days' written notice by ordinary mail to each member at the member's principal office as shown by the records in the commissioner's office, specifying the time and place, and in the case of a special meeting, the purpose of the meeting. Members may vote in person or by proxy and ten members present in person or by proxy shall constitute a quorum for the transaction of any business.

[C71, 73, 75, 77, 79, 81, §515B.3]

515B.4 Board of directors.

The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by majority vote of the remaining directors, subject to the approval of the commissioner.

In approving selections to the board the commissioner shall consider among other things whether all member insurers are fairly represented.

Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

[C71, 73, 75, 77, 79, 81, §515B.4]

515B.5 Duties and powers of the association.

1. The association shall:

a. Be obligated to pay covered claims existing prior to the final order of liquidation and arising within thirty days after the final order of liquidation, or before the policy expiration date if less than thirty days after the final order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within thirty days of the final order of liquidation. Such obligation shall be satisfied by paying to the claimant an amount as follows:

(1) The full amount of a covered claim for benefits under a workers' compensation insurance coverage.

(2) An amount in excess of one hundred dollars but not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.

(3) An amount not exceeding the lesser of the policy limits or three hundred thousand dollars per claim for all covered claims for all damages arising out of any one or series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

b. Be obligated to pay covered claims subject to a limitation as established by the rights, duties, and obligations under the policy of the insolvent insurer. However, the association is not obligated to pay a claimant an amount in excess of the obligation under the policy of the insolvent insurer, regardless of whether such claim is based on contract or tort.

c. Assess member insurers amounts necessary to pay the obligations of the association under paragraph *"a"* of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 515B.10, and other expenses authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the as-

sociation, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility pursuant to this section may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. In addition, the association shall have the authority to levy an administrative assessment of not more than fifty dollars per year per member insurer on a non pro rata basis, which assessment shall be credited against any future insolvency assessment. Such assessment shall be used to pay authorized expenses not directly attributable to any particular insolvency or insolvent insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

The association shall also have the right to pursue and retain for its own account salvage and subrogation recoverable on paid covered claim obligations. An obligation of the association to defend an insured shall cease upon the association's payment or tender to an excess insurer of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limits.

d. Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligations on covered claims and deny all other claims. The association may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which settlements, releases, and judgments may properly be contested, and, to that end, any uncontested or default judgment against the insolvent insurer or its insured shall not be binding on the association. The association shall have the right to appoint or substitute legal counsel retained to defend insureds on covered claims.

e. Notify such persons as the commissioner directs under section 515B.7, subsection 2, paragraph *"a"*.

f. Process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

g. Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay the other expenses of the association authorized by this chapter.

2. The association may:

a. Appear in, defend, and appeal any action on a claim brought against the association.

b. Employ or retain persons necessary to handle claims and perform other duties of the association.

c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

d. Sue or be sued.

e. Negotiate and become a party to contracts necessary to carry out the purpose of this chapter.

f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

g. The board of directors, in its discretion, may from time to time refund excess amounts to member insurers that are not needed for current or projected liabilities of a particular insolvency. The amount of each refund is equal to the net direct written premiums of the member insurer for the preceding calendar year divided by the net written premiums of all member insurers for the preceding calendar year, multiplied by the total amount to be refunded to all members. Any assessments or refunds of any member insurer in amounts not to exceed twenty-five dollars may, at the discretion of the board of directors, be waived.

h. Request that all future payments of workers' compensation weekly benefits, medical expenses, or other payments under chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum and upon the payment of which, either to the claimant or to a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant, the employer and the association shall be discharged from all further liability for the workers' compensation claim. Notwithstanding the provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payment by the association under this chapter pursuant to chapter 85, 85A, 85B, 86, or 87, is deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2, and the workers' compensation commissioner shall fix the lump sum of the probable future medical expenses and weekly compensation benefits capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees.

[C71, 73, 75, 77, 79, 81, §515B.5; 82 Acts, ch 1051, §2]

86 Acts, ch 1184, §6; 88 Acts, ch 1112, §507; 91 Acts, ch 26, §44; 92 Acts, ch 1162, §40, 41; 97 Acts, ch 186, §15, 16; 98 Acts, ch 1061, §11; 2001 Acts, ch 69, §32; 2002 Acts, ch 1111, §20, 21

Subsection 1, paragraph c, unnumbered paragraph 2 amended
Subsection 1, paragraph d stricken and rewritten

515B.6 Plan of operation.

1. The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments shall become effective upon approval in writing by the commissioner.

If the association fails to submit a suitable plan of operation within ninety days following the effective date of this chapter or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and opportunity for hearing, adopt and promulgate reasonable rules necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. All member insurers shall comply with the plan of operation.

3. The plan of operation shall:

a. Establish the procedures for performance of all the duties and powers of the association under section 515B.5.

b. Establish procedures for managing assets of the association.

c. Establish the amount and method of reimbursing members of the board of directors under section 515B.4.

d. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

e. Establish regular places and times for meetings of the board of directors.

f. Establish procedures for keeping records of all financial transactions of the association, its agents, and the board of directors.

g. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.

h. Establish procedures for submission to the commissioner of selections for the board of directors.

i. Contain additional provisions necessary or proper for the execution of the duties and powers of the association.

4. The plan of operation may provide that any or all duties and powers of the association, except those under section 515B.5, subsection 1, paragraph *"c"*, and subsection 2, paragraph *"c"*, are delegated to a person which performs or will perform functions similar to those of this association in two or more states. Such person shall be reimbursed as a servicing facility and shall be paid for performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a person which extends protection not substantially less favorable and effective than that provided by this chapter.

[C71, 73, 75, 77, 79, 81, §515B.6]

515B.7 Duties and powers of the commissioner.

1. The commissioner shall:

a. Notify the association of the existence of an insolvent insurer not later than three days after the commissioner receives notice of the determination of the insolvency.

b. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

2. The commissioner may:

a. Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by mail at their last known address, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

b. Suspend or revoke, after notice and opportunity for hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

c. Revoke the designation of any servicing facility if the commissioner finds claims are being processed unsatisfactorily.

3. Judicial review of actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C71, 73, 75, 77, 79, 81, §515B.7]

515B.8 Effect of paid claims.

1. Any person recovering under this chapter shall be deemed to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this chapter shall co-operate with the association to the same extent as such person would have been required to co-operate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out.

2. The association and any similar entity in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claim obligations as determined under this chapter or under similar law in another state, and shall receive dividends and any other distributions at the priority set forth under the applicable liquidation law. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this chapter and by settlements of covered claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

3. The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which statements shall preserve the rights of the association against the assets of the insolvent insurer.

[C71, 73, 75, 77, 79, 81, §515B.8]

97 Acts, ch 186, §17

515B.9 Nonduplication of recovery.

1. Any person having a claim under another policy, which claim arises out of the same facts which give rise to a covered claim, is first required to exhaust the person's right under the policy. Any amount recovered or recoverable by a person under another insurance policy shall be credited against the liability of the association under section 515B.5, subsection 1, paragraph *"a"*. For purposes of this section, another insurance policy means a policy issued by any insurance company, whether a member insurer or not, which policy insures against any of the types of risks insured by an insurance company authorized to write insurance under chapter 515, 516A, or 520, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

2. A person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. However, if the claim is a first party claim for damage to property with a permanent location, recovery shall be first sought from the association of the location of the property. If the claim is a workers' compensation claim, recovery shall be first sought from the association of the residence of the claimant. Any sums recovered from any other guaranty association or equivalent organization shall be subtracted from the maximum liability of the association under section 515B.5, subsection 1, paragraph *"a"*.

[C71, 73, 75, 77, 79, 81, §515B.9]

86 Acts, ch 1184, §7; 88 Acts, ch 1112, §508; 91 Acts, ch 26, §45

515B.10 Prevention of insolvencies.

1. *a.* To aid in the detection and prevention of insurer insolvencies the board of directors, upon majority vote, may do either of the following:

(1) Make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(2) Respond to a request by the commissioner to discuss and make recommendations regarding the status of member insurers whose financial condition may be hazardous to policyholders or the public.

b. At the conclusion of a domestic insurer insolvency, the board of directors may prepare a report based on the information available to the association on the history and causes of the insolvency. The report may be submitted to the commissioner.

2. Recommendations and reports made pursuant to subsection 1, paragraph *"a"*, subparagraph (2), are not public records under chapter 22.

[C71, 73, 75, 77, 79, 81, §515B.10]

86 Acts, ch 1184, §8

515B.11 Examination of the association.

The association is subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

[C71, 73, 75, 77, 79, 81, §515B.11]

515B.12 Tax exemption.

The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on property.

[C71, 73, 75, 77, 79, 81, §515B.12]

89 Acts, ch 296, §73

515B.13 Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive as a result of containing such recoupment allowances.

[C71, 73, 75, 77, 79, 81, §515B.13]

515B.14 Immunity.

There is no liability, and no cause of action of any nature shall arise against any member insurer, the association, its agents or employees, the board

of directors, the commissioner, or the commissioner's representatives, for any reasonable action taken by them in the performance of their duties and powers under this chapter.

[C71, 73, 75, 77, 79, 81, §515B.14]

515B.15 Stay of proceedings.

All proceedings to which the insolvent insurer is a party or in which it is obligated to defend a party shall be stayed from the date of the insolvency to and including the date set as the deadline for the filing of claims against the insolvent insurer or its receiver. However, upon application, the court having jurisdiction of the receivership, may lengthen or shorten the period, either as to all claims or as to any particular claim. The association may, at the option of the association, waive such stay as to specific cases involving covered claims.

As to any covered claims based on the default of an insurer who is or who becomes insolvent, or based on the failure of an insurer to defend an insured, the association, on its own behalf or on behalf of the insured, is entitled to set the default aside and defend such claim on its merits.

[C71, 73, 75, 77, 79, 81, §515B.15]

92 Acts, ch 1162, §42; 97 Acts, ch 186, §18

515B.16 Actions against the association.

Any action against the association shall be brought against the association in the association's own name. The Polk county district court shall have exclusive jurisdiction and venue of such actions. Service of the original notice in actions against the association may be made on any officer of the association or upon the commissioner of insurance on behalf of the association. The commissioner shall promptly transmit any notice so served upon the commissioner to the association.

[C73, 75, 77, 79, 81, §515B.16]

97 Acts, ch 186, §19; 2001 Acts, ch 69, §33

515B.17 Timely filing of claims.

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after the final date set by the court for the filing of claims against the insolvent insurer or its receiver.

[C77, 79, 81, §515B.17]

93 Acts, ch 88, §23

515B.18 Prohibited advertising.

A person shall not advertise or publish, in connection with the sale of an insurance policy, that claims under the insurance policy are subject to this chapter or will be paid by the Iowa insurance guaranty association.

88 Acts, ch 1112, §509

515B.19 to 515B.24 Reserved.

515B.25 Early access to assets. Repealed by 97 Acts, ch 186, § 27.

515B.26 Title.

This chapter shall be known and may be cited as the *"Iowa Insurance Guaranty Association Act"*.

[C71, §515B.16; C73, 75, §515B.17; C77, 79, 81, §515B.18]

CHAPTER 515C

MORTGAGE GUARANTY INSURANCE

515C.1 Definition.
515C.2 Eligibility for insurance.
515C.3 Bases for computations.
515C.4 Contingency reserve.
515C.5 Limit of outstanding liability.
515C.6 Determination of loss reserves.
515C.7 Rate-making provisions.
515C.8 Policy forms approved.
515C.9 Restrictions on advertising.
515C.10 Law applicable.
515C.11 Mortgages secured by first lien on real estate.

515C.1 Definition.

"Mortgage guaranty insurance" means insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate or on an owner-occupied manufactured or mobile home.

[C66, 71, 73, 75, 77, 79, 81, §515C.1]

95 Acts, ch 67, §37; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

515C.2 Eligibility for insurance.

Eligibility for mortgage guaranty insurers shall be as follows:

1. An insurer, in order to qualify for writing mortgage guaranty insurance, must have the

same surplus to policyholders as that required of a multiple line company by section 515.49, subsection 8.

2. An insurer transacting any class of insurance other than mortgage guaranty insurance is not eligible for the issuance of a certificate of authority to transact mortgage guaranty insurance in this state, nor the renewal thereof.

3. A foreign or alien insurer writing mortgage guaranty insurance shall not be eligible for the issuance of a certificate of authority in Iowa unless it has demonstrated a satisfactory operating experience in its state of domicile.

[C66, 71, 73, 75, 77, 79, 81, §515C.2]

515C.3 Bases for computations.

The unearned premium reserve shall be computed pursuant to rules adopted by the commissioner of insurance.

[C66, 71, 73, 75, 77, 79, 81, §515C.3]
2000 Acts, ch 1023, §31, 60

515C.4 Contingency reserve.

For the protection of the people of this state and for the purpose of protecting against the effect of adverse economic cycles, the company shall establish a contingency reserve. The company shall annually contribute fifty percent of the earned premiums to this reserve. The earned premiums so reserved may be released annually after the period of time required by the commissioner, provided that said time shall not be less than one hundred twenty months. However, subject to the approval of the commissioner, this reserve may be available only for loss payments, when the loss ratio (incurred losses to premiums earned) exceeds twenty percent. This amount so used shall reduce the next subsequent annual release to surplus from the established contingency reserve.

[C66, 71, 73, 75, 77, 79, 81, §515C.4]

515C.5 Limit of outstanding liability.

A mortgage guaranty insurer shall not at any time have outstanding a total liability, net of reinsurance, in excess of twenty-five times its capital, unassigned funds and contingency reserve. It shall not insure loans secured by properties in a single housing tract or a contiguous tract (not separated by more than one-half mile) in excess of ten percent of its capital, unassigned funds and contingency reserve. Coverage may be provided only if the properties in such tract are residential buildings, buildings designed for occupancy by not more than four families, or owner-occupied mobile homes.

[C66, 71, 73, 75, 77, 79, 81, §515C.5]

515C.6 Determination of loss reserves.

The case basis method shall be used to determine the loss reserves, which shall include a reserve for claims reported and unpaid and a reserve for claims incurred but not reported.

[C66, 71, 73, 75, 77, 79, 81, §515C.6]

515C.7 Rate-making provisions.

Mortgage guaranty insurance shall be subject to the provisions of chapter 515F, for the purposes of rate making.

[C66, 71, 73, 75, 77, 79, 81, §515C.7]
93 Acts, ch 88, §24

515C.8 Policy forms approved.

All policy forms and endorsements shall be filed with and be subject to the approval of the commissioner of insurance. With respect to owner-occupied single family dwellings and owner-occupied mobile homes, the mortgage insurance policy shall provide that the borrower shall not be liable to the insurance company for any deficiency arising from a foreclosure sale.

[C66, 71, 73, 75, 77, 79, 81, §515C.8]

515C.9 Restrictions on advertising.

No bank, savings and loan association, insurance company or other lending institution, any of whose authorized real estate securities are insured by mortgage guaranty insurance companies may state in any brochure, pamphlet, report or any form of advertising that the real estate loans of the bank, savings and loan association, insurance company or other lending institution are "insured loans" unless the brochure, pamphlet, report or advertising also clearly states that the loans are insured by private insurers and the names of the private insurers are given and shall not make any such statement at all unless such insurance is by an insurer authorized to write this coverage in this state.

[C66, 71, 73, 75, 77, 79, 81, §515C.9]

515C.10 Law applicable.

All companies writing insurance as authorized by this chapter shall, in addition to the provisions herein, comply with and be subject to all of the provisions of chapter 515 not inconsistent herewith.

[C66, 71, 73, 75, 77, 79, 81, §515C.10]

515C.11 Mortgages secured by first lien on real estate.

A mortgage guaranty insurer in addition to coverage provided under section 515C.5 may insure mortgages secured by first lien upon improved real estate which is used for commercial purposes, except for those types of commercial properties specifically excluded by the commissioner of insurance.

[C71, 73, 75, 77, 79, 81, §515C.11]

CHAPTER 515D

AUTOMOBILE INSURANCE CANCELLATION CONTROL

515D.1 Title.
515D.2 Definitions.
515D.3 When not applicable.
515D.4 Notice of cancellation — reasons.
515D.5 Delivery of notice.
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515D.7 Notice of intent.
515D.8 Duplicate coverage.
515D.9 Renewal not a waiver or estoppel.
515D.10 Hearing before commissioner.
515D.11 Insured told of alternate coverage.
515D.12 Immunity of liability.

515D.1 Title.

This chapter shall be known as the *"Iowa Automobile Insurance Cancellation Control Act"*.

[C71, 73, 75, 77, 79, 81, §515D.1]

515D.2 Definitions.

As used in this chapter, unless otherwise required by the context:

1. *"Policy"* means an automobile insurance policy providing bodily injury liability, property damage liability, medical payments, uninsured motorist coverage, physical damage coverage, or any combination thereof, delivered or issued for delivery in this state, insuring a single individual or one or more related individuals resident in the same household, as named insured, and insuring vehicles of the following types only:

a. Motor vehicles of the private passenger or station wagon type which are not used as public conveyances nor rented to others.

b. Any other four-wheel motor vehicles with a load capacity of one thousand five hundred pounds or less which are not used in the business or profession of the insured.

2. *"Renewal"* or *"to renew"* means the issuance and delivery by an insurer of a policy replacing at the end of the previous policy term a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the coverage of the policy beyond its original term. Any renewal policy, other than a replacement policy for an unfinished term, with a term of six months or less shall be considered written, for the purposes of this chapter, for a term of six months.

Any policy written for a term longer than one year or with no fixed expiration date shall be considered written for successive policy terms of one year.

3. *"Nonpayment of premium"* means failure of the named insured to discharge when due any of the named insured's obligations in connection with the payment of premiums on the policy, or any installment of a premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

[C71, 73, 75, 77, 79, 81, §515D.2]

515D.3 When not applicable.

This chapter shall not apply to any policy:

1. Issued under an automobile assigned risk plan.

2. Covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

3. Insuring more than four automobiles.

4. Issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle on the premises of such insured or on the ways immediately adjoining the premises.

[C71, 73, 75, 77, 79, 81, §515D.3]

515D.4 Notice of cancellation — reasons.

1. A policy shall not be canceled except by notice to the insured as provided in this chapter. Notice of cancellation of a policy is not effective unless it is based on one or more of the following reasons:

a. Nonpayment of premium.

b. Nonpayment of dues to an association or organization other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing insurance in force and the dues payment requirement was in effect prior to January 1, 1969.

c. Fraud or material misrepresentation affecting the policy or the presentation of a claim.

d. Violation of terms or conditions of the policy.

e. Any reason permitted in subsection 2 for exclusion of a person from the policy.

2. A person shall not be excluded from the policy unless the exclusion is based on one or more of the following reasons, or is agreed upon by both the named insured and the insurer:

a. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy has that person's driver's license suspended or re-

voked during the policy term or, if the policy is a renewal, during its term or the one hundred eighty days immediately preceding its effective date.

b. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy has during the term of the policy engaged in a competitive speed contest while operating an automobile insured under the policy.

c. The named insured or any operator who either resides in the same household or customarily operates an automobile insured under the policy, during the thirty-six months immediately preceding the notice of cancellation or nonrenewal, has been convicted of or forfeited bail for any of the following:

(1) Criminal negligence resulting in death, homicide, or assault and arising out of the operation of a motor vehicle.

(2) Operating a motor vehicle while intoxicated or while under the influence of a drug.

(3) A violation of section 321.261.

3. This section shall not apply to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy. This section shall not apply to the nonrenewal of a policy.

4. During the policy period, a modification of automobile physical damage coverage, other than coverage for loss caused by collision, where provision is made for the application of a deductible amount not exceeding one hundred dollars, shall not be deemed a cancellation of the coverage or of the policy.

[C71, 73, 75, 77, 79, 81, §515D.4]

96 Acts, ch 1045, §6; 97 Acts, ch 186, §20; 2002 Acts, ch 1111, §22

Section amended

515D.5 Delivery of notice.

1. Notwithstanding the provisions of sections 515.80 through 515.81A, a notice of cancellation of a policy shall not be effective unless mailed or delivered by the insurer to the named insured at least twenty days prior to the effective date of cancellation, or, where the cancellation is for nonpayment of premium notwithstanding the provisions of sections 515.80 and 515.81A at least ten days prior to the date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of cancellation, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the date of cancellation, the insurer will state the reason for cancellation, together with notification of the right to a hearing before the commissioner within fifteen days as provided in this chapter.

When the reason does not accompany the notice of cancellation, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation. A statement of reason shall be mailed or delivered to the named insured within five days after receipt of a request.

2. A notice of exclusion of a person under a policy pursuant to section 515D.4, is not effective unless written notice is mailed or delivered to the named insured at least twenty days prior to the effective date of the exclusion. The written notice shall state the reason for the exclusion, together with notification of the right to a hearing before the commissioner pursuant to section 515D.10 within fifteen days of receipt or delivery of a statement of reason as provided in this section.

[C71, 73, 75, 77, 79, 81, §515D.5]

88 Acts, ch 1112, §601; 97 Acts, ch 186, §21

515D.6 Prohibited reasons.

No insurer shall refuse to renew a policy solely because of age, residence, sex, race, color, creed, or occupation of an insured.

No insurer shall require a physical examination of a policyholder as a condition for renewal solely on the basis of age or other arbitrary reason. In the event that an insurer requires a physical examination of a policyholder, the burden of proof in establishing reasonable and sufficient grounds for such requirement shall rest with the insurer and the expenses incident to such examination shall be borne by the insurer.

[C71, 73, 75, 77, 79, 81, §515D.6]

515D.7 Notice of intent.

1. Notwithstanding the provisions of sections 515.80 through 515.81B, an insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of intent not to renew, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than thirty days prior to the expiration date of the policy, the insurer will state the reason for nonrenewal.

2. When the reason does not accompany the notice of intent not to renew, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for nonrenewal, together with notification of the right to a hearing before the commissioner within fifteen days as provided herein. A statement of reason shall be mailed or delivered to the named insured within ten days after receipt of a request.

3. This section shall not apply:

a. If the insurer has manifested its willingness to renew.

b. If the insured fails to pay any premium due or any advance premium required by the insurer for renewal.

c. If the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

[C71, 73, 75, 77, 79, 81, §515D.7]

88 Acts, ch 1112, §602; 2002 Acts, ch 1111, §23
Section amended

515D.8 Duplicate coverage.

If an insured obtains a second policy which provides equal or more extensive coverage for any vehicle designated in both policies, the first policy's coverage of such vehicle may be terminated by failure to renew as of the effective time and date of the second policy, whether or not the first policy insurer complies with all provisions of section 515D.7.

[C71, 73, 75, 77, 79, 81, §515D.8]

515D.9 Renewal not a waiver or estoppel.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of renewal.

[C71, 73, 75, 77, 79, 81, §515D.9]

515D.10 Hearing before commissioner.

Any named insured who has received a statement of reason for cancellation, or of reason for an insurer's intent not to renew a policy, may, within fifteen days of the receipt or delivery of a statement of reason, request a hearing before the commissioner of insurance. The purpose of this hearing shall be limited to establishing the existence of the proof or evidence used by the insurer in its reason for cancellation or intent not to renew. The burden of proof of the reason for cancellation or intent not to renew shall be upon the insurer. The commissioner of insurance shall adopt rules for carrying out the provisions of this section.

[C71, 73, 75, 77, 79, 81, §515D.10]

515D.11 Insured told of alternate coverage.

When automobile bodily injury and property damage liability coverage is canceled or not renewed, other than for nonpayment of premium, the insurer shall notify the named insured of the insured's possible eligibility for automobile liability insurance through the Iowa automobile insurance plan. Such notice shall accompany the notice of cancellation or intent not to renew.

[C71, 73, 75, 77, 79, 81, §515D.11]

515D.12 Immunity of liability.

There shall be no liability on the part of, and no cause of action of any nature shall arise against the commissioner of insurance or any employee of the division or against any insurer, its authorized representatives, its agents, its employees, or against any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or intent not to renew, for any statement made by any of them in any written notice of cancellation or notice of intent not to renew or in any other communication, oral or written, specifying the reasons for cancellation or intent not to renew, or for any information provided or evidence submitted at any hearings conducted in connection with reasons for cancellation or intent not to renew.

[C71, 73, 75, 77, 79, 81, §515D.12]

CHAPTER 515E

RISK RETENTION GROUPS AND PURCHASING GROUPS

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515E.11 Penalties.
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515E.1 Purpose.

The purpose of this chapter is to regulate the formation and operation in this state of risk retention groups formed pursuant to the Product Liabil-

ity Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., or the Risk Retention Amendments of 1986, Pub. L. No. 99-563. As used in this chapter, *"federal Act"* means the Product Liability Risk Retention Act of 1981 as amended.

88 Acts, ch 1111, §2

515E.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commissioner"* means the commissioner of insurance or the commissioner, director, superintendent of insurance, or similar public official, in any other state.

2. *"Completed operations liability"* means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by either of the following:

a. A person who performs that work.

b. A person who hires an independent contractor to perform that work.

However, liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability is included.

3. *"Domicile"*, for purposes of determining the state in which a purchasing group is domiciled, means either of the following:

a. For a corporation, the state in which the purchasing group is incorporated.

b. For an unincorporated entity, the state of its principal place of business.

4. *"Hazardous financial condition"* means a risk retention group not yet financially impaired or insolvent, which, based on its present or reasonably anticipated financial condition, is unlikely to be able to do one of the following:

a. Meet obligations to policyholders with respect to known claims and reasonably anticipated claims.

b. Pay other obligations in the normal course of business.

5. *"Insurance"* means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

6. *"Liability"* means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to other persons resulting from or arising out of either of the following:

a. A business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations.

b. An activity of a state or local government, or an agency or political subdivision of state or local government.

"Liability" does not include personal risk liability and an employer's liability with respect to its employees other than an employer's legal liability under the federal Employers' Liability Act, 45 U.S.C. § 51 et seq.

7. *"Personal risk liability"* means liability for damages because of injury to a person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection 6, paragraphs *"a"* and *"b"*.

8. *"Plan of operation or a feasibility study"* means an analysis which presents the expected activities and results of a risk retention group including, at a minimum, all of the following:

a. Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

b. For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.

c. Historical and expected loss experience of the proposed members and national experience of similar exposures.

d. Pro forma financial statements and projections.

e. Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.

f. Identification of management, underwriting and claim procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements.

g. Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state.

h. Other matters prescribed by the commissioner for liability insurance companies of the state in which the risk retention group is chartered or authorized by its insurance laws.

9. *"Product liability"* means liability for damages because of personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of a person for those damages if the product involved was in the possession of the person when the incident giving rise to the claim occurred.

10. *"Purchasing group"* means a group to which all of the following apply:

a. It has as one of its purposes the purchase of liability insurance on a group basis.

b. It purchases such insurance only for its group members and only to cover their similar or

related liability exposure, as described in paragraph *"c"*.

c. It is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

d. It is domiciled in any state.

11. *"Risk retention group"* means a corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands and to which all of the following apply:

a. Its primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.

b. It is organized for the primary purpose of conducting the activity described under paragraph *"a"*.

c. One of the following applies:

(1) It is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state.

(2) Before January 1, 1985, it was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any such group is a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as those terms were defined in the Product Liability Risk Retention Act of 1981, 15 U.S.C. § 3901, before the date of the enactment of the Risk Retention Amendments of 1986, Pub. L. No. 99-563.

d. It does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over such a person.

e. One of the following applies:

(1) It has as its members only persons who have an ownership interest in the group, and as its owners only persons who are members and are provided insurance by the risk retention group.

(2) It has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group.

(3) It has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group, and the organization members are the only persons who comprise the membership of the risk retention group and who are provided insurance by the group.

f. Its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of a related, similar, or common business trade, product, services, premises, or operations.

g. Its activities do not include the provision of insurance other than the following:

(1) Liability insurance for assuming and spreading all or any portion of the liability of its group members.

(2) Reinsurance with respect to the liability of any other risk retention group, or any members of another such group, which is engaged in businesses or activities so that the group or member meets the requirement described in paragraph *"f"* from membership in the risk retention group which provides the reinsurance.

h. Its name includes the phrase *"risk retention group"*.

12. *"State"* means a state of the United States or the District of Columbia.

88 Acts, ch 1111, §3

515E.3 Risk retention groups organized in this state.

To be organized as a risk retention group in this state, the group must be organized and licensed as a liability insurance company authorized by the insurance laws of this state. Except as provided elsewhere in this chapter, a risk retention group organized in this state must comply with all of the laws, rules, and requirements applicable to liability insurers organized in this state. Additionally, a risk retention group organized in this state must comply with section 515E.4. These requirements do not exempt risk retention groups from a duty imposed by any other law or rule of the state. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner of insurance of this state a plan of operation or a feasibility study, and revisions of the plan or study, within ten days of any change. The name under which a risk retention group may be chartered and licensed shall be a brief description of its membership followed by the phrase "risk retention group" and, unless its membership consists solely of insurers, shall not include the terms "insurance", "mutual", "reciprocal", or any similar term. All risk retention groups chartered in this state shall file with the division and the national association of insurance commissioners an annual statement blank prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual statement shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

88 Acts, ch 1111, §4; 92 Acts, ch 1162, §43

515E.4 Risk retention groups not organized in this state.

Risk retention groups chartered in other states and seeking to do business as a risk retention group in this state must observe and abide by the

laws of this state as provided in this section.

However, a risk retention group failing to qualify under the definitional requirement of the federal Act, will not benefit from this exemption from state law. The commissioner, therefore, may apply any of the laws that otherwise may be preempted by the federal Act because the nonexempt group will not qualify for the preemption.

1. *Notice of operations and designation of commissioner as agent.* Before offering insurance in this state, a risk retention group shall submit to the commissioner all of the following:

a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner of this state requires to verify that the risk retention group is qualified under section 515E.2, subsection 11.

b. A copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to its state of domicile. However, the provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to a line or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before that date by a risk retention group which had been organized and operating for not less than three years before that date.

c. A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process for which a filing fee set by the commissioner shall be paid.

d. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section 515E.3 at the same time that such revision is submitted to the commissioner of its chartering state.

2. *Financial condition.* A risk retention group doing business in this state shall submit to the commissioner all of the following:

a. A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist under criteria established by the national association of insurance commissioners.

b. A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.

c. Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group.

d. Information required to verify its continuing qualification as a risk retention group under section 515E.2, subsection 11.

3. *Taxation.*

a. Premiums paid for coverages within this state to risk retention groups are subject to taxation as provided in section 432.5.

b. To the extent agents or brokers are used, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

c. To the extent agents or brokers are not used or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Each risk retention group shall report all premiums paid to it for risks insured within the state.

4. *Compliance with unfair claims settlement practices law.* A risk retention group, its agents, and representatives, shall comply with the unfair claims settlement practices law in section 507B.4, subsection 9.

5. *Deceptive, false, or fraudulent practices.* A risk retention group shall comply with sections 507B.3 and 507B.4 regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

6. *Examination regarding financial condition.* A risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the national association of insurance commissioners' examiner handbook.

7. *Notice to purchasers.* Every application form for insurance from a risk retention agency and every policy issued by a risk retention group shall contain in ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

8. *Prohibited acts regarding solicitation or sale.* The following acts by a risk retention group are prohibited:

a. The solicitation or sale of insurance by a risk retention group to a person who is not eligible for membership in the group.

b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in a haz-

ardous financial condition or is financially impaired.

9. *Prohibition against ownership by an insurance company.* A risk retention group shall not be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

10. *Prohibited coverage.* A risk retention group shall not offer insurance policy coverage prohibited by law or declared unlawful by the highest court of this state.

11. *Delinquency proceedings.* A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection 6.

88 Acts, ch 1111, §5

515E.5 Compulsory associations.

A risk retention group shall not join or contribute financially to an insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall a risk retention group, or its insureds, receive any benefit from an insurance insolvency guaranty fund, or similar mechanism, in this state, for claims arising out of the operations of the risk retention group.

88 Acts, ch 1111, §6

515E.6 Countersignatures not required. Repealed by 98 Acts, ch 1057, § 13.

515E.7 Purchasing groups exemptions.

A purchasing group which meets the criteria established under the federal Act is exempt from any law of this state relating to the creation of groups for the purchase of insurance, the prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. An insurer is exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group is subject to all other applicable laws.

88 Acts, ch 1111, §8; 98 Acts, ch 1057, §11

515E.8 Purchasing groups — requirements.

1. A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which notice shall include all of the following:

a. The state in which the group is domiciled and all states in which the group does or intends to do business.

b. The lines and classifications of liability insurance which the purchasing group intends to purchase.

c. The insurance company from which the group intends to purchase its insurance and the domicile of that company.

d. The principal place of business of the group.

e. The method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state.

f. Other information as required by the commissioner to verify that the purchasing group is qualified under section 515E.2, subsection 10.

g. The commissioner may require the notice to be in a form prescribed by the national association of insurance commissioners.

2. A purchasing group, within ten days of any changes in any of the items set forth in subsection 1, shall notify the commissioner of the changes.

3. The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee determined by the commissioner shall be paid, except that the requirements do not apply in the case of a purchasing group to which all of the following apply:

a. It was domiciled before April 2, 1986, and is domiciled on and after October 27, 1986, in any state of the United States.

b. Before and since October 27, 1986, it purchased insurance from an insurance carrier licensed in any state.

c. It was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.

d. It does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

88 Acts, ch 1111, §9; 92 Acts, ch 1162, §44

515E.9 Purchasing group restrictions.

A purchasing group shall not purchase insurance from an insurer not admitted in this state unless the purchase is effected through a duly licensed agent or broker acting pursuant to sections 515.147 through 515.149.

88 Acts, ch 1111, §10; 90 Acts, ch 1234, §44

515E.10 Commissioner's administrative and procedural authority.

The commissioner may make use of any of the powers established under the laws of this state to enforce the laws of this state so long as those powers are not specifically preempted by the federal Act, including but not limited to, the commissioner's authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. With re-

gard to an investigation, administrative proceeding, or litigation, the commissioner may rely on the procedural law and rules of the state.

A risk retention group or purchasing group operating under this chapter shall be considered a person for purposes of chapter 507B.

88 Acts, ch 1111, §11; 93 Acts, ch 88, §25

515E.11 Penalties.

A risk retention group which violates a provision of this chapter is subject to fines and penalties applicable to licensed insurers generally, including revocation of the group's license and of the right to do business in this state.

88 Acts, ch 1111, §12

515E.12 License required for agents and brokers.

A person acting, or offering to act, as an agent or broker for a risk retention group or purchasing group, which solicits members, sells or procures insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state shall, before commencing any such activity, obtain a license from the commissioner.

88 Acts, ch 1111, §13

515E.13 Effect of federal district court orders.

An order issued by a district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state, or in all states, or in any territory or possession of the United States, upon a finding that such a group is in a hazardous or impaired financial condition, is enforceable in the courts of this state.

88 Acts, ch 1111, §14

515E.14 Rules.

The commissioner may establish and from time to time amend rules relating to risk retention groups as necessary or desirable to carry out the provisions of this chapter.

88 Acts, ch 1111, §15

CHAPTER 515F

CASUALTY INSURANCE

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DIVISION I

REGULATION OF RATES

515F.1 Purpose of chapter.

1. The purpose of this chapter is to promote the public welfare by regulating insurance rates so they are not excessive, inadequate, or unfairly discriminatory, and to authorize and regulate limited cooperative action among insurers in ratemaking-related activities and in other matters within the

scope of this chapter. This chapter is not intended to:

a. Prohibit or discourage reasonable competition.

b. Prohibit or encourage, except to the extent necessary to accomplish its purpose, uniformity in rating systems, rating plans, or practices.

2. This chapter shall be liberally interpreted to carry into effect the provisions of this section.

90 Acts, ch 1234, §45

515F.2 Definitions.

1. *"Advisory organization"* means an entity, including its affiliates or subsidiaries, which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers, and which assists insurers in ratemaking-related activities such as enumerated in sections 515F.10 and 515F.11. Two or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.

2. *"Commercial risk"* means any kind of risk which is not a personal risk.

3. *"Developed losses"* means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss (including loss adjustment expense) payments.

4. *"Expenses"* means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.

5. *"Joint underwriting"* means a voluntary arrangement established on an ad hoc basis to provide insurance coverage for a commercial risk pursuant to which two or more insurers jointly contract with the insured at a price and under policy terms agreed upon between the insurers.

6. *"Loss trending"* means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

7. *"Personal risk"* means insurance covering homeowners, tenants, private passenger nonfleet automobiles, and mobile homes, and other property and casualty insurance for personal, family, or household needs.

8. *"Pool"* means a voluntary arrangement, established on an ongoing basis, pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate, or other pooling agreement.

9. *"Prospective loss costs"* means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

10. *"Rate"* means the cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.

11. *"Residual market mechanism"* means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be offered to applicants who are unable to obtain insurance through ordinary methods.

12. *"Supplementary rating information"* includes a manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.

13. *"Supporting information"* means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer, the interpretation of any other data relied upon by the filer, descriptions of methods used in making the rates, and any other information required by the commissioner to be filed.

90 Acts, ch 1234, §46

515F.3 Scope of chapter.

This chapter applies to all forms of casualty insurance, including fidelity, surety, and guaranty bonds, including but not limited to all forms of fire and inland marine insurance, and to any combination of any of the foregoing, on risks or operations located in this state.

This chapter does not apply to:

1. Reinsurance, other than statutorily authorized joint reinsurance mechanisms to the extent stated in section 515F.13.

2. Accident and health insurance.

3. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, excluding inland marine insurance, as determined by the commissioner.

4. Workers' compensation insurance.

5. Surplus lines insurance.

6. Insurance written by a county or state mutual insurance association as provided in chapter 518 or 518A.

90 Acts, ch 1234, §47; 2000 Acts, ch 1023, §32; 2002 Acts, ch 1111, §24

Subsection 6 amended

515F.4 Rate standards.

Rates shall be made in accordance with the following:

1. Rates shall not be excessive, inadequate, or unfairly discriminatory.

2. Due consideration may be given to past and prospective loss experience within and outside this state; to the conflagration and catastrophe hazards; to a reasonable margin for profit and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to past and prospective expenses both within and outside this state; and to all other relevant factors within and outside this state; and in the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which experience data is available.

3. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. A risk classification, however, shall not be based upon race, creed, national origin, or the religion of the insured.

4. The expense provisions included in the rates to be used by an insurer shall reflect to the extent possible the operating methods of the insurer and its anticipated expenses.

5. The rates may contain a provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit, consideration shall be given to investment income attributable to unearned premium and loss reserves. Income from other sources shall not be considered.

90 Acts, ch 1234, §48

515F.4A Reasonableness of benefits in relation to premium charged.

Benefits provided by credit personal property insurance shall be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may reasonably be expected to develop a loss ratio of not less than fifty percent or such lower loss ratio as designated by the commissioner to afford a reasonable allowance for actual and expected loss experience including a reasonable catastrophe provision, general and administrative expenses, reasonable acquisition expenses, reasonable creditor compensation, investment income, premium taxes, licenses, fees, assessments, and reasonable insurer profit.

2001 Acts, ch 69, §34, 39

515F.5 Rate filings.

1. An insurer shall file with the commissioner, except as to inland marine risks which are not written according to manual rates or rating plans, every manual, minimum premium, class rate, rating schedule, rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. A filing shall state its proposed effective date, and shall indicate the character and extent of the coverage contemplated.

An insurer shall file or incorporate by reference to material which has been approved by the commissioner, at the same time as the filing of the rate, all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include or consist of a reference to any of the following:

a. The experience or judgment of the insurer or rating information filed by the advisory organization on behalf of the insurer as permitted by section 515F.11.

b. An interpretation of any statistical data the insurer relies upon.

c. The experience of other insurers or rating advisory organizations.

d. Any other relevant factors. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

When a filing is not accompanied by the information upon which the insurer supports the filing, the commissioner may require the insurer to furnish the supporting information and the waiting period commences on the date the information is furnished. Until the required information is furnished, the filing shall not be deemed complete or filed or available for use by the insurer. If the requested information is not furnished within a reasonable time period, the filing may be returned to the insurer as not filed and not available for use.

After reviewing an insurer's filing, the commissioner may require that the insurer's rates be based upon the insurer's own loss and expense information. If an insurer's loss or allocated loss adjustment expense information is not actuarially credible, as determined by the commissioner, the insurer may supplement its experience with information filed with the commissioner by an advisory organization.

Insurers using the services of an advisory organization shall, at the request of the commissioner, provide with a rate filing, a description of the rationale for that use, including its own information and method of using the advisory organization's information.

2. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

3. Subject to the exception in subsection 4, a filing shall be on file for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional

period not to exceed fifteen days if written notice is given within the waiting period to the insurer or advisory organization which made the filing that additional time is needed for the consideration of the filing. Upon written application by the insurer, the commissioner may authorize a filing which has been reviewed to become effective before the expiration of the waiting period or an extension of the waiting period. A filing is deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or an extension of the waiting period.

4. Under rules adopted under chapter 17A, the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, or subdivision or combination of insurance, or as to classes of risks, which are unnecessary to achieve the purposes of this chapter and the rates for which cannot practicably be filed before they are used. The commissioner may make an examination as the commissioner deems advisable to ascertain whether rates affected by the order meet the standards set forth in section 515F.4.

5. Upon the written application of the insured stating the insured's reasons, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on a specific risk.

6. An insurer shall not make or issue a contract or policy except in accordance with the filings which have been approved and are in effect for the insurer as provided in this chapter. This subsection does not apply to contracts or policies for inland marine risks as to which filings are not required.

90 Acts, ch 1234, §49; 92 Acts, ch 1162, §45; 95 Acts, ch 185, §25

515F.5A Collateral insurance and forced placement.

1. The commissioner shall review all collateral insurance forms and rates to assure that the rates are not excessive in comparison to the benefits provided to consumers.

2. The commissioner may adopt by rule procedures and restrictions to protect consumers from abusive practices in forced placement or collateral insurance. Rules may include, but are not limited to, the following:

a. Notice requirements, to assure that consumers have an opportunity to exercise reasonable choice in the placement, of a collateral insurance policy.

b. A prohibition or limitation on the receipt of a sales commission or other fee by the person making a forced placement, or the person's employer.

3. For purposes of this section, unless the context otherwise requires:

a. *"Collateral insurance"* means an insurance policy solely or primarily intended to provide security for a loan or to insure collateral for a loan.

b. *"Forced placement"* means the purchase of an insurance policy by a third person when the law or a contract obligates another person to pay the insurance premium.

92 Acts, ch 1162, §13

515F.6 Disapproval of filings.

1. If, within the waiting period or any extension of it as provided in section 515F.5, subsection 3, the commissioner finds that a filing does not meet the requirements of this chapter, written notice of disapproval shall be sent to the insurer or advisory organization which made the filing, specifying in what respects the filing fails to meet the requirements of this chapter and stating that the filing shall not become effective. If a filing is disapproved by the commissioner, the insurer or advisory organization, may request a hearing on the disapproval within thirty days. The insurer bears the burden of proving compliance with the standards established by this chapter.

2. If, at any time after a rate has been approved, the commissioner finds that the rate no longer meets the requirements of this chapter, the commissioner may order the discontinuance of use of the rate. The order of discontinuance may be issued only after a hearing with at least ten days' prior notice for all insurers affected by the order. The order must be in writing and state the grounds for the order. The order shall state when, within a reasonable period after the order is issued, the order of discontinuance shall be effective. The order shall not affect a contract or policy made or issued prior to the expiration of the period set forth in the order.

3. An insured which is aggrieved with respect to a filing which is in effect may make written application to the commissioner for a hearing on that filing. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if the applicant's grounds are established, and that the grounds otherwise justify holding a hearing, a hearing shall be held within thirty days after receipt of the application, upon not less than ten days' written notice to the applicant and to every insurer and advisory organization which made that filing.

If, after hearing, the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period after the order is issued, the filing shall no longer be in effect. Copies of the order shall be sent to the applicant and to every insurer and advisory organization which made that filing. The order shall not affect a contract or policy made or issued prior to the expiration of the period set forth in the order.

90 Acts, ch 1234, §50

515F.7 Information to be furnished insureds — hearings and appeals of insureds.

An insurer shall, within a reasonable time after receiving written request and upon payment of reasonable charges set by the commissioner, furnish to an insured affected by a rate made by the insurer, or to the authorized representative of the insured, all pertinent information as to the rate. An insurer shall provide within this state reasonable means for the insured aggrieved by the application of its rating system to be heard, in person or by the insured's authorized representative, on written request to review the manner in which the rating system has been applied in connection with the insurance afforded the insured. If the insurer fails to grant or reject a request for hearing and review within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. The insured affected by the action of the insurer on a request may, within thirty days after written notice of the action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to the insurer, may affirm or reverse the action.

90 Acts, ch 1234, §51

515F.8 Licensing advisory organizations.

1. *License required.* An advisory organization shall not provide a service relating to the rates of insurance subject to this chapter, and an insurer shall not utilize the services of an advisory organization for such purposes unless the advisory organization has obtained a license under subsection 3.

2. *Availability of services.* An advisory organization shall not refuse to supply any services for which it is licensed in this state to an insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

3. *Licensing.*

a. Application. An advisory organization applying for a license shall include with its application all of the following:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business.

(2) A list of its members and subscribers.

(3) The name and address of one or more residents of this state upon whom notices, process affecting it, or orders of the commissioner may be served.

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license.

(5) A biography of the ownership and management of the organization.

(6) Any other relevant information and documents that the commissioner may require.

b. Change of circumstances. An advisory organization which has applied for a license shall notify the commissioner of every material change in the facts or in the documents on which its application was based. An amendment to a document filed under this section shall be filed at least thirty days before it becomes effective.

c. Granting of license. If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, the commissioner shall issue a license specifying the authorized activity of the applicant. The commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market.

d. Duration. A license issued under this section shall remain in effect for one year unless the license is suspended or revoked. The commissioner may, at any time after hearing, revoke or suspend the license of an advisory organization which does not comply with the requirements and standards of this chapter.

90 Acts, ch 1234, §52

515F.9 Insurers and advisory organizations — prohibited activity.

1. An insurer or advisory organization shall not:

a. Attempt to monopolize, or combine or conspire with any other person to monopolize, an insurance market.

b. Engage in a boycott, on a concerted basis, of an insurance market.

2. *a.* An insurer shall not agree with any other insurer or with an advisory organization to mandate adherence to or to mandate use of a rate, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection, or similar material, except as needed to develop statistical plans permitted by section 515F.11, subsection 1. The fact that two or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently, the same rates, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.

b. Two or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this chapter as if they constituted a single insurer.

3. An insurer or advisory organization shall

not make an arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.

90 Acts, ch 1234, §53

515F.10 Advisory organizations — prohibited activity.

In addition to the other prohibitions contained in this chapter, except as specifically permitted under section 515F.11, an advisory organization shall not compile or distribute recommendations relating to rates that include profit or expenses, other than loss adjustment expenses.

90 Acts, ch 1234, §54

515F.11 Advisory organizations — permitted activity.

An advisory organization, in addition to other activities not prohibited, may, on behalf of its members and subscribers, do any or all of the following:

1. Develop statistical plans including territorial and class definitions.
2. Collect statistical data from members, subscribers, or any other source.
3. Prepare and distribute prospective loss costs.
4. Prepare and distribute factors, calculations, or formulas pertaining to classifications, territories, increased limits, and other variables.
5. Prepare and distribute manuals of rating rules and rating schedules that do not include final rates, expense provisions, profit provisions, or minimum premiums.
6. Distribute information that is required or directed to be filed with the commissioner.
7. Conduct research and on-site inspections in order to prepare classifications of public fire defenses.
8. Consult with public officials regarding public fire protection as it would affect members, subscribers, and others.
9. Conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses.
10. Prepare policy forms and endorsements and consult with members, subscribers, and others relative to their use and application.
11. Conduct research and on-site inspections for the purpose of providing risk information relating to individual structures.
12. Collect, compile, and distribute past and current prices of individual insurers and publish such information.
13. File final rates, at the direction of the commissioner, for residual market mechanisms.
14. Collect, compile, and distribute historical expense information.
15. Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

90 Acts, ch 1234, §55

515F.12 Advisory organizations — filing requirements.

An advisory organization shall file with the commissioner for approval all prospective loss costs and all supplementary rating information and every change or amendment or modification of any of the foregoing proposed for use in this state. The filings are subject to sections 515F.5 and 515F.6 and other provisions of this chapter relating to filings made by insurers.

90 Acts, ch 1234, §56

515F.13 Pool and residual market activities.

1. *Authorization.* Notwithstanding section 515F.9, rating organizations, advisory organizations, and insurers participating in joint underwriting, joint reinsurance pools, or residual market mechanisms may in connection with such activity act in cooperation with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections, and investigations, the furnishing of loss and expense statistics or other information, or carrying on research. Joint underwriting, joint reinsurance pools, and residual market mechanisms shall not be deemed advisory organizations.

2. *Regulation.*

a. Except to the extent modified by this section, insurers, and joint underwriting, joint reinsurance pool, and residual market mechanism activities are subject to the other provisions of this chapter.

b. If, after hearing, the commissioner finds that an activity or practice of an insurer participating in joint underwriting or a pool is unfair, is unreasonable, will tend to lessen competition in a market, or is otherwise inconsistent with the provisions or purposes of this chapter, the commissioner may issue a written order and require the discontinuance of that activity or practice.

c. A pool shall file with the commissioner a copy of its constitution; its articles of incorporation, agreement, or association; its bylaws, rules, and regulations governing its activities; its members; the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served; and any changes in amendments or changes in the foregoing.

d. A residual market mechanism, or plan or agreement to implement such a mechanism, and any changes or amendments thereto, shall be submitted in writing to the commissioner for consideration and approval, together with information as reasonably required by the commissioner. The commissioner shall only approve agreements found to contemplate both of the following:

(1) The use of rates which meet the standards

prescribed by this chapter.

(2) Activities and practices that are not unfair, unreasonable, or otherwise inconsistent with this chapter.

At any time after the agreements are in effect, the commissioner may review the practices and activities of the adherents to the agreements and if, after a hearing, the commissioner finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with this chapter, the commissioner may issue a written order to the parties and either require the discontinuance of the acts or revoke approval of the agreement.

90 Acts, ch 1234, §57

515F.14 Examinations.

The commissioner may, as often as deemed expedient, make or cause to be made an examination of each advisory organization referred to in section 515F.8 and of each group, association, or other organization referred to in section 515F.13. The reasonable costs of an examination shall be paid by the advisory organization or group, association, or other organization examined. The officers, manager, agents, and employees of the advisory organization, or group, association, or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of an examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of that state.

90 Acts, ch 1234, §58

515F.15 Rate administration.

1. *Recording and reporting of loss and expense experience.*

The commissioner may adopt reasonable rules for use by companies to record and report to the commissioner their rates and other information determined by the commissioner to be necessary or appropriate for the administration of this chapter and the effectuation of its purposes.

The commissioner may adopt reasonable rules and statistical plans, which shall then be used by each insurer in the recording and reporting of its loss and expense experience, in order that the experience of all insurers may be made available at least annually in the form and detail necessary to aid the commissioner in determining whether rating systems comply with the standards set forth in section 515F.4. The commissioner may designate one or more advisory organizations or other agencies to assist in gathering the experience and making compilations, and the compilations shall be public documents.

2. *Interchange of rating plan data.*

Reasonable rules and plans may be adopted by the commissioner for the interchange of data necessary for the application of rating plans.

3. *Consultation with other states.*

In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and advisory organization may exchange information and experience data with insurance supervisory officials, insurers, and advisory organizations in other states and may consult with them with respect to the application of rating systems.

4. *Rules.*

The commissioner may make reasonable rules necessary, including definitions of the rate standards contained in section 515F.4, to effect the purposes of this chapter.

90 Acts, ch 1234, §59

515F.16 False or misleading information.

A person, including an insurer, or advisory organization, shall not willfully withhold information which will affect the rates or premiums chargeable under this chapter from, or knowingly give false or misleading information to, the commissioner, a statistical agency designated by the commissioner, an advisory organization, or an insurer. A violation of this section subjects the one guilty of the violation to the penalties provided in section 515F.19.

90 Acts, ch 1234, §60

515F.17 Assigned risks.

Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, the insurance through ordinary methods, and the insurers may agree among themselves on the use of reasonable rate modifications for such insurance, the agreements and rate modifications to be subject to the approval of the commissioner.

90 Acts, ch 1234, §61

515F.18 Exemptions.

The commissioner may, upon the commissioner's own initiative or upon request of any person, by rule, exempt a market from any or all of the provisions of this chapter, if and to the extent that the exemption is necessary to achieve the purposes of this chapter.

90 Acts, ch 1234, §62

515F.19 Penalties.

The commissioner may, upon a finding that a person or organization has violated a provision of this chapter, impose a civil penalty of not more than ten thousand dollars for each violation, but if the violation is found to be willful, a penalty of not more than twenty-five thousand dollars may be imposed for each violation. The civil penalties may be in addition to any other penalty provided by law.

For purposes of this section, an insurer using a rate for which the insurer has failed to file the rate, supplementary rate information, underwriting rules or guides, or supporting information as required by this chapter, has committed a separate violation for each day the failure continues.

The commissioner may suspend or revoke the license of an advisory organization or insurer which fails to comply with an order of the commissioner within the time limit set by the order, or an extension of the order.

The commissioner may determine when a suspension of license becomes effective and it shall remain in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

A penalty shall not be imposed and a license shall not be suspended or revoked except upon a written order of the commissioner stating the commissioner's findings, made after hearing.

90 Acts, ch 1234, §63

DIVISION II

RATE FILINGS IN COMPETITIVE MARKETS

515F.20 Definitions.

As used in sections 515F.21 through 515F.25 unless the context otherwise requires:

1. *"Competitive market"* means a market for which an order is in effect pursuant to section 515F.22 that a reasonable degree of competition does exist.

2. *"Market"* means the interaction between buyers and sellers consisting of a product market component and a geographic market component. A product market component consists of identical or readily substitutable products including, but not limited to, consideration of coverage, policy terms, rate classifications, and underwriting. A geographic component is a geographical area in which buyers have a reasonable degree of access to the insurance product through sales outlets or other marketing mechanisms.

3. *"Noncompetitive market"* means a market which has not been found to be competitive pursuant to section 515F.22.

87 Acts, ch 132, §6
CS87, §515A.20
90 Acts, ch 1234, §77
C91, §515F.20

515F.21 Scope of application.

Section 515F.20 and sections 515F.22 through 515F.25 apply to all forms of casualty insurance except joint underwriting and joint reinsurance, assigned risks, and those excluded by section 515F.3.

87 Acts, ch 132, §7
CS87, §515A.21
90 Acts, ch 1234, §65, 77
C91, §515F.21

515F.22 Competitive market.

1. A noncompetitive market is presumed to exist unless the commissioner determines after a hearing that a reasonable degree of competition exists in the market and the commissioner issues an order to that effect. Such an order shall not become effective until sixty days after the date of the order and shall expire not later than one year thereafter unless the commissioner renews the order. Any affected insurer or insured may petition for a hearing on the renewal of an order relating to competitive status.

2. In determining whether a reasonable degree of competition exists, the commissioner shall consider relevant factors of workable competition pertaining to the market structure, market performance, and market conduct, and the practical opportunities available to consumers in the market to obtain pricing and other consumer information and to compare and obtain insurance from competing insurers. Such factors may include, but are not limited to, the following:

a. The size and number of insurers actually engaged in the market.

b. The profitability for insurers generally in the market segment and whether that profitability is unreasonably high.

c. The price variance on premiums offered in the market.

d. The availability of consumer information concerning the product and sales outlets or other sales mechanisms.

e. The efforts of insurers to provide consumer information.

f. Consumer complaints regarding the market generally.

87 Acts, ch 132, §8
CS87, §515A.22
90 Acts, ch 1234, §77
C91, §515F.22

515F.23 Noncompetitive market.

Unless the commissioner has determined a market to be competitive, the provisions of sections 515F.1 through 515F.19 apply.

87 Acts, ch 132, §9
CS87, §515A.23
90 Acts, ch 1234, §66, 77
C91, §515F.23

515F.24 Filing of rates in a competitive market.

1. Subject to the inland marine exception specified in section 515F.5, subsection 1, a competitive filing shall become effective when filed and shall be deemed to meet the requirements of section 515F.4 as long as the filing remains in effect unless

it is disapproved upon review by the commissioner.

2. In a competitive market, every insurer shall file with the commissioner all rates and supplementary rate information which are used in this state. The rates and supplementary rate information shall be filed not later than fifteen days after the effective date of the rates.

3. In a competitive market, if the commissioner finds that an insurer's rates require closer supervision because of the insurer's financial condition or unfairly discriminatory rating practices, the insurer shall file with the commissioner at least thirty days prior to the effective date of the rates all the rates and supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

87 Acts, ch 132, §10
CS87, §515A.24
90 Acts, ch 1234, §67, 77
C91, §515F.24

515F.25 Disapproval of a rate filing in a competitive market.

1. If the commissioner believes that an insurer's rate filing in a competitive market violates the requirements of sections 515F.4 and 515F.5, the commissioner may require the insurer to file supporting information. If after reviewing the supporting information the commissioner continues to believe that the filing violates sections 515F.4 and 515F.5, the commissioner shall notify the insurer of the insurer's right to petition for a hearing on any subsequent order relating to the filing.

2. The commissioner may disapprove prefiled rates that have not become effective. However, the commissioner shall notify the insurer whose rates have been disapproved of the insurer's right to petition for a hearing on the disapproval within thirty days after the disapproval.

3. If the commissioner disapproves a filing in a competitive market, the commissioner shall issue an order specifying the reasons the filing fails to meet the requirements of sections 515F.4 and 515F.5. For rates in effect at the time of disapproval, the commissioner shall inform the insurer within a reasonable period of time the date when further use of the rates for policies or contracts of insurance is prohibited. The order shall be issued within thirty days of disapproval, or within thirty days of a hearing on the disapproval if a hearing is held. The order may include a provision for premium adjustment for the period after the effective date of the order for policies or contracts in effect on the date of the order.

4. Whenever an insurer has filed no legally effective rates as a result of the commissioner's disapproval of a filing, the commissioner shall on request of the insurer work with the insurer to develop interim rates for the insurer that are sufficient to protect the interest of all parties and the commissioner may order that a specified portion of the premium be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately. The commissioner may waive distribution if the commissioner determines that the amount involved would not warrant such action.

87 Acts, ch 132, §11
CS87, §515A.25
90 Acts, ch 1234, §68, 77
C91, §515F.25

CHAPTER 515G

MUTUAL INSURANCE COMPANY CONVERSIONS

515G.1 Definitions.
515G.2 Mutual insurer becoming stock company — authorization.
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515G.4 Eligible policyholders participation.
515G.5 Appointment of consultant.
515G.6 Approval of plan by policyholders — notice of election — effective date.
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515G.8 Payment of fees, salaries, and costs.
515G.9 Act of conversion — continuation of company.
515G.10 Continuation of officers.
515G.11 Rules.
515G.12 Amendments — withdrawal.
515G.13 Prohibitions on certain offers to acquire shares.
515G.14 Limitation of actions — security for attorney fees.
515G.15 Duties of secretary of state.

515G.1 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. *"Affiliate"* of a mutual insurer means a per-

son who controls, is controlled by, or is under common control with, the mutual insurer being converted.

2. *"Control"* has the meaning assigned to it in section 521A.1, subsection 3.

3. *"Holder of a surplus note agreement"* means the holder of a guaranty fund or contribution certificate issued pursuant to section 515.20 or its equivalent which has been approved by the commissioner of insurance.

4. *"Mutual insurer"* means a domestic mutual property and casualty insurance company organized and licensed under chapter 515.

90 Acts, ch 1083, §1

515G.2 Mutual insurer becoming stock company — authorization.

A mutual insurer may become a stock insurance company pursuant to a plan established and approved in the manner provided by this chapter. The plan shall be adopted by the board of directors of the insurer to become effective on a future stated date. If conversion from a mutual insurer to a stock company is to be undertaken by a transaction which would be governed by chapter 521 or 521A, but the plan adopted by the board of directors of the insurer includes approval of an acquisition of control, merger, consolidation, or reinsurance, then chapter 521 or 521A shall not be applicable to the transaction. However, in that case, the commissioner may require any information from the person or persons acquiring control of the insurer as could be required under chapter 521 or 521A, and may disapprove the transaction on any basis on which it could be disapproved under chapter 521 or 521A.

90 Acts, ch 1083, §2

515G.3 Plan of conversion.

A plan of conversion shall include all of the following:

1. The proposed articles of incorporation and bylaws of the mutual insurer as a stock company.

2. The manner of treating a holder of a surplus note agreement, if any. The holder of a surplus note agreement, if otherwise qualified, may, at its option, exchange the agreement for an equitable share of the securities or other consideration, or both, of the corporation into which the insurer is to be converted.

3. The manner and basis of exchanging the equitable share of each mutual policyholder with a policy in force as provided in section 515G.4 for securities or other consideration, or both, of the stock corporation or an affiliate into which the mutual insurer is to be converted and the disposition of any unclaimed shares. The plan shall also provide that each person who had a policy of insurance in effect on the date of adoption of the plan is entitled to receive in exchange for an equitable share, without additional payment, consideration payable in voting common shares of the insurer, or other consideration, or both. The equitable share of the policyholder in the mutual insurer may include a base value for each policyholder in recognition of the voting rights of the policyholder and the balance of such equitable share of its statutory surplus, plus any adjustments for nonadmitted assets permitted by the commissioner, shall be determined by the ratio which the net earned premiums the policyholder has properly and timely paid to the insurer on insurance policies in effect during the three years immediately preceding the adoption of the plan bears to the total net earned premiums received by the mutual insurer from policyholders during that three-year period. If the equitable share of the policyholder entitles the policyholder to the purchase of a fractional share of stock, the policyholder has the option to receive the value of the fractional share in cash or purchase a full share by paying the balance in cash. However, policyholders due a de minimus amount, as established by the commissioner, need not be offered the value of the fractional share or the option to purchase a full share.

4. The number of voting common shares proposed to be authorized for the stock corporation, their par value, and the price at which they shall be offered.

A plan of conversion for an insurer organized on the mutual plan under chapter 491, shall also provide for conversion to a stock company as follows: the insurer organized on the mutual plan under chapter 491 shall amend its articles pursuant to chapter 491 as necessary to become a stock company, and shall immediately convert to a chapter 490 corporation as provided in section 490.1701 upon becoming a stock company.

90 Acts, ch 1083, §3

515G.4 Eligible policyholders participation.

The policyholders who are entitled to notice of and to vote upon approval of a plan of conversion and entitled to notice of a public hearing are the policyholders whose policies are in force on the date of the adoption of the plan by the board of directors.

90 Acts, ch 1083, §4

515G.5 Appointment of consultant.

A plan may provide for the appointment by the mutual insurer of a person as defined in section 4.1, subsection 20, who is qualified to act as a consultant. The appointment of the consultant shall be reviewed by the commissioner and unless the commissioner finds the consultant unqualified, the consultant shall carry out the duties required by the mutual insurer and this chapter.

The consultant may assist in determining the equity or value of the policyholders and the mutual insurer. The consultant may consider the value of the consideration to be given to the participat-

ing policyholders in exchange for their membership interests or into which the membership interest is to be converted and may consider any valuations necessary to carry out the plans provided for in section 515G.3. Valuations shall be made taking into account the latest filed annual statement of the mutual insurer and any significant developments occurring subsequent to the date of the statement.

The findings of the consultant may be modified by the mutual insurer at any time so long as the results are not unfair or inequitable to policyholders.

If it can be shown by the mutual insurer to the commissioner that an underwriter of the shares is a qualified person, the underwriter may be appointed as the consultant.

90 Acts, ch 1083, §5

515G.6 Approval of plan by policyholders — notice of election — effective date.

After the plan has been approved by the commissioner as provided in section 515G.7, the plan of conversion shall be submitted to and shall not take effect until approved by two-thirds of the policyholders of the mutual insurer voting on the plan or such greater vote, if any, as is required by the articles of incorporation or bylaws of the mutual insurer. Notice of a meeting for the purpose of voting on the conversion plan shall be provided by mail to each policyholder entitled to vote in accordance with notice provisions in the articles of incorporation or bylaws of the mutual insurer. Each policyholder entitled to vote may cast one vote unless otherwise provided in the articles of incorporation or bylaws of the mutual insurer. Voting shall be by ballot, in person, or by proxy. A quorum consists of a quorum as defined in the articles of incorporation or bylaws of the mutual insurer. A copy of the plan of conversion, or a summary of the plan of conversion, shall accompany the notice of meeting and election. An approved plan of conversion shall take effect on the date specified in the plan.

90 Acts, ch 1083, §6

515G.7 Review of plan by commissioner — hearing authorized — approval.

The commissioner of insurance shall review the plan. The commissioner shall approve the plan if the commissioner finds the plan complies with all provisions of law, the plan is fair and equitable to the mutual insurer and its policyholders, and that the reorganized company will have the amount of capital and surplus deemed by the commissioner to be reasonably necessary for its future solvency. The commissioner may order a hearing on the fairness and equity of the terms of the plan after giving written notice of the hearing to the mutual insurer, and its policyholders, all of whom have the right to appear at the hearing.

90 Acts, ch 1083, §7; 2000 Acts, ch 1023, §33

515G.8 Payment of fees, salaries, and costs.

A director, officer, agent, or employee of the mutual insurer shall not receive a fee, commission, or other valuable consideration, other than regular salary and compensation, for aiding, promoting, or assisting in the conversion except as set forth in the plan approved by the commissioner. However, this section does not prohibit the payment of reasonable fees and compensation to a consultant, attorneys at law, accountants, actuaries, or other persons specifically employed for services performed in the practice of their professions while completing the plan of conversion, even if these persons are directors of the mutual insurer.

90 Acts, ch 1083, §8

515G.9 Act of conversion — continuation of company.

When the commissioner and the policyholders approve the conversion plan as provided in this chapter, the commissioner shall issue a new certificate of authority to the successor stock company effective on the date specified in the plan. The successor stock company is a continuation of the mutual insurer and the conversion does not annul or modify any of the mutual insurer's existing suits, contracts, or liabilities except as provided in the approved conversion plan. All rights, franchises, and interests of the mutual insurer in and to property, assets, and other interests shall be transferred to and shall vest in the successor stock company and the successor stock company shall assume all obligations and liabilities of the mutual insurer.

The successor stock company shall exercise all rights and powers and perform all duties conferred or imposed by law on insurance companies writing the classes of insurance written by it, and shall retain the rights and contracts existing before conversion, subject to provisions of the plan.

90 Acts, ch 1083, §9

515G.10 Continuation of officers.

The directors and officers of the mutual insurer shall serve the reorganized company until new directors and officers are elected and qualify pursuant to the articles of incorporation and bylaws of the reorganized company.

90 Acts, ch 1083, §10

515G.11 Rules.

The commissioner may issue rules pursuant to chapter 17A to carry out the provisions of this chapter.

90 Acts, ch 1083, §11

515G.12 Amendments — withdrawal.

At any time before approval of the plan of conversion and pursuant to rules issued by the commissioner, the board of directors of a mutual insurer may amend the conversion plan. The board of directors of a mutual insurer may withdraw the plan of conversion at any time prior to the approval of the plan of conversion by either the commissioner or the policyholders.

90 Acts, ch 1083, §12

515G.13 Prohibitions on certain offers to acquire shares.

Prior to and for a period of five years following the effective date of the conversion, and five years following the date of distribution of consideration to the policyholders in exchange for their membership interests, an officer or director, including family members and their spouses, of the mutual insurer or the successor stock company, shall not directly or indirectly offer to acquire or acquire control of the successor stock company unless the acquisition is made pursuant to a stock option or other plan approved by the commissioner, made pursuant to the plan of conversion, or made after the initial public offering from a broker or dealer of registered securities with the securities and exchange commission at the quoted price on the date of purchase, or made in connection with the defense against an acquisition of control of the reorganized company pursuant to any proposal not approved by the board of directors. As used in this section, *"family member"* includes a brother, sister, spouse, parent, grandparent, ancestor, or descendant of the officer or director.

90 Acts, ch 1083, §13

515G.14 Limitation of actions — security for attorney fees.

An action challenging the validity of a conversion plan, or any part of a conversion plan, shall not be commenced more than thirty days following the date of approval by the commissioner, unless an application for rehearing is filed pursuant to section 17A.16, subsection 2. If an application for rehearing is filed, then such action must be filed within thirty days after that application is denied or deemed denied or, if the application is granted, within thirty days after the issuance of the commissioner's final decision on rehearing.

90 Acts, ch 1083, §14; 2000 Acts, ch 1023, §34

515G.15 Duties of secretary of state.

After approval of the conversion plan by the commissioner and the policyholders, the secretary of state shall accept for filing a verified copy of the amended articles of incorporation.

90 Acts, ch 1083, §15

CHAPTER 516

LIABILITY POLICIES — UNSATISFIED JUDGMENTS

516.1 Inurement of policy.
516.2 Settlement.
516.3 Limitation on action.

516.1 Inurement of policy.

All policies insuring the legal liability of the insured, issued in this state by any company, association or reciprocal exchange shall, notwithstanding any other provision of the statutes, contain a provision providing that, in event an execution on a judgment against the insured be returned unsatisfied in an action by a person who is injured or whose property is damaged, the judgment creditor shall have a right of action against the insurer to the same extent that such insured could have enforced the insured's claim against such insurer had such insured paid such judgment.

[C35, §9024-g1; C39, §**9024.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §516.1]

516.2 Settlement.

No settlement between said insurer and insured, after loss, shall bar said action unless consented to by said judgment plaintiff.

[C35, §9024-g2; C39, §**9024.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §516.2]

516.3 Limitation on action.

Said action may be brought against said insurer within one hundred eighty days from the entry of judgment in case no appeal is taken, and, in case of appeal, within one hundred eighty days after the judgment is affirmed on appeal, anything in the policy or statutes to the contrary notwithstanding.

[C35, §9024-g3; C39, §**9024.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §516.3]

CHAPTER 516A

UNINSURED, UNDERINSURED, OR HIT-AND-RUN MOTORISTS

516A.1 Coverage included in every liability policy — rejection by insured.
516A.2 Construction — minimum coverage — stacking.
516A.3 Definition.
516A.4 Insurer making payment — reimbursement.
516A.5 Tolling of statute.

516A.1 Coverage included in every liability policy — rejection by insured.

No automobile liability or motor vehicle liability insurance policy insuring against liability for bodily injury or death arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided in such policy or supplemental thereto, for the protection of persons insured under such policy who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle or a hit-and-run motor vehicle or an underinsured motor vehicle because of bodily injury, sickness, or disease, including death resulting therefrom, caused by accident and arising out of the ownership, maintenance, or use of such uninsured or underinsured motor vehicle, or arising out of physical contact of such hit-and-run motor vehicle with the person insured or with a motor vehicle which the person insured is occupying at the time of the accident. Both the uninsured motor vehicle or hit-and-run motor vehicle coverage, and the underinsured motor vehicle coverage shall include limits for bodily injury or death at least equal to those stated in section 321A.1, subsection 11. The form and provisions of such coverage shall be examined and approved by the commissioner of insurance.

However, the named insured may reject all of such coverage, or reject the uninsured motor vehicle (hit-and-run motor vehicle) coverage, or reject the underinsured motor vehicle coverage, by written rejections signed by the named insured. If rejection is made on a form or document furnished by an insurance company or insurance producer, it shall be on a separate sheet of paper which contains only the rejection and information directly related to it. Such coverage need not be provided in or supplemental to a renewal policy if the named insured has rejected the coverage in connection with a policy previously issued to the named insured by the same insurer.

[C71, 73, 75, 77, 79, 81, §516A.1]

83 Acts, ch 101, §108; 90 Acts, ch 1233, §33; 2001 Acts, ch 16, §10, 37

2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37

516A.2 Construction — minimum coverage — stacking.

1. Except with respect to a policy containing both underinsured motor vehicle coverage and uninsured or hit-and-run motor vehicle coverage, nothing contained in this chapter shall be construed as requiring forms of coverage provided pursuant hereto, whether alone or in combination with similar coverage afforded under other automobile liability or motor vehicle liability policies, to afford limits in excess of those that would be afforded had the insured thereunder been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits for bodily injury or death prescribed in subsection 11 of section 321A.1. Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits.

To the extent that Hernandez v. Farmers Insurance Company, 460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking of uninsured or underinsured coverages in contravention of specific contract or policy language, the general assembly declares such decision abrogated and declares that the enforcement of the antistacking provisions contained in a motor vehicle insurance policy does not frustrate the protection given to an insured under section 516A.1.

2. Pursuant to chapter 17A, the commissioner of insurance shall, by January 1, 1992, adopt rules to assure the availability, within the state, of motor vehicle insurance policies, riders, endorsements, or other similar forms of coverage, the terms of which shall provide for the stacking of uninsured and underinsured coverages with any similar coverage which may be available to an insured.

3. It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased by or on behalf of an injured insured and which provides uninsured, underinsured, or hit-and-run motor vehicle coverage to an insured injured in an accident, the injured insured is entitled to recover up to an amount equal to the highest single limit for uninsured, underinsured, or hit-and-run motor vehicle coverage under any one of the above described motor vehicle insurance

policies insuring the injured person which amount shall be paid by the insurers according to any priority of coverage provisions contained in the policies insuring the injured person.

[C71, 73, 75, 77, 79, 81, §516A.2]

91 Acts, ch 213, §30

516A.3 Definition.

For the purpose of this chapter, the term *"uninsured motor vehicle"* shall, subject to the terms and conditions of the coverage herein required, be deemed to include an insured motor vehicle with respect to which insolvency proceedings have been instituted against the liability insurer thereof by the insurance regulatory official of this or any other state or territory of the United States or of the District of Columbia.

An insurer's insolvency protection is applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect and only if the liability insurer of the tort-feasor is insolvent at the time of such an accident or becomes insolvent after the accident.

[C71, 73, 75, 77, 79, 81, §516A.3]

91 Acts, ch 26, §46; 92 Acts, ch 1162, §46

516A.4 Insurer making payment — reimbursement.

In the event of payment to any person under the coverage required by this chapter and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. The person to whom said payment is made under the insolvency protection required by this chapter shall to the extent thereof, be deemed to have waived any right to proceed to enforce such a judgment against the assets of the judgment debtor who was insured by the insolvent insurer whose insolvency resulted in said payment being made, other than assets recovered or recoverable by such judgment debtor from such insolvent insurer.

[C71, 73, 75, 77, 79, 81, §516A.4]

516A.5 Tolling of statute.

Commencement of an action by an insured under a provision included in an automobile liability or motor vehicle liability insurance policy pursuant to section 516A.1 tolls the statute of limitations for purposes of the insurer's subrogated cause of action against a party, as defined in section 668.2. Section 668.8 is also applicable to an action commenced as described in this section.

98 Acts, ch 1057, §12

CHAPTER 516B

AUTOMOBILE LIABILITY POLICIES

516B.1 Definitions.
516B.2 Reduction in premiums to reflect reductions in losses.
516B.3 Minor traffic violations not considered in establishing rates.

516B.1 Definitions.

As used in this chapter, unless otherwise required by the context:

1. *"Automobile liability policy"* means an insurance policy issued by an insurance carrier authorized to do business in this state to or for the benefit of the person named in the policy as insured against loss from liability imposed by law for damages arising out of ownership, maintenance, or use of an insured automobile.

2. *"Commissioner"* means the commissioner of insurance.

86 Acts, ch 1218, §1

516B.2 Reduction in premiums to reflect reductions in losses.

The commissioner shall require that insurance companies transacting business in this state reduce the automobile liability insurance premiums charged insureds in this state for liability insurance renewed or issued on or after July 1, 1987. The reduction in insurance premiums, on a statewide basis, shall be at whatever amount the commissioner of insurance deems appropriate as reflecting the reduction in annual losses incurred by the insurance companies with the enactment of 1986 Iowa Acts, chapter 1009. The commissioner

of insurance may annually make adjustments to the reduction in insurance premiums as the commissioner deems appropriate considering the latest statistics available to the commissioner.

In making the determination on the amount of reduction of automobile liability insurance premiums which takes effect July 1, 1987, the commissioner may employ or contract with actuarial consultants as necessary in making the determination. The reasonable fees and expenses of an actuarial consultant employed or contracted by the commissioner for the purpose of determining the amount of the July 1, 1987 reduction shall be assessed against and paid by the affected insurance companies.

86 Acts, ch 1218, §2

516B.3 Minor traffic violations not considered in establishing rates.

1. The commissioner shall require that insurance companies transacting business in this state not consider speeding violations occurring on or after July 1, 1986, but before May 12, 1987, which are for speeding violations for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour or speeding violations occurring on or after May 12, 1987, which are for speeding violations for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour for the purpose of establishing rates for motor vehicle insurance charged by the insurer and shall require that insurance companies not cancel or refuse to renew any such policy for such violations. In any twelve-month period, this section applies only to the first two such violations which occur.

2. If the rate for motor vehicle insurance is based on an operating record of a period longer than twelve months in length, the twelve-month periods under subsection 1 shall not overlap.

87 Acts, ch 120, §8; 88 Acts, ch 1158, §78; 88 Acts, ch 1214, §3

CHAPTER 516C

COLLISION DAMAGE WAIVERS

Repealed by 91 Acts, ch 204, §10; see chapter 516D

CHAPTER 516D

RENTAL OF MOTOR VEHICLES

516D.1 Title.
516D.2 Scope.
516D.3 Definitions.
516D.4 Collision damage and loss.
516D.5 Recovery for damage or loss.
516D.6 Disclosures.
516D.7 Prohibitions.
516D.8 Rules.
516D.9 Enforcement.

516D.1 Title.

This chapter shall be known and may be cited as the *"Iowa Car Rental and Collision Damage Waiver Act"*.

91 Acts, ch 204, §1

516D.2 Scope.

This chapter applies to advertising and business practices relating to vehicle rental agreements entered into in this state.

91 Acts, ch 204, §2

516D.3 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Authorized driver"* means any of the following:

a. A customer to whom a vehicle is rented.

b. A person expressly listed by a rental company on a rental agreement as an authorized driver.

c. A customer's spouse, if the spouse is a licensed driver and satisfies the rental company's minimum age requirement.

d. A customer's employer or coworker, if the employer or coworker is engaged in a business activity with the customer to whom the vehicle is rented, is a licensed driver, and satisfies the rental

company's minimum age requirement.

2. *"Collision damage waiver"* means a contract or contractual provision, whether separate from or a part of a rental agreement, whereby the rental company agrees, for a charge, to waive claims against an authorized driver for all, or any portion of, damages to the rental vehicle, loss due to theft of the rental vehicle, or damages resulting from the loss of use of the rental vehicle.

3. *"Customer"* means a person entering into a rental agreement and obtaining the use of a rental vehicle from a rental company under the terms of the rental agreement.

4. *"Estimated time for repair"* means a good faith estimate of the reasonable number of hours of labor, or fraction of an hour, needed to repair a damaged vehicle or damaged vehicle parts.

5. *"Estimated time for replacement"* means the number of hours of labor, or fraction of an hour, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as crash books.

6. *"Mandatory charge"* means any charge, fee differential, or surcharge that all or a majority of customers must pay in order to obtain or operate a rental vehicle except as follows:

a. *"Mandatory charge"* does not include an airport-imposed fee if the existence and amount of the fee are clearly and conspicuously disclosed immediately adjacent to any advertised rental price. The customer must be informed of the amount of the fee when the reservation is made. When an advertisement encompasses more than one rental location, the fee may be expressed as the maximum fee or range of fees.

b. *"Mandatory charge"* does not include taxes imposed directly upon the rental transaction by an authorized taxing authority.

c. Mandatory charge does not include mileage fees as long as the existence of any mileage limitation and cost per mile for excess mileage is clearly and conspicuously disclosed immediately adjacent to the advertised price.

7. *"Material restriction"* means a restriction, limitation, or other requirement which significantly affects the price of, normal anticipated use of, or a customer's financial responsibility for, a rental vehicle. Restrictions against any or all of the following activities in connection with the acquisition or use of a rental vehicle are not material restrictions:

a. Obtaining a rental vehicle by use of false or misleading information.

b. Operating a rental vehicle while intoxicated or under the influence of any drug.

c. Using a rental vehicle to transport persons or property for hire.

d. Using a rental vehicle to engage in a race, training activity, contest, or use for an illegal purpose.

e. Using a rental vehicle to push or tow a vehicle or other object.

f. Operating a rental vehicle in an abusive or reckless manner.

g. Operating a rental vehicle other than on regularly maintained hard surface roadways, including private driveways and parking lots. For purposes of this chapter, *"hard surface roadways"* includes, but is not limited to, all regularly maintained gravel-covered surfaces.

h. Operating a rental vehicle outside the continental United States unless specifically authorized by the rental agreement.

8. *"Placing a block"* means any procedure or mechanism which reserves a specified amount of the customer's otherwise available credit on the customer's credit or charge card account so that the amount is not available for future credit purchases.

9. *"Rental agreement"* means a written contract containing the terms and conditions for the use of a rental vehicle by a customer for a term of sixty days or less.

10. *"Rental company"* means a person in the business of providing rental vehicles to customers.

11. *"Rental vehicle"* means a private passenger type vehicle which, upon the execution of a rental agreement, is made available to a customer for the customer's use or other authorized driver's use.

91 Acts, ch 204, §3; 92 Acts, ch 1163, §101; 2002 Acts, ch 1151, §29

Subsection 6, paragraphs a and b amended

516D.4 Collision damage and loss.

1. A rental company shall not hold, or attempt to hold, an authorized driver liable for physical damage to a rental vehicle, loss due to theft of a rental vehicle, or damages resulting from the loss of use of a rental vehicle, unless the rental company offers the customer a collision damage waiver under the terms and conditions described in subsection 2 of this section, or unless one or more of the following applies:

a. The damage or loss is caused intentionally by an authorized driver or is a result of the authorized driver's willful, abusive, reckless, or wanton misconduct.

b. The damage or loss arises out of the authorized driver's operation of the rental vehicle while intoxicated or under the influence of a drug.

c. The damage or loss is caused while the authorized driver is engaged in a race, training activity, contest, or use of the rental vehicle for an illegal purpose.

d. The rental agreement is based on false or misleading information supplied by the customer or an authorized driver.

e. The damage or loss is caused by operating the rental vehicle other than on regularly maintained hard surface roadways, including private driveways and parking lots.

f. The damage or loss arises out of the use of the rental vehicle to transport persons or property

for hire or to push or tow anything.

g. The damage or loss occurs while the rental vehicle is operated by a driver other than an authorized driver.

h. The damage or loss arises out of the use of the rental vehicle outside the continental United States unless such use is specifically authorized by the rental agreement.

i. The damage or loss is attributable to theft which occurs with the prior knowledge or knowing participation of an authorized driver, or which is attributable to the authorized driver leaving the rental vehicle unattended with the keys in the rental vehicle.

This section does not alter the liability of a customer or authorized driver for bodily injury or the death of another and for property damage other than to the rental vehicle in accordance with the rental agreement. This section does not prohibit a rental company from accepting or negotiating master contracts with companies or government entities in advance of need whereby the companies or government entities specifically agree to assume liability in exchange for rate concessions. This section does not prohibit a rental company from entering into agreements with insurance companies to provide replacement vehicles to insurance company customers whereby the insurance company agrees to assume the risk of loss.

If the rental vehicle is not repaired, damages shall not exceed the fair market value of the vehicle, as determined in the customary market for that vehicle, less salvage or actual sale value, plus additional license and tax fees incurred because of the sale, plus administrative fees. A claim shall not be made for loss of use if the rental vehicle is not repaired.

2. A rental company may offer a collision damage waiver under the following terms and conditions:

a. All restrictions, conditions, and exclusions must be printed in the rental agreement, or on a separate sheet or document, in ten-point type, or larger; or written in pen and ink or typewritten in or on the face of the rental agreement in a blank space provided for such restrictions, conditions, and exclusions. The rental agreement may provide that the collision damage waiver may be voided under the conditions set forth in subsection 1, paragraphs *"a"* through *"i"*.

b. The rental agreement, separate sheet, or document must clearly and conspicuously state both the daily and estimated total charge for the collision damage waiver.

c. The rental agreement, separate sheet, or document given to the customer prior to entering into the rental agreement must display in ten-point type, or larger, the following notice:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER ALL OR PART OF YOUR RESPONSIBILITY FOR DAMAGE TO THE RENTAL VEHICLE.

BEFORE DECIDING WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN AUTOMOBILE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

The customer must separately acknowledge that the customer received the above notice, that the customer desires to purchase the collision damage waiver, and the terms of the collision damage waiver to which the customer agrees.

d. The car rental company shall not pay commissions to a rental counter agent or representative for selling collision damage waivers and is prohibited from considering volume of sales of collision damage waivers in an employee evaluation or determination of promotion.

However, notwithstanding whether a rental company offers a collision damage waiver under the provisions of this subsection, the rental company shall not hold an authorized driver liable for damage or loss due to theft except where subsection 1, paragraph *"i"* applies.

91 Acts, ch 204, §4

516D.5 Recovery for damage or loss.

A claim against an authorized driver resulting from damage to a rental vehicle, loss due to theft of a rental vehicle, or damages resulting from the loss of use of a rental vehicle, must be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and shall not assert or collect any claim for physical damage which exceeds the actual cost of the repair, including all discounts or price reductions. Administrative fees shall be limited to the reasonable administrative costs associated with processing the damage claim. A claim made for loss of use shall not exceed the daily rental rate stated in the customer's contract, excluding optional charges, multiplied by the total of the estimated time for replacement and the estimated time for repair, divided by eight.

91 Acts, ch 204, §5

516D.6 Disclosures.

1. All material restrictions on an advertised rate or on the use of the rental vehicle must be clearly and conspicuously disclosed in any price advertisement.

2. A rental company shall only advertise, quote, and charge a rental rate that includes all mandatory charges. A rental company shall not impose any mandatory charges in addition to the

advertised or quoted rental rate.

91 Acts, ch 204, §6

516D.7 Prohibitions.

Unfair or deceptive acts or practices in the advertisement or rental of vehicles are prohibited. Unfair or deceptive acts or practices include, but are not limited to, the following:

1. A representation connected with the advertisement or rental of a vehicle that the purchase of a collision damage waiver is mandatory.

2. Failure to provide disclosures as required by this chapter.

3. Failure to disclose in a manner likely to be noticed and comprehended in an advertisement, as defined in section 714.16, subsection 1, paragraph *"a"*, the availability of a collision damage waiver, and the cost of the waiver.

4. Misrepresentation of a customer's need for a collision damage waiver, personal accident insurance, or personal effects insurance.

5. Misrepresentation of the characteristics or availability of a reserved rental vehicle in order to rent a customer a more expensive vehicle than the one reserved.

6. Failure to provide a vehicle in the class reserved, or, if the reserved vehicle is out of stock, failure to provide another vehicle in the class reserved or a more expensive vehicle. A replacement vehicle for an out-of-stock reserved vehicle may be provided from the stock of the rental company or from another rental company but, in any event, must be provided at the rate quoted for the vehicle reserved.

7. Failure to disclose the following material restrictions, where applicable, in response to direct consumer inquiries regarding the price of renting a vehicle, when the rental company discloses a vehicle rental rate, and at the time the reservation is accepted:

a. Specific geographic restrictions and limitations, other than travel outside the continental United States.

b. Advance reservation and payment requirements.

c. The existence of penalties or higher rates that may apply for early or late returns.

d. Cost of an additional driver fee.

e. Credit or cash deposit requirements.

f. Extent of liability for damage or loss and price range of collision damage waiver.

g. Mileage limitations and charges.

8. Placement of a block against a customer's credit limit or charge against a customer's credit card in the following manner:

a. Placing a block or charge against a customer's credit limit without disclosing in the rental agreement in a clear and conspicuous manner the fact that a block or charge will be placed against the customer's credit card, and the amount of the block or charge. Such disclosure shall also be made orally whenever possible.

b. Placing a block or charge against a portion or the entirety of the credit limit of the card or otherwise placing a block or charge against the card in excess of the estimated total daily or weekly charges, including taxes and charges of optional services accepted by the customer, stated in the rental agreement multiplied by the number of days of the estimated rental if rented on a daily basis or, if rented on a weekly basis, multiplied by the number of weeks of the estimated rental.

c. Placing a block or charge against a customer's credit card and then failing to clear the unused amount of the block or charge against the customer's credit card after the customer returns the rental vehicle in the same amount of time, subject to credit card company or charge card company availability, as it took the rental company to place the block or charge against the customer's card when the customer rented the vehicle.

d. Placing or threatening to place a block or charge on a customer's credit card when seeking to recover any portion of a claim arising out of damage to, or loss of use of, the rental vehicle, unless, after the rental vehicle is damaged or lost, the rental company determines the exact amount of the repair or replacement costs and the customer authorizes the charge.

e. Charging an amount to a customer's credit card for damage to, or loss of use of, a rental vehicle after the customer has left the location where the rental vehicle was returned, unless the customer has authorized the specific charge, in a specific amount, to be charged to the customer's credit card. This subsection does not apply to a block in the amount of one dollar obtained for authorized charge amounts.

9. Assessment of additional driver fees for licensed drivers who are spouses or business associates engaged in business activities with the customer to whom the vehicle is rented, other than charges for a person who does not satisfy the rental company's minimum age requirement, if applicable.

91 Acts, ch 204, §7

516D.8 Rules.

The attorney general shall prescribe forms and adopt rules pursuant to chapter 17A as necessary to administer this chapter.

91 Acts, ch 204, §8

516D.9 Enforcement.

A violation of this chapter or any rules adopted by the attorney general pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*. The provisions of section 714.16, including, but not limited to, provisions relating to investigation, injunctive relief, and penalties, apply to violations of this chapter.

91 Acts, ch 204, §9

CHAPTER 516E

MOTOR VEHICLE SERVICE CONTRACTS

Chapter transferred from chapter 321I in Code 2001 pursuant to directive in 2000 Acts, ch 1147, §15

516E.1 Definitions.
516E.2 Insurance required.
516E.3 Filing and fee requirements.
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516E.12 Service of process.
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516E.14 Audits.
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516E.1 Definitions.

For the purposes of this chapter:

1. *"Commissioner"* means the commissioner of insurance as provided in section 505.1 or the deputy administrator appointed under section 502.601.

2. *"Mechanical breakdown insurance"* means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, and that is issued by an insurance company authorized to do business in this state.

3. *"Motor vehicle"* means any self-propelled vehicle subject to registration under chapter 321.

4. *"Motor vehicle service contract"* or *"service contract"* means a contract or agreement given for consideration over and above the lease or purchase price of a new or used motor vehicle having a gross vehicle weight rating of less than sixteen thousand pounds that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance or maintenance agreements providing scheduled repair and maintenance services for leased vehicles.

5. *"Motor vehicle service contract provider"* or *"provider"* means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract.

6. *"Motor vehicle service contract reimbursement insurance policy"* or *"reimbursement insurance policy"* means a policy of insurance providing coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider.

7. *"Record"* means information stored or preserved in any medium, including in an electronic or paper format. A record includes but is not limited to documents, books, publications, accounts, correspondence, memoranda, agreements, computer files, film, microfilm, photographs, and audio or visual tapes.

8. *"Service contract holder"* means a person who purchases a motor vehicle service contract.

85 Acts, ch 45, §1
CS85, §321I.1
90 Acts, ch 1145, §1; 92 Acts, ch 1163, §77; 2000 Acts, ch 1147, §1, 2, 15
C2001, §516E.1

516E.2 Insurance required.

1. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the provider of the service contract is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state.

2. The issuer of a reimbursement insurance policy shall not cancel a reimbursement insurance policy unless a written notice has been received by the commissioner and by each applicable provider, including automobile dealers and third-party administrators. The notice shall fix the date of cancellation at a date no earlier than ten days after receipt of the notice by the commissioner and by the applicable provider. The notice may be made in person or by mail and a post office department receipt of certified or registered mailing shall be deemed proof of receipt of the notice.

85 Acts, ch 45, §2
CS85, §321I.2
90 Acts, ch 1145, §2; 2000 Acts, ch 1147, §3, 15
C2001, §516E.2

516E.3 Filing and fee requirements.

1. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless a true and correct copy of the service contract and the provider's reimbursement insurance policy have been filed with the commissioner.

2. In addition to any other required filings, an accurate copy of the service contract and the provider's reimbursement insurance policy, the consent to service of process on the commissioner, and such other information as the commissioner requires shall be filed annually with the commissioner no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the provider shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after the first of August and sales have occurred during the period when the provider was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

3. *a.* A motor vehicle service contract provider shall promptly file the following information with the insurance commissioner:

(1) A change in the name or ownership of the provider.

(2) The termination of the provider's business.

b. The provider is not required to submit a fee as part of this filing.

85 Acts, ch 45, §3
CS85, §321I.3
90 Acts, ch 1145, §3; 98 Acts, ch 1189, §1; 2000 Acts, ch 1147, §4, 5, 15
C2001, §516E.3

516E.4 Disclosure to provider.

A motor vehicle service contract reimbursement insurance policy shall not be issued, sold, or offered for sale in this state unless the reimbursement insurance policy conspicuously states that the issuer of the policy shall pay on behalf of the provider all sums which the provider is legally obligated to pay for failure to perform according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider.

85 Acts, ch 45, §4
CS85, §321I.4
2000 Acts, ch 1147, §15
C2001, §516E.4

516E.5 Disclosure to service contract holders — contract provisions.

1. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the provider to the service contract holder are guaranteed under the service contract reimbursement policy, and unless the contract conspicuously states the name and address of the issuer of the reimbursement policy.

2. A motor vehicle service contract shall be written in clear, understandable language and the entire contract shall be printed or typed in easy-to-read type, size, and style, and shall not be issued, sold, or offered for sale in this state unless the contract does all of the following:

a. Clearly and conspicuously states that the obligations of the provider to the service contract holder are guaranteed under a service contract reimbursement insurance policy.

b. Clearly and conspicuously states the name and address of the issuer of the reimbursement insurance policy.

c. Identifies the motor vehicle service contract provider, the seller of the motor vehicle, and the service contract holder.

d. Sets forth the total purchase price and the terms under which the purchase price is to be paid.

e. Sets forth the procedure for making a claim, including a telephone number.

f. Clearly and conspicuously states the dates that coverage starts and ends and the existence, terms, and conditions of a deductible amount, if any.

g. Specifies the merchandise or services, or both, to be provided and clearly states any and all limitations, exceptions, or exclusions.

h. Sets forth the conditions on which substitution of services will be allowed.

i. Sets forth all of the obligations and duties of the service contract holder, including but not limited to the duty to protect against any further damage to the motor vehicle, and the obligation to notify the provider in advance of any repair, if any.

j. Sets forth any and all terms, restrictions, or conditions governing transferability of the service contract, if any.

k. Describes or references any and all applicable provisions of the Iowa consumer credit code, chapter 537.

l. States the name and address of the commissioner.

m. Sets forth any and all conditions on which the service contract may be canceled, the terms and conditions for the refund of any portion of the purchase price, the identity of the person primarily liable to provide any refund, and the identity of any other person liable to provide any portion of the refund.

3. A complete copy of the terms of the motor vehicle service contract shall be delivered to the pro-

spective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the motor vehicle service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

85 Acts, ch 45, §5
CS85, §321I.5
90 Acts, ch 1145, §4; 94 Acts, ch 1031, §1; 98 Acts, ch 1189, §2, 3; 2000 Acts, ch 1147, §15
C2001, §516E.5

516E.6 Commissioner may prohibit certain sales — injunction.

The commissioner shall issue an order instructing the provider to cease and desist from selling or offering for sale motor vehicle service contracts if the commissioner determines that the provider has failed to comply with a provision of this chapter. Upon the failure of a motor vehicle service contract provider to obey a cease and desist order issued by the commissioner, the commissioner may give notice in writing of the failure to the attorney general, who shall immediately commence an action against the provider to enjoin the provider from selling or offering for sale motor vehicle service contracts until the provider complies with the provisions of this chapter and the district court may issue the injunction.

85 Acts, ch 45, §6
CS85, §321I.6
98 Acts, ch 1189, §4; 2000 Acts, ch 1147, §15
C2001, §516E.6

516E.7 Rules.

The commissioner may adopt rules as provided in chapter 17A to administer and enforce the provisions of this chapter and to establish minimum standards for disclosure of motor vehicle service contract coverage limitations and exclusions.

85 Acts, ch 45, §7
CS85, §321I.7
2000 Acts, ch 1147, §15
C2001, §516E.7

516E.8 Exemption.

This chapter does not apply to a motor vehicle service contract issued by the manufacturer or importer of the motor vehicle covered by the service contract or to any third party acting in an administrative capacity on the manufacturer's behalf in connection with that service contract.

85 Acts, ch 45, §8
CS85, §321I.8
90 Acts, ch 1145, §5; 94 Acts, ch 1031, §2; 2000 Acts, ch 1147, §15
C2001, §516E.8

516E.9 Misrepresentations of state approval.

A motor vehicle service contract provider shall not represent or imply in any manner that the provider has been sponsored, recommended, or approved or that the provider's abilities or qualifications have in any respect been passed upon by the state of Iowa, including the commissioner, the insurance division, or the division's securities bureau.

90 Acts, ch 1145, §7
C91, §321I.10
92 Acts, ch 1163, §78; 2000 Acts, ch 1147, §6, 15
C2001, §516E.9

516E.10 Prohibited acts — unfair or deceptive trade practices.

1. *Misrepresentations, false advertising, and unfair practices.*

a. Unless licensed as an insurance company, a motor vehicle service contract provider shall not use in its name, contracts, or literature, the words *"insurance"*, *"casualty"*, *"surety"*, *"mutual"*, or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other motor vehicle service contract provider.

b. A motor vehicle service contract provider shall not, without the written consent of the purchaser, knowingly charge a purchaser for duplication of coverage or duties required by state or federal law, a warranty expressly issued by a manufacturer or seller of a product, or an implied warranty enforceable against the lessor, seller, or manufacturer of a product.

c. A motor vehicle service contract provider shall not make, permit, or cause a false or misleading statement, either oral or written, in connection with the sale, offer to sell, or advertisement of a motor vehicle service contract.

d. A motor vehicle service contract provider shall not permit or cause the omission of a material statement in connection with the sale, offer to sell, or advertisement of a motor vehicle service contract, which under the circumstances should have been made in order to make the statement not misleading.

e. A motor vehicle service contract provider shall not make, permit, or cause to be made a false or misleading statement, either oral or written, about the benefits or services available under the motor vehicle service contract.

f. A motor vehicle service contract provider shall not make, permit, or cause to be made a statement of practice which has the effect of creating or maintaining a fraud.

g. A motor vehicle service contract provider shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper,

magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the motor vehicle service contract industry or with respect to a motor vehicle service contract provider which is untrue, deceptive, or misleading. It is deceptive or misleading to use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a manufacturer or of such a nature that the use would tend to mislead a person into believing that the solicitation is in some manner connected with the manufacturer, unless actually authorized or issued by the manufacturer.

h. A bank, savings and loan association, credit union, insurance company, or other lending institution shall not require the purchase of a motor vehicle service contract as a condition of a loan.

2. *Defamation.* A motor vehicle service contract provider shall not make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of an oral or written statement or a pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of a person, and which is calculated to injure the person.

3. *Boycott, coercion, and intimidation.* A motor vehicle service contract provider shall not enter into an agreement to commit, or by a concerted action commit, an act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the service contract industry.

4. *False statements.* A motor vehicle service contract provider shall not knowingly file with a supervisory or other public official, or knowingly make, publish, disseminate, circulate, or deliver to a person, or place before the public, or knowingly cause directly or indirectly to be made, published, disseminated, circulated, delivered to a person, or placed before the public, a false material statement of fact as to the financial condition of a person.

5. *False entries.* A motor vehicle service contract provider shall not knowingly make a false entry of a material fact in a book, report, or statement of a person or knowingly fail to make a true entry of a material fact pertaining to the business of the person in a book, report, or statement of the person.

6. A motor vehicle service contract provider shall not repair a motor vehicle covered by a motor vehicle service contract with any of the following:

a. Used parts, unless the provider receives prior written authorization by the vehicle owner.

b. Rebuilt parts, unless the parts are rebuilt according to national standards recognized by the insurance division.

7. *Violations of section 714.16.*

a. A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is an unfair practice as defined in section 714.16.

b. An enforcement agreement between the commissioner and a motor vehicle service contract provider does not bar the attorney general from bringing an action against the provider under section 714.16 as to allegations that a violation of this chapter constitutes a violation of section 714.16.

90 Acts, ch 1145, §8
C91, §321I.11
98 Acts, ch 1189, §5; 2000 Acts, ch 1147, §7, 15
C2001, §516E.10

516E.11 Records — explanation of reasons for denial of claims.

1. A motor vehicle service contract provider shall keep accurate records concerning transactions regulated under this chapter.

a. A motor vehicle service contract provider's records shall include all of the following:

(1) Copies of all service contracts.

(2) The name and address of each service contract holder.

(3) The dates, amounts, and descriptions of all receipts, claims, and expenditures related to service contracts.

(4) Copies of all materials relating to claims which have been denied.

b. A motor vehicle service contract provider shall retain all required records pertaining to a service contract holder for at least two years after the specified period of coverage has expired. A provider discontinuing business in this state shall maintain its records until the provider furnishes the commissioner satisfactory proof that the provider has discharged all obligations to contract holders in this state.

c. Motor vehicle service contract providers shall make all records concerning transactions regulated under the chapter available to the commissioner for the purpose of examination.

2. A motor vehicle service contract provider shall promptly deliver a written explanation to the service contract holder, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the service contract.

90 Acts, ch 1145, §9
C91, §321I.12
94 Acts, ch 1031, §3; 98 Acts, ch 1189, §6; 2000 Acts, ch 1147, §8 – 10, 15
C2001, §516E.11

516E.12 Service of process.

The commissioner shall be the agent for service of process upon a motor vehicle service contract provider and an issuer of a reimbursement insur-

ance policy.
90 Acts, ch 1145, §10
C91, §321I.13
2000 Acts, ch 1147, §15
C2001, §516E.12

516E.13 Orders, investigations, examinations, and subpoenas.

1. The commissioner may take actions which are necessary or appropriate for the protection of service contract holders or for the effective administration of this chapter. The commissioner may make private and public investigations and examinations as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter or a rule or order adopted or issued pursuant to this chapter.

2. In an investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of records which the commissioner deems relevant or material to an inquiry, all of which may be enforced in accordance with chapter 17A.

3. A person is not excused from attending and testifying or from producing a document or record before the administrator or in obedience to a subpoena of the administrator or an officer designated by the administrator, or in a proceeding instituted by the administrator, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, a person shall not be prosecuted or subjected to any penalty or forfeiture due to a transaction or matter about which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise. The person testifying, however, is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

4. Upon the commissioner's determination that a provider has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted pursuant to this chapter, the commissioner may issue a summary order directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

a. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this subsection may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection.

b. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

90 Acts, ch 1145, §11
C91, §321I.14
94 Acts, ch 1031, §4; 2000 Acts, ch 1147, §11, 15
C2001, §516E.13

516E.14 Audits.

The commissioner may examine or cause to be examined the records of a motor vehicle service contract provider for the purpose of verifying compliance with this chapter. The commissioner may require, by a subpoena, the attendance of the provider, or the provider's representative, and any other witness whom the commissioner deems necessary or expedient, and the production of records relating in any manner to compliance with this chapter if a provider or witness fails or refuses to produce the documents for examination when requested by the commissioner.

90 Acts, ch 1145, §12
C91, §321I.15
2000 Acts, ch 1147, §12, 15
C2001, §516E.14

516E.15 Violations — penalties.

1. *a.* Except as provided in paragraph *"b"*, all of the following shall apply:

(1) A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*. The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

(2) A person who willfully and knowingly violates this chapter or a rule adopted pursuant to this chapter is, upon conviction, guilty of a class "D" felony.

b. A motor vehicle service contract provider who fails to file documents and information with the commissioner as required pursuant to section 516E.3 may be subject to a civil penalty. The amount of the civil penalty shall not be more than four hundred dollars plus two dollars for each mo-

tor vehicle service contract that the person executed prior to satisfying the filing requirement. However, a person who fails to file information regarding a change in the provider's name or the termination of the provider's business as required pursuant to section 516E.3 is subject to a civil penalty of not more than five hundred dollars.

2. If the commissioner believes that grounds exist for the criminal prosecution of a motor vehicle service contract provider for violating this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession for action deemed appropriate by the attorney general or county attorney. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county served by the county attorney.

94 Acts, ch 1031, §5
C95, §321I.16
2000 Acts, ch 1147, §13, 15
C2001, §516E.15

CHAPTER 517

EMPLOYERS LIABILITY INSURANCE

517.1 Reserve required.
517.2 Terms defined.
517.3 Distribution of unallocated payments.
517.4 Reports required.
517.5 Inspection not basis for civil liability.
517.6 Issuance of employers' liability coverage.

517.1 Reserve required.

Every corporation, association, company, or reciprocal exchange writing any of the several classes of insurance authorized by paragraph *"d"* of subsection 5 of section 515.48 shall maintain reserves for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable computed as follows:

1. For all liability suits being defended under policies written more than:

a. Ten years prior to the date as of which the statement is made, one thousand five hundred dollars for each suit.

b. Five and less than ten years prior to the date as of which the statement is made, one thousand dollars for each suit.

c. Three and less than five years prior to the date as of which the statement is made, eight hundred fifty dollars for each suit.

2. For all liability policies written during the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty percent of the earned liability premiums of each of such three years less all loss and loss expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall, for the first of such three years, be not less than seven hundred fifty dollars for each outstanding liability suit on said year's policies.

3. For all compensation claims under policies written more than three years prior to the date as of which the statement is made, the present values at four percent interest of the determined and the estimated future payments.

4. For all compensation claims under policies written in the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five percent of the earned compensation premiums of each of such three years, less all loss and loss expense payments in connection with such claims under policies written in the corresponding years; but in any event, in the case of the first year of any of such three-year period such reserve shall be not less than the present value at four percent interest of the determined and the estimated unpaid compensation claims under policies written during such year.

[C24, 27, 31, 35, 39, §**9025;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517.1]

517.2 Terms defined.

The term *"earned premiums"* as used herein shall include gross premiums charged on all policies written, including all determined excess and additional premiums, less returned premiums, other than premiums returned to policyholders as dividends, and less reinsurance premiums and premiums on policies canceled, and less unearned premiums on policies in force.

Any participating company which has charged in its premiums a loading solely for dividends shall not be required to include such loading in its earned premiums, provided a statement of the amount of such loading has been filed with and approved by the commissioner of insurance.

The term *"compensation"* as used in this chapter

shall relate to all insurances affected by virtue of statutes providing compensation to employees for personal injuries irrespective of fault of the employer.

The term *"liability"* shall relate to all insurance, except compensation insurance, against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable.

The terms *"loss payments"* and *"loss expense payments"* as used herein shall include all payments to claimants, including payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, and field personnel, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated.

[C24, 27, 31, 35, 39, §**9026;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517.2]

517.3 Distribution of unallocated payments.

All unallocated liability loss expense payments made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies shall be distributed as follows: Thirty-five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding, ten percent to the policies written in the third year preceding, and five percent to the policies written in the fourth year preceding, and such payments made in each of the first four calendar years in which an insurer issues liability policies shall be distributed as follows: In the first calendar year one hundred percent shall be charged to the policies written in that year, in the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year, in the third calendar year forty percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, and twenty percent to the policies written in the second year preceding, and in the fourth calendar year thirty-five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, fifteen percent to the policies written in the second year preceding, and ten percent to the policies written in the third year preceding, and a schedule showing such distribution shall be included in the annual statement.

All unallocated compensation loss expense payments made in a given calendar year subsequent to the first three years in which an insurer has been issuing compensation policies shall be distributed as follows:

Forty percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding and five percent to the policies written in the third year preceding, and such payments made in each of the first three calendar years in which an insurer issues compensation policies shall be distributed as follows: In the first calendar year one hundred percent shall be charged to the policies written in that year, in the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year, in the third calendar year forty-five percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year and ten percent to the policies written in the second year preceding, and a schedule showing such distribution shall be included in the annual statement.

Whenever, in the judgment of the commissioner of insurance, the liability or compensation loss reserves of any insurer under the commissioner's supervision, calculated in accordance with the foregoing provisions, are inadequate, the commissioner may, in the commissioner's discretion, require such insurer to maintain additional reserves based upon estimated individual claims or otherwise.

[C24, 27, 31, 35, 39, §**9027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517.3]

517.4 Reports required.

Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the commissioner of insurance may prescribe.

[C24, 27, 31, 35, 39, §**9028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517.4]

Annual statement, §515.63

517.5 Inspection not basis for civil liability.

No inspection of any place of employment made by insurance company inspectors or other inspectors inspecting for group self-insurance purposes shall be the basis for the imposition of civil liability upon the inspector or upon the insurance company employing the inspector or upon any group organized for self-insurance purposes which employs an inspector and is regulated by the insurance departments; but this provision refers only to liability arising out of the making of an inspection and shall not be construed to deny or limit the liability of any employer to the employer's employees or the liability of any insurance carrier on its insurance policy.

[C79, 81, §517.5]

517.6 Issuance of employers' liability coverage.

An insurer intending to issue a policy providing employers' liability insurance only and covering a corporate officer excluded from workers' compensation coverage by the signing of a written rejection of workers' compensation coverage under section 87.22, shall file the policy with and obtain the approval of the commissioner of insurance. The filing shall include the premium rates which will apply to the employers' liability coverage.

83 Acts, ch 36, §6, 8

CHAPTER 517A

LIABILITY INSURANCE FOR PUBLIC EMPLOYEES

See chapter 669 for tort liability of state
See chapter 670 for tort liability of governmental subdivisions

517A.1 Authority to purchase.

517A.1 Authority to purchase.

All state commissions, departments, boards and agencies and all commissions, departments, boards, districts, municipal corporations and agencies of all political subdivisions of the state of Iowa not otherwise authorized are hereby authorized and empowered to purchase and pay the premiums on liability, personal injury and property damage insurance covering all officers, proprietary functions and employees of such public bodies, including volunteer fire fighters, while in the performance of any or all of their duties including operating an automobile, truck, tractor, machinery or other vehicles owned or used by said public bodies, which insurance shall insure, cover and protect against individual personal, corporate or quasi corporate liability that said bodies or their officers or employees may incur.

The form and liability limits of any such liability insurance policy purchased by any commission, department, board, or agency of the state of Iowa shall be subject to the approval of the attorney general.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §517A.1]

CHAPTER 518

COUNTY MUTUAL INSURANCE ASSOCIATIONS

Memorandum of intent, 61 GA (1965), Senate Journal, page 1612;
House Journal, page 1785

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518.1 Incorporation.

Corporations formed to operate as county mutual insurance associations shall be governed by the provisions of chapter 491, except as modified by the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §518.1]

518.2 Articles — approval.

An organization shall present to the commissioner of insurance for approval its articles of incorporation, which shall show its name, objects and purposes, the time and place of the annual meeting of the members, and the location of its principal place of business, and any subsequent amendments to its articles. The commissioner of insurance shall submit the articles of incorporation and any subsequent amendments to the articles to the attorney general for examination, and if found by the attorney general to be in accordance with the provisions of this chapter and the Constitution and the laws of the state, the attorney general shall certify such fact on the articles of incorporation and on any amendments to the articles and return them to the commissioner. Articles of incorporation and amendments to the articles shall not be approved by the commissioner or recorded unless certified by the attorney general.

[C66, 71, 73, 75, 77, 79, 81, §518.2]

99 Acts, ch 165, §15

518.3 Certificate — recording.

If the commissioner of insurance approves the articles of incorporation, the commissioner shall so certify and the articles with the certificates of approval shall then be recorded and certified by the secretary of state.

[C66, 71, 73, 75, 77, 79, 81, §518.3]

518.4 Identification as to type of insurer.

Any association incorporated under the laws of this state for the purpose of furnishing insurance as provided for in this chapter shall be known as a county mutual insurance association. The words "mutual" and "association" shall be incorporated in and become a part of its name.

[C97, §1760; S13, §1759-b; C24, 27, 31, 35, 39, §**9030;** C46, 50, 54, 58, 62, §518.2; C66, 71, 73, 75, 77, 79, 81, §518.4]

518.5 Commencement of business — conditions.

No county mutual insurance association shall issue policies until applications for insurance of not less than fifty thousand dollars, representing at least fifty applicants, have been received, and no application for insurance during the period of organization shall exceed two percent of the amount required for organization, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

[C66, 71, 73, 75, 77, 79, 81, §518.5]

518.6 Powers of the members.

Members of the association shall have the power to make or amend articles of incorporation at any membership meeting, provided that notice of such addition or amendment has been mailed to each member at least ten days in advance of the meeting in which such proposed action is to be considered, and provided that no amendment shall become effective until approved by the commissioner of insurance and recorded in the office of the secretary of state.

[C66, 71, 73, 75, 77, 79, 81, §518.6]

518.7 Officers and directors — election.

Officers or directors shall be elected in the manner and for the length of time prescribed in the articles of incorporation. The same person shall not simultaneously hold the offices of president and secretary. A director shall be a member of the association.

[C66, 71, 73, 75, 77, 79, 81, §518.7]

97 Acts, ch 186, §22; 2000 Acts, ch 1023, §35

518.8 Bylaws.

The directors of the association shall have the authority to enact such bylaws and regulations not inconsistent with law as they consider necessary for the regulation and conduct of the business. No change in the bylaws shall have the effect of limiting coverage under existing policies of insurance. An association shall file with the commissioner bylaws and subsequent amendments to the bylaws within thirty days of the adoption of the bylaws and amendments.

[C66, 71, 73, 75, 77, 79, 81, §518.8]

2000 Acts, ch 1023, §36

518.9 Eligibility for membership.

The members of the association shall consist of those persons or organizations insured therein. The words *"persons"* and *"members"* as used in this chapter shall be construed to mean trustees, administrators, and all other individuals, public or private corporations or associations. Insurance on the property of one or more minors may be granted on application of an adult parent, friend or guardian who consents to become a member as representing such minor.

[C66, 71, 73, 75, 77, 79, 81, §518.9]

518.10 Territorial limitations.

The territory of any association shall be limited to the county in which its principal place of business is located, and to the counties contiguous thereto, and no coverage shall be placed on property located outside of this territory; provided, however, that the insurance may be extended, if the policy so provides, to cover personal property

while temporarily removed to other locations.

[C97, §1760; S13, §1759-b; C24, 27, 31, 35, 39, §**9030;** C46, 50, 54, 58, 62, §518.2; C66, 71, 73, 75, 77, 79, 81, §518.10]

518.11 Kinds of insurance.

Any association organized under this chapter is authorized to insure or to accept reinsurance against loss or damage by:

1. Any peril or perils resulting in physical loss or damage to property;
2. Theft of personal property;
3. Injury, sickness or death of animals and the furnishing of veterinary service.

Such contracts of insurance shall be subject only to such provisions as are contained in this chapter and shall consist of:

An application on blanks furnished by the association and signed by the insured or the insured's representatives;

A policy issued by the association in accordance with its rules, and approved by the commissioner of insurance.

[C66, 71, 73, 75, 77, 79, 81, §518.11]

518.12 Properties to be insured.

County mutual insurance associations are permitted to insure only the following classes of property:

1. Farm property, including residences and other farm buildings and all classes of personal property in connection therewith;
2. Buildings and personal property used in the processing of agricultural products in conjunction with a farming operation;
3. City and suburban residences, including household and personal effects;
4. Churches, schools and community buildings.

[C66, 71, 73, 75, 77, 79, 81, §518.12]

518.13 Premium charges.

Any association may by action of its board of directors establish premium charges for the purpose of payment of losses and expenses and for the establishment or maintenance of a reserve fund.

Any policy shall stand suspended if any default shall be made in the payment of any premium on or before the date specified in a written notice requiring the payment of such premium and mailed to the insured and directed to the insured's last known address not less than thirty days prior to such suspension date. Such notice shall specify the amount and due date of the premium. The association shall in no event be liable for any loss occurring during such period of suspension.

[C66, 71, 73, 75, 77, 79, 81, §518.13]

518.13A Assessments prohibited.

An association doing business under this chapter shall not levy an assessment on any member of the association.

2000 Acts, ch 1023, §37

518.14 Investments.

1. *General considerations*. The following considerations apply in the interpretation of this section:

a. This section applies to the investments of county mutual insurance associations.

b. The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of associations organized under this chapter. These standards, and the investment programs developed by associations, shall take into account the safety of the association's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the association's expected business needs, and investment diversification.

All investments made pursuant to this section shall have investment qualities and characteristics such that the speculative elements of the investments are not predominant.

c. Financial terms relating to county mutual insurance associations have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies or associations other than county mutual insurance associations have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, an association may elect to hold the investment under the subsection of its choice. This section does not prevent an association from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions*. For purposes of this section:

a. *"Admitted assets"*, for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the association acquires the investment.

b. *"Clearing corporation"* means as defined in section 554.8102.

c. *"Custodian bank"* means as defined in section 515.35.

d. *"Issuer"* means as defined in section 554.8201.

e. *"Member bank"* means a national bank,

state bank, or trust company which is a member of the United States federal reserve system.

f. "National securities exchange" means an exchange registered under section 6 of the federal Securities Exchange Act of 1934 or an exchange regulated under the laws of Canada.

g. "Obligations" includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

3. *Investments in name of association or nominee and prohibitions.*

a. An association's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the association making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the association provides that adequate evidence of the deposit is to be obtained and retained by the association or a custodian bank.

(2) An association may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the federal Securities Exchange Act of 1934 or to a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(b) That the loan may be terminated by the association at any time, and that the borrower will return the loaned stocks or obligations within five business days after termination.

(c) That the association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the association due to default that are not covered by the collateral.

(3) An association may participate through a member bank in the United States federal reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the association or for specific accounts of the association.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the association, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the association making the investment.

(5) Transfers of ownership of investments held as described in paragraph *"a"*, subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4), may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the association's investment.

b. Except as provided in paragraph *"a"*, subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the association's investment shall be obtained from the issuer or its transfer or recording agent and retained by the association, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the association.

4. *Investments.* Except as otherwise permitted by this section, an association organized under this chapter shall only invest in the following:

a. United States government obligations. Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

b. Certain development bank obligations. Obligations issued or guaranteed by the

international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An association shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. State obligations. Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

d. Canadian government obligations. Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

e. Corporate and business trust obligations. Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that an association shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

f. Stocks. Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada. Aggregate investments in nondividend paying stocks shall not exceed five percent of surplus.

(1) Stocks purchased under this lettered paragraph shall not exceed fifty percent of surplus. With the approval of the commissioner, an association may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the association's surplus as regards policyholders will be reasonable in relation to the association's outstanding liabilities and adequate to its financial needs.

(2) An association shall not invest more than ten percent of its surplus in the stocks of any one corporation.

g. Home office real estate. Funds may be invested in a home office building, at the direction of the board of directors and with the prior approval of the commissioner of insurance. An association shall not invest more than twenty-five percent of its total admitted assets in such real estate. With the prior approval of the commissioner, an association may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another association.

[C66, 71, 73, 75, 77, 79, 81, §518.14]
95 Acts, ch 185, §26; 96 Acts, ch 1138, §3, 84

518.15 Reports and examinations.

The president or the vice president and secretary of each association authorized to do business under this chapter shall annually before the first day of March prepare under oath and file with the commissioner of insurance a full, true and complete statement of the condition of such association on the last day of the preceding year. The commissioner of insurance shall prescribe the report forms and shall determine the information and data to be reported.

Such associations shall pay the same expenses of any examination made or ordered to be made by the commissioner of insurance and the same fees for the annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 515, which certificates shall expire June 1 of the year following the date of issue.

[C66, 71, 73, 75, 77, 79, 81, §518.15]
88 Acts, ch 1112, §108

518.16 Soliciting application for insurance — license required.

A person shall not solicit any application for insurance for an association in this state without having procured from the commissioner of insurance a license authorizing the person to act as an insurance producer pursuant to chapter 522B.

[C66, 71, 73, 75, 77, 79, 81, §518.16; 82 Acts, ch 1003, §8]
95 Acts, ch 185, §27; 2001 Acts, ch 118, §16

518.16A Limitation on termination of independent insurance producers.

A county mutual insurance association authorized to do business in this state shall not terminate a contract of an insurance producer who is an independent contractor but who is not an exclusive insurance producer as defined in section 522B.1 without at least one hundred eighty days' notice, except for loss of license, fraud, nonpayment of association premiums that are due and not in dispute by the producer, or the withdrawal of operations in the state by the association.

2002 Acts, ch 1111, §25
NEW section

518.17 Reinsurance.

A county mutual insurance association may reinsure a part or all of its coverages written pursuant to this chapter with an association operating under this chapter, or with any other association or company licensed in this state and authorized to write the kinds of insurance enumerated in section 518.11.

Reinsurance sufficient to protect the financial stability of the state mutual insurance association

is also required. In general, reinsurance coverage obtained by a county mutual insurance association shall not expose the association to losses from coverages written pursuant to this chapter of more than fifteen percent from surplus in any calendar year. The commissioner of insurance may require additional reinsurance if necessary to protect the policyholders of the association.

[C66, 71, 73, 75, 77, 79, 81, §518.17]

91 Acts, ch 26, §47; 99 Acts, ch 165, §16; 2000 Acts, ch 1023, §38; 2002 Acts, ch 1111, §26; 2002 Acts, ch 1119, §183

See Code editor's note to §8.55 at the end of Vol IV

Unnumbered paragraph 2 amended

518.18 Premium tax.

After January 1, 1966, every association doing business under this chapter shall be required to pay to the director of the department of revenue and finance, or a depository designated by the director, as taxes an amount equal to the following:

Two percent of the gross amount of premiums received during the preceding calendar year, after deducting the amount returned upon the canceled policies, certificates and rejected applications; and after deducting premiums paid for windstorm or hail reinsurance on properties specifically reinsured; provided, however, that the reinsurer of such windstorm or hail risks shall pay two percent of the gross amount of reinsurance premiums received upon such risks after deducting the amounts returned upon canceled policies, certificates and rejected applications.

[C66, 71, 73, 75, 77, 79, 81, §518.18]

518.19 Proof of loss — requirement for reporting.

The insured shall give immediate written notice to the association of any loss for which claim is made and shall then furnish a written proof of loss to the association within sixty days from the time the loss occurred, unless such time is extended in writing by the association. The proof of loss shall contain such information as is required by the policy provisions of the association, which information shall be signed and sworn to by the insured.

[C66, 71, 73, 75, 77, 79, 81, §518.19]

518.20 Reporting of livestock losses.

In the event of loss of livestock, the insured shall give notice to the association in sufficient time to permit the performance by a licensed veterinarian of a postmortem examination of the livestock for which claim is made, but in no event later than forty-eight hours from the time of occurrence.

[C66, 71, 73, 75, 77, 79, 81, §518.20]

518.21 Reporting of losses of crops by hail.

In the event of loss to growing crops by hail, notice of such loss must be given by mailing to the association a certified letter within ten days from the time such loss or damage occurred.

[C66, 71, 73, 75, 77, 79, 81, §518.21]

518.22 Limitation of action.

No action on any loss shall be begun sooner than forty days after proof of loss has been given to the association, and unless commenced within twelve months next after the inception of the loss.

[C66, 71, 73, 75, 77, 79, 81, §518.22]

518.23 Cancellation or nonrenewal of policies — notice.

1. *Cancellation by insured.* A policy shall be canceled at any time at the request of the insured upon the return of the policy to the home office of the association, and the payment of all premium charges against such policy.

2. *Cancellation by association.*

a. Except as provided in paragraph *"b"*, notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least twenty days before the effective date of cancellation.

b. Notice of cancellation resulting from nonpayment of a premium or installment provided for in the policy, or provided for in a note or contract for the payment of such premium or installment, is not effective unless mailed or delivered by the association to the named insured at least ten days prior to the date of cancellation.

c. If a notice of cancellation under paragraph *"a"* or *"b"* fails to include the reason for such cancellation, the association, upon receipt of a timely request by the named insured, shall provide in writing the reason for the cancellation.

3. *Nonrenewal by association.* A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. If the reason does not accompany the notice of nonrenewal, the association, upon receipt of a timely request by the named insured, shall provide the reason for the nonrenewal in writing.

4. *Notice.* Service of notice under subsection 2 or 3 may be delivered in person or mailed to the insured at the insured's post office address as given in or upon the policy, or to such other address as the insured shall have given to the association in writing. A post office department certificate of mailing shall be deemed proof of receipt of such mailing. If in either case the cash payments exceed the amount properly chargeable, the excess shall be refunded to the insured upon the surrender of the policy to the association at its home office.

[C66, 71, 73, 75, 77, 79, 81, §518.23]

2000 Acts, ch 1023, §39; 2001 Acts, ch 69, §35

518.24 Reserved.

518.25 Surplus.

An association organized under this chapter shall at all times maintain a surplus of not less than fifty thousand dollars or one-tenth of one percent of the gross risk in force, whichever is greater.

90 Acts, ch 1234, §70; 99 Acts, ch 165, §17; 2002 Acts, ch 1111, §27

Section amended

518.26 Loans to officers prohibited.

Assets or other funds shall not be loaned directly or indirectly to an officer, director, or employee of the association, or directly or indirectly to a relative of an officer, director, or an employee of the association.

95 Acts, ch 185, §28

518.27 Form — approval.

The form of all policies, applications, agreements, and endorsements modifying the provisions of policies, and all permits and riders used in this state, issued or proposed to be issued by a county mutual insurance association doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance.

95 Acts, ch 185, §29

518.28 Failure to file copy.

Upon the failure of a county mutual insurance association to file a copy of its forms of policies or contracts pursuant to section 518.27, the commissioner of insurance may suspend its authority to transact business within the state until such forms of policies or contracts have been filed and approved.

95 Acts, ch 185, §30; 2001 Acts, ch 24, §56

518.29 Disapproval of filings.

If the commissioner finds that a filing does not meet the requirements of this chapter, written notice of disapproval shall be sent to the county mutual insurance association specifying in what respect the filing fails to meet the requirements of this chapter and stating that the filing is not effective. If a filing is disapproved by the commissioner, the association may request a hearing on the disapproval within thirty days. The association bears the burden of proving compliance with the standards established by this chapter.

If, at any time after a form has been approved, the commissioner finds that the form no longer meets the requirements of this chapter, the commissioner may order the discontinuance of the use of the form. The order of discontinuance shall be in writing and may be issued only after a hearing with at least ten days' prior notice to all county mutuals affected by the order. The order shall state the grounds upon which the order is based and when the order of discontinuance is effective.

95 Acts, ch 185, §31

518.30 Certificate suspension.

The commissioner of insurance may suspend a county mutual insurance association's certificate of authority to do business if the association neglects or fails to comply with this chapter.

95 Acts, ch 185, §32

CHAPTER 518A

STATE MUTUAL INSURANCE ASSOCIATIONS

Additional provisions, chapter 515

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518A.55 Certificate suspension.

518A.1 Organization — purpose and powers.

1. Any number of persons may, by incorporating under chapter 491, enter into contracts with each other for the following kinds of insurance from loss or damage by:

a. Any peril or perils resulting in physical loss of or damage to property.

b. Theft of personal property.

c. Injury, sickness, or death of animals and the furnishing of veterinary service.

d. Any automobile or aircraft or other vehicle, including loss, expense, or liability resulting from the ownership, maintenance, or use thereof, but shall not include insurance against bodily injury to the person.

2. For the purpose of this protection these contracts of insurance shall be subject only to such provisions as are contained in this chapter and shall consist of:

a. An application on blanks furnished by the association and signed by the insured or the insured's representative, which may contain in addition to other provisions: the value of the property, the proper description thereof, the amount of other insurance and the encumbrance thereon, and agreement to be governed by the articles of incorporation and bylaws in force at the time the policy is issued, a representation that the foregoing statements are true as far as the same are known to the insured or material to the risk, and that the insurance shall take effect when approved by the secretary.

b. A policy issued by the association in accordance with its rules, and approved by the commissioner of insurance.

3. Such associations may insure risks of their members or may reinsure risks of other associations or companies.

4. The words "persons" and "members" as used in this chapter shall be construed to mean trustees, administrators, and all other individuals, public or private corporations or associations.

5. Insurance on the property of one or more minors may be granted on application of an adult parent, friend, or guardian who consents to become a member as representing such minor.

[C73, §1160; C97, §1759; S13, §1759-a; C24, 27, 31, 35, 39, §**9029;** C46, 50, 54, 58, 62, §518.1; C66, 71, 73, 75, 77, 79, 81, §518A.1]

88 Acts, ch 1112, §510

518A.1A Plan of organization.

An entity seeking to organize as or convert to a state mutual insurance association shall submit a plan of organization to the commissioner for approval.

99 Acts, ch 165, §18

518A.2 State mutual insurance associations.

Any association incorporated under the laws of this state for the purpose of furnishing insurance as provided for in this chapter is authorized to do business in the county in which its principal place of business is located, the counties contiguous thereto, and the next tier of contiguous counties and in other states where they are legalized and authorized to do business. Each association seeking to modify its authorized writing territory shall file with the commissioner a plan for controlled expansion demonstrating that provisions have been made adequately to service and protect policyholders. The expansion plan shall not be modified without the prior written approval of the commissioner, which approval shall not be unreasonably withheld. The words *"mutual"* and *"association"* shall be incorporated in and become a part of their name.

[C97, §1760; S13, §1759-b; C24, 27, 31, 35, 39,

§**9030;** C46, 50, 54, 58, 62, §518.2; C66, 71, 73, 75, 77, 79, 81, §518A.2]

2002 Acts, ch 1111, §28

Section amended

518A.3 Meetings.

Unless the time and place of holding the annual meeting of the members of any association transacting business under the provisions of this chapter are plainly stated in their articles of incorporation or bylaws, twenty days' notice of the time and place of holding of said meetings shall be given to all members of the association. Annual meetings may adjourn from time to time.

[S13, §1759-o; C24, 27, 31, 35, 39, §**9031;** C46, 50, 54, 58, 62, §518.3; C66, 71, 73, 75, 77, 79, 81, §518A.3]

518A.4 Amendments to articles.

Members of the association at such annual meetings shall have power to make or amend articles of incorporation or bylaws as they in their judgment may deem necessary.

[S13, §1759-o; C24, 27, 31, 35, 39, §**9032;** C46, 50, 54, 58, 62, §518.4; C66, 71, 73, 75, 77, 79, 81, §518A.4]

518A.5 Articles and bylaws part of policy.

When such articles of incorporation and bylaws are printed on the policy they become a part thereof and are binding upon the association and the insured alike.

[C24, 27, 31, 35, 39, §**9033;** C46, 50, 54, 58, 62, §518.5; C66, 71, 73, 75, 77, 79, 81, §518A.5]

518A.6 Officers — election.

Officers or directors shall be elected in the manner and for the length of time prescribed in the articles of incorporation or bylaws. The same person shall not simultaneously hold the offices of president and secretary. A director shall be a member of the association.

[C24, 27, 31, 35, 39, §**9034;** C46, 50, 54, 58, 62, §518.6; C66, 71, 73, 75, 77, 79, 81, §518A.6]

97 Acts, ch 186, §23; 2000 Acts, ch 1023, §40

518A.6A Bylaws.

The directors of the association may enact the bylaws and regulations not inconsistent with law as they consider necessary for the regulation and conduct of the business. A change in the bylaws shall not limit coverage under existing policies of insurance. An association shall file with the commissioner bylaws and amendments to bylaws within thirty days of adoption.

2000 Acts, ch 1023, §41

518A.7 Policies — issuance — conditions.

A state mutual insurance association shall not issue policies until at least one hundred twenty-five applications have been received in any class as shown by section 518A.1, representing the following amount of insurance: Classes one, two, three, and five, two hundred fifty thousand dollars each; class four, one hundred thousand dollars, and an application for insurance during the period of organization shall not exceed two percent of the amount required for organization, or after one year of organization, one percent of the total insurance in force, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

[C97, §1761; S13, §1759-c; C24, 27, 31, 35, 39, §**9035;** C46, 50, 54, 58, 62, §518.7; C66, 71, 73, 75, 77, 79, 81, §518A.7]

2000 Acts, ch 1023, §42

518A.8 Articles — approval.

An organization shall present to the commissioner of insurance for approval its articles of incorporation, which shall show its name, objects, and purposes, the time and place of the annual meeting of the members, and the location of its principal place of business, and any subsequent amendments. The commissioner shall submit the articles of incorporation and any subsequent amendments to the articles to the attorney general for examination, and if found by the attorney general to be in accordance with the provisions of this chapter and the Constitution and the laws of this state, the attorney general shall certify such fact on the articles of incorporation and on any amendments to the articles and return them to the commissioner. Articles of incorporation and amendments to the articles shall not be approved by the commissioner or recorded unless certified by the attorney general.

[C97, §1761; S13, §1759-c; C24, 27, 31, 35, 39, §**9036;** C46, 50, 54, 58, 62, §518.8; C66, 71, 73, 75, 77, 79, 81, §518A.8]

99 Acts, ch 165, §19

518A.9 Premium charges.

An association, by action of its board of directors, may establish premium charges for the purpose of payment of losses and expenses and for the establishment or maintenance of a reserve fund.

A policy shall stand suspended if any default is made in the payment of any premium on or before the date specified in a written notice requiring the payment of such premium and mailed to the insured and directed to the insured's last known address not less than thirty days prior to such suspension date. The notice shall specify the amount and due date of the premium. The association is not liable for any loss occurring during such period of suspension.

[C97, §1765; S13, §1759-h; C24, 27, 31, 35, 39, §**9037;** C46, 50, 54, 58, 62, §518.9; C66, 71, 73, 75, 77, 79, 81, §518A.9]

2000 Acts, ch 1023, §43

518A.9A Assessments prohibited.

An association doing business under this chapter shall not levy an assessment on any member of the association.

2000 Acts, ch 1023, §44

518A.10 Advance assessments. Repealed by 99 Acts, ch 165, § 23.

518A.11 Borrowing money. Repealed by 2000 Acts, ch 1023, § 59.

518A.12 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

a. This section applies to the investments of state mutual insurance associations.

b. The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of associations organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the association's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the association's expected business needs, and investment diversification.

All investments made pursuant to this section shall have investment qualities and characteristics such that the speculative elements of the investments are not predominant.

c. Financial terms relating to state mutual insurance associations have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than state mutual insurance associations have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, an association may elect to hold the investment under the subsection of its choice. This section does not prevent an association from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. *"Admitted assets"*, for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the association acquires the investment.

b. *"Clearing corporation"* means as defined in section 554.8102.

c. *"Custodian bank"* means as defined in section 515.35.

d. *"Issuer"* means as defined in section 554.8201.

e. *"Member bank"* means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. *"National securities exchange"* means an exchange registered under section 6 of the federal Securities Exchange Act of 1934 or an exchange regulated under the laws of Canada.

g. *"Obligations"* includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

3. *Investments in name of association or nominee and prohibitions.*

a. An association's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the association making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the association provides that adequate evidence of the deposit is to be obtained and retained by the association or a custodian bank.

(2) An association may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the federal Securities Exchange Act of 1934 or to a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(b) That the loan may be terminated by the association at any time, and that the borrower will return the loaned stocks or obligations within five business days after termination.

(c) That the association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the association due to default that are not covered by the collateral.

(3) An association may participate through a member bank in the United States federal reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the association or for specific accounts of the association.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the association, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the association making the investment.

(5) Transfers of ownership of investments held as described in paragraph *"a"*, subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4), may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the association's investment.

b. Except as provided in paragraph *"a"*, subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the association's investment shall be obtained from the issuer or its transfer or recording agent and retained by the association, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the association.

4. *Investments.* Except as otherwise permitted by this section, an association organized under this chapter shall only invest in the following:

a. United States government obligations. Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

b. Certain development bank obligations. Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An association shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. State obligations. Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

d. Canadian government obligations. Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

e. Corporate and business trust obligations. Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that an association shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

f. Stocks. Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada. Aggregate investments in nondividend paying stocks shall not exceed five percent of surplus.

(1) Stocks purchased under this lettered paragraph shall not exceed fifty percent of surplus. With the approval of the commissioner, an association may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the association's surplus as regards policyholders will be reasonable in relation to the association's outstanding liabilities and adequate to its financial needs.

(2) An association shall not invest more than ten percent of its surplus in the stocks of any one corporation.

g. Home office real estate. Funds may be invested in a home office building, at the direction of the board of directors and with the prior approval of the commissioner of insurance. An association shall not invest more than twenty-five percent of its total admitted assets in such real estate. With the prior approval of the commissioner, an association may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another association.

[C24, 27, 31, 35, 39, §**9040;** C46, 50, 54, 58, 62, §518.12; C66, 71, 73, 75, 77, 79, 81, §518A.12]

95 Acts, ch 185, §33; 96 Acts, ch 1138, §4, 84; 2000 Acts, ch 1023, §45

518A.13 Policies with fixed premiums. Repealed by 99 Acts, ch 165, § 23.

518A.14 Net assets required — liability of members. Repealed by 2000 Acts, ch 1023, § 59.

518A.15 Reserve for unearned premiums. Repealed by 2000 Acts, ch 1023, § 59.

518A.16 Repealed by 65 Acts, ch 401, § 26.

518A.17 Hail assessments — payment of losses. Repealed by 99 Acts, ch 165, § 23.

518A.18 Annual report.

An association doing business under this chapter, on or before March 1 of each year, shall prepare under oath and file with the commissioner of insurance an accurate and complete statement of the condition of the association as of the last day of the preceding calendar year. The statement shall conform to the annual statement blank prepared pursuant to instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared pursuant to accounting practices and procedures prescribed by the commissioner. Statements filed with the commissioner pursuant to this section shall be tabulated and published by the commissioner of insurance in the annual report of insurance.

[C73, §1160; C97, §1762, 1763; S13, §1759-d, -e; C24, 27, 31, 35, 39, §**9044;** C46, 50, 54, 58, 62, §518.18; C66, 71, 73, 75, 77, 79, 81, §518A.18]

85 Acts, ch 228, §8; 2000 Acts, ch 1023, §46

518A.19 Proof of loss — sixty-day limit.

In furnishing proofs of loss under any contract of insurance under this chapter for loss or damage it shall be necessary for the insured within sixty days from the time loss or damage occurs, to give notice in writing to the association issuing such contracts of insurance accompanied by an affidavit stating the facts as to how the loss occurred so far as the same are within the knowledge of the insured, the property destroyed or damaged, and the extent of the loss.

[C24, 27, 31, 35, 39, §**9045;** C46, 50, 54, 58, 62, §518.19; C66, 71, 73, 75, 77, 79, 81, §518A.19]

Similar provisions, §511.35, 514A.3, 515.98, 518A.22

518A.20 Five-day limit.

In case of damage or loss to livestock by fire or lightning or loss or damage to automobiles or aircraft by theft or fire, notice of such loss must be given the association by mailing written notice within five days from the time such loss or damage occurred.

[C24, 27, 31, 35, 39, §**9046;** C46, 50, 54, 58, 62, §518.20; C66, 71, 73, 75, 77, 79, 81, §518A.20]

518A.21 Ten-day limit.

In case of loss to growing crops by hail, notice of such loss must be given the association by mailing a certified mail letter within ten days from the time such loss or damage occurred.

[C24, 27, 31, 35, 39, §**9047;** C46, 50, 54, 58, 62, §518.21; C66, 71, 73, 75, 77, 79, 81, §518A.21]

518A.22 Limitation of action.

No action on any loss shall be begun until the date when such loss becomes due in accordance with the articles of incorporation or bylaws of such association and in no event sooner than forty days after such proof has been given to the association and no action can be started after one year from the date such cause of action accrues.

[C24, 27, 31, 35, 39, §**9048;** C46, 50, 54, 58, 62, §518.22; C66, 71, 73, 75, 77, 79, 81, §518A.22]

Similar provision, §518A.19

518A.23 Presumption as to value.

In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima facie evidence of the insurable value of the building at the date of the policy.

[C24, 27, 31, 35, 39, §**9049;** C46, 50, 54, 58, 62, §518.23; C66, 71, 73, 75, 77, 79, 81, §518A.23]

Similar provision, §515.96

518A.24 Value of building — liability.

The association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount of insurance stated in the policy.

[C24, 27, 31, 35, 39, §**9050;** C46, 50, 54, 58, 62, §518.24; C66, 71, 73, 75, 77, 79, 81, §518A.24]

Similar provision, §515.97

518A.25 Value of personal property — value of crops.

In any action on a policy to recover loss or damage on personal property, the association shall not be liable in excess of the amount of damage or loss at the time the loss or damage occurs; provided that the value of growing crops may be stated in the policy or contract.

[C24, 27, 31, 35, 39, §**9051;** C46, 50, 54, 58, 62, §518.25; C66, 71, 73, 75, 77, 79, 81, §518A.25]

518A.26 Arbitration.

No recovery on a policy or contract of insurance shall be defeated for failure of the insured to comply, after a loss occurs, with any arbitration or appraisement stipulation as to fixing the value of property. No arbitration shall take place except substantially where the property was situated at the time of loss. Contracts of insurance to indemnify against loss by hail to growing crops which stipulate for arbitration shall provide that the decision of the majority of the arbitrators shall be final only as to the arbitration.

[C31, 35, §9051-c1; C39, §**9051.1;** C46, 50, 54, 58, 62, §518.26; C66, 71, 73, 75, 77, 79, 81, §518A.26]

518A.27 Reinsurance — quo warranto.

The commissioner of insurance may address inquiries to any association in relation to its doings and condition and any association so addressed shall promptly reply thereto in writing. If the commissioner of insurance is then satisfied that the association has failed to comply with any provisions of this law, or is exceeding its powers, or is not carrying out its contracts in good faith; or is transacting business fraudulently or soliciting insurance in territories where it is not legally admitted to do business, or is in such condition as to render the further transaction of business by it hazardous to the public or its policyholders, the business under the commissioner's supervision and with the consent of the association may be reinsured in some mutual association, or the commissioner may present the facts relating thereto to the attorney general and if the circumstances warrant the attorney general may commence an action in quo warranto in a court of competent jurisdiction.

[C97, §1766; S13, §1759-g; C24, 27, 31, 35, 39, §**9052;** C46, 50, 54, 58, 62, §518.27; C66, 71, 73, 75, 77, 79, 81, §518A.27]

518A.28 Decree — receivership. Repealed by 99 Acts, ch 165, § 23.

518A.29 Cancellation or nonrenewal by association — notice.

1. *Cancellation by insured.* A policy shall be canceled at any time at the request of the insured upon the return of the policy to the home office of the association and the payment of all premium charges against such policy.

2. *Cancellation by association.*

a. Except as provided in paragraph *"b"*, notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least twenty days before the effective date of cancellation.

b. Notice of cancellation resulting from nonpayment of a premium or installment provided for in the policy, or provided for in a note or contract for the payment of such premium or installment, is not effective unless mailed or delivered by the association to the named insured at least ten days prior to the date of cancellation.

c. If a notice of cancellation under paragraph *"a"* or *"b"* fails to include the reason for such cancellation, the association, upon receipt of a timely request by the named insured, shall provide the reason for the cancellation in writing.

3. *Nonrenewal by association.* A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. If the reason does not accompany the notice of nonrenewal, the association, upon receipt of a timely request by the named insured, shall provide in writing the reason for the nonrenewal.

4. *Notice.* Service of notice under subsection 2 or 3 may be delivered in person or mailed to the insured at the insured's post office address as given in or upon the policy, or to such other address as the insured shall have given to the association in writing. A post office department certificate of mailing shall be deemed proof of receipt of such mailing. If in either case the cash payments exceed the amount properly chargeable, the excess shall be refunded upon the surrender of the policy to the association at its home office.

[S13, §1759-m; C24, 27, 31, 35, 39, §**9054;** C46, 50, 54, 58, 62, §518.29; C66, 71, 73, 75, 77, 79, 81, §518A.29]

2000 Acts, ch 1023, §47; 2001 Acts, ch 69, §36

518A.30 Cancellation by insured — conditions. Repealed by 2000 Acts, ch 1023, § 59.

518A.31 Unearned assessments — return. Repealed by 2000 Acts, ch 1023, § 59.

518A.32 When pro rata assessment retained. Repealed by 2000 Acts, ch 1023, § 59.

518A.33 Bonds of officers. Repealed by 95 Acts, ch 185, § 47.

518A.34 Additional security — noncompliance. Repealed by 95 Acts, ch 185, § 47.

518A.35 Annual tax.

A state mutual insurance association doing business under this chapter shall on or before the first day of March, each year, pay to the director of revenue and finance, or a depository designated by the director, a sum equivalent to two percent of the gross receipts from premiums and fees for business done within the state, including all insurance upon property situated in the state without including or deducting any amounts received or paid for reinsurance. However, a company reinsuring windstorm or hail risks written by county mutual insurance associations is required to pay a two percent tax on the gross amount of reinsurance premiums received upon such risks, but after deducting the amount returned upon canceled policies and rejected applications covering property situated within the state, and dividends returned to policyholders on property situated within the state.

[C24, 27, 31, 35, 39, §**9060;** C46, 50, 54, 58, 62, §518.35; C66, 71, 73, 75, 77, 79, 81, §518A.35]

2000 Acts, ch 1023, §48; 2001 Acts, ch 24, §57; 2002 Acts, ch 1050, §46

Section amended

518A.36 Repealed by 49 Acts, ch 213, § 1. See § 507.2.

518A.37 Surplus.

An association organized under this chapter shall at all times maintain a surplus of not less than one hundred thousand dollars, or one-tenth of one percent of the gross risk in force, whichever is greater.

90 Acts, ch 1234, §71; 99 Acts, ch 165, §20; 2002 Acts, ch 1111, §29

Section amended

518A.38 Repealed by 76 Acts, ch 1056, § 45.

518A.39 "Debt" defined.

In ascertaining such corporate indebtedness, a debt shall be deemed to exist, on account of its liabilities on the policy certificates or contracts of insurance issued by it equal to the amount of surplus or other funds accumulated by such corporation for the purpose of fulfilling its policy contracts of insurance and which can be used for no other purpose.

[C24, 27, 31, 35, 39, §**9064;** C46, 50, 54, 58, 62, §518.39; C66, 71, 73, 75, 77, 79, 81, §518A.39]

518A.40 Annual fees.

Such associations shall pay the same fees for annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 515, which certificates shall expire May 1 of the year following the date of issue.

[C73, §1160; C97, §1764; S13, §1759-f; C24, 27, 31, 35, 39, §**9065;** C46, 50, 54, 58, 62, §518.40; C66, 71, 73, 75, 77, 79, 81, §518A.40]

518A.41 Insurance producers to be licensed.

No person or corporation shall solicit any application for insurance for any association in this state without having procured from the commissioner of insurance a license authorizing the person or corporation to act as an insurance producer. Violation of this provision shall constitute a serious misdemeanor.

[C24, 27, 31, 35, 39, §**9066;** C46, 50, 54, 58, 62, §518.41; C66, 71, 73, 75, 77, 79, 81, §518A.41]

2002 Acts, ch 1119, §73

Section amended

518A.42 Limitation on termination of independent insurance producers.

A state mutual insurance association authorized to do business in this state shall not terminate a contract of an insurance producer who is an independent contractor but who is not an exclusive insurance producer as defined in section 522B.1 without at least one hundred eighty days' notice, except for loss of license, fraud, nonpayment of association premiums that are due and not in dispute by the producer, or the withdrawal of operations in the state by the association.

2002 Acts, ch 1111, §30

NEW section

518A.43 Cancellation of license.

The commissioner of insurance may, for a just and reasonable cause, cancel the license of an insurance producer after due notice and hearing.

[C24, 27, 31, 35, 39, §**9068;** C46, 50, 54, 58, 62, §518.43; C66, 71, 73, 75, 77, 79, 81, §518A.43]

2002 Acts, ch 1119, §74

Section amended

518A.44 Reinsurance.

A state mutual insurance association may reinsure a part or all of its coverages written pursuant to this chapter with an association operating under this chapter, or with any other association or company licensed in this state and authorized to write the kinds of insurance enumerated in section 518A.1.

Reinsurance sufficient to protect the financial stability of the state mutual insurance association is required. In general, reinsurance coverage obtained by an association shall not expose the association to losses from coverages written pursuant to this chapter of more than fifteen percent from surplus in any calendar year. The commissioner of insurance may require additional reinsurance if necessary to protect the policyholders of the association.

95 Acts, ch 185, §35; 99 Acts, ch 165, §21; 2000 Acts, ch 1023, §49; 2002 Acts, ch 1111, §31

Unnumbered paragraph 2 amended

518A.45 through 518A.50 Reserved.

518A.51 Loans to officers prohibited.

Assets or other funds shall not be loaned directly or indirectly to an officer, director, or employee of the association, or directly or indirectly to a relative of an officer, director, or employee of the association.

95 Acts, ch 185, §36

518A.52 Form — approval.

The form of all policies, applications, agreements, and endorsements modifying the provisions of policies, and all permits and riders used in this state, issued or proposed to be issued by a state mutual insurance association doing business in this state under this chapter, shall first be examined and approved by the commissioner of insurance.

95 Acts, ch 185, §37; 2000 Acts, ch 1023, §50

518A.53 Failure to file copy.

Upon the failure of a state mutual insurance association to file a copy of its forms of policies or contracts pursuant to section 518A.52, the commissioner of insurance may suspend its authority to transact business within the state until such forms of policies or contracts have been filed and approved.

95 Acts, ch 185, §38; 2000 Acts, ch 1023, §51

518A.54 Disapproval of filings.

If the commissioner finds that a filing does not meet the requirements of this chapter, written notice of disapproval shall be sent to the state mutual insurance association specifying in what respect the filing fails to meet the requirements of this chapter and stating that the filing is not effective. If a filing is disapproved by the commissioner, the association may request a hearing on the disapproval within thirty days. The association bears the burden of proving compliance with the standards established by this chapter.

If, at any time after a form has been approved, the commissioner finds that the form no longer meets the requirements of this chapter, the commissioner may order the discontinuance of the use of the form. The order of discontinuance shall be in writing and may be issued only after a hearing with at least ten days' prior notice to all state mutual insurance associations affected by the order. The order shall state the grounds upon which the order is based and when the order of discontinuance is effective.

95 Acts, ch 185, §39; 2000 Acts, ch 1023, §52

518A.55 Certificate suspension.

The commissioner of insurance may suspend a state mutual insurance association's certificate of authority to do business if the association neglects or fails to comply with this chapter.

95 Acts, ch 185, §40; 2000 Acts, ch 1023, §53

CHAPTER 518B

RIOT REINSURANCE PROGRAM

518B.1 Definitions.
518B.2 Reimbursement fund created.
518B.3 Secretary reimbursed.
518B.4 Insurers assessed.
518B.5 Warrants issued — overage fund.
518B.6 Insolvent insurers.
518B.7 Recovery factor included.

518B.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"The secretary"* means the secretary of the United States department of housing and urban development.

2. *"Farm property"* means the residence, personal effects, other farm buildings and other personal property used in conjunction with a farming operation.

3. *"The Act"* means Section 1223 of the Housing and Urban Development Act of 1968, Public Law 90-448, 90th Congress approved August 1, 1968.

4. *"The fund"* or *"fund"* means the federal riot reinsurance reimbursement fund referred to in this chapter.

5. *"Commissioner"* means the commissioner of insurance.

[C71, 73, 75, 77, 79, 81, §518B.1]

518B.2 Reimbursement fund created.

There is hereby created the federal riot reinsurance reimbursement fund in the office of the treasurer of state which shall be operated under the joint control of the director of revenue and finance and the commissioner. The fund shall consist of all payments made by insurers in accordance with

the provisions of this chapter. The director of revenue and finance shall have the same power to enforce the collection of the assessments provided hereunder as any other obligation due the state.

[C71, 73, 75, 77, 79, 81, §518B.2]

518B.3 Secretary reimbursed.

The commissioner shall reimburse the secretary in an amount up to five percent of the aggregate property, except farm property insurance premiums earned in this state during the calendar year immediately preceding the calendar year with respect to which the secretary paid losses on lines of insurance reinsured by the secretary in this state during that year and for which the secretary claims reimbursement from the fund in accordance with the Act.

[C71, 73, 75, 77, 79, 81, §518B.3]

518B.4 Insurers assessed.

Whenever the secretary shall, in accordance with the Act, present to the state a request for reimbursement under the Act, the commissioner shall immediately assess all insurers which, during the calendar year with respect to which reimbursement is requested by the secretary, were licensed to write and engaged in writing property insurance business, including the property insurance components of multiperil policies on a direct basis, in this state. The amount of each such insurer's assessment shall be calculated by multiplying the amount of the reimbursement requested by the secretary by a fraction the numerator of which is the insurer's premium actually written in this state in that calendar year on habitational and commercial property, except farm property, risks and the denominator of which is the aggregate premiums written by all licensed insurers on such property risks. In no event shall any insurer's assessment be less than one hundred dollars.

[C71, 73, 75, 77, 79, 81, §518B.4]

518B.5 Warrants issued — overage fund.

The secretary shall be reimbursed up to the amount requested by warrants issued against the fund by the director of revenue and finance upon vouchers approved by the director of revenue and finance and the commissioner. If the assessment produces a fund greater than the amount requested by the secretary, the overage shall be placed in a special fund in the office of the treasurer of state under the control of the commissioner and the director of revenue and finance and shall be applied to any subsequent requests by the secretary for reimbursement of losses paid on lines of insurance reinsured by the secretary in this state in accordance with the Act.

In the event that the provisions of this chapter and the assessments made thereunder are no longer needed in order to effectuate the program for which they were intended, the amounts remaining in the special fund shall inure to the general fund of the state.

[C71, 73, 75, 77, 79, 81, §518B.5]

518B.6 Insolvent insurers.

In the event any insurer fails, by reason of insolvency, to pay any assessment, the commissioner shall cause the reimbursement ratios computed under section 518B.4 to be immediately recalculated excluding therefrom the insolvent insurer, so that its assessment is in effect assumed and redistributed among the remaining insurers.

[C71, 73, 75, 77, 79, 81, §518B.6]

518B.7 Recovery factor included.

Insurers shall include in filings submitted pursuant to chapter 515A, a factor, applicable to the line or lines of insurance on which the assessment is levied, sufficient to recover within not more than three years after the date of assessment any amounts so assessed under section 518B.4 during the preceding calendar year together with the amount of costs and expenses reasonably attributable to such assessment and recovery thereof.

[C71, 73, 75, 77, 79, 81, §518B.7]

CHAPTER 518C

COUNTY AND STATE MUTUAL INSURANCE GUARANTY ASSOCIATION

518C.1 Title.
518C.2 Scope.
518C.3 Definitions.
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518C.1 Title.

This chapter shall be known and may be cited as the *"Iowa County and State Mutual Insurance Guaranty Association Act"*.

2000 Acts, ch 1035, §1

518C.2 Scope.

This chapter applies to direct insurance authorized to be written by an insurer licensed to transact insurance business in this state under chapter 518 or 518A.

2000 Acts, ch 1035, §2

518C.3 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Association"* means the Iowa county and state mutual insurance guaranty association established pursuant to section 518C.4.

2. *"Claimant"* means an insured making a first-party claim or a person instituting a liability claim against an insolvent insurer. *"Claimant"* does not include a person who is an affiliate of an insolvent insurer.

3. *"Commissioner"* means the commissioner of insurance.

4. *a.* *"Covered claim"* means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and subject to the applicable limits of an insurance policy subject to this chapter which is issued by an insurer, if the insurer becomes an insolvent insurer on or after July 1, 2000, and one of the following conditions exists:

(1) The claimant is a resident of this state at the time of the event giving rise to the covered claim. For a claimant other than an individual, the residence of the claimant is the state in which its principal place of business is located.

(2) The claim is a first-party claim by the claimant for damage to property permanently located in this state.

b. *"Covered claim"* does not include any of the following:

(1) An amount due a reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation, contribution, indemnity recoveries, or otherwise.

(2) An amount that constitutes the portion of a claim that is within an insured's deductible or self-insured retention.

(3) An amount due an attorney, adjuster, or witness as a fee for services rendered to the insolvent insurer.

(4) An amount that constitutes a fine, penalty, interest, or punitive or exemplary damages.

(5) An amount that is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

Notwithstanding subparagraphs (1) through (5), a person is not prevented from presenting a noncovered claim to the insolvent insurer or its liquidator. However, the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

5. *"Insolvent insurer"* means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 2000, by a court of competent jurisdiction of this state.

6. *"Insurer"* means a person licensed to transact insurance business in this state under either chapter 518 or chapter 518A either at the time the policy was issued or when the insured event occurred.

7. *"Net direct written premiums"* means direct gross premiums written in this state on insurance policies subject to this chapter, less return premiums and dividends paid or credited to policyholders on such direct business. *"Net direct written premiums"* does not include premiums on a contract between insurers or reinsurers.

8. *"Person"* means an individual, corporation, partnership, association, or voluntary organization.

2000 Acts, ch 1035, §3

518C.4 Association established.

An Iowa county and state mutual insurance guaranty association is established as a nonprofit unincorporated legal entity. An insurer shall be a member of the association as a condition of the insurer's authority to transact insurance business in this state. The association shall perform its functions under a plan of operation established and approved pursuant to section 518C.7 and shall exercise its powers through a board of directors established under section 518C.5. Except as otherwise provided in such plan of operation, an annual or special meeting of members of the association may be held on call as directed by the association's board of directors or by the commissioner of insurance. Written notice shall be given not less than ten days prior to the meeting by ordinary mail to each member at the member's principal office as shown by the records in the commissioner's office. The notice shall state the time and place, and in the case of a special meeting, the purpose of the meeting. Members may vote in person and ten members present in person shall constitute a quorum for the transaction of any business.

2000 Acts, ch 1035, §4

518C.5 Board of directors.

The board of directors of the association shall consist of the officers and directors of the mutual insurance association of Iowa or its successor association. An officer and director of the mutual insurance association of Iowa shall serve in the same capacity on the association board as the officer or

director serves the mutual insurance association of Iowa or its successor association.

2000 Acts, ch 1035, §5

518C.6 Duties and powers of the association.

1. The association is subject to all of the following:

a. (1) The association is obligated to pay a covered claim as follows:

(a) A covered claim existing prior to the final order of liquidation and arising within thirty days after the final order of liquidation.

(b) A covered claim existing before the policy expiration date if the expiration date is less than thirty days after the final order of liquidation.

(c) A covered claim existing before the insured replaces the policy or causes its cancellation, if the insured replaces or cancels the policy within thirty days of the final order of liquidation.

(2) An obligation under subparagraph (1) is satisfied by paying to the claimant an amount as follows:

(a) An amount not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.

(b) An amount not exceeding the lesser of the policy limits or three hundred thousand dollars per claim for all covered claims for all damages arising out of any one or a series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

b. The association is obligated to pay covered claims subject to a limitation as established by the rights, duties, and obligations under the policy issued by the insolvent insurer.

c. The association shall assess member insurers amounts necessary to pay the obligations of the association under paragraphs *"a"* and *"b"* subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 518C.12, and other expenses as authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not less than thirty days before it is due. A member insurer shall not be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, do not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of surplus less than the minimum amounts required for a certificate of authority to transact insurance business. A member insurer serving as a servicing facility pursuant to this section may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

The association may pursue and retain for its own account salvage and subrogation recoverable on paid covered claim obligations. An obligation of the association to defend an insured shall cease upon the association's payment of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limits.

d. The association shall investigate claims filed with the association and adjust, compromise, settle, defend, and pay covered claims to the extent of the association's obligation and deny all other claims.

e. The association shall notify such persons as the commissioner directs under section 518C.8, subsection 2, paragraph *"a"*.

f. The association shall process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

g. The association shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay the other expenses of the association authorized by this chapter.

2. The association may do any of the following:

a. Appear in, defend, and appeal an action on a claim brought against the association.

b. Employ or retain persons necessary to handle claims and perform other duties of the association.

c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

d. Sue or be sued.

e. Negotiate and become a party to contracts necessary to carry out the purposes of this chapter.

f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

3. The board of directors, in its discretion, may from time to time refund excess amounts to member insurers that are not needed for current or projected liabilities of a particular insolvency. The amount of each refund is equal to the net direct written premiums of the member insurer for the preceding calendar year divided by the net written premiums of all member insurers for the preced-

ing calendar year, multiplied by the total amount to be refunded to all members. At the discretion of the board of directors, an assessment or refund of any member insurer in an amount not to exceed twenty-five dollars may be waived.

2000 Acts, ch 1035, §6

518C.7 Plan of operation.

1. The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendment become effective upon written approval by the commissioner.

If the association fails to submit a suitable plan of operation within ninety days following July 1, 2000, or if at any time after submission of a suitable plan the association fails to submit suitable amendments to the plan, the commissioner, after notice and opportunity for hearing, shall adopt rules necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. A member insurer shall comply with the association's plan of operation.

3. The plan of operation shall provide for all of the following:

a. Procedures for the performance of the duties and execution of the powers of the association under section 518C.6.

b. Procedures for managing the assets of the association.

c. Procedures by which claims may be filed with the association and acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer constitutes notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

d. The place and time for meetings of the board of directors, as necessary.

e. Procedures for keeping records of all financial transactions of the association, its agents, and the board of directors.

f. That any member insurer aggrieved by a final action or decision of the association may appeal the action or decision to the commissioner within thirty days after the action or decision.

g. Additional provisions necessary or proper for the performance of the duties and execution of the powers of the association.

4. The plan of operation may delegate any or all duties and powers of the association, except those under section 518C.6, subsection 1, paragraph *"c"*, and subsection 2, paragraph *"c"*, to a person with the approval of both the board of directors and the commissioner. Such delegation shall only be made to a person extending protection which is not substantially less favorable and effective than that provided by this chapter. Such person shall be reimbursed as a servicing facility and shall be paid for the performance of any other functions of the association.

2000 Acts, ch 1035, §7

518C.8 Duties and powers of the commissioner.

1. The commissioner shall do both of the following:

a. Notify the association of the existence of an insolvent insurer not later than three days after the commissioner receives notice of the determination of the insolvency.

b. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

2. The commissioner may do any of the following:

a. Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. The notification shall be by regular mail at their last known address, but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

b. Suspend or revoke, after notice and opportunity for hearing, the certificate of authority to transact insurance business in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a penalty on any member insurer which fails to pay an assessment when due. Such penalty shall not exceed five percent of the unpaid assessment per month, except that a penalty shall not be less than one hundred dollars per month.

c. Revoke the designation of any servicing facility if the commissioner finds claims are being processed unsatisfactorily.

3. Judicial review of an action of the commissioner may be sought pursuant to chapter 17A.

2000 Acts, ch 1035, §8

518C.9 Effect of paid claims.

1. A person recovering under a claim made pursuant to this chapter is deemed to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. A claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such claimant would have been required to cooperate with the insolvent insurer. The association has no cause of action against a claimant for any sums the association has paid out.

2. The association or a similar entity in another state shall be recognized as a claimant in the liquidation of an insolvent insurer for any amounts

paid by the association or similar entity on covered claim obligations as determined under this chapter or under similar law in another state. The association or similar entity shall receive dividends and any other distributions at the priority set forth under the applicable liquidation law. The receiver, liquidator, or statutory successor of an insolvent insurer is bound by determinations of covered claim eligibility under this chapter and by settlements of covered claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

3. The association shall periodically file with the receiver, liquidator, or statutory successor of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which statements shall preserve the rights of the association against the assets of the insolvent insurer.

2000 Acts, ch 1035, §9

518C.10 Nonduplication of recovery.

1. A person having a claim under another policy, which claim arises out of the same facts which give rise to a covered claim, is first required to exhaust the person's rights under the other policy. An amount recovered or recoverable by a person under another insurance policy shall be credited against the liability of the association under section 518C.6, subsection 1, paragraph *"a"*. For purposes of this section, *"another insurance policy"* means a policy issued by an insurance company, whether a member insurer or not, which policy insures against any of the types of risks insured by an insurance company authorized to transact insurance business under chapter 518 or 518A, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

2. A person having a claim which may be recovered under more than one insurance guaranty association or an equivalent entity shall seek recovery first from the association of the place of residence of the insured. However, if the claim is a first-party claim for damage to property with a permanent location, recovery shall be first sought from the association or equivalent entity of the state in which the property is permanently located. An amount recovered from any other guaranty association or equivalent entity shall be subtracted from the maximum liability of the Iowa county and state mutual insurance guaranty association under section 518C.6, subsection 1, paragraph *"a"*.

2000 Acts, ch 1035, §10

518C.11 Prevention of insolvencies.

1. *a.* The board of directors, upon majority vote and for purposes of detecting and preventing insurer insolvencies, may do either of the following:

(1) Make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(2) Respond to a request by the commissioner to discuss and make recommendations regarding the status of a member insurer whose financial condition may be hazardous to policyholders or the public.

b. The board of directors, at the conclusion of a domestic insurer insolvency, may prepare a report based on the information available to the association on the history and causes of the insolvency. The report may be submitted to the commissioner.

2. Recommendations and reports made pursuant to subsection 1, paragraph *"a"*, subparagraph (2), are not public records under chapter 22.

2000 Acts, ch 1035, §11

518C.12 Examination of the association.

The association is subject to examination and regulation by the commissioner. The board of directors, not later than March 30 of each year, shall submit a financial report for the preceding calendar year in a form approved by the commissioner.

2000 Acts, ch 1035, §12

518C.13 Tax exemption.

The association is exempt from the payment of fees and taxes levied by this state or a subdivision of the state except for taxes levied on property.

2000 Acts, ch 1035, §13

518C.14 Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. Such rates and premiums shall not be deemed excessive as a result of including such recoupment allowances.

2000 Acts, ch 1035, §14

518C.15 Immunity.

Liability and a cause of action shall not arise against any member insurer, the association, its agents or employees, the board of directors, the commissioner, or the commissioner's representatives, for any reasonable action taken in the performance of duties and execution of powers as provided for under this chapter.

2000 Acts, ch 1035, §15

518C.16 Stay of proceedings.

A proceeding to which the insolvent insurer is a

party or in which the insolvent insurer is obligated to defend a party shall be stayed from the date of the insolvency to and including the date set as the deadline for the filing of claims against the insolvent insurer or its receiver. However, upon application, the court having jurisdiction of the receivership may lengthen or shorten the period, either as to all claims or as to any particular claim. The association may waive such stay as to specific cases involving covered claims.

The association, on its own behalf or on behalf of the insured, with respect to a covered claim based on the default of an insurer who is or who becomes insolvent, or based on the failure of an insurer to defend an insured, is entitled to set the default aside and defend such claim on its merits.

2000 Acts, ch 1035, §16

518C.17 Actions against the association.

An action against the association shall be brought against it in the association's own name and only in the Polk county district court. Service of original notice in an action against the association may be made on any officer of the association or upon the commissioner of insurance on its behalf. The commissioner shall promptly transmit any notice served upon the commissioner to the association.

2000 Acts, ch 1035, §17

518C.18 Timely filing of claims.

Notwithstanding any other provision of this chapter, a covered claim shall not include a claim filed with the association after the final date set by the court for the filing of claims against the insolvent insurer or its receiver.

2000 Acts, ch 1035, §18

518C.19 Prohibited advertising.

A person, in connection with the sale of an insurance policy, shall not advertise or publish that claims under the insurance policy are subject to this chapter or that such claims will be paid by the association.

2000 Acts, ch 1035, §19

CHAPTER 519

LIABILITY INSURANCE — CERTAIN PROFESSIONS

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519.1 Authorization.

Any number of physicians and surgeons, osteopaths, osteopathic physicians and surgeons, podiatric physicians, chiropractors, pharmacists, dentists, and graduate nurses, licensed to practice their profession in this state, and hospitals licensed under chapter 135B, may, by complying with the provisions of this chapter and without regard to other statutory provisions, enter into contracts with each other for the purpose of protecting themselves by insurance against loss by reason of actions at law on account of their alleged error, mistake, negligence, or carelessness in the treatment and care of patients, including the performance of surgical operations, or in the prescribing and dispensing of drugs and medicines, or for loss by reason of damages in other respects, and to reimburse any member in case of such loss.

[C24, 27, 31, 35, 39, §**9069;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.1]

95 Acts, ch 108, §19

Action on liability policy, chapter 516

519.2 Incorporation — powers.

All corporations, organized for the purpose of transacting such insurance business under the provisions of this chapter, shall incorporate under the provisions of chapter 491, and be known as mutual corporations; and are hereby empowered to collect such assessments, or premium payments, provided for in their articles of incorporation or bylaws, as are required to pay losses and expenses incurred in the conduct of their business and to cede reinsurance. Such mutual insurance corporations may issue certificates of membership, or policies; and may provide that all assessments, or premium payments, payable thereunder, be made in cash, or on the installment, or as-

sessment plan.

[C24, 27, 31, 35, 39, §**9070;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.2]

519.3 Approval of articles.

The articles of such mutual insurance corporations shall be submitted to, and approved by, the attorney general and the commissioner of insurance before being filed with the secretary of state.

[C24, 27, 31, 35, 39, §**9072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.3]

519.4 Approval of policy — certificate of authority.

No such mutual insurance corporation shall issue membership certificates, or policies, until its form of certificate or policy, shall have been submitted to, and approved by, the commissioner of insurance and until it has secured from such commissioner of insurance a certificate authorizing it to transact such an insurance business.

[C24, 27, 31, 35, 39, §**9073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.4]

519.5 Conditions.

No such certificate shall be issued by the commissioner of insurance until two hundred fifty individual applications or ten or more applications from a hospital group, have been received, and until the commissioner of insurance is satisfied that such mutual insurance corporation has bona fide applications representing the number of applicants required, and that there is in the possession of such mutual insurance corporation cash assets amounting to not less than ten times the maximum single retained risk.

[C24, 27, 31, 35, 39, §**9074;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.5]

519.6 Reports.

Such mutual insurance corporations doing business under the provisions of this chapter shall, annually, before the first day of March, report to the commissioner of insurance, upon blanks furnished by the commissioner, the same facts, so far as applicable, as are required to be furnished by mutual insurance associations under the statutes of Iowa, which report shall be tabulated by the commissioner of insurance and published by the commissioner in the annual report on insurance.

[C24, 27, 31, 35, 39, §**9075;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.6]

Annual report, §505.13

519.7 Reinsurance reserve.

Such mutual insurance corporations shall, annually, set aside and maintain as a reinsurance reserve, an amount equal to ten percent of the receipts from assessments, or premium payments, during the year until the total amount thus accumulated shall equal forty percent, but not to exceed fifty percent of the amount of the annual assessment, or premium payment, at the rate charged for such insurance on all policies in force. The reserve thus accumulated may be used for the payment of losses and expenses, and when so used shall be restored and maintained in like manner as originally accumulated.

[C24, 27, 31, 35, 39, §**9076;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.7]

519.8 Cancellation of policy.

Any certificate of membership, or policy, issued by such a mutual insurance corporation may be canceled by the corporation by giving thirty days' written notice thereof to the insured; or such cancellation may be upon demand of the insured; and such cancellation, when so made, either by the corporation or by the insured, shall be upon a pro rata basis, and the cancellation of such certificate or policy shall release the member from all other future obligations to such corporation.

[C24, 27, 31, 35, 39, §**9077;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.8]

519.9 Fees.

Such a mutual insurance corporation shall pay the same fees for admission into the state, for annual reports, and for annual certificates of authority as are required to be paid by domestic mutual companies organized and doing business under chapter 515; such certificate shall expire June 1 of the year following the date of its issue.

[C24, 27, 31, 35, 39, §**9078;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.9]

88 Acts, ch 1112, §109

519.10 Powers of commissioner.

The commissioner of insurance shall have and exercise the same control over such corporations as the commissioner now has over state mutual insurance associations organized and doing business under chapter 518A.

[C24, 27, 31, 35, 39, §**9079;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.10]

2000 Acts, ch 1023, §54

519.11 Liability to assessments.

The provisions as to maximum liability of members to assessments when assets are insufficient and to assessments when the corporation is insolvent, found in section 518A.9, shall apply to all mutual insurance corporations organized under this chapter.

[C24, 27, 31, 35, 39, §**9080;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.11]

99 Acts, ch 165, §22; 2000 Acts, ch 1023, §55

519.12 Foreign companies.

Any mutual insurance association organized under the laws of any other state, for the purpose

of transacting the kind of business described in this chapter, and which has on hand surplus amounting to not less than ten times the maximum single retained risk, and has not less than two hundred fifty members, may upon application, be admitted to do business in this state if the commissioner finds such admission is in the public interest; and shall thereafter make all reports and be subject to taxation, examination, and supervision by the commissioner of insurance to the same extent and in the same manner as are domestic corporations organized under the provisions of this chapter.

[C24, 27, 31, 35, 39, §**9081;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.12]

519.13 Construction.

All laws, or parts of laws, in conflict herewith shall be so construed as not to include corporations regulated by this chapter.

[C24, 27, 31, 35, 39, §**9082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §519.13]

CHAPTER 519A

MEDICAL MALPRACTICE INSURANCE

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519A.13 Privileged communications.

519A.1 Intent.

The general assembly finds that a critical situation exists because of the high cost and impending unavailability of medical malpractice insurance. The purposes of sections 519A.2 to 519A.13 are to assure that the public is adequately protected against losses arising out of medical malpractice by providing licensed health care providers with medical malpractice insurance through the requirement that certain liability insurance carriers write medical malpractice insurance for a period of two years upon a finding of an emergency by the commissioner of insurance that either such insurance is not available through normal channels or that it is not available on a reasonable basis because of lack of competition for such insurance, or otherwise; to establish an association to equitably spread the risks for such insurance; and to provide for recoupment of losses resulting from the operation of the association through a stabilization reserve fund contributed to by insureds, a surcharge on future liability insurance policies, or a favorable premium tax treatment.

It is the intent of this chapter to provide only an interim solution to the impending unavailability of medical malpractice insurance. It is not anticipated that this chapter will resolve the underlying causes of the unavailability and high cost which extend beyond the insurance mechanism. It is anticipated that future legislation will be required to deal on a more permanent basis with the underlying causes of the current situation.

[C77, 79, 81, §519A.1]

519A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Association"* means the joint underwriting association established pursuant to this section and sections 519A.3 to 519A.13.

2. *"Commissioner"* means the commissioner of insurance or a designee.

3. *"Licensed health care provider"* means and includes a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, or nurse licensed pursuant to chapter 147, a hospital licensed pursuant to chapter 135B, and a nursing facility licensed pursuant to chapter 135C.

4. *"Medical malpractice insurance"* means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed health care provider.

5. *"Net direct premiums"* means gross direct premiums written on liability insurance as reported in the annual statements filed by the insurers with the commissioner, including the liability component of multiple peril package policies as computed by the commissioner, less return premiums for the unused or unabsorbed portions of

premium deposits.

[C77, 79, 81, §519A.2]

95 Acts, ch 108, §20; 2002 Acts, ch 1111, §32

Subsection 3 amended

519A.3 Temporary joint underwriting association.

1. A temporary joint underwriting association is created, consisting of all insurers authorized to write and engaged in writing on a direct basis within this state liability insurance, including insurers covering such peril in multiple peril policies. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to write liability insurance in this state.

2. The purpose of the association shall be to provide, for a period not exceeding two years, a market for medical malpractice insurance on a self-supporting basis without subsidy from its members.

3. The association shall not commence underwriting operations for health care providers until the commissioner, after notice and opportunity for hearing, has determined that medical malpractice insurance is not available at a reasonable cost for a specific type of licensed health care provider in the voluntary market. Upon such determination the association shall be authorized to issue policies of medical malpractice insurance for such specific type of health care provider but need not be the exclusive agency through which such insurance may be written on a primary basis in this state.

If the commissioner determines at any time that medical malpractice insurance can be made available in the voluntary market at a reasonable price for any specific type of licensed health care provider, the association shall thereby cease underwriting medical malpractice insurance for that type of licensed health care provider.

4. The association shall, subject to the terms and conditions of sections 519A.2 to 519A.13, have and exercise the following powers on behalf of its members:

a. To issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limits as specified in the plan of operation but not to exceed one million dollars for each claimant under one policy and three million dollars for all claimants under one policy in any one year.

b. To underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions.

c. To assume reinsurance from its members.

d. To cede reinsurance.

[C77, 79, 81, §519A.3]

519A.4 Plan of operation.

1. The association shall submit a plan of operation to the commissioner, together with any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association consistent with sections 519A.2 to 519A.13. The plan of operation and any amendments thereto shall become effective only after promulgation of the plan or amendment by the commissioner as a rule pursuant to section 17A.4: Provided that the initial plan may in the discretion of the commissioner become effective immediately upon filing with the secretary of state pursuant to section 17A.5, subsection 2, paragraph *"b"*, subparagraph (1).

If the association fails to submit a suitable plan of operation within twenty-five days following the effective date of this chapter or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall adopt rules necessary to effectuate sections 519A.2 to 519A.13. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. The plan of operation shall provide for economic, fair and nondiscriminatory administration, and for the prompt and efficient provision of medical malpractice insurance. The plan shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.

3. All member insurers shall comply with the plan of operation.

[C77, 79, 81, §519A.4]

519A.5 Policy forms and rates.

1. The rates, rating plans, rating classifications, and policy forms and endorsements applicable to insurance written by the association and the statistical and experience data relating thereto shall be subject to sections 519A.2 to 519A.13 and to the provisions of the general insurance code which are not inconsistent with the purposes and provisions of this chapter.

2. All policies issued by the association shall provide for a continuous period of coverage beginning with their respective effective dates. All policies shall terminate at 12:01 a.m. two years from the date of finding of an emergency by the commissioner, or earlier in accordance with sections 519A.2 through 519A.13; or because of failure of the policyholder to pay any premium or stabilization reserve fund charge or portion of either when due. All policies shall be issued subject to the

group retrospective rating plan and the stabilization reserve fund authorized by this chapter. No policy form shall be used by the association unless it has been filed with and approved by the commissioner.

3. The commissioner shall specify whether policy forms and the rate structure shall be on a "claims-made" or "occurrence" basis and coverage shall be provided by the association only on the basis specified by the commissioner. The commissioner shall specify the "claims-made" basis only if the contract makes provision for residual "occurrence" coverage upon the retirement, death, disability or removal from this state of the insured. Provision may be made for a premium charge allocable to any such residual "occurrence" coverage and such premium charges for such residual coverage shall be segregated and separately maintained for such purpose which may include the reinsurance of all or a part of that portion of the risk.

4. The rates, rating plans, rating rules, and rating classifications applicable to the insurance written by the association shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting.

5. All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the commissioner under which the final premium for all policyholders of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee, on policyholder supplied funds. The standard premium, before retrospective adjustment, for each policy issued by the association shall be established for portions of the policy period coinciding with the association's fiscal year on the basis of the association's rates, rating plans, rating rules, and rating classifications then in effect. The maximum final premium for all policyholders of the association, as a group, shall be limited as provided in section 519A.6, subsection 5. Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection, there shall be a presumption that the rates filed and premiums imposed by the association are not unreasonable or excessive.

6. The association shall certify to the commissioner the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within sixty days after that certification the commissioner shall authorize the members of the association to commence recoupment of their respective shares of the deficit by deducting their share of the deficit from past or future premium taxes due the state of Iowa. The association shall amend the amount of its certification of deficit to the commissioner as the values of its incurred losses become finalized and the members of the association shall amend their recoupment procedure accordingly.

7. In the event that sufficient funds are not available for the sound financial operation of the association, all members shall contribute to the financial requirements of the association in the manner provided for in section 519A.8. Any contribution shall be reimbursed to the members by recoupment as provided in subsection 6.

[C77, 79, 81, §519A.5]
2002 Acts, ch 1111, §33
Subsection 2 amended

519A.6 Stabilization reserve fund.

1. There is created a stabilization reserve fund. The fund shall be administered by three directors, one of whom shall be the commissioner. The remaining two directors shall be appointed by the commissioner: One shall be a representative of the association and the other a representative of its policyholders.

2. The directors shall act by majority vote with two directors constituting a quorum for the transaction of any business or the exercise of any power of the fund. The directors shall serve without salary, but each director other than the commissioner shall be reimbursed for actual and necessary expenses incurred in the performance of official duties as a director. The directors shall not be subject to any personal liability with respect to the administration of the fund for acts or decisions made in good faith pursuant to the provisions of this chapter.

3. Each policyholder shall pay to the association a stabilization reserve fund charge determined by the directors which shall not exceed the amount of one annual premium due for insurance through the association. Such charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

4. The association shall promptly pay to the fund all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under any group retrospective rating plan approved by the commissioner under the provisions of this chapter.

5. All moneys received by the fund shall be held in trust by a corporate trustee selected by the directors. The corporate trustee may invest the moneys held in trust, subject to the approval of the directors. All investment income shall be credited to the fund, and all expenses of administration of the fund shall be charged against the fund. The moneys held in trust shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rat-

ing plan approved by the commissioner. Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If all moneys accruing to the fund are finally exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall there upon terminate and shall be conclusively presumed to have been discharged. Any moneys remaining in the fund after all such retrospective premium charges have been paid shall be returned to policyholders pursuant to procedures authorized by the directors.

[C77, 79, 81, §519A.6]

519A.7 Procedures.

1. Upon a finding by the commissioner, after notice and opportunity for hearing, that medical malpractice insurance is not available at a reasonable cost for a specific type of licensed health care provider in the voluntary market and upon notification of that finding to the association, any licensed health care provider of the type specified in the commissioner's finding shall be entitled to apply to the association for medical malpractice insurance coverage. The application may be made on behalf of a licensed health care provider by an authorized agent.

2. If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation, then the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical malpractice insurance.

[C77, 79, 81, §519A.7]

519A.8 Participation.

All members of the association shall participate in its writings, expenses, servicing allowance, management fees and losses in the proportion that the net direct premiums of each member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association. Each member's proportion shall be determined annually on the basis of the annual statements and other reports filed by the insurer with the commissioner.

[C77, 79, 81, §519A.8]

519A.9 Governing board.

1. The association shall be governed by a board of eleven directors of whom three shall be appointed annually by the commissioner to represent the licensed health care providers. Eight members shall be elected annually, except as provided in subsection 2, by the members of the association. Vacancies on the board shall be filled for the remaining period of the term by majority vote of the remaining directors subject to approval of the commissioner.

2. The commissioner shall designate a time and place for a meeting of the members of the association at which the eight elected members serving on the board shall be elected. The commissioner shall appoint the appointive members of the board on or before the date of the meeting.

The commissioner may, prior to the first meeting of the members of the association, appoint an interim governing board of the association consisting of eight member insurers and three representatives of the licensed health care providers. The eight member insurers of that interim governing board shall serve until their successors are elected by the members of the association. In appointing members of the association to the interim governing board, the commissioner shall consider among other things whether all member insurers are fairly represented.

[C77, 79, 81, §519A.9]

2002 Acts, ch 1111, §34

Subsection 2, unnumbered paragraph 1 amended

519A.10 Appeals and judicial review.

1. Any applicant or any person insured pursuant to section 519A.7, or a legal representative, or any affected insurer, may appeal to the commissioner within thirty days after any ruling, action or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters.

2. All orders of the commissioner made pursuant to sections 519A.2 to 519A.13 shall be subject to judicial review as provided in the Iowa administrative procedure Act.

[C77, 79, 81, §519A.10]

519A.11 Annual statements.

The association shall file in the office of the commissioner on or before the first day of March each year, a statement as prescribed by the commissioner. The statement shall contain matters and information required by the commissioner including, but not limited to, information with respect to its transactions, condition, operations and affairs during the preceding year, and shall be in a form approved by the commissioner. The commissioner may, at any time, require the association to furnish additional information with respect to matters considered to be material to the scope, operation and experience of the association.

[C77, 79, 81, §519A.11]

519A.12 Examinations.

The commissioner shall make an examination of the association at least annually. The expenses of each examination shall be paid by the association.

[C77, 79, 81, §519A.12]

519A.13 Privileged communications.

There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, the commissioner, or any other person or organization, for any statements made in good faith by any of them in any report or communication concerning risks insured or to be insured by the association, or during any proceedings within the scope of sections 519A.2 to 519A.12 and this section.

[C77, 79, 81, §519A.13]

CHAPTER 520

RECIPROCAL OR INTERINSURANCE CONTRACTS

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520.1 Authorization.

Individuals, partnerships, and corporations, and cities, counties, townships, school districts and any other units of local government of this state, hereby designated subscribers, are hereby authorized to exchange reciprocal or interinsurance contracts with each other, and with individuals, partnerships, and corporations of other states, territories, districts, and countries, providing insurance among themselves from any loss which may be insured against under the law, except life insurance.

[C24, 27, 31, 35, 39, §**9083;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.1]

520.2 Execution of contract.

Such contracts may be executed by an attorney, agent, or other representative herein designated attorney, duly authorized and acting for such subscribers under powers of attorney, and such attorney may be a corporation. Such attorney shall have the power and authority to execute any and all instruments, papers, and documents incident to and a part of the business of the reciprocal or interinsurance exchange, including deeds for the conveyance of real estate, and acquisition and sale of securities. Such attorney shall have the power and authority to do all things necessary and incident to the management and operation of such business. The certificate of the commissioner of insurance certifying the name of the attorney for any reciprocal or interinsurance exchange shall be sufficient proof of the authority of any such attorney.

[C24, 27, 31, 35, 39, §**9084;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.2]

520.3 Office of attorney — foreign office.

The principal office of such attorney shall be maintained at such place as is designated by the subscribers in the power of attorney; provided that, where the principal office of such attorney is located in another state, the commissioner of insurance shall not issue a certificate of authority, or license, as provided in this chapter unless such attorney shall hold a license or certificate of authority from the insurance department of such other state.

[C24, 27, 31, 35, 39, §**9085;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.3]

520.4 Preliminary declaration.

Such subscribers so contracting among themselves, shall, through their attorney, file with the commissioner of insurance a declaration verified by the oath of such attorney, or, where such attorney is a corporation, by the oath of the duly authorized officers thereof, setting forth:

1. The name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so

similar to any name or designation adopted by any attorney or by any insurance organization in the United States prior to the adoption of such name or designation by the attorney, as to confuse or deceive.

2. The location of the principal office.

3. The kind or kinds of insurance to be effected.

4. A copy of each form of policy, contract, or agreement under or by which insurance is to be effected.

5. A copy of the form of power of attorney under which such insurance is to be effected.

6. That applications have been made for indemnity or insurance upon at least one hundred separate risks aggregating not less than one and one-half million dollars represented by executed contracts or bona fide applications to become concurrently effective; or in case of employers liability or workers' compensation insurance, covering a total payroll of not less than two and one-half million dollars.

7. That there is in the possession of such attorney and available for the payment of losses, assets amounting to not less than three hundred thousand dollars.

8. A financial statement under oath in form prescribed for the annual statement.

9. The instrument authorizing service of process as provided for in this chapter.

10. Certificate showing deposit of funds.

[C24, 27, 31, 35, 39, §**9086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.4]

520.5 Actions — venue — commissioner as process agent.

Concurrently with the filing of the declaration provided for by the terms of section 520.4, the attorney shall file with the commissioner of insurance, an instrument in writing executed by the attorney for said subscribers, conditioned that, upon the issuance of certificate of authority provided for in this chapter, action may be brought in the county in which the property or person insured thereunder is located, and that service of process shall be had upon the commissioner of insurance or upon the attorney in fact in all suits in this state, whether arising out of such policies, contracts, agreements or otherwise, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. All suits of every kind and description brought against such reciprocal exchange or the subscribers thereto on account of their connection therewith, must be brought against the attorney in fact therefor or the exchange as such, and shall not be brought against any of the subscribers thereto individually on account of their connection with or membership in such reciprocal exchange, and must be brought in the manner and method above provided.

[C24, 27, 31, 35, 39, §**9087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.5]

520.6 Manner of service.

Three copies of such process shall be served and the commissioner of insurance shall file one copy, forward one copy to said attorney, and return one copy with the commissioner's admission of service.

[C24, 27, 31, 35, 39, §**9088;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.6]

520.7 Judgment — satisfaction.

A judgment rendered in any such case where service of process has been so had upon the commissioner of insurance, shall be valid and binding against any and all such subscribers as their interests appear and such judgment may be satisfied out of the funds in the possession of the attorney belonging to such subscribers.

[C24, 27, 31, 35, 39, §**9089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.7]

520.8 Reports — limitations on risks.

There shall be filed with the commissioner of insurance by such attorney whenever the commissioner of insurance shall so require, a statement under oath of such attorney showing the maximum amount of indemnity upon a single risk, and, except as to workers' compensation insurance, no subscriber shall assume on any single risk an amount greater than ten percent of the net worth of such subscriber.

[C24, 27, 31, 35, 39, §**9090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.8]

520.9 Standard of solvency.

1. There shall at all times be maintained as assets a sum in cash, or in securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, equal to one hundred percent of the net unearned premiums or deposits collected and credited to the account of subscribers, or assets equal to fifty percent of the net annual deposits collected and credited to the account of subscribers on policies having one year or less to run and pro rata on those for longer periods; in addition to which there shall be maintained in cash, or in such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks; provided that where the assets on hand available for the payment of losses other than determined losses, do not equal two million dollars, all liability for each determined loss or claim deferred for more than one year, shall be provided for by a special deposit in a trust company or bank having fiduciary powers of the state in which the principal office is located, to be used in pay-

ment of compensation benefits for disability; such deposit to be a trust fund and applicable only to the purposes stated, or such liability may be reinsured in authorized companies with a surplus of at least two million dollars. For the purpose of such reserves, net deposits shall be construed to mean the advance payments of subscribers after deducting the amount specifically provided in the subscribers' agreements for expenses. If at any time the assets so held in cash or such securities shall be less than required above, or less than two million dollars, the subscribers or their attorney for them shall make up the deficiency within thirty days after notice from the commissioner of insurance to do so. In computing the assets required by this section, the amount specified in section 520.4, subsection 7, shall be included.

2. Notwithstanding subsection 1, a person issuing reciprocal contracts and authorized to transact business under this chapter shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

[C24, 27, 31, 35, 39, §**9091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.9]

88 Acts, ch 1111, §16; 96 Acts, ch 1046, §8

520.9A Solvency standard — transition.

Notwithstanding section 520.9, a reciprocal or interinsurance insurer authorized to transact business in this state prior to July 1, 1988, may continue in operation provided that the insurer contributes an additional ten percent of the previous year ending capital and surplus to capital and surplus each year. If an insurer fails to contribute the additional ten percent, the commissioner of insurance may revoke the insurer's authorization to do business in this state. The insurance commissioner may waive this requirement for just cause shown.

88 Acts, ch 1111, §17

520.10 Annual report — examination.

Such attorney shall, within the time limited for filing the annual statement by insurance companies transacting the same kind of business, make a report, under oath, to the commissioner of insurance for each calendar year, showing the financial condition of affairs at the office where such contracts are issued and shall, at any and all times, furnish such additional information and reports as may be required; provided, however, that the attorney shall not be required to furnish the names and addresses of any subscribers except in case of an unpaid final judgment. The business affairs, records, and assets of any such organization shall be subject to examination by the commissioner of insurance at any reasonable time, and such examination shall be at the expense of the organization examined.

[C24, 27, 31, 35, 39, §**9092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.10]

520.11 Implied powers of corporations.

Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as fully granted as the rights and powers expressly conferred.

[C24, 27, 31, 35, 39, §**9093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.11]

520.12 Certificate of authority.

Upon compliance with the requirements of this chapter, the commissioner of insurance shall issue a certificate of authority or a license to the attorney, authorizing the attorney to make such contracts of insurance, which license shall specify the kind or kinds of insurance and shall contain the name of the attorney, the location of the principal office and the name or designation under which such contracts of insurance are issued. The certificate of authority shall expire on the first day of June next succeeding its issue, and shall be renewed annually as long as the company transacts business in accordance with the requirements of law.

[C24, 27, 31, 35, 39, §**9094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.12]

88 Acts, ch 1112, §110

520.13 Fidelity or surety bonds executed.

Fidelity or surety bonds executed by a reciprocal or interinsurance exchange pursuant to authority given by the commissioner of insurance shall be received and accepted as company or corporate bonds, provided, however, that such reciprocal companies before being permitted to qualify for writing fidelity or surety bonds shall be required to maintain a surplus of three hundred thousand dollars.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.13]

520.14 Violations — exceptions.

Any attorney who shall exchange any contracts of insurance of the kind and character specified in this chapter, or any attorney or representative of such attorney, who shall solicit or negotiate any applications for the same without the attorney having first complied with the foregoing provisions, shall be deemed guilty of a simple misdemeanor. For the purpose of organization and upon issuance of permit by the commissioner of insurance, powers of attorney and applications for such contracts may be solicited without compliance with the provisions of this chapter, but no attorney, agent, or other person shall make any such contracts of indemnity until all of the provisions of this chapter shall have been complied with.

[C24, 27, 31, 35, 39, §**9095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.14]

520.15 Refusal or revocation of certificate.

In addition to the foregoing penalties and where not otherwise provided, the penalty for failure or refusal to comply with any of the terms and provisions of this chapter, upon the part of the attorney, shall be the refusal, suspension, or revocation of certificate of authority or license by the commissioner of insurance and the public announcement of the commissioner's act, after due notice and opportunity for hearing has been given such attorney so that the attorney may appear and show cause why such action should not be taken.

[C24, 27, 31, 35, 39, §**9096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.15]

520.16 Bonds.

Where the principal office of the attorney in fact is located in this state the attorney shall give a fidelity bond to the subscribers thereof, personal or surety, in such sum as the commissioner of insurance shall deem sufficient, no less, however, than ten thousand dollars, which bond shall be approved by and deposited with the commissioner of insurance.

[C24, 27, 31, 35, 39, §**9097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.16]

520.17 Additional security — refusal.

Should the commissioner of insurance consider the surety on said bond, or the amount thereof, insufficient, the commissioner may require additional security or an increase in the amount of the bond. If such additional security or increase be not furnished within thirty days after notice to furnish the same, the commissioner of insurance may revoke the certificate of authority.

[C24, 27, 31, 35, 39, §**9098;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.17]

520.18 Foreign attorney — bonds.

Where the principal office of the attorney is located in another state, there shall be filed with the commissioner of insurance, in connection with the declaration, provided for by section 520.4, certified copies of all such bonds given by such attorney as security for the funds of subscribers.

[C24, 27, 31, 35, 39, §**9099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.18]

520.19 Annual tax — fees.

In lieu of all other taxes, licenses, charges, and fees whatsoever, such attorney shall annually pay to the commissioner the same fees as are paid by mutual companies transacting the same kind of business, and an annual tax of two percent, if a domestic reciprocal organization, and two percent, if a foreign reciprocal organization, calculated upon the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, after deducting therefrom returns, or cancellations, and all amounts returned to subscribers or credited to their accounts as savings, and the amount returned upon canceled policies and rejected applications covering property situated or on business done within this state.

[C24, 27, 31, 35, 39, §**9100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.19]

88 Acts, ch 1112, §305

520.20 Form of policy — construction.

The attorney may insert in any form of policy prescribed by the laws of this state any provisions or conditions required by the plan of reciprocal or interinsurance, provided the same shall not be inconsistent with or in conflict with any law of this state. Such policy, in lieu of conforming to the language and form prescribed by such law, shall be held to conform thereto in substance if such policy includes a provision or endorsement reciting that the policy shall be construed as if in the language and form prescribed by such law. Any such policy or endorsement shall first be filed with and approved by the commissioner of insurance.

[C24, 27, 31, 35, 39, §**9101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.20]

520.21 Reinsurance.

Such attorney shall not effect any reinsurance on risks in this state unless the insurance carrier granting such reinsurance shall be licensed in this state.

[C24, 27, 31, 35, 39, §**9102;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.21]

520.22 Laws applicable. Repealed by 88 Acts, ch 1111, § 18.

520.23 Deposit of securities by reciprocal or interinsurance exchanges.

If the commissioner of insurance or chief insurance officer of any other state or territory of the United States, claiming to proceed under existing or future laws of any such state or territory, shall require reciprocal or interinsurance exchanges of this state or the agents thereof to make any deposit of securities in such other state or territory for the protection of policyholders or otherwise or to make payment of taxes, fines, penalties, certificates of authority, license fees or otherwise or subject them to any restrictions, obligations, conditions, or penalties, greater than are required or imposed by the laws of the state of Iowa relating to reciprocal or interinsurance exchanges, from such exchanges of such other states or territories by the then existing laws of this state, then and in every such case all such reciprocal or interinsurance exchanges of such other states or territories

shall be and they are hereby required to make like deposits for like purposes with the insurance division of this state and to pay to the commissioner of insurance taxes, fines, penalties, certificates of authority, license fees and otherwise in an amount equal to the amount of such charges and payments, and shall be subjected to the same restrictions, obligations, conditions, or penalties imposed by the commissioner of insurance or chief insurance officer of such other states under and by virtue of law, upon reciprocal or interinsurance exchanges of this state and the agents thereof.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §520.23]

CHAPTER 521

CONSOLIDATION AND REINSURANCE

Securities to be deposited by foreign companies, §508.20 – 508.22, 515.70 – 515.72

521.1 Definitions.
521.2 Life companies — consolidation and reinsurance.
521.3 Submission of plan.
521.4 Procedure — notice.
521.5 Commission to hear petition.
521.6 Examination.
521.7 Appearance by policyholders.
521.8 Authorization.
521.9 Unanimous decision required.
521.10 Election called.
521.11 Approval and filing with commissioner.
521.12 Companies other than life — approval of plan.
521.13 Consolidation prohibited — exception.
521.14 Expenses — how paid.
521.15 Violations.
521.16 Applicability of chapter.

521.1 Definitions.

"Company" or *"companies"* when used in this chapter means a company or association organized under chapter 508, 511, 515, 518, 518A, or 520, and includes a mutual insurance holding company organized pursuant to section 521A.14.

[S13, §1821-m; C24, 27, 31, 35, 39, §**9104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.1]

89 Acts, ch 83, §75; 95 Acts, ch 185, §41

521.2 Life companies — consolidation and reinsurance.

A company organized under the laws of this state to do the business of life insurance, either on the stock, mutual, stipulated premium, or assessment plan, shall not consolidate with any other company or reinsure its risks, or any part of such risks, with any other company, or assume or reinsure the whole or any part of the risks of any other company, except as provided in this chapter. However, this chapter shall not be construed to prevent any company, as defined in section 521.1, from reinsuring a fractional part of any single risk.

[S13, §1821-n; C24, 27, 31, 35, 39, §**9105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.2]

95 Acts, ch 185, §42

521.3 Submission of plan.

When any such company shall propose to consolidate or enter into any reinsurance contract with any other company, it shall present its plan to the commissioner of insurance, setting forth the terms of its proposed contract of consolidation or reinsurance, asking for the approval or any modification thereof, which the commission hereinafter provided for may approve. The company must also file a statement of its assets and if a legal reserve company, of the reserve value of its policies or contracts.

[S13, §1821-o; C24, 27, 31, 35, 39, §**9106;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.3]

521.4 Procedure — notice.

The commission shall proceed to hear and determine such petition, without notice. If the commission shall deem it necessary in order to conserve the interests of the policyholders that notice shall be given, it shall require the company or companies to notify, by mail, all of the members or policyholders of the said company or companies of the pendency of such petition, and the time and place at which the same will be heard, the length of time of such notice to be determined by the commission.

[S13, §1821-p; C24, 27, 31, 35, 39, §**9107;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.4]

521.5 Commission to hear petition.

For the purpose of hearing and determining such petition, a commission consisting of the commissioner of insurance and attorney general is hereby created.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9108;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.5]

88 Acts, ch 1112, §702

521.6 Examination.

The commission may make such examination into the affairs and condition of any company or companies as it may deem proper, and shall have power to summon and compel the attendance and testimony of witnesses, and the production of books and papers before said commission and may administer oaths.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9109;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.6]

521.7 Appearance by policyholders.

When notice shall have been given as above provided, any policyholder, or stockholder of said company or companies shall have the right to appear before said commission and be heard with reference to said petition.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9110;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.7]

521.8 Authorization.

Said commission, if satisfied that the interests of the policyholders of said company or companies are properly protected and no reasonable objection to said petition exists, may authorize the proposed consolidation or reinsurance or may direct such modification thereof as may seem to it best for the interests of the policyholders; and said commission may make such order and disposition of the assets of any such company thereafter remaining as shall be just and equitable.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9111;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.8]

521.9 Unanimous decision required.

Such consolidation or reinsurance shall only be approved by the consent of all of the members of said commission, and it shall be the duty of said commission to guard the interests of the policyholders of any such company or companies proposing consolidation or reinsurance.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9112;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.9]

521.10 Election called.

In case of companies organized on the assessment plan, the commission may require the plan of consolidation or reinsurance to be submitted to the membership of such company or companies to be voted upon. When submitted, it shall be at a meeting called for that purpose, thirty days' notice being given, and a two-thirds vote of all the members present and voting shall be necessary to an approval of any plan of consolidation or reinsurance, and no proxies shall, in any case, be voted.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9113;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.10]

521.11 Approval and filing with commissioner.

Any plan of consolidation or reinsurance submitted as herein contemplated, must first have been approved by the commission, and the result of said vote must be filed with the commissioner of insurance and be by the commissioner determined before any consolidation or reinsurance shall be effected.

[S13, §1821-q; C24, 27, 31, 35, 39, §**9114;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.11]

521.12 Companies other than life — approval of plan.

When any company or companies not named in section 521.2 desire to consolidate or reinsure, it shall only be necessary for such company or companies to submit the plan of consolidation or reinsurance with any other information that may be required, to the commissioner of insurance and the attorney general and have the same by them approved.

[S13, §1821-r; C24, 27, 31, 35, 39, §**9115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.12]

521.13 Consolidation prohibited — exception.

A company or companies as described in section 521.1 shall not consolidate or reinsure except insofar as provided by section 515.49 with any other company or companies or any insurance company or companies organized under the laws of another state without the commission's approval.

[S13, §1821-s; C24, 27, 31, 35, 39, §**9116;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.13]

97 Acts, ch 186, §24

521.14 Expenses — how paid.

All expenses and costs incident to proceedings under the provisions of this chapter, shall be paid by the company or companies bringing the petition.

[S13, §1821-t; C24, 27, 31, 35, 39, §**9117;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.14]

521.15 Violations.

Any officer, director or stockholder of any company or companies, as defined in section 521.1, violating or consenting to the violation of any of the provisions of sections 521.2 to 521.13 shall be guilty of a serious misdemeanor.

[S13, §1821-u; C24, 27, 31, 35, 39, §**9118;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §521.15]

521.16 Applicability of chapter.

Chapter 521A is applicable to a merger or consolidation made pursuant to this chapter, and the provisions of chapter 521A and this chapter shall apply exclusively with respect to such merger or consolidation.

95 Acts, ch 185, §43

CHAPTER 521A

INSURANCE HOLDING COMPANY SYSTEMS

521A.1 Definitions.
521A.2 Subsidiaries of insurers.
521A.3 Acquisition of control of or merger with domestic insurer.
521A.4 Registration of insurers.
521A.5 Standards.
521A.6 Examination.
521A.7 Confidential treatment.
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521A.9 Injunctions — prohibitions against voting securities — sequestration of voting securities.
521A.10 Sanctions and penalties.
521A.11 Receivership.
521A.11A Recovery.
521A.12 Revocation, suspension, or nonrenewal of insurer's license.
521A.13 Judicial review.

MUTUAL INSURANCE HOLDING COMPANIES

521A.14 Mutual insurance holding companies.

521A.1 Definitions.

For the purpose of this chapter, unless the context otherwise requires:

1. *"Affiliate of"*, or a person affiliated with, a specific person, shall mean a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

2. The term *"commissioner"* shall mean the insurance commissioner, the commissioner's deputies, or the insurance division, as appropriate.

3. *"Control"*, including controlling, controlled by, and under common control with, shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not exist in fact.

4. *"Domestic insurer"* means an insurer organized or created under the laws of this state except an insurer excluded under subsection 6.

5. *"Insurance holding company system"* shall consist of two or more affiliated persons, one or more of which is an insurer.

6. *"Insurer"* means a company qualified and licensed by the insurance division to transact the business of insurance in this state by certificate issued pursuant to chapters 508, 514B, 515, 515E, and 520, except that it shall not include:

a. Agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

b. Fraternal benefit societies.

c. Nonprofit medical, hospital or dental service associations.

7. A *"person"* is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but does not include a joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

8. A *"securityholder"* of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

9. A *"subsidiary"* of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

10. The term *"voting security"* shall include any security convertible into or evidencing a right to acquire a voting security.

[C71, 73, 75, 77, 79, 81, §521A.1]

86 Acts, ch 1102, §1, 2; 90 Acts, ch 1234, §72; 97 Acts, ch 186, §25

521A.2 Subsidiaries of insurers.

1. *Authorization.* Any domestic insurer, either by itself or in cooperation with one or more persons, subject to the limitations set forth herein or elsewhere in this chapter, may organize or acquire one or more subsidiaries engaged or registered to engage in one or more of the following businesses or activities:

a. Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

b. Acting as an insurance producer for its parent or for any of its parent's insurer subsidiaries or

intermediate insurer subsidiaries.

c. Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

d. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

e. Acting as a broker dealer subject to or registered pursuant to the Securities Exchange Act of 1934 as amended.

f. Rendering financial services or advice to individuals, governments, government agencies, corporations, or other organizations or groups.

g. Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.

h. Ownership and management of assets which the parent corporation could itself own and manage. However, the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to the investments by the insurer.

i. Acting as administrative agent for a government instrumentality which is performing an insurance function.

j. Financing of insurance premiums, agents and other forms of consumer financing.

k. Any other business or service activity reasonably ancillary to an insurance business.

l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in paragraphs *"a"* to *"k"* inclusive.

2. *Exception.* Nothing contained in subsection 1 of this section shall prohibit a domestic insurer, either by itself or in cooperation with one or more persons, from investing amounts up to a total of ten percent of surplus in one or more subsidiaries or affiliates organized to do any lawful business.

3. *Additional investment authority.* In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this subtitle, a domestic insurer may also:

a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of the insurer's assets or fifty percent of the insurer's surplus as regards policyholders, if after the investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded and both of the following shall be included:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

b. Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph *"a"* of this subsection or in chapters 511, 515, 518A, and 520 applicable to the insurer. For the purpose of this paragraph, "total investment of the insurer" shall include both:

(1) Any direct investment by the insurer in an asset.

(2) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

c. With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, if after the investment the insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

4. *Exemption from investment restrictions.* Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection 3 of this section hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the Code applicable to such investments of insurers.

5. *Qualification of investment — when determined.* Whether any investment pursuant to subsection 3 meets the applicable requirements of the subsection is to be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, excluding dividends.

6. *Cessation of control.* If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of con-

trol or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of the Code, and the insurer has notified the commissioner thereof.

[C71, 73, 75, 77, 79, 81, §521A.2; 82 Acts, ch 1051, §3]

86 Acts, ch 1102, §3 – 8; 87 Acts, ch 115, §65; 91 Acts, ch 26, §48; 2001 Acts, ch 16, §11, 37

2001 amendment to subsection 1, paragraph b, takes effect January 1, 2002; 2001 Acts, ch 16, §37

521A.3 Acquisition of control of or merger with domestic insurer.

1. *Filing requirements.* No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

For purposes of this section a domestic insurer shall include any other person controlling a domestic insurer unless the other person is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, for purposes of this section *"person"* does not include a securities broker holding, in the usual and customary broker's function, less than twenty percent of the voting securities of an insurance company or of a person which controls an insurance company.

2. *Content of statement.* The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

a. The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection 1 of this section is to be effected, hereinafter called *"acquiring party"*.

(1) If such person is an individual, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

(2) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (1) of this paragraph.

b. The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose including a pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. However, if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

c. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

d. Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

e. The number of shares of any security referred to in subsection 1 of this section which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection 1 of this section, and a statement as to the method by which the fairness of the proposal was arrived at.

f. The amount of each class of any security referred to in subsection 1 of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

g. A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection 1 of this section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

h. A description of the purchase of any security referred to in subsection 1 of this section during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

i. A description of any recommendations to purchase any security referred to in subsection 1 of this section made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interview or at the suggestion of such acquiring party.

j. Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection 1 of this section, and, if distributed, of additional soliciting material relating thereto.

k. The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection 1 of this section for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

l. Additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection 1 of this section is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs *"a"* through *"l"* of this subsection shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection 1 of this section is a corporation, the commissioner may require that the information called for by paragraphs *"a"* through *"l"* of this subsection shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

3. *Alternative filing materials.* If any offer, request, invitation, agreement or acquisition referred to in subsection 1 of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration, or disclosure, the person required to file the statement referred to in subsection 1 of this section may utilize such documents in furnishing the information called for by that statement.

4. *Approval by the commissioner — hearings.*

a. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 if, after a public hearing on such merger or acquisition, the applicant has demonstrated to the commissioner all of the following:

(1) After the change of control the domestic insurer referred to in subsection 1 will be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(2) The effect of the merger or other acquisition of control will not substantially lessen competition in insurance in this state.

(3) The financial condition of any acquiring party will not jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders.

(4) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are not unfair or unreasonable to policyholders of the insurer and are not contrary to the public interest.

(5) The competence, experience, and integrity of those persons who would control the operation of the insurer are sufficient to indicate that the interests of policyholders of the insurer and of the public will not be jeopardized by the merger or other acquisition of control.

b. The public hearing referred to in paragraph *"a"* shall be held within thirty days after the statement required by subsection 1 is filed, and at least twenty days' notice of the public hearing shall be given by the commissioner to the person filing the statement. Not less than seven days' notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings shall be concluded not later than three days prior to the com-

mencement of the public hearing.

c. The commissioner may retain any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed merger or acquisition of control, the reasonable cost of which shall be paid by the acquiring party.

5. *Exemptions.* The provisions of this section shall not apply to any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom for one of the following reasons:

a. It has not been made or entered into for the purpose and does not have the effect of changing or influencing the control of a domestic insurer.

b. It is otherwise not comprehended within the purposes of this section.

6. *Violations.* The following shall be violations of this section:

a. The failure to file any statement, amendment, or other material required to be filed pursuant to subsection 1 or 2 of this section.

b. The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given approval thereto.

7. *Jurisdiction — consent to service of process.* The district court is hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process, notice or demand in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process, notice or demand shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at the person's last known address.

[C71, 73, 75, 77, 79, 81, §521A.3; 82 Acts, ch 1051, §4 – 6]

86 Acts, ch 1102, §9 – 11; 91 Acts, ch 26, §49, 50; 93 Acts, ch 88, §26; 97 Acts, ch 186, §26

521A.4 Registration of insurers.

1. *Registration.* An insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards which are substantially similar to those contained in this section and section 521A.5, subsection 1, paragraph *"a"*, and are adopted by statute or regulation in the jurisdiction of its domicile. The insurer shall also file a copy of the summary of its registration statement as required by subsection 4 in each state in which that insurer is authorized to do business if requested to do so by the commissioner of that state. An insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by March 31 of each year for the previous calendar year unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of the company's domiciliary jurisdiction.

2. *Information and form required.* Every insurer subject to registration shall file a registration statement on a form prescribed by the commissioner, which may be a form provided by the national association of insurance commissioners, which shall contain current information about:

a. The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

b. The identity and relationship of every member of the insurance holding company system.

c. The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(1) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements.

(7) Dividends and other distributions to shareholders.

(8) Consolidated tax allocation agreements.

d. A pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate, for a loan made to a member of the insurance holding company system.

e. Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

3. *Materiality.* Information need not be disclosed on the registration statement filed pursuant to subsection 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments or guarantees involving one-half of one percent or less of an insurer's admitted assets as of the next preceding December 31 are not material for purposes of this section.

4. *Reporting of dividends to shareholders.* Subject to section 521A.5, subsection 3, a registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen days following the declaration of the dividends or distributions.

5. *Summary of registration statement.* All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the next preceding registration statement.

6. *Information of insurers.* Any person within an insurance holding company system subject to registration is required to provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with this chapter.

7. *Termination of registration.* The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

8. *Consolidated filing.* The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

9. *Alternative registration.* The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection 1 of this section and to file all information and material required to be filed under this section.

10. *Exemptions.* The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

11. *Disclaimer.* Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and basis for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

12. *Violations.* The failure to file a registration statement or a summary of the registration statement required by this section within the time specified for the filing is a violation of this section.

[C71, 73, 75, 77, 79, 81, §521A.4]

86 Acts, ch 1102, §12 – 18; 87 Acts, ch 115, §66; 91 Acts, ch 26, §51 – 53

521A.5 Standards.

1. *Transactions within a holding company system affecting domestic insurers.*

a. Material transactions by registered insurers with their affiliates are subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) Charges or fees for services performed shall be reasonable.

(3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary and consistently applied insurance accounting practices.

(4) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions.

(5) After any material transaction with an affiliate and after any dividends or distributions to shareholder affiliates, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

b. A domestic insurer and a person in its holding company system shall not enter into any of the following transactions between each other involving amounts equal to or exceeding the lesser of three percent of a nonlife insurer's admitted assets or twenty-five percent of the surplus as regards policyholders with respect to nonlife insurers, and equal to or exceeding three percent of the insurer's admitted assets with respect to life insurers, each as of the next preceding December 31, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

(1) Sales.

(2) Purchases.

(3) Exchanges.

(4) Loans or extensions of credit.

(5) Guarantees.

(6) Investments.

(7) Loans or extensions of credit to a person

who is not an affiliate, if the domestic insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the domestic insurer making the loans or extensions of credit.

c. A domestic insurer and a person in its holding company system shall not enter into any of the following transactions, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

(1) All reinsurance agreements or modifications to such agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the next preceding December 31, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

(2) All management agreements, service contracts, and all other cost-sharing arrangements involving at least one-half of one percent of the insurer's surplus as of the next preceding December 31.

(3) Any material transactions specified by rule which the commissioner determines may adversely affect the interests of the domestic insurer's policyholders.

d. This subsection does not authorize or permit any transactions which in the case of an insurer would be otherwise contrary to law.

e. A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with a person or persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over a twelve-month period for that purpose, the commissioner may exercise the authority under section 521A.10.

f. The commissioner, in reviewing transactions pursuant to paragraphs *"b"* and *"c"*, shall consider whether the transactions comply with the standards set forth in paragraph *"a"*.

g. A domestic insurer shall notify the commissioner within thirty days of an investment of the insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

2. *Adequacy of surplus.* For purposes of this chapter in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

a. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

b. The extent to which the insurer's business is diversified among the several lines of insurance.

c. The number and size of risks insured in each line of business.

d. The extent of the geographical dispersion of the insurer's insured risks.

e. The nature and extent of the insurer's reinsurance program.

f. The quality, diversification, and liquidity of the insurer's investment portfolio.

g. The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

h. The surplus as regards policyholders maintained by other comparable insurers.

i. The adequacy of the insurer's reserves.

j. The quality and liquidity of investments in subsidiaries made pursuant to section 521A.2. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment such investment so warrants.

k. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.

3. *Dividends and other distributions.*

a. A domestic insurer may declare and pay dividends to its shareholders only from earned surplus.

For the purposes of this paragraph, *"earned surplus"* means surplus as regards policyholders less paid-in and contributed surplus, and may include a fair revaluation of assets by the board of directors that is reasonable under the circumstances. Assets revalued by the board of directors cannot be included in earned surplus until thirty days after the commissioner has received notice of the revaluation and has approved the revaluation. The commissioner shall approve or disapprove the revaluation within thirty days after receiving notice of the revaluation unless for good cause the commissioner extends the approval period for an additional thirty days.

b. A domestic insurer shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner has received notice of the declaration of the dividend or distribution and has not disapproved such payment within the period, or until the time the commissioner has approved the payment within the thirty-day period.

For purposes of this paragraph, an *"extraordinary dividend or distribution"* includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of the following:

(1) Ten percent of insurer's surplus as regards policyholders as of the thirty-first day of December next preceding.

(2) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the twelve-month period ending the thirty-first day of December next preceding.

An extraordinary dividend or distribution does not include pro rata distributions of any class of the insurer's own securities.

c. A domestic insurer subject to registration under section 521A.4 shall report to the commissioner all dividends to shareholders within five business days following the declaration of the dividends and not less than fourteen days prior to the payment of the dividends. This report shall also include a schedule setting forth all dividends or other distributions made within the previous twelve months.

d. Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval of the dividend or distribution. Such declaration does not confer any rights upon shareholders until the commissioner has approved the payment of the dividend or distribution or the commissioner has not disapproved the payment within the thirty-day period as provided in paragraph *"b"*.

[C71, 73, 75, 77, 79, 81, §521A.5]

86 Acts, ch 1102, §19, 20; 91 Acts, ch 26, §54; 92 Acts, ch 1117, §40, 43; 93 Acts, ch 88, §27 – 30; 94 Acts, ch 1006, §1; 94 Acts, ch 1023, §125

521A.6 Examination.

1. *Power of commissioner.* Subject to the limitation contained in this section and in addition to the powers which the commissioner has under chapter 507 relating to the examination of insurers, the commissioner may also order an insurer registered under section 521A.4 to produce records, books, or other information papers in the possession of the insurer or its affiliates as reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with this chapter. If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

2. *Use of consultants.* The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection 1 of this section. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

3. *Expenses.* Each registered insurer producing for examination records, books and papers pursuant to subsection 1 of this section shall be liable for and shall pay the expense of such examination in accordance with section 507.7.

[C71, 73, 75, 77, 79, 81, §521A.6]

86 Acts, ch 1102, §21, 22

521A.7 Confidential treatment.

All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 521A.6 and all information reported pursuant to sections 521A.4 and 521A.5, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.

[C71, 73, 75, 77, 79, 81, §521A.7]

93 Acts, ch 88, §31

521A.8 Rules.

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §521A.8]

521A.9 Injunctions — prohibitions against voting securities — sequestration of voting securities.

1. *Injunctions.* Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the district court of the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court of Polk county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this chapter or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

2. *Voting of securities — when prohibited.* No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the district court has so ordered. If any insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, regulation or order issued by the commissioner hereunder the insurer or the commissioner may apply to the district court of Polk county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 521A.3 or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

3. *Sequestration of voting securities.* In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation or order issued by the commissioner hereunder, the district court of Polk county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

[C71, 73, 75, 77, 79, 81, §521A.9]

521A.10 Sanctions and penalties.

1. If the commissioner finds after notice and hearing that a person subject to registration under section 521A.4 failed without just cause to file a registration statement as required in this chapter, the person shall be required to pay a penalty of one thousand dollars for each day's delay. The penalty shall be recovered by the commissioner and paid into the state general fund. The maximum penalty under this section is ten thousand dollars. The commissioner may reduce the penalty if the person demonstrates that the imposition of the penalty would constitute a financial hardship to the person.

2. *a.* A director or officer of an insurance holding company system who does any of the following is subject to the civil penalty imposed under paragraph *"b"*:

(1) Knowingly participates in or assents to transactions or investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph *"b"*.

(2) Knowingly permits any of the officers or agents of an insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to section 521A.4 or section 521A.5, subsection 1, paragraph *"b"*.

(3) Knowingly violates any other provision of this chapter.

b. An officer or director of an insurance holding company system who commits any of the acts or omissions listed in paragraph *"a"* shall pay, in the person's individual capacity, a civil penalty of not more than one thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

3. If it appears to the commissioner that an insurer subject to this chapter has engaged in a transaction or entered into a contract which is subject to section 521A.5 and which would not have been approved had approval been requested, the commissioner may order the insurer to immediately cease and desist any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any contracts and restore the status quo if the commissioner finds that action is in the best interest of the policyholders, creditors, or the public.

4. If it appears to the commissioner that an insurer or a director, officer, agent, or employee of an insurer has committed a willful violation of this chapter, the commissioner may institute criminal proceedings against the insurer or the responsible director, officer, agent, or employee in the district court for the county in which the principal office of the insurer is located, or if the insurer has no office in this state, then in the district court for Polk county. An insurer or individual who willfully violates this chapter is guilty of a class "D" felony.

5. A director or officer, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false

filings with the intent to deceive the commissioner in the performance of the commissioner's duties under this chapter is guilty of a class "D" felony. Any fines imposed shall be paid by the director, officer, or employee in the person's individual capacity.

[C71, 73, 75, 77, 79, 81, §521A.10]

86 Acts, ch 1102, §23; 91 Acts, ch 26, §55, 56

521A.11 Receivership.

Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in section 505.9 to take possession of the property of such domestic insurer and to conduct the business thereof.

[C71, 73, 75, 77, 79, 81, §521A.11]

521A.11A Recovery.

1. Subject to subsections 2 through 4, if an order for liquidation, conservation, or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order may recover on behalf of the insurer either of the following if made within one year preceding the filing of the petition for liquidation, conservation, or rehabilitation:

a. From a parent corporation, holding company, affiliate, or other person who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock.

b. Any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or a subsidiary of the insurer to a director, officer, agent, or employee.

2. A distribution is not recoverable if the parent holding company, affiliate, or other person shows that when the distribution was paid it was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

3. A parent corporation, holding company, affiliate, or other person who otherwise controlled the insurer or affiliate at the time the distributions were paid is liable only up to the amount of distributions or payments under subsection 1 that the person received. A person who otherwise controlled the insurer at the time the distributions were declared is liable only up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, each shall be separately liable for their distributive share.

4. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

5. To the extent that a person liable under subsection 3 is insolvent or otherwise fails to pay claims due from the person pursuant to this section, the person's parent corporation, holding company, affiliate, or other person who otherwise controlled it at the time the distribution was paid, is separately liable for its share of any resulting deficiency in the amount recovered from the parent corporation, holding company, affiliate, or other person who otherwise controlled it.

86 Acts, ch 1102, §24; 87 Acts, ch 115, §67

521A.12 Revocation, suspension, or nonrenewal of insurer's license.

Whenever it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interest of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

[C71, 73, 75, 77, 79, 81, §521A.12]

521A.13 Judicial review.

Judicial review of the actions of the commissioner may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C71, 73, 75, 77, 79, 81, §521A.13]

MUTUAL INSURANCE HOLDING COMPANIES

521A.14 Mutual insurance holding companies.

1. *a.* A domestic mutual insurance company, upon approval of the commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurance company as a stock insurance company. The commissioner, after a public hearing as provided in section 521A.3, subsection 4, paragraph *"b"*, if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the commissioner finds necessary for the protection of the policyholders' interests. The

commissioner may retain consultants as provided in section 521A.3, subsection 4, paragraph *"c"*. A reorganization pursuant to this section is subject to section 521A.3, subsections 1, 2, and 3. The commissioner shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

b. All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

2. *a.* A domestic mutual insurance company, upon the approval of the commissioner, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to subsection 1 and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company. The commissioner, after a public hearing as provided in section 521A.3, subsection 4, paragraph *"b"*, if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the commissioner finds necessary for the protection of the policyholders' interests. The commissioner may retain consultants as provided in section 521A.3, subsection 4, paragraph *"c"*. A merger pursuant to this section is subject to section 521A.3, subsections 1, 2, and 3. The commissioner shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

b. All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company. A merger of policyholders' membership interests in a mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to chapter 521 and chapter 521 is also applicable.

c. A foreign mutual insurance company, or a foreign health service corporation, which if a domestic corporation would be organized under chapter 514, may reorganize upon the approval of the commissioner and in compliance with the requirements of any law or regulation which is applicable to the foreign mutual insurance company or foreign health service corporation by merging its policyholders' or subscribers' membership interests into a mutual insurance holding company formed pursuant to subsection 1 and continuing the corporate existence of the reorganizing foreign mutual insurance company or reorganizing foreign health service corporation as a foreign stock insurance company subsidiary of the mutual insurance holding company. The commissioner, after a public hearing as provided in section 521A.3, subsection 4, paragraph *"b"*, may approve the proposed merger. The commissioner may retain consultants as provided in section 521A.3, subsection 4, paragraph *"c"*. A merger pursuant to this paragraph is subject to section 521A.3, subsections 1, 2, and 3. The reorganizing foreign mutual insurance company or reorganizing foreign health service corporation may remain a foreign company or foreign corporation after the merger, and may be admitted to do business in this state. A foreign mutual insurance company or foreign mutual health service corporation which is a party to the merger may at the same time redomesticate in this state by complying with the applicable requirements of this state and its state of domicile. The provisions of paragraph *"b"* shall apply to a merger authorized under this paragraph, except that a reference to policyholders in that paragraph is also deemed to include subscribers in the case of a health service corporation.

3. A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company organized under chapter 491 shall be incorporated pursuant to chapter 491. This requirement shall supersede any conflicting provisions of section 491.1. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the commissioner and the attorney general in the same manner as those of an insurance company.

4. A mutual insurance holding company is deemed to be an insurer subject to chapter 507C and shall automatically be a party to any proceeding under chapter 507C involving an insurance company which as a result of a reorganization pursuant to subsection 1 or 2 is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 507C involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be as-

sets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the commissioner or as ordered by the district court pursuant to chapter 507C.

5. *a.* Chapters 508B and 515G are not applicable to a reorganization or merger pursuant to this section.

b. Chapter 508B is applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual life insurance company organized under chapter 508 as if it were a mutual life insurance company.

c. Chapter 515G is applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual property and casualty insurance company organized under chapter 515 as if it were a mutual property and casualty insurance company.

6. A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in section 502.102.

7. The majority of the voting shares of the capital stock of the reorganized insurance company, which is required by this section to be at all times owned by a mutual insurance holding company, shall not be conveyed, transferred, assigned, pledged, subjected to a security interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance holding company or intermediate holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in or on the majority of the voting shares of the reorganized insurance company which is required by this section to be at all times owned by a mutual insurance holding company, is in violation of this section and shall be void in inverse chronological order of the date of such conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation, as to the shares necessary to constitute a majority of such voting shares. The majority of the voting shares of the capital stock of the reorganized insurance company which is required by this section to be at all times owned by a mutual insurance holding company shall not be subject to execution and levy as provided in chapter 626. The shares of the capital stock of the surviving or new company resulting from a merger or consolidation of two or more reorganized insurance companies or two or more intermediate holding companies which were subsidiaries of the same mutual insurance holding company are subject to the same requirements, restrictions, and limitations as provided in this section to which the shares of the merging or consolidating reorganized insurance companies or intermediate holding companies were subject by this section prior to the merger or consolidation.

As used in this section, *"majority of the voting shares of the capital stock of the reorganized insurance company"* means shares of the capital stock of the reorganized insurance company which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurance company for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurance company. The ownership of a majority of the voting shares of the capital stock of the reorganized insurance company which are required by this section to be at all times owned by a parent mutual insurance holding company includes indirect ownership through one or more intermediate holding companies in a corporate structure approved by the commissioner. However, indirect ownership through one or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurance company. The commissioner shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company. As used in this section, *"intermediate holding company"* means a holding company which is a subsidiary of a mutual insurance holding company, and which either directly or through a subsidiary intermediate holding company has one or more subsidiary reorganized insurance companies of which a majority of the voting shares of the capital stock would otherwise have been required by this section to be at all times owned by the mutual insurance holding company.

95 Acts, ch 185, §44, 48; 96 Acts, ch 1014, §1, 2

CHAPTER 521B

CREDIT FOR REINSURANCE

521B.1 Short title.
521B.2 Credit allowed a domestic ceding insurer.
521B.3 Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.
521B.4 Qualified United States financial institutions.
521B.5 Rules.

521B.1 Short title.

This chapter shall be known and may be cited as the *"Credit for Reinsurance Act."*

91 Acts, ch 26, §14

521B.2 Credit allowed a domestic ceding insurer.

Credit for reinsurance is allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only if the reinsurer meets the requirements of subsection 1, 2, 3, 4, or 5. If the reinsurer meets the requirements of subsection 3 or 4, the requirements of subsection 6 must also be met.

1. Credit is allowed if the reinsurance is ceded to an assuming insurer which is licensed to transact the business of reinsurance in this state.

2. Credit is allowed if the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which satisfies all of the following conditions:

a. Files with the commissioner evidence of submission to the jurisdiction of this state.

b. Submits to the authority of this state to examine its books and records.

c. Is licensed to transact reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact the business of reinsurance in at least one state.

d. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and does either of the following:

(1) Maintains a surplus with respect to policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission to the jurisdiction of this state.

(2) Maintains a surplus with respect to policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner. Credit shall not be allowed a domestic ceding insurer, if the accreditation of the assuming insurer is revoked by the commissioner after notice and hearing.

To qualify as an accredited reinsurer, an assuming insurer must meet all of the requirements and the standards set forth in this subsection. If the commissioner determines that the assuming insurer has failed to continue to meet any of these requirements or standards, the commissioner may upon written notice and hearing revoke accreditation of the assuming insurer.

This section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

3. *a.* Credit is allowed if the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section, and the assuming insurer or United States branch of an alien assuming insurer does both of the following:

(1) Maintains a surplus with respect to policyholders in an amount of not less than twenty million dollars.

(2) Submits to the authority of this state to examine its books and records.

b. However, the requirement of paragraph *"a"*, subparagraph (1), does not apply to reinsurance ceded and assumed pursuant to a pooling arrangement among insurers in the same holding company system.

4. *a.* Credit is allowed if the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in section 521B.4, subsection 2, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners' annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusted account representing the liabilities of the assuming insurer attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusted surplus of not less than twenty million dollars. In the case of a group including individual unincorporated and incorporated underwriters, the trust shall consist of a trusted account representing the liabilities of the group attributable to business written in the United States and, in addition, the group shall maintain a trusted surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not engage in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in paragraph *"a"*, which is under the supervision of the department of trade and industry of the United

Kingdom, which submits to the authority of this state to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of at least ten billion dollars, the trust shall be in an amount equal to the several liabilities of the group attributable to business written in the United States. The group shall also maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

c. Such trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust vests legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this paragraph must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

d. No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding calendar year and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

5. Credit is allowed if the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection 1, 2, 3, or 4, but only with respect to the insurance of risks located in a jurisdiction where such reinsurance is required by applicable law or regulation of that jurisdiction. For purposes of this subsection, jurisdiction refers to a jurisdiction other than the United States, and any state, district, or territory of the United States. This subsection allows credit to ceding insurers which are mandated by such a jurisdiction to cede reinsurance to state owned or controlled insurance or reinsurance companies or to participate in pools, guaranty funds, or joint underwriting associations.

6. *a.* If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsection 3 or 4 is not allowed unless the assuming insurer agrees in the reinsurance agreements to both of the following:

(1) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or of any appellate court in the event of an appeal.

(2) That the commissioner or an attorney designated in the agreement is the true and lawful attorney of the assuming insurer upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

b. This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

91 Acts, ch 26, §15; 91 Acts, ch 258, §60; 95 Acts, ch 185, §45

521B.3 Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.

A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 521B.2 is allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution, as defined in section 521B.4, subsection 2. This security may be held in the form of any of the following:

1. Cash.

2. Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets.

3. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in section 521B.4, subsection 2, no later than December 31 of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement.

Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the subsequent failure of the issuing or confirming institution or subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

4. Any other form of security acceptable to the

commissioner.

91 Acts, ch 26, §16

521B.4 Qualified United States financial institutions.

1. For purposes of this chapter, a *"qualified United States financial institution"* means an institution that satisfies all of the following conditions:

a. The financial institution is organized or licensed under the laws of the United States or any state of the United States.

b. The financial institution is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

c. The financial institution has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

2. A *"qualified United States financial institution"* means, for purposes of those provisions of this chapter specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that is both of the following:

a. Organized or licensed under the laws of the United States or any state of the United States, and has been granted authority to operate with fiduciary powers.

b. Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

91 Acts, ch 26, §17

521B.5 Rules.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient to administer this chapter.

91 Acts, ch 26, §18

CHAPTER 521C

REINSURANCE INTERMEDIARIES

521C.1 Short title.
521C.2 Definitions.
521C.3 Licensure.
521C.4 Required contract provisions — reinsurance intermediary-brokers.
521C.5 Books and records — reinsurance intermediary-brokers.
521C.6 Duties of insurers utilizing the services of a reinsurance intermediary-broker.
521C.7 Required contract provisions — reinsurance intermediary-managers.
521C.8 Prohibited acts.
521C.9 Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.
521C.10 Examination authority.
521C.11 Penalties and liabilities.
521C.12 Rules.

521C.1 Short title.

This chapter shall be known and may be cited as the *"Reinsurance Intermediary Model Act."*

91 Acts, ch 26, §19

521C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Actuary"* means a person who is a member in good standing of the American academy of actuaries.

2. *"Controlling person"* means a person who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

3. *"Insurer"* means a person licensed to transact the business of insurance in this state.

4. *"Licensed producer"* means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law of any jurisdiction.

5. *"Qualified United States financial institution"* means an institution that satisfies all of the following conditions:

a. The financial institution is organized or licensed under the laws of the United States or any state of the United States.

b. The financial institution is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

c. The financial institution has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the

quality of financial institutions whose letters of credit will be acceptable to the commissioner.

6. *"Reinsurance intermediary"* means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

7. *"Reinsurance intermediary-broker"* means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.

8. *"Reinsurance intermediary-manager"* means a person who has authority to bind or manage all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager or manager, or known by any other similar term or title. However, for the purposes of this chapter, the following persons shall not be considered a reinsurance intermediary-manager, with respect to the reinsurer:

a. An employee of the reinsurer.

b. A manager of a United States branch of an alien reinsurer who resides in this country.

c. An underwriting manager who, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, who is under common control with the reinsurer, subject to chapter 521A relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.

d. The manager of a group, association, pool, or organization of insurers who engages in joint underwriting or joint reinsurance and who is subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

9. *"Reinsurer"* means a person licensed in this state as a reinsurer with the authority to assume reinsurance.

10. *"To be in violation"* means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this chapter.

91 Acts, ch 26, §20; 94 Acts, ch 1176, §14

521C.3 Licensure.

1. A person shall not act as a reinsurance intermediary-broker in this state if the person maintains an office in this state or another state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation, unless the person is a licensed producer in this state or another state having a law substantially similar to this law, or the person is licensed in this state as a nonresident reinsurance intermediary.

2. A person shall not act as a reinsurance intermediary-manager in any of the following circumstances:

a. Where the reinsurer is domiciled in this state, unless the person is a licensed producer in this state.

b. Where the person maintains an office in this state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the person is a licensed producer in this state.

c. Where the person would be acting in another state for a nondomestic insurer, unless the person is a licensed producer in this state or in another state having a law substantially similar to this law, or is licensed in this state as a nonresident reinsurance intermediary.

3. The commissioner may require a reinsurance intermediary-manager subject to subsection 2 to do one or more of the following:

a. File a bond in an amount determined by the commissioner from an insurer acceptable to the commissioner for the protection of each reinsurer represented by the reinsurance intermediary-manager.

b. Maintain an errors and omissions policy in an amount acceptable to the commissioner.

4. *a.* The commissioner may issue a reinsurance intermediary license to a person who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements to the application. A license issued to a corporation shall authorize all of the officers, and any designated employees and directors of the corporation to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements to the application.

b. If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of a change of the designated agent for service of process, and the change becomes effective upon acknowledgment by the commissioner.

5. The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, any of the following conditions are present:

a. The applicant, anyone named in the application, or any member, principal, officer, or director of the applicant, is not trustworthy.

b. A controlling person of such applicant is not trustworthy to act as a reinsurance intermediary.

c. Conditions present in paragraph *"a"* or *"b"* have given cause for revocation or suspension of a license, or a person referred to in paragraph *"a"* or *"b"* has failed to comply with any prerequisite for the issuance of a license.

Upon written request, the commissioner shall furnish a written summary of the basis for refusal to issue a license, which document is privileged and not subject to disclosure under chapter 22.

6. A licensed attorney in this state when acting in a professional capacity as an attorney is exempt from the requirements of this section.

91 Acts, ch 26, §21

521C.4 Required contract provisions — reinsurance intermediary-brokers.

Transactions between a reinsurance intermediary-broker and the insurer that the reinsurance intermediary-broker represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that satisfy all of the following requirements:

1. The insurer may terminate the authority of the reinsurance intermediary-broker at any time.

2. The reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary-broker, and shall remit all funds due to the insurer within thirty days of receipt.

3. All funds collected for the account of the insurer shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank, as defined in section 524.103.

4. The reinsurance intermediary-broker shall comply with section 521C.5.

5. The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

6. The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

91 Acts, ch 26, §22

521C.5 Books and records — reinsurance intermediary-brokers.

1. For a minimum of ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing all of the following:

a. The type of contract, limits, underwriting restrictions, classes or risks, and territory.

b. The period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation.

c. The reporting and settlement requirements of balances.

d. The rate used to compute the reinsurance premium.

e. The names and addresses of assuming reinsurers.

f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker.

g. All related correspondence and memoranda.

h. Proof of placement.

i. The details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded.

j. Financial records, including but not limited to premium and loss accounts.

k. If the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer one or both of the following shall be included in the record:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

2. The insurer has a right of access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

91 Acts, ch 26, §23

521C.6 Duties of insurers utilizing the services of a reinsurance intermediary-broker.

1. An insurer shall not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by section 521C.3, subsection 1.

2. An insurer shall not employ an individual who is employed by a reinsurance intermediary-broker with which the insurer transacts business, unless such reinsurance intermediary-broker is under common control with the insurer and subject to chapter 521A relating to the regulation of insurance company holding systems.

3. The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which the insurer transacts business.

91 Acts, ch 26, §24

521C.7 Required contract provisions — reinsurance intermediary-managers.

Transactions between a reinsurance intermediary-manager and the reinsurer that the reinsurance intermediary-manager represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before the reinsurer assumes or cedes business through a reinsurance intermediary-manager, a true copy of the approved contract shall be filed with the commissioner for approval by the commissioner. The contract, at a minimum, shall contain the following provisions:

1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

2. The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance intermediary-manager, and shall remit all funds due under the contract to the reinsurer on not less than a monthly basis.

3. All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution, as defined in section 521C.2. The reinsurance intermediary-manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that the reinsurance intermediary-manager represents.

4. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing all of the following:

a. The type of contract, limits, underwriting restrictions, classes or risks, and territory.

b. The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks.

c. The reporting and settlement requirements of balances.

d. The rate used to compute the reinsurance premium.

e. The names and addresses of reinsurers.

f. The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager.

g. Any related correspondence and memoranda.

h. Proof of placement.

i. The details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by section 521C.9, subsection 4, including the identity of retrocessionaires and percentage of each contract assumed or ceded.

j. Financial records, including but not limited to premium and loss accounts.

k. If the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer one or both of the following shall be included in the record:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

5. The reinsurer has a right of access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

6. The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

7. The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

8. The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

9. If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer, all of the following apply:

a. All claims shall be reported to the reinsurer in a timely manner.

b. A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim meets any or all of the following conditions:

(1) The claim has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer.

(2) The claim involves a coverage dispute.

(3) The claim may exceed the claims settlement authority of the reinsurance intermediary-manager.

(4) The claim is open for more than six months.

(5) The claim is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.

c. All claim files shall be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property

of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

d. Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

10. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits shall not be paid until one year after the end of each underwriting period for property insurance business and five years after the end of each underwriting period for casualty insurance business, or a later period as determined by the commissioner for each type of insurance, but in no case until the adequacy of reserves on remaining claims has been verified pursuant to section 521C.9, subsection 3.

11. The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

12. The reinsurer shall periodically, but not less than semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

13. The reinsurance intermediary-manager shall disclose to the reinsurer any relationship the reinsurance intermediary-manager has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

14. The acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf the reinsurance intermediary-manager is acting.

91 Acts, ch 26, §25

521C.8 Prohibited acts.

The reinsurance intermediary-manager shall not do any of the following:

1. Bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

2. Commit the reinsurer to participate in reinsurance syndicates.

3. Appoint any producer without assuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed.

4. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, or a net amount of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

5. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

6. Jointly employ an individual who is employed by the reinsurer.

7. Appoint an agent of a reinsurance intermediary-manager.

91 Acts, ch 26, §26

521C.9 Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.

1. A reinsurer shall not engage the services of a person to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by section 521C.3, subsection 2.

2. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager whom the reinsurer has engaged pursuant to subsection 1. The statements of financial condition shall be prepared by an independent certified accountant in a form acceptable to the commissioner.

3. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification.

4. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary-manager.

5. Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

6. A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or an agent of a producer of its reinsurance intermediary-manager. This subsection shall not apply to relationships governed by chapter 521A relating to the regulation of insurance company holding systems or, if applicable, governed by chapter 510A relating to the regulation of producer controlled property and casualty insurers.

91 Acts, ch 26, §27

521C.10 Examination authority.

1. A reinsurance intermediary is subject to ex-

amination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

2. A reinsurance intermediary-manager may be examined as if it were the reinsurer.

91 Acts, ch 26, §28

521C.11 Penalties and liabilities.

1. A reinsurance intermediary or other person found by the commissioner, after a hearing conducted in accordance with chapter 17A, to have not materially complied with a provision of this chapter is subject to one or more of the following:

a. For each separate violation, a civil penalty in an amount not exceeding five thousand dollars.

b. Revocation or suspension of the license of the reinsurance intermediary.

If the commissioner finds that such noncompliance has resulted in a loss or damage to the insurer or reinsurer, the commissioner may bring a civil action on behalf of the insurer or reinsurer, and the policyholders and creditors of the insurer or reinsurer, seeking the recovery of compensatory damages for the benefit of the insurer or reinsurer, and the policyholders and creditors of the insurer or reinsurer, or seeking other relief as appropriate.

If an order of rehabilitation or liquidation has been entered pursuant to chapter 507C, and the receiver appointed under the order determines that the reinsurance intermediary or any other person has not materially complied with a provision of this chapter and such noncompliance has resulted in a loss or damage to the insurer or reinsurer, the receiver may bring a civil action on behalf of the insurer or reinsurer seeking the recovery of damages for the benefit of the insurer or reinsurer, or seeking other appropriate sanction or relief.

2. A decision, determination, or order of the commissioner made or entered pursuant to subsection 1 is subject to judicial review pursuant to chapter 17A.

3. This section does not affect the right of the commissioner to impose any other penalties provided in this subtitle.

4. This chapter shall not in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties, or confer any rights to such persons.

91 Acts, ch 26, §29; 91 Acts, ch 213, §31; 94 Acts, ch 1176, §15

521C.12 Rules.

The commissioner may adopt rules, pursuant to chapter 17A, as necessary or convenient for the administration of this chapter.

91 Acts, ch 26, §30

CHAPTER 521D

DISCLOSURE OF MATERIAL TRANSACTIONS

521D.1 Title.
521D.2 Report.
521D.3 Report of acquisition and disposition of assets — information required — scope.
521D.4 Report of nonrenewal, cancellation, revision of ceded reinsurance agreements — information required — scope.

521D.1 Title.

This chapter shall be known and may be cited as the *"Disclosure of Material Transactions Act"*.

94 Acts, ch 1176, §16

521D.2 Report.

1. An insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets, or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless such acquisitions and dispositions of assets, or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes pursuant to other provisions of this subtitle or pursuant to other requirements. The report shall be filed not later than fifteen days after the end of the calendar year in which the material acquisition or disposition of assets, or material nonrenewal, cancellation, or revision of ceded reinsurance agreements occurs.

2. The insurer shall also file a copy of the report required to be filed with the commissioner pursuant to subsection 1, including any exhibits or other attachments filed as part of the report, with the national association of insurance commissioners.

3. All reports obtained by or disclosed to the commissioner and the national association of in-

surance commissioners pursuant to this chapter are confidential and shall not be subject to subpoena and shall not be made public by the commissioner, the national association of insurance commissioners, or any other person without the prior written consent of the insurer to which it pertains, unless the commissioner, after giving such insurer notice and providing an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication or disclosure of the report, in which event the commissioner may publish or disclose all or any part of the report as deemed appropriate.

Notwithstanding this subsection, the commissioner or the national association of insurance commissioners may provide the report to the insurance regulatory agencies of other states.

94 Acts, ch 1176, §17

521D.3 Report of acquisition and disposition of assets — information required — scope.

1. An acquisition or disposition of assets need not be reported pursuant to section 521D.2 if the acquisition or disposition is not material. For purposes of this chapter, a material acquisition, or the aggregate of any series of related acquisitions, or a disposition, or the aggregate of any series of related dispositions, during any thirty-day period, is one that is nonrecurring, is not in the ordinary course of business, and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance division of the insurer's state of domicile.

2. For purposes of this chapter, an asset acquisition includes every purchase, lease, exchange, merger, consolidation, succession, or other acquisition, other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose. For purposes of this chapter, an asset disposition includes every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

3. A report of a material acquisition or disposition of assets shall include all of the following:

a. Date of the transaction.

b. Manner of the acquisition or disposition.

c. Description of the assets involved.

d. Nature and amount of the consideration given or received.

e. Purpose of, or reason for, the transaction.

f. Manner by which the amount of consideration was determined.

g. Gain or loss recognized or realized as a result of the transaction.

h. Name or names of the person or persons from whom the assets were acquired or to whom they were disposed.

4. An insurer is required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves, and such insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement, and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

94 Acts, ch 1176, §18

521D.4 Report of nonrenewal, cancellation, revision of ceded reinsurance agreements — information required — scope.

1. A nonrenewal, cancellation, or revision of a ceded reinsurance agreement need not be reported pursuant to section 521D.2 if the nonrenewal, cancellation, or revision is not material. For purposes of this chapter, a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement is one that does the following:

a. For property and casualty business including accident and health business when written as such, affects more than fifty percent of an insurer's ceded written premium on an annualized basis as indicated in the insurer's most recently filed statutory statement.

b. For life, annuity, and accident and health business, affects more than fifty percent of the total reserve credit taken for business ceded on an annualized basis as indicated in the insurer's most recently filed statutory statement.

2. Notwithstanding subsection 1, a filing is not required if the insurer's ceded written premium represents, on an annualized basis, less than ten percent of direct plus assumed written premium, or the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession.

3. A report required to be filed pursuant to this chapter is to be filed regardless of who has initiated the nonrenewal, cancellation, or revision of the ceded reinsurance agreement whenever one or more of the following conditions exist:

a. The entire cession has been canceled, nonrenewed, or revised and ceded indemnity and loss adjustment expense reserves, after any nonrenewal, cancellation, or revision, represent less than fifty percent of the comparable reserves that would have been ceded had the nonrenewal, cancellation, or revision not occurred.

b. An authorized or accredited reinsurer has

been replaced on an existing cession by an unauthorized reinsurer.

c. Collateral requirements previously established for unauthorized reinsurers have been reduced.

Subject to the materiality criteria, for purposes of paragraphs *"b"* and *"c"*, a report shall be filed if the result of the revision affects more than ten percent of the cession.

4. A report of a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement required to be filed shall include all of the following:

a. The effective date of the nonrenewal, cancellation, or revision.

b. The description of the transaction including the identification of the initiator of the transaction.

c. The purpose of, or reason for, the transaction.

d. The identity of the replacement reinsurers, if applicable.

5. Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes an intercompany pooling agreement or arrangement or a one hundred percent reinsurance agreement under which the ceding company has ceded substantially one hundred percent of its direct and assumed business to a pool. An insurer is deemed to have ceded substantially one hundred percent of its direct and assumed business to a pool if the insurer has less than one million dollars of total direct plus assumed written premiums during a calendar year that are not subject to the pooling agreement or arrangement and the net income of the business not subject to the pooling agreement or arrangement represents less than five percent of the insurer's capital and surplus. If a group of insurers reports on a consolidated basis, the report shall identify the individual insurers that are members of the group.

94 Acts, ch 1176, §19

CHAPTER 521E

RISK-BASED CAPITAL REQUIREMENTS FOR INSURERS

521E.1 Definitions.
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521E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Adjusted risk-based capital report"* means a risk-based capital report adjusted by the commissioner pursuant to section 521E.2, subsection 5.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Corrective order"* means an order issued by the commissioner of insurance specifying corrective actions which the commissioner has determined are required.

4. *"Domestic insurer"* means an insurance company domiciled in this state and licensed to transact the business of insurance under chapter 508, 515, or 520, except that it shall not include any of the following:

a. An agency, authority, or instrumentality of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

b. A fraternal benefit society organized under chapter 512B.

c. A nonprofit medical, hospital, or dental service corporation organized under chapter 514.

d. A county mutual insurance association organized under chapter 518.

e. A state mutual insurance association organized under chapter 518A.

f. A health maintenance organization orga-

nized under chapter 514B.

5. *"Filing date"* means March 1 of each year.

6. *"Foreign insurer"* means an insurance company not domiciled in this state which is licensed to transact the business of insurance in this state under chapter 508, 515, or 520.

7. *"Life and health insurer"* means an insurance company licensed under chapter 508 or a licensed property and casualty insurer writing only accident and health insurance under chapter 515.

8. *"Negative trend"* means a negative trend over a period of time as determined in accordance with the trend test calculation included in the risk-based capital instructions.

9. *"Property and casualty insurer"* means an insurance company licensed under chapter 515 but does not include monoline mortgage guaranty insurers, financial guaranty insurers, or title insurers.

10. *"Revised risk-based capital plan"* is a risk-based capital plan which has been rejected by the commissioner and has been revised by the insurer, with or without the commissioner's recommendation.

11. *"Risk-based capital instructions"* means the instructions included in the risk-based capital report as adopted by the national association of insurance commissioners, as such risk-based capital instructions may be amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.

12. *"Risk-based capital level"* means an insurer's company-action-level risk-based capital, regulatory-action-level risk-based capital, authorized-control-level risk-based capital, or mandatory-control-level risk-based capital as follows:

a. *"Company-action-level risk-based capital"* means, with respect to any insurer, the product of two and the insurer's authorized-control-level risk-based capital.

b. *"Regulatory-action-level risk-based capital"* means the product of one and one-half and the insurer's authorized-control-level risk-based capital.

c. *"Authorized-control-level risk-based capital"* means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

d. *"Mandatory-control-level risk-based capital"* means the product of seven-tenths and the insurer's authorized-control-level risk-based capital.

13. *"Risk-based capital plan"* means a comprehensive financial plan containing the elements identified in section 521E.3, subsection 2.

14. *"Risk-based capital report"* means the report required to be prepared and submitted to the commissioner pursuant to section 521E.2.

15. *"Total adjusted capital"* means the sum of the following:

a. An insurer's statutory capital and surplus.

b. Such other items, if any, as identified in the risk-based capital instructions.

96 Acts, ch 1046, §9; 2000 Acts, ch 1023, §56

521E.2 Risk-based capital reports.

1. A domestic insurer, on or prior to the filing date, shall prepare and submit to the commissioner a report of the insurer's risk-based capital level as of the end of the calendar year immediately preceding the filing date, in a form and containing the information required by the risk-based capital instructions. A domestic insurer shall also file its risk-based capital report with both of the following:

a. The national association of insurance commissioners.

b. The insurance commissioner in each state in which the insurer is authorized to do business, if such insurance commissioner has notified the insurer of its request in writing. Upon receipt of the written request, the insurer shall file its risk-based capital report with the requesting commissioner by no later than the later of the following:

(1) Fifteen days from the receipt of the written request.

(2) The filing date.

2. A life and health insurer's risk-based capital shall be determined pursuant to the formula set forth in the risk-based capital instructions. The formula shall take into account all of the following, and may be adjusted, as deemed appropriate by the commissioner, for the covariance between the following:

a. The risk with respect to the insurer's assets.

b. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations.

c. The interest rate risk with respect to the insurer's business.

d. All other business risks and other relevant risks as identified in the risk-based capital instructions, determined in each case by applying the factors in the manner provided for in the risk-based capital instructions.

3. A property and casualty insurer's risk-based capital shall be determined pursuant to the formula set forth in the risk-based capital instructions. The formula shall take into account all of the following, and may be adjusted, as deemed appropriate by the commissioner, for the covariance between the following:

a. Asset risk.

b. Credit risk.

c. Underwriting risk.

d. All other business risks and other relevant risks as identified in the risk-based capital instructions, determined in each case by applying the factors in the manner provided for in the risk-based capital instructions.

4. An insurer shall seek to maintain capital above the risk-based capital levels required by

this chapter.

5. A risk-based capital report filed by a domestic insurer which in the judgment of the commissioner is inaccurate, shall be adjusted by the commissioner to correct the inaccuracy. The commissioner shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment.

96 Acts, ch 1046, §10

521E.3 Company-action-level event.

1. *"Company-action-level event"* means any of the following:

a. The filing of a risk-based capital report by an insurer which indicates either of the following:

(1) For an insurer other than a life and health insurer, the insurer's total adjusted capital is greater than or equal to its regulatory-action-level risk-based capital but less than its company-action-level risk-based capital.

(2) For a life and health insurer, the insurer's total adjusted capital is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and two and one-half, and has a negative trend.

b. Notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates an event in paragraph *"a"*, provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. If a hearing is requested pursuant to section 521E.7, notification by the commissioner to the insurer after the hearing that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating an event in paragraph *"a"*.

2. Upon the occurrence of a company-action-level event, the insurer shall prepare and submit to the commissioner a risk-based capital plan which shall include all of the following:

a. Identification of the conditions which contributed to the company-action-level event.

b. Proposed corrective actions which the insurer intends to implement and which are expected to result in the elimination of the company-action-level event.

c. Projections of the insurer's financial results for the current year and at least the four succeeding years, including projections of statutory operating income, net income, capital, and surplus. Projections shall be provided assuming the absence of the proposed corrective actions and assuming the implementation of the proposed corrective actions. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

d. Identification of the primary assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions.

e. Identification of the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

3. The risk-based capital plan shall be submitted within forty-five days of the company-action-level event, or, if the insurer requests a hearing pursuant to section 521E.7 for the purpose of challenging the adjusted risk-based capital report, within forty-five days after notification to the insurer that the commissioner, after hearing, has rejected the insurer's challenge.

4. Within sixty days after the submission by an insurer of a risk-based capital plan to the commissioner, the commissioner shall notify the insurer whether the risk-based capital plan shall be implemented or, in the judgment of the commissioner, is unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which in the judgment of the commissioner will render the risk-based capital plan satisfactory. Upon the receipt of notification from the commissioner pursuant to this subsection, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and submit the revised risk-based capital plan to the commissioner within forty-five days of the receipt of notification from the commissioner of the commissioner's determination that the risk-based capital plan is unsatisfactory, or, if the insurer requests a hearing pursuant to section 521E.7 for the purpose of challenging the commissioner's determination, within forty-five days after notification to the insurer that the commissioner, after hearing, has rejected the insurer's challenge.

5. After notification of the insurer by the commissioner that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, at the commissioner's discretion and subject to the insurer's right to a hearing pursuant to section 521E.7, may specify in the notification that the notification constitutes a regulatory-action-level event.

6. A domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in a state in which the insurer is authorized to do business if both of the following apply:

a. The other state has a provision substantially similar to section 521E.8, subsection 1, with respect to the confidentiality and availability of such plans.

b. The insurance commissioner of that state

has notified the insurer in writing of its request to receive a copy of the risk-based capital plan or revised risk-based capital plan. Upon receipt of the written request, the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan with the requesting commissioner by no later than the later of the following:

(1) Fifteen days from the receipt of the written request.

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed pursuant to subsection 3 or 4, as applicable.

96 Acts, ch 1046, §11

521E.4 Regulatory-action-level event.

1. *"Regulatory-action-level event"* means any of the following:

a. The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized-control-level risk-based capital but less than its regulatory-action-level risk-based capital.

b. Notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

d. Failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure which is satisfactory to the commissioner and has cured the failure within ten days after the filing date.

e. Failure of the insurer to submit a risk-based capital plan to the commissioner within the time period set forth in section 521E.3, subsection 3.

f. Notification by the commissioner to the insurer of both of the following:

(1) The risk-based capital plan or revised risk-based capital plan submitted by the insurer, in the judgment of the commissioner, is unsatisfactory.

(2) Notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the insurer, provided the insurer has not challenged the determination pursuant to section 521E.7.

g. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the determination made by the commissioner pursuant to paragraph *"f"*.

h. Notification by the commissioner to the insurer that the insurer has failed to adhere to the insurer's risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company-action-level event pursuant to the insurer's risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification. However, notification by the commissioner pursuant to this paragraph does not constitute a company-action-level event if the insurer has challenged the determination of the commissioner pursuant to section 521E.7.

i. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the commissioner's determination pursuant to paragraph *"h"*.

2. In the event of a regulatory-action-level event the commissioner shall do all of the following:

a. Require the insurer to prepare and submit a risk-based capital plan or a revised risk-based capital plan, as applicable.

b. Perform an examination or analysis of the assets, liabilities, and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan, as deemed necessary by the commissioner.

c. Subsequent to the examination or analysis pursuant to paragraph *"b"*, issue a corrective order.

3. In determining the corrective actions to be specified, the commissioner shall take into account factors the commissioner deems to be relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted within forty-five days after the occurrence of the regulatory-action-level event, except as follows:

a. If the insurer challenges an adjusted risk-based capital report pursuant to section 521E.7, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the insurer that the commissioner, after a hearing pursuant to section 521E.7, has rejected the insurer's challenge.

b. If the insurer challenges a revised risk-based capital plan pursuant to section 521E.7, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the insurer that the commissioner, after a hearing pursuant to section 521E.7, has rejected the insurer's challenge.

4. The commissioner may retain actuaries, investment experts, and other consultants as deemed necessary by the commissioner to review the insurer's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities, and operations of the insurer; and

assist in the formulation of the corrective order with respect to the insurer. Fees of the actuaries, investment experts, or other consultants retained by the commissioner shall be paid by the insurer subject to the review or examination.

96 Acts, ch 1046, §12

521E.5 Authorized-control-level event.

1. *"Authorized-control-level event"* means any of the following:

a. The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory-control-level risk-based capital but less than its authorized-control-level risk-based capital.

b. Notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

d. Failure of the insurer to respond to a corrective order in a manner satisfactory to the commissioner, unless the insurer has challenged the corrective order pursuant to section 521E.7.

e. Failure of the insurer to respond to the corrective order in a manner satisfactory to the commissioner after the insurer has challenged the corrective order pursuant to section 521E.7, and the commissioner, after a hearing pursuant to section 521E.7, has rejected the challenge or modified the corrective order.

2. In the event of an authorized-control-level event the commissioner shall do either of the following:

a. Take action as required pursuant to section 521E.4 in the same manner as if a regulatory-action-level event has occurred.

b. Take action as necessary to cause the insurer to be placed under supervision or other regulatory control under chapter 507C, if the commissioner deems such action to be in the best interests of the policyholders and creditors of the insurer and of the public. If the commissioner takes action pursuant to this paragraph, the authorized-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C, and the commissioner has the rights, powers, and duties with respect to the insurer as set forth in chapter 507C. If the commissioner takes action under this paragraph pursuant to an adjusted risk-based capital report, the insurer is entitled to the protections afforded to insurers under the provisions of chapter 17A relating to summary proceedings.

96 Acts, ch 1046, §13

521E.6 Mandatory-control-level event.

1. *"Mandatory-control-level event"* means any of the following events:

a. The filing of a risk-based capital report which indicates that an insurer's total adjusted capital is less than its mandatory-control-level risk-based capital.

b. Notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the insurer does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521E.7.

c. After a hearing pursuant to section 521E.7, notification by the commissioner to the insurer that the commissioner has rejected the insurer's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

2. In the event of a mandatory-control-level event the commissioner shall do the following:

a. With respect to a life insurer, take action as necessary to place the insurer under supervision or other regulatory control under chapter 507C. If the commissioner takes action pursuant to this paragraph, the mandatory-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C, and the commissioner shall have the rights, powers, and duties with respect to the insurer as set forth in chapter 507C. If the commissioner takes action pursuant to an adjusted risk-based capital report, the insurer is entitled to the protections of chapter 17A pertaining to summary proceedings. Notwithstanding the provisions of this paragraph, the commissioner may forego any action pursuant to this paragraph for up to ninety days after the mandatory-control-level event if the commissioner finds a reasonable expectation exists that the mandatory-control-level event may be eliminated within the ninety-day period.

b. With respect to a property and casualty insurer, take action as necessary to place the insurer under supervision or other regulatory control under chapter 507C, or, in the case of an insurer which is no longer writing business and which is running off its existing business, the commissioner may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory-control-level event is deemed sufficient grounds for the commissioner to take action under chapter 507C and the commissioner shall have the rights, powers, and duties with respect to the insurer as set forth in chapter 507C. If the commissioner takes action pursuant to an adjusted risk-based capital report, the insurer is entitled to the protections of chapter 17A pertaining to summary proceedings. Notwithstanding the provisions of this paragraph, the commissioner may forego action for up to ninety days after

the mandatory-control-level event if the commissioner finds a reasonable expectation exists that the mandatory-control-level event may be eliminated within the ninety-day period.

96 Acts, ch 1046, §14

521E.7 Confidential hearings.

1. An insurer shall notify the commissioner of the insurer's request for a confidential hearing within five days after the occurrence of any of the following:

a. Notification to an insurer by the commissioner of an adjusted risk-based capital report.

b. Notification to an insurer by the commissioner of both of the following:

(1) The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory.

(2) That the notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the insurer.

c. Notification to an insurer by the commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company-action-level event in accordance with its risk-based capital plan or revised risk-based capital plan.

d. Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

2. An insurer receiving a notification pursuant to subsection 1 is entitled to a confidential hearing before the insurance division, at which the insurer may challenge a determination or action by the commissioner. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which shall be not less than ten or more than thirty days after the date of the insurer's request.

96 Acts, ch 1046, §15

521E.8 Confidentiality — use of reports and information — prohibition on announcements — prohibition on use in ratemaking.

1. A risk-based capital report, to the extent the information in the report is not required to be set forth in a publicly available annual statement schedule, or a risk-based capital plan, including the results or report of any examination or analysis of an insurer performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to an examination or analysis, with respect to a domestic insurer or foreign insurer, which are filed with the commissioner, are deemed not to be public records under chapter 22 and are privileged and confidential. This information shall not be made public and is not subject to subpoena, other than by the commissioner, and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.

2. The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not to be used as a means to rank insurers generally.

3. Except as otherwise required under this chapter or as required of a publicly held company by the United States securities and exchange commission or other regulatory agency, the publication or dissemination in any manner of an announcement or statement which contains an assertion, representation, or statement with regard to the risk-based capital levels of an insurer, or of a component derived in the calculation, by an insurer, agent, broker, or other person engaged in any manner in the business of insurance which would be misleading, is prohibited. However, if a materially false statement comparing an insurer's total adjusted capital to its risk-based capital levels or a misleading comparison of any other amount to the insurer's risk-based capital levels is published or disseminated in any manner and if the insurer is able to demonstrate to the commissioner with substantial proof that the statement is false, misleading, or inappropriate, as the case may be, the insurer may publish an announcement in a written publication for the sole purpose of rebutting the materially false, misleading, or inappropriate statement.

4. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall be solely used by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall not be used by the commissioner for ratemaking and shall not be considered or introduced as evidence in any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

5. A violation of this section by an insurer, agent, broker, or other person engaged in any manner in the business of insurance constitutes an unfair trade practice under chapter 507B.

96 Acts, ch 1046, §16

521E.9 Supplemental provisions — rules — exemption.

1. The provisions of this chapter are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such

laws, including, but not limited to, chapter 507C.

2. The commissioner may adopt rules pursuant to chapter 17A necessary for the administration of this chapter.

3. The commissioner may exempt from the application of this chapter any domestic property and casualty insurer which satisfies all of the following:

a. Writes direct business only in this state.

b. Writes direct annual premiums of one million dollars or less.

c. Does not assume reinsurance in excess of five percent of direct premiums written.

96 Acts, ch 1046, §17

521E.10 Foreign insurers.

1. A foreign insurer, upon the written request of the commissioner, shall submit to the commissioner a risk-based capital report as of the end of the calendar year just ended by the later of the following:

a. The filing date.

b. Fifteen days after the request is received by the foreign insurer.

A foreign insurer, upon the written request of the commissioner, shall promptly submit to the commissioner a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.

2. In the event of a company-action-level event, regulatory-action-level event, or authorized-control-level event with respect to a foreign insurer as determined under the risk-based capital statute applicable in the state of domicile of the insurer, or, if no risk-based capital statute is in force in that state, under the provisions of this chapter, and if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under that state's risk-based capital statute, or, if no risk-based capital statute is in force in that state, pursuant to section 521E.2, the commissioner may require the foreign insurer to file a risk-based capital plan with the commissioner. The failure of the foreign insurer to file a risk-based capital plan with the commissioner shall be sufficient grounds for the commissioner to order the insurer to cease and desist from writing new insurance business in this state.

3. In the event of a mandatory-control-level event with respect to a foreign insurer, if a domiciliary receiver has not been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the district court as permitted under chapter 507C with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory-control-level event shall be considered adequate grounds for the application.

96 Acts, ch 1046, §18

521E.11 Immunity.

No liability shall arise on the part of, and no cause of action shall arise against, the commissioner or the insurance division or its employees or agents for an action taken in the exercise of powers or performance of duties under this chapter.

96 Acts, ch 1046, §19

521E.12 Effect of notices.

Notice by the commissioner to an insurer which may result in regulatory action under this chapter is effective upon being sent if transmitted by certified mail, or in the case of any other transmission is effective upon the insurer's receipt of the notice.

96 Acts, ch 1046, §20

CHAPTER 521F

RISK-BASED CAPITAL REQUIREMENTS FOR HEALTH ORGANIZATIONS

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521F.1 Purpose.

The purpose of this chapter is to establish minimum capital requirements for health organizations that will provide protection related to the

risks to which an individual health organization may be subject including, but not limited to, the health organization's assets risk, underwriting risk, credit risk, and other business risk.

2000 Acts, ch 1050, §1

521F.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Adjusted risk-based capital report"* means a risk-based capital report adjusted by the commissioner pursuant to section 521F.3, subsection 4.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Corrective order"* means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

4. *"Domestic health organization"* means a health organization domiciled in this state.

5. *"Filing date"* means March 1 of each year.

6. *"Foreign health organization"* means a health organization that is not domiciled in this state.

7. *"Health organization"* means a health maintenance organization, limited service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation or other managed care organization licensed under chapter 514, 514B, or 1993 Iowa Acts, chapter 158, or any other entity engaged in the business of insurance, risk transfer, or risk retention, that is subject to the jurisdiction of the commissioner of insurance or the director of public health. *"Health organization"* does not include an insurance company licensed to transact the business of insurance under chapter 508, 515, or 520, and which is otherwise subject to chapter 521E.

8. *"Revised risk-based capital plan"* means a risk-based capital plan that has been rejected by the commissioner and has been revised by the health organization, with or without the commissioner's recommendation.

9. *"Risk-based capital instructions"* means the instructions included in the risk-based capital report as adopted by the national association of insurance commissioners, as such risk-based capital instructions may be amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.

10. *"Risk-based capital level"* means a health organization's company-action-level risk-based capital, regulatory-action-level risk-based capital, authorized-control-level risk-based capital, or mandatory-control-level risk-based capital as follows:

a. *"Company-action-level risk-based capital"* means the product of two and the health organization's authorized-control-level risk-based capital.

b. *"Regulatory-action-level risk-based capital"* means the product of one and one-half and the health organization's authorized-control-level risk-based capital.

c. *"Authorized-control-level risk-based capital"* means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

d. *"Mandatory-control-level risk-based capital"* means the product of seven-tenths and the health organization's authorized-control-level risk-based capital.

11. *"Risk-based capital plan"* means a comprehensive financial plan containing the elements identified in section 521F.4, subsection 2.

12. *"Risk-based capital report"* means the report required in section 521F.3.

13. *"Total adjusted capital"* means the sum of the following:

a. A health organization's statutory capital and surplus.

b. Such other items, if any, as identified in the risk-based capital instructions.

2000 Acts, ch 1050, §2

521F.3 Risk-based capital reports.

1. A domestic health organization, on or prior to the filing date, shall prepare and submit to the commissioner a report of the health organization's risk-based capital levels as of the end of the calendar year immediately preceding the filing date, in a form and containing the information required by the risk-based capital instructions. A domestic health organization shall also file its risk-based capital report with the insurance commissioner in each state in which the health organization is authorized to do business, if such insurance commissioner has notified the health organization of its request in writing. Upon receipt of the written request, the health organization shall file its risk-based capital report with the requesting commissioner by no later than the later of the following:

a. Fifteen days from the receipt of the written request.

b. The filing date.

2. *a.* A health organization's risk-based capital shall be determined pursuant to the formula set forth in the risk-based capital instructions. The formula shall take into account all of the following, and may be adjusted, as deemed appropriate by the commissioner, for the covariance between the following:

(1) Assets risk.

(2) Credit risk.

(3) Underwriting risk.

(4) All other business risks and other relevant risks as identified in the risk-based capital instructions.

b. The risk factors shall be applied in the manner set forth in the risk-based capital instructions.

3. A health organization shall seek to main-

tain capital above the risk-based capital levels required by this chapter.

4. A risk-based capital report filed by a domestic health organization which in the judgment of the commissioner is inaccurate shall be adjusted by the commissioner to correct the inaccuracy. The commissioner shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment.

2000 Acts, ch 1050, §3; 2000 Acts, ch 1232, §79

521F.4 Company-action-level event.

1. *"Company-action-level event"* means any of the following:

a. The filing of a risk-based capital report by a health organization which indicates that the health organization's total adjusted capital is greater than or equal to its regulatory-action-level risk-based capital but less than its company-action-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates an event in paragraph *"a"*, provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. If a hearing is requested pursuant to section 521F.8, notification by the commissioner to the health organization after the hearing that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

2. Upon the occurrence of a company-action-level event, the health organization shall prepare and submit to the commissioner a risk-based capital plan that includes all of the following:

a. Identification of the conditions which contributed to the company-action-level event.

b. Proposed corrective actions which the health organization intends to implement and which are expected to result in the elimination of the company-action-level event.

c. Projections of the health organization's financial results for the current year and at least the two succeeding years, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. Projections shall be provided assuming the absence of the proposed corrective actions and assuming the implementation of the proposed corrective actions. Projections shall be provided for each major line of business and separately identify each significant income, expense, and benefit component.

d. Identification of the primary assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions.

e. Identification of the quality of, and problems associated with, the health organization's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

3. The risk-based capital plan shall be filed within forty-five days of the company-action-level event, or, if the health organization requests a hearing pursuant to section 521F.8 for the purpose of challenging the adjusted risk-based capital report, within forty-five days after notification to the health organization that the commissioner, after hearing, has rejected the health organization's challenge.

4. Within sixty days after the submission by a health organization of a risk-based capital plan to the commissioner, the commissioner shall notify the health organization whether the risk-based capital plan shall be implemented or, in the judgment of the commissioner, is unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination, and may set forth proposed revisions which in the judgment of the commissioner will render the risk-based capital plan satisfactory. Upon the receipt of the notification from the commissioner, the health organization shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and file the revised risk-based capital plan with the commissioner.

5. The revised risk-based capital plan shall be filed within forty-five days of the receipt of notification from the commissioner of the commissioner's determination that the risk-based capital plan is unsatisfactory, or, if the health organization requests a hearing pursuant to section 521F.8 for the purpose of challenging the commissioner's determination, within forty-five days after notification to the health organization that the commissioner, after hearing, has rejected the health organization's challenge.

6. After notification of the health organization by the commissioner that the health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, pursuant to section 521F.8, may specify in the notification that the notification constitutes a regulatory-action-level event.

7. *a.* A domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in a state in which the health organization is authorized to do business if both of the following apply:

(1) The other state has a risk-based capital provision substantially similar to section 521F.9, with respect to the confidentiality and availability of such plans.

(2) The insurance commissioner of that state has notified the health organization in writing of its request to receive a copy of the risk-based capi-

tal plan or revised risk-based capital plan.

b. Upon receipt of the written request under paragraph *"a"*, subparagraph (2), the health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan with the requesting commissioner by no later than the later of the following:

(1) Fifteen days after the receipt of the written request.

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection 3 or 5, as applicable.

2000 Acts, ch 1050, §4; 2000 Acts, ch 1232, §80

521F.5 Regulatory-action-level event.

1. *"Regulatory-action-level event"* means any of the following:

a. The filing of a risk-based capital report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its authorized-control-level risk-based capital but less than its regulatory-action-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

d. Failure of the health organization to file a risk-based capital report by the filing date, unless the health organization has provided an explanation for the failure which is satisfactory to the commissioner and has cured the failure within ten days after the filing date.

e. Failure of the health organization to submit a risk-based capital plan to the commissioner within the time period set forth in section 521F.4, subsection 3.

f. Notification by the commissioner to the health organization of both of the following:

(1) The risk-based capital plan or revised risk-based capital plan filed by the health organization, in the judgment of the commissioner, is unsatisfactory.

(2) Notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the health organization, provided the health organization has not challenged the determination pursuant to section 521F.8.

g. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the determination made by the commissioner pursuant to paragraph *"f"*.

h. Notification by the commissioner to the health organization that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company-action-level event pursuant to the health organization's risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification. However, notification by the commissioner pursuant to this paragraph does not constitute a company-action-level event if the health organization has challenged the determination of the commissioner pursuant to section 521F.8.

i. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner rejected the health organization's challenge of the commissioner's determination pursuant to paragraph *"h"*.

2. Upon the occurrence of a regulatory-action-level event, the commissioner shall do all of the following:

a. Require the health organization to prepare and submit a risk-based capital plan or revised risk-based capital plan, as applicable.

b. Perform an examination or analysis of the assets, liabilities, and operations of the health organization, including a review of its risk-based capital plan or revised risk-based capital plan.

c. Subsequent to the examination or analysis pursuant to paragraph *"b"*, issue a corrective order.

3. The commissioner, in determining the corrective actions to be ordered, may take into account factors the commissioner deems relevant with respect to the health organization based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the health organization, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted within forty-five days after the occurrence of the regulatory-action-level event, except as follows:

a. If the health organization challenges a risk-based capital report pursuant to section 521F.8, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the health organization that the commissioner, after a hearing pursuant to section 521F.8, has rejected the health organization's challenge.

b. If the health organization challenges a revised risk-based capital plan pursuant to section 521F.8, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the health organization that the commissioner, after a hearing pursuant to section 521F.8, has rejected the health or-

ganization's challenge.

4. The commissioner may retain actuaries, investment experts, and other consultants as deemed necessary by the commissioner to review the health organization's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities, and operations of the health organization; and assist in the formulation of the corrective order with respect to the health organization. Fees of the actuaries, investment experts, or other consultants retained by the commissioner shall be paid by the health organization subject to the review or examination.

2000 Acts, ch 1050, §5

521F.6 Authorized-control-level event.

1. *"Authorized-control-level event"* means any of the following:

a. The filing of a risk-based capital report by the health organization which indicates that the health organization's total adjusted capital is greater than or equal to its mandatory-control-level risk-based capital but less than its authorized-control-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

d. Failure of the health organization to respond to a corrective order in a manner satisfactory to the commissioner, unless the health organization has challenged the corrective order pursuant to section 521F.8.

e. Failure of the health organization to respond to a corrective order in a manner satisfactory to the commissioner after the health organization has challenged the corrective order pursuant to section 521F.8, and the commissioner, after a hearing pursuant to section 521F.8, has rejected the challenge or modified the corrective order.

2. In the event of an authorized-control-level event, the commissioner shall do either of the following:

a. Take action as required pursuant to section 521F.5 in the same manner as if a regulatory-action-level event has occurred.

b. Take action as necessary to cause the health organization to be placed under supervision or other regulatory control under chapter 507C, if the commissioner deems such action to be in the best interests of the policyholders and creditors of the health organization and of the public. If the commissioner takes such action pursuant to this paragraph, the authorized-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C and the commissioner has the rights, powers, and duties with respect to the health organization as set forth in chapter 507C. If the commissioner takes action under this paragraph pursuant to an adjusted risk-based capital report, the health organization is entitled to the protections of chapter 17A pertaining to summary proceedings.

2000 Acts, ch 1050, §6

521F.7 Mandatory-control-level event.

1. *"Mandatory-control-level event"* means any of the following:

a. The filing of a risk-based capital report which indicates that a health organization's total adjusted capital is less than its mandatory-control-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in paragraph *"a"*, provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"*.

2. In the event of a mandatory-control-level event, the commissioner shall take action as necessary to place the health organization under supervision or other regulatory control pursuant to chapter 507C. If the commissioner takes action pursuant to this subsection, the mandatory-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C, and the commissioner has the rights, powers, and duties with respect to the health organization as are set forth in chapter 507C. If the commissioner takes action pursuant to an adjusted risk-based capital report, the health organization is entitled to the protections of chapter 17A pertaining to summary proceedings. Notwithstanding this subsection, the commissioner may forego action for up to ninety days after the mandatory-control-level event if the commissioner finds a reasonable expectation exists that the mandatory-control-level event may be eliminated within the ninety-day period.

2000 Acts, ch 1050, §7

521F.8 Confidential hearings.

1. A health organization receiving a notification pursuant to subsection 2 is entitled to a confidential hearing before the insurance division, at which the health organization may challenge a determination or action by the commissioner. Upon receipt of the health organization's request for a hearing, the commissioner shall set a date for the

hearing, which shall be not less than ten and not more than thirty days after the date of the health organization's request.

2. A health organization shall notify the commissioner of the health organization's request for a confidential hearing within five days after the occurrence of any of the following:

a. Notification to a health organization by the commissioner of an adjusted risk-based capital report.

b. Notification to a health organization by the commissioner of both of the following:

(1) That the health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory.

(2) That the notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the health organization.

c. Notification to a health organization by the commissioner that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company-action-level event in accordance with its risk-based capital plan or revised risk-based capital plan.

d. Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

2000 Acts, ch 1050, §8; 2000 Acts, ch 1232, §81

521F.9 Confidentiality — use of reports and information — prohibition on announcements — prohibition on use in ratemaking.

1. A risk-based capital report, to the extent the information in the report is not required to be set forth in a publicly available annual statement schedule, a risk-based capital plan, including the results or report of any examination or analysis of a health organization performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to an examination or analysis, which are filed with the commissioner, are deemed not to be public records under chapter 22 and are privileged and confidential. This information shall not be made public and is not subject to subpoena, other than by the commissioner, and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.

2. The comparison of a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the health organization, and is not to be used as a means to rank health organizations generally.

3. Except as otherwise required under this chapter, the publication or dissemination in any manner of an announcement or statement which contains an assertion, representation, or statement with regard to the risk-based capital levels of a health organization, or of a component derived in the calculation, by a health organization, agent, broker, or other person engaged in any manner in the business of insurance, is prohibited. However, if a materially false statement comparing a health organization's total adjusted capital to its risk-based capital levels or a misleading comparison of any other amount to the health organization's risk-based capital levels is published or disseminated in any manner and if the health organization is able to demonstrate to the commissioner with substantial proof that the statement is false, misleading, or inappropriate, as the case may be, the health organization may publish an announcement in a written publication for the sole purpose of rebutting the materially false, misleading, or inappropriate statement.

4. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall be solely used by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall not be used by the commissioner for ratemaking and shall not be considered or introduced as evidence in any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which a health organization or any affiliate is authorized to write.

2000 Acts, ch 1050, §9

521F.10 Supplemental provisions — rules — exemption.

1. This chapter shall not preclude or limit any other powers or duties of the commissioner under insurance laws including but not limited to chapter 507C.

2. The commissioner may adopt rules pursuant to chapter 17A as are necessary for the administration of this chapter.

3. The commissioner may exempt from filing a risk-based capital report a domestic health organization which writes direct business only in this state and satisfies any of the following:

a. Writes direct annual premiums of one hundred thousand dollars or less, and does not assume reinsurance in excess of five percent of direct annual premiums written.

b. Is authorized to do business pursuant to chapter 514 and writes direct annual premiums of one hundred thousand dollars or less.

c. Is a limited health service organization that

covers fewer than five hundred lives.

2000 Acts, ch 1050, §10

521F.11 Foreign health organizations.

1. A foreign health organization, upon the written request of the commissioner, shall submit to the commissioner a risk-based capital report for the previous calendar year just ended by the later of the following:

a. The filing date.

b. Fifteen days after the request is received by the foreign health organization.

2. A foreign health organization, upon the written request of the commissioner, shall promptly submit to the commissioner a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.

3. The commissioner may require a foreign health organization to file a risk-based capital plan under either of the following circumstances:

a. In the event of a company-action-level event, regulatory-action-level event, or authorized-control-level event as determined under the risk-based capital statute applicable in the state of domicile of the foreign health organization, or, if no risk-based capital statute is in force in that state, under this chapter.

b. The insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file a risk-based capital plan in the manner specified under that state's risk-based capital statute, or, if no risk-based capital statute is in force in that state, pursuant to this chapter.

4. The failure of the foreign health organization to file a risk-based capital plan is sufficient grounds to order the health organization to cease and desist from writing new insurance business in this state.

5. In the event of a mandatory-control-level event with respect to a foreign health organization, if a domiciliary receiver has not been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization, the commissioner may make application to the district court as permitted under chapter 507C with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the mandatory-control-level event shall be considered adequate grounds for the application.

2000 Acts, ch 1050, §11

521F.12 Immunity.

Liability shall not arise on the part of and a cause of action shall not arise against the commissioner or the insurance division or its employees or agents for an action taken in the exercise of powers or performance of duties under this chapter.

2000 Acts, ch 1050, §12

521F.13 Notices.

Notice by the commissioner to a health organization which may result in regulatory action under this chapter is effective upon being sent if transmitted by certified mail, or, in the case of any other transmission, is effective upon the health organization's receipt of the notice.

2000 Acts, ch 1050, §13

CHAPTER 521G

PROTECTED CELL COMPANIES

521G.1 Short title.
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521G.8 Supervision, rehabilitation, or liquidation of a protected cell company.
521G.9 Securitization transactions not insurance.
521G.10 Rules.

521G.1 Short title.

This chapter shall be known and may be cited as the *"Protected Cell Company Act"*.

2000 Acts, ch 1046, §1

521G.2 Purpose.

The purpose of this chapter is to authorize the establishment of protected cells by a domestic insurer authorized to transact the business of insurance under chapter 508 or 515, as a means of accessing alternative sources of capital and achieving the benefits of insurance securitization. Investors in fully funded insurance securitization transactions provide funds that are available to

pay the insurer's insurance obligations or to repay the investors, or both. Protected cells are intended to achieve more efficiencies with respect to such insurance securitization.

2000 Acts, ch 1046, §2

521G.3 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Domestic insurer"* means an insurer domiciled in this state and organized under chapter 508 or 515.

2. *"Fair value"* of an asset or liability means the amount at which that asset or liability could be bought or incurred, or sold or settled, in a current transaction between willing parties, other than in a forced or liquidation sale, and as determined under section 521G.4.

3. *"Fully funded"* means, with respect to any exposure attributed to a protected cell, that the fair value of the protected cell assets, on the date on which the insurance securitization is effected, equals or exceeds the maximum possible exposure attributable to the protected cell with respect to such exposures.

4. *"General account"* means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities.

5. *"Indemnity trigger"* means a transaction term by which relief of the issuer's obligation to repay investors is triggered by its incurring a specified level of losses under its insurance or reinsurance contracts.

6. *"Nonindemnity trigger"* means a transaction term by which relief of the issuer's obligation to repay investors is triggered solely by some event or condition other than the individual protected cell company incurring a specified level of losses under its insurance or reinsurance contracts.

7. *"Protected cell"* means an identified pool of assets and liabilities of a protected cell company segregated and insulated as provided under this chapter from the remainder of the protected cell company's assets and liabilities.

8. *"Protected cell account"* means a specifically identified bank or custodial account established by a protected cell company for the purpose of segregating the protected cell assets of one protected cell from the protected cell assets of other protected cells and from the assets of the protected cell company's general account.

9. *"Protected cell assets"* means all assets, contract rights, and general intangibles, identified with and attributable to a specific protected cell of a protected cell company.

10. *"Protected cell company"* means a domestic insurer that has one or more protected cells.

11. *"Protected cell company insurance securitization"* means the issuance of a debt instrument, the proceeds from which support the exposures attributed to a protected cell, by a protected cell company where repayment of principal or interest, or both, to investors pursuant to the transaction terms is contingent upon the occurrence or nonoccurrence of an event with respect to which the protected cell company is exposed to loss under insurance or reinsurance contracts which the protected cell company has issued.

12. *"Protected cell liabilities"* means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell company.

2000 Acts, ch 1046, §3

521G.4 Determination of fair value — valuation technique.

A quoted market price in an active market is deemed to be the best evidence of fair value of an asset and shall be used as the basis for the measurement of fair value, if available. If a quoted market price is available, the fair value is the product of the number of trading units times the quoted market price. If a quoted market price is not available, the estimate of fair value shall be based on the best information available. The estimate of fair value shall consider the price for similar assets and liabilities and the results of a valuation technique to the extent available in the circumstances. For purposes of this section, *"valuation technique"* includes, but is not limited to, the present value of estimated expected future cash flows using a discount rate commensurate with the risks involved, option-pricing models, matrix pricing, option-adjusted spread models, and fundamental analysis. A valuation technique for measuring financial assets and liabilities and servicing assets and liabilities shall be consistent with the objective of measuring fair value. A valuation technique shall incorporate assumptions that a market participant would use in estimating value, future revenue, and future expenses, including assumptions about interest rates, default, prepayment, and volatility. In measuring financial liabilities and servicing liabilities at fair value by discounting estimated future cash flows, discount rates shall be used at which those liabilities could be settled in an open and competitive transaction. An estimate of expected future cash flow, if used to estimate fair value, shall be the best estimate based on reasonable and supportable assumptions and projections. All available evidence shall be considered in developing an estimate of expected future cash flow. The weight given to the evidence shall be commensurate with the extent to which the evidence can be verified objectively. If a range is estimated for either the amount or timing of possible cash flows, the likelihood of possible outcomes shall be considered in determining the best estimate of such future cash flows.

2000 Acts, ch 1046 §4

521G.5 Establishment of protected cells.

1. A protected cell company may establish one

or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments to such plan submitted by the protected cell company with respect to each protected cell related to an insurance securitization. The plan shall include, but not be limited to, the specific business objectives and investment guidelines of the protected cell company. Upon the written approval of the commissioner of the plan of operation, the protected cell company, consistent with the approved plan of operation, may attribute to the protected cell insurance obligations with respect to its insurance business and obligations relating to the insurance securitization and assets to fund the obligations. A protected cell shall have its own distinct name or designation, which shall include the words "protected cell". The protected cell company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

2. Attribution of assets and liabilities between a protected cell and the general account shall be pursuant to the plan of operation. Other attribution of assets or liabilities shall not be made by a protected cell company between the protected cell company's general account and its protected cells. The attribution of assets and liabilities between the general account and a protected cell, or from investors in the form of principal on a debt instrument issued by a protected cell company in connection with a protected cell company insurance securitization transaction, shall be in cash or in readily marketable securities with established market values.

3. The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell company. An amount attributed to a protected cell under this chapter, including assets transferred to a protected cell account, is owned by the protected cell company and the protected cell company shall not be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, a protected cell company may permit a security interest to attach to protected cell assets or a protected cell account which is in favor of a creditor of the protected cell company and otherwise allowed under applicable law.

4. This chapter shall not be construed to prohibit the protected cell company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, provided that all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell company's general account.

5. *a.* A protected cell company shall establish administrative and accounting procedures necessary to properly identify the protected cells of the protected cell company and the protected cell assets and protected cell liabilities attributable to the protected cells. The board of directors of a protected cell company shall do both of the following:

(1) Keep protected cell assets and protected cell liabilities separate and separately identifiable from the assets and liabilities of the protected cell company's general account.

(2) Keep protected cell assets and protected cell liabilities attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

b. Tracing shall be applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell company's general account. The remedy of tracing shall not be construed as an exclusive remedy.

6. A protected cell company, when establishing a protected cell, shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

2000 Acts, ch 1046, §5

521G.6 Use and operation of protected cells.

1. The protected cell assets of a protected cell shall not be charged with liabilities arising out of any other business the protected cell company may conduct. A contract or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets of a protected cell are available for the satisfaction of the protected cell liabilities attributed to that same protected cell.

2. The income, gains, and losses, realized or unrealized, from protected cell assets and protected cell liabilities shall be credited to or charged against the protected cell without regard to other income, gains, or losses of the protected cell company, including income, gains, or losses of another protected cell. An amount attributed to a protected cell and accumulations on the attributed amount may be invested and reinvested without regard to the requirements and limitations of section 511.8 or 515.35, and the investments in a protected cell shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the protected cell company.

3. Assets and liabilities attributed to a protected cell shall be valued at their fair value on the date of valuation.

4. *a.* A protected cell company, with respect to

its protected cells, shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell. A protected cell company insurance securitization that is nonindemnity triggered qualifies as an insurance securitization under this chapter only after the commissioner adopts rules providing for all of the following:

(1) The methods of funding of the portion of the risk that is not indemnity based.

(2) Accounting requirements.

(3) Disclosure requirements.

(4) Risk-based capital treatment.

(5) Assessment of risks associated with such securitizations.

b. A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited. Protected cell assets may be used to pay interest or other consideration on an outstanding debt or other obligation attributable to that protected cell. This subsection shall not be construed or interpreted to prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration.

5. In a protected cell company insurance securitization, a contract or other documentation affecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contract or other documentation shall clearly disclose that the assets of the protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection, the failure to include such language in a contract or other documentation shall not be used as the sole basis by a creditor, reinsurer, or other claimant to circumvent this chapter.

6. A protected cell company shall only attribute to a protected cell account the insurance obligations relating to the protected cell company's general account. A protected cell company shall not issue an insurance or reinsurance contract directly to a policyholder or reinsured, and shall not have an obligation to a policyholder or reinsured of the protected cell company's general account.

7. At the cessation of business of a protected cell pursuant to the plan approved by the commissioner, the protected cell company shall close the protected cell account.

2000 Acts, ch 1046, §6

521G.7 Creditors and other claimants of protected cell companies.

1. *a.* Protected cell assets shall only be available to a creditor of the protected cell company that is a creditor with respect to that protected cell. Such a creditor shall have recourse to the protected cell assets attributable to that protected cell, to the exclusion of other creditors of the protected cell company that are not creditors with respect to that protected cell. Such other creditors shall have no recourse to the protected cell assets attributable to that protected cell. A creditor with respect to a protected cell does not have recourse against the protected cell assets of other protected cells or the assets of the protected cell company's general account.

b. Protected cell assets shall only be available to creditors of a protected cell company after all protected cell liabilities have been extinguished or otherwise provided for pursuant to the plan of operation relating to that protected cell.

2. An obligation of a protected cell company to a person which arises from a transaction, or is otherwise imposed, with respect to a protected cell, is subject to both of the following:

a. The obligation to a person shall extend only to the protected cell assets attributable to that protected cell, and with respect to that obligation, such person is entitled to recourse only against the protected cell assets attributable to that protected cell.

b. The obligation to a person shall not extend to the protected cell assets of another protected cell or the assets of the protected cell company's general account, and with respect to that obligation, such person is not entitled to recourse against the protected cell assets of any other protected cell or the assets of the protected cell company's general account.

3. An obligation of a protected cell company that relates solely to the general account shall extend only to the assets of the protected cell company's general account, and the creditor, with respect to that obligation, is entitled to recourse against only the assets of the protected cell company's general account.

4. A protected cell is not subject to any requirements relating to a guaranty fund or guaranty association, and shall not be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in this state with respect to the activities, assets, or obligations of a protected cell. This section does not affect the activities or obligations of a protected cell company's general account.

5. The establishment of one or more protected cells, by itself, does not constitute any of the following:

a. A fraudulent conveyance.

b. An intent by the protected cell company to defraud creditors.

c. The transaction of business by the protected cell company for a fraudulent purpose.

2000 Acts, ch 1046, §7

521G.8 Supervision, rehabilitation, or liquidation of a protected cell company.

Upon an order of supervision, rehabilitation, or liquidation of a protected cell company, a receiver

shall manage a protected cell company's assets and liabilities, including protected cell assets and protected cell liabilities, as provided in this chapter.

An amount recoverable by a receiver under a protected cell company insurance securitization shall not be reduced or diminished as a result of the entry of an order of supervision, rehabilitation, or liquidation with respect to the protected cell company, notwithstanding contrary provisions in a contract or other document governing the protected cell company insurance securitization.

2000 Acts, ch 1046, §8

521G.9 Securitization transactions not insurance.

A protected cell company insurance securitization is not an insurance or reinsurance contract. An investor in a protected cell company insurance securitization, by sole means of this investment, is not deemed to be transacting an insurance business in this state. An underwriter or selling agent, or a partner, director, officer, member, manager, employee, or agent of such underwriter or selling agent, participating in a protected cell company insurance securitization, is not deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business as a result of such participation.

2000 Acts, ch 1046, §9

521G.10 Rules.

The commissioner shall adopt rules pursuant to chapter 17A as are necessary to administer this chapter.

2000 Acts, ch 1046, §10

CHAPTER 522

LICENSING OF INSURANCE AGENTS

Repealed by 2001 Acts, ch 16, §36, 37; see chapter 522B

CHAPTER 522A

SALE OF INSURANCE BY VEHICLE RENTAL COMPANIES

522A.1 Purpose.
522A.2 Definitions.
522A.3 Limited licenses.
522A.4 Term of limited license.
522A.5 Fees.
522A.6 Vendor qualifications.
522A.7 Rules.

522A.1 Purpose.

The purpose of this chapter is to provide for the limited licensing of rental companies when a motor vehicle rental company sells travel or automobile-related insurance products or coverage in connection with and incidental to the rental of vehicles.

99 Acts, ch 143, §1

522A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commissioner"* means the commissioner of insurance appointed pursuant to section 505.2.

2. *"Counter employee"* means any employee at least eighteen years of age employed by a rental company that offers the products described in this chapter.

3. *"Limited licensee"* means a person at least eighteen years of age or an entity authorized to sell certain insurance coverages relating to the rental of vehicles.

4. *"Rental agreement"* means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by a rental company for rental.

5. *"Rental company"* means any person or entity in the business of primarily providing vehicles intended for the private transportation of passengers to the public under a rental agreement for a period not to exceed ninety days.

6. *"Rental period"* means the term of the rental agreement.

7. *"Renter"* means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed ninety days.

8. *"Vehicle"* means a motor vehicle under section 321.1 used for the private transportation of passengers, including passenger vans, minivans, and sport utility vehicles, or used for the transportation of cargo with a gross vehicle weight of less than twenty-six thousand and one pounds and not requiring the operator to possess a commercial driver's license, including cargo vans, pickup trucks, and trucks.

99 Acts, ch 143, §2

522A.3 Limited licenses.

1. Notwithstanding the provisions of chapter 522B, the commissioner may issue a limited license to a rental company that has complied with the requirements of this chapter. The limited license shall authorize the limited licensee to offer or sell insurance with the rental of vehicles.

2. As a prerequisite for issuance of a limited license under this section, a written application for a limited license, which is signed by an officer of the applicant, shall be filed with the commissioner. The application shall be in a form and contain information prescribed by the commissioner. The application shall include a list of all rental locations where the rental company intends to conduct business. An updated list shall be provided to the commissioner within thirty business days from any date on which the list is amended.

3. If a provision of this section is violated by a limited licensee, the commissioner may, after notice and a hearing, revoke or suspend a limited license issued under this section, or impose any other penalties, including suspending permission for the transaction of insurance offers or sales at specific rental locations where violations of this section have occurred, as the commissioner deems to be necessary or convenient to carry out the purposes of this section.

4. A rental company licensed pursuant to this section may offer or sell insurance issued by an insurance carrier authorized to do business in this state and only in connection with and incidental to the rental of a vehicle. A renter shall not be required to purchase coverage in order to rent a vehicle. The type of insurance offered or sold by a limited licensee, whether at the rental office or by preselection of coverage in a master, corporate, group rental, or individual agreement, may be in any of the following general categories:

a. Personal accident insurance covering the risks of travel, including, but not limited to, accident and health insurance that provides coverage, as applicable, to a renter and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period.

b. Liability insurance that provides coverage, as applicable, to a renter and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle.

c. Personal effects insurance that provides coverage, as applicable, to a renter and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period.

d. Roadside assistance and emergency sickness protection programs.

5. Insurance shall only be sold by a limited licensee pursuant to this section if all of the following apply:

a. The rental period of the rental agreement does not exceed ninety consecutive days.

b. At every rental location where a rental agreement is executed, brochures or other written materials are readily available to a prospective renter that include all of the following information:

(1) A clear and correct summary of the material terms of coverage offered to renters, including the identity of the insurer.

(2) A disclosure that the coverage offered by the rental company may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowner's insurance policy, personal liability insurance policy, or other source of coverage.

(3) A statement that the purchase by a renter of the types of coverage specified in this section is not required in order to rent a vehicle.

(4) A description of the process for filing a claim in the event a renter elects to purchase coverage and in the event of a claim.

c. Evidence of coverage in the rental agreement is provided to every renter who elects to purchase such coverage.

d. A fee, compensation, or commission is not paid to an employee by a rental company dependent solely on the sale of insurance under any limited license issued pursuant to this section.

6. Any limited license issued under this section shall authorize a counter employee of the limited licensee to act individually on behalf, and under the supervision, of the limited licensee with respect to the offer and sale of coverage specified in this section.

7. A rental company counter employee must successfully pass an examination covering the insurance products offered for sale by the rental company in connection with and incidental to the rental of vehicles by the rental company. The examination shall be approved and administered by the insurance division or a vendor approved by the insurance division pursuant to section 522A.6. The counter employee shall file an application with the commissioner for an individual license. Any application shall be deemed approved unless the commissioner notifies the rental company of the denial or rejection of the application within thirty days of receiving the application. An application shall not include requirements greater in scope than defined in this section.

8. A limited licensee pursuant to this section

shall not be required to treat moneys collected from renters purchasing insurance when renting vehicles as moneys received in a fiduciary capacity, provided that the charges for coverage are itemized and are ancillary to a rental agreement. The offer or sale of insurance not in conjunction with a rental agreement shall not be permitted.

9. A limited licensee under this section shall not advertise, represent, or otherwise hold itself out or hold any of its employees out as licensed insurers, insurance agents, or insurance brokers.

10. A limited licensee shall not engage in this state in any of the following:

a. A trade practice defined in chapter 507B as, or determined pursuant to section 507B.6 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

b. An illegal sales practice or unfair trade practice as defined in rules adopted pursuant to chapter 17A by the commissioner.

11. An individual license, authorization, and certification to offer or sell insurance products under this chapter shall expire when the counter employee's employment terminates with the rental company.

99 Acts, ch 143, §3; 2000 Acts, ch 1058, §48; 2001 Acts, ch 16, §12, 37

2001 amendment to subsection 1 takes effect January 1, 2002; 2001 Acts, ch 16, §37

522A.4 Term of limited license.

A limited license issued pursuant to this chapter is valid for three years and may be renewed without examination if the renewal application is received in a timely manner.

99 Acts, ch 143, §4

522A.5 Fees.

The fee for a counter employee license shall be fifty dollars per counter employee. In no case shall any combined fees exceed one thousand dollars in any calendar year for any one rental company or limited license or licensee or renewal license.

99 Acts, ch 143, §5

522A.6 Vendor qualifications.

If a qualified vendor is available, the commissioner shall utilize the qualified vendor closest in proximity to where the counter employee is employed to meet the requirements in section 522A.3. A vendor shall have at least two years teaching experience relating to the topic of the products described in this chapter. For purposes of this section, the commissioner may approve a rental company that meets the requirements of this section as a qualifying vendor to administer the requirements in section 522A.3.

99 Acts, ch 143, §6

522A.7 Rules.

The commissioner shall adopt rules necessary for the administration of this chapter.

99 Acts, ch 143, §7

CHAPTER 522B

LICENSING OF INSURANCE PRODUCERS

Chapter takes effect January 1, 2002; 2001 Acts, ch 16, §37

522B.1 Definitions.
522B.2 License required.
522B.3 Exceptions to licensing.
522B.4 Application for examination.
522B.5 Application for license.
522B.6 License.
522B.7 Nonresident licensing.
522B.8 Exemption from examination.
522B.9 Assumed names.
522B.10 Temporary licensing.
522B.11 License denial, nonrenewal, or revocation.
522B.12 Commissions.
522B.13 Appointments.
522B.14 Notification to commissioner of termination — penalties.
522B.15 Reciprocity.
522B.16 Reporting of actions.
522B.17 Penalty.
522B.18 Rules.

522B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Business entity"* means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

2. *"Commissioner"* means the commissioner of insurance.

3. *"Exclusive insurance producer"* means a licensed insurance producer whose contract with an insurer requires the insurance producer to act as an agent only for that insurer or a group of insurers under common ownership or control or other insurers authorized by that insurer.

4. *"Home state"* means the District of Columbia and any state or territory of the United States in which an insurance producer maintains the producer's principal place of residence or principal place of business and is licensed to act as an insurance producer.

5. *"Insurance"* means any of the lines of authority an insurer is authorized to sell in this state.

6. *"Insurance producer"* means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

7. *"Insurer"* means a person engaged in the business of insurance who is regulated under chapter 508, 512B, 515, or 520.

8. *"License"* means a document issued pursuant to this chapter by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. A license by itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurer.

9. *"Limited lines insurance"* means any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 522B.6, subsection 2, paragraphs *"a"* through *"f"*, and any other line of insurance that the commissioner may deem it necessary to recognize for the purposes of complying with section 522B.7, subsection 4.

10. *"Limited lines producer"* means a person licensed by the commissioner to sell, solicit, or negotiate limited lines insurance.

11. *"Negotiate"* means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

12. *"Person"* means an individual or a business entity.

13. *"Producer database"* means the national database of insurance producers maintained by the national association of insurance commissioners, its affiliates, or subsidiaries.

14. *"Sell"* means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

15. *"Solicit"* or *"solicitation"* means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

16. *"Terminate"* means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance.

17. *"Uniform application"* means the current version of the national association of insurance commissioners uniform application for resident and nonresident insurance producer licensing.

18. *"Uniform business entity application"* means the current version of the national association of insurance commissioners uniform business entity application for resident and nonresident business entities.

2001 Acts, ch 16, §15, 37; 2002 Acts, ch 1111, §35; 2002 Acts, ch 1119, §75

NEW subsection 3 and former subsections 3 – 17 renumbered as 4 – 18
Subsections 7 and 10 amended

522B.2 License required.

1. A person shall not sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed as an insurance producer for that line of insurance as provided in this chapter.

2. A person offering to the public, for a fee or commission, to engage in the business of offering any advice, counsel, or service with respect to the benefits, advantages, or disadvantages promised under any policy of insurance must also be licensed as an insurance producer.

2001 Acts, ch 16, §16, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.3 Exceptions to licensing.

1. Nothing in this chapter shall be construed to require an insurer to obtain an insurance producer license. For the purposes of this section, *"insurer"* does not mean an officer, director, employee, subsidiary, or affiliate of the insurer.

2. A license as an insurance producer shall not be required of any of the following:

a. An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state, and one of the following applies:

(1) The activities of the officer, director, or employee are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance.

(2) The function of the officer, director, or employee relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance.

(3) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.

b. A person who performs any of the following services and who is not paid a commission for the performance of such service:

(1) Secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, or group

or blanket accident and health insurance.

(2) Secures and furnishes information for the purpose of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans.

(3) Performs administrative services related to mass marketed property and casualty insurance.

c. An employer or association, or an officer, director, or employee of such employer or association, or the trustees of an employee trust plan, to the extent that such employer, association, officer, director, employee, or trustee is engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as such employer, association, officer, director, employee, or trustee is not in any manner compensated, directly or indirectly, by the insurer issuing the contracts.

d. An employee of an insurer, or an organization employed by an insurer, who engages in the inspection, rating, or classification of risks or in the supervision of the training of insurance producers and who is not individually engaged in the sale, solicitation, or negotiation of insurance.

e. A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.

f. A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

g. A salaried full-time employee who counsels or advises the employee's employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission.

h. A licensed attorney providing surety bonds incident to the attorney's practice.

i. A person selling transportation tickets of a common carrier of persons or property when that person also sells, in connection with and related to the transportation ticket, a trip and accident insurance policy or an insurance policy on personal effects being carried as baggage.

2001 Acts, ch 16, §17, 37; 2002 Acts, ch 1050, §47; 2002 Acts, ch 1119, §76

See also §522A.3

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, paragraph b, subparagraph (1) amended

522B.4 Application for examination.

1. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 522B.8. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and regulations of this state. The commissioner shall adopt rules pursuant to chapter 17A related to development and conduct of the examination.

2. The commissioner may make arrangements, including contracting with an outside testing service or other appropriate entity, for administering examinations and collecting fees.

3. An individual applying for an examination shall remit a nonrefundable fee as established by rule of the commissioner.

4. An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

2001 Acts, ch 16, §18, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.5 Application for license.

1. A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find all of the following:

a. The individual is at least eighteen years of age.

b. The individual has not committed any act that is a ground for denial, suspension, or revocation as set forth in section 522B.11.

c. The individual has paid the license fee of fifty dollars.

d. The individual has successfully passed the examinations for the lines of authority for which the person has applied.

e. In order to protect the public interest, the individual has the requisite character and competence to receive a license as an insurance producer.

2. A business entity acting as an insurance producer may elect to obtain an insurance producer license. Application shall be made using the uniform business entity application. Prior to approving the application, the commissioner shall find both of the following:

a. The business entity has paid the appropriate fees.

b. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws and rules of this state.

3. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

2001 Acts, ch 16, §19, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.6 License.

1. A person who meets the requirements of sections 522B.4 and 522B.5, unless otherwise denied licensure pursuant to section 522B.11, shall be issued an insurance producer license. An insurance producer license is valid for three years.

2. An insurance producer may qualify for a license in one or more of the following lines of authority:

a. Life insurance providing coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

b. Accident and health or sickness insurance providing coverage for sickness, bodily injury, or accidental death, and may include benefits for disability income.

c. Property insurance providing coverage for the direct or consequential loss or damage to property of any kind.

d. Casualty insurance providing coverage against legal liability, including that for death, injury, or disability, or damage to real or personal property.

e. Variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities.

f. Personal lines property and casualty insurance sold to individuals and families primarily for noncommercial purposes.

g. Excess and surplus lines insurance provided by certain nonadmitted insurers pursuant to section 515.147.

h. Credit insurance, including credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing a credit obligation and that the commissioner determines should be designated a form of credit insurance.

i. Any other line of insurance permitted under state law or by rule.

3. An insurance producer license remains in effect unless revoked or suspended as long as all required fees are paid and continuing education requirements for resident individual insurance producers are met by any applicable due date.

4. An individual insurance producer who allows the producer's license to lapse, within twelve months from the due date of the renewal fee, may have the same license reinstated without the necessity of passing a written examination upon the payment of a reinstatement fee as specified by rule of the commissioner. Such reinstatement fee shall be in addition to the required renewal fee.

5. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request a waiver of those procedures. Such insurance producer may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

6. The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the commissioner deems necessary.

7. A licensee shall inform the commissioner by any means acceptable to the commissioner of a change of legal name or address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty as specified in section 522B.17.

8. In order to assist with the commissioner's duties, the commissioner may contract with a nongovernmental entity, including the national association of insurance commissioners or any affiliate or subsidiary the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner deems appropriate.

2001 Acts, ch 16, §20, 37; 2002 Acts, ch 1050, §48; 2002 Acts, ch 1119, §77

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

Subsection 2, paragraph e amended

Subsection 7 amended

522B.7 Nonresident licensing.

1. Unless denied licensure pursuant to section 522B.11, a nonresident person shall receive a nonresident insurance producer license if all of the following apply:

a. The person is currently licensed as an insurance producer and is in good standing in the person's home state.

b. The person has submitted the proper request for licensure and has paid the required fees.

c. The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the person's home state, or in lieu of such application, a completed uniform application.

d. The person's home state awards nonresident insurance producer licenses to residents of

this state on the same basis.

2. The commissioner may verify the insurance producer's licensing status through the producer database.

3. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required. The certification may be obtained through the producer database.

4. Notwithstanding any other provision of this chapter, a person licensed as a limited lines insurance producer in the person's home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection 1, granting the same scope of authority as granted under the license issued by such person's home state.

2001 Acts, ch 16, §21, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.8 Exemption from examination.

1. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete an examination. This exemption is only available if the person is currently licensed in that other state or if the request for licensure is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state. The certification may be obtained through the producer database.

2. A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to section 522B.5. An examination shall not be required of that person to obtain an insurance producer license for any line of authority previously held in the prior state except where the commissioner determines otherwise by regulation.

2001 Acts, ch 16, §22, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.9 Assumed names.

An insurance producer doing business under any name other than the insurance producer's legal name is required to notify the commissioner prior to using the assumed name.

2001 Acts, ch 16, §23, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.10 Temporary licensing.

1. The commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

a. To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled, to allow adequate time for the sale of the insurance business owned by the insurance producer, for the recovery or return of the insurance producer to the business, or for the training and licensing of new personnel to operate the insurance producer's business.

b. To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license.

c. To the designee of a licensed insurance producer entering active service in the armed forces of the United States.

d. In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of a temporary license.

2. The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed insurance producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public is endangered. A temporary license shall not continue after the owner or the personal representative disposes of the business.

2001 Acts, ch 16, §24, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.11 License denial, nonrenewal, or revocation.

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:

a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.

c. Obtaining or attempting to obtain a license through misrepresentation or fraud.

d. Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business.

e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

f. Having been convicted of a felony.

g. Having admitted or been found to have com-

mitted any unfair insurance trade practice or fraud.

h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

i. Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

j. Forging another's name to an application for insurance or to any document related to an insurance transaction.

k. Improperly using notes or any other reference material to complete an examination for an insurance license.

l. Knowingly accepting insurance business from an individual who is not licensed.

m. Failing to comply with an administrative or court order imposing a child support obligation.

n. Failing to comply with an administrative or court order related to repayment of loans to the college student aid commission.

o. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

p. Failing or refusing to cooperate in an investigation by the commissioner.

2. If the commissioner does not renew a license or denies an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the licensee or applicant of the reason for the nonrenewal of the license or denial of the application for a license. The licensee or applicant may request a hearing on the nonrenewal or denial. A hearing shall be conducted according to section 507B.6.

3. The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by a partner, officer, or manager acting on behalf of the business entity and the violation was not reported to the commissioner and corrective action was not taken.

4. In addition to, or in lieu of, any applicable denial, suspension, or revocation of a license, a person, after hearing, may be subject to a civil penalty as provided in section 522B.17.

5. The commissioner may enforce the provisions and impose any penalty or remedy authorized by this chapter and chapter 507B against any person who is under investigation for, or charged with, a violation of either chapter even if the person's license has been surrendered or has lapsed by operation of law.

2001 Acts, ch 16, §25, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.12 Commissions.

1. An insurer or insurance producer shall not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

2. A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

3. Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was so licensed at that time.

4. An insurer or insurance producer may pay or assign a commission, service fee, brokerage, or other valuable consideration to an insurance agency or to a person who does not sell, solicit, or negotiate insurance in this state, unless the payment would violate chapter 507B or section 515.130.

2001 Acts, ch 16, §26, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.13 Appointments.

1. An individual insurance producer who acts as an agent of an insurer must be appointed by that insurer. An insurance producer who is not acting as an agent of an insurer need not be appointed. A business entity is not required to be appointed.

2. The appointing insurer, for the purpose of appointing an insurance producer as its agent, shall file, in a format approved by the commissioner, a notice of appointment within thirty days from the date the agency contract is executed or the first insurance application is submitted.

3. An insurer shall pay an appointment fee, in the amount and method of payment set forth by rule of the commissioner, for each insurance producer appointed by the insurer.

4. An insurer shall remit a renewal appointment fee in the manner and amount as set forth by rule of the commissioner.

2001 Acts, ch 16, §27, 37

Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.14 Notification to commissioner of termination — penalties.

1. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in section 522B.11, or the insurer has knowledge the insurance producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities set forth in section 522B.11. Upon request of

the commissioner, the insurer or authorized representative of the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer.

2. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer for any reason not set forth in section 522B.11 shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

3. The insurer or the authorized representative of the insurer shall promptly notify the commissioner using a format prescribed by the commissioner if, upon further review or investigation, the insurer or authorized representative of the insurer discovers additional information that would have been reportable to the commissioner pursuant to subsection 1, had the insurer then known of its existence.

4. Within fifteen days after making the notification required by this section, the insurer shall mail a copy of the notification to the insurance producer at the insurance producer's last known address. If the insurance producer is terminated for any of the reasons set forth in section 522B.11, the insurer shall provide a copy of the notification to the insurance producer at the insurance producer's last known address by restricted certified mail, as defined in section 618.15, or by overnight delivery using a nationally recognized carrier.

5. Within thirty days after the insurance producer has received the original or additional notification, the insurance producer may file written comments concerning the substance of the notification with the commissioner. The insurance producer, by the same means, shall simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's record and accompany every copy of a report distributed or disclosed for any reason about the insurance producer, as permitted under subsection 8.

6. In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability. A civil cause of action of any nature shall not arise against any of these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner from an insurer or insurance producer; or a statement by a terminating insurer or insurance producer to an insurer or insurance producer limited solely and exclusively to whether a termination for cause under subsection 1 was reported to the commissioner, provided that the propriety of any termination for cause under subsection 1 is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship.

In any action brought against a person that may have immunity under this section for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that this section does not apply because the person making the statement or providing the information did so with actual malice. This section shall not abrogate or modify any existing statutory or common law privileges or immunities.

7. Any document, material, or other information in the control or possession of the insurance division that is furnished by an insurer, insurance producer, or an employee or agent of such insurer or insurance producer acting on behalf of the insurer or insurance producer, or obtained by the commissioner in an investigation pursuant to this section is considered a confidential record and shall not be subject to subpoena, or subject to discovery, or admissible in evidence in any private civil action. However, the commissioner is authorized to use such document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

Neither the commissioner nor any person who received any document, material, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential document, material, or information subject to this section.

8. The commissioner may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 7, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.

The commissioner may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged

any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

The commissioner may enter into agreements governing sharing and use of information consistent with this subsection.

9. A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall not occur as a result of disclosure to the commissioner or sharing of information received under this section.

10. Nothing in this chapter shall prohibit the commissioner from releasing information regarding final, adjudicated actions that are considered public records subject to examination and copying under chapter 22 to a database or other clearinghouse service maintained by the national association of insurance commissioners, or an affiliate or subsidiary of the national association of insurance commissioners.

11. An insurer, the authorized representative of the insurer, or an insurance producer that fails to report as required under this section, or that is found to have reported with actual malice by a court of competent jurisdiction, after notice and hearing, may have its license or certificate of authority suspended or revoked and may be penalized as provided in section 522B.17.

2001 Acts, ch 16, §28, 37; 2001 Acts, ch 176, §72
Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.15 Reciprocity.

1. The commissioner shall waive any requirements for a nonresident license applicant with a valid license from such applicant's home state, except for the requirements imposed by section 522B.7, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

2. A nonresident insurance producer's satisfaction of the producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident insurance producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from this state on the same basis.

2001 Acts, ch 16, §29, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.16 Reporting of actions.

An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, and other relevant legal documents.

Within thirty days of the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

2001 Acts, ch 16, §30, 37; 2002 Acts, ch 1050, §49
Section is effective January 1, 2002; 2001 Acts, ch 16, §37
Unnumbered paragraph 1 amended

522B.17 Penalty.

An insurer or insurance producer who, after hearing, is found to have violated this chapter may be assessed a civil penalty pursuant to chapter 507B.

A person found, after hearing, to have acted as an agent of an insurer or otherwise selling, soliciting, or negotiating insurance in this state, or offering to the public advice, counsel, or services with regard to insurance, who is not properly licensed is subject to penalty according to the provisions of chapter 507A.

2001 Acts, ch 16, §31, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37

522B.18 Rules.

The commissioner may adopt reasonable rules according to chapter 17A as are necessary or proper to carry out the purposes of this chapter.

2001 Acts, ch 16, §32, 37
Section is effective January 1, 2002; 2001 Acts, ch 16, §37

CHAPTER 523

ELECTIONS, PROPORTIONATE REPRESENTATION, AND INSIDER TRADING

523.1 Proxies authorized.
523.2 Conditions.
523.3 and 523.4 Repealed by 65 Acts, ch 402, §1.
523.5 Proportionate representation.
523.6 Amendment of articles.
523.7 Statement of stock ownership filed with commissioner.
523.8 Profit in trading stock to inure to company.
523.9 Penalty for selling stock not directly owned by seller.
523.10 Exceptions — rules by commissioner.
523.11 Arbitrage transactions excepted.
523.12 Equity security defined.
523.13 Exceptions as to domestic stock companies.
523.14 Rules.

523.1 Proxies authorized.

Any insurance company or association organized under the laws of this state, may provide in its articles of incorporation, that its members or stockholders may vote by proxies, voluntarily given, upon all matters of business coming before the stated or called meetings of the stockholders or members, including the election of directors.

[S13, §1821-x; C24, 27, 31, 35, 39, §**9124;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §523.1]

523.2 Conditions.

The commissioner of insurance shall promulgate such rules with respect to the solicitation and voting of proxies as will in the commissioner's opinion best protect the interests of all stockholders or policyholders from whom they are solicited. Any violation of any rule promulgated hereunder shall be deemed a simple misdemeanor.

[S13, §1821-x; C24, 27, 31, 35, 39, §**9125;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §523.2]

523.3 and 523.4 Repealed by 65 Acts, ch 402, § 1.

523.5 Proportionate representation.

The holder or holders, jointly or severally, of not less than one-fifth but less than a majority of the shares of the capital stock of corporations organized on the stock plan under the laws of this state for transacting the business of life or fire insurance, shall be entitled to nominate, to be elected, or appointed, as the case may be, directors or other persons performing the functions of directors by whom, according to the articles of incorporation of such corporations, its affairs are to be conducted. In the event such nomination shall be made, there shall be elected or appointed to the extent that the total number to be elected or appointed is divisible, such proportionate number from the persons so nominated as the shares of stock held by persons making such nominations bear to the whole number of shares issued; provided the holder or holders of the minority shares of stock shall only be entitled to one-fifth (disregarding fractions) of the total number of directors to be elected for each one-fifth of the entire capital stock of such corporation so held by them; and provided, further, that this section shall not be construed to prevent the holders of a majority of the stock of any such corporation from electing the majority of its directors. Vacancies occurring from time to time shall be filled so as to preserve and secure to such minority and majority stockholders proportionate representation as above provided.

[S13, §1821-v; C24, 27, 31, 35, 39, §**9128;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §523.5]

523.6 Amendment of articles.

All such existing corporations shall by amendment to their articles of incorporation, approved by the commissioner of insurance, provide for the nomination, election, or appointment of the directors or other persons by whom its affairs are to be conducted, in conformity with the provisions of section 523.5, and the articles of incorporation of all such corporations hereafter organized shall contain like provisions.

[S13, §1821-w; C24, 27, 31, 35, 39, §**9129;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §523.6]

523.7 Statement of stock ownership filed with commissioner.

Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner of insurance within ten days after the person becomes such beneficial owner, director or officer a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which the person is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner a statement, in such form as the commissioner may prescribe, indicating the person's ownership at the close of the calendar month and such changes in the person's ownership as have occurred during such calendar month.

[C66, 71, 73, 75, 77, 79, 81, §523.7]

523.8 Profit in trading stock to inure to company.

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of the relationship to such company, any profit realized by the beneficial owner, director or officer from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchase or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more

than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

[C66, 71, 73, 75, 77, 79, 81, §523.8]

523.9 Penalty for selling stock not directly owned by seller.

It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or the person's principal does not own the security sold, or if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if the person proves that notwithstanding the exercise of good faith the person was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

[C66, 71, 73, 75, 77, 79, 81, §523.9]

523.10 Exceptions — rules by commissioner.

The provisions of section 523.8 shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 523.9 shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held in an investment account by a dealer in the ordinary course of the dealer's business and incident to the establishment or maintenance by the dealer of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as the commissioner deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

[C66, 71, 73, 75, 77, 79, 81, §523.10]

523.11 Arbitrage transactions excepted.

The provisions of sections 523.7, 523.8, and 523.9 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of sections 523.7 to 523.14.

[C66, 71, 73, 75, 77, 79, 81, §523.11]

523.12 Equity security defined.

The term *"equity security"* when used in sections 523.7 to 523.14 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as the commissioner may prescribe in the public interest or for the protection of investors, to treat as an equity security.

[C66, 71, 73, 75, 77, 79, 81, §523.12]

523.13 Exceptions as to domestic stock companies.

The provisions of sections 523.7, 523.8 and 523.9 shall not apply to equity securities of a domestic stock insurance company if (1) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934 [48 Stat. L. 881; 15 U.S.C., § 77b et seq.], as amended, or if (2) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 523.7, 523.8 and 523.9 except for the provisions of this subsection 2.

[C66, 71, 73, 75, 77, 79, 81, §523.13]

523.14 Rules.

The commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in the commissioner by sections 523.7 to 523.13, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters, within the commissioner's jurisdiction. No provisions of sections 523.7, 523.8 and 523.9 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

[C66, 71, 73, 75, 77, 79, 81, §523.14]

CHAPTER 523A

CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES

This chapter replaces former chapter 523A, repealed effective July 1, 2001; 2001 Acts, ch 118, §17 – 54, 57

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SUBCHAPTER I

SHORT TITLE AND DEFINITIONS

523A.101 Short title.

This chapter may be cited as the *"Iowa Cemetery and Funeral Merchandise and Funeral Services Act"*.

2001 Acts, ch 118, §17

523A.102 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Authorized to do business within this state"* means a person licensed, registered, or subject to regulation by an agency of the state of Iowa or who has filed a consent to service of process with the commissioner for purposes of this chapter.

2. *"Beneficiary"* means any natural person specified or included in a purchase agreement, upon whose future death cemetery merchandise, funeral merchandise, funeral services, or a combination thereof are to be provided under the purchase agreement.

3. *"Burial account"* means an account established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof without any related trust agreement.

4. *"Burial trust fund"* means an irrevocable burial trust fund established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the person named in the burial trust fund's records or a related purchase agreement. *"Burial trust fund"* does not include or imply the existence of any oral or written purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof between the person and a seller.

5. *"Cemetery merchandise"* means foundations, grave markers, tombstones, ornamental merchandise, memorials, and monuments sold under a purchase agreement that does not require installation within twelve months of the purchase.

6. *"Commissioner"* means the commissioner of insurance or the deputy administrator authorized in section 523A.801 to the extent the commissioner delegates functions to the deputy administrator.

7. *"Common business enterprise"* means a group of two or more business entities that share common ownership in excess of fifty percent.

8. *"Credit sale"* means a sale of goods, services, or an interest in land in which all of the following are applicable:

a. Credit is granted either under a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

b. The buyer is a person other than an organization.

c. The goods, services, or interest in land are purchased primarily for a personal, family, or household purpose.

d. Either the debt is payable in installments or a finance charge is made.

e. For goods and services, the amount financed does not exceed twenty-five thousand dollars.

9. *"Delivery"* occurs when:

a. The cemetery merchandise, funeral merchandise, or the title document establishing an easement for burial rights is physically delivered to the purchaser or installed, except that burial of any item at the site of its ultimate use shall not constitute delivery for purposes of this chapter.

b. If authorized by a purchaser under a purchase agreement, cemetery merchandise has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the establishment for retention in its files.

c. If authorized by a purchaser under a purchase agreement, a polystyrene or polypropylene outer burial container has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the establishment for retention in its files.

10. *"Doing business in this state"* means issuing or performing wholly or in part any term of a purchase agreement executed within the state of Iowa.

11. *"Establishment"* means each business establishment that advertises, sells, promotes, or offers cemetery merchandise, funeral merchandise, funeral services, or a combination thereof prior to the death of the person named or implied in a purchase agreement.

12. *"Financial institution"* means a state or federally insured bank, savings and loan association, credit union, trust department thereof, or a trust company authorized to do business within this state and which has been granted trust powers under the laws of this state or the United States, which holds funds under a trust agreement. *"Financial institution"* does not include:

a. A seller.

b. Anyone employed by or directly involved with the seller in the seller's cemetery merchandise, funeral merchandise, or funeral services business.

13. *"Funeral merchandise"* means personal

property used for the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, urns, and interment receptacles. *"Funeral merchandise"* does not include easements for burial rights in a completed space or cemetery merchandise.

14. *"Funeral services"* means services provided for the final disposition of a dead human body, including but not limited to services necessarily or customarily provided for a funeral, or for the interment, entombment, or cremation of a dead human body, or any combination thereof. *"Funeral services"* does not include perpetual care or maintenance.

15. *"Inner burial container"* means a container in which human remains are placed for burial or entombment. Where only one container is used for burial or entombment, *"inner burial container"* includes a container serving as a burial vault, urn vault, grave box, grave liner, or lawn crypt.

16. *"Insolvent"* means the inability to pay debts as they become due in the usual course of business.

17. *"Interest or income"* means unrealized net appreciation or loss in the fair value of cemetery merchandise, funeral merchandise, and funeral services trust assets for which a market value may be determined with reasonable certainty, plus the return in money or property derived from the use of trust principal or income, net of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, and any annual audit fee. *"Interest or income"* includes but is not limited to:

a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.

b. Interest on money lent, including sums received as consideration for prepayment of principal.

c. Cash dividends paid on corporate stock.

d. Interest paid on deposit funds or debt obligations.

e. Gain realized from the sale of trust assets.

18. *"Next of kin"* means the surviving spouse and heirs at law of the deceased.

19. *"Nonguaranteed"* means that the price of the merchandise and services selected has not been fixed or guaranteed and will be determined by existing prices at the time the merchandise and services are delivered or provided.

20. *"Outer burial container"* means a container used for the burial of human remains that is used exclusively to surround or enclose an inner burial container and to support the earth above the container, commonly known as a burial vault, urn vault, grave box, or grave liner, but not including a lawn crypt.

21. *"Parent company"* means a corporation that has a controlling interest in an establishment.

22. *"Person"* means an individual, business, corporation, trust, firm, partnership, association, or any other legal entity.

23. *"Personal representative"* means a personal representative as defined in section 633.3.

24. *"Provider"* means a person that provides funeral services, funeral merchandise, or cemetery merchandise purchased in a purchase agreement.

25. *"Purchase agreement"* means an agreement to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account.

26. *"Purchase price"* means the negotiated price for the item of merchandise or service, if itemized in the purchase agreement, or the price of the item listed in the seller's general price list at the time the purchase agreement is signed.

27. *"Purchaser"* means a person who purchases cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. The purchaser need not be a beneficiary of the agreement.

28. *"Seller"* means a person doing business within this state, including a person doing business within this state who sells insurance, who advertises, sells, promotes, or offers to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce. *"Seller"* includes any person performing any term of a purchase agreement executed within this state, and any person identified under a burial account as the provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

29. *"Total purchase price"* means the aggregate amount the purchaser is obligated to pay for merchandise or services pursuant to the purchase agreement, excluding any taxes, administrative charges, or financing charges.

2001 Acts, ch 118, §18; 2002 Acts, ch 1119, §78
Subsection 3 amended

SUBCHAPTER II

ESTABLISHMENT OF TRUSTS — DEPOSIT, INVESTMENT, AND REPORTING REQUIREMENTS

523A.201 Establishment of trust funds.

Unless proceeding under section 523A.401, 523A.402, or 523A.403, a seller must establish a trust fund prior to advertising, selling, promoting, or offering cemetery merchandise, funeral merchandise, funeral services, or a combination there-

of in this state as follows:

1. The trust fund must be established at a financial institution.

2. If a seller agrees to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and performance or delivery may be more than one hundred twenty days following the initial payment on the account, a minimum of eighty percent of all payments made under the purchase agreement shall be placed and remain in trust until the person for whose benefit the funds were paid dies.

3. If a purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof provides that payments are to be made in installments, the seller shall deposit eighty percent of each payment in the trust fund until the full amount required to be placed in trust has been deposited. If the purchase agreement is financed with or sold to a financial institution, the purchase agreement shall be considered paid in full and the trust requirements shall be satisfied within fifteen days after the close of the month in which the seller receives funds from the financial institution.

4. A seller shall not invade the trust principal for any purpose.

5. A seller who lacks insurance coverage which protects against the loss of purchaser payments not placed in trust within the time period required by this section and section 523A.202 shall not commingle these payments with any other seller funds. A seller who lacks insurance coverage may use one or more of the following methods to dispose of these payments:

a. Deposit purchaser funds into an escrow account until the required amount has been deposited into a trust account at a financial institution.

b. Make a prior delivery or warehouse cemetery or funeral merchandise or a combination thereof as provided by this chapter.

c. Make a prior filing of a surety bond in lieu of establishing a trust fund as required by this section.

d. Make a simultaneous, same-day deposit of the purchaser's payments into the seller's bank account and the required amount into the seller's trust fund.

6. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.

7. Commingling of trust funds with other funds of the seller is prohibited.

8. Interest or income earned on amounts deposited in trust shall remain in trust under the same terms and conditions as payments made under the purchase agreement, except that the seller may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or income on a calendar-year basis. The early withdrawal of interest or income under this provision does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation, or nonperformance by the seller.

9. The commissioner may require amendments to a trust agreement not in accord with the provisions of this chapter.

10. If a seller voluntarily or involuntarily ceases doing business and the seller's obligation to provide merchandise or services has not been assumed by another establishment holding a current establishment permit, all trust funds, including accrued interest or income, shall be repaid to the purchaser within one hundred twenty days following the seller's cessation of business or, in the event of circumstances where a payment is not possible within one hundred twenty days, as soon as is reasonably practicable.

2001 Acts, ch 118, §19

523A.202 Trust fund deposit requirements.

1. All funds held in trust pursuant to section 523A.201 shall be deposited in a financial institution within fifteen days after the close of the month a seller receives the funds. The financial institution shall hold the funds for the designated beneficiary until released.

2. All funds required to be deposited by the purchaser or the seller for a purpose described in section 523A.201 shall be deposited consistent with one of the following methods:

a. The payments shall be deposited directly into an interest-bearing burial account in the purchaser's name.

b. The purchaser or the seller shall deposit payments directly into a separate trust account in the purchaser's name. The account may be made payable to the seller upon the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the trust account funds and may revoke the trust and withdraw the funds, in whole or in part, at any time during the term of the agreement.

c. The purchaser or the seller shall deposit payments directly into a separate trust account in the name of the purchaser, as trustee, for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the beneficiary. The depositor shall notify the financial institution of the existence and terms of the trust, including at a minimum, the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon the beneficiary's death.

d. The payments shall be deposited in the name of the trustee, as trustee, under the terms of

a master trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund for the benefit and protection of the named beneficiary.

3. The commissioner may by rule authorize other methods of deposit upon a finding that such methods provide equivalent safety of the principal and interest or income and the seller lacks access to the proceeds prior to performance.

4. This section does not prohibit moving trust funds from one financial institution to another.

2001 Acts, ch 118, §20; 2002 Acts, ch 1119, §79
Subsection 2 amended

523A.203 Financial institution trustees — qualification and investment requirements.

1. A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law.

2. A financial institution acting as a trustee of trust funds under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to it. The trustee shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty proven under this chapter.

3. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes if each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and maintenance of a separate accounting of each purchaser's principal, interest, and income.

4. Subject to a master trust agreement, the seller may appoint an independent investment adviser to advise the financial institution about investment of the trust funds.

5. Subject to agreement between the parties, the financial institution may receive a reasonable fee from the trust funds for services rendered as trustee. The trust shall pay the trust operation costs and any annual audit fees.

6. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee. A financial institution holding trust funds shall not do any of the following:

a. Be owned, under the control of, or affiliated with a seller.

b. Use any funds required to be held in trust under this chapter or chapter 566A to purchase an interest in any contract or agreement to which a seller is a party.

c. Otherwise invest, directly or indirectly, in a seller's business operations.

2001 Acts, ch 118, §21

523A.204 Establishment annual reporting requirements.

1. An establishment shall file with the commissioner not later than March 1 of each year an annual report on a form prescribed by the commissioner containing all of the following:

a. The seller's name and address and the name and address of the establishment that will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

b. The balance of each trust account as of the end of the preceding calendar year, identified by purchaser or beneficiary name.

c. A report of any amounts withdrawn from the trust account including the reason for each withdrawal.

d. A detailed listing of the insurance funding outstanding at the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary.

e. A complete inventory of the cemetery merchandise, funeral merchandise, or a combination thereof delivered in lieu of trust fund requirements under section 523A.401, including the following:

(1) The location of the merchandise.

(2) Merchandise serial numbers or warehouse receipt numbers identified by the name of the purchaser or the beneficiary.

(3) A verified statement of a certified public accountant on a form prescribed by the commissioner that all of the following have occurred:

(a) A physical inventory of the cemetery merchandise or funeral merchandise has been conducted.

(b) Each item of that merchandise is in the seller's possession at the specified location.

f. The purchaser and beneficiary names, the amount of each purchase agreement made in the preceding year, and the date the purchase agreement was made.

g. A summary of any purchase agreements converted from trust-funded benefits to insurance-funded or annuity benefits during the preceding year which shall include, as of the conversion date, the following information, as well as aggregated totals for each of the following categories of information, if appropriate:

(1) Insured's name.

(2) Insured's policy number.

(3) Original prepaid purchase agreement amount.

(4) Amount paid in.

(5) Unpaid balance of the prepaid purchase

agreement.

(6) Unpaid balance of the purchase agreement.

(7) Amount retained by the establishment.

(8) Amount applied to the purchase of the insurance policy or annuity.

(9) Initial cash surrender value and initial death benefit under the insurance policy.

The establishment shall include a notarized statement attesting that the insurance policies or annuities have been issued and funded on behalf of the purchasers listed in the summary and that all notices required under this section have been given.

h. A summary of any purchase agreements converted from trust-funded benefits to a surety bond during the preceding year which shall include, as of the conversion date, the following information, as well as aggregated totals for each of the following categories of information, if appropriate:

(1) Name of the purchaser and beneficiary.

(2) Original prepaid purchase agreement amount.

(3) Amount paid in.

(4) Unpaid balance of the prepaid purchase agreement.

(5) Unpaid balance of the purchase agreement.

(6) Amount retained by the establishment.

(7) Amount applied to the purchase of the surety bond.

(8) A description of the surety bond and the applicable amount of coverage.

i. Any other information the commissioner deems necessary for the administration of this chapter.

2. A person holding multiple establishment permits may elect to file only one annual report after noting all establishments on the report.

3. An establishment shall make a good faith effort to complete the annual report. The establishment shall note on the annual report any information not reasonably available to the establishment as an exception or variance. Account balances within twelve months of the date of the filing of the annual report shall be accepted if the actual date of the account balances is noted.

4. In lieu of the annual report form described in subsection 1, the commissioner may authorize an establishment to file a short form annual report on a form prescribed by the commissioner. The short form annual report may incorporate by reference information readily available to the establishment. The commissioner may certify and decertify establishments authorized to file the short form based upon:

a. The establishment's recordkeeping system.

b. The number of purchase agreements which the establishment has sold that are subject to regulation under this chapter.

c. The availability and accessibility of information at the establishment for purchase agreements subject to regulation.

d. Whether the establishment places one hundred percent of funds received pursuant to its purchase agreements in trust.

e. The findings of the commissioner concerning audits and consumer complaints.

The commissioner shall retain the authority to require establishments permitted to file the short form annual report to provide all of the information required in the annual report form required by subsection 1 for audit purposes or otherwise.

5. An establishment filing an annual report shall pay a filing fee of ten dollars per purchase agreement sold during the year covered by the report. The fee does not apply to any of the following:

a. A purchase agreement where the beneficiary dies in the same year the agreement was sold.

b. Any modifications or additions, such as payments, for an existing purchase agreement sold in a previous year.

c. An additional agreement purchased and already reported to the commissioner by the purchaser.

d. A purchase agreement canceled or revoked in the same year it was sold.

All purchase agreement changes for which a filing fee is not required must be reported to the commissioner on the annual report for the year covered.

6. As part of the annual filing with the commissioner, an establishment shall file an authorization for the commissioner or a designee to investigate, audit, and verify all funds, accounts, safe deposit boxes, and other evidence of establishment trust funds held by or in a financial institution.

7. Forms may be obtained at cost from the commissioner upon request. The commissioner may accept annual reports submitted in an electronic format, including but not limited to computer diskettes.

8. Notwithstanding chapter 22, all records maintained by the commissioner under this section shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

2001 Acts, ch 118, §22

523A.205 Financial institution annual reporting requirements.

1. A financial institution shall file with the commissioner not later than March 1 of each year an annual report on a form prescribed by the commissioner showing all funds deposited by an establishment under a trust agreement during the previous year. Each report shall contain all information requested.

2. Forms may be obtained from the commissioner upon request. The commissioner may accept annual reports submitted in an electronic for-

mat, including but not limited to computer diskettes.

3. Notwithstanding chapter 22, all records maintained by the commissioner under this section shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

2001 Acts, ch 118, §23

523A.206 Audits.

1. The commissioner may make audits of the establishment and of the records of a seller, at the times and in the scope the commissioner determines. The audits may be made without prior notice to the seller. The commissioner may copy all records the commissioner feels are necessary to conduct the audit. The commissioner may require an audit of a seller or other person by a certified public accountant to verify compliance with this chapter, implementing rules, or orders.

2. A seller or other person shall pay for the audit unless the commissioner waives this requirement. The cost of an audit involving multiple sellers or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner. The accountant shall deliver the audit report to the commissioner and to the seller or other persons.

3. The commissioner shall not make public the information obtained in the course of an audit, except when a duty under this chapter requires the commissioner to take action against a seller or to cooperate with another enforcement or regulatory agency, or except when the commissioner is called as a witness in a civil or criminal proceeding.

2001 Acts, ch 118, §24

SUBCHAPTER III

DISBURSEMENT OF REMAINING BURIAL TRUST FUNDS OR INSURANCE OR ANNUITY PROCEEDS — MEDICAL ASSISTANCE DEBTS

523A.301 Definition.

As used in sections 523A.302 and 523A.303, *"director"* means the director of human services.

2001 Acts, ch 118, §25

523A.302 Identification of merchandise and service provider.

If a burial trust fund identifies, either in the trust fund records or in a related purchase agreement, the seller who will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, the trust fund records or the related purchase agreements must contain a statement signed by an authorized representative of the seller agreeing to furnish the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the beneficiary. The burial trust fund shall not identify a specific seller as payee unless the trust fund records or the related purchase agreements, if any, contain the signature of an authorized representative of the seller and, if the agreement is for mortuary science services as mortuary science is defined in section 156.1, the name of a funeral director licensed to deliver those services. A person may enter into agreements authorizing the establishment of more than one burial trust fund and agreeing to furnish the applicable merchandise and services.

2001 Acts, ch 118, §26; 2002 Acts, ch 1119, §80
Section amended

523A.303 Disbursement of remaining funds.

1. If funds remain in a nonguaranteed irrevocable burial trust fund or from the proceeds of an insurance policy or annuity made payable or assigned to the seller or a provider after the payment of funeral and burial expenses in accordance with the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, or funeral services, the seller shall comply with all of the following:

a. The seller shall provide written notice by mail to the director under subsection 2.

b. At least sixty days after mailing notice to the director, the seller shall disburse any remaining funds from the burial trust fund as follows:

(1) If within the sixty-day period the seller receives a claim from the personal representative of the deceased, any remaining funds shall be disbursed to the personal representative, notwithstanding any claim by the director.

(2) If within the sixty-day period the seller has not received a claim from the personal representative of the deceased but receives a claim from the director, the seller shall disburse the remaining funds up to the amount of the claim to the director.

(3) Any remaining funds not disposed of pursuant to subparagraphs (1) and (2) shall be disbursed to any person who is identified as the next of kin of the deceased in an affidavit submitted in accordance with subsection 5.

2. The notice mailed to the director shall meet all of the following requirements and is subject to all of the following conditions:

a. The notice shall be mailed with postage prepaid.

b. If the notice is sent by regular mail, the sixty-day period for receipt of a response is deemed to commence three days following the date of mailing.

c. If the notice is sent by certified mail, the sixty-day period for receipt of a response is deemed to commence on the date of mailing.

d. The notice shall provide all of the following information:

(1) Current name, address, and telephone

number of the seller.

(2) Full name of the deceased.

(3) Date of the deceased's death.

(4) Amount of funds remaining in the burial trust fund.

(5) Statement that any claim by the director must be received by the seller within sixty days after the date of mailing of the notice.

e. A notice in substantially the following form complies with this subsection:

"TO: THE DIRECTOR OF HUMAN SERVICES

FROM: (SELLER'S NAME, CURRENT ADDRESS, AND TELEPHONE NUMBER)

YOU ARE HEREBY NOTIFIED THAT (NAME OF DECEASED), WHO HAD AN IRREVOCABLE BURIAL TRUST FUND, HAS DIED, THAT FINAL PAYMENT FOR CEMETERY MERCHANDISE, FUNERAL MERCHANDISE, AND FUNERAL SERVICES HAS BEEN MADE, AND THAT (REMAINING AMOUNT) REMAINS IN THE IRREVOCABLE BURIAL TRUST FUND.

THE ABOVE-NAMED SELLER MUST RECEIVE A WRITTEN RESPONSE REGARDING ANY CLAIM BY THE DIRECTOR WITHIN SIXTY DAYS AFTER THE MAILING OF THIS NOTICE TO THE DIRECTOR.

IF THE ABOVE-NAMED SELLER DOES NOT RECEIVE A WRITTEN RESPONSE REGARDING A CLAIM BY THE DIRECTOR WITHIN SIXTY DAYS AFTER THE MAILING OF THIS NOTICE, THE SELLER MAY DISPOSE OF THE REMAINING FUNDS IN ACCORDANCE WITH SECTION 523A.303, CODE OF IOWA."

3. Upon receipt of the seller's written notice, the director shall determine if a debt is due the department of human services pursuant to section 249A.5. If the director determines that a debt is owing, the director shall provide a written response to the seller within sixty days after the mailing of the seller's notice. If the director does not respond with a claim within the sixty-day period, any claim made by the director shall not be enforceable against the seller, the trust, or a trustee.

4. A personal representative who wishes to make a claim shall send written notice of the claim to the seller. If the seller does not receive any claim from a personal representative within the sixty-day period provided for response by the director regarding a claim, the claim of the personal representative shall not be enforceable against the seller, the trust, or a trustee.

5. Any person other than a personal representative or the director claiming an interest in the remaining funds shall submit an affidavit claiming an interest which provides the following information:

a. Full name, current address, and telephone number of the claimant.

b. Claimant's relationship to the deceased.

c. Name of any surviving next of kin of the deceased, and the relationship of any named surviving next of kin.

d. That the claimant has no knowledge of the existence of a personal representative for the deceased's estate.

6. The seller may retain not more than fifty dollars of the remaining funds in the burial trust fund for the administrative expenses associated with the requirements of this section.

7. If the funds remaining in a burial trust fund are disbursed under the requirements of this section, the seller, the provider, the burial trust fund, and any trustee shall not be liable to the director, the estate of the deceased, any personal representative, or any other interested person for the remaining funds and any lien imposed by the director shall be unenforceable against the seller, the burial trust fund, or any trustee.

2001 Acts, ch 118, §27

SUBCHAPTER IV

TRUSTING ALTERNATIVES

523A.401 Purchase agreements funded by insurance proceeds.

1. A purchase agreement may be funded by insurance proceeds derived from a new or existing insurance policy issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trusting requirements of this chapter when the purchaser assigns the proceeds of an existing insurance policy.

3. Such funding may be in lieu of the trusting requirements of this chapter when a new insurance policy is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new insurance policy shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the policy.

5. Any new insurance policy shall satisfy the following conditions:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Title XIX of the federal Social Security Act, the policy shall not be owned by the establishment, the policy shall not be irrevocably assigned to the establishment, and the assignment of proceeds from the insurance policy to the establish-

ment shall be limited to the establishment's interests as they appear in the purchase agreement, and conditioned on the establishment's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

b. The policy shall provide that any assignment of benefits is contingent upon the establishment's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

c. The policy shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with insurance-funded benefits provided the establishment and the insurance benefits comply with the following provisions:

a. The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or policy fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any insurance policy issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental insurance policy issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the insurance purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The insurance policy shall not allow for contesting coverage, limit death benefits in the case of suicide, refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of policy at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

d. The establishment shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid insurance-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter.

8. An insurance company issuing policies funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable insurance policies outstanding for each establishment. Computer printouts may be submitted so long as each legibly provides the same information required in the prescribed form.

2001 Acts, ch 118, §28; 2001 Acts, ch 176, §73

523A.402 Purchase agreements funded by annuity proceeds.

1. A purchase agreement may be funded by proceeds derived from a new or existing annuity issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trust requirements of this chapter when the purchaser assigns the proceeds of an existing annuity.

3. Such funding may be in lieu of the trust requirements of this chapter when a new annuity is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new annuity shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the annuity.

5. The annuity shall satisfy the following conditions:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Title XIX of the federal Social Security Act, the annuity shall not be owned by the establishment or irrevocably assigned to the establishment and any designation of the establishment as a beneficiary shall not be made irrevocable.

b. The annuity shall provide that any assignment of benefits is contingent upon the establishment's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

c. The annuity shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with annuity-funded benefits provided the establishment and the annuity benefits comply with the following provisions:

a. The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any annuity issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental annuity issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the annuity purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The annuity shall not allow for contesting coverage, limit death benefits in the case of suicide, refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of the annuity at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

d. The establishment shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid annuity-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by annuity proceeds shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter.

8. An insurance company issuing annuities funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable annuities outstanding for each establishment. Computer printouts may be submitted so long as each legibly provides the same information required in the prescribed form.

2001 Acts, ch 118, §29; 2002 Acts, ch 1119, §81
Subsection 5, paragraph a amended

523A.403 Purchase agreements funded by certificates of deposit.

1. A purchase agreement may be funded by proceeds derived from a certificate of deposit in the name of the purchaser made payable to the seller upon the purchaser's death.

2. The seller of a purchase agreement subject to this chapter which is to be funded by a certificate of deposit shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter, implementing rules, and orders.

2001 Acts, ch 118, §30

523A.404 Merchandise delivered to the purchaser or warehoused.

1. Trust requirements do not apply to payments for outer burial containers made of either polystyrene or polypropylene or cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the seller when approved by the commissioner. The seller or the storage facility must demonstrate that they will do all of the following:

a. Issue a receipt of ownership in the name of the purchaser and deliver it to the purchaser.

b. Insure the merchandise against loss.

c. Protect the merchandise against damage.

d. Transfer title to the purchaser.

e. Appropriately identify and describe the merchandise in a manner that it can be distinguished from other similar items.

f. Use a method of storage that allows for visual audits of the merchandise.

g. Have adequate, computerized recordkeeping systems in place to identify, describe, and count each item in storage, including the ownership of each item, and provide an aggregate listing with numerical totals.

h. File a consent to be audited and inspected by the commissioner.

i. Provide reports to the commissioner, annually, by an independent certified public accountant, which shall include a physical count of merchandise held in storage and a review of information, including the seller's revenue and sales records, as necessary to verify the adequacy of the number of items held at the storage facility.

j. Satisfy the annual reporting requirements of section 523A.204.

2. Lawn crypts may be delivered in lieu of trusting. For this purpose, delivery means installation in a grave owned by the purchaser. The seller shall do all of the following:

a. Notify the administrator before the lawn

crypts are installed.

b. Identify the intended location of the lawn crypts within the cemetery.

c. Provide documentation adequately demonstrating delivery has occurred. Adequate documentation includes but is not limited to photographs and third-party certifications.

3. Cemetery merchandise and funeral merchandise shall not be deemed delivered to the purchaser or warehoused if the merchandise is subject to a lien or security interest by any party other than the seller.

4. An establishment is prohibited from requiring delivery as a condition of the sale.

5. A seller shall provide services necessary for the installation or burial of outer burial containers sold by the seller. This subsection shall not require the seller to provide for the opening or closing of the interment or entombment space, unless the purchase agreement provides otherwise.

2001 Acts, ch 118, §31

523A.405 Bond in lieu of trust fund.

1. In lieu of trust requirements, a seller may file with the commissioner a surety bond issued by a surety company authorized to do business and doing business within this state. The bond must be conditioned upon the seller's faithful performance of purchase agreements subject to this chapter. The surety's liability extends to each such agreement executed while the bond is in force and until performance or recision of the purchase agreement. The aggregate liability of the surety for any and all breaches of the conditions of the bond shall not exceed the penal sum of the bond. To the extent expressly agreed to in writing by the surety, the surety's liability extends to each such agreement subject to this chapter executed prior to the time the bond was in force and until performance or recision of the agreement. A purchaser aggrieved by a breach of a condition of the bond covering the purchaser's agreement may maintain an action against the bond. If, at the time of the breach, the purchaser is aware of the purchaser's rights under the bond and how to file a claim against the bond, the surety shall not be liable for any breach of condition unless the surety receives notice of a claim within sixty days following discovery of the acts, omissions, or conditions constituting the breach of condition, except as otherwise provided in this section. A surety bond shall not be canceled by a surety except upon a written notice of cancellation given by the surety to the commissioner by restricted certified mail, and not prior to the expiration of sixty days after receipt of the notice by the commissioner. The surety's liability shall extend to each purchase agreement subject to this chapter executed prior to cancellation of the surety bond until the seller has complied with subsection 3.

2. If a seller becomes insolvent or otherwise ceases to engage in business prior to or within sixty days after cancellation of a bond, the seller shall be deemed to have breached the bond conditions for outstanding agreements under this chapter as of the day prior to cancellation of the bond. The commissioner shall mail written notice by restricted certified mail to the purchaser under each outstanding purchase agreement of the seller that a claim against the bond must be filed with the surety company within sixty days after the mailing date of the notice. The surety shall cease to be liable for all purchase agreements except those for which claims are filed with the surety company within sixty days after the date the commissioner mails the notices.

3. If a surety bond is canceled by a surety under any conditions other than those specified in subsection 2, the seller shall comply with all of the following:

a. The seller shall comply with the trust requirements of section 523A.201 for all purchase agreements subject to this chapter executed on or after the effective date of cancellation of the surety bond. In the alternative, the seller may submit a substitute surety bond meeting the requirements of subsection 1, but the seller must comply with section 523A.201 for any purchase agreements executed on or after the effective cancellation date of the earlier surety bond and prior to the effective date of the later surety bond.

b. Within sixty days after the effective cancellation date of the surety bond, the seller shall submit to the commissioner an undertaking by another surety company that a substitute surety bond meeting the requirements of subsection 1 is in effect and that the liability of the substitute surety bond extends to all outstanding purchase agreements of the seller that were executed but not performed or extinguished prior to the effective date of the substitute surety bond, or the seller shall submit to the commissioner a financial statement accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state certifying the total amount of outstanding liabilities of the seller on purchase agreements subject to this chapter and proof of deposit by the seller in trust under section 523A.201 of either the amount specified in section 523A.201, including interest as set by the commissioner based on the interest which would have been earned had the funds been maintained in trust, with respect to all of those outstanding purchase agreements or, where applicable, that delivery of merchandise has been made in compliance with section 523A.404. The surety may require such security as is necessary to comply with this section. Upon compliance by the seller with this paragraph, the surety company canceling the surety bond shall cease to be liable with respect to any outstanding purchase agreements of the seller except those purchase agreements with respect to which a breach of condition occurred prior to

cancellation and for which timely claims were filed.

4. Section 523A.202 and, to the extent it is applicable, section 523A.206, apply to sellers whose purchase agreements are covered by a surety bond maintained under this section, and section 523A.202 continues to apply to any purchase agreements of those sellers that are not covered by a surety bond maintained under this section.

5. Upon receiving a notice of cancellation of a surety bond, the commissioner shall notify the seller of the requirements of this chapter resulting from cancellation of the bond. The notice may be in the form of a copy of this section and sections 523A.201 and 523A.202.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the attorney general shall seek an injunction to prohibit the seller from making further purchase agreements subject to this chapter. The attorney general shall commence an action to attach and levy execution upon property of the seller when the seller fails to perform a purchase agreement subject to this chapter, to the extent necessary to secure compliance with this chapter. The county attorney may bring criminal charges under subchapter VII.

7. The surety under this section shall not be owned, under the control of, or affiliated with the seller.

8. The amount of the surety bond shall equal eighty percent of the payments received pursuant to purchase agreements, or the applicable portion thereof, for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and the amount needed to adjust the amount of the surety bond for inflation as set by the commissioner based on the consumer price index. The seller shall review the amount of the surety bond no less than annually and shall increase the bond as necessary to reflect additional payments. The amount needed to adjust for inflation shall be added annually to the surety bond during the first quarter of the establishment's fiscal year.

9. With the consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement funded by a surety bond provided the establishment and the surety bond comply with the following provisions:

a. The amount of the trust funds transferred to the surety company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of the surety bond issued on an individual must be no less than the amount of principal and interest transferred for that individual to the surety company, and any supplemental surety bond issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the surety bond purchased shall not, under the circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The establishment shall maintain a copy of any prepaid trust-funded agreement that was converted to a prepaid purchase agreement funded by a surety bond and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

2001 Acts, ch 118, §32; 2001 Acts, ch 176, §74

SUBCHAPTER V

ESTABLISHMENT AND SALES PERMITS

523A.501 Establishment permits.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account without an establishment permit. Each establishment must have an establishment permit.

2. An application for an establishment permit shall be filed on a form prescribed by the commissioner, be accompanied by a fifty dollar filing fee, and include a copy of each purchase agreement the person will use for sales of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

3. The application shall contain:

a. The name and address of the establishment.

b. The name and address of any additional provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

c. The name and address of each owner, officer, or other official of the establishment, including when relevant the chief executive officer and the members of the board of directors.

d. A description of any common business enterprise or parent company.

e. The types of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof to be sold.

f. The types of trust or trust alternatives utilized by the establishment and a list of the financial institutions, storage facilities, surety companies, and insurance companies utilized by the es-

tablishment on a regular basis.

4. A permit holder shall inform the commissioner of changes in the information required to be provided by subsection 3 within thirty days of the change.

5. An establishment permit is not assignable or transferable. A permit holder selling all or part of an establishment shall cancel the permit and the purchaser shall apply for a new permit in the purchaser's name within thirty days of the sale.

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the person in writing of the reasons for the denial. The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date.

7. An initial permit is valid for two years from the date the application is filed. A permit may be renewed for two years by filing the form prescribed by the commissioner under subsection 2, accompanied by a ten dollar renewal fee. Submission of purchase agreements is not required for renewals unless the purchase agreements have been modified since the last filing.

8. The commissioner may by rule create or accept a multijurisdiction establishment permit. If the establishment permit is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of fifty dollars for an initial application and ten dollars for a renewal application. The application or notice form utilized and the effective dates and terms of the permit may vary from the provisions set forth in subsections 2, 3, and 7.

2001 Acts, ch 118, §33; 2002 Acts, ch 1119, §82
Subsection 6 amended

523A.502 Sales permits.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account without a sales permit. A permit holder must be an employee or agent of a person holding an establishment permit who can deliver the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof being sold. A person must have a sales permit for each establishment at which the person works. However, a person may apply for a sales permit covering multiple establishments, if the establishments have common ownership. The establishment permit holder is liable for the acts of its employees and agents performed in advertising, selling, promoting, or offering to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter does not permit a person to practice mortuary science without a license. A person holding a current sales permit may advertise, sell, promote, or offer to furnish a funeral director's services as an employee or agent of a funeral establishment furnishing the funeral services under chapter 156.

3. An application for a sales permit shall be filed on a form prescribed by the commissioner and be accompanied by a five dollar filing fee.

4. The application shall contain:

a. The name and address of the person.

b. The name and address of the person's employer and each establishment on whose behalf the person will be advertising, selling, promoting, or offering to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

c. The name and address of the provider who will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof if different from the person's employer.

5. An initial permit expires one year from the date the application is filed. The permit may be renewed for four years by filing the form prescribed by the commissioner under subsection 3, accompanied by a twenty dollar filing fee.

6. A permit holder shall inform the commissioner of changes in the information required to be provided by subsection 4 within thirty days of the change.

7. A sales permit is not assignable or transferable. A permit holder selling all or part of a business shall cancel the permit and the purchaser shall apply for a new permit in the purchaser's name within thirty days of the sale.

8. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the applicant in writing of the reasons for the denial.

9. The commissioner may by rule create or accept a multijurisdiction sales permit. If the sales permit is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of

five dollars for each year. The application or notice form utilized and the effective dates and terms of the permit may vary from the provisions set forth in subsections 3 and 5.

2001 Acts, ch 118, §34; 2002 Acts, ch 1119, §83
Subsection 8 amended

523A.503 Denial, suspension, revocation, and surrender of permits.

1. The commissioner may, pursuant to chapter 17A, deny any permit application or immediately suspend or revoke any permit issued under this chapter for several reasons, including but not limited to:

a. Committing a fraudulent act, engaging in a fraudulent practice, or violating any provision of this chapter or any implementing rule or order issued under this chapter.

b. Violating any other state or federal law applicable to the conduct of the applicant's or permit holder's business.

c. Insolvency or financial condition.

d. The permit holder, for the purpose of avoiding the trust requirement for funeral services, attributes amounts paid under the purchase agreement to cemetery merchandise or funeral merchandise that is delivered under section 523A.404 rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of cemetery merchandise or funeral merchandise to be delivered under section 523A.404 than the services are regularly and customarily sold for when not sold in conjunction with cemetery merchandise or funeral merchandise is evidence that the permit holder is acting with the purpose of avoiding the trust requirement for funeral services under section 523A.201.

e. Engaging in a deceptive act or practice or deliberately misrepresenting or omitting a material fact regarding the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter.

f. Conviction of a criminal offense involving dishonesty or a false statement.

g. Inability to provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof which the applicant or permit holder purports to sell.

h. The applicant or permit holder sells the business without filing a prior notice of sale with the commissioner. The permit shall be revoked thirty days following such sale.

i. Selling by a person who is not an employee or agent of the applicant or permit holder.

2. The commissioner may, for good cause shown, suspend any permit for a period not exceeding thirty days, pending investigation.

3. Except as provided in subsection 2, a permit shall not be revoked or suspended except after notice and hearing under chapter 17A.

4. Any permit holder may surrender a permit by delivering to the commissioner written notice that the permit holder surrenders the permit, but the surrender shall not affect the permit holder's civil or criminal liability for acts committed before the surrender.

5. Denial, revocation, suspension, or surrender of a permit does not impair or affect the obligation of any preexisting lawful agreement between the permit holder and any person.

2001 Acts, ch 118, §35

SUBCHAPTER VI

PURCHASE AGREEMENTS

523A.601 Disclosures.

1. A purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof shall be written in clear, understandable language, and shall be printed or typed in an easy-to-read font, size, and style, and shall:

a. Identify the seller, the salesperson's permit and establishment name and permit number, the expiration date of the salesperson's permit, the purchaser, and the person for whom the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof is purchased, if other than the purchaser.

b. Specify the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof to be provided, and the cost of each merchandise item or service.

c. State clearly the conditions upon which substitution will be allowed.

d. State the total purchase price and the terms under which it is to be paid.

e. State clearly whether the purchase agreement is a guaranteed price agreement or a nonguaranteed price agreement. A nonguaranteed price agreement shall contain in twelve point boldface type an explanation of the consequences of such agreement in substantially the following language:

THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS AGREEMENT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES AGREED UPON. ADDITIONAL CHARGES MAY BE INCURRED WHEN ADDITIONAL MERCHANDISE OR SERVICES OR BOTH ARE PROVIDED OR WHEN PRICES HAVE INCREASED MORE THAN ACCRUED INCOME.

f. State that the purchase of the cemetery merchandise, funeral merchandise, and funeral ser-

vices is revocable and specify the damages for cancellation, if any.

g. State clearly who has the authority to cancel, amend, or revoke the purchase agreement to purchase cemetery merchandise, funeral merchandise, and funeral services.

h. State clearly that the purchaser is entitled to rescind the purchase agreement under terms and conditions specified by section 523A.602.

i. Include an explanation of regulatory oversight by the insurance division in twelve point boldface type, in substantially the following language:

THIS AGREEMENT IS SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT (. . . .) . . . . . WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE IOWA SECURITIES BUREAU, (STREET ADDRESS), (CITY), IOWA (ZIP CODE).

2. A purchase agreement that is funded by a trust shall also:

a. State the percentage of money to be placed in trust.

b. Explain the disposition of the income generated from investments and include a statement of the purchaser's responsibility for income taxes owed on the income if applicable.

c. State that if, after all payments are made under the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, any funds remain in the nonguaranteed irrevocable burial trust fund, the seller shall disburse the remaining funds according to law.

d. State clearly the terms of the funeral and burial trust agreement and whether it is revocable or irrevocable.

e. State clearly that the purchaser is entitled to transfer the trust funding, insurance funding, or other trust assets or select another establishment to receive the trust funding, insurance funding, or any other trust assets.

f. State clearly who has the authority to amend or revoke the trust agreement, if revocable, and who has the authority to appoint successor trustees if the purchase agreement is canceled.

3. The commissioner may adopt rules establishing disclosure and format requirements to promote consumer understanding of the merchandise and services purchased and the available funding mechanisms for a purchase agreement under this chapter.

4. A purchase agreement shall be signed by the purchaser, the seller, and if the agreement is for mortuary science services as mortuary science is defined in section 156.1, a person licensed to deliver funeral services.

5. The seller shall disclose the following information prior to accepting the initial payment under a purchase agreement:

a. The specific method or methods (trust deposits, certificates of deposit, life insurance or an annuity, a surety bond, or warehousing) that will be used to fund the purchase agreement.

b. The relationship between the soliciting agent or agents, the provider of the cemetery merchandise, funeral merchandise, or funeral services, or combination thereof, the commissioner, and any other person.

c. The relationship of the life insurance policy or other trust assets to the funding of the purchase agreement and the nature and existence of any guarantees regarding the purchase agreement.

d. The impact on the purchase agreement of the following:

(1) Changes in the funding, including but not limited to changes in the assignment, beneficiary designation, trustee, or use of proceeds.

(2) Any penalties to be incurred by the purchaser as a result of the failure to make any additional payments required.

(3) Penalties to be incurred upon cancellation.

e. A list of cemetery merchandise, funeral merchandise, and funeral services which are agreed upon under the purchase agreement and all relevant information concerning the price of the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, including a statement that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the funding and the amount actually needed to fund the purchase agreement.

g. Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, upon delivery of cemetery merchandise, funeral merchandise, or funeral services, or the purchase agreement guarantee.

h. If the funding is being transferred from another establishment, any material facts related to the revocation of the prior purchase agreement and the transfer of the existing trust funds.

2001 Acts, ch 118, §36; 2002 Acts, ch 1119, §84
Subsection 4 amended

523A.602 Consumer recision, cancellation, and refund rights — purchase agreement compliance with other laws.

1. A seller shall furnish the purchaser with a completed copy of a purchase agreement pertaining to the sale at the time the purchase agreement is signed. The seller shall comply with the following terms:

a. The same language shall be used in both the oral sales representation and the written purchase agreement.

b. The seller shall give notice in the purchase agreement of the purchaser's right to rescind after signing the purchase agreement. The recision period must be, but may be greater than, three business days after the date of the purchase agreement. The notice must:

(1) Be located close to the signature line.

(2) Be printed in twelve point boldface type.

(3) State that **"YOU, THE PURCHASER, HAVE THE RIGHT TO RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE (INSERT RELEVANT NUMBER, NOT LESS THAN THREE) BUSINESS DAY AFTER THE DATE OF THIS AGREEMENT."**

c. All moneys shall be refunded without penalty within ten days after recision.

2. *Cancellation refund.*

a. A purchase agreement must include a statement that the purchaser has the right to cancel the agreement for the purchase of cemetery merchandise, funeral merchandise, and funeral services upon written demand and designate or appoint a trustee to hold, manage, invest, and distribute the trust assets.

b. If a purchase agreement is canceled, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement, or another establishment provides merchandise or services designated in a purchase agreement, the seller shall refund or transfer within thirty days of receiving a written demand no less than the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services adjusted for inflation, using the consumer price index amounts announced by the commissioner annually, less any cancellation penalty set forth in the purchase agreement. The amount of the cancellation penalty shall not exceed ten percent of the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

c. A purchase agreement must include a statement that the purchaser is entitled to a refund of the purchase price of the applicable funeral merchandise adjusted for inflation, using the consumer price index amounts announced by the commissioner annually for any item of funeral merchandise that cannot be delivered to the location specified in the purchase agreement within forty-eight hours of notice of the individual's death, unless the delay is caused by weather conditions or a natural disaster. The seller must return such refund to the purchaser within thirty days of receiving the written demand.

3. This section does not prohibit a purchaser who is or may become eligible for benefits under Title XIX of the federal Social Security Act from making a guaranteed price purchase agreement irrevocable to the extent that federal law or regulations require that such an agreement be irrevocable for purposes of a purchaser's eligibility for benefits under Title XIX of the federal Social Security Act, as permitted under federal law. The seller of credit sale agreements shall comply with the requirements of chapter 537, the Iowa consumer credit code, and is subject to the remedies and penalties provided in that chapter for noncompliance.

2001 Acts, ch 118, §37

SUBCHAPTER VII

FRAUDULENT PRACTICES

523A.701 Misleading filings.

It is unlawful for a person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement of material fact which is, at the time and in the light of the circumstances under which it is made, false or misleading, or in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2001 Acts, ch 118, §38

523A.702 Misrepresentations of government approval.

It is unlawful for a seller under this chapter to represent or imply in any manner that the seller has been sponsored, recommended, or approved, or that the seller's abilities or qualifications have in any respect been passed upon, by the commissioner.

2001 Acts, ch 118, §39

523A.703 Fraudulent practices.

A person who commits any of the following acts commits a fraudulent practice and is punishable as provided in chapter 714:

1. Knowingly fails to comply with any requirement of this chapter.

2. Knowingly makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, implementing rules, or orders, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.

3. Conspires to defraud in connection with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter.

4. Fails to deposit funds under sections 523A.201 and 523A.202 or withdraws any funds in a manner inconsistent with this chapter.

5. Knowingly sells or offers cemetery merchandise, funeral merchandise, funeral services, or a combination thereof without an establish-

ment permit.

6. Deliberately misrepresents or omits a material fact relative to the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter. When selling cemetery merchandise or funeral merchandise, a seller shall not exclude the funeral services necessary for the delivery, use, or installation of the cemetery merchandise or funeral merchandise at the time of the funeral or burial unless the purchase agreement expressly provides otherwise.

2001 Acts, ch 118, §40

SUBCHAPTER VIII

ADMINISTRATION AND ENFORCEMENT

523A.801 Administration.

1. This chapter shall be administered by the commissioner. The deputy administrator appointed pursuant to section 502.601 shall be the principal operations officer responsible to the commissioner for the routine administration of this chapter and management of the administrative staff. In the absence of the commissioner, whether because of vacancy in the office due to absence, physical disability, or other cause, the deputy administrator shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may by order from time to time delegate to the deputy administrator any or all of the functions assigned to the commissioner in this chapter. The deputy administrator shall employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

2. It is unlawful for the commissioner or any administrative staff to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. This chapter does not authorize the commissioner or any such staff member to disclose any such information except among themselves or to other cemetery and funeral administrators, regulatory authorities, or governmental agencies, or when necessary and appropriate in a proceeding or investigation under this chapter or as required by chapter 22. This chapter neither creates nor derogates any privileges that exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any administrative staff.

2001 Acts, ch 118, §41

523A.802 Scope.

1. This chapter applies to any advertisement, sale, promotion, or offer made by a person to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. Burial accounts and insurance policies are included if the account records or related documents identify the establishment that will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter applies when a purchase agreement is executed within this state or an advertisement, promotion, or offer to furnish is made or accepted within this state. An offer to furnish is made within this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state through the mail, over the telephone, by the internet, or through any other means of commerce.

3. If a foreign person does not have a registered agent or agents in the state of Iowa, doing business within this state shall constitute the person's appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process of original notice in actions or proceedings arising or growing out of any contract or tort.

2001 Acts, ch 118, §42

523A.803 Investigations and subpoenas.

1. The commissioner may, for the purpose of discovering violations of this chapter, implementing rules, or orders issued under this chapter:

a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter, implementing rules, or orders issued under this chapter, or to aid in enforcement of this chapter or in the prescribing of rules and forms under this chapter.

b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner or attorney general determines, as to all the facts and circumstances concerning the matter to be investigated.

c. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other administrators, regulatory authorities, or governmental agencies, or may publish information concerning a violation of this chapter, implementing rules, or orders issued under this chapter.

d. Investigate the establishment and examine the books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records used by every applicant and permit holder under this chapter.

e. Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, ac-

counts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the commissioner deems relevant or material to any investigation or proceeding under this chapter and implementing rules, all of which may be enforced under chapter 17A.

f. Apply to the district court for an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

2. The commissioner may issue and bring an action in district court to enforce subpoenas within this state at the request of an agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

2001 Acts, ch 118, §43

523A.804 Mediation.

The commissioner may order an establishment to participate in mediation in any dispute regarding a purchase agreement. Mediation performed under this section shall be conducted by a mediator appointed by the commissioner and shall comply with the provisions of chapter 679C.

Mediation of these disputes shall include attendance at a mediation session with the mediator and the parties to the dispute, listening to the mediator's explanation of the mediation process, presentation of one party's view of the dispute, and listening to the response of the other party. Participation in mediation does not require that the parties reach a mediation agreement.

Parties to the mediation shall have the right to advice and presence of counsel at all times. The parties to the mediation shall present any mediation agreement reached through the mediation to the commissioner. If a mediation agreement is not reached, the mediator shall file a report with the commissioner. The costs of the mediation shall be approved by the commissioner and shall be borne by the insurance division's regulatory fund.

2001 Acts, ch 118, §44

523A.805 Cease and desist orders — injunctions.

If it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, implementing rules, or orders issued under this chapter, the commissioner or the attorney general may do either or both of the following:

1. Issue a summary order directed at the person requiring the person to cease and desist from engaging in such act or practice. A person may request a hearing within thirty days of issuance of the summary order. If a hearing is not timely requested, the summary order shall become final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer following a request for hearing. Section 17A.18A is inapplicable to summary cease and desist orders issued under this section.

2. Bring an action in the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the commissioner or attorney general may apply to the court for a subpoena to require the appearance of a defendant and the defendant's agents and for any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records germane to the hearing upon the petition for an injunction. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The commissioner or attorney general shall not be required to post a bond.

2001 Acts, ch 118, §45

523A.806 Court action for failure to cooperate.

If a person fails or refuses to file any statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey any subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any or all of the following:

1. Injunctive relief, restricting or prohibiting the offer or sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. Revocation or suspension of any permit issued under this chapter.

3. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.

4. Such other relief as may be required.

Such an order shall be effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

2001 Acts, ch 118, §46

523A.807 Prosecution for violations of law.

1. A violation of this chapter or rules adopted or orders issued under this chapter is a violation

of section 714.16, subsection 2, paragraph *"a"*. The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and penalties, apply to violations of this chapter.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate.

2001 Acts, ch 118, §47

523A.808 Cooperation with other agencies.

1. To encourage uniform interpretation and administration of this chapter and effective regulation of the sale of cemetery merchandise, funeral merchandise, and funeral services, the commissioner may cooperate with any governmental law enforcement or regulatory agency.

2. This cooperation includes but is not limited to:

a. Making a joint examination or investigation.

b. Holding a joint administrative hearing.

c. Filing and prosecuting a joint civil or administrative proceeding.

d. Sharing and exchanging personnel.

e. Sharing and exchanging relevant information and documents.

f. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, regulatory standards, guidelines, and interpretive opinions.

2001 Acts, ch 118, §48

523A.809 Rules, forms, and orders.

1. Under chapter 17A, the commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary or appropriate for the protection of purchasers and the public and to administer the provisions of this chapter, its implementing rules, and orders issued under this chapter.

2. A rule, form, or order shall not be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of purchasers and consistent with the purposes fairly intended by the policies and provisions of this chapter, its implementing rules, and orders issued under this chapter.

3. A provision of this chapter imposing any liability does not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

2001 Acts, ch 118, §49

523A.810 Date of filing — interpretive opinions.

1. A document is filed when it is received by the commissioner.

2. Requests for interpretive opinions may be granted in the commissioner's discretion.

2001 Acts, ch 118, §50

523A.811 Receiverships.

1. The commissioner shall notify the attorney general of the potential need for establishment of a receivership if the commissioner finds that a seller subject to this chapter meets one or more of the following conditions:

a. Is insolvent.

b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter.

c. The amount of funds currently held in trust for cemetery merchandise, funeral merchandise, and funeral services is less than eighty percent of all payments made under the purchase agreements referred to in section 523A.201.

d. Has refused to pay any just claim or demand based on a purchase agreement referred to in section 523A.201.

e. The commissioner finds upon investigation that a seller is unable to pay any claim or demand based on a purchase agreement which has been legally determined to be just and outstanding.

2. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof of any of the grounds for a receivership described in this section, the court may grant a receivership.

2001 Acts, ch 118, §51

523A.812 Insurance division regulatory fund.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. The commissioner shall allocate annually from the fees paid pursuant to section 523A.204, two dollars for each purchase agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.204 shall be deposited into the general fund of the state. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, the expenses of mediation ordered by the commissioner, consumer education expenses, the expenses of a toll-free telephone line to receive consumer com-

plaints, and the expenses of receiverships established under section 523A.811. An annual allocation to the regulatory fund shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

2001 Acts, ch 118, §52

523A.813 License revocation — recommendation by commissioner to board of mortuary science examiners.

Upon a determination by the commissioner that grounds exist for an administrative license revocation or suspension action by the board of mortuary science examiners under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

2001 Acts, ch 118, §53

SUBCHAPTER IX

LIQUIDATION PROCEDURES

523A.901 Liquidation.

1. *Grounds for liquidation.* The commissioner may petition the district court for an order directing the commissioner to liquidate an establishment on either of the following grounds:

a. The establishment did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and is insolvent.

b. The establishment did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and the condition of the establishment is such that further transaction of business would be hazardous, financially or otherwise, to purchasers or the public.

2. *Liquidation order.*

a. An order to liquidate the business of an establishment shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the establishment and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the establishment ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or in the case of real estate, with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of an establishment and of the establishment's creditors, purchasers, owners, and other persons interested in the establishment's estate shall become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

c. At the time of petitioning for an order of liquidation, or at any time after the time of petitioning, the commissioner, after making appropriate findings of an establishment's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the establishment's obligations during the pendency of an appeal. The plan shall provide for the continued performance of purchase agreements in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant establishment's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain purchasers and claimants over creditors and interested parties as well as other purchasers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such purchasers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

3. *Powers of liquidator.*

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court, fix reasonable compensation of employees and agents, legal

counsel, accountants, appraisers, and consultants.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the establishment all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the establishment. If the property of the establishment does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of the insurance division regulatory fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division regulatory fund for the use of the division out of the first available moneys of the establishment.

(5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the liquidator deems relevant to the inquiry.

(6) Collect debts and moneys due and claims belonging to the establishment, wherever located. Pursuant to this subparagraph, the liquidator may do any of the following:

(a) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(b) Perform acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(c) Pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the establishment.

(8) Use assets of the establishment under a liquidation order to transfer obligations of purchase agreements to a solvent establishment, if the transfer can be accomplished without prejudice to the applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the establishment at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases, and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

(10) Borrow money on the security of the establishment's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and shall have priority over any other class 1 claims under the priority of distribution established in subsection 18.

(11) Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the establishment is a party.

(12) Continue to prosecute and to institute in the name of the establishment or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, purchasers, or owners against an officer of the establishment or any other person.

(14) Remove records and property of the establishment to the offices of the commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

(17) File necessary documents for recording in the office of the recorder of deeds or record office in this state or elsewhere where property of the establishment is located.

(18) Assert defenses available to the establishment against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the establishment after a petition in liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce the rights, remedies, and powers of a creditor, purchaser, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph *"a"* that may be necessary or appropriate to accomplish the purposes of this chapter.

4. *Notice to creditors and others.*

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing both of the following:

(1) Mailing notice, by first-class mail, to all persons known or reasonably expected to have claims against the establishment, including pur-

chasers, at their last known address as indicated by the records of the establishment.

(2) Publication of notice in a newspaper of general circulation in the county in which the establishment has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph *"a"* shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this subsection, the distribution of assets of the establishment under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

5. *Actions by and against liquidator.*

a. After issuance of an order appointing a liquidator of an establishment, an action at law or equity shall not be brought against the establishment within this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the establishment necessitates intervention in an action against the establishment that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the establishment, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the establishment upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period has not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the establishment, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitations or defense of laches shall not run with respect to an action against an establishment between the filing of a petition for liquidation against the establishment and the denial of the petition. An action against the establishment that might have been commenced when the petition was filed may be commenced within sixty days after the petition is denied.

6. *Collection and list of assets.*

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the establishment's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court, and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission of a proposal to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph *"a"*.

7. *Fraudulent transfers prior to petition.*

a. A transfer made and an obligation incurred by an establishment within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by an establishment ordered to be liquidated under this chapter may be avoided by the liquidator, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than present fair equivalent value for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer, lien, or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph *"c"*.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the establishment could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be perfected.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have ob-

tained a lien or persons who might have become bona fide purchasers.

8. *Fraudulent transfer after petition.*

a. After a petition for liquidation has been filed, a transfer of real property of the establishment made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer is not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the establishment within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

b. After a petition for liquidation has been filed and before either the liquidator takes possession of the property of the establishment or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the establishment made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

(2) If acting in good faith, a person indebted to the establishment or holding property of the establishment may pay the debt or deliver the property, or any part of the property, to the establishment or upon the establishment's order as if the petition were not pending.

(3) A person having actual knowledge of the pending liquidation is not acting in good faith.

(4) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as provided in this subsection, a transfer by or on behalf of the establishment after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

c. A person receiving any property from the establishment or any benefit of the property of the establishment which is a fraudulent transfer under paragraph *"a"* is personally liable for the property or benefit and shall account to the liquidator.

d. This chapter does not impair the negotiability of currency or negotiable instruments.

9. *Voidable preferences and liens.*

a. (1) A preference is a transfer of the property of an establishment to or for the benefit of a creditor for an antecedent debt made or suffered by the establishment within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the establishment is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following exist:

(a) The establishment was insolvent at the time of the transfer.

(b) The transfer was made within four months before the filing of the petition.

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the establishment was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer, or an employee, attorney, or other person who was in fact in a position of comparable influence in the establishment to an officer whether or not the person held the position of an officer, owner, or other person, firm, corporation, association, or aggregation of persons with whom the establishment did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than the present fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the establishment could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings may become superior to the rights of a transferee, or a purchaser may obtain rights superior to the rights of a transferee within the meaning of paragraph *"b"*, if such consequences follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph *"b"* through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph *"b"* made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

e. If a lien which is voidable under paragraph *"a"*, subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety of which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of an establishment before the filing of a petition under this chapter which results in the liquidation order, the indemnifying transfer or lien is also voidable.

f. The property affected by a lien voidable under paragraphs *"a"* and *"e"* is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction in a proceeding by a liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph *"g"*, the liability of the surety is discharged to the extent of the amount paid to the liquidator.

i. If a creditor has been preferred for property which becomes a part of the establishment's estate, and afterward in good faith gives the establishment further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, an establishment, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the establishment or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provisions of paragraph *"a"*, subparagraph (2), subparagraph subdivision (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or other person acting on behalf of the establishment who knowingly participates in giving any preference when the person has reasonable cause to believe the establishment is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer

was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the establishment or the benefit of the property of the establishment as a preference voidable under paragraph *"a"* is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

10. *Claims of holder of void or voidable rights.*

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter, shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph *"a"* by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph *"a"*.

11. *Liquidator's proposal to distribute assets.*

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

(a) Expenses of administration.

(b) To the extent of the value of the security held, the payment of claims of secured creditors.

(c) Claims falling within the priorities established in subsection 18, paragraphs *"a"* and *"b"*.

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph *"b"*.

12. *Filing of claims.*

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

(1) The existence of the claim was not known to the claimant and the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and the filing satisfies the conditions of subsection 10.

(3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. *Proof of claim.*

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim, including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments, if any, made on the debt.

(4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph *"a"* which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph *"a"*, and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

d. A judgment or order against an establishment entered after the date of filing of a successful petition for liquidation, or a judgment or order against the establishment entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against an establishment before the filing of the petition need not be considered as evidence of liability or of the amount of

damages.

14. *Special claims.*

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

15. *Disputed claims.*

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

16. *Claims of other person.* If a creditor, whose claim against an establishment is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the establishment's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

17. *Secured creditor's claims.*

a. The value of the security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

18. *Priority of distribution.* The priority of distribution of claims from the establishment's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

a. Class 1. The costs and expenses of administration, including but not limited to the following:

(1) Actual and necessary costs of preserving or recovering the assets of the establishment.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) Fees and mileage payable to witnesses.

(5) Authorized reasonable attorney fees and other professional services rendered in the liquidation.

b. Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. Class 3. Claims under purchase agreements.

d. Class 4. Claims of general creditors.

e. Class 5. Claims of the federal or of any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph *"g"*.

f. Class 6. Claims filed late or any other claims other than claims under paragraph *"g"*.

g. Class 7. The claims of shareholders or other owners.

19. *Liquidator's recommendations to the court.*

a. The liquidator shall review claims duly filed

in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization. Unresolved disputes shall be determined under subsection 15. As soon as practicable, the liquidator shall present to the court a report of the claims against the establishment with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended.

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. *Distribution of assets.* Under the direction of the court, the liquidator shall pay distributions in a manner that will ensure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

21. *Unclaimed and withheld funds.*

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or to the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. Any amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pursuant to subsection 18. Sums remaining which under subsection 18 would revert to the undistributed assets of the establishment shall be transferred to the insurance division regulatory fund and become the property of the state as provided under paragraph *"a"*, unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph *"a"*, with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or to the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

22. *Termination of proceedings.*

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph *"a"*. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney fee.

23. *Reopening liquidation.* At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. *Disposition of records during and after termination of liquidation.* If it appears to the commissioner that the records of an establishment in the process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. *External audit of liquidator's books.* The court may order audits to be made of the books of the commissioner relating to a liquidation established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the liquidation shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the liquidation.

2001 Acts, ch 118, §54; 2002 Acts, ch 1050, §50; 2002 Acts, ch 1119, §85, 86

Subsection 5, paragraph c amended
Subsection 8, paragraph a amended
Subsection 9, paragraph g amended

CHAPTER 523B

BUSINESS OPPORTUNITY PROMOTIONS

523B.1 Definitions.
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523B.3 Exemptions from registration and disclosure.
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523B.1 Definitions.

1. *"Administrator"* means the commissioner of insurance or the deputy appointed under section 502.601.

2. *"Advertising"* means a circular, prospectus, advertisement, or other material, or a communication by radio, television, pictures, or similar means used in connection with an offer or sale of a business opportunity.

3. *a. "Business opportunity"* means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, at an initial investment exceeding five hundred dollars, where the parties agree that the seller or a person recommended by the seller is to provide to the purchaser any products, equipment, supplies, materials, or services for the purpose of enabling the purchaser to start a business, and the seller represents, directly or indirectly, orally or in writing, any of the following:

(1) The seller or a person recommended by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, on premises which are not owned or leased by the purchaser or seller.

(2) The seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services.

(3) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser.

(4) The purchaser will derive income from the business which exceeds the price paid to the seller.

(5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment, or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business.

(6) The seller will provide a marketing plan.

b. "Business opportunity" does not include any of the following:

(1) An offer or sale of an ongoing business operated by the seller which is to be sold in its entirety.

(2) An offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies, or services which are substantially similar to the products, equipment, supplies, or services sold by the purchaser in connection with the purchaser's ongoing business.

(3) An offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of one million dollars as determined on the basis of the seller's most recent audited financial statement prepared within thirteen months of the first offer in this state. Net worth may be determined on a consolidated basis if the seller is at least eighty percent owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of a business opportunity claimed to be excluded under this subparagraph.

(4) An offer or sale of a business opportunity by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator, or a judicial offer or sale of a business opportunity.

(5) The renewal or extension of a business opportunity contract or agreement entered into under this chapter or prior to July 1, 1981.

4. *"Franchise"* means a contract or agreement between a seller and a purchaser, express or implied, orally or in writing, where the parties agree to both of the following:

a. A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor.

b. The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.

For the purposes of this subsection, *"franchisee"* means a person to whom a franchise is granted and *"franchisor"* means a person who grants a franchise.

5. *"Initial investment"* means the total amount a purchaser is obligated to pay under the terms of the business opportunity contract either prior to or at the time of the delivery of the merchandise or services or within six months of the purchaser commencing operation of the business opportunity. However, if payment is over a period of time, *"initial investment"* means the sum of the down payment and the total monthly payments specified in the contract.

6. *"Marketing plan"* means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies, or services. The advice or training may include, but is not limited to, preparing or providing any of the following:

a. Promotional literature, brochures, pamphlets, or advertising materials.

b. Training regarding the promotion, operation, or management of the business opportunity.

c. Operational, managerial, technical, or financial guidelines or assistance.

7. *"Offer"* or *"offer to sell"* means an attempt to dispose of a business opportunity for value, or solicitation of an offer to purchase a business opportunity.

8. *"Ongoing business"* means an existing business that for at least six months prior to the offer, has been operated from a specific location, has been open for business to the general public, and has substantially all of the equipment and supplies necessary for operating the business.

9. *"Person"* means an individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity, provided, however, person does not include a government or governmental subdivision or agency.

10. *"Purchaser"* means a person who enters into a contract or agreement for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

11. *"Record"* means the same as defined in section 516E.1.

12. *"Sale"* or *"sell"* includes every contract or agreement of sale, contract to sell, or disposition of, a business opportunity or interest in a business opportunity for value.

13. *"Seller"* means a person who sells or offers to sell a business opportunity or an agent or other person who directly or indirectly acts on behalf of such a person. *"Seller"* does not include the media in or by which an advertisement appears or is disseminated.

[81 Acts, ch 171, §1]

91 Acts, ch 205, §1; 98 Acts, ch 1189, §11; 99 Acts, ch 90, §1, 3; 2000 Acts, ch 1147, §20

1999 amendment to subsection 3 applies retroactively to July 1, 1998; 99 Acts, ch 90, §3

523B.2 Registration.

1. *Requirement.* It is unlawful to offer or sell a business opportunity in this state unless the business opportunity is registered under this chapter or is exempt under section 523B.3.

2. *Disclosure.*

a. To register a business opportunity, the seller shall file with the administrator one of the disclosure documents as provided in paragraph *"b"* with the appropriate cover sheet as required by subsection 8, paragraph *"b"*, a consent to service of process as specified in subsection 3, and the appropriate fee as required by subsection 7.

b. The disclosure document required in paragraph *"a"* shall be in one of the following forms:

(1) A uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through September 21, 1983. The administrator may by rule adopt any amendment to the uniform franchise offering circular that has been adopted by the North American securities administrators association, inc.

(2) A disclosure document prepared pursuant to the federal trade commission rule relating to disclosure requirements and prohibitions concerning franchising and business opportunity ventures as adopted by rule of the administrator in accordance with 16 C.F.R. § 436.

(3) A disclosure document prepared pursuant to subsection 8.

c. The seller shall disclose to the administrator in the disclosure document or otherwise any sales or offers made in this state prior to registration.

3. *Consent to service.* A seller shall file, on a form as the administrator may prescribe, an irrevocable consent appointing the administrator or the administrator's successor in office to be the seller's attorney to receive service of any lawful process in a noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator which arises under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the administrator, but is not effective unless the plaintiff or petitioner, who may be the administrator or the attorney general, in a suit, action, or proceeding, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant's or respondent's address on file with the administrator, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

4. *Effective date.* A registration automatically becomes effective upon the expiration of the thirtieth full business day after the complete filing

is received by the administrator, provided that an order has not been issued or a proceeding is not pending under subsection 10. The administrator may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The administrator may by order defer the effective date until the expiration of the thirtieth full business day after the filing of an amendment with the administrator.

5. *Period.* The registration is effective for one year commencing on the date the registration becomes effective and may be renewed annually upon the filing of a current disclosure document accompanied by any documents or information that the administrator may by rule or order require. Failure to renew upon the close of the one-year period of effectiveness will result in expiration of the registration. The administrator may by rule or order require the filing of a sales report.

6. *Filing rule.* The administrator may by rule require the filing of all proposed literature or advertising prior to its use.

7. *Filing fee.* The seller shall pay a five hundred dollar filing fee with the initial disclosure statement filed under subsection 2 and a two hundred fifty dollar annual renewal fee. The administrator shall by rule periodically revise these fees to ensure that they defray the costs of administration of this chapter.

8. *Disclosure requirements.*

a. It is unlawful to offer or sell a business opportunity required to be registered pursuant to this chapter unless a written disclosure document as filed under subsection 2 is delivered to each purchaser at least ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.

b. The disclosure document shall have a cover sheet which is entitled, in at least ten point bold type, **"DISCLOSURE REQUIRED BY IOWA LAW."** Under the title shall appear the following statement in at least ten point type: "The registration of this business opportunity does not constitute approval, recommendation, or endorsement by the state of Iowa. The information contained in this disclosure document has not been verified by this state. If you have any questions or concerns about this investment, seek professional advice before you sign a contract or make any payment. You are to be provided ten (10) business days to review this document before signing a contract or agreement or making any payment to the seller or the seller's representative."

The seller's name and principal business address, along with the date of the disclosure document, shall also be provided on the cover sheet. No other information shall appear on the cover sheet.

c. Unless the seller uses a disclosure document as provided in subsection 2, paragraphs *"a"* and *"b"*, the disclosure document shall contain the following information:

(1) The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this state.

(2) The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other entity; the names under which the seller has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or that will take responsibility for statements made by the seller.

(3) The names, addresses, and titles of the seller's officers, directors, trustees, general managers, principal executives, agents, and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity.

(4) Prior business experience of the seller relating to business opportunities including all of the following:

(a) The name, address, and a description of any business opportunity previously offered by the seller.

(b) The length of time the seller has offered each such business opportunity.

(c) The length of time the seller has conducted the business opportunity currently being offered to the purchaser.

(5) With respect to each person identified in subparagraph (3), all of the following:

(a) A description of the person's business experience for the ten-year period preceding the filing date of this disclosure document. The description of business experience shall list principal occupations and employers.

(b) A listing of the person's educational and professional background, including the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed.

(6) Whether any of the following apply to the seller or any person identified in subparagraph (3):

(a) The seller or other person has been convicted of a felony, pleaded nolo contendere to a felony charge, or has been the subject of a criminal, civil, or administrative proceeding alleging the violation of a business opportunity law, securities law, commodities law, or franchise law, or alleging fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, an unfair or deceptive practice, misappropriation of property, or making comparable allegations.

(b) The seller or other person has filed for bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency, or was an owner, principal officer, or general partner of a person, or any other person that has filed for bankruptcy or was adjudged bankrupt, or been reorganized due to in-

solvency during the last seven years.

(7) The name of any person identified in subparagraph (6), the nature of and the parties to the action or proceeding, the court or other forum, the date of the institution of the action, the docket references to the action, the current status of the action or proceeding, the terms and conditions of any order or decree, and the penalties or damages assessed and terms of settlement.

(8) The initial payment required, or if the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller.

(9) A detailed description of the actual services the seller agrees to perform for the purchaser.

(10) A detailed description of any training the seller agrees to provide for the purchaser.

(11) A detailed description of services the seller agrees to perform in connection with the placement of equipment, products, or supplies at a location, as well as any agreement necessary in order to locate or operate equipment, products, or supplies on premises which are not owned or leased by the purchaser or seller.

(12) A detailed description of any license or permit that will be necessary in order for the purchaser to engage in or operate the business opportunity.

(13) The business opportunity seller that secures a bond pursuant to subsection 10 shall include in the disclosure document the following statement: "As required by the state of Iowa, the seller has secured a bond issued by [insert name and address of surety company], a surety company, authorized to do business in this state. Before signing a contract or agreement to purchase this business opportunity, you should check with the surety company to determine the bond's current status."

(14) Any representations made by the seller to the purchaser concerning sales or earnings that may be made from this business opportunity, including, but not limited to the following:

(a) The bases or assumptions for any actual, average, projected, or forecasted sales, profits, income, or earnings.

(b) The total number of purchasers who, within a period of three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser.

(c) The total number of purchasers who, within three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified.

(15) A detailed description of the elements of a guarantee made by a seller to a purchaser. The description shall include, but is not limited to, the duration, terms, scope, conditions, and limitations of the guarantee.

(16) A statement including all of the following:

(a) The total number of business opportunities that are the same or similar in nature to those being sold or organized by the seller.

(b) The names and addresses of purchasers who have requested a refund or recision from the seller within the last twelve months and the number of those who have received the refund or recision.

(c) The total number of business opportunities the seller intends to sell in this state within the next twelve months.

(d) The total number of purchasers known to the seller to have failed in the business opportunity.

(17) A statement describing any contractual restrictions, prohibitions, or limitations on the purchaser's conduct. Attach a copy of all business opportunities and other contracts or agreements proposed for use or in use in this state including, without limitation, all lease agreements, option agreements, and purchase agreements.

(18) The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract or agreement.

(19) A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract or agreement.

(20) A copy of the most recent audited financial statement of the seller, prepared within thirteen months of the first offer in this state, together with a statement of any material changes in the financial condition of the seller from that date. The administrator may allow the seller to submit a limited review in order to satisfy the requirements of subparagraph (13).

(21) A list of the states in which this business opportunity is registered.

(22) A list of the states in which this disclosure document is on file.

(23) A list of the states which have denied, suspended, or revoked the registration of this business opportunity.

(24) A section entitled *"Risk Factors"* containing a series of short concise statements summarizing the principal factors which make this business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document.

(25) Any additional information as the administrator may require by rule or order.

9. *Contract or agreement provisions.*

a. It is unlawful to offer or sell a business opportunity required to be registered unless the business opportunity contract or agreement is in writing and a copy of the contract or agreement is given to the purchaser at the time the purchaser signs the contract or agreement.

b. The contract or agreement is subject to this chapter and section 714.16.

c. Contracts or agreements shall set forth in at least ten point type or equivalent size, if handwritten, all of the following:

(1) The terms and conditions of any and all payments due to the seller.

(2) The seller's principal business address and the name and address of the seller's agent in this state authorized to receive service of process.

(3) The business form of the seller, whether corporate, partnership, or otherwise.

(4) The delivery date, or when the contract provides for a periodic delivery of items to the purchaser, the approximate delivery date of the product, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to start business.

(5) Whether the product, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser.

(6) A statement that accurately states the purchaser's right to void the contract under the circumstances and in the manner set forth in section 523B.6.

(7) The cancellation statement appearing in section 555A.3.

(8) The rights and responsibilities of the parties regarding the marketing of a business opportunity, including but not limited to all of the following:

(a) Whether the seller assigns the purchaser a territory in which to sell a business opportunity.

(b) Whether the seller assists the purchaser in finding locations in which to sell a business opportunity.

(c) Whether the purchaser is solely responsible for marketing a business opportunity.

10. *Denial, suspension, or revocation of registration.*

a. The administrator may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration if the administrator finds that the order is in the public interest and any of the following:

(1) The registration as of its effective date or as of any earlier date in the case of an order denying effectiveness, any amendment as of its effective date, or any report is incomplete in any material respect or contains any statement which is, in the light of the circumstances under which it was made, determined by the administrator to be false or misleading with respect to any material fact.

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the business opportunity, by either of the following:

(a) The person filing the registration.

(b) The seller, any partner, officer, or director of the seller, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller, but only if the person filing the registration is directly or indirectly controlled by or acting for the seller.

(3) The business opportunity registered or sought to be registered is the subject of an administrative order denying, suspending, or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction. However, the administrator shall not do either of the following:

(a) Institute a proceeding against an effective registration under this paragraph more than one year from the date of the order or injunction relied on.

(b) Enter an order under this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section.

(4) The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are or would be illegal where performed.

(5) The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would operate to work such a fraud.

(6) There has been a failure to file any documents or information required under subsection 2.

(7) The seller has failed to pay the proper filing fee. However, the administrator shall vacate any order issued pursuant to this subparagraph when the deficiency has been corrected.

(8) The seller's literature or advertising is misleading, incorrect, incomplete, or deceptive.

(9) The seller does not have a minimum net worth of fifty thousand dollars, as determined in accordance with generally accepted accounting principles. A seller may submit a surety bond in lieu of the net worth requirement. The administrator may by rule or order increase the amount of the net worth or bond for the protection of purchasers and may require the seller to file reports of all sales in this state to determine the appropriate amount of the net worth requirement. The surety bond shall be for the period of the registration, issued by a surety company authorized to do business in this state and for the benefit of any purchaser.

b. The administrator shall not institute a proceeding under this subsection against an effective registration on the basis of a fact or transaction known to the administrator when the registration became effective unless the proceeding is instituted thirty days after the effective date of the registration.

c. (1) The administrator may by order summarily postpone or suspend the effectiveness of the registration pending final determination of a

proceeding under this subsection.

(2) Upon the entry of a summary order, the administrator shall promptly notify the seller that the order has been entered and of the reasons for entering the order and that within fifteen days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator may modify or vacate the order or extend the order until final determination.

d. A summary order shall not be entered under any part of this subsection, except under subparagraph (1) of paragraph *"c"*, without appropriate notice to the seller, an opportunity for hearing, and written findings of fact and conclusions of law in accordance with chapter 17A.

e. The administrator may vacate or modify an order issued under this subsection if the administrator finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

[81 Acts, ch 171, §2]

91 Acts, ch 205, §2; 98 Acts, ch 1189, §12 – 14; 99 Acts, ch 166, §11; 2000 Acts, ch 1147, §21 – 24

523B.3 Exemptions from registration and disclosure.

1. *Exemptions.* The following business opportunities are exempt from the requirements of section 523B.2:

a. The offer or sale of a business opportunity if the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, a pension or profit-sharing trust, or other financial institution or institutional buyer, or a broker-dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

b. The offer or sale of a business opportunity which is defined as a franchise under section 523B.1, subsection 4, provided that the seller delivers to each purchaser at the earlier of the first personal meeting between the seller and the purchaser, or ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

(1) A uniform franchise-offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through September 21, 1983.

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979).

For the purposes of this paragraph, a personal meeting means a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity. The administrator may by rule adopt any amendment to the uniform franchise-offering circular that has been adopted by the North American securities administrators association, inc., or any amendment to the disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979), that has been adopted by the federal trade commission.

c. The offer or sale of a business opportunity for which the cash payment made by a purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

d. The offer or sale of a business opportunity which the administrator exempts by order or a class of business opportunities which the administrator exempts by rule upon the finding that the exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

2. *Denial or revocation of exemptions.*

a. If the public interest of the protection of purchasers so requires, the administrator may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities. An order shall not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.

b. If the public interest or the protection of purchasers so requires, the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceedings under this section. Upon entry of the order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for entering the order and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If a hearing is not requested the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator shall not modify or vacate the order or extend it until final determination.

c. An order under this section shall not operate retroactively.

d. A person does not violate section 523B.2 by reason of an offer or sale effected after the entry of an order under paragraph *"b"* if the person sus-

tains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

3. *Burden of proof.* In an administrative, civil, or criminal proceeding related to this chapter, the burden of proving an exemption, an exception from a definition, or an exclusion from this chapter, is upon the person claiming it.

[81 Acts, ch 171, §3]

91 Acts, ch 205, §3; 98 Acts, ch 1189, §15, 16; 99 Acts, ch 90, §2, 3

1999 amendments to subsection 1 apply retroactively to July 1, 1998; 99 Acts, ch 90, §3

523B.4 Minimum net worth or bond requirement. Repealed by 98 Acts, ch 1189, § 31. See § 523B.2.

523B.5 Administrative files and opinions.

1. A document is filed when the document is received by the administrator.

2. The administrator shall keep a register of all applications for registration and disclosure documents which are or have been effective under this chapter and all orders which have been entered under this chapter.

3. Unless otherwise provided by law, a registration statement, filing, application, or report filed with the administrator is open for public inspection.

4. The administrator may honor a written request from an interested person for an interpretative opinion upon the payment of a fee of one hundred dollars.

[81 Acts, ch 171, §5]

91 Acts, ch 205, §5

523B.6 Cancellation of contract.

The purchaser has the right to cancel a contract with a seller for a business opportunity for any reason at any time within three business days of the date the purchaser signs the contract or the date the contract is accepted by the seller whichever is later. The notice of the right to cancel, the seller's obligation to provide the purchaser with cancellation forms, and the procedures to be followed when a contract is canceled shall be the same as the procedures in chapter 555A for door-to-door sales.

[81 Acts, ch 171, §6]

523B.7 Liability — remedies.

1. *a.* A person who violates section 523B.2, subsection 1, 8, or 9, is liable to the purchaser in an action for recision of the agreement, or for recovery of all money or other valuable consideration paid for the business opportunity, and for actual damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs.

b. A person who violates section 523B.12, subsection 2 or 3, is liable to the purchaser who may sue either at law or in equity for recision, or for recovery of all money or other valuable consideration paid for the business opportunity, and for the recovery of treble damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs.

c. A person who violates section 523B.2, subsection 8, or section 523B.12, subsection 2 or 3, or who breaches a business opportunity contract or agreement or an obligation arising under the contract or agreement, is liable to the purchaser who may sue the surety of the seller's bond, either at law or in equity, to recover all money or other valuable consideration paid for the business opportunity and actual damages, together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs. The liability of the surety shall not exceed the amount of the bond.

2. Every person who directly or indirectly controls a party liable under this section, every partner in a partnership so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status in, or performing similar functions for, and every employee of, a party so liable who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as the party, unless the person liable as a result of the person's relationship with the liable party as defined under this section proves that the person did not know, and in the exercise of reasonable care could not have known of the existence of the facts giving rise to the alleged liability. Among the persons held liable, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action.

3. An action shall not be maintained under this section unless commenced within three years after the act or transaction constituting the violation, or within one year after the discovery of the facts constituting the violation, whichever period later expires.

4. The rights and remedies available pursuant to this chapter are in addition to any other rights or remedies that may exist at law or in equity.

[81 Acts, ch 171, §7]

91 Acts, ch 205, §6; 98 Acts, ch 1189, §17

523B.8 Powers of administrator.

1. *a.* Upon the administrator's determination that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order adopted or issued under this chapter, the administrator may issue a summary order directing the person to cease and desist from engaging in the act or practice or to take other affirmative action as in the judgment of the administrator is necessary to

comply with the requirements of this chapter.

b. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this subsection may contest it by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with the rules adopted by the administrator. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection.

c. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The administrator may petition the district court to enforce the order as certified by the administrator. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

A consent agreement between the administrator and the seller may be filed in the miscellaneous docket of the clerk of the district court.

2. *a.* The administrator may do any of the following:

(1) Make public or private investigations within or outside of this state as the administrator deems necessary to determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter.

(2) Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the administrator determines that it is necessary or appropriate in the public interest or for the protection of the public, the administrator shall share information with other regulatory authorities or governmental agencies, or may publish information concerning a violation of this chapter or a rule or order under this chapter.

(3) Require or permit a person to file a statement, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated.

(4) Publish information concerning a violation of this chapter or a violation of a rule or order under this chapter.

b. For the purpose of an investigation or proceeding under this chapter, the administrator or an officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence and require the production of records which the administrator deems relevant or material to the inquiry.

c. If a person resists or refuses to obey a subpoena issued to that person, the district court upon application by the administrator may issue to the person an order requiring the person to appear before the administrator, to produce documentary evidence if so ordered, or to give evidence related to the matter under investigation. Failure to obey the order of the court is punishable as a contempt of court.

d. A person is not excused from attending and testifying or from producing a document or record before the administrator or an officer designated by the administrator, on the grounds that the testimony or evidence, documentary or otherwise, required by the administrator may tend to incriminate the person or subject the person to a penalty or forfeiture. However, an individual shall not be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the person's privilege against self-incrimination, to testify or produce, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt related to such testimony.

3. Judicial review of a decision of the administrator may be sought under chapter 17A.

4. *a.* If it appears to the administrator that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter, or of a rule or order adopted or issued under this chapter, the administrator may bring an action in the district court to enjoin the acts or practices constituting the violation and to enforce compliance with this chapter or any rule or order adopted or issued pursuant to this chapter. Upon a proper showing a permanent or temporary injunction shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. Upon proper showing by the administrator, the court may enter an order of recision, restitution, or disgorgement, as well as prejudgment and postjudgment interest, directed at any person who has engaged in an act constituting a violation of this chapter.

b. The administrator, in bringing an action under paragraph *"a"*, shall not be required to post bond.

[81 Acts, ch 171, §8]

91 Acts, ch 205, §7; 96 Acts, ch 1160, §8, 9; 98 Acts, ch 1189, §18; 2000 Acts, ch 1147, §25, 26

523B.9 Waiver of rights.

A waiver of this chapter by a purchaser prior to or at the time of sale is contrary to public policy and is void and unenforceable. An attempt by a seller to have a purchaser waive any rights given in this chapter is a violation of this chapter.

[81 Acts, ch 171, §9]

523B.10 Rules.

The administrator may adopt rules according to chapter 17A as necessary or appropriate for the protection of purchasers and to implement the purposes of this chapter, including but not limited to rules governing registrations, applications, disclosure statements, and reports. In adopting rules the administrator shall co-operate with agency administrators of other states and the federal trade commission to achieve uniformity in the form and content of registrations, applications and reports as practicable.

[81 Acts, ch 171, §10]

523B.11 Penalties.

1. A seller who willfully violates section 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection 2, who willfully violates a rule under this chapter, who willfully violates an order of which the person has notice, or who violates section 523B.12, subsection 1, knowing that the statement made was false or misleading in any material respect, upon conviction, is guilty of a class "D" felony. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.

2. A seller who willfully uses any device or scheme to defraud a person in connection with the advertisement, offer to sell or lease, sale, or lease of a business opportunity, or who willfully violates any other provision of this chapter, except as provided in subsections 1 and 3, is, upon conviction, guilty of a fraudulent practice.

3. A seller who violates a rule or order adopted or issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor.

4. The administrator may refer available evidence concerning a possible violation of this chapter or of a rule or order issued under this chapter to the attorney general. The attorney general, with or without such a referral, may institute appropriate criminal proceedings or may direct the case to the appropriate county attorney to institute appropriate criminal proceedings.

[81 Acts, ch 171, §11]

91 Acts, ch 205, §8; 98 Acts, ch 1189, §19

523B.12 Fraudulent practices.

1. *Misleading filings.* It is unlawful to make or cause to be made, in a document filed with the administrator or in a proceeding under this chapter, a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in a material respect or, in connection with such a statement, to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

2. *Unlawful representations.* The fact that an application for registration has been filed or the fact that a business opportunity is effectively registered does not constitute a finding by the administrator that a document filed under this chapter is true, complete, and not misleading. The fact that an application for registration has been filed, that a business opportunity is effectively registered, or that an exemption or exception is available for a business opportunity does not mean that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, a person or business opportunity. It is unlawful to make, or cause to be made, to a purchaser, any representation inconsistent with this subsection.

3. *Advertising.* It is unlawful for a seller, in connection with the offer or sale of a business opportunity in this state, to publish, circulate, or use advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

4. *Misrepresentations, omissions, and misleading conduct.* It is unlawful for a business opportunity seller to do any of the following:

a. Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity.

b. Misrepresent or fail to disclose efforts to sell or establish more business opportunities than it is reasonable to expect the market or market area for the particular business opportunity to sustain.

c. Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity.

d. Misrepresent the training and management assistance available to the business opportunity purchaser.

e. Misrepresent the amount of profits, net or gross, which the business opportunity purchaser can expect from the operation of the business opportunity.

f. Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity agreement.

g. Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity.

h. Assign a so-called exclusive territory encompassing the same area to more than one business opportunity purchaser.

i. Provide vending locations for which written authorizations have not been granted by the property owners or lessees.

j. Provide merchandise, machines, or displays of a brand or kind substantially different from or inferior to those promised by the business opportunity seller.

k. Fail to provide the purchaser a written contract.

l. Misrepresent the ability of a person or entity providing services to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity.

m. Misrepresent or omit to state a material fact or create a false or misleading impression in the sale of a business opportunity.

91 Acts, ch 205, §9; 98 Acts, ch 1189, §20

523B.13 Scope — service of process.

1. The provisions of this chapter concerning sales and offers to sell apply to persons who sell or offer to sell a business opportunity when any of the following apply:

a. An offer to sell is made in this state.

b. An offer to purchase is made and accepted in this state.

c. The purchaser is domiciled in this state and the business opportunity is or will be operated in this state.

2. For the purpose of this section, an offer to sell is made in this state, whether or not either party is then present in this state, when either of the following apply:

a. The offer originates from this state.

b. The offer is directed by the offeror to this state and received at the place to which the offer is directed or at a post office in this state in the case of a mailed offer.

3. An offer to sell is not made in this state under either of the following circumstances:

a. If the offer appears in a bona fide newspaper or other publication of general circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

b. If the offer is made on a radio or television program originating outside this state which is received in this state.

4. For the purpose of this section, an offer to sell is accepted in this state when both of the following occur:

a. The acceptance is communicated to the offeror in this state.

b. The acceptance has not previously been communicated to the offeror, orally, or in writing, outside this state. For the purpose of this section the acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state, and the acceptance is received at the place to which it is directed or at a post office in this state in the case of a mailed acceptance.

5. A person who engages in conduct prohibited or made actionable under this chapter and who has not filed a consent to service of process is deemed to have appointed the administrator to be the person's attorney for purposes of service of any lawful process in a noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator, which is the result of that conduct and which is brought under this chapter or is pursuant to a rule or order under this chapter. Service shall be made by leaving a copy of the process in the office of the administrator. The service is effective after both of the following have occurred:

a. The plaintiff, who may be the administrator, in a suit, action, or proceeding instituted by the administrator, sends notice of the service and a copy of the process by certified or registered mail to the defendant's or respondent's last known address or takes other steps which are reasonably calculated to give actual notice.

b. The plaintiff's affidavit of compliance with this subsection is filed on or before the return day of the process, if any, or within such further time as the court allows.

6. When process is served under this section, the court, or the administrator in a proceeding before the administrator, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

91 Acts, ch 205, §10; 94 Acts, ch 1031, §22

CHAPTER 523C

RESIDENTIAL SERVICE CONTRACTS

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523C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commissioner"* means the commissioner of insurance.

2. *"Custodial account"* means an account established by agreement between a licensed service company and a custodian under section 523C.5.

3. *"Custodial agreement"* means an agreement entered into between a licensed service company and a custodian under section 523C.5.

4. *"Custodian"* means an institution meeting the requirements established by the commissioner which institution has entered into a custodial agreement or reserve account agreement with a licensed service company.

5. *"Depository"* means an institution designated by the commissioner as an authorized custodian for purposes of sections 523C.5 and 523C.11.

6. *"Licensed service company"* means a service company which is licensed by the commission pursuant to this chapter.

7. *"Record"* means the same as defined in section 516E.1.

8. *"Reserve account agreement"* means an agreement entered into between a licensed service company and a depository under section 523C.11.

9. *"Residential service contract"* means a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

10. *"Service company"* means a person who issues and performs, or arranges to perform, services pursuant to a residential service contract.

83 Acts, ch 87, §2; 88 Acts, ch 1112, §703; 2000 Acts, ch 1147, §28

523C.2 License required.

A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation or other form of organization approved by the commissioner by rule and is a licensed service company.

83 Acts, ch 87, §3; 93 Acts, ch 60, §7

523C.3 Application for license.

1. Application for a license as a service company shall be made to and filed with the commissioner on forms approved by the commissioner and shall include all of the following information:

a. The name and principal address of the applicant.

b. The state of incorporation of the applicant.

c. The name and address of the applicant's registered agent for service of process within Iowa.

2. The application shall be accompanied by all of the following:

a. A certificate of good standing for the applicant issued by the secretary of state and dated not more than thirty days prior to the date of the application.

b. A surety bond, a copy of the receipt from the treasurer of state that a cash deposit has been made, or a copy of a custodial agreement as provided in section 523C.5.

c. A copy of the most recent financial statement, including balance sheets and related statements of income, of the applicant, prepared in accordance with generally accepted accounting principles, audited by a certified public accountant and dated not more than twelve months prior to the date of the application.

d. An affidavit of an authorized officer of the service company stating the number of contracts issued by the service company in the preceding calendar year, and stating that the net worth of the service company satisfies the requirements of section 523C.6.

e. A license fee in the amount of two hundred fifty dollars.

3. If the application contains the required information and is accompanied by the items set forth in subsection 2, and if the net worth requirements of section 523C.6 are satisfied, as evidenced by the audited financial statements, the commissioner shall issue the license. If the form of application is not properly completed or if the required accompanying documents are not furnished or in proper form, the commissioner shall not issue the license and shall give the applicant written notice of the grounds for not issuing the license. A notice of license denial shall be accompanied by a refund of fifty percent of the fee submitted with the application.

83 Acts, ch 87, §4; 88 Acts, ch 1112, §704; 92 Acts, ch 1078, §2

523C.4 License expiration and renewal.

Each license issued under this chapter shall expire on June 30 next following the date of issuance. If the service company maintains in force the sure-

ty bond described in section 523C.5 and if its license is not subject to or under suspension or revocation under section 523C.9, its license shall be renewed by the commissioner upon receipt by the commissioner on or before the expiration date of a renewal application accompanied by the items required by section 523C.3, subsection 2, paragraphs *"b", "c", "d",* and *"e"*, and section 523C.15. If the commissioner denies renewal of the license, the denial shall be in writing setting forth the grounds for denial and shall be accompanied by a refund of fifty percent of the license renewal fee.

83 Acts, ch 87, §5

523C.5 Required bond, cash deposit, or custodial account.

1. To assure the faithful performance of obligations under residential service contracts issued and outstanding in this state, a service company shall, prior to the issuance or renewal of a license, file with the commissioner a surety bond in the amount of one hundred thousand dollars, which has been issued by an authorized surety company and approved by the commissioner as to issuer, form, and contents or establish a custodial account in the amount of one hundred thousand dollars at an authorized depository. The bond or custodial account shall not be canceled or be subject to cancellation unless thirty days' advance notice in writing is filed with the commissioner. Notwithstanding chapter 17A, if a bond or custodial account is canceled for any reason and a new bond or notice that a new custodial account has been established in the required amount is not received by the commissioner on or before the effective date of cancellation, the license of the service company is automatically revoked as of the date the bond or custodial account ceases to be in effect. A service company whose license is revoked under this section may file an application for a new license pursuant to section 523C.3.

The bond or custodial account posted by a service company pursuant to this section shall be for the benefit of, and subject to recovery thereon by any residential service contract holder sustaining actionable injury due to the failure of the service company to faithfully perform its obligations under a residential service contract because of insolvency of the service company.

If a service company ceases to do business in this state and furnishes to the commissioner satisfactory proof that it has discharged all obligations to contract holders, the surety bond or custodial account shall be released.

The commissioner may by rule designate institutions authorized to act as a depository under this section and establish requirements for custodians, custodial agreements, custodial accounts, or the method of valuing noncash assets held in a custodial account which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

2. In lieu of the bond or custodial account required by this section, the service company may deposit with the treasurer of state a cash deposit in the same amount. The treasurer of state shall not refund a deposit until sixty days after the service company has ceased doing business in this state, a bond has been filed with the commissioner which complies with this section, or a custodial account is established which complies with this section.

83 Acts, ch 87, §6; 88 Acts, ch 1112, §705; 92 Acts, ch 1078, §3

523C.6 Net worth requirement.

A service company that has issued or renewed in the aggregate one thousand or less residential service contracts during the preceding calendar year shall maintain a minimum net worth of forty thousand dollars, and the minimum net worth to be maintained shall be increased by an additional twenty thousand dollars for each additional five hundred contracts or fraction thereof issued or renewed, up to a maximum required net worth of four hundred thousand dollars. At least twenty thousand dollars of net worth shall consist of paid-in capital.

83 Acts, ch 87, §7; 88 Acts, ch 1112, §706; 92 Acts, ch 1078, §4; 99 Acts, ch 166, §12

523C.7 Filing of forms of contract — fee.

1. A residential service contract shall not be issued or used in this state unless it has been filed with and approved by the commissioner. If the commissioner fails to inform the service company of objections to the form of the residential service contract within thirty days after filing, the residential contract shall be deemed to have been approved by the commissioner provided it otherwise complies with this section.

2. Residential service contracts shall:

a. Be written in nontechnical, readily understood language, using words with common and everyday meanings.

b. Clearly, conspicuously, and plainly specify all of the following:

(1) The services to be performed by the service company, and the terms and conditions of performance.

(2) The fee, if any, to be charged for a service call.

(3) Each of the systems, appliances, and components covered by the contract.

(4) Any exclusions and limitations respecting the extent of coverage.

(5) The period during which the contract will remain in effect.

(6) All limitations respecting the performance of services, including any restrictions as to the time periods when services may be requested or will be performed.

(7) The following statement: "The issuer of this contract is subject to regulation by the insurance division of the department of commerce of the state of Iowa. Complaints which are not settled by the issuer may be sent to the insurance division."

c. Provide for the performance of services only. A residential service contract shall not provide for a payment to, or reimbursement or indemnification of the holder of the contract.

d. Provide for the performance of services upon a request by telephone to the service company without a requirement that claim forms or applications be filed prior to the rendition of services.

e. Provide for the initiation of services by or under the direction of the service company within forty-eight hours of the request for the services by the holder of the contract.

3. Any application for a residential service contract shall notify the purchaser that the person submitting the application to the service company for the purchaser is acting as the representative of the service company and not of the purchaser in that transaction.

4. To the extent necessary to administer the provisions of this chapter, the commissioner may, after notice and hearing, institute a residential service contract form approval or form review fee. If the commissioner establishes a fee, the amount of the fee shall be set by rule adopted pursuant to chapter 17A. The fee may be by dollar amount or based upon a percentage of the sale value of the contract. However, the fee shall not exceed fifty thousand dollars.

5. A complete copy of the terms of the residential service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the residential service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

83 Acts, ch 87, §8; 87 Acts, ch 234, §434; 98 Acts, ch 1189, §21; 2000 Acts, ch 1147, §29

523C.8 Rebates and commissions.

1. Except as provided in subsection 2, a service company shall not pay a commission or any other consideration to any person as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract.

2. This section does not prohibit any of the following:

a. The payment of an override commission or marketing fee to an employee or commission sales agent who is a marketing or sales representative of the service company or its parent company, subsidiary, or affiliate on the sale or marketing of a residential service contract, provided the employee or commission sales agent is not a real estate licensee sharing in or entitled to share in, or affiliated with, a company or organization which is entitled to share in any real estate commission generated by the underlying real property transaction.

b. Fees, payments, or reimbursements for a bona fide inspection, if an inspection of the property to be the subject of a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

3. The division may adopt rules identifying types of fees, payments, or reimbursements that do not constitute an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract.

83 Acts, ch 87, §9; 92 Acts, ch 1078, §5; 93 Acts, ch 60, §8; 99 Acts, ch 166, §13

523C.8A Issuance of residential service contract without consideration prohibited.

1. Except as provided in subsection 2, furnishing a residential service contract to any person without charge for the applicable contract fees constitutes a violation of this chapter. A residential service contract providing for listing period coverage shall not be issued or delivered unless it provides for consideration for such coverage. The consideration may consist of a bona fide promise to pay the applicable residential service contract fees at the close of the sale. However, if a contract is subsequently canceled as a result of the failure to close such a sale, including such failure due to cancellation, expiration, or other termination of any real estate listing agreement on the residence, the residential service contract holder shall pay to the service company, at the time of cancellation of the residential service contract, the lesser of the actual costs of such service or a pro rata portion of the applicable annual residential service contract fees based on the number of days the residential service contract remained in effect, together with administrative costs incurred by the service company as a result of the cancellation.

2. *a.* Notwithstanding subsection 1, a service company may offer a residential service contract providing for listing period coverage for consideration which consists of both of the following:

(1) The contract holder's bona fide promise to pay, upon the close of sale, the applicable residential service contract fees for coverage of the residence for at least one year from the close of sale.

(2) Actual payment of the costs of any and all services performed under the residential service contract during the term of the listing period coverage by the contract holder to the service contractor.

b. Upon the close of sale and actual payment of the contract fees referred to in paragraph *"a"*, subparagraph (1), the service company shall reimburse the listing period coverage contract holder for all legitimate service costs incurred and paid

under the residential service contract during the term of the listing period coverage with offset only for any deductible or service call fees remaining due and payable with respect to service performed under the residential service contract during the term of the listing period coverage.

3. For purposes of this section:

a. *"Close of sale"* means the time an interest in, or title to, a home to which the interest or title attaches is sold or transferred.

b. *"Listing period coverage"* means coverage provided prior to the close of sale.

93 Acts, ch 60, §9

523C.9 Suspension or revocation of license.

1. In addition to the license revocation provisions of section 523C.5, the commissioner may suspend or revoke or refuse to renew the license of a service company for any of the following grounds:

a. The service company violated a lawful order of the commission or any provision of this chapter.

b. The service company failed to pay any final judgment rendered against it in this state within sixty days after the judgment became final.

c. The service company has without just cause refused to perform or negligently or incompetently performed services required to be performed under its residential service contracts and the refusal, or negligent or incompetent performance has occurred with such frequency, as the commissioner determines, as to indicate the general business practices of the service company.

d. The service company violated section 523C.13.

e. The service company failed to maintain the net worth required by section 523C.6.

f. The service company failed to maintain the reserve account required by section 523C.11.

g. The service company failed to maintain its corporate certificate of good standing with the secretary of state.

2. If the license of a service company is terminated under section 523C.5 because of failure to maintain bond, the commissioner shall give written notice of termination to the service company. The notice shall include the effective date of the termination.

83 Acts, ch 87, §10

523C.10 Rules.

The commissioner may adopt rules under chapter 17A to implement this chapter.

83 Acts, ch 87, §11

523C.11 Reserve account.

1. A service company shall maintain in an independent depository a reserve account consisting of unencumbered assets in an amount equal to fifty percent of aggregate annual fees collected on residential service contracts issued and outstanding in this state, if any, less actual expenditures for services rendered under those contracts. The assets shall be held in the form of cash or marketable securities.

2. The depository shall make its records concerning the service company reserve accounts available to the commissioner or a designee for inspection on the premises of the depository and, upon request, shall produce documents and records which the commissioner determines are necessary to verify the value and safety of the assets of the reserve account.

3. The commissioner may by rule designate institutions authorized to act as a depository under this section and may establish requirements for reserve accounts, reserve account agreements, or the method of valuing marketable securities which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

4. For purposes of this section, *"aggregate annual fees"* does not include the annual fees collected on residential service contracts for which the service company has purchased contractual liability insurance which demonstrates to the satisfaction of the commissioner that one hundred percent of the service company's claim exposure related to such service contracts is covered by the insurance. The contractual liability insurance must be obtained from an insurer authorized to do business in this state and shall contain the following provisions:

a. If the service company is unable to fulfill its obligations under its contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to the persons making claims under the contracts.

b. The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

c. The insurer shall not cancel or refuse to renew the policy unless sixty days' written notice has been given to the commissioner by the insurer before the date of the cancellation or nonrenewal.

83 Acts, ch 87, §12; 88 Acts, ch 1112, §707, 708; 92 Acts, ch 1078, §6

523C.12 Optional examination.

The commissioner or a designee of the commissioner may make an examination of the books and records of a service company, including copies of contracts and records of claims and expenditures, and verify its assets, liabilities, and reserves. The actual costs of the examination shall be borne by the service company.

83 Acts, ch 87, §13; 94 Acts, ch 1031, §18

523C.13 Prohibited acts or practices — penalty.

The commissioner shall adopt rules which regulate residential service contracts to prohibit misrepresentation, false advertising, defamation, boycotts, coercion, intimidation, false statements and entries and unfair discrimination or practices. If the commissioner finds that a person has violated the rules adopted under this section, the commissioner may order any or all of the following:

1. Payment of a civil penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of this section, in which case the penalty shall be not more than five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. The commissioner shall, if it finds the violations of this section were directed, encouraged, condoned, ignored, or ratified by the employer of such person, assess such fine to the employer and not such person.

2. Suspension or revocation of the license of a person, if the person knew or reasonably should have known the person was in violation of this section.

83 Acts, ch 87, §14; 92 Acts, ch 1078, §7

523C.14 Rate review.

Using the information obtained in the annual reports and any additional information requested by the commissioner, the commissioner shall evaluate the fees charged for the residential service contract to determine if they are reasonable in relation to the value of the claims made. The commissioner may order an adjustment of the fees if the commissioner determines that the fees are not reasonable in relation to the value of the claims made.

83 Acts, ch 87, §15

523C.15 Annual report.

A licensed service company shall file with the commissioner an annual report within ninety days of the close of its fiscal year. The annual report shall be in a form prescribed by the commissioner and contain all of the following:

1. A current financial statement including a balance sheet and statement of operations prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.

2. The number of residential service contracts issued during the preceding fiscal year, the number canceled or expired during the year, the number in effect at year end and the amount of residential service contract fees received.

3. Any other information relating to the performance and solvency of the residential service company required by the commissioner.

83 Acts, ch 87, §16

523C.16 Exclusions.

This chapter does not apply to any of the following:

1. A performance guarantee given by a builder of a residence or the manufacturer or seller or lessor of residential property if no identifiable charge is made for the guarantee.

2. A service contract, guarantee or warranty between a residential customer and a service company which will perform the work itself and not through subcontractors for the service, repair or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems.

3. A contract between a service company and a person who actually performs the maintenance, repairs, or replacements of structural components, or appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems, if someone other than the service company actually performs these functions.

4. A service contract, guarantee or warranty issued by a retail merchant to a retail customer, guaranteeing or warranting the repair, service or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems sold by said retail merchant.

5. A service contract, guarantee, or warranty issued by a manufacturer, third party, or retail company, covering the repair, maintenance, or replacement of individual appliances and other individual items of merchandise marketed and sold by a retail company, in the ordinary course of business.

83 Acts, ch 87, §17; 96 Acts, ch 1160, §10

523C.17 Lending institutions, service companies, and insurance companies.

A bank, savings and loan association, insurance company, or other lending institution shall not require the purchase of a residential service contract as a condition of a loan. A service company or an insurer, either directly or indirectly, as a part of any real property transaction in which a residential service contract will be issued, purchased, or acquired, shall not require that a residential service contract be issued, purchased, or acquired in conjunction with or as a condition precedent to the issuance, purchase, or acquisition, by any person, of a policy of insurance. A lending institution shall not sell a residential service contract to a borrower unless the borrower signs an affidavit acknowledging that the purchase is not required. Violation of this section is punishable as provided in section 523C.13.

83 Acts, ch 87, §18; 93 Acts, ch 60, §10

523C.18 Violations.

A person who willfully violates section 523C.5 is, upon conviction, guilty of a class "D" felony.

92 Acts, ch 1078, §8

523C.19 Cease and desist orders.

1. Upon the commissioner's determination that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or any rule adopted pursuant to this chapter, the commissioner may issue an order directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

2. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this section may contest it by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this section.

3. A person violating a summary order issued under this section shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

92 Acts, ch 1078, §9; 2000 Acts, ch 1147, §30; 2000 Acts, ch 1232, §82

523C.20 Consent to service of process.

If a person engages in conduct subject to regulation under this chapter, the conduct shall constitute the appointment of the commissioner of insurance as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct, with the same force and validity as if served personally.

93 Acts, ch 60, §11

523C.21 Service of process.

The commissioner shall be the agent for service of process upon a service company.

94 Acts, ch 1031, §19

523C.22 Claim procedures.

A service company shall promptly provide a written explanation to the residential customer, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the residential service contract.

94 Acts, ch 1031, §20

523C.23 Investigations and subpoenas.

1. *a.* In enforcing this chapter, the commissioner may conduct a public or private investigation in order to do any of the following:

(1) Determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter.

(2) Aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter.

b. In carrying out this subsection, the commissioner may do all of the following:

(1) Conduct the investigation within or outside of this state.

(2) Require or allow a person to file a statement in writing regarding the facts or circumstances concerning a matter to be investigated. The commissioner may require that the statement be made under oath.

(3) Apply to the district court for the issuance of an order requiring a person's appearance before the commissioner or the attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. The failure to obey an order under this subsection constitutes contempt of court.

c. Information obtained in the course of an investigation is confidential as provided in section 22.7. However, upon a determination that disclosure of the information is necessary or appropriate in the public interest or for the protection of consumers, the commissioner may do any of the following:

(1) Share information obtained during the course of the investigation with another regulatory authority or government agency.

(2) Publish information obtained during the course of the investigation which concerns a violation of this chapter or a rule or order under this chapter.

2. Except as provided in section 523C.19, a proceeding instituted under this chapter shall be conducted pursuant to chapter 17A and rules adopted by the commissioner pursuant to chapter 17A.

3. In an investigation or proceeding conducted under this chapter, the commissioner or any designee of the commissioner may administer oaths and affirmations, subpoena witnesses, compel

their attendance, take evidence, and require the production of any records which the commissioner deems relevant or material to the inquiry.

4. A person is not excused from attending and testifying or from producing a document or record before the commissioner or in obedience to a subpoena of the commissioner or an officer designated by the commissioner, or in a proceeding instituted by the commissioner, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, a person shall not be prosecuted or subjected to any penalty or forfeiture due to a transaction or matter about which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise. The person testifying, however, is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

2000 Acts, ch 1147, §31

CHAPTER 523D

RETIREMENT FACILITIES

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523D.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commissioner"* means the commissioner of insurance or the deputy appointed under section 502.601.

2. *"Continuing care"* means housing together with supportive services, nursing services, medical services, or other health related services, furnished to a resident, regardless of whether or not the lodging and services are provided at the same location, with or without other periodic charges, and pursuant to one or more contracts effective for the life of the resident or a period in excess of one year, including mutually cancelable contracts, and in consideration of an entrance fee.

3. *"Continuing care retirement community"* means a facility which provides continuing care to residents other than residents related by consanguinity or affinity to the person furnishing their care.

4. *"Entrance fee"* means an initial or deferred transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual in a facility if the amount exceeds either of the following:

a. Five thousand dollars.

b. The sum of the regular periodic charges for six months of residency.

5. *"Facility"* means the place or places in which a provider undertakes to provide continuing care or senior adult congregate living services to an individual.

6. *"Living unit"* means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

7. *"New construction"* means construction of a new facility or the expansion of an existing facility if the expansion involves an increase in the number of living units in excess of twenty-five percent.

8. *"Provider"* means a person undertaking through a lease or other type of agreement to provide care in a continuing care retirement community or senior adult congregate living facility, even if that person does not own the facility.

9. *"Resident"* means an individual, sixty years of age or older, entitled to receive care in a continuing care retirement community or a senior adult congregate living facility.

10. *"Senior adult congregate living facility"* means a facility which provides senior adult congregate living services to residents other than residents related by consanguinity or affinity to the person furnishing their care.

11. *"Senior adult congregate living services"* means housing and one or more supportive services furnished to a resident, with or without other periodic charges, in consideration of an entrance fee.

12. *"Supportive services"* includes but is not limited to one or any combination of the following services: laundry, maintenance, housekeeping,

emergency nursing care, activity services, security, dining options, transportation, beauty and barber services, health care, and personal care, including personal hygiene, eating, bathing, dressing, and supervised medication administration.

89 Acts, ch 217, §1; 91 Acts, ch 205, §11

523D.2 Filing with division of insurance.

A person shall not, as a provider, enter into a contract to provide continuing care or senior adult congregate living services in a facility, or extend the term of an existing contract to provide continuing care or senior adult congregate living services in a facility, if the contract requires or permits the payment of an entrance fee to any person, and the facility is or will be located in this state, or the provider or a person acting on the provider's behalf solicits the contract within this state for a facility located in this state and the person to be provided with continuing care or senior adult congregate living services under the contract resides within this state at the time of the solicitation, unless the person has filed with the division of insurance of the department of commerce, a current disclosure statement which meets the requirements of section 523D.3. The disclosure statement shall be accompanied by a one hundred dollar filing fee as a condition of filing and compliance with this section.

89 Acts, ch 217, §2

523D.3 Disclosure statement.

1. At the time of, or prior to, the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of, or prior to the provider's acceptance of part or all of the entrance fee by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a disclosure statement to the person, and to the person's personal representative if one is appointed, with whom the contract is to be entered into. Unless incorporated by reference, in whole or in part, the disclosure statement shall not constitute part of the contract between the resident and provider. The disclosure statement shall contain all of the following information unless the information is in the contract, a copy of which must be attached to the statement:

a. The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other legal entity.

b. The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in the provider and a description of such person's interest in or occupation with the provider.

c. With respect to each person covered by paragraph *"b"*, and if the facility will be managed on a day-to-day basis by a person identified pursuant to paragraph *"b"*, or with respect to the proposed manager, the following information:

(1) A description of the business experience of the person, if any, in the operation or management of similar facilities.

(2) The name and address of any professional service, or other entity in which the person has, or which has in the person, a ten percent or greater interest and which has provided goods, leases, or services to the facility of a value of five hundred dollars or more within the prior twelve months or which has contracted to provide goods, leases, or services to the facility of a value of five hundred dollars or more within a year, including a description of the goods, leases, or services and their actual or anticipated cost to the facility or provider.

(3) A description of any matter resulting in the person's conviction of a felony or a plea of nolo contendere to a felony charge, or a description of any matter where the person was found to be liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, misappropriation of property, or a similar felony involving theft or dishonesty.

(4) A description of any matter in which the person is subject to a currently effective injunctive or restrictive order of a court, or a description of any matter within the past five years where the person has had a state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency of this or any state or the division of insurance, arising out of or relating to business activity or health care, including, without limitation, actions affecting a license to operate a foster care facility, health care facility, retirement home, home for the aged, or facility licensed under this chapter or a similar law of another state.

d. A statement, if applicable, containing the following:

(1) Whether the provider is or ever has been affiliated with a for-profit organization or with a religious, charitable, or other nonprofit organization.

(2) The nature of the affiliation.

(3) The extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider.

(4) The provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax.

e. The location and description of the physical property or properties of the facility, existing or proposed, and, to the extent proposed, the estimated completion date or dates, whether or not construction has begun, and the contingencies subject to which construction may be deferred.

f. The services provided or proposed to be provided under contracts for continuing care or senior adult congregate living services at the facility, including the extent to which medical care is fur-

nished. The disclosure statement shall clearly state which services are included in basic contracts and which services are made available at or by the facility at extra charge.

g. A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on such adjustments, if any.

h. The provisions which have been made or will be made, if any, to provide reserve funding or security to enable the provider to fully perform its obligations under contracts to provide continuing care or senior adult congregate living services at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which the funds will be invested and the names and experience of persons who will make the investment decisions.

i. Certified financial statements of the provider, for all parts of an operation covered by the contract, including the health center or nursing home portion of the continuing care retirement community, if those services are included in the contract, but the disclosure statement may exclude services or operations not provided to residents as senior adult congregate living services under the contract, which shall include the following:

(1) A balance sheet as of the end of the two most recent fiscal years.

(2) Income statements of the provider for the two most recent fiscal years or the shorter period of time the provider has been in existence.

j. If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including the following:

(1) An estimate of the cost of purchasing or constructing and equipping the facility, including related costs such as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs the provider expects to incur or become obligated for prior to the commencement of operations.

(2) A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of the financing.

(3) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility.

(4) An estimate of the funds, if any, anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care or senior adult congregate living services.

(5) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to contracts for continuing care or senior adult congregate living services.

(6) A projection of estimated operating expenses of the facility, including a description of the assumptions used in calculating the expenses and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions.

(7) Identification of any assets pledged as collateral for any purpose.

(8) An estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing.

k. Other material information concerning the facility or the provider required by the division of insurance or which the provider wishes to include.

l. The cover page of the disclosure statement shall state, in a prominent location and typeface, the date of the disclosure statement.

m. A copy of the standard form or forms of contract for continuing care or senior adult congregate living services used by the provider, attached as an exhibit to each disclosure statement.

2. The provider shall file with the insurance division, annually within five months following the end of the provider's fiscal year, an annual disclosure statement which shall contain the information required by this chapter for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing:

a. Any material differences between the pro forma cash flow projection filed pursuant to this chapter as part of the most recent annual disclosure statement and the actual results of operations during the fiscal year, if the material differences substantially affect the financial safety or soundness of the community.

b. A revised pro forma cash flow projection for the next fiscal year.

3. In the event an amendment is filed with the division of insurance pursuant to subsection 4, the provider shall deliver a copy of the amendment or the amended disclosure statement to a prospective resident and to a prospective resident's personal representative if one is appointed prior to the provider's acceptance of part or all of the entrance fee or the execution of the continuing care or senior congregate living services contract by the prospective resident.

4. In addition to filing the annual disclosure statement, the provider may amend its currently filed disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement and annual disclosure statement from containing any material misstatement of fact or omission to state

a material fact required to be included in the statement. The amendment or amended disclosure statement shall be filed with the division of insurance before the statement is delivered to a resident or prospective resident and a personal representative of a resident or prospective resident and is subject to all the requirements, including those as to content and delivery, of this chapter.

89 Acts, ch 217, §3; 90 Acts, ch 1168, §54; 91 Acts, ch 205, §12, 13; 92 Acts, ch 1078, §10

523D.4 False information.

1. A provider shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement of any sort containing any assertion, representation, or statement which is untrue, deceptive, or misleading.

2. A provider shall not file with the division of insurance or make, publish, disseminate, circulate, or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person or placed before the public, a financial statement which does not meet generally accepted accounting principles.

89 Acts, ch 217, §4

523D.5 New construction.

1. *Filing with insurance division.* A provider shall not enter into a contract to provide continuing care or senior adult congregate living services that applies to a living unit that is part of a new facility or proposed expansion that is or will be located in this state unless the person has submitted an application on a form as required by the division of insurance accompanied by a fee of two hundred fifty dollars. The application at a minimum must include the following information:

a. A description of the new facility or the proposed expansion, including a description of the goods and services that will be offered to prospective residents.

b. A statement of the financial resources of the provider available for this project.

c. A statement of the capital expenditures necessary to accomplish this project.

d. A statement of financial feasibility for the new facility or proposed expansion in a form satisfactory to the commissioner, which includes a statement of future funding sources and shall identify the qualifications of the person or persons preparing the study.

e. A statement of the market feasibility for the new facility or proposed expansion in a form satisfactory to the commissioner, which identifies the qualifications of the person or persons preparing the study.

f. If the new facility or proposed expansion offers a promise to provide nursing or health care services to residents in the future pursuant to contracts effective for the life of the resident or a period in excess of one year in consideration for an entrance fee, an actuarial forecast in a form satisfactory to the commissioner, which identifies the qualifications of the actuary or actuaries preparing the forecast.

g. Copies of the escrow agreements executed pursuant to this chapter or proof that an escrow is not required.

2. *Determination of feasibility.*

a. Existing facilities. If a filing is made under this section for an expansion of an existing facility, the determination of feasibility shall be based on consolidated information for the existing facility and the proposed expansion.

b. New facilities. If a filing is made under this section for a new facility, not part of an existing facility that will be constructed in more than one stage or phase, the initial stage or phase must evidence feasibility independent of any subsequent stage or phase and contain all of the facilities or components necessary to provide residents with all of the services and amenities promised by the provider.

3. *Construction.* New construction shall not begin until the filing required by this section has been made and at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved pursuant to executed contracts and at least ten percent of the entrance fees required by those contracts are held in escrow pursuant to this chapter. However, the requirements of this subsection may be waived by the commissioner by rule or order upon a showing of good cause.

For purposes of this subsection, *"good cause"* includes, but is not limited to, evidence of the following:

a. Secured financing adequate in an amount and term to complete the project described in the filing required by this section.

b. Cash reserves adequate in an amount to operate the facility for twenty-four months based upon reasonable projections of income and expenses.

c. Creation of an escrow account in which a resident's entrance fee or purchase price will be deposited, if the terms of the escrow agreement provide reasonable protection from loss until at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved.

4. *Escrow requirements.* Unless proof has been submitted to the commissioner that conditions for the release of escrowed funds set forth in this section have already been met, the provider shall establish an interest-bearing escrow account

at a state or federally regulated financial institution located within this state to receive any deposits or entrance fees or portions of deposits or fees for a living unit which has not been previously occupied by a resident for which an entry fee arrangement is used. The escrow account agreement shall be entered into between the financial institution and the provider with the financial institution as the escrow agent and as a fiduciary for the resident or prospective resident. The agreement shall state that the purpose of the escrow account is to protect the resident or prospective resident and that the funds deposited shall be kept and maintained in an account separate and apart from the provider's business accounts.

5. *Release of escrowed funds.* Funds held in escrow shall be released only as follows:

a. If the provider fails to meet the requirements for release of funds held in escrow pursuant to this section within a time period specified in the escrow agreement, which shall not exceed thirty-six months, these funds shall be returned by the escrow agent to the persons who have made payment to the provider.

b. Upon notice from the provider that a resident is entitled to a refund, the escrow agent shall refund the amount directly to the resident. The amount of the refund shall be included in the provider's notice to the escrow agent and shall be determined in compliance with this chapter and any applicable terms of the resident's contract.

c. Except as provided by paragraphs *"a"* and *"b"*, amounts held in escrow shall be released only upon approval of the commissioner. The commissioner shall approve the release of funds only upon a determination that at least one of the following conditions has been satisfied:

(1) The facility has a minimum of fifty percent of the units reserved for which the provider is charging an entrance fee and the aggregate amount of the entrance fees received by or pledged to the provider, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the provider, equal not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility.

(2) The resident has moved into the living unit, the cancellation period required by section 523D.6, subsection 2, has expired, construction of the facility or the portion of the facility under construction is complete, the facility has been adequately equipped and furnished, a certificate of occupancy or the equivalent has been issued by the appropriate local jurisdiction, and the provider has been issued all the appropriate licenses or permits needed to operate the facility and provide all of the promised services.

d. Upon receipt by the escrow agent of a request by the provider for the release of these escrowed funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrowed funds shall be accompanied by any documentation the escrow agent requires.

89 Acts, ch 217, §5; 91 Acts, ch 205, §14; 92 Acts, ch 1078, §11; 93 Acts, ch 60, §12

523D.6 Contracts.

1. *Disclosure.* In addition to any other provisions prescribed by rules adopted under this chapter, each contract providing for continuing care or senior adult congregate living services by a provider shall be written in nontechnical language easily understood by a lay person and shall include all of the following:

a. The name and business address of the provider.

b. The name and address of the facility or facilities.

c. The identification of the living unit which the prospective resident will occupy.

d. A description of the total consideration paid by the resident, including the value of all property transferred.

e. A list of all of the continuing care or senior adult congregate living services which are to be provided by the provider to each resident. The list shall clearly identify the manner in which continuing care or senior adult congregate living services will be provided, including a statement whether the items will be provided for a designated time period or for life, and shall indicate which continuing care and senior adult congregate living services, if any, will be provided through an affiliate or third party. The description of any service charges or fees shall, in the event of multiple residents, be provided on an individual basis and shall include a description of any additional charges that will be assessed for occupancy by more than one resident.

f. A statement of the policy of the facility with regard to any health or financial conditions upon which the provider may require the resident to relinquish the resident's space in the designated facility.

g. A statement of the policy of the facility with regard to the health and financial conditions required for a person to continue as a resident.

h. A statement of the policy of the facility with regard to the conditions under which the resident is permitted to remain in the facility in the event of financial difficulties affecting the resident.

i. A statement of the terms concerning the entry of a person to the living unit and the consequences if a person does not meet the requirements for entry.

j. A statement of the policy of the facility with regard to changes in accommodations and a description of the procedures to be followed by the provider when the provider temporarily or perma-

nently changes the resident's accommodations within the facility, transfers the resident from one level of care to another, or transfers the resident to another health facility.

k. A description in clear and understandable language, in at least ten-point type, of the terms governing the refund of any portion of the entrance fee in the event of discharge by the provider, or cancellation by the resident, and a statement that the provider shall not dismiss or discharge a resident from a facility prior to the expiration of a resident contract without just cause and sixty days written notice of intent to cancel. The notice of dismissal or discharge shall only be given upon a good faith determination that just cause exists, and the notice shall be given in writing, signed by the medical director, if any, and the administrator of the facility. In an emergency situation only such notice as is reasonable under the circumstances is required.

l. A description in clear and understandable language, in at least ten-point type, whether monthly fees, if charged, are subject to periodic increases.

m. A description of the facility's policies and procedures for handling grievances between the provider and residents.

n. A statement that residents living in the facility have the right of self-organization.

o. A statement that a prospective resident or resident shall be given the opportunity to appoint a personal representative in the prospective resident's or resident's contract. The personal representative shall receive copies of the contract and all notices, disclosures, or forms required by this chapter to be delivered to a prospective resident or resident. A personal representative appointed under this section has no legal authority to make any decision for the prospective resident or resident appointing the person to be a personal representative. The personal representative may advise the prospective resident or resident as to the materials provided. A personal representative shall not be affiliated or associated with a provider or any person identified in section 523D.3, subsection 1, paragraph *"b"* or *"c"*, and shall not be a prospective resident or resident.

p. A statement that if a resident dies or through illness, injury, or incapacity is precluded from becoming a resident under the terms of the contract before occupying the living unit, the contract is automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all payments of money or transferred property to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by both parties to the contract.

q. A statement that a resident has the right to rescind a contract for continuing care or senior adult congregate living services, without penalty or forfeiture, within three business days of the date the contract was executed or within thirty days after the date the resident received the disclosure statement required by section 523D.3, whichever is later.

2. *Cancellation.* The contract required by this section shall state the terms under which the contract can be canceled by the provider or the resident, including a statement of the refund rights of a resident, and shall include a completed, easily detachable form in duplicate, captioned **"Notice of Cancellation"**, as an attachment, in ten-point boldface type, containing the following information and statements in substantially the following form and language:

NOTICE OF CANCELLATION

. . . . . .

Date contract was executed.

. . . . . .

Date disclosure statement was provided to resident.

You may rescind and cancel your contract, without any penalty or obligation, within three business days of the date the contract was executed or within thirty days after the date you received the disclosure statement required by Iowa Code section 523D.3, whichever is later. You are not required to move into the facility before the expiration of this cancellation period. However, if you do, the provider may retain the reasonable value of care and services actually provided to you, the resident, prior to your vacating the provider's facility. If you cancel this contract and you have already moved into the provider's facility, you must vacate your living unit within ten days after receipt by the provider of your cancellation notice.

If you cancel this contract, any payments of money or transfers of property you made to the provider must be returned as soon as reasonably possible by the provider following receipt by the provider of your cancellation notice, and any security interest arising out of the transaction is canceled, except that, as stated above, the provider may retain the reasonable value of care and services actually provided to you prior to your vacating the provider's facility.

To cancel this contract, mail by certified mail or hand deliver a signed and dated copy of this cancellation notice or any other written notice clearly indicating your intent to cancel the contract, or send a telegram, to . . . . . (name of provider) at . . . . . (address of provider's place of business). Your cancellation is effective upon mailing by certified mail, when transmitted by telegraph, or when actual notice is given to the provider, whichever is earlier.

I hereby cancel this contract.

. . . . . .

(Date)

. . . . . .

(Resident's signature)

89 Acts, ch 217, §6; 90 Acts, ch 1168, §55; 90 Acts, ch 1233, §34; 91 Acts, ch 205, §15; 92 Acts, ch 1163, §102

523D.7 Civil liability.

1. A provider is liable to the person contracting for continuing care or senior adult congregate living services for damages and repayment of all fees paid to the provider, facility, or person violating this chapter, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care or senior adult congregate living services was entered into prior to discovery of the violation, misstatement, or omission, or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest at the legal rate for judgments and court costs and reasonable attorney fees, if the provider does any of the following:

a. Enters into a contract to provide continuing care or senior adult congregate living services at a facility without having first delivered a disclosure statement meeting the requirements of this chapter to the person contracting for continuing care or senior adult congregate living services and to the person's personal representative if one is appointed by the person.

b. Enters into a contract to provide continuing care or senior adult congregate living services at a facility with a person who has relied on a disclosure statement which contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

2. Liability under this section exists regardless of whether or not the provider or person liable had actual knowledge of the misstatement or omission.

3. A person shall not file or maintain an action under this section if the person, before filing the action, received an offer to refund, payable upon acceptance, all amounts paid the provider, facility, or person violating this chapter, together with interest from the date of payment, less the reasonable value of care and lodging provided prior to receipt of the offer, and the person failed to accept the offer within thirty days of its receipt. At the time a provider makes a written offer of refund, the provider shall file a copy with the division of insurance. The refund offer shall refer to the provisions of this section.

4. An action shall not be maintained to enforce a liability created under this chapter unless brought before the expiration of six years after the execution of the contract for continuing care or senior adult congregate living services which gave rise to the violation.

5. Except as expressly provided in this chapter, civil liability in favor of a private party shall not arise against a person, by implication, from or as a result of the violation of this chapter. This chapter does not limit a liability which may exist by virtue of any other statute or under common law if this chapter were not in effect.

89 Acts, ch 217, §7

523D.8 Criminal penalties.

1. A person who willfully and knowingly violates a provision of this chapter or a rule adopted or order entered pursuant to this chapter, upon conviction, is guilty of an aggravated misdemeanor.

2. This chapter does not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

89 Acts, ch 217, §8

523D.9 Initial filing.

For any facility offering continuing care or senior adult congregate living services contracts prior to July 1, 1989, initial filings of disclosure statements shall take effect in and for the facility's fiscal year ending after January 1, 1990.

89 Acts, ch 217, §9

523D.10 Rules.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to implement this chapter, and may make further recommendations to the general assembly for the protection of residents and prospective residents of facilities required to file an annual disclosure statement under this chapter.

89 Acts, ch 217, §10

523D.11 Reserved.

523D.12 Filings and investigations.

1. The annual filing, and any amendments to the annual filing, shall be signed by the chief executive officer, stating that to the best of the officer's knowledge and belief, the items are correct.

2. The commissioner or the attorney general may, for the purpose of discovering or investigating violations of this chapter or rules adopted pursuant to this chapter do any or all of the following:

a. Investigate the business and examine the books, accounts, records, and files used by a provider. With the exception of an examination involving new construction, an examination involving a complaint by a resident or a prospective resident or where good cause exists for the lack of prior notice, as determined by the commissioner, the division of insurance shall provide at least seven days' prior notice to the facility before conducting an on-site examination.

b. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being con-

ducted pursuant to this chapter.

c. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

91 Acts, ch 205, §16

523D.13 Compliance — summary orders.

1. Upon the commissioner's determination that a provider has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted pursuant to this chapter, the commissioner may issue a summary order directing the provider to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

2. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this section may contest it by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this section.

3. A person violating a summary order issued under this section shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

91 Acts, ch 205, §17; 2000 Acts, ch 1147, §32

523D.14 Injunctions.

The attorney general may petition the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices in violation of this chapter or rules adopted pursuant to this chapter. In a proceeding for an injunction, the attorney general may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, or records germane to the hearing upon the petition for an injunction. Upon proof of any of the violations described in the petition for injunction, the court may grant the injunction.

91 Acts, ch 205, §18

CHAPTER 523E

CEMETERY MERCHANDISE

Repealed by 2001 Acts, ch 118, §57; see chapter 523A

CHAPTER 523F

LEGAL EXPENSE INSURANCE

Repealed by 2001 Acts, ch 16, §36, 37

CHAPTER 523G

INVENTION DEVELOPMENT SERVICES

Legislative findings; 92 Acts, ch 1114, §1

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523G.1 Short title.

This chapter shall be known and may be cited as the *"Invention Development Services Act"*.

92 Acts, ch 1114, §2

523G.2 Purpose of the chapter.

The general assembly declares that the purpose of this chapter is to safeguard the public against fraud, deceit, imposition, and financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of invention development services by prohibiting or restricting deceptive practices, misleading advertising, onerous contract terms, harmful financial practices, and other unfair, dishonest, deceptive, destructive, unscrupulous, fraudulent, or discriminatory practices which threaten the public welfare.

92 Acts, ch 1114, §3

523G.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Business record"* means a record maintained by an invention developer relating to invention development services, including but not limited to contracts, files, accounts, books, papers, photographs, and audio or visual tapes.

2. *"Commissioner"* means the commissioner of insurance or a person designated by the commissioner to act on the commissioner's behalf.

3. *"Contract"* means an agreement between an invention developer and a customer under which the invention developer promises to perform invention development services for the customer.

4. *"Customer"* means a person who is solicited by, inquires about, seeks the services of, or enters into a contract with an invention developer.

5. *"Deceptive practice"* means communicating a false or fraudulent statement, providing false pretense, making a false promise or misleading statement, misrepresenting a fact, omitting a material fact, or failing to make all disclosures required by this chapter.

6. *"Fee"* means a payment made by a customer to an invention developer, including reimbursements for expenditures made or costs incurred by the invention developer. However, *"fee"* does not include a payment made from a portion of the income received by the customer which resulted from invention development services performed by the invention developer.

7. *"Invention"* means an original concept which may be rendered into an artistic, educational, or technological expression, including works, compositions, designs, machines, manufacturing or engineering techniques, analyses, or processes.

8. *"Invention developer"* means a person who performs invention development services in this state or offers, through any means of communication, to perform invention development services in this state. However, an invention developer does not include the following:

a. A person licensed by a state or the United States to render legal advice, if the person acts within the scope of the license. However, if the person is a corporation, all of its stockholders or members must be licensed. If the person is a partnership, all of its partners must be licensed.

b. A department or agency of a federal or state government.

c. A political subdivision.

d. A nonprofit organization registered pursuant to state law.

e. A charitable, scientific, educational, or religious organization registered pursuant to state law.

f. A person who does not charge a fee for invention development services.

g. A person who provides researching, marketing, surveying, or other kinds of consulting services to professional manufacturers, marketers, publishers, or others purchasing such services as an adjunct to their traditional commercial enterprises.

9. *"Invention development services"* or *"services"* means acts required, promised to be performed, or actually performed by an invention developer for a customer pursuant to a contract which involves facilitating the development, promotion, licensing, publishing, exhibiting, or marketing of an invention.

92 Acts, ch 1114, §4

523G.4 Initial disclosures.

1. If an invention developer contemplates entering into a contract or if the invention developer contemplates performance of a phase covered in a contract, the invention developer shall notify the customer by a written statement. The invention developer shall deliver to the customer the written notice together with a copy of each contract or a written summary of the general terms of each contract, including the total cost or consideration required from the customer, before the customer first executes the contract.

2. The invention developer shall make a written disclosure to the customer of the information required in this section. The disclosure shall be made in either the first written communication from the invention developer to a specific customer or at the first meeting between the invention developer and a customer. The written disclosure shall contain all of the following:

a. The median fee based on fees charged to all customers who have executed contracts with the invention developer in the preceding six months, excluding customers who have executed a contract in the preceding thirty days.

b. A single statement setting forth both of the following:

(1) The total number of customers who have executed contracts with the invention developer, except that the number need not reflect those customers who have executed contracts within the preceding thirty days.

(2) The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract. The amount received by a customer reported on the statement shall only include income earned from the successful development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to the contract executed between the invention developer and the customer.

c. A notice appearing in substantially the following form:

WARNING

The following disclosure is required by section 523G.4 of the Iowa Code:

The person you are dealing with is an invention developer regulated under chapter 523G of the Iowa Code. Unless an invention developer is an attorney licensed to practice in this state, the invention developer is prohibited from providing you legal advice concerning patent, copyright, or trademark law or to advise you of whether your creation, idea, or invention may be patentable or may be protected under the patent, copyright, or trademark laws of the United States or any other law. A registered patent agent may give advice as to patentability and protection available under the patent laws.

A patent, copyright, or trademark protection cannot be acquired for you by the invention developer. Your potential patent rights may be adversely affected by any attempt to commercialize your idea or invention before a patent application covering it is filed. Nonconfidential disclosures of your creation, idea, or invention may also trigger a one-year statutory deadline for filing a patent application in the United States, after which you would be banned from receiving any patent protection in the United States, and would prevent you from obtaining valid patent rights in countries whose law provides that patent applications must be filed before there is a public disclosure.

Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyright, patent, or trademark rights of other persons if you proceed to make, use, or sell your creation, idea, or invention.

If you assign even a partial interest in the invention to the invention developer, the invention developer may have the right to assign or license its interest in the invention, or make, use, and sell the creation, idea, or invention without your consent and may not have to share the profits with you.

92 Acts, ch 1114, §5; 99 Acts, ch 96, §48

523G.5 Contracts.

1. A contract shall set forth information required in this section in at least ten point type.

2. The contract shall describe fully and in detail the services that the invention developer contracts to perform for the customer.

3. The contract shall state the following information:

a. If the invention developer contracts to construct one or more prototypes, models, or devices embodying the invention of the customer, the total number of prototypes to be constructed and whether the invention developer contracts to sell or distribute such prototypes, models, or devices.

b. If an oral or written estimate of customer earnings is made, the estimate and the data upon which it is based.

c. A single statement setting forth both of the following:

(1) The total number of customers who have executed contracts with the invention developer, except that the number need not reflect those customers who have contracted within the preceding thirty days.

(2) The number of customers who have received from the invention developer's services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract. The amount received by a customer reported on the statement shall only include payments for services performed by the invention developer involving the development, promotion, licensing, publishing, exhibiting, or marketing of the customer's invention pursuant to their contract.

d. The expected date of completion of the invention development services.

e. The extent to which the terms of the contract effectuate or make possible the purchase by the invention developer of an interest in the title to an invention.

f. A statement explaining that the invention developer is required to maintain all records and correspondence relating to the invention develop-

ment services performed for that customer for a period not less than three years after expiration of the contract.

g. A statement explaining that the records and correspondence required to be maintained pursuant to section 523G.8 shall be made available to the customer or representative for review and copying at the expense of the customer on the premises of the invention developer during normal business hours upon seven days' written notice from the date of delivery sent by certified mail.

h. The name of the person contracting to perform the invention development services, all names under which the person is doing or has done business as an invention developer during the previous ten years, the names of all parent and subsidiary entities to the person, and the names of all entities that have a contractual obligation to perform invention development services for the person.

i. The principal business address of the invention developer and the name and address of its agent in this state authorized to receive service of process in this state.

4. *a.* The customer has an unconditional right to cancel a contract for invention development services at any time before the third business day following the date the customer receives an executed copy of the contract.

b. The customer must notify the invention developer of a cancellation by written notice delivered personally or by certified mail. A notice delivered personally must be delivered to the invention developer's place of business by the end of the third business day following the date that the contract was executed, and the cancellation shall take effect upon delivery. Upon delivery of the personal notice, the invention developer shall return a receipt to the customer acknowledging receipt of the cancellation. A notice delivered by certified mail must be mailed by midnight of the third day following the date that the contract was executed, and the cancellation shall become effective upon the date the receipt is signed. A notice of cancellation may take any form which indicates that the customer no longer intends to be bound by the contract.

c. Within ten business days after receipt of the notice of cancellation, the invention developer shall deliver to the customer, personally or by certified mail, all moneys paid, any note or other evidence of indebtedness, and all materials provided by the customer. The invention developer may condition payment upon a receipt by the customer acknowledging personal delivery.

5. The following shall be included in the contract:

a. A disclosure statement in substantially the following form shall appear in boldface type and be located conspicuously on a cover sheet that contains no other writing:

NOTICE

The following disclosure is required by section 523G.5 of the Iowa Code and is expressly made a part of this contract:

You have the right to cancel this contract for any reason at any time within three (3) business days from the date you and the invention developer sign the contract and you receive a fully executed copy. To exercise this option you may use certified mail or personally deliver to this invention developer written notice of your cancellation. The method and time for notification is set forth in this contract immediately above the place for your signature. The invention developer must return by certified mail or personal delivery, within ten business days after receipt of the cancellation notice, all money paid and all materials provided either by you or by another party on your behalf.

Unless the invention developer is an attorney, the invention developer is prohibited from giving you legal advice concerning patent, copyright, or trademark law, whether your creation, idea, or invention may be patentable, or protected under the patent, copyright, or trademark laws of the United States or any other law. A registered patent agent may give advice as to patentability and protection available under the patent laws.

A patent, copyright, or trademark protection will not be acquired for you by the invention developer or by this contract. Your potential patent rights may be adversely affected by any attempt to commercialize your idea or invention before a patent application covering it is filed. Nonconfidential disclosures of your idea or invention may also trigger certain statutory deadlines for filing a patent application in the United States and would prevent you from obtaining valid patent rights in countries whose law provides that patent applications must be filed before there is a public disclosure. Your failure to identify and investigate existing patents, trademarks, or registered copyrights may place you in jeopardy of infringing the copyright, patent, or trademark rights of other persons if you proceed to make, use, or sell your idea or invention.

b. A disclosure statement in substantially the following form shall appear in ten point boldface type immediately above the place where the customer is to sign:

ATTENTION!
(READ CAREFULLY)

You have three (3) business days during which you may cancel this contract for any reason. You must deliver written notice of the cancellation by certified mail or personally to the invention developer. This opportunity to cancel the contract will expire on the last date that you are allowed to mail or deliver notice. If you choose to use certified mail

to deliver your notice, it must be placed in the United States mail addressed to (insert name of invention developer), at (insert address of invention developer's place of business) with first class postage prepaid before midnight of (insert proper date). If you choose to personally deliver your notice to the invention developer, it must be delivered by the end of the normal business day on (insert proper date). You are advised to obtain a written statement from the invention developer acknowledging receipt.

92 Acts, ch 1114, §6

523G.6 Evidence of financial responsibility.

1. An invention developer shall maintain as security evidence of financial responsibility as approved by the commissioner. The security shall be either a bond or cash deposit in an amount which is equal to the greater of either ten percent of the invention developer's gross income from the invention development business in this state during the invention developer's preceding fiscal year, or twenty-five thousand dollars. The commissioner shall approve the security before the invention developer renders or offers to render invention development services in this state. The invention developer shall have ninety days beginning on the first day of the invention developer's new fiscal year to change the security as necessary to conform to the requirements of this subsection.

2. A surety who issues a bond must be approved by the commissioner. A copy of the bond shall be filed in a manner and according to procedures approved by the commissioner. A cash deposit shall be filed with the treasurer of state in a manner and according to procedures approved by the treasurer of state in consultation with the commissioner. The treasurer of state shall not refund a deposit until sixty days following either the date that the invention developer has ceased doing business in the state or a bond has been filed with the commissioner in compliance with this section.

3. The security shall be in favor of the state for the benefit of any person entering into a contract with and damaged by an invention developer, if the damages are caused by one of the following:

a. A failure by the invention developer to perform the terms of the contract.

b. The insolvency of the invention developer or the cessation of the invention developer's business.

c. The intentional violation of a provision of this chapter by the invention developer.

A person claiming against the security may maintain an action at law against the invention developer. An action against a bond may also include the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond shall not exceed the amount of the bond.

92 Acts, ch 1114, §7, 13

Implementation contingent upon appropriation; 92 Acts, ch 1114, §13; 94 Acts, ch 1031, §21

523G.7 Negotiable instruments.

An invention developer shall not take a negotiable instrument from a customer as part of a contract, unless the negotiable instrument is a check constituting evidence of the customer's obligation. A person in possession of a negotiable instrument is not a holder in due course as defined in section 554.3302, if the person takes a negotiable instrument from a customer in violation of this section.

92 Acts, ch 1114, §8

523G.8 Records and correspondence.

An invention developer shall maintain all records and correspondence relating to performance of each invention development contract for not less than three years after expiration of the contract.

92 Acts, ch 1114, §9

523G.9 Compliance with other laws, violations and penalties.

1. The provisions of this chapter are not exclusive and do not relieve persons or a contract from compliance with other applicable law.

2. A contract which fails to comply with the applicable provisions of this chapter is unenforceable against the customer as contrary to public policy, unless the invention developer proves all of the following:

a. The noncompliance resulted from an error.

b. The invention developer followed reasonable procedures adopted to avoid such errors.

c. The invention developer promptly made an appropriate correction upon discovery of the noncompliance.

3. A contract executed by an invention developer is unenforceable against the customer, if the invention developer used deceptive practices, with an intent to cause reliance, regardless of whether the customer was actually misled, deceived, or damaged.

4. A provision of a contract which waives a provision of this chapter is contrary to public policy and is void and unenforceable.

5. A person may bring a civil action against an invention developer that uses a deceptive practice. The person may be awarded damages together with costs and disbursements, including reasonable attorney fees. The court in its discretion may increase the award of damages to an amount not to exceed three times the damages or two thousand five hundred dollars, whichever is greater.

6. Failure to make an initial disclosure required by section 523G.4 shall render any contract subsequently entered into between the customer and the invention developer voidable by the customer.

7. A violation of this chapter or a rule adopted by the commissioner pursuant to this chapter is a

violation of section 714.16. The remedies and penalties provided by section 714.16, including but not limited to provisions relating to injunctive relief and penalties, apply to violations of this chapter.

92 Acts, ch 1114, §10

523G.10 Registration statement. Repealed by 98 Acts, ch 1119, § 6.

523G.11 Powers and duties of the commissioner. Repealed by 98 Acts, ch 1119, § 6.

CHAPTER 523H

FRANCHISES

Agreements entered into on or after July 1, 2000, are subject to §537A.10; see §523H.2A

523H.1 Definitions.
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523H.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Affiliate"* means a person controlling, controlled by, or under common control with another person, every officer or director of such a person, and every person occupying a similar status or performing similar functions.

2. *"Business day"* means a day other than a Saturday, Sunday, or federal holiday.

3. *a. "Franchise"* means either of the following:

(1) An oral or written agreement, either express or implied, which provides all of the following:

(a) Grants the right to distribute goods or provide services under a marketing plan prescribed or suggested in substantial part by the franchisor.

(b) Requires payment of a franchise fee to a franchisor or its affiliate.

(c) Allows the franchise business to be substantially associated with a trademark, service mark, trade name, logotype, advertisement, or other commercial symbol of or designating the franchisor or its affiliate.

(2) A master franchise.

b. "Franchise" does not include any business that is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or licensor on such premises, including, without limitation, leased departments, licensed departments, and concessions and the leased or licensed department operates only under the trademark, trade name, service mark, or other commercial symbol designating the lessor or licensor.

c. "Franchise" also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq. The term *"refiner"* means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. *"Franchise"* also does not include a contract entered into by any person regulated under chapter 123, 322, 322A, 322B, 322C, 322D, 322F, 522B, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

4. *"Franchise fee"* means a direct or indirect payment to purchase or operate a franchise. Franchise fee does not include any of the following:

a. Payment of a reasonable service charge to the issuer of a credit card by an establishment accepting the credit card.

b. Payment to a trading stamp company by a person issuing trading stamps in connection with a retail sale.

c. An agreement to purchase at a bona fide

wholesale price a reasonable quantity of tangible goods for resale.

d. The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements, real property, supplies, or other materials reasonably necessary to enter into or continue a business.

e. Payments by a purchaser pursuant to a bona fide loan from a seller to the purchaser.

f. Payment of rent which reflects payment for the economic value of leased real or personal property.

g. The purchase or agreement to purchase promotional or demonstration supplies, materials, or equipment furnished at fair market value and not intended for resale.

5. *"Franchisee"* means a person to whom a franchise is granted. Franchisee includes the following:

a. A subfranchisor with regard to its relationship with a franchisor.

b. A subfranchisee with regard to its relationship with a subfranchisor.

6. *"Franchisor"* means a person who grants a franchise or master franchise, or an affiliate of such a person. Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this chapter.

7. *"Marketing plan"* means a plan or system concerning a material aspect of conducting business. Indicia of a marketing plan include any of the following:

a. Price specification, special pricing systems, or discount plans.

b. Sales or display equipment or merchandising devices.

c. Sales techniques.

d. Promotional or advertising materials or cooperative advertising.

e. Training regarding the promotion, operation, or management of the business.

f. Operational, managerial, technical, or financial guidelines or assistance.

8. *"Master franchise"* means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

9. *"Offer"* or *"offer to sell"* means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

10. *"Person"* means a person as defined in section 4.1, subsection 20.

11. *"Sale"* or *"sell"* means every contract or agreement of sale of, contract to sell or disposition of, a franchise or interest in a franchise for value.

12. *"Subfranchise"* means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

13. *"Subfranchisee"* means a person who is granted a franchise from a subfranchisor.

14. *"Subfranchisor"* means a person who is granted a master franchise.

92 Acts, ch 1134, §1; 2001 Acts, ch 16, §13, 37

2001 amendment to subsection 3, paragraph c, takes effect January 1, 2002; 2001 Acts, ch 16, §37

523H.2 Applicability.

This chapter applies to a new or existing franchise that is operated in the state of Iowa. For purposes of this chapter, the franchise is operated in this state only if the premises from which the franchise is operated is physically located in this state. For purposes of this chapter, a franchise including marketing rights in or to this state, is deemed to be operated in this state only if the franchisee's principal business office is physically located in this state. This chapter does not apply to a franchise solely because an agreement relating to the franchise provides that the agreement is subject to or governed by the laws of this state. The provisions of this chapter do not apply to any existing or future contracts between Iowa franchisors and franchisees who operate franchises located out of state.

92 Acts, ch 1134, §2; 95 Acts, ch 117, §1

523H.2A Applicability — limitation.

1. Notwithstanding section 523H.2, this chapter does not apply to a franchise agreement which is entered into on or after July 1, 2000. A franchise agreement which is entered into on or after July 1, 2000, shall be subject to section 537A.10.

2. This chapter shall govern all actions with respect to a franchise agreement entered into prior to July 1, 2000, no matter when the occurrence giving rise to such action occurs.

2000 Acts, ch 1093, §2

523H.3 Jurisdiction and nonjudicial resolution of disputes.

1. A provision in a franchise agreement restricting jurisdiction to a forum outside this state is void with respect to a claim otherwise enforceable under this chapter.

2. A civil action or proceeding arising out of a franchise may be commenced wherever jurisdiction over the parties or subject matter exists, even if the agreement limits actions or proceedings to a designated jurisdiction.

3. Parties to a franchise may agree to independent arbitration, mediation, or other nonjudicial resolution of an existing or future dispute.

4. Venue for a civil action commenced under this chapter shall be determined in accordance with chapter 616.

92 Acts, ch 1134, §3

523H.4 Waivers void.

A condition, stipulation, or provision requiring a franchisee to waive compliance with or relieving a person of a duty or liability imposed by or a right

provided by this chapter or a rule or order under this chapter is void. This section shall not affect the settlement of disputes, claims, or civil lawsuits arising or brought pursuant to this chapter.

92 Acts, ch 1134, §4

523H.5 Transfer of franchise.

1. A franchisee may transfer the franchised business and franchise to a transferee, provided that the transferee satisfies the reasonable current qualifications of the franchisor for new franchisees. For the purposes of this section, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to the transfer is not arbitrary or capricious.

2. Except as otherwise provided in this section, a franchisor may exercise a right of first refusal contained in a franchise agreement after receipt of a proposal from the franchisee to transfer the franchise.

3. A franchisor may require as a condition of a transfer any of the following:

a. That the transferee successfully complete a reasonable training program.

b. That a reasonable transfer fee be paid to reimburse the franchisor for the franchisor's reasonable and actual expenses directly attributable to the transfer.

c. That the franchisee pay or make provision reasonably acceptable to the franchisor to pay any amount due the franchisor or the franchisor's affiliate.

d. That the financial terms of the transfer comply at the time of the transfer with the franchisor's current financial requirements for franchisees.

4. A franchisee may transfer the franchisee's interest in the franchise, for the unexpired term of the franchise agreement, and a franchisor shall not require the franchisee or the transferee to enter into a new or different franchise agreement as a condition of the transfer.

5. A franchisee shall give the franchisor no less than sixty days' written notice of a transfer which is subject to the provisions of this section, and on request from the franchisor shall provide in writing the ownership interests of all persons holding or claiming an equitable or beneficial interest in the franchise subsequent to the transfer or the franchisee, as appropriate. A franchisee shall not circumvent the intended effect of a contractual provision governing the transfer of the franchise or an interest in the franchise by means of a management agreement, lease, profit-sharing agreement, conditional assignment, or other similar device.

6. A franchisor shall not transfer its interest in a franchise unless the franchisor makes reasonable provision for the performance of the franchisor's obligations under the franchise agreement by the transferee. For purposes of this subsection, *"reasonable provision"* means that upon the transfer, the entity assuming the franchisor's obligations has the financial means to perform the franchisor's obligations in the ordinary course of business, but does not mean that the franchisor transferring the franchise is required to guarantee obligations of the underlying franchise agreement.

7. A transfer by a franchisee is deemed to be approved sixty days after the franchisee submits the request for consent to the transfer unless the franchisor withholds consent to the transfer as evidenced in writing, specifying the reason or reasons for withholding the consent. The written notice must be delivered to the franchisee prior to the expiration of the sixty-day period. Any such notice is privileged and is not actionable based upon a claim of defamation.

8. A franchisor shall not discriminate against a proposed transferee of a franchise on the basis of race, color, national origin, religion, sex, or disability.

9. A franchisor, as a condition to a transfer of a franchise, shall not obligate a franchisee to undertake obligations or relinquish any rights unrelated to the franchise proposed to be transferred, or to enter into a release of claims broader than a similar release of claims by the franchisor against the franchisee which is entered into by the franchisor.

10. A franchisor, after a transfer of a franchise, shall not seek to enforce any covenant of the transferred franchise against the transferor which prohibits the transferor from engaging in any lawful occupation or enterprise. However, this subsection does not prohibit the franchisor from enforcing a contractual covenant against the transferor not to exploit the franchisor's trade secrets or intellectual property rights, unless otherwise agreed to by the parties.

11. For purposes of this section, *"transfer"* means any change in ownership or control of a franchise, franchised business, or a franchisee.

12. The following occurrences shall not be considered transfers requiring the consent of the franchisor under a franchise agreement, and shall not result in the imposition of any penalties or make applicable any right of first refusal by the franchisor:

a. The succession of ownership of a franchise upon the death or disability of a franchisee, or of an owner of a franchise, to the surviving spouse, heir, or a partner active in the management of the franchisee unless the successor fails to meet within one year the then current reasonable qualifications of the franchisor for franchisees and the enforcement of the reasonable current qualifications is not arbitrary or capricious.

b. Incorporation of a proprietorship franchisee, provided that such incorporation does not prohibit a franchisor from requiring a personal guaranty by the franchisee of obligations related to the franchise.

c. A transfer within an existing ownership group of a franchise provided that more than fifty percent of the franchise is held by persons who meet the franchisor's reasonable current qualifications for franchisees. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

d. A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children, provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

e. A transfer of less than a controlling interest in the franchise of an employee stock ownership plan, or employee incentive plan, provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications for franchisees. If less than fifty percent would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

f. A grant or retention of a security interest in the franchised business or its assets, or an ownership interest in the franchisee, provided the security agreement establishes an obligation on the part of the secured party enforceable by the franchisor to give the franchisor notice of the secured party's intent to foreclose on the collateral simultaneously with notice to the franchisee, and a reasonable opportunity to redeem the interests of the secured party and recover the secured party's interest in the franchise or franchised business by paying the secured obligation.

13. A franchisor shall not interfere or attempt to interfere with any disposition of an interest in a franchise or franchised business as described in subsection 12, paragraphs *"a"* through *"f"*.

92 Acts, ch 1134, §5; 95 Acts, ch 117, §2

523H.6 Encroachment.

1. If a franchisor develops, or grants to a franchisee the right to develop, a new outlet or location which sells essentially the same goods or services under the same trademark, service mark, trade name, logotype, or other commercial symbol as an existing franchisee and the new outlet or location has an adverse effect on the gross sales of the existing franchisee's outlet or location, the existing adversely affected franchisee has a cause of action for monetary damages in an amount calculated pursuant to subsection 3, unless any of the following apply:

a. The franchisor has first offered the new outlet or location to the existing franchisee on the same basic terms and conditions available to the other potential franchisee, or, if the new outlet or location is to be owned by the franchisor, on the terms and conditions that would ordinarily be offered to a franchisee for a similarly situated outlet or location.

b. The adverse impact on the existing franchisee's annual gross sales, based on a comparison to the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location, is determined to have been less than five percent during the first twelve months of operation of the new outlet or location.

c. The existing franchisee, at the time the franchisor develops, or grants to a franchisee the right to develop, a new outlet or location, is not in compliance with the franchisor's then current reasonable criteria for eligibility for a new franchise. A franchisee determined to be ineligible pursuant to this paragraph shall be afforded the opportunity to seek compensation pursuant to the formal procedure established under paragraph *"d"*, subparagraph (2). Such procedure shall be the franchisee's exclusive remedy.

d. The franchisor has established both of the following:

(1) A formal procedure for hearing and acting upon claims by an existing franchisee with regard to a decision by the franchisor to develop, or grant to a franchisee the right to develop, a new outlet or location, prior to the opening of the new outlet or location.

(2) A reasonable formal procedure for awarding compensation or other form of consideration to a franchisee to offset all or a portion of the franchisee's lost profits caused by the establishment of the new outlet or location. The procedure shall involve, at the option of the franchisee, one of the following:

(a) A panel, comprised of an equal number of members selected by the franchisee and the franchisor, and one additional member to be selected unanimously by the members selected by the franchisee and the franchisor.

(b) A neutral third-party mediator or an arbitrator with the authority to make a decision or award in accordance with the formal procedure. The procedure shall be deemed reasonable if approved by a majority of the franchisor's franchisees in the United States, either individually or by

an elected representative body.

(c) Arbitration of any dispute before neutral arbitrators pursuant to the rules of the American arbitration association. The award of an arbitrator pursuant to this subparagraph subdivision is subject to judicial review pursuant to chapter 679A.

2. A franchisor shall establish and make available to its franchisees a written policy setting forth its reasonable criteria to be used by the franchisor to determine whether an existing franchisee is eligible for a franchise for an additional outlet or location.

3. *a.* In establishing damages under a cause of action brought pursuant to this section, the franchisee has the burden of proving the amount of lost profits attributable to the compensable sales. In any action brought under this section, the damages payable shall be limited to no more than three years of the proven lost profits. For purposes of this subsection, *"compensable sales"* means the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location less both of the following:

(1) Five percent.

(2) The actual gross sales from the operation of the existing outlet or location for the twelve-month period immediately following the opening of the new outlet or location.

b. Compensable sales shall exclude any amount attributable to factors other than the opening and operation of the new outlet or location.

4. Any cause of action brought under this section must be filed within eighteen months of the opening of the new outlet or location or within three months after the completion of the procedure under subsection 1, paragraph *"d"*, subparagraph (2), whichever is later.

5. Upon petition by the franchisor or the franchisee, the district court may grant a permanent or preliminary injunction to prevent injury or threatened injury for a violation of this section or to preserve the status quo pending the outcome of the formal procedure under subsection 1, paragraph *"d"*, subparagraph (2).

92 Acts, ch 1134, §6; 95 Acts, ch 117, §3

523H.7 Termination.

1. Except as otherwise provided by this chapter, a franchisor shall not terminate a franchise prior to the expiration of its term except for good cause. For purposes of this section, *"good cause"* is cause based upon a legitimate business reason. *"Good cause"* includes the failure of the franchisee to comply with any material lawful requirement of the franchise agreement, provided that the termination by the franchisor is not arbitrary or capricious when compared to the actions of the franchisor in other similar circumstances. The burden of proof of showing that action of the franchisor is arbitrary or capricious shall rest with the franchisee.

2. Prior to termination of a franchise for good cause, a franchisor shall provide a franchisee with written notice stating the basis for the proposed termination. After service of written notice, the franchisee shall have a reasonable period of time to cure the default, which in no event shall be less than thirty days or more than ninety days. In the event of nonpayment of moneys due under the franchise agreement, the period to cure need not exceed thirty days.

3. Notwithstanding subsection 2, a franchisor may terminate a franchisee upon written notice and without an opportunity to cure if any of the following apply:

a. The franchisee or the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent.

b. All or a substantial part of the assets of the franchise or the business to which the franchisee relates are assigned to or for the benefit of any creditor which is subject to chapter 681. An assignment for the benefit of any creditor pursuant to this paragraph does not include the granting of a security interest in the normal course of business.

c. The franchisee voluntarily abandons the franchise by failing to operate the business for five consecutive business days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless the failure to operate is due to circumstances beyond the control of the franchisee.

d. The franchisor and franchisee agree in writing to terminate the franchise.

e. The franchisee knowingly makes any material misrepresentations or knowingly omits to state any material facts relating to the acquisition or ownership or operation of the franchise business.

f. After three material breaches of a franchise agreement occurring within a twelve-month period, for which the franchisee has been given notice and an opportunity to cure, the franchisor may terminate upon any subsequent material breach within the twelve-month period without providing an opportunity to cure, provided that the action is not arbitrary and capricious.

g. The franchised business or business premises of the franchisee are lawfully seized, taken over, or foreclosed by a government authority or official.

h. The franchisee is convicted of a felony or any other criminal misconduct which materially and adversely affects the operation, maintenance, or goodwill of the franchise in the relevant market.

i. The franchisee operates the franchised business in a manner that imminently endangers the public health and safety.

92 Acts, ch 1134, §7; 95 Acts, ch 117, §4

523H.8 Nonrenewal of a franchise.

1. A franchisor shall not refuse to renew a franchise unless both of the following apply:

a. The franchisee has been notified of the franchisor's intent not to renew at least six months prior to the expiration date or any extension of the franchise agreement.

b. Any of the following circumstances exist:

(1) Good cause exists, provided that the refusal of the franchisor to renew is not arbitrary or capricious. For purposes of this section, *"good cause"* means cause based on a legitimate business reason.

(2) The franchisor and franchisee agree not to renew the franchise.

(3) The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee, provided that upon expiration of the franchise, the franchisor agrees not to seek to enforce any covenant of the nonrenewed franchisee not to compete with the franchisor or franchisees of the franchisor.

2. As a condition of renewal of the franchise, a franchise agreement may require that the franchisee meet the then current requirements for franchises and that the franchisee execute a new agreement incorporating the then current terms and fees for new franchises.

92 Acts, ch 1134, §8; 95 Acts, ch 117, §5

523H.9 Franchisee's right to associate.

A franchisor shall not restrict a franchisee from associating with other franchisees or from participating in a trade association, and shall not retaliate against a franchisee for engaging in these activities.

92 Acts, ch 1134, §9

523H.10 Duty of good faith.

A franchise imposes on the parties a duty of good faith in performance and enforcement of the franchise agreement. *"Good faith"* means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

92 Acts, ch 1134, §10

523H.11 Repurchase of assets.

A franchisor shall not prohibit a franchisee from, or enforce a prohibition against a franchisee, engaging in any lawful business at any location after a termination or refusal to renew by a franchisor, unless it is one which relies on a substantially similar marketing program as the terminated or nonrenewed franchise or unless the franchisor offers in writing no later than ten business days before expiration of the franchise to purchase the assets of the franchised business for its fair market value as a going concern. The value of the assets shall not include the goodwill of the business attributable to the trademark licensed to the franchisee in the franchise agreement. The offer may be conditioned upon the ascertainment of a fair market value by an impartial appraiser. This section does not apply to assets of the franchised business which the franchisee did not purchase from the franchisor, or the agent of the franchisor.

92 Acts, ch 1134, §11; 95 Acts, ch 117, §6

523H.12 Independent sourcing.

1. Except as provided in subsection 2, a franchisor shall allow a franchisee to obtain equipment, fixtures, supplies, and services used in the establishment and operation of the franchised business from sources of the franchisee's choosing, provided that such goods and services meet standards as to their nature and quality promulgated by the franchisor.

2. Subsection 1 of this section does not apply to reasonable quantities of inventory goods or services, including display and sample items, that the franchisor requires the franchisee to obtain from the franchisor or its affiliate, but only if the goods or services are central to the franchised business and either are actually manufactured or produced by the franchisor or its affiliate, or incorporate a trade secret owned by the franchisor or its affiliate.

92 Acts, ch 1134, §12

523H.13 Private civil action.

A person who violates a provision of this chapter or order issued under this chapter is liable for damages caused by the violation, including, but not limited to, costs and reasonable attorneys' and experts' fees, and subject to other appropriate relief including injunctive and other equitable relief.

92 Acts, ch 1134, §13

523H.14 Choice of law.

A condition, stipulation, or provision requiring the application of the law of another state in lieu of this chapter is void.

92 Acts, ch 1134, §14

523H.15 Construction with other law.

This chapter does not limit any liability that may exist under another statute or at common law. Prior law governs all actions based on facts occurring before July 1, 1992.

92 Acts, ch 1134, §15

523H.16 Construction.

This chapter shall be liberally construed to effectuate its purposes.

92 Acts, ch 1134, §16

523H.17 Severability.

If any provision or clause of this chapter or any application of this chapter to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

92 Acts, ch 1134, §17

CHAPTER 523I

CEMETERIES

See also chapter 566A

523I.1 Definitions.
523I.2 Applicability — cemeteries commencing business after July 1, 1995.
523I.3 Permit requirements.
523I.4 Denial, suspension, or revocation of permit.
523I.5 Liquidation.
523I.6 Powers and duties of perpetual care cemeteries.
523I.7 Investigations.

523I.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Abandoned cemetery"* means any cemetery where there has been a failure to cut grass or weeds or care for graves, grave markers, walls, fences, driveways, and buildings, or for which proper records have not been maintained.

2. *"Cemetery"* means a cemetery, mausoleum, columbarium, or other space held for the purpose of burial, entombment, or inurnment of human remains, and which is subject to this chapter.

3. *"Commissioner"* means the commissioner of insurance or the deputy appointed under section 502.601.

4. *"Interment rights"* means a right of use conveyed by contract or property ownership to inter human remains in a columbarium, grave, mausoleum, lawn crypt, or undeveloped space.

5. *"Perpetual care cemetery"* means a cemetery which has established a perpetual care fund for the maintenance, repair, and care of all interment spaces subject to perpetual care within the cemetery in compliance with section 566A.3 or 566A.4.

95 Acts, ch 149, §22; 96 Acts, ch 1034, §49

523I.2 Applicability — cemeteries commencing business after July 1, 1995.

A cemetery which is organized or commences business in this state on or after July 1, 1995, shall operate as a perpetual care cemetery and is subject to this chapter and other applicable law.

95 Acts, ch 149, §23

523I.3 Permit requirements.

1. A perpetual care cemetery shall not sell or offer interment rights to the public without a permit as provided for in this section.

2. Applications for a permit shall be made to and filed with the commissioner on forms approved by the commissioner. If the application contains the following information, the commissioner shall issue the license:

a. The name and principal address of the applicant.

b. The identity of the applicant's owner or owners.

c. Evidence of a trust fund for cemetery maintenance and care in compliance with section 566A.3 or 566A.4.

3. Each permit issued under this chapter shall expire on June 30 of the fourth year following the date of issuance.

95 Acts, ch 149, §24; 96 Acts, ch 1160, §18

523I.4 Denial, suspension, or revocation of permit.

The commissioner, pursuant to chapter 17A, may deny, suspend, or revoke any permit to operate a cemetery if the commissioner finds any of the following:

1. The cemetery has committed a fraudulent practice, or the cemetery's trust assets, warehoused merchandise, surety bonds, or insurance funding are in material noncompliance with chapter 523A or section 566A.3 or 566A.4.

2. An owner or officer of the cemetery has been convicted of a felony related to the sale of interment rights or the sale of funeral services, funeral merchandise, or cemetery merchandise, as defined in section 523A.102, subsections 5, 13, and 14.

95 Acts, ch 149, §25

523I.5 Liquidation.

1. *Grounds for liquidation.* The commissioner may petition the district court for an order directing the commissioner to liquidate a perpetual care cemetery on any of the following grounds:

a. The cemetery's trust fund is in material noncompliance with the requirements of section 566A.3 or 566A.4 and is insolvent.

b. The cemetery's trust fund is in material noncompliance with the requirements of section 566A.3 or 566A.4 and the condition of the cemetery is such that the further transaction of business would be hazardous, financially or otherwise, to its customers or the public.

c. The cemetery has been abandoned.

2. *Liquidation order.*

a. An order to liquidate the business of a perpetual care cemetery shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the cemetery and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the cemetery ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of a cemetery and of the cemetery's creditors, customers, owners, and other persons interested in the cemetery's estate shall become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

c. At the time of petitioning for an order of liquidation, or at any time after the time of petitioning, the commissioner, after making appropriate findings of a cemetery's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the cemetery's obligations during the pendency of an appeal. The plan shall provide for the continued performance of interment rights contracts in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant cemetery's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain customers and claimants over creditors and interested parties as well as other customers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such customers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

3. *Powers of liquidator.*

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers and consultants.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the cemetery all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the cemetery. If the property of the cemetery does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of the insurance division cemetery fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division cemetery fund for the use of the division out of the first available moneys of the cemetery.

(5) Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records, or other documents which the liquidator deems relevant to the inquiry.

(6) Collect debts and moneys due and claims belonging to the cemetery, wherever located. Pursuant to this subparagraph, the liquidator may do any of the following:

(a) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(b) Perform acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(c) Pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the cemetery.

(8) Use assets of the cemetery under a liquidation order to transfer obligations of preneed funeral contracts to a solvent cemetery, if the transfer can be accomplished without prejudice to applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the cemetery at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases, and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

(10) Borrow money on the security of the cemetery's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and have priority over any other class 1 claims under the priority of distribution established in subsection 18.

(11) Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the cemetery is a party.

(12) Continue to prosecute and to institute in the name of the cemetery or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, customers, or owners against an officer of the cemetery or any other person.

(14) Remove records and property of the cemetery to the offices of the commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

(17) File necessary documents for recording in the office of a recorder of deeds or record office in this state or elsewhere where property of the cemetery is located.

(18) Assert defenses available to the cemetery as against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the cemetery after a petition in liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce the rights, remedies, and powers of a creditor, customer, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph *"a"* that may be necessary or appropriate to accomplish the purposes of this chapter.

4. *Notice to creditors and others.*

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

(1) By first-class mail to all persons known or reasonably expected to have claims against the cemetery by mailing a notice to their last known address as indicated by the records of the cemetery.

(2) By publication in a newspaper of general circulation in the county in which the cemetery has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph *"a"* shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this section, the distribution of assets of the cemetery under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

5. *Actions by and against liquidator.*

a. After the issuance of an order appointing a liquidator of a cemetery, an action at law or equity shall not be brought against the cemetery in this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the cemetery necessitates intervention in an action against the cemetery that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the cemetery, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as

applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the cemetery upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period had not expired at the date of the filing of the petition, the liquidator, for the benefit of the estate, may take any action or do any act, required of or permitted to the cemetery, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitation or defense of laches shall not run with respect to an action against a cemetery between the filing of a petition for liquidation against the cemetery and the denial of the petition. An action against the cemetery that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

6. *Collection and list of assets.*

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the cemetery's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph *"a"*.

7. *Fraudulent transfers prior to petition.*

a. A transfer made and an obligation incurred by a cemetery within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by a cemetery ordered to be liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court, on due notice, may order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph *"c"*.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the cemetery could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

8. *Fraudulent transfer after petition.*

a. After a petition for liquidation has been filed a transfer of real property of the cemetery made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the cemetery within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

b. After a petition for liquidation has been filed and before either the receiver takes possession of the property of the cemetery or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the cemetery made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

(2) If acting in good faith, a person indebted to the cemetery or holding property of the cemetery may pay the debt or deliver the property, or any part of the property, to the cemetery or upon the cemetery's order as if the petition were not pending.

(3) A person having actual knowledge of the pending liquidation is not acting in good faith.

(4) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as provided in this subsection, a transfer by or on behalf of the cemetery after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

c. A person receiving any property from the cemetery or any benefit of the property of the cemetery which is a fraudulent transfer under paragraph *"a"* is personally liable for the property or benefit and shall account to the liquidator.

d. This chapter does not impair the negotiability of currency or negotiable instruments.

9. *Voidable preferences and liens.*

a. (1) A preference is a transfer of the property of a cemetery to or for the benefit of a creditor for an antecedent debt made or suffered by the cemetery within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the cemetery is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following exist:

(a) The cemetery was insolvent at the time of the transfer.

(b) The transfer was made within four months before the filing of the petition.

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the cemetery was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer, or an employee, attorney, or other person who was in fact in a position of comparable influence in the cemetery to an officer whether or not the person held the position of an officer, owner, or other person, firm, corporation, association, or aggregation of persons with whom the cemetery did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the cemetery could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of paragraph *"b"*, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph *"b"* through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph *"b"* made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as

against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

e. If a lien voidable under paragraph *"a"*, subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of a cemetery before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien is also voidable.

f. The property affected by a lien voidable under paragraphs *"a"* and *"e"* is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction of a proceeding by the liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph *"g"*, the liability of the surety is discharged to the extent of the amount paid to the liquidator.

i. If a creditor has been preferred for property which becomes a part of the cemetery's estate, and afterward in good faith gives the cemetery further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, a cemetery, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the cemetery or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered is governed by the provision of paragraph *"a"*, subparagraph (2), subparagraph subdivision (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or any other person acting on behalf of the cemetery who knowingly participates in giving any preference when the person has reasonable cause to believe the cemetery is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the cemetery or the benefit of the property of the cemetery as a preference voidable under paragraph *"a"* is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

10. *Claims of holder of void or voidable rights.*

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph *"a"* by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph *"a"*.

11. *Liquidator's proposal to distribute assets.*

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

(a) Expenses of administration.

(b) To the extent of the value of the security held, the payment of claims of secured creditors.

(c) Claims falling within the priorities established in subsection 18, paragraphs *"a"* and *"b"*.

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph *"b"*.

12. *Filing of claims.*

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

(1) The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and that the filing satisfies the conditions of subsection 10.

(3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. *Proof of claim.*

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments, if any, made on the debt.

(4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph *"a"* which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph *"a"* and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

d. A judgment or order against a cemetery entered after the date of filing of a successful petition for liquidation, or a judgment or order against the cemetery entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against a cemetery before the filing of the petition need not be considered as evidence of liability or of the amount of damages.

14. *Special claims.*

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

15. *Disputed claims.*

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-

appointed referee. The referee shall submit findings of fact along with a recommendation.

16. *Claims of other person.* If a creditor, whose claim against a cemetery is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the cemetery's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

17. *Secured creditor's claims.*

a. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

18. *Priority of distribution.* The priority of distribution of claims from the cemetery's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

a. Class 1. The costs and expenses of administration, including but not limited to the following:

(1) The actual and necessary costs of preserving or recovering the assets of the cemetery.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) The fees and mileage payable to witnesses.

(5) Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

b. Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. Class 3. Claims under interment rights contracts.

d. Class 4. Claims of general creditors.

e. Class 5. Claims of the federal or any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph *"g"*.

f. Class 6. Claims filed late or any other claims other than claims under paragraph *"g"*.

g. Class 7. The claims of shareholders or other owners.

19. *Liquidator's recommendations to the court.*

a. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization. Unresolved disputes shall be determined under subsection 15. As soon as practicable, the liquidator shall present to the court a report of the claims against the cemetery with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended.

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. *Distribution of assets.* Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

21. *Unclaimed and withheld funds.*

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge,

including the amount distributable to a creditor, owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pursuant to subsection 18. Sums remaining which under subsection 18 would revert to the undistributed assets of the cemetery shall be transferred to the insurance division regulatory fund and become the property of the state as provided under paragraph *"a"*, unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph *"a"*, with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

22. *Termination of proceedings.*

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph *"a"*. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

23. *Reopening liquidation.* At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. *Disposition of records during and after termination of liquidation.* If it appears to the commissioner that the records of a cemetery in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. *External audit of receiver's books.* The court may order audits to be made of the books of the commissioner relating to a receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the receivership.

95 Acts, ch 149, §26

523I.6 Powers and duties of perpetual care cemeteries.

1. Within the boundaries of the cemetery lands that the cemetery owns, a cemetery may perform the following functions:

a. The exclusive care and maintenance of the cemetery.

b. The exclusive interment, entombment, or inurnment of human remains, including the exclusive right to open, prepare for interment, and close all ground, mausoleum, and urn burials. Each preneed contract for burial rights or services shall disclose, pursuant to the cemetery's bylaws, rules, and regulations, whether opening and closing of the burial space is included in the contract, and, if not, the current prices for opening and closing and a statement that these prices are subject to change. Each cemetery which sells preneed contracts must offer opening and closing as part of a preneed contract.

c. The exclusive initial preneed and at-need sale of interment or burial rights in earth, mausoleum, crypt, niche, or columbarium interment. However, this chapter does not limit the right of a person owning interment or burial rights to sell those rights to third parties subject to transfer of title by the cemetery.

d. The adoption of bylaws regulating the activities conducted within the cemetery's boundaries, provided that a licensed funeral director shall not be denied access by any cemetery to conduct a funeral for or supervise a disinterment of human remains. The cemetery shall not approve any bylaw which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment or burial rights in utilizing these rights.

e. The nonexclusive preneed and at-need sale of the following:

(1) Monuments.

(2) Memorials.

(3) Markers.

(4) Installation of monuments, memorials, or markers.

(5) Burial vaults.

(6) Urns.

(7) Flower vases.

(8) Floral arrangements.

(9) Other similar merchandise for use within the cemetery.

f. The entry into sales or management contracts with other persons. The cemetery shall be responsible for the deposit of all moneys required to be placed in a trust fund.

2. A full disclosure shall be made of all fees required for interment, entombment, or inurnment of human remains.

3. A cemetery may adopt bylaws establishing minimum standards for burial merchandise or the installation of such merchandise.

4. A cemetery shall provide services necessary for the installation or burial of vaults or other similar merchandise sold by the cemetery. This subsection shall not require the cemetery to provide for opening or closing interment or entombment space, unless an agreement executed by the cemetery expressly provides otherwise.

95 Acts, ch 149, §27; 98 Acts, ch 1189, §24; 99 Acts, ch 166, §15

523I.7 Investigations.

The commissioner or the attorney general, for the purpose of discovering violations of this chapter, may do any of the following:

1. Investigate the cemetery and examine records as necessary to verify compliance with this chapter.

2. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

3. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

95 Acts, ch 149, §28

SUBTITLE 2

FINANCIAL INSTITUTIONS

CHAPTER 524

BANKS

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DIVISION I

GENERAL PROVISIONS

524.101 Short title.

This chapter shall be known and may be cited as the *"Iowa Banking Act"*.

[C71, 73, 75, 77, 79, 81, §524.101]
84 Acts, ch 1067, §41

524.102 Statement of intent.

The general assembly declares as its purpose in adopting this chapter to provide for:

1. The safe and sound conduct of the business of banking.
2. The conservation of the assets of state banks.
3. The maintenance of public confidence in state banks.
4. The protection of the interests of depositors, creditors, shareholders and of the interest of the public in a sound and strong banking system.
5. The opportunity for state banks to be competitive with each other and with banks existing under the laws of other states and the United States.
6. The opportunity for state banks to effectively serve the convenience and banking needs of their depositors, borrowers, and other customers and to participate in and promote the economic progress of Iowa and of the United States.
7. The opportunity for the management of a state bank to exercise its business judgment, in conducting the affairs of the state bank, to the extent compatible with, and subject to the purposes of this chapter.
8. The delegation to the superintendent of adequate rulemaking power and administrative discretion, in order that the supervision and regulation of state banks may be flexible and readily responsive to changes in economic conditions and changes in banking and fiduciary practices.
9. The simplification and modernization of the law governing the business of banking and the exercise of certain fiduciary powers.

[C71, 73, 75, 77, 79, 81, §524.102]

524.103 Definitions.

As used in this chapter, unless the context otherwise requires, the term:

1. *"Account"* means any account with a state bank and includes a demand, time or savings deposit account or any account for the payment of money to a state bank.
2. *"Administrator"* means the person desig-

nated in section 537.6103.

3. *"Aggregate capital"* means the sum of capital, surplus, undivided profits, and reserves as of the most recent calculation date.

4. *"Agreement for the payment of money"* means a monetary obligation, other than an obligation in the form of an evidence of indebtedness or an investment security; including, but not limited to, amounts payable on open book accounts receivable and executory contracts and rentals payable under leases of personal property.

5. *"Agricultural credit corporation"* means as defined in section 535.12, subsection 4.

6. *"Articles of incorporation"* means the original or restated articles of incorporation and all amendments thereto and includes articles of merger.

7. *"Assets"* means all the property and rights of every kind of a state bank.

8. *"Bank"* means a corporation organized under this chapter or 12 U.S.C. § 21.

9. *"Bankers' bank"* means a bank which is organized under the laws of any state or under federal law, and whose shares are owned exclusively by other banks or by a bank holding company whose shares are owned exclusively by other banks, except for directors' qualifying shares when required by law, and which engages exclusively in providing services for depository institutions and officers, directors and employees of those depository institutions.

10. *"Borrower"* means a person named as a borrower or debtor in a loan or extension of credit, or any other person, including a drawer, endorser, or guarantor, deemed to be a borrower under section 524.904, subsection 3.

11. *"Business of banking"* means the business generally done by banks.

12. *"Calculation date"* means the most recent of the following:

a. The date the bank's statement of condition is required to be filed pursuant to section 524.220, subsection 2.

b. The date an event occurs that reduces or increases the bank's aggregate capital by ten percent or more.

c. As the superintendent may direct.

13. *"Capital"* means the sum of the par value of the preferred and common shares of a state bank issued and outstanding.

14. *"Capital structure"* means the capital, surplus, and undivided profits of a state bank and shall include an amount equal to the sum of any capital notes and debentures issued and outstanding pursuant to section 524.404.

15. *"Chief executive officer"* means the person designated by the board of directors to be responsible for the implementation of and adherence to board policies and resolutions by all officers and employees of the bank.

16. *"Contractual commitment to advance funds"* means a bank's obligation to do either of the following:

a. Advance funds under a standby letter of credit or other similar arrangement.

b. Make payment, directly or indirectly, to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with a third person, or to make payments upon some other stated condition.

The term does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third person.

17. *"Control"* means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

a. Owns, controls, or has the power to vote fifty percent or more of any class of voting securities of another person.

b. Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person.

c. Has the power to exercise a controlling influence over the management or policies of another person.

18. *"Customer"* means a person with an account or other contractual arrangement with a state bank.

19. *"Evidence of indebtedness"* means a note, draft or similar negotiable or nonnegotiable instrument.

20. *"Executive officer"* means a person who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of a state bank, whether or not the officer has an official title, whether or not such a title designates the officer as an assistant, or whether or not the officer is serving without salary or other compensation. The chief executive officer, chairperson of the board, the president, every vice president, and the cashier of a state bank are deemed to be executive officers, unless such an officer is excluded, by resolution of the board of directors of a state bank or by the bylaws of the state bank, from participation, other than in the capacity of a director, in major policymaking functions of the state bank, and the officer does not actually participate in the major policymaking functions. All officers who serve on a board of directors are deemed to be executive officers, except as provided for in section 524.701, subsection 3.

21. *"Fiduciary"* means an executor, administrator, guardian, conservator, receiver, trustee or one acting in a similar capacity.

22. *"Insolvent"* means the inability of a state bank to pay its debts and obligations as they become due in the ordinary course of its business. A state bank is also considered to be insolvent if the

ratio of its capital, surplus, and undivided profits to assets is at or close to zero or if its assets are of such poor quality that its continued existence is uncertain.

23. *"Insured bank"* means a state bank the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

24. *"Municipal corporation"* means an incorporated city.

25. *"Officer"* means chief executive officer, executive officer, or any other administrative official of a bank elected by the bank's board of directors to carry out any of the bank's operating rules and policies.

26. *"Operations subsidiary"* means a wholly owned corporation incorporated and controlled by a bank that performs functions which the bank is authorized to perform.

27. *"Person"* means as defined in section 4.1.

28. *"Reserves"* means the amount of the allowance for loan and lease losses of a state bank.

29. *"Sale of federal funds"* means any transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at federal reserve banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

30. *"Shareholder"* means one who is a holder of record of shares in a state bank.

31. *"Shares"* means the units into which the proprietary interests in a state bank are divided.

32. *"Standby letter of credit"* means a letter of credit, or similar arrangement, that represents an obligation to the beneficiary on the part of the issuer to do any of the following:

a. Repay money borrowed by or advanced to or for the account of the account holder.

b. Make payment on account of any indebtedness undertaken by the account holder.

c. Make payment on account of any default by the account holder in the performance of an obligation.

33. *"State bank"* means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any "state bank" or "savings bank" incorporated pursuant to the laws of this state and doing business as such on January 1, 1970.

34. *"Superintendent"* means the superintendent of banking of this state.

35. *"Supervised financial organization"* as defined and used in the Iowa consumer credit code includes a person organized pursuant to this chapter.

36. *"Surplus"* means the aggregate of the amount originally paid in as required by section 524.401, subsection 3, any amounts transferred to surplus pursuant to section 524.405 and any amounts subsequently designated as such by action of the board of directors of the state bank.

37. *"Trust company"* means a business organization which is authorized to engage in trust business pursuant to section 524.1005. A bank lawfully exercising trust powers under the laws of this state or of the United States is not a trust company by reason of having authority to engage in trust business in addition to its general business.

38. *"Undivided profits"* means the accumulated undistributed net profits of a state bank, including any residue from the fund established pursuant to section 524.401, subsection 4, after:

a. Payment or provision for payment of taxes and expenses of operations.

b. Transfers to reserves allocated to a particular asset or class of assets.

c. Losses estimated or sustained on a particular asset or class of assets in excess of the amount of reserves allocated therefor.

d. Transfers to surplus and capital.

e. Amounts declared as dividends to shareholders.

39. *"Unincorporated area"* means a village within which a state bank or national bank has its principal place of business.

[C71, 73, 75, 77, 79, 81, §524.103]

85 Acts, ch 252, §32; 89 Acts, ch 257, §2, 3; 90 Acts, ch 1228, §1; 95 Acts, ch 148, §1 – 3; 96 Acts, ch 1056, §1

524.104 Rules of construction.

In the interpretation and construction of this chapter:

1. Transactions or acts validly entered into or performed before July 1, 1995, and the rights, duties and interests flowing from them remain valid on and after July 1, 1995, and may be completed or terminated according to their terms and as permitted by any statute repealed or amended by this chapter, as though such repeal or amendment had not occurred.

2. All individuals who, on July 1, 1995, hold any office under a provision of law repealed by this chapter, and which offices are continued by this chapter shall continue to hold such offices according to their former tenure.

[C71, 73, 75, 77, 79, 81, §524.104]

95 Acts, ch 148, §4

524.105 Effect on existing banks.

1. The corporate existence of a state bank existing and operating on July 1, 1995, is not affected by the amendment of this chapter.

2. All state banks are subject to the provisions and requirements of this chapter in every particular, and all national banks, now or hereafter doing business in this state, are subject to the provisions of this chapter, to the extent applicable, from July 1, 1995.

[C71, 73, 75, 77, 79, 81, §524.105]

95 Acts, ch 148, §5

524.106 Renewal of the corporate existence of an existing state bank. Repealed by 95 Acts, ch 148, § 135. See § 524.314.

524.107 Persons authorized to engage in banking business — educational bank.

1. A person, other than a state bank which is subject to the provisions of this chapter and a national bank authorized by the laws of the United States to engage in the business of receiving money for deposit, shall not engage in this state in the business of receiving money for deposit, transact the business of banking, or establish in this state a place of business for such purpose.

2. A person doing business in this state shall not use the words "bank" or "trust" or use any derivative, plural, or compound of the words "bank", "banking", "bankers", or "trust" in any manner which would tend to create the impression that the person is authorized to engage in the business of banking or to act in a fiduciary capacity, except a state bank authorized to do so by this chapter, a national bank to the extent permitted by the laws of the United States, a state association pursuant to section 534.507, or a federal association to the extent permitted by the laws of the United States, or, insofar as the word "trust" is concerned, an individual permissibly serving as a fiduciary in this state, pursuant to section 633.63, or, insofar as the words "trust" and "bank" are concerned, a nonresident corporate fiduciary permissibly serving as a fiduciary in this state pursuant to section 633.64.

3. Notwithstanding subsections 1 and 2, an organization formed for educational purposes in association with an accredited elementary or secondary school which engages in the receipt of deposits may use the words "educational bank", the use of which is otherwise restricted in subsection 2, and such an educational bank is not a bank within the meaning or scope of regulation of this chapter.

[C97, §1862, 1889; S13, §1889, 1889-i; C24, 27, 31, 35, 39, §**9151, 9203, 9258, 9259, 9296;** C46, 50, 54, 58, 62, 66, §524.24, 527.2, 528.50, 528.52, 532.13; C71, 73, 75, 77, 79, 81, §524.107]

89 Acts, ch 257, §4; 89 Acts, ch 319, §80; 95 Acts, ch 148, §6; 96 Acts, ch 1056, §2

524.108 Applicability of safe deposit provisions.

The provisions of sections 524.809 to 524.812 shall apply, to the extent applicable, to any person engaged in this state in the business of leasing safe deposit boxes for the storage of property.

[C71, 73, 75, 77, 79, 81, §524.108]

524.109 Bankers' bank authorized — authority to hold shares of bankers' bank.

1. A state bank may be organized under this chapter as a bankers' bank. The bankers' bank is subject to all rights, privileges, duties, restrictions, penalties, liabilities, conditions and limitations applicable to a state bank generally, except as limited in the definition of bankers' bank contained in section 524.103, subsection 9. However, a bankers' bank shall have the same powers as those granted by federal law and regulation to a national bank organized as a bankers' bank under 12 U.S.C. § 27.

2. A state bank shall have the power to acquire and hold the shares in one or more bankers' banks or bank holding companies which own a bankers' bank in a total amount not to exceed five percent of the state bank's aggregate capital. A state bank shall not own, directly or indirectly, more than five percent of any class of voting shares of a bankers' bank.

85 Acts, ch 252, §33; 95 Acts, ch 148, §7

DIVISION II

DIVISION OF BANKING

524.201 Superintendent of banking.

1. The governor shall appoint, subject to confirmation by the senate, a superintendent of banking. The appointee shall be selected solely with regard to qualification and fitness to discharge the duties of office, and a person shall not be appointed who has not had at least five years' experience as an executive officer in a bank or in the regulation or examination of banks.

2. The superintendent shall have an office at the seat of government. The regular term of office shall be four years beginning and ending as provided by section 69.19.

[C24, 27, 31, 35, 39, §**9130, 9131;** C46, 50, 54, 58, 62, 66, §524.1, 524.2; C71, 73, 75, 77, 79, 81, §524.201]

95 Acts, ch 148, §8

Confirmation, see §2.32

524.202 Superintendent — salary.

The superintendent shall receive a salary to be fixed by the governor.

[C24, 27, 31, 35, 39, §**9137;** C46, 50, 54, 58, 62, 66, §524.7; C71, 73, 75, 77, 79, 81, §524.202]

95 Acts, ch 148, §9

524.203 Superintendent — vacancy.

A vacancy in the office of superintendent shall be filled as regular appointments are made for the unexpired portion of the regular term.

[C24, 27, 31, 35, 39, §**9133;** C46, 50, 54, 58, 62, 66, §524.3; C71, 73, 75, 77, 79, 81, §524.203]

524.204 Deputy superintendent of banking.

1. The superintendent shall appoint a deputy superintendent of banking, who shall assist the superintendent in the performance of the superintendent's duties and who shall perform the duties

of the superintendent during the absence or the inability of the superintendent, and as directed by the superintendent.

2. The deputy superintendent shall be removable at the pleasure of the superintendent. If the office of the superintendent becomes vacant, the deputy superintendent shall have all the powers and duties of the superintendent until a new superintendent is appointed by the governor in accordance with the provisions of this chapter.

3. The deputy superintendent shall receive a salary to be fixed as provided in section 524.208.

[C24, 27, 31, 35, 39, §**9136, 9137;** C46, 50, 54, 58, 62, 66, §524.6, 524.7; C71, 73, 75, 77, 79, 81, §524.204]

95 Acts, ch 148, §10

524.205 State banking board.

1. The state banking board shall be composed of the superintendent, who shall be an ex officio nonvoting member and chairperson, and six other members, appointed by the governor, who shall be chosen from various sections of the state. Provided, however, that in no event shall more than five members of such board be engaged in the business of banking in any executive capacity. In case of a vacancy in the state banking board, other than one resulting from a vacancy in the office of the superintendent, the governor shall appoint a new member to fill such vacancy for the unexpired term.

2. The regular term of office of each member, other than the superintendent, shall be contemporaneous with the regular term of office of the superintendent as defined in subsection 2 of section 524.201, and each such member shall hold office for such term and until the member's successor shall have been appointed.

3. A member of the state banking board, other than the superintendent, shall not receive a salary but is entitled to reimbursement for actual expenses incurred by the member in connection with the member's duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

4. The state banking board shall act with the superintendent in an advisory capacity concerning all matters pertaining to the conduct of the administration of the provisions of this chapter and shall perform such other duties as are specifically provided for by the laws of this state.

5. The state banking board shall meet each month on such date and at such place as the state banking board may designate, and shall meet at such other times as the board may deem necessary, or when called by the chairperson of the board, or any two members thereof.

[C27, 31, 35, §9154-a1, -a2, -a3, -a4, -a7, -a8; C39, §**9154.04 – 9154.07, 9154.10, 9154.11;** C46, 50, 54, 58, 62, 66, §525.1 – 525.4, 525.7, 525.8; C71, 73, 75, 77, 79, 81, §524.205]

86 Acts, ch 1245, §747

524.206 Banking division created.

The banking division is created within the department of commerce.

[C71, 73, 75, 77, 79, 81, §524.206]

86 Acts, ch 1245, §748

524.207 Expenses of the banking division — fees.

1. All expenses required in the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce, the superintendent, and the state banking board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the general fund of the state. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other moneys received by the superintendent to the treasurer of state within the time required by section 12.10 and the fees and other moneys shall be deposited into the general fund of the state. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent approved by the state banking board.

2. The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

3. The banking division may expend additional funds, including funds for additional personnel, if those additional expenditures are actual expenses which exceed the funds budgeted for bank examinations and directly result from examinations of banks. The amounts necessary to fund the excess examination expenses shall be collected from banks being regulated, and the collections shall be treated as repayment receipts as defined in section 8.2. The division shall notify in writing the legislative fiscal bureau and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed to the general fund, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

4. All fees and moneys collected shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes. Moneys deposited into the general fund of the state pursuant to this section shall be subject to the requirements of section 8.60.

[C24, 27, 31, 35, 39, §**9144, 9145, 9149;** C46, 50, 54, 58, 62, 66, §524.16, 524.17, 524.22; C71, 73, 75, 77, 79, 81, §524.207]

86 Acts, ch 1246, §616; 87 Acts, ch 234, §435; 90 Acts, ch 1247, §14; 91 Acts, ch 260, §1243; 93 Acts, ch 131, §22; 94 Acts, ch 1107, §85

524.208 Assistants, examiners, and other employees.

The superintendent may appoint assistants, examiners, and other employees as the superintendent deems necessary to the proper discharge of the duties imposed upon the superintendent by the laws of this state. Pay plans shall be established for employees, other than clerical, who examine the accounts and affairs of state banks and who examine the accounts and affairs of other persons, subject to supervision and regulation by the superintendent, which are substantially equivalent to those paid by the Federal Deposit Insurance Corporation and other federal supervisory agencies in this area of the United States.

[C24, 27, 31, 35, 39, §**9136, 9137;** C46, 50, 54, 58, 62, 66, §524.6, 524.7; C71, 73, 75, 77, 79, 81, §524.208]

86 Acts, ch 1245, §749

524.209 Expenses.

The superintendent, deputy superintendent, assistants, examiners and other employees of the banking division shall be entitled to receive reimbursement for expenses incurred in the performance of their duties. The superintendent, and when specifically authorized by the superintendent, the deputy superintendent, assistants, examiners and other employees of the banking division, shall be entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties, and such expenses shall be paid by the treasurer of state on warrants drawn by the director of revenue and finance.

[C24, 27, 31, 35, 39, §**9144;** C46, 50, 54, 58, 62, 66, §524.16; C71, 73, 75, 77, 79, 81, §524.209]

524.210 Insurance and surety bonds.

The superintendent shall acquire good and sufficient bond in a company authorized to do business in this state insuring the faithful performance of the deputy superintendent, assistants, examiners, and all other employees of the banking division and insuring against any liability which may accrue in the case of the loss of any property of a state bank, of a customer of a state bank or of any other person, in the course of any examination, investigation, or other function required or allowed by the laws of this state. The superintendent shall be bonded in accordance with the provisions of chapter 64.

[C24, 27, 31, 35, 39, §**9138, 9139;** C46, 50, 54, 58, 62, 66, §524.8, 524.9; C71, 73, 75, 77, 79, 81, §524.210]

524.211 Prohibitions relating to banking division personnel.

1. The superintendent, deputy superintendent, an assistant to the superintendent, a bank examination analyst, general counsel, or an examiner assigned to the bank bureau of the banking division is prohibited from obtaining a loan of money or property from a state-chartered bank or any person or entity affiliated with a state-chartered bank.

2. The superintendent, deputy superintendent, finance company bureau chief, general counsel, and all examiners assigned to the finance company bureau are prohibited from obtaining a loan of money or property from a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or a person or entity affiliated with such licensee.

3. The superintendent, deputy superintendent, an assistant to the superintendent, a bank examination analyst, finance company bureau chief, general counsel, or an examiner of the banking division, who has credit relations with a person or entity licensed or registered pursuant to chapter 535B or 536C, is prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee or registrant.

4. An assistant to the superintendent, a bank examination analyst, or an examiner assigned to the bank bureau of the banking division who has credit relations with a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or with a person or entity affiliated with such licensee, is prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee.

5. An employee of the banking division, other than the superintendent or a member of the state banking board, shall not perform any services for, and shall not be a shareholder, member, partner, owner, director, officer, or employee of, any enterprise, person, or affiliate subject to the regulatory purview of the banking division.

6. For the purposes of this section and section 524.212, an affiliate of a person other than a state bank shall include any corporation, trust, estate, association or other similar organization:

a. Of which such person, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees or other individuals exercising similar functions.

b. Of which control is held, directly or indirectly, through share ownership or in any other man-

ner, by the shareholders of such person who own or control either a majority of the shares of such person or more than fifty percent of the number of shares voted for the election of directors of such person at the preceding election or by trustees for the benefit of the shareholders of any such person.

c. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one such person.

d. Which owns or controls, directly or indirectly, either a majority of the voting shares of such person or more than fifty percent of the total number of shares voted for the election of directors of such person at the preceding election, or controls in any manner the election of a majority of the directors of such person, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of such person is held by trustees.

7. The superintendent, deputy superintendent, or any assistant or examiner who is convicted of a felony while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

[C97, §1875, 1876; SS15, §1875; C24, 27, 31, 35, 39, §**9146;** C46, 50, 54, 58, 62, 66, §524.18; C71, 73, 75, 77, 79, 81, §524.211; 81 Acts, ch 172, §1]

95 Acts, ch 148, §11 – 13; 96 Acts, ch 1056, §3

524.212 Prohibition against disclosure of regulatory information.

The superintendent, deputy superintendent, assistant to the superintendent, examiner, or other employee of the banking division shall not disclose, in any manner, to any person other than the person examined and those regulatory agencies referred to in section 524.217, subsection 2, any information relating specifically to the supervision and regulation of any state bank, persons subject to the provisions of chapter 533A, 533B, 536, or 536A, any affiliate of any state bank, or an affiliate of a person subject to the provisions of chapter 533A, 533B, 536, or 536A, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in section 524.215, subsections 1, 2, 3, and 5.

[C31, 35, §9146-c1; C39, §**9146.1;** C46, 50, 54, 58, 62, 66, §524.19; C71, 73, 75, 77, 79, 81, §524.212]

95 Acts, ch 148, §14

524.213 Duties and powers of superintendent.

The superintendent shall have general control, supervision and regulation of all state banks and shall be charged with the administration and execution of the laws of this state relating to banks and banking and with such other duties and responsibilities as are imposed upon the superintendent by the laws of this state. The superintendent shall have power to adopt and promulgate such rules and regulations as necessary to carry out and enforce, properly and effectively, the provisions of this chapter and chapter 12C applicable to banks.

[C24, 27, 31, 35, 39, §**9140;** C46, 50, 54, 58, 62, 66, §524.10; C71, 73, 75, 77, 79, 81, §524.213]

2002 Acts, ch 1096, §15, 17

Section amended

524.214 Subpoena — contempt.

1. The superintendent, the deputy superintendent, and upon the approval of the superintendent, any assistant or examiner shall have the power to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books or papers. Such examination may be conducted on any subject relating to the duties imposed upon, or powers vested in, the superintendent under the provisions of this chapter.

2. Whenever any person subpoenaed pursuant to subsection 1 of this section neglects or refuses to obey the terms of such subpoena, to produce books or papers or to give testimony, as required, the superintendent may apply to the district court of Polk county for the enforcement of such subpoena or the issuance of an order compelling such compliance as the court may direct.

3. The refusal of any person to obey an order of the district court, issued pursuant to subsection 2 of this section, without reasonable cause, shall be considered a contempt of that court.

[C97, §1877; S13, §1871; C24, 27, 31, 35, 39, §**9226, 9236;** C46, 50, 54, 58, 62, 66, §528.20, 528.30; C71, 73, 75, 77, 79, 81, §524.214]

524.215 Records of division of banking.

All records of the division of banking shall be public records subject to the provisions of chapter 22, except that all papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state shall not be public records and shall not be open for examination or copying by the public or for examination or publication by the news media.

The superintendent, deputy superintendent, assistants, or examiners shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, and the records of the banking division which relate specifically to the supervision and regulation of any such state bank or other such person shall not be offered in evidence in any court or subject to subpoena by any party except, where relevant:

1. In such actions or proceedings as are brought by the superintendent.

2. In any matter in which an interested and proper party seeks review of a decision of the superintendent.

3. In any action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

4. In any action brought as a shareholders derivative suit against a state bank.

5. In an action brought to recover moneys for a loss in connection with an indemnity bond which was a result of embezzlement, misappropriation, or misuse of state bank funds by a director, officer, or employee of the state bank.

[C31, 35, §9146-c1; C39, §**9146.1;** C46, 50, 54, 58, 62, 66, §524.19; C71, 73, 75, 77, 79, 81, §524.215]

95 Acts, ch 148, §15; 96 Acts, ch 1056, §4

524.216 Annual report of superintendent.

The superintendent shall make a report in writing annually to the governor in the manner and within the time required by chapter 7A. A copy of the report shall be furnished by the superintendent to each state bank.

In addition to the matters required by chapter 7A, the annual report of the superintendent shall contain:

1. A summary of applications approved or denied by the superintendent pursuant to this chapter since the superintendent's last previous report.

2. A summary of the assets, liabilities and capital structure of all state banks as of June 30 of the year for which the report is made.

3. A statement of the receipts and disbursements of funds of the superintendent during the calendar year ending on the preceding December 31 and of the funds on hand on such December 31.

4. Such other information as the superintendent may deem appropriate and advisable to fairly disclose the discharge of the duties imposed upon the superintendent by this chapter.

[C97, §1881; C24, 27, 31, 35, 39, §**9148;** C46, 50, 54, 58, 62, 66, §524.21; C71, 73, 75, 77, 79, 81, §524.216]

Annual report, §7A.8

524.217 Examinations.

1. The superintendent may do all of the following:

a. Make or cause to be made an examination of every state bank and trust company whenever in the superintendent's judgment such examination is necessary or advisable, but in no event less frequently than once during each two-year period. During the course of each examination of a state bank or trust company, inquiry shall be made as to its financial condition, the security afforded to those to whom it is obligated, the policies of its management, whether the requirements of law have been complied with in the administration of its affairs, and such other matters as the superintendent may prescribe.

b. Make or cause to be made such limited examinations at such times and with such frequency as the superintendent deems necessary and advisable to determine the condition of any state bank or trust company and whether any person has violated any of the provisions of this chapter.

c. Make or cause to be made an examination of any corporation in which the state bank or trust company owns shares.

d. Upon application to and order of the district court of Polk county, make or cause to be made an examination of any person having business transactions or a relationship with any state bank or trust company when such examination is deemed necessary and advisable in order to determine whether the capital of the state bank or trust company is impaired or whether the safety of its deposits has been imperiled. The fee for any such examination shall be paid by the state bank or trust company.

e. To the extent necessary for the purpose of any examination provided for by this section and section 524.1105, examine all relevant books, records, accounts, and documents and compel the production of the same in the manner prescribed by section 524.214.

2. The superintendent may furnish to the federal deposit insurance corporation, the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, national credit union administration, the federal home loan bank, and financial institution regulatory authorities of other states, or to any official or supervising examiner of such regulatory authorities, a copy of the report of any or all examinations made of any state bank and of any affiliate of a state bank.

3. A copy of the report of each examination of a state bank or trust company shall be transmitted by the superintendent to the board of directors of the state bank or trust company except to the extent that the report of any such examination may be confidential to the superintendent, and each member of the board of directors shall furnish to the superintendent, on forms to be supplied by the superintendent, a statement that the member has read the report of examination.

4. All reports of examinations, including any copies of such reports, in the possession of any person other than the superintendent or employee of the banking division, including any state bank or any agency to which any report of such examination may be furnished under subsection 2, shall be confidential communications, shall not be subject to subpoena from such persons, and shall not be published or made public by such persons.

5. The report of examination of any affiliate or of any person examined as provided for in subsection 1, paragraph *"c"* or *"d"*, shall not be trans-

mitted by the superintendent to any such affiliate or person or to any state bank or trust company or to the board of directors of any state bank or trust company unless authorized or requested by such affiliate or person.

[R60, §1637; C73, §1571; C97, §1873; S13, §1873; C24, 27, 31, 35, §9231, 9283-g4; C39, §**9231, 9283.47;** C46, 50, 54, 58, 62, 66, §528.25, 530.4; C71, 73, 75, 77, 79, 81, §524.217]

89 Acts, ch 257, §5; 90 Acts, ch 1228, §2; 92 Acts, ch 1161, §1; 95 Acts, ch 148, §16

524.218 Regulation and examination of services.

A state bank may not cause to be performed, by contract or otherwise any bank services, of a type referred to in section 524.804, for itself, whether on or off its premises, unless assurances satisfactory to the superintendent are furnished to the superintendent by both the state bank and the person performing such services that the performance thereof will be subject to supervision, regulation, and examination by the superintendent to the same extent as if such services were being performed by the state bank itself on its own premises.

[C71, 73, 75, 77, 79, 81, §524.218; 81 Acts, ch 173, §9]

524.219 Fees.

A state bank subject to examination, supervision, and regulation by the superintendent, shall pay to the superintendent fees, established by the state banking board, based on the costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but are not limited to, costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

The fees for examination of any affiliate of a state bank as provided for in section 524.1105, and the examinations provided for in section 524.217, subsection 1, paragraphs *"c"* and *"d"*, shall be established by the state banking board, based on the time required for the examination and the administrative costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but not be limited to, costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

Upon completion of each examination required or allowed by this chapter, the examiner in charge of the examination shall render a bill for the fees, in duplicate, and shall deliver one copy of the bill to the state bank and one copy to the superintendent.

Failure to pay the amount of the fees to the superintendent within ten days after the date of billing shall subject the state bank to an additional charge equal to five percent of the amount of the fees for each day the payment is delinquent.

[C97, §1875, 1876, 1877; SS15, §1875; C24, 27, 31, 35, 39, §**9143, 9150, 9237;** C46, 50, 54, 58, 62, 66, §524.15, 524.23, 528.31; C71, 73, 75, 77, 79, 81, §524.219]

86 Acts, ch 1246, §617; 95 Acts, ch 148, §17

524.220 Reports to superintendent.

1. A state bank shall render a full, clear, and accurate statement of its condition to the superintendent, in a format prescribed by the superintendent, verified by the oath of an officer and attested by the signatures of at least three of the directors, or verified by the oath of two of its officers and attested by two of the directors. The superintendent may, in the superintendent's discretion, use any form of statement of condition that is used by the federal deposit insurance corporation or the federal reserve system.

2. The statement shall be transmitted to the superintendent or the superintendent's designee within thirty days after the end of each calendar quarter.

3. The state bank shall cause the statement of condition filed for a calendar quarter which ends on June 30 to be published no later than the following August 15 and the statement of condition filed for a calendar quarter which ends on December 31 to be published no later than February 15 of the following year in a newspaper of general circulation in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business. Proof of such publication by affidavit of the publisher of the newspaper in which it was made, shall be delivered to the superintendent and is conclusive evidence of the fact.

4. The superintendent shall also have power to call for special reports from a state bank whenever in the superintendent's judgment the same are necessary in order to obtain a full and complete knowledge of its condition. Such reports shall be verified and attested in the same manner as required in subsection 1 of this section.

[R60, §1636, 1637; C73, §1570, 1571; C97, §1872, 1873, 1874; S13, §1873, 1889-m; C24, 27, 31, 35, 39, §**9228, 9229, 9231, 9232, 9234, 9305;** C46, 50, 54, 58, §528.22, 528.23, 528.25, 528.26, 528.28, 532.20; C62, 66, §528.22, 528.23, 528.25, 528.26, 528.28; C71, 73, 75, 77, 79, 81, §524.220]

95 Acts, ch 148, §18; 96 Acts, ch 1056, §5

524.221 Preservation of bank records — statute of limitations.

1. A state bank is not required to preserve its records for a period longer than eleven years after the first day of January of the year following the time of the making or filing of such records, pro-

vided, however, that account records showing unpaid balances due to depositors shall not be destroyed. A copy of an original may be kept in lieu of any such original record. For purposes of this subsection, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

A copy is deemed to be an original and shall be treated as an original record in a judicial or administrative proceeding for purposes of admissibility in evidence. A facsimile, exemplification, or certified copy of any such copy reproduced from a film record is deemed to be a facsimile, exemplification, or certified copy of the original. A printout or other tangible output readable by sight shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, which contains a signature made or created by electronic or digital means such that it is stored by a computer or similar device, is deemed to be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

2. All causes of action, other than actions for relief on the grounds of fraud or mistake, against a state bank based upon a claim or claims inconsistent with an entry or entries in a state bank record, made in the regular course of business, shall be deemed to have accrued, and shall accrue for the purpose of the statute of limitations one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual.

3. The provisions of this section, insofar as applicable, shall apply to the records of a national bank.

[C50, 54, 58, 62, 66, §528A.1 – 528A.5; C71, 73, 75, 77, 79, 81, §524.221]

91 Acts, ch 95, §1; 99 Acts, ch 34, §1

524.222 Meetings of the board of directors called by superintendent.

Whenever the superintendent deems it necessary and advisable the superintendent may cause a meeting of the board of directors of a state bank to be held in such manner and at such time and place as the superintendent may direct. Any report of an examination required or allowed by this chapter, any conclusions drawn therefrom by the superintendent, any recommendations made relative thereto and any other matters concerning the operation and condition of the state bank may be presented to the board of directors by the superintendent. The state bank shall cause the recommendations of the superintendent to be recorded in the minutes of the board of directors of the state bank.

Each member of the board of directors shall furnish to the superintendent a statement, on forms to be supplied by the superintendent, that the member has read and is familiar with the recommendations of the superintendent.

[C71, 73, 75, 77, 79, 81, §524.222]

524.223 Power of superintendent to issue orders.

1. Whenever it shall appear to the superintendent that a state bank is engaging or has engaged, or the superintendent has reasonable cause to believe that the state bank is about to engage, in an unsafe or unsound practice in conducting the business of such state bank, or is violating or has violated, or the superintendent has reasonable cause to believe that the state bank is about to violate, any provision of this chapter or of any regulation adopted pursuant to this chapter, or any condition imposed in writing by the superintendent in connection with the approval of any matter required by this chapter, or any written agreement entered into with the superintendent, or any provision of chapter 12C* or any rules adopted pursuant to chapter 12C,* the superintendent may issue and serve upon the state bank a notice containing a statement of the facts constituting the alleged violation or violations, or the unsafe or unsound practice or practices, and fixing a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued to the state bank.

2. If the state bank fails to appear at the hearing it shall be deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at such hearing, the superintendent shall find that any violation or unsafe or unsound practice specified in the notice has been established, the superintendent may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may require the state bank and its directors, officers and employees to cease and desist from any such violation or practice and, further, to take affirmative action to correct the conditions resulting from any such violation or practice. In addition, if the violation or practice involves a failure to comply with chapter 12C* or any rules adopted pursuant to chapter 12C,* the superintendent may recommend to the committee established under section 12C.6 that the bank be removed from the list of financial institutions eligible to accept public funds under section 12C.6A and may require that during the current calendar quarter and up to the next succeeding eight calendar quarters that the bank do any one or more of the following:

a. Not accept public funds deposits.

b. Return to the depositors some or all uninsured public funds held in demand deposits and, when deposit instruments or agreements mature, return to the depositors some or all deposits representing proceeds of such instruments or agreements.

c. Pledge collateral to the treasurer of state having a value at all times up to one hundred ten percent of the public funds held by the bank.*

d. Comply with such other requirements as the superintendent may impose.

3. Any order issued pursuant to this section shall become effective upon service of the order on the state bank and shall remain effective except to such extent that it is stayed, modified, terminated, or set aside by action of the superintendent or of the district court of the county in which the state bank has its principal place of business.

4. The superintendent may apply to the district court of the county in which the state bank has its principal place of business for the enforcement of any order pursuant to this section and such court shall have jurisdiction and power to order and require compliance.

[C73, §1572; C97, §1877; C24, 27, 31, 35, 39, §**9235;** C46, 50, 54, 58, 62, 66, §528.29; C71, 73, 75, 77, 79, 81, §524.223]

2002 Acts, ch 1096, §16, 17

*Certification to the superintendent under section 12C.20, subsection 1, is not required until January 31, 2003; notification by the superintendent to the treasurer of state under section 12C.20, subsection 4, is not required until April 30, 2003; the pledging of collateral to the treasurer of state pursuant to section 12C.22 is not required until July 1, 2003; 2002 Acts, ch 1096, §17

Section amended

524.224 Grounds for management of state bank by superintendent.

The superintendent may take over the management of the property and business of a state bank whenever it appears to the superintendent that:

1. The state bank has violated its articles of incorporation or any law of this state.

2. The capital of the state bank is impaired.

3. The state bank is conducting its business in an unsafe or unsound manner.

4. The state bank is in such condition that it is unsound, unsafe or inexpedient for it to transact business.

5. The state bank has suspended or refused payment of its deposits or other liabilities contrary to the terms thereof.

6. The state bank refuses to make its records available to the superintendent for examination or otherwise refuses to make available, through an officer or employee having knowledge thereof, information required by the superintendent for the proper discharge of the duties of the superintendent's office.

7. The state bank neglects or refuses to observe any order of the superintendent made pursuant to the provisions of this chapter, unless the enforcement of such order is stayed in a proceeding brought by the state bank.

8. The state bank has not transacted any business or performed any of the duties, contemplated by its authorization to do business, for a period of one year.

9. The state bank has failed to renew its corporate existence in the manner provided for in section 524.314 within one hundred eighty days prior to the expiration thereof.

The superintendent shall thereafter manage the property and business of the state bank until such time as the superintendent may relinquish to the state bank the management thereof, upon such conditions as the superintendent may prescribe, or until its affairs be finally dissolved as provided in this chapter.

[C73, §1572; C97, §1877; C24, 27, 31, 35, §9283-e1, -e2, -e3, -e4; C39, §**9235, 9285.05 – 9285.08;** C46, 50, 54, 58, 62, 66, §528.29, 528.90 – 528.93; C71, 73, 75, 77, 79, 81, §524.224]

95 Acts, ch 148, §19

524.225 Procedures — judicial review.

Judicial review of the actions of the superintendent may be sought in accordance with chapter 17A. However, contested case provisions of chapter 17A, the Iowa administrative procedure Act, do not apply to an action by the superintendent to take over the management of or to manage a state bank, as authorized by sections 524.224 and 524.226.

[C71, 73, 75, 77, 79, 81, §524.225]

89 Acts, ch 257, §6

524.226 Management of state bank by superintendent.

Upon taking over the management of the property and business of a state bank, the superintendent shall have the authority to operate and direct the affairs of the state bank in its regular course of business. The superintendent shall also have the authority to collect such amounts due to the state bank and to do such other acts as are necessary or expedient to conduct the affairs of the state bank and conserve or protect its assets, property and business.

If upon taking over the management of the business and property of the state bank, the superintendent concludes that the state bank is insolvent or should be dissolved for any other reason enumerated in section 524.224, the superintendent may immediately, or at any time within three years, order that the state bank cease to carry on its business and proceed to dissolve the affairs of the state bank in accordance with the provisions of this chapter. If the superintendent has not caused the state bank to cease to carry on its business within three years of taking over the management of the property and business of the state bank, the superintendent shall relinquish the management thereof to the state bank.

The superintendent may appoint one or more special deputies as agent or agents, with powers specified in the certificate of appointment, to assist the superintendent in the duty of management, conservation or dissolution and distribution of the business and property of a state bank.

The superintendent, during the period of the superintendent's management of the property and business of the state bank, and prior to such time as the superintendent may apply to the district court for appointment as receiver, may require reimbursement by the state bank to the extent of the expenses incurred by the superintendent in connection with such management.

[C73, §1572; C97, §1877; C24, 27, 31, 35, §9238, 9283-e2, -e4; C39, §**9238, 9283.06, 9283.08;** C46, 50, 54, 58, 62, 66, §528.32, 528.91, 528.93; C71, 73, 75, 77, 79, 81, §524.226]

524.227 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to banks, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The superintendent shall co-operate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a bank when necessary to enable the administrator to enforce chapter 537.

4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the superintendent to each bank or other person upon request. The annual report shall contain:

a. A summary of applications to engage in the business of banking approved or denied by the superintendent since the last report.

b. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

c. Information which the superintendent may deem appropriate and advisable to disclose.

d. Information which the administrator may require to be included.

[C75, 77, 79, 81, §524.227]

91 Acts, ch 118, §1

524.228 Interim cease and desist order — final order — suspension.

1. If it appears to the superintendent that a state bank, or any director, officer, employee, or substantial shareholder of the state bank is engaging in or is about to engage in an unsafe or unsound practice or dishonest act in conducting the business of the state bank that is likely to cause insolvency or substantial dissipation of assets or earnings of the state bank, or is likely to seriously weaken the condition of the state bank or otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to section 524.223, 524.606, subsection 2, or 524.707, subsection 2, the superintendent may issue an interim order requiring the bank, director, officer, employee, or substantial shareholder to cease and desist from any such practice or act, and to take affirmative action, including suspension of the director, officer, or employee to prevent such insolvency, dissipation, condition, or prejudice pending completion of the proceedings. The interim order becomes effective upon service upon the state bank, or upon the director, officer, employee, or substantial shareholder of the state bank and, unless set aside, limited, or suspended by a court as provided in this chapter, remains effective and enforceable pending the completion of the administrative proceedings pursuant to the interim order and until such time as the superintendent dismisses the charges specified in the interim order, or, if a final cease and desist order is issued against the state bank or the director, officer, employee, or substantial shareholder until the effective date of the final order.

2. Within ten days after the state bank concerned or any director, officer, employee, or substantial shareholder is served with an interim order, the bank or such director, officer, employee, or substantial shareholder may apply to the district court in the county in which the bank has its principal place of business, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such interim order pending the completion of the administrative proceedings. If serious prejudice to the interests of the superintendent, the state bank, the officer, director, employee, or substantial shareholder would result from such hearing, the court may order the judicial proceeding to be conducted in camera.

3. The interim order shall contain a concise statement of the facts constituting the alleged unsafe or unsound practice or alleged dishonest act, and shall fix a time and place at which a hearing will be held to determine whether a final order to cease and desist should issue against the state bank or any director, officer, employee, or substantial shareholder. The hearing shall be fixed for a date not later than thirty days after service of the interim order unless a later date is set at the request of the party so served. If the state bank, or the director, officer, employee, or substantial shareholder fails to appear at the hearing, the state bank, or the director, officer, employee, or substantial shareholder is deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at the hearing the superintendent finds that

any unsafe or unsound practice or dishonest act specified in the interim order has been established, the superintendent may issue and serve upon the bank, or the director, officer, employee, or substantial shareholder a final order to cease and desist from any such practice or act. The order may require the state bank, or the director, officer, employee, or substantial shareholder to cease and desist from any such practice or act and, further, to take affirmative action, including suspension of the director, officer, or employee.

4. A hearing provided for in this section shall be presided over by an administrative law judge appointed in accordance with section 17A.11. The hearing shall be private, unless the superintendent determines after full consideration of the views of the party afforded the hearing, that a public hearing is necessary to protect the public interest. After the hearing, and within thirty days after the case has been submitted for decision, the superintendent shall review the proposed order of the administrative law judge and render a final decision, including findings of fact upon which the decision is predicated, and issue and serve upon each party to the proceeding an order consistent with this section.

5. Any final order issued by the superintendent pursuant to subsection 3 becomes effective upon service of the final order on the state bank, director, officer, employee, or substantial shareholder and shall remain effective except to the extent that it is stayed, modified, terminated, or set aside by action of the superintendent or of the district court of the county in which the state bank has its principal place of business in accordance with the terms of chapter 17A.

6. In the case of violation or threatened violation of, or failure to obey, an interim order issued pursuant to subsection 1 or a final order issued pursuant to subsection 3, the superintendent may apply to the district court of the county in which the state bank has its principal place of business for the enforcement of the order and such court shall have jurisdiction and power to order and require compliance with the interim order or final order.

7. For purposes of this section, *"substantial shareholder"* means a shareholder exercising a controlling influence over the management or policies of a state bank as determined by the superintendent.

91 Acts, ch 220, §2

DIVISION III

INCORPORATION

524.301 Incorporators.

A state bank may be incorporated under this chapter by one or more individuals eighteen years of age or older, a majority of whom shall be residents of this state and citizens of the United States.

[C97, §1840, 1863; C24, 27, 31, 35, 39, §**9155, 9204;** C46, 50, 54, 58, 62, 66, §526.1, 527.3; C71, 73, 75, 77, 79, 81, §524.301]

95 Acts, ch 148, §20

524.302 Articles of incorporation.

1. The articles of incorporation of a state bank, in the form prescribed by the superintendent, shall set forth the following:

a. The name of the state bank, that it is incorporated for the purpose of conducting the business of banking, and that it is incorporated under the provisions of this chapter.

b. The location of its proposed principal place of business including the name of the municipal corporation and county.

c. The duration of the state bank which shall be perpetual.

d. The aggregate number of common and preferred shares which the state bank shall have authority to issue and the par value of such shares. If such shares are to be divided into classes or series, the number of shares of each class or series and a statement of the par value of the shares of each class or series.

e. The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

f. The name and address of each incorporator.

g. The specific month in which the annual meeting of shareholders is to be held.

2. The articles of incorporation may set forth any or all of the following:

a. Provisions not inconsistent with law regarding:

(1) Managing the business and regulating the affairs of the corporation.

(2) Defining, limiting, and regulating the affairs of the corporation.

b. Any provision required or permitted by this chapter to be set forth in the bylaws.

c. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for any breach of the director's duty of loyalty to the corporation or its shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for any transaction from which the director derives an improper personal benefit, or under section 524.605, subsection 1 or 2. A provision shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

3. The articles of incorporation need not set

forth any of the corporate powers enumerated in this chapter. The articles of incorporation shall be signed by all of the incorporators.

[C97, §1842, 1863; S13, §1842; C24, 27, 31, 35, 39, §**9157, 9204;** C46, 50, 54, 58, 62, 66, §526.3, 527.3; C71, 73, 75, 77, 79, 81, §524.302]

84 Acts, ch 1032, §1; 87 Acts, ch 212, §12; 88 Acts, ch 1170, §10; 89 Acts, ch 257, §7, 8; 95 Acts, ch 148, §21; 96 Acts, ch 1056, §6

524.303 Application for approval.

The incorporators shall make an application to the superintendent for approval of a proposed state bank in the manner prescribed by the superintendent and shall deliver to the superintendent, together with such application:

1. The articles of incorporation.

2. Applicable fees, payable to the secretary of state as specified in section 490.122, for the filing and recording of the articles of incorporation.

[C97, §1842, 1863; S13, §1842; C24, 27, 31, 35, §9140-c1; C39, §**9140.1, 9158, 9205;** C46, 50, 54, 58, 62, 66, §524.11, 526.4, 527.4; C71, 73, 75, 77, 79, 81, §524.303]

90 Acts, ch 1205, §37; 95 Acts, ch 148, §22

524.304 Publication of notice.

1. The incorporators of a state bank shall, within thirty days of the acceptance of the application for processing, publish notice of the proposed incorporation once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation which is proposed as the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the proposed state bank is to have its principal place of business. The notice shall set forth all of the following:

a. The name of the proposed state bank.

b. A statement that it is to be incorporated under this chapter.

c. The purpose or purposes of the state bank.

d. The names and addresses of the incorporators and of the members of the initial board of directors as they appear, or will appear, in the articles of incorporation.

e. The date the application was accepted for processing.

f. If the incorporation of the state bank has been approved by the superintendent under section 524.305, subsection 8, the name and address of the bank with which the state bank will have merged, or the assets of which the state bank will have acquired or the condition of which in some other way provided a purpose for the incorporation.

2. Proof of publication of the notice by affidavit of the publisher of the newspaper in which the notice appears shall be filed with the superintendent and is conclusive evidence of the publication.

[C97, §1842, 1863; S13, §1842; C24, 27, 31, 35, 39, §**9159, 9205;** C46, 50, 54, 58, 62, 66, §526.5, 527.4; C71, 73, 75, 77, 79, 81, §524.304]

95 Acts, ch 148, §23

524.305 Approval by superintendent.

1. Upon receipt of an application for approval of a state bank, the superintendent shall conduct an investigation as the superintendent deems necessary to ascertain whether:

a. The articles of incorporation and supporting items satisfy the requirements of this chapter.

b. The convenience and needs of the public will be served by the proposed state bank.

c. The population density or other economic characteristics of the area primarily to be served by the proposed state bank afford reasonable promise of adequate support for the state bank.

d. The character and fitness of the incorporators and of the members of the initial board of directors are such as to command the confidence of the community and to warrant the belief that the business of the proposed state bank will be honestly and efficiently conducted.

e. The capital structure of the proposed state bank is adequate in relation to the amount of the anticipated business of the state bank and the safety of prospective depositors.

f. The proposed state bank will have sufficient personnel with adequate knowledge and experience to conduct the business of the state bank, and to administer fiduciary accounts, if the state bank is to be authorized to act in a fiduciary capacity.

2. Within one hundred eighty days after the application is accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation.

3. Within thirty days after the date of the second publication of the notice required under section 524.304, any interested person may submit written comments and information to the superintendent concerning the application. Comments challenging the legality of an application must be submitted separately in writing. The superintendent may extend the thirty-day comment period, if, in the judgment of the superintendent, extenuating circumstances which justify the extension exist.

4. Within thirty days after the date of the second publication of the notice required by section 524.304, any interested person may submit a written request of the superintendent for a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. A written request for a hearing shall be evaluated by the superintendent, who may grant or deny the request in whole or in part. A hearing request shall generally be granted only if it is determined that

written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

5. If a request for a hearing is denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. An interested person may submit additional written comments or information on the application to the superintendent, with copies to the applicant at the time of submission to the superintendent, within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period after the notice of denial. The superintendent may waive this seven-day period if requested by the applicant. A copy of any response submitted by the applicant shall also be mailed by the applicant to the interested persons at the time the response is submitted to the superintendent.

6. If the superintendent approves the application, the superintendent shall notify the incorporators, and such other persons who requested in writing that they be notified, of the approval. If the superintendent disapproves the application, the superintendent shall notify the incorporators of the action and the reason for the decision.

7. The actions of the superintendent shall be subject to judicial review in accordance with chapter 17A. The court may award damages to the incorporators if it finds that review is sought frivolously or in bad faith.

8. Subsections 3, 4, and 5 shall not apply if the superintendent finds that one of the purposes of the proposed state bank is the merger with, or the purchase of some or all of the assets of and assumption of some or all of the liabilities of, a bank for which a receiver has been appointed or which has been ordered, by authorities of this state or the United States, to cease to carry on its business, or if the superintendent finds for any other reason that immediate action on the pending application is advisable in order to protect the interests of depositors or the assets of any other bank.

9. As a condition of receiving the decision of the superintendent with respect to the application the incorporators shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application.

[C24, 27, 31, 35, §9140-c1, 9141, 9142; C39, §**9140.1, 9141, 9142;** C46, 50, 54, 58, 62, 66, §524.11, 524.12, 524.13; C71, 73, 75, 77, 79, 81, §524.305]

92 Acts, ch 1161, §2; 95 Acts, ch 148, §24

524.306 Incorporation of state bank.

1. Unless a delayed effective date or time is specified, the corporate existence of a state bank begins when the articles of incorporation, with the superintendent's approval indicated on the articles of incorporation, are filed with the secretary of state. The secretary of state shall record the articles of incorporation and forward a copy of them to the county recorder of the county in which the state bank is to have its principal place of business.

2. The secretary of state's acknowledgment of filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation, except in a proceeding instituted by the superintendent to cancel or revoke the incorporation or involuntarily dissolve the corporation.

[C97, §1842, 1863; S13, §1842; C24, 27, 31, 35, 39, §**9158, 9205;** C46, 50, 54, 58, 62, 66, §526.4, 527.4; C71, 73, 75, 77, 79, 81, §524.306]

90 Acts, ch 1205, §38; 91 Acts, ch 211, §11; 95 Acts, ch 148, §25; 96 Acts, ch 1034, §50

524.307 Organization of state bank.

Upon incorporation of the state bank, the initial board of directors shall hold an organizational meeting within this state, at the call of a majority of the directors, to complete the organization of the state bank by electing officers, adopting bylaws, if any are to be adopted, and conducting any other business properly brought before the board at the meeting.

[C97, §1845; C24, 27, 31, 35, 39, §**9168;** C46, 50, 54, 58, 62, 66, §526.11; C71, 73, 75, 77, 79, 81, §524.307]

95 Acts, ch 148, §26

524.308 Issuance of authorization to do business.

1. The state bank shall not accept deposits or transact any business except such business as is incident to commencement of business, or to the obtaining of subscriptions and payment for its shares until receipt of an authorization to do business from the superintendent. The superintendent shall issue an authorization to do business upon finding that the proposed state bank has complied with all the requirements of this chapter precedent to commencing business and has submitted to the superintendent a statement under oath, in the manner designated by the superintendent, showing that the capital, surplus and undivided profits required by the superintendent in accordance with this chapter have been fully paid in.

2. If a state bank transacts any business before receipt of an authorization to do business in violation of subsection 1, the directors and officers who willfully authorized or participated in the action are severally liable for the debts and liabilities of the state bank incurred prior to the receipt of the authorization to do business.

[C97, §1843, 1864; S13, §1843, 1864; C24, 27, 31, 35, 39, §**9161, 9207;** C46, 50, 54, 58, 62, 66, §526.6,

527.5; C71, 73, 75, 77, 79, 81, §524.308]
95 Acts, ch 148, §27, 28

524.309 Publication of authorization to do business.

1. A state bank shall cause to be published once within two weeks after the issuance by the superintendent of the authorization to do business, in a newspaper of general circulation published in the municipal corporation which is the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business, a notice which shall state all of the following:

a. The name of the state bank, the address of its principal place of business, and the date of the issuance of the authorization to do business.

b. The names and addresses of the members of the initial board of directors as designated in the articles of incorporation.

c. That the shareholders shall not be personally liable for the debts and obligations of the state bank.

2. Proof of publication, by affidavit of the publisher of the newspaper in which it was made, shall be filed with the superintendent, and is conclusive evidence of the fact.

[C97, §1843, 1864; S13, §1843, 1864; C24, 27, 31, 35, 39, §**9161, 9208;** C46, 50, 54, 58, 62, 66, §526.6, 527.6; C71, 73, 75, 77, 79, 81, §524.309]
95 Acts, ch 148, §29

524.310 Name of state bank.

1. The name of a state bank originally incorporated after the effective date of this chapter shall include the word "bank" and may include the word "state" or "trust" in its name. A state bank using the word "trust" in its name must be authorized under this chapter to act in a fiduciary capacity.

2. The provisions of this section shall not require any state bank, existing and operating on January 1, 1970, to add to, modify or otherwise change its corporate name, either on January 1, 1970, or upon renewal of its corporate existence pursuant to section 524.314.

3. If a state bank existing and operating on January 1, 1970, causes its corporate name to be changed, the name as changed shall comply with subsection 1 of this section.

4. *a.* A person may reserve the exclusive use of a corporate name for a state bank by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

b. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

[C97, §1861, 1889; S13, §1889, 1889-i; C24, 27, 31, 35, 39, §**9202, 9261, 9295, 9296;** C46, 50, 54, 58, 62, 66, §527.1, 528.54, 532.12, 532.13; C71, 73, 75, 77, 79, 81, §524.310]
84 Acts, ch 1202, §1; 91 Acts, ch 11, §1; 91 Acts, ch 258, §61; 95 Acts, ch 148, §30

524.311 Commission for organizing state banks.

No person shall, directly or indirectly, receive or contract to receive any commission or bonus of any kind for organizing any state bank or for securing a subscription to the original capital of any state bank or to any increase thereof; provided that this section shall not be construed as prohibiting the payment of reasonable compensation for legal or accounting services in connection with organization.

[C24, 27, 31, 35, 39, §**9275;** C46, 50, 54, 58, 62, 66, §528.74; C71, 73, 75, 77, 79, 81, §524.311]

524.312 Location of state bank — exceptions.

1. A state bank originally incorporated pursuant to this chapter shall have its principal place of business within the city limits of a municipal corporation. The existence of a state bank shall not, however, be affected by the subsequent discontinuance of the municipal corporation. A state bank existing and operating on January 1, 1970, which does not have its principal place of business within the city limits of a municipal corporation, may renew its corporate existence pursuant to section 524.314 without regard to this section and may also operate as a bank or convert to and operate as a bank office when acquired by or merged into another state bank and approved by the superintendent.

2. A state bank may, with the prior written approval of the superintendent, change the location of its principal place of business to a new location. A change of location shall be limited to another location in the same municipal corporation, to a location in a municipal corporation in the same county, or to a location in a municipal corporation in a county that is contiguous to or touching or cornering on the county in which the state bank is located. If a state bank has its principal place of business in an unincorporated area, the superintendent may authorize a change of location of its principal place of business to a new location within the same unincorporated area as well as to any location referred to in this subsection.

3. If a change in the location of the principal place of business of a state bank is proposed, application for approval of the superintendent shall be made as required by the superintendent pur-

suant to this section. A change in location of the principal place of business of a state bank, including a change from one municipal corporation to another municipal corporation within an urban complex, requires an amendment to the articles of incorporation pursuant to sections 524.1502, 524.1504, and 524.1506. A state bank seeking approval of a change of location pursuant to this subsection shall publish once each week for two consecutive weeks a notice of the proposed change of location in a newspaper of general circulation in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, in a newspaper of general circulation in the county, or in a county adjoining the county, in which the state bank has its principal place of business, and in the municipal corporation in which it seeks to establish its principal place of business, or if there is none, in a newspaper of general circulation in the county, or in a county adjoining the county, in which the municipal corporation is located. The notices shall be published within thirty days after the application to the superintendent for approval of the change in location is accepted for processing. The notice shall set forth the name of the state bank, the present location of its principal place of business, the location to which it proposes to move its principal place of business, and the date upon which the application was accepted for processing by the superintendent.

4. Within thirty days after acceptance of an application for approval of a change of location of the principal place of business of a state bank pursuant to subsection 3, the superintendent shall commence an investigation into the circumstances of the application as deemed necessary by the superintendent, giving due consideration to factors substantially similar to those set forth in section 524.305, subsection 1, paragraphs *"c"* through *"f"*. Within one hundred eighty days after the application has been accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation. The superintendent shall give written notice of the decision to the state bank, and in the event of disapproval a statement of the reasons for the disapproval. If the superintendent approves the change in location the superintendent shall deliver the articles of amendment to the secretary of state. As a condition of receiving the decision of the superintendent with respect to the application, the state bank shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application.

5. A state bank approved under the provisions of section 524.305, subsection 8, shall not commence its business at any location other than within a municipal corporation or unincorporated area in which was located the principal place of business or an office of the bank the condition of which was the basis for the superintendent authorizing incorporation of the new state bank.

[C71, 73, 75, 77, 79, 81, §524.312]

85 Acts, ch 13, §1; 95 Acts, ch 148, §31, 32

524.313 Bylaws.

A state bank may adopt bylaws. The power to adopt, amend, or repeal bylaws or adopt new bylaws is vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the state bank not inconsistent with law or the articles of incorporation.

[C97, §1844; C24, 27, 31, 35, 39, §**9162;** C46, 50, 54, 58, 62, 66, §526.7; C71, 73, 75, 77, 79, 81, §524.313]

95 Acts, ch 148, §33

524.314 Renewal of corporate existence of existing state bank.

1. The corporate existence of a state bank existing and operating on January 1, 1970, which expires subsequent to that date, may be renewed prior to the expiration date of the corporate existence, following the affirmative vote of the holders of at least a majority of the shares entitled to vote on the renewal, at a meeting held for that purpose and called as provided by section 524.533, and delivery to the superintendent of the articles of incorporation together with the applicable filing and recording fees for the filing and recording. If the superintendent finds that the articles of incorporation satisfy the requirements of this section, the superintendent shall deliver them to the secretary of state for filing and recording in the secretary of state's office. Following the receipt of the articles of incorporation, the secretary of state shall proceed as provided in section 524.306.

2. Sections 524.303, 524.304, 524.305, 524.307, 524.308, and 524.309 are not applicable to a state bank existing and operating on January 1, 1970, which renews its corporate existence as provided in subsection 1.

3. The renewal of the corporate existence of a state bank pursuant to this section shall not affect any right accrued or established, or any liability or penalty incurred, under the laws of this state or of the United States, prior to the issuance of a certificate of incorporation by the secretary of state.

95 Acts, ch 148, §34

DIVISION IV

CAPITAL STRUCTURE

524.401 Minimum capital.

1. The minimum capital structure of a state bank existing and operating on July 1, 1995, shall not be less than the amount required by law prior to that date.

2. The minimum capital structure of a state

bank incorporated after July 1, 1995, pursuant to the provisions of this chapter shall not be less than the amount required by the federal deposit insurance corporation, or its successor, or a greater amount which the superintendent may deem necessary in view of the deposit potential of the state bank and current banking standards relating to total capital requirements.

3. A state bank incorporated on or after July 1, 1995, pursuant to this chapter, prior to receiving authorization to do business from the superintendent, shall establish paid-in surplus and undivided profits as required by the superintendent.

4. A state bank originally incorporated pursuant to this chapter shall establish, prior to receiving authorization to do business from the superintendent, paid-in surplus and undivided profits as required by the superintendent.

[C97, §1843, 1864; S13, §1843, 1864; C24, 27, §9160, 9206; C31, §9217-c1; C35, §9217-c1, 9283-f14; C39, §**9217.1, 9283.42;** C46, 50, 54, 58, 62, 66, §528.1, 528.127; C71, 73, 75, 77, 79, 81, §524.401]

95 Acts, ch 148, §35; 96 Acts, ch 1056, §7

524.402 Surplus. Repealed by 95 Acts, ch 148, § 135. See § 524.401.

524.403 Undivided profits. Repealed by 95 Acts, ch 148, § 135. See § 524.401.

524.404 Capital notes and debentures.

1. A state bank, with the prior approval of the superintendent and the affirmative vote of the holders of a majority of the shares entitled to vote, may issue capital notes or debentures. The amounts, maturities, rate of interest, relative rights with other creditors, and other terms and conditions shall be set forth on the face of the capital notes or debentures or in an attendant agreement, and all terms and conditions are subject to the prior approval of the superintendent provided that all such capital notes and debentures shall be subordinated to the rights of other persons to the extent provided for in section 524.1312. The aggregate amount of all capital notes and debentures issued and outstanding pursuant to this section shall not exceed, at any one time, twenty-five percent of the aggregate capital of the state bank.

2. A state bank shall not make any payment of principal on any capital notes or debentures without the prior approval of the superintendent nor shall any payment of principal and interest be made on any such capital or debentures by a state bank when its capital is impaired or which would cause its capital to become impaired. Subject to the provisions of this section a state bank may issue capital notes or debentures with provision for installment or serial payment of capital notes or debentures according to an established schedule which shall be approved by the superintendent prior to issuance.

3. A state bank shall not issue capital notes or debentures within five years after it is originally authorized to do business.

[C71, 73, 75, 77, 79, 81, §524.404]

95 Acts, ch 148, §36

524.405 Increase or decrease of capital structure.

1. A state bank, with the approval of the superintendent, may increase its capital structure or effect an allocation of amounts within its capital structure, by the use of any of the following methods:

a. Sale of authorized but unissued shares.

b. Transfer of surplus or undivided profits to capital for authorized but unissued shares.

c. Transfer of undivided profits to surplus.

d. Authorization and issuance of common shares, preferred shares, or capital notes or debentures.

2. The superintendent, whenever it appears necessary to do so in the interest of the safety of the deposits of a state bank, may require that the capital structure of the state bank be increased by either of the methods provided for in subsection 1, paragraphs *"a"* and *"d"*.

3. Capital or surplus shall not be decreased except with the approval of the superintendent.

[C97, §1856; C24, 27, 31, 35, 39, §**9194, 9262, 9264, 9265;** C46, 50, 54, 58, 62, 66, §526.38, 528.56, 528.59, 528.60; C71, 73, 75, 77, 79, 81, §524.405]

95 Acts, ch 148, §37

DIVISION V

SHARES, SHAREHOLDERS, AND DIVIDENDS

524.501 through 524.517 Transferred to § 524.521, 524.523 – 524.525, 524.527, 524.528, 524.531 – 524.533, 524.535 – 524.539, and 524.541 – 524.543 respectively.

524.518 Redemption of preferred shares. Repealed by 95 Acts, ch 148, § 135.

524.519 and 524.520 Transferred to § 524.544 and 524.545.

524.521 Authorized shares.

1. The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the state bank is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class. Prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limita-

tions, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 524.523.

2. The articles of incorporation must authorize both of the following:

a. One or more classes of shares that together have unlimited voting rights.

b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the state bank upon dissolution.

3. The articles of incorporation may authorize one or more classes of shares that have any of the following qualities:

a. Have special, conditional, or limited voting rights, or no right to vote, unless prohibited by this chapter.

b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:

(1) At the option of the state bank, the shareholders, or another person or upon the occurrence of a designated event.

(2) For cash, indebtedness, securities, or other property.

(3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

c. Preferred shares are redeemable only by resolution of the board of directors with the prior approval of the superintendent. Preferred shares which are redeemable according to the terms of their issuance shall be redeemed only in accordance with such terms. Preferred shares which are redeemed shall be canceled and shall not be reissued. Preferred shares which are not redeemable according to the terms of their issuance are redeemable only pro rata, by lot, or by such other equitable method as determined by the board of directors.

d. (1) If preferred shares are redeemed by a state bank, the redemption effects a cancellation of the shares, and a statement of cancellation shall be filed as provided in this paragraph. The filing of the statement of cancellation constitutes an amendment to the articles of incorporation and reduces the number of preferred shares of the class which the state bank is authorized to issue by the number which are canceled.

(2) The statement of cancellation shall be executed by the state bank by its president or a vice president and by its cashier or an assistant cashier, and acknowledged by one of the officers signing such statement, and shall set forth all of the following:

(a) The name of the state bank and the effective date of its articles of incorporation.

(b) The number of preferred shares canceled through redemption, itemized by classes.

(c) The aggregate number of issued shares, itemized by classes, after giving effect to the cancellation.

(d) The amount, expressed in dollars, of the stated capital of the state bank after giving effect to the cancellation.

(e) The number of shares which the state bank has authority to issue, itemized by classes, after giving effect to the cancellation.

(3) The statement of cancellation, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if the superintendent finds the statement of cancellation satisfies the requirements of this section, deliver it to the secretary of state for filing and recording in the secretary of state's office and the statement of cancellation shall also be filed and recorded in the office of the county recorder. The capital of the state bank is deemed to be reduced by the par value of the shares canceled upon the effective date of the redemption.

e. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

f. Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the state bank.

4. The description of the designations, preferences, limitations, and relative rights of share classes in subsection 3 is not all-inclusive.

5. Unless the articles of incorporation or bylaws otherwise provide, the board of directors, by resolution duly adopted and with the approval of the superintendent as provided in section 524.405, may issue from time to time, in whole or in part, the shares authorized by the articles of incorporation.

[C97, §1853, 1865; C24, 27, §9192, 9209; C31, 35, §9192, 9209, 9261-c1; C39, §**9192, 9209, 9261.1;** C46, 50, 54, 58, 62, 66, §526.36, 527.7, 528.55; C71, 73, 75, 77, 79, 81, §524.501]

95 Acts, ch 148, §38

CS 95, §524.521

524.522 Terms of class or series determined by board of directors.

1. If the articles of incorporation provide for such, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in section 524.521, of either of the following:

a. A class of shares before the issuance of any shares of that class.

b. One or more series within a class before the issuance of any shares of that series.

2. Each series of a class must be given a distinguishing designation.

3. All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

4. Before issuing any shares of a class or series created under this section, the state bank shall deliver to the superintendent for filing with the secretary of state articles of amendment on forms prescribed by the superintendent, which are effective without shareholder action, that set forth all of the following:

a. The name of the state bank and the effective date of its articles of incorporation.

b. The text of the amendment determining the terms of the class or series of shares.

c. The date it was adopted.

d. A statement that the amendment was duly adopted by the board of directors.

95 Acts, ch 148, §39

524.523 Certificates representing shares.

1. The shares of a state bank shall be represented by certificates signed by such officers, employees, or agents as are authorized by the articles of incorporation or bylaws to sign. If no contrary provisions are made in the articles of incorporation or bylaws, the certificates shall be signed by the president or a vice president and the cashier or an assistant cashier of the state bank.

2. Each share certificate must state on its face, at a minimum, all of the following:

a. The name of the issuing state bank and that it is organized under the laws of this state.

b. The name of the person to whom issued.

c. The number and class of shares and the designation of the series, if any, which the certificate represents.

d. The par value of each share represented by the certificate.

3. A state bank which is authorized to issue different classes of shares or different series within a class must do one of the following:

a. Summarize on the front or back of each certificate the designations, relative rights, preferences, and limitations applicable to each class; the variations in rights, preferences, and limitations determined for each series; and the authority of the board of directors to determine variations for future series.

b. State conspicuously on the front or back of each certificate that the state bank will furnish the shareholder this information on request in writing and without charge.

4. Each share certificate must be signed either manually or in facsimile by two officers as set forth in subsection 1, and may bear the corporate seal or its facsimile.

5. If the person who signed a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

6. A certificate shall not be issued for any share until such share is fully paid.

[C71, 73, 75, 77, 79, 81, §524.502]

95 Acts, ch 148, §40

CS 95, §524.523

524.524 Consideration for shares.

Except in the case of a distribution of shares authorized by section 524.543 or shares issued upon exchanges or conversion, common or preferred shares of a state bank may be issued only for cash in an amount not less than that determined by the superintendent.

[C97, §1853; C24, 27, 31, 35, 39, §**9192;** C46, 50, 54, 58, 62, 66, §526.36; C71, 73, 75, 77, 79, 81, §524.503]

95 Acts, ch 148, §41

CS 95, §524.524

524.525 Subscription for shares before incorporation.

1. A subscription for shares entered into before incorporation of the state bank is irrevocable for six months unless the subscription agreement provides a longer or shorter period, or all subscribers agree to revocation.

2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation of the state bank unless the subscription agreement specifies the terms. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Shares issued pursuant to subscriptions entered into before incorporation of the state bank are fully paid and nonassessable when the state bank receives the consideration specified in the subscription agreement.

4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation of the state bank, the state bank may do either of the following:

a. Collect the amount owed as any other debt.

b. Unless the subscription agreement provides otherwise, the state bank may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the state bank sends written demand for payment to the subscriber.

[C71, 73, 75, 77, 79, 81, §524.504]

95 Acts, ch 148, §42

CS 95, §524.525

524.526 Fractional shares.

1. A state bank may do any of the following:

a. Issue fractions of a share or pay in money the value of fractions of a share.

b. Arrange for disposition of fractional shares by the shareholders of the state bank.

c. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

2. Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 524.523, subsection 2.

3. The holder of a fractional share is entitled to

exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the state bank upon liquidation, but only if the scrip provides for such rights.

4. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including either of the following:

a. That the scrip will become void if not exchanged for full shares before a specified date.

b. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scrip holders.

95 Acts, ch 148, §43

524.527 Liability of shareholders.

1. A purchaser of the shares of a state bank is not liable to the bank, its creditors, or depositors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 524.521, or the consideration specified in the subscription agreement authorized under section 524.525.

2. Unless otherwise provided in the articles of incorporation, a shareholder of a state bank is not personally liable for the acts or debts of the state bank.

[C71, 73, 75, 77, 79, 81, §524.505]
95 Acts, ch 148, §44
CS 95, §524.527

524.528 Shareholders' preemptive rights.

1. Unless otherwise provided in section 524.529, the shareholders of a state bank do not have a preemptive right to acquire the state bank's unissued shares except to the extent provided in the articles of incorporation.

2. A statement included in the articles of incorporation that "the state bank elects to have preemptive rights", or words of similar import, means that, except to the extent otherwise expressly provided in the articles of incorporation, the following principles apply:

a. A shareholder of a state bank has a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire a proportional amount of the state bank's unissued shares upon the decision of the board of directors to issue such shares.

b. A shareholder may waive the shareholder's preemptive right. A waiver evidenced in writing is irrevocable even though it is not supported by consideration.

c. There is no preemptive right with respect to any of the following:

(1) Shares issued as compensation to directors, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation.

d. A holder of shares of any class without general voting rights but with preferential rights to distributions or assets has no preemptive rights with respect to shares of any class.

e. A holder of shares of any class with general voting rights but without preferential rights to distributions or assets has no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

f. Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

3. For purposes of this section, *"shares"* includes a security convertible into or carrying a right to subscribe for or acquire shares.

[C71, 73, 75, 77, 79, 81, §524.506]
95 Acts, ch 148, §45
CS 95, §524.528

524.529 Preemptive rights for existing state banks.

Notwithstanding contrary provisions of this chapter, a state bank which was incorporated under this chapter prior to July 1, 1995, shall be governed by the following until July 1, 1998:

1. Except to the extent limited or denied by this section or by the articles of incorporation, shareholders have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

2. Unless otherwise provided in the articles of incorporation:

a. No preemptive right exists with respect to either of the following:

(1) Acquiring any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote or when authorized by and consistent with a plan approved by such vote of the shareholders.

(2) Acquiring treasury shares of the state bank pursuant to section 524.530.

b. A holder of shares of any class that is preferred or limited as to dividends or assets is not entitled to any preemptive right.

c. A holder of shares of common stock is not entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or

assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

d. A holder of common stock without voting power has no preemptive right to shares of common stock with voting power.

e. A preemptive right is only an opportunity to acquire shares or other securities under the terms and conditions as fixed by the board of directors for the purpose of providing a fair and reasonable opportunity for the exercise of the preemptive right.

95 Acts, ch 148, §46

524.530 State bank's acquisition of its own shares.

1. With the prior approval of the superintendent, a state bank may acquire its own shares. Shares acquired pursuant to this section constitute authorized but unissued shares except as provided in subsection 2.

2. If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

95 Acts, ch 148, §47

524.531 Loaning on its own shares.

A state bank shall not make any loan or extension of credit on the security of the shares of its own capital, unless such security is necessary to prevent loss upon a debt previously contracted in good faith.

[C97, §1850; S13, §1850; C24, 27, §9184; C31, 35, §9221-c2; C39, §**9221.2;** C46, 50, 54, 58, 62, 66, §528.9; C71, 73, 75, 77, 79, 81, §524.507]

95 Acts, ch 148, §48

CS 95, §524.531

524.532 Meetings of shareholders.

Meetings of shareholders may be held at a place, within this state, as provided in the articles of incorporation or the bylaws, or as fixed in accordance with their provisions. In the absence of any such provision, all meetings shall be held at the principal place of business of the state bank. An annual meeting of the shareholders shall be held during the specific month as shall be provided in the articles of incorporation, at the date and time as stated in or fixed in accordance with the bylaws. Failure to hold the annual meeting during the month shall not work a forfeiture or dissolution of the state bank. Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or other officers or persons as provided in the articles of incorporation or the bylaws.

[C71, 73, 75, 77, 79, 81, §524.508]

84 Acts, ch 1032, §2

CS 95, §524.532

524.533 Notice of shareholder meetings — waiver of notice generally.

1. Written notice stating the place, day and hour of a meeting of the shareholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the cashier, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at the meeting. If mailed, the notice is deemed to be delivered when deposited in the United States mail addressed to the shareholder at the shareholder's address as it appears on the stock transfer books of the state bank with postage prepaid.

2. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the state bank for inclusion in the minutes or filing with the corporate records.

3. A shareholder's attendance at a meeting results in both of the following:

a. Waives the shareholder's objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon the shareholder's arrival objects to holding the meeting or transacting business at the meeting.

b. Waives the shareholder's objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

4. Unless the articles of incorporation or bylaws provide otherwise, the shareholders may permit any or all shareholders to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting as provided in this subsection is deemed to be present in person at the meeting.

[C71, 73, 75, 77, 79, 81, §524.509]

95 Acts, ch 148, §49

CS 95, §524.533

524.534 Action without meeting.

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted to be taken under this chapter at a special shareholders' meeting may be taken without a meeting if the action is consented to by all shareholders. The action must be evidenced by one or more written consents describing the action taken, signed by each shareholder, and included in

the minutes or filed with the corporate records reflecting the action taken.

2. Action taken under this section is effective when the last shareholder signs the consent, unless the consent specifies a different effective date.

3. A written consent signed under this section has the effect of a meeting vote and may be described as such in any document.

95 Acts, ch 148, §50

524.535 Transfer books — fixing record date.

The board of directors of a state bank shall cause adequate stock transfer books to be maintained.

The bylaws or, in the absence of an applicable bylaw, the board of directors may fix, in advance, a date as the record date for any determination of shareholders entitled to notice of or to vote at a meeting of shareholders, the date to be not more than seventy days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring the determination of shareholders, is to be taken. If a record date is not fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for the determination of shareholders. If a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, the determination applies to any adjournment of the meeting.

[C97, §1853; C24, 27, 31, 35, 39, §**9192;** C46, 50, 54, 58, 62, 66, §526.36; C71, 73, 75, 77, 79, 81, §524.510]

95 Acts, ch 148, §51

CS 95, §524.535

524.536 Voting list.

The officer or agent having charge of the stock transfer books for shares of a state bank shall, at least ten days before each meeting of shareholders, make a complete list of the shareholders entitled to vote at the meeting or any adjournment of the meeting, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to the meeting, shall be kept on file at the principal place of business of the state bank and is subject to inspection by a shareholder, or a shareholder's agent or attorney, at any time during usual business hours. The list of shareholders shall also be produced and kept open at the time and place of the meeting and is subject to the inspection of a shareholder, or a shareholder's agent or attorney, during the whole time of the meeting. The original stock transfer books are prima facie evidence as to who are the shareholders entitled to examine the list or transfer books or to vote at a meeting of shareholders. Failure to comply with the requirements of this section shall not affect the validity of action taken at a meeting of shareholders.

[C71, 73, 75, 77, 79, 81, §524.511]

95 Acts, ch 148, §52

CS 95, §524.536

524.537 Quorum of shareholders.

1. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, constitutes a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the laws of this state or of the United States or by the articles of incorporation or bylaws.

2. Once a share is represented for any purpose at a meeting, it is deemed present for the purpose of determining a quorum for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

[C71, 73, 75, 77, 79, 81, §524.512]

95 Acts, ch 148, §53

CS 95, §524.537

524.538 Voting of shares.

1. Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of a class or series may be limited or denied by the articles of incorporation.

2. Shares of a state bank purchased or acquired by such state bank pursuant to this chapter shall not be voted at any meeting and shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.

3. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney in fact. A proxy shall not be valid after eleven months from the date of its execution.

4. At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many individuals as there are directors to be elected and for whose election the shareholder has a right to vote.

5. In an election of directors, a state bank shall not vote its own shares held by it as sole trustee unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs

how the shares shall be voted. However, shares held in trust by a state bank pursuant to an instrument in effect prior to January 1, 1970, under the terms of which the manner in which such shares shall be voted could not be determined by a donor or beneficiary of the trust, may be voted in an election of directors of a state bank upon petition filed by the state bank, to a court of competent jurisdiction, and the appointment by such court of an individual to determine the manner in which the shares shall be voted. When the shares of a state bank are held by such state bank and one or more persons as trustees, the shares may be voted by such other person or persons as trustees, in the same manner as if the person or persons were the sole trustee. Whenever shares cannot be voted by reason of being held by a state bank as sole trustee, the shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.*

[C97, §1847; S13, §1889-e; C24, 27, 31, 35, 39, §**9175, 9289;** C46, 50, 54, 58, 62, 66, §526.18, 532.6; C71, 73, 75, 77, 79, 81, §524.513]

95 Acts, ch 148, §54

CS 95, §524.538

*See §633.699

524.539 Voting trust.

Any number of shareholders of a state bank may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the state bank at its principal place of business, by delivery of a copy of the voting trust agreement to the superintendent and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the state bank is subject to examination for any proper purpose during usual business hours by a shareholder of the state bank, in person or by agent or attorney, or by any holder of a beneficial interest in the voting trust, in person or by agent or attorney.

This section shall not affect the validity of any agreement, relative to the voting of shares, in effect prior to July 1, 1995.

[C71, 73, 75, 77, 79, 81, §524.514]

95 Acts, ch 148, §55

CS 95, §524.539

524.540 Voting agreements.

1. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to section 524.539.

2. A voting agreement created under this section is subject to a judicial order for specific enforcement.

95 Acts, ch 148, §56

524.541 Lists — filing with superintendent.

Every state bank shall cause to be kept a full and correct list of the names and addresses of the officers, directors, and shareholders of the state bank, and the number of shares held by each. The list shall be subject to public inspection during usual business hours. If an affiliate, as defined in subsection 4 of section 524.1101 is a shareholder in a state bank, such list shall include the names, addresses, and percentage of ownership or interest in the affiliate of the shareholders, members or other individuals possessing a beneficial interest in said affiliate.

A copy of the list as of the date of the adjournment of each annual meeting of shareholders, in the form of an affidavit signed by the president or cashier of the state bank, shall be transmitted to the superintendent within ten days after such annual meeting.

[C97, §1889; S13, §1889; C24, 27, 31, 35, 39, §**9255, 9256, 9257;** C46, 50, 54, 58, 62, 66, §528.47, 528.48, 528.49; C71, 73, 75, 77, 79, 81, §524.515]

CS 95, §524.541

524.542 Dividends.

1. The board of directors of a state bank may, from time to time, declare, and the state bank may pay, dividends on its outstanding shares subject to the restrictions of this chapter and to the restrictions, if any, in its articles of incorporation. Dividends may be declared and paid only out of undivided profits and may be paid in cash or property.

2. A dividend shall not be declared or paid if restricted by the superintendent.

[C97, §1852, 1888; S13, §1850-a, 1852, 1889-l; C24, 27, 31, 35, §9188, 9191, 9262, 9262-c1, 9263, 9283, 9299; C39, §**9188, 9191, 9262, 9262.1, 9263, 9283, 9299;** C46, 50, 54, 58, 62, 66, §526.33, 526.35, 528.56, 528.57, 528.58, 528.85, 532.16; C71, 73, 75, 77, 79, 81, §524.516]

95 Acts, ch 148, §57

CS 95, §524.542

524.543 Distribution of shares of state bank.

1. The board of directors of a state bank may, subject to the provisions of section 524.405, distribute pro rata to holders of common shares authorized but unissued common shares of the state bank.

2. A distribution shall not be made in authorized but unissued shares of the state bank unless an amount equal to the total par value of the shares distributed is transferred to capital.

[C71, 73, 75, 77, 79, 81, §524.517]
95 Acts, ch 148, §58
CS 95, §524.543

524.544 Change of control — certificate of approval — shares as security — reports.

1. Whenever any person proposes to purchase or otherwise acquire directly or indirectly any of the outstanding shares of a state bank, and the proposed purchase or acquisition would result in control or in a change in control of the bank, the person proposing to purchase or acquire the shares shall first apply in writing to the superintendent for a certificate of approval for the proposed change of control. The superintendent shall grant the certificate if the superintendent is satisfied that the person who proposes to obtain control of the bank is qualified by character, experience and financial responsibility to control and operate the bank in a sound and legal manner, and that the interests of the depositors, creditors and shareholders of the bank, and of the public generally, will not be jeopardized by the proposed change of control. A person which will become a bank holding company upon completion of an acquisition shall make application to the superintendent for a certificate of approval as provided in this section. Any other bank holding company shall comply with section 524.1804 in lieu of seeking a certificate of approval under this section. In any situation where the president or cashier of a bank has reason to believe any of the foregoing requirements have not been complied with, it shall be the duty of the president or cashier to promptly report in writing such facts to the superintendent upon obtaining knowledge thereof. As used in this section, the term *"control"* means the power, directly or indirectly, to elect the board of directors. If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control thereof, or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the superintendent.

2. Whenever twenty-five percent or more of the outstanding voting shares of a state bank is used as security for any transaction, the person or persons owning such shares shall promptly report such transaction to the superintendent in writing.

3. The reports required by subsections 1 and 2 of this section shall contain information (to the extent known by the person making the report) relative to the number of shares involved, the names of the sellers and purchasers (or transferors and transferees), the purchase price, the name of the borrower, the amount, source, and terms of the loan, or other transaction, the name of the bank issuing the shares used as security, and the number of shares used as security.

4. The superintendent may require, at such times as the superintendent deems appropriate, the submission of a financial statement from a shareholder or shareholders of a state bank possessing, directly or indirectly, control of such state bank.

[C71, 73, 75, 77, 79, 81, §524.519]
CS 95, §524.544
99 Acts, ch 6, §1

524.545 Options for shares.

A state bank may authorize the granting of options to officers and employees to purchase unissued shares of the state bank in accordance with a plan approved by the superintendent.

[C71, 73, 75, 77, 79, 81, §524.520]
95 Acts, ch 148, §59
CS 95, §524.545

DIVISION VI

DIRECTORS

524.601 Board of directors.

1. The business and affairs of a state bank shall be managed by a board of five or more directors eighteen years of age or older, a majority of whom shall be residents of the state of Iowa and citizens of the United States.

2. The number of directors may be increased, or decreased to a number not less than five, by the shareholders at the annual meeting, or at a special meeting called for that purpose, but no decrease shall have the effect of shortening the term of an incumbent director.

[C97, §1845, 1866; C24, 27, §9163, 9164, 9165, 9166, 9210 – 9212, 9213; C31, 35, §9163, 9164, 9165, 9210 – 9212, 9217-c2; C39, §**9163, 9164, 9165, 9210 – 9212, 9217.2;** C46, 50, 54, 58, 62, 66, §526.8, 526.9, 526.10, 527.8 – 527.10, 528.2; C71, 73, 75, 77, 79, 81, §524.601]
95 Acts, ch 148, §60

524.602 Board of directors — election.

At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting. Directors shall hold office for one year or until their successors have been elected and qualified, unless removed in accordance with provisions of section 524.606. When the shareholders determine the number of directors at an annual meeting or at a special meeting, they shall, at the same meeting, elect a director to fill each directorship.

[C97, §1846; C24, 27, 31, 35, 39, §**9171, 9172;** C46, 50, 54, 58, 62, 66, §526.14, 526.15; C71, 73, 75, 77, 79, 81, §524.602]
95 Acts, ch 148, §61

524.603 Vacancies.

Unless otherwise provided in the articles of incorporation, the bylaws, or by action of the shareholders, any vacancy occurring in the board of di-

rectors may be filled by the affirmative vote of the majority of the directors then in office, even if less than a quorum of the board of directors. A director so elected shall be elected for the unexpired term of the director's predecessor in office.

[C97, §1846; C24, 27, 31, 35, 39, §**9170;** C46, 50, 54, 58, 62, 66, §526.13; C71, 73, 75, 77, 79, 81, §524.603]

524.604 Duties and responsibilities.

The duties and responsibilities of a director or of the board of directors shall include, but are not limited to, the following:

1. Attendance at no less than seventy-five percent of the regular board meetings held during the calendar year.

2. Employment of officer personnel, and determination of their compensation.

3. Periodic review of the original records of the state bank, or comprehensive summaries thereof prepared by the officers of the state bank, pertaining to loans, discounts, security interests and investments in bonds and securities.

4. Review of the adequacy of the bank's internal controls and determination of the most appropriate method to satisfy the bank's audit needs pursuant to section 524.608.

5. Periodic review of the utilization of security measures for the protection of the state bank and the maintenance of reasonable insurance coverage.

Directors of a state bank shall discharge the duties of their position in good faith and with that diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. The directors shall have a continuing responsibility to assure themselves that the bank is being managed according to law and that the practices and policies adopted by the board are being implemented.

[C27, 31, 35, §9283-b23; C39, §**9283.71;** C46, 50, 54, 58, 62, 66, §531.23; C71, 73, 75, 77, 79, 81, §524.604]

95 Acts, ch 148, §62

524.605 Liability of directors in certain cases.

In addition to any other liabilities imposed by law upon directors of a state bank:

1. Directors of a state bank who vote for or assent to the declaration of any dividend or other distribution of the assets of a state bank to its shareholders in willful or negligent violation of the provisions of this chapter or of any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the state bank for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or of the restrictions in the articles of incorporation.

2. The directors of a state bank who vote for or assent to any distribution of assets of a state bank to its shareholders during the dissolution of the state bank without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the state bank shall be jointly and severally liable to the state bank for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the state bank are not thereafter paid and discharged.

3. The directors of a state bank who, willfully or negligently, vote for or assent to loans or extensions of credit in violation of the provisions of this chapter, shall be jointly and severally liable to the state bank for the total amount of any loss sustained.

4. The directors of a state bank who, willfully or negligently, vote for or assent to any investment of funds of the state bank in violation of the provisions of this chapter shall be jointly and severally liable to the state bank for the amount of any loss sustained on such investment.

A director of a state bank who is present at a meeting of its board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting or unless the director shall file the director's written dissent to such action with the individual acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the cashier of the state bank promptly after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

A director shall not be liable under subsection 1, 2, 3, or 4 of this section if the director relied and acted in good faith upon information represented to the director to be correct by an officer or officers of such state bank or stated in a written report by a certified public accountant or firm of such accountants. No director shall be deemed to be negligent within the meaning of this section if the director in good faith exercised that diligence, care and skill which an ordinarily prudent person would exercise as a director under similar circumstances.

Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a state bank and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of the provisions of this chapter, in proportion to the amounts received by them respectively. Further, any director against whom a claim shall be asserted pursuant to this section for the payment of any liability imposed by this section shall be entitled to contribution from any director found to be

similarly liable.

Whenever the superintendent deems it necessary the superintendent may require, after affording an opportunity for a hearing upon adequate notice, that a director or directors whom the superintendent reasonably believes to be liable to a state bank pursuant to subsection 1, 2, 3, or 4 of this section, to place in an escrow account in an insured bank located in this state, as directed by the superintendent, an amount sufficient to discharge any liability which may accrue pursuant to subsection 1, 2, 3, or 4 of this section. The amount so deposited shall be paid over to the state bank by the superintendent upon final determination of the amount of such liability. Any portion of the escrow account which is not necessary to meet such liability shall be repaid on a pro rata basis to the directors who contributed to the fund.

Any action seeking to impose liability under this section, other than liability for contribution, shall be commenced only within five years of the action complained of and not thereafter.

[C71, 73, 75, 77, 79, 81, §524.605]

95 Acts, ch 148, §63

524.606 Removal of directors.

1. At a meeting of shareholders expressly called for that purpose, individual directors or the entire board of directors may be removed, with or without cause, by the affirmative vote of the holders of a majority of the shares entitled to vote at an election of directors. The vacancies created may be filled at the same meeting at which the removal proceedings take place.

2. If, in the opinion of the superintendent, any director of a state bank has violated any law relating to such state bank or has engaged in unsafe or unsound practices in conducting the business of such state bank, the superintendent may cause notice to be served upon such director, to appear before the superintendent to show cause why the director should not be removed from office. A copy of such notice shall be sent to each director of the state bank affected, by registered or certified mail. If, after granting the accused director a reasonable opportunity to be heard, the superintendent finds that the director violated any law relating to such state bank or engaged in unsafe or unsound practices in conducting the business of such state bank, the superintendent, in the superintendent's discretion, may order that such director be removed from office. A copy of the order shall be served upon such director and upon the state bank of which the person is a director at which time the person shall cease to be a director of the state bank. The resignation, termination of employment, or separation of such director, including a separation caused by the closing of the state bank at which the person serves as a director, does not affect the jurisdiction and authority of the superintendent to cause notice to be served and proceed under this subsection against the director, if the notice is served before the end of the six-year period beginning on the date the director ceases to be a director with the bank.

The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. No action taken by a director prior to the director's removal shall be subject to attack on the ground of the director's disqualification.

[C31, 35, §9224-c2; C39, §**9224.2;** C46, 50, 54, 58, 62, 66, §528.18; C71, 73, 75, 77, 79, 81, §524.606]

91 Acts, ch 220, §3; 93 Acts, ch 28, §1; 95 Acts, ch 148, §64

524.607 Meetings — waiver of notice — quorum.

The board of directors shall hold at least nine regular meetings each calendar year. No more than one regular meeting shall be held in any one calendar month. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit directors to participate in meetings through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present at the meeting.

A special meeting may be called by any executive officer or a director. Notice of a meeting shall be given to each director, either personally or by mail, at least two days in advance of the meeting. Notice of a regular meeting shall not be required if the articles of incorporation, bylaws, or a resolution of the board of directors provide for a regular monthly meeting date.

Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Whenever any notice is required to be given to any director of a state bank under the provisions of this chapter or under the provisions of the articles of incorporation or the bylaws of the state bank, a waiver thereof in writing, signed by the individual or individuals entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

A majority of the board of directors shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the laws of this state or of the United States, the articles of incorporation or the bylaws.

[C97, §1846, 1871; S13, §1871; C24, 27, §9174, 9224; C31, 35, §9174, 9224-c1; C39, §**9174, 9224.1;**

C46, 50, 54, 58, 62, 66, §526.17, 528.17; C71, 73, 75, 77, 79, 81, §524.607]

95 Acts, ch 148, §65

524.608 Auditing procedures.

In addition to any examination made by the banking division or other supervisory agency, the board of directors shall review the adequacy of the bank's internal controls and cause to be made no less frequently than once each calendar year additional auditing procedures that the board deems to be appropriate. The board shall determine the bank's audit needs and record in the board's minutes the extent to which audit procedures are to be employed. A report which summarizes significant audit findings shall be delivered to the superintendent as soon as practical upon completion.

The superintendent may require that more comprehensive auditing procedures be applied to a bank's account records when deemed necessary. These auditing procedures may range from limited scope agreed-upon procedures to an unqualified audit opinion.

[C97, §1871; S13, §1871; C24, 27, §9224, 9225; C31, 35, §9224-c1, 9225, 9226; C39, §**9224.1, 9225, 9226;** C46, 50, 54, 58, 62, 66, §528.17, 528.19, 528.20; C71, 73, 75, 77, 79, 81, §524.608]

95 Acts, ch 148, §66; 96 Acts, ch 1056, §8

524.609 Executive and other committees.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the state bank shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the state bank, recommending to the shareholders a voluntary dissolution of the state bank or a revocation thereof, or amending the bylaws of the state bank. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[C71, 73, 75, 77, 79, 81, §524.609]

524.610 Compensation of directors.

The shareholders of a state bank shall fix the reasonable compensation of directors for their services as members of the board of directors. Subject to the approval of the superintendent and approval by the shareholders at an annual or special meeting called for that purpose, the shareholders of a state bank may adopt a pension or profit sharing plan, or both, or other plan of deferred compensation for directors, to which a state bank may contribute.

Directors may be reimbursed for reasonable expenses incurred in the performance of their duties.

[C97, §1869, 1871; S13, §1869, 1871; C24, 27, 31, 35, 39, §**9219, 9227;** C46, 50, 54, 58, 62, 66, §528.5, 528.21; C71, 73, 75, 77, 79, 81, §524.610; 81 Acts, ch 173, §1]

95 Acts, ch 148, §67

524.611 Oath of directors.

Each director of a state bank, before acting as a director, shall take an oath that the director will diligently, faithfully and impartially perform the duties imposed upon the director by law, that the director will not knowingly violate or willingly permit a violation of any of the provisions of this chapter, and that the director meets the eligibility requirements of this chapter.

The oath shall be signed by the director, acknowledged before an officer authorized to take acknowledgments of deeds, and delivered to the superintendent.

[C97, §1845; C24, 27, §9167; C31, 35, 39, §**9224;** C46, 50, 54, 58, 62, 66, §528.16; C71, 73, 75, 77, 79, 81, §524.611]

524.612 Director dealing with state bank.

1. Subject to the provisions of section 524.904, a director of a state bank may receive loans and extensions of credit from a state bank of which the person is a director. A majority of the board of directors, voting in the absence of the applying director, shall give its prior approval to such loans and extensions of credit. Approval shall be recorded in the minutes.

2. A director shall not be permitted to receive any loan or extension of credit or use any property of a state bank of which the person is a director at a lower rate of interest or on terms which are more favorable than the terms offered to other customers under similar circumstances.

3. A director shall not receive terms or be paid a rate of interest on deposits, by a state bank of which the person is a director, which are more favorable than that provided to any other customer under similar circumstances.

4. A director shall not purchase or lease any assets from or sell or lease any assets to a state bank of which the person is a director except upon terms not less favorable to the state bank than those offered to or by other persons. All purchases or leases from and sales or leases to a director shall receive the prior approval of a majority of the board of directors voting in the absence of the interested director.

5. For the purpose of this section and section 524.706, loans and extensions of credit, as defined in section 524.904, to the spouse of a director or officer, other than a spouse who is legally separated

from the director or officer under a decree of divorce or separate maintenance, or to minor children of a director or officer to the state bank in which the person is a director or officer, are considered loans and extensions of credit of such director or officer. However, loans and extensions of credit of a spouse are not considered loans and extensions of credit of the director or officer if all of the following apply:

a. Assets and liabilities of a director or officer are not included in the financial statement of the spouse and are not otherwise relied upon as a basis for loans or extensions of credit to the spouse.

b. The guarantee of a director or officer is not relied upon as a basis for loans or extensions of credit to the spouse.

c. The proceeds of the loans and extensions of credit to the spouse are not intermingled with or used for a common purpose with the proceeds of loans and extensions of credit to the director or officer.

[C97, §1869; S13, §1869; C24, 27, 31, 35, 39, §**9220;** C46, 50, 54, 58, 62, 66, §528.6; C71, 73, 75, 77, 79, 81, §524.612]

91 Acts, ch 14, §1; 95 Acts, ch 148, §68

524.613 Prohibitions applicable to certain financial transactions involving directors.

1. A director of a state bank shall not receive anything of value, other than compensation and expense reimbursement authorized by section 524.610, for procuring, or attempting to procure, any loan or extension of credit, as defined in section 524.904, to the state bank or for procuring, or attempting to procure, an investment by the state bank.

2. A state bank shall not pay an overdraft of a director of the state bank on an account at the state bank, unless the payment of funds is made in accordance with either of the following:

a. A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment.

b. A written, preauthorized transfer of collected funds from another account of the account holder at the state bank.

[C31, 35, §9221-c3; C39, §**9221.3;** C46, 50, 54, 58, 62, 66, §528.10; C71, 73, 75, 77, 79, 81, §524.613]

95 Acts, ch 148, §69

524.614 Honorary and advisory directors.

The board of directors of a state bank may appoint an individual as an honorary director, director emeritus, or member of an advisory board. An individual so appointed shall not vote at any meeting of the board of directors, shall not be counted in determining a quorum, and shall not be charged with any responsibilities or be subject to any liabilities imposed upon directors by this chapter.

[C71, 73, 75, 77, 79, 81, §524.614]

95 Acts, ch 148, §70

DIVISION VII

OFFICERS AND EMPLOYEES

524.701 Officers and employees.

1. A state bank shall have as officers a president, one vice president, and a cashier. No more than two of these positions may be held by the same individual. A state bank may have other officers as prescribed by the articles of incorporation or bylaws.

2. The board of directors shall elect one officer as the chief executive officer, who shall be a member of the board of directors.

3. Upon written notice by the superintendent, an individual who performs active executive or official duties for a state bank may be treated as an executive officer. A state bank may have a chairperson of the board of directors who, if the person does not perform executive or official duties or receive a salary, need not be considered an executive officer of the state bank.

4. An individual employed by a state bank, other than a director or an officer, is considered an employee for the purposes of this chapter.

[C97, §1845; C24, 27, 31, 35, 39, §**9162;** C46, 50, 54, 58, 62, 66, §526.7(4); C71, 73, 75, 77, 79, 81, §524.701]

91 Acts, ch 7, §1; 95 Acts, ch 148, §71

524.702 Officers — duties and liability.

1. All officers of a state bank shall have such authority and perform such duties in the management of the state bank as may be provided for in the articles of incorporation or the bylaws, or as may be determined by a resolution of the board of directors not inconsistent with the bylaws or the articles of incorporation.

2. If an officer willfully or negligently submits any incorrect information to a director or directors, and action by the board of directors contrary to the provisions of this chapter, or of any restrictions in the articles of incorporation, is taken in reliance thereon, the officer shall be liable to the same extent as if the officer were a director voting for or assenting to such action, as provided in section 524.605. An officer shall also be liable to the extent of any loss sustained by the state bank as a result of the officer's willful or negligent violation of any provision of this chapter. The superintendent may require an officer or officers whom the superintendent reasonably believes to be liable to a state bank pursuant to this section, to place in an escrow account an amount sufficient to discharge such liability in the manner provided for in section 524.605. No officer shall be deemed to be negligent within the meaning of this section if the officer exercised that diligence, care and skill

which an ordinarily prudent person would exercise as an officer under similar circumstances.

[C97, §1886; C24, 27, 31, 35, 39, §**9281;** C46, 50, 54, 58, 62, 66, §528.83; C71, 73, 75, 77, 79, 81, §524.702]

524.703 Officers and employees — employment and compensation.

The board of directors may fix the tenure and provide for the reasonable compensation of officers. The chief executive officer or the chief executive officer's designee shall determine the employees' compensation and tenure. Officers and employees may be reimbursed for reasonable expenses incurred by them on behalf of the state bank.

Subject to the approval of the superintendent, and approval by the shareholders at an annual or special meeting called for the purpose, the board of directors of a state bank may adopt a pension or profit-sharing plan, or both, or other plan of deferred compensation, for both officers and employees, to which the state bank may contribute.

[C97, §1844, 1869; S13, §1869; C24, 27, 31, 35, 39, §**9162, 9219;** C46, 50, 54, 58, 62, 66, §526.7(4), 528.5; C71, 73, 75, 77, 79, 81, §524.703]

95 Acts, ch 148, §72

524.704 Employee — employment and compensation. Repealed by 95 Acts, ch 148, § 135. See § 524.703.

524.705 Bonds of officers and employees.

The officers and employees of a state bank having the care, custody, or control of any funds or securities for any state bank shall give a good and sufficient bond in a company authorized to do business in this state indemnifying the state bank against losses, which may be incurred by reason of any act or acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misapplication, misappropriation, or other unlawful act committed by such officer or employee directly or through connivance with others, until all of the officer's or employee's accounts with the state bank are fully settled and satisfied. The amounts and sureties are subject to the approval of the board of directors. The superintendent may require higher amounts as deemed necessary. If the agent of a bonding company issuing a bond under this section is an officer or employee of the state bank upon which the bond was issued, the bond so issued shall contain a provision that the bonding company shall not use, either as a grounds for rescission or as a defense to liability under the terms and conditions of the bond, the knowledge that the agent was so employed, whether or not the agent received any part of the premium for the bond as a commission.

[C97, §1845; C24, 27, §9169; C31, 35, §9169, 9217-c3; C39, §**9169, 9217.3;** C46, 50, 54, 58, 62, 66, §526.12, 528.3; C71, 73, 75, 77, 79, 81, §524.705]

95 Acts, ch 148, §73

524.706 Officer dealing with state bank.

1. *a.* An executive officer of a state bank may receive loans and extensions of credit, as defined in section 524.904, subsection 1, from a state bank of which the person is an executive officer, as follows:

(1) For amounts secured by a lien on a dwelling which is expected, after the obligation is incurred, to be owned by the executive officer and used as the officer's principal residence.

(2) For amounts to finance the education of a child or children of the executive officer.

(3) For amounts which in the aggregate do not at any one time exceed the higher of twenty-five thousand dollars or two and one-half percent of the bank's aggregate capital, but in no event more than one hundred thousand dollars.

(4) For amounts which do not, in the aggregate, exceed the principal amounts of segregated deposit accounts which the bank may lawfully set off. An interest in or portion of a segregated deposit account does not satisfy the requirements of this subparagraph if that interest or portion is also pledged to secure the payment of a debt or obligation of any person other than the executive officer. If the deposit is eligible for withdrawal before the secured loan matures, the bank shall establish internal procedures to prevent the release of the security without the bank's prior consent.

(5) For amounts secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations fully guaranteed by the United States as to principal and interest.

(6) For amounts secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States.

b. A state bank shall not loan money or extend credit to an executive officer of the state bank, and an executive officer of a state bank shall not receive a loan or extension of credit from the state bank, exceeding the limitations imposed by this section or for a purpose other than that authorized by this section. Such loans and extensions of credit shall not exceed an amount totaling more than fifteen percent of the aggregate capital of the state bank, except for loans and extensions of credit identified in paragraph *"a"*, subparagraphs (4), (5), and (6). Any such loan on real property shall comply with section 524.905. A majority of the board of directors, voting in the absence of the applying executive officer, whether or not the executive officer is also a director, shall give its prior approval to any obligation of an executive officer to the state bank of which the person is an executive

officer. Approval shall be recorded in the minutes.

2. Section 524.612, subsection 2, applies to executive officers, and section 524.612, subsections 3 and 4, apply to all officers and employees.

3. Upon the request of the board of directors, an officer or employee of a state bank shall submit to the board of directors a personal financial statement which shall include the names of all persons to whom the officer or employee is obligated, the dates, terms, and amounts of each loan or other obligation, the security for the loan or obligation, and the purpose for which the proceeds of the loan or other obligation has been or is to be used.

4. Upon the request of the superintendent, a director or an officer of a state bank shall submit to the superintendent a personal financial statement which shall show the names of all persons to whom the director or officer is obligated, the dates, terms, and amounts of each loan or other obligation, the security for the loan or obligation, and the purpose for which the proceeds of the loan or other obligation has been or is to be used.

[C97, §1869; S13, §1869; C24, 27, 31, 35, 39, §**9220;** C46, 50, 54, 58, 62, 66, §528.6; C71, 73, 75, 77, 79, 81, §524.706; 82 Acts, ch 1253, §1]

83 Acts, ch 101, §109; 84 Acts, ch 1032, §3; 91 Acts, ch 7, §2; 95 Acts, ch 148, §74; 96 Acts, ch 1056, §9

524.707 Removal of officers or employees.

1. An officer or employee may be removed by the board of directors whenever in its judgment the best interests of the state bank shall be served by such removal, but the removal shall be without prejudice to the contract rights, if any, of the officer or employee so removed. Election of an officer shall not of itself create contract rights.

2. Section 524.606, subsection 2, which provides for the removal of directors by the superintendent, shall have equal application to officers and employees.

[C71, 73, 75, 77, 79, 81, §524.707]

91 Acts, ch 220, §4; 95 Acts, ch 148, §75

524.708 Report of change in officer personnel.

A state bank shall promptly notify the superintendent of any change in the individuals holding the offices of chief executive officer or president.

[C97, §1889; S13, §1889; C24, 27, 31, 35, 39, §**9255, 9257;** C46, 50, 54, 58, 62, 66, §528.47, 528.49; C71, 73, 75, 77, 79, 81, §524.708]

95 Acts, ch 148, §76

524.709 Duty to make records available to superintendent.

The officers and employees of a state bank shall make all records of the state bank available to the superintendent for the purpose of examination or for any other reasonable purpose.

[C24, 27, 31, 35, 39, §**9147;** C46, 50, 54, 58, 62, 66, §524.20; C71, 73, 75, 77, 79, 81, §524.709]

524.710 Prohibitions applicable to certain financial transactions involving officers and employees.

1. An officer or employee of a state bank shall not do any of the following:

a. Receive anything of value, other than compensation as authorized by section 524.703, for procuring, or attempting to procure, any loan or extension of credit, as defined in section 524.904, for the state bank or for procuring, or attempting to procure, an investment by the state bank.

b. Engage, directly or indirectly, in the sale of any kind of insurance, shares of stock, bonds or other securities, or real property, or procure or attempt to procure for a fee or other compensation, a loan or extension of credit for any person from a person other than the state bank of which the person is an officer or employee, or act in any fiduciary capacity, unless authorized to do so by the board of directors of the state bank which shall also determine the manner in which the profits, fees, or other compensation derived therefrom shall be distributed.

2. A state bank shall not pay an overdraft of an officer or employee of the state bank on an account at the state bank, unless the payment of funds is made in accordance with either of the following:

a. A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment.

b. A written, preauthorized transfer of collected funds from another account of the account holder at the state bank.

[C31, 35, §9221-c3, 9222-c2, 9283-c1; C39, §**9221.3, 9222.2, 9283.01;** C46, 50, 54, 58, 62, 66, §528.10, 528.12, 528.86; C71, 73, 75, 77, 79, 81, §524.710]

95 Acts, ch 148, §77

DIVISION VIII

GENERAL BANKING POWERS

524.801 General powers.

A state bank, unless otherwise stated in its articles of incorporation, shall have power:

1. To sue and be sued, complain and defend, in its corporate name.

2. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

3. To purchase, take, receive, lease, or otherwise acquire, own, hold, improve and use real or personal property, or an interest therein, in connection with the exercise of any power granted in this chapter.

4. To sell, convey, pledge, mortgage, grant a security interest, lease, exchange, transfer, and release from trust or mortgage or otherwise dispose

of all or any part of real or personal property, or an interest therein, in connection with the exercise of any power granted in this chapter.

5. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the state bank.

6. To make donations for the public welfare for religious, charitable, scientific or educational or community development purposes.

7. To indemnify a director, officer, or employee, or a former director, officer, or employee of the state bank in the manner and in the instances authorized by sections 490.850 through 490.859.

8. To elect officers or appoint agents of the state bank and define their duties and fix their compensation.

9. To cease its existence as a state bank in the manner provided for in this chapter.

10. To have and exercise all powers necessary and proper to effect any or all of the purposes for which the state bank is organized.

11. To contract indebtedness and incur liabilities to effect any or all of the purposes for which the state bank is organized, subject to the provisions of this chapter.

12. To set off a customer's account against any of the customer's debts or liabilities owed the state bank pursuant to an agreement entered into between the customer and the state bank.

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere in this chapter, or as a limitation on the purposes for which a state bank may be incorporated.

[C97, §1841, 1844; S13, §1889-j; C24, 27, 31, 35, 39, §**9156, 9162, 9267;** C46, 50, 54, 58, 62, 66, §526.2, 526.7, 532.14; C71, 73, 75, 77, 79, 81, §524.801]

83 Acts, ch 71, §5; 90 Acts, ch 1205, §39; 95 Acts, ch 148, §78, 79; 2002 Acts, ch 1154, §112, 125

2002 amendment to subsection 7 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 7 amended

524.802 Additional powers of a state bank.

A state bank shall have in addition to other powers granted by this chapter, and subject to the limitations and restrictions contained in this chapter, the power to do all of the following:

1. Become an insured bank pursuant to the Federal Deposit Insurance Act and to take action as necessary to maintain the state bank's insured status.

2. Become a member of the federal reserve system, to acquire and hold shares in the appropriate federal reserve bank and to exercise all powers conferred on member banks by the federal reserve system that are not inconsistent with this chapter.

3. Become a member of a clearinghouse association.

4. Act as agent of the United States or of any instrumentality or agency of the United States.

5. Act as agent for a depository institution affiliate to the same extent that a national bank can act as an agent for a depository institution under the provisions of section 18 of the Federal Deposit Insurance Act, 12 U.S.C. § 1828.

6. Buy and sell coin, currency, and bullion.

7. Organize, acquire, and hold shares of stock in an operations subsidiary, with the prior approval of the superintendent.

8. Engage in the brokerage of insurance and real estate subject to the prior approval of the superintendent. These activities are subject to regulation, including but not limited to regulation under subtitle 1 and subtitle 4 of this title.

9. Acquire and hold shares of stock in the appropriate federal home loan bank and to exercise all powers conferred on member banks of the federal home loan bank system that are not inconsistent with this chapter. A purchase of federal home loan bank shares which causes the state bank's holdings to exceed fifteen percent of aggregate capital requires the prior approval of the superintendent.

10. Acquire and hold shares of stock in the federal agricultural mortgage corporation or corporations engaged solely in the pooling of agricultural loans for the federal agricultural mortgage corporation guarantees.

11. Become a member of a bankers' bank.

12. Subject to the prior approval of the superintendent, organize, acquire, or invest in a subsidiary for the purpose of engaging in any of the following:

a. Nondepository activities that a state bank is authorized to engage in directly under this chapter.

b. Activities that a bank service corporation is authorized to engage in under state or federal law or regulation.

c. Activities authorized pursuant to section 524.825.

13. Acquire, hold, and improve real estate for the sole purpose of economic or community development, provided that the state bank's aggregate investment in all acquisitions and improvements of real estate under this subsection shall not exceed fifteen percent of a state bank's aggregate capital and shall be subject to the prior approval of the superintendent.

14. All other powers determined by the superintendent to be appropriate for a state bank.

[C97, §1841; SS15, §1889-o; C24, 27, 31, §9156, 9269, 9271; C35, §9156, 9269, 9271, 9283-g2, -g3, -g4, -g5; C39, §**9156, 9269, 9271, 9283.45, 9283.46, 9283.47, 9283.48;** C46, 50, 54, 58, 62, 66, §526.2, 528.67, 528.70, 530.2, 530.3, 530.4, 530.5; C71, 73, 75, 77, 79, 81, §524.802]

95 Acts, ch 148, §80

524.803 Business property of state bank.

1. A state bank shall have power to do all of the following:

a. Acquire and hold, or lease as lessee, such personal property as is used, or is to be used, in its operations.

b. Subject to the prior approval of the superintendent, acquire and hold, or lease as lessee, only such real property as is used, or is to be used, wholly or substantially, in its operations or acquired for future use.

c. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged solely in holding or operating real property used wholly or substantially by a state bank in its operations or acquired for its future use.

d. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation organized solely for the purpose of providing data processing services, as such services are defined in section 524.804.

e. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged in providing and operating facilities through which banks and customers may engage, by means of either the direct transmission of electronic impulses to and from a bank or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank, in transactions in which such banks are otherwise permitted to engage pursuant to applicable law.

2. The book value of all real and personal property acquired and held pursuant to this section, of all alterations to buildings on real property owned or leased by a state bank, of all shares in corporations acquired pursuant to paragraphs *"c"*, *"d"*, and *"e"* of subsection 1, and of any and all obligations of such corporations to the state bank, shall not exceed forty percent of the aggregate capital of the state bank or such larger amount as may be approved by the superintendent.

3. Any real property which is held by a state bank pursuant to this section and which it ceases to use for banking purposes, or is acquired for future use but not used within a reasonable period of time, shall be sold or disposed of by the state bank as directed by the superintendent.

[C97, §1851; C24, 27, 31, 35, 39, §**9190;** C46, 50, 54, 58, §526.34; C62, 66, §524.31, 526.34; C71, 73, 75, 77, 79, 81, §524.803]

87 Acts, ch 171, §13; 95 Acts, ch 148, §81

524.804 Data processing services.

A state bank which owns or leases equipment to perform such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or other clerical, bookkeeping, accounting, statistical, or other similar functions, may provide similarly related data processing services for others whether or not engaged in the business of banking. If a state bank holds shares in a corporation organized solely for the purpose of providing data processing services, pursuant to the authority granted by section 524.803, subsection 1, paragraph *"d"*, other than a bank service corporation as defined by the laws of the United States, such corporation shall be authorized to perform services for the state bank owning such interest and for others, whether or not engaged in the business of banking.

[C62, 66, §524.31; C71, 73, 75, 77, 79, 81, §524.804]

95 Acts, ch 148, §82

524.805 Deposits.

1. A state bank may receive money for deposit and may provide, by resolution of the board of directors, for the payment of interest on such deposit and shall repay the deposit in accordance with the terms and conditions of its acceptance.

2. The terms and conditions attending an agreement to pay interest on deposits shall be furnished to each customer at the time of the acceptance by the state bank of the initial deposit. No change made in the terms and conditions attending an agreement to pay interest which adversely affects the interest of a depositor shall be retroactively effective. Savings account depositors and holders and payees of automatic renewal time certificates of deposit shall be given reasonable notice of any change in the terms and conditions attending an agreement to pay interest prior to the effective date thereof.

3. A state bank may make such charges for the handling or custody of deposits as may be fixed by its board of directors provided that a schedule of the charges shall be furnished to the customer at the time of acceptance by the state bank of the initial deposit. Any change in the charges shall be furnished to the customer within a reasonable period of time before the effective date of the change.

4. A state bank shall not accept deposits or renew certificates of deposit when insolvent.

5. Except as provided in section 524.807, a state bank may receive deposits by or in the name of a minor and may deal with a minor with respect to a deposit account without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such deposit account shall be binding on the minor with the same effect as though an adult.

6. A state bank may receive deposits from a person acting as fiduciary or in an official capacity which shall be payable to such person in such capacity.

7. A state bank may receive deposits from a corporation, trust, estate, association or other similar organization which shall be payable to any person authorized by its board of directors or other

persons exercising similar functions.

8. A state bank may receive deposits from one or more persons with the provision that upon the death of the depositors the deposit account shall be the property of the person or persons designated by the deceased depositors as shown on the deposit account records of the state bank. After payment by the state bank, the proceeds shall remain subject to the debts of the decedent and the payment of Iowa inheritance tax, if any. A state bank paying the person or persons designated shall not be liable as a result of that action for any debts of the decedent or for any estate, inheritance, or succession taxes which may be due this state.

[C97, §1844, 1848, 1849, 1852, 1854, 1884; S13, §1848, 1852; C24, 27, §9162, 9177, 9178, 9179, 9180, 9181, 9182, 9191, 9193, 9279; C31, 35, §9162, 9177, 9178, 9179, 9180, 9181, 9182, 9191, 9193, 9222-c1, 9279; C39, §**9162, 9177, 9178, 9179, 9180, 9181, 9182, 9191, 9193, 9222.1, 9279;** C46, 50, 54, 58, 62, 66, §526.7, 526.19 – 526.24, 526.35, 526.37, 528.11, 528.81; C71, 73, 75, 77, 79, 81, §524.805; 81 Acts, ch 173, §2]

95 Acts, ch 148, §83, 84; 2002 Acts, ch 1002, §1
Subsection 8 amended

524.806 Deposit in the names of two or more individuals.

When a deposit is made in any state bank in the names of two or more individuals, payable to any one or more of them, or payable to the survivor or survivors, the deposit, including interest, or any part thereof, may be paid to any one or more of the individuals whether the others be living or not, and the receipt or acquittance of the individuals so paid is a valid and sufficient release and discharge to the state bank for any payment so made.

[S13, §1889-b; C24, 27, 31, 35, 39, §**9267;** C46, 50, 54, 58, 62, 66, §528.64; C71, 73, 75, 77, 79, 81, §524.806; 81 Acts, ch 173, §3]

524.807 Payment of deposited funds.

When any deposit shall be made by any individual in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the state bank, in the event of the death of the trustee, the same or any part thereof, together with interest thereon, may be paid to the individual for whom the deposit was made, or to the individual's legal representatives; provided that the individual for whom the deposit was made, if a minor, shall not draw the same during the individual's minority without the consent of the legal representatives of said trustee.

[SS15, §1889-d; C24, 27, 31, 35, 39, §**9287;** C46, 50, 54, 58, 62, 66, §532.4; C71, 73, 75, 77, 79, 81, §524.807]

524.808 Adverse claims to deposits.

1. A state bank shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or any claim of authority to exercise control over, a deposit account made by a person or persons other than:

a. The customer in whose name the account is held by the state bank.

b. An individual or group of individuals who are authorized to draw on or control the account pursuant to certified corporate resolution or other written arrangement with the customer, currently on file with the state bank, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the state bank has received notice and which is not the subject of a dispute known to the state bank as to its original validity. The deposit account records of a state bank shall be presumptive evidence as to the identity of the customer on whose behalf the money is held.

2. To require a state bank to recognize an adverse claim to, or adverse claim of authority to control, a deposit account, whoever makes the claim must either:

a. Obtain and serve on the state bank an appropriate court order or judicial process directed to the state bank, restraining any action with respect to the account until further order of such court or instructing the state bank to pay the balance of the account, in whole or in part, as provided in the order or process; or

b. Deliver to the state bank a bond, in form and amount and with sureties satisfactory to the state bank, indemnifying the state bank against any liability, loss or expense which it might incur because of its recognition of the adverse claim or because of its refusal by reason of such claim to honor any check or other order of anyone described in paragraphs *"a"* and *"b"* of subsection 1 of this section.

[C71, 73, 75, 77, 79, 81, §524.808]

524.809 Authority to lease safe deposit boxes.

1. A state bank may lease safe deposit boxes for the storage of property on terms and conditions prescribed by the state bank. The terms and conditions shall not bind a customer or the customer's successors or legal representatives to whom the state bank does not give notice of such terms and conditions by delivery of a lease and agreement in writing containing the terms and conditions. A state bank may limit its liability provided such limitations are set forth in the lease and agreement in at least the same size and type as the other substantive provisions of the lease and agreement.

2. The lease and agreement of a safe deposit box may provide that evidence tending to prove

that property was left in any such box upon the last entry by the customer or the customer's authorized agent, and that the same or any part thereof was found missing upon subsequent entry, shall not be sufficient to raise a presumption that the same was lost by any negligence or wrongdoing for which such state bank is responsible, or put upon the state bank the burden of proof that such alleged loss was not the fault of the state bank.

3. A state bank may lease a safe deposit box to a minor. A state bank may deal with a minor with respect to a safe deposit lease and agreement without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such safe deposit lease and agreement shall be binding on the minor with the same effect as though an adult.

4. A state bank which has on file a power of attorney of a customer covering a safe deposit lease and agreement, which has not been revoked by the customer, shall incur no liability as a result of continuing to honor the provisions of the power of attorney in the event of the death or incompetence of the donor of the power of attorney until it receives written notice of the death, or written notice of adjudication by a court of the incompetence of the customer and the appointment of a guardian or conservator.

[C31, 35, §9267-c1; C39, §**9267.1;** C46, 50, 54, 58, 62, 66, §528.65; C71, 73, 75, 77, 79, 81, §524.809]

95 Acts, ch 148, §85

524.810 Search procedure on death. Repealed by 97 Acts, ch 60, § 1, 2.

524.810A Safe deposit box access.

1. A bank shall permit a person named in and authorized by a court order to open, examine, and remove the contents of a safe deposit box located at the bank. If a court order has not been delivered to the bank, the following persons may access and remove any or all contents of a safe deposit box located at a state bank and described in an ownership or rental agreement or lease between the state bank and a deceased owner or lessee:

a. A co-owner or co-lessee of the safe deposit box.

b. A person designated in the safe deposit box agreement or lease to have access to the safe deposit box upon the death of the lessee, to the extent provided in the safe deposit box agreement or lease.

c. An executor or administrator of the estate of a deceased owner or lessee upon delivery to the state bank of a certified copy of letters of appointment.

d. A person named as an executor in a copy of a purported will produced by the person, provided such access shall be limited to the removal of a purported will, and no other contents shall be removed.

e. A trustee of a trust created by the deceased owner or lessee upon delivery to the state bank of a copy of the trust together with an affidavit by the trustee which certifies that the copy of the trust delivered to the state bank with the affidavit is an accurate and complete copy of the trust, the trustee is the duly authorized and acting trustee under the trust, the trust property includes property in the safe deposit box, and that to the knowledge of the trustee the trust has not been revoked.

2. A person removing any contents of a safe deposit box pursuant to subsection 1 shall deliver any writing purported to be a will of the decedent to the court having jurisdiction over the decedent's estate.

3. *a.* If a person authorized to have access under subsection 1 does not request access to the safe deposit box within the thirty-day period immediately following the date of death of the owner or lessee of a safe deposit box, and the state bank has knowledge of the death of the owner or lessee of the safe deposit box, the safe deposit box may be opened by or in the presence of two employees of the state bank. If no key is produced, the state bank may cause the safe deposit box to be opened and the state bank shall have a claim against the estate of the deceased owner or lessee and a lien upon the contents of the safe deposit box for the costs of opening and resealing the safe deposit box.

b. If a safe deposit box is opened pursuant to paragraph *"a"*, the bank employees present at such opening shall do all of the following:

(1) Remove any purported will of the deceased owner or lessee.

(2) Unseal, copy, and retain in the records of the state bank a copy of a purported will removed from the safe deposit box. An additional copy of such purported will shall be made, dated, and signed by the bank employees present at the safe deposit box opening and placed in the safe deposit box. The safe deposit box shall then be resealed.

(3) The original of a purported will shall be sent by registered or certified mail or personally delivered to the district court in the county of the last known residence of the deceased owner or lessee, or the court having jurisdiction over the testator's estate. If the residence is unknown or last known and not in this state, the purported will shall be sent by registered or certified mail or personally delivered to the district court in the county where the safe deposit box is located.

4. The state bank may rely upon published information or other reasonable proof of death of an owner or lessee. A state bank has no duty to inquire about or discover, and is not liable to any person for failure to inquire about or discover, the death of the owner or lessee of a safe deposit box. A state bank has no duty to open or cause to be opened, and is not liable to any person for failure to open or cause to be opened, a safe deposit box of

a deceased owner or lessee. Upon compliance with the requirements of subsection 1 or 3, the state bank is not liable to any person as a result of the opening of the safe deposit box, removal and delivery of the purported will, or retention of the unopened safe deposit box and contents.

99 Acts, ch 148, §1

524.811 Adverse claims to property in safe deposit and safekeeping.

1. A state bank shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or claim of authority to exercise control over, property held in safe deposit or property held for safekeeping pursuant to section 524.813 made by a person or persons other than:

a. The customer in whose name the property is held by the state bank.

b. An individual or group of individuals who are authorized to have access to the safe deposit box, or to the property held for safekeeping, pursuant to a certified corporate resolution or other written arrangement with the customer, currently on file with the state bank, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the state bank has received notice and which is not the subject of a dispute known to the state bank as to its original validity. The safe deposit and safekeeping account records of a state bank shall be presumptive evidence as to the identity of the customer on whose behalf the money is held.

2. To require a state bank to recognize an adverse claim to, or adverse claim of authority to control, property held in safe deposit or for safekeeping, whoever makes the claim must either:

a. Obtain and serve on the state bank an appropriate court order or judicial process directed to the state bank, restraining any action with respect to the property until further order of such court or instructing the state bank to deliver the property, in whole or in part, as provided in the order or process; or

b. Deliver to the state bank a bond, in form and amount and with sureties satisfactory to the state bank, indemnifying the state bank against any liability, loss or expense which it might incur because of its recognition of the adverse claim or because of its refusal to deliver the property to any person described in paragraphs *"a"* and *"b"* of subsection 1 of this section.

[C71, 73, 75, 77, 79, 81, §524.811]

524.812 Remedies and proceedings for nonpayment of rent on safe deposit box.

1. A state bank shall have a lien upon the contents of a safe deposit box for past due rentals and any expense incurred in opening the safe deposit box, replacement of the locks thereon, and of any sale made pursuant to this section. If the rental of any safe deposit box is not paid within six months from the day it is due, at any time thereafter and while such rental remains unpaid, the state bank shall mail a notice by certified or registered mail to the customer at the customer's last known address as shown upon the records of the state bank, stating that if the amount due for such rental is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state bank will remove the contents thereof and hold the same for the account of the customer.

2. If the rental for the safe deposit box has not been paid prior to the expiration of the period specified in a notice mailed pursuant to subsection 1 of this section, the state bank may, in the presence of two of its officers, cause the box to be opened and the contents removed. An inventory of the contents of the safe deposit box shall be made by the two officers present and the contents held by the state bank for the account of the customer.

3. If the contents are not claimed within two years after their removal from the safe deposit box, the state bank may proceed to sell so much of the contents as is necessary to pay the past due rentals and the expense incurred in opening the safe deposit box, replacement of the locks thereon and the sale of the contents. The sale shall be held at the time and place specified in a notice published prior to the sale once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state bank has its principal place of business. A copy of the notice so published shall be mailed to the customer at the customer's last known address as shown upon the records of the state bank. The notice shall contain the name of the customer and need only describe the contents of the safe deposit box in general terms. The contents of any number of safe deposit boxes may be sold under one notice of sale and the cost thereof apportioned ratably among the several safe deposit box customers involved. At the time and place designated in said notice the contents taken from each respective safe deposit box shall be sold separately to the highest bidder for cash and the proceeds of each sale applied to the rentals and expenses due to the state bank and the residue from any such sale shall be held by the state bank for the account of the customer or customers. Any amount so held as proceeds from such sale shall be credited with interest at the customary annual rate for savings accounts at said state bank, or in lieu thereof, at the customary rate of interest in the community where such proceeds are held. The crediting of interest shall not activate said account

to avoid an abandonment as unclaimed property under chapter 556.

4. Notwithstanding any of the provisions of this section, shares, bonds, or other securities which, at the time of a sale pursuant to subsection 3 of this section, are listed on any established stock exchange in the United States, shall not be sold at public sale but may be sold through an established stock exchange. Upon the making of a sale of any such securities, an officer of the state bank shall execute and attach to the securities so sold an affidavit reciting facts showing that such securities were sold pursuant to this section and that the state bank has complied with the provisions of this section. The affidavit shall constitute sufficient authority to any corporation whose shares are so sold or to any registrar or transfer agent of such corporation to cancel the certificates of shares so sold and to issue a new certificate or certificates representing such shares to the purchaser thereof, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser thereof.

5. The proceeds of any sale made pursuant to this section, after the payment of any amounts with respect to which the state bank has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state bank until such time as the property is presumed abandoned according to the provisions of section 556.2, and shall thereafter be handled in accordance with the provisions of that chapter.

[C71, 73, 75, 77, 79, 81, §524.812]

95 Acts, ch 148, §86

524.813 Authority to receive property for safekeeping.

1. A state bank may accept property for safekeeping if, except in the case of night depositories, it issues a receipt therefor. A state bank accepting property for safekeeping shall purchase and maintain reasonable insurance coverage to insure against loss incurred in connection with the acceptance of property for safekeeping. Property held for safekeeping shall not be commingled with the property of the state bank or the property of others.

2. A state bank shall have a lien upon any property held for safekeeping for past due charges for safekeeping and for expenses incurred in any sale made pursuant to this subsection. If the charge for the safekeeping of property is not paid within six months from the day it is due, at any time thereafter and while such charge remains unpaid, the state bank may mail a notice to the customer at the customer's last known address as shown upon the records of the state bank, stating that if the amount due is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state bank will remove the property from safekeeping and hold the same for the account of the customer. After the expiration of the period specified in such notice, if the charge for safekeeping has not been paid, the state bank may remove the property from safekeeping, cause the property to be inventoried and hold the same for the account of the customer. If the property is not claimed within two years after its removal from safekeeping the state bank may proceed to sell so much thereof as is necessary to pay the charge which remains unpaid and the expense incurred in making the sale in the manner provided for in subsections 3 and 4 of section 524.812. The proceeds of any sale made pursuant to this section, after payment of any amounts with respect to which the state bank has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state bank until such time as the property is presumed abandoned according to the provisions of section 556.2, and shall thereafter be handled in accordance with the provisions of that chapter.

[C71, 73, 75, 77, 79, 81, §524.813]

524.814 Loan or pledge of assets.

Pursuant to a resolution of its board of directors, a state bank may lend or pledge its assets for the following purposes, and for no other purposes:

1. To secure deposits of the state bank or a bank that is an affiliate of the state bank when a customer is required to obtain such security, or a bank is required to provide security, by the laws of the United States, by any agency or instrumentality of the United States, by the laws of the state of Iowa, by the state board of regents, by a resolution or ordinance relating to the issuance of bonds, by the terms of any interstate compact or by order of any court of competent jurisdiction. The lending of securities to a bank that is an affiliate, or the pledging of securities for the account of a bank that is an affiliate, shall be on terms and conditions that are consistent with safe and sound banking practices.

2. To secure money borrowed by the state bank, provided that capital notes or debentures issued pursuant to section 524.404 shall not in any event be secured by a pledge of assets or otherwise.

3. To secure participations sold to the federal agricultural mortgage corporation.

[S13, §1889-c; C24, 27, §9268; C31, 35, §9222-c2, 9222-c3, 9268; C39, §**9222.2, 9222.3, 9268;** C46, 50, 54, 58, 62, 66, §528.12, 528.13, 528.66; C71, 73, 75, 77, 79, 81, §524.814]

89 Acts, ch 257, §9; 2002 Acts, ch 1175, §92, 103

Section amended

524.815 Deposits by a state bank.

A state bank may deposit its funds in a depository which is selected by, or in a manner authorized by, the directors of a state bank and which is au-

thorized by law to receive deposits and is subject to supervision by banking authorities of the United States or of any state, and, with the prior approval of the superintendent, in any other depository.

[C71, 73, 75, 77, 79, 81, §524.815]

524.816 Account insurance.

1. A bank organized under this chapter, as a condition of maintaining its privilege of organization after July 1, 1984 shall become an insured bank and shall acquire and maintain insurance to protect each depositor against loss of funds held on account by the bank. The insurance shall be obtained from the federal deposit insurance corporation or another insurance plan approved by the superintendent, provided that each bank shall acquire deposit insurance from the appropriate agency of the federal government.

2. The superintendent may furnish to an official of an insurance plan by which the accounts of the bank are insured, any information relating to examinations and reports of the status of that bank for the purpose of determining availability of insurance to that bank.

84 Acts, ch 1196, §1; 91 Acts, ch 16, §1

524.817 Repealed by 81 Acts, ch 173, § 11.

524.818 Indebtedness of state bank.

A state bank may borrow money or otherwise contract indebtedness for necessary expenses in managing and transacting its business, to maintain proper cash reserves, and for other corporate purposes, provided, however, the superintendent may prohibit or place restrictions upon money borrowed or other indebtedness which would, in the superintendent's judgment, constitute an unsafe or unsound practice in view of the condition and circumstances of the state bank. Nothing contained in this section shall limit the right of a state bank to issue capital notes or debentures pursuant and subject to the provisions of section 524.404.

[S13, §1889-j; C24, 27, 31, 35, 39, §**9297;** C46, 50, 54, 58, 62, 66, §532.14; C71, 73, 75, 77, 79, 81, §524.818]

524.819 Clearing checks at par.

Checks drawn on a state bank shall be cleared at par by the state bank on which they are drawn. This section shall not be applicable where checks are received by a bank as special collection items.

[C46, 50, 54, 58, 62, 66, §528.63; C71, 73, 75, 77, 79, 81, §524.819]

524.820 Money received for transmission.

1. A state bank shall have power to receive money for transmission. Upon receiving money for transmission, a state bank shall give the customer a receipt setting forth the date of receipt of the money, the amount of the money in dollars and cents, and if the money is to be transmitted to a foreign country in the currency of such country, the amount of the money in such currency.

2. In an action by a customer against a state bank for recovery of money delivered for transmission, the burden of proof of delivery of the money in accordance with the instructions of the customer shall be on the state bank but an affidavit by an agent or depository of the state bank that the money was delivered in accordance with the instructions of the customer and a receipt for the money signed in the name of the recipient designated by the customer shall be prima facie evidence of the delivery of the money in accordance with the instructions of the customer.

[C71, 73, 75, 77, 79, 81, §524.820]

524.821 Electronic transmission of funds — restrictions.

1. A state bank may engage in any transaction incidental to the conduct of the business of banking and otherwise permitted by applicable law, by means of either the direct transmission of electronic impulses to or from customers and banks or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank. Subject to the provisions of chapter 527, a state bank may utilize, establish or operate, alone or with one or more other banks, savings and loan associations incorporated under the provisions of chapter 534 or federal law, credit unions incorporated under the provisions of chapter 533 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which customers and banks may transmit and receive electronic impulses constituting transactions pursuant to this section. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527. Nothing in this section shall be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this section be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any bank.

2. A state bank which offers its customers, or any of them, the opportunity to engage in transactions with or through the bank in the manner authorized by subsection 1 shall not require a customer to deal with or through the bank in that manner in lieu of writing checks in the usual manner upon a conventional checking account, and shall not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that bank. The term *"extraordinary charge"*, as used in this subsection, is a charge in excess of a fair and reasonable charge, based upon

the costs to the bank of providing and maintaining checking account services.

[C77, 79, 81, §524.821; 82 Acts, ch 1094, §1]

524.822 through 524.824 Reserved.

524.825 Securities activities.

Subject to the prior approval of the superintendent and as authorized by rules adopted by the superintendent pursuant to chapter 17A, a state bank or a subsidiary of a state bank organized or acquired pursuant to section 524.802, subsection 12, may engage in directly, or may organize, acquire, or invest in a subsidiary for the purpose of engaging in securities activities and any aspect of the securities industry, including, but not limited to, any of the following:

1. Issuing, underwriting, selling, or distributing stocks, bonds, debentures, notes, interest in mutual funds or money-market-type mutual funds, or other securities.

2. Organizing, sponsoring, and operating one or more mutual funds.

3. Acting as a securities broker-dealer licensed under chapter 502. The business relating to securities shall be conducted through, and in the name of, the broker-dealer. The requirements of chapter 502 apply to any business of the broker-dealer transacted in this state.

A subsidiary engaging in activities authorized by this section may also engage in any other authorized activities under section 524.802, subsection 12.

87 Acts, ch 171, §14; 95 Acts, ch 148, §87

DIVISION IX

INVESTMENT AND LENDING POWERS

524.901 Investments.

1. For purposes of this section, unless the context otherwise requires:

a. "Investment securities" means marketable obligations in the form of bonds, notes, or debentures which have been publicly offered, are of sound value, or are secured so as to be readily marketable at a fair value, and are within the four highest grades according to a reputable rating service or represent unrated issues of equivalent value. *"Investment securities"* does not include investments which are predominately speculative in nature.

b. "Shares" means proprietary units of ownership of a corporation.

2. A state bank shall not invest for its own account more than fifteen percent of its aggregate capital in investment securities of any one obligor. Any premium paid by a state bank for any investment securities shall not be included in determining the amount that may be invested under this subsection.

3. Subject only to the exercise of prudent banking judgment, a state bank may invest for its own account without regard to the limitation provided in subsection 2 in any of the following:

a. Investment securities of the United States of which the payment of principal and interest is fully and unconditionally guaranteed by the United States.

b. Investment securities issued, insured, or guaranteed by a department or an agency of the United States government, provided that the securities, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the securities.

c. Investment securities of the federal national mortgage association or the association's successor.

d. Investment securities of the federal home loan mortgage corporation or the corporation's successor.

e. Investment securities of the student loan marketing association or the association's successor.

f. Investment securities of a federal home loan bank.

g. Investment securities of a farm credit bank.

h. Investment securities representing general obligations of the state of Iowa or of political subdivisions of the state.

4. A state bank may invest without limit in the shares or units of investment companies or investment trusts registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to United States investment securities described in subsection 3 or repurchase agreements fully collateralized by United States investment securities described in subsection 3, if delivery of the collateral is taken either directly or through an authorized custodian and the dollar-weighted average maturity of the portfolio is not more than five years. All other investments by a state bank in the shares or units of investment companies or investment trusts registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, whose portfolios exclusively contain investment securities permissible pursuant to subsections 2 and 3, shall not exceed fifteen percent of the state bank's aggregate capital.

5. To the extent necessary to meet minimum membership or participation criteria, a state bank may invest for its own account in the shares of the appropriate federal reserve bank, the appropriate federal home loan bank, the federal national agricultural mortgage corporation or corporations engaged solely in the pooling of agricultural loans for federal agricultural mortgage corporation guarantees, and other similar investments acceptable to the superintendent and approved in writing by the superintendent. The bank's investment in the shares of each of the organizations is limited to fif-

teen percent of its aggregate capital or a higher amount as approved by the superintendent. Notwithstanding the specific requirements of this section, any shares of government-sponsored entities held by a state bank on or before July 1, 1995, shall be authorized.

6. A state bank, upon the approval of the superintendent, may acquire and hold the shares of any corporation which a state bank is authorized to acquire and hold pursuant to this chapter.

7. A state bank, upon the approval of the superintendent, may invest up to five percent of its aggregate capital in the shares or equity interests of any of the following:

a. Economic development corporations organized under chapter 496B to the extent authorized by and subject to the limitations of that chapter.

b. Community development corporations or community development projects to the same extent a national bank may invest in such corporations or projects pursuant to 12 U.S.C. § 24.

c. Small business investment companies as defined by the laws of the United States.

d. Venture capital funds which invest an amount equal to at least fifty percent of a state bank's investment in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state.

e. Small businesses having a principal office within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state. An investment by a state bank in a small business under this paragraph shall be included with the obligations of the small business to the state bank that are incurred as a result of the exercise by the state bank of the powers conferred in section 524.902 for the purpose of determining the total obligations of the small business pursuant to section 524.904. A state bank's equity interest investment in a small business, pursuant to this paragraph, shall not exceed a twenty percent ownership interest in the small business.

f. Other entities, acceptable to the superintendent, whose sole purpose is to promote economic or civic developments within a community or this state.

A state bank's total investment in any combination of the shares or equity interests of the entities identified in paragraphs *"a"* through *"f"* shall be limited to fifteen percent of its aggregate capital.

For purposes of this subsection, the term *"venture capital fund"* means a corporation, partnership, proprietorship, or other entity whose principal business is or will be the making of investments in, and the providing of significant managerial assistance to, small businesses. The term *"small business"* means a corporation, partnership, proprietorship, or other entity which meets the appropriate United States small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state, or other investments which provide an economic benefit to the state. The term *"equity interests"* means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

8. A state bank, in the exercise of the powers granted in this chapter, may purchase cash value life insurance contracts which may include provisions for the lump sum payment of premiums and which may include insurance against the loss of the lump sum payment. The cash value life insurance contracts purchased from any one company shall not exceed fifteen percent of aggregate capital of the state bank, and in the aggregate from all companies, shall not exceed twenty-five percent of aggregate capital of the state bank unless the state bank has obtained the approval of the superintendent prior to the purchase of any cash value life insurance contract in excess of this limitation.

9. A state bank may invest without limitation for its own account in futures, forward, and standby contracts to purchase and sell any of the instruments a state bank is authorized to purchase and sell, subject to the prior approval of the superintendent and pursuant to applicable federal laws and regulations governing such contracts. Purchase and sale of such contracts shall be conducted in accordance with safe and sound banking practices and with the level of the activity being reasonably related to the state bank's business needs and capacity to fulfill its obligations under the contracts.

[C97, §1844, 1850; S13, §1850; SS15, §1889-o; C24, 27, 31, 35, 39, §**9162, 9183, 9269, 9271;** C46, 50, 54, 58, 62, 66, §526.7, 526.25, 528.15, 528.67, 528.70; C71, 73, 75, 77, 79, 81, §524.901; 81 Acts, ch 173, §10; 82 Acts, ch 1017, §1, 2]

83 Acts, ch 124, §14, 15; 83 Acts, ch 152, §1; 85 Acts, ch 136, §3; 85 Acts, ch 252, §35; 87 Acts, ch 171, §15 – 19; 88 Acts, ch 1075, §1; 89 Acts, ch 49, §1; 89 Acts, ch 257, §10 – 15; 91 Acts, ch 220, §5, 6; 94 Acts, ch 1140, §1, 2; 95 Acts, ch 148, §88

524.902 General lending powers of a state bank.

1. A state bank may, subject to any applicable restrictions under other provisions of this chapter, loan money, extend credit and discount or purchase evidences of indebtedness and agreements for the payment of money.

2. Nothing in this chapter is deemed to permit a state bank to purchase a vendee's interest in a real property sales contract, provided, however, that a state bank may loan or extend credit on the security of such an interest.

[C97, §1844, 1850, 1870; S13, §1850; SS15, §1870; C24, 27, 31, 35, 39, §**9162, 9184, 9223;** C46, 50, 54, 58, 62, 66, §526.7, 526.29, 528.14; C71, 73, 75, 77, 79, 81, §524.902]

92 Acts, ch 1161, §3

524.903 Purchase and sale of drafts and bills of exchange.

1. A state bank shall have power to accept drafts drawn upon it having not more than six months after sight to run, exclusive of days of grace:

a. Which grow out of transactions involving the importation or exportation of goods.

b. Which grow out of transactions involving the domestic shipment of goods, provided documents of title are attached thereto at the time of acceptance.

c. In which a security interest is perfected at the time of acceptance covering readily marketable staples.

2. A state bank shall not accept such drafts in an amount which exceeds at any time in the aggregate for all drawers thirty percent of the state bank's aggregate capital. The superintendent may authorize a state bank to accept drafts in an amount not exceeding at any time in the aggregate for all drawers sixty percent of the state bank's aggregate capital, but the aggregate of acceptance growing out of domestic transactions shall in no event exceed thirty percent of aggregate capital.

3. A state bank, with the prior approval of the superintendent, may accept drafts, having not more than three months after sight to run, drawn upon it by banks or bankers in foreign countries, or in dependencies or insular possessions of the United States, for the purpose of furnishing dollar exchange as required by the usages of trade where the drafts are drawn in an aggregate amount which shall not at any time exceed for all such acceptance on behalf of a single bank or banker seven and one-half percent of the state bank's aggregate capital, and for all such acceptances, thirty percent of the state bank's aggregate capital.

[C24, 27, 31, 35, 39, §**9272, 9273, 9274;** C46, 50, 54, 58, 62, 66, §528.71, 528.72, 528.73; C71, 73, 75, 77, 79, 81, §524.903]

95 Acts, ch 148, §89

524.904 Loans and extensions of credit to one borrower.

1. For purposes of this section, *"loans and extensions of credit"* means a state bank's direct or indirect advance of funds to a borrower based on an obligation of that borrower to repay the funds or repayable from specific property pledged by the borrower and shall include:

a. A contractual commitment to advance funds, as defined in section 524.103.

b. A maker or endorser's obligation arising from a state bank's discount of commercial paper.

c. A state bank's purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period.

d. A state bank's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the state bank's loan is the total unpaid balance of the paper owned by the state bank less any applicable dealer reserves retained by the state bank and held by the state bank as collateral security. Where the seller's obligation to repurchase is limited, the state bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A state bank's purchase of third-party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller.

e. An overdraft.

f. Amounts paid against uncollected funds.

g. Loans or extensions of credit that have been charged off the books of the state bank in whole or in part, unless the loan or extension of credit has become unenforceable by reason of discharge in bankruptcy; or is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or forgiven under an executed written agreement by the state bank and the borrower.

h. The aggregate rentals payable by the borrower under leases of personal property by the state bank as lessor.

i. Loans and extensions of credit to one borrower consisting of investments in which the state bank has invested pursuant to section 524.901.

j. Amounts invested by a state bank for its own account in the shares and obligations of a corporation which is a customer of the state bank.

k. All other loans and extensions of credit to one borrower of the state bank not otherwise excluded by subsection 7, whether directly or indirectly, primarily or secondarily.

2. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed fifteen percent of the state bank's aggregate capital as defined in section 524.103, unless the additional lending provisions described in subsection 3 or 4 apply.

3. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed twenty-five percent of the state bank's aggregate capital if any amount that exceeds the lending limitation described in subsection 2 is fully secured by one or any combination of the following:

a. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable nonperishable staples when such goods are covered by insurance to the extent that insuring the goods is customary, and when the market value of the goods is not at any time less than one hundred twenty per-

cent of the amount of the loans and extensions of credit.

b. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable refrigerated or frozen staples when such goods are fully covered by insurance and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

c. Shipping documents or instruments that secure title to or give a first lien on livestock. At inception, the current value of the livestock securing the loans must equal at least one hundred percent of the amount of the outstanding loans and extensions of credit. For purposes of this section, *"livestock"* includes dairy and beef cattle, hogs, sheep, and poultry, whether or not held for resale. For livestock held for resale, current value means the price listed for livestock in a regularly published listing or actual purchase price established by invoice. For livestock not held for resale, the value shall be determined by the local slaughter price. The bank must maintain in its files evidence of purchase or an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate.

d. Mortgages, deeds of trust, or similar instruments granting a first lien on farmland or on single-family or two-family residences, subject to the provisions of section 524.905, provided the amount loaned shall not exceed fifty percent of the appraised value of such real property.

e. With the prior approval of the superintendent, other readily marketable collateral. The market value of the collateral securing the loans must at all times equal at least one hundred percent of the outstanding loans and extensions of credit.

4. A state bank may grant loans and extensions of credit to one borrower not to exceed thirty-five percent of the state bank's aggregate capital if any amount that exceeds the lending limitations described in subsection 2 or 3 consists of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.

5. A state bank may grant loans and extensions of credit to a corporate group in an amount not to exceed twenty-five percent of the state bank's aggregate capital if all loans and extensions of credit to any one borrower within a corporate group conform to subsection 2 or 3, and the financial strength, assets, guarantee, or endorsement of any one corporate group member is not relied upon as a basis for loans and extensions of credit to any other corporate group member. A state bank may grant loans and extensions of credit to a corporate group in an amount not to exceed thirty-five percent of aggregate capital if all loans and extensions of credit to any one borrower within a corporate group conform to subsection 2, 3, or 4, and the financial strength, assets, guarantee, or endorsement of any one corporate group member is not relied upon as a basis for loans and extensions of credit to any other corporate group member. A corporate group includes a person and all corporations in which the person owns or controls fifty percent or more of the shares entitled to vote.

6. For purposes of this section:

a. Loans and extensions of credit to one person will be attributed to another person and will be considered one borrower if either of the following apply:

(1) The proceeds, or assets purchased with the proceeds, benefit another person, other than a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(2) The expected source of repayment for each loan or extension of credit is the same for each borrower and no borrower has another source of income from which the loan may be fully repaid.

b. Loans and extensions of credit to a partnership, joint venture, or association are deemed to be loans and extensions of credit to each member of the partnership, joint venture, or association. This provision does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement or other written agreement, are not to be held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

c. Loans and extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless loans and extensions of credit are made to the member to purchase an interest in the partnership, joint venture, or association, or the proceeds are used for a common purpose with the proceeds of loans and extensions of credit to the partnership, joint venture, or association.

d. Loans and extensions of credit to one borrower which are endorsed or guaranteed by another borrower will not be combined with loans and extensions of credit to the endorser or guarantor unless the endorsement or guaranty is relied upon as a basis for the loans and extensions of credit. A state bank shall not be deemed to have violated this section if the endorsement or guaranty is relied upon after inception of loans and extensions of credit, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to one borrower in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

e. When the superintendent determines the interests of a group of more than one borrower, or

any combination of the members of the group, are so interrelated that they should be considered a unit for the purpose of applying the limitations of this section, some or all loans and extensions of credit to that group of borrowers existing at any time shall be combined and deemed loans and extensions of credit to one borrower. A state bank shall not be deemed to have violated this section solely by reason of the fact that loans and extensions of credit to a group of borrowers exceed the limitations of this section at the time of a determination by the superintendent that the indebtedness of that group must be combined, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to the group in the amount in excess of the limitations of this section within a reasonable time as fixed by the superintendent.

7. Total loans and extensions of credit to one borrower for the purpose of applying the limitations of this section shall not include any of the following:

a. Additional funds advanced for taxes or for insurance if the advance is for the protection of the state bank, and provided that such amounts receive the prior approval of the superintendent.

b. Accrued and discounted interest on existing loans or extensions of credit.

c. Any portion of a loan or extension of credit sold as a participation by a state bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. If an originating state bank funds the entire loan, it must receive funding from the participants on the same day or the portions funded will be treated as loans by the originating state bank to the borrower.

d. Loans and extensions of credit to one borrower to the extent secured by a segregated deposit account which the state bank may lawfully set off. An amount held in a segregated deposit account in the name of more than one customer shall be counted only once with respect to all borrowers. Where the deposit is eligible for withdrawal before the secured loan matures, the state bank must establish internal procedures to prevent release of the security without the state bank's prior consent.

e. Loans and extensions of credit to one borrower which is a bank.

f. Loans and extensions of credit to one borrower which are fully secured by bonds and securities of the kind in which a state bank is authorized to invest for its own account without limitation under section 524.901, subsection 3.

g. Loans and extensions of credit to a federal reserve bank or to the United States, or of any department, bureau, board, commission, agency, or establishment of the United States, or to any corporation owned directly or indirectly by the United States, or loans and extensions of credit to one borrower to the extent that such loans and extensions of credit are fully secured or guaranteed or covered by unconditional commitments or agreements to purchase by a federal reserve bank or by the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States. Loans and extensions of credit to one borrower secured by a lease on property under the terms of which the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States, or the state of Iowa, or any political subdivision of the state, is lessee and under the terms of which the aggregate rentals payable to the borrower will be sufficient to satisfy the amount loaned is considered to be loans and extensions of credit secured or guaranteed as provided for in this paragraph.

h. Loans and extensions of credit to one borrower as the drawer of drafts drawn in good faith against actually existing values in connection with a sale of goods which have been endorsed by the borrower with recourse or which have been accepted.

i. Loans and extensions of credit arising out of the discount of commercial paper actually owned by a borrower negotiating the same and endorsed by a borrower without recourse and which is not subject to repurchase by a borrower.

j. Loans and extensions of credit drawn by a borrower in good faith against actually existing values and secured by nonnegotiable bills of lading for goods in process of shipment.

k. Loans and extensions of credit in the form of acceptances of other banks of the kind described in section 524.903, subsection 3.

l. Loans and extensions of credit of the borrower by reason of acceptances by the state bank for the account of the borrower pursuant to section 524.903, subsection 1.

[C97, §1870; SS15, §1870; C24, 27, 31, 35, 39, §**9223;** C46, 50, 54, 58, 62, 66, §528.14, 528.15; C71, 73, 75, 77, 79, 81, §524.904; 81 Acts, ch 173, §4]

89 Acts, ch 257, §16; 95 Acts, ch 148, §90; 96 Acts, ch 1056, §10; 99 Acts, ch 6, §2

524.905 Loans on real property.

1. *Rules for loans.* A state bank may make permanent loans, construction loans, or combined construction and permanent loans, secured by

liens on real property, as authorized by rules adopted by the superintendent under chapter 17A. The rules shall include provisions as necessary to ensure the safety and soundness of these loans, and to ensure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for the borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

2. *Protective payments — escrow accounts*. A bank may include in the loan documents signed by the borrower a provision requiring the borrower to pay the bank each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the bank in order to better secure the loan. The bank shall be deemed to be acting in a fiduciary capacity with respect to these funds. A bank receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the bank pays to depositors of funds in ordinary savings accounts. A bank which maintains an escrow account in connection with any loan authorized by this section, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annual accounting of all transactions made with respect to the loan and escrow account.

3. *Escrow reports*. A state bank may act as an escrow agent with respect to real property, and may receive funds and make disbursements from escrowed funds in that capacity. The state bank shall be deemed to be acting in a fiduciary capacity with respect to these funds. A bank which maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year. The summary shall be delivered or mailed not later than thirty days following the year to which disclosure relates. The summary shall contain all of the following information:

a. The name and address of the mortgagee.

b. The name and address of the mortgagor.

c. A summary of escrow account activity during the year as follows:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(a) Payments against loan principal.

(b) Payments against interest.

(c) Payments against real estate taxes.

(d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) The balance of the escrow account at the end of the year.

d. A summary of loan principal for the year as follows:

(1) The amount of principal outstanding at the beginning of the year.

(2) The aggregate amount of payments against principal during the year.

(3) The amount of principal outstanding at the end of the year.

4. *Marketability reports*. If the bank obtains a report or opinion by an attorney or from another mortgage lender relating to defects in or liens or encumbrances on the title of real property, the unmarketability of the title to real property, or the invalidity or unenforceability of liens or encumbrances upon real property, the bank shall provide a copy of the report or opinion to the mortgagor and the mortgagor's attorney.

[C97, §1850; S13, §1850; C24, 27, 31, §9183, 9185, 9186; C35, §9183, 9183-g1, 9185, 9186; C39, §**9183, 9183.1, 9185, 9186;** C46, 50, 54, 58, 62, 66, §526.25, 526.26, 526.30, 526.31; C71, 73, 75, 77, 79, S79, §524.905; C81, §524.905, 535B.1 – 535B.14; 81 Acts, ch 173, §5, ch 174, §1, 7; 82 Acts, ch 1253, §2, 43]

83 Acts, ch 124, §16

Court action required for termination of installment contracts during military service; §29A.102, 29A.105

Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service; §29A.103, 29A.104

524.906 Installment loans by state banks. Repealed by 89 Acts, ch 257, § 33. See § 524.904(3b).

524.907 Participations.

A state bank may purchase and may sell, subject to the provisions of sections 524.901, 524.904, and 524.905, and to such regulations as the superintendent may prescribe, participations in one or more evidences of indebtedness and agreements for the payment of money, and pools of bonds, securities, evidences of indebtedness and agreements for the payment of money.

[C71, 73, 75, 77, 79, 81, §524.907]
89 Acts, ch 257, §17

524.908 Leasing of personal property.
A state bank may make leases as authorized by rules adopted by the superintendent under chapter 17A.
[C71, 73, 75, 77, 79, 81, §524.908]
95 Acts, ch 148, §91

524.909 Loans and investments by officer.
No loan or investment shall be made from the funds of any state bank, directly or indirectly, except by an officer of the state bank who is authorized to do so by the board of directors.
[C97, §1869; S13, §1869; C24, 27, §9220; C31, 35, §9220, 9221-c3; C39, §**9220, 9221.3;** C46, 50, 54, 58, 62, 66, §528.6, 528.10; C71, 73, 75, 77, 79, 81, §524.909]

524.910 Property acquired to satisfy debts previously contracted.
A state bank may acquire property of any kind to secure, protect or satisfy a loan or investment previously made in good faith. Property acquired pursuant to this section shall be held and disposed of subject to the following conditions and limitations:
1. Shares in a corporation and other personal property, the acquisition of which is not otherwise authorized by this chapter, shall be sold or otherwise disposed of within six months unless the time is extended by the superintendent.
2. Real property purchased by a state bank at sales upon foreclosure of mortgages or deeds of trust owned by it, or acquired upon judgments or decrees obtained or rendered for debts due it, or real property conveyed to it in satisfaction of debts previously contracted in the course of its business, or real property obtained by it through redemption as a junior mortgagee or judgment creditor, shall be sold or otherwise disposed of by the state bank within five years after title is vested in the state bank, unless the time is extended by the superintendent.
[C97, §1851; C24, 27, 31, 35, 39, §**9190;** C46, 50, 54, 58, 62, 66, §526.34; C71, 73, 75, 77, 79, 81, §524.910]
85 Acts, ch 252, §34; 90 Acts, ch 1245, §1; 92 Acts, ch 1161, §4

524.911 Letters of credit.
A state bank shall have the power to issue, advise and confirm letters of credit authorizing a beneficiary thereof to draw on or demand payment of the state bank or its correspondent banks.
[C71, 73, 75, 77, 79, 81, §524.911]

524.912 Customer shall be free to obtain own insurance and loan.
In any case in which any kind of insurance is required by the state bank as a condition for lending money or in connection with any other transaction, the customer shall be free to obtain such insurance from a source of the customer's selection. In the case of a sale of shares of stock, bonds, or other securities, or real property by an officer or employee, which is authorized by the board of directors of a state bank in the manner provided for in section 524.710, subsection 1, paragraph *"b"*, the purchaser shall be free to obtain a loan for the purchase of such stock, bonds, or other securities, or real property from a lender of the purchaser's selection.
[C71, 73, 75, 77, 79, 81, §524.912]
98 Acts, ch 1036, §1

524.913 Consumer loans.
1. The provisions of the Iowa consumer credit code shall apply to consumer loans made by a bank, and provisions of that code shall supersede any conflicting provision of this chapter with respect to consumer loans.
2. This section shall not apply to a consumer loan which is a real property improvement loan insured wholly or in part by the federal housing administration of the United States.
[C75, 77, 79, 81, §524.913]

DIVISION X

FIDUCIARY POWERS

524.1001 Power to act as fiduciary.
When approving a proposed state bank, or at any time subsequent thereto upon amendment of its articles of incorporation, the superintendent may authorize a state bank to act in a fiduciary capacity. In determining whether the superintendent shall authorize a state bank to act in a fiduciary capacity, the superintendent may consider any of the relevant criteria referred to in section 524.305, and other appropriate facts and circumstances. In any fiduciary capacity in which a state bank may act pursuant to this section, it shall have all the rights and duties which an individual has in such capacity under applicable law and under the terms upon which the state bank is designated to act in such capacity. In authorizing a state bank to act in a fiduciary capacity, the superintendent may limit such authorization to such capacities as the superintendent deems appropriate.
[S13, §1889-g; SS15, §1889-d; C24, 27, 31, 35, 39, §**9284, 9291;** C46, 50, 54, 58, 62, 66, §532.1, 532.8; C71, 73, 75, 77, 79, 81, §524.1001]

524.1002 Actions required, permitted or prohibited in a fiduciary capacity.
The following rules shall be applicable to a state

bank acting in the capacity of fiduciary:

1. A state bank shall segregate from its assets all property held as fiduciary, other than items in the course of collection, and shall keep separate records of all such property for each account for which such property is held.

2. Funds of a fiduciary account may be deposited in the state bank which is acting as fiduciary, either as demand deposits, savings deposits or time deposits having a single or multiple maturity.

3. A state bank may provide any oath or affidavit required of the state bank as fiduciary through an officer acting on behalf of the state bank.

4. A state bank shall not make a loan or extension of credit of any funds held as fiduciary, directly or indirectly, to or for the benefit of a director, officer or employee of the state bank or of an affiliate, a partnership or other unincorporated association of which such director, officer or employee is a partner or member, or a corporation in which such officer, director or employee has a controlling interest, except a loan specifically authorized by the terms upon which the state bank was designated as fiduciary.

5. Unless otherwise authorized by the instrument creating the relationship, court order, or the laws of this state, a state bank, as fiduciary, shall not, directly or indirectly, sell any asset to the state bank for its own account, or to an officer, director, or employee, nor purchase from the state bank, or an officer, director, or employee, any asset or any security issued by the state bank except, in the case of a state bank, any of the following:

a. Investments in which a state bank may invest without limitation pursuant to section 524.901, subsection 3.

b. Assets purchased by the state bank pursuant to an agreement whereby the state bank is bound to sell, and the state bank as fiduciary is bound to buy, at a date not more than one year from the date of acquisition by the state bank, such assets at a price agreed upon at the time of acquisition by the state bank.

c. Any asset sold to the state bank for its own account or purchased in a fiduciary capacity from the state bank with the prior approval of the superintendent.

[S13, §1889-f; C24, 27, 31, 35, 39, §**9290;** C46, 50, 54, 58, 62, 66, §532.7; C71, 73, 75, 77, 79, 81, §524.1002]

98 Acts, ch 1036, §2

524.1003 Removal of fiduciary powers.

If the superintendent at any time concludes that a state bank authorized to act in a fiduciary capacity is managing its accounts in an unsafe or unsound manner, or in a manner in conflict with the provisions of this chapter, and such state bank refuses to correct such practices upon notice to do so, the superintendent may forthwith direct that the state bank cease to act as a fiduciary and proceed to resign its fiduciary positions.

In such event the superintendent shall cause to be filed a petition in the district court in which the state bank has its principal place of business setting forth in general terms that the state bank is acting as fiduciary with respect to certain property and that it is necessary and desirable that successor fiduciaries be appointed. Upon the filing of the petition the court shall enter an order requiring all persons interested in all such fiduciary accounts to designate and take all necessary measures to appoint a successor fiduciary within a time to be fixed by the order, or to show cause why a successor fiduciary should not be appointed by the court. The court shall also direct the state bank to mail a copy of the order to each living settlor and each person known by the state bank to have a beneficial interest in the fiduciary accounts with respect to which the state bank is fiduciary and with respect to which it is being asked to resign its position. Such notice shall be mailed to the last known address of each such settlor and person having a beneficial interest as shown by the records of the state bank. The court may also order publication of such order to the extent that it deems necessary to protect the interests of absent or remote beneficiaries.

In any fiduciary account where those interested therein fail to cause a successor fiduciary to be appointed prior to the time fixed in such order, the court shall appoint a successor fiduciary. A successor fiduciary appointed in accordance with the terms of this section shall succeed to all the rights, powers, titles, duties and responsibilities of the state bank, except that the successor fiduciary shall not exercise powers given in the instrument creating the powers that by its express terms are personal to the fiduciary therein designated and except claims or liabilities arising out of the management of the fiduciary account prior to the date of the transfer.

[C39, §**9283.38;** C46, 50, 54, 58, 62, 66, §528.123; C71, 73, 75, 77, 79, 81, §524.1003]

524.1004 Voluntary relinquishment of fiduciary capacity.

A state bank desiring to surrender its authorization to act in a fiduciary capacity, in order to relieve itself of the necessity of complying with the requirements attendant to such capacity, shall file with the superintendent a certified copy of a resolution signifying such intent. In such event the state bank shall cause to be filed a petition in the district court in which the state bank has its principal place of business setting forth in general terms that the state bank is acting as fiduciary with respect to certain property and that it desires to cease its fiduciary function and resign its fiduciary positions. Upon the filing of the petition the relinquishment of fiduciary capacity and the appointment of a successor fiduciary or fiduciaries shall be handled in the same manner and with the

same effect as provided for in section 524.1003, dealing with the removal of fiduciary powers.

After compliance with this section the state bank shall proceed to amend its articles of incorporation, in accordance with the provisions of this chapter, in a manner to indicate that it is no longer authorized to act in a fiduciary capacity. The superintendent shall approve the proposed amendment, in the manner provided for in this chapter, if the superintendent is satisfied that the state bank has properly relieved itself of its fiduciary responsibilities.

[S13, §1889-h; C24, 27, 31, 35, 39, §**9292;** C46, 50, 54, 58, 62, 66, §532.9; C71, 73, 75, 77, 79, 81, §524.1004]

524.1005 Trust companies operating on January 1, 1970.

1. A trust company existing and operating on January 1, 1970 and which was authorized to act only as a trust company may continue to act only in a fiduciary capacity according to the terms of its articles of incorporation. The articles of incorporation of the trust company may be renewed in perpetuity. When applicable, this chapter applies to the operations of the trust company. Section 524.107, subsection 2, regarding the use of the word "trust" does not apply to a trust company subject to this section.

2. Notwithstanding subsection 1, a trust company shall have the power to do all of the following:

a. Acquire and hold, or lease as lessee, such personal property as is used, or is to be used, in its operations.

b. Subject to the prior approval of the superintendent, acquire and hold, or lease as lessee, only such real property as is used, or is to be used, wholly or substantially, in its operations or acquired for future use.

c. Subject to the prior approval of the superintendent, acquire and hold shares of a corporation engaged solely in holding and operating real property used wholly or substantially by the trust company in its operation or acquired for its future use.

d. Subject to the prior approval of the superintendent, acquire and hold shares of a corporation organized to perform, or performing, functions or activities that may be performed by a trust company, including activities of a fiduciary, agency, or custodial nature, in the manner authorized by federal or state law, as long as the corporation is not a bank and does not make loans and investments or accept deposits other than the following permitted deposits:

(1) Deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law.

(2) Deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property; or for such owner or investor as agent or custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing agent, or securities clearing agent. However, such deposits shall not be employed by or for the account of the customer in the manner of a general purpose checking account or interest-bearing account.

(3) Making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. Such authorized loans and investments, however, shall not be used as a method of channeling funds to nontrust company affiliates of the trust company.

e. Subject to the prior approval of the superintendent, acquire and hold shares of a corporation organized to perform, or performing, the collection of charges and premiums from, or adjusting and settling claims on, residents of this state and any other state where authorized or qualified to conduct such activity, in connection with life or health insurance coverage or annuities.

[C97, §1889; S13, §1889; C24, 27, 31, 35, 39, §**9259, 9261;** C46, 50, 54, 58, 62, 66, §528.52, 528.54; C71, 73, 75, 77, 79, 81, §524.1005]

85 Acts, ch 25, §1; 89 Acts, ch 257, §18

524.1006 Banks depositing securities in federally regulated corporation.

A bank, either acting as a fiduciary or holding securities as a managing agent or custodian, including a custodian for a fiduciary, may deposit securities in a federally regulated clearing corporation as provided in section 633.89, and in addition may deposit securities, the principal and interest of which the United States or any United States department, agency, or instrumentality either has agreed to pay or has guaranteed, in a federal reserve bank.

The records of a depositing bank at all times must identify the persons on whose behalf securities have been deposited in a federal reserve bank. An interest in deposited securities may be transferred by entry on the books of the federal reserve bank without physical delivery of the securities. A depositing bank is subject to rules adopted by the superintendent of banking, with respect to state banks, and by the comptroller of the currency, with respect to national banking associations. On demand by the owner, a bank acting as a managing agent or as a custodian shall identify in writing the securities deposited in a federal reserve bank for the account of the owner. On demand by any party to the accounting of a bank acting as a fiduciary, the bank shall identify in writing the securities deposited in a federal reserve bank for its account as fiduciary.

This section applies regardless of the date of the agreement, instrument, or court order under

which the bank was appointed.

[C75, 77, 79, 81, §524.1006]

524.1007 Succession of fiduciary accounts to an affiliate.

1. A state bank authorized to act in a fiduciary capacity may enter into an agreement for the succession of fiduciary accounts with any of its affiliates which are authorized to act in a fiduciary capacity. In the agreement the succeeding affiliate may agree to succeed the relinquishing affiliate as a fiduciary to those fiduciary accounts which are designated in the agreement. The designation of accounts may be by general class or description and may include fiduciary accounts subject and not subject to court administration and fiduciary accounts to arise in the future under wills, trusts, court orders, or other documents under which the relinquishing affiliate is named as a fiduciary or is named to become a fiduciary upon the death of a testator or settlor or upon the happening of any other subsequent event. The agreement shall provide that the succeeding affiliate maintain one or more employees or agents at the office of the relinquishing affiliate in order to facilitate the continued servicing of the designated fiduciary accounts. The relinquishing affiliate shall mail a notice of the succession to all persons having an interest in a fiduciary account at the then last known address, and shall publish a notice of the succession to fiduciary accounts in a newspaper published in the county of the principal place of business of the relinquishing affiliate. After the publication, the succeeding affiliate shall, without further notice, approval or authorization, succeed to the relinquishing affiliate as to the fiduciary accounts and the fiduciary powers, rights, privileges, duties, and liabilities for the fiduciary accounts. On the effective date of the succession to fiduciary accounts, the relinquishing affiliate is released from the fiduciary duties under the fiduciary accounts and shall discontinue its exercise of trust powers to the fiduciary accounts. This subsection does not absolve a bank or affiliate from liabilities arising out of a breach of fiduciary duty occurring prior to the effective date of the succession to fiduciary accounts.

2. Within sixty days after the mailing and publication of the notice, a person with an interest in a fiduciary account included within the notice and agreement required by subsection 1 may apply to the district court in the county in which the notice is published for the appointment of a new fiduciary on the ground that the succeeding fiduciary will adversely affect the administration of the fiduciary account. After notice to all interested parties and a hearing on the issues, the court may appoint a new fiduciary to replace the succeeding fiduciary if it finds that the substitution of the succeeding fiduciary will adversely affect the administration of the account and that the appointment of a new fiduciary would be in the best interests of the beneficiaries of the fiduciary account. This subsection is in addition to section 633.65 governing the removal of a fiduciary.

3. For purposes of subsection 1, *"affiliate"* means a trust company subsidiary authorized by the superintendent pursuant to section 524.802, subsection 12, paragraph *"b"*, and located in this state, a state bank located in this state, or a national bank located in this state and organized under 12 U.S.C. § 21, that are under the common ownership of a bank holding company as defined in section 524.1801.

4. The privilege extended to a state bank by this section is also extended on the same terms and conditions to a national bank located in this state and organized under 12 U.S.C. § 21 et seq. to engage generally in the banking business.

84 Acts, ch 1167, §1; 96 Acts, ch 1056, §11

524.1008 Succession of fiduciary accounts to an independent bank.

1. A state bank authorized to act in a fiduciary capacity may enter into an agreement for the succession of fiduciary accounts with a trust company subsidiary authorized by the superintendent pursuant to section 524.802, subsection 12, paragraph *"b"*, or one or more other state or national banks that are located in this state and authorized to act in a fiduciary capacity. In the agreement, the succeeding bank or trust company subsidiary may agree to succeed the relinquishing bank as a fiduciary with respect to those fiduciary accounts which are designated in the agreement. The designation of accounts may be by general class or description and may include fiduciary accounts subject and not subject to court administration and fiduciary accounts to arise in the future under wills, trusts, court orders, or other documents under which the relinquishing bank is named as a fiduciary or is named to become a fiduciary upon the death of a testator or settlor or upon the happening of any other subsequent event. The agreement shall provide either (a) that the succeeding bank or trust company subsidiary maintain one or more employees or agents at the office of the relinquishing bank in order to facilitate the continued servicing of the designated fiduciary accounts, or (b) that the relinquishing bank act as an agent of the succeeding bank or trust company subsidiary with respect to the fiduciary accounts that are subject to the agreement, and the relinquishing bank as an agent may perform services other than fiduciary services with respect to those accounts. If the relinquishing bank is an agent under alternative (b) above, then the relinquishing bank shall disclose to its customers that it is acting as an agent of the succeeding bank or trust company subsidiary. The relinquishing bank shall mail a notice of the succession to all persons having an interest in a fiduciary account at their last known address, and shall publish a notice of the succes-

sion to fiduciary accounts in a newspaper published in the county of the principal place of business of the relinquishing bank. After the publication, the succeeding bank or trust company subsidiary shall, without further notice, approval or authorization succeed the relinquishing bank as to the fiduciary accounts and the fiduciary powers, rights, privileges, duties, and liabilities for the fiduciary accounts. On the effective date of the succession to fiduciary accounts, the relinquishing bank is released from fiduciary duties under the fiduciary accounts and shall discontinue its exercise of trust powers to the fiduciary accounts. This subsection does not absolve a relinquishing bank from liabilities arising out of a breach of fiduciary duty occurring prior to the succession of fiduciary accounts.

2. Within sixty days after the mailing and publication of the notice, a person with an interest in a fiduciary account included within the notice and agreement required by subsection 1 may apply to the district court in the county in which the notice is published for the appointment of a new fiduciary on the ground that the succeeding fiduciary will adversely affect the administration of the fiduciary account. After notice to all interested parties and a hearing on the issues, the court may appoint a new fiduciary to replace the succeeding fiduciary if it finds that the substitution of the succeeding fiduciary will adversely affect the administration of the account and that the appointment of a new fiduciary would be in the best interests of the beneficiaries of the fiduciary account. This subsection is in addition to section 633.65 governing the removal of a fiduciary.

3. A bank shall not agree to relinquish fiduciary accounts to or act as an agent of more than one succeeding fiduciary at any one time.

4. The privilege of succeeding to fiduciary accounts that is extended to a state bank or trust company subsidiary by subsection 1 is also extended on the same terms and conditions to a national bank located in this state and organized under 12 U.S.C. § 21.

84 Acts, ch 1167, §2; 96 Acts, ch 1056, §12

524.1009 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary.

1. If a party to a plan of merger was authorized to act in a fiduciary capacity and if the resulting state or national bank is similarly authorized, the resulting state or national bank shall be automatically substituted by reason of the merger as fiduciary of all accounts held in that capacity by such party to the plan, without further action and without any order or decree of any court or public officer, and shall have all the rights and be subject to all the obligations of such party as fiduciary.

2. No designation, nomination, or appointment as fiduciary of a party to a plan of merger shall lapse by reason of the merger. The resulting state or national bank, if authorized to act in a fiduciary capacity, shall be entitled to act as fiduciary pursuant to each designation, nomination, or appointment to the same extent as the party to the plan so named could have acted in the absence of the merger.

3. Any person with an interest in an account held in a fiduciary capacity by a party to a plan of merger may, within sixty days after the effective date of the merger, apply to the district court in the county in which the resulting state or national bank has its principal place of business, for the appointment of a new fiduciary to replace the resulting state or national bank on the ground that the merger will adversely affect the administration of the fiduciary account. The court shall have the discretion to appoint a new fiduciary to replace the resulting state or national bank if it should find, upon hearing after notice to all interested parties, that the merger will adversely affect the administration of the fiduciary account and that the appointment of a new fiduciary will be in the best interests of the beneficiaries of the fiduciary account. This provision is in addition to any other provision of law governing the removal of fiduciaries and is subject to the terms upon which the party to the plan which held the fiduciary account was designated as fiduciary.

95 Acts, ch 148, §92

DIVISION XI

AFFILIATES

524.1101 Definitions.

For the purposes of this chapter, an *"affiliate"* of a state bank shall include any corporation, trust, estate, association, or other similar organization:

1. Of which a state bank, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions.

2. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of a state bank who own or control either a majority of the shares of such state bank or more than fifty percent of the number of shares voted for the election of directors of such state bank at the preceding election, or by trustees for the benefit of the shareholders of any such state bank.

3. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one state bank.

4. Which owns or controls, directly or indirectly, either a majority of the voting shares of a state

bank or more than fifty percent of the number of shares voted for the election of directors of a state bank at the preceding election, or controls in any manner the election of a majority of the directors of a state bank, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of a state bank is held by trustees.

5. Which is a bank holding company, as defined by the laws of the United States, of which a state bank is a subsidiary, and any other subsidiary, as defined by the laws of the United States, of a bank holding company.

[C71, 73, 75, 77, 79, 81, §524.1101]

524.1102 Loans and other transactions with affiliates.

A state bank shall not make any loan or any extension of credit to, or purchase securities under repurchase agreement from, any of its affiliates, or invest any of its funds in the shares, bonds, capital securities, or other obligations of an affiliate, or accept the shares, bonds, capital securities, or other obligations of an affiliate as collateral security for advances made to any customer, if the aggregate amount of the loans, extensions of credit, repurchase agreements, investments and advances against such collateral security will exceed:

1. In the case of any one affiliate, ten percent of the aggregate capital of the state bank.

2. In the case of all such affiliates, twenty percent of the aggregate capital of the state bank.

Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of shares of stock, bonds, capital securities or other such obligations having a market value at the time of making the loan or extension of credit of at least twenty percent more than the amount of the loan or extension of credit, or of at least ten percent more than the amount of the loan or extension of credit if it is secured by obligations of any state, or of any political subdivision or agency of the state, or of at least one hundred percent of the amount of the loan or extension of credit if it is secured by a segregated deposit account which the state bank may set off.

A loan or extension of credit to a director, officer, clerk, or other employee or any representative of any affiliate is deemed to be a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of, or transferred to, the affiliate.

The provisions of this section shall not apply to loans or extensions of credit fully secured by obligations of the United States, or the farm credit banks, or the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest. The provisions of this section shall not apply to indebtedness of any affiliate for unpaid balances due a state bank on assets purchased from the state bank.

For purposes of this section, the terms *"extension of credit"* and *"extensions of credit"* are deemed to include any purchase of securities under a repurchase agreement, other assets or obligations under a repurchase agreement, and the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse.

[C71, 73, 75, 77, 79, 81, §524.1102]

89 Acts, ch 257, §19, 20; 91 Acts, ch 20, §1; 95 Acts, ch 148, §93

524.1103 Exceptions.

The provisions of section 524.1102 shall not apply to any affiliate:

1. Engaged solely in holding or operating real estate used wholly or substantially by the state bank in its operations or acquired for its future use.

2. Engaged solely in conducting a safe-deposit business or the business of an agricultural credit corporation eligible to discount loans with a farm credit bank.

3. Engaged solely in holding obligations of the United States, the farm credit banks, the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest.

4. Where the affiliate relationship has arisen as a result of shares acquired in satisfaction of a bona fide debt contracted prior to the date of the creation of such relationship provided that such shares shall be sold at public or private sale within one year from the date of the creation of the relationship, unless the time is extended by the superintendent.

5. Where the affiliate relationship exists by reason of the ownership or control of any voting shares thereof by a state bank as executor, administrator, trustee, receiver, agent, depository, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the shareholders of such state bank.

6. Which is a bank.

7. Which is an operations subsidiary or other subsidiary in which the state bank owns or controls eighty percent or more of the voting shares. However, an operations subsidiary shall not conduct any activity at any location where the state bank itself would not be permitted to conduct that activity without the prior approval of the superintendent.

[C71, 73, 75, 77, 79, 81, §524.1103]

89 Acts, ch 257, §21, 22; 95 Acts, ch 148, §94

524.1104 Applicability of general loan limitations.

Any loan or extension of credit to an affiliate, and any investment in the shares, bonds, capital securities or other obligations of an affiliate, excepted by the provisions of section 524.1102 from the requirements of that section, shall continue to

be subject to the other provisions of this chapter applicable to loans or extensions of credit by a state bank and investments by a state bank in shares, bonds, capital securities, or other such obligations.

[C71, 73, 75, 77, 79, 81, §524.1104]

524.1105 Examination of affiliates and reports.

1. For the purpose of determining the condition of a state bank and information concerning the state bank, the superintendent shall have the power to make or cause to be made an examination of any affiliate to the same extent as the superintendent may examine a state bank under this chapter.

2. If the superintendent has reasonable cause to believe that any corporation, trust, estate, association, or other similar organization is an affiliate, the superintendent may require the organization to furnish such information as may enable the superintendent to determine whether the organization is an affiliate.

[C71, 73, 75, 77, 79, 81, §524.1105]

524.1106 Fees paid to an affiliate — approval by superintendent.

Any contract or arrangement for management or financial services which involves payment for these services by a state bank to a person who owns shares in that bank, or to any other affiliate, must be approved by the superintendent prior to such contract or arrangement becoming binding upon the state bank, and may also be reviewed at any time after original approval. Any contract or arrangement for consultation or other services which involve payment of those services by a state bank to any person who individually or whose spouse or immediate family or any combination thereof owns fifteen percent or more of the outstanding shares of that bank or is an officer or director thereof, or to an affiliate may be reviewed by the superintendent. The superintendent shall have authority to determine whether or not such fees are reasonable in relation to the services performed, and if the superintendent determines they are unreasonable, to require that they be reduced to a reasonable amount or eliminated and the excess refunded, or that such contract or arrangement not be entered into by the state bank.

[C71, 73, 75, 77, 79, 81, §524.1106]

DIVISION XII

OFFICES

524.1201 General provisions.

1. A bank shall not open or maintain a branch bank. A state bank may establish and operate bank offices subject to approval and regulation of the superintendent and to the restrictions upon location and number imposed by section 524.1202. A bank office may furnish all banking services ordinarily furnished to customers and depositors at the principal place of business of the state bank which operates the office, and a bank office manager or an officer of the bank shall be physically present at each bank office during a majority of its business hours. The central executive and official business and principal recordkeeping functions of a state bank shall be exercised only at its principal place of business or at another bank office as authorized by the superintendent for these functions.

2. Notwithstanding subsection 1, data processing services referred to in section 524.804 may be performed for the state bank at some other location. All transactions of a bank office shall be immediately transmitted to the principal place of business or other bank office authorized under subsection 1 of the state bank which operates the office, and no current recordkeeping functions shall be maintained at a bank office other than the bank office authorized under subsection 1, except to the extent the state bank which operates the office deems it desirable to keep there duplicates of the records kept at the principal place of business or authorized bank office of the state bank.

3. Notwithstanding any of the other provisions of this section, original loan documentation recordkeeping functions may be located at an authorized bank office or at any other location approved by the superintendent.

4. Notwithstanding any of the other provisions of this section, original trust recordkeeping functions may be located at an authorized bank office or at any other location approved by the superintendent.

[C27, 31, 35, §9258-b1; C39, §**9258.1;** C46, 50, 54, 58, 62, 66, §528.51; C71, 73, 75, 77, 79, 81, §524.1201; 81 Acts, ch 173, §6]

89 Acts, ch 257, §23; 91 Acts, ch 72, §1; 95 Acts, ch 32, §1; 96 Acts, ch 1056, §13, 14

For future amendments to subsection 1 effective July 1, 2004, see 2001 Acts, ch 4, §1, 11

524.1202 Location of offices.

The location of any new bank office, or any change of location of a previously established bank office, shall be subject to the approval of the superintendent. No state bank shall establish a bank office outside the boundaries of the counties contiguous to or cornering upon the county in which the principal place of business of the state bank is located.

1. Except as otherwise provided in subsection 2 of this section, no state bank shall establish a bank office outside the corporate limits of a municipal corporation or in a municipal corporation in which there is already an established state or national bank or office; however, the subsequent chartering and establishment of any state or na-

tional bank, through the opening of its principal place of business within the municipal corporation where the bank office is located, shall not affect the right of the bank office to continue in operation in that municipal corporation. The existence and continuing operation of a bank office shall not be affected by the subsequent discontinuance of a municipal corporation pursuant to the provisions of sections 368.11 to 368.22. A bank office existing and operating on July 1, 1976, which is not located within the confines of a municipal corporation, shall be allowed to continue its existence and operation without regard to this subsection.

2. *a.* A state bank may establish any number of bank offices within the municipal corporation or urban complex in which the principal place of business of the bank is located.

b. For purposes of this subsection, *"urban complex"* means the geographic area bounded by the corporate limits of two or more municipal corporations, each of which being contiguous to or cornering upon at least one of the other municipal corporations within the complex. Nothing contained in this paragraph authorizes a state bank to establish a bank office outside of the boundaries of this state.

c. One such facility located in the proximity of a state bank's principal place of business may be found by the superintendent to be an integral part of the principal place of business, and not a bank office within the meaning of this section.

d. One such facility located in the proximity of a state bank's office may be found by the superintendent to be an integral part of the bank office and not a bank office within the meaning of this section.

3. Notwithstanding subsection 1, if the assets of a state or national bank in existence on January 1, 1989, are transferred to a different state or national bank in the state which is located in the same county or a county contiguous to or cornering upon the county in which the principal place of business of the acquired bank is located, the resulting or acquiring bank may convert to and operate as its bank office any one or more of the business locations occupied as the principal place of business or as a bank office of the bank whose assets are so acquired. The limitations on bank office locations contained in unnumbered paragraph 1 of this section are applicable to any bank office otherwise authorized by this subsection. A bank office established under the authority of this subsection is subject to the approval of the superintendent and shall be operated in accordance with this chapter relating to the operation of bank offices, and may be augmented by an integral facility when approved under subsection 2, paragraph *"d"*.

4. Notwithstanding other restrictions in this chapter to the contrary, a state bank may, subject to the approval of the superintendent, establish up to three bank offices at any location in Iowa in addition to the bank offices that may be established pursuant to other provisions of this chapter.

5. Notwithstanding any other restrictions in this chapter to the contrary, a branch of an out-of-state national bank or a branch of an out-of-state state bank may establish up to three bank offices at any location in Iowa in addition to the bank offices that may be established pursuant to other provisions of this chapter, provided that no more than a total of three such bank offices may be established by all branches collectively of an out-of-state national bank or an out-of-state state bank.

[C71, 73, 75, 77, 79, 81, §524.1202; 81 Acts, ch 173, §7, 12]

84 Acts, ch 1202, §2; 85 Acts, ch 252, §36; 89 Acts, ch 172, §2; 89 Acts, ch 257, §24; 95 Acts, ch 148, §95; 98 Acts, ch 1033, §1; 99 Acts, ch 114, §42; 2001 Acts, ch 4, §2, 12

For future repeal of this section effective July 1, 2004, see 2001 Acts, ch 4, §10, 11

524.1203 Cancellation of approval of offices.

Whenever an examination by the superintendent or other supervisory agencies discloses that the operation of a bank office is being conducted in violation of section 524.1201, the superintendent may forthwith revoke the approval of the bank office.

[C71, 73, 75, 77, 79, 81, §524.1203]

524.1204 Privileges extended to national banks.

The privileges extended to state banks by section 524.1201, 524.1202 and 524.1212 and chapter 527 shall be available on the same conditions to national banks to the extent they are so authorized by federal law.

[C71, §524.1201(3); C73, 75, 77, 79, 81, §524.1204]

For future amendments to this section effective July 1, 2004, see 2001 Acts, ch 4, §3, 11

524.1205 Establishment of branch or office in other state — superintendent's authority to regulate.

1. Notwithstanding section 524.1201, subsection 1, and section 524.1202, subsection 2, paragraph *"b"*, upon application to and approval by the superintendent, a state bank may acquire in any manner, establish, maintain, operate, retain, or relocate a branch or office in a state other than this state. Subject to the approval of the superintendent, such branch or office may engage in any activity authorized for a branch or office of a bank organized under the laws of that other state.

2. The superintendent shall supervise and regulate all out-of-state branches and offices of a state bank.

3. Sections 524.1201 and 524.1203 apply to an out-of-state branch or office of a state bank except as otherwise provided by the laws of the state in which a branch or office is located or by the super-

intendent pursuant to this section.

4. This section does not authorize or permit a state-chartered bank located outside of this state or a national bank located outside of this state to establish a de novo branch or office in this state.

96 Acts, ch 1056, §15; 2001 Acts, ch 4, §4, 12

For future amendments to this section effective July 1, 2004, see 2001 Acts, ch 4, §5, 11

524.1206 Identification of legally chartered name of bank — required use of name.

A state or national bank, at its locations in this state, shall identify its principal place of business, any bank office, or any bank branch in a manner which includes its legally chartered name or a reasonable variation of such name. The legally chartered name of the state or national bank shall be used in all legal documents of such bank.

98 Acts, ch 1036, §3

524.1207 through 524.1211 Reserved.

524.1212 Location of satellite terminals.

Any state bank may utilize a satellite terminal, as defined in section 527.2, when that satellite terminal is lawfully being operated, at any location within this state. A satellite terminal which complies with the requirements of chapter 527 is not a branch bank or an office of a bank and is not subject to the restrictions on location or number set forth in section 524.1202. Any transaction engaged in through the use of a satellite terminal shall be deemed to take place at the principal place of business of a bank whose accounts and records are affected by the transaction.

[C77, 79, 81, §524.1212; 81 Acts, ch 173, §8]

For future amendments to this section effective July 1, 2004, see 2001 Acts, ch 4, §6, 11

524.1213 United community bank offices.

1. A bank may convert to a united community bank office as provided in this section.

2. A united community bank office formed under this section shall have a united community bank office board, at least one-half or more of the members of which shall be residents of the county in which the united community bank office is located. The liability of the united community bank office board shall be limited as provided in section 524.614. The bank establishing and operating the united community bank office may indemnify members of the united community bank office board as agents of the bank in the manner and in the instances authorized by sections 490.850 through 490.859.

3. Any two or more state banks, national banks, or state and national banks that are located in this state, that are affiliates as defined in section 524.1101, and that individually have been in existence and operated as banks continuously in this state for at least five years, may be merged or consolidated into a single state or national bank, and the resulting entity shall be a *"united community bank"*. The resulting united community bank of the merger or consolidation:

a. Shall retain and operate as its principal place of business one of the principal places of business of the banks that are the parties to the merger or consolidation.

b. May retain and continue to operate as united community bank offices of the resulting bank any of the remaining principal places of business of the banks that are the parties to the merger or consolidation.

c. May retain and continue to operate as retained bank offices of the resulting united community bank any of the bank offices that are being operated as of the date of the merger or consolidation by any of the banks that are parties to the merger or consolidation.

d. May establish any number of additional bank offices within the municipal corporation or urban complex in which a united community bank office referred to in paragraph *"b"* is located.

e. May retain and continue to operate and may establish in conjunction with the resulting bank, or with any retained united community bank office, or with any other retained bank office, any facility authorized by section 524.1202, subsection 2, paragraph *"c"* or *"d"*, and in operation at the time of the merger or consolidation or established after the merger or consolidation.

f. May relocate any principal place of business and any bank offices operated pursuant to this section by complying with other provisions of law applicable to relocation.

4. For purposes of subsection 3, the period of existence and operation of a bank shall be deemed continuous, notwithstanding any of the following:

a. Any direct or indirect change in the name, ownership, or control of the bank.

b. Any rechartering of the bank, or any merger or consolidation with one or more banks.

c. The bank acquired its initial assets and liabilities from the federal deposit insurance corporation, or other transferor, pursuant to a purchase and assumption transaction or any other type of transaction involving the transfer of ownership of a failed bank or other bank.

5. For purposes of subsection 3, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by a savings association, as defined in 12 U.S.C. § 1813, which association is an affiliate of the bank, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the savings association from which the branch or branches were acquired.

6. For purposes of subsection 3, a bank that results from the conversion of a state savings associ-

ation or federal savings association, as defined in 12 U.S.C. § 1813, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the association from which it was converted.

7. For purposes of subsection 3, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, a bank located in this state is deemed to have been in existence and operation for the same period of time as the bank which is acquired.

8. All united community bank offices and other bank offices retained by the resulting bank of a merger or consolidation under the authority of this section shall be deemed bank offices established under the authority of section 524.1201 for all intents and purposes of this chapter, except as is otherwise expressly provided in this section.

9. A bank that is converted to the principal place of business or to a united community bank office as a result of a merger or consolidation under subsection 3 that occurs after January 1, 2001, may establish any number of additional bank offices that could have been established by the bank pursuant to section 524.1202, subsection 4, prior to the merger or consolidation.

10. This section does not alter the limitations upon bank holding companies contained in section 524.1802.

11. This section shall be strictly construed as an exception to the bank office limitations contained in section 524.1202. It is the intent of the general assembly that a court or regulatory agency shall not deem, construe, or interpret this section to permit statewide branch banking or to permit the establishment of a bank office at any location in this state unless specifically authorized by this section or section 524.312 or 524.1202.

12. This section does not authorize the establishment of a bank office or an integral facility at any time by any bank except as a direct and immediate consequence of a merger or consolidation of two or more affiliated banks and as expressly permitted by subsection 3. This section does not authorize the resulting bank of a merger or consolidation to establish or retain any united community bank office, bank office, or integral facility at any location other than those expressly permitted by subsection 3, or to preserve any business location acquired in the merger or consolidation for subsequent use.

13. As used in this section, the term *"bank"* does not include any entity unless it is chartered as a state or national bank and is authorized by its bylaws to, and actually does, accept deposits, pay checks, and make commercial loans.

89 Acts, ch 172, §3; 90 Acts, ch 1266, §43; 94 Acts, ch 1023, §67; 96 Acts, ch 1056, §16; 97 Acts, ch 50, §1; 98 Acts, ch 1033, §2, 3; 99 Acts, ch 114, §43; 2001 Acts, ch 4, §7, 12; 2002 Acts, ch 1154, §113, 125

For future repeal of this section effective July 1, 2004, see 2001 Acts, ch 4, §10, 11

2002 amendment to subsection 2 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 2 amended

DIVISION XIII

DISSOLUTION

524.1301 Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a state bank that has not issued shares or has not commenced business may dissolve the state bank by delivering articles of dissolution to the superintendent, together with the applicable filing and recording fees, for filing with the secretary of state that set forth all of the following:

1. The name of the state bank.
2. The date of its incorporation.
3. Either of the following:

a. That the state bank has not issued any shares.

b. That the state bank has not commenced business.

4. That no debt of the state bank remains unpaid.
5. If shares were issued, that the net assets of the state bank remaining after the payment of all necessary expenses have been distributed to the shareholders.
6. That a majority of the incorporators or initial directors authorized the dissolution.

[C97, §1857; S13, §1857; C24, 27, 31, 35, 39, §**9277;** C46, 50, 54, 58, 62, 66, §528.76; C71, 73, 75, 77, 79, 81, §524.1301]

90 Acts, ch 1205, §40; 95 Acts, ch 148, §96

524.1302 Involuntary dissolution prior to commencement of business.

Prior to the issuance of an authorization to do business, the superintendent may cause the dissolution of a state bank if there exists any reason why it should not have been incorporated under this chapter or if an authorization to do business has not been issued within one year after the date of its incorporation, or such longer time as the superintendent may allow for satisfaction of conditions precedent to its issuance. After giving the state bank adequate notice and an opportunity for hearing, the superintendent shall certify the applicable facts by the filing of a statement with the secretary of state, who shall thereafter issue a certificate of dissolution. Upon the issuance of such certificate of dissolution by the secretary of state, the corporate existence of the state bank shall cease.

[C31, 35, §9142-c1; C39, §**9142.1;** C46, 50, 54,

58, 62, 66, §524.14; C71, 73, 75, 77, 79, 81, §524.1302]

524.1303 Voluntary dissolution after commencement of business.

1. A state bank which has commenced business may propose to voluntarily dissolve upon the affirmative vote of the holders of at least a majority of the shares entitled to vote on the voluntary dissolution, adopting a plan of dissolution involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan of dissolution providing for full payment of its liabilities.

2. Upon acceptance for processing of an application for approval of a plan of dissolution on forms prescribed by the superintendent, the superintendent shall conduct such investigation as the superintendent may deem necessary to determine whether the plan adequately protects the interests of depositors, other creditors and shareholders and, if the plan involves an acquisition of assets and assumption of liabilities by another state bank, whether such acquisition and assumption would be consistent with adequate and sound banking and in the public interest, on the basis of factors substantially similar to those set forth in section 524.1403, subsection 1, paragraph *"d"*.

3. Within thirty days after the application for dissolution involving a provision of acquisition of the state bank's assets and assumption of its liabilities by another state bank is accepted for processing, the dissolving bank shall publish once each week for two consecutive weeks a notice of the proposed transaction. The notice shall be published in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the dissolving bank has its principal place of business, and in the municipal corporation or unincorporated area in which the acquiring state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county or counties, or in a county adjoining the county or counties, in which the dissolving bank and the acquiring bank have their principal place of business. The notice shall be on forms provided by the superintendent, and proof of publication of the notice shall be delivered to the superintendent.

4. Within thirty days after the date of the second publication of the notice, any interested person may submit to the superintendent written comments and data on the application. The superintendent may extend the thirty-day comment period if, in the superintendent's judgment, extenuating circumstances exist.

5. Within thirty days after the date of the second publication of the notice, any interested person may submit to the superintendent a written request for a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. Comments challenging the legality of an application shall be submitted separately in writing and shall not be considered at a hearing conducted pursuant to this section. Written requests for hearings shall be evaluated by the superintendent, who may grant or deny such requests in whole or in part. A hearing request shall generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

6. If a request for a hearing has been made and denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. Interested persons may submit to the superintendent, with simultaneous copies to the applicant, additional written comments or information on the application within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period. The superintendent may waive this seven-day period upon request by the applicant. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to the interested persons.

[C97, §1857; S13, §1857; C24, 27, 31, 35, 39, §**9277;** C46, 50, 54, 58, 62, 66, §528.76; C71, 73, 75, 77, 79, 81, §524.1303]

92 Acts, ch 1161, §5; 95 Acts, ch 148, §97

524.1304 Voluntary dissolution — approval.

1. Within ninety days after acceptance of the application for processing, the superintendent shall approve or disapprove the application for voluntary dissolution on the basis of the superintendent's investigation. As a condition of receiving the decision of the superintendent with respect to the application, the applying state bank shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application. The superintendent shall give to the applying state bank written notice of the superintendent's decision. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A.

2. Upon approval of the plan of voluntary dissolution by the superintendent, the superintendent shall file with the secretary of state articles

of dissolution prepared by the applicant in conformance with section 524.1304A. Upon filing of the articles of dissolution with the secretary of state, the state bank shall cease to accept deposits or carry on its business, except insofar as may be necessary for the proper winding up of the business of the state bank in accordance with the approved plan of dissolution.

3. If applicable state or federal laws require approval by an appropriate state or federal agency, the superintendent may withhold delivery of the approved articles of dissolution until the superintendent receives notice of the decision of such agency. If the final approval of the agency is not given within six months of the superintendent's approval, then the superintendent shall notify the applying state bank that the approval of the superintendent has been rescinded for that reason.

[C97, §1857; S13, §1857; C24, 27, 31, 35, 39, §**9277;** C46, 50, 54, 58, 62, 66, §528.76; C71, 73, 75, 77, 79, 81, §524.1304]

95 Acts, ch 148, §98

524.1304A Articles of dissolution.

1. At any time after the dissolution of a state bank is authorized, the state bank may dissolve by delivering to the superintendent for filing with the secretary of state articles of dissolution setting forth all of the following:

a. The name of the state bank.

b. The date dissolution was authorized.

c. The number of votes entitled to be cast by the shareholders on the proposal to dissolve.

d. The total number of shareholder votes cast for and against dissolution, or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

e. If voting by voting groups was required, the information required by paragraphs *"c"* and *"d"* must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

f. That all debts, obligations, and liabilities of the state bank will be paid or otherwise discharged or that adequate provision will be made for such discharge.

g. That all the remaining property and assets of the state bank will be distributed among its shareholders in accordance with their respective rights and interests.

h. That there are no legal actions pending against the state bank in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending legal action.

2. A state bank is dissolved upon the effective date of its articles of dissolution.

95 Acts, ch 148, §99

524.1305 Voluntary dissolution proceedings — winding up.

1. The board of directors shall have full power to wind up and settle the affairs of a state bank in voluntary dissolution proceedings, including the power to do all of the following:

a. Collecting the assets of the state bank.

b. Disposing of its properties that will not be distributed in kind to its shareholders.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property among its shareholders according to their interests.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a state bank does not result in any of the following:

a. Transferring title to the state bank's property.

b. Preventing transfer of its shares or securities, although the authorization to dissolve may provide for closing the state bank's share transfer records.

c. Subjecting its directors or officers to standards of conduct different from those prescribed by this chapter prior to dissolution.

d. Changing quorum or voting requirements for its board of directors or shareholders; changing provisions for selection, resignation, or removal of its directors or officers or both; or changing provisions for amending its bylaws.

e. Preventing commencement of a proceeding by or against the state bank in its name.

f. Abating or suspending a proceeding pending by or against the state bank on the effective date of dissolution.

3. Within thirty days after filing of the articles of dissolution with the secretary of state, the state bank shall give notice of its dissolution:

a. By mail to each depositor and creditor, except those as to whom the liability of the state bank has been assumed by another financial institution insured by the federal deposit insurance corporation pursuant to the plan, at their last address of record as shown upon the books of the bank, including a statement of the amount shown by the books of the state bank to be due to such depositor or creditor and a demand that any claim for a greater amount be filed with the state bank any time before a specified date at least ninety days after the date of the notice.

b. By mail to each lessee of a safe-deposit box and each customer for whom property is held in safekeeping, except those as to whom the liability of the state bank has been assumed by another financial institution insured by the federal deposit insurance corporation pursuant to the plan, at their last address of record as shown upon the books of the state bank, including a demand that all property held in a safe-deposit box or held in safekeeping by the state bank be withdrawn by the person entitled to the property before a specified

date which is at least ninety days after the date of the notice.

c. By mail to each person, at the person's last known address as shown upon the books of the state bank, interested in funds held in a fiduciary account or other representative capacity.

d. By a conspicuous posting at each office of the state bank.

e. By such publication as the superintendent may prescribe.

4. As soon after the approval of the plan of dissolution and the filing of the articles of dissolution as feasible, the state bank shall resign all fiduciary appointments and take such action as may be necessary to settle its fiduciary accounts.

5. All known depositors and creditors shall be paid promptly after the date specified in the notice given under paragraph *"a"* of subsection 3 of this section. Unearned portions of rentals for safe-deposit boxes shall be rebated to the lessees thereof.

6. Safe-deposit boxes, the contents of which have not been removed by the owners after the date specified in the notice given under paragraph *"b"* of subsection 3 of this section, shall be opened under the supervision of the superintendent and the contents placed in sealed packages which, together with unclaimed property held by the state bank in safekeeping, shall be transmitted to the treasurer of state. Amounts due to depositors who are unknown, or who are under a disability and there is no person legally competent to receive the amount, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state, together with a statement giving the name of the person, if known, entitled to the amount, the person's last known address, the amount due the person, and other information about the person as the treasurer of state may reasonably require. All property transmitted to the treasurer of state pursuant to this subsection shall be treated as abandoned, retained by the treasurer of state, and subject to claim, in the manner provided for in sections 556.14 to 556.21. All amounts due creditors described in section 490.1440 shall be deposited with the treasurer of state in accordance with that section. Such amounts shall be retained by the treasurer of state and are subject to claim in the manner provided for in section 490.1440.

7. Upon approval by the superintendent, assets remaining after the performance of all obligations of the state bank under subsections 4, 5, and 6 of this section shall be distributed to its shareholders according to their respective rights and preferences. Partial distributions to shareholders may be made prior to such time only if, and to the extent, approved by the superintendent. All amounts due shareholders described in section 490.1440 shall be deposited with the treasurer of state in accordance with that section. Such amounts shall be retained by the treasurer of state and are subject to claim in the manner provided for in said section 490.1440.

8. During the course of dissolution proceedings the state bank shall make such reports as the superintendent may require, and shall continue to be subject to the provisions of this chapter, including those relating to examination of state banks, until completion of the dissolution of the state bank.

9. If at any time during the course of dissolution proceedings the superintendent finds that the assets of the state bank will not be sufficient to discharge its obligations, the superintendent shall apply to the district court for appointment as receiver in the manner required by section 524.1310, and the dissolution shall thereafter be treated as an involuntary dissolution in accordance with the terms of that section and sections 524.1311 and 524.1312.

[C71, 73, 75, 77, 79, 81, §524.1305]

90 Acts, ch 1205, §41; 95 Acts, ch 148, §100

524.1306 Revocation of voluntary dissolution proceedings.

1. A state bank may, at any time prior to the filing of the articles of dissolution with the secretary of state, revoke voluntary dissolution proceedings as provided for in section 490.1404.

2. The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the state bank, shall be delivered to the superintendent, together with the applicable filing and recording fee, who shall, if the superintendent finds that they satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and the same shall be filed and recorded in the office of the county recorder.

[C71, 73, 75, 77, 79, 81, §524.1306]

90 Acts, ch 1205, §42; 95 Acts, ch 148, §101

524.1307 Articles of dissolution. Repealed by 95 Acts, ch 148, § 135. See § 524.1304A.

524.1308 Certificate of dissolution. Repealed by 95 Acts, ch 148, § 135. See § 524.1304A.

524.1308A Known claims against dissolved state bank.

1. A dissolved state bank may dispose of the known claims against it pursuant to this section.

2. The dissolved state bank shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must include all of the following:

a. A description of information that must be included in a claim.

b. The mailing address where a claim may be sent.

c. The deadline for submitting a claim, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved state bank must receive the claim.

d. A statement that the claim will be barred if not received by the deadline.

3. A claim against the dissolved state bank is barred if either of the following occur:

a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved state bank by the deadline.

b. A claimant whose claim was rejected by the dissolved state bank does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, *"claim"* does not include a contingent liability or a claim based upon an event occurring after the effective date of dissolution.

95 Acts, ch 148, §102

524.1308B Unknown claims against dissolved state bank.

1. A dissolved state bank may publish notice of its dissolution and request that persons with claims against the state bank present them in accordance with the notice.

2. A notice made pursuant to this section must satisfy all of the following requirements:

a. Be published at least once in a newspaper of general circulation in the county where the dissolved state bank's principal office is located.

b. Include a description of the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. Include a statement that a claim against the state bank will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

3. If the dissolved state bank publishes a newspaper notice pursuant to subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved state bank within two years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 524.1308A.

b. A claimant whose claim was timely sent to the dissolved state bank but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section as follows:

a. Against the dissolved state bank, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a shareholder of the dissolved state bank to the extent of the shareholder's pro rata share of the claim or the state bank's assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the shareholder in liquidation.

95 Acts, ch 148, §103

524.1309 Becoming subject to chapter 490.

In lieu of the dissolution procedure prescribed in sections 524.1303 to 524.1306, a state bank may cease to carry on the business of banking and, after compliance with this section, continue as a corporation subject to chapter 490.

1. A state bank which has commenced business may propose to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490 upon the affirmative vote of the holders of at least a majority of the shares entitled to vote on such proposal, adopting a plan involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation, and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan providing for the cessation of banking business and the payment of its liabilities.

2. The application to the superintendent for approval of a plan described in subsection 1 of this section shall be treated by the superintendent in the same manner as an application for approval of a plan of dissolution under subsection 2 of section 524.1303, and shall be subject to subsection 3 of section 524.1303.

3. Immediately upon adoption and approval of a plan to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, the state bank shall deliver to the superintendent a plan to cease the business of banking and become a corporation subject to chapter 490, which shall be signed by two of its duly authorized officers and shall contain the name of the state bank, the post office address of its principal place of business, the name and address of its officers and directors, the number of shares entitled to vote on the plan and the number of shares voted for or against the plan, respectively, the nature of the business to be conducted by the corporation under chapter 490, and the general nature of the assets to be held by the corporation.

4. Upon approval of the plan by the superintendent, the state bank shall immediately surrender to the superintendent its authorization to do business as a bank and shall cease to accept deposits and carry on the banking business except insofar as may be necessary for it to complete the settlement of its affairs as a state bank in accordance with subsection 5.

5. The board of directors has full power to com-

plete the settlement of the affairs of the state bank. Within thirty days after approval by the superintendent of the plan to cease the business of banking and become a corporation subject to chapter 490, the state bank shall give notice of its intent to persons identified in section 524.1305, subsection 4, in the manner provided for in that subsection. In completing the settlement of its affairs as a state bank the state bank shall also follow the procedure prescribed in section 524.1305, subsections 4, 5, and 6.

6. Upon completion of all the requirements of this section, the state bank shall deliver to the superintendent articles of intent to be subject to chapter 490, together with the applicable filing and recording fees, which shall set forth that the state bank has complied with this section, that it has ceased to carry on the business of banking, and the information required by section 490.202 relative to the contents of articles of incorporation under chapter 490. If the superintendent finds that the state bank has complied with this section and that the articles of intent to be subject to chapter 490 satisfy the requirements of this section, the superintendent shall deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed and recorded in the office of the county recorder.

7. Upon the filing of the articles of intent to be subject to chapter 490, the state bank shall cease to be a state bank subject to this chapter, and shall cease to have the powers of a state bank subject to this chapter and shall become a corporation subject to chapter 490. The secretary of state shall issue a certificate as to the filing of the articles of intent to be subject to chapter 490, and send the certificate to the corporation or its representative. The articles of intent to be subject to chapter 490 shall be the articles of incorporation of the corporation. The provisions of chapter 490 becoming applicable to a corporation formerly doing business as a state bank shall not affect any right accrued or established, or liability or penalty incurred under this chapter prior to the filing with the secretary of state of the articles of intent to be subject to chapter 490.

8. A shareholder of a state bank who objects to adoption by the state bank of a plan to cease to carry on the business of banking and to continue as a corporation subject to chapter 490, is entitled to appraisal rights provided for in chapter 490, division XIII.

9. A state bank, at any time prior to the approval of the articles of intent to become subject to chapter 490, may revoke the proceedings in the manner prescribed by section 524.1306.

[C71, 73, 75, 77, 79, 81, §524.1309]

90 Acts, ch 1205, §43; 95 Acts, ch 148, §104 – 106; 2002 Acts, ch 1154, §114, 125

2002 amendment to subsection 8 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 8 amended

524.1310 Involuntary dissolution after commencement of business — superintendent as receiver.

In a situation in which the superintendent has required, in accordance with section 524.226, that the state bank cease to carry on its business, the superintendent shall apply to the district court for the county in which the state bank is located for appointment as receiver for the state bank. The district court shall appoint the superintendent as receiver unless the superintendent has tendered the appointment to the federal deposit insurance corporation as provided for in section 524.1313, in which case the district court shall appoint the federal deposit insurance corporation as receiver. The affairs of the state bank shall thereafter be under the direction of the district court, and the assets of the state bank shall be distributed in accordance with section 524.1312. All amounts due creditors and shareholders described in section 490.1440 shall be deposited with the treasurer of state in accordance with that section. Such amounts shall be retained by the treasurer of state and subject to claim in the manner provided for in section 490.1440. Amounts due to depositors who are unknown, or who are under a disability and there is no person legally competent to receive the amount, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state in the manner required by section 524.1305, subsection 6. Such property shall be treated as abandoned, retained by the treasurer of state, and is subject to claim, in the manner provided for in sections 556.14 to 556.21. The attorney general, or assistants appointed by the court, shall represent the superintendent in all proceedings connected with the receivership.

[C73, §1572; C97, §1877; C24, 27, 31, §9239, 9240, 9242; C35, §9154-f3, 9239, 9240, 9242; C39, §**9154.03, 9239, 9240, 9242, 9283.35, 9283.36;** C46, 50, 54, 58, 62, 66, §524.30, 528.33, 528.41, 528.43, 528.120, 528.121; C71, 73, 75, 77, 79, 81, §524.1310]

90 Acts, ch 1205, §44

524.1311 Involuntary dissolution after commencement of business — receivership procedure.

1. In all situations in which the superintendent has been named the receiver as provided in section 524.1310 the superintendent shall make a diligent effort to collect and realize on the assets of the state bank, and make distribution of the proceeds from time to time to those entitled thereto. The superintendent may execute assignments, releases and satisfactions to effectuate sales and transfers as receiver or after the receivership has terminated. Upon the order of the court in which the receivership is pending, the superintendent may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and per-

sonal property of such state bank, on such terms as the court shall direct.

2. All expenses of the receivership and dissolution shall be fixed by the superintendent, subject to the approval of the district court, and shall be paid out of the assets of the state bank.

3. At the termination of the receivership, the superintendent shall file a final report containing the details of the superintendent's actions therein, together with such additional facts as the court may require.

4. Upon the submission and approval of the final report, the court shall enter a decree dissolving the state bank whereupon the corporate existence of the state bank shall cease. It shall be the duty of the clerk of such court to cause certified copies of the decree to be filed with and recorded by the secretary of state and the county recorder of the county in which is located the state bank. No fee shall be charged by the secretary of state or said county recorder for the filing or recording thereof.

[C73, §1572; C97, §1857, 1877; S13, §1857; C24, §9239, 9278; C27, §9239, 9239-a5, 9278; C31, 35, §9239, 9239-a5, 9278, 9278-c1; C39, §**9239, 9239.6, 9278, 9278.1 – 9278.3;** C46, 50, 54, 58, 62, 66, §528.33, 528.39, 528.77 – 528.80; C71, 73, 75, 77, 79, 81, §524.1311]

524.1312 Distribution of assets upon insolvency.

In the distribution of the assets of a state bank which is dissolved under this chapter, or by any other method, the order of payment of the liabilities of the state bank, in the event that its assets are insufficient to pay in full all its liabilities for which claims are made, shall be:

1. The payment of costs and expenses of the administration of the dissolution.

2. The payment of claims for public funds deposited pursuant to chapter 12C and the payment of claims which are given priority by applicable statutes. If the assets are insufficient for payment of the claims in full, then priority shall be determined as specified by the statutes or, in the absence of conflicting provisions, on a pro rata basis.

3. Amounts due to depositors.

4. The payment of all other claims pro rata, exclusive of claims on capital notes and debentures.

5. The payment of capital notes and debentures.

[C73, §1572; C97, §1857, 1877; S13, §1857; C24, §9239, 9243, 9278; C27, §9239, 9239-a6, 9243, 9278; C31, 35, §9239, 9239-a6, 9243, 9278, 9278-c1; C39, §**9239, 9239.7, 9243, 9278, 9278.1, 9278.2, 9278.3;** C46, 50, 54, 58, 62, 66, §528.33, 528.40, 528.44, 528.77, 528.78, 528.79, 528.80; C71, 73, 75, 77, 79, 81, §524.1312]

85 Acts, ch 194, §9

Claims entitled to priority; §680.7 through 680.9

524.1313 Involuntary dissolution after commencement of business — tender of receivership to F.D.I.C.

1. When an insured state bank has ceased to carry on its business, the superintendent may tender to the federal deposit insurance corporation the appointment as receiver of the insured state bank. If the federal deposit insurance corporation accepts the appointment as receiver, the rights of depositors and other creditors of the insured state bank shall be determined in accordance with the laws of this state.

2. The federal deposit insurance corporation as receiver shall possess all the powers, rights and privileges given to the superintendent under section 524.1311, except insofar as that section may be in conflict with the laws of the United States.

3. If the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of an insured state bank, the federal deposit insurance corporation, whether or not it has become receiver, shall be subrogated by operation of law to all rights against such insured state bank of the owners of such deposits in the same manner and to the same extent as subrogation of the federal deposit insurance corporation is provided for in applicable federal law in the case of a national bank.

[C35, §9283-g3; C39, §**9283.46;** C46, 50, 54, 58, 62, 66, §530.3; C71, 73, 75, 77, 79, 81, §524.1313]

524.1314 Survival of rights and remedies after dissolution or expiration — preservation of records.

1. The dissolution of a state bank, or the expiration of its period of duration, shall not take away or impair any remedy available to or against such state bank, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred prior to such dissolution or expiration, if action or other proceeding thereon is commenced within two years after the date of such dissolution or expiration. Any such action or proceeding by or against the state bank may be prosecuted or defended by the state bank in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

2. Subsequent to the dissolution of a state bank, other than through the adoption of a plan involving a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation, the superintendent may assume custody of the records of the state bank and, if so, shall retain them in accordance with the provisions of section 524.221. The superintendent may make copies of such records in accordance with the provisions of section 524.221, subsection 1.

[C71, 73, 75, 77, 79, 81, §524.1314]
95 Acts, ch 148, §107

DIVISION XIV

MERGER, CONSOLIDATION, AND CONVERSION

524.1401 Authority to merge.

1. Upon compliance with the requirements of this chapter, one or more state banks, one or more national banks, one or more state associations, one or more federal associations, one or more corporations, or any combination of these entities, with the approval of the superintendent, may merge into a state bank.

2. Upon compliance with the requirements of this chapter, one or more state banks may merge into a national bank. The authority of a state bank to merge into a national bank is subject to the condition that at the time of the transaction the laws of the United States shall authorize a national bank located in this state, without approval by the comptroller of the currency of the United States, to merge into a state bank under limitations no more restrictive than those contained in this chapter with respect to the merger of a state bank into a national bank.

3. Upon compliance with the requirements of this chapter and chapter 534, one or more state banks may merge with one or more state associations or federal associations. The authority of a state bank to merge into a state or federal association is subject to the conditions the laws of the United States authorize at the time of the transaction.

4. As used in this section, the term *"merger"* or *"merge"* means any plan by which the assets and liabilities of an entity are combined with those of one or more other entities, including transactions in which one of the corporate entities survives and transactions in which a new corporate entity is created.

[C54, 58, 62, 66, §528B.1 – 528B.3; C71, 73, 75, 77, 79, 81, §524.1401]
95 Acts, ch 148, §108

524.1402 Requirements for a merger.

The requirements for a merger which must be satisfied by the parties to the merger are as follows:

1. The parties shall adopt a plan stating all of the following:

a. The names of the parties proposing to merge and the name of the bank into which they propose to merge, which is the *"resulting bank"*.

b. The terms and conditions of the proposed merger.

c. The manner and basis of converting the shares of each party into shares, obligations, or other securities of the resulting bank or of any other corporation, or, in whole or in part, into cash or other property.

d. The rights of the shareholders of each of the parties.

e. An agreement concerning the merger.

f. Such other provisions with respect to the proposed merger which are deemed necessary or desirable.

2. In the case of a state bank which is a party to the plan, if the proposed merger will result in a state bank subject to this chapter, adoption of the plan by such state bank requires the affirmative vote of at least a majority of the directors and approval by the shareholders, in the manner and according to the procedures prescribed in section 490.1104, at a meeting called in accordance with the terms of that section. In the case of a national bank, or if the proposed merger will result in a national bank, adoption of the plan by each party to the merger shall require the affirmative vote of at least such directors and shareholders whose affirmative vote on the plan is required under the laws of the United States. Subject to applicable requirements of the laws of the United States in a case in which a national bank is a party to a plan, any modification of a plan which has been adopted shall be made by any method provided in the plan, or in the absence of such provision, by the same vote as required for adoption.

3. If a proposed merger will result in a state bank, application for the required approval by the superintendent shall be made in the manner prescribed by the superintendent. There shall also be delivered to the superintendent, when available, the following:

a. Articles of merger.

b. Applicable fees payable to the secretary of state, as specified in section 490.122, for the filing and recording of the articles of merger.

c. If there is any modification of the plan at any time prior to the approval by the superintendent under section 524.1403, an amendment of the application and, if necessary, of the articles of merger, signed in the same manner as the originals, setting forth the modification of the plan, the method by which the modification was adopted and any related change in the provisions of the articles of merger.

d. Proof of publication of the notice required by subsection 4.

4. If a proposed merger will result in a state bank, within thirty days after the application for merger is accepted for processing, the parties to the plan shall publish, once each week for two consecutive weeks, a notice of the proposed transaction. The notices shall be published in a newspaper of general circulation published in the municipal corporation or unincorporated area in which each party to the plan has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which each party to the plan has its principal place of business. The

notice shall be on forms prescribed by the superintendent and shall set forth the names of the parties to the plan and the resulting state bank, the location and post office address of the principal place of business of the resulting state bank and of each office to be maintained by the resulting state bank, and the purpose or purposes of the resulting state bank.

5. Within thirty days after the date of the second publication of the notice required under subsection 4, any interested person may submit to the superintendent written comments and data on the application. Comments challenging the legality of an application shall be submitted separately in writing. The superintendent may extend the thirty-day comment period if, in the superintendent's judgment, extenuating circumstances exist.

6. Within thirty days after the date of the second publication of the notice required under subsection 4, any interested person may submit to the superintendent a written request for a hearing on the application. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. If the reasons are related to factual disputes, the disputes shall be described. Written requests for hearings shall be evaluated by the superintendent, who may grant or deny such requests in whole or in part. A hearing request shall generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the superintendent.

7. If a request for a hearing is denied, the superintendent shall notify the applicant and all interested persons and shall state the reasons for the denial. Interested persons may submit to the superintendent, with simultaneous copies to the applicant, additional written comments or data on the application within fourteen days after the date of the notice of denial. The applicant shall be provided an additional seven days, after the fourteen-day deadline has expired, within which to respond to any comments submitted within the fourteen-day period. The superintendent may waive this seven-day period upon request by the applicant. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to the interested persons.

8. The articles of merger shall be signed by two duly authorized officers of each party to the plan and shall contain all of the following:

a. The names of the parties to the plan, and of the resulting state bank.

b. The location and the post office address of the principal place of business of each party to the plan, and of each additional office maintained by the parties to the plan, and the location and post office address of the principal place of business of the resulting state bank, and of each additional office to be maintained by the resulting state bank.

c. The votes by which the plan was adopted, and the date and place of each meeting in connection with such adoption.

d. The number of directors constituting the board of directors, and the names and addresses of the individuals who are to serve as directors until the next annual meeting of the shareholders or until their successors be elected and qualify.

e. Any amendment of the articles of incorporation of the resulting state bank.

f. The plan of merger.

9. If a proposed merger will result in a national bank, a state bank which is a party to the plan shall do all of the following:

a. Notify the superintendent of the proposed merger.

b. Provide such evidence of the adoption of the plan as the superintendent may request.

c. Notify the superintendent of any abandonment or disapproval of the plan.

d. File with the superintendent and with the secretary of state evidence of approval of the merger by the comptroller of the currency of the United States.

e. Notify the superintendent of the date upon which the merger is to become effective.

[C54, 58, 62, 66, §528B.4, 528B.5; C71, 73, 75, 77, 79, 81, §524.1402]

90 Acts, ch 1076, §1; 90 Acts, ch 1205, §45, 46; 95 Acts, ch 148, §109; 2002 Acts, ch 1154, §115, 125

2002 amendment to subsection 2 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 2 amended

524.1403 Approval of merger by superintendent.

1. Upon receipt of an application for approval of a merger and of the supporting items required by section 524.1402, subsection 3, the superintendent shall conduct such investigation as the superintendent deems necessary to ascertain the following:

a. The articles of merger and supporting items satisfy the requirements of this chapter.

b. The plan and any modification of the plan adequately protects the interests of depositors, other creditors and shareholders.

c. The requirements for a merger under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter with respect to it.

d. The merger would be consistent with adequate and sound banking and in the public interest on the basis of the financial history and condition of the parties to the plan, including the adequacy of the capital structure of the resulting state bank, the character of the management of the resulting state bank, the potential effect of the merger on competition, and the convenience and needs

of the area primarily to be served by the resulting state bank.

2. Within one hundred eighty days after acceptance of the application for processing, or within an additional period of not more than sixty days after receipt of an amendment of the application, the superintendent shall approve or disapprove the application on the basis of the investigation. The plan shall not be modified at any time after approval of the application by the superintendent.

If the superintendent finds that the superintendent must act immediately on the pending application in order to protect the interests of depositors or the assets of any party to the plan, the superintendent may proceed without requiring publication of the notice required under section 524.1402, subsection 4. As a condition of receiving the decision of the superintendent with respect to the pending application, the parties to the plan shall reimburse the superintendent for all the expenses incurred in connection with the application. The superintendent shall give to the parties to the plan written notice of the decision and, in the event of disapproval, a statement of the reasons for the decision. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A.

[C54, 58, 62, 66, §528B.4; C71, 73, 75, 77, 79, 81, §524.1403]

92 Acts, ch 1161, §6; 95 Acts, ch 148, §110

524.1404 Procedure after approval by the superintendent — issuance of certificate of merger.

If applicable state or federal laws require the approval of the merger by a federal or state agency, the superintendent may withhold delivery of the approved articles of merger until the superintendent receives notice of the decision of such agency. If the final approval of the agency is not given within six months of the superintendent's approval, the superintendent shall notify the parties to the plan that the approval of the superintendent has been rescinded for that reason. If such agency gives its approval, the superintendent shall deliver the articles of merger, with the superintendent's approval indicated on the articles, to the secretary of state, and shall notify the parties to the plan. The receipt of the approved articles of merger by the secretary of state constitutes filing of the articles of merger with that office. The secretary of state shall record the articles of merger, and the articles shall be filed and recorded in the office of the county recorder in each county in which the parties to the plan had previously maintained a principal place of business. On the date upon which the merger is effective the secretary of state shall issue a certificate of merger and send the same to the resulting state bank and a copy of the certificate of merger to the superintendent.

[C54, 58, 62, 66, §528B.6; C71, 73, 75, 77, 79, 81, §524.1404]

95 Acts, ch 148, §111

524.1405 Effect of merger.

1. The merger is effective upon the filing of the articles of merger with the secretary of state, or at any later date and time as specified in the articles of merger. The certificate of merger is conclusive evidence of the performance of all conditions precedent to the merger, and of the existence or creation of the resulting state bank, except as against the state.

2. When a merger takes effect all of the following apply:

a. Every other financial institution to the merger merges into the surviving financial institution and the separate existence of every party except the surviving financial institution ceases.

b. The title to all real estate and other property owned by each party to the merger is vested in the surviving party without reversion or impairment.

c. The surviving party has all liabilities of each party to the merger.

d. A proceeding pending against any party to the merger may be continued as if the merger did not occur or the surviving party may be substituted in the proceeding for the party whose existence ceased.

e. The articles of incorporation of the surviving party are amended to the extent provided in the articles of merger.

f. The shares of each party to the merger that are to be converted into shares, obligations, or other securities of the surviving party or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under section 524.1406.

[C54, 58, 62, 66, §528B.6, 528B.8; C71, 73, 75, 77, 79, 81, §524.1405]

95 Acts, ch 148, §112, 113; 98 Acts, ch 1036, §4

524.1406 Appraisal rights of shareholders.

1. A shareholder of a state bank, which is a party to a proposed merger plan which will result in a state bank subject to this chapter, who objects to the plan is entitled to appraisal rights as provided in chapter 490, division XIII.

2. If a shareholder of a national bank which is a party to a proposed merger plan which will result in a state bank, or a shareholder of a state bank which is a party to a plan which will result in a national bank, objects to the plan and complies with the requirements of the applicable laws of the United States, the resulting state bank or national bank, as the case may be, is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

3. *a.* Notwithstanding any contrary provision in chapter 490, division XIII, in determining the

fair value of the shareholder's shares of a bank organized under this chapter or a bank holding company as defined in section 524.1801 in a transaction or event in which the shareholder is entitled to appraisal rights, due consideration shall be given to valuation factors recognized for federal and estate tax purposes, including discounts for minority interests and discounts for lack of marketability. However, any payment made to shareholders under section 490.1324 shall be in an amount not less than the stockholders' equity in the bank disclosed in its last statement of condition filed under section 524.220 or the total equity capital of the bank holding company disclosed in the most recent report filed by the bank holding company with the board of governors of the federal reserve system, divided by the number of shares outstanding.

b. Prior to giving notice of a meeting at which a shareholder of a bank organized under this chapter or a bank holding company as defined in section 524.1801 would be entitled to appraisal rights, such bank or bank holding company may seek a declaratory judgment to establish the fair value for purposes of section 490.1301, subsection 4, of shares held by such shareholders. Another cause of action or a counterclaim shall not be joined with such a declaratory action. A declaratory judgment shall be filed in the county where the principal place of business of the bank or bank holding company is located. The court shall appoint an attorney to represent minority shareholders. All shareholders of the bank or bank holding company shall be served with notice of the action and be advised of the name, address, and telephone number of the attorney appointed to represent minority shareholders. The attorney appointed to represent minority shareholders shall select an appraiser to give an opinion of the fair value of such shares. The bank or bank holding company may select an appraiser to give an opinion on the fair value of the shares of the bank or bank holding company. Any shareholder may participate individually and present evidence of the fair value of such shareholder's shares. All court costs, appraiser's fees, and the fees and expenses of the attorney appointed to represent the minority shareholders shall be assessed against the bank or the bank holding company. A judgment in the action shall not determine fair value for a share to be less than the stockholders' equity in the bank disclosed in its last statement of condition filed under section 524.220 or the total equity capital of the bank holding company disclosed in the most recent report filed by the bank holding company with the board of governors of the federal reserve system, divided by the number of shares outstanding. A final judgment in the action shall establish fair value for the purposes of chapter 490, division XIII and shall be disclosed to the shareholders in the notice to shareholders of the meeting to approve the transaction that gives rise to appraisal rights. If the proposed transaction is approved by the shareholders, upon consummation of the proposed transaction the fair value so established shall be paid to each shareholder entitled to payment for the shareholder's shares upon receipt of such shareholder's share certificates.

[C54, 58, 62, 66, §528B.9; C71, 73, 75, 77, 79, 81, §524.1406]

90 Acts, ch 1205, §47; 95 Acts, ch 148, §114; 99 Acts, ch 162, §1; 99 Acts, ch 208, §59; 2000 Acts, ch 1211, §3; 2002 Acts, ch 1154, §116, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

524.1407 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary. Repealed by 95 Acts, ch 148, § 135. See § 524.1009.

524.1408 Merger of corporation substantially owned by a state bank.

A state bank owning at least ninety percent of the outstanding shares, of each class, of another corporation which it is authorized to own under this chapter, may merge the other corporation into itself without approval by a vote of the shareholders of either the state bank or the subsidiary corporation. The board of directors of the state bank shall approve a plan of merger, mail to shareholders of record of the subsidiary corporation, and prepare and execute articles of merger in the manner provided for in section 490.1105. The articles of merger, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if the superintendent approves of the proposed merger and if the superintendent finds the articles of merger satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed in the office of the county recorder. The secretary of state upon filing the articles of merger shall issue a certificate of merger and send the certificate to the state bank and a copy of it to the superintendent.

[C71, 73, 75, 77, 79, 81, §524.1408]

90 Acts, ch 1205, §48; 95 Acts, ch 148, §115; 2002 Acts, ch 1154, §117, 125

2002 amendment to this section is effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

524.1409 Conversion of national bank or federal savings association into state bank.

A national bank or federal savings association, subject to the provisions of this chapter, may convert into a state bank upon authorization by and compliance with the laws of the United States, adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the

holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders, and upon approval of the superintendent.

[C54, 58, 62, 66, §528B.3, 528B.7; C71, 73, 75, 77, 79, 81, §524.1409]

98 Acts, ch 1036, §5

524.1410 Application for approval by superintendent.

A national bank or federal savings association shall make an application to the superintendent for approval of the conversion in a manner prescribed by the superintendent and shall deliver to the superintendent, when available:

1. Articles of conversion.

2. As soon as available, proof of publication of the notice required by section 524.1412.

3. The applicable fee payable to the secretary of state, under section 490.122, for the filing and recording of the articles of conversion.

[C54, 58, 62, 66, §528B.7; C71, 73, 75, 77, 79, 81, §524.1410]

90 Acts, ch 1205, §49; 98 Acts, ch 1036, §6

524.1411 Articles of conversion.

The articles of conversion shall be signed by two duly authorized officers of the national bank or federal savings association and shall contain all of the following:

1. The name of the national bank or federal savings association and the name of the resulting state bank.

2. The location and post office address of its principal place of business and of each additional office, and the location and post office address of the principal place of business of the resulting state bank and of each additional office to be maintained by the resulting state bank.

3. The votes by which the plan of conversion was adopted and the date and place of each meeting in connection with the adoption.

4. The number of directors constituting the board of directors, and the names and addresses of the persons who are to serve as directors until the next annual meeting of shareholders or until successors be elected and qualify.

5. The provisions required in the articles of incorporation by section 524.302, subsection 1, paragraphs *"c"* and *"d"*, and subsection 2, paragraph *"b"*.

6. The plan of conversion.

[C54, 58, 62, 66, §528B.4; C71, 73, 75, 77, 79, 81, §524.1411]

95 Acts, ch 148, §116; 98 Acts, ch 1036, §7, 8

524.1412 Publication of notice.

Within thirty days after the application for conversion has been accepted for processing, the national bank or federal savings association shall publish a notice of the delivery of the articles of conversion to the superintendent once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the national bank or federal savings association has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the national bank or federal savings association has its principal place of business. The notice shall set forth all of the following:

1. The name of the national bank or federal savings association and the name of the resulting state bank.

2. The location and post office address of its principal place of business.

3. A statement that articles of conversion have been delivered to the superintendent.

4. The purpose or purposes of the resulting state bank.

5. The date of delivery of the articles of conversion to the superintendent.

[C54, 58, 62, 66, §528B.6; C71, 73, 75, 77, 79, 81, §524.1412]

95 Acts, ch 148, §117; 98 Acts, ch 1036, §9, 10

524.1413 Approval of conversion by superintendent.

1. Upon acceptance for processing of an application for approval of a conversion, the superintendent shall conduct such investigation as the superintendent deems necessary to ascertain the following:

a. The articles of conversion and supporting items satisfy the requirements of this chapter.

b. The plan adequately protects the interests of depositors.

c. The requirements for a conversion under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter applicable to it.

d. The resulting state bank will possess an adequate capital structure.

2. Within ninety days after the application has been accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation. As a condition of receiving the decision of the superintendent with respect to the application, the national bank or federal savings association shall reimburse the superintendent for all expenses incurred in connection with the application. The superintendent shall give the national bank or federal savings association written notice of the decision and, in the event of disapproval, a statement of the reasons for the decision. If the superintendent approves the application, the superintendent shall deliver the articles of conversion, with the superintendent's approval indicated on the articles of conversion, to the secretary of state. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A. Notwithstanding the

terms of the Iowa administrative procedure Act, chapter 17A, a petition for judicial review must be filed within thirty days after the superintendent notifies the national bank or federal savings association of the superintendent's decision.

[C54, 58, 62, 66, §528B.4; C71, 73, 75, 77, 79, 81, §524.1413]

95 Acts, ch 148, §118; 98 Acts, ch 1036, §11

524.1414 Receipt by secretary of state — county recorder.

The receipt of the approved articles of conversion by the secretary of state constitutes filing of the articles of conversion with that office. The secretary of state shall record the articles of conversion and the articles shall be filed and recorded in the office of the county recorder in the county in which the resulting state bank has its principal place of business.

[C54, 58, 62, 66, §528B.6; C71, 73, 75, 77, 79, 81, §524.1414]

95 Acts, ch 148, §119

524.1415 Effect of filing of articles of conversion with secretary of state.

1. The conversion is effective upon the filing of the articles of conversion with the secretary of state, or at any later date and time as specified in the articles of conversion. The acknowledgment of filing is conclusive evidence of the performance of all conditions required by this chapter for conversion of a national bank or federal savings association into a state bank, except as against the state.

2. When a conversion becomes effective, the existence of the national bank or federal savings association shall continue in the resulting state bank which shall have all the property, rights, powers, and duties of the national bank or federal savings association, except that the resulting state bank shall have only the authority to engage in such business and exercise such powers as it would have, and shall be subject to the same prohibitions and limitations to which it would be subject, upon original incorporation under this chapter. The articles of incorporation of the resulting state bank shall be the provisions stated in the articles of conversion.

3. No liability of the national bank or federal savings association, or of the national bank's or federal savings association's shareholders, directors, or officers, is affected by the conversion. A lien on any property of the national bank or federal savings association is not impaired by the conversion. A claim existing or action pending by or against the national bank or federal savings association may be prosecuted to judgment as if the conversion had not taken place, or the resulting state bank may be substituted in its place.

4. The title to all real estate and other property owned by the converting national bank or federal savings association is vested in the resulting state bank without reversion or impairment.

[C54, 58, 62, 66, §528B.6, 528B.8; C71, 73, 75, 77, 79, 81, §524.1415]

95 Acts, ch 148, §120, 121; 96 Acts, ch 1034, §51; 98 Acts, ch 1036, §12

524.1416 Authority for conversion of state bank into national bank or federal savings association.

1. A state bank may convert into a national bank or federal savings association upon authorization by and compliance with the laws of the United States, and adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders. The authority of a state bank to convert into a national bank or federal savings association shall be subject to the condition that at the time of the transaction, the laws of the United States shall authorize a national bank or federal savings association located in this state, without approval by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, to convert into a state bank under limitations and conditions no more restrictive than those contained in this section and section 524.1417 with respect to conversion of a state bank into a national bank or federal savings association.

2. A state bank which converts into a national bank or federal savings association shall notify the superintendent of the proposed conversion, provide such evidence of the adoption of the plan as the superintendent may request, notify the superintendent of any abandonment or disapproval of the plan, file with the superintendent and with the secretary of state a certificate of the approval of the conversion by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, and the date upon which such conversion is to become effective.

[C54, 58, 62, 66, §528B.2; C71, 73, 75, 77, 79, 81, §524.1416]

98 Acts, ch 1036, §13

524.1417 Appraisal rights of shareholder of converting state or national bank or federal savings association.

1. A shareholder of a state bank that converts into a national bank or federal savings association who objects to the plan of conversion is entitled to appraisal rights as provided in chapter 490, division XIII.

2. If a shareholder of a national bank or federal savings association that converts into a state bank objects to the plan of conversion and complies with the requirements of applicable laws of the United States, the resulting state bank is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

[C54, 58, 62, 66, §528B.9; C71, 73, 75, 77, 79, 81,

§524.1417]

95 Acts, ch 148, §122, 123; 98 Acts, ch 1036, §14; 2002 Acts, ch 1154, §118, 125

2002 amendments to this section are effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

524.1418 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary.

The provisions of section 524.1009 apply to a resulting state or national bank or federal savings association after a conversion with the same effect as though the state or national bank or federal savings association were a party to a plan of merger, and the conversion were a merger, within the provisions of that section.

[C54, 58, 62, 66, §528B.10; C71, 73, 75, 77, 79, 81, §524.1418]

95 Acts, ch 148, §124; 98 Acts, ch 1036, §15

524.1419 Offices of a resulting state bank.

If a merger or conversion results in a state bank subject to the provisions of this chapter, the resulting state bank, after the effective date of the merger or conversion, shall be subject to the provisions of sections 524.1201, 524.1202, and 524.1203 relating to the bank offices.

[C71, 73, 75, 77, 79, 81, §524.1419]

89 Acts, ch 257, §25; 95 Acts, ch 148, §125

For future amendments to this section effective July 1, 2004, see 2001 Acts, ch 4, §8, 11

524.1420 Nonconforming assets of resulting state bank.

If a merger or conversion results in a state bank subject to the provisions of this chapter, and the resulting state bank has assets which do not conform with the provisions of this chapter, the superintendent may allow the resulting state bank a reasonable time to conform with state law.

[C54, 58, 62, 66, §528B.11; C71, 73, 75, 77, 79, 81, §524.1420]

95 Acts, ch 148, §126

DIVISION XV

AMENDMENT TO ARTICLES OF INCORPORATION

524.1501 Authority to amend.

A state bank, with the approval of the superintendent and in the manner provided in this chapter, may amend its articles of incorporation in order to make any change in the articles of incorporation so long as the articles of incorporation as amended contain only provisions as might be lawfully contained in the original articles of incorporation at the time of making the amendment.

[C35, §9283-f14; C39, §**9283.42;** C46, 50, 54, 58, 62, 66, §528.127; C71, 73, 75, 77, 79, 81, §524.1501]

95 Acts, ch 148, §127

524.1502 Procedure to amend.

1. An amendment of the articles of incorporation shall be proposed by adoption of a resolution by the board of directors, directing that it be submitted to a vote at a meeting of shareholders called in the manner required by section 524.533.

2. The resolution proposing an amendment or amendments shall contain the language of each amendment by setting forth in full the articles of incorporation as they would be amended or any provision thereof as it would be amended or by setting forth in full any matter to be added to or deleted from the articles of incorporation. A copy of the resolution or a summary thereof shall be included with the notice of the meeting required for the vote of the shareholders.

3. Adoption of each amendment shall require the affirmative vote of the holders of a majority of the shares entitled to vote thereon and, if any class is entitled to vote thereon as a class, the affirmative vote of the holders of a majority of the shares of each class entitled to vote thereon as a class.

[C35, §9283-f11, -f12, -f13; C39, §**9283.39, 9283.40, 9283.41;** C46, 50, 54, 58, 62, 66, §528.124, 528.125, 528.126; C71, 73, 75, 77, 79, 81, §524.1502]

524.1503 Voting on amendments by voting groups.

1. The holders of the outstanding shares of a class are entitled to vote as a separate voting group on a proposed amendment if the amendment does any of the following:

a. Increases or decreases the aggregate number of authorized shares of the class.

b. Increases or decreases the par value of the shares of the class.

c. Effects an exchange or reclassification of all or part of the shares of the class into shares of another class or effects a cancellation of all or part of the shares of the class.

d. Effects an exchange or reclassification, or creates the right of exchange, of all or part of the shares of another class into shares of that class.

e. Changes the designation, rights, preferences, or limitations of all or part of the shares of the class.

f. Changes the shares of all or part of the class into a different number of shares of the same class.

g. Creates a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

h. Increases the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

i. Limits or denies an existing preemptive right of all or part of the shares of the class.

j. Cancels or otherwise affects rights to dis-

tributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

2. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection 1, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

3. If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

4. A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

[C71, 73, 75, 77, 79, 81, §524.1503]
95 Acts, ch 148, §128

524.1504 Articles of amendment.

1. Upon the adoption of an amendment, articles of amendment shall be prepared on forms prescribed by the superintendent, signed by two duly authorized officers of the state bank and shall contain:

a. The name of the state bank.

b. The location of its principal place of business.

c. The amendment adopted, which shall be set forth in full.

d. The place and date of the meeting of shareholders at which the amendment was adopted, and the kind and period of notice given to the shareholders.

e. The number of shares entitled to vote on the amendment, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each class.

f. The number of shares voted for and against such amendment, respectively, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment.

2. The articles of amendment shall be delivered to the superintendent together with the applicable fees for the filing and recording of the articles of amendment.

[C71, 73, 75, 77, 79, 81, §524.1504]
95 Acts, ch 148, §129

524.1505 Approval of articles of amendment.

1. Upon receipt of the articles of amendment the superintendent shall conduct such investigation as the superintendent may deem necessary to determine whether the articles of amendment satisfy the requirements of section 524.1504 and whether the amendment, if effected, will in any way prejudice the interests of the depositors of the state bank.

2. Within sixty days after receipt of the articles of amendment the superintendent shall approve or disapprove the articles of amendment on the basis of the investigation. If the superintendent shall approve the articles of amendment, the superintendent shall deliver them with the written approval to the secretary of state and notify the state bank of the action. If the superintendent shall disapprove the articles of amendment, the superintendent shall give written notice to the state bank of the disapproval and a statement of the reasons for the decision. The decision of the superintendent shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, such a petition for judicial review must be filed within thirty days after the superintendent notifies the state bank of the decision.

[C71, 73, 75, 77, 79, 81, §524.1505]

524.1506 Certificate of amendment.

1. The secretary of state shall record the articles of amendment, and the articles of amendment shall be filed in the office of the county recorder in the county in which the state bank has its principal place of business. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the same to the state bank.

2. Upon the issuance of the certificate of amendment by the secretary of state, the amendment becomes effective and the articles of incorporation are deemed to be amended accordingly.

[C71, 73, 75, 77, 79, 81, §524.1506]
95 Acts, ch 148, §130

524.1507 Change of location of principal place of business. Repealed by 95 Acts, ch 148, § 135. See § 524.312.

524.1508 Restated articles of incorporation.

A state bank may at any time restate its articles of incorporation, which may be amended by the restatement, so long as its articles of incorporation as restated contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making the restatement. Restated articles of incorporation shall be adopted in the following manner:

1. The board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation, which may include an amendment or amendments to the articles of incorporation of the state bank to be made thereby, and directing that the restated articles, including such amendment or amendments, be submitted to a vote at a meeting of shareholders, which may be either an annual meeting or a special meeting.

2. Written or printed notice setting forth the

proposed restated articles or a summary of the provisions of the proposed restated articles shall be given to each shareholder of record entitled to vote on the proposed restated articles within the time and in the manner provided in section 524.533. If the meeting be an annual meeting, the proposed restated articles may be included in the notice of such annual meeting. If the restated articles include an amendment or amendments to the articles of incorporation, the notice shall separately set forth such amendment or amendments or a summary of the changes to be effected by the amendment or amendments.

3. At the meeting a vote of the shareholders entitled to vote on the proposed restated articles shall be taken on the proposed restated articles. The proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote, unless such restated articles include an amendment to the articles of incorporation which, if contained in a proposed amendment to articles of incorporation to be made without restatement of the articles of incorporation, would entitle a class of shares to vote as a class on the proposed restated articles, in which event the proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote on the proposed restated articles as a class, and of the total shares entitled to vote on the proposed restated articles.

Upon approval, restated articles of incorporation shall be executed by the state bank by its president or vice president and by its cashier or an assistant cashier, and verified by one of the officers signing the restated articles, and shall set forth, as then stated in the articles of incorporation of the state bank and, if the restated articles of incorporation included an amendment or amendments to the articles of incorporation, as so amended, the material and contents described in section 524.302.

The restated articles of incorporation shall set forth also a statement that they correctly set forth the provisions of the articles of incorporation as amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments to the original articles of incorporation.

The restated articles of incorporation shall be delivered to the superintendent together with the applicable fees for the filing and recording of the restated articles of incorporation. The superintendent shall conduct such investigation and give approval or disapproval, as provided in section 524.1505. If the superintendent approves the restated articles of incorporation, the superintendent shall deliver them with the written approval on the restated articles of incorporation to the secretary of state for filing, and the restated articles of incorporation shall be filed in the office of the county recorder. The secretary of state upon filing the restated articles of incorporation shall issue a restated certificate of incorporation and send the certificate to the state bank or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation including any amendment or amendments to the articles of incorporation are effective and supersede the original articles of incorporation and all amendments to the original articles of incorporation.

[C71, 73, 75, 77, 79, 81, §524.1508]
95 Acts, ch 148, §131

524.1509 Reverse stock split.

A state bank may effect a reverse stock split or similar change in capital structure by renewal, amendment, or restatement of existing articles of incorporation, provided the requirements of the superintendent are satisfied.

95 Acts, ch 148, §132

524.1510 Effect of amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the state bank, a proceeding to which the state bank is a party, or the existing rights of persons other than shareholders of the state bank. An amendment changing the state bank's name does not abate a proceeding brought by or against the state bank in its former name.

95 Acts, ch 148, §133

DIVISION XVI

PENALTIES

524.1601 Penalties and criminal provisions applicable to directors, officers and employees of state banks.

1. A director, officer or employee of a state bank who willfully violates any of the provisions of subsection 4 of section 524.612, section 524.613, subsection 2 of section 524.706, insofar as such subsection incorporates subsection 4 of section 524.612, or section 524.710, shall be guilty of a serious misdemeanor, plus, in the following circumstances, an additional fine or fines equal to:

a. The amount of money or the value of the property which the director, officer, or employee received for procuring, or attempting to procure, a loan, extension of credit or investment by the state bank, upon conviction of a violation of subsection 1 of section 524.613, or of subsection 1 of section 524.710.

b. The amount by which the director's, officer's, or employee's deposit account in the state bank is overdrawn, upon conviction of a violation of subsection 2 of section 524.613, or of subsection 2 of section 524.710.

c. The amount of any profit which the director, officer, or employee receives on the transaction,

upon conviction of a violation of subsection 4 of section 524.612, or of subsection 2 of section 524.706, insofar as each applies to purchases from and sales to a state bank upon terms more favorable to such director or officer than those offered to other persons.

d. The amount of profit, fees or other compensation received, upon conviction of a violation of section 524.710, subsection 1, paragraph *"b"*.

2. A director or officer who willfully makes or receives a loan in violation of subsection 1 of section 524.612, or subsection 1 of section 524.706, shall be guilty of a serious misdemeanor and shall be subject to an additional fine equal to that amount of the loan in excess of the limitation imposed by such subsections, and shall be forever disqualified from acting as a director or officer of any state bank. For the purpose of this subsection, amounts which are treated as obligations of an officer or director pursuant to subsection 5 of section 524.612, shall be considered in determining whether the loan or extension of credit is in violation of subsection 1 of section 524.612 and subsection 1 of section 524.706.

3. A director, officer or employee of a state bank who willfully makes or receives a loan or extension of credit of funds held by the state bank as fiduciary, in violation of subsection 4 of section 524.1002, shall be guilty of a serious misdemeanor and shall be subject to a further fine equal to the amount of the loan or extension of credit made in violation of subsection 4 of section 524.1002, and shall be forever disqualified from acting as a director, officer or employee of any state bank.

4. A director, officer or employee of a state bank who willfully violates, or participates in the violation of, section 524.814, or section 524.819, shall be guilty of a serious misdemeanor.

[C97, S13, §1869; C24, 27, 31, 35, 39, §**9221;** C46, 50, 54, 58, 62, 66, §528.7, 528.63; C71, 73, 75, 77, 79, 81, §524.1601]

98 Acts, ch 1036, §16

524.1602 Penalties applicable to state bank.

The superintendent may impose a penalty on a state bank of up to one hundred dollars for each day:

1. That it holds investments for its own account in bonds or securities in violation of section 524.901.

2. On which it accepts and holds drafts in violation of section 524.903.

3. On which it has money loaned, credit extended or holds discounted or purchased evidences of indebtedness or agreements for the payment of money, in violation of sections 524.904 to 524.907.

4. On which it has money loaned, invested or is otherwise in violation of section 524.1102 or 524.1104.

5. On which it publishes, disseminates or distributes any advertising containing any false, misleading or deceptive statements concerning rates, terms and conditions on which loans are made or deposits are received, in violation of section 524.1606.

[C71, 73, 75, 77, 79, 81, §524.1602]

84 Acts, ch 1067, §42

524.1603 Engaging in business unlawfully.

1. Any person who willfully engages in the business of receiving money for deposit or transacts the business generally done by banks, or who willfully establishes a place of business for such purposes, in violation of subsection 1 of section 524.107, shall be guilty of a serious misdemeanor.

2. The superintendent may impose a penalty on a state bank of up to one hundred dollars for each day that it violates the provisions of section 524.1201.

[C97, S13, §1889; C24, 27, 31, 35, 39, §**9151, 9260;** C46, 50, 54, 58, 62, 66, §524.25, 528.53; C71, 73, 75, 77, 79, 81, §524.1603]

524.1604 Failure to file report or make statement.

1. Any person whose duty it is to make statements or file reports as may be required by this chapter, and who willfully neglects or refuses to perform such duty, shall be guilty of a simple misdemeanor.

2. A state bank which fails to furnish to the superintendent the statement of condition required within the time required by this chapter, or fails to furnish the superintendent any report or other information the superintendent is legally authorized to request, within ten days of the superintendent's request therefor, or within the time required by this chapter, shall pay to the superintendent a penalty of fifty dollars for each day of delinquency, unless prior to such delinquency the superintendent has extended the time within which the same may be filed.

3. Any officer or employee who violates section 524.709 shall be guilty of a simple misdemeanor.

[C97, §1886; S13, §1871; C24, 27, 31, 35, 39, §**9226, 9230, 9281;** C46, 50, 54, 58, 62, 66, §528.20, 528.24, 528.83; C71, 73, 75, 77, 79, 81, §524.1604]

524.1605 False statements, reports and felonious acts.

1. Any director, officer or employee of a state bank who shall knowingly subscribe or make any false statements or false entries in the books, records, or memoranda of a state bank, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe or make false reports, or shall knowingly divert the funds of the state bank to other purposes than those authorized by law, or who commits any other act with in-

tent to defraud the state bank or any other person shall be guilty of a class "C" felony, and shall be forever disqualified from acting as a director, officer or employee of any state bank.

2. Any officer or employee of a state bank who, with intent to defraud the state bank or any other person, certifies any check when there are not sufficient funds on hand available to the credit of the drawer of said check to pay the same, or who issues any certificate of deposit when funds have not been deposited equal to the amount of such certificate, or who, with intent to defraud the state bank or any other person, draws any draft or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation or instrument, or participates in, or receives directly or indirectly any money, property or other benefit from any transaction, loan, contract or other act of a state bank shall be guilty of a class "C" felony, and shall, in either event be forever disqualified from acting as an officer or employee of any state bank.

[C97, §1887; C24, 27, §9282; C31, 35, §9282, 9283-c2; C39, §**9282, 9283.02;** C46, 50, 54, 58, 62, 66, §528.84, 528.87; C71, 73, 75, 77, 79, 81, §524.1605]

524.1606 Fraudulent advertising or notice.

A state bank shall not publish, disseminate or distribute any advertising or notice containing any false, misleading or deceptive statements concerning the rates, terms or conditions on which loans are made or deposits are received, any charge which the state bank is authorized to impose pursuant to this chapter, or the financial condition of the state bank. Any officer or employee of a state bank who willfully violates the provisions of this section shall be guilty of a fraudulent practice.

[C97, §1859; C24, 27, 31, 35, 39, §**9260;** C46, 50, 54, 58, 62, 66, §526.44, 529.12; C71, 73, 75, 77, 79, 81, §524.1606]

524.1607 False statement for credit.

Any person who knowingly makes or causes to be made, directly or indirectly, any false statement in writing, or who procures, knowing that a false statement in writing has been made concerning the financial condition or means or ability to pay of such person, or any other person in which such person is interested or for whom such person is acting, with the intent that such statement shall be relied upon by a bank for the purpose of procuring the delivery of property, the payment of cash or the receipt of credit in any form, for the benefit of such person or of any other person in which such person is interested or for whom such person is acting, shall be guilty of a fraudulent practice.

[C31, 35, §9283-c3; C39, §**9283.03;** C46, 50, 54, 58, 62, 66, §528.88; C71, 73, 75, 77, 79, 81, §524.1607]

524.1608 Penalty for accepting deposits while insolvent.

If a state bank shall accept any deposit or renew any certificate of deposit in violation of subsection 4 of section 524.805, any officer or employee knowing of such insolvency who willfully receives, accepts or renews or is accessory to or otherwise knowingly permits such acceptance shall be guilty of a fraudulent practice and shall, in either event be forever disqualified from acting as an officer or employee of any state bank.

[C97, §1885; C24, 27, 31, 35, 39, §**9280;** C46, 50, 54, 58, 62, 66, §528.82; C71, 73, 75, 77, 79, 81, §524.1608]

524.1609 False statements concerning state banks.

Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false statement concerning any state bank which imputes, or tends to impute, insolvency, unsound financial condition or financial embarrassment, or which may tend to cause or provoke, or aid in causing or provoking, a general withdrawal of deposits from such state bank, or which may otherwise injure or tend to injure the business or good will of such state bank, shall be guilty of a simple misdemeanor.

[C31, 35, §9283-c4; C39, §**9283.04;** C46, 50, 54, 58, 62, 66, §528.89; C71, 73, 75, 77, 79, 81, §524.1609]

524.1610 Violation of prohibition against receiving a commission for organizing a state bank.

Any person violating the provisions of section 524.311 shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §**9276;** C46, 50, 54, 58, 62, 66, §528.75; C71, 73, 75, 77, 79, 81, §524.1610]

524.1611 Offenses involving employees of banking division.

1. Any person violating the provisions of subsection 1 of section 524.211 shall be guilty of a fraudulent practice, and shall be subject to a further fine of a sum equal to the amount of the value of the property given or received or the money so loaned or borrowed. The deputy superintendent, an assistant or examiner convicted of a violation of such subsection shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

2. Any examiner violating the provision of section 524.212 shall be guilty of a serious misdemeanor. Any examiner convicted of a violation of section 524.212 shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

[C71, 73, 75, 77, 79, 81, §524.1611]

DIVISION XVII

PRIVATE BANKS

524.1701 through 524.1703 Repealed by 95 Acts, ch 148, § 135.

DIVISION XVIII

BANK HOLDING COMPANIES

524.1801 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Bank holding company"* means bank holding company as defined in 12 U.S.C. § 1841(a), and also includes a company that would become a bank holding company upon completion of an acquisition.

2. *"Company"* means company as defined in 12 U.S.C. § 1841(b).

3. *"Control"* means control as provided in 12 U.S.C. § 1841(a).

4. *"Location"* means, for purposes of determining where a bank or bank holding company is located, the following:

a. A bank is located in the state in which its principal place of business or main office is physically located.

b. A bank holding company is located in the state which is its home state as determined under 12 U.S.C. § 1841(o)(4).

5. *"Out-of-state bank holding company"* means out-of-state bank holding company as defined in 12 U.S.C. § 1841(o).

[C73, 75, 77, 79, 81, §524.1801]

96 Acts, ch 1056, §17

Bank holding companies also referred to in chapter 534

524.1802 Limitation.

1. For purposes of this section, unless the context otherwise requires:

a. *"Acquisition"* means any of the following:

(1) Obtaining direct or indirect ownership or control of more than twenty-five percent of any class of the voting shares of a depository institution.

(2) Obtaining the power to directly or indirectly control in any manner the election of a majority of the directors, trustees, or other persons exercising similar functions of a depository institution.

(3) Obtaining direct or indirect ownership or control of, or acquisition or assumption of, the deposits of a depository institution or the deposits of any branch, office, or other facility of a depository institution.

b. *"Affiliate"* of a depository institution or holding company includes a corporation, limited liability company, trust, estate, association, or other similar organization which satisfies any of the following:

(1) The depository institution or holding company directly or indirectly owns or controls either twenty-five percent of the voting shares or more than twenty-five percent of the number of shares voted for the election of such entity's directors, trustees, or other individuals exercising similar functions, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions.

(2) Control is held directly or indirectly in such entity through share ownership, or in any other manner, by the shareholders of the depository institution or holding company who own or control either twenty-five percent of the shares of such depository institution or holding company or more than twenty-five percent of the number of shares voted for the election of directors, trustees, or other individuals exercising similar functions of such depository institution or holding company, or by trustees for the benefit of the shareholders of any such depository institution or holding company.

(3) A majority of such entity's directors, trustees, or other individuals exercising similar functions are directors of the depository institution or holding company.

(4) Directly or indirectly owns or controls either twenty-five percent of the voting shares of the depository institution or holding company or more than twenty-five percent of the number of shares voted for the election of directors, trustees, or other individuals exercising similar functions of the depository institution or holding company, or controls in any manner the election of a majority of the directors, trustees, or other individuals exercising similar functions of the depository institution or holding company, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of the depository institution or holding company are held by trustees.

c. *"Deposit"* means deposit as defined in 12 U.S.C. § 1813.

d. *"Deposit in this state"* means a deposit properly shown in a deposit report or in a statement under subsection 4, paragraph *"c"*, *"d"*, *"h"*, or *"i"*, as a deposit at a depository institution in this state or at a branch, office, or other facility of the depository institution in this state, without regard to the location of the depositor.

e. *"Deposit report"* means the annual report that identifies deposits by branch, office, or other facility and that is filed by a depository institution with the federal deposit insurance corporation or the office of thrift supervision. For a depository institution not required to file an annual report that identifies deposits by branch, office, or other facility, *"deposit report"* means the quarterly report of condition filed by the depository institution for the quarter that ends on or nearest to the date as of which deposits are stated in a deposit report that identifies deposits by branch, office, or other facility and that is required to be filed by other deposito-

ry institutions having the same type of charter. The date of a deposit report means the date as of which deposits are stated in the deposit report.

f. "Depository institution" means a depository institution as defined in 12 U.S.C. § 1813.

g. "Holding company" means a bank holding company as defined in section 524.1801 and a savings and loan holding company as defined in 12 U.S.C. § 1467a.

h. "Series of acquisitions" means both of the following:

(1) All acquisitions made at any time after the date of the most recent available deposit report and prior to the date of a statement under subsection 4, and all acquisitions made during such time by any depository institution or holding company that is acquired by the depository institution or holding company making the statement, and all acquisitions made during such time by any such depository institution or holding company so acquired.

(2) All acquisitions made at any time between the dates of the two most recent available deposit reports, that are not shown on the most recent available deposit report, by a depository institution or holding company making a statement under subsection 4, and all acquisitions made during such time by any depository institution or holding company that is acquired by the depository institution or holding company making the statement, and all acquisitions made during such time by any such depository institution or holding company so acquired.

2. A depository institution or holding company shall not directly or indirectly acquire a depository institution or the deposits of a depository institution if any of the following apply:

a. The acquirer is a depository institution and, upon the acquisition, the total deposits in this state directly or indirectly controlled by the depository institution would exceed fifteen percent of the total deposits in this state, as determined under this section.

b. The acquirer is a holding company and, upon the acquisition, the total deposits in this state directly or indirectly controlled by the holding company would exceed fifteen percent of the total deposits in this state, as determined under this section.

c. The acquirer is a depository institution or a holding company which is directly or indirectly owned or controlled by a holding company and, upon the acquisition, the total deposits in this state directly or indirectly controlled by the holding company which owns or controls the acquiring depository institution or holding company would exceed fifteen percent of the total deposits in this state, as determined under this section.

3. On or after January 1, 2000, a depository institution shall not directly or indirectly cause or permit the transfer, assignment, or other disposition of deposits, or the conversion of deposits to nondeposit investments or other nondeposit products, whether by written agreement or otherwise, for the purpose of achieving compliance with the deposit limitation set forth in subsection 2. The following transfers or conversions by a depository institution shall not be deemed to be made for the purpose of achieving such compliance:

a. A transfer or conversion in the ordinary course of business, such as compliance with a contract to transfer funds from deposit accounts into repurchase agreements, mutual funds, or other nondeposit investments.

b. A transfer or conversion of deposits held in the name of an affiliate as a depositor of the depository institution.

c. A transfer of deposits, which are not subject to reacquisition, in an acquisition by an entity that is not an affiliate of the depository institution.

4. If the superintendent determines that an acquisition may involve a question of compliance with the deposit limitation set forth in subsection 2, the superintendent shall require that each depository institution and holding company involved in the acquisition submit to the superintendent a statement certified by its president, chief executive officer, or chief financial officer, which states that a transfer, assignment, or other disposition of deposits prohibited by subsection 3 has not been made. The statement, in sufficient detail to permit the superintendent to make the determinations required under subsections 5 and 6, shall also set forth the following:

a. The total amount of deposits in this state directly or indirectly held or controlled by the depository institution making the statement, or the deposits in this state directly or indirectly held or controlled by all depository institutions that are directly or indirectly owned or controlled by the holding company, on the date of the most recent available deposit reports of the depository institutions.

b. If all of the deposits of a depository institution making a deposit report were directly or indirectly acquired since the date of the most recent available deposit report in an acquisition or as a result of a series of acquisitions, the statement shall set forth the amount of the deposits in this state acquired from each such other depository institution measured as of the date of the most recent available deposit report of each such depository institution made prior to the acquisition.

c. If less than all of the deposits of a depository institution were directly or indirectly acquired since the date of the most recent available deposit report in an acquisition or as a result of a series of acquisitions, the statement shall set forth the total amount of deposits in this state directly or indirectly acquired in such acquisitions.

d. The total amount of deposits in this state directly or indirectly owned or controlled by the depository institution or holding company making the statement that have been directly or indirectly

transferred or assigned in a transaction since the date of the most recent available deposit report to an entity that is not an affiliate of the depository institution or holding company making the statement, and that are not subject to reacquisition.

e. The total amount of deposits in this state set forth in paragraph *"a"* plus the deposits described in paragraphs *"b"* and *"c"*, and less the deposits described in paragraph *"d"*.

f. The total amount of deposits in this state directly or indirectly held or controlled by the depository institution making the statement, or in the case of a statement by a holding company, the total amount of deposits in this state directly or indirectly held or controlled by all depository institutions that are directly or indirectly owned or controlled by the holding company, on the date of the earlier of the two most recent available deposit reports of the depository institutions.

g. If all of the deposits of any other depository institution making a deposit report were acquired between the dates of the two most recent available deposit reports in an acquisition or as a result of a series of acquisitions, the statement shall set forth the amount of the deposits in this state acquired from each such other depository institution measured as of the date of the earlier of the two most recent available deposit reports of each such depository institution made prior to the acquisition.

h. If less than all of the deposits of any depository institution were directly or indirectly acquired between the dates of the two most recent available deposit reports in an acquisition or as a result of a series of acquisitions, the statement shall set forth the total amount of deposits in this state directly or indirectly acquired in such acquisitions.

i. The total amount of deposits in this state directly or indirectly owned or controlled by the depository institution or holding company making the statement that have been directly or indirectly transferred or assigned in a transaction between the dates of the two most recent available deposit reports to an entity that is not an affiliate of the depository institution or holding company making the statement, and that are not subject to reacquisition.

j. The total amount of deposits in this state set forth in paragraph *"f"* plus the deposits described in paragraphs *"g"* and *"h"*, and less the deposits described in paragraph *"i"*.

5. The superintendent may conduct such review as the superintendent considers necessary to verify the statements submitted under subsection 4, paragraphs *"a"*, *"b"*, *"c"*, and *"d"*. The superintendent shall calculate the following fraction:

a. The numerator is the sum of the deposits in this state directly or indirectly owned or controlled by the depository institutions involved in the acquisition and the deposits in this state directly or indirectly owned or controlled by all other depository institutions directly or indirectly owned or controlled by a holding company involved in the acquisition, as stated in subsection 4, paragraph *"e"*.

b. The denominator is the deposits in this state of all depository institutions as stated in the most recent available deposit reports.

6. The superintendent may conduct such review as the superintendent considers necessary to verify the statements submitted under subsection 4, paragraphs *"f"*, *"g"*, *"h"*, and *"i"*. The superintendent shall calculate the following fraction:

a. The numerator is the average of the sum of the deposits in this state directly or indirectly owned or controlled by the depository institutions involved in the acquisition and the deposits in this state directly or indirectly owned or controlled by all other depository institutions directly or indirectly owned or controlled by a holding company involved in the acquisition, as stated in subsection 4, paragraphs *"e"* and *"j"*.

b. The denominator is the average of the deposits in this state of all depository institutions as stated in the two most recent available deposit reports.

7. If the quotient determined by the calculation in either subsection 5 or 6 exceeds fifteen percent, the proposed acquisition does not comply with the limitation of subsection 2.

[C73, 75, 77, 79, 81, §524.1802; 82 Acts, ch 1253, §3]

84 Acts, ch 1230, §25; 90 Acts, ch 1002, §2; 97 Acts, ch 23, §64; 2000 Acts, ch 1094, §1, 2

2000 amendment is effective April 14, 2000, and applies retroactively to January 1, 2000; 2000 Acts, ch 1094, §2

524.1803 Offer to purchase stock.

No bank holding company shall make any offer to purchase or acquire, directly or indirectly, the voting shares of any state or national bank without extending the same offer to the owners of all outstanding shares of the bank not owned or controlled by the holding company. The refusal of any shareholder to accept the offer shall not be a bar to purchase or acquisition of the shares of any other shareholder if all other pertinent requirements of this division have been met by the bank holding company.

[C73, 75, 77, 79, 81, §524.1803]

524.1804 Notice of acquisition.

A bank holding company which proposes to directly or indirectly acquire control of, or directly or indirectly acquire all or substantially all of the assets of, a state bank or national bank, shall provide to the superintendent a copy of the application and any modifications or amendments to the application submitted to the federal reserve board for permission to take such action at the same time the application is transmitted to the federal reserve board. The superintendent may conduct such investigation into and evaluation of the proposed ac-

tion as the superintendent deems necessary and appropriate, and may submit to the federal reserve board any information so obtained together with the superintendent's own comments or recommendations regarding the proposed acquisition.

[C73, 75, 77, 79, 81, §524.1804]
96 Acts, ch 1056, §18

524.1805 Restrictions on acquisitions and mergers.

1. An out-of-state bank or out-of-state bank holding company shall not directly or indirectly acquire control of, or directly or indirectly acquire all or substantially all of the assets of, a bank located in this state unless the bank has been in continuous existence and operation for at least five years.

2. For purposes of subsection 1, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, a bank located in this state is deemed to have been in existence for the same period of time as the bank to be acquired.

3. For purposes of subsection 1, the period of existence and operation of a bank is deemed to be continuous, notwithstanding any of the following:

a. Any direct or indirect change in the name, ownership, or control of the bank.

b. Any rechartering or merger of the bank.

4. For purposes of subsection 1, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by a savings association, as defined in 12 U.S.C. § 1813, which association is an affiliate of the bank, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the savings association from which the branch or branches were acquired.

5. For purposes of subsection 1, a bank that resulted from the conversion of a state savings association or federal savings association, as defined in 12 U.S.C. § 1813, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the association from which it was converted.

6. An out-of-state bank or out-of-state bank holding company that is organized under laws other than those of this state is subject to and shall comply with the provisions of chapter 490, division XV, relating to foreign corporations, and shall immediately provide the superintendent of banking with a copy of each filing submitted to the secretary of state under that division.

[C73, 75, 77, 79, 81, §524.1805]
96 Acts, ch 1056, §19; 97 Acts, ch 50, §2

524.1806 Banks owned or controlled — officers and directors.

An individual who is a director or an officer of a bank holding company, as specified by section 524.1801, is deemed to be a director or an officer, or both, as the case may be, of each bank so owned or controlled by that bank holding company, for the purposes of sections 524.612, 524.613 and 524.706.

[C73, 75, 77, 79, 81, §524.1806]
95 Acts, ch 148, §134

524.1807 Penalties.

Any bank holding company which willfully violates any provision of sections 524.1801 to 524.1806 shall, upon conviction, be fined not less than one hundred dollars nor more than one thousand dollars for each day during which the violation continues. Any individual who willfully participates in a violation of any provisions of sections 524.1801 to 524.1806 shall be guilty of a serious misdemeanor.

[C73, 75, 77, 79, 81, §524.1807]

524.1808 Insurance sales.

1. Insurance activities in Iowa of an out-of-state bank holding company and its subsidiaries are subject to regulation, including but not limited to regulation under Title XIII, subtitle 1, in the same manner and to the same extent as are the insurance activities of an Iowa bank holding company and its subsidiaries.

2. An authorization for a state bank to engage in activities regulated under Title XIII, subtitle 1, if any, does not grant an out-of-state bank holding company that acquires a state bank or any state bank owned or controlled by such bank holding company or any subsidiary or affiliate the ability or right to engage in such activities outside of this state.

90 Acts, ch 1002, §13; 90 Acts, ch 1266, §57
C91, §524.1912
96 Acts, ch 1056, §20, 23
C97, §524.1808

DIVISION XIX

REGIONAL BANKING

524.1901 through 524.1911 Repealed by 96 Acts, ch 1056, § 24.

524.1912 Insurance sales. Transferred to § 524.1808.

524.1913 Prohibited acquisitions. Repealed by 90 Acts, ch 1266, § 61(3).

DIVISION XX

APPLICABILITY

524.2001 Applicability of other chapters.
Chapters 490, 491, 492, and 493 do not apply to banks except as provided by this chapter.
[C71, §524.1802; C73, 75, 77, 79, 81, §524.1902]
90 Acts, ch 1205, §50
C91, §524.2001

CHAPTER 525

STATE BANKING BOARD

Repealed by 69 Acts, ch 273, §1843

CHAPTER 526

SAVINGS BANKS

Repealed by 69 Acts, ch 273, §1844

CHAPTER 527

ELECTRONIC TRANSFER OF FUNDS

527.1 Statement of intent.
527.2 Definitions.
527.3 Enforcement.
527.4 Establishment of satellite terminals — restrictions.
527.5 Satellite terminal requirements.
527.6 Disclosure of terms. Repealed by 95 Acts, ch 66, §5.
527.7 Records maintained.
527.8 Liability and errors. Repealed by 95 Acts, ch 66, §5.
527.8A Exemptions.
527.9 Central routing units.
527.10 Confidentiality.
527.11 Rulemaking.
527.12 Revocation of privilege.

527.1 Statement of intent.
The general assembly declares, as its purpose in adopting this chapter to provide:
1. That electronic funds transfer systems should provide reliable service to the consumer with full protection of privacy of personal financial information.
2. That electronic funds transfer systems should not impair the safety and soundness of a person's funds.
3. That electronic funds transfer systems are essential facilities in the channels of commerce.
4. That regulation of electronic funds transfer systems should be fair and not unduly impede the development of new technologies which benefit the public.
[C77, 79, 81, §527.1]

527.2 Definitions.
As used in this chapter, the following definitions shall apply unless the context otherwise requires:
1. *"Access device"* means a card, code, or other mechanism, or any combination thereof, that may be used by a customer for the purpose of initiating a transaction by means of a satellite terminal which will affect a customer asset account.
2. *"Administrator"* means and includes the superintendent of banking, the superintendent of savings and loan associations, and the superintendent of credit unions within the department of commerce and the supervisor of industrial loan companies within the office of the superintendent of banking. However, the powers of administration and enforcement of this chapter shall be exercised only as provided in sections 527.3, 527.5, subsection 7, sections 527.11, 527.12, and any other pertinent provision of this chapter.
3. *"Batch basis"* means the delivery of an accumulation of messages representing multiple transactions after completion of the transactions.
4. *"Central routing unit"* means any facility where electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are routed and transmitted to a fi-

nancial institution, or to a data processing center, or to another central routing unit, wherever located.

5. *"Completion of the transaction"* means when the presence of the customer at a satellite terminal is no longer needed to consummate the sale of goods or services, to grant to the seller the right to receive payment for the goods or services, and to issue a receipt to the customer.

6. *"Customer asset account"* or *"account"* means a demand deposit, share, checking, savings, or other customer account, other than an occasional or incidental credit balance in a credit plan, which represents a liability of the financial institution which maintains such account at a business location or office located in this state, either directly or indirectly for the benefit of a customer.

7. *"Data processing center"* means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are processed in order to enable the satellite terminal to perform any function for which it is designed. However, *"data processing center"* does not include a facility which is directly connected to a satellite terminal and which performs only the functions of direct transmission of all requested transactions from that terminal to a data processing facility without performing any review of the requested transactions for the purpose of categorizing, separating, or routing. *"Categorizing"* means the process of reviewing and grouping of requested electronic funds transfer transactions according to the source or nature of the requested transaction. *"Separating"* means the process of interpreting and segregating requested electronic funds transfer transactions, or portions of such transactions, to provide for processing of information relating to such requested transactions or portions of such transactions. *"Routing"* means the process of interpreting and transmitting requested electronic funds transfer transactions to a destination selected at the time of interpretation and transmission from two or more alternative destinations.

8. *"Electronic personal identifier"* means a personal and confidential code or other security mechanism which has been designated by a financial institution issuing an access device to a customer to serve as a supplemental means of access to a customer's account that may be used by the customer in conjunction with an access device for the purpose of initiating a transaction by means of a satellite terminal.

9. *"Financial institution"* means and includes any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of any state or federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company.

10. *"Limited-function terminal"* means an on-line point-of-sale terminal, an off-line point-of-sale terminal, or a multiple use terminal, which is not operated in a manner to accept an electronic personal identifier. Except as otherwise provided, a limited-function terminal shall not be subject to the requirements imposed upon other satellite terminals pursuant to sections 527.4 and 527.5, subsections 1, 2, 3, 7, and 8.

11. *"Multiple use terminal"* means any machine or device to which all of the following are applicable:

a. The machine or device is established and owned or operated by a person who primarily engages in a service, business or enterprise, including but not limited to the retail sale of goods or services, but who is not organized under the laws of this state or under federal law as a bank, savings and loan association, or credit union;

b. The machine or device is used by the person by whom it is owned or operated in some capacity other than as a satellite terminal; and

c. A financial institution proposes to contract or has contracted to utilize that machine or device as a satellite terminal.

12. *"Municipal corporation"* means an incorporated city.

13. *"Office"* means and includes any business location in this state of a financial institution at which is offered the services of accepting deposits, originating loans, and dispensing cash, by financial institution personnel in the office.

14. *"Off-line point-of-sale terminal"* means a satellite terminal at any location in this state off the premises of the financial institution, other than an on-line point-of-sale terminal, that satisfies all of the following:

a. The satellite terminal is not operated to accept deposits or to dispense scrip or other negotiable instruments.

b. The satellite terminal is not operated to dispense cash except when operated by a person other than the customer initiating the transaction.

c. The satellite terminal is utilized for the purpose of making payment to the provider of goods or services purchased or provided at the location of the satellite terminal.

15. *"On-line point-of-sale terminal"* means a satellite terminal at any location in this state off the premises of the financial institution operated on an on-line real time basis, that satisfies all of the following:

a. The satellite terminal is not operated to accept deposits or to dispense scrip or other negotiable instruments.

b. The satellite terminal is not operated to dispense cash except when operated by a person other than the customer initiating the transaction.

c. The satellite terminal is utilized for the purpose of making payment to the provider of goods or

services purchased or provided at the location of the satellite terminal.

16. *"On-line real time basis"* means the delivery or return of a message initiated at a satellite terminal through transmission of electronic impulses to or from a location remote from the location of the satellite terminal prior to completion of the transaction.

17. *"Personal terminal"* means and includes a satellite terminal located in a personal residence and a telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting a noncommercial account of the customer.

18. *"Premises"* means and includes only those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; provided that with respect to an industrial loan company, *"premises"* means only a location where business may be conducted under a single license issued to the industrial loan company.

19. *"Reciprocal basis"* means that a financial institution whose licensed or principal place of business is located in this state has the express authority under the laws of a state other than Iowa to conduct business under qualifications and conditions which are no more restrictive than those imposed by the laws of the other state on financial institutions whose licensed or principal place of business is located in the other state, as determined by the administrator, and the laws of Iowa are no more restrictive of financial institutions whose licensed or principal place of business is located in such other state than they are of financial institutions whose licensed or principal place of business is located in this state.

20. *"Satellite terminal"* means and includes any machine or device located off the premises of a financial institution, and any machine or device located on the premises of a financial institution only if the machine or device is available for use by customers of other financial institutions, whether attended or unattended, by means of which the financial institution and its customers utilizing an access device may engage through either the immediate transmission of electronic impulses to or from the financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the financial institution, in transactions which affect a customer asset account and which otherwise are specifically permitted by applicable law. However, the term *"satellite terminal"* does not include any such machine or device, wherever located, if that machine or device is not generally accessible to persons other than employees of a financial institution or an affiliate of a financial institution.

[C77, 79, 81, §527.2]

87 Acts, ch 158, §1, 2; 89 Acts, ch 86, §1 – 7; 91 Acts, ch 216, §1 – 3; 95 Acts, ch 66, §1; 2000 Acts, ch 1232, §99, 107

527.3 Enforcement.

1. For purposes of this chapter the superintendent of banking only has the power to issue rules applicable to, to accept and approve or disapprove applications or informational statements from, to conduct hearings and revoke any approvals relating to, and to exercise all other supervisory authority created by this chapter with respect to banks; the superintendent of savings and loan associations only shall have and exercise such powers and authority with respect to savings and loan associations; the superintendent of credit unions only has such powers and authority with respect to credit unions; and the superintendent of banking or the superintendent's designee only has such powers and authority with respect to industrial loan companies.

2. The administrator shall have the authority to examine any person who operates a multiple use terminal, limited-function terminal, or other satellite terminal, and any other device or facility with which such terminal is interconnected, as to any transaction by, with, or involving a financial institution which affects a customer asset account. Information obtained in the course of such an examination shall not be disclosed, except as provided by law.

3. Nothing contained in this chapter shall authorize the administrator to regulate the conduct of business functions or to obtain access to any business records, data, or information of a person who operates a multiple use terminal, except those pertaining to a financial transaction engaged in through a satellite terminal, or as may otherwise be provided by law.

4. Nothing contained in this chapter shall be construed to prohibit or to authorize the administrator to prohibit an operator of a multiple use terminal, other than a financial institution, or an operator of any other device or facility with which such terminal is interconnected, other than a central routing unit or data processing center (as defined in section 527.2) from using those facilities to perform internal proprietary functions, including the extension of credit pursuant to an open end credit arrangement.

5. An administrator may conduct hearings and exercise any other appropriate authority conferred by this chapter regarding the operation or control of a satellite terminal upon the written request of a person, including but not limited to, a retailer, financial institution, or consumer.

6. The authority of an administrator pursuant to section 527.5, subsection 2, paragraph *"a"*, to approve access cards issued by a financial institution for use as an access device includes the requirement that a registration statement shall be filed with the administrator and be maintained on a current basis by each financial institution issuing access cards within the state. The registration

statement shall be in writing on a form prescribed by the administrator, and contain the name and address of the registrant, a depiction of both sides of the access card, and any other information the administrator deems relevant relating to the access card and transactions utilizing the access card which affect a customer asset account.

7. A financial institution shall not be required to join, be a member or shareholder of, or otherwise participate in, any corporation, association, partnership, cooperative, or other enterprise as a condition of the financial institution's utilization of any satellite terminal located within this state.

8. An administrator may issue any order necessary to secure compliance with or prevent a violation of this chapter or the rules adopted pursuant to this chapter, regarding the establishment and operation of a satellite terminal, limited-function terminal, upgraded, altered, modified, or replaced limited-function terminal, and any other device or facility with which such terminal is interconnected. A person who violates a provision of this chapter or any rule or any order issued pursuant to this chapter is subject to a civil penalty not to exceed one thousand dollars for each day the violation continues. A person aggrieved by an order of an administrator may appeal the order by filing a written notice of appeal with the administrator within thirty days of the issuance of the order. The administrator shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal. The provisions of chapter 17A shall apply to all matters related to the appeal. The attorney general, on request of the administrator, shall institute any legal proceedings necessary to obtain compliance with an order of the administrator or to prosecute a person for a violation of the provisions of this chapter or rules adopted pursuant to this chapter.

[C77, 79, 81, §527.3]

87 Acts, ch 158, §3; 91 Acts, ch 92, §1; 91 Acts, ch 216, §4, 5; 95 Acts, ch 66, §2

527.4 Establishment of satellite terminals — restrictions.

1. A satellite terminal shall not be established within this state except by a financial institution.

2. A financial institution may establish a satellite terminal at any location within this state. This subsection does not amend, modify, or supersede any provision of chapter 524 regulating the number or locations of bank offices of a state or national bank, or authorize the establishment by a financial institution of any offices or other facilities except satellite terminals at locations permitted by this subsection.

3. A financial institution whose licensed or principal place of business is not located in this state may establish, control, maintain, or operate any number of satellite terminals at any location within this state if all satellite terminals, wherever located, that are owned, controlled, maintained, or operated by the financial institution are available for use on a nondiscriminatory basis by any other financial institution which engages in electronic transactions in this state and by all customers who have minimum contact with this state and who have been designated by a financial institution using the satellite terminal and who have been provided with an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

[C77, 79, 81, §527.4]

87 Acts, ch 158, §4; 89 Acts, ch 86, §8 – 11; 91 Acts, ch 216, §6; 2000 Acts, ch 1232, §100 – 103, 107

527.5 Satellite terminal requirements.

A satellite terminal may be utilized by a financial institution to the extent permitted in this chapter only if the satellite terminal is utilized and maintained in compliance with the provisions of this chapter and only if all of the following are complied with:

1. A satellite terminal in this state may be established by one or more financial institutions. The establishing financial institutions shall designate a single controlling financial institution which shall maintain the location, use, and operation of the satellite terminal, wherever located, in compliance with this chapter. The use and operation of a satellite terminal shall be governed by a written agreement between the controlling financial institution and the person controlling the physical location at which the satellite terminal is placed. The written agreement shall specify all of the terms and conditions, including any fees and charges, under which the satellite terminal is placed at that location. If the satellite terminal is a multiple use terminal, the written agreement shall specify, and may limit, the specific types of transactions incidental to the conduct of the business of a financial institution which may be engaged in through that terminal.

2. *a.* A satellite terminal shall be available for use on a nondiscriminatory basis by any other financial institution which has its principal place of business within this state, and by all customers who have been designated by a financial institution using the satellite terminal and who have been provided with an access device, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal.

b. For the purposes of complying with paragraph *"a"*, an on-line point-of-sale terminal is not required to be available for use by customers of a financial institution by means of an access device by which an off-line point-of-sale terminal can be used to engage in electronic transactions.

c. All off-line point-of-sale terminals located at the retail location or retail locations within this state of a single retailer are exempt from para-

graph *"a"* if electronic transactions can be initiated at each of such terminals only by an access device unique to the retailer.

d. Paragraph *"a"* applies to a financial institution whose licensed or principal place of business is located in a state other than Iowa, whether or not the financial institution has a business location in this state, if all satellite terminals or other similar type terminals owned, controlled, operated, or maintained by the financial institution, wherever located, are available on a reciprocal basis to each financial institution with a principal place of business in this state and to each financial institution with a business location in this state which complies with this paragraph, and to all customers who have been designated by any such financial institution using the satellite terminal and who have been provided with an access device.

3. An informational statement shall be filed and shall be maintained on a current basis with the administrator by the financial institution controlling a satellite terminal in this state, which sets forth all of the following:

a. The name and business address of the controlling financial institution.

b. The location of the satellite terminal.

c. A schedule of the charges which will be required to be paid by a financial institution utilizing the satellite terminal.

d. An agreement with the administrator that the financial institution controlling the satellite terminal will maintain that satellite terminal in compliance with this chapter.

The informational statement shall be accompanied by a copy of the written agreement required by subsection 1. The informational statement also shall be accompanied by a statement or copy of any agreement, whether oral or in writing, between the controlling financial institution and a data processing center or a central routing unit, unless operated by or solely on behalf of the controlling financial institution, by which transactions originating at that terminal will be received.

4. A satellite terminal in this state shall not be attended or operated at any time by an employee of a financial institution or an affiliate of a financial institution, except for the purpose of instructing customers, on a temporary basis, in the use of the satellite terminal, for the purpose of testing the terminal, or for the purpose of transacting business on the employee's own behalf.

5. A satellite terminal shall bear a sign or label no larger than three inches by two inches identifying the name, address, and telephone number of the owner of the satellite terminal. The administrator may authorize methods of identification the administrator deems necessary to enable the general public to determine the accessibility of a satellite terminal.

6. The charges required to be paid by any financial institution which utilizes the satellite terminal for transactions involving an access device shall not exceed a pro rata portion of the costs, determined in accordance with generally accepted accounting principles, of establishing, operating and maintaining the satellite terminal, plus a reasonable return on these costs to the owner of the satellite terminal.

7. If the administrator deems the informational statement or any amendment to that statement or amendment to be complete and finds no grounds for denying establishment of a satellite terminal, the administrator may notify the person filing the informational statement that the administrator has expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached to the statement or amendment. Operation of the satellite terminal may commence immediately upon a person receiving such express approval from the administrator. If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal the administrator shall notify the person filing the informational statement or an amendment thereto, within thirty days of the filing thereof, of the existence of such grounds. If such notification is not given by the administrator, the administrator shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subsection shall not be construed to prohibit the administrator from enforcing the provisions of this chapter, nor shall it be construed to constitute a waiver of any prohibition, limitation, or obligation imposed by this chapter.

8. *a.* Satellite terminals located in this state shall be directly connected to either of the following:

(1) A central routing unit approved pursuant to this chapter.

(2) A data processing center which is directly connected to a central routing unit approved pursuant to this chapter.

b. If a data processing center which is directly connected to a satellite terminal located in this state does not authorize or reject a transaction originated at that terminal, the transaction shall be immediately transmitted by the data processing center to a central routing unit approved pursuant to this chapter, unless one of the following applies:

(1) The transaction is not authorized because of a mechanical failure of the data processing center or satellite terminal.

(2) The transaction does not affect a customer asset account held by a financial institution.

c. This subsection does not limit the authority of a data processing center to authorize or reject

transactions requested by customers of a financial institution pursuant to an agreement whereby the data processing center authorizes or rejects requested transactions on behalf of the financial institution and provides to the financial institution, on a batch basis and not on an on-line real time basis, information concerning authorized or rejected transactions of customers of the financial institution.

9. A personal terminal may be utilized by a financial institution to the extent permitted by this chapter if the use and operation of the personal terminal is governed by a written agreement between the controlling financial institution and its customer and if the personal terminal is utilized and maintained in compliance with subsection 8 and all other applicable sections of this chapter. A telephone located at other than a personal residence and used primarily as a personal terminal must be utilized and maintained in compliance with this section.

10. Any person, as defined in section 4.1, subsection 20, establishing a limited-function terminal within this state, except for a multiple use terminal, which is utilized to initiate transactions affecting a customer asset account shall file with the administrator and shall maintain on a current basis a registration statement on a form prescribed by the administrator containing the name and address of the registrant, the location of the limited-function terminal, and any other information the administrator deems relevant. All limited-function terminals established in this state prior to July 1, 1991, shall be registered in a similar manner by the establishing person no later than July 1, 1992.

11. *a.* If at any time, a limited-function terminal at a location in this state off the premises of the financial institution is replaced by a device constituting either an on-line or an off-line point-of-sale terminal which may be utilized to initiate transactions which affect customer asset accounts through the use of an electronic personal identifier, or is upgraded, altered, or modified to be operated in a manner which allows the use of an electronic personal identifier to initiate transactions which affect customer asset accounts, or an on-line or an off-line point-of-sale terminal which may be utilized to initiate transactions which affect customer asset accounts through the use of an electronic personal identifier is newly established at a location in this state off the premises of the financial institution, then such upgraded, altered, or modified limited-function terminal or replacement point-of-sale terminal or such newly established point-of-sale terminal is deemed to be a full-function point-of-sale terminal for purposes of this subsection and all requirements of a satellite terminal in this chapter apply to the full-function point-of-sale terminal with regard to all transactions affecting customer asset accounts which are initiated through the use of an electronic personal identifier, except for section 527.4, subsection 3, and subsections 1, 3, and 7 of this section.

b. A full-function point-of-sale terminal, as identified in paragraph *"a"*, which is operated in a manner which permits all access devices to be utilized to initiate transactions which affect customer asset accounts, and where all such transactions can be directly routed for authorization purposes as established in this subsection, is also exempt from the provisions of subsection 8. However, if a data processing center directly connected to such full-function point-of-sale terminal does not authorize or reject a transaction affecting a customer asset account initiated at the terminal through the use of an electronic personal identifier, the transaction shall be immediately transmitted by the data processing center to either of the following:

(1) A central routing unit approved pursuant to this chapter.

(2) An electronic funds transfer processing facility maintained or operated by a national card association and utilized for the processing of transactions initiated through the use of electronic funds transfer transaction cards or access devices depicting a service mark, logo, or trademark associated with the national card association. However, if the national card association's processing facility is unable to immediately authorize or reject a transaction affecting a customer asset account initiated at that terminal through the use of an access device which bears a service mark, logo, or trademark associated with a central routing unit approved pursuant to this chapter but does not bear a service mark, logo, or trademark associated with a national card association, or which bears a service mark, logo, or trademark other than that associated with either a central routing unit approved pursuant to this chapter or a national card association, the transaction shall be immediately transmitted to a central routing unit approved pursuant to this chapter, whether the transaction initiated through the use of such access device was transmitted to the national card association's processing facility by a data processing center directly connected to the full-function point-of-sale terminal, or the national card association's processing facility received the transmission of transaction data directly from the full-function point-of-sale terminal.

c. If the national card association's electronic funds transfer processing facility directly or indirectly receives a transaction affecting a customer asset account initiated at a full-function point-of-sale terminal through the use of an electronic personal identifier and an access device bearing a service mark, logo, or trademark associated with a national card association, whether or not the access device also bears the service mark, logo, or trademark of an approved central routing unit, and the national card association's processing facility cannot immediately authorize or reject the

transaction, such transaction shall be immediately transmitted to a central routing unit approved pursuant to this chapter, or to a financial institution, or its data processing center, which is capable of immediately authorizing or rejecting the transaction.

d. For purposes of this subsection, a national card association must be a membership corporation or organization, wherever incorporated and maintaining a principal place of business, which is engaged in the business of administering for the benefit of the association's members a program involving electronic funds transfer transaction cards or access devices depicting a service mark, logo, or trademark associated with the national card association and which may be utilized to perform transactions at point-of-sale terminals. A national card association must have a membership solely comprised of insured depository financial institutions, organizations directly or indirectly owned or controlled solely by insured depository financial institutions, entities wholly owned by one or more insured depository financial institutions, holding companies having at least two-thirds of their assets consisting of the voting stock of insured depository financial institutions, organizations wholly owned by one or more holding companies having at least two-thirds of their assets consisting of the voting stock of insured depository financial institutions and which are solely engaged in activities related to the programs sponsored by the national card association, or such other entities or organizations which are authorized by the national card association's bylaws to participate in the electronic funds transfer transaction card or access device programs or other services and programs sponsored by the national card association. For purposes of this subsection, a national card association shall not include a financial institution, bank holding company as defined in section 524.1801, or in the federal Bank Holding Company Act of 1956, 12 U.S.C. § 1842(d), as amended to July 1, 1994, association holding company as defined in section 534.102, or a supervised organization as defined in section 534.102, any other financial institution holding company organized under federal or state law, or a subsidiary or affiliate corporation owned or controlled by a financial institution or financial institution holding company, which has authorized a customer or member to engage in satellite terminal transactions. For purposes of this subsection, a national card association shall also not include a membership corporation or organization which is conducting business as a regional or nationwide network of shared electronic funds transfer terminals which do not constitute point-of-sale terminals, and is engaged in satellite terminal transaction services utilizing a common service mark, logo, or trademark to identify such terminal services.

e. This subsection does not apply to satellite terminals located in this state, other than on-line and off-line full-function point-of-sale terminals as identified in this subsection, or multiple use terminals located in this state which are capable of being operated in a manner to initiate transactions affecting customer asset accounts through the use of an electronic personal identifier.

12. Effective July 1, 1994, any transaction engaged in with a retailer through a satellite terminal at a location in this state off the premises of the financial institution by means of an access device which results in a debit to a customer asset account shall be cleared and paid at par during the settlement of such transaction. Notwithstanding the terms of any contractual agreement between a retailer or financial institution and a national card association as described in subsection 11, an electronic funds transfer processing facility of a national card association, a central routing unit approved pursuant to this chapter, or a data processing center, the processing fees and charges for such transactions to the retailer shall be as contractually agreed upon between the retailer and the financial institution which establishes, owns, operates, controls, or processes transactions initiated at the satellite terminal. All accounting documents reflecting such fees and charges imposed on the retailer shall separately identify transactions which have resulted in a debit to a customer asset account and the charges imposed. The provisions of this subsection shall apply to all satellite terminals, including limited-function terminals, full-function point-of-sale terminals as identified in subsection 11, paragraph *"a"*, and multiple use terminals.

[C77, 79, 81, §527.5; 82 Acts, ch 1094, §2]

87 Acts, ch 158, §5 – 11; 89 Acts, ch 86, §12 – 14; 91 Acts, ch 216, §7 – 11; 93 Acts, ch 36, §1; 93 Acts, ch 37, §1; 95 Acts, ch 66, §3, 4; 96 Acts, ch 1094, §1, 2; 2000 Acts, ch 1232, §104 – 107

527.6 Disclosure of terms. Repealed by 95 Acts, ch 66, § 5.

527.7 Records maintained.

All transactions engaged in through a satellite terminal shall be recorded in a form from which it will be possible to produce a humanly readable record of any transaction, and these recordings shall be retained by the utilizing financial institutions for the periods required by law.

The machine receipt provided to a satellite account transaction card user by a satellite terminal shall be admissible as evidence in any legal action or proceeding and shall constitute prima facie proof of the transaction evidence by that receipt.

A financial institution shall provide each of its satellite account holders with a periodic account statement that shall contain a brief description of all satellite terminal transactions sufficient to enable the account holder to identify any transaction and to relate it to machine receipts provided by

satellite terminals.

When a periodic account statement includes both satellite terminal transactions and other nonsatellite terminal transactions, all satellite terminal transactions shall be indicated as such, and shall be accompanied by the description required by this subsection.

The administrator may provide by rule for the recording and maintenance, by any financial institution utilizing a satellite terminal, of amounts involved in a transaction engaged in through the satellite terminal which are of a known tax consequence to the customer initiating the transaction. For the purpose of this paragraph *"known tax consequences"* means and includes but shall not be limited to the following:

1. An amount directly or indirectly received from a customer and applied to a loan account of the customer which represents interest paid by the customer to the financial institution.

2. In any transaction where the total amount involved is deducted from funds in a customer's account and is simultaneously paid either directly or indirectly by the financial institution to the account of a third party, any portion of the transaction amount which represents a sales or other tax imposed upon or included within the transaction and collected by that third party from the customer, or any portion of the transaction amount which represents interest paid to the third party by the customer.

3. Any other transaction which the administrator determines to have direct tax consequences to the customer. The administrator also may provide for the periodic distribution to customers of summaries of transactions having known tax consequences.

[C77, 79, 81, §527.7]
91 Acts, ch 216, §12

527.8 Liability and errors. Repealed by 95 Acts, ch 66, § 5.

527.8A Exemptions.

Transactions initiated at a satellite terminal which do not involve the use of an access device to directly or indirectly affect a customer asset account are not governed by this chapter.

91 Acts, ch 216, §13

527.9 Central routing units.

1. A central routing unit shall not be operated in this state unless written approval for that operation has been obtained from the administrator.

2. A person desiring to operate a central routing unit shall submit to the administrator an application which shall contain all of the following information:

a. The name and business address of the owner of the proposed unit.

b. The name and business address of each data processing center and other central routing unit with which the proposed central routing unit will have direct electronic communication.

c. The location of the proposed central routing unit.

d. A schedule of the charges which will be required to be paid to that applicant by each financial institution which utilizes the proposed central routing unit.

The application shall be accompanied by all agreements between the proposed central routing unit and all data processing centers and other central routing units respecting the transmission of transaction data; and a copy of any agreement between the proposed central routing unit and any financial institution establishing a satellite terminal unless that agreement theretofore has been filed with the administrator pursuant to section 527.5.

e. An agreement by the applicant that the proposed central routing unit will be capable of accepting and routing, and will be operated to accept and route, transmissions of data originating at any satellite terminal located in this state, except limited-function terminals, whether receiving from that terminal or from a data processing center or other central routing unit.

f. A representation and undertaking that the proposed central routing unit is directly connected to every data processing center that is directly connected to a satellite terminal located in this state, and that the proposed central routing unit will provide for direct connection in the future with any data processing center that becomes directly connected to a satellite terminal located in this state. This representation and undertaking is not required of a central routing unit with respect to limited-function terminals.

3. The administrator shall approve or disapprove an application for operation of a central routing unit within sixty days after receipt.

4. A central routing unit operating under the approval of the administrator shall be subject to examination by the administrator for the purpose of determining compliance with this chapter.

5. *a.* Effective July 1, 1987, a person owning or operating a central routing unit authorized under this section shall include public representation on any board setting policy for the central routing unit. Four or five public members shall be appointed to the board in the following manner:

(1) Two members shall be appointed by the superintendent of banking.

(2) One member shall be appointed by the superintendent of credit unions.

(3) One member shall be appointed by the superintendent of savings and loan associations.

(4) If an industrial loan company is connected to the central routing unit, one member shall be appointed by the superintendent of banking.

b. The superintendent of banking, superintendent of credit unions, and superintendent of sav-

ings and loan associations shall form a committee to set, in conjunction with the entity owning or operating the central routing unit, the term of office, the rate of compensation, and the rate of reimbursement for each public member. However, the public members shall be entitled to reasonable compensation and reimbursement from the board.

c. Each public member is entitled to all the rights of participation and voting as any other member of the board. The public members are to represent the interest of consumers and the business and agricultural communities in establishing policies for the central routing unit.

d. It is the intention of the general assembly that the ratio of public members to the overall membership of the board shall not be less than one public member for each seven members of the board. If the number of members on the board is increased, then the number of members appointed pursuant to paragraph *"a"* shall be increased to maintain the minimum ratio. In this event, a committee composed of the superintendent of banking, the superintendent of credit unions, and the superintendent of savings and loan associations shall appoint additional public members in order to maintain the minimum ratio.

e. An individual shall not be appointed as a public member pursuant to this subsection if the individual is a director of a financial institution or is directly employed by a financial institution doing business in this state.

[C77, 79, 81, §527.9]

87 Acts, ch 158, §13, 14; 89 Acts, ch 86, §16; 91 Acts, ch 216, §14

527.10 Confidentiality.

A satellite terminal, data processing center, or central routing unit shall not be operated in any manner to permit any person to obtain information concerning the account of any person with a financial institution, unless such information is essential to complete or prevent the completion of a transaction then being engaged in through the use of that facility.

A financial institution, data processing center, central routing unit, or other person shall not disseminate any information relating to the use of a multiple use terminal without the written authorization of the retailer on whose premises the terminal is located, or of the owner or operator of the terminal or the financial institution controlling the terminal. This section shall not, however, prohibit or restrict the use of information received in the processing, authorization, or rejection of a requested electronic funds transfer transaction, where such use is necessary or incidental to the processing, authorization, or rejection, or to reconciling disputes or resolving questions raised by a retailer, financial institution, consumer, or any other person regarding the transaction.

[C77, 79, 81, §527.10]

87 Acts, ch 158, §15

527.11 Rulemaking.

The administrator shall have the power to adopt and promulgate rules pursuant to chapter 17A as in the administrator's opinion will be necessary to properly and effectively carry out and enforce the provisions of this chapter.

[C77, 79, 81, §527.11]

527.12 Revocation of privilege.

Whenever the administrator determines, upon notice and hearing pursuant to chapter 17A, that a satellite facility or data processing center or central routing unit is being operated in violation of this chapter, the administrator may revoke the approval to operate that facility. If the administrator does not have any direct authority over the facility because of the provisions of section 527.3, the administrator may revoke with respect to any financial institution over which the administrator does have direct authority the privilege to engage in transactions through or with that facility. A revocation by the administrator shall be effective when ordered by the administrator, anything in chapter 17A to the contrary notwithstanding. The administrator may bring an action in the district court in the name of the state to enjoin any financial institution or other person who continues to utilize or to operate a satellite terminal or data processing center or central routing unit after the approval has been revoked. The administrator also may bring such an action to enjoin any person who fails to obtain any approval required by this chapter.

[C77, 79, 81, §527.12]

CHAPTER 528

ALTERNATIVE MORTGAGE LOANS

528.1 Title.
528.2 Definitions.
528.3 Financial institutions allowed to make alternative mortgages.
528.4 Prepayment penalty prohibited.
528.5 Disclosure of alternative mortgage loan information to applicants.
528.6 Prototype plan for alternative mortgage loans — approval by administrator.
528.7 Reduction in installment payments — repayment of mortgage debt.
528.8 Interest on graduated payment mortgage loans.
528.9 Rules.

528.1 Title.

This chapter is entitled *"Alternative and Reverse Annuity Mortgage Loan Act"*.

89 Acts, ch 267, §1

528.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the superintendent of banking, the superintendent of savings and loan associations, and the superintendent of credit unions within the department of commerce.

2. *"Alternative mortgage loan"* means a mortgage loan which is a reverse annuity mortgage loan or graduated payment mortgage loan.

3. *"Financial institution"* means financial institution as defined in section 535A.1.

4. *"Graduated payment mortgage loan"* means a mortgage loan in which principal and interest payments, if any, and the making of additional advances, if any, are scheduled to reflect the prospective increasing or decreasing income of the mortgagor.

5. *"Mortgage loan"* means a loan secured by a first mortgage on one, two, three, or four family, owner-occupied residential real property.

6. *"Reverse annuity mortgage loan"* means a mortgage loan in which either the loan proceeds are used to purchase an annuity with the annuity proceeds to be advanced to the mortgagors, or the loan proceeds are directly advanced to the mortgagors, in ten or more installments, either directly or indirectly, and which together with unpaid interest, if any, are to be repaid in accordance with section 528.7.

89 Acts, ch 267, §2

528.3 Financial institutions allowed to make alternative mortgages.

A financial institution may make alternative mortgage loans in accordance with this chapter. General provisions governing a financial institution's mortgage loans apply to alternative mortgage loans unless inconsistent with the provisions of this chapter. This chapter does not prohibit a financial institution from making any loan which is not an alternative mortgage loan, provided such loan otherwise complies with applicable laws.

89 Acts, ch 267, §3

528.4 Prepayment penalty prohibited.

A financial institution making an alternative mortgage loan may contract with the mortgagor for interest to be paid currently or to accrue, and if accrued, for accrued interest to be added to the mortgage debt on which interest may be charged and collected. Accrued interest which is added to the mortgage debt shall be secured by the mortgage to the same extent as the principal of the alternative mortgage loan. An instrument evidencing an alternative mortgage loan shall not contain a provision imposing a penalty for prepayment of the loan.

89 Acts, ch 267, §4

528.5 Disclosure of alternative mortgage loan information to applicants.

1. A financial institution that offers or makes an alternative mortgage loan shall include in any disclosure of the rates or availability of mortgage loans, the rates and availability of reverse annuity mortgages or graduated payment mortgage loans, if and when such loans are offered. The administrator may prescribe by rule forms for the required disclosures.

2. A prospective mortgage loan applicant shall have the choice of applying for a mortgage loan or any type of alternative mortgage loan offered by the financial institution.

89 Acts, ch 267, §5

528.6 Prototype plan for alternative mortgage loans — approval by administrator.

1. Before a financial institution makes an alternative mortgage loan, it shall submit to the administrator for that type of institution, for the administrator's approval, the prototype plan and subsequent amendments to the plan under which alternative mortgage loans are to be made. A plan submitted shall include a copy of the form of note and mortgage instrument that will be used for that type of alternative mortgage loan, a detailed description of how the plan will function, and other information as the administrator requires. The administrator shall specifically review the mortgage instrument submitted as part of the plan to ensure that any default provisions included in the deed pursuant to section 528.7, subsection 2, paragraph *"c"*, are necessary to protect the interests of the mortgagee and are fair and equitable for the mortgagor. A reverse annuity mortgage shall provide that the mortgagor or mortgagors of the property shall retain a life estate in the property until the death of the mortgagor or all of the mortgagors, notwithstanding that the annuity may expire prior to the end of the life estate, depending upon the terms of the annuity.

2. The administrator may approve any plan and amendment to a plan that in the administrator's opinion serves the best interests of prospective mortgagors and mortgagees. The administrator's considerations shall include, without limitation, the flexibility of each plan to serve the differing needs of various persons who may apply for an alternative mortgage loan under the plan.

3. If the administrator approves the plan or amendment, the financial institution may make alternative mortgage loans in accordance with the approved plan and any approved amendments.

4. This section applies to all alternative mort-

gage loans made on or after January 1, 1990.
89 Acts, ch 267, §6

528.7 Reduction in installment payments — repayment of mortgage debt.

1. If the mortgagee or its assignee and the mortgagor agree, any installment payment of either the loan proceeds or an annuity purchased with the loan proceeds of a reverse annuity mortgage loan may be reduced by an amount used for partial repayment of the mortgage debt, except as provided in subsection 2 of this section.

a. Notwithstanding any such reduction, each mortgagor shall receive a cash payment in each installment for the term of the annuity or, if no annuity, for the term during which the mortgagee contracted with the mortgagor to advance the loan proceeds.

b. Except as provided in subsection 2, no repayments of any part of the mortgage debt shall be required from the mortgagor after termination of the period during which loan proceeds or any annuity purchased with the loan proceeds are advanced to the mortgagor.

2. If the mortgagee or its assignee and the mortgagor agree, and at the option of the mortgagee, advances under a reverse annuity mortgage loan may terminate and the entire unpaid balance of the loan plus accrued interest may become due and payable upon the occurrence of any of the following events:

a. The death of the last surviving mortgagor.

b. The sale or other transfer of the real estate securing the loan to a person other than any of the original mortgagors.

c. Any other occurrence which materially decreases the value of the property securing the loan or which will have the likely effect of causing the loan not to be repaid. Any such additional occurrence shall be clearly described in the note or mortgage instrument.

89 Acts, ch 267, §7

528.8 Interest on graduated payment mortgage loans.

A graduated payment mortgage loan offered or made by a financial institution shall provide for interest at a specified rate or a series of specified rates.

89 Acts, ch 267, §8

528.9 Rules.

The administrator may adopt rules pursuant to chapter 17A, as the administrator deems necessary and convenient to carry out the provisions of this chapter.

89 Acts, ch 267, §9

CHAPTER 528A

PRESERVATION OF BANK RECORDS

Repealed by 69 Acts, ch 273, §1847

CHAPTER 528B

MERGER, CONSOLIDATION AND CONVERSION OF BANKS AND TRUST COMPANIES

Repealed by 69 Acts, ch 273, §1848

CHAPTER 529

IOWA FINANCIAL TRANSACTION REPORTING ACT

529.1 Definitions.
529.2 Reports.
529.3 Investigations.
529.4 Uniformity of construction and application.

529.1 Definitions.

In this chapter, unless the context otherwise requires:

1. *"Authorized delegate"* means a person designated by the licensee.

2. *"Check cashing"* means exchanging for com-

pensation a check, draft, money order, traveler's check, or a payment instrument of a money transmitter for money delivered to the presenter at the time and place of the presentation.

3. *"Compensation"* means any fee, commission, or other benefit.

4. *"Conduct the business"* means engaging in activities of a licensee or money transmitter more than ten times in any calendar year for compensation.

5. *"Foreign money exchange"* means exchanging for compensation money of the United States government or a foreign government to or from money of another government at a conspicuously posted exchange rate at the time and place of the presentation of the money to be exchanged.

6. *"Licensee"* means a person licensed under this chapter.*

7. *"Location"* means a place of business at which activity conducted by a licensee or money transmitter occurs.

8. *"Money"* means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.

9. *"Money transmitter"* means a person who is located or doing business in this state, including a check casher and a foreign money exchanger, and who does any of the following:

a. Sells or issues payment instruments.

b. Conducts the business of receiving money for the transmission of or transmitting money.

c. Conducts the business of exchanging payment instruments or money into any form of money or payment instrument.

d. Conducts the business of receiving money for obligors for the purpose of paying obligors' bills, invoices, or accounts.

e. Meets the definition of a bank, financial agency, or financial institution as prescribed by 31 U.S.C. § 5312 or 31 C.F.R. § 103.11 and any successor provisions.

10. *"Payment instrument"* means a check, draft, money order, traveler's check, or other instrument or order for the transmission or payment of money, sold to one or more persons, whether or not that instrument or order is negotiable. *"Payment instrument"* does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

11. *"Proceeds"* means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

12. *"Property"* means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

13. *"Superintendent"* means the superintendent of banking or the superintendent of credit unions.

14. *"Transaction"* includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

15. *"Transmitting money"* includes the transmission of money by any means including transmission within this country or to or from locations abroad by payment instrument, wire, facsimile, or electronic transfer, courier, or otherwise.

16. *"Traveler's check"* means an instrument identified as a traveler's check on its face or commonly recognized as a traveler's check and issued in a money multiple of United States or foreign currency with a provision for a specimen signature of the purchaser to be completed at the time of purchase and a countersignature of the purchaser to be completed at the time of negotiation.

96 Acts, ch 1133, §34; 98 Acts, ch 1074, §30

*This chapter does not include licensing provisions

529.2 Reports.

1. A licensee, authorized delegate, or money transmitter required to file a report regarding business conducted in this state pursuant to the federal Currency and Foreign Transactions Reporting Act, 31 U.S.C. § 5311 through 5326 and 31 C.F.R. pt. 103, or 12 C.F.R. § 21.11, shall file a duplicate of that report with the department of public safety.

2. All persons engaged in a trade or business who are required to file a report pursuant to 26 U.S.C. § 6050I and 26 C.F.R. § 1.6050I, and any successor provisions, concerning returns relating to cash received in trade or business, shall file a copy of the report with the department of public safety.

3. A licensee, authorized delegate, or money transmitter that is regulated under the federal Currency and Foreign Transactions Reporting Act, 31 U.S.C. § 5325 and 31 C.F.R. pt. 103, and that is required to make available prescribed records to the secretary of the United States department of treasury upon request at any time, shall follow the same prescribed procedures and create and maintain the same prescribed records relating to a transaction and shall make these records available to the department of public safety pursuant to a prosecuting attorney subpoena.

4. *a.* The timely filing of a report required by this section with the appropriate federal agency shall be deemed compliance with the reporting requirements of this section, unless the attorney general or the department of public safety has notified the superintendent that reports of that type are not being regularly and comprehensively

transmitted by that federal agency to the department of public safety.

b. This chapter does not preclude a licensee, authorized delegate, money transmitter, financial institution, or a person engaged in a trade or business, in its discretion, from instituting contact with, and thereafter communicating with and disclosing customer financial records to appropriate state or local law enforcement agencies if the licensee, authorized delegate, money transmitter, financial institution, or person has information that may be relevant to a possible violation of any criminal statute or to the evasion or attempted evasion of any reporting requirement of this chapter.

c. A licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any of them, or any public official or governmental employee who keeps or files a record pursuant to this section or who communicates or discloses information or records under paragraph *"b"*, is not liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained in that report.

5. The attorney general or the department of public safety may report any possible violations indicated by analysis of the reports required by this chapter to any appropriate law enforcement agency for use in the proper discharge of its official duties. The attorney general or the department of public safety shall provide copies of the reports required by this chapter to any appropriate prosecutorial or law enforcement agency upon being provided with a written request for records relating to a specific individual or entity and stating that the agency has an articulable suspicion that such individual or entity has committed a felony offense or a violation of this chapter to which the reports are relevant. A person who releases information received pursuant to this subsection except in the proper discharge of the person's official duties is guilty of a serious misdemeanor.

6. It shall be unlawful for any person to do any of the following:

a. With intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, to knowingly furnish or provide to a licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any of them, or to the attorney general or department of public safety, any false, inaccurate, or incomplete information; or to knowingly conceal a material fact in connection with a transaction for which a report is required to be filed pursuant to this section.

b. With the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, or with intent to evade the making or filing of a report required under this chapter, or with intent to cause the making or filing of a report that contains a material omission or misstatement of fact, to conduct or structure a transaction or series of transactions by or through one or more licensees, authorized delegates, money transmitters, financial institutions, or persons engaged in a trade or business.

7. A person who violates subsection 6 is guilty of a class "C" felony and is also subject to a civil penalty of three times the value of the property involved in the transaction, or, if no transaction is involved, five thousand dollars.

8. Notwithstanding any other provision of law, each violation of this section constitutes a separate, punishable offense.

9. Any report, record, information, analysis, or request obtained by the attorney general or department of public safety pursuant to this chapter is not a public record as defined in chapter 22 and is not subject to disclosure.

96 Acts, ch 1133, §35; 98 Acts, ch 1074, §31

529.3 Investigations.

1. The attorney general or county attorney may conduct investigations within or outside this state to determine if any licensee, authorized delegate, money transmitter, or person engaged in a trade or business has failed to file a report required by this chapter or has engaged or is engaging in any act, practice, or transaction that constitutes a violation of this chapter.

2. Upon presentation of a subpoena from a prosecuting attorney, all licensees, authorized delegates, money transmitters, and financial institutions shall make their books and records available to the attorney general or county attorney or peace officer during normal business hours for inspection and examination in connection with an investigation pursuant to this section.

96 Acts, ch 1133, §36

529.4 Uniformity of construction and application.

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. The civil remedies do not preclude and are not precluded by other provisions of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law and to make the reporting requirements re-

garding financial transactions under Iowa law uniform with the reporting requirements regarding financial transactions under federal law.

3. The attorney general is authorized to enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

96 Acts, ch 1133, §37

CHAPTER 530

STATE-FEDERAL BANKING CO-ORDINATION

Repealed by 69 Acts, ch 273, §1850

CHAPTER 531

CO-OPERATIVE BANKS

Repealed by 69 Acts, ch 273, §1851

CHAPTER 532

BANKS AND TRUST COMPANIES ADDITIONAL POWERS AS FIDUCIARIES

Repealed by 69 Acts, ch 273, §1852

CHAPTER 533

CREDIT UNIONS

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ADMINISTRATION

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533.1 Purpose — administration — organization.

Definition and purpose. A credit union is hereby defined as a co-operative, nonprofit association, incorporated in accordance with the provisions of this chapter for the purpose of creating a source of credit at a fair and reasonable rate of interest, of encouraging habits of thrift among its members and of providing the opportunity for people to use and control their savings for their mutual benefit.

Administration. The superintendent shall have the supervisory and regulatory authority of all state chartered credit unions and shall be charged with the administration and execution of the laws of this state relating to credit unions. Subject to the approval of the credit union review board, the superintendent shall have power to adopt such rules as in the superintendent's opinion are necessary to properly and effectively safeguard the interests of depositors and shareholders of credit unions, and otherwise to carry out and enforce the provisions of this chapter.

Organization. Any seven residents of the state of Iowa may apply to the superintendent for permission to organize a credit union.

A credit union is organized in the following manner:

1. The applicants shall execute in duplicate articles of incorporation by the terms of which they agree to be bound. The articles shall state:

a. The name and location of the proposed credit union.

b. The names and addresses of the subscribers to the articles and the number of shares subscribed by each.

c. The par value of the shares of the credit union shall be established by the board of directors. A credit union may have more than one class of shares.

2. Said applicants shall prepare and adopt bylaws for the general government of the credit union consistent with the provisions of this chapter, and execute the same in duplicate.

3. The articles and the bylaws, both executed in duplicate, shall be forwarded with a fee of ten dollars to the superintendent.

4. The superintendent shall, within thirty days of the receipt of said articles and bylaws, determine whether they conform with the provisions of this chapter, and whether or not the organization of the credit union in question would benefit its members and be consistent with the purposes of this chapter.

5. The superintendent shall thereupon notify the applicants of the decision. If the decision is favorable the superintendent shall issue a certificate of approval which shall be attached to the duplicate articles of incorporation and the superintendent shall return the same, together with the duplicate bylaws to the applicants.

6. The applicants shall thereupon file this duplicate of the articles of incorporation and the attached certificate of approval with the county recorder of the county within which the credit union is to have its principal place of business. The county recorder shall record and index the same and return it, with the recorder's certificate of record attached, to the superintendent for permanent record.

7. The applicants shall thereupon become and be a credit union, incorporated in accordance with the provisions of this chapter.

8. The original articles or amended articles may contain a provision eliminating or limiting the personal liability of a director, officer, or employee of the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, officer, or employee, provided that the provision does not eliminate or limit the liability of a director, officer, or employee for any breach of the director's, officer's, or employee's duty of loyalty to the corporation or its shareholders, for acts or

omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or for any transaction from which the director, officer, or employee derives an improper personal benefit. A provision shall not eliminate or limit the liability of a director, officer, or employee for any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

In order to simplify the organization of credit unions, the superintendent shall cause to be prepared an approved form of articles of incorporation and a form of bylaws, consistent with this chapter which may be used by credit union incorporators for their guidance, and on written application of any seven residents of the state, shall supply them without charge with blank articles of incorporation and a copy of this form of suggested bylaws.

[C27, 31, 35, §9305-a1; C39, §**9305.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.1]

84 Acts, ch 1197, §1; 87 Acts, ch 212, §13; 88 Acts, ch 1170, §11

533.2 Amendments.

The articles of incorporation or the bylaws may be amended by a favorable vote of a majority of the members present at a meeting, if that number constitutes a quorum and if the proposed amendment was contained in the notice of the meeting. Bylaws may also be amended by a vote of a majority of the members of the board, or by a majority vote of members voting by mailed ballot according to procedures specified by rule of the superintendent requiring at least twenty days' notice to all members, mailed ballots ensuring the confidentiality of voters, announcement to members of the results of the vote, and preservation of the ballots for a reasonable period of time. All amendments must be approved by the superintendent before they become effective.

[C27, 31, 35, §9305-a2; C39, §**9305.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.2; 82 Acts, ch 1171, §1]

533.3 Restriction.

1. A person other than one referred to in subsection 2 shall not use a name or title containing the words "credit union" or any derivation thereof, and shall not represent in advertising or otherwise that the person is conducting business as a credit union.

2. The prohibitions contained in subsection 1 do not apply to a credit union organized under this chapter or under the Federal Credit Union Act, 12 U.S.C. Sec. 1751 et seq., or to the Iowa credit union league, or a chapter, affiliate or subsidiary of the Iowa credit union league, or to a political action committee formed under Public Law 94-283 or chapter 56 by the Iowa credit union league or by credit unions organized under this chapter or federal law.

3. Violation of subsection 1 is a serious misdemeanor, and the violator may be enjoined from the use of words, advertising or other representation prohibited by subsection 1.

[C27, 31, 35, §9305-a3; C39, §**9305.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.3]

533.4 Powers.

A credit union shall have the following powers to:

1. Receive from its members, nonmembers as prescribed by rule where the credit union is serving predominantly low-income members, other credit unions, and federal, state, county, and city governments, payments on shares or as deposits. Rules adopted allowing nonmember deposits in credit unions serving predominantly low-income members shall be designed solely to meet the needs of the low-income members.

2. Make loans to members for provident or productive purposes.

3. Make loans to a cooperative society or other organization having membership in the credit union.

4. Make deposits in state and national banks, state and federal savings banks or savings and loan associations, and state and federal credit unions, the accounts of which are insured by the federal deposit insurance corporation or the national credit union share insurance fund.

5. Make investments in:

a. Time deposits in state and national banks, state and federal savings banks or savings and loan associations, and state and federal credit unions, the deposits of which are insured by the federal deposit insurance corporation or the national credit union share insurance fund.

b. Obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by the United States government or any agency thereof; or any trust or trusts established for investing directly or collectively in the same.

c. General obligations of the state of Iowa and any subdivision of the state.

d. Purchase of notes of liquidating credit unions with the approval of the superintendent.

e. Shares and deposits in other credit unions.

f. Shares, stocks, loans, and other obligations or a combination thereof of an organization, corporation, or association, provided the membership or ownership, as the case may be, of the organization, corporation, or association is primarily confined or restricted to credit unions or organizations of credit unions and provided that the purpose of the organization, corporation, or association is primarily designed to provide services to credit unions, organizations of credit unions, or credit union members. However, the aggregate amount invested pursuant to this subsection shall not exceed five percent of the assets of the credit union.

g. Obligations issued by federal land banks, federal intermediate credit banks, banks for cooperatives, or any or all of the federal farm credit banks.

h. Commercial paper issued by United States corporations as defined by rule.

i. Corporate bonds as defined by and subject to terms and conditions imposed by the administrator, provided that the administrator shall not approve investment in corporate bonds unless the bonds are rated in the two highest grades of corporate bonds by a nationally accepted rating agency, including but not limited to a rating of AAA or AA from Standard and Poors.

6. Borrow money as hereinafter indicated.

7. Assess fines as may be provided by the bylaws.

8. Sue and be sued.

9. Make contracts.

10. Purchase, hold and dispose of property necessary and incidental to its operation provided, however, that any property acquired through foreclosure shall be disposed of within a period not to exceed ten years.

11. Exercise such incidental powers as may be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

12. Apply for share account and deposit account insurance which meets the requirements of this chapter and take all actions necessary to maintain an insured status.

13. Upon the approval of the superintendent, serve an employee group having an insufficient number of members to form or conduct the affairs of a separate credit union. There shall be no requirement for the existence of a common bond relationship between the said small employee group and the credit union effecting such service.

14. Deposit with a credit union which has been in existence for not more than a year an amount not to exceed twenty-five percent of the assets of the new credit union, but only one credit union may at any time make the deposit.

15. Acquire the conditional sales contracts, promissory notes or other similar instruments executed by its members, but the rate of interest existing on the instrument shall not exceed the highest rate charged by the acquiring credit union on its outstanding loans.

16. Sell, participate in, or discount the obligations of its members with or without recourse. Purchase the obligations of credit union members, provided the obligations meet the requirements of this chapter.

17. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged in providing and operating facilities through which a credit union and its members may engage, by means of either the direct transmission of electronic impulses to and from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union, in transactions in which such credit union is otherwise permitted to engage pursuant to applicable law.

18. Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union. Subject to the provisions of chapter 527, a credit union may utilize, establish or operate, alone or with one or more other credit unions, banks incorporated under the provisions of chapter 524 or federal law, savings and loan associations incorporated under the provisions of chapter 534 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the credit union may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527. Nothing in this subsection shall be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this subsection be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any credit union.

19. Establish one or more offices other than its main office, subject to the approval and regulation of the superintendent, if such offices are reasonably necessary to furnish service to its membership. A credit union office may furnish all credit union services ordinarily furnished to the membership at the principal place of business of the credit union which operates the office. All transactions of a credit union office shall be transmitted daily to the principal place of business of the credit union which operates the office, and current recordkeeping functions shall not be maintained at a credit union office except to the extent the credit union which operates the office deems it desirable to keep at the office duplicates of the records kept at the principal place of business of the credit union. The central executive and official business functions of a credit union shall be exercised only at the principal place of business.

A credit union office shall not be opened without the prior written approval of the superintendent. Upon application by a credit union in the form prescribed by the superintendent, the superintendent shall determine, after notice and hearing, if the establishment of the credit union office is reasonably necessary for service to, and is in the best interests of, the members of the credit union.

Notwithstanding the provisions of this section, data processing services and loan documentation recordkeeping functions may be performed or located at an authorized credit union office or at

some other location, subject to the approval of the superintendent.

20. Purchase insurance or make the purchase of insurance available for members.

21. A credit union may take a second mortgage on real property to secure a loan made by the credit union, pursuant to rules adopted by the superintendent.

22. Charge fees and penalties and apply them to income.

23. *a.* Act as agent of the federal government when requested by the secretary of the United States department of treasury; perform such services as may be required in connection with the collection of taxes and other obligations due the United States and the lending, borrowing and repayment of money by the United States; and be a depository of public money when designated for that purpose.

b. Act as agent of the state when requested by the treasurer of state; perform such services as may be required in connection with the collection of taxes and other obligations due the state and the lending, borrowing and repayment of money by the state; and be a depository of public money when designated for that purpose.

24. Receive public funds pursuant to chapter 12C.

25. Engage in any activity authorized by the superintendent which would be permitted if the credit union were federally chartered and which is consistent with state law.

26. Pledge its assets to secure the deposit of public funds.

27. To provide indemnity for the director, officer, or employee in the same fashion that a corporation organized under chapter 490 could under sections 490.850 through 490.859; however, where those sections provide for action by shareholders the provision is applicable to action by members of the credit union and where the sections have reference to the corporation organized under chapter 490, the provision is applicable to the association organized under this chapter.

[C27, 31, 35, §9305-a4; C39, §**9305.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.4; 82 Acts, ch 1253, §4]

84 Acts, ch 1197, §2, 3, 4; 84 Acts, ch 1230, §26; 85 Acts, ch 242, §1, 2; 87 Acts, ch 171, §20, 21; 87 Acts, ch 212, §14; 88 Acts, ch 1103, §1; 89 Acts, ch 94, §1; 90 Acts, ch 1205, §51; 96 Acts, ch 1012, §1; 96 Acts, ch 1219, §28; 2002 Acts, ch 1154, §119, 125

2002 amendment to subsection 27 is effective January 1, 2003; 2002 Acts, ch 1154, §125

Subsection 27 amended

533.5 Membership.

The membership of a credit union consists of those persons in the common bond, duly admitted, who have paid any required one-time or periodic membership fee, or both, have subscribed to one or more shares, and have complied with the other requirements specified by the articles of incorporation and bylaws. To continue membership, a member must comply with any changes in the par value of the share. Credit union organization shall be available to groups of individuals who have a common bond of association such as, but not limited to, occupation, common employer, or residence within specified geographic boundaries. Changes in the common bond may be made by the board of directors. If adopted as a policy by the board of directors of a credit union, members who cease to meet qualifications of membership may retain their credit union membership and all membership privileges. Organizations, incorporated or otherwise, may be members.

[C27, 31, 35, §9305-a5; C39, §**9305.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.5]

84 Acts, ch 1197, §5; 87 Acts, ch 171, §22

533.6 Reports — examinations — revocation — receivership — notice to show cause.

1. Credit unions organized under this chapter shall report annually on or before the first day of February to the superintendent on blanks supplied by the superintendent for that purpose. Additional reports may be required. If any report remains in arrears for more than five days, a fine of five dollars for each day such report remains in arrears may be levied against the offending credit union in addition to the fine for failure to pay the annual fee. If such report is not returned within thirty days of the due date, the superintendent may, after written notice to the president of the credit union, suspend or revoke the certificate of approval, take possession of the business and property of such credit union, and order its dissolution.

2. The superintendent may make or cause to be made an examination of each credit union whenever the superintendent believes such examination is necessary or advisable, but in no event less frequently than once during each eighteen-month period. A credit union designated as serving predominantly low-income members shall be reviewed during each examination to ensure that such credit union is continuing to meet the standards established by rule of the superintendent. Each credit union and all of its officers and agents shall give to the representatives of the superintendent free access to all books, papers, securities, records, and other sources of information under their control. A report of such examination shall be forwarded to the chairperson of each credit union within thirty days after the completion of the examination. Within thirty days of the receipt of this report, a meeting of the directors shall be called to consider matters contained in the report and the action taken shall be set forth in the minutes of the board. The superintendent may accept, in lieu of the examination of a credit union, an audit report conducted by a certified public accounting firm selected from a list of firms previously ap-

proved by the superintendent. The cost of the audit shall be paid by the credit union.

3. The superintendent may require any credit union whose records are inadequate or whose books have not been balanced as of the end of the month not less than thirty days previously or whose affairs are in an unfavorable condition, to submit to an additional examination each year.

4. If after notice and opportunity for hearing the superintendent determines that a credit union has violated any of the provisions of this chapter, the superintendent shall, except when the credit union is insolvent, order the credit union to correct the condition. The superintendent may grant the credit union not more than sixty days within which to comply with the order. Failure to comply gives the superintendent grounds to revoke the certificate of approval and the superintendent may apply to the district court of the county in which this credit union is located for the appointment of a receiver for the credit union. Notwithstanding any other provision of this chapter, upon a determination by the superintendent that a credit union's assets, if made immediately available, would not be sufficient to discharge the credit union's liabilities, the superintendent shall take control of the credit union. Upon taking over management of the property and business of a credit union, the superintendent may operate and direct the affairs of the credit union in its regular course of business. The superintendent may also collect amounts due to the credit union and do other acts as are necessary or expedient to conduct the affairs of the credit union and conserve or protect its assets, property, and business. If upon taking over the management of the business and property of the credit union, the superintendent concludes that the credit union is insolvent or should be dissolved for any other reason enumerated in this section, the superintendent may immediately, or at any time within three years from taking over management of the credit union, order that the credit union cease to carry on its business. The superintendent shall revoke the certificate of approval and shall apply to the district court in the county in which the main office of the credit union is located for the appointment of a receiver for the credit union. The district court shall appoint the superintendent of the credit union division as receiver unless the superintendent of the credit union division has tendered the appointment to the administrator of the plan by which the accounts of the credit union are insured. Either the superintendent or the administrator as receiver possesses the rights, powers, and privileges granted by state law to a receiver of a state credit union. Neither the superintendent nor the administrator shall be required to furnish bond as receiver of a state credit union.

The superintendent may appoint one or more special deputies as agent or agents with powers specified in the certificate of appointment to assist the superintendent in the duty of management, conservation, or dissolution and distribution of the business and property of a credit union whose management is taken over under this section.

During the period of the superintendent's management of the business of the credit union and prior to the time that the superintendent applies to the district court for appointment as receiver, the superintendent may require reimbursement by the credit union to the extent of the expenses incurred by the division in connection with the management.

The superintendent may adopt rules which define insolvency or which establish factors to be considered in determining insolvency. The superintendent may adopt separate solvency standards for credit unions which are within their first year of operation.

5. If the superintendent has reason to believe that an officer, director, employee, or committee member of a credit union has violated any law, rule, or cease and desist order relating to a credit union or has engaged in an unsafe or unsound practice in conducting the business of a credit union, the superintendent may cause notice to be served upon the officer, director, employee, or committee member to appear before the superintendent to show cause why the person should not be removed from office or employment. A copy of such notice shall be sent by certified or restricted certified mail to each director of the credit union affected. If, after granting the accused reasonable opportunity to be heard, the superintendent finds that the accused has violated a law, rule, or cease and desist order relating to a credit union or has engaged in an unsafe or unsound practice in conducting the business of a credit union, the superintendent in the superintendent's discretion may order that the accused be removed from office and from any position of employment with the credit union. A copy of the order shall be served upon the accused and upon the credit union affected, at which time the accused shall cease to be an officer, director, employee, or committee member of the credit union.

[C27, 31, 35, §9305-a6; C39, §**9305.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.6]

84 Acts, ch 1067, §43; 86 Acts, ch 1053, §1; 92 Acts, ch 1039, §1; 96 Acts, ch 1012, §2

533.6A Interim cease and desist order — final order — suspension.

1. If it appears to the superintendent that a credit union, or any director, officer, employee, or committee member of a credit union is engaging in or is about to engage in an unsafe or unsound practice or dishonest act in conducting the business of the credit union that is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union, or is likely to seriously weaken the condition of the credit union or otherwise seriously prejudice the interests of its members prior

to the completion of the proceedings conducted pursuant to section 533.6, the superintendent may issue an interim order requiring the credit union, director, officer, employee, or committee member to cease and desist from any such practice or act, and to take affirmative action, including suspension of the director, officer, employee, or committee member to prevent such insolvency, dissipation, condition, or prejudice pending completion of the proceedings. The interim order becomes effective upon personal service upon the credit union, or upon the director, officer, employee, or committee member of the credit union and, unless set aside, limited, or suspended by a court as provided in this chapter, remains effective and enforceable pending the completion of the administrative proceedings pursuant to the interim order and until such time as the superintendent dismisses the charges specified in the interim order, or, if a final cease and desist order is issued against the credit union or the director, officer, employee, or committee member until the effective date of the final order.

2. Within ten days after a credit union or any director, officer, employee, or committee member is served with an interim order, the credit union or director, officer, employee, or committee member may apply to the district court in the county in which the credit union has its principal place of business, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the interim order pending the completion of the administrative proceedings. If serious prejudice to the interests of the superintendent, the credit union, the officer, director, employee, or committee member would result from a court hearing, the court may order the judicial proceeding to be conducted in camera.

3. The interim order shall contain a concise statement of the facts constituting the alleged unsafe or unsound practice or alleged dishonest act, and shall fix a time and place at which a hearing will be held to determine whether a final order to cease and desist should issue against the credit union or any director, officer, employee, or committee member. The hearing shall be fixed for a date not later than thirty days after service of the interim order unless a later date is set at the request of the party so served. If the credit union, or the director, officer, employee, or committee member fails to appear at the hearing, the credit union, or the director, officer, employee, or committee member is deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at the hearing the superintendent finds that any unsafe or unsound practice or dishonest act specified in the interim order has been established, the superintendent may issue and serve upon the credit union, or the director, officer, employee, or committee member a final order to cease and desist from any such practice or act. The order may require the credit union, or the director, officer, employee, or committee member to cease and desist from any such practice or act and, further, to take affirmative action, including suspension of the director, officer, employee, or committee member.

4. A hearing provided for in this section shall be presided over by an administrative law judge appointed in accordance with section 17A.11. The hearing shall be private, unless the superintendent determines after full consideration of the views of the party afforded the hearing, that a public hearing is necessary to protect the public interest. After the hearing, and within thirty days after the case has been submitted for decision, the superintendent shall review the proposed order of the administrative law judge and render a final decision, including findings of fact upon which the decision is predicated, and issue and serve upon each party to the proceeding an order consistent with this section.

5. Any final order issued by the superintendent pursuant to subsection 3 becomes effective upon service of the final order on the credit union, director, officer, employee, or committee member and shall remain effective except to the extent that it is stayed, modified, terminated, or set aside by action of the superintendent or of the district court of the county in which the credit union has its principal place of business in accordance with the terms of chapter 17A.

6. In the case of violation or threatened violation of, or failure to obey, an interim order issued pursuant to subsection 1 or a final order issued pursuant to subsection 3, the superintendent may apply to the district court of the county in which the credit union has its principal place of business for the enforcement of the order and such court shall have jurisdiction and power to order and require compliance with the interim order or final order.

92 Acts, ch 1039, §2

533.7 Fiscal year — meetings — mail ballot.

The fiscal year of all credit unions shall end December 31. Annual meetings shall be held, and special meetings may be held, in the manner indicated in the bylaws.

At all meetings a member shall not have more than one vote regardless of the shares held by the member. There shall be no voting by proxy. A member other than a natural person may cast a single vote through a delegated agent which agent shall be a member of the organization for which the agent acts. The majority of members present at any meeting may vote to modify, amend, or reverse any act of the board of directors or instruct the board to take action not inconsistent with the bylaws or this chapter. In order to be binding upon the board of directors, any action so taken by the membership to modify, amend, or reverse an act of the board or to instruct the board to take action re-

quires an affirmative vote of a majority of all eligible members after submitting the modification, amendment, or reversal, by mail ballot pursuant to rules on mailed ballots adopted by the superintendent.

[C27, 31, 35, §9305-a7; C39, §**9305.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.7]

92 Acts, ch 1039, §3

533.8 Elections.

At the organization meeting there shall be elected a board of directors of not less than nine members to hold office for such terms as the bylaws provide and until successors are elected and qualify. At each annual meeting there shall be elected one member to fill each position vacated by reason of expiring terms or other causes. A record of the names and addresses of the directors, officers and committee persons shall be filed with the superintendent within ten days following each election.

[C27, 31, 35, §9305-a8; C39, §**9305.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.8]

533.9 Directors and officers.

Within five days following the organization meeting and each annual meeting the directors shall elect from their own number a chairperson of the board, a vice chairperson, a secretary, and a chief financial officer whose title shall be designated by the board of directors. The board shall appoint a credit committee of not less than three members, and an auditing committee of not less than three members, and may also appoint alternate members of the credit committee. Only a member of the board of directors or a member of the credit union may be appointed to the credit committee or to the auditing committee. The board may appoint an executive committee to act on its behalf when designated for that purpose. The directors have general management of the affairs of the credit union including, but not limited to, the power to fix the amount of the surety bond which shall be required of all officers and employees handling money.

[C27, 31, 35, §9305-a9; C39, §**9305.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.9]

87 Acts, ch 171, §23, 24; 88 Acts, ch 1103, §2

533.10 Credit committee.

The credit committee shall have the general supervision of all loans to members. Applications for loans shall be on a form, prepared by the credit committee, and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the endorsement of a note may be deemed security. At least a majority of the members of the credit committee shall pass on all loans and may grant approval thereof, provided, however, that the credit committee of a credit union, with the approval of the board of directors, may appoint one or more loan officers, who may be the president or vice president, and delegate to the loan officers, subject to conditions and regulations of the credit committee, power to approve or reject loans. The credit committee shall meet as often as may be necessary after due notice to each member.

[C27, 31, 35, §9305-a10; C39, §**9305.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.10]

533.11 Auditing committee.

The auditing committee shall:

1. Make or cause to be made an examination of the affairs of the credit union at least semiannually, including an audit of its books and, if the committee feels such action to be necessary, it shall call the members together after the audit and submit to them its report.

2. Make or cause to be made an annual report and submit it at the annual meeting of the members.

3. By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director, or member of committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove such officer permanently or may reinstate said officer.

By majority vote, the auditing committee may call a special meeting of the members to consider any matter submitted to it by said committee.

[C27, 31, 35, §9305-a11; C39, §**9305.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.11]

87 Acts, ch 171, §25

533.12 Capital.

1. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from the member or for any loan endorsed by the member. A credit union may charge an entrance fee as may be provided by the bylaws.

2. A credit union may establish an equity share having a par value not to exceed one hundred dollars which shall be a part of the capital of the credit union and shall not be withdrawn or transferred except upon termination of membership in the credit union. At the option of the credit union, the equity share may earn a dividend and may be insured.

[C27, 31, 35, §9305-a12; C39, §**9305.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.12]

85 Acts, ch 242, §3

533.13 Special shares and accounts.

1. *Joint accounts.* A member may designate any person or persons to hold shares, deposits, and thrift club accounts with the member in joint ten-

ancy with the right of survivorship, but no joint tenant, unless a member in the person's own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance fee. Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

2. *Minors.* Shares may be issued and deposits accepted in the name of a minor and such shares and deposits may be withdrawn by such minor and payments made on such withdrawals shall be valid. No such minor under sixteen years of age shall be entitled to vote in the meetings of the members either personally or through the minor's parent or guardian, nor may the minor become a director until the minor shall have reached the minor's eighteenth birthday.

3. *Trust accounts.* If shares and deposits are held in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of the holder as trustee for such beneficiary. Such shares and deposits may be withdrawn, upon the death of the trustee, by the beneficiary's legal representative.

[C27, 31, 35, §9305-a13; C39, §**9305.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.13]

533.14 Interest rates.

1. Interest rates on loans made by a credit union, other than loans secured by a mortgage or deed of trust which is a first lien upon real property, shall not exceed the finance charge permitted in sections 537.2401 and 537.2402 on consumer loans. Interest rates on business loans shall not exceed the finance charge permitted by section 535.2.

2. With respect to a loan secured by a mortgage or deed of trust which is a first lien upon real property, a credit union shall not charge a rate of interest which exceeds the maximum rate permitted by section 535.2.

3. The provisions of this section do not apply to a loan which is subject to section 636.46.

[C27, 31, 35, §9305-a14; C39, §**9305.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.14]

85 Acts, ch 242, §4

533.15 Power to borrow.

A credit union may borrow from any source in total sum which shall not exceed fifty percent of the sum of its share and deposit account balances.

[C27, 31, 35, §9305-a15; C39, §**9305.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.15]

533.16 Loans.

1. A credit union may loan to a member for a provident or productive purpose. Loans are subject to the conditions contained in this section and in the bylaws. A loan may be repaid by the borrower, in whole or in part, any day the office of the credit union is open for business. A loan shall be pursuant to an application with supportive credit information. The superintendent may adopt rules requiring periodic updating of credit or financial information for all loans or for classes of loans designated in the rules.

2. A credit union shall not lend in the aggregate to a member more than one hundred dollars or ten percent of its member savings, whichever is greater.

3. A director of a credit union may borrow from that credit union under the provisions of this chapter, but the rates, terms, and conditions of a loan or line of credit either made to or endorsed or guaranteed by the director shall not be more favorable than the rates, terms, or conditions of comparable loans or lines of credit provided to other members. The aggregate amount of all director loans and lines of credit shall not exceed twenty-five percent of the assets of the credit union.

4. *a.* A credit union may make permanent loans, construction loans, or combined construction and permanent loans, secured by liens on real property, as authorized by rules adopted by the superintendent under chapter 17A. These rules shall contain provisions as necessary to ensure the safety and soundness of these loans, and to ensure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for the borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

b. A credit union may include in the loan documents signed by the borrower a provision requiring the borrower to pay the credit union each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the credit union in order to better secure the loan. The credit union shall be deemed to be acting in a fiduciary capacity with respect to these funds. A credit union receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the credit union pays to its members on ordinary savings deposits. A credit union which maintains an escrow account in connection with any loan authorized by this subsection, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annu-

al accounting of all transactions made with respect to the loan and escrow account.

c. A credit union which obtains a report or opinion by an attorney or from another mortgage lender relating to defects in or liens or encumbrances on the title to real property, the unmarketability of the title to real property, or the invalidity or unenforceability of liens or encumbrances on real property, shall provide a copy of the report or opinion to the mortgagor and the mortgagor's attorney.

5. A credit union may act as an escrow agent with respect to real property that is mortgaged to the credit union, and may receive funds and make disbursements from escrowed funds in that capacity. The credit union shall be deemed to be acting in a fiduciary capacity with respect to these funds. A credit union which maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year.

The summary shall be delivered or mailed not later than thirty days following the year to which the disclosure relates. The summary shall contain all of the following information:

a. The name and address of the mortgagee.

b. The name and address of the mortgagor.

c. A summary of escrow account activity during the year as follows:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(a) Payments against loan principal.

(b) Payments against interest.

(c) Payments against real estate taxes.

(d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) The balance of the escrow account at the end of the year.

d. A summary of loan principal for the year as follows:

(1) The amount of principal outstanding at the beginning of the year.

(2) The aggregate amount of payments against principal during the year.

(3) The amount of principal outstanding at the end of the year.

6. Loans which are not secured by real property shall be subject to the following conditions:

a. Loans to any one member which in the aggregate exceed the unsecured loan limit established by the board of directors of a credit union shall be secured by one or more cosigners or guarantors, or, by a first lien on collateral having a value which is approximately equal to the amount in excess of such unsecured loan limit. Every cosigner or guarantor shall furnish the credit union with evidence of financial responsibility.

b. Nothing contained in this subsection shall be deemed to preclude a credit committee or loan officer from requiring security for any loan.

c. A credit union may make loans insured under the provisions of Title XX, United States Code, section 1071 to section 1087 or similar state programs, loans insured by the federal housing administration under Title XII, United States Code, section 1703, and loans to families of low or moderate income as a part of programs authorized in sections 16.1 to 16.36.

d. The restrictions and limitations contained in this subsection shall not apply to loans made to a member credit union by a corporate central credit union.

7. Nothing contained in this section shall prevent the renewal or extension of loans.

8. The superintendent may impose a penalty on a credit union for each loan made in violation of this section. If a credit union, after notice in writing, and opportunity for hearing, fails to satisfactorily resolve the matter within sixty days from receipt of such notice, the superintendent may impose a fine against such credit union in an amount not to exceed one hundred dollars per day per violation for each day the violation remains unresolved.

9. The provisions of the Iowa consumer credit code shall apply to consumer loans made by a credit union, and a provision of that code shall supersede any conflicting provision of this chapter with respect to a consumer loan.

10. If a member elects to repay a loan secured by a mortgage or deed of trust upon real property which is a single-family or a two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the credit union shall be governed by section 535.9.

11. Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, excepting that a credit union may charge not to exceed six months advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. Nothing contained in this subsection, however, authorizes a credit union to charge any advance interest or prepayment penalty where prohibited by section 535.9.

[C27, 31, 35, §9305-a16; C39, §**9305.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, §533.16; C81, §533.16, 535B.1 – 535B.14; 81 Acts, ch 174, §2, 7; 82 Acts, ch 1171, §2, ch 1253, §5, 43]

83 Acts, ch 124, §17; 85 Acts, ch 242, §5; 96 Acts, ch 1012, §3, 4

533.17 Reserves.

1. At the end of each dividend period, but no less than quarterly, the gross income of the credit union shall be determined. A legal reserve against losses on loans and against such other losses as may be specified by rule shall be set aside from the gross income in accordance with the following schedule:

a. A credit union in operation for more than four years and having assets of five hundred thousand dollars or more shall set aside the following amounts in the following order:

(1) Ten percent of the gross income until the legal reserve equals four percent of the total outstanding loans and risk assets.

(2) Five percent of the gross income until the legal reserve equals six percent of the total outstanding loans and risk assets.

b. A credit union in operation for less than four years or having assets of less than five hundred thousand dollars shall set aside the following amounts in the order set forth:

(1) Ten percent of the gross income until the legal reserve equals seven and one-half percent of the total outstanding loans and risk assets.

(2) Five percent of the gross income until the legal reserve equals ten percent of the total outstanding loans and risk assets.

If the legal reserve falls below the percent of the total outstanding loans and risk assets required for a credit union by this subsection, the credit union shall replenish the legal reserve by regular contributions in the amounts needed to reach the required reserve. However, the superintendent may waive the reserve requirement when in the superintendent's opinion the waiver is necessary or desirable. The legal reserve shall belong to the credit union and shall be used to meet losses. The reserve shall not be distributed to members as interest or dividends except on liquidation of the credit union or in accordance with a plan approved by the superintendent.

2. For the purpose of establishing legal reserves, the following shall not be considered risk assets:

a. Cash on hand.

b. Deposits and shares in federally insured banks, savings and loan associations, and credit unions.

c. Assets which are insured by, fully guaranteed as to principal and interest by, or due from the United States government, its agencies, and instrumentalities.

d. Loans to other credit unions.

e. Student loans insured under the provisions of Title XX, United States Code, section 1071 to section 1087 or similar state programs.

f. Loans insured by the federal housing administration under Title XII, United States Code, section 1703.

g. Loans fully insured or guaranteed by the federal government, a state government, or any agency of either.

h. Common trust investments which deal in investments authorized in section 533.4.

i. Prepaid expenses.

j. Accrued interest on nonrisk investments.

k. Furniture and equipment.

l. Land and buildings.

m. Loans fully secured by a pledge of shares within the credit union.

n. Deposits in the national credit union share insurance fund.

o. Real estate loans in transit to the secondary market as specified by rule.

3. The superintendent may require a credit union to set aside additional amounts as a special reserve if an examination of its assets should disclose that its legal reserve is inadequate.

[C27, 31, 35, §9305-a17; C39, §**9305.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.17]

84 Acts, ch 1197, §6; 85 Acts, ch 242, §6; 96 Acts, ch 1012, §5, 6

533.18 Dividends.

At such intervals and for such periods as the board of directors may authorize, and after provision for required reserves pursuant to section 533.17, the board of directors may declare dividends at such rates and upon such classes of shares as are determined by the board. Such dividends shall be paid on all paid-up shares outstanding at the close of the period for which the dividend is declared.

[C27, 31, 35, §9305-a18; C39, §**9305.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.18]

96 Acts, ch 1012, §7

533.19 Expulsion — withdrawal.

A member may be expelled by a majority vote of the board of directors at a regular or special meeting of the board. The expelled member may request a hearing before the membership of the credit union. A meeting of the membership shall be held within sixty days of the member's request. The membership may, by majority vote at the membership meeting, reinstate the expelled member upon terms and conditions prescribed by it. Any member may withdraw from the credit union at any time, but notice of withdrawal may be required as provided in this section. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, after deducting all amounts due from the member to the credit union and an amount as necessary to honor outstanding share drafts drawn against accounts of the member, be paid to the member. Upon expulsion or withdrawal of a member from a credit union, or at any other time, the credit union may require sixty days' notice of intention to withdraw shares and thirty days' no-

tice of intention to withdraw deposits, except that a credit union shall not at any time require notice of withdrawal with respect to funds which are subject to withdrawal by share drafts. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

[C27, 31, 35, §9305-a19; C39, §**9305.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.19]

533.20 Voluntary dissolution.

The process of voluntary dissolution shall be as follows:

1. At a special meeting called for that purpose, a credit union may dissolve upon the affirmative vote of a majority of its members eligible to vote at the special meeting. Notice of the meeting's purpose shall be contained in the meeting's notice. Any member eligible to vote and not present at the meeting may, within twenty days after the date on which the meeting was held, vote in favor of dissolution by signing a statement in the form approved by the superintendent. This vote shall have the same force and effect as if cast at the meeting.

2. The credit union shall cease to do business except for the purposes of liquidation immediately upon giving notice of the special meeting called for the members vote on dissolution. The board of directors shall immediately notify the superintendent of the intention of the credit union to dissolve. The credit union shall not resume its regular business unless the dissolution fails to receive the required vote of the members or unless the members have revoked prior affirmative action to dissolve as provided for in subsection 4 of this section.

3. The board of directors shall have power to terminate and settle the affairs of a credit union in voluntary dissolution. The credit union shall continue in existence for the purpose of discharging its liabilities, collecting and distributing its assets, and doing all acts required in order to terminate its affairs. The credit union may sue and be sued for the purpose of enforcing such liabilities and for the purpose of collecting its assets until its affairs are fully settled. During the course of dissolution proceedings, the credit union shall make such reports and shall be subject to such examinations as the superintendent may require. If at any time after the affirmative vote of a majority of the members of a credit union to dissolve the credit union, the superintendent finds that the credit union is not making reasonable progress toward terminating its affairs or finds that the credit union is insolvent, the superintendent may apply to the district court for appointment of a receiver to terminate the affairs of the credit union.

4. At any time prior to any distribution of its assets, a credit union may revoke the voluntary dissolution proceedings by the affirmative vote of a majority of its members eligible to vote. This vote, if taken, shall be at a special meeting called for that purpose in the manner prescribed by the bylaws. The board of directors shall immediately notify the superintendent of any such action to revoke voluntary dissolution proceedings.

5. Upon such proof as is satisfactory to the superintendent that all assets have been liquidated from which there is a reasonable expectance of realization, that the liabilities of the credit union have been discharged and distribution made to its members, and that the liquidation has been completed, the superintendent shall issue a certificate of dissolution, which certificate shall be filed and recorded in the county in which the credit union has its principal place of business and in the county in which its original articles of incorporation were filed and recorded. Upon the issuance of a certificate of dissolution, the existence of the credit union shall cease.

6. The board of directors may appoint by resolution any responsible person as defined in section 4.1, whose appointment has been approved by the superintendent, to exercise its powers to terminate and settle the affairs of the credit union pursuant to this section. The superintendent is authorized to promulgate rules pursuant to chapter 17A establishing the qualifications which must be met by such appointees, including but not limited to filing a surety bond with the superintendent.

[C27, 31, 35, §9305-a20; C39, §**9305.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §533.20]

533.21 Involuntary dissolution.

1. In all situations in which the superintendent has been appointed as receiver as provided in this chapter, the superintendent shall make a diligent effort to collect and realize on the assets of the credit union, and shall make distribution of the proceeds from time to time to those entitled thereto in the order provided for by law. The superintendent may execute as receiver, or after the receivership has terminated, assignments, releases, and satisfactions to effectuate sales and transfers. Upon the order of the court in which the receivership is pending, the superintendent may sell or compound all bad or doubtful debts. Upon the order of the court in which the receivership is pending, the superintendent may sell all the real and personal property of the credit union, on such terms as the court shall direct.

2. All expenses of the receivership and dissolution shall be determined by the superintendent, subject to the approval of the district court, and shall be paid out of the assets of the credit union.

3. At the termination of the receivership, the superintendent shall file a final report which shall contain the details of the superintendent's actions and such additional facts as the court may require.

4. Upon the submission and approval of the final report, the court shall enter a decree dissolving the credit union, at which time the existence of the

credit union shall cease. It shall be the duty of the clerk of court to cause certified copies of the decree to be filed with and recorded by the county recorder of the county in which the credit union has its principal place of business and by the county recorder of the county in which its original articles of incorporation were filed and recorded. No fee shall be charged by the county recorder for the filing or recording of the decree.

[C73, 75, 77, 79, 81, §533.21]

533.22 Dissolution generally.

The following shall apply to dissolution of a credit union under this chapter, whether voluntary or involuntary:

1. Distribution of the assets of the credit union shall be made in the following order:

a. The payment of costs and expense of the administrator of dissolution.

b. The payment of claims for public funds deposited pursuant to chapter 12C and the payment of claims which are given priority by applicable statutes. If the assets are insufficient for payment of the claims in full, then priority shall be determined by the statutes or, in the absence of conflicting provisions, on a pro rata basis.

c. The payment of deposits, including accrued interest, up to the date of the special meeting of the members at which voluntary dissolution was authorized or in the case of involuntary dissolution, the date of appointment of a receiver.

d. The pro rata apportionment of the balance among the members of record on the date of the special meeting of the members at which voluntary dissolution was authorized or in the case of involuntary dissolution, the members of record on the date of appointment of a receiver.

2. All amounts due to members who are unknown, or who are under a disability and there is no person legally competent to receive the amounts, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state who shall hold the amounts in the manner prescribed by chapter 556. All amounts due to creditors as described in section 490.1440 shall be transmitted to the treasurer of state in accordance with that section and shall be retained by the treasurer of state and subject to claim as provided for in that section.

3. The superintendent shall assume custody of the records of a credit union dissolved pursuant to this chapter and shall retain these records in accordance with the provisions of section 533.26. The superintendent may cause film, photographic, photostatic, or other copies of these records to be made and the superintendent shall retain these copies in lieu of the original records.

4. The dissolution of a credit union shall not remove or impair any remedy available to or against such credit union, its directors, officers, or members for any right or claim existing or any liability incurred prior to such dissolution if an action or other proceeding to enforce the right or claim is commenced within two years after the date of filing of a certificate or decree of dissolution with the county recorder in the county in which the credit union has its principal place of business. Any such action or proceeding by or against the credit union may be prosecuted or defended by the credit union in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim.

[C73, 75, 77, 79, 81, §533.22]

85 Acts, ch 194, §10; 90 Acts, ch 1205, §52

533.23 Change in place of business.

A credit union may change its place of business on written notice to the superintendent.

[C27, 31, 35, §9305-a21; C39, §**9305.21;** C46, 50, 54, 58, 62, 66, 71, §533.21; C73, 75, 77, 79, 81, §533.23]

533.24 Taxation.

A credit union shall be deemed an institution for savings and is subject to taxation only as to its real estate and moneys and credits. The shares shall not be taxed.

The moneys and credits tax on credit unions is imposed at a rate of five mills on each dollar of the legal and special reserves which are required to be maintained by the credit union under section 533.17, and shall be levied by the board of supervisors, and placed upon the tax list and collected by the county treasurer, except that an exemption shall be given to each credit union in the amount of forty thousand dollars. The amount collected in each taxing district within a city shall be apportioned twenty percent to the county, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county and fifty percent to the general fund of the state. The moneys and credits tax shall be collected at the location of the credit union as shown in its articles of incorporation.

The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15E.51.

[C27, 31, 35, §9305-a22; C39, §**9305.22;** C46, 50, 54, 58, 62, 66, 71, §533.22; C73, 75, 77, 79, 81, §533.24]

83 Acts, ch 123, §189, 209; 89 Acts, ch 296, §74; 2002 Acts, ch 1006, §11, 13; 2002 Acts, ch 1156, §6, 8

Unnumbered paragraph 3 takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

Unnumbered paragraph 4 takes effect May 8, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1156, §8

NEW unnumbered paragraphs 3 and 4

533.25 Small loans legislation.

Nothing contained in this chapter shall apply to any person engaged in the business of loaning money under chapter 536.

[C27, 31, 35, §9305-a23; C39, §**9305.23;** C46, 50, 54, 58, 62, 66, 71, §533.23; C73, 75, 77, 79, 81, §533.25]

533.26 Preservation of records.

The superintendent shall prescribe by rule the period of preservation of records or files for credit unions. A copy of an original may be kept in lieu of any original records. For purposes of this section, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record. A copy is deemed to be an original and shall be treated as an original record in a judicial or administrative proceeding for purposes of admissibility in evidence. A facsimile, exemplification, or certified copy of any such copy reproduced from a film record is deemed to be a facsimile, exemplification, or certified copy of the original.

[C62, 66, 71, §533.24; C73, 75, 77, 79, 81, §533.26]

88 Acts, ch 1103, §3; 91 Acts, ch 95, §2; 99 Acts, ch 34, §2

533.27 Liability for destruction.

No liability shall accrue against any credit union destroying any such records after the expiration of the time provided in sections 533.26 to 533.29 and in any cause or proceedings in which any such records or files may be called in question or be demanded of the credit union or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of said sections shall be a sufficient excuse for the failure to produce them. Nothing herein shall require credit unions to retain any class of records or files for the period of limitations of actions provided herein; but any records, files or class of records not deemed necessary for the conduct of the current business of credit unions, or future examinations thereof, or for defense in the event of litigation, may be destroyed within such period.

For the purpose of assisting credit unions in the retention of only necessary records and files, or for the destruction of those which are obsolete or unnecessary, credit unions are authorized to destroy such records and files or classes thereof within the period of limitation of actions upon the joint recommendation of the superintendent and the credit union review board.

[C62, 66, 71, §533.25; C73, 75, 77, 79, 81, §533.27]

533.28 Photographic records.

1. Any writing or record, or a photostatic or photographic reproduction of such writing or record, of a credit union whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible in evidence in proof of the act, transaction, occurrence, or event, if made in the regular course of business.

2. A printout or other tangible output readable by sight shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, which contains a signature made or created by electronic or digital means such that it is stored by a computer or similar device, is deemed to be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

[C62, 66, 71, §533.26; C73, 75, 77, 79, 81, §533.28]

99 Acts, ch 34, §3

533.29 Limitation of actions.

All causes of action against a credit union based upon a claim or claims inconsistent with an entry or entries in any credit union record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual. Any such existing cause of action may be commenced in any court of competent jurisdiction within one year after July 4, 1959.

[C62, 66, 71, §533.27; C73, 75, 77, 79, 81, §533.29]

533.30 Merger.

1. With the approval of the superintendent, a credit union may merge with another credit union under the existing charter of the other credit union if the merger is pursuant to a plan agreed upon by a majority of the board of directors of each credit union joining in the merger and the merger is approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members called for the purpose of voting on the merger.

The superintendent may approve a merger according to the plan agreed upon by the majority of the board of directors of each credit union if the superintendent receives a written and verified application filed by the board of directors of each credit union and finds all of the following:

a. Notice of the meeting called to consider the merger was mailed to each member of the merging

credit union entitled to vote upon the question.

b. The notice disclosed the purpose of the meeting and properly informed the membership that approval of the merger would be sought pursuant to this subsection.

c. A majority of the votes upon the question were in favor of the merger.

The superintendent may waive the membership merger vote if the superintendent finds that an emergency exists which justifies the waiver.

2. The superintendent may adopt rules establishing merger procedures.

3. The certificate and a copy of the agreed plan of merger shall be forwarded to the superintendent, certified by the superintendent, and returned to both credit unions within thirty days of the date of receipt by the superintendent.

4. Upon return of the certificates from the superintendent, all property, property rights, and members' interest of the merged credit union vest in the surviving credit union without the legal need for deeds, endorsements or other instruments of transfer, and all debts, obligations and liabilities of the merged credit union are assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union remain intact according to the plan. Credit union membership in the surviving credit union shall be available to persons within the field of membership of the merged credit union.

5. This section shall be construed to permit a credit union organized under any other statute to merge with one organized under this chapter, or to permit one organized under this chapter to merge with one organized under any other statute.

[C62, 66, 71, §533.28; C73, 75, 77, 79, 81, §533.30; 82 Acts, ch 1171, §3 – 5]

85 Acts, ch 242, §7

533.31 Penalty for falsification.

Any director, officer, agent, employee, or clerk of any credit union who shall knowingly subscribe or make any false statements or false entries in the books thereof, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe and make false reports, or shall knowingly divert the funds of the credit union to other objects than those authorized by law, shall be guilty of a fraudulent practice and be forever after barred from holding any office created by this chapter.

[C66, 71, §533.29; C73, 75, 77, 79, 81, §533.31]

533.32 Governmental employees — payments withheld.

When a credit union has been organized by the employees of the state or of any political or municipal subdivision of the state, the officer who writes warrants for the state or other governmental body by which any public employee credit union member is employed, may withhold from the salary or wages of such employee, and pay over to such credit union, such sums as may be designated by written authorization signed by such employee. The provisions of section 539.4 shall have no application hereto.

[C71, §533.30; C73, 75, 77, 79, 81, §533.32]

533.33 Administrator of account insurance plan as receiver.

1. The superintendent may tender to the administrator of an account insurance plan approved under this chapter the appointment as receiver for an insured credit union. If the insurance plan administrator accepts the appointment as receiver, the rights of the members and other creditors of the insured credit union shall be determined in accordance with the laws of this state.

2. The administrator of an account insurance plan as receiver shall possess the powers, rights, and privileges given to the superintendent as provided by law.

3. If the administrator of an account insurance plan pays or makes available for payment the insured liabilities of a state credit union, the administrator shall be subrogated by operation of law to all rights of the members against the insured credit union in the same manner and to the same extent as subrogation is provided for in applicable laws in the case of a closed federal credit union or closed state credit union.

[C73, 75, 77, 79, 81, §533.33]

533.34 Conversion of state credit union into federal credit union.

1. A state credit union may convert into a federal credit union with the approval of the administrator of the national credit union administration and by the affirmative vote of a majority of the credit union's members who vote on the proposal. This vote, if taken, shall be at a meeting called for that purpose and shall be in the manner prescribed by the bylaws.

2. The board of directors of the state credit union shall notify the superintendent of any proposed conversion and of any abandonment or disapproval of the conversion by the members or by the administrator of the national credit union administration. The board of directors of the state credit union shall file with the superintendent appropriate evidence of approval of the conversion by the administrator of the national credit union administration and shall notify the superintendent of the date on which the conversion is to be effective.

3. Upon receipt of satisfactory proof that the state credit union has complied with all applicable laws of this state and of the United States, the superintendent shall issue a certificate of conversion which shall be filed and recorded in the county in which the state credit union has its principal place

of business and in the county in which its original articles of incorporation were filed and recorded.

[C73, 75, 77, 79, 81, §533.34]

87 Acts, ch 171, §26

533.35 Conversion of federal credit union into state credit union.

1. A federal credit union may convert into a state credit union by compliance with the laws of the United States and upon the approval of the superintendent. Application for approval of the conversion to a state credit union shall be submitted to the superintendent in the form prescribed by the superintendent, together with the articles of incorporation and bylaws as required by section 533.1. The superintendent may cause an examination to be made of any converting federal credit union. The credit union shall pay to the superintendent the same examination fee as paid for examinations of state credit unions.

2. If the superintendent should approve the application of a federal credit union for conversion to a state credit union, the superintendent shall cause the articles of incorporation of the resulting state credit union to be filed and recorded in the county in which the credit union has its principal place of business and the superintendent shall issue a certificate of authority to do business under the laws of this state to the resulting state credit union. The credit union shall then become a state credit union subject to the laws of this state. The superintendent shall furnish a copy of the certificate to the administrator of the national credit union administration.

3. The existence of the federal credit union shall continue and the resulting state credit union shall have all of the property, rights, powers and duties of the federal credit union except that the resulting state credit union shall have only the authority to engage in such business and exercise such powers and shall be subject to the same prohibitions and limitations to which it would be subject upon original organization under this chapter.

4. No liability of the federal credit union or of its members, directors or officers shall be affected, nor shall any lien on any property of the federal credit union be impaired by the conversion. Any claim existing or action pending by or against the federal credit union may be prosecuted to judgment as if the conversion had not taken place, or the resulting state credit union may be substituted in its place.

[C73, 75, 77, 79, 81, §533.35]

533.36 Repealed by 78 Acts, ch 1169, § 40.

533.37 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to credit unions, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The superintendent shall co-operate with the administrator of the Iowa consumer credit code as designated in section 537.6103, and shall assist that administrator whenever necessary to provide for the discharge of the duties of that administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator of the Iowa consumer credit code, access to or copies of records in the custody of the division which relate to a credit union, when necessary to enable the administrator of the Iowa consumer credit code to enforce chapter 537.

[C75, 77, 79, 81, §533.37]

533.38 Corporate central credit union.

A corporate central credit union may be established. Credit unions organized under this chapter, the Federal Credit Union Act, or any other credit union act and credit union organizations may be members. In addition, regulated financial institutions, nonprofit organizations, and cooperative organizations may be members to the extent and manner provided for in the bylaws of the corporate central credit union. The corporate central credit union shall have all the powers, restrictions, and obligations imposed upon, or granted to a credit union under this chapter, except that the corporate central credit union may exercise any of the following additional powers subject to the adoption of rules by the superintendent pursuant to chapter 17A and with the prior written approval of the superintendent:

1. Make loans and extend lines of credit to its members.

2. Impose fees or penalties upon its members and apply them to income.

3. Make available share draft accounts and permit the owners of the accounts to make withdrawals by negotiable or other transferable instruments or other orders for the purpose of making transfers to third parties.

4. Borrow any amount from any source.

5. Invest in or purchase obligations or securities or other designated investments to the same extent authorized for other supervised financial institutions.

6. Invest in or acquire shares, stocks, or other obligations of an organization providing services which are associated with the operations of credit unions. However, the aggregate amount invested pursuant to this subsection shall not exceed fifty percent of the total of all reserves and undivided earnings of the corporate credit union.

7. Buy or sell investment securities and corporate bonds which are evidences of indebtedness. However, the purchase or sale is limited to marketable obligations of a corporation or state or federal agency issued without recourse.

8. Sell all or part of its assets to another cen-

tral or corporate credit union and assume the liabilities of a selling central or corporate credit union if the action is approved by the majority vote of the board of directors at a meeting called for that purpose.

9. Invest in the shares or deposits of another similarly organized corporate credit union, central credit union, or central liquidity facility.

10. Make other investments approved by the superintendent.

11. The corporate central credit union shall not be required to transfer to its legal reserve more than five percent of its net income for the year.

[C77, 79, 81, §533.38]
85 Acts, ch 242, §8; 87 Acts, ch 171, §27

533.39 Reciprocity.

Subject to rules of the superintendent, a credit union chartered in another state may do business in Iowa subject to the applicable provisions of this chapter if credit unions chartered in Iowa may do business in the state in which the out-of-state credit union is chartered.

84 Acts, ch 1230, §27

533.40 and 533.41 Reserved.

533.42 Share drafts.

1. A credit union may provide its members with share draft accounts. Share draft means a negotiable draft which is payable upon demand and is used to withdraw funds from a share draft account. A share draft is an item for purposes of chapter 554, article 4. The term does not include a draft issued by a credit union for the transfer of funds between the issuing credit union and another credit union, a bank, a savings and loan association, or another depository financial institution.

2. A share draft account is an account that is a demand account from which a credit union has agreed that funds may be withdrawn by means of a share draft. A share draft account may bear interest or dividends as determined by the board of directors, provided that a credit union shall not pay interest or dividends on a share draft account at a rate which exceeds the maximum interest rate which a regulated financial institution is able to pay on comparable instruments as allowed by the depository institutions deregulatory committee.

3. A credit union may guarantee payment for a share draft if both the following conditions are met:

a. A specific guarantee authorization is obtained for the share draft from the credit union.

b. The guarantee authorization is immediately noted on the share draft account to prevent the withdrawal of funds needed to pay the guaranteed share draft.

4. A credit union may charge fees and penalties on share drafts and apply fees and penalties to the credit union's income in relation to share draft services.

5. The superintendent may adopt rules relating to share draft programs as necessary to administer this chapter.

[C79, §533.39; C81, §533.42]
83 Acts, ch 98, §1, 3

533.43 Payment of share drafts during dissolution.

Other provisions of section 533.22 notwithstanding, when a credit union is dissolved, first priority of payment shall be given to unpaid share drafts. However, a share draft shall not be paid if any of the following conditions exist:

1. The share draft was issued on or after the date of appointment of a receiver in the event of an involuntary dissolution, or on or after the date the credit union is required by section 533.20, subsection 2 to cease doing business in the event of a voluntary dissolution.

2. The share draft is written against an account which does not contain sufficient funds with which to pay the share draft.

3. The share draft is payable to a member of the credit union, or to a member of the family of the issuer of the share draft, or to a business in which the issuer of the share draft has an interest. However, the exception contained in this subsection does not apply to any person referred to in this subsection if the person is a holder in due course, as provided in chapter 554, article 3.

[C81, §533.43]
94 Acts, ch 1167, §2, 122

533.44 Share-draft violations — revocation of authority. Repealed by 83 Acts, ch 98, § 2, 3.

533.45 Share-draft liquidity reserve — violations — penalty. Repealed by 83 Acts, ch 98, § 2, 3.

533.46 Acceptance of deposits and investments while insolvent.

A credit union shall not accept any deposits or investments in its shares, or renew or extend the term of any time deposits or time investments, when the credit union is insolvent.

[C81, §533.46]

533.47 Investment in certain shares or equity interests.

1. A credit union may invest in either of the following to the extent that the total investments under this section shall not be more than five percent of the credit union's assets:

a. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the credit union's investment in small businesses having their principal offices within this state and having either more than one

half of their assets within this state or more than one half of their employees employed within this state.

b. Shares or equity interests in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A credit union shall not invest in more than twenty percent of the total capital and surplus of any one small business under this paragraph.

2. For purposes of this section:

a. *"Venture capital fund"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business.

b. *"Equity interests"* means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

c. *"Small business"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, which meets the appropriate small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state or other investments which provide an economic benefit to the state.

85 Acts, ch 136, §4

533.48 Investment in banks or savings and loan associations.

1. *Investments in banks.* A credit union may, with the prior approval of the superintendent, invest in the capital stock, obligations, or other securities of a bank.

2. *Investment in savings and loans.* A credit union may, with the prior approval of the superintendent, invest in the capital stock, obligations, or other securities of a state savings and loan association.

3. *Findings required.* The superintendent shall not grant an approval under subsection 1 or 2, except after making one of the following findings:

a. Based upon a preponderance of the evidence presented, the proposed investment will not have the immediate effect of significantly reducing competition between depository financial institutions located in the same community as the institution whose shares would be acquired.

b. Based upon a preponderance of the evidence presented, the proposed investment would have an anticompetitive effect as described in paragraph *"a"*, but other factors, specifically cited, outweigh the anticompetitive effect so that there would be a net public benefit as a result of the investment.

4. *Competition preserved.* The subsequent liquidation of a bank or state savings and loan association whose shares are acquired under this section shall not prevent the subsequent incorporation of another bank or savings and loan association in the same community, and the superintendent of banking shall not find the liquidation of such a bank to be grounds for disapproving the incorporation of another bank in the same community under section 524.305, and the superintendent of savings and loan associations shall not find the liquidation of such a savings and loan association to be grounds for disapproving the incorporation of another savings and loan association in the same community under chapter 534.

87 Acts, ch 171, §28

533.49 Authority to lease safe deposit boxes.

1. A credit union may lease safe deposit boxes for the storage of property on terms and conditions prescribed by it. Such terms and conditions shall not bind any person to whom the credit union does not give notice of the terms and conditions by delivery of a lease and agreement in writing containing the terms and conditions. A credit union may limit its liability provided such limitations are set forth in the lease and agreement in at least the same size and type as the other substantive provisions of the contract.

2. The lease and agreement of a safe deposit box may provide that evidence tending to prove that property was left in a safe deposit box upon the last entry by the member or the member's authorized agent, and that the property or any part of the property was found missing upon subsequent entry, is not sufficient to raise a presumption that the property was lost by any negligence or wrongdoing for which the credit union is responsible, or put upon the credit union the burden of proof that the alleged loss was not the fault of the credit union.

3. A credit union may lease a safe deposit box to a minor. A credit union may deal with a minor with respect to a safe deposit lease and agreement without the consent of a parent, guardian, or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such safe deposit lease and agreement is binding on the minor with the same effect as though the minor were an adult.

4. A credit union which has on file a power of attorney of a member covering a safe deposit lease and agreement, which has not been revoked by the member, shall incur no liability as a result of con-

tinuing to honor the provisions of the power of attorney in the event of the death or incompetence of the donor of the power of attorney until the credit union receives written notice of the death, or written notice of adjudication by a court of the incompetence of the member and the appointment of a guardian or conservator.

96 Acts, ch 1012, §8

533.49A Search procedure on death. Repealed by 97 Acts, ch 60, § 1, 2.

533.49B Adverse claims to property in safe deposit and safekeeping.

1. A credit union shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or claim of authority to exercise control over, property held in safe deposit or property held for safekeeping pursuant to section 533.49D made by a person or persons other than the following:

a. The member in whose name the property is held by the credit union.

b. An individual or group of individuals who are authorized to have access to the safe deposit box, or to the property held for safekeeping, pursuant to a certified corporate resolution or other written arrangement with the member, currently on file with the credit union, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other member, of which the credit union has received notice and which is not the subject of a dispute known to the credit union as to its original validity. The safe deposit and safekeeping account records of a credit union shall be presumptive evidence as to the identity of the member on whose behalf the property is held.

2. To require a credit union to recognize an adverse claim to, or adverse claim of authority to control, property held in safe deposit or for safekeeping, whoever makes the claim must do either of the following:

a. Obtain and serve on the credit union an appropriate court order or judicial process directed to the credit union, restraining any action with respect to the property until further order of the court or instructing the credit union to deliver the property, in whole or in part, as indicated in the order or process.

b. Deliver to the credit union a bond, in form and amount with sureties satisfactory to the credit union, indemnifying the credit union against any liability, loss, or expense which the credit union might incur because of its refusal to deliver the property to any person described in subsection 1, paragraph *"a"* or *"b"*.

96 Acts, ch 1012, §10

533.49C Remedies and proceedings for nonpayment of rent on safe deposit box.

1. A credit union has a lien upon the contents of a safe deposit box for past due rentals and any expense incurred in opening the safe deposit box, replacement of the locks on the safe deposit box, and of a sale made pursuant to this section. If the rental of a safe deposit box is not paid within six months from the day the rental is due, at any time after the six months and while the rental remains unpaid, the credit union shall mail a notice by restricted certified mail to the member at the member's last known address as shown upon the records of the credit union, stating that if the amount due for the rental is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the credit union will remove the contents of the safe deposit box and hold the contents for the account of the member.

2. If the rental for the safe deposit box has not been paid after the expiration of the period specified in a notice mailed pursuant to subsection 1, the credit union, in the presence of two of its officers, may cause the box to be opened and the contents removed. An inventory of the contents of the safe deposit box shall be made by the two officers present and the contents held by the credit union for the account of the member.

3. If the contents are not claimed within two years after their removal from the safe deposit box, the credit union may proceed to sell so much of the contents as is necessary to pay the past due rentals and expense incurred in opening the safe deposit box, replacement of the locks on the safe deposit box, and the sale of the contents. The sale shall be held at the time and place specified in a notice published prior to the sale once each week for two successive weeks in a newspaper of general circulation published in the city or unincorporated area in which the credit union has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the credit union has its principal place of business. A copy of the published notice shall be mailed to the member at the member's last known address as shown upon the records of the credit union. The notice shall contain the name of the member and need only describe the contents of the safe deposit box in general terms. The contents of any number of safe deposit boxes may be sold under one notice of sale and the cost of the sale apportioned ratably among the several safe deposit box members involved. At the time and place designated in the notice the contents taken from each respective safe deposit box shall be sold separately to the highest bidder for cash and the proceeds of each sale applied to the rentals and expenses due to the credit union and the residue from any such sale shall be held by the credit union for the account of the member or members. An amount held as proceeds

from such sale shall be credited with interest at the customary annual rate for savings accounts at the credit union, or in lieu thereof, at the customary rate of interest in the community where such proceeds are held. The crediting of interest does not activate the account to avoid an abandonment as unclaimed property under chapter 556.

4. Notwithstanding the provisions of this section, shares, bonds, or other securities which, at the time of a sale pursuant to subsection 3, are listed on an established stock exchange in the United States, shall not be sold at public sale but may be sold through an established stock exchange. Upon making a sale of any such securities, an officer of the credit union shall execute and attach to the securities so sold an affidavit reciting facts showing that the securities were sold pursuant to this section and that the credit union has complied with the provisions of this section. The affidavit constitutes sufficient authority to any corporation whose shares are sold or to any registrar or transfer agent of such corporation to cancel the certificates representing the shares to the purchaser of the shares, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser of the bonds or other securities.

5. The proceeds of any sale made pursuant to this section, after the payment of any amounts with respect to which the credit union has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the credit union until such time as the property is presumed abandoned according to section 556.2, and shall be handled pursuant to chapter 556.

96 Acts, ch 1012, §11

533.49D Authority to receive property for safekeeping.

1. A credit union may accept property for safekeeping if, except in the case of night depositories, the credit union issues a receipt for the property. A credit union accepting property for safekeeping shall purchase and maintain reasonable insurance coverage to ensure against loss incurred in connection with the acceptance of property for safekeeping. Property held for safekeeping shall not be commingled with the property of the credit union or the property of others.

2. A credit union has a lien upon any property held for safekeeping and for expenses incurred in any sale made pursuant to this subsection. If the charge for safekeeping of property is not paid within six months from the day the charge is due, at any time after the six months and while the charge remains unpaid, the credit union may mail a notice to the member at the member's last known address as shown upon the records of the credit union, stating that if the amount due is not paid on or before a specified day, which shall be at least thirty days after the date of mailing the notice, the credit union will remove the property from safekeeping and hold the property for the account of the member. After the expiration of the period specified in the notice, if the charge for safekeeping has not been paid, the credit union may remove the property from safekeeping, cause the property to be inventoried, and hold the property for the account of the member. If the property is not claimed within two years after its removal from safekeeping the credit union may proceed to sell so much of the property as is necessary to pay the charge which remains unpaid and the expense incurred in making the sale in the manner provided for in section 533.49C, subsections 3 and 4. The proceeds of any sale made pursuant to this section, after payment of any amounts with respect to which the credit union has a lien, any property which was not offered for sale, and property which, although offered for sale, was not sold, shall be retained by the credit union until such time as the property is presumed abandoned according to section 556.2, and shall be handled pursuant to chapter 556.

96 Acts, ch 1012, §12

533.49E Safe deposit box access.

1. A credit union shall permit a person named in and authorized by a court order to open, examine, and remove the contents of a safe deposit box located at the credit union. If a court order has not been delivered to the credit union, the following persons may access and remove any or all contents of a safe deposit box located at a state credit union and described in an ownership or rental agreement or lease between the state credit union and a deceased owner or lessee:

a. A co-owner or co-lessee of the safe deposit box.

b. A person designated in the safe deposit box agreement or lease to have access to the safe deposit box upon the death of the lessee, to the extent provided in the safe deposit box agreement or lease.

c. An executor or administrator of the estate of a deceased owner or lessee upon delivery to the state credit union of a certified copy of letters of appointment.

d. A person named as an executor in a copy of a purported will produced by the person, provided such access shall be limited to the removal of a purported will, and no other contents shall be removed.

e. A trustee of a trust created by the deceased owner or lessee upon delivery to the state credit union of a copy of the trust together with an affidavit by the trustee which certifies that the copy of the trust delivered to the state credit union with the affidavit is an accurate and complete copy of the trust, the trustee is the duly authorized and acting trustee under the trust, the trust property

includes property in the safe deposit box, and that to the knowledge of the trustee the trust has not been revoked.

2. A person removing any contents of a safe deposit box pursuant to subsection 1 shall deliver any writing purported to be a will of the decedent to the court having jurisdiction over the decedent's estate.

3. *a.* If a person authorized to have access under subsection 1 does not request access to the safe deposit box within the thirty-day period immediately following the date of death of the owner or lessee of a safe deposit box, and the state credit union has knowledge of the death of the owner or lessee of the safe deposit box, the safe deposit box may be opened by or in the presence of two employees of the state credit union. If no key is produced, the state credit union may cause the safe deposit box to be opened and the state credit union shall have a claim against the estate of the deceased owner or lessee and a lien upon the contents of the safe deposit box for the costs of opening and resealing the safe deposit box.

b. If a safe deposit box is opened pursuant to paragraph *"a"*, the credit union employees present at such opening shall do all of the following:

(1) Remove any purported will of the deceased owner or lessee.

(2) Unseal, copy, and retain in the records of the state credit union a copy of a purported will removed from the safe deposit box. An additional copy of such purported will shall be made, dated, and signed by the credit union employees present at the safe deposit box opening and placed in the safe deposit box. The safe deposit box shall then be resealed.

(3) The original of a purported will shall be sent by registered or certified mail or personally delivered to the district court in the county of the last known residence of the deceased owner or lessee or the court having jurisdiction over the testator's estate. If the residence is unknown or last known and not in this state, the purported will shall be sent by registered or certified mail or personally delivered to the district court in the county where the safe deposit box is located.

4. The state credit union may rely upon published information or other reasonable proof of death of an owner or lessee. A state credit union has no duty to inquire about or discover, and is not liable to any person for failure to inquire about or discover, the death of the owner or lessee of a safe deposit box. A state credit union has no duty to open or cause to be opened, and is not liable to any person for failure to open or cause to be opened, a safe deposit box of a deceased owner or lessee. Upon compliance with the requirements of subsection 1 or 2, the state credit union is not liable to any person as a result of the opening of the safe deposit box, removal and delivery of the purported will, or retention of the unopened safe deposit box and contents.

99 Acts, ch 148, §2

533.50 Reserved.

ADMINISTRATION

533.51 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Credit union"* means a co-operative, nonprofit association, incorporated in accordance with the provisions of this chapter. A credit union is also a supervised financial organization as defined and used in the Iowa consumer credit code.

2. *"Board"* means the credit union review board, created in section 533.53.

3. *"Superintendent"* means the superintendent of credit unions appointed by the governor to direct and regulate credit unions pursuant to this chapter.

4. *"Account insurance plan"* means a plan providing account and share insurance which is of a type authorized under section 533.64.

[C75, 77, §533.36(2); C79, 81, §533.51]
86 Acts, ch 1245, §750

533.52 Credit union division created.

A credit union division of the department of commerce is created to administer this chapter.

[C79, 81, §533.52]
86 Acts, ch 1245, §751

533.53 Credit union review board.

1. A credit union review board is created. The board shall consist of seven members, five of whom shall have been members in good standing for at least the previous five years of either an Iowa state chartered credit union, or a credit union chartered under the federal Credit Union Act and having its principal place of business in Iowa. Two of the members may be public members; however, at no time shall more than five of the members be directors or employees of a credit union. The members shall serve for three-year staggered terms beginning and ending as provided by section 69.19.

2. The members of the board shall be appointed by the governor subject to confirmation by the senate. The governor may appoint the members of the board from a list of nominees submitted to the governor by the credit unions located in the state of Iowa.

3. The board shall meet at least four times each year and shall hold special meetings at the call of the chairperson. Four members constitute a quorum.

4. Each member of the board shall receive actual and necessary expenses incurred in the discharge of official duties. Each member of the

board may also be eligible to receive compensation as provided in section 7E.6.

5. A member of the credit union review board shall not take part in any action or participate in any decision when the matter under consideration specifically relates to a credit union of which the board member is a member.

[C79, 81, §533.53]
86 Acts, ch 1245, §752
Confirmation, see §2.32

533.54 Powers and duties.

The board may adopt, amend, and repeal rules pursuant to chapter 17A or take other action as it deems necessary or suitable, to effect the provisions of this chapter.

[C79, 81, §533.54]

533.55 Superintendent.

1. The superintendent shall be appointed by the governor, subject to confirmation by the senate, and shall possess a minimum of five years' credit union experience.

2. The superintendent may appoint assistants, examiners, and other employees as the superintendent deems necessary to the proper discharge of duties imposed upon the superintendent by the laws of this state. Pay plans shall be established for employees, other than clerical employees, who examine the accounts and affairs of credit unions and who examine the accounts and affairs of other persons, subject to supervision and regulation by the superintendent, that are substantially equivalent to those paid by the national credit union administration and other federal supervisory agencies in this area of the United States.

3. The superintendent may adopt rules as necessary or appropriate to implement this chapter, subject to the prior approval of the rules by the board.

[C79, 81, §533.55]
86 Acts, ch 1245, §753; 2001 Acts, ch 76, §1
Confirmation, see §2.32

533.56 Deputy superintendent.

1. The superintendent shall appoint a deputy superintendent who shall assist the superintendent in the performance of the superintendent's duties and who shall perform the duties of the superintendent as directed by the superintendent during the absence or inability of the superintendent.

2. The deputy superintendent shall serve at the pleasure of the superintendent. If the office of the superintendent becomes vacant, the deputy superintendent has all powers and duties of the superintendent until a new superintendent is appointed by the governor in accordance with this chapter.

3. The deputy superintendent shall receive a salary to be fixed by the board.

[C79, 81, §533.56]
86 Acts, ch 1245, §754

533.57 Expenses.

The superintendent, deputy superintendent, assistants, examiners, and other employees of the credit union division are entitled to receive reimbursement for expenses incurred in the performance of their duties subject to approval by the board. The superintendent, and when specifically authorized by the superintendent, the deputy superintendent, assistants, examiners, and other employees of the division, are entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties.

[C79, 81, §533.57]
86 Acts, ch 1245, §755

533.58 Insurance and surety bond.

The superintendent shall acquire good and sufficient bond in a company authorized to do business in this state to insure the faithful performance of the deputy superintendent, assistants, examiners and all other employees of the credit union division and to insure against any liability which may accrue in case of the loss of property of a credit union, or of a member of a credit union or of any other person, in the course of an examination, investigation, or other function required or allowed by the laws of this state. The superintendent shall be bonded in accordance with the provisions of chapter 64, provided that such bond shall be in the amount of one hundred thousand dollars.

[C79, 81, §533.58]

533.59 Subpoena — contempt.

1. The superintendent, the deputy superintendent, and upon the approval of the superintendent, any assistant or examiner shall have the power to subpoena witnesses, to compel their attendance, to administer oaths, to examine any person under oath and to require the production of relevant books or papers. The examination may be conducted on any subject relating to the duties imposed upon, or powers vested in, the superintendent under the provisions of this chapter.

2. When a person subpoenaed pursuant to subsection 1 of this section neglects or refuses to obey the terms of the subpoena, or to produce books or papers or to give testimony, as required, the superintendent may apply to the district court of Polk county for the enforcement of the subpoena or for the issuance of an order compelling compliance as the court directs.

3. The refusal without reasonable cause of a person to obey an order of the district court, issued pursuant to subsection 2, shall be considered contempt of court.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §533.6(2); C79, 81, §533.59]

533.60 Records of credit union division.

1. Records of the credit union division are public records subject to the provisions of chapter 22, except that papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of a specific credit union or of other persons by the superintendent pursuant to the laws of this state are not public records and shall not be open for examination or copying by the public or for examination or publication by the news media.

2. The credit union review board or the superintendent may notify the Iowa credit union league of the name of any credit union which the board or superintendent has reasonable cause to believe may have violated any of the provisions of this chapter or may be in danger of becoming insolvent or which has been the subject of a report of examination which the board or superintendent deems unsatisfactory in any respect, and thereafter the superintendent may, with the written consent of the credit union, give information secured from or about that credit union to the Iowa credit union league.

3. The superintendent, deputy superintendent, assistants or examiners shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating to the supervision and regulation of a specific credit union or persons by the superintendent pursuant to the laws of this state, nor shall the records of the credit union division which relate to the supervision and regulation of a specific credit union or persons be offered in evidence in a court or subject to subpoena by a party except where relevant:

a. In actions or proceedings brought by the superintendent.

b. In matters in which an interested and proper party seeks review of a decision of the superintendent.

c. In actions or proceedings which arise out of the criminal provisions of the laws of this state or of the United States.

d. In actions brought as shareholder derivative suits against a credit union.

e. In actions brought to recover moneys or to recover upon an indemnity bond for embezzlement, misappropriation or misuse of credit union funds.

[C79, 81, §533.60]

533.61 Annual report of superintendent.

1. The superintendent shall make a report in writing annually to the governor in the manner and within the time required by chapter 7A. A copy of the report shall be furnished by the superintendent to each credit union and to the Iowa credit union league and its affiliates.

2. In addition to the matters required by chapter 7A, the annual report of the superintendent shall contain:

a. A summary of applications approved or denied by the superintendent pursuant to this chapter since the last previous report.

b. A summary of the assets, liabilities and capital structures of all credit unions, and a summary of the volume of consumer installment credit outstanding per credit union, as of December 31 of the year for which the report is made.

c. A statement of the receipts and disbursements of funds of the superintendent during the calendar year ending on the preceding December 31 and of the funds on hand on that December 31, including an estimate of the disbursements of credit union division funds for consumer credit protection during the year for which the report is made.

d. Other information the superintendent deems appropriate and advisable to fairly disclose the discharge of the duties imposed upon the superintendent by this chapter.

e. Information which the administrator of the Iowa consumer credit code may require to be included.

f. A list of credit unions which have been designated as serving predominantly low-income members pursuant to section 533.4, subsection 1.

[C75, 77, §533.37(4); C79, 81, §533.61]

96 Acts, ch 1012, §13

533.62 Examination and supervision fees — penalties.

1. Each credit union shall pay to the superintendent an annual fee as established by the superintendent and adopted by the credit union review board. The fee shall be based upon the actual operating costs of the credit union division.

2. Failure of a credit union to pay a fee pursuant to subsection 1 within fifteen days after the fee is due shall result in the fee being considered delinquent and a penalty equal to five percent of the original fee may be assessed for each day or part of a day the payment remains delinquent. The delinquency may be grounds for revocation of the charter of the credit union.

3. All expenses required in the discharge of the duties and responsibilities imposed upon the superintendent and the board by the laws of this state shall be paid from funds appropriated from the general fund of the state. The superintendent shall pay all fees and other money received by the superintendent to the treasurer of state within the same time required by section 12.10. The treasurer of state shall deposit such funds in the general fund of the state. Funds appropriated to the credit union division shall be subject at all times to the warrant of the director of revenue and finance, drawn upon written requisition of the superintendent or a designated representative, for the payment of all salaries and other expenses necessary

to carry out the duties of the credit union division.

4. *a.* A loan of money or property shall not be made directly or indirectly by a state-chartered credit union, or by its officers, directors, or employees, to the superintendent, deputy, or employee of the credit union division. The superintendent, deputy, or employee of the credit union division shall not accept from a state-chartered credit union, or its officers, directors, or employees, a loan of money or property, either directly or indirectly.

b. The superintendent, deputy, or employee of the credit union division shall not perform any services for or be an officer, director, or employee of a state-chartered credit union.

c. A person who willfully undertakes to establish a business dealing contrary to this section commits a serious misdemeanor, and shall be permanently disqualified from acting as an officer, director, or employee of a state-chartered credit union and permanently disqualified from acting as superintendent, deputy, or employee of the credit union division.

d. The superintendent, deputy, or employee of the credit union division who is convicted of theft, burglary, robbery, larceny, or embezzlement as a result of a violation of the laws of any state or of the United States while holding such position shall be immediately disqualified from employment and shall be forever disqualified from holding any position in the credit union division.

[C79, 81, §533.62]

92 Acts, ch 1039, §4; 96 Acts, ch 1012, §14

533.63 False statements — penalties.

1. A director, officer or employee of a credit union shall not intentionally publish, disseminate or distribute any advertising or notice containing any false, misleading or deceptive statements concerning rates, terms or conditions on which loans are made, or deposits or share installments are received, or concerning any charge which the credit union is authorized to impose pursuant to this chapter, or concerning the financial condition of the credit union. Any director, officer, or employee of a credit union who violates the provisions of this section commits fraudulent practice.

2. Any person who maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false statement concerning any credit union which imputes or tends to impute insolvency, unsound financial condition or financial embarrassment, or which may tend to cause or provoke or aid in causing or provoking a general withdrawal of deposits from such credit union, or which may otherwise injure or tend to injure the business or good will of such credit union, shall be guilty of a simple misdemeanor.

[C79, 81, §533.63]

533.64 Account insurance — fidelity bond.

Except as provided in section 533.12, subsection 2, a credit union organized under this chapter, as a condition of maintaining its privilege of organization, shall acquire and maintain insurance to protect each shareholder and each depositor against loss of funds held on account by the credit union. The insurance shall be obtained from the national credit union administrator or from some other share guarantor or insurance plan approved by the Iowa commissioner of insurance and the superintendent, provided that each credit union shall acquire deposit insurance from the appropriate agency of the federal government.

A credit union shall maintain a fidelity bond for credit union employees and officials in a sufficient amount to indemnify the credit union against losses which may be incurred by reason of any act or acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misapplication, misappropriation, or other unlawful act committed by the employee or official directly or through connivance with others, and general insurance coverage for losses caused by persons not associated with the credit union. The fidelity bond and general insurance coverage shall be obtained from a company authorized to do business in this state. The superintendent may require additional coverage for any credit union if, in the opinion of the superintendent, current coverage is insufficient. The board of directors of the credit union shall obtain the additional coverage within thirty days after written notice from the superintendent.

The superintendent may furnish to any official of an insurance plan by which the accounts of a credit union are insured or by which its employees and officials are bonded, any information relating to examinations, investigations, and reports of the status of that credit union or its employees and officials for the purpose of facilitating the availability or continuation of the insurance or bond of the credit union or resolution of a claim.

[C79, 81, §533.64]

85 Acts, ch 242, §9; 91 Acts, ch 16, §2; 92 Acts, ch 1039, §5

533.65 False statement for credit.

Any person who knowingly makes or causes to be made, directly or indirectly, any false statement in writing, or who procures, knowing that a false statement in writing has been made concerning the financial condition or means or ability to pay of such person or any other person in which such person is interested or for whom such person is acting with the intent that such statement shall be relied upon by a credit union for the purpose of procuring the delivery of property, the payment of cash or the receipt of credit in any form, for the benefit of such person or of any other person in which such person is interested or for whom such

person is acting, shall be guilty of a fraudulent practice.

[C79, 81, §533.65]

533.66 Central credit unions.

Credit unions known as "central credit unions" may exist for the purpose of serving members of dissolved credit unions, directors, officers and employees of credit unions, employee groups as defined in section 533.4, subsection 13, and such other persons as the superintendent shall approve.

[C79, 81, §533.66]

533.67 Expenses of the credit union division — fees.

1. All expenses required in the discharge of the duties and responsibilities imposed upon the credit union division, the superintendent, and the credit union review board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the general fund of the state. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other moneys received by the superintendent to the treasurer of state within the time required by section 12.10 and the fees and other moneys shall be deposited into the general fund of the state. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent approved by the credit union review board.

2. The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

3. The credit union division may expend additional funds, including funds for additional personnel, if those additional expenditures are actual expenses which exceed the funds budgeted for credit union examinations and directly result from examinations of credit unions. The amounts necessary to fund the excess examination expenses shall be collected from credit unions being regulated, and the collections shall be treated as repayment receipts as defined in section 8.2. The division shall notify in writing the legislative fiscal bureau and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed to the general fund, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

4. All fees and other moneys collected shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes. Moneys deposited into the general fund of the state pursuant to this section shall be subject to the requirements of section 8.60.

5. The division may accept reimbursement of expenses related to the examination of a credit union from the national credit union administration or any other share guarantor or insurance plan authorized by this chapter. These reimbursements shall be deposited into the general fund of the state.

86 Acts, ch 1246, §618; 87 Acts, ch 234, §436; 90 Acts, ch 1247, §15; 91 Acts, ch 260, §1244; 93 Acts, ch 131, §23; 94 Acts, ch 1107, §86

CHAPTER 533A

DEBT MANAGEMENT

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533A.1 Definitions.

As used in this chapter:

1. *"Creditor"* means a person for whose benefit moneys are being collected and distributed by licensees.

2. *"Debt management"* means the planning and management of the financial affairs of a debtor and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to the debtor's creditors in payment or par-

tial payment of the debtor's obligations for a fee.

3. *"Debtor"* means any natural person.

4. *"Licensee"* means any individual, partnership, unincorporated association, agency or corporation licensed under this chapter.

5. *"Office"* means each location by street number, building number, city, and state where any person engages in debt management.

6. *"Superintendent"* means the superintendent of banking.

[C71, 73, 75, 77, 79, 81, §533A.1]

533A.2 Licenses required — exceptions.

1. No individual, partnership, unincorporated association, agency or corporation shall engage in the business of debt management in this state without a license therefor as provided for in this chapter, except that the following persons shall not be required to be licensed when engaged in the regular course of their respective businesses and professions:

a. Attorneys at law.

b. Banks, savings and loan associations, insurance companies and similar fiduciaries, regulated loan companies licensed under chapter 536 and industrial loan companies licensed under chapter 536A, authorized and admitted to transact business in this state and performing credit and financial adjusting in the regular course of their principal business, or while performing an escrow function.

c. Abstract companies, while performing an escrow function.

d. Employees of licensees under this chapter.

e. Judicial officers or others acting under court orders.

f. Nonprofit religious, fraternal or co-operative organizations, including credit unions, offering to debtors gratuitous debt-management service.

g. Those persons, associations, or corporations whose principal business is the origination of first mortgage loans on real estate for their own portfolios or for sale to institutional investors.

2. The application for such license shall be in writing, under oath, and in the form prescribed by the superintendent. The application shall contain the name of the applicant; date of incorporation, if incorporated, and the address where the business is to be conducted; and similar information as to any branch office of the applicant; the name and resident address of the owner or partners, or, if a corporation, association or agency, of the directors, trustees, principal officers, and agents, and such other pertinent information as the superintendent may require. If the applicant is a partnership, a copy of the certificate of assumed name or articles of partnership shall be filed with the application. If the applicant is a corporation, a copy of the articles of incorporation shall be filed with the application.

3. Each application shall be accompanied by a bond to be approved by the superintendent to the people of the state of Iowa in the penal sum of ten thousand dollars for each office, providing, however, the superintendent may require such bond to be raised to a maximum sum of twenty-five thousand dollars, and conditioned that the obligor will not violate any law pertaining to such business and upon the faithful accounting of all moneys collected upon accounts entrusted to such person engaged in debt management, and their employees and agents for the purpose of indemnifying debtors for loss resulting from conduct prohibited by this chapter. The aggregate liability of the surety to all debtors doing business with the office for which the bond is filed shall, in no event, exceed the penal sum of such bond. The surety on the bond shall have the right to cancel such bond upon giving thirty days' notice to the superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. No individual, partnership, unincorporated association, agency or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of this chapter.

4. Each applicant shall furnish with the application a copy of the contract the applicant proposes to use between the applicant and the debtor, which shall contain a schedule of fees to be charged the debtor for the applicant's services.

5. At the time of making such application the applicant shall pay to the superintendent the sum of fifty dollars as a license fee for each of the applicant's offices and an investigation fee in the sum of one hundred dollars. A separate application shall be made for each office maintained by the applicant.

[C71, 73, 75, 77, 79, 81, §533A.2]
85 Acts, ch 158, §1

533A.3 Investigation — hearing.

1. Upon the filing of each application and the payment of such fees, the superintendent shall fix a date and a time for a hearing upon such application, and shall make an investigation of the facts concerning the application and the requirements provided for in subsection 3 of this section.

2. The superintendent shall grant or deny each application for a license within sixty days from the filing thereof with the required fee, unless the period is extended by written agreement between the applicant and the superintendent.

3. *a.* If the superintendent shall find the experience, financial responsibility, character and general fitness of the applicant is such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the purposes of this chapter, and that the applicant, or if the applicant is an unincorporated association, agency or partnership, then the individuals involved, or if

the applicant is a corporation then the officers and directors thereof, have not been convicted of a felony or a misdemeanor involving moral turpitude, or have not had a record of having defaulted in payment of money collected for others, including the discharge of such debts through bankruptcy proceedings, the superintendent shall thereupon enter an order granting such application and forthwith issue and deliver a license to the applicant. The superintendent may require as part of the application a credit report and other information.

b. If the applicant has, at the time of the application, a license for an office located within ten statute miles of the location of the office named in the application, no license shall be issued unless the superintendent finds that public convenience will be served by the issuance of such license.

c. No license shall be transferable or assignable.

4. If the superintendent finds the applicant not qualified by subsection 3 of this section, the superintendent shall enter an order denying such application and forthwith notify the applicant of the denial, returning the license fee. Within fifteen days after the entry of such order, the superintendent shall prepare written findings and shall forthwith deliver a copy thereof to the applicant.

[C71, 73, 75, 77, 79, 81, §533A.3]

533A.4 Expiration date.

The license issued under this chapter shall expire on July 1 next following its issuance unless sooner surrendered, revoked or suspended, but may be renewed as provided in this chapter.

[C71, 73, 75, 77, 79, 81, §533A.4]

533A.5 Renewal.

Each licensee on or before July 1 may make application to the superintendent for renewal of its license. The application shall be on the form prescribed by the superintendent and shall be accompanied by a fee of one hundred dollars, together with a bond as in the case of an original application. A separate renewal application shall be made for each office maintained by the applicant.

[C71, 73, 75, 77, 79, 81, §533A.5]

533A.6 Appointment of process agent.

1. No licensee shall transact business until it shall have first appointed in writing the superintendent as agent of the licensee for service of process in this state. Service upon the superintendent or, in the superintendent's absence, any employee in charge of the superintendent's office, shall be of the same legal force and validity as if served upon any licensee under this chapter.

2. Whenever lawful process against any licensee shall be served upon the superintendent, two copies shall be furnished and the superintendent shall forthwith forward a copy of the process served on the superintendent, by certified mail, postpaid and directed to the licensee. For each service of process the sum of two dollars shall be collected, which shall be paid by the plaintiff at the time of such service, the same to be recovered by the plaintiff as part of the taxable costs, if the plaintiff prevails in the suit.

[C71, 73, 75, 77, 79, 81, §533A.6]

533A.7 Revocation or suspension.

1. The superintendent may revoke or suspend any license issued or applied for under this chapter for the following causes:

a. Conviction of a felony or of a misdemeanor involving moral turpitude.

b. For intentionally violating any of the provisions of this chapter.

c. For fraud or deceit in procuring the issuance of a license or renewal under this chapter.

d. For indulging in a continuous course of unfair conduct.

e. For insolvency, bankruptcy, receivership or assignment for the benefit of creditors by a licensee or applicant for a license under this chapter.

2. The denial, revocation or suspension shall be made only upon specific charges in writing, under oath, filed with the superintendent or by the superintendent whereupon a hearing shall be had as to the reasons for any denial, revocation or suspension and a certified copy of the charges shall be served on the licensee or applicant for license not less than ten days prior to the hearing.

[C71, 73, 75, 77, 79, 81, §533A.7]

533A.8 Written contract required.

1. Each licensee shall make a written contract between the licensee and a debtor and shall immediately and before collecting any fee, furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of creditors who are to receive payments under the contract, the total charges agreed upon for the services of the licensee, a statement of how the charges are to be paid, and the beginning and expiration date of the contract. No contract shall extend for a period longer than thirty-six months.

2. Each licensee shall maintain a separate bank trust account in which all payments received from debtors for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor or the creditor. Every licensee shall keep, and use in the licensee's business, books, accounts and records which will enable the superintendent to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations of the superintendent. Every licensee shall preserve such books, accounts and records for at least seven years after making the final entry on any transaction recorded therein.

3. Each licensee shall keep complete and adequate records during the term of the contract and for a period of five years from the date of cancella-

tion or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements, and charges, which records shall be open to inspection by the superintendent and the superintendent's duly appointed agents during normal business hours.

4. Each licensee shall make remittances to creditors within forty-five days after initial receipt of funds, and thereafter remittances shall be made to creditors within thirty days of receipt, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain.

5. Each licensee shall, upon request, furnish the debtor a written statement of the debtor's account monthly or a verbal accounting at any time the debtor may request it during normal business hours. A monthly written statement of disbursements made and fees deducted from the debtor's account shall be made to the debtor, whether the debtor requests it or not.

6. A licensee shall not receive any fee unless the licensee has the consent of at least fifty percent of the total number of the creditors listed in the licensee's contract with the debtor, or such a like number of creditors have accepted a distribution of payment. The debtor shall be informed by the licensee of those creditors who have not agreed to the licensee's handling of the account. No licensee shall accept an account unless a written and thorough budget analysis has been performed which indicates that the debtor can meet the requirements determined by the budget analysis.

7. In the event a compromise of a debt is arranged by the licensee with any one or more creditors, the debtor shall have the full benefit of such compromise.

[C71, 73, 75, 77, 79, 81, §533A.8]

533A.9 Fee agreed in advance.

The fee of the licensee shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall be clearly stated herein. The fee of the licensee shall not exceed fifteen percent of any payment made by the debtor and distributed to the creditors pursuant to the contract. In case of total payment of the contract before the contract period has expired, the licensee shall be entitled only to a fee of no more than three percent of such final payment.

[C71, 73, 75, 77, 79, 81, §533A.9]
90 Acts, ch 1100, §1

533A.10 Examination of licensee.

1. The superintendent may examine the condition and affairs of said licensee. In connection with any examination, the superintendent may examine on oath any licensee, and any director, officer, employee, customer, creditor or stockholder of a licensee concerning the affairs and business of the licensee. The superintendent shall ascertain whether the licensee transacts its business in the manner prescribed by the law and the rules and regulations issued thereunder. The licensee shall pay the cost of the examination as determined by the superintendent, which fee shall not exceed the sum of one hundred dollars per day of examination. Failure to pay the examination fee within thirty days of receipt of demand from the superintendent shall automatically suspend the license until the fee is paid.

2. In the investigation of alleged violations of this chapter, the superintendent may compel the attendance of any person or the production of any books, accounts, records and files used therein, and may examine under oath all persons in attendance pursuant thereto.

The superintendent is authorized to make and promulgate as prescribed by law regulations necessary to carry out the purposes of this chapter.

[C71, 73, 75, 77, 79, 81, §533A.10]

533A.11 Unlawful acts of licensee.

It shall be unlawful and a violation of this chapter for the holder of any license issued under the terms and provisions hereto:

1. To purchase from a creditor any obligation of a debtor.

2. To operate as a collection agent and as a licensee as to the same debtor's account without first disclosing in writing such fact to both the debtor and creditor.

3. To execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished.

4. To receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, both as to real or personal property.

5. To pay any bonus or other consideration to any individual, agency, partnership, unincorporated association or corporation for the referral of a debtor to the licensee's business, or to accept or receive any bonus, commission or other consideration for referring any debtor to any individual, partnership, unincorporated association, agency or corporation for any reason.

6. To advertise the licensee's services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcast or televised the licensee's services in any manner inconsistent with the law.

[C71, 73, 75, 77, 79, 81, §533A.11]
90 Acts, ch 1100, §2

533A.12 Reserved.

533A.13 License mandatory to business.

It shall be unlawful for an individual, partnership, unincorporated association, agency or corpo-

ration to engage in the business of debt management without first obtaining a license as required by this chapter. Any individual, partnership, unincorporated association, agency, corporation or any other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent or representative thereof who shall willfully or knowingly engage in the business of debt management without the license required by this chapter, shall be guilty of a serious misdemeanor.

[C71, 73, 75, 77, 79, 81, §533A.13]

533A.14 Fees to state treasurer.

All moneys received by the superintendent from fees, licenses and examinations pursuant to this chapter shall be deposited by the superintendent with the treasurer of state.

[C71, 73, 75, 77, 79, 81, §533A.14]

533A.15 Judicial review.

Judicial review of actions of the superintendent pursuant to sections 533A.3 and 533A.7 may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C71, 73, 75, 77, 79, 81, §533A.15]

CHAPTER 533B

SALE OF CERTAIN INSTRUMENTS FOR PAYMENT OF MONEY

533B.1 Permission from superintendent of banking.
533B.2 Agencies.
533B.3 Corporations exempt.
533B.4 Definitions.
533B.5 Penalty.
533B.6 Examination.
533B.7 Termination of license.

533B.1 Permission from superintendent of banking.

A person shall not engage in the business of selling written instruments for the transmission or payment of money, whether in the form of checks, drafts, money orders, travelers checks or otherwise, unless the person has been issued a license by the superintendent of banking. A person is not eligible to receive or retain a license under this chapter unless the person's net worth is at all times at least twenty-five thousand dollars as shown by financial statements satisfactory to the superintendent of banking and unless the person has deposited and at all times keeps on deposit with the superintendent of banking in the form of cash or securities satisfactory to the superintendent of banking or any combination of these, the sum of fifty thousand dollars plus an additional one thousand dollars for each office or agent from or through which the person engages in business under this chapter, provided that the maximum deposit required of a person under this section shall not exceed two hundred thousand dollars. However, the superintendent of banking may at the superintendent's option accept a surety bond of equivalent value in the form satisfactory to the superintendent and issued by a surety company acceptable to the superintendent in lieu of the required deposit. The deposit or bond shall be for the protection of purchasers or holders of instruments sold by the licensee, and the superintendent or any aggrieved party may enforce claims on such instruments against the deposit or bond.

The annual fee for a license issued under this chapter shall be the sum of one hundred fifty dollars plus an additional five dollars for each location in this state at which business is conducted through agents or employees of the licensee. The annual license fee shall be paid to the superintendent of banking at the time the person submits an application for a license or an application for annual renewal of the license. If the licensee gives notice to the superintendent of the opening of a new business location, as required under section 533B.2, the licensee shall submit payment of the required additional fee at the time of giving notice.

[C62, 66, 71, 73, 75, 77, 79, 81, §533B.1]

533B.2 Agencies.

Any person complying with the provisions of this chapter may engage in such business at one or more locations in this state and through or by means of such agents as such person may designate and appoint from time to time and no such agent shall be required to comply with the provisions of this chapter.

Each licensee shall give notice to the superintendent of banking of the business name and business location of each office, agent or other representative through which instruments are sold under this chapter. This notice shall be given at the time the licensee submits an application for a li-

cense or license renewal. Any change in locations, agents or other representatives shall be reported on a quarterly basis.

[C62, 66, 71, 73, 75, 77, 79, 81, §533B.2]

533B.3 Corporations exempt.

Nothing in this chapter shall apply to corporations organized under the general banking laws of this state or of the United States or any department or agency thereof, or to private banks of this state, or state chartered credit unions, or to the receipt of money by an incorporated telegraph company at any office or agency thereof for immediate transmission by telegraph. The Federal Home Loan Bank of Des Moines and federally chartered and state chartered savings and loan associations may sell checks, drafts, or money orders for single transaction transmission of money.

[C62, 66, 71, 73, 75, 77, 79, 81, §533B.3]

533B.4 Definitions.

As used in this chapter the word *"person"* shall mean any individual, partnership, association, joint stock association, trust or corporation.

As used in this chapter *"superintendent"* or *"superintendent of banking"* means either the superintendent of banking or a person designated by the superintendent of banking.

[C62, 66, 71, 73, 75, 77, 79, 81, §533B.4]

533B.5 Penalty.

Any person violating any provision of this chapter shall be guilty of a serious misdemeanor. Each transaction in violation of this chapter and each day that a violation continues shall be a separate offense.

[C62, 66, 71, 73, 75, 77, 79, 81, §533B.5]

533B.6 Examination.

The superintendent may investigate at any time the business of a person licensed under this chapter, and the superintendent may examine the books, records, accounts and files pertaining to business conducted under the authority of this chapter. The superintendent may require annual reports of licensees under this chapter, and may require such additional reports from a licensee as the public interest may require. The superintendent may accept an opinion audit conducted by a certified public accountant in lieu of an investigation or examination performed by the banking division.

If an investigation or examination is performed by the banking division under this section the licensee shall pay to the superintendent a fee which is equal to the cost of the investigation or examination, as determined by the superintendent according to a cost schedule promulgated by administrative rule. A licensee shall pay the fee not later than thirty days following receipt of notice of the fee. A fee shall not be charged for the submission of an annual report required of all licensees.

[C81, §533B.6]

533B.7 Termination of license.

1. The superintendent may suspend or revoke a license issued under this chapter after notice and opportunity for hearing if the superintendent finds any of the following conditions to exist:

a. The licensee has failed to pay fees when due.

b. The licensee has failed to maintain the deposit or bond required under this chapter.

c. The licensee has failed to comply with an order, decision or finding of the superintendent made under this chapter.

d. The licensee has violated a provision of this chapter, and the violation is detrimental to the public interest.

e. A fact or condition exists which, had it existed at the time of application for a license, would have disqualified the person from licensure under this chapter.

2. A licensee is entitled to ten days' advance notice of a hearing to be held for the purpose of considering the suspension or revocation of the license, except that the superintendent may immediately suspend a license pending a hearing if the superintendent has reasonable grounds to believe that the public interest would be substantially harmed if the licensee were to continue doing business pending the conclusion of the hearing.

3. A licensee under this chapter may surrender the license by delivering a written notice of surrender to the superintendent.

4. A voluntary or involuntary termination of a license under this section shall not affect civil or criminal liability of the licensee for acts or omissions occurring prior to termination of the license, and shall not exonerate the deposit or bond from any claims arising prior to the effective date of termination. Termination of a license does not entitle the licensee to any refund of fees. The superintendent may withhold release of the deposit of a licensee following termination of a license for a reasonable period of time as necessary to assure satisfaction of outstanding claims.

[C81, §533B.7]

CHAPTER 533C

CREDIT SERVICES ORGANIZATIONS

Transferred to chapter 538A

CHAPTER 533D

DELAYED DEPOSIT SERVICES

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533D.3 License required — application process — display.
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533D.5 Change in circumstances — notification of superintendent.
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533D.15 Criminal violation — operation of business without license — injunction.
533D.16 Applicability.

533D.1 Title.

This chapter shall be known and may be cited as the *"Delayed Deposit Services Licensing Act"*.

95 Acts, ch 139, §1

533D.2 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Check"* means a check, draft, share draft, or other instrument for the payment of money.

2. *"Delayed deposit services business"* means a person who for a fee does either of the following:

a. Accepts a check dated subsequent to the date it was written.

b. Accepts a check dated on the date it was written and holds the check for a period of time prior to deposit or presentment pursuant to an agreement with, or any representation made to, the maker of the check, whether express or implied.

3. *"Licensee"* means a person licensed to operate pursuant to this chapter.

4. *"Person"* means an individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity.

5. *"Superintendent"* means the superintendent of banking.

95 Acts, ch 139, §2

533D.3 License required — application process — display.

1. A person shall not operate a delayed deposit services business in this state unless the person is licensed by the superintendent as provided in this chapter.

2. An applicant for a license shall submit an application, under oath, to the superintendent on forms prescribed by the superintendent. The forms shall contain such information as the superintendent may prescribe.

3. The application required by this section shall be submitted with both of the following:

a. An application fee in an amount prescribed by rule adopted by the superintendent.

b. A surety bond executed by a surety company authorized to do business in this state in the sum of twenty-five thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days' notice in writing to the licensee and to the superintendent indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the licensee's willingness to comply with this chapter, the faithful performance by the licensee of the duties and obligations pertaining to the delayed deposit services business so licensed, and the prompt payment of any judgment recovered against the licensee. The surety's liability under this chapter is limited to the amount of the bond regardless of the number of years the bond is in effect.

4. The superintendent shall issue a license to an applicant if the superintendent finds all of the following:

a. The experience, character, and general fitness of the applicant and its officers, directors, shareholders, partners, or members are such as to warrant a finding that the applicant will conduct the delayed deposit services business honestly, fairly, and efficiently.

b. The applicant and its officers, directors, shareholders, partners, or members have not been convicted of a felony in this state, or convicted of a crime in another jurisdiction which would be a felony in this state.

c. The applicant is financially responsible and will conduct the delayed deposit services business pursuant to this chapter and other applicable laws.

d. The applicant has unencumbered assets of

at least twenty-five thousand dollars available for operating the delayed deposit services business.

5. The superintendent shall approve or deny an application for a license by written order not more than ninety days after the filing of an application. An order of the superintendent issued pursuant to this section may be appealed pursuant to chapter 17A.

6. A license issued pursuant to this chapter shall be conspicuously posted at the licensee's place of business. A license shall remain in effect until the next succeeding May 1, unless earlier suspended or revoked by the superintendent. A license shall be renewed annually by filing with the superintendent an application for renewal containing such information as the superintendent may require to indicate any material change in the information contained in the original application or succeeding renewal applications and a renewal fee of one hundred dollars.

95 Acts, ch 139, §3

533D.4 Surrender of license.

A licensee may surrender a delayed deposit services license by delivering to the superintendent written notice that the license is surrendered. The surrender does not affect the licensee's civil or criminal liability for acts committed prior to such surrender, the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee. The superintendent may establish procedures for the disposition of the books, accounts, and records of the licensee and may require such action as deemed necessary for the protection of the makers of checks which are outstanding at the time of surrender of the license.

95 Acts, ch 139, §4

533D.5 Change in circumstances — notification of superintendent.

A licensee is to notify the superintendent in writing within thirty days of the occurrence of a material development affecting the licensee, including, but not limited to, any of the following:

1. Filing for bankruptcy or reorganization.
2. Reorganization of the business.
3. Commencement of license revocation or any other civil or criminal proceedings by any other state or jurisdiction.
4. The filing of a criminal indictment or complaint against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents.
5. A felony conviction against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents.

95 Acts, ch 139, §5

533D.6 Continued operation after change in ownership — approval of superintendent required.

1. The prior written approval of the superintendent is required for the continued operation of a delayed deposit services business whenever a change in control of a licensee is proposed. Control in the case of a corporation means direct or indirect ownership, or the right to control, ten percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive. The superintendent may require information deemed necessary to determine whether a new application is required. Costs incurred by the superintendent in investigating a change of control request shall be paid by the person requesting such approval.

2. A license issued pursuant to this chapter is not transferable or assignable.

95 Acts, ch 139, §6

533D.7 Principal place of business — branch offices authorized.

1. Except as provided in subsection 2, a licensee may operate a delayed deposit services business only at an office designated as its principal place of business in the application. The licensee shall maintain its books, accounts, and records at its designated principal place of business. A licensee may change the location of its designated principal place of business with the prior written approval of the superintendent. The superintendent shall establish forms and procedures for determining whether the change of location should be approved.

2. A licensee may operate branch offices only in the same county in which the licensee's designated principal place of business is located. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the superintendent. The superintendent shall establish forms and procedures for determining whether the location of a branch office should be approved.

3. A fee of one hundred fifty dollars shall be paid to the superintendent for each request made pursuant to subsection 1 or 2.

95 Acts, ch 139, §7

533D.8 Other business operations at same site — restrictions.

1. A licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business with the written approval of the superintendent and consistent with both of the following requirements:

a. The books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business.

b. The other business is not of a type which would tend to enable the concealment of acts engaged in to evade the requirements of this chapter. If the superintendent determines upon investigation that the other business is of a type which would conceal such acts the superintendent shall order the licensee to cease the operation of the delayed deposit services business at the location.

2. The department may order the licensee to cease operations of the business if it fails to obtain written approval of the superintendent before operating a business in association or conjunction with services provided under this chapter.

95 Acts, ch 139, §8

533D.9 Fee restriction — required disclosure.

1. A licensee shall not charge a fee in excess of fifteen dollars on the first one hundred dollars on the face amount of a check or more than ten dollars on subsequent one hundred dollar increments on the face amount of the check for services provided by the licensee, or pro rata for any portion of one hundred dollars face value.

2. A licensee shall give to the maker of the check, at the time any delayed deposit service transaction is made, or if there are two or more makers, to one of them, notice written in clear, understandable language disclosing all of the following:

a. The fee to be charged for the transaction.

b. The annual percentage rate on the first hundred dollars on the face amount of the check which the fee represents, and the annual percentage rate on subsequent one hundred dollar increments which the fee represents, if different.

c. The date on which the check will be deposited or presented for negotiation.

d. Any penalty, not to exceed fifteen dollars, which the licensee will charge if the check is not negotiable on the date agreed upon. A penalty to be charged pursuant to this section shall only be collected by the licensee once on a check no matter how long the check remains unpaid. A penalty to be charged pursuant to this section is a licensee's exclusive remedy and if a licensee charges a penalty pursuant to this section no other penalties under this chapter or any other provision apply.

3. In addition to the notice required by subsection 2, every licensee shall conspicuously display a schedule of all fees, charges, and penalties for all services provided by the licensee authorized by this section. The notice shall be posted at the office and every branch office of the licensee.

95 Acts, ch 139, §9

533D.10 Prohibited acts by licensee.

1. A licensee shall not do any of the following:

a. Hold from any one maker more than two checks at any one time.

b. Hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars at any one time.

c. Hold or agree to hold a check for more than thirty-one days.

d. Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee or another person.

e. Repay, refinance, or otherwise consolidate a postdated check transaction with the proceeds of another postdated check transaction made by the same licensee.

f. Receive any other charges or fees in addition to the fees listed in section 533D.9, subsections 1 and 2.

2. For purposes of this section, *"licensee"* includes a person related to the licensee by common ownership or control, a person in whom the licensee has any financial interest, or any employee or agent of the licensee.

95 Acts, ch 139, §10

533D.11 Examination of records by superintendent.

The superintendent shall examine the books, accounts, and records of each licensee annually. The costs of the superintendent incurred in an examination shall be paid by the licensee.

The superintendent may examine or investigate complaints or reports concerning alleged violations of this chapter or any rule adopted or order issued by the superintendent. The superintendent may order the actual cost of the examination or investigation to be paid by the person who is the subject of the examination or investigation, whether or not the alleged violator is licensed.

95 Acts, ch 139, §11

533D.12 Suspension or revocation of license.

1. The superintendent may, after notice and hearing pursuant to chapter 17A, suspend or revoke any license issued pursuant to this chapter upon the finding of any of the following:

a. A licensee or any of its officers, directors, shareholders, partners, or members has violated this chapter or any rule adopted or order issued by the superintendent.

b. A licensee has failed to pay a license fee required under this chapter.

c. A fact or condition existing which, if it had existed at the time of the original application for the license, would have resulted in the denial of the superintendent to issue the license.

d. A licensee has abandoned its place of business for a period of sixty days or more.

e. A licensee fails to pay an administrative

penalty and the cost of investigation as ordered by the superintendent.

2. Notice of the time and place of the hearing provided for in this section shall be given no less than ten days prior to the date of the hearing.

95 Acts, ch 139, §12

533D.13 Cease and desist order — injunction.

If the superintendent believes that any person has engaged in or is about to engage in an act or practice constituting a violation of this chapter or any rule adopted or order issued by the superintendent, the superintendent may issue and serve on the person a cease and desist order. Upon entry of a cease and desist order the superintendent shall promptly notify in writing all persons to whom the order is directed that it has been entered and the reasons for the order. Any person to whom the order is directed may request in writing a hearing within fifteen business days after the date of the issuance of the order. Upon receipt of the written request, the matter shall be set for hearing within fifteen business days of the receipt by the superintendent, unless the person requesting the hearing consents to a later date. If a hearing is not requested within fifteen business days and none is ordered by the superintendent, the order of the superintendent shall automatically become final and remain in effect until modified or vacated by the superintendent. If a hearing is requested or ordered, the superintendent, after notice and hearing, shall issue written findings of fact and conclusions of law and shall affirm, vacate, or modify the order.

The superintendent may vacate or modify an order if the superintendent finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so. Any person aggrieved by a final order of the superintendent may appeal the order as provided in chapter 17A.

If it appears that a person has engaged in or is engaging in an act or practice in violation of this chapter, the attorney general may initiate an action in the district court to enjoin such acts or practices and to enforce compliance with this chapter. Upon a showing of a violation of this chapter, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted or a receiver or conservator may be appointed to oversee the person's assets. The attorney general shall not be required to post a bond.

95 Acts, ch 139, §13

533D.14 Administrative penalty.

1. If the superintendent finds, after notice and hearing as provided in this chapter, that a person has violated this chapter, a rule adopted pursuant to this chapter, or an order of the superintendent, the superintendent may order the person to pay an administrative fine of not more than five thousand dollars for each violation, in addition to the costs of investigation.

2. If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection 1, a lien in the amount of the fine and costs may be imposed upon all assets and property of the person in this state and may be recovered in a civil action by the superintendent. Failure of the person to pay the fine and costs constitutes a separate violation of this chapter.

95 Acts, ch 139, §14

533D.15 Criminal violation — operation of business without license — injunction.

A person required to be licensed under this chapter who operates a delayed deposit services business in this state without first obtaining a license under this chapter or while such license is suspended or revoked by the superintendent is guilty of a serious misdemeanor. In addition to the criminal penalty provided for in this section, the superintendent may also commence an action to enjoin the operation of the business.

95 Acts, ch 139, §15

533D.16 Applicability.

This chapter does not apply to a bank incorporated under the provisions of any state or federal law, a savings and loan association incorporated under the provisions of any state or federal law, a credit union organized under the provisions of any state or federal law, a corporation licensed as an industrial loan company under chapter 536A, or an affiliate of a bank, savings and loan association, credit union, or industrial loan company.

95 Acts, ch 139, §16

CHAPTER 534

SAVINGS AND LOAN ASSOCIATIONS

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DIVISION I

GENERAL PROVISIONS

534.101 Short title.

This chapter may be cited as *"Savings and Loan Association chapter"*.

[C62, 66, 71, 73, 75, 77, 79, 81, §534.1]
C85, §534.101

534.102 Definitions.

When used in this chapter, the following words and phrases shall have the following meanings, except to the extent that any such word or phrase is specifically qualified by its context:

1. *"Administrator"* means the person designated in section 537.6103.

2. *"Association"* or *"state association"* means a

corporation holding a certificate of authority to operate under this chapter as either a mutual association or a stock association.

3. *"Association holding company"* means a person other than an individual that directly or indirectly owns, controls or votes more than twenty-five percent of any class of voting stock of a stock association or that controls in any manner the election of a majority of the directors of a stock association or mutual association.

4. *"Bank"* means any person who is authorized under chapter 524 to engage in the business of banking in this state.

5. *"Bank holding company"* means a bank holding company as defined in section 524.1801 that is authorized under chapter 524, division XVIII, to do business in this state as a bank holding company.

6. *"Dividend"* shall mean that part of the net earnings of an association which is declared payable on share accounts from time to time by the board of directors and is the cost of savings money to the association.

7. *"Federal association"* means a corporation operating under the federal Home Owners' Loan Act of 1933 as either a mutual association or a stock association.

8. *"Foreign association"* means a building and loan or savings and loan association, incorporated by the laws of another state or country, which as of January 1, 1984 did not have an office, agency, or agent operating in this state.

9. *"Gross income"* shall mean the sum for an accounting period of the following:

a. Operating income.

b. Real estate income.

c. All profits actually received during such accounting period from the sale of securities, real estate or other property.

d. Other nonrecurring income.

10. *"Home loan"* shall mean a real estate loan on a dwelling or dwellings for not more than four families, the principal use of which is for residential purposes. A *"home"* is the same as *"home property"* and constitutes the homestead of the owner. A home on a farm is a home.

11. *"Impaired condition"* shall mean a condition in which the assets of an association do not have an aggregate value equal to the aggregate amount of liabilities of the association to its creditors, its members and all other persons.

12. *"Insured"*, when used in conjunction with the words *"association"*, *"state association"*, *"foreign association"*, or *"federal association"*, means an institution whose deposits are insured in part by the savings association insurance fund of the federal deposit insurance corporation or another insurance plan approved by the superintendent.

13. *"Insured mortgage"* is a mortgage covered in part by insurance, which insurance has been formally submitted to and approved by the superintendent or by the federal home loan bank of the area in which the association is located.

14. *"Member"* shall mean a person owning a share account of an association, and a person borrowing from or assuming or obligated upon a loan held by an association, or purchasing property securing a loan held by an association and any contract purchaser from the association. A joint and survivorship relationship, whether of investors or borrowers, constitutes a single membership.

15. *"Mutual association"* means a corporation organized on a mutual ownership basis without shareholders.

16. *"Net earnings"* shall mean gross income for an accounting period less the aggregate of the following:

a. Operating expenses.

b. Real estate expenses.

c. All losses actually sustained during such accounting period from the sale of securities, real estate or other property, or such portion of such losses as shall not have been charged to reserves, pursuant to the provisions of this chapter.

d. All interest paid, or due but unpaid, on borrowed money.

e. Other nonrecurring income.

17. *"Operating expenses"* shall mean all expenses actually paid, or due but unpaid, by an association during an accounting period, excluding the following:

a. Real estate expenses.

b. Other nonrecurring charges.

That portion of prepaid expenses which is not apportionable to the period may be excluded from operating expenses, in which event operating expenses for future periods shall exclude that portion of such prepaid expenses apportionable thereto.

18. *"Operating income"* shall mean all income actually received by an association during an accounting period, excluding the following:

a. Foreclosed real estate income.

b. Other nonrecurring income.

19. *"Real estate expenses"* shall mean all expenses actually paid, or due but unpaid, in connection with the ownership, maintenance, and sale of real estate (other than office building or buildings and real estate held for investment) by an association during an accounting period, excluding capital expenditures and losses on the sale of real estate.

20. *"Real estate income"* shall mean all income actually received by an association during an accounting period from real estate owned (other than from office building or buildings and real estate held for investment) excluding profit from sales of real estate.

21. *"Real estate loan"* shall mean any loan or other obligation secured by real estate, whether in fee or in a leasehold extending or renewable automatically for a period of at least fifty years or ten years beyond the maturity date of the loan.

22. *"Regular lending area"* shall mean the en-

tire area within this state and an area which is outside this state and which is within one hundred miles from any approved office.

23. *"Savings account"* means a deposit account in a stock association or mutual association or a withdrawable share account or time share account in a mutual association.

24. *"Savings liability"* shall mean the aggregate amount of share accounts of members, including dividends credited to such accounts, less redemptions and withdrawals.

25. *"Service corporation"* means a corporation which is organized under chapter 490 and which is owned in any part by one or more state associations or federal associations or a combination of these.

26. *"Share account or shares"* shall mean that part of the savings liability of the association which is credited to the account of the holder thereof.

27. *"Stock association"* means a corporation owned by shareholders.

28. *"Superintendent"* means the superintendent of savings and loan associations appointed pursuant to section 534.401.

29. *"Supervised financial organization"* as defined and used in the Iowa consumer credit code includes a person organized pursuant to this chapter.

30. *"Supervised organization"* means an association, association holding company, service corporation, licensed foreign association, or a subsidiary of an association, holding company, service corporation, or licensed foreign association.

31. *"Withdrawal value"* shall mean the amount credited to a share account of a member, less lawful deductions therefrom, as shown by the records of the association.

[C73, §1184, 1187; C97, §1890, 1902, 1903; C24, 27, 31, §9306 – 9309, 9347, 9350; C35, §9306, 9308-e1, 9347, 9350; C39, §**9306, 9308.1, 9309, 9347;** C46, 50, 54, 58, §534.1 – 534.3, 534.45; C62, 66, 71, 73, 75, 77, 79, 81, §534.2; 82 Acts, ch 1253, §6 – 8]

84 Acts, ch 1081, §1

C85, §534.102

85 Acts, ch 153, §1; 88 Acts, ch 1134, §95; 90 Acts, ch 1205, §53; 90 Acts, ch 1208, §1; 91 Acts, ch 92, §2, 3; 94 Acts, ch 1187, §20

534.103 General powers.

Every such association shall have the following general powers:

1. *General corporate power.* To sue and be sued, complain and defend in any court of law or equity; to purchase, acquire, hold, and convey real and personal estate consistent with its objects and powers; to mortgage, pledge, or lease any real or personal estate owned by the association and to authorize a pledgee to repledge the property; to take property by gift, devise, or bequest; to have a corporate seal, which may be affixed by imprint, facsimile, or otherwise; to appoint officers, agents, and employees as its business requires and allow them suitable compensation; to provide for life, health, and casualty insurance for its officers and employees and to adopt and operate reasonable bonus plans and retirement benefits for the officers and employees to enter into payroll savings plans; to adopt and amend bylaws; to insure its accounts with the savings association insurance fund of the federal deposit insurance corporation and qualify as a member of a federal home loan bank; to become a member of, deal with, or make contributions to any organization to the extent that the organization assists in furthering or facilitating the association's purposes or powers and to comply with conditions of membership; to accept savings as provided in this chapter together with other powers otherwise expressly provided for in this chapter, together with implied powers as reasonably necessary for the purpose of carrying out the express powers granted in this chapter.

2. *Fiscal agent.* Any such association which is a member of a federal home loan bank shall have power to act as fiscal agent of the United States and, when designated for the purpose by the secretary of the treasury, it shall perform under such regulations as the secretary may prescribe all such reasonable duties as fiscal agent of the United States as the secretary may require, and shall have power to act as agent for any United States government instrumentality. An association may also handle travelers checks and money orders.

3. *Lock boxes.* Any association may own and rent to its members lock boxes for storage or safekeeping of securities and valuables.

4. *Power to borrow.* Except as provided by its articles of incorporation, an association may borrow not more than an aggregate amount equal to its savings liability on the date of borrowing. A subsequent reduction of savings liability shall not affect in any way outstanding obligations for borrowed money. All loans and advances may be secured by property of the association. In addition to the above unsecured or secured borrowing, an association may issue notes, bonds, debentures and other obligations or securities approved by the superintendent, and if authorized by the regulations of the federal home loan bank. However, the obligations and securities are subject to the priority of the rights of the owners of the savings and deposits of the association.

5. *Service corporations.* Any association may organize and own, alone or with any other similar corporation, a service corporation for the mutual good of the associations. The superintendent shall have the right to examine service corporations.

6. *Limited trust powers.* An association incorporated under this chapter may act as trustee for trusts which are created or organized in the United States, and which form part of a stock bo-

nus, pension, or profit sharing plan which qualifies for special tax treatment under section 401(d) or subsection (a) of section 408 of the Internal Revenue Code, as amended, or as trustee with no active fiduciary duties, if the funds of the trust are invested only in savings accounts or deposits in the association or in obligations or securities issued by the association. All funds held in such a fiduciary capacity by an association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this subsection.

The superintendent is authorized to grant by special permit to an association the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity. However, this authority is available only for periods of time when federally chartered savings and loan associations operating in this state are granted similar authority, and the state authorization is subject to the rights and limitations established in rules adopted by the superintendent, which shall be consistent with the rights and limitations for federally chartered associations engaged in this type of activity.

7. *Tax and loan accounts.* To act as depository for receipt of payments of federal or state taxes and loan funds from persons other than the state or subdivisions, agencies or instrumentalities of the state, and satisfy any federal or state statutory or regulatory requirements in connection therewith, including pledging of assets as collateral, payment of earnings at prescribed rates and, notwithstanding any other provision of this chapter, issuing such accounts subject to the right of immediate withdrawal.

8. *Leasing of personal property.* To acquire, upon the specific request of and for the use of a customer, and lease, personal property pursuant to a binding arrangement for the leasing of the property to the customer upon terms requiring payment to the association, during the minimum period of the lease, of rentals which in the aggregate, when added to the estimated tax benefits to the association resulting from the ownership of the leased property plus the estimated residual market value of the leased property at the expiration of the initial term of the lease, will be at least equal to the total expenditures by the association for, and in connection with, the acquisition, ownership, maintenance, and protection of the property. A lease made under authority of this section shall have the prior approval of the superintendent or be made pursuant to personal property lease guidelines approved by the superintendent for use by the lessor association or pursuant to a personal property lease guideline rule of general applicability for use by all associations.

9. *Electronic transactions.* Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the association. Subject to the provisions of chapter 527, an association may utilize, establish or operate, alone or with one or more other associations, banks incorporated under the provisions of chapter 524 or federal law, credit unions incorporated under the provisions of chapter 533 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the association may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment or operation shall be lawful only when in compliance with chapter 527. Nothing in this subsection shall be construed as authority for any association or other person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this subsection be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any association.

10. *Automatic authorization.* Any association may have the right to participate in any new or additional powers or activities hereafter granted to such association under this chapter immediately upon the effective date of such additional authority, if authorized by the articles of incorporation of such association.

[C73, §1185, 1186; C97, §1898, 1899; S13, §1898; C24, 27, 31, §9329, 9331, 9340; C35, §9329, 9340; C39, §**9329,** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §534.19; 81 Acts, ch 175, §3, 4, 8; 82 Acts, ch 1253, §13, 14, 44(3)]

84 Acts, ch 1112, §5

C85, §534.103

87 Acts, ch 171, §29; 91 Acts, ch 92, §4; 92 Acts, ch 1163, §103

534.104 Capital certificates.

An association may issue and sell, directly or through underwriters, capital certificates which shall represent nonwithdrawable capital contributions, and constitute part of the reserves and net worth of the association. The certificates shall have no voting rights, shall be subordinate to all savings accounts, debt obligations and claims of creditors of the association and shall constitute a claim in liquidation against any reserves, surplus and other net worth accounts remaining after the payment in full of all savings accounts, debt obligations and claims of creditors. The capital certificates may be entitled to the payment of earnings prior to the allocation of income to surplus or other net worth accounts of the association and may be issued with a fixed rate of earnings or with a prior claim to distribution of a specified percentage of net income remaining after required alloca-

tions to reserves, or a combination thereof. Losses shall be charged against capital certificates only after reserves, surplus and other net worth accounts have been exhausted.

84 Acts, ch 1112, §1

534.105 Defamation of institutions — penalty.

Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false report concerning any building and loan or savings and loan association which imputes or tends to impute, insolvency or unsound financial condition or financial embarrassment, or which may tend to cause or provoke or aid in causing or provoking a general withdrawal of funds from such association, or which may otherwise injure or tend to injure the business or good will of such building and loan or savings and loan association, shall be guilty of a serious misdemeanor.

[C35, §9388-e1; C39, §**9388.2;** C46, 50, 54, 58, §534.87; C62, 66, 71, 73, 75, 77, 79, 81, §534.13]

C85, §534.105

534.106 Records.

1. Complete and adequate records of all accounts and of all minutes of proceedings of the members, directors and executive committee shall be maintained at all times at the office of the association.

2. Every association shall maintain membership records, which shall show the name and address of the member, whether the member is a share account holder, or a borrower, or a share account holder and borrower, and the date of membership thereof. In the case of account holding members, the association shall obtain a card containing the signature of the owner of such account or the owner's duly authorized representative and shall preserve such signature card in the records of the association.

3. Associations shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files; provided, however, that ledger sheets showing unpaid accounts in favor of members of such savings and loan association shall not be destroyed.

4. No liability shall accrue against any association, destroying any such records after the expiration of the time provided in subsection 3, and in any cause or proceedings in which any such records or files may be called in question or be demanded of the association or any officer or employee thereof, a showing that such records and files have been destroyed in accordance with the terms of this chapter shall be a sufficient excuse for the failure to produce them.

5. All causes of action against an association based upon a claim or claims inconsistent with an entry or entries in any savings and loan association record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual.

6. The provisions of this chapter, so far as applicable, shall apply to the records of federal savings and loan associations.

7. A copy of an original may be kept by an association in lieu of any original records. For purposes of this section, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record. Any such copy or reproduction is deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original.

A printout or other tangible output readable by sight shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, which contains a signature made or created by electronic or digital means such that it is stored by a computer or similar device, is deemed to be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

[C97, §1904; C24, 27, 31, 35, 39, §**9357;** C46, 50, 54, 58, §534.55, 534.111 – 534.114; C62, 66, 71, 73, 75, 77, 79, 81, §534.9]

C85, §534.106

91 Acts, ch 95, §3; 99 Acts, ch 34, §4

534.107 Operating expenses.

The operating expense of an association in any one year shall not exceed three percent of the association's average assets during that year without the written approval of the superintendent.

[S13, §1902-a; C24, 27, 31, 35, 39, §**9348;** C46, 50, 54, 58, §534.47; C62, 66, 71, 73, 75, 77, 79, 81, §534.44]

C85, §534.107

87 Acts, ch 171, §30

534.108 Financial statement — reports.

Every association shall prepare and publish annually in the month of January in a newspaper of general circulation in the county in which the

home office of such association is located, and shall deliver to each member upon application therefor, a statement of its financial condition in the form prescribed or approved by the superintendent.

Every association shall file with the superintendent all monthly, quarterly, and annual reports required by and filed with the federal home loan bank board.

[C97, §1898; S13, §1898; C24, 27, 31, 35, 39, §**9333;** C46, 50, 54, 58, §534.23; C62, 66, 71, 73, 75, 77, 79, 81, §534.6]

C85, §534.108

90 Acts, ch 1208, §2

534.109 Effect of changes in law.

1. *Chapter applicable.* The name, rights, powers, privileges, and immunities of every such corporation heretofore incorporated under the laws of this state repealed and revised by this chapter shall be governed, controlled, construed, extended, limited, and determined by the provisions of this chapter to the same extent and effect as if such corporation had been incorporated pursuant hereto, and the articles of association, certificate of incorporation, or charter, however entitled, bylaws and constitution, or other rules of every such corporation heretofore made or existing are hereby modified, altered, and amended to conform to the provisions of this chapter, as the same are inconsistent with the provisions of this chapter; except that the obligations of any such existing corporation, whether between such corporation and its members, or any of them, or any other person or persons, or any valid contract between the members of any such corporation, or between such corporation and any other person or persons, existing at the time this chapter takes effect, shall not be in any way impaired by the provisions of this chapter, and, with such exceptions, every such corporation shall possess the rights, powers, privileges and immunities and shall be subject to the duties, liabilities, disabilities, and restrictions conferred and imposed by this chapter notwithstanding anything to the contrary in its certificate of incorporation, bylaws, constitution or rules.

2. *Prior obligations.* All obligations heretofore contracted may be enforced. All obligations to any such corporation heretofore contracted shall be enforceable by it and in its name, and demands, claims, and rights of action against any such corporation may be enforced against it as fully and completely as they might have been enforced heretofore.

3. *Chapter controlling.* Insofar as the provisions of this chapter are inconsistent with the provisions of any other law affecting savings associations the provisions of this chapter shall control.

[C58, §534.112 – 534.114; C62, 66, 71, 73, 75, 77, 79, 81, §534.69]

C85, §534.109

534.110 Emergency operations.

In the event an association's offices are destroyed by enemy attack or by natural disaster, such association may operate from such temporary headquarters as may be necessary until such time as it is again able to resume operations in its normal location.

[C62, 66, 71, 73, 75, 77, 79, 81, §534.20; 81 Acts, ch 175, §5]

C85, §534.110

534.111 Rights of federal associations — reciprocity.

Every federal savings and loan association incorporated under the Home Owners' Loan Act of 1933, 12 U.S.C. § 1461 – 1468, as amended, and the holders of share accounts issued by any such association have all the rights, powers, and privileges and are entitled to the same exemptions and immunities, as savings and loan associations organized under the laws of this state and members thereof are entitled.

Every association organized under this chapter has all the rights, powers, and privileges not in conflict with the laws of this state, which are conferred upon federal savings and loan associations by the Home Owners' Loan Act of 1933, 12 U.S.C. § 1464, and conferred by regulations adopted by the federal home loan bank board and the federal office of thrift supervision.

[C39, §**9402.9;** C46, 50, 54, 58, §534.110; C62, 66, 71, 73, 75, 77, 79, 81, §534.31]

C85, §534.111

87 Acts, ch 171, §31; 91 Acts, ch 92, §5

534.112 Regulatory capital.

An association shall maintain regulatory capital in the amount required by regulations of the federal office of thrift supervision. For the purpose of this section, *"regulatory capital"* means the sum of all reserve accounts (except specific reserves established to offset actual or anticipated losses), undivided profits, surplus, capital stock, and any other nonwithdrawable accounts.

87 Acts, ch 171, §32; 91 Acts, ch 92, §6

534.113 References to United States Code and regulations.

All references in this chapter to the United States Code and regulations adopted pursuant to the United States Code refer to the United States Code and regulations as amended to and including January 1, 1990.

90 Acts, ch 1208, §3

DIVISION II

LOANS AND INVESTMENTS

534.201 General lending powers.

An association may, subject to any applicable re-

strictions under this chapter and rules adopted by the superintendent, loan money, extend credit, discount or purchase the vendor's interest in real estate contracts, and discount or purchase other evidences of indebtedness and agreements for the payment of money.

[C73, §1185, 1186; C97, §1898, 1899; S13, §1898; C24, 27, 31, §9329, 9340; C35, §9329, 9340; C39, §**9329;** C46, 50, 54, 58, §534.19, 534.33; C62, 66, 71, 73, 75, 77, 79, 81, §534.19; 82 Acts, ch 1253, §18]

C83, §534.74

C85, §534.201

534.202 Powers with respect to loans.

Every such association shall have the following general powers:

1. *Power to purchase and to lend upon loans.* The power to make loans shall include (a) the power to purchase loans of any type that the association may make, (b) the power to make loans upon the security of loans of any type that the association may make, and (c) the power to sell any loans of the type the association is authorized to make.

2. *Participation loans.* An association may participate with other lenders in the origination or purchase of an interest in loans of any type that such an association may otherwise make, provided that the other participants are instrumentalities of or corporations owned wholly or in part by the United States or this state, or are associations or corporations insured by the federal savings and loan insurance corporation or the federal deposit insurance corporation or are life insurance companies with assets in excess of one hundred million dollars, or are approved federal housing administration lenders or are service corporations in which the majority of the capital stock is owned by one or more insured institutions, such loans to be within or without the regular lending area of the association.

3. *Servicing loans.* To service mortgages and real estate contracts subject to such regulations and restrictions as may be prescribed by the superintendent.

[C73, §1185, 1186; C97, S13, §1898; C24, 27, 35, §9329; C39, §**9329, 9340.09, 9340.14;** C46, 50, 54, 58, §534.19, 534.33, 534.38; C62, 66, 71, 73, 75, 77, 79, 81, §534.19]

C85, §534.202

534.203 Sound lending standards.

An association shall not make a loan unless it first has determined that the loan is authorized by this chapter, and that the type, amount, purpose, and repayment provisions of the loan in relation to the borrower's resources, credit standing and any collateral securing repayment of the loan support the reasonable belief that the loan will be financially sound and will be repaid according to its terms.

A loan made by an association must be authorized by lending policies approved by the association's board of directors and made available to the superintendent upon request.

[C97, §1899; S13, §1899-a; C24, 27, 31, §9340, 9341; C35, §9340, 9340-b1, 9341; C39, §**9340.01, 9340.04 – 9340.06, 9340.08, 9340.09;** C46, 50, 54, 58, §534.25, 534.28 – 534.30, 534.32, 534.33; C62, 66, 71, 73, 75, 77, 79, S79, C81, §534.21; 82 Acts, ch 1253, §20]

C83, §534.76

C85, §534.203

90 Acts, ch 1208, §4

534.204 Real estate loans.

An association may make permanent loans, construction loans, or combined construction and permanent loans, secured by liens on real property, as authorized by rules adopted by the superintendent under chapter 17A. These rules shall contain provisions as necessary to ensure the safety and soundness of these loans, and to ensure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for the borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

[C73, §1185, 1186; C97, §1898, 1899; S13, §1898, 1899-a; C24, 27, 31, §9329, 9331, 9340, 9341; C35, §9329, 9330-e1, 9331, 9340, 9340-b1, 9341; C39, §**9329, 9330.1, 9331, 9340.01, 9340.04 – 9340.06, 9340.08, 9340.09, 9340.14;** C46, 50, 54, 58, §534.19, 534.21, 534.22, 534.25, 534.28 – 534.30, 534.32, 534.33, 534.38; C62, 66, 71, 73, 75, §534.19, 534.21; C77, 79, §534.19, 534.21, 534.72; S79, §534.21; C81, §534.19, 534.21, 534.72, 535B.1 – 535B.14; 82 Acts, ch 1253, §22, 43]

C83, §534.78

C85, §534.204

534.205 Required real estate loan practices.

Real estate loans must meet the following requirements:

1. *Appraisal.* A qualified person shall conduct an inspection of the property securing the loan and submit a signed appraisal of the market value of that property. However, an appraisal is only required if the loan is secured by a first lien. An appraisal must conform to the standards promulgated by the federal office of thrift supervision as mandated by Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

2. *Note.* A note shall be signed by the borrower and delivered to the association.

3. *Lien.* The loan shall be secured by a mortgage, deed of trust or similar instrument constituting a lien or claim upon real estate. Such instrument shall provide for the full protection of the association in the event of default.

4. *Payment terms.* The loan shall provide for repayment upon those terms set forth in the note signed by the borrower.

5. *Loan settlement statement.* The borrower shall receive a statement setting forth in detail the charges and fees the borrower has paid or is obligated to pay in connection with the loan.

6. *Balloon payments.* An association shall mail to the borrower an offer to refinance a balloon payment under a loan at least twenty days before the balloon payment date if at that time no payments under the loan are delinquent. The offer shall be at an interest rate no greater than one percent per annum above the index rate and with monthly payments no greater than those necessary to fully amortize the amount of the balloon payment plus interest over a term which, when added together with the term representing the number of monthly payments made before the most recent notice to refinance, is not less than the original loan term. The association must offer to the borrower a term of at least one year before the next balloon payment. If the balloon payment is due one month after the preceding monthly payment date, the association may require the borrower to make a payment equal to the preceding monthly payment on the balloon payment date if the first payment under the note to refinance the balloon note is one month after the balloon payment date. The association may offer repayment plans to refinance a balloon payment in addition to the plan required by this subsection. For purposes of this subsection, *"loan"* means the same as defined in section 535.8, subsection 1; *"balloon payment"* means a payment which is more than three times as big as the mean average of the payments which precede it; and *"index rate"* means the national average mortgage contract rate for major lenders on the purchase of previously occupied homes which is most recently published in final form by the federal home loan bank board not more than four months before the date on which the balloon payment is due, or, alternatively, a rate based upon any other independently verifiable index approved by the superintendent.

[C97, §1899; S13, §1899-a; C24, 27, 31, §9340, 9341; C35, §9340, 9340-b1, 9341; C39, §**9340.01, 9340.04 – 9340.06, 9340.08, 9340.09, 9340.14;** C46, 50, 54, 58, §534.25, 534.28 – 534.30, 534.32, 534.33, 534.38; C62, 66, 71, 73, 75, §534.21; C77, 79, §534.21, 534.72; S79, §534.21; C81, §534.21, 534.72; 82 Acts, ch 1253, §23]

C83, §534.79

84 Acts, ch 1112, §7

C85, §534.205

90 Acts, ch 1208, §5; 91 Acts, ch 92, §7

534.206 Authorized real estate loan practices.

An association may do any of the following with respect to a real estate loan, and any contract provision authorized by this section shall be enforceable:

1. *Prepayment.* Except as prohibited by section 535.9, an association may include in the loan documents signed by the borrower a provision imposing a penalty in the event of prepayments as defined in the document.

2. *Protective disbursements.* An association may pay taxes, assessments, ground rents, insurance premiums and similar charges with respect to real estate securing a loan. An association may add these disbursements to the unpaid principal balance of the loan, in which event the disbursements shall be secured to the same extent as the principal balance of the loan.

3. *Protective payments — escrow accounts.* An association may include in the loan documents signed by the borrower a provision requiring the borrower to pay the association each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the association in order to better secure the loan. The association shall be deemed to be acting in a fiduciary capacity with respect to these funds. An association receiving funds pursuant to an escrow agreement executed on or after July 1, 1982 in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the association pays to members depositing funds in ordinary savings accounts. An association which maintains an escrow account in connection with any real estate loan, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annual accounting of all transactions made with respect to the loan and escrow account.

4. *Escrow reports.* A savings and loan association may act as an escrow agent with respect to real property that is mortgaged to the association, and may receive funds and make disbursements from escrowed funds in that capacity. The association shall be deemed to be acting in a fiduciary capacity with respect to these funds. A savings and loan association which maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select

a fiscal year reporting period other than the calendar year.

The summary shall be delivered or mailed not later than thirty days following the year to which the disclosure relates. The summary shall contain all of the following information:

a. The name and address of the mortgagee.

b. The name and address of the mortgagor.

c. A summary of escrow account activity during the year as follows:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(a) Payments against loan principal.

(b) Payments against interest.

(c) Payments against real estate taxes.

(d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) The balance of the escrow account at the end of the year.

d. A summary of loan principal for the year as follows:

(1) The amount of principal outstanding at the beginning of the year.

(2) The aggregate amount of payments against principal during the year.

(3) The amount of principal outstanding at the end of the year.

5. *Additional provisions.* An association may include in the loan documents signed by the borrower any other provision not inconsistent with this chapter.

6. *Marketability reports.* Section 524.905, subsection 4, applies to the association in the same manner as if the association is a bank within the meaning of that provision.

[C97, §1899; S13, §1899-a; C24, 27, 31, §9340, 9341; C35, §9340, 9340-b1, 9341; C39, §**9340.01, 9340.04 – 9340.06, 9340.08, 9340.09;** C46, 50, 54, 58, §534.25, 534.28 – 534.30, 534.32, 534.33; C62, 66, 71, 73, 75, 77, 79, 81, §534.21; 81 Acts, ch 174, §3, 7; 82 Acts, ch 1253, §24]

C83, §534.80

83 Acts, ch 124, §18

C85, §534.206

534.207 Commitment to residential loans.

1. *Commitment.* As an annual average, based on monthly computations, an association shall hold at least sixty percent of its assets in the following types of assets:

a. Loans secured by liens or claims on residential real estate, participation interests in groups of loans secured by liens or claims on residential real estate, securities that are secured by groups of loans secured by liens or claims on residential real estate, or property improvement loans for the making of improvements upon residential real property, or a combination of these.

b. Cash.

c. Obligations of the United States or of a state or political subdivision of a state, and stock or obligations of a corporation which is an instrumentality of the United States or of a state or political subdivision of a state, but not including obligations the interest on which is excludable from gross income under section 103 of the Internal Revenue Code.

d. Certificates of deposit in, or obligations of, a corporation organized under a state law which specifically authorizes such corporation to insure the deposits or share accounts of member associations.

e. Loans secured by a deposit or share of a member.

f. Property acquired through the liquidation of default loans.

g. Property used by the association in the conduct of its business under this chapter.

For the purposes of this subsection, *"residential real estate"* means real estate on which there is located, or within three years will be located following the construction of improvements financed by a real estate loan, a structure or structures designed or used primarily to provide living accommodations for people, except structures which are designed primarily to provide accommodations for transients.

2. *Failure to meet commitment.* If, upon examination, the superintendent of savings and loan associations determines that an association has failed to meet the requirements of subsection 1 for any two of its preceding five fiscal years, the association shall be so notified in writing, with a copy of the notice to the superintendent of banking, and the association shall within ninety days following receipt of the notice do one of the following:

a. Establish to the satisfaction of the superintendent that at least sixty percent of the current amount of its assets are held in the types of assets referred to in subsection 1. If the association subsequently fails to meet the requirements of subsection 1 during any one of the three fiscal years following the fiscal year in which the second violation in five years occurred, then the association shall within ninety days following receipt of a notice of this violation take one of the actions specified in paragraph *"b", "c", "d",* or *"e".*

b. File a plan of merger to merge with another state association whose assets are such that the two associations would have met the requirements of subsection 1 on a consolidated basis during at least four of the five preceding years.

c. File a plan of merger with a federal association or a bank under which the resulting organization is not a state association.

d. File a plan of conversion to become a federal

association or a bank.

e. File a plan of conversion that provides both for conversion to a stock association and for the immediate conversion of the resulting stock association to a bank.

3. *Failure to resolve problem.* If an association fails to take one of the actions required by subsection 2, or fails to complete the plan of merger or conversion within nine months after receiving the notice specified in subsection 2, the superintendent shall appoint a conservator to operate the association in conformance with subsection 1 or a receiver to liquidate the association.

[C73, §1185, 1186; C97, §1898, 1899; S13, §1898, 1899-a; C24, 27, 31, §9329, 9340, 9341; C35, §9329, 9330-e1, 9340, 9340-b1, 9341; C39, §**9329, 9330.1, 9340.01, 9340.04 – 9340.06, 9340.08, 9340.09, 9340.14;** C46, 50, 54, 58, §534.19, 534.21, 534.22, 534.25, 534.28 – 534.30, 534.32, 534.33, 534.38; C62, 66, 71, 73, 75, 77, 79, §534.19, 534.21; S79, §534.21; C81, §534.19, 534.21; 82 Acts, ch 1253, §21]

C83, §534.77

C85, §534.207

87 Acts, ch 171, §33; 90 Acts, ch 1208, §6

534.208 Consumer loans and certain securities.

An association may make consumer loans as defined in chapter 537, subject to the consumer loan provisions of that chapter. An association may invest in, sell, or hold commercial paper, corporate debt securities and bankers acceptances.

[80 Acts, ch 1167, §1; C81, §534.19]

84 Acts, ch 1112, §6

C85, §534.208

534.209 Commercial lending and accounts.

1. An association shall not hold more than forty percent of its assets in commercial loans and consumer loans as an annual average based on monthly computations.

2. An association may accept a commercial NOW account. For the purposes of this subsection, a *"commercial NOW account"* is a NOW account, as authorized by section 534.301, subsection 3, for a commercial, corporate, business, or agricultural entity.

3. For the purposes of this section, unless the context otherwise requires:

a. *"Commercial loan"* means a loan to a person borrowing money for a business or agricultural purpose.

b. *"Business purpose"* means a loan to a for-profit entity, or a for-profit activity, including but not limited to a commercial, service, or industrial enterprise carried on for profit, or an investment activity.

c. *"Agricultural purpose"* means as defined in section 535.13.

d. *"Commercial loan"* does not include a loan secured by an interest in real estate for the purpose of financing the acquisition of real estate or the construction of improvements on real estate. In determining which loans are *"commercial loans"* the rules of construction stated in section 535.2, subsection 2, paragraph *"b"*, apply.

4. For the purposes of this section, a lease of personal property is treated as a commercial loan if a loan to the lessee to acquire the property would have been a commercial loan.

[C97, §1899; S13, §1899-a; C24, 27, 31, §9340, 9341; C35, §9340, 9340-b1, 9341; C39, §**9340.01, 9340.04 – 9340.06, 9340.08, 9340.09;** C46, 50, 54, 58, §534.25, 534.28 – 534.30, 534.32, 534.33; C62, 66, 71, 73, 75, 77, 79, S79, C81, §534.21; 82 Acts, ch 1253, §19]

C83, §534.75

83 Acts, ch 101, §110

C85, §534.209

87 Acts, ch 171, §34

534.210 Line of credit arrangements.

An association may commit its assets to lines of credit pursuant to credit arrangements, including but not limited to agreements with credit and debit card holders and with other credit or debit card issuers. An association may become a member or stockholder of or become otherwise affiliated with, any credit or debit card corporation, association, or other issuer.

[C97, §1899; S13, §1899-a; C24, 27, 31, §9340, 9341; C35, §9340, 9340-b1, 9341; C39, §**9340.01, 9340.04 – 9340.06, 9340.08, 9340.09;** C46, 50, 54, 58, §534.25, 534.28 – 534.30, 534.32, 534.33; C62, 66, 71, 73, 75, §534.21; C77, 79, 81, §534.21, 534.73; 82 Acts, ch 1253, §25]

C83, §534.81

C85, §534.210

534.211 Successors in interest.

An association may deal directly with any person who has an interest in property which secures a loan by the association regarding the loan or the security interest without notice to any person who is obligated to repay the loan, and an association may forebear to sue or may extend time for payment of or otherwise modify the terms of the loan, without discharging or in any way affecting the liability of any person obligated to repay the loan.

[C62, 66, 71, 73, 75, 77, 79, 81, §534.19(5); 82 Acts, ch 1253, §26]

C83, §534.82

C85, §534.211

534.212 Actions to avoid loss.

An association may invest its funds, operate a business, manage or deal in property, or take any other action, over a reasonable period of time not exceeding one year, to avoid or reduce the loss on a loan or investment made or an obligation created in good faith, even though such action is not other-

wise authorized by this chapter.

An association taking any such actions shall notify the superintendent of the action or actions taken.

[82 Acts, ch 1253, §28]
C83, §534.84
C85, §534.212
90 Acts, ch 1208, §7

534.213 Investment in securities and real estate.

Every association shall have power to invest in securities and real estate as follows:

1. *General investment powers.* An association may invest without limit, except as expressly stated, in any of the following securities:

a. Obligations of, or obligations which are guaranteed as to principal and interest by, the United States or this state.

b. Stock of a federal home loan bank of which the association is eligible to be a member and any obligation or consolidated obligations of any federal home loan bank or banks.

c. Stock, obligations, or other instruments of the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or any successor.

d. Demand time or savings deposits, or bankers acceptances with any bank or trust company the deposits of which are insured by the federal deposit insurance corporation.

e. Stock or obligations of any corporation or agency of the United States or this state or deposits of the corporation or agency to the extent that the corporation or agency assists in furthering or facilitating the association's purposes or powers.

f. Savings accounts of any savings and loan association the deposits of which are insured by the federal deposit insurance corporation.

g. Bonds, notes, or other evidences of indebtedness which are a general obligation of a city, village, county, school district, or other municipal or political subdivision so long as the total investment under this paragraph does not exceed five percent of the assets of the association, except that any investments which are securities or obligations which are evidence of first mortgage liens on real estate are exempt from the five percent limitation.

h. Bonds or bond instruments secured by an interest in real estate.

i. Capital stock, obligations, or other securities of service corporations; however, the aggregate investment in service corporations shall not exceed ten percent of the assets of the association.

j. An open end management investment company registered under the federal Investment Company Act of 1940, the portfolio of which is restricted to investments in which an association may invest; however, the association's total investment in the shares of any one such company shall not exceed five percent of the association's assets without prior notification of the superintendent, who may prohibit exceeding the five percent limit by order.

k. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the association's investment in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. An association shall not invest more than a total of five percent of its assets in investments permitted under this paragraph or paragraph *"l"*. For purposes of this paragraph, *"venture capital fund"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provisions of significant managerial assistance to, small businesses which meet the small business administration definition of small business. *"Equity interests"* means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

l. Shares or equity interests in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. The total amount of an association's investments under this paragraph shall not exceed five percent of the association's capital and surplus. An association shall not invest in more than twenty percent of the total capital and surplus of any one small business under this paragraph. For purposes of this paragraph, *"small business"* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, which meets the appropriate small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state or other investments which provide an economic benefit to the state; and *"equity interests"* means limited partnership interests and other equity interests in which liability is limited to the amount of investment, but does not mean general partnership interests or other interests involving general liability.

m. In addition to other investments authorized in this section, an association may invest and may continue previous investments in capital stock, obligations, or other securities of finance subsidiaries and may exercise powers with respect

to finance subsidiaries to the same extent as a federal association is permitted under the Home Owners' Loan Act of 1933, 12 U.S.C. § 1464, and regulations adopted thereunder by the federal home loan bank board up to and including January 1, 1985. Investments authorized by this paragraph shall not be counted in applying the limitations on investments in service corporations in paragraph *"i"*.

n. In addition to other investments authorized in this section, an association may invest and may continue previous investments in capital stock, obligations, or other securities of corporations which are wholly owned by the association and which exercise only those powers which may be exercised by an association under this chapter. Investments authorized by this paragraph shall not be counted in applying the limitations on investments in service corporations in paragraph *"i"*.

o. Commercial paper and corporate debt securities with investment characteristics as defined by rules adopted by the superintendent.

2. *Investment in real estate*. In real estate purchased at sheriff's sale or at any other sale, public or private, judicial or otherwise, upon which the association has a lien or claim, legal or equitable; in real estate accepted by the association in satisfaction of any obligation; in real estate purchased for sale or improvement and sale, upon contracts, at the cost of land and improvements, when such contracts are executed concurrently with or prior to such purchase, such transactions to be subject to all the limitations herein provided with respect to real estate loans; in real estate acquired by the association in exchange for real estate owned by the association; in real estate acquired by the association in connection with salvaging the value of property owned by the association; an amount not exceeding the sum of its reserves and undivided profits in the purchase and development of real estate for the purpose of producing income or for sale or for improvement thereof and the erection of buildings thereon for sale or rental purposes. Title to all real estate shall be taken and held in the name of the association and such title shall immediately be recorded in accordance with law. No association shall invest in any loan at any time when its liquid assets are less than five percent of its savings liability, unless the superintendent shall have issued written approval.

3. *Investment in EFT organizations*. Subject to the prior approval of the superintendent, in shares in a corporation engaged in providing and operating facilities through which an association and its members may engage, by means of either the direct transmission of electronic impulses to and from the association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the association, in transactions in which the association is otherwise permitted to engage pursuant to applicable law.

4. *Deposits of funds by associations*. Funds of such associations may be deposited in any state or national bank insured by the federal deposit insurance corporation on certificate of deposit, or the usual bank pass book credit, subject to check by the proper designated officers of such association or in the federal home loan bank of the district in which Iowa is located.

5. *Investment in home office buildings*. Any such association may invest an amount not to exceed five percent of its paid-in savings liability or such additional amounts as are authorized by the superintendent in unencumbered real estate for use wholly or partly as its business office.

1-3. [C27, 31, 35, §9340-b1; C39, §**9340.01;** C46, 50, 54, 58, §534.25; C62, 66, 71, 73, 75, 77, 79, 81, §534.17; 82 Acts, ch 1253, §15]

4. [C27, 31, 35, §9340-b2; C39, §**9340.02;** C46, 50, 54, 58, §534.26; C62, 66, 71, 73, 75, 77, 79, 81, §534.16]

5. [C39, §**9340.16;** C46, 50, 54, 58, §534.40; C62, 66, 71, 73, 75, 77, 79, 81, §534.18]

84 Acts, ch 1112, §4

C85, §534.213

85 Acts, ch 136, §5; 85 Acts, ch 252, §37, 38; 90 Acts, ch 1208, §8 – 11; 91 Acts, ch 92, §8, 9

Investments in federally insured bonds, §636.45

534.214 Investment in and by banks.

1. *Investment in banks*. A holding company, association, or service corporation may invest in the capital stock, obligations, or other securities of a bank with the prior approval of the superintendent of savings and loan associations.

2. *Investment by banks*. Notwithstanding sections 524.802 and 524.901, subsection 3, a bank holding company, bank, or bank service corporation may, with the prior approval of the superintendent of banking, invest in the capital stock, obligations or other securities of a state association.

The superintendent of banking shall not approve an investment under this subsection if upon making the investment the entity making the investment directly or indirectly would own or control more than twenty-five percent of the voting shares of a savings and loan association or would have the power to control in any manner the election of a majority of the directors of a savings and loan association, unless the superintendent of banking first determines either that the association in which the investment is to be made has only those office locations which a bank would be authorized under section 524.1202 to apply for and have approved on the effective date of the proposed investment, or that all nonconforming office locations were in existence and operating on July 1, 1982. If such an investment is approved by the superintendent of banking, the association so owned or controlled shall not subsequently establish any additional office locations except one which a bank would be authorized under section 524.1202 to apply for and have approved on the

date which the proposed office location would commence operations.

3. *Contingencies.* An association or service corporation may make an investment under subsection 1 only if at the time of the investment either an insured bank or a bank service corporation owned by one or more insured banks would be permitted to make an investment under substantially the same circumstances in an insured state association under all applicable laws and regulations of the United States. A bank or bank service corporation may make an investment under subsection 2 only if at the time of the investment either an insured state association or a service corporation owned by one or more insured associations would be permitted to make an investment under substantially the same circumstances in an insured bank under all applicable laws and regulations of the United States. The ability of an organization to merge with another organization is not relevant in determining whether an organization is permitted to invest in another organization.

4. *Bank as holding company.* No bank shall directly or indirectly acquire ownership or control of more than twenty-five percent of the voting shares of any savings and loan association, or the power to control in any manner the election of a majority of the directors of any savings and loan association, if upon such acquisition the associations so owned or controlled by the bank would have, in the aggregate, more than eight percent of the total deposits, both time and demand, of all associations in this state, as determined by the superintendent of banking on the basis of the most recent reports of the associations in the state to their supervisory authorities which are available at the time of the acquisition.

5. *Definitions.* For purposes of this section an *"insured bank"* is a bank whose deposits are insured in part by the bank insurance fund of the federal deposit insurance corporation; a *"bank service corporation"* is as defined by, and in accordance with, the laws of the United States, and the *"superintendent of banking"* is the person appointed pursuant to section 524.201.

6. *Findings required.* The superintendent of savings and loan associations shall not grant an approval under subsection 1, and the superintendent of banking shall not grant an approval under subsection 2 except after making one of the two following findings:

a. Based upon a preponderance of the evidence presented, the proposed investment will not have the immediate effect of significantly reducing competition between depository financial institutions located in the same community as the institution whose shares would be acquired.

b. Based upon a preponderance of the evidence presented, the proposed investment would have the anticompetitive effect specified in paragraph *"a"* of this subsection, but that other factors, to be specifically cited, outweigh the anticompetitive effect so that there would be a net public benefit as a result of the investment.

7. *Competition preserved.* The subsequent liquidation of a bank or state association whose shares are acquired under this section shall not prevent the subsequent incorporation of another bank in the same community, and the superintendent of banking shall not find the liquidation to be grounds for disapproving the incorporation of another bank in the same community under section 524.305, and shall not prevent the subsequent incorporation of another association in the same community, and the superintendent of savings and loan associations shall not find the liquidation to be grounds for disapproving the incorporation of another association in the same community under this chapter.

[82 Acts, ch 1253, §27]
C83, §534.83
83 Acts, ch 101, §111
C85, §534.214
91 Acts, ch 92, §10

For future amendments to subsection 2 effective July 1, 2004, see 2001 Acts, ch 4, §9, 11

534.215 False statement for credit.

A person who knowingly does either of the following is guilty of a fraudulent practice:

1. Makes or causes to be made, directly or indirectly, a false statement in writing with the intent that the false statement shall be relied upon by an association for the purpose of procuring the delivery of property, the payment of cash, or the receipt of credit in any form, for the benefit of the person or of any other person in which the person is interested or for whom the person is acting.

2. Procures the delivery of property, the payment of cash, or the receipt of credit in any form, knowing that a false statement in writing has been made concerning the financial condition or means or ability to pay of the person, or any other person in which the person is interested or for whom the person is acting, if the person knew that the association relied or would rely upon the false written statement.

87 Acts, ch 171, §35

DIVISION III

SAVINGS ACCOUNTS

534.301 Savings account authority.

1. *Deposit accounts.* A stock association or mutual association may receive money for deposit.

2. *Share accounts.* A mutual association may receive money to be held in withdrawable share accounts and time share accounts.

3. *NOW accounts.* An association may offer savings accounts under which the owner of the account may order or authorize the withdrawal of

part or all of the savings account by means of a negotiable or nonnegotiable draft or similar instrument payable to the owner or to third parties or their order.

4. *Terms and conditions.* An association shall establish the interest rate, method of computing interest, service charges, and other terms and conditions of each type of savings account it will accept. These terms and conditions shall be consistent with this chapter, and shall be applied equally to all similar accounts. An association shall furnish a copy of the terms and conditions of a savings account upon request. An association shall give reasonable notice of any change in the terms and conditions to the owners of each type of savings account which is changed, provided that notice of changes in interest rates or methods of computing interest may be provided by posting a conspicuous notice of the change in each of the association's offices. The terms and conditions of an account established for a specified time period cannot be changed during that time period except with mutual consent or according to the original terms.

5. *Inducements.* An association may give inducements for the opening of a savings account or the making of additions to a savings account.

6. *Operating under federal rules as to deposits and interest.* A savings and loan association operating under this chapter may operate in a manner similar to federally chartered savings and loan associations regarding the use of the terms *"deposit"* and *"interest"* and with such other powers as have been authorized to federally chartered associations under the Homeowners' Loan Act of 1933, 12 U.S.C. § 1464, and as permitted under the rules and regulations of the federal home loan bank system and the federal office of thrift supervision, to the extent that similar rules and regulations have been adopted by the superintendent and have been filed with the secretary of state. This subsection does not diminish or restrict the powers otherwise granted to such association by the laws of Iowa.

The adoption and filing of such rules or regulations by the superintendent shall not diminish or restrict the rights of associations which do not make the above determination.

7. *Limitation on members' savings.* Associations having assets of five hundred thousand dollars or less shall not accept from any one member savings liability of more than ten thousand dollars. Associations having assets in excess of five hundred thousand dollars shall not accept from any one member savings liability in excess of ten percent of its assets. These limitations shall not apply to share accounts issued to the United States government, or to any other federal government agency or instrumentality.

1 – 5. [80 Acts, ch 1166, §1; C81, §534.11; 82 Acts, ch 1253, §10]

6. [69 Acts, ch 276, §1; 70 Acts, ch 1252, §1; C71, §534.19]

7. [C73, §1185; S13, §1898; C24, 27, 31, 35, 39, §**9330;** C46, 50, 54, 58, §534.20; C62, 66, 71, 73, 75, 77, 79, 81, §534.14]

C85, §534.301

91 Acts, ch 92, §11

534.302 Ownership of savings accounts.

1. *Ownership.* Savings accounts may be opened and held solely and absolutely in the person's own right by, or in trust for, any person, including an adult or minor individual, male or female, single or married, a partnership, association, fiduciary corporation, or political subdivision or public or government unit or any other corporation or legal entity. Savings accounts shall be represented only by the account of each savings account holder on the books of the association, and shall be transferable only on the books of the association and upon proper application by the transferee and upon acceptance of the transferee as a savings account holder upon terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner for all purposes without being affected by any notice to the contrary unless the association has acknowledged in writing notice of a pledge of the savings account.

2. *Evidence of ownership.* An account book may be issued to each savings account holder on the books of the association and the account book shall, if issued, indicate the withdrawal value of the account. A separate certificate for a savings account may be issued in lieu of an account book in form to be approved by the superintendent.

3. *Duplicate account books and certificates.* Upon the filing with an association by any one of the holders of record as shown by the books of the association, or by the holder's legal representative, of an affidavit to the effect that the account book or certificate evidencing a savings account with the association has been lost or destroyed, and that the account book or certificate has not been pledged or assigned in whole or in part, the association shall issue a new account book or certificate in the name of the holder or holders of record, the replacement book or certificate disclosing that it is issued in lieu of one lost or destroyed, and the association shall in no way be liable thereafter on account of the original account book or certificate, provided that the board of directors shall, if in its judgment it is necessary, require a bond in an amount it deems sufficient to indemnify the association against any loss which might result from the issuance of the new account book or certificate.

4. *Minors.* An association and a federal savings and loan association may issue a savings account to any minor as the sole and absolute owner of the account, and pay withdrawals and act with respect to the account on the order of the minor. Any payment or delivery of rights to any minor, or

a receipt of acquittance signed by a minor, who holds a savings account, shall be a valid and sufficient release and discharge of the institution for any payment so made or delivery of right to the minor. In the case of a minor, the receipt, acquittance or other action required by the institution to be taken by the minor shall be binding upon the minor with like effect as if the minor were of full age and legal capacity. The parent or guardian of a minor shall not in the capacity of parent or guardian have the power to attach or in any manner to transfer any savings account issued to or in the name of the minor, provided, however, that in the event of the death of the minor the receipt of acquittance of either parent or of a person standing in loco parentis to the minor shall be a valid and sufficient discharge of the institution for any sum or sums not exceeding one thousand dollars in the aggregate unless the minor previously has given written notice to the institution not to accept the signature of the parent or person.

5. *Joint accounts.* When a savings account is opened in any association or federal savings and loan association in the name of two or more persons, whether minor or adult, in such form that the moneys in the account are payable to either or the survivor or survivors then the account and all additions thereto shall be the property of those persons as joint tenants. The moneys in the account may be paid to or on the order of any one of them during their lifetimes or to or on the order of any one of the survivors of them after the death of any one or more of them upon presentation of the pass or account book or other evidence of ownership as required by the articles or bylaws of the association. The opening of the account in such form shall, in the absence of fraud or undue influence, be conclusive evidence in any act or proceedings to which either the association or the surviving party or parties is a party, of the intention of all of the parties to the account to vest title to the account and the additions thereto in the survivor or survivors. By written instructions given to the institution by all the parties to the account, the signatures of more than one of the persons during their lifetime or of more than one of the survivors after the death of any one of them may be required on any check, receipt or withdrawal order, in which case the institution shall pay the moneys in the account only in accordance with the instructions, but instructions of the parties shall not in any event limit the right of the survivor or survivors to receive the moneys in the account.

Payment of all or any of the moneys in an account as provided in the preceding paragraph of this subsection shall discharge the institution from liability with respect to the moneys so paid, prior to receipt by the institution of a written notice from any one of the parties directing the institution not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of such a notice an institution may refuse without liability to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties. An institution paying any survivor in accordance with the provisions of this subsection shall not be liable as a result of that action for any estate, inheritance or succession taxes which may be due this state.

6. *Pledge to association of savings account in joint tenancy.* The pledge to any association or federal savings and loan association of all or part of a savings account in joint tenancy signed by that person or those persons who are authorized in writing to make withdrawals from the account shall, unless the terms of the savings account provide specifically to the contrary, be a valid pledge and transfer to the association of that part of the account pledged, and shall not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

7. *Accounts of administrators, executors, guardians, custodians, trustees and other fiduciaries.* Any association or federal savings and loan association may accept savings accounts in the name of any administrator, custodian, executor, guardian, trustee, or other fiduciary in trust for a named beneficiary or beneficiaries, or other fiduciary in trust for a specified class of unnamed beneficiaries. The fiduciary shall have power to vote as a member as if the membership were held absolutely, to open and to make additions to, and to withdraw the account in whole or in part. The withdrawal value of the accounts, and dividends thereon, or other rights relating thereto may be paid or delivered, in whole or in part to the fiduciary without regard to any notice to the contrary as long as the fiduciary is living. The payment or delivery to the fiduciary or a receipt or acquittance signed by the fiduciary to whom payment or delivery of rights is made shall be a valid and sufficient release and discharge of the institution for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship has been given to an institution and the institution has no notice of any other disposition of the beneficial estate, the withdrawal value of the account and dividends on the account, or other rights relating to the account may, at the option of an institution, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries. Whenever an account is opened by any person, describing the person in opening the account as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than that description has been given in writing to the association, in the event of the death of the person so described as trustee, the withdrawal value of the account or any part thereof, together with the dividends or interest on the account, may be paid to the person for whom the account was thus stated to have been opened, and the account and all additions shall be the property

of that person. The payment or delivery to that person, or a receipt or acquittance signed by that person for any payment or delivery shall be a valid and sufficient release and discharge of the institution for the payment or delivery so made. An institution paying a fiduciary or beneficiary in accordance with the provisions of this subsection shall not be liable as a result of that action for any estate, inheritance or succession taxes which may be due this state.

8. *Pay on death accounts.* Any association and any federal savings and loan association may issue savings accounts in the name of one or more persons with the provision that upon the death of the owner or owners the proceeds shall be the property of the person or persons designated by the owner or owners and shown by the record of the association. After payment by the institution, the proceeds shall remain subject to the debts of the decedent and the payment of Iowa inheritance tax, if any. An institution paying the person or persons designated shall not be liable as a result of that action for any debts of the decedent or for any estate, inheritance, or succession taxes which may be due this state.

9. *Powers of attorney on savings account.* Any association or federal savings and loan association may continue to recognize the authority of an attorney authorized in writing to manage or to make withdrawals either in whole or in part from a savings account until it receives written notice or is on clear actual notice of the revocation of the attorney's authority. For the purpose of this subsection, written notice of the death or adjudication of incompetency of the savings account holder constitutes written notice of revocation of the authority of the attorney. An institution shall not be liable for damages, penalty or tax by reason of any payment made pursuant to this subsection.

10. *Savings accounts as legal investments.* Administrators, executors, custodians, guardians, trustees, and other fiduciaries of every kind and nature, insurance companies, business and manufacturing companies, banks, credit unions and all other types of financial institutions, charitable, educational, eleemosynary and public corporations and organizations, and municipalities and other public corporations and bodies, and public officials are authorized to invest funds held by them without any order of any court in share or deposit accounts or time certificates of deposit of insured savings associations which are under state supervision, or federal savings and loan associations organized under the laws of the United States and under federal supervision, and the investment shall be deemed and held to be a legal investment of the funds.

Whenever, under the laws of this state or otherwise, a deposit of securities is required for any purpose, the securities made legal investments by this subsection shall be acceptable for that deposit, and whenever, under the laws of this state or otherwise, a bond is required with security the bond may be furnished, and the securities made legal investments by this subsection in the amount of the bond, when deposited, shall be acceptable as security without other security.

The provisions of this subsection are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, corporations, organizations, and officials referred to in this subsection and the laws relating to the deposit of securities and the making and filing of bonds for any purpose.

[C97, §1901, 1904; C24, 27, 31, §9343, 9344, 9357; C35, §9330-e1; C39, §**9330.1, 9340.03, 9340.10, 9343, 9344, 9357;** C46, 50, 54, 58, §534.21, 534.27, 534.34, 534.42, 534.43, 534.55, 534.111 – 534.114; C62, 66, 71, 73, 75, 77, 79, 81, §534.11; 81 Acts, ch 175, §2; 82 Acts, ch 1253, §10]

C85, §534.302

90 Acts, ch 1208, §12

534.303 Contracts for savings programs.

1. *School savings.* An association may contract with the proper authorities of any public or nonpublic elementary or secondary school or other institution of higher learning, or any public or charitable institution caring for minors, for the participation and implementation by the association in any school or institutional thrift or savings plan, and it may accept savings accounts at the school or institution, either by its own collector or by any representative of the school or institution which becomes the agent of the association for that purpose.

2. *Payroll savings plans.* An association shall have power to contract with any corporation of any type for investment in such association by employees under a payroll savings plan.

[C39, §**9340.03;** C46, 50, 54, 58, §534.27; C62, 66, 71, 73, 75, 77, 79, 81, §534.23; 82 Acts, ch 1253, §16]

C85, §534.303

534.304 Withdrawals.

The terms of withdrawal of a member from such association shall be such that any withdrawing member shall receive a sum not less than the member has paid into said association less withdrawals and legal charges against the account, unless losses have occurred to said association, during the time that said withdrawing member was a member, which exceed the amount of the profits, or any fund created with which to pay such losses, and in that case such withdrawing member shall be charged with the member's proportionate share of the excess of the losses over the profits, and no more. Such association may provide by its articles of incorporation or bylaws or by resolution of its board of directors, the order in which withdrawals shall be paid, and when dividends shall cease on share accounts on which withdrawal demands

have been made and what portion of the association funds or receipts shall be used for payment of withdrawals.

[S13, §1903-a, -b; C24, 27, 31, 35, §9352, 9353; C39, §**9352, 9353**; C46, 50, 54, 58, §534.50, 534.51; C62, 66, 71, 73, 75, 77, 79, 81, §534.12]

C85, §534.304

534.305 Redemption.

When funds are on hand for the purpose, the association may redeem by lot or otherwise, as the board of directors determines, all or any part of any of its savings accounts on a dividend date by giving thirty days' notice by registered mail addressed to the account holders at their last addresses recorded on the books of the association. An association shall not redeem its share accounts when the association is in an impaired condition or when it has applications for withdrawal which have been on file more than thirty days and have not been reached for payment. The redemption price of a savings account shall be the full value of the account redeemed, as determined by the board of directors, but the redemption value shall not be less than the withdrawal value. If the notice of redemption has been given, and if on or before the redemption date the funds necessary for the redemption have been set aside for redemptions, dividends upon the accounts called for redemption shall cease to accrue from and after the dividend date specified as the redemption date, and rights with respect to those accounts terminate as of the redemption date, subject only to the right of the account holder of record to receive the redemption value without interest. Savings accounts which have been validly called for redemption must be tendered for payment within ten years from the date of redemption designated in the redemption notice, or they shall be canceled and paid to the treasurer of state for deposit in the general fund of the state and all claims of the account holders against the association are barred forever. Redemption shall not be made of any savings accounts which are held by a person who is a director and which are necessary to qualify the person to act as director.

[59 Acts, ch 338, §12; 61 Acts, ch 265, §7; C62, 66, 71, 73, 75, 77, 79, 81, §534.12]

83 Acts, ch 185, §51, 62; 83 Acts, ch 186, §10108, 10201, 10204

C85, §534.305

534.306 Association's lien on savings accounts.

Every association shall at all times have a lien upon the savings accounts of a savings account holder as security for repayment of money loaned to the person and as security for other indebtedness of the person to the association and the lien shall attach and continue without assignment or pledge to or possession by the association of any evidence of ownership. The lien may be enforced to satisfy any past due indebtedness by charging the indebtedness to the debtor's savings account.

[C39, §**9340.11;** C46, 50, 54, 58, §534.35; C62, 66, 71, 73, 75, 77, 79, 81, §534.12]

C85, §534.306

534.307 Dividends — service fee.

After making such provisions for absorbing immediate and possible future losses, the board of directors of such association shall annually, or at such other intervals as the board of directors may determine, declare and apportion as a dividend to members, according to its articles of incorporation, such portion of the association's net profits as it may deem available, and as authorized under this chapter. Members shall participate in dividends in proportion to their respective investments therein. Dividends for a particular month may be paid on sums invested by a member by the tenth day of that month or by such later date of that month as is authorized by the superintendent, which shall in no event be later than the twentieth day of a particular month. If the tenth day of said month or other authorized date falls on a Sunday, holiday or another business day on which the particular association is normally closed, then money received by the next business day may earn dividends from the first of that month. The board of directors may also devise other methods of paying dividends, including payment of dividends from date of investment to date of withdrawal, subject to the approval of the superintendent. Additionally a service fee not to exceed one dollar per dividend period may be charged to a member's account when no activity has taken place in said account for the eight preceding quarterly periods and the principal of such account is less than fifty dollars.

[C73, §1187; C97, §1902, 1903; C24, 27, 31, 35, §9347, 9350; C39, §**9347, 9347.1;** C46, 50, 54, 58, §534.45, 534.46; C62, 66, 71, 73, 75, 77, 79, 81, §534.42, 534.43]

C85, §534.307

87 Acts, ch 171, §36

534.308 Savings liability — classes of accounts.

The savings liability of an association is not limited, but consists only of the aggregate amount of share accounts of its members, plus dividends credited to the accounts, less redemption and withdrawal payments. Except as limited by the board of directors, a member may make additions to the member's share account in the amounts and at the times the member elects. Share accounts shall be opened for cash. The members of an association are not responsible for losses which its savings liability is not sufficient to satisfy, and share accounts are not subject to assessment, nor are the holders of share accounts liable for unpaid installments on their accounts. Dividends shall be de-

clared in accordance with this chapter.

An association shall not prefer one of its share accounts over any other share account as to the right to participate in dividends as to time or amount, except that an association may classify its savings accounts according to the location of the offices at which the accounts are opened, the character, amount or duration of the accounts, or the regularity of additions to the accounts, and may agree in advance to pay an additional rate of earnings for particular classes of accounts such as a variable rate or bonus for saving larger amounts, or for maintaining savings over a longer period of time or with regularity, as determined by the board of directors. However, all classes of accounts shall be available to all qualifying members. The board of directors may also determine that earnings shall not be paid on an account which has a withdrawable value in an amount less than fifty dollars. Except as provided in section 534.517, preference between share account members shall not be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of an association. An association shall not contract with respect to the savings liability in a manner inconsistent with this chapter.

[S13, §1898-a, -c; C24, 27, 31, 35, §9334, 9336; C39, §**9334, 9340.07, 9340.11;** C46, 50, 54, 58, §534.24, 534.31, 534.35; C62, 66, 71, 73, 75, 77, 79, 81, §534.10]

84 Acts, ch 1112, §3; 85 Acts, ch 194, §11

C85, §534.308

534.309 Adverse claims to deposits.

1. An association is not required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or any claim of authority to exercise control over, a deposit account made by a person or persons other than:

a. The customer in whose name the account is held by the association.

b. An individual or group of individuals who are authorized to draw on or control the account pursuant to certified corporate resolution or other written arrangement with the customer, currently on file with the association, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the association has received notice and which is not the subject of a dispute known to the association as to its original validity. The deposit account records of an association are presumptive evidence as to the identity of the customer on whose behalf the money is held.

2. To require an association to recognize an adverse claim to, or adverse claim of authority to control, a deposit account, whoever makes the claim must do either of the following:

a. Obtain and serve on the association an appropriate court order or judicial process directed to the association, restraining any action with respect to the account until further order of such court or instructing the association to pay the balance of the account, in whole or in part, as provided in the order or process.

b. Deliver to the association a bond, in form and amount and with sureties satisfactory to the association, indemnifying the association against any liability, loss, or expense which the association might incur because of its recognition of the adverse claim or because of its refusal by reason of such claim to honor any check or other order of anyone described in subsection 1, paragraphs *"a"* and *"b"*.

91 Acts, ch 85, §1

DIVISION IV

SUPERVISION

534.401 Division of savings and loan associations.

1. *Superintendent of savings and loan associations.* The superintendent of savings and loan associations is the administrator of professional licensing and regulation appointed pursuant to section 546.10, subsection 2, or an individual appointed by the administrator as provided in section 546.10, subsection 6.

2. *General supervisory power.* The superintendent has general supervision over all supervised organizations.

The superintendent may appoint examiners and assistants necessary to properly execute the duties of the office.

Before entering upon their duties, the superintendent and each examiner appointed by the superintendent shall take an oath of office and shall each give bond to the state, signed by a responsible surety company, in the penal sum of two thousand dollars, conditioned upon faithful and impartial discharge of the person's duty and on proper accounting for all funds and other valuables which may come into the person's hands. The bonds shall be approved by and filed with the auditor of state, together with oaths of office of the officers.

The superintendent may adopt further rules deemed necessary to enable savings and loan associations to properly carry on the activities authorized under this chapter.

3. *Duties.* The superintendent shall, at least once each year, cause examination and audit to be made of the affairs of every association subject to this chapter. If an association is insured under Title IV of the National Housing Act, 12 U.S.C. ch. 13, the superintendent may, in lieu of examination and audit, accept an examination or audit made by the federal office of thrift supervision. An association may, in lieu of examination and audit by the superintendent, at the option of the superintendent be audited by a certified public accountant, or

by a public accountant qualified and licensed to practice accountancy under the Code of Iowa. At least two copies of each examination or audit report, signed and verified by the accountant making it, shall promptly be filed with the superintendent. When, in the judgment of the superintendent, the condition of an association renders it necessary or expedient to make an extra examination or audit or to devote extraordinary attention to its affairs, the superintendent shall cause such work to be done. A copy of every examination or audit report shall be furnished to the association examined, exclusive of confidential comments made by the examiner, and a copy of every report and comments and any other information pertaining to an association may be furnished to the federal home loan bank board, federal home loan bank, and federal office of thrift supervision. A copy of an examination or audit report shall be presented to the board of directors at its next regular or special meeting, their action on it shall be recorded in the minutes, and two certified copies of the minutes shall be transmitted to the superintendent.

4. *Superintendent's annual report.* The superintendent, as of December 31 of each year, shall prepare and publish a report showing in general terms the condition of all savings and loan associations doing business in this state, and containing other general information as in the superintendent's judgment seems desirable. The reports shall also list the names of all examiners and other assistants appointed by the superintendent, together with their respective salaries and expenses, shall list all receipts from savings and loan associations, and shall show all expenditures made on account of the supervision and examination of the associations.

[C97, §1904, 1906; C24, 27, 31, §9354, 9355, 9360; C35, §9354, 9354-f1, 9355, 9360; C39, §**9354, 9354.1, 9360;** C46, 50, 54, 58, §534.52, 534.53, 534.57; C62, 66, 71, 73, 75, 77, 79, 81, §534.41; 82 Acts, ch 1253, §17]

C85, §534.401

86 Acts, ch 1245, §756; 88 Acts, ch 1158, §79; 91 Acts, ch 92, §12; 94 Acts, ch 1187, §21

534.402 Judicial review.

Judicial review of the actions of the superintendent may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C62, 66, 71, 73, 75, 77, 79, 81, §534.68]

C85, §534.402

534.403 Examinations.

1. *Superintendent's authority — examinations.* The superintendent and examiners shall have full access to all books and papers of an association which relate to its business, and to books, records, and papers kept by an officer, director, agent, or employee relating to, or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of an association, or any other person, in relation to its affairs, transactions, and condition, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

2. *Expenses, per diem, vacation, and sick leave.* If the examination is made under section 534.401, subsection 3, each examiner shall file with the superintendent an itemized, certified, and sworn voucher of the examiner's expense for the time the examiner is actually engaged in an examination. On the fifteenth and last days of each month each examiner shall file in triplicate with the superintendent a certified statement of the actual days engaged in examinations. The salaries shall be included in a two-week payroll period. Upon approval of the superintendent, the director of revenue and finance is authorized to issue warrants for payment of the vouchers and salaries, including a prorated amount for vacation and sick leave. Repayment to the state shall be made as provided by section 534.408, subsection 4. Savings and loan examiners shall be paid salaries at rates commensurate with, and shall be reimbursed for meals and lodging at the same rate and in the same manner as, that which is received by federal examiners operating under the federal home loan bank board.

3. *Record required.* A record of all examinations, reports, and related information shall be kept in the superintendent's office, showing in detail as to each association all matters connected with the conduct of its business, its financial standing, and everything touching its solvency, plan of business, and integrity.

The examinations, reports, and information shall be kept confidential in the office of the superintendent, and are not subject to publication or disclosure to others except as provided in this chapter. However, the superintendent may furnish any examination, report, or information to the federal office of thrift supervision, federal deposit insurance corporation, or a successor deposit insurance instrumentality, federal home loan bank board, or financial institution regulatory authorities of any state. Any evidence of felonious acts on the part of the officers, directors, or employees of an association may be referred by the superintendent to proper authorities. Members of associations, other than their officers and directors, are not entitled to inspection of any such records or information, and are not entitled to any information relative to the names of the members of an association, or the amounts invested by them, as disclosed in the superintendent's office, or in the records of an association.

4. *Revocation of authority.* If an association refuses to submit to examination, the superintendent shall revoke its certificate of authority.

[C97, §1904; C24, 27, 31, 35, §9354, 9355 – 9358; C39, §**9354, 9356 – 9358;** C46, 50, 54, 58, §534.52, 534.54 – 534.56; C62, 66, 71, 73, 75, 77, 79, 81, §534.41]

C85, §534.403

88 Acts, ch 1158, §80; 90 Acts, ch 1208, §13, 14; 91 Acts, ch 92, §13

534.404 Access to and release of information.

1. *Exclusiveness of access.*

a. A member may inspect the books and records of an association as they pertain to the member's loan or savings investment. Otherwise, the right of inspection and examination of the books and records is limited to the following:

(1) The superintendent or a duly authorized representative.

(2) Persons duly authorized to act for the association.

(3) A federal instrumentality or agency authorized to inspect or examine the books and records of an insured association or of an uninsured member by the federal home loan bank.

b. The accounts and loans of members shall be kept confidential by the association, its directors, officers and employees, and by the superintendent and the superintendent's examiners and representatives. However, the association may, upon receipt of the written consent of a member, furnish information concerning that member's loans and savings investments to a person who the association has reason to believe intends to use the information in connection with a credit transaction involving the member on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the member. However, written consent of a member is not required for the release of information concerning the member's loans to any of the following:

(1) Another association.

(2) A federal association.

(3) A bank.

(4) A credit union.

(5) An industrial loan company.

(6) A bona fide credit bureau.

(7) A real estate broker seeking the information in connection with the closing of a loan involving a member.

(8) A person acting in a fiduciary capacity as an agent for the member.

c. A member or any other person shall not have access to the books and records except upon express action and authority of the board of directors.

d. An association shall compile prior to its annual meeting, and shall make available to any member upon request of the member, a list by name of the aggregate remuneration paid by the association during the preceding fiscal year to each of the association's five highest paid officers and to each director of the association.

2. *Communication with members.* In the event, however, that any member or members desire to communicate with other members of the association with reference to any question pending or to be presented for consideration at a meeting of the members, the association shall furnish upon request a statement of the approximate number of members of the association at the time of such request, and an estimate of the cost of forwarding such communication. The requesting member or members shall then submit the communication to the superintendent who, if the superintendent finds it to be appropriate, truthful and in the best interests of the association and all its members, shall execute a certificate setting out such findings, forward the certificate together with the communications to the association, and direct that the communication be prepared and mailed by the association to the members upon the requesting member's or members' payment to it of the expenses of such preparation and mailing.

3. *Applicability of section to federal associations.* Insofar as the provisions of this section are not inconsistent with federal law, such provisions shall apply to federal savings and loan associations whose home offices are located in this state, and to the members thereof except that the communication provided for in subsection 2 shall be submitted to the federal home loan bank board, Washington, D.C., in the case of a federal savings and loan association and forwarded only upon that board's certificate and direction.

[C97, §1904; C24, 27, 31, 35, §9357; C39, §**9315, 9357;** C46, 50, 54, 58, §534.10, 534.55; C62, 66, 71, 73, 75, 77, 79, 81, §534.5; 81 Acts, ch 175, §1; 82 Acts, ch 1253, §9]

84 Acts, ch 1112, §2

C85, §534.404

534.405 Conservatorship — operation — termination.

If the superintendent, as a result of any examination or from a report made to the superintendent finds that a savings and loan association is violating a provision of its certificate of incorporation, or bylaws, or the laws of this state, or of the United States, or a lawful order of the superintendent, or is conducting its business in an unsafe manner, the superintendent may by an order direct discontinuance of the violation or unsafe practice, and conformance with all requirements of law. A conservator shall not be appointed for a solvent association if a violation or unsafe practice can be corrected otherwise. If an association refuses or neglects to comply with the order within the time specified in it, or if it appears to the superintendent that an association is in an unsafe condition or is conducting its business in an unsafe manner, or if the superintendent finds that an impairment of capital exists to such extent that it threatens loss to the members, or if an association

refuses to submit its books, papers, and accounts to the inspection of the superintendent or the superintendent's representative, the superintendent, by written order signed by the superintendent, may appoint a conservator to take charge of the association and manage its business until the superintendent permits the board of directors to resume management of the business or reorganizes the association, or until a receiver is appointed to liquidate its affairs.

A conservator so appointed has, subject to approval of the superintendent, all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association. The conservator shall not retain special counsel or other experts, or incur any expenses other than normal operating expenses, or liquidate assets, except in the ordinary course of operations. The directors and officers shall remain in office and the employees shall remain in their respective positions, but the superintendent may remove any director, officer, or employee. While the association is in the charge of a conservator, members of the association shall continue to make payments to the association in accordance with the terms of their contracts and the conservator, in the conservator's discretion, may permit members to withdraw in the ordinary course of business, or under and subject to rules the superintendent may prescribe.

The conservator may accept savings but savings received by the conservator may be segregated if the superintendent so orders in writing and if so ordered such savings are not subject to offset and shall not be used to liquidate an indebtedness of the association existing at the time the conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of the association existing at the time a conservator was appointed. All expenses of the association during conservatorship shall be paid by the association.

The appointment of a conservator shall be evidenced by the superintendent issuing a certificate, signed by the superintendent, delivered to the president, or the vice president, or to at least three members of the board of directors of the association, certifying that a conservator has been appointed pursuant to this section. Within six months from the date upon which the conservator takes charge of an association, the superintendent shall determine whether to restore the management of the association to the board of directors. The determination shall be evidenced by the superintendent's certificate under the seal of the office, delivered to the president, or vice president, or to the board of directors of the association, that the conservator is redelivering the management of the association to the board of directors of the association then in office.

After the management of the association has been redelivered to the board of directors of an association, the association shall be managed and operated as though no conservator had been appointed. At any time prior to the redelivery of the management to the board of directors, the superintendent shall determine whether the association shall be required to reorganize. That determination shall be evidenced by a certificate, signed by the superintendent, under the seal of the office, delivered to an executive officer of the association, stating that unless the association reorganizes under the laws of this state within a period of sixty days from the date of the certificate, or within such further time as the superintendent approves, the superintendent shall liquidate the association.

If the association has the insurance protection provided by Title IV of the National Housing Act, 12 U.S.C. ch. 13, a signed and sealed copy of each order and certificate mentioned in this section shall be promptly sent by the superintendent by registered mail to the federal office of thrift supervision, Washington, D.C. If the association is insured by the savings association insurance fund of the federal deposit insurance corporation, the resolution trust corporation shall be named receiver if the superintendent has determined the need for a receivership.

Actions taken by the superintendent under this section are not subject to section 17A.18, subsection 3.

[C39, §**9361;** C46, 50, 54, 58, §534.58; C62, 66, 71, 73, 75, 77, 79, 81, §534.46]

C85, §534.405

88 Acts, ch 1158, §81; 90 Acts, ch 1208, §15; 91 Acts, ch 92, §14

534.406 Receivership.

If a building and loan or savings and loan association is conducting its business illegally, or in violation of its articles of incorporation or bylaws, or is practicing deception upon its members or the public, or is pursuing a plan of business that is injurious to the interest of its members, or if its affairs are in an unsafe condition, the superintendent shall notify the directors of the association, and, if they fail to put its affairs upon a safe basis, the superintendent shall advise the attorney general, who shall take the necessary steps to wind up its affairs in the manner provided by law. In the proceedings a receiver may be appointed by the court and the proceedings shall be the exclusive liquidation or insolvency proceeding and a receiver shall not be appointed in any other proceedings.

[C97, §1907; C24, 27, 31, 35, 39, §**9362;** C46, 50, 54, 58, §534.59; C62, 66, 71, 73, 75, 77, 79, 81, §534.47]

C85, §534.406

85 Acts, ch 195, §49; 88 Acts, ch 1158, §82

534.407 Revocation of certificate.

If a certificate of authority to do business has been issued to an association, and it violates any

of the provisions of this chapter, the superintendent may revoke the certificate.

[C97, §1917; C24, 27, 31, 35, 39, §**9387;** C46, 50, 54, 58, §534.84; C62, 66, 71, 73, 75, 77, 79, 81, §534.63]

C85, §534.407

88 Acts, ch 1158, §83

534.408 Supervisory fees.

1. *Payable to division.* Associations shall pay fees by delivering to the superintendent a check payable to the savings and loan division of the department of commerce. All fees collected under this chapter shall be deposited with the treasurer of state in the general fund of the state.

2. *Incorporation fee.* Simultaneously with the filing with the superintendent of a certificate of incorporation, the corporation shall pay an incorporation fee of one hundred dollars.

3. *Change of location or change of name.* A fee of fifty dollars shall accompany each application to the superintendent for permission to change the location of the home office or to change the name of the association.

4. *Supervision and examination fee.* At the time of filing its annual report each association shall pay to the superintendent an annual filing fee of fifty dollars. The superintendent shall assess against an association the actual and necessary expenses incidental to examinations, or to supervision, or to a special audit made pursuant to an order of the superintendent acting under authority of this chapter. The annual assessment to each association shall also include a fair proportion of the cost of administration of the savings and loan division.

5. *Merger fee.* At the time of filing with the superintendent a merger agreement, the association proposing to merge shall submit a fee of one hundred fifty dollars, which fee shall be paid in equal parts by the associations which are parties to the proposed merger.

6. *For reorganization, transfer of assets, and dissolution.* A fee of fifty dollars shall accompany a proposed plan of reorganization, a proposal for the transfer of assets in bulk, and a certificate of dissolution, filed with the superintendent for approval.

7. *For approval of superintendent.* The superintendent, in the superintendent's discretion, may charge a fee of not exceeding ten dollars upon each application for the superintendent's approval, as provided by this chapter.

[C97, §1913; C24, 27, 31, 35, 39, §**9380;** C46, 50, 54, 58, §534.78; C62, 66, 71, 73, 75, 77, 79, 81, §534.61]

C85, §534.408

86 Acts, ch 1246, §619; 87 Acts, ch 234, §437; 88 Acts, ch 1158, §84; 90 Acts, ch 1247, §16; 91 Acts, ch 92, §15; 91 Acts, ch 260, §1245; 92 Acts, ch 1163, §104

534.409 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to associations, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The superintendent shall co-operate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a savings and loan association when necessary to enable the administrator to enforce chapter 537.

4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the superintendent to each association or other person upon request. The annual report shall contain:

a. A summary of applications for organization approved or denied by the superintendent since the last report.

b. A summary of the volume of consumer installment credit outstanding per association as of December 31 of the year for which the report is made.

c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

d. Information which the superintendent may deem appropriate and advisable to disclose.

e. Information which the administrator may require to be included.

[C75, 77, 79, 81, §534.70]

C85, §534.409

DIVISION V

CORPORATE STRUCTURE

534.501 Articles of incorporation.

1. *Original articles.* The original articles of incorporation of an association shall set forth:

a. The name of the association.

b. Whether the association is organized as a mutual association or a stock association.

c. That the association will operate under this chapter.

d. The period of duration if for a limited period, but in the absence of any statement in the articles an association shall have perpetual duration.

e. The officer or officers authorized to sign instruments pertaining to real estate.

f. Whether or not the association will have a corporate seal, and whether such seal must be affixed to instruments pertaining to real estate.

g. If a stock association, the information specified in section 490.202 and sections 490.601 and 490.602.

h. Any other provision not inconsistent with

this chapter.

i. The person to whom the certificate of incorporation should be mailed by the secretary of state after filing.

j. The address of its registered office including street and number, if any, the name of the county in which the registered office is located, and the name of its registered agent or agents at such address.

k. The name and address of each incorporator.

l. The name and address and initial term of office of each member of the initial board of directors.

m. Any provision eliminating or limiting the personal liability of a director to the corporation or its shareholders or members, for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for any breach of the director's duty of loyalty to the association or its shareholders or members, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or for any transaction from which the director derives an improper personal benefit. A provision shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

2. *Articles may omit powers.* It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

3. *Restated articles.* Restated articles of incorporation shall set forth the information specified in paragraphs *"a"*, *"b"*, *"c"*, *"d"*, *"e"*, *"f"*, *"g"*, *"h"*, *"i"*, *"j"*, and *"m"* of subsection 1.

4. *Amendment procedure.* The procedure for amending articles of incorporation or adopting restated articles for mutual associations is that specified in section 504A.35, and for stock associations it is that specified in section 490.726 and sections 490.1002 through 490.1005.

5. *Effective date.* Original articles, amendments, and restatements are effective on the date they are filed with the secretary of state, or on such later effective date as is stated therein. The secretary of state shall not accept any of these documents for filing unless it has been approved by the superintendent.

[C73, §1184; C97, §1891, 1893 – 1895; C24, 27, 31, 35, 39, §**9310, 9313, 9315 – 9317, 9319;** C46, 50, 54, 58, §534.4, 534.8, 534.9, 534.11 – 534.13; C62, 66, 71, 73, 75, 77, 79, 81, §534.3; 82 Acts, ch 1253, §29]

C83, §534.85

C85, §534.501

87 Acts, ch 212, §15, 16; 88 Acts, ch 1170, §12; 90 Acts, ch 1205, §54

534.502 Bylaws.

1. *General provisions.* The initial bylaws of an association shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the association not inconsistent with the law or the articles. If the articles of a stock association so provide, the bylaws may contain provisions restricting the transfer of shares.

2. *Effective date.* Amendments to bylaws or restatements of bylaws are effective on the date they are adopted if they have been preapproved by the superintendent or on the date they are approved by the superintendent if they were not preapproved, provided that the amendment or restatement is effective on a later effective date if so provided therein.

[82 Acts, ch 1253, §29]

C83, §534.86

C85, §534.502

534.503 Voting by members.

Each member shall have one vote for each one hundred dollars of net equity above share loans in the member's share account owned and held by the member at any election, and may vote the same by proxy, but no person shall vote more than ten percent of the savings liability at the time of said election excepting that proxies held and voted by an individual member or a proxy committee shall not be included in said ten percent limitation. Every proxy shall be in writing and shall, unless otherwise specified in the proxy, continue in force for eleven months from the date thereof, provided that upon receipt of a written request for a new proxy solicitation that is signed by at least two percent of the members of the association, all proxies executed prior to the date of receipt of the written request shall be void upon the expiration of sixty days following the date of receipt of the written request. No proxies shall be voted at any meeting unless such proxies have been on file with the secretary of the association for verification at least five days before the date of the meeting. Anyone depositing or transferring savings as collateral security shall be deemed the owner of such share account within the meaning of this section. Notice of the regular annual meeting of members of an association shall be given by publishing said notice in a newspaper of general circulation in the county in which the office of said association is located at least thirty days before the date set for said annual meeting. Proxies may be revoked by any member upon written notice to the secretary of an association; by execution of a written proxy to another agent; or by personal attendance by the member at the members' meetings. Each member as defined by section 534.102, shall, regardless of shares, be entitled to at least one vote at any mem-

bers' meeting.

[C97, §1900; C24, 27, 31, 35, §9342; C39, §**9342;** C46, 50, 54, 58, §534.41; C62, 66, 71, 73, 75, 77, 79, 81, §534.12; 82 Acts, ch 1253, §11, 12]

C85, §534.503

534.504 Meetings of stockholders.

Sections 490.701 through 490.732 apply to stock associations.

[82 Acts, ch 1253, §29]

C83, §534.87

C85, §534.504

90 Acts, ch 1205, §55; 2002 Acts, ch 1154, §120, 125

2002 amendment to this section is effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

534.505 Incorporating an association.

1. *Plan of incorporation.* One or more persons may petition for approval of a plan of incorporation for an association by forwarding to the superintendent the following:

a. The proposed original articles of incorporation.

b. The proposed original bylaws.

c. An application for approval of each proposed office.

d. Other information the superintendent requires.

2. *Procedures.* If the superintendent approves the plan of incorporation, the superintendent shall note the approval on the original articles, and the original articles shall be filed with the secretary of state.

3. *Certificate of operation.* A corporation shall not operate as an association under this chapter until it has received a certificate of operation from the superintendent. The superintendent shall not issue a certificate of operation to the association until approved articles and bylaws have been adopted, the superintendent has received satisfactory proof that the corporation will be an insured association before receiving any money in savings accounts, and the interests of the public and members have been adequately protected.

[C73, §1184; C97, §1891, 1893 – 1895; C24, 27, 31, 35, 39, §**9310, 9313, 9315 – 9317, 9319;** C46, 50, 54, 58, §534.4, 534.8, 534.9, 534.11 – 534.13; C62, 66, 71, 73, 75, 77, 79, 81, §534.3; 82 Acts, ch 1253, §29]

C83, §534.89

C85, §534.505

87 Acts, ch 171, §37

534.506 Account insurance required.

1. An association organized under this chapter as a condition of maintaining its privilege of organization after July 1, 1984 shall acquire and maintain insurance to protect each depositor against loss of funds held on account by the association. The insurance shall be obtained from the federal deposit insurance corporation or another insurance plan approved by the superintendent, provided that each association organized under this chapter shall acquire deposit insurance from the appropriate agency of the federal government.

2. The superintendent may furnish to an official of an insurance plan by which the accounts of the association are insured, any information relating to examinations and reports of the status of that association for the purpose of determining availability of insurance to that association.

84 Acts, ch 1196, §4; 91 Acts, ch 16, §3; 91 Acts, ch 92, §16

534.507 Name.

The name of an association shall contain the words *"savings bank"* or the words *"savings and loan association"*. An association shall not advertise or hold itself out to the public as a commercial bank; however, a corporate name, logo, or signage existing on January 1, 1989, depicting the name of the association may be used for as long as the association chooses to continue to use the name, logo, or signage existing on that date.

84 Acts, ch 1112, §8; 90 Acts, ch 1208, §16

534.508 Stock association capitalization.

1. *In general.* Sections 490.601 through 490.604, 490.620 through 490.628, 490.630, and 490.1704 apply to stock associations.

2. *Permanent capital.* Except as provided in this chapter, the total of the par values of all outstanding shares of voting common capital stock shall be permanent capital of the stock association and shall not be retired until final liquidation of the stock association. A stock association shall not reduce its outstanding voting common capital stock without first obtaining the consent of the superintendent. Consent shall be withheld if the reduction will cause the par value of outstanding voting common capital stock to be less than the minimum required by rules adopted by the superintendent.

3. *Capital stock as security.* A stock association shall not make a loan secured by the pledge of its capital stock.

4. *Dividends on capital stock.* A stock association may declare and pay dividends on capital stock in cash or property out of the unreserved and unrestricted earned surplus of the stock association, or in its own shares, except when the stock association is in an impaired condition or when the payment thereof would cause the stock association to be in an impaired condition. A split-up or division of the issued shares of capital stock into a greater number of shares without increasing the stated capital of the stock association is authorized, and shall not be construed to be a dividend within the meaning of this subsection.

[82 Acts, ch 1253, §13, 29]
C83, §534.19, 534.91
C85, §534.508
90 Acts, ch 1205, §56

534.509 Conversions.

1. *Types authorized.* The following types of conversions are authorized:

a. Mutual association to stock association.

b. Stock association to mutual association.

c. Mutual association or stock association to federal mutual association or federal stock association.

d. Federal mutual association or federal stock association to mutual association or stock association.

e. Stock association to a bank chartered under chapter 524.

2. *Insurance.* The organization must be either an insured association, a federal association, or an insured bank after any conversion.

3. *Plan of conversion.* The board of directors shall approve a plan of conversion by a majority vote of all directors then serving. The plan shall include the following:

a. The proposed restated articles of incorporation.

b. The proposed restated bylaws.

c. The effect of the conversion on each type of member or each class of stockholders.

d. Other information the superintendent of savings and loan associations requires.

e. If the conversion is to a bank, information required by the superintendent of banking.

4. *Superintendent of savings and loan associations' approval.* The plan of conversion shall be submitted to the superintendent for approval. The superintendent shall reject the plan based on any of the following determinations:

a. The plan is inconsistent with applicable statutes or regulations.

b. The plan does not contain all required information.

c. The plan is inequitable to a class of members or shareholders.

The superintendent shall notify the organization which submitted the plan of the superintendent's decision, and the reasons for rejection if the plan is rejected.

5. *Superintendent of banking's approval.* The plan of conversion shall be submitted to the superintendent of banking for approval if the conversion is to a bank. The superintendent of banking shall reject the plan based on any of the following determinations:

a. The plan is inconsistent with applicable statutes or regulations.

b. The plan does not contain all required information.

c. The character and fitness of the members of the initial board of directors is not such as to command the confidence of the community and to warrant the belief that the organization's business will be honestly and efficiently conducted.

d. The capital structure of the organization is not adequate in relation to its anticipated business.

e. The organization will not have sufficient personnel with adequate knowledge and experience to conduct its business and administer any fiduciary accounts which it proposes to handle.

f. The plan does not provide for the closing or sale of all of the offices which must be discontinued in order for the organization to have only those home and branch offices which a bank is allowed to have under chapter 524.

The superintendent of banking shall notify the organization which submitted the plan of the superintendent's decision, and the reasons for rejection if the plan is rejected. The organization may amend and resubmit the plan in response to a notification of rejection.

6. *Member or stockholder approval.* The plan of conversion must be approved at an annual meeting of members or stockholders, or at a special meeting called to consider the plan, by a majority vote of the members represented in person or by proxy if a mutual association or federal mutual association, or a majority vote of each class of voting stock represented in person or by proxy if a stock association or federal stock association.

If the proposed conversion is the conversion of a mutual association to a stock association, the board of directors shall cause written notice of the date, time and purpose of the meeting at which the members will be asked to vote on the proposal to be mailed by first class mail, postage prepaid, to each member of the association not less than thirty days prior to the date of the meeting, and the board shall cause a copy of this notice to be posted in a conspicuous location in each of the association's offices from the date of mailing until the date of the meeting. The notice to be mailed to members and posted also shall give notice, in a form and manner to be prescribed by rule of the superintendent, the rights of a member to have access to and communicate with other members as provided in section 534.404, subsection 2 and the procedures that are to be followed under that provision. The mailed notice may be included in an envelope containing a periodic statement of account to the member. The superintendent may require that the date for the meeting of members be postponed to a date certain, not more than thirty days after the date originally prescribed, if the superintendent determines that such additional time is necessary to enable members who have requested to communicate with other members under section 534.404, subsection 2, to properly exercise that right.

If the proposed conversion is the conversion of a stock association to any other type of entity, the board of directors shall cause written notice of the

proposed conversion and the earliest date when the proposed conversion might become effective to be posted in a conspicuous location in each of the association's offices commencing thirty days prior to the date of the shareholder's meeting at which the proposal will be voted upon and until thirty days after that date.

If the plan of conversion is approved, a copy of the minutes of the meeting, certified and acknowledged by the secretary or assistant secretary, shall be filed with the superintendent.

7. *Conversion to association.* If a state association results from the plan of conversion, the superintendent shall issue a certificate of incorporation when all of the following have occurred:

a. The superintendent has received adequate assurance that the association will be an insured association upon issuance of the certificate of incorporation.

b. The superintendent has approved the plan of conversion.

c. The superintendent has received the certified minutes of approval under subsection 6.

The proposed articles of incorporation and bylaws as contained in the plan of conversion shall become effective upon the issuance of the certificate of incorporation.

8. *Conversion to federal association.* If a federal association results from the plan of conversion, the association shall cease to be an association and shall no longer be subject to the supervision and control of the superintendent when all of the following have occurred:

a. The superintendent has received a copy of the charter issued to a converting association by the federal home loan bank board or a certificate showing the organization of such association as a federal savings and loan association, certified by the secretary or assistant secretary of the federal home loan bank board.

b. The superintendent has approved the plan of conversion.

c. The superintendent has received the certified minutes of approval under subsection 6.

9. *Conversion to a bank.* If a bank results from the plan of conversion, the association shall cease to be an association and shall no longer be subject to the supervision and control of the superintendent when all of the following have occurred:

a. The superintendent has received from the superintendent of banking a certificate showing that the organization is chartered as a bank.

b. The superintendent has approved the plan of conversion.

c. The superintendent has received the certified minutes of approval under subsection 6.

10. *Certification.* The superintendent shall prepare a certificate of conversion upon the occurrence of all of the events stated in subsection 7, 8, or 9. This certificate shall include the name of the corporation which adopted the plan of conversion, the name of the corporation after the conversion, and the effective date of conversion. The original certificate shall be filed with the secretary of state. The superintendent shall provide a certified copy of the certificate to any person upon payment of a five dollar fee. A certified copy of this certificate shall be sufficient proof of that conversion for purposes of establishing the liability for debts or the ownership of assets as provided in section 534.510, subsections 2 and 3.

11. *Competition preserved.* A conversion of an association to a bank under this section shall not prevent the subsequent incorporation of another bank in the same community, and the superintendent of banking shall not find the existence of the bank resulting from the conversion to be grounds for disapproving the incorporation of another bank in the same community under section 524.305, subsection 1, paragraph *"b"* or *"c"*. A conversion of an association to a bank under this section shall not prevent the subsequent incorporation of another association in the same community, and the superintendent of savings and loan associations shall not find the existence of the bank resulting from the conversion to be grounds for disapproving the incorporation of another association in the same community under this chapter.

[C35, §9402-f1 – 9402-f8; C39, §**9315.1, 9402.1 – 9402.8;** C46, 50, 54, 58, §534.10, 534.102 – 534.109; C62, 66, 71, 73, 75, 77, 79, 81, §534.24 – 534.30; 82 Acts, ch 1253, §30]

C83, §534.92

84 Acts, ch 1067, §45

C85, §534.509

534.510 Effects of conversion.

1. *Continuation.* The legal existence of an entity shall not terminate as a result of a conversion under section 534.509. The entity resulting from a conversion shall be a continuation of the same corporate entity which adopted the plan of conversion.

2. *Liabilities.* The corporation resulting from a conversion is liable for all obligations incurred by the corporation before, during or after the conversion.

3. *Assets.* All property of the corporation adopting a plan of conversion, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal or mixed, choses in action, and every other right and privilege immediately vests in the corporation resulting from the conversion, by act of law and without any other conveyance, act or deed, except to the extent an interest in property passes to another person under the explicit terms of the plan of conversion.

4. *Pending actions.* Pending actions in any court or tribunal to which the corporation adopting a plan of conversion is a party shall not be abated or discontinued by reason of the conversion, but may be prosecuted in the same manner as if the conversion had not been made.

[C35, §9402-f1 – 9402-f8; C39, §**9315.1, 9402.1 – 9402.8;** C46, 50, 54, 58, §534.10, 534.102 – 534.109; C62, 66, 71, 73, 75, 77, 79, 81, §534.24 – 534.30; 82 Acts, ch 1253, §31]

C83, §534.93

C85, §534.510

534.511 Merger.

1. *Merger defined.* As used in this section, the terms *"merger"* or *"merge"* means any plan by which the assets and liabilities of an entity are combined with those of one or more other entities, including transactions in which one of the corporate entities survives and transactions in which a new corporate entity is created.

2. *Types authorized.* An association may merge only with one or more other state associations, federal associations, association holding companies, bank holding companies, or banks.

3. *Plan of merger.* The board of directors of each merging entity shall approve an identical plan of merger by a majority vote of all directors then serving. The plan shall include the following:

a. The proposed name of the surviving organization.

b. The proposed articles of incorporation of the surviving organization.

c. The proposed bylaws of the surviving organization.

d. The effect of the merger on each type of member or each class of stockholders.

e. Other information required by the superintendent.

4. *Superintendent of savings and loan associations' approval.* The plan of merger shall be submitted to the superintendent of savings and loan associations for approval. The superintendent shall reject the plan based on any of the following determinations:

a. The plan is inconsistent with applicable statutes or regulations.

b. The plan does not contain all required information.

c. The plan is inequitable to a class of members or stockholders.

The superintendent shall notify the organizations which submitted the plan of the superintendent's decision, and the reasons for rejection if the plan is rejected.

5. *Superintendent of banking's approval.* The plan of merger shall be submitted to the superintendent of banking for approval if the proposed merger is with or into a bank or bank holding company. The superintendent of banking shall reject the plan based on any of the following determinations:

a. The plan is inconsistent with applicable statutes or regulations.

b. The plan does not contain all required information.

c. The capital structure of the resulting organization will not be adequate in relation to its anticipated business.

d. The plan does not provide for the closing or sale of all of the offices which must be discontinued in order for the resulting organization to have only those office locations which a resulting bank would be authorized under chapter 524 to apply for and have approved on the effective date of the merger if it had no bank office locations in operation on that date.

The superintendent of banking shall notify the organization which submitted the plan of the superintendent of banking's decision, and the reasons for rejection if the plan is rejected. The organization may amend and resubmit the plan in response to a notification of rejection.

6. *Member or stockholder approval.* The plan of merger must be approved at an annual meeting of members or stockholders, or at a special meeting called to consider the plan, by a majority vote of the members represented in person or by proxy of each of the mutual associations or federal mutual associations included in the plan, or a majority vote of each class of voting stock represented in person or by proxy of each of the stock associations, federal stock associations, bank holding companies or banks included in the plan. If so approved, a copy of the minutes of the meeting, certified and acknowledged by the secretary or assistant secretary, shall be filed with the superintendent.

7. *Receivership.* If a receiver has been appointed for any association included in the plan of merger, the receiver shall act in place of the board of directors and the members or stockholders, and the plan must also be approved by the court by which the receiver was appointed.

8. *Certification.* The superintendent shall prepare a certificate of merger upon the occurrence of all of the events stated in subsections 3, 4, 5, 6, and 7. This certificate shall include the name of the surviving association, federal association, or bank and the effective date of the merger. The original certificate shall be filed with the secretary of state. The superintendent shall provide a certified copy of the certificate to any person upon payment of a five dollar fee. A certified copy of this certificate is sufficient proof of the merger for purposes of establishing liability for debts or the ownership of assets as provided in section 534.512, subsections 1 and 2. An association involved in a merger may transfer assets or receive assets under the plan of merger only after the certificate of merger has been issued by the superintendent.

9. *Competition preserved.* A merger under this section shall not prevent the subsequent incorporation of another bank in the community in which the merged association is located, and the superintendent of banking shall not find the merger to be grounds for disapproving the incorporation of another bank in the same community under section 524.305, subsection 1, paragraph *"b"* or *"c"*. A merger under this section shall not prevent the

subsequent incorporation of another association in the community in which the merged association is located, and the superintendent of savings and loan associations shall not find the merger to be grounds for disapproving the incorporation of another association in the same community under this chapter.

10. *Limitations.* Nothing contained in this chapter shall be construed to authorize an association to merge with or be acquired wholly or in part by a foreign institution unless all applicable laws and regulations of the United States would specifically authorize a merger with or acquisition by a foreign institution. For purposes of this subsection the term *"foreign institution"* means a federal association whose home office is located in another state, a bank whose home office is located in another state, or a bank holding company which is with respect to the state of Iowa an *"out-of-state bank holding company"* as defined or referred to in 12 U.S.C. 1842(d), and for purposes of this subsection the words *"acquire"* or *"acquisition"* mean to directly or indirectly acquire ownership or control of more than twenty-five percent of the voting shares of any association or the power to control in any manner the election of a majority of the directors of any association.

1 – 9. [S13, §1907-b, -c; C24, 27, 31, 35, 39, §**9366 – 9370;** C46, 50, 54, 58, §534.64 – 534.68; C62, 66, 71, 73, 75, 77, 79, 81, §534.36 – 534.40; 82 Acts, ch 1253, §32]

10. [S13, §1907-b, -c; C24, 27, 31, 35, 39, §**9366 – 9370;** C46, 50, 54, 58, §534.64 – 534.68; C62, 66, 71, 73, 75, 77, 79, 81, §534.36 – 534.40; 82 Acts, ch 1253, §35]

C83, §534.94, §534.97
C85, §534.511
88 Acts, ch 1158, §85; 90 Acts, ch 1208, §17

534.512 Effects of merger.

1. *Liabilities.* The association, federal association or bank resulting from a merger is liable for all obligations incurred by each of the associations, federal associations, bank holding companies or banks included in the merger before, during, or after the merger.

2. *Assets.* All property of each association, federal association, bank holding company or bank adopting a plan of merger, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, choses in action, and every other right and privilege immediately vests in the association, federal association, bank holding companies or bank resulting from the merger by act of law and without any other conveyance, act or deed, except to the extent an interest in property passed to another person under the explicit terms of the plan of merger.

3. *Pending actions.* Pending actions in any court or tribunal to which any association, federal association, bank holding company or bank adopting a plan of merger is a party shall not be abated or discontinued by reason of the merger, but may be prosecuted in the same manner as if the merger had not been made.

[S13, §1907-b, -c; C24, 27, 31, 35, 39, §**9366 – 9370;** C46, 50, 54, 58, §534.64 – 534.68; C62, 66, 71, 73, 75, 77, 79, 81, §534.36 – 534.40; 82 Acts, ch 1253, §33]

C83, §534.95
C85, §534.512

534.513 Liquidation.

1. *Voluntary liquidation.* Building and loan or savings and loan associations, by a vote of three-fourths of the members of such association represented in person or by proxy, may go into voluntary liquidation upon such plan as shall be determined upon by the members at their meeting.

2. *Reorganization — liquidation.* Any savings and loan association, including one in receivership, may reorganize under any plan approved by its board of directors and by the superintendent. Such reorganization may include reduction of savings credits of its member, not pledged as security for real estate loans, and may also include segregation of assets of uncertain or doubtful value by transfer thereof to trustees for management and liquidation or by transfer to a separate fund within the association, to be managed and liquidated by the association for the benefit of the members whose savings credits have been reduced in connection with such segregation.

3. *Supervision during liquidation.* During the period of voluntary liquidation of any such association, the superintendent shall have substantially the same powers and duties as to supervision as before such liquidation, and the persons in charge of such voluntary liquidation shall furnish and deposit with the superintendent such bonds as the superintendent shall require and approve, and shall semiannually, or oftener if required by the superintendent report fully as to their doings and progress, and as to the financial condition of the association. Upon completion of such liquidation they shall file with the superintendent a verified final report of such liquidation and disbursement of proceeds and upon approval of such report the superintendent shall issue a written order discharging the liquidators, and their duties shall thereupon cease.

4. *Transfer of mortgages — maturity.* In case any such association resolves to go into voluntary liquidation, it shall have power after crediting the mortgages given by the borrowing member with the full book value of the stock, to sell and assign such mortgages to a similar building and loan association, or to any other parties who will hold the same upon the terms under which such mortgage was given to the association. In that event the said mortgage shall be held to become due, if no other time can be agreed upon between the mortgagor

and the association, within three years after the assignment thereof.

1. [S13, §1907-a; C24, 27, 31, 35, 39, §**9363;** C46, 50, 54, 58, §534.61; C62, 66, 71, 73, 75, 77, 79, 81, §534.33]

2. [C39, §**9362.1;** C46, 50, 54, 58, §534.60; C62, 66, 71, 73, 75, 77, 79, 81, §534.32]

3. [C39, §**9363.1;** C46, 50, 54, 58, §534.62; C62, 66, 71, 73, 75, 77, 79, 81, §534.34]

4. [S13, §1907-a; C24, 27, 31, 35, 39, §**9364;** C46, 50, 54, 58, §534.63; C62, 66, 71, 73, 75, 77, 79, 81, §534.35]

C85, §534.513

534.514 Bulk transfers.

1. *Defined.* A *"bulk transfer"* is any transfer in bulk and not in the ordinary course of the transferor's business of a major part in value of the loans, savings accounts, or real estate of an association or of one office of an association, or any combination of such loans, savings accounts and real estate.

2. *Approval.* An association may be the transferor under a bulk transfer upon the prior written consent of the superintendent of savings and loan associations and upon the majority vote of members represented in person or by proxy if a mutual association, or a majority vote of each class of voting stock represented in person or by proxy if a stock association. An association may be the transferee under a bulk transfer upon the approval of its board of directors.

3. *Transfers to banks.* A bulk transfer by an association to a bank is void unless written consent to the transfer is obtained from the superintendent prior to the transfer.

[S13, §1907-b, -c; C24, 27, 31, 35, 39, §**9366 – 9370;** C46, 50, 54, 58, §534.64 – 534.68; C62, 66, 71, 73, 75, 77, 79, 81, §534.36 – 534.40; 82 Acts, ch 1253, §34]

C83, §534.96

C85, §534.514

534.515 Unincorporated associations.

1. *Statutes applicable.* All unincorporated organizations, associations, societies, partnerships, or individuals conducting and carrying on a business, the purpose of which is to create a fund derived from periodical payments by members of such organizations, associations, societies, or other persons, upon contracts or otherwise, as well as from fines, forfeitures, incidental fees, and payment of premiums and interest; which fund is to be loaned or advanced to members of the organization, associations, society, or to the persons making such periodical payments, for the purpose of enabling them to acquire the ownership or free possession of real estate, or personal property, or to construct buildings, or any or all of such purposes, shall be deemed building and loan associations; and the provisions of this chapter shall apply to all such building and loan associations as far as the same can be made applicable to unincorporated organizations, associations, societies, partnerships, or individuals.

2. *Statement of resources, liabilities, and plan.* Every such unincorporated organization, association, society, partnership, or individual conducting and carrying on the business defined in this section shall, before transacting any business in this state, submit to the executive council a full and complete sworn statement of the resources and liabilities of such organization, association, society, partnership, or individual, and of the proposed plan or method of doing business.

3. *Deposit of securities.* An unincorporated building and loan association shall not carry on its business within this state unless it first deposits with the superintendent at least fifty thousand dollars of first mortgages and negotiable notes in the same amount secured by real estate in the state, bearing interest at a rate not less than five percent per annum, which mortgages shall not exceed one-half the actual value of the real estate upon which they are taken.

4. *Additional deposits.* The superintendent may require that a further amount of such securities be deposited with the superintendent as in the superintendent's judgment is necessary to protect the members of the building and loan association, or the persons making periodical payments to it.

5. *Securities held in trust.* The notes, mortgages, and securities deposited with the superintendent, with all interest and accumulations on them, shall be held in trust by the superintendent for the purpose of fulfilling and carrying out all contracts made by such building and loan associations with their members, and with the persons making periodical payments to them.

6. *Approval — certificate of authority.* If the executive council approves the plan or method of business of such a building and loan association, it shall endorse its approval upon the statement of the resources and liabilities and plan of business presented to it, and the statement shall be filed in the office of the superintendent, who shall issue a certificate to the building and loan association to transact business within the state, if the association has deposited with the superintendent the mortgages and securities required by the other provisions of this chapter.

7. *Officers to give bonds — approval.* An officer of such a building and loan association who signs or endorses checks, or handles any of the funds or securities of the association, shall give bond or fidelity insurance for the faithful performance of the officer's duty in a sum as the superintendent may require, and no such officer is qualified to enter upon the duties of the office until the officer's bond is approved by, and deposited with, the superintendent. The bond may be increased or additional sureties required by the superintendent if in the superintendent's judgment it be-

comes necessary to protect the interest of the association or its members, or persons making periodical payments of money to it.

8. *Examination.* The superintendent may at any time the superintendent deems proper make, or cause to be made, an examination of such a building and loan association, or the superintendent may call upon it for a report of its condition upon any given day which has passed, as often as four times each year, which report shall contain the information required in this section.

9. *Expense of examination.* The expense of making an examination shall be paid by the building and loan association, and if made by the superintendent in person the superintendent shall be paid the superintendent's necessary expenses only; if made by an examiner designated by the superintendent, the examiner shall receive not to exceed twenty-five dollars a day for the time employed by the superintendent, and the examiner's necessary expenses.

10. *Annual reports.* On or before the first day of February of each year, every such building and loan association shall file with the superintendent its annual report in writing for the year ending on the thirty-first day of December preceding, giving a complete statement in detail of all of its receipts from all sources, and all disbursements made during the year, arranged and itemized as required by the superintendent. The report shall also show the number of members or persons making periodical payments to the association, the number and amount of loans made to the persons, the interest received from them, the number and amounts of mortgages, contracts, or other securities held by the association, the actual cash value of the real estate securing the mortgages or contracts, the salary paid to each of its officers during the preceding year, the assets and liabilities of the association at the end of the year, and any other matters which in the judgment of the superintendent are required to give the superintendent full information as to the business transacted by the building and loan association.

11. *Failure to furnish reports.* If such a building and loan association fails or refuses to furnish the superintendent the report required in subsection 10, the officers or persons conducting the business of the building and loan association shall forfeit the sum of twenty-five dollars for each day that the report is withheld, and the superintendent may maintain an action, jointly or severally, against them in the name of the state to recover that penalty, and the penalty shall be paid into the state treasury when recovered by the superintendent.

12. *Criminal offenses.* If any officer or agent of any such building and loan association, or any person conducting the business thereof, shall knowingly and willfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, the person shall be guilty of perjury and punished accordingly. And if any officer, agent or employee of any such association, or any person transacting the business thereof, shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized so to do, the person shall be guilty of a fraudulent practice; or if any such officer, agent, or employee of such association, or any person transacting the business thereof, shall embezzle, convert to the person's own use, or shall use or pledge for the person's own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, the person shall be guilty of theft; or if the person shall knowingly solicit, transact, or attempt to transact any business for any such association which has not procured and does not hold the certificate of authority from the superintendent to transact business in this state as provided in this section, the person shall be guilty of a serious misdemeanor; or if the person shall knowingly make, or cause to be made, any false entries in the books of the association, or shall, with intent to deceive any person making an examination of such association, as herein provided, exhibit to the person making the examination any false entry, paper, or statement, the person shall be guilty of a fraudulent practice.

13. *Revocation of certificate — receiver.* If any such building and loan association holding a certificate of authority to transact business within this state issued by the superintendent as provided in this chapter, shall violate any of the provisions of this chapter, or shall fail to deposit with the superintendent such further amount of mortgages or securities as the superintendent may require under this chapter, the superintendent shall at once revoke the certificate and notify the executive council of its revocation; and under the direction of the executive council, application shall be made by the attorney general to the proper court for the appointment of a receiver to wind up the affairs of the association. In the proceedings the amount due from the borrowing members or persons making periodical payments upon contracts or mortgages given by them shall be ascertained in the manner provided in section 534.405; and the amount owing upon mortgages or contracts from members of the association or persons making periodical payments to it, shall be treated and considered as due and payable within a reasonable time, to be fixed by the court after the appointment of a receiver.

[S13, §1920-a – 1920-j; C24, 27, 31, 35, 39, §**9390 – 9402;** C46, 50, 54, 58, §534.89 – 534.101; C62, 66,

71, 73, 75, 77, 79, 81, §534.66]
C85, §534.515
88 Acts, ch 1158, §86
Similar provision, §534.606

534.516 Liquidation in lieu of insurance.
In lieu of acquiring and maintaining the account insurance required in section 534.506, an association may with the approval of the superintendent enter into voluntary liquidation as provided in section 534.513.
85 Acts, ch 153, §2

534.517 Priority of public funds upon dissolution.
After payment of the costs and expenses of dissolution, the first claim upon the assets of an association shall be the claims for public funds deposited pursuant to chapter 12C and claims which are given priority by applicable statute. If the assets are insufficient for payment of the claims in full, then priority shall be determined as specified by the statutes or, in the absence of conflicting provisions, on a pro rata basis.
85 Acts, ch 194, §12

534.518 Dissolution.
The dissolution of an association shall be conducted pursuant to procedures approved by the superintendent. Upon dissolution, the association shall surrender its certificate of authority to the superintendent, and the superintendent shall publish notice of the dissolution in a newspaper of general circulation in the county of the home office of the association.
90 Acts, ch 1208, §18

534.519 Mutual holding companies.
1. An association may reorganize as a mutual holding company in the manner and with the effect provided in the federal National Housing Act of 1934, 12 U.S.C. § 1730a(s). The mutual holding company may engage in activities permitted by the federal National Housing Act of 1934, 12 U.S.C. § 1730a(s). For purposes of 12 U.S.C. § 1730a(s)(5)(D), investments in service corporations shall be deemed available for purchase without regard to the limitation contained in section 534.213, subsection 1, paragraph *"i"*, on the amount of such investments.
2. A mutual holding company shall be deemed a mutual association for purposes of sections 534.401, 534.403, 534.501, 534.502, 534.503, 534.505, 534.509, 534.510, 534.511, 534.512, 534.513, 534.514, 534.601, 534.602, 534.603, 534.604, 534.605, 534.606, 534.701, 534.702, 534.703, 534.704, and 534.705.
3. Except as otherwise provided in this chapter, a mutual holding company has all powers set forth in section 490.302.
4. The superintendent may adopt rules pursuant to chapter 17A pertaining to mutual holding companies.
5. Proxies of the association shall continue in force as proxies of the mutual holding company.
90 Acts, ch 1208, §19; 91 Acts, ch 258, §62

DIVISION VI

DIRECTORS, OFFICERS, AND EMPLOYEES

534.601 Directors.
The business of the association shall be directed by a board of directors of not less than five nor more than twenty-five adult individuals elected by ballot from among the members or stockholders by a plurality of the votes of the members or stockholders present or voting by proxy. If authorized by vote of the members or stockholders, the directors may elect all directors. At all times at least two-thirds of the directors must be bona fide residents of this state.
[C97, §1892; C24, 27, 31, 35, 39, §**9312;** C46, 50, 54, 58, §534.7; C62, 66, 71, 73, 75, 77, 79, 81, §534.67; 82 Acts, ch 1253, §29]
C83, §534.88
C85, §534.601

534.602 Indemnity bonds.
1. *Domestic companies — bonds — custody.* The officers and employees of a domestic association who sign or endorse checks or handle funds or securities of an association shall give bonds or fidelity insurance as the board of directors may require; and no such officer shall be deemed qualified to enter upon the duties of the office until the officer's bond is approved by the board of directors and by the superintendent. The bonds shall be deposited and filed with the superintendent. The associations may in connection with obtaining bonds or insurance acquire and hold membership in mutual insurance or bonding companies. No such bond shall be terminated or canceled because of failure to pay premium or for any other cause until after ten days' written notice to the superintendent of intention to cancel the bond.
2. *Additional bonds.* All such bonds shall be increased or additional securities required by the board of directors or the superintendent when it becomes necessary to protect the interests of the association or its members.
3. *Disqualified sureties.* No director shall be accepted as surety on such bonds, and no person shall be accepted as surety on the bond of more than one office of said association.
4. *Liability of directors.* The directors shall be individually liable for loss to the association or its members caused by their failure to require a compliance with the provisions of this section.
[C97, §1895; C24, 27, 31, 35, 39, §**9319 – 9322;** C46, 50, 54, 58, §534.14 – 534.17; C62, 66, 71, 73,

75, 77, 79, 81, §534.7]
C85, §534.602
88 Acts, ch 1158, §87

534.603 Acknowledgments by employees.

No public officer qualified to take acknowledgments or proofs of execution of written instruments shall by reason of the public officer's membership in or being an officer of or employment by a savings and loan association interested in such instrument be disqualified from taking and certifying to the acknowledgment or proof of execution of any written instrument in which such association is interested, and any such acknowledgment or proof heretofore taken or certified is hereby legalized and declared valid.

[C39, §**9388.1;** C46, 50, 54, 58, §534.86; C62, 66, 71, 73, 75, 77, 79, 81, §534.65]
C85, §534.603

534.604 Compensation of officers and agents.

No officers, employee, or agent of any association shall receive directly or indirectly any salary or other compensation, except for services actually rendered. Any compensation paid in violation of this section may be recovered by the association or by any shareholder or borrower, in the name and for the use of such association, within three years from the receipt of such illegal compensation, from the person accepting the same, or from any officer knowingly consenting to the allowance thereof.

[S13, §1902-a; C24, 27, 31, 35, 39, §**9349;** C46, 50, 54, 58, §534.48; C62, 66, 71, 73, 75, 77, 79, 81, §534.45]
C85, §534.604

534.605 Transactions of officers, directors, employees.

It shall be unlawful for an officer, director or employee of an association:

1. To solicit, accept or agree to accept, directly or indirectly, from any person other than the association any gratuity, compensation or other personal benefit for any action taken by the association or for endeavoring to procure any such action.

2. To make a real estate loan or real estate contract to a director, officer, or employee of the association, or to an attorney or firm of attorneys regularly serving the association in the capacity of attorney at law, or to a partnership in which a director, officer, employee, attorney, or firm of attorneys has an interest, without the prior notification of the superintendent, fifteen days prior to closing the loan or executing the contract, who may prohibit the proposed transaction by order. A real estate loan or real estate contract shall not be made to a corporation in which any of the parties are stockholders, except that with the prior approval of its board of directors a real estate loan or real estate contract may be made to a corporation in which a party owns no more than fifteen percent of the total outstanding stock and in which the stock owned by all the parties does not exceed twenty-five percent of the total outstanding stock. However, this section does not prohibit an association from making loans pursuant to sections 534.202 and 534.208 and loans on the security of a first lien on the home property or manufactured or mobile home owned and occupied by a director, officer, or employee of an association, or by an attorney or member of a firm of attorneys regularly serving the association in the capacity of attorney at law.

A loan made to an affiliated party is subject to the association's normal lending policies and procedures, and shall be approved by a two-thirds vote of the directors, the interested director not voting.

3. To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings liability or other indebtedness issued by the association or other assets at less than their fair market value.

4. An association operating under this chapter may indemnify any present or former director, officer, or employee in the manner and in the instances authorized in sections 490.850 through 490.859. If the association is a mutual association, the references in those sections to stockholder shall be deemed to be references to members.

[C97, §1918; C24, 27, 31, 35, 39, §**9388;** C46, 50, 54, 58, §534.85; C62, 66, 71, 73, 75, 77, 79, 81, §534.8]
83 Acts, ch 71, §6
C85, §534.605
87 Acts, ch 212, §17; 90 Acts, ch 1205, §57; 90 Acts, ch 1208, §20; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1154, §121, 125
2002 amendment to subsection 4 is effective January 1, 2003; 2002 Acts, ch 1154, §125
Subsection 4 amended

534.606 Criminal offenses.

If any officer, director, or agent of any building and loan or savings and loan association shall knowingly and willfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, the person shall be guilty of perjury. If any director of any such association shall vote to declare a dividend greater than has been earned; or if any officer or director or any agent or employee of any such association shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized to do so by the board of directors in pursuance of its lawful power, the person

shall be guilty of a fraudulent practice; or if any such officer, director, agent, or employee shall embezzle or convert to the person's own use, or shall use or pledge for the person's own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, the person shall be guilty of theft; or if the person shall knowingly do or attempt to do business for such association that has not procured and does not hold the certificate of authority therefor as in this chapter provided, the person shall be guilty of a serious misdemeanor; or if the person shall knowingly make or cause to be made any false entries in the books of the association, or shall, with the intent to deceive any person making an examination in this chapter required to be made, exhibit to the person making the examination any false entry, paper, or statement, the person shall be guilty of a fraudulent practice; or if the person shall knowingly do or solicit business for any building and loan or savings and loan association which has not procured the required certificate therefor, the person shall be guilty of a serious misdemeanor.

[C97, §1918; C24, 27, 31, 35, 39, §**9388.1;** C46, 50, 54, 58, §534.85; C62, 66, 71, 73, 75, 77, 79, 81, §534.64]

C85, §534.606

Similar provision, §534.515

534.607 Indemnification.

Except as otherwise provided in section 534.602, sections 490.850 through 490.859 apply to associations incorporated under this chapter.

87 Acts, ch 212, §18; 90 Acts, ch 1205, §58; 2002 Acts, ch 1154, §122, 125

2002 amendment to this section is effective January 1, 2003; 2002 Acts, ch 1154, §125

Section amended

DIVISION VII

FOREIGN ASSOCIATIONS

534.701 State reciprocity.

When by the laws of any other state, territory, country, or nation, or by the decision or rulings of the appropriate and proper officers thereof, any greater taxes, fines, penalties, licenses, fees, deposits of money or other securities, or other obligations or prohibitions, are demanded of building and loan or savings and loan associations of this state, as a condition to be complied with before doing business or granting loans in that state, so long as such laws continue in force, the same requirements, obligations, and prohibitions of whatever kind shall be imposed on all building and loan or savings and loan associations of such other state, territory, country, or nation doing business in this state, and upon their agents. The superintendent shall enforce this section.

[C97, §1916; C24, 27, 31, 35, 39, §**9386;** C46, 50, 54, 58, §534.83; C62, 66, 71, 73, 75, 77, 79, 81, §534.62]

C85, §534.701

88 Acts, ch 1158, §88

534.702 Admission of foreign associations.

1. *Application.* If a foreign association desires to transact business within this state, it shall furnish to the superintendent a certified copy of its articles of incorporation, or charter and bylaws, and a certified copy of the state laws under which it is organized, together with a report for the year next preceding, verified by its president, vice president, secretary, and at least three directors, which report shall show:

a. The amount of its authorized savings liability and the par value of its shares, if any.

b. The increase in savings liability.

c. The withdrawal from savings liability during the year.

d. The amount of savings liability in force at the end of the year.

e. A detailed statement of all funds received during the year and all disbursements.

f. The salaries paid each of its officers.

g. A detailed statement of its assets and liabilities at the end of the year and their nature.

h. A reconciliation of its net worth for the current year to the date of application and the previous three fiscal years.

i. A detailed description of the anticipated types of business to be performed within the state.

j. Any additional information required of domestic associations under section 534.505, subsection 1.

As used in this section, to transact business means to have an office, agency or agent in this state.

2. *Approval by superintendent — certificate of authority.* If upon receipt of the report the superintendent finds from a review of the report that the association is properly managed, that its financial condition is satisfactory, and that its business is conducted upon a safe and reliable plan and one equitable to its members, the superintendent shall issue a like certificate of authority, signed by the superintendent as in the case of domestic associations.

3. *Conditions attending approval.* A foreign association shall not be authorized to do business in this state if the foreign association's articles of incorporation are not found by the superintendent to be in substantial compliance with the laws of this state, and affording equal security and protection to its members.

4. *Deposit by foreign association.* Before the superintendent issues a certificate to a foreign association, it shall deposit with the superintendent two hundred fifty thousand dollars, either in cash, or bonds of the United States or of the state of Iowa, or of a county or municipal corporation of the state, or notes secured by first mortgages on real

estate, or a like amount in other security which is satisfactory to the superintendent.

The foreign association may collect and use the interest on any securities so deposited as long as it fulfills its obligations and complies with this chapter. Upon the approval of the superintendent, it may also exchange the securities for other securities of equal value.

5. *Liability of deposit.* The deposit made with the superintendent shall be held as security for all claims of resident members of the state against the association, and is liable for all judgments or decrees thereon, and subject to their payment.

6. *Superintendent as process agent.* The foreign associations shall also file with the superintendent a duly authorized copy of a resolution adopted by the board of directors of the association, stipulating and agreeing that, if any legal process or notice affecting the association is served on the superintendent, and a copy thereof mailed, postage prepaid, by the party procuring and issuing it, or the party's attorney, to the association, addressed to its home office, then such service and mailing of process or notice has the same effect as personal service on the association within this state.

7. *Manner of service.* When proceedings have been commenced against or affecting a foreign building and loan or savings and loan association, as contemplated in subsection 6, and notice has been served upon the superintendent, the notice shall be by duplicate copies, one of which shall be filed in the superintendent's office, and the other mailed by the superintendent, postage prepaid, to the home office of the association.

8. *Amendment to articles.* Within ten days after the adoption of an amendment to its articles of incorporation or bylaws, a foreign association shall file a duly certified copy of the amendment with the superintendent.

9. *Operations subject to supervision.* Subject to the laws and regulations of the United States, a foreign association transacting business within this state is subject to the provisions of this chapter and is subject to the supervision of the superintendent as to its operations in this state. Notwithstanding subsection 2 of section 534.102, the term *"association"* or *"state association"* in this chapter shall include a foreign association and any foreign association which is a party to a plan of merger under section 534.511 as to its operations in this state.

10. *Limited exemption for solvent foreign associations.* A foreign savings and loan association is exempt from the requirements of this section if the association's business in this state is limited to the sale of certificates of deposit through independent broker-dealers registered under section 502.302, unless the superintendent of savings and loans by order determines the association is insolvent.

1. [C97, §1908; C24, 27, 31, 35, 39, §**9371;** C46, 50, 54, 58, §534.69; C62, 66, 71, 73, 75, 77, 79, 81, §534.48]

2. [C97, §1908; C24, 27, 31, 35, 39, §**9372;** C46, 50, 54, 58, §534.70; C62, 66, 71, 73, 75, 77, 79, 81, §534.49]

3. [S13, §1908-a; C24, 27, 31, 35, 39, §**9373;** C46, 50, 54, 58, §534.71; C62, 66, 71, 73, 75, 77, 79, 81, §534.50]

4. [C97, §1909; C24, 27, 31, 35, 39, §**9374;** C46, 50, 54, 58, §534.72; C62, 66, 71, 73, 75, 77, 79, 81, §534.51]

5. [C97, §1910; C24, 27, 31, 35, 39, §**9375;** C46, 50, 54, 58, §534.73; C62, 66, 71, 73, 75, 77, 79, 81, §534.52]

6. [C97, §1911; C24, 27, 31, 35, 39, §**9376;** C46, 50, 54, 58, §534.74; C62, 66, 71, 73, 75, 77, 79, 81, §534.53]

7. [C97, §1911; C24, 27, 31, 35, 39, §**9377;** C46, 50, 54, 58, §534.75; C62, 66, 71, 73, 75, 77, 79, 81, §534.54]

8. [C97, §1912; C24, 27, 31, 35, 39, §**9378;** C46, 50, 54, 58, §534.76; C62, 66, 71, 73, 75, 77, 79, 81, §534.55]

84 Acts, ch 1067, §44; 84 Acts, ch 1081, §2 – 6

C85, §534.702

87 Acts, ch 171, §38; 88 Acts, ch 1149, §1; 88 Acts, ch 1158, §89

534.703 Fees — foreign associations.

Foreign building and loan or savings and loan associations shall pay to the superintendent the following fees, which shall be paid by the superintendent into the state treasury: For an application to do business in this state, two hundred dollars; for a certificate of authority or an annual renewal of a certificate, one hundred dollars; for filing an annual statement of the assets of the association as shown by the statement filed, amounts to fifty thousand dollars or less, six dollars; if more than fifty thousand dollars and less than one hundred thousand dollars, ten dollars; if one hundred thousand dollars or more and less than two hundred fifty thousand dollars, twenty dollars; if two hundred fifty thousand dollars or more, and less than five hundred thousand dollars, forty dollars; if five hundred thousand dollars or more and less than one million dollars, sixty dollars; and if one million dollars or more, one hundred dollars.

[C97, §1913; C24, 27, 31, 35, 39, §**9379;** C46, 50, 54, 58, §534.77; C62, 66, 71, 73, 75, 77, 79, 81, §534.56]

C85, §534.703

88 Acts, ch 1158, §90

534.704 Sale of stock if unauthorized foreign company — penalty.

It shall be unlawful for an agent, solicitor or other person to sell stock or solicit share accounts or solicit persons to subscribe for same in any association named in section 534.702, subsection 3 which has not been authorized to do business in

this state, and any person convicted of so doing shall be guilty of a serious misdemeanor.

This section does not make unlawful the activities of a broker-dealer registered under section 502.302 when the broker-dealer makes available in this state certificates of deposit issued by a foreign association whose deposits are insured by a federal insurer.

[S13, §1915-a; C24, 27, 31, 35, 39, §**9385;** C46, 50, 54, 58, §534.82; C62, 66, 71, 73, 75, 77, 79, 81, §534.57]

C85, §534.704

88 Acts, ch 1149, §2

534.705 Reports — penalty.

1. *Annual statement.* All associations doing business in this state shall, on or before the first day of February of each year, file with the superintendent a detailed report and financial statement of their business for the year ending the thirty-first day of December next preceding, and the report shall be verified by the president and secretary or by three directors of the association, and shall show:

a. The date when the association was incorporated.

b. The increase in savings liability.

c. The amount of withdrawals during the year.

d. The total savings liability at the end of the year.

e. A statement of the assets and liabilities at the end of the year.

f. The salary paid to each of its officers during the year.

2. *Additional report by foreign company.* All foreign building and loan or savings and loan associations shall, in addition to the above, report the name of each shareholder or member of such association residing within the state, together with the post-office address of each and the number of shares or investment owned by each of said persons on the first day of January preceding.

3. *Violations.* If an association fails or refuses to furnish the superintendent the report required in subsections 1 and 2 it shall forfeit the sum of twenty-five dollars for every day the report is withheld and the superintendent may maintain an action in the name of the state to recover that penalty and the penalty shall be paid into the treasury of the state.

1. [C97, §1914; C24, 27, 31, 35, 39, §**9382;** C46, 50, 54, 58, §534.79; C62, 66, 71, 73, 75, 77, 79, 81, §534.58]

2. [C97, §1914; C24, 27, 31, 35, 39, §**9383;** C46, 50, 54, 58, §534.80; C62, 66, 71, 73, 75, 77, 79, 81, §534.59]

3. [C97, §1915; C24, 27, 31, 35, 39, §**9384;** C46, 50, 54, 58, §534.81; C62, 66, 71, 73, 75, 77, 79, 81, §534.60]

C85, §534.705

88 Acts, ch 1158, §91, 92

SUBTITLE 3

MONEY AND CREDIT

CHAPTER 535

MONEY AND INTEREST

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535.1 Denominations of money.

The money of account of this state is the dollar, cent, and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in the above denominations. Demands expressed in money of another denomination shall not be affected by the provisions of this section, but in any action or proceeding based thereon it shall be reduced to and computed by the denominations given.

[C51, §943, 944; R60, §1785, 1786; C73, §2075, 2076; C97, §3037; C24, 27, 31, 35, 39, §**9403;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.1]

535.2 Rate of interest.

1. Except as provided in subsection 2 hereof, the rate of interest shall be five cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest at a rate not exceeding the rate permitted by subsection 3:

a. Money due by express contract.

b. Money after the same becomes due.

c. Money loaned.

d. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.

e. Money due on the settlement of accounts from the day the balance is ascertained.

f. Money due upon open accounts after six months from the date of the last item.

g. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated.

2. *a.* The following persons may agree in writing to pay any rate of interest, and a person so agreeing in writing shall not plead or interpose the claim or defense of usury in any action or proceeding, and the person agreeing to receive the interest is not subject to any penalty or forfeiture for agreeing to receive or for receiving the interest:

(1) A person borrowing money for the purpose of acquiring real property or refinancing a contract for deed.

(2) A person borrowing money or obtaining credit in an amount which exceeds twenty-five thousand dollars, exclusive of interest, for the purpose of constructing improvements on real property, whether or not the real property is owned by the person.

(3) A vendee under a contract for deed to real property.

(4) A domestic or foreign corporation, and a real estate investment trust as defined in section 856 of the Internal Revenue Code, and a person purchasing securities as defined in chapter 502 on credit from a broker or dealer registered or licensed under chapter 502 or under the Securities Exchange Act of 1934, 15 U.S.C., ch. 78A, as amended.

(5) A person borrowing money or obtaining credit for business or agricultural purposes, or a person borrowing money or obtaining credit in an amount which exceeds twenty-five thousand dollars for personal, family, or household purposes. As used in this paragraph, *"agricultural purpose"* means as defined in section 535.13, and *"business purpose"* includes but is not limited to a commercial, service, or industrial enterprise carried on for profit and an investment activity.

b. In determining exemptions under this sub-

section, the rules of construction stated in this paragraph apply:

(1) The purpose for which money is borrowed is the purpose to which a majority of the loan proceeds are applied or are designated in the agreement to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are applied for the same purposes and in the same proportion as the original principal of the loan that is refinanced or paid.

(3) If the lender releases the original borrower from all personal liability with respect to the loan, loan proceeds used to pay a prior loan by a different borrower are applied for the new borrower's purposes in agreeing to pay the prior loan.

(4) If the lender releases the original borrower from all personal liability with respect to the loan, the assumption of a loan by a new borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) This paragraph does not modify or limit section 535.8, subsection 2, paragraph *"c"* or *"e"*.

(6) With respect to any transaction referred to in paragraph *"a"* of this subsection, this subsection supersedes any interest-rate or finance-charge limitations contained in the Code, including but not limited to this chapter and chapters 321, 322, 524, 533, 534, 536A, and 537.

3. *a.* The maximum lawful rate of interest which may be provided for in any written agreement for the payment of interest entered into during any calendar month commencing on or after April 13, 1979, shall be two percentage points above the monthly average ten-year constant maturity interest rate of United States government notes and bonds as published by the board of governors of the federal reserve system for the calendar month second preceding the month during which the maximum rate based thereon will be effective, rounded to the nearest one-fourth of one percent per year.

On or before the twentieth day of each month the superintendent of banking shall determine the maximum lawful rate of interest for the following calendar month as prescribed herein, and shall cause this rate to be published, as a notice in the Iowa administrative bulletin or as a legal notice in a newspaper of general circulation published in Polk county, prior to the first day of the following calendar month. This maximum lawful rate of interest shall be effective on the first day of the calendar month following publication. The determination of the maximum lawful rate of interest by the superintendent of banking shall be exempt from the provisions of chapter 17A.

b. Any rate of interest specified in any written agreement providing for the payment of interest shall, if such rate was lawful at the time the agreement was made, remain lawful during the entire term of the agreement, including any extensions or renewals thereof, for all money due or to become due thereunder including future advances, if any.

c. Any written agreement for the payment of interest made pursuant to a prior written agreement by a lender to lend money in the future, either to the other party to such prior written agreement or a third party beneficiary of such prior agreement, may provide for payment of interest at the lawful rate of interest at the time of the execution of the prior agreement regardless of the time at which the subsequent agreement is executed.

d. Any contract, note or other written agreement providing for the payment of a rate of interest permitted by this subsection which contains any provisions providing for an increase in the rate of interest prescribed therein shall, if such increase could be to a rate which would have been unlawful at the time the agreement was made, also provide for a reduction in the rate of interest prescribed therein, to be determined in the same manner and with the same frequency as any increase so provided for.

4. *a.* Notwithstanding the provisions of subsection 3, with respect to any agreement which was executed prior to August 3, 1978, and which contained a provision for the adjustment of the rate of interest specified in that agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be nine cents on the hundred by the year, and any excess charge shall be a violation of section 535.4.

b. Notwithstanding the limitation contained in paragraph *"a"* of this subsection, with respect to a written agreement for the repayment of money loaned, which was executed prior to August 3, 1978 and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980 according to the terms of the agreement to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

c. Notwithstanding paragraph *"a"*, when a written agreement providing for the repayment of money loaned, and requiring the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement is extended, renewed, or otherwise amended by the parties on or after August 3, 1978, the parties may agree to the payment of interest from the effective date of the extension, renewal, or amendment, at a rate and in a manner that is lawful for a new agreement made on that date.

5. This section shall not apply to any loan which is subject to the provisions of section 636.46.

6. *a.* Notwithstanding the provisions of Acts of the Sixty-eighth General Assembly, chapter 1156, with respect to any agreement which was executed on or after August 3, 1978 and prior to July 1, 1979, and which contained a provision for the adjustment of the rate of interest specified in the agreement, the maximum lawful rate of interest which may be imposed under that agreement shall be that rate which is two and one-half percentage points above the rate initially to be paid under the agreement, provided that the greatest interest rate adjustment which may be made at any one time shall be one-half of one percent and an interest rate adjustment may not be made until at least one year has passed since the last interest rate adjustment, and any excess charge shall be a violation of section 535.4.

b. Notwithstanding the limitation contained in paragraph *"a"* of this subsection, with respect to a written agreement for the repayment of money loaned which was executed on or after August 3, 1978, and prior to July 1, 1979, and which provided for the payment of over fifty percent of the initial principal amount of the loan as a single payment due at the end of the term of the agreement, the interest rate may be adjusted after June 3, 1980, according to the terms of the agreement to any rate of interest permitted by the laws of this state as of the date an adjustment in interest is to be made. This paragraph does not authorize adjustment of interest in any manner other than that expressly permitted by the terms of the written agreement, and nothing contained in this paragraph authorizes the collection of additional interest with respect to any portion of a loan which was repaid prior to the effective date of an interest rate adjustment.

7. This section does not apply to a charge imposed for late payment of rent. However, in the case of a residential lease, a late payment fee shall not exceed ten dollars a day or forty dollars per month.

[C51, §945; R60, §1787; C73, §2077; C97, §3038; C24, 27, 31, 35, 39, §**9404;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.2; 82 Acts, ch 1153, §4, 5]

93 Acts, ch 154, §5; 95 Acts, ch 125, §1

Life insurance policy loans; see §511.36

535.3 Interest on judgments and decrees.

1. Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13, except for interest due pursuant to section 85.30 for which the rate shall be ten percent per year.

2. Interest on periodic payments for child, spousal, or medical support shall not accrue until thirty days after the payment becomes due and owing and shall accrue at a rate of ten percent per annum thereafter. Additionally, interest on these payments shall not accrue on amounts being paid through income withholding pursuant to chapter 252D for the time these payments are unpaid solely because the date on which the payor of income withholds income based upon the payor's regular pay cycle varies from the provisions of the support order.

[C51, §946; R60, §1789; C73, §2078; C97, §3039; C24, 27, 31, 35, 39, §**9405;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.3]

87 Acts, ch 157, §1; 96 Acts, ch 1141, §33; 97 Acts, ch 175, §232; 97 Acts, ch 197, §2 – 4, 16

535.4 Illegal rate prohibited — usury.

No person shall, directly or indirectly, receive in money or in any other thing, or in any manner, any greater sum or value for the loan of money, or upon contract founded upon any sale or loan of real or personal property, than is in this chapter prescribed.

[R60, §1790; C73, §2079; C97, §3040; C24, 27, 31, 35, 39, §**9406;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.4]

535.5 Penalty for usury.

If it is ascertained in an action brought on a contract that a rate of interest has been contracted for, directly or indirectly, in money or in property, greater than is authorized by this chapter, the rate shall work a forfeiture of eight cents on the hundred by the year upon the amount of the principal remaining unpaid upon the contract at the time judgment is rendered, and the court shall enter final judgment in favor of the plaintiff and against the defendant for the principal sum remaining unpaid without costs, and also against the defendant and in favor of the state, to be paid to the treasurer of state for deposit in the general fund of the state, for the amount of the forfeiture. If unlawful interest is contracted for the plaintiff shall not have judgment for more than the principal sum, whether the unlawful interest is incorporated with the principal or not.

[R60, §1791; C73, §2080; C97, §3041; C24, 27, 31, 35, 39, §**9407;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.5]

83 Acts, ch 185, §52, 62; 83 Acts, ch 186, §10109, 10201, 10204

535.6 Repealed by 82 Acts, ch 1153, § 18.

535.7 Assignee of usurious contract.

Any assignee of a usurious contract, becoming such in good faith in the usual course of business and without notice of such fact, may recover of the usurer the full amount of the consideration paid by the assignee therefor, less any sum that may have been realized on the contract, anything in this chapter contained to the contrary notwithstanding.

[R60, §1792; C73, §2081; C97, §3042; C24, 27, 31, 35, 39, §**9409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, S79, C81, §535.7]

535.8 Loan charges limited.

1. As used in this section, the term *"loan"* means a loan of money which is wholly or in part to be used for the purpose of purchasing real property which is a single-family or a two-family dwelling occupied or to be occupied by the borrower. *"Loan"* includes the refinancing of a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

2. *a.* A lender may collect, in connection with a loan made pursuant to a written agreement executed by the borrower on or after July 1, 1983, or in connection with a loan made pursuant to a written commitment by the lender mailed or delivered to the borrower on or after that date, a loan processing fee which does not exceed two percent of an amount which is equal to the loan principal; except that to the extent of an assumption by a new borrower of the obligation to make payments under a prior loan, or to the extent that the loan principal is used to refinance a prior loan between the same borrower and the same lender, the lender may collect a loan processing fee which does not exceed an amount which is a reasonable estimate of the expenses of processing the loan assumption or refinancing but which does not exceed one percent of the unpaid balance of the loan that is assumed or refinanced. In addition, a lender may collect from a borrower, a seller of property, another lender, or any other person, or from any combination of these persons, in contemplation of or in connection with a loan, a commitment fee, closing fee, or both, that is agreed to in writing by the lender and the persons from whom the charges are to be collected. A loan fee collected under this paragraph is compensation to the lender solely for the use of money, notwithstanding any provision of the agreement to the contrary. However, a loan fee collected under this paragraph shall be disregarded for purposes of determining the maximum charge permitted by section 535.2 or 535.9, subsection 2. The collection in connection with a loan of a loan origination fee, closing fee, commitment fee, or similar charge is prohibited other than expressly authorized by this paragraph or a payment reduction fee authorized by subsection 3.

b. A lender may collect in connection with a loan any of the following costs which are incurred by the lender in connection with the loan and which are disclosed to the borrower:

(1) Credit reports.

(2) Appraisal fees paid to a third party, or when the appraisal is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the appraisal.

(3) Attorney's opinions.

(4) Abstracting fees paid to a third party, or when the abstracting is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the abstracting.

(5) County recorder's fees.

(6) Inspection fees.

(7) Mortgage guarantee insurance charge.

(8) Surveying of property.

(9) Termite inspection.

(10) The cost of a title guaranty issued by the Iowa finance authority pursuant to chapter 16.

The lender shall not charge the borrower for the cost of revenue stamps or real estate commissions which are paid by the seller. Collection of any cost other than as expressly permitted by this lettered paragraph is prohibited.

c. If the purpose of the loan is to enable the borrower to purchase a single-family or two-family dwelling, for the borrower's residence, any provision of a loan agreement which prohibits the borrower from transferring the borrower's interest in the property to a third party for use by the third party as the third party's residence, or any provision which requires or permits the lender to make a change in the interest rate, the repayment schedule or the term of the loan as a result of a transfer by the borrower of the borrower's interest in the property to a third party for use by the third party as the third party's residence shall not be enforceable except as provided in the following sentence. If the lender on reasonable grounds believes that its security interest or the likelihood of repayment is impaired, based solely on criteria which is not more restrictive than that used to evaluate a new mortgage loan application, the lender may accelerate the loan, or to offset any such impairment, may adjust the interest rate, the repayment schedule or the term of the loan. A provision of a loan agreement which violates this paragraph is void.

d. If a lender collects a fee or charge which is prohibited by paragraph *"a"* or *"b"* of this subsection or which exceeds the amount permitted by paragraph *"a"* or *"b"* of this subsection, the person from whom the fee was collected has the right to recover the unlawful fee or charge or the unlawful portion of the fee or charge, plus attorney fees and costs incurred in any action necessary to effect recovery.

e. Notwithstanding section 628.3 when a foreclosure of a mortgage on real property results from the enforcement of a due-on-sale clause, the mortgagor may redeem the real property at any time within three years from the day of sale under the levy, and the mortgagor shall, in the meantime, be entitled to the possession thereof; and for the first thirty months thereafter such right of redemption is exclusive. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment

under which the real property was sold. The right of redemption established by this paragraph is not subject to waiver by the mortgagor and the period of redemption established by this paragraph shall not be reduced. The times for redemption by creditors provided in sections 628.5, 628.15 and 628.16 shall be extended to thirty-three months in any case in which the mortgagor's period for redemption is extended by this paragraph. This paragraph does not apply to foreclosure of a mortgage if for any reason other than enforcement of a due-on-sale clause. As used in this paragraph, "due-on-sale clause" means any type of covenant which gives the mortgagee the right to demand payment of the outstanding balance or a major part thereof upon a transfer by the mortgagor to a third party of an interest of the mortgagor in property covered by the mortgage. This paragraph applies to any foreclosure occurring on or after May 10, 1980. However, this paragraph does not apply if the lender establishes, based on reasonable criteria which are not more restrictive than those used to evaluate new mortgage-loan applications, that the security interest or the likelihood of repayment is impaired as a result of the transfer of interest.

This lettered paragraph applies only to a mortgage given in connection with a loan as defined in subsection 1 of this section.

3. A lender who offers to make a loan with only those fees authorized by subsection 2 may also offer in exchange for the payment of an interest reduction fee to make a loan on all of the same terms except at a lower interest rate and with the lower payments resulting from the lower interest rate. Prior to accepting an application for a loan which includes a payment reduction fee, the lender shall provide the potential borrower with a written disclosure describing in plain language the specific terms which the loan would have both with the payment reduction fee and without it. This disclosure shall include a good faith example showing the amount of the payment reduction fee and the reduction in payments which would result from the payment of this fee in a typical loan transaction. A payment reduction fee which complies with this subsection may be collected in connection with a loan in addition to the fees authorized by subsection 2.

4. A lender shall not, as a condition of making a loan as defined in this section, require the borrower to place money, or to place property other than that which is given as security for the loan, on deposit with or in the possession or control of the lender or some other person if the effect is to increase the yield to the lender with respect to that loan; provided that this subsection shall not prohibit a lender from requiring the borrower to deposit money without interest with the lender in an escrow account for the payment of insurance premiums, property taxes and special assessments payable by the borrower to third persons. Any lender who requires an escrow account shall not violate the provisions of section 507B.5, subsection 1, paragraph *"a"*.

5. If any lender receives interest either in a manner or in an amount which is prohibited by subsection 4 of this section, the borrower shall have the right to recover all amounts collected or earned by the lender, whether or not from the borrower, in violation of this section, plus attorney fees, plus court costs incurred in any action necessary to effect such recovery.

6. The provisions of this section shall not apply to any loan which is subject to the provisions of section 636.46, nor shall it apply to origination fees, administrative fees, commitment fees or similar charges paid by one lender to another lender if these fees are not ultimately paid either directly or indirectly by the borrower who occupies or will occupy the dwelling or by the seller of the dwelling.

A lender shall not use an appraisal for any purpose in connection with making a loan under this section if the appraisal is performed by a person who is employed by or affiliated with any person receiving a commission or fee from the seller of the property. If a lender violates this paragraph the borrower is entitled to recover any actual damages plus the costs paid by the borrower, plus attorney fees incurred in an action necessary to effect recovery.

[C79, S79, C81, §535.8; 81 Acts, ch 176, §1, 2]
83 Acts, ch 124, §19, 20; 85 Acts, ch 252, §39

535.9 Prepayment penalties on loans secured by real estate mortgages prohibited.

1. As used in this section, *"loan"* means a loan of money which is wholly or in part to be used for the purpose of purchasing real property which is a single-family or a two-family dwelling occupied or to be occupied by the borrower, or for the purpose of purchasing agricultural land. *"Loan"* includes the refinancing of a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

2. Whenever a borrower under a loan prepays part or all of the outstanding balance of the loan the lender shall not receive an amount in payment of interest which is greater than the amount determined by applying the rate of interest agreed upon by the lender and the borrower to the unpaid balance of the loan for a period of time during which the borrower had the use of the money loaned; and the lender shall not impose any penalty or other charge in addition to the amount of interest due as a result of the repayment of that loan at a date earlier than is required by the terms of the loan agreement. A lender may, however, require advance notice of not more than thirty days of a borrower's intent to repay the entire outstanding balance of a loan if the payment of that balance, together with any partial prepayments made previously by the borrower, will result in the repayment of the loan at a date earlier than is required by the terms of

the loan agreement.

3. If any lender receives an amount of interest greater than permitted by subsection 2 of this section, or imposes any penalty or other charge prohibited by subsection 2 of this section, the borrower shall have the right to recover all amounts paid the lender which are in excess of the amounts permitted by subsection 2 of this section, plus attorney's fees and court costs incurred in any action necessary to effect such recovery.

[C79, S79, C81, §535.9]

535.10 Home equity line of credit.

1. As used in this chapter, the term *"home equity line of credit"* means an arrangement pursuant to which all of the following are applicable:

a. The amounts borrowed and the interest and other charges are debited to an account.

b. The interest is computed on the account periodically.

c. The borrower has the right to pay in full at any time without penalty or to pay in the installments which are established by the loan agreement.

d. The lender agrees to permit the borrower to borrow money from time to time with the maximum amount of each borrowing established by the loan agreement.

e. The account is secured by an interest in real estate. The priority of the secured interest in the real estate shall be determined by section 654.12A.

2. Except as provided in this section, a home equity line of credit is subject to chapter 537. However, sections 537.2307, 537.2402, and 537.2510 do not apply.

3. *a.* A lender may collect in connection with establishing or renewing a home equity line of credit the costs listed in section 535.8, subsection 2, paragraph *"b"*, charges for insurance as described in section 537.2501, subsection 2, and a loan processing fee as agreed between the borrower and the lender, and annually may collect an account maintenance fee of not more than fifteen dollars. Fees collected under this subsection shall be disregarded for purposes of determining the maximum charge permitted by subsection 4.

b. The parties to a home equity line of credit which is not a consumer credit transaction, as defined in section 537.1301, may contract for a delinquency charge under terms no more favorable than those permitted for open-end credit under section 537.2502.

4. The interest rate on a home equity line of credit shall not exceed one and three-quarters percent per month.

5. Real estate which is the consumer's principal dwelling shall not be subject to foreclosure when the balance secured is two thousand dollars or less.

84 Acts, ch 1272, §1; 95 Acts, ch 35, §1; 99 Acts, ch 15, §1

535.11 Finance charge on accounts receivable.

1. Except where the parties have agreed in writing for the payment of a different finance charge or rate of interest, a creditor may charge a finance charge on the unpaid balances of an account receivable at a rate not exceeding that permitted by subsection 3 or 4 of this section if the creditor gives notice as required by subsection 2 of this section.

2. As a condition of imposing a finance charge under this section, the creditor shall give notice to the debtor as follows:

a. In a transaction that is subject to the Truth in Lending Act, the creditor shall give all disclosures as required by that Act and at the time or times required by that Act.

b. In a transaction that is not subject to the Truth in Lending Act, the creditor shall give written notice to the debtor at the time the debt arises. The notice shall be contained on the invoice or bill of sale evidencing the credit transaction, and shall disclose the rate of the finance charge and the date or day of the month before which payment must be received if the finance charge is to be avoided. With respect to open accounts, this notice shall be given at the time credit is initially extended; provided that additional advance notice in writing shall be given to the debtor not less than ninety days prior to any change in the terms of the agreement or of rate of the finance charge or date payment is due. For purposes of this paragraph, notice is given if the invoice or bill of sale is delivered with the goods, whether or not the debtor is present at the time of delivery.

c. As used in this subsection, *"Truth in Lending Act"* means as defined in section 537.1302.

3. With respect to an account other than an open account, the creditor may impose a finance charge not exceeding that permitted by section 537.2201, subsections 2 to 5.

4. With respect to an open account, the creditor may impose a finance charge not exceeding that permitted by section 537.2202, subsection 2.

5. As used in this section, *"finance charge"* means as defined in section 537.1301; and *"account receivable"* means a debt arising from the retail sale of goods or services or both on credit; and *"open account"* means an account receivable consisting of debt arising from the extension of open-end credit, as defined in section 537.1301.

6. This section does not supersede any of the provisions of chapter 537, except that section 537.3212 does not apply to a consumer credit transaction in which a finance charge is imposed under this section. This section does not authorize the compounding of a finance charge.

7. The finance charge authorized by this section is in lieu of interest or a finance charge authorized under section 535.2, subsection 1 or any oth-

er provision of law. The rate of a finance charge imposed pursuant to this section is applicable to a judgment in an action on the account, notwithstanding section 535.3.

8. If a creditor imposes a finance charge in violation of this section, the debtor shall have the right to recover all amounts unlawfully received by the creditor as finance charges, plus attorney's fees and court costs incurred in any action to effect recovery. This subsection does not limit remedies which may be available under chapter 537.

[C81, §535.11; 82 Acts, ch 1153, §6, 18(1)]
98 Acts, ch 1100, §72

535.12 Loans by agricultural credit corporation.

1. An agricultural credit corporation, as defined in subsection 4, may lend money pursuant to a written promissory note or other writing evidencing the loan obligation, at a rate of interest which is not more than four percentage points above the lending rate in effect at the farm credit bank of Omaha, Nebraska, for the month during which the writing evidencing the loan obligation is made, provided that the loan is for an agricultural production purpose as defined in subsection 5 and further provided that the loan would, but for this section, be subject to the maximum rate of interest prescribed by section 535.2, subsection 3, paragraph *"a"*.

2. On or prior to the first day of each calendar month following June 13, 1980, the superintendent of banking shall determine the maximum rate of interest which may be charged pursuant to subsection 1 of this section on loans made by an agricultural credit corporation during that month, and shall cause the maximum rate to be published as soon after determination as possible, as a notice in the Iowa Administrative Bulletin or as a legal notice in a newspaper of general circulation published in Polk county. The maximum rate so determined shall be effective as provided in subsection 1 of this section regardless of the date of publication of the notice, except that no agricultural credit corporation shall be found in violation of this chapter solely on account of having made a loan on or prior to the day on which a notice of a maximum rate is published as provided in this subsection, if the loan would have been lawful if made during the preceding calendar month.

3. This section does not prohibit an agricultural credit corporation from lending money as otherwise permitted by law.

4. As used in this section, *"agricultural credit corporation"* means a corporation which has been designated by the farm credit bank of Omaha, Nebraska, as an agricultural credit corporation eligible to sell or discount loans to that bank pursuant to 12 U.S.C. § 2074.

5. As used in this section *"agricultural production purpose"* means a purpose related to the production of agricultural products. *"Agricultural products"* includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products thereof, and any and all products produced on farms.

[C81, §535.12]
89 Acts, ch 257, §26

535.13 Definition.

As used in this chapter, unless the context otherwise requires, *"agricultural purpose"* means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a person who cultivates, plants, propagates or nurtures the agricultural products. *"Agricultural products"* includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

[C81, §535.13; 82 Acts, ch 1153, §7]

535.14 Prompt crediting of payment on loans secured by residential real property.

A lender is subject to the requirements set forth in section 537.3206, regarding the prompt crediting of payments, with respect to a loan secured by a lien or security interest on owner-occupied residential real property. For purposes of this section, *"residential real property"* means residential real property as defined in section 535B.1.

99 Acts, ch 15, §2

535.15 Open-end credit and credit card disclosure. Repealed by 99 Acts, ch 73, § 1.

535.16 Delivery of copies of debt documents.

A lender or other secured party shall provide to a debtor, at the time a document relating to a debt is signed, a copy of the document signed by the debtor. Receipt of a copy required by this section may be acknowledged anywhere on the document or on a separate acknowledgment of receipt.

A lender or other secured party shall provide to a debtor copies of all documents signed by the debtor relating to the debt at any other time, upon request, for a charge that shall not exceed the reasonable cost of copying the document.

86 Acts, ch 1081, §1; 87 Acts, ch 163, §1; 88 Acts, ch 1023, §1

535.17 Requirements of credit agreements — statute of frauds — modifications.

1. A credit agreement is not enforceable in contract law by way of action or defense by any party unless a writing exists which contains all of the material terms of the agreement and is signed by

the party against whom enforcement is sought.

2. Unless otherwise expressly agreed in writing, a modification of a credit agreement which occurs after the person asserting the modification has been notified in writing that oral or implied modifications to the credit agreement are unenforceable and should not be relied upon, is not enforceable in contract law by way of action or defense by any party unless a writing exists containing the material terms of the modification and is signed by the party against whom enforcement is sought. This notification can be included among the terms of a credit agreement, can be included on a separate form or together with other disclosures that are provided when the agreement is made, or can be given wholly apart from the agreement and at any time after the agreement has been made. To be effective, the notification and its language must be conspicuous. A person who gives a notification is bound by it to the same extent as the person notified. A notification with respect to any credit agreement is effective with respect to all other credit agreements then in effect between the parties if the notification conspicuously so provides. When a modification is required by this section to be in writing and signed, such requirement cannot be modified except by clear and explicit language in a writing signed by the person against whom the modification is to be enforced.

3. A notification referred to in subsection 2 in the following form in boldface, ten-point type, complies with the requirements of this section:

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

4. Notwithstanding subsections 1 and 2, a credit agreement or modification of a credit agreement which is not in writing, but which is valid in other respects, is enforceable if the party against whom enforcement is sought admits in court that the agreement or modification was made, but no agreement or modification is enforceable under this subsection beyond the terms admitted.

5. For purposes of this section, unless the context otherwise requires:

a. "Action" includes petition, complaint, counterclaim, cross-claim, or any other pleading or proceeding to enforce affirmatively any right or duty or to recover damages for the nonperformance of any duty.

b. "Contract" means a promise or set of promises for the breach of which the law would give a remedy or the performance of which the law would recognize a duty, and includes promissory obligations based on instruments and similar documents or on the contract doctrine of promissory estoppel.

c. "Credit agreement" means any contract made or acquired by a lender to loan money, finance any transaction, or otherwise extend credit for any purpose, and includes all of the terms of the contract. *"Credit agreement"* does not mean a contract to loan money, finance a transaction, or otherwise extend credit by means of or pursuant to a credit card, as defined in section 537.1301, subsection 16, or pursuant to open-end credit, as defined in section 537.1301, subsection 29, or pursuant to a home equity line of credit, as defined in section 535.10 whether the loan, financing, or credit is for consumer or business purposes or a consumer rental purchase agreement as defined in section 537.3604, subsection 8.

d. "Defense" includes setoff, recoupment, and any basis or means for barring or reducing liability or obligation on any claim.

e. "Lender" means any person primarily in the business of loaning money, or financing sales, leases, or other provision of property or services.

f. "Modification" includes change, addition, waiver, rescission, and any other variation of any kind whether expressly made or implied by, or inferred from, conduct of any kind.

6. This section shall be interpreted and applied purposively to ensure that contract actions and defenses on credit agreements are supported by clear and certain written proof of the terms of such agreements to protect against fraud and to enhance the clear and predictable understanding of rights and duties under credit agreements.

7. This section entirely displaces principles of common law and equity that would make or recognize exceptions to or otherwise limit or dilute the force and effect of its provisions concerning the enforcement in contract law of credit agreements or modifications of credit agreements. However, this section does not displace any additional or other requirements of contract law, which shall continue to apply, with respect to the making of enforceable contracts, including the requirement of consideration or other basis of validation.

8. This section does not apply to a credit agreement made primarily for a personal, family, or household purpose where the credit extended is twenty thousand dollars or less.

90 Acts, ch 1176, §1

CHAPTER 535A

MORTGAGE LOANS — RED-LINING

535A.1 Definitions.
535A.2 Discriminatory — real estate mortgages.
535A.3 Discretion of financial institution.
535A.4 Disclosure.
535A.5 Agency to administer.
535A.6 Action for damages.
535A.7 Criminal penalty.
535A.8 Civil penalty.
535A.9 Tying arrangements prohibited.
535A.10 and 535A.11 Reserved.
535A.12 Title guaranty program disclosed.
Repealed by 88 Acts, ch 1145, §6.

535A.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Financial institution"* means any bank, credit union, insurance company, mortgage banking company or savings and loan association, industrial loan company, or like institution or any other person who makes mortgage loans and which operates or has a place of business in this state. *"Financial institution"* does not include an individual who makes less than five mortgage loans a year.

2. *"Mortgage loan"* means a loan for the purchase, construction, improvement or rehabilitation of residential property containing or to contain four or fewer family dwelling units in which the property is used as security for the loan.

3. *"Mortgage loan disclosure statement"* means the statement required by the federal Home Mortgage Disclosure Act, 12 U.S.C. § 2801 to 2809.

4. *"Red-lining"* means the practice by which a financial institution may designate certain areas as unsuitable for the making of mortgage loans and reject applications for mortgage loans or vary the terms of a mortgage loan upon property within that area because of the prevailing income, racial or ethnic characteristics of the area, or because of the age of the structures in the area.

5. *"Reporting financial institution"* means a financial institution which is required to file a mortgage loan disclosure statement.

6. *"Vary the terms of a mortgage loan"* includes, but is not limited to the following:

a. Requiring a greater than average down payment than is usual for the particular type of mortgage loan involved.

b. Requiring a shorter period of amortization than is usual for the particular type of mortgage loan involved.

c. Charging a higher interest rate or higher loan origination fees than is usual for the particular type of mortgage loan involved.

d. An unreasonable underappraisal of real estate or item of property offered as security.

[C79, 81, §535A.1; 81 Acts, ch 174, §4, 5]
85 Acts, ch 238, §1

535A.2 Discriminatory — real estate mortgages.

It is a discriminatory practice for any financial institution accepting mortgage loan applications to engage in the practice of red-lining as defined in section 535A.1.

[C79, 81, §535A.2]

535A.3 Discretion of financial institution.

Nothing contained in this chapter shall preclude a financial institution from applying economically sound underwriting practices in contemplation of any mortgage loan to any person. Such practices shall include but are not limited to the following:

1. The willingness and the financial ability of the borrower to repay the mortgage loan.

2. The appraised value of any real estate or other item of property proposed as security for any mortgage loan.

3. Diversification of the financial institution's investment portfolio.

[C79, 81, §535A.3]

535A.4 Disclosure.

Each reporting financial institution shall file a copy of its mortgage loan disclosure statement with the Iowa finance authority by March 31 following the calendar year covered by the mortgage loan disclosure statement. The filing satisfies all reporting requirements under this chapter. The maintenance of records sufficient to prepare this report satisfies the recordkeeping requirements of this chapter.

[C79, 81, §535A.4; 81 Acts, ch 174, §6]

535A.5 Agency to administer.

Sections 535A.2 and 535A.4 shall be administered and enforced by the following agencies:

1. The superintendent of banking or the superintendent's designee shall enforce the sections in regard to banks, persons licensed under chapter 536A, and mortgage banking companies.

2. The superintendent of savings and loan associations shall enforce the sections in regard to

savings and loan associations pursuant to chapter 534.

3. The commissioner of insurance or the commissioner's designee shall be responsible for enforcing those sections pursuant to chapter 505 in regard to all insurance companies.

4. The superintendent of credit unions or a designee shall be responsible for enforcing those sections in regard to all credit unions.

[C79, 81, §535A.5]

88 Acts, ch 1134, §96

535A.6 Action for damages.

Any person who has been aggrieved as a result of a violation of sections 535A.1 to 535A.9 may bring an action in the district court of the county in which the violation occurred or in the county where the financial institution involved is located.

Upon a finding that a financial institution has committed a violation of either section 535A.2, 535A.4, or 535A.9 the court may award actual damages, court costs and attorney fees.

[C79, 81, §535A.6]

85 Acts, ch 238, §2

535A.7 Criminal penalty.

Any person who knowingly engages in a practice which violates the provisions of section 535A.2, 535A.4 or 535A.9 is guilty of a serious misdemeanor.

[C79, 81, §535A.7]

85 Acts, ch 238, §3

535A.8 Civil penalty.

Any person who in bad faith fails to comply with the provisions of this chapter is subject to punitive damages not to exceed one thousand dollars in addition to actual damages as set forth in section 535A.6.

[C79, 81, §535A.8]

535A.9 Tying arrangements prohibited.

1. A financial institution which makes or offers to make real estate mortgage loans shall not:

a. Grant or offer to grant a loan on the prior condition, that the borrower is required to contract with any specific person or organization for either of the following:

(1) Services of a real estate agent or broker.

(2) Insurance services as an agent, broker, or underwriter.

b. Use confidential credit status information that is used for qualifying a person for the purchase of real property for solicitation purposes either directly or indirectly by an affiliate subsidiary.

c. Attempt or permit a real estate or insurance subsidiary to attempt to create the impression in its advertising or in any communication that the customers of the subsidiary shall have priority access to the funds of the financial institution or are entitled to preferential interest rates or other terms.

2. This section does not apply to the Iowa finance authority or a program operated pursuant to chapter 16.

85 Acts, ch 238, §4; 85 Acts, ch 252, §56

535A.10 and 535A.11 Reserved.

535A.12 Title guaranty program disclosed. Repealed by 88 Acts, ch 1145, § 6.

CHAPTER 535B

MORTGAGE BANKERS AND BROKERS

535B.1 Definitions.
535B.2 Exemptions.
535B.3 Registration.
535B.4 General licensing requirements.
535B.5 Granting and denial of license.
535B.6 Licensing of foreign corporation.
535B.7 Suspension or revocation of license.
535B.8 Operating without a license.
535B.9 Bonds required of license applicants.
535B.10 Investigations and examinations.
535B.11 Servicing mortgages and payoffs.
535B.12 Payment processing.
535B.13 Enforcement.
535B.14 Rulemaking authority.
535B.15 Liability of state.
535B.16 Notice to administrator.

535B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Administrator"* means the superintendent of the division of banking of the department of commerce.

2. *"First mortgage loan"* means a loan of money secured by a first lien on residential real property and includes a refinancing of a contract of sale, an assumption of a prior loan, and a refi-

nancing of a prior loan.

3. *"Licensee"* means a person licensed under this chapter; however, any individual who is acting solely as an employee or agent of a mortgage banker or broker licensed under this Act need not be separately licensed.

4. *"Mortgage banker"* means a person who does one or more of the following:

a. Makes at least four first mortgage loans on residential real property located in this state in a calendar year.

b. Originates at least four first mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.

c. Services at least four first mortgage loans on residential real property located in this state. However, a natural person, who services less than fifteen first mortgage loans on residential real estate within the state and who does not sell or transfer first mortgage loans, is exempt from this paragraph if that person is otherwise exempt from the provisions of this chapter.

5. *"Mortgage broker"* means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four first mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year.

6. *"Person"* means an individual, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.

"Natural person" means an individual who is not an association, joint venture, or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any other group of individuals or business entities, however organized.

7. *"Registrant"* means a person registered under section 535B.3.

8. *"Residential real property"* means real property, which is an owner-occupied single-family or two-family dwelling, located in this state, occupied or used or intended to be occupied or used for residential purposes, including an interest in any real property covered under chapter 499B.

88 Acts, ch 1146, §1; 89 Acts, ch 133, §1 – 3; 91 Acts, ch 65, §1

535B.2 Exemptions.

This chapter, except for sections 535B.3, 535B.11, 535B.12, and 535B.13, does not apply to any of the following:

1. A national bank.
2. A federally chartered savings and loan association.
3. A federally chartered savings bank.
4. A federally chartered credit union.
5. A loan company licensed under chapter 536 or 536A.
6. A bank organized under chapter 524.
7. A savings and loan association or savings bank organized under chapter 534.
8. A credit union organized under chapter 533.
9. An insurance company organized under the laws of this state and subject to regulation by the commissioner of insurance.
10. A wholly owned subsidiary of an organization listed in subsections 1 through 9 if the listed organization has its principal place of business in Iowa.
11. A bank, savings and loan association, credit union, or insurance company organized or chartered under the laws of any other state, provided the financial institution or insurance company has a place of business in Iowa or in a county of another state if that county is contiguous to an Iowa border.
12. Mortgage lenders or mortgage bankers maintaining an office in this state whose principal business in this state is conducted with or through mortgage lenders or mortgage bankers otherwise exempt under this section and which maintain a place of business in this state.
13. A nonprofit organization qualifying for tax-exempt status under the Internal Revenue Code as defined in section 422.3 which offers housing services to low and moderate income families.

88 Acts, ch 1146, §2; 89 Acts, ch 83, §76; 89 Acts, ch 133, §4, 5; 96 Acts, ch 1056, §21

535B.3 Registration.

1. A person exempt under section 535B.2, subsection 10, 11, 12, or 13, shall register with the administrator.
2. A registrant shall submit to the administrator a registration statement on forms provided by the administrator. The forms shall include all addresses at which business is to be conducted, the names and titles of each director and principal officer of the business, and a description of the activities of the applicant in such detail as the administrator may require.
3. The registrant, except a nonprofit organization exempt under section 535B.2, subsection 13, shall pay an annual registration fee of one hundred dollars.
4. A registration under this chapter is not assignable.

88 Acts, ch 1146, §3; 89 Acts, ch 133, §6; 96 Acts, ch 1056, §22

535B.4 General licensing requirements.

1. A person shall not act as a mortgage banker or mortgage broker in this state or use the title *"mortgage banker"* or *"mortgage broker"* without first obtaining a license from the administrator.
2. License applicants shall submit to the administrator an application on forms provided by the administrator. The forms shall include, at a minimum, all addresses at which business is to be

conducted, the names and titles of each director and principal officers of the business, and a description of the activities of the applicant in such detail as the administrator may require.

3. The applicant shall also submit a recently prepared certified financial statement.

4. The applicant for an initial license shall submit a fee in the amount of five hundred dollars.

5. Licenses granted under this chapter are not assignable.

6. Licenses granted under this chapter expire on the next June 30 after their issuance.

7. Applications for renewals of licenses under this chapter must be filed with the administrator before June 1 of the year of expiration and must be accompanied by a fee of two hundred dollars for a license to transact business solely as a mortgage broker, and four hundred dollars for a license to transact business as a mortgage banker.

88 Acts, ch 1146, §4; 89 Acts, ch 133, §7

535B.5 Granting and denial of license.

1. Upon the filing of an application for a license, if the administrator finds that the financial responsibility, character, and general fitness of the applicant and of the members thereof if the applicant is a partnership, association, or other organization and of the officers, directors, and principal employees if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of this chapter, the administrator shall issue the applicant a license to engage in mortgage lending, brokering, and servicing. The administrator shall approve or deny an application for a license within ninety days after the filing of the application for a license.

2. If the administrator does not so find, the license shall not be issued, and the administrator shall notify the applicant in writing of the denial and the reasons for the denial.

88 Acts, ch 1146, §5

535B.6 Licensing of foreign corporation.

An applicant that is a foreign corporation must be authorized to do business in this state. A foreign corporation shall file with the license application both of the following:

1. An irrevocable consent, duly acknowledged, that suits and actions may be commenced against that licensee in the courts of this state by service of process in the usual manner provided for by the statutes and court rules of this state.

2. Proof of authorization to do business in this state.

88 Acts, ch 1146, §6

535B.7 Suspension or revocation of license.

1. The administrator may, pursuant to chapter 17A, suspend or revoke any license issued pursuant to this chapter if the administrator finds any of the following:

a. The licensee has violated a provision of this chapter or a rule adopted under this chapter or any other state or federal law applicable to the conduct of its business including but not limited to chapters 535 and 535A.

b. A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the administrator to refuse originally to issue the license.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

2. The administrator may order an emergency suspension of a licensee's license pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

3. A licensee may surrender a license by delivering to the administrator written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

4. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a mortgagor.

88 Acts, ch 1146, §7; 98 Acts, ch 1202, §42, 46

535B.8 Operating without a license.

A person, who without first obtaining a license under this chapter, engages in the business or occupation of, or advertises or holds the person out as, or claims to be, or temporarily acts as, a mortgage banker or mortgage broker in this state is guilty of a class "D" felony and may be prosecuted by the attorney general or a county attorney.

88 Acts, ch 1146, §8

535B.9 Bonds required of license applicants.

1. An applicant for a license shall file with the administrator a bond furnished by a surety company authorized to do business in this state. The bond shall be in the amount of fifteen thousand dollars for an applicant seeking to transact business solely as a mortgage broker, or thirty thousand dollars for an applicant seeking to transact business as a mortgage banker. The bond shall be continuous in nature until canceled by the surety with not less than thirty days' notice in writing to the mortgage broker or mortgage banker and to

the administrator indicating the surety's intention to cancel the bond on a specific date. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

2. In lieu of filing a bond, the applicant may pledge an alternative form of collateral acceptable to the administrator, if the alternative collateral provides protection to the state and any aggrieved person that is equivalent to that provided by a bond.

88 Acts, ch 1146, §9; 89 Acts, ch 133, §8

535B.10 Investigations and examinations.

1. Within one hundred twenty days after the end of a licensee's fiscal year, the licensee shall file financial statements which are certified by an independent accounting firm.

2. For the purposes of discovering violations of this chapter or any rules adopted under this chapter or for securing information lawfully required under this chapter, the administrator may at any time and as often as the administrator deems necessary, investigate the business and examine the books, accounts, records, and files used by a licensee. However, if the financial statement required by subsection 1 shows that the licensee satisfies the minimum net worth requirement necessary to be an approved mortgagee by the United States department of housing and urban development pursuant to its guidelines, as amended, the licensee is not subject to an investigation or examination as described in this subsection.

3. Notwithstanding subsection 2, all licensees are subject to limited examination by the administrator to investigate complaints or alleged violations about the licensee made to the administrator. Such investigation or examination by the administrator shall be restricted to acquiring information from the licensee relevant to the alleged violations.

4. In conducting any examination under this section, the administrator may rely on current reports made by the licensee which have been prepared for the following federal agencies or federally related entities:

a. United States department of housing and urban development.

b. Federal housing administration.

c. Federal national mortgage association.

d. Government national mortgage association.

e. Federal home loan mortgage corporation.

f. Veterans administration.

5. With respect to mortgage lenders or mortgage bankers who are specifically exempted from this chapter but are subject to sections 535B.11, 535B.12, and 535B.13, the powers of examination and investigation concerning compliance with sections 535B.11, 535B.12, and 535B.13 shall be exercised by the official or agency to whose supervision the exempted person is subject. If the administrator receives a complaint or other information concerning noncompliance with this chapter by an exempted person, the administrator shall inform the official or agency having supervisory authority over that person.

6. The total charge for an examination or investigation shall be paid by the licensee to the administrator within thirty days after the administrator has requested payment. The administrator may by rule provide for a charge for late payment of the fee. The amount of the fee shall be based on the actual costs of the examination as determined by the administrator. Examination reports and correspondence regarding these reports shall be kept confidential except as provided in this subsection, notwithstanding chapter 22. The administrator may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the administrator. The administrator may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act.

88 Acts, ch 1146, §10

535B.11 Servicing mortgages and payoffs.

A licensee or other mortgagee who services mortgages on residential real estate located in this state shall do all of the following:

1. Disburse required funds paid by the mortgagor and held in escrow for the payment of real estate taxes and insurance payments no later than their final due date.

2. Pay penalties incurred by the mortgagor due to the licensee's or mortgagee's failure to meet the due dates referred to in subsection 1 unless the licensee or mortgagee can show that the failure was due solely to the fact that the mortgagor received a statement of the amount due more than fifteen days before the due date and has failed to remit it to the licensee or mortgagee.

3. Perform a complete escrow analysis yearly. A clear and legible copy of the yearly analysis shall be promptly mailed to the mortgagor. If there is a change in the payment amount, the analysis shall be mailed at least twenty days before the effective date of the change. The summary shall contain all of the following information:

a. The name and address of the mortgagee.

b. The name and address of the mortgagor.

c. A summary of escrow account activity during the year which includes all of the following:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(a) Payments against loan principal.

(b) Payments against interest.

(c) Payments against real estate taxes.

(d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) A summary of loan principal for the year as follows:

(a) The amount of principal outstanding at the beginning of the year.

(b) The aggregate amount of payments against principal during the year.

(c) The amount of principal outstanding at the end of the year.

Compliance with sections 524.905, 533.16, 534.206, and 536A.20 shall constitute compliance with this subsection.

4. Answer in writing, within ten business days of receipt, any written request for payoff information received from a mortgagor or the mortgagor's designated representative.

5. Execute and deliver a release after payoff and within forty-five days after receipt of correct payment. If the licensee or mortgagee fails to execute and deliver a release of lien to the mortgagor or the mortgagor's designated representative, the mortgagor or the mortgagor's designated representative may notify in writing the administrator and any other official to whom the mortgagee is primarily subject. The administrator shall promptly mail by certified mail to the licensee or mortgagee a notice stating that the licensee or mortgagee must both release the mortgage and deliver the release to the administrator within fifteen days of receipt of said notice or face a penalty as provided in this section. If the licensee or mortgagee fails to make the release and deliver it to the administrator, the administrator may assess a penalty not to exceed fifty dollars for each day of delinquency after the fifteen days. The administrator may waive the penalty if the administrator finds the failure was not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid error.

6. If a person in connection with a first mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty calendar days of the borrower's request made by certified mail return receipt requested in connection with a proposed sale of the property, then the borrower may authorize the preparation of a new abstract of title to the property and the person failing to deliver the original abstract shall pay to the borrower the reasonable costs of preparation. If the borrower brings an action against the person failing to deliver to recover such payment and in the action recovers the payment, then the borrower shall also be entitled to recover attorney fees and court costs incurred in the action.

7. When the servicing of a first mortgage loan is transferred, sold, purchased, or accepted by a licensee or registrant, the licensee or registrant who is transferring or selling the servicing shall issue to the mortgagor, within five business days of the transfer, a notice which shall include at a minimum:

a. The name and address of the licensee or registrant transferring or selling the servicing.

b. The name and address of the licensee or registrant accepting or purchasing the servicing.

c. The effective date of the transfer.

d. A statement concerning the effect of the transfer on the terms and conditions of the mortgage.

e. The address where payments are to be submitted for at least the next three months.

f. The name and address of the licensee or registrant to whom questions related to the mortgage may be addressed.

88 Acts, ch 1146, §11; 89 Acts, ch 133, §9

535B.12 Payment processing.

A licensee or other mortgagee shall not assess a late charge if full payment is received before the date late charges are authorized in the mortgage documents and shall post all periodic payments in full within two business days of receipt.

88 Acts, ch 1146, §12

535B.13 Enforcement.

1. The administrator has cease and desist powers as follows:

a. For the purposes of this subsection, *"administrator"* means either the superintendent of banking or the official or agency charged with enforcing this chapter, or parts thereof, against the person under investigation.

b. If the administrator has reason to believe that a person has been or is in violation of this chapter or rules adopted under this chapter, after notice and hearing, the administrator may order a person to cease and desist from violating any provision of this chapter or rules adopted under this chapter.

c. The administrator, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of all records or other documents which the administrator deems relevant to the inquiry. In case of a refusal of a person to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, on application of the administrator, the district court of Polk county may issue an order requiring the person to comply with the subpoena and to testify. A failure to obey an order of the court to comply with the subpoena

may be punished by the court as a civil contempt. A cease and desist hearing need not observe any formal rules of pleading or evidence.

d. If after the hearing, the administrator finds that the person charged has violated this chapter or rules adopted under this chapter, the administrator shall issue written findings, a copy of which shall be served upon the person charged with the violations, along with an order requiring the person to cease and desist from engaging in the violations.

e. A person aggrieved by a cease and desist order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the Polk county district court for the enforcement of the cease and desist order.

f. A proceeding for review must be initiated within thirty days after the aggrieved person receives the cease and desist order. If no proceeding is initiated, the administrator may obtain a decree of the Polk county district court for enforcement of the cease and desist order.

g. A person who violates a cease and desist order of the administrator may, after notice and hearing, and upon further order of the administrator, be subject to a penalty of not more than five thousand dollars for each act or violation of the cease and desist order.

2. The administrator may request the attorney general to enforce the provisions of this chapter. A civil enforcement action by the attorney general may be filed in equity in either the county in which the violation occurred or Polk county. A civil enforcement action by the attorney general may seek any or all of the following:

a. Temporary and permanent injunctive relief.

b. Restitution for a mortgagor aggrieved by a violation of this chapter.

c. Costs for the investigation and prosecution of the enforcement action including attorneys fees.

3. This chapter does not limit the power of the attorney general to determine that any other practice is unlawful under the Iowa consumer fraud Act, section 714.16, and to file an action under that section.

88 Acts, ch 1146, §13; 91 Acts, ch 65, §2

535B.14 Rulemaking authority.

The administrator may adopt, amend, or repeal rules to aid in the administration and enforcement of this chapter.

88 Acts, ch 1146, §14

535B.15 Liability of state.

An act or omission by the state pursuant to this chapter including, but not limited to, an examination, inspection, audit, or other financial oversight responsibility shall not subject the state to liability.

88 Acts, ch 1146, §15

535B.16 Notice to administrator.

A licensee or registrant maintaining an office in the state shall notify the administrator in writing at least thirty days before closing or otherwise ceasing operations at any office in the state.

89 Acts, ch 133, §10

CHAPTER 535C

LOAN BROKERS

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535C.1 Title.

This chapter may be cited as the *"Iowa Loan Brokers Act"*.

83 Acts, ch 146, §1

535C.2 Definitions.

1. *"Advance fee"* means consideration of any type including a payment, fee, pay-per-call charge, or deposit, which is assessed or collected prior to

the closing of a loan or the issuing of a credit card.

2. *"Borrower"* means a person who seeks the services of a loan broker.

3. *"Loan"* means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for the use of the property.

4. *"Loan broker"* or *"broker"* means a person who promises to obtain a loan or credit card or assist in obtaining a loan for another from a third person, or who promises to consider making a loan or offering to issue a credit card to a person. A loan broker does not include any of the following:

a. An attorney licensed to practice in this state while engaged in the practice of law.

b. A certified public accountant licensed to practice in this state while engaged in practice as a certified public accountant.

c. An accounting practitioner, while engaged as an accounting practitioner, who procures loans as an incidental part of the accountant's practice.

d. A governmental body or employee acting in an official capacity.

e. A financial institution, to the extent the institution's activities or arrangements are expressly approved or regulated by a regulatory body or officer acting under authority of the United States.

f. An insurance company subject to regulation by the commissioner of insurance.

g. A bank incorporated under chapter 524.

h. A credit union incorporated under chapter 533.

i. A savings and loan association or savings bank incorporated under chapter 534.

j. A mortgage broker or mortgage banker licensed or registered under chapter 535B.

k. A regulated loan company licensed under chapter 536.

l. An industrial loan company licensed under chapter 536A.

5. *"Loan brokerage agreement"* or *"agreement"* means an agreement between a loan broker and a borrower in which the loan broker promises to do any of the following:

a. Obtain a loan or credit card for a borrower.

b. Assist the borrower in obtaining a loan or credit card.

c. Consider making a loan or issuing a credit card to the borrower.

6. *"Records"* means books, papers, documents, accounts, agreements, memoranda, electronic records of accounts, or correspondence relating to a matter regulated under this chapter.

7. *"Successful procurement of a loan"* means the receipt by a borrower of the loan proceeds.

83 Acts, ch 146, §2; 91 Acts, ch 205, §19; 93 Acts, ch 60, §13, 14

535C.2A Prohibition on advance fees.

A loan broker shall not directly or indirectly solicit, receive, or accept from a borrower an advance fee as consideration for providing services as a loan broker. A loan broker's fee may only be assessed or collected from a borrower after the successful procurement of a loan or issuance of a credit card.

93 Acts, ch 60, §15

535C.3 Disclosure statement required. Repealed by 93 Acts, ch 60, § 27.

535C.3A Financial statement. Repealed by 93 Acts, ch 60, § 27.

535C.4 Surety bond or trust account required. Repealed by 93 Acts, ch 60, § 27.

535C.5 Filing with the administrator — penalty. Repealed by 93 Acts, ch 60, § 27.

535C.6 Penalty.

A loan broker who violates a provision of this chapter is guilty of a serious misdemeanor.

83 Acts, ch 146, §6; 93 Acts, ch 60, §16

535C.7 Written agreements required.

A loan brokerage agreement shall be in writing, contain a description of the services that the broker agrees to perform for the borrower, and the conditions under which the borrower is obligated to pay the broker. The agreement shall be signed by the broker and the borrower. The broker shall give the borrower a copy of the agreement when the borrower signs the agreement.

83 Acts, ch 146, §7; 91 Acts, ch 205, §22

535C.8 Waiver of rights.

A waiver of this chapter by a borrower prior to or at the time of entering into a loan brokerage agreement is contrary to public policy and is void. An attempt by a loan broker to have a borrower waive any rights given in this chapter is a violation of this chapter.

83 Acts, ch 146, §8

535C.9 Rules.

The attorney general may adopt rules according to chapter 17A as necessary or appropriate to implement the purposes of this chapter.

83 Acts, ch 146, §9; 93 Acts, ch 60, §17

535C.10 Remedies.

1. If a broker materially violates the loan brokerage agreement, the borrower may, upon written notice, void the agreement. In addition, the borrower may recover all moneys paid the broker, a penalty of twice the amount of the fee sought by the broker, other damages, and reasonable attorney's fees. A material violation includes, but is not limited to, any of the following:

a. Making false or misleading statements relative to the agreement.

b. Failure to comply with the agreement or the obligations arising from the agreement.

c. Failure to either grant the borrower a loan or issue a credit card or diligently attempt to obtain a loan or credit card for the borrower.

d. Failure to comply with the requirements of this chapter.

e. Soliciting or obtaining, directly or indirectly, an advance fee.

2. A violation of this chapter is a violation of the Iowa consumer fraud Act, section 714.16.

3. Remedies under this chapter are in addition to other remedies available in law or equity.

83 Acts, ch 146, §10; 93 Acts, ch 60, §18

535C.11 Applicability.

This chapter does not apply to activities or arrangements expressly approved or regulated by the department of commerce.

83 Acts, ch 146, §11; 91 Acts, ch 205, §23; 93 Acts, ch 60, §19

535C.11A Exemption — burden of proof.

In a civil proceeding pursuant to this chapter, a person claiming to be excluded from the definition of "loan broker" or "broker" has the burden of proof in substantiating the claim.

93 Acts, ch 60, §20

535C.12 Records.

1. A loan broker shall maintain accurate records relating to transactions regulated under this chapter. The records shall include all of the following:

a. The accounts of the broker.

b. A copy of each contract in which the broker is a party, including loan brokerage agreements.

c. The amount of receipts received by the broker and the date the receipts were received.

2. The broker shall retain each loan brokerage agreement entered into by the broker and records pertaining to each agreement for at least two years after the agreement expires.

91 Acts, ch 205, §24; 93 Acts, ch 60, §21

535C.13 Administrative actions. Repealed by 93 Acts, ch 60, § 27.

535C.14 Misrepresentation of governmental approval.

It is unlawful for a loan broker to represent or imply that the broker has been sponsored, recommended, or approved by, or that the broker's abilities or qualifications have been passed upon by a governmental entity of the state or its political subdivisions.

91 Acts, ch 205, §26; 93 Acts, ch 60, §22

535C.15 Reserved.

535C.16 Scope of chapter. Repealed by 93 Acts, ch 60, § 27.

CHAPTER 536

REGULATED LOANS

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536.13 Banking board — report — classification — rules — penalty — consumer credit code.
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536.25 Statement of indebtedness of borrower.
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536.27 Insurance related to property of borrower.
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536.1 Title — license required.

1. This chapter may be referred to as the *"Iowa Regulated Loan Act"*.

2. With respect to a loan other than a consumer loan, a person shall not engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of twenty-five thousand dollars or less and charge, contract for, or receive on the loan a greater rate of interest or consideration for the loan than the lender would be permitted by law to charge if the lender were not a licensee under this chapter except as authorized by this chapter and without first obtaining a license from the superintendent of banking.

3. With respect to a consumer loan, a person required by section 537.2301 to have a license shall not engage in the business of making loans of money, credit, goods or things in action in the amount or value of twenty-five thousand dollars or less and charge, contract for, or receive on the loan a greater rate of interest or consideration for the loan than the lender would be permitted by law to charge if the lender were not a licensee under this chapter, except as authorized by this chapter and without first obtaining a license from the superintendent.

4. A person who enters into less than ten supervised loans per year in this state and who neither has an office physically located in this state nor engages in face-to-face solicitation in this state may contract for and receive the rate of interest permitted in this chapter for licensees under this chapter. A "consumer loan" means the same as defined in section 537.1301.

[C24, 27, 31, §9410; C35, §9438-f1; C39, §**9438.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.1]

85 Acts, ch 158, §2

536.2 Application — fees.

Application for such license shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, of the place where the business of making loans under the provisions of this chapter is to be conducted and such further relevant information as the superintendent may require. Such applicant at the time of making such application shall pay to the superintendent the sum of fifty dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and the sum of one hundred dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as a fee for investigating the application and the additional sum of one hundred twenty-five dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and two hundred fifty dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as an annual license fee.

Every applicant shall also prove, in form satisfactory to the superintendent, that the applicant has available for the operation of such business at the place of business specified in the application, liquid assets of at least five thousand dollars, or that the applicant has at least the said amount actually in use in the conduct of such business at such place of business.

[C24, 27, 31, §9411, 9412; C35, §9438-f2; C39, §**9438.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.2]

89 Acts, ch 257, §27

536.3 Bond.

The applicant shall also at the same time file with the superintendent a bond to be approved by the superintendent in which the applicant shall be the obligor, with one or more sureties, in the sum of one thousand dollars. The said bond shall run to the state for the use of the state and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this chapter. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the superintendent hereunder, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such person or persons from said obligor under and by virtue of the provisions of this chapter.

[C24, 27, 31, §9413, 9414; C35, §9438-f3; C39, §**9438.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.3]

536.4 Grant or refusal of license.

Upon the filing of such application, the approval of such bond and the payment of such fees, the superintendent shall make a thorough and complete investigation of the facts as the superintendent may deem necessary or proper.

If the superintendent shall determine from such application and from such investigation that the applicant can have a reasonable expectancy of a successful lending business at the location of the office for which application is made, and that there is a real need and necessity in that community for additional lending facilities to adequately serve the local people, and that said applicant is one who will command the respect of and confidence from the people in that community; that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a copartnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to warrant the belief that the business will be operated lawfully, honestly, fairly, and efficiently within the

purposes of this chapter, and if the superintendent shall find that the applicant has available or actually in use the assets described in section 536.2, the superintendent shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this chapter at the place of business specified in the said application; if the superintendent shall not so find the superintendent shall not issue such license and the superintendent shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The superintendent shall approve or deny every application for a license hereunder within sixty days from the filing of the application and the approved bond and the payment of the said fees.

If the application is denied the superintendent shall within twenty days thereafter file with the banking department a written transcript of the evidence and decision and findings with respect thereto containing the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof.

[C24, 27, 31, §9415; C35, §9438-f4; C39, §**9438.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.4]

536.5 License — form — posting.

Such license shall state the address of the place where the business of making such loans is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such license shall be kept conspicuously posted in such place of business and shall not be transferable or assignable.

[C24, 27, 31, §9411, 9418; C35, §9438-f5; C39, §**9438.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.5]

536.6 Additional bond.

If the superintendent shall find at any time that the bond is insecure or exhausted or otherwise of doubtful validity or collectibility, an additional bond to be approved by the superintendent, with one or more sureties and of the character specified in section 536.3, in the sum of not more than one thousand dollars, shall be filed by the licensee within ten days after written demand upon the licensee by the superintendent.

Every licensee shall have available at all times for each licensed place of business at least five thousand dollars in assets, either in liquid form or actually in use in the conduct of such business.

[C24, 27, 31, §9437; C35, §9438-f6; C39, §**9438.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.6]

536.7 Separate license — change of place of business.

Not more than one place of business where such loans are made shall be maintained under the same license, but the superintendent may issue more than one license to the same licensee upon compliance, for each such additional license, with all the provisions of this chapter governing an original issuance of a license.

Whenever a licensee shall change such place of business to another location the licensee shall at once give written notice thereof to the superintendent who shall attach to the license in writing the superintendent's record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new place of business.

[C24, 27, 31, §9416, 9419; C35, §9438-f7; C39, §**9438.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.7]

536.8 Annual fee — payment — new bond.

Every licensee shall, on or before the fifteenth day of each December, pay to the superintendent the sum as provided in section 536.2 as an annual license fee for the next succeeding calendar year and shall at the same time file with the superintendent a new bond or renewal of the old bond in the same amount and of the same character as required by section 536.3.

[C35, §9438-f8; C39, §**9438.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.8]

536.9 Suspension, revocation or surrender of license.

1. The superintendent may, upon at least twenty days' written notice to the licensee stating the contemplated action and grounds, and upon reasonable opportunity to be heard, revoke any license issued hereunder if the superintendent shall find that:

a. The licensee has failed, after ten days' notice of default, to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this chapter or to comply with any rule or regulation of the superintendent lawfully made pursuant to and within the authority of this chapter; or that

b. The licensee has violated any provision of this chapter or any rule or regulation lawfully made by the superintendent under and within the authority of this chapter; or that

c. Any fact or condition exists which would clearly have warranted the superintendent in refusing originally to issue such license.

2. If the superintendent shall find that probable cause for revocation of any license exists and that the enforcement of the chapter requires immediate suspension of such license pending investigation, the superintendent may, upon five days' written notice and a hearing, suspend such license for a period not exceeding thirty days.

3. The superintendent may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if the superintendent shall find that such grounds for revocation or suspension are of general application to all licensed places of business, or to more than one licensed place of business, operated by such licensee, the superintendent shall revoke or suspend all of the licenses issued to such licensee or such licenses as such grounds apply to, as the case may be.

4. Any licensee may surrender any license by delivering to the superintendent written notice that the licensee thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

5. No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

6. Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this chapter. The superintendent shall have authority on the superintendent's own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which would have warranted the superintendent in refusing originally to issue such license under this chapter.

7. Whenever the superintendent shall revoke or suspend a license issued under this chapter, the superintendent shall forthwith file with the banking division of the department of commerce a written transcript of the evidence and order to that effect and findings with respect thereto containing the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof.

[C24, 27, 31, §9436; C35, §9438-f9; C39, §**9438.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.9]

536.10 Examination of business — fee.

For the purpose of discovering violations of this chapter or securing information lawfully required by the superintendent hereunder, the superintendent may at any time, either personally or by an individual or individuals duly designated by the superintendent, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business described in section 536.1, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. For that purpose the superintendent and the superintendent's duly designated representatives shall have and be given free access to the place of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The superintendent and all individuals duly designated by the superintendent shall have authority to require the attendance of and to examine under oath all individuals whomsoever whose testimony the superintendent may require relative to such loans or such business.

The superintendent shall make an examination of the affairs, place of business, and records of each licensed place of business at least once each year.

A licensee subject to examination, supervision and regulation by the superintendent, shall pay to the superintendent an examination fee, based on the actual cost of the operation of the regulated loan bureau of the banking division of the department of commerce, and the proportionate share of administrative expenses in the operation of the banking division attributable to the regulated loan bureau as determined by the superintendent of banking. The fee shall apply equally to all licenses and shall not be changed more frequently than annually and when changed, shall be effective on January 1 of the year following the year in which the change is approved.

Upon completion of each examination required or allowed by this chapter, the examiner shall render a bill for such fee, in triplicate, and shall deliver one copy to the licensee and two copies to the superintendent. Failure to pay the fee to the superintendent within ten days after the date of the close of each such examination shall subject the licensee to an additional fee of five percent of the amount of such fee for each day the payment is delinquent.

[C24, 27, 31, §9433; C35, §9438-f10; C39, §**9438.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.10]

85 Acts, ch 158, §3

536.11 Records — annual report by licensee.

The licensee shall keep such books, accounts, and records as the superintendent may require in order to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve for at least two years after making the last entry on any loan recorded therein all books, accounts, and records, including cards used in the card system, if any.

Each licensee shall annually on or before the fifteenth day of March file a report with the superintendent giving such relevant information as the superintendent reasonably may require concerning the business and operations during the preceding calendar year of the licensed places of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the superintendent who shall make and publish annually an analysis and recapitulation of such reports.

[C24, 27, 31, §9434; C35, §9438-f11; C39, §**9438.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.11]

536.12 Restrictions on practices.

No licensee shall conduct the business of making loans under the provisions of this chapter within any office, room, suite or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the superintendent upon the superintendent's finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this chapter or of the rules lawfully made by the superintendent hereunder.

No licensee shall make any loan provided for by this chapter under any other name or at any other place of business than that named in the license.

No licensee shall take any instrument in which blanks are left to be filled in after execution.

[C24, 27, 31, §9426, 9432; C35, §9438-f12; C39, §**9438.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.12]

536.13 Banking board — report — classification — rules — penalty — consumer credit code.

1. The state banking board may investigate the conditions and find the facts with reference to the business of making regulated loans, as described in section 536.1 and after making the investigation, report in writing its findings to the next regular session of the general assembly, and upon the basis of the facts:

a. Classify regulated loans by a rule according to a system of differentiation which will reasonably distinguish the classes of loans for the purposes of this chapter.

b. Determine and fix by a rule the maximum rate of interest or charges upon each class of regulated loans which will induce efficiently managed commercial capital to enter the business in sufficient amounts to make available adequate credit facilities to individuals. The maximum rate of interest or charge shall be stated by the board as an annual percentage rate calculated according to the actuarial method and applied to the unpaid balances of the amount financed.

2. Except as provided in subsection 7, the board may redetermine and refix by rule, in accordance with subsection 1, any maximum rate of interest or charges previously fixed by it, but the changed maximum rates shall not affect preexisting loan contracts lawfully entered into between a licensee and a borrower. All rules which the board may make respecting rates of interest or charges shall state the effective date of the rules, which shall not be earlier than thirty days after notice to each licensee by mailing the notice to each licensed place of business.

3. Before fixing any classification of regulated loans or any maximum rate of interest or charges, or changing a classification or rate under authority of this section, the board shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard and to introduce evidence with respect to the change or classification.

4. Beginning July 4, 1965, and until such time as a different rate is fixed by the board, the maximum rate of interest or charges upon the class or classes of regulated loans is three percent per month on any part of the unpaid principal balance of the loan not exceeding one hundred fifty dollars and two percent per month on any part of the loan in excess of one hundred fifty dollars, but not exceeding three hundred dollars, and one and one-half percent per month on any part of the unpaid principal balance of the loan in excess of three hundred dollars, but not exceeding seven hundred dollars, and one percent per month on any part of the unpaid principal balance of the loan in excess of seven hundred dollars.

5. A licensee under this chapter may lend any sum of money not exceeding twenty-five thousand dollars in amount and may charge, contract for, and receive on the loan interest or charges at a rate not exceeding the maximum rate of interest or charges determined and fixed by the board under authority of this section or pursuant to subsection 7 for those amounts in excess of ten thousand dollars.

6. If any interest or charge on a loan regulated by this chapter in excess of those permitted by this chapter is charged, contracted for, or received, the contract of loan is void as to interest and charges and the licensee has no right to collect or receive any interest or charges. In addition, the licensee shall forfeit the right to collect the lesser of two thousand dollars of principal of the loan or the total amount of the principal of the loan.

7. The board may establish the maximum rate of interest or charges as permitted under this chapter for those loans whose unpaid principal balance is ten thousand dollars or less. For those loans whose unpaid principal balance is over ten thousand dollars, the maximum rate of interest or charges which a licensee may charge shall be the greater of the rate permitted by chapter 535 or the rate authorized for supervised financial organizations by chapter 537.

The Iowa consumer credit code, chapter 537, applies to a consumer loan in which the licensee participates or engages, and a violation of the Iowa consumer credit code is a violation of this chapter.

Article 2, parts 3, 5 and 6 of chapter 537, and article 3 of chapter 537, sections 537.3203, 537.3206, 537.3209, 537.3304, 537.3305 and 537.3306 apply to any credit transaction, as defined in section 537.1301 in which a licensee participates or engages, and any violation of those parts or sections is a violation of this chapter. For the purpose of ap-

plying the Iowa consumer credit code to those credit transactions, "consumer loan" includes a loan for a business purpose.

A provision of the Iowa consumer credit code applicable to loans regulated by this chapter supersedes a conflicting provision of this chapter.

[C24, 27, 31, §9420 – 9423; C35, §9438-f13; C39, §**9438.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.13]

85 Acts, ch 158, §4; 86 Acts, ch 1237, §34

536.14 Rights of borrower — payments.

Every licensee, in addition to complying with requirements of the Iowa consumer credit code respecting consumer loans, shall:

1. Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all interest or charges up to the date of such payment.

2. Upon repayment of the loan in full, mark indelibly every obligation and security other than a mortgage* signed by the borrower with the word "paid" or "canceled", and release any security interest which no longer secures a loan to the licensee, restore any collateral, return any note and any assignment given to the licensee by the borrower.

3. Display prominently in each licensed place of business an accurate schedule, to be approved by the superintendent, of the charges currently to be made upon all loans.

[C24, 27, 31, §9425; C35, §9438-f14; C39, §**9438.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.14]

*See §554.1201(37)

536.15 Limitation on principal amount over twenty-five thousand dollars.

A licensee shall not directly or indirectly charge, contract for, or receive any interest or consideration greater than the lender would be permitted by law to charge if the lender were not a licensee upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than twenty-five thousand dollars. This section also applies to a licensee who permits a person, as borrower or as endorser, guarantor, or surety for a borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than twenty-five thousand dollars for principal.

[C24, 27, 31, §9424; C35, §9438-f15; C39, §**9438.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.15]

85 Acts, ch 158, §5

536.16 Nonresident licensees — face-to-face solicitation.

Notwithstanding other provisions of this chapter to the contrary, a person who neither has an office physically located in this state nor engages in face-to-face solicitation in this state, if authorized by another state to make loans in that state at a rate of finance charge in excess of the rate provided in chapter 535, shall not be subject to the following provisions of this chapter:

1. Section 536.2 to the extent it requires payment of an annual license fee in excess of two hundred fifty dollars and requires a person to prove the person has any dollar amount of liquid assets or the use of any dollar amount in the conduct of the person's business at the licensed place of business.

2. Section 536.4, however, the superintendent may deny a license if upon investigation the superintendent determines that the financial responsibility, experience, character or general fitness of the person, or members, officers, or directors thereof, do not warrant the belief that the business will be operated lawfully, honestly, fairly and efficiently, within the purposes of this chapter.

3. Section 536.6 to the extent it requires a person to have any dollar amount of assets available for a licensed place of business.

4. Section 536.10 to the extent it requires the superintendent to make an examination of the affairs, place of business and records of the person on a periodic basis.

[C75, 77, 79, 81, §536.16]

89 Acts, ch 257, §28

536.17 and 536.18 Repealed by 74 Acts, ch 1250, § 9.132.

536.19 Violations.

Any person, copartnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of section 536.1, 536.12, 536.13 or 536.14, which are not also violations of article 5, part 3, of the Iowa consumer credit code, shall be guilty of a serious misdemeanor. Violations of the Iowa consumer credit code shall be subject to the penalties provided therein.

[C24, 27, 31, §9435; C35, §9438-f19; C39, §**9438.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.19]

536.20 Nonapplicability of statute.

This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, trust companies, building and loan associations, credit unions or licensed pawnbrokers, nor shall it apply to any domestic corporation entitled to the benefits of chapter 536A.

[C35, §9438-f20; C39, §**9438.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.20]

536.21 Rules.

The superintendent is hereby authorized and

empowered to make such reasonable and relevant rules as may be necessary for the execution and the enforcement of the provisions of this chapter, in addition hereto and not inconsistent herewith. All rules shall be filed and entered by the superintendent in the banking division of the department of commerce in an indexed, permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document.

[C35, §9438-f21; C39, §**9438.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.21]

536.22 Assistants.

The superintendent of banking is hereby authorized to employ such competent help as the superintendent deems necessary to carry out and perform the provisions of this chapter, and is hereby authorized and empowered to pay such persons so employed from the license fees, examination fees, and investigation fees referred to in section 536.2.

[C35, §9438-f22; C39, §**9438.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.22]

536.23 Judicial review.

Judicial review of the actions of the superintendent or the state banking board may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C35, §9438-f23; C39, §**9438.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §536.23]

536.24 List of licensees by banking superintendent.

The superintendent of banking shall, in listing the names of licensees under this chapter, indicate if the licensee is one of a chain of two or more such licensees, the name of the owner and the address of the principal place of business of each owner, a summary of individual reports of each such licensed office indicating its location, the name of licensee, capital, surplus, reserves, loans receivable, cash and due from banks, real estate, borrowed money, net worth, total assets, total liabilities and such other pertinent and related information as may be necessary or desirable to give a correct and full picture of the total assets and total liabilities of each such licensee.

[C62, 66, 71, 73, 75, 77, 79, 81, §536.24]

536.25 Statement of indebtedness of borrower.

A licensee when making a loan under this chapter shall require a statement in writing from each applicant setting forth a description of all installment indebtedness of the applicant by giving the amount of each loan and the name of the lender. The applicant may orally disclose the information and the licensee shall write down the information, and the applicant shall subsequently sign the statement.

[C62, 66, 71, 73, 75, 77, 79, 81, §536.25]
85 Acts, ch 158, §6

536.26 Insured loans.

A licensee shall not, directly or indirectly, sell or offer for sale any life or accident and health insurance in connection with a loan made under this chapter except as and to the extent authorized by this section. Life, accident and health insurance, or any of them, may be written by a licensed insurance producer upon or in connection with any loan for a term not extending beyond the final maturity date of the loan contract, but only upon one obligor on any one loan contract.

The amount of life insurance shall at no time exceed the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract or the actual amount unpaid on the loan contract, whichever is greater.

Accident and health insurance shall provide benefits not in excess of the unpaid balance of principal and interest combined which are scheduled to be outstanding under the terms of the loan contract and the amount of each periodic benefit payment shall not exceed the total amount payable divided by the number of installments and shall provide that if the insured obligor is disabled, as defined in the policy, for a period of more than fourteen days, benefits shall commence as of the first day of disability.

The premium, which shall be the only charge for such insurance, shall not exceed that approved by the commissioner of insurance of the state of Iowa as filed in the office of such commissioner. Such charge, computed at the time the loan is made for the full term of the loan contract on the total amount required to pay principal and interest.

If a borrower procures insurance by or through a licensee, the licensee shall cause to be delivered to the borrower a copy of the policy within fifteen days from the date such insurance is procured. No licensee shall decline new or existing insurance which meets the standards set out herein nor prevent any obligor from obtaining such insurance coverage from other sources.

If the loan contract is prepaid in full by cash, a new loan, or otherwise (except by the insurance) any life, accident and health insurance procured by or through a licensee shall be canceled and the unearned premium shall be refunded. The amount of such refund shall represent at least as great a proportion of the insurance premium or identifiable charge as the sum of the consecutive monthly balances of principal and interest of the loan contract originally scheduled to be outstanding after the installment date nearest the date of prepayment bears to the sum of all such monthly balances of the loan contract originally scheduled to be outstanding.

[C66, 71, 73, 75, 77, 79, 81, §536.26]
85 Acts, ch 158, §7; 2001 Acts, ch 16, §33, 37
2001 amendment to unnumbered paragraph 1 takes effect January 1, 2002; 2001 Acts, ch 16, §37

536.27 Insurance related to property of borrower.

A licensee may sell the borrower insurance against loss of or damage to property owned by the borrower or loss from liability arising out of the ownership or use of property owned by the borrower. When the transaction is a consumer credit transaction as defined in section 537.1301 the sale of property insurance is subject to the requirements of sections 537.2501 and 537.2510 and the rules adopted under those sections by the administrator of the Iowa consumer credit code.
85 Acts, ch 158, §9

536.28 Definitions.

As used in this chapter, unless the context otherwise requires:
1. *"Administrator"* means the person designated in section 537.6103.
2. *"Licensee"* means a person licensed under this chapter.
3. *"Board"* means the state banking board.
4. *"Consumer loan"* means a loan as defined in section 537.1301.
5. *"Superintendent"* means the state superintendent of banking.
[C75, 77, 79, 81, §536.28]
85 Acts, ch 158, §8

536.29 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to licensees, as provided in sections 537.2303, 537.2305 and 537.6105.
2. The superintendent shall co-operate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.
3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a person licensed under this chapter, when necessary to enable the administrator to enforce chapter 537.
4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the superintendent to each licensee or other person upon request. The annual report shall contain:
a. A summary of license applications approved or denied by the superintendent since the last report.
b. A summary of the assets, liabilities and capital structure of all licensees, and volume of consumer installment of credit outstanding per licensee, as of December 31 of the year for which the report is made.
c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.
d. Information which the superintendent may deem appropriate and advisable to disclose.
e. Information which the administrator may require to be included.
[C75, 77, 79, 81, §536.29]

CHAPTER 536A

INDUSTRIAL LOANS

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536A.1 Title.

This chapter may be referred to as the *"Iowa Industrial Loan Law"*.

[C66, 71, 73, 75, 77, 79, 81, §536A.1]

536A.2 Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly requires a different meaning:

1. *"Administrator"* means the person designated in section 537.6103.

2. *"Corporation"* shall mean any corporation for pecuniary profit organized under the laws of the state of Iowa.

3. *"Industrial loan company"* shall mean a corporation operating under the provisions of this chapter and engaged in the business of loaning money to be repaid in one payment or in weekly, monthly or other periodic installments and the charging, receiving or requiring of interest, discount, fees, compensation or charges of whatever nature or kind for the use of such money and for the services to be rendered to the borrower in connection with the loan. The term *"industrial loan company"* shall not include those businesses specifically exempted in section 536A.5.

4. *"License"* shall mean a permit or authorization issued or required under the provisions of this chapter to make loans in accordance with this chapter at a single location or place of business.

5. *"Licensee"* means a person licensed under this chapter.

6. *"Superintendent"* means the superintendent of banking within the banking division of the department of commerce.

[C66, 71, 73, 75, 77, 79, 81, §536A.2]

86 Acts, ch 1245, §757; 94 Acts, ch 1023, §68

536A.3 License.

With respect to a loan other than a consumer loan, a person shall not engage in the business of operating an industrial loan company in this state without first having obtained a license from the superintendent. With respect to a consumer loan, a person required by section 537.2301 to have a license is not authorized to engage in the business of operating an industrial loan company without first obtaining a license from the superintendent. A person that enters into less than ten supervised loans per year in this state and that neither has an office physically located in this state nor engages in face-to-face solicitation in this state may contract for and receive the rate of interest permitted in this chapter for licensees in this chapter. A *"consumer loan"* means the same as defined in section 537.1301.

[C66, 71, 73, 75, 77, 79, 81, §536A.3]

86 Acts, ch 1245, §758

536A.4 Limitations.

No license shall be issued to any individual, partnership, nonprofit organization or unincorporated association. Not more than one place of business where loans are made shall be maintained under the same license but the superintendent may issue more than one license to the same licensee upon compliance, for each such additional license, with all the provisions of this chapter governing an original issuance of a license.

[C66, 71, 73, 75, 77, 79, 81, §536A.4]

536A.5 Exemptions.

This chapter does not apply to any of the following:

1. Businesses organized or operating as permitted under the authority of a law of this state or the United States relating to banks, trust companies, building and loan associations, savings and loan associations, insurance companies, regulated loan companies organized under chapter 536, or credit unions.

2. Persons that make loans only on notes secured by first mortgages on real estate.

3. Licensed real estate brokers or salespersons.

4. A person engaged exclusively in the business of purchasing commodity financing or commercial paper.

5. A pawnbroker.

6. A person engaged in the mercantile business.

7. Loans made to a domestic or foreign corporation.

[C66, 71, 73, 75, 77, 79, 81, §536A.5]

85 Acts, ch 158, §10

536A.6 Administration by superintendent.

The superintendent shall supervise the operation of industrial loan companies in this state in accordance with this chapter.

[C66, 71, 73, 75, 77, 79, 81, §536A.6]

86 Acts, ch 1245, §759

536A.7 Application for license.

Applications for licenses to engage in the business of operating industrial loan companies shall be in writing on such forms as may be prescribed by the superintendent. The application shall give the name of the corporation, the location where the business is to be conducted, the street address of the place of business, the names and addresses of the officers and directors of the corporation and such other relevant information as the superintendent shall require. At the time of making such application the applicant shall pay to the superintendent the sum of fifty dollars to cover the cost of the investigation of the applicant. The applicant shall also pay to the superintendent the sum of two hundred fifty dollars as an annual license fee for

the period ending December 31 next following the application; provided that if the license is granted after June 30 in any year, the license fee for the remainder of that year shall be one hundred twenty-five dollars and any license fee paid by the applicant in excess of that amount shall be refunded by the superintendent.

[C66, 71, 73, 75, 77, 79, 81, §536A.7]
89 Acts, ch 257, §29

536A.8 Capital stock requirement.

The paid-in capital stock of any corporation engaged in the business of operating an industrial loan company shall not be less than twenty-five thousand dollars when the corporation is transacting business in any city having less than twenty-five thousand inhabitants according to the last preceding decennial census. The paid-in capital stock of any corporation engaged in the business of operating an industrial loan company in any city having a population of more than twenty-five thousand inhabitants according to the last preceding decennial census shall not be less than fifty thousand dollars. The paid-in capital stock of any corporation engaged in the business of operating an industrial loan company outside the limits of any incorporated city shall not be less than fifty thousand dollars. Every corporation engaged in the industrial loan business in the state of Iowa shall have a surplus of not less than ten percent of its paid-in capital stock.

[C66, 71, 73, 75, 77, 79, 81, §536A.8]

536A.9 Investigation of application.

Upon the filing of an application for a license to engage in the business of operating an industrial loan company, and upon payment of the investigation fee and license fee as required by section 536A.7, the superintendent shall cause an investigation to be made of the facts set forth in the application. If as the result of the preliminary investigation the superintendent deems it proper, the superintendent may hold a hearing at a time and place designated by the superintendent for the purpose of completing the superintendent's investigation.

[C66, 71, 73, 75, 77, 79, 81, §536A.9]

536A.10 Issuance of license.

If the superintendent shall find:

1. That the financial responsibility, experience, character and general fitness of the applicant and of the officers thereof are such as to command the confidence of the community, and to warrant the belief that the business will be operated honestly, fairly and efficiently within the purpose of this chapter;

2. That a reasonable necessity exists for a new industrial loan company in the community to be served;

3. That the applicant has available for the operation of the business at the specified location paid-in capital and surplus as required by section 536A.8; and

4. That the applicant is a corporation organized for pecuniary profit under the laws of the state of Iowa.

The superintendent shall approve the application and issue to the applicant a license to engage in the industrial loan business in accordance with the provisions of this chapter. The superintendent shall approve or deny an application for a license within one hundred twenty days from the date of the filing of such application.

[C66, 71, 73, 75, 77, 79, 81, §536A.10]

536A.11 Denial of license.

If the superintendent shall not approve the application, the superintendent shall prepare a written denial of the application with a written finding of facts which shall be sent by certified mail to the applicant. Within fifteen days after mailing of notice of the denial of its application, the applicant may file with the superintendent a written demand for a hearing on the application. Upon such demand being made, the superintendent must within thirty days hold a formal hearing at the superintendent's office in Des Moines, Iowa, notice of the time of which hearing shall be given by the superintendent to the applicant by mail within fifteen days after the filing of the written demand by the applicant. Notice of the time and place of hearing shall also be given by the superintendent to all corporations holding licenses to engage in the industrial loan business in the county where the applicant proposes to establish its business and notice of said time and place of hearing shall be published pursuant to section 618.14.

At the formal hearing after the original denial of the license by the superintendent the applicant shall be entitled to present evidence in support of the application. The superintendent shall then grant or deny the application for a license within thirty days from the date of the formal hearing and give notice to the applicant by a decision and finding of facts in writing. If the application for a license is disapproved and a license is denied the superintendent shall refund the annual license fee which was required to be deposited by section 536A.7 providing the cost of investigation does not exceed the investigation fee. If the cost of investigation exceeds the investigation fee, the excess cost shall be deducted from the license fee before any refund is made.

Judicial review of actions of the superintendent may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C66, 71, 73, 75, 77, 79, 81, §536A.11]

536A.12 Continuing license — annual fee — change of location — change of control.

1. Each such license remains in full force and effect until surrendered, revoked, or suspended, or until there is a change of control on or after January 1, 1996. A licensee, on or before the second day of January, shall pay to the superintendent the sum of two hundred fifty dollars as an annual license fee for the succeeding calendar year. When a licensee changes its place of business from one location to another in the same city, it shall at once give written notice to the superintendent who shall attach to the license in writing the superintendent's record of the change and the date of the change, which is authority for the operation of the business under that license at the new place of business.

2. A person who proposes to purchase or otherwise acquire, directly or indirectly, any of the outstanding shares of an industrial loan company which would result in a change of control of the industrial loan company, shall first apply in writing to the superintendent for a certificate of approval for the proposed change of control. The superintendent shall grant the certificate if the superintendent is satisfied that the person who proposes to obtain control of the industrial loan company is qualified by character, experience, and financial responsibility to control and operate the industrial loan company in a sound and legal manner, and that the interests of the thrift certificate holders, creditors, and shareholders of the industrial loan company, and of the public generally, shall not be jeopardized by the proposed change of control. If a board member of the industrial loan company has reason to believe any of the requirements of this subsection have not been complied with, the board member shall promptly report in writing such facts to the superintendent. If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control of the industrial loan company, or to effect a change in the control of the industrial loan company, such doubt shall be resolved in favor of reporting the facts to the superintendent.

3. *a.* For purposes of this section, *"control"* means control as defined in section 524.103. However, a change of control does not occur when a majority shareholder of an industrial loan company transfers the shareholder's shares of the industrial loan company to a revocable trust, so long as the transferor retains the power to revoke the trust and take possession of such shares.

b. Notwithstanding the provisions of paragraph *"a"*, a change of control is deemed to occur two years after the death of the majority shareholder, whether the shareholder's shares of the industrial loan company are held in a revocable trust or otherwise.

[C66, 71, 73, 75, 77, 79, 81, §536A.12]

87 Acts, ch 11, §1, 2; 96 Acts, ch 1159, §1; 2002 Acts, ch 1119, §184

Subsection 1 amended

536A.13 Books and records.

Each industrial loan company shall keep such books, accounts and records as will enable the superintendent to determine whether or not the licensee is complying with the provisions of this chapter. Industrial loan companies shall not be required to preserve or keep their records or files for a longer period than eleven years next after the first day of January of the year following the time of the making or filing of such records or files.

[C66, 71, 73, 75, 77, 79, 81, §536A.13]

536A.14 Annual report.

Each licensee shall annually on or before the fifteenth day of March file with the superintendent a report in writing showing the results of the operation of its industrial loan business for the previous calendar year, which reports shall contain:

1. A balance sheet showing all assets and liabilities as of the thirty-first day of December next preceding.

2. An operating statement showing income, expenses and net profit for the previous calendar year.

3. Such other relevant information as the superintendent shall reasonably require.

The report shall be verified under oath by the president and secretary of the corporation. The superintendent shall make and publish annually an analysis and recapitulation of such reports.

[C66, 71, 73, 75, 77, 79, 81, §536A.14]

536A.15 Examination of licensees.

The superintendent or the superintendent's duly authorized representative shall, at least once each year without previous notice, examine the books, accounts, and records of each licensee engaged in the industrial loan business as defined by this chapter. A licensee issuing senior debt to the general public shall be audited at the expense of the licensee by a certified public accountant licensed to practice in the state of Iowa. A licensee not issuing senior debt to the general public may provide an audited statement of the licensee's parent corporation which includes the Iowa licensee. After receiving such an audit or audited statement, the superintendent may make further examination of the licensee as the superintendent deems necessary. A record of each examination shall be kept in the superintendent's office. The examinations and reports, and other information connected with them, shall be kept confidential in the office of the superintendent and shall not be subject to publication or disclosure to others except as in this chapter provided. Any evidence of criminal acts committed by officers, directors, or employees of an industrial loan company shall be reported by the superintendent to the proper au-

thorities. The licensee shall be charged and shall pay the actual costs of the examination.

[C66, 71, 73, 75, 77, 79, 81, §536A.15]

87 Acts, ch 11, §3

536A.16 Cease and desist orders.

If the superintendent has reasonable cause to believe that a licensee is violating this chapter or rules adopted pursuant to this chapter, the superintendent may, after ten days' advance written notice, in addition to all actions provided for in this chapter, and without prejudice, enter an order requiring the licensee to cease, desist, and refrain from the violation. After receipt of the advance written notice, the licensee, within five days from the receipt of the notice, may file with the superintendent a written demand for a hearing. Hearings shall promptly be held in the office of the superintendent and a cease and desist order shall not be issued until after the hearing. The licensee shall be entitled to present evidence and the testimony of witnesses at the hearing.

[C66, 71, 73, 75, 77, 79, 81, §536A.16; 82 Acts, ch 1253, §37]

91 Acts, ch 63, §1

536A.17 Injunctions.

The superintendent by counsel of the attorney general may commence an action in the district court, in the name of the state of Iowa as plaintiff on the relation of the superintendent to restrain and enjoin any licensee from violating this chapter or rules adopted pursuant to this chapter, or to restrain and enjoin any person, copartnership, firm, or corporation from engaging in the business of operating an industrial loan company without obtaining a license as required by this chapter.

[C66, 71, 73, 75, 77, 79, 81, §536A.17; 82 Acts, ch 1253, §38]

91 Acts, ch 63, §2

536A.18 Revocation or suspension of license.

The superintendent, upon giving ten days' advance written notice to the licensee by certified mail stating the contemplated action and the grounds thereof, and after giving the licensee an opportunity to be heard, may by order in writing suspend or revoke any license issued under the provisions of this chapter, if the superintendent shall find:

1. That the licensee has failed to pay the annual license fee required by this chapter.

2. That the licensee knowingly has violated any of the provisions of this chapter.

3. That the licensee has refused to submit to the examination required by this chapter.

4. That the licensee has neglected or refused for a period of more than thirty days to pay a final judgment rendered against it in the courts of this state.

5. That the licensee has become insolvent.

No suspension, revocation, relinquishment or expiration of any license shall invalidate, impair or affect the legality of obligations of any preexisting contracts, or prevent the enforcement and collection thereof. Judicial review of the actions of the superintendent may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C66, 71, 73, 75, 77, 79, 81, §536A.18]

536A.19 Receivership — liquidation.

1. If the superintendent revokes the license of any industrial loan company, the superintendent shall promptly report the revocation to the attorney general, who may apply to the district court of the county in which the licensee had conducted its business for the appointment of a receiver to take possession of the assets of the corporation for the purpose of liquidating its affairs. The court shall appoint the superintendent as receiver unless the superintendent has tendered the appointment to the federal deposit insurance corporation, in which case the court shall appoint the federal deposit insurance corporation as receiver. The affairs of the industrial loan company, after such appointment, shall be under the direction of the court. The attorney general shall represent the superintendent in all proceedings connected with the receivership.

2. When an insured industrial loan company has ceased to carry on its business, the superintendent may tender the appointment as receiver of the insured industrial loan company to the federal deposit insurance corporation. If the federal deposit insurance corporation accepts the appointment as receiver, the rights of depositors and other creditors of the insured industrial loan company shall be determined in accordance with the laws of this state.

3. The federal deposit insurance corporation as receiver shall possess all of the powers, rights, and privileges of the superintendent in connection with the liquidation.

4. If the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of an insured industrial loan company, the federal deposit insurance corporation, whether or not it has become receiver, shall be subrogated to all rights of the owners of such deposits against the insured industrial loan company in the same manner and to the same extent as subrogation of the federal deposit insurance corporation is provided for in applicable federal law with respect to a national bank.

[C66, 71, 73, 75, 77, 79, 81, §536A.19]

96 Acts, ch 1159, §2

536A.20 Real estate loans.

1. A licensed industrial loan company may make permanent loans, construction loans, or combined construction and permanent loans, se-

cured by liens on real property, as authorized by rules adopted by the superintendent under chapter 17A. These rules shall contain provisions as necessary to insure the safety and soundness of these loans, and to insure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for the borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

2. A licensed industrial loan company may require and establish escrow accounts in connection with subsection 3.

3. A licensed industrial loan company may act as an escrow agent with respect to real property that is mortgaged to the licensed industrial loan company, and may receive funds and make disbursements from escrowed funds in that capacity. The licensed industrial loan company shall be deemed to be acting in a fiduciary capacity with respect to these funds. A licensed industrial loan company receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 and before July 1, 1983 or on or after July 1, 1984 in connection with a loan defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the lowest rate the company pays to holders of thrift certificates issued by the company. A licensed industrial loan company which maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year.

The summary shall be delivered or mailed not later than thirty days following the year to which the disclosure relates. The summary shall contain all of the following information:

a. The name and address of the mortgagee.

b. The name and address of the mortgagor.

c. A summary of escrow account activity during the year as follows:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(a) Payments against loan principal.

(b) Payments against interest.

(c) Payments against real estate taxes.

(d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) The balance of the escrow account at the end of the year.

d. A summary of loan principal for the year as follows:

(1) The amount of principal outstanding at the beginning of the year.

(2) The aggregate amount of payments against principal during the year.

(3) The amount of principal outstanding at the end of the year.

4. Section 524.905, subsection 4, applies to the licensed industrial loan company in the same manner as if the licensed industrial loan company is a bank within the meaning of that provision.

[82 Acts, ch 1253, §36, 43]

83 Acts, ch 124, §21 – 23; 84 Acts, ch 1205, §1

536A.21 Other business in same office.

A licensee engaged in the business of operating an industrial loan company under the provisions of this chapter may not conduct its business within any office, room, suite or place of business in which any other business is engaged in or conducted, unless specifically authorized to do so in writing by the superintendent upon the superintendent's finding that the character of the other business is such that its operation by the licensee would not facilitate evasions of this chapter or any other statute of the state of Iowa relating to the making of loans.

[C66, 71, 73, 75, 77, 79, 81, §536A.21]

536A.22 Thrift certificates.

Licensed industrial loan companies may sell senior debt to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness if such debt instruments are insured by a federal deposit insurance agency. Licensees selling debt instruments on January 1, 1996, may continue to do so without obtaining federal deposit insurance until there is a change of control of the licensee which occurs on or after January 1, 1996. If there is a change of control of a licensee on or after January 1, 1996, and the licensee has sold senior debt instruments that are not insured by a federal deposit insurance agency, such outstanding senior debt instruments that do not have a stated maturity date shall be redeemed within six months of the date of the change of control. Such outstanding senior debt instruments with stated maturity dates shall be redeemed on their stated maturity dates.

The total amount of such thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness outstanding and in the hands of the general public shall not at any time

exceed ten times the total amount of capital, surplus, undivided profits, and subordinated debt that gives priority to such securities of the issuing industrial loan company. The sale of such securities is subject to the provisions of chapter 502 and rules adopted by the superintendent of banking pursuant to chapter 17A, and shall not be construed to be exempt by reason of the provisions of section 502.202, subsection 10, except that the sale of thrift certificates or installment thrift certificates which are redeemable by the holder either upon demand or within a period not in excess of five years are exempt from sections 502.201 and 502.602.

For purposes of this section, *"control"* means control as defined in section 524.103.

[C66, 71, 73, 75, 77, 79, 81, §536A.22; 82 Acts, ch 1253, §39]

91 Acts, ch 63, §3; 93 Acts, ch 96, §1; 96 Acts, ch 1159, §3

536A.23 Powers of industrial loan companies.

No industrial loan company licensed under the provisions of this chapter shall have the power and authority to:

1. Charge, receive or collect interest at a rate exceeding ten cents on the hundred by the year, except that the interest may be computed when the note is made on the full amount of the cash advanced on the loan from the date of the note to the date of the final installment thereof, and the interest so computed may be included in the note, notwithstanding any agreement to pay the entire amount in installments; or the interest may be computed on the amount of the note and discounted or collected in advance when the loan is made, notwithstanding any agreement to pay the entire amount in installments. If the note is repayable in other than equal monthly installments, the interest may be an amount computed on the basis of the effective rates permitted as provided above; provided, however, there shall be no compounding of interest and when an interest rate as authorized herein is advertised, or negotiated for with a prospective borrower, with intent that it be computed by either of the two methods authorized herein, they being the "add on" method or the "discount" method, in such case such rate shall be further described as to the method of computation to be used, but interest computed by either method shall be stated to the borrower as provided in section 537.3210.

If a borrower elects to repay a loan secured by a mortgage or deed of trust upon real property which is a single-family or two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the licensee shall be governed by section 535.9.

The limitation on interest rate which is contained in this subsection shall not apply to any loan in which the borrower is a corporation or investment trust or any other person who is referred to in section 535.2, subsection 2.

2. Charge, receive, or collect in advance, a service charge in excess of one dollar for each fifty dollars of the amount of the note, not to exceed a total of one hundred twenty dollars.

3. Require any borrower to purchase insurance from the lender as a condition for obtaining a loan. However, an industrial loan company may collect from the borrower, at the option of the borrower, and transmit the premiums charged for insuring real or personal property used by the borrower as security for a loan and provided that such insurance is obtained from a licensed insurance producer for an insurance company authorized to do business in Iowa; and the premiums charged for insuring the life of one party on the loan in an amount not to exceed the total amount of the note or contract, including cash advance, interest and service charge, provided that no licensee shall require that the contract of life insurance be outstanding for more than the unpaid balance of the indebtedness and provided that such insurance is obtained from a licensed insurance producer for an insurance company authorized to do business in Iowa; and an industrial loan company may receive and transmit the premiums charged for accident and health insurance on the borrower, provided such insurance bears a reasonable relationship to the existing hazards or risk of loss, and the aggregate benefits of which shall not exceed the approximate amount of the contractual payments on the loan outstanding at the time of loss, and provided that such insurance is obtained from a licensed producer for an insurance company authorized to do business in Iowa. However, all life insurance rates in connection with industrial loans shall be subject to the rules and regulations of the insurance commissioner of the state of Iowa.

4. Industrial loan companies licensed under the provisions of this chapter may purchase notes, contracts, mortgages, accounts, receivables, leases and securities of a type and kind authorized by the superintendent.

5. In addition to the other charges authorized by this chapter, industrial loan companies licensed under this chapter may collect an appraisal fee on a loan secured by a mortgage or deed of trust upon real property, if the appraisal fee is bona fide, reasonable in amount, and not for purposes of circumvention or evasion of this chapter.

[C66, 71, 73, 75, 77, 79, S79, C81, §536A.23; 82 Acts, ch 1153, §8, 18(1)]

84 Acts, ch 1205, §2; 89 Acts, ch 295, §1; 2001 Acts, ch 16, §34, 37

2001 amendment to subsection 3 takes effect January 1, 2002; 2001 Acts, ch 16, §37

536A.24 Electronic transactions.

A licensee may engage in any transaction otherwise permitted by this chapter and applicable law,

by means of either the direct transmission of electronic impulses or other indicia of a transaction for delayed transmission to the licensee. Subject to the provisions of chapter 527, a licensee may utilize, establish or operate, alone or with one or more other licensees, banks incorporated under the provisions of chapter 524 or federal law, credit unions incorporated under the provisions of chapter 533 or federal law, savings and loan associations incorporated under the provisions of chapter 534 or federal law, or third parties, the satellite terminals permitted under chapter 527, by means of which the licensee may transmit to or receive from any customer electronic impulses constituting transactions pursuant to this section. However, such utilization, establishment or operation is lawful only when in compliance with chapter 527. Nothing in this section authorizes a licensee or other person to engage in transactions not otherwise permitted by applicable law, nor does anything in this section repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by a licensee.

[C81, §536A.24]

536A.25 Restrictions.

1. An industrial loan company licensed under this chapter shall not make a loan of money or property to or guarantee the obligations of its directors or officers; or loan to any borrower, other than a subsidiary or affiliated corporation, more than twenty percent of its total capital, surplus, and undivided profits. A licensee shall not make a loan under any other name or at any other place of business than that named in the license.

2. An industrial loan company licensed under this chapter that sells debt instruments to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness, shall not loan to a borrower, including a subsidiary or an affiliated corporation, more than twenty percent of the industrial loan company's total of capital, surplus, and undivided profits. The aggregate of all loans to subsidiaries and affiliated corporations of the industrial loan company shall not exceed ten percent of the industrial loan company's total assets.

A debt instrument sold by an industrial loan company which is not insured by the federal deposit insurance corporation, shall contain on its face a notice in bold print that the debt instrument is not insured or guaranteed by the federal deposit insurance corporation.

3. Investments by an industrial loan company licensed under this chapter are subject to the provisions of section 524.901 as applied to state banks.

[C66, 71, 73, 75, 77, 79, 81, §536A.25]
91 Acts, ch 63, §4

536A.26 Prepayment.

In addition to the requirements of the Iowa consumer credit code respecting consumer loans, and notwithstanding the provisions of any note or contract to the contrary, a borrower may, at any time, prepay all or any part of the unpaid balance to become payable under any note or installment contract.

[C66, 71, 73, 75, 77, 79, 81, §536A.26]

536A.27 Penalty.

If any officer, director or agent of any corporation engaged in the business of operating an industrial loan company shall violate any of the provisions of this chapter which are not also violations of the Iowa consumer credit code; or if any person individually or as a partner, or officer, director or agent of any corporation shall engage in the business of operating an industrial loan company without obtaining the license required by section 536A.3, when that person is not required by section 537.2301 to have a license, the person shall be guilty of a serious misdemeanor. Violations of the Iowa consumer credit code shall be subject to the penalties provided therein.

[C66, 71, 73, 75, 77, 79, 81, §536A.27]

536A.28 Rules.

The superintendent is hereby authorized and empowered to make such reasonable and relevant rules, not inconsistent herewith, as may be necessary for the enforcement of the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §536A.28]

536A.29 Enforcement of Iowa consumer credit code.

1. The superintendent shall enforce the Iowa consumer credit code with respect to licensees, as provided in sections 537.2303, 537.2305 and 537.6105.

2. The superintendent shall co-operate with the administrator, and shall assist the administrator whenever necessary to provide for the discharge of the duties of the administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall authorize to be furnished to the administrator, access to or copies of records in the possession of the superintendent or other persons which relate to a licensee when necessary to enable the administrator to enforce chapter 537.

4. The superintendent shall make an annual report in writing to the administrator. A copy of the report shall be furnished at cost by the superintendent to each licensee or other person upon request. The annual report shall contain:

a. A summary of license applications approved or denied by the superintendent since the last report.

b. A summary of the assets, liabilities and capital structure of all licensees, and volume of con-

sumer installment credit outstanding per licensee, as of December 31 of the year for which the report is made.

c. An estimate of the disbursements of agency funds for consumer credit protection during the calendar year ending the preceding December 31.

d. Information which the superintendent may deem appropriate and advisable to disclose.

e. Information which the administrator may require to be included.

[C75, 77, 79, 81, §536A.29]

536A.30 Nonresident licensees — face-to-face solicitation.

Notwithstanding other provisions of this chapter to the contrary, a person which neither has an office physically located in this state nor engages in face-to-face solicitation in this state, if authorized by another state to make loans in that state at a rate of finance charge in excess of the rate provided in chapter 535, shall not be subject to the following provisions of this chapter:

1. Section 536A.7, to the extent it requires payment of an annual license fee in excess of two hundred fifty dollars.
2. Section 536A.8.
3. Section 536A.10, subsections 2, 3, and 4.
4. Section 536A.12, to the extent it requires a licensee to pay an annual license fee which, when combined with that required in section 536A.7, is in excess of two hundred fifty dollars.
5. Section 536A.15, to the extent it requires the superintendent to make an examination and audit of the books, accounts and records of the licensee on a periodic basis.

[C75, 77, 79, 81, §536A.30]

89 Acts, ch 257, §30; 2002 Acts, ch 1119, §185

Subsection 4 amended

536A.31 Applicability of Iowa consumer credit code.

1. The provisions of the Iowa consumer credit code shall apply to a consumer loan in which the licensee participates or engages, and any violation of the said code shall be a violation of this chapter.

2. Article 2, parts 3, 5 and 6, and article 3, sections 537.3203, 537.3206, 537.3209, 537.3210, 537.3304, 537.3305 and 537.3306 shall apply to any credit transaction, as defined in section 537.1301, in which a licensee participates or engages, and any violation of those parts or sections shall be violations of this chapter. For the purpose of applying the provisions of the Iowa consumer credit code to those credit transactions, *"consumer loan"* shall include a loan for a business purpose.

3. A provision of the Iowa consumer credit code, chapter 537, applicable to loans regulated by this chapter supersedes a conflicting provision of this chapter. However, section 536A.23, subsection 5 is not superseded by the Iowa consumer credit code.

[C75, 77, 79, 81, §536A.31]

84 Acts, ch 1205, §3

CHAPTER 536B

IOWA INDUSTRIAL LOAN CORPORATION THRIFT GUARANTY LAW

Repealed by 91 Acts, ch 63, §6

CHAPTER 536C

LENDER CREDIT CARDS

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536C.2 Definitions.
536C.3 Exemptions.
536C.4 Notification.
536C.5 Fees.
536C.6 Applicability of Iowa consumer credit code.
536C.7 Books and records.
536C.8 Investigations.
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536C.10 Injunctions.
536C.11 Waiver unenforceable.
536C.12 Penalty.
536C.13 Rules.
536C.14 Enforcement.

536C.1 Title.

This chapter shall be known and may be cited as the *"Lender Credit Card Act"*.

91 Acts, ch 216, §15

536C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrator"* means the superintendent

of banking, the superintendent of savings and loan associations or the superintendent's successor, or the superintendent of credit unions. However, the powers of administration and enforcement of this chapter are to be exercised pursuant to section 536C.14.

2. *"Agreement"* means agreement as defined in section 537.1301, subsection 3.

3. *"Cardholder"* means cardholder as defined in section 537.1301, subsection 7.

4. *"Consumer credit transaction"* means consumer credit transaction as defined in section 537.1301, subsection 11.

5. *"Credit card"* means a card or device issued by a financial institution under an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing property, or purchasing services, obtaining loans, or otherwise obtaining credit from at least one hundred persons not related to the card issuer.

6. *"Financial institution"* means a bank incorporated under the provisions of any state or federal law, a savings and loan association incorporated under the provisions of any state or federal law, a credit union organized under the provisions of any state or federal law, and any affiliate of such bank, savings and loan association, or credit union.

7. *"Person"* means any individual, firm, corporation, partnership, joint venture, or association, and any other organization or group, however organized.

91 Acts, ch 216, §16

536C.3 Exemptions.

This chapter does not apply to a bank chartered under chapter 524 or a bank chartered under federal law which has its principal place of business located in this state, a savings and loan association chartered under chapter 534 or a savings and loan association chartered under federal law which has its principal place of business located in this state, a credit union chartered under chapter 533 or a credit union chartered under federal law which has its principal place of business located in this state, regulated loan companies licensed under chapter 536, or industrial loan companies licensed under chapter 536A.

91 Acts, ch 216, §17

536C.4 Notification.

1. A person shall file a registration statement annually with the administrator before conducting the business of issuing credit cards in this state, and annually thereafter on or before January 31 of each year. The registration statement shall be in writing on a form prescribed by the administrator, and contain the name and address of the registrant, the name and address of a designated agent upon whom service of process may be made in this state, and any other information the administrator deems relevant.

2. At the time of filing a registration statement the person shall provide the administrator with a copy of the credit agreement and billing statement being used by the card issuer.

3. If information in a filing statement becomes inaccurate after filing, the person shall notify the administrator in writing of the changes within sixty days of such change.

91 Acts, ch 216, §18

536C.5 Fees.

A person required to file a registration statement pursuant to this chapter shall pay to the administrator an annual fee of fifty dollars. The fee shall be paid at the time the person files the registration statement.

91 Acts, ch 216, §19

536C.6 Applicability of Iowa consumer credit code.

1. The terms and conditions of a credit card agreement shall conform to the provisions of chapter 537, the Iowa consumer credit code.

2. A provision of the Iowa consumer credit code applicable to credit cards regulated by this chapter supersedes a conflicting provision of this chapter.

3. A person who is in full compliance with the provisions of this chapter is considered a supervised financial organization under the Iowa consumer credit code for purposes of contracting for finance charges authorized for credit card issuers under section 537.2402.

91 Acts, ch 216, §20

536C.7 Books and records.

A person who issues credit cards shall keep such books, accounts, and records as will enable the administrator to determine whether or not the person is complying with the provisions of this chapter and chapter 537. The person shall not be required to preserve or keep their records or files for a longer period than three years following the date of the final payment.

91 Acts, ch 216, §21

536C.8 Investigations.

1. The administrator may investigate at any time the business of a credit card issuer subject to the provisions of this chapter. The administrator may examine the books, records, accounts, and files pertaining to the business of issuing credit cards subject to the provisions of this chapter.

2. The administrator may accept a copy of an examination conducted by a state or federal regulator in lieu of an investigation or examination by the administrator.

3. If an investigation or examination is performed by the administrator under this section, the credit card issuer shall pay to the administrator a fee based on the actual cost of such investiga-

tion or examination as determined by the administrator.

4. Upon completion of an investigation or examination by the administrator, the examiner shall render a billing in triplicate, with one copy to be delivered to the credit card issuer and two copies to be delivered to the administrator. Failure to pay the fee to the administrator within thirty days after the billing for the investigation or examination is delivered shall subject the credit card issuer to an additional fee of five percent of the amount of the original fee for each day the payment is delinquent.

91 Acts, ch 216, §22

536C.9 Cease and desist orders.

1. If the administrator has reasonable cause to believe a person who issues credit cards is violating any provision of this chapter, or rules adopted pursuant to this chapter, the administrator may enter a written order requiring the person to cease, desist, and refrain from an act constituting a violation. A copy of the order shall be sent to the person by certified mail. The person may file with the administrator a written notice of appeal within fifteen days of receipt of the order. The person may also request that the order be stayed pending resolution of the appeal. The appellant shall be entitled to prompt consideration of the request to stay the order.

2. Within thirty days after receipt of a notice of appeal the administrator shall hold a hearing to consider the appeal. The appellant shall be informed regarding the time and place of the hearing not later than ten days prior to the hearing. The administrator's decision shall be provided, in writing, to the appellant within thirty days of the completion of the hearing.

91 Acts, ch 216, §23

536C.10 Injunctions.

The administrator may commence an action in the district court to restrain and enjoin any person from violating this chapter, or to restrain and enjoin any person from engaging in the business of issuing credit cards without filing a registration statement as required by this chapter.

91 Acts, ch 216, §24

536C.11 Waiver unenforceable.

A waiver of the provisions of this chapter or chapter 537 is not valid.

91 Acts, ch 216, §25

536C.12 Penalty.

If an officer, director, or agent of a corporation engaged in the business of issuing credit cards violates any of the provisions of this chapter which are not also violations of the Iowa consumer credit code; or if a person individually or as a partner, or officer, director, or agent of a corporation engages in the business of issuing credit cards without filing the registration statement required by section 536C.4, the person is guilty of a serious misdemeanor. Violations of this chapter which are also violations of the Iowa consumer credit code shall be subject to the penalties provided in the Iowa consumer credit code.

91 Acts, ch 216, §26

536C.13 Rules.

The administrator may adopt such rules pursuant to chapter 17A as may be necessary for the enforcement and administration of this chapter.

91 Acts, ch 216, §27

536C.14 Enforcement.

1. The superintendent of banking shall enforce the provisions of this chapter with respect to banks not exempt from the provisions of this chapter under section 536C.3.

2. The superintendent of credit unions shall enforce the provisions of this chapter with respect to credit unions not exempt from the provisions of this chapter under section 536C.3.

3. The superintendent of savings and loan associations or the superintendent's successor shall enforce the provisions of this chapter with respect to savings and loan associations not exempt from the provisions of this chapter under section 536C.3.

91 Acts, ch 216, §28

CHAPTER 537

CONSUMER CREDIT CODE

The general assembly of the state of Iowa hereby declares and states that it does not want any of the provisions of Public Law No. 96 – 221 (94 stat. 132), section 501, subsection (a), paragraph (1), to apply with respect to loans, mortgages, credit sales, and advances made in this state; and that it does not want any of the provisions of Public Law No. 96 – 221 (94 stat. 132), Part B (section 511, subsections (a) and (b)), to apply with respect to loans made in this state; and that it does not want any of the provisions of any of the amendments contained in Public Law No. 96 – 221 (94 stat. 132), sections 521, 522 and 523 to apply with respect to loans made in this state; and that it does not want any of the provisions of Public Law No. 96 – 221 (94 stat. 132), section 524 to apply with respect to loans made in this state.

It is the intent of the general assembly of the state of Iowa in enacting this section to exercise all authority granted by Congress and to satisfy all requirements imposed by Congress in Public Law No. 96 – 221 (94 stat. 132), section 501, subsection (b), paragraph (2), and section 512, and section 524, subsection (i), paragraph (3), and section 525, for the purpose of rendering the provisions of Public Law No. 96 – 221 (94 stat. 132), Title V, inapplicable in this state.

[80 Acts, ch 1156, §32]

Court action required for termination of installment contracts during military service; §29A.102, 29A.105

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PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

537.1101 Short title.

Articles 1 to 7 of this chapter shall be known and may be cited as the *"Iowa Consumer Credit Code."*

[C75, 77, 79, 81, §537.1101]

537.1102 Purposes — rules of construction.

1. This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this chapter are to:

a. Simplify, clarify and modernize the law governing retail installment sales and other consumer credit.

b. Provide rate ceilings for certain creditors in order to assure an adequate supply of credit to consumers.

c. Further consumer understanding of the terms of credit transactions and foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost.

d. Protect consumers against unfair practices by some suppliers, solicitors or collectors of consumer credit, having due regard for the interests of legitimate and scrupulous creditors.

e. Permit and encourage the development of fair and economically sound consumer credit practices.

f. Conform the regulation of disclosure in consumer credit transactions to the Truth in Lending Act.

g. Make the law, including administrative rules, more uniform among the various jurisdictions.

3. A reference to a requirement imposed by this chapter includes reference to a related rule of the administrator adopted pursuant to this chapter.

[C75, 77, 79, 81, §537.1102]

537.1103 Law applicable.

Unless displaced by the particular provisions of this chapter, the uniform commercial code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions.

[C75, 77, 79, 81, §537.1103]

537.1104 Construction.

This chapter being a general Act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

[C75, 77, 79, 81, §537.1104]

537.1105 and 537.1106 Reserved.

537.1107 Waiver — agreement — settlement.

1. Except in settlement of a bona fide dispute, a consumer may not waive or agree to forego rights or benefits under this Act.

2. A claim by a consumer against a creditor relating to an excess charge, any other civil violation of this chapter, or a civil penalty, or a claim by a creditor against a consumer for default or breach of a civil duty imposed by this chapter, may be settled by agreement if the claim is disputed in good faith.

3. A claim against a consumer, whether or not disputed, may be settled for less value than the amount claimed.

4. A settlement in which the consumer waives or agrees to forego rights or benefits under this chapter is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer, and the value of the consideration may be considered, among other factors, with respect to the issue of unconscionability.

[C75, 77, 79, 81, §537.1107]

537.1108 Effect on organizations.

1. This chapter prescribes maximum charges for certain creditors, except lessors and those excluded in section 537.1202, extending credit in consumer credit transactions.

2. This chapter does not displace limitations on powers of credit unions, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

3. This chapter does not displace:

a. Limitations on powers of supervised financial organizations with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits.

b. Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

[C75, 77, 79, 81, §537.1108]

537.1109 Reserved.

537.1110 Obligation of good faith.

Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement.

[C75, 77, 79, 81, §537.1110]

PART 2

SCOPE AND JURISDICTION

537.1201 Territorial application.

1. This chapter applies to:

a. A transaction, or acts, practices or conduct with respect to a transaction, if the transaction is entered into in this state, except that a transaction involving other than open end credit or acts, practices or conduct with respect to such a transaction shall not subject any person to damages or penalty under article 5 of this chapter, or administrative enforcement under article 6, part 1.

(1) If the buyer, lessee or debtor was physically located outside of this state, at the time the buyer, lessee or debtor signed the writing evidencing the transaction or made, in face-to-face solicitation, a written or oral offer to enter into the transaction,

(2) If the transaction or acts, practices or conduct with respect to the transaction were not in violation of law in the state in which the buyer, lessee or debtor was physically located, and

(3) If, with respect to charges and agreements, the person does not collect or enforce that transaction except to the extent permitted by this chapter.

b. A transaction, or acts, practices or conduct with respect to a transaction, if it is modified in this state, without regard to where the transaction is entered into, except that acts, practices, conduct, disclosures, charges or provisions of agreements not in violation of law in the state where they occurred or were entered into, shall not subject any person to damages or penalty under article 5 or administrative enforcement under article 6, part 1, if, with respect to acts, practices, conduct or disclosures, they occurred outside this state and before a modification in this state, and if, with respect to charges and agreements, they are not collected or enforced by that person except to the extent permitted by this chapter. A person shall not be required to obtain a license under section 537.2301 solely because the person modifies a transaction in this state.

c. Acts, practices or conduct in this state in the solicitation, inducement, negotiation, collection or enforcement of a transaction, without regard to where it is entered into or modified; including, but not limited to, acts, practices or conduct in violation of sections 537.3209, 537.3210, 537.3311, 537.3501, article 5, parts 1 and 3, and article 7.

2. For the purposes of this section, a transaction is entered into or modified in this state if any of the following apply:

a. In a transaction involving other than open end credit:

(1) If the buyer, lessee or debtor is a resident of this state at the time the person extending credit solicits the transaction or modification, whether personally, by mail or by telephone, unless the parties have agreed that the law of the residence of the buyer, lessee or debtor applies, in which case that law applies.

(2) If the buyer, lessee or debtor is a resident of this state at the time the person extending credit receives either a signed writing evidencing the transaction or modification, or a written or oral offer of the buyer, lessee or debtor to enter into or modify the transaction.

(3) If the transaction otherwise has significant contacts with this state, unless the buyer, lessee or debtor is not a resident of this state at the times designated in subsection 2, paragraph *"a"*, subparagraphs (1) and (2), and the parties have agreed that the law of the buyer's, lessee's, or debtor's residence applies. A person shall not be required to obtain a license under section 537.2301 solely because this chapter applies to a transaction pursuant to this subparagraph.

b. In an open end credit transaction:

(1) If the buyer, lessee or debtor is a resident of this state either at the time the buyer, lessee or debtor forwards or otherwise gives to the person extending credit a written or oral communication of the intention to establish the open end transaction, or at the time the person extending credit forwards or otherwise gives to the buyer, lessee or debtor a written or oral communication giving notice to the buyer, lessee or debtor of the right to enter into open end transactions with such person, unless the parties have agreed that the law of the residence of the buyer, lessee or debtor applies in which case that law shall apply.

(2) If the transaction otherwise has significant contacts with this state, unless the buyer, lessee or debtor is not a resident of this state at the times designated in subsection 2, paragraph *"a"*, subparagraph (1), and the parties have agreed that the law of the buyer's, lessee's, or debtor's residence applies. A person shall not be required to obtain a license under section 537.2301 solely because this chapter applies to a transaction pursuant to this subparagraph.

c. In any credit transaction, if the parties have agreed that the law of the residence of the buyer, lessee or debtor applies and the buyer, lessee or debtor is a resident of this state at any time designated, with respect to a transaction other than open end, in subsection 2, paragraph *"a"*, subparagraphs (1) and (2) or, with respect to an open end credit transaction, in subsection 2, paragraph *"b"*, subparagraph (1).

3. For the purposes of this section, *"modification"* shall include, but not be limited to, any alteration in the maturity, schedule of payments, amount financed, rate of finance charge or other

term of a transaction.

4. For the purposes of this chapter, the residence of a buyer, lessee or debtor is the address given by that person as the person's residence in a writing signed by the person in connection with a transaction until the person notifies the person extending credit of a different address as the person's residence, and it is then the different address.

5. Except as provided in subsection 1, paragraph *"c"*, and subsection 6, a transaction entered into or modified in another jurisdiction is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the other jurisdiction.

6. A provision of an agreement made by a buyer, lessee or debtor is invalid:

a. Which provides, if the buyer, lessee or debtor is a resident of this state at the times designated in subsection 2, paragraph *"a"*, subparagraphs (1) and (2) and subsection 2, paragraph *"b"*, subparagraph (1):

(1) That the law of another jurisdiction shall apply, except as provided in subsection 2, paragraph *"a"*, subparagraph (1) and in subsection 2, paragraph *"b"*, subparagraph (1).

(2) That the buyer, lessee or debtor consents to be subject to the process of another jurisdiction.

(3) That the buyer, lessee or debtor appoints an agent to receive service of process.

(4) That venue is fixed at a particular place.

(5) That the consumer consents to the jurisdiction of a court that does not otherwise have jurisdiction.

b. If a provision would negate subsection 1, paragraph *"b"*.

7. The following provisions of this chapter specify the applicable law governing certain cases:

a. Section 537.6102 specifies the applicability of article 6, part 1.

b. Section 537.6201 specifies the applicability of article 6, part 2.

[C75, 77, 79, 81, §537.1201]

537.1202 Exclusions.

This chapter does not apply to:

1. Extensions of credit to government or governmental agencies or instrumentalities.

2. Except as otherwise provided in article 4, the sale of insurance if the insured is not obligated to pay installments of the premium and the insurance may terminate or be canceled after nonpayment of an installment of the premium.

3. Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.

4. Transactions in securities or commodities accounts with a broker-dealer registered with the securities and exchange commission.

5. Pawnbrokers who are licensed and whose rates and charges are regulated under or pursuant to ordinances of cities or statutes of this state, except with respect to the provisions on compliance with the Truth in Lending Act in section 537.3201, civil liability for violation of disclosure provisions in section 537.5203, criminal penalties for disclosure violations in section 537.5302, and powers and functions of the administrator with respect to disclosure violations.

[C75, 77, 79, 81, §537.1202]

537.1203 Jurisdiction — service of process.

1. The district court of this state may exercise jurisdiction over any person with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over a person may be acquired in a civil action or proceeding instituted in the district court by the service of process in the manner provided by this section.

2. If a person is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this chapter, or engages in a transaction subject to this chapter, the person may designate an agent upon whom service of process or original notice may be made in this state. The agent shall be a resident of state or a corporation authorized to do business in this state. The designation shall be in a writing and filed with the secretary of state. If no designation is made and filed or if process or original notice cannot be served in this state upon the designated agent, process or original notice may be served upon the secretary of state, in the manner provided in section 617.3 for service upon nonresident persons and foreign corporations which have made contracts with residents of Iowa, and the provisions of that section relating to the service of process or original notice apply.

[C75, 77, 79, 81, §537.1203]

PART 3

DEFINITIONS

537.1301 General definitions.

As used in this chapter, unless otherwise required by the context:

1. *"Actuarial method"* means the method of allocating payments made on a debt between the amount financed and the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed. The administrator may adopt rules not inconsistent with the Truth in Lending Act further defining the term

and prescribing its application.

2. *"Administrator"* means the administrator designated in section 537.6103.

3. *"Agreement"* means the oral or written bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

4. *"Amount financed"* means:

a. In the case of a sale, the cash price of the goods, services, or interest in land, plus the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in, less the amount of any down payment whether made in cash or in property traded in, plus additional charges if permitted under paragraph *"c"*.

b. In the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge under subsection 20, paragraph *"b,"* subparagraph 3, plus additional charges if permitted under paragraph *"c"* of this subsection.

c. In the case of a sale or loan, additional charges permitted under section 537.2501, to the extent that payment is deferred, that the charge is not otherwise included, in the amount permitted respectively in paragraph *"a"* or *"b",* and that the charge is authorized by and disclosed to the consumer as required by law.

5. *"Billing cycle"* means the time interval between periodic billing statement dates.

6. *"Card issuer"* means a person who issues a credit card.

7. *"Cardholder"* means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance or use of the card to or by another person.

8. *"Cash price"* of goods, services, or an interest in land means, except in the case of a consumer rental purchase agreement, the price at which they are sold by the seller to cash buyers in the ordinary course of business, and may include the cash price of accessories or services related to the sale, such as delivery, installation, alterations, modifications, and improvements, and taxes to the extent imposed on a cash sale of the goods, services, or interest in land.

9. *Conspicuous.* A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether or not a term or clause is conspicuous is for decision by the court.

10. *"Consumer"* means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

11. *"Consumer credit transaction"* means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease, or a consumer rental purchase agreement.

12. *Consumer credit sale.*

a. Except as provided in paragraph *"b",* a consumer credit sale is a sale of goods, services, or an interest in land in which all of the following are applicable:

(1) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

(2) The buyer is a person other than an organization.

(3) The goods, services or interest in land are purchased primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

b. A *"consumer credit sale"* does not include:

(1) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card.

(2) A sale of an interest in land if the finance charge does not exceed twelve percent per year calculated on the actuarial method on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(3) A consumer rental purchase agreement as defined in section 537.3604.

13. *Consumer lease.*

a. Except as provided in paragraph *"b"*, a consumer lease is a lease of goods in which all of the following are applicable:

(1) The lessor is regularly engaged in the business of leasing.

(2) The lessee is a person other than an organization.

(3) The lessee takes under the lease primarily for a personal, family, or household purpose.

(4) The amount payable under the lease does not exceed twenty-five thousand dollars.

(5) The lease is for a term exceeding four months.

b. A consumer lease does not include a consumer rental purchase agreement as defined in section 537.3604.

14. *Consumer loan.*

a. Except as provided in paragraph *"b",* a *"consumer loan"* is a loan in which all of the following are applicable:

(1) The person is regularly engaged in the business of making loans.

(2) The debtor is a person other than an organization.

(3) The debt is incurred primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) The amount financed does not exceed twenty-five thousand dollars.

b. A *"consumer loan"* does not include:

(1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a seller credit card.

(2) A debt which is secured by a first lien on real property and which is incurred primarily for the purpose of acquiring that real property, or refinancing a contract for deed to that real property, or constructing on that real property a building containing one or more dwelling units.

(3) A loan financed by the Iowa finance authority and secured by a lien on land.

(4) A consumer rental purchase agreement as defined in section 537.3604.

c. In determining which loans are consumer loans under this subsection the rules of construction stated in this paragraph shall be applied:

(1) A debt is incurred primarily for the purpose to which a majority of the loan proceeds are applied or are designated by the debtor to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are incurred for the same purposes and in the same proportion as the principal of the loan refinanced or paid.

(3) Loan proceeds used to pay a prior loan by a different borrower are incurred for the new borrower's purposes in agreeing to pay the prior loan.

(4) The assumption of a loan by a different borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) The provisions of this paragraph shall not be construed to modify or limit the provisions of section 535.8, subsection 2, paragraph *"c"* or *"e."*

15. *"Credit"* means the right granted by a person extending credit to a person to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.

16. *"Credit card"* means a card or device issued under an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing property or purchasing services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons. A transaction is *"pursuant to a credit card"* if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or automated methods, or in any other manner. A transaction is not *"pursuant to a credit card"* if the card or device is used solely to identify the cardholder and credit is not obtained according to the terms of the arrangement.

17. *"Creditor"* means the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of the assignee's assignor. In the case of credit granted pursuant to a credit card, the "creditor" is the card issuer and not another person honoring the credit card.

18. *"Earnings"* means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

19. *Finance charge.*

a. Except as otherwise provided in paragraph *"b", "finance charge"* means the sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable:

(1) Interest or any amount payable under a point, discount or other system of charges, however denominated, except that with respect to a consumer credit sale of goods or services a cash discount of five percent or less of the stated price of goods or services which is offered to the consumer for payment by cash, check or the like either immediately or within a period of time, is not part of the finance charge for the purpose of determining maximum charges pursuant to section 537.2401. A cash discount permitted by this subparagraph is not part of the finance charge for the purpose of determining compliance with section 537.3201 if it is properly disclosed as required by the Truth in Lending Act as amended to and including July 1, 1982 and regulations issued pursuant to that Act prior to July 1, 1982.

(2) Time price differential, credit service, service, carrying or other charge, however denominated.

(3) Premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(4) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

b. *"Finance charge"* does not include:

(1) Charges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence unless the parties agree that these charges are finance charges. A charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account which is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or at a specified amount is required when billed, and in the ordinary course of business the consumer is permitted to continue to

have purchases or other debts debited to the account after the imposition of the charge.

(2) Additional charges as defined in section 537.2501, or deferral charges as defined in section 537.2503.

(3) A discount, if a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

(4) Lease payments for a consumer rental purchase agreement, or charges specifically authorized by this chapter for consumer rental purchase agreements.

20. *"Gift certificate"* means a merchandise certificate conspicuously designated as a gift certificate, and purchased by a buyer for use by a person other than the buyer.

21. *a. "Goods"* includes, but is not limited to:

(1) "Goods" as described in section 554.2105, subsection 1.

(2) Goods not in existence at the time the transaction is entered into.

(3) Things in action.

(4) Investment securities.

(5) Mobile homes regardless of whether they are affixed to the land.

(6) Gift certificates.

b. "Goods" excludes money, chattel paper, documents of title, instruments and merchandise certificates other than gift certificates.

22. *"Insurance premium loan"* means a consumer loan that is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer, is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract, and contains an authorization to cancel the policy or contract financed.

23. *"Lender"* means a person who makes a loan or, except as otherwise provided in this Act, a person who takes an assignment of a lender's right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender.

24. *"Lender credit card"* means a credit card issued by a lender.

25. *a. "Loan"* means any of the following, except as provided in paragraph *"b"*:

(1) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third person for the account of the debtor.

(2) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately.

(3) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the debtor, paying or agreeing to pay the debtor's obligation, or purchasing or otherwise acquiring the debtor's obligation from the obligee or the obligee's assignees.

(4) The creation of debt by a cash advance to a debtor pursuant to a seller credit card.

(5) The forbearance of debt arising from a loan.

b. "Loan" does not include:

(1) A card issuer's payment or agreement to pay money to a third person for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of a seller credit card.

(2) The forbearance of debt arising from a sale or lease.

26. *"Merchandise certificate"* means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services. Sale of a merchandise certificate on credit is a credit sale beginning at the time the certificate is redeemed.

27. *"Mortgage lender"* means a domestic or foreign corporation authorized in this state to make loans secured by mortgages or deeds of trust.

28. *"Official fees"* means:

a. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating, or satisfying a security interest related to a consumer credit transaction.

b. Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph *"a"* which would otherwise be payable.

29. *"Open-end credit"* means an arrangement, other than a consumer rental purchase agreement, pursuant to which all of the following are applicable:

a. A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card.

b. The amounts financed and the finance and other appropriate charges are debited to an account.

c. The finance charge, if made, is computed on the account periodically.

d. Either the consumer has the privilege of paying in full or in installments, or the transaction is a consumer credit transaction solely because a delinquency charge or the like is treated as a finance charge pursuant to subsection 19, paragraph *"b"*, subparagraph (1) of this section or the creditor otherwise periodically imposes charges computed on the account for delaying payment of it and permits the consumer to continue to purchase or lease on credit.

30. *"Organization"* means a corporation, government or governmental subdivision or agency, trust, estate, co-operative, or association.

31. *"Payable in installments"* means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment

other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment excluding the down payment, a transaction is "payable in installments".

32. *"Person"* means:

a. A natural person, partnership, or an individual.

b. An organization.

33. *a.* *"Person related to"* with respect to a natural person or an individual means any of the following:

(1) The spouse of the individual.

(2) A brother, brother-in-law, sister, or sister-in-law of the individual.

(3) An ancestor or lineal descendant of the individual or the individual's spouse.

(4) Any other relative, by blood or marriage, of the individual or the individual's spouse, if the relative shares the same home with the individual.

b. *"Person related to"* with respect to an organization means:

(1) A person directly or indirectly controlling, controlled by or under common control with the organization.

(2) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization.

(3) The spouse of a person related to the organization.

(4) A relative by blood or marriage of a person related to the organization who shares the same home with the person.

34. A *"precomputed consumer credit transaction"* is a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance. A disclosure required by the Truth in Lending Act does not in itself make a finance charge or transaction precomputed.

35. *"Presumed"* or *"presumption"* means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

36. *"Sale of goods"* includes, but is not limited to, any agreement in the form of a bailment or lease of goods if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with the terms of the agreement. *"Sale of goods"* does not include a consumer rental purchase agreement.

37. *"Sale of an interest in land"* includes, but is not limited to, a lease in which the lessee has an option to purchase the interest, by which all or a substantial part of the rental or other payments previously made by the lessee are applied to the purchase price.

38. *"Sale of services"* means furnishing or agreeing to furnish services for a consideration and includes making arrangements to have services furnished by another.

39. *"Seller"* means a person who makes a sale or, except as otherwise provided in this chapter, a person who takes an assignment of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller.

40. *"Seller credit card"* means either of the following:

a. A credit card issued primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from the card issuer, persons related to the card issuer, persons licensed or franchised to do business under the card issuer's business or trade name or designation, or from any of these persons and from other persons as well.

b. A credit card issued by a person other than a supervised lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from at least one hundred persons not related to the card issuer.

41. *"Services"* includes, but is not limited to:

a. Work, labor, and other personal services.

b. Privileges or benefits with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like.

c. Insurance.

42. *"Supervised financial organization"* means a person, other than an insurance company or other organization primarily engaged in an insurance business, which is organized, chartered, or holding an authorization certificate pursuant to chapter 524, 533, or 534, or pursuant to the laws of any other state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and which is subject to supervision by an official or agency of this state, such other state, or of the United States.

43. *"Supervised loan"* means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds the rate of finance charge permitted in chapter 535.

With respect to a consumer loan made pursuant to open end credit, the finance charge shall be deemed not to exceed the rate permitted in chapter 535 if the finance charge contracted for and received does not exceed a charge for each monthly billing cycle which is one-twelfth of that rate multiplied by the average daily balance of the open end account in the billing cycle for which the charge is made. The average daily balance of the

open end account is the sum of the amount unpaid each day during that cycle divided by the number of days in the cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day. If the billing cycle is not monthly, the finance charge shall be deemed not to exceed that rate per year if the finance charge contracted for and received does not exceed a percentage which bears the same relation to that rate as the number of days in the billing cycle bears to three hundred sixty-five. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

[C58, 62, 66, 71, 73, §322.2(12) – (15), C75, 77, 79, S79, C81, §537.1301; 81 Acts, ch 76, 8, ch 177, §3, 4; 82 Acts, ch 1153, §9 – 13, 18(1), ch 1253, §42]

83 Acts, ch 101, §114; 83 Acts, ch 124, §24, 25; 87 Acts, ch 80, §26 – 34; 97 Acts, ch 187, §1

537.1302 Definition — Truth in Lending Act.

As used in this chapter, *"Truth in Lending Act"* means Title 1 of the Consumer Credit Protection Act, in subchapter 1 of 15 U.S.C. chapter 41, as amended to and including January 1, 1998, and includes regulations issued pursuant to that Act prior to January 1, 1998.

[C75, 77, 79, 81, §537.1302; 82 Acts, ch 1153, §14]

89 Acts, ch 68, §1; 95 Acts, ch 31, §1; 95 Acts, ch 209, §27; 98 Acts, ch 1031, §1

537.1303 Other defined terms.

Other defined terms in this chapter and the sections in which they appear are:

1. *"Closing costs"*. Section 537.2501, subsection 1, paragraph *"e."*
2. *"Computational period"*. Section 537.2510, subsection 4, paragraph *"a."*
3. *"Debt"*. Section 537.7102, subsection 3.
4. *"Debt collection"*. Section 537.7102, subsection 4.
5. *"Debt collector"*. Section 537.7102, subsection 5.
6. *"Disposable earnings"*. Section 537.5105, subsection 1, paragraph *"a."*
7. *"Garnishment"*. Section 537.5105, subsection 1, paragraph *"b."*
8. *"Interval"*. Section 537.2510, subsection 4, paragraph *"b."*
9. *"Location"*. Section 537.2310, subsection 1.
10. *"Pursuant to a credit card"*. Section 537.1301, subsection 17.
11. *"Residence"*. Section 537.1201, subsection 4.

[C75, 77, 79, 81, §537.1303]

ARTICLE 2

FINANCE CHARGES AND RELATED PROVISIONS

PART 1

GENERAL PROVISIONS

537.2101 Short title.

This article shall be known and may be cited as the *"Iowa Consumer Credit Code — Finance Charges and Related Provisions."*

[C75, 77, 79, 81, §537.2101]

537.2102 Scope.

Part 2 applies to consumer credit sales. Parts 3 and 4 apply to consumer loans. Part 5 applies to other charges and modifications with respect to consumer credit transactions. Part 6 applies to other credit transactions.

[C75, 77, 79, 81, §537.2102]

PART 2

CONSUMER CREDIT SALES:
MAXIMUM FINANCE CHARGES

537.2201 Finance charge for consumer credit sales not pursuant to open end credit.

1. With respect to a consumer credit sale, other than a sale pursuant to open end credit, a creditor may contract for and receive a finance charge not exceeding the maximum charge permitted by the law of this state or the United States for similar creditors. In addition, with respect to a consumer credit sale of goods or services, other than a sale pursuant to open end credit or a sale of a motor vehicle, a creditor may contract for and receive a finance charge not exceeding that permitted in subsections 2 to 6. With respect to a consumer credit sale of a motor vehicle, a creditor may contract for and receive a finance charge as provided in section 322.19, and a finance charge in excess of that provided in section 322.19, is an excess charge in violation of this chapter.

2. The finance charge, calculated according to the actuarial method, may not exceed twenty-one percent per year on the unpaid balances of the amount financed.

3. This section does not limit or restrict the manner of calculating the finance charge whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. If the sale is a precomputed consumer credit transaction, the finance charge may be calculated on the assumption that all scheduled payments will be made when due, and the effect of prepayment is governed by the provisions on rebate upon prepayment contained in section 537.2510.

4. For the purposes of this section, the term of a sale agreement commences with the date the

credit is granted or, if goods are delivered or services performed ten days or more after that date, with the date of commencement of delivery or performance. Any month may be counted as one-twelfth of a year, but a day is counted as one-three hundred sixty-fifth of a year. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. The administrator may adopt rules not inconsistent with the Truth in Lending Act with respect to treating as regular other minor irregularities in amount or time.

5. Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection 2 if both of the following are applicable:

a. When applied to the median amount within each range, it does not exceed the maximum rate permitted by subsection 1.

b. When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph *"a"* by more than eight percent of the rate calculated according to paragraph *"a"* of this subsection.

6. Regardless of subsection 2, the seller may contract for and receive a minimum finance charge of not more than five dollars when the amount financed does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount financed exceeds seventy-five dollars.

[C75, 77, 79, 81, §537.2201; 82 Acts, ch 1153, §15, 18(1)]

537.2202 Finance charge for consumer credit sales pursuant to open end credit.

1. With respect to a consumer credit sale made pursuant to open end credit, a creditor may contract for and receive a finance charge without limitation as to amount or rate as permitted in this section.

2. For each billing cycle, a charge may be made which is a percentage of an amount not exceeding the greatest of the following:

a. The average daily balance of the open end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

b. The balance of the open end account at the beginning of the first day of the billing cycle, after deducting all payments and credits made in the cycle except credits attributable to purchases charged to the account during the cycle.

c. The median amount within a specified range including the balance of the open end account not exceeding that permitted by paragraph *"a"* or *"b"*. A charge may be made pursuant to this paragraph only if the creditor, subject to classifications and differentiations the creditor may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

[C75, 77, 79, 81, §537.2202]

84 Acts, ch 1237, §1; 97 Acts, ch 187, §2, 3; 98 Acts, ch 1100, §73

PART 3

CONSUMER LOANS: SUPERVISED LOANS

537.2301 Authority to make supervised loans.

1. As used in this part, *"licensing authority"* means the agency designated in chapter 524, 533, 534, 536, or 536A to issue licenses or otherwise authorize the conduct of business pursuant to the respective chapter or this chapter, and *"licensee"* includes any person subject to regulation by a licensing authority. *"License"* includes the authorization, of whatever form, to engage in the conduct regulated under those chapters.

2. A person who is not authorized to make supervised loans as provided herein shall not engage in the business of making supervised loans or undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans, but the person may collect and enforce for three months without a license if the person promptly applies for a license and the person's application has not been denied.

3. The following persons are authorized to make supervised loans:

a. A person who is a supervised financial organization.

b. A person who has obtained a license pursuant to either chapter 536 or 536A.

c. A person who enters into less than ten supervised loans per year in this state and has neither an office physically located in this state nor engages in face-to-face solicitation in this state.

4. This section shall not affect dollar amount, purpose, or rate of finance charge restrictions imposed by any statute of this state or of the United States with respect to which a person is authorized to make loans at a rate of finance charge in excess of that permitted by chapter 535 or pursuant to which a person is licensed.

[C75, 77, 79, 81, §537.2301]

537.2302 Reserved.

537.2303 Revocation or suspension of license.

1. The licensing authority may issue to a person subject to regulation by that authority an order to show cause why the person's license with respect to one or more specific places of business should not be suspended for a period not in excess of six months, or revoked. The order shall set the place for a hearing and set a time for the hearing that is not less than ten days from the date of the order. After the hearing, if the licensing authority finds that the licensee has intentionally violated this chapter, or any rule or order made pursuant to law, including an order of discontinuance, or if facts or conditions exist which would clearly have justified the licensing authority in refusing to grant a license for that place or those places of business had these facts or conditions been known to exist at the time the application for the license was made, the licensing authority shall revoke or suspend the license or, if there are mitigating circumstances, may accept an assurance of discontinuance as provided in section 537.6109, and allow retention of the license.

2. No revocation or suspension of a license is lawful unless prior to institution of proceedings by the licensing authority notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

3. If the licensing authority finds that probable cause for revocation of a license exists and that enforcement of the law requires immediate suspension of the license pending investigation, the licensing authority may, after a hearing upon five days' written notice, enter an order suspending the license for not more than thirty days.

4. Whenever the licensing authority revokes or suspends a license, the licensing authority shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order the licensing authority shall deliver to the licensee a copy of the order and the findings supporting the order.

5. Any person holding a license to make supervised loans may relinquish the license by notifying the licensing authority in writing of its relinquishment, but this relinquishment does not affect the licensee's liability for acts previously committed.

6. No revocation, suspension or relinquishment of a license impairs or affects the obligation of any pre-existing lawful contract between the licensee and any consumer.

7. The licensing authority may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would justify the licensing authority in refusing to grant a license.

[C75, 77, 79, 81, §537.2303]

537.2304 Records — annual reports.

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the licensing authority to determine whether the licensee is complying with the provisions of law. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the licensing authority is given free access to the records wherever located.

2. On or before April 15 each year every licensee shall file with the licensing authority a composite annual report in the form prescribed by that authority relating to all supervised loans made by the licensee. The licensing authority shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form. The licensing authority shall assess against a licensee who fails to file the prescribed report on or before April 15 a penalty of ten dollars for each day the report is overdue, up to a maximum of thirty days. When an annual report is overdue for more than thirty days, the licensing authority may institute proceedings under section 537.2303 for revocation of the licenses held by the licensee.

[C75, 77, 79, 81, §537.2304]

537.2305 Examinations and investigations.

1. For the purpose of discovering violations of this chapter or securing information lawfully required, the licensing authority shall examine periodically at intervals the licensing authority deems appropriate, but not less frequently than is required for other examinations of the licensee by section 524.217, 533.6, 534.401, 536.10, or 536A.15, whichever is applicable, the loans, business, and records of every licensee, except a licensee which has no office physically located in this state and engages in no face-to-face solicitation in this state. In addition, the licensing authority may at any time investigate the loans, business, and records of any lender. For these purposes the licensing authority shall be given free and reasonable access to the offices, places of business, and records of the lender.

2. If the lender's records are located outside this state, the lender at the lender's option shall make them available to the licensing authority at a convenient location within this state, or pay the reasonable and necessary expenses for the licens-

ing authority or the licensing authority's representative to examine them at the place where they are maintained. The licensing authority may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the licensing authority's behalf.

3. For the purposes of this section, the licensing authority may administer oaths or affirmations, and upon the licensing authority's own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

4. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the licensing authority may apply to the district court for an order compelling compliance.

[C75, 77, 79, 81, §537.2305]

537.2306 Reserved.

537.2307 Restrictions on interest in land as security.

With respect to a supervised loan in which the rate of finance charge is in excess of fifteen percent computed according to the actuarial method, and the amount financed is two thousand dollars or less, a lender may not contract for a security interest in real property used as a residence for the consumer or the consumer's dependents. A security interest taken in violation of this section is void.

[C75, 77, 79, 81, §537.2307]

537.2308 Regular schedule of payments — maximum loan term.

Supervised loans, not made pursuant to open end credit and in which the amount financed is one thousand dollars or less, shall be scheduled to be payable in substantially equal installments at substantially equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor, and over a period of not more than thirty-seven months if the amount financed is more than three hundred dollars, or over a period of not more than twenty-five months if the amount financed is three hundred dollars or less. However, a lender may make a loan not pursuant to open end credit that is repayable in a single payment if the amount financed does not exceed one thousand dollars and if the finance charge does not exceed the rate permitted by section 537.2401, subsection 1, to be charged by a supervised financial organization.

[C75, 77, 79, 81, §537.2308; 81 Acts, ch 179, §1]

537.2309 No other business for purpose of evasion.

A lender may not carry on other business for the purpose of evasion or violation of this chapter at a location where the lender makes supervised loans.

[C75, 77, 79, 81, §537.2309]

537.2310 Conduct of business other than making loans.

1. Except as provided in subsection 2, a licensee authorized to make supervised loans pursuant to section 537.2301 may not engage in the business of selling or leasing tangible goods at a location where supervised loans are made. In this section, *"location"* means the entire space in which supervised loans are made and the location must be separated from any space where goods are sold or leased by walls which may be broken only by a passageway to which the public is not admitted.

2. This section does not apply to:

a. Occasional sales of property used in the ordinary course of business of the licensee.

b. Sales of items of collateral of which the licensee has taken possession.

c. Sales of items by a licensee who is also authorized by law to operate as a pawnbroker.

d. Sales of property or items by the licensee which are not for the profit of the licensee and which are sold for a price not exceeding fifty dollars.

[C75, 77, 79, 81, §537.2310; 82 Acts, ch 1253, §41]

PART 4

CONSUMER LOANS: MAXIMUM FINANCE CHARGES

537.2401 Finance charge for consumer loans not pursuant to open end credit.

1. Except as provided with respect to a finance charge for loans pursuant to open end credit under section 537.2402, a lender may contract for and receive a finance charge not exceeding the maximum charge permitted by the laws of this state or of the United States for similar lenders, and, in addition, with respect to a consumer loan, a supervised financial organization or a mortgage lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding twenty-one percent per year on the unpaid balance of the amount financed. This subsection does not prohibit a lender from contracting for and receiving a finance charge exceeding twenty-one percent per year on the unpaid balance of the amount financed on consumer loans if authorized by other provisions of the law.

2. This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section or the laws of this state

or of the United States. The finance charge permitted by this section or the laws of this state or of the United States may be calculated by determining the single annual percentage rate as required to be disclosed to the consumer pursuant to section 537.3201 which, when applied according to the actuarial method to the unpaid balances of the amount financed, will yield the finance charge for that transaction which would result from applying any graduated rates permitted by this section or the laws of this state or of the United States to the transaction on the assumption that all scheduled payments will be made when due. If the loan is a precomputed consumer credit transaction, the finance charge may be calculated on the assumption that all scheduled payments will be made when due, and the effect of prepayment is governed by section 537.2510.

3. Except as provided in subsection 5, the term of a loan for the purposes of this section commences on the date the loan is made. Any month may be counted as one-twelfth of a year but a day is counted as one-three hundred sixty-fifth of a year. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. The administrator may adopt rules not inconsistent with the Truth in Lending Act with respect to treating as regular other minor irregularities in amount or time.

4. Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection 1, if both of the following are applicable:

a. When applied to the median amount within each range, it does not exceed the maximum permitted by that subsection.

b. When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph *"a"* by more than eight percent of the rate calculated according to paragraph *"a"*.

5. With respect to an insurance premium loan, the term of the loan commences on the earliest inception date of a policy or contract of insurance for which the premium is financed.

[C75, 77, 79, 81, §537.2401; 82 Acts, ch 1153, §16, 18(1)]

83 Acts, ch 124, §26

537.2402 Finance charge for consumer loans pursuant to open end credit.

1. If authorized to make supervised loans, a creditor may contract for and receive a finance charge without limitation as to amount or rate with respect to a loan pursuant to open-end credit as permitted in this section.

2. For each billing cycle, a charge may be made which is a percentage of an amount not exceeding the greatest of the following:

a. The average daily balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

b. The balance of the open-end account at the beginning of the first day of the billing cycle, after deducting all payments and credits made in the cycle except credits attributable to purchases charged to the account during the cycle.

c. The median amount within a specified range including the balance of the open-end account not exceeding that permitted by paragraph *"a"* or *"b"*. A charge may be made pursuant to this paragraph only if the organization, subject to classifications and differentiations it may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

[C75, 77, 79, 81, §537.2402]

84 Acts, ch 1237, §2; 89 Acts, ch 295, §2; 97 Acts, ch 187, §4, 5; 98 Acts, ch 1100, §74

PART 5

CONSUMER CREDIT TRANSACTIONS: OTHER CHARGES AND MODIFICATIONS

537.2501 Additional charges.

1. In addition to the finance charge permitted by parts 2 and 4, a creditor may contract for and receive the following additional charges:

a. Official fees and taxes.

b. Charges for insurance as described in subsection 2.

c. Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees.

d. Annual charges, payable in advance, for the privilege of using a credit card which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debts resulting from the purchases or leases are payable to the card issuer.

e. With respect to a debt secured by an interest in land, the following "closing costs," provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this chapter:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes including surveys.

(2) Fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor.

(3) Escrows for future payments of taxes, including assessments for improvements, insurance and water, sewer and land rents.

(4) Fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor.

f. With respect to open-end credit pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the parties may contract for an over-limit charge up to fifteen dollars if the balance of the account exceeds the credit limit established pursuant to the agreement. The over-limit charge under this paragraph shall not be assessed again in a subsequent billing cycle unless in a subsequent billing cycle the account balance has been reduced below the credit limit.

If the differential treatment of this subsection based on the number of persons honoring a credit card is found to be unconstitutional, the parties may contract for the over-limit charge as described in this paragraph in any consumer credit transaction pursuant to open-end credit, and the other conditions relating to the over-limit charge shall remain in effect.

g. A surcharge of not more than five percent of the amount of the face value of the payment instrument or twenty dollars, whichever is greater, for each dishonored payment instrument provided that the fee is clearly and conspicuously disclosed in the cardholder agreement. However, the amount of the surcharge shall not exceed twenty dollars unless the check, draft, or order was presented twice or the maker does not have an account with the drawee. If the check, draft, or order was presented twice or the maker does not have an account with the drawee, the amount of the surcharge shall not exceed fifty dollars. The surcharge shall not be assessed against the maker if the reason for the dishonor of the instrument is that the maker has stopped payment pursuant to section 554.4403.

h. Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator.

i. A reasonable annual account maintenance fee, payable in advance, for the privilege of maintaining a demand deposit account with a line of credit that may be accessed by the account holder writing a check.

2. An additional charge may be made for insurance written in connection with the transaction, as follows:

a. With respect to insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, if the creditor furnishes a clear, conspicuous and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained.

b. With respect to consumer credit insurance providing life, accident, health, or unemployment coverage, if the insurance coverage is not required by the creditor, and this fact is clearly and conspicuously disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific dated and separately signed affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost. However, credit unemployment insurance shall be permitted under this paragraph if all of the following conditions have been met:

(1) The insurance provides coverage beginning with the first day of unemployment. However, the policy may include a waiting period before the consumer may file a claim.

(2) The insurance shall be sold separately and shall be separately priced from any other insurance offered or sold at the same time. The credit unemployment insurance need not be sold separately or separately priced from other insurance offered if it is included as part of an insurance offering by a credit card issuer to its credit cardholders.

(3) The premium rates have been affirmatively approved by the insurance division of the department of commerce. In approving or establishing the rates, the division shall review the insurance company's actuarial data to assure that the rates are fair and reasonable. The insurance commissioner shall either hire or contract with a qualified actuary to review the data. The insurance division shall obtain reimbursement from the insurance company for the cost of the actuarial review prior to approving the rates. In addition, the rates shall be made in accordance with the following provisions:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) Due consideration shall be given to all relevant factors within and outside this state but rates shall be deemed to be reasonable under this section if they reasonably may be expected to produce a ratio of fifty percent by dividing claims incurred by premiums earned.

3. With respect to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the creditor

may contract for and receive any charge lawfully contained in a prior agreement between the consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card account, if the account was acquired in an arm's-length for-value sale from a nonrelated or nonaffiliated creditor. The creditor may charge any charge on new open-end credit accounts lawfully permitted in a prior agreement between a consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card accounts.

[C24, 27, 31, §9422; C35, §9438-f13; C39, §**9438.13;** C46, 50, 54, 58, 62, §536.13(6); C66, 71, 73, §536.13(6), 536A.23(6); C75, 77, 79, 81, §537.2501]

86 Acts, ch 1151, §1; 89 Acts, ch 68, §2, 3; 89 Acts, ch 296, §75; 95 Acts, ch 137, §1; 96 Acts, ch 1114, §1, 2; 99 Acts, ch 116, §1

537.2502 Delinquency charges.

1. With respect to a consumer credit transaction not pursuant to an open-end credit arrangement and other than a consumer lease or consumer rental purchase agreement, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount as follows:

a. For a precomputed transaction, an amount not exceeding the greater of either of the following:

(1) Five percent of the unpaid amount of the installment, or a maximum of twenty dollars.

(2) The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

b. For an interest-bearing transaction, an amount not exceeding five percent of the unpaid amount of the installment, or a maximum of fifteen dollars.

2. A delinquency charge under subsection 1 may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

3. A delinquency charge shall not be collected under subsection 1 on an installment which is paid in full within ten days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

4. With respect to open-end credit, the parties may contract for a delinquency charge on any payment not paid in full when due, as originally scheduled or as deferred, in an amount up to fifteen dollars.

5. A delinquency charge under subsection 4 may be collected only once on a payment however long it remains in default. A delinquency charge shall not be collected with respect to a deferred payment unless the payment is not paid in full on or before its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

6. A delinquency charge shall not be collected under subsection 4 on a payment which is paid in full on or before its scheduled or deferred due date even though an earlier maturing payment or a delinquency or deferred charge on an earlier payment has not been paid in full. For purposes of this subsection, payments are applied first to amounts due for the current billing cycle and then to delinquent payments.

[C66, 71, 73, §536.13(7), 536A.23(3); C75, 77, 79, 81, §537.2502]

89 Acts, ch 68, §4; 93 Acts, ch 124, §1; 95 Acts, ch 113, §1; 96 Acts, ch 1114, §3 – 5; 97 Acts, ch 187, §6, 7; 99 Acts, ch 15, §3

537.2503 Deferral charges.

1. Before or after default in payment of a scheduled installment of a precomputed consumer credit transaction, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid installments and the creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge which is not in excess of one and one-half percent per month for the period of time for which it is deferred, but not to exceed the rate of finance charge which was required to be disclosed in the transaction to the consumer pursuant to section 537.3201 applied to each amount deferred for the period for which it is deferred. In computing a deferral charge for one or more months, any month may be counted as one-twelfth of a year and in computing a deferral charge for part of a month, a day shall be counted as one three hundred sixty-fifth of a year.

2. In addition to the deferral charge permitted by this section, a creditor may make and receive appropriate additional charges as permitted under section 537.2501, and the amount of these charges which is not paid may be added to the amount deferred for the purpose of computing the deferral charge according to subsection 1.

3. The parties may agree in writing at the time of a precomputed consumer credit transaction that if an installment is not paid within ten days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the transaction.

4. A delinquency charge made by the creditor on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

[C66, 71, 73, §536.13(7), 537A.23(4); C75, 77, 79, 81, §537.2503]

537.2504 Finance charge on refinancing.

With respect to a consumer credit transaction in which the rate of finance charge required to be disclosed in the transaction pursuant to section 537.3201 does not exceed eighteen percent per year, other than a consumer lease or a consumer rental purchase agreement, the creditor may, by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on finance charge for consumer credit sales other than open end credit in section 537.2201 if a consumer credit sale is refinanced, the provisions on finance charge for a consumer loan other than a supervised loan in section 537.2401, subsection 1, or the provisions on finance charge for a supervised loan not pursuant to open end credit in section 537.2401, subsection 2, as applicable, if a consumer loan is refinanced. With respect to a consumer credit transaction in which the rate of finance charge required to be disclosed in the transaction to the consumer pursuant to section 537.3201 exceeds eighteen percent per year, other than a consumer lease or a consumer rental purchase agreement, the creditor may by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate of finance charge not to exceed that which was required to be disclosed in the original transaction to the consumer pursuant to section 537.3201. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing consists of:

1. If the transaction was not precomputed, the total of the unpaid balance of the amount financed and the accrued charges, including finance charges, on the date of the refinancing, or, if the transaction was precomputed, the amount determined by deducting the unearned portion of the finance charge and any other unearned charges, including charges for insurance or deferral charges, from the unpaid balance on the date of refinancing. For the purposes of this section, the unearned portion of the finance charge and deferral charge, if any, shall be determined as provided in section 537.2510, subsection 2, but without allowing any minimum charge.

2. Appropriate additional charges as permitted under section 537.2501, payment of which is deferred.

[C75, 77, 79, 81, §537.2504]
87 Acts, ch 80, §35

537.2505 Finance charge on consolidation.

1. In this section, *"consumer credit transaction"* does not include a consumer lease or a consumer rental purchase agreement.

2. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit transaction was not precomputed, the parties may agree to add the unpaid amount of the amount financed and accrued charges including finance charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction. If the previous consumer credit transaction was precomputed, the parties may agree to refinance the unpaid balance pursuant to section 537.2504, and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent consumer credit transaction. In either case the creditor may contract for and receive a finance charge as provided in subsection 3, based on the aggregate amount financed resulting from the consolidation.

3. If all debts consolidated arise exclusively from consumer loans, the creditor may contract for and receive the finance charge permitted by the provisions on finance charge for consumer loans pursuant to section 537.2401. If the debts consolidated include a debt arising from a consumer credit sale, including a transaction pursuant to a lender credit card, the amount of the finance charge is governed by the provisions on finance charge for consumer credit sales in section 537.2201.

4. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction arising out of a consumer credit sale, and becomes obligated on another consumer credit transaction arising out of another consumer credit sale by the same seller, the parties may agree to a consolidation resulting in a single schedule of payments either pursuant to subsection 2 or by adding together the unpaid balances with respect to the two sales.

[C75, 77, 79, 81, §537.2505]
87 Acts, ch 80, §36

537.2506 Advances to perform covenants of consumer.

1. If the agreement with respect to a consumer credit transaction other than a consumer lease or a consumer rental purchase agreement contains covenants by the consumer to perform certain du-

ties pertaining to insuring or preserving collateral and the creditor pursuant to the agreement pays for performance of the duties on behalf of the consumer, the creditor may add the amounts paid to the debt. Within a reasonable time after advancing any sums, the creditor shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverages. No further information need be given.

2. A finance charge may be made for sums advanced pursuant to subsection 1 at a rate not exceeding the rate of finance charge required to be stated to the consumer pursuant to law in the disclosure statement required by this chapter and the Truth in Lending Act, except that with respect to open end credit the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a finance charge not exceeding that permitted by section 537.2202 or 537.2402, as applicable.

[C75, 77, 79, 81, §537.2506]

87 Acts, ch 80, §37

537.2507 Attorney's fees.

With respect to a consumer credit transaction, the agreement may not provide for the payment by the consumer of attorney's fees. A provision in violation of this subsection is unenforceable.

[C75, 77, 79, 81, §537.2507]

537.2508 Conversion to open end credit.

The parties may agree at or within ten days prior to the time of conversion to add the unpaid balance of a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, not made pursuant to open end credit to the consumer's open end credit account with the creditor. The unpaid balance so added is an amount equal to the amount financed determined according to the provisions on finance charge on refinancing under section 537.2504.

[C75, 77, 79, 81, §537.2508]

87 Acts, ch 80, §38

537.2509 Right to prepay.

Subject to the provisions on prepayment and minimum charge under section 537.2510, the consumer may prepay in full the unpaid balance of a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, at any time.

[C58, 62, 66, 71, 73, §322.3(6, *e*); C75, 77, 79, 81, §537.2509]

87 Acts, ch 80, §39

537.2510 Rebate upon prepayment.

1. Except as provided in this section, upon prepayment in full of a precomputed consumer credit transaction, the creditor shall rebate to the consumer an amount not less than the amount of rebate provided in subsection 2, paragraph *"a"*, or redetermine the earned finance charge as provided in subsection 2, paragraph *"b"*, and rebate any other unearned charges including charges for insurance. If the rebate otherwise required is less than one dollar, no rebate need be made.

2. The amount of rebate and the redetermined earned finance charge shall be as follows:

a. The amount of rebate shall be determined by applying the rate of finance charge which was required to be disclosed in the transaction pursuant to section 537.3201, according to the actuarial method,

(1) If no deferral charges have been made in a transaction, to the unpaid balances and time remaining as originally scheduled for the period following prepayment.

(2) If a deferral charge has been made, to the unpaid balances and time remaining as deferred for the period following prepayment.

The time remaining for the period following prepayment shall be either the full days following the prepayment; or both the full days, counting the date of prepayment, between the prepayment date and the end of the computational period in which the prepayment occurs, and the full computational periods following the date of prepayment to the scheduled due date of the final installment of the transaction.

b. The redetermined earned finance charge shall be determined by applying, according to the actuarial method, the rate of finance charge which was required to be disclosed in the transaction pursuant to section 537.3201 to the actual unpaid balances of the amount financed for the actual time the unpaid balances were outstanding as of the date of prepayment. Any delinquency or deferral charges collected before the date of prepayment shall be applied to reduce the amount financed as of the date collected.

3. Upon prepayment, but not otherwise, of a consumer credit transaction whether or not precomputed, other than a consumer lease, a consumer rental purchase agreement, or a transaction pursuant to open end credit:

a. If the prepayment is in full, the creditor may collect or retain a minimum charge not exceeding five dollars in a transaction which had an amount financed of seventy-five dollars or less, or not exceeding seven dollars and fifty cents in a transaction which had an amount financed of more than seventy-five dollars, if the minimum charge was contracted for, and the finance charge earned at the time of prepayment is less than the minimum charge contracted for.

b. If the prepayment is in part, the creditor may not collect or retain a minimum charge.

4. For the purposes of this section, the following defined terms apply:

a. "Computational period" means the interval between scheduled due dates of installments under the transaction if the intervals are substantially equal or, if the intervals are not substantially equal, one month if the smallest interval between the scheduled due dates of installments under the transaction is one month or more, and otherwise one week.

b. The *"interval"* between specified dates means the interval between them including one or the other but not both of them. If the interval between the date of a transaction and the due date of the first scheduled installment does not exceed one month by more than fifteen days when the computational period is one month, or eleven days when the computational period is one week, the interval may be considered by the creditor as one computational period.

5. This section does not preclude the collection or retention by the creditor of delinquency charges under section 537.2502.

6. If the maturity is accelerated for any reason and judgment is obtained, the consumer is entitled to the same rebate as if payment had been made on the date maturity is accelerated.

7. Upon prepayment in full of a precomputed consumer credit transaction by the proceeds of consumer credit insurance, the consumer or the consumer's estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor, but no later than ten business days after satisfactory proof of loss is furnished to the creditor.

[C66, 71, 73, §536.13(7), 536A.26; C75, 77, 79, 81, §537.2510]

87 Acts, ch 80, §40

PART 6

OTHER CREDIT TRANSACTIONS

537.2601 Charges for other credit transactions.

1. Except as provided in subsection 2, with respect to a credit transaction other than a consumer credit transaction, the parties may contract for the payment by the debtor of any finance or other charge as permitted by law. Except with respect to debt obligations issued by a government, governmental agency or instrumentality, in calculating any finance charge contracted for, any month may be counted as one-twelfth of a year, but a day is to be counted as one three-hundred sixty-fifth of a year.

2. With respect to a credit transaction which would be a consumer credit transaction if a finance charge were made, a charge for delinquency may not exceed amounts allowed for finance charges for consumer credit sales pursuant to open end credit.

[C75, 77, 79, 81, §537.2601]

537.2602 Repealed by 79 Acts, ch 130, § 30. See § 322B.9.

ARTICLE 3

REGULATION OF AGREEMENTS AND PRACTICES

PART 1

GENERAL PROVISIONS

537.3101 Short title.

This article shall be known and may be cited as the *"Iowa Consumer Credit Code — Regulation of Agreements and Practices."*

[C75, 77, 79, 81, §537.3101]

537.3102 Scope.

Part 2 applies to disclosure with respect to consumer credit transactions, other than consumer rental purchase agreements, and the provision in section 537.3201 applies to a sale of an interest in land or a loan secured by an interest in land, without regard to the rate of finance charge, if the sale or loan is otherwise a consumer credit sale or consumer loan. Parts 3 and 4 apply, respectively, to disclosure, limitations on agreements and practices, and limitations on consumer's liability with respect to certain consumer credit transactions. Part 5 applies to home solicitation sales. Part 6 applies to consumer rental purchase agreements.

[C75, 77, 79, 81, §537.3102]

87 Acts, ch 80, §41; 2001 Acts, ch 24, §58

PART 2

DISCLOSURE

537.3201 Compliance with Truth in Lending Act.

A person upon whom the Truth in Lending Act imposes duties or obligations shall make or give to the consumer the disclosures, information and notices required of the person by that Act and in all respects shall comply with that Act. To the extent the Truth in Lending Act does not impose duties or obligations upon a person in a credit transaction, other than a consumer lease, which is a consumer credit transaction under this chapter, the person shall make or give to the consumer disclosures, information and notices in accordance with the Truth in Lending Act, with respect to the credit transaction.

[C75, 77, 79, 81, §537.3201]

537.3202 Consumer leases.

1. With respect to a consumer lease the lessor

shall give to the consumer the following information:

a. Brief description or identification of the goods.

b. Amount of any payment required at the inception of the lease.

c. Amount paid or payable for official fees, registration, certificate of title, or license fees or taxes.

d. Amount of other charges not included in the periodic payments and a brief description of the charges.

e. Brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages.

f. Except with respect to a consumer lease made pursuant to a lender credit card, the number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the consumer.

g. Statement of the conditions under which the consumer may terminate the lease prior to the end of the term.

h. Statement of the liabilities the lease imposes upon the consumer at the end of the term.

2. The disclosures required by this section are subject to the following:

a. They shall be made clearly and conspicuously in writing, a copy of which shall be delivered to the lessee.

b. They may be supplemented by additional information or explanations supplied by the lessor but none shall be stated, utilized or placed so as to mislead or confuse the lessee or contradict, obscure or detract attention from the information required to be disclosed by this section.

c. They need be made only to the extent applicable.

d. They shall be made on the assumption that all scheduled payments will be made when due and will comply with this section, although the assumption may be rendered inaccurate by an act, occurrence or agreement subsequent to the required disclosure.

e. They shall be made before the lease transaction is consummated but may be made in the lease to be signed by the lessee.

[C75, 77, 79, 81, §537.3202]

537.3203 Notice to consumer.

The creditor shall give to the consumer a copy of any writing evidencing a consumer credit transaction, other than one pursuant to open end credit, if the writing requires or provides for signature of the consumer. The writing evidencing the consumer's obligation to pay under a consumer credit transaction, other than one pursuant to open end credit, shall contain a clear and conspicuous notice to the consumer that the consumer should not sign it before reading it, that the consumer is entitled to a copy of it, and, except in the case of a consumer lease, that the consumer is entitled to prepay the unpaid balance at any time with such penalty and minimum charges as the agreement and section 537.2510 may permit, and may be entitled to receive a refund of unearned charges in accordance with law. The following notices if clear and conspicuous comply with this section:

1. In all transactions to which this section applies:

"NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law."

2. In addition, in a transaction in which a minimum charge will be collected or retained, the notice to consumer shall state "4. If you prepay the unpaid balance, you may have to pay a minimum charge not greater than seven dollars and fifty cents."

[C58, 62, 66, 71, 73, §322.3(6, b); C75, 77, 79, 81, §537.3203]

537.3204 Notice of assignment.

A consumer is authorized to pay the original creditor until the consumer receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless the assignee does so the consumer may pay the original creditor.

[C75, 77, 79, 81, §537.3204]

537.3205 Change in terms of open-end credit accounts.

1. Whether or not a change is authorized by prior agreement, a creditor may make a change in the terms of an open-end credit account applying to any balance incurred after the effective date of the change only if the creditor delivers or mails to the consumer a written disclosure of the change at least sixty days before the effective date of the change.

2. Unless authorized by this chapter or unless agreed to by the consumer, a creditor shall not change the terms of an open-end credit account, with respect to a balance incurred before the effective date of the change, which results in an increase of the rate of the finance charge or other charge or an increase in the amount of a periodic payment due, or which otherwise adversely affects the interests of the consumer with respect to the balance. The use by the consumer of an open-end account after the effective date of the change constitutes the agreement of the consumer if the

consumer is notified as provided in subsection 1 that the use will constitute the agreement of the consumer.

3. Notwithstanding subsection 2, a creditor may make a change in the terms of an open-end credit account with respect to a balance incurred before the effective date of the change if the creditor gives a written disclosure as provided in subsection 1 and if the credit card account is part of a portfolio of credit card accounts acquired in a bulk acquisition of the portfolio.

4. A disclosure provided for in subsection 1 is mailed to the consumer when mailed to the consumer at the consumer's address used by the creditor for mailing the consumer periodic billing statements.

5. If a creditor attempts to make a change in the terms of an open-end credit account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and is subject to the remedies available to the consumer under section 537.5201 and to the administrator under section 537.6113.

6. Notwithstanding subsections 1 through 5, a creditor is not required to deliver or mail to the consumer a written disclosure of a change in the terms of an open-end credit account if the change involves a decrease in the rate of the finance charge, a decrease in a delinquency charge, or a decrease in an over-limit charge.

[C75, 77, 79, 81, §537.3205]

84 Acts, ch 1237, §3; 91 Acts, ch 118, §2, 3; 96 Acts, ch 1057, §1

537.3206 Receipt — statements of account — evidence of payment — credits.

1. The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement for a computational period showing a payment received by mail complies with this subsection.

2. Upon written request of a consumer, the person to whom an obligation is owed pursuant to a consumer credit agreement shall provide a written statement of the dates and amounts of payments made within the twelve months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested the creditor may charge not in excess of three dollars for each additional statement.

3. After a consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to open end credit, the person to whom the obligation was owed shall, upon request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

4. *a.* A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge, including a late charge, or except as provided in paragraph *"b"*. For purposes of this subsection, a delay in posting does not violate this subsection so long as the payment is credited as of the date of receipt.

b. If a creditor specifies requirements for the consumer to follow in making payments on the contract, payment coupon book, payment coupon or statement, or periodic statement, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within two days of receipt of such payment.

c. If a creditor fails to credit a payment as required by this subsection in time to avoid the imposition of a finance or other charge, including a delinquency charge, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next payment period.

[C75, 77, 79, 81, §537.3206]

99 Acts, ch 15, §4

537.3207 Form of insurance premium loan agreement.

An agreement pursuant to which an insurance premium loan is made shall contain the names of the insurance producer negotiating each policy or contract and of the insurer issuing each policy or contract, the number and inception date of, and premium for, each policy or contract, the date on which the term of the loan begins, and a clear and conspicuous notice that each policy or contract may be canceled if payment is not made in accordance with the agreement. If a policy or contract has not been issued when the agreement is signed, the agreement may provide that the insurance producer may insert the appropriate information in the agreement and, if they do so, shall furnish the information promptly in writing to the insured.

[C75, 77, 79, 81, §537.3207]

2001 Acts, ch 16, §35, 37

2001 amendment takes effect January 1, 2002; 2001 Acts, ch 16, §37

537.3208 Notice to cosigners and similar parties.

1. No natural person, other than the spouse of the consumer, is obligated as a cosigner, comaker, guarantor, endorser, surety, or similar party with respect to a consumer credit transaction, unless before or contemporaneously with signing any separate agreement of obligation or any writing setting forth the terms of the debtor's agreement, the person receives a separate written notice that contains a completed identification of the debt the person may have to pay and reasonably informs

the person of the person's obligation with respect to it.

2. A clear and conspicuous notice in substantially the following form complies with this section:

NOTICE

You agree to pay the debt identified below although you may not personally receive any property, services, or money. You may be sued for payment although the person who receives the property, services, or money is able to pay. This notice is not the contract that obligates you to pay the debt. Read the contract for the exact terms of your obligation.

IDENTIFICATION OF DEBT
YOU MAY HAVE TO PAY

. . . . . .
(name of debtor)

. . . . . .
(name of creditor)

. . . . . .
(date)

. . . . . .
(kind of debt)

I have received a copy of this notice.

. . . .
(Date) (Signed)

3. The notice required by this section need not be given to a seller, lessor, or lender who is obligated to an assignee of the seller's, lessor's, or lender's rights.

4. A person entitled to notice under this section shall also be given a copy of any writing setting forth the terms of the debtor's agreement and of any separate agreement of obligation signed by the person entitled to the notice.

[C75, 77, 79, 81, §537.3208]

537.3209 Advertising.

1. A seller, lessor, or lender shall not advertise, print, display, publish, distribute, utter or broadcast, or cause to be advertised, printed, displayed, published, distributed, uttered or broadcast in any manner, any false, misleading, or deceptive statement or representation with regard to the rates, terms or conditions of credit with respect to a consumer credit transaction.

2. Advertising that complies with the Truth in Lending Act does not violate this section.

3. This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

[C24, 27, 31, §9432; C35, §9438-f12; C39, §**9438.12;** C46, 50, 54, 58, 62, §536.12; C66, 71, 73, §536.12, 536A.20; C75, 77, 79, 81, §537.3209]

537.3210 Prohibited statements relating to rates.

A creditor shall not state the rate of a finance charge to a consumer, in response to any inquiry, or in any advertisement, in the form of an add-on or discount rate, or in any form other than the rate calculated according to the actuarial method as a percent per year on the unpaid balances of the amount financed, or the annual percentage rate required to be disclosed under the Truth in Lending Act.

[C75, 77, 79, 81, §537.3210]

537.3211 Notice of consumer paper.

Every note which is a negotiable instrument as provided in section 554.3104 taken in a consumer credit transaction, if the writing requires or provides for a signature of the consumer, shall conspicuously show on its face the following: "This is a consumer credit transaction."

[C75, 77, 79, 81, §537.3211]

94 Acts, ch 1167, §3, 122

537.3212 Notice of methods of financing and rates.

1. With respect to a consumer who has an open end credit account with a creditor, and with respect to a creditor which offers to some or all of its customers consumer credit sales of goods or services both pursuant to open end credit and not pursuant to open end credit, that creditor shall give written notice to that consumer of those alternative methods at the times provided in subsection 3. The notice shall be as provided in subsection 2.

2. The notice required by this section shall conspicuously state the highest finance charge charged by that creditor to any consumer within the last calendar year for each type of credit sale. Such finance charge shall be stated as an annual percentage rate in such form as is required pursuant to section 537.3201 for each type of credit sale described in subsection 1, and the terms of repayment for each type of credit sale.

3. This section is complied with if notice is given at the following times:

a. With respect to an existing open end credit account holder, in a writing contained as a part of, or mailed with a periodic statement mailed to the account holders and no less than once every six months.

b. With respect to a consumer not holding an existing open end credit account, if the written notice is presented to the person at the time of the consumer credit transaction, and thereafter as provided in paragraph *"a"*.

[C75, 77, 79, 81, §537.3212]

This section not applicable under §535.11(6)

PART 3

LIMITATIONS ON AGREEMENTS AND PRACTICES

537.3301 Security in consumer credit transactions.

1. With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the amount financed is one thousand dollars or more, or in the case of a security interest in goods if either the amount financed is three hundred dollars or more, or if the goods are household goods, or motor vehicles used by a consumer, the consumer's dependents, or the family with which the consumer resides, as transportation to and from a place of employment, one hundred dollars or more. Except as provided with respect to cross-collateral under section 537.3302, a seller may not otherwise take a security interest in property to secure the debt arising from a consumer credit sale.

2. With respect to a consumer lease, a lessor may not take a security interest in property to secure the debt arising from the lease. This subsection does not apply to a security deposit for a consumer lease or a consumer rental purchase agreement.

3. With respect to a supervised loan, a lender may not take a security interest, other than a purchase money security interest, in the clothing, one dining table and set of chairs, one refrigerator, one heating stove, one cooking stove, one radio, beds and bedding, one couch, two living room chairs, cooking utensils, or kitchenware used by the consumer, the consumer's dependents, or the family with whom the consumer resides.

4. A security interest taken in violation of this section is void.

[C75, 77, 79, 81, §537.3301]

87 Acts, ch 80, §42

537.3302 Cross-collateral.

1. In addition to contracting for a security interest pursuant to the provisions on security in consumer credit transactions under section 537.3301, a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

2. If the seller contracts for a security interest in other property pursuant to this section, the rate of finance charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on finance charge on consolidation under section 537.2505. The seller has a reasonable time after so contracting to make any adjustments required by this section.

[C75, 77, 79, 81, §537.3302]

537.3303 Debt secured by cross-collateral.

1. If debts arising from two or more consumer credit sales, other than sales pursuant to open end credit, are secured by cross-collateral or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debt originally incurred with respect to each item is paid.

2. Payments received by the seller upon an open end credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

3. If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

[C75, 77, 79, 81, §537.3303]

537.3304 Use of multiple agreements.

1. With respect to a sale or loan other than a supervised loan, a creditor may not use multiple agreements in what is in substance a single transaction, with intent to obtain a higher finance charge than would otherwise be permitted by the provisions of article 2 of this chapter.

2. With respect to a supervised loan, a lender may not use multiple agreements with intent to obtain a higher finance charge than would otherwise be permitted. For the purposes of this subsection, multiple agreements are used if a lender allows any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender.

3. The excess amount of finance charge ob-

tained in violation of this section is an excess charge for the purposes of the provisions on rights of parties in section 537.5201 and the provisions on civil actions by the administrator in section 537.6113.

[C35, §9438-f13; C39, §**9438.13;** C46, 50, 54, 58, 62, §536.13(6); C66, 71, 73, §536.13(6), 536A.24; C75, 77, 79, 81, §537.3304]

537.3305 No assignment of earnings.

1. A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer. This section does not prohibit a consumer from authorizing deductions in favor of a creditor if the authorization is revocable, the consumer is given a complete copy of the writing evidencing the authorization at the time the consumer signs it, and the writing contains on its face a conspicuous notice of the consumer's right to revoke the authorization.

2. A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to the seller secured by an assignment of earnings.

[C24, 27, 31, §9427, 9428; C35, §9438-f17; C39, §**9438.17;** C46, 50, 54, 58, 62, 66, 71, 73, §536.17; C75, 77, 79, 81, §537.3305]

537.3306 Authorization to confess judgment prohibited.

Unless executed after default on a claim arising out of a consumer credit transaction, authorization for a judgment by confession on that claim pursuant to chapter 676 is void. Any other authorization by a consumer for any person to confess judgment on the claim, whenever executed, is void.

[C24, 27, 31, §9426; C35, §9438-f12; C39, §**9438.12;** C46, 50, 54, 58, 62, 66, 71, 73, §536.12; C75, 77, 79, 81, §537.3306]

537.3307 Certain negotiable instruments prohibited.

With respect to a consumer credit sale or consumer lease, the creditor may not take a negotiable instrument other than a check or credit union share draft dated not later than ten days after its issuance as evidence of the obligation of the consumer.

[C75, 77, 79, 81, §537.3307]

537.3308 Balloon payments.

1. Except as provided in subsection 2, if any scheduled payment of a consumer credit transaction is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due without penalty, as provided in section 537.2504. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction.

2. This section does not apply to any of the following:

a. A consumer lease.

b. A transaction pursuant to open end credit.

c. A transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments of obligations of the consumer.

d. A transaction of a class defined by rule of the administrator as not requiring for the protection of the consumer a right to refinance as provided in this section.

e. A consumer loan in which the amount financed exceeds five thousand dollars and is secured by an interest in land.

f. A consumer rental purchase agreement.

g. A consumer loan secured by a certificate of title in a motor vehicle.

[C75, 77, 79, 81, §537.3308; 82 Acts, ch 1153, §17]

87 Acts, ch 80, §43; 2001 Acts, ch 21, §1

537.3309 Referral sales and leases.

A practice unlawful under section 714.16, subsection 2, paragraph *"b"*, if done in connection with a consumer credit sale or consumer lease, is a violation of this chapter for which the consumer has a cause of action under section 537.5201, subsection 1. The administrator has all powers granted under article 6, part 1, to enforce the provisions of section 714.16, subsection 2, paragraph *"b"*. If a consumer is induced by a violation of section 714.16, subsection 2, paragraph *"b"* to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the consumer, at the consumer's option, in addition to other remedies, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

[C75, 77, 79, 81, §537.3309]

537.3310 Limitations on executory transactions.

1. In a consumer credit transaction, other than a consumer rental purchase agreement, if performance by a creditor is by delivery of goods, services, or both, in four or more installments, either on demand of the consumer or by prearranged scheduled performance, the consumer may cancel the obligation with respect to that part which has not been performed on the date of cancellation.

2. If the consumer exercises the right to cancel or, in any event, if the creditor attempts to exercise a right to accelerate, the creditor is entitled to recover only that part of the cash price and charges attributable to the part of the creditor's obligation

which has been performed.

3. Cancellation under this section shall be effective when the consumer mails or delivers a written notice of cancellation.

4. Notwithstanding an agreement to the contrary, a creditor may not exercise a right to accelerate beyond the amount set forth in subsection 2.

5. Subsections 1 through 4 do not apply to a membership camping contract which is subject to the requirements of chapter 557B.

[C75, 77, 79, 81, §537.3310]

87 Acts, ch 80, §44; 87 Acts, ch 181, §4

537.3311 Discrimination prohibited.

A creditor shall not refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of the age, color, creed, national origin, political affiliation, race, religion, sex, marital status or disability of the consumer, or because the consumer receives public assistance, social security benefits, pension benefits or the like, or because of the exercise by the consumer of rights pursuant to this chapter or other provisions of law.

[C75, 77, 79, 81, §537.3311]

PART 4

LIMITATIONS ON CONSUMER'S LIABILITY

537.3401 Restriction on liability in consumer lease.

The obligation of a lessee upon expiration of a consumer lease may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

[C75, 77, 79, 81, §537.3401]

537.3402 Limitation on default charges.

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit transaction other than a consumer lease may not provide for any charges as a result of default by the consumer other than those authorized by this chapter. A provision in violation of this section is unenforceable.

[C75, 77, 79, 81, §537.3402]

537.3403 Card issuer subject to claims and defenses.

1. This section neither limits the liability of nor imposes liability on a card issuer as a manufacturer, supplier, seller, or lessor of property or services sold or leased pursuant to the credit card. This section may subject a card issuer to claims and defenses of a cardholder against a seller or lessor arising from sales or leases made pursuant to the credit card.

2. A card issuer is subject to claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services by a seller or lessor licensed, franchised, or permitted by the card issuer or a person related to the card issuer to do business under the trade name or designation of the card issuer or a person related to the card issuer, to the extent of the original amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose.

3. Except as otherwise provided in subsection 2, a card issuer, including a lender credit card issuer, is subject to all claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services pursuant to the credit card only if all of the following apply:

a. The original amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose exceeds fifty dollars.

b. The residence of the cardholder and the place where the sale or lease occurred are in the same state or within one hundred miles of each other.

c. The cardholder has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense.

4. Except as otherwise provided in subsection 2, a card issuer, including a lender credit card issuer, is subject to claims and defenses only to the extent of the amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose at the time the card issuer has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt to obtain satisfaction specified in subsection 3. Written notice is effective when mailed or delivered.

5. For the purpose of determining the amount owing to the card issuer with respect to the sale or lease upon an open end credit account, payments received for the account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

6. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a cardholder under this section. A provision in violation of this subsection is unenforceable.

[C75, 77, 79, 81, §537.3403]

537.3404 Assignee subject to claims and defenses.

1. With respect to a consumer credit sale or consumer lease, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the consumer against the seller or lessor arising

from the sale or lease of property or services, notwithstanding that the assignee is a holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments in section 537.3307; unless the consumer has agreed in writing not to assert against an assignee a claim or defense arising out of such sale, and the consumer's contract has been assigned to an assignee not related to the seller who acquired the consumer's contract in good faith and for value and who gives the consumer notice of the assignment as provided in this subsection and who within thirty days after the mailing of the notice receives no written notice of the facts giving rise to the consumer's claim or defense. Such agreement not to assert a claim or defense is not valid if the assignee receives such written notice from the consumer within such thirty-day period. The notice of assignment shall be in writing and addressed to the consumer at the consumer's address as stated in the contract, identify the contract, describe the property purchased by the consumer, state the names of the seller and consumer, the name and address of the assignee, the amount payable by the consumer and the number, amounts and due dates of the installments, and contain a conspicuous notice to the consumer that the consumer has thirty days from the date of the mailing of the notice to the consumer within which to notify the assignee in writing of any claims or defenses the consumer may have against the seller and that if written notification of any such claims or defenses is not received by the assignee within such thirty-day period, the assignee will have the right to enforce the contract free of any claims or defenses the consumer may have against the seller. An assignee does not acquire a consumer's contract in good faith within the meaning of this subsection if the assignee has knowledge or, from the assignee's course of dealing with the seller or the assignee's records, notice of substantial complaints by other consumers of the seller's failure or refusal to perform the seller's contracts with them and of the seller's failure to remedy the seller's defaults within a reasonable time after the assignee notifies the seller of the complaints.

2. A claim or defense of a consumer specified in subsection 1 may be asserted against the assignee under this section only if the consumer has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense, and only to the extent of the amount owing to the assignee with respect to the sale or lease of the property or services as to which the claim or defense arose, at the time the assignee has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt specified in this subsection. Written notice is effective when mailed or delivered.

3. For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

a. Payments received by the assignee after the consolidation of two or more consumer credit sales, other than pursuant to open end credit, are deemed to have been first applied to the payment of the sales first made, and if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales.

b. Payments received upon an open end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

4. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a consumer under this section. A provision in violation of this subsection is unenforceable.

[C75, 77, 79, 81, §537.3404]

537.3405 Lender subject to defenses arising from sales and leases.

1. A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a consumer to buy or lease from a particular seller or lessor property or services, is subject to all claims and defenses of the consumer against the seller or lessor arising from that sale or lease of the property or services if any of the following are applicable:

a. The lender knows that the seller or lessor arranged for a commission, brokerage, or referral fee, for the extension of credit by the lender.

b. The lender is a person related to the seller or lessor, unless the relationship is remote or is not a factor in the transaction.

c. The seller or lessor guarantees the loan or otherwise assumes the risk of loss by the lender upon the loan.

d. The lender directly supplies the seller or lessor with the contract document used by the consumer to evidence the loan, and the seller or lessor has knowledge of the credit terms and participates in the preparation of the document.

e. The loan is conditioned upon the consumer's purchase or lease of the property or services from the particular seller or lessor, but the lender's payment of proceeds of the loan to the seller or lessor does not in itself establish that the loan was so conditioned.

f. The lender otherwise knowingly participates with the seller in the sale. The fact that the lender takes a security interest in property sold in that sale, or makes the proceeds of the loan payable to the seller does not in itself constitute knowing participation in the sale.

2. A claim or defense of a consumer specified in subsection 1 may be asserted against the lender under this section only if the consumer has made a good faith attempt to obtain satisfaction from the

seller or lessor with respect to the claim or defense and only to the extent of the amount owing to the lender with respect to the sale or lease of the property or services as to which the claim or defense arose at the time the lender has notice of the claim or defense. Notice of the claim or defense may be given prior to the attempt specified in this subsection. Written notice is effective when mailed or delivered.

3. For the purpose of determining the amount owing to the lender with respect to the sale or lease:

a. Payments received by the lender after the consolidation of two or more consumer loans, other than pursuant to open end credit, are deemed to have been first applied to the payment of the loans first made, and if the loans consolidated arose from loans made on the same day, payments are deemed to have been first applied to the smaller or smallest loan or loans.

b. Payments received upon an open end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

4. Except as provided in section 537.1107, an agreement may not contain a provision to limit or waive the claims or defenses of a consumer under this section. A provision in violation of this section is unenforceable.

[C75, 77, 79, 81, §537.3405]

PART 5

HOME SOLICITATION SALES

537.3501 Door-to-door sales.

In a consumer credit sale or a sale in which the goods or services are paid for in whole or in part by a lender credit card or a consumer loan in which the lender is subject to defenses arising from the sale under section 537.3405, a consumer has, in addition to all the rights and remedies provided by chapter 555A, a cause of action under section 537.5201, subsection 1, and the administrator has all powers granted under article 6, part 1, to enforce the provisions of chapter 555A.

[C75, 77, 79, 81, §537.3501]

PART 6

CONSUMER RENTAL PURCHASE AGREEMENTS

537.3601 Short title.

This part of article 3 may be known and may be cited as the *"Consumer Rental Purchase Agreement Act"*.

87 Acts, ch 80, §1

537.3602 Purposes — rules of construction.

1. This part shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this part are to:

a. Define, simplify, and clarify the law governing consumer rental purchase agreements.

b. Provide certain disclosures to consumers who enter into consumer rental purchase agreements, and further consumer understanding of the terms of consumer rental purchase agreements.

c. Protect consumers against unfair practices.

d. Permit and encourage the development of fair and economically sound rental purchase practices.

e. Make the law on consumer rental purchase agreements, including administrative rules, more uniform among the various uniform consumer credit code jurisdictions.

3. A reference to a requirement imposed by this part includes a reference to a related rule of the administrator adopted pursuant to this chapter.

87 Acts, ch 80, §2

537.3603 Exclusions.

This part does not apply to, and an agreement which complies with this part is not governed by, the provisions regarding:

1. A consumer credit sale as defined in section 537.1301, subsection 12.

2. A consumer lease as defined in section 537.1301, subsection 13.

3. A consumer loan as defined in section 537.1301, subsection 14.

4. A lease or agreement which constitutes a *"credit sale"* as defined in 12 C.F.R. § 226.2(a16), and the Truth In Lending Act, 15 U.S.C. § 1602(g), or an agreement which constitutes a *"sale of goods"* under section 537.1301, subsection 36.

5. A lease which constitutes a consumer lease as defined in 12 C.F.R. § 213.2(a6).

6. A lease or agreement which constitutes a security interest as defined in section 554.1201, subsection 37.

87 Acts, ch 80, §3; 88 Acts, ch 1134, §97

537.3604 General definitions.

As used in this part, unless otherwise required by the context:

1. *"Administrator"* means the administrator as designated in section 537.6103.

2. *"Advertisement"* means a commercial message in any medium, including signs, window displays, and price tags, that promotes, directly or indirectly, a consumer rental purchase agreement.

3. *"Cash price"* means the price at which the lessor in the ordinary course of business would offer to sell the personal property to the lessee for

cash on the date of the consumer rental purchase agreement.

4. *"Consummation"* means the time at which the lessee enters into a consumer rental purchase agreement.

5. *"Lessee"* means a natural person who rents personal property under a consumer rental purchase agreement for personal, family, or household use.

6. *"Lessor"* means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement.

7. *"Personal property"* means any property that is not real property under the laws of this state when it is made available for a consumer rental purchase agreement.

8. *"Consumer rental purchase agreement"* means an agreement for the use of personal property in which all of the following are applicable:

a. The lessor is regularly engaged in the rental purchase business.

b. The agreement is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the lessee to become the owner of the property.

c. The lessee is a person other than an organization.

d. The lessee takes under the consumer rental purchase agreement primarily for a personal, family, or household purpose.

e. The amount payable under the consumer rental purchase agreement does not exceed twenty-five thousand dollars.

87 Acts, ch 80, §4

537.3605 Disclosures.

In a consumer rental purchase agreement, the lessor shall disclose the following items, as applicable:

1. The total of scheduled payments accompanied by an explanation that this term means the *"total dollar amount of lease payments you will have to make to acquire ownership"*.

2. By item, the total number, amounts, and timing of all lease payments and other charges including taxes or official fees paid to or through the lessor which are necessary to acquire ownership of the property.

3. Any initial or advance payment such as a delivery charge, security deposit, or trade-in allowance.

4. A statement that the lessee will not own the property until the lessee has made the total of payments necessary to acquire ownership of the property.

5. A statement that the total of payments does not include additional charges such as late payment charges, and a separate listing and explanation of these charges as applicable.

6. If applicable, a statement that the lessee is responsible for the fair market value of the property if and as of the time it is lost, stolen, damaged, or destroyed.

7. A description of the goods or merchandise including model numbers as applicable and a statement indicating whether the property is new or used. It is not a violation of this subsection to indicate that the property is used if it is actually new.

8. A statement that at any time after the first periodic payment is made, the lessee may acquire ownership of the property by exercising the option to purchase the property, and at what price, or by what formula or method the purchase price will be determined. It is not a violation of this subsection for the lessor and the lessee to agree in writing to allow the lessee to acquire ownership of the property for less than the amounts referred to in this subsection.

9. The cash price of the merchandise.

87 Acts, ch 80, §5; 89 Acts, ch 128, §1

537.3606 Form requirements.

1. The disclosure information required by section 537.3605 and this section shall be disclosed in a consumer rental purchase agreement, and shall meet the following requirements:

a. Be made clearly and conspicuously with items appearing in logical order and segregated as appropriate for readability and clarity.

b. Be made in writing.

c. Except as provided in subsection 2 or in rules adopted by the administrator, need not be contained in a single writing or made in the order set forth in section 537.3605.

d. May be supplemented by additional information or explanations supplied by the lessor, but none shall be stated, used or placed so as to mislead or confuse the lessee, or to contradict, obscure, or detract attention from the information required by section 537.3605, and so long as the additional information or explanations do not have the effect of circumventing, evading, or unduly complicating the information required to be disclosed by section 537.3605.

2. The lessor shall disclose all information required by section 537.3605 before the consumer rental purchase agreement is consummated. These disclosures shall be made on the face of the writing evidencing the consumer rental purchase agreement.

3. Before any payment is due, the lessor shall furnish the lessee with an exact copy of each consumer rental purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement. If there is more than one lessee in a consumer rental purchase agreement, delivery of a copy of the consumer rental purchase agreement to one of the lessees constitutes compliance with this part; however, a lessee not signing the agreement is not liable under it.

4. The administrator may adopt by rule requirements for the order, acknowledgment by initialing, and conspicuousness of the disclosures set forth in section 537.3605. These rules may allow these disclosures to be made in accordance with model forms prepared by the administrator.

5. The terms of the consumer rental purchase agreement, except as otherwise provided in this part, shall be set forth in not less than eight point standard type, or such similar type as prescribed in rules adopted by the administrator.

6. Every consumer rental purchase agreement shall contain immediately above or adjacent to the place for the signature of the lessee, a clear, conspicuous, printed or typewritten notice in substantially the following language:

NOTICE TO LESSEE — READ BEFORE SIGNING

a. DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

d. YOU HAVE THE RIGHT TO EXERCISE ANY EARLY BUY-OUT OPTION AS PROVIDED IN THIS AGREEMENT. EXERCISE OF THIS OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP UNDER THIS AGREEMENT.

e. IF YOU ELECT TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND EXERCISE YOUR PURCHASE OPTION, YOU MAY PAY MORE FOR THE LEASED PROPERTY.

7. The notice described in subsection 6 shall be in bold face, ten point type.

87 Acts, ch 80, §6

537.3607 Receipts.

The lessor shall furnish the lessee, without request, an itemized written receipt for each payment in cash, or any other time the method of payment itself does not provide evidence of payment.

87 Acts, ch 80, §7

537.3608 Acquiring ownership.

1. A lessor shall not offer a consumer rental purchase agreement in which fifty percent of all lease payments necessary to acquire ownership of the leased property exceeds the cash price of the leased property. When fifty percent of all lease payments made by a lessee equals the cash price of the property disclosed to the lessee pursuant to section 537.3605, subsection 9, the lessee shall acquire ownership of the leased property and the agreement shall terminate.

2. At any time after tendering an initial lease payment, a lessee may acquire ownership of the property that is the subject of the consumer rental purchase agreement by tendering an amount equal to the amount by which the cash price of the leased property exceeds fifty percent of all lease payments made by the lessee.

3. It is not a violation of this section for the lessor and the lessee to agree in writing to allow the lessee to acquire ownership of the property for less than the amounts referred to in this section.

87 Acts, ch 80, §8; 89 Acts, ch 128, §2

537.3609 Renegotiation.

1. A renegotiation occurs when an existing consumer rental purchase agreement is satisfied and replaced by a new consumer rental purchase agreement undertaken by the same lessor and lessee. A renegotiation is a new lease requiring new disclosures.

2. However, the following events are not renegotiations:

a. The addition or return of property in a multi-item agreement or the substitution of the leased property, if in either case the lease payment is not changed by more than twenty-five percent.

b. A deferral or extension of one or more lease payments, or portions of a lease payment.

c. A reduction in charges in the agreement.

d. A lease or agreement involved in a court proceeding.

87 Acts, ch 80, §9

537.3610 Balloon payments prohibited.

A lessee shall not be required, as a condition to acquiring ownership, to make a payment that is more than twice the amount of a regular rental payment, or to pay lease payments totaling more than the cost to acquire ownership as disclosed pursuant to section 537.3605. This section does not apply to payments made pursuant to section 537.3608, 537.3612, or 537.3619.

87 Acts, ch 80, §10

537.3611 Prohibited charges.

A lessor shall not make a charge for any of the following:

1. Any insurance whether in connection with the transaction or otherwise, except that a charge may be made for property insurance on the leased property if the charge is clearly disclosed as optional and all other requirements of section 537.2501, subsection 2, paragraph *"a"*, are met.

2. A penalty for early termination of a consumer rental purchase agreement or for the return of an item at any point, except for those charges authorized by sections 537.3612 and 537.3613.

3. Payment by a cosigner of the consumer rental purchase agreement of any fees or charges which could not be imposed upon the lessee as part

of the consumer rental purchase agreement.
87 Acts, ch 80, §11

537.3612 Additional charges.

1. In a consumer rental purchase agreement, the lessor may contract for and receive an initial nonrefundable administrative fee not to exceed ten dollars. If a security deposit is required by the lessor, the amount and conditions under which it is returned must be disclosed with the disclosures required by sections 537.3605 and 537.3606.

2. In a consumer rental purchase agreement, the lessor may contract for and receive a delivery charge not to exceed ten dollars or, in the case of a consumer rental purchase agreement covering more than five items, a delivery charge not to exceed twenty-five dollars. A delivery charge may be assessed only if the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed with the disclosures required by sections 537.3605 and 537.3606. The delivery charge may be assessed in lieu of and not in addition to the initial administrative charge in subsection 1 of this section.

3. In a consumer rental purchase agreement, a lessor may contract for and receive a charge for picking up payments from the lessee if the lessor is required or requested to visit the lessee's dwelling to pick up a payment. In a consumer rental purchase agreement with payment or renewal dates which are more frequent than monthly, this charge shall not be assessed more than three times in any three-month period. In consumer rental purchase agreements with payments or renewal options which are at least monthly, this charge shall not be assessed more than three times in any six-month period. A charge assessed pursuant to this subsection shall not exceed seven dollars. This charge is in lieu of any delinquency charge assessed for the applicable payment period.

4. In a consumer rental purchase agreement, the parties may contract for late charges or delinquency fees as follows:

a. For consumer rental purchase agreements with monthly renewal dates, a late charge not exceeding five dollars may be assessed on any payment not made within five business days after either payment is due or the return of the property is required.

b. For consumer rental purchase agreements with weekly or biweekly renewal dates, a late charge not exceeding three dollars may be assessed on any payments not made within three business days after either payment is due or the return of the property is required.

A late charge on a consumer rental purchase agreement may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected at the time it accrues or at any time thereafter. A late charge shall not be assessed against a payment that is timely made, even though an earlier late charge has not been paid in full.
87 Acts, ch 80, §12

537.3613 Reinstatement fees.

A reinstatement fee as provided for in section 537.3616 shall not equal more than the outstanding balance of any missed payments and delinquency charges on those missed payments plus an additional reinstatement fee that shall not exceed five dollars.
87 Acts, ch 80, §13

537.3614 Taxes and official fees.

1. If the amount is separately disclosed in the agreement, the lessor may require the lessee to pay all applicable state and county sales, use, and personal property taxes levied as a result of the execution of the consumer rental purchase agreement, provided that the lessor pays the full amount of these taxes to the appropriate authorities.

2. If the amount is separately disclosed in the agreement, the lessor may contract for and receive from the lessee an amount equal to all official fees required to be paid under the consumer rental purchase agreement provided that the lessor pays the full amount of these fees to the appropriate authorities.
87 Acts, ch 80, §14

537.3615 Advertising.

1. An advertisement for a consumer rental purchase agreement shall not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.

2. If an advertisement for a consumer rental purchase agreement refers to or states the amount of any payment, or the right to acquire ownership, for a specific item, the advertisement must also clearly and conspicuously state the following terms as applicable:

a. That the transaction advertised is a consumer rental purchase agreement.

b. The total of payments necessary to acquire ownership.

c. That the lessee will not own the property until the total amount necessary to acquire ownership is paid in full or by prepayment as provided for by law.

3. Notwithstanding the requirements of subsection 1, if the advertisement is published by way of radio announcement or on a roadside billboard, the lessor need only make the disclosures required by subsection 2, paragraphs *"a"* and *"c"*.

4. With respect to any matters specifically governed by the advertising provisions of the federal Consumer Credit Protection Act, compliance with that Act satisfies the requirements of this section.

5. This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

87 Acts, ch 80, §15

537.3616 Lessee's reinstatement rights.

1. A lessee who fails to make timely rental payments has the right to reinstate the original consumer rental purchase agreement without losing any rights or options previously acquired under the consumer rental purchase agreement if both of the following apply:

a. Subsequent to having failed to make a timely rental payment, the lessee has surrendered the property to the lessor, if and when requested by the lessor.

b. Not more than sixty days has passed since the lessee has returned the property.

2. As a condition precedent to reinstatement of a consumer rental purchase agreement, a lessor may charge the outstanding balance of any accrued payments and delinquency charges, a reinstatement fee, and the delivery charges allowable by section 537.3612, subsection 2, if redelivery of the item is necessary.

3. If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with the same item, if available, leased by the lessee prior to reinstatement. If the same item is not available, a substitute item of comparable worth, quality, and condition may be used. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 537.3605.

87 Acts, ch 80, §16

537.3617 Unconscionability.

Unconscionability in consumer rental purchase agreements is governed by section 537.5108.

87 Acts, ch 80, §17

537.3618 Default.

An agreement of the parties to a consumer rental purchase agreement with respect to default on the part of the lessee is enforceable only to the extent that one of the following apply:

1. The lessee both fails to renew an agreement and also fails to return the rented property or make arrangements for its return as provided by the agreement.

2. The prospect of payment, performance, or return of the property is materially impaired due to a breach of the consumer rental purchase agreement; the burden of establishing the prospect of material impairment is on the lessor.

87 Acts, ch 80, §18

537.3619 Cure of default.

1. In a consumer rental purchase agreement, after a lessee has been in default for three business days and has not voluntarily surrendered possession of the rented property, a lessor may give the lessee the notice provided in subsection 3 when the consumer has the right to cure a default. A lessor gives the notice to the lessee under this section when the lessor delivers notice to the lessee or mails the notice to the last known address of the lessee.

2. For the purpose of this section, there is no right to cure and no limitation on the lessor's rights with respect to a default that occurs within twelve months after an earlier default as to which a lessor has given a proper notice of the lessee's right to cure.

3. The notice of right to cure must be in writing and conspicuously state all of the following:

a. The name, address, and telephone number of the lessor to whom payment is to be made.

b. A brief identification of the transaction.

c. The lessee's right to cure the default.

d. The amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

THE NAME, ADDRESS, & TELEPHONE
NUMBER OF THE LESSOR
ACCOUNT NUMBER, IF ANY
BRIEF IDENTIFICATION OF TRANSACTION

( ) is the last date for payment, ( ) is the amount now due. You have failed to renew your rental purchase agreement(s). If you pay the amount now due (above) by the last date for payment (above), you may continue with the agreement as though you had renewed on time. If you do not pay by that date, we may exercise our rights under the law. If you are late again during the next twelve months of your agreement, in either returning the property or renewing your agreement, we may exercise our rights without sending you another notice like this one. If you have questions, you may write or telephone the lessor promptly.

4. With respect to a consumer rental purchase agreement, except as provided in subsection 5, after a default consisting of the lessee's failure to renew and failure to return the property, a lessor, because of that default, may not instigate court action to recover the rented property until five business days after the notice of the lessee's right to cure is given. In the case of an agreement with weekly or biweekly renewal dates, such action shall not be taken until three business days after the notice of the lessee's right to cure is given.

5. With respect to defaults on the same consumer rental purchase agreement and subject to subsection 4, after a lessor has once given a proper notice of the lessee's right to cure, this section does not give the consumer a right to cure or impose any additional limitations beyond those otherwise im-

posed by this part on the lessor's right to proceed against the lessee or the lessor's right to recover the property.

6. Until expiration of the minimum applicable periods contained in subsection 4 after notice is given, the lessee may cure all defaults consisting of failure to renew and failure to return the property by tendering the amount of all unpaid sums due at the time of the tender plus any unpaid delinquency charges or other charges authorized by section 537.3616.

7. This section and the provisions on limitations of agreements do not prohibit a lessee from voluntarily surrendering possession of the rented property, and the lessor from enforcing any past due obligation which the lessee may have at any time after default. However, in an enforcement proceeding, the lessor shall affirmatively plead and prove either that the notice to cure is not required or that the lessor has given the required notice, but the failure to so plead does not invalidate any action taken by the lessor that is lawful and if the lessor has rightfully repossessed any property the repossession is not conversion.

8. A repossession of rented property in violation of this section is void.

87 Acts, ch 80, §19

537.3620 Willful and intentional violations.

A person who willfully and intentionally violates a provision of this part is guilty of a serious misdemeanor.

87 Acts, ch 80, §20

537.3621 Damages.

In case of a violation of a provision of this part with respect to a consumer rental purchase agreement, or a violation of the Iowa debt collection practices Act, article 7 of this chapter, where a debt arises in connection with a consumer rental purchase agreement, the lessee in the agreement may recover from the person committing the violation, or may set off or counterclaim in an action by that person, actual damages, with a minimum recovery of three hundred dollars or twenty-five percent of the total cost to acquire ownership under the consumer rental purchase agreement, whichever is greater; attorneys' fees; and court costs.

87 Acts, ch 80, §21; 89 Acts, ch 128, §3

537.3622 Effect of correction.

Notwithstanding sections 537.3620 and 537.3621, a failure to comply with a provision of this part which is due to a bona fide error may be corrected within thirty days after the date of execution of the consumer rental purchase agreement by the lessee. If so corrected, neither the lessor nor any holder is subject to penalty under this section if, where appropriate, a new written agreement and disclosures are provided to the lessee and any excess charges are refunded to the lessee.

87 Acts, ch 80, §22

537.3623 Statute of limitations.

An action shall not be brought under this part more than two years after the occurrence of the alleged violation.

87 Acts, ch 80, §23

537.3624 Enforcement.

1. The provisions of this part are subject to the powers and functions of the administrator as provided in article 6 of this chapter and to the debt collection practices as provided in article 7 of this chapter. However, section 537.6113, subsection 2, does not apply to violations of this part.

2. If a court finds in an action brought by the administrator pursuant to section 537.6113 that it is proven that a lessor has intentionally acted in bad faith in its performance under this part, the lessor is subject to a civil penalty of not less than one hundred dollars nor more than one thousand dollars for each violation. However, no more than one penalty may be imposed in any one action against a lessor for repeated violations of the same provision. A civil penalty pursuant to this subsection shall not be imposed for a violation of this part occurring more than two years before the action is brought, or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

87 Acts, ch 80, §24

ARTICLE 4

INSURANCE

537.4101 Scope — excess charges.

1. This article applies to insurance provided in relation to a consumer credit transaction.

2. A charge for insurance in excess of the rates promulgated by the commissioner of insurance, or otherwise made in violation of the law, including this chapter, or the rules promulgated by the commissioner of insurance, is an excess charge for purposes of determining rights of parties under section 537.5201, and authority of the administrator to bring civil action under section 537.6113.

[C75, 77, 79, 81, §537.4101]

ARTICLE 5

REMEDIES AND PENALTIES

PART 1

LIMITATIONS ON CREDITORS' REMEDIES

537.5101 Short title.

This article shall be known and may be cited as the *"Iowa Consumer Credit Code — Remedies and*

Penalties."

[C75, 77, 79, 81, §537.5101]

537.5102 Scope.

This part applies to actions or other proceedings to enforce rights arising from consumer credit transactions, to extortionate or unlawful extensions of credit, and to unconscionability.

[C75, 77, 79, 81, §537.5102]

537.5103 Creditor's obligations on repossession — restriction on deficiency judgments.

1. This section applies to a consumer credit sale of goods or services and a consumer loan. A consumer is not liable for a deficiency unless the creditor has disposed of repossessed or surrendered goods in good faith and in a commercially reasonable manner.

2. If the seller repossesses or voluntarily accepts surrender either of goods which were the subject of the sale and in which the seller has a security interest, or of goods which were not the subject of the sale but in which the seller has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services, the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral in chapter 554, article 9, part 6.

3. If a lender takes possession or voluntarily accepts surrender of goods in which the lender has a security interest to secure a debt arising from a consumer loan, the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral in chapter 554, article 9, part 6.

[C75, 77, 79, 81, §537.5103]

2000 Acts, ch 1149, §171, 187

537.5104 No garnishment before judgment.

Prior to entry of judgment in an action against the consumer arising from a consumer credit transaction, the creditor may not attach unpaid earnings of the consumer, or earnings deposited in a financial institution by the consumer, by garnishment, attachment, or proceedings under chapter 630.

[C75, 77, 79, 81, §537.5104]

537.5105 Limitation on garnishment.

1. For the purposes of this part:

a. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld or assigned.

b. "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

2. In addition to the provisions of section 642.21, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed the lesser of twenty-five percent of the individual's disposable earnings for that week, or the amount by which the individual's disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938, United States Code, title 29, section 206, subsection "a," paragraph (1), in effect at the time the earnings are payable.

In the case of earnings for a pay period other than a week, the administrator shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth for a pay period of a week.

3. No court may make, execute, or enforce an order or process in violation of this section.

4. At any time after the entry of a judgment in favor of a creditor in an action against a consumer for debt arising from a consumer credit transaction, the consumer may file with the court a verified application for an order exempting from garnishment pursuant to that judgment for an appropriate period of time a greater portion or all of the consumer's aggregate disposable earnings for a workweek or other applicable pay period than is provided for in subsection 2. The application shall designate the portion of the consumer's earnings which are not exempt from garnishment under this section and other law, shall specify the period of time for which the additional exemption is sought, shall describe the judgment with respect to which the application is made, and shall state that the designated portion in addition to earnings that are exempt by law is necessary for the maintenance of the consumer or a family supported wholly or partly by the earnings. Upon the filing of a sufficient application under this subsection, the court may issue any temporary order staying enforcement of the judgment by garnishment that may be necessary under the circumstances, shall set a hearing on the application not less than five nor more than ten days from the date of the filing of the application, and shall cause notice of the application and the hearing date to be served on the judgment creditor or the judgment creditor's attorney of record. At the hearing, if it appears to the court that all or any portion of the earnings sought to be additionally exempted are necessary for the maintenance of the consumer or a family supported wholly or partly by the earnings of the consumer for all or any part of the time requested in the application, the court shall issue an order granting the application to that extent, otherwise it shall deny the application. The order is subject to modification or vacation upon the further application of any party to it upon a showing of changed circumstances after a hearing upon notice to all interested parties.

[C75, 77, 79, 81, §537.5105]

537.5106 Garnishment.

The administrator has all powers granted under article 6, part 1, to enforce the provisions of section 642.21, in relation to a garnishment arising from a consumer credit transaction.

[C75, 77, 79, 81, §537.5106]

537.5107 Extortionate or unlawful extensions of credit.

If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer.

[C75, 77, 79, 81, §537.5107]

537.5108 Unconscionability — inducement by unconscionable conduct — unconscionable debt collection.

1. With respect to a transaction that is, gives rise to, or leads the debtor to believe it will give rise to a consumer credit transaction, in an action other than a class action, if the court as a matter of law finds the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or if the court finds any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.

2. With respect to a consumer credit transaction, or a transaction which would have been a consumer credit transaction if a finance charge was made or the obligation was payable in installments, if the court as a matter of law finds in an action other than a class action, that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction and award the consumer any actual damages the consumer sustained.

3. If it is claimed or appears to the court that the agreement or transaction or any term or part of it may be unconscionable, or that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the agreement or transaction or term or part thereof, or of the conduct, to aid the court in making the determination.

4. In applying subsection 1, consideration shall be given to each of the following factors, among others, as applicable:

a. Belief by the seller, lessor, or lender at the time a transaction is entered into that there is no reasonable probability of payment in full of the obligation by the consumer or debtor. However, the rental renewals necessary to acquire ownership in a consumer rental purchase agreement shall not be construed to be the obligation contemplated in this subsection if the consumer may terminate the agreement without penalty at any time. As used in this paragraph, *"obligation"* means the initial periodic lease payments and any other additional advance payments required at the consummation of the transaction.

b. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, knowledge by the seller or lessor at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased.

c. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in consumer credit transactions by like consumers.

d. The fact that the creditor contracted for or received separate charges for insurance with respect to a consumer credit sale or consumer loan with the effect of making the sale or loan, considered as a whole, unconscionable.

e. The fact that the seller, lessor or lender has knowingly taken advantage of the inability of the consumer or debtor reasonably to protect the consumer's or debtor's interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

f. The fact that the seller, lessor or lender has engaged in conduct with knowledge or reason to know that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct in section 537.6111.

5. In applying subsection 2, violations of section 537.7103 shall be considered, among other factors, as applicable.

6. If in an action in which unconscionability is claimed the court finds unconscionability pursuant to subsection 1 or 2, the court shall award reasonable fees to the attorney for the consumer or debtor. If the court does not find unconscionability and the consumer or debtor claiming unconscionability has brought or maintained an action the consumer or debtor knew to be groundless, the court

shall award reasonable fees to the attorney for the party against whom the claim is made. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney on the unconscionability issue and not by the amount of the recovery on behalf of the prevailing party.

7. The remedies of this section are in addition to remedies otherwise available for the same conduct under law other than this chapter, but no double recovery of actual damages may be had.

8. For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable.

[C75, 77, 79, 81, §537.5108]
87 Acts, ch 80, §45 – 47

537.5109 Default.

"Default" with respect to a consumer credit transaction and for the purposes of this article, means either of the following, if without justification under any law:

1. Failure to make a payment within ten days of the time required by agreement, or in a consumer rental purchase agreement, failure to renew an agreement and failure to return the rented property or make arrangements for its return as provided by the agreement.

2. Failure to observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the creditor's right in any collateral securing the transaction, or materially impairs the consumer's prospect to pay amounts due under the transaction. The burden of establishing material impairment is on the creditor.

[C75, 77, 79, 81, §537.5109]
87 Acts, ch 80, §48

537.5110 Cure of default.

1. Notwithstanding any term or agreement to the contrary, the obligation of a consumer in a consumer credit transaction is enforceable by a creditor only after compliance with this section, except that in a consumer rental purchase agreement, default is governed by section 537.3618.

2. A creditor who believes in good faith that a consumer is in default may give the consumer written notice of the alleged default, and, if the consumer has a right to cure the default, shall give the consumer the notice of right to cure provided in section 537.5111 before commencing any legal action in any court on an obligation of the consumer and before repossessing collateral. However, this subsection and subsection 4 do not require a creditor to give notice of right to cure prior to the filing of a petition by a creditor seeking to enforce the consumer's obligation in which attachment under chapter 639 is sought upon any of the grounds specified in section 639.3, subsections 3 to 12.

When property is attached without the giving of notice of right to cure as permitted by this subsection, the creditor immediately shall give notice of the attachment to the consumer in the same manner as prescribed by the rules of civil procedure for service of an original notice. The notice shall advise the consumer that the attachment may be discharged by the filing of a bond as provided in sections 639.42 and 639.45, or by the filing of a motion with the court to discharge the attachment pursuant to section 639.63. The notice required by this paragraph is in lieu of the notice requirements of sections 639.31 and 639.33.

When a motion is filed to discharge an attachment made without the giving of a prior notice of right to cure, the court shall hear the motion within three days of the filing of the motion to discharge. If the court finds that the attachment should not have been issued or should not have been levied on all or any part of the property held, the attachment shall be discharged in whole or in part and property wrongfully attached shall be returned to the consumer.

If the court finds that there was no probable cause to believe the grounds upon which the attachment was issued, the consumer may be awarded damages plus reasonable attorney's fees to be determined by the court.

3. A consumer has a right to cure the default unless, in other than an insurance premium loan transaction, the creditor has given the consumer a proper notice of right to cure with respect to a prior default which occurred within three hundred sixty-five days of the present default, or the consumer has voluntarily surrendered possession of goods that are collateral and the creditor has accepted them in full satisfaction of any debt owing on the transaction in default.

4. If the consumer has a right to cure a default:

a. A creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or take possession of collateral, otherwise than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until twenty days after a proper notice of right to cure is given.

b. With respect to an insurance premium loan, a creditor shall not give notice of cancellation as provided in subsection 6 until thirteen days after a proper notice of right to cure is given.

c. Until the expiration of the minimum applicable period after the notice is given, the consumer may cure the default by tendering either the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges, or the amount stated in the notice of right to cure, whichever is less, or by tendering any performance necessary to cure any default other than nonpayment of amounts due, which is described in the notice of right to cure. The act of curing a default restores to the consumer the consumer's rights under the agreement as though no default had occurred, ex-

cept as provided in subsection 3.

5. This section and the provisions on waiver, agreements to forego rights, and settlement of claims under section 537.1107 do not prohibit a consumer from voluntarily surrendering possession of goods which are collateral and do not prohibit the creditor from thereafter enforcing the creditor's security interest in the goods at any time after default.

6. If a default on an insurance premium loan is not cured, the lender may give notice of cancellation of each insurance policy or contract to be canceled. If given, the notice of cancellation shall be in writing and given to the insurer that issued the policy or contract and to the insured. The insurer, within two business days after receipt of the notice of cancellation together with a copy of the insurance premium loan agreement if not previously given to the insurer, shall give any notice of cancellation required by the policy or contract or by law and, within ten business days after the effective date of the cancellation, pay to the lender any premium unearned on the policy or contracts as of that effective date. Within ten business days after receipt of the unearned premium, the lender shall pay to the consumer indebted upon the insurance premium loan any excess of the unearned premium received over the amount owing by the consumer upon the insurance premium loan.

7. If a creditor in a consumer credit transaction commences an action for money judgment prior to giving the customer notice of right to cure as required by this section and fails to follow the procedures set out in this section, the court shall dismiss the action without prejudice. If the action was commenced as a small claim under chapter 631, the creditor shall not be found to be in violation of this section for purposes of section 537.5201 and the penalties provided in that section shall not apply if the creditor proves by a preponderance of the evidence that the creditor did not at the time of the violation have either knowledge or reason to know of the requirements of this section, and for this purpose the court shall consider all relevant evidence, including but not limited to the education or experience of the creditor with respect to the collection of debts arising from consumer credit transactions and any representation of the creditor by legal counsel and any legal advice rendered to the creditor with respect to the collection of debts arising from consumer credit transactions.

[C75, 77, 79, 81, §537.5110; 82 Acts, ch 1025, §1, 2]

87 Acts, ch 80, §49

537.5111 Notice of right to cure.

1. The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor to which payment is to be made, a brief identification of the credit transaction and of the consumer's right to cure the default, a statement of the nature of the right to cure the default, a statement of the nature of the alleged default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered.

2. Except as provided in subsection 4, a notice in substantially the following form complies with this section:

. . . . . .
(name, address, and
telephone number of creditor)
. . . . . .
(account number, if any)
. . . . . .
(brief identification
of credit transaction)

You are now in default on this credit transaction. You have a right to correct this default until . . . . . (date). If you do so, you may continue with the contract as though you did not default. Your default consists of

. . . . . .
(describe default alleged)

Correction of the default: Before . . . . . , (date)
. . . . . .
(describe the acts necessary
for cure)

If you do not correct your default by the date stated above, we may exercise rights against you under the law.

If you default again in the next year, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone promptly.

. . . . . .
(the creditor)

3. A creditor gives notice to the consumer under this part when the creditor delivers the notice to the consumer or mails the notice to the consumer at the consumer's residence as defined in section 537.1201, subsection 4.

4. If the consumer credit transaction is an insurance premium loan, the notice shall conform to the requirements of subsection 2, and a notice in substantially the form specified in that subsection complies with this subsection except for the following:

a. In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as an insurance premium loan and each insurance policy or contract that may be canceled.

b. In lieu of the statement in the form of notice specified in subsection 2 that the creditor may ex-

ercise the creditor's rights under the law, the statement that each policy or contract, identified in the notice may be canceled.

c. The last paragraph of the form of notice specified in subsection 2 shall be omitted.

5. This section does not apply to a consumer rental purchase agreement, which is governed by section 537.3618.

[C75, 77, 79, 81, §537.5111]

87 Acts, ch 80, §50

537.5112 Reserved.

537.5113 Venue.

An action by a creditor against a consumer arising from a consumer credit transaction shall be brought in the county of the consumer's residence as defined in section 537.1201, subsection 4, unless an action is brought to enforce an interest in land securing the consumer's obligation, in which case the action shall be brought in the county in which the land or a part of it is located. If the county of the consumer's residence has changed, the consumer upon motion may have the action removed to the county of the consumer's current residence. If the residence of the consumer is not within this state, the action may be brought in the county in which the sale, lease or loan was made. If the initial papers offered for filing in the action on their face show noncompliance with this section, they shall not be accepted by the clerk of the court.

[C75, 77, 79, 81, §537.5113]

537.5114 Complaint — proof.

1. In an action brought by a creditor against a consumer arising from a consumer credit transaction, the complaint shall allege the facts of the consumer's default, the amount to which the creditor is entitled, and an indication of how that amount was determined.

2. No default judgment shall be entered in the action in favor of the creditor unless the complaint is verified by the creditor, or unless sworn testimony, by affidavit or otherwise, is adduced showing that the creditor is entitled to the relief demanded.

[C75, 77, 79, 81, §537.5114]

537.5115 Reserved.

PART 2

CONSUMERS' REMEDIES

537.5201 Effect of violations on rights of parties.

1. The consumer, other than a lessee in a consumer rental purchase agreement, has a cause of action to recover actual damages and in addition a right in an action other than a class action to recover from the person violating this chapter a penalty in an amount determined by the court, but not less than one hundred dollars nor more than one thousand dollars, if a person has violated the provisions of this chapter relating to:

a. Authority to make supervised loans under section 537.2301.

b. Restrictions on interests in land as security under section 537.2307.

c. Limitations on the schedule of payments or loan terms for supervised loans under section 537.2308.

d. Attorney's fees under section 537.2507.

e. Charges for other credit transactions under section 537.2601.

f. Disclosure with respect to consumer leases under section 537.3202.

g. Notice to consumers under section 537.3203.

h. Receipts, statements of account and evidences of payment under section 537.3206.

i. Form of insurance premium loan agreement under section 537.3207.

j. Notice to cosigners and similar parties under section 537.3208.

k. Restrictions on rates stated to the consumer under section 537.3210.

l. Security in consumer credit transactions under section 537.3301.

m. Prohibition against assignments of earnings under section 537.3305.

n. Authorizations to confess judgment under section 537.3306.

o. Certain negotiable instruments prohibited under section 537.3307.

p. Referral sales and leases under section 537.3309.

q. Limitations on executory transactions under section 537.3310.

r. Prohibition against discrimination under section 537.3311.

s. Limitations on default charges under section 537.3402.

t. Card issuer subject to claims and defenses under section 537.3403.

u. Assignees subject to claims and defenses under section 537.3404.

v. Lenders subject to claims and defenses arising from sales and leases, under section 537.3405.

w. Door-to-door sales under section 537.3501.

x. Assurance of discontinuance under section 537.6109.

y. Prohibitions against unfair debt collection practices under section 537.7103.

z. Failure to provide a proper notice of cure or right to cure under sections 537.5110 and 537.5111.

aa. Failure to provide a notice of consumer paper under section 537.3211.

With respect to violations arising from sales or loans made pursuant to open end credit, no action pursuant to this subsection may be brought more

than two years after the violations occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement.

2. A consumer is not obligated to pay a charge in excess of that allowed by this chapter, and has a right of refund of any excess charge paid. A refund may not be made by reducing the consumer's obligation by the amount of the excess charge unless the creditor has notified the consumer that the consumer may request a refund and the consumer has not so requested within thirty days thereafter. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount either from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against consumers arising from the debt.

3. If a creditor has contracted for or received a charge in excess of that allowed by this chapter, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable, in an action other than a class action, the excess charge or refund and a penalty in an amount determined by the court not less than one hundred dollars or more than one thousand dollars. With respect to excess charges arising from sales or loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. For purposes of this subsection, a reasonable time is presumed to be thirty days.

4. Except as otherwise provided in this chapter, no violation of this chapter impairs rights on a debt.

5. If an employer discharges an employee in violation of the provisions prohibiting discharge in section 642.21, subsection 2, paragraph *"c"*, the employee may within two years bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

6. A person is not liable for a penalty under subsection 1 or 3 if the person notifies the consumer of an error before the person receives from the consumer written notice of the error or before the consumer has brought an action under this section, and the person corrects the error within forty-five days after notifying the consumer. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund as provided in subsection 2. The administrator, and any official or agency of this state having supervisory authority over a person, shall give prompt notice to a person of any errors discovered pursuant to an examination or investigation of the transactions, business, records and acts of the person.

7. A person may not be held liable in any action brought under this section for a violation of this chapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

8. In an action in which it is found that a person has violated this chapter, the court shall award to the consumer the costs of the action and to the consumer's attorneys their reasonable fees. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the consumer.

[C75, 77, 79, 81, §537.5201]
87 Acts, ch 80, §51

537.5202 Damages or penalties as setoff to obligation.

Damages or penalties to which a consumer is entitled pursuant to this part may be setoff against the consumer's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this part.

[C75, 77, 79, 81, §537.5202]

537.5203 Civil liability for violation of disclosure provisions.

1. Except as otherwise provided in this section, a creditor who, in violation of the provisions of the Truth in Lending Act other than its provisions concerning advertising of credit terms, fails to disclose information to a person entitled to the information under this chapter is liable to that person, in other than a class action, in an amount equal to the sum of the following:

a. Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than one hundred dollars or more than one thousand dollars.

b. In the case of a successful action to enforce the liability under paragraph *"a"*, the costs of the action together with reasonable attorney's fees as determined by the court.

2. A creditor has no liability under this section if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error,

the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed. The administrator, and any official or agency of this state having supervisory authority over a creditor, shall give prompt notice to a creditor of any errors discovered pursuant to an examination or investigation of the transactions, business, records and acts of the creditor.

3. A creditor may not be held liable in any action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

4. Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this chapter and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

5. An obligor or consumer has all rights under this chapter that the obligor or consumer has under the provisions of the Truth in Lending Act concerning a right of rescission as to certain transactions, and a creditor or other person has all liabilities and defenses under this section that the obligor or consumer has under the Truth in Lending Act.

6. No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

7. In this section, creditor includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit, or offers to arrange for the extension of credit, and includes the seller of an interest in land and the lender who makes a loan secured by an interest in land if, but for the rate of the finance charge made in the transaction, the sale or loan would be a consumer credit sale or consumer loan.

8. The liability of a creditor under this section is in lieu of and not in addition to the creditor's liability under the Truth in Lending Act. An action by a person with respect to a violation may not be maintained pursuant to this section if a final judgment has been rendered for or against that person with respect to the same violation pursuant to the Truth in Lending Act, and if a final judgment has been rendered in favor of a person pursuant to this section and thereafter a final judgment with respect to the same violation is rendered in favor of the same person pursuant to the Truth in Lending Act, a creditor liable under both judgments has a cause of action against that person for appropriate relief to the extent necessary to avoid double liability with respect to the same violation.

9. The administrator shall adopt rules to keep this section in harmony with the Truth in Lending Act. These rules supersede any provisions of this section which are inconsistent with the Truth in Lending Act as adopted by section 537.1302.

[C75, 77, 79, 81, §537.5203]

PART 3

CRIMINAL PENALTIES

537.5301 Willful violations.

1. A person who willfully and knowingly makes charges in excess of those permitted by the provisions of article 2, part 4, applying to supervised loans, is guilty of a serious misdemeanor.

2. A person who, in violation of the provisions of this Act applying to authority to make supervised loans under section 537.2301, willfully and knowingly engages without a license in the business of making supervised loans, or of taking assignments of and undertaking direct collection of payments from and enforcement of rights against consumers arising from supervised loans, is guilty of a serious misdemeanor.

3. A person, other than a lessor in a consumer rental purchase agreement, who willfully and knowingly engages in the business of entering into consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertaking direct collection of payments or enforcement of these rights, without complying with the provisions of this chapter concerning notification under section 537.6202 or payment of fees under section 537.6203, is guilty of a simple misdemeanor.

4. A person who willfully and knowingly violates the provisions of section 537.7103 is guilty of a serious misdemeanor.

[C75, 77, 79, 81, §537.5301]

87 Acts, ch 80, §52

537.5302 Disclosure violations.

A person is guilty of a serious misdemeanor, if the person willfully and knowingly does any of the following:

1. Gives false or inaccurate information or fails to provide information which the person is required to disclose under the provisions of the Truth in Lending Act.

2. Uses any rate table or chart, the use of which is authorized by the provisions of the Truth in Lending Act, in a manner which consistently understates the annual percentage rate determined according to those provisions.

3. Otherwise fails to comply with any requirement of the provisions on disclosure of the Truth in Lending Act.

4. The criminal liability of a person under this section is in lieu of and not in addition to the person's criminal liability under the Truth in Lending Act. No prosecution of a person with respect to the same violation may be maintained pursuant to both this section and the Truth in Lending Act.

[C75, 77, 79, 81, §537.5302]

ARTICLE 6

ADMINISTRATION

PART 1

POWERS AND FUNCTIONS OF ADMINISTRATOR

537.6101 Short title.

This article shall be known and may be cited as the *"Iowa Consumer Credit Code — Administration."*

[C75, 77, 79, 81, §537.6101]

537.6102 Applicability.

This part applies to persons who:

1. Participate in transactions, acts, practices or conduct to which this chapter applies pursuant to section 537.1201.

2. Participate in this state in transactions, acts, practices or conduct to which this chapter would apply pursuant to section 537.1201, but for the residence of the consumer.

3. Enter into or modify a sale of an interest in land or a loan secured by an interest in land, if, but for the rate of the finance charge, the sale, loan or modification would involve a consumer credit sale or consumer loan, but applies only for the purpose of authorizing the administrator to enforce the provisions on compliance with the Truth in Lending Act.

[C75, 77, 79, 81, §537.6102]

537.6103 Administrator.

Except as expressly provided in sections 537.6106 and 537.6108, *"administrator"* means the attorney general or the attorney general's designee.

[C75, 77, 79, 81, §537.6103]

537.6104 Powers of administrator — reliance on rules — duty to report.

1. The administrator, within the limitations provided by law, may:

a. Receive and act on complaints.

b. Take action designed to obtain voluntary compliance with this chapter.

c. Commence proceedings on the administrator's own initiative.

d. Counsel persons and groups on their rights and duties under this chapter.

e. Establish programs for the education of consumers with respect to credit practices and problems.

f. Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public.

g. Maintain offices within this state.

2. The administrator may enforce the Truth in Lending Act to the fullest extent provided by law.

3. To keep the administrator's rules in harmony with the rules of administrators in other jurisdictions which enact the uniform consumer credit code, the administrator, so far as is consistent with the purposes, policies and provisions of this chapter, shall do both of the following:

a. Before adopting, amending and repealing rules, advise and consult with administrators in other jurisdictions which enact the uniform consumer credit code.

b. In adopting, amending, and repealing rules, take into consideration the rules of administrators in other jurisdictions which enact the uniform consumer credit code.

4. Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule or declaratory ruling of the administrator, notwithstanding that after the act or omission the rule or declaratory ruling is amended or repealed or determined by judicial or other authority to be invalid for any reason.

5. The administrator shall report annually on or before January 1 to the general assembly on the operation of the consumer credit protection bureau and the other agencies of this state charged with administering this chapter, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the administrator may conduct research and make appropriate studies. The report shall include, for the consumer credit protection bureau and for other state agencies enforcing this chapter, a description of the examination and investigation procedures and policies, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and consumers which have come to the administrator's attention through the administrator's examinations and investigations and the disposition of them under existing law, and recommendations, if any, for legislation to deal with those problems within the administrator's general jurisdiction, a statement of the extent to which the rules of the administrator pursuant to this chapter are not in harmony with the rules of administrators in other jurisdictions which enact the uniform consumer credit code and

the reasons for the variations, and a general statement of the activities of the administrator's office and of others to promote the purposes of this chapter. The report shall not identify the creditors against whom action is taken.

[C75, 77, 79, 81, §537.6104]

91 Acts, ch 118, §4; 92 Acts, ch 1035, §1

537.6105 Administrative powers with respect to supervised financial organizations and supervised loan licensees.

1. With respect to supervised financial organizations subject to regulation under chapters 524, 533 and 534, and persons licensed under chapters 536 and 536A, the powers of examination and investigation as provided in sections 537.2305 and 537.6106, and administrative enforcement as provided in sections 537.2303 and 537.6108, shall be exercised by the official or agency to whose supervision the person is subject. All other powers of the administrator under this chapter may be exercised by the administrator with respect to such persons. In all actions or other court proceedings brought to enforce this chapter, the attorney general or the attorney general's designee shall participate.

2. If the administrator receives a complaint or other information concerning noncompliance with this chapter by a person specified in subsection 1, the administrator shall inform the official or agency having supervisory authority over that person. The administrator may obtain information about any such person from the officials or agencies supervising them.

3. The administrator and any official or agency of this state having supervisory authority over a supervised financial organization or a chapter 536 or 536A licensee are authorized and directed to consult and assist one another in maintaining compliance with this chapter. They may jointly pursue investigations, prosecute suits, and take other official action against violations of this chapter, as they deem appropriate, if either of them otherwise is empowered to take the action.

[C75, 77, 79, 81, §537.6105]

537.6106 Investigatory powers.

1. For purposes of this section, *"administrator"* means either the attorney general or the attorney general's designee, or the official or agency charged with enforcing this chapter against the person under investigation, as provided in section 537.6105, subsection 1. If the administrator has reasonable cause to believe that a person has engaged in conduct or committed an act which is in violation of this chapter, the administrator may make an investigation to determine whether the person has engaged in the conduct or committed the act, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of, or testimony as to, any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. In any civil action brought by the administrator as a result of such an investigation, the administrator shall be awarded the reasonable costs of making the investigation if the administrator prevails in the action.

2. If the person's records are located outside this state, the person at the person's option shall either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

3. Upon application by the administrator showing failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the district court shall grant an order compelling compliance.

4. The administrator shall not make public the name or identity of a person whose acts or conduct the administrator investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not prohibit disclosures in actions or enforcement proceedings pursuant to this chapter.

[C75, 77, 79, 81, §537.6106]

537.6107 Reserved.

537.6108 Administrative enforcement orders.

1. For purposes of this section, *"administrator"* means either the attorney general or the attorney general's designee, or the official or agency charged with enforcing this chapter against the person under investigation, as provided in section 537.6105, subsection 1. Except as provided in subsection 6, after notice and hearing the administrator may order a person to cease and desist from engaging in violations of this chapter. A person aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the district court for enforcement of the cease and desist order if the person prevails in the proceeding for review, or as provided in subsection 5. The proceeding for review or enforcement is initiated by filing a petition in the district court. Copies of the petition shall be served upon all parties of record.

2. Within thirty days after service of the petition for review upon the administrator, or within any further time the court may allow, the administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may reverse or modify the order if the findings of fact of the administrator are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or grant any temporary relief or restraining order it deems just, and enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the administrator, or remanding the case to the administrator for further proceedings.

3. An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

4. The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final judgment or decree in an equitable proceeding. The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

5. A proceeding for review under this section must be initiated within thirty days after a copy of the order of the administrator is received. If no proceeding is so initiated, the administrator may obtain a decree of the district court for enforcement of the cease and desist order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within thirty days after copy of the order was received, and that the person against whom the order was directed is subject to the jurisdiction of the court.

6. With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction under section 537.6111.

[C75, 77, 79, 81, §537.6108]

537.6109 Assurance of discontinuance.

If it is claimed that a person has engaged in conduct which could be subject to an order by the administrator or by a court, the administrator may accept an assurance in writing that the person will not engage in the same or in similar conduct in the future. The assurance may include stipulations that the creditor will voluntarily pay the costs of investigation, or that an amount will be held in escrow as restitution to debtors aggrieved by future conduct of the creditor or as a reserve to cover costs of future investigation, or may include admissions of past specific acts by the creditor or admissions that those acts violated this chapter or other statutes. A violation of an assurance of discontinuance is a violation of this chapter.

[C75, 77, 79, 81, §537.6109]

537.6110 Injunctions and other proceedings in equity.

The administrator may bring a civil action to restrain a person from violating this chapter and for other appropriate relief, including but not limited to the following:

1. To prevent the use or employment by a person of practices prohibited by this chapter.

2. To reform contracts to conform to this chapter and to rescind contracts into which a creditor has induced a consumer to enter by conduct violating this chapter, even though the consumers are not parties to the action. An action under this section may be joined with an action under the provisions on civil actions by the administrator under section 537.6113.

[C75, 77, 79, 81, §537.6110]

537.6111 Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

1. The administrator may bring a civil action to restrain a person to whom this part applies from engaging in any of the following courses of action:

a. Making or enforcing unconscionable terms or provisions of consumer credit transactions.

b. Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions.

c. Conduct of any of the types specified in paragraph *"a"* or *"b"* with respect to transactions that give rise to or that lead persons to believe they will give rise to consumer credit transactions.

d. Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions or from transactions which would have been consumer credit transactions if a finance charge was made or the obligation was payable in installments.

2. In an action brought pursuant to this section the court may grant relief only if it finds all of the following:

a. That the defendant has made unconscionable agreements or has engaged in or is likely to engage in a course of fraudulent or unconscionable conduct.

b. That the defendant's agreements have caused or are likely to cause, or the conduct of the defendant has caused or is likely to cause, injury to consumers or debtors.

c. That the defendant has been able to cause or

will be able to cause the injury primarily because the transactions involved are credit transactions.

3. In applying subsection 1, paragraph *"a," "b,"* or *"c,"* consideration shall be given to the factors specified in the provisions on unconscionability with respect to a transaction that is or gives rise to or that a person leads the debtor to believe will give rise to a consumer credit transaction, as provided in section 537.5108, subsection 3, among others.

4. In applying subsection 1, paragraph *"d,"* violations of section 537.7103 shall be considered, among other factors, as applicable.

5. In an action brought pursuant to this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable.

[C75, 77, 79, 81, §537.6111]

537.6112 Temporary relief.

With respect to an action brought to enjoin violations of this chapter under section 537.6110 or unconscionable agreements or fraudulent or unconscionable conduct under section 537.6111, the administrator may apply to the court for appropriate temporary relief against a defendant, pending final determination of the action. The court may grant appropriate temporary relief.

[C75, 77, 79, 81, §537.6112]

537.6113 Civil actions by administrator.

1. After demand, the administrator may bring a civil action against a person for all amounts of money, other than penalties, which a consumer or class of consumers has a right to recover explicitly granted by this chapter. The court shall order amounts recovered or recoverable under this subsection to be paid to each consumer or set off against the consumer's obligation. A consumer's action, other than a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. A consumer's class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions but intervention by the administrator is authorized. An administrator's action on behalf of a class of consumers takes precedence over a consumer's subsequent class action with respect to claims common to both actions. Whenever an action takes precedence over another action under this subsection, the latter action may be stayed to the extent appropriate while the precedent action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A defense available to a person in a civil action brought by a consumer is available to the person in a civil action brought under this subsection.

2. The administrator may bring a civil action against a person to recover a civil penalty of no more than five thousand dollars for repeatedly and intentionally violating this chapter. No civil penalty pursuant to this subsection may be imposed for violations of this chapter occurring more than two years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

3. The administrator may bring a civil action against a person for failure to file notification in accordance with the provisions on notification in section 537.6202, or to pay fees in accordance with the provisions on fees in section 537.6203, to recover the fees the defendant has failed to pay plus interest at the rate of seven percent per annum and the administrator's reasonable costs in bringing the action, and a civil penalty in an amount determined by the court not exceeding the greater of three times the amount of fees the person has failed to pay or one thousand dollars.

[C75, 77, 79, 81, §537.6113]

537.6114 Reserved.

537.6115 Consumer's remedies not affected.

The grant of powers to the administrator in this article does not affect remedies available to consumers under this chapter or under other principles of law or equity, except as provided in section 537.6113.

[C75, 77, 79, 81, §537.6115]

537.6116 Venue.

The administrator may bring actions or proceedings in the district court in a county in which an act on which the action or proceeding is based occurred, or in a county in which the defendant resides or transacts business.

[C75, 77, 79, 81, §537.6116]

537.6117 Administrative rules.

1. The attorney general or the attorney general's designee pursuant to chapter 17A may adopt, amend and repeal rules which the attorney general deems reasonably necessary for the enforcement of this chapter. Each rule so adopted shall be applicable to and binding upon every person subject to the provisions of this chapter.

2. An official or agency of this state charged with the enforcement of provisions of this chapter may adopt, amend or repeal rules pursuant to chapter 17A, subject to the following limitations:

a. A rule adopted pursuant to this subsection which conflicts with a rule adopted by the administrator is void.

b. An official or agency shall not adopt a rule which interprets or prescribes law or policy which has not been approved in advance of adoption by the administrator. If, in the opinion of the administrator, the proposed rule interprets the provisions of this chapter, or otherwise should be a rule

of general applicability, the administrator may disapprove the proposed rule, in which case the official or agency shall not adopt that rule. The administrator may adopt that rule or a different rule relating to the same subject, or may determine that no rule relating to that subject shall be adopted.

[C75, §537.6204; C77, 79, 81, §537.6117]

PART 2

NOTIFICATION AND FEES

537.6201 Applicability.

This part applies to all of the following:

1. Creditors engaged in consumer credit transactions and acts, practices or conduct involving consumer credit transactions to which this chapter applies pursuant to section 537.1201, but not to those licensed, certificated, or otherwise authorized to engage in business by chapter 524, 533, 534, 536 or 536A.

2. Debt collectors, as defined in section 537.7102, subsection 5, to whose acts, practices, or conduct this chapter applies pursuant to section 537.1201 if the total debt collected by a debt collector in the preceding calendar year exceeds twenty-five thousand dollars, or if not, if the total debt collected during the current calendar year exceeds twenty-five thousand dollars, but this part does not apply to those licensed, certified, or otherwise authorized to engage in business under chapter 524, 533, 534, 536, or 536A.

[C75, 77, 79, 81, §537.6201]

89 Acts, ch 68, §5

537.6202 Notification.

1. Persons subject to this part shall file notification with the administrator within thirty days after commencing business in this state and, thereafter, on or before January 31 of each year. The notification must state all of the following:

a. Name of the person.

b. Every name in which business is transacted if different from the name of the person.

c. Address of principal office, whether or not within this state.

d. Address of all offices or retail stores, if any, in this state at which consumer credit transactions are entered into or acts, practices or conduct involving consumer credit transactions are engaged in, or in the case of a person taking assignments of obligations, any offices or places of business within this state at which business is transacted or, in the case of debt collectors, any offices in this state from or at which debt collection is engaged in.

e. If consumer credit transactions or acts, practices or conduct involving consumer credit transactions or debt collection, are engaged in otherwise than at an office or retail store in this state and this chapter applies to such transactions, acts, practices or conduct, pursuant to section 537.1201, a brief description of the manner in which they are engaged in.

f. Address of designated agent upon whom service of process may be made in this state.

g. Whether or not supervised loans are made.

2. If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

[C75, 77, 79, 81, §537.6202]

89 Acts, ch 68, §6; 90 Acts, ch 1168, §56

537.6203 Fees.

1. A person required to file notification shall pay to the administrator an annual fee of ten dollars. The fee shall be paid with the filing of the first notification and on or before January 31 of each succeeding year.

2. A person required to file notification who is a seller, lessor, or lender and who is not an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances, including unpaid scheduled periodic payments under consumer leases, of obligations arising from consumer credit transactions entered into or modified by the person in this state and held on the last day of each calendar month during the preceding calendar year and held either by the seller, lessor, or lender, or by an immediate or remote assignee who has not filed notification. The unpaid balances of assigned obligations held by an assignee who has not filed notifications are presumed to be the unpaid balances of the assigned obligations at the time of their assignment by the seller, lessor, or lender.

3. A person required to file notification who is an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances including unpaid scheduled periodic payments payable by lessees, of obligations arising from consumer credit transactions entered into or modified in this state, taken by the person by assignment and held by the person on the last day of each calendar month during the preceding calendar year.

4. In addition to the penalties provided by section 537.6113, subsection 3, the administrator may collect a charge, established by rule, not exceeding twenty-five dollars from each person required to pay fees under this section who fails to pay the fees in full within thirty days after they are due.

5. Moneys collected under this section shall be deposited in a consumer credit administration fund in the state treasury and shall be used for the administration of chapter 537. The moneys are subject to warrant upon certification of the admin-

istrator and are appropriated for these purposes. Notwithstanding section 8.33, the moneys in the fund do not revert at the end of a fiscal period.

[C75, 77, 79, 81, §537.6203]

89 Acts, ch 68, §7

537.6204 Repealed by 76 Acts, ch 1212, § 8. See § 537.6117.

ARTICLE 7

DEBT COLLECTION PRACTICES

537.7101 Short title.

This article shall be known and may be cited as the *"Iowa Debt Collection Practices Act."*

[C75, 77, 79, 81, §537.7101]

537.7102 Definitions.

As used in this article, unless the context otherwise requires:

1. *"Administrator"* means the person designated in section 537.6103.

2. *"Creditor",* for the purposes of this article, means the person to whom a debtor is obligated, either directly or indirectly, on a debt.

3. *"Debt"* means an actual or alleged obligation arising out of a consumer credit transaction, consumer rental purchase agreement, or a transaction which would have been a consumer credit transaction either if a finance charge was made, if the obligation was not payable in installments, if a lease was for a term of four months or less, or if a lease was of an interest in land. A debt includes a check as defined in section 554.3104 given in a transaction in connection with a consumer rental purchase agreement, in a transaction which was a consumer credit sale or in a transaction which would have been a consumer credit sale if credit was granted and if a finance charge was made, or in a transaction regulated under chapter 533D.

4. *"Debt collection"* means an action, conduct or practice in soliciting debts for collection or in the collection or attempted collection of a debt.

5. *"Debt collector"* means a person engaging, directly or indirectly, in debt collection, whether for the person, the person's employer, or others, and includes a person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended to be used to collect debts.

6. *"Debtor",* for the purposes of this article, means the person obligated.

[C75, 77, 79, 81, §537.7102]

87 Acts, ch 137, §3; 89 Acts, ch 128, §4; 95 Acts, ch 139, §17

537.7103 Prohibited practices.

1. A debt collector shall not collect or attempt to collect a debt by means of an illegal threat, coercion or attempt to coerce. The conduct described in each of the following paragraphs is an illegal threat, coercion or attempt to coerce within the meaning of this subsection:

a. The use, or express or implicit threat of use, of force, violence or other criminal means, to cause harm to a person or to property of a person.

b. The false accusation or threat to falsely accuse a person of fraud or any other crime.

c. False accusations made to a person, including a credit reporting agency, or the threat to falsely accuse, that a debtor is willfully refusing to pay a just debt. However, a failure to reply to requests for payment and a failure to negotiate disputes in good faith are deemed willful refusal.

d. The threat to sell or assign to another an obligation of the debtor with an attending representation or implication that the result of the sale or assignment will be to subject the debtor to harsh, vindictive or abusive collection attempts.

e. The false threat that nonpayment of a debt may result in the arrest of a person or the seizure, garnishment, attachment or sale of property or wages of that person.

f. An action or threat to take an action prohibited by this chapter or any other law.

2. A debt collector shall not oppress, harass or abuse a person in connection with the collection or attempted collection of a debt of that person or another person. The following conduct is oppressive, harassing or abusive within the meaning of this subsection:

a. The use of profane or obscene language or language that is intended to abuse the hearer or reader and which by its utterance would tend to incite an immediate breach of the peace.

b. The placement of telephone calls to the debtor without disclosure of the name of the business or company the debt collector represents.

c. Causing expense to a person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication by attempting to deceive or mislead persons as to the true purpose of the notice, letter, message or communication.

d. Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously or at unusual hours or times known to be inconvenient, with intent to annoy, harass or threaten a person.

3. A debt collector shall not disseminate information relating to a debt or debtor as follows:

a. The communication or threat to communicate or imply the fact of a debt to a person other than the debtor or a person who might reasonably be expected to be liable for the debt, except with the written permission of the debtor given after default. For the purposes of this paragraph, the use of language on envelopes indicating that the

communication relates to the collection of a debt is a communication of the debt. However, this paragraph does not prohibit a debt collector from any of the following:

(1) Notifying a debtor of the fact that the debt collector may report a debt to a credit bureau or engage an agent or an attorney for the purpose of collecting the debt.

(2) Reporting a debt to a credit reporting agency or any other person reasonably believed to have a legitimate business need for the information.

(3) Engaging an agent or attorney for the purpose of collecting a debt.

(4) Attempting to locate a debtor whom the debt collector has reasonable grounds to believe has moved from the debtor's residence, where the purpose of the communication is to trace the debtor, and the content of the communication is restricted to requesting information on the debtor's location.

(5) Communicating with the debtor's employer or credit union not more than once during any three-month period when the purpose of the communication is to obtain an employer's or credit union's debt counseling services for the debtor. In the event no response is received by the debt collector from a communication to the debtor's employer or credit union the debt collector may make one inquiry as to whether the communication was received. In addition a debt collector may respond to any communications by a debtor's employer or credit union.

(6) Communicating with the debtor's employer once during any one-month period, if the purpose of the communication is to verify with an employer the fact of the debtor's employment and if the debt collector does not disclose, except as permitted in subparagraph (5), information other than the fact that a debt exists. This subparagraph does not authorize a debt collector to disclose to an employer the fact that a debt is in default.

(7) Communicating the fact of the debt not more than once in any three-month period, with the parents of a minor debtor, or with any trustee of any property of the debtor, conservator of the debtor or the debtor's property, or guardian of the debtor. In addition, a debt collector may respond to inquiry from a parent, trustee, conservator or guardian.

(8) Communicating with the debtor's spouse with the consent of the debtor, or responding to inquiry from the debtor's spouse.

b. The disclosure, publication, or communication of information relating to a person's indebtedness to another person, by publishing or posting a list of indebted persons, commonly known as "deadbeat lists", or by advertising for sale a claim to enforce payment of a debt when the advertisement names the debtor.

c. The use of a form of communication to the debtor, except a telegram, an original notice or other court process, or an envelope displaying only the name and address of a debtor and the return address of the debt collector, intended or so designed as to display or convey information about the debt to another person other than the name, address, and phone number of the debt collector.

4. A debt collector shall not use a fraudulent, deceptive, or misleading representation or means to collect or attempt to collect a debt or to obtain information concerning debtors. The following conduct is fraudulent, deceptive, or misleading within the meaning of this subsection:

a. The use of a business, company or organization name while engaged in the collection of debts, other than the true name of the debt collector's business, company, or organization or the name of the business or company the debt collector represents.

b. The failure to disclose in the initial written communication with the debtor and, in addition, if the initial communication with the debtor is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph does not apply to either of the following:

(1) A formal pleading made in connection with a legal action.

(2) Communications issued directly by a state bank as defined in section 524.103, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association or savings bank, an out-of-state chartered savings and loan association or savings bank, a financial institution chartered by the federal home loan bank board, an association incorporated or authorized to do business under chapter 534, a state or federally chartered credit union, or a company or association organized or authorized to do business under chapter 515, 518, 518A, or 520, or an officer, employee, or agent of such company or association, provided the communication does not deceptively conceal its origin or its purpose.

c. A false representation that the debt collector has information in the debt collector's possession or something of value for the debtor, which is made to solicit or discover information about the debtor.

d. The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned at the time of making a demand for money.

e. An intentional misrepresentation, or a representation which tends to create a false impression of the character, extent or amount of a debt, or of its status in a legal proceeding.

f. A false representation, or a representation which tends to create a false impression, that a

debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agency or official of the state or an agency of federal, state or local government.

g. The use or distribution or sale of a written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or other legally constituted or authorized authority, or which tends to create a false impression about its source, authorization or approval.

h. A representation that an existing obligation of the debtor may be increased by the addition of attorney's fees, investigation fees, service fees or other fees or charges, when in fact such fees or charges may not legally be added to the existing obligation.

i. A false representation, or a representation which tends to create a false impression, about the status or true nature of, or services rendered by, the debt collector or the debt collector's business.

5. A debt collector shall not engage in the following conduct to collect or attempt to collect a debt:

a. The seeking or obtaining of a written statement or acknowledgment in any form that specifies that a debtor's obligation is one chargeable upon the property of either husband or wife or both, under section 597.14, when the original obligation was not in fact so chargeable.

b. The seeking or obtaining of a written statement or acknowledgment in any form containing an affirmation of an obligation which has been discharged in bankruptcy, without clearly disclosing the nature and consequences of the affirmation and the fact that the debtor is not legally obligated to make the affirmation. However, this subsection does not prohibit the accepting of promises to pay that are voluntarily written and offered by a bankrupt debtor.

c. The collection of or the attempt to collect from the debtor a part or all of the debt collector's fee for services rendered, unless both of the following are applicable:

(1) The fee is reasonably related to the actions taken by the debt collector.

(2) The debt collector is legally entitled to collect the fee from the debtor.

d. The collection of or the attempt to collect interest or other charge, fee or expense incidental to the principal obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation and is legally chargeable to the debtor, or is otherwise legally chargeable.

e. A communication with a debtor when the debt collector knows that the debtor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question, within a reasonable time, or prior approval is obtained from the debtor's attorney or when the communication is a response in the ordinary course of business to the debtor's inquiry.

6. A debt collector shall not use or distribute, sell or prepare for use, a written communication that violates or fails to conform to United States postal laws and regulations.

[C75, 77, 79, 81, §537.7103]

83 Acts, ch 101, §115; 87 Acts, ch 137, §4; 89 Acts, ch 296, §76; 97 Acts, ch 120, §1; 98 Acts, ch 1146, §1

ARTICLE 8

CHECK CASHING PRACTICES

537.8101 Provision of credit card number as condition of check cashing or acceptance prohibited.

1. *Provision of credit card number or expiration date not required.* A person shall not require as a condition of acceptance of a check or share draft, or as a means of identification, that the person presenting the check provide a credit card number or expiration date, or both.

2. *Recording of credit card number or expiration date, simple misdemeanor.* Recording a credit card number or expiration date, or both, in connection with a sale of goods or services in which the purchaser pays by check or share draft, or in connection with the acceptance of a check or share draft, is a simple misdemeanor.

3. *Display without recordation permissible condition.* This section does not prohibit a person from requesting a purchaser to display a credit card as indicia of credit worthiness and financial responsibility or as additional identification, but the only information concerning a credit card which may be recorded is the type of credit card so displayed and the issuer of the credit card. This section does not require acceptance of a check or share draft whether or not a credit card is presented.

4. *Provision of credit card number or expiration date in lieu of deposit.* This section does not prohibit a person from requesting or receiving a credit card number or expiration date and recording the number or date, or both in lieu of a deposit to secure payment in event of default, loss, damage, or other occurrence.

88 Acts, ch 1059, §1, 2

CHAPTER 537A

CONTRACTS

537A.1 Seals abolished.
537A.2 Consideration implied.
537A.3 Failure of consideration.
537A.4 Gaming contracts void — exceptions.
537A.5 through 537A.9 Reserved.
537A.10 Franchise agreements.

537A.1 Seals abolished.

The use of private seals in written contracts, or other instruments in writing, by individuals, firms, or corporations that have not adopted a corporate seal, is hereby abolished; but the addition of a seal to any such instrument shall not affect its character or validity in any respect.

[C51, §974; R60, §1823; C73, §2112; C97, §3068; S13, §3068; C24, 27, 31, 35, 39, §**9439;** C46, 50, 54, 58, 62, 66, 71, 73, §537.1; C75, 77, 79, 81, §537A.1]

Corporate seals, §558.2 et seq.

537A.2 Consideration implied.

All contracts in writing, signed by the party to be bound or by the party's authorized agent or attorney, shall import a consideration.

[C51, §975; R60, §1824; C73, §2113; C97, §3069; C24, 27, 31, 35, 39, §**9440;** C46, 50, 54, 58, 62, 66, 71, 73, §537.2; C75, 77, 79, 81, §537A.2]

537A.3 Failure of consideration.

The want or failure, in whole or in part, of the consideration of a written contract may be shown as a defense, total or partial, except as provided in the Uniform Commercial Code, chapter 554.

[C51, §976; R60, §1825; C73, §2114; C97, §3070; C24, 27, 31, 35, 39, §**9441;** C46, 50, 54, 58, 62, 66, 71, 73, §537.3; C75, 77, 79, 81, §537A.3]

537A.4 Gaming contracts void — exceptions.

All promises, agreements, notes, bills, bonds, or other contracts, mortgages or other securities, when the whole or any part of the consideration thereof is for money or other valuable thing won or lost, laid, staked, or bet, at or upon any game of any kind or on any wager, are absolutely void and of no effect.

This section does not apply to a contract for the operation of or for the sale or rental of equipment for games of skill or games of chance, if both the contract and the games are in compliance with chapter 99B. This section does not apply to wagering under the pari-mutuel method of wagering authorized by chapter 99D. This section does not apply to the sale, purchase or redemption of a ticket or share in the state lottery in compliance with chapter 99E. This section does not apply to wagering under the excursion boat gambling method of wagering authorized by chapter 99F. This section does not apply to the sale, purchase, or redemption of any ticket or similar gambling device legally purchased in Indian lands within this state.

[C51, §2724; R60, §4366; C73, §4029; C97, §4965; C24, 27, 31, 35, 39, §**9442;** C46, 50, 54, 58, 62, 66, 71, 73, §537.4; C75, 77, 79, 81, §537A.4]

83 Acts, ch 187, §32; 85 Acts, ch 33, §123; 86 Acts, ch 1125, §4; 88 Acts, ch 1136, §1; 89 Acts, ch 231, §34; 92 Acts, ch 1203, §19

537A.5 through 537A.9 Reserved.

537A.10 Franchise agreements.

1. *Definitions.*

When used in this section, unless the context otherwise requires:

a. *"Affiliate"* means a person controlling, controlled by, or under common control with another person, every officer or director of such a person, and every person occupying a similar status or performing similar functions.

b. *"Business day"* means a day other than a Saturday, Sunday, or federal holiday.

c. (1) *"Franchise"* means either of the following:

(a) An oral or written agreement, either express or implied, which provides all of the following:

(i) Grants the right to distribute goods or provide services under a marketing plan prescribed or suggested in substantial part by the franchisor.

(ii) Requires payment of a franchise fee to a franchisor or its affiliate.

(iii) Allows the franchise business to be substantially associated with a trademark, service mark, trade name, logotype, advertisement, or other commercial symbol of or designating the franchisor or its affiliate.

(b) A master franchise.

(2) *"Franchise"* does not include any business that is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or licensor on such premises, including, without limitation, leased departments, licensed departments, and concessions and the leased or licensed department operates only under the trade-

mark, trade name, service mark, or other commercial symbol designating the lessor or licensor.

(3) *"Franchise"* also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq. The term *"refiner"* means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. *"Franchise"* also does not include a contract entered into by any person regulated under chapter 123, 322, 322A, 322B, 322C, 322D, 322F, 522B, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

d. "Franchise fee" means a direct or indirect payment to purchase or operate a franchise. Franchise fee does not include any of the following:

(1) Payment of a reasonable service charge to the issuer of a credit card by an establishment accepting the credit card.

(2) Payment to a trading stamp company by a person issuing trading stamps in connection with a retail sale.

(3) An agreement to purchase at a bona fide wholesale price a reasonable quantity of tangible goods for resale.

(4) The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements, real property, supplies, or other materials reasonably necessary to enter into or continue a business.

(5) Payments by a purchaser pursuant to a bona fide loan from a seller to the purchaser.

(6) Payment of rent which reflects payment for the economic value of leased real or personal property.

(7) The purchase or agreement to purchase promotional or demonstration supplies, materials, or equipment furnished at fair market value and not intended for resale.

e. "Franchisee" means a person to whom a franchise is granted. Franchisee includes the following:

(1) A subfranchisor with regard to its relationship with a franchisor.

(2) A subfranchisee with regard to its relationship with a subfranchisor.

f. "Franchisor" means a person who grants a franchise or master franchise, or an affiliate of such a person. Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this section.

g. "Marketing plan" means a plan or system concerning a material aspect of conducting business. Indicia of a marketing plan include any of the following:

(1) Price specification, special pricing systems, or discount plans.

(2) Sales or display equipment or merchandising devices.

(3) Sales techniques.

(4) Promotional or advertising materials or cooperative advertising.

(5) Training regarding the promotion, operation, or management of the business.

(6) Operational, managerial, technical, or financial guidelines or assistance.

h. "Master franchise" means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

i. "Offer" or *"offer to sell"* means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

j. "Person" means a person as defined in section 4.1, subsection 20.

k. "Sale" or *"sell"* means every contract or agreement of sale of, contract to sell or disposition of, a franchise or interest in a franchise for value.

l. "Subfranchise" means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

m. "Subfranchisee" means a person who is granted a franchise from a subfranchisor.

n. "Subfranchisor" means a person who is granted a master franchise.

2. *Applicability.* Notwithstanding section 523H.2, this section applies to a new or existing franchise that is operated in this state and that is subject to an agreement entered into on or after July 1, 2000. For purposes of this section, the franchise is operated in this state only if the premises from which the franchise is operated are physically located in this state. For purposes of this section, a franchise including marketing rights in or to this state, is deemed to be operated in this state only if the franchisee's principal business office is physically located in this state. This section does not apply to a franchise solely because an agreement relating to the franchise provides that the agreement is subject to or governed by the laws of this state. The provisions of this section do not apply to any existing or future contracts between Iowa franchisors and franchisees who operate franchises located out-of-state.

3. *Jurisdiction and venue of disputes.*

a. A provision in a franchise agreement restricting jurisdiction to a forum outside this state is void with respect to a claim otherwise enforceable under this section.

b. A civil action or proceeding arising out of a franchise may be commenced wherever jurisdiction over the parties or subject matter exists, even if the agreement limits actions or proceedings to a designated jurisdiction.

c. Venue for a civil action commenced under this chapter shall be determined in accordance with chapter 616.

4. *Waivers void.* A condition, stipulation, or

provision requiring a franchisee to waive compliance with or relieving a person of a duty or liability imposed by or a right provided by this section or a rule or order under this section is void. This subsection shall not affect the settlement of disputes, claims, or civil lawsuits arising or brought pursuant to this section.

5. *Transfer of franchise.*

a. A franchisee may transfer the franchised business and franchise to a transferee, provided that the transferee satisfies the reasonable current qualifications of the franchisor for new franchisees. For the purposes of this subsection, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to the transfer is not arbitrary or capricious.

b. (1) A franchisee may transfer less than a controlling interest in the franchise to an employee stock ownership plan, or employee incentive plan provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications for franchisees, and such transfer is approved by the franchisor. Approval of such transfer shall not be unreasonably withheld.

(2) If pursuant to such a transfer fifty percent or less of the entire franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

(3) Participation by an employee in an employee stock ownership plan or employee incentive plan established pursuant to this subsection does not confer upon such employee any right to access trade secrets protected under the franchise agreement, which access the employee would not otherwise have if the employee did not participate in such plan.

c. A franchisor may require as a condition of a transfer any of the following:

(1) That the transferee successfully complete a training program.

(2) That a transfer fee be paid to reimburse the franchisor for the franchisor's actual expenses directly attributable to the transfer.

(3) That the franchisee pay or make provision acceptable to the franchisor to pay any amount due the franchisor or the franchisor's affiliate.

(4) That the financial terms of the transfer comply at the time of the transfer with the franchisor's current financial requirements for franchisees.

d. A franchisee shall give the franchisor no less than sixty days' written notice of a transfer which is subject to this subsection, and on request from the franchisor shall provide in writing the ownership interests of all persons holding or claiming an equitable or beneficial interest in the franchise subsequent to the transfer or the franchisee, as appropriate. A franchisee shall not circumvent the intended effect of a contractual provision governing the transfer of the franchise or an interest in the franchise by means of a management agreement, lease, profit-sharing agreement, conditional assignment, or other similar device.

e. A transfer by a franchisee is deemed to be approved sixty days after the franchisee submits the request for consent to the transfer unless the franchisor withholds consent to the transfer as evidenced in writing, specifying the reason or reasons for withholding the consent. The written notice must be delivered to the franchisee prior to the expiration of the sixty-day period. Any such notice is privileged and is not actionable based upon a claim of defamation.

f. A franchisor shall not discriminate against a proposed transferee of a franchise on the basis of race, color, national origin, religion, sex, or disability.

g. A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children shall be permitted if following the transfer more than fifty percent of the interest in the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If following such a transfer fifty percent or less of the interest in the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

h. A franchisor shall not deny the surviving spouse or a child or children of a deceased or permanently disabled franchisee the opportunity to participate in the ownership of a franchise under a valid franchise agreement for a reasonable period, which need not exceed one year, after the death or disability of the franchisee. During such reasonable period, the surviving spouse or the child or children of the franchisee shall either meet all of the qualifications which the franchisee was subject to at the time of the death or disability of the franchisee, or sell, transfer, or assign the franchise to a person who meets the franchisor's current qualifications for a new franchisee. The rights granted pursuant to this subsection are subject to the surviving spouse or the child or children of the franchisee maintaining all standards and obligations of the franchise.

i. Incorporation of a proprietorship franchise shall be permitted upon sixty days' prior written notice to the franchisor. Such incorporation does not prohibit a franchisor from requiring a personal guaranty by the franchisee of obligations related to the franchise, and the owners of the corporation must meet the franchisor's reasonable current

qualifications for franchisees.

j. A transfer within an existing ownership group of a franchise shall be permitted provided that the transferee meets the franchisor's reasonable current qualifications for franchisees, and written notice is submitted to the franchisor sixty days prior to such a transfer. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

6. *Encroachment.*

a. If a franchisor develops, or grants to a franchisee the right to develop, a new outlet or location which sells essentially the same goods or services under the same trademark, service mark, trade name, logotype, or other commercial symbol as an existing franchisee and the new outlet or location is in unreasonable proximity to the existing franchisee's outlet or location and has an adverse effect on the gross sales of the existing franchisee's outlet or location, the existing adversely affected franchisee has a cause of action for monetary damages in an amount calculated pursuant to paragraph *"d"*, unless any of the following apply:

(1) The franchisor has first offered the new outlet or location to the existing franchisee on the same basic terms and conditions available to the other potential franchisee and such existing franchisee meets the reasonable current qualifications of the franchisor including any financial requirements, or, if the new outlet or location is to be owned by the franchisor, on the terms and conditions that would ordinarily be offered to a franchisee for a similarly situated outlet or location.

(2) The adverse impact on the existing franchisee's annual gross sales, based on a comparison to the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location, is determined to have been less than six percent during the first twelve months of operation of the new outlet or location.

(3) The existing franchisee, at the time the franchisor develops, or grants to a franchisee the right to develop, a new outlet or location, is not in compliance with the franchisor's then current reasonable criteria for eligibility for a new franchise, not including any financial requirements.

(4) The existing franchisee has been granted reasonable territorial rights and the new outlet or location does not violate those territorial rights.

b. (1) The franchisor, with respect to claims made under paragraph *"a"*, shall establish both of the following:

(a) A formal procedure for hearing and acting upon claims by an existing franchisee with regard to a decision by the franchisor to develop, or grant to a franchisee the right to develop, a new outlet or location, prior to the opening of the new outlet or location.

(b) A reasonable formal procedure for mediating a dispute resulting in an award of compensation or other form of consideration to a franchisee to offset all or a portion of the franchisee's lost profits caused by the establishment of the new outlet or location. The procedure shall involve a neutral third-party mediator. The procedure shall be deemed reasonable if approved by a majority of the franchisor's franchisees in the United States.

(2) A dispute submitted to a formal procedure under subparagraph (1) does not diminish the rights of a franchisor or franchisee to bring a cause of action for a violation of this subsection if no settlement results from such procedure.

c. A franchisor shall establish and make available to its franchisees a written policy setting forth its reasonable criteria to be used by the franchisor to determine whether an existing franchisee is eligible for a franchise for an additional outlet or location.

d. (1) In establishing damages under a cause of action brought pursuant to this subsection, the franchisee has the burden of proving the amount of lost profits attributable to the compensable sales. In any action brought under this subsection, the damages payable shall be limited to no more than three years of the proven lost profits. For purposes of this paragraph, *"compensable sales"* means the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location less both of the following:

(a) Six percent of the annual gross sales for that twelve-month period immediately preceding the opening of the new outlet or location.

(b) The actual gross sales from the operation of the existing outlet or location for the twelve-month period immediately following the opening of the new outlet or location.

(2) Compensable sales shall exclude any amount attributable to factors other than the opening and operation of the new outlet or location.

e. Any cause of action brought under this subsection must be filed within eighteen months of the opening of the new outlet or location or within thirty days after the completion of the procedure under paragraph *"b"*, subparagraph (1), whichever is later.

7. *Termination.*

a. Except as otherwise provided by this section, a franchisor shall not terminate a franchise prior to the expiration of its term except for good cause. For purposes of this subsection, *"good cause"* is cause based upon a legitimate business reason. *"Good cause"* includes the failure of the franchisee to comply with any material lawful requirement of the franchise agreement, provided that the termination by the franchisor is not arbitrary or capricious. The burden of proof of showing that the action of the franchisor is arbitrary or

capricious shall rest with the franchisee.

b. Prior to termination of a franchise for good cause, a franchisor shall provide a franchisee with written notice stating the basis for the proposed termination. After service of written notice, the franchisee shall have a reasonable period of time to cure the default, which in no event shall be less than thirty days or more than ninety days. In the event of nonpayment of moneys due under the franchise agreement, the period to cure need not exceed thirty days.

c. Notwithstanding paragraph *"b"*, a franchisor may terminate a franchise upon written notice and without an opportunity to cure if any of the following apply:

(1) The franchisee or the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent.

(2) All or a substantial part of the assets of the franchise or the business to which the franchisee relates are assigned to or for the benefit of any creditor which is subject to chapter 681. An assignment for the benefit of any creditor pursuant to this subparagraph does not include the granting of a security interest in the normal course of business.

(3) The franchisee voluntarily abandons the franchise by failing to operate the business for five consecutive business days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless the failure to operate is due to circumstances beyond the control of the franchisee.

(4) The franchisor and franchisee agree in writing to terminate the franchise.

(5) The franchisee knowingly makes any material misrepresentations or knowingly omits to state any material facts relating to the acquisition or ownership or operation of the franchise business.

(6) The franchisee repeatedly fails to comply with one or more material provisions of the franchise agreement, when the enforcement of such material provisions is not arbitrary or capricious, whether or not the franchisee complies after receiving notice of the failure to comply.

(7) The franchised business or business premises of the franchisee are lawfully seized, taken over, or foreclosed by a government authority or official.

(8) The franchisee is convicted of a felony or any other criminal misconduct which materially and adversely affects the operation, maintenance, or goodwill of the franchise in the relevant market.

(9) The franchisee operates the franchised business in a manner that imminently endangers the public health and safety.

8. *Nonrenewal of a franchise.*

a. A franchisor shall not refuse to renew a franchise unless both of the following apply:

(1) The franchisee has been notified of the franchisor's intent not to renew at least six months prior to the expiration date or any extension of the franchise agreement.

(2) Any of the following circumstances exist:

(a) Good cause exists, provided that the refusal of the franchisor to renew is not arbitrary or capricious. For purposes of this subsection, *"good cause"* means cause based on a legitimate business reason.

(b) The franchisor and franchisee agree not to renew the franchise.

(c) The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee, provided that upon expiration of the franchise, the franchisor agrees not to seek to enforce any covenant of the nonrenewed franchisee not to compete with the franchisor or franchisees of the franchisor.

b. As a condition of renewal of the franchise, a franchise agreement may require that the franchisee meet the then current requirements for franchises and that the franchisee execute a new agreement incorporating the then current terms and fees for new franchises.

9. *Sources of goods or services.* A franchisor shall not require that a franchisee purchase goods, supplies, inventories, or services exclusively from the franchisor or from a source or sources of supply specifically designated by the franchisor where such goods, supplies, inventories, or services of comparable quality are available from sources other than those designated by the franchisor.

However, the publication by the franchisor of a list of approved suppliers of goods, supplies, inventories, or services, or the requirement that such goods, supplies, inventories, or services comply with specifications and standards prescribed by the franchisor, does not constitute designation of a source. Additionally, the reasonable right of a franchisor to disapprove a supplier does not constitute a designation of source. This subsection does not apply to the principal goods, supplies, inventories, or services manufactured by the franchisor, or such goods, supplies, inventories, or services entitled to protection as a trade secret.

10. *Franchisee's right to associate.* A franchisor shall not restrict a franchisee from associating with other franchisees or from participating in a trade association, and shall not retaliate against a franchisee for engaging in these activities.

11. *Duty of good faith.* A franchise imposes on the parties a duty of good faith in performance and enforcement of the franchise agreement. *"Good faith"* means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

The duty of good faith is imposed in situations including, but not limited to, where the franchisor

opens a new outlet or location that has an adverse impact on an existing franchisee. A determination of whether the duty of good faith with respect to a new outlet or location has been met shall be made pursuant to the provisions, standards, and procedures in subsection 6.

12. *Exclusion.* For purposes of this section, *"franchise"* does not include a contract under which a franchise relationship is established with respect to retreaded tires and related equipment used for commercial vehicles.

13. *Private civil action.* A person who violates a provision of this section or order issued under this section is liable for damages caused by the violation, including, but not limited to, costs and reasonable attorneys' and experts' fees, and subject to other appropriate relief including injunctive and other equitable relief.

14. *Choice of law.* A condition, stipulation, or provision requiring the application of the law of another state in lieu of this section is void.

15. *Construction with other law.* This section does not limit any liability that may exist under another statute or at common law.

16. *Construction.* This section shall be liberally construed to effectuate its purposes.

17. *Severability.* If any provision or clause of this section or any application of this section to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

2000 Acts, ch 1093, §1; 2001 Acts, ch 118, §55; 2002 Acts, ch 1119, §186

Subsection 5, paragraph b, subparagraph (2) amended

CHAPTER 537B

MOTOR VEHICLE SERVICE TRADE PRACTICES

537B.1 Title.
537B.2 Definitions.
537B.3 Required trade practices.
537B.4 Aftermarket parts.
537B.5 Reserved.
537B.6 Deceptive act or practice.

537B.1 Title.

This chapter is entitled the *"Motor Vehicle Service Trade Practices Act"*.

90 Acts, ch 1010, §1

537B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Consumer"* means a person contracting for, or intending to contract for, repairs or service upon a motor vehicle used primarily for farm or personal use.

2. *"Motor vehicle"* means a motor vehicle as defined in section 321.1 which is subject to registration. However, *"motor vehicle"* does not include a motor vehicle, as defined in section 321.1, with a gross vehicle weight rating of more than twelve thousand pounds.

3. *"Supplier"* means a person offering to contract for repairs or service upon a motor vehicle. Supplier includes an employee or other representative of the supplier.

90 Acts, ch 1010, §2; 90 Acts, ch 1145, §13; 98 Acts, ch 1100, §75

537B.3 Required trade practices.

1. If a consumer authorizes, in writing, repairs or service upon a motor vehicle prior to the commencement of the repairs or service, a conspicuous disclosure in substantially the following language shall appear on the authorization form or on a separate form provided to the consumer at the time of the authorization.

ESTIMATE

YOU HAVE THE RIGHT TO A WRITTEN OR ORAL ESTIMATE IF THE EXPECTED COST OF REPAIRS OR SERVICE WILL BE MORE THAN FIFTY DOLLARS. YOUR BILL WILL NOT BE HIGHER THAN THE ESTIMATE BY MORE THAN TEN PERCENT UNLESS YOU APPROVE A HIGHER AMOUNT BEFORE REPAIRS ARE FINISHED. INITIAL YOUR CHOICE:

. . . . . Written estimate.
. . . . . Oral estimate.
. . . . . No estimate.
. . . . . Call me if repairs and service will be more than $ . . . . . .

2. The form described in subsection 1, shall at minimum contain the following information:

a. The date.

b. The supplier's name.

c. The consumer's name and telephone number.

d. The reasonably anticipated completion date.

If a written estimate is requested, the supplier may write the written estimate on the authorization form or on another form. If the nature of repairs or service is unknown at the time that the estimate is given, the supplier may state an hourly labor charge for the work. If the consumer so requests, a copy of the written estimate shall be provided to the consumer prior to the commencement of any repairs or service.

3. If a consumer orally authorizes repairs or service upon a motor vehicle prior to the commencement of the repairs or service, the supplier shall inform the consumer of the right to receive a written or oral estimate. The supplier shall note the consumer's response on the form described in subsections 1 and 2. If the consumer requests an estimate, the supplier shall provide the estimate to the consumer prior to commencing the repairs or service.

90 Acts, ch 1010, §3

537B.4 Aftermarket parts.

1. As used in this section:

a. "Aftermarket crash part" means a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels, which replacement is not manufactured or marketed by the original equipment manufacturer of the motor vehicle. Aftermarket crash part does not include replacement glass for the windows, windshield, or backlight of the motor vehicle.

b. "Motor vehicle" means a motor vehicle as defined in section 321.1 which is subject to registration.

c. "Repair facility" means a motor vehicle dealer, garage, body shop, or other person, which undertakes the repair or replacement of those parts of a motor vehicle that generally constitute the exterior of a motor vehicle for a fee.

2. A repair facility shall not use aftermarket crash parts in the repair of a customer's motor vehicle without disclosing the proposed use of such parts in the estimate of repairs given to the customer prior to the repair of the motor vehicle. The estimate shall be in writing and shall clearly identify each part proposed to be used which is an aftermarket crash part. The following information shall appear in ten point type, or larger, on or attached to the estimate:

"This estimate has been prepared based on the use of aftermarket crash parts supplied by a source other than the manufacturer of your motor vehicle. Any warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle."

3. An aftermarket crash part supplied for use in this state after January 1, 1991, shall have affixed or inscribed upon the part the logo or name of its manufacturer. A repair facility installing an aftermarket crash part on a motor vehicle shall install the part so that the manufacturer's logo or name is visible upon inspection after installation whenever practicable.

4. It is a deceptive act or practice for a repair facility or manufacturer or distributor of aftermarket crash parts to fail to comply with the requirements of this section.

90 Acts, ch 1010, §4; 90 Acts, ch 145, §14

537B.5 Reserved.

537B.6 Deceptive act or practice.

It is a deceptive act or practice for a supplier to:

1. Fail to comply with the requirements of section 537B.3.

2. Make the performance of any repair or service contingent upon a consumer's waiver of any rights provided for in this chapter.

3. Fail to obtain oral or written authorization from the consumer for the anticipated cost of any additional, unforeseen, but necessary repairs or services when the cost of those repairs or services amount to more than ten percent, excluding tax, of the original estimate requested by a consumer.

4. Fail, if the anticipated cost of a repair or service is less than fifty dollars and an estimate has not been given to the consumer, to obtain oral or written authorization from the consumer for the anticipated cost of any additional unforeseen, but necessary repairs or services if the total cost of the repairs or services, if performed, will exceed fifty dollars.

5. Fail to disclose prior to the commencement of any repairs or service, that a charge will be made for disassembly, reassembly, partially completed work, or any other work not directly related to the actual performance of the repairs or service. A charge so imposed must be directly related to the actual amount of labor or parts involved in the inspection, repair, or service.

6. Charge for any repair or service which has not been authorized by the consumer.

7. Fail to disclose upon the first contact with the consumer that any charge not directly related to the actual performance of the repair or service will be imposed by the supplier whether or not repairs or services are performed.

8. Fail to disclose upon the first contact with a consumer the basis upon which a charge will be imposed for towing the motor vehicle if that service will be performed.

9. Represent that repairs or services are necessary when that is not the fact.

10. Represent that repairs have been made or

services have been performed when that is not the fact.

11. Represent that a motor vehicle or any part of a motor vehicle which is being inspected or diagnosed for a repair or service is in a dangerous condition, or that the consumer's continued use of it may be harmful, when that is not the fact.

12. Materially and intentionally understate or misstate the estimated cost of the repairs or service.

13. Fail to provide the consumer with an itemized list of repairs performed or services rendered, including a list of parts or materials and a statement of whether they are used, remanufactured or rebuilt, if not new, and their cost to the consumer, the amount charged for labor, and the identity of the individual performing the repair or service.

14. Fail to tender to the consumer any replaced parts, unless the parts are to be rebuilt or sold by the supplier, or returned to the manufacturer in connection with warranted repairs or services, and such intended reuse or return is made known to the consumer prior to commencing any repair or service. However, this subsection does not prohibit the supplier from retaining the replaced parts if the consumer so requests.

15. Fail to provide to the consumer upon the consumer's request a written, itemized receipt for any motor vehicle or part of a motor vehicle that is left with, or turned over to, the supplier for repair or service. The receipt shall include:

a. The identity of the supplier which will perform the repair or service.

b. The name and signature of the supplier or a representative who actually accepts the motor vehicle or any part of the motor vehicle.

c. A description including make and model number or other features as will reasonably identify the motor vehicle or any part of the motor vehicle to be repaired or serviced.

d. The date on which the motor vehicle or any part of the motor vehicle was left with or turned over to the supplier.

16. Fail to disclose to the consumer prior to the commencement of any repair or service, that any part of the repair or service will be performed by a person other than the supplier or the supplier's employees, if the consumer requests that information.

90 Acts, ch 1010, §5

CHAPTER 538

TENDER OF PAYMENT AND PERFORMANCE

Tender under offer to compromise, chapter 677

538.1 Demand required.
538.2 Tender of labor or property.
538.3 Tender when contract assigned.
538.4 Effect of tender.
538.5 Tender when holder absent from state.
538.6 Offer in writing — effect.
538.7 Nonacceptance of tender.
538.8 Receipt — objection.

538.1 Demand required.

No cause of action shall accrue upon a contract for labor or the payment or delivery of property other than money, where the time of performance is not fixed, until a demand of performance has been made upon the maker and refused, or a reasonable time for performance thereafter allowed.

[C51, §959; R60, §1806; C73, §2097; C97, §3056; C24, 27, 31, 35, 39, §**9443;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.1]

538.2 Tender of labor or property.

When a contract for labor, or for the payment or delivery of property other than money, does not fix a place of payment, the maker may tender the labor or property at the place where the payee resided at the time of making the contract, or at the residence of the payee at the time of performance of the contract, or where any assignee of the contract resides when it becomes due, but if the property in such case is too ponderous to be conveniently transported, or if the payee had no known place of residence within the state at the time of making the contract, or if the assignee of a written contract has no known place of residence within the state at the time of performance, the maker may tender the property at the place where the maker resided at the time of making the contract.

[C51, §960, 961; R60, §1807, 1808; C73, §2098, 2099; C97, §3057; C24, 27, 31, 35, 39, §**9444;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.2]

538.3 Tender when contract assigned.

When the contract is contained in a written instrument which is assigned before due, and the maker has notice thereof, the maker shall make the tender at the residence of the holder if the holder resides in the state and no farther from the

maker than the payee did at the making thereof.

[C51, §962; R60, §1809; C73, §2100; C97, §3058; C24, 27, 31, 35, 39, §**9445;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.3]

538.4 Effect of tender.

A tender of the property, as above provided, discharges the maker from the contract, and the property becomes vested in the payee or the payee's assignee, and the payee or assignee may maintain an action therefor as in other cases. But if the property tendered be perishable, or requires feeding, or other care, and no person is found to receive it when tendered, the person making the tender shall preserve, feed, or otherwise take care of the same, and shall have a lien thereon for the person's reasonable expenses and trouble in so doing.

[C51, §963, 964; R60, §1810, 1811; C73, §2101, 2102; C97, §3059; C24, 27, 31, 35, 39, §**9446;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.4]

538.5 Tender when holder absent from state.

When an instrument for the payment of money is due and the holder is absent from the state or the holder's identity or whereabouts are unknown and the instrument does not provide for a place of payment, the maker may tender payment at the last known residence or place of business of the last known holder, and if there be no person there authorized to receive payment and give proper credit therefor, the maker shall be deemed to have tendered payment and interest shall cease on the date of deposit if:

1. The maker deposits the amount due with the clerk of the district court in the county where the maker resided at the time of the making of the instrument, if the maker was then a resident of the state of Iowa, or if the maker was a nonresident of the state of Iowa at the time of making, with the clerk of the district court of Polk county, and

2. *a.* The maker files an affidavit with the clerk of the court that the identity or address of the holder is unknown and that the maker has made diligent inquiry to ascertain it, or

b. The maker within three days gives notice of such deposit by ordinary mail to the holder, if the holder's identity and address are known.

Upon presentment of the instrument by the holder to the clerk, the clerk shall pay the holder of such instrument the funds in the clerk's hands. If such deposit is in full payment of the instrument the clerk shall deliver the instrument to the maker. If such deposit is a partial payment thereof the clerk shall endorse such payment thereon and return the instrument to the holder.

[C51, §958; R60, §1805; C73, §2103; C97, §3060; C24, 27, 31, 35, 39, §**9447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.5]

538.6 Offer in writing — effect.

An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, if not accepted, is equivalent to the actual tender of the money, instrument, or property, subject, however, to the condition contained in section 538.7; but if the party to whom the tender is made desires an inspection of the instrument or property tendered, other than money, before making the party's determination, it shall be allowed the party on request.

[C51, §967; R60, §1816; C73, §2105; C97, §3061; C24, 27, 31, 35, 39, §**9448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.6]

538.7 Nonacceptance of tender.

When a tender of money or property is not accepted by the party to whom it is made, the party making it may, if that party sees fit, retain it in possession; but if afterwards the party to whom the tender was made concludes to accept it and gives notice thereof to the other party, and the subject of the tender is not delivered to the accepting party within a reasonable time, the tender shall be of no effect.

[C51, §966; R60, §1815; C73, §2104; C97, §3062; C24, 27, 31, 35, 39, §**9449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.7]

538.8 Receipt — objection.

The person making a tender may demand a receipt in writing for the money or article tendered, as a condition precedent to the delivery thereof. The person to whom a tender is made must, at the time, make any objection which the person may have to the money, instrument, or property tendered, or the person will be deemed to have waived it.

[C51, §968, 969; R60, §1817, 1818; C73, §2106, 2107; C97, §3063; C24, 27, 31, 35, 39, §**9450;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.8]

CHAPTER 538A

CREDIT SERVICES ORGANIZATIONS

538A.1 Definitions.
538A.2 Credit services organization defined — exemptions.
538A.3 Prohibited conduct.
538A.4 Bond — surety account.
538A.5 Registration.

538A.6 Disclosure statement.
538A.7 Form in terms of contract.
538A.8 Waiver.
538A.9 Action for damages.
538A.10 Injunction.
538A.11 Statute of limitations.
538A.12 Criminal penalty.
538A.13 Burden of proving exemption.
538A.14 Remedies cumulative.

538A.1 Definitions.

In this chapter, unless the context otherwise requires:

1. *"Buyer"* means an individual who is solicited to purchase or who purchases the services of a credit services organization.

2. *"Consumer reporting agency"* has the meaning assigned by section 603(f), Fair Credit Reporting Act, 15 U.S.C. § 1681a(f) as amended through January 1, 1989.

3. *"Extension of credit"* means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes.

89 Acts, ch 183, §1
CS89, §533C.1
C93, §538A.1

538A.2 Credit services organization defined — exemptions.

1. A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:

a. Improving a buyer's credit record, history, or rating.

b. Providing advice or assistance to a buyer with regard to paragraph *"a"*.

2. The following are exempt from this chapter:

a. A person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision of this state or the United States, or a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act, 12 U.S.C. § 1701 et seq.

b. A bank or savings and loan association whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or the federal savings and loan insurance corporation, or successor deposit insurance entities, or a subsidiary of a bank or savings and loan association.

c. A credit union doing business in this state.

d. A nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3.

e. A person licensed as a real estate broker or salesperson, under section 543B.20, acting within the course and scope of that license.

f. A person licensed to practice as an attorney in this state acting within the course and scope of the person's practice as an attorney.

g. A broker-dealer registered with the securities and exchange commission or the commodity futures trading commission acting within the course and scope of the regulations of the commission that person is registered with.

h. A consumer reporting agency.

89 Acts, ch 183, §2
CS89, §533C.2
C93, §538A.2
93 Acts, ch 60, §23

538A.3 Prohibited conduct.

A credit services organization, a salesperson, agent, or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization shall not:

1. Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained a bond in accordance with section 538A.4 or established and maintained a surety account at a federally insured bank or savings and loan association located in this state in the amount required by section 538A.4, subsection 5.

2. Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public.

3. Make or use a false or misleading representation in the offer or sale of the services of a credit services organization.

4. Engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization.

89 Acts, ch 183, §3
CS89, §533C.3
C93, §538A.3

538A.4 Bond — surety account.

1. This section applies to a credit services organization required by section 538A.3, subsection

1, to obtain a surety bond or establish a surety account.

2. If a bond is obtained, a copy of it shall be filed with the secretary of state. If a surety account is established, notification of the depository, the trustee, and the account number shall be filed with the secretary of state.

3. If a bond is obtained, the bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than thirty days' written notice to both the credit services organization and to the secretary of state. The notice shall indicate the surety's intent to cancel the bond effective on a date at least thirty days after the date of the notice.

4. The bond or surety account required must be in favor of the state for the benefit of any person who is damaged by a violation of this chapter.

5. A person claiming against the bond or surety account for a violation of this chapter may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee is liable only for damages awarded under section 538A.9, subsection 1, and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter shall not exceed the amount of the surety account or bond.

6. The bond or the surety account shall be in an amount of at least ten thousand dollars.

7. A depository holding money in a surety account under this chapter shall not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the secretary of state indicating that section 538A.5, subsection 6, has been satisfied in relation to the account. The secretary of state may conduct investigations and require submission of information as necessary to enforce this subsection.

89 Acts, ch 183, §4
CS89, §533C.4
C93, §538A.4

538A.5 Registration.

1. A credit services organization shall file a registration statement with the secretary of state before conducting business in this state. The registration statement must contain both of the following:

a. The name and address of the credit services organization.

b. The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

2. The registration statement must also contain one of the following:

a. A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

b. A notarized statement that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

3. The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

4. A credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

5. The secretary of state may charge each credit services organization that files a registration statement with the secretary of state a reasonable fee not to exceed one hundred dollars to cover the cost of filing. The secretary of state shall not require a credit services organization to provide information other than that provided in the registration statement.

6. The bond or surety account shall be maintained until two years after the date that the credit services organization ceases to operate.

89 Acts, ch 183, §5
CS89, §533C.5
C93, §538A.5

538A.6 Disclosure statement.

1. Before executing a contract or agreement with a buyer, or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing all of the following:

a. A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services.

b. A statement explaining the buyer's rights to proceed against the bond or surety account required by section 538A.4.

c. The name and address of the surety company which issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account.

2. The credit services organization shall maintain on file for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

89 Acts, ch 183, §6
CS89, §533C.6
C93, §538A.6

538A.7 Form in terms of contract.

1. A contract between the buyer and a credit

services organization for the purchase of the services of the credit services organization must be in writing, dated, signed by the buyer, and must include all of the following:

a. A conspicuous statement in boldface type, in immediate proximity to the space reserved for the signature of the buyer, as follows: **"You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."**

b. The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person.

c. A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed or estimated length of time for performing the services.

d. The address of the credit services organization's principal place of business and the name and address of its agent in the state authorized to receive service of process.

2. The contract must have attached two easily detachable copies of the notice of cancellation. The notice must be in boldface type and in the following form:

Notice of Cancellation

You may cancel this contract, without any penalty or obligations, within three days after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days after the date of receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice or other written notice to: (name of seller) at (address of seller) (place of business) not later than midnight (date).
(date) . . . . . .
(Purchaser's signature) . . . . . .

3. The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

89 Acts, ch 183, §7
CS89, §533C.7
C93, §538A.7

538A.8 Waiver.

1. A credit services organization shall not attempt to cause a buyer to waive a right under this chapter.

2. A waiver by a buyer of any part of this chapter is void.

89 Acts, ch 183, §8
CS89, §533C.8
C93, §538A.8

538A.9 Action for damages.

1. A buyer injured by a violation of this chapter may bring an action for recovery of damages. The damages awarded shall not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

2. The buyer may also be awarded punitive damages.

89 Acts, ch 183, §9
CS89, §533C.9
C93, §538A.9

538A.10 Injunction.

The attorney general or a buyer may bring an action in a district court to enjoin a violation of this chapter.

89 Acts, ch 183, §10
CS89, §533C.10
C93, §538A.10

538A.11 Statute of limitations.

An action shall not be brought under section 538A.9 after ten years after the date of the execution of the contract for services to which the action relates.

An action shall not be brought under section 538A.12 after four years after the date of the execution of the contract for services to which the action relates.

89 Acts, ch 183, §11
CS89, §533C.11
C93, §538A.11

538A.12 Criminal penalty.

A person who violates a provision of this chapter commits a serious misdemeanor.

89 Acts, ch 183, §12
CS89, §533C.12
C93, §538A.12

538A.13 Burden of proving exemption.

In an action under this chapter, the burden of proving an exemption under section 538A.2, subsection 2, is upon the person claiming the exemption.

89 Acts, ch 183, §13
CS89, §533C.13
C93, §538A.13

538A.14 Remedies cumulative.

The remedies provided by this chapter are in addition to other remedies provided by law.

89 Acts, ch 183, §14
CS89, §533C.14
C93, §538A.14

CHAPTER 539

ASSIGNMENT OF ACCOUNTS AND NONNEGOTIABLE INSTRUMENTS

Assignment of thing in action, R.C.P. 1.205

539.1 Assignment of nonnegotiable instruments.
539.2 Assignment prohibited by instrument.
539.3 Assignment of open account.
539.4 Assignment of wages.
539.5 Priority.
539.6 Assignor liable.
539.7 to 539.15 Repealed by 65 Acts, ch 413, §10102.

539.1 Assignment of nonnegotiable instruments.

Bonds, due bills, and all instruments by which the maker promises to pay another, without words of negotiability, a sum of money, or by which the maker promises to pay a sum of money in property or labor, or to pay or deliver any property or labor, or acknowledges any money, labor, or property to be due, are assignable by endorsement on the instrument, or by other writing. The assignee, including a person who takes assignment for collection in the regular course of business, has a right of action on them in the assignee's own name, subject to any defense or counterclaim which the maker or debtor had against an assignor of the instrument before notice of the assignment. In case of conflict between this section and section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405, section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405 controls.

[C51, §949; R60, §1796; C73, §2084; C97, §3044; C24, 27, 31, 35, 39, §**9451;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.1; 82 Acts, ch 1235, §1]

94 Acts, ch 1167, §4; 96 Acts, ch 1026, §17; 2000 Acts, ch 1149, §172, 187

Related provision, R.C.P. 1.205

539.2 Assignment prohibited by instrument.

When by the terms of an instrument its assignment is prohibited, an assignment thereof shall nevertheless be valid, but the maker may make use of any defense or counterclaim against the assignee which the maker may have against any assignor thereof before notice of such assignment is given to the maker in writing. In case of conflict between this section and section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405, section 554.5112, 554.5113, 554.5114, 554.9404, or 554.9405 controls.

[C51, §951; R60, §1798; C73, §2086; C97, §3046; C24, 27, 31, 35, 39, §**9452;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.2]

94 Acts, ch 1167, §5, 122; 96 Acts, ch 1026, §18; 2000 Acts, ch 1149, §173, 187

Related provision, R.C.P. 1.205

539.3 Assignment of open account.

An open account of sums of money due on contract may be assigned. The assignee, including a person who takes assignment for collection in the regular course of business, has a right of action on the account in the assignee's own name, subject to the defenses and counterclaims allowed against the instruments mentioned in section 539.2, before notice of the assignment is given to the debtor in writing by the assignee. In case of conflict, uniform commercial code, section 554.9404 or 554.9405, controls.

[C51, §952; R60, §1799; C73, §2087; C97, §3047; S13, §3047; C24, 27, 31, 35, 39, §**9453;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.3; 82 Acts, ch 1235, §2]

2000 Acts, ch 1149, §174, 187

Related provision, R.C.P. 1.205

539.4 Assignment of wages.

No sale or assignment, by the head of a family, of wages, whether the same be exempt from execution or not, shall be of any validity whatever unless the same be evidenced by a written instrument, and if married, unless the husband and wife sign and acknowledge the same joint instrument before an officer authorized to take acknowledgments. Provided, however, that no such assignment or order shall be effective or binding upon the employer unless the employer has in writing agreed to accept and pay said assignment or order. This section shall not apply to a wage assignment by an employee to an organization which represents the employee in labor relations with the employee's employer.

[S13, §3047; C24, 27, 31, 35, 39, §**9454;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.4]

539.5 Priority.

Assignments of wages shall have priority and precedence in the order in which notice in writing of such assignments shall be given to the employer, and not otherwise.

[S13, §3047; C24, 27, 31, 35, 39, §**9455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.5]

539.6 Assignor liable.

The assignor of any of the above instruments not

negotiable shall be liable to the action of the assignee without notice.

[C51, §956; R60, §1803; C73, §2088; C97, §3048; C24, 27, 31, 35, 39, §**9456;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §539.6]

539.7 to 539.15 Repealed by 65 Acts, ch 413, § 10102.

CHAPTER 540

SURETIES

540.1 Requiring creditor to sue.
540.2 Refusal or neglect of creditor.
540.3 Suit by surety.
540.4 Executor — official bonds.

540.1 Requiring creditor to sue.

When any person bound as surety for another for the payment of money, or the performance of any other contract in writing, apprehends that the principal is about to become insolvent or remove permanently from the state without discharging the contract, the surety may, if a cause of action has accrued thereon, by writing, require the creditor to sue upon the same, or permit the surety to commence an action in such creditor's name and at the surety's cost.

[C51, §970; R60, §1819; C73, §2108; C97, §3064; C24, 27, 31, 35, 39, §**9457;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §540.1]

Order of liability, R.C.P. 1.956
Right of subrogation, §626.19

540.2 Refusal or neglect of creditor.

If the creditor refuses or neglects to bring an action for ten days after request, and does not permit the surety to do so, and to furnish the surety with a true copy of the contract or other writing therefor, and enable the surety to have the use of the original when requisite in such action, the surety shall be discharged.

[C51, §971; R60, §1820; C73, §2109; C97, §3065; C24, 27, 31, 35, 39, §**9458;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §540.2]

540.3 Suit by surety.

When the surety commences such action, the surety shall give a bond to pay such costs as may be adjudged against the creditor, and the action shall be brought against all the obligors, but those joining in the request to the creditor shall make no defense thereto, but may be heard on the assessment of the damages.

[C51, §972; R60, §1821; C73, §2110; C97, §3066; C24, 27, 31, 35, 39, §**9459;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §540.3]

540.4 Executor — official bonds.

The provisions of this chapter extend to the executor of a deceased surety and holder of the contract, but not to the official bonds of public officers, executors, or guardians.

[C51, §973; R60, §1822; C73, §2111; C97, §3067; C24, 27, 31, 35, 39, §**9460;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §540.4]

CHAPTER 540A

INSTITUTIONAL FUNDS MANAGEMENT

This chapter not enacted as a part of this title;
transferred from chapter 122C in Code 1993

540A.1 Short title.
540A.2 Definitions.
540A.3 Appropriation of appreciation.
540A.4 Rule of construction.
540A.5 Investment authority.
540A.6 Delegation of investment management.
540A.7 Standard of conduct.
540A.8 Release of restrictions on use or investment.
540A.9 Uniformity of application and construction.

540A.1 Short title.

This chapter may be cited as the *"Uniform Management of Institutional Funds Act"*.

90 Acts, ch 1096, §1
C91, §122C.1
C93, §540A.1

540A.2 Definitions.

For purposes of this chapter and unless the context otherwise requires:

1. *"Endowment fund"* means an institutional fund, or any part of an institutional fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

2. *"Gift instrument"* means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

3. *"Historic dollar value"* means the aggregate fair value in dollars of all of the following:

a. An endowment fund at the time it becomes an endowment fund.

b. Each subsequent donation to the fund at the time it is made.

c. Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

4. *"Institution"* means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

5. *"Institutional fund"* means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include a fund held for an institution by a trustee that is not an institution and does not include a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

90 Acts, ch 1096, §2
C91, §122C.2
C93, §540A.2

540A.3 Appropriation of appreciation.

The governing board of an institution may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 540A.7. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

90 Acts, ch 1096, §3
C91, §122C.3
C93, §540A.3

540A.4 Rule of construction.

Section 540A.3 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation shall not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after July 1, 1990.

90 Acts, ch 1096, §4
C91, §122C.4
C93, §540A.4

540A.5 Investment authority.

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board of an institution, subject to specific limitations set forth in the applicable gift instrument or in the applicable law, other than law relating to investments by a fiduciary, may do any of the following:

1. Invest and reinvest an institutional fund in real or personal property deemed advisable by the governing board, whether or not the investment or reinvestment produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of a government or subdivision or instrumentality of a government.

2. Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

3. Include all or any part of an institutional fund in any pooled or common fund maintained by the institution.

4. Invest all or part of an institutional fund in another pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

90 Acts, ch 1096, §5
C91, §122C.5
C93, §540A.5

540A.6 Delegation of investment management.

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board of an institution may do any of the following:

1. Delegate to committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in the investment and reinvestment of institutional funds.

2. Contract with independent investment advisors, investment counsel or managers, banks, or trust companies, to act in place of the board in the investment and reinvestment of institutional funds.

3. Authorize the payment of compensation for investment advisory or management services.

90 Acts, ch 1096, §6
C91, §122C.6
C93, §540A.6

540A.7 Standard of conduct.

In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board of an institution shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long-term and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

90 Acts, ch 1096, §7
C91, §122C.7
C93, §540A.7

540A.8 Release of restrictions on use or investment.

1. With the written consent of the donor, the governing board of an institution may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

2. If written consent of the donor cannot be obtained by reason of death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the district court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection shall not change an endowment fund into a fund that is not an endowment fund.

3. A release under this section shall not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

4. This section does not limit the application of the doctrine of cy pres.

90 Acts, ch 1096, §8
C91, §122C.8
C93, §540A.8

540A.9 Uniformity of application and construction.

This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact the uniform management of institutional funds Act.

90 Acts, ch 1096, §9
C91, §122C.9
C93, §540A.9

CHAPTER 541

NEGOTIATING INSTRUMENTS ON HOLIDAY

541.1 to 541.201 Repealed by 65 Acts, ch 413, §10102.
541.202 Negotiating instrument on holiday.

541.1 to 541.201 Repealed by 65 Acts, ch 413, § 10102. See chapter 554.

541.202 Negotiating instrument on holiday.

Nothing in any law of this state shall in any

manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank or trust company in this state because done or performed on any legal holiday or during any time other than regular banking hours, if such payment, certification, acceptance or other transaction could have been validly done or performed on any other day; provided that nothing herein shall be construed to compel any bank or trust company in this state, which by law or custom is entitled to close for the whole or any part of any legal holiday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid on any legal holiday except at its own option.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §541.202]

CHAPTER 541A

INDIVIDUAL DEVELOPMENT ACCOUNTS

541A.1 Definitions.
541A.2 Individual development accounts.
541A.3 Individual development accounts — refund and tax provisions.
541A.4 Individual development account — pilot phase.
541A.5 Rules.
541A.6 Compliance with federal requirements.

541A.1 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. *"Account holder"* means an individual who is the owner of an individual development account.

2. *"Administrator"* means the department of human services.

3. *"Charitable contributor"* means a nonprofit association described in section 501(c)(3) of the Internal Revenue Code which makes a deposit to an individual development account and which is exempt from taxation under section 501(a) of the Internal Revenue Code.

4. *"Federal poverty level"* means the first poverty income guidelines published in the calendar year by the United States department of health and human services.

5. *"Financial institution"* means a financial institution approved by the administrator as an investment mechanism for individual development accounts.

6. *"Individual contributor"* means an individual who makes a deposit to an individual development account and is not the account holder or a charitable contributor.

7. *"Individual development account"* means either of the following:

a. A financial instrument that is certified to have the characteristics described in section 541A.2 by the operating organization.

b. A financial instrument that is certified by the operating organization to have the characteristics described in and funded by a federal individual development account program under which federal and state funding contributed to match account holder deposits is deposited by an operating organization in accordance with federal law and regulations, and which includes but is not limited to any of the programs implemented under the following federal laws:

(1) The federal Personal Responsibility and Work Opportunity Act of 1996, 42 U.S.C. § 604(h).

(2) The federal Assets for Independence Act, Pub. L. No. 105-285, Title IV.

8. *"Operating organization"* means an agency selected by the administrator for involvement in operating individual development accounts directed to a specific target population.

9. *"Reserve pool"* means the state human investment reserve pool under the authority of the administrator created in section 541A.4.

10. *"Source of principal"* means any of the sources of a deposit to an individual development account under section 541A.2, subsection 2.

93 Acts, ch 97, §16; 94 Acts, ch 1114, §23; 2002 Acts, ch 1175, §38

Subsection 7 amended

541A.2 Individual development accounts.

A financial instrument known as an individual development account is established. An individual development account shall have all of the following characteristics:

1. The account is kept in the name of an individual account holder.

2. Deposits made to an individual development account shall be made in any of the following manners and are subject to the indicated conditions:

a. Deposits made by the account holder.

b. Deposits of a savings refund authorized under section 541A.3, subsection 1, due the account

holder because of the account holder's deposits in the account holder's account.

c. Deposits of individual development account moneys which are transferred from another individual account holder.

d. A deposit made on behalf of the account holder by an individual or a charitable contributor. This type of deposit may include but is not limited to moneys to match the account holder's deposits.

3. The account earns income.

4. During a calendar year, an account holder may withdraw from the account holder's account the sum of the following:

a. With the approval of the operating organization, amounts withdrawn for any of the following approved purposes:

(1) Educational costs at an accredited institution of higher education.

(2) Training costs for an accredited or licensed training program.

(3) Purchase of a primary residence.

(4) Capitalization of a small business start-up.

(5) An improvement to a primary residence which increases the tax basis of the property.

(6) Emergency medical costs for the account holder or for a member of the account holder's family. However, a withdrawal for this purpose is limited to once during the life of the account and the amount of the withdrawal shall not exceed ten percent of the account balance at the time of the withdrawal.

b. At the account holder's discretion, if the account holder is at least fifty-nine and one-half years of age, any amount.

5. An account holder shall not withdraw moneys from the holder's account unless the withdrawal is authorized under subsection 4.

6. An adult account holder may transfer all or part of the assets in the account to any other account holder's account. An account holder who is less than eighteen years of age is prohibited from transferring account assets to any other account holder.

7. An individual development account closed in accordance with this subsection is not subject to the limitations and benefits provided by this chapter but is subject to state tax in accordance with the provisions of section 422.7, subsection 28, and section 450.4, subsection 6. An individual development account may be closed for any of the following reasons:

a. The account's operating organization determines that the account holder has withdrawn moneys from the account for a purpose other than authorized under subsection 4.

b. The account's operating organization determines there has been no activity in the account during the preceding twelve months.

c. The account holder changes the account holder's place of primary residence to a new location outside the general geographic area served by the operating organization and an operating organization is not available in the new location.

d. The account's operating organization withdraws from involvement with the individual development account project and another operating organization is not available to operate the account.

8. Subject to obtaining any necessary federal waivers, the department of human services shall not consider moneys in an individual development account and any earnings on the moneys in determining the eligibility or need of an individual for benefits or assistance or the amount of benefits or assistance under the family investment program under chapter 239B, the promoting independence and self-sufficiency through employment job opportunities and basic skills program, or any other program administered by the department of human services.

9. In the event of an account holder's death, the account may be transferred to the ownership of a contingent beneficiary or to the individual development account of another account holder. An account holder shall name contingent beneficiaries or transferees at the time the account is established and a named beneficiary or transferee may be changed at the discretion of the account holder. If the named beneficiary or transferee is deceased or otherwise cannot accept the transfer, the moneys shall be transferred to the reserve pool.

10. The total amount of sources of principal which may be in an individual development account shall be limited to fifty thousand dollars.

93 Acts, ch 97, §17; 96 Acts, ch 1106, §9, 10; 97 Acts, ch 41, §32

541A.3 Individual development accounts — refund and tax provisions.

All of the following state tax provisions shall apply to an individual development account:

1. Payment by the state of a savings refund on amounts of up to two thousand dollars per calendar year that an account holder deposits in the account holder's account. Moneys transferred to an individual development account from another individual development account shall not be considered an account holder deposit for purposes of determining a savings refund. Payment of a savings refund either shall be made directly to the account holder's account or to an operating organization's central reserve account for later distribution to the account holder's account in the most appropriate manner as determined by the administrator. The state savings refund shall be the indicated percentage of the amount deposited:

a. For an account holder with a household income, as defined in section 425.17, subsection 6, which is one hundred fifty percent or less of the federal poverty level, twenty-five percent.

b. For an account holder with a household income which is more than one hundred fifty percent but less than one hundred seventy-five percent of the federal poverty level, twenty percent.

c. For an account holder with a household income which is one hundred seventy-five percent or more but not more than two hundred percent of the federal poverty level, fifteen percent.

d. For an account holder with a household income which is more than two hundred percent of the federal poverty level, zero percent.

2. Income earned by an individual development account is not subject to state tax, in accordance with the provisions of section 422.7, subsection 28.

3. Amounts transferred between individual development accounts are not subject to state tax.

4. The administrator shall work with the United States secretary of the treasury and the state's congressional delegation as necessary to secure an exemption from federal taxation for individual development accounts and the earnings on those accounts. The administrator shall report annually to the governor and the general assembly concerning the status of federal approval.

5. The administrator shall coordinate the filing of claims for savings refunds authorized under subsection 1, between account holders, operating organizations, and the department of revenue and finance. Claims approved by the administrator may be paid by the department of revenue and finance to each account, for an aggregate amount for distribution to the accounts in a particular financial institution, or to an operating organization's central reserve account for later distribution to the account holders' accounts depending on the efficiency for issuing the refunds. Claims shall be initially filed with the administrator on or before a date established by the administrator. Claims approved by the administrator shall be paid from the general fund of the state in the manner specified in section 422.74.

93 Acts, ch 97, §18; 96 Acts, ch 1106, §11; 98 Acts, ch 1218, §78, 84; 2002 Acts, ch 1175, §39, 40

Subsection 1, unnumbered paragraph 1 amended
Subsection 5 amended

541A.4 Individual development account — pilot phase.

A state human investment reserve pool is created in the state treasury under the authority of the administrator. The governor shall name an executive branch agency as administrator to have authority over the reserve pool. Interest on moneys in the reserve pool shall remain in the reserve pool and notwithstanding sections 8.33 and 8.39, moneys in the reserve pool are not subject to reversion or transfer. Moneys in the reserve pool shall be used for administrative expenses of the administrator. The administrator shall perform all of the following duties or may delegate the performance of the duties to a suitable entity in administering the individual development accounts:

1. During the five-year period beginning January 1, 1995, the total number of individual development accounts shall be limited to ten thousand accounts, with not more than five thousand new accounts opened in any one calendar year of the period, and to individuals with a household income which does not exceed two hundred percent of the federal poverty level.

2. Issue a request for proposals for operating organizations to be involved with the operation of individual development accounts on behalf of a specific target population. The administrator shall determine the review criteria used to select operating organizations. The initial review criteria used to evaluate organizations' proposed projects and requirements associated with operating organizations shall include but are not limited to all of the following:

a. Provision of a safe and secure investment mechanism for the individual development accounts utilizing a financial institution approved by the administrator.

b. The proposed project has a strong relationship to goals established by other initiatives deemed a priority by the administrator.

c. The proposed project links the making of an account holder's contributions to an individual development account with other services or outcomes identified by the operating organization in the proposal. The proposed project includes mechanisms for the operating organization to monitor and enforce the identified outcomes and services.

d. The operating organization is capable of performing the project as proposed. Minimum capabilities shall include an ability to provide financial counseling, familiarity and ability to work with the proposed target population, and a strong record of successful management.

e. The operating organization proposes to provide a significant amount of matching funds for individual development accounts.

f. The proposal includes a monitoring and evaluation plan for certifying the proposed project's outcomes.

g. The responsibilities of an operating organization shall include but are not limited to all of the following:

(1) Certifying that a financial instrument is an individual development account based upon its having the characteristics described in section 541A.2.

(2) Certifying the income status and the amount of contributions to an individual development account by an account holder during a tax year which are eligible for a savings refund authorized under section 541A.3, subsection 1.

3. Utilizing guidelines established in law for this purpose, the administrator shall contract for an independent evaluation of the implementation of the individual development accounts. The evaluation shall consider the following: implementation and process used for the implementation, program impact, and financial effectiveness.

93 Acts, ch 97, §19; 94 Acts, ch 1114, §24; 96 Acts, ch 1106, §12, 13

541A.5 Rules.

The administrator, in consultation with the department of revenue and finance, shall adopt administrative rules to administer this chapter. The rules adopted by the administrator shall include but are not limited to provision for transfer of an individual development account to a different financial institution than originally approved by the administrator, if the different financial institution has an agreement with the account's operating organization.

94 Acts, ch 1114, §25; 96 Acts, ch 1106, §14

541A.6 Compliance with federal requirements.

The administrator shall adopt rules for compliance with federal individual development account requirements under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 103, as codified in 42 U.S.C. § 604(h), under the federal Assets for Independence Act, Pub. L. No. 105-285, Title IV, or with any other federal individual development account program requirements, as necessary for the state to qualify to use federal temporary assistance for needy families block grant funding or other available federal funding for allocation to operating organizations. Any rules adopted under this section shall not apply the federal individual development account program requirements to an operating organization which does not utilize federal funding for the accounts with which it is connected or to an account holder who does not receive temporary assistance for needy families block grant or other federal funding.

99 Acts, ch 100, §4

SUBTITLE 4

PROFESSIONAL REGULATION, COMMERCE-RELATED

CHAPTER 542

PUBLIC ACCOUNTANTS

Chapter is effective July 1, 2002; recognition of certificates, licenses, and permits issued prior to July 1, 2002; validity of actions or proceedings prior to July 1, 2002; 2001 Acts, ch 55, §36 – 38

542.1 Title.
542.2 Legislative intent.
542.3 Definitions.
542.4 Iowa accountancy examining board.
542.5 Qualifications for a certificate as a certified public accountant.
542.6 Issuance and renewal of certificates — maintenance of competency.
542.7 Firm permits to practice — attest experience and peer review.
542.8 Qualifications for and issuance of a license as a licensed public accountant — renewal of license — firm registration — peer review.
542.9 Appointment of secretary of state as agent.
542.10 Enforcement against a holder of a certificate, permit, or license.
542.11 Investigations and hearings.
542.12 Reinstatement.
542.13 Unlawful acts.
542.14 Injunction against unlawful acts, civil penalties, and consent agreements.
542.15 Criminal penalties.
542.16 Single act evidence of practice.
542.17 Confidential communications.
542.18 Licensees' working papers — clients' records.
542.19 Substantial equivalency.

542.1 Title.

This chapter shall be known and may be cited as the *"Iowa Accountancy Act of 2001"*.

2001 Acts, ch 55, §1, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.2 Legislative intent.

It is the policy of this state, and the purpose of this chapter, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. The reliance of the public in general and of the business community in particular on sound financial reporting imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which this chapter is intended to enforce, include the obligation to maintain independence in thought and action, to strive continuously to improve one's professional skills, to observe where applicable generally accepted accounting principles and generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy. The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

2001 Acts, ch 55, §2, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Attest"* or *"attest service"* means providing any of the following services:

a. An audit or other engagement to be performed in accordance with the statements on auditing standards.

b. A review of a financial statement to be per-

formed in accordance with the statements on standards for accounting and review services.

c. An examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements. For purposes of this subsection, *"the statements on standards for attestation engagements"* means those standards adopted by the board, by rule, by reference to the standards developed for general application by the American institute of certified public accountants, or other recognized national accountancy organization.

2. *"Board"* means the Iowa accountancy examining board established under section 542.4 or its predecessor under prior law.

3. *"Certificate"* means a certificate as a certified public accountant issued under section 542.6 or 542.19, or a certificate issued under corresponding prior law.

4. *"Certified public accountant"* means a person licensed by the board who holds a certificate issued under this chapter or corresponding prior law.

5. *"Certified public accounting firm"* means a sole proprietorship, a corporation, a partnership, a limited liability company, or any other form of organization issued a permit to practice as a firm of certified public accountants under section 542.7.

6. *"Client"* means a person or entity that agrees with a licensee or licensee's employer to receive a professional service.

7. *"Commission"* means a brokerage or other participation fee. *"Commission"* does not include a contingent fee.

8. *"Compilation"* means a service performed in accordance with statements on standards for accounting and review services and presented in the form of financial statements, which provides information that is the representation of management without undertaking to express any assurance on the statements.

9. *"Contingent fee"* means a fee established for the performance of a service pursuant to an arrangement under which a fee will not be charged unless a specified finding or result is attained, or under which the amount of the fee is otherwise dependent upon the finding or result of such service. *"Contingent fee"* does not mean a fee fixed by a court or other public authority, or a fee related to any tax matter which is based upon the results of a judicial proceeding or the findings of a governmental agency.

10. *"License"* means a certificate issued under section 542.6 or 542.19, a permit issued under section 542.7, or a license issued under section 542.8; or a certificate, permit, or license issued under corresponding prior law.

11. *"Licensed public accountant"* means a person licensed by the board who does not hold a certificate as a certified public accountant under this chapter, and who offers to perform or performs for the public any of the following services:

a. Records financial transactions in books of record.

b. Makes adjustments of financial transactions in books of record.

c. Makes trial balances from books of record.

d. Prepares internal verification and analysis of books or accounts of original entry.

e. Prepares financial statements, schedules, or reports.

f. Devises and installs systems or methods of bookkeeping, internal controls of financial data, or the recording of financial data.

g. Prepares compilations.

Nothing contained in this definition or elsewhere in this chapter shall be construed to permit a licensed public accountant to give an opinion attesting to the reliability of any representation embracing financial information.

12. *"Licensed public accounting firm"* means a sole proprietorship, a corporation, a partnership, a limited liability company, or any other form of organization issued a permit to practice as a firm of licensed public accountants under section 542.8.

13. *"Licensee"* means the holder of a license.

14. *"Manager"* means a manager of a limited liability company.

15. *"Member"* means a member of a limited liability company.

16. *"Peer review"* means a study, appraisal, or review of one or more aspects of the professional work of a licensee or firm that performs attest or compilation services, by a licensed person or persons who are not affiliated with the licensee or firm being reviewed. *"Peer review"* does not include a peer review conducted pursuant to chapter 272C in connection with a disciplinary investigation.

17. *"Peer review records"* means a file, report, or other information relating to the professional competence of an applicant in the possession of a peer review team, or information concerning the peer review developed by a peer review team in the possession of an applicant.

18. *"Peer review team"* means a person or organization participating in the peer review function, but does not include the board.

19. *"Permit"* means a permit to practice as either a certified public accounting firm issued under section 542.7 or licensed public accounting firm under section 542.8 or under corresponding provisions of prior law.

20. *"Practice of public accounting"* means the performance or the offering to perform, by a person holding oneself out to the public as a certified public accountant or a licensed public accountant, one or more kinds of professional services involving the use of accounting, attest, or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. However,

with respect to licensed public accountants, the *"practice of public accounting"* shall not include attest or auditing services or the rendering of an opinion attesting to the reliability of any representation embracing financial information.

21. *"Report"*, when used with reference to financial statements, means a report, opinion, or other form of a writing that states or implies assurance as to the reliability of any financial statements and that includes or is accompanied by a statement or implication that the person or firm issuing the report has special knowledge or competence in accounting or auditing. Such statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. *"Report"* includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply a positive assurance as to the reliability of the financial statements referred to or special knowledge or competence on the part of the person or firm issuing the language, and any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

22. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or Guam.

23. *"Substantial equivalency"* is a determination by the board that the education, examination, and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed, the education, examination, and experience requirements contained in this chapter or that an individual licensee's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in this chapter.

2001 Acts, ch 55, §3, 38

Section is effective July 1, 2002; 2001 Acts, ch 55, §38

NEW section

542.4 Iowa accountancy examining board.

1. An Iowa accountancy examining board is created within the professional licensing and regulation division of the department of commerce to administer and enforce this chapter. The board shall consist of eight members, appointed by the governor and subject to senate confirmation, all of whom shall be residents of this state. Five of the eight members shall be holders of certificates issued under section 542.6, one member shall be the holder of a license issued under section 542.8, and two shall not be certified public accountants or licensed public accountants and shall represent the general public. At least three of the holders of certificates issued under section 542.6 shall also be qualified to supervise attest services as provided in section 542.7. A certified or licensed member of the board shall be actively engaged in practice as a certified public accountant or as a licensed public accountant and shall have been so engaged for five years preceding appointment, the last two of which shall have been in this state. Professional associations or societies composed of certified public accountants or licensed public accountants may recommend the names of potential board members to the governor. However, the governor is not bound by the recommendations. A board member is not required to be a member of any professional association or society composed of certified public accountants or licensed public accountants. The term of each member of the board shall be three years, as designated by the governor, and appointments to the board are subject to the requirements of sections 69.16, 69.16A, and 69.19. Members of the board appointed and serving pursuant to chapter 542C, Code 2001, on July 1, 2002, shall serve out the terms for which they were appointed. Vacancies occurring during a term shall be filled by appointment by the governor for the unexpired term. Upon the expiration of the member's term of office, a member shall continue to serve until a successor shall have been appointed and taken office. The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examinations, but shall not determine the content or determine the correctness of the answers. The licensed public accountant member shall not determine the content of the certified public accountant examination or determine the correctness of the answers. Any member of the board whose certificate under section 542.6 or license under section 542.8 is revoked or suspended shall automatically cease to be a member of the board, and the governor may, after a hearing, remove any member of the board for neglect of duty or other just cause. A person who has served three successive complete terms shall not be eligible for reappointment, but appointment to fill an unexpired term shall not be considered a complete term for this purpose.

2. The board shall elect annually from among its members a chairperson and such other officers as the board may determine to be appropriate. The board shall meet at such times and places as may be fixed by the board. A majority of the board members in office shall constitute a quorum at any meeting. The board shall maintain a registry of the names and addresses of all licensees and permittees under this chapter.

3. Members of the board are entitled to receive a per diem as specified in section 7E.6 for each day spent on performance of duties as members and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

4. All moneys collected by the board from fees authorized to be charged by this chapter shall be

received and accounted for by the board and shall be paid monthly to the treasurer of state for deposit in the general fund of the state. Expenses of administering this chapter shall be paid from appropriations made by the general assembly, which expenses may include, but shall not be limited to, the costs of conducting investigations and of taking testimony and procuring the attendance of witnesses before the board or its committees; all legal proceedings taken under this chapter for the enforcement of this chapter; and educational programs for the benefit of the public and licensees and their employees.

5. A member of the board shall maintain the confidentiality of information relating to the following:

a. Criminal history or prior misconduct of the applicant.

b. Information relating to the contents of the examination.

c. Information relating to the examination results other than final score except for information about the results of the examination given to the person examined.

A member of the board who willfully communicates or seeks to communicate such information in a manner which violates confidentiality requirements, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

6. The administrator of the professional licensing and regulation division of the department of commerce shall provide staffing assistance to the board for implementing this chapter.

7. The board may join professional organizations and associations to promote the improvement of the standards of the practice of accountancy and for the protection and welfare of the public.

8. The board shall have the power to take all action that is necessary and proper to effectuate the purposes of this chapter, including the power to sue and be sued in its official name as an agency of this state. The board shall also have the power to issue subpoenas to compel the attendance of witnesses and the production of documents; to administer oaths; to take testimony; to cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of this chapter and comparable statutes of other states; and to receive evidence concerning all matters within the scope of this chapter. In case of disobedience of a subpoena, the board may invoke the aid of any district court in requiring the attendance and testimony of witnesses and the production of documentary evidence.

9. The board shall adopt rules pursuant to chapter 17A governing the administration and enforcement of this chapter and the conduct of licensees and permittees. Rules adopted shall include, but not be limited to, the following:

a. Rules governing the board's meetings and the conduct of its business.

b. Rules of procedure governing the conduct of investigations and hearings by the board.

c. Rules specifying the educational and experience qualifications required for the issuance of a certificate under section 542.6 and the continuing professional education required for renewal of a certificate under section 542.6.

d. Rules specifying the educational and experience qualifications required for the issuance of a license under section 542.8 and the continuing professional education required for renewal of a license under section 542.8.

e. Rules of professional conduct directed to control the quality and probity of services provided by a licensee, and, among other areas, pertaining to a licensee's independence, integrity, and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to a client.

f. Rules relating to the propriety of opinions on financial statements by a certified public accountant who is not independent.

g. Rules relating to actions discreditable to the practice as a certified public accountant or licensed public accountant.

h. Rules relating to professional confidences between a certified public accountant or licensed public accountant and a client.

i. Rules governing technical competence and the expression of opinions on financial statements.

j. Rules governing the failure to disclose a material fact known to the certified public accountant or licensed public accountant.

k. Rules relating to a material misstatement known to the certified public accountant or licensed public accountant.

l. Rules governing negligent conduct in an examination or in making a report on an examination.

m. Rules governing failure to direct attention to any material departure from generally accepted accounting principles.

n. Rules governing the professional standards applicable to a licensee.

o. Rules governing the manner and circumstances of use of the titles "certified public accountant" and "CPA".

p. Rules governing the manner and circumstances of use of the titles "accounting practitioner" and "AP", and "licensed public accountant" and "LPA".

q. Rules regarding peer review that may be required to be performed under this chapter.

r. Rules on substantial equivalency under section 542.19.

s. Such other rules as the board deems necessary or appropriate for administering this chapter, including, but not limited to, rules establishing fees and rules of professional conduct, pertaining to corporations or limited liability companies practicing accounting, which the board deems con-

sistent with or required by the public welfare. The board may adopt rules governing the style, name, and title of corporations and limited liability companies and governing the affiliation of corporations and limited liability companies with other organizations.

2001 Acts, ch 55, §4, 38; 2002 Acts, ch 1050, §58

Confirmation; §2.32

Recognition of certificates, licenses, and permits issued prior to July 1, 2002; validity of actions or proceedings prior to July 1, 2002; 2001 Acts, ch 55, §36 – 38

Section is effective July 1, 2002; 2001 Acts, ch 55, §38

NEW section

542.5 Qualifications for a certificate as a certified public accountant.

1. A certificate as a certified public accountant may be granted to a person of good moral character who makes application pursuant to section 542.6 and who satisfies the education, experience, and examination requirements of this section and rules adopted pursuant to this section.

2. An applicant for a certificate who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral character or honesty, in a court of competent jurisdiction in this state, or another state, territory, or a district of the United States, or in a foreign jurisdiction, may be denied a certificate by the board on the grounds of the conviction. For purposes of this subsection, *"conviction"* means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

3. An applicant for a certificate who has had a professional license of any kind revoked in this or any other jurisdiction may be denied a certificate by the board on the grounds of the revocation.

4. A person who makes a false statement of material fact on an application for a certificate, or who causes to be submitted, or has been a party to preparing or submitting a false application for a certificate, may be denied a certificate by the board on the grounds of the false statement or submission. A certificate holder found to have made such a false statement or who has caused to be submitted, or was a party to preparing or submitting any false application for a certificate, may have the holder's certificate suspended or revoked by the board on the grounds of the false statement or submission.

5. A certified public accountant shall notify the board of such accountant's conviction of an offense included in subsection 2, within thirty days of such conviction. Failure of the certified public accountant to notify the board of the conviction within thirty days of the date of the conviction is sufficient grounds for revocation of the certificate.

6. The board, when considering the denial or revocation of a certificate pursuant to subsections 2 through 5, shall consider the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the applicant or certificate holder; and any other factors the board deems relevant. Character references may be required, but shall not be obtained from certified public accountants. An applicant shall not be denied a certificate because of age, citizenship, race, religion, marital status, or national origin, although the application may require citizenship information.

7. An applicant shall complete at least one hundred fifty semester hours, or the trimester or quarter equivalent of one hundred fifty semester hours, of college education, and receive a baccalaureate or higher degree conferred by a college or university recognized by the board, the total educational program to include a concentration in accounting or what the board determines to be substantially equivalent.

8. An applicant must pass an examination which shall be offered at least twice per year and which shall test the applicant's knowledge of the subjects of accounting and auditing, and such other related subjects as the board may specify by rule, including but not limited to business law and taxation. The examination shall be held at a time determined by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading and determining a passing grade required of an applicant for a certificate. However, the board, to the extent possible, shall ensure the examination, grading of the examination, and the passing grades are uniform with those applicable in all other states. The board may make such use of all or any part of a nationally recognized uniform certified public accountant examination and advisory grading service, and may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to perform the duties of the board with respect to examination. Except as otherwise provided under this section, a person who has partially passed the examination required by this subsection by passing one or more subjects prior to December 31, 2000, has until December 31, 2003, to successfully complete the examination process and qualify for a certificate under the educational requirements in effect prior to December 31, 2000.

9. The board may admit to the examination a candidate who will complete the educational requirements for a baccalaureate degree with a concentration in accounting or what the board determines by rule to be substantially equivalent to a concentration in accounting within one hundred twenty days immediately following the date of the

examination or who has completed those requirements. However, the board shall not report the results of the examination until the candidate has met the educational requirements for a baccalaureate degree and shall not issue the certificate until the candidate has fully satisfied the requirements of subsection 7.

10. Applicants who fail the examination once shall be allowed to take the examination again at a time determined by the board. Applicants who fail the examination twice shall be allowed to take the examination again at the discretion of the board. The board may by rule prescribe the terms and conditions under which a candidate who passes two or more subjects of the examination conducted in this state or by the licensing authority of another state may be reexamined in only the failed subjects and receive credit for the passed subjects. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

11. The board, by rule, may establish an examination fee to be charged each applicant by the board or by a third party administering the examination.

12. An applicant for initial issuance of a certificate must have no less than one year of experience. The experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, as verified by a licensee, meeting requirements prescribed by the board by rule. The experience is acceptable if it was gained through employment in government, industry, academia, or public practice.

13. A person holding a certificate as a certified public accountant issued by the state prior to July 1, 2002, is deemed to have met the requirements of this section.

2001 Acts, ch 55, §5, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.6 Issuance and renewal of certificates — maintenance of competency.

1. *a.* The board shall issue a certificate to a person who makes application on a form prescribed and furnished by the board and who demonstrates either of the following:

(1) That the person's qualifications, including where applicable the qualifications prescribed by section 542.5, satisfy the requirements of this section, or that the person holds a certificate issued under prior law.

(2) That the person holds in good standing a certificate or license to practice as a certified public accountant in another state or equivalent designation from a foreign country, and is eligible under the substantial equivalency or other provisions of section 542.19.

b. The holder of a certificate issued under this section shall only provide attest services in a certified public accounting firm that is issued a permit under section 542.7.

2. A certificate shall be initially issued, and renewed, for a period of not more than three years, but in any event shall expire on a date specified by rule. A person who fails to renew a certificate as a certified public accountant by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. The board shall specify by rule the conditions under which a lapsed certificate may be reinstated, including the imposition of administrative penalties.

3. A certificate holder, for renewal of a certificate under this section, shall participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the board. The board, by rule, may grant an exception to this requirement for a certificate holder who does not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or the use of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. A certificate holder entitled to an exception by rule of the board shall place the word "inactive" adjacent to the holder's certified public accountant title on any business card, letterhead, or other document or device, with the exception of the certificate holder's certified public accountant certificate, on which the certificate holder's certified public accountant title appears.

4. The board shall charge an application fee for initial issuance or renewal of a certificate in an amount prescribed by the board by rule.

5. An applicant for initial issuance or renewal of a certificate shall list in the application all states in which the applicant has applied for or holds a certificate, license, or permit and list any past denial, revocation, or suspension of a certificate, license, or permit. A holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate, license, or permit by another state.

6. The board, by rule, shall require as a condition for renewal of a certificate under this section, by any certificate holder who performs compilation services for the public other than through a

certified public accounting firm, that such individual undergo, no more frequently than once every three years, a peer review conducted in such manner as the board shall by rule specify, and such review shall include verification that such individual has met the competency requirements set out in professional standards for such services.

2001 Acts, ch 55, §6, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.7 Firm permits to practice — attest experience and peer review.

1. The board shall issue or renew a permit to practice to a certified public accounting firm that makes application and demonstrates the qualifications set forth in this section, or to a qualified certified public accounting firm originally licensed in another state that establishes an office in this state or otherwise provides services for clients in this state on a regular or recurring basis. A certified public accounting firm licensed and located in another state or foreign jurisdiction shall be allowed to audit a business unit located in Iowa without a permit to practice if the Iowa business unit is part of a multistate company whose principal offices are located outside of this state. A person or firm holding a permit to practice issued by this state prior to July 1, 2002, is deemed to have met the requirements of this section. A firm must hold a permit issued under this section in order to provide attest services or to use the title "CPAs" or "CPA firm".

2. A permit shall be initially issued and renewed for a period of not more than three years, but in any event shall expire on a date specified by rule. An application for a permit shall be made in such form, and in the case of an application for renewal, between such dates as the board may by rule specify.

3. *a.* An applicant for initial issuance or renewal of a permit to practice as a firm shall show that notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members, and managers, belongs to holders of a certificate issued by a state, and that such partners, officers, shareholders, members, and managers, who perform professional services in this state or for clients in this state, hold a certificate issued under section 542.6 or 542.19.

b. A certified public accounting firm may include a nonlicensee owner, provided all of the following occur:

(1) Such firm designates a licensee who is responsible for the proper registration of the firm, and identifies that individual to the board.

(2) All nonlicensee owners are active participants in the firm or an affiliated entity.

(3) All nonlicensee owners participate in a program of learning designed to maintain professional competency in compliance with rules adopted by the board which shall include requiring compliance with requirements imposed by a regulatory authority charged with regulation of a nonlicensee owner's professional or occupational license which is relevant to the firm's services.

(4) All nonlicensee owners comply with all applicable rules of professional conduct adopted by the board, and their own regulatory authority.

(5) Such firm complies with other requirements as established by the board by rule.

c. A licensee who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm shall meet the experience or competency requirements set out in nationally recognized professional standards for such services.

d. A licensee who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm shall meet the experience or competency requirements established in paragraph *"c"*.

4. An applicant for initial issuance or renewal of a permit to practice as a certified public accounting firm is required to register each office of the firm within this state with the board and to show that all attest and compilation services rendered in this state are under the charge of a person holding a valid certificate issued under section 542.6 or 542.19.

5. The board, by rule, shall establish and charge an application fee for each application for initial issuance or renewal of a permit.

6. An applicant for initial issuance or renewal of a permit shall list in the application all states in which the applicant has applied for or holds a permit as a certified public accounting firm and list any past denial, revocation, or suspension of a permit by another state. A holder of or applicant for a permit shall notify the board in writing within thirty days after an occurrence of any of the following:

a. A change in the identity of a partner, officer, shareholder, member, or manager who performs professional services in this state or for clients in this state.

b. A change in the number or location of offices within this state.

c. A change in the identity of a person in charge of such offices.

d. The issuance, denial, revocation, or suspension of a permit by another state.

7. A firm, after receiving or renewing a permit which is not in compliance with this section as a result of a change in firm ownership or personnel, shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result

in the suspension or revocation of the firm's permit.

8. The board, by rule, shall require as a condition to renewal of a permit to practice as a certified public accounting firm, that an applicant undergo, no more frequently than once every three years, a peer review conducted in such manner as the board specifies. The review shall include a verification that any individual in the firm who is responsible for supervising attest and compilation services and who signs or authorizes someone to sign the accountant's report on a financial statement on behalf of the firm meets the competency requirements set forth in the professional standards for such services.

Such rules shall include reasonable provision for compliance by an applicant showing that the applicant, within the preceding three years, has undergone a peer review that is a satisfactory equivalent to the peer review required under this subsection. An applicant's completion of a peer review program endorsed or supported by the American institute of certified public accountants, or other substantially similar review as determined by the board, satisfies the requirements of this subsection.

9. An applicant for a permit to practice as a certified public accounting firm, at the time of renewal, may request in writing upon forms provided by the board, a waiver from the requirements of subsection 8. The board may grant a waiver upon a showing satisfactory to the board of any of the following:

a. The applicant does not engage in, and does not intend to engage in during the following year, financial reporting areas of practice, including but not limited to financial audits, compilations, and reviews. An applicant granted a waiver pursuant to this paragraph shall immediately notify the board if the applicant engages in such practice, and shall be subject to peer review.

b. Reasons of health.

c. Military service.

d. Instances of hardship.

e. Other good cause as determined by the board.

10. Peer review records are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion. Peer review records are not admissible in evidence in a judicial, administrative, or arbitration proceeding. Information or documents discoverable from sources other than a peer review team do not become nondiscoverable from such other sources because they are made available to or are in the possession of a peer review team. Information or documents publicly available from the American institute of certified public accountants relating to quality or peer review are not privileged or confidential under this subsection. A person or organization participating in the peer review process shall not testify as to the findings, recommendations, evaluations, or opinions of a peer review team in a judicial, administrative, or arbitration proceeding.

11. A person is not liable as a result of an act, omission, or decision made in connection with the person's service on a peer review team, unless the act, omission, or decision is made with actual malice. A person is not liable as a result of providing information to a peer review team, or for disclosure of privileged matters to a peer review team.

12. The costs of the peer review shall be paid by the applicant.

2001 Acts, ch 55, §7, 38; 2002 Acts, ch 1119, §112
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.8 Qualifications for and issuance of a license as a licensed public accountant — renewal of license — firm registration — peer review.

1. The license of a licensed public accountant shall be granted by the board to any person who meets one of the following requirements:

a. The applicant holds a license as an accounting practitioner issued under the laws of this state in full force and effect on July 1, 2002, and has completed additional educational requirements as prescribed by the board.

b. The applicant has satisfactorily completed the examination prescribed in subsection 2 after having met one of the following:

(1) The applicant has had two or more years' actual experience in practice as an accountant as an employee of a certified public accountant, an accounting practitioner, or a licensed public accountant.

(2) The applicant submits evidence satisfactory to the board that the applicant is a graduate of a four-year college or university accredited by the north central accreditation association or other regional accreditation association having equivalent standards, with a major in accounting, or that the applicant is a graduate in accountancy from a business or correspondence school accredited by the accrediting commission for business schools or the accrediting commission of the national home study council.

(3) The applicant submits evidence of at least five years of continuous experience engaged in performing any of the services delineated in section 542.3, subsection 11, on a full-time basis.

2. An examination shall be conducted by the board as often as deemed necessary, but not less than two times per year.

3. The examination shall be designed and given in a manner as to fairly test the applicant's knowledge of accounting. The examination shall not include questions relating to the subject of auditing.

4. The board, in its discretion, may use all or any part of a standard or uniform examination and advisory grading service that is provided or fur-

nished by a national accounting organization or society to assist the board in the performance of its duties under this chapter. The identity of the person taking the examination shall be concealed until after the examination papers have been graded.

5. If an applicant has partially passed an examination given in another state determined by the board to be substantially equivalent to the examination required by this state and meets eligibility requirements that the board finds to be substantially equivalent to those prescribed by this state, the results of the other state's examination shall be accepted as though given in this state.

6. An applicant who successfully passes all subjects in which examined shall be issued a license as a licensed public accountant by the board. The cost of the license shall be based upon the administrative costs of the board and the costs of issuing the license.

7. An applicant who fails the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who passes a portion of the examination shall have the right to be reexamined in the remaining subjects at a future examination, and if the applicant passes the remaining subjects, the applicant shall be considered to have passed the entire examination. An applicant who fails the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which is available to the board.

8. An applicant for initial issuance of a license must have no less than one year of experience. The experience shall include providing any type of service or advice involving the use of accounting, compilation, management advisory, financial advisory, tax, or consulting skills, as verified by a licensee, meeting requirements prescribed by the board by rule. The experience is acceptable if gained through employment in government, industry, academia, or public practice.

9. *a.* The licensed public accountant license shall expire in multiyear intervals as determined by the board. The board shall notify a person licensed under this chapter of the date of expiration of the license and the amount of the fee required for its renewal. The notice shall be mailed at least one month in advance of the expiration date. A person who fails to renew a license as a licensed public accountant by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

b. A licensee, for renewal of a license under this section, shall participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the board. The board, by rule, may grant an exception to this requirement for a licensee who does not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or the use of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. A licensee entitled to an exception by rule of the board shall place the word "inactive" adjacent to the licensee's licensed public accountant title on any business card, letterhead, or other document or device, with the exception of the licensee's licensed public accountant license, on which the licensee's licensed public accountant title appears.

10. The board, in its discretion, may waive an examination and issue a license as a licensed public accountant to an applicant for one of the following:

a. The applicant holds a license as a licensed public accountant, an accounting practitioner, or similar title issued, after examination, by a state which extends by substantial equivalency privileges to a licensed public accountant of this state, and who, at the time of issuance of the registration, possessed the basic qualifications set forth in subsection 1.

b. The applicant has passed the examination required under the laws of another state and possesses the basic qualifications set forth in subsection 1 at the time the applicant applied for registration in this state.

11. A person applying for a license as a licensed public accountant shall pay a fee as determined by the board based upon the costs of issuing such licenses.

12. The board shall issue or renew a permit to practice as a licensed public accounting firm to a person that makes application and demonstrates the qualification set forth in this section or to a licensed public accounting firm originally registered in another state that provides evidence that the qualifications met in the other state are substantially equivalent to those required by this section. A firm must hold a permit issued under this section in order to use the title "LPA" or "Licensed Public Accountants" in a firm name.

a. An applicant for initial issuance or renewal of a permit to practice as a firm under this section must show that notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members, and managers, belongs to the holders of a certificate or license issued by a state, and that such partners, officers, shareholders, members, and managers who perform professional services in

this state or for clients in this state hold a certificate issued under section 542.6 or a license issued under this section.

b. A licensed public accounting firm may include a nonlicensee owner, provided all of the following occur:

(1) Such firm designates a licensee who is responsible for the proper registration of the firm, and identifies that individual to the board.

(2) All nonlicensee owners are active participants in the firm or an affiliated entity.

(3) All nonlicensee owners participate in a program of learning designed to maintain professional competency in compliance with rules adopted by the board which shall include requiring compliance with requirements imposed by a regulatory authority charged with regulation of a nonlicensee owner's professional or occupational license which is relevant to the firm's services.

(4) All nonlicensee owners comply with all applicable rules of professional conduct adopted by the board, and their own regulatory authority.

(5) Such firm complies with other requirements as established by the board by rule.

c. An individual licensee who is responsible for compilation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm shall meet the competency requirements set out in nationally recognized professional standards for such services.

d. An individual licensee who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm shall meet the competency requirements set out in nationally recognized professional standards for such services.

13. An applicant for initial issuance or renewal of a permit to practice as a licensed public accounting firm is required to register each office of the firm within this state with the board and to show that all compilation services rendered in this state are under the charge of a person holding a valid certificate issued under section 542.6 or 542.19, or a license issued under this section.

14. The board, by rule, shall establish and charge an application fee for each application for initial issuance or renewal of a permit.

15. An applicant for initial issuance or renewal of a permit shall list in the application all states in which the applicant has applied for or holds a permit as a certified public accountant or a licensed public accounting firm and list any past denial, revocation, or suspension of a permit by another state. A holder of or applicant for a permit shall notify the board in writing within thirty days after an occurrence of any of the following:

a. A change in the identity of a partner, officer, shareholder, member, or manager who performs professional services in this state or for clients in this state.

b. A change in the number or location of offices within this state.

c. A change in the identity of a person in charge of such offices.

d. The issuance, denial, revocation, or suspension of a permit by another state.

16. A firm, after receiving or renewing a permit which is not in compliance with this section as a result of a change in firm ownership or personnel, shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm permit.

17. The board, by rule, shall require as a condition to renewal of a permit to practice as a licensed public accounting firm, that an applicant undergo, no more frequently than once every three years, a peer review conducted in such manner as the board specifies. The review shall include verification that any individual in the firm who is responsible for supervising compilation services and who signs or authorizes someone to sign the accountant's report on a financial statement on behalf of the firm meets the competency requirements set forth in the professional standards for such services. Such rules shall include reasonable provision for compliance by an applicant showing that the applicant, within the preceding three years, has undergone a peer review that is a satisfactory equivalent to the peer review required under this subsection. An applicant's completion of a peer review program endorsed or supported by the national society of accountants, or other substantially similar review as determined by the board, satisfies the requirements of this subsection.

18. An applicant for a permit to practice as a licensed public accounting firm, at the time of renewal, may request in writing upon forms provided by the board, a waiver from the requirements of subsection 17. The board may grant a waiver upon a showing satisfactory to the board of any of the following:

a. The applicant does not engage in, and does not intend to engage in during the following year, financial reporting areas of practice, including but not limited to compilations. An applicant granted a waiver pursuant to this paragraph shall immediately notify the board if the applicant engages in such practice, and shall be subject to peer review.

b. Reasons of health.

c. Military service.

d. Instances of hardship.

e. Other good cause as determined by the board.

19. Peer review records are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion. Peer review records are not admissible in evidence in a judicial, administrative, or arbitration proceed-

ing. Information or documents discoverable from sources other than a peer review team do not become nondiscoverable from such other sources because they are made available to or are in the possession of a peer review team. Information or documents publicly available from the national society of accountants relating to quality or peer review are not privileged or confidential under this subsection. A person or organization participating in the peer review process shall not testify as to the findings, recommendations, evaluations, or opinions of a peer review team in a judicial, administrative, or arbitration proceeding.

20. A person is not liable as a result of an act, omission, or decision made in connection with the person's service in a peer review team, unless the act, omission, or decision is made with actual malice. A person is not liable as a result of providing information to a peer review team, or for disclosure of privileged matters to a peer review team.

21. The costs of the peer review shall be paid by the applicant.

2001 Acts, ch 55, §8, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.9 Appointment of secretary of state as agent.

Application for a certificate under section 542.6, a license under section 542.8, a permit to practice under section 542.7, or a certificate under section 542.19 by a person or a firm not a resident of this state constitutes appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of a transaction or operation connected with or incidental to services performed by the applicant while a licensee within this state.

2001 Acts, ch 55, §9, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.10 Enforcement against a holder of a certificate, permit, or license.

1. After notice and hearing pursuant to section 542.11, the board may revoke, suspend for a period of time not to exceed two years, or refuse to renew a license; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative penalty not to exceed one thousand dollars per violation; or place any licensee on probation; all with or without terms, conditions, and in combinations of remedies, for any one or more of the following reasons:

a. Fraud or deceit in obtaining a license, which may also result in permanent revocation of the license.

b. Dishonesty, fraud, or gross negligence in the practice of public accounting.

c. Engaging in any activity prohibited under section 542.13 or permitting persons under the licensee's supervision to do so.

d. Violation of a rule of professional conduct adopted by the board under the authority granted by this chapter.

e. Conviction of a felony under the laws of any state of the United States.

f. Conviction of any crime, any element of which is dishonesty or fraud as provided in section 542.5, subsection 2, under the laws of any state of the United States.

g. Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant, licensed public accountant, or accounting practitioner, or the acceptance of the voluntary surrender of a license to practice as a certified public accountant, licensed public accountant, or accounting practitioner to conclude a pending disciplinary action, by any other state or foreign authority for any cause other than failure to pay appropriate fees in the other jurisdiction.

h. Suspension or revocation of the right to practice before any state or federal agency.

i. Conduct discreditable to the public accounting profession.

j. Violation of section 272C.10.

2. Multiple violations arising from the same factual circumstances or from different factual circumstances containing a common error shall be considered as a single violation for the purpose of imposition of an administrative penalty.

3. In lieu of or in addition to any remedy specifically provided in subsection 1, the board may require a licensee to satisfy a peer review or desk review process on such terms as the board may specify, satisfactorily complete a continuing education program, or such additional remedies as the board may specify by rule.

2001 Acts, ch 55, §10, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.11 Investigations and hearings.

1. The board may initiate proceedings under this chapter upon written complaint or on its own motion pursuant to other information received by the board suggesting violations of this chapter or board rules. The board may conduct an investigation as needed to determine whether probable cause exists to initiate such proceedings. In aid of such investigation, the board may issue subpoenas to compel witnesses to testify or persons to produce evidence consistent with the provisions of section 272C.6, subsection 3. The board may also review the publicly available public accounting work product of licensees on a general or random basis to determine whether reasonable grounds exist to initiate proceedings under this chapter or to conduct a more specific investigation.

2. A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on the charges shall be served on the accused not less

than thirty days prior to the date of hearing either personally or by mailing a copy by restricted certified mail to the last known address of the accused.

3. At any hearing, the accused may appear in person or by counsel, produce evidence and witnesses on behalf of the accused, cross-examine witnesses, and examine evidence which is produced against the accused. A firm may appear by a partner, officer, director, shareholder, member, or manager.

4. The board may issue subpoenas in any proceeding to compel witnesses to testify and to produce documentary evidence on behalf of the board and shall issue such subpoenas upon the application of the accused, pursuant to section 17A.13, subsection 1, and section 272C.6, subsection 3.

5. Evidence supporting the board's charges may be presented at any hearing by an assistant attorney general.

6. The decision of the board shall be by a majority vote of a quorum of the board. Licensee discipline shall only be imposed upon the majority vote of the members of the board not disqualified pursuant to section 17A.17, subsection 8, or other applicable law.

7. Judicial review may be sought in accordance with chapter 17A.

2001 Acts, ch 55, §11, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.12 Reinstatement.

1. In any case in which the board has suspended, revoked, or restricted a license, refused to renew a license, or accepted the voluntary surrender of a license to conclude a pending disciplinary investigation or action, the board may, upon written application, modify or terminate the suspension, reissue the license, or modify or remove the restriction, with or without terms and conditions.

2. The board is vested with discretionary authority to specify by rule the manner in which such applications shall be made, the times within which they shall be made, the circumstances in which a hearing will be held, and the grounds upon which such applications will be decided. The rules shall provide at a minimum that the burden is on the licensee to produce evidence that the basis for revocation, suspension, restriction, refusal to renew, or voluntarily surrender no longer exists and that it will be in the public interest for the board to grant the application on such terms and conditions as the board deems desirable.

2001 Acts, ch 55, §12, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.13 Unlawful acts.

1. Only a certified public accountant may issue a report on financial statements of a person, firm, organization, or governmental unit, or offer to render or render any attest service. Only a certified public accountant or licensed public accountant may render compilation services. This restriction does not prohibit such acts by a public official or public employee in the performance of that person's duties; or prohibit the performance by any nonlicensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports on such financial statements. A nonlicensee may prepare financial statements and issue nonattest transmittals or information on such statements or transmittals which do not purport to be in compliance with the statements on standards for accounting and review services.

2. A licensee performing attest or compilation services must provide those services consistent with professional standards.

3. A person not holding a certificate shall not use or assume the title "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

4. A firm shall not provide attest services or assume or use the title "certified public accountants" or the abbreviation "CPAs" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a certified public accounting firm unless the firm holds a permit issued under section 542.7 and ownership of the firm satisfies the requirements of this chapter and rules adopted by the board.

5. A person shall not assume or use the title "licensed public accountant" or the abbreviation "LPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a licensed public accountant unless that person holds a license issued under section 542.8.

6. A firm not holding a permit issued under section 542.8 shall not provide compilation services or assume or use the title "licensed public accountants", the abbreviation "LPAs", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is composed of licensed public accountants.

7. A person or firm not holding a certificate, permit, or license issued under section 542.6, 542.7, 542.8, or 542.19 shall not assume or use the title "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "accredited accountant", or any other title or designation likely to be confused with the title "certified public accountant" or "licensed public accountant", or use any of the abbreviations "CA", "LA", "RA", "AA", or similar abbreviation likely to be confused with the abbreviation "CPA" or "LPA". The title "enrolled agent" or "EA" may be used by individuals so des-

ignated by the internal revenue service. Nothing in this section shall restrict truthful advertising of a bona fide credential or title which in context is not deceptive or misleading to the public.

8. A nonlicensee shall not use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements. The board shall develop and issue language which nonlicensees may use in connection with such financial information.

9. A person or firm not holding a certificate, permit, or license issued under section 542.6, 542.7, 542.8, or 542.19 shall not assume or use any title or designation that includes the word "accountant", "auditor", or "accounting" in connection with any other language that implies that such person or firm holds such a certificate, permit, or license or has special competence as an accountant or auditor. However, this subsection does not prohibit an officer, partner, member, manager, or employee of a firm or organization from affixing that person's own signature to a statement in reference to the financial affairs of such firm or organization with wording which designates the position, title, or office that the person holds, or prohibit any act of a public official or employee in the performance of such person's duties. This subsection does not otherwise prohibit the use of the title or designation "accountant" by persons other than those holding a certificate or license under this chapter.

10. A person holding a certificate or license or firm holding a permit under this chapter shall not use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter. However, the name of one or more former partners, members, managers, or shareholders may be included in the name of a firm or its successor.

11. This section does not apply to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder to engage in the practice of public accountancy or its equivalent in such country, whose activities in this state are limited to providing professional services to a person or firm who is a resident of, government of, or business entity of the country in which the person holds such entitlement, who does not perform attest or compilation services, and who does not issue reports with respect to the financial statements of any other person, firm, or governmental unit in this state, and who does not use in this state any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

12. A holder of a certificate issued under section 542.6 or 542.19 shall not perform attest services in a firm that does not hold a permit issued under section 542.7.

13. An individual licensee shall not issue a report in standard form upon a compilation of financial information through any form of business that does not hold a permit issued under section 542.7 unless the report discloses the name of the business through which the individual is issuing the report and the individual licensee does all of the following:

a. Signs the compilation report identifying the individual as a certified public accountant or licensed public accountant.

b. Meets competency requirements provided in applicable standards.

c. Undergoes, no less frequently than once every three years, a peer review conducted in a manner as specified by the board. The review shall include verification that such individual has met the competency requirements set out in professional standards for such services.

14. This section does not prohibit a practicing attorney from preparing or presenting records or documents customarily prepared by an attorney in connection with the attorney's professional work in the practice of law.

15. *a.* A licensee shall not for a commission recommend or refer a client to any product or service, or for a commission recommend or refer another person to any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client any of the following:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence.

(3) An examination of prospective financial information.

The prohibitions under this paragraph *"a"* apply during the period in which the licensee is engaged to perform any of the services identified in subparagraphs (1) through (3), and the period covered by any historical financial statements involved in such services.

b. A licensee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

c. A licensee who accepts a referral fee for recommending a service of a licensee or referring a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

16. *a.* A licensee shall not do any of the following:

(1) Perform professional services for a contingent fee, or receive such fee from a client for whom the licensee or the licensee's firm performs any of the following:

(a) An audit or review of a financial statement.

(b) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence.

(c) An examination of prospective financial information.

(2) Prepare for a client an original or amended tax return or claim for a tax refund for a contingent fee.

b. Paragraph *"a"* applies during the period in which the licensee is engaged to perform any of the listed services and the period covered by any historical financial statements involved in such listed services.

c. For purposes of this subsection, a contingent fee is a fee established for the performance of a service pursuant to an arrangement in which a fee will not be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee shall not be considered as being a contingent fee if fixed by a court or other public authority, or, in a tax matter, if determined based on the results of a judicial proceeding or the findings of a governmental agency. A licensee's fee may vary depending on the complexity of the services rendered.

d. Nothing contained in this chapter shall be construed to authorize any person engaged in the practice as a certified public accountant or licensed public accountant or any member or employee of such firm to engage in the practice of law individually or within entities licensed under this chapter.

2001 Acts, ch 55, §13, 38; 2002 Acts, ch 1119, §113

Section is effective July 1, 2002; 2001 Acts, ch 55, §38

NEW section

542.14 Injunction against unlawful acts, civil penalties, and consent agreements.

1. If, as a result of an investigation under section 542.11 or otherwise, the board believes that a person or firm has engaged, or is about to engage, in an act or practice which constitutes or will constitute a violation of section 542.13, the board may make application to the district court for an order enjoining such act or practice. Upon a showing by the board that such person or firm has engaged, or is about to engage, in any such act or practice, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.

2. In addition to a criminal penalty provided for in section 542.15, the board may issue an order to require compliance with section 542.13 and may impose a civil penalty not to exceed one thousand dollars for each offense upon a person who is not a licensee under this chapter and who engages in conduct prohibited by section 542.13. Each day of a continued violation constitutes a separate offense.

3. The board, in determining the amount of a civil penalty to be imposed, may consider any of the following:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The interest of the public.

4. The board, before issuing an order under this section, shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a licensee under this chapter.

5. The board, in connection with a proceeding under this section, may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce the subpoena.

6. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review pursuant to section 17A.19.

7. If a person fails to pay a civil penalty within thirty days after entry of an order imposing the civil penalty, or if the order is stayed pending an appeal, within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

8. An action to enforce an order under this section may be joined with an action for an injunction.

9. The board, in its discretion and in lieu of prosecuting a first offense under this section, may enter into a consent agreement with a violator, or with a person guilty of aiding or abetting a violator, which acknowledges the violation and the violator's agreement to refrain from any further violations.

2001 Acts, ch 55, §14, 38

Section is effective July 1, 2002; 2001 Acts, ch 55, §38

NEW section

542.15 Criminal penalties.

1. A person who violates a provision of section 542.13 is guilty of a serious misdemeanor.

2. If the board has reason to believe that a person has committed a violation subject to subsec-

tion 1, the board may certify the facts to the attorney general of this state, or to the county attorney of the county where the person maintains a business office, who, in the attorney general's or county attorney's discretion, may initiate an appropriate criminal proceeding.

3. If, after an investigation under section 542.11 or otherwise, the board has reason to believe that a person or firm has knowingly engaged in an act or practice that constitutes a violation subject to subsection 1, the board may submit its information to the attorney general of any state, or other appropriate law enforcement official, who, in such official's discretion, may initiate an appropriate criminal proceeding.

2001 Acts, ch 55, §15, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.16 Single act evidence of practice.

In an action brought under section 542.14 or 542.15, evidence of the commission of a single act prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order, or conviction, without evidence of a general course of conduct.

2001 Acts, ch 55, §16, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.17 Confidential communications.

A licensee shall not voluntarily disclose information communicated to the licensee by a client relating to and in connection with services rendered to the client by the licensee, except with the permission of the client, or an heir, successor, or personal representative of the client. Such information is deemed to be confidential. However, this section shall not be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in a court proceeding, in an investigation or proceeding under this chapter or chapter 272C, in an ethical investigation conducted by a private professional organization, in the course of a peer review, to another person active in the licensee's firm performing services for that client on a need-to-know basis, to persons associated with the investigative entity who need this information for the sole purpose of assuring quality control, or as otherwise required by law.

This section does not preclude a licensee from filing a complaint with, or responding to an inquiry made by, the board, a taxing authority or law enforcement authority of this state, or a licensing or similar authority of another state or the United States.

2001 Acts, ch 55, §17, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.18 Licensees' working papers — clients' records.

1. Subject to section 542.17, all statements, records, schedules, working papers, and memoranda made by a licensee or a partner, shareholder, officer, director, member, manager, or employee of a licensee, incident to, or in the course of, rendering services to a client, except reports submitted by the licensee to the client and except for records that are part of the client's records, are the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. Such statement, record, schedule, working paper, or memorandum shall not be sold, transferred, or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than a surviving partner, stockholder, or member of the licensee, or any combined or merged firm or successor in interest to the licensee. This section shall not be construed as prohibiting a temporary transfer of working papers or other material necessary in the course of carrying out peer reviews or as otherwise interfering with the disclosure of information pursuant to section 542.17.

2. A licensee shall furnish to a client or former client, upon request and reasonable notice, the following:

a. A copy of the licensee's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

b. Accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.

3. This chapter does not require a licensee to keep any working papers beyond the period prescribed in any other applicable statute.

2001 Acts, ch 55, §18, 38
Section is effective July 1, 2002; 2001 Acts, ch 55, §38
NEW section

542.19 Substantial equivalency.

1. An individual whose principal place of business is not in this state shall be granted a certificate to practice as a certified public accountant in this state if the board determines that the individual holds in good standing a valid certificate or license to practice as a certified public accountant in the state in which the individual's principal place of business is located, and that the individual satisfies one of the following conditions:

a. The other state's licensing standards are substantially equivalent to those required by this chapter.

b. The applicant's individual qualifications are substantially equivalent to those required by section 542.5.

c. The applicant satisfies all of the following:

(1) The applicant passed the examination required for issuance of the applicant's certificate or license with grades that would have been passing grades at the time in this state;

(2) The applicant has at least four years of experience within the ten years immediately preceding the application which occurred after passing the examination upon which the applicant's certificate or license was based and which in the board's opinion is substantially equivalent to that required by section 542.5, subsection 12; and,

(3) If the applicant's certificate or license was issued more than four years prior to the filing of the application in this state, the applicant has fulfilled the continuing professional education requirements described in section 542.6, subsection 3.

2. An individual who holds in good standing a valid certificate or license to practice as a certified public accountant in another state and who desires to establish the holder's principal place of business in this state shall request the issuance of a certificate from the board prior to establishing such principal place of business. The board shall issue a certificate to an individual who satisfies one or more of the conditions described in subsection 1.

3. The board shall issue a certificate to a holder of a substantially equivalent foreign designation, upon satisfaction of all of the following:

a. The foreign authority which issued the designation allows a person who holds a valid certificate issued by this state to obtain such foreign authority's comparable designation.

b. The foreign designation satisfies all of the following:

(1) The designation was issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended.

(2) The designation entitles the holder to issue reports on financial statements.

(3) The designation was issued upon the basis of education, examination, and experience requirements established by the foreign authority or by law.

c. The applicant satisfies all of the following:

(1) The designation was issued based on education and examination standards substantially equivalent to those in effect in this state at the time the foreign designation was granted.

(2) The applicant satisfies an experience requirement, substantially equivalent to the requirement set out in section 542.5, subsection 12, in the jurisdiction which issued the foreign designation or has completed four years of professional experience in this state; or meets equivalent requirements prescribed by the board by rule, within the ten years immediately preceding the application.

(3) The applicant has passed qualifying examinations in national standards and the laws, rules, and code of ethical conduct in effect in this state.

(4) The applicant shall list in the application all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy. A holder of a certificate issued under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

4. An applicant under this section shall comply with all applicable provisions of section 542.5, subsections 1 through 6, and section 542.6.

5. The board shall adopt rules to implement this section which will expedite the application process to the extent reasonably possible.

2001 Acts, ch 55, §19, 38

Section is effective July 1, 2002; 2001 Acts, ch 55, §38

NEW section

CHAPTER 542A

GRAIN BARGAINING AGENTS

Transferred to chapter 203A

CHAPTER 542B

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Standards for land surveying;
board to adopt rules; see chapter 355
This chapter not enacted as a part of this title;
transferred from chapter 114 in Code 1993

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542B.1 Licensed engineers and surveyors.

A person shall not engage in the practice of engineering or land surveying in the state unless the person is a licensed professional engineer or a licensed land surveyor as provided in this chapter, except as permitted by section 542B.26.

[C24, 27, 31, 35, 39, §**1854;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.1]

C93, §542B.1

95 Acts, ch 65, §1; 96 Acts, ch 1055, §4

542B.2 Terms defined.

1. The *"board"* means the engineering and land surveying examining board provided by this chapter.

2. The term *"engineering documents"* as used in this chapter includes all plans, specifications, drawings, and reports, if the preparation of such documents constitutes or requires the practice of engineering.

3. The term *"engineer intern"* as used in this chapter means a person who passes an examination in the fundamental engineering subjects, but does not entitle the person to claim to be a professional engineer.

4. The term *"in responsible charge"* as used in this chapter means having direct control of and personal supervision over any land surveying work or work involving the practice of engineering. One or more persons, jointly or severally, may be in responsible charge.

5. *a.* The practice of *"land surveying"* includes providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location of property lines or boundaries, and the utilization, development, and interpretation of these facts into an orderly survey, plat, or map. The practice of land surveying includes, but is not limited to, the following:

(1) Locating, relocating, establishing, reestablishing, setting, or resetting of permanent monumentation for any property line or boundary of any tract or parcel of land. Setting permanent monuments constitutes an improvement to real property.

(2) Making any survey for the division or subdivision of any tract or parcel of land.

(3) Determination, by the use of the principles of land surveying, of the position for any permanent survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point excluding the responsibility of engineers pursuant to section 314.8.

(4) Creating and writing metes and bounds descriptions as defined in section 354.2.

(5) Geodetic surveying for determination of

the size and shape of the earth both horizontally and vertically for the precise positioning of permanent land survey monuments on the earth utilizing angular and linear measurements through spatially oriented spherical geometry.

(6) Creation, preparation, or modification of electronic or computerized data, including land information systems and geographical information systems, relative to the performance of the activities identified in subparagraphs (1) through (5).

b. This subsection does not prohibit a professional engineer from practicing any aspect of the practice of engineering. A land surveyor is not prohibited from performing engineering surveys as defined in the practice of engineering.

c. A person is construed to be engaged in or offering to be engaged in the practice of land surveying if the person does any of the following:

(1) Engages in land surveying.

(2) Makes a representation by verbal claim, sign, advertisement, letterhead, card, or other manner that the person is a land surveyor.

(3) Uses any title which implies that the person is a land surveyor or that the person is licensed under this chapter.

(4) Holds the person's self out as able to perform, or who does perform, any service or work included in the practice of land surveying.

6. The term *"land surveying documents"* as used in this chapter includes all plats, maps, surveys, and reports, if the preparation thereof constitutes or requires the practice of land surveying.

7. The term *"land surveyor"* as used in this chapter shall mean a person who engages in the practice of land surveying as defined in this section.

8. *"Practice of engineering"* as used in this chapter means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences, such as consultation, investigation, evaluation, planning, design and design coordination of engineering works and systems, planning the use of land and water, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications, any of which embraces such services or creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property, and including such other professional services as may be necessary to the planning, progress, and completion of the services identified in this paragraph. *"Design coordination"* includes the review and coordination of technical submissions prepared by others, including as appropriate and without limitation, consulting engineers, architects, landscape architects, land surveyors, and other professionals working under the direction of the engineer. *"Engineering surveys"* includes all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

A person is construed to be engaged in the practice of engineering if the person does any of the following:

a. Practices any branch of the profession of engineering.

b. Makes a representation by verbal claim, sign, advertisement, letterhead, card, or other manner that the person is a professional engineer.

c. Uses any title which implies that the person is a professional engineer or that the person is certified under this chapter.

d. The person holds the person's self out as able to perform, or who does perform, any service or work included in the practice of engineering.

9. The term *"professional engineer"* as used in this chapter means a person, who, by reason of the person's knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education or practical experience, is qualified to engage in the practice of engineering.

[C24, 27, 31, 35, 39, §**1855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.2]

84 Acts, ch 1104, §2

C93, §542B.2

94 Acts, ch 1107, §13; 95 Acts, ch 65, §2, 3; 98 Acts, ch 1037, §1

542B.3 Engineering and land surveying examining board created.

An engineering and land surveying examining board is created within the professional licensing and regulation division of the department of commerce. The board consists of four members who are licensed professional engineers, one member who is a licensed land surveyor or a professional engineer who is also a licensed land surveyor, and two members who are not licensed professional engineers or land surveyors and who shall represent the general public. Members shall be appointed by the governor subject to confirmation by the senate. A licensed member shall be actively engaged in the practice of engineering or land surveying and shall have been so engaged for five years preceding the appointment, the last two of which shall have been in Iowa. Insofar as practicable, licensed engineer members of the board shall be from different branches of the profession of engineering. Professional associations or societies composed of licensed engineers or licensed land

surveyors may recommend the names of potential board members whose profession is representative of that association or society to the governor. However, the governor is not bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of professional engineers or land surveyors.

[C24, 27, 31, 35, 39, §**1856;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.3]

84 Acts, ch 1104, §3; 86 Acts, ch 1245, §716; 88 Acts, ch 1125, §1

C93, §542B.3

96 Acts, ch 1055, §5

Confirmation, see §2.32

542B.4 Terms of office.

Appointments shall be for three-year terms and shall commence and end as provided by section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor and shall be subject to senate confirmation. Members shall serve no more than three terms or nine years, whichever is least.

[C24, 27, 31, 35, 39, §**1857, 1858;** C46, 50, 54, 58, 62, 66, 71, 73, §114.4, 114.5; C75, 77, 79, 81, §114.4]

C93, §542B.4

542B.5 Reserved.

542B.6 Official seal — bylaws.

The board shall adopt and have an official seal which shall be affixed to all certificates of licensure granted and may make all bylaws and rules, not inconsistent with law, necessary for the proper performance of its duty.

[C24, 27, 31, 35, 39, §**1859;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.6]

C93, §542B.6

96 Acts, ch 1055, §6

542B.7 Attorney general to assist — general powers.

Such board, or any committee thereof, shall be entitled to the counsel and to the services of the attorney general, and shall have power to compel the attendance of witnesses, pay witness fees and mileage, and may take testimony and proofs and may administer oaths concerning any matter within its jurisdiction.

[C24, 27, 31, 35, 39, §**1860;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.7]

C93, §542B.7

Administration of oaths, §63A.2

542B.8 Expenses — compensation.

Members of the board are entitled to receive all actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C24, 27, 31, 35, 39, §**1861;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.8]

86 Acts, ch 1245, §717

C93, §542B.8

Compensation; see §114.8, Code 1985, and §7E.6(1)

542B.9 Organization of the board — staff.

The board shall elect annually from its members a chairperson and a vice chairperson. The administrator of the professional licensing and regulation division of the department of commerce shall hire and provide staff to assist the board in implementing this chapter. The board shall hold at least one meeting at the location of the board's principal office, and meetings shall be called at other times by the administrator at the request of the chairperson or four members of the board. At any meeting of the board, a majority of members constitutes a quorum.

[C24, 27, 31, 35, 39, §**1862;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.9]

86 Acts, ch 1245, §718; 88 Acts, ch 1158, §19

C93, §542B.9

542B.10 Annual report. Repealed by 98 Acts, ch 1119, § 11.

542B.11 Staff — duties.

The staff shall keep on file a record of all certificates of licensure granted and shall make annual revisions of the record as necessary. In revising the record the staff shall communicate biennially by mail with every professional engineer and surveyor licensed under this chapter, as provided in section 542B.18.

[C24, 27, 31, 35, 39, §**1864;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.11]

84 Acts, ch 1104, §1; 85 Acts, ch 68, §1; 90 Acts, ch 1168, §15

C93, §542B.11

96 Acts, ch 1055, §5, 6

542B.12 Disposition of fees.

The staff shall collect and account for all fees provided for by this chapter and pay the fees to the treasurer of state who shall deposit the fees in the general fund of the state.

[C24, 27, 31, 35, 39, §**1865;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.12]

90 Acts, ch 1168, §16; 90 Acts, ch 1261, §36

C93, §542B.12

94 Acts, ch 1107, §87

542B.13 Applications and examination fees.

Applications for licensure shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and a detailed summary of the ap-

plicant's technical work, and the board shall not require that a recent photograph of the applicant be attached to the application form. An applicant is not ineligible for licensure because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. The board may consider the past felony record of an applicant. The board may require that an applicant submit references. Applications for examination in fundamentals in the practice of engineering and land surveying shall be accompanied by application fees determined by the board. The board shall determine the annual cost of administering the examinations and shall set the fees accordingly.

[C24, 27, 31, 35, 39, §**1866;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.13]

84 Acts, ch 1104, §4

C93, §542B.13

95 Acts, ch 65, §4; 96 Acts, ch 1055, §7

542B.14 General requirements for licensure — temporary permit to practice engineering.

Each applicant for licensure as a professional engineer or land surveyor shall have all of the following requirements, respectively, to wit:

1. As a professional engineer:

a. (1) Graduation from a course in engineering of four years or more in a school or college which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental engineering subjects.

(2) However, prior to July 1, 1988, in lieu of compliance with subparagraph (1), the board may accept eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental engineering subjects.

(3) Between July 1, 1988, and June 30, 1991, in lieu of compliance with subparagraph (1), the board shall require satisfactory completion of a minimum of two years of postsecondary study in mathematics, physical sciences, engineering technology, or engineering at an institution approved by the board, and may accept six years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental engineering subjects.

(4) For applicants who obtained an associate of science degree or a more advanced degree between July 1, 1983, and June 30, 1988, in lieu of compliance with subparagraph (1), the board shall only require compliance with the provisions of subparagraph (3) with regard to areas of study and practical experience. Applicants qualifying under this subparagraph must meet the requirements of paragraph *"b"*, by June 30, 2001.

b. Successfully passing a written, oral, or written and oral examination in fundamental engineering subjects which is designed to show the knowledge of general engineering principles. A person passing the examination in fundamental engineering subjects is entitled to a certificate as an engineer intern.

c. In addition to any other requirement, a specific record of four years or more of practical experience in engineering work which is of a character satisfactory to the board.

d. Successfully passing a written, oral, or written and oral examination designed to determine the proficiency and qualifications to engage in the practice of engineering. No applicant shall be entitled to take this examination until the applicant shows the necessary practical experience in engineering work.

2. As a land surveyor:

a. (1) Graduation from a course of two years or more in mathematics, physical sciences, mapping and surveying, or engineering in a school or college and six years of practical experience, all of which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental land surveying subjects.

(2) However, prior to July 1, 1988, in lieu of compliance with subparagraph (1), the board may accept eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental land surveying subjects.

b. Successfully passing a written, oral, or written and oral examination in fundamental land surveying subjects which is designed to show the knowledge of general land surveying principles.

c. In addition to any other requirement, a specific record of four years or more of practical experience in land surveying work which is of a character satisfactory to the board.

d. Successfully passing a written, oral, or written and oral examination designed to determine the proficiency and qualifications to engage in the practice of land surveying. No applicant shall be entitled to take this examination until the applicant shows the necessary practical experience in land surveying work.

The board may establish by rule a temporary permit and a fee to permit an engineer to practice for a period of time without applying for licensure.

[C39, §**1866.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.14]

84 Acts, ch 1104, §5; 87 Acts, ch 165, §1, 2

C93, §542B.14

94 Acts, ch 1107, §14; 95 Acts, ch 65, §5; 96 Acts, ch 1055, §7; 98 Acts, ch 1054, §1

542B.15 Examinations — report required.

Examinations for licensure shall be given as often as deemed necessary by the board, but no less than one time per year. The scope of the examinations and the methods of procedure shall be

prescribed by the board. Any written examination may be given by representatives of the board. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. As soon as practicable after the close of each examination, a report shall be filed in the office of the secretary of the board by the board. The report shall show the action of the board upon each application and the secretary of the board shall notify each applicant of the result of the applicant's examination. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

[C24, 27, 31, 35, 39, §**1867;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.15]

C93, §542B.15

96 Acts, ch 1055, §6

542B.16 Seal — certificate of responsibility.

1. Each licensee, upon licensure, shall obtain a seal of a design approved by the board, bearing the licensee's name, Iowa license number, and the words "professional engineer" or "land surveyor" or both, as the case may be. A legible rubber stamp or other facsimile of the seal may be used and shall have the same effect as the use of the actual seal.

2. All engineering documents and land surveying documents shall be dated and shall contain all of the following:

a. The signature of the licensee in responsible charge.

b. A certification that the work was done by the licensee or under the licensee's direct personal supervision.

c. The Iowa legible seal of the licensee.

3. An agency, subdivision, or municipal corporation of this state, or an officer of the state, subdivision, or municipal corporation, shall not file for record or approve any engineering document or land surveying document which does not comply with this section.

4. A licensee shall not place the licensee's signature or seal on any engineering document or land surveying document unless the licensee was in responsible charge of the work, except that the licensee may do so if the licensee contributed to the work and the licensee in responsible charge has signed and certified the work.

5. Violation of this section by a licensee shall be deemed fraud and deceit in the licensee's practice.

[C24, 27, 31, 35, 39, §**1868;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.16]

C93, §542B.16

96 Acts, ch 1055, §1

542B.17 Certificate.

The board shall issue a certificate of licensure as a professional engineer to an applicant who has passed the examination as a professional engineer and who has paid an additional fee. The certificate shall be signed by the chairperson and secretary of the board under the seal of the board. The certificate shall authorize the applicant to engage in the practice of engineering. The certificate shall not carry with it the right to practice land surveying, unless specifically so stated on the certificate, which permission shall be granted by the board without additional fee in cases where the applicant duly qualifies as a land surveyor as prescribed by the rules of the board.

[C24, 27, 31, 35, 39, §**1869;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.17]

C93, §542B.17

95 Acts, ch 65, §6; 96 Acts, ch 1055, §7

542B.18 Expirations and renewals.

Certificates of licensure shall expire in multiyear intervals as determined by the board. It shall be the duty of the secretary of the board to notify every person licensed under this chapter, of the date of expiration of the certificate and the amount of the fee that shall be required for its renewal; such notice shall be mailed at least one month in advance of the date of the expiration of the certificate. Renewal may be effected by the payment of a fee the amount of which shall be determined by the board. The failure on the part of any licensee to renew a certificate in the month of expiration as required above shall not deprive a person of the right of renewal. A person who fails to renew a certificate by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty. For the duration of any war in which the United States is engaged the board may, in its discretion, defer the collection of renewal fees without penalty, which have or may become due from licensed professional engineers who are employed in the war effort, and residing outside the state, or who are members of the armed forces of the United States, and may renew the engineering certificates of licensed professional engineers.

[C27, 31, 35, §1869-b1; C39, §**1869.1;** C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.18]
C93, §542B.18
96 Acts, ch 1055, §5, 6, 8

542B.19 Land surveyor's certificate.

To any applicant who shall have passed the examination as a land surveyor and who shall have paid an additional fee as set by the board, the board shall issue a certificate of licensure signed by its chairperson and secretary under the seal of the board, which certificate shall authorize the applicant to practice land surveying as defined in this chapter and to administer oaths to assistants and to witnesses produced for examination, with reference to facts connected with land surveys being made by such land surveyor.

[C24, 27, 31, 35, 39, §**1870;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.19]
C93, §542B.19
96 Acts, ch 1055, §6
Administration of oaths, chapter 63A

542B.20 Foreign licensees.

A person holding a certificate of licensure as a professional engineer or land surveyor issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of any foreign country, based on requirements and qualifications, in the opinion of the board equal to or higher than the requirements of this chapter, may be licensed without further examination.

A temporary permit to practice engineering may be granted to a person licensed in another state, as prescribed by rule, provided that before practicing within the state the person shall have applied for licensure or for a temporary permit to practice without applying for licensure and shall have paid the fee prescribed by the board.

The application for licensure shall be accompanied by a fee as determined by the board. After the board determines the applicant to be qualified under this section, a certificate of licensure shall be issued upon receipt of an additional fee as determined by the board. All fees collected shall be transmitted to the treasurer of state and deposited as provided by law.

[C24, 27, 31, 35, 39, §**1871;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.20]
84 Acts, ch 1104, §6; 90 Acts, ch 1168, §17
C93, §542B.20
96 Acts, ch 1055, §5, 6, 9

542B.21 Suspension, revocation, or reprimand.

The board shall have the power by a five-sevenths vote of the entire board to suspend for a period not exceeding two years, or to revoke the certificate of licensure of, or to reprimand any licensee who is found guilty of the following acts or offenses:

1. Fraud in procuring a certificate of licensure.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony under the laws of the United States, of any state or possession of the United States, or of any other country. A copy of the record of conviction or plea of guilty is conclusive evidence.
6. Revocation or suspension of licensure to engage in the practice of engineering or land surveying, or other disciplinary action by the licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or other disciplinary action is prima facie evidence of such fact.
7. Fraud in representations as to skill or ability.
8. Use of untruthful or improbable statements in advertisements.
9. Willful or repeated violations of the provisions of this Act.*

[C24, 27, 31, 35, 39, §**1872;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.21]
85 Acts, ch 195, §13
C93, §542B.21
95 Acts, ch 65, §7, 8; 96 Acts, ch 1055, §7, 10, 11
*See 77 Acts, ch 95, §10

542B.22 Procedure.

Proceedings for any action under section 542B.21 shall be begun by filing with the board written charges against the accused. Upon the filing of charges the board may request the department of inspections and appeals to conduct an investigation into the charges. The department of inspections and appeals shall report its findings to the board, and the board shall designate a time and place for a hearing, and shall notify the accused of this action and furnish the accused a copy of all charges at least thirty days prior to the date of the hearing. The accused has the right to appear personally or by counsel, to cross-examine witnesses, or to produce witnesses in defense.

[C24, 27, 31, 35, 39, §**1873;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.22]
88 Acts, ch 1158, §20
C93, §542B.22

542B.23 Reserved.

542B.24 Injunction.

Any person who is not legally authorized to practice in this state according to the provisions of this chapter, and shall practice, or shall in connection with the person's name use any designation

tending to imply or designate the person as a professional engineer or land surveyor, may be restrained by permanent injunction.

[C24, 27, 31, 35, 39, §**1875;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.24]

C93, §542B.24

542B.25 Violations.

Any person who violates such permanent injunction or presents or attempts to file as the person's own the certificate of licensure of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of licensure, or who shall falsely impersonate another practitioner of like or different name, or who shall use or attempt to use a revoked certificate of licensure, shall be deemed guilty of a fraudulent practice.

[C24, 27, 31, 35, §1875; C39, §**1875.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.25]

C93, §542B.25

96 Acts, ch 1055, §6

542B.26 Applicability of chapter.

This chapter shall not apply to any full-time employee of any corporation while doing work for that corporation, except in the case of corporations offering their services to the public as professional engineers or land surveyors.

Corporations engaged in designing buildings or works for public or private interests not their own shall be deemed to be engaged in the practice of engineering within the meaning of this chapter. With respect to such corporations all principal designing or constructing engineers shall hold certificates of licensure issued under this chapter. This chapter shall not apply to corporations engaged solely in constructing buildings and works.

This chapter shall not apply to any professional engineer or land surveyor working for the United States government, nor to any professional engineer or land surveyor employed as an assistant to a professional engineer or land surveyor licensed under this chapter if such assistant is not placed in responsible charge of any work involving the practice of engineering or land surveying work, nor to the operation or maintenance of power and mechanical plants or systems.

[C24, 27, 31, 35, 39, §**1876;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §114.26]

C93, §542B.26

95 Acts, ch 65, §9; 96 Acts, ch 1055, §4, 7

542B.27 Civil penalty.

1. In addition to any other penalties provided for in this chapter, the board may by order impose a civil penalty upon a person who is not licensed under this chapter as a professional engineer or a land surveyor and who does any of the following:

a. Engages in or offers to engage in the practice of professional engineering or land surveying.

b. Uses or employs the words "professional engineer" or "land surveyor", or implies authorization to provide or offer professional engineering or land surveying services, or otherwise uses or advertises any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the person is a professional engineer or land surveyor or is engaged in the practice of professional engineering or land surveying.

c. Presents or attempts to use the certificate of licensure or the seal of a professional engineer or land surveyor.

d. Gives false or forged evidence of any kind to the board or any member of the board in obtaining or attempting to obtain a certificate of licensure.

e. Falsely impersonates any licensed professional engineer or land surveyor.

f. Uses or attempts to use an expired, suspended, revoked, or nonexistent certificate of licensure.

g. Knowingly aids or abets an unlicensed person who engages in any activity identified in this subsection.

2. A civil penalty imposed shall not exceed one thousand dollars for each offense. Each day of a continued violation constitutes a separate offense.

3. In determining the amount of a civil penalty to be imposed, the board may consider any of the following:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The interest of the public.

4. Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted in the same manner as provided in section 542B.22.

5. The board, in connection with a proceeding under this section, may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce the subpoena.

6. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review in accordance with section 17A.19.

7. If a person fails to pay a civil penalty within thirty days after entry of an order under subsection 1, or if the order is stayed pending an appeal within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and

costs.

8. An action to enforce an order under this section may be joined with an action for an injunction.

96 Acts, ch 1055, §2; 96 Acts, ch 1219, §29; 97 Acts, ch 23, §65

542B.28 and 542B.29 Reserved.

542B.30 Fees.

The board shall set the fees for application, licensure, and renewal of licensure based upon the administrative costs of sustaining the board. The fees shall include, but shall not be limited to, the costs for:

1. Per diem, expenses and travel for board members.
2. Office facilities, supplies, and equipment.
3. Legal, technical and clerical assistance.

[C75, 77, 79, 81, §114.30]
C93, §542B.30
96 Acts, ch 1055, §6

542B.31 Public members.

The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

[C75, 77, 79, 81, §114.31]
C93, §542B.31

542B.32 Disclosure of confidential information.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §114.32]
C93, §542B.32

542B.33 and 542B.34 Reserved.

542B.35 Exception — real property inspection report.

1. *"Real property inspection report"* means a report stating whether, after visual examination, a parcel of real property which is being collateralized is materially impaired.

2. A real property inspection report is not a property survey or an engineering document and is exempt from the provisions of this chapter and the rules adopted under this chapter which apply to property surveys. A real property inspection report shall not be filed or recorded with the county recorder. The real property inspection report shall include all of the following:

a. A clear and prominent statement of disclosure to the buyer that the real property inspection report is not a property survey or an engineering document and should not be relied upon as such, and that property boundaries shown may be approximate only.

b. A clear and prominent statement that the report is for the use of the mortgage lender or its assigns and determination of the actual placement of boundary lines should be addressed by a property survey in accordance with the provisions of this chapter.

c. A person who completes the real property inspection report shall not claim to be a licensed land surveyor or a professional engineer for purposes of the report.

90 Acts, ch 1060, §1
C91, §114.35
C93, §542B.35
96 Acts, ch 1055, §5; 97 Acts, ch 23, §66

CHAPTER 542C

PUBLIC ACCOUNTANTS

Repealed by 2001 Acts, ch 55, §36, 38; see chapter 542
Repeal is effective July 1, 2002; recognition of certificates, licenses, and permits issued prior to July 1, 2002; validity of actions or proceedings prior to July 1, 2002;
2001 Acts, ch 55, §36 – 38

CHAPTER 543

WAREHOUSES FOR AGRICULTURAL PRODUCTS

Transferred to chapter 203C

CHAPTER 543A

GRAIN DEPOSITORS AND SELLERS INDEMNIFICATION

Transferred to chapter 203D

CHAPTER 543B

REAL ESTATE BROKERS AND SALESPERSONS

This chapter not enacted as a part of this title;
transferred from chapter 117 in Code 1993

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SUBCHAPTER II

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SUBCHAPTER I

GENERAL PROVISIONS

543B.1 License mandatory.

A person shall not, directly or indirectly, with the intention or upon the promise of receiving any valuable consideration, offer, attempt, agree to perform, or perform any single act as a real estate broker whether as a part of a transaction or as an entire transaction, or represent oneself as a real estate broker, broker associate, or salesperson, without first obtaining a license and otherwise complying with the requirements of this chapter.

[C31, 35, §1905-c23; C39, §**1905.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.1; 81 Acts, ch 54, §1]

C93, §543B.1

95 Acts, ch 170, §1

543B.2 Individual licenses necessary.

A partnership, association, or corporation shall not be granted a license, unless every member or officer of the partnership, association, or corporation who actively participates in the brokerage business of the partnership, association, or corporation, holds a license as a real estate broker or salesperson, and unless every employee who acts as a salesperson for the partnership, association, or corporation holds a license as a real estate broker or salesperson. At least one member or officer of each partnership, association, or corporation shall be a real estate broker.

[C31, 35, §1905-c24; C39, §**1905.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.2; 81 Acts, ch 54, §2]

C93, §543B.2

543B.3 Broker — definition.

As used in this chapter, *"real estate broker"* means a person acting for another for a fee, commission, or other compensation or promise, whether it be for all or part of a person's time, and who engages directly or indirectly in any of the following acts:

1. Sells, exchanges, purchases, rents, or leases real estate.
2. Lists, offers, attempts, or agrees to list real estate for sale, exchange, purchase, rent, or lease.
3. Advertises or holds oneself out as being engaged in the business of selling, exchanging, purchasing, renting, leasing, or managing real estate.
4. Negotiates, or offers, attempts, or agrees to negotiate, the sale, exchange, purchase, rental, or lease of real estate.
5. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.
6. Collects, or offers, attempts, or agrees to collect, rent for the use of real estate.
7. Assists or directs in the procuring of prospects, intended to result in the sale, exchange, purchase, rental, or leasing of real estate.
8. Assists or directs in the negotiation of any transaction intended to result in the sale, exchange, purchase, rental, or leasing of real estate.
9. Prepares offers to purchase or purchase agreements, listing contracts, agency disclosures, real property residential and agricultural rental agreements, real property commercial rental agreements of one year or less, and groundwater hazard statements, including any modifications, amendments, or addendums to these specific documents.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.3]

C93, §543B.3

95 Acts, ch 170, §2; 2002 Acts, ch 1031, §1

NEW subsection 9

543B.4 Real estate — definition.

As used in this chapter, *"real estate"* means real property wherever situated, and includes any and all leaseholds or any other interest or estate in land, and business opportunities which involve any interest in real property.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.4]

C93, §543B.4

95 Acts, ch 170, §3

543B.5 Other definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agency"* means a relationship in which a real estate broker acts for or represents another by the other person's express authority in a transaction.
2. *"Agency agreement"* means a written agreement between a broker and a client which identifies the party the broker represents in a transaction.
3. *"Appointed agent"* means that affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.
4. *"Branch office"* means a real estate broker's office other than a principal place of business.
5. *"Broker associate"* means a person who has a broker's license but is licensed under, and employed by or otherwise associated with, another broker as a salesperson.
6. *"Brokerage"* means the business or occupation of a real estate broker.
7. *"Brokerage agreement"* means a contract between a broker and a client which establishes the relationship between the parties as to the brokerage services to be performed.
8. *"Brokerage services"* means those activities identified in sections 543B.3 and 543B.6.
9. *"Client"* means a party to a transaction who

has an agency agreement with a broker for brokerage services.

10. *"Customer"* means a consumer who is not being represented by a licensee but for whom the licensee may perform ministerial acts.

11. *"Designated broker"* means a licensee designated by a real estate brokerage agency to act for the agency in conducting real estate brokerage services.

12. *"Inactive license"* means either a broker or salesperson license certificate that is on file with the real estate commission in the commission office and during which time the licensee is precluded from engaging in any of the acts of this chapter.

13. *"Licensee"* means a broker or a salesperson licensed pursuant to this chapter.

14. *"Material adverse fact"* means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction, or affects or would affect the party's decision about the terms of the contract or agreement.

For purposes of this subsection, *"adverse fact"* means a condition or occurrence that is generally recognized by a competent licensee as resulting in any of the following:

a. Significantly and adversely affecting the value of the property.

b. Significantly reducing the structural integrity of improvement to real estate.

c. Presenting a significant health risk to occupants of the property.

15. *"Negotiate"* means to act as an intermediary between the parties to a transaction, and includes any of the following acts:

a. Participating in the parties' discussion of the terms of a contract or agreement concerning a transaction.

b. Completing, when requested by a party, appropriate forms or other written record to document the party's proposal in a manner consistent with the party's intent.

c. Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

16. *"Party"* means a person seeking to sell, exchange, buy, or rent an interest in real estate, a business, or a business opportunity. *"Party"* includes a person who seeks to grant or accept an option to buy, sell, or rent an interest in real estate.

17. *"Person"* means an individual, partnership, association, or corporation.

18. *"Regular employee"* means a person whose compensation is fixed in advance, who does not receive a commission, who works exclusively for the owner, and whose total compensation is subject to state and federal withholding.

19. *"Salesperson"* means a person who is licensed under, and employed by or otherwise associated with, a real estate broker, as a selling, renting, or listing agent or representative of the broker.

20. *"Transaction"* means the sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent an interest in real estate.

[C31, 35, §1905-c25; C39, §**1905.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.5; 81 Acts, ch 54, §3]

C93, §543B.5

95 Acts, ch 17, §1; 95 Acts, ch 170, §4

543B.6 Acts constituting dealing in real estate.

A person who, for another, in consideration of compensation, by fee, commission, salary, or otherwise, or with the intention or in the expectation or upon the promise of receiving or collecting a fee, does, offers or attempts or agrees to do, engages in or offers or attempts or agrees to engage in, either directly or indirectly, any single act or transaction contained in the definition of a real estate broker as set out in section 543B.3, whether the act be an incidental part of a transaction or the entire transaction is a real estate broker or real estate salesperson within the meaning of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.6; 81 Acts, ch 54, §4]

C93, §543B.6

543B.7 Acts excluded from provisions.

The provisions of this chapter shall not apply to the sale, exchange, purchase, rental, lease, or advertising of any real estate in any of the following cases:

1. A person who, as owner, spouse of an owner, general partner of a limited partnership, lessor, or prospective purchaser, or through another engaged by such person on a regular full-time basis, buys, sells, manages, or otherwise performs any act with reference to property owned, rented, leased, or to be acquired by such person.

2. By any person acting as attorney in fact under a duly executed and acknowledged power of attorney from the owner, to act on behalf of the owner or lessor to authorize the final consummation and execution of any contract for the sale, leasing, or exchange of real estate. The exclusion in this subsection does not apply to a person who, in the regular course of a business operated in the nature of a property management or brokerage business, makes repeated and successive transactions of a like character for compensation.

3. A licensed attorney admitted to practice in Iowa acting solely as an incident to the practice of law.

4. A person acting as a receiver, trustee in bankruptcy, administrator, executor, guardian, or

while acting under court order or under authority of a deed of trust, trust agreement, or will.

5. The acts of an auctioneer in conducting a public sale or auction. The auctioneer's role must be limited to establishing the time, place, and method of an auction; advertising the auction including a brief description of the property for auction, the time and place for the auction, and the name and address of the real estate broker or attorney who is providing brokerage services for the transaction and who is also responsible for closing the sale of the property; and crying the property at the auction. If the auctioneer closes or attempts to close the sale of the property or otherwise engages in acts defined in sections 543B.3 and 543B.6, then the requirements of this chapter do apply to the auctioneer.

6. An isolated real estate rental transaction by an owner's representative on behalf of the owner; such transaction not being made in the course of repeated and successive transactions of a like character.

7. The sale of time-share uses as defined in section 557A.2.

8. A person acting as a resident manager when such resident manager resides in the dwelling and is engaged in the leasing of real property in connection with their employment.

9. An officer or employee of the federal government, state government, or a political subdivision of the state, in the conduct of the officer's or employee's official duties.

10. A person employed by a public or private utility who performs an act with reference to property owned, leased, or to be acquired by the utility employing that person, where such an act is performed in the regular course of, or incident to, the management of the property and the investment in the property.

11. A nonlicensed employee of a licensee who provides information to another licensee concerning the sale, exchange, purchase, rental, lease, or advertising of real estate which has been provided to the employee by the employer licensee either verbally or in writing.

[C31, 35, §1905-c26; C39, §**1905.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.7]

83 Acts, ch 43, §1; 85 Acts, ch 155, §21

C93, §543B.7

95 Acts, ch 170, §5; 96 Acts, ch 1054, §1; 99 Acts, ch 82, §1; 2001 Acts, ch 83, §1

543B.8 Real estate commission created — staff.

A real estate commission is created within the professional licensing and regulation division of the department of commerce. The commission consists of three members licensed under this chapter and two members not licensed under this chapter and who shall represent the general public. At least one of the licensed members shall be a licensed real estate salesperson, except that if the licensed real estate salesperson becomes a licensed real estate broker during a term of office, that person may complete the term, but is not eligible for reappointment on the commission as a licensed real estate salesperson. A licensed member shall be actively engaged in the real estate business and shall have been so engaged for five years preceding the appointment, the last two of which shall have been in Iowa. Professional associations or societies of real estate brokers or real estate salespersons may recommend the names of potential commission members to the governor. However, the governor is not bound by their recommendations. A commission member shall not be required to be a member of any professional association or society composed of real estate brokers or salespersons. Commission members shall be appointed by the governor subject to confirmation by the senate. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. A member shall serve no more than three terms or nine years, whichever is less. No more than one member shall be appointed from a county. A commission member shall not hold any other elective or appointive state or federal office. Vacancies shall be filled for the unexpired term by appointment of the governor and are subject to senate confirmation. A majority of the commission members constitutes a quorum. The administrator of the professional licensing and regulation division shall hire and provide staff to assist the commission with implementing this chapter.

The administrator of the professional licensing and regulation division of the department of commerce shall hire a real estate education director to assist the commission in administering education programs for the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.8; 81 Acts, ch 54, §5]

86 Acts, ch 1245, §722; 88 Acts, ch 1274, §36; 89 Acts, ch 292, §1

C93, §543B.8

Confirmation, see §2.32

543B.9 Rules.

The real estate commission may adopt rules to carry out and administer the provisions of this chapter. The commission may carry on a program of education of real estate practices and matters relating to real estate. The commission shall adopt rules necessary to carry out the provisions of chapter 558A relating to the disclosure of information before the transfer of real estate.

[C31, 35, §1905-c33; C39, §**1905.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.9]

C93, §543B.9

93 Acts, ch 30, §1

543B.10 and 543B.11 Reserved.

543B.12 Expenses of members — compensation.

Members of the real estate commission are entitled to be reimbursed for their actual expenses in the performance of duties pertaining to their office within the limits of the funds appropriated to the commission. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.12]

86 Acts, ch 1245, §723

C93, §543B.12

543B.13 Seal — records.

The real estate commission shall adopt a seal with such design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this chapter shall be open to public inspection under such reasonable rules and regulations as shall be prescribed by the commission.

[C31, 35, §1905-c28; C39, §**1905.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.13]

C93, §543B.13

543B.14 Fees and expenses — funds.

All fees and charges collected by the real estate commission under this chapter shall be paid into the general fund of the state, except that the equivalent of the greater of ten dollars or forty percent per year of the fees for each real estate salesperson's license, plus the equivalent of the greater of ten dollars or twenty-five percent per year of the fees for each broker's license shall be paid into the Iowa real estate education fund created in section 543B.54. All expenses incurred by the commission under this chapter, including compensation of staff assigned to the commission, shall be paid from funds appropriated for those purposes, except for expenses incurred and compensation paid for the real estate education director, which shall be paid out of the real estate education fund.

[C31, 35, §1905-c29; C39, §**1905.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.14]

86 Acts, ch 1245, §724; 89 Acts, ch 292, §2; 90 Acts, ch 1168, §19; 90 Acts, ch 1261, §38; 92 Acts, ch 1070, §1

C93, §543B.14

94 Acts, ch 1107, §89

543B.15 Qualifications.

1. Except as provided in section 543B.20 an applicant for a real estate broker's or salesperson's license must be a person whose application has not been rejected for licensure in this or any other state within twelve months prior to the date of application, and whose real estate license has not been revoked in this or any other state within two years prior to date of application.

2. To qualify for a license as a real estate broker or salesperson a person shall be eighteen years of age or over. However, an applicant is not ineligible because of citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information.

3. An applicant for a real estate broker's or salesperson's license who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral turpitude in a court of competent jurisdiction in this state, or in any other state, territory, or district of the United States, or in any foreign jurisdiction, may be denied a license by the commission, on the grounds of the conviction. For purposes of this section, *"conviction"* means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

4. An applicant for a real estate broker's or salesperson's license who has had a professional license of any kind revoked in this or any other jurisdiction may be denied a license by the commission on the grounds of the revocation.

5. A person who makes a false statement of material fact on an application for a real estate broker's or salesperson's license, or who causes to be submitted, or has been a party to preparing or submitting any false application for such license, may be denied a license by the commission on the grounds of the false statement or submission. A licensee found to have made such a statement or who caused to be submitted, or was a party to preparing or submitting any false application for a real estate broker's or salesperson's license, may have the license suspended or revoked by the commission on the grounds of the false statement or submission.

6. A licensed real estate broker or salesperson shall notify the commission of the licensee's conviction of an offense included in subsection 3 within sixty days of the conviction. The failure of the licensee to notify the commission of the conviction within sixty days of the date of the conviction is sufficient grounds for revocation of the license.

7. The commission, when considering the denial or revocation of a license pursuant to this section, shall consider the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the appli-

cant or licensee; and any other factors the commission deems relevant. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.

8. To qualify for a license as a real estate broker, a person shall complete at least sixty contact hours of commission approved real estate education within twenty-four months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense course. The applicant shall have been a licensed real estate salesperson actively engaged in real estate for a period of at least twenty-four months preceding the date of application, or shall have had experience substantially equal to that which a licensed real estate salesperson would ordinarily receive during a period of twenty-four months, whether as a former broker or salesperson, a manager of real estate, or otherwise.

9. A qualified applicant for a license as a real estate salesperson shall complete a commission approved short course in real estate education of at least thirty hours during the twelve months prior to taking the salesperson examination.

[C31, 35, §1905-c30; C39, §**1905.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.15; 81 Acts, ch 54, §6, 7]

85 Acts, ch 82, §1

C93, §543B.15

95 Acts, ch 64, §1; 2002 Acts, ch 1031, §2

Subsection 8 amended

543B.16 Application forms.

Every applicant for a real estate broker's license shall apply in writing upon blanks prepared or furnished by the real estate commission. The real estate commission shall not require that a recent photograph of the applicant be attached to the application.

Every applicant for a license shall furnish information setting forth the applicant's present address, both of business and residence, a complete list of all former places where the applicant may have been engaged in business for a period of sixty days or more, during the last five years, accounting for such entire period.

The commission shall prepare and furnish written application blanks for the salesperson's license requesting information as the commission may require. The commission shall not require that a recent photograph of the applicant be attached to the application. The application for the salesperson's license shall be accompanied by a written statement by the broker whose service the applicant is about to enter recommending that the license be granted to the applicant.

[C31, 35, §1905-c31; C39, §**1905.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.16; 81 Acts, ch 54, §8]

C93, §543B.16

543B.17 Reserved.

543B.18 Enforcement of rules.

The real estate commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this chapter.

[C31, 35, §1905-c33; C39, §**1905.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.18]

C93, §543B.18

543B.19 License denied — hearing.

If the real estate commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall deny a license to the applicant, upon the applicant's application in writing, and within a period of thirty days of such denial, the applicant shall be entitled to a hearing as provided in section 543B.35.

[C31, 35, §1905-c34; C39, §**1905.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.19]

C93, §543B.19

543B.20 Written examination.

Examinations for registration shall be given as often as deemed necessary by the real estate commission, but no less than one time per year. Each applicant for a license must pass a written examination authorized by the commission and administered by the commission or persons designated by the commission. The examination shall be of scope and wording sufficient in the judgment of the commission to establish the competency of the applicant to act as a real estate broker or salesperson in a manner to protect the interests of the public. An examination for a real estate broker shall be of a more exacting nature than that for a real estate salesperson and require higher standards of knowledge of real estate. All examinations in real estate theory shall be in writing and the identity of the persons taking the examinations shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the persons taking the examinations shall also be concealed as far as possible. A person who fails to pass either written examination once may immediately apply to take the next available examination. Thereafter, the applicant may take the examination at the discretion of the commission. An applicant who has failed either examination may request in writing information from the commission concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the commission administers a uniform, standardized examination, the commission is only required to provide the examination grade and other information concerning the applicant's examination results which is available to the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.20; 81 Acts, ch 54, §9]
C93, §543B.20

543B.21 Nonresident license.
A nonresident of this state may be licensed as a real estate broker or a real estate salesperson, upon complying with all requirements of law and with all the provisions and conditions of this chapter relative to resident brokers or salespersons and the filing by the applicant with the real estate commission of a certification from the state of original licensure signed by the duly qualified and authorized official or officials of that state that the applicant is there currently licensed, that no charges against the applicant are there pending, and that applicant's record in that state justifies the issuance of a license to the applicant in Iowa. The commission may waive the requirement of an examination in the case of a nonresident broker who is licensed under the laws of a state having similar requirements and where similar recognition and courtesies are extended to licensed real estate brokers and salespersons of this state.
[C31, 35, §1905-c57; C39, §**1905.54;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.21; 81 Acts, ch 54, §10]
C93, §543B.21

543B.22 Nonresident's place of business.
A nonresident to whom a license is issued upon compliance with all the other requirements of law and provisions of this chapter, is not required to maintain a definite place of business within this state. Provided that the nonresident, if a broker, shall maintain an active place of business within the state of the nonresident's domicile, and that the privilege of submitting a certification of licensure certified to by the qualified and authorized official or officials of the state of original licensure, in lieu of the recommendations and statements otherwise required, only applies to licensed real estate brokers and real estate salespersons of those states under the laws of which similar recognition and courtesies are extended to licensed real estate brokers and real estate salespersons of this state.
[C31, 35, §1905-c57; C39, §**1905.54;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.22; 81 Acts, ch 54, §11]
C93, §543B.22

543B.23 Actions against nonresidents.
Every nonresident applicant, before the issuance of a license, shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of this state in which a cause of action may arise, by the service of any process or pleadings authorized by the laws of this state on the chairperson of the real estate commission, said consent stipulating and agreeing that such service of such process or pleadings on the commission shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant within the state of Iowa. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by a duly certified copy of the resolutions of the proper officers, or managing board, authorizing the proper officer to execute the same. In case any process or pleadings mentioned in the case are served upon the commission it shall be by duplicate copies, one of which shall be filed in the office of the commission, and the other immediately forwarded by certified mail to the main office of the applicant against whom or which said process or pleadings are directed.
[C31, 35, §1905-c57; C39, §**1905.54;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.23]
C93, §543B.23

543B.24 Custody of salesperson's license.
The license of a real estate salesperson shall be delivered or mailed to the real estate broker by whom the real estate salesperson is employed and shall be kept in the custody and control of the broker.
[C31, 35, §1905-c36; C39, §**1905.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.24; 81 Acts, ch 54, §12]
C93, §543B.24

543B.25 Display of license.
A real estate broker shall conspicuously display in the broker's place of business the current real estate broker's license issued to the broker and the licenses issued to the broker's employees.
[C31, 35, §1905-c37; C39, §**1905.34;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.25; 81 Acts, ch 54, §13]
C93, §543B.25

543B.26 Reserved.

543B.27 Fees.
1. The real estate commission shall set fees for examination and licensing of real estate brokers and real estate salespersons. The commission shall determine the annual cost of administering the examination and shall set the examination fee accordingly. The commission shall set the fees for the real estate broker's licenses and for real estate salesperson's licenses based upon the administrative costs of sustaining the commission. The fees shall include, but shall not be limited to, the costs for:
a. Per diem, expenses, and travel for commission members.

b. Office facilities, supplies, and equipment.

c. Staff assistance.

d. Establishing and maintaining a real estate education program.

2. Notwithstanding subsection 1, a nonresident person seeking to procure a license pursuant to this chapter shall be charged a fee equal to the greater of the following:

a. The fee as determined pursuant to subsection 1.

b. A fee equal to the fee the nonresident person would be charged by such person's state of residence if that person were a resident of this state making application for a license in that state and that state charges a nonresident a fee which is greater than that charged by that state to a resident of that state.

[C31, 35, §1905-c40; C39, §**1905.37;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.27; 81 Acts, ch 54, §14]

89 Acts, ch 292, §3; 90 Acts, ch 1168, §20

C93, §543B.27

95 Acts, ch 36, §1

543B.28 Expiration of license.

Every license shall expire in multiyear intervals as determined by the real estate commission. A person who fails to renew a real estate broker's or real estate salesperson's license by the expiration date shall be allowed to do so within thirty days following its expiration, but the commission may assess a reasonable penalty. The commission upon the written request of the applicant on forms prescribed by the commission, and payment of the fee, shall issue a new license for each ensuing license period except as provided in section 543B.15, in the absence of any reason or condition which might warrant the revocation of a license after a hearing as provided in sections 543B.34 and 543B.35.

[C31, 35, §1905-c42; C39, §**1905.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.28; 81 Acts, ch 54, §15]

C93, §543B.28

543B.29 Revocation or suspension.

A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

1. Fraud in procuring a license.

2. Professional incompetency.

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

4. Habitual intoxication or addiction to the use of drugs.

5. Conviction of an offense included in section 543B.15, subsection 3. For purposes of this section, *"conviction"* means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence.

6. Fraud in representations as to skill or ability.

7. Use of untruthful or improbable statements in advertisements.

8. Willful or repeated violations of the provisions of this Act.*

9. Noncompliance with insurance requirements under section 543B.47.

10. Noncompliance with the trust account requirements under section 543B.46.

11. Revocation of any professional license held by the licensee in this or any other jurisdiction.

The revocation of a broker's license shall automatically suspend every license granted to any person by virtue of the person's employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. The new license shall be issued upon payment of a fee in an amount determined by the commission based upon the administrative costs involved, if granted during the same license period in which the original license was granted.

A real estate broker or salesperson who is an owner or lessor of property or an employee of an owner or lessor may have the broker's or salesperson's license revoked or suspended for violations of this section or section 543B.34, except subsections 4, 5, 6 and 9, with respect to that property.

[C31, 35, §1905-c43; C39, §**1905.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.29; 81 Acts, ch 54, §16, 17]

83 Acts, ch 101, §14; 90 Acts, ch 1126, §1; 92 Acts, ch 1242, §20

C93, §543B.29

95 Acts, ch 64, §2, 3

*See 77 Acts, ch 95, §12

543B.30 Actions — license as prerequisite.

A person engaged in the business or acting in the capacity of a real estate broker or a real estate salesperson within this state shall not bring or maintain any action in the courts of this state for the collection of compensation for services performed as a real estate broker or salesperson without alleging and proving that the person was a duly licensed real estate broker or real estate salesperson at the time the alleged cause of action arose.

[C31, 35, §1905-c44; C39, §**1905.41;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.30; 81 Acts, ch 54, §18]

C93, §543B.30

543B.31 Place of business.

Every real estate broker, except as provided in section 543B.22, shall maintain a place of business in this state. If the real estate broker maintains more than one place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained. Provided, that if such broker be a copartnership, association, or corporation, a duplicate shall be issued to the members or officers thereof, and a fee determined by the real estate commission in each case shall be paid for each duplicate license.

[C31, 35, §1905-c45; C39, §**1905.42;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.31]

C93, §543B.31

543B.32 Change of location.

Notice in writing shall be given to the real estate commission by each licensee of any change of principal business location, whereupon the commission shall issue a new license for the unexpired period upon the payment of a fee established by rule to cover the cost of issuing the license.

[C31, 35, §1905-c46; C39, §**1905.43;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.32; 81 Acts, ch 54, §19]

C93, §543B.32

543B.33 Salespersons — change of employment.

When any real estate salesperson is discharged or terminates employment with the real estate broker by whom the salesperson is employed, the real estate broker shall immediately deliver or mail by certified mail to the real estate commission the real estate salesperson's license on the reverse side of which the employing broker shall set out the date and cause of termination of employment. The real estate broker at the time of mailing the real estate salesperson's license to the commission shall address a communication to the last known residence address of the real estate salesperson stating that the license has been delivered or mailed to the commission. A copy of the communication to the real estate salesperson shall accompany the license when mailed or delivered to the commission. It is unlawful for any real estate salesperson to perform any of the acts contemplated by this chapter either directly or indirectly under authority of a license from and after the date of receipt of the license by the commission. The commission shall, upon presentation of evidence by the salesperson that the salesperson has been employed by another broker, issue another license for the balance of the current license period showing each change of employment. A fee as determined by the commission shall be charged for the issuance of the license. Not more than one license shall be issued to any real estate salesperson for the same period of time.

[C31, 35, §1905-c47; C39, §**1905.44;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.33; 81 Acts, ch 54, §20]

C93, §543B.33

543B.34 Investigations by commission.

The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima facie case, request commission staff or any other duly authorized representative or designee to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee is found to be guilty of any of the following:

1. Making any substantial misrepresentation.

2. Making any false promise of a character likely to influence, persuade or induce.

3. Pursuing a continued and flagrant course of misrepresentation, or making of false promises through agents or salespersons or advertising or otherwise.

4. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.

5. Accepting a commission or valuable consideration as a real estate broker associate or salesperson for the performance of any of the acts specified in this chapter, from any person, except the broker associate's or salesperson's employer, who must be a licensed real estate broker. However, a broker associate or salesperson may, without violating this subsection, accept a commission or valuable consideration from a corporation which is wholly owned, or owned with a spouse, by the broker associate or salesperson if the conditions described in subsection 9 are met.

6. Representing or attempting to represent a real estate broker other than the licensee's employer, without the express knowledge and consent of the employer.

7. Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession which belong to others.

8. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

9. *a.* Paying a commission or other valuable consideration or any part of such commission or consideration for performing any of the acts specified in this chapter to a person who is not a licensed broker or salesperson under this chapter or who is not engaged in the real estate business in another state or foreign country, or paying a commission or other valuable consideration for performing any of the acts specified in this chapter to

a licensee knowing that the licensee will pay a portion of or all of such commission or consideration to a person or party who is not licensed pursuant to this chapter, provided that the provisions of this section shall not be construed to prohibit the payment of earned commissions or consideration to any of the following:

(1) The estate or heirs of a deceased real estate licensee when such licensee had a valid real estate license in effect at the time the commission or consideration was earned.

(2) A citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Iowa licensee paying the commission or consideration obtains and maintains reasonable written evidence that the payee is a citizen of the other country, is not a resident of this country, and is in the business of brokering real estate in that other country.

(3) A corporation pursuant to paragraph *"b"*.

b. A broker may pay a commission to a corporation which is wholly owned, or owned with a spouse, by a salesperson or broker associate employed by or otherwise associated with the broker, if all of the following conditions are met:

(1) The corporation does not engage in real estate transactions as a third-party agent or in any other activity requiring a license under this chapter.

(2) The employing broker is not relieved of any obligation to supervise the employed licensee or any other requirement of this chapter or the rules adopted pursuant to this chapter.

(3) The employed broker associate or salesperson is not relieved from any personal civil liability for any licensed activities by interposing the corporate form.

10. Failing, within a reasonable time, to provide information requested by the commission as the result of a formal or informal complaint to the commission which would indicate a violation of this chapter.

11. Any other conduct, whether of the same or different character from that specified in this section, which demonstrates bad faith, or improper, fraudulent, or dishonest dealings which would have disqualified the licensee from securing a license under this chapter.

Any unlawful act or violation of any of the provisions of this chapter by any real estate broker associate or salesperson, employee, or partner or associate of a licensed real estate broker, is not cause for the revocation of the license of any real estate broker, unless the commission finds that the real estate broker had guilty knowledge of the unlawful act or violation.

[C31, 35, §1905-c48; C39, §**1905.45;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.34; 81 Acts, ch 54, §21]

88 Acts, ch 1158, §23; 89 Acts, ch 29, §1; 89 Acts, ch 83, §24; 92 Acts, ch 1242, §21

C93, §543B.34

95 Acts, ch 170, §6; 99 Acts, ch 22, §1

543B.35 Hearing on charges.

The real estate commission shall, upon request of the applicant as provided in section 543B.19, or before revoking any license, set the matter down for a hearing and at least twenty days prior to the date set for the hearing it shall notify the applicant or licensee in writing, which said notice shall contain an exact statement of the charges made and the date and place of the hearing. The applicant or licensee at all such hearings shall have the opportunity to be heard in person and by counsel in reference thereto. Such written notice of hearing may be served by delivery personally to the applicant or licensee or by mailing the same by certified mail to the last known business address of such applicant or licensee. If such applicant or licensee be a salesperson, the commission shall also notify the broker employing the salesperson or into whose employ the salesperson is about to enter by mailing such notice by certified mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the commission shall prescribe.

[C31, 35, §1905-c49; C39, §**1905.46;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.35]

C93, §543B.35

543B.36 Attendance of witnesses.

In the preparation and conducting of such hearings, the real estate commission shall have power to execute and sign subpoenas to require the attendance and testimony of any witnesses and the producing of any papers or books. The commission may administer oaths, examine witnesses, and take any evidence the commission deems pertinent to the determination of the charges. Any such hearing may be held before two or more members of the commission as may be directed by the commission.

[C31, 35, §1905-c50; C39, §**1905.47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.36]

C93, §543B.36

543B.37 Fees and mileage.

Any witnesses so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the courts of this state in civil cases.

[C31, 35, §1905-c51; C39, §**1905.48;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.37]

C93, §543B.37

543B.38 Request for witnesses.

Any party to any hearing before the real estate commission shall have the right to the attendance

of witnesses in the party's behalf at such a hearing upon making a request thereof to the commission and designating the person or persons sought to be subpoenaed.

[C31, 35, §1905-c52; C39, §**1905.49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.38]

C93, §543B.38

543B.39 Disobedience to subpoena.

In case of a disobedience to a subpoena the real estate commission may invoke the aid of any court of competent jurisdiction or judge thereof in requiring the attendance and testimony of witnesses and the production of papers; and such court may issue an order requiring the persons to appear before the commission and give evidence or to produce papers as the case may be; and any failure to obey such order may be punished as a contempt.

[C31, 35, §1905-c53; C39, §**1905.50;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.39]

C93, §543B.39

543B.40 Depositions.

The testimony may be taken by deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided.

[C31, 35, §1905-c54; C39, §**1905.51;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.40]

C93, §543B.40

543B.41 Findings of fact.

If the majority of the real estate commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to such applicant, and if the commission shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, the license may be suspended or revoked. The commission, upon request of the applicant or licensee, shall furnish said applicant or licensee with a definite statement of its findings of fact and its reason or reasons for refusing to grant the license or for suspension of the rights of the licensee or for the revocation of the license, as the case may be. Judicial review of action of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act.

[C31, 35, §1905-c56; C39, §**1905.53;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.41]

C93, §543B.41

543B.42 List of licensees.

The real estate commission shall at least annually prepare a list of the names and addresses of all licensees licensed by it under this chapter, and of all persons whose licenses have been suspended or revoked within one year; together with other information relative to the enforcement of this chapter as it deems of interest to the public. The lists shall be mailed by the commission to any person in this state upon request.

[C31, 35, §1905-c58; C39, §**1905.55;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.42]

86 Acts, ch 1238, §6

C93, §543B.42

543B.43 Penalties.

Any person found guilty of violating a provision of sections 543B.1 to 543B.42 in a first offense shall be guilty of a simple misdemeanor.

[C31, 35, §1905-c59; C39, §**1905.56;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.43]

C93, §543B.43

543B.44 Complaints referred to court.

The real estate commission may refer a complaint for violation of section 543B.1 before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of this state to enforce the provisions hereof and collect the penalties herein provided.

[C31, 35, §1905-c60; C39, §**1905.57;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §117.44]

C93, §543B.44

543B.45 Dual contracts for sale of real property.

A person licensed under this chapter shall not knowingly make, issue, deliver, receive, or permit the use of two or more written or oral contracts for the purpose of sale concerning the same parcel of real estate one of which is not made known to the prospective lender or loan guarantor to enable the purchaser to obtain a larger loan than the true sales price would allow or to enable the purchaser to qualify for a loan which the purchaser otherwise could not obtain.

Any person who shall violate the provisions of this section shall be guilty of a fraudulent practice.

[C71, 73, 75, 77, 79, 81, §117.45; 81 Acts, ch 54, §22]

C93, §543B.45

543B.46 Trust accounts.

1. Each real estate broker shall maintain a common trust account in a bank, a savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the ac-

count shall be transferred quarterly to the treasurer of state and transferred to the department of economic development for deposit in the local housing assistance program fund established in section 15.354 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession.

2. Each broker shall notify the real estate commission of the name of each bank or savings and loan association in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker shall authorize the real estate commission to examine each trust account and shall obtain the certification of the bank or savings and loan association attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the commission. The certification and consent shall be furnished on forms prescribed by the commission. This subsection does not apply to an individual farm account maintained in the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager. This subsection also does not apply to an individual property management account maintained in the name of the owner or owners for the purpose of conducting ongoing property management whether it is conducted by the property owner or by an agent or manager when the account is part of a property management agreement between the owner and agent or manager.

4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 543B.6 in the common trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.

5. A broker may maintain more than one trust account provided the commission is advised of said account as specified in subsections 2 and 3 above.

6. The commission shall verify on a test basis, a random sampling of the brokers, corporations, and partnerships for their trust account compliance. The commission may upon reasonable cause, or as a part of or after an investigation, request or order a special report.

7. The examination of a trust account shall be conducted by the commission or the commission's authorized representative.

8. The commission shall adopt rules to ensure implementation of this section.

[C71, 73, 75, 77, 79, 81, §117.46; 81 Acts, ch 54, §23; 82 Acts, ch 1067, §1]
85 Acts, ch 252, §1; 92 Acts, ch 1242, §22, 23
C93, §543B.46
93 Acts, ch 30, §2; 93 Acts, ch 175, §19; 95 Acts, ch 170, §7; 96 Acts, ch 1027, §1; 97 Acts, ch 23, §67; 97 Acts, ch 214, §12

543B.47 Insurance requirement.

1. The real estate commission shall adopt rules requiring as a condition of licensure that all real estate licensees, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter. The rules shall provide for administration of the insurance requirements of this section within the multiyear licensing structure required by section 543B.28. However, the rules shall require licensees to submit evidence of compliance with this section within twenty calendar days of the commission's request, which may be made on a test basis, a random basis, or upon reasonable cause to question a licensee's compliance.

2. The commission shall contract with an insurance provider for a group policy under which coverage is available to all licensees, and shall maintain coverage with the contracted provider unless the commission determines that continuing the contract is not reasonably practical. The contract shall be solicited by competitive, sealed bid.

3. The group policy shall be made available to all licensees and shall not include any right on the part of the insurance provider to cancel coverage for a licensee.

4. A licensee shall have the option of obtaining insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements adopted by rule of the commission.

5. The commission shall determine the terms and conditions of coverage required by subsection 1, including but not limited to the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

6. Failure of a license applicant or licensee to carry the errors and omissions insurance required by this section, or to timely submit proof of coverage upon commission request, shall be grounds for the denial of an application for licensure, the denial of an application to renew a license, or the suspension or revocation of a license.

90 Acts, ch 1126, §2
C91, §117.47
91 Acts, ch 97, §21
C93, §543B.47
2002 Acts, ch 1031, §3
Subsections 1, 2, and 6 amended

543B.48 Civil penalty amount.

Notwithstanding section 272C.3, licensee disci-

pline may include a civil penalty not to exceed two thousand five hundred dollars per violation.

2002 Acts, ch 1031, §4
NEW section

543B.49 Reserved.

543B.50 Meetings.

The real estate commission shall hold at least one meeting per year at the location of the commission's principal office and shall elect a chairperson annually. A majority of the members of the commission shall constitute a quorum.

[C75, 77, 79, 81, §117.50]
88 Acts, ch 1158, §24
C93, §543B.50

543B.51 Public members.

The public members of the real estate commission shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

[C75, 77, 79, 81, §117.51]
C93, §543B.51

543B.52 Disclosure of confidential information.

A member of the commission shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the commission who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §117.52]
C93, §543B.52

543B.53 Application of chapter.

The provisions of this chapter which require successful completion of a real estate education course before being licensed as a real estate salesperson shall not apply to persons who hold real estate salesperson's licenses on July 1, 1976 or to the issuance of new licenses to these persons under the provisions of section 543B.28.

[C77, 79, 81, §117.53; 81 Acts, ch 54, §24]
C93, §543B.53

543B.54 Real estate education fund.

The Iowa real estate education fund is created as a financial assurance mechanism to assist in the establishment and maintenance of a real estate education program at the university of northern Iowa and to assist the real estate commission in providing an education director. The fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund, but shall remain in the Iowa real estate education fund. Seventy percent of the moneys in the fund shall be distributed and are appropriated to the board of regents for the purpose of establishing and maintaining a real estate education program at the university of northern Iowa. Thirty percent of the moneys in the fund shall be distributed and are appropriated to the professional licensing and regulation division of the department of commerce for the purpose of hiring and compensating a real estate education director.

89 Acts, ch 292, §4
CS89, §117.54
91 Acts, ch 260, §1213
C93, §543B.54

543B.55 Disclosure of relationship.

The real estate commission shall adopt rules requiring that each real estate broker or salesperson in a real estate transaction disclose in writing the broker's or salesperson's agency relationship with the buyer or seller in the transaction.

90 Acts, ch 1126, §3
C91, §117.55
C93, §543B.55

SUBCHAPTER II

RELATIONSHIP BETWEEN LICENSEES AND PARTIES TO TRANSACTIONS

543B.56 Duties of licensees.

1. *Duties to all parties in a transaction.* In providing brokerage services to all parties to a transaction, a licensee shall do all of the following:

a. Provide brokerage services to all parties to the transaction honestly and in good faith.

b. Diligently exercise reasonable skill and care in providing brokerage services to all parties.

c. Disclose to each party all material adverse facts that the licensee knows except for the following:

(1) Material adverse facts known by the party.

(2) Material adverse facts the party could discover through a reasonably diligent inspection, and which would be discovered by a reasonably prudent person under like or similar circumstances.

(3) Material adverse facts the disclosure of which is prohibited by law.

(4) Material adverse facts that are known to a person who conducts an inspection on behalf of the party.

d. Account for all property coming into the possession of a licensee that belongs to any party within a reasonable time of receiving the property.

2. *Duties to a client.* In addition to the licensee's duties under subsection 1, a licensee providing brokerage services to a client shall do all of the following:

a. Place the client's interests ahead of the interests of any other party, unless loyalty to a client violates the licensee's duties under subsection 1, section 543B.58, or under other applicable law.

b. Disclose to the client all information known by the licensee that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection.

c. Fulfill any obligation that is within the scope of the agency agreement, except those obligations that are inconsistent with other duties that the licensee has under this chapter or any other law.

d. Disclose to a client any financial interests the licensee or the brokerage has in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction.

3. *Prohibited conduct.* In providing brokerage services, a licensee shall not do either of the following:

a. Accept a fee or compensation related to a transaction from a person other than the licensee's client, unless the licensee has provided written notice to all parties to the transaction that a fee or compensation will be accepted by the licensee from such person.

b. Act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family or brokerage, or on behalf of an organization or business entity in which the licensee has an interest, unless the licensee has provided written disclosure of the interest to all parties to the transaction.

95 Acts, ch 17, §2; 96 Acts, ch 1054, §2

543B.57 Confirmation and disclosure of relationship.

1. A licensee shall not represent any party or parties to a transaction or otherwise as a licensee unless that licensee makes a disclosure to all parties to the transaction identifying which party that person represents in the transaction.

2. *a.* The disclosure required in subsection 1 shall be made by the licensee at the time the licensee provides specific assistance to the client. A change in a licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made immediately.

b. A written disclosure is required to be made prior to an offer being made or accepted by any party to a transaction. The written disclosure shall be acknowledged by separate signatures of all parties to the transaction prior to any offer being made or accepted by any party to a transaction.

c. For purposes of this section, *"specific assistance"* means eliciting or accepting confidential information about a party's real estate needs, motivation, or financial qualifications, or eliciting or accepting information involving a proposed or preliminary offer associated with specific real estate. *"Specific assistance"* does not mean an open house showing, preliminary conversations concerning price range, location, and property styles, or responding to general factual questions concerning properties which have been advertised for sale or lease.

3. The written agency disclosure form shall contain all of the following:

a. A statement of which party is the licensee's client or, if the licensee is providing brokerage services to more than one client as provided under section 543B.60, a statement of all persons who are the licensee's clients.

b. A statement of the licensee's duties to the licensee's client under section 543B.56, subsections 1 and 2.

c. Any additional information that the licensee determines is necessary to clarify the licensee's relationship to the licensee's client or customer.

4. This section does not prohibit a person from representing oneself.

5. The seller, in the listing agreement, may authorize the seller's licensee to disburse part of the licensee's compensation to other licensees, including a buyer's licensee solely representing the buyer. A licensee representing a buyer shall inform the listing licensee, if there is a listing licensee, either verbally or in writing, of the agency relationship before any negotiations are initiated. The obligation of either the seller or the buyer to pay compensation to a licensee is not determinative of the agency relationship.

95 Acts, ch 17, §3; 97 Acts, ch 82, §1

543B.58 Licensees representing more than one client in a transaction.

1. A licensee shall not be the agent for both a buyer and a seller to a transaction without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee has made a full disclosure of the type of representation the licensee will provide. The consent to multiple representation shall contain a statement of the licensee's duties under section 543B.56, subsection 1, a statement of the licensee's duties to the client under section 543B.56, subsection 2, paragraphs *"b"* and *"c"*, and a statement that the clients understand the licensee's duties and consent to the licensee's providing brokerage services to more than one client.

2. A consent to multiple representation may contain additional disclosures by the licensee or additional agreements between the licensee and

the clients that do not violate any duty of a licensee under this chapter.

95 Acts, ch 17, §4

543B.59 Appointed agents within a firm.

1. *Appointed agents.* A real estate brokerage agency entering into a brokerage agreement, through a designated broker, may notify a client in writing of those affiliated licensees within the real estate brokerage agency who will be acting as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage agency.

2. *Dual agent.* A real estate brokerage agency and a designated broker are not considered to be dual agents solely because of an appointment under the provisions of this section. However, an affiliated licensee who personally represents both the seller and the buyer in a particular transaction is considered to be a disclosed dual agent and is required to comply with the provisions of this subchapter governing disclosed dual agents.

3. *Actual knowledge — information.* A client, a real estate brokerage agency, and its appointed agents are deemed to possess only actual knowledge and information at the time the appointed agents are appointed. Knowledge or information is not imparted by operation of law among the clients, the real estate brokerage agency, and its appointed agents.

4. *Appointments — roles.* The commission shall define by rule the methods of appointment and the role of the real estate brokerage agency and the designated broker. The rules must include a requirement that clients be informed as to the real estate brokerage agency's appointed agent policy and be given written notice of that policy in advance of entering into a brokerage agreement.

95 Acts, ch 17, §5

543B.60 Licensees providing services in more than one transaction.

A licensee may provide brokerage services simultaneously to more than one party in different transactions unless the licensee agrees with a client that the licensee is to provide brokerage services only to that client. If the licensee and a client agree that the licensee is to provide brokerage services only to that client, the agency agreement disclosure required under section 543B.57, subsection 1, shall contain a statement of that agreement.

95 Acts, ch 17, §6

543B.60A Restrictions on payment of commission to others.

1. A licensee shall not require that a person, party, client, or customer negotiate a listing or purchase agreement or contract of real estate through a particular broker or group of brokers, salesperson or group of salespersons, or agent or group of agents.

2. A licensee shall not pay a commission, or portion of a commission, or other valuable consideration to a person or other licensee as described in subsection 1.

3. A licensee shall not request a referral fee after a bona fide offer to purchase is accepted.

4. A licensee shall not request a referral fee after a bona fide listing agreement has been signed.

5. A violation of this section shall be considered a violation under section 543B.34, subsection 4. In addition to any other penalty applicable, a license to practice the profession of real estate broker or salesperson may be revoked or suspended for a violation of this section.

99 Acts, ch 22, §2

543B.61 Violations — real estate commission jurisdiction.

1. Failure of a licensee to comply with sections 543B.57 through 543B.60 is prima facie evidence of a violation under section 543B.34, subsection 4.

2. Failure of a licensee to act in accordance with the disclosures made pursuant to sections 543B.56 through 543B.58 is prima facie evidence of a violation under section 543B.34, subsection 4.

3. Nothing in this subchapter shall affect the validity of title to real property transferred based solely on the reason that a licensee failed to conform to the provisions of this subchapter.

95 Acts, ch 17, §7

543B.62 Changes in common law duties and liabilities of licensees and parties.

1. Except as provided in subsection 2, the duties of a licensee specified in this chapter or in rules adopted pursuant to this chapter supersede any fiduciary duties of a licensee to a party to a transaction based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties specified in this chapter or rules adopted pursuant to this chapter.

2. This section shall not be construed to modify a licensee's duty under common law as to negligent or fraudulent misrepresentation of material information.

3. *a.* A licensee who is providing brokerage services to a client and who retains another licensee to provide brokerage services to that client is not liable for misrepresentation made by the other licensee, unless the retaining licensee knew or should have known of the other licensee's misrepresentation or the other licensee is repeating a misrepresentation made to the other licensee by the retaining licensee.

b. A broker is responsible for supervising a salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the bro-

ker and the salesperson or broker associate does not relieve the broker, salesperson, or broker associate of the duties and responsibilities established by this chapter. A salesperson or broker associate shall keep the employing broker fully informed of all activities being conducted on behalf of the broker and any other activities that might impact on the broker's responsibilities. However, the failure of the salesperson or broker associate to keep the employing broker fully informed does not relieve the broker of the duties and responsibilities established by this chapter.

95 Acts, ch 17, §8

543B.63 Licensee not considered subagent.

A licensee is not considered to be a subagent of a client of another licensee solely by reason of membership or other affiliation by the licensee in a multiple listing service or other similar information source, and an offer of subagency shall not be made through a multiple listing service or other similar information source.

95 Acts, ch 17, §9

543B.64 Chapter is not limiting.

The duties imposed upon persons under this chapter or pursuant to rules adopted by the real estate commission shall not limit or abridge any duty or responsibility to disclose created by other applicable law, or under a contract between parties.

95 Acts, ch 17, §10

CHAPTER 543C

SALES OF SUBDIVIDED LAND OUTSIDE OF IOWA

This chapter not enacted as a part of this title;
transferred from chapter 117A in Code 1993

543C.1 Definitions.
543C.2 Provisions governing sale or lease of subdivided lands.
543C.3 Offering statement — contents — prohibitions.
543C.4 Inspection power of commission and attorney general — unlawful practices — penalties.
543C.5 Penalties.
543C.6 Sales by brokers.
543C.7 Prosecution.
543C.8 Filing fees.

543C.1 Definitions.

As used in this chapter, unless the context otherwise indicates:

1. *"Advertisement"* means the attempt by, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in land offered for sale or lease, to the public in this state.

2. *"Commission"* means the real estate commission as established by chapter 543B.

3. *"Sale"* means any sale, offer for sale, or attempt to sell or lease any land, to the public in this state, for cash or on credit.

4. *"Subdivided land"* means improved or unimproved land divided or proposed to be divided for the purpose of sale or lease into five or more lots or parcels, or additions or parts of lots or parcels; however, subdivided land does not include a subdivision subject to section 306.21 or chapter 354 nor the leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in the structure. Subdivided land does not include subdivisions of land located within the state of Iowa or time-share intervals as defined in section 557A.2.

5. *"Subdivider"* means any person, firm, partnership, company, corporation, or association engaging directly or through an agent in the business of selling or leasing subdivided land, or of offering such land for sale or lease, to the public in this state.

[C75, 77, 79, 81, §117A.1]
85 Acts, ch 155, §22; 90 Acts, ch 1236, §42
C93, §543C.1

543C.2 Provisions governing sale or lease of subdivided lands.

No subdivider shall sell or lease subdivided land, or offer such land for sale or lease, or advertise such land for sale or lease to the public within this state unless the subdivider has filed with the commission an application which shall include an offering statement. No subdivider shall engage in business in this state until the application and the

offering statement have been accepted and the subdivider has been registered as a subdivider with the commission. The application shall contain the following:

1. The name of the owner and of the subdivider.

2. The address of the principal office of the owner and of the subdivider, wherever situated, and the addresses of the principal office and all branch offices of the owner and of the subdivider within this state.

3. The name of the person, firm, partnership, company, corporation, or association holding legal or equitable title to the land for sale or lease for the purpose of offering such land or part thereof to the general public.

4. A statement as to whether the owner or the subdivider, or if such owner or subdivider be other than an individual, the name of any partner, principal, officer, director, or branch manager thereof or any owner of more than a five percent interest in the business, who has been convicted of any criminal offense in connection with any transaction involving the sale or lease, or offer for sale or lease, of subdivided land, or who has been enjoined or restrained by order of any court from selling or leasing, or offering for sale or lease, any subdivided land in any state or county, or who has been enjoined or restrained by any court from continuing any practices in connection therewith.

5. The complete description of the land offered for subdivision by lots, plots, blocks, or sales, with or without streets, together with plats certified to by a duly registered land surveyor accompanied by a certificate attached thereto showing the date of the completion of the survey and of the making of the plat and the name of the subdivision for the purpose of identification of the subdivided land or any part thereof.

6. Copies of plats of all of the land being filed by the subdivider which plats must have already been recorded by the proper recording office in the state in which the land is located.

7. An opinion of an attorney admitted to practice law in this state, a policy of title insurance issued by a title insurer licensed to do business in the state where the subdivided land is located, or an opinion of an attorney admitted or licensed to practice law in the state wherein the lands are situated, reciting in detail all of the liens, encumbrances, and clouds upon the title to such land, and any other defects of title, which may render the title to such land unmarketable.

8. The provisions, covenants, terms, and conditions upon which it is the intention of the owner and the subdivider to sell or lease such subdivided land, accompanied by proposed forms of contracts contemplated for execution and delivery upon the consummation of sales or leases.

9. If the subdivided land sought to be filed comes within the purview of the interstate land sales full disclosure Act (Title 15, United States Code section 1701 et seq.) the subdivider must furnish a copy of the accepted report filed with the department of housing and urban development. If the subdivision comes under the regulation of the real estate laws of the state where the land is located and that state requires a state offering statement or public report, the subdivider must also include a copy of said state report.

10. The subdivider, if a corporation, must register to do business in the state of Iowa as a foreign corporation with the secretary of state and furnish a copy of the certificate of authority to do business in the state of Iowa. If not a corporation, the subdivider must comply with the provisions of chapter 547, by filing a proper trade name with the Polk county recorder. The provisions of this subsection shall also apply to any person, partnership, firm, company, corporation, or association, other than the subdivider, which is engaged by or through the subdivider for the purpose of advertising or selling the land involved in the filing.

11. Such other information as the commission may require, which shall be filed pursuant to the provisions of this chapter.

12. The offering statement must contain all of the following:

a. The names, addresses, and business background of the subdivider as required in subsections 1 to 4. If such subdivider is a partnership or corporation, the names, addresses, and business background of each of the partners, officers, and principal stockholders, the nature of their fiduciary relationship and their past, present, or anticipated financial relationship to the subdivider.

b. A complete description of the land and copies of the plat in which the land is located as required in subsections 5 and 6 and a certified financial statement by a certified public accountant of the assets and liabilities of the subdivider as of a date not more than six months prior to the date of the filing, in such detail as the board may require.

c. Information concerning public improvements, including without limitation, streets, storm sewers, street lighting, water supply, and sewage treatment and disposal facilities in existence or planned on the subdivision, and the estimated cost, date of completion, and responsibility for construction of improvements to be made which are referred to in connection with the sale or lease, or offering for sale or lease, of the subdivision or any unit or lot thereon.

d. Each of the terms and conditions under which each such unit or lot is offered for sale and such opinion or certificates as required in subsections 7 and 8.

e. A statement as to the exact terms of any guaranties or promises of refund or exchange which are to be used by the subdivider. The guaranty or promise of refund or exchange, if any, must be contained in the body of any contracts used by the subdivider and cannot be in any separate document. Said guaranty or promise of refund or ex-

change must appear in boldface type in the contract.

f. If the refund privilege, pursuant to paragraph *"e"* of this subsection, is predicated in any way upon the requiring by the subdivider of an inspection by the purchaser prior to requesting a refund or exchange pursuant to the guaranty provisions, the offering statement and the sale contract itself must set out in detail all pertinent information in regard to the inspection trip and in regard to claiming a refund or exchange pursuant to the guaranty after the inspection trip.

g. Such additional information as the commission may require as being necessary or appropriate in the public interest or for the protection of purchasers or lessees.

h. A vicinity sketch of sufficient scale to show the entire tract of land, surrounding property ownership, and road access.

[C75, 77, 79, 81, §117A.2]
C93, §543C.2

543C.3 Offering statement — contents — prohibitions.

1. There may be omitted from the offering statement any of the information required under section 543C.2, subsections 6, 9 and 10 which the commission may by a properly promulgated rule designate as being unnecessary or inappropriate for the protection of the public interest or a purchaser.

2. No offer to sell or lease subdivided land by any means of advertisement shall be made unless a copy of such advertisement has first been filed with the board. All such advertisements shall state that an offering statement has been filed with the commission and that a copy of such statement is available from the subdivider upon request.

3. Except as provided in subsection 1, no offer to sell or lease subdivided land shall be made unless such offer is accompanied by a copy of the current offering statement filed pursuant to this chapter.

4. The first page of the offering statement employed in the sale or lease, or offer for sale or lease, of subdivided land shall contain a legible statement printed in at least sixteen point bold type which shall be at least four point type larger than the body of the document that the filing of the verified statement and offering statement with the commission does not constitute approval of the sale or lease, or offer for sale or lease, by the state, commission or any officer thereof, or that the state, commission or any officer thereof, has in any way passed upon the merits of such offering.

5. No sale or lease of subdivided land shall be made unless accompanied or preceded by the delivery to the prospective purchaser of an offering statement complying with the provisions of this section.

6. No offering statement shall be changed or amended unless a copy of such change or amendment has first been filed with the commission.

7. The subdivider shall, within thirty days after the first day of July of each year, file with the commission a current offering statement setting forth all changes which have taken place during the preceding year with respect to any information required to be set forth in such offering statement. Only a current offering statement shall be used to sell or lease, or offer to sell or lease, any subdivided land.

8. A fee of one hundred dollars shall be paid, plus ten dollars for each one hundred lots, units, parcels, portions, or interest included in the current offering statement.

[C75, 77, 79, 81, §117A.3]
C93, §543C.3

543C.4 Inspection power of commission and attorney general — unlawful practices — penalties.

1. The commission may request the department of inspections and appeals to conduct an investigation and inspection to be made of any subdivided land proposed to be offered for sale or lease in this state pursuant to this chapter. The department of inspections and appeals shall make a report of its findings.

2. If an inspection is to be made of subdivided land situated outside of this state and offered for sale in this state, the inspection as authorized by subsection 1 shall be made by the department of inspections and appeals at the expense of the subdivider. After the application required by section 543C.2 is filed and after the filing fee required by section 543C.8 is received, the commission may decide whether an inspection pursuant to this subsection is to be made. If the commission requires an inspection, the department of inspections and appeals shall so notify the subdivider and the subdivider shall remit to the department an amount equivalent to the round trip cost of travel from this state to the location of the project, as estimated by the department and a further amount estimated to be necessary to cover the additional expenses of inspection but not to exceed fifty dollars a day for each day incurred in the inspection. The costs of any subsequent inspections deemed necessary shall be paid for by the subdivider. At the completion of an inspection trip the department shall furnish the subdivider a statement as to the costs of the inspection trip, and if the costs are less than the amount advanced by the subdivider to the department, the remaining balance shall be refunded to the subdivider.

3. It shall be unlawful for the subdivider to change the financial structure of any offering after the submission thereof to the commission without first notifying the commission in writing of such intention.

4. Where improvements are to be made in con-

nection with the sale or lease, or offering for sale or lease, of the subdivision or any unit, parcel, or lot thereon, the owner or subdivider shall either furnish to the commission a performance bond executed by a surety company authorized to do business in the state and which has given consent to be sued in this state with sufficient surety for the benefit and protection of purchasers of units, parcels, or lots, in such amount and subject to such terms as the commission deems necessary for the protection of such purchasers with respect to construction of such improvements, or place in an escrow account in a depository acceptable to the commission, that portion of the sums paid or advanced by purchasers which the commission deems necessary for the protection of such purchasers with respect to construction of such improvements.

5. Where the land to be subdivided is subject to a mortgage, lien, or encumbrance securing or evidencing the payment of money, other than taxes levied or assessments made, or where the interest of the owner, the subdivider or an agent is held under option or contract of purchase or in trust, it shall be unlawful to sell any land in such subdivision unless a provision in such mortgage, lien, encumbrance, option, contract, or trust agreement, or a provision in an agreement supplementary thereto, enables the vendor to convey valid title to each parcel so sold or leased free of such mortgage, lien, encumbrance, option, contract, or trust agreement upon completion of all payments and the performance of all the terms and conditions required to be made and performed by the vendee under the agreement of sale.

Where the consideration price for a lot sold has been amortized to an extent that the balance due and owing thereunder equals an amount required to release such lot or lots from any existing mortgage, lien, encumbrance, tax, assessment, option, contract, or trust agreement, and the initial cost for said land has not been paid for by the owner or subdivider, all moneys thereafter received by the owner or subdivider shall be segregated and kept in a separate account as a trust which shall be applied toward the clearance of title of the land intended to be conveyed to the purchaser. Certified or verified copies of documents containing such provisions shall be filed with the commission prior to the sale or lease, or offer of sale or lease, or advertisement for sale or lease, of any part of the subdivision.

[C75, 77, 79, 81, §117A.4]
88 Acts, ch 1158, §25
C93, §543C.4

543C.5 Penalties.

1. Any person, firm, partnership, corporation, company, or association representing in any manner that the state, the commission or any officer thereof has recommended or acquiesced in the recommendation of the purchase of any subdivided land offered for sale or lease, in advertising or offering such subdivided land for sale or lease, shall be guilty of a serious misdemeanor.

2. Any person, officer, director, agent, or employee of a person, company, firm, partnership, association, or corporation offering to sell or lease, or selling or leasing, subdivided land prior to the filing of the offering statement and the application required by this chapter shall be guilty of a serious misdemeanor.

3. Except as provided in subsection 2, every person, officer, director, agent, or employee of a person, company, firm, partnership, corporation, or association who authorizes, directs, or aids in the publication, advertisement, distribution, or circulation of any device, scheme, or artifice for obtaining money or property by means of any false pretense, representation, or promise concerning any subdivided land offered for sale or lease, and every person, officer, director, agent, or employee of a company, firm, partnership, corporation, or association who makes or attempts to make fictitious or pretended purchases or sales of subdivided lands in this state, or in any other respect willfully violates or fails to comply with any of the provisions of this chapter, or omits or neglects to obey, observe, or comply with any order, permit, decision, demand, or requirement of the commission under the provisions of this chapter, is guilty of a serious misdemeanor.

[C75, 77, 79, 81, §117A.5]
C93, §543C.5

543C.6 Sales by brokers.

It shall be unlawful for any subdivider to sell or lease, or offer for sale or lease, any subdivided land located without this state except through a real estate broker or salesperson duly licensed in this state. The provision of section 543B.7, subsection 1, exempting regular employees of the owner of real estate from the licensing requirements of chapter 543B, shall not in any way apply to the sale of any subdivided land regulated by this chapter and subdividers covered by this chapter may not avail themselves of the provisions of section 543B.7, subsection 1, but must pursuant to this subsection sell only through licensed Iowa brokers and licensed salespersons.

[C75, 77, 79, 81, §117A.6]
C93, §543C.6

543C.7 Prosecution.

1. The attorney general shall prosecute all violations of this chapter. Prosecutions shall be instituted by the attorney general upon the written request of the commission. In all criminal proceedings the attorney general may appear before any court or any grand jury and exercise all the

powers and perform all the duties in respect to such actions or proceedings which the county attorney would otherwise be authorized or required to exercise or perform. In lieu thereof the attorney general may transmit evidence, proof, and information pertaining to such offense to the county attorney of the county in which the alleged violation occurred, and such county attorney shall prosecute for such violation. In any such proceeding in which the attorney general has appeared, the county attorney shall only exercise such powers and perform such duties as are required by the attorney general. The attorney general shall, within ten days after a conviction for a violation of any provision of this chapter, file with the commission a detailed report showing the date of the conviction, name of the person convicted, and the specific nature of the charge.

2. Whenever it appears to the commission that any person, officer, director, agent, or employee of a company, firm, partnership, association, or corporation offering to sell or lease, or selling or leasing, subdivided land, has committed or is about to commit a violation of this chapter or any rule or order issued by the commission hereunder, the commission may apply to the district court of the county in which the principal office of the subdivider is located or if such subdivider has no such office in this state then to the district court of Polk county for an order enjoining such subdivider or such officer, director, agent, or employee thereof from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interests of the public may require.

3. Any false statement contained in any statement filed with the commission pursuant to the requirements of this chapter, or in any affidavit attached thereto, shall constitute a violation of this chapter.

4. In any action brought under the provisions of this chapter, the attorney general is entitled to recover costs for the use of this state.

[C75, 77, 79, 81, §117A.7]
C93, §543C.7

543C.8 Filing fees.

Each initial filing made pursuant to section 543C.2 shall be accompanied by a basic filing fee of one hundred dollars, plus twenty-five dollars for every one hundred lots, units, parcels, portions, or interests included in the offering. A registration fee shall be paid with the filing of an application for registration consolidating additional lots with a prior registration and shall be set by rule which shall provide a basic fee of fifty dollars, plus an additional fee of twenty-five dollars for every one hundred lots, units, parcels, portions, or interests included in the offering. A fee shall not be charged for amendments to the property report as a result of amendments to the initial filing, unless the commission determines the amendments are made for the purpose of avoiding the payment of a fee, in which event the amendment may be treated as an application for registration consolidating additional lots with a prior registration. The filing fee to be paid with each annual current offering statement is as established by section 543C.3, subsection 8.

All fees collected under this chapter shall be deposited with the treasurer of state and credited to the general fund.

[C75, 77, 79, 81, §117A.8]
C93, §543C.8

CHAPTER 543D

REAL ESTATE APPRAISALS AND APPRAISERS

This chapter not enacted as a part of this title;
transferred from chapter 117B in Code 1993

543D.1 Short title.
543D.2 Definitions.
543D.3 Purposes — voluntary certification.
543D.4 Iowa real estate appraiser board.
543D.5 Powers of the board.
543D.6 Fees.
543D.7 Certification process.
543D.8 Examination requirement.
543D.9 Education and experience requirement.
543D.10 Nonresident certification.
543D.11 Certification by reciprocity.
543D.12 Basis for denial.
543D.13 Principal place of business.
543D.14 Certificate.
543D.15 Use of term.
543D.16 Continuing education.
543D.17 Disciplinary proceedings.
543D.18 Standards of practice.
543D.19 Retention of records.

543D.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Voluntary Appraisal Standards and Appraiser Certification Law"*.

89 Acts, ch 290, §1
CS89, §117B.1
C93, §543D.1

543D.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Appraisal"* or *"real estate appraisal"* means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis. A *"valuation"* is an estimate of the value of real estate or real property. An *"analysis"* is a study of real estate or real property other than estimating value.

2. *"Appraisal assignment"* means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting as a disinterested third party in rendering an appraisal, valuation, or analysis.

3. *"Appraisal foundation"* means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987.

4. *"Appraisal report"* means any communication of an appraisal.

5. *"Associate real estate appraiser"* means a person who may not yet fully meet the requirements for certification but who is providing significant input into the appraisal development under the direction of a certified appraiser.

6. *"Board"* means the real estate appraiser examining board established pursuant to this chapter.

7. *"Certified appraisal or certified appraisal report"* means an appraisal or appraisal report given or signed and certified as an appraisal or appraisal report by an Iowa certified real estate appraiser.

8. A *"certified real estate appraiser"* means a person who develops and communicates real estate appraisals and who holds a current, valid certificate for appraisals of types of real estate which may include residential, commercial, or rural real estate, as may be established under this chapter.

9. *"Review appraiser"* means a person who is responsible for the administrative approval of the appraised value of real property or assures that appraisal reports conform to the requirements of law and policy, or that the value of real property estimated by appraisers represents adequate security, fair market value, or other defined value.

10. *"Specialized services"* means a hypothetical or other special valuation, or an analysis or an appraisal which does not fall within the definition of an appraisal assignment.

89 Acts, ch 290, §2
CS89, §117B.2
C93, §543D.2
2001 Acts, ch 49, §1

543D.3 Purposes — voluntary certification.

The purpose of this chapter is to establish standards for real estate appraisals and a procedure for the voluntary certification of real estate appraisers.

A person who is not a certified real estate appraiser under this chapter may appraise real estate for compensation if certification is not required by this chapter or by federal or state law, rule, or policy. However, an employee of the state department of transportation whose duties include appraisals of property pursuant to chapter 6B must be a certified real estate appraiser under this chapter.

89 Acts, ch 290, §3
CS89, §117B.3
C93, §543D.3
99 Acts, ch 171, §39, 42

1999 amendment to unnumbered paragraph 2 applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

543D.4 Iowa real estate appraiser board.

A real estate appraiser examining board is established within the professional licensing and regulation division of the department of commerce. The board consists of seven members, two of whom shall be public members and five of whom shall be real estate appraisers.

1. The governor shall appoint the members of the board who are subject to confirmation by the senate. The governor may remove a member for cause.

2. Appointees shall possess or maintain at least those standards of ethics, education, and experience required by federal regulations.

3. Each real estate appraiser member of the board appointed after January 1, 1992, must be a certified real estate appraiser. The governor shall attempt to represent each class of certified appraisers in making the appointments.

4. The term of each member is three years; except that, of the members first appointed, two shall be appointed for two years and two shall be appointed for one year.

5. Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors. A person shall not serve as a member of the board for more than two consecutive terms.

6. The public members of the board shall not engage in the practice of real estate appraising.

7. The board shall meet at least once each calendar quarter to conduct its business.

8. The members of the board shall elect a chairperson from among the members to preside at board meetings.

9. A quorum of the board is four members. At least three of the four members shall be appraiser members.

89 Acts, ch 290, §4
CS89, §117B.4
C93, §543D.4
Confirmation, see §2.32

543D.5 Powers of the board.

1. The board shall adopt rules establishing uniform appraisal standards and appraiser certification requirements and other rules necessary to administer and enforce this chapter and its responsibilities under chapter 272C. The board shall consider and may incorporate any standards recommended by the appraisal foundation, or by a professional appraisal organization, or by a public authority or organization responsible to review appraisals or for the oversight of appraisers.

2. The uniform appraisal standards shall meet all of the following requirements:

a. Require compliance with federal law and appraisal standards adopted by federal authorities as they apply to federally covered transactions. This paragraph does not require that an appraiser invoke a jurisdictional exception to the uniform standards of professional appraisal practice in order to comply with federal law and appraisal standards adopted by federal authorities as they apply to federally covered transactions, unless federal law requires that the exception be invoked.

b. Develop standards for the scope of practice for certified real estate appraisers.

3. Appraiser certification requirements shall require a demonstration that the applicant has a working knowledge of current appraisal theories, practices, and techniques which will provide a high degree of service and protection to members of the public dealt with in a professional relationship under authority of the certification. The board shall establish the examination specifications for each category of certified real estate appraiser, provide or procure appropriate examinations, establish procedures for grading examinations, receive and approve or disapprove applications for certification, and issue certificates.

4. The board shall maintain a registry of the names and addresses of appraisers certified under this chapter and retain records and application materials submitted to the board.

89 Acts, ch 290, §5
CS89, §117B.5
C93, §543D.5
99 Acts, ch 171, §40, 42
1999 amendment to subsection 2, paragraph a, applies to state highway construction projects approved for commencement by the transportation commission on or after July 1, 1999, and to all other condemnation proceedings in which the application for condemnation is filed on or after July 1, 1999; see 99 Acts, ch 171, §42

543D.6 Fees.

1. The board shall establish and collect fees for certification, examination, reexamination, renewal of certification, and delinquency at an amount necessary to pay the administrative costs of sustaining the board and implementing this chapter. The fees shall include, but are not limited to, amounts to cover the costs for the following items:

a. Per diem, expenses, and travel expenses for board members, peer review committee persons, or disciplinary panel members.

b. Salary, per diem, and expenses of staff.

c. Office facilities, supplies, and equipment.

2. Fees collected by the board shall be transmitted to the treasurer of state who shall deposit the fees in the general fund of the state.

89 Acts, ch 290, §6; 90 Acts, ch 1168, §21; 90 Acts, ch 1261, §39
CS89, §117B.6
C93, §543D.6
94 Acts, ch 1107, §90

543D.7 Certification process.

1. Applications for original certification, renewal certification, and examinations shall be made in writing to the board on forms approved by the board.

2. Until the board has adopted final rules to implement this chapter, the board may issue interim annual certification to qualified applicants. No interim annual certifications may be issued or renewed following the publication of final certification rules by the board.

89 Acts, ch 290, §7
CS89, §117B.7
C93, §543D.7

543D.8 Examination requirement.

An original certification as a certified real estate appraiser shall not be issued to a person who has not demonstrated through a written examination that the person possesses the following knowledge and understanding:

1. Appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing, and economic concepts applicable to real estate.

2. Understanding of the principles of land economics, real estate appraisal processes, and problems likely to be encountered in gathering, interpreting, and processing data in carrying out appraisal assignments.

3. Knowledge of theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal that are appropriate for each classification of certificate applied for.

4. Knowledge of other appropriate principles and procedures for the classifications applied for.

5. Basic understanding of Iowa real estate, property tax, and eminent domain laws.

6. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against a certified real estate appraiser.

89 Acts, ch 290, §8
CS89, §117B.8
C93, §543D.8

543D.9 Education and experience requirement.

The board shall determine what real estate appraisal or real estate appraisal review experience and what education shall be required to provide appropriate assurance that an applicant for certification is competent to perform the certified appraisal work which is within the scope of practice defined by the board. The board shall prescribe a required minimum number of tested hours of education relating to the provisions of this chapter, the uniform appraisal standards, and other rules issued in accordance with this chapter.

89 Acts, ch 290, §9
CS89, §117B.9
C93, §543D.9

543D.10 Nonresident certification.

1. An applicant for certification as a real estate appraiser who is not a resident of Iowa shall submit, with the application for certification, an irrevocable consent that service of process upon the applicant may be made by delivery of the process to the secretary of state if, in an action against the applicant in a court of this state arising out of the applicant's activities as a certified real estate appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

2. A nonresident of Iowa who has complied with subsection 1 may obtain a certificate as a certified real estate appraiser by complying with the certification requirements in this chapter.

89 Acts, ch 290, §10
CS89, §117B.10
C93, §543D.10

543D.11 Certification by reciprocity.

If, in the determination by the board, another state is deemed to have substantially equivalent certification requirements, an applicant who is certified under the laws of the other state may obtain a certificate as a certified real estate appraiser upon terms and conditions as determined by the board.

89 Acts, ch 290, §11
CS89, §117B.11
C93, §543D.11

543D.12 Basis for denial.

The board may deny the issuance of a certificate as a certified real estate appraiser to an applicant on any of the grounds listed in this chapter or in chapter 272C.

89 Acts, ch 290, §12
CS89, §117B.12
C93, §543D.12

543D.13 Principal place of business.

1. Each certified real estate appraiser shall advise the board of the address of the appraiser's principal place of business and all other addresses at which the appraiser is currently engaged in the business of preparing real estate appraisal reports.

2. When a certified real estate appraiser changes the appraiser's principal place of business, the appraiser shall immediately give written notification of the change to the board and apply for an amended certificate.

3. Each certified real estate appraiser shall notify the board of the appraiser's current residence address. Residence addresses on file with the board are exempt from disclosure as public records.

89 Acts, ch 290, §13
CS89, §117B.13
C93, §543D.13

543D.14 Certificate.

A certificate issued under this chapter shall bear the signature or facsimile signature of the member or members of the board as designated by the board and a certificate number assigned by the board.

89 Acts, ch 290, §14
CS89, §117B.14
C93, §543D.14
2001 Acts, ch 49, §2

543D.15 Use of term.

1. The term *"certified real estate appraiser"* shall only be used to refer to individuals who hold the certificate and shall not be used in connection with or as part of the name or signature of a firm, partnership, corporation, or group, or in a manner that it may be interpreted as referring to a firm, partnership, corporation, group, other business entity, or anyone other than an individual holder of the certificate.

2. The term *"associate real estate appraiser"* shall only be used to refer to individuals who do not yet fully meet the requirements for certification but who provide significant input into the appraisal development under the direction of a certified appraiser.

3. A certificate shall not be issued under this chapter to a firm, corporation, partnership, group,

or other business entity.

89 Acts, ch 290, §15
CS89, §117B.15
C93, §543D.15

543D.16 Continuing education.

1. As a prerequisite to renewal of a certification, a certified real estate appraiser shall present evidence satisfactory to the board of having met continuing education requirements.

2. The basic continuing education requirement for renewal of certification shall be the completion, before June 30 of the year in which the appraiser's certificate expires, of the number of hours of instruction required by the board in courses or seminars which have received the preapproval of the board. Instructional hours by correspondence and home study courses claimed by an appraiser shall not exceed fifty percent of the required hours of instruction necessary for renewal.

89 Acts, ch 290, §16
CS89, §117B.16
C93, §543D.16
97 Acts, ch 80, §1

543D.17 Disciplinary proceedings.

1. The rights of a holder of a certificate as a certified real estate appraiser may be revoked or suspended, or the holder may be otherwise disciplined in accordance with this chapter. The board may investigate the actions of a certified real estate appraiser and may revoke or suspend the rights of a holder or otherwise discipline a holder for violation of a provision of this chapter, or chapter 272C, or of a rule adopted under this chapter or commission of any of the following acts or omissions:

a. Procurement or attempt to procure a certificate under this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or participating in any form of fraud or misrepresentation.

b. Failure to meet the minimum qualifications established by this chapter.

c. A conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions, and duties of a person developing real estate appraisals and communicating real estate appraisals to others.

d. Violation of any of the standards for the development or communication of real estate appraisals as provided in this chapter.

e. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

f. Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.

g. Willful disregard or violation of a provision of this chapter or a rule of the board of the administration and enforcement of this chapter.

2. In a disciplinary proceeding based upon a civil judgment a certified real estate appraiser shall be given an opportunity to present matters in mitigation and extenuation, but not to collaterally attack the civil judgment.

3. Notwithstanding the limitations of section 272C.3, subsection 2, paragraph *"e"*, the board shall adopt a rule providing for civil penalties in amounts and for the reasons authorized by federal law where federal law requires the board to have the authority to impose the civil penalties in order to obtain or to retain the board's designation as a qualified state appraiser certifying agency.

89 Acts, ch 290, §17
CS89, §117B.17
C93, §543D.17

543D.18 Standards of practice.

1. A certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter.

2. A certified real estate appraiser shall not accept an appraisal assignment or a fee for an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis, or opinion or if the fee to be paid is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.

3. A certified real estate appraiser may provide specialized services to facilitate the client's or employer's objectives. Specialized services shall not be communicated as a certified appraisal or as a certified appraisal report. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis or opinion or conclusion, the work is an appraisal assignment rather than an assignment for specialized services. Communication of a valuation under oath is an appraisal assignment.

4. A certified real estate appraiser who enters into an agreement to perform specialized services may be paid a fixed fee or a fee that is contingent on the results achieved by the specialized services.

5. If a certified real estate appraiser enters into an agreement to perform specialized services for a contingent fee, this fact shall be clearly stated in each written and oral report. In each written report, this fact shall be clearly stated in a prominent location in the report, each letter of transmittal, and the certification statement made by the appraiser in the report.

6. A certified real estate appraiser making a significant contribution to the valuation or analysis process in completing an appraisal assignment

shall sign the final written report or acknowledge the appraiser's contribution in a verbal report.

89 Acts, ch 290, §18
CS89, §117B.18
C93, §543D.18

543D.19 Retention of records.

1. A certified real estate appraiser shall retain for three years, originals or true copies of all written contracts engaging the appraiser's services for real estate appraisal work and all reports and supporting data assembled and formulated for use by the appraiser or the associate appraiser in preparing the reports.

2. The three-year period for retention of records is applicable to each engagement of the services of a certified real estate appraiser and shall commence upon the date of the submission of the appraisal to the client unless, within the three-year period, the appraiser is notified that the appraisal or report is involved in litigation, in which event the three-year period for the retention of records shall commence upon the date of the final disposition of the litigation.

3. All records required to be maintained under this chapter shall be made available by a certified real estate appraiser for inspection and copying by the board on reasonable notice to the appraiser.

89 Acts, ch 290, §19
CS89, §117B.19
C93, §543D.19

CHAPTER 544

UNIFORM PARTNERSHIP LAW

Transferred to ch 486; ch 486 repealed effective July 1, 2001; see chapter 486A

CHAPTER 544A

REGISTERED ARCHITECTS

This chapter not enacted as a part of this title; transferred from chapter 118 in Code 1993

544A.1 Practice regulated — creation of architectural examining board.
544A.2 Officers.
544A.3 Records — roster.
544A.4 Report. Repealed by 98 Acts, ch 1119, §11.
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544A.8 Qualification for registration.
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544A.25 Applicant — civil rights — moral character.
544A.26 Public members.
544A.27 Disclosure of confidential information.
544A.28 Seal required.
544A.29 Rules.

544A.1 Practice regulated — creation of architectural examining board.

The practice of architecture affects the public health, safety, and welfare and is subject to regulation and control in the public interest. Only persons qualified by the laws of the state are authorized to engage in the practice of architecture in the state.

The architectural examining board is created within the professional licensing and regulation division of the department of commerce. The board consists of five members who possess a certificate of registration issued under section 544A.9 and who have been in active practice of architecture for not less than five years, the last two of which shall have been in Iowa, and two members who do not possess a certificate of registration issued under section 544A.9 and who shall represent the general public. Members shall be appointed by the governor subject to confirmation by the senate.

Professional associations or societies composed of registered architects may recommend the names of potential board members to the governor but the governor is not bound by the recommendations. A board member is not required to be a member of any professional association or society composed of registered architects. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor and shall require senate confirmation. Members shall serve no more than three terms or nine years, whichever is less.

[C27, 31, 35, §1905-b1; C39, §**1905.58;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.1]

86 Acts, ch 1245, §725; 87 Acts, ch 92, §1

C93, §544A.1

Confirmation, see §2.32

544A.2 Officers.

At a time to be determined by the board, the board shall elect from its members officers to serve for a term not to exceed one year. The division shall provide staff assistance.

[C27, 31, 35, §1905-b2; C39, §**1905.59;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.2]

87 Acts, ch 92, §2; 90 Acts, ch 1168, §22

C93, §544A.2

93 Acts, ch 5, §1

544A.3 Records — roster.

The board shall keep a record, open to public inspection at all reasonable times, of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain a roster showing the name, place of business and residence, and the date and number of the certificate of registration of every registered architect entitled to practice the profession in the state of Iowa.

[C27, 31, 35, §1905-b3; C39, §**1905.60;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.3]

C93, §544A.3

544A.4 Report. Repealed by 98 Acts, ch 1119, § 11.

544A.5 Duties.

The architectural examining board shall enforce this chapter, shall make rules for the examination of applicants for the certificate of registration provided by this chapter, and shall, after due public notice, hold meetings each year for the purpose of examining applicants for registration and the transaction of business pertaining to the affairs of the board. Examinations shall be given as often as deemed necessary, but not less than annually. Action at a meeting shall not be taken without the affirmative votes of a majority of the members of the board. The administrator of the professional licensing and regulation division of the department of commerce shall hire and provide staff to assist the board with implementing this chapter.

[C27, 31, 35, §1905-b5; C39, §**1905.62;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.5]

86 Acts, ch 1245, §726

C93, §544A.5

544A.6 and 544A.7 Reserved.

544A.8 Qualification for registration.

Any person may apply for a certificate of registration or may apply to take an examination for certification under this chapter. The board shall not require that the application contain a photograph of the applicant.

The board shall adopt rules governing practical training and education and may adopt as its rules criteria published by a national certification body recognized by the board. The board may accept the accreditation decisions of a national accreditation body recognized by the board.

A person applying for registration by examination, upon complying with the other requirements, shall satisfactorily pass an examination in technical and professional subjects prescribed by the board. The board may adopt the uniform standardized examination and grading procedures of a national certification body recognized by the board. The examination may be conducted by representatives of the board. The identity of the person taking the examination shall be concealed until after the examination has been graded. The board shall adopt rules regarding reexamination. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examina-

tion, the board shall only be required to provide the examination grade and the other information concerning the applicant's examination results which is available to the board.

In lieu of examination, the board may grant registration by reciprocity. A person applying to the board for registration by reciprocity shall furnish satisfactory evidence that the person meets both of the following requirements:

1. Holds a valid and current certificate of registration issued by another registration authority recognized by the board, where the qualifications for registration were substantially equivalent to those prescribed in this state on the date of original registration with the other registration authority.

2. Holds a record or certificate issued by a national certification council recognized by the board.

[C27, 31, 35, §1905-b8; C39, §**1905.65;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.8]

87 Acts, ch 92, §3

C93, §544A.8

544A.9 Registration.

When the applicant has complied with the requirements as set forth in section 544A.8, to the satisfaction of at least four members of the board, and has paid the fees prescribed by the board, the secretary shall enroll the applicant's name and address in the roster of registered architects and issue to the applicant a certificate of registration, signed by the officers of the board, which certificate shall entitle the applicant to practice as an architect in the state of Iowa.

[C27, 31, 35, §1905-b9; C39, §**1905.66;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.9]

C93, §544A.9

544A.10 Renewals.

Certificates of registration expire in multiyear intervals as determined by the board. Registered architects shall renew their certificates of registration and pay a renewal fee in the manner prescribed by the board. The board shall prescribe the conditions and reasonable penalties for renewal after a certificate's expiration date.

[C27, 31, 35, §1905-b10; C39, §**1905.67;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.10]

87 Acts, ch 92, §4

C93, §544A.10

544A.11 Fees.

The board shall set the fees for examination, for a certificate of registration as an architect, for renewal of a certificate, for reinstatement of a certificate, and for other activities of the board pertaining to its duties. The fee for examination shall be based on the annual cost of administering the examinations. The fee for a certificate of registration and for renewal of a certificate shall be based upon the administrative costs of sustaining the board which shall include, but are not limited to, the costs for all of the following:

1. Per diem, expenses and travel for board members.

2. Office facilities, supplies and equipment.

3. Staff assistance.

All fees shall be paid to the treasurer of state and deposited in the general fund of the state.

[C27, 31, 35, §1905-b11; C39, §**1905.68;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.11]

87 Acts, ch 92, §5; 90 Acts, ch 1168, §23; 90 Acts, ch 1261, §40

C93, §544A.11

94 Acts, ch 1107, §91

544A.12 Expenses — compensation.

The members of the architectural examining board are entitled to be reimbursed for the actual expenses incurred in attending the meetings of the board, within the limits of the funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C27, 31, 35, §1905-b12; C39, §**1905.69;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.12]

86 Acts, ch 1245, §727

C93, §544A.12

544A.13 Revocation or suspension.

A license to practice architecture may be revoked or suspended when the licensee is guilty of the following acts or offenses:

1. Fraud in procuring a license.

2. Professional incompetency.

3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

4. Habitual intoxication or addiction to the use of drugs.

5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice the profession of architecture. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

6. Fraud in representations as to skill or ability.

7. Use of untruthful or improbable statements in advertisements.

8. Willful or repeated violations of the provisions of this Act.*

9. Willful or repeated violations of one or more rules of conduct adopted by the board.

The board may revoke any certificate after thirty days' notice with grant of hearing to the holder if satisfactory proof is presented to the board.

Proceedings for the revocation of a certificate

shall be initiated by filing written charges against the accused with the board. Upon the filing of charges the board may request the department of inspections and appeals to conduct an investigation into the charges. The department of inspections and appeals shall report its findings to the board, and a time and place for the hearing of the charges shall be fixed by the board if the board determines that a hearing is warranted. If personal service or service through counsel cannot be effected, service may be by publication. At the hearing, the accused has the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. The board may subpoena witnesses, administer oaths to witnesses, and employ counsel. The board shall make a written report of its findings, which shall be filed with the secretary of state, and which is conclusive.

[C27, 31, 35, §1905-b13; C39, §**1905.70;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §118.13]

87 Acts, ch 92, §6; 88 Acts, ch 1158, §26

C93, §544A.13

*See 77 Acts, ch 95, §13

544A.14 Reserved.

544A.15 Unlawful practice — violations — criminal and civil penalties — consent agreement.

1. It is unlawful for a person to engage in or to offer to engage in the practice of architecture in this state or use in connection with the person's name the title "architect", "registered architect", or "architectural designer", or to imply that the person provides or offers to provide professional architectural services, or to otherwise assume, use, or advertise any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the person is an architect or is engaged in the practice of architecture unless the person is qualified by registration as provided in this chapter.

2. A person who violates this section is guilty of a serious misdemeanor.

3. *a.* In addition to the criminal penalty provided for in this section, the board may by order impose a civil penalty upon a person who is not registered under this chapter as an architect pursuant to this chapter and who does any of the following:

(1) Engages in or offers to engage in the practice of architecture.

(2) Uses or employs the words "architect", "registered architect", "architectural designer", or implies authorization to provide or offer professional architectural services, or otherwise uses or advertises any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the person or entity is an architect or is engaged in the practice of architecture.

(3) Presents or attempts to use the certificate of registration or the seal of an architect.

(4) Gives false or forged evidence of any kind to the board or any member of the board in obtaining or attempting to obtain a certificate of registration.

(5) Falsely impersonates any other registered architect.

(6) Uses or attempts to use an expired, suspended, revoked, or nonexistent certificate of registration.

(7) Knowingly aids or abets an unregistered person who engages in any activity identified in this paragraph.

b. A civil penalty imposed shall not exceed one thousand dollars for each offense. Each day of a continued violation constitutes a separate offense.

c. In determining the amount of a civil penalty to be imposed, the board may consider any of the following:

(1) Whether the amount imposed will be a substantial economic deterrent to the violation.

(2) The circumstances leading to the violation.

(3) The severity of the violation and the risk of harm to the public.

(4) The economic benefits gained by the violator as a result of noncompliance.

(5) The interest of the public.

d. Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a registered architect.

e. The board, in connection with a proceeding under this subsection, may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce the subpoena.

f. A person aggrieved by the imposition of a civil penalty under this subsection may seek judicial review in accordance with section 17A.19.

g. If a person fails to pay a civil penalty within thirty days after entry of an order under paragraph *"a"*, or if the order is stayed pending an appeal, within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

h. An action to enforce an order under this section may be joined with an action for an injunction.

4. The board at its discretion and in lieu of prosecuting a first offense under this section may enter into a consent agreement with a violator, or with a person guilty of aiding or abetting a violator, which acknowledges the violation and the vio-

lator's agreement to refrain from any further violations.

[C66, 71, 73, 75, 77, 79, 81, §118.15]
87 Acts, ch 92, §7
C93, §544A.15
96 Acts, ch 1055, §3

544A.16 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Architect"* means a person qualified to engage in the practice of architecture who holds a current valid registration under the laws of this state.

2. *"Board"* means the architectural examining board established in section 544A.1.

3. *"Construction"* means physical alteration of a building or improvement of real estate, and includes new construction, enlargements, or additions to existing construction, and alterations, renovation, remodeling, restoration, preservation, or other material modification to and within existing construction.

4. *"Construction documents"* means the drawings, specifications, technical submissions, and other documents upon which construction is based.

5. *"Direct supervision and responsible charge"* means an architect's personal supervisory control of work as to which the architect has detailed professional knowledge. In respect to preparing technical submissions, *"direct supervision and responsible charge"* means that the architect has the exercising, directing, guiding, and restraining power over the design of the building or structure and the preparation of the documents, and exercises professional judgment in all architectural matters embodied in the documents. Merely reviewing the work prepared by another person does not constitute *"direct supervision and responsible charge"* unless the reviewer actually exercises supervision and control and is in responsible charge of the work.

6. *"Good moral character"* means a reputation for trustworthiness, honesty, and adherence to professional standards of conduct.

7. *"Interior designer"* means a person using such designation in the performance of interior design services who has either passed the NCIDQ (National Council for Interior Design Qualification) prior to or subsequent to enactment of 1988 Iowa Acts, chapter 1274, or who was qualified under established NCIDQ criteria to take the examination as of July 1, 1988. An interior designer performing customary interior design services shall not be deemed to be engaged in the unlawful practice of architecture. Customary interior design services include nonstructural aspects of interior space as provided in section 544A.18.

8. *"Observation of construction site progress"* means intermittent visitation to the construction site by an architect or the architect's employee for the purpose of general familiarity with the progress and quality of the construction and general conformance of the construction to the construction documents and general compliance with the applicable building codes. For the purpose of this chapter, such observation does not imply exhaustive or continuous on-site inspections to check the quality or quantity of construction work.

9. *"Practice of architecture"* means performing, or offering to perform, professional architectural services in connection with the design, preparation of construction documents, or construction of one or more buildings, structures, or related projects, and the space within and surrounding the buildings or structures, or the addition to or alteration of one or more buildings or structures, which buildings or structures have as their principal purpose human occupancy or habitation, if the safeguarding of life, health, or property is concerned or involved, unless the buildings or structures are excepted from the requirements of this chapter by section 544A.18.

10. *"Professional architectural services"* means consultation, investigation, evaluation, programming, planning, preliminary design and feasibility studies, designs, drawings, specifications and other technical submissions, administration of construction contracts, observation of construction site progress, or other services and instruments of service related to architecture. A person is performing or offering to perform professional architectural services within the meaning of this chapter, if the person, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents the person to be an architect or through the use of a title implies that the person is an architect.

11. *"Professional consultant"* means a person who is required by the laws of this state to hold a current and valid certificate of registration in the field of the person's professional practice, and who is employed by the architect to perform, or who offers to perform professional services as a consultant to the architect, in connection with the design, preparation of construction documents or other technical submissions, or construction of one or more buildings or structures, and the space within and surrounding the buildings or structures.

12. *"Programming"* means the identification, verification, and analysis of the architectural requirements precedent to the planning and design of a building or structure.

13. *"Registration"* means the certificate of registration issued to an architect by the board.

14. *"Technical submissions"* means the designs, drawings, sketches, specifications, details, studies, and other technical reports, including construction documents, prepared in the course of

the practice of architecture.
[C66, 71, 73, 75, 77, 79, 81, §118.16]
87 Acts, ch 92, §8; 88 Acts, ch 1274, §37
C93, §544A.16

544A.17 When not applicable.
The provisions of this chapter shall not apply to:
1. Professional engineers registered under chapter 542B.
2. Persons acting under the instruction, control or supervision of, and those executing the plans of, a registered architect or a professional engineer registered under chapter 542B, provided that such unregistered persons shall not be placed in responsible charge of architectural or professional engineering work.
3. Superintendents, inspectors, supervisors and building trades craftspersons while performing their customary duties.
[C66, 71, 73, 75, 77, 79, 81, §118.17]
C93, §544A.17

544A.18 Exceptions.
Notwithstanding the other provisions of this chapter, persons who are not registered architects may perform planning and design services in connection with any of the following:
1. Detached residential buildings containing twelve or fewer family dwelling units of not more than three stories and outbuildings in connection with the buildings.
2. Buildings used primarily for agricultural purposes including grain elevators and feed mills.
3. Nonstructural alterations to existing buildings which do not change the use of a building:
a. From any other use to a place of assembly of people or public gathering.
b. From any other use to a place of residence not exempted by subsection 1.
c. From an industrial or warehouse use to a commercial or office use not exempted by subsection 4.
4. Warehouses and commercial buildings not more than one story in height, and not exceeding ten thousand square feet in gross floor area; commercial buildings not more than two stories in height and not exceeding six thousand square feet in gross floor area and light industrial buildings.
5. Factory built buildings which are not more than two stories in height and not exceeding twenty thousand square feet in gross floor area or which are certified by a professional engineer registered under chapter 542B.
6. Churches and accessory buildings, whether attached or separate, not more than two stories in height and not exceeding two thousand square feet in gross floor area.
[C66, 71, 73, 75, 77, 79, 81, §118.18]
84 Acts, ch 1057, §1
C93, §544A.18

544A.19 Reserved.

544A.20 Injunction.
In addition to any other remedies, and on the petition of the board or any person, any violators of this chapter may be restrained and permanently enjoined.
[C66, 71, 73, 75, 77, 79, 81, §118.20]
C93, §544A.20

544A.21 Practice by business entities.
Corporations may be formed under the Iowa business corporation Act, chapter 490, for the purpose of engaging in the practice of architecture. A corporation may be either a business corporation or a professional corporation. A corporation, partnership, sole proprietorship, or other business entity is not eligible for registration under this chapter. Only an individual natural person is eligible for registration. A domestic or foreign corporation, partnership, sole proprietorship, or other business entity may engage in the practice of architecture in this state, but only if all of the following requirements are met:
1. The entire practice of architecture by the corporation, partnership, sole proprietorship, or other business entity in this state and in connection with buildings, structures, and projects located in this state shall be performed by or under the direct supervision and responsible charge of one or more architects.
2. No less than two-thirds of the directors, if a corporation, or no less than two-thirds of the general partners, if a partnership, or the sole proprietor shall be qualified by registration to perform either professional architectural services or professional engineering services, by a registration authority recognized by the board, where the qualifications for registration are, in the opinion of the board, substantially equivalent to those prescribed by the laws of this state.
3. No less than one-third of the directors, if a corporation, or no less than one-third of the general partners, if a partnership, or the sole proprietor shall be qualified by registration to perform professional architectural services, by a registration authority recognized by the board, where the qualifications for registration are, in the opinion of the board, equivalent to those prescribed by this chapter.
4. A person engaging in the practice of architecture in the state of Iowa and in responsible charge on behalf of a business entity engaged in the practice of architecture must be registered to practice architecture in this state, and shall be a director, if a corporation, a general partner, if a partnership, or a sole proprietor of the business entity.
5. Before engaging in the practice of architecture in this state, a corporation, partnership, or sole proprietorship shall acquire an "authorization to practice architecture as a business entity"

from the board. The board shall adopt rules establishing the required information concerning officers, directors, beneficial owners, limitations on the name of the business entity, and other aspects of its business organization, which must be submitted to the board upon forms prescribed by the board in order to qualify for authorization.

The practice of architecture by or through a corporation, partnership, sole proprietorship, or other business entity does not relieve a person of liability for professional errors or omissions which liability would exist if the person were practicing as an individual, including, but not limited to, liability arising out of negligent supervision of the work of subordinates.

[C66, 71, 73, 75, 77, 79, 81, §118.21]
87 Acts, ch 92, §10
C93, §544A.21
2001 Acts, ch 24, §62

544A.22 to 544A.24 Reserved.

544A.25 Applicant — civil rights — moral character.

An applicant is not ineligible for registration because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. Character references may be required.

The board may consider the following aspects when investigating an applicant's good moral character:

1. An applicant's conviction for commission of a felony, but only if the felony relates directly to the practice of architecture or to the applicant's honesty.
2. An applicant's misstatement, omission, or misrepresentation of a material fact in connection with the applicant's application for registration in this state or another jurisdiction.
3. An applicant's violation of a rule of conduct of a jurisdiction in which the applicant has previously engaged in the practice of architecture, provided that the rule of conduct violated is substantially equivalent to a then existing or current rule of conduct required of architects in this state.
4. An applicant's practice of architecture without being registered in violation of registration laws of the jurisdiction in which the practice took place.

If the applicant's background includes any of the foregoing, the board may register the applicant on the basis of suitable evidence of reform.

[C75, 77, 79, 81, §118.25]
87 Acts, ch 92, §11
C93, §544A.25

544A.26 Public members.

The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

[C75, 77, 79, 81, §118.26]
C93, §544A.26

544A.27 Disclosure of confidential information.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §118.27]
C93, §544A.27

544A.28 Seal required.

An architect shall procure a seal with which to identify all technical submissions issued by the architect for use in this state. The seal shall be of a design, content, and size designated by the board.

Technical submissions prepared by an architect, or under an architect's direct supervision and responsible charge, shall be stamped with the impression of the architect's seal. The board shall designate by rule the location, frequency, and other requirements for use of the seal. An architect shall not impress the architect's seal on technical submissions if the architect was not the author of the technical submissions or if they were not prepared under the architect's direct supervision and responsible charge. An architect who merely reviews standardized construction documents for pre-engineered or prototype buildings, is not the author of the technical submissions and the technical submissions were not prepared under a reviewing architect's responsible charge.

An architect shall cause those portions of technical submissions prepared by a professional consultant to be stamped with the impression of the seal of the professional consultant, with a clear identification of the consultant's areas of responsibility, signature, and date of issuance.

A public official charged with the enforcement of the state building code, or a municipal or county building code, shall not accept or approve any technical submissions involving the practice of architecture unless the technical submissions have been stamped with the architect's seal as required by this section or unless the applicant has certified on the technical submission to the applicability of a specific exception under section 544A.18 permit-

ting the preparation of technical submissions by a person not registered under this chapter. A building permit issued with respect to technical submissions which do not conform to the requirements of this section is invalid.

87 Acts, ch 92, §12
CS87, §118.28
C93, §544A.28

544A.29 Rules.

The board may adopt rules consistent with this chapter for the administration and enforcement of this chapter and may prescribe forms to be issued. The rules may include, but are not limited to, standards and criteria for licensure, license renewal, professional conduct, misconduct, and discipline. Violation of a rule of conduct is grounds for disciplinary action or reprimand or probation at the discretion of the board. The board may enter into a consent order with an architect which acknowledges an architect's violation and agreement to refrain from any further violation. A willful or repeated violation of a rule of conduct is grounds for disciplinary action as provided in section 544A.13.

87 Acts, ch 92, §13
CS87, §118.29
C93, §544A.29

CHAPTER 544B

LANDSCAPE ARCHITECTS

This chapter not enacted as a part of this title;
transferred from chapter 118A in Code 1993

544B.1 Definitions.
544B.2 License required.
544B.3 Landscape architectural examining board created.
544B.4 Organization of the board — meetings — quorum.
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544B.6 Annual report. Repealed by 98 Acts, ch 1119, §11.
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544B.15 Suspension, revocation, or reprimand.
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544B.20 Scope of chapter.
544B.21 Examination not required.

544B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the landscape architectural examining board established pursuant to section 544B.3.

2. The *"practice of landscape architecture"* means the performance of professional services such as consultations, investigations, reconnaissance, research, planning, design, or responsible supervision in connection with projects involving the arranging of land and the elements thereon for public and private use and enjoyment, including the alignment of roadways and the location of buildings, service areas, parking areas, walkways, steps, ramps, pools and other structures, and the grading of the land, surface and subsoil drainage, erosion control, planting, reforestation, and the preservation of the natural landscape and aesthetic values, in accordance with accepted professional standards of public health, welfare, and safety. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this chapter but shall not include the design of structures or facilities with separate and self-contained purposes for habitation or industry, or the design of public streets and highways, utilities, storm and sanitary sewers, and sewage treatment facilities, such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of land surveys or final land plats for official approval or recording. Nothing contained in this chapter shall be construed as authorizing a professional landscape architect to engage in the practice of architecture, engineering, or land surveying.

3. *"Professional landscape architect"* means a person who has obtained a license pursuant to section 544B.2, and who engages in the practice of landscape architecture as defined in this section.

[C75, 77, 79, 81, §118A.1]
C93, §544B.1
2002 Acts, ch 1045, §1, 2
Subsections 2 and 3 amended and renumbered as 3 and 2, respectively

544B.2 License required.

A person shall not engage in the practice of landscape architecture, or use the title "landscape architect", "professional landscape architect", "landscape architecture designer", or use other titles or words, letters, figures, signs, cards, advertisements, symbols, or other devices to represent that the person or a business associated with the person is authorized to practice landscape architecture, without first obtaining a license as a professional landscape architect from the board pursuant to this chapter. Every holder of a license as a professional landscape architect shall display it in a conspicuous place in the holder's principal office.

[C75, 77, 79, 81, §118A.2]
C93, §544B.2
2002 Acts, ch 1045, §3
Section stricken and rewritten

544B.3 Landscape architectural examining board created.

A landscape architectural examining board is created within the professional licensing and regulation division of the department of commerce. The board consists of five members who are professional landscape architects and two members who are not professional landscape architects and who shall represent the general public. Members shall be appointed by the governor, subject to confirmation by the senate. A professional member shall be actively engaged in the practice of landscape architecture or the teaching of landscape architecture in an accredited college or university, and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. Associations or societies composed of professional landscape architects may recommend the names of potential board members to the governor. However, the governor is not bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of professional landscape architects.

Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor and are subject to senate confirmation. Members shall serve no more than three terms or nine years, whichever is less.

[C75, 77, 79, 81, §118A.3]
86 Acts, ch 1245, §728
C93, §544B.3
2002 Acts, ch 1045, §4
Confirmation, see §2.32
Unnumbered paragraph 1 amended

544B.4 Organization of the board — meetings — quorum.

The board shall elect annually from its members a chairperson and vice chairperson. The duties of the officers are those usually performed by such officers. The board shall hold at least one meeting each year at the location of the board's principal office, and meetings shall be called at other times by division staff at the request of the chairperson or four members of the board. A majority of the members constitutes a quorum. No action at any meeting can be taken without the affirmative votes of a majority of the members of the board.

[C75, 77, 79, 81, §118A.4]
88 Acts, ch 1158, §27; 90 Acts, ch 1168, §24
C93, §544B.4

544B.5 Duties.

The board shall enforce this chapter, shall make rules for the examination of applicants for licensure, and, after public notice, shall conduct examinations of applicants for licensure. The board shall keep a record of its proceedings. The board shall adopt an official seal which shall be affixed to all certificates of licensure granted. The board may make other rules, not inconsistent with law, as necessary for the proper performance of its duties. The board shall maintain a roster showing the name, place of business, and residence, and the date and number of the certificate of licensure of every professional landscape architect in this state. The administrator of the professional licensing and regulation division of the department of commerce shall hire and provide staff to assist the board in implementing this chapter.

[C75, 77, 79, 81, §118A.5]
86 Acts, ch 1245, §729
C93, §544B.5
2002 Acts, ch 1045, §5
Section amended

544B.6 Annual report. Repealed by 98 Acts, ch 1119, § 11.

544B.7 Expenses — compensation.

Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C75, 77, 79, 81, §118A.7]
86 Acts, ch 1245, §730
C93, §544B.7

544B.8 Examination.

The board shall conduct examinations of applicants for certificates of licensure as professional landscape architects at least once each year, or, if there are sufficient applications, at such additional times as the board may deem necessary. The examination shall determine the ability of the applicant to use and understand the theory and practice of landscape architecture and may be divided into such subjects as the board deems necessary.

The board shall determine the annual cost of administering the examinations and shall set the fees accordingly. The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

[C75, 77, 79, 81, §118A.8]
C93, §544B.8
2002 Acts, ch 1045, §6
Unnumbered paragraph 1 amended

544B.9 Applications.

Any person may apply for a certificate of licensure or may apply to take an examination for such certification. Applications for licensure shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detail summary of the applicant's pertinent practical landscape architectural work and experience. The board shall not require that a recent photograph of the applicant be attached to the application form. An applicant shall not be ineligible for licensure because of age, citizenship, sex, race, religion, marital status, or national origin. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of landscape architecture. Character references may be required but shall not be obtained from professional landscape architects. An application for examination shall be accompanied by an examination fee in the amount determined by the board. Each applicant for licensure as a professional landscape architect shall meet one of the following requirements:

1. Graduation from a course in landscape architecture in a school, college, or university offering an accredited minimum four-year curriculum in landscape architecture, and a minimum of three years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a professional landscape architect or a person who becomes a professional landscape architect within one year after July 1, 2002.

2. Graduation from a nonaccredited course of landscape architecture of a minimum of four years in a school, college, or university and a minimum of four years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a professional landscape architect.

3. A minimum of ten years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character to properly prepare the applicant for the examination.

A satisfactorily completed year of study in an accredited course of landscape architecture in an accredited school, college, or university may be accepted in lieu of one year of practical experience.

A master's degree from an accredited school, college, or university may be accepted in lieu of one year of practical experience.

Any four-year college or university degree may be accepted in lieu of two years of practical experience.

[C75, 77, 79, 81, §118A.9]
C93, §544B.9
2002 Acts, ch 1045, §7
Section amended

544B.10 Foreign licensees.

Any applicant who holds a license or certificate to practice landscape architecture issued to the applicant upon examination by a board of examiners in any other state, territory, or possession of the United States, the District of Columbia, or of any foreign country, if the requirements for such license or certificate were, at the time it was issued, in the opinion of the board, equal to or higher than the requirements of this state, may be licensed without further examination.

[C75, 77, 79, 81, §118A.10]
C93, §544B.10
2002 Acts, ch 1045, §8
Section amended

544B.11 Licensure.

When an applicant has complied with the application requirements of this chapter and has passed the examination to the satisfaction of a majority of the licensed members of the board, or is a foreign registrant and has qualified for licensure under this chapter, and has paid the required licensure fee, the secretary shall enroll the applicant's name and address in the roster of professional landscape architects and issue to the applicant a certificate of licensure, signed by the officers of the board.

[C75, 77, 79, 81, §118A.11]
C93, §544B.11
2002 Acts, ch 1045, §9
Section amended

544B.12 Seal.

Every professional landscape architect shall have a seal, approved by the board, which shall contain the name of the landscape architect and the words "Professional Landscape Architect,

State of Iowa", and such other words or figures as the board may deem necessary. All landscape architectural plans and specifications, prepared by such professional landscape architect or under the supervision of such professional landscape architect, shall be dated and bear the legible seal of such professional landscape architect. Nothing contained in this section shall be construed to permit the seal of a professional landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer or land surveyor whenever the seal of an architect, engineer or land surveyor is required under the laws of this state.

[C75, 77, 79, 81, §118A.12]
C93, §544B.12
2002 Acts, ch 1045, §10
Section amended

544B.13 Renewals.

Certificates of licensure shall expire in multiyear intervals as determined by the board. Professional landscape architects shall renew their certificates of licensure and pay a renewal fee in the manner and amount prescribed by the board. A person who fails to renew a certificate by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

[C75, 77, 79, 81, §118A.13]
C93, §544B.13
2002 Acts, ch 1045, §11
Section amended

544B.14 Fees.

The board shall set the fees for a certificate of licensure as a professional landscape architect, and for renewal of a certificate. The fee for a certificate of licensure and for renewal of a certificate shall be based upon the administrative costs of sustaining the board which shall include, but shall not be limited to, the costs for:

1. Per diem, expenses, and travel for board members.
2. Office facilities, supplies and equipment.
3. Staff assistance.

All fees shall be collected by the secretary, paid to the treasurer of state and deposited in the general fund of the state.

[C75, 77, 79, 81, §118A.14]
90 Acts, ch 1168, §25; 90 Acts, ch 1261, §41
C93, §544B.14
94 Acts, ch 1107, §92; 2002 Acts, ch 1045, §12
Unnumbered paragraph 1 amended

544B.15 Suspension, revocation, or reprimand.

The board may by a five-sevenths vote of the entire board, suspend for a period not exceeding two years, or revoke the certificate of licensure of, or reprimand any licensee who is found guilty of the following acts or offenses:

1. Fraud in procuring a certificate of licensure.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee that would affect the licensee's ability to practice professional landscape architecture. A copy of the record of conviction or plea of guilty is conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this chapter.

[C75, 77, 79, 81, §118A.15]
85 Acts, ch 195, §14
C93, §544B.15
2002 Acts, ch 1045, §13
Section amended

544B.16 Procedure.

A person may file charges with the board against a professional landscape architect or the board may initiate charges. The charges shall be in writing, sworn to if by a complainant other than the board, and filed with the board. Unless the charges are dismissed by the board as unfounded or trivial, the board may request the department of inspections and appeals to conduct an investigation into the charges. The department of inspections and appeals shall report its findings to the board, and the board shall hold a hearing within sixty days after the date on which the charges are filed. The board shall fix the time and place for such hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be served on the accused at least thirty days before the date fixed for the hearing. Where personal service cannot be effected, service may be effected by publication. At such hearing, the accused shall have the right to appear personally or by counsel, to cross-examine witnesses against the accused, and to produce evidence and witnesses in defense. After the hearing, the board may suspend or revoke the certificate of licensure. The board may restore the certificate of licensure to any person whose certificate of licensure has been revoked. Application for the restoration of a certificate of licensure shall be made in such manner, form, and content as the board may prescribe.

[C75, 77, 79, 81, §118A.16]
88 Acts, ch 1158, §28
C93, §544B.16
2002 Acts, ch 1045, §14
Section amended

544B.17 Attorney general to assist and witnesses.

The board is entitled to the counsel and services of the attorney general or such assistance as the attorney general may so designate. The board may compel the attendance of witnesses, pay witness fees and mileage, and take testimony and affidavits and administer oaths concerning any matter within its jurisdiction.

[C75, 77, 79, 81, §118A.17]
C93, §544B.17

544B.18 Unlawful practice.

Any person who uses the words "landscape architect", "professional landscape architect", or "landscape architecture designer", or any word or any letters or figures indicating or tending to imply that the person using the same is a professional landscape architect, without having a valid certificate of licensure as a professional landscape architect issued pursuant to this chapter, or who knowingly assists such a person, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §118A.18]
C93, §544B.18
2002 Acts, ch 1045, §15
Section amended

544B.19 Injunction.

In addition to any other remedies, and on the petition of the board or any person, any person violating any of the provisions of sections 544B.1 to 544B.5 and 544B.7 to 544B.21 may be restrained and permanently enjoined from committing or continuing the violations.

[C75, 77, 79, 81, §118A.19]
C93, §544B.19
98 Acts, ch 1119, §10

544B.20 Scope of chapter.

Nothing contained in this chapter shall be construed:

1. To apply to a professional engineer duly registered under the laws of this state.
2. To apply to an architect registered under the laws of this state.
3. To prevent a registered architect or professional engineer from doing landscape planning and designing.
4. To affect or prevent the practice of land surveying by a land surveyor registered under the laws of this state.
5. To apply to the business conducted in this state by any planner, agriculturist, soil conservationist, horticulturist, tree expert, arborist, forester, nursery or landscape nursery person, gardener, landscape gardener, landscape contractor, garden or lawn caretaker, tiling contractor, grader or cultivator of land, golf course designer or contractor, or similar business. However, such person shall not use the designation landscape architect or any title or device indicating or representing that such person is a professional landscape architect or is practicing landscape architecture unless such person is licensed under the provisions of section 544B.11.

[C75, 77, 79, 81, §118A.20]
C93, §544B.20
2002 Acts, ch 1045, §16
Subsection 5 amended

544B.21 Examination not required.

Any person who is registered pursuant to this chapter on July 1, 2002, shall be issued a license to practice as a professional landscape architect.

[C75, 77, 79, 81, §118A.21]
C93, §544B.21
2002 Acts, ch 1045, §17
Section stricken and rewritten

CHAPTER 545

IOWA UNIFORM LIMITED PARTNERSHIP ACT

Transferred to chapter 487

SUBTITLE 5

REGULATION OF COMMERCIAL ENTERPRISES

CHAPTER 546

DEPARTMENT OF COMMERCE

546.1 Definitions.
546.2 Department of commerce.
546.3 Banking division.
546.4 Credit union division.
546.5 Savings and loan division.
546.6 Gaming division. Repealed by 87 Acts, ch 234, §440.
546.7 Utilities division.
546.8 Insurance division.
546.9 Alcoholic beverages division.
546.10 Professional licensing and regulation division — superintendent of savings and loan associations.
546.11 Administrative services trust fund created. Repealed by 94 Acts, ch 1107, §99.

546.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of commerce.

2. *"Director"* means the director of the department of commerce.

86 Acts, ch 1245, §701

546.2 Department of commerce.

1. A department of commerce is created to coordinate and administer the various regulatory, service, and licensing functions of the state relating to the conducting of business or commerce in the state.

2. The chief administrative officer of the department is the director. The director shall be appointed by the governor from among those individuals who serve as heads of the divisions within the department. A division head appointed to be the director shall fulfill the responsibilities and duties of the director in addition to the individual's responsibilities and duties as the head of a division. The director shall serve at the pleasure of the governor. If the office of director becomes vacant, the vacancy shall be filled in the same manner as the original appointment was made.

3. The department is administratively organized into the following divisions:

a. Banking.
b. Credit union.
c. Savings and loan.
d. Utilities.
e. Insurance.
f. Alcoholic beverages.
g. Professional licensing and regulation.

4. The director shall have the following responsibilities:

a. To establish general operating policies for the department to provide general uniformity among the divisions while providing for necessary flexibility.

b. To assemble a department structure and strategic plan that will provide optimal decentralization of responsibilities and authorities with sufficient coordination for appropriate growth and development.

c. To coordinate personnel services and shared administrative support services to assure maximum support and assistance to the divisions.

d. To coordinate the development of an annual budget which quantifies the operational plans of the divisions.

e. To identify and, with the chief administrative officers of each division, facilitate the opportunities for consolidation and efficiencies within the department.

f. To maintain monitoring and control systems, procedures, and policies which will permit each level of responsibility to quickly and precisely measure its results with its plan and standards.

5. The chief administrative officer of each division shall have the following responsibilities:

a. To make rules pursuant to chapter 17A except to the extent that rulemaking authority is vested in a policymaking commission.

b. To hire, allocate, develop, and supervise employees of the division necessary to perform duties assigned to the division by law.

c. To supervise and direct personnel and other resources to accomplish duties assigned to the division by law.

d. To establish fees assessed to the regulated industry except to the extent this power is vested in a policymaking commission.

6. Each division is responsible for policymak-

ing and enforcement duties assigned to the division under the law. Except as provided in section 546.10, subsection 3:

a. Each division shall adopt rules pursuant to chapter 17A to implement its duties.

b. Decisions by the divisions are final agency actions pursuant to chapter 17A.

86 Acts, ch 1245, §702; 87 Acts, ch 234, §438; 93 Acts, ch 175, §20; 2000 Acts, ch 1219, §17

546.3 Banking division.

The banking division shall regulate and supervise banks under chapter 524, regulated loan companies under chapter 536, and industrial loan companies under chapter 536A, and shall perform other duties assigned to the division by law. The division is headed by the superintendent of banking who is appointed pursuant to section 524.201. The state banking board shall perform duties within the division as prescribed by law.

86 Acts, ch 1245, §703; 91 Acts, ch 63, §5

546.4 Credit union division.

The credit union division shall regulate and supervise credit unions under chapter 533. The division is headed by the superintendent of credit unions who shall be appointed pursuant to section 533.55. The credit union review board shall perform duties within the division as prescribed in chapter 533.

86 Acts, ch 1245, §704

546.5 Savings and loan division.

The savings and loan division shall regulate and supervise savings and loan associations and savings banks under chapter 534. The division is headed by the superintendent of savings and loan associations who shall be appointed pursuant to section 534.401.

86 Acts, ch 1245, §705

546.6 Gaming division. Repealed by 87 Acts, ch 234, § 440. See § 10A.701.

546.7 Utilities division.

The utilities division shall regulate and supervise public utilities operating in the state. The division shall enforce and implement chapters 476, 476A, 477C, 478, 479, 479A, and 479B and shall perform other duties assigned to it by law. The division is headed by the administrator of public utilities who shall be appointed by the governor pursuant to section 474.1.

86 Acts, ch 1245, §707; 91 Acts, ch 97, §58; 92 Acts, ch 1163, §105; 95 Acts, ch 192, §60

546.8 Insurance division.

The insurance division shall regulate and supervise the conducting of the business of insurance in the state. The division shall enforce and implement Title XIII, subtitle 1, insurance and related regulation, and chapter 502, and shall perform other duties assigned to the division by law. The division is headed by the commissioner of insurance who shall be appointed pursuant to section 505.2.

86 Acts, ch 1245, §708; 93 Acts, ch 60, §24; 94 Acts, ch 1023, §115

546.9 Alcoholic beverages division.

The alcoholic beverages division shall enforce and implement chapter 123. The division is headed by the administrator of alcoholic beverages who shall be appointed pursuant to section 123.10. The alcoholic beverages commission shall perform duties within the division pursuant to chapter 123.

86 Acts, ch 1245, §709; 90 Acts, ch 1247, §17; 94 Acts, ch 1107, §93

546.10 Professional licensing and regulation division — superintendent of savings and loan associations.

1. The professional licensing and regulation division shall administer and coordinate the licensing and regulation of several professions by bringing together the following licensing boards:

a. The engineering and land surveying examining board created pursuant to chapter 542B.

b. The Iowa accountancy examining board created pursuant to chapter 542.

c. The real estate commission created pursuant to chapter 543B.

d. The architectural examining board created pursuant to chapter 544A.

e. The landscape architectural examining board created pursuant to chapter 544B.

2. The division is headed by the administrator of professional licensing and regulation who shall be appointed by the governor subject to confirmation by the senate and shall serve a four-year term that begins and ends as provided in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator shall appoint and supervise staff and shall coordinate activities for the licensing boards within the division. The administrator shall act as a staff person to one or more of the licensing boards.

3. The licensing and regulation examining boards included in the division pursuant to subsection 1 retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters which shall be handled by the administrator. Each licensing board shall adopt rules pursuant to chapter 17A. Decisions by a licensing board are final agency actions for purposes of chapter 17A.

Notwithstanding subsection 5, eighty-five percent of the funds received annually resulting from an increase in licensing fees implemented on or after April 1, 2002, by a licensing board or commis-

sion listed in subsection 1, is appropriated to the professional licensing and regulation division to be allocated to the board or commission for the fiscal year beginning July 1, 2002, and succeeding fiscal years, for purposes related to the duties of the board or commission, including but not limited to additional full-time equivalent positions. The director of revenue and finance shall draw warrants upon the treasurer of state from the funds appropriated as provided in this section and shall make the funds available to the professional licensing division on a monthly basis during each fiscal year.

4. The professional licensing and regulation division of the department of commerce may expend additional funds, including funds for additional personnel, if those additional expenditures are directly the cause of actual examination expenses exceeding funds budgeted for examinations. Before the division expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the division and the division does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management, the division may expend and encumber funds for excess examination expenses. The amounts necessary to fund the examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2, subsection 8.

5. Fees collected under chapters 542, 542B, 543B, 543D, 544A, and 544B shall be paid to the treasurer of state and credited to the general fund of the state. All expenses required in the discharge of the duties and responsibilities imposed upon the professional licensing division of the department of commerce, the administrator, and the licensing boards by the laws of this state shall be paid from moneys appropriated by the general assembly for those purposes. All fees deposited into the general fund of the state, as provided in this subsection, shall be subject to the requirements of section 8.60.

6. The administrator of professional licensing and regulation is the superintendent of savings and loan associations. The administrator may appoint an individual to act as the superintendent who shall serve as the superintendent at the pleasure of the administrator.

86 Acts, ch 1245, §710; 88 Acts, ch 1274, §41; 90 Acts, ch 1247, §18; 90 Acts, ch 1261, §42; 91 Acts, ch 260, §1246; 93 Acts, ch 131, §24; 94 Acts, ch 1107, §94, 95; 94 Acts, ch 1187, §22; 2001 Acts, ch 55, §33, 34, 38; 2002 Acts, 2nd Ex, ch 1003, §33, 35

Confirmation, see §2.32

2001 amendments to subsection 1, paragraph b, and subsection 5 take effect July 1, 2002; 2001 Acts, ch 55, §38

Subsection 1, paragraph b amended

Subsection 3, NEW unnumbered paragraph 2

Subsection 5 amended

546.11 Administrative services trust fund created. Repealed by 94 Acts, ch 1107, § 99.

CHAPTER 546A

PUBLIC AUCTIONS

Repealed by 81 Acts, ch 117, §1097

CHAPTER 547

TRADE NAMES

547.1 Use of trade name — verified statement required.
547.2 Change in statement.
547.3 Fee for recording.
547.4 Penalty.
547.5 "Offense" defined.
547.6 County recorder to submit monthly list of filings. Repealed by 91 Acts, ch 4, §1.

547.1 Use of trade name — verified statement required.

A person or copartnership shall not engage in or conduct a business under a trade name, or an assumed name of a character other than the true surname of each person owning or having an interest in the business, unless the person first records with the county recorder of the county in

which the business is to be conducted a verified statement showing the name, post office address, and residence address of each person owning or having an interest in the business, and the address where the business is to be conducted. However, this provision does not apply to any corporation or limited liability company incorporated or organized in this state or any foreign corporation or foreign limited liability company authorized to do business in this state or doing business pursuant to an exemption in chapter 490 or 490A.

[C27, 31, 35, §9866-a1; C39, §**9866.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.1]

89 Acts, ch 102, §3; 96 Acts, ch 1170, §23

547.2 Change in statement.

A like verified statement shall be recorded of any change in ownership of the business, or persons interested in the business and the original owners are liable for all obligations until the certificate of change is recorded.

[C27, 31, 35, §9866-a2; C39, §**9866.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.2]

89 Acts, ch 102, §4

547.3 Fee for recording.

The county recorder shall charge and receive a fee in the amount specified in section 331.604 for each verified statement recorded under this chapter. The recorder may return the original instrument to the sender or dispose of the instrument if the sender does not wish to have the instrument returned. An instrument filed in the recorder's office before July 1, 1990, may be returned to the sender or disposed of if the sender does not wish to have the instrument returned and if there is an official copy of the instrument in the recorder's office.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.3]

85 Acts, ch 159, §4; 89 Acts, ch 102, §5; 90 Acts, ch 1021, §4

547.4 Penalty.

Any person violating the provisions of this chapter shall be guilty of a simple misdemeanor.

[C27, 31, 35, §9866-a3; C39, §**9866.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.4]

547.5 "Offense" defined.

Each day that any person or persons violate the provisions of this chapter shall be deemed to be a separate and distinct offense.

[C27, 31, 35, §9866-a4; C39, §**9866.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §547.5]

547.6 County recorder to submit monthly list of filings. Repealed by 91 Acts, ch 4, § 1.

CHAPTER 548

REGISTRATION AND PROTECTION OF MARKS

548.1 Definitions. Transferred to §548.101.
548.2 Registrability. Transferred to §548.102.
548.3 Application for registration. Transferred to §548.103.
548.4 Certificate of registration. Transferred to §548.105.
548.5 Duration and renewal. Transferred to §548.106.
548.6 Assignment. Transferred to §548.107.
548.7 Cancellation. Transferred to §548.109.
548.8 Classification. Transferred to §548.110.
548.9 Fraudulent registration. Transferred to §548.111.
548.10 Infringement. Transferred to §548.112.
548.11 Remedies. Transferred to §548.114.
548.12 Defenses. Repealed by 94 Acts, ch 1090, §19.
548.13 Application. Repealed by 94 Acts, ch 1090, §19.
548.14 through 548.100 Reserved.
548.101 Definitions.
548.102 Registrability.
548.103 Application for registration.
548.104 Filing of applications.
548.105 Certificate of registration.
548.106 Duration and renewal.
548.107 Assignments, changes of name, and other instruments.
548.108 Records.
548.109 Cancellation.
548.110 Classification.
548.111 Fraudulent registration.
548.112 Infringement.
548.113 Injury to business reputation — dilution.
548.114 Remedies.
548.115 Forum for actions regarding registration — service on out-of-state registrants.
548.116 Common law rights.
548.117 Fees.

548.1 Definitions. Transferred to § 548.101.

548.2 Registrability. Transferred to § 548.102.

548.3 Application for registration. Transferred to § 548.103.

548.4 Certificate of registration. Transferred to § 548.105.

548.5 Duration and renewal. Transferred to § 548.106.

548.6 Assignment. Transferred to § 548.107.

548.7 Cancellation. Transferred to § 548.109.

548.8 Classification. Transferred to § 548.110.

548.9 Fraudulent registration. Transferred to § 548.111.

548.10 Infringement. Transferred to § 548.112.

548.11 Remedies. Transferred to § 548.114.

548.12 Defenses. Repealed by 94 Acts, ch 1090, § 19.

548.13 Application. Repealed by 94 Acts, ch 1090, § 19. See § 548.116.

548.14 through 548.100 Reserved.

548.101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Abandoned"* means the occurrence of any of the following in relation to a mark:

a. The use of the mark has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment.

b. A course of conduct of the owner of the mark, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

2. *"Applicant"* means a person filing an application for registration of a mark under this chapter, and the person's legal representative, successor, or assignee.

3. *"Dilution"* means the lessening of the capacity of a mark to identify and distinguish goods or services, regardless of the presence or absence of any of the following:

a. Competition between parties.

b. Likelihood of confusion, mistake, or deception.

4. *"Mark"* means a trademark or service mark, entitled to registration under this chapter, whether registered or not.

5. *"Person"* and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under this chapter includes a juristic person as well as a natural person. The term *"juristic person"* includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.

6. *"Registrant"* means a person to whom the registration of a mark under this chapter is issued, and the legal representative, successor, or assignee of such person.

7. *"Secretary"* means the secretary of state or the designee of the secretary charged with the administration of this chapter.

8. *"Service mark"* means a word, name, symbol, or device or any combination of a word, name, symbol, or device, used by a person to identify services and to distinguish the services of that person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of a sponsor.

9. *"Trademark"* means a word, name, symbol, or device or any combination of a word, name, symbol, or device, used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

10. *"Trade name"* means a name used by a person to identify a business or vocation of such person.

11. *"Use"* means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this chapter, a mark shall be deemed to be in use under any of the following circumstances:

a. On goods sold or transported in commerce in this state when the mark is placed in any manner on the goods or containers or associated displays, or on affixed tags or labels, or if the nature of the goods makes the placement on the goods or containers impracticable, on documents associated with the goods or their sale.

b. On services when the mark is used or displayed in the sale or advertising of services and the services are rendered in this state.

[C71, 73, 75, 77, 79, 81, §548.1]
94 Acts, ch 1090, §1
C95, §548.101
95 Acts, ch 49, §15; 95 Acts, ch 67, §38, 39

548.102 Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if the mark meets any of the following criteria:

1. Consists of or comprises immoral, deceptive, or scandalous matter.

2. Consists of or comprises matter which may disparage, bring into contempt or disrepute, or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.

3. Consists of or comprises the flag, or coat of arms, or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof.

4. Consists of, or comprises the name, signature, or portrait identifying a particular living individual, except by the individual's written consent.

5. Consists of a mark which is one of the following:

a. When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of the goods or services.

b. When used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or geographically misdescriptive of the goods or services.

c. Is primarily merely a surname.

This subsection 5 does not prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five years before the date on which the claim for distinctiveness is made.

6. Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, so as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake, or to deceive.

[C71, 73, 75, 77, 79, 81, §548.2]
86 Acts, ch 1087, §1, 2; 94 Acts, ch 1090, §2
C95, §548.102
95 Acts, ch 67, §40

548.103 Application for registration.

Subject to the limitations set forth in this chapter, a person who uses a mark may file in the office of the secretary, in the manner which will comply with the requirements of the secretary, an application for the registration of that mark setting forth, but not limited to, all of the following information:

1. The name and business address of the person applying for registration; and if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary.

2. The goods or services on or in connection with which the mark is in use, the mode or manner in which the mark is used on or in connection with those goods or services, and the class in which such goods or services fall, as described in rules adopted by the secretary.

3. The date on which the mark was first used anywhere by the applicant or the applicant's predecessor in interest.

4. A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form or in such resemblance to the form as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake, or to deceive.

The secretary may also require a statement as to whether an application to register the mark, or portions or a composite of the mark, has been filed by the applicant or a predecessor in interest in the United States patent and trademark office; and if so, the applicant shall provide full particulars with respect to the filing including the filing date and serial number of each application, the status of the application and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application.

The application shall be signed and verified by oath, affirmation, or declaration subject to perjury laws by the applicant or by a member of the firm or an officer of the corporation or association applying.

The application shall be accompanied by a specimen showing the mark as actually used.

The application shall be accompanied by the application fee payable to the secretary.

[C97, §5049; C24, 27, 31, 35, 39, §**9867, 9868, 9870;** C46, 50, 54, 58, 62, 66, §548.1, 548.2, 548.4; C71, 73, 75, 77, 79, 81, §548.3]
94 Acts, ch 1090, §3
C95, §548.103
97 Acts, ch 44, §1

548.104 Filing of applications.

1. Upon the filing of an application for registration and payment of the application fee, the sec-

retary may cause the application to be examined for conformity with this chapter.

2. The applicant shall provide any additional pertinent information requested by the secretary including a description of a design mark and may make, or authorize the secretary to make, such amendments to the application as may be reasonably requested by the secretary or deemed by the applicant to be advisable to respond to any rejection or objection.

3. The secretary may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. A disclaimer shall not prejudice or affect the applicant's or registrant's rights existing at or after the time of disclaimer arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or services.

4. Amendments may be made by the secretary upon the application submitted by the applicant upon the applicant's agreement, or the secretary may require a new application to be submitted.

5. If the applicant is found not to be entitled to registration, the secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall be reexamined. This procedure may be repeated until the secretary finally refuses registration of the mark or the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

6. If the secretary finally refuses registration of the mark, the applicant may seek judicial review of the refusal in accordance with chapter 17A.

7. If the secretary is concurrently processing applications seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If an application filed earlier is granted a registration, a later application shall be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of section 548.109.

94 Acts, ch 1090, §4

548.105 Certificate of registration.

Upon compliance by the applicant with the requirements of this chapter, the secretary shall issue and deliver a certificate of registration to the applicant. The certificate of registration shall be issued under the signature and seal of the secretary. The certificate of registration shall show the name and business address and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark. The certificate of registration shall also show the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a description of the mark, the registration date, and the term of the registration.

A certificate of registration issued by the secretary under this section or a copy thereof duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in an action or judicial proceeding in any court in this state.

[C97, §5049; C24, 27, 31, 35, 39, §**9868, 9869;** C46, 50, 54, 58, 62, 66, §548.2, 548.3; C71, 73, 75, 77, 79, 81, §548.4]

94 Acts, ch 1090, §5

C95, §548.105

97 Acts, ch 44, §2

548.106 Duration and renewal.

A registration of a mark under this chapter shall be effective for a term of five years from the date of registration and, upon application filed within six months prior to the expiration of the term, in a manner complying with the requirements of the secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee payable to the secretary shall accompany an application for renewal of registration.

A registration may be renewed for successive periods of five years in like manner.

A registration in force on the date on which this chapter shall become effective shall continue in full force and effect for the unexpired term thereof and may be renewed by filing an application for renewal with the secretary complying with the requirements of the secretary and paying the renewal fee within six months prior to the expiration of the registration.

All applicants for renewal under this chapter, whether of registration made under this chapter or of registrations effected under any prior statute, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

[C46, 50, 54, 58, 62, 66, §548.6; C71, 73, 75, 77, 79, 81, §548.5]

94 Acts, ch 1090, §6

C95, §548.106

548.107 Assignments, changes of name, and other instruments.

1. A mark and its registration under this chapter is assignable with the good will of the business

in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by a duly executed written instrument which may be recorded with the secretary upon the payment of a recording fee to the secretary, who, upon recording of the assignment, shall issue a new certificate in the name of the assignee for the remainder of the term of the assigned registration or of the last renewal of the registration. An assignment of a registration under this chapter shall be void as against any subsequent purchase for valuable consideration without notice, unless the assignment is recorded with the secretary within three months after the date of the assignment or prior to such subsequent purchase.

2. A registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of the recording fee. The secretary may issue a certificate of registration of an assigned application in the name of the assignee. The secretary may issue in the name of the assignee, a new certificate or registration for the remainder of the term of the registration or last renewal of the registration.

3. Other instruments which relate to a mark registered or application pending pursuant to this chapter, such as, by way of example, licenses, security interests, or mortgages, may be recorded in the discretion of the secretary, if such instrument is in writing and duly executed.

4. Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution.

5. A photocopy of any instrument referred to in subsections 1 through 3, shall be accepted for recording if it is certified by any of the parties to the registration, or their successors, to be a true and correct copy of the original.

[C46, 50, 54, 58, 62, 66, §548.5; C71, 73, 75, 77, 79, 81, §548.6]
94 Acts, ch 1090, §7
C95, §548.107

548.108 Records.

The secretary shall keep for public examination a record of all marks registered or renewed under this chapter, as well as a record of all documents recorded pursuant to section 548.107.

94 Acts, ch 1090, §8

548.109 Cancellation.

The secretary shall cancel from the register, in whole or in part, any of the following:

1. A registration concerning which the secretary receives a voluntary request for cancellation from the registrant or the assignee of record.

2. A registration granted under this chapter and not renewed in accordance with this chapter.

3. A registration concerning which a district court finds any of the following:

a. That the registered mark has been abandoned.

b. That the registrant is not the owner of the mark.

c. That the registration was granted improperly.

d. That the registration was obtained fraudulently.

e. That the mark has become the generic name for the goods or services, or a portion of the goods or services, for which the mark has been registered.

f. That the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States patent and trademark office prior to the date of the filing of the application for registration by the registrant under this chapter, and not abandoned. However, if the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States patent and trademark office covering an area including this state, the registration under this chapter shall not be canceled for such area of the state.

4. A registration ordered canceled by a court on any ground.

[C71, 73, 75, 77, 79, 81, §548.7]
94 Acts, ch 1090, §9
C95, §548.109

548.110 Classification.

The secretary shall by rule establish a classification of goods and services for convenience in the administration of this chapter, but not limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. If a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States patent and trademark office.

[C71, 73, 75, 77, 79, 81, §548.8]
94 Acts, ch 1090, §10
C95, §548.110

548.111 Fraudulent registration.

A person who, either on the person's own behalf or on behalf of any other person, procures the filing or registration of a mark in the office of the secretary under this chapter by knowingly making any false or fraudulent representation or declaration,

orally or in writing, or by any other fraudulent means, is liable for the damages sustained in consequence of the filing or registration to be recovered by or on behalf of the party injured in district court.

[C71, 73, 75, 77, 79, 81, §548.9]
94 Acts, ch 1090, §11
C95, §548.111

548.112 Infringement.

Subject to section 548.116, a person shall not do any of the following:

1. Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake, or to deceive as to the source of origin of such goods or services.

2. Reproduce, counterfeit, copy, or colorably imitate any such mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services.

The person shall be liable in a civil action by the registrant for any or all of the remedies provided in section 548.114, except that under subsection 2, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

[C97, §5051; C24, 27, 31, 35, 39, §**9874;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §548.10]
94 Acts, ch 1090, §12
C95, §548.112

548.113 Injury to business reputation — dilution.

The owner of a mark which is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another's use of a mark, commencing after the owner's mark becomes famous, which causes dilution of the distinctive quality of the owner's mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous, a court may consider factors such as, but not limited to:

1. The degree of inherent or acquired distinctiveness of the mark in this state.

2. The duration and extent of use of the mark in connection with the goods and services.

3. The duration and extent of advertising and publicity of the mark in this state.

4. The geographical extent of the trading area in which the mark is used.

5. The channels of trade for the goods or services with which the owner's mark is used.

6. The degree of recognition of the owner's mark in its and in the other's trading areas and channels of trade in this state.

7. The nature and extent of use of the same or similar mark by third parties.

The owner shall be entitled only to injunctive relief in this state in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

94 Acts, ch 1090, §13

548.114 Remedies.

The owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark and any court may grant injunctions to restrain such manufacture, use, display, or sale as the court deems just and reasonable, and may require the defendants to pay to such owner all profits derived from or all damages suffered by reason of such wrongful manufacture, use, display, or sale. The court may also order that any counterfeits or imitations in the possession or under the control of a defendant be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three times such profits and damages and reasonable attorneys' fees of the prevailing party in cases where the court finds the other party committed such wrongful acts with knowledge or in bad faith or otherwise as according to the circumstances of the case.

The enumeration of any right or remedy in this section shall not affect a registrant's right to prosecute under any penal law of this state.

[C97, §5050, 5051; C24, 27, 31, 35, 39, §**9871 – 9873, 9875;** C46, 50, 54, 58, 62, 66, §548.7 – 548.9, 548.11; C71, 73, 75, 77, 79, 81, §548.11]
94 Acts, ch 1090, §14
C95, §548.114

548.115 Forum for actions regarding registration — service on out-of-state registrants.

1. Actions to require cancellation of a mark registered pursuant to this chapter shall be brought in district court. In an action for cancellation, the secretary shall not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the district court in which it is filed and shall be given the right to intervene in the action.

2. In an action brought against a nonresident registrant, service may be effected upon the secretary as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business enti-

ties under section 617.3.
94 Acts, ch 1090, §15

548.116 Common law rights.
This chapter shall not adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.
94 Acts, ch 1090, §16

548.117 Fees.
The secretary shall by rule adopted pursuant to chapter 17A prescribe the fees payable for the various applications and recording fees and for related services. Unless specified by the secretary, the fees payable pursuant to this chapter are not refundable.
94 Acts, ch 1090, §17

CHAPTER 549

MUSIC LICENSING FEES

549.1 Short title.
549.2 Definitions.
549.3 Licensing negotiations.
549.4 Royalty contract requirements.
549.5 Improper licensing practices.
549.6 Investigations.
549.7 Remedies — injunction.
549.8 Remedies cumulative.
549.9 Exceptions.

549.1 Short title.
This chapter may be cited as the *"Music Licensing Fees Act"*.
96 Acts, ch 1155, §1

549.2 Definitions.
As used in this chapter:
1. *"Copyright owner"* means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States under 17 U.S.C. § 101 et seq.
2. *"Performing rights society"* means an association or corporation, including an agent or employee of the association or corporation, that licenses the public performance of a nondramatic musical work on behalf of a copyright owner, including the American society of composers, authors and publishers (ASCAP), broadcast music, inc. (BMI), and the society of European stage authors and composers, inc. (SESAC).
3. *"Proprietor"* means the owner of a retail establishment, restaurant, inn, bar, tavern, or any other similar place of business located in this state in which the public may assemble and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted.
4. *"Royalty"* or *"royalties"* means the license fee or fees payable by a proprietor to a performing rights society for the public performance of a nondramatic musical work.
96 Acts, ch 1155, §2

549.3 Licensing negotiations.
1. A performing rights society shall not enter onto the business premises of a proprietor for the purpose of discussing a contract for the payment of royalties by the proprietor, unless the performing rights society identifies itself to the proprietor and describes to the proprietor the purpose for entering onto the proprietor's business premises.
2. A performing rights society shall not enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any later time, but not later than seventy-two hours prior to the execution of the contract, the performing rights society provides to the proprietor, in writing, all of the following:
a. A schedule of the rates and terms of royalties under the contract.
b. Upon the request of the proprietor, the opportunity to review the most current available list of the members or affiliates represented by the performing rights society.
c. Notice that the performing rights society will make available, upon the written request of a proprietor, at the sole expense of the proprietor, the most current available listing of the copyrighted nondramatic musical or similar works in the performing rights society's repertory, provided that the notice shall specify the means by which the listing can be secured.
d. Notice that the performing rights society complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights of public performance are offered to any proprietor.
96 Acts, ch 1155, §3

549.4 Royalty contract requirements.
A contract for the payment of royalties between a performing rights society and a proprietor executed in this state shall meet all of the following

requirements:

1. Be in writing.
2. Be signed by the parties.
3. Include, at a minimum, the following information:

a. The proprietor's name and business address and the name and location of each place of business to which the contract applies.

b. The name of the performing rights society.

c. The duration of the contract.

d. The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of rates for the duration of the contract.

96 Acts, ch 1155, §4

549.5 Improper licensing practices.

A performing rights society shall not collect, or attempt to collect, from a proprietor licensed by that performing rights society, a royalty payment except as provided in a contract executed pursuant to the provisions of this chapter.

96 Acts, ch 1155, §5

549.6 Investigations.

This chapter shall not be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligations under the federal copyright law, 17 U.S.C. § 101 et seq.

96 Acts, ch 1155, §6

549.7 Remedies — injunction.

A person who suffers a violation of this chapter may bring an action to recover actual damages and reasonable attorney fees and to seek an injunction or any other available remedy.

96 Acts, ch 1155, §7

549.8 Remedies cumulative.

The rights, remedies, and prohibitions contained in this chapter shall be in addition to and cumulative of any other right, remedy, or prohibition accorded by common law or state or federal law. This chapter shall not be construed to deny, abrogate, or impair any such common law or statutory right, remedy, or prohibition.

96 Acts, ch 1155, §8

549.9 Exceptions.

This chapter shall not apply to a contract between a performing rights society or a copyright owner and a broadcaster licensed by the federal communications commission, or to a contract with a cable operator, programmer, or other transmission service. This chapter shall not apply to a nondramatic musical or similar work performed in synchronization with an audio or visual film or tape. This chapter shall also not apply to the gathering of information to determine compliance with or activities related to the enforcement of section 714.15.

96 Acts, ch 1155, §9

CHAPTER 550

TRADE SECRETS

550.1 Short title.
550.2 Definitions.
550.3 Injunctive relief.
550.4 Damages.
550.5 Defense — consent of disclosure.
550.6 Attorney fees.
550.7 Preservation of secrecy.
550.8 Statute of limitations.

550.1 Short title.

This chapter shall be known and may be cited as the *"Uniform Trade Secrets Act"*.

90 Acts, ch 1201, §1

550.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Improper means"* means theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage, including but not limited to espionage through an electronic device.

2. *"Knows"* or *"knowledge"* means that a person has actual knowledge of information or a circumstance or that the person has reason to know of the information or circumstance.

3. *"Misappropriation"* means doing any of the following:

a. Acquisition of a trade secret by a person who knows that the trade secret is acquired by improper means.

b. Disclosure or use of a trade secret by a person who uses improper means to acquire the trade secret.

c. Disclosure or use of a trade secret by a person who at the time of disclosure or use, knows that the trade secret is derived from or through a person who had utilized improper means to acquire the trade secret.

d. Disclosure or use of a trade secret by a person who at the time of disclosure or use knows that the trade secret is acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.

e. Disclosure or use of a trade secret by a person who at the time of disclosure or use knows that the trade secret is derived from or through a person who owes a duty to maintain the trade secret's secrecy or limit its use.

f. Disclosure or use of a trade secret by a person who, before a material change in the person's position, knows that the information is a trade secret and that the trade secret has been acquired by accident or mistake.

4. *"Trade secret"* means information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is both of the following:

a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use.

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

90 Acts, ch 1201, §2; 91 Acts, ch 35, §1

550.3 Injunctive relief.

1. The owner of a trade secret may petition the district court to enjoin an actual or threatened misappropriation. Upon application to the district court, an injunction shall be terminated when the trade secret has ceased to exist. However, the injunction may be continued for an additional reasonable period of time in order to eliminate a commercial advantage that otherwise would be derived from the misappropriation.

2. In exceptional circumstances, an injunction may condition future use of a trade secret upon payment of a reasonable royalty. The payment of a royalty shall continue for a period no longer than the period for which use of the trade secret may be prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position of the person prior to acquiring knowledge of a misappropriation that renders a prohibitive injunction inequitable.

3. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

90 Acts, ch 1201, §3

550.4 Damages.

1. Except to the extent that a material and prejudicial change of a person's position occurs prior to acquiring knowledge of a misappropriation and renders a monetary recovery inequitable, an owner of a trade secret is entitled to recover damages for the misappropriation. Damages may include the actual loss caused by the misappropriation, and the unjust enrichment caused by the misappropriation which is not taken into account in computing the actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a person's unauthorized disclosure or use of a trade secret.

2. If a person commits a willful and malicious misappropriation, the court may award exemplary damages in an amount not exceeding twice the award made under subsection 1.

90 Acts, ch 1201, §4

550.5 Defense — consent of disclosure.

In an action for injunctive relief or damages against a person under this chapter, it shall be a complete defense that the person disclosing a trade secret made the disclosure with the implied or express consent of the owner of the trade secret.

90 Acts, ch 1201, §5

550.6 Attorney fees.

The court may award actual and reasonable attorney fees to the prevailing party in an action under this chapter if any of the following is applicable:

1. A claim of misappropriation is made in bad faith.

2. A motion to terminate an injunction is made or resisted in bad faith.

3. A person acts willfully and maliciously in the misappropriation.

90 Acts, ch 1201, §6

550.7 Preservation of secrecy.

In an action brought under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, including but not limited to granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering a person involved in the litigation not to disclose an alleged trade secret without prior court approval.

90 Acts, ch 1201, §7

550.8 Statute of limitations.

An action for misappropriation under this chapter must be brought within three years after the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence. For purposes of this section, a continuing misappropriation constitutes a single claim.

90 Acts, ch 1201, §8

CHAPTER 551

UNFAIR DISCRIMINATION

551.1 Unfair discrimination in sales.
551.2 Unfair discrimination in purchases.
551.3 Repealed by 76 Acts, ch 1056, §45.
551.4 Penalty.
551.5 Contracts or agreements.
551.6 Enforcement.
551.7 Complaint — to whom made.
551.8 Revocation of permit.
551.9 Corporation to be enjoined.
551.10 Cumulative remedies.
551.11 Exceptions.
551.12 Price discrimination — sale or lease of motor vehicles. Repealed by 87 Acts, ch 3, §1.

551.1 Unfair discrimination in sales.

Any person, firm, company, association, or corporation, foreign or domestic, doing business in the state, and engaged in the production, manufacture, sale, or distribution of any commodity of commerce or commercial services excepting those, the rate of which is now subject to control of cities or other governmental agency, that shall, for the purpose of destroying the business of a competitor in any locality or creating a monopoly, discriminate between different sections, localities, communities or cities of this state, by selling such commodity or commercial services excepting those, the rate of which is now subject to control of cities or other governmental agency at a lower price or rate in one section, locality, community or city than such commodity or commercial services excepting those, the rate of which is now subject to control of cities or other governmental agency is sold for by said person, firm, association, company, or corporation, in another section, locality, community or city, after making due allowance in case of telephone service for the difference in the cost of furnishing service in different localities, and in the case of commodities and commercial services other than telephone service, for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of production or purchase, if a raw product, or from the point of manufacture, if a manufactured product, to a place of sale, storage, or distribution shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community or city shall not be in violation of this section.

[S13, §5028-b; C24, 27, 31, 35, 39, §**9885;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.1]

551.2 Unfair discrimination in purchases.

Any person, firm, association, company, or corporation, foreign or domestic, doing business in the state, and engaged in the business of purchasing for manufacture, storage, sale, or distribution, any commodity of commerce that shall, for the purpose of destroying the business of a competitor or creating a monopoly, discriminate between different sections, localities, communities or cities, in this state, by purchasing such commodity at a higher rate or price in one section, locality, community or city, than is paid for such commodity by such party in another section, locality, community or city, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale, distribution, or storage, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community or city shall not be in violation of this section.

[S13, §5028-b; C24, 27, 31, 35, 39, §**9886;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.2]

551.3 Repealed by 76 Acts, ch 1056, § 45.

551.4 Penalty.

Any person, firm, company, association, or corporation violating any of the provisions of sections 551.1 and 551.2, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any individual violating any of such provisions shall be guilty of a serious misdemeanor.

[S13, §5028-c; C24, 27, 31, 35, 39, §**9888;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.4]

551.5 Contracts or agreements.

All contracts or agreements made in violation of any of the provisions of sections 551.1 and 551.2 shall be void.

[S13, §5028-d; C24, 27, 31, 35, 39, §**9889;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.5]

551.6 Enforcement.

It shall be the duty of the county attorneys, in their counties, and the attorney general, to enforce the provisions of sections 551.1 to 551.5, inclusive,

by appropriate actions in courts of competent jurisdiction.

[S13, §5028-e; C24, 27, 31, 35, 39, §**9890;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.6]

551.7 Complaint — to whom made.

If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination, within the terms of sections 551.1 and 551.2, it shall be the duty of the secretary of state to refer the matter to the attorney general who may, if the facts justify it in the attorney general's judgment, institute proceedings in the courts against such corporation.

[S13, §5028-f; C24, 27, 31, 35, 39, §**9891;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.7]

551.8 Revocation of permit.

If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, within the terms of sections 551.1 and 551.2, it shall be the duty of the secretary of state to immediately revoke the permit of such corporation to do business in this state.

[S13, §5028-g; C24, 27, 31, 35, 39, §**9892;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.8]

551.9 Corporation to be enjoined.

If after revocation of its permit such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of sections 551.1 and 551.2, shall continue or attempt to do business in this state, it shall be the duty of the attorney general, by a proper suit in the name of the state of Iowa, to enjoin such corporation from transacting all business of every kind and character in said state.

[S13, §5028-h; C24, 27, 31, 35, 39, §**9893;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.9]

551.10 Cumulative remedies.

Nothing in this chapter shall be construed as repealing any other Act, or part of Act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

[S13, §5028-i; C24, 27, 31, 35, 39, §**9894;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551.10]

551.11 Exceptions.

The provisions of this chapter shall not apply to any contract or agreement relating to any sale made to the state, its departments, commissions, agencies, boards and its governmental subdivisions.

[C71, 73, 75, 77, 79, 81, §551.11]

551.12 Price discrimination — sale or lease of motor vehicles. Repealed by 87 Acts, ch 3, § 1.

CHAPTER 551A

CIGARETTE SALES

Transferred to chapter 421B

CHAPTER 552

PHYSICAL EXERCISE CLUBS

552.1 Definitions.
552.2 Purpose.
552.3 Unenforceable contracts.
552.4 Contracts for physical exercise club services — right of cancellation.
552.5 Contract — statement of buyer's rights — form.
552.6 Delivery of physical exercise club rules.
552.7 Buyer's cancellation.
552.8 Duration of contract — renewal.
552.9 Notice of membership plans, prices, and right of cancellation.
552.10 Statement regarding assignability of buyer's obligation.
552.11 Buyer's rights upon assignment.
552.12 Listing of equipment and services.
552.13 Remedies — violations.
552.14 Prohibited activities.
552.15 Registration. Repealed by 2000 Acts, ch 1021, §4.
552.16 Escrow — bond.
552.17 Consumer credit sales.
552.18 Waiver of provisions.
552.19 Immunity.
552.20 Rules.
552.21 Construction of chapter.
552.22 Applicability.

552.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Contract price"* means the total price paid or to be paid, including service charges or membership fees, which entitles the buyer either directly or indirectly to membership in a physical exercise club or to the use of the services or facilities of a physical exercise club.

2. *"Finance charge"* means *"finance charge"* as defined in section 537.1301, subsection 19.

3. *"Physical exercise club"* means a person offering services or facilities, or both, for the preservation, maintenance, encouragement, or development of physical fitness or well-being in return for the payment of a fee entitling the buyer to the use of the services or facilities. The term includes but is not limited to persons offering services and facilities known as *"health clubs", "health spas", "sports and health clubs", "tennis clubs", "racquetball courts", "golf clubs", "gymnasiums", "figure salons", "health studios", "weight control studios",* and persons operating establishments whose primary purpose is the teaching of a particular form of self-defense or martial arts, such as judo, karate or kung fu. *"Physical exercise club"* does not include:

a. A person or establishment which does not charge a membership fee and from which a buyer may only purchase or become obligated to purchase the use of services or facilities to be rendered for a period of not more than thirty days, and which does not collect more than thirty days in advance for the rendering of the services.

b. Except for purposes of sections 552.4, 552.7, 552.13, 552.14, and 552.16 a nonprofit organization organized and operating as a nonprofit organization.

c. An entity primarily engaged in physical rehabilitation activities related to an individual's injury or disease.

d. A private club owned and operated by its members.

e. Except for purposes of sections 552.4, 552.7, 552.13, and 552.14, a facility operated by the state or any of its political subdivisions.

f. A facility owned and operated on a not-for-profit basis by a person or a contractor of a person that is operated solely for the purpose of serving employees of the person, whether currently employed or retired, and family members of employees.

4. *"Physical exercise club contract"* means an agreement by which a buyer is entitled to membership in a physical exercise club or use of the services or facilities of a physical exercise club.

5. *"Prepayment"* means any partial or full payment for services or the use of facilities made before the services are actually made available by the physical exercise club or the facility is fully opened for business as described in section 552.16, subsection 3.

88 Acts, ch 1221, §1; 98 Acts, ch 1044, §1

552.2 Purpose.

The purpose of this chapter is to safeguard the public against fraud, deceit, and financial hardship and to foster and encourage competition, fair dealing, and prosperity in the field of physical exercise club operations and services by prohibiting or restricting practices by which the public has been injured in connection with contracts for and the marketing of physical exercise club services.

88 Acts, ch 1221, §2

552.3 Unenforceable contracts.

A physical exercise club contract or assignment of a contract that does not comply with this chapter is unenforceable as contrary to public policy.

88 Acts, ch 1221, §3

552.4 Contracts for physical exercise club services — right of cancellation.

A physical exercise club contract shall provide that the contract may be canceled within three business days after the date of receipt by the buyer of a copy of the signed contract. Cancellation shall be by written notice delivered to the seller at an address which shall be specified in the contract. Cancellation is complete upon mailing of the notice of cancellation. After receipt of the cancellation, the physical exercise club may request the return of contract forms, membership cards, and all other documents and evidence of membership previously delivered to the buyer. The buyer is entitled to a refund of the entire consideration paid for the contract, if any, less twenty dollars.

A physical exercise club contract shall in plain terms disclose whether the physical exercise club will allow the buyer to cancel the contract in the event of the death or disability of the buyer.

88 Acts, ch 1221, §4

552.5 Contract — statement of buyer's rights — form.

1. A physical exercise club contract shall be in writing and signed by the buyer. The contract shall state in at least ten-point boldface type **"NOTICE TO BUYER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT. DO NOT SIGN THIS CONTRACT IF IT CONTAINS BLANK SPACES."** A copy of the physical exercise club contract shall be delivered to the buyer at the time the contract is signed.

2. A physical exercise club contract shall designate the date on which the buyer actually signs the contract and shall contain a statement of the buyer's rights which complies with this subsection. The statement shall appear in the contract

under the conspicuous caption **"BUYER'S RIGHT TO CANCEL"**, and shall read as follows:

. . . . . .
(enter date of transaction)

You may cancel this transaction within three business days from the above date.

If you cancel, any payments made by you under the contract, less twenty dollars, and any negotiable instrument executed by you will be returned within forty-five days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. After you cancel, the physical exercise club may request the return of all contracts, membership cards, and other documents or evidence of membership.

To cancel this transaction, send, or deliver a signed and dated copy of this cancellation notice or any other written notice by certified or registered mail to . . . . . (name of seller), at . . . . . (address of seller's place of business) not later than midnight of . . . . . (date).

I hereby cancel this transaction.

. . . . . .
(Date)

. . . . . .
(Buyer's signature)

The full text of this statement shall be in ten-point boldface type.

88 Acts, ch 1221, §5

552.6 Delivery of physical exercise club rules.

A physical exercise club contract shall include a complete statement of the rules of the physical exercise club, or an acknowledgment in a conspicuous form that the buyer has received a copy of the rules. Physical exercise club rules shall include, but are not limited to, the hours of operation.

88 Acts, ch 1221, §6

552.7 Buyer's cancellation.

If a buyer cancels a physical exercise club contract pursuant to the three-day cancellation provision, the physical exercise club shall send the buyer a written confirmation of cancellation, together with the buyer's refund and any negotiable instruments executed by the buyer, within forty-five days after receipt by the physical exercise club of the buyer's cancellation notice. If the physical exercise club fails to send the written confirmation to the buyer within forty-five days after receiving a timely cancellation, the physical exercise club is deemed to have accepted the cancellation.

88 Acts, ch 1221, §7

552.8 Duration of contract — renewal.

A physical exercise club contract shall not have a duration longer than thirty-six months. If a physical exercise club offers a contract of more than twelve months duration, it shall also offer a twelve-month contract. A physical exercise club contract shall not contain an automatic renewal clause.

88 Acts, ch 1221, §8

552.9 Notice of membership plans, prices, and right of cancellation.

The physical exercise club shall orally inform the buyer prior to the buyer's entering into a physical exercise club contract of the three-day cancellation provision and provide the buyer with a written list of all membership plans and their respective prices.

88 Acts, ch 1221, §9

552.10 Statement regarding assignability of buyer's obligation.

If the buyer's obligation is in a form that may be assigned, the contract shall state in boldface type on the front page of the contract that the contract may be discounted and sold to third parties to whom the buyer will become obligated to make full payment.

88 Acts, ch 1221, §10

552.11 Buyer's rights upon assignment.

1. A physical exercise club contract is not assignable by the physical exercise club without written notice of the assignment mailed to the buyer at the buyer's address as stated in the contract. The notice shall identify the contract, state the name and address of the assignee, the amount payable by the buyer and the number, amounts, and due dates of any payments, and shall contain a conspicuous notice to the buyer of the provisions of subsection 2.

2. If the physical exercise club assigns the buyer's obligation, the buyer has thirty days from the date of the mailing of the notice of the assignment within which to notify the assignee in writing of any claims or defenses the buyer may have against the physical exercise club. If written notification of the claims or defenses is not received by the assignee within the thirty-day period, the assignee has the right to enforce the contract free of any claims or defenses the buyer may have against the physical exercise club.

88 Acts, ch 1221, §11

552.12 Listing of equipment and services.

A physical exercise club, which accepts prepayments as defined in section 552.1, subsection 5, shall compile a written list which shall be available to a buyer upon request showing:

1. The equipment by kind and quantity that is or will be made available.

2. Each service which the physical exercise club intends to have available for use by the buyers.

Subject to section 552.16, subsection 3, a physical exercise club that accepts prepayments shall not be considered fully open for business until all of the equipment and services so listed are actually available for use by the buyers.

88 Acts, ch 1221, §12

552.13 Remedies — violations.

1. If a physical exercise club violates a provision of this chapter, the buyer may cancel the physical exercise club contract. The buyer also has a right of action against the physical exercise club for recovery of the amount the buyer paid to the physical exercise club under the contract. In addition to any judgment awarded to the buyer, the court may allow reasonable attorney's fees.

2. A violation of any of the provisions of this chapter shall be deemed an unlawful practice under section 714.16, subsection 2, paragraph *"a"*.

3. Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement the provisions of this chapter.

88 Acts, ch 1221, §13

552.14 Prohibited activities.

1. It is unlawful for a physical exercise club to make any misrepresentation to current members, prospective buyers, or buyers of physical exercise club contracts regarding:

a. Qualifications of staff.

b. Availability, quality, or extent of facilities or services.

c. Results obtained through exercise, dieting, or weight control programs.

d. Membership rights.

e. The period that a special offer or discount will be available.

2. It is unlawful for a physical exercise club to fail or refuse to establish the escrow account required by section 552.16.

3. It is unlawful for a physical exercise club to advertise, state, or represent that it is approved by the state or that it has complied with this chapter.

88 Acts, ch 1221, §14; 2000 Acts, ch 1021, §1

552.15 Registration. Repealed by 2000 Acts, ch 1021, § 4.

552.16 Escrow — bond.

1. A physical exercise club or its assignee or agent that accepts prepayments shall deposit all of the funds received as prepayments in an escrow account established with a financial institution located in this state whose accounts are insured by the federal deposit insurance corporation, the national credit union administration, or the federal savings and loan insurance corporation, which shall hold the funds as escrow agent for the benefit of the buyers that prepay. The physical exercise club shall deposit all prepayments received at least biweekly and shall make the first deposit not later than the fourteenth day after the day on which the physical exercise club accepts the first prepayment. Not later than the fourteenth day after the day on which the first prepayment is received, the physical exercise club shall submit to the attorney general's consumer protection division a notarized statement that identifies the financial institution in which the prepayments are held in escrow and the name and account number in which the account is held. The prepayments shall be held in escrow until the thirtieth day after the date that the physical exercise club fully opens for business.

2. If the physical exercise club does not fully open for business before the two hundred eleventh day after the date it enters into the first physical exercise club contract or if the club does not remain fully open for thirty days, the buyers whose payments are held in escrow under this section shall receive a full refund, including the buyer's pro rata share of any interest earned thereon, from the escrow agent. Refunds pursuant to this section shall be made not later than the two hundred forty-first day after the date the first physical exercise club contract was signed. If the escrow agent fails to make a full refund as provided for in this section, the attorney general shall hold a hearing and determine whether the physical exercise club has fully opened and has remained open for thirty days, and if not, determine those persons who, as buyers, are entitled to a refund and, if appropriate, distribute the escrow proceeds. Notice shall be provided to the physical exercise club at the address specified in the contract pursuant to section 552.4 and to all buyers who have funds in the escrow account. All hearings held under this section shall be held in accordance with chapter 17A.

3. For the purposes of this section, the date on which a physical exercise club fully opens for business is the date on which all of the equipment and services of the physical exercise club that were advertised before the opening or promised to be made available, whether or not contained in the contract, are actually available for use by buyers. The attorney general may upon application certify that a physical exercise club is fully open for business if substantially all of the promised equipment and services are available for use, and the physical exercise club has made a diligent effort to provide the remaining equipment and services.

4. The buyer retains ownership of all moneys and interest held in escrow under this section.

5. In lieu of establishing the escrow account described in subsections 1 through 4, a physical exercise club may post a one hundred fifty thousand dollar bond with the office of the attorney general, in a form deemed acceptable by the attor-

ney general to protect the interest of buyers. Notice of the existence of the bond must be disclosed to the buyer in the physical exercise club contract. Either the attorney general or a buyer shall be entitled to collect on the bond in the same manner and on the same terms as provided for an escrow account in subsections 1 through 4. The aggregate liability of the surety for all damages shall not exceed the amount of the bond.

88 Acts, ch 1221, §16; 2000 Acts, ch 1021, §2

552.17 Consumer credit sales.

A physical exercise club contract where a finance charge is made or where payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment, is a consumer credit sale within the meaning of section 537.1301, subsection 12, and is subject to chapter 537. If any periodic payment, other than the down payment under an agreement requiring or permitting two or more periodic payments, is more than twice the amount of any other periodic payment other than the down payment, a transaction is "payable in installments" within the meaning of section 537.1301, subsection 31.

The provisions of this chapter providing rights and protections to buyers are in addition to the provisions of chapter 537.

88 Acts, ch 1221, §17

552.18 Waiver of provisions.

A waiver by the buyer of any of the provisions of this chapter is void as contrary to public policy.

88 Acts, ch 1221, §18

552.19 Immunity.

Notwithstanding chapter 669, there is no liability on behalf of the state of Iowa, the attorney general, or the employees of the attorney general, for damages for failure to execute, or for negligently executing, the duties or authority conferred upon them by this chapter, or the rules adopted pursuant to this chapter.

88 Acts, ch 1221, §19

552.20 Rules.

The attorney general may adopt rules in accordance with chapter 17A to carry out the provisions of this chapter.

88 Acts, ch 1221, §20

552.21 Construction of chapter.

This chapter does not limit the power or authority of the attorney general to seek administrative, legal, or equitable relief as provided by other statutes or at common law.

88 Acts, ch 1221, §21

552.22 Applicability.

This chapter applies to all physical exercise club contracts entered into in this state on or after July 1, 1988, concerning physical exercise club facilities located, or services to be provided, in this state.

88 Acts, ch 1221, §22

CHAPTER 552A

BUYING CLUB MEMBERSHIPS

552A.1 Definitions.
552A.2 Exemptions.
552A.3 Right of cancellation — requirement of writing.
552A.4 Limitation on membership period.
552A.5 Remedies.

552A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Buying club"* means a corporation, partnership, unincorporated association, or other business enterprise which sells or offers for sale to the public generally memberships or certificates of membership.

2. *"Contract"* means the agreement by which a person acquires a membership in a buying club.

3. *"Membership"* means certificates, memberships, shares, bonds, contracts, stocks, or agreements of any kind or character issued upon any plan offered generally to the public entitling the holder to purchase merchandise, materials, equipment, or service, either from the issuer or another person designated by the issuer, either under a franchise or otherwise, whether it be at a discount, at cost plus a percentage, at cost plus a fixed amount, at a fixed price, or on any other similar basis.

93 Acts, ch 60, §1

552A.2 Exemptions.

This chapter does not apply to any of the following:

1. Building and loan associations, state or national banks, insurance companies and associations, and mutual or cooperative telephone companies organized under chapter 491 which have been determined to be exempt from taxation under section 501(c)(12) of the Internal Revenue Code.

2. Corporations and cooperative associations subject to regulation under chapter 497, 498, or 499.

3. The sale of membership camping contracts by persons or entities registered or exempt under chapter 557B.

4. The sale of physical exercise club contracts by persons or entities registered under chapter 552.

5. Corporations, partnerships, unincorporated associations, or other business enterprises which sell or offer for sale memberships to an individual or to a family unit for consideration of no more than fifty dollars for a one-year period. Consideration for this purpose includes but is not limited to the amount of any required purchase under the terms of the contract.

6. The sale of goods or services by corporations, partnerships, unincorporated associations, or other business enterprises which sell products to direct sellers as defined by section 3508 of the Internal Revenue Code, where the initial contract establishing the relationship with the direct seller is terminable at will by either party, and where the corporation, partnership, unincorporated association, or other business enterprise offers to repurchase the products at reasonable commercial terms.

For purposes of this subsection, *"reasonable commercial terms"* includes the repurchase of all unencumbered products which are in an unused, commercially resalable condition within one year from the direct seller's date of purchase. The repurchase shall be at a price not less than ninety percent of the original net cost to the direct seller of the products being returned. *"Original net cost"* means the amount actually paid by the direct seller for the products, less any consideration received by the direct seller for the purchase of the products being returned. Products which are no longer marketed by a program shall be deemed resalable if the products are otherwise in an unused, commercially resalable condition and are returned to the seller within one year from the direct seller's date of purchase, provided, however, that products which are no longer marketed by a program shall not be deemed resalable if the products are sold to direct sellers as nonreturnable, discontinued, seasonal, or special promotion items and the nonreturnable nature of the product was clearly disclosed to the direct seller prior to purchase.

93 Acts, ch 60, §2

552A.3 Right of cancellation — requirement of writing.

The requirements of sections 555A.1 through 555A.5, relating to door-to-door sales, shall apply to sales of buying club memberships, irrespective of the place or manner of sale or the purpose for which they are purchased. In addition to the requirements of chapter 555A, a contract shall not be enforceable against a person acquiring a membership in a buying club unless the contract is in writing and signed by the purchaser.

93 Acts, ch 60, §3

552A.4 Limitation on membership period.

A contract shall not be valid for a term longer than eighteen months from the date on which the contract is signed. However, a buying club may allow a member to convert the contract into a contract for a period longer than eighteen months after the member has been a member of the club for at least one year. The duration of the contract shall be clearly and conspicuously disclosed in the contract in bold-face type of a minimum size of fourteen points.

93 Acts, ch 60, §4

552A.5 Remedies.

1. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*.

2. The rights, obligations, and remedies provided in this chapter shall be in addition to any other rights, obligations, or remedies provided by law or in equity.

3. In addition to the remedies otherwise provided by law, any person injured by a violation of this chapter may bring a civil action and recover damages, together with costs, including reasonable attorney's fees, and receive other equitable relief as determined by the court.

93 Acts, ch 60, §5

CHAPTER 553

IOWA COMPETITION LAW

553.1 Short title.
553.2 Construction.
553.3 Definitions.
553.4 Restraint prohibited.
553.5 Monopoly prohibited.
553.6 Exemptions.

553.7 Attorney general to enforce.
553.8 Venue.
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553.11 Protective orders.
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553.13 Civil penalty.
553.14 Criminal penalties.
553.15 Election of remedies.
553.16 Limitations.
553.17 Prima facie evidence.
553.18 Debarment.

553.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Competition Law"*.

[C77, 79, 81, §553.1]

553.2 Construction.

This chapter shall be construed to complement and be harmonized with the applied laws of the United States which have the same or similar purpose as this chapter. This construction shall not be made in such a way as to constitute a delegation of state authority to the federal government, but shall be made to achieve uniform application of the state and federal laws prohibiting restraints of economic activity and monopolistic practices.

[C77, 79, 81, §553.2]

553.3 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commodity"* means tangible or intangible property, real, personal, or mixed.
2. *"Enterprise"* means a business, commercial or professional entity, including a corporation, partnership, limited partnership, professional corporation, proprietorship, incorporated or unincorporated association, or other form of organization.
3. *"Government agency"* means the state, its political subdivisions, and any public agency supported in whole or in part by taxation.
4. *"Person"* means a natural person, estate, trust, enterprise or government agency.
5. *"Price"* includes the terms and conditions of sale, rental, rate, fee, or any other form of payment for a commodity or service.
6. *"Relevant market"* means the geographical area of actual or potential competition in a line of commerce, all or any part of which is within this state.
7. *"Service"* means any activity which is performed in whole or part for financial gain.
8. *"Trade or commerce"* means any economic activity involving or relating to any commodity, service, or business activity.

[C77, 79, 81, §553.3]

553.4 Restraint prohibited.

A contract, combination, or conspiracy between two or more persons shall not restrain or monopolize trade or commerce in a relevant market.

[C97, §5060, 5061; S13, §5067-a; C24, 27, 31, 35, 39, §**9906, 9907, 9915;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.1, 553.2, 553.10; C77, 79, 81, §553.4]

553.5 Monopoly prohibited.

A person shall not attempt to establish or establish, maintain, or use a monopoly of trade or commerce in a relevant market for the purpose of excluding competition or of controlling, fixing, or maintaining prices.

[C97, §5060, 5061; S13, §5067-a; C24, 27, 31, 35, 39, §**9906, 9907, 9915;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.1, 553.2, 553.10; C77, 79, 81, §553.5]

553.6 Exemptions.

This chapter shall not be construed to prohibit:

1. The activities of any labor organization, individual members of such an organization, or group of such organizations, of any employer or group of employers, or of any groups of employees, if these activities are directed solely to legitimate labor objectives which are permitted under the laws of either this state or the United States.
2. The activities of any agricultural or horticultural organization, whether incorporated or unincorporated, or of the individual members of such organizations, if these activities carry out the legitimate objectives of such organizations, to the extent permitted under the laws of either this state or the United States.
3. The activities of persons engaged in the production of agricultural products when these persons act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing the products of these persons, to the extent permitted under the laws of either this state or the United States. These associations may have marketing and purchasing agencies in common and their members may make the necessary contracts and agreements to effect such purposes. However, such associations must be operated for the mutual benefit of the members of these associations acting as producers to qualify under this subsection.
4. The activities or arrangements expressly approved or regulated by any regulatory body or officer acting under authority of this state or of the United States.
5. The activities of a city or county, or an ad-

ministrative or legal entity created by a city or county, when acting within its statutory or constitutional home rule powers and to the same extent that the activities would not be prohibited if undertaken by the state.

[C24, 27, 31, 35, 39, §**9916;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.11; C77, 79, 81, §553.6]

84 Acts, ch 1020, §1

553.7 Attorney general to enforce.

The attorney general, with such assistance as may be required from time to time of the county attorneys in their respective counties, shall institute all criminal and civil actions and proceedings brought under this Act in the name of the state.

[C97, §5067; C24, 27, 31, 35, 39, §**9913;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.8; C77, 79, 81, §553.7]

553.8 Venue.

A suit or proceeding brought under this chapter may be brought in the county where the cause of action arose, where any defendant resides or transacts business, or where an act in furtherance of the conduct prohibited by this chapter occurred.

[C77, 79, 81, §553.8]

553.9 Investigation.

1. If the attorney general has reasonable cause to believe that a person has engaged in or is engaging in conduct prohibited by this chapter, the attorney general shall make such investigation as is deemed necessary and may, prior to the commencement of a suit against this person under this chapter:

a. Issue written demand on this person, its officers, directors, partners, fiduciaries, or employees to compel their attendance before the attorney general and examine them under oath;

b. Issue written demand to produce, examine, and copy a document or tangible item in the possession of this person or its officers, directors, partners, or fiduciaries;

c. Upon an order of a district court, pursuant to a showing that such is reasonably necessary to an investigation being conducted under this section:

(1) Compel the attendance of any other person before the attorney general and examine this person under oath;

(2) Require the production, examination, and copying of a document or other tangible item in the possession of such person; and,

d. Upon an order of a district court, impound a document or other tangible item produced pursuant to this section and retain possession of it until the completion of all proceedings arising out of the investigation.

2. A written demand or court order issued pursuant to this section shall contain the following information, as applicable:

a. A reference to this chapter and a general description of the subject matter being investigated;

b. The date, time and place at which any person is to appear or to produce documents or other tangible items;

c. Where the production of documents or other tangible items is required, a description of such documents or items by class with sufficient clarity so that they may be reasonably identified.

3. Any procedure, testimony taken, or material produced under this section shall be sealed by the court and be kept confidential by the attorney general, until an action is filed against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or unless disclosure is authorized by the court for the purposes of interstate co-operation in enforcing this chapter and similar state and federal laws.

4. This chapter shall not be construed to limit or abridge statutory or constitutional limitations on self-incrimination.

5. Evidence obtained from a natural person pursuant to the provisions of this section shall not be introduced in a subsequent criminal prosecution of this person. However, evidence obtained from a natural person pursuant to a grand jury proceeding may be so introduced.

[C77, 79, 81, §553.9]

553.10 Investigation enforcement.

If a person objects or otherwise fails to obey a written demand or court order issued under section 553.9, the attorney general may file in the district court of the county in which the person resides or maintains a principal place of business within this state an application for an order to enforce the demand or order. Notice of hearing and a copy of the application shall be served upon the person, who may appear in opposition to the application. If the court finds that the demand or order is proper, that there is reasonable cause to believe there has been a violation of this chapter, and that the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand or order, subject to such modification as the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings which justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

[C77, 79, 81, §553.10]

553.11 Protective orders.

Before the attorney general files an application under section 553.10 and upon application of any person who was served a written demand or court order under section 553.9, upon notice and hearing, and for good cause shown, the district court

may make any order which justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden of expense, including the following:

1. That the examination of this person shall not be taken or that documents or other tangible items shall not be produced for inspection and copying;

2. That the examination or production of documents or other tangible items shall be had only on specified terms and conditions, including a change in the time or place;

3. That certain matters shall not be inquired into or that the scope of the examination or production shall be limited to certain matters;

4. That the examination or production and inspection shall be conducted with only those persons present as designated by the court;

5. That the transcript of the examination shall be sealed and be opened only by order of the court;

6. That a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way.

[C77, 79, 81, §553.11]

553.12 Remedies.

The state or a person who is injured or threatened with injury by conduct prohibited under this chapter may bring suit to:

1. Prevent or restrain conduct prohibited under this chapter and remove the conduct's effect by injunction, divestiture, divorcement, dissolution of domestic enterprises right to do business in this state, compelling the forfeiture or restraint of the issuance of a certificate of incorporation, permit to transact business, license, or franchise, or granting other equitable relief. The state may bring suit under this section without posting bond.

2. Recover actual damages resulting from conduct prohibited under this chapter.

3. Recover, at the court's discretion, exemplary damages which do not exceed twice the actual damages awarded under subsection 2, from a person other than a city or county or legal entity created by a city or county, if:

a. The trier of fact determines that the prohibited conduct is willful or flagrant; and,

b. The person bringing suit is not the state.

4. Recover the necessary costs of bringing suit, including a reasonable attorney fee. However, the state may not recover any attorney fee.

[C77, 79, 81, §553.12]

84 Acts, ch 1020, §2

553.13 Civil penalty.

In addition to suit under section 553.12, the state may bring suit to assess a civil penalty against an enterprise whose conduct is prohibited under this chapter. The suit may be tried to the jury and the civil penalty provided for in this section shall be imposed by the court. The civil penalty assessed shall not exceed ten percent of the total value of the specific commodities by their brand, make, and size or of services either of which were the subject of the prohibited conduct sold in the relevant market in this state by the enterprise in each year in which this conduct occurred, but this penalty shall not exceed one hundred fifty thousand dollars. In computing this penalty, only the four most recent years in which the prohibited conduct occurred, as of commencement of suit under this section, shall be used in the computation.

[C77, 79, 81, §553.13]

553.14 Criminal penalties.

A person or a natural person having substantial control over an enterprise who knowingly and willfully engages in conduct prohibited by this chapter shall be guilty of a serious misdemeanor.

A person having substantial control over an enterprise who knowingly and willfully engages in bid rigging or price fixing involving a contract with the state or a governmental agency is guilty of a class "D" felony.

[C97, §5062; S13, §5062, 5067-c, 5077-a5; C24, 27, 31, 35, 39, §**9908, 9918, 9926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §553.3, 553.13, 553.21; C77, 79, 81, §553.14]

84 Acts, ch 1143, §1

553.15 Election of remedies.

The bringing of suit to assess a civil penalty against a person by filing a petition shall be an election of remedies to not bring a criminal prosecution against this person. The bringing of a criminal prosecution against a person by filing an information or returning an indictment shall be an election of remedies to not bring suit to assess a civil penalty against this person.

[C77, 79, 81, §553.15]

553.16 Limitations.

1. Suit by the state to assess a civil penalty or to obtain a criminal conviction under this chapter must be commenced within four years after the cause of action accrues or, if there is fraudulent concealment of this cause of action, within four years after the cause of action becomes known, whichever period is later.

2. Suit under section 553.12 must be commenced within four years after the cause of action accrues or, if there is a fraudulent concealment of this cause of action, within four years after the cause of action becomes known, whichever period is later. However, if this cause is based, in whole or part, on the same set of facts as alleged in a suit brought under section 553.13, this period shall be

suspended until one year after the suit brought under section 553.13 is concluded.

[C77, 79, 81, §553.16]

553.17 Prima facie evidence.

A final decree or judgment, other than a consent decree or consent judgment entered before trial, in a suit brought by the state is prima facie evidence against the defendant in a suit brought by any person other than the state under section 553.12 as to all matters respecting which this decree or judgment would be an estoppel between the state and the defendant. This section shall not affect the application of collateral estoppel or issue preclusion.

[C77, 79, 81, §553.17]

553.18 Debarment.

A contractor or supplier of goods or services to the state or a governmental agency, and the enterprise for which the illegal action was taken, convicted under this chapter, or convicted under the laws of any other state or the federal government for actions which would constitute a violation of this chapter, are prohibited from bidding on a governmental contract for one year from the date of conviction, unless the state or governmental agency accepting bids expressly allows the contractor or supplier to bid after being informed of the conviction.

84 Acts, ch 1143, §2

CHAPTER 554

UNIFORM COMMERCIAL CODE

Gender references changed pursuant to 82 Acts, ch 1217, §1
Court action or parties agreement required for disposition of property under obligation secured by mortgage, trust deed, or other security during military service; §29A.103, 29A.104

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ARTICLE 1

GENERAL PROVISIONS

PART 1

SHORT TITLE, CONSTRUCTION, APPLICATION, AND SUBJECT MATTER OF THE CHAPTER

554.1101 Short title.

This chapter shall be known and may be cited as Uniform Commercial Code.

[C66, 71, 73, 75, 77, 79, 81, §554.1101]

554.1102 Purposes — rules of construction — variation by agreement.

1. This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

2. Underlying purposes and policies of this chapter are:

a. to simplify, clarify and modernize the law governing commercial transactions;

b. to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

c. to make uniform the law among the various jurisdictions.

3. The effect of provisions of this chapter may be varied by agreement, except as otherwise provided in this chapter and except that the obligations of good faith, diligence, reasonableness and care prescribed by this chapter may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

4. The presence in certain provisions of this chapter of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection 3.

5. In this chapter, unless the context otherwise requires, words in the singular number include the plural, and in the plural include the singular.

[S13, §3138-a57, -b51; C24, 27, 31, 35, 39, §**8296, 9717, 10003;** C46, §487.53, 542.57, 554.75; C50, 54, 58, 62, §487.53, 493A.19, 542.57, 554.75; C66, 71, 73, 75, 77, 79, 81, §554.1102]

2000 Acts, ch 1188, §2

554.1103 Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

[S13, §3060-a196, 3138-a56, -b50; C24, 27, 31, 35, 39, §**8295, 9657, 9716, 9931, 10002;** C46, §487.52, 541.197, 542.56, 554.2, 554.74; C50, 54, 58, 62, §487.52, 493A.18, 541.197, 542.56, 554.2, 554.74; C66, 71, 73, 75, 77, 79, 81, §554.1103]

554.1104 Construction against implicit repeal.

This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

[C66, 71, 73, 75, 77, 79, 81, §554.1104]

554.1105 Territorial application of the chapter — parties' power to choose applicable law.

1. Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

2. Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 554.2402.

Applicability of the Article on Bank Deposits and Collections. Section 554.4102.

Letters of Credit. Section 554.5116.

Applicability of the Article on Investment Securities. Section 554.8110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 554.9301, 554.9302, 554.9303, 554.9304, 554.9305, 554.9306, and 554.9307.

Governing law in the Article on Funds Transfers. Section 554.12507.

Applicability of the Article on Leases. Sections 554.13105 and 554.13106.

[C66, 71, 73, 75, 77, 79, 81, §554.1105]

92 Acts, ch 1146, §39; 94 Acts, ch 1052, §2; 94 Acts, ch 1121, §3; 96 Acts, ch 1026, §19; 96 Acts, ch 1138, §5, 84; 2000 Acts, ch 1149, §137, 187

2000 amendment to subsection 2 is effective July 1, 2001; 2000 Acts, ch 1149, §187

554.1106 Remedies to be liberally administered.

1. The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this chap-

ter or by other rule of law.

2. Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

[C24, 27, 31, 35, 39, §**10001;** C46, 50, 54, 58, 62, §554.73; C66, 71, 73, 75, 77, 79, 81, §554.1106]

554.1107 Waiver or renunciation of claim or right after breach.

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

[S13, §3060-a118, -a122; SS15, §3060-a120; C24, 27, 31, 35, 39, §**9579, 9581, 9583;** C46, 50, 54, 58, 62, §541.119, 541.121, 541.123; C66, 71, 73, 75, 77, 79, 81, §554.1107]

554.1108 Severability.

If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

[C66, 71, 73, 75, 77, 79, 81, §554.1108]

554.1109 Section captions.

Section captions are parts of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §554.1109]

554.1110 Rules for filing and indexing.*

The secretary of state shall make and promulgate rules for all filing and indexing pursuant to this chapter and chapter 554B including but not limited to rules on whether statements and documents shall be indexed in real estate records.

[C71, 73, 75, 77, 79, 81, §554.1110]

*This caption supplied by Code editor

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

554.1201 General definitions.

Subject to additional definitions contained in the subsequent Articles of this chapter which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this chapter:

1. *"Action"* in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

2. *"Aggrieved party"* means a party entitled to resort to a remedy.

3. *"Agreement"* means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 554.1205 and 554.2208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 554.1103). (Compare "Contract".)

4. *"Bank"* means any person engaged in the business of banking.

5. *"Bearer"* means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

6. *"Bill of lading"* means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. *"Airbill"* means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

7. *"Branch"* includes a separately incorporated foreign branch of a bank.

8. *"Burden of establishing"* a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

9. *"Buyer in ordinary course of business"* means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

10. *"Conspicuous"*: A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: "Nonnegotiable Bill of Lading") is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not

is for decision by the court.

11. *"Contract"* means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare "Agreement".)

12. *"Creditor"* includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

13. *"Defendant"* includes a person in the position of defendant in a cross-action or counterclaim.

14. *"Delivery"* with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

15. *"Document of title"* includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

16. *"Fault"* means wrongful act, omission or breach.

17. *"Fungible"* with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

18. *"Genuine"* means free of forgery or counterfeiting.

19. *"Good faith"* means honesty in fact in the conduct or transaction concerned.

20. *"Holder"*, with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. *"Holder"* with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

21. To *"honor"* is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

22. *"Insolvency proceedings"* includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

23. A person is *"insolvent"* who either has ceased to pay that person's debts in the ordinary course of business or cannot pay that person's debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

24. *"Money"* means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

25. A person has *"notice"* of a fact when

a. the person has actual knowledge of it; or

b. the person has received a notice or notification of it; or

c. from all the facts and circumstances known to the person at the time in question the person has reason to know that it exists. A person "knows" or has "knowledge" of a fact when that person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

26. A person *"notifies"* or *"gives"* a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

a. it comes to that person's attention; or

b. it is duly delivered at the place of business through which the contract was made or at any other place held out by that person as the place for receipt of such communications.

27. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to that individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of that individual's regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

28. *"Organization"* includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

29. *"Party",* as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this chapter.

30. *"Person"* includes an individual or an organization (See section 554.1102).

31. *"Presumption"* or *"presumed"* means that the trier of fact must find the existence of the fact

presumed unless and until evidence is introduced which would support a finding of its nonexistence.

32. *"Purchase"* means any voluntary transaction creating an interest in property, including taking by sale, discount, negotiation, mortgage, pledge, voluntary lien, security interest, issue, reissue, or gift.

33. *"Purchaser"* means a person who takes by purchase.

34. *"Remedy"* means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

35. *"Representative"* includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

36. *"Rights"* includes remedies.

37. *a.* *"Security interest"* means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 554.2401 is not a *"security interest"*, but a buyer may also acquire a *"security interest"* by complying with Article 9. Except as otherwise provided in section 554.2505, the right of a seller or lessor of goods under Article 2 or 13 to retain or acquire possession of the goods is not a *"security interest"*, but a seller or lessor may also acquire a *"security interest"* by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 554.2401) is limited in effect to a reservation of a *"security interest"*.

b. Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods,

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(4) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

c. A transaction does not create a security interest merely because it provides that

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(2) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(3) the lessee has an option to renew the lease or to become the owner of the goods,

(4) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(5) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

d. For purposes of this subsection:

(1) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(2) *"Reasonably predictable"* and *"remaining economic life of the goods"* are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(3) *"Present value"* means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

38. *"Send"* in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

39. *"Signed"* includes any symbol executed or adopted by a party with present intention to authenticate a writing.

40. *"Surety"* includes guarantor.

41. *"Telegram"* includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

42. *"Term"* means that portion of an agreement which relates to a particular matter.

43. *"Unauthorized"* signature means one made without actual, implied, or apparent authority and includes a forgery.

44. *"Value".* Except as otherwise provided with respect to negotiable instruments and bank collections (sections 554.3303, 554.4210, and 554.4211) a person gives "value" for rights if the person acquires them

a. in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

b. as security for or in total or partial satisfaction of a pre-existing claim; or

c. by accepting delivery pursuant to a pre-existing contract for purchase; or

d. generally, in return for any consideration sufficient to support a simple contract.

45. *"Warehouse receipt"* means a receipt issued by a person engaged in the business of storing goods for hire.

46. *"Written"* or *"writing"* includes printing, typewriting or any other intentional reduction to tangible form.

[S13, §1889-a, 3060-a6, -a25, -a27, -a56, -a191, 3138-a1, -a58, -b, -b52; C24, 27, 31, 35, 39, §**8245, 8297, 9266, 9466, 9485 – 9487, 9516, 9652, 9661, 9718, 9932, 9934, 9935, 10000, 10005;** C46, 50, 54, 58, 62, §487.1, 487.54, 528.61, 541.6, 541.25 – 541.27, 541.56, 541.192, 542.1, 542.58, 554.3, 554.6, 554.7, 554.72, 554.77; C50, 54, 58, 62, §493A.22; C58, 62, §539.12; C66, 71, 73, 75, 77, 79, 81, §554.1201]

89 Acts, ch 113, §54; 94 Acts, ch 1052, §3; 94 Acts, ch 1167, §6, 122; 2000 Acts, ch 1149, §138, 139, 187

2000 amendments to subsections 9, 32, and 37 are effective July 1, 2001; 2000 Acts, ch 1149, §187

554.1202 Prima facie evidence by third party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

[C66, 71, 73, 75, 77, 79, 81, §554.1202]

554.1203 Obligation of good faith.

Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement.

[C66, 71, 73, 75, 77, 79, 81, §554.1203]

554.1204 Time — reasonable time — "seasonably".

1. Whenever this chapter requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

2. What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

3. An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

[S13, §3060-a193; C24, 27, 31, 35, 39, §**9654, 9972;** C46, 50, 54, 58, 62, §541.194, 554.44; C66, 71, 73, 75, 77, 79, 81, §554.1204]

554.1205 Course of dealing and usage of trade.

1. A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

2. A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

3. A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

4. The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

5. An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

6. Evidence of a relevant usage of trade offered by one party is not admissible unless and until that party has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

[C24, 27, 31, 35, 39, §**9938, 9944, 9947, 10000;** C46, 50, 54, 58, 62, §554.10, 554.16, 554.19, 554.72; C66, 71, 73, 75, 77, 79, 81, §554.1205]

554.1206 Statute of frauds for kinds of personal property not otherwise covered.

1. Except in the cases described in subsection 2 of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by that party's authorized agent.

2. Subsection 1 of this section does not apply to contracts for the sale of goods (section 554.2201) nor of securities (section 554.8113) nor to security agreements (section 554.9203).

[C24, 27, 31, 35, 39, §**9933;** C46, 50, 54, 58, 62, §554.4; C66, 71, 73, 75, 77, 79, 81, §554.1206]

96 Acts, ch 1138, §6, 84

554.1207 Performance or acceptance under reservation of rights.

1. A party who, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

2. Subsection 1 does not apply to an accord and satisfaction.

[C66, 71, 73, 75, 77, 79, 81, §554.1207]

94 Acts, ch 1167, §7, 122

554.1208 Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party deems itself insecure" or in words of similar import shall be construed to mean that that party shall have power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

[C66, 71, 73, 75, 77, 79, 81, §554.1208]

554.1209 Subordinated obligations.

An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate the creditor's right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

[C75, 77, 79, 81, §554.1209]

ARTICLE 2

SALES

PART 1

SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

554.2101 Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Sales.

[C66, 71, 73, 75, 77, 79, 81, §554.2101]

554.2102 Scope — certain security and other transactions excluded from this Article.

Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

[C24, 27, 31, 35, 39, §**10004;** C46, 50, 54, 58, 62, §554.76; C66, 71, 73, 75, 77, 79, 81, §554.2102]

554.2103 Definitions and index of definitions.

1. In this Article unless the context otherwise requires

a. "Buyer" means a person who buys or contracts to buy goods.

b. "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

c. "Receipt" of goods means taking physical possession of them.

d. "Seller" means a person who sells or contracts to sell goods.

2. Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance"	Section 554.2606
"Banker's credit"	Section 554.2325
"Between merchants"	Section 554.2104
"Cancellation"	Section 554.2106(4)
"Commercial unit"	Section 554.2105
"Confirmed credit"	Section 554.2325
"Conforming to contract"	Section 554.2106
"Contract for sale"	Section 554.2106
"Cover"	Section 554.2712
"Entrusting"	Section 554.2403
"Financing agency"	Section 554.2104
"Future goods"	Section 554.2105
"Goods"	Section 554.2105
"Identification"	Section 554.2501
"Installment contract"	Section 554.2612
"Letter of credit"	Section 554.2325
"Lot"	Section 554.2105
"Merchant"	Section 554.2104

"Overseas"	Section 554.2323
"Person in position of seller"	Section 554.2707
"Present sale"	Section 554.2106
"Sale"	Section 554.2106
"Sale on approval"	Section 554.2326
"Sale or return	Section 554.2326
"Termination"	Section 554.2106

3. The following definitions in other Articles apply to this Article:

"Check"	Section 554.3104
"Consignee"	Section 554.7102
"Consignor"	Section 554.7102
"Consumer goods"	Section 554.9102
"Dishonor"	Section 554.3502
"Draft"	Section 554.3104

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

[C24, 27, 31, 35, 39, §**10005;** C46, 50, 54, 58, 62, §554.77; C66, 71, 73, 75, 77, 79, 81, §554.2103]

94 Acts, ch 1167, §8, 122; 2000 Acts, ch 1149, §140, 187

2000 amendment to subsection 3 is effective July 1, 2001; 2000 Acts, ch 1149, §187

554.2104 Definitions: "merchant"— "between merchants" — "financing agency".

1. *"Merchant"* means a person who deals in goods of the kind or otherwise by the person's occupation holds that person out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary who by the intermediary's occupation holds the intermediary out as having such knowledge or skill.

2. *"Financing agency"* means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 554.2707).

3. *"Between merchants"* means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

[S13, §3138-b34, -b36; C24, 27, 31, 35, 39, §**8279, 8281;** C46, 50, 54, 58, 62, §487.35, 487.37; C66, 71, 73, 75, 77, 79, 81, §554.2104]

554.2105 Definitions: transferability — "goods" — "future" goods — "lot" — "commercial unit".

1. *"Goods"* means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 554.2107).

2. Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

3. There may be a sale of a part interest in existing identified goods.

4. An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

5. *"Lot"* means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

6. *"Commercial unit"* means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

[C24, 27, 31, 35, 39, §**9934, 9935, 10005;** C46, 50, 54, 58, 62, §554.6, 554.7, 554.77; C66, 71, 73, 75, 77, 79, 81, §554.2105]

554.2106 Definitions: "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation".

1. In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. *"Contract for sale"* includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (section 554.2401). A "present sale" means a sale which is accomplished by the making of the contract.

2. Goods or conduct including any part of a performance are *"conforming"* or conform to the contract when they are in accordance with the obligations under the contract.

3. *"Termination"* occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its

breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

4. *"Cancellation"* occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

[C24, 27, 31, 35, 39, §**9930, 9940;** C46, 50, 54, 58, 62, §554.1, 554.12; C66, 71, 73, 75, 77, 79, 81, §554.2106]

554.2107 Goods to be severed from realty: recording.

1. A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

2. A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection 1 or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

3. The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

[C24, 27, 31, 35, 39, §**10005;** C46, 50, 54, 58, 62, §554.77; C66, 71, 73, 75, 77, 79, 81, §554.2107]

PART 2

FORM, FORMATION, AND READJUSTMENT OF CONTRACT

554.2201 Formal requirements — statute of frauds.

1. Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by that party's authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

2. Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection 1 against such party unless written notice of objection to its contents is given within ten days after it is received.

3. A contract which does not satisfy the requirements of subsection 1 but which is valid in other respects is enforceable

a. if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

b. if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

c. with respect to goods for which payment has been made and accepted or which have been received and accepted (section 554.2606).

[C24, 27, 31, 35, 39, §**9933;** C46, 50, 54, 58, 62, §554.4; C66, 71, 73, 75, 77, 79, 81, §554.2201]

554.2202 Final written expression — parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

a. by course of dealing or usage of trade (section 554.1205) or by course of performance (section 554.2208); and

b. by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

[C66, 71, 73, 75, 77, 79, 81, §554.2202]

554.2203 Seals inoperative.

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

[C24, 27, 31, 35, 39, §**9932;** C46, 50, 54, 58, 62, §554.3; C66, 71, 73, 75, 77, 79, 81, §554.2203]

554.2204 Formation in general.

1. A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

2. An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

3. Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

[C24, 27, 31, 35, 39, §**9930, 9932;** C46, 50, 54, 58, 62, §554.1, 554.3; C66, 71, 73, 75, 77, 79, 81, §554.2204]

554.2205 Firm offers.

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

[C24, 27, 31, 35, 39, §**9930, 9932;** C46, 50, 54, 58, 62, §554.1, 554.3; C66, 71, 73, 75, 77, 79, 81, §554.2205]

554.2206 Offer and acceptance in formation of contract.

1. Unless otherwise unambiguously indicated by the language or circumstances

a. an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

b. an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

2. Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

[C24, 27, 31, 35, 39, §**9930, 9932;** C46, 50, 54, 58, 62, §554.1, 554.3; C66, 71, 73, 75, 77, 79, 81, §554.2206]

554.2207 Additional terms in acceptance or confirmation.

1. A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

2. The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

a. the offer expressly limits acceptance to the terms of the offer;

b. they materially alter it; or

c. notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

3. Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this chapter.

[C24, 27, 31, 35, 39, §**9930, 9932;** C46, 50, 54, 58, 62, §554.1, 554.3; C66, 71, 73, 75, 77, 79, 81, §554.2207]

554.2208 Course of performance or practical construction.

1. Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

2. The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (section 554.1205).

3. Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

[C66, 71, 73, 75, 77, 79, 81, §554.2208]

554.2209 Modification, rescission and waiver.

1. An agreement modifying a contract within this Article needs no consideration to be binding.

2. A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately

signed by the other party.

3. The requirements of the statute of frauds section of this Article (section 554.2201) must be satisfied if the contract as modified is within its provisions.

4. Although an attempt at modification or rescission does not satisfy the requirements of subsection 2 or 3 it can operate as a waiver.

5. A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

[C24, 27, 31, 35, 39, §**9990;** C46, 50, 54, 58, 62, §554.62; C66, 71, 73, 75, 77, 79, 81, §554.2209]

554.2210 Delegation of performance — assignment of rights.

1. A party may perform that party's duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

2. Except as otherwise provided in section 554.9406, unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden of risk imposed on the other party by the contract, or impair materially the other party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of the assignor's entire obligation can be assigned despite agreement otherwise.

3. The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection 2 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

4. Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

5. An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

6. The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to that party's rights against the assignor demand assurances from the assignee (section 554.2609).

[C66, 71, 73, 75, 77, 79, 81, §554.2210]

2000 Acts, ch 1149, §141, 142, 187

2000 amendments take effect July 1, 2001; 2000 Acts, ch 1149, §187

PART 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

554.2301 General obligations of parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

[C24, 27, 31, 35, 39, §**9940, 9970;** C46, 50, 54, 58, 62, §554.12, 554.42; C66, 71, 73, 75, 77, 79, 81, §554.2301]

554.2302 Unconscionable contract or clause.

1. If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

2. When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

[C66, 71, 73, 75, 77, 79, 81, §554.2302]

554.2303 Allocation or division of risks.

Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

[C66, 71, 73, 75, 77, 79, 81, §554.2303]

554.2304 Price payable in money, goods, realty, or otherwise.

1. The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which that party is to transfer.

2. Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

[C24, 27, 31, 35, 39, §**9938;** C46, 50, 54, 58, 62, §554.10; C66, 71, 73, 75, 77, 79, 81, §554.2304]

554.2305 Open price term.

1. The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

a. nothing is said as to price; or

b. the price is left to be agreed by the parties and they fail to agree; or

c. the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

2. A price to be fixed by the seller or by the buyer means a price for that party to fix in good faith.

3. When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at that party's option treat the contract as canceled or fix a reasonable price.

4. Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

[C24, 27, 31, 35, 39, §**9938, 9939;** C46, 50, 54, 58, 62, §554.10, 554.11; C66, 71, 73, 75, 77, 79, 81, §554.2305]

554.2306 Output, requirements and exclusive dealings.

1. A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

2. A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

[C66, 71, 73, 75, 77, 79, 81, §554.2306]

554.2307 Delivery in single lot or several lots.

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

[C24, 27, 31, 35, 39, §**9974;** C46, 50, 54, 58, 62, §554.46; C66, 71, 73, 75, 77, 79, 81, §554.2307]

554.2308 Absence of specified place for delivery.

Unless otherwise agreed

a. the place for delivery of goods is the seller's place of business or if the seller has none the seller's residence; but

b. in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

c. documents of title may be delivered through customary banking channels.

[C24, 27, 31, 35, 39, §**9972;** C46, 50, 54, 58, 62, §554.44; C66, 71, 73, 75, 77, 79, 81, §554.2308]

554.2309 Absence of specific time provisions — notice of termination.

1. The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

2. Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

3. Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

[C24, 27, 31, 35, 39, §**9972, 9974, 9976, 9977;** C46, 50, 54, 58, 62, §554.44, 554.46, 554.48, 554.49; C66, 71, 73, 75, 77, 79, 81, §554.2309]

554.2310 Open time for payment or running of credit — authority to ship under reservation.

Unless otherwise agreed

a. payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

b. if the seller is authorized to send the goods the seller may ship them under reservation, and may tender the documents of title, but the buyer

may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 554.2513); and

c. if delivery is authorized and made by way of documents of title otherwise than by subsection *"b"* then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

d. where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

[C24, 27, 31, 35, 39, §**9971, 9976;** C46, 50, 54, 58, 62, §554.43, 554.48; C66, 71, 73, 75, 77, 79, 81, §554.2310]

554.2311 Options and co-operation respecting performance.

1. An agreement for sale which is otherwise sufficiently definite (subsection 3 of section 554.2204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

2. Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections 1 *"c"* and 3 of section 554.2319 specifications or arrangements relating to shipment are at the seller's option.

3. Where such specification would materially affect the other party's performance but is not seasonably made or where one party's co-operation is necessary to the agreed performance of the other but is not seasonably forthcoming the other party in addition to all other remedies

a. is excused for any resulting delay in that party's own performance; and

b. may also either proceed to perform in any reasonable manner or after the time for a material part of that party's own performance treat the failure to specify or to co-operate as a breach by failure to deliver or accept the goods.

[C66, 71, 73, 75, 77, 79, 81, §554.2311]

554.2312 Warranty of title and against infringement — buyer's obligation against infringement.

1. Subject to subsection 2 there is in a contract for sale a warranty by the seller that

a. the title conveyed shall be good, and its transfer rightful; and

b. the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

2. A warranty under subsection 1 will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title or that the person selling is purporting to sell only such right or title as the person selling or a third person may have.

3. Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

[C24, 27, 31, 35, 39, §**9942;** C46, 50, 54, 58, 62, §554.14; C66, 71, 73, 75, 77, 79, 81, §554.2312]

554.2313 Express warranties by affirmation, promise, description, sample.

1. Express warranties by the seller are created as follows:

a. Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

c. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

2. It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

[C24, 27, 31, 35, 39, §**9941, 9943, 9945;** C46, 50, 54, 58, 62, §554.13, 554.15, 554.17; C66, 71, 73, 75, 77, 79, 81, §554.2313]

554.2314 Implied warranty: merchantability — usage of trade.

1. Unless excluded or modified (section 554.2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

2. Goods to be merchantable must be at least such as

a. pass without objection in the trade under the contract description; and

b. in the case of fungible goods, are of fair average quality within the description; and

c. are fit for the ordinary purposes for which such goods are used; and

d. run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

e. are adequately contained, packaged, and labeled as the agreement may require; and

f. conform to the promises or affirmations of fact made on the container or label if any.

3. Unless excluded or modified (section 554.2316) other implied warranties may arise from course of dealing or usage of trade.

[C24, 27, 31, 35, 39, §**9944;** C46, 50, 54, 58, 62, §554.16; C66, 71, 73, 75, 77, 79, 81, §554.2314]

Limitation; §613.18

554.2315 Implied warranty — fitness for particular purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

[C24, 27, 31, 35, 39, §**9944;** C46, 50, 54, 58, 62, §554.16; C66, 71, 73, 75, 77, 79, 81, §554.2315]

554.2316 Exclusion or modification of warranties.

1. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (section 554.2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

3. Notwithstanding subsection 2

a. unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

b. when the buyer before entering into the contract has examined the goods or the sample or model as fully as the buyer desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to the buyer; and

c. an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

4. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (sections 554.2718 and 554.2719).

[C66, 71, 73, 75, 77, 79, 81, §554.2316]

Limitation; §613.18

Livestock warranty exemption, chapter 554A

554.2317 Cumulation and conflict of warranties express or implied.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

a. Exact or technical specifications displace an inconsistent sample or model or general language of description.

b. A sample from an existing bulk displaces inconsistent general language of description.

c. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

[C24, 27, 31, 35, 39, §**9943 – 9945;** C46, 50, 54, 58, 62, §554.15 – 554.17; C66, 71, 73, 75, 77, 79, 81, §554.2317]

554.2318 Third party beneficiaries of warranties express or implied.

A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.

[C66, 71, 73, 75, 77, 79, 81, §554.2318]

554.2319 F.O.B. and F.A.S. terms.

1. Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

a. when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (section 554.2504) and bear the expense and risk of putting them into the possession of the carrier; or

b. when the term is F.O.B. the place of destination, the seller must at the seller's own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (section 554.2503);

c. when under either *"a"* or *"b"* the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at the seller's own expense and risk load the goods on board. If the term is F.O.B. ves-

sel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (section 554.2323).

2. Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

a. at the seller's own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

b. obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

3. Unless otherwise agreed in any case falling within subsection 1 *"a"* or *"c"* or subsection 2 the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of co-operation under this Article (section 554.2311). The seller may also at the seller's option move the goods in any reasonable manner preparatory to delivery or shipment.

4. Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[C66, 71, 73, 75, 77, 79, 81, §554.2319]

554.2320 C.I.F. and C. & F. terms.

1. The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

2. Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at the seller's own expense and risk to

a. put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

b. load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

c. obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

d. prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

e. forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

3. Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

4. Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[C66, 71, 73, 75, 77, 79, 81, §554.2320]

554.2321 C.I.F. or C. & F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival.

Under a contract containing a term C.I.F. or C. & F.

1. Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

2. An agreement described in subsection 1 or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

3. Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

[C66, 71, 73, 75, 77, 79, 81, §554.2321]

554.2322 Delivery "ex-ship".

1. Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

2. Under such a term unless otherwise agreed

a. the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to de-

liver the goods; and

b. the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

[C66, 71, 73, 75, 77, 79, 81, §554.2322]

554.2323 Form of bill of lading required in overseas shipment — "overseas".

1. Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

2. Where in a case within subsection 1 a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

a. due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection 1 of section 554.2508); and

b. even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

3. A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

[C66, 71, 73, 75, 77, 79, 81, §554.2323]

554.2324 "No arrival, no sale" term.

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

a. the seller must properly ship conforming goods and if they arrive by any means the seller must tender them on arrival but the seller assumes no obligation that the goods will arrive unless the seller has caused the nonarrival; and

b. where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 554.2613).

[C66, 71, 73, 75, 77, 79, 81, §554.2324]

554.2325 "Letter of credit" term — "confirmed credit".

1. Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

2. The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from the buyer.

3. Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

[C66, 71, 73, 75, 77, 79, 81, §554.2325]

554.2326 Sale on approval and sale or return — rights of creditors.

1. Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

a. a "sale on approval" if the goods are delivered primarily for use, and

b. a "sale or return" if the goods are delivered primarily for resale.

2. Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

3. Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (section 554.2201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (section 554.2202).

[C24, 27, 31, 35, 39, §**9948;** C46, 50, 54, 58, 62, §554.20; C66, 71, 73, 75, 77, 79, 81, §554.2326]

2000 Acts, ch 1149, §143, 187

2000 amendments are effective July 1, 2001; 2000 Acts, ch 1149, §187

554.2327 Special incidents of sale on approval and sale or return.

1. Under a sale on approval unless otherwise agreed

a. although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

b. use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

c. after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

2. Under a sale or return unless otherwise agreed

a. the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

b. the return is at the buyer's risk and ex-

pense.

[C24, 27, 31, 35, 39, §**9948;** C46, 50, 54, 58, 62, §554.20; C66, 71, 73, 75, 77, 79, 81, §554.2327]

554.2328 Sale by auction.

1. In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

2. A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in the auctioneer's discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

3. Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until the auctioneer announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract the bidder's bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

4. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at the buyer's option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

[C24, 27, 31, 35, 39, §**9950;** C46, 50, 54, 58, 62, §554.22; C66, 71, 73, 75, 77, 79, 81, §554.2328]

PART 4

TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

554.2401 Passing of title — reservation for security — limited application of this section.

Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

1. Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 554.2501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this chapter. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

2. Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes the seller's performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

a. if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

b. if the contract requires delivery at destination, title passes on tender there.

3. Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

a. if the seller is to deliver a document of title, title passes at the time when and the place where the seller delivers such documents; or

b. if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

4. A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

[C24, 27, 31, 35, 39, §**9946 – 9949;** C46, 50, 54, 58, 62, §554.18 – 554.21; C66, 71, 73, 75, 77, 79, 81, §554.2401]

554.2402 Rights of seller's creditors against sold goods.

1. Except as provided in subsections 2 and 3, rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (sections 554.2502 and 554.2716).

2. A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

3. Nothing in this Article shall be deemed to impair the rights of creditors of the seller

a. under the provisions of the Article on Secured Transactions (Article 9); or

b. where identification to the contract or deliv-

ery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference.

[C24, 27, 31, 35, 39, §**9955;** C46, 50, 54, 58, 62, §554.27; C66, 71, 73, 75, 77, 79, 81, §554.2402]

554.2403 Power to transfer — good faith purchase of goods — "entrusting".

1. A purchaser of goods acquires all title which the purchaser's transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

a. the transferor was deceived as to the identity of the purchaser, or

b. the delivery was in exchange for a check which is later dishonored, or

c. it was agreed that the transaction was to be a "cash sale", or

d. the delivery was procured through fraud punishable as larcenous under the criminal law.

2. Any entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business.

3. "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

4. The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9) and Documents of Title (Article 7).

[C24, 27, 31, 35, 39, §**9949, 9952 – 9954;** C46, 50, 54, 58, 62, §554.21, 554.24 – 554.26; C66, 71, 73, 75, 77, 79, 81, §554.2403]

94 Acts, ch 1121, §4

Notwithstanding 74 Acts, ch 1249, division 1, an owner of farm products whose possession is entrusted to a person engaged in farming operations may create an Article 9 security interest in the farm products, with respect to the obligation of the person engaged in farming operations; 74 Acts, ch 1249, §8

PART 5

PERFORMANCE

554.2501 Insurable interest in goods — manner of identification of goods.

1. The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and the buyer has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

a. when the contract is made if it is for the sale of goods already existing and identified;

b. if the contract is for the sale of future goods other than those described in paragraph *"c"*, when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

c. when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

2. The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in the seller and where the identification is by the seller alone the seller may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

3. Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

[C24, 27, 31, 35, 39, §**9946, 9948;** C46, 50, 54, 58, 62, §554.18, 554.20; C66, 71, 73, 75, 77, 79, 81, §554.2501]

554.2502 Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.

1. Subject to subsections 2 and 3 and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which the buyer has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

a. in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

b. in all cases the seller becomes insolvent within ten days after receipt of the first installment on their price.

2. The buyer's right to recover the goods under subsection 1, paragraph *"a"*, vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

3. If the identification creating the buyer's special property has been made by the buyer, the buyer acquires the right to recover the goods only if they conform to the contract for sale.

[C24, 27, 31, 35, 39, §**9946 – 9948;** C46, 50, 54, 58, 62, §554.18 – 554.20; C66, 71, 73, 75, 77, 79, 81,

§554.2502]

2000 Acts, ch 1149, §144, 187

2000 amendments are effective July 1, 2001; 2000 Acts, ch 1149, §187

554.2503 Manner of seller's tender of delivery.

1. Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable the buyer to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

a. tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

b. unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

2. Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

3. Where the seller is required to deliver at a particular destination tender requires that the seller comply with subsection 1 and also in any appropriate case tender documents as described in subsections 4 and 5 of this section.

4. Where goods are in the possession of a bailee and are to be delivered without being moved

a. tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

b. tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

5. Where the contract requires the seller to deliver documents

a. the seller must tender all such documents in correct form except as provided in this Article with respect to bills of lading in a set (subsection 2 of section 554.2323); and

b. tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

[C24, 27, 31, 35, 39, §**9940, 9948, 9949, 9972, 9975, 9980;** C46, 50, 54, 58, 62, §554.12, 554.20, 554.21, 554.44, 554.47, 554.52; C66, 71, 73, 75, 77, 79, 81, §554.2503]

554.2504 Shipment by seller.

Where the seller is required or authorized to send the goods to the buyer and the contract does not require the seller to deliver them at a particular destination, then unless otherwise agreed the seller must

a. put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

b. obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

c. promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph *"c"* or to make a proper contract under paragraph *"a"* is a ground for rejection only if material delay or loss ensues.

[C24, 27, 31, 35, 39, §**9975;** C46, 50, 54, 58, 62, §554.47; C66, 71, 73, 75, 77, 79, 81, §554.2504]

554.2505 Seller's shipment under reservation.

1. Where the seller has identified goods to the contract by or before shipment:

a. the seller's procurement of a negotiable bill of lading to the seller's own order or otherwise reserves in the seller a security interest in the goods. The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

b. a nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection 2 of section 554.2507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

2. When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

[C24, 27, 31, 35, 39, §**9949;** C46, 50, 54, 58, 62, §554.21; C66, 71, 73, 75, 77, 79, 81, §554.2505]

554.2506 Rights of financing agency.

1. A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

2. The right to reimbursement of a financing

agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

[S13, §3138-b36; C24, 27, 31, 35, 39, §**8281;** C46, 50, 54, 58, 62, §487.37; C66, 71, 73, 75, 77, 79, 81, §554.2506]

554.2507 Effect of seller's tender — delivery on condition.

1. Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to the buyer's duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

2. Where payment is due and demanded on the delivery to the buyer of goods or documents of title, the buyer's right as against the seller to retain or dispose of them is conditional upon the buyer's making the payment due.

[C24, 27, 31, 35, 39, §**9940, 9970, 9971, 9998;** C46, 50, 54, 58, 62, §554.12, 554.42, 554.43, 554.70; C66, 71, 73, 75, 77, 79, 81, §554.2507]

554.2508 Cure by seller of improper tender or delivery — replacement.

1. Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of the seller's intention to cure and may then within the contract time make a conforming delivery.

2. Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if the seller seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

[C66, 71, 73, 75, 77, 79, 81, §554.2508]

554.2509 Risk of loss in the absence of breach.

1. Where the contract requires or authorizes the seller to ship the goods by carrier

a. if it does not require the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 554.2505); but

b. if it does require the seller to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

2. Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

a. on the buyer's receipt of a negotiable document of title covering the goods; or

b. on acknowledgment by the bailee of the buyer's right to possession of the goods; or

c. after the buyer's receipt of a nonnegotiable document of title or other written direction to deliver, as provided in subsection 4 *"b"* of section 554.2503.

3. In any case not within subsection 1 or 2, the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

4. The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (section 554.2327) and on effect of breach on risk of loss (section 554.2510).

[C24, 27, 31, 35, 39, §**9951;** C46, 50, 54, 58, 62, §554.23; C66, 71, 73, 75, 77, 79, 81, §554.2509]

554.2510 Effect of breach on risk of loss.

1. Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

2. Where the buyer rightfully revokes acceptance the buyer may to the extent of any deficiency in the buyer's effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

3. Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to the buyer, the seller may to the extent of any deficiency in the seller's effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

[C66, 71, 73, 75, 77, 79, 81, §554.2510]

554.2511 Tender of payment by buyer — payment by check.

1. Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

2. Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

3. Subject to the provisions of this chapter on the effect of an instrument on an obligation (section 554.3310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

[C24, 27, 31, 35, 39, §**9971;** C46, 50, 54, 58, 62, §554.43; C66, 71, 73, 75, 77, 79, 81, §554.2511]

94 Acts, ch 1167, §9, 122

554.2512 Payment by buyer before inspection.

1. Where the contract requires payment before inspection nonconformity of the goods does

not excuse the buyer from so making payment unless

a. the nonconformity appears without inspection; or

b. despite tender of the required documents the circumstances would justify injunction against honor under this chapter (section 554.5109, subsection 2).

2. Payment pursuant to subsection 1 does not constitute an acceptance of goods or impair the buyer's right to inspect or any of the buyer's remedies.

[C24, 27, 31, 35, 39, §**9976, 9978;** C46, 50, 54, 58, 62, §554.48, 554.50; C66, 71, 73, 75, 77, 79, 81, §554.2512]

96 Acts, ch 1026, §20; 97 Acts, ch 23, §68

554.2513 Buyer's right to inspection of goods.

1. Unless otherwise agreed and subject to subsection 3, where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

2. Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

3. Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection 3 of section 554.2321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

a. for delivery "C.O.D." or on other like terms; or

b. for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

4. A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

[C24, 27, 31, 35, 39, §**9976;** C46, 50, 54, 58, 62, §554.48; C66, 71, 73, 75, 77, 79, 81, §554.2513]

554.2514 When documents deliverable on acceptance — when on payment.

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

[S13, §3138-b40; C24, 27, 31, 35, 39, §**8285;** C46, 50, 54, 58, 62, §487.41; C66, 71, 73, 75, 77, 79, 81, §554.2514]

554.2515 Preserving evidence of goods in dispute.

In furtherance of the adjustment of any claim or dispute

a. either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

b. the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

[C66, 71, 73, 75, 77, 79, 81, §554.2515]

PART 6

BREACH, REPUDIATION, AND EXCUSE

554.2601 Buyer's rights on improper delivery.

Subject to the provisions of this Article on breach in installment contracts (section 554.2612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 554.2718 and 554.2719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

a. reject the whole; or

b. accept the whole; or

c. accept any commercial unit or units and reject the rest.

[C24, 27, 31, 35, 39, §**9940, 9973, 9998;** C46, 50, 54, 58, 62, §554.12, 554.45, 554.70; C66, 71, 73, 75, 77, 79, 81, §554.2601]

554.2602 Manner and effect of rightful rejection.

1. Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

2. Subject to the provisions of the two following sections on rejected goods (sections 554.2603 and 554.2604),

a. after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

b. if the buyer has before rejection taken physical possession of goods in which the buyer does not have a security interest under the provisions of this Article (subsection 3 of section 554.2711), the buyer is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

c. the buyer has no further obligations with re-

gard to goods rightfully rejected.

3. The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on Seller's remedies in general (section 554.2703).

[C24, 27, 31, 35, 39, §**9979;** C46, 50, 54, 58, 62, §554.51; C66, 71, 73, 75, 77, 79, 81, §554.2602]

554.2603 Merchant buyer's duties as to rightfully rejected goods.

1. Subject to any security interest in the buyer (subsection 3 of section 554.2711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in the merchant buyer's possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

2. When the buyer sells goods under subsection 1, that buyer is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent on the gross proceeds.

3. In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

[C66, 71, 73, 75, 77, 79, 81, §554.2603]

554.2604 Buyer's options as to salvage of rightfully rejected goods.

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to the seller or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

[C66, 71, 73, 75, 77, 79, 81, §554.2604]

554.2605 Waiver of buyer's objections by failure to particularize.

1. The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes the buyer from relying on the unstated defect to justify rejection or to establish breach

a. where the seller could have cured it if stated seasonably; or

b. between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

2. Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

[C66, 71, 73, 75, 77, 79, 81, §554.2605]

554.2606 What constitutes acceptance of goods.

1. Acceptance of goods occurs when the buyer

a. after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that the buyer will take or retain them in spite of their nonconformity; or

b. fails to make an effective rejection (subsection 1 of section 554.2602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

c. does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by the seller.

2. Acceptance of a part of any commercial unit is acceptance of that entire unit.

[C24, 27, 31, 35, 39, §**9977;** C46, 50, 54, 58, 62, §554.49; C66, 71, 73, 75, 77, 79, 81, §554.2606]

554.2607 Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over.

1. The buyer must pay at the contract rate for any goods accepted.

2. Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for nonconformity.

3. Where a tender has been accepted.

a. the buyer must within a reasonable time after the buyer discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

b. if the claim is one for infringement or the like (subsection 3 of section 554.2312) and the buyer is sued as a result of such a breach the buyer must so notify the seller within a reasonable time after the buyer receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

4. The burden is on the buyer to establish any breach with respect to the goods accepted.

5. Where the buyer is sued for breach of a warranty or other obligation for which the buyer's seller is answerable over

a. the buyer may give the buyer's seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so the seller will be bound in any

action against the seller by the seller's buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend the seller is so bound.

b. if the claim is one for infringement or the like (subsection 3 of section 554.2312) the original seller may demand in writing that the seller's buyer turn over to the seller control of the litigation including settlement or else be barred from any remedy over and if the seller also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

6. The provisions of subsections 3, 4 and 5 apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection 3 of section 554.2312).

[C24, 27, 31, 35, 39, §**9970, 9978, 9998;** C46, 50, 54, 58, 62, §554.42, 554.50, 554.70; C66, 71, 73, 75, 77, 79, 81, §554.2607]

554.2608 Revocation of acceptance in whole or in part.

1. The buyer may revoke the buyer's acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the buyer if the buyer has accepted it

a. on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

b. without discovery of such nonconformity if the buyer's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

2. Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

3. A buyer who so revokes has the same rights and duties with regard to the goods involved as if the buyer had rejected them.

[C24, 27, 31, 35, 39, §**9998;** C46, 50, 54, 58, 62, §554.70; C66, 71, 73, 75, 77, 79, 81, §554.2608]

554.2609 Right to adequate assurance of performance.

1. A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until that party receives such assurance may if commercially reasonable suspend any performance for which that party has not already received the agreed return.

2. Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

3. Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

4. After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

[C24, 27, 31, 35, 39, §**9982 – 9984, 9992;** C46, 50, 54, 58, 62, §554.54 – 554.56, 554.64; C66, 71, 73, 75, 77, 79, 81, §554.2609]

554.2610 Anticipatory repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

a. for a commercially reasonable time await performance by the repudiating party; or

b. resort to any remedy for breach (section 554.2703 or 554.2711), even though the aggrieved party has notified the repudiating party that the aggrieved party would await the latter's performance and has urged retraction; and

c. in either case suspend the aggrieved party's own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 554.2704).

[C24, 27, 31, 35, 39, §**9992, 9994;** C46, 50, 54, 58, 62, §554.64, 554.66; C66, 71, 73, 75, 77, 79, 81, §554.2610]

554.2611 Retraction of anticipatory repudiation.

1. Until the repudiating party's next performance is due the repudiating party can retract the repudiation unless the aggrieved party has since the repudiation canceled or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

2. Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (section 554.2609).

3. Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

[C66, 71, 73, 75, 77, 79, 81, §554.2611]

554.2612 "Installment contract" — breach.

1. An "installment contract" is one which requires or authorizes the delivery of goods in sepa-

rate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

2. The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection 3 and the seller gives adequate assurance of its cure the buyer must accept that installment.

3. Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if the aggrieved party accepts a nonconforming installment without seasonably notifying of cancellation or if the aggrieved party brings an action with respect only to past installments or demands performance as to future installments.

[C24, 27, 31, 35, 39, §**9974;** C46, 50, 54, 58, 62, §554.46; C66, 71, 73, 75, 77, 79, 81, §554.2612]

554.2613 Casualty to identified goods.

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (section 554.2324) then

a. if the loss is total the contract is avoided; and

b. if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at the buyer's option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

[C24, 27, 31, 35, 39, §**9936, 9937;** C46, 50, 54, 58, 62, §554.8, 554.9; C66, 71, 73, 75, 77, 79, 81, §554.2613]

554.2614 Substituted performance.

1. Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

2. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

[C66, 71, 73, 75, 77, 79, 81, §554.2614]

554.2615 Excuse by failure of presupposed conditions.

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

a. Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs *"b"* and *"c"* is not a breach of the seller's duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

b. Where the causes mentioned in paragraph *"a"* affect only a part of the seller's capacity to perform, the seller must allocate production and deliveries among the seller's customers but may at the sellers's option include regular customers not then under contract as well as the seller's own requirements for further manufacture. The seller may so allocate in any manner which is fair and reasonable.

c. The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph *"b",* of the estimated quota thus made available for the buyer.

[C66, 71, 73, 75, 77, 79, 81, §554.2615]

554.2616 Procedure on notice claiming excuse.

1. Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section the buyer may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (section 554.2612), then also as to the whole,

a. terminate and thereby discharge any unexecuted portion of the contract; or

b. modify the contract by agreeing to take the buyer's available quota in substitution.

2. If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

3. The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

[C66, 71, 73, 75, 77, 79, 81, §554.2616]

PART 7

REMEDIES

554.2701 Remedies for breach of collateral contracts not impaired.

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article.

[C66, 71, 73, 75, 77, 79, 81, §554.2701]

554.2702 Seller's remedies on discovery of buyer's insolvency.

1. Where the seller discovers the buyer to be insolvent the seller may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (section 554.2705).

2. Where the seller discovers that the buyer has received goods on credit while insolvent the seller may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

3. The seller's right to reclaim under subsection 2 is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (section 554.2403). Successful reclamation of goods excludes all other remedies with respect to them.

[C24, 27, 31, 35, 39, §**9982, 9983, 9986;** C46, 50, 54, 58, 62, §554.54, 554.55, 554.58; C66, 71, 73, 75, 77, 79, 81, §554.2702]

554.2703 Seller's remedies in general.

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 554.2612), then also with respect to the whole undelivered balance, the aggrieved seller may

a. withhold delivery of such goods;

b. stop delivery by any bailee as hereafter provided (section 554.2705);

c. proceed under the next section respecting goods still unidentified to the contract;

d. resell and recover damages as hereafter provided (section 554.2706);

e. recover damages for nonacceptance (section 554.2708) or in a proper case the price (section 554.2709);

f. cancel.

[C24, 27, 31, 35, 39, §**9993;** C46, 50, 54, 58, 62, §554.65; C66, 71, 73, 75, 77, 79, 81, §554.2703]

554.2704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.

1. An aggrieved seller under the preceding section may

a. identify to the contract conforming goods not already identified if at the time the seller learned of the breach they are in the seller's possession or control;

b. treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

2. Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

[C24, 27, 31, 35, 39, §**9992, 9993;** C46, 50, 54, 58, 62, §554.64, 554.65; C66, 71, 73, 75, 77, 79, 81, §554.2704]

554.2705 Seller's stoppage of delivery in transit or otherwise.

1. The seller may stop delivery of goods in the possession of a carrier or other bailee when the seller discovers the buyer to be insolvent (section 554.2702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

2. As against such buyer the seller may stop delivery until

a. receipt of the goods by the buyer; or

b. acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

c. such acknowledgment to the buyer by a carrier by reshipment or as warehouse operator; or

d. negotiation to the buyer of any negotiable document of title covering the goods.

3. *a.* To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

b. After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

c. If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

d. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

[S13, §3138-a9, -a11, -a49, -b11, -b13, -b41; C24,

27, 31, 35, 39, §**8256, 8258, 8286, 9669, 9671, 9709, 9986 – 9988;** C46, 50, 54, 58, 62, §487.12, 487.14, 487.42, 542.9, 542.11, 542.49, 554.58 – 554.60; C66, 71, 73, 75, 77, 79, 81, §554.2705]

554.2706 Seller's resale including contract for resale.

1. Under the conditions stated in section 554.2703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (section 554.2710), but less expenses saved in consequence of the buyer's breach.

2. Except as otherwise provided in subsection 3 or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

3. Where the resale is at private sale the seller must give the buyer reasonable notification of the seller's intention to resell.

4. Where the resale is at public sale

a. only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

b. it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

c. if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

d. the seller may buy.

5. A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

6. The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 554.2707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of that person's security interest, as hereinafter defined (subsection 3 of section 554.2711).

[C24, 27, 31, 35, 39, §**9989;** C46, 50, 54, 58, 62, §554.61; C66, 71, 73, 75, 77, 79, 81, §554.2706]

554.2707 "Person in the position of a seller".

1. A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of the agent's principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

2. A person in the position of a seller may as provided in this Article withhold or stop delivery (section 554.2705) and resell (section 554.2706) and recover incidental damages (section 554.2710).

[C24, 27, 31, 35, 39, §**9981;** C46, 50, 54, 58, 62, §554.53; C66, 71, 73, 75, 77, 79, 81, §554.2707]

554.2708 Seller's damages for nonacceptance or repudiation.

1. Subject to subsection 2 and to the provisions of this Article with respect to proof of market price (section 554.2723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (section 554.2710), but less expenses saved in consequence of the buyer's breach.

2. If the measure of damages provided in subsection 1 is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (section 554.2710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

[C24, 27, 31, 35, 39, §**9993;** C46, 50, 54, 58, 62, §554.65; C66, 71, 73, 75, 77, 79, 81, §554.2708]

554.2709 Action for the price.

1. When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

a. of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

b. of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

2. Where the seller sues for the price the seller must hold for the buyer any goods which have been identified to the contract and are still in the seller's control except that if resale becomes possible the seller may resell them at any time prior to the collection of the judgment. The net proceeds of any

such resale must be credited to the buyer and payment of the judgment entitles the buyer to any goods not resold.

3. After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 554.2610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

[C24, 27, 31, 35, 39, §**9992;** C46, 50, 54, 58, 62, §554.64; C66, 71, 73, 75, 77, 79, 81, §554.2709]

554.2710 Seller's incidental damages.

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

[C24, 27, 31, 35, 39, §**9993, 9999;** C46, 50, 54, 58, 62, §554.65, 554.71; C66, 71, 73, 75, 77, 79, 81, §554.2710]

554.2711 Buyer's remedies in general — buyer's security interest in rejected goods.

1. Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (section 554.2612), the buyer may cancel and whether or not the buyer has done so may in addition to recovering so much of the price as has been paid

a. "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

b. recover damages for nondelivery as provided in this Article (section 554.2713).

2. Where the seller fails to deliver or repudiates the buyer may also

a. if the goods have been identified recover them as provided in this Article (section 554.2502); or

b. in a proper case obtain specific performance or replevy the goods as provided in this Article (section 554.2716).

3. On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in the buyer's possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (section 554.2706).

[C24, 27, 31, 35, 39, §**9998;** C46, 50, 54, 58, 62, §554.70; C66, 71, 73, 75, 77, 79, 81, §554.2711]

554.2712 "Cover" — buyer's procurement of substitute goods.

1. After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

2. The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (section 554.2715), but less expenses saved in consequence of the seller's breach.

3. Failure of the buyer to effect cover within this section does not bar the buyer from any other remedy.

[C66, 71, 73, 75, 77, 79, 81, §554.2712]

554.2713 Buyer's damages for nondelivery or repudiation.

1. Subject to the provisions of this Article with respect to proof of market price (section 554.2723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (section 554.2715), but less expenses saved in consequence of the seller's breach.

2. Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

[C24, 27, 31, 35, 39, §**9996;** C46, 50, 54, 58, 62, §554.68; C66, 71, 73, 75, 77, 79, 81, §554.2713]

554.2714 Buyer's damages for breach in regard to accepted goods.

1. Where the buyer has accepted goods and given notification (subsection 3 of section 554.2607) the buyer may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

2. The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

3. In a proper case any incidental and consequential damages under the next section may also be recovered.

[C24, 27, 31, 35, 39, §**9998;** C46, 50, 54, 58, 62, §554.70; C66, 71, 73, 75, 77, 79, 81, §554.2714]

554.2715 Buyer's incidental and consequential damages.

1. Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and

custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

2. Consequential damages resulting from the seller's breach include

a. any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

b. injury to person or property proximately resulting from any breach of warranty.

[C24, 27, 31, 35, 39, §**9998, 9999;** C46, 50, 54, 58, 62, §554.70, 554.71; C66, 71, 73, 75, 77, 79, 81, §554.2715]

554.2716 Buyer's right to specific performance or replevin.

1. Specific performance may be decreed where the goods are unique or in other proper circumstances.

2. The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

3. The buyer has a right of replevin for goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

[C24, 27, 31, 35, 39, §**9995, 9997;** C46, 50, 54, 58, 62, §554.67, 554.69; C66, 71, 73, 75, 77, 79, 81, §554.2716]

2000 Acts, ch 1149, §145, 187

2000 amendment to subsection 3 takes effect July 1, 2001; 2000 Acts, ch 1149, §187

554.2717 Deduction of damages from the price.

The buyer on notifying the seller of the buyer's intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

[C24, 27, 31, 35, 39, §**9998;** C46, 50, 54, 58, 62, §554.70; C66, 71, 73, 75, 77, 79, 81, §554.2717]

554.2718 Liquidation or limitation of damages — deposits.

1. Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

2. Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of the buyer's payments exceeds

a. the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection 1, or

b. in the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

3. The buyer's right to restitution under subsection 2 is subject to offset to the extent that the seller establishes

a. a right to recover damages under the provisions of this Article other than subsection 1, and

b. the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

4. Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection 2; but if the seller has notice of the buyer's breach before reselling goods received in part performance, the seller's resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (section 554.2706).

[C66, 71, 73, 75, 77, 79, 81, §554.2718]

554.2719 Contractual modification or limitation of remedy.

1. Subject to the provisions of subsections 2 and 3 of this section and of the preceding section on liquidation and limitation of damages,

a. the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

b. resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

2. Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter.

3. Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limita-

tion of damages where the loss is commercial is not.

[C66, 71, 73, 75, 77, 79, 81, §554.2719]

554.2720 Effect of "cancellation" or "rescission" on claims for antecedent breach.

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

[C24, 27, 31, 35, 39, §**9990;** C46, 50, 54, 58, 62, §554.62; C66, 71, 73, 75, 77, 79, 81, §554.2720]

554.2721 Remedies for fraud.

Remedies for material misrepresentation or fraud include all remedies available under this Article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

[C24, 27, 31, 35, 39, §**9990;** C46, 50, 54, 58, 62, §554.62; C66, 71, 73, 75, 77, 79, 81, §554.2721]

554.2722 Who can sue third parties for injury to goods.

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

a. a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

b. if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, the plaintiff's suit or settlement is, subject to plaintiff's own interest, as a fiduciary for the other party to the contract;

c. either party may with the consent of the other sue for the benefit of whom it may concern.

[C66, 71, 73, 75, 77, 79, 81, §554.2722]

554.2723 Proof of market price — time and place.

1. If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (section 554.2708 or 554.2713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

2. If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

3. Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until that party has given the other party such notice as the court finds sufficient to prevent unfair surprise.

[C66, 71, 73, 75, 77, 79, 81, §554.2723]

554.2724 Admissibility of market quotations.

If the prevailing price or value of goods regularly bought and sold in an established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. Reports are also admissible under rule of evidence 5.803(17).

[C66, 71, 73, 75, 77, 79, 81, §554.2724]

83 Acts, ch 37, §2

554.2725 Statute of limitations in contracts for sale.*

1. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

2. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

3. Where an action commenced within the time limited by law* or by agreement as provided in subsection 1 is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

4. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this chapter becomes effective.

[C66, 71, 73, 75, 77, 79, 81, §554.2725]

*Period of limitation, chapter 614

ARTICLE 2A

LEASES

Article on Leases codified as Article 13;
94 Acts, ch 1052, §5 – 84

ARTICLE 3

NEGOTIABLE INSTRUMENTS

Article 3 takes effect July 1, 1995; 94 Acts, ch 1167, §122; former Article 3 is repealed effective July 1, 1995; 94 Acts, ch 1167, §121, 122; for law prior to July 1, 1995, see Code 1993

PART 1

GENERAL PROVISIONS AND DEFINITIONS

554.3101 Short title.

This Article may be cited as Uniform Commercial Code — Negotiable Instruments.

94 Acts, ch 1167, §10, 121, 122

554.3102 Subject matter.

1. This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 12, or to securities governed by Article 8.

2. If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.

3. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

94 Acts, ch 1167, §11, 121, 122; 95 Acts, ch 67, §41

554.3103 Definitions.

1. In this Article:

a. "Acceptor" means a drawee who has accepted a draft.

b. "Drawee" means a person ordered in a draft to make payment.

c. "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

d. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

e. "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

f. "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

g. "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

h. "Party" means a party to an instrument.

i. "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

j. "Prove" with respect to a fact means to meet the burden of establishing the fact (section 554.1201, subsection 8).

k. "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

2. Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	Section 554.3409
"Accommodated party"	Section 554.3419
"Accommodation party"	Section 554.3419
"Alteration"	Section 554.3407
"Anomalous endorsement"	Section 554.3205
"Blank endorsement"	Section 554.3205
"Cashier's check"	Section 554.3104
"Certificate of deposit"	Section 554.3104
"Certified check"	Section 554.3409
"Check"	Section 554.3104
"Consideration"	Section 554.3303
"Draft"	Section 554.3104
"Holder in due course"	Section 554.3302
"Incomplete instrument"	Section 554.3115
"Endorsement"	Section 554.3204
"Endorser"	Section 554.3204
"Instrument"	Section 554.3104
"Issue"	Section 554.3105
"Issuer"	Section 554.3105
"Negotiable instrument"	Section 554.3104
"Negotiation"	Section 554.3201
"Note"	Section 554.3104
"Payable at a definite time"	Section 554.3108
"Payable on demand"	Section 554.3108
"Payable to bearer"	Section 554.3109
"Payable to order"	Section 554.3109
"Payment"	Section 554.3602
"Person entitled to enforce"	Section 554.3301
"Presentment"	Section 554.3501
"Reacquisition"	Section 554.3207
"Special endorsement"	Section 554.3205
"Teller's check"	Section 554.3104
"Transfer of instrument"	Section 554.3203
"Traveler's check"	Section 554.3104
"Value"	Section 554.3303

3. The following definitions in other Articles apply to this Article:

"Bank"	Section 554.4105
"Banking day"	Section 554.4104
"Clearing house"	Section 554.4104
"Collecting bank"	Section 554.4105
"Depositary bank"	Section 554.4105
"Documentary draft"	Section 554.4104
"Intermediary bank"	Section 554.4105
"Item"	Section 554.4104
"Payor bank"	Section 554.4105
"Suspends payments"	Section 554.4104

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

94 Acts, ch 1167, §12, 121, 122

554.3104 Negotiable instrument.

1. Except as provided in subsections 3 and 4, *"negotiable instrument"* means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

a. is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

b. is payable on demand or at a definite time; and

c. does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

2. *"Instrument"* means a negotiable instrument.

3. An order that meets all of the requirements of subsection 1, except paragraph *"a"*, and otherwise falls within the definition of "check" in subsection 6 is a negotiable instrument and a check.

4. A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

5. An instrument is a *"note"* if it is a promise and is a *"draft"* if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

6. *"Check"* means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

7. *"Cashier's check"* means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

8. *"Teller's check"* means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

9. *"Traveler's check"* means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

10. *"Certificate of deposit"* means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

94 Acts, ch 1167, §13, 121, 122

554.3105 Issue of instrument.

1. *"Issue"* means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

2. An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

3. *"Issuer"* applies to issued and unissued instruments and means a maker or drawer of an instrument.

94 Acts, ch 1167, §14, 121, 122

554.3106 Unconditional promise or order.

1. Except as provided in this section, for the purposes of section 554.3104, subsection 1, a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

2. A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

3. If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 554.3104, subsection 1. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the

instrument from becoming a holder of the instrument.

4. If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 554.3104, subsection 1; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

94 Acts, ch 1167, §15, 121, 122

554.3107 Instrument payable in foreign money.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

94 Acts, ch 1167, §16, 121, 122

554.3108 Payable on demand or at definite time.

1. A promise or order is *"payable on demand"* if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

2. A promise or order is *"payable at a definite time"* if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

3. If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

94 Acts, ch 1167, §17, 121, 122

554.3109 Payable to bearer or to order.

1. A promise or order is payable to bearer if it:

a. states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

b. does not state a payee; or

c. states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

2. A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

3. An instrument payable to bearer may become payable to an identified person if it is specially endorsed pursuant to section 554.3205, subsection 1. An instrument payable to an identified person may become payable to bearer if it is endorsed in blank pursuant to section 554.3205, subsection 2.

94 Acts, ch 1167, §18, 121, 122

554.3110 Identification of person to whom instrument is payable.

1. The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

2. If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

3. A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

a. if an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

b. if an instrument is payable to:

(1) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(2) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(3) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(4) an office or to a person described as holding

an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

4. If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

94 Acts, ch 1167, §19, 121, 122

554.3111 Place of payment.

Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

94 Acts, ch 1167, §20, 121, 122

554.3112 Interest.

1. Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

2. Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

94 Acts, ch 1167, §21, 121, 122

554.3113 Date of instrument.

1. An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 554.4401, subsection 3, an instrument payable on demand is not payable before the date of the instrument.

2. If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

94 Acts, ch 1167, §22, 121, 122

554.3114 Contradictory terms of instrument.

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

94 Acts, ch 1167, §23, 121, 122

554.3115 Incomplete instrument.

1. *"Incomplete instrument"* means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

2. Subject to subsection 3, if an incomplete instrument is an instrument under section 554.3104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 554.3104, but, after completion, the requirements of section 554.3104 are met, the instrument may be enforced according to its terms as augmented by completion.

3. If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 554.3407.

4. The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

94 Acts, ch 1167, §24, 121, 122

554.3116 Joint and several liability — contribution.

1. Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who endorse as joint payees, or anomalous endorsers are jointly and severally liable in the capacity in which they sign.

2. Except as provided in section 554.3419, subsection 5, or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

3. Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection 2 of a party having the same joint and several liability to receive contribution from the party discharged.

94 Acts, ch 1167, §25, 121, 122

554.3117 Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

94 Acts, ch 1167, §26, 121, 122

554.3118 Accrual of cause of action.

1. A cause of action against a maker or an acceptor accrues

a. in the case of a time instrument on the day after maturity;

b. in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

2. A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

3. A cause of action against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

4. Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

a. in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

b. in all other cases from the date of accrual of the cause of action.

94 Acts, ch 1167, §27, 121, 122

554.3119 Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

94 Acts, ch 1167, §28, 121, 122

554.3120 Instruments "payable through" bank. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.4106.

554.3121 Instruments payable at bank. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.4106.

554.3122 Accrual of cause of action. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3118.

PART 2

NEGOTIATION, TRANSFER, AND ENDORSEMENT

554.3201 Negotiation.

1. *"Negotiation"* means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

2. Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

94 Acts, ch 1167, §29, 121, 122

554.3202 Negotiation subject to rescission.

1. Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

2. To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

94 Acts, ch 1167, §30, 121, 122

554.3203 Transfer of instrument — rights acquired by transfer.

1. An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

2. Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

3. Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of endorsement by the transferor, the transferee has a specifically enforceable right to the unqualified endorsement of the transferor, but negotiation of the instrument does not occur until the endorsement is made.

4. If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

94 Acts, ch 1167, §31, 121, 122

554.3204 Endorsement.

1. *"Endorsement"* means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring endorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an endorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than endorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

2. *"Endorser"* means a person who makes an endorsement.

3. For the purpose of determining whether the transferee of an instrument is a holder, an endorsement that transfers a security interest in the instrument is effective as an unqualified endorsement of the instrument.

4. If an instrument is payable to a holder under a name that is not the name of the holder, endorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

94 Acts, ch 1167, §32, 121, 122

554.3205 Special endorsement — blank endorsement — anomalous endorsement.

1. If an endorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the endorsement identifies a person to whom it makes the instrument payable, it is a *"special endorsement."* When specially endorsed, an instrument becomes payable to the identified person and may be negotiated only by the endorsement of that person. The principles stated in section 554.3110 apply to special endorsements.

2. If an endorsement is made by the holder of an instrument and it is not a special endorsement, it is a *"blank endorsement."* When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed.

3. The holder may convert a blank endorsement that consists only of a signature into a special endorsement by writing, above the signature of the endorser, words identifying the person to whom the instrument is made payable.

4. *"Anomalous endorsement"* means an endorsement made by a person who is not the holder of the instrument. An anomalous endorsement does not affect the manner in which the instrument may be negotiated.

94 Acts, ch 1167, §33, 121, 122

554.3206 Restrictive endorsement.

1. An endorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

2. An endorsement stating a condition to the right of the endorsee to receive payment does not affect the right of the endorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

3. If an instrument bears an endorsement (i) described in section 554.4201, subsection 2, or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the endorser or for a particular account, the following rules apply:

a. A person, other than a bank, who purchases the instrument when so endorsed converts the instrument unless the amount paid for the instrument is received by the endorser or applied consistently with the endorsement.

b. A depositary bank that purchases the instrument or takes it for collection when so endorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the endorser or applied consistently with the endorsement.

c. A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the endorser or applied consistently with the endorsement.

d. Except as otherwise provided in paragraph *"c"*, a payor bank or intermediary bank may disregard the endorsement and is not liable if the proceeds of the instrument are not received by the endorser or applied consistently with the endorsement.

4. Except for an endorsement covered by sub-

section 3, if an instrument bears an endorsement using words to the effect that payment is to be made to the endorsee as agent, trustee, or other fiduciary for the benefit of the endorser or another person, the following rules apply:

a. Unless there is notice of breach of fiduciary duty as provided in section 554.3307, a person who purchases the instrument from the endorsee or takes the instrument from the endorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the endorsee without regard to whether the endorsee violates a fiduciary duty to the endorser.

b. A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the endorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

5. The presence on an instrument of an endorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection 3 or has notice or knowledge of breach of fiduciary duty as stated in subsection 4.

6. In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an endorsement to which this section applies and the payment is not permitted by this section.

94 Acts, ch 1167, §34, 121, 122

554.3207 Reacquisition.

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel endorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An endorser whose endorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

94 Acts, ch 1167, §35, 121, 122

554.3208 Reacquisition. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3207.

PART 3

ENFORCEMENT OF INSTRUMENTS

554.3301 Person entitled to enforce instrument.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 554.3309 or 554.3418, subsection 4. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

94 Acts, ch 1167, §36, 121, 122

554.3302 Holder in due course.

1. Subject to subsection 3 and section 554.3106, subsection 4, *"holder in due course"* means the holder of an instrument if:

a. the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

b. the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in section 554.3306, and (vi) without notice that any party has a defense or claim in recoupment described in section 554.3305, subsection 1.

2. Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection 1, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

3. Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

4. If, under section 554.3303, subsection 1, paragraph *"a"*, the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

5. If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may as-

sert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

6. To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

7. This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

94 Acts, ch 1167, §37, 121, 122

554.3303 Value and consideration.

1. An instrument is issued or transferred for value if:

a. the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

b. the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

c. the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

d. the instrument is issued or transferred in exchange for a negotiable instrument; or

e. the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

2. *"Consideration"* means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection 1, the instrument is also issued for consideration.

94 Acts, ch 1167, §38, 121, 122

554.3304 Overdue instrument.

1. An instrument payable on demand becomes overdue at the earliest of the following times:

a. on the day after the day demand for payment is duly made;

b. if the instrument is a check, ninety days after its date; or

c. if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

2. With respect to an instrument payable at a definite time the following rules apply:

a. If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

b. If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

c. If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

3. Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

94 Acts, ch 1167, §39, 121, 122

554.3305 Defenses and claims in recoupment.

1. Except as stated in subsection 2, the right to enforce the obligation of a party to pay an instrument is subject to the following:

a. a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

b. a defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

c. a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

2. The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection 1, paragraph *"a"*, but is not subject to defenses of the obligor stated in subsection 1, paragraph *"b"*, or claims in recoupment stated in subsection 1, paragraph *"c"*, against a person other than the holder.

3. Except as stated in subsection 4, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 554.3306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instru-

ment. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

4. In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection 1 that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

94 Acts, ch 1167, §40, 121, 122

554.3306 Claims to an instrument.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

94 Acts, ch 1167, §41, 121, 122

554.3307 Notice of breach of fiduciary duty.

1. In this section:

a. *"Fiduciary"* means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

b. *"Represented person"* means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph *"a"* is owed.

2. If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

a. Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

b. In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

c. If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

d. If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

94 Acts, ch 1167, §42, 121, 122

554.3308 Proof of signatures and status as holder in due course.

1. In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 554.3402, subsection 1.

2. If the validity of signatures is admitted or proved and there is compliance with subsection 1, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 554.3301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

94 Acts, ch 1167, §43, 122

554.3309 Enforcement of lost, destroyed, or stolen instrument.

1. A person not in possession of an instrument is entitled to enforce the instrument if: (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or

is not amenable to service of process.

2. A person seeking enforcement of an instrument under subsection 1 must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 554.3308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

94 Acts, ch 1167, §44, 122

554.3310 Effect of instrument on obligation for which taken.

1. Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an endorser of the instrument.

2. Unless otherwise agreed and except as provided in subsection 1, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

a. In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

b. In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

c. Except as provided in paragraph *"d"*, if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

d. If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

3. If an instrument other than one described in subsection 1 or 2 is taken for an obligation, the effect is (i) that stated in subsection 1 if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection 2 in any other case.

94 Acts, ch 1167, §45, 122

554.3311 Accord and satisfaction by use of instrument.

1. If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

2. Unless subsection 3 applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

3. Subject to subsection 4, a claim is not discharged under subsection 2 if either of the following applies:

a. The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

b. The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph *"a"*, part (i).

4. A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

94 Acts, ch 1167, §46, 122

554.3312 Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

1. In this section:

a. *"Check"* means a cashier's check, teller's

check, or certified check.

b. "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

c. "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

d. "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

2. A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

a. The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check.

b. Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

c. If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

d. When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to section 554.4302, subsection 1, paragraph *"a"*, payment to the claimant discharges all liability of the obligated bank with respect to the check.

3. If the obligated bank pays the amount of a check to a claimant under subsection 2, paragraph *"d"*, and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

4. If a claimant has the right to assert a claim under subsection 2 and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or section 554.3309.

94 Acts, ch 1167, §47, 122

PART 4

LIABILITY OF PARTIES

554.3401 Signature.

1. A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 554.3402.

2. A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

94 Acts, ch 1167, §48, 121, 122

554.3402 Signature by representative.

1. If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

2. If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

a. If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

b. Subject to subsection 3, if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or

(ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

3. If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

94 Acts, ch 1167, §49, 121, 122

554.3403 Unauthorized signature.

1. Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

2. If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

3. The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article.

94 Acts, ch 1167, §50, 121, 122

554.3404 Impostors — fictitious payees.

1. If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an endorsement of the instrument by any person in the name of the payee is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

2. If (i) a person whose intent determines to whom an instrument is payable (section 554.3110, subsection 1 or 2) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special endorsement:

a. Any person in possession of the instrument is its holder.

b. An endorsement by any person in the name of the payee stated in the instrument is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

3. Under subsection 1 or 2, an endorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not endorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

4. With respect to an instrument to which subsection 1 or 2 applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

94 Acts, ch 1167, §51, 121, 122

554.3405 Employer's responsibility for fraudulent endorsement by employee.

1. In this section:

a. *"Employee"* includes an independent contractor and employee of an independent contractor retained by the employer.

b. *"Fraudulent endorsement"* means (i) in the case of an instrument payable to the employer, a forged endorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged endorsement purporting to be that of the person identified as payee.

c. *"Responsibility"* with respect to instruments means authority (i) to sign or endorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. *"Responsibility"* does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

2. For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent endorsement of the instrument, the endorsement is effective as the endorsement of the person to whom the instru-

ment is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

3. Under subsection 2, an endorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not endorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

94 Acts, ch 1167, §52, 121, 122

554.3406 Negligence contributing to forged signature or alteration of instrument.

1. A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

2. Under subsection 1, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

3. Under subsection 1, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection 2, the burden of proving failure to exercise ordinary care is on the person precluded.

94 Acts, ch 1167, §53, 121, 122

554.3407 Alteration.

1. *"Alteration"* means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

2. Except as provided in subsection 3, an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

3. A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

94 Acts, ch 1167, §54, 121, 122

554.3408 Drawee not liable on unaccepted draft.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

94 Acts, ch 1167, §55, 121, 122

554.3409 Acceptance of draft — certified check.

1. *"Acceptance"* means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

2. A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

3. If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

4. *"Certified check"* means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection 1 or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

94 Acts, ch 1167, §56, 121, 122

554.3410 Acceptance varying draft.

1. If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

2. The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

3. If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and endorser that does not expressly assent to the acceptance is discharged.

94 Acts, ch 1167, §57, 121, 122

554.3411 Refusal to pay cashier's checks, teller's checks, and certified checks.

1. In this section, *"obligated bank"* means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

2. If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

3. Expenses or consequential damages under subsection 2 are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

94 Acts, ch 1167, §58, 121, 122

554.3412 Obligation of issuer of note or cashier's check.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation is owed to a person entitled to enforce the instrument or to an endorser who paid the instrument under section 554.3415.

94 Acts, ch 1167, §59, 121, 122

554.3413 Obligation of acceptor.

1. The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an endorser who paid the draft under section 554.3414 or 554.3415.

2. If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

94 Acts, ch 1167, §60, 121, 122

554.3414 Obligation of drawer.

1. This section does not apply to cashier's checks or other drafts drawn on the drawer.

2. If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation is owed to a person entitled to enforce the draft or to an endorser who paid the draft under section 554.3415.

3. If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

4. If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an endorser under section 554.3415, subsections 1 and 3.

5. If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection 2 to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection 2 is not effective if the draft is a check.

6. If (i) a check is not presented for payment or given to a depositary bank for collection within thirty days after its date, (ii) the drawee suspends payments after expiration of the thirty-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

94 Acts, ch 1167, §61, 121, 122

554.3415 Obligation of endorser.

1. Subject to subsections 2, 3, and 4 and to section 554.3419, subsection 4, if an instrument is dishonored, an endorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was endorsed, or (ii) if the endorser endorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 554.3115 and 554.3407. The obligation of the endorser is owed to a person entitled to enforce the instrument or to a subsequent endorser who paid the instrument under this section.

2. If an endorsement states that it is made "without recourse" or otherwise disclaims liability of the endorser, the endorser is not liable under subsection 1 to pay the instrument.

3. If notice of dishonor of an instrument is re-

quired by section 554.3503 and notice of dishonor complying with that section is not given to an endorser, the liability of the endorser under subsection 1 is discharged.

4. If a draft is accepted by a bank after an endorsement is made, the liability of the endorser under subsection 1 is discharged.

5. If an endorser of a check is liable under subsection 1 and the check is not presented for payment, or given to a depositary bank for collection, within thirty days after the day the endorsement was made, the liability of the endorser under subsection 1 is discharged.

94 Acts, ch 1167, §62, 121, 122

554.3416 Transfer warranties.

1. A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:

a. the warrantor is a person entitled to enforce the instrument;

b. all signatures on the instrument are authentic and authorized;

c. the instrument has not been altered;

d. the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

e. the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

2. A person to whom the warranties under subsection 1 are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

3. The warranties stated in subsection 1 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 is discharged to the extent of any loss caused by the delay in giving notice of the claim.

4. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

94 Acts, ch 1167, §63, 121, 122

554.3417 Presentment warranties.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

a. the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

b. the draft has not been altered; and

c. the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

2. A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 554.3404 or 554.3405 or the drawer is precluded under section 554.3406 or 554.4406 from asserting against the drawee the unauthorized endorsement or alteration.

4. If (i) a dishonored draft is presented for payment to the drawer or an endorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

a. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

b. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

5. The warranties stated in subsections 1 and 4 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 or 4 is discharged to the extent of any loss caused by the delay in giving notice of the claim.

6. A cause of action for breach of warranty un-

der this section accrues when the claimant has reason to know of the breach.

94 Acts, ch 1167, §64, 121, 122

554.3418 Payment or acceptance by mistake.

1. Except as provided in subsection 3, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to section 554.4403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

2. Except as provided in subsection 3, if an instrument has been paid or accepted by mistake and the case is not covered by subsection 1, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

3. The remedies provided by subsection 1 or 2 may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 554.3417 or 554.4407.

4. Notwithstanding section 554.4215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection 1 or 2, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

94 Acts, ch 1167, §65, 121, 122

554.3419 Instruments signed for accommodation.

1. If an instrument is issued for value given for the benefit of a party to the instrument (*"accommodated party"*) and another party to the instrument (*"accommodation party"*) signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

2. An accommodation party may sign the instrument as maker, drawer, acceptor, or endorser and, subject to subsection 4, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

3. A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous endorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 554.3605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

4. If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

5. An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

94 Acts, ch 1167, §66, 121, 122

554.3420 Conversion of instrument.

1. The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

2. In an action under subsection 1, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

3. A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not

the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

94 Acts, ch 1167, §67, 122

PART 5

DISHONOR

554.3501 Presentment.

1. *"Presentment"* means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

2. The following rules are subject to Article 4, agreement of the parties, and clearing-house rules and the like:

a. Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

b. Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

c. Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary endorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

d. The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than two p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

94 Acts, ch 1167, §68, 121, 122

554.3502 Dishonor.

1. Dishonor of a note is governed by the following rules:

a. If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

b. If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

c. If the note is not payable on demand and paragraph *"b"* does not apply, the note is dishonored if it is not paid on the day it becomes payable.

2. Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

a. If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 554.4301 or 554.4302, or becomes accountable for the amount of the check under section 554.4302.

b. If a draft is payable on demand and paragraph *"a"* does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

c. If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

d. If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

3. Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection 2, paragraphs *"b"*, *"c"*, and *"d"*, except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

4. Dishonor of an accepted draft is governed by the following rules:

a. If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

b. If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

5. In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 554.3504,

dishonor occurs without presentment if the instrument is not duly accepted or paid.

6. If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

94 Acts, ch 1167, §69, 121, 122

554.3503 Notice of dishonor.

1. The obligation of an endorser stated in section 554.3415, subsection 1, and the obligation of a drawer stated in section 554.3414, subsection 4, may not be enforced unless (i) the endorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under section 554.3504, subsection 2.

2. Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

3. Subject to section 554.3504, subsection 3, with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within thirty days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within thirty days following the day on which dishonor occurs.

94 Acts, ch 1167, §70, 121, 122

554.3504 Excused presentment and notice of dishonor.

1. Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of endorsers or the drawer, (iv) the drawer or endorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

2. Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

3. Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

94 Acts, ch 1167, §71, 121, 122

554.3505 Evidence of dishonor.

1. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

a. a document regular in form as provided in subsection 2 which purports to be a protest;

b. a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

c. a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

2. A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

94 Acts, ch 1167, §72, 121, 122

554.3506 Time allowed for acceptance or payment. Repealed by 94 Acts, ch 1167, § 121, 122.

554.3507 Dishonor — holder's right of recourse — term allowing re-presentment. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3501, 554.3502, and 554.3512.

554.3508 Notice of dishonor. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3503.

554.3509 Protest — noting for protest. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3505.

554.3510 Evidence of dishonor and notice of dishonor. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3505.

554.3511 Waived or excused presentment, protest or notice of dishonor or delay therein. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3502 and 554.3504.

554.3512 Holder's recourse for dishonor.

1. The holder of a dishonored check, draft, or order may assess against the maker of that check, draft, or order a surcharge of not more than the greater of twenty dollars or five percent of the face value of the check. However, the amount of the surcharge shall not exceed twenty dollars unless the check, draft, or order was presented twice or the maker does not have an account with the drawee. If the check, draft, or order was presented twice or the maker does not have an account with the drawee, the amount of the surcharge shall not exceed fifty dollars.

2. The surcharge authorized by this section shall not be assessed unless the holder clearly and conspicuously posts a notice at the usual place of payment, or in the billing statement of the holder, stating that a surcharge will be assessed and the amount of the surcharge. However, the surcharge shall not be assessed against the maker if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403.

95 Acts, ch 137, §2

554.3513 Civil remedy for dishonor.

1. In a civil action against a person who makes a check, draft, or order, which has been dishonored for lack of funds or credit, after having been presented twice, or because the maker has no account with the drawee, the plaintiff shall recover from the defendant total damages equaling three times the face value of the dishonored check, draft, or order, which sum shall include the face value of the check, draft, or order. However, total recovery under this section shall not exceed by more than five hundred dollars the amount of the check, draft, or order and may be awarded only if all of the following apply:

a. The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order not less than thirty days before commencing the action.

b. The written demand notified the defendant that treble damages would be sought if the face value of the dishonored check was not paid within thirty days of receipt, and was received by the defendant through personal service or restricted certified mail.

c. The defendant has failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the face value of the dishonored check, draft, or order.

d. The plaintiff clearly and conspicuously posted a notice at the usual place of payment, or in a billing statement of the plaintiff, stating that civil damages pursuant to this section would be sought upon dishonorment.

2. In an action for damages pursuant to subsection 1, if the court or jury determines that the failure of the defendant to satisfy the dishonored check, draft, or order is due to economic hardship, the court or jury may waive all or part of the allowable civil damages. However, if the court or jury waives all or part of the civil damages, the court or jury shall render judgment against the defendant in the amount of the dishonored check, draft, or order and the actual costs incurred by the plaintiff in bringing the action.

3. This section does not apply if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403 because of a bona fide dispute between the maker and the holder relating to the consideration for which the check, draft, or order was given.

4. In actions brought pursuant to this section, no additional award pursuant to section 554.3512 or 625.22 shall be made.

5. The plaintiff in a civil action to collect a dishonored check, draft, or order brought before the district court sitting in small claims shall not request or recover punitive or exemplary damages, but may seek the civil damages allowed under this section. The plaintiff in a civil action to collect a dishonored check, draft, or order in the district court not sitting in small claims, may seek punitive or exemplary damages if appropriate under chapter 668A, or civil damages allowed under this section, but not both.

6. A violation of this section is an unlawful practice as provided in section 714.16, subsection 2, paragraph *"a"*.

95 Acts, ch 137, §3

PART 6

DISCHARGE AND PAYMENT

554.3601 Discharge and effect of discharge.

1. The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

2. Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

94 Acts, ch 1167, §73, 121, 122

554.3602 Payment.

1. Subject to subsection 2, an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 554.3306 by another person.

2. The obligation of a party to pay the instrument is not discharged under subsection 1 if:

a. a claim to the instrument under section 554.3306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

b. the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

94 Acts, ch 1167, §74, 121, 122

554.3603 Tender of payment.

1. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

2. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an endorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

3. If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

94 Acts, ch 1167, §75, 121, 122

554.3604 Discharge by cancellation or renunciation.

1. A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

2. Cancellation or striking out of an endorsement pursuant to subsection 1 does not affect the status and rights of a party derived from the endorsement.

94 Acts, ch 1167, §76, 121, 122

554.3605 Discharge of endorsers and accommodation parties.

1. In this section, the term *"endorser"* includes a drawer having the obligation described in section 554.3414, subsection 4.

2. Discharge, under section 554.3604, of the obligation of a party to pay an instrument does not discharge the obligation of an endorser or accommodation party having a right of recourse against the discharged party.

3. If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an endorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the endorser or accommodation party proves that the extension caused loss to the endorser or accommodation party with respect to the right of recourse.

4. If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an endorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the endorser or accommodation party with respect to the right of recourse. The loss suffered by the endorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

5. If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an endorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of re-

course of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

6. If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection 5, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

7. Under subsection 5 or 6, impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

8. An accommodation party is not discharged under subsection 3, 4, or 5 unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 554.3419, subsection 3, that the instrument was signed for accommodation.

9. A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

94 Acts, ch 1167, §77, 121, 122

554.3606 Impairment of recourse or of collateral. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3605.

554.3701 and 554.3801 Repealed by 94 Acts, ch 1167, § 121, 122.

554.3802 Effect of instrument on obligation for which it is given. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3310.

554.3803 Notice to third party. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3119.

554.3804 Lost, destroyed or stolen instruments. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3309.

554.3805 Instruments not payable to order or to bearer. Repealed by 94 Acts, ch 1167, § 121, 122.

554.3806 Civil remedy for dishonor of a check, draft or order. Repealed by 94 Acts, ch 1167, § 121, 122. See § 554.3513.

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

PART 1

GENERAL PROVISIONS AND DEFINITIONS

554.4101 Short title.

This Article may be cited as Uniform Commercial Code — Bank Deposits and Collections.

[C66, 71, 73, 75, 77, 79, 81, §554.4101]

94 Acts, ch 1167, §78, 122

554.4102 Applicability.

1. To the extent that items within this Article are also within Articles 3 and 8, they are subject to the provisions of those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.

2. The liability of a bank for action or nonaction with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

[C66, 71, 73, 75, 77, 79, 81, §554.4102]

94 Acts, ch 1167, §79, 122

554.4103 Variation by agreement — measure of damages — action constituting ordinary care.

1. The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the

lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

2. Federal reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection 1, whether or not specifically assented to by all parties interested in items handled.

3. Action or nonaction approved by this Article or pursuant to federal reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie the exercise of ordinary care.

4. The specification or approval of certain procedures by this Article is not disapproval of other procedures that may be reasonable under the circumstances.

5. The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

[C66, 71, 73, 75, 77, 79, 81, §554.4103]
94 Acts, ch 1167, §80, 122

554.4104 Definitions and index of definitions.

1. In this Article, unless the context otherwise requires:

a. "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

b. "Afternoon" means the period of a day between noon and midnight.

c. "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions but for the purposes of determining a bank's midnight deadline, shall not include Saturday, Sunday, or any holiday when the federal reserve banks are not performing check clearing functions.

d. "Clearing house" means an association of banks or other payors regularly clearing items.

e. "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

f. "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 554.8102) or instructions for uncertificated securities (section 554.8102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

g. "Draft" means a draft as defined in section 554.3104 or an item, other than an instrument, that is an order.

h. "Drawee" means a person ordered in a draft to make payment.

i. "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 12 or a credit or debit card slip.

j. "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

k. "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

l. "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

2. Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	Section 554.4110
"Bank"	Section 554.4105
"Collecting bank"	Section 554.4105
"Depositary bank"	Section 554.4105
"Intermediary bank"	Section 554.4105
"Payor bank"	Section 554.4105
"Presenting bank"	Section 554.4105
"Presentment notice"	Section 554.4110

3. The following definitions in other Articles apply to this Article:

"Acceptance"	Section 554.3409
"Alteration"	Section 554.3407
"Cashier's check"	Section 554.3104
"Certificate of deposit"	Section 554.3104
"Certified check"	Section 554.3409
"Check"	Section 554.3104
"Good faith"	Section 554.3103
"Holder in due course"	Section 554.3302
"Instrument"	Section 554.3104
"Notice of dishonor"	Section 554.3503
"Order"	Section 554.3103
"Ordinary care"	Section 554.3103
"Person entitled to enforce"	Section 554.3301
"Presentment"	Section 554.3501
"Promise"	Section 554.3103
"Prove"	Section 554.3103
"Teller's check"	Section 554.3104
"Unauthorized signature"	Section 554.3403

4. In addition Article 1 contains general definitions and principles of construction and inter-

pretation applicable throughout this Article.

[C66, 71, 73, 75, 77, 79, 81, §554.4104]

88 Acts, ch 1102, §1; 91 Acts, ch 222, §1; 94 Acts, ch 1167, §81, 122; 95 Acts, ch 67, §42; 96 Acts, ch 1138, §7, 84

554.4105 "Bank" — "depositary bank" — "intermediary bank" — "collecting bank" — "payor bank" — "presenting bank".

In this Article:

1. *"Bank"* means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.

2. *"Depositary bank"* means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

3. *"Payor bank"* means a bank that is the drawee of the draft.

4. *"Intermediary bank"* means a bank to which an item is transferred in course of collection except the depositary or payor bank.

5. *"Collecting bank"* means a bank handling an item for collection except the payor bank.

6. *"Presenting bank"* means a bank presenting an item except a payor bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4105]

94 Acts, ch 1167, §82, 122

554.4106 Payable through or payable at bank — collecting bank.

1. If an item states that it is *"payable through"* a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

2. If an item states that it is *"payable at"* a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

3. If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank.

94 Acts, ch 1167, §87, 120, 122

554.4107 Separate office of a bank.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this Article and under Article 3.

[C66, 71, 73, 75, 77, 79, 81, §554.4106]

94 Acts, ch 1167, §83, 120, 122

C95, §554.4107

554.4108 Time of receipt of items.

1. For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

2. An item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

[C66, 71, 73, 75, 77, 79, 81, §554.4107]

94 Acts, ch 1167, §84, 120, 122

C95, §554.4108

554.4109 Delays.

1. Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this chapter for a period not exceeding two additional banking days without discharge of drawers or endorsers or liability to its transferor or a prior party.

2. Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require.

[C66, 71, 73, 75, 77, 79, 81, §554.4108]

94 Acts, ch 1167, §85, 120, 122

C95, §554.4109

95 Acts, ch 49, §16

554.4110 Electronic presentment.

1. *"Agreement for electronic presentment"* means an agreement, clearing-house rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item (*"presentment notice"*) rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

2. Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

3. If presentment is made by presentment notice, a reference to *"item"* or *"check"* in this Article means the presentment notice unless the context otherwise indicates.

94 Acts, ch 1167, §86, 122

PART 2

COLLECTION OF ITEMS:
DEPOSITARY AND COLLECTING BANKS

554.4201 Status of collecting bank as agent and provisional status of credits — applicability of Article — item endorsed "pay any bank".

1. Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

2. After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

a. returned to the customer initiating collection; or

b. specially endorsed by a bank to a person who is not a bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4201]
94 Acts, ch 1167, §88, 122

554.4202 Responsibility for collection or return — when action timely.

1. A collecting bank must exercise ordinary care in:

a. presenting an item or sending it for presentment;

b. sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

c. settling for an item when the bank receives final settlement; and

d. notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

2. A collecting bank exercises ordinary care under subsection 1 by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

3. Subject to subsection 1, paragraph *"a"*, a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

[C66, 71, 73, 75, 77, 79, 81, §554.4202]
94 Acts, ch 1167, §89, 122

554.4203 Effect of instructions.

Subject to Article 3 concerning conversion of instruments (section 554.3420) and restrictive endorsements (section 554.3206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

[C66, 71, 73, 75, 77, 79, 81, §554.4203]
94 Acts, ch 1167, §90, 122

554.4204 Methods of sending and presenting — sending directly to payor bank.

1. A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

2. A collecting bank may send:

a. an item directly to the payor bank;

b. an item to a nonbank payor if authorized by its transferor; and

c. an item other than documentary drafts to any nonbank payor, if authorized by federal reserve regulation or operating circular, clearinghouse rule, or the like.

3. Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

[C66, 71, 73, 75, 77, 79, 81, §554.4204]
94 Acts, ch 1167, §91, 122

554.4205 Depositary bank holder of unendorsed item.

If a customer delivers an item to a depositary bank for collection:

1. The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer endorses the item, and, if the bank satisfies the other requirements of section 554.3302, it is a holder in due course; and

2. The depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

[C66, 71, 73, 75, 77, 79, 81, §554.4205]
94 Acts, ch 1167, §92, 122

554.4206 Transfer between banks.

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4206]
94 Acts, ch 1167, §93, 122

554.4207 Transfer warranties.

1. A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

a. the warrantor is a person entitled to enforce the item;

b. all signatures on the item are authentic and authorized;

c. the item has not been altered;

d. the item is not subject to a defense or claim in recoupment (section 554.3305, subsection 1) of any party that can be asserted against the warrantor; and

e. the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

2. If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was an incomplete item, according to its terms when completed as stated in sections 554.3115 and 554.3407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.

3. A person to whom the warranties under subsection 1 are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

4. The warranties stated in subsection 1 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

5. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

[C66, 71, 73, 75, 77, 79, 81, §554.4207]
94 Acts, ch 1167, §94, 122

554.4208 Presentment warranties.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

a. the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

b. the draft has not been altered; and

c. the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

2. A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 554.3404 or 554.3405 or the drawer is precluded under section 554.3406 or 554.4406 from asserting against the drawee the unauthorized endorsement or alteration.

4. If (i) a dishonored draft is presented for payment to the drawer or an endorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

5. The warranties stated in subsections 1 and 4 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within sixty days after the claimant has reason to know of the breach and the

identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

6. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

94 Acts, ch 1167, §102, 120, 122

554.4209 Encoding and retention warranties.

1. A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

2. A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

3. A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

94 Acts, ch 1167, §103, 120, 122

554.4210 Security interest of collecting bank in items, accompanying documents and proceeds.

1. A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

a. in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

b. in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

c. if it makes an advance on or against the item.

2. If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

3. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

a. no security agreement is necessary to make the security interest enforceable (section 554.9203, subsection 2, paragraph *"c"*, subparagraph (1));

b. no filing is required to perfect the security interest; and

c. the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

[C66, 71, 73, 75, 77, 79, 81, §554.4208]

94 Acts, ch 1167, §95, 120, 122

C95, §554.4210

2000 Acts, ch 1149, §146, 187

2000 amendment to subsection 3, paragraph a, takes effect July 1, 2001; 2000 Acts, ch 1149, §187

554.4211 When bank gives value for purposes of holder in due course.

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of section 554.3302 on what constitutes a holder in due course.

[S13, §3060-a27; C24, 27, 31, 35, 39, §**9487;** C46, 50, 54, 58, 62, §541.27; C66, 71, 73, 75, 77, 79, 81, §554.4209]

94 Acts, ch 1167, §96, 120, 122

C95, §554.4211

554.4212 Presentment by notice of item not payable by, through, or at a bank; liability of drawer or endorser.

1. Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 554.3501 by the close of the bank's next banking day after it knows of the requirement.

2. If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under section 554.3501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or endorser by sending it notice of the facts.

[C73, §2094; C97, §3053; S13, §3053; C24, 27, 31, 35, 39, §**9545;** C46, 50, 54, 58, 62, §541.85; C66, 71, 73, 75, 77, 79, 81, §554.4210]

94 Acts, ch 1167, §97, 120, 122

C95, §554.4212

95 Acts, ch 67, §43

554.4213 Medium and time of settlement by bank.

1. With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

a. the medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement; and

b. the time of settlement is:

(1) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(2) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

(3) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(4) with respect to tender of settlement by a funds transfer, when payment is made pursuant to section 554.12406, subsection 1 to the person receiving the settlement.

2. If the tender of settlement is not by a medium authorized by subsection 1 or the time of settlement is not fixed by subsection 1, no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

3. If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

a. presents or forwards the check for collection, settlement is final when the check is finally paid; or

b. fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

4. If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

[C66, 71, 73, 75, 77, 79, 81, §554.4211]
94 Acts, ch 1167, §98, 120, 122
C95, §554.4213

554.4214 Right of charge-back or refund — liability of collecting bank — return of item.

1. If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

2. A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

3. A depositary bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 554.4301).

4. The right to charge back is not affected by:

a. previous use of a credit given for the item; or

b. failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

5. A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

6. If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

[C66, 71, 73, 75, 77, 79, 81, §554.4212]
94 Acts, ch 1167, §99, 120, 122
C95, §554.4214

554.4215 Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal.

1. An item is finally paid by a payor bank when the bank has first done any of the following:

a. paid the item in cash;

b. settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

c. made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

2. If provisional settlement for an item does not become final, the item is not finally paid.

3. If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in

an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

4. If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

5. Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

a. if the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

b. if the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

6. Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

[C66, 71, 73, 75, 77, 79, 81, §554.4213]
94 Acts, ch 1167, §100, 120, 122
C95, §554.4215
95 Acts, ch 49, §17; 95 Acts, ch 67, §44

554.4216 Insolvency and preference.

1. If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

2. If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

3. If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

4. If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4214]
94 Acts, ch 1167, §101, 120, 122
C95, §554.4216

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

554.4301 Deferred posting — recovery of payment by return of items — time of dishonor — return of items by payor bank.

1. If a payor settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the payment settlement if, before it has made final payment and before its midnight deadline, it

a. returns the item; or

b. sends written notice of dishonor or nonpayment if the item is unavailable for return; and the item or notice includes the reason for dishonor or nonpayment.

2. If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection 1.

3. Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

4. An item is returned:

a. as to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

b. in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to that customer's or transferor's instructions.

[C66, 71, 73, 75, 77, 79, 81, §554.4301]
94 Acts, ch 1167, §104, 122

554.4302 Payor bank's responsibility for late return of item.

1. If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

a. a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

b. any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

2. The liability of a payor bank to pay an item pursuant to subsection 1 is subject to defenses based on breach of a presentment warranty (section 554.4208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

[C66, 71, 73, 75, 77, 79, 81, §554.4302]
94 Acts, ch 1167, §105, 122

554.4303 When items subject to notice, stop-payment order, legal process, or setoff — order in which items may be charged or certified.

1. Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

a. the bank accepts or certifies the item;

b. the bank pays the item in cash;

c. the bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;

d. the bank becomes accountable for the amount of the item under section 554.4302 dealing with the payor bank's responsibility for late return of items; or

e. with respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

2. Subject to subsection 1 items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

[C31, 35, §9266-d1; C39, §**9266.1;** C46, 50, 54, 58, 62, §528.62; C66, 71, 73, 75, 77, 79, 81, §554.4303]
94 Acts, ch 1167, §106, 122

PART 4

RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

554.4401 When bank may charge customer's account.

1. A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

2. A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

3. A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 554.4403, subsection 2, for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 554.4303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 554.4402.

4. A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

a. the original terms of the customer's altered item; or

b. the terms of the customer's completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

[C66, 71, 73, 75, 77, 79, 81, §554.4401]
94 Acts, ch 1167, §107; 95 Acts, ch 67, §45, 122

554.4402 Bank's liability to customer for wrongful dishonor — time of determining insufficiency of account.

1. Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

2. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

3. A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is

received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purposes of reevaluating the bank's decision to dishonor the item, the account balance at the time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

[C66, 71, 73, 75, 77, 79, 81, §554.4402]

94 Acts, ch 1167, §108, 122

554.4403 Customer's right to stop payment — burden of proof of loss.

1. A customer or any person authorized to draw on the account if there is more than one person may stop payment of an item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in section 554.4303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

2. A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

3. The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 554.4402.

[C31, 35, §9266-d1; C39, §**9266.1;** C46, 50, 54, 58, 62, §528.62; C66, 71, 73, 75, 77, 79, 81, §554.4403]

94 Acts, ch 1167, §109, 122

554.4404 Bank not obligated to pay check more than six months old.

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

[C66, 71, 73, 75, 77, 79, 81, §554.4404]

554.4405 Death or incompetence of customer.

1. A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

2. Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

[S13, §3060-a76; C24, 27, 31, 35, 39, §**9536;** C46, 50, 54, 58, 62, §541.76; C66, 71, 73, 75, 77, 79, 81, §554.4405]

94 Acts, ch 1167, §110, 122

554.4406 Customer's duty to discover and report unauthorized signature or alteration.

1. A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information, if the item is described by item number, amount, and date of payment.

2. If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of eleven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

3. If a bank sends or makes available a statement of account or items pursuant to subsection 1, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

4. If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection 3, the customer is precluded from asserting against the bank:

a. the customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

b. the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding sixty days, in which to examine the item or statement of account and notify the bank.

5. If subsection 4 applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection 3 and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection 4 does not apply.

6. Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subsection 1) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 554.4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

[C66, 71, 73, 75, 77, 79, 81, §554.4406]
94 Acts, ch 1167, §111, 122

554.4407 Payor bank's right to subrogation on improper payment.

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights

a. of any holder in due course on the item against the drawer or maker;

b. of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

c. of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

[C66, 71, 73, 75, 77, 79, 81, §554.4407]
94 Acts, ch 1167, §112, 122

PART 5

COLLECTION OF DOCUMENTARY DRAFTS

554.4501 Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor.

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

[C66, 71, 73, 75, 77, 79, 81, §554.4501]
94 Acts, ch 1167, §113, 122

554.4502 Presentment of "on arrival" drafts.

If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

[C66, 71, 73, 75, 77, 79, 81, §554.4502]
94 Acts, ch 1167, §114, 122

554.4503 Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need.

Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

a. must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

b. upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

[S13, §3060-a131, 3138-b40; C24, 27, 31, 35, 39,

§**8285, 9592;** C46, 50, 54, 58, 62, §487.41, 541.132; C66, 71, 73, 75, 77, 79, 81, §554.4503]
94 Acts, ch 1167, §115, 122

554.4504 Privilege of presenting bank to deal with goods — security interest for expenses.

1. A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

2. For its reasonable expenses incurred by action under subsection 1 the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

[C66, 71, 73, 75, 77, 79, 81, §554.4504]
94 Acts, ch 1167, §116, 122

ARTICLE 4A

FUNDS TRANSFERS

Article on Funds Transfers codified as Article 12; 92 Acts, ch 1146, §1 – 38

ARTICLE 5

LETTERS OF CREDIT

554.5101 Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Letters of Credit.

[C66, 71, 73, 75, 77, 79, 81, §554.5101]

554.5102 Definitions.

1. In this Article unless the context otherwise requires:

a. "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

b. "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

c. "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

d. "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

e. "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

f. "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in section 554.5108, subsection 5, and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

g. "Good faith" means honesty in fact in the conduct or transaction concerned.

h. "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, *"honor"* occurs

(1) upon payment,

(2) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment, or

(3) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

i. "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

j. "Letter of credit" means a definite undertaking that satisfies the requirements of section 554.5104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

k. "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

l. "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

m. "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

n. "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

o. "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

2. Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance"	Section 554.3409
"Value"	Sections 554.3303, 554.4211

3. Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article.

[C66, 71, 73, 75, 77, 79, 81, §554.5102]
96 Acts, ch 1026, §1, 28

554.5103 Scope.

1. This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

2. The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

3. With the exception of this subsection, subsections 1 and 4, section 554.5102, subsection 1, paragraphs *"i"* and *"j"*, section 554.5106, subsection 4, and section 554.5114, subsection 4, and except to the extent prohibited in section 554.1102, subsection 3, and section 554.5117, subsection 4, the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

4. Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

[C66, 71, 73, 75, 77, 79, 81, §554.5103]
94 Acts, ch 1167, §117, 122; 96 Acts, ch 1026, §2, 28

554.5104 Formal requirements.

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in section 554.5108, subsection 5.

[C66, 71, 73, 75, 77, 79, 81, §554.5104]
96 Acts, ch 1026, §3, 28

554.5105 Consideration.

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

[C66, 71, 73, 75, 77, 79, 81, §554.5105]
96 Acts, ch 1026, §4, 28

554.5106 Issuance, amendment, cancellation, and duration.

1. A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

2. After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

3. If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

4. A letter of credit that states that it is perpetual expires five years after its stated date of issuance or, if none is stated, after the date on which it is issued.

[C66, 71, 73, 75, 77, 79, 81, §554.5106]
96 Acts, ch 1026, §5, 28

554.5107 Confirmer, nominated person, and adviser.

1. A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

2. A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

3. A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

4. A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection 3. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

[C66, 71, 73, 75, 77, 79, 81, §554.5107]
96 Acts, ch 1026, §6, 28

554.5108 Issuer's rights and obligations.

1. Except as otherwise provided in section 554.5109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection 5, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in section 554.5113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

2. An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

a. to honor,

b. if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation, or

c. to give notice to the presenter of discrepancies in the presentation.

3. Except as otherwise provided in subsection 4, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

4. Failure to give the notice specified in subsection 2 or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in section 554.5109, subsection 1, or expiration of the letter of credit before presentation.

5. An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

6. An issuer is not responsible for:

a. the performance or nonperformance of the underlying contract, arrangement, or transaction,

b. an act or omission of others, or

c. observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection 5.

7. If an undertaking constituting a letter of credit under section 554.5102, subsection 1, paragraph *"j"*, contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

8. An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

9. An issuer that has honored a presentation as permitted or required by this Article:

a. is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

b. takes the documents free of claims of the beneficiary or presenter;

c. is precluded from asserting a right of recourse on a draft under sections 554.3414 and 554.3415;

d. except as otherwise provided in sections 554.5110 and 554.5117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

e. is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

[C66, 71, 73, 75, 77, 79, 81, §554.5108]
96 Acts, ch 1026, §7, 28

554.5109 Fraud and forgery.

1. If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

a. the issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

b. the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

2. If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

a. the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

b. a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

c. all of the conditions to entitle a person to the relief under the law of this state have been met; and

d. on the basis of the information submitted to the court, the applicant is more likely than not to

succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection 1, paragraph *"a"*.

[C66, 71, 73, 75, 77, 79, 81, §554.5109]
96 Acts, ch 1026, §8, 28

554.5110 Warranties.

1. If its presentation is honored, the beneficiary warrants:

a. to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in section 554.5109, subsection 1; and

b. to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

2. The warranties in subsection 1 are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those Articles.

[C66, 71, 73, 75, 77, 79, 81, §554.5110]
96 Acts, ch 1026, §9, 28

554.5111 Remedies.

1. If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

2. If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

3. If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection 1 or 2, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections 1 and 2.

4. An issuer, nominated person, or adviser who is found liable under subsection 1, 2, or 3 shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

5. Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article.

6. Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

[C66, 71, 73, 75, 77, 79, 81, §554.5111]
96 Acts, ch 1026, §10, 28

554.5112 Transfer of letter of credit.

1. Except as otherwise provided in section 554.5113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

2. Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

a. the transfer would violate applicable law; or

b. the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in section 554.5108, subsection 5, or is otherwise reasonable under the circumstances.

[C66, 71, 73, 75, 77, 79, 81, §554.5112]
96 Acts, ch 1026, §11, 28

554.5113 Transfer by operation of law.

1. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

2. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection 5, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in section 554.5108, subsection 5, or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

3. An issuer is not obliged to determine whether a purported successor is a successor of a benefi-

ciary or whether the signature of a purported successor is genuine or authorized.

4. Honor of a purported successor's apparently complying presentation under subsection 1 or 2 has the consequences specified in section 554.5108, subsection 9, even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of section 554.5109.

5. An issuer whose rights of reimbursement are not covered by subsection 4 or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection 2.

6. A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

[C66, 71, 73, 75, 77, 79, 81, §554.5113]
96 Acts, ch 1026, §12, 28

554.5114 Assignment of proceeds.

1. In this section, *"proceeds of a letter of credit"* means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

2. A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

3. An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

4. An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

5. Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

6. Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law.

[C66, 71, 73, 75, 77, 79, 81, §554.5114]
89 Acts, ch 113, §55; 96 Acts, ch 1026, §13, 28

554.5115 Statute of limitations.

An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

[C66, 71, 73, 75, 77, 79, 81, §554.5115]
96 Acts, ch 1026, §14, 28

554.5116 Choice of law and forum.

1. The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in section 554.5104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

2. Unless subsection 1 applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

3. Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the uniform customs and practice for documentary credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this Article would govern the liability of an issuer, nominated person, or adviser under subsection 1 or 2, (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in section 554.5103, subsection 3.

4. If there is conflict between this Article and

Article 3, 4, 9, or 12, this Article governs.

5. The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection 1.

[C66, 71, 73, 75, 77, 79, 81, §554.5116]
96 Acts, ch 1026, §15, 28; 97 Acts, ch 23, §69

554.5117 Subrogation of issuer, applicant, and nominated person.

1. An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

2. An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection 1.

3. A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

a. the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

b. the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

c. the applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

4. Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections 1 and 2 do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection 3 do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

[C66, 71, 73, 75, 77, 79, 81, §554.5117]
96 Acts, ch 1026, §16, 28

554.5118 Security interest of issuer or nominated person.

1. An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

2. So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection 1, the security interest continues and is subject to Article 9, but:

a. a security agreement is not necessary to make the security interest enforceable under section 554.9203, subsection 2, paragraph *"c"*;

b. if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

c. if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

2000 Acts, ch 1149, §147, 187
Section is effective July 1, 2001; 2000 Acts, ch 1149, §187

ARTICLE 6

BULK TRANSFERS

Article repealed effective January 1, 1995, by 94 Acts, ch 1121, §17, 18; see chapter 684

ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

PART 1

GENERAL

554.7101 Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Documents of Title.

[S13, §3138-b56; C24, 27, 31, 35, 39, §**8299;** C46, 50, 54, 58, 62, §487.55; C66, 71, 73, 75, 77, 79, 81, §554.7101]

554.7102 Definitions and index of definitions.

1. In this Article, unless the context otherwise requires:

a. "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

b. "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

c. "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

d. "Delivery order" means a written order to deliver goods directed to a warehouse operator, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

e. "Document" means document of title as defined in the general definitions in Article 1 (section 554.1201).

f. "Goods" means all things which are treated

as movable for the purposes of a contract of storage or transportation.

g. *"Issuer"* means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated that agent's or employee's instructions.

h. *"Warehouse operator"* is a person engaged in the business of storing goods for hire.

2. Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Duly negotiate"	Section 554.7501
"Person entitled under the document"	Section 554.7403(4)

3. Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale"	Section 554.2106
"Overseas"	Section 554.2323
"Receipt" of goods	Section 554.2103

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

[R60, §1903; C73, §2180; C97, §3132; S13, §3138-a58, -b52; C24, 27, 31, 35, 39, §**8297, 9718, 10005, 10325;** C46, 50, 54, 58, 62, §487.54, 542.58, 554.77, 575.1; C66, 71, 73, 75, 77, 79, 81, §554.7102]

554.7103 Relation of Article to treaty, statute, tariff, classification or regulation.

To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto.

[C66, 71, 73, 75, 77, 79, 81, §554.7103]

554.7104 Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.

1. A warehouse receipt, bill of lading or other document of title is negotiable

a. if by its terms the goods are to be delivered to bearer or to the order of a named person; or

b. where recognized in overseas trade, if it runs to a named person or assigns.

2. Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

[S13, §3138-a2 – a5, -a7, -b1 – b4, -b7, -b8, -b52; C24, 27, 31, 35, 39, §**8246 – 8249, 8253, 8254, 8297, 9662 – 9665, 9667, 9956, 9959, 10005;** C46, 50, 54, 58, 62, §487.2 – 487.5, 487.8, 487.9, 487.54, 542.2 – 542.5, 542.7, 554.28, 554.31, 554.77; C66, 71, 73, 75, 77, 79, 81, §554.7104]

554.7105 Construction against negative implication.

The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable.

[C66, 71, 73, 75, 77, 79, 81, §554.7105]

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

554.7201 Who may issue a warehouse receipt — storage under government bond.

1. A warehouse receipt may be issued by any warehouse operator.

2. Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouse operator.

[S13, §3138-a1; C24, 27, 31, §9661, 9740; C35, §9661, 9751-g23; C39, §**9661, 9751.23;** C46, 50, 54, 58, 62, §542.1, 543.20; C66, 71, 73, 75, 77, 79, 81, §554.7201]

554.7202 Form of warehouse receipt — essential terms — optional terms.

1. A warehouse receipt need not be in any particular form.

2. Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouse operator is liable for damages caused by the omission to a person injured thereby:

a. the location of the warehouse where the goods are stored;

b. the date of issue of the receipt;

c. the consecutive number of the receipt;

d. a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or that person's order;

e. the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

f. a description of the goods or of the packages containing them;

g. the signature of the warehouse operator, which may be made by the warehouse operator's authorized agent;

h. if the receipt is issued for goods of which the warehouse operator is owner, either solely or joint-

ly or in common with others, the fact of such ownership; and

i. a statement of the amount of advances made and of liabilities incurred for which the warehouse operator claims a lien or security interest (section 554.7209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse operator or to the warehouse operator's agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

3. A warehouse operator may insert in the receipt any other terms which are not contrary to the provisions of this chapter and do not impair the warehouse operator's obligation of delivery (section 554.7403) or duty of care (section 554.7204). Any contrary provisions shall be ineffective.

[S13, §3138-a2, -a7; C24, 27, 31, 35, §975-g19; C39, §**9662, 9667, 9751.19;** C46, 50, 54, 58, 62, §542.2, 542.7, 543.21; C66, 71, 73, 75, 77, 79, 81, §554.7202]

554.7203 Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

[S13, §3138-a20; C24, 27, 31, 35, 39, §**9680;** C46, 50, 54, 58, 62, §542.20; C66, 71, 73, 75, 77, 79, 81, §554.7203]

554.7204 Duty of care — contractual limitation of warehouse operator's liability.

1. A warehouse operator is liable for damages for loss of or injury to the goods caused by the warehouse operator's failure to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed the warehouse operator is not liable for damages which could not have been avoided by the exercise of such care.

2. Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouse operator shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouse operator's tariff, if any. No such limitation is effective with respect to the warehouse operator's liability for conversion to the warehouse operator's own use.

3. Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

[S13, §3138-a3, -a21, -a24; C24, 27, 31, 35, 39, §**9663, 9681, 9684;** C46, 50, 54, 58, 62, §542.3, 542.21, 542.24; C66, 71, 73, 75, 77, 79, 81, §554.7204]

554.7205 Title under warehouse receipt defeated in certain cases.

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse operator who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

[C66, 71, 73, 75, 77, 79, 81, §554.7205]

554.7206 Termination of storage at warehouse operator's option.

1. A warehouse operator may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouse operator may sell them in accordance with the provisions of the section on enforcement of a warehouse operator's lien (section 554.7210).

2. If a warehouse operator in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of the warehouse operator's lien within the time prescribed in subsection 1 for notification, advertisement and sale, the warehouse operator may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

3. If as a result of a quality or condition of the goods of which the warehouse operator had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouse operator may sell the goods at public or private sale without advertisement on

reasonable notification to all persons known to claim an interest in the goods. If the warehouse operator after a reasonable effort is unable to sell the goods the warehouse operator may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

4. The warehouse operator must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

5. The warehouse operator may satisfy the warehouse operator's lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom the warehouse operator would have been bound to deliver the goods.

[S13, §3138-a34; C24, 27, 31, §9694; C35, §9694, 9751-g21; C39, §**9694, 9751.21;** C46, 50, 54, 58, 62, §542.34, 543.23; C66, 71, 73, 75, 77, 79, 81, §554.7206]

554.7207 Goods must be kept separate — fungible goods.

1. Unless the warehouse receipt otherwise provides, a warehouse operator must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

2. Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouse operator is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouse operator has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

[S13, §3138-a22, -a23, -a24; C24, 27, 31, 35, 39, §**9682 – 9684;** C46, 50, 54, 58, 62, §542.22 – 542.24; C66, 71, 73, 75, 77, 79, 81, §554.7207]

554.7208 Altered warehouse receipts.

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

[S13, §3138-a13; C24, 27, 31, 35, 39, §**9673;** C46, 50, 54, 58, 62, §542.13; C66, 71, 73, 75, 77, 79, 81, §554.7208]

554.7209 Lien of warehouse operator.

1. A warehouse operator has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in the warehouse operator's possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouse operator also has a lien against that person for such charges and expenses whether or not the other goods have been delivered by the warehouse operator. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouse operator's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

2. The warehouse operator may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection 1, such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (Article 9).

3. *a.* A warehouse operator's lien for charges and expenses under subsection 1 or a security interest under subsection 2 is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 554.7503.

b. A warehouse operator's lien on household goods for charges and expenses in relation to the goods under subsection 1 is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

4. A warehouse operator loses the warehouse operator's lien on any goods which the warehouse operator voluntarily delivers or unjustifiably refuses to deliver.

[R60, §1898, 1899; C73, §2177, 2178; C97, §3130; S13, §3138-a27, -a28, -a29, -a30, -a31, -a32; C24, 27, 31, §9687 – 9692, 9741, 10326; C35, §9687 – 9692, 9751-g24, 10326; C39, §**9687 – 9692, 9751.24, 10326;** C46, 50, 54, 58, 62, §542.27 – 542.32, 543.24, 543.25, 575.2; C66, 71, 73, 75, 77, 79, 81, §554.7209]

554.7210 Enforcement of warehouse operator's lien.

1. Except as provided in subsection 2, a warehouse operator's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount

due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse operator is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouse operator either sells the goods in the usual manner in any recognized market therefor, or if the warehouse operator sells at the price current in such market at the time of the warehouse operator's sale, or if the warehouse operator has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, the warehouse operator has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

2. A warehouse operator's lien on goods other than goods stored by a merchant in the course of the merchant's business may be enforced only as follows:

a. All persons known to claim an interest in the goods must be notified.

b. The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

c. The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

d. The sale must conform to the terms of the notification.

e. The sale must be held at the nearest suitable place to that where the goods are held or stored.

f. After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

3. Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouse operator subject to the terms of the receipt and this Article.

4. The warehouse operator may buy at any public sale pursuant to this section.

5. A purchaser in good faith of goods sold to enforce a warehouse operator's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouse operator with the requirements of this section.

6. The warehouse operator may satisfy the warehouse operator's lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom the warehouse operator would have been bound to deliver the goods.

7. The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against the creditor's debtor.

8. Where a lien is on goods stored by a merchant in the course of the merchant's business the lien may be enforced in accordance with either subsection 1 or 2.

9. The warehouse operator is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

[R60, §1899 – 1904; C73, §2177 – 2181; C97, §3130 – 3133; S13, §3131, 3138-a33, -a35, -a36; C24, 27, 31, §9693, 9695, 9696, 9741, 10327 – 10330, 10333 – 10335; C35, §9693, 9695, 9696, 9751-g24, 10327 – 10330, 10333 – 10335; C39, §**9646, 9693, 9695, 9751.24, 10327, 10330, 10333 – 10335;** C46, 50, 54, 58, 62, §542.33, 542.35, 542.36, 543.24 – 543.26, 575.3 – 575.6, 575.9 – 575.11; C66, 71, 73, 75, 77, 79, 81, §554.7210]

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

554.7301 Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling.

1. A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

2. When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the

kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

3. When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

4. The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

5. The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit the issuer's responsibility and liability under the contract of carriage to any person other than the shipper.

[S13, §2074-b, 3138-b22; C24, 27, 31, 35, 39, §**8267, 10980;** C46, 50, 54, 58, 62, §487.23, 613.6; C66, 71, 73, 75, 77, 79, 81, §554.7301]

554.7302 Through bills of lading and similar documents.

1. The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

2. Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, that person is subject with respect to that person's own performance while the goods are in that person's possession to the obligation of the issuer. That person's obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

3. The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

[C66, 71, 73, 75, 77, 79, 81, §554.7302]

554.7303 Diversion — reconsignment — change of instructions.

1. Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

a. the holder of a negotiable bill; or

b. the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

c. the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

d. the consignee on a nonnegotiable bill if the consignee is entitled as against the consignor to dispose of them.

2. Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

[C66, 71, 73, 75, 77, 79, 81, §554.7303]

554.7304 Bills of lading in a set.

1. Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

2. Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

3. Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of the later holder's part.

4. Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

5. The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

[S13, §3138-b5; C24, 27, 31, 35, 39, §**8250;** C46, 50, 54, 58, 62, §487.6; C66, 71, 73, 75, 77, 79, 81, §554.7304]

554.7305 Destination bills.

1. Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

2. Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

[C66, 71, 73, 75, 77, 79, 81, §554.7305]

554.7306 Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

[S13, §3138-b15; C24, 27, 31, 35, 39, §**8260;** C46, 50, 54, 58, 62, §487.16; C66, 71, 73, 75, 77, 79, 81, §554.7306]

554.7307 Lien of carrier.

1. A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

2. A lien for charges and expenses under subsection 1 on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection 1 is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

3. A carrier loses the carrier's lien on any goods which the carrier voluntarily delivers or which the carrier unjustifiably refuses to deliver.

[R60, §1898, 1899; C73, §2177, 2178; C97, §3130; S13, §3138-a27 – 32, -b25; C24, 27, 31, 35, 39, §**8270, 9687 – 9692, 10326;** C46, 50, 54, 58, 62, §487.26, 542.27 – 542.32, 575.2; C66, 71, 73, 75, 77, 79, 81, §554.7307]

554.7308 Enforcement of carrier's lien.

1. A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if the carrier sells at the price current in such market at the time of the carrier's sale or if the carrier has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold the carrier has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

2. Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

3. The carrier may buy at any public sale pursuant to this section.

4. A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

5. The carrier may satisfy the carrier's lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom the carrier would have been bound to deliver the goods.

6. The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against the creditor's debtor.

7. A carrier's lien may be enforced in accordance with either subsection 1 or the procedure set forth in subsection 2 of section 554.7210.

8. The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

[R60, §1899 – 1904; C73, §2177 – 2181; C97, §3130 – 3133; S13, §3131, 3138-a33, -b26; C24, 27, 31, 35, 39, §**8271, 9693, 10327 – 10336;** C46, 50, 54, 58, 62, §487.27, 542.33, 575.3 – 575.7, 575.9 – 575.12; C66, 71, 73, 75, 77, 79, 81, §554.7308]

554.7309 Duty of care — contractual limitation of carrier's liability.

1. A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful person would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

2. Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed the consignor is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

3. Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

[S13, §2074-b, 3138-b2; C24, 27, 31, 35, 39, §**8247, 10980;** C46, 50, 54, 58, 62, §487.3, 613.6; C66, 71, 73, 75, 77, 79, 81, §554.7309]

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

554.7401 Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

a. the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

b. the issuer may have violated laws regulating the conduct of the issuer's business; or

c. the goods covered by the document were owned by the bailee at the time the document was issued; or

d. the person issuing the document does not come within the definition of warehouse operator if it purports to be a warehouse receipt.

[S13, §3138-a20, -b22; C24, 27, 31, 35, 39, §**8267, 9680;** C46, 50, 54, 58, 62, §487.23, 542.20; C66, 71, 73, 75, 77, 79, 81, §554.7401]

554.7402 Duplicate receipt or bill — overissue.

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by the issuer's overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

[S13, §3138-a6, -a15, -b6, -b17; C24, 27, 31, 35, 39, §**8251, 8262, 9666, 9675;** C46, 50, 54, 58, 62, §487.7, 487.18, 542.6, 542.15, 543.20; C66, 71, 73, 75, 77, 79, 81, §554.7402]

554.7403 Obligation of warehouse operator or carrier to deliver — excuse.

1. The bailee must deliver the goods to a person entitled under the document who complies with subsections 2 and 3, unless and to the extent that the bailee establishes any of the following:

a. delivery of the goods to a person whose receipt was rightful as against the claimant;

b. damage to or delay, loss or destruction of the goods for which the bailee is not liable, but the burden of establishing negligence in such cases is on the person entitled under the document;

c. previous sale or other disposition of the goods in lawful enforcement of a lien or on the warehouse operator's lawful termination of storage;

d. the exercise by a seller of the seller's right to stop delivery pursuant to the provisions of the Article on Sales (section 554.2705);

e. a diversion, reconsignment or other disposition pursuant to the provisions of this Article (section 554.7303) or tariff regulating such right;

f. release, satisfaction or any other fact affording a personal defense against the claimant;

g. any other lawful excuse.

2. A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

3. Unless the person claiming is one against whom the document confers no right under section 554.7503, subsection 1, that person must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

4. "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.

[S13, §3138-a8, -a9, -a10, -a11, -a12, -a16, -a19, -b10, -b11, -b12, -b13, -b14, -b18, -b21; C24, 27, 31, 35, 39, §**8255 – 8259, 8263, 8266, 9668 – 9672, 9676, 9679;** C46, 50, 54, 58, 62, §487.11 – 487.15, 487.19, 487.22, 542.8 – 542.12, 542.16, 542.19; C66, 71, 73, 75, 77, 79, 81, §554.7403]

554.7404 No liability for good faith delivery pursuant to receipt or bill.

A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom the bailee received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom the bailee delivered the goods had no authority to receive them.

[S13, §2074-b, 3138-a10, -b12; C24, 27, 31, 35, 39, §**8257, 9670, 10980;** C46, 50, 54, 58, 62, §487.13, 542.10, 613.6; C66, 71, 73, 75, 77, 79, 81, §554.7404]

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

554.7501 Form of negotiation and requirements of "due negotiation".

1. A negotiable document of title running to the order of a named person is negotiated by that person's endorsement and delivery. After that person's endorsement in blank or to bearer any person can negotiate it by delivery alone.

2. *a.* A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

b. When a document running to the order of a named person is delivered to the named person the effect is the same as if the document had been negotiated.

3. Negotiation of a negotiable document of title after it has been endorsed to a specified person requires endorsement by the special endorsee as well as delivery.

4. A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

5. Endorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

6. The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

[S13, §3138-a37, -a38, -a39, -a40, -a47, -b27, -b28, -b29, -b30, -b37; C24, 27, 31, 35, 39, §**8272 – 8275, 8282, 9697 – 9700, 9707, 9957 – 9961, 9967;** C46, 50, 54, 58, 62, §487.28 – 487.31, 487.38, 542.37 – 542.40, 542.47, 554.29 – 554.32, 554.39; C66, 71, 73, 75, 77, 79, 81, §554.7501]

554.7502 Rights acquired by due negotiation.

1. Subject to the following section and to the provisions of section 554.7205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

a. title to the document;

b. title to the goods;

c. all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

d. the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

2. Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

[S13, §3138-a41, -a47, -a48, -a49, -b31, -b37, -b38, -b39, -b41; C24, 27, 31, 35, 39, §**8276, 8282 – 8284, 8286, 9701, 9707 – 9709, 9949, 9954, 9962, 9967, 9991;** C46, 50, 54, 58, 62, §487.32, 487.38 – 487.40, 487.42, 542.41, 542.47 – 542.49, 554.21, 554.26, 554.34, 554.39, 554.63; C66, 71, 73, 75, 77, 79, 81, §554.7502]

554.7503 Document of title to goods defeated in certain cases.

1. A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

a. delivered or entrusted them or any document of title covering them to the bailor or the bailor's nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (section 554.7403) or with power of disposition under this chapter (sections 554.2403 and 554.9320) or other statute or rule of law; nor

b. acquiesced in the procurement by the bailor or the bailor's nominee of any document of title.

2. Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

3. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

[S13, §3138-a41, -b31, -b42; C24, 27, 31, 35, 39, §**8276, 8287, 9701, 9962;** C46, 50, 54, 58, 62, §487.32, 487.43, 542.41, 554.34; C66, 71, 73, 75, 77, 79, 81, §554.7503]

2000 Acts, ch 1149, §148, 187

2000 amendment to subsection 1, paragraph a, takes effect July 1, 2001; 2000 Acts, ch 1149, §187

554.7504 Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery.

1. A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which the transferee's transferor had or had actual authority to convey.

2. In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

a. by those creditors of the transferor who could treat the sale as void under section 554.2402; or

b. by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights; or

c. as against the bailee by good faith dealings of the bailee with the transferor.

3. A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

4. Delivery pursuant to a nonnegotiable document may be stopped by a seller under section 554.2705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

[S13, §3138-a41, -a42, -b31, -b32; C24, 27, 31, 35, 39, §**8276, 8277, 9701, 9702, 9959, 9963;** C46, 50, 54, 58, 62, §487.32, 487.33, 542.41, 542.42, 554.31, 554.35; C66, 71, 73, 75, 77, 79, 81, §554.7504]

554.7505 Endorser not a guarantor for other parties.

The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

[S13, §3138-a45, -b35; C24, 27, 31, 35, 39, §**8280, 9705, 9966;** C46, 50, 54, 58, 62, §487.36, 542.45, 554.38; C66, 71, 73, 75, 77, 79, 81, §554.7505]

554.7506 Delivery without endorsement — right to compel endorsement.

The transferee of a negotiable document of title has a specifically enforceable right to have the transferee's transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

[S13, §3138-a43, -b33; C24, 27, 31, 35, 39, §**8278, 9703, 9964;** C46, 50, 54, 58, 62, §487.34, 542.43, 554.36; C66, 71, 73, 75, 77, 79, 81, §554.7506]

554.7507 Warranties on negotiation or transfer of receipt or bill.

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed that person warrants to that person's immediate purchaser only in addition to any warranty made in selling the goods

a. that the document is genuine; and

b. that that person has no knowledge of any fact which would impair its validity or worth; and

c. that that person's negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

[S13, §3138-a44, -b34, -b36; C24, 27, 31, 35, 39, §**8279, 8281, 9704, 9965;** C46, 50, 54, 58, 62, §487.35, 487.37, 542.44, 554.37; C66, 71, 73, 75, 77, 79, 81, §554.7507]

554.7508 Warranties of collecting bank as to documents.

A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

[S13, §3138-a46; C24, 27, 31, 35, 39, §**9706;** C46, 50, 54, 58, 62, §542.46; C66, 71, 73, 75, 77, 79, 81, §554.7508]

554.7509 Receipt or bill: When adequate compliance with commercial contract.

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5).

[C66, 71, 73, 75, 77, 79, 81, §554.7509]

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

554.7601 Lost and missing documents.

1. If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

2. A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery.

3. If a warehouse receipt has been lost or destroyed, the warehouse operator shall issue a duplicate upon receipt of:

a. An affidavit that the warehouse receipt has been lost or destroyed.

b. A bond in an amount at least double the value of the goods at the time of posting the bond, to indemnify any person injured by issuance of the duplicate warehouse receipt who files a notice of claim within one year after delivery of the goods.

A duplicate warehouse receipt shall be plainly marked to indicate that it is a duplicate. A receipt plainly marked as a duplicate is a representation and warranty by the warehouse operator that the duplicate receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon the warehouse operator no other liability.

A warehouse operator who in good faith delivers goods to the holder of a duplicate receipt issued in accordance with this subsection is liable to any person injured by the delivery, but only to the extent of the security posted in accordance with paragraph *"b"* of this subsection.

4. If a warehouse receipt has been lost or destroyed, the depositor may either remove the goods from the warehouse or sell the goods to the warehouse operator after executing a lost warehouse receipt release on a form prescribed by the department of agriculture and land stewardship. The form shall include an affidavit stating that the warehouse receipt has been lost or destroyed, and the depositor's undertaking to indemnify the warehouse operator for any loss incurred as a result of the loss or destruction of the warehouse receipt. The form shall be filed with the department of agriculture and land stewardship.

5. If a warehouse receipt has been lost or destroyed by a warehouse operator after delivery of the goods or purchase of the goods by the warehouse operator, the warehouse operator shall execute and file with the department of agriculture and land stewardship a notarized affidavit stating that the warehouse receipt has been lost or destroyed by the warehouse operator after delivery or purchase of the goods by the warehouse operator. The form of the affidavit shall be prescribed by the department of agriculture and land stewardship.

[S13, §3138-a14, -b16; C24, 27, 31, 35, 39, §**8261, 9674;** [C46, 50, 54, 58, 62, §487.17, 542.14; C66, 71, 73, 75, 77, 79, 81, §554.7601]

554.7602 Attachment of goods covered by a negotiable document.

Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to the bailee or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

[S13, §3138-a25, -b23, -b24; C24, 27, 31, 35, 39, §**8268, 8269, 9685, 9968, 9969;** C46, 50, 54, 58, 62, §487.24, 487.25, 542.25, 554.40, 554.41; C66, 71, 73, 75, 77, 79, 81, §554.7602]

554.7603 Conflicting claims — interpleader.

If more than one person claims title or possession of the goods, the bailee is excused from delivery until the bailee has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

[S13, §3138-a16, -a17, -a18, -b19, -b20, -b42; C24, 27, 31, 35, 39, §**8264, 8265, 8287, 9676 – 9678;** C46, 50, 54, 58, 62, §487.20, 487.21, 487.43, 542.16 – 542.18; C66, 71, 73, 75, 77, 79, 81, §554.7603]

ARTICLE 8

INVESTMENT SECURITIES

PART 1

SHORT TITLE AND GENERAL MATTERS

554.8101 Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Investment Securities.

[C50, 54, 58, 62, §493A.24; C66, 71, 73, 75, 77, 79, 81, §554.8101]

554.8102 Definitions.

1. In this Article:

a. "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

b. "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

c. "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

d. "Certificated security" means a security that is represented by a certificate.

e. "Clearing corporation" means:

(1) a person that is registered as a "clearing agency" under the federal securities laws;

(2) a federal reserve bank; or

(3) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

f. "Communicate" means to:

(1) send a signed writing; or

(2) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

g. "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 554.8501, subsection 2, paragraph *"b"* or *"c"*, that person is the entitlement holder.

h. "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

i. "Financial asset", except as otherwise provided in section 554.8103, means:

(1) a security;

(2) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(3) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

j. "Good faith", for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

k. "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

l. "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

m. "Registered form", as applied to a certificated security, means a form in which:

(1) the security certificate specifies a person entitled to the security; and

(2) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

n. "Securities intermediary" means:

(1) a clearing corporation; or

(2) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

o. "Security", except as otherwise provided in section 554.8103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(1) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(2) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(3) which:

(a) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(b) is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

p. "Security certificate" means a certificate representing a security.

q. "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

r. "Uncertificated security" means a security that is not represented by a certificate.

2. Other definitions applying to this Article and the sections in which they appear are:

"Appropriate person"	Section 554.8107
"Control"	Section 554.8106
"Delivery"	Section 554.8301
"Investment company security"	Section 554.8103
"Issuer"	Section 554.8201
"Overissue"	Section 554.8210
"Protected purchaser"	Section 554.8303
"Securities account"	Section 554.8501

3. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

4. The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

[C66, 71, 73, 75, 77, 79, 81, §554.8102]

89 Acts, ch 113, §1; 96 Acts, ch 1138, §10, 84

554.8103 Rules for determining whether certain obligations and interests are securities or financial assets.

1. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

2. An "investment company security" is a security. *"Investment company security"* means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

3. An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

4. A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

5. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

6. A commodity contract, as defined in section 554.9102, subsection 1, paragraph *"o"*, is not a security or a financial asset.

[C50, 54, 58, 62, §493A.15; C66, 71, 73, 75, 77, 79, 81, §554.8103]

89 Acts, ch 113, §2; 96 Acts, ch 1138, §11, 84; 2000 Acts, ch 1149, §149, 187

2000 amendment to subsection 6 takes effect July 1, 2001; 2000 Acts, ch 1149, §187

554.8104 Acquisition of security or financial asset or interest therein.

1. A person acquires a security or an interest therein, under this Article, if:

a. the person is a purchaser to whom a security is delivered pursuant to section 554.8301; or

b. the person acquires a security entitlement to the security pursuant to section 554.8501.

2. A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

3. A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in section 554.8503.

4. Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection 1 or 2.

[C66, 71, 73, 75, 77, 79, 81, §554.8104]

89 Acts, ch 113, §3; 96 Acts, ch 1138, §12, 84

554.8105 Notice of adverse claim.

1. A person has notice of an adverse claim if:

a. the person knows of the adverse claim;

b. the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

c. the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

2. Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the

rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

3. An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

a. one year after a date set for presentment or surrender for redemption or exchange; or

b. six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

4. A purchaser of a certificated security has notice of an adverse claim if the security certificate:

a. whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

b. is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

5. Filing of a financing statement under Article 9 is not notice of an adverse claim to a financial asset.

[C66, 71, 73, 75, 77, 79, 81, §554.8105]

89 Acts, ch 113, §4; 96 Acts, ch 1138, §13, 84

554.8106 Control.

1. A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

2. A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

a. the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

b. the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

3. A purchaser has "control" of an uncertificated security if:

a. the uncertificated security is delivered to the purchaser; or

b. the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

4. A purchaser has "control" of a security entitlement if:

a. the purchaser becomes the entitlement holder;

b. the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

c. another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

5. If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

6. A purchaser who has satisfied the requirements of subsection 3 or 4 has control, even if the registered owner in the case of subsection 3, or the entitlement holder in the case of subsection 4, retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

7. An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection 3, paragraph *"b"*, or subsection 4, paragraph *"b"*, without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

[C66, 71, 73, 75, 77, 79, 81, §554.8106]

89 Acts, ch 113, §5; 96 Acts, ch 1138, §14, 84; 2000 Acts, ch 1149, §150, 187; 2002 Acts, ch 1119, §87

2000 amendments to subsections 4 and 6 are effective July 1, 2001; 2000 Acts, ch 1149, §187

Subsection 6 amended

554.8107 Whether indorsement, instruction, or entitlement order is effective.

1. *"Appropriate person"* means:

a. with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

b. with respect to an instruction, the registered owner of an uncertificated security;

c. with respect to an entitlement order, the entitlement holder;

d. if the person designated in paragraph *"a"*, *"b"*, or *"c"* is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

e. if the person designated in paragraph *"a"*, *"b"*, or *"c"* lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

2. An indorsement, instruction, or entitlement order is effective if:

a. it is made by the appropriate person;

b. it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under section 554.8106, subsection 3, paragraph *"b"*, or subsection 4, paragraph *"b"*; or

c. the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

3. An indorsement, instruction, or entitlement order made by a representative is effective even if:

a. the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

b. the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

4. If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

5. Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

[C66, 71, 73, 75, 77, 79, 81, §554.8107]

89 Acts, ch 113, §6; 96 Acts, ch 1138, §15, 84

554.8108 Warranties in direct holding.

1. A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

a. the certificate is genuine and has not been materially altered;

b. the transferor or indorser does not know of any fact that might impair the validity of the security;

c. there is no adverse claim to the security;

d. the transfer does not violate any restriction on transfer;

e. if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

f. the transfer is otherwise effective and rightful.

2. A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

a. the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

b. the security is valid;

c. there is no adverse claim to the security; and

d. at the time the instruction is presented to the issuer:

(1) the purchaser will be entitled to the registration of transfer;

(2) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(3) the transfer will not violate any restriction on transfer; and

(4) the requested transfer will otherwise be effective and rightful.

3. A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

a. the uncertificated security is valid;

b. there is no adverse claim to the security;

c. the transfer does not violate any restriction on transfer; and

d. the transfer is otherwise effective and rightful.

4. A person who indorses a security certificate warrants to the issuer that:

a. there is no adverse claim to the security; and

b. the indorsement is effective.

5. A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

a. the instruction is effective; and

b. at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

6. A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

7. If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the princi-

pal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

8. A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection 7.

9. Except as otherwise provided in subsection 7, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections 1 through 6. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection 1 or 2, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

89 Acts, ch 113, §7; 96 Acts, ch 1138, §16, 84

554.8109 Warranties in indirect holding.

1. A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

a. the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

b. there is no adverse claim to the security entitlement.

2. A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in section 554.8108, subsection 1 or 2.

3. If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in section 554.8108, subsection 1 or 2.

96 Acts, ch 1138, §17, 84

554.8110 Applicability — choice of law.

1. The local law of the issuer's jurisdiction, as specified in subsection 4, governs:

a. the validity of a security;

b. the rights and duties of the issuer with respect to registration of transfer;

c. the effectiveness of registration of transfer by the issuer;

d. whether the issuer owes any duties to an adverse claimant to a security; and

e. whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

2. The local law of the securities intermediary's jurisdiction, as specified in subsection 5, governs:

a. acquisition of a security entitlement from the securities intermediary;

b. the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

c. whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

d. whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

3. The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

4. *"Issuer's jurisdiction"* means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection 1, paragraphs *"b"* through *"e"*.

5. The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

a. if an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this Article, or this Act,* that jurisdiction is the securities intermediary's jurisdiction.

b. if paragraph *"a"* does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

c. if neither paragraph *"a"* nor paragraph *"b"* applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

d. if none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

e. if none of the preceding paragraphs applies,

the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

6. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

96 Acts, ch 1138, §18, 84; 2000 Acts, ch 1149, §151, 187

*2000 Acts, ch 1149

2000 amendments to subsection 5 take effect July 1, 2001; 2000 Acts, ch 1149, §187

554.8111 Clearing corporation rules.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this chapter and affects another party who does not consent to the rule.

96 Acts, ch 1138, §19, 84; 97 Acts, ch 23, §70

554.8112 Creditor's legal process.

1. The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection 4. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

2. The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection 4.

3. The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection 4.

4. The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

5. A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

96 Acts, ch 1138, §20, 84

554.8113 Statute of frauds inapplicable.

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

96 Acts, ch 1138, §21, 84

For contrary provision applicable prior to July 1, 1997, see §554.8319, Code 1995

554.8114 Evidentiary rules concerning certificated securities.

The following rules apply in an action on a certificated security against the issuer:

1. Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

2. If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

3. If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

4. If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

96 Acts, ch 1138, §22, 84

554.8115 Securities intermediary and others not liable to adverse claimant.

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

1. took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

2. acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

3. in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

96 Acts, ch 1138, §23, 84

554.8116 Securities intermediary as purchaser for value.

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

96 Acts, ch 1219, §30, 40

PART 2

ISSUE AND ISSUER

554.8201 Issuer.

1. With respect to an obligation on or a defense to a security, an *"issuer"* includes a person that:

a. places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

b. creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

c. directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

d. becomes responsible for, or in place of, another person described as an issuer in this section.

2. With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

3. With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

[S13, §3060-a29, -a60, -a61, -a62; C24, 27, 31, 35, 39, §**9489, 9520 – 9522;** C46, 50, 54, 58, 62, §541.29, 541.60 – 541.62; C66, 71, 73, 75, 77, 79, 81, §554.8201]

89 Acts, ch 113, §8; 96 Acts, ch 1138, §24, 84

554.8202 Issuer's responsibility and defenses — notice of defect or defense.

1. Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

2. The following rules apply if an issuer asserts that a security is not valid:

a. A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

b. Paragraph *"a"* applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

3. Except as otherwise provided in section 554.8205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

4. All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

5. This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

6. If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

[S13, §3060-a16, -a23, -a28, -a56, -a57, -a60, -a61, -a62; C24, 27, 31, 35, 39, §**9476, 9483, 9488, 9516, 9517, 9520 – 9522;** C46, 50, 54, 58, 62, §541.16, 541.23, 541.28, 541.56, 541.57, 541.60 – 541.62; C66, 71, 73, 75, 77, 79, 81, §554.8202]

89 Acts, ch 113, §9; 96 Acts, ch 1138, §25, 84

554.8203 Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

1. requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

2. is not covered by subsection 1 and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

[S13, §3060, -a52, -a53; C24, 27, 31, 35, 39, §**9512, 9513;** C46, 50, 54, 58, 62, §541.52, 541.53; C66, 71, 73, 75, 77, 79, 81, §554.8203]

89 Acts, ch 113, §10; 96 Acts, ch 1138, §26, 84

554.8204 Effect of issuer's restriction on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

1. the security is certificated and the restriction is noted conspicuously on the security certificate; or

2. the security is uncertificated and the registered owner has been notified of the restriction.

[C50, 54, 58, 62, §493A.15; C66, 71, 73, 75, 77, 79, 81, §554.8204]

89 Acts, ch 113, §11; 96 Acts, ch 1138, §27, 84

554.8205 Effect of unauthorized signature on security certificate.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

1. an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

2. an employee of the issuer, or of any of the persons listed in subsection 1, entrusted with responsible handling of the security certificate.

[S13, §3060-a23; C24, 27, 31, 35, 39, §**9483;** C46, 50, 54, 58, 62, §541.23; C66, 71, 73, 75, 77, 79, 81, §554.8205]

89 Acts, ch 113, §12; 96 Acts, ch 1138, §28, 84; 97 Acts, ch 23, §71

554.8206 Completion or alteration of security certificate.

1. If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

a. any person may complete it by filling in the blanks as authorized; and

b. even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

2. A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

[S13, §3060-a14, -a15, -a124; C24, 27, 31, 35, 39, §**9474, 9475, 9585;** C46, §541.14, 541.15, 541.25; C50, 54, 58, 62, §493A.16, 541.14, 541.15, 541.125; C66, 71, 73, 75, 77, 79, 81, §554.8206]

89 Acts, ch 113, §13; 96 Acts, ch 1138, §29, 84

554.8207 Rights and duties of issuer with respect to registered owners.

1. Before due presentment for registration of transfer of a certificated security in registered form, or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

2. This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like.

[C50, 54, 58, 62, §493A.3, 493A.21; C66, 71, 73, 75, 77, 79, 81, §554.8207]

89 Acts, ch 113, §14; 96 Acts, ch 1138, §30, 84

554.8208 Effect of signature of authenticating trustee, registrar, or transfer agent.

1. A person signing a security certificate, as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

a. the certificate is genuine;

b. the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

c. the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

2. Unless otherwise agreed, a person signing under subsection 1 does not assume responsibility for the validity of the security in other respects.

[C66, 71, 73, 75, 77, 79, 81, §554.8208]
89 Acts, ch 113, §15; 96 Acts, ch 1138, §31, 84

554.8209 Issuer's lien.
A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.
96 Acts, ch 1138, §32, 84

554.8210 Overissue.
1. In this section, *"overissue"* means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.
2. Except as otherwise provided in subsections 3 and 4, the provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.
3. If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.
4. If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.
96 Acts, ch 1138, §33, 84

PART 3

TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

554.8301 Delivery.
1. Delivery of a certificated security to a purchaser occurs when:
a. the purchaser acquires possession of the security certificate;
b. another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or
c. a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.
2. Delivery of an uncertificated security to a purchaser occurs when:
a. the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or
b. another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.
[S13, §3060-a52, -a57, -a58, -a59; C24, 27, 31, 35, 39, §**9512, 9517 – 9519;** C46, §541.52, 541.57 – 541.59; C50, 54, 58, 62, §493A.4, 493A.7, 541.52, 541.57 – 541.59; C66, 71, 73, 75, 77, 79, 81, §554.8301]
89 Acts, ch 113, §16; 96 Acts, ch 1138, §34, 84; 2000 Acts, ch 1149, §152, 187
2000 amendments to subsection 1, paragraph c, are effective July 1, 2001; 2000 Acts, ch 1149, §187

554.8302 Rights of purchaser.
1. Except as otherwise provided in subsections 2 and 3, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.
2. A purchaser of a limited interest acquires rights only to the extent of the interest purchased.
3. A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.
[S13, §3060-a52; C24, 27, 31, 35, 39, §**9512;** C46, 50, 54, 58, 62, §541.52; C66, 71, 73, 75, 77, 79, 81, §554.8302]
89 Acts, ch 113, §17; 96 Acts, ch 1138, §35, 84; 2000 Acts, ch 1149, §153, 187
2000 amendments to subsection 1 are effective July 1, 2001; 2000 Acts, ch 1149, §187

554.8303 Protected purchaser.
1. *"Protected purchaser"* means a purchaser of a certificated or uncertificated security, or of an interest therein, who:
a. gives value;
b. does not have notice of any adverse claim to the security; and
c. obtains control of the certificated or uncertificated security.
2. In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.
[C66, 71, 73, 75, 77, 79, 81, §554.8303]
89 Acts, ch 113, §18; 96 Acts, ch 1138, §36, 84

554.8304 Indorsement.
1. An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.
2. An indorsement purporting to be only of part of a security certificate representing units in-

tended by the issuer to be separately transferable is effective to the extent of the indorsement.

3. An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

4. If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

5. An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

6. Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in section 554.8108 and not an obligation that the security will be honored by the issuer.

[S13, §3060-a37, -a56; C24, 27, 31, 35, 39, §**9497, 9516;** C46, §541.37, 541.56; C50, 54, 58, 62, §493A.8, 541.37, 541.56; C66, 71, 73, 75, 77, 79, 81, §554.8304]

89 Acts, ch 113, §19; 96 Acts, ch 1138, §37, 84

554.8305 Instruction.

1. If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

2. Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by section 554.8108 and not an obligation that the security will be honored by the issuer.

[S13, §3060-a52, -a53; C24, 27, 31, 35, 39, §**9512, 9513;** C46, 50, 54, 58, 62, §541.52, 541.53; C66, 71, 73, 75, 77, 79, 81, §554.8305]

89 Acts, ch 113, §20; 96 Acts, ch 1138, §38, 84

554.8306 Effect of guaranteeing signature, indorsement, or instruction.

1. A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

a. the signature was genuine;

b. the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

c. the signer had legal capacity to sign.

2. A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

a. the signature was genuine;

b. the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

c. the signer had legal capacity to sign.

3. A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection 2 and also warrants that at the time the instruction is presented to the issuer:

a. the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

b. the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

4. A guarantor under subsections 1 and 2 or a special guarantor under subsection 3 does not otherwise warrant the rightfulness of the transfer.

5. A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection 1 and also warrants the rightfulness of the transfer in all respects.

6. A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection 3 and also warrants the rightfulness of the transfer in all respects.

7. An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

8. The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

[S13, §3060-a65, -a66, -a67, -a69; C24, 27, 31, 35, 39, §**9525 – 9527, 9529;** C46, §541.65 – 541.67, 541.69; C50, 54, 58, 62, §493A.6, 493A.11, 493A.12, 541.65 – 541.67, 541.69; C66, 71, 73, 75, 77, 79, 81, §554.8306]

89 Acts, ch 113, §21; 96 Acts, ch 1138, §39, 84

554.8307 Purchaser's right to requisites for registration of transfer.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the

transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

[S13, §3060-a49; C24, 27, 31, 35, 39, §**9509;** C46, §541.49; C50, 54, 58, 62, §493A.9, 541.49; C66, 71, 73, 75, 77, 79, 81, §554.8307]

89 Acts, ch 113, §22; 96 Acts, ch 1138, §40, 84

554.8308 through 554.8321 Repealed by 96 Acts, ch 1138, § 81, 84.

PART 4

REGISTRATION

554.8401 Duty of issuer to register transfer.

1. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

a. under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

b. the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

c. reasonable assurance is given that the indorsement or instruction is genuine and authorized (section 554.8402);

d. any applicable law relating to the collection of taxes has been complied with;

e. the transfer does not violate any restriction on transfer imposed by the issuer in accordance with section 554.8204;

f. a demand that the issuer not register transfer has not become effective under section 554.8403, or the issuer has complied with section 554.8403, subsection 2, but no legal process or indemnity bond is obtained as provided in section 554.8403, subsection 4; and

g. the transfer is in fact rightful or is to a protected purchaser.

2. If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

[C66, 71, 73, 75, 77, 79, 81, §554.8401]

89 Acts, ch 113, §37; 96 Acts, ch 1138, §41, 84; 97 Acts, ch 23, §72

554.8402 Assurance that indorsement or instruction is effective.

1. An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

a. in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

b. if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

c. if the indorsement is made or the instruction is originated by a fiduciary pursuant to section 554.8107, subsection 1, paragraph *"d"* or *"e"*, appropriate evidence of appointment or incumbency;

d. if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

e. if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

2. An issuer may elect to require reasonable assurance beyond that specified in this section.

3. In this section:

a. *"Guaranty of the signature"* means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

b. *"Appropriate evidence of appointment or incumbency"* means:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

[C66, 71, 73, 75, 77, 79, 81, §554.8402]

86 Acts, ch 1047, §1; 89 Acts, ch 113, §38; 96 Acts, ch 1138, §42, 84

554.8403 Demand that issuer not register transfer.

1. A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

2. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer

with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (i) the person who initiated the demand at the address provided in the demand and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

a. the certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

b. a demand that the issuer not register transfer had previously been received; and

c. the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

3. The period described in subsection 2, paragraph *"c"*, may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

4. An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

a. obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

b. file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

5. This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

[C66, 71, 73, 75, 77, 79, 81, §554.8403]

89 Acts, ch 113, §39; 90 Acts, ch 1168, §57; 96 Acts, ch 1138, §43, 84

554.8404 Wrongful registration.

1. Except as otherwise provided in section 554.8406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

a. pursuant to an ineffective indorsement or instruction;

b. after a demand that the issuer not register transfer became effective under section 554.8403, subsection 1, and the issuer did not comply with section 554.8403, subsection 2;

c. after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

d. by an issuer acting in collusion with the wrongdoer.

2. An issuer that is liable for wrongful registration of transfer under subsection 1 on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by section 554.8210.

3. Except as otherwise provided in subsection 1 or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

[C66, 71, 73, 75, 77, 79, 81, §554.8404]

89 Acts, ch 113, §40; 96 Acts, ch 1138, §44, 84

554.8405 Replacement of lost, destroyed, or wrongfully taken security certificate.

1. If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

a. so requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

b. files with the issuer a sufficient indemnity bond; and

c. satisfies other reasonable requirements imposed by the issuer.

2. If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by section 554.8210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

[S13, §3060-a199, -a200; C24, 27, 31, 35, 39, §**9659, 9660;** C46, §541.199, 541.200; C50, 54, 58, 62, §493A.17, 541.199; C66, 71, 73, 75, 77, 79, 81, §554.8405]

89 Acts, ch 113, §41; 96 Acts, ch 1138, §45, 84

554.8406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and

the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under section 554.8404 or a claim to a new security certificate under section 554.8405.

[C66, 71, 73, 75, 77, 79, 81, §554.8406]

89 Acts, ch 113, §42; 96 Acts, ch 1138, §46, 84

554.8407 Authenticating trustee, transfer agent, and registrar.

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

89 Acts, ch 113, §43; 96 Acts, ch 1138, §47, 84

554.8408 Statements of uncertificated securities. Repealed by 96 Acts, ch 1138, § 81, 84.

PART 5

SECURITY ENTITLEMENTS

554.8501 Securities account — acquisition of security entitlement from securities intermediary.

1. *"Securities account"* means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

2. Except as otherwise provided in subsections 4 and 5, a person acquires a security entitlement if a securities intermediary:

a. indicates by book entry that a financial asset has been credited to the person's securities account;

b. receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

c. becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

3. If a condition of subsection 2 has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

4. If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

5. Issuance of a security is not establishment of a security entitlement.

96 Acts, ch 1138, §48, 84

554.8502 Assertion of adverse claim against entitlement holder.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under section 554.8501 for value and without notice of the adverse claim.

96 Acts, ch 1138, §49, 84

554.8503 Property interest of entitlement holder in financial asset held by securities intermediary.

1. To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 554.8511.

2. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

3. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 554.8505 through 554.8508.

4. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 may be enforced against a purchaser of the financial asset or interest therein only if:

a. insolvency proceedings have been initiated by or against the securities intermediary;

b. the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

c. the securities intermediary violated its obligations under section 554.8504 by transferring the financial asset or interest therein to the purchaser; and

d. the purchaser is not protected under subsection 5.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

5. An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection 1, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 554.8504.

96 Acts, ch 1138, §50, 84

554.8504 Duty of securities intermediary to maintain financial asset.

1. A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

2. Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection 1.

3. A securities intermediary satisfies the duty in subsection 1 if:

a. the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

4. This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

96 Acts, ch 1138, §51, 84

554.8505 Duty of securities intermediary with respect to payments and distributions.

1. A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

a. the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

2. A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

96 Acts, ch 1138, §52, 84

554.8506 Duty of securities intermediary to exercise rights as directed by entitlement holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

1. the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

2. in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

96 Acts, ch 1138, §53, 84

554.8507 Duty of securities intermediary to comply with entitlement order.

1. A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

a. the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

2. If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

96 Acts, ch 1138, §54, 84

554.8508 Duty of securities intermediary to change entitlement holder's position to other form of security holding.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

1. the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

2. in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

96 Acts, ch 1138, §55, 84

554.8509 Specification of duties of securities intermediary by other statute or regulation — manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

1. If the substance of a duty imposed upon a securities intermediary by sections 554.8504 through 554.8508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

2. To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

3. The obligation of a securities intermediary to perform the duties imposed by sections 554.8504 through 554.8508 is subject to:

a. rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

b. rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

4. Sections 554.8504 through 554.8508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

96 Acts, ch 1138, §56, 84

554.8510 Rights of purchaser of security entitlement from entitlement holder.

1. In a case not covered by the priority rules in Article 9 or the rules stated in subsection 3, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

2. If an adverse claim could not have been asserted against an entitlement holder under section 554.8502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

3. In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection 4, purchasers who have control rank according to priority in time of:

a. the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 554.8106, subsection 4, paragraph *"a"*;

b. the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 554.8106, subsection 4, paragraph *"b"*;

c. if the purchaser obtained control through another person under section 554.8106, subsection 4, paragraph *"c"*, the time on which priority would be based under this subsection if the other person were the secured party; or

4. A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

96 Acts, ch 1138, §57, 84; 2000 Acts, ch 1149, §154, 187

2000 amendments are effective July 1, 2001; 2000 Acts, ch 1149, §187

554.8511 Priority among security interests and entitlement holders.

1. Except as otherwise provided in subsections 2 and 3, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

2. A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority

over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

3. If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

96 Acts, ch 1138, §58, 84

ARTICLE 9

SECURED TRANSACTIONS

PART 1

GENERAL PROVISIONS

A. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

554.9101 Short title.

This Article may be cited as Uniform Commercial Code — Secured Transactions.

2000 Acts, ch 1149, §1, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9102 Definitions and index of definitions.

1. *Article 9 definitions.* In this Article:

a. "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

b. "Account", except as used in *"account for"*, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

c. "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

d. "Accounting", except as used in *"accounting for"*, means a record:

(1) authenticated by a secured party;

(2) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(3) identifying the components of the obligations in reasonable detail.

e. "Agricultural lien" means an interest, other than a security interest, in farm products:

(1) which secures payment or performance of an obligation for:

(a) goods or services furnished in connection with a debtor's farming operation; or

(b) rent on real property leased by a debtor in connection with its farming operation;

(2) which is created by statute in favor of a person that:

(a) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(b) leased real property to a debtor in connection with the debtor's farming operation; and

(3) whose effectiveness does not depend on the person's possession of the personal property.

f. "As-extracted collateral" means:

(1) oil, gas, or other minerals that are subject to a security interest that:

(a) is created by a debtor having an interest in the minerals before extraction; and

(b) attaches to the minerals as extracted; or

(2) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

g. "Authenticate" means:

(1) to sign; or

(2) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

h. "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

i. "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

j. "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

k. "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, *"monetary obligation"* means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

l. "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(1) proceeds to which a security interest attaches;

(2) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(3) goods that are the subject of a consignment.

m. "Commercial tort claim" means a claim arising in tort with respect to which:

(1) the claimant is an organization; or

(2) the claimant is an individual and the claim:

(a) arose in the course of the claimant's business or profession; and

(b) does not include damages arising out of personal injury to or the death of an individual.

n. "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

o. "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(1) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(2) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

p. "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

q. "Commodity intermediary" means a person that:

(1) is registered as a futures commission merchant under federal commodities law; or

(2) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

r. "Communicate" means:

(1) to send a written or other tangible record;

(2) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(3) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

s. "Consignee" means a merchant to which goods are delivered in a consignment.

t. "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(1) the merchant:

(a) deals in goods of that kind under a name other than the name of the person making delivery;

(b) is not an auctioneer; and

(c) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(2) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(3) the goods are not consumer goods immediately before delivery; and

(4) the transaction does not create a security interest that secures an obligation.

u. "Consignor" means a person that delivers goods to a consignee in a consignment.

v. "Consumer debtor" means a debtor in a consumer transaction.

w. "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

x. "Consumer-goods transaction" means a consumer transaction in which:

(1) an individual incurs an obligation primarily for personal, family, or household purposes; and

(2) a security interest in consumer goods secures the obligation.

y. "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

z. "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

aa. "Continuation statement" means an amendment of a financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates; and

(2) indicates that it is a continuation statement for, or that it is filed to continue the effective-

ness of, the identified financing statement.

ab. "Debtor" means:

(1) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(2) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(3) a consignee.

ac. "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

ad. "Document" means a document of title or a receipt of the type described in section 554.7201, subsection 2.

ae. "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

af. "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

ag. "Equipment" means goods other than inventory, farm products, or consumer goods.

ah. "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(1) crops grown, growing, or to be grown, including:

(a) crops produced on trees, vines, and bushes; and

(b) aquatic goods produced in aquacultural operations;

(2) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(3) supplies used or produced in a farming operation; or

(4) products of crops or livestock in their unmanufactured states.

ai. "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

aj. "File number" means the number assigned to an initial financing statement pursuant to section 554.9519, subsection 1.

ak. "Filing office" means an office designated in section 554.9501 as the place to file a financing statement.

al. "Filing-office rule" means a rule adopted pursuant to section 554.9526.

am. "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

an. "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 554.9502, subsections 1 and 2. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

ao. "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

ap. "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

aq. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

ar. "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

as. "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

at. "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

au. "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

av. "Inventory" means goods, other than farm products, which:

(1) are leased by a person as lessor;

(2) are held by a person for sale or lease or to be furnished under a contract of service;

(3) are furnished by a person under a contract of service; or

(4) consist of raw materials, work in process, or materials used or consumed in a business.

aw. "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

ax. "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

ay. "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

az. "Lien creditor" means:

(1) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(2) an assignee for benefit of creditors from the time of assignment;

(3) a trustee in bankruptcy from the date of the filing of the petition; or

(4) a receiver in equity from the time of appointment.

ba. "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

bb. "Manufactured-home transaction" means a secured transaction:

(1) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(2) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

bc. "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

bd. "New debtor" means a person that becomes bound as debtor under section 554.9203, subsection 4, by a security agreement previously entered into by another person.

be. "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

bf. "Noncash proceeds" means proceeds other than cash proceeds.

bg. "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

bh. "Original debtor", except as used in section 554.9310, subsection 3, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 554.9203, subsection 4.

bi. "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

bj. "Person related to", with respect to an individual, means:

(1) the spouse of the individual;

(2) a brother, brother-in-law, sister, or sister-in-law of the individual;

(3) an ancestor or lineal descendant of the individual or the individual's spouse; or

(4) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

bk. "Person related to", with respect to an organization, means:

(1) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(2) an officer or director of, or a person performing similar functions with respect to, the organization;

(3) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (1);

(4) the spouse of an individual described in subparagraph (1), (2), or (3); or

(5) an individual who is related by blood or marriage to an individual described in subparagraph (1), (2), (3), or (4) and shares the same home with the individual.

bl. "Proceeds", except as used in section 554.9609, subsection 2, means the following property:

(1) whatever is acquired upon the sale, lease,

license, exchange, or other disposition of collateral;

(2) whatever is collected on, or distributed on account of, collateral;

(3) rights arising out of collateral;

(4) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(5) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

bm. "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

bn. "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 554.9620, 554.9621, and 554.9622.

bo. "Public-finance transaction" means a secured transaction in connection with which:

(1) debt securities are issued;

(2) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(3) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

bp. "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

bq. "Record", except as used in *"for record"*, *"of record"*, *"record or legal title"*, and *"record owner"*, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

br. "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

bs. "Secondary obligor" means an obligor to the extent that:

(1) the obligor's obligation is secondary; or

(2) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

bt. "Secured party" means:

(1) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(2) a person that holds an agricultural lien;

(3) a consignor;

(4) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(5) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(6) a person that holds a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, section 554.4210, 554.5118, or 554.13508, subsection 5.

bu. "Security agreement" means an agreement that creates or provides for a security interest.

bv. "Send", in connection with a record or notification, means:

(1) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(2) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (1).

bw. "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

bx. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

by. "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

bz. "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

ca. "Termination statement" means an amendment of a financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates; and

(2) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

cb. "Transmitting utility" means a person primarily engaged in the business of:

(1) operating a railroad, subway, street railway, or trolley bus;

(2) transmitting communications electrically, electromagnetically, or by light;

(3) transmitting goods by pipeline or sewer; or

(4) transmitting or producing and transmitting electricity, steam, gas, or water.

2. *Definitions in other Articles.* The following definitions in other Articles apply to this Article:

"Applicant"	Section 554.5102
"Beneficiary"	Section 554.5102
"Broker"	Section 554.8102
"Certificated security"	Section 554.8102
"Check"	Section 554.3104
"Clearing corporation"	Section 554.8102
"Contract for sale"	Section 554.2106
"Customer"	Section 554.4104
"Entitlement holder"	Section 554.8102
"Financial asset"	Section 554.8102
"Holder in due course"	Section 554.3302
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 554.5102
"Issuer" (with respect to a security)	Section 554.8201
"Lease"	Section 554.13103
"Lease agreement"	Section 554.13103
"Lease contract"	Section 554.13103
"Leasehold interest"	Section 554.13103
"Lessee"	Section 554.13103
"Lessee in ordinary course of business"	Section 554.13103
"Lessor"	Section 554.13103
"Lessor's residual interest"	Section 554.13103
"Letter of credit"	Section 554.5102
"Merchant"	Section 554.2104
"Negotiable instrument"	Section 554.3104
"Nominated person"	Section 554.5102
"Note"	Section 554.3104
"Proceeds of a letter of credit"	Section 554.5114
"Prove"	Section 554.3103
"Sale"	Section 554.2106
"Securities account"	Section 554.8501
"Securities intermediary"	Section 554.8102
"Security"	Section 554.8102
"Security certificate"	Section 554.8102
"Security entitlement"	Section 554.8102
"Uncertificated security"	Section 554.8102

3. *Article 1 definitions and principles.* Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

4. *Federal Food Security Act.* For purposes of the Federal Food Security Act, 7 U.S.C. § 1631, written notice shall be considered to be received by the person to whom it was delivered if the notice is delivered in hand to the person, or mailed by certified or registered mail with the proper postage and properly addressed to the person to whom it was sent. The refusal of a person to whom a notice is so mailed to accept delivery of the notice shall be considered receipt.

2000 Acts, ch 1149, §2, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9103 Purchase-money security interest — application of payments — burden of establishing.

1. *Definitions.* In this section:

a. *"purchase-money collateral"* means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

b. *"purchase-money obligation"* means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

2. *Purchase-money security interest in goods.* A security interest in goods is a purchase-money security interest:

a. to the extent that the goods are purchase-money collateral with respect to that security interest;

b. if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

c. also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

3. *Purchase-money security interest in software.* A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

a. the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

b. the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

4. *Consignor's inventory purchase-money security interest.* The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

5. *Application of payment in nonconsumer-goods transaction.* In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

a. in accordance with any reasonable method of application to which the parties agree;

b. in the absence of the parties' agreement to

a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

c. in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(1) to obligations that are not secured; and

(2) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

6. *No loss of status of purchase-money security interest in nonconsumer-goods transaction.* In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

a. the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

b. collateral that is not purchase-money collateral also secures the purchase-money obligation; or

c. the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

7. *Burden of proof in nonconsumer-goods transaction.* In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

8. *Nonconsumer-goods transactions — no inference.* The limitation of the rules in subsections 5, 6, and 7 to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

2000 Acts, ch 1149, §3, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9104 Control of deposit account.

1. *Requirements for control.* A secured party has control of a deposit account if:

a. the secured party is the bank with which the deposit account is maintained;

b. the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

c. the secured party becomes the bank's customer with respect to the deposit account.

2. *Debtor's right to direct disposition.* A secured party that has satisfied subsection 1 has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

2000 Acts, ch 1149, §4, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9105 Control of electronic chattel paper.

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

1. a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subsections 4, 5, and 6, unalterable;

2. the authoritative copy identifies the secured party as the assignee of the record or records;

3. the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

4. copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

5. each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

6. any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

2000 Acts, ch 1149, §5, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9106 Control of investment property.

1. *Control under section 554.8106.* A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 554.8106.

2. *Control of commodity contract.* A secured party has control of a commodity contract if:

a. the secured party is the commodity intermediary with which the commodity contract is carried; or

b. the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

3. *Effect of control of securities account or commodity account.* A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

2000 Acts, ch 1149, §6, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9107 Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 554.5114, subsection 3, or otherwise applicable law or practice.

2000 Acts, ch 1149, §7, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9108 Sufficiency of description.

1. *Sufficiency of description.* Except as otherwise provided in subsections 3, 4, and 5, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

2. *Examples of reasonable identification.* Except as otherwise provided in subsection 4, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

a. specific listing;

b. category;

c. except as otherwise provided in subsection 5, a type of collateral defined in this chapter;

d. quantity;

e. computational or allocational formula or procedure; or

f. except as otherwise provided in subsection 3, any other method, if the identity of the collateral is objectively determinable.

3. *Supergeneric description not sufficient.* A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

4. *Investment property.* Except as otherwise provided in subsection 5, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

a. the collateral by those terms or as investment property; or

b. the underlying financial asset or commodity contract.

5. *When description by type insufficient.* A description only by type of collateral defined in this chapter is an insufficient description of:

a. a commercial tort claim; or

b. in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

2000 Acts, ch 1149, §8, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

B. APPLICABILITY OF ARTICLE

554.9109 Scope.

1. *General scope of Article.* Except as otherwise provided in subsections 3 and 4, this Article applies to:

a. a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

b. an agricultural lien;

c. a sale of accounts, chattel paper, payment intangibles, or promissory notes;

d. a consignment;

e. a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, or section 554.13508, subsection 5, as provided in section 554.9110; and

f. a security interest arising under section 554.4210 or 554.5118.

2. *Security interest in secured obligation.* The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

3. *Extent to which Article does not apply.* This Article does not apply to the extent that:

a. a statute, regulation, or treaty of the United States preempts this Article;

b. another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

c. a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

d. the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 554.5114.

4. *Inapplicability of Article.* This Article does not apply to:

a. a landlord's lien, other than an agricultural lien;

b. a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 554.9333 applies with respect to priority of the lien;

c. an assignment of a claim for wages, salary, or other compensation of an employee;

d. a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

e. an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

f. an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

g. an assignment of a single account, payment intangible, or promissory note to an assignee in

full or partial satisfaction of a preexisting indebtedness;

h. a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care insurance receivable and any subsequent assignment of the right to payment, but sections 554.9315 and 554.9322 apply with respect to proceeds and priorities in proceeds;

i. an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

j. a right of recoupment or setoff, but:

(1) section 554.9340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(2) section 554.9404 applies with respect to defenses or claims of an account debtor;

k. the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(1) liens on real property in sections 554.9203 and 554.9308;

(2) fixtures in section 554.9334;

(3) fixture filings in sections 554.9501, 554.9502, 554.9512, 554.9516, and 554.9519; and

(4) security agreements covering personal and real property in section 554.9604;

l. an assignment of a claim arising in tort, other than a commercial tort claim, but sections 554.9315 and 554.9322 apply with respect to proceeds and priorities in proceeds;

m. an assignment of a deposit account in a consumer transaction, but sections 554.9315 and 554.9322 apply with respect to proceeds and priorities in proceeds;

n. a transfer, other than a transfer pursuant to chapter 419, by this state or a governmental unit within this state in connection with a public-finance transaction or a transaction that would be a public-finance transaction but for failure to meet the criterion set forth in section 554.9102, subsection 1, paragraph *"bo"*, subparagraph (2); or

o. an assignment of a claim or right to receive any of the following:

(1) compensation for injuries or sickness as provided in 26 U.S.C. § 104(a)(1) or (2).

(2) benefits under a special needs trust as provided in 42 U.S.C. § 1396p(d)(4).

2000 Acts, ch 1149, §9, 185, 187; 2002 Acts, ch 1119, §88

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

Subsection 1, paragraph e amended

554.9110 Security interests arising under Article 2 or 13.

A security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, or section 554.13508, subsection 5, is subject to this Article. However, until the debtor obtains possession of the goods:

1. the security interest is enforceable, even if section 554.9203, subsection 2, paragraph *"c"*, has not been satisfied;

2. filing is not required to perfect the security interest;

3. the rights of the secured party after default by the debtor are governed by Article 2 or 13; and

4. the security interest has priority over a conflicting security interest created by the debtor.

2000 Acts, ch 1149, §10, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9111 Applicability of bulk transfer laws. Repealed effective January 1, 1995, by 94 Acts, ch 1121, § 17, 18.

554.9112 through 554.9116 Repealed by 2000 Acts, ch 1149, § 185, 187.

PART 2

EFFECTIVENESS OF SECURITY AGREEMENT — ATTACHMENT OF SECURITY INTEREST — RIGHTS OF PARTIES TO SECURITY AGREEMENT

A. EFFECTIVENESS AND ATTACHMENT

554.9201 General effectiveness of security agreement.

1. *General effectiveness.* Except as otherwise provided in this chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

2. *Applicable consumer laws.* A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, including as provided in chapter 537, or any other statute or regulation of this state that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer protection statute or regulation.

3. *Other applicable law controls.* In case of conflict between this Article and a rule of law, statute, or regulation described in subsection 2, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection 2 has only the effect the statute or regulation specifies.

4. *Further deference to other applicable law.* This Article does not:

a. validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection 2; or

b. extend the application of the rule of law, statute, or regulation to a transaction not other-

wise subject to it.

2000 Acts, ch 1149, §11, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9202 Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

2000 Acts, ch 1149, §12, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9203 Attachment and enforceability of security interest — proceeds — supporting obligations — formal requisites.

1. *Attachment.* A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

2. *Enforceability.* Except as otherwise provided in subsections 3 through 9, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

a. value has been given;

b. the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

c. one of the following conditions is met:

(1) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(2) the collateral is not a certificated security and is in the possession of the secured party under section 554.9313 pursuant to the debtor's security agreement;

(3) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 554.8301 pursuant to the debtor's security agreement; or

(4) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under section 554.9104, 554.9105, 554.9106, or 554.9107 pursuant to the debtor's security agreement.

3. *Other UCC provisions.* Subsection 2 is subject to section 554.4210 on the security interest of a collecting bank, section 554.5118 on the security interest of a letter-of-credit issuer or nominated person, section 554.9110 on a security interest arising under Article 2 or 13, and section 554.9206 on security interests in investment property.

4. *When person becomes bound by another person's security agreement.* A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

a. the security agreement becomes effective to create a security interest in the person's property; or

b. the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

5. *Effect of new debtor becoming bound.* If a new debtor becomes bound as debtor by a security agreement entered into by another person:

a. the agreement satisfies subsection 2, paragraph *"c"*, with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

b. another agreement is not necessary to make a security interest in the property enforceable.

6. *Proceeds and supporting obligations.* The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 554.9315 and is also attachment of a security interest in a supporting obligation for the collateral.

7. *Lien securing right to payment.* The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

8. *Security entitlement carried in securities account.* The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

9. *Commodity contracts carried in commodity account.* The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

2000 Acts, ch 1149, §13, 185, 187

Sufficiency of description, see §554.9108

Effectiveness of financing statement if new debtor bound, see §554.9508

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9204 After-acquired property — future advances.

1. *After-acquired collateral.* Except as otherwise provided in subsection 2, a security agreement may create or provide for a security interest in after-acquired collateral.

2. *When after-acquired property clause not effective.* A security interest does not attach under a term constituting an after-acquired property clause to:

a. consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after

the secured party gives value; or

b. a commercial tort claim.

3. *Future advances and other value.* A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

2000 Acts, ch 1149, §14, 185, 187

Accessions, see §554.9335

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9205 Use or disposition of collateral permissible.

1. *When security interest not invalid or fraudulent.* A security interest is not invalid or fraudulent against creditors solely because:

a. the debtor has the right or ability to:

(1) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(2) collect, compromise, enforce, or otherwise deal with collateral;

(3) accept the return of collateral or make repossessions; or

(4) use, commingle, or dispose of proceeds; or

b. the secured party fails to require the debtor to account for proceeds or replace collateral.

2. *Requirements of possession not relaxed.* This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

2000 Acts, ch 1149, §15, 185, 187

Secured parties rights on disposition of collateral and in proceeds, see §554.9315

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9206 Security interest arising in purchase or delivery of financial asset.

1. *Security interest when person buys through securities intermediary.* A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

a. the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

b. the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

2. *Security interest secures obligation to pay for financial asset.* The security interest described in subsection 1 secures the person's obligation to pay for the financial asset.

3. *Security interest in payment against delivery transaction.* A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

a. the security or other financial asset:

(1) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(2) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

b. the agreement calls for delivery against payment.

4. *Security interest secures obligation to pay for delivery.* The security interest described in subsection 3 secures the obligation to make payment for the delivery.

2000 Acts, ch 1149, §16, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

B. RIGHTS AND DUTIES

554.9207 Rights and duties of secured party having possession or control of collateral.

1. *Duty of care when secured party in possession.* Except as otherwise provided in subsection 4, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

2. *Expenses, risks, duties, and rights when secured party in possession.* Except as otherwise provided in subsection 4, if a secured party has possession of collateral:

a. reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

b. the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

c. the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

d. the secured party may use or operate the collateral:

(1) for the purpose of preserving the collateral or its value;

(2) as permitted by an order of a court having competent jurisdiction; or

(3) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

3. *Duties and rights when secured party in possession or control.* Except as otherwise provided in subsection 4, a secured party having possession of collateral or control of collateral under section 554.9104, 554.9105, 554.9106, or 554.9107:

a. may hold as additional security any pro-

ceeds, except money or funds, received from the collateral;

b. shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

c. may create a security interest in the collateral.

4. *Buyer of certain rights to payment.* If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

a. subsection 1 does not apply unless the secured party is entitled under an agreement:

(1) to charge back uncollected collateral; or

(2) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

b. subsections 2 and 3 do not apply.

2000 Acts, ch 1149, §17, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9208 Additional duties of secured party having control of collateral.

1. *Applicability of section.* This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

2. *Duties of secured party after receiving demand from debtor.* Within ten days after receiving an authenticated demand by the debtor:

a. a secured party having control of a deposit account under section 554.9104, subsection 1, paragraph *"b"*, shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

b. a secured party having control of a deposit account under section 554.9104, subsection 1, paragraph *"c"*, shall:

(1) pay the debtor the balance on deposit in the deposit account; or

(2) transfer the balance on deposit into a deposit account in the debtor's name;

c. a secured party, other than a buyer, having control of electronic chattel paper under section 554.9105 shall:

(1) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(2) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(3) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

d. a secured party having control of investment property under section 554.8106, subsection 4, paragraph *"b"*, or section 554.9106, subsection 2, shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

e. a secured party having control of a letter-of-credit right under section 554.9107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

2000 Acts, ch 1149, §18, 185, 187

Remedies for noncompliance, see §554.9625

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9209 Duties of secured party if account debtor has been notified of assignment.

1. *Applicability of section.* Except as otherwise provided in subsection 3, this section applies if:

a. there is no outstanding secured obligation; and

b. the secured party is not committed to make advances, incur obligations, or otherwise give value.

2. *Duties of secured party after receiving demand from debtor.* Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 554.9406, subsection 1, an authenticated record that releases the account debtor from any further obligation to the secured party.

3. *Inapplicability to sales.* This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

2000 Acts, ch 1149, §19, 187

Remedies for noncompliance, see §554.9625

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9210 Request for accounting — request regarding list of collateral or statement of account.

1. *Definitions.* In this section:

a. *"Request"* means a record of a type described in paragraph *"b"*, *"c"*, or *"d"*.

b. *"Request for an accounting"* means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

c. *"Request regarding a list of collateral"* means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

d. *"Request regarding a statement of account"* means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

2. *Duty to respond to requests.* Subject to subsections 3, 4, 5, and 6, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

a. in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

b. in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

3. *Request regarding list of collateral — statement concerning type of collateral.* A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

4. *Request regarding list of collateral — no interest claimed.* A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

a. disclaiming any interest in the collateral; and

b. if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

5. *Request for accounting or regarding statement of account — no interest in obligation claimed.* A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

a. disclaiming any interest in the obligations; and

b. if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

6. *Charges for responses.* A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

2000 Acts, ch 1149, §20, 187

Remedies for noncompliance, see §554.9625

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

PART 3

PERFECTION AND PRIORITY

A. LAW GOVERNING PERFECTION AND PRIORITY

554.9301 Law governing perfection and priority of security interests.

Except as otherwise provided in sections 554.9303, 554.9304, 554.9305, and 554.9306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

1. Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

2. While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

3. Except as otherwise provided in subsection 4, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

a. perfection of a security interest in the goods by filing a fixture filing;

b. perfection of a security interest in timber to be cut; and

c. the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

4. The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

2000 Acts, ch 1149, §21, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed

effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9302 Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

2000 Acts, ch 1149, §22, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9303 Law governing perfection and priority of security interests in goods covered by a certificate of title.

1. *Applicability of section.* This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

2. *When goods covered by certificate of title.* Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

3. *Applicable law.* The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

2000 Acts, ch 1149, §23, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9304 Law governing perfection and priority of security interests in deposit accounts.

1. *Law of bank's jurisdiction governs.* The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

2. *Bank's jurisdiction.* The following rules determine a bank's jurisdiction for purposes of this part:

a. If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this Article, or this chapter, that jurisdiction is the bank's jurisdiction.

b. If paragraph *"a"* does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

c. If neither paragraph *"a"* nor paragraph *"b"* applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

d. If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

e. If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

2000 Acts, ch 1149, §24, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9305 Law governing perfection and priority of security interests in investment property.

1. *Governing law — general rules.* Except as otherwise provided in subsection 3, the following rules apply:

a. While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

b. The local law of the issuer's jurisdiction as specified in section 554.8110, subsection 4, governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

c. The local law of the securities intermediary's jurisdiction as specified in section 554.8110, subsection 5, governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

d. The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

2. *Commodity intermediary's jurisdiction.* The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

a. If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this Article, or this chapter, that jurisdiction is the commodity intermediary's jurisdiction.

b. If paragraph *"a"* does not apply and an

agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

c. If neither paragraph *"a"* nor paragraph *"b"* applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

d. If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

e. If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

3. *When perfection governed by law of jurisdiction where debtor located.* The local law of the jurisdiction in which the debtor is located governs:

a. perfection of a security interest in investment property by filing;

b. automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

c. automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

2000 Acts, ch 1149, §25, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9306 Law governing perfection and priority of security interests in letter-of-credit rights.

1. *Governing law — issuer's or nominated person's jurisdiction.* Subject to subsection 3, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

2. *Issuer's or nominated person's jurisdiction.* For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 554.5116.

3. *When section not applicable.* This section does not apply to a security interest that is perfected only under section 554.9308, subsection 4.

2000 Acts, ch 1149, §26, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9307 Location of debtor.

1. *Place of business.* In this section, *"place of business"* means a place where a debtor conducts its affairs.

2. *Debtor's location — general rules.* Except as otherwise provided in this section, the following rules determine a debtor's location:

a. A debtor who is an individual is located at the individual's principal residence.

b. A debtor that is an organization and has only one place of business is located at its place of business.

c. A debtor that is an organization and has more than one place of business is located at its chief executive office.

3. *Limitation of applicability of subsection 2.* Subsection 2 applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection 2 does not apply, the debtor is located in the District of Columbia.

4. *Continuation of location — cessation of existence, etc.* A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections 2 and 3.

5. *Location of registered organization organized under state law.* A registered organization that is organized under the law of a state is located in that state.

6. *Location of registered organization organized under federal law — bank branches and agencies.* Except as otherwise provided in subsection 9, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

a. in the state that the law of the United States designates, if the law designates a state of location;

b. in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

c. in the District of Columbia, if neither paragraph *"a"* nor paragraph *"b"* applies.

7. *Continuation of location — change in status of registered organization.* A registered organization continues to be located in the jurisdiction specified by subsection 5 or 6 notwithstanding:

a. the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

b. the dissolution, winding up, or cancellation

of the existence of the registered organization.

8. *Location of United States.* The United States is located in the District of Columbia.

9. *Location of foreign bank branch or agency if licensed in only one state.* A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

10. *Location of foreign air carrier.* A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

11. *Section applies only to this part.* This section applies only for purposes of this part.

2000 Acts, ch 1149, §27, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

B. PERFECTION

554.9308 When security interest or agricultural lien is perfected — continuity of perfection.

1. *Perfection of security interest.* Except as otherwise provided in this section and section 554.9309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 554.9310, 554.9311, 554.9312, 554.9313, 554.9314, 554.9315, and 554.9316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

2. *Perfection of agricultural lien.* An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 554.9310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

3. *Continuous perfection — perfection by different methods.* A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

4. *Supporting obligation.* Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

5. *Lien securing right to payment.* Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

6. *Security entitlement carried in securities account.* Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

7. *Commodity contract carried in commodity account.* Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

2000 Acts, ch 1149, §28, 185, 187

Effectiveness, attachment, and enforceability of security interests, see §554.9201 – 554.9206

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9309 Security interest perfected upon attachment.

The following security interests are perfected when they attach:

1. a purchase-money security interest in consumer goods, except as otherwise provided in section 554.9311, subsection 2, with respect to consumer goods that are subject to a statute or treaty described in section 554.9311, subsection 1;

2. an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

3. a sale of a payment intangible;

4. a sale of a promissory note;

5. a security interest created by the assignment of a health care insurance receivable to the provider of the health care goods or services;

6. a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, or section 554.13508, subsection 5, until the debtor obtains possession of the collateral;

7. a security interest of a collecting bank arising under section 554.4210;

8. a security interest of an issuer or nominated person arising under section 554.5118;

9. a security interest arising in the delivery of a financial asset under section 554.9206, subsection 3;

10. a security interest in investment property created by a broker or securities intermediary;

11. a security interest in a commodity contract or a commodity account created by a commodity intermediary;

12. an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

13. a security interest created by an assignment of a beneficial interest in a decedent's estate.

2000 Acts, ch 1149, §29, 185, 187

Attachment and enforceability of security interests, see §554.9203 – 554.9206

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9310 When filing required to perfect security interest or agricultural lien — security interests and agricultural liens to which filing provisions do not apply.

1. *General rule — perfection by filing.* Except as otherwise provided in subsection 2 and section 554.9312, subsection 2, a financing statement must be filed to perfect all security interests and agricultural liens.

2. *Exceptions — filing not necessary.* The filing of a financing statement is not necessary to perfect a security interest:

a. that is perfected under section 554.9308, subsection 4, 5, 6, or 7;

b. that is perfected under section 554.9309 when it attaches;

c. in property subject to a statute, regulation, or treaty described in section 554.9311, subsection 1;

d. in goods in possession of a bailee which is perfected under section 554.9312, subsection 4, paragraph *"a"* or *"b"*;

e. in certificated securities, documents, goods, or instruments which is perfected without filing or possession under section 554.9312, subsection 5, 6, or 7;

f. in collateral in the secured party's possession under section 554.9313;

g. in a certificated security which is perfected by delivery of the security certificate to the secured party under section 554.9313;

h. in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under section 554.9314;

i. in proceeds which is perfected under section 554.9315; or

j. that is perfected under section 554.9316.

3. *Assignment of perfected security interest.* If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

2000 Acts, ch 1149, §30, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

1. *Security interest subject to other law.* Except as otherwise provided in subsection 4, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

a. a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 554.9310, subsection 1;

b. any certificate-of-title statute, including as provided in chapter 321, covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection; or

c. a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

2. *Compliance with other law.* Compliance with the requirements of a statute, regulation, or treaty described in subsection 1 for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection 4 and sections 554.9313 and 554.9316, subsections 4 and 5, for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection 1 may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

3. *Duration and renewal of perfection.* Except as otherwise provided in subsection 4 and section 554.9316, subsections 4 and 5, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection 1 are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

4. *Inapplicability to certain inventory.* During any period in which collateral subject to a statute specified in subsection 1, paragraph *"b"* is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

2000 Acts, ch 1149, §31, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money — perfection by permissive filing — temporary perfection without filing or transfer of possession.

1. *Perfection by filing permitted.* A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

2. *Control or possession of certain collateral.* Except as otherwise provided in section

554.9315, subsections 3 and 4, for proceeds:

a. a security interest in a deposit account may be perfected only by control under section 554.9314;

b. and except as otherwise provided in section 554.9308, subsection 4, a security interest in a letter-of-credit right may be perfected only by control under section 554.9314; and

c. a security interest in money may be perfected only by the secured party's taking possession under section 554.9313.

3. *Goods covered by negotiable document.* While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

a. a security interest in the goods may be perfected by perfecting a security interest in the document; and

b. a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

4. *Goods covered by nonnegotiable document.* While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

a. issuance of a document in the name of the secured party;

b. the bailee's receipt of notification of the secured party's interest; or

c. filing as to the goods.

5. *Temporary perfection — new value.* A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

6. *Temporary perfection — goods or documents made available to debtor.* A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

a. ultimate sale or exchange; or

b. loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

7. *Temporary perfection — delivery of security certificate or instrument to debtor.* A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

a. ultimate sale or exchange; or

b. presentation, collection, enforcement, renewal, or registration of transfer.

8. *Expiration of temporary perfection.* After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection depends upon compliance with this Article.

2000 Acts, ch 1149, §32, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9313 When possession by or delivery to secured party perfects security interest without filing.

1. *Perfection by possession or delivery.* Except as otherwise provided in subsection 2, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 554.8301.

2. *Goods covered by certificate of title.* With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 554.9316, subsection 4.

3. *Collateral in possession of person other than debtor.* With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

a. the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

b. the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

4. *Time of perfection by possession — continuation of perfection.* If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

5. *Time of perfection by delivery — continuation of perfection.* A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 554.8301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

6. *Acknowledgment not required.* A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

7. *Effectiveness of acknowledgment — no duties or confirmation.* If a person acknowledges that it holds possession for the secured party's benefit:

a. the acknowledgment is effective under subsection 3 or section 554.8301, subsection 1, even if the acknowledgment violates the rights of a debtor; and

b. unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

8. *Secured party's delivery to person other than debtor.* A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

a. to hold possession of the collateral for the secured party's benefit; or

b. to redeliver the collateral to the secured party.

9. *Effect of delivery under subsection 8 — no duties or confirmation.* A secured party does not relinquish possession, even if a delivery under subsection 8 violates the rights of a debtor. A person to which collateral is delivered under subsection 8 does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

2000 Acts, ch 1149, §33, 185, 187

Rights and duties of secured party having possession or control of collateral, §554.9207, 554.9208

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9314 Perfection by control.

1. *Perfection by control.* A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under section 554.9104, 554.9105, 554.9106, or 554.9107.

2. *Specified collateral — time of perfection by control — continuation of perfection.* A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under section 554.9104, 554.9105, or 554.9107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

3. *Investment property — time of perfection by control — continuation of perfection.* A security interest in investment property is perfected by control under section 554.9106 from the time the secured party obtains control and remains perfected by control until:

a. the secured party does not have control; and

b. one of the following occurs:

(1) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(2) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(3) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

2000 Acts, ch 1149, §34, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9315 Secured party's rights on disposition of collateral and in proceeds.

1. *Disposition of collateral — continuation of security interest or agricultural lien — proceeds.* Except as otherwise provided in this Article and in section 554.2403, subsection 2:

a. a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

b. a security interest attaches to any identifiable proceeds of collateral.

2. *When commingled proceeds identifiable.* Proceeds that are commingled with other property are identifiable proceeds:

a. if the proceeds are goods, to the extent provided by section 554.9336; and

b. if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

3. *Perfection of security interest in proceeds.* A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

4. *Continuation of perfection.* A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

a. the following conditions are satisfied:

(1) a filed financing statement covers the original collateral;

(2) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(3) the proceeds are not acquired with cash proceeds;

b. the proceeds are identifiable cash proceeds; or

c. the security interest in the proceeds is perfected other than under subsection 3 when the security interest attaches to the proceeds or within twenty days thereafter.

5. *When perfected security interest in proceeds becomes unperfected.* If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection 4, paragraph *"a"*, becomes unperfected at the later of:

a. when the effectiveness of the filed financing statement lapses under section 554.9515 or is terminated under section 554.9513; or

b. the twenty-first day after the security interest attaches to the proceeds.

2000 Acts, ch 1149, §35, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9316 Continued perfection of security interest following change in governing law.

1. *General rule — effect on perfection of change in governing law.* A security interest perfected pursuant to the law of the jurisdiction designated in section 554.9301, subsection 1, or section 554.9305, subsection 3, remains perfected until the earliest of:

a. the time perfection would have ceased under the law of that jurisdiction;

b. the expiration of four months after a change of the debtor's location to another jurisdiction; or

c. the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

2. *Security interest perfected or unperfected under law of new jurisdiction.* If a security interest described in subsection 1 becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

3. *Possessory security interest in collateral moved to new jurisdiction.* A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

a. the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

b. thereafter the collateral is brought into another jurisdiction; and

c. upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

4. *Goods covered by certificate of title from this state.* Except as otherwise provided in subsection 5, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

5. *When subsection 4 security interest becomes unperfected against purchasers.* A security interest described in subsection 4 becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 554.9311, subsection 2, or section 554.9313 are not satisfied before the earlier of:

a. the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

b. the expiration of four months after the goods had become so covered.

6. *Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.* A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

a. the time the security interest would have become unperfected under the law of that jurisdiction; or

b. the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

7. *Subsection 6 security interest perfected or unperfected under law of new jurisdiction.* If a security interest described in subsection 6 becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

2000 Acts, ch 1149, §36, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

C. PRIORITY

554.9317 Interests that take priority over or take free of security interest or agricultural lien.

1. *Conflicting security interests and rights of lien creditors.* A security interest or agricultural lien is subordinate to the rights of:

a. a person entitled to priority under section

554.9322; and

b. except as otherwise provided in subsection 5, a person that becomes a lien creditor before the earlier of the time:

(1) The security interest or agricultural lien is perfected; or

(2) One of the conditions specified in section 554.9203, subsection 2, paragraph *"c"* is met and a financing statement covering the collateral is filed.

2. *Buyers that receive delivery.* Except as otherwise provided in subsection 5, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

3. *Lessees that receive delivery.* Except as otherwise provided in subsection 5, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

4. *Licensees and buyers of certain collateral.* A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

5. *Purchase-money security interest.* Except as otherwise provided in sections 554.9320 and 554.9321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

2000 Acts, ch 1149, §37, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9318 No interest retained in right to payment that is sold — rights and title of seller of account or chattel paper with respect to creditors and purchasers.

1. *Seller retains no interest.* A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

2. *Deemed rights of debtor if buyer's security interest unperfected.* For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

2000 Acts, ch 1149, §38, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9319 Rights and title of consignee with respect to creditors and purchasers.

1. *Consignee has consignor's rights.* Except as otherwise provided in subsection 2, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

2. *Applicability of other law.* For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

2000 Acts, ch 1149, §39, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9320 Buyer of goods.

1. *Buyer in ordinary course of business.* Except as otherwise provided in subsection 5, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

2. *Buyer of consumer goods.* Except as otherwise provided in subsection 5, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

a. without knowledge of the security interest;

b. for value;

c. primarily for the buyer's personal, family, or household purposes; and

d. before the filing of a financing statement covering the goods.

3. *Effectiveness of filing for subsection 2.* To the extent that it affects the priority of a security interest over a buyer of goods under subsection 2, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 554.9316, subsections 1 and 2.

4. *Buyer in ordinary course of business at wellhead or minehead.* A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

5. *Possessory security interest not affected.* Subsections 1 and 2 do not affect a securi-

ty interest in goods in the possession of the secured party under section 554.9313.

2000 Acts, ch 1149, §40, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9321 Licensee of general intangible and lessee of goods in ordinary course of business.

1. *Licensee in ordinary course of business.* In this section, *"licensee in ordinary course of business"* means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

2. *Rights of licensee in ordinary course of business.* A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

3. *Rights of lessee in ordinary course of business.* A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

2000 Acts, ch 1149, §41, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9322 Priorities among conflicting security interests in and agricultural liens on same collateral.

1. *General priority rules.* Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

a. Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

b. A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

c. The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

2. *Time of perfection — proceeds and supporting obligations.* For the purposes of subsection 1, paragraph *"a"*:

a. the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

b. the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

3. *Special priority rules — proceeds and supporting obligations.* Except as otherwise provided in subsection 6, a security interest in collateral which qualifies for priority over a conflicting security interest under section 554.9327, 554.9328, 554.9329, 554.9330, or 554.9331 also has priority over a conflicting security interest in:

a. any supporting obligation for the collateral; and

b. proceeds of the collateral if:

(1) the security interest in proceeds is perfected;

(2) the proceeds are cash proceeds or of the same type as the collateral; and

(3) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

4. *First-to-file priority rule for certain collateral.* Subject to subsection 5 and except as otherwise provided in subsection 6, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

5. *Applicability of subsection 4.* Subsection 4 applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

6. *Limitations on subsections 1 through 5.* Subsections 1 through 5 are subject to:

a. subsection 7 and the other provisions of this part;

b. section 554.4210 with respect to a security interest of a collecting bank;

c. section 554.5118 with respect to a security interest of an issuer or nominated person; and

d. section 554.9110 with respect to a security interest arising under Article 2 or 13.

7. *Priority under agricultural lien statute.* A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

2000 Acts, ch 1149, §42, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9323 Future advances.

1. *When priority based on time of advance.* Except as otherwise provided in subsection 3, for purposes of determining the priority of

a perfected security interest under section 554.9322, subsection 1, paragraph *"a"*, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

a. is made while the security interest is perfected only:

(1) under section 554.9309 when it attaches; or

(2) temporarily under section 554.9312, subsection 5, 6, or 7; and

b. is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 554.9309 or 554.9312, subsection 5, 6, or 7.

2. *Lien creditor.* Except as otherwise provided in subsection 3, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

a. without knowledge of the lien; or

b. pursuant to a commitment entered into without knowledge of the lien.

3. *Buyer of receivables.* Subsections 1 and 2 do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

4. *Buyer of goods.* Except as otherwise provided in subsection 5, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

a. the time the secured party acquires knowledge of the buyer's purchase; or

b. forty-five days after the purchase.

5. *Advances made pursuant to commitment — priority of buyer of goods.* Subsection 4 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

6. *Lessee of goods.* Except as otherwise provided in subsection 7, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

a. the time the secured party acquires knowledge of the lease; or

b. forty-five days after the lease contract becomes enforceable.

7. *Advances made pursuant to commitment — priority of lessee of goods.* Subsection 6 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

2000 Acts, ch 1149, §43, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9324 Priority of purchase-money security interests.

1. *General rule — purchase-money priority.* Except as otherwise provided in subsection 7, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 554.9327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

2. *Inventory purchase-money priority.* Subject to subsection 3 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 554.9330, and, except as otherwise provided in section 554.9327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

a. the purchase-money security interest is perfected when the debtor receives possession of the inventory;

b. the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

c. the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

d. the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

3. *Holders of conflicting inventory security interests to be notified.* Subsection 2, paragraphs *"b"* through *"d"*, apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

a. if the purchase-money security interest is perfected by filing, before the date of the filing; or

b. if the purchase-money security interest is temporarily perfected without filing or possession under section 554.9312, subsection 6, before the beginning of the twenty-day period thereunder.

4. *Livestock purchase-money priority.* Subject to subsection 5 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 554.9327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured

states also has priority, if:

a. the purchase-money security interest is perfected when the debtor receives possession of the livestock;

b. the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

c. the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

d. the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

5. *Holders of conflicting livestock security interests to be notified.* Subsection 4, paragraphs *"b"* through *"d"*, apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

a. if the purchase-money security interest is perfected by filing, before the date of the filing; or

b. if the purchase-money security interest is temporarily perfected without filing or possession under section 554.9312, subsection 6, before the beginning of the twenty-day period thereunder.

6. *Software purchase-money priority.* Except as otherwise provided in subsection 7, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 554.9327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

7. *Conflicting purchase-money security interests.* If more than one security interest qualifies for priority in the same collateral under subsection 1, 2, 4, or 6:

a. a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

b. in all other cases, section 554.9322, subsection 1, applies to the qualifying security interests.

2000 Acts, ch 1149, §44, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9325 Priority of security interests in transferred collateral.

1. *Subordination of security interest in transferred collateral.* Except as otherwise provided in subsection 2, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

a. the debtor acquired the collateral subject to the security interest created by the other person;

b. the security interest created by the other person was perfected when the debtor acquired the collateral; and

c. there is no period thereafter when the security interest is unperfected.

2. *Limitation of subsection 1 subordination.* Subsection 1 subordinates a security interest only if the security interest:

a. otherwise would have priority solely under section 554.9322, subsection 1, or section 554.9324; or

b. arose solely under section 554.2711, subsection 3, or section 554.13508, subsection 5.

2000 Acts, ch 1149, §45, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9326 Priority of security interests created by new debtor.

1. *Subordination of security interest created by new debtor.* Subject to subsection 2, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 554.9508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 554.9508.

2. *Priority under other provisions — multiple original debtors.* The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under section 554.9508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

2000 Acts, ch 1149, §46, 187

"Original debtor" and "new debtor" defined; §554.9102

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9327 Priority of security interests in deposit account.

The following rules govern priority among conflicting security interests in the same deposit account:

1. A security interest held by a secured party having control of the deposit account under section 554.9104 has priority over a conflicting security interest held by a secured party that does not have control.

2. Except as otherwise provided in subsections 3 and 4, security interests perfected by control under section 554.9314 rank according to priority in time of obtaining control.

3. Except as otherwise provided in subsection 4, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another

secured party.

4. A security interest perfected by control under section 554.9104, subsection 1, paragraph *"c"*, has priority over a security interest held by the bank with which the deposit account is maintained.

2000 Acts, ch 1149, §47, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9328 Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

1. A security interest held by a secured party having control of investment property under section 554.9106 has priority over a security interest held by a secured party that does not have control of the investment property.

2. Except as otherwise provided in subsections 3 and 4, conflicting security interests held by secured parties each of which has control under section 554.9106 rank according to priority in time of:

a. if the collateral is a security, obtaining control;

b. if the collateral is a security entitlement carried in a securities account and:

(1) if the secured party obtained control under section 554.8106, subsection 4, paragraph *"a"*, the secured party's becoming the person for which the securities account is maintained;

(2) if the secured party obtained control under section 554.8106, subsection 4, paragraph *"b"*, the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(3) if the secured party obtained control through another person under section 554.8106, subsection 4, paragraph *"c"*, the time on which priority would be based under this subsection if the other person were the secured party; or

c. if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 554.9106, subsection 2, paragraph *"b"*, with respect to commodity contracts carried or to be carried with the commodity intermediary.

3. A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

4. A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

5. A security interest in a certificated security in registered form which is perfected by taking delivery under section 554.9313, subsection 1, and not by control under section 554.9314 has priority over a conflicting security interest perfected by a method other than control.

6. Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under section 554.9106 rank equally.

7. In all other cases, priority among conflicting security interests in investment property is governed by sections 554.9322 and 554.9323.

2000 Acts, ch 1149, §48, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9329 Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

1. A security interest held by a secured party having control of the letter-of-credit right under section 554.9107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

2. Security interests perfected by control under section 554.9314 rank according to priority in time of obtaining control.

2000 Acts, ch 1149, §49, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9330 Priority of purchaser of chattel paper or instrument.

1. *Purchaser's priority — security interest claimed merely as proceeds.* A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

a. in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 554.9105; and

b. the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

2. *Purchaser's priority — other security interests.* A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 554.9105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

3. *Chattel paper purchaser's priority in proceeds.* Except as otherwise provided in section 554.9327, a purchaser having priority in chattel paper under subsection 1 or 2 also has priority in proceeds of the chattel paper to the extent that:

a. section 554.9322 provides for priority in the

proceeds; or

b. the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

4. *Instrument purchaser's priority.* Except as otherwise provided in section 554.9331, subsection 1, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

5. *Holder of purchase-money security interest gives new value.* For purposes of subsections 1 and 2, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

6. *Indication of assignment gives knowledge.* For purposes of subsections 2 and 4, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

2000 Acts, ch 1149, §50, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9331 Priority of rights of purchasers of instruments, documents, and securities under other articles — priority of interests in financial assets and security entitlements under Article 8.

1. *Rights under Articles 3, 7, and 8 not limited.* This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

2. *Protection under Article 8.* This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

3. *Filing not notice.* Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections 1 and 2.

2000 Acts, ch 1149, §51, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9332 Transfer of money — transfer of funds from deposit account.

1. *Transferee of money.* A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

2. *Transferee of funds from deposit account.* A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

2000 Acts, ch 1149, §52, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9333 Priority of certain liens arising by operation of law.

1. *Possessory lien.* In this section, *"possessory lien"* means an interest, other than a security interest or an agricultural lien:

a. which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

b. which is created by statute or rule of law in favor of the person; and

c. whose effectiveness depends on the person's possession of the goods.

2. *Priority of possessory lien.* A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

2000 Acts, ch 1149, §53, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9334 Priority of security interests in fixtures and crops.

1. *Security interest in fixtures under this Article.* A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

2. *Security interest in fixtures under real-property law.* This Article does not prevent creation of an encumbrance upon fixtures under real property law.

3. *General rule — subordination of security interest in fixtures.* In cases not governed by subsections 4 through 8, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

4. *Fixtures purchase-money priority.* Except as otherwise provided in subsection 8, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

a. the security interest is a purchase-money security interest;

b. the interest of the encumbrancer or owner arises before the goods become fixtures; and

c. the security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

5. *Priority of security interest in fixtures over interests in real property.* A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

a. the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(1) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(2) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

b. before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

(1) factory or office machines;

(2) equipment that is not primarily used or leased for use in the operation of the real property; or

(3) replacements of domestic appliances that are consumer goods;

c. the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article; or

d. the security interest is:

(1) created in a manufactured home in a manufactured-home transaction; and

(2) perfected pursuant to a statute described in section 554.9311, subsection 1, paragraph *"b"*.

6. *Priority based on consent, disclaimer, or right to remove.* A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

a. the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

b. the debtor has a right to remove the goods as against the encumbrancer or owner.

7. *Continuation of subsection 6, paragraph "b", priority.* The priority of the security interest under subsection 6, paragraph *"b"*, continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

8. *Priority of construction mortgage.* A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections 5 and 6, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

9. *Priority of security interest in crops.* Except as provided in subsection 10, a perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

10. *Agricultural liens prevail.* The provisions of this Article regarding agricultural liens prevail over any inconsistent provisions of subsection 9.

2000 Acts, ch 1149, §54, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9335 Accessions.

1. *Creation of security interest in accession.* A security interest may be created in an accession and continues in collateral that becomes an accession.

2. *Perfection of security interest.* If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

3. *Priority of security interest.* Except as otherwise provided in subsection 4, the other provisions of this part determine the priority of a security interest in an accession.

4. *Compliance with certificate-of-title statute.* A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 554.9311, subsection 2.

5. *Removal of accession after default.* After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

6. *Reimbursement following removal.* A secured party that removes an accession from other goods under subsection 5 shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives

adequate assurance for the performance of the obligation to reimburse.

2000 Acts, ch 1149, §55, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9336 Commingled goods.

1. *Commingled goods.* In this section, *"commingled goods"* means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

2. *No security interest in commingled goods as such.* A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

3. *Attachment of security interest to product or mass.* If collateral becomes commingled goods, a security interest attaches to the product or mass.

4. *Perfection of security interest.* If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection 3 is perfected.

5. *Priority of security interest.* Except as otherwise provided in subsection 6, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection 3.

6. *Conflicting security interests in product or mass.* If more than one security interest attaches to the product or mass under subsection 3, the following rules determine priority:

a. A security interest that is perfected under subsection 4 has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

b. If more than one security interest is perfected under subsection 4, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

2000 Acts, ch 1149, §56, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9337 Priority of security interests in goods covered by certificate of title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

1. a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

2. the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 554.9311, subsection 2, after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

2000 Acts, ch 1149, §57, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 554.9516, subsection 2, paragraph *"e"*, which is incorrect at the time the financing statement is filed:

1. the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

2. a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

2000 Acts, ch 1149, §58, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9339 Priority subject to subordination.

This Article does not preclude subordination by agreement by a person entitled to priority.

2000 Acts, ch 1149, §59, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

D. RIGHTS OF BANK

554.9340 Effectiveness of right of recoupment or setoff against deposit account.

1. *Exercise of recoupment or setoff.* Except as otherwise provided in subsection 3, a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

2. *Recoupment or setoff not affected by security interest.* Except as otherwise provided in subsection 3, the application of this Article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

3. *When setoff ineffective.* The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a securi-

ty interest in the deposit account which is perfected by control under section 554.9104, subsection 1, paragraph *"c"*, if the setoff is based on a claim against the debtor.

2000 Acts, ch 1149, §60, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9341 Bank's rights and duties with respect to deposit account.

Except as otherwise provided in section 554.9340, subsection 3, and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

1. the creation, attachment, or perfection of a security interest in the deposit account;

2. the bank's knowledge of the security interest; or

3. the bank's receipt of instructions from the secured party.

2000 Acts, ch 1149, §61, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9342 Bank's right to refuse to enter into or disclose existence of control agreement.

This Article does not require a bank to enter into an agreement of the kind described in section 554.9104, subsection 1, paragraph *"b"*, even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

2000 Acts, ch 1149, §62, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

PART 4

RIGHTS OF THIRD PARTIES

554.9401 Alienability of debtor's rights.

1. *Other law governs alienability — exceptions.* Except as otherwise provided in subsection 2 and sections 554.9406, 554.9407, 554.9408, and 554.9409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

2. *Agreement does not prevent transfer.* An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

2000 Acts, ch 1149, §63, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9402 Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

2000 Acts, ch 1149, §64, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9403 Agreement not to assert defenses against assignee.

1. *Value.* In this section, *"value"* has the meaning provided in section 554.3303, subsection 1.

2. *Agreement not to assert claim or defense.* Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

a. for value;

b. in good faith;

c. without notice of a claim of a property or possessory right to the property assigned; and

d. without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 554.3305, subsection 1.

3. *When subsection 2 not applicable.* Subsection 2 does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 554.3305, subsection 2.

4. *Omission of required statement in consumer transaction.* In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

a. the record has the same effect as if the record included such a statement; and

b. the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

5. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

6. *Other law not displaced.* Except as otherwise provided in subsection 4, this section does not displace law other than this Article which gives effect to an agreement by an account debtor not to

assert a claim or defense against an assignee.

2000 Acts, ch 1149, §65, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9404 Rights acquired by assignee — claims and defenses against assignee.

1. *Assignee's rights subject to terms, claims, and defenses — exceptions.* Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections 2 through 5, the rights of an assignee are subject to:

a. all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

b. any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

2. *Account debtor's claim reduces amount owed to assignee.* Subject to subsection 3 and except as otherwise provided in subsection 4, the claim of an account debtor against an assignor may be asserted against an assignee under subsection 1 only to reduce the amount the account debtor owes.

3. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

4. *Omission of required statement in consumer transaction.* In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

5. *Inapplicability to health care insurance receivable.* This section does not apply to an assignment of a health care insurance receivable.

2000 Acts, ch 1149, §66, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9405 Modification of assigned contract.

1. *Effect of modification on assignee.* A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections 2 through 4.

2. *Applicability of subsection 1.* Subsection 1 applies to the extent that:

a. the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

b. the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 554.9406, subsection 1.

3. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

4. *Inapplicability to health care insurance receivable.* This section does not apply to an assignment of a health care insurance receivable.

2000 Acts, ch 1149, §67, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9406 Discharge of account debtor — notification of assignment — identification and proof of assignment — restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

1. *Discharge of account debtor — effect of notification.* Subject to subsections 2 through 9, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

2. *When notification ineffective.* Subject to subsection 8, notification is ineffective under subsection 1:

a. if it does not reasonably identify the rights assigned;

b. to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

c. at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(1) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(2) a portion has been assigned to another assignee; or

(3) the account debtor knows that the assignment to that assignee is limited.

3. *Proof of assignment.* Subject to subsection 8, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection 1.

4. *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection 5 and sections 554.9407 and 554.13303, and subject to subsection 8, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

a. prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

b. provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

5. *Inapplicability of subsection 4 to certain sales.* Subsection 4 does not apply to the sale of a payment intangible or promissory note.

6. *Legal restrictions on assignment generally ineffective.* Except as otherwise provided in sections 554.9407 and 554.13303 and subject to subsections 8 and 9, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

a. prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

b. provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

7. *Subsection 2, paragraph "c", not waivable.* Subject to subsection 8, an account debtor may not waive or vary its option under subsection 2, paragraph *"c"*.

8. *Rule for individual under other law.* This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

9. *Inapplicability to health care insurance receivable.* This section does not apply to an assignment of a health care insurance receivable.

10. *Section prevails over specified inconsistent law.* This section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

2000 Acts, ch 1149, §68, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

1. *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection 2, a term in a lease agreement is ineffective to the extent that it:

a. prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

b. provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

2. *Effectiveness of certain terms.* Except as otherwise provided in section 554.13303, subsection 7, a term described in subsection 1, paragraph *"b"*, is effective to the extent that there is:

a. a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

b. a delegation of a material performance of either party to the lease contract in violation of the term.

3. *Security interest not material impairment.* The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 554.13303, subsection 3, unless, and then

only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

2000 Acts, ch 1149, §69, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9408 Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective.

1. *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection 2, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:

a. would impair the creation, attachment, or perfection of a security interest; or

b. provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

2. *Applicability of subsection 1 to sales of certain rights to payment.* Subsection 1 applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

3. *Legal restrictions on assignment generally ineffective.* A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

a. would impair the creation, attachment, or perfection of a security interest; or

b. provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

4. *Limitation on ineffectiveness under subsections 1 and 3.* To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection 3 would be effective under law other than this Article but is ineffective under subsection 1 or 3, the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

a. is not enforceable against the person obligated on the promissory note or the account debtor;

b. does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

c. does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

d. does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;

e. does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

f. does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

5. *Section prevails over specified inconsistent law.* This section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section, and states that the provision prevails over this section.

2000 Acts, ch 1149, §70, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9409 Restrictions on assignment of letter-of-credit rights ineffective.

1. *Term or law restricting assignment generally ineffective.* A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

a. would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

b. provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

2. *Limitation on ineffectiveness under subsection 1.* To the extent that a term in a letter of credit is ineffective under subsection 1 but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

a. is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

b. imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

c. does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

2000 Acts, ch 1149, §71, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

PART 5

FILING

A. FILING OFFICE — CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

554.9501 Filing office.

1. *Filing offices.* Except as otherwise provided in subsection 2, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

a. the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(1) the collateral is as-extracted collateral or timber to be cut; or

(2) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

b. the office of the secretary of state in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

2. *Filing office for transmitting utilities.* The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

2000 Acts, ch 1149, §72, 185, 187

What constitutes filing, §554.9516

Filing office duties, §554.9519 – 554.9527

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9502 Contents of financing statement — record of mortgage as financing statement — time of filing financing statement.

1. *Sufficiency of financing statement.* Subject to subsection 2, a financing statement is sufficient only if it:

a. provides the name of the debtor;

b. provides the name of the secured party or a representative of the secured party; and

c. indicates the collateral covered by the financing statement.

2. *Real-property-related financing statements.* Except as otherwise provided in section 554.9501, subsection 2, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection 1 and also:

a. indicate that it covers this type of collateral;

b. indicate that it is to be filed for record in the real property records;

c. provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

d. if the debtor does not have an interest of record in the real property, provide the name of a record owner.

3. *Record of mortgage as financing statement.* A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

a. the record indicates the goods or accounts that it covers;

b. the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

c. the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

d. the record is duly recorded.

4. *Filing before security agreement or attachment.* A financing statement may be filed before a security agreement is made or a security interest

otherwise attaches.

2000 Acts, ch 1149, §73, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9503 Name of debtor and secured party.

1. *Sufficiency of debtor's name.* A financing statement sufficiently provides the name of the debtor:

a. if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

b. if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

c. if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(1) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(2) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

d. in other cases:

(1) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(2) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

2. *Additional debtor-related information.* A financing statement that provides the name of the debtor in accordance with subsection 1 is not rendered ineffective by the absence of:

a. a trade name or other name of the debtor; or

b. unless required under subsection 1, paragraph *"d"*, subparagraph (2), names of partners, members, associates, or other persons comprising the debtor.

3. *Debtor's trade name insufficient.* A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

4. *Representative capacity.* Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

5. *Multiple debtors and secured parties.* A financing statement may provide the name of more than one debtor and the name of more than one secured party.

2000 Acts, ch 1149, §74, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9504 Indication of collateral.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

1. a description of the collateral pursuant to section 554.9108; or

2. an indication that the financing statement covers all assets or all personal property.

2000 Acts, ch 1149, §75, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

1. *Use of terms other than debtor and secured party.* A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 554.9311, subsection 1, using the terms *"consignor"*, *"consignee"*, *"lessor"*, *"lessee"*, *"bailor"*, *"bailee"*, *"licensor"*, *"licensee"*, *"owner"*, *"registered owner"*, *"buyer"*, *"seller"*, or words of similar import, instead of the terms *"secured party"* and *"debtor"*.

2. *Effect of financing statement under subsection 1.* This part applies to the filing of a financing statement under subsection 1 and, as appropriate, to compliance that is equivalent to filing a financing statement under section 554.9311, subsection 2, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

2000 Acts, ch 1149, §76, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9506 Effect of errors or omissions.

1. *Minor errors and omissions.* A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

2. *Financing statement seriously misleading.* Except as otherwise provided in subsection 3, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 554.9503, subsection 1, is seriously misleading.

3. *Financing statement not seriously misleading.* If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to pro-

vide the name of the debtor in accordance with section 554.9503, subsection 1, the name provided does not make the financing statement seriously misleading.

4. *Debtor's correct name.* For purposes of section 554.9508, subsection 2, the *"debtor's correct name"* in subsection 3 means the correct name of the new debtor.

2000 Acts, ch 1149, §77, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9507 Effect of certain events on effectiveness of financing statement.

1. *Disposition.* A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

2. *Information becoming seriously misleading.* Except as otherwise provided in subsection 3 and section 554.9508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 554.9506.

3. *Change in debtor's name.* If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 554.9506:

a. the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

b. the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

2000 Acts, ch 1149, §78, 185, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001

554.9508 Effectiveness of financing statement if new debtor becomes bound by security agreement.

1. *Financing statement naming original debtor.* Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

2. *Financing statement becoming seriously misleading.* If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection 1 to be seriously misleading under section 554.9506:

a. the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 554.9203, subsection 4; and

b. the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under section 554.9203, subsection 4, unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

3. *When section not applicable.* This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 554.9507, subsection 1.

2000 Acts, ch 1149, §79, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9509 Persons entitled to file a record.

1. *Person entitled to file record.* A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

a. the debtor authorizes the filing in an authenticated record or pursuant to subsection 2 or 3; or

b. the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

2. *Security agreement as authorization.* By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

a. the collateral described in the security agreement; and

b. property that becomes collateral under section 554.9315, subsection 1, paragraph *"b"*, whether or not the security agreement expressly covers proceeds.

3. *Acquisition of collateral as authorization.* By acquiring collateral in which a security interest or agricultural lien continues under section 554.9315, subsection 1, paragraph *"a"*, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 554.9315, subsection 1, paragraph *"b"*.

4. *Person entitled to file certain amendments.* A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

a. the secured party of record authorizes the

filing; or

b. the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 554.9513, subsection 1 or 3, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

5. *Multiple secured parties of record.* If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection 4.

2000 Acts, ch 1149, §80, 187

Damages for improper filing; §554.9625

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9510 Effectiveness of filed record.

1. *Filed record effective if authorized.* A filed record is effective only to the extent that it was filed by a person that may file it under section 554.9509.

2. *Authorization by one secured party of record.* A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

3. *Continuation statement not timely filed.* A continuation statement that is not filed within the six-month period prescribed by section 554.9515, subsection 4, is ineffective.

2000 Acts, ch 1149, §81, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9511 Secured party of record.

1. *Secured party of record.* A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 554.9514, subsection 1, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

2. *Amendment naming secured party of record.* If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 554.9514, subsection 2, the assignee named in the amendment is a secured party of record.

3. *Amendment deleting secured party of record.* A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

2000 Acts, ch 1149, §82, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9512 Amendment of financing statement.

1. *Amendment of information in financing statement.* Subject to section 554.9509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection 5, otherwise amend the information provided in, a financing statement by filing an amendment that:

a. identifies, by its file number, the initial financing statement to which the amendment relates; and

b. if the amendment relates to an initial financing statement filed or recorded in a filing office described in section 554.9501, subsection 1, paragraph *"a"*, provides the date and time that the initial financing statement was filed or recorded and the information specified in section 554.9502, subsection 2.

2. *Period of effectiveness not affected.* Except as otherwise provided in section 554.9515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

3. *Effectiveness of amendment adding collateral.* A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

4. *Effectiveness of amendment adding debtor.* A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

5. *Certain amendments ineffective.* An amendment is ineffective to the extent it:

a. purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

b. purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

2000 Acts, ch 1149, §83, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9513 Termination statement.

1. *Consumer goods.* A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

a. there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

b. the debtor did not authorize the filing of the initial financing statement.

2. *Time for compliance with subsection 1.* To comply with subsection 1, a secured party shall cause the secured party of record to file the termination statement:

a. within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

b. if earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

3. *Other collateral.* In cases not governed by subsection 1, within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

a. except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

b. the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

c. the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

d. the debtor did not authorize the filing of the initial financing statement.

4. *Effect of filing termination statement.* Except as otherwise provided in section 554.9510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 554.9510, for purposes of section 554.9519, subsection 7, section 554.9522, subsection 1, and section 554.9523, subsection 3, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

2000 Acts, ch 1149, §84, 187

Remedies for secured party's failure to comply with Article; §554.9625

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9514 Assignment of powers of secured party of record.

1. *Assignment reflected on initial financing statement.* Except as otherwise provided in subsection 3, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

2. *Assignment of filed financing statement.* Except as otherwise provided in subsection 3, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

a. identifies, by its file number, the initial financing statement to which it relates;

b. provides the name of the assignor; and

c. provides the name and mailing address of the assignee.

3. *Assignment of record of mortgage.* An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 554.9502, subsection 3, may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than this chapter.

2000 Acts, ch 1149, §85, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9515 Duration and effectiveness of financing statement — effect of lapsed financing statement.

1. *Five-year effectiveness.* Except as otherwise provided in subsections 2, 5, 6, and 7, a filed financing statement is effective for a period of five years after the date of filing.

2. *Public-finance or manufactured-home transaction.* Except as otherwise provided in subsections 5, 6, and 7, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

3. *Lapse and continuation of financing statement.* The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection 4. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

4. *When continuation statement may be filed.* A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection 1 or the thirty-year period specified in subsection 2, whichever is applicable.

5. *Effect of filing continuation statement.* Except as otherwise provided in section 554.9510,

upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection 3, unless, before the lapse, another continuation statement is filed pursuant to subsection 4. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

6. *Transmitting utility financing statement.* If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

7. *Record of mortgage as financing statement.* A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 554.9502, subsection 3, remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

2000 Acts, ch 1149, §86, 187

Applicability of Article 9 to public-finance transactions, see §554.9109

Effectiveness of financing statement to perfect landlord's lien in farm products, see §570.1

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9516 What constitutes filing — effectiveness of filing.

1. *What constitutes filing.* Except as otherwise provided in subsection 2, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

2. *Refusal to accept record — filing does not occur.* Filing does not occur with respect to a record that a filing office refuses to accept because:

a. the record is not communicated by a method or medium of communication authorized by the filing office;

b. an amount equal to or greater than the applicable filing fee is not tendered;

c. the filing office is unable to index the record because:

(1) in the case of an initial financing statement, the record does not provide a name for the debtor;

(2) in the case of an amendment or correction statement, the record:

(a) does not identify the initial financing statement as required by section 554.9512 or 554.9518, as applicable; or

(b) identifies an initial financing statement whose effectiveness has lapsed under section 554.9515;

(3) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(4) in the case of a record filed or recorded in the filing office described in section 554.9501, subsection 1, paragraph *"a"*, the record does not provide a sufficient description of the real property to which it relates;

d. in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

e. in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(1) provide a mailing address for the debtor;

(2) indicate whether the debtor is an individual or an organization; or

(3) if the financing statement indicates that the debtor is an organization, provide:

(a) a type of organization for the debtor;

(b) a jurisdiction of organization for the debtor; or

(c) an organizational identification number for the debtor or indicate that the debtor has none;

f. in the case of an assignment reflected in an initial financing statement under section 554.9514, subsection 1, or an amendment filed under section 554.9514, subsection 2, the record does not provide a name and mailing address for the assignee; or

g. in the case of a continuation statement, the record is not filed within the six-month period prescribed by section 554.9515, subsection 4.

3. *Rules applicable to subsection 2.* For purposes of subsection 2:

a. a record does not provide information if the filing office is unable to read or decipher the information; and

b. a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 554.9512, 554.9514, or 554.9518, is an initial financing statement.

4. *Refusal to accept record — record effective as filed record.* A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection 2, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

2000 Acts, ch 1149, §87, 187

Acceptance and refusal of record, see also §554.9520

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9517 Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

2000 Acts, ch 1149, §88, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9518 Claim concerning inaccurate or wrongfully filed record.

1. *Correction statement.* A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

2. *Sufficiency of correction statement.* A correction statement must:

a. identify the record to which it relates by:

(1) the file number assigned to the initial financing statement to which the record relates; and

(2) if the correction statement relates to a record filed or recorded in a filing office described in section 554.9501, subsection 1, paragraph *"a"*, the date and time that the initial financing statement was filed or recorded and the information specified in section 554.9502, subsection 2;

b. indicate that it is a correction statement; and

c. provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

3. *Record not affected by correction statement.* The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

2000 Acts, ch 1149, §89, 187

Remedies for secured party's noncompliance with Article; §554.9625

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

B. DUTIES AND OPERATION OF FILING OFFICE

554.9519 Numbering, maintaining, and indexing records — communicating information provided in records.

1. *Filing office duties.* For each record filed in a filing office, the filing office shall:

a. assign a unique number to the filed record;

b. create a record that bears the number assigned to the filed record and the date and time of filing;

c. maintain the filed record for public inspection; and

d. index the filed record in accordance with subsections 3, 4, and 5.

2. *File number.* A file number assigned after January 1, 2002, must include a digit that:

a. is mathematically derived from or related to the other digits of the file number; and

b. aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

3. *Indexing — general.* Except as otherwise provided in subsections 4 and 5, the filing office shall:

a. index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

b. index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

4. *Indexing — real-property-related financing statement.* If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

a. under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

b. to the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

5. *Indexing — real-property-related assignment.* If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 554.9514, subsection 1, or an amendment filed under section 554.9514, subsection 2:

a. under the name of the assignor as grantor; and

b. to the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

6. *Retrieval and association capability.* The filing office shall maintain a capability:

a. to retrieve a record by the name of the debtor and:

(1) if the filing office is described in section 554.9501, subsection 1, paragraph *"a"*, by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(2) if the filing office is described in section 554.9501, subsection 1, paragraph *"b"*, by the file number assigned to the initial financing statement to which the record relates; and

b. to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

7. *Removal of debtor's name.* The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 554.9515 with respect to all secured parties of record.

8. *Timeliness of filing office performance.* The filing office shall perform the acts required by subsections 1 through 5 at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

2000 Acts, ch 1149, §90, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9520 Acceptance and refusal to accept record.

1. *Mandatory refusal to accept record.* A filing office shall refuse to accept a record for filing for a reason set forth in section 554.9516, subsection 2, and may refuse to accept a record for filing only for a reason set forth in section 554.9516, subsection 2.

2. *Communication concerning refusal.* If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than two business days after the filing office receives the record.

3. *When filed financing statement effective.* A filed financing statement satisfying section 554.9502, subsections 1 and 2, is effective, even if the filing office is required to refuse to accept it for filing under subsection 1. However, section 554.9338 applies to a filed financing statement providing information described in section 554.9516, subsection 2, paragraph *"e"*, which is incorrect at the time the financing statement is filed.

4. *Separate application to multiple debtors.* If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

2000 Acts, ch 1149, §91, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9521 Uniform form of written financing statement and amendment.

1. *Initial financing statement form.* A filing office that accepts written records may not refuse to accept a written initial financing statement in a form and format approved by the secretary of state by rule adopted pursuant to chapter 17A except for a reason set forth in section 554.9516, subsection 2. The forms shall be consistent with those set forth in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by the American law institute and the national conference of commissioners on uniform state laws.

2. *Amendment form.* A filing office that accepts written records may not refuse to accept a written amendment in a form and format approved by the secretary of state by rule adopted pursuant to chapter 17A except for a reason set forth in section 554.9516, subsection 2. The forms shall be consistent with those set forth in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by the American law institute and the national conference of commissioners on uniform state laws.

2000 Acts, ch 1149, §92, 187; 2002 Acts, ch 1119, §89

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

Subsection 2 amended

554.9522 Maintenance and destruction of records.

1. *Post-lapse maintenance and retrieval of information.* The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 554.9515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

a. if the record was filed or recorded in the filing office described in section 554.9501, subsection 1, paragraph *"a"*, by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

b. if the record was filed in the filing office described in section 554.9501, subsection 1, paragraph *"b"*, by using the file number assigned to the initial financing statement to which the record relates.

2. *Destruction of written records.* Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection 1.

2000 Acts, ch 1149, §93, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9523 Information from filing office — sale or license of records.

1. *Acknowledgment of filing written record.* If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the rec-

ord showing the number assigned to the record pursuant to section 554.9519, subsection 1, paragraph *"a"*, and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

a. note upon the copy the number assigned to the record pursuant to section 554.9519, subsection 1, paragraph *"a"*, and the date and time of the filing of the record; and

b. send the copy to the person.

2. *Acknowledgment of filing other record.* If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

a. the information in the record;

b. the number assigned to the record pursuant to section 554.9519, subsection 1, paragraph *"a"*; and

c. the date and time of the filing of the record.

3. *Communication of requested information.* The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

a. whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(1) designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(2) has not lapsed under section 554.9515 with respect to all secured parties of record; and

(3) if the request so states, has lapsed under section 554.9515 and a record of which is maintained by the filing office under section 554.9522, subsection 1;

b. the date and time of filing of each financing statement; and

c. the information provided in each financing statement.

4. *Medium for communicating information.* In complying with its duty under subsection 3, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

5. *Timeliness of filing office performance.* The filing office shall perform the acts required by subsections 1 through 4 at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

6. *Public availability of records.* At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office, as provided in chapter 22.

2000 Acts, ch 1149, §94, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9524 Delay by filing office.

Delay by the filing office beyond a time limit prescribed by this part is excused if:

1. the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

2. the filing office exercises reasonable diligence under the circumstances.

2000 Acts, ch 1149, §95, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9525 Fees.

1. *Initial financing statement or other record — general rule.* Except as otherwise provided in subsections 3 and 4, fees for services rendered by the filing office under this part must be set by rules adopted by the secretary of state's office for services for that office. The rule must set the fees for filing and indexing a record under this part on the following basis:

a. if a record presented for filing is communicated to the filing office in writing and consists of more than two pages, the fee for filing and indexing the record must be at least twice the amount of the fee for a record communicated in writing that consists of one or two pages; and

b. if the record is communicated by another medium authorized by the secretary of state's office, the fee must be no more than half the amount of the fee for a record communicated in writing that consists of one or two pages.

2. *Number of names.* The number of names required to be indexed does not affect the amount of the fee in subsection 1.

3. *Response to information request.* A rule adopted pursuant to subsection 1 must set the fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor. However, if the filing office is in the county, the board of supervisors for the county may adopt an ordinance or resolution setting the fee for responding to a request for the information. A fee for responding to a request communicated in writing must be not less than twice the amount of the fee for responding to a request communicated by another medium authorized by the office of secretary of state or the board of supervisors for the filing office where its filing office is located.

4. *Record of mortgage.* This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut un-

der section 554.9502, subsection 3. However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

2000 Acts, ch 1149, §96, 187; 2001 Acts, ch 176, §75; 2002 Acts, ch 1119, §90, 91

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

Subsection 1, unnumbered paragraph 1 amended

Subsection 3 amended

554.9526 Filing-office rules.

1. *Adoption of filing-office rules.* The office of secretary of state shall adopt and publish rules to implement this Article. The filing-office rules must be:

a. consistent with this Article; and

b. adopted and published in accordance with chapter 17A.

2. *Harmonization of rules.* To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the office of secretary of state, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, shall:

a. consult with filing offices in other jurisdictions that enact substantially this part; and

b. consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

c. take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

2000 Acts, ch 1149, §97, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9527 Duty to report.

The office of secretary of state shall report annually on or before December 31 to the governor on the operation of the filing office. The report must contain a statement of the extent to which:

1. the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

2. the filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

2000 Acts, ch 1149, §98, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

PART 6

DEFAULT

A. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

554.9601 Rights after default — judicial enforcement — consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

1. *Rights of secured party after default.* After default, a secured party has the rights provided in this part and, except as otherwise provided in section 554.9602, those provided by agreement of the parties. A secured party:

a. may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

b. if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

2. *Rights and duties of secured party in possession or control.* A secured party in possession of collateral or control of collateral under section 554.9104, 554.9105, 554.9106, or 554.9107 has the rights and duties provided in section 554.9207.

3. *Rights cumulative — simultaneous exercise.* The rights under subsections 1 and 2 are cumulative and may be exercised simultaneously.

4. *Rights of debtor and obligor.* Except as otherwise provided in subsection 7 and section 554.9605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

5. *Lien of levy after judgment.* If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

a. the date of perfection of the security interest or agricultural lien in the collateral;

b. the date of filing a financing statement covering the collateral; or

c. any date specified in a statute under which the agricultural lien was created.

6. *Execution sale.* A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

7. *Consignor or buyer of certain rights to payment.* Except as otherwise provided in section 554.9607, subsection 3, this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

2000 Acts, ch 1149, §99, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9602 Waiver and variance of rights and duties.

Except as otherwise provided in section 554.9624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

1. section 554.9207, subsection 2, paragraph *"d"*, subparagraph (3), which deals with use and operation of the collateral by the secured party;

2. section 554.9210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

3. section 554.9607, subsection 3, which deals with collection and enforcement as to collateral;

4. section 554.9608, subsection 1, and section 554.9615, subsection 3, to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

5. section 554.9608, subsection 1, and section 554.9615, subsection 4, to the extent that they require accounting for or payment of surplus proceeds of collateral;

6. section 554.9609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

7. section 554.9610, subsection 2, and sections 554.9611, 554.9613, and 554.9614, which deal with disposition of collateral;

8. section 554.9615, subsection 6, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

9. section 554.9616, which deals with explanation of the calculation of a surplus or deficiency;

10. sections 554.9620, 554.9621, and 554.9622, which deal with acceptance of collateral in satisfaction of obligation;

11. section 554.9623, which deals with redemption of collateral;

12. section 554.9624, which deals with permissible waivers; and

13. sections 554.9625 and 554.9626, which deal with the secured party's liability for failure to comply with this Article.

2000 Acts, ch 1149, §100, 187; 2002 Acts, ch 1119, §92

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

Subsection 3 amended

554.9603 Agreement on standards concerning rights and duties.

1. *Agreed standards.* The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 554.9602 if the standards are not manifestly unreasonable.

2. *Agreed standards inapplicable to breach of peace.* Subsection 1 does not apply to the duty under section 554.9609 to refrain from breaching the peace.

2000 Acts, ch 1149, §101, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9604 Procedure if security agreement covers real property or fixtures.

1. *Enforcement — personal and real property.* If a security agreement covers both personal and real property, a secured party may proceed:

a. under this part as to the personal property without prejudicing any rights with respect to the real property; or

b. as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

2. *Enforcement — fixtures.* Subject to subsection 3, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

a. under this part; or

b. in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

3. *Removal of fixtures.* Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

4. *Injury caused by removal.* A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

2000 Acts, ch 1149, §102, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9605 Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party:

1. to a person that is a debtor or obligor, unless the secured party knows:

a. that the person is a debtor or obligor;

b. the identity of the person; and

c. how to communicate with the person; or

2. to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

a. that the person is a debtor; and

b. the identity of the person.

2000 Acts, ch 1149, §103, 187

Liability limitations; see §554.9628

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9606 Time of default for agricultural lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

2000 Acts, ch 1149, §104, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9607 Collection and enforcement by secured party.

1. *Collection and enforcement generally.* If so agreed, and in any event after default, a secured party:

a. may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

b. may take any proceeds to which the secured party is entitled under section 554.9315;

c. may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

d. if it holds a security interest in a deposit account perfected by control under section 554.9104, subsection 1, paragraph *"a"*, may apply the balance of the deposit account to the obligation secured by the deposit account; and

e. if it holds a security interest in a deposit account perfected by control under section 554.9104, subsection 1, paragraph *"b"* or *"c"*, may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

2. *Nonjudicial enforcement of mortgage.* If necessary to enable a secured party to exercise under subsection 1, paragraph *"c"*, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

a. a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

b. the secured party's sworn affidavit in recordable form stating that:

(1) a default has occurred; and

(2) the secured party is entitled to enforce the mortgage nonjudicially.

3. *Commercially reasonable collection and enforcement.* A secured party shall proceed in a commercially reasonable manner if the secured party:

a. undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

b. is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

4. *Expenses of collection and enforcement.* A secured party may deduct from the collections made pursuant to subsection 3 reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

5. *Duties to secured party not affected.* This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

2000 Acts, ch 1149, §105, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9608 Application of proceeds of collection or enforcement — liability for deficiency and right to surplus.

1. *Application of proceeds, surplus, and deficiency if obligation secured.* If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

a. a secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 554.9607 in the following order to:

(1) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(3) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

b. if requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph *"a"*, subparagraph (3).

c. a secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 554.9607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a com-

mercially reasonable manner.

d. a secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

2. *No surplus or deficiency in sales of certain rights to payment.* If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

2000 Acts, ch 1149, §106, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9609 Secured party's right to take possession after default.

1. *Possession — rendering equipment unusable — disposition on debtor's premises.* After default, a secured party:

a. may take possession of the collateral; and

b. without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 554.9610.

2. *Judicial and nonjudicial process.* A secured party may proceed under subsection 1:

a. pursuant to judicial process; or

b. without judicial process, if it proceeds without breach of the peace.

3. *Assembly of collateral.* If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

2000 Acts, ch 1149, §107, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9610 Disposition of collateral after default.

1. *Disposition after default.* After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

2. *Commercially reasonable disposition.* Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

3. *Purchase by secured party.* A secured party may purchase collateral:

a. at a public disposition; or

b. at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

4. *Warranties on disposition.* A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

5. *Disclaimer of warranties.* A secured party may disclaim or modify warranties under subsection 4:

a. in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

b. by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

6. *Record sufficient to disclaim warranties.* A record is sufficient to disclaim warranties under subsection 5 if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

2000 Acts, ch 1149, §108, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9611 Notification before disposition of collateral.

1. *Notification date.* In this section, *"notification date"* means the earlier of the dates on which:

a. a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

b. the debtor and any secondary obligor waive the right to notification.

2. *Notification of disposition required.* Except as otherwise provided in subsection 4, a secured party that disposes of collateral under section 554.9610 shall send to the persons specified in subsection 3 a reasonable authenticated notification of disposition.

3. *Persons to be notified.* To comply with subsection 2, the secured party shall send an authenticated notification of disposition to:

a. the debtor;

b. any secondary obligor; and

c. if the collateral is other than consumer goods:

(1) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(a) identified the collateral;

(b) was indexed under the debtor's name as of that date; and

(c) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 554.9311, subsection 1.

4. *Subsection 2 inapplicable — perishable collateral — recognized market.* Subsection 2 does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

5. *Compliance with subsection 3, paragraph "c", subparagraph (2).* A secured party complies with the requirement for notification prescribed by subsection 3, paragraph *"c"*, subparagraph (2), if:

a. not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection 3, paragraph *"c"*, subparagraph (2); and

b. before the notification date, the secured party:

(1) did not receive a response to the request for information; or

(2) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

2000 Acts, ch 1149, §109, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9612 Timeliness of notification before disposition of collateral.

1. *Reasonable time is question of fact.* Except as otherwise provided in subsection 2, whether a notification is sent within a reasonable time is a question of fact.

2. *Ten-day period sufficient in nonconsumer transaction.* In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

2000 Acts, ch 1149, §110, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9613 Contents and form of notification before disposition of collateral — general.

Except in a consumer-goods transaction, the following rules apply:

1. The contents of a notification of disposition are sufficient if the notification:

a. describes the debtor and the secured party;

b. describes the collateral that is the subject of the intended disposition;

c. states the method of intended disposition;

d. states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

e. states the time and place of a public disposition or the time after which any other disposition is to be made.

2. Whether the contents of a notification that lacks any of the information specified in subsection 1 are nevertheless sufficient is a question of fact.

3. The contents of a notification providing substantially the information specified in subsection 1 are sufficient, even if the notification includes:

a. information not specified by that subsection; or

b. minor errors that are not seriously misleading.

4. A particular phrasing of the notification is not required.

5. The following form of notification and the form appearing in section 554.9614, subsection 3, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION
OF COLLATERAL

To: [name of debtor, obligor, or other person to which the notification is sent]

From: [name, address, and telephone number of secured party]

Name of Debtor(s): [include only if debtor(s) are not an addressee]

[for a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: . . . . . .
Time: . . . . . .
Place: . . . . . .

[for a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of . . . . . dollars]. You may request an accounting by calling us at [telephone number].

2000 Acts, ch 1149, §111, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9614 Contents and form of notification before disposition of collateral — consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

1. A notification of disposition must provide

the following information:

a. the information specified in section 554.9613, subsection 1;

b. a description of any liability for a deficiency of the person to which the notification is sent;

c. a telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 554.9623 is available; and

d. a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

2. A particular phrasing of the notification is not required.

3. The following form of notification, when completed, provides sufficient information:

[name and address of secured party]
[date]
NOTICE OF OUR PLAN TO SELL PROPERTY
[name and address of any obligor who is also a debtor]
Subject: [identification of transaction]

We have your [describe collateral], because you broke promises in our agreement.

[for a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: . . . . . .
Time: . . . . . .
Place: . . . . . .

You may attend the sale and bring bidders if you want.

[for a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you . . . . . for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:
[names of all other debtors and obligors, if any]

4. A notification in the form of subsection 3 is sufficient, even if additional information appears at the end of the form.

5. A notification in the form of subsection 3 is sufficient, even if it includes errors in information not required by subsection 1, unless the error is misleading with respect to rights arising under this Article.

6. If a notification under this section is not in the form of subsection 3, law other than this Article determines the effect of including information not required by subsection 1.

2000 Acts, ch 1149, §112, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9615 Application of proceeds of disposition — liability for deficiency and right to surplus.

1. *Application of proceeds.* A secured party shall apply or pay over for application the cash proceeds of disposition under section 554.9610 in the following order to:

a. the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

b. the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

c. the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(1) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(2) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

d. a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

2. *Proof of subordinate interest.* If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection 1, paragraph *"c"*.

3. *Application of noncash proceeds.* A secured party need not apply or pay over for application noncash proceeds of disposition under section 554.9610 unless the failure to do so would be com-

mercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

4. *Surplus or deficiency if obligation secured.* If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection 1 and permitted by subsection 3:

a. unless subsection 1, paragraph *"d"*, requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

b. the obligor is liable for any deficiency.

5. *No surplus or deficiency in sales of certain rights to payment.* If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

a. the debtor is not entitled to any surplus; and

b. the obligor is not liable for any deficiency.

6. *Calculation of surplus or deficiency in disposition to person related to secured party.* The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

a. the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

b. the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

7. *Cash proceeds received by junior secured party.* A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

a. takes the cash proceeds free of the security interest or other lien;

b. is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

c. is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

2000 Acts, ch 1149, §113, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9616 Explanation of calculation of surplus or deficiency.

1. *Definitions.* In this section:

a. *"Explanation"* means a writing that:

(1) states the amount of the surplus or deficiency;

(2) provides an explanation in accordance with subsection 3 of how the secured party calculated the surplus or deficiency;

(3) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(4) provides a telephone number or mailing address from which additional information concerning the transaction is available.

b. *"Request"* means a record:

(1) authenticated by a debtor or consumer obligor;

(2) requesting that the recipient provide an explanation; and

(3) sent after disposition of the collateral under section 554.9610.

2. *Explanation of calculation.* In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 554.9615, the secured party shall:

a. send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(1) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(2) within fourteen days after receipt of a request; or

b. in the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

3. *Required information.* To comply with subsection 1, paragraph *"a"*, subparagraph (2), a writing must provide the following information in the following order:

a. the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(1) if the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(2) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

b. the amount of proceeds of the disposition;

c. the aggregate amount of the obligations after deducting the amount of proceeds;

d. the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the se-

cured party and relate to the current disposition;

e. the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph *"a"*; and

f. the amount of the surplus or deficiency.

4. *Substantial compliance.* A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection 1 is sufficient, even if it includes minor errors that are not seriously misleading.

5. *Charges for responses.* A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection 2, paragraph *"a"*. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

2000 Acts, ch 1149, §114, 187

Remedies for secured party's failure to comply with Article; §554.9625

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9617 Rights of transferee of collateral.

1. *Effects of disposition.* A secured party's disposition of collateral after default:

a. transfers to a transferee for value all of the debtor's rights in the collateral;

b. discharges the security interest under which the disposition is made; and

c. discharges any subordinate security interest or other subordinate lien.

2. *Rights of good-faith transferee.* A transferee that acts in good faith takes free of the rights and interests described in subsection 1, even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

3. *Rights of other transferee.* If a transferee does not take free of the rights and interests described in subsection 1, the transferee takes the collateral subject to:

a. the debtor's rights in the collateral;

b. the security interest or agricultural lien under which the disposition is made; and

c. any other security interest or other lien.

2000 Acts, ch 1149, §115, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9618 Rights and duties of certain secondary obligors.

1. *Rights and duties of secondary obligor.* A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

a. receives an assignment of a secured obligation from the secured party;

b. receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

c. is subrogated to the rights of a secured party with respect to collateral.

2. *Effect of assignment, transfer, or subrogation.* An assignment, transfer, or subrogation described in subsection 1:

a. is not a disposition of collateral under section 554.9610; and

b. relieves the secured party of further duties under this Article.

2000 Acts, ch 1149, §116, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9619 Transfer of record or legal title.

1. *Transfer statement.* In this section, *"transfer statement"* means a record authenticated by a secured party stating:

a. that the debtor has defaulted in connection with an obligation secured by specified collateral;

b. that the secured party has exercised its post-default remedies with respect to the collateral;

c. that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

d. the name and mailing address of the secured party, debtor, and transferee.

2. *Effect of transfer statement.* A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

a. accept the transfer statement;

b. promptly amend its records to reflect the transfer; and

c. if applicable, issue a new appropriate certificate of title in the name of the transferee.

3. *Transfer not a disposition — no relief of secured party's duties.* A transfer of the record or legal title to collateral to a secured party under subsection 2 or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article.

2000 Acts, ch 1149, §117, 187

Transfer of title or interest in vehicles, §321.45 – 321.52A

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9620 Acceptance of collateral in full or partial satisfaction of obligation — compulsory disposition of collateral.

1. *Conditions to acceptance in satisfaction.* Except as otherwise provided in subsection 7, a secured party may accept collateral in full or

partial satisfaction of the obligation it secures only if:

a. the debtor consents to the acceptance under subsection 3;

b. the secured party does not receive, within the time set forth in subsection 4, a notification of objection to the proposal authenticated by:

(1) a person to which the secured party was required to send a proposal under section 554.9621; or

(2) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

c. if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

d. subsection 5 does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 554.9624.

2. *Purported acceptance ineffective.* A purported or apparent acceptance of collateral under this section is ineffective unless:

a. the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

b. the conditions of subsection 1 are met.

3. *Debtor's consent.* For purposes of this section:

a. a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

b. a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(1) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(2) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(3) does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

4. *Effectiveness of notification.* To be effective under subsection 1, paragraph *"b"*, a notification of objection must be received by the secured party:

a. in the case of a person to which the proposal was sent pursuant to section 554.9621, within twenty days after notification was sent to that person; and

b. in other cases:

(1) within twenty days after the last notification was sent pursuant to section 554.9621; or

(2) if a notification was not sent, before the debtor consents to the acceptance under subsection 3.

5. *Mandatory disposition of consumer goods.* A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 554.9610 within the time specified in subsection 6 if:

a. sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

b. sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

6. *Compliance with mandatory disposition requirement.* To comply with subsection 5, the secured party shall dispose of the collateral:

a. within ninety days after taking possession; or

b. within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

7. *No partial satisfaction in consumer transaction.* In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

2000 Acts, ch 1149, §118, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9621 Notification of proposal to accept collateral.

1. *Persons to which proposal to be sent.* A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

a. any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

b. any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(1) identified the collateral;

(2) was indexed under the debtor's name as of that date; and

(3) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

c. any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 554.9311, subsection 1.

2. *Proposal to be sent to secondary obligor in partial satisfaction.* A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons de-

scribed in subsection 1.

2000 Acts, ch 1149, §119, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9622 Effect of acceptance of collateral.

1. *Effect of acceptance.* A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

a. discharges the obligation to the extent consented to by the debtor;

b. transfers to the secured party all of a debtor's rights in the collateral;

c. discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

d. terminates any other subordinate interest.

2. *Discharge of subordinate interest notwithstanding noncompliance.* A subordinate interest is discharged or terminated under subsection 1, even if the secured party fails to comply with this Article.

2000 Acts, ch 1149, §120, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9623 Right to redeem collateral.

1. *Persons that may redeem.* A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

2. *Requirements for redemption.* To redeem collateral, a person shall tender:

a. fulfillment of all obligations secured by the collateral; and

b. the reasonable expenses and attorney's fees described in section 554.9615, subsection 1, paragraph *"a"*.

3. *When redemption may occur.* A redemption may occur at any time before a secured party:

a. has collected collateral under section 554.9607;

b. has disposed of collateral or entered into a contract for its disposition under section 554.9610; or

c. has accepted collateral in full or partial satisfaction of the obligation it secures under section 554.9622.

2000 Acts, ch 1149, §121, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9624 Waiver.

1. *Waiver of disposition notification.* A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 554.9611 only by an agreement to that effect entered into and authenticated after default.

2. *Waiver of mandatory disposition.* A debtor may waive the right to require disposition of collateral under section 554.9620, subsection 5, only by an agreement to that effect entered into and authenticated after default.

3. *Waiver of redemption right.* Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 554.9623 only by an agreement to that effect entered into and authenticated after default.

2000 Acts, ch 1149, §122, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

B. NONCOMPLIANCE WITH ARTICLE

554.9625 Remedies for secured party's failure to comply with Article.

1. *Judicial orders concerning noncompliance.* If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

2. *Damages for noncompliance.* Subject to subsections 3, 4, and 6, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

3. *Persons entitled to recover damages — statutory damages in consumer-goods transaction.* Except as otherwise provided in section 554.9628:

a. a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection 2 for its loss; and

b. if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

4. *Recovery when deficiency eliminated or reduced.* A debtor whose deficiency is eliminated under section 554.9626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 554.9626 may not otherwise recover under subsection 2 for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

5. *Statutory damages — noncompliance with specified provisions.* In addition to any damages recoverable under subsection 2, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

a. fails to comply with section 554.9208;

b. fails to comply with section 554.9209;

c. files a record that the person is not entitled to file under section 554.9509, subsection 1;

d. fails to cause the secured party of record to file or send a termination statement as required by section 554.9513, subsection 1 or 3;

e. fails to comply with section 554.9616, subsection 2, paragraph *"a"*, and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

f. fails to comply with section 554.9616, subsection 2, paragraph *"b"*.

6. *Statutory damages — noncompliance with section 554.9210.* A debtor or consumer obligor may recover damages under subsection 2 and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under section 554.9210. A recipient of a request under section 554.9210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

7. *Limitation of security interest — noncompliance with section 554.9210.* If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 554.9210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

2000 Acts, ch 1149, §123, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9626 Action in which deficiency or surplus is in issue.

1. *Applicable rules if amount of deficiency or surplus in issue.* In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

a. a secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

b. if the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

c. except as otherwise provided in section 554.9628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(1) the proceeds of the collection, enforcement, disposition, or acceptance; or

(2) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

d. for purposes of paragraph *"c"*, subparagraph (2), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

e. if a deficiency or surplus is calculated under section 554.9615, subsection 6, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

2. *Nonconsumer transactions — no inference.* The limitation of the rules in subsection 1 to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

2000 Acts, ch 1149, §124, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9627 Determination of whether conduct was commercially reasonable.

1. *Greater amount obtainable under other circumstances — no preclusion of commercial reasonableness.* The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

2. *Dispositions that are commercially reasonable.* A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

a. in the usual manner on any recognized market;

b. at the price current in any recognized market at the time of the disposition; or

c. otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

3. *Approval by court or on behalf of creditors.* A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

a. in a judicial proceeding;

b. by a bona fide creditors' committee;

c. by a representative of creditors; or

d. by an assignee for the benefit of creditors.

4. *Approval under subsection 3 not necessary — absence of approval has no effect.* Approval under subsection 3 need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

2000 Acts, ch 1149, §125, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9628 Nonliability and limitation on liability of secured party — liability of secondary obligor.

1. *Limitation of liability of secured party for noncompliance with article.* Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

a. the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

b. the secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

2. *Limitation of liability based on status as secured party.* A secured party is not liable because of its status as secured party:

a. to a person that is a debtor or obligor, unless the secured party knows:

(1) that the person is a debtor or obligor;

(2) the identity of the person; and

(3) how to communicate with the person; or

b. to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(1) that the person is a debtor; and

(2) the identity of the person.

3. *Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.* A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

a. a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

b. an obligor's representation concerning the purpose for which a secured obligation was incurred.

4. *Limitation of liability for statutory damages.* A secured party is not liable to any person under section 554.9625, subsection 3, paragraph *"b"*, for its failure to comply with section 554.9616.

5. *Limitation of multiple liability for statutory damages.* A secured party is not liable under section 554.9625, subsection 3, paragraph *"b"*, more than once with respect to any one secured obligation.

2000 Acts, ch 1149, §126, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

PART 7

TRANSITION

554.9701 Effective date.

This Article takes effect on July 1, 2001.

2000 Acts, ch 1149, §127, 187

Section effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9702 Savings clause.

1. *Pre-effective-date transactions or liens.* Except as otherwise provided in this part, this Act* applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2001.

2. *Continuing validity.* Except as otherwise provided in subsection 3 and sections 554.9703, 554.9704, 554.9705, 554.9706, 554.9707, 554.9708, and 554.9709:

a. transactions and liens that were not governed by former Article 9, were validly entered into or created before July 1, 2001, and would be subject to this Act* if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001; and

b. the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this Act* or by the law that otherwise would apply if this Act* had not taken effect.

3. *Pre-effective-date proceedings.* This Act* does not affect an action, case, or proceeding commenced before July 1, 2001.

2000 Acts, ch 1149, §128, 187

*2000 Acts, ch 1149

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9703 Security interest perfected before effective date.

1. *Continuing priority over lien creditor — perfection requirements satisfied.* A security interest that is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this Act* if, on July 1, 2001, the applicable requirements for enforceability and perfection under this Act* are satisfied without further action.

2. *Continuing priority over lien creditor — perfection requirements not satisfied.* Except as

otherwise provided in section 554.9705, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this Act* are not satisfied on July 1, 2001, the security interest:

a. is a perfected security interest for one year after July 1, 2001;

b. remains enforceable thereafter only if the security interest becomes enforceable under section 554.9203 before the year expires; and

c. remains perfected thereafter only if the applicable requirements for perfection under this Act* are satisfied before the year expires.

2000 Acts, ch 1149, §129, 187

*2000 Acts, ch 1149

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9704 Security interest unperfected before effective date.

A security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

1. remains an enforceable security interest for one year after July 1, 2001;

2. remains enforceable thereafter if the security interest becomes enforceable under section 554.9203 on July 1, 2001, or within one year thereafter; and

3. becomes perfected:

a. without further action, on July 1, 2001, if the applicable requirements for perfection under this Act* are satisfied before or at that time; or

b. when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

2000 Acts, ch 1149, §130, 187

*2000 Acts, ch 1149

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9705 Effectiveness of action taken before effective date.

1. *Pre-effective-date action — one-year perfection period unless reperfected.* If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this Act* within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under this Act* before the expiration of that period.

2. *Pre-effective-date filing.* The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this Act.*

3. *Pre-effective-date filing in jurisdiction formerly governing perfection.* This Act* does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 554.9103. However, except as otherwise provided in subsections 4 and 5 and section 554.9706, the financing statement ceases to be effective at the earlier of:

a. the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

b. June 30, 2006.

4. *Continuation statement.* The filing of a continuation statement after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

5. *Application of subsection 3, paragraph "b", to transmitting utility financing statement.* Subsection 3, paragraph *"b"*, applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 554.9103 only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

6. *Application of part 5.* A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

2000 Acts, ch 1149, §131, 187

*2000 Acts, ch 1149

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9706 When initial financing statement suffices to continue effectiveness of financing statement.

1. *Initial financing statement in lieu of continuation statement.* The filing of an initial financing statement in the office specified in section 554.9501 continues the effectiveness of a financing statement filed before July 1, 2001, if:

a. the filing of an initial financing statement in that office would be effective to perfect a security

interest under this Act;*

b. the pre-effective-date financing statement was filed in an office in another state or another office in this state; and

c. the initial financing statement satisfies subsection 3.

2. *Period of continued effectiveness.* The filing of an initial financing statement under subsection 1 continues the effectiveness of the pre-effective-date financing statement:

a. if the initial financing statement is filed before July 1, 2001, for the period provided in former section 554.9403 with respect to a financing statement; and

b. if the initial financing statement is filed after July 1, 2001, for the period provided in section 554.9515 with respect to an initial financing statement.

3. *Requirements for initial financing statement under subsection 1.* To be effective for purposes of subsection 1, an initial financing statement must:

a. satisfy the requirements of part 5 for an initial financing statement;

b. identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

c. indicate that the pre-effective-date financing statement remains effective.

2000 Acts, ch 1149, §132, 187

*2000 Acts, ch 1149

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9707 Amendment of pre-effective-date financing statement.

1. *Pre-effective-date financing statement.* In this section, *"pre-effective-date financing statement"* means a financing statement filed before July 1, 2001.

2. *Applicable law.* After July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

3. *Method of amending — general rule.* Except as otherwise provided in subsection 4, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after July 1, 2001, only if:

a. the pre-effective-date financing statement and an amendment are filed in the office specified in section 554.9501; or

b. an amendment is filed in the office specified in section 554.9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 554.9706, subsection 3; or

c. an initial financing statement that provides the information as amended and satisfies section 554.9706, subsection 3 is filed in the office specified in section 554.9501.

4. *Method of amending — continuation.* If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 554.9705, subsections 4 and 6 or section 554.9706.

5. *Method of amending — additional termination rule.* Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after July 1, 2001, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 554.9706, subsection 3, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

2000 Acts, ch 1149, §133, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9708 Persons entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

1. the secured party of record authorizes the filing; and

2. the filing is necessary under this part:

a. to continue the effectiveness of a financing statement filed before July 1, 2001; or

b. to perfect or continue the perfection of a security interest.

2000 Acts, ch 1149, §134, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9709 Priority.

1. *Law governing priority.* This Act* determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, former Article 9 determines priority.

2. *Priority if security interest becomes enforceable under section 554.9203.* For purposes of section 554.9322, subsection 1, the priority of a security interest that becomes enforceable under section 554.9203 of this Act* dates from July 1, 2001, if the security interest is perfected under this Act* by the filing of a financing statement before July

1, 2001, which would not have been effective to perfect the security interest under former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

2000 Acts, ch 1149, §135, 187

*2000 Acts, ch 1149

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

554.9710 "Former" defined.

References in this part to *"former Article 9"* or a former section are to that Article or section as in effect immediately before July 1, 2001.

2000 Acts, ch 1149, §136, 187

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

ARTICLE 10

EFFECTIVE DATE AND REPEALER

554.10101 Effective date.

Except as otherwise provided in Article 11 of this chapter, this chapter shall take effect and be in force on and after July 4, 1966. It applies to transactions entered into and events occurring after that date.

Transactions validly entered into before the effective date specified in this section and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though such repeal or amendment had not occurred.

[C24, 27, 31, 35, 39, §**10006;** C46, 50, 54, 58, 62, §554.78; C66, 71, 73, 75, 77, 79, 81, §554.10101]

554.10102 Reserved.

554.10103 General repealer.

Except as provided in the following section, all acts and parts of acts inconsistent with this chapter are hereby repealed.

[C66, 71, 73, 75, 77, 79, 81, §554.10103]

554.10104 Laws not repealed.

The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 554.1201).

[C66, 71, 73, 75, 77, 79, 81, §554.10104]

96 Acts, ch 1138, §78, 84

554.10105 Secretary of state exempted from personal liability.

The secretary of state, the secretary's employees or agents, are hereby exempted from all personal liability as a result of errors or omissions in the performance of any duty required by the Uniform Commercial Code, chapter 554, except in cases of willful negligence.

In the event of such error or omission the state of Iowa shall be liable in respect to such claims in the same manner, and to the same extent as a private individual under like circumstances.

Immunity of the state from suit and liability in such case is waived to the extent provided in chapter 669 and said chapter shall govern the extent of liability and the practice and procedure necessary to establish any liability of the state.

[C66, 71, 73, 75, 77, 79, 81, §554.10105]

ARTICLE 11

EFFECTIVE DATE OF 1974 AMENDMENTS

554.11101 Effective date.

Division 2 of this Act [65GA, chapter 1249], sections 9 to 72, the Iowa amendments to the Uniform Commercial Code pertaining primarily to security interests, and related amendments, shall become effective at 12:01 a.m. on January 1, 1975.

[C75, 77, 79, 81, §554.11101]

554.11102 Preservation of old transition provision.

The provisions of Article 10 of this chapter, sections 554.10101 to 554.10105, shall continue to apply to this chapter as amended and for this purpose this chapter prior to amendment and this chapter as amended shall be considered one continuous statute.

[C75, 77, 79, 81, §554.11102]

554.11103 Transition to this chapter as amended — general rule.

Transactions validly entered into after July 4, 1966, and before January 1, 1975, which were subject to the provisions of this chapter prior to amendment and which would be subject to this chapter as amended if they had been entered into on or after January 1, 1975, and the rights, duties and interests flowing from such transactions remain valid after January 1, 1975, and may be terminated, completed, consummated or enforced as required or permitted by this chapter as amended. Security interests arising out of such transactions which are perfected on January 1, 1975, shall remain perfected until they lapse or are terminated as provided in this chapter as amended, and may be continued as permitted by this chapter as amended, except as stated in section 554.11105.*

[C75, 77, 79, 81, §554.11103]

*Section 554.11105 was repealed effective July 1, 2001; corrective legislation is pending

554.11104 Transition provision on change of requirement of filing.

A security interest for the perfection of which filing or the taking of possession was required under this chapter prior to amendment and which attached prior to January 1, 1975, but was not perfected shall be deemed perfected on January 1, 1975, if this chapter as amended permits perfection without filing or the taking of possession, or authorizes filing in the office or offices where a prior ineffective filing was made.

[C75, 77, 79, 81, §554.11104]

554.11105 Transition provision on change of place of filing. Repealed by 2000 Acts, ch 1149, § 186, 187.

554.11106 Reserved.

554.11107 Transition provisions as to priorities.

Except as otherwise provided in this Article, this chapter prior to amendment shall apply to any questions of priority if the positions of the parties were fixed prior to January 1, 1975. In other cases questions of priority shall be determined by this chapter as amended.

[C75, 77, 79, 81, §554.11107]

554.11108 Presumption that rule of law continues unchanged.

Unless a change in law has clearly been made, the provisions of this chapter as amended shall be deemed declaratory of the meaning of this chapter prior to amendment.

[C75, 77, 79, 81, §554.11108]

2000 Acts, ch 1149, §155, 187

2000 amendment is effective July 1, 2001; 2000 Acts, ch 1149, §187

554.11109 Effect of official comments.

To the extent that they are consistent with the Iowa statutory text, the 1972 Official Comments to the 1972 Official Text of the Uniform Commercial Code are evidence of legislative intent as to the meaning of this chapter as amended. However, prior drafts of the Official Text and Comments may not be used to ascertain legislative intent.

[C75, 77, 79, 81, §554.11109]

ARTICLE 12

FUNDS TRANSFERS

PART 1

SUBJECT MATTER AND DEFINITIONS

554.12101 Short title.

This article shall be known and may be cited as Uniform Commercial Code — Funds Transfers.

92 Acts, ch 1146, §1

554.12102 Subject matter.

Except as otherwise provided in section 554.12108, this article applies to funds transfers defined in section 554.12104.

92 Acts, ch 1146, §2

554.12103 Payment order — definitions.

In this article unless the context otherwise requires:

1. *a.* *"Payment order"* means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if all of the following apply:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment.

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender.

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

b. A payment order instructing more than one payment to be made to a beneficiary is a separate payment order with respect to each payment.

c. A payment order is issued when it is sent to the receiving bank.

2. *"Beneficiary"* means the person to be paid by the beneficiary's bank.

3. *"Beneficiary's bank"* means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

4. *"Receiving bank"* means the bank to which the sender's instruction is addressed.

5. *"Sender"* means the person giving the instruction to the receiving bank.

92 Acts, ch 1146, §3

554.12104 Funds transfer — definitions.

In this article unless the context otherwise requires:

1. *"Funds transfer"* means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

2. *"Intermediary bank"* means a receiving

bank other than the originator's bank or the beneficiary's bank.

3. *"Originator"* means the sender of the first payment order in a funds transfer.

4. *"Originator's bank"* means the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank.

92 Acts, ch 1146, §4

554.12105 Other definitions.

1. In this article unless the context otherwise requires:

a. "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

b. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

c. "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

d. "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders, and cancellations and amendments of payment orders.

e. "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

f. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

g. "Prove" with respect to a fact means to meet the burden of establishing the fact as defined in section 554.1201, subsection 8.

2. Other definitions applying to this article and the sections in which they appear are:

"Acceptance"	Section 554.12209
"Beneficiary"	Section 554.12103
"Beneficiary's bank"	Section 554.12103
"Executed"	Section 554.12301
"Execution date"	Section 554.12301
"Funds transfer"	Section 554.12104
"Funds-transfer system rule"	Section 554.12501
"Governing law"	Section 554.12507
"Intermediary bank"	Section 554.12104
"Originator"	Section 554.12104
"Originator's bank"	Section 554.12104
"Payment by beneficiary's bank to beneficiary"	Section 554.12405
"Payment by originator to beneficiary"	Section 554.12406
"Payment by sender to receiving bank"	Section 554.12403
"Payment date"	Section 554.12401
"Payment order"	Section 554.12103
"Receiving bank"	Section 554.12103
"Security procedure"	Section 554.12201
"Sender"	Section 554.12103

3. The following definitions in article 4 apply to this article:

"Clearing house"	Section 554.4104
"Item"	Section 554.4104
"Suspends payments"	Section 554.4104

4. In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

92 Acts, ch 1146, §5; 2000 Acts, ch 1058, §49

554.12106 Time payment order is received.

1. The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 554.1201, subsection 27. A receiving bank may establish a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders, and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally, or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

2. Unless otherwise provided, if this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated.

92 Acts, ch 1146, §6

554.12107 Federal reserve regulations and operating circulars.

Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks as of July 1, 1991, supersede any inconsistent provision of this article to the ex-

tent of the inconsistency.
92 Acts, ch 1146, §7

554.12108 Exclusion of consumer transactions governed by federal law.
This article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978, 15 U.S.C. § 1693 et seq.
92 Acts, ch 1146, §8

PART 2

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

554.12201 Security procedure.
"Security procedure" means a procedure established by agreement between a customer and a receiving bank for the purpose of verifying that a payment order or communication amending or canceling a payment order is that of the customer, or detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.
92 Acts, ch 1146, §9

554.12202 Authorized and verified payment orders.
1. A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.
2. If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.
3. Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in the customer's name and accepted by the bank in compliance with the security procedure chosen by the customer.
4. The term *"sender"* in this article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection 1, or it is effective as the order of the customer under subsection 2.
5. This section applies to amendments and cancellations of payment orders in the same manner it applies to payment orders.
6. Except as provided in this section and section 554.12203, rights and obligations arising under this section or section 554.12203 may not be varied by agreement.
92 Acts, ch 1146, §10

554.12203 Unenforceability of certain verified payment orders.
If an accepted payment order is not an authorized order of a customer identified as sender pursuant to section 554.12202, subsection 1, but is effective as an order of the customer pursuant to section 554.12202, subsection 2, the following rules apply:
1. By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.
2. The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person entrusted at any time with the authority to act for the customer with respect to payment orders or the security procedure, or who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or similar items.
3. This section applies to amendments of payment orders in the same manner it applies to payment orders.
92 Acts, ch 1146, §11

554.12204 Refund of payment and duty of customer to report with respect to unauthorized payment order.

1. If a receiving bank accepts a payment order issued in the name of its customer as sender which is not authorized and not effective as the order of the customer under section 554.12202, or which is not enforceable, in whole or in part, against the customer under section 554.12203, the bank shall refund any payment related to the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer as a result of a failure by the customer to give notification as stated in this section.

2. Reasonable time under subsection 1 may be fixed by agreement as provided in section 554.1204, subsection 1, but the obligation of a receiving bank to refund payment as stated in subsection 1 may not otherwise be varied by agreement.

92 Acts, ch 1146, §12

554.12205 Erroneous payment orders.

1. If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

a. If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 554.12206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obligated to pay the order to the extent stated in subsections 2 and 3.

b. If the funds transfer is completed on the basis of an erroneous payment order described in (i) or (iii) of subsection 1, the sender is not obligated to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

c. If the funds transfer is completed on the basis of a payment order described in (ii) of subsection 1, the sender is not obligated to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

2. If the sender of an erroneous payment order described in subsection 1 is not obligated to pay all or part of the order, and the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform this duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, not to exceed the amount of the sender's order.

3. This section applies to amendments to payment orders in the same manner it applies to payment orders.

92 Acts, ch 1146, §13

554.12206 Transmission of payment order through funds-transfer or other communication system.

If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system by the sender and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are deemed to be those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

This section applies to cancellations and amendments of payment orders in the same manner it applies to payment orders.

92 Acts, ch 1146, §14

554.12207 Misdescription of beneficiary.

1. Subject to subsection 2, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

2. If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and

the name and number identify different persons, the following rules apply:

a. Except as otherwise provided in subsection 3, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

b. If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

3. If a payment order described in subsection 2 is accepted, the originator's payment order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number as permitted by subsection 2, paragraph *"a"*, the following rules apply:

a. If the originator is a bank, the originator shall pay the originator's order.

b. If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obligated to pay the originator's order unless the originator's bank proves that the originator had notice, before acceptance by the originator's bank of the originator's order, that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator signed a writing stating the information to which the notice relates before the payment order was accepted.

4. In a case governed by subsection 2, paragraph *"a"*, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

a. If the originator is obligated to pay its payment order as stated in subsection 3, the originator has the right to recover.

b. If the originator is not a bank and is not obligated to pay its payment order, the originator's bank has the right to recover.

92 Acts, ch 1146, §15

554.12208 Misdescription of intermediary bank or beneficiary's bank.

1. This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

a. The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

b. The sender shall compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of the receiving bank's reliance on the number in executing or attempting to execute the order.

2. This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

a. If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender shall compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of the receiving bank's reliance on the number in executing or attempting to execute the order.

b. If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by paragraph *"a"*, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

c. Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time the receiving bank executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

d. If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in section 554.12302, subsection 1, paragraph *"a"*.

92 Acts, ch 1146, §16

554.12209 Acceptance of payment order.

1. Subject to subsection 4, a receiving bank other than the beneficiary's bank accepts a pay-

ment order when it executes the order.

2. Subject to subsections 3 and 4, a beneficiary's bank accepts a payment order at the earliest of the following times:

a. When the bank pays the beneficiary as stated in section 554.12405, subsection 1 or 2, or notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order, unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

b. When the bank receives payment of the entire amount of the sender's order pursuant to section 554.12403, subsection 1, paragraph *"a"* or *"b"*; or

c. The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within one hour after that time, or one hour after the opening of the next business day of the sender following the payment date if the time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank shall pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting the day that notice is received as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

3. Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection 2, paragraph *"b"* or *"c"*, if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

4. A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to section 554.12211, subsection 2, the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

92 Acts, ch 1146, §17

554.12210 Rejection of payment order.

1. A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if the notice indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable under the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, any means complying with the agreement is reasonable and any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

2. This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank shall pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 554.12211, subsection 4, or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

3. If a receiving bank suspends payments, all unaccepted payment orders issued to the receiving bank are deemed rejected at the time the bank suspends payments.

4. Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

92 Acts, ch 1146, §18

554.12211 Cancellation and amendment of payment order.

1. A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

2. Subject to subsection 1, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if no-

tice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

3. After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

a. With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

b. With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order that is a duplicate of a payment order previously issued by the sender, that orders payment to a beneficiary not entitled to receive payment from the originator, or that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

4. An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

5. A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issuance of a new payment order in the amended form at the same time.

6. Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

7. A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

8. A funds-transfer system rule is not effective to the extent it conflicts with subsection 3, paragraph *"b"*.

92 Acts, ch 1146, §19

554.12212 Liability and duty of receiving bank regarding unaccepted payment order.

If a receiving bank fails to accept a payment order that it is obligated by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 554.12209, and liability is limited to that provided in this article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this article or by express agreement.

92 Acts, ch 1146, §20

PART 3

EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

554.12301 Execution and execution date.

1. A payment order is executed by the receiving bank when the receiving bank issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

2. *"Execution date"* of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

92 Acts, ch 1146, §21

554.12302 Obligations of receiving bank in execution of payment order.

1. Except as provided in subsections 2 through 4, if the receiving bank accepts a payment order pursuant to section 554.12209, subsection 1, the bank has the following obligations in executing the order:

a. The receiving bank is obligated to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank shall instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

b. If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obligated to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank shall transmit the receiving bank's payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

2. Unless otherwise instructed, a receiving bank executing a payment order may use any funds-transfer system if use of that system is reasonable under the circumstances, and issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

3. Unless subsection 1, paragraph *"b"*, applies or the receiving bank is otherwise instructed, the receiving bank may execute a payment order by transmitting the receiving bank's payment order by first class mail or by any means reasonable under the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting the receiving bank's payment order by a particular means, the receiving bank may issue the payment order by the means stated or by any means as expeditious as the means stated.

4. Unless instructed by the sender, the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

92 Acts, ch 1146, §22

554.12303 Erroneous execution of payment order.

1. A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or that issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under section 554.12402, subsection 3, if the provisions of that subsection are otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

2. A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 554.12402, subsection 3, if the provisions of that subsection are otherwise satisfied and the bank corrects the error by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of the receiving bank's charges for services and expenses pursuant to instruction of the sender.

3. If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obligated to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the payment order issued the payment received to the extent allowed by the law governing mistake and restitution.

92 Acts, ch 1146, §23

554.12304 Duty of sender to report erroneously executed payment order.

If the sender of a payment order that is erroneously executed as stated in section 554.12303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts with-

in a reasonable time not exceeding ninety days after the notification from the bank is received by the sender. If the sender fails to perform that duty, the bank is not obligated to pay interest on any amount refundable to the sender under section 554.12402, subsection 4, for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender as a result of the failure by the sender to perform the duty stated in this section.

92 Acts, ch 1146, §24

554.12305 Liability for late or improper execution or failure to execute payment order.

1. If a funds transfer is completed, but execution of a payment order by the receiving bank in breach of section 554.12302 results in delay in payment to the beneficiary, the bank is obligated to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection 3, additional damages are not recoverable.

2. If execution of a payment order by a receiving bank in breach of section 554.12302 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for the originator's expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection 1, resulting from the improper execution. Except as provided in subsection 3, additional damages are not recoverable.

3. In addition to the amounts payable under subsections 1 and 2, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

4. If a receiving bank fails to execute a payment order that the receiving bank was obligated by express agreement to execute, the receiving bank is liable to the sender for the sender's expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

5. Reasonable attorney's fees are recoverable if demand for compensation under subsection 1 or 2 is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection 4 and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection 4 is made and refused before an action is brought on the claim.

6. Except as stated in this section, the liability of a receiving bank under subsections 1 and 2 may not be varied by agreement.

92 Acts, ch 1146, §25

PART 4

PAYMENT

554.12401 Payment date.

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

92 Acts, ch 1146, §26

554.12402 Obligation of sender to pay receiving bank.

1. This section is subject to sections 554.12205 and 554.12207.

2. With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obligates the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

3. This subsection is subject to subsection 5 and to section 554.12303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obligates the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of the sender to pay the sender's payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of the payment order instructing payment to the beneficiary of the sender's payment order.

4. If the sender of a payment order pays the order and was not obligated to pay all or part of the amount paid, the bank receiving payment shall refund payment to the extent the sender was not obligated to pay. Except as provided in sections 554.12204 and 554.12304, interest is payable on the refundable amount from the date of payment.

5. If a funds transfer is not completed as stated in subsection 3 and an intermediary bank is obligated to refund payment as stated in subsection 4 but is unable to do so because the intermediary bank is not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in section 554.12302, subsection 1, paragraph *"a"*, to route the funds transfer through the intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted.

The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection 4.

6. The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection 3 or to receive refund under subsection 4 may not be varied by agreement.

92 Acts, ch 1146, §27

554.12403 Payment by sender to receiving bank.

1. Payment of the sender's obligation under section 554.12402 to pay the receiving bank occurs as follows:

a. If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

b. If the sender is a bank and the sender credited an account of the receiving bank with the sender, or caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank knows of that fact.

c. If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

2. (i) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. (ii) The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. (iii) The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in clause (ii) of this subsection has been exercised.

3. If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 554.12402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

4. In a case not covered by subsection 1, the time when payment of the sender's obligation occurs under section 554.12402, subsection 2 or 3, is governed by applicable principles of law that determine when an obligation is satisfied.

92 Acts, ch 1146, §28

554.12404 Obligation of beneficiary's bank to pay and give notice to beneficiary.

1. Subject to sections 554.12211, subsection 5, and 554.12405, subsections 4 and 5, if a beneficiary's bank accepts a payment order, the beneficiary bank shall pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the beneficiary's bank, payment is due on the next funds-transfer business day. If the beneficiary's bank refuses to pay upon demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the beneficiary's bank had notice of the damages, unless the beneficiary's bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

2. If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank shall notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the beneficiary's bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the beneficiary's bank fails to give the required notice, the bank shall pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the beneficiary's bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

3. The right of a beneficiary to receive payment and damages as stated in subsection 1 may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection 2 may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the

rule before initiation of the funds transfer.

92 Acts, ch 1146, §29

554.12405 Payment by beneficiary's bank to beneficiary.

1. If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the beneficiary's bank's obligation under section 554.12404, subsection 1, occurs when and to the extent the beneficiary is notified of the right to withdraw the credit, the bank lawfully applies the credit to a debt of the beneficiary, or funds with respect to the order are otherwise made available to the beneficiary by the beneficiary's bank.

2. If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the beneficiary's bank's obligation under section 554.12404, subsection 1, occurs is governed by principles of law that determine when an obligation is satisfied.

3. Except as stated in subsections 4 and 5, if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the beneficiary's bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

4. A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order the beneficiary's bank accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and the beneficiary's bank did not receive payment of the payment order that the beneficiary's bank accepted. If the beneficiary is obligated to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 554.12406.

5. This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that nets obligations multilaterally among participants, and has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to the system's rules with respect to any payment order in the funds transfer, the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, the beneficiary's bank is entitled to recover payment from the beneficiary, payment by the originator to the beneficiary does not occur under section 554.12406, and subject to section 554.12402, subsection 5, each sender in the funds transfer is excused from its obligation to pay its payment order under section 554.12402, subsection 3, because the funds transfer has not been completed.

92 Acts, ch 1146, §30

554.12406 Payment by originator to beneficiary — discharge of underlying obligation.

1. Subject to section 554.12211, subsection 5, and section 554.12405, subsections 4 and 5, the originator of a funds transfer pays the beneficiary of the originator's payment order at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

2. If payment under subsection 1 is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless the payment under subsection 1 was made by a means prohibited by the contract of the beneficiary with respect to the obligation, the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, or the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 554.12404, subsection 1.

3. For the purpose of determining whether discharge of an obligation occurs under subsection 2, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

4. Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

92 Acts, ch 1146, §31

PART 5

MISCELLANEOUS PROVISIONS

554.12501 Variation by agreement and effect of funds-transfer system rule.

1. Except as otherwise provided in this article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

2. *"Funds-transfer system rule"* means a rule of an association of banks governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern the rights and obligations of parties other than participating banks using the system to the extent stated in section 554.12404, subsection 3, section 554.12405, subsection 4, and section 554.12507, subsection 3.

92 Acts, ch 1146, §32

554.12502 Creditor process served on receiving bank — setoff by beneficiary's bank.

1. As used in this section, *"creditor process"* means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

2. This subsection applies to the creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining the rights of the parties with respect to the creditor process, if the receiving bank accepts the payment order, the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

3. If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

a. The beneficiary's bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy a creditor process served on the bank with respect to the account.

b. The beneficiary's bank may credit the beneficiary's account and allow withdrawal of the amount credited unless a creditor process with respect to the account is served at a time and in a manner affording the beneficiary's bank a reasonable opportunity to act to prevent withdrawal.

c. If a creditor process with respect to the beneficiary's account has been served and the beneficiary's bank has had a reasonable opportunity to act on it, the beneficiary's bank may not reject the payment order except for a reason unrelated to the service of process.

4. Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not required to act with respect to the process.

92 Acts, ch 1146, §33

554.12503 Injunction or restraining order with respect to funds transfer.

For proper cause and in compliance with applicable law, a court may restrain a person from issuing a payment order to initiate a funds transfer, an originator's bank from executing the payment order of the originator, or the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

92 Acts, ch 1146, §34

554.12504 Order in which items and payment orders may be charged to account — order of withdrawals from account.

1. If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

2. In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

92 Acts, ch 1146, §35

554.12505 Preclusion of objection to debit of customer's account.

If a receiving bank has received payment from the receiving bank's customer with respect to a payment order issued in the name of the customer as sender and accepted by the receiving bank, and the customer received notification reasonably

identifying the order, the customer is precluded from asserting that the receiving bank is not entitled to retain the payment unless the customer notifies the receiving bank of the customer's objection to the payment within one year after the notification was received by the customer.

92 Acts, ch 1146, §36

554.12506 Rate of interest.

1. If, under this article, a receiving bank is to pay interest with respect to a payment order issued to the bank, the amount payable may be determined by agreement of the sender and receiving bank, or by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

2. If the amount of interest is not determined by an agreement or rule as stated in subsection 1, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the receiving bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

92 Acts, ch 1146, §37

554.12507 Choice of law.

1. The following rules apply unless the affected parties otherwise agree or subsection 3 applies:

a. The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

b. The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

c. The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

2. If the parties described in each paragraph of subsection 1 have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

3. A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) the rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

4. In the event of inconsistency between an agreement under subsection 2 and a choice-of-law rule under subsection 3, the agreement under subsection 2 prevails.

5. If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

92 Acts, ch 1146, §38

ARTICLE 13

LEASES

PART 1

GENERAL PROVISIONS

Provisions codified in this Article have been designated as Article 2A by the National Conference of Commissioners on Uniform State Laws

554.13101 Short title.

This Article shall be known and may be cited as the Uniform Commercial Code — Leases.

94 Acts, ch 1052, §5

554.13102 Scope.

This Article applies to any transaction, regardless of form, that creates a lease.

94 Acts, ch 1052, §6

554.13103 Definitions and index of definitions.

1. In this Article unless the context otherwise

requires:

a. "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. *"Buying"* may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

b. "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

c. "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

d. "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

e. "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed the dollar amount designated in section 537.1301, subsection 13.

f. "Fault" means wrongful act, omission, breach, or default.

g. "Finance lease" means a lease with respect to which:

(1) the lessor does not select, manufacture, or supply the goods;

(2) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(3) one of the following occurs:

(a) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(b) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(c) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(d) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (i) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (ii) that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (iii) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

h. "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 554.13309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

i. "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

j. "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

k. "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

l. "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

m. "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

n. "Lessee" means a person who acquires the

right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

o. "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. *"Leasing"* may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

p. "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

q. "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

r. "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

s. "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

t. "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

u. "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

v. "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

w. "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

x. "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

y. "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

z. "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

2. Other definitions applying to this Article and the sections in which they appear are:

"Accessions"	Section 554.13310, subsection 1
"Construction mortgage"	Section 554.13309, subsection 1, paragraph *"d"*
"Encumbrance"	Section 554.13309, subsection 1, paragraph *"e"*
"Fixtures"	Section 554.13309, subsection 1, paragraph *"a"*
"Fixture filing"	Section 554.13309, subsection 1, paragraph *"b"*
"Purchase money lease"	Section 554.13309, subsection 1, paragraph *"c"*

3. The following definitions in other Articles apply to this Article:

"Account"	Section 554.9102, subsection 1, paragraph *"b"*
"Between merchants"	Section 554.2104, subsection 3
"Buyer"	Section 554.2103, subsection 1, paragraph *"a"*
"Chattel paper"	Section 554.9102, subsection 1, paragraph *"k"*
"Consumer goods"	Section 554.9102, subsection 1, paragraph *"w"*
"Document"	Section 554.9102, subsection 1, paragraph *"ad"*
"Entrusting"	Section 554.2403, subsection 3
"General intangible"	Section 554.9102, subsection 1, paragraph *"ap"*
"Good faith"	Section 554.2103, subsection 1, paragraph *"b"*
"Instrument"	Section 554.9102, subsection 1, paragraph *"au"*
"Merchant"	Section 554.2104, subsection 1
"Mortgage"	Section 554.9102, subsection 1, paragraph *"bc"*
"Pursuant to commitment"	Section 554.9102, subsection 1, paragraph *"bp"*
"Receipt"	Section 554.2103, subsection 1, paragraph *"c"*
"Sale"	Section 554.2106, subsection 1
"Sale on approval"	Section 554.2326
"Sale or return"	Section 554.2326
"Seller"	Section 554.2103, subsection 1, paragraph *"d"*

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

94 Acts, ch 1052, §7; 2000 Acts, ch 1149, §156, 187

2000 amendments to subsection 3 are effective July 1, 2001; 2000 Acts, ch 1149, §187

554.13104 Leases subject to other law.

1. A lease, although subject to this Article, is also subject to any applicable:

a. certificate of title or registration statute of this state (including as provided in chapters 321

and 462A);

b. certificate of title statute of another jurisdiction (section 554.13105); or

c. consumer protection statute of this state, or final consumer protection decision of a court of this state existing on July 1, 1994.

2. In case of conflict between this Article, other than sections 554.13105, 554.13304, subsection 3, and 554.13305, subsection 3, and a statute or decision referred to in subsection 1, the statute or decision controls.

3. Failure to comply with an applicable law has only the effect specified therein.

94 Acts, ch 1052, §8

554.13105 Territorial application of Article to goods covered by certificate of title.

Subject to the provisions of sections 554.13304, subsection 3, and 554.13305, subsection 3, with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (i) surrender of the certificate, or (ii) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

94 Acts, ch 1052, §9

554.13106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

1. If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter or in which the goods are to be used, the choice is not enforceable.

2. If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

94 Acts, ch 1052, §10

554.13107 Waiver or renunciation of claim or right after default.

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

94 Acts, ch 1052, §11

554.13108 Unconscionability.

1. If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

2. With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

3. Before making a finding of unconscionability under subsection 1 or 2, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

4. In an action in which the lessee claims unconscionability with respect to a consumer lease:

a. If the court finds unconscionability under subsection 1 or 2, the court shall award reasonable attorney's fees to the lessee.

b. If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action that the lessee knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

c. In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections 1 and 2 is not controlling.

94 Acts, ch 1052, §12

554.13109 Option to accelerate at will.

1. A term providing that one party or the party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party deems the party insecure" or in words of similar import must be construed to mean that the party has power to do so only if the party in good faith believes that the prospect of payment or performance is impaired.

2. With respect to a consumer lease, the burden of establishing good faith under subsection 1 is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

94 Acts, ch 1052, §13

PART 2

FORMATION AND CONSTRUCTION OF LEASE CONTRACT

554.13201 Statute of frauds.

1. A lease contract is not enforceable by way of action or defense unless:

a. the total payments to be made under the lease contract, excluding payments for options to

renew or buy, are less than one thousand dollars; or

b. there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

2. Any description of leased goods or of the lease term is sufficient and satisfies subsection 1, paragraph *"b"*, whether or not it is specific, if it reasonably identifies what is described.

3. A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection 1, paragraph *"b"*, beyond the lease term and the quantity of goods shown in the writing.

4. A lease contract that does not satisfy the requirements of subsection 1, but which is valid in other respects, is enforceable:

a. if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

b. if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

c. with respect to goods that have been received and accepted by the lessee.

5. The lease term under a lease contract referred to in subsection 4 is:

a. if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

b. if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

c. a reasonable lease term.

94 Acts, ch 1052, §14

554.13202 Final written expression — parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

1. by course of dealing or usage of trade or by course of performance; and

2. by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

94 Acts, ch 1052, §15

554.13203 Seals inoperative.

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

94 Acts, ch 1052, §16

554.13204 Formation in general.

1. A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

2. An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

3. Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

94 Acts, ch 1052, §17

554.13205 Firm offers.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

94 Acts, ch 1052, §18

554.13206 Offer and acceptance in formation of lease contract.

1. Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

2. If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

94 Acts, ch 1052, §19

554.13207 Course of performance or practical construction.

1. If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportu-

nity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

2. The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

3. Subject to the provisions of section 554.13208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

94 Acts, ch 1052, §20

554.13208 Modification, rescission, and waiver.

1. An agreement modifying a lease contract needs no consideration to be binding.

2. A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

3. Although an attempt at modification or rescission does not satisfy the requirements of subsection 2, it may operate as a waiver.

4. A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

94 Acts, ch 1052, §21

554.13209 Lessee under finance lease as beneficiary of supply contract.

1. The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

2. The extension of the benefit of a supplier's promises and of warranties to the lessee under subsection 1 does not: (i) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

3. Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

4. In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection 1, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

94 Acts, ch 1052, §22

554.13210 Express warranties.

1. Express warranties by the lessor are created as follows:

a. Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

c. Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

2. It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

94 Acts, ch 1052, §23

554.13211 Warranties against interference and against infringement — lessee's obligation against infringement.

1. There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

2. Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

3. A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

94 Acts, ch 1052, §24

554.13212 Implied warranty of merchantability.

1. Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

2. Goods to be merchantable must be at least such as

a. pass without objection in the trade under the description in the lease agreement;

b. in the case of fungible goods, are of fair average quality within the description;

c. are fit for the ordinary purposes for which goods of that type are used;

d. run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

e. are adequately contained, packaged, and labeled as the lease agreement may require; and

f. conform to any promises or affirmations of fact made on the container or label.

3. Other implied warranties may arise from course of dealing or usage of trade.

94 Acts, ch 1052, §25

554.13213 Implied warranty of fitness for particular purpose.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

94 Acts, ch 1052, §26

554.13214 Exclusion or modification of warranties.

1. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of section 554.13202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection 3, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

3. Notwithstanding subsection 2, but subject to subsection 4,

a. unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

b. if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

c. an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

4. To exclude or modify a warranty against interference or against infringement (section 554.13211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

94 Acts, ch 1052, §27

554.13215 Cumulation and conflict of warranties express or implied.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

1. Exact or technical specifications displace an inconsistent sample or model or general language of description.

2. A sample from an existing bulk displaces inconsistent general language of description.

3. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

94 Acts, ch 1052, §28

554.13216 Third-party beneficiaries of express and implied warranties.

A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any person who may reasonably be expected to use, consume, or be affected by the goods and who is injured by breach of the warranty. The operation of this section may not be excluded, modified, or limited with respect to injury to the person of an individual to whom the warranty extends, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and

remedies, effective against the lessee is also effective against the beneficiary designated under this section.

94 Acts, ch 1052, §29

554.13217 Identification.

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

1. when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

2. when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

3. when the young are conceived, if the lease contract is for a lease of unborn young of animals.

94 Acts, ch 1052, §30

554.13218 Insurance and proceeds.

1. A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

2. If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

3. Notwithstanding a lessee's insurable interest under subsections 1 and 2, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

4. Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

5. The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

94 Acts, ch 1052, §31

554.13219 Risk of loss.

1. Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

2. Subject to the provisions of this Article on the effect of default on risk of loss (section 554.13220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

a. If the lease contract requires or authorizes the goods to be shipped by carrier

(1) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(2) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

b. If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

c. In any case not within paragraph *"a"* or *"b"*, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

94 Acts, ch 1052, §32

554.13220 Effect of default on risk of loss.

1. Where risk of loss is to pass to the lessee and the time of passage is not stated:

a. If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

b. If the lessee rightfully revokes acceptance, the lessee, to the extent of any deficiency in the lessee's effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

2. Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in the lessor's or supplier's effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

94 Acts, ch 1052, §33

554.13221 Casualty to identified goods.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or section 554.13219, then:

1. if the loss is total, the lease contract is avoided; and

2. if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at the lessee's option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the bal-

ance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

94 Acts, ch 1052, §34

PART 3

EFFECT OF LEASE CONTRACT

554.13301 Enforceability of lease contract.

Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

94 Acts, ch 1052, §35

554.13302 Title to and possession of goods.

Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

94 Acts, ch 1052, §36

554.13303 Alienability of party's interest under lease contract or of lessor's residual interest in goods — delegation of performance — transfer of rights.

1. As used in this section, *"creation of a security interest"* includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of section 554.9109, subsection 1, paragraph *"c"*.

2. Except as provided in subsection 3 and section 554.9407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection 4, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

3. A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection 4.

4. Subject to subsection 3 and section 554.9407:

a. if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 554.13501, subsection 2;

b. if paragraph *"a"* is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

5. A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

6. Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

7. In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

94 Acts, ch 1052, §37; 2000 Acts, ch 1149, §157, 187

2000 amendments are effective July 1, 2001; 2000 Acts, ch 1149, §187

554.13304 Subsequent lease of goods by lessor.

1. Subject to section 554.13303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection 2 and section 554.13527, subsection 4, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold in-

terest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

a. the lessor's transferor was deceived as to the identity of the lessor;

b. the delivery was in exchange for a check which is later dishonored;

c. it was agreed that the transaction was to be a "cash sale"; or

d. the delivery was procured through fraud punishable as larcenous under the criminal law.

2. A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

3. A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

94 Acts, ch 1052, §38

554.13305 Sale or sublease of goods by lessee.

1. Subject to the provisions of section 554.13303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection 2 and section 554.13511, subsection 4, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

a. the lessor was deceived as to the identity of the lessee;

b. the delivery was in exchange for a check which is later dishonored; or

c. the delivery was procured through fraud punishable as larcenous under the criminal law.

2. A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

3. A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

94 Acts, ch 1052, §39

554.13306 Priority of certain liens arising by operation of law.

If a person in the ordinary course of the person's business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

94 Acts, ch 1052, §40

554.13307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

1. Except as otherwise provided in section 554.13306, a creditor of a lessee takes subject to the lease contract.

2. Except as otherwise provided in subsection 3 and in sections 554.13306 and 554.13308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

3. Except as otherwise provided in sections 554.9317, 554.9321, and 554.9323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

94 Acts, ch 1052, §41; 2000 Acts, ch 1149, §158, 187

2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187

554.13308 Special rights of creditors.

1. A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

2. Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (i) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and (ii) is made under circumstances which under any statute or rule of law apart from this Article would

constitute the transaction a fraudulent transfer or voidable preference.

3. A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

94 Acts, ch 1052, §42

554.13309 Lessor's and lessee's rights when goods become fixtures.

1. In this section:

a. goods are *"fixtures"* when they become so related to particular real estate that an interest in them arises under real estate law;

b. a *"fixture filing"* is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 554.9502, subsections 1 and 2;

c. a lease is a *"purchase money lease"* unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

d. a mortgage is a *"construction mortgage"* to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

e. *"encumbrance"* includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

2. Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

3. This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

4. The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

a. the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

b. the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

5. The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

a. the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

b. the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

c. the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

d. the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

6. Notwithstanding subsection 4, paragraph *"a"*, but otherwise subject to subsections 4 and 5, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

7. In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

8. If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical in-

jury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

9. Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions (Article 9).

94 Acts, ch 1052, §43; 2000 Acts, ch 1149, §159, 187

2000 amendment to subsection 1, paragraph b, is effective July 1, 2001; 2000 Acts, ch 1149, §187

554.13310 Lessor's and lessee's rights when goods become accessions.

1. Goods are *"accessions"* when they are installed in or affixed to other goods.

2. The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection 4.

3. The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection 4 but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

4. The interest of a lessor or a lessee under a lease contract described in subsection 2 or 3 is subordinate to the interest of

a. a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

b. a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

5. When under subsections 2 or 3 and 4 a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (ii) if necessary to enforce the lessor's or lessee's other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but the lessor or lessee must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

94 Acts, ch 1052, §44

554.13311 Priority subject to subordination.

Nothing in this Article prevents subordination by agreement by any person entitled to priority.

94 Acts, ch 1052, §45

PART 4

PERFORMANCE OF LEASE CONTRACT — REPUDIATED, SUBSTITUTED, AND EXCUSED

554.13401 Insecurity — adequate assurance of performance.

1. A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

2. If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which the insecure party has not already received the agreed return.

3. A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty days after receipt of a demand by the other party.

4. Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

5. Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

94 Acts, ch 1052, §46

554.13402 Anticipatory repudiation.

If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

1. for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

2. make demand pursuant to section

554.13401 and await assurance of future performance adequate under the circumstances of the particular case; or

3. resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 554.13524).

94 Acts, ch 1052, §47

554.13403 Retraction of anticipatory repudiation.

1. Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

2. Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 554.13401.

3. Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

94 Acts, ch 1052, §48

554.13404 Substituted performance.

1. If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

2. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

a. the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

b. if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

94 Acts, ch 1052, §49

554.13405 Excused performance.

Subject to section 554.13404 on substituted performance, the following rules apply:

1. Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections 2 and 3 is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

2. If the causes mentioned in subsection 1 affect only part of the lessor's or the supplier's capacity to perform, the lessor or supplier shall allocate production and deliveries among the lessor's or supplier's customers but at the lessor's or supplier's option may include regular customers not then under contract for sale or lease as well as the lessor's or supplier's own requirements for further manufacture. The lessor or supplier may so allocate in any manner that is fair and reasonable.

3. The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection 2, of the estimated quota thus made available for the lessee.

94 Acts, ch 1052, §50

554.13406 Procedure on excused performance.

1. If the lessee receives notification of a material or indefinite delay or an allocation justified under section 554.13405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 554.13510):

a. terminate the lease contract (section 554.13505, subsection 2); or

b. except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

2. If, after receipt of a notification from the lessor under section 554.13405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected.

94 Acts, ch 1052, §51

554.13407 Irrevocable promises — finance leases.

1. In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

2. A promise that has become irrevocable and independent under subsection 1:

a. is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

b. is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

3. This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

94 Acts, ch 1052, §52

PART 5

DEFAULT

A. IN GENERAL

554.13501 Default — procedure.

1. Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

2. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

3. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

4. Except as otherwise provided in section 554.1106, subsection 1, of this Article or the lease agreement, the rights and remedies referred to in subsections 2 and 3 are cumulative.

5. If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

94 Acts, ch 1052, §53

554.13502 Notice after default.

Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

94 Acts, ch 1052, §54

554.13503 Modification or impairment of rights and remedies.

1. Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

2. Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

3. Consequential damages may be liquidated under section 554.13504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

4. Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article.

94 Acts, ch 1052, §55

554.13504 Liquidation of damages.

1. Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

2. If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection 1, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

3. If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (section 554.13525 or 554.13526), the lessee is entitled to restitution of any amount by which the sum of the lessee's payments exceeds:

a. the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection 1; or

b. in the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to pay for the balance of the

lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars.

4. A lessee's right to restitution under subsection 3 is subject to offset to the extent the lessor establishes:

a. a right to recover damages under the provisions of this Article other than subsection 1; and

b. the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

94 Acts, ch 1052, §56

554.13505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.

1. On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

2. On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

3. Unless the contrary intention clearly appears, expressions of "cancellation", "rescission", or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

4. Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

5. Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

94 Acts, ch 1052, §57

554.13506 Statute of limitations.

1. An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

2. A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

3. If an action commenced within the time limited by subsection 1 is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

4. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective.

94 Acts, ch 1052, §58

554.13507 Proof of market rent — time and place.

1. Damages based on market rent (section 554.13519 or 554.13528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in sections 554.13519 and 554.13528.

2. If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

3. Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until the party has given the other party notice the court finds sufficient to prevent unfair surprise.

4. If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

94 Acts, ch 1052, §59

B. DEFAULT BY LESSOR

554.13508 Lessee's remedies.

1. If a lessor fails to deliver the goods in conformity to the lease contract (section 554.13509) or repudiates the lease contract (section 554.13402), or a lessee rightfully rejects the goods (section 554.13509) or justifiably revokes acceptance of the goods (section 554.13517), then with respect to any goods involved, and with respect to all of the

goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 554.13510), the lessor is in default under the lease contract and the lessee may:

a. cancel the lease contract (section 554.13505, subsection 1);

b. recover so much of the rent and security as has been paid and is just under the circumstances;

c. cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 554.13518 and 554.13520), or recover damages for nondelivery (sections 554.13519 and 554.13520);

d. exercise any other rights or pursue any other remedies provided in the lease contract.

2. If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

a. if the goods have been identified, recover them (section 554.13522); or

b. in a proper case, obtain specific performance or replevy the goods (section 554.13521).

3. If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in section 554.13519, subsection 3.

4. If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 554.13519, subsection 4).

5. On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to section 554.13527, subsection 5.

6. Subject to the provisions of section 554.13407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

94 Acts, ch 1052, §60

554.13509 Lessee's rights on improper delivery — rightful rejection.

1. Subject to the provisions of section 554.13510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

2. Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

94 Acts, ch 1052, §61

554.13510 Installment lease contracts — rejection and default.

1. Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection 2 and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

2. Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

94 Acts, ch 1052, §62

554.13511 Merchant lessee's duties as to rightfully rejected goods.

1. Subject to any security interest of a lessee (section 554.13508, subsection 5), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in the merchant lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's or supplier's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

2. If a merchant lessee (subsection 1) or any other lessee (section 554.13512) disposes of goods, the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

3. In complying with this section or section 554.13512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

4. A purchaser who purchases in good faith from a lessee pursuant to this section or section 554.13512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article.

94 Acts, ch 1052, §63

554.13512 Lessee's duties as to rightfully rejected goods.

1. Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 554.13511) and subject to any security interest of a lessee (section 554.13508, subsection 5):

a. the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

b. if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 554.13511; but

c. the lessee has no further obligations with regard to goods rightfully rejected.

2. Action by the lessee pursuant to subsection 1 is not acceptance or conversion.

94 Acts, ch 1052, §64

554.13513 Cure by lessor of improper tender or delivery — replacement.

1. If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

2. If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if the lessor or supplier seasonably notifies the lessee.

94 Acts, ch 1052, §65

554.13514 Waiver of lessee's objections.

1. In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

a. if, stated seasonably, the lessor or the supplier could have cured it (section 554.13513); or

b. between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

2. A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

94 Acts, ch 1052, §66

554.13515 Acceptance of goods.

1. Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and

a. the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

b. the lessee fails to make an effective rejection of the goods (section 554.13509, subsection 2).

2. Acceptance of a part of any commercial unit is acceptance of that entire unit.

94 Acts, ch 1052, §67

554.13516 Effect of acceptance of goods — notice of default — burden of establishing default after acceptance — notice of claim or litigation to person answerable over.

1. A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

2. A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

3. If a tender has been accepted:

a. within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

b. except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 554.13211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

c. the burden is on the lessee to establish any default.

4. If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

a. The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

b. The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 554.13211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

5. Subsections 3 and 4 apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 554.13211).

94 Acts, ch 1052, §68

554.13517 Revocation of acceptance of goods.

1. A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

a. except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

b. without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

2. Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

3. If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

4. Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

5. A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

94 Acts, ch 1052, §69

554.13518 Cover — substitute goods.

1. After a default by a lessor under the lease contract of the type described in section 554.13508, subsection 1, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1102, subsection 3, and 554.13503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

3. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 554.13519 governs.

94 Acts, ch 1052, §70

554.13519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1102, subsection 3, and 554.13503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 554.13518, subsection 2, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

2. Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

3. Except as otherwise agreed, if the lessee has accepted goods and given notification (section 554.13516, subsection 3), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential dam-

ages, less expenses saved in consequence of the lessor's default.

4. Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

94 Acts, ch 1052, §71

554.13520 Lessee's incidental and consequential damages.

1. Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

2. Consequential damages resulting from a lessor's default include:

a. any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

b. injury to person or property proximately resulting from any breach of warranty.

94 Acts, ch 1052, §72

554.13521 Lessee's right to specific performance or replevin.

1. Specific performance may be decreed if the goods are unique or in other proper circumstances.

2. A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

3. A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

94 Acts, ch 1052, §73

554.13522 Lessee's right to goods on lessor's insolvency.

1. Subject to subsection 2 and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 554.13217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

2. A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

94 Acts, ch 1052, §74

C. DEFAULT BY LESSEE

554.13523 Lessor's remedies.

1. If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 554.13510), the lessee is in default under the lease contract and the lessor may:

a. cancel the lease contract (section 554.13505, subsection 1);

b. proceed respecting goods not identified to the lease contract (section 554.13524);

c. withhold delivery of the goods and take possession of goods previously delivered (section 554.13525);

d. stop delivery of the goods by any bailee (section 554.13526);

e. dispose of the goods and recover damages (section 554.13527), or retain the goods and recover damages (section 554.13528), or in a proper case recover rent (section 554.13529);

f. exercise any other rights or pursue any other remedies provided in the lease contract.

2. If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection 1, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

3. If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

a. if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection 1 or 2; or

b. if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection 2.

94 Acts, ch 1052, §75

554.13524 Lessor's right to identify goods to lease contract.

1. After default by the lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"* or, if agreed, after other default by the lessee, the lessor may:

a. identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

b. dispose of goods (section 554.13527, subsection 1) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

2. If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

94 Acts, ch 1052, §76

554.13525 Lessor's right to possession of goods.

1. If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

2. After a default by the lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"* or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 554.13527).

3. The lessor may proceed under subsection 2 without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

94 Acts, ch 1052, §77

554.13526 Lessor's stoppage of delivery in transit or otherwise.

1. A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

2. In pursuing its remedies under subsection 1, the lessor may stop delivery until

a. receipt of the goods by the lessee;

b. acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

c. such an acknowledgment to the lessee by a carrier via reshipment or as warehouser.

3. *a.* To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

b. After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

c. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

94 Acts, ch 1052, §78

554.13527 Lessor's rights to dispose of goods.

1. After a default by a lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"*, or after the lessor refuses to deliver or takes possession of goods (section 554.13525 or 554.13526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1102, subsection 3, and 554.13503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

3. If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 554.13528 governs.

4. A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

5. The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 554.13508, subsection 5).

94 Acts, ch 1052, §79

554.13528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1102, subsection 3, and 554.13503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 554.13527, subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"*, or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

2. If the measure of damages provided in subsection 1 is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 554.13530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

94 Acts, ch 1052, §80

554.13529 Lessor's action for the rent.

1. After default by the lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"*, or, if agreed, after other default by the lessee, if the lessor complies with subsection 2, the lessor may recover from the lessee as damages:

a. for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 554.13219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default; and

b. for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

2. Except as provided in subsection 3, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

3. The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection 1. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by section 554.13527 or 554.13528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to section 554.13527 or 554.13528.

4. Payment of the judgment for damages obtained pursuant to subsection 1 entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

5. After default by the lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph *"a"*, or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under section 554.13527 or section 554.13528.

94 Acts, ch 1052, §81

554.13530 Lessor's incidental damages.

Incidental damages to an aggrieved lessor in-

clude any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

94 Acts, ch 1052, §82

554.13531 Standing to sue third parties for injury to goods.

1. If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (i) the lessor has a right of action against the third party, and (ii) the lessee also has a right of action against the third party if the lessee:

a. has a security interest in the goods;

b. has an insurable interest in the goods; or

c. bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

2. If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, the plaintiff party's suit or settlement, subject to party plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

3. Either party with the consent of the other may sue for the benefit of whom it may concern.

94 Acts, ch 1052, §83

554.13532 Lessor's rights to residual interest.

In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

94 Acts, ch 1052, §84

CHAPTER 554A

LIVESTOCK WARRANTY EXEMPTION

554A.1 Livestock sales — when exempt from implied warranty.

554A.1 Livestock sales — when exempt from implied warranty.

1. Notwithstanding section 554.2316, subsection 2, all implied warranties arising under sections 554.2314 and 554.2315 are excluded from a sale of cattle, hogs, sheep, ostriches, rheas, emus, and horses if the following information is disclosed to the prospective buyer or the buyer's agent in advance of the sale, and if confirmed in writing at or before the time of acceptance of the livestock when confirmation is requested by the buyer or the buyer's agent:

a. That the animals to be sold have been inspected in accordance with existing federal and state animal health regulations and found apparently free from any infectious, contagious, or communicable disease.

b. One of the following, as applicable:

(1) Except when the livestock have been confined with livestock from another source or assembled within the meaning of subparagraph 2, the name and address of the present owner, and whether or not that owner has owned all of the livestock for at least thirty days.

(2) If the livestock have been confined with livestock from another source or assembled from two or more sources within the previous thirty days, the livestock shall be represented as being "assembled livestock". As used in this subparagraph, "confined with livestock from another source" means the placement of livestock in a livestock auction market, yard, or other unitary facility in which livestock from another source are confined, but does not include livestock confined at the facility where the sale takes place if such confinement is for less than forty-eight hours prior to the day of sale; provided that livestock which are not sold after being confined with livestock from another source at a facility and offered for sale shall be deemed "assembled livestock" for the thirty-day period following the day when offered for sale.

2. If the livestock are represented as being "assembled livestock", the name and address of the present owner shall be disclosed.

3. In the case of an auction sale, the disclosure required by this section shall be made verbally immediately before the sale by the owner, an agent for the owner, or the person who is conducting the auction of the lot of livestock in question. Warranties shall be implied to the person who is conducting the auction only if the disclosure contains rep-

resentations which that person knew or had reason to know were untrue.

[C81, §554A.1]
95 Acts, ch 43, §12

CHAPTER 554B

SECURED TRANSACTIONS OF TRANSMITTING UTILITIES

554B.1 Definitions.
554B.2 Security interest.
554B.3 Recording mortgage or deed of trust upon real estate.
554B.4 Reserved.

554B.1 Definitions.

As used in this chapter *"transmitting utility"* has the same meaning as defined in the Uniform Commercial Code, section 554.9102, subsection 1. Security interests filed pursuant to this chapter prior to January 1, 1975, which have not been terminated, are deemed to be filed in accordance with section 554.9501, subsection 2.

[C66, 71, 73, 75, 77, 79, 81, §555.1]
C93, §554B.1
2000 Acts, ch 1149, §175, 187

554B.2 Security interest.

A security interest in rolling stock of a transmitting utility may be perfected either as provided in the Uniform Commercial Code, chapter 554, or as provided in the Interstate Commerce Act, 49 U.S.C., section 20 "c."

[C66, 71, 73, 75, 77, 79, 81, §555.2]
C93, §554B.2

554B.3 Recording mortgage or deed of trust upon real estate.

Any mortgage or deed of trust upon real estate executed by a transmitting utility may provide that property of the transmitting utility, whether owned at the time of the execution of the instrument or subsequently acquired, shall secure the obligations covered by the instrument. Recording the instrument in the office of the recorder of each county in which such property, or any part thereof, described in the instrument is situated shall give constructive notice to all persons of the lien of the mortgage or deed of trust from the time of recording or, in the case of subsequently acquired real estate, from the time of acquisition.

[C66, 71, 73, 75, 77, 79, 81, §555.3]
C93, §554B.3

554B.4 Reserved.

CHAPTER 554C

ELECTRONIC COMMERCE SECURITY ACT

Chapter repealed by 2000 Acts, ch 1189, §31; see chapter 554D

CHAPTER 554D

UNIFORM ELECTRONIC TRANSACTIONS ACT

554D.101 Short title.
554D.102 Legislative intent.
554D.103 Definitions.
554D.104 Scope.
554D.105 Prospective application.
554D.106 Use of electronic records and electronic signatures — variation by agreement.
554D.107 Construction and application.
554D.108 Legal recognition of electronic records, electronic signatures, and electronic contracts.
554D.109 Legal recognition of electronic records affecting interests in real property.
554D.110 Provision of information in writing — presentation of records.
554D.111 Attribution and effect of electronic record and electronic signature.
554D.112 Effect of change or error.
554D.113 Notarization and acknowledgment.
554D.114 Retention of electronic records — originals.
554D.115 Admissibility in evidence.

554D.116 Automated transaction.
554D.117 Time and place of sending and receipt.
554D.118 Transferable records.
554D.119 Creation and retention of electronic records and conversion of written records by governmental agencies.
554D.120 Acceptance and distribution of electronic records by governmental agencies.
554D.121 Interoperability.
554D.122 Fraudulent purpose — penalty.
554D.123 False or unauthorized request — penalty.

554D.101 Short title.

This chapter shall be known and may be cited as the *"Uniform Electronic Transactions Act"*.

2000 Acts, ch 1189, §1

554D.102 Legislative intent.

It is the intent of the general assembly in enacting this chapter to effectuate all of the following purposes:

1. Facilitate electronic communications by means of reliable electronic records.

2. Facilitate and promote electronic commerce, by eliminating barriers resulting from uncertainties over writing and signature requirements, and promote the development of the legal and business infrastructure necessary to implement secure electronic commerce.

3. Facilitate electronic filing of documents with state and local government agencies and promote efficient delivery of government services by means of reliable electronic records.

4. Minimize the incidence of forged electronic records, intentional and unintentional alteration of records, and fraud in electronic commerce.

5. Promote public confidence in the integrity, reliability, and legality of electronic records and electronic commerce.

2000 Acts, ch 1189, §2

554D.103 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agreement"* means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

2. *"Automated transaction"* means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course of forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

3. *"Computer program"* means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

4. *"Consumer"* means an individual engaged in a transaction for personal, family, or household purposes.

5. *"Consumer transaction"* means a transaction by an individual for personal, family, or household use.

6. *"Contract"* means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

7. *"Digital signature"* means a type of electronic signature consisting of a transformation of an electronic record using a message digest function that is encrypted with an asymmetric cryptosystem using the signer's private key in a manner providing that any person having the initial untransformed electronic record, the encrypted transformation, and the signer's public key may accurately determine all of the following:

a. Whether the transformation was created using the private key that corresponds to the signer's public key.

b. Whether the initial electronic record has been altered since the transformation was made.

8. *"Electronic"* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

9. *"Electronic agent"* means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

10. *"Electronic record"* means a record created, generated, sent, communicated, received, or stored by electronic means.

11. *"Electronic signature"* means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

12. *"Governmental agency"* means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

13. *"Information"* means data, text, images, sounds, codes, computer programs, software, databases, or the like.

14. *"Information processing system"* means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing

information.

15. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

16. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

17. *"Security procedure"* means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. *"Security procedure"* includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures, and includes digital signature technology.

18. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. *"State"* includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

19. *"Transaction"* means an action or set of actions occurring between two or more persons relating to the conduct of business, consumer, commercial, or governmental affairs.

2000 Acts, ch 1189, §3

554D.104 Scope.

1. Except as provided in subsection 2, this chapter applies to electronic records and electronic signatures relating to a transaction.

2. *a.* (1) This chapter does not apply to the following:

(a) An application which would involve construction of a rule of law that is clearly inconsistent with the manifest intent of the body imposing the requirement or repugnant to the context of the same rule of law. However, the mere requirement that information be in writing, written, or printed shall not by itself be sufficient to establish an intent which is inconsistent with the requirement of this section.

(b) With respect to a consumer transaction, a record that serves as a unique and transferable physical expression of rights and obligations including, without limitation, negotiable instruments and other instruments of title where possession of the instrument is deemed to confer title.

(c) An electronic transaction initiated at a satellite terminal, as defined in section 527.2, or the processing and routing of transaction data by a central routing unit or a data processing center, each as defined in section 527.2.

(2) Except as provided under paragraph *"b"*, this chapter does not apply to a transaction to the extent it is governed by any of the following:

(a) A disclosure requirement associated with a consumer transaction, including, but not limited to, such disclosures required under chapter 13C, sections 321.69 and 321.71, chapters 516D, 523A, 523B, 523G, 533D, 537, 537B, 538A, 552, 552A, 555A, 557A, 557B, 558A, 562A, and 562B, section 714.16, and chapters 714B and 714D, or an administrative rule adopted pursuant to such sections or chapters.

(b) A rule of law governing the creation or execution of a will or trust, living will, a general, durable, or healthcare power of attorney, or a voluntary, involuntary, or standby guardianship or conservatorship.

(c) Chapter 554 other than articles 2 and 13 and sections 554.1107 and 554.1206.

b. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under paragraph *"a"* to the extent it is governed by a law other than those specified in paragraph *"a"*, subparagraph (2).

3. A transaction subject to this chapter is also subject to other applicable substantive law.

4. A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted the uniform computer information transactions Act, as proposed by the national conference of commissioners on uniform state laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this state if the party against whom enforcement of the choice of law provision is sought is a resident of this state or has its principal place of business located in this state. For purposes of this subsection, a *"computer information agreement"* means an agreement that would be governed by the uniform computer information transactions Act or substantially similar law as enacted in the state specified in the choice of laws provision if that state's law were applied to the agreement.

2000 Acts, ch 1189, §4; 2000 Acts, ch 1232, §29

Subsection 4 is repealed effective July 1, 2003; 2000 Acts, ch 1189, §32; 2001 Acts, ch 34, §1; 2002 Acts, ch 1106, §1

554D.105 Prospective application.

This chapter applies to an electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after July 1, 2000.

2000 Acts, ch 1189, §5

554D.106 Use of electronic records and electronic signatures — variation by agreement.

1. This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

2. This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

3. A party who agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

4. Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words *"unless otherwise agreed"*, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

5. Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

2000 Acts, ch 1189, §6

554D.107 Construction and application.

This chapter shall be construed and applied as follows:

1. To facilitate electronic transactions consistent with other applicable law.

2. To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

3. To effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the uniform law.

2000 Acts, ch 1189, §7

554D.108 Legal recognition of electronic records, electronic signatures, and electronic contracts.

1. A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.

2. A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.

3. If a law requires a record to be in writing, an electronic record satisfies the law.

4. If a law requires a signature, an electronic signature satisfies the law.

2000 Acts, ch 1189, §8

554D.109 Legal recognition of electronic records affecting interests in real property.

An electronic record that grants a legal or equitable interest in real property, including a deed, mortgage, deed of trust, pledge, security interest, or other lien or encumbrance, and any disclosure required under chapter 558A shall comply with all of the following:

1. Be created using a security procedure and signed by use of a digital signature.

2. Shall not be recorded or have effect against third parties until a duplicate paper original of the electronic record is executed in writing by the parties, acknowledged, and recorded. The burden of proof that the duplicate paper original of the electronic record is identical to the original electronic record rests upon the party submitting the duplicate paper original.

3. Comply with all requirements of Iowa law regarding the recording of instruments and all other applicable state requirements.

2000 Acts, ch 1189, §9

554D.110 Provision of information in writing — presentation of records.

1. If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

2. If a law other than this chapter requires a record to be posted or displayed in a certain manner; to be sent, communicated, or transmitted by a specified method; or to contain information that is formatted in a certain manner, all of the following apply:

a. The record must be posted or displayed in the manner specified in the other law.

b. Except as otherwise provided in subsection 4, paragraph *"b"*, the record must be sent, communicated, or transmitted by the method specified in the other law.

c. The record must contain the information formatted in the manner specified in the other law.

3. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

4. The requirements of this section shall not be varied by agreement, except as follows:

a. To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection 1 that the information be in the form of an electronic record capable of retention may also be varied by agreement.

b. A requirement under a law other than this chapter to send, communicate, or transmit a record by delivery in person, by mail postage prepaid, or by courier may be varied by agreement to the extent permitted by the other law.

2000 Acts, ch 1189, §10

554D.111 Attribution and effect of electronic record and electronic signature.

1. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

2. The effect of an electronic record or electronic signature attributed to a person under subsection 1 is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

3. In addition to subsections 1 and 2, in a consumer transaction, the attribution and effect of an electronic record and an electronic signature is determined by the substantive law governing the transaction.

2000 Acts, ch 1189, §11

554D.112 Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

1. If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

2. In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, all of the following apply:

a. The individual promptly notifies the other person of the error and that the individual does not intend to be bound by the electronic record received by the other person.

b. The individual takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record.

c. The individual has not used or received any benefit or value from the consideration, if any, received from the other person.

3. If subsection 1 or 2 does not apply, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

4. In a consumer transaction, any substantive law limiting a consumer's liability shall apply to an electronic transaction.

5. Subsections 2, 3, and 4 shall not be varied by agreement of the parties.

2000 Acts, ch 1189, §12

554D.113 Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

2000 Acts, ch 1189, §13

554D.114 Retention of electronic records — originals.

1. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which does both of the following:

a. Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise.

b. Remains accessible for later reference.

2. A requirement to retain a record in accordance with subsection 1 does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

3. A person may satisfy subsection 1 by using the services of another person if the requirements of that subsection are satisfied.

4. If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection 1.

5. If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection 1.

6. A record retained as an electronic record in accordance with subsection 1 satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 1, 2000, specifically prohibits the use of an electronic record for the specified purpose.

7. This section does not preclude a governmental agency from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

2000 Acts, ch 1189, §14

554D.115 Admissibility in evidence.

In a proceeding, evidence of a record or signature shall not be excluded solely because it is in

electronic form.

2000 Acts, ch 1189, §15

554D.116 Automated transaction.

In an automated transaction, the following rules apply:

1. A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

2. A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

3. The terms of the contract are determined by the substantive law applicable to it.

2000 Acts, ch 1189, §16

554D.117 Time and place of sending and receipt.

1. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when all of the following occur:

a. The electronic record is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.

b. The electronic record is in a form capable of being processed by that information processing system.

c. The electronic record enters an information processing system outside the control of the sender or of a person who sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

2. Unless otherwise agreed between a sender and the recipient, an electronic record is received when both of the following occur:

a. The electronic record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.

b. The electronic record is in a form capable of being processed by that information processing system.

3. Subsection 2 applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection 4.

4. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, both of the following apply:

a. If the sender or recipient has more than one place of business, the place of business of such person is the place having the closest relationship to the underlying transaction.

b. If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

5. An electronic record is received under subsection 2 even if no individual is aware of its receipt.

6. Receipt of an electronic acknowledgment from an information processing system described in subsection 2 establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

7. If a person is aware that an electronic record purportedly sent under subsection 1, or purportedly received under subsection 2, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted or required by the other law, the requirements of this subsection shall not be varied by agreement.

2000 Acts, ch 1189, §17

554D.118 Transferable records.

1. For purposes of this section, *"transferable record"* means an electronic record that satisfies both of the following:

a. The electronic record would be a note under chapter 554, article 3, or a document under chapter 554, article 7, if the electronic record were in writing.

b. The issuer of the electronic record expressly has agreed such electronic record is a transferable record.

2. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

3. A system satisfies subsection 2, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that satisfies all of the following:

a. A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs *"d"*, *"e"*, and *"f"*, unalterable.

b. The authoritative copy identifies the person asserting control as one of the following:

(1) The person to which the transferable record was issued.

(2) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred.

c. The authoritative copy is communicated to and maintained by the person asserting control or such person's designated custodian.

d. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control.

e. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

f. A revision of the authoritative copy is readily identifiable as authorized or unauthorized.

4. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 554.1201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chapter 554, including, if the applicable statutory requirements under section 554.3302, subsection 1, section 554.7501, or section 554.9308* are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

5. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapter 554.

6. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

2000 Acts, ch 1189, §18

*Section 554.9308 was repealed and replaced effective July 1, 2001; corrective legislation is pending

554D.119 Creation and retention of electronic records and conversion of written records by governmental agencies.

A governmental agency of this state shall determine whether, and the extent to which, the governmental agency will create and retain electronic records and convert written records to electronic records.

2000 Acts, ch 1189, §19

554D.120 Acceptance and distribution of electronic records by governmental agencies.

1. Except as otherwise provided in section 554D.114, subsection 6, a governmental agency of this state other than a state executive branch agency, department, board, commission, authority, or institution, shall determine whether, and the extent to which, the governmental agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

2. Except as otherwise provided in section 554D.114, subsection 6, on or before July 1, 2003, a state executive branch agency, department, board, commission, authority, or institution, in consultation and cooperation with the information technology department, shall send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and signatures. The department of management, upon the written request of a state executive branch agency, department, board, commission, authority, or institution and for good cause shown, may grant a waiver from the July 1, 2003, deadline established in this section to the state executive branch agency, department, board, commission, authority, or institution.

3. To the extent that a governmental agency of this state uses electronic records and electronic signatures under subsection 1 or 2, the office of the secretary of state and the information technology department, jointly, and in consultation with the office of the attorney general, giving due consideration to security, may specify by rule all of the following:

a. The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the information processing systems established for those purposes.

b. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process.

c. Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

d. Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

4. Except as otherwise provided in section 554D.114, subsection 6, this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

5. Notwithstanding this section, an institu-

tion governed under chapter 262 shall conform with national standards with respect to electronic records and electronic signatures, as such standards are developed.

2000 Acts, ch 1189, §20; 2002 Acts, ch 1119, §187, 188

Subsection 2 amended

Subsection 3, unnumbered paragraph 1 amended

554D.121 Interoperability.

The standards adopted pursuant to section 554D.120 should encourage and promote consistency and interoperability with similar requirements adopted by another governmental agency and nongovernmental persons interacting with governmental agencies of this state. If appropriate, such standards may specify differing levels of standards from which a governmental agency of this state may choose in implementing the most appropriate standard for a particular application.

2000 Acts, ch 1189, §21

554D.122 Fraudulent purpose — penalty.

A person shall not knowingly create, publish, alter, or otherwise use an electronic record or an electronic signature for a fraudulent or other unlawful purpose. A person convicted of violating this section is guilty of a serious misdemeanor. A person convicted of a second or subsequent violation of this section is guilty of a class "D" felony.

2000 Acts, ch 1189, §22

554D.123 False or unauthorized request — penalty.

A person shall not knowingly misrepresent the person's identity or authorization to obtain a private key for use in a digital signature or in requesting suspension or revocation of a private key for use in a digital signature. *"Private key"* means the key of a key pair used to create a digital signature. A person convicted of violating this section is guilty of a serious misdemeanor. A person convicted of a second or subsequent violation of this section is guilty of a class "D" felony.

2000 Acts, ch 1189, §23

TITLE XIV

PROPERTY

SUBTITLE 1

PERSONAL PROPERTY

CHAPTER 555

SECURED TRANSACTIONS OF TRANSMITTING UTILITIES

Transferred to chapter 554B

CHAPTER 555A

DOOR-TO-DOOR SALES

This chapter not enacted as a part of this title;
transferred from chapter 82 in Code 1993

555A.1 Definitions.
555A.2 Contract.
555A.3 Cancellation.
555A.4 Duties of seller.
555A.5 Effect on indebtedness.
555A.6 Penalties.

555A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Business day"* means any calendar day except Saturday, Sunday, or public holiday, including holidays observed on Mondays.

2. *"Consumer goods or services"* means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

3. *a. "Door-to-door sale"* means a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. Door-to-door sale does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.

(2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1635, or rules issued pursuant to this chapter.

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days.

(4) Conducted and consummated entirely by mail or telephone, and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

(5) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.

(6) Pertaining to the sale or rental of real prop-

erty, to the sale of insurance and prepaid health service plans, or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission.

b. *"Door-to-door sale"*, irrespective of the place or manner of sale, also means the following:

(1) A sale of funeral services or funeral merchandise regulated under chapter 523A.

(2) A sale of a social referral service or an ancillary service. For purposes of this subparagraph, *"social referral service"* means a service for a fee providing matching or introduction of individuals for the purpose of dating, matrimony, or general social contact not otherwise prohibited by law, and *"ancillary service"* means goods or services directly or indirectly related to or to be provided in connection with a social referral service.

4. *"Place of business"* means the main or permanent branch office or local address of a seller.

5. *"Purchase price"* means the total price paid or to be paid for the consumer goods or services, including all interest and service charges.

6. *"Seller"* means any person engaged in the door-to-door sale of consumer goods or services.

[C75, 77, §713B.1; C79, 81, §82.1; 82 Acts, ch 1249, §5]
C93, §555A.1
2000 Acts, ch 1021, §3

555A.2 Contract.

Every seller shall furnish the buyer with a fully completed receipt or copy of any contract pertaining to a door-to-door sale at the time of its execution, which is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of ten points, a statement in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

[C75, 77, §713B.2; C79, 81, §82.2]
C93, §555A.2

555A.3 Cancellation.

Every seller shall furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned *"Notice of Cancellation"*, which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

. . . . . .
(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to . . . . . , (Name of seller) at . . . . . (Address of seller's place of business) not later than midnight of . . . . . (Date).

I hereby cancel this transaction.

. . . . . .
(Date)

. . . . . .
(Buyer's signature)

[C75, 77, §713B.3; C79, 81, §82.3]
C93, §555A.3

555A.4 Duties of seller.

A seller shall:

1. Furnish two copies of the notice of cancellation to the buyer, and complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

2. Not include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically the right to cancel

the sale in accordance with the provisions of this chapter.

3. Inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.

4. Not misrepresent in any manner the buyer's right to cancel.

5. Honor any valid notice of cancellation by a buyer and within ten business days after the receipt of notice shall refund all payments made under the contract or sale, return any goods or property traded in, in substantially as good condition as when received by the seller, and cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

6. Not negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the seventh business day following the day the contract was signed or the goods or services were purchased.

7. Within ten business days of receipt of the buyer's notice of cancellation notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

[C75, 77, §713B.4; C79, 81, §82.4]
C93, §555A.4

555A.5 Effect on indebtedness.

Rescission of any contract pursuant to this chapter or the failure to provide a copy of the contract to the buyer as required by this chapter shall void any contract, note, instrument, or other evidence of indebtedness executed or entered into in connection with the contract and shall constitute a complete defense in any action based on the contract, note, instrument or other evidence of indebtedness brought by the seller, the seller's successors or assigns unless a successor or assignee of the seller after the seventh business day following the day the contract was signed has detrimentally relied upon a representation of the buyer that the contract has not been rescinded. This section shall not affect the rights of holders in due course of checks made by the buyer.

[C75, 77, §713B.5; C79, 81, §82.5]
C93, §555A.5

555A.6 Penalties.

1. Any seller who violates the provisions of this chapter shall be guilty of a simple misdemeanor.

2. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*.

[C75, 77, §713B.6; C79, 81, §82.6]
92 Acts, ch 1062, §1
C93, §555A.6

CHAPTER 555B

DISPOSAL OF ABANDONED MOBILE HOMES AND PERSONAL PROPERTY

See also chapter 555C relating to valueless homes

555B.1 Definitions.
555B.2 Removal — notice to sheriff.
555B.3 Action for abandonment — jurisdiction.
555B.4 Notice.
555B.5 Change of venue.
555B.6 Priority of assignment.
555B.7 Remedy not exclusive.
555B.8 Judgment.
555B.9 Disposal — proceeds.
555B.10 Limitation on liability.

555B.1 Definitions.

Unless the context otherwise requires, in this chapter:

1. *"Abandoned"* means abandoned as provided in section 562B.27, subsection 1.

2. *"Claimant"* includes but is not limited to any government subdivision with authority to levy a tax on abandoned personal property. *"Claimant"* also includes a holder of a lien as defined in section 555B.2.

3. *"Demolisher"* means demolisher as defined in section 321.89.

4. *"Junkyard"* means junkyard as defined in section 306C.1.

5. *"Mobile home"* includes "manufactured homes" and "modular homes" as those terms are defined in section 435.1, if the manufactured homes or modular homes are located in a manufactured home community or mobile home park.

6. *"Personal property"* includes personal property of the mobile home owner in the abandoned mobile home, on the mobile home lot, in the immediate vicinity of the abandoned mobile home and the mobile home lot, and in any storage area pro-

vided by the real property owner for the use of the mobile home owner.

7. *"Real property owner"* means the owner or other lawful possessor of real property upon which a mobile home is located.

88 Acts, ch 1138, §1
C89, §562C.1
C93, §555B.1
93 Acts, ch 154, §6, 7; 94 Acts, ch 1110, §21, 24; 99 Acts, ch 155, §1, 14; 2001 Acts, ch 153, §16

555B.2 Removal — notice to sheriff.

1. A real property owner may remove or cause to be removed a mobile home and other personal property which is unlawfully parked, placed, or abandoned on that real property, and may cause the mobile home and personal property to be placed in storage until the owner of the personal property pays a fair and reasonable charge for removal, storage, or other expense incurred, including reasonable attorneys' fees, or until a judgment of abandonment is entered pursuant to section 555B.8 provided that there is no lien on the mobile home or personal property other than a tax lien pursuant to chapter 435. For purposes of this chapter, a lien other than a tax lien exists only if the real property owner receives notice of a lien on the standardized registration form completed by a tenant pursuant to section 562B.27, subsection 3, or a lien has been filed in state or county records on a date before the mobile home is considered to be abandoned. The real property owner or the real property owner's agent is not liable for damages caused to the mobile home and personal property by the removal or storage unless the damage is caused willfully or by gross negligence.

2. The real property owner shall notify the sheriff of the county where the real property is located of the removal of the mobile home and other personal property.

a. If the mobile home owner can be determined, and if the real property owner so requests, the sheriff shall notify the mobile home owner of the removal by restricted certified mail. If the mobile home owner cannot be determined, and the real property owner so requests, the sheriff shall give notice by one publication in one newspaper of general circulation in the county where the mobile home and personal property were unlawfully parked, placed, or abandoned. If the mobile home and personal property have not been claimed by the owner within six months after notice is given, the mobile home and personal property shall be sold by the sheriff at a public or private sale. After deducting costs of the sale the net proceeds shall be applied to the cost of removal, storage, notice, attorney fees, and any other expenses incurred for preserving the mobile home and personal property, including any rent owed by the mobile home owner to the real property owner in connection with the presence of the mobile home on the real property. The remaining net proceeds, if any, shall be paid to the county treasurer to satisfy any tax lien on the mobile home. The remainder, if any, shall be retained by the county treasurer. A sheriff's sale transfers to the purchaser for value, all of the mobile home owner's rights in the mobile home and personal property, and discharges the real property owner's interest in the mobile home and personal property, and discharges the tax lien on the mobile home. If the purchaser acts in good faith the purchaser takes free of all rights and interests even though the real property owner fails to comply with the requirements of this chapter or of any judicial proceedings.

b. If the real property owner removes the mobile home and personal property but does not request that the sheriff notify the mobile home owner, the real property owner shall proceed with an action for abandonment as provided in sections 555B.3 through 555B.9.

88 Acts, ch 1138, §2
C89, §562C.2
C93, §555B.2
93 Acts, ch 154, §8, 9; 94 Acts, ch 1110, §22, 24

555B.3 Action for abandonment — jurisdiction.

A real property owner not requesting notification by the sheriff as provided in section 555B.2 may bring an action alleging abandonment in the court within the county where the real property is located provided that there is no lien on the mobile home or personal property other than a tax lien pursuant to chapter 435. The action shall be tried as an equitable action. Unless commenced as a small claim, the petition shall be presented to a district judge. Upon receipt of the petition, either the court or the clerk of the district court shall set a date for a hearing not later than fourteen days from the date of the receipt of the petition.

88 Acts, ch 1138, §3
C89, §562C.3
C93, §555B.3
93 Acts, ch 154, §10

555B.4 Notice.

1. Personal service pursuant to rule of civil procedure 1.305 shall be made upon the mobile home owner not less than ten days before the hearing. If personal service cannot be completed in time to give the mobile home owner the minimum notice required by this section, the court may set a new hearing date.

2. If personal service cannot be made on the mobile home owner because the mobile home owner is avoiding service or cannot be found, service may be made by mailing a copy of the petition and notice of hearing to the mobile home owner's last known address and publishing the notice in one newspaper of general circulation in the county where the petition is filed. If the mobile home owner's address is not known to the real property

owner, service may be made pursuant to rule of civil procedure 1.313 except that service is complete seven days after the initial publication. The court shall set a new hearing date if necessary to allow the ten-day minimum notice required under subsection 1 of this section.

3. If a tax lien exists on the mobile home or personal property at the time an action for abandonment is initiated, the real property owner shall notify the county treasurer of each county in which a tax lien appears by restricted certified mail sent not less than ten days before the hearing. The notice shall describe the mobile home and shall state the docket, case number, date, and time at which the hearing is scheduled, and the county treasurer's right to assert a claim to the mobile home at the hearing. The notice shall also state that failure to assert a claim to the mobile home is deemed a waiver of all right, title, claim, and interest in the mobile home and is deemed consent to the sale or disposal of the mobile home.

88 Acts, ch 1138, §4
C89, §562C.4
C93, §555B.4
93 Acts, ch 154, §11; 97 Acts, ch 121, §31

555B.5 Change of venue.

In an action under this chapter a change of place of trial may be had as in other cases.

88 Acts, ch 1138, §5
C89, §562C.5
C93, §555B.5

555B.6 Priority of assignment.

An action under this chapter shall be accorded reasonable priority for assignment to assure prompt disposition.

88 Acts, ch 1138, §6
C89, §562C.6
C93, §555B.6

555B.7 Remedy not exclusive.

An action under this chapter may be brought in connection with a claim for monetary damages, possession, or recovery as provided in section 562B.25 or 562B.30 or chapter 648.

88 Acts, ch 1138, §7
C89, §562C.7
C93, §555B.7

555B.8 Judgment.

1. If the court determines that the mobile home and personal property have been abandoned, judgment shall be entered in favor of the real property owner for the reasonable costs of removal, storage, notice, and attorneys' fees; any other expenses incurred for preserving the mobile home and personal property or for bringing the action; and, if the action is brought in conjunction with one for monetary damages, the amount of monetary damages assessed.

2. If the mobile home owner or other claimant asserts a claim to the property, the judgment shall be satisfied before the mobile home owner or other claimant may take possession of the mobile home or personal property.

3. If no claim is asserted to the mobile home or personal property or if the judgment is not satisfied at the time of entry, an order shall be entered allowing the real property owner to sell or otherwise dispose of the mobile home and personal property pursuant to section 555B.9. If a claimant satisfies the judgment at the time of entry, the court shall enter an order permitting and directing the claimant to remove the mobile home or personal property from its location within a reasonable time to be fixed by the court. The court shall also determine the amount of further rent or storage charges to be paid by the claimant to the real property owner at the time of removal.

88 Acts, ch 1138, §8
C89, §562C.8
C93, §555B.8

555B.9 Disposal — proceeds.

1. Pursuant to an order for disposal under section 555B.8, subsection 3, the real property owner shall dispose of the mobile home and personal property by public or private sale in a commercially reasonable manner. If the personal property owner or other claimant has asserted a claim to the mobile home or personal property, that person shall be notified of the sale by restricted certified mail not less than five days before the sale. The notice is deemed given upon the mailing. The real property owner may buy at any public sale, and if the mobile home or personal property is of a type customarily sold in a recognized market or is the subject of widely distributed standard price quotations, the real property owner may buy at a private sale.

2. A sale pursuant to subsection 1 transfers to the purchaser for value, all of the mobile home owner's rights in the mobile home and personal property, and discharges the real property owner's interest in the mobile home and personal property and any tax lien. The purchaser takes free of all rights and interests even though the real property owner fails to comply with the requirements of this chapter or of any judicial proceedings, if the purchaser acts in good faith.

3. The proceeds of the sale of mobile home and personal property shall be distributed as follows:

a. First, to satisfy the real property owner's judgment obtained under section 555B.8.

b. Second, to satisfy any tax lien for which a claim was asserted pursuant to section 555B.4, subsection 3.

c. Any surplus remaining after the proceeds are distributed shall be held by the real property owner for six months. If the mobile home owner

fails to claim the surplus in that time, the surplus may be retained by the real property owner. If a deficiency remains after distribution of the proceeds, the mobile home owner is liable for the amount of the deficiency.

4. Notwithstanding subsections 1 through 3, the real property owner may propose to retain the mobile home and personal property in satisfaction of the judgment obtained pursuant to section 555B.8. Written notice of the proposal shall be sent to the mobile home owner or other claimant, if that person has asserted a claim to the mobile home or personal property in the judicial proceedings. If the real property owner receives objection in writing from the mobile home owner or other claimant within twenty-one days after the notice was sent, the real property owner shall dispose of the mobile home and personal property pursuant to subsection 1. If no written objection is received by the real property owner within twenty-one days after the notice was sent, the mobile home and personal property may be retained. Retention of the mobile home and personal property discharges the judgment of the real property owner and any tax lien.

5. If the real property owner has made a good faith attempt to sell the mobile home and personal property pursuant to subsection 1 but is unsuccessful and elects not to retain the mobile home and personal property pursuant to subsection 4, the real property owner may dispose of the mobile home and personal property to a demolisher or junkyard. Proceeds from the disposition shall be distributed pursuant to subsection 3. If the personal property is a motor vehicle to which section 321.90 applies, the real property owner shall present the order for disposal obtained pursuant to section 555B.8, subsection 3, to the police authority to obtain a certificate of authority to dispose of the motor vehicle pursuant to section 321.90, subsection 2.

88 Acts, ch 1138, §9
C89, §562C.9
C93, §555B.9

555B.10 Limitation on liability.

1. A real property owner who disposes of a mobile home or personal property in accordance with this chapter is not liable for damages by reason of the removal, sale, or disposal of the mobile home and personal property unless the damage is caused willfully or by gross negligence. Upon a motion to the district court and a showing that the real property owner is not proceeding in accordance with this chapter, the court may enjoin the real property owner from proceeding further and a determination for the proper disposition of the mobile home and personal property shall be made. If disposition of the mobile home or personal property has not occurred in accordance with this chapter, the owner thereof has a right to recover from the real property owner, any loss caused by failure to comply with this chapter. The burden of proof shall be upon the mobile home or personal property owner to show that the real property owner has not complied with this chapter in disposing of a mobile home or personal property.

2. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the real property owner is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the real property owner sells the mobile home and personal property in the usual manner in any recognized market or if the real property owner sells at the price current in the market at the time of the real property owner's sale or if the real property owner has otherwise sold in conformity with reasonable commercial practices among dealers in the type of mobile home or personal property sold, the real property owner has sold in a commercially reasonable manner. A disposition approved in any judicial proceeding shall be deemed conclusively to be commercially reasonable.

88 Acts, ch 1138, §10
C89, §562C.10
C93, §555B.10
93 Acts, ch 154, §12

CHAPTER 555C

VALUELESS MOBILE, MODULAR, AND MANUFACTURED HOMES

555C.1 Definitions.
555C.2 Removal or transfer of title of valueless home — presumption of value.
555C.3 New title — third party.
555C.4 Removal by manufactured home community or mobile home park owner.
555C.5 Liability limited.
555C.6 Rights of real property owner.

555C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Home"* means a mobile home, modular

home, or a manufactured home as defined in section 435.1.

2. *"Manufactured home community"* means a manufactured home community as defined in section 435.1.

3. *"Mobile home park"* means a mobile home park as defined in section 435.1.

4. *"Personal property"* includes personal property of the owner or other occupant of the home, which is located in the home, on the lot where the home is located, in the immediate vicinity of the home or lot, or in any storage area provided by the real property owner for use of the home owner or occupant.

5. *"Valueless home"* means a home located in a manufactured home community or a mobile home park including all other personal property, where all of the following conditions exist:

a. The home has been abandoned as defined in section 562B.27, subsection 1, and the home has not been removed after the right to possession of the underlying real estate has been terminated pursuant to chapter 648.

b. A lien of record, other than a tax lien as provided in chapter 435, does not exist against the home. A lien exists only if the real property owner receives notice of a lien on the standardized registration form completed by an owner or occupant pursuant to chapter 562B, or a lien has been filed in the state or county records on a date before the home is considered to be valueless.

c. The value of the home and other personal property is equal to or less than the reasonable cost of disposal plus all sums owing to the real property owner pertaining to the home.

95 Acts, ch 104, §1; 2001 Acts, ch 153, §12

555C.2 Removal or transfer of title of valueless home — presumption of value.

1. An owner of a manufactured home community or mobile home park may remove, or cause to be removed, from the manufactured home community or mobile home park a valueless home and personal property associated with the home at any time following a determination of abandonment by the manufactured home community or mobile home park owner in accordance with section 562B.27, subsection 1, and an order of removal pursuant to chapter 648 without further notice to the owner or occupant of the valueless home. Within ten days of the removal or transfer of title, the manufactured home community or mobile home park owner shall give written notice to the county treasurer for the county in which the manufactured home community or mobile home park is located by affidavit which shall include a description of the valueless home, its owner or occupant, if known, the date of removal or transfer of title, and if applicable, the name and address of any third party to whom a new title shall be issued.

2. A valueless home and any personal property associated with the valueless home shall be conclusively deemed in value to be equal to or less than the reasonable cost of disposal plus all sums owing to the manufactured home community or mobile home park owner pertaining to the valueless home, if the manufactured home community or mobile home park owner or an agent of the owner removes the home and personal property to a demolisher, sanitary landfill, or other lawful disposal site or if the manufactured home community or mobile home park owner allows a disinterested third party to remove the valueless home and personal property or to leave the home in the manufactured home community or mobile home park in a transaction in which the manufactured home community or mobile home park owner receives no consideration.

95 Acts, ch 104, §2; 99 Acts, ch 155, §2, 14; 2001 Acts, ch 153, §16

555C.3 New title — third party.

If a new title to a valueless home is to be issued to a third party, the county treasurer shall issue, upon receipt of the affidavit required in section 555C.2, a new title upon payment of a fee equal to the fee specified in section 321.42 for replacement certificates of title for vehicles. Any tax lien levied pursuant to chapter 435 is canceled and the ownership interest of the previous owner or occupant of the valueless home is terminated as of the date of issuance of the new title. The new title owner shall take the title free of all rights and interests even though the manufactured home community or mobile home park owner fails to comply with the requirements of this chapter or any judicial proceedings, if the new title owner acts in good faith.

95 Acts, ch 104, §3; 99 Acts, ch 155, §3, 14; 2001 Acts, ch 153, §16

555C.4 Removal by manufactured home community or mobile home park owner.

Unless the valueless home is to be titled in the name of a third party, the manufactured home community or mobile home park owner may dispose of a valueless home and any personal property to a demolisher, sanitary landfill, or other lawful disposal site under the terms and conditions as the manufactured home community or mobile home park owner shall determine.

95 Acts, ch 104, §4; 2001 Acts, ch 153, §16

555C.5 Liability limited.

A person who removes or allows the removal of a valueless home or transfers title or allows the transfer of title of a valueless home as provided in this chapter is not liable to the previous owner of the valueless home due to the removal or transfer of title of the valueless home.

95 Acts, ch 104, §5; 99 Acts, ch 155, §4, 14

555C.6 Rights of real property owner.

The rights provided in this chapter to a real property owner are not exclusive of other rights of the real property owner.

95 Acts, ch 104, §6

CHAPTER 556

DISPOSITION OF UNCLAIMED PROPERTY

556.1 Definitions and use of terms.
556.2 Property held by banking or financial organizations or by business associations.
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556.2B Checks, drafts, and similar instruments issued or certified by banking and financial organizations.
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556.17 Sale of abandoned property.
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556.23 Examination of records.
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556.25 Interest and penalties.
556.26 Rules.
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556.28 Interstate agreements and cooperation.
556.29 Uniformity of interpretation.
556.30 Short title.
556.31 Obtaining information on accounts. Repealed by 84 Acts, ch 1295, §25.
556.32 Proceeding to adjudicate escheat. Repealed by 84 Acts, ch 1295, §25.
556.33 Notice. Repealed by 84 Acts, ch 1295, §25.
556.34 Collection and deposit of funds. Repealed by 84 Acts, ch 1295, §25.
556.35 Indemnification of the United States. Repealed by 84 Acts, ch 1295, §25.
556.36 Short title. Repealed by 84 Acts, ch 1295, §25.

556.1 Definitions and use of terms.

As used in this chapter, unless the context otherwise requires:

1. *"Banking organization"* means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

2. *"Business association"* means a corporation, cooperative association, joint stock company, business trust, investment company, partnership, limited liability company, trust company, mutual fund, or other business entity consisting of one or more persons, whether or not for profit.

3. *"Cooperative association"* means an entity which is structured and operated on a cooperative basis, including an association of persons organized under chapter 497, 498, or 499; an entity composed of entities organized under those chapters; a cooperative corporation organized under chapter 501; a cooperative association organized under chapter 490; or any other entity recognized pursuant to 26 U.S.C. § 1381(a) which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

4. *"Financial organization"* means any savings and loan association, building and loan association, credit union, cooperative bank or investment company, engaged in business in this state.

5. *"Holder"* means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

6. *"Life insurance corporation"* means any association or corporation transacting within this state the business of insurance on the lives of per-

sons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

7. *"Money order"* includes an express money order and a personal money order, on which the remitter is the purchaser. *"Money order"* does not include a bank money order or any other instrument sold by a banking or financial organization if the seller has obtained the name and address of the payee.

8. *"Owner"* means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or that person's legal representative.

9. *"Person"* means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

10. *"Property"* means a fixed and certain interest in or right in an intangible that is held, issued, or owed in the course of a holder's business, or by a government or governmental entity, and all income or increment therefrom, including that which is referred to as or evidenced by any of the following:

a. Money, check, draft, deposit, interest, dividend, and income.

b. Credit balance, customer overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused airline ticket, unused ticket, mineral proceeds, and unidentified remittance and electronic fund transfer.

c. Stock or other evidence of ownership interests in a business association.

d. Bond, debenture, note, or other evidence of indebtedness.

e. Money deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.

f. An amount due and payable under the terms of an insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability benefits insurance.

g. An amount distributable from a trust or custodian fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

h. Amounts distributable from a mineral interest in land.

i. Any other fixed and certain interest or right in an intangible that is held, issued, or owing in the course of a holder's business, or by a government or governmental entity.

"Property" does not include credits, advance payments, overpayments, refunds, or credit memoranda shown on the books and records of a business association with respect to another business association unless the balance is property described in section 556.2 held by a banking organization or financial organization.

11. *"Utility"* means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

[C71, 73, 75, 77, 79, 81, §556.1]

95 Acts, ch 34, §1; 96 Acts, ch 1173, §1, 2; 2001 Acts, ch 142, §4, 5; 2001 Acts, ch 152, §1

556.2 Property held by banking or financial organizations or by business associations.

The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

1. Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend, excluding any charges that may lawfully be withheld, unless the owner has, within three years:

a. Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest.

b. Corresponded in writing with the banking organization concerning the deposit.

c. Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization. Such memorandum shall be dated and may have been prepared by the banking organization, in which case it shall be signed by an official of the bank, or it may have been prepared by the owner.

d. Had another relationship with the bank in which the owner has:

(1) Communicated in writing with the bank.

(2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the bank and if the bank communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship are regularly sent.

e. Been sent any written correspondence, notice, or information by first-class mail regarding the deposit by the banking organization on or after July 1, 1992, if the correspondence, notice, or information requests an address correction on the face of the envelope, and is not returned to the bank organization for nondelivery, and if the bank organization maintains a record of all returned mail.

2. Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made in this state, and any interest or dividends, excluding any charges that may lawfully be withheld, unless the owner

has within three years:

a. Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends.

b. Corresponded in writing with the financial organization concerning the funds or deposit.

c. Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization. Such memorandum shall be dated and may have been prepared by the financial organization, in which case it shall be signed by an officer of the financial organization, or it may have been prepared by the owner.

d. Had another relationship with the financial organization in which the owner has:

(1) Communicated in writing with the financial organization.

(2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the financial organization and if the financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship are regularly sent.

e. Been sent any written correspondence, notice, or information by first-class mail regarding the funds or deposits by the financial organization on or after July 1, 1992, if the correspondence, notice, or information requests an address correction on the face of the envelope, and is not returned to the financial organization for nondelivery, and if the financial organization maintains a record of all returned mail.

3. Any property described in subsections 1 and 2 which is automatically renewable is matured for purposes of subsections 1 and 2 upon the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time provided for which consent was given. However, consent to renewal is deemed to have been given if the owner is sent written notice of the renewal by first-class mail which requests an address correction on the face of the envelope, the notice is not returned for nondelivery, and the banking or financial organization maintains a record of all returned mail. If at the time period for delivery in section 556.13, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time period for delivery is extended until the time when no penalty or forfeiture would result.

4. Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than three years from the date on which the lease or rental period expired.

5. A banking organization or financial organization shall send to the owner of each account, to which none of the actions specified in paragraphs *"a"* through *"e"* of subsection 1 or *"a"* through *"e"* of subsection 2 have occurred during the preceding three calendar years, a notice by certified mail stating in substance the following:

According to our records, we have had no contact with you regarding (describe account) for more than three years. Under Iowa law, if there is a period of three years without contact, we may be required to transfer this account to the custody of the treasurer of state of Iowa as unclaimed property. You may prevent this by taking some action, such as a deposit or withdrawal, which indicates your interest in this account or by signing this form and returning it to us.

I desire to keep the above account open and active.

. . . . . .
Your signature

The notice required under this section shall be mailed within thirty days of the lapse of the three-year period in which there is no activity. The cost of the certified mail of the notice required in this section may be deducted from the account by the banking or financial organization.

[C71, 73, 75, 77, 79, 81, §556.2]

84 Acts, ch 1295, §1 – 7; 85 Acts, ch 233, §1 – 3; 91 Acts, ch 267, §623 – 625; 92 Acts, ch 1085, §1 – 4; 95 Acts, ch 34, §2; 96 Acts, ch 1173, §3

556.2A Traveler's checks and money orders.

1. Subject to subsection 4, any sum payable on a traveler's check that has been outstanding for more than fifteen years after its issuance is deemed abandoned unless the owner, within fifteen years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

2. Subject to subsection 4, any sum payable on a money order that has been outstanding for more than seven years after its issuance is deemed abandoned unless the owner, within seven years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

3. A holder shall not deduct from the amount of a traveler's check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and

enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

4. A sum payable on a traveler's check or money order described in subsection 1 or 2 shall not be subjected to the custody of this state as unclaimed property unless any of the following apply:

a. The records of the issuer show that the traveler's check or money order was purchased in this state.

b. The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the traveler's check or money order was purchased.

c. The issuer has its principal place of business in this state, the records of the issuer show the state in which the traveler's check or money order was purchased, and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

96 Acts, ch 1173, §4

556.2B Checks, drafts, and similar instruments issued or certified by banking and financial organizations.

1. Any sum payable on a check, draft, or similar instrument, except those subject to section 556.2A, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than three years after it was payable or after its issuance if payable on demand, is deemed abandoned, unless the owner, within three years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization.

2. A holder shall not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

96 Acts, ch 1173, §5

556.3 Unclaimed funds held by life insurance corporations.

1. *"Unclaimed funds,"* as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

2. *"Unclaimed funds,"* as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than three years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if the policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based and shall be presumed abandoned and to be unclaimed funds as defined in this section if unclaimed and unpaid for more than two years thereafter, unless the person appearing entitled thereto has within the two-year period assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan or corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

[C71, 73, 75, 77, 79, 81, §556.3]

84 Acts, ch 1295, §8; 91 Acts, ch 267, §626

556.4 Deposits and refunds held by utilities.

The following funds held or owing by any utility are presumed abandoned:

1. Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled to the deposit for more than one year after the termination of the services for which the deposit or advance payment was made.

2. Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest on the refund, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled to the refund for more than one year after the date it became payable in accordance with the final determination or order providing for the refund.

[C71, 73, 75, 77, 79, 81, §556.4]

83 Acts, ch 191, §12, 26, 27; 91 Acts, ch 267, §627

556.5 Stocks and other intangible interests in business associations.

1. Any stock, shareholding, or other intangible ownership interests in a business association, the existence of which is evidenced by records available to the association, is deemed abandoned and, with respect to the interest, the association is the holder, if both of the following apply:

a. The interest in the association is owned by a person who for more than three years has neither claimed a dividend, distribution, nor other sum payable as a result of the interest, or who has not communicated with the association regarding the interest or a dividend, distribution, or other sum payable as the result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

b. The association does not know the location of the owner at the end of the three-year period.

2. The return of official shareholder notifications or communications by the postal service as undeliverable shall be evidence that the association does not know the location of the owner.

3. This section shall be applicable to both the underlying stock, shareholdings, or other intangible ownership interests of an owner, and any stock, shareholdings, or other intangible ownership interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, shareholdings, or other intangible ownership interests of dividend and nondividend paying business associations whether or not the interest is represented by a certificate.

4. At the time an interest is deemed abandoned under this section, the following shall apply:

a. Except as provided in paragraph *"b"*, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously deemed abandoned, is deemed abandoned.

b. A disbursement held by a cooperative association shall not be deemed abandoned under this chapter if the disbursement is retained by a cooperative association organized under chapter 490 as provided in section 490.629 or by a cooperative association organized under chapter 499 as provided in section 499.30A.

5. This section does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless one or more of the following applies:

a. The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within three years communicated in any manner described in subsection 1.

b. Three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable, and the owner has not within those three years communicated in any manner described in subsection 1. The three-year period from the return of official shareholder notifications or communications shall commence from the earlier of the return of the second such mailing or the time the holder discontinues mailings to the shareholder.

[C71, 73, 75, 77, 79, 81, §556.5]

84 Acts, ch 1295, §9; 85 Acts, ch 195, §50; 91 Acts, ch 267, §628; 93 Acts, ch 178, §33, 34; 94 Acts, ch 1023, §116; 96 Acts, ch 1173, §6; 2001 Acts, ch 142, §6

556.6 Property of business associations and banking or financial organizations held in course of dissolution.

Except as provided in section 490.1440, all intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within one year after the date for final distribution, is presumed abandoned.

[C71, 73, 75, 77, 79, 81, §556.6]

84 Acts, ch 1295, §10; 90 Acts, ch 1205, §59

556.7 Property held by fiduciaries.

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within three years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary which shall have been dated and may have been prepared by the fiduciary or by the owner:

1. If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

2. If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

3. If it is held in this state by any other person.

[C71, 73, 75, 77, 79, 81, §556.7]

84 Acts, ch 1295, §11; 91 Acts, ch 267, §629

556.8 Property held by state courts and public officers and agencies — abandonment.

All intangible personal property held for the owner by any court, public corporation, public authority, agency, instrumentality, employee, or public officer of this state, or the United States, or a political subdivision of the state, another state, or the United States, that has remained unclaimed by the owner for more than two years after becoming payable or distributable is presumed abandoned.

[C71, 73, 75, 77, 79, 81, §556.8]

84 Acts, ch 1295, §12; 89 Acts, ch 287, §4

556.9 Miscellaneous personal property held for another person — gift certificates.

1. All intangible personal property, not otherwise covered by this chapter, including any income or increment earned on the property and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

2. An issuer of a gift certificate shall not deduct from the face value of the gift certificate any charge imposed due to the failure of the owner of the gift certificate to present the gift certificate in a timely manner, unless a valid and enforceable written contract exists between the issuer and the owner of the gift certificate pursuant to which the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them. For purposes of this subsection, *"gift certificate"* means a merchandise certificate conspicuously designated as a gift certificate, and generally purchased by a buyer for use by a person other than the buyer.

[C71, 73, 75, 77, 79, 81, §556.9]

84 Acts, ch 1295, §13; 2002 Acts, ch 1059, §1

Section amended

556.9A Out-of-state property issued within the state.

1. As used in this section, unless the context requires otherwise:

a. "Property" means intangible personal property located outside the state, but issued by the state of Iowa, a state agency, a political subdivision of the state, or a person formed or otherwise located within the state as a corporation, trust, partnership, limited partnership, association, cooperative, union, or organization.

b. "Temporary custodian" means an entity holding property outside of this state, including but not limited to a person, the United States government, or an agency or instrumentality of the United States government, and any other state or agency or political subdivision of that state.

2. Property and income derived from the property, including but not limited to dividends, earnings, and interest, which are held by a temporary custodian are presumed abandoned and after deducting lawful charges are subject to the custody of this state as unclaimed property, if all the following apply:

a. The owner has not claimed the property or income derived from the property or corresponded in writing with the temporary custodian of the property within three years after the date prescribed for delivery of the property or payment of income from the property.

b. The last known address of the owner is unknown.

3. This section does not apply to property or income derived from the property subject to any other provision of this chapter providing for a different procedure for determining when property is presumed abandoned and subject to state custody.

90 Acts, ch 1095, §1; 92 Acts, ch 1038, §1 – 3

556.10 Reciprocity for property presumed abandoned or escheated under the laws of another state.

If specific property which is subject to the provisions of sections 556.2, 556.5, 556.6, 556.7 and 556.9 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this chapter if:

1. It may be claimed as abandoned or escheated under the laws of such other state; and

2. The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

[C71, 73, 75, 77, 79, 81, §556.10]

556.11 Report of abandoned property.

1. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the state treasurer with respect to the property as hereinafter provided.

2. The report shall be verified and shall include:

a. Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars or more presumed abandoned under this chapter.

b. In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and the insured's or annuitant's last known address according to the life insurance corporation's records.

c. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars each may be reported in aggregate.

d. The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

e. Other information which the state treasurer prescribes by rule as necessary for the administration of this chapter.

3. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed names while holding the property, the holder shall file with the holder's report all prior known names and addresses of each holder of the property.

4. The report shall be filed annually before November 1 for the fiscal year ending on the preceding June 30. The treasurer of state may postpone the reporting date upon written request by any person required to file a report.

5. If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

6. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

7. The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the ten-year period preceding its effective date.

8. *a.* A holder required to file a report under this section shall maintain its records containing the information required to be included in the report until the holder files the report and for four years after the date of filing, unless a shorter time is provided in paragraph *"b"* or by rule of the treasurer of state.

b. A business association that sells, issues, or provides to others for sale or issue in this state, traveler's checks, money orders, or similar written instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for four years after the date of filing.

All agreements to pay compensation to recover or assist in the recovery of property reported under this section, made within twenty-four months after the date payment or delivery is made under section 556.13 are unenforceable. However, such agreements made after twenty-four months from the date of payment or delivery are valid if the fee or compensation agreed upon is not more than fifteen percent of the recoverable property, the agreement is in writing and signed by the owner, and the writing discloses the nature and value of the property and the name and address of the person in possession. This section does not prevent an owner from asserting, at any time, that an agreement to locate property is based upon excessive or unjust consideration. This section does not apply to an owner who has a bona fide fee contract with a practicing attorney and counselor as described in chapter 602, article 10.

[C71, 73, 75, 77, 79, 81, §556.11]

84 Acts, ch 1295, §14, 26; 89 Acts, ch 287, §5; 95 Acts, ch 34, §3; 2000 Acts, ch 1191, §1

556.12 Notice and publication of lists of abandoned property.

1. If a report has been filed with the treasurer of state, or property has been paid or delivered to the treasurer of state, for the fiscal year ending on June 30 as required by section 556.11, the treasurer of state shall provide for the publication annually of at least one notice not later than the following November 30. Each notice shall be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If an address is not listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has its principal place of business within this state.

2. The published notice shall contain:

a. The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

b. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

c. A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

3. The state treasurer is not required to publish in such notice any item of less than twenty-five dollars unless the treasurer deems such publication to be in the public interest.

4. Within one hundred twenty days from the receipt of the report required by section 556.11, the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this chapter.

5. The mailed notice shall contain:

a. A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

b. The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

c. A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

6. This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 556.2.

[C71, 73, 75, 77, 79, 81, §556.12]

84 Acts, ch 1295, §15; 95 Acts, ch 34, §4

556.13 Payment or delivery of abandoned property.

1. Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by section 556.11, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository shall not be delivered to the treasurer of state until one hundred twenty days after filing the report required in section 556.11.

2. If the property reported to the treasurer of state is a security or security entitlement under the Uniform Commercial Code, chapter 554, article 8, the treasurer of state is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with the Uniform Commercial Code, chapter 554, article 8.

3. If the holder of property reported to the treasurer of state is the issuer of a certificated security, the treasurer of state has the right to obtain a replacement certificate pursuant to section 554.8405 but an indemnity bond is not required.

4. An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and shall be indemnified against claims of any person in accordance with section 556.14.

[C71, 73, 75, 77, 79, 81, §556.13]

84 Acts, ch 1295, §16; 92 Acts, ch 1243, §32; 96 Acts, ch 1173, §7; 98 Acts, ch 1100, §76

556.14 Relief from liability by payment or delivery.

1. Upon the payment or delivery of property to the treasurer of state, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the treasurer of state in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which may arise or be made in respect to the property.

2. If the holder pays or delivers property to the treasurer of state in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the treasurer of state, upon written notice of the claim, shall defend the holder against any liability on the claim.

3. The holder of an interest under section 556.5 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the treasurer of state. Upon delivery of a duplicate certificate to the treasurer of state, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability in accordance with subsections 1 and 2 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the treasurer of state, for any losses or damages resulting to any person by the issuance and delivery to the treasurer of state of the duplicate certificate.

4. A holder who has paid money to the treasurer of state under this chapter may make payment to any person appearing to the holder to be entitled to payment and upon filing proof of payment and proof that the payee is entitled thereto, the treasurer of state shall reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder must be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under section 556.16.

5. A holder who has delivered property includ-

ing a certificate of any interest in a business association, other than money, to the treasurer of state may reclaim the property if the property is still in the possession of the treasurer of state without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

6. The treasurer of state may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

7. For purposes of this section, *"good faith"* means that:

a. Payment or delivery was made in a reasonable attempt to comply with this chapter.

b. The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to the person, that the property was abandoned for the purposes of this chapter.

c. There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

[C71, 73, 75, 77, 79, 81, §556.14]
84 Acts, ch 1295, §17

556.15 Income accruing after payment or delivery.

When property other than money is paid or delivered to the treasurer of state under this chapter, the owner is entitled to receive from the treasurer of state any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion into money.

[C71, 73, 75, 77, 79, 81, §556.15]
84 Acts, ch 1295, §18

556.16 Periods of limitation not a bar.

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the state treasurer.

[C71, 73, 75, 77, 79, 81, §556.16]

556.17 Sale of abandoned property.

1. All abandoned property other than money delivered to the state treasurer under this chapter which remains unclaimed one year after the delivery to the treasurer may be sold to the highest bidder at public sale in any city in the state that affords in the treasurer's judgment the most favorable market for the property involved. The state treasurer may decline the highest bid and reoffer the property for sale if the treasurer considers the price bid insufficient. The treasurer need not offer any property for sale if, in the treasurer's opinion, the probable cost of sale exceeds the value of the property. The treasurer may order destruction of the property when the treasurer has determined that the probable cost of offering the property for sale exceeds the value of the property.

2. Any sale held or destruction ordered under this section shall be preceded by a single publication of notice of the sale or destruction order at least three weeks in advance of sale or destruction in an English language newspaper of general circulation in the county where the property is to be sold or, for the destruction, in the county from which the property was received.

3. The purchaser at any sale conducted by the state treasurer pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

4. Unless the treasurer of state considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under section 556.5, delivered to the treasurer of state must be held for at least one year before the treasurer of state may sell them.

5. Unless the treasurer of state considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under section 556.5 and delivered to the treasurer of state must be held for at least three years before the treasurer of state may sell them. If the treasurer of state sells any securities delivered pursuant to section 556.5 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to section 556.18, subsection 2. A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the treasurer of state by the holder, if they still remain in the hands of the treasurer of state, or the proceeds received from the sale, less any amounts deducted pursuant to section 556.18, subsection 2, but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the treasurer of state.

[C71, 73, 75, 77, 79, 81, §556.17]
84 Acts, ch 1295, §19; 94 Acts, ch 1188, §37

556.18 Deposit of funds.

1. Except as provided in subsection 3, all funds received under this chapter, including the proceeds from the sale of abandoned property under

section 556.17, shall be deposited quarterly by the treasurer of state in the general fund of the state. However, the treasurer of state shall retain in a separate trust fund a sufficient amount from which the treasurer of state shall make prompt payment of claims duly allowed under section 556.20. Before making the deposit, the treasurer of state shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

2. Before making any deposit to the credit of the general funds, the state treasurer may deduct:

a. Any costs in connection with sale of abandoned property.

b. Any costs of mailing and publication in connection with any abandoned property.

c. Reasonable service charges.

3. The treasurer of state shall annually credit all moneys received under section 556.4 to the general fund of the state. Moneys credited to the general fund of the state pursuant to this subsection are subject to the requirements of subsections 1 and 2 and section 8.60.

[C71, 73, 75, 77, 79, 81, §556.18]

83 Acts, ch 191, §13, 14, 27; 84 Acts, ch 1295, §20; 88 Acts, ch 1175, §4; 89 Acts, ch 287, §6; 91 Acts, ch 253, §24; 91 Acts, ch 260, §1248; 93 Acts, ch 131, §26, 27; 94 Acts, ch 1107, §96, 97, 100; 94 Acts, ch 1188, §38

556.19 Claim for abandoned property paid or delivered.

Any person claiming an interest in any property delivered to the state under this chapter may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state treasurer.

[C71, 73, 75, 77, 79, 81, §556.19]

556.20 Determination of claims.

1. The state treasurer shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it. If a hearing is held, the treasurer shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the treasurer and the reasons for the treasurer's decision. The decision shall be a public record.

2. If the claim is allowed, the state treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

[C71, 73, 75, 77, 79, 81, §556.20]

83 Acts, ch 191, §15, 27; 84 Acts, ch 1295, §21

556.21 Judicial action upon determinations.

Any person aggrieved by a decision of the state treasurer or as to whose claim the treasurer has failed to act within ninety days after the filing of the claim, may commence an action in the district court to establish that person's claim. The proceeding shall be brought within ninety days after the decision of the treasurer or within one hundred eighty days from the filing of the claim if the treasurer fails to act. The action shall be tried de novo without a jury.

[C71, 73, 75, 77, 79, 81, §556.21]

556.22 Elections by the treasurer of state.

1. The treasurer of state may elect to allow a holder to file a report as provided in section 556.11, or to deliver or pay property to the treasurer, before the property is presumed abandoned, upon consent of the treasurer and according to terms and conditions prescribed by the treasurer.

2. The treasurer of state, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which the treasurer deems to have a value less than the cost of giving notice and holding sale, or the treasurer may, if the treasurer deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 556.11, the treasurer shall be deemed to have elected to receive the custody of the property.

[C71, 73, 75, 77, 79, 81, §556.22]

95 Acts, ch 34, §5

556.23 Examination of records.

The treasurer of state may at reasonable times and upon reasonable notice examine the records of any person if the treasurer of state has reason to believe that the person has failed to report property that should have been reported pursuant to this chapter. If an examination of the records of a person results in the disclosure of property reportable and deliverable under this chapter, the treasurer of state may assess the cost of the examination against the holder at a rate not to exceed one hundred dollars a day for each examiner, but in no case may the charges exceed the value of the property found to be reportable and deliverable.

[C71, 73, 75, 77, 79, 81, §556.23]

84 Acts, ch 1295, §22

556.24 Proceeding to compel delivery of abandoned property.

If any person refuses to deliver property to the state treasurer as required under this chapter, the treasurer shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

[C71, 73, 75, 77, 79, 81, §556.24]

556.25 Interest and penalties.

1. A person who fails to pay or deliver property within the time prescribed by this chapter shall pay the treasurer of state interest at the annual rate of ten percent on the property or value of the property from the date the property should have been paid or delivered but in no event prior to July 1, 1984.

2. A person who willfully fails to pay or deliver property to the treasurer of state as required under this chapter shall pay a civil penalty equal to twenty-five percent of the value of the property that should have been paid or delivered.

3. The interest or penalty or any part of the interest or penalty as imposed in subsection 1 or 2 may be waived or remitted by the treasurer of state if the person's failure to pay abandoned funds or deliver property is satisfactorily explained to the treasurer of state and if the failure has resulted from a mistake by the person in understanding or applying the law or the facts which require that person to pay abandoned funds or deliver property as provided in this chapter.

[C71, 73, 75, 77, 79, 81, §556.25]

84 Acts, ch 1295, §23; 85 Acts, ch 195, §51; 93 Acts, ch 178, §35, 36

556.26 Rules.

The state treasurer is hereby authorized to make necessary rules to carry out the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §556.26]

556.27 Effect of laws of other states.

This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to July 1, 1967.

[C71, 73, 75, 77, 79, 81, §556.27]

556.28 Interstate agreements and cooperation.

1. The treasurer of state may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The treasurer of state by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

2. To avoid conflicts between the treasurer of state's procedures and the procedures of unclaimed property administrators in other jurisdictions that enact the uniform unclaimed property Act, the treasurer of state, so far as is consistent with the purposes, policies, and provisions of this chapter, before adopting, amending or repealing rules, shall advise and consult with the unclaimed property administrators in other jurisdictions that enact substantially the uniform unclaimed property Act and take into consideration the rules of unclaimed property administrators in other jurisdictions that enact the uniform unclaimed property Act.

3. The treasurer of state may join with other states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

4. At the request of another state, the attorney general of this state may bring an action in the name of the unclaimed property administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

5. The treasurer of state may request that the attorney general of another state or any other person bring an action in the name of the unclaimed property administrator in the other state. The state shall pay all expenses including attorney's fees in any action under this subsection. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under this chapter.

84 Acts, ch 1295, §24

556.29 Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[C71, 73, 75, 77, 79, 81, §556.28]

C85, §556.29

556.30 Short title.

This chapter may be cited as the *"Uniform Disposition of Unclaimed Property Act"*.

[C71, 73, 75, 77, 79, 81, §556.29]

C85, §556.30

556.31 Obtaining information on accounts. Repealed by 84 Acts, ch 1295, § 25.

556.32 Proceeding to adjudicate escheat. Repealed by 84 Acts, ch 1295, § 25.

556.33 Notice. Repealed by 84 Acts, ch 1295, § 25.

556.34 Collection and deposit of funds. Repealed by 84 Acts, ch 1295, § 25.

556.35 Indemnification of the United States. Repealed by 84 Acts, ch 1295, § 25.

556.36 Short title. Repealed by 84 Acts, ch 1295, § 25.

CHAPTER 556A

UNSOLICITED GOODS, WARES AND MERCHANDISE

556A.1 Gift of unsolicited goods.

556A.1 Gift of unsolicited goods.

Unless otherwise agreed, where unsolicited goods are mailed to a person, that person has a right to accept delivery of such goods as a gift only, and is not bound to return such goods to the sender. If such unsolicited goods are either addressed to or intended for the recipient, the recipient may use them or dispose of them in any manner without any obligation to the sender, and in any action for goods sold and delivered, or in any action for the return of the goods, it shall be a complete defense that the goods were mailed voluntarily and that the defendant did not actually order or request such goods, either orally or in writing.

[C71, 73, 75, 77, 79, 81, §556A.1]

CHAPTER 556B

ABANDONED MOTOR VEHICLES OR OTHER PROPERTY

556B.1 Removal — notice to sheriff.

556B.1 Removal — notice to sheriff.

1. The owner or other lawful possessor of real property may remove or cause to be removed any motor vehicle or other personal property which has been unlawfully parked or placed on that real property, and may place or cause such personal property to be placed in storage until the owner of the same pays a fair and reasonable charge for towing, storage or other expense incurred. The real property owner or possessor, or the owner's or possessor's agent, shall not be liable for damages caused to the personal property by the removal or storage unless the damage is caused willfully or by gross negligence.

2. The real property owner or possessor shall notify the sheriff of the county where the real property is located of the removal of the motor vehicle or other personal property. If the owner of the motor vehicle or other personal property can be determined, the owner shall be notified of the removal by the sheriff by certified mail, return receipt requested. If the owner cannot be identified, notice by one publication in one newspaper of general circulation in the area where the personal property was parked or placed is sufficient to meet all notice requirements under this section. If the personal property has not been reclaimed by the owner within six months after notice has been effected, it may be sold by the sheriff at public or private sale. The net proceeds after deducting the cost of the sale shall be applied to the cost of removal and storage of the property, and the remainder, if any, shall be paid to the county treasurer.

[C75, 77, 79, 81, §556B.1]

83 Acts, ch 123, §190, 209

CHAPTER 556C

RIGHTS TO DIES, MOLDS AND FORMS

556C.1 Definitions.
556C.2 Rights to dies, molds, or forms.

556C.1 Definitions.

As used in this chapter unless the context requires otherwise:

1. *"Customer"* means a person who causes a molder to fabricate, cast, or otherwise make a die, mold, or form to be used for the manufacture of plastic products.

2. *"Molder"* means a person, including but not limited to a tool or die maker, who fabricates, casts, or otherwise makes a die, mold, or form to be used for the manufacture of plastic products.

84 Acts, ch 1066, §1

556C.2 Rights to dies, molds, or forms.

1. In the absence of an agreement to the contrary, the customer has all rights and title to a die, mold, or form in the possession of the molder as provided in this section.

2. If a customer does not claim possession from a molder of a die, mold, or form within three years following the last use of the die, mold, or form, all rights and title to the die, mold, or form are transferred to the molder for the purpose of destroying or disposing of the die, mold, or form.

3. The molder shall notify the customer by certified mail sent to the customer's last known address at least ninety days prior to the transfer provided in subsection 2. The notice shall indicate that all rights and title to the die, mold, or form will be transferred pursuant to this section.

4. If the customer does not respond in person or by mail within ninety days following the date the notice was sent or does not make other contractual arrangements with the molder for storage of the die, mold, or form the rights and title of the customer to the die, mold, or form shall transfer to the molder. After a transfer has occurred the molder may destroy or otherwise dispose of the particular die, mold, or form as the molder's own property without liability to the customer. This section does not affect the right of the customer under federal patent or copyright law or a state or federal law relating to unfair competition.

84 Acts, ch 1066, §2

CHAPTER 556D

CONSIGNMENTS BETWEEN ARTISTS AND ART DEALERS

556D.1 Definitions.
556D.2 Consignment.
556D.3 Conditions of consignment.
556D.4 Consignment — trust arrangement.
556D.5 Waiver provision void.

556D.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Art dealer"* means a person engaged in the business of selling works of fine art, in a shop or gallery devoted in the majority to works of fine art, other than a person engaged in the business of selling goods of general merchandise or at a public auction.

2. *"Artist"* means the person who creates a work of fine art or, if such person is deceased, the person's personal representative.

3. *"Consignment"* means a delivery of a work of fine art under which no title to, estate in, or right to possession superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to the fine art.

4. *"Fine art"* means a painting, sculpture, drawing, mosaic, photograph, work of graphic art, including an etching, lithograph, offset print, silk screen, or work of graphic art of like nature, a work of calligraphy, or a work in mixed media including a collage, assemblage, or any combination of these art media which is one of a kind or is available in a limited issue or series. *"Fine art"* also means crafts which include work in clay, textiles, fiber, wood, metal, plastic, glass, or similar materials which is one of a kind or is available in a limited issue or series.

5. *"Stated value"* means the amount agreed to be paid to the consignor.

86 Acts, ch 1233, §1

556D.2 Consignment.

If an artist delivers or causes to be delivered a work of fine art of the artist's own creation to an art dealer in this state for the purpose of exhibition or sale on a commission, fee, or other basis of compensation, the delivery to and acceptance of the work of fine art by the art dealer is a consignment, unless the delivery to the art dealer is an outright sale for which the artist receives or has received full compensation upon delivery.

When an art dealer accepts a work of fine art for the purposes of sale or exhibition and sale to the public on a commission, fee, or other basis of com-

pensation, there shall be a contract or agreement between the artist and art dealer which shall include the following provisions:

1. That the amount of the proceeds due the artist from the sale of the work of fine art shall be delivered to the artist at a time agreed upon by the artist and the art dealer.

2. That the art dealer shall be responsible for the stated value of the work of fine art in the event of the loss of or damage to the work of fine art while it is in the possession of the art dealer.

3. That the work of fine art shall be sold by the art dealer only for the amount agreed upon by the artist in the contract or agreement and that the art dealer will take only the commission or fee agreed upon.

4. That the work of fine art may be used or displayed by the art dealer or any other person only with the prior written consent of the artist. The artist may require that the artist be acknowledged in the use of the work of fine art.

86 Acts, ch 1233, §2

556D.3 Conditions of consignment.

The following apply to consignment:

1. The art dealer, after delivery of the work of fine art, becomes an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art.

2. The work of fine art shall be held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

3. The consignee is responsible for the loss of or damage to the work of fine art, unless otherwise mutually agreed upon in writing between the artist and art dealer in which case the art dealer shall be required to exercise all due diligence and care with regard to the work of fine art. In case of a waiver, the burden shall be on the dealer to demonstrate the waiver was entered into in good faith.

4. The proceeds from the sale of the work of fine art shall be held in trust by the consignee for the benefit of the artist. The proceeds shall first be applied to pay any balance due the artist unless the artist expressly agrees otherwise in writing.

86 Acts, ch 1233, §3

556D.4 Consignment — trust arrangement.

A consignment remains trust property, even if purchased by the art dealer, until the price is paid in full to the artist. If the work is resold to a bona fide purchaser before the artist has been paid in full, the proceeds of the resale received by the art dealer constitute funds held in trust for the benefit of the artist to the extent necessary to pay any balance still due to the artist and the trusteeship continues until the fiduciary obligation of the art dealer with respect to the transaction is discharged in full.

86 Acts, ch 1233, §4

556D.5 Waiver provision void.

A provision of a contract or agreement where the art dealer waives a provision of this chapter is void.

86 Acts, ch 1233, §5

CHAPTER 556E

GOLD AND SILVER ALLOY

This chapter not enacted as a part of this title;
transferred from chapter 119 in Code 1993

556E.1 Fraudulent marking.
556E.2 Tests.
556E.3 "Sterling silver."
556E.4 "Coin silver."
556E.5 Other articles of silver.
556E.6 Tests for articles.
556E.7 Gold-plated or gold-filled articles.
556E.8 Silver-plated articles.
556E.9 Violation.
556E.10 "Person" defined.

556E.1 Fraudulent marking.

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made, in whole or in part, of gold or any alloy of gold, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, any mark indicating or designed to indicate that the gold or alloy in such article is of a greater degree of fineness than the actual fineness or quality thereof, unless the actual fineness thereof, in the case of flatware or watchcases, be not less by more than three one-thousandths parts, and in case of all other articles be not less by more than one-half carat than the

fineness indicated by the marks stamped, branded, engraved, or imprinted upon any part of such article, or upon any tag, card, or label attached thereto, or upon any container in which such article is enclosed according to the standards and subject to the qualifications hereinafter set forth, is guilty of a fraudulent practice.

[S13, §5077-b; C24, 27, 31, 35, 39, §**1906;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.1]

C93, §556E.1

556E.2 Tests.

In any test for the ascertainment of the fineness of the gold or alloy in any such article, according to the foregoing standards, the part of the gold or alloy taken for the test shall be such portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article; and in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold and its alloys contained in any article mentioned in this and section 556E.1, except watchcases and flatware, including all solder or alloy of inferior metal used for brazing or uniting the parts of the article, all such gold, alloys, and solder being assayed as one piece, shall not be less than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed.

[S13, §5077-b; C24, 27, 31, 35, 39, §**1907;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.2]

C93, §556E.2

556E.3 "Sterling silver."

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, the words "sterling silver" or "sterling" or any colorable imitation thereof, unless nine hundred twenty-five one-thousandths of the component parts of the metal purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a fraudulent practice, but in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standard.

[S13, §5077-b1; C24, 27, 31, 35, 39, §**1908;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.3]

C93, §556E.3

556E.4 "Coin silver."

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is enclosed, the words "coin" or "coin silver", or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a fraudulent practice; but in case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards.

[S13, §5077-b1; C24, 27, 31, 35, 39, §**1909;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.4]

C93, §556E.4

556E.5 Other articles of silver.

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, any mark or word, other than the word "sterling" or the word "coin", indicating, or designed to indicate that the silver or alloy of silver in said article is of a greater degree of fineness than the actual fineness or quality, unless the actual fineness of the silver or alloy of silver of which said article is composed be not less by more than four one-thousandths parts than the actual fineness indicated by the said mark or word, other than the word "sterling" or "coin", stamped, branded, engraved, or imprinted upon any part of said article, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, subject to the qualifications hereinafter set forth, is guilty of a fraudulent practice.

[S13, §5077-b1; C24, 27, 31, 35, 39, §**1910;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.5]

C93, §556E.5

556E.6 Tests for articles.

In any test for the ascertainment of the fineness of any such article mentioned in this and sections 556E.3 to 556E.5, inclusive, according to the foregoing standards, the part of the article taken for the test shall be such portion as does not contain or have attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article, and provided further and in addition to the foregoing test and standards, that the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in sections 556E.3 to 556E.5, inclusive, including all solder or alloy of inferior fineness used for brazing

or uniting the parts of any such article, all such silver, alloy, or solder being assayed as one piece, shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed.

[S13, §5077-b1; C24, 27, 31, 35, 39, §**1911;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.6]

C93, §556E.6

556E.7 Gold-plated or gold-filled articles.

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of gold or of any alloy of gold and which article is known in the market as "rolled gold-plate", "gold-plate", "gold-filled", or "gold-electroplate", or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is enclosed, any word or mark usually employed to indicate the fineness of gold, unless said word be accompanied by other words plainly indicating that such article or part thereof is made of rolled gold-plate, or gold-plate, or gold-electroplate, or is gold-filled, as the case may be, is guilty of a fraudulent practice.

[S13, §5077-b2; C24, 27, 31, 35, 39, §**1912;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.7]

C93, §556E.7

556E.8 Silver-plated articles.

Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of silver or of any alloy of silver, and which article is known in the market as "silver-plate" or "silver-electroplate", or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is encased or enclosed, the word "sterling" or the word "coin" either alone or in conjunction with any other words or marks, is guilty of a fraudulent practice.

[S13, §5077-b3; C24, 27, 31, 35, 39, §**1913;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.8]

C93, §556E.8

556E.9 Violation.

Every person guilty of a violation of the provisions of this chapter, and every officer, manager, director, or agent of any such person directly participating in such violation or consenting thereto, shall be guilty of a simple misdemeanor; but nothing in this chapter shall apply to articles manufactured prior to June 13, 1907.

[S13, §5077-b4; C24, 27, 31, 35, 39, §**1914;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.9]

C93, §556E.9

556E.10 "Person" defined.

The term *"person"* as used in this chapter shall embrace persons, firms, partnerships, companies, corporations, and associations.

[C24, 27, 31, 35, 39, §**1915;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §119.10]

C93, §556E.10

CHAPTER 556F

LOST PROPERTY

556F.1 Definitions.
556F.1A Taking up vessels, rafts, logs and lumber.
556F.2 Warrant — appraisal — return — record.
556F.3 Value under twenty dollars.
556F.4 Value exceeding twenty dollars.
556F.5 Advertisement — when title vests.
556F.6 Lost goods or money.
556F.7 When owner unknown.
556F.8 Advertisement.
556F.9 Record of publication.
556F.10 Additional publication.
556F.11 Vesting of title.
556F.12 Ownership settled.
556F.13 Compensation.
556F.14 Costs, charges and care — assessment.
556F.15 Proceeds — forfeiture.
556F.16 Responsibility of taker-up.
556F.17 Penalty for selling.
556F.18 Failure to comply.

556F.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, trea-

surer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §556F.1 transferred to §556F.1A

556F.1A Taking up vessels, rafts, logs and lumber.

If any person shall stop or take up any vessel or watercraft, or any raft of logs, or part thereof, or any logs suitable for making lumber or hewn timber, or sawed lumber, found adrift within the limits or upon the boundaries of this state, of the value of five dollars or upwards, including the cargo, tackle, rigging, and other appendages of such vessel or watercraft, such person, within five days thereafter, provided the same shall not have been previously proved and restored to the owner, shall go before some district judge, district associate judge, judicial magistrate or district court clerk where such property is found, and make affidavit setting forth the exact description of such property; where and when the same was found; whether any, and if so what cargo, tackle, rigging, or other appendages were found on board or attached thereto; and that the same has not been altered or defaced, either in whole or in part, since the taking up, either by the person or by any other person to the person's knowledge.

[C51, §876 – 878; R60, §1506; C73, §1509, 1512; C97, §2371; C24, 27, 31, 35, 39, §**12199;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.1]

94 Acts, ch 1188, §27

C95, §556F.1

C2001, §556F.1A

556F.2 Warrant — appraisal — return — record.

The district judge, district associate judge, judicial magistrate, or district court clerk shall thereupon issue a warrant, directed to some peace officer, commanding the peace officer to summon three respectable householders of the neighborhood, who shall proceed without delay to examine and appraise the property, including cargo, tackle, rigging, and other appendages if applicable, and to submit a report regarding the examination and appraisal to the magistrate, judge, or clerk issuing the warrant, who shall transmit a certified copy to the county auditor to be recorded in a lost property book in the auditor's office.

[C51, §878 – 880; R60, §1506; C73, §1509, 1512; C97, §2371; C24, 27, 31, 35, 39, §**12200;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.2]

94 Acts, ch 1188, §27

C95, §556F.2

95 Acts, ch 49, §18

556F.3 Value under twenty dollars.

In all cases where the appraisement of any such property shall not exceed the sum of twenty dollars, the finder shall advertise the same on the door of the courthouse, and in three other of the most public places in the county, within five days after the appraisement, and if no person shall appear to claim and prove such property within six months of the time of taking up, it shall vest in the finder.

[C51, §879, 880; R60, §1507; C73, §1513; C97, §2372; S13, §2372; C24, 27, 31, 35, 39, §**12201;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.3]

94 Acts, ch 1188, §27

C95, §556F.3

556F.4 Value exceeding twenty dollars.

If the value thereof shall exceed the sum of twenty dollars, the county auditor, within five days from the time of the reception of the magistrate, judge or clerk's certificate at the auditor's office, shall cause an advertisement to be posted on the door of the courthouse, and at three other of the most public places in the county, and also a notice to be published once each week for three weeks successively, in some newspaper printed in this state; and if such property be not claimed or proved within ninety days after the advertisement of the same, as aforesaid, the finder shall deliver the same to the sheriff of the county wherein it was taken up, who shall thereupon proceed to sell it at public auction to the highest bidder for cash, having first given ten days' notice of the time and place of sale, and the proceeds of all such sales, after deducting the costs and other necessary expenses, shall be paid into the county treasury.

[C51, §881; R60, §1507; C73, §1513; C97, §2372; S13, §2372; C24, 27, 31, 35, 39, §**12202;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.4]

94 Acts, ch 1188, §27

C95, §556F.4

556F.5 Advertisement — when title vests.

In all cases where any vessel, watercraft, logs, or lumber shall be taken up as aforesaid, which shall be of a value less than five dollars, the finder shall advertise the same by posting a notice of such finding in three of the most public places in the neighborhood; but in such cases the finder shall keep and preserve the same in the finder's possession, and shall make restitution thereof to the owner, without fee or reward, except the same be given voluntarily when the owner claims the same, provided it shall be done in three months from such taking up or finding; but, if no owner shall claim such property within the time aforesaid, the exclusive right to it shall be vested in the finder.

[C51, §876, 877; R60, §1510; C73, §1516; C97, §2375; C24, 27, 31, 35, 39, §**12203;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.5]

94 Acts, ch 1188, §27

C95, §556F.5

556F.6 Lost goods or money.

If any person shall find any lost goods, money, bank notes, or other things of any description whatever, of the value of five dollars and over, such person shall inform the owner thereof, if known, and make restitution thereof.

[C51, §876 – 879; R60, §1508; C73, §1514; C97, §2373; C24, 27, 31, 35, 39, §**12204;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.6]

94 Acts, ch 1188, §27

C95, §556F.6

556F.7 When owner unknown.

If the owner is unknown, the finder shall, within five days after finding the property, take the money, bank notes, and a description of any other property to the county sheriff of the county or the chief of police of the city in which the property was found, and provide an affidavit describing the property, the time when and place where the property was found, and attesting that no alteration has been made in the appearance of the property since the finding. The sheriff or chief of police shall send a copy of the affidavit to the county auditor who shall enter a description of the property and the value of the property, as nearly as the auditor can determine it, in the auditor's lost property book, together with the copy of the affidavit of the finder.

[R60, §1508; C73, §1514; C97, §2373; C24, 27, 31, 35, 39, §**12205;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.7]

94 Acts, ch 1188, §27

C95, §556F.7

95 Acts, ch 49, §19; 2000 Acts, ch 1043, §2

556F.8 Advertisement.

The finder of the lost goods, money, bank notes, or other things shall give written notice of the finding of the property. The notice shall contain an accurate description of the property and a statement as to the time when and place where the same was found, and the post-office address of the finder. The notice shall:

1. Be posted at the door of the courthouse in the county in which the property was found or at the city hall or police station if found within a city and in one other of the most public places in the county; and

2. If the property found exceeds forty dollars in value, the notice shall be published once each week for three consecutive weeks in some newspaper published in and having general circulation in the county.

[C51, §877, 878, 880; R60, §1509, 1510; C73, §1510, 1514 – 1516; C97, §2372, 2374; S13, §2372, 2374; C24, 27, 31, 35, 39, §**12206;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.8]

94 Acts, ch 1188, §27

C95, §556F.8

2000 Acts, ch 1043, §3

556F.9 Record of publication.

Proof of publication of said notice and of the posting thereof shall be made by affidavits of the publisher and the person posting said notices, and said affidavits shall be filed in the office of the county auditor of said county.

[C51, §886; C24, 27, 31, 35, 39, §**12207;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.9]

94 Acts, ch 1188, §27

C95, §556F.9

556F.10 Additional publication.

The affidavits provided for in section 556F.9 shall be entered by the auditor in the proceedings of the board of supervisors and the same shall be published with the proceedings of said board.

[C24, 27, 31, 35, 39, §**12208;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.10]

94 Acts, ch 1188, §27

C95, §556F.10

556F.11 Vesting of title.

If no person appears to claim and prove ownership to said goods, money, bank notes, or other things within twelve months of the date when proof of said publication and posting is filed in the office of the county auditor, the right to such property shall irrevocably vest in said finder.

[C51, §879, 881; R60, §1509, 1510; C73, §1510, 1513, 1515, 1516; C97, §2372, 2374, 2375; S13, §2372, 2374; C24, 27, 31, 35, 39, §**12209;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.11]

94 Acts, ch 1188, §27

C95, §556F.11

556F.12 Ownership settled.

In any case where a claim is made to property found or taken up, and the ownership of the property cannot be agreed upon by the finder and claimant, they may make a case before any district judge, associate district judge, or judicial magistrate in the county, who may hear and adjudicate it, and if either of them refuses to make such case the other may make an affidavit of the facts which have previously occurred, and the claimant shall also verify the claim by the claimant's affidavit, and the district judge, associate district judge, or judicial magistrate may take cognizance of and try the matter on the other party having one day's notice, but there shall be no appeal from the decision. This section does not bar any other remedy given by law.

[C51, §890; R60, §1504; C73, §1517; C97, §2376; C24, 27, 31, 35, 39, §**12210;** C46, 50, 54, 58, 62, 66,

71, 73, 75, 77, 79, 81, §644.12]
94 Acts, ch 1188, §27
C95, §556F.12

556F.13 Compensation.

As a reward for the taking up of boats and other vessels, and for finding lost goods, money, bank notes, and other things, before restitution of the property or proceeds thereof shall be made, the finder shall be entitled to ten percent upon the value thereof, and for taking up any logs or lumber, as hereinbefore described, twenty-five cents for each log not exceeding ten, twenty cents for each exceeding ten and not exceeding fifty, fifteen cents for each exceeding fifty, and fifty cents per thousand feet for sawed lumber.

[C51, §892; R60, §1514; C73, §1511, 1518; C97, §2377; C24, 27, 31, 35, 39, §**12211;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.13]
94 Acts, ch 1188, §27
C95, §556F.13

556F.14 Costs, charges and care — assessment.

The owner shall also be required to pay the finder all such costs and charges as may have been paid by the finder for services rendered as aforesaid, including the cost of publication, together with reasonable charges for keeping and taking care of such property, which last mentioned charge, in case the finder and the owner cannot agree, shall be assessed by two disinterested householders of the neighborhood, to be appointed by some magistrate judge of the proper county, whose decision, when made, shall be binding and conclusive on all parties.

[C51, §893; R60, §1514; C73, §1518; C97, §2377; C24, 27, 31, 35, 39, §**12212;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.14]
94 Acts, ch 1188, §27
C95, §556F.14

556F.15 Proceeds — forfeiture.

The net proceeds of sales made by the sheriff, and money or bank notes paid over to the county treasurer, as directed in this chapter, shall remain in the hands of the county treasurer in trust for the owner, if the owner applies within one year from the time the proceeds, moneys, or bank notes would have been paid over. However, if no owner appears within that time, the proceeds, moneys, or bank notes shall be forfeited, and the claim of the owner is forever barred, in which event the money shall be paid to the treasurer of state for deposit in the general fund of the state.

[C51, §885; R60, §1516; C73, §1519; C97, §2378; C24, 27, 31, 35, 39, §**12213;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.15]
83 Acts, ch 185, §57, 62; 83 Acts, ch 186, §10125, 10201, 10204; 94 Acts, ch 1188, §27
C95, §556F.15

556F.16 Responsibility of taker-up.

If the taker-up of any watercraft, logs, or lumber, or finder of lost goods, bank notes, or other things, takes reasonable care of the property, and any unavoidable accident happens to the property without the fault or neglect of the finder or taker-up before the owner has an opportunity of reclaiming the property, the taker-up or finder shall not be accountable for the unavoidable accident, if within ten days of the accident, the finder or taker-up certifies the accident to the county auditor, who shall make an entry of the accident in the auditor's lost property book.

[R60, §1517; C73, §1520; C97, §2379; C24, 27, 31, 35, 39, §**12214;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.16]
94 Acts, ch 1188, §27
C95, §556F.16
95 Acts, ch 49, §20

556F.17 Penalty for selling.

If any person shall trade, sell, loan, or take out of the limits of this state any such property taken up or found as aforesaid, before the person shall be vested with the right to the same according to the foregoing provisions, the person shall forfeit and pay double the value thereof, to be recovered by any person in an action, one half of which shall go to the plaintiff and the other half to the county.

[R60, §1518; C73, §1521; C97, §2380; C24, 27, 31, 35, 39, §**12215;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.17]
94 Acts, ch 1188, §27
C95, §556F.17

556F.18 Failure to comply.

If any person shall take up any boat or vessel, or any logs or lumber, or shall find any goods, money, bank notes, or other things, and shall fail to comply with the requirements of this chapter, the person shall forfeit and pay the sum of twenty dollars, to be recovered in an action by any person who will sue for the same, one half for the use of the person suing and the other half to be deposited in the county treasury for the use of the common schools; but nothing herein contained shall prevent the owner from having and maintaining an action for the recovery of any damage the owner may sustain.

[R60, §1519; C73, §1522; C97, §2381; C24, 27, 31, 35, 39, §**12216;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §644.18]
94 Acts, ch 1188, §27
C95, §556F.18

CHAPTER 556G

UNCLAIMED DRY CLEANING

556G.1 Unclaimed personal property held by a dry cleaning establishment.

556G.1 Unclaimed personal property held by a dry cleaning establishment.

All property deposited with a dry cleaning establishment which remains unclaimed for a period of four months after the establishment has attempted to contact the owner of the property by ordinary mail one time at the property owner's last known mailing address, may be presumed abandoned and disposed of by delivering the property to a local nonprofit charitable organization.

94 Acts, ch 1094, §1

CHAPTER 556H

UNCLAIMED DEER VENISON

556H.1 Unclaimed deer venison held by a licensed processing establishment.

556H.1 Unclaimed deer venison held by a licensed processing establishment.

All deer venison deposited with an establishment licensed pursuant to chapter 189A, which remains unclaimed for a period of two months after the establishment has attempted to contact the deer venison owner at least once by ordinary mail at the owner's last known mailing address, shall be presumed to be abandoned. The establishment may dispose of the abandoned deer venison by donating the deer venison to a local nonprofit, charitable organization. For purposes of this section, the term *"deer"* means the Cervidae or game deer excluding any farm deer as defined in section 481A.1, subsection 20, paragraph *"h"*, and all donated deer venison shall include game deer venison only and shall not be processed as a multispecies meat food product pursuant to chapter 189A.

2001 Acts, ch 23, §1

SUBTITLE 2

REAL PROPERTY — GIFTS

CHAPTER 557

REAL PROPERTY IN GENERAL

GENERAL PRINCIPLES

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557.2 Estate in fee simple.
557.3 Conveyance passes grantor's interest.
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557.6 Future estates.
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REGISTRATION OF FARMS

557.22 Authorization — certificate.
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GENERAL PRINCIPLES

557.1 Who deemed seized.

All persons owning real estate not held by an adverse possession shall be deemed to be seized and possessed of the same.

[C51, §1199; R60, §2207; C73, §1928; C97, §2912; C24, 27, 31, 35, 39, §**10040;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.1]

557.2 Estate in fee simple.

The term *"heirs"* or other technical words of inheritance are not necessary to create and convey an estate in fee simple.

[C51, §1200; R60, §2208; C73, §1929; C97, §2913; C24, 27, 31, 35, 39, §**10041;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.2]

557.3 Conveyance passes grantor's interest.

Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used.

[C51, §1201; R60, §2209; C73, §1930; C97, §2914; C24, 27, 31, 35, 39, §**10042;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.3]

557.4 After-acquired interest — exception.

Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee. But if the spouse of such grantor joins in such conveyance for the purpose of relinquishing dower or homestead only, and subsequently acquires an interest therein as above defined, it shall not be held to inure to the benefit of the grantee.

[C51, §1202; R60, §2210; C73, §1931; C97, §2915; C24, 27, 31, 35, 39, §**10043;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.4]

557.5 Adverse possession.

Adverse possession of real estate does not prevent any person from selling that person's interest in the same.

[C51, §1203; R60, §2211; C73, §1932; C97, §2916; C24, 27, 31, 35, 39, §**10044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.5]

557.6 Future estates.

Estates may be created to commence at a future day.

[C51, §1204; R60, §2212; C73, §1933; C97, §2917; C24, 27, 31, 35, 39, §**10045;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.6]

557.7 Contingent remainders.

A contingent remainder shall take effect, notwithstanding any determination of the particular estate, in the same manner in which it would have taken effect if it had been an executory devise or a springing or shifting use, and shall, as well as such limitations, be subject to the rule respecting remoteness known as the rule against perpetuities, exclusive of any other supposed rule respecting limitations to successive generations or double possibilities.

[C24, 27, 31, 35, 39, §**10046;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.7]

557.8 Applicability.

Section 557.7, except so far as declaratory of existing law, shall apply only to instruments executed on or after July 1, 1925, and to wills and codicils revived or confirmed by a will or codicil executed on or after said date.

[C24, 27, 31, 35, 39, §**10047;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.8]

557.9 Defeating expectant estate.

No expectant estate shall be defeated or barred by an alienation or other act of the owner of the precedent estate, nor by the destruction of such precedent estate by disseizin, forfeiture, surrender, or merger; provided that on the petition of the life tenant, with the consent of the holder of the reversion, the district court may order the sale of the property in such estate and the proceeds shall be subject to the order of court until the right thereto becomes fully vested. The proceedings shall be as in an action for partition.

[C24, 27, 31, 35, 39, §**10048;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.9]

557.10 Declarations of trust.

Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law.

[C51, §1205; R60, §2213; C73, §1934; C97, §2918; C24, 27, 31, 35, 39, §**10049;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.10]

Statute of frauds, §622.32

557.11 Conveyances by married persons.

A married person may convey or encumber any real estate or interest therein belonging to the person, and may control the same, or contract with reference thereto, to the same extent and in the same manner as other persons.

[C51, §1207; R60, §2215; C73, §1935; C97, §2919; C24, 27, 31, 35, 39, §**10050;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.11]

557.12 Conveyances by husband and wife.

Every conveyance made by a husband and wife shall be sufficient to pass any and all right of either in the property conveyed, unless the contrary appears on the face of the conveyance.

[R60, §2255; C73, §1936; C97, §2920; C24, 27, 31, 35, 39, §**10051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.12]

557.13 Covenants — spouse not bound.

Where either the husband or wife joins in a conveyance of real estate owned by the other, the husband or wife so joining shall not be bound by the covenants of such conveyance, unless it is expressly so stated on the face thereof.

[C73, §1937; C97, §2921; C24, 27, 31, 35, 39, §**10052;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.13]

557.14 Title and possession of mortgagor.

In absence of stipulations to the contrary, the mortgagor of real estate retains the legal title and right of possession thereto.

[C51, §1210; R60, §2217; C73, §1938; C97, §2922; C24, 27, 31, 35, 39, §**10053;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.14]

557.15 Tenancy in common.

Conveyances to two or more in their own right create a tenancy in common, unless a contrary intent is expressed.

[C51, §1206; R60, §2214; C73, §1939; C97, §2923; C24, 27, 31, 35, 39, §**10054;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.15]

557.16 Cotenant liable for rent.

In all cases in which any real estate is now or shall be hereafter held by two or more persons as tenants in common, and one or more of said tenants shall have been or shall hereafter be in possession of said real estate, it shall be lawful for any one or more of said tenants in common, not in possession, to sue for and recover from such tenants in possession, their proportionate part of the rental value of said real estate for the time, not exceeding a period of five years, such real estate shall have been in possession as aforesaid.

[C24, 27, 31, 35, 39, §**10055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.16]

557.17 Partition — cotenant charged with rent.

In case of partition of such real estate held in common as aforesaid, the parties in possession shall have deducted from their distributive shares of said real estate the rental value thereof to which their cotenants are entitled.

[C24, 27, 31, 35, 39, §**10056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.17]

557.18 Vendor's lien.

No vendor's lien for unpaid purchase money shall be enforced in any court of this state after a conveyance by the vendee, unless such lien is reserved by conveyance, mortgage, or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee is made after suit by the vendor, the vendor's executor, or assigns to enforce such lien.

[C73, §1940; C97, §2924; C24, 27, 31, 35, 39, §**10057;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.18]

557.19 Fraudulent conveyances.

Nothing in section 557.18 shall be construed to deprive a vendor of any remedy now existing against conveyance procured through the fraud or collusion of the vendees therein, or persons purchasing of such vendees with notice of such fraud or lien.

[C73, §1940; C97, §2924; C24, 27, 31, 35, 39, §**10058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.19]

557.20 Rule in Shelley's case.

The rule or principle of the common law known as the rule in Shelley's case is hereby abolished and is declared not to be a part of the law of this state.

[S13, §2924-a; C24, 27, 31, 35, 39, §**10059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.20]

557.21 Devise, bequest, or conveyance not enlarged.

No express devise, bequest, or conveyance of an estate for life, or other limited estate in real or personal property shall be enlarged or construed to pass any greater estate to the devisee, legatee, or grantee thereof by reason of any devise, bequest, or conveyance to the heirs, heirs of the body, children, or issue of such devisee, legatee, or grantee; but this section shall not in any manner or under any circumstances be so construed as to impair or affect the vested rights of any person in or to any lands or estates acquired prior to July 4, 1907.

[S13, §2924-b; C24, 27, 31, 35, 39, §**10060;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.21]

REGISTRATION OF FARMS

557.22 Authorization — certificate.

Any owner of a farm in the state may have the name of that farm, together with a description of the owner's lands to which said name applies, recorded in a register kept for that purpose in the office of the county recorder of the county in which said farm is located.

Such recorder shall furnish to such landowner a proper certificate setting forth said name and a description of such lands.

[S13, §2924-c; C24, 27, 31, 35, 39, §**10061;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.22]

557.23 Vested interest.

When any name shall have been recorded as the name of any farm in such county, such name shall not be recorded as the name of any other farm in the same county.

[S13, §2924-c; C24, 27, 31, 35, 39, §**10062;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.23]

557.24 Fee.

A person having the name of the person's farm recorded as provided in section 557.22 shall first pay to the county recorder a fee in the amount specified in section 331.604, which fee shall be paid to the county treasurer as other fees are paid to the county treasurer by the recorder.

[S13, §2924-d; C24, 27, 31, 35, 39, §**10063;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.24]

85 Acts, ch 159, §6

557.25 Transfer of farm.

When any owner of a farm, the name of which has been recorded as hereinbefore provided, transfers by deed or otherwise the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then in that event, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed of conveyance.

[S13, §2924-e; C24, 27, 31, 35, 39, §**10064;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.25]

557.26 Cancellation — fee.

If the owner of a registered farm desires to cancel the registered name of the farm, the owner shall acknowledge cancellation of the name by execution of an instrument in writing referring to the farm name, and shall record the instrument. For the latter service the county recorder shall charge a fee in the amount specified in section 331.604, which shall be paid to the county treasurer as other fees are paid to the county treasurer by the recorder.

[S13, §2924-f; C24, 27, 31, 35, 39, §**10065;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §557.26]

85 Acts, ch 159, §7

CHAPTER 557A

TIME-SHARES

For cooperatives and condominiums, see chapters 499A and 499B

557A.1 Time-share Act.
557A.2 Definitions.
557A.3 Applicability to time-share programs located out-of-state.
557A.4 Action for partition.
557A.5 Status of time-share estates.
557A.6 Creation of time-share estates.
557A.7 Arrangements for management and operation of a time-share estate program.
557A.8 Developer control period.
557A.9 Creation of time-share uses.
557A.10 Arrangement for management and operation of a time-share use program.
557A.11 Disclosure requirements.
557A.12 Additional disclosure requirements relating to exchange programs.
557A.13 Exemptions from disclosure requirements.
557A.14 Purchaser's and developer's rights relating to property report.
557A.15 Release from liens.
557A.16 Enforcement and cause of action.
557A.17 Blanket mortgage or other liens affecting a time-share interval at time of first conveyance.
557A.18 Financing of time-share programs.
557A.19 Lienholder's rights.
557A.20 Selling time-share estates — license required.

557A.1 Time-share Act.

This chapter shall be known as the *"Iowa Time-share Act"*.

85 Acts, ch 155, §1

557A.2 Definitions.

In this chapter, unless the context requires otherwise:

1. *"Association"* means all of the time-share interval owners of a time-share project acting as a group, either through a nonstock nonprofit corporation or an unincorporated association, in accordance with its bylaws governing administration of the project.

2. *"Commission"* means the real estate commission.

3. *"Common expense"* means all sums lawfully assessed against an owner of a time-share interval by an association for the expenses of operating and maintaining the time-share project and for other expenses designated by the project instruments.

4. *"Developer"* means a person who is in the business of creating or selling time-share intervals in a time-share program. This definition does not include a person acting solely as a sales agent.

5. *"Exchange agent"* means a person who negotiates and arranges the exchange of time-share intervals for their owners in an exchange program involving other time-share intervals.

6. *"Managing agent"* means a person who undertakes the duties and responsibilities of the management of a time-share project.

7. *"Project instrument"* means a recordable document applicable to an entire time-share project, containing restrictions or covenants regulating the use, occupancy, or disposition of the entire project and including amendments to the document.

8. *"Property report"* means a written statement provided to the initial purchaser of a time-share interval containing the information required in sections 557A.11 and 557A.12.

9. *"Purchaser"* means a person other than a developer or lender who acquires an interest in a time-share interval.

10. *"Time-share estate"* means an ownership or leasehold estate in property devoted to a time-share fee or a time-share lease.

11. *"Time-share instrument"* means a document by whatever name denominated creating or regulating time-share programs, but excluding any law, ordinance, or government regulation.

12. *"Time-share interval"* means a time-share estate or a time-share use.

13. *"Time-share program"* means an arrangement for time-share intervals in a time-share project in which the use, occupancy or possession of real property circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis occurring over a period of time.

14. *"Time-share project"* means the entire real property that is subject to a time-share program.

15. *"Time-share use"* means a contractual right of exclusive occupancy which does not fall within the definition of a time-share estate including, but is not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond.

16. *"Unit"* means the real property or the real property improvement in a time-share project which is divided into time-share intervals.

85 Acts, ch 155, §2

557A.3 Applicability to time-share programs located out-of-state.

1. Sections 557A.4 to 557A.10 apply only to time-share programs located in Iowa.

2. Sections 557A.1, 557A.2, and 557A.11 to 557A.20 apply to any time-share program, wherever located, which is marketed in Iowa.

85 Acts, ch 155, §3

557A.4 Action for partition.

An action for partition of a unit shall not be maintained except as permitted by the time-share instrument.

85 Acts, ch 155, §4

557A.5 Status of time-share estates.

1. A time-share estate is an estate in real property and has the character and incidents of an estate in fee simple at common law or an estate for years if a leasehold, except as expressly modified by this chapter.

2. A document transferring or encumbering a time-share estate shall not be rejected for recordation because of the nature or duration of the estate.

3. For purposes of title, each time-share estate constitutes a separate estate or interest in property except for real property tax purposes.

85 Acts, ch 155, §5

557A.6 Creation of time-share estates.

Project instruments and time-share instruments creating time-share estates shall contain the following:

1. The name of the county in which the property is situated.

2. The legal description, street address, or other description sufficient to identify the property.

3. Identification of units and time periods by letter, name, number, or a combination.

4. Identification of time-share estates and, when applicable, the method by which additional time-share estates may be created.

5. The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share estate and, when applicable, to each unit that is not subject to the time-share program.

6. Any restrictions on the use, occupancy, alteration, or alienation of time-share intervals.

7. The dates and conditions under which a partition may occur.

8. The ownership interest, if any, of personal property and provisions for care and replacement of the personal property.

9. Any other matters the developer deems appropriate.

85 Acts, ch 155, §6

557A.7 Arrangements for management and operation of a time-share estate program.

The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the program and for the maintenance, repair, and furnishing of units, which shall include, but not be limited to, provisions for the following:

1. Creation of an association of time-share estate owners.

2. Adoption of bylaws for organizing and operating the association.

3. Payment of costs and expenses of operating the time-share program and owning and maintaining the units.

4. Employment and termination of employment of the managing agent.

5. Preparation and dissemination to time-share estate owners of an annual budget and of operating statements and other financial information concerning the time-share program.

6. Adoption of standards and rules of conduct for the use and occupancy of units by time-share estate owners.

7. Procedures for imposing and collecting assessments from time-share estate owners to defray the expenses of management of the time-share program and maintenance of the units.

8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share estate owners, their guests, and other users.

9. Methods for providing compensating use periods or monetary compensation to a time-share estate owner if a unit cannot be made available for the period to which the time-share estate owner is entitled by schedule or by confirmed reservation.

10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share program for failure of the owner to comply with the time-share instruments or the rules of the association with respect to the use of the units. The time-share estate owner shall be given notice and the opportunity to refute or explain the charges in person or in writing to the governing body or the association before a decision to impose discipline is rendered.

11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share program and the units.

85 Acts, ch 155, §7

557A.8 Developer control period.

1. The time-share instruments for a time-share estate program may provide for a period of time, known as the developer control period, during which the developer or a managing agent se-

lected by the developer shall manage the time-share program and the units in the time-share program.

2. If the time-share instruments for a time-share estate program provide for the establishment of a developer control period, they shall include, but not be limited to, provisions for the following:

a. Termination of the developer control period by action of the association.

b. Termination of contracts for goods and services for the time-share program entered into during the developer control periods.

c. Termination of contract for managing agent entered into during developer control period.

d. A regular accounting by the developer to the association as to all matters that significantly affect the interests of owners in the time-share program.

85 Acts, ch 155, §8

557A.9 Creation of time-share uses.

Project instruments and time-share instruments creating time-share uses shall contain the following:

1. Identification by name of the time-share project and street address or other description sufficient to identify the property where the time-share project is situated. The address shall be the street address if available.

2. Identification of the time periods, type of units, and the units that are in the time-share program and the length of time that the units are committed to the time-share program.

3. In case of a time-share project, identification of which units are in the time-share program and the method by which any units may be added, deleted, or substituted.

4. Any other matters that the developer deems appropriate.

85 Acts, ch 155, §9

557A.10 Arrangement for management and operation of a time-share use program.

The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the program and for the maintenance, repair, and furnishing of units which shall include, but not be limited to, provisions for the following:

1. Standards and procedures for upkeep, repair, and interior furnishing of units and for providing of janitorial, cleaning, linen, and similar services to the units during use periods.

2. Adoption of standards and rules of conduct governing the use and occupancy of units by time-share use owners.

3. Payment of the costs and expenses of operating the time-share program.

4. Selection of a managing agent to act on behalf of the developer.

5. Preparation and dissemination to time-share use owners of an annual budget and operating statements and other financial information concerning the time-share program.

6. Procedures for establishing the rights of time-share use owners to the use of units by prearrangement or under a first-reserved, first-served priority system.

7. Organization of a management advisory board consisting of time-share use owners including an enumeration of rights and responsibilities of the advisory board.

8. Procedures for imposing and collecting assessment or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units.

9. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests, and other users.

10. Methods for providing compensating use periods or monetary compensation to a time-share use owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation.

11. Procedures for imposing a monetary penalty or suspension of a time-share use owner's rights and privileges in the time-share program for failure of the owner to comply with the time-share instruments or the rules established by the developer with respect to the use of the units. The time-share use owner shall be given notice and the opportunity to refute or explain the charges in person or in writing to the management advisory board before a decision to impose discipline is rendered.

12. Procedures for disclosure at cost to requesting time-share users of a list of the names and mailing addresses of all current time-share owners in the time-share program.

85 Acts, ch 155, §10

557A.11 Disclosure requirements.

1. A developer or an agent of a developer of a time-share program shall provide a current property report to a purchaser not later than ten days after the purchaser signs a purchase agreement. Prior to any sale or solicitation for sale of a time-share interval, a copy of all disclosure materials required to be given to a purchaser by this section and section 557A.12 shall be filed with the commission. The property report shall contain the following:

a. A cover sheet of the same approximate size and shape as the majority of the disclosure materials required in this section, bearing the title "Property Report" and containing the name and location of the time-share project, the name and business address of the developer and the name and business address of the developer's agent. Following

this information, on the front of the cover sheet, but set apart from it, there shall appear four statements in boldface type, or capital letters no smaller than the largest type on the page, in the following wording:

(1) These are the legal documents covering your rights and responsibilities as a time-share interval owner. If you do not understand any provisions contained in them, you should obtain professional advice.

(2) These disclosure materials given to you as required by law may be relied upon as correct and binding. Oral statements may not be legally binding.

(3) You may at any time within ..... (developer or developer's agent shall insert a number, not less than five, designating the rescission period) business days following receipt of a current property report, cancel in writing the purchase agreement and receive a full refund of any deposits made.

(4) The filing of this document with the commission does not constitute approval of the sale or lease, or offer for sale or lease, by the state, commission, or any officer thereof, or indicate that the state, commission, or any officer thereof has in any way passed upon the merits of the offering.

b. A general description of the units including, but not limited to, the developer's schedule of approximate commencement and completion of all buildings, units, and amenities; or if completed, a statement that they have been completed.

c. As to all units offered by the developer in the same time-share project:

(1) The types and number of units.

(2) Identification of units that are subject to time-share intervals.

(3) The estimated number of units that may become subject to time-share intervals.

d. A brief description of the time-share project.

e. If applicable, any current budget and a projected budget to be used for the time-share intervals for one year after the date of the first transfer to a purchaser. The budget shall include, but is not limited to:

(1) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement.

(2) The projected liability for common expense, if any, by category of expenditures for the time-share intervals.

(3) A statement of any services not reflected in the budget that the developer provides, or expenses that the developer pays and which, upon completion of the project or the commencement of association control, would be payable by purchasers as part of their annual share of common expenses.

f. Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

g. A description of any liens, defects, or encumbrances on or affecting the title to the time-share intervals.

h. A description in general terms of any financing offered by the developer and a statement that documents showing specific terms and conditions of financing will be furnished upon request.

i. A statement of any pending lawsuits material to the time-share intervals of which a developer has actual knowledge.

j. Any restraints on alienation of any number or portion of any time-share intervals of which a developer has actual knowledge.

k. A description of the insurance coverage, or a statement that there is no insurance coverage, provided for the benefit of time-share interval owners.

l. Any current or expected fees or charges to be paid by time-share interval owners for the use of any amenities or facilities related to the property.

m. The extent to which financial arrangements have been provided for completion of all promised improvements.

n. The extent to which a unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

2. If the time-share program has been registered under a law or rule of another state of the United States, which registration has a similar goal in the protection of prospective purchasers of time-share programs, the developer may substitute for the property report required by subsection 1 an abbreviated property report which consists of a first page to which have been attached the disclosure materials required by the other registering jurisdiction.

a. In addition to the information required to be included on the cover page under subsection 1, paragraph *"a"*, the cover page of the abbreviated report shall contain the following conspicuously noted language:

PROPERTY REPORT OF
(Name of time-share program)
IMPORTANT NOTE TO
PROSPECTIVE PURCHASERS:

The attached information has been provided by (name of time-share program) under the laws of Iowa and (other registering jurisdiction). Read it carefully before you spend any money.

b. If the commission finds that some states do not have disclosure requirements adequate to protect prospective purchasers in this state, the commission may adopt rules identifying those states and requiring the amending of the language of the first page of the abbreviated property report or the abbreviated property report from those states to

insure adequate disclosure.

3. The developer shall pay a filing fee in an amount set by rule by the commission when filing the property report required in subsection 1 or 2.

4. At the same time as the developer files the property report or abbreviated property report, the developer shall provide the commission with a list of the names, addresses and phone numbers of all persons authorized to sell time-share intervals on the developer's behalf in Iowa. This list shall be periodically updated as the commission may by rule require.

85 Acts, ch 155, §11; 86 Acts, ch 1237, §36

557A.12 Additional disclosure requirements relating to exchange programs.

1. When the owners of time-share intervals are to be permitted or required to become members of or participate in any program for the exchange of occupancy rights among themselves or with the owners of time-share intervals of other time-share projects or both, the developer or an agent of a developer of a time-share program, in addition to the property report required by section 557A.11 and within the same time limitation, shall provide the following disclosure materials to a purchaser:

a. The name, address and telephone number of the exchange agent and a statement as to whether that person is an affiliate of the developer.

b. Whether membership or participation, or both, in the exchange program are voluntary or mandatory.

c. The expenses, or ranges of expenses, charged to the time-share interval owners for membership in the exchange program including the expenses, if any, of exchanging as of a date not more than one year before the property report is delivered to the purchaser, and the name of the person to whom those expenses are payable.

d. Whether and how any of the expenses specified in paragraph *"c"* may be altered and, if any of them are to be fixed on a case-by-case basis, the manner in which they are to be fixed in each case.

2. Subsection 1 shall not apply if information on all exchange programs has been included pursuant to law or rule of the other registering jurisdiction in an abbreviated property report prepared pursuant to section 557A.11, subsection 2.

85 Acts, ch 155, §12

557A.13 Exemptions from disclosure requirements.

A person shall not be required to provide disclosure documents, as required in sections 557A.11 and 557A.12, in the following cases:

1. A transfer of a time-share interval by a time-share interval owner other than a developer or a developer's agent.

2. A disposition of units in a time-share project pursuant to a court order.

3. A disposition of units in a time-share project by a government or governmental agency.

4. A disposition of units in a time-share project by a foreclosure or deed in lieu of foreclosure.

5. A disposition to a person acquiring the time-share interval for other than personal use.

6. A disposition of a time-share interval in a time-share project situated wholly outside this state if all solicitations, negotiations, and contracts took place wholly outside this state and the contract was executed wholly outside this state.

7. A gratuitous transfer of a time-share interval.

85 Acts, ch 155, §13

557A.14 Purchaser's and developer's rights relating to property report.

1. A purchaser may at any time within five business days following the receipt of all information required in sections 557A.11 and 557A.12 rescind in writing a contract of sale without stating any reason and without any liability on the purchaser's part. All payments made by the purchaser before rescission shall be refunded within thirty days after receipt of the notice of rescission as provided in subsection 3.

2. The developer may cancel the contract of purchase without penalty to either person at any time within five business days after the receipt by the purchaser of the disclosure materials required in sections 557A.11 and 557A.12. The developer shall return all payments made and the purchaser shall return all materials received in good condition, reasonable wear and tear excepted. If the materials are not returned, the developer may deduct their cost and return the balance to the purchaser.

3. If either person elects to cancel a contract pursuant to subsection 1 or 2, the person may do so by hand delivery or personal service, or electronic or prepaid United States mail to the other person or to the person's agent for service of process.

4. Material furnished under sections 557A.11 and 557A.12 may not be changed or amended following delivery to a purchaser without the prior approval of the purchaser, if the change or amendment would materially affect the rights of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

5. A developer who makes a false or misleading statement of fact that reasonably could affect the purchaser's decision to enter into the contract of sale, or omits to include a fact, in the information required to be disclosed under sections 557A.11 and 557A.12 shall be liable to the purchaser for damages, and, at the election of the purchaser, the misrepresentation shall be sufficient to void the contract for sale.

6. Rights of purchasers under this section shall not be waived in the contract of sale and an

attempt to waive is void.

85 Acts, ch 155, §14

557A.15 Release from liens.

1. Unless the purchaser expressly agrees, prior to the transfer other than by deed in lieu of foreclosure of a time-share interval, to take subject to or assume a lien, the developer shall record or furnish to the purchaser releases of all liens affecting that time-share interval, or shall provide a surety bond or insurance against the lien.

2. If a lien, other than an underlying mortgage or deed of trust, becomes effective against more than one time-share interval in a time-share project, a time-share interval owner is entitled to a release of the owner's time-share interval from the lien upon payment of the amount of the lien attributable to the owner's time-share interval. The amount of the payment shall be proportionate to the ratio that the time-share interval owner's liability bears to the liabilities of all time-share interval owners whose interests are subject to the lien. Upon receipt of payment, the lienholder shall promptly deliver to the time-share interval owner a release of the lien covering the time-share interval. After payment, the managing entity shall not assess or have a lien against that time-share interval for any portion of the expenses incurred in connection with that lien. The time-share interval owner and the lienholder may enter into an alternative arrangement.

85 Acts, ch 155, §15

557A.16 Enforcement and cause of action.

1. Violations of this chapter, unfair methods of competition, and deceptive or unfair acts or practices, in the offer or sale of a time-share are unlawful. Enforcement shall be as provided in section 714.16. The terms *"unfair methods of competition"* and *"deceptive or unfair acts or practices"* include, but are not limited to, the following acts:

a. Misrepresenting or failing to disclose any material fact concerning a time-share.

b. Failing to honor and comply with all provisions of a time-share instrument entered into with a purchaser.

c. Including any time-share instrument provisions purporting to waive any right or benefit provided for purchasers under this chapter.

d. Receiving from a prospective purchaser any money or other valuable consideration before the purchaser signs a time-share instrument.

e. Misrepresenting the amount of time or period of time the time-share unit will be available to a purchaser.

f. Misrepresenting the location of the offered time-share unit.

g. Misrepresenting the size, nature, extent, qualities, or characteristics of the offered time-share unit.

h. Misrepresenting the nature or extent of any services incident to the time-share unit.

i. Misrepresenting the conditions under which a purchaser may exchange occupancy rights to a time-share unit in one location for occupancy rights to a time-share unit in another location.

2. If a developer or any other person subject to this chapter violates any provision of this chapter or any provision of the project or time-share instruments, any person or class of persons damaged or otherwise adversely affected by the violation shall have a claim for appropriate relief, which shall be brought in the county in which the time-share project is located or was offered or sold, in which the time-share offeror or time-share salesperson resides or is doing business upon tender of the time-share interest sold, or in which the contract was made. The court may order the developer or other person subject to this chapter to refund the purchaser the full amount paid by the purchaser, with prejudgment interest, less a portion of the amount paid representing the portion of any benefit the purchaser actually received or had the right to receive during the time preceding the tender. In all cases, the court may provide equitable relief it considers necessary or proper. The court may also award the person or class of persons reasonable attorney's fees. This action does not limit any other remedy of the purchaser.

85 Acts, ch 155, §16

557A.17 Blanket mortgage or other liens affecting a time-share interval at time of first conveyance.

The developer whose project is subject to an underlying blanket lien or encumbrance shall protect nondefaulting purchasers from foreclosure by the lienholder by obtaining from the lienholder written assurances that the lienholder will not foreclose on nondefaulting purchasers. These written assurances may be in the form of a nondisturbance clause, subordination agreement, or partial release of the lien as the time-share intervals are sold, or the developer may obtain the agreement of the lienholder to take the project, in the event of default by the developer, subject to the rights of the nondefaulting purchasers by entering into a financing plan or escrow agreement sufficient to protect the lienholder's interest.

85 Acts, ch 155, §17

557A.18 Financing of time-share programs.

In the financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made to any person or entity which is the holder of an underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance. Any transfer of the developer's interest in the time-share program to a person other than purchaser of a unit shall be subject to the obliga-

tions of the developer.
85 Acts, ch 155, §18

557A.19 Lienholder's rights.
Any purchaser who fails to object and specify the invalidity or defect contained in the time-share instrument within sixty days after receipt of written notice that the developer has assigned the receivables to the lienholder may not claim that the time-share instrument is invalid, void, or voidable in any subsequent action for enforcement of the collection of the receivables by the lienholder. The notice shall be by certified mail or personal delivery and state that the developer has assigned the receivables to the lienholder and that the purchaser has sixty days within which to object and specify the invalidity or defect contained within such instrument. Any objection shall be written and delivered by certified mail or personal delivery to the lienholder.
85 Acts, ch 155, §19

557A.20 Selling time-share estates — license required.
A person engaged in the business or occupation of selling time-share estates for a fee or a commission shall obtain a real estate license pursuant to chapter 543B.
85 Acts, ch 155, §20

CHAPTER 557B

MEMBERSHIP CAMPGROUNDS

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557B.1 Definitions.
As used in this chapter, unless the context otherwise requires:
1. *"Advertisement"* means an attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into an obligation or acquire a title or interest in a membership camping contract.
2. *"Affiliate"* means any person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.
3. *"Blanket encumbrance"* means any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, judgment lien, federal or state tax lien, or any other material lien or encumbrance which secures or evidences the obligation to pay money or to sell or convey all or part of a campground located in this state, made available to purchasers by the membership camping operator, and which authorizes, permits, or requires the foreclosure or other disposition of the campground. *"Blanket encumbrance"* also includes the lessor's interest in a lease of all or part of a campground which is located in this state and which is made available to purchasers by a membership camping operator. *"Blanket encumbrance"* does not include a lien for taxes or assessments levied by a public body which are not yet due and payable.
4. *"Business day"* means any day except Saturday, Sunday, or a legal holiday.
5. *"Campground"* means real property made available to persons for camping, whether by tent, trailer, camper, cabin, recreational vehicle, or similar device and includes the outdoor recreational facilities located on the real property. *"Campground"* does not include a manufactured home community or mobile home park as defined in section 435.1.
6. *"Controlling persons of a membership camping operator"* means each director and officer and each owner of twenty-five percent or more of the stock of the operator, if the operator is a corporation; and each general partner and each owner of twenty-five percent or more of the partnership or other interests, if the operator is a general or limited partnership; or other person doing business as a membership camping operator.
7. *"Membership camping contract"* means an

agreement offered or sold within this state evidencing a purchaser's right to use a campground of a membership camping operator for more than thirty days during the term of the agreement.

8. *"Membership camping operator"* or *"operator"* means any person other than one who is tax exempt under section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3, who owns or operates a campground and offers or sells membership camping contracts paid for by a fee or periodic payments. *"Membership camping operator"* does not include the operator of a manufactured home community or mobile home park as defined in chapter 435.

9. *"Offer"* means an inducement, solicitation, or attempt to encourage a person to acquire a membership camping contract.

10. *"Purchaser"* means a person who enters into a membership camping contract with a membership camping operator and obtains the right to use the campground owned or operated by the membership camping operator.

87 Acts, ch 181, §5; 2001 Acts, ch 153, §16

557B.2 Registration requirement.

A person shall not offer or sell a membership camping contract in this state unless one of the following is applicable:

1. The membership camping contract is covered by a membership camping registration as provided in this chapter.

2. The membership camping contract or the transaction is exempted under section 557B.4.

87 Acts, ch 181, §6

557B.3 Application for registration — amendments — renewal.

1. Filing fees, as prescribed in section 557B.7, shall accompany the application for registration, renewal of a registration, or any amendment of a registration of membership camping contracts.

2. The application for registration shall be filed with the attorney general and shall include all of the following:

a. The membership camping operator's name and the address of its principal place of business, the form, date of organization, jurisdiction of its organization, and the name and address of each of its offices in this state.

b. A copy of the membership camping operator's articles of incorporation, partnership agreement, or joint venture agreement as contemplated or currently in effect.

c. The name, address, and principal occupation for the past five years of the membership camping operator and of each controlling person of the membership camping operator and the extent of each such person's interest in the membership camping operator as of a specified date within thirty days prior to the filing of the application.

d. A list of affiliates of the membership camping operator, including the names and addresses of officers and directors.

e. A legal description of each campground owned or operated by the membership camping operator which is represented to be available for use by purchasers and a statement identifying the existing amenities at each campground and the planned amenities represented as to be available for use by purchasers in the future at each campground. If future amenities are represented, the statement must include the estimated cost and schedule for completion of those amenities.

f. A brief description of the membership camping operator's ownership of or other right to use the campground properties or facilities represented to be available for use by purchasers, together with a brief description of any material encumbrance, the duration of any lease, real estate contract, license, franchise, reciprocal agreement, or other agreement entitling the membership camping operator to use the property and any material provisions of the agreements which restrict a purchaser's use of the property.

g. If a blanket encumbrance materially adversely affects a campground, a legal description of the encumbrance and a description of the steps taken to protect purchasers in accordance with section 557B.12 in case of failure to discharge the encumbrance.

h. A brief description of all payments of a purchaser under a membership camping contract, including initial fees and any further fees, charges, or assessments, together with any provision for changing the payments.

i. A description of any restraints on the transfer of membership camping contracts, including a complete description of any resale agreement or policy.

j. A brief description of the policies relating to the availability of camping sites and whether reservations are required.

k. A brief description of any grounds for forfeiture of a purchaser's membership camping contract.

l. A sample copy of each membership camping contract to be offered or sold in this state and the purchase price of each type, and if the price varies, the reason for the variance.

m. A sample copy of each instrument which a purchaser will be required to execute, and a copy of the disclosure statement required by section 557B.8.

n. A statement of the total number of membership camping contracts for each campground intended to be sold in this state and the method used to determine this number, including a statement of commitment that this number will not be exceeded unless it is disclosed by an amendment to the registration.

o. A summary or copy of the articles, bylaws, rules, restrictions, or covenants regulating the

purchaser's use of each campground and the facilities located on each property, including a statement of whether and how the articles, bylaws, rules, restrictions, or covenants may be changed.

p. A brief description of any reciprocal agreement allowing purchasers to use camping sites, facilities, or other properties owned or operated by any person other than the membership camping operator with whom the purchaser has entered into a membership camping contract.

q. Financial statements of the membership camping operator prepared in accordance with generally accepted accounting principles which shall include a financial statement for the most recent fiscal year audited by an independent certified public accountant, and an unaudited financial statement for the most recent fiscal quarter. The attorney general may waive the requirement for an audited statement if the statement has been prepared by an independent certified public accountant and the attorney general is satisfied with the reliability of the statement and with the ability of the membership camping operator to meet future commitments.

The application shall be signed by the membership camping operator or an officer or a general partner of the membership camping operator, or by another person holding a power of attorney for this purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney must be included with the application.

An application for registration shall be amended within twenty-five days of any material change in the information included in the application. A material change includes any change which significantly reduces or terminates either the applicant's or the purchaser's right to use the campground or any of the facilities described in the membership camping contract, but does not include minor changes covering the use of the campground, its facilities, or the reciprocal program.

The registration of the membership camping operator must be renewed annually by filing an application for renewal with the required fee not later than thirty days prior to the anniversary of the current registration. The application shall include all changes which have occurred in the information included in the application previously filed.

Registration with the attorney general does not constitute approval or endorsement by the attorney general of the membership camping operator, the membership camping contract, or the campground, and any attempt by the membership camping operator to indicate that registration constitutes such approval or endorsement is unlawful.

87 Acts, ch 181, §7

557B.4 Exemptions.

The following transactions are exempt from registration:

1. An offer, sale, or transfer by any one person of not more than one membership camping contract in any twelve-month period.
2. An offer or sale by a government, government agency, or other subdivision of government.
3. A bona fide pledge of a membership camping contract.
4. Transactions subject to regulation pursuant to chapter 557A.

87 Acts, ch 181, §8

557B.5 Effective date of registration.

The application for registration automatically becomes effective upon the expiration of forty-five calendar days following filing of a completed application with the attorney general unless one of the following occurs:

1. The application is denied under section 557B.6.
2. The attorney general grants the registration effective as of an earlier date.
3. The applicant consents to a delay of the effective date.

If the attorney general requests additional information with respect to the application, the application becomes effective upon the expiration of fifteen business days following the filing with the attorney general of the additional information unless an order pursuant to section 557B.6 is issued or unless declared effective on an earlier date by order of the attorney general.

87 Acts, ch 181, §9

557B.6 Denial, suspension, or revocation of application or registration — penalties.

The attorney general may by order deny, suspend, or revoke a membership camping operator's application or registration or impose a penalty of not more than five thousand dollars or a combination of suspension or revocation and penalty, if the attorney general finds that the order is for the protection of prospective purchasers or purchasers of membership camping contracts and that one of the following applies:

1. The membership camping operator's advertising or sales techniques or trade practices have been or are deceptive, false, or misleading.
2. The membership camping operator is not financially responsible or has insufficient capital to warrant its offering or selling membership camping contracts in this state. The attorney general may require a surety bond or, if one is unobtainable, other evidence of financial assurances satisfactory to the attorney general.
3. The membership camping operator's application for registration or an amendment to the registration is incomplete in a material respect.

4. The membership camping operator has failed to file timely amendments to the application for registration as required by section 557B.3.

5. The membership camping operator has failed to comply with any provision of this chapter that materially affects the rights of purchasers, prospective purchasers, or owners of membership camping contracts.

6. The membership camping operator has made a false or misleading representation or concealed material facts in any document or information filed with the attorney general.

7. The membership camping operator has represented or is representing to purchasers in connection with the offer to sell membership camping contracts that a particular facility is planned, without reasonable expectation that the facility will be completed within a reasonable time or without the apparent means to ensure its completion.

An order denying, suspending, or revoking a registration or imposing a penalty shall be sent by certified mail, return receipt requested, to the applicant or registrant. The applicant or registrant has thirty calendar days from the date of mailing the order to request a hearing pursuant to chapter 17A. If a hearing is not requested within thirty days and is not ordered by the attorney general, the order shall remain in effect until modified or vacated by the attorney general. However, if the attorney general finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, summary suspension of a membership camping operator's registration may be ordered. If the membership camping operator desires to contest the summary order, the membership camping operator must request a hearing within fifteen calendar days of service of the summary order. If so requested, the hearing must be instituted within twenty calendar days of the request and the contest of the summary order must be promptly determined.

87 Acts, ch 181, §10; 88 Acts, ch 1134, §99, 100

557B.7 Fees.

Each application for registration of an offer or sale of membership camping contracts and each application for amendment or renewal of a registration shall be accompanied by a fee determined by the attorney general which shall be sufficient to defray the costs of administering this chapter.

87 Acts, ch 181, §11

557B.8 Disclosures to purchasers.

A membership camping operator who is subject to the registration requirements of section 557B.3 shall provide a disclosure statement to a purchaser or prospective purchaser before the person signs a membership camping contract or gives any money or thing of value for the purchase of a membership camping contract.

1. The front cover or first page of the disclosure statement shall contain only the following, in the order stated:

a. **"MEMBERSHIP CAMPING OPERATOR'S DISCLOSURE STATEMENT"** printed at the top in boldfaced type of a minimum size of ten points.

b. The name and principal business address of the membership camping operator and any material affiliate of the membership camping operator.

c. A statement that the membership camping operator is in the business of offering for sale membership camping contracts.

d. A statement, printed in boldfaced type of a minimum size of ten points, which reads as follows:

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A MEMBERSHIP CAMPING CONTRACT. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT. THE STATEMENTS CONTAINED IN THIS DOCUMENT ARE ONLY SUMMARY IN NATURE. YOU AS A PROSPECTIVE PURCHASER SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE MEMBERSHIP CAMPING OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT.

e. A statement, printed in boldfaced type of a minimum size of ten points, which reads as follows:

IF YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL THE CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE THIRD BUSINESS DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED OR THE DATE OF RECEIPT OF THIS DISCLOSURE STATEMENT, WHICHEVER EVENT OCCURS LATER. TO CANCEL THE MEMBERSHIP CAMPING CONTRACT, YOU AS THE PURCHASER MUST HAND DELIVER OR MAIL NOTICE OF YOUR INTENT TO CANCEL TO THE MEM-

BERSHIP CAMPING OPERATOR AT THE ADDRESS SHOWN IN THE MEMBERSHIP CAMPING CONTRACT, POSTAGE PREPAID. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO RETURN ALL MONEYS PAID BY YOU IN CONNECTION WITH THE EXECUTION OF THE MEMBERSHIP CAMPING CONTRACT, UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT AND RETURN OF ALL MEMBERSHIP AND RECIPROCAL USE PROGRAM MATERIALS FURNISHED AT THE TIME OF PURCHASE.

2. The following pages of the disclosure statement shall contain all of the following in the order stated:

a. The name, principal occupation, and address of every director, partner, or controlling person of the membership camping operator.

b. A brief description of the nature of the purchaser's right or license to use the campground and the facilities which are to be available for use by purchasers.

c. A brief description of the membership camping operator's experience in the membership camping business, including the length of time the operator has been in the membership camping business.

d. The location of each of the campgrounds which is to be available for use by purchasers and a brief description of the facilities at each campground which are currently available for use by purchasers. Facilities which are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A brief description of any facilities that are or will be available to nonpurchasers shall also be provided. The description shall include, but need not be limited to, the number of campsites in each park, the number of campsites in each park with full or partial hookups, swimming pools, tennis courts, recreation buildings, restrooms and showers, laundry rooms, trading posts, and grocery stores.

e. The fees and charges that purchasers are or may be required to pay for the use of the campground or any facilities.

f. Any initial or special fee due from the purchaser, together with a description of the purpose and method of calculating the fee.

g. The extent to which financial arrangements, if any, have been provided for the completion of facilities, together with a statement of the membership camping operator's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the membership camping operator's obligation to begin or to complete the facilities.

h. The names of the managing entity, if any, and the significant terms of any management contract, including but not limited to, the circumstances under which the membership camping operator may terminate the management contract.

i. A summary or copy, whether by way of supplement or otherwise, of the rules, restrictions, or covenants regulating the purchaser's use of the campground and the facilities which are to be available for use by the purchaser, including a statement of whether and how the rules, restrictions, or covenants may be changed.

j. A brief description of the policies covering the availability of camping sites, the availability of reservations and the conditions under which they are made.

k. A brief description of any grounds for forfeiture of a purchaser's membership camping contract.

l. A statement of whether the membership camping operator has the right to withdraw permanently from use, all or any portion of any campground devoted to membership camping and, if so, the conditions under which the withdrawal is to be permitted.

m. A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser, including a statement concerning whether the purchaser's participation in any reciprocal program is dependent on the continued affiliation of the membership camping operator with that reciprocal program and whether the membership camping operator reserves the right to terminate such affiliation.

n. As to all memberships offered by the membership camping operator at each campground, all of the following:

(1) The form of membership offered.

(2) The types of duration of membership along with a summary of the major privileges, restrictions, and limitations applicable to each type.

(3) Provisions that have been made for public utilities at each campsite including water, electricity, telephone, and sewage facilities.

o. A statement of the assistance, if any, that the membership camping operator will provide to the purchaser in the resale of membership camping contracts and a detailed description of how any such resale program is operated.

p. The following statement, printed in boldfaced type of a minimum size of ten points:

REGISTRATION OF THE MEMBERSHIP CAMPING OPERATOR WITH THE IOWA ATTORNEY GENERAL DOES NOT CONSTITUTE AN APPROVAL OR ENDORSEMENT BY THE ATTORNEY GENERAL OF THE MEMBERSHIP CAMPING OPERATOR, THE MEMBERSHIP CAMPING CONTRACT, OR THE CAMPGROUND.

The membership camping operator shall promptly amend the disclosure statement to reflect any material change and shall promptly file any such amendments with the attorney general.

87 Acts, ch 181, §12

557B.9 Membership camping contracts.

The membership camping operator shall deliver to the purchaser a fully executed copy of a membership camping contract, in writing, which contract shall include at least the following information:

1. The name of the membership camping operator and the address of its principal place of business.

2. The actual date the membership camping contract is executed by the purchaser.

3. The total financial obligation imposed on the purchaser by the contract, including the initial purchase price and any additional charge the purchaser may be required to pay.

4. A statement that the membership camping operator is required by law to provide each purchaser with a copy of the membership camping operator's disclosure statement prior to execution of the contract and that failure to do so is a violation of the law.

5. The full name of each salesperson involved in the execution of the membership camping contract.

6. In immediate proximity to the space reserved for the purchaser's signature, a conspicuous statement printed in boldfaced type of a minimum size of ten points:

YOU THE PURCHASER MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME WITHIN THREE BUSINESS DAYS FOLLOWING THE DATE OF EXECUTION OF THE CONTRACT OR THE RECEIPT OF THE DISCLOSURE STATEMENT FROM THE MEMBERSHIP CAMPING OPERATOR, WHICHEVER EVENT OCCURS LATER. TO CANCEL THE CONTRACT, HAND DELIVER OR MAIL A POSTAGE PREPAID WRITTEN CANCELLATION TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS LISTED ON THIS CONTRACT. UPON CANCELLATION AND RETURN OF ALL MEMBERSHIP AND RECIPROCAL USE PROGRAM MATERIALS FURNISHED AT THE TIME OF PURCHASE, YOU WILL RECEIVE A REFUND OF ALL MONEY PAID WITHIN THIRTY CALENDAR DAYS AFTER THE MEMBERSHIP CAMPING OPERATOR RECEIVES NOTICE OF YOUR CANCELLATION.

87 Acts, ch 181, §13

557B.10 Purchaser's right of cancellation.

A purchaser has the right to cancel a membership camping contract within three business days following the date the contract is executed or within three business days following the date of delivery of the written disclosure statement required by section 557B.8, whichever event is later.

1. The right to cancel may not be waived and any attempt to obtain such a waiver is unlawful.

2. A purchaser may cancel the contract by hand delivering a written statement of cancellation or by mailing such a statement to the membership camping operator. The cancellation is deemed effective upon mailing.

3. Upon cancellation and return of all membership and reciprocal use materials furnished at the time of purchase, the membership camping operator shall refund to the purchaser all payment and other consideration given by the purchaser. The refund shall be made within thirty calendar days after the membership camping operator receives notice of the cancellation and may, where payment has been made by credit card, be made by an appropriate credit to the purchaser's account. If the membership camping operator fails to refund the payment or other consideration given within the thirty-day period, it is presumed that the membership camping operator is willfully and wrongfully retaining the payment or other consideration. The willful retention of a payment or other consideration in violation of this section renders the membership camping operator liable for double the amount of that portion of the payment or other consideration wrongfully withheld from the purchaser together with reasonable attorney fees and court costs.

4. The membership camping operator or salesperson shall orally inform the purchaser at the time the contract is executed of the right to cancel the contract as provided in this section.

87 Acts, ch 181, §14

557B.11 Purchaser's remedies.

A purchaser's remedy for errors in or omissions from the membership camping contract, the materials delivered to the purchaser at the time of sale, or any of the disclosures required in section 557B.13 is limited to a right of cancellation and refund of the payment made or consideration given by the purchaser. However, this limitation does not apply to errors or omissions from the contract or disclosures or other requirements of this chapter which are part of a scheme to willfully misstate or omit the information required. Reasonable attorney fees shall be awarded to the prevailing party in any action under this section.

87 Acts, ch 181, §15

557B.12 Nondisturbance provisions.

1. With respect to any property in this state acquired and put into operation by a membership camping operator after July 1, 1987, the membership camping operator shall not offer or execute a membership camping contract in this state granting the right to use the property until the following requirements are met:

a. Each person holding an interest in a voluntary blanket encumbrance has executed and deliv-

ered a nondisturbance agreement which includes all of the following provisions:

(1) That the rights of the holder or holders of the blanket encumbrance in the affected campground are subordinate to the rights of purchasers.

(2) That any person who acquires the affected campground or any portion of the campground by the exercise of any right of sale or foreclosure contained in the blanket encumbrance takes the campground subject to the rights of purchasers.

(3) That the holder or holders of the blanket encumbrance shall not use or cause the campground to be used in a manner which interferes with the right of purchasers to use the campground and its facilities in accordance with the terms and conditions of the membership camping contract.

b. Each hypothecation lender which has a lien on, or security interest in, the membership camping operator's ownership interest in the campground has executed and delivered a nondisturbance agreement and recorded the agreement in the office of the clerk of the district court of the county in which the campground is located. In addition, each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender has executed, delivered, and recorded an instrument stating that such person will give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before the person commences any foreclosure action affecting the campground. For the purposes of this section:

(1) *"Hypothecation lender"* means a financial institution which provides a major hypothecation loan to a membership camping operator.

(2) *"Major hypothecation loan"* is a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts.

(3) *"Nondisturbance agreement"* means an instrument by which a hypothecation lender agrees to conditions substantially the same as those set forth in paragraph *"a"*.

2. In lieu of compliance with subsection 1, a surety bond or letter of credit satisfying the requirements of this subsection may be delivered to and accepted by the attorney general. The surety bond or letter of credit shall be issued to the attorney general for the benefit of purchasers and shall be in an amount which is not less than one hundred five percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the campground. The bond shall be issued by a surety which is authorized to do business in this state and which has sufficient net worth to satisfy the indebtedness. The aggregate liability of the surety for all damages shall not exceed the amount of the bond. The letter of credit shall be irrevocable, shall be drawn upon a bank, savings and loan, or financial institution, and shall be in form and content acceptable to the attorney general. The bond or letter of credit shall provide for payment of all amounts secured by the blanket encumbrance including costs, expenses, and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced. The bond or letter of credit may be reduced at the option of the membership camping operator periodically in proportion to the reductions of the amounts secured by the blanket encumbrance.

3. The nondisturbance agreement shall be recorded in the real estate records of the county in which the campground is located.

87 Acts, ch 181, §16

557B.13 Advertising plans — disclosures — unlawful acts.

1. Any advertisement, communication, or sales literature relating to membership camping contracts, including oral statements by a salesperson or any other person, shall not contain:

a. Any untrue statement of material fact or any omission of material fact which would make the statements misleading in light of the circumstances under which the statements were made.

b. Any statement or representation that the membership camping contracts are offered without risk or that loss is impossible.

c. Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

2. A person shall not by any means, as part of an advertising program, offer any item of value as an inducement to the recipient to visit a location, attend a sales presentation, or contact a sales agent, unless the person clearly and conspicuously discloses in writing in the offer in readily understandable language each of the following:

a. The name and street address of the owner of the real or personal property or the provider of the services which are the subject of such visit, sales presentation, or contact with a sales agent.

b. A general description of the business of the owner or provider identified and the purpose of any requested visit, sales presentation, or contact with a sales agent, including a general description of the facilities or proposed facilities or services which are the subject of the sales presentation.

c. A statement of the odds, in arabic numerals, of receiving each item offered.

d. All restrictions, qualifications, and other conditions that must be satisfied before the recipient is entitled to receive the item, including all of the following:

(1) Any deadline by which the recipient must visit the location, attend the sales presentation, or contact the sales agent in order to receive the item.

(2) The approximate duration of any visit and sales presentation.

(3) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife must be present in order to receive the item.

e. A statement that the owner or provider reserves the right to provide a rain check or a substitute or like item, if these rights are reserved.

f. A statement that a recipient who receives an offered item may request and will receive evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

g. All other rules, terms, and conditions of the offer, plan, or program.

3. A person making an offer subject to registration under sections 557B.2 and 557B.3, or the person's employee or agent, shall not offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

4. A person making an offer subject to registration under sections 557B.2 and 557B.3, or the person's employee or agent, shall not fail to provide any offered item which a recipient is entitled to receive, unless the failure to provide the item is due to a higher than reasonably anticipated response to the offer which caused the item to be unavailable and the offer discloses the reservation of a right to provide a rain check or a like or substitute item if the offered item is unavailable.

5. If the person making an offer subject to registration under sections 557B.2 and 557B.3 is unable to provide an offered item because of limitations of supply not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall inform the recipient of the recipient's right to receive a rain check for the item offered or receive a like or substitute item of equal or greater value at no additional cost or obligation to the recipient.

6. If a rain check is provided, the person making an offer subject to registration under sections 557B.2 and 557B.3, within a reasonable time, and in any event not later than ninety calendar days after the rain check is issued, shall deliver the agreed item to the recipient's address without additional cost or obligation to the recipient, unless the item for which the rain check is provided remains unavailable because of limitations of supply not reasonably foreseeable or controllable by the person making the offer. If the item is unavailable for these reasons, the person, not later than thirty days after the expiration of the ninety-day period, shall deliver a like or substitute item of equal or greater retail value to the recipient.

7. On the request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to registration under sections 557B.2 and 557B.3 shall furnish to the recipient sufficient evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

8. A person making an offer subject to registration under sections 557B.2 and 557B.3, or the person's employee or agent, shall not do any of the following:

a. Misrepresent the size, quantity, identity, or quality of any prize, gift, money, or other item of value offered.

b. Misrepresent in any manner the odds of receiving a particular gift, prize, amount of money, or other item of value.

c. Represent directly or by implication that the number of participants has been significantly limited or that any person has been selected to receive a particular prize, gift, money, or other item of value, unless this fact is true.

d. Label any offer a notice of termination or notice of cancellation.

e. Misrepresent, in any manner, the offer, plan, or program.

87 Acts, ch 181, §17

557B.14 Remedies.

1. A violation of this chapter or the commission of any act declared to be unlawful under this chapter constitutes a violation of section 714.16, subsection 2, paragraph *"a"*, and the attorney general has all the powers enumerated in that section to enforce the provisions of this chapter.

2. In addition, the attorney general may seek civil penalties of not more than ten thousand dollars for each violation of or the commission of any act declared to be unlawful under this chapter. Each day of continued violation constitutes a separate offense.

3. Any person who fails to pay the filing fees required by this chapter and continues to sell membership camping contracts is liable civilly in an action brought by the attorney general for a penalty in an amount equal to treble the unpaid fees.

4. The provisions of this chapter are cumulative and nonexclusive and do not affect any other available remedy at law or equity, except as otherwise provided in sections 502.202, 537.3310, and 552A.2.

87 Acts, ch 181, §18; 93 Acts, ch 60, §25

557B.15 Exemptions by attorney general.

The attorney general may, by rule or order, exempt any person from all or part of the requirements of this chapter if the attorney general finds the requirements unnecessary for the protection of purchasers. In determining exemptions from this chapter, the attorney general shall consider all of the following:

1. The duration of the membership camping contracts involved.

2. The number of membership camping contracts being offered by the operator.

3. The amount of the purchase price of the membership camping contracts.

87 Acts, ch 181, §19

557B.16 Rules.

The attorney general may prescribe rules in accordance with this chapter as deemed necessary to carry out the provisions of this chapter.

87 Acts, ch 181, §20

CHAPTER 557C

MINERAL INTERESTS IN COAL

557C.1 Lapse of mineral interests in coal — prevention.
557C.2 Definitions.
557C.3 Statement of claim — filing requirement.
557C.4 Statement of claim — recorder's duty.
557C.5 Reservation in other conveyance.
557C.6 Exemption.

557C.1 Lapse of mineral interests in coal — prevention.

A mineral interest in coal shall be extinguished twenty years after its creation, transfer, or preservation, unless a statement of claim is filed in accordance with section 557C.3, and the ownership shall revert to the person who was then the owner of the interest from which the mineral interest in coal was created, transferred, or preserved. Upon the filing of a statement of claim within the specified period, the mineral interest shall be deemed to have been preserved for an additional period of twenty years, or a shorter period as may be specified in the instrument creating the interest.

91 Acts, ch 183, §2

557C.2 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

A *"mineral interest in coal"* means an interest created by an instrument which creates or transfers either by grant, assignment, reservation, or otherwise, an interest of any kind in coal, as described in chapter 207, without limitation on the manner of mining the coal.

91 Acts, ch 183, §3; 2000 Acts, ch 1148, §1

557C.3 Statement of claim — filing requirement.

The statement of claim provided in section 557C.1 shall be filed by the owner of the mineral interest in coal prior to the end of the twenty-year period set forth in section 557C.1 or by July 1, 1994, whichever is later. The statement of claim shall contain the name and address of the owner of the mineral interest in coal, and a description of the real estate on, or under, which the mineral interest in coal is located. The statement of claim shall be filed in the office of the recorder in the county in which the real estate is located.

91 Acts, ch 183, §4

557C.4 Statement of claim — recorder's duty.

Upon the filing of the statement of claim provided for in section 557C.3 in the recorder's office for the county where the real estate on, or under, which the mineral interest in coal exists, is located, the recorder shall record the statement of claim and index it in the claimant's book.

91 Acts, ch 183, §5

557C.5 Reservation in other conveyance.

A reservation of a mineral interest in coal or an exception of a mineral interest in coal, contained in a conveyance of the interest out of which it is carved, by a nonowner of the mineral interest in coal shall not be deemed to satisfy the requirements of this chapter or as a revival of a mineral interest in coal otherwise extinguished under this chapter.

91 Acts, ch 183, §6

557C.6 Exemption.

The filing of the statement of claim required under section 557C.3 to preserve the mineral interest in coal shall not be required of an owner if the mineral interest was separately taxed for real estate tax purposes at any time after July 1, 1971.

91 Acts, ch 183, §7

CHAPTER 558

CONVEYANCES

Advisory committee on issues relating to electronic filing, recording, and indexing of instruments affecting real property and electronic use of real property disclosures; report filed January 2001; recommendations for county "PIN" system, survey of existing system, and pilot project; 2000 Acts, ch 1189, §27

558.1 "Instruments affecting real estate" defined — revocation.
558.1A Definition.
558.1B Definitions.
558.2 Corporation having seal.
558.3 Corporation not having seal.
558.4 Repealed by 73 Acts, ch 279, §1.
558.5 Contract for deed — presumption of abandonment.
558.6 Given names — variation — effect.
558.7 Assignment of certificate of entry deemed deed.
558.8 Affidavits explanatory of title — presumption.
558.9 Railroad land grants — duty to record.
558.10 Patents covering land in different counties.
558.11 Record — constructive notice.
558.12 Transcript of instruments.
558.13 Transcript recorded.
558.14 Grantor described as "spouse" or "heir" — presumption.
558.15 Notarial stamps or seals of nonresidents — presumption.
558.16 and 558.17 Repealed by 81 Acts, ch 117, §1097.
558.18 Certification — effect.
558.19 Forms of conveyance.
558.20 Acknowledgments within state.
558.21 Acknowledgments outside of state.
558.22 Certificate of authenticity.
558.23 Authorized foreign officials.
558.24 Certificate of authenticity — evidence and recordation.
558.25 Form of authentication.
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558.29 Certificate of authenticity — foreign officials.
558.30 Certificate of acknowledgment — verification.
558.31 Proof of execution and delivery in lieu of acknowledgment.
558.32 Contents of certificate.
558.33 Subpoenas.
558.34 Use of seal.
558.35 Married persons.
558.36 Attorney in fact.
558.37 Certificate of acknowledgment — attorney in fact.
558.38 Officers of corporation.
558.39 Forms of acknowledgment — foreign acknowledgments.
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558.44 Mandatory recordation of conveyances and leases of agricultural land.
558.45 Notation of assignment or release on index.
558.46 Mandatory recording of certain residential real estate installment sales contracts.
558.47 When assignment void. Repealed by 86 Acts, ch 1079, §7.
558.48 Reserved.
558.49 Index records.
558.50 Index for affidavits. Repealed by 2001 Acts, ch 44, §33.
558.51 Separate indexes required. Repealed by 2001 Acts, ch 44, §33.
558.52 Alphabetical arrangement.
558.53 City lot deeds and mortgages. Repealed by 2001 Acts, ch 44, §33.
558.54 Deeds covering both lands and lots. Repealed by 2001 Acts, ch 44, §33.
558.55 Filing and indexing — constructive notice.
558.56 Repealed by 70 Acts, ch 1169, §6.
558.57 Entry on auditor's transfer books.
558.58 Recorder to collect and deliver to auditor.
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558.60 Transfer and index books.
558.61 Form of transfer book.
558.62 Form of index book.
558.63 Book of plats — how kept.
558.64 Entries of transfers.
558.65 Council's approval of certain plats.
558.66 Title decree — entry on transfer books.
558.67 Correction of books and instruments.
558.68 Perpetuities.
558.69 Reporting of private burial sites, wells, disposal sites, underground storage tanks, and hazardous waste — liability.
558.70 Contract disclosure statement required for certain residential real estate installment sales.
558.71 Civil liabilities.

558.1 "Instruments affecting real estate" defined — revocation.

All instruments containing a power to convey, or in any manner relating to real estate, including certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy, and a jobs training agreement entered into under chapter 260E or 260F between an employer and community college which contains a description of the real estate affected, shall be held to be instruments affecting the same; and no such instrument, when acknowledged or certified and recorded as in this chapter prescribed, can be revoked as to third parties by any act of the parties by whom it was executed, until the instrument containing such revocation is acknowledged and filed for record in the same office in which the instrument containing such power is recorded, except that uniform commercial code financing statements and financing statement changes need not be thus acknowledged.

[C51, §1226; R60, §2234; C73, §1969; C97, §2957; C24, 27, 31, 35, 39, §**10066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.1]

93 Acts, ch 180, §90

558.1A Definition.

As used in this chapter, unless the context otherwise requires, *"list"*, *"book"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, or other county officer means the county system as defined in section 445.1.

92 Acts, ch 1073, §15

558.1B Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

See §558.1A; corrective legislation is pending

558.2 Corporation having seal.

In the execution of any written instrument conveying, encumbering, or affecting real estate by a corporation that has adopted a corporate seal, the seal of such corporation may but need not be attached or affixed to such written instrument.

[C51, §974; R60, §1823; C73, §2112; C97, §3068; S13, §3068; C24, 27, 31, 35, 39, §**10067;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.2]

96 Acts, ch 1154, §1

Seals generally, §537A.1

558.3 Corporation not having seal.

If the corporation has not adopted a corporate seal, such fact may but need not be stated in such written instrument.

[S13, §3068; C24, 27, 31, 35, 39, §**10068;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.3]

96 Acts, ch 1154, §2

558.4 Repealed by 73 Acts, ch 279, § 1.

558.5 Contract for deed — presumption of abandonment.

When the record shows that a contract or bond for a deed has been executed more than ten years earlier, and the record discloses no performance of the same and that more than ten years have elapsed since the contract by its terms was to be performed, the contract shall be deemed abandoned and of no effect and the land shall be freed from any lien or defect on account of the contract.

On and after July 1, 1992, this section shall apply to a contract or bond described in this section, if the contract or bond is not filed of record but referred to in another instrument which is filed of record. The contract or bond shall be deemed abandoned ten years from the date that the contract or bond is to be performed according to the recorded instrument. However, if the recorded instrument does not refer to a performance date for the contract or bond, the contract or bond shall be deemed abandoned ten years after the date that the instrument containing the reference is recorded.

[S13, §2963-j; C24, 27, 31, 35, 39, §**10070;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.5]

91 Acts, ch 183, §8

558.6 Given names — variation — effect.

When there is a difference between the given names or initials in which title is taken, and the given names or initials of the grantor in a succeeding conveyance, and the surnames in both instances are written the same or sound the same, the conveyances or the record of them is presumptive evidence that the surname in the several conveyances and instruments refers to the same person.

[S13, §2963-k; C24, 27, 31, 35, 39, §**10071;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.6]

84 Acts, ch 1067, §46

558.7 Assignment of certificate of entry deemed deed.

When the record shows:

1. That the original entry, certificate of entry, receipt, or duplicate thereof has been assigned;

2. That prior or subsequent to such assignment, the United States or state issued a patent or conveyance to the assignor;

3. That no deed of conveyance appears on record from the person who made the original entry or assignor to the assignee; and

4. That the present record owner holds title under such assignment; such assignment shall have the same force and effect as a deed of convey-

ance and shall be conclusively presumed to carry all right, title, and interest of the patentee of said real estate, the same as though a deed of conveyance had been subsequently executed by the patentee or assignor to a subsequent grantor.

[S13, §2963-n; C24, 27, 31, 35, 39, §**10072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.7]

558.8 Affidavits explanatory of title — presumption.

Affidavits explaining any defect in the chain of title to any real estate may be recorded as instruments affecting the same, but no one except the owner in possession of such real estate shall have the right to file such affidavit. Such affidavit or the record thereof, including all such affidavits now of record, shall raise a presumption from the date of recording that the purported facts stated therein are true; after the lapse of three years from the date of such recording, such presumption shall be conclusive.

[C51, §1226; R60, §2234; C73, §1969; C97, §2957; S13, §2963-i; C24, 27, 31, 35, 39, §**10073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.8]

558.9 Railroad land grants — duty to record.

Every railroad company which owns or claims real estate in this state, granted by the government of the United States or this state to aid in the construction of its railroad, where it has not already done so, shall place on file and cause to be recorded, in each county wherein the real estate granted is situated, evidence of its title or claim of title, whether the same consists of patents from the United States, certificates from the secretary of the interior, or governor of this state, or the proper land office of the United States or this state. Where no patent was issued, reference shall be made in said certificate to the Acts of Congress, and the acts of the legislature of this state, granting such lands, giving the date thereof, and date of their approval under which claim of title is made.

[C97, §2939; C24, 27, 31, 35, 39, §**10074;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.9]

558.10 Patents covering land in different counties.

Where the certificate of the secretary of the interior or the patents cover real estate situated in more than one county, the secretary of state shall, upon the application of any railroad company or its grantee, prepare and furnish, to be recorded, a list of all the real estate situated in any one county so granted, patented, or certified; and all such evidences of title shall be entered by the auditor upon the index, transfer, and plat books.

[C97, §2939; C24, 27, 31, 35, 39, §**10075;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.10]

558.11 Record — constructive notice.

The evidence of title shall be filed with the recorder of deeds of the county in which the real estate is situated, who shall record the same, and place an abstract thereof upon the index of deeds. The recording thereof shall be constructive notice to all persons, as provided in other cases of entries upon said index, and the recorder shall receive the same fees therefor as for recording other instruments.

[C97, §2940; C24, 27, 31, 35, 39, §**10076;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.11]

Fees, §331.604

558.12 Transcript of instruments.

A person interested in a parcel of real estate may procure from a county recorder in this state a transcript of any instrument affecting real estate which is of record in that recorder's office. The transcript shall be certified by the recorder.

[S13, §2938-a; C24, 27, 31, 35, 39, §**10077;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.12]

90 Acts, ch 1081, §2

558.13 Transcript recorded.

A transcript of the record of any instrument affecting real estate, certified as provided in section 558.12, shall be entitled to record in the office of the recorder of any other county in which is situated any of the real estate affected by such instrument. The effect of the recording of transcript shall be the same as the recording of the original instrument.

[S13, §2938-a; C24, 27, 31, 35, 39, §**10078;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.13]

558.14 Grantor described as "spouse" or "heir" — presumption.

All conveyances or the record title thereof of real estate executed more than ten years earlier, wherein the grantor or grantors described themselves as the surviving spouse, heir at law, heirs at law, surviving spouse and heir at law, or surviving spouse and heirs at law, of some person deceased in whom the record title or ownership of said real estate previously vested, shall be conclusive evidence of the facts so recited as far as they relate to the right of the grantor or grantors to convey, as fully as if the record title of said grantor or grantors had been established by due probate proceedings in the county wherein the real estate is situated.

[S13, §2963-e; C24, 27, 31, 35, 39, §**10079;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.14]

91 Acts, ch 183, §9

558.15 Notarial stamps or seals of nonresidents — presumption.

Any notarial stamp or seal purporting to have been affixed to any instrument in writing, by any notary public residing elsewhere than in this state, shall be prima facie evidence that the words

thereon engraved conform to the requirements of the law of the place where such certificate purports to have been made.

[S13, §2943-a; C24, 27, 31, 35, 39, §**10080;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.15]

2001 Acts, ch 38, §6; 2001 Acts, ch 176, §45, 46

558.16 and 558.17 Repealed by 81 Acts, ch 117, § 1097.

558.18 Certification — effect.

When any such records are copied, the officer to whose office the original records belong shall compare the copy so made with the original, and when found correct, shall attach the officer's certificate in each volume or book of such copied records, to the effect that the officer has compared such copies with the original and they are true and correct, and such copied records shall thereupon have the same force and effect in all respects as the original records.

[R60, §2261, 2262; C73, §1974, 1975; C97, §2963; C24, 27, 31, 35, 39, §**10083;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.18]

558.19 Forms of conveyance.

The following or other equivalent forms of conveyance, varied to suit circumstances, are sufficient for the purposes herein contemplated:

1. FOR A QUITCLAIM DEED

For the consideration of ..... dollars, I hereby quitclaim to ..... all my interest in the following tract of real estate (describing it).

2. FOR A DEED IN FEE SIMPLE WITHOUT WARRANTY

For the consideration of ..... dollars, I hereby convey to ..... the following tract of real estate (describing it).

3. FOR A DEED IN FEE WITH WARRANTY

The same as the last preceding form, adding the words: "And I warrant the title against all persons whomsoever" (or other words of warranty, as the party may desire).

4. FOR A MORTGAGE

The same as deed of conveyance, adding the following: "To be void upon condition that I pay," etc.

[C51, §1232; R60, §2240; C73, §1970; C97, §2958; C24, 27, 31, 35, 39, §**10084;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.19]

558.20 Acknowledgments within state.

The acknowledgment of any deed, conveyance, or other instrument in writing by which real estate in this state is conveyed or encumbered, if made within this state, must be before some court having a seal, or some judge or clerk thereof, or some county auditor, or judicial magistrate or district associate judge within the county, or notary public within the state. Each of the officers above named is authorized to take and certify acknowledgments of all written instruments, authorized or required by law to be acknowledged.

[C51, §1217; R60, §2226; C73, §1955; C97, §2942; S13, §2942; C24, 27, 31, 35, 39, §**10085;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.20]

Certain acknowledgments legalized, §589.4

558.21 Acknowledgments outside of state.

When made out of the state but within the United States, it shall be before a judge of a court of record, or officer holding the seal thereof, or a commissioner appointed by the governor of this state to take the acknowledgment of deeds, or some notary public, or justice of the peace.

[R60, §2245; C73, §1956; C97, §2943; S13, §2943; C24, 27, 31,35, 39, §**10086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.21]

558.22 Certificate of authenticity.

When made out of the state but within the United States and before a judge, or justice of the peace, a certificate, under the official seal of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state of the state or territory within which such acknowledgment was taken, under the seal of the secretary's office, of the official character of said judge, or justice, and of the genuineness of the judge's or justice's signature, shall accompany said certificate of acknowledgment.

[R60, §2245; C73, §1956; C97, §2943; S13, §2943; C24, 27, 31, 35, 39, §**10087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.22]

558.23 Authorized foreign officials.

The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person without this state and within any other state, territory, or district of the United States, may also be made before any officer of such state, territory, or district authorized by the laws thereof to take the proof and acknowledgment of deeds; and when so taken and certified as provided in section 558.24, may be recorded in this state, and read in evidence in the same manner and with like effect as proofs and acknowledgments taken before any of the officers named in section 558.21.

[C97, §2944; C24, 27, 31, 35, 39, §**10088;** C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.23]

558.24 Certificate of authenticity — evidence and recordation.

To entitle any conveyance or written instrument, acknowledged or proved under section 558.23, to be read in evidence or recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment signed by such officer a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of such state or territory, or a certificate of the clerk of a court of record of such state, territory, or district in the county in which said officer resides or in which the officer took such proof or acknowledgment, under the seal of such court. Such certificate shall comply substantially with section 558.25.

[C97, §2945; C24, 27, 31, 35, 39, §**10089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.24]

558.25 Form of authentication.

The following form of authentication of the proof or acknowledgment of a deed or other written instrument, when taken without this state and within any other state, territory, or district of the United States, or any form substantially in compliance with the foregoing provisions of this chapter, shall be used:

(Begin with a caption specifying the state, territory, or district, and county or place where the authentication is made.)

I, ... , clerk of the . . . . . court in and for said county, which court is a court of record, having a seal (or I, ... , secretary of state of such state or territory), do hereby certify that . . . . . , by and before whom the foregoing acknowledgment or proof was taken, was at the time of taking the same . . . . . , (Name of office held) residing or authorized to act in said county, and was duly authorized by the laws of said state, territory, or district to take and certify acknowledgments or proofs of deeds of land in said state, territory, or district, and that said conveyance and the acknowledgment thereof are in due form of law; and, further, that I am well acquainted with the handwriting of said . . . . . , and that I verily believe that the signature to said certificate of acknowledgment or proof is genuine. In testimony whereof, I have hereunto set my hand and affixed the seal of the said court or state this . . . . . day of . . . . . (month), ... (year).

[C97, §2946; C24, 27, 31, 35, 39, §**10090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.25]

2000 Acts, ch 1058, §63

558.26 Acknowledgments by military or naval officers.

In addition to the acknowledgment of instruments in the manner and form and as otherwise authorized by law, any person serving in or with the armed forces of the United States may acknowledge the same wherever located before any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or ensign or higher in the navy or United States coast guard. Neither the instrument nor the acknowledgment shall be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment shall be required, but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in the following form:

On this the . . . . . day of . . . . . (month), ... (year), before me, ... , the undersigned commissioned officer, personally appeared . . . . . , known to me (or satisfactorily proven) to be serving in or with the armed forces of the United States and to be the person whose name is subscribed to the within instrument and acknowledged that . . . . . that person . . . . . executed the same as . . . . . voluntary act and deed.

. . . . . .
Signature of officer.
. . . . . .
Rank of officer and command
to which attached.

Such acknowledgments executed according to the above provisions shall be deemed of the same force and effect as acknowledgments executed before officers authorized to accept acknowledgments.

Any acknowledgments made before March 30, 1943, by any person serving in or with the armed forces of the United States in the manner as prescribed by this section, or substantially so, are hereby legalized and considered sufficient.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.26]

2000 Acts, ch 1058, §56

558.27 Acknowledgments outside United States.

When the acknowledgment is made without the United States, it may be before any ambassador, minister, secretary of legation, consul, vice consul, charge-d'affaires, consular agent, or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States.

[C73, §1957; C97, §2947; C24, 27, 31, 35, 39, §**10091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.27]

558.28 Authorized foreign officials.

Said instruments may also be acknowledged or proved without the United States before any officer of a foreign country who is authorized by the laws thereof to certify to the acknowledgments of written documents.

[C73, §1957; C97, §2947; C24, 27, 31, 35, 39, §**10092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.28]

558.29 Certificate of authenticity — foreign officials.

The certificate of acknowledgment by a foreign officer must be authenticated by one of the above-named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and certify thereto, and of the genuineness of that officer's signature, and seal if the officer has any.

[C73, §1957; C97, §2947; C24, 27, 31, 35, 39, §**10093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.29]

558.30 Certificate of acknowledgment — verification.

The court or officer taking the acknowledgment must endorse upon the deed or instrument a certificate setting forth the following particulars:

1. The title of the court or person before whom the acknowledgment was made.

2. That the person making the acknowledgment was known to the officer taking the acknowledgment to be the identical person whose name is affixed to the deed as grantor, or that such identity was proved by at least one credible witness, naming that witness.

3. That such person acknowledged the execution of the instrument to be that person's voluntary act and deed.

[C51, §1219; R60, §2227; C73, §1958; C97, §2948; C24, 27, 31, 35, 39, §**10094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.30]

558.31 Proof of execution and delivery in lieu of acknowledgment.

Proof of the due and voluntary execution and delivery of a deed or other instrument may be made before any officer authorized to take acknowledgments, by one competent person other than the vendee or other person to whom the instrument is executed, in the following cases:

1. If the grantor dies before making the acknowledgment.

2. If the grantor's attendance cannot be procured.

3. If, having appeared, the grantor refuses to acknowledge the execution of the instrument.

[C51, §1220, 1221; R60, §2228; C73, §1959; C97, §2949; C24, 27, 31, 35, 39, §**10095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.31]

558.32 Contents of certificate.

The certificate endorsed by the officer upon a deed or other instrument thus proved must state:

1. The title of the officer taking the proof.

2. That it was satisfactorily proved that the grantor was dead, or that for some other reason the grantor's attendance could not be procured in order to make the acknowledgment, or that, having appeared, the grantor refused to acknowledge the same.

3. The name of the witness by whom proof was made, and that it was proved by the witness that the instrument was executed and delivered by the person whose name is thereunto subscribed as a party.

[C51, §1222; R60, §2230; C73, §1960; C97, §2950; C24, 27, 31, 35, 39, §**10096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.32]

558.33 Subpoenas.

An officer having power to take the proof hereinbefore contemplated may issue the necessary subpoenas, and compel the attendance of witnesses residing within the county, in the manner provided for the taking of depositions.

[C51, §1225; R60, §2233; C73, §1965; C97, §2956; C24, 27, 31, 35, 39, §**10097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.33]

Attendance of witnesses, §622.102

558.34 Use of seal.

The certificate of proof or acknowledgment may be given under seal or otherwise, according to the mode by which the officer making the same usually authenticates the officer's formal acts.

[C51, §1223; R60, §2231; C73, §1961; C97, §2951; C24, 27, 31, 35, 39, §**10098;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.34]

558.35 Married persons.

The acknowledgment of a married person, when required by law, may be taken in the same form as if the person were sole, and without any examination separate and apart from the person's spouse.

[C97, §2960; C24, 27, 31, 35, 39, §**10099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.35]

558.36 Attorney in fact.

The execution of any deed, mortgage, or other instrument in writing, executed by any attorney in fact, may be acknowledged by the attorney executing the same.

[R60, §2251; C73, §1962; C97, §2952; C24, 27, 31, 35, 39, §**10100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.36]

558.37 Certificate of acknowledgment — attorney in fact.

The person taking the acknowledgment must endorse upon such instrument a certificate, setting forth the following particulars:

1. The title of the person before whom the acknowledgment was taken.

2. That the person making the acknowledgment was known to the officer taking the acknowledgment to be the identical person whose name is subscribed to the instrument as attorney for the grantor therein named, or that such identity was proved to the officer by at least one credible witness, personally known by the officer and therein named.

3. That such person acknowledged said instrument to be the act and deed of the grantor therein named by that person, as such attorney thereunto appointed, voluntarily done and executed.

[R60, §2252; C73, §1963; C97, §2953; C24, 27, 31, 35, 39, §**10101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.37]

558.38 Officers of corporation.

If the acknowledgment is made by the officers of a corporation, the certificate shall show that such persons as such officers, naming the office of each person, acknowledged the execution of the instrument as provided in section 558.39.

[C97, §2954; C24, 27, 31, 35, 39, §**10102;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.38]

558.39 Forms of acknowledgment — foreign acknowledgments.

The following forms of acknowledgment shall be sufficient in the cases to which they are respectively applicable. In each case where one of these forms is used, the name of the state and county where the acknowledgment is taken shall precede the body of the certificate, and the signature and official title of the officer shall follow it as indicated in the first form and shall constitute a part of the certificate, and the stamp or seal of the officer shall be attached when necessary under the provision of this chapter and as provided in section 9E.6A. No certificate of acknowledgment shall be held to be defective on account of the failure to show the official title of the officer making the certificate if such title appears either in the body of such certificate or in connection therewith, or with the signature thereto.

1. In the case of natural persons acting in their own right:

State of . . . . .)
County of . . . . .) ss.

On this . . . . . day of . . . . . (month), ... (year), before me, ... (Insert title of acknowledging officer), personally appeared . . . . . , to me known to be the person . . . . . named in and who executed the foregoing instrument, and acknowledged that . . . . . executed the same as . . . . . voluntary act and deed.

. . . . . .
Notary Public in the state of Iowa.

2. In the case of natural persons acting by attorney:

On this . . . . . day of . . . . . (month), ... (year), before me, ... (Insert title of acknowledging officer), personally appeared . . . . . , to me known to be the person who executed the foregoing instrument in behalf of . . . . . , and acknowledged that that person executed the same as the voluntary act and deed of said . . . . . .

3. In the case of corporations or joint-stock associations:

On this . . . . . day of . . . . . (month), ... (year), before me, a . . . . . (Insert title of acknowledging officer) in and for said county, personally appeared . . . . . , to me personally known, who being by me duly (sworn or affirmed) did say that that person is . . . . . (Insert title of executing officer) of said (corporation or association) and that said instrument was signed on behalf of the said (corporation or association) by authority of its board of (directors or trustees) and the said . . . . . acknowledged the execution of said instrument to be the voluntary act and deed of said (corporation or association) by it voluntarily executed.

3A. In the case of limited liability companies:

On this . . . . . day of . . . . . (month), ... (year), before me, a . . . . . (Insert title of acknowledging officer) in and for said county, personally appeared . . . . . , to me personally known, who being by me duly (sworn or affirmed) did say that that person is . . . . . (Insert title of executing member) of said (limited liability company) and that said instrument was signed on behalf of the said (limited liability company) by authority of its managers and the said . . . . . acknowledged the execution of said instrument to be the voluntary act and deed of said (limited liability company) by it voluntarily executed.

4. In the case of partnerships:

On this . . . . . day of . . . . . (month), ... (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared . . . . . , to me personally known, who being by me duly sworn, did say that the person is one of the partners of . . . . . , a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

5. In the case of an individual fiduciary:

On this . . . . . day of . . . . . (month), ... (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared . . . . . , to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person, as the fiduciary, executed the instrument as the voluntary act and deed of the person and of the fiduciary.

6. In the case of a corporate fiduciary:

On this . . . . . day of . . . . . (month), ... (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared . . . . . and . . . . . , to me personally known, who, being by me duly sworn, did say that they are the . . . . . and . . . . . , respectively, of the corporation executing the foregoing instrument; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; that . . . . . and . . . . . acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and of the fiduciary, by it, by them and as the fiduciary voluntarily executed.

7. In the case of a limited partnership with corporate general partner:

On this . . . . . day of . . . . . (month), ... (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared . . . . . , to me personally known, who being by me duly sworn did say that the person is the . . . . . of . . . . . , the General Partner of . . . . . , a . . . . . limited partnership, executing the foregoing instrument, that the instrument was signed on behalf of the corporation as General Partner of . . . . . , a . . . . . limited partnership, by authority of the corporation's Board of Directors; and that . . . . . as that officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and limited partnership by it and by the officer voluntarily executed.

8. In the case of a limited partnership with an individual general partner:

On this . . . . . day of . . . . . (month), ... (year), before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared . . . . . , to me personally known, who, being by me duly sworn, did say that the person is (a) (the) General Partner of . . . . . , an Iowa limited partnership, executing the foregoing instrument, that the instrument was signed on behalf of the limited partnership by authority of the limited partnership; and the general partner acknowledged the execution of the instrument to be the voluntary act and deed of the limited partnership, by it and by the general partner voluntarily executed.

9. In the case of joint ventures:

On this . . . . . day of . . . . . (month), ... (year), before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared . . . . . and . . . . . , to me personally known, who, being by me duly sworn, did say that they are the . . . . . and . . . . . , respectively, of . . . . . , an Iowa corporation, a joint venturer of . . . . . , a joint venture, executing the foregoing instrument, that the instrument was signed on behalf of the corporation as a joint venturer of . . . . . , a joint venture, by authority of its Board of Directors; and that . . . . . and . . . . . , as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and joint venture, by the corporation and joint venture and by them voluntarily executed.

10. In the case of municipalities:

On this . . . . . day of . . . . . (month), ... (year), before me, ... , a Notary Public in and for the State of Iowa, personally appeared . . . . . and . . . . . , to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of . . . . . , Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Ordinance No. . . . . passed (the Resolution adopted) by the City Council, under Roll Call No. . . . . of the City Council on the . . . . . day of . . . . . (month), ... (year), and that . . . . . and . . . . . acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation,

by it voluntarily executed.

11. In the case of counties:

On this . . . . . day of . . . . . (month), ... (year), before me, ... , a Notary Public in and for the State of Iowa, personally appeared . . . . . and . . . . . , to me personally known, and who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of the County of . . . . . , Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in Ordinance No. . . . . passed (the Resolution adopted) by the Board of Supervisors, under Roll Call No. . . . . of the Board of Supervisors on the . . . . . day of . . . . . (month), ... (year), and . . . . . and . . . . . acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

12. In the case of natural persons acting as custodian pursuant to chapter 565B or any other Uniform Transfers to Minors Act:

On this . . . . . day of . . . . . (month), ... (year), before me, the undersigned, a Notary Public in and for said State, personally appeared . . . . . , to me known to be the person named in and who executed the foregoing instrument, and acknowledged that the custodian executed the instrument as custodian for . . . . . (name of minor), under the . . . . . (State) Uniform Transfers to Minors Act, as the voluntary act and deed of the person and of the custodian.

13. In the case of corporations or national banking associations acting as custodians pursuant to chapter 565B or any other Uniform Transfers to Minors Act:

On this . . . . . day of . . . . . (month), ... (year), before me, the undersigned, a Notary Public in and for said State, personally appeared . . . . . and . . . . . , to me personally known, who, by me duly sworn, did say that they are the . . . . . and . . . . . , respectively, of the Corporation executing the foregoing instrument; that the instrument was signed on behalf of the Corporation by authority of its Board of Directors; that . . . . . and . . . . . acknowledged the execution of the instrument as custodian of . . . . . (name of minor), under the . . . . . (State) Uniform Transfers to Minors Act, to be the voluntary act and deed of the person and of the custodian.

(In all cases add a stamp or seal as provided in section 9E.6A and a signature and title of the officer taking the acknowledgment, and strike from between the parentheses the word or clause not used, as the case may be.)

Any instrument affecting real estate situated in this state which has been or may be acknowledged or proved in a foreign state or country and in conformity with the laws of that foreign state or country, shall be deemed as good and valid in law as though acknowledged or proved in conformity with the existing laws of this state.

[C97, §2959; C24, 27, 31, 35, 39, §**10103;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.39]

85 Acts, ch 43, §1; 87 Acts, ch 2, §1; 92 Acts, ch 1151, §106; 96 Acts, ch 1154, §3 – 8; 2000 Acts, ch 1058, §56, 63; 2001 Acts, ch 38, §7, 8; 2001 Acts, ch 176, §45, 46, 76

558.40 Liability of officer.

Any officer, who knowingly misstates a material fact in either of the certificates mentioned in this chapter, shall be liable for all damages caused thereby, and shall be guilty of a serious misdemeanor.

[C51, §1224; R60, §2232; C73, §1964; C97, §2955; C24, 27, 31, 35, 39, §**10104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.40]

558.41 Recording.

An instrument affecting real estate is of no validity against subsequent purchasers for a valuable consideration, without notice, or against the state or any of its political subdivisions during and after condemnation proceedings against the real estate, unless the instrument is filed and recorded in the county in which the real estate is located, as provided in this chapter.

An interest in real estate evidenced by an instrument so filed shall have priority over any lien that is given equal precedence with ordinary taxes under chapter 260E or 260F, or its successor provisions, except for a lien under chapter 260E or 260F upon the real estate described in an instrument or job training agreement filed in the office of the recorder of the county in which the real estate is located prior to the filing of a conflicting instrument affecting the real estate, and a subordinate lien under chapter 260E or 260F may be divested or discharged by judicial sale or by other available legal remedy notwithstanding any provision to the contrary contained in chapter 260E or 260F, or its successor provisions. Nothing in this section shall abrogate the collection of, or any lien for, unpaid property taxes which have attached to real estate pursuant to chapter 445, including taxes levied against tangible property that is assessed and taxed as real property pursuant to chapter 427A,

or the collection of, or any lien for, unpaid taxes for which notice of lien has been properly recorded pursuant to section 422.26.

A provision contained in a residential real estate installment sales contract which prohibits the recording of the contract, or the recording of a memorandum of the contract, is unenforceable by any party to the contract.

[C51, §1211; R60, §2220; C73, §1941; C97, §2925; C24, 27, 31, 35, 39, §**10105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.41]

93 Acts, ch 33, §1; 93 Acts, ch 180, §91; 98 Acts, ch 1120, §2

558.42 Acknowledgment as condition precedent.

It shall not be deemed lawfully recorded, unless it has been previously acknowledged or proved in the manner prescribed in this chapter or chapter 9E, except that affidavits, and certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy, and Uniform Commercial Code financing statements and financing statement changes need not be thus acknowledged.

[C51, §1212; R60, §2221; C73, §1942; C97, §2926; C24, 27, 31, 35, 39, §**10106;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.42]

90 Acts, ch 1205, §60; 91 Acts, ch 211, §12

558.43 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Nonresident alien"* means:

a. An individual who is not a citizen of the United States and who is not domiciled in the United States.

b. A corporation incorporated under the law of any foreign country.

c. A corporation organized in the United States, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

d. A trust organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

e. A partnership or limited partnership organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

2. The term *"beneficial ownership"* includes interests held by a nonresident alien individual directly or indirectly holding or acquiring a ten percent or greater share in the partnership, limited partnership, corporation or trust, or directly or indirectly through two or more such entities. In addition, the term beneficial ownership shall include interests held by all nonresident alien individuals if the nonresident alien individuals in the aggregate directly or indirectly hold or acquire twenty-five percent or more of the partnership, limited partnership, corporation or trust.

3. The term *"conveyance"* means all deeds and all contracts for the conveyance of an estate in real property except those contracts to be fulfilled within six months from date of execution thereof.

4. *"Agricultural land"* means agricultural land as defined in section 9H.1.

[C79, 81, §558.43]

558.44 Mandatory recordation of conveyances and leases of agricultural land.

Every conveyance or lease of agricultural land, except leases not to exceed five years in duration with renewals, conveyances or leases made by operation of law, and distributions made from estates to heirs or devisees shall be recorded by the grantee or lessee with the county recorder not later than one hundred eighty days after the date of conveyance or lease.

For an instrument of conveyance of agricultural land deposited with an escrow agent, the fact of deposit of that instrument of conveyance with the escrow agent as well as the name and address of the grantor and grantee shall be recorded, by a document executed by the escrow agent, with the county recorder not later than one hundred eighty days from the date of the deposit with the escrow agent. For an instrument of conveyance of agricultural land delivered by an escrow agent, that instrument shall be recorded with the county recorder not later than one hundred eighty days from the date of delivery of the instrument of conveyance by the escrow agent.

At the time of recordation of the conveyance or lease of agricultural land, except a lease not exceeding five years in duration with renewals, conveyances or leases made by operation of law and distributions made from estates of decedents to heirs or devisees, to a nonresident alien as grantee or lessee, such conveyance or lease shall disclose, in an affidavit to be recorded therewith as a precondition to recordation, the name, address, and citizenship of the nonresident alien. In addition, if the nonresident alien is a partnership, limited partnership, corporation or trust, the affidavit shall also disclose the names, addresses, and citizenship of the nonresident alien individuals who are the beneficial owners of such entities. However, any partnership, limited partnership, corporation, or trust which has a class of equity securities registered with the United States securities and exchange commission under section 12 of the Securities Exchange Act of 1934 as amended to January 1, 1978, need only state that fact on the affidavit.

Failure to record a conveyance or lease of agricultural land required to be recorded by this section by the grantee or lessee within the specified time limit is punishable by a fine not to exceed one hundred dollars per day for each day of violation. The county recorder shall record a conveyance or

lease of agricultural land presented for recording even though not presented within one hundred eighty days after the date of conveyance or lease. The county recorder shall forward to the county attorney a copy of each such conveyance or lease of agricultural land recorded more than one hundred eighty days from the date of conveyance. The county attorney shall initiate action in the district court to enforce the provisions of this section. Failure to timely record shall not invalidate an otherwise valid conveyance or lease.

If a real estate contract or lease is required to be recorded under this section, the requirement is satisfied by recording either the entire real estate contract or lease or a memorandum of the contract or lease containing at least the names and addresses of all parties named in the contract or lease, a description of all real property and interests therein subject to the contract or lease, the length of the contract or initial term of the lease, and in the case of a lease a statement as to whether any of the named parties have or are subject to renewal rights, and if so, the event or condition upon which renewal occurs, the number of renewal terms and the length of each, and in the case of a real estate contract a statement as to whether the seller is entitled to the remedy of forfeiture and as to the dates upon which payments are due. This unnumbered paragraph is effective July 1, 1980 for all contracts and leases of agricultural land made on or after July 1, 1980.

The provisions of this section except as otherwise provided, are effective July 1, 1979, for all conveyances and leases of agricultural land made on or after July 1, 1979.

[C79, 81, §558.44]

558.45 Notation of assignment or release on index.

Where any mortgage, contract, or other instrument constituting an encumbrance upon real estate shall be assigned or released by a separate instrument, it shall be the duty of the recorder to make a notation where the instrument was originally indexed, indicating the nature of such assignment or release and a document reference number of the record where the same is recorded.

[C27, 31, 35, §10108-a1; C31, 35, §10115-c1; C39, §**10108.1, 10115.1;** C46, 50, 54, 58, 62, 66, §558.45, 558.56; C71, 73, 75, 77, 79, 81, §558.45]

2001 Acts, ch 44, §22

558.46 Mandatory recording of certain residential real estate installment sales contracts.

1. Every real estate installment sales contract transferring an interest in residential property shall be recorded by the contract seller with the county recorder in the county in which the real estate is situated not later than one hundred eighty days from the date the contract was signed by the contract seller and contract purchaser.

2. Failure to record a real estate contract required to be recorded by this section by the contract seller within the specified time limit is punishable by a fine not to exceed one hundred dollars per day for each day of violation. The county recorder shall record a real estate contract presented for recording even though not presented within one hundred eighty days of the signing of the contract. The county recorder shall forward to the county attorney a copy of each real estate contract recorded more than one hundred eighty days from the date the contract was signed by the contract seller and contract purchaser. The county attorney shall initiate action in the district court to enforce the provisions of this section. Fines collected pursuant to this subsection shall be deposited in the general fund of the county.

3. Failure to timely record shall not invalidate an otherwise valid real estate contract. However, a contract seller is prohibited from initiating forfeiture proceedings on the basis of a failure to comply with the terms of a real estate contract, if the contract has not been recorded.

4. If a real estate contract is required to be recorded under this section, the requirement is satisfied by recording either the entire real estate contract or a memorandum of the contract containing at least the names and addresses of all parties named in the contract, a description of all real property and interests in the real property subject to the contract, the length of the contract, and a statement as to whether the seller is entitled to the remedy of forfeiture and as to the dates upon which payments are due.

5. For the purposes of this section, *"residential property"* includes commercial property consisting of three or more separate living quarters with at least seventy-five percent of the space used for residential purposes.

6. This section applies to residential real estate installment sales contracts entered into before, on, or after July 1, 1998. However, such contracts entered into before July 1, 1998, shall not be subject to the fine in subsection 2.

7. If a contract seller is subject to the requirements of section 558.70, the contract must be recorded within forty-five days rather than one hundred eighty days and the recording requirement is only satisfied by recording the real estate contract rather than a memorandum of the contract.

98 Acts, ch 1120, §1; 2002 Acts, ch 1136, §3, 6

For applicability provisions pertaining to subsection 7, see 2002 Acts, ch 1136, §6

NEW subsection 7

558.47 When assignment void. Repealed by 86 Acts, ch 1079, § 7.

558.48 Reserved.

558.49 Index records.

The recorder must keep index records to show the following:

1. Each grantor.
2. Each grantee.
3. The time when the instrument was filed.
4. The date of the instrument.
5. The nature of the instrument.
6. The document reference number where the record of the instrument may be found.
7. The description of the real estate conveyed.

[C51, §1213; R60, §2222; C73, §1943; C97, §2935; S13, §2935; C24, 27, 31, 35, 39, §**10109;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.49]

2001 Acts, ch 44, §23, 24

558.50 Index for affidavits. Repealed by 2001 Acts, ch 44, § 33.

558.51 Separate indexes required. Repealed by 2001 Acts, ch 44, § 33.

558.52 Alphabetical arrangement.

The entries shall show the names of the respective grantors and grantees, arranged in alphabetical order. When the instrument is executed by a personal representative, guardian, referee, commissioner, receiver, sheriff, or other person acting in a representative capacity, the recorder shall enter upon the index the name and representative capacity of each person executing the instrument and the owner of the property if disclosed in the instrument.

[C51, §1215; R60, §2224; C73, §1945; C97, §2937; C24, 27, 31, 35, 39, §**10112;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.52]

2001 Acts, ch 44, §25

558.53 City lot deeds and mortgages. Repealed by 2001 Acts, ch 44, § 33.

558.54 Deeds covering both lands and lots. Repealed by 2001 Acts, ch 44, § 33.

558.55 Filing and indexing — constructive notice.

The recorder must endorse upon every instrument properly filed for record in the recorder's office, the day, hour, and minute of the filing, and enter in the index the entries required to be entered, except the document reference number where the complete record will appear, and the filing and indexing shall constitute constructive notice to all persons of the rights of the grantees conferred by the instruments.

[C51, §1214; R60, §2223; C73, §1944; C97, §2936; C24, 27, 31, 35, 39, §**10115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.55]

2001 Acts, ch 44, §26

558.56 Repealed by 70 Acts, ch 1169, § 6.

558.57 Entry on auditor's transfer books.

The recorder shall not record any deed, real estate installment contract, or other instrument unconditionally conveying real estate until the proper entries have been made upon the transfer books in the auditor's office, and endorsement made upon the deed, real estate installment contract, or other instrument properly dated and officially signed, in substantially the following form:

Entered upon transfer books and for taxation this .... day of ..... (month), ... (year). My fee $ ..... collected by recorder.

.....
Auditor.

[C73, §1952, 1953; C97, §2932, 2934; C24, 27, 31, 35, 39, §**10116;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.57]

85 Acts, ch 159, §8; 86 Acts, ch 1079, §2; 2000 Acts, ch 1058, §56; 2001 Acts, ch 143, §5

558.58 Recorder to collect and deliver to auditor.

1. At the time of filing a deed, real estate installment contract, or other instrument mentioned in section 558.57, the recorder shall collect from the person filing the deed, real estate installment contract, or instrument the recording fee provided by law and the auditor's transfer fee, except as provided in subsection 2. The recorder shall deliver the deed, real estate installment contract, or instrument to the county auditor, after endorsing upon the instrument the following:

Filed for record, indexed, and delivered to the county auditor this .... day of ..... (month), ... (year), at ..... o'clock .... m. Recorder's and auditor's fee $ ..... paid.

.....
Recorder.

2. When the person required to pay a fee relating to a real estate transaction is a governmental subdivision or agency, the recorder, at the request of the governmental subdivision or agency, shall bill the governmental subdivision or agency for the fees required to be paid. The governmental subdivision or agency shall pay the fees and taxes due within thirty days after the date of filing.

[C24, 27, 31, 35, 39, §**10117;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.58]

86 Acts, ch 1079, §3; 2000 Acts, ch 1058, §56; 2001 Acts, ch 143, §6

558.59 Final record.

Every instrument shall be recorded as soon as

practicable, after which the recorder shall complete the entries to show the document reference number where the record is to be found.

[C51, §1216; R60, §2225; C73, §1946; C97, §2938; C24, 27, 31, 35, 39, §**10118;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.59]

2001 Acts, ch 44, §27

558.60 Transfer and index books.

The county auditor shall keep in the county auditor's office books for the transfer of real estate, which shall consist of a transfer book, index book, and plat book.

[C73, §1948; C97, §2927; C24, 27, 31, 35, 39, §**10119;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.60]

558.61 Form of transfer book.

Said transfer book shall be ruled and headed substantially after the following form; and entries therein shall be in numerical order, beginning with section one:

Section No. . . . , Township . . . . , Range . . . .

Grantee	Grantor	Date of Instrument	Description	Page of Plats
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

[C73, §1949; C97, §2928; C24, 27, 31, 35, 39, §**10120;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.61]

558.62 Form of index book.

Said index book shall be ruled and headed substantially after the following form:

NAMES OF GRANTEES	PAGES OF TRANSFER BOOK
.....	.....
.....	.....
.....	.....
.....	.....

[C73, §1949; C97, §2928; C24, 27, 31, 35, 39, §**10121;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.62]

558.63 Book of plats — how kept.

The auditor shall keep the book of plats so as to show the number of lot and block, or township and range, divided into sections and subdivisions as occasion may require, and shall designate thereon each piece of real estate, and mark in pencil the name of the owner thereon, in a legible manner; which plats shall be lettered or numbered so that they may be conveniently referred to by the memoranda of the transfer book, and shall be drawn on the scale of not less than four inches to the mile.

[C73, §1950; C97, §2929; C24, 27, 31, 35, 39, §**10122;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.63]

558.64 Entries of transfers.

When a deed of unconditional conveyance of real estate or transcript of decree in a partition proceeding is presented, the auditor shall enter in the index book, in alphabetical order, the name of the grantee, and opposite thereto the number of the page of the transfer book on which such transfer is made; and upon the transfer book the auditor shall enter in the proper columns the name of the grantee, the grantor, date, and character of the instrument, the description of the real estate, and the number or letter of the plat on which the same is marked.

[C73, §1951; C97, §2930; S13, §2930; C24, 27, 31, 35, 39, §**10123;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.64]

558.65 Council's approval of certain plats.

No conveyances or plats of additions to any city or subdivision of any lands lying within or adjacent to any city in which streets and alleys and other public grounds are sought to be dedicated to public use, or other conveyances in which streets and alleys are sought to be conveyed to such city, shall be so entered, unless such conveyances, plats, or other instruments have endorsed thereon the approval of the council of such city, the certificates of such approval to be made by the city clerk.

[S13, §2930; C24, 27, 31, 35, 39, §**10124;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.65]

Plats, see also chapter 354

558.66 Title decree — entry on transfer books.

Upon receipt of a certificate from the clerk of the district court or an appellate court that the title to real estate has been finally established in any named person by judgment or decree or by will or by affidavit of or on behalf of a surviving spouse that has been recorded by the recorder, the auditor shall enter the information in the certificate upon the transfer books, upon payment of a fee in the amount specified in section 331.507, subsection 2, paragraph *"a"*. In the case of a certificate from the clerk of the district court or an appellate court, the fee shall be taxed as court costs, collected by the clerk, and paid to the treasurer as provided in section 331.902, subsection 3. In the case of the affidavit filed with the recorder, the fee set forth in section 331.507, subsection 2, paragraph *"a"*, and the fee set forth in section 331.604, shall be collected by the recorder and paid to the treasurer as

provided in section 331.902, subsection 3.

An affidavit of or on behalf of a surviving spouse may be recorded with the county recorder only when real estate owned by a decedent, who died on or after January 1, 1988, was held in joint tenancy with right of survivorship solely with the surviving spouse and shall be in the following form:

AFFIDAVIT OF SURVIVING SPOUSE FOR CHANGE OF TITLE TO REAL ESTATE

STATE OF IOWA)
) ss:
COUNTY OF . . . . .)

I, ... , being first duly sworn on oath, depose and state as follows:

1. I am [. . . . . is] the surviving spouse of . . . . . , who died on the . . . . . day of . . . . . (month), ... (year).

2. The following described real estate was owned only by . . . . . and this Affiant, [or . . . . .] as joint tenants with full rights of survivorship at the time of [. . . . . 's] death:

. . . . . .
. . . . . .

3. I hereby request that the auditor enter this information on the transfer books pursuant to section 558.66 of the Iowa Code.

. . . . . .

Subscribed and sworn to before me this . . . . . day of . . . . . (month), ... (year).

. . . . . .
Notary Public in and for the State of Iowa

[C97, §2931; C24, 27, 31, 35, 39, §**10125;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.66]

85 Acts, ch 159, §9; 86 Acts, ch 1079, §4; 90 Acts, ch 1035, §1; 91 Acts, ch 86, §1; 93 Acts, ch 109, §14; 2000 Acts, ch 1058, §56

Title established or changed — certificate; §602.8102(10)

558.67 Correction of books and instruments.

The auditor from time to time shall correct any error appearing in the transfer books, and shall notify the grantee of any error in description discovered in any instrument filed for transfer, and permit the same to be corrected by the parties before completing such transfer.

[C73, §1954; C97, §2933; C24, 27, 31, 35, 39, §**10126;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.67]

558.68 Perpetuities.

1. A nonvested interest in property is not valid unless it must vest, if at all, within twenty-one years after one or more lives in being at the creation of the interest and any relevant period of gestation.

2. *a.* In determining whether a nonvested interest would violate the rule against perpetuities in subsection 1, the period of the rule shall be measured by actual events rather than by possible events, in any case in which that would validate the interest. For this purpose, if an examination of the facts in existence at the time the period of the rule begins to run reveals a life or lives in being within twenty-one years after whose deaths the nonvested interest will necessarily vest, if it ever vests, that life or lives are the measuring lives for purposes of the rule against perpetuities with respect to that nonvested interest and that nonvested interest is valid under the rule.

b. If no such life or lives can be ascertained at the time the period of the rule begins to run, the measuring lives for purposes of the rule are all of the following:

(1) The creator of the nonvested interest, if the period of the rule begins to run in the creator's lifetime.

(2) Those persons alive when the period begins to run, if reasonable in number, who have been selected by the creator of the interest to measure the validity of the nonvested interest or, if none, those persons, if reasonable in number, who have a beneficial interest whether vested or nonvested in the property in which the nonvested interest exists, the grandparents of all such beneficiaries and the issue of such grandparents alive when the period of the rule begins to run, and those persons who are the potential appointees of a special power of appointment exercisable over the property in which the nonvested interests exist who are the grandparents or issue of the grandparents of the donee of the power and alive when the period of the rule begins to run.

(3) Those other persons alive when the period of the rule begins to run, if reasonable in number, who are specifically mentioned in describing the beneficiaries of the property in which the nonvested interest exists.

(4) The donee of a general or special power of appointment if the donee is alive when the period of the rule begins to run and if the exercise of that power could affect the nonvested interest.

3. A nonvested interest that would violate the rule against perpetuities whether its period is measured by actual or by possible events shall be judicially reformed to most closely approximate the intention of the creator of the interest in order that the nonvested interest will vest, even though it may not become possessory, within the period of

the rule.

4. This section is applicable to all nonvested interests created on, before, or after July 1, 1983.

[C51, §1191; R60, §2199; C73, §1920; C97, §2901; C24, 27, 31, 35, 39, §**10127;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §558.68]

83 Acts, ch 20, §1

558.69 Reporting of private burial sites, wells, disposal sites, underground storage tanks, and hazardous waste — liability.

With each declaration of value submitted to the county recorder under chapter 428A, there shall also be submitted a statement regarding whether any known private burial site is situated on the property, and if a known private burial site is situated on the property, the statement shall state the approximate location of the site. The statement shall also state that no known wells are situated on the property, or if known wells are situated on the property, the statement must state the approximate location of each known well and its status with respect to section 455B.190 or 460.302. The statement shall also state that no known disposal site for solid waste, as defined in section 455B.301, which has been deemed to be potentially hazardous by the department of natural resources, exists on the property, or if such a known disposal site does exist, the location of the site on the property. The statement shall additionally state that no known underground storage tank, as defined in section 455B.471, subsection 11, exists on the property, or if a known underground storage tank does exist, the type and size of the tank, and any known substance in the tank. The statement shall also state that no known hazardous waste as defined in section 455B.411, subsection 3, or listed by the department pursuant to section 455B.412, subsection 2, or section 455B.464, exists on the property, or if known hazardous waste does exist, that the waste is being managed in accordance with rules adopted by the department of natural resources. The statement shall be signed by at least one of the sellers or their agents. The county recorder shall refuse to record any deed, instrument, or writing for which a declaration of value is required under chapter 428A unless the statement required by this section has been submitted to the county recorder. A buyer of property shall be provided with a copy of the statement submitted, and, following the fulfillment of this provision, if the statement submitted reveals no private burial site, well, disposal site, underground storage tank, or hazardous waste on the property, the county recorder may destroy the statement. The land application of sludges or soils resulting from the remediation of underground storage tank releases accomplished in compliance with department of natural resources rules without a permit is not required to be reported as the disposal of solid waste or hazardous waste.

If a declaration of value is not required, the above information shall be submitted on a separate form. The director of the department of natural resources shall prescribe the form of the statement and the separate form to be supplied by each county recorder in the state. The county recorder shall transmit the statements to the department of natural resources at times directed by the director of the department.

The owner of the property is responsible for the accuracy of the information submitted on the form. The owner's agent shall not be liable for the accuracy of information provided by the owner of the property. The provisions of this paragraph do not limit liability which may be imposed under a contract or under any other law.

87 Acts, ch 225, §307; 88 Acts, ch 1169, §16, 17; 90 Acts, ch 1235, §42; 99 Acts, ch 140, §1

558.70 Contract disclosure statement required for certain residential real estate installment sales.

1. Prior to executing a residential real estate installment sales contract, the contract seller shall deliver a written contract disclosure statement to the contract purchaser which shall clearly set forth the following information:

a. If the real estate subject to the contract has been separately assessed for property tax purposes, the current assessed value of the real estate.

b. (1) A complete description of any property taxes due and payable on the real estate and a complete description of any special assessment on the real estate and the term of the assessment.

(2) Information on whether any property taxes or special assessments are delinquent and whether any tax sale certificates have been issued for delinquent property taxes or special assessments on the real estate.

c. A complete description of any mortgages or other liens encumbering or secured by the real estate, including the identity and address of the current owner of record with respect to each such mortgage or lien, as well as a description of the total outstanding balance and due date under any such mortgage or lien.

d. A complete amortization schedule for all payments to be made pursuant to the contract, which amortization schedule shall include information on the portion of each payment to be applied to principal and the portion to be applied to interest.

e. If the contract requires a balloon payment, a complete description of the balloon payment, including the date the payment is due, the amount of the balloon payment, and other terms related to the balloon payment. For purposes of this paragraph, a *"balloon payment"* is any scheduled payment that is more than twice as large as the average of earlier scheduled payments.

f. The annual rate of interest to be charged under the contract.

g. A statement that the purchaser has a right to seek independent legal counsel concerning the contract and any matters pertaining to the contract.

h. A statement that the purchaser has a right to receive a true and complete copy of the contract after it has been executed by all parties to the contract.

i. The mailing address of each party to the contract.

j. If the contract is subject to forfeiture, a statement that if the purchaser does not comply with the terms of the contract, the purchaser may lose all rights in the real estate and all sums paid under the contract.

2. The contract disclosure statement shall be dated and signed by each party to the contract, and the contract purchaser shall be provided a complete copy of the contract at the time the disclosure statement is delivered to the contract purchaser pursuant to subsection 1.

3. Within five days after a residential real estate installment sales contract has been executed by all parties to the contract, the contract seller shall mail a true and correct copy of the contract by regular first class mail to the last known address of each contract purchaser. However, this requirement is satisfied as to any purchaser who acknowledges in writing that the purchaser has received a true and correct copy of the fully executed contract.

4. This section applies to a contract seller who entered into four or more residential real estate contracts in the three hundred sixty-five days previous to the contract seller signing the contract disclosure statement. For purposes of this subsection, two or more entities sharing a common owner or manager are considered a single contract seller. This section does not apply to an organization listed in section 535B.2, subsections 1 through 12.

5. A violation of this section affects title to property only as provided in section 558.71.

6. For purposes of this section, *"residential real estate"* means a residential dwelling containing no more than two single-family dwelling units, which is not located on a tract of land used for agricultural purposes as defined in section 535.13.

7. This section and any rules adopted to administer this section shall not limit or abridge any duty, requirement, obligation, or liability for disclosure created by any other provision of law, or under a contract between the parties.

2002 Acts, ch 1136, §1, 6

For applicability provisions, see 2002 Acts, ch 1136, §6

NEW section

558.71 Civil liabilities.

1. A contract purchaser injured by a violation of section 558.70 may within one year of the execution of the contract bring an equitable action in the district court of record where the real estate is located to obtain relief as follows:

a. The court may rescind a contract that remains in existence at the time the action is commenced, and award restitution to the contract purchaser determined in accordance with the standards for damages specified in paragraph *"b"*.

b. If the contract has been terminated by any means prior to commencement of the action, the contract purchaser may recover a money judgment against the original contract seller for a sum equal to all amounts the contract purchaser paid to the contract seller, plus the reasonable value of any improvements to the real estate made by the contract purchaser, plus any other proximately caused or incidental damages, less the fair rental value of the real estate for the period of time the contract purchaser was in possession of the real estate. For the purposes of this paragraph, the fair rental value of the real estate shall be based on the fair rental value of the real estate as of the date the real estate installment sales contract was executed by all parties to the contract.

2. A contract purchaser alleging a violation of section 558.70 bears the burden of establishing such violation by a preponderance of the evidence.

3. An order of recision or a money judgment awarded shall not affect any rights or responsibilities arising from any conveyance or encumbrance made by either the contract purchaser or the contract seller prior to the filing of a lis pendens in the action in which such relief is sought, unless it is established by clear and convincing evidence that the recipient of such conveyance or encumbrance had prior knowledge that the contract was executed in violation of the requirements of section 558.70.

4. In an action in which a contract purchaser obtains relief under this section, the court shall also award to such contract purchaser reasonable attorney fees incurred in bringing the action.

2002 Acts, ch 1136, §2, 6

For applicability provisions, see 2002 Acts, ch 1136, §6

NEW section

CHAPTER 558A

REAL ESTATE DISCLOSURES

Advisory committee on issues relating to electronic filing, recording, and indexing of instruments affecting real property and electronic use of real property disclosures; report filed January 2001; recommendations for county "PIN" system, survey of existing system, and pilot project; 2000 Acts, ch 1189, §27

558A.1 Definitions.
558A.2 Procedures.
558A.3 Good faith and amendments.
558A.4 Required information.
558A.5 Agency.
558A.6 Liability under the chapter.
558A.7 Chapter is not limiting.
558A.8 Validity of a transfer.

558A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Broker"* means a real estate broker licensed pursuant to chapter 543B.

2. *"Commission"* means the real estate commission created pursuant to section 543B.8.

3. *"Salesperson"* means a salesperson licensed pursuant to chapter 543B.

4. *"Transfer"* means the transfer or conveyance by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, if the property includes at least one but not more than four dwelling units. However, a transfer does not include any of the following:

a. A transfer made pursuant to a court order, including but not limited to a transfer under chapter 633, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to chapter 654, the forfeiture of a real estate contract under chapter 656, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.

b. A transfer to a mortgagee by a mortgagor or successor in interest who is in default, or a transfer by a mortgagee who has acquired real property at a sale conducted pursuant to chapter 654, a transfer back to a mortgagor exercising a right of first refusal pursuant to section 654.16A, a nonjudicial voluntary foreclosure procedure under section 654.18 or chapter 655A, or a deed in lieu of foreclosure under section 654.19.

c. A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

d. A transfer between joint tenants or tenants in common.

e. A transfer made to a spouse, or to a person in the lineal line of consanguinity of a person making the transfer.

f. A transfer between spouses resulting from a decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to chapter 598.

g. A transfer to or from the state, a political subdivision of the state, another state, or the United States.

h. A transfer by quitclaim deed.

5. *"Transferee"* means a person who is acquiring real property as provided in an instrument containing the power to transfer real estate, including an instrument described in section 558.1.

6. *"Transferor"* means a person who is transferring real property as provided in an instrument containing the power to transfer real estate, including an instrument described in section 558.1.

93 Acts, ch 30, §3

558A.2 Procedures.

1. A person interested in transferring real property, or a broker or salesperson acting on behalf of the person, shall deliver a written disclosure statement to a person interested in being transferred the real property. The disclosure statement must be delivered prior to either the transferor making a written offer for the transfer of the real property, or accepting a written offer for the transfer of the real property.

2. The disclosure statement shall be made by personal delivery or by certified or registered mail to the transferee. The delivery may be made to the spouse of the transferee, unless otherwise provided by the parties. If the disclosure statement is not timely delivered, the transferee may withdraw the offer or revoke the acceptance without liability, within three days following personal delivery of the statement or five days following delivery by mail.

3. The disclosure statement may be filed with the county recorder with instruments affecting the transfer of real estate. However, the failure to file the statement shall not cause a defect in the title to the property.

93 Acts, ch 30, §4

558A.3 Good faith and amendments.

1. All information required by this section and rules adopted by the commission shall be disclosed in good faith. If at the time the disclosure is required to be made, information required to be disclosed is not known or available to the transferor, and a reasonable effort has been made to ascertain the information, an approximation of the information may be used. The information shall be identified as an approximation. The approximation shall be based on the best information available at the time.

2. A disclosure statement shall be amended, if information disclosed in the statement is or becomes inaccurate or misleading, or is supplemented. The amended statement shall be subject to the same procedures as the original disclosure statement as provided in this chapter. However, the statement is not required to be amended if either of the following applies:

a. The information disclosed in conformance with this chapter is subsequently rendered inaccurate as a result of an act, occurrence, or agreement subsequent to the delivery of the disclosure statement.

b. The information is based on information of a public agency, including the state, a political subdivision of the state, or the United States. The information shall be deemed to be accurate and complete, unless the transferor or the broker or salesperson has actual knowledge of an error, inaccuracy, or omission, or fails to exercise ordinary care in obtaining the information.

93 Acts, ch 30, §5

558A.4 Required information.

1. The disclosure statement shall include information relating to the condition and important characteristics of the property and structures located on the property, including significant defects in the structural integrity of the structure, as provided in rules which shall be adopted by the real estate commission pursuant to section 543B.9. The disclosure statement shall also include whether the property is located in a real estate improvement district and the amount of any special assessment against the property under chapter 358C. The rules may require the disclosure to include information relating to the property's zoning classification; the condition of plumbing, heating, or electrical systems; or the presence of pests.

2. The disclosure statement may include a report or written opinion prepared by a person qualified to make judgment based on education or experience, as provided by rules adopted by the commission, including but not limited to a land surveyor licensed pursuant to chapter 542B, a geologist, a structural pest control operator licensed pursuant to section 206.6, or a building contractor. The report or opinion on a matter within the scope of the person's practice, profession, or expertise shall satisfy the requirements of this section or rules adopted by the commission regarding that matter required to be disclosed. If the report or opinion is in response to a request made for purposes of satisfying the disclosure statement, the report or opinion shall indicate which part of the disclosure statement the report or opinion satisfies.

3. A transferor subject to the requirements of section 558.70 shall recommend in writing that the transferee obtain an independent home inspection report to provide full and complete information as required to be disclosed under this section and under rules adopted by the real estate commission pursuant to section 543B.9.

A transferor subject to section 558.70 shall provide the real estate disclosure statement required by this chapter at least seven days before the real estate installment sales contract is executed by all parties to the contract.

93 Acts, ch 30, §6; 96 Acts, ch 1204, §11; 2002 Acts, ch 1136, §4, 6

For applicability provisions pertaining to subsection 3, see 2002 Acts, ch 1136, §6

NEW subsection 3

558A.5 Agency.

1. A person other than a broker or salesperson acting in the capacity of an agent in the transfer of real property shall not be deemed to be an agent of the transferor or transferee for purposes of this chapter, unless the person is granted powers of attorney or is empowered as an agent, as expressly provided in writing, and is subject to any other applicable requirements as provided by law.

2. A broker or salesperson representing the transferor shall deliver the disclosure statement to the transferee as required in section 558A.2, unless the transferor or transferee has instructed the broker or salesperson otherwise in writing.

93 Acts, ch 30, §7

558A.6 Liability under the chapter.

A person who violates this chapter shall be liable to a transferee for the amount of actual damages suffered by the transferee, but subject to the following limitations:

1. The transferor, or a broker or salesperson, shall not be liable under this chapter for the error, inaccuracy, or omission in information required in a disclosure statement, unless that person has actual knowledge of the inaccuracy, or fails to exercise ordinary care in obtaining the information.

2. The person submitting a report or opinion within the scope of the person's practice, profession, or expertise, as provided in section 558A.4, for purposes of satisfying the disclosure statement, shall not be liable under this chapter for any matter other than a matter within the person's practice, profession, or expertise, and which is required by the disclosure statement, unless the person failed to use care ordinary in the person's pro-

fession, practice, or area of expertise in preparing the information.

93 Acts, ch 30, §8

558A.7 Chapter is not limiting.

The duties imposed upon persons under this chapter or under rules adopted by the real estate commission shall not limit or abridge any duty, requirement, obligation, or liability for disclosure created by another provision of law, or under a contract between parties.

93 Acts, ch 30, §9

558A.8 Validity of a transfer.

A transfer under this chapter shall not be invalidated solely because of a failure of a person to comply with a provision of this chapter.

93 Acts, ch 30, §10

CHAPTER 559

POWER OF APPOINTMENT

See probate code, §633.704

559.1 Release by donee of power.
559.2 Definition — scope of power.
559.3 Release by one donee exclusive of others.
559.4 Limiting release.
559.5 Disclaimer.
559.6 Delivery.
559.7 Other lawful means.
559.8 Declaration of common law.
559.9 Applicability.

559.1 Release by donee of power.

A power to appoint which is exercisable by deed, by will, by deed or will, or otherwise, in whole or to any extent in favor of the donee of the power, the donee's estate, the donee's creditors, the creditors of the donee's estate, or others, is releasable, either with or without consideration, by written instrument executed by the donee. If such instrument shall be executed and acknowledged in the manner provided for the execution and acknowledgment of instruments affecting real estate and recorded with the county recorder in the county in which the donee of the power resides or the county of last residence of the donor of the power of the county in which any real estate which may be subject to the power is located, such recording shall be deemed a sufficient delivery of such release.

A power to appoint described herein is releasable with respect to the whole or any part of the property subject to such power and is also releasable in such manner as to reduce or limit the persons or objects, or classes of persons or objects in whose favor such power would otherwise be exercisable.

It is hereby declared that such releases are in accordance with the public policy of this state and are valid and effectual whether heretofore or hereafter made.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §559.1]

559.2 Definition — scope of power.

The term *"power to appoint"* as used in section 559.1, shall mean and include all powers which are in substance and effect powers of appointment, regardless of the language used in creating them and whether they are (1) general, special or otherwise, (2) vested, contingent or conditional, (3) in gross, appendant, simply collateral, in trust or in the nature of a trust or otherwise, (4) exercisable by an instrument amending, revoking, altering or terminating a trust or an estate, or an interest thereunder or otherwise, (5) exercisable presently or in the future, (6) exercisable in an individual or a fiduciary capacity whether alone or in conjunction with one or more other persons or corporations, (7) powers to invade or consume property, or (8) powers remaining after one or more partial releases have heretofore or hereafter been made with respect to a power to appoint.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §559.2]

559.3 Release by one donee exclusive of others.

If a power to appoint is or may be exercisable by two or more persons either in an individual or fiduciary capacity in conjunction with one another or successively, a release or disclaimer of the power in whole or in part executed by any one of the donees of the power shall be effective to release or disclaim, to the extent therein provided, all right of such person to exercise or to participate in the exercise of the said power, but unless the instrument creating the power otherwise provides, shall not prevent or limit the exercise or participation in the exercise thereof by the other donee or donees.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §559.3]

559.4 Limiting release.
A release of a power to appoint may also be made for life or lives or for a specified period of time.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §559.4]

559.5 Disclaimer.
A donee of a power to appoint may disclaim the same at any time, wholly or in part, in the same manner and to the same extent as the donee might release it.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §559.5]

559.6 Delivery.
A release or disclaimer may be delivered to any of the following: (1) Any person who could be adversely affected by the exercise of the power; or (2) any trustee of the property to which the power relates; or (3) any person specified for such purpose in the instrument creating the power; or (4) the county recorder as provided in section 559.1.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §559.6]

559.7 Other lawful means.
Nothing contained in this chapter shall prevent the release of any power to appoint or the disclaimer thereof in any lawful manner.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §559.7]

559.8 Declaration of common law.
This chapter shall be deemed declaratory of the common law of this state and it shall be liberally construed so as to effectuate the intent that all powers to appoint whatsoever shall be releasable.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §559.8]

559.9 Applicability.
This chapter shall apply to releases and disclaimers heretofore or hereafter delivered.
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §559.9]

CHAPTER 560

OCCUPYING CLAIMANTS

Eviction or distress for rent during military service; §29A.101

560.1 Right to improvements.
560.2 "Color of title" defined.
560.3 Petition — trial — appraisement.
560.4 Rights of parties to property.
560.5 Tenants in common.
560.6 Waste by claimant.
560.7 Option to remove improvements.

560.1 Right to improvements.
Where an occupant of real estate has color of title thereto and has in good faith made valuable improvements thereon, and is thereafter adjudged not to be the owner, no execution shall issue to put the owner of the land in possession of the same, after the filing of a petition as hereinafter provided, until the provisions of this chapter have been complied with.
[C51, §1233; R60, §2264; C73, §1976; C97, §2964; C24, 27, 31, 35, 39, §**10128;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §560.1]

560.2 "Color of title" defined.
Persons of each of the classes hereinafter enumerated shall be deemed to have color of title within the meaning of this chapter, but nothing contained herein shall be construed as giving a tenant color of title against the tenant's landlord:
1. *Purchaser at judicial or tax sale.* A purchaser in good faith at any judicial or tax sale made by the proper officer, whether said officer had sufficient authority to make said sale or not, unless want of authority in such officer was known to the purchaser at the time of the sale.
2. *Occupancy for five years.* A person who has alone or together with those under whom the person claims, occupied the premises for a period of five years continuously.
3. *Occupancy and improvements.* A person whose occupancy of the premises has been for a shorter period than five years, if during such occupancy the occupant or those under whom the person claims have, with the knowledge or consent of the real owner, express or implied, made any valuable improvements thereon.
4. *Occupancy and payment of taxes.* A person whose occupancy of the premises has been for a shorter period than five years, if such occupant or those under whom the person claims have at any time during such occupancy paid the ordinary county taxes thereon for any one year, and two years have elapsed without a repayment or offer of repayment of the same by the owner thereof, and such occupancy has continued to the time the action is brought by which the recovery of the real es-

tate is obtained.

5. *Occupancy under state or federal law or contract.* A person who has settled upon any real estate and occupied the same for three years under or by virtue of any law, or contract with the proper officers of the state or of the United States for the purchase thereof and shall have made valuable improvements thereon.

[C51, §1239, 1240; R60, §2268, 2269; C73, §1982 – 1984; C97, §2967, 2968; C24, 27, 31, 35, 39, §**10129;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §560.2]

560.3 Petition — trial — appraisement.

The petition of the occupant must set forth the grounds upon which the occupant seeks relief, and state as accurately as practicable the value of the real estate, exclusive of the improvements made thereon by the claimant or the claimant's grantors, and the value of such improvements. The issue joined thereon must be tried as in ordinary actions and the value of the real estate and of such improvements separately ascertained.

[C51, §1234, 1235; R60, §2265, 2266; C73, §1977, 1978; C97, §2965; C24, 27, 31, 35, 39, §**10130;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §560.3]

560.4 Rights of parties to property.

The owner of the land may thereupon pay to the clerk of the court, for the benefit of the occupying claimant, the appraised value of the improvements and take the property and an execution may issue for the purpose of putting the owner of the land in possession thereof. Should the owner fail to make such payment within such reasonable time as the court may fix, the occupying claimant may pay to the clerk of the court, within such time as the court may fix, for the use of the owner of the land, the value of the property exclusive of the improvements and take and retain the property together with the improvements.

[C51, §1236 – 1238, 1243; R60, §2267, 2272; C73, §1979 – 1981, 1986; C97, §2966, 2970; C24, 27, 31, 35, 39, §**10131;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §560.4]

560.5 Tenants in common.

Should the owner of the land fail to pay for the improvements and the occupying claimant fail to pay for the land within the time fixed by the court as provided in section 560.4, the parties shall be held to be tenants in common of all the real estate including the improvements, each holding an undivided interest proportionate to the values ascertained on the trial.

[C51, §1236 – 1238; R60, §2267; C73, §1979 – 1981; C97, §2966; C24, 27, 31, 35, 39, §**10132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §560.5]

560.6 Waste by claimant.

If the occupying claimant has committed any injury to the real estate by cutting timber or otherwise, the owner may set the same off against any claim for improvements made by such claimant.

[C51, §1241; R60, §2270; C73, §1985; C97, §2969; C24, 27, 31, 35, 39, §**10133;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §560.6]

560.7 Option to remove improvements.

Any person having improvements on any real estate granted to the state in aid of any work of internal improvement, whose title thereto is questioned by another, may remove such improvements without other injury to such real estate at any time before that person is evicted therefrom, or that person may have the benefit of this chapter by proceeding as herein directed.

[C73, §1987; C97, §2971; C24, 27, 31, 35, 39, §**10134;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §560.7]

CHAPTER 561

HOMESTEAD

561.1 "Homestead" defined.
561.2 Extent and value.
561.3 Dwelling and appurtenances.
561.4 Selecting — platting.
561.5 Platted by officer having execution.
561.6 Platting under order of court.
561.7 Changes — nonconsenting spouse.
561.8 Referees to determine exemption.
561.9 Referring back — marking off — costs.
561.10 Change of circumstances.
561.11 Occupancy by surviving spouse.
561.12 Life possession in lieu of dower.
561.13 Conveyance or encumbrance.
561.14 Devise.
561.15 Removal of spouse or children.
561.16 Exemption.
561.17 Repealed by 81 Acts, ch 182, §5.
561.18 Descent.
561.19 Exemption in hands of issue.
561.20 New homestead exempt.
561.21 Debts for which homestead liable.
561.22 Waiver.
561.23 through 561.25 Reserved.
561.26 Definitions.

561.1 "Homestead" defined.

The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

[C51, §1250, 1251; R60, §2282, 2283; C73, §1994, 1995; C97, §2977; C24, 27, 31, 35, 39, §**10135;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.1]

561.2 Extent and value.

If within a city plat, it must not exceed one-half acre in extent, otherwise it must not contain in the aggregate more than forty acres, but if, in either case, its value is less than five hundred dollars, it may be enlarged until it reaches that amount.

[C51, §1252; R60, §2284; C73, §1996; C97, §2978; S13, §2978; C24, 27, 31, 35, 39, §**10136;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.2]

561.3 Dwelling and appurtenances.

It must not embrace more than one dwelling house, or any other buildings except such as are properly appurtenant thereto, but a shop or other building situated thereon, actually used and occupied by the owner in the prosecution of the owner's ordinary business, and not exceeding three hundred dollars in value, is appurtenant thereto.

[C51, §1253; R60, §2285; C73, §1997; C97, §2978; S13, §2978; C24, 27, 31, 35, 39, §**10137;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.3]

561.4 Selecting — platting.

The owner, husband or wife, or a single person, may select the homestead and cause it to be platted, but a failure to do so shall not render the same liable when it otherwise would not be, and a selection by the owner shall control. When selected, it shall be designated by a legal description, or if impossible it shall be marked off by permanent, visible monuments, and the description shall give the direction and distance of the starting point from some corner of the dwelling, which description, with the plat, shall be filed and recorded by the recorder of the proper county in the homestead book, which shall be, as nearly as may be, in the form of the record books for deeds, with an index kept in the same manner.

[C51, §1254, 1255; R60, §2286, 2287; C73, §1998, 1999; C97, §2979; S13, §2979; C24, 27, 31, 35, 39, §**10138;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.4]

87 Acts, ch 116, §1

561.5 Platted by officer having execution.

Should the homestead not be platted and recorded at the time levy is made upon real property in which a homestead is included, the officer having the execution shall give notice in writing to the owner or owners if found within the county, to plat and record the same within ten days after service; after which time the officer shall cause the homestead to be platted and recorded, and the expense shall be added to the costs in the case.

[C51, §1254; R60, §2286; C73, §1998; S13, §2979; C24, 27, 31, 35, 39, §**10139;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.5]

87 Acts, ch 116, §2

561.6 Platting under order of court.

Upon application made to the district court by any creditor of the owner of the homestead, or other person interested therein, such court shall hear the cause upon the proof offered, and fix and establish the boundaries thereof, and the judgment therein shall be filed and recorded in the manner provided in section 561.5.

[C97, §2980; C24, 27, 31, 35, 39, §**10140;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.6]

561.7 Changes — nonconsenting spouse.

The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or vacate it.

Such changes shall not prejudice conveyances or liens made or created previously thereto.

No such change of the entire homestead, made without the concurrence of the other spouse, shall affect that spouse's rights, or those of the children.

[C51, §1256, 1257; R60, §2288, 2289; C73, §2000, 2001; C97, §2981; C24, 27, 31, 35, 39, §**10141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.7]

561.8 Referees to determine exemption.

When a disagreement takes place between the owner and any person adversely interested, as to whether any land or buildings are properly a part of the homestead, the sheriff shall, at the request of either party, summon nine disinterested persons having the qualifications of jurors. The parties then, commencing with the owner, shall in turn strike off one person each, until three remain. Should either party fail to do so, the sheriff may act for that person, and the three as referees shall proceed to examine and ascertain all the facts of the case, and report the same, with their opinion thereon, to the court from which the execution or other process may have issued within thirty days after their qualification as referees.

[C51, §1258, 1259; R60, §2290, 2291; C73, §2002, 2003; C97, §2982; C24, 27, 31, 35, 39, §**10142;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79,

81, §561.8]

561.9 Referring back — marking off — costs.

The court in its discretion may refer the whole or any part of the matter back to the same or other referees, to be selected in the same manner, or as the parties agree, giving them directions as to the report required of them. When the court is sufficiently advised in the case, it shall make its decision, and may direct the homestead to be marked off anew, or a new plat and description to be made and recorded, and take such other steps as shall be lawful and expedient in attaining the purpose of this chapter. It shall also award costs in accordance with the practice in other cases, as nearly as may be.

[C51, §1260, 1261; R60, §2292, 2293; C73, §2004, 2005; C97, §2983; C24, 27, 31, 35, 39, §**10143;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.9]

Costs, chapter 625

561.10 Change of circumstances.

The extent or appurtenances of the homestead thus established may be called in question in like manner, whenever a change in value or circumstances will justify such new proceedings.

[C51, §1262; R60, §2294; C73, §2006; C97, §2984; C24, 27, 31, 35, 39, §**10144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.10]

561.11 Occupancy by surviving spouse.

Upon the death of either spouse, the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law, but the setting off of the distributive share of the survivor in the real estate of the deceased shall be such a disposal of the homestead as is herein contemplated.

[C51, §1263; R60, §2295; C73, §2007, 2008; C97, §2985; C24, 27, 31, 35, 39, §**10145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.11]

561.12 Life possession in lieu of dower.

The survivor may elect to retain the homestead for life in lieu of such share in the real estate of the deceased.

[C73, §2008; C97, §2985; C24, 27, 31, 35, 39, §**10146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.12]

561.13 Conveyance or encumbrance.

A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument, and the instrument or power of attorney sets out the legal description of the homestead. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer. If a spouse who holds only homestead rights and surviving spouse's statutory share in the homestead specifically relinquishes homestead rights in an instrument, including a power of attorney constituting the other spouse as the husband's or wife's attorney in fact, as provided in section 597.5, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

[C51, §1247; R60, §2279; C73, §1990; C97, §2974; C24, 27, 31, 35, 39, §**10147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.13; 81 Acts, ch 181, §1]

91 Acts, ch 106, §1

561.14 Devise.

Subject to the rights of the surviving spouse, the homestead may be devised like other real estate of the testator.

[C51, §1266; R60, §2298; C73, §2010; C97, §2987; C24, 27, 31, 35, 39, §**10148;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.14]

561.15 Removal of spouse or children.

Neither spouse can remove the other nor the children from the homestead without the consent of the other.

[C51, §1462; R60, §2514; C73, §2215; C97, §3166; C24, 27, 31, 35, 39, §**10149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.15]

561.16 Exemption.

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. Persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale. A single person may claim only one homestead to be exempt from judicial sale. For purposes of this section, *"household unit"* means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

[C51, §1245; R60, §2277; C73, §1988; C97, §2972, 2973; C24, 27, 31, 35, 39, §**10150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.16; 81 Acts, ch 182, §1]

87 Acts, ch 116, §3

561.17 Repealed by 81 Acts, ch 182, § 5.

561.18 Descent.

If there be no survivor, the homestead descends

to the issue of either spouse according to the rules of descent, unless otherwise directed by will.

[C51, §1264; R60, §2296; C73, §2008; C97, §2985; C24, 27, 31, 35, 39, §**10152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.18]

561.19 Exemption in hands of issue.

Where the homestead descends to the issue of either spouse the homestead shall be held exempt from any antecedent debts of the issue's parents or antecedent debts of the issue, except those of the owner of the homestead contracted prior to acquisition of the homestead or those created under section 249A.5 relating to the recovery of medical assistance payments.

[C51, §1264; R60, §2296; C73, §2008; C97, §2985; C24, 27, 31, 35, 39, §**10153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.19]

95 Acts, ch 68, §6; 96 Acts, ch 1034, §53

561.20 New homestead exempt.

Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been.

[C51, §1257; R60, §2289; C73, §2001; C97, §2981; C24, 27, 31, 35, 39, §**10154;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.20]

561.21 Debts for which homestead liable.

The homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt.

3. Those incurred for work done or material furnished exclusively for the improvement of the homestead.

4. If there is no survivor or issue, for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

[C51, §1248, 1249, 1265; R60, §2280, 2281, 2297; C73, §1991 – 1993, 2009; C97, §2975, 2976, 2986; C24, 27, 31, 35, 39, §**10155;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.21]

Homestead acquired with pension funds, §627.9
Liability for assistance furnished poor person, §252.14

561.22 Waiver.

If a homestead exemption waiver is contained in a written contract affecting agricultural land as defined in section 9H.1, or dwellings, buildings, or other appurtenances located on the land, the contract must contain a statement in substantially the following form, in boldface type of a minimum size of ten points, and be signed and dated by the person waiving the exemption at the time of the execution of the contract: **"I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale; and that by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract."** A principal or deputy state, county, or city officer shall not be required to waive the officer's homestead exemption in order to be bonded as required pursuant to chapter 64.

86 Acts, ch 1214, §8; 87 Acts, ch 67, §1; 89 Acts, ch 153, §3

561.23 through 561.25 Reserved.

561.26 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

CHAPTER 562

OWNER-LESSOR AND TENANT-LESSEE

Landlord's lien, chapter 570
Eviction or distress for rent during military service; termination of leases; §29A.101

562.1 Apportionment of rent.
562.2 Double rental value — liability.
562.3 Attornment to stranger.
562.4 Tenant at will — notice to terminate.
562.5 Termination of farm tenancies.
562.6 Agreement for termination.
562.7 Notice — how and when served.
562.8 Termination of life estate — farm tenancy.
562.9 Termination of life estate — nonfarm tenancy.
562.10 Rental value.
562.11 to 562.16 Repealed by 78 Acts, ch 1172, §38.

562.1 Apportionment of rent.

The executor of a tenant for life who leases real estate so held, and dies on or before the day on which the rent is payable, and a person entitled to rent dependent on the life of another may recover the proportion of rent which had accrued at the time of the death of such life tenant.

[C51, §1267; R60, §2299; C73, §2011; C97, §2988; C24, 27, 31, 35, 39, §**10156;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §562.1]

562.2 Double rental value — liability.

A tenant serving notice of intention to quit leased premises at a time named, and holding over after the time, and a tenant or the tenant's assignee willfully holding over after the term, and after notice to quit, shall pay double the rental value of the leased premises during the time the tenant holds over to the person entitled to the rent.

[C51, §1268; R60, §2300; C73, §2012; C97, §2989; C24, 27, 31, 35, 39, §**10157;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §562.2]

83 Acts, ch 132, §1

562.3 Attornment to stranger.

The payment of rent, or delivery of possession of leased premises, to one not the lessor, is void, and shall not affect the rights of such lessor, unless made with the lessor's consent, or in pursuance of a judgment or decree of court or judicial sale to which the lessor was a party.

[C51, §1269; R60, §2301; C73, §2013; C97, §2990; C24, 27, 31, 35, 39, §**10158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §562.3]

562.4 Tenant at will — notice to terminate.

A person in the possession of real estate, with the assent of the owner, is presumed to be a tenant at will until the contrary is shown, and thirty days' notice in writing must be served upon either party or a successor of the party before termination of the tenancy. However, if a rent is reserved payable at intervals of less than thirty days, the length of notice need not be greater than the interval.

[C51, §1208, 1209; R60, §2216, 2218; C73, §2014, 2015; C97, §2991; C24, 27, 31, 35, 39, §**10159;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §562.4]

83 Acts, ch 132, §2

Three-day forcible entry notice, §648.3 and 648.4

562.5 Termination of farm tenancies.

In case of tenants occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of March, except in cases of mere croppers, whose leases shall be held to expire when the crop is harvested; if the crop is corn, it shall not be later than the first day of December, unless otherwise agreed upon.

[R60, §2218; C73, §2015; C97, §2991; C24, 27, 31, 35, 39, §**10160;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §562.5]

Forcible entry provisions, §648.3 and 648.4

562.6 Agreement for termination.

If an agreement is made fixing the time of the termination of the tenancy, whether in writing or not, the tenancy shall cease at the time agreed upon, without notice. In the case of farm tenants, except mere croppers, occupying and cultivating an acreage of forty acres or more, the tenancy shall continue beyond the agreed term for the following crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party in the manner provided in section 562.7, whereupon the tenancy shall terminate March 1 following. However, the tenancy shall not continue because of absence of notice if there is default in the performance of the existing rental agreement.

[R60, §2218; C73, §2015; C97, §2991; C24, 27, 31, 35, 39, §**10161;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §562.6]

83 Acts, ch 132, §3

Forcible entry provisions, §648.3 and 648.4

562.7 Notice — how and when served.

Written notice shall be served upon either party or a successor of the party by using one of the following methods:

1. By delivery of the notice, on or before September 1, with acceptance of service to be signed by the party to the lease or a successor of the party, receiving the notice.

2. By serving the notice, on or before September 1, personally, or if personal service has been tried and cannot be achieved, by publication, on the same conditions, and in the same manner as is provided for the service of original notices, except that when the notice is served by publication no affidavit is required. Service by publication is completed on the day of the last publication.

3. By mailing the notice before September 1 by certified mail. Notice served by certified mail is made and completed when the notice is enclosed in a sealed envelope, with the proper postage on the envelope, addressed to the party or a successor of the party at the last known mailing address and deposited in a mail receptacle provided by the United States postal service.

[C73, §2016; C97, §2991; C24, 27, 31, 35, 39, §**10162;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §562.7]

83 Acts, ch 132, §4

Forcible entry provisions, §648.3 and 648.4

Original notice, R.C.P. 1.302 – 1.315

562.8 Termination of life estate — farm tenancy.

Upon the termination of a life estate, a farm ten-

ancy granted by the life tenant shall continue until the following March 1 except that if the life estate terminates between September 1 and the following March 1 inclusively, then the farm tenancy shall continue for that year as provided by section 562.6 and continue until the holder of the successor interest serves notice of termination of the interest in the manner provided by section 562.7. However, if the lease is binding upon the holder of the successor interest by the provision of a trust or by specific commitment of the holder of the successor interest, the lease shall terminate as provided by that provision or commitment. This section does not abrogate the common law doctrine of emblements.

[C79, 81, §562.8]

83 Acts, ch 132, §5

562.9 Termination of life estate — nonfarm tenancy.

Upon the termination of a life estate, a tenancy granted by the life tenant which is not a farm tenancy shall continue until one of the following first occurs:

1. The date previously agreed upon for termination of the tenancy without notice.
2. If the tenant is a tenant at will, upon the expiration of the period provided by section 562.4.
3. If the tenancy is for less than one year, sixty days after the end of the month in which the life estate terminated.
4. If the tenancy is for a year or more, one year after the end of the month in which the life estate terminated. However, if the lease is binding upon the holder of the successor interest by the provision of a trust or by specific commitment of the holder of the successor interest, the lease shall terminate as provided by that provision or commitment.

[C79, 81, §562.9]

562.10 Rental value.

The holder of the interest succeeding a life estate who is required by section 562.8 or 562.9 to continue a tenancy shall be entitled to a rental amount equal to the prevailing fair market rental amount in the area. If the parties cannot agree on a rental amount, either party may petition the district court for a declaratory judgment setting the rental amount. The costs of the action shall be divided equally between the parties.

[C79, 81, §562.10]

562.11 to 562.16 Repealed by 78 Acts, ch 1172, § 38. See § 562A.12(4 – 7).

CHAPTER 562A

UNIFORM RESIDENTIAL LANDLORD AND TENANT LAW

Eviction or distress for rent during military service; termination of leases; §29A.101

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ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

PART 1

SHORT TITLE, CONSTRUCTION, APPLICATION, AND SUBJECT MATTER OF THE ACT

562A.1 Short title.

This chapter shall be known and may be cited as the *"Uniform Residential Landlord and Tenant Act"*.

[C79, 81, §562A.1]

562A.2 Purposes — rules of construction.

1. This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

2. Underlying purposes and policies of this chapter are:

a. To simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant; and

b. To encourage landlord and tenant to maintain and improve the quality of housing.

c. To insure that the right to the receipt of rent is inseparable from the duty to maintain the premises.

[C79, 81, §562A.2]

562A.3 Supplementary principles of law applicable.

Unless displaced by the provisions of this chapter, the principles of law and equity in this state, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, shall supplement its provisions.

[C79, 81, §562A.3]

562A.4 Administration of remedies — enforcement.

1. The remedies provided by this chapter shall be administered so that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

2. A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

[C79, 81, §562A.4]

PART 2

SCOPE AND JURISDICTION

562A.5 Exclusions from application of chapter.

Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

1. Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.

2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the purchaser's interest.

3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

4. Transient occupancy in a hotel, motel or other similar lodgings.

5. Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a co-operative.

7. Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

8. Occupancy in housing owned by a nonprofit organization whose purpose is to provide transitional housing for persons released from drug or alcohol treatment facilities and in housing for homeless persons.

[C79, 81, §562A.5]

95 Acts, ch 125, §2

PART 3

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION — NOTICE

562A.6 General definitions.

Subject to additional definitions contained in subsequent articles of this chapter which apply to specific articles or its parts, and unless the context otherwise requires, in this chapter:

1. *"Building and housing codes"* include a law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of a premises or dwelling unit.

2. *"Business"* includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

3. *"Dwelling unit"* means a structure or the part of a structure that is used as a home, residence, or sleeping place.

4. *"Good faith"* means honesty in fact in the conduct of the transaction concerned.

5. *"Landlord"* means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 562A.13.

6. *"Owner"* means one or more persons, jointly or severally, in whom is vested:

a. All or part of the legal title to property; or

b. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

7. *"Premises"* means a dwelling unit and the structure of which it is a part and facilities and appurtenances of it and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

8. *"Reasonable attorney's fees"* means fees determined by the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the tenant or landlord.

9. *"Rent"* means a payment to be made to the landlord under the rental agreement.

10. *"Rental agreement"* means an agreement written or oral, and a valid rule, adopted under section 562A.18, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

11. *"Rental deposit"* means a deposit of money to secure performance of a residential rental agreement, other than a deposit which is exclusively in advance payment of rent.

12. *"Roomer"* means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.

13. *"Single family residence"* means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heat-

ing facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

14. *"Tenant"* means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of another.

15. *"Transitional housing"* means temporary or nonpermanent housing.

[C79, 81, §562A.6]

95 Acts, ch 125, §3

562A.7 Unconscionability.

1. If the court, as a matter of law, finds that:

a. A rental agreement or any provision of it was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of an unconscionable provision to avoid an unconscionable result.

b. A settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of an unconscionable provision to avoid any unconscionable result.

2. If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

[C79, 81, §562A.7]

562A.8 Notice.

A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. In the case of the landlord, notice is received when it comes to the landlord's attention or when it is delivered in hand or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the landlord signs a receipt for the notice, to the place of business of the landlord through which the rental agreement was made or at a place held out by the landlord as the place for receipt of the communication or delivered to any individual who is designated as an agent of the landlord. In the case of the tenant, notice is received when it comes to the tenant's attention or when it is delivered in hand to the tenant or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice, to such person at the place held out by such person as the place for receipt of the communication, or in the absence of such designation, to such person's last known place of residence.

Any notice required under this chapter, except a written notice of termination required by section 562A.27, subsection 1 or 2, a notice of termination and notice to quit under section 562A.27A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, shall be deemed legally sufficient notice if made by posting at or delivering to the dwelling unit. The date of posting of the notice shall be written on the notice.

[C79, 81, §562A.8]

96 Acts, ch 1203, §1, 2; 99 Acts, ch 155, §5, 14

562A.8A Computation of time.

The calculation of all time periods required under this chapter shall be made in accordance with section 4.1, subsection 34.

99 Acts, ch 155, §6, 14

PART 4

GENERAL PROVISIONS

562A.9 Terms and conditions of rental agreement.

1. The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

2. In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

3. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day-to-day.

4. Unless the rental agreement fixes a definite term, the tenancy shall be week-to-week in case of a roomer who pays weekly rent, and in all other cases month-to-month.

[C79, 81, §562A.9]

562A.10 Effect of unsigned or undelivered rental agreement.

1. If a landlord does not sign and deliver a written rental agreement signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

2. If a tenant does not sign and deliver a written rental agreement signed and delivered to the tenant by the landlord, acceptance of possession without reservation gives the rental agreement the same effect as if it had been signed and deliv-

ered by the tenant.

3. If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective only for one year.

[C79, 81, §562A.10]

562A.11 Prohibited provisions in rental agreements.

1. A rental agreement shall not provide that the tenant or landlord:

a. Agrees to waive or to forego rights or remedies under this chapter provided that this restriction shall not apply to rental agreements covering single family residences on land assessed as agricultural land and located in an unincorporated area;

b. Authorizes a person to confess judgment on a claim arising out of the rental agreement;

c. Agrees to pay the other party's attorney fees; or

d. Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.

2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. If a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney's fees.

[C79, 81, §562A.11]

ARTICLE II

LANDLORD OBLIGATIONS

562A.12 Rental deposits.

1. A landlord shall not demand or receive as a security deposit an amount or value in excess of two months' rent.

2. All rental deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank or savings and loan association or credit union which is insured by an agency of the federal government. Rental deposits shall not be commingled with the personal funds of the landlord. Notwithstanding the provisions of chapter 543B, all rental deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a rental deposit during the first five years of a tenancy shall be the property of the landlord.

3. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the dwelling unit, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

a. To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

b. To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

c. To recover expenses incurred in acquiring possession of the premises from a tenant who does not act in good faith in failing to surrender and vacate the premises upon noncompliance with the rental agreement and notification of such noncompliance pursuant to this chapter.

In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

4. A landlord who fails to provide a written statement within thirty days of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy the rental deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the rental deposit.

5. Upon termination of a landlord's interest in the dwelling unit, the landlord or an agent of the landlord shall, within a reasonable time, transfer the rental deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant.

Upon the termination of the landlord's interest in the dwelling unit and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the rental deposit.

6. Upon termination of the landlord's interest in the dwelling unit, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the rental deposits, except that if the tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of rental deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

7. The bad faith retention of a deposit by a landlord, or any portion of the rental deposit, in

violation of this section shall subject the landlord to punitive damages not to exceed two hundred dollars in addition to actual damages.

8. The court may, in any action on a rental agreement, award reasonable attorney fees to the prevailing party.

[C75, 77, §562.9 – 562.14; C79, 81, §562A.12]
93 Acts, ch 154, §13

562A.13 Disclosure.

1. The landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

a. The person authorized to manage the premises.

b. An owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

2. The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against a successor landlord, owner, or manager.

3. A person who fails to comply with subsection 1 becomes an agent of each person who is a landlord for the purpose of:

a. Service of process and receiving and receipting for notices and demands.

b. Performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

4. The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall fully explain utility rates, charges and services to the prospective tenant before the rental agreement is signed unless paid by the tenant directly to the utility company.

5. Each tenant shall be notified, in writing, of any rent increase at least thirty days before the effective date. Such effective date shall not be sooner than the expiration date of original rental agreement or any renewal or extension thereof.

[C79, 81, §562A.13]

562A.14 Landlord to supply possession of dwelling unit.

At the commencement of the term, the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and section 562A.15. The landlord may bring an action for possession against a person wrongfully in possession and may recover the damages provided in section 562A.34, subsection 3.

[C79, 81, §562A.14]

562A.15 Landlord to maintain fit premises.

1. The landlord shall:

a. Comply with the requirements of applicable building and housing codes materially affecting health and safety.

b. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.

c. Keep all common areas of the premises in a clean and safe condition. The landlord shall not be liable for any injury caused by any objects or materials which belong to or which have been placed by a tenant in the common areas of the premises used by the tenant.

d. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord.

e. Provide and maintain appropriate receptacles and conveniences, accessible to all tenants, for the central collection and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.

f. Supply running water and reasonable amounts of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

If the duty imposed by paragraph *"a"* of this subsection is greater than a duty imposed by another paragraph of this subsection, the landlord's duty shall be determined by reference to paragraph *"a"* of this subsection.

2. The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs *"e"* and *"f"* of subsection 1 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

3. The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only:

a. If the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;

b. If the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

4. The landlord shall not treat performance of the separate agreement described in subsection 3 as a condition to an obligation or performance of a

rental agreement.
[C79, 81, §562A.15]

562A.16 Limitation of liability.
1. Unless otherwise agreed, a landlord, who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance.
2. A manager of premises that includes a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the person's management.
[C79, 81, §562A.16]

ARTICLE III

TENANT OBLIGATIONS

562A.17 Tenant to maintain dwelling unit.
The tenant shall:
1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.
2. Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit.
3. Dispose from the tenant's dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner.
4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.
5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises.
6. Not deliberately or negligently destroy, deface, damage, impair or remove a part of the premises or knowingly permit a person to do so.
7. Act in a manner that will not disturb a neighbor's peaceful enjoyment of the premises.
[C79, 81, §562A.17]

562A.18 Rules.
A landlord, from time to time, may adopt rules, however described, concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if it is written and if:
1. Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally.
2. It is reasonably related to the purpose for which it is adopted.
3. It applies to all tenants in the premises in a fair manner.
4. It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply.
5. It is not for the purpose of evading the obligations of the landlord.
6. The tenant has notice of it at the time the tenant enters into the rental agreement.
A rule adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of the rental agreement.
[C79, 81, §562A.18]

562A.19 Access.
1. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.
2. The landlord may enter the dwelling unit without consent of the tenant in case of emergency.
3. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least twenty-four hours' notice of the landlord's intent to enter and enter only at reasonable times.
4. The landlord does not have another right of access except by court order, and as permitted by sections 562A.28 and 562A.29, or if the tenant has abandoned or surrendered the premises.
[C79, 81, §562A.19]

562A.20 Tenant to use and occupy.
Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit and uses incidental thereto. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises not later than the first day of the extended absence.
[C79, 81, §562A.20]

ARTICLE IV

REMEDIES

PART 1

TENANT REMEDIES

562A.21 Noncompliance by the landlord — in general.
1. Except as provided in this chapter, if there

is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 562A.15 materially affecting health and safety, the tenant may elect to commence an action under this section and shall deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate and the tenant shall surrender as provided in the notice subject to the following:

a. If the breach is remediable by repairs or the payment of damages or otherwise, and if the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

b. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement unless the landlord has exercised due diligence and effort to remedy the breach which gave rise to the noncompliance.

c. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

2. Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 562A.15 unless the landlord demonstrates affirmatively that the landlord has exercised due diligence and effort to remedy any noncompliance, and that any failure by the landlord to remedy any noncompliance was due to circumstances reasonably beyond the control of the landlord. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees.

3. The remedy provided in subsection 2 is in addition to any right of the tenant arising under subsection 1.

4. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under section 562A.12.

[C79, 81, §562A.21]

95 Acts, ch 125, §4, 5

562A.22 Failure to deliver possession.

1. If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in section 562A.14, rent abates until possession is delivered and the tenant shall:

a. Upon at least five days' written notice to the landlord, terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security; or

b. Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the damages sustained by the tenant.

2. If a landlord's failure to deliver possession is willful and not in good faith, a tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney's fees.

[C79, 81, §562A.22]

562A.23 Wrongful failure to supply heat, water, hot water or essential services.

1. If contrary to the rental agreement or section 562A.15 the landlord deliberately or negligently fails to supply running water, hot water, or heat, or essential services, the tenant may give written notice to the landlord specifying the breach and may:

a. Procure reasonable amounts of hot water, running water, heat and essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

b. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

c. Recover any rent already paid for the period of the landlord's noncompliance which shall be reimbursed on a pro rata basis.

2. If the tenant proceeds under this section, the tenant may not proceed under section 562A.21 as to that breach.

3. The rights under this section do not arise until the tenant has given notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the consent of the tenant.

[C79, 81, §562A.23]

562A.24 Landlord's noncompliance as defense to action for possession or rent.

1. In an action for possession based upon nonpayment of the rent or in an action for rent where the tenant is in possession, the tenant may counterclaim for an amount which the tenant may recover under the rental agreement or this chapter. In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If rent does not remain due after application of this section, judgment shall be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith the landlord may recover reasonable attorney's fees.

2. In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in subsection 1, but the tenant is not required to pay any rent into court.

[C79, 81, §562A.24]

562A.25 Fire or casualty damage.

1. If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

a. Immediately vacate the premises and notify the landlord in writing within fourteen days of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

b. If continued occupancy is lawful, vacate a part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

2. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable under section 562A.12. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty.

[C79, 81, §562A.25]

562A.26 Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service.

If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover the actual damages sustained by the tenant and reasonable attorney's fees. If the rental agreement is terminated, the landlord shall return all prepaid rent and security.

[C79, 81, §562A.26]

PART 2

LANDLORD REMEDIES

562A.27 Noncompliance with rental agreement — failure to pay rent.

1. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section 562A.17 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement.

2. If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

3. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or section 562A.17 unless the tenant demonstrates affirmatively that the tenant has exercised due diligence and effort to remedy any noncompliance, and that the tenant's failure to remedy any noncompliance was due to circumstances beyond the tenant's control. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

4. In any action by a landlord for possession based upon nonpayment of rent, proof by the tenant of the following shall be a defense to any action or claim for possession by the landlord, and the amounts expended by the claimant in correcting the deficiencies shall be deducted from the amount claimed by the landlord as unpaid rent:

a. That the landlord failed to comply either with the rental agreement or with section 562A.15; and

b. That the tenant notified the landlord at least seven days prior to the due date of the tenant's rent payment of the tenant's intention to correct the condition constituting the breach referred to in paragraph *"a"* at the landlord's expense; and

c. That the reasonable cost of correcting the condition constituting the breach is equal to or less than one month's periodic rent; and

d. That the tenant in good faith caused the condition constituting the breach to be corrected prior to receipt of written notice of the landlord's intention to terminate the rental agreement for nonpayment of rent.

[C79, 81, §562A.27]

95 Acts, ch 125, §6, 7

562A.27A Termination for creating a clear and present danger to others.

1. Notwithstanding section 562A.27 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on

or within one thousand feet of the landlord's property, the landlord, after a single three days' written notice of termination and notice to quit, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the incident or incidents giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.

2. A clear and present danger to the health or safety of other tenants, the landlord, the landlord's employees or agents, or other persons on or within one thousand feet of the landlord's property includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:

a. Physical assault or the threat of physical assault.

b. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.

c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner while acting in the course of the practitioner's professional practice. This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.

3. This section shall not apply to a tenant if the activities causing the clear and present danger, as defined in subsection 2, are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activities:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

b. The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate a criminal action against the person conducting the activities.

c. The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has previously written a letter to the person as provided in this paragraph, without taking an action specified in paragraph *"a"* or *"b"* or filing a trespass or other action, and the person to whom the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in paragraph *"a"* or *"b"* to be exempt from proceedings pursuant to subsection 1.

However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of the measures specified in paragraphs *"a"* through *"c"*.

92 Acts, ch 1211, §1; 95 Acts, ch 125, §8, 9; 98 Acts, ch 1090, §71, 84

562A.28 Failure to maintain.

If there is noncompliance by the tenant with section 562A.17, materially affecting health and safety, that can be remedied by repair or replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within seven days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a competent manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value of it as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment.

[C79, 81, §562A.28]

85 Acts, ch 67, §50; 95 Acts, ch 125, §10

562A.29 Remedies for absence, nonuse and abandonment.

1. If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence as provided in section 562A.20, and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

2. During an absence of the tenant in excess of fourteen days, the landlord may enter the dwelling unit at times reasonably necessary.

3. If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. The rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment, if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender. If the tenancy is from month-to-month, or week-to-week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be.

[C79, 81, §562A.29]

562A.29A Method of notice and service of process.

Notwithstanding sections 631.4 and 648.5, the written notice of termination required by section 562A.27, subsection 1 or 2, a notice of termination and notice to quit under section 562A.27A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, may be served upon the tenant in any of the following ways:

1. By personal service.

2. By sending notice by certified or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice.

92 Acts, ch 1211, §2; 96 Acts, ch 1203, §3; 99 Acts, ch 155, §7, 14

562A.30 Waiver of landlord's right to terminate.

Acceptance of performance by the tenant that varies from the terms of the rental agreement or rules subsequently adopted by the landlord constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

[C79, 81, §562A.30]

562A.31 Landlord liens — distress for rent.

1. A lien on behalf of the landlord on the tenant's household goods is not enforceable unless perfected before January 1, 1979.

2. Distraint for rent is abolished.

[C79, 81, §562A.31]

562A.32 Remedy after termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in section 562A.27.

[C79, 81, §562A.32]

562A.33 Recovery of possession limited.

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this chapter.

[C79, 81, §562A.33]

PART 3

PERIODIC TENANCY — HOLDOVER — ABUSE OF ACCESS

562A.34 Periodic tenancy — holdover remedies.

1. The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten days prior to the termination date specified in the notice.

2. The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

3. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith the landlord, in addition, may recover the actual damages sustained by the landlord and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, section 562A.9, subsection 4 applies.

[C79, 81, §562A.34]

562A.35 Landlord and tenant remedies for abuse of access.

1. If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fee.

2. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages not less than an amount equal to one month's rent and reasonable attorney's fees.

[C79, 81, §562A.35]

ARTICLE V

RETALIATORY ACTION

562A.36 Retaliatory conduct prohibited.

1. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:

a. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;

b. The tenant has complained to the landlord

of a violation under section 562A.15; or

c. The tenant has organized or become a member of a tenants' union or similar organization.

2. If the landlord acts in violation of subsection 1 of this section, the tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney's fees, and has a defense in action against the landlord for possession. In an action by or against the tenant, evidence of a good faith complaint within one year prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. Evidence by the landlord that legitimate costs and charges of owning, maintaining or operating a dwelling unit have increased shall be a defense against the presumption of retaliation when a rent increase is commensurate with the increase in costs and charges. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

3. Notwithstanding subsections 1 and 2 of this section, a landlord may bring an action for possession if:

a. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with the tenant's consent;

b. The tenant is in default in rent; or

c. Compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit. The maintenance of the action does not release the landlord from liability under section 562A.21, subsection 2.

[C79, 81, §562A.36]

ARTICLE VI

EFFECTIVE DATE

562A.37 Applicability.

This chapter shall apply to rental agreements entered into or extended or renewed after January 1, 1979.

[C79, 81, §562A.37]

CHAPTER 562B

MANUFACTURED HOME COMMUNITIES OR MOBILE HOME PARKS RESIDENTIAL LANDLORD AND TENANT LAW

Not applicable to recreational mobile home parks; see §435.1
Eviction or distress for rent during military service; termination of leases; §29A.101

DIVISION I

GENERAL PROVISIONS

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562B.3 Supplementary principles of law applicable.
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562B.7 General definitions.
562B.8 Unconscionability.
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562B.9A Computation of time.
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562B.14 Disclosure and tender of written rental agreement.
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DIVISION III

TENANT OBLIGATIONS

562B.18 Tenant to maintain mobile home space — notice of vacating.
562B.19 Rules and regulations.
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DIVISION I

GENERAL PROVISIONS

562B.1 Short title.

This chapter shall be known and may be cited as the *"Manufactured Home Communities or Mobile Home Parks Residential Landlord and Tenant Act"*.

[C79, 81, §562B.1]
2001 Acts, ch 153, §16

562B.2 Purposes.

Underlying purposes and policies of this chapter are:

1. To simplify, clarify and establish the law governing the rental of manufactured or mobile home spaces and rights and obligations of landlord and tenant.

2. To encourage landlord and tenant to maintain and improve the quality of manufactured or mobile home living.

[C79, 81, §562B.2]
2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

562B.3 Supplementary principles of law applicable.

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions.

[C79, 81, §562B.3]

562B.4 Administration of remedies — enforcement.

1. The remedies provided by this chapter shall be so administered that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

2. Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

[C79, 81, §562B.4]

562B.5 Exclusions from application of chapter.

The provisions of this chapter shall not apply to an occupancy in or operation of public housing as authorized, provided or conducted pursuant to chapter 403A, or pursuant to any federal law or regulation with which it might conflict.

[C79, 81, §562B.5]

562B.6 Jurisdiction and service of process.

1. The appropriate district court of this state may exercise jurisdiction over a landlord or tenant with respect to conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter. An action under this chapter may be brought as a small claim pursuant to the provisions of chapter 631. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord or tenant may be acquired in a civil action or proceeding instituted in the appropriate district court by the service of process in the manner provided by this section.

2. If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engages in conduct in this state governed by this chapter, or engages in a transaction subject to this chapter, the landlord shall designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and filed with the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but the plaintiff or petitioner shall forthwith mail a copy of this process and pleading by certified mail, return receipt requested, to the defendant or respondent at that person's last reasonably ascertained address. If there is no last reasonably ascertainable address and if the defendant or respondent has not complied with section 562B.14, subsections 1 and 2, then service upon the secretary of state shall be sufficient service of process without the mailing of copies to the defendant or respondent. Service of process shall be deemed complete and the time shall begin to run for the purposes of this section at the time of service upon the secretary of state. The defendant shall appear and answer within thirty days after completion

thereof in the manner and under the same penalty as if defendant had been personally served with the summons. An affidavit of compliance with this section shall be filed with the clerk of the district court on or before the return day of the process, or within any further time the court allows.

[C79, 81, §562B.6]

562B.7 General definitions.

Subject to additional definitions contained in subsequent sections of this chapter which apply to specific sections thereof, and unless the context otherwise requires, in this chapter:

1. *"Building and housing codes"* include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any manufactured home community or mobile home park, dwelling unit, or manufactured or mobile home space.

2. *"Business"* includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity which is a landlord, owner, manager, or constructive agent pursuant to section 562B.14.

3. *"Dwelling unit"* excludes real property used to accommodate a manufactured or mobile home.

4. *"Landlord"* means the owner, lessor, or sublessor of a manufactured home community or a mobile home park and it also means a manager of the manufactured home community or a mobile home park who fails to disclose as required by section 562B.14.

5. *"Manufactured home community"* means the same as land-leased community defined in sections 335.30A and 414.28A.

6. *"Mobile home"* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. References in this chapter to *"mobile home"* include *"manufactured homes"* and *"modular homes"* as those terms are defined in section 435.1, if the manufactured homes or modular homes are located in a manufactured home community or a mobile home park.

7. *"Mobile home park"* shall mean any site, lot, field or tract of land upon which three or more mobile homes, manufactured homes, or modular homes or a combination of any of these homes are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available.

8. *"Mobile home space"* means a parcel of land for rent which has been designed to accommodate a mobile home and provide the required sewer and utility connections.

9. *"Owner"* means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property or all or part of the beneficial ownership and a right to present use and enjoyment of the manufactured home community or the mobile home park. The term includes a mortgagee in possession.

10. *"Rent"* means a payment to be made to the landlord under the rental agreement.

11. *"Rental agreement"* means agreements, written or those implied by law, and valid rules and regulations adopted under section 562B.19 embodying the terms and conditions concerning the use and occupancy of a mobile home space.

12. *"Rental deposit"* means a deposit of money to secure performance of a mobile home space rental agreement under this chapter other than a deposit which is exclusively in advance payment of rent.

13. *"Tenant"* means a person entitled under a rental agreement to occupy a mobile home space to the exclusion of others.

[C79, 81, §562B.7]

94 Acts, ch 1110, §23; 97 Acts, ch 121, §32; 2001 Acts, ch 153, §13

562B.8 Unconscionability.

1. If the court, as a matter of law, finds that:

a. A rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

b. A settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid any unconscionable result.

2. If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or settlement to aid the court in making the determination.

[C79, 81, §562B.8]

562B.9 Notice.

A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. In the case of the landlord, notice is received when it comes to the landlord's attention or when it is delivered in hand or mailed by certified mail or re-

stricted certified mail, as defined in section 618.15, whether or not the landlord signs a receipt for the notice, to the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication or delivered to any individual who is designated as an agent by section 562B.14. In the case of the tenant, notice is received when it comes to the tenant's attention or when it is delivered in hand to the tenant or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice, to the tenant at the place held out by the tenant as the place for receipt of the communication or, in the absence of such designation, to the tenant's last known place of residence other than the landlord's mobile home or space.

Any notice required under this chapter, except a written notice of termination required by section 562B.25, subsection 1 or 2, a notice of termination and notice to quit under section 562B.25A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, shall be deemed legally sufficient notice if made by posting at or delivering to each manufactured or mobile home space. The date of posting of the notice shall be written on the notice.

[C79, 81, §562B.9]

96 Acts, ch 1203, §4, 5; 99 Acts, ch 155, §8, 14; 2001 Acts, ch 153, §14

562B.9A Computation of time.

The calculation of all time periods required under this chapter shall be made in accordance with section 4.1, subsection 34.

99 Acts, ch 155, §9, 14

562B.10 Terms and conditions of rental agreement.

1. The landlord and tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

2. The tenant shall pay as rent the amount stated in the rental agreement. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the mobile home space.

3. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed periodic rent is payable at the beginning of any term and thereafter in equal monthly installments. Rent shall be uniformly apportionable from day to day.

4. Rental agreements shall be for a term of one year unless otherwise specified in the rental agreement. Rental agreements shall be canceled by at least sixty days' written notice given by either party. A landlord shall not cancel a rental agreement solely for the purpose of making the tenant's mobile home space available for another mobile home.

5. If a tenant should die, the surviving joint tenant or tenant in common in the mobile home shall continue as tenant with all rights, privileges and liabilities as the original tenant.

6. If a tenant who was sole owner of a mobile home dies during the term of a rental agreement then that person's heirs or legal representative or the landlord shall have the right to cancel the tenant's lease by giving sixty days' written notice to the person's heirs or legal representative or to the landlord, whichever is appropriate, and the heirs or the legal representative shall have the same rights, privileges and liabilities of the original tenant.

7. Improvements, except a natural lawn, purchased and installed by a tenant on a mobile home space shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy, provided that a tenant shall leave the mobile home space in substantially the same or better condition than upon taking possession.

[C79, 81, §562B.10]

562B.11 Prohibited provisions in rental agreements.

1. A rental agreement shall not provide that the tenant or landlord does any of the following:

a. Agrees to waive or to forego rights or remedies under this chapter.

b. Agrees to pay the other party's attorney fees.

c. Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.

d. Agrees to a designated agent for the sale of tenant's mobile home.

2. A provision prohibited by subsection 1 of this section included in a rental agreement is unenforceable. If a landlord or tenant knowingly uses a rental agreement containing provisions known to be prohibited by this chapter, the other party may recover actual damages sustained.

Nothing in this chapter shall prohibit a rental agreement from requiring a tenant to maintain liability insurance which names the landlord as an insured as relates to the mobile home space rented by the tenant.

[C79, 81, §562B.11]

562B.12 Separation of rents and obligations to maintain property forbidden.

A rental agreement, assignment, conveyance, trust deed or security instrument shall not permit

the receipt of rent, unless the landlord has agreed to comply with section 562B.16, subsection 1.

[C79, 81, §562B.12]

DIVISION II

LANDLORD OBLIGATIONS

562B.13 Rental deposits.

1. A landlord shall not demand or receive as a security deposit an amount or value in excess of two months' rent.

2. All rental deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank, credit union or savings and loan association which is insured by an agency of the federal government. Rental deposits shall not be commingled with the personal funds of the landlord. All rental deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a rental deposit shall be the property of the landlord.

3. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the manufactured or mobile home space, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

a. To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

b. To restore the manufactured or mobile home space to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

c. To remove, store, and dispose of a manufactured or mobile home if it is abandoned as defined in section 562B.27.

4. In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

5. A landlord who fails to provide a written statement within thirty days of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy the rental deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the rental deposit.

6. Upon termination of a landlord's interest in the manufactured home community or mobile home park, the landlord or the landlord's agent shall, within a reasonable time, transfer the rental deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant.

Upon the termination of the landlord's interest in the manufactured home community or mobile home park and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the rental deposit.

7. Upon termination of the landlord's interest in the manufactured home community or mobile home park, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the rental deposits, except that if the tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of rental deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to the landlord's successor and may be given by mail or by personal service.

8. The bad faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed two hundred dollars in addition to actual damages.

[C79, 81, §562B.13]

88 Acts, ch 1138, §15; 93 Acts, ch 154, §14; 2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80

562B.14 Disclosure and tender of written rental agreement.

1. The landlord shall offer the tenant the opportunity to sign a written agreement for a mobile home space.

2. The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before entering into the rental agreement the name and address of:

a. The person authorized to manage the manufactured home community or mobile home park.

b. The owner of the manufactured home community or mobile home park or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

3. The information required to be furnished by this section shall be kept current and refurnished to the tenant upon the tenant's request. When there is a new owner or operator this section extends to and is enforceable against any successor landlord, owner or manager.

4. A person who fails to comply with subsections 1 and 2 becomes an agent of each person who is a landlord for the following purposes:

a. Service of process and receiving and receipting for notices and demands.

b. Performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the purpose all rent collected from the manufactured home community or mobile home park.

5. If there is a written rental agreement, the landlord must tender and deliver a signed copy of the rental agreement to the tenant and the tenant must sign and deliver to the landlord one fully executed copy of such rental agreement within ten days after the agreement is executed. Noncompliance with this subsection shall be deemed a material noncompliance by the landlord or the tenant, as the case may be, of the rental agreement.

6. The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall provide a written explanation of utility rates, charges and services to the prospective tenant before the rental agreement is signed unless the utility charges are paid by the tenant directly to the utility company.

7. Each tenant shall be notified, in writing, of any rent increase at least sixty days before the effective date. Such effective date shall not be sooner than the expiration date of the original rental agreement or any renewal or extension thereof.

[C79, 81, §562B.14]

2001 Acts, ch 153, §16

562B.15 Landlord to deliver possession of mobile home space.

At the commencement of the term the landlord shall deliver possession of the mobile home space to the tenant in compliance with the rental agreement and section 562B.16. The landlord may bring an action for possession against a person wrongfully in possession and may recover the damages provided in section 562B.30, subsection 2.

[C79, 81, §562B.15]

88 Acts, ch 1158, §94; 2001 Acts, ch 153, §16; 2002 Acts, ch 1050, §60, 65

562B.16 Landlord to maintain fit premises.

1. The landlord shall:

a. Comply with the requirements of all applicable city, county and state codes materially affecting health and safety which are primarily imposed upon the landlord.

b. Make all repairs and do whatever is necessary to put and keep the mobile home space in a fit and habitable condition.

c. Keep all common areas of the manufactured home community or mobile home park in a clean and safe condition.

d. Maintain in good and safe working order and condition all facilities supplied or required to be supplied by the landlord.

e. Provide for removal of garbage, rubbish, and other waste from the manufactured home community or mobile home park.

f. Furnish outlets for electric, water and sewer services.

2. A landlord shall not impose any conditions of rental or occupancy which restrict the tenant in the choice of a seller of fuel, furnishings, goods, services or mobile homes connected with the rental or occupancy of a mobile home space unless such condition is necessary to protect the health, safety, aesthetic value or welfare of mobile home tenants in the manufactured home community or park. The landlord may impose reasonable requirements designed to standardize methods of utility connection and hookup. If any such conditions are imposed which result in charges for such goods or services, the charges shall not exceed the actual cost incurred in providing the tenant with such goods or services.

[C79, 81, §562B.16]

2001 Acts, ch 153, §16

562B.17 Limitation of liability.

1. A landlord who conveys a manufactured home community or mobile home park in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance.

2. A manager of a manufactured home community or mobile home park is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the person's management, except such notice shall not terminate any agreement or legal liability arising prior to the notice.

[C79, 81, §562B.17]

2001 Acts, ch 153, §16

DIVISION III

TENANT OBLIGATIONS

562B.18 Tenant to maintain mobile home space — notice of vacating.

A tenant shall maintain the mobile home space in as good a condition as when the tenant took possession and shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of city, county and state codes materially affecting health and safety.

2. Keep that part of the manufactured home community or mobile home park that the tenant occupies and uses reasonably clean and safe.

3. Dispose from the tenant's mobile home

space all rubbish, garbage and other waste in a clean and safe manner.

4. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the manufactured home community or mobile home park or knowingly permit any person to do so.

5. Act and require other persons in the manufactured home community or mobile home park with the tenant's consent to act in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the manufactured home community or mobile home park.

6. Maintain in good and safe working order all utility lines, pipes, and cables extending from the mobile home to outlets provided by the landlord for electric, water, sewer, and other services. This subsection shall not apply to a tenant who does not own the mobile home.

[C79, 81, §562B.18]

85 Acts, ch 67, §51; 99 Acts, ch 155, §10, 14; 2001 Acts, ch 153, §16

562B.19 Rules and regulations.

1. A landlord may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the manufactured home community or mobile home park. Such rules or regulations are enforceable against the tenant only if they are written and if:

a. Their purpose is to promote the convenience, safety or welfare of the tenants in the manufactured home community or mobile home park, to preserve the landlord's property from abuse, to make a fair distribution of services and facilities held out for the tenants generally, or to facilitate manufactured home community or mobile home park management.

b. They are reasonably related to the purpose for which adopted.

c. They apply to all tenants in the manufactured home community or mobile home park in a fair manner.

d. They are sufficiently explicit in prohibition, direction or limitation of the tenant's conduct to fairly inform that person of what must or must not be done to comply.

e. They are not for the purpose of evading the obligations of the landlord.

f. The prospective tenant is given a copy of them before the rental agreement is entered into.

2. Notice of all such additions, changes, deletions or amendments shall be given to all mobile home tenants thirty days before they become effective. Any rule or condition of occupancy which is unfair and deceptive or which does not conform to the requirements of this chapter shall be unenforceable. A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant only if it does not work a substantial modification of that person's rental agreement.

3. A landlord shall not:

a. Deny rental unless the tenant or prospective tenant cannot conform to manufactured home community or park rules and regulations.

b. Require any person as a precondition to renting, leasing or otherwise occupying or removing from a mobile home space in a manufactured home community or mobile home park to pay an entrance or exit fee of any kind unless for services actually rendered or pursuant to a written agreement.

c. Deny any resident of a manufactured home community or mobile home park the right to sell that person's mobile home at a price of the person's own choosing, but may reserve the right to approve the purchaser of such mobile home as a tenant but such permission may not be unreasonably withheld, provided however, that the landlord may, in the event of a sale to a third party, in order to upgrade the quality of the manufactured home community or mobile home park, require that any mobile home in a rundown condition or in disrepair be removed from the manufactured home community or park within sixty days.

d. Exact a commission or fee with respect to the price realized by the tenant selling the tenant's mobile home, unless the manufactured home community or park owner or operator has acted as agent for the mobile home owner pursuant to a written agreement.

e. Require tenant to furnish permanent improvements which cannot be removed without damage thereto or to the mobile home space by tenant at expiration of the rental agreement.

f. Prohibit meetings between tenants in the manufactured home community or mobile home park relating to mobile home living and affairs in the manufactured home community or park community or recreational hall if such meetings are held at reasonable hours and when the facility is not otherwise in use.

[C79, 81, §562B.19]

2001 Acts, ch 153, §16

562B.20 Access.

1. A landlord shall not have the right of access to a mobile home owned by a tenant unless such access is necessary to prevent damage to the mobile home space or is in response to an emergency situation.

2. The landlord may enter onto the mobile home space in order to inspect the mobile home space, make necessary or agreed repairs or improvements, supply necessary or agreed services or exhibit the mobile home space to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

[C79, 81, §562B.20]

562B.21 Tenant to occupy as a dwelling unit — authority to sublet.

The tenant shall occupy the tenant's mobile home only as a dwelling unit and may rent the mobile home to another, only upon written agreement with the park management.

[C79, 81, §562B.21]

DIVISION IV

REMEDIES

562B.22 Noncompliance by the landlord.

1. Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days. If there is a noncompliance by the landlord with section 562B.16 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days. The rental agreement shall terminate and the mobile home space shall be vacated as provided in the notice subject to the following:

a. If the breach is remediable by repairs or the payment of damages or otherwise and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate.

b. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family or other person in the manufactured home community or mobile home park with the tenant's consent.

2. Except as provided in this chapter, the tenant may recover damages, and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or with section 562B.16.

3. The remedy provided in subsection 2 of this section is in addition to any right of the tenant arising under subsection 1 of this section.

[C79, 81, §562B.22]

2001 Acts, ch 153, §16

562B.23 Failure to deliver possession.

1. If the landlord fails to deliver physical possession of the mobile home space to the tenant as provided in section 562B.15, rent abates until possession is delivered and the tenant may do either of the following:

a. Upon written notice to the landlord, terminate the rental agreement and at that time the landlord shall return all deposits.

b. Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the mobile home space against the landlord and recover the damages sustained by the tenant plus reasonable attorney's fees and court costs.

2. If the landlord delivers physical possession to the tenant but fails to comply with section 562B.16 at the time of delivery, rent shall not abate. The tenant may also proceed with the remedies provided for in section 562B.22.

[C79, 81, §562B.23]

2001 Acts, ch 153, §16; 2002 Acts, ch 1050, §60, 65

562B.24 Tenant's remedies for landlord's unlawful ouster, exclusion or diminution of services.

If the landlord unlawfully removes or excludes the tenant from the manufactured home community or mobile home park or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession, require the restoration of essential services or terminate the rental agreement and, in either case, recover an amount not to exceed two months' periodic rent and twice the actual damages sustained by the tenant.

[C79, 81, §562B.24]

2001 Acts, ch 153, §16

562B.25 Noncompliance with rental agreement by tenant — failure to pay rent.

1. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days. If there is a noncompliance by the tenant with section 562B.18 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days. However, if the breach is remediable by repair or the payment of damages or otherwise, and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission, which constituted a prior noncompliance of which notice was given, recurs within six months, the landlord may terminate the rental agreement upon at least four-

teen days' written notice specifying the breach and the date of termination of the rental agreement.

2. If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

3. Except as otherwise provided in this chapter, the landlord may recover damages, obtain injunctive relief or recover possession of the mobile home space pursuant to an action in forcible detainer for any material noncompliance by the tenant with the rental agreement or with section 562B.18.

4. The remedy provided in subsection 3 of this section is in addition to any right of the landlord arising under subsection 1 of this section.

[C79, 81, §562B.25]

93 Acts, ch 154, §15

562B.25A Termination for creating a clear and present danger to others.

1. Notwithstanding section 562B.25 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after a single three days' written notice of termination and notice to quit, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the incident or incidents giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.

2. A clear and present danger to the health or safety of other tenants, the landlord, the landlord's employees or agents, or other persons on or within one thousand feet of the landlord's property includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:

a. Physical assault or the threat of physical assault.

b. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.

c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner while acting in the course of the practitioner's professional practice. This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.

3. This section shall not apply to a tenant if the activities causing the clear and present danger, as defined in subsection 2, are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activities:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

b. The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate a criminal action against the person conducting the activities.

c. The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has previously written a letter to the person as provided in this paragraph, without taking an action specified in paragraph *"a"* or *"b"* or filing a trespass or other action, and the person to whom the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in paragraph *"a"* or *"b"* to be exempt from proceedings pursuant to subsection 1.

However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of the measures specified in paragraphs *"a"* through *"c"*.

92 Acts, ch 1211, §3; 95 Acts, ch 125, §11, 12; 98 Acts, ch 1090, §72, 84

562B.26 Failure to maintain by tenant.

If there is noncompliance by the tenant with section 562B.18 materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the mobile home space, and cause the work to be done in a skillful manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as additional rent on the next date when periodic rent is due, or if the rental agreement was terminated, for immediate payment.

[C79, 81, §562B.26]

562B.27 Remedies for abandonment — required registration.

1. A tenant is considered to have abandoned a mobile home when the tenant has been absent from the mobile home without reasonable explanation for thirty days or more during which time there is either a default of rent three days after rent is due, or the rental agreement is terminated pursuant to section 562B.25. A tenant's return to the mobile home does not change its status as abandoned unless the tenant pays to the landlord all costs incurred for the mobile home space, including costs of removal, storage, notice, attorneys' fees, and all rent and utilities due and owing.

2. When a mobile home is abandoned on a mobile home space:

a. If a tenant abandons a mobile home on a mobile home space, the landlord shall notify the mobile home owner or other claimant of the mobile home and communicate to that person that the person is liable for any costs incurred for the mobile home space, including rent and utilities due and owing. A claimant includes a holder of a lien as defined in section 555B.2. However, the person is only liable for costs incurred ninety days before the landlord's communication. After the landlord's communication, costs for which liability is incurred shall then become the responsibility of the mobile home owner or other claimant of the mobile home. The mobile home shall not be removed from the mobile home space without a signed written agreement from the landlord showing clearance for removal, and that all debts are paid in full, or an agreement reached with the mobile home owner or other claimant and the landlord.

b. If there is no lien on the mobile home other than a lien for taxes, the landlord may follow the procedure in chapter 555B to dispose of the mobile home.

c. An action pursuant to chapter 555B may be combined with an action for possession under chapter 648 or an action for damages under section 562B.30.

3. A required standardized registration form shall be filled out by each tenant upon the rental of a mobile home space, showing the mobile home make, year, serial number, and also showing if the mobile home is paid for, if there is a lien on the mobile home, and if so the lienholder, and the name of the legal owner of the mobile home. The registration forms shall be kept on file with the landlord as long as the mobile home is on the mobile home space within the mobile home park. The tenant shall give notice to the landlord within ten days of any new lien, change of existing lien, or settlement of lien.

[C79, 81, §562B.27; 81 Acts, ch 183, §1]

83 Acts, ch 102, §1; 88 Acts, ch 1138, §16; 93 Acts, ch 154, §16, 17; 99 Acts, ch 155, §11, 14

562B.27A Method of notice and service of process.

Notwithstanding sections 631.4 and 648.5, the written notice of termination required by section 562B.25, subsection 1 or 2, a notice of termination and notice to quit under section 562B.25A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, may be served upon the tenant in any of the following ways:

1. By personal service.

2. By sending notice by certified or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice.

92 Acts, ch 1211, §4; 96 Acts, ch 1203, §6; 99 Acts, ch 155, §12, 14

562B.28 Waiver of landlord's right to terminate.

Acceptance of performance by the tenant that varied from the terms of the rental agreement or rules subsequently adopted by the landlord constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

[C79, 81, §562B.28]

562B.29 Repealed by 81 Acts, ch 183, § 3.

562B.30 Periodic tenancy — holdover remedies.

1. The landlord may terminate a tenancy only as provided in this chapter.

2. Notwithstanding section 648.19, if the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and recover actual damages. If the tenant's holdover is willful and not in good faith the landlord in addition may recover an amount not to exceed two months' periodic rent and twice the actual damages sustained by the landlord. In any event, the landlord may recover reasonable attorney's fees and court costs.

[C79, 81, §562B.30]

562B.31 Landlord and tenant remedies for abuse of access to mobile home space.

1. If the tenant refuses to allow lawful access to the mobile home space, the landlord may terminate the rental agreement and may recover actual damages.

2. If the landlord makes an unlawful entry or a lawful entry to the mobile home space in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the re-

currence of the conduct or terminate the rental agreement. In either case, the tenant may recover actual damages not less than an amount equal to one month's rent plus attorney's fees.

[C79, 81, §562B.31]

562B.32 Retaliatory conduct prohibited.

1. Except as provided in this section, a landlord shall not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by failing to renew a rental agreement after any of the following:

a. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the manufactured home community or mobile home park materially affecting health and safety. For this subsection to apply, a complaint filed with a governmental body must be in good faith.

b. The tenant has complained to the landlord of a violation under section 562B.16.

c. The tenant has organized or become a member of a tenant's union or similar organization.

d. For exercising any of the rights and remedies pursuant to this chapter.

2. If the landlord acts in violation of subsection 1 of this section, the tenant is entitled to the remedies provided in section 562B.24 and has a defense in an action for possession. In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. For the purpose of this subsection, "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

3. Notwithstanding subsections 1 and 2 of this section, a landlord may bring an action for possession if either of the following occurs:

a. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the household or upon the premises with the tenant's consent.

b. The tenant is in default of rent three days after rent is due. The maintenance of the action does not release the landlord from liability under section 562B.22, subsection 2.

[C79, 81, §562B.32; 82 Acts, ch 1100, §25]
2001 Acts, ch 153, §16

CHAPTER 562C

DISPOSAL OF ABANDONED MOBILE HOMES AND PERSONAL PROPERTY

Transferred to chapter 555B

CHAPTER 563

WALLS IN COMMON

563.1 Resting wall on neighbor's land.
563.2 Contribution by adjoining owner.
563.3 Openings in walls.
563.4 Repairs — apportionment.
563.5 Beams, joists and flues.
563.6 Increasing height of wall.
563.7 Rebuilding in order to heighten.
563.8 Heightened wall made common.
563.9 Paying for share of adjoining wall.
563.10 Openings in walls — fixtures.
563.11 Disputes — delay — bonds.
563.12 Special agreements — evidence.

563.1 Resting wall on neighbor's land.

Where building lots have been surveyed and plats thereof recorded, anyone who is about to build contiguous to the land of another may, if there be no wall on the line between them, build a brick, reinforced concrete, or stone wall thereon, when the whole thickness of such wall above the cellar wall does not exceed eighteen inches exclusive of the plastering, and rest one-half thereof on the adjoining land, but the adjoining owner shall not be compelled to contribute to the expense of building said wall.

[R60, §1914; C73, §2019; C97, §2994; C24, 27, 31, 35, 39, §**10163;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.1]

563.2 Contribution by adjoining owner.

If the adjoining owner contributes one-half of the expense of building such wall, then it is a wall in common between them, but if the adjoining owner refuses to contribute, the adjoining owner shall have the right to make it a wall in common by paying to the person who erected or maintained it one-half of its appraised value at the time of using it.

[R60, §1915; C73, §2020; C97, §2995; C24, 27, 31, 35, 39, §**10164;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.2]

563.3 Openings in walls.

No wall shall be built by any person partly on the land of another with any openings therein, and every separating wall between buildings shall, as high as the upper part of the first story, be presumed to be a wall in common, if there be no titles, proof, or mark to the contrary, and if any wall is erected which, under the provisions of this chapter, becomes, or may become, at the option of another, a wall in common, such person shall not be compelled to contribute to the expense of closing any openings therein, but this shall be done at the expense of the owner of such wall.

[R60, §1916; C73, §2021; C97, §2996; C24, 27, 31, 35, 39, §**10165;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.3]

563.4 Repairs — apportionment.

The repairs and rebuilding of walls in common are to be made at the expense of all who have a right to them, and in proportion to the interest of each therein, but every coproprietor of a wall in common may be exonerated from contributing to the same by giving up the coproprietor's right in common, if no building belonging to that person is actually supported by such wall.

[R60, §1917; C73, §2022; C97, §2997; C24, 27, 31, 35, 39, §**10166;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.4]

563.5 Beams, joists and flues.

Every coproprietor may build against a wall held in common, and cause beams or joists to be placed therein; and any person building such a wall shall, on being requested by the other coproprietor, make the necessary flues, and leave the necessary bearings for joists or beams, at such height and distance apart as shall be specified by the other coproprietor.

[R60, §1918; C73, §2023; C97, §2998; C24, 27, 31, 35, 39, §**10167;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.5]

563.6 Increasing height of wall.

Every coproprietor may increase the height of a wall in common at the coproprietor's sole expense, and that person shall repair and keep in repair that part of the same above the part held in common.

[R60, §1919; C73, §2024; C97, §2999; C24, 27, 31, 35, 39, §**10168;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.6]

563.7 Rebuilding in order to heighten.

If the wall so held in common cannot support the wall to be raised upon it, one who wishes to have it made higher must rebuild it anew and at that person's own expense, and the additional thickness of the wall must be placed entirely on that person's own land.

[R60, §1920; C73, §2025; C97, §2999; C24, 27, 31, 35, 39, §**10169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.7]

563.8 Heightened wall made common.

The person who did not contribute to the heightening of a wall held in common may cause the raised part to become common by paying one-half of the appraised value of raising it, and half the value of the ground occupied by the additional thickness thereof, if any ground was so occupied.

[R60, §1921; C73, §2026; C97, §2999; C24, 27, 31, 35, 39, §**10170;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.8]

563.9 Paying for share of adjoining wall.

Every proprietor joining a wall has the right of making it a wall in common, in whole or in part, by repaying to the owner thereof one-half of its value, or one-half of the part which the proprietor wishes to hold in common, and one-half of the value of the ground on which it is built, if the person who has built it has laid the foundation entirely upon the person's own ground.

[R60, §1922; C73, §2027; C97, §3000; C24, 27, 31, 35, 39, §**10171;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.9]

563.10 Openings in walls — fixtures.

Adjoining owners of walls held in common shall not make openings or cavities therein, nor affix nor attach thereto any work or structure, without the consent of the other, or upon the other's refusal, without having taken all necessary precautions to guard against injury to the rights of the other, to be ascertained by persons skilled in building.

[R60, §1923; C73, §2028; C97, §3001; C24, 27, 31, 35, 39, §**10172;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.10]

563.11 Disputes — delay — bonds.

No dispute between adjoining owners as to the amount to be paid by one or the other, by reason of any of the matters provided in this chapter, shall delay the execution of the provisions of the same, if the party on whom the claim is made shall enter into bonds, with security, to the satisfaction of the clerk of the district court of the proper county, con-

ditioned that that party shall pay to the claimant whatever may be found to be due on the settlement of the matter between them, either in a court of justice or elsewhere; upon the presentation of such a bond, the clerk shall endorse approval thereon, and retain the same until demanded by the party for whose benefit it is executed.

[R60, §1924; C73, §2029; C97, §3002; C24, 27, 31, 35, 39, §**10173;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.11]

563.12 Special agreements — evidence.

This chapter shall not prevent adjoining proprietors from entering into special agreements about walls on the lines between them, but no evidence thereof shall be competent unless in writing, signed by the parties thereto or their lawfully authorized agents, or the guardian of either, if a minor, who shall have full authority to act for the guardian's ward in all matters relating to walls in common without an order of court therefor.

[R60, §1925; C73, §2030; C97, §3003; C24, 27, 31, 35, 39, §**10174;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §563.12]

Statute of frauds in general, §622.32

CHAPTER 564

EASEMENTS

564.1 Adverse possession — "use" as evidence.
564.2 Light and air.
564.3 Footway.
564.4 Notice to prevent acquisition.
564.5 Effect of notice.
564.6 Notice, service and record.
564.7 Evidence.
564.8 Action to establish.

564.1 Adverse possession — "use" as evidence.

In all actions hereafter brought, in which title to any easement in real estate shall be claimed by virtue of adverse possession thereof for the period of ten years, the use of the same shall not be admitted as evidence that the party claimed the easement as the party's right, but the fact of adverse possession shall be established by evidence distinct from and independent of its use, and that the party against whom the claim is made had express notice thereof; and these provisions shall apply to public as well as private claims.

[C73, §2031; C97, §3004; C24, 27, 31, 35, 39, §**10175;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.1]

564.2 Light and air.

Whoever has erected, or may erect, any house or other building near the land of another person, with windows overlooking such land, shall not, by the mere continuance of such windows, acquire any easement of light or air, so as to prevent the erection of any building on such land.

[C73, §2032; C97, §3005; C24, 27, 31, 35, 39, §**10176;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.2]

564.3 Footway.

No right of footway, except claimed in connection with a right to pass with carriages, shall be acquired by prescription or adverse use for any length of time.

[C73, §2033; C97, §3006; C24, 27, 31, 35, 39, §**10177;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.3]

564.4 Notice to prevent acquisition.

When any person is in the use of a way, privilege, or other easement in the land of another, the owner of the land in such case may give notice in writing to the person claiming or using the way, privilege, or easement of the owner's intention to dispute any right arising from such claim or use.

[C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §**10178;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.4]

564.5 Effect of notice.

Said notice, when served and recorded as hereinafter provided, shall be an interruption of such use, and prevent the acquiring of any right thereto by the continuance thereof.

[C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §**10179;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.5]

564.6 Notice, service and record.

Said notice, signed by the owner of the land, the owner's agent, or guardian, may be served in the same manner as in a civil action, upon the party, the party's agent, or guardian, if within this state, otherwise on the tenant or occupant, if there be any, and it, with the return thereof, shall be recorded within three months thereafter in the recorder's office of the county in which the land is situated.

[C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §**10180;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.6]

Manner of service, R.C.P. 1.302 – 1.315

564.7 Evidence.

A certified copy of such record of said notice and the officer's return thereon shall be evidence of the notice and the service thereof.

[C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §**10181;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.7]

564.8 Action to establish.

When notice is given to prevent the acquisition of a right to a way or other easement, it shall be considered so far a disturbance thereof as to enable the party claiming to bring an action for disturbing the same in order to try such right, and if the plaintiff in the action prevails, the plaintiff shall recover costs.

[C73, §2035; C97, §3008; C24, 27, 31, 35, 39, §**10182;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.8]

CHAPTER 564A

ACCESS TO SOLAR ENERGY

564A.1 Purpose.
564A.2 Definitions.
564A.3 Designation.
564A.4 Application for solar access easement.
564A.5 Decision.
564A.6 Removal of easement.
564A.7 Solar access easements.
564A.8 Restrictive covenants.
564A.9 Assistance to local government bodies and the public.

564A.1 Purpose.

It is the purpose of this chapter to facilitate the orderly development and use of solar energy by establishing and providing certain procedures for obtaining access to solar energy.

[81 Acts, ch 184, §3]

564A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Development of property"* means construction, landscaping, growth of vegetation, or other alteration of property that interferes with the operation of a solar collector.

2. *"Dominant estate"* means that parcel of land to which the benefits of a solar access easement attach.

3. *"Servient estate"* means land burdened by a solar access easement, other than the dominant estate.

4. *"Solar access easement"* means an easement recorded under section 564A.7, the purpose of which is to provide continued access to incident sunlight necessary to operate a solar collector.

5. *"Solar access regulatory board"* means the board designated by a city council or county board of supervisors under section 564A.3 to receive and act on applications for a solar access easement or in the absence of a specific designation, the district court having jurisdiction in the area where the dominant estate is located. Notwithstanding chapter 602 the jurisdiction of the district court established in this subsection may be exercised by district associate judges.

6. *"Solar collector"* means a device or structural feature of a building that collects solar energy and that is part of a system for the collection, storage, and distribution of solar energy. For purposes of this chapter, a greenhouse is a solar collector.

7. *"Solar energy"* means energy emitted from the sun and collected in the form of heat or light by a solar collector.

[81 Acts, ch 184, §4]

564A.3 Designation.

The city council or the county board of supervisors may designate a solar access regulatory board to receive and act on applications for a solar access easement. The board designated by the city council may be a board of adjustment having jurisdiction in the city, the city council itself, or any board with at least three members. The board designated by the county board of supervisors may be a board of adjustment having jurisdiction in the county, the board of supervisors itself, or any other board with at least three members. The jurisdiction of a board designated by the city council extends to applications when the dominant estate is located in the city. The jurisdiction of a board designated by the county board of supervisors extends to applications when the dominant estate is located in the county but outside the city limits of a city. In the absence of the designation of a specific board under this section, the district court having jurisdiction in the area where the dominant estate is located shall receive and act on applications sub-

mitted under section 564A.4 and to that extent shall serve as the solar access regulatory board for purposes of this chapter. Notwithstanding chapter 602 the jurisdiction of the district court established in this section may be exercised by district associate judges.

[81 Acts, ch 184, §5]

564A.4 Application for solar access easement.

1. An owner of property may apply to the solar access regulatory board designated under section 564A.3 for an order granting a solar access easement. The application must be filed before installation or construction of the solar collector. The application shall state the following:

a. A statement of the need for the solar access easement by the owner of the dominant estate.

b. A legal description of the dominant and servient estates.

c. The name and address of the dominant and servient estate owners of record.

d. A description of the solar collector to be used.

e. The size and location of the collector, including heights, its orientation with respect to south, and its slope from the horizontal shown either by drawings or in words.

f. An explanation of how the applicant has done everything reasonable, taking cost and efficiency into account, to design and locate the collector in a manner to minimize the impact on development of servient estates.

g. A legal description of the solar access easement which is sought and a drawing that is a spatial representation of the area of the servient estate burdened by the easement illustrating the degrees of the vertical and horizontal angles through which the easement extends over the burdened property and the points from which those angles are measured.

h. A statement that the applicant has attempted to voluntarily negotiate a solar access easement with the owner of the servient estate and has been unsuccessful in obtaining the easement voluntarily.

i. A statement that the space to be burdened by the solar access easement is not obstructed at the time of filing of the application by anything other than vegetation that would shade the solar collector.

2. Upon receipt of the application the solar access regulatory board shall determine whether the application is complete and contains the information required under subsection 1. The board may return an application for correction of any deficiencies. Upon acceptance of an application the board shall schedule a hearing. The board shall cause a copy of the application and a notice of the hearing to be served upon the owners of the servient estates in the manner provided for service of original notice and at least twenty days prior to the date of the hearing. The notice shall state that the solar access regulatory board will determine whether and to what extent a solar access easement will be granted, that the board will determine the compensation that may be awarded to the servient estate owner if the solar access easement is granted and that the servient estate owner has the right to contest the application before the board.

3. The applicant shall pay all costs incurred by the solar access regulatory board in copying and mailing the application and notice.

4. An application for a solar access easement submitted to the district court acting as the solar access regulatory board under this chapter is not subject to the small claims procedures under chapter 631.

[81 Acts, ch 184, §6]

564A.5 Decision.

1. After the hearing on the application, the solar access regulatory board shall determine whether to issue an order granting a solar access easement. The board shall grant a solar access easement if the board finds that there is a need for the solar collector, that the space burdened by the easement was not obstructed by anything except vegetation that would shade the solar collector at the time of filing of the application, that the proposed location of the collector minimizes the impact of the easement on the development of the servient estate and that the applicant tried and failed to negotiate a voluntary easement. However, the board may refuse to grant a solar access easement upon a finding that the easement would require the removal of trees that provide shade or a windbreak to a residence on the servient estate. The board shall not grant a solar access easement upon a servient estate if the board finds that the owner, at least six months prior to the filing of the application, has made a substantial financial commitment to build a structure that will shade the solar collector. In issuing its order granting the solar access easement, the board may modify the solar access easement applied for and impose conditions on the location of the solar collector that will minimize the impact upon the servient estate.

2. The solar access regulatory board shall grant a solar access easement only within the area that is within three hundred feet of the center of the northernmost boundary of the collector and is south of a line drawn east and west tangent to the northernmost boundary of the collector.

3. The solar access regulatory board shall determine the amount of compensation that is to be paid to the owners of the servient estate for the impairment of the right to develop the property. Compensation shall be based on the difference between the fair market value of the property prior to and after granting the solar access easement.

The parties shall be notified of the board's decision within thirty days of the date of the hearing. The owner of the dominant estate shall have thirty days from the date of notification of the board's decision to deposit the compensation with the board. Upon receipt of the compensation, the board shall issue an order granting the solar access easement to the owner of the dominant estate and remit the compensation awarded to the owners of the servient estate. The owner of the dominant estate may decline to deposit the compensation with the board, and no order granting the solar access easement shall then be issued.

4. When the order granting the solar access easement is issued, the owner of the dominant estate shall have it recorded in the office of the county recorder who shall record the solar access easement and list the owner of the dominant estate as grantee and the owner of the servient estate as grantor in the deed index. The solar access easement after being recorded shall be considered an easement appurtenant in or on the servient estate.

[81 Acts, ch 184, §7]

564A.6 Removal of easement.

The owner of a servient estate may apply to the solar access regulatory board or may petition the district court for an order removing a solar access easement granted by a solar access regulatory board under this chapter under any of the following conditions:

1. If the solar collector is not installed and made operational within two years of recording the easement under section 564A.5.

2. If the dominant estate owner ceases to use the solar collector for more than one year.

3. If the solar collector is destroyed or removed and not replaced within one year.

The procedure for filing an application with the solar access regulatory board under this section and for notice and hearings on the application shall be the same as that prescribed for an application for granting a solar access easement. An order issued by the district court or a solar access regulatory board removing a solar access easement may provide for the return by the servient estate owner of compensation paid by the dominant estate owner for the solar access easement after the deduction of reasonable expenses incurred by the servient estate owner in proceedings for the granting and removal of the easement.

[81 Acts, ch 184, §8]

564A.7 Solar access easements.

1. Persons, including public bodies, may voluntarily agree to create a solar access easement. A solar access easement whether obtained voluntarily or pursuant to the order of a solar access regulatory board is subject to the same recording and conveyance requirements as other easements.

2. A solar access easement shall be created in writing and shall include the following:

a. The legal description of the dominant and servient estates.

b. A legal description of the space which must remain unobstructed expressed in terms of the degrees of the vertical and horizontal angles through which the solar access easement extends over the burdened property and the points from which these angles are measured.

3. In addition to the items required in subsection 2 the solar access easement may include, but the contents are not limited to, the following:

a. Any limitations on the growth of existing and future vegetation or the height of buildings or other potential obstructions of the solar collector.

b. Terms or conditions under which the solar access easement may be abandoned or terminated.

c. Provisions for compensating the owner of the property benefiting from the solar access easement in the event of interference with the enjoyment of the solar access easement, or for compensating the owner of the property subject to the solar access easement for maintaining that easement.

[81 Acts, ch 184, §9]

564A.8 Restrictive covenants.

City councils and county boards of supervisors may include in ordinances relating to subdivisions a provision prohibiting deeds for property located in new subdivisions from containing restrictive covenants that include unreasonable restrictions on the use of solar collectors.

[81 Acts, ch 184, §10]

564A.9 Assistance to local government bodies and the public.

The department of natural resources shall make available information and guidelines to assist local government bodies and the public to understand and use the provisions of this chapter. The information and guidelines shall include an application form for a solar access easement, instructions and aids for preparing and recording solar access easements and model ordinances that promote reasonable access to solar energy.

[81 Acts, ch 184, §11]

CHAPTER 565

GIFTS

565.1 Churches may lease.
565.2 Taxation.
565.3 Gifts to state.
565.4 Management of property.
565.5 Gifts to state institutions.
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565.8 to 565.11 Repealed by 81 Acts, ch 117, §1097.
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565.13 Annuity tax.
565.14 Repealed by 81 Acts, ch 117, §1097.
565.15 Surplus of tax.

565.1 Churches may lease.

Church organizations, occupying real property granted to them by the territory or state, may lease the same for business purposes, and occupy other real property with their church edifices, but all of the income derived from such leased real property shall be devoted to maintaining the religious exercises and ordinance of the church to which the grant was originally made, and to no other purpose; and such churches and their affairs shall remain in the control of boards of trustees regularly chosen in accordance with their charters.

[C73, §1921; C97, §2902; C24, 27, 31, 35, 39, §**10183;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §565.1]

565.2 Taxation.

Real property so leased shall in all cases be subject to taxation, the same as the real property of natural persons.

[C73, §1921; C97, §2902; C24, 27, 31, 35, 39, §**10184;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §565.2]

Tax exemptions generally, §427.1

565.3 Gifts to state.

A gift, devise, or bequest of property, real or personal, may be made to the state, to be held in trust for and applied to any specified purpose within the scope of its authority, but the same shall not become effectual to pass the title in such property unless accepted by the governor on behalf of the state.

[C73, §1387; C97, §2903; C24, 27, 31, 35, 39, §**10185;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §565.3]

86 Acts, ch 1245, §1990

565.4 Management of property.

If gifts are made to the state in accordance with section 565.3, for the benefit of an institution thereof, the property, if accepted, shall be held and managed in the same way as other property of the state, acquired for or devoted to the use of such institution; and any conditions attached to such gift shall become binding upon the state, upon the acceptance thereof.

[C97, §2904; C24, 27, 31, 35, 39, §**10186;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §565.4]

565.5 Gifts to state institutions.

Gifts, devises, or bequests of property, real or personal, made to any state institution for purposes not inconsistent with the objects of such institution, may be accepted by its governing board, and such board may exercise such powers with reference to the management, sale, disposition, investment, or control of property so given, devised, or bequeathed, as may be deemed essential to its preservation and the purposes for which the gift, devise, or bequest was made.

[S13, §2904-a; C24, 27, 31, 35, 39, §**10187;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §565.5]

565.6 Gifts to governmental bodies.

Civil townships wholly outside of any city, and school corporations, are authorized to take and hold property, real and personal, by gift and bequest and to administer the property through the proper officer in pursuance of the terms of the gift or bequest. Title shall not pass unless accepted by the governing board of the corporation or township. Conditions attached to the gifts or bequests become binding upon the corporation or township upon acceptance.

[C97, §740, 2903, 2904; S13, §740; C24, 27, 31, 35, 39, §**10188;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §565.6; 81 Acts, ch 117, §1088]

See also §279.42

565.7 Trustees appointed by court — bond.

When made for the establishing of institutions of learning or benevolence, and no provision is made in the gift or bequest for the execution of the trust, the judge of the district court having charge of the probate proceedings in the county shall appoint three trustees, residents of said county, who shall have charge and control of the same, and who

shall continue to act until removed by the court. They shall give bond as required in case of executors, and be subject to the orders of said court.

[C97, §740; S13, §740; C24, 27, 31, 35, 39, §**10189;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §565.7]

565.8 to 565.11 Repealed by 81 Acts, ch 117, § 1097.

565.12 Condition as to annuity.

When a gift or bequest is conditioned upon the payment of an annuity to the donor, or any other person, a city may, upon acceptance of the gift or bequest, agree to pay the annuity providing the amount does not exceed five percent of the amount of the gift or bequest and does not exceed the amount realized from a tax levy of twenty-seven cents per thousand dollars of assessed value upon the taxable property of the city.

[C24, 27, 31, 35, 39, §**10194;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §565.12; 81 Acts, ch 117, §1089]

565.13 Annuity tax.

To provide for the payment of an annuity, the city shall annually thereafter levy a tax sufficient to pay the annuity.

[C24, 27, 31, 35, 39, §**10195;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §565.13; 81 Acts, ch 117, §1090]

565.14 Repealed by 81 Acts, ch 117, § 1097.

565.15 Surplus of tax.

Any amount collected by a tax so levied and which is not required for the payment of such annuity shall be used for the purposes for which such gift or bequest is made and may be transferred to such fund as will enable it to be used for such purpose.

[C24, 27, 31, 35, 39, §**10197;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §565.15]

CHAPTER 565A

GIFTS TO MINORS

Repealed by 86 Acts, ch 1035, §26;
see Uniform Transfers to Minors Act, chapter 565B;
effect of repeal, 86 Acts, ch 1035, §22, 26

CHAPTER 565B

TRANSFERS TO MINORS

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565B.1 Definitions.

In this chapter, unless the context otherwise requires:

1. *"Adult"* means an individual who has attained the age of twenty-one years.

2. *"Benefit plan"* means an employer's plan for

the benefit of an employee or partner or an individual retirement account.

3. *"Broker"* means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

4. *"Conservator"* means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

5. *"Court"* means the supreme court, court of appeals, district courts, and other courts the general assembly establishes.

6. *"Custodial property"* means both of the following:

a. Any interest in property transferred to a custodian under this chapter.

b. The income from and proceeds of that interest in property.

7. *"Custodian"* means a person so designated under section 565B.9 or a successor or substitute custodian designated under section 565B.18.

8. *"Financial institution"* means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

9. *"Legal representative"* means an individual's personal representative or conservator.

10. *"Member of the minor's family"* means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

11. *"Minor"* means an individual who has not attained the age of twenty-one years.

12. *"Personal representative"* means an executor, administrator, successor personal representative, special administrator, or temporary administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

13. *"State"* includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

14. *"Transfer"* means a transaction that creates custodial property under section 565B.9.

15. *"Transferor"* means a person who makes a transfer under this chapter.

16. *"Trust company"* means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

86 Acts, ch 1035, §1; 87 Acts, ch 87, §1

565B.2 Scope and jurisdiction.

1. This chapter applies to a transfer that refers to this chapter in the designation under section 565B.9, subsection 1, by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

2. A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

3. A transfer that purports to be made and which is valid under the uniform transfer to minors Act, the uniform gifts to minors Act, or a substantially similar Act, of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

86 Acts, ch 1035, §2

565B.3 Nomination of custodian.

1. A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed in substance by the words: "as custodian for ..... (name of minor) under the Iowa Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

2. A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section 565B.9, subsection 1.

3. The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 565B.9. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 565B.9.

86 Acts, ch 1035, §3

565B.4 Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable

gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 565B.9.

86 Acts, ch 1035, §4

565B.5 Transfer authorized by will or trust.

1. A personal representative or trustee may make an irrevocable transfer pursuant to section 565B.9 to a custodian for the benefit of a minor as authorized in the governing will or trust.

2. If the testator or settlor has nominated a custodian under section 565B.3 to receive the custodial property, the transfer must be made to that person.

3. If the testator or settlor has not nominated a custodian under section 565B.3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 565B.9, subsection 1.

4. A personal representative or trustee making a distribution under this section may do so without court order and, after effecting the distribution, is relieved of all accountability as a personal representative or trustee with respect to the property distributed.

86 Acts, ch 1035, §5

565B.6 Other transfers by fiduciary.

1. Subject to subsection 3, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 565B.9, in the absence of a will or under a will or trust that does not contain an authorization to do so.

2. Subject to subsection 3, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 565B.9.

3. A transfer under subsection 1 or 2 may be made only if all of the following are true:

a. The personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor.

b. The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument.

c. The transfer is authorized by the court if all transfers (including the transfer to be made and prior transfers) exceed ten thousand dollars in value. Transfers by a personal representative, trustee, or conservator shall not be aggregated, but each personal representative, trustee, or conservator shall be treated separately.

4. A personal representative, trustee, or conservator making a distribution under this section is relieved of all accountability as a personal representative, trustee, or conservator with respect to the property once the property has been distributed.

86 Acts, ch 1035, §6

565B.7 Transfer by obligor.

1. Subject to subsections 2 and 3, a person not subject to section 565B.5 or 565B.6 who holds property of, or owes a liquidated debt to, a minor not having a conservator, may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 565B.9.

2. If a person having the right to do so under section 565B.3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

3. If no custodian has been nominated under section 565B.3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars in value.

4. A person making a distribution under this section is relieved of all accountability with respect to the property once the property has been distributed.

5. This section does not apply to any amounts due a minor for services rendered by the minor.

86 Acts, ch 1035, §7; 87 Acts, ch 87, §2

565B.8 Receipt for custodial property.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

86 Acts, ch 1035, §8

565B.9 Manner of creating custodial property and effecting transfer — designation of initial custodian — control.

1. Custodial property is created and a transfer is made whenever:

a. An uncertificated security or a certificated security in registered form is either:

(1) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for . . . . . (name of minor) under the Iowa Uniform Transfers to Minors Act"; or

(2) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection 2;

b. Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Iowa Uniform Transfers to Minors Act";

c. The ownership of a life or endowment insurance policy or annuity contract is either:

(1) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ..... (name of minor) under the Iowa Uniform Transfers to Minors Act"; or

(2) Assigned in writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for .... (name of minor) under the Iowa Uniform Transfers to Minors Act";

d. An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for ..... (name of minor) under the Iowa Uniform Transfers to Minors Act";

e. An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Iowa Uniform Transfers to Minors Act";

f. An interest in any property not described in paragraphs *"a"* through *"e"* is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection 2. An interest in any property as used in this paragraph does not include a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property.

2. An instrument in the following form satisfies the requirements of subsection 1, paragraph *"a"*, subparagraph (2), and paragraph *"f"*:

TRANSFER UNDER THE IOWA UNIFORM TRANSFERS TO MINORS ACT

I, ... (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ..... (name of custodian), as custodian for ..... (name of minor) under the Iowa Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: .....

.....
(signature)

..... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Iowa Uniform Transfers to Minors Act:

Dated: .....

.....
(signature of custodian)

3. A transferor shall place the custodian in control of the custodial property as soon as practicable.

86 Acts, ch 1035, §9

565B.10 Single custodianship.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

86 Acts, ch 1035, §10

565B.11 Validity and effect of transfer.

1. The validity of a transfer made in a manner prescribed in this chapter is not affected by:

a. The failure of the transferor to comply with section 565B.9, subsection 3, concerning possession and control;

b. The designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section 565B.9, subsection 1; or

c. The death or incapacity of a person nominated under section 565B.3 or designated under section 565B.9 as custodian or the disclaimer of the office by that person.

2. A transfer made pursuant to section 565B.9 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

3. By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian and to any third person dealing with a person designated as custodian the respective powers, rights, and immunities provided in this chapter.

86 Acts, ch 1035, §11

565B.12 Care of custodial property.

1. A custodian shall:

a. Take control of custodial property;

b. Register or record title to custodial property if appropriate; and

c. Collect, hold, manage, invest, and reinvest custodial property.

2. In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, at the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

3. A custodian may invest in or pay premiums on life insurance or endowment policies on:

a. The life of the minor, only if the minor or the minor's estate is the sole beneficiary; or

b. The life of another person in whom the minor has an insurable interest, only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

4. A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for . . . . . (name of minor) under the Iowa Uniform Transfers to Minors Act".

5. A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or the legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

86 Acts, ch 1035, §12

565B.13 Powers of custodian.

1. A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

2. This section does not relieve a custodian from liability for breach of section 565B.12.

86 Acts, ch 1035, §13

565B.14 Use of custodial property.

1. A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

a. The duty or ability of the custodian personally or of any other person to support the minor; or

b. Any other income or property of the minor which may be applicable or available for that purpose.

2. On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

3. A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

86 Acts, ch 1035, §14

565B.15 Custodian's expenses, compensation, and bond.

1. A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

2. Except for one who is a transferor under section 565B.4, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

3. Except as provided in section 565B.18, subsection 6, a custodian need not give a bond.

86 Acts, ch 1035, §15

565B.16 Exemption of third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

1. The validity of the purported custodian's designation;

2. The propriety of, or the authority under this chapter for, any act of the purported custodian;

3. The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

4. The propriety of the application of any property of the minor delivered to the purported custodian.

86 Acts, ch 1035, §16

565B.17 Liability to third persons.

1. A claim based on:

a. A contract entered into by a custodian acting in a custodial capacity;

b. An obligation arising from the ownership or control of custodial property; or

c. A tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

2. A custodian is not personally liable:

a. On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

b. For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

3. A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

86 Acts, ch 1035, §17

565B.18 Renunciation, resignation, death, or removal of custodian — designation of successor custodian.

1. A person nominated under section 565B.3 or designated under section 565B.9 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 565B.3, the person who made the nomination may nominate a substitute custodian under section 565B.3; otherwise, the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 565B.9, subsection 1. The custodian so designated has the rights of a successor custodian.

2. A custodian at any time may designate a trust company or an adult other than a transferor under section 565B.4 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

3. A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

4. If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection 2, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

5. A custodian who declines to serve under subsection 1 or resigns under subsection 3, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

6. A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 565B.4 or to require the custodian to give appropriate bond.

86 Acts, ch 1035, §18

565B.19 Accounting by and determination of liability of custodian.

1. A minor who has attained the age of fourteen years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

a. For an accounting by the custodian or the custodian's legal representative; or

b. For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 565B.17 to which the minor or the minor's legal representative was a party.

2. A successor custodian may petition the court for an accounting by the predecessor custodian.

3. The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

4. If a custodian is removed under section 565B.18, subsection 6, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

86 Acts, ch 1035, §19

565B.20 Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

1. The minor's attainment of twenty-one years of age with respect to custodial property transferred under this chapter; or

2. The minor's death.

86 Acts, ch 1035, §20

565B.21 Applicability.

This chapter applies to a transfer within the scope of section 565B.2 made after July 1, 1986, if:

1. The transfer purports to have been made under the Iowa uniform gifts to minors Act; or

2. The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

86 Acts, ch 1035, §21

565B.22 Effect on existing custodianships.

1. Any transfer of custodial property as now defined in this chapter made before July 1, 1986, is validated notwithstanding that there was no specific authority in the Iowa uniform gifts to minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

2. This chapter applies to all transfers made before July 1, 1986, in a manner and form prescribed in chapter 565A, Code 1985, the Iowa uniform gifts to minors Act, except insofar as the application impairs constitutionally vested rights.

86 Acts, ch 1035, §22

Effect of repeal of chapter 565A; 86 Acts, ch 1035, §26

565B.23 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

86 Acts, ch 1035, §23

565B.24 Other laws not applicable.

Chapter 633 and all other laws of this state to the extent contrary to this chapter do not apply to the custodial property of a minor held by the custodian under this chapter.

86 Acts, ch 1035, §24

565B.25 Short title.

This chapter may be cited as the *"Iowa Uniform Transfers to Minors Act"*.

86 Acts, ch 1035, §25

CHAPTER 566

CEMETERY MANAGEMENT

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MANAGEMENT BY TRUSTEE

566.1 Trustee appointed — trust funds.

The owners of, or any party interested in, any cemetery may, by petition presented to the district court of the county where the cemetery is situated, have a trustee appointed with authority to receive any and all moneys or property that may be donated for and on account of said cemetery and to invest, manage, and control same under the direction of the court; but the trustee shall not be authorized to receive any gift, except with the understanding that the principal sum is to be a permanent fund, and only the net proceeds therefrom to be used in carrying out the purpose of the trust created, and all such funds shall be exempt from taxation.

[S13, §254-a4; C24, 27, 31, 35, 39, §**10198;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.1]

566.2 Requisites of petition.

Such petition may state the amount proposed to be placed in such trust fund, the manner of investment thereof, the provisions made for the disposition of any surplus income not required for the care and upkeep of the property described in such petition.

[C24, 27, 31, 35, 39, §**10199;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.2]

566.3 Approval of court — surplus fund.

Such provisions shall all be subject to the approval of the court and when so approved the trust fund and the trustee thereof shall, at all times, be subject to the orders and control of the court and such surplus arising from said fund shall not be used except for charitable, eleemosynary, or public purposes under the direction of the court.

[C24, 27, 31, 35, 39, §**10200;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.3]

566.4 Receipt — cemetery record.

Every such trustee shall execute and deliver to the donor a receipt showing the amount of money or other property received, and the use to be made of the net proceeds from same, duly attested by the clerk of the court granting letters of trusteeship, and a copy thereof, signed by the trustee and so attested, shall be filed with and recorded by the clerk in a book to be known as the cemetery record, in which shall be recorded all reports and other papers, including orders made by the court relative to cemetery matters.

[S13, §254-a5; C24, 27, 31, 35, 39, §**10201;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.4]

566.5 Investments.

Any such trustee shall have authority to receive and invest all moneys and property, so donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against cemetery lots which has been set aside in a perpetual care fund, in such authorized investments and in the manner prescribed in section 636.23 or as the same may be hereafter amended.

[S13, §254-a6; C24, 27, 31, 35, 39, §**10202, 10203;** C46, 50, 54, 58, §566.5, 566.6; C62, 66, 71, 73, 75, 77, 79, 81, §566.5]

566.6 Repealed by 59 Acts, ch 343, § 1. See § 566.5.

566.7 Bond — approval — oath.

Every such trustee before entering upon the discharge of the trustee's duties or at any time thereafter when required by the court, must give bond in such penalty as may be required by the court, approved by the clerk, conditioned for the faithful discharge of the trustee's duties, and take and subscribe an oath the same in substance as the condition of the bond, which bond and oath must be filed with the clerk.

[S13, §254-a7; C24, 27, 31, 35, 39, §**10204;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.7]

566.8 Clerk — duty of.

It shall be the duty of the clerk at the time of filing each such receipt, to at once advise the court as to the amount of the principal fund in the hands of such trustee, the amount of bond filed, and whether it is good and sufficient for the amount given.

[S13, §254-a8; C24, 27, 31, 35, 39, §**10205;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.8]

566.9 Compensation — costs.

Such trustee shall serve without compensation, but may, out of the income received, pay all proper items of expense incurred in the performance of the trustee's duties, including cost of bond, if any.

[S13, §254-a9; C24, 27, 31, 35, 39, §**10206;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.9]

566.10 Annual report.

Such trustee shall make full report of the trustee's doings in the month of January following appointment and in January of each successive year. In each of said reports the trustee shall apportion the net proceeds received from the sum total of the permanent fund and make proper credit to each of the separate funds assigned to the trustee in trust.

[S13, §254-a10; C24, 27, 31, 35, 39, §**10207;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.10]

566.11 Removal — vacancy filled.

Any such trustee may be removed by the court at any time for cause, and in the event of removal or death, the court must appoint a new trustee and require the new trustee's predecessor or the predecessor's personal representative to make full accounting.

[S13, §254-a11; C24, 27, 31, 35, 39, §**10208;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.11]

566.12 County auditor as trustee.

In case no trustee is appointed, or if so appointed does not qualify, then such funds, or any funds donated by any person or estate to improvement of cemeteries, unless otherwise provided by law, shall be placed in the hands of the county auditor, who shall receipt for, loan, and make annual reports of such funds in such manner as provided in this chapter.

[SS15, §254-a12; C24, 27, 31, 35, 39, §**10209;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.12]

566.13 Accounting.

The said auditor shall annually turn over the accrued interest in the auditor's hands to the cemetery association or other person having control of the cemetery entitled thereto, who shall use the same in carrying out the provisions of said trust, and who shall file a written report annually with the county auditor.

[SS15, §254-a12; C24, 27, 31, 35, 39, §**10210;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.13]

MANAGEMENT BY POLITICAL SUBDIVISIONS

566.14 Political subdivisions as trustees.

Counties, cities, irrespective of their form of government, boards of trustees of cities to whom the management of municipal cemeteries has been transferred by ordinance, and civil townships wholly outside of any city, are trustees in perpetuity, and are required to accept, receive, and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of cemetery lot sales or permanent charges made against cemetery lots which has been set aside in a perpetual care fund for which there is no other acting trustee, to be used in caring for the property of the donor or lot owner who by purchase or otherwise has provided for the perpetual care of a cemetery lot in any cemetery, or in accordance with the terms of the donation, bequest, or agreement for sale and purchase of a cemetery lot, and the money or property thus received shall be used for no other purpose.

[S13, §740; C24, 27, 31, 35, 39, §**10211;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.14]

91 Acts, ch 188, §3

566.15 Authority to invest funds — current care charge payments.

The board of supervisors, mayor and council, or other elected governmental body, as the case may be, has the authority to receive and invest all moneys and property, donated or bequeathed, and that

portion of cemetery lot sales and permanent charges made against cemetery lots which have been set aside in a perpetual care fund, in investments for which they have exercised the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their affairs. The income from the investment shall be used in caring for the property of the donor in any cemetery, or as shall be provided in the terms of the gift or donations or agreement for sale and purchase of a cemetery lot.

All current charges received shall be allocated to the perpetual care fund or to the fund paying the costs of cemetery operation. Care charge payments received one year or more after the date they were incurred shall be used to fund the cost of operating the cemetery. Care charge payments received one year or more in advance of their due date shall be deposited in the perpetual care fund. Interest from the perpetual care fund shall be used for the maintenance of both occupied and unoccupied lots or spaces. Any remaining interest may be used for costs of access roads and paths, fencing, and general maintenance of the cemetery. Lots under perpetual care shall be maintained in accordance with the cemetery covenants of sale.

[S13, §740; C24, 27, 31, 35, 39, §**10212;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.15]

91 Acts, ch 188, §4, 5

566.16 Resolution of acceptance — interest.

Before any part of the principal may be invested or used, the county, city, board of trustees of a city to whom the management of a municipal cemetery has been transferred by ordinance, or civil township shall, by resolution, accept the moneys described in section 566.14 and, by resolution, shall provide for the payment of interest annually to the appropriate fund, or to the cemetery association, or the person in charge of the cemetery, to be used in caring for or maintaining the individual property of the donor in the cemetery, or lots which have been sold if provision was made for perpetual care, all in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of a cemetery lot.

If there is no cemetery association or person in charge of the cemetery, the income from the fund shall be expended under the direction of the board of supervisors, city council, board of trustees, or civil township trustees, as the case may be, in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of a cemetery lot.

[S13, §740; C24, 27, 31, 35, 39, §**10213;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §566.16; 81 Acts, ch 117, §1091]

83 Acts, ch 123, §191, 209; 91 Acts, ch 188, §6

566.17 Delegates to conventions.

A township having a cemetery under its control may delegate not to exceed two officials from each cemetery controlled to attend meetings of cemetery officials, and certain expenses, including association dues, not to exceed twenty-five dollars, of the delegates may be paid out of the cemetery fund of the township.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §566.17; 81 Acts, ch 117, §1092]

566.18 Subscribing to publications.

The cemetery officials of every township having a cemetery under its control may subscribe to one or more publications devoted exclusively to cemetery management, and the subscriptions may be paid out of the cemetery fund of the township.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §566.18; 81 Acts, ch 117, §1093]

MAINTENANCE UNDER COURT ORDER

566.19 Settlement of estates — maintenance fund.

The court in which the estate of a deceased person is administered, before final distribution, may allow and set apart from the estate, a sum sufficient to provide an income adequate to pay for the perpetual care and upkeep of the cemetery lot upon which the body of the deceased is buried, except where perpetual care has otherwise been provided for. The sum so allowed and set apart shall be paid to a trustee as provided by this chapter.

[C27, 31, 35, §10213-a1; C39, §**10213.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.19]

89 Acts, ch 83, §77

ABANDONED LOTS

566.20 Reversion.

The ownership or right in or to an unoccupied cemetery lot or portion thereof shall upon abandonment revert to the person or corporation having ownership and charge of the cemetery containing such lots.

[C31, 35, §10213-d1; C39, §**10213.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.20]

566.21 Presumption of abandonment.

The continued failure by the owner to maintain or care for an unoccupied cemetery lot or space not

under perpetual care, or to pay the annual care fee, for a period of ten years shall create the presumption that the lot or space has been abandoned. A lot with empty space under perpetual care which has not had a burial for seventy-five years shall create a presumption that the empty space has been abandoned.

[C31, 35, §10213-d2; C39, §**10213.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.21]

91 Acts, ch 188, §7

566.22 Notice of abandonment.

Abandonment shall not be deemed complete unless after the ten-year or seventy-five year period, whichever is applicable, there is given by the reversionary owner to the recorded owner, or if the recorded owner is deceased or the recorded owner's whereabouts are unknown, to the heirs of the recorded owner, notice declaring the lot to be abandoned.

[C31, 35, §10213-d3; C39, §**10213.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.22]

91 Acts, ch 188, §8

566.23 Service of notice.

The notice may be served personally on the owner or the owner's heirs, or may be served by the mailing of the notice by certified mail to the owner, or the owner's heirs as the case may be, to their last known address. In the event that the address of the owner or the owner's heirs cannot be ascertained, then notice of such abandonment shall be by one publication in the official newspaper of the county, in which the cemetery is located.

[C31, 35, §10213-d4; C39, §**10213.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.23]

566.24 Overcoming presumption of abandonment.

If within one year from the time of serving the notice, the recorded owner or the owner's heirs pay the past due annual care charges against the lot, then the presumption of abandonment shall no longer exist and the recorded owner may be required to make full payment for future perpetual care.

[C31, 35, §10213-d5; C39, §**10213.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.24]

91 Acts, ch 188, §9

566.25 Reversioner's right to sell.

In case the abandonment has been complete as herein provided the reversionary owner of the abandoned lot or portion thereof may sell the same and convey title thereto.

[C31, 35, §10213-d6; C39, §**10213.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.25]

566.26 Use of funds.

Any funds realized from the sale of all or a part of an unoccupied lot not under perpetual care which has reverted shall be allocated to the perpetual care fund and to the fund paying the costs of cemetery operation.

[C31, 35, §10213-d7; C39, §**10213.8;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.26]

91 Acts, ch 188, §10

566.27 Abandonment if perpetual care provided by will, court order, or contract.

After the seventy-five year period, sections 566.20 through 566.26 are applicable to an unoccupied lot or space for which perpetual care has been provided by will, court order, contract, or as provided by law. However, the reversionary owner shall not acquire the absolute right to sell the unoccupied lot or space until three years after the date notice was served on the recorded owner or the recorded owner's heirs.

[C31, 35, §10213-d8; C39, §**10213.9;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566.27]

91 Acts, ch 188, §11

566.28 to 566.30 Reserved.

PROTECTION OF SITES, MEMORIALS

566.31 Burial sites.

If a governmental subdivision or agency is notified of the existence of a marked burial site within its jurisdiction, and the burial site is not otherwise provided for under this chapter or chapter 263B or 566A, it shall as soon as practicable notify the owner of the land upon which the burial site is located of the site's existence and location. The notification shall include an explanation of the provisions contained within section 566.32.

86 Acts, ch 1030, §1

566.32 Disturbance of burial sites — penalty.

A person who knowingly and without authorization removes, destroys, or otherwise disturbs a burial site for which the person received notification under section 566.31 commits a simple misdemeanor.

86 Acts, ch 1030, §2

566.33 Protection and preservation of burial sites.

A governmental subdivision or agency having a burial site within its jurisdiction, for which protection or preservation is not otherwise provided, shall preserve and protect the burial site as neces-

sary to restore or maintain its physical integrity as a burial site. The governmental subdivision or agency may enter into an agreement with a public or private organization interested in historical preservation to delegate to the organization the responsibility for the protection and preservation of the burial site.

86 Acts, ch 1030, §3

566.34 Confiscation and return of memorials.

A law enforcement officer having reason to believe that a grave memorial or burial memorial is in the possession of a person without authorization or right to possess the memorial may take possession of the memorial from that person and turn it over to the officer's agency.

If a law enforcement agency determines that a memorial it has taken possession of rightfully belongs on a grave or burial site, the agency shall return the memorial to the site, or make arrangements with the agency having jurisdiction over the grave or burial site for the return of the memorial.

86 Acts, ch 1030, §4

566.35 Burial sites located on private property.

If a person notifies a governmental subdivision or agency of the existence within the jurisdiction of the governmental subdivision or agency of a burial site of the person's ancestor on property owned by another person, the owner of the property shall permit the person reasonable ingress and egress for the purposes of visiting the burial site, and the governmental subdivision or agency shall notify the owner of this obligation.

99 Acts, ch 140, §2; 2001 Acts, ch 44, §28

CHAPTER 566A

CEMETERY REGULATION

See also chapter 523I

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566A.2 Designation.
566A.2A Perpetual care cemetery registry.
566A.2B Interment rights agreement — requirements — contents.
566A.2C Annual report by nonperpetual care cemeteries.
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566A.3 Guarantee fund.
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566A.7 Commission or bonus unlawful.
566A.8 Discrimination prohibited.
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566A.15 Cemetery fund.

566A.1 Applicability of chapter — requirements for certain organizations.

1. A corporation or other form of organization engaging in the business of the ownership, maintenance, or operation of a cemetery, which provides lots or other interment space for the remains of human bodies, is subject to this chapter. However, a religious cemetery is subject only to subsection 2, and sections 566A.2A and 566A.2B. Political subdivisions of the state which are counties are exempt from this chapter. Political subdivisions of the state other than counties are subject only to sections 566A.1A, 566A.2A, 566A.2B, and 566A.2D.

2. An organization which establishes a fund for the perpetual care of a cemetery shall establish the fund as an irrevocable trust to provide for the care and maintenance of the cemetery for which it was established, and shall provide for the appointment of a trustee, with perpetual succession, in case the organization is dissolved or ceases to be responsible for the cemetery's care and maintenance.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.1]

91 Acts, ch 188, §12, 13; 95 Acts, ch 149, §29; 98 Acts, ch 1189, §25

566A.1A Definitions.

As used in this chapter, unless the context

otherwise requires:

1. *"Agent"* means a person authorized by a cemetery or a cemetery operator to represent the cemetery in dealing with the public.

2. *"Cemetery"* means a cemetery, mausoleum, columbarium, or other space held for the purpose of burial, entombment, or inurnment of human remains and where such space is offered for sale to the public.

3. *"Cemetery operator"* means a person who owns, controls, operates, or manages a cemetery, who is responsible for the cemetery's care and maintenance, and who controls the opening and closing of all graves, crypts, and niches.

4. *"Columbarium"* means a structure or room or other space in a building or structure used or intended to be used for the inurnment or deposit of cremated human remains.

5. *"Commissioner"* means the commissioner of insurance or the deputy appointed under section 502.601.

6. *"Deed"* means the assignment or conveyance of interment rights.

7. *"Grave"* means a piece of land that is used or intended to be used for the underground burial of human remains, other than an underground mausoleum or columbarium space.

8. *"Human remains"* means the body of a deceased individual that is in any stage of decomposition or has been cremated.

9. *"Interment"* means the disposition of human remains by earth burial, entombment, or inurnment.

10. *"Interment rights"* means a right of use conveyed by contract or property ownership to inter human remains in a columbarium, grave, mausoleum, lawn crypt, or undeveloped space.

11. *"Lawn crypt"* means an outer enclosure, for a casket or similar inner burial container which is permanently installed below ground prior to the time of actual interment. A lawn crypt may permit single or multiple interments in a grave space.

12. *"Mausoleum"* means a building, structure, or part of a building or structure that is used or intended to be used for the entombment of human remains.

13. *"Mausoleum space"* means a niche, crypt, or specific place in a mausoleum that contains or is intended to contain human remains.

14. *"Niche"* means a recess in the wall of a mausoleum or columbarium for the deposit of human remains.

15. *"Perpetual care"* means maintenance, repair, and care of all interment spaces, features, buildings, roadways, parking lots, water supply, and other existing cemetery structures subject to the provisions of section 566A.3 and includes the general overhead expenses needed to accomplish such maintenance, repair, and care.

16. *"Perpetual care cemetery"* means a cemetery which has established a perpetual care fund for the maintenance, repair, and care of all interment spaces subject to perpetual care within the cemetery in compliance with section 566A.3.

17. *"Religious cemetery"* means a cemetery that is owned, operated, or controlled by a recognized church, religious society, association, or denomination.

18. *"Sale"* means a transfer for consideration of any interest in ownership, title, or right of use.

19. *"Undeveloped space"* means a mausoleum, columbarium space, or lawn crypt that is not ready for the burial of human remains on the date of the sale of the space.

95 Acts, ch 149, §30

566A.2 Designation.

All such organizations subject to the provisions of this chapter shall be, for the purposes hereof, designated either as "perpetual care cemeteries" or "nonperpetual care cemeteries."

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.2]

566A.2A Perpetual care cemetery registry.

A perpetual care cemetery shall maintain a registry of individuals who have purchased items subject to the perpetual care requirements of this chapter including the amount deposited in trust for each individual. The registry shall include all transactions entered into on or after July 1, 1995.

95 Acts, ch 149, §31

566A.2B Interment rights agreement — requirements — contents.

An agreement for interment rights under this chapter must be written in clear, understandable language and do all of the following:

1. Identify the seller and purchaser.

2. Identify the salesperson.

3. Specify the interment rights to be provided and the cost of each item.

4. State clearly the conditions on which substitution will be allowed.

5. Set forth the total purchase price and the terms under which it is to be paid.

6. State clearly whether the agreement is a revocable or irrevocable contract, and, if revocable, which parties have the authority to revoke the agreement.

7. State the amount or percentage of money to be placed in the cemetery's perpetual care and maintenance guarantee fund.

8. Set forth an explanation that the perpetual care and maintenance guarantee fund is an irrevocable trust, that deposits cannot be withdrawn even in the event of cancellation, and that the trust's income shall be used by the cemetery for its

maintenance, repair, and care.

9. Set forth an explanation of any fees or expenses that may be charged.

10. Set forth an explanation of whether amounts for perpetual care will be deposited in trust upon payment in full or on an allocable basis as payments are made.

11. Set forth an explanation of whether initial payments on agreements for multiple items of funeral and cemetery merchandise or services, or both, will be allocated first to the purchase of a grave, niche, columbarium space, or mausoleum space. If such an allocation is to be made, the agreement shall provide for the immediate transfer of such interment rights upon payment in full and prominently state that any applicable trust deposits under chapter 523A will not be made until the cemetery has received payment in full for the interment rights. The transfer of an undeveloped space may be deferred until such space is ready for burial.

12. If the transfer of an undeveloped space will be deferred until the space is ready for burial as permitted in subsection 11, the agreement shall provide for some form of written acknowledgment upon payment in full, specify a reasonable time period for development of the space, describe what happens in the event of a death prior to development of the space, and provide for the immediate transfer of the interment rights when development of the space is complete.

13. Specify the purchaser's right to cancel and the damages payable for cancellation, if any.

14. State the name and address of the commissioner.

95 Acts, ch 149, §32

566A.2C Annual report by nonperpetual care cemeteries.

1. A nonperpetual care cemetery shall file a written report with the insurance division within four months following the end of the cemetery's fiscal year. The report shall include all of the following:

a. The name and address of the cemetery.

b. An affidavit that the cemetery is a nonperpetual care cemetery in compliance with section 566A.5.

c. Copies of all sales agreement forms used by the cemetery.

2. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries.

3. The report shall be made under oath.

4. Notwithstanding chapter 22, all records maintained by the commissioner under this section are confidential and shall not be made available for inspection or copying except upon the approval of the commissioner or attorney general.

5. This section does not apply to a cemetery with average retail sales equal to or less than five thousand dollars for the previous three calendar years.

95 Acts, ch 149, §33; 98 Acts, ch 1189, §26, 27

566A.2D Annual report by perpetual care cemeteries.

1. A perpetual care cemetery shall file a written report as of the end of each fiscal year of the cemetery including the following:

a. The name and address of the cemetery.

b. The name and address of any trustee holding perpetual care and maintenance guarantee fund moneys.

c. The name and address of any depository holding perpetual care and maintenance guarantee fund moneys.

d. An affidavit that the cemetery is a perpetual care cemetery in compliance with section 566A.3.

e. Copies of all sales agreement forms used by the cemetery.

f. The amount of the principal of the cemetery's perpetual care funds at the end of the fiscal year.

g. The number of interments made and the number of deeds issued during the cemetery's preceding fiscal year.

2. The report shall be filed with the insurance division within four months following the end of the cemetery's fiscal year in the form required by the commissioner.

3. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries. A political subdivision subject to this section may commingle perpetual care funds for purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

4. The commissioner shall establish by rule an audit fee to be filed with the annual report. The audit report fee shall be based on the number of deeds issued by the cemetery during the reporting period. The audit fee shall apply only to perpetual care cemeteries and shall be based on the approximate cost of regulation.

5. Notwithstanding chapter 22, all records maintained by the commissioner under this subsection are confidential and shall not be made available for inspection or copying except upon approval of the commissioner or attorney general.

95 Acts, ch 149, §34

566A.3 Guarantee fund.

Except for political subdivisions of the state, any such organization subject to the provisions of this chapter which is organized or commences busi-

ness in the state of Iowa after July 4, 1953, and desires to operate as a perpetual care cemetery shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash. The perpetual care and maintenance guarantee fund shall be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. Notwithstanding chapter 633, annual reports shall not be required unless specifically required by the district court. Reports shall be filed as necessary to approve trustees, trust agreements and amendments, changes in fees or expenses, and other matters within the district court's jurisdiction. The district court so having jurisdiction shall have full jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult burial space, whichever is the greater.
2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches in length or ten dollars for each space up to sixty inches in length, whichever is the greater.
3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each crypt in a public mausoleum, whichever is the greater.
4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a public columbarium.

The initial perpetual care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached one hundred thousand dollars, when the initial twenty-five thousand dollar deposit may be withdrawn. An affidavit shall be filed with the commissioner providing prior notice of the withdrawal and attesting that the money has not previously been withdrawn. Except as approved by the commissioner upon sufficient proof that the money has not previously been withdrawn, the withdrawal must take place within one year after the fund reaches one hundred thousand dollars.

A perpetual care cemetery may require a contribution to the cemetery's perpetual care guarantee fund for each grave marker, tombstone, monument, or item of ornamental merchandise installed in the cemetery from the purchaser of such merchandise. A cemetery may establish a separate perpetual care fund for this purpose. The contribution, if required by the cemetery, shall be uniformly charged on every installation and shall be set aside and deposited in the perpetual care trust fund. The contributions shall be nonrefundable and shall not be withdrawn from the trust fund once deposited.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.3]
95 Acts, ch 149, §35; 96 Acts, ch 1160, §19; 98 Acts, ch 1189, §28

566A.4 Application to prior cemeteries.

An organization subject to this chapter which was organized and engaged in business prior to July 4, 1953 is a perpetual care cemetery if it at all times subsequent to that date complies with the requirements of a perpetual care cemetery as set forth in section 566A.3.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.4]
83 Acts, ch 101, §116

566A.5 Nonperpetual care cemeteries.

1. Each nonperpetual care cemetery shall have printed or stamped at the head of all of its contracts, deeds, statements, letterheads, and advertising material, the legend: "This is a nonperpetual care cemetery", and shall not sell any lot or interment space in the cemetery unless the purchaser of the lot or interment space is informed that the cemetery is a nonperpetual care cemetery.
2. A nonperpetual care cemetery or cemetery operator or employee or agent of a nonperpetual care cemetery shall not advertise or represent that the cemetery is a perpetual care cemetery or use any similar title, description, or term indicating that the cemetery provides guaranteed or permanent maintenance and care or that the cemetery has a trust fund or endowment fund to pay for the expenses of such care.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.5]
95 Acts, ch 149, §36; 97 Acts, ch 89, §1, 2

566A.6 Perpetual care cemeteries.

A nonperpetual care cemetery after July 4, 1953, may become a perpetual care cemetery by placing in the perpetual care trust fund twenty-five thousand dollars or five thousand dollars per acre of all property sold, whichever is the greater, and by complying with the requirements for a perpetual care cemetery as provided in section 566A.3.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.6]
83 Acts, ch 101, §117

566A.7 Commission or bonus unlawful.

It shall be unlawful for any organization subject

to the provisions of this chapter to pay or offer to pay to, or for any person, firm or corporation to receive directly or indirectly a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interment space, lot or part thereof, in any cemetery described in section 566A.1 of this chapter. The provisions of this section shall not apply to a person regularly employed and supervised by such organization or to a person, firm, corporation, or other entity licensed under chapter 523A that contracts with the cemetery to sell interment spaces or lots. The conduct of any person, firm, corporation, or other entity described in this section is the direct responsibility of the cemetery.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.7]
92 Acts, ch 1078, §14

566A.8 Discrimination prohibited.

It shall be unlawful for any organization subject to the provisions of this chapter to deny the privilege of interment of the remains of any deceased person in any cemetery described in section 566A.1 of this chapter solely because of the race or color of such deceased person. Any contract, agreement, deed, covenant, restriction or charter provision at any time entered into, or bylaw, rule or regulation adopted or put in force, either subsequent or prior to July 4, 1953, authorizing, permitting or requiring any organization subject to the provisions of this chapter to deny such privilege of interment because of race or color of such deceased person is hereby declared to be null and void and in conflict with the public policy of this state. No organization subject to the provisions of this chapter or any director, officer, agent, employee or trustee thereof or therefor, shall be liable for damages or other relief, or be subjected to any action in any court otherwise having jurisdiction in the premises by reason of refusing to commit any act declared unlawful herein.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.8]

566A.9 Penalty.

Any person, firm or corporation violating any of the provisions of this chapter, shall be guilty of a simple misdemeanor.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.9]

566A.10 Extent of offenses.

Each day any person, firm or corporation violates any provision of this chapter, except the commission of any act declared unlawful in section 566A.7 or section 566A.8, shall be deemed to be a separate and distinct offense.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.10]

566A.11 Speculation prohibited.

No organization subject to the provisions of this chapter nor any person representing it in a sales capacity shall advertise or represent, in connection with the sale or attempted sale of any interment space, that the same is or will be a desirable speculative investment for resale purposes.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §566A.11]

566A.12 Administration.

1. *Cemetery registry.* The commissioner shall establish and maintain a public registry of perpetual care cemeteries.

2. *Investigations and audits.* The commissioner or the attorney general, for the purpose of discovering violations of this chapter or rules adopted pursuant to this chapter, may do any of the following:

a. Audit any cemetery, for cause or on a random basis, to determine compliance with this chapter. A cemetery shall make available to the commissioner or attorney general the cemetery's deed registry and those books, accounts, records, and files related to the sale of interment rights. Notwithstanding chapter 22, all business records and files acquired by the commissioner or attorney general pursuant to an audit under this subsection are confidential and shall not be made available for inspection or copying unless ordered by a court for good cause shown. If it is determined pursuant to an audit that a material violation of this chapter or rules adopted pursuant to this chapter has occurred, the cost of the audit may be assessed to the cemetery.

b. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

c. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

3. *Cease and desist orders.* If an audit or investigation provides reasonable evidence that a person has violated this chapter, or any rule adopted pursuant to this chapter, the commissioner may issue an order directed at the person to cease and desist from engaging in such act or practice.

4. *Receiverships.*

a. The commissioner shall notify the attorney general if the commissioner finds that a perpetual

care cemetery subject to regulation under this chapter meets one or more of the following grounds for the establishment of a receivership:

(1) Is insolvent.

(2) Has utilized trust funds for personal or business purposes in a manner inconsistent with the requirements of this chapter, and the amount of funds currently held in the trust is less than the amount required by this chapter.

b. The commissioner or the attorney general may apply to the district court in any county of the state for a receivership. Upon proof of any of the grounds for a receivership described in this section the court may grant a receivership.

5. *Injunctions*. The commissioner or the attorney general may apply to the district court for an injunction to restrain any cemetery subject to this chapter and any agents, employees, trustees, or associates of the cemetery from engaging in conduct or practices deemed a violation of this chapter or rules adopted pursuant to this chapter. Upon proof of any violation of this chapter described in the petition for injunction, the court may grant the injunction. The commissioner or the attorney general shall not be required to post a bond. Failure to obey a court order under this subsection constitutes contempt of court.

90 Acts, ch 1213, §31; 95 Acts, ch 149, §37; 98 Acts, ch 1189, §29, 30

566A.13 Violations and penalties.

A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*. The remedies and penalties provided by section 714.16, including but not limited to provisions relating to injunctive relief and penalties, apply to a violation of this chapter.

90 Acts, ch 1213, §32; 95 Acts, ch 149, §38

566A.14 Rules.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to administer this chapter.

95 Acts, ch 149, §39

566A.15 Cemetery fund.

A special revenue fund is created in the state treasury, under the control of the commissioner, to be known as the insurance division cemetery fund. Commencing July 1, 1995, one dollar from the audit fee for each deed reported on the annual report required by section 566A.2D, executed during the preceding fiscal year, shall be deposited in the insurance division cemetery fund by the commissioner. However, if the balance of the fund on July 1 of any year exceeds two hundred thousand dollars, the allocation to the fund shall not be made, and the total sum of the fees paid pursuant to section 566A.2D shall be deposited in the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund but shall remain in the cemetery fund. Moneys in the cemetery fund are appropriated to the insurance division and, subject to authorization by the commissioner, may be used to pay the expenses of that office incurred in the administration of the audit, investigative, and enforcement duties and obligations imposed under this chapter, and the expenses of receiverships established pursuant to section 566A.12.

95 Acts, ch 149, §40; 96 Acts, ch 1034, §54

CHAPTER 567

NONRESIDENT ALIENS — LAND OWNERSHIP

Transferred to chapter 9I; 2002 Acts, ch 1095, §10

CHAPTER 568

ISLANDS AND ABANDONED RIVER CHANNELS

568.1 Sale authorized.
568.2 Application by county auditor. Repealed by 94 Acts, ch 1173, §42.
568.3 Application by prospective purchaser.
568.4 Form of application.
568.5 Survey.
568.6 Report of survey.
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568.8 Contract for survey.
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568.21 Sale or lease authorized.
568.22 Survey — appraisement — sale.
568.23 Lease.
568.24 Sales and leases for cash — expenses.
568.25 Patent or lease.

568.1 Sale authorized.

All land between high-water mark and the center of the former channel of any navigable stream, where such channel has been abandoned, so that it is no longer capable of use, and is not likely again to be used for the purposes of navigation, and all land within such abandoned river channels, and all bars or islands in the channels of navigable streams not heretofore surveyed or platted by the United States or the state of Iowa, and all within the jurisdiction of the state of Iowa shall be sold and disposed of in the manner hereinafter provided.

[S13, §2900-a2; C24, 27, 31, 35, 39, §**10221;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.1]

568.2 Application by county auditor. Repealed by 94 Acts, ch 1173, § 42.

568.3 Application by prospective purchaser.

A person desiring to purchase land described in section 568.1 may file a written application with the secretary of state, asking that the land be surveyed, appraised, and sold.

[S13, §2900-a3; C24, 27, 31, 35, 39, §**10223;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.3]

94 Acts, ch 1173, §37

568.4 Form of application.

The application shall contain an accurate description of the land, stating whether the land is abandoned river channel, or land within the abandoned river channel, or an island or a sand bar in a navigable stream, and giving the number of township and range in which it is located, and the section numbers if possible, and also the estimated acreage.

[S13, §2900-a3; C24, 27, 31, 35, 39, §**10224;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.4]

94 Acts, ch 1173, §38

568.5 Survey.

Upon receiving such application, it shall be the duty of the secretary of state to order a complete survey of such land to be made by the county surveyor of the county wherein the land is situated, and in case of the refusal or inability of such county surveyor to make such survey then the secretary of state shall appoint some other competent surveyor to make such survey.

[S13, §2900-a4; C24, 27, 31, 35, 39, §**10225;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.5]

568.6 Report of survey.

When such survey is made, a full report thereof, with field notes, shall be filed with the clerk of the state land office, which report and field notes shall constitute the official survey of such land.

[S13, §2900-a4; C24, 27, 31, 35, 39, §**10226;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.6]

568.7 Appraisement.

Upon the filing of such report, with the accompanying field notes, the secretary of state shall thereupon appoint a commission of three disinterested freeholders of the county wherein the land is situated, to view the land and make appraisement of the value thereof, which appraisement shall be returned and filed with the clerk of the state land office in the office of the secretary of state.

The secretary of state, if the secretary deems it necessary, may either go in person or send the clerk of the state land office into the county to make proper selection of the said commissioners.

[S13, §2900-a5; C24, 27, 31, 35, 39, §**10227;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.7]

568.8 Contract for survey.

The secretary of state shall make a contract with some surveyor for making such survey; the surveyor to furnish all the chainpersons and other attendants and pay all necessary expenses, which contract before it becomes binding shall be submitted to and approved by the executive council.

[S13, §2900-a6; C24, 27, 31, 35, 39, §**10228;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.8]

568.9 Commissioners' compensation and expenses.

Commissioners, for their services in making such appraisement shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses. All per diem moneys paid to the commissioners shall be paid from funds appropriated to the secretary of state.

[C24, 27, 31, 35, 39, §**10229;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.9]

90 Acts, ch 1256, §50

568.10 Sale — how effected — rights of occupants.

Such lands shall be sold in the following manner: Any person who has in fact lived upon any such land and occupied the same, as a home, continuously for a period of three or more years immediately prior to the time of the appraisement thereof, and such occupancy has been in good faith for the purpose of procuring title thereto, whenever by law such title could be vested in the occupant by purchase from the proper authority, or any person who has acquired possession of such land by inheritance, or by purchase made in good faith from a former occupant, or occupants, whose occupancy dates back over a period of three years prior to the date of appraisement of the land, shall have first right to purchase such land at the appraised value; provided such bona fide occupant shall file an application for the purchase thereof at the appraised value with the secretary of state within sixty days after the day the appraisement is made, and shall accompany such application with affidavits showing proof of such bona fide occupancy. If no application has been filed by such bona fide occupant within the sixty-day period above provided, then the secretary of state shall advertise the sale of such land once each week for four consecutive weeks in two newspapers of general circulation published in the county wherein the land is situated, and proof of publication shall be filed with the secretary of state. The sale shall be made upon written bids addressed to the secretary of state and the advertisements shall fix the time when such bids will be received and opened. All bids shall be opened by the secretary of state or by the clerk of the state land office at the time fixed, and the land thereupon may be sold to the highest bidder and at not less than the appraised value.

Any such sale shall be subject to the permanent right of a utility association, company or corporation to continue in possession of a right of way for its underground and aerial plant, including cables, wires, poles, fixtures, piers and abutments, where such right of way has existed on lands which have become subject to sale under section 568.1.

[S13, SS15, §2900-a7; C24, 27, 31, 35, 39, §**10230;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.10]

568.11 Lease authorized — lands readvertised — sale.

If no application is filed for the purchase of the land within the sixty-day period by a bona fide occupant, and if no bids are received for the purchase thereof, on or before the date of the sale as advertised, then the secretary of state is authorized to lease the land for a period of from one to five years, upon as favorable terms as the secretary can obtain. At the expiration of such lease the secretary shall readvertise the land for sale in the manner provided in section 568.10. If no bids for the purchase of the land are received on the date of the second advertised sale, then the secretary of state shall submit the matter to the executive council, and they may either order the land reappraised in the manner provided in section 568.7, and then advertised and sold in the manner provided in section 568.10, or if they deem it advisable, they may authorize the secretary of state to sell the land for less than the appraised value. In such event the secretary of state shall readvertise the land for sale in the manner provided in section 568.10, and such advertisement shall also state that the land will be sold to the highest bidder without restrictions as to the appraised value.

[S13, §2900-a8; C24, 27, 31, 35, 39, §**10231;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.11]

568.12 Deed or patent.

When, upon full compliance with the conditions of this chapter, any person shall become entitled to a deed or patent for any land, a deed or patent shall thereupon be executed and delivered to such person by the governor, on behalf of the state, duly attested with the seal of the state attached thereto, which deed shall, in addition to the usual formalities, also recite the name of the party making application to have the land surveyed, appraised, and sold, the date and the amount of the appraisement, the name of the party making final payment and entitled to a deed therefor, whether as bona fide occupant or as highest bidder, and also that such deed is given for the purpose of conveying such title and interest in the land as the state may at the time own and possess, and has the right to convey. A record of such conveyance shall be made and kept by the clerk of the state land office of the secretary of state.

[S13, §2900-a9; C24, 27, 31, 35, 39, §**10232;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.12]

568.13 Previous survey.

When any such land shall be found to have been previously surveyed under and by virtue of any order of a court of record, and the record of such survey has been duly made and preserved, then and in that event, in the discretion of the secretary of state, a duly certified transcript of such record, together with the field notes accompanying the same, if obtainable, may be filed with the clerk of the state land office in the office of secretary of state, and when so filed shall obviate the necessity for any further survey of such land except when such survey becomes necessary for the purpose of execution of conveyance thereof, and the record of such transcript, when filed, shall constitute the official survey of such land.

[S13, §2900-a10; C24, 27, 31, 35, 39, §**10233;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.13]

568.14 Boundary commission.

If in any proceeding contemplated by the provisions of this chapter, it shall become necessary to determine the boundary line between this state and either of the states adjoining, the matter shall then be at once referred to the executive council, who shall thereupon proceed to confer with the proper authority of such adjoining state, and if the co-operation of the proper authority of such adjoining state shall be obtained, then the executive council shall appoint a commission of three disinterested, competent persons, who shall, in conjunction with the parties acting for such adjoining state, have authority to ascertain and locate the true boundary line between this state and such adjoining state, so far as the particular land under consideration at the time is concerned. The report of the commissioners with a statement of their findings shall be submitted to the executive council, who shall file the same with the clerk of the state land office in the office of the secretary of state. The line so ascertained and located shall constitute the true and permanent boundary line between this state and such other state to the extent such line shall be so ascertainable and located.

[S13, §2900-a11; C24, 27, 31, 35, 39, §**10234;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.14]

568.15 How constituted.

The members of the commission shall be selected with reference to their fitness for the duties required and at least one of them shall be a competent surveyor and civil engineer.

[S13, §2900-a12; C24, 27, 31, 35, 39, §**10235;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.15]

568.16 Purchase money refunded.

If the grantee of the state, or the grantee's successors, administrators, or assigns, shall be deprived of the land conveyed by the state under this chapter by the final decree of a court of record for the reason that the conveyance by the state passed no title whatever to the land therein described, because title thereto had previously for any reason been vested in others, then the money so paid the state for the said land shall be refunded by the state to the person or persons entitled thereto, provided the said grantee, or the grantee's successors, administrators, or assigns, shall file a certified copy of the transcript of the said final decree with the executive council within one year from the date of the issuance of such decree, and shall also file satisfactory proof with the executive council that the action over the title to the land was commenced within ten years from the date of the issuance of patent or deed by the state. The amount of money to be refunded under the provisions of this section shall be certified by the executive council to the director of revenue and finance, who shall draw a warrant therefor, and the same shall be paid out of the general fund.

[S13, §2900-a13; C24, 27, 31, 35, 39, §**10236;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.16]

568.17 Sales and leases for cash.

All sales and leases of land under the provisions of this chapter shall be for cash. All money received for such sales and leases shall be paid into the state treasury by the secretary of state.

[S13, §2900-a14; C24, 27, 31, 35, 39, §**10237;**

C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.17]

568.18 Good faith possession — preference.

If any lands in the present or in any former channel of any navigable river, or island therein, or any lands formed by accretion or avulsion in consequence of the changes of the channel of any such river, have been for ten years or more in the possession of any person, company, or corporation, or of its grantors or predecessors in interest under a bona fide claim of ownership, and the person, company or corporation so in possession, or its grantors or predecessors in interest, have paid state or county taxes upon said lands for a period of five years, and have in good faith and under bona fide claim of title made valuable improvements thereon, and also in any other case where, in the judgment of the executive council, the person in possession of any land subject to the provisions of this chapter, has, in equity and good conscience, a substantial interest therein, then the said lands shall be sold to the person, company, or corporation so in possession thereof as hereinafter provided.

[S13, §2900-a16; C24, 27, 31, 35, 39, §**10238;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.18]

568.19 Notice — action to determine title and value — patent.

When any person, company, or corporation so in possession of any such lands shall give to the secretary of state written notice of its claim, or whenever the executive council shall deem it advisable, it shall be the duty of the attorney general to bring an action in equity, in the district court of the county in which said lands are situated, against the party in possession thereof to determine the title of the state to such lands, and the value thereof, exclusive of improvements made thereon by the occupant or by its grantors or predecessors in interest. If the person, company, or corporation in possession of such land shall, after the court has determined the value thereof as herein provided, tender to the secretary of state the amount adjudged to be the value of said lands, exclusive of improvements made thereon by the occupant or by its grantors or predecessors in interest, a deed or patent of such land shall be executed by the governor, attested by the secretary of state, and delivered to the person, company, or corporation making such tender, as provided by law. If the person, company, or corporation so in possession shall fail to pay to the state the amount so adjudged within six months after the final determination of the action so brought by the state, then said lands shall be subject to the other provisions of this chapter.

[S13, §2900-a17; C24, 27, 31, 35, 39, §**10239;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.19]

568.20 Withholding patent — deposit money refunded.

If the land described in any application is covered by the provisions of sections 568.18 and 568.19, and notice thereof is given to the secretary of state as provided in section 568.19, no deed or patent of such land, or any part thereof, shall be executed or issued until the title thereto shall have been established by the court as herein provided. If the party making such application, or the party's assignee, does not desire to prosecute the application, or if the party or assignee does not purchase the land under this chapter, then all of the money deposited by the party or assignee with the secretary of state under the provisions of this chapter shall be repaid to said applicant by the secretary of state; and if any part of the money so deposited has been expended by the secretary of state, then the amount so expended shall be certified by the secretary of state to the director of revenue and finance, who shall draw a warrant upon the general fund in favor of the person entitled thereto.

[S13, §2900-a18; C24, 27, 31, 35, 39, §**10240;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.20]

568.21 Sale or lease authorized.

The executive council of the state is hereby authorized and empowered to sell, convey, lease, or demise any of the islands belonging to the state which are within the meandered banks of rivers in the state, and to execute and deliver a patent or lease thereof. Nothing in this and sections 568.22 to 568.25 shall be construed to apply to islands in the Mississippi or Missouri rivers.

[S13, §2900-a28; C24, 27, 31, 35, 39, §**10241;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.21]

568.22 Survey — appraisement — sale.

Before a sale of any island is made under the provisions of section 568.21, the executive council shall cause a survey and plat of such island to be made, showing its location and area, and the plat and notes of such survey shall be filed with the secretary of state. The land composing the island shall then be appraised by a commission appointed by the governor, consisting of three disinterested freeholders of the state, who shall report their appraisement to the executive council. The sale of the island shall then be advertised once each week for four consecutive weeks in some newspaper of general circulation published in the county where the island is located, and proof of such publication filed with the executive council. The sale shall be made upon written bids addressed to the executive council of the state, and the advertisement shall fix the time when such bids will be received and opened. All bids shall be

opened by the executive council at the time fixed, and the island may thereupon be sold to the highest bidder and at not less than its appraised value.

[S13, §2900-a29; C24, 27, 31, 35, 39, §**10242;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.22]

568.23 Lease.

If it shall be deemed expedient to lease any such island, a lease thereof may be made upon written bids addressed to the executive council, and the island proposed to be leased shall be surveyed and platted, and notice of the leasing thereof and of the receiving and opening of bids shall be published, in the manner provided in section 568.22, but no appraisement shall be necessary. Upon the opening of the bids received by the executive council it may make a lease of such island to the highest bidder for such term as is deemed advisable.

[S13, §2900-a30; C24, 27, 31, 35, 39, §**10243;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.23]

568.24 Sales and leases for cash — expenses.

All sales and leases must be for cash, and the money received therefor shall be paid into the state treasury. All expenses incurred in making the survey, plat, appraisement, sale, or lease of any such island shall be certified by the executive council to the director of revenue and finance, who shall draw a warrant upon the state treasury for the amount, and the same shall be paid from the general fund.

[S13, §2900-a31; C24, 27, 31, 35, 39, §**10244;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.24]

568.25 Patent or lease.

When any sale or lease of any island belonging to the state is made by the executive council as herein provided, the governor shall execute and deliver to the purchaser or lessee a patent or a lease thereof, as the case may be, duly attested by the seal of the state.

[S13, §2900-a32; C24, 27, 31, 35, 39, §**10245;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §568.25]

CHAPTER 569

ACQUISITION OF TITLE BY STATE OR MUNICIPAL CORPORATIONS

569.1 Right to receive conveyance.
569.2 Bidding in at execution sale.
569.3 Amount of bid.
569.4 Costs and expenses.
569.5 Management.
569.6 Costs, expenses and proceeds.
569.7 Execution of deeds and leases.
569.8 Title under tax deed — sale — proceeds.

569.1 Right to receive conveyance.

When it becomes necessary, to secure the state or any county or other municipal corporation thereof from loss, to take real estate on account of a debt by bidding the same in at execution sale or otherwise, the conveyance shall vest in the grantee as complete a title as if it were a natural person.

[C73, §1910; C97, §2894; C24, 27, 31, 35, 39, §**10246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §569.1]

569.2 Bidding in at execution sale.

Such real estate shall be bid in, if for the state, by the attorney general, if for the county, by the county attorney, and if for any other municipal corporation, by its attorney or agent appointed for that purpose, the proceeds of any such real estate, when sold, to be covered into the state, county, or municipal treasury, as the case may be, for the use of the general or the special fund to which it rightfully belongs.

[C73, §1911; C97, §2895; C24, 27, 31, 35, 39, §**10247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §569.2]

Bidding at tax sale, §446.19, 468.158

569.3 Amount of bid.

When real estate is sold as above provided, the fair and reasonable value shall be bid therefor, unless in excess of the judgment, interest, costs, and accruing costs, in which case the bid shall be for such sum only.

[C73, §1912; C97, §2896; C24, 27, 31, 35, 39, §**10248;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §569.3]

569.4 Costs and expenses.

In all cases in which the state becomes the purchaser of real estate under the provisions of this chapter, the costs and expenses attending such

purchases shall be audited and allowed by the director of revenue and finance, and paid out of any money in the state treasury not otherwise appropriated, upon the director's warrant, and charged to the fund to which the indebtedness belonged upon which such real estate was taken.

If the real estate is purchased by a county, the costs and expenses shall be audited by the board of supervisors and paid out of the county treasury, upon a warrant drawn by the auditor on the treasurer, from the fund to which the debt belonged upon which said real estate was purchased.

If the real estate is purchased by any other municipal corporation, then the costs shall be audited and paid by it in the same manner as other claims against it are audited and paid.

[C73, §1913; C97, §2897; C24, 27, 31, 35, 39, §**10249;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §569.4]

569.5 Management.

When the title to real estate becomes vested in the state, or in a county or municipality under this chapter, or by conveyance under the statutes relating to taxation, the executive council, board of supervisors, or other governing body, as the case may be, shall manage, control, protect by insurance, lease, or sell said real estate on such terms, conditions, or security as said governing body may deem best.

[C73, §1914 – 1917, 1919; C97, §2898, 2899; C24, 27, 31, §10250 – 10252, 10254 – 10256; C35, §10260-e1; C39, §**10260.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §569.5]

569.6 Costs, expenses and proceeds.

The cost and expense resulting from the exercise of said powers shall be paid from the fund to which said real estate belongs and the proceeds of a lease or sale shall be credited to said fund.

[C73, §1914 – 1917, 1919; C97, §2898, 2899; C24, 27, 31, §10250 – 10252, 10254 – 10256; C35, §10260-e2; C39, §**10260.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §569.6]

569.7 Execution of deeds and leases.

The said governing body may appoint its chairperson, president, or other member to execute and acknowledge, for and on behalf of the state, county, or municipality, leases and deeds of conveyance, but said instruments when executed shall be approved by the said body and said approval spread upon its minutes with the yea and nay vote thereon. A transcript of said minutes certified by the secretary of said body shall be entitled to be recorded in the same manner as the approved instrument is entitled to be recorded.

[C73, §1916, 1918, 1919; C97, §2898 – 2900; C24, 27, 31, §10254, 10257 – 10260; C35, §10260-e3; C39, §**10260.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §569.7]

569.8 Title under tax deed — sale — proceeds.

1. Disposition by a county of a parcel acquired by tax deed shall comply with section 331.361, subsection 2 or 3.

2. When title to a parcel acquired by tax deed is transferred, the auditor shall immediately record the deed and the assessor shall enter the parcel to be assessed following the assessment date.

3. A parcel the county holds by tax deed shall not be assessed or taxed until transferred.

4. The transfer by a county of a parcel acquired by tax deed gives the purchaser free title as to previously levied or set taxes.

5. The proceeds of the sale shall be credited to the county general fund.

[C35, §10260-g1; C39, §**10260.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §569.8; 81 Acts, ch 117, §1094]

91 Acts, ch 191, §122; 92 Acts, ch 1016, §40; 96 Acts, ch 1204, §32

For definitions applicable to this section, see §445.1

SUBTITLE 3

LIENS

CHAPTER 570

LANDLORD'S LIEN

Landlord and tenant generally, chapters 562, 562A, 562B

570.1 Lien created — perfection and priority — termination.
570.2 Duration of lien.
570.3 Limitation on lien in case of sale under judicial process.
570.4 Limitation on lien in case of crop failure.
570.5 Enforcement — proceeding by attachment.
570.6 Lien upon additional property.
570.7 Action by tenant to recover property.
570.8 Acts sufficient to constitute taking of property.
570.9 Sale of crops held by landlord's lien.
570.10 Action barred by payment of rent.

570.1 Lien created — perfection and priority — termination.

1. A landlord shall have a lien for the rent upon all crops grown upon the leased premises, and upon any other personal property of the tenant which has been used or kept thereon during the term and which is not exempt from execution.

2. In order to perfect a lien in farm products as defined in section 554.9102, which is created under this section, a landlord must file a financing statement as required by section 554.9308, subsection 2. Except as provided in chapters 571, 572, 579A, 579B, and 581, a perfected lien in the farm products has priority over a conflicting security interest or lien, including a security interest or lien that was perfected prior to the creation of the lien under this section, if the lien created in this section is perfected on either of the following dates:

a. Prior to July 1, 2001.

b. When the debtor takes possession of the leased premises or within twenty days after the debtor takes possession of the leased premises.

3. A financing statement filed to perfect a lien in the farm products must include a statement that it is filed for the purpose of perfecting a landlord's lien. Notwithstanding section 554.9515, such financing statement shall continue to be effective until a termination statement is filed.

4. Within twenty days after a landlord who has filed a financing statement receives a written demand, authenticated as provided in article 9 of chapter 554, from a tenant, the landlord shall file a termination statement, if the lien in the farm products has expired or if the tenant is no longer in possession of the leased premises and has performed all obligations under the lease.

[C51, §1270; R60, §2302; C73, §2017; C97, §2992; C24, 27, 31, 35, 39, §**10261;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.1]

2000 Acts, ch 1149, §176, 187; 2002 Acts, ch 1023, §1

2000 amendments to this section are effective July 1, 2001; 2000 Acts, ch 1149, §187

Subsection 2, unnumbered paragraph 2 amended, divided, and redesignated as subsections 3 and 4

570.2 Duration of lien.

Such lien shall continue for the period of one year after a year's rent, or the rent of a shorter period, falls due. But in no case shall such lien continue more than six months after the expiration of the term.

[C51, §1270; R60, §2302; C73, §2017; C97, §2992; C24, 27, 31, 35, 39, §**10262;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.2]

570.3 Limitation on lien in case of sale under judicial process.

In the event that a stock of goods or merchandise, or a part thereof, subject to a landlord's lien, shall be sold under judicial process, order of court, or by an assignee under a general assignment for benefit of creditors, the lien of the landlord shall not be enforceable against said stock or portion thereof, except for rent due for the term already expired, and for rent to be paid for the use of demised premises for a period not exceeding six months after date of sale, any agreement of the parties to the contrary notwithstanding.

[C97, §2992; C24, 27, 31, 35, 39, §**10263;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.3]

570.4 Limitation on lien in case of crop failure.

In cases of farm leases involving the rental of farm lands of forty acres or more, where the tenant has defaulted in the payment of the rent and suit

has been commenced aided by landlord's attachment for the enforcement of the landlord's lien, the defendant may file as a defense that the default or inability to pay is caused or brought about by reason of drought, flood, hail, storms, or other climatic conditions or infestation of pests affecting the crops in controversy. When such a defense has been filed, the issue as to the cause for the default shall be triable as an equitable action. Upon the hearing, if the court finds that the default or inability to pay is due to drought, flood, hail, storm, or other climatic conditions or infestation of pests affecting the crops in controversy, the court may enter a decree pursuant thereto with the court's finding of fact. Where a decree has been entered finding that the inability to pay was brought about by any of the conditions named in this section, the landlord's lien shall be confined to all of the crops grown and raised upon the premises and to all increase in livestock and hogs raised upon the premises.

The provisions of this section shall not apply to any farm leases executed prior to July 4, 1941.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.4]

570.5 Enforcement — proceeding by attachment.

The lien may be enforced by the commencement of an action, within the period above prescribed, for the rent alone, in which action the landlord shall be entitled to a writ of attachment, upon filing with the clerk a verified petition, stating that the action is commenced to recover rent accrued within one year previous thereto upon premises described in the petition; and the procedure thereunder shall be the same, as nearly as may be, as in other cases of attachment, except no bond shall be required.

[C51, §1271; R60, §2303; C73, §2018; C97, §2993; C24, 27, 31, 35, 39, §**10264;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.5]

Attachment, chapter 639

570.6 Lien upon additional property.

If a lien for rent is given in a written lease or other instrument upon additional property, it may be enforced in the same manner as a landlord's lien and in the same action.

[C51, §1271; R60, §2303; C73, §2018; C97, §2993; C24, 27, 31, 35, 39, §**10265;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.6]

570.7 Action by tenant to recover property.

An action brought by a tenant, the tenant's assignee or undertenant, to recover the possession of specific personal property taken under landlord's attachment, may be against the party who sued out the attachment; and the property claimed in such action may, under the writ therefor, be taken from the officer who seized it, when the officer has no other claim to hold it than that derived from the writ.

[R60, §2770; C73, §2575; C97, §3490; C24, 27, 31, 35, 39, §**10266;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.7]

570.8 Acts sufficient to constitute taking of property.

The endorsement of a levy on the property, made upon the process by the officer holding it, shall be a sufficient taking of the property to sustain an action against the party who sued out the writ.

[R60, §2770; C73, §2575; C97, §3490; C24, 27, 31, 35, 39, §**10267;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.8]

Levy generally, R.C.P. 1.1018 et seq.; §639.26

570.9 Sale of crops held by landlord's lien.

If any tenant of farm lands, with intent to defraud, shall sell, conceal, or in any manner dispose of any of the grain, or other annual products thereof upon which there is a landlord's lien for unpaid rent, without the written consent of the landlord, the tenant shall be guilty of theft.

[S13, §4852-a; C24, 27, 31, 35, 39, §**10268;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.9]

Theft, chapter 714

570.10 Action barred by payment of rent.

The payment of the rent for the lands upon which such grain or other annual products were raised at or before the time the same falls due, shall be a bar to any prosecution under section 570.9 and no prosecution shall be commenced until such rent be wholly due.

[S13, §4852-b; C24, 27, 31, 35, 39, §**10269;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §570.10]

CHAPTER 570A

AGRICULTURAL SUPPLY DEALER'S LIEN

570A.1 Definitions.
570A.2 Financial institution memorandum to agricultural supply dealers.
570A.3 Lien created.
570A.4 Perfection of lien.
570A.5 Priority of lien.
570A.6 Enforcement of lien.
570A.7 Enforcement actions.
570A.8 Demand for bringing suit.
570A.9 Assignment of lien.
570A.10 Acknowledgment of satisfaction.
570A.11 Rights and remedies.

570A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agricultural chemical"* means a fertilizer or agricultural chemical which is applied to crops or land which is used for the raising of crops, including but not limited to fertilizer as defined in section 200.3, and pesticide as defined in section 206.2.

2. *"Agricultural purpose"* means a purpose related to the production, harvest, marketing, or transportation of agricultural products by a person who cultivates, plants, propagates or nurtures the agricultural products including agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any other products raised or produced on farms.

3. *"Agricultural supply dealer"* means a person engaged in the retail sale of agricultural chemicals, seed, feed, or petroleum products used for an agricultural purpose.

4. *"Certified request"* means a request delivered by registered or certified mail, or a request delivered in person in writing signed and dated by the respective parties.

5. *"Farmer"* means a person engaged in a business which has an agricultural purpose.

6. *"Feed"* means a commercial feed, feed ingredient, mineral feed, drug, animal health product, or customer-formula feed which is used for the feeding of livestock, including but not limited to feed as defined in section 198.3.

7. *"Financial history"* means the record of a person's current loans, the date of a person's loans, the amount of the loans, the person's payment record on the loans, current liens against the person's property, and the person's most recent financial statement.

8. *"Financial institution"* means a bank, credit union, insurance company, mortgage banking company or savings and loan association, industrial loan company, production credit association, farmer's home administration, or like institution which operates or has a place of business in this state.

9. *"Labor"* means labor performed in the application, delivery, or preparation of a product defined in subsections 1, 6, 12, and 14.

10. *"Letter of credit"* means an engagement by a financial institution to honor drafts or other demands for payment.

11. *"Livestock"* means cattle, sheep, swine, ostriches, rheas, emus, poultry, or other animals or fowl.

12. *"Petroleum product"* means a motor fuel or special fuel which is used in the production of crops and livestock, including but not limited to motor fuel as defined in section 452A.2.

13. *"Sale on a credit basis"* means a transaction in which the purchase price is due on a date after the date of the sale.

14. *"Seed"* means agricultural seeds which are used in the production of crops, including but not limited to agricultural seed as defined in section 199.1.

84 Acts, ch 1072, §1; 85 Acts, ch 204, §1; 95 Acts, ch 43, §13

570A.2 Financial institution memorandum to agricultural supply dealers.

1. Upon the receipt of a certified request of an agricultural supply dealer, prior to or upon a sale on a credit basis of agricultural chemicals, seed, feed, or petroleum products to a farmer, a financial institution which has either a security interest in collateral owned by the farmer or an outstanding loan to the farmer for an agricultural purpose shall issue within four business days a memorandum which states whether or not the farmer has a sufficient net worth or line of credit to assure payment of the purchase price on the terms of the sale. The certified request submitted by the agricultural supply dealer shall state the amount of the purchase and the terms of sale and shall be accompanied by a waiver of confidentiality signed by the farmer, and a fifteen dollar fee. The waiver of confidentiality and the certified request may be combined and submitted as one document. If the financial institution states in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the memorandum is an irrevocable and unconditional letter of credit to the benefit of the agricultural supply dealer for a period of thirty days following the date on which the final payment is due for the amount of the purchase price which remains unpaid. If the financial institution does not state in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the financial institution shall transmit the relevant financial history which it holds on the person. This financial history shall remain confidential between the financial institution, the agricultural supply dealer, and the farmer.

2. If within four business days of receipt of a certified request a financial institution fails to issue a memorandum upon the request of an agricultural supply dealer and the request from the agricultural supply dealer was proper under subsection 1, or if the memorandum from the financial institution is incomplete, or if the memorandum from the financial institution states that the farmer does not have a sufficient net worth or line of credit to assure payment of the purchase price, the agricultural supply dealer may decide to make the sale and secure the lien provided in section 570A.3.

3. Upon an action to enforce a lien secured under section 570A.3 against the interest of a financial institution secured to the same collateral as

that of the lien, it shall be an affirmative defense to a financial institution and complete proof of the superior priority of the financial institution's lien that the financial institution either did not receive a certified request and a waiver signed by the farmer, or received the request and a waiver signed by the farmer and provided the full and complete relevant financial history which it held on the farmer making the purchase from the agricultural supply dealer on which the lien is based and that financial history reasonably indicated that the farmer did not have a sufficient net worth or line of credit to assure payment of the purchase price.

84 Acts, ch 1072, §2; 85 Acts, ch 204, §2; 90 Acts, ch 1168, §58

570A.3 Lien created.

1. An agricultural supply dealer furnishing an agricultural chemical, seed, or a petroleum product to a farmer has a lien for the retail cost of the agricultural chemical, seed, or petroleum product, including labor furnished. The lien attaches to all crops which are produced upon the land to which the agricultural chemical was applied, or produced from seed furnished, or produced using the petroleum product furnished, for a period of sixteen months following the date of perfection of the lien pursuant to section 570A.4. However, the lien does not attach to that portion of the crops of a farmer who has paid all amounts due from the farmer for the retail cost, including labor, of the agricultural chemical, seed, or petroleum product provided.

2. An agricultural supply dealer furnishing feed to a farmer has a lien for the unpaid amount of the retail cost of the feed, including labor. The lien attaches to all livestock consuming the feed. However, the lien does not attach to that portion of the livestock of a farmer who has paid all amounts due from the farmer for the retail cost, including labor, of the feed.

84 Acts, ch 1072, §3; 85 Acts, ch 204, §3

570A.4 Perfection of lien.

1. In order to perfect the lien created by section 570A.3, the agricultural supply dealer entitled to the lien shall file a verified lien statement with the office of the secretary of state. The lien statement may be filed at the time the agricultural chemical, seed, feed, or petroleum product is purchased or delivered but not later than thirty-one days after the first date on which payment is due under the terms of payment agreed to by the farmer and the agricultural supply dealer. The lien statement shall disclose all of the following:

a. The name and address of the agricultural supply dealer claiming the lien.

b. An itemized declaration of the nature and retail cost of the agricultural chemical, seed, feed, or petroleum product which has been or may be furnished pursuant to the certified request or the combined certified request and waiver of confidentiality.

c. The last date through which the agricultural supply dealer claiming the lien has agreed to furnish agricultural chemicals, seed, feed, or petroleum products as stated in the certified request or the combined certified request and waiver of confidentiality.

d. The first date on which payment was due, according to the terms of payment, from the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished or may be furnished pursuant to the certified request or the combined certified request and waiver of confidentiality.

e. The name and address of the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished or may be furnished pursuant to the certified request or the combined certified request and waiver of confidentiality.

f. A description of the real property on which the crops to which the lien attaches are growing or are to be grown or the description of the livestock to which the lien attaches.

2. The secretary of state shall enter on the lien statement the time of day and date of filing.

3. If an agricultural supply dealer fails to file the lien statement within the time required by subsection 1, the lien and all benefits under this chapter are forfeited.

4. The secretary of state shall note the filing of a lien statement under this section in the manner provided by chapter 554, the uniform commercial code, and shall charge a fee as provided under section 554.9525.

5. An agricultural supply dealer filing a verified lien statement shall request from the secretary of state a certificate showing any effective financing statement or verified lien statements naming the debtor and the crops or livestock to which the lien attaches. The agricultural supply dealer shall notify by registered or certified mail, return receipt requested, any other creditor who holds a lien or security interest which is subordinate or equal to the agricultural supply dealer's lien.

84 Acts, ch 1072, §4; 85 Acts, ch 204, §4; 88 Acts, ch 1275, §40; 91 Acts, ch 267, §630; 2000 Acts, ch 1149, §177, 187

570A.5 Priority of lien.

1. A lien perfected under this chapter is superior to a lien or security interest which attaches subsequent to the time the lien statement is filed with the secretary of state, except liens which arise under this chapter or under chapters 570 and 571.

2. A lien perfected under this chapter is equal to a lien or security interest which is of record or which is perfected prior to the time the lien statement is filed with the secretary of state except as provided in section 570A.2, subsection 3.

3. A lien perfected under this chapter for the purposes of feed will continue to be perfected in the livestock and takes priority over an earlier perfected lien or security interest to the extent of the difference between the acquisition price of the livestock and the fair market value of the livestock at the time the lien attaches or the sale price of the livestock, whichever is greater.

84 Acts, ch 1072, §5

570A.6 Enforcement of lien.

The holder of a lien perfected under this chapter may enforce the lien in the manner provided for agricultural liens pursuant to chapter 554, article 9, part 6, for the enforcement of security interests. For purposes of enforcement of the lien, the lienholder is deemed to be the secured party, and the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished is deemed to be the debtor, and each has the respective rights and duties of a secured party and a debtor as provided in chapter 554, article 9, part 6. Where a right or duty under chapter 554, article 9, part 6, is contingent upon the existence of express language in a security agreement, or may be waived by express language in a security agreement, the requisite language is deemed not to exist for purposes of enforcement of the lien created by this chapter.

84 Acts, ch 1072, §6; 2000 Acts, ch 1149, §178, 187

570A.7 Enforcement actions.

An action to enforce a lien arising under this chapter may be commenced in the district court after the lien is perfected. The action may be brought in any county in which some part of the crop and livestock or animals is located. The action shall be by equitable proceedings, and no other cause of action shall be joined with it. A lien statement may be amended by leave of the court in furtherance of justice, except as to the amount demanded. An action to enforce a lien under this chapter may be brought within one year after the date the lien statement is filed and not afterward.

84 Acts, ch 1072, §7

570A.8 Demand for bringing suit.

1. A person who has an interest in crops or livestock to which a lien has attached under this chapter may serve upon the lienholder a written demand that the lienholder commence an action to enforce the lien within thirty days after the date of service. The written demand shall be served in the same manner provided for service of an original notice. If the lienholder fails to commence an action within thirty days after being served with the written demand, the lien and all benefits of the lien are extinguished.

2. Return of service of the written demand specified in subsection 1 shall be filed with the secretary of state.

3. The lienholder shall file with the secretary of state a file stamped copy of the petition to enforce the lien within thirty days of commencing the action. Failure to file the copy of the petition will cause the verified lien statement to lapse.

84 Acts, ch 1072, §8

570A.9 Assignment of lien.

A lien which has been perfected under this chapter is assignable, and follows the assignment of the debt for which it is claimed.

84 Acts, ch 1072, §9

570A.10 Acknowledgment of satisfaction.

When a lien under this chapter is satisfied by payment of the claim, the lienholder shall acknowledge the satisfaction of the claim in writing to the secretary of state. If the lienholder failed to file an acknowledgment of satisfaction with the secretary of state within thirty days after written demand by a person having an interest in the crop or livestock, the lienholder is liable to the person for a penalty of twenty-five dollars, plus actual damages incurred as a result of the failure, plus attorney fees and court costs.

84 Acts, ch 1072, §10

570A.11 Rights and remedies.

The rights and remedies provided for in this chapter are in addition to and not in lieu of the rights and remedies provided for in chapter 572.

84 Acts, ch 1072, §11

CHAPTER 571

THRESHER'S OR CORNSHELLER'S LIEN

571.1 Nature of lien.
571.2 Priority of lien.
571.3 Preservation of lien.
571.4 Enforcement — time limit.
571.5 Enforcement of lien.
571.6 Acknowledgment of satisfaction.

571.1 Nature of lien.

Any person, firm, corporation, or association engaged in operating a machine for the threshing, baling, or combining of any kind of grain or seed; or for the baling of hay, straw, or any other farm product whether done by stationary or movable baler; or for the mechanical husking or shelling of corn; or for doing custom threshing, combining, mechanical husking, baling, or corn shelling for hire, shall have a first lien on grain and seed threshed, or any farm product baled, or on corn shelled or husked, for the reasonable value of such services.

[C35, §10269-e1; C39, §**10269.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §571.1]

571.2 Priority of lien.

Said lien shall be prior and superior to any landlord's lien or security interest upon said grain, seed, or corn.

[C35, §10269-e2; C39, §**10269.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §571.2]

571.3 Preservation of lien.

In order to preserve the lien the person entitled to the lien must, within ten days from the completion of the work for which the lien is claimed, file in the office of the secretary of state an itemized and verified statement setting forth the services rendered, the number of bushels of grain threshed or corn shelled, the value of the services, the name of the person for whom the services were rendered and the place where the services were rendered; and the secretary of state shall note the filing of the verified statement under this section in the manner provided by chapter 554 and shall charge a four dollar filing fee if the statement is on the standard form prescribed by the secretary of state, and a five dollar filing fee if the statement is on another form.

[C35, §10269-e3; C39, §**10269.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §571.3]

86 Acts, ch 1033, §1

571.4 Enforcement — time limit.

Proceedings to enforce said lien must be brought within thirty days after the filing of the verified statement and cannot be brought after the lapse of the thirty days. The lienholder shall file with the secretary of state a file stamped copy of the petition to enforce the lien immediately upon commencing the action.

[C35, §10269-e4; C39, §**10269.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §571.4]

86 Acts, ch 1033, §2

571.5 Enforcement of lien.

A lien as provided in this chapter may be enforced in the manner provided for agricultural liens pursuant to the uniform commercial code, chapter 554, article 9, part 6.

[C35, §10269-e5; C39, §**10269.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §571.5]

2000 Acts, ch 1149, §179, 187

571.6 Acknowledgment of satisfaction.

When a lien under this chapter is satisfied by payment of the claim, the lienholder shall acknowledge the satisfaction of the claim in writing to the secretary of state. If the lienholder failed to file an acknowledgment of satisfaction with the secretary of state within thirty days after written demand by a person having an interest in the crop, the lienholder is liable to the person for a penalty of twenty-five dollars, plus actual damages incurred as a result of the failure, plus attorney fees and court costs.

86 Acts, ch 1033, §3

CHAPTER 572

MECHANIC'S LIEN

572.1 Definitions and rules of construction.
572.2 Persons entitled to lien.
572.3 Collateral security before completion of work.
572.4 Security after completion of work.
572.5 Extent of lien.
572.6 In case of leasehold interest.
572.7 In case of internal improvement.
572.8 Perfection of lien.
572.9 Time of filing.
572.10 Perfecting subcontractor's lien after lapse of ninety days.
572.11 Extent of lien filed after ninety days.
572.12 Time of filing against railway.
572.13 Liability of owner to original contractor.
572.14 Liability to subcontractor after payment to original contractor.
572.15 Discharge of subcontractor's lien — bond.
572.16 Rule of construction.
572.17 Priority of mechanics' liens between mechanics.
572.18 Priority over other liens — priority of certain construction mortgage liens.
572.19 Priority over garnishments of the owner.
572.20 Priority as to buildings over prior liens upon land.
572.21 Foreclosure of mechanic's lien when lien on land.
572.22 Record of claim.
572.23 Acknowledgment of satisfaction of claim.
572.24 Time of bringing action — court.
572.25 Place of bringing action.
572.26 Kinds of action — amendment.

572.27 Limitation on action.
572.28 Demand for bringing suit.
572.29 Assignment of lien.
572.30 Action by subcontractor or owner against contractor.
572.31 Co-operative and condominium housing.
572.32 Attorney fees — remedies.
572.33 Requirement of notification.

572.1 Definitions and rules of construction.

For the purpose of this chapter:

1. *"Building"* shall be construed as if followed by the words "erection, or other improvement upon land".

2. *"Material"* shall, in addition to its ordinary meaning, include machinery, tools, fixtures, trees, evergreens, vines, plants, shrubs, tubers, bulbs, hedges, bushes, sod, soil, dirt, mulch, peat, fertilizer, fence wire, fence material, fence posts, tile, and the use of forms, accessories, and equipment.

3. *"Owner"* shall include every person for whose use or benefit any building, erection, or other improvement is made, having the capacity to contract, including guardians.

4. *"Owner-occupied dwelling"* means the homestead of an owner, as defined in section 561.1, and without respect to the value limitations in section 561.3, and actually occupied by the owner or the spouse of the owner, or both. *"Owner-occupied dwelling"* includes a newly constructed dwelling to be occupied by the owner as a homestead, or a dwelling that is under construction and being built by or for an owner who will occupy the dwelling as a homestead.

5. *"Subcontractor"* shall include every person furnishing material or performing labor upon any building, erection, or other improvement, except those having contracts therefor directly with the owner, the owner's agent, or trustee.

[C51, §982; R60, §1866, 1871; C73, §2144, 2146; C97, §3096, 3097; C24, 27, 31, 35, 39, §**10270;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.1; 81 Acts, ch 186, §1]

98 Acts, ch 1142, §1

572.2 Persons entitled to lien.

1. Every person who shall furnish any material or labor for, or perform any labor upon, any building or land for improvement, alteration, or repair thereof, including those engaged in the construction or repair of any work of internal or external improvement, and those engaged in grading, sodding, installing nursery stock, landscaping, sidewalk building, fencing on any land or lot, by virtue of any contract with the owner, the owner's agent, trustee, contractor, or subcontractor shall have a lien upon such building or improvement, and land belonging to the owner on which the same is situated or upon the land or lot so graded, landscaped, fenced, or otherwise improved, altered, or repaired, to secure payment for the material or labor furnished or labor performed.

2. If material is rented by a person to the owner, the owner's agent, trustee, contractor, or subcontractor, the person shall have a lien upon such building, improvement, or land to secure payment for the material rental. The lien is for the reasonable rental value during the period of actual use of the material and any reasonable periods of nonuse of the material taken into account in the rental agreement. The delivery of material to such building, improvement, or land, whether or not delivery is made by the person, creates a presumption that the material was used in the course of alteration, construction, or repair of the building, improvement, or land. However, this presumption shall not pertain to recoveries sought under a surety bond.

[C51, §981, 1010; R60, §1846; C73, §2130; C97, §3089; C24, 27, 31, 35, 39, §**10271;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.2]

98 Acts, ch 1142, §2

Homestead liable, §561.21

572.3 Collateral security before completion of work.

No person shall be entitled to a mechanic's lien who, at the time of making a contract for furnishing material or performing labor, or during the progress of the work, shall take any collateral security on such contract.

[C51, §1009; R60, §1845; C73, §2129; C97, §3088; C24, 27, 31, 35, 39, §**10272;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.3]

572.4 Security after completion of work.

After the completion of such work, the taking of security of any kind shall not affect the right to establish a mechanic's lien unless such new security shall, by express agreement, be given and received in lieu of such lien.

[C97, §3088; C24, 27, 31, 35, 39, §**10273;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.4]

572.5 Extent of lien.

The entire land upon which any building or improvement is situated, including that portion not covered therewith, shall be subject to a mechanic's lien to the extent of the interest therein of the person for whose benefit such material was furnished or labor performed.

[R60, §1854; C73, §2140; C97, §3090; C24, 27, 31, 35, 39, §**10274;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.5]

572.6 In case of leasehold interest.

When the interest of such person is only a leasehold, the forfeiture of the lease for the nonpayment of rent, or for noncompliance with any of the other conditions therein, shall not forfeit or impair the mechanic's lien upon such building or improvement; but the same may be sold to satisfy such lien, and removed by the purchaser within thirty days after the sale thereof.

[R60, §1854; C73, §2140; C97, §3090; C24, 27, 31, 35, 39, §**10275;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.6]

572.7 In case of internal improvement.

When the lien is for material furnished or labor performed in the construction, repair, or equipment of any railroad, canal, viaduct, or other similar improvement, said lien shall attach to the erections, excavations, embankments, bridges, roadbeds, rolling stock, and other equipment and to all land upon which such improvements or property may be situated, except the easement or right of way.

[C73, §2132; C97, §3091; C24, 27, 31, 35, 39, §**10276;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.7]

572.8 Perfection of lien.

A person shall perfect a mechanic's lien by filing with the clerk of the district court of the county in which the building, land, or improvement to be charged with the lien is situated a verified statement of account of the demand due the person, after allowing all credits, setting forth:

1. The time when such material was furnished or labor performed, and when completed.
2. The correct description of the property to be charged with the lien.
3. The name and last known mailing address of the owner, agent, or trustee of the property.

Upon the filing of the lien, the clerk of court shall mail a copy of the lien to the owner, agent, or trustee. If the statement of the lien consists of more than one page, the clerk may omit such pages as consist solely of an accounting of the material furnished or labor performed. In this case, the clerk shall attach a notification that pages of accounting were omitted and may be inspected in the clerk's office.

[R60, §1851; C73, §2137; C97, §3092; C24, 27, 31, 35, 39, §**10277;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.8]

572.9 Time of filing.

The statement or account required by section 572.8 shall be filed by a principal contractor or subcontractor within ninety days from the date on which the last of the material was furnished or the last of the labor was performed. A failure to file the statement or account within the ninety-day period does not defeat the lien, except as otherwise provided in this chapter.

[R60, §1851; C73, §2137; C97, §3092; C24, 27, 31, 35, 39, §**10278;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.9]

87 Acts, ch 79, §1

572.10 Perfecting subcontractor's lien after lapse of ninety days.

After the lapse of the ninety days prescribed in section 572.9, a subcontractor may perfect a mechanic's lien by filing a claim with the clerk of the district court and giving written notice thereof to the owner, the owner's agent, or trustee. Such notice may be served by any person in the manner original notices are required to be served. If the party to be served, the party's agent, or trustee, is out of the county wherein the property is situated, a return of that fact by the person charged with making such service shall constitute sufficient service from and after the time it was filed with the clerk of the district court.

[C73, §2133; C97, §3094; SS15, §3094; C24, 27, 31, 35, 39, §**10279;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.10]

87 Acts, ch 79, §2

Service of notice, R.C.P. 1.302 – 1.315

572.11 Extent of lien filed after ninety days.

Liens perfected under section 572.10 shall be enforced against the property or upon the bond, if given, by the owner, as hereinafter provided, only to the extent of the balance due from the owner to the contractor at the time of the service of such notice; but if the bond was given by the contractor, or person contracting with the subcontractor filing the claim for a lien, such bond shall be enforced to the full extent of the amount found due the subcontractor.

[C73, §2133; C97, §3094; SS15, §3094; C24, 27, 31, 35, 39, §**10280;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.11]

87 Acts, ch 79, §3

572.12 Time of filing against railway.

Where a lien is claimed upon a railway, the subcontractor shall have ninety days from the last day of the month in which such labor was done or material furnished within which to file the claim therefor.

[R60, §1851; C73, §2137; C97, §3092; C24, 27, 31, 35, 39, §**10281;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.12]

87 Acts, ch 79, §4

572.13 Liability of owner to original contractor.

1. An owner of a building, land, or improvement upon which a mechanic's lien of a subcontractor may be filed, is not required to pay the original contractor for compensation for work done or material furnished for the building, land, or improvement until the expiration of ninety days from the completion of the building or improvement unless the original contractor furnishes to the owner one of the following:

a. Receipts and waivers of claims for mechanics' liens, signed by all persons who furnished material or performed labor for the building, land, or improvement.

b. A good and sufficient bond to be approved by the owner, conditioned that the owner shall be held harmless from any loss which the owner may sustain by reason of the filing of mechanics' liens by subcontractors.

2. An original contractor who enters into a contract for an owner-occupied dwelling and who has contracted or will contract with a subcontractor to provide labor or furnish material for the dwelling shall include the following notice in any written contract with the owner and shall provide the owner with a copy of the written contract:

"Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the owner."

If no written contract is entered into between the original contractor and the dwelling owner, the original contractor shall, within ten days of commencement of work on the dwelling, provide written notice to the dwelling owner stating the name and address of all subcontractors that the contractor intends to use for the construction and, that the subcontractors or suppliers may have lien rights in the event they are not paid for their labor or material used on this site; and the notice shall be updated as additional subcontractors and suppliers are used from the names disclosed on earlier notices.

An original contractor who fails to provide notice under this section is not entitled to the lien and remedy provided by this chapter as they pertain to any labor performed or material furnished by a subcontractor not included in the notice.

[R60, §1847; C73, §2131; C97, §3093; S13, §3093; C24, 27, 31, 35, 39, §**10282;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.13]

87 Acts, ch 79, §5

572.14 Liability to subcontractor after payment to original contractor.

1. Except as provided in subsection 2, payment to the original contractor by the owner of any part or all of the contract price of the building or improvement before the lapse of the ninety days allowed by law for the filing of a mechanic's lien by a subcontractor, does not relieve the owner from liability to the subcontractor for the full value of any material furnished or labor performed upon the building, land, or improvement if the subcontractor files a lien within the time provided by law for its filing.

2. In the case of an owner-occupied dwelling, a mechanic's lien perfected under this chapter is enforceable only to the extent of the amount due the principal contractor by the owner-occupant under the contract, less any payments made by the owner-occupant to the principal contractor prior to the owner-occupant being served with the notice specified in subsection 3. This notice may be served by delivering it to the owner or the owner's spouse personally, or by mailing it to the owner by certified mail with restricted delivery and return receipt to the person mailing the notice, or by personal service as provided in the rules of civil procedure.

3. The written notice required for purposes of subsection 2 shall contain the name of the owner, the address of the property charged with the lien, the name, address and telephone number of the lien claimant, and the following statement:

"The person named in this notice is providing labor or materials or both in connection with improvements to your residence or real property. Chapter 572 of the Code of Iowa may permit the enforcement of a lien against this property to secure payment for labor and materials supplied. You are not required to pay more to the person claiming the lien than the amount of money due from you to the person with whom you contracted to perform the improvements. You should not make further payments to your contractor until the contractor presents you with a waiver of the lien claimed by the person named in this notice. If you have any questions regarding this notice you should call the person named in this notice at the phone number listed in this notice or contact an attorney. You should obtain answers to your questions before you make any payments to the contractor."

[S13, §3093; C24, 27, 31, 35, 39, §**10283;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.14; 81 Acts, ch 186, §2]

87 Acts, ch 79, §6; 98 Acts, ch 1142, §3

572.15 Discharge of subcontractor's lien — bond.

A mechanic's lien may be discharged at any time by the owner, principal contractor, or intermediate subcontractor filing with the clerk of the district court of the county in which the property is located a bond in twice the amount of the sum for which the claim for the lien is filed, with surety or sureties, to be approved by the clerk, conditioned for the payment of any sum for which the claimant

may obtain judgment upon the claim. This section applies to any mechanic's lien perfected under this chapter that has not been discharged as of March 21, 1986, as well as any mechanic's lien filed on or after March 21, 1986.

[C97, §3093; S13, §3093; C24, 27, 31, 35, 39, §**10284;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.15]

86 Acts, ch 1017, §1

572.16 Rule of construction.

Nothing in this chapter shall be construed to require the owner to pay a greater amount or at an earlier date than is provided in the owner's contract with the principal contractor, unless said owner pays a part or all of the contract price to the original contractor before the expiration of the ninety days allowed by law for the filing of a mechanic's lien by a subcontractor; provided that in the case of an owner-occupied dwelling, nothing in this chapter shall be construed to require the owner to pay a greater amount or at an earlier date than is provided in the owner's contract with the principal contractor, unless the owner pays a part or all of the contract price to the principal contractor after receipt of notice under section 572.14, subsection 2.

[C97, §3093; S13, §3093; C24, 27, 31, 35, 39, §**10285;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.16; 81 Acts, ch 186, §3]

87 Acts, ch 79, §7

572.17 Priority of mechanics' liens between mechanics.

Mechanics' liens shall have priority over each other in the order of the filing of the statements or accounts as herein provided.

[R60, §1853, 1855; C73, §2139, 2141; C97, §3095; C24, 27, 31, 35, 39, §**10286;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.17]

572.18 Priority over other liens — priority of certain construction mortgage liens.

Mechanics' liens shall be preferred to all other liens which may attach to or upon a building or improvement and to the land upon which it is situated, except liens of record prior to the time of the original commencement of the work or improvements. However, construction mortgage liens shall be preferred to all mechanics' liens of claimants who commenced their particular work or improvement subsequent to the date of the recording of the construction mortgage lien. For purposes of this section, a lien is a "construction mortgage lien" to the extent that it secures loans or advancements made to directly finance work or improvements upon the real estate which secures the lien. The rights of purchasers, encumbrancers, and other persons who acquire interests in good faith and for a valuable consideration, and without notice, after the expiration of the time for filing claims for mechanics' liens, are prior to the claims of all contractors or subcontractors who have not, at the dates such rights and interests were acquired, filed their claims for such liens.

[R60, §1851, 1853, 1855; C73, §2137, 2139, 2141; C97, §3092, 3095; C24, 27, 31, 35, 39, §**10287;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.18]

84 Acts, ch 1215, §1

572.19 Priority over garnishments of the owner.

Mechanics' liens shall take priority of all garnishments of the owner for the contract debts, whether made prior or subsequent to the commencement of the furnishing of the material or performance of the labor, without regard to the date of filing the claim for such lien.

[C97, §3095; C24, 27, 31, 35, 39, §**10288;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.19]

572.20 Priority as to buildings over prior liens upon land.

Mechanics' liens, including those for additions, repairs, and betterments, shall attach to the building or improvement for which the material or labor was furnished or done, in preference to any prior lien, encumbrance, or mortgage upon the land upon which such building or improvement was erected or situated.

[R60, §1853, 1855; C73, §2139, 2141; C97, §3095; C24, 27, 31, 35, 39, §**10289;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.20]

572.21 Foreclosure of mechanic's lien when lien on land.

In the foreclosure of a mechanic's lien when there is a prior lien, encumbrance, or mortgage upon the land the following regulations shall govern:

1. *Lien on original and independent building or improvement.* If such material was furnished or labor performed in the construction of an original and independent building or improvement commenced after the attaching or execution of such prior lien, encumbrance, or mortgage, the court may, in its discretion, order such building or improvement to be sold separately under execution, and the purchaser may remove the same in such reasonable time as the court may fix. If the court shall find that such building or improvement should not be sold separately, it shall take an account of and ascertain the separate values of the land, and the building or improvement, and order the whole sold, and distribute the proceeds of such sale so as to secure to the prior lien, encumbrance, or mortgage priority upon the land, and to the mechanic's lien priority upon the building or improvement.

2. *Lien on existing building or improvement for repairs or additions.* If the material furnished or labor performed was for additions, repairs, or betterments upon any building or improvement,

the court shall take an accounting of the values before such material was furnished or labor performed, and the enhanced value caused by such additions, repairs, or betterments; and upon the sale of the premises, distribute the proceeds of such sale so as to secure to the prior mortgagee or lienholder priority upon the land and improvements as they existed prior to the attaching of the mechanic's lien, and to the mechanic's lienholder priority upon the enhanced value caused by such additions, repairs, or betterments. In case the premises do not sell for more than sufficient to pay off the prior mortgage or other lien, the proceeds shall be applied on the prior mortgage or other liens.

[R60, §1853, 1855; C73, §2139, 2141; C97, §3095; C24, 27, 31, 35, 39, §**10290;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.21]

572.22 Record of claim.

The clerk of the court shall endorse upon every claim for a mechanic's lien filed in the clerk's office the date and hour of filing and make an abstract thereof in the mechanic's lien book kept for that purpose. Said book shall be properly indexed and shall contain the following items concerning each claim:

1. The name of the person by whom filed.
2. The date and hour of filing.
3. The amount thereof.
4. The name of the person against whom filed.
5. The description of the property to be charged therewith.

[R60, §1852; C73, §2138; C97, §3100; C24, 27, 31, 35, 39, §**10291;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.22]

572.23 Acknowledgment of satisfaction of claim.

1. When a mechanic's lien is satisfied by payment of the claim, the claimant shall acknowledge satisfaction thereof upon the mechanic's lien book, or otherwise in writing, and, if the claimant neglects to do so for thirty days after demand in writing is personally served upon the claimant, the claimant shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of the injury.

2. If acknowledgment of satisfaction is not filed within thirty days after service of the demand in writing, the party serving the demand or causing the demand to be served may file for record with the clerk of the district court a copy of the demand with proofs of service attached and endorsed and, in case of service by publication, a personal affidavit that personal service could not be made within this state. Upon completion of the requirements of this subsection, the record shall be constructive notice to all parties of the due forfeiture and cancellation of the lien. Upon the filing of the demand with the required attachments, the clerk of the district court shall mail a file-stamped copy of the demand to both parties.

[R60, §1867 – 1869; C73, §2145; C97, §3101; C24, 27, 31, 35, 39, §**10292;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.23]

99 Acts, ch 79, §1; 2000 Acts, ch 1154, §34

572.24 Time of bringing action — court.

1. An action to enforce a mechanic's lien, or an action brought upon any bond given in lieu thereof, may be commenced in the district court after said lien is perfected.

2. An action to challenge a mechanic's lien may be commenced in the district court or small claims court if the amount of the lien is within jurisdictional limits. Any permissible claim or counterclaim meeting subject matter and jurisdictional requirements may be joined with the action. The court shall make written findings regarding the lawful amount and the validity of the mechanic's lien. In addition to any other appropriate order, the court may enter judgment on a permissibly joined claim or counterclaim. If the court determines that the mechanic's lien is invalid, valid for a lesser amount, frivolous, fraudulent, forfeited, expired, or for any other reason unenforceable, the clerk of the district court shall make an entry of record to the mechanic's lien book regarding the proper amount of the lien or, if warranted, canceling the lien.

[R60, §1856; C73, §2142, 2143; C97, §3098; C24, 27, 31, 35, 39, §**10293;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.24]

99 Acts, ch 79, §2

572.25 Place of bringing action.

An action to enforce a mechanic's lien shall be brought in the county in which the property to be affected, or some part thereof, is situated.

[C73, §2142, 2578; C97, §3098, 3493; C24, 27, 31, 35, 39, §**10294;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.25]

572.26 Kinds of action — amendment.

An action to enforce a mechanic's lien shall be by equitable proceedings, and no other cause of action shall be joined therewith.

Any lien statement may be amended by leave of court in furtherance of justice, except as to the amount demanded.

[C51, §985; R60, §4183; C73, §2510; C97, §3429; C24, 27, 31, 35, 39, §**10295;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.26]

572.27 Limitation on action.

An action to enforce a mechanic's lien may be brought within two years from the expiration of the ninety days for filing the claim as provided in this chapter and not afterwards.

[C51, §984; R60, §1865; C73, §2529; C97, §3447; S13, §3447; C24, 27, 31, 35, 39, §**10296;** C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.27]
87 Acts, ch 79, §8

572.28 Demand for bringing suit.

1. Upon the written demand of the owner, the owner's agent, or contractor, served on the lienholder requiring the lienholder to commence action to enforce the lien, such action shall be commenced within thirty days thereafter, or the lien and all benefits derived therefrom shall be forfeited.

2. If an action is not filed within thirty days after demand to commence action is served, the party serving the demand or causing the demand to be served may file for record with the clerk of the district court a copy of the demand with proofs of service attached and endorsed and, in case of service by publication, a personal affidavit that personal service could not be made within this state. Upon completion of the requirements of this subsection, the record shall be constructive notice to all parties of the due forfeiture and cancellation of the lien. Upon the filing of the demand with the required attachments, the clerk of the district court shall mail a file-stamped copy of the demand to both parties.

[C73, §2143; C97, §3099; C24, 27, 31, 35, 39, §**10297;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.28]
99 Acts, ch 79, §3

572.29 Assignment of lien.

A mechanic's lien is assignable, and shall follow the assignment of the debt for which it is claimed.

[C97, §3099; C24, 27, 31, 35, 39, §**10298;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §572.29]

572.30 Action by subcontractor or owner against contractor.

Unless otherwise agreed, a principal contractor who engages a subcontractor to supply labor or materials or both for improvements, alterations or repairs to a specific owner-occupied dwelling shall pay the subcontractor in full for all labor and materials supplied within thirty days after the date the principal contractor receives full payment from the owner. If a principal contractor fails without due cause to pay a subcontractor as required by this section, the subcontractor, or the owner by subrogation, may commence an action against the contractor to recover the amount due. Prior to commencing an action to recover the amount due, a subcontractor, or the owner by subrogation, shall give notice of nonpayment of the cost of labor or materials to the principal contractor paid for the improvement. Notice of nonpayment must be in writing, delivered in a reasonable manner, and in terms that reasonably identify the real estate improved and the nonpayment complained of. In an action to recover the amount due a subcontractor, or the owner by subrogation, under this section, the court in addition to actual damages, shall award a successful plaintiff exemplary damages against the contractor in an amount not less than one percent and not exceeding fifteen percent of the amount due the subcontractor, or the owner by subrogation, for the labor and materials supplied, unless the principal contractor does one or both of the following, in which case no exemplary damages shall be awarded:

1. Establishes that all proceeds received from the person making the payment have been applied to the cost of labor or material furnished for the improvement.

2. Within fifteen days after receiving notice of nonpayment the principal contractor gives a bond or makes a deposit with the clerk of the district court, in an amount not less than the amount necessary to satisfy the nonpayment for which notice has been given under this section, and in a form approved by a judge of the district court, to hold harmless the owner or person having the improvement made from any claim for payment of anyone furnishing labor or material for the improvement, other than the principal contractor.

[81 Acts, ch 186, §4]
87 Acts, ch 79, §9

572.31 Co-operative and condominium housing.

A lien arising under this chapter as a result of the construction of an apartment house or apartment building which is owned on a co-operative basis under chapter 499A, or which is submitted to a horizontal property regime under chapter 499B, is not enforceable, notwithstanding any contrary provision of this chapter, as against the interests of an owner in an owner-occupied dwelling unit contained in the apartment house or apartment building acquired in good faith and for valuable consideration, unless a lien statement specifically describing the dwelling unit is filed under section 572.8 within the applicable time period specified in section 572.9, but determined from the date on which the last of the material was supplied or the last of the labor was performed in the construction of that dwelling unit.

[C81, §572.30]
C83, §572.31

572.32 Attorney fees — remedies.

1. In a court action to enforce a mechanic's lien, if the plaintiff furnished labor or materials directly to the defendant, a prevailing plaintiff may be awarded reasonable attorney fees.

2. In a court action to challenge a mechanic's lien filed on an owner-occupied dwelling, if the person challenging the lien prevails, the court may award reasonable attorney fees and actual damages. If the court determines that the mechanic's lien was filed in bad faith or the supporting affidavit was materially false, the court shall award the owner reasonable attorney fees plus an

amount not less than five hundred dollars or the amount of the lien, whichever is less.

83 Acts, ch 106, §1; 99 Acts, ch 79, §4

572.33 Requirement of notification.

1. Notwithstanding other provisions of this chapter, and in addition to all other requirements of this chapter, a person furnishing labor or materials to a subcontractor shall not be entitled to a lien under this chapter unless the person furnishing labor or materials does all of the following:

a. Notifies the principal contractor in writing with a one-time notice containing the name, mailing address, and telephone number of the person furnishing the labor or materials, and the name of the subcontractor to whom the labor or materials were furnished, within thirty days of first furnishing labor or materials for which a lien claim may be made. Additional labor or materials furnished by the same person to the same subcontractor for use in the same construction project shall be covered by this notice.

b. Supports the lien claim with a certified statement that the principal contractor was notified in writing with a one-time notice containing the name, mailing address, and telephone number of the person furnishing the labor or materials, and the name of the subcontractor to whom the labor or materials were furnished, within thirty days after the labor or materials were first furnished, pursuant to paragraph *"a"*.

2. This section shall not apply to a mechanic's lien on single-family or two-family dwellings occupied or used or intended to be occupied or used for residential purposes.

3. Notwithstanding other provisions of this chapter, a principal contractor shall not be prohibited from requesting information from a subcontractor or a person furnishing labor or materials to a subcontractor regarding payments made or payments to be made to a person furnishing labor or materials to a subcontractor.

84 Acts, ch 1248, §1; 98 Acts, ch 1142, §4; 99 Acts, ch 104, §1

CHAPTER 573

LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

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573.1 Terms defined.

For the purpose of this chapter:

1. *"Construction"*, in addition to its ordinary meaning, includes repair, alteration and demolition.

2. *"Material"* shall, in addition to its ordinary meaning, embrace feed, gasoline, kerosene, lubricating oils and greases, provisions and fuel, and the use of forms, accessories, and equipment, but shall not include personal expenses or personal purchases of employees for their individual use.

3. *"Public corporation"* shall embrace the state, and all counties, cities, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.

4. *"Public improvement"* is one, the cost of which is payable from taxes or other funds under the control of the public corporation, except in cases of public improvement for drainage or levee purposes the provisions of the drainage law in cases of conflict shall govern.

5. *"Service"* shall, in addition to its ordinary meaning, include the furnishing to the contractor of workers' compensation insurance, and premiums and charges for such insurance shall be

considered a claim for service.

[C24, 27, 31, 35, 39, §**10299;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.1]

85 Acts, ch 22, §1

573.2 Public improvements — bond — waiver and remedies.

Contracts for the construction of a public improvement shall, when the contract price equals or exceeds twenty-five thousand dollars, be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of other requirements as provided by law. The bond may also be required when the contract price does not equal that amount. However, if a contractor provides a performance or maintenance bond as required by a public improvement contract governed by this chapter and subsequently the surety company becomes insolvent and the contractor is required to purchase a new bond, the contractor may apply for reimbursement from the governmental agency that required a second bond and the claims shall be reimbursed from funds allocated for road construction purposes.

If the requirement for a bond is waived pursuant to section 12.44, a person, firm, or corporation, having a contract with the targeted small business or with subcontractors of the targeted small business, for labor performed or materials furnished, in the performance of the contract on account of which the bond was waived, is entitled to any remedy provided under this chapter. When a bond has been waived pursuant to section 12.44, the remedies provided for under this paragraph are available in an action against the public corporation.

[C24, 27, 31, 35, 39, §**10300;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.2; 82 Acts, ch 1096, §1]

86 Acts, ch 1246, §32; 88 Acts, ch 1032, §1

573.3 Bond mandatory.

The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract.

A public corporation, with respect to a public improvement which is or has been competitively bid or negotiated, shall not require a contractor to procure a bond, as required under section 573.2, from a particular insurance or surety company, agent, or broker.

[C24, 27, 31, 35, 39, §**10301;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.3]

2000 Acts, ch 1023, §58

573.4 Deposit in lieu of bond.

A deposit of money, a certified check on a solvent bank of the county in which the improvement is to be located, a credit union certified share draft, state or federal bonds, bonds issued by a city, school corporation, or county of this state, or bonds issued on behalf of a drainage or highway paving district of this state may be received in an amount equal to the amount of the bond and held in lieu of a surety on the bond, and when so received the securities shall be held on the terms and conditions applicable to a surety.

[C24, 27, 31, 35, 39, §**10302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.4]

84 Acts, ch 1055, §14

573.5 Amount of bond.

Said bond shall run to the public corporation. The amount thereof shall be fixed, and the bond approved, by the official board or officer empowered to let the contract, in an amount not less than seventy-five percent of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly embraced in said bond; except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five percent of the contract price.

[C24, 27, 31, 35, 39, §**10303;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.5]

573.6 Subcontractors on public improvements.

The following provisions shall be held to be a part of every bond given for the performance of a contract for the construction of a public improvement, whether said provisions be inserted in such bond or not, to wit:

1. The principal and sureties on this bond hereby agree to pay to all persons, firms, or corporations having contracts directly with the principal or with subcontractors, all just claims due them for labor performed or materials furnished, in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the public corporation is required to retain until completion of the public improvement, but the principal and sureties shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law.

2. Every surety on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

a. To any extension of time to the contractor in which to perform the contract.

b. To any change in the plans, specifications, or contract, when such change does not involve an increase of more than twenty percent of the total contract price, and shall then be released only as to such excess increase.

c. That no provision of this bond or of any other contract shall be valid which limits to less than one year from the time of the acceptance of the

work the right to sue on this bond for defects in the quality of the work or material not discovered or known to the obligee at the time such work was accepted.

[S13, §1527-s18; C24, 27, 31, 35, 39, §**10304;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.6]

573.7 Claims for material or labor.

Any person, firm, or corporation who has, under a contract with the principal contractor or with subcontractors, performed labor, or furnished material, service, or transportation, in the construction of a public improvement, may file, with the officer, board, or commission authorized by law to let contracts for such improvement, an itemized, sworn, written statement of the claim for such labor, or material, service, or transportation.

A person furnishing only materials to a subcontractor who is furnishing only materials is not entitled to a claim against the retainage or bond under this chapter and is not an obligee or person protected under the bond pursuant to section 573.6.

[C97, §3102; S13, §1989-a57; C24, 27, 31, 35, 39, §**10305;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.7]

83 Acts, ch 55, §1

573.8 Highway improvements.

In case of highway improvements by the county, claims shall be filed with the county auditor of the county letting the contract. In case of contracts for improvements on the farm-to-market highway system paid from farm-to-market funds, claims shall be filed with the auditor of the state department of transportation.

But no claims filed for credit extended for the personal expenses or personal purchases of employees for their individual use shall cause any part of the unpaid funds of the contractor to be withheld.

[C24, 27, 31, 35, 39, §**10306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.8]

573.9 Officer to endorse time of filing claim.

The officer shall endorse over the officer's official signature upon every claim filed with the officer, the date and hour of filing.

[C24, 27, 31, 35, 39, §**10307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.9]

573.10 Time of filing claims.

Claims may be filed with said officer as follows:

1. At any time before the expiration of thirty days immediately following the completion and final acceptance of the improvement.

2. At any time after said thirty-day period, if the public corporation has not paid the full contract price as herein authorized, and no action is pending to adjudicate rights in and to the unpaid portion of the contract price.

[C97, §3102; S13, §1989-a57; C24, 27, 31, 35, 39, §**10308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.10]

573.11 Claims filed after action brought.

The court may permit claims to be filed with it during the pendency of the action hereinafter authorized, if it be made to appear that such belated filing will not materially delay the action.

[C24, 27, 31, 35, 39, §**10309;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.11]

573.12 Payments and retention from payments on contracts.

1. *Retention.* Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered, as determined by the project architect or engineer. The public corporation shall retain from each monthly payment not more than five percent of that amount which is determined to be due according to the estimate of the architect or engineer. However, institutions governed pursuant to chapter 262 may, on contracts where a bond is required under section 573.2, make payments under this section without retention until ninety-five percent of the contract amount has been paid and the remaining five percent of the contract amount shall be paid as provided under section 573.14.

The contractor may retain from each payment to a subcontractor not more than the lesser of five percent or the amount specified in the contract between the contractor and the subcontractor.

2. *Prompt payment.*

a. (1) Interest shall be paid to the contractor on any progress payment that is approved as payable by the public corporation's project architect or engineer and remains unpaid for a period of fourteen days after receipt of the payment request at the place, or by the person, designated in the contract, or by the public corporation to first receive the request, or for a time period greater than fourteen days, unless a time period greater than fourteen days is specified in the contract documents, not to exceed thirty days, to afford the public corporation a reasonable opportunity to inspect the work and to determine the adequacy of the contractor's performance under the contract.

(2) Interest shall accrue during the period commencing the day after the expiration of the period defined in subparagraph (1) and ending on the date of payment. The rate of interest shall be determined as set forth in section 573.14.

b. A progress payment or final payment to a subcontractor for satisfactory performance of the subcontractor's work shall be made no later than one of the following, as applicable:

(1) Seven days after the contractor receives

payment for that subcontractor's work.

(2) A reasonable time after the contractor could have received payment for the subcontractor's work, if the reason for nonpayment is not the subcontractor's fault.

A contractor's acceptance of payment for one subcontractor's work is not a waiver of claims, and does not prejudice the rights of the contractor, as to any other claim related to the contract or project.

3. *Interest payments.*

a. If the contractor receives an interest payment under section 573.14, the contractor shall pay the subcontractor a share of the interest payment proportional to the payment for that subcontractor's work.

b. If a public corporation other than a school corporation, county, or city retains funds, the interest earned on those funds shall be payable at the time of final payment on the contract in accordance with the schedule and exemptions specified by the public corporation in its administrative rules. The rate of interest shall be determined by the period of time during which interest accrues, and shall be the same as the rate of interest that is in effect under section 12C.6 as of the day interest begins to accrue.

[S13, §1989-a57; C24, 27, 31, 35, 39, §**10310;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.12; 81 Acts, ch 127, §3]

87 Acts, ch 155, §1; 90 Acts, ch 1229, §1, 2; 91 Acts, ch 148, §1

573.13 Inviolability and disposition of fund.

A public corporation shall not be permitted to plead noncompliance with section 573.12 and the retained percentage of the contract price, which in no case shall be more than five percent, constitutes a fund for the payment of claims for materials furnished and labor performed on the improvement and shall be held and disposed of by the public corporation as provided in this chapter.

[S13, §1989-a57; C24, 27, 31, 35, 39, §**10311;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.13]

90 Acts, ch 1229, §3

573.14 Retention of unpaid funds.

The fund provided for in section 573.13 shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of the thirty-day period claims are on file as provided the public corporation shall continue to retain from the unpaid funds a sum equal to double the total amount of all claims on file. The remaining balance of the unpaid fund, or if no claims are on file, the entire unpaid fund, shall be released and paid to the contractor.

The public corporation shall order payment of any amount due the contractor to be made in accordance with the terms of the contract. Except as provided in section 573.12 for progress payments, failure to make payment pursuant to this section, of any amount due the contractor, within forty days, unless a greater time period not to exceed fifty days is specified in the contract documents, after the work under the contract has been completed and if the work has been accepted and all required materials, certifications, and other documentations required to be submitted by the contractor and specified by the contract have been furnished the awarding public corporation by the contractor, shall cause interest to accrue on the amount unpaid to the benefit of the unpaid party. Interest shall accrue during the period commencing the thirty-first day following the completion of work and satisfaction of the other requirements of this paragraph and ending on the date of payment. The rate of interest shall be determined by the period of time during which interest accrues, and shall be the same as the rate of interest that is in effect under section 12C.6, as of the day interest begins to accrue, for a deposit of public funds for a comparable period of time. This paragraph does not abridge any of the rights set forth in section 573.16. Except as provided in sections 573.12 and 573.16, interest shall not accrue on funds retained by the public corporation to satisfy the provisions of this section regarding claims on file. This chapter does not apply if the public corporation has entered into a contract with the federal government or accepted a federal grant which is governed by federal law or rules that are contrary to the provisions of this chapter.

[C97, §3104; S13, §1989-a59; C24, 27, 31, 35, 39, §**10312;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.14; 81 Acts, ch 127, §4]

90 Acts, ch 1229, §4; 91 Acts, ch 148, §2

573.15 Exception.

No part of the unpaid fund due the contractor shall be retained as provided in this chapter on claims for material furnished, other than materials ordered by the general contractor or the general contractor's authorized agent, unless such claims are supported by a certified statement that the general contractor had been notified within thirty days after the materials are furnished or by itemized invoices rendered to contractor during the progress of the work, of the amount, kind, and value of the material furnished for use upon the said public improvement, and no part of such unpaid fund due the contractor shall be retained as provided in this chapter because of the commencement of any action by the contractor against the state department of transportation under authority granted in section 613.11.

[C31, 35, §10312-d1; C39, §**10312.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.15]

573.15A Early release of retained funds.

Notwithstanding section 573.14, a public corporation may release retained funds upon completion of ninety-five percent of the contract in accordance with the following:

1. Any person, firm, or corporation who has, under contract with the principal contractor or with subcontractors, performed labor, or furnished materials, service, or transportation, in the construction of the public improvement, may file with the public corporation an itemized, sworn, written statement of the claim for the labor, or materials, service, or transportation. The claim shall be filed with the public corporation either before the expiration of the thirty days after completion of ninety-five percent of the contract or at any time after the thirty-day period if the public corporation has not paid the full contract price and no action is pending to adjudicate rights in and to the unpaid portion of the contract price.

2. The fund, as provided in section 573.13, shall be retained by the public corporation for a period of thirty days after ninety-five percent of the contract has been completed. If at the end of the thirty-day period, a claim has been filed, in accordance with this section, the public corporation shall continue to retain from the unpaid funds, a sum equal to double the total amount of all claims on file. The remaining balance of the unpaid fund, or if there are no claims on file, the entire unpaid fund, may be released and paid to the contractor.

3. The public corporation, the principal contractor, or any claimant for labor or materials, service, or transportation, who has filed a claim or the surety on any bond given for performance of the contract, at any time after the expiration of thirty days, and not later than sixty days after the completion of ninety-five percent of the contract, may bring an action in equity in the county where the public improvement is located to determine rights to moneys contained in the fund or to enforce liability on the bond. The action shall be brought in accordance with sections 573.16 through 573.18, with the completion of ninety-five percent of the contract taking the place of the date of final acceptance.

4. A public corporation that releases funds at the completion of ninety-five percent of the contract, in accordance with this section, shall not be required to retain additional funds.

96 Acts, ch 1126, §6

573.16 Optional and mandatory actions — bond to release.

The public corporation, the principal contractor, any claimant for labor or material who has filed a claim, or the surety on any bond given for the performance of the contract, may, at any time after the expiration of thirty days, and not later than sixty days, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond.

Upon written demand of the contractor served, in the manner prescribed for original notices, on the person filing a claim, requiring the claimant to commence action in court to enforce the claim, an action shall be commenced within thirty days, otherwise the retained and unpaid funds due the contractor shall be released. Unpaid funds shall be paid to the contractor within twenty days of the receipt by the public corporation of the release as determined pursuant to this section. Failure to make payment by that date shall cause interest to accrue on the unpaid amount. Interest shall accrue during the period commencing the twenty-first day after the date of release and ending on the date of the payment. The rate of interest shall be determined pursuant to section 573.14. After an action is commenced, upon the general contractor filing with the public corporation or person withholding the funds, a surety bond in double the amount of the claim in controversy, conditioned to pay any final judgment rendered for the claims so filed, the public corporation or person shall pay to the contractor the amount of funds withheld.

[C97, §3103; S13, §1989-a58; C24, 27, 31, 35, 39, §**10313;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.16]

91 Acts, ch 148, §3

Action against surety, §616.15
Manner of service, R.C.P. 1.302 – 1.315

573.17 Parties.

The official board or officer letting the contract, the principal contractor, all claimants for labor and material who have filed their claim, and the surety on any bond given for the performance of the contract shall be joined as plaintiffs or defendants.

[C24, 27, 31, 35, 39, §**10314;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.17]

573.18 Adjudication — payment of claims.

The court shall adjudicate all claims for which an action is filed under section 573.16. Payments from the retained percentage, if still in the hands of the public corporation, shall be made in the following order:

1. Costs of the action.
2. Claims for labor.
3. Claims for materials.
4. Claims of the public corporation.

Upon settlement or adjudication of a claim and after judgment is entered, unpaid funds retained with respect to the claim which are not necessary to satisfy the judgment shall be released and paid to the contractor within twenty days of receipt by the public corporation of evidence of entry of judgment or settlement of the claim. Failure to make payment by that date shall cause interest to ac-

crue on the unpaid amount. Interest shall accrue during the period commencing on the twenty-first day after receipt by the public corporation of evidence of entry of judgment and ending on the date of payment. The rate of interest shall be determined as set forth in section 573.14.

[C24, 27, 31, 35, 39, §**10315;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.18]

91 Acts, ch 148, §4

573.19 Insufficiency of funds.

When the retained percentage aforesaid is insufficient to pay all claims for labor or materials, the court shall, in making distribution under section 573.18, order the claims in each class paid in the order of filing the same.

[C97, §3102; S13, §1989-a57; C24, 27, 31, 35, 39, §**10316;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.19]

573.20 Converting property into money.

When it appears that the unpaid portion of the contract price for the public improvement, or a part thereof, is represented in whole or in part, by property other than money, or if a deposit has been made in lieu of a surety, the court shall have jurisdiction thereover, and may cause the same to be sold, under such procedure as it may deem just and proper, and disburse the proceeds as in other cases.

[C24, 27, 31, 35, 39, §**10317;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.20]

573.21 Attorney fees.

The court may tax, as costs, a reasonable attorney fee in favor of any claimant for labor or materials who has, in whole or in part, established a claim.

[C97, §3103; S13, §1989-a58; C24, 27, 31, 35, 39, §**10318;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.21]

573.22 Unpaid claimants — judgment on bond.

If, after the said retained percentage has been applied to the payment of duly filed and established claims, there remain any such claims unpaid in whole or in part, judgment shall be entered for the amount thereof against the principal and sureties on the bond. In case the said percentage has been paid over as herein provided, judgment shall be entered against the principal and sureties on all such claims.

[C24, 27, 31, 35, 39, §**10319;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.22]

573.23 Abandonment of public work — effect.

When a contractor abandons the work on a public improvement or is legally excluded therefrom, the improvement shall be deemed completed for the purpose of filing claims as herein provided, from the date of the official cancellation of the contract. The only fund available for the payment of the claims of persons for labor performed or material furnished shall be the amount then due the contractor, if any, and if said amount be insufficient to satisfy said claims, the claimants shall have a right of action on the bond given for the performance of the contract.

[C24, 27, 31, 35, 39, §**10320;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.23]

573.24 Notice of claims to state department of transportation.

If payment for such improvement is to be made in whole or in part from the primary road fund, the county auditor shall immediately notify the state department of transportation of the filing of all claims.

[C24, 27, 31, 35, 39, §**10321;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.24]

573.25 Filing of claim — effect.

The filing of any claim shall not work the withholding of any funds from the contractor except the retained percentage, as provided in this chapter.

[C24, 27, 31, 35, 39, §**10322;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.25]

573.26 Public corporation — action on bond.

Nothing in this chapter shall be construed as limiting in any manner the right of the public corporation to pursue any remedy on the bond given for the performance of the contract.

[C24, 27, 31, 35, 39, §**10323;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573.26]

573.27 Payment before work completed.

Notwithstanding anything in this Code to the contrary, when at least ninety-five percent of any contract for the construction of public improvements has been completed to the satisfaction of the public contracting authority and owing to conditions beyond the control of the construction contractor the remaining work on the contract cannot proceed for a period of more than sixty days, such public contracting authority may make full payment for the completed work and enter into a supplemental contract with the construction contractor involved on the same terms and conditions so far as applicable thereto for the construction of the work remaining to be done, provided however, that the contractor's surety consents thereto and agrees that the bond shall remain in full force and effect.

[C62, 66, 71, 73, 75, 77, 79, 81, §573.27]

CHAPTER 573A

EMERGENCY STOPPAGE OF PUBLIC CONTRACTS

573A.1 National emergency.
573A.2 Termination of contracts.
573A.3 Determination of dispute.
573A.4 Rules applicable.
573A.5 Jurisdiction.
573A.6 Appeal.
573A.7 Order of court.
573A.8 Limit of payment.
573A.9 Application of statute.
573A.10 Definitions.

573A.1 National emergency.

In the event work or construction upon a public improvement is stopped directly or indirectly by or as the result of an order or action of any federal or state authority or of any court because of the occurrence or existence of a situation which the president or the Congress of the United States has declared to be national emergency, and the circumstances or conditions are such that it is and will be impracticable to proceed with such work or construction, then the public corporation and the contractor or contractors may, by written agreement terminate said contract. Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which any party shall pay to the other, or any other person, firm or corporation under the facts and circumstances in the case.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.1]

573A.2 Termination of contracts.

Whenever a public corporation and a contractor or contractors, have entered into a contract for the construction of a public improvement, and any party to such contract desires to terminate said contract because of the occurrence of the event and under the circumstances stated in section 573A.1, and another party thereto will not agree to such termination, or said parties having agreed upon the termination of the contract cannot agree upon the terms and conditions thereof, then any party may have the issues in dispute determined in the manner hereinafter provided.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.2]

573A.3 Determination of dispute.

Any party to the contract may have the issue in dispute determined by filing in the district court of the county in which the public improvement or any part thereof is located a verified petition which shall allege in detail the ultimate facts upon which the petitioner relies for the termination of such contract. All subcontractors and the sureties upon all bonds given in connection with the contract and subcontracts shall be made parties to the proceeding.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.3]

573A.4 Rules applicable.

The rules of civil procedure shall be applicable to such action. The cause shall be tried forthwith in equity, and the court shall give such cases preference over other cases, except criminal cases.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.4]

573A.5 Jurisdiction.

The district court shall have jurisdiction of the issue which is thus presented, and of all parties including any public corporation as defined in this chapter. The court shall make findings and render its judgment determining the issues involved in accordance with the purpose and spirit of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.5]

573A.6 Appeal.

Any party aggrieved by the findings and judgment of the district court may appeal to the supreme court as in other cases and the case shall be given preference over other cases in the supreme court.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.6]

573A.7 Order of court.

If the court determines that said contract should be terminated, or if the parties have agreed to its termination, the court shall include in its order:

1. The terms and conditions imposed upon each party to the contract, including the extent of the liability of the sureties upon any bond;

2. The protective requirements, if any be deemed necessary, to protect the property, and provision for the payment of the cost thereof;

3. The determination of the relative rights of the parties involved, including the compensation or payments, if any, which any party shall pay to any other person, firm or corporation under the facts and circumstances of the case.

If the court determines that the contract shall not be terminated, it shall state in its order the reasons therefor. The court shall adjust and assess the costs in such manner as may be equitable

and fair under the circumstances.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.7]

573A.8 Limit of payment.

In no event shall the public corporation pay or be required to pay compensation or moneys in excess of the total compensation stated in the contract for the construction of the public improvement.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.8]

573A.9 Application of statute.

The provisions of this chapter shall not apply unless it is specifically contracted for between the contracting parties.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.9]

573A.10 Definitions.

For the purposes of this chapter:

1. *"Public corporation"* shall embrace the state, and all counties, cities, public school corporations, drainage districts, and all officers, boards or commissions empowered by law to enter into contracts for the construction of public improvements.

2. *"Public improvement"* is one, the cost of which is payable from taxes or other funds under the control of the public corporation.

3. *"Construction"* shall, in addition to its ordinary meaning, embrace repair and alteration.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §573A.10]

CHAPTER 574

MINER'S LIEN

574.1 Nature of miner's lien.

574.1 Nature of miner's lien.

Every laborer or miner who shall perform labor in opening, developing, or operating any coal mine shall have a lien for the full value of such labor upon all the property of the person, firm, or corporation owning or operating such mine and used in the construction or operation thereof, including real estate and personal property. Such lien shall be secured and enforced in the same manner as a mechanic's lien.

[C97, §3105; C24, 27, 31, 35, 39, §**10324;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §574.1]

Mechanic's lien, chapter 572

CHAPTER 575

NONSTATUTORY LIENS

575.1 Nonstatutory liens.

575.1 Nonstatutory liens.

1. A person claiming a common law lien, an equitable servitude lien, or a lien of similar nature which is other than a statutory lien, shall first give notice to any legal and equitable owners and persons in possession of the real or personal property against which the lien is sought.

a. If the lien is filed by an owner of the real or personal property, notice shall first be given to any person with a lien or other interest in the property.

b. The notice shall be given pursuant to the Iowa rules of civil procedure.

2. Prior to the filing of the lien in any office of record in the county where the real or personal property is located, the following shall occur:

a. The clerk of the district court shall confirm that all notices required pursuant to subsection 1 have been given.

b. The district court in such county shall hold a hearing to determine the validity of the lien.

(1) Pendency of such a proceeding shall not be indexed under section 617.10 and shall not constitute lis pendens or constructive notice to third persons under sections 617.11 through 617.15.

(2) A bona fide purchaser takes title to the real or personal property free of any claims arising from such proceeding unless proper filing is made in the office of the county recorder as provided in this section.

(3) The person claiming the lien is required to prove the validity of the lien by a preponderance of the evidence.

(4) If the court determines the person claiming the lien has willfully and maliciously proceeded, a judgment may be entered against the person claiming the lien in favor of any resisting party for reasonable damages, including actual damages, costs, and reasonable attorneys' fees incurred by the resisting party.

3. A lien, as described in this section, shall not be filed in any office of record other than as provided in this section and if such lien is filed other than as provided in this section, the lien shall be null and void and of no force or effect.

4. If, after hearing, the district court enters an order determining the lien to be valid, the person claiming the lien shall file a certified copy of the order in the office of the county recorder where the real or personal property is located.

5. An appeal from the district court arising from such proceeding is by certiorari.

89 Acts, ch 163, §1; 99 Acts, ch 35, §1

Bond to release; chapter 584

CHAPTER 576

FORWARDING AND COMMISSION MERCHANT'S LIEN

576.1 Nature of lien.
576.2 Enforcement of lien.

576.1 Nature of lien.

Every forwarding and commission merchant shall have a lien upon all property of every kind in the merchant's possession, for the transportation and storage thereof, for all lawful charges and services thereon or in connection therewith, and, if sold under the provisions of this chapter, for selling the same.

[R60, §1898, 1899, 1900 – 1902; C73, §2177 – 2179; C97, §3130, 3131; S13, §3131; C24, 27, 31, 35, 39, §**10341;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §576.1]

Bond to release, chapter 584

576.2 Enforcement of lien.

Said lien may be foreclosed in the manner provided in the Uniform Commercial Code, section 554.7308.

[R60, §1898 – 1905; C73, §2177 – 2182; C97, §3130 – 3134; S13, §3131; C24, 27, 31, 35, 39, §**10342;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §576.2]

Attachment to enforce lien, §640.1

CHAPTER 577

ARTISAN'S LIEN

577.1 Nature of lien — generally — aircraft and equipment.
577.2 Enforcement of lien.

577.1 Nature of lien — generally — aircraft and equipment.

1. Any person who renders any service or furnishes any material in the making, repairing, improving, or enhancing the value of any inanimate personal property, with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for the service and material while such property is lawfully in the person's possession, which possession the person may retain until such compensation is paid, but such lien shall be subject to all prior liens

of record, unless notice is given to all lienholders of record and written consent is obtained from all lienholders of record to the making, repairing, improving, or enhancing the value of any inanimate personal property and in this event the lien created under this section shall be prior to liens of record.

2. The assent of the owner shall be implied, for purposes of determining whether a lien on inanimate personal property exists, if all of the following are established:

a. The inanimate personal property is a multiengine aircraft, eligible for registration under section 501 of the federal Aviation Act of 1958, 49 U.S.C. § 1401.

b. The aircraft is either owned, leased, operated, or on order by an air carrier certified under section 604(b) of the federal Aviation Act of 1958, 49 U.S.C. § 1424(b), or by any other person that rents or leases commercial airliners to certified air carriers in the regular course of business.

c. The material furnished is new electronic navigation or communications aviation equipment.

d. The equipment is delivered for installation on the aircraft at the request of a lessee, operator, or other person, or an agent of the lessee, operator, or other person, who has an interest in or exercises control over the aircraft.

The aircraft and equipment shall be deemed, for purposes of determining priority over perfected security interests, to be in the possession of the person who furnished the equipment, if the person either manufactures or sells the equipment in the regular course of business and allows the equipment to be made available for installation on the aircraft by releasing it for delivery. Possession of the aircraft and equipment shall be deemed to continue up to, and including, ninety days after the equipment is fully installed on the aircraft, except that if a notice of lien is filed with the federal aviation administration, and no subsequent release of the lien is on file, it shall be deemed to continue indefinitely. A notice of lien under this section is not required to be verified or notarized, but shall be signed by the lienholder, the lienholder's designated agent, or the lienholder's attorney and must identify the aircraft which is the subject of the lien. Notwithstanding subsection 1, liens obtained under this subsection attach and take priority over all other prior liens of record without the giving of prior notice or the obtaining of consent and are enforceable against all persons, including a bona fide purchaser.

[R60, §1898; C73, §2177; C97, §3130; C24, 27, 31, 35, 39, §**10343;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §577.1]

91 Acts, ch 22, §1

Bond to release, chapter 584

Secured transactions; §554.9101 et seq.

577.2 Enforcement of lien.

Said lien may be foreclosed in the manner provided in the Uniform Commercial Code, section 554.7308.

[R60, §1898 – 1905; C73, §2177-2182; C97, §3130 – 3134; S13, §3131; C24, 27, 31, 35, 39, §**10344;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §577.2]

Attachment to enforce lien, §640.1

CHAPTER 578

COLD STORAGE LOCKER LIEN

578.1 Storage lien.
578.2 Enforcement of lien.

578.1 Storage lien.

Every lessor owning or operating a refrigerated locker plant or plants, shall have a lien upon all property of every kind in its possession for all reasonable charges and rents thereon and for the handling, keeping, and caring for the same.

[C39, §**10344.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §578.1]

Bond to release, chapter 584

578.2 Enforcement of lien.

Said lien may be foreclosed in the manner provided in the Uniform Commercial Code, section 554.7308.

[C39, §**10344.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §578.2]

Attachment to enforce lien, §640.1

CHAPTER 578A

SELF-SERVICE STORAGE FACILITY LIEN

578A.1 Short title.
578A.2 Definitions.
578A.3 Lien.
578A.4 Enforcement of lien.
578A.5 Supplemental nature of chapter.
578A.6 Facility not residence or warehouse.

578A.1 Short title.

This Act shall be known as the *"Iowa Self-Service Storage Facility Lien Act"*.

84 Acts, ch 1130, §1

578A.2 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. *"Last known address"* means that address provided by the occupant in the latest rental agreement, or the address provided by the occupant by certified mail in a subsequent written notice of a change of address.

2. *"Occupant"* means a person, in privity with the owner, entitled to the use to the exclusion of others of the storage space at a self-service storage facility pursuant to privity with the owner.

3. *"Owner"* means the owner, operator, lessor, or sublessor of a self-service storage facility, the agent, or any other person authorized by the owner to manage the facility, or to receive rent from an occupant under a rental agreement.

4. *"Personal property"* means movable property not affixed to land, and includes, but is not limited to goods, merchandise, and household items.

5. *"Possessory lien"* means a lien on a personal property that is valid only while the property is in the possession of the person asserting the lien or an agent of the person.

6. *"Rental agreement"* means an agreement or lease, written or oral, between the owner and occupant, that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of a self-service storage facility.

7. *"Self-service storage facility"* means real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing personal property. If an owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to chapter 554, article 7 and this chapter does not apply.

84 Acts, ch 1130, §2

578A.3 Lien.

The owner of a self-service storage facility and the heirs, executors, administrators, successors, and assigns have a possessory lien upon all personal property located at a self-service storage facility for rent, labor, or other reasonable charges, in relation to the storage of the personal property, and for expenses necessary for its preservation, or expenses reasonably incurred in its sale or other disposition pursuant to this chapter. The lien provided for in this section shall not have priority over a lien or security interest perfected prior to the time the personal property is placed within or upon the self-storage facility. The lien attaches as of the date the personal property is brought to the self-service storage facility.

84 Acts, ch 1130, §3

578A.4 Enforcement of lien.

An owner's lien for a claim which has become due may be satisfied as follows:

1. The occupant shall be notified by delivering in person with acceptance to be signed by the occupant or by mailing by certified mail to the last known address of the occupant, a notice which shall include:

a. An itemized statement of the owner's claim showing the amount due at the time of the notice and the date when the amount became due.

b. A brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, except that any container including a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents shall be described as such without describing its contents.

c. A statement that the occupant is denied access to the personal property, if a denial is permitted under the rental agreement. The statement shall provide the name, street address, and telephone number of the owner, or the owner's designated agent, whom the occupant may contact to respond to this notice.

d. A demand for payment within a specified time not less than fourteen days after delivery of the notice.

e. A conspicuous statement that unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition, and will be sold or otherwise dis-

posed of at a specified time and place.

2. A notice mailed by certified mail pursuant to subsection 1 is made and completed when the notice is enclosed in a sealed envelope with the proper postage on the envelope, addressed to the occupant or successor at the last known mailing address, and deposited in a mail receptacle provided by the United States postal service.

3. After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county where the self-service storage facility is located. The advertisement shall include:

a. A brief and general description of the personal property reasonably adequate to permit its identification as provided for in subsection 1, paragraph *"b"*.

b. The address of the self-service storage facility, the number, if any, of the space where the personal property is located, and the name of the occupant.

c. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than fifteen days after the first publication. If there is no newspaper of general circulation where the self-service storage facility is located, the advertisement shall be posted at least ten days before the date of the sale or other disposition in at least six conspicuous places in the neighborhood where the self-service storage facility is located.

4. A sale or other disposition of the personal property shall conform to the terms of the notification provided for in this section.

5. A sale or other disposition of the personal property shall be held at the self-service storage facility, or at the nearest suitable place to where the personal property is held or stored.

6. Before a sale or other disposition of personal property is made pursuant to this section, the occupant may pay the amount necessary to satisfy the lien, and the reasonable expenses incurred under this section, and redeem the personal property. Upon receipt of such payment, the owner shall return the personal property.

7. A purchaser in good faith of the personal property sold to satisfy the lien takes the property free of any rights of persons against whom the lien was valid, despite noncompliance by the owner with the requirements of this section. The purchaser shall apply for a new title to a vehicle by the procedures outlined in section 321.47. For all other property which has a written title, the purchaser shall follow the applicable procedures for the property for the transfer of title by operation of law.

8. In the event of a sale under this section, the owner may satisfy the lien from the proceeds of the sale, but shall hold the balance in a segregated escrow account for a period of ninety days for delivery on demand to the occupant. If the occupant does not claim the balance within ninety days, the moneys shall be paid to the county treasurer in the county where the facility is located. The county treasurer shall hold the money for a period of two years. If a claim is not made by the owner for the funds, then the funds shall become the property of the county. There shall be no further recourse by any person against the owner for an action pursuant to this section.

84 Acts, ch 1130, §4

578A.5 Supplemental nature of chapter.

This chapter does not impair or affect the right of parties to create liens by special contract or agreement, nor does it affect or impair other liens arising at common law or in equity, or by a statute of this state.

84 Acts, ch 1130, §5

578A.6 Facility not residence or warehouse.

An occupant shall not use a self-service storage facility for residential purposes. A self-service storage facility is not a warehouse as defined in chapter 554.

84 Acts, ch 1130, §6

CHAPTER 579

LIENS FOR CARE OF STOCK AND STORAGE OF BOATS AND MOTOR VEHICLES

579.1 Nature of liens.
579.2 Satisfaction of lien by sale.
579.3 Disposal of proceeds.

579.1 Nature of liens.

1. Livery and feed stable keepers, herders, feeders, or keepers of stock shall have a lien on all property coming into their hands, as such, for

their charges and the expense of keeping, but such lien shall be subject to chapter 579A and all prior liens of record.

2. Places for the storage of motor vehicles, boats, and boat engines and boat motors shall have a lien on all property coming into their hands, as such, for their charges and the expense of keeping, but such lien shall be subject to all prior liens of record.

[C97, §3137; C24, 27, 31, 35, 39, §**10345;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §579.1]

95 Acts, ch 59, §1

Bond to release, chapter 584

579.2 Satisfaction of lien by sale.

If such charges and expenses are not paid, the lienholder may sell said stock and property at public auction, after giving to the owner or claimant, if found within the county, ten days' notice in writing of the time and place of such sale and also by posting written notices thereof in three public places in the township where said stock and property were kept or received.

[C97, §3137; C24, 27, 31, 35, 39, §**10346;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §579.2]

Attachment to enforce, §640.1

579.3 Disposal of proceeds.

Out of the proceeds of such sale the lienholder shall pay all of the charges and expenses of keeping said stock and property, together with the costs and expenses of said sale, and the balance shall be paid to the owner or claimant of the stock and property.

[C97, §3137; C24, 27, 31, 35, 39, §**10347;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §579.3]

CHAPTER 579A

CUSTOM CATTLE FEEDLOT LIEN

579A.1 Definitions.
579A.2 Establishment of lien — priority.
579A.3 Enforcement.
579A.4 Waivers unenforceable.
579A.5 Alternate lien procedure.

579A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Cattle"* means an animal classified as bovine, regardless of the age or sex of the animal.

2. *"Custom cattle feedlot"* means a feedlot where cattle owned by a person are provided feed and care by another person.

3. *"Custom cattle feedlot operator"* means the owner of a custom cattle feedlot or the owner's personal representative.

4. *"Feedlot"* means a lot, yard, corral, building, or other area in which cattle are confined and fed and maintained for forty-five days or more in any twelve-month period.

5. *"Lien"* means a custom cattle feedlot lien created in section 579A.2.

6. *"Personal representative"* means a person who is authorized by the owner of a custom cattle feedlot to act on behalf of the owner, including by executing an agreement, managing a custom cattle feedlot, filing a financing statement to perfect a lien, and enforcing a lien under this chapter.

7. *"Processor"* means the same as defined in section 9H.1.

95 Acts, ch 59, §2; 99 Acts, ch 169, §7, 8, 22, 24; 2001 Acts, ch 25, §1, 2

579A.2 Establishment of lien — priority.

1. A custom cattle feedlot lien is created. The lien is an agricultural lien as provided in section 554.9302.

2. A custom cattle feedlot operator shall have a lien upon the cattle and the identifiable cash proceeds from the sale of the cattle for the amount of the contract price for the feed and care of the cattle at the custom cattle feedlot pursuant to a written or oral agreement by the custom cattle feedlot operator and the person who owns the cattle, which may be enforced as provided in section 579A.3. The custom cattle feedlot operator is a secured party and the owner of the cattle is a debtor for purposes of chapter 554, article 9.

3. A custom cattle feedlot lien becomes effective at the time the cattle arrive at the custom cattle feedlot. In order to perfect the lien, the custom cattle feedlot operator must file a financing statement in the office of the secretary of state as provided in section 554.9308 within twenty days after the cattle arrive at the custom cattle feedlot.

a. The financing statement shall substantially meet the requirements of section 554.9502, subsection 1, and include all applicable information described in section 554.9516.

b. The lien terminates one year after the cattle

have left the custom cattle feedlot. Section 554.9515 shall not apply to a financing statement perfecting the lien. The lien may be terminated by the custom cattle feedlot operator who files a termination statement as provided in chapter 554, article 9.

4. Filing a financing statement as provided in this section substantially satisfies all requirements for perfection of an agricultural lien as provided in chapter 554, article 9.

5. *a.* Except as provided in this paragraph, a custom cattle feedlot lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the cattle, including a lien or security interest that was perfected prior to the perfection of the custom cattle feedlot lien. However, a custom cattle feedlot lien shall not be superior to a veterinarian's lien created under chapter 581, that is perfected as an agricultural lien as provided in chapter 554, article 9.

b. A custom cattle feedlot lien that is effective but not perfected under this section has priority as provided in section 554.9322.

95 Acts, ch 59, §3; 99 Acts, ch 169, §9 – 11, 22, 24; 2001 Acts, ch 25, §3

579A.3 Enforcement.

While the cattle are located at the custom cattle feedlot, the custom cattle feedlot operator may enforce a lien created in section 579A.2 in the manner provided for the enforcement of an agricultural lien as provided in chapter 554, article 9, part 6. After the cattle have left the custom cattle feedlot, the custom cattle feedlot operator may enforce the lien by commencing an action at law for the amount of the lien against either of the following:

1. The holder of the identifiable cash proceeds from the sale of the cattle.

2. The processor who has purchased the cattle within three days after the cattle have left the custom cattle feedlot.

95 Acts, ch 59, §4; 2000 Acts, ch 1149, §180, 187; 2002 Acts, ch 1119, §93

Unnumbered paragraph 1 amended

579A.4 Waivers unenforceable.

A waiver of a right created by this chapter, including but not limited to a waiver of the right to file a financing statement pursuant to this chapter, is void and unenforceable. This section does not affect other provisions of a contract, including a production contract or a related document, policy, or agreement which can be given effect without the voided provision.

99 Acts, ch 169, §12, 22, 24; 2001 Acts, ch 25, §4

579A.5 Alternate lien procedure.

A person who is a custom cattle feedlot operator may file a financing statement and enforce a lien as a contract producer under this chapter or chapter 579B, but not both.

99 Acts, ch 169, §13, 22, 24; 2001 Acts, ch 25, §5

CHAPTER 579B

COMMODITY PRODUCTION CONTRACT LIEN

Alternative lien procedure for cattle; see chapter 579A

579B.1 Definitions.
579B.2 Lien depends upon production contracts.
579B.3 Establishment of lien — priority.
579B.4 Perfecting the lien — filing requirements.
579B.5 Enforcement.
579B.6 Waivers unenforceable.
579B.7 Alternate lien procedure.

579B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commodity"* means livestock, raw milk, or a crop.

2. *"Continuous arrival"* means the arrival of livestock at a contract livestock facility on a monthly basis or more frequently as provided in a production contract.

3. *"Contract crop field"* means farmland where a crop is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the farmland.

4. *"Contract livestock facility"* means an animal feeding operation as defined in section 459.102, in which livestock or raw milk is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the animal feeding operation. *"Contract livestock facility"* includes a confinement feeding operation as defined in section

459.102, an open feedlot, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed.

5. *"Contract operation"* means a contract livestock facility or contract crop field.

6. *"Contract producer"* means a person who owns or leases a contract operation and who produces a commodity under a production contract executed pursuant to section 579B.2.

7. *"Contractor"* means a person who owns a commodity at the time that the commodity is under the authority of the contract producer as provided in section 579B.3 pursuant to a production contract executed pursuant to section 579B.2.

8. *a.* *"Crop"* means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.

b. A *"crop"* does not include trees or nuts or fruit grown on trees; sod; shrubs; greenhouse plants; or plants or plant parts produced for precommercial, experimental, or research purposes.

9. *"Farmland"* means agricultural land suitable for use in farming as defined in section 9H.1.

10. *"Lien"* means a commodity production contract lien created in section 579B.3.

11. *"Livestock"* means beef cattle, dairy cattle, sheep, or swine.

12. *"Open feedlot"* means the same as defined in section 202.1.

13. *"Personal representative"* means a person who is authorized by a contract producer to act on behalf of the contract producer, including by executing an agreement, managing a contract operation, filing a financing statement perfecting a lien, and enforcing a lien as provided in this chapter.

14. *"Processor"* means a person engaged in the business of manufacturing goods from commodities, including by slaughtering or processing livestock, processing raw milk, or processing crops.

15. *"Produce"* means to do any of the following:

a. Provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, *"produce"* includes milking the dairy cattle and storing raw milk at the contract producer's contract livestock facility.

b. Provide for planting, raising, harvesting, and storing a crop. *"Produce"* includes preparing the soil for planting and nurturing the crop by the application of fertilizers or soil conditioners as defined in section 200.3 or pesticides as defined in section 206.2.

16. *"Production contract"* means an oral or written agreement executed pursuant to section 579B.2 that provides for the production of a commodity by a contract producer.

99 Acts, ch 169, §14, 22, 24; 2001 Acts, ch 25, §6, 7; 2002 Acts, ch 119, §94
Subsection 13 amended

579B.2 Lien depends upon production contracts.

1. A lien established under section 579B.3 depends upon the execution of a production contract that provides for producing a commodity owned by a contractor by a contract producer at the contract producer's contract operation.

2. A production contract is executed when it is signed or orally agreed to by each party to the contract or by a person authorized by a party to act on the party's behalf, including the contract producer's personal representative.

3. This chapter applies to any production contract that is in force on or after May 24, 1999, regardless of the date that the production contract is executed.

99 Acts, ch 169, §15, 22, 24

579B.3 Establishment of lien — priority.

1. A commodity production contract lien is created. The lien is an agricultural lien as provided in section 554.9302.

2. A contract producer who is a party to a production contract executed pursuant to section 579B.2 shall have a lien as provided in this section. The contract producer is a secured party and the contractor is a debtor for purposes of chapter 554, article 9. The amount of the lien shall be the amount owed to the contract producer pursuant to the terms of the production contract, which may be enforced as provided in section 579B.5.

3. If the production contract is for the production of livestock or raw milk, all of the following shall apply:

a. For livestock, the lien shall apply to all of the following:

(1) If the livestock is not sold or slaughtered by the contractor, the lien shall be on the livestock.

(2) If the livestock is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this paragraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

(3) If the livestock is slaughtered by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9109.

b. For raw milk, the lien shall apply to all of the following:

(1) If the raw milk is not sold or processed by the contractor, the lien shall be on the raw milk.

(2) If the raw milk is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this paragraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

(3) If the raw milk is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9109.

4. If the production contract is for the production of crops, all of the following shall apply:

a. If the crop is not sold or processed by the contractor, the lien shall be on the crop.

b. If the crop is sold by the contractor, the lien shall be on cash proceeds from the sale. For purposes of this paragraph, cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds.

c. If the crop is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9109.

99 Acts, ch 169, §16, 22, 24; 2000 Acts, ch 1149, §181 – 183, 187; 2001 Acts, ch 25, §8 – 10; 2002 Acts, ch 1119, §95

Subsection 2 amended

579B.4 Perfecting the lien — filing requirements.

1. A commodity production contract lien becomes effective and is perfected as follows:

a. For a lien arising out of producing livestock or raw milk, the lien becomes effective the day that the livestock first arrives at the contract livestock facility. In order to perfect the lien, the contract producer must file a financing statement in the office of the secretary of state as provided in section 554.9308. Unless the production contract provides for continuous arrival, the contract producer must file the financing statement for the livestock within forty-five days after the livestock's arrival. If the production contract provides for continuous arrival, the contract producer must file the financing statement for the livestock within one hundred eighty days after the livestock's arrival. The lien terminates one year after the livestock is no longer under the authority of the contract producer. For purposes of this section, livestock is no longer under the authority of the contract producer when the livestock leaves the contract livestock facility. Section 554.9515 shall not apply to a financing statement perfecting the lien. The lien may be terminated by the contract producer who files a termination statement as provided in chapter 554, article 9.

b. For a lien arising out of producing a crop, the lien becomes effective the day that the crop is first planted. In order to perfect the lien, the contract producer must file a financing statement in the office of the secretary of state as provided in section 554.9308. The contract producer must file a financing statement for the crop within forty-five days after the crop is first planted. The lien terminates one year after the crop is no longer under the authority of the contract producer. For purposes of this section, a crop is no longer under the authority of the contract producer when the crop or a warehouse receipt issued by a warehouse operator licensed under chapter 203C for grain from the crop is no longer under the custody or control of the contract producer. Section 554.9515 shall not apply to a financing statement perfecting the lien. The lien may be terminated by the contract producer who files a termination statement as provided in chapter 554, article 9.

2. The financing statement shall substantially meet the requirements of section 554.9502, subsection 1, and include all applicable information described in section 554.9516.

3. Filing a financing statement as provided in this section satisfies all requirements for perfection of an agricultural lien as provided in chapter 554, article 9.

4. *a.* Except as provided in this paragraph, a commodity production contract lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the commodity, including a lien or security interest that was perfected prior to the perfection of the commodity production contract lien under this chapter. However, a commodity production contract lien shall not be superior to a veterinarian's lien created under chapter 581 that is perfected as an agricultural lien.

b. A commodity production contract lien that is effective but not perfected under this section has priority as provided in section 554.9322.

99 Acts, ch 169, §17, 22, 24; 2000 Acts, ch 1154, §35; 2001 Acts, ch 25, §11

579B.5 Enforcement.

Before a commodity leaves the authority of the contract producer as provided in section 579B.3, the contract producer may enforce a lien created in that section in the manner provided for the enforcement of an agricultural lien as provided in chapter 554, article 9, part 6. After the commodity is no longer under the authority of the contract producer, the contract producer may enforce the lien in the manner provided in chapter 554, article 9, part 6.

99 Acts, ch 169, §18, 22, 24; 2000 Acts, ch 1149, §184, 187

579B.6 Waivers unenforceable.

A waiver of a right created by this chapter, including but not limited to a waiver of the right to file a lien pursuant to this chapter, is void and unenforceable. This section does not affect other provisions of a contract, including a production contract or a related document, policy, or agreement which can be given effect without the voided provision.

99 Acts, ch 169, §19, 22, 24

579B.7 Alternate lien procedure.

A person who is a custom cattle feedlot operator as defined in section 579A.1 may file and enforce a lien as a contract producer under this chapter or chapter 579A, but not both.

99 Acts, ch 169, §20, 22, 24

CHAPTER 580

LIEN FOR SERVICES OF ANIMALS

580.1 Nature of lien — forfeiture.
580.2 Period of lien — sale or removal.
580.3 Sale or removal prohibited — penalty.
580.4 Affidavit of foreclosure.
580.5 Possession and notice.
580.6 Service of notice.
580.7 Joinder of liens.
580.8 Sale — application of proceeds.
580.9 Right of contest — injunction.

580.1 Nature of lien — forfeiture.

Except as provided in chapter 579A, the owner or keeper of any stallion, bull or jack kept for public service, or any person, firm, or association which invokes pregnancy of animals for the public by means of artificial insemination shall have a prior lien on the progeny of such stallion, bull, artificial insemination or jack, to secure the amount due such owner, artificial inseminator or keeper for the service resulting in such progeny, but no such lien shall obtain where the owner or keeper misrepresents the animal by a false or spurious pedigree, or fails to substantially comply with the laws of Iowa relating to such animals.

[S13, §2341-s; C24, 27, 31, §2967; C35, §10347-a1; C39, §**10347.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §580.1]

95 Acts, ch 59, §5

580.2 Period of lien — sale or removal.

The lien herein provided for shall attach at the birth of such progeny and shall remain in force on such progeny for one year and shall not be lost by reason of any sale, exchange, or removal from the county of the animals subject to such lien.

[S13, §2341-t; C24, 27, 31, §2968; C35, §10347-a2; C39, §**10347.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §580.2]

580.3 Sale or removal prohibited — penalty.

It shall be unlawful to sell, exchange, or remove permanently from the county any animal subject to the lien herein provided for, without the written consent of the holder of such lien, and any person violating this provision, shall be guilty of a simple misdemeanor.

[C24, 27, 31, §2969; C35, §10347-a3; C39, §**10347.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §580.3]

580.4 Affidavit of foreclosure.

Liens may be enforced by the holder filing with the sheriff of the county in which the progeny is kept, an affidavit which shall, in addition to a demand for foreclosure, contain:

1. A description of the stallion, bull or jack, when used and of the dam and its progeny.
2. The time and terms of said service.
3. A statement of the amount due for said service.

[S13, §2341-u; C24, 27, 31, §2970; C35, §10347-a4; C39, §**10347.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §580.4]

580.5 Possession and notice.

The sheriff shall, under said affidavit, take immediate possession of said progeny, and give written notice of the sale thereof, which notice shall contain:

1. A copy of the said affidavit.
2. The date and hour when, and the particular place at which, said property will be sold.

[S13, §2341-u; C24, 27, 31, §2971; C35, §10347-a5; C39, §**10347.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §580.5]

580.6 Service of notice.

Said notice shall be served as follows:

1. By posting a duplicate copy for ten days prior to the day of sale in three public places in the township in which the sale is to take place, and
2. If the owner of the progeny resides in the said county, by also serving a duplicate copy on the owner in the manner in which original notices are served, at least ten days prior to the day of sale.

[S13, §2341-u; C24, 27, 31, §2972; C35, §10347-a6; C39, §**10347.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §580.6]

Manner of service, R.C.P. 1.302 – 1.315

580.7 Joinder of liens.

A foreclosure may embrace liens on more than one progeny of the same stallion, bull, inseminator

or jack when all of said progenies are owned by the same person. In such case there shall be separate sales until an amount is realized sufficient to pay all liens and costs.

[C24, 27, 31, §2973; C35, §10347-a7; C39, §**10347.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §580.7]

580.8 Sale — application of proceeds.

If payment of the service fee, and costs, be not made prior to the time of sale, as fixed in such notice, the sheriff may sell property so held by the sheriff, or so much thereof as may be necessary, at public auction to the highest bidder, and the proceeds shall be applied, first, to the payment of the costs, and second, in payment of amount due for service fee. Any surplus arising from such sale shall be forthwith paid to the owner of the property sold.

[S13, §2341-u; C24, 27, 31, §2974; C35, §10347-a8; C39, §**10347.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §580.8]

580.9 Right of contest — injunction.

The right of the owner or keeper to foreclose, as well as the amount claimed to be due, may be contested by anyone interested in so doing, and the proceeding may be transferred to the district court, for which purpose an injunction may issue, if necessary.

[S13, §2341-v; C24, 27, 31, §2975; C35, §10347-a9; C39, §**10347.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §580.9]

Injunctions, R.C.P. 1.1501 et seq.

CHAPTER 581

VETERINARIAN'S LIEN

581.1 Nature of lien.
581.2 Priority.
581.3 Statement — filing.
581.4 Enforcement.

581.1 Nature of lien.

Every veterinarian, licensed and registered in accordance with chapter 169, shall have a lien for the actual and reasonable value of any product used and for the actual and reasonable value of any professional service rendered by the veterinarian in connection with livestock, providing claim for said lien is filed as hereinafter provided.

[C35, §10347-f1; C39, §**10347.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §581.1]

581.2 Priority.

Said lien shall have priority over all other liens and encumbrances upon said livestock if filed as hereinafter provided.

[C35, §10347-f2; C39, §**10347.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §581.2]

581.3 Statement — filing.

Any veterinarian entitled to a lien under this chapter shall make an account in writing, duly verified, stating the kind and number and a particular description of livestock upon which such services were rendered, the amount and kind of product used and the actual and reasonable value of such services and products and the name of the person or persons for whom such services were rendered and file the same in the office of the clerk of the district court in the county in which the person or persons owning such livestock resides, within sixty days after the day on which said services were rendered. Said lien shall be effective from the date of filing.

[C35, §10347-f3; C39, §**10347.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §581.3]

581.4 Enforcement.

The lienholder may enforce the lien by a suit in equity.

[C35, §10347-f4; C39, §**10347.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §581.4]

CHAPTER 582

HOSPITAL LIEN

582.1 Nature of lien.
582.2 Written notice of lien.
582.3 Duration and enforcement of lien.
582.4 Lien book — fees.

582.1 Nature of lien.

Every association, corporation, county, or other institution, including a municipal corporation, maintaining a hospital in the state, which shall furnish medical or other service to any patient injured by reason of an accident not covered by the workers' compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by the patient's heirs or personal representatives in the case of the patient's death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages; provided, however, that this lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or the patient's heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient, the patient's heirs, or personal representatives; provided, further, that the lien herein set forth shall not be applied or considered valid against anyone coming under the workers' compensation Act in this state.

[C35, §10347-f5; C39, §**10347.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §582.1]

Workers' compensation, chapter 85

582.2 Written notice of lien.

No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the district court of the county in which such hospital is located, prior to the payment of any moneys to such injured person, the person's attorneys or legal representative, as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, the person's attorneys or legal representative, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability, if the name and address shall be known.

[C35, §10347-f6; C39, §**10347.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §582.2]

582.3 Duration and enforcement of lien.

Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to the patient's attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement, after paying the amount of any prior liens, shall, for a period of one year from the date of payment to such patient or the patient's heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; any such association, corporation, or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment.

[C35, §10347-f7; C39, §**10347.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §582.3]

582.4 Lien book — fees.

Every clerk of the district court shall, at the expense of the county, provide a suitable well-bound book to be called the hospital lien docket in which, upon the filing of any lien claim under the provisions of this chapter, the clerk shall enter the name of the injured person, the date of the accident, and the name of the hospital or other institution making the claim. The clerk shall make a proper index of the same in the name of the injured person and the clerk shall collect a fee of ten dollars for filing each lien claim.

[C35, §10347-f8; C39, §**10347.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §582.4]

95 Acts, ch 91, §2

CHAPTER 583

HOTELKEEPER'S LIEN

583.1 Definitions.
583.2 Nature of hotelkeeper's lien.
583.3 Enforcement of claim by ordinary action.
583.4 Satisfaction of lien by sale.
583.5 Disposal of proceeds — statement.
583.6 Duty of county treasurer — right of guest.

583.1 Definitions.

For the purposes of this chapter:

1. *"Baggage"* shall include all property which is in any hotel belonging to or under the control of any guest.

2. *"Guest"* shall include boarder and patron, or any legal occupant of any hotel as herein defined.

3. *"Hotel"* shall include inn, rooming house, and eating house, or any structure where rooms or board are furnished, whether to permanent or transient occupants.

4. *"Hotelkeeper"* shall mean a person who owns or operates a hotel.

[C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §**10348;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §583.1]

583.2 Nature of hotelkeeper's lien.

A hotelkeeper shall have a lien upon the baggage of any guest, which may be in that hotel, for:

1. The accommodations and keep of said guest.

2. The money paid for or advanced to said guest.

3. The extras and other things furnished said guest.

[C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §**10349;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §583.2]

Bond to release, chapter 584

583.3 Enforcement of claim by ordinary action.

The hotelkeeper may take and retain possession of all baggage and may enforce the claim by an ordinary action. Said baggage shall be subject to attachment and execution for the reasonable charges of the hotelkeeper against the guest, and for the costs of enforcing the lien thereon.

[C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §**10350;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §583.3]

Attachment to enforce lien, §640.1

583.4 Satisfaction of lien by sale.

If the hotelkeeper does not proceed by an ordinary action the hotelkeeper shall retain the baggage upon which the hotelkeeper has a lien for a period of ninety days, at the expiration of which time, if such lien is not satisfied, the hotelkeeper may sell such baggage at public auction after giving ten days' notice of the time and place of sale in a newspaper of general circulation in the county where the hotel is situated, and also by mailing a copy of such notice addressed to said guest at the place of residence registered by the guest in the register of the hotel.

[C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §**10351;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §583.4]

583.5 Disposal of proceeds — statement.

From the proceeds of said sale the hotelkeeper shall satisfy the lien, the reasonable expense of storage, and the costs for enforcing the lien, and any remaining balance shall, on demand within six months, be paid to the guest, and if not demanded within said period of time, said balance shall be deposited by the hotelkeeper with the county treasurer of the county in which the hotel is situated, together with:

1. A statement of the hotelkeeper's claim and the costs of enforcing same.

2. A copy of the published notice of sale.

3. A statement of the amounts received for the goods sold at said sale.

[C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §**10352;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §583.5]

583.6 Duty of county treasurer — right of guest.

The balance received by the county treasurer under section 583.5 shall be credited to the county, subject to a right of the guest, or the guest's representative, to reclaim it at any time within three years from the date of deposit with the county treasurer.

[C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §**10353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §583.6]

83 Acts, ch 123, §193, 209

CHAPTER 584

RELEASE OF LIENS BY BOND

584.1 Liens subject to release.
584.2 Requirements of bond.
584.3 Effect of bond.
584.4 Action on bond.

584.1 Liens subject to release.

An owner of personal property in this state who disputes, either the existence, on such property, of a common law or statutory lien, or the amount of

any such lien, may release such lien, if any, and become entitled to the immediate possession of said property by filing a bond as hereinafter provided.

[C24, 27, 31, 35, 39, §**10354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §584.1]

584.2 Requirements of bond.

Said bond shall be in an amount equal to twice the amount of the lien claimed, shall have one or more sureties, shall be approved by and filed with the clerk of the district court of the county where the property is being held under the claimed lien, and shall be conditioned to pay claimant any sum found to be due and also found to have been a lien on said property at the time the bond is filed.

[C24, 27, 31, 35, 39, §**10355;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §584.2]

584.3 Effect of bond.

When said bond is filed and claimant is given written notice of such filing, the said lien, if any, shall stand released, and the owner shall be entitled to the immediate possession of said property.

[C24, 27, 31, 35, 39, §**10356;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §584.3]

584.4 Action on bond.

An action upon said bond shall be brought in the county where the owner of the property resides; when the said owner is a nonresident of this state, the action shall be brought in the county where the bond is filed.

[C24, 27, 31, 35, 39, §**10357;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §584.4]

SUBTITLE 4

LEGALIZING ACTS

CHAPTER 585

PUBLICATION OF PROPOSED LEGALIZING ACTS

585.1 Publication prior to passage.
585.2 Place of publication in certain cases.
585.3 Caption of publication.
585.4 Cost of publication.
585.5 Subsequent amendment — effect.

585.1 Publication prior to passage.

No bill which seeks to legalize the official proceedings of any board of supervisors, board of school directors, or city council, or which seeks to legalize any warrant or bond issued by any of said official bodies, shall be placed on passage in either house or senate until such bill as introduced shall have been published in full in some newspaper published within the territorial limits of the public corporation whose proceedings, warrants, or bonds are proposed to be legalized, nor until proof of such publication shall have been filed with the chief clerk of the house, and with the secretary of the senate, and a brief minute of such filing entered on the respective journals.

[C24, 27, 31, 35, 39, §**10358;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §585.1]

Additional requirements, §7A.19

585.2 Place of publication in certain cases.

In case no newspaper is published within such territorial limits, the publication required by this chapter shall be made in one newspaper of general circulation published within the county.

[C24, 27, 31, 35, 39, §**10359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §585.2]

585.3 Caption of publication.

The publication required by this chapter shall be made under the following caption or heading, to wit:

"Proposed bill for the legalization of the proceedings of (name of official body)".

If the proposed bill be for the legalization of the bonds or warrants of the public corporation, the caption shall be modified accordingly.

[C24, 27, 31, 35, 39, §**10360;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §585.3]

585.4 Cost of publication.

If the bill be introduced at the instance of the public body whose proceedings, bonds, or warrants are sought to be legalized, the cost of the aforesaid publication may be paid from the general fund of the public corporation.

[C24, 27, 31, 35, 39, §**10361;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §585.4]

Cost of printing, §7A.19

585.5 Subsequent amendment — effect.

The amendment of the proposed bill after its publication as aforesaid shall not affect its legality, provided the subject matter of the bill is not substantially changed.

[C24, 27, 31, 35, 39, §**10362;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §585.5]

CHAPTER 586

ACKNOWLEDGMENTS, OTHER ACTS, AND INSTRUMENTS

586.1 Specific defects legalized.

586.1 Specific defects legalized.

The following acts and instruments are hereby legalized and declared to be as valid as though all defects and irregularities therein as set forth be-

low had never existed; nothing in this section, however, shall affect pending litigation:

1. Official acts performed more than ten years earlier by notaries public during the time that they held over in office without qualifying after the expiration of the preceding term, if such notaries public subsequently qualified.

2. Acknowledgments taken more than ten years earlier by notaries public outside their jurisdiction.

3. Acknowledgments taken and oaths administered by mayors under section 691, Code 1897, or section 1216 of subsequent Codes to and including the Code of 1939 and section 63A.2 to and including Code of 1966, in proceedings not connected with their offices.

4. Acknowledgments of deeds, mortgages, permanent school fund mortgages and contracts taken and certified before 1970 by any county auditor, deputy county auditor, or deputy clerk of the district court although such officer was not authorized to take the acknowledgments at the time they were taken.

5. Acknowledgments taken and certified as provided by the Code of 1873, which were taken and certified after September 29, 1897, and prior to April 14, 1898, by officers having authority under the Code of 1873 to take and certify acknowledgments, as though such acknowledgments were taken and certified according to the provisions of the Code of 1897, and as though the officers were authorized to take and certify acknowledgments.

6. Acknowledgments taken, certified, and recorded before 1970 in the proper counties, and which are defective only in the form of the certificate of the officer taking the acknowledgment or because made before an official not qualified to take such acknowledgment but who was qualified to take acknowledgments generally.

7. Acknowledgments taken outside the United States before 1970 by officers authorized by section 10092, Codes 1924 to 1939 and section 558.28, Code 1946 to and including the Code of 1966, to take such acknowledgments, whether or not a certificate of authenticity as provided by section 10093, Codes of 1924 to 1939 and section 558.29, Code 1946 to and including the Code of 1966, is attached to such instrument; and the certificate of acknowledgment of such officer is hereby made conclusive evidence that such officer was duly qualified to make such certificate of acknowledgment.

8. Any instrument affecting real estate executed before 1970 by an attorney in fact for the grantor where a duly executed and sufficient power of attorney was on file in the county where the land was situated, although the instrument was executed and acknowledged in the form of "A, attorney in fact for B", instead of "B, by A, the attorney in fact for B"; or if such instrument is duly recorded and there is no record in the county where the land is situated of a power of attorney authorizing the attorney in fact to so act.

9. Any written instrument and the recording thereof, recorded prior to 1970 in the office of the recorder of the proper county, although there is attached to the instrument a defective certificate of acknowledgment.

[S13, §2942-c, -e, -k, -l; SS15, §2963-v, -x; C24, 27, §10363 – 10374; C31, 35, §10363 – 10374-b1; C39, §**10363 – 10374.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §586.1; 82 Acts, ch 1020, §1]

83 Acts, ch 185, §53, 62; 96 Acts, ch 1060, §2

CHAPTER 587

JUDGMENTS AND DECREES LEGALIZED

587.1 Decrees against unknown claimants.
587.2 Certain publications of original notices.
587.3 Original notices failing to name term.
587.4 Decrees for sale of real estate by guardian.
587.5 Judgments or decrees respecting wills.
587.6 Judgments in probate by circuit courts.
587.7 Judgments or decrees quieting title.
587.8 Decrees in general — affidavit of nonresidence.
587.9 Decrees in general — affidavit of publication.
587.10 Affidavit of publication of notice by assistant publisher.
587.11 Annulment of marriages — service by publication.
587.12 Service by publication under former rule 60.

587.1 Decrees against unknown claimants.

All decrees of court obtained in actions against unknown defendants in which the notice was entitled in the initial or initials of the plaintiff instead of the plaintiff's full given name are legalized, and the decrees have the same force and effect as if the notice had been entitled in the full

name of the plaintiff as was provided for in section 3538, Code of 1897, and in section 3538 of the supplement to the Code of 1913.

[SS15, §3540-a; C24, 27, 31, 35, 39, §**10375;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.1]

85 Acts, ch 67, §52

587.2 Certain publications of original notices.

No action in which unknown persons were made parties defendant pursuant to the requirements of section 3538, supplemental supplement to the Code 1915, and in which notice of such action was given by publication between July 1, 1913, and July 1, 1915, for four consecutive weeks, the last publication being ten days prior to the first day of the term for which said action was brought as shown by proof on file in the office of the clerk of the court where said action was pending, shall be held ineffectual, void, or insufficient because the records fail to show that the court or judge approved said notice before publication or failed to endorse approval on said notice or failed to designate in which paper said notice should be published as required by section 3539, Code of 1897.

[C24, 27, 31, 35, 39, §**10376;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.2]

587.3 Original notices failing to name term.

All judgments and decrees heretofore entered by default prior to July 4, 1963, in causes wherein the original notices set out the date when and the place where the court would convene are hereby declared legal and binding, notwithstanding the fact that said original notices fail to name the term at which defendant or defendants was or were required to appear. Nothing contained in this section shall affect pending litigation.

[C39, §**10376.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.3]

587.4 Decrees for sale of real estate by guardian.

In all cases where decrees and orders of court have been obtained for the sale of real estate by a guardian prior to January 1, 1969, where the original notice shows that service of notice pertaining to the sale of such real estate was made on the minor or ward outside of the state of Iowa, such services of notices are hereby legalized. All decrees so obtained as aforesaid are hereby legalized and held to have the same force and effect as though the service of such original notice had been made on the minor or ward within the state of Iowa.

[C24, 27, 31, 35, 39, §**10377;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.4]

587.5 Judgments or decrees respecting wills.

No judgment or decree purporting to set aside any will or the provisions of any will, or to place any construction upon any will or terms of any will, or to aid in carrying out the provisions of any will, and no contract or agreement purporting to be a settlement of any suit or action to set aside any will or the terms of any will, or to place any construction upon any will or any of the terms thereof, shall be held ineffectual, void, or insufficient because the records fail to show proper service of notice on all parties interested, that persons under disability affected by the action were not properly served with notice or represented by guardian or guardian ad litem, either in suit, action, or in a settlement thereof, that all persons interested participated in the settlement, or that any other provisions of law had been complied with which are necessary to make a valid decree, judgment, or settlement; provided more than ten years had elapsed since the judgment, decree, contract, or agreement was filed, entered, or placed on record in the county where the real estate affected thereby is situated. Said decree, judgment, contract, or agreement shall be conclusive evidence of the right, title, or interest it purports to establish or adjudicate insofar as it affects the title to such real estate, and said proceedings therein are hereby made legal and effectual the same as though all provisions of law had been complied with in the obtaining of said decree, judgment, or execution of said contract or agreement, and any judgment, decree, contract, or agreement such as above described which is now of record less than ten years in the county in which the real estate is situated shall, at the expiration of ten years from date of filing, entering, or recording thereof, have the same force and effect as is above given to those now in effect more than ten years.

[S13, §2963-m; C24, 27, 31, 35, 39, §**10378;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.5]

587.6 Judgments in probate by circuit courts.

In all cases where matters or proceedings in probate have been heard by the circuit courts or judges outside the county in which such matters or proceedings were pending, and in all cases where orders and judgments in probate matters and proceedings have been made by the circuit courts and judges outside the county in which such proceeding or matter was pending, and where such hearing was had or order or judgment made within the circuit to which the county belonged in which such proceeding or matter was pending, such hearing, order, or judgment shall be held and deemed to be of the same validity and force and effect as if such hearing was had or such order or judgment was made within the county in which such proceeding or matter was pending, and all title and rights acquired under such orders and judgments shall be held and deemed to be of the same legal force and effect and to be as valid as if such order or judgment had been made within the county in which

the proceeding or matter was pending.

[C24, 27, 31, 35, 39, §**10379;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.6]

587.7 Judgments or decrees quieting title.

No existing judgment or decree quieting title to real estate as against defects arising prior to January 1, 1966, and purporting to sustain the record title shall be held ineffectual because of the failure to properly set out in the petition or notice the derivation or devolution of the interest of the unknown defendants, or on account of the failure of the record to show that such notice was approved by the court or that the same was published as directed by the court, or because of the failure of the record to show that an affidavit was filed by plaintiff showing that personal service could not be made on any defendant in the state of Iowa, or because of the failure of defense by a guardian ad litem for any defendant under legal disability, or where there was more than one tract of real estate described in the same petition and decree, or where the plaintiffs have no joint or common interest in the property or defects of title, or because of failure to comply with any other provision of law. All such decrees are hereby made legal and effectual the same as if all provisions of law had been complied with in obtaining them.

[S13, §2963-f; C24, 27, 31, 35, 39, §**10380;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.7]

587.8 Decrees in general — affidavit of nonresidence.

In all cases where decrees of court have been obtained prior to January 1, 1966, upon publication of notice before the filing of the affidavit of nonresidence, as provided by section 3534, Code of 1897, or section 11081, Codes of 1924, 1927, 1931, 1935, 1939 and rule of civil procedure, number 60, effective July 4, 1943, and the same have not been filed as provided by law, but have been filed during the time that the notice was being published, on which such decrees are based, are hereby legalized and such decrees shall have the same force and effect as though the affidavit of nonresidence, as provided in said section, was filed at the time of or prior to the first publication of such notice. All decrees so obtained, as aforesaid, are hereby legalized and held to have the same force and effect as though the affidavit of nonresidence had been filed, as by law required.

[S13, §3534-a; C24, 27, 31, 35, 39, §**10381;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.8]

587.9 Decrees in general — affidavit of publication.

In all cases where decrees of court have been obtained prior to January 1, 1969, in which the proof of publication of the original notice has been made by the affidavit of the editor of the newspaper or the publisher, manager, cashier, or supervisor thereof in which such original notice was published, the same are hereby legalized and such decrees shall have the same force and effect as though the affidavit of the publisher or supervisor of the newspaper in which original notice was published had been filed as provided by section 3536, Code of 1897, or section 11085, Codes of 1924, 1927, 1931, 1935, 1939 and rule of civil procedure, number 60, Code 1946, that all decrees obtained as aforesaid are hereby legalized and held to have the same force and effect as though the proof of the publication on the original notice had been made by the affidavit of the publisher or supervisor of the newspaper in which such original notice was published.

[S13, §3536-a; C24, 27, 31, 35, 39, §**10382;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.9]

587.10 Affidavit of publication of notice by assistant publisher.

All affidavits of proof of publication of any notice or original notice made by the assistant publisher of any newspaper of general circulation, which were executed and filed more than ten years earlier, are hereby legalized, declared valid, binding, and of full force and effect.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.10]

91 Acts, ch 183, §10

587.11 Annulment of marriages — service by publication.

All decrees of the courts of this state made and entered of record in actions brought to annul a marriage in which the service of the original notice was made by publication in the manner provided by law for actions for divorce are hereby legalized and validated as fully and to the same extent as if the statute at the time such suit was instituted had provided for service of the original notice by publication in the time and manner aforesaid.

[S13, §3187-a; C24, 27, 31, 35, 39, §**10383;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.11]

587.12 Service by publication under former rule 60.

1. In all actions or in proceedings in probate where an order, judgment or decree has been entered prior to July 1, 1970, based upon service of notice by publication as provided by rule 60 of the Iowa rules of civil procedure* or any statute authorizing publication of notice or upon service of notice by publication or posting pursuant to authorization or direction of any court of competent jurisdiction in the state of Iowa, all such orders, judgments, or decrees are hereby declared valid and of full force and effect, unless an action shall be commenced within the time provided in subsection 2 hereof to question such order, judgment, or decree, or any right or status created, confirmed, or existing thereunder.

2. No action shall be maintained in any court to question any such order, judgment, or decree, or any right or status created, confirmed, or existing thereunder unless such action shall be commenced within one year from July 1, 1970.

3. The provisions of section 614.8 as to the rights of minors and persons with mental illness and any other provision of law fixing or extending the time within which actions may be commenced shall not be applicable to extend the time within which any such action shall be commenced beyond one year after July 1, 1970.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §587.12]
96 Acts, ch 1129, §113
*Iowa court rules, 3rd ed

CHAPTER 588

EXECUTION SALES

588.1 Failure to make proper entries.
588.2 Homestead selection — deficiency.

588.1 Failure to make proper entries.

All execution sales heretofore had wherein the execution officer has failed to endorse on the execution the day and hour when received, the levy, sale, or other act done by virtue thereof, with the date thereof, the dates and amounts of any receipts or payment in satisfaction thereof at the time of the receipt or act done, or has failed to endorse thereon, an exact description of the property levied upon at length with the date of levy, be and the same are hereby legalized and declared to be legal and valid as if all of the provisions of laws as required by sections 11664 to 11668.1 [Code 1939], both inclusive, had been in all respects strictly and fully complied with.

[C35, §10383-e1; C39, §**10383.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §588.1]

588.2 Homestead selection — deficiency.

All execution sales of real estate heretofore had in which the execution officer has failed to serve notice upon the titleholders in possession to select their homestead or has defectively served such notice or, having served such notice, has, upon the failure of defendants to select a homestead, neglected to plat the same or has defectively platted the same, or where said execution officer in such sales has offered the property en masse without first offering the same in the least legal subdivisions, or where said officer has failed to offer property, including the homestead, first separately in least legal subdivisions exclusive of homestead, then offering all property en masse, exclusive of the homestead, then offering the homestead separately, then offering all of the property for sale, en masse, be and the same are hereby legalized and declared to be legal and valid in all particulars as if all of the provisions of the law had been in all respects strictly and fully complied with at the time of said acts or said sales.

[C39, §**10383.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §588.2]

CHAPTER 589

REAL PROPERTY

589.1 Acknowledgments — seal not affixed.
589.2 Conveyances by county.
589.3 Absence of or defective acknowledgments.
589.4 Acknowledgments by corporation officers.
589.5 Acknowledgments by stockholders.
589.6 Instruments affecting real estate.
589.7 Repealed by 79 Acts, ch 133, §13.
589.8 Mortgages, trust deeds and realty liens — releases.
589.9 Marginal releases of school-fund mortgages.
589.10 Marginal assignment of mortgage or lien.
589.11 Conveyances by fiduciaries.
589.12 Sheriffs' deeds.
589.13 Sheriff's deed executed by deputy.
589.14 Defective tax deeds.
589.15 Tax deeds legalized.
589.16 Tax sales legalized.
589.16A Defect in tax sale proceeding.
589.17 Conveyances by spouse under power.
589.18 Conveyances by foreign executors.
589.19 Conveyances under school-fund foreclosures.
589.20 Conveyances according to law of other states. Repealed by 91 Acts, ch 183, §40.

589.21 Releases and discharges.
589.22 Certain loans, contracts and mortgages.
589.23 Descriptions referring to defective plats.
589.24 Defective instruments.
589.25 Sales of real estate by school district.
589.26 Land transfers by the department of human services legalized.
589.27 Condemnation by department of transportation.
589.28 County surplus property — sale legalized.
589.29 Permission to lay water mains.
589.30 Establishment of ancient county roads.
589.31 City and county deeds.

589.1 Acknowledgments — seal not affixed.

All deeds, mortgages, or other instruments in writing for the conveyance of lands which have been made and executed more than ten years earlier, and the officer taking the acknowledgment has not affixed the officer's seal to the acknowledgment; the acknowledgment is, nevertheless, good and valid in law and equity, any other provision of law to the contrary notwithstanding.

[S13, §2942-h; C24, 27, 31, 35, 39, §**10384;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.1]

84 Acts, ch 1090, §1; 91 Acts, ch 183, §11

589.2 Conveyances by county.

All deeds executed more than ten years earlier, by a court or the chairperson of the board of supervisors of a county, and to which the officer executing the deed has failed or omitted to affix the county seal, and all deeds where the clerk has failed or omitted to countersign when required so to do, are legalized and valid as though the law had in all respects been fully complied with.

[C24, 27, 31, 35, 39, §**10385;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.2]

84 Acts, ch 1090, §2; 91 Acts, ch 183, §12

589.3 Absence of or defective acknowledgments.

Any instrument in writing affecting the title to real estate within the state of Iowa, to which is attached no certificate of acknowledgment, or to which is attached a defective certificate of acknowledgment, which was, more than ten years earlier, recorded or spread upon the records in the office of the recorder of the county in which the real estate described in the instrument is located, is, together with the recording and the record of the recording, valid, legal, and binding as if the instrument had been properly acknowledged and legally recorded.

[S13, SS15, §2963-a; C24, 27, 31, 35, 39, §**10386;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.3]

84 Acts, ch 1090, §3; 91 Acts, ch 183, §13

589.4 Acknowledgments by corporation officers.

The acknowledgments of all deeds, mortgages, or other instruments in writing taken or certified more than ten years earlier, which instruments have been recorded in the recorder's office of any county of this state, including acknowledgments of instruments made by a corporation, or to which the corporation was a party, or under which the corporation was a beneficiary, and which have been acknowledged before or certified by a notary public who was at the time of the acknowledgment or certifying a stockholder or officer in the corporation, are legal and valid official acts of the notaries public, and entitle the instruments to be recorded, anything in the laws of the state of Iowa in regard to acknowledgments to the contrary notwithstanding. This section does not affect pending litigation.

[C39, §**10387.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.4]

84 Acts, ch 1090, §4; 91 Acts, ch 183, §14

589.5 Acknowledgments by stockholders.

All deeds and conveyances of lands within this state executed more than ten years earlier, but which have been acknowledged or proved according to and in compliance with the laws of this state before a notary public or other official authorized by law to take acknowledgments who was, at the time of the acknowledgment, an officer or stockholder of a corporation interested in the deed or conveyance, or otherwise interested in the deeds or conveyances, are, if otherwise valid, valid in law as though acknowledged or proved before an officer not interested in the deeds or conveyances; and if recorded more than ten years earlier, in the respective counties in which the lands are, the records are valid in law as though the deeds and conveyances, so acknowledged or proved and recorded, had, prior to being recorded, been acknowledged or proved before an officer having no interest in the deeds or conveyances.

[S13, §2942-d; C24, 27, 31, 35, 39, §**10388;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.5]

84 Acts, ch 1090, §5; 91 Acts, ch 183, §15

589.6 Instruments affecting real estate.

All instruments in writing executed by a corporation before July 1, 1996, which are more than one year old, conveying, encumbering, or affecting real estate, including releases or satisfactions of mortgages, judgments, or any other liens by entry of the release or satisfaction upon the page where

the lien appears recorded or entered, where the corporate seal of the corporation has not been affixed or attached, and which are otherwise legally and properly executed, are legal, valid, and binding as though the corporate seal had been attached or affixed.

[S13, §3068-a; C24, 27, 31, 35, 39, §**10389;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.6]

84 Acts, ch 1090, §6; 91 Acts, ch 183, §16; 96 Acts, ch 1154, §9; 97 Acts, ch 23, §74

589.7 Repealed by 79 Acts, ch 133, § 13.

589.8 Mortgages, trust deeds and realty liens — releases.

A release or satisfaction of a mortgage or trust deed, or of an instrument in writing creating a lien upon real estate where the release or satisfaction has been recorded in the recorder's office of the county in this state, or upon the margin of the record, where the original instrument was recorded and which release or satisfaction was made by an individual, association, copartnership, assignee, corporation, attorney in fact, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, or commissioner, and which release or satisfaction was executed, filed, and recorded more than ten years earlier, is valid, legal and binding, any defects in the execution, acknowledgment, recording, filing, or otherwise of the releases or satisfactions to the contrary notwithstanding.

[S13, §2938-b; C24, 27, 31, 35, 39, §**10391;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.8]

84 Acts, ch 1090, §7; 91 Acts, ch 183, §17

589.9 Marginal releases of school-fund mortgages.

The release or satisfaction of a school-fund mortgage entered on the margin of the record of the mortgage by the auditor of the county more than ten years earlier, is legalized as though the auditor had, at the time of entering the release or satisfaction, the same power thereafter conferred upon the auditor by chapter 53 of the Acts of the Twenty-fifth General Assembly.

[C24, 27, 31, 35, 39, §**10392;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.9]

84 Acts, ch 1090, §8; 91 Acts, ch 183, §18

589.10 Marginal assignment of mortgage or lien.

If an assignment of a mortgage or other recorded lien on real estate has been executed more than ten years earlier, by written assignment on the margin of the record where the mortgage or other lien is recorded or entered, the assignment passed all the right, title, and interest in the real estate, which the assignor at the time had, with like force and effect as if the assignment had been made by separate instrument duly acknowledged and recorded; and an assignment or a duly authenticated copy of an assignment when accompanied by a duly authenticated copy of the record of the instrument or lien it purports to assign, is admissible in evidence as provided by law for the admission of the records of deeds and mortgages.

[SS15, §2963-x2; C24, 27, 31, 35, 39, §**10393;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.10]

84 Acts, ch 1090, §9; 91 Acts, ch 183, §19

589.11 Conveyances by fiduciaries.

If an executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner, acting in that capacity in this or any state, has conveyed in the trust capacity real estate lying in this state and the conveyance has been of record for more than ten years, in the county where the real estate so conveyed is located and which conveyance purports to sustain the title in the present record owner, the conveyance is not void or insufficient because due and legal notice of all proceedings with reference to the making of the conveyance was not served upon all interested or necessary parties, or that the executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner is not shown to have been duly authorized by an order of court to make and execute the conveyance, that a bond was not given, or that a report of the sale was not made; or the sale or deed of conveyance was not approved by order of court, or a foreign executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner was not appointed or qualified in the state of Iowa prior to the making of the conveyance, or the record fails to disclose compliance with any law, and all such conveyances are valid, legal, and binding. Allotments by referees in partition are conveyances within the meaning of this section.

[S13, SS15, §2963-l; C24, 27, 31, 35, 39, §**10394;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.11]

84 Acts, ch 1090, §10; 91 Acts, ch 183, §20

589.12 Sheriffs' deeds.

A sheriff's deed executed more than ten years earlier which purports to sustain the record title is not ineffectual on account of the failure of the record to show that any of the steps in obtaining the judgment or in the sale of the property were complied with. The proceedings are legalized as if the record showed that the law has been complied with.

[S13, §2963-c; C24, 27, 31, 35, 39, §**10396;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.12]

84 Acts, ch 1090, §11; 91 Acts, ch 183, §21

589.13 Sheriff's deed executed by deputy.

All conveyances of land in this state, executed in this state by a deputy sheriff, and properly re-

corded in the office of the county recorder of the county where the land is located, more than ten years earlier, have the same force and effect as though the conveyance had been executed by the sheriff.

[C24, 27, 31, 35, 39, §**10397;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.13]

84 Acts, ch 1090, §12; 91 Acts, ch 183, §22

589.14 Defective tax deeds.

A tax deed executed more than ten years earlier which purports to sustain the record title, is not ineffectual because of the failure of the record to show that any of the steps in the sale and deeding of the property were complied with and these proceedings are legalized and valid as if the record showed that the law had been complied with.

[S13, §2963-o; C24, 27, 31, 35, 39, §**10398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.14]

84 Acts, ch 1090, §13; 91 Acts, ch 183, §23

589.15 Tax deeds legalized.

That in all instances where tax deeds have been issued by county treasurers in the absence of the report and entry required by section 7283 of the Code, 1939, or corresponding sections of earlier Codes relating to collection of costs of serving notices, such tax deeds shall not by reason of omission to make such report and entry be held invalid, but are hereby legalized. Nothing herein contained shall be construed as curing any other defect in tax deeds than that herein specifically described. Nothing herein contained shall be so construed as to affect pending litigation.

[C35, §10398-g1; C39, §**10398.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.15]

589.16 Tax sales legalized.

In all instances where a county treasurer heretofore conducted a tax sale at the time provided in section 7259 or section 7262, both of the Code, 1935, sales made at such tax sale or any adjournment thereof shall not be held invalid by reason of the failure of the county treasurer to have brought forward the delinquent tax of prior years upon the current tax lists in use by the said county treasurer at the time of conducting the sale, or by reason of the failure of the county treasurer to have offered all the property unsold before each adjournment of said sale and said tax sales are hereby legalized and declared valid notwithstanding the provisions of section 7193 and section 7259, both of the Code, 1935, provided the delinquent taxes for which the said real estate was sold had been brought forward upon the current tax list of the year preceding the year in which the said tax sale was conducted. Provided, however, that no tax sale so legalized and validated shall affect a special assessment if the same continues to remain a lien notwithstanding a tax deed now or hereafter issued pursuant to such tax sale.

[C39, §**10398.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.16]

589.16A Defect in tax sale proceeding.

An action shall not be commenced after July 1, 1987, which asserts a claim against any real estate sold at a tax sale, based upon any defect in the tax sale proceeding, including the inadequacy of the notice of tax sale or the inadequacy of the notice of the expiration of the redemption period, where the tax sale was made prior to July 1, 1986.

86 Acts, ch 1139, §10

589.17 Conveyances by spouse under power.

A conveyance of real estate executed more than ten years earlier, in which the husband or wife conveyed or contracted to convey the inchoate right of dower through the other spouse, acting as the attorney in fact, by virtue of a power of attorney executed by the spouse, the power of attorney not having been executed as a part of a contract of separation, are not invalid.

[S'02, §2942-f; C24, 27, 31, 35, 39, §**10399;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.17]

84 Acts, ch 1090, §14; 91 Acts, ch 183, §24

589.18 Conveyances by foreign executors.

All conveyances of real property executed more than ten years earlier, by executors or trustees under foreign wills and prior to the date upon which the will was admitted to probate in Iowa or prior to the expiration of three months after the recording of a duly authenticated copy of the will, original record of appointment, qualification, and bond, and in which the will was, subsequent to the conveyance, probated in Iowa, and in which a duly authenticated copy of the will, original record of appointment, qualification, and bond was, subsequent to the conveyance, made a matter of record as provided in those sections, are legalized and valid in law and in equity as though the will had been probated in Iowa prior to the conveyance. However, this section does not affect pending litigation.

[S13, §3295-c; C24, 27, 31, 35, 39, §**10401;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.18]

84 Acts, ch 1090, §15; 91 Acts, ch 183, §25

589.19 Conveyances under school-fund foreclosures.

If the title to real estate has been conveyed more than ten years earlier, by the sheriff of a county pursuant to sheriff's sale under the foreclosure of permanent school-fund mortgages to the state, or to the state for the use of the school fund, or to the county for the school fund; and the land has been sold under authority of the board of supervisors of the county and conveyed under its authority, more than ten years earlier, and the full purchase price

paid and credited to, and used by, the county for the permanent school fund of the county, all right, title, or interest of the state in and to the real estate is relinquished and quitclaimed to the purchaser or the purchaser's grantees forever, and the title confirmed in the purchaser, or the purchaser's grantees insofar as the erroneous conveyance is concerned.

[C31, 35, §10401-c1; C39, §**10401.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.19]

84 Acts, ch 1090, §16; 91 Acts, ch 183, §26

589.20 Conveyances according to law of other states. Repealed by 91 Acts, ch 183, § 40.

589.21 Releases and discharges.

All releases and discharges of judgments, mortgages, or deeds of trust affecting property in this state executed more than ten years earlier, by administrators, executors, or guardians appointed by the court of any other state or country are legalized, valid and effective in law and in equity. However, this section does not affect pending litigation.

[S13, §3308-a; C24, 27, 31, 35, 39, §**10403;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.21]

84 Acts, ch 1090, §17; 91 Acts, ch 183, §27

589.22 Certain loans, contracts and mortgages.

All loans, contracts, and mortgages which are affected by the repeal of chapter 48, Acts of the Twenty-seventh General Assembly, are hereby legalized so far as to permit recovery to be had thereon for interest at the rate of eight percent per annum, but at no greater rate, and nothing contained in such contracts shall be construed to be usurious so as to work a forfeiture of any penalty to the school fund.

[S13, §1898-b; C24, 27, 31, 35, 39, §**10404;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.22]

589.23 Descriptions referring to defective plats.

The description of land in all instruments, conveyances, and encumbrances describing lots in or referring to plats of survey or to plats made by a county auditor, or by a county surveyor for the owner, and placed of record by a county recorder more than ten years earlier, are legalized, valid and binding.

[S13, §924-b; C24, 27, 31, 35, 39, §**10405;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.23]

84 Acts, ch 1090, §18; 91 Acts, ch 183, §28

589.24 Defective instruments.

A deed of conveyance, or other instrument purporting to convey real estate within the state, where the deed or instrument has been recorded in the office of the recorder of any county in which the real estate is situated, and the deed or instrument was executed by a county treasurer under a tax sale, a sheriff under execution sale, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, commissioner, individual, copartnership, association, or corporation, and was executed and recorded more than ten years earlier, and if the grantee named in the deed or conveyance, or other instrument, or the grantee's heirs or devisees, by direct line of title or conveyance have been in the actual, open, adverse possession of the premises since that date, is legalized, valid, and binding, notwithstanding defects in the execution of the deed or instrument.

[S13, §2963-c; C24, 27, 31, 35, 39, §**10406;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §589.24]

84 Acts, ch 1090, §19; 91 Acts, ch 183, §29

589.25 Sales of real estate by school district.

All deeds and conveyances of land executed by or purporting to be executed by a school district or by the board of directors of a school district, and placed of record more than ten years earlier, which deeds or conveyances purport to sustain the record title, are legalized and valid, even though the record fails to show that all necessary steps in the sale and deeding of the property were complied with. The deeds and conveyances are legalized and valid as if the record showed that the law had been complied with, and that the sales had been duly authorized by the electors of the school district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §589.25]

84 Acts, ch 1090, §20; 91 Acts, ch 183, §30

589.26 Land transfers by the department of human services legalized.

Every deed, release or other instrument in writing purporting to transfer any interest in land held or claimed by the department of human services or a predecessor agency, which is signed by a departmental official, and which was filed of record more than ten years earlier, in the office of the auditor or recorder or clerk of the district court of any county is legalized and shall be good and valid in law and in equity as fully as if the record expressly showed that it in all respects complied with and was fully authorized as provided in any statute pertaining to such instrument, any other provision of law to the contrary notwithstanding.

[C62, 66, 71, 73, 75, 77, 79, 81, §589.26]

91 Acts, ch 183, §31

589.27 Condemnation by department of transportation.

In any condemnation proceedings instituted by the state department of transportation and pending on or filed subsequent to January 1, 1968, in any court of the state, under chapter 6B, wherein the property owner has served a proper notice of appeal on the applicant for condemnation within the statutory period, but has failed to serve notice of appeal on a lienholder within the statutory peri-

od as required by section 6B.18, such failure shall not deprive the court of jurisdiction insofar as the property owner is concerned, unless a lienholder can show prejudice thereby, and in such instances the appeal, as it affects the property owner, is legalized and validated.

Any award of damages and judgment for costs, in any such proceeding, which has been set aside or vacated, by reason of the failure of the property owner to serve notice of appeal on a lienholder within the statutory period required under section 6B.18, shall be reinstated by the court where such award and judgment was entered after notice and hearing, as prescribed by the court, and after a finding that such lienholder will not be prejudiced thereby.

[C73, 75, 77, 79, 81, §589.27]

589.28 County surplus property — sale legalized.

All proceedings taken by the board of supervisors of any county pertaining to the sale of any property which was no longer needed for the purpose for which it was acquired or any other county purpose and sold pursuant to section 331.361, where the board failed to offer such property for sale at a public auction on or after June 30, 1974 and on or before July 1, 1975 are validated, legalized, and confirmed and shall constitute a valid, legal, and binding sale of such property sold on or after June 30, 1974 and on or before July 1, 1975 by the board of supervisors of any county.

[C81, §589.28]

589.29 Permission to lay water mains.

The provisions of section 320.4, relating to the laying of water mains apply to all permits or permissions granted by a county board of supervisors or the state department of transportation and its predecessors before July 1, 1979 and are retroactive to that extent.

[82 Acts, ch 1165, §1]

589.30 Establishment of ancient county roads.

Effective January 1, 1993, the establishment of a county road pursuant to proceedings by a board of supervisors, in which the proceedings, plans, or plats were on file or recorded with the county auditor or county recorder prior to January 1, 1920, are not ineffectual because of the failure of the board of supervisors to comply with any of the steps necessary for the establishment of the road, and these proceedings are legalized and valid as if the record showed that the law had been complied with, unless the adjacent property owner, or an attorney, agent, guardian, conservator, trustee, or parent of a minor adjacent property owner, files in the office of the county recorder in the county where the property is located, a statement in writing, which is duly acknowledged, and which specifically describes the property involved, the nature and extent of the right of the interest claimed, and the nature of the alleged failure to comply with any of the steps necessary for the establishment of the road, on or before December 31, 1992.

92 Acts, ch 1169, §1

589.31 City and county deeds.

All deeds and conveyances of land executed by or purporting to be executed by the governing body of a city or county, and placed of record more than ten years earlier, which deeds or conveyances purport to sustain the record title, are legalized and valid, even though the record fails to show that all necessary steps in the conveyance and deeding of the property were complied with. The deeds and conveyances are legalized and valid as if the record showed that the law had been complied with, and that the conveyances and deeding had been duly authorized by the governing body of the city or county.

97 Acts, ch 156, §1

CHAPTER 590

WILLS

590.1 Notice of appointment of executors.
590.2 Notice of hearing in probate.

590.1 Notice of appointment of executors.

In all instances prior to January 1, 1964, where executors or administrators have failed to publish notice of their appointment as required by section 3304, Code of 1897, and section 11890, Codes of 1924 to 1939, inclusive, and section 633.46, Codes 1946 to 1962, inclusive, but have published a notice of appointment, such notice of appointment is hereby legalized and shall have the same force and effect as though the same had been published as

directed by the court or clerk.

In all instances where more than five years have passed since the appointment of a personal representative or probate of a will without administration, where administrators have failed to publish notice of their appointment as required by section 633.230, and executors have failed to publish a notice of admission of the will to probate and their appointment as required by sections 633.304 and 633.305, but have published a notice of appointment or notice of admission of the will to probate and of the appointment of the executor, such notice of appointment or notice of admission of the will to probate and of the appointment of the executor, is hereby legalized and shall have the same force and effect as though the same had been published as required.

[C24, 27, 31, 35, 39, §**10407;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §590.1]

590.2 Notice of hearing in probate.

In all instances prior to January 1, 1964, where the clerk of the district court of any county failed to publish notice of the time fixed for hearing of the probate of any will filed in such county as required by section 11865 of the Code [1924 to 1939, inclusive], and section 633.20, Codes 1946 to 1962, inclusive, but did publish a notice of the time fixed for such hearing signed by the clerk and addressed to whom it may concern in a daily or weekly newspaper printed in the county where the will was filed, such notice of time fixed for the hearing of the probate of such will is hereby legalized and shall have the same force and effect as though the same had been published in strict conformity with the requirements of said section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §590.2]

CHAPTER 591

CORPORATIONS LEGALIZED

591.1 Defective publication.
591.2 Publication after required time.
591.3 Filing of renewals after required time.
591.4 Defective notice or acknowledgment, etc.
591.5 Notices of incorporation.
591.6 Amended articles and change of name.
591.7 Co-operative associations or corporations.
591.8 Defective organization or renewal.
591.9 Interstate bridges — merger and consolidation.
591.10 Failure to publish notice of renewal.
591.11 Failure to publish notice of amendment.
591.12 Effect of foregoing statutes.
591.13 Corporation stock — certificates of information.
591.14 Failure to file certificate — penalty.
591.15 Failure to publish notice of incorporation or amendment.
591.16 Nonprofit corporate renewal legalized.
591.17 Nonprofit corporations legalized.

591.1 Defective publication.

Corporations heretofore incorporated under the laws of the state which have caused notice of their incorporation to be published once each week for four consecutive weeks in some daily, semiweekly or triweekly newspaper, instead of causing the same to be published in each issue of such newspaper for four consecutive weeks, are hereby legalized and are declared legal incorporations the same as though the law had been complied with in all respects in regard to the publication of notice.

[S13, §1613-a; C24, 27, 31, 35, 39, §**10408;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.1]

591.2 Publication after required time.

In all instances where the incorporators of corporations organized in this state for pecuniary profit have omitted to publish notice of such incorporation within three months after the date of the certificates of incorporation issued by the secretary of state, but did publish such notices thereafter in the manner and form as required by law, such notices of incorporation are hereby legalized and shall have the same force and effect as though published within said period of three months.

[C24, 27, 31, 35, 39, §**10409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.2]

591.3 Filing of renewals after required time.

In all instances where proper action has been taken prior to July 1, 1959, by the stockholders for renewal of any corporation for pecuniary profit and the certificates showing such proceedings, together with the articles of incorporation, have been filed and recorded in the office of the county recorder and later in the office of the secretary of state, or have been filed and recorded in the office of the secretary of state and later in the office of the county recorder, although there has been failure to file such certificates and articles of incorporation in either or both of the said offices within the time

specified therefor by law, such renewals are hereby legalized and shall be held to have the same force and effect as though the filings of the said documents in the said offices had been made within the periods prescribed by statute.

[SS15, §1618-1a; C24, 27, 31, 35, 39, §**10410;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.3]

591.4 Defective notice or acknowledgment, etc.

In all instances where the incorporators of corporations organized in the state prior to January 1, 1959, have failed to publish notices of such incorporation within three months from and after the date of the certificates of incorporation issued by the secretary of state, but did publish such notices within three months after the date required by law in such cases in manner and form as required by law, and in all instances where the number of incorporators or the signatures or acknowledgment thereof were less than the number required by law, or the articles of incorporation were otherwise defective, but where the corporation or association has thereafter been conducted with the requisite number of stockholders or members, such notices of incorporation and the incorporation of corporations or associations so defectively incorporated are in each and every case hereby legalized and all the corporate acts of all such corporations and associations are hereby legalized in all respects.

[C24, 27, 31, 35, 39, §**10411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.4]

591.5 Notices of incorporation.

In all instances where the incorporators of corporations for pecuniary profit have omitted to publish notice of incorporation within three months from the date of the certificate of incorporation issued by the secretary of state, but have published notice thereafter in manner and form as by law required, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months, as to all acts of said corporation from the date of said completed publication.

[C24, 27, 31, 35, 39, §**10412;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.5]

591.6 Amended articles and change of name.

Any corporation, organized under chapter 2 of Title IX, Code of 1897, or chapter 394, Codes of 1924, 1927, 1931, 1935 and 1939, or chapter 504, Codes of 1946, 1950, 1954 and 1958, which shall have heretofore adopted articles of incorporation or changed its name or amended its articles, and some question has arisen as to whether such articles, change in name or amendment was adopted by a majority of the members of such corporation as required by section 1651, Code of 1897, and section 8593, Codes of 1924, 1927, 1931, 1935 and 1939, and section 504.19, Codes of 1946, 1950, 1954 and 1958, and such corporation shall have been engaged in the exercise of its corporate functions for the period of at least three years, such articles, change in name or amendment shall be held and considered to have been duly adopted by a majority of all the members of such corporation and are hereby legalized and made valid.

[S13, §1642-b; C24, 27, 31, 35, 39, §**10413;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.6]

591.7 Co-operative associations or corporations.

In all instances where co-operative associations or corporations have been organized under the law as it appears in chapter 389, Code of 1927, where such associations or corporations have filed the original articles rather than a verified copy with the county recorder or where the secretary of state failed to certify the filing and acceptance of such articles, or where the certificate of the secretary of state contained a facsimile signature rather than the true signature of the secretary of state, or where there is any defect in the articles, notice, procedure or otherwise, the incorporation of such corporation or association and all of the corporate acts thereof are hereby legalized in all respects.

[C31, 35, §10413-c1; C39, §**10413.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.7]

591.8 Defective organization or renewal.

In all cases wherein a corporation organized or purporting to have been organized under the laws of this state has adopted articles of incorporation or other instrument of similar import and has functioned as a corporation in carrying out the objects and purposes set forth therein and in the transaction of its business, but has failed to file its articles of incorporation or such other instrument with the secretary of state, or otherwise to comply with the laws of this state relating to the organization of corporations, or to take appropriate action for the renewal of its existence within the period limited by law, and has, subsequent thereto, filed in the office of the secretary of state its renewal articles of incorporation and a certificate of the adoption thereof, paid all fees in connection therewith and has heretofore received a certificate from the secretary of state renewing and extending its corporate existence, the acts, franchises, rights, privileges and corporate existence of any such corporation are hereby legalized and validated and shall have the same force and effect as if all the laws of this state relating to the organization of corporations and the renewal of their corporate existence had been strictly complied with.

[C31, 35, §10413-d1; C39, §**10413.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.8]

591.9 Interstate bridges — merger and consolidation.

In all cases wherein any corporation organized or purporting to have been organized under the laws of this state for the purpose of constructing or operating a bridge or both, one extremity of which shall rest in an adjacent state, has attempted to merge or consolidate its stock, property, franchises, assets and liabilities with the stock, property, franchises, assets and liabilities of a corporation organized or purporting to have been organized for a similar purpose under the laws of such adjacent state, and such corporations have in fact united and combined their stock, property, franchises, assets and liabilities, such merger or consolidation, together with the action taken in effecting such merger or consolidation, is hereby legalized and validated, and such corporations so merging or consolidating shall be deemed to have become one corporation under such name as shall have been agreed upon, and such corporation shall be deemed on the date of such merger or consolidation to have succeeded to all the property, rights, privileges, assets and franchises and to have assumed all of the liabilities of such merging or consolidating corporations.

[C31, 35, §10413-d2; C39, §**10413.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.9]

591.10 Failure to publish notice of renewal.

In all instances where there has been an omission to publish notice of renewal within three months after the filing of the certificate and articles of incorporation with the secretary of state as provided in section 491.32, Code 1954, but such notice was published thereafter in the manner and form as required by law and proof of publication filed in the office of the secretary of state, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months and proper proof of publication thereof was filed.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.10]

591.11 Failure to publish notice of amendment.

In all instances where notices of amendments to articles of incorporation have not been published within three months after the filing with and approval by the secretary of state of such amendments, as provided in section 491.20 of the Code 1954, but such notices have been thereafter published in the form and manner as required by law and proof of publication filed with the secretary of state, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months and proper proof of publication filed with the secretary of state.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §591.11]

591.12 Effect of foregoing statutes.

Sections 591.1 to 591.11 hereof shall not affect pending litigation and shall not operate to revive rights or claims previously barred, and shall not permit an action to be brought or maintained upon any claim or cause of action which was barred by any statute which was in force prior to July 4, 1955.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §591.12]

591.13 Corporation stock — certificates of information.

In all instances in which corporations, incorporated under the laws of this state, have properly issued any of their capital stock prior to July 4, 1951, and have filed in the office of secretary of state certificates relative thereto containing the specific information required by statute at the time of the issuance of said stock, although there has been failure to file such certificates in said office within the time specified therefor by law, such filings are hereby legalized and shall be held to have the same force and effect as though the filings of the said certificates had been made within the period prescribed by the statute then in effect.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §591.13]

591.14 Failure to file certificate — penalty.

Any corporation organized under the laws of this state which failed to file with the office of secretary of state a certificate relative to any issuance of its capital stock prior to July 4, 1951, containing the specific information required by statute at the time of such issuance of stock may file with the office of the secretary of state subsequent to July 4, 1955, a certificate of issuance of said stock upon first paying to the secretary of state a penalty of ten dollars when said certificate is offered for filing and, provided that the penalty herein provided for is first paid and that said certificate contains the specific information required by section 492.9, said certificate when so filed shall be received by the secretary of state as a compliance with the statutes requiring the filing of such certificates in effect at the time of the issuance of said stock and shall be held to have the same force and effect as though the filing of said certificate had been made within the period prescribed by statute then in effect.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §591.14]

591.15 Failure to publish notice of incorporation or amendment.

In all instances where the incorporators, stockholders and directors of corporations organized in this state for pecuniary profit have omitted to publish notice of incorporation or notice of amendments to articles of incorporation within three months after the date of the certificates of incorporation issued by the secretary of state or approval

by the secretary of state of such amendments, but have published such notices of incorporation or notices of amendments to articles of incorporation and filed proper proof of publication with the secretary of state prior to July 4, 1963, such notices of incorporation and notices of amendments to articles of incorporation are hereby legalized and shall have the same force and effect as though published within said period of three months.

[C66, 71, 73, 75, 77, 79, 81, §591.15]

591.16 Nonprofit corporate renewal legalized.

In all cases wherein any corporation organized under chapter 2 of Title IX, Code of 1897, or chapter 394 of the Codes of 1924, 1927, 1931, 1935 and 1939, or chapter 504 of the Codes of 1946, 1950, 1954, 1958 and 1962, or purporting to have been organized, reincorporated or renewed thereunder, whose articles of incorporation, either original or on renewal or reincorporation, are filed with the secretary of state has thereafter taken action to reincorporate or renew its period of existence and has filed with the secretary of state articles of incorporation on renewal or reincorporation with a certificate or proof of the adoption thereof and has paid all fees in connection therewith and has heretofore received a certificate from the secretary of state approving said articles of incorporation filed on renewal or reincorporation, the acts, franchises, rights, privileges and corporate existence of any such corporation for the period provided by any such renewal or reincorporation but not in excess of the period permitted by law and the articles of incorporation adopted on such renewal or reincorporation, as filed in the office of the secretary of state, are hereby legalized and validated and shall have the same force and effect as if all the laws of this state relating to the organization or reincorporation of such corporations and the renewal of their corporate existence by reincorporation or renewal had been strictly complied with.

This section shall not operate to revive rights or claims previously barred and shall not permit an action to be brought or maintained upon any claim or cause of action which was barred by any statute which was in force prior to the effective date of this section.

[C66, 71, 73, 75, 77, 79, 81, §591.16]

591.17 Nonprofit corporations legalized.

In all instances where corporations not for pecuniary profit have heretofore adopted renewal articles of incorporation or articles of reincorporation and there has been a failure to set forth therein the time of the annual meeting or the time of the annual meeting of the trustees or directors and such renewal articles of incorporation or articles of reincorporation are otherwise complete and in compliance with the law as set forth in section 504.1,* such renewal articles of incorporation or articles of reincorporation are hereby legalized and validated and shall be held to have the same force and effect as though all of such provisions had been complied with in all respects.

In all instances where corporations not for pecuniary profit have adopted renewal articles of incorporation or articles of reincorporation and the certificate thereof shall not have been signed and acknowledged by the three or more persons who shall have adopted the same but such documents shall have been signed and acknowledged by one or more officers of the corporation or of its board of directors or trustees, such certificates of renewal are hereby legalized and validated and shall be held to be in full force and effect.

[C66, 71, 73, 75, 77, 79, 81, §591.17]

*Chapter 504 repealed July 1, 1990; see §504A.100

CHAPTER 592

CITIES AND TOWNS

592.1 Bonds for garbage disposal plants.
592.2 Plats legalized.
592.3 City and town plats.
592.4 Making and recording plats.
592.5 Ordinances and proceedings of council.
592.6 Contracts, elections and ordinances in re libraries.
592.7 Changing names of streets.
592.8 Taxes for secondary roads.
592.9 City waterworks.

592.1 Bonds for garbage disposal plants.

All proceedings of such cities and towns as herein included, heretofore had, subsequent to the adoption of section 696-b [SS 15] by the thirty-sixth general assembly, and prior to the passage of this Act,* providing for the issuance of bonds within the limitations of this Act, for the purchase or erection of garbage disposal plants, the vote of the people authorizing such issue and the bonds issued under such proceedings and vote, are hereby

legalized and declared legal and valid, the same as though all of the provisions of this Act had been included in said section 696-b of the supplemental supplement to the Code, 1915, and such cities may issue and sell such bonds without again submitting such question to vote.

[C24, 27, 31, 35, 39, §**10414;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §592.1]

*See 17 Acts, ch 367, effective May 1, 1917

592.2 Plats legalized.

None of the provisions of this chapter [ch 13, title V, Code of 1897] shall be construed to require replatting in any case where plats have been made and recorded in pursuance of law; and all plats heretofore filed for record and not subsequently vacated are hereby declared valid, notwithstanding irregularities and omissions in the required statement or plat, or in the manner or form of acknowledgment, or certificates thereof.

[C73, §571; C97, §929; C24, 27, 31, 35, 39, §**10415;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §592.2]

592.3 City and town plats.

1. In all cases where, prior to January 1, 1980, any person has laid out any parcel of land into town or city lots and the plat of the lots has been recorded and the plat appears to be insufficient because of failure to show certificates of the county clerk of the district court, county treasurer, or county recorder, or the affidavit and bond, if any, and the certificate of approval of the local governing body or because the certificates are defective, or because of a failure to fully comply with all of the provisions of chapter 354 of the Code in effect at the time of the recording of the plat, or corresponding statutes of earlier Codes, or because the plat failed to show signatures or acknowledgment of proprietors as provided by law, or because the acknowledgment was defective, and subsequent to the platting, lots or subdivisions of the lots have been sold and conveyed, all such said plats which have not been vacated, are legalized as of the date of the recording of the plat, the same as though all certificates have been attached and all the other necessary steps taken as provided by law, and the record of the plat shall be conclusive evidence that the person was the proprietor of the tract of land and the owner of the tract at the time of the platting, and that the tract of land was free and clear of all encumbrances unless an affidavit to the contrary was filed at the time of recording the plat.

After July 1, 1992, no action shall be brought on any cause arising more than ten years earlier or which has been in existence for more than ten years, to establish, enforce, or recover any right, title, interest, lien, or condition existing at the time of the platting, and adverse to a clear and unqualified title in fee simple in the owner unless on or before July 1, 1992, there is filed in the office of county recorder of the county where the real estate involved is located a written statement, acknowledged by the claimant, definitely describing the real estate involved, stating the nature and extent of the right or interest claimed, and stating the facts upon which the claim is based.

2. After July 1, 1992, in all cases where more than ten years earlier, a plat of lots from a parcel of land which has been laid into town or city lots has been recorded and the plat appears to be insufficient, the plat is legalized as of the date of the recording of the plat to the same extent as if the plat did not appear insufficient, if subsequent to the platting, the lots or a subdivision of the lots have been sold and conveyed, and the plats have not been vacated. A plat shall appear insufficient because of one of the following:

a. A failure to show or a deficiency in a certificate of the county clerk of the district court, county treasurer, or county recorder, or an affidavit and bond, or a certificate of approval of a local governing body.

b. A failure to fully comply with Code provisions in effect at the time of the recording of the plat.

c. A failure to show or a deficiency in a signature or acknowledgment of a proprietor as provided by law.

The record of the plat shall be conclusive evidence that the person was the proprietor of the tract of land and the owner of the tract at the time of the platting, and that the tract of land was free and clear of all encumbrances unless an affidavit to the contrary was filed at the time of recording the plat.

[C24, 27, 31, 35, 39, §**10416;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §592.3]

91 Acts, ch 183, §32

592.4 Making and recording plats.

The acts of the county auditors of Iowa, in making and recording plats as authorized under sections 922, 923 and 924 of the Code, 1897, and sections 6289 to 6299, inclusive, of subsequent Codes to and including the Code, 1939, without first having properly signed or acknowledged the same, and the acts of the county recorders of Iowa in recording such plats, are hereby legalized and the same declared valid and binding the same as though they had in such respects been made and recorded in strict compliance with law.

[S13, §924-a; C24, 27, 31, 35, 39, §**10417;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §592.4]

592.5 Ordinances and proceedings of council.

All acts, motions, proceedings, resolutions, and ordinances heretofore passed or adopted by the council of any city and incorporated towns in the state on the supposition that the mayor was not a member of such council, and which would conform to the law if the mayor had not been a member of

said council, shall for all purposes from the date of such act, motion, proceeding, resolution, or ordinance, be considered as valid and legal as they would have been had the mayor not been a member of such body.

[S13, §658-a; C24, 27, 31, 35, 39, §**10418;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §592.5]

592.6 Contracts, elections and ordinances in re libraries.

Where cities or incorporated towns and institutions of learning have established or contracted to establish public libraries to be maintained and controlled jointly as contemplated by this Act,* all contracts, elections, ordinances, and other proceedings made, held, or passed in the manner provided by law are hereby declared as valid and obligatory upon the parties thereto as though the same had been made, held, or passed after the taking effect of this Act.

[S13, §730-a; C24, 27, 31, 35, 39, §**10419;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §592.6]

*See 1904 Acts, ch 24, §3, effective July 4, 1904

592.7 Changing names of streets.

Whereas, certain cities throughout the state of Iowa have passed ordinances changing the name or names of certain streets in the cities;

Now, therefore, it is provided that the acts of the city councils of the cities in enacting the ordinances changing the names of certain streets are hereby declared valid. The proper method for recording a change of street name is found in section 354.26.

[C24, 27, 31, 35, 39, §**10420;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §592.7]

90 Acts, ch 1236, §51

592.8 Taxes for secondary roads.

All taxes heretofore* assessed, levied or collected by any county, for secondary road construction and maintenance purposes, on real and personal property within cities and towns located in any such county, be and the same are hereby declared to be legal and valid, and where the same have not been paid, the officers of such counties are hereby empowered and directed to proceed at once to collect the same as other taxes are collected and to use the same for authorized secondary road construction and maintenance purposes.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §592.8]

*Effective May 27, 1955

592.9 City waterworks.

All proceedings taken prior to January 1, 1961 purporting to provide for the establishment, organization, formation, operation, or maintenance of a city waterworks and not previously declared invalid by any court, are legalized, validated and confirmed. All such proceedings are declared to be legally sufficient to create, establish and authorize the maintenance and operation of a city waterworks as a city utility, as defined in section 362.2, subsection 6.

[81 Acts, ch 187, §1]

CHAPTER 593

BONDS LEGALIZED

Repealed by 76 Acts, ch 1056, §45

CHAPTER 594

ELECTIONS LEGALIZED

Repealed by 76 Acts, ch 1056, §45

CHAPTER 594A

SCHOOL CORPORATIONS

594A.1 Organization or change in boundaries.
594A.2 Organization or change before July 2, 1960.
594A.3 Organization or change before September 1, 1963.
594A.4 Public community or junior colleges.
594A.5 Organization or change before January 1, 1965.
594A.6 Organization or change before January 1, 1967.
594A.7 Merged area schools before January 1, 1969.
594A.8 Organization or change before January 1, 1969.
594A.9 Merged areas before January 1, 1972.

594A.1 Organization or change in boundaries.

All proceedings taken prior to January 2, 1959, purporting to provide for the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section* becomes effective involving the organization, reorganization, enlargement or change in boundaries of any school corporation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §594A.1]

*Effective July 4, 1959

See also 59 Acts, ch 349, effective February 13, 1959

594A.2 Organization or change before July 2, 1960.

All proceedings taken prior to July 2, 1960, purporting to provide for the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

[C62, 66, 71, 73, 75, 77, 79, 81, §594A.2]

594A.3 Organization or change before September 1, 1963.

All proceedings taken prior to September 1, 1963, purporting to provide for the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the organization, reorganization, enlargement, or change in boundaries of any school corporation.

[C66, 71, 73, 75, 77, 79, 81, §594A.3]

594A.4 Public community or junior colleges.

All proceedings heretofore taken by or on behalf of any school corporation for the organization, establishment and maintenance of a public community or junior college therein are hereby legalized, validated and confirmed.

[C66, 71, 73, 75, 77, 79, 81, §594A.4]

594A.5 Organization or change before January 1, 1965.

All proceedings taken prior to January 1, 1965, purporting to provide for the organization, reorganization, enlargement, or change in the boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the organization, reorganization, enlargement, or change in boundaries of any school corporation.

[C66, 71, 73, 75, 77, 79, 81, §594A.5]

594A.6 Organization or change before January 1, 1967.

All proceedings taken prior to January 1, 1967, purporting to provide for the organization of, reorganization of, attachment of territory to, enlargement of, or change in boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective, involving the organization of, reorganization of, attachment of territory to, enlargement of, or change in boundaries of any school corporation.

This section shall not apply to proceedings purporting to provide for the attachment of territory to a school corporation pursuant to section 275.1, if such attachment was disapproved by the state board of public instruction pursuant to said section and was not subsequently approved by the state board of public instruction prior to January 1, 1967.

[C71, 73, 75, 77, 79, 81, §594A.6]

594A.7 Merged area schools before January 1, 1969.

All proceedings taken prior to January 1, 1969, purporting to provide for the establishment, organization, formation, and changes in the boundaries of merged areas under the provisions of chapter 260C and not heretofore declared invalid by any court, are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending July 1, 1969, involving the establishment, organization, formation, or changes in the boundaries of any such merged area.

[C71, 73, 75, 77, 79, 81, §594A.7]

594A.8 Organization or change before January 1, 1969.

All proceedings taken prior to January 1, 1969, purporting to provide for the organization of, reorganization of, attachment of territory to, enlargement of, or change in boundaries of any school corporation in this state and not heretofore declared invalid by any court are hereby legalized, validated and confirmed.

The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective, involving the organization of, reorganization of, attachment of territory to, enlargement of, or change in boundaries of any school corporation.

This section shall not apply to proceedings purporting to provide for the attachment of territory to a school corporation pursuant to section 275.1, if such attachment was disapproved by the state board of public instruction pursuant to said section and was not subsequently approved by the state board of public instruction prior to January 1, 1969.

[C71, 73, 75, 77, 79, 81, §594A.8]

594A.9 Merged areas before January 1, 1972.

All proceedings taken after January 1, 1969 and prior to January 1, 1972, purporting to provide for the establishment, organization, formation, and changes in the boundaries of merged areas under the provisions of chapter 260C, and not heretofore declared invalid by any court, are legalized, validated, and confirmed. The foregoing shall not be construed to affect any litigation that may be pending July 1, 1972 involving the establishment, organization, formation, or changes in the boundaries of any such merged area.

[C73, 75, 77, 79, 81, §594A.9]

TITLE XV

JUDICIAL BRANCH AND JUDICIAL PROCEDURES

SUBTITLE 1

DOMESTIC RELATIONS

CHAPTER 595

MARRIAGE

Exempt from gender editorial changes, 82 Acts, ch 1217, §2

595.1 Definitions.
595.1A Contract.
595.2 Gender — age.
595.3 License.
595.3A Application form and license — abuse prevention language.
595.4 Age and qualification — verified application — waiting period — exception.
595.5 Name change adopted.
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595.7 Delivery of blank with license.
595.8 Repealed by 75 Acts, ch 244, §5.
595.9 Violations.
595.10 Who may solemnize.
595.11 Nonstatutory solemnization — forfeiture.
595.12 Fee and expenses.
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595.14 Repealed by 73 Acts, ch 281, §1.
595.15 Inadequate return.
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595.16A Issuance of certified copy of certificate of marriage.
595.17 Exceptions.
595.18 Issue legitimatized.
595.19 Void marriages.
595.20 Foreign marriages — validity.
595.21 through 595.28 Repealed by 57 Acts, ch 255, §1.

595.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §595.1 transferred to §595.1A

595.1A Contract.

Marriage is a civil contract, requiring the consent of the parties capable of entering into other contracts, except as herein otherwise declared.

[C51, §1463; R60, §2515; C73, §2185; C97, §3139; C24, 27, 31, 35, 39, §**10427;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.1]

C2001, §595.1A

595.2 Gender — age.

1. Only a marriage between a male and a female is valid.

2. Additionally, a marriage between a male and a female is valid only if each is eighteen years of age or older. However, if either or both of the parties have not attained that age, the marriage may be valid under the circumstances prescribed in this section.

3. If either party to a marriage falsely represents the party's self to be eighteen years of age or older at or before the time the marriage is solemnized, the marriage is valid unless the person who falsely represented their age chooses to void the marriage by making their true age known and verified by a birth certificate or other legal evidence of age in an annulment proceeding initiated at any time before the person reaches their eighteenth birthday. A child born of a marriage voided under this subsection is legitimate.

4. A marriage license may be issued to a male and a female either or both of whom are sixteen or seventeen years of age if both of the following apply:

a. The parents of the underage party or parties certify in writing that they consent to the marriage. If one of the parents of any underage party to a proposed marriage is dead or incompetent the certificate may be executed by the other parent, if both parents are dead or incompetent the guardian of the underage party may execute the certifi-

cate, and if the parents are divorced the parent having legal custody may execute the certificate; and

b. The certificate of consent of the parents, parent, or guardian is approved by a judge of the district court or, if both parents of any underage party to a proposed marriage are dead, incompetent, or cannot be located and the party has no guardian, the proposed marriage is approved by a judge of the district court. A judge shall grant approval under this subsection only if the judge finds the underage party or parties capable of assuming the responsibilities of marriage and that the marriage will serve the best interest of the underage party or parties. Pregnancy alone does not establish that the proposed marriage is in the best interest of the underage party or parties, however, if pregnancy is involved the court records which pertain to the fact that the female is pregnant shall be sealed and available only to the parties to the marriage or proposed marriage or to any interested party securing an order of the court.

5. If a parent or guardian withholds consent, the judge upon application of a party to a proposed marriage shall determine if the consent has been unreasonably withheld. If the judge so finds, the judge shall proceed to review the application under subsection 4, paragraph *"b"*.

[C51, §1464, 1469; R60, §2516, 2521; C73, §2186, 2191; C97, §3140, 3143; C24, 27, 31, 35, 39, §**10428, 10434;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §595.2, 595.8; C77, 79, 81, §595.2]

85 Acts, ch 67, §53; 98 Acts, ch 1099, §1; 99 Acts, ch 114, §44

595.3 License.

Previous to the solemnization of any marriage, a license for that purpose must be obtained from the county registrar. The license must not be granted in any case:

1. Where either party is under the age necessary to render the marriage valid.

2. Where either party is under eighteen years of age, unless the marriage is approved by a judge of the district court as provided by section 595.2.

3. Where either party is disqualified from making any civil contract.

4. Where the parties are within the degrees of consanguinity or affinity in which marriages are prohibited by law.

5. Where either party is a ward under a guardianship and the court has made a finding that the ward lacks the capacity to contract a valid marriage.

[C51, §1465 – 1467; R60, §2517, 2518; C73, §2187 – 2189; C97, §3141, 3142; S13, §3141; C24, 27, 31, 35, 39, §**10429, 10431;** C46, 50, 54, 58, §595.3, 595.5; C62, 66, 71, 73, 75, 77, 79, 81, §595.3]

91 Acts, ch 93, §2; 95 Acts, ch 124, §13, 26; 98 Acts, ch 1099, §2

595.3A Application form and license — abuse prevention language.

In addition to any other information contained in an application form for a marriage license and a marriage license, the application form and license shall contain the following statement in bold print:

"The laws of this state affirm your right to enter into this marriage and at the same time to live within the marriage under the full protection of the laws of this state with regard to violence and abuse. Neither of you is the property of the other. Assault, sexual abuse, and willful injury of a spouse or other family member are violations of the laws of this state and are punishable by the state."

97 Acts, ch 175, §233

595.4 Age and qualification — verified application — waiting period — exception.

Previous to the issuance of any license to marry, the parties desiring the license shall sign and file a verified application with the county registrar which application either may be mailed to the parties at their request or may be signed by them at the office of the county registrar in the county in which the license is to be issued. The application shall include the social security number of each applicant and shall set forth at least one affidavit of some competent and disinterested person stating the facts as to age and qualification of the parties. Upon the filing of the application for a license to marry, the county registrar shall file the application in a record kept for that purpose and shall take all necessary steps to ensure the confidentiality of the social security number of each applicant. All information included on an application may be provided as mutually agreed upon by the division of records and statistics and the child support recovery unit, including by automated exchange.

Upon receipt of a verified application, the county registrar may issue the license which shall not become valid until the expiration of three days after the date of issuance of the license. If the license has not been issued within six months from the date of the application, the application is void.

A license to marry may be validated prior to the expiration of three days from the date of issuance of the license in cases of emergency or extraordinary circumstances. An order authorizing the validation of a license may be granted by a judge of the district court under conditions of emergency or extraordinary circumstances upon application of the parties filed with the county registrar. No order may be granted unless the parties have filed an application for a marriage license in a county within the judicial district. An application for an order shall be made on forms furnished by the county registrar at the same time the application for the license to marry is made. After examining the application for the marriage license and issu-

ing the license, the county registrar shall refer the parties to a judge of the district court for action on the application for an order authorizing the validation of a marriage license prior to expiration of three days from the date of issuance of the license. The judge shall, if satisfied as to the existence of an emergency or extraordinary circumstances, grant an order authorizing the validation of a license to marry prior to the expiration of three days from the date of issuance of the license to marry. The county registrar shall validate a license to marry upon presentation by the parties of the order authorizing a license to be validated. A fee of five dollars shall be paid to the county registrar at the time the application for the order is made, which fee is in addition to the fee prescribed by law for the issuance of a marriage license.

[C51, §1468; R60, §2520; C73, §2190; C97, §3142; C24, 27, 31, 35, 39, §**10430;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.4]

85 Acts, ch 67, §54; 91 Acts, ch 116, §5; 95 Acts, ch 124, §14, 26; 97 Acts, ch 175, §234; 98 Acts, ch 1020, §3

595.5 Name change adopted.

1. A party may indicate on the application for a marriage license the adoption of a name change. The names used on the marriage license shall become the legal names of the parties to the marriage. The marriage license shall contain a statement that when a name change is requested and affixed to the marriage license, the new name is the legal name of the requesting party.

2. An individual shall have only one legal name at any one time.

[C79, 81, §595.5]

88 Acts, ch 1142, §1; 95 Acts, ch 124, §15, 26; 99 Acts, ch 150, §1; 2001 Acts, ch 143, §7

595.6 Filing and record required.

The affidavit or certificate, in each case, shall be filed by the county registrar and constitute a part of the records of the registrar's office. A memorandum of the affidavit or certificate shall also be entered in the license book.

[C51, §1468; R60, §2520; C73, §2190; C97, §3142; C24, 27, 31, 35, 39, §**10432;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.6]

85 Acts, ch 67, §55; 95 Acts, ch 124, §16, 26

595.7 Delivery of blank with license.

When a license is issued the county registrar shall deliver to the applicant a blank return for the marriage, and give instructions relative to the blank return as will insure a complete and accurate return.

[C24, 27, 31, 35, 39, §**10433;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.7]

95 Acts, ch 124, §17, 26

595.8 Repealed by 75 Acts, ch 244, § 5.

595.9 Violations.

If a marriage is solemnized without procuring a license, the parties married, and all persons aiding them, are guilty of a simple misdemeanor.

[C51, §1470; R60, §2522; C73, §2192; C97, §3144; C24, 27, 31, 35, 39, §**10435;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.9]

595.10 Who may solemnize.

Marriages may be solemnized by:

1. A judge of the supreme court, court of appeals, or district court, including a district associate judge, associate juvenile judge, or a judicial magistrate, and including a senior judge as defined in section 602.9202, subsection 3.

2. A person ordained or designated as a leader of the person's religious faith.

[C51, §1472; R60, §2524; C73, §2193; C97, §3145; C24, 27, 31, 35, 39, §**10436;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.10; 81 Acts, ch 188, §1]

83 Acts, ch 159, §1; 87 Acts, ch 115, §69; 95 Acts, ch 92, §3

595.11 Nonstatutory solemnization — forfeiture.

Marriages solemnized, with the consent of parties, in any manner other than that prescribed in this chapter, are valid; but the parties, and all persons aiding or abetting them, shall pay to the treasurer of state for deposit in the general fund of the state the sum of fifty dollars each; but this shall not apply to the person conducting the marriage ceremony, if within fifteen days after the ceremony is conducted, the person makes the required return to the county registrar.

[C51, §1474, 1475; R60, §2526, 2527; C73, §2195, 2196; C97, §3147; S13, §3147; C24, 27, 31, 35, 39, §**10437;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.11]

83 Acts, ch 185, §54, 62; 95 Acts, ch 124, §18, 26

595.12 Fee and expenses.

1. A judge or magistrate authorized to solemnize a marriage under section 595.10, subsection 1, may charge a reasonable fee for officiating and making return for each marriage solemnized at a time other than regular judicial working hours. In addition the judge or magistrate may charge the parties to the marriage for expenses incurred in solemnizing the marriage. No judge or magistrate shall make any charge for solemnizing a marriage during regular judicial working hours. The supreme court shall adopt rules prescribing the maximum fee and expenses that the judge or magistrate may charge.

2. A minister authorized to solemnize a marriage under section 595.10, subsection 2, may charge a reasonable fee for each marriage solemnization and making return in an amount agreed to by the parties.

[C51, §2551; R60, §4159; C73, §3828; C97, §3152; C24, 27, 31, 35, 39, §**10438;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.12]
83 Acts, ch 151, §1

595.13 Certificate — return.
After the marriage has been solemnized, the officiating minister or magistrate shall attest to the marriage on the blank provided for that purpose and return the certificate of marriage within fifteen days to the county registrar who issued the marriage license.
[C51, §1473, 1476; R60, §2525, 2528; C73, §2194, 2197; C97, §3146; S13, §3146; C24, 27, 31, 35, 39, §**10439;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.13]
95 Acts, ch 124, §19, 26; 2000 Acts, ch 1140, §44; 2002 Acts, ch 1119, §189
See also §144.36 for certificate
Section amended

595.14 Repealed by 73 Acts, ch 281, § 1.

595.15 Inadequate return.
If the return of a marriage is not complete in every particular as required by the forms specified in section 144.12, the county registrar shall require the person making the same to supply the omitted information.
[C24, 27, 31, 35, 39, §**10441;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.15]
95 Acts, ch 124, §20, 26

595.16 Spouse responsible for return.
When a marriage is consummated without the services of a cleric or magistrate, the required return of the marriage may be made to the county registrar by either spouse.
[C51, §1478; R60, §2530; C73, §2199; C97, §3149; C24, 27, 31, 35, 39, §**10442;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.16]
95 Acts, ch 124, §21, 26

595.16A Issuance of certified copy of certificate of marriage.
Following receipt of the original certificate of marriage pursuant to section 144.36, the county registrar shall issue a certified copy of the original certificate of marriage to the parties to the marriage.
2000 Acts, ch 1140, §45, 49

595.17 Exceptions.
The provisions of this chapter, as they relate to procuring licenses and to the solemnizing of marriages are not applicable to members of a denomination having an unusual mode of entering the marriage relation.
[C51, §1477; R60, §2529; C73, §2198; C97, §3148; C24, 27, 31, 35, 39, §**10443;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.17; 82 Acts, ch 1152, §2]

595.18 Issue legitimatized.
Children born outside of a marriage become legitimate by the subsequent marriage of their parents. Children born of a marriage contracted in violation of section 595.3 or 595.19 are legitimate.
[C51, §1479; R60, §2531; C73, §2200; C97, §3150; C24, 27, 31, 35, 39, §**10444;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.18]
94 Acts, ch 1046, §30

595.19 Void marriages.
1. Marriages between the following persons who are related by blood are void:
a. Between a man and his father's sister, mother's sister, daughter, sister, son's daughter, daughter's daughter, brother's daughter, or sister's daughter.
b. Between a woman and her father's brother, mother's brother, son, brother, son's son, daughter's son, brother's son, or sister's son.
c. Between first cousins.
2. Marriages between persons either of whom has a husband or wife living are void, but, if the parties live and cohabit together after the death or divorce of the former husband or wife, such marriage shall be valid.
[R60, §4367, 4368; C73, §4030; C97, §3151, 4936; S13, §4936; C24, 27, 31, 35, 39, §**10445;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §595.19]
85 Acts, ch 99, §8; 94 Acts, ch 1023, §117
Incest, see §726.2

595.20 Foreign marriages — validity.
A marriage which is solemnized in any other state, territory, country, or any foreign jurisdiction which is valid in that state, territory, country, or other foreign jurisdiction, is valid in this state if the parties meet the requirements for validity pursuant to section 595.2, subsection 1, and if the marriage would not otherwise be declared void.
98 Acts, ch 1099, §3

595.21 through 595.28 Repealed by 57 Acts, ch 255, § 1.

CHAPTER 596

PREMARITAL AGREEMENTS

Chapter applies to premarital agreements executed on or after January 1, 1992; agreements entered into prior to that date not affected; §596.12

596.1 Definitions.
596.2 Construction and application.
596.3 Short title.
596.4 Formalities.
596.5 Content.
596.6 Effective date of agreement.
596.7 Revocation.
596.8 Enforcement.
596.9 Unconscionability.
596.10 Enforcement — void marriage.
596.11 Limitation of actions.
596.12 Effective date.

596.1 Definitions.

As used in this chapter:

1. *"Premarital agreement"* means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

2. *"Property"* means an interest, present or future, legal or equitable, vested or contingent, in real or personal property.

91 Acts, ch 77, §1

596.2 Construction and application.

This chapter shall be construed and applied to effectuate its general purpose to make uniform the law with respect to premarital agreements.

91 Acts, ch 77, §2

596.3 Short title.

This chapter may be cited as the *"Iowa Uniform Premarital Agreement Act"*.

91 Acts, ch 77, §3

596.4 Formalities.

A premarital agreement must be in writing and signed by both prospective spouses. It is enforceable without consideration other than the marriage. Both parties to the agreement shall execute all documents necessary to enforce the agreement.

91 Acts, ch 77, §4

596.5 Content.

1. Parties to a premarital agreement may contract with respect to the following:

a. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.

b. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.

c. The disposition of property upon separation, dissolution of the marriage, death, or the occurrence or nonoccurrence of any other event.

d. The making of a will, trust, or other arrangement to carry out the provisions of the agreement.

e. The ownership rights in and disposition of the death benefit from a life insurance policy.

f. The choice of law governing the construction of the agreement.

g. Any other matter, including the personal rights and obligations of the parties, not in violation of public policy or a statute imposing a criminal penalty.

2. The right of a spouse or child to support shall not be adversely affected by a premarital agreement.

91 Acts, ch 77, §5

596.6 Effective date of agreement.

A premarital agreement becomes effective upon the marriage of the parties.

91 Acts, ch 77, §6

596.7 Revocation.

After marriage, a premarital agreement may be revoked only as follows:

1. By a written agreement signed by both spouses. The revocation is enforceable without consideration.

2. To revoke a premarital agreement without the consent of the other spouse, the person seeking revocation must prove one or more of the following:

a. The person did not execute the agreement voluntarily.

b. The agreement was unconscionable when it was executed.

c. Before the execution of the agreement the person was not provided a fair and reasonable disclosure of the property or financial obligations of the other spouse; and the person did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations

of the other spouse.
91 Acts, ch 77, §7

596.8 Enforcement.
A premarital agreement is not enforceable if the person against whom enforcement is sought proves any of the following:
1. The person did not execute the agreement voluntarily.
2. The agreement was unconscionable when it was executed.
3. Before the execution of the agreement the person was not provided a fair and reasonable disclosure of the property or financial obligations of the other spouse; and the person did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other spouse.
If a provision of the agreement or the application of the provision to a party is found by the court to be unenforceable, the provision shall be severed from the remainder of the agreement and shall not affect the provisions, or application, of the agreement which can be given effect without the unenforceable provision.
91 Acts, ch 77, §8

596.9 Unconscionability.
In any action under this chapter to revoke or enforce a premarital agreement the issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.
91 Acts, ch 77, §9

596.10 Enforcement — void marriage.
If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.
91 Acts, ch 77, §10

596.11 Limitation of actions.
Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.
91 Acts, ch 77, §11

596.12 Effective date.
This chapter takes effect on January 1, 1992, and applies to any premarital agreement executed on or after that date. This chapter does not affect the validity under Iowa law of any premarital agreement entered into prior to January 1, 1992.
91 Acts, ch 77, §12

CHAPTER 597

HUSBAND AND WIFE

597.1 Property rights of married women.
597.2 Interest of spouse in other's property.
597.3 Remedy by one against the other.
597.4 Conveyances to each other.
597.5 Attorney in fact.
597.6 Mental illness — conveyance of property.
597.7 Proceedings.
597.8 Decree.
597.9 Conveyances — revocation.
597.10 Abandonment of either — proceedings.
597.11 Contracts and sales binding.
597.12 Nonabatement of action.
597.13 Annulment of decree.
597.14 Family expenses.
597.15 Custody of children.
597.16 Wages of married person — actions by.
597.17 Liability for separate debts.
597.18 Contracts of married person.
597.19 Spouse not liable for torts of other spouse.

597.1 Property rights of married women.
A married woman may own in her own right, real and personal property, acquired by descent, gift, or purchase, and manage, sell, and convey the same, and dispose thereof by will, to the same extent and in the same manner the husband can property belonging to him.
[C73, §2202; C97, §3153; C24, 27, 31, 35, 39, §**10446;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.1]

597.2 Interest of spouse in other's property.
When property is owned by the husband or wife, the other has no interest therein which can be the subject of contract between them, nor such interest as will make the same liable for the contracts or liabilities of the one not the owner of the property, except as provided in this chapter.
[C73, §2203; C97, §3154; C24, 27, 31, 35, 39, §**10447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79,

81, §597.2]

597.3 Remedy by one against the other.

Should the husband or wife obtain possession or control of property belonging to the other before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and extent as if they were unmarried.

[C73, §2204; C97, §3155; C24, 27, 31, 35, 39, §**10448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.3]

597.4 Conveyances to each other.

A conveyance, transfer, or lien, executed by either husband or wife to or in favor of the other, shall be valid to the same extent as between other persons.

[C73, §2206; C97, §3157; C24, 27, 31, 35, 39, §**10449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.4]

597.5 Attorney in fact.

A husband or wife may constitute the other spouse as the husband's or wife's attorney in fact, to control and dispose of the husband's or wife's property, including the relinquishment of homestead rights and surviving spouse's statutory share in the homestead, as provided in section 561.13, for their mutual benefit, and may revoke the appointment, the same as other persons.

[C73, §2210; C97, §3161; C24, 27, 31, 35, 39, §**10450;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.5]

91 Acts, ch 106, §2

597.6 Mental illness — conveyance of property.

Where either the husband or wife is mentally ill and incapable of executing a deed or mortgage relinquishing, conveying, or encumbering the husband's or wife's right to the real property of the other, including the homestead, the other may petition the district court of the county of that spouse's residence or the county where the real estate to be conveyed or encumbered is situated, setting forth the facts and praying for an order authorizing the applicant or some other person to execute a deed or mortgage and relinquish or encumber the interest of the person with mental illness in said real estate.

[R60, §1500; C73, §2216; C97, §3167; S13, §3167; C24, 27, 31, 35, 39, §**10451;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.6]

96 Acts, ch 1129, §113

See also probate code §633.652

597.7 Proceedings.

The petition shall be verified by the petitioner, and filed in the office of the clerk of the district court of the proper county, notice of which shall be given as in other cases. Upon completed service, the court shall appoint some responsible attorney thereof guardian for the person alleged to be mentally ill, who shall ascertain the propriety, good faith, and necessity of the prayer of the petitioner, and may resist the application by making any legal or equitable defense thereto, and the guardian shall be allowed by the court a reasonable compensation to be paid as the other costs.

[R60, §1501; C73, §2217; C97, §3168; C24, 27, 31, 35, 39, §**10452;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.7]

597.8 Decree.

Upon the hearing of the petition the court, if satisfied that it is made in good faith by the petitioner, and the petitioner is a proper person to exercise the power and make the conveyance or mortgage, and it is necessary and proper, shall enter a decree authorizing the execution of the conveyance or mortgage for and in the name of such husband or wife by such person as the court may appoint.

[R60, §1502; C73, §2218; C97, §3169; S13, §3169; C24, 27, 31, 35, 39, §**10453;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.8]

597.9 Conveyances — revocation.

All deeds executed as provided in this chapter shall convey the interest of such person with mental illness in the real estate described, but such power shall cease and be revoked as soon as that person shall again be in good mental health and apply to the court therefor, but such revocation shall not affect conveyances previously made.

[R60, §1503; C73, §2219; C97, §3170; C24, 27, 31, 35, 39, §**10454;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.9]

96 Acts, ch 1129, §113

597.10 Abandonment of either — proceedings.

In case the husband or wife abandons the other for one year, or leaves the state and is absent therefrom for such term, without providing for the maintenance and support of the family, or is confined in jail or the penitentiary for such period, the district court of the county where the abandoned party resides may, on application by petition setting forth the facts, authorize the applicant to manage, control, sell, and encumber the property of the guilty party for the support and maintenance of the family and for the purpose of paying debts. Notice of such proceedings shall be given as in ordinary actions, and anything done under or by virtue of the order or decree of the court shall be valid to the same extent as if the same was done by the party owning the property.

[C51, §1456 – 1459, 1461; R60, §2508 – 2511, 2513; C73, §2207; C97, §3158; C24, 27, 31, 35, 39, §**10455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79,

81, §597.10]

Service of notice, R.C.P. 1.302 – 1.315

597.11 Contracts and sales binding.

All contracts, sales, or encumbrances made by either husband or wife under the provisions of section 597.10 shall be binding on both, and during such absence or confinement the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable, and execution may be levied or attachment issued accordingly.

[C73, §2208; C97, §3159; C24, 27, 31, 35, 39, §**10456;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.11]

597.12 Nonabatement of action.

No action or proceedings shall abate or be affected by the return or release of the person absent or confined, but the person may be permitted to prosecute or defend jointly with the other.

[C73, §2208; C97, §3159; C24, 27, 31, 35, 39, §**10457;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.12]

597.13 Annulment of decree.

The husband or wife affected by the proceedings contemplated in sections 597.10 to 597.12 may obtain an annulment thereof, upon filing a petition therefor and serving a notice on the person in whose favor the same was granted, as in ordinary actions; but the setting aside of such decree or order shall not affect any act done thereunder.

[C51, 1460; R60, §2512; C73, §2209; C97, §3160; C24, 27, 31, 35, 39, §**10458;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.13]

597.14 Family expenses.

The reasonable and necessary expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

[C51, §1455; R60, §2507; C73, §2214; C97, §3165; S13, §3165; C24, 27, 31, 35, 39, §**10459;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.14]

Spousal support debt for medical assistance to institutionalized spouse; chapter 249B

597.15 Custody of children.

If one spouse abandons the other spouse, the abandoned spouse is entitled to the custody of the minor children, unless the district court, upon application for that purpose, otherwise directs, or unless a custody decree is entered in accordance with chapter 598B. In this section *"abandon"* does not include:

1. The departure of a spouse due to physical or emotional abuse.

2. The departure of a spouse accompanied by the minor children.

[C51, §1462; R60, §2514; C73, §2215; C97, §3166; C24, 27, 31, 35, 39, §**10460;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.15]

85 Acts, ch 18, §1; 99 Acts, ch 103, §43

597.16 Wages of married person — actions by.

A married person may receive the wages for the person's personal labor, and maintain an action therefor in the person's own name, and hold the same in the person's own right, and may prosecute and defend all actions for the preservation and protection of the person's rights and property, as if unmarried.

[C73, §2211; C97, §3162; C24, 27, 31, 35, 39, §**10461;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.16]

597.17 Liability for separate debts.

Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise declared, they are not liable for the debts of each other contracted after marriage; nor are the wages, earnings, or property of either, nor is the rent or income of the property of either, liable for the separate debts of the other.

[C51, §1453; R60, §2505; C73, §2212; C97, §3163; C24, 27, 31, 35, 39, §**10465;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.17]

597.18 Contracts of married person.

Contracts may be made by a married person and liabilities incurred, and the same enforced by or against the person, to the same extent and in the same manner as if the person were unmarried.

[C51, §1454; R60, §2506; C73, §2213; C97, §3164; C24, 27, 31, 35, 39, §**10466;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.18]

597.19 Spouse not liable for torts of other spouse.

For civil injuries committed by a married person, damages may be recovered from the person alone, and the partner shall not be liable therefor, except in cases where the partner would be jointly liable if the marriage did not exist.

[C73, §2205; C97, §3156; C24, 27, 31, 35, 39, §**10467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §597.19]

CHAPTER 598

DISSOLUTION OF MARRIAGE AND DOMESTIC RELATIONS

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598.1 Definitions.

As used in this chapter:

1. *"Best interest of the child"* includes, but is not limited to, the opportunity for maximum continuous physical and emotional contact possible with both parents, unless direct physical or significant emotional harm to the child may result from this contact. Refusal by one parent to provide this opportunity without just cause shall be considered harmful to the best interest of the child.

2. *"Dissolution of marriage"* means a termination of the marriage relationship and shall be synonymous with the term *"divorce"*.

3. *"Joint custody"* or *"joint legal custody"* means an award of legal custody of a minor child to both parents jointly under which both parents have legal custodial rights and responsibilities toward the child and under which neither parent has legal custodial rights superior to those of the other parent. Rights and responsibilities of joint legal custody include, but are not limited to, equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

4. *"Joint physical care"* means an award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child including, but not limited to, shared parenting time with the child, maintaining homes for the child, providing routine care for the child and under which neither parent has physical care rights superior to those of the other parent.

5. *"Legal custody"* or *"custody"* means an award of the rights of legal custody of a minor child to a parent under which a parent has legal custodial rights and responsibilities toward the child. Rights and responsibilities of legal custody in-

clude, but are not limited to, decision making affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

6. *"Minor child"* means any person under legal age.

7. *"Physical care"* means the right and responsibility to maintain a home for the minor child and provide for the routine care of the child.

8. *"Postsecondary education subsidy"* means an amount which either of the parties may be required to pay under a temporary order or final judgment or decree for educational expenses of a child who is between the ages of eighteen and twenty-two years if the child is regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs; or is, in good faith, a full-time student in a college, university, or community college; or has been accepted for admission to a college, university, or community college and the next regular term has not yet begun.

9. *"Support"* or *"support payments"* means an amount which the court may require either of the parties to pay under a temporary order or a final judgment or decree, and may include alimony, child support, maintenance, and any other term used to describe these obligations. For orders entered on or after July 1, 1990, unless the court specifically orders otherwise, medical support is not included in the monetary amount of child support. The obligations shall include support for a child who is between the ages of eighteen and nineteen years who is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age; and may include support for a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability.

[C71, 73, 75, 77, 79, 81, §598.1; 82 Acts, ch 1250, §1]

84 Acts, ch 1088, §1; 86 Acts, ch 1245, §1495; 90 Acts, ch 1224, §41; 90 Acts, ch 1253, §120; 97 Acts, ch 175, §182 – 185, 200

598.2 Jurisdiction and venue.

The district court has original jurisdiction of the subject matter of this chapter. Venue shall be in the county where either party resides.

[C51, §1480; R60, §2532; C73, §2220; C97, §3171; C24, 27, 31, 35, 39, §**10468;** C46, 50, 54, 58, 62, 66, §598.1; C71, 73, 75, 77, 79, 81, §598.2]

598.2A Choice of law.

In a proceeding to establish, modify, or enforce a child support order the forum state's law shall apply except as follows:

1. In interpreting a child support order, a court shall apply the law of the state of the court or administrative agency that issued the order.

2. In an action to enforce a child support order, a court shall apply the statute of limitations of the forum state or the state of the court or administrative agency that issued the order, whichever statute provides the longer period of limitations.

96 Acts, ch 1141, §26

598.3 Kind of action — joinder.

An action for dissolution of marriage shall be by equitable proceedings, and no cause of action, save for alimony, shall be joined therewith. Such actions shall not be subject to counterclaim or cross petition by the respondent. After the appearance of the respondent, no dismissal of the cause of action shall be allowed unless both the petitioner and the respondent sign the dismissal.

[R60, §4184; C73, §2511; C97, §3430; C24, 27, 31, 35, 39, §**10469;** C46, 50, 54, 58, 62, 66, §598.2; C71, 73, 75, 77, 79, 81, §598.3]

598.4 Caption of petition for dissolution.

The petition for dissolution of marriage shall be captioned substantially as follows:

In the District Court of the State of Iowa
In and For . . . . . County
In Re the Marriage of
. . . . . and . . . . . .

Upon the Petition of	Petition for Dissolution of Marriage Equity No. . . . .
. . . . .	
(Petitioner)	
and Concerning	
. . . . .	
(Respondent)	

[C71, 73, 75, 77, 79, 81, §598.4]

598.5 Contents of petition.

The petition for dissolution of marriage shall:

1. State the name, birth date, address and county of residence of the petitioner and the name and address of the petitioner's attorney.

2. State the place and date of marriage of the parties.

3. State the name, birth date, address and county of residence, if known, of the respondent.

4. State the name and age of each minor child by date of birth whose welfare may be affected by the controversy.

5. State whether or not a separate action for dissolution of marriage or child support has been commenced and whether such action is pending in any court in this state or elsewhere. State whether the entry of an order would violate 28 U.S.C. § 1738B. If there is an existing child support order, the party shall disclose identifying information regarding the order.

6. Allege that the petition has been filed in good faith and for the purposes set forth therein.

7. Allege that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

8. Set forth any application for temporary support of the petitioner and any children without enumerating the amounts thereof.

9. Set forth any application for permanent alimony or support, child custody, or disposition of property, as well as attorneys' fees and suit money, without enumerating the amounts thereof.

10. State whether the appointment of a conciliator pursuant to section 598.16 may preserve the marriage.

[C71, 73, 75, 77, 79, 81, §598.5]

85 Acts, ch 178, §4; 97 Acts, ch 175, §186

598.6 Additional contents.

Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5, must state that the petitioner has been for the last year a resident of the state, specifying the county in which the petitioner has resided, and the length of such residence therein after deducting all absences from the state; and that the maintenance of the residence has been in good faith and not for the purpose of obtaining a marriage dissolution only.

[C51, §1481; R60, §2533; C73, §2221; C97, §3172; C24, 27, 31, 35, 39, §**10470;** C46, 50, 54, 58, 62, 66, §598.3; C71, 73, 75, 77, 79, 81, §598.6]

598.7 Verification — evidence.

The petition must be verified by the petitioner, and its allegations established by competent evidence.

[C51, §1481; R60, §2533; C73, §2222; C97, §3173; C24, 27, 31, 35, 39, §**10471;** C46, 50, 54, 58, 62, 66, §598.4; C71, 73, 75, 77, 79, 81, §598.7]

598.7A Mediation.

1. The district court may, on its own motion or on the motion of any party, order the parties to participate in mediation in any dissolution of marriage action or other domestic relations action. Mediation performed under this section shall comply with the provisions of chapter 679C. The provisions of this section shall not apply if the action involves a child support or medical support obligation enforced by the child support recovery unit. The provisions of this section shall not apply to actions which involve domestic abuse pursuant to chapter 236. The provisions of this section shall not affect a judicial district's or court's authority to order settlement conferences pursuant to rules of civil procedure. The court shall, on application of a party, grant a waiver from any court-ordered mediation under this section if the party demonstrates that a history of domestic abuse exists as specified in section 598.41, subsection 3, paragraph *"j"*.

2. The supreme court shall establish a dispute resolution program in family law cases that includes the opportunities for mediation and settlement conferences. Any judicial district may implement such a dispute resolution program, subject to the rules prescribed by the supreme court.

3. The supreme court shall prescribe rules for the mediation program, including the circumstances under which the district court may order participation in mediation.

4. Any dispute resolution program shall comply with all of the following standards:

a. Participation in mediation shall include attendance at a mediation session with the mediator and the parties to the action, listening to the mediator's explanation of the mediation process, presentation of one party's view of the case, and listening to the response of the other party. Participation in mediation does not require that the parties reach an agreement.

b. The parties may choose the mediator, or the court shall appoint a mediator. A court-appointed mediator shall meet the qualifications established by the supreme court.

c. Parties to the mediation have the right to advice and presence of counsel at all times.

d. The parties to the mediation shall present any agreement reached through the mediation to their attorneys, if any. A mediation agreement reached by the parties shall not be enforceable until approved by the court.

e. The costs of mediation shall be borne by the parties, as agreed to by the parties, or as ordered by the court, and may be taxed as court costs. Mediation shall be provided on a sliding fee scale for parties who are determined to be indigent pursuant to section 815.9.

5. The supreme court shall prescribe qualifications for mediators under this section on or before January 1, 2001. The qualifications shall include but are not limited to the ethical standards to be observed by mediators. The qualifications shall not include a requirement that the mediator be licensed to practice any particular profession.

95 Acts, ch 183, §1; 96 Acts, ch 1195, §1; 2000 Acts, ch 1159, §2, 4; 2000 Acts, ch 1232, §86

Legislative intent; 2000 Acts, ch 1159, §1

598.8 Hearings — exceptions.

1. Except as otherwise provided in subsection 2, hearings for dissolution of marriage shall be held in open court upon the oral testimony of witnesses, or upon the depositions of such witnesses taken as in other equitable actions or taken by a commissioner appointed by the court. The court may in its discretion close the hearing. Hearings held for the purpose of determining child custody may be limited in attendance by the court. Upon request of either party, the court shall provide se-

curity in the courtroom during the custody hearing if a history of domestic abuse relating to either party exists.

2. The court may enter a decree of dissolution without a hearing under either of the following circumstances:

a. All of the following circumstances have been met:

(1) The parties have certified in writing that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

(2) All documents required by the court and by statute have been filed.

(3) The parties have entered into a written agreement settling all of the issues involved in the dissolution of marriage.

b. The respondent has not entered a general or special appearance or filed a motion or pleading in the case, the waiting period provided under section 598.19 has expired, and all of the following circumstances have been met:

(1) The petitioner has certified in writing that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

(2) All documents required by the court and by statute have been filed.

[C73, §2222; C97, §3173; C24, 27, 31, 35, 39, §**10472;** C46, 50, 54, 58, 62, 66, §598.5; C71, 73, 75, 77, 79, 81, §598.8]

95 Acts, ch 165, §1; 95 Acts, ch 182, §21; 2000 Acts, ch 1034, §1, 2

598.9 Residence — failure of proof.

If the averments as to residence are not fully proved, the hearing shall proceed no further, and the action be dismissed by the court.

[C73, §2222; C97, §3173; C24, 27, 31, 35, 39, §**10473;** C46, 50, 54, 58, 62, 66, §598.6; C71, 73, 75, 77, 79, 81, §598.9]

598.10 Repealed by 76 Acts, ch 1228, § 10.

598.11 Temporary orders.

The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the other party and the children and to enable such party to prosecute or defend the action. The court may on its own motion and shall upon application of either party or an attorney appointed under section 598.12 determine the temporary custody of any minor child whose welfare may be affected by the filing of the petition for dissolution.

The court may make such an order when a claim for temporary support is made by the petitioner in the petition, or upon application of either party, after service of the original notice and when no application is made in the petition; however, no such order shall be entered until at least five days' notice of hearing, and opportunity to be heard, is given the other party. Appearance by an attorney or the respondent for such hearing shall be deemed a special appearance for the purpose of such hearing only and not a general appearance. An order entered pursuant to this section shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

[C73, §2226; C97, §3177; C24, 27, 31, 35, 39, §**10478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §598.11]

85 Acts, ch 178, §5

598.12 Attorney for minor child — investigations.

1. The court may appoint an attorney to represent the interests of the minor child or children of the parties. The attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify before the court on matters pertinent to the interests of the children.

2. The court may require that an appropriate agency make an investigation of both parties regarding the home conditions, parenting capabilities, and other matters pertinent to the best interests of the child or children in a dispute concerning custody of the child or children. The investigation report completed by the appropriate agency shall be submitted to the court and available to both parties. The investigation report completed by the appropriate agency shall be a part of the record unless otherwise ordered by the court.

3. The court shall enter an order in favor of the attorney or an appropriate agency for fees and disbursements, and the amount shall be charged against the party responsible for court costs unless the court determines that the party responsible for costs is indigent, in which event the fees shall be borne by the county.

[C71, 73, 75, 77, 79, 81, §598.12; 82 Acts, ch 1250, §3]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1067, §1

598.13 Financial statements filed.

1. Both parties shall disclose their financial status. A showing of special circumstances shall not be required before the disclosure is ordered. A statement of net worth set forth by affidavit on a form prescribed by the supreme court and furnished without charge by the clerk of the district court shall be filed by each party prior to the dissolution hearing. However, the parties may waive this requirement upon application of both parties and approval by the court.

Failure to comply with the requirements of this subsection constitutes failure to make discovery as provided in rule of civil procedure 1.517.

2. The court may, in its discretion, order a

trustee to provide, on behalf of a trust, information including, but not limited to, trust documents and financial statements relating to any beneficial interest a party to the pending action may have in the trust.

[C71, 73, 75, 77, 79, 81, §598.13]

87 Acts, ch 89, §1; 2001 Acts, ch 112, §1

The form of affidavit prescribed by the Supreme Court is published in the compilation "Iowa Court Rules"

598.14 How temporary order made — changes.

In making temporary orders, the court shall take into consideration the age of the applicant, the physical and pecuniary condition of the parties, and other matters as are pertinent, which may be shown by affidavits, as the court may direct. The hearing on the application shall be limited to matters set forth in the application, the affidavits of the parties, and the required statements of income. The court shall not hear any other matter relating to the petition, respondent's answer, or any pleadings connected with the petition or answer.

Subject to 28 U.S.C. § 1738B, after notice and hearing subsequent changes in temporary orders may be made by the court on application of either party demonstrating a substantial change in the circumstances occurring subsequent to the issuance of such order. If the order is not so modified it shall continue in force and effect until the action is dismissed or a decree is entered dissolving the marriage.

[C73, §2228; C97, §3179; C24, 27, 31, 35, 39, §**10480;** C46, 50, 54, 58, 62, 66, §598.13; C71, 73, 75, 77, 79, 81, §598.14]

85 Acts, ch 99, §9; 85 Acts, ch 195, §52; 96 Acts, ch 1141, §27

598.14A Retroactive modification of temporary support order.

An order for temporary support may be retroactively modified only from three months after notice of hearing for temporary support pursuant to section 598.11 or from three months after notice of hearing for modification of a temporary order for support pursuant to section 598.14. The three-month limitation applies to modification actions pending on or after July 1, 1997.

97 Acts, ch 175, §187

598.15 Attachment.

The petition may be presented to the court for the allowance of an order of attachment, which, by endorsement thereon, may direct such attachment and fix the amount for which it may issue, and the amount of the bond, if any, that shall be given. Any property taken by virtue thereof shall be held to satisfy the judgment or decree of the court, but may be discharged or released as in other cases.

[C73, §2227; C97, §3178; C24, 27, 31, 35, 39, §**10479;** C46, 50, 54, 58, 62, 66, §598.12; C71, 73, 75, 77, 79, 81, §598.15]

598.16 Conciliation — domestic relations divisions.

A majority of the judges in any judicial district, with the cooperation of any county board of supervisors in the district, may establish a domestic relations division of the district court of the county where the board is located. The division shall offer counseling and related services to persons before the court.

Upon the application of the petitioner in the petition or by the respondent in the responsive pleading thereto or, within twenty days of appointment, of an attorney appointed under section 598.12, the court shall require the parties to participate in conciliation efforts for a period of sixty days from the issuance of an order setting forth the conciliation procedure and the conciliator.

At any time upon its own motion or upon the application of a party the court may require the parties to participate in conciliation efforts for sixty days or less following the issuance of such an order.

Every order for conciliation shall require the conciliator to file a written report by a date certain which shall state the conciliation procedures undertaken and such other matters as may have been required by the court. The report shall be a part of the record unless otherwise ordered by the court. Such conciliation procedure may include, but is not limited to, referrals to the domestic relations division of the court, if established, public or private marriage counselors, family service agencies, community health centers, physicians and clergy.

The costs of conciliation procedures shall be paid in full or in part by the parties and taxed as court costs; however, if the court determines that the parties will be unable to pay the costs without prejudicing their financial ability to provide themselves and any minor children with economic necessities, the costs may be paid in full or in part by the county.

Persons providing counseling and other services pursuant to this section are not court employees, but are subject to court supervision.

[C71, 73, 75, 77, 79, 81, §598.16]

83 Acts, ch 123, §194, 209; 83 Acts, ch 186, §10110, 10201; 93 Acts, ch 54, §11

598.17 Dissolution of marriage — evidence.

A decree dissolving the marriage may be entered when the court is satisfied from the evidence presented that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that

the marriage can be preserved. The decree shall state that the dissolution is granted to the parties, and shall not state that it is granted to only one party.

If at the time of trial petitioner fails to present satisfactory evidence that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, the respondent may then proceed to present such evidence as though the respondent had filed the original petition.

A dissolution of marriage granted when one of the spouses has mental illness shall not relieve the other spouse of any obligation imposed by law as a result of the marriage for the support of the spouse with mental illness. The court may make an order for the support or may waive the support obligation when satisfied from the evidence that it would create an undue hardship on the obliged spouse or that spouse's other dependents.

[C71, 73, 75, 77, 79, 81, §598.17]

89 Acts, ch 296, §77; 96 Acts, ch 1129, §101

598.18 Recrimination not a bar to dissolution of marriage.

If, upon the trial of an action for dissolution of marriage, both of the parties are found to have committed an act or acts which would support or justify a decree of dissolution of marriage, such dissolution may be decreed, and the acts of one party shall not negate the acts of the other, nor serve to bar the dissolution decree in any way.

[C71, 73, 75, 77, 79, 81, §598.18]

598.19 Waiting period before decree.

No decree dissolving a marriage shall be granted in any proceeding before ninety days shall have elapsed from the day the original notice is served, or from the last day of publication of notice, or from the date that waiver or acceptance of original notice is filed or until after conciliation is completed, whichever period shall be longer. However, the court may in its discretion, on written motion supported by affidavit setting forth grounds of emergency or necessity and facts which satisfy the court that immediate action is warranted or required to protect the substantive rights or interests of any party or person who might be affected by the decree, hold a hearing and grant a decree dissolving the marriage prior to the expiration of the applicable period, provided that requirements of notice have been complied with. In such case the grounds of emergency or necessity and the facts with respect thereto shall be recited in the decree unless otherwise ordered by the court. The court may enter an order finding the respondent in default and waiving conciliation when the respondent has failed to file an appearance within the time set forth in the original notice.

[C58, 62, 66, §598.25; C71, 73, 75, §598.16, 598.19; C77, 79, 81, §598.19]

598.19A Mandatory course — parties to certain proceedings.

1. The court shall order the parties to any action which involves the issues of child custody or visitation to participate in a court-approved course to educate and sensitize the parties to the needs of any child or party during and subsequent to the proceeding within forty-five days of the service of notice and petition for the action or within forty-five days of the service of notice and application for modification of an order. Participation in the course may be waived or delayed by the court for good cause including, but not limited to, a default by any of the parties or a showing that the parties have previously participated in a court-approved course or its equivalent. Participation in the course is not required if the proceeding involves termination of parental rights of any of the parties. A final decree shall not be granted or a final order shall not be entered until the parties have complied with this section, unless participation in the course is waived or delayed for good cause or is otherwise not required under this subsection.

2. Each party shall be responsible for arranging for participation in the course and for payment of the costs of participation in the course.

3. Each party shall submit certification of completion of the course to the court prior to the granting of a final decree or the entry of an order, unless participation in the course is waived or delayed for good cause or is otherwise not required under subsection 1.

4. If participation in the court-approved course is waived or delayed for good cause or is otherwise not required under this section, the court may order that the parties receive the information described in subsection 5 through an alternative format.

5. Each judicial district shall certify approved courses for parties required to participate in a course under this section. Approved courses may include those provided by a public or private entity. At a minimum and as appropriate, an approved course shall include information relating to the parents regarding divorce and its impact on the children and family relationship, parenting skills for divorcing parents, children's needs and coping techniques, and the financial responsibilities of parents following divorce.

6. In addition to the provisions of this section relating to the required participation in a court-approved course by the parties to an action as described in subsection 1, the court may require age-appropriate counseling for children who are involved in a dissolution of marriage action. The counseling may be provided by a public or private entity approved by the court. The costs of the counseling shall be taxed as court costs.

7. The supreme court may prescribe rules to implement this section.

96 Acts, ch 1195, §2, 3; 98 Acts, ch 1070, §1; 2001 Acts, ch 112, §2, 3

598.20 Forfeiture of marital rights.

When a dissolution of marriage is decreed the parties shall forfeit all rights acquired by marriage which are not specifically preserved in the decree. This provision shall not obviate any of the provisions of section 598.21.

[C51, §1486; C73, §2230; C97, §3181; C24, 27, 31, 35, 39, §**10483;** C46, 50, 54, 58, 62, 66, §598.16; C71, 73, 75, 77, 79, 81, §598.20]

598.21 Orders for disposition and support.

1. Upon every judgment of annulment, dissolution, or separate maintenance the court shall divide the property of the parties and transfer the title of the property accordingly, including ordering the parties to execute a quitclaim deed or ordering a change of title for tax purposes and delivery of the deed or change of title to the county recorder of the county in which each parcel of real estate is located. The county recorder shall record each quitclaim deed or change of title and shall collect the fee specified in section 331.507, subsection 2, paragraph *"a"*, and the fee specified in section 331.604, subsection 1. The court may protect and promote the best interests of children of the parties by setting aside a portion of the property of the parties in a separate fund or conservatorship for the support, maintenance, education and general welfare of the minor children. The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:

a. The length of the marriage.

b. The property brought to the marriage by each party.

c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

d. The age and physical and emotional health of the parties.

e. The contribution by one party to the education, training or increased earning power of the other.

f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

h. The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.

i. Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

j. The tax consequences to each party.

k. Any written agreement made by the parties concerning property distribution.

l. The provisions of an antenuptial agreement.

m. Other factors the court may determine to be relevant in an individual case.

2. Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

3. Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:

a. The length of the marriage.

b. The age and physical and emotional health of the parties.

c. The distribution of property made pursuant to subsection 1.

d. The educational level of each party at the time of marriage and at the time the action is commenced.

e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

g. The tax consequences to each party.

h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.

i. The provisions of an antenuptial agreement.

j. Other factors the court may determine to be relevant in an individual case.

4. The supreme court shall maintain uniform child support guidelines and criteria and review the guidelines and criteria at least once every four years, pursuant to the federal Family Support Act

of 1988, Pub. L. No. 100-485. The initial review shall be performed within four years of October 12, 1989, and subsequently within the four-year period of the most recent review. It is the intent of the general assembly that, to the extent possible within the requirements of federal law, the court and the child support recovery unit consider the individual facts of each judgment or case in the application of the guidelines and determine the support obligation, accordingly. It is also the intent of the general assembly that in the supreme court's review of the guidelines, the supreme court shall do both of the following: emphasize the ability of a court to apply the guidelines in a just and appropriate manner based upon the individual facts of a judgment or case; and in determining monthly child support payments, consider other children for whom either parent is legally responsible for support and other child support obligations actually paid by either party pursuant to a court or administrative order.

a. Unless prohibited pursuant to 28 U.S.C. § 1738B, upon every judgment of annulment, dissolution, or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for supporting a child. In establishing the amount of support, consideration shall be given to the responsibility of both parents to support and provide for the welfare of the minor child and of a child's need, whenever practicable, for a close relationship with both parents. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. A variation from the guidelines shall not be considered by a court without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under the criteria prescribed by the supreme court.

The court shall order as child medical support a health benefit plan as defined in chapter 252E if available to either parent at a reasonable cost. A health benefit plan is considered reasonable in cost if it is employment-related or other group health insurance, regardless of the service delivery mechanism. The premium cost of the health benefit plan may be considered by the court as a reason for varying from the child support guidelines. If a health benefit plan is not available at a reasonable cost, the court may order any other provisions for medical support as defined in chapter 252E.

b. The guidelines prescribed by the supreme court shall be used by the department of human services in determining child support payments under sections 252C.2 and 252C.4. A variation from the guidelines shall not be considered by the department without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under criteria prescribed by the supreme court.

c. The guidelines prescribed by the supreme court shall incorporate provisions for medical support as defined in chapter 252E to be effective on or before January 1, 1991.

d. For purposes of calculating a support obligation under this section, the income of the parent from whom support is sought shall be used as the noncustodial parent income for purposes of application of the guidelines, regardless of the legal custody of the child.

e. Unless the special circumstances of the case justify a deviation, the court or the child support recovery unit shall establish a monthly child support payment of twenty-five dollars for a parent who is nineteen years of age or younger, who has not received a high school or high school equivalency diploma, and to whom each of the following apply:

(1) The parent is attending a school or program described as follows or has been identified as one of the following:

(a) The parent is in full-time attendance at an accredited school and is pursuing a course of study leading to a high school diploma.

(b) The parent is attending an instructional program leading to a high school equivalency diploma.

(c) The parent is attending a vocational education program approved pursuant to chapter 258.

(d) The parent has been identified by the director of special education of the area education agency as a child requiring special education as defined in section 256B.2.

(2) The parent provides proof of compliance with the requirements of subparagraph (1) to the child support recovery unit, if the unit is providing services under chapter 252B, or if the unit is not providing services pursuant to chapter 252B, to the court as the court may direct.

Failure to provide proof of compliance under this subparagraph or proof of compliance under section 598.21A is grounds for modification of the support order using the uniform child support guidelines and imputing an income to the parent equal to a forty-hour work week at the state minimum wage, unless the parent's education, experience, or actual earnings justify a higher income.

f. For the purposes of including a child's dependent benefit in calculating a support obligation under this section for a child whose parent has been awarded disability benefits under the federal Social Security Act, the provisions of section 598.22C shall apply.

4A. If, during an action initiated under this chapter or any other chapter in which a child or medical support obligation may be established based upon a prior determination of paternity, a party wishes to contest the paternity of the child or children involved, all of the following apply:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to

section 252A.3A, or a court or administrative order entered in this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A apply.

(2) If following the proceedings under section 600B.41A the court determines that the prior determination of paternity should not be overcome, and that the established father has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to subsection 4, or the medical support obligation pursuant to chapter 252E, or both.

b. If a determination of paternity is based on an administrative or court order or other means pursuant to the laws of a foreign jurisdiction, any action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless a stay of the action initiated in this state to establish child or medical support is requested and granted by the court, pending a resolution of the contested paternity issue by the foreign jurisdiction, the action shall proceed.

c. Notwithstanding paragraph *"a"*, in a pending dissolution action under this chapter, a prior determination of paternity by operation of law through the marriage of the established father and mother of the child may be overcome under this chapter if the established father and mother of the child file a written statement with the court that both parties agree that the established father is not the biological father of the child.

If the court overcomes a prior determination of paternity, the previously established father shall be relieved of support obligations as specified in section 600B.41A, subsection 4. In any action to overcome paternity other than through a pending dissolution action, the provisions of section 600B.41A apply. Overcoming paternity under this paragraph does not bar subsequent actions to establish paternity. A subsequent action to establish paternity against the previously established father is not barred if it is subsequently determined that the written statement attesting that the established father is not the biological father of the child may have been submitted erroneously, and that the person previously determined not to be the child's father during the dissolution action may actually be the child's biological father.

4B. If an action to overcome paternity is brought pursuant to subsection 4A, paragraph *"c"*, the court shall appoint a guardian ad litem for the child for the pendency of the proceedings.

5. The court may protect and promote the best interests of a minor child by setting aside a portion of the child support which either party is ordered to pay in a separate fund or conservatorship for the support, education and welfare of the child.

5A. The court may order a postsecondary education subsidy if good cause is shown.

a. In determining whether good cause exists for ordering a postsecondary education subsidy, the court shall consider the age of the child, the ability of the child relative to postsecondary education, the child's financial resources, whether the child is self-sustaining, and the financial condition of each parent. If the court determines that good cause is shown for ordering a postsecondary education subsidy, the court shall determine the amount of subsidy as follows:

(1) The court shall determine the cost of postsecondary education based upon the cost of attending an in-state public institution for a course of instruction leading to an undergraduate degree and shall include the reasonable costs for only necessary postsecondary education expenses.

(2) The court shall then determine the amount, if any, which the child may reasonably be expected to contribute, considering the child's financial resources, including but not limited to the availability of financial aid whether in the form of scholarships, grants, or student loans, and the ability of the child to earn income while attending school.

(3) The child's expected contribution shall be deducted from the cost of postsecondary education and the court shall apportion responsibility for the remaining cost of postsecondary education to each parent. The amount paid by each parent shall not exceed thirty-three and one-third percent of the total cost of postsecondary education.

b. A postsecondary education subsidy shall be payable to the child, to the educational institution, or to both, but shall not be payable to the custodial parent.

c. A postsecondary education subsidy shall not be awarded if the child has repudiated the parent by publicly disowning the parent, refusing to acknowledge the parent, or by acting in a similar manner.

d. The child shall forward, to each parent, reports of grades awarded at the completion of each academic session, within ten days of receipt of the reports. Unless otherwise specified by the parties, a postsecondary education subsidy awarded by the court shall be terminated upon the child's completion of the first calendar year of course instruction if the child fails to maintain a cumulative grade point average in the median range or above during that first calendar year.

e. A support order, decree, or judgment entered or pending before July 1, 1997, that provides for support of a child for college, university, or community college expenses may be modified in accordance with this subsection.

6. The court may provide for joint custody of the children by the parties pursuant to section 598.41. All orders relating to custody of a child are subject to chapter 598B.

7. Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and

counties of residence of the petitioner and respondent.

8. Subject to 28 U.S.C. § 1738B, the court may subsequently modify orders made under this section when there is a substantial change in circumstances. In determining whether there is a substantial change in circumstances, the court shall consider the following:

a. Changes in the employment, earning capacity, income or resources of a party.

b. Receipt by a party of an inheritance, pension or other gift.

c. Changes in the medical expenses of a party.

d. Changes in the number or needs of dependents of a party.

e. Changes in the physical, mental, or emotional health of a party.

f. Changes in the residence of a party.

g. Remarriage of a party.

h. Possible support of a party by another person.

i. Changes in the physical, emotional or educational needs of a child whose support is governed by the order.

j. Contempt by a party of existing orders of court.

k. Other factors the court determines to be relevant in an individual case.

Unless otherwise provided pursuant to 28 U.S.C. § 1738B, a modification of a support order entered under chapter 234, 252A, 252C, 600B, this chapter, or any other support chapter or proceeding between parties to the order is void unless the modification is approved by the court, after proper notice and opportunity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 234.39, 239B.6, or 252E.11, or if services are being provided pursuant to chapter 252B, the department is a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598B. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 598.41.

Judgments for child support or child support awards entered pursuant to this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code which are subject to a modification proceeding may be retroactively modified only from three months after the date the notice of the pending petition for modification is served on the opposing party. The three-month limitation applies to a modification action pending on or after July 1, 1997. The prohibition of retroactive modification does not bar the child support recovery unit from obtaining orders for accrued support for previous time periods. Any retroactive modification which increases the amount of child support or any order for accrued support under this paragraph shall include a periodic payment plan. A retroactive modification shall not be regarded as a delinquency unless there are subsequent failures to make payments in accordance with the periodic payment plan.

The periodic due date established under a prior order for payment of child support shall not be changed in any modified order under this section, unless the court determines that good cause exists to change the periodic due date. If the court determines that good cause exists, the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

8A. If a parent awarded joint legal custody and physical care or sole legal custody is relocating the residence of the minor child to a location which is one hundred fifty miles or more from the residence of the minor child at the time that custody was awarded, the court may consider the relocation a substantial change in circumstances. If the court determines that the relocation is a substantial change in circumstances, the court shall modify the custody order to, at a minimum, preserve, as nearly as possible, the existing relationship between the minor child and the nonrelocating parent. If modified, the order may include a provision for extended visitation during summer vacations and school breaks and scheduled telephone contact between the nonrelocating parent and the minor child. The modification may include a provision assigning the responsibility for transportation of the minor child for visitation purposes to either or both parents. If the court makes a finding of past interference by the parent awarded joint legal custody and physical care or sole legal custody with the minor child's access to the other parent, the court may order the posting of a cash bond to assure future compliance with the visitation provisions of the decree. The supreme court shall prescribe guidelines for the forfeiting of the bond and restoration of the bond following forfeiting of the bond.

9. Subject to 28 U.S.C. § 1738B, but notwithstanding subsection 8, a substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to subsection 4 or the obligor has access to a health benefit plan, the current order for support does not contain provisions for medical support, and the dependents are not covered by a health benefit plan provided by the obligee, excluding coverage pursuant to chapter 249A or a comparable statute of a foreign jurisdiction.

This basis for modification is applicable to petitions filed on or after July 1, 1992, notwithstand-

ing whether the guidelines prescribed by subsection 4 were used in establishing the current amount of support. Upon application for a modification of an order for child support for which services are being received pursuant to chapter 252B, the court shall set the amount of child support based upon the most current child support guidelines established pursuant to subsection 4, including provisions for medical support pursuant to chapter 252E. The child support recovery unit shall, in submitting an application for modification, adjustment, or alteration of an order for support, employ additional criteria and procedures as provided in chapter 252H and as established by rule.

10. Notwithstanding any other provision of law to the contrary, when an application for modification or adjustment of support is submitted by the child support recovery unit, the sole issues which may be considered by the court in that action are the application of the guidelines in establishing the amount of support pursuant to subsection 4, and provision for medical support under chapter 252E. When an application for a cost-of-living alteration of support is submitted by the child support recovery unit pursuant to section 252H.24, the sole issue which may be considered by the court in the action is the application of the cost-of-living alteration in establishing the amount of child support. Issues related to custody, visitation, or other provisions unrelated to support shall be considered only under a separate application for modification.

11. If the court orders a transfer of title to real property, the clerk of court shall issue a certificate under chapter 558 relative to each parcel of real estate affected by the order and immediately deliver the certificate for recording to the county recorder of the county in which the real estate is located. Any fees assessed shall be included as part of the court costs. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58, subsection 1.

Property divisions made under this chapter are not subject to modification.

[C51, §1485; R60, §2537; C73, §2229; C97, §3180; C24, 27, 31, 35, 39, §**10481;** C46, 50, 54, 58, 62, 66, §598.14; C71, 73, 75, 77, 79, §598.17, §598.21; C81, §598.21; 82 Acts, ch 1054, §1, ch 1250, §4 – 9]

83 Acts, ch 101, §118; 85 Acts, ch 159, §10; 85 Acts, ch 178, §6, 7; 86 Acts, ch 1079, §5; 88 Acts, ch 1141, §2; 89 Acts, ch 102, §6; 89 Acts, ch 166, §6; 90 Acts, ch 1224, §42 – 45; 92 Acts, ch 1195, §405, 406, 508, 509; 93 Acts, ch 78, §44 – 46; 93 Acts, ch 79, §48, 49; 94 Acts, ch 1171, §40 – 42; 95 Acts, ch 52, §8; 95 Acts, ch 115, §11, 12; 96 Acts, ch 1106, §17; 96 Acts, ch 1141, §7, 28, 29; 97 Acts, ch 41, §32; 97 Acts, ch 175, §188 – 193, 200; 99 Acts, ch 103, §44, 45; 2001 Acts, ch 143, §8; 2002 Acts, ch 1018, §16, 17, 21

Child support recovery unit, initiation of proceedings to modify child support award; §252B.5(7)

Subsection 5A, paragraph e, takes effect March 15, 2002, and applies retroactively to support orders, decrees, or judgments entered or pending before July 1, 1997; 2002 Acts, ch 1018, §21

Subsection 4, NEW paragraph f

Subsection 5A, NEW paragraph e

598.21A Minor parent — parenting classes.

In any order or judgment entered under chapter 234, 252A, 252C, 252F, 598, or 600B or under any other chapter which provides for temporary or permanent support payments, if the parent ordered to pay support is less than eighteen years of age, one of the following shall apply:

1. If the child support recovery unit is providing services pursuant to chapter 252B, the court, or the administrator as defined in section 252C.1, shall order the parent ordered to pay support to attend parenting classes which are approved by the department of human services.

2. If the child support recovery unit is not providing services pursuant to chapter 252B, the court may order the parent ordered to pay support to attend parenting classes which are approved by the court.

96 Acts, ch 1106, §18

598.22 Support payments — clerk of court — collection services center — defaults — security.

Except as otherwise provided in section 598.22A, this section applies to all initial or modified orders for support entered under this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code. All orders or judgments entered under chapter 234, 252A, 252C, 252F, or 600B, or under this chapter or any other chapter which provide for temporary or permanent support payments shall direct the payment of those sums to the clerk of the district court or the collection services center in accordance with section 252B.14 for the use of the person for whom the payments have been awarded. Beginning October 1, 1999, all income withholding payments shall be directed to the collection services center. Payments to persons other than the clerk of the district court and the collection services center do not satisfy the support obligations created by the orders or judgments, except as provided for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, for tax refunds or rebates in section 602.8102, subsection 47, or for dependent benefits paid to the child support obligee as the result of disability benefits awarded to the child support obligor under the federal Social Security Act. For trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, the order for income withholding or notice of the order for income withholding shall require the payment of such sums to the alternate payee in accordance with the federal Act. For dependent benefits paid to the child support obligee as a result of disability benefits awarded to the child sup-

port obligor under the federal Social Security Act, the provisions of section 598.22C shall apply.

An income withholding order or notice of the order for income withholding shall be entered under the terms and conditions of chapter 252D. However, for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, the payor shall transmit the payments to the alternate payee in accordance with the federal Act.

An order or judgment entered by the court for temporary or permanent support or for income withholding shall be filed with the clerk. The orders have the same force and effect as judgments when entered in the judgment docket and lien index and are records open to the public. Unless otherwise provided by federal law, if it is possible to identify the support order to which a payment is to be applied, and if sufficient information identifying the obligee is provided, the clerk or the collection services center, as appropriate, shall disburse the payments received pursuant to the orders or judgments within two working days of the receipt of the payments. All moneys received or disbursed under this section shall be entered in records kept by the clerk, or the collection services center, as appropriate, which shall be available to the public. The clerk or the collection services center shall not enter any moneys paid in the record book if not paid directly to the clerk or the center, as appropriate, except as provided for trusts and federal social security disability payments in this section, and for tax refunds or rebates in section 602.8102, subsection 47.

If the sums ordered to be paid in a support payment order are not paid to the clerk or the collection services center, as appropriate, at the time provided in the order or judgment, the clerk or the collection services center, as appropriate, shall certify a default to the court which may, on its own motion, proceed as provided in section 598.23.

Prompt payment of sums required to be paid under sections 598.11 and 598.21 is the essence of such orders or judgments and the court may act pursuant to section 598.23 regardless of whether the amounts in default are paid prior to the contempt hearing.

Upon entry of an order for support or upon the failure of a person to make payments pursuant to an order for support, the court may require the person to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the person's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

For the purpose of enforcement, medical support is additional support which, upon being reduced to a dollar amount, may be collected through the same remedies available for the collection and enforcement of child support.

The clerk of the district court in the county in which the order for support is filed and to whom support payments are made pursuant to the order may require the person obligated to pay support to submit payments by bank draft or money order if the obligor submits an insufficient funds support payment to the clerk of the district court.

[C71, 73, 75, 77, 79, 81, §598.22; 82 Acts, ch 1134, §1]

85 Acts, ch 100, §7; 85 Acts, ch 178, §8; 86 Acts, ch 1246, §319, 320; 88 Acts, ch 1218, §6–8; 90 Acts, ch 1123, §13; 90 Acts, ch 1224, §46, 47; 93 Acts, ch 79, §50; 97 Acts, ch 175, §194; 98 Acts, ch 1170, §11, 12; 2002 Acts, ch 1018, §18

Unnumbered paragraph 1 amended

598.22A Satisfaction of support payments.

Notwithstanding sections 252B.14 and 598.22, support payments ordered pursuant to any support chapter for orders entered on or after July 1, 1985, which are not made pursuant to the provisions of section 252B.14 or 598.22, shall be credited only as provided in this section.

1. For payment made pursuant to an order, the clerk of the district court or collection services center shall record a satisfaction as a credit on the official support payment record if its validity is confirmed by the court upon submission of an affidavit by the person entitled to receive the payment, after notice is given to all parties.

If a satisfaction recorded on the official support payment record by the clerk of the district court or collection services center prior to July 1, 1991, was not confirmed as valid by the court, and a party to the action submits a written affidavit objecting to the satisfaction, notice of the objection shall be mailed to all parties at their last known addresses. After all parties have had sufficient opportunity to respond to the objection, the court shall either require the satisfaction to be removed from the official support payment record or confirm its validity.

2. For purposes of this section, the state is a party to which notice shall be given when public funds have been expended pursuant to chapter 234, 239B, or 249A, or similar statutes in another state. If proper notice is not given to the state when required, any order of satisfaction is void.

3. The court shall not enter an order for satisfaction of payments not made through the clerk of the district court or collection services center if those payments have been assigned as a result of public funds expended pursuant to chapter 234, 239B, or 249A, or similar statutes in other states and the support payments accrued during the months in which public funds were expended. If the support order did not direct payments to a clerk of the district court or the collection services center, and the support payments in question accrued during the months in which public funds were not expended, however, the court may enter an order for satisfaction of payments not made through the clerk of the district court or the collection services center if documentation of the finan-

cial instrument used in the payment of support is presented to the court and the parties to the order submit a written affidavit confirming that the financial instrument was used as payment for support.

4. Payment of accrued support debt due the department of human services shall be credited pursuant to section 252B.3, subsection 5.

90 Acts, ch 1224, §48; 91 Acts, ch 177, §7; 93 Acts, ch 79, §51; 97 Acts, ch 41, §32; 98 Acts, ch 1170, §42

598.22B Information required in order or judgment.

This section applies to all initial or modified orders for paternity or support entered under this chapter, chapter 234, 252A, 252C, 252F, 252H, 252K, or 600B, or under any other chapter, and any subsequent order to enforce such support orders.

1. All such orders or judgments shall direct each party to file with the clerk of court or the child support recovery unit, as appropriate, upon entry of the order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of the party's employer. The order shall also include a provision that the information filed will be disclosed and used pursuant to this section. The party shall file the information with the clerk of court, or, if all support payments are to be directed to the collection services center as provided in section 252B.14, subsection 2, and section 252B.16, with the child support recovery unit.

2. All such orders or judgments shall include a statement that in any subsequent child support action initiated by the child support recovery unit or between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the unit or the court shall deem due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the clerk of court or unit pursuant to subsection 1.

3. *a.* Information filed pursuant to subsection 1 shall not be a public record.

b. Information filed with the clerk of court pursuant to subsection 1 shall be available to the child support recovery unit, upon request. Beginning October 1, 1998, information filed with the clerk of court pursuant to subsection 1 shall be provided by the clerk of court to the child support recovery unit pursuant to section 252B.24.

c. Information filed with the clerk of court shall be available, upon request, to a party unless the party filing the information also files an affidavit alleging the party has reason to believe that release of the information may result in physical or emotional harm to the affiant or child. However, even if an affidavit has been filed, any information provided by the clerk of court to the child support recovery unit shall be disclosed by the unit as provided in section 252B.9.

d. Information provided to the unit shall only be disclosed as provided in section 252B.9.

97 Acts, ch 175, §195; 98 Acts, ch 1170, §16

598.22C Child support — social security disability dependent benefits.

If dependent benefits are paid for a child as a result of disability benefits awarded to the child's parent under the federal Social Security Act, all of the following shall apply:

1. Unless the court otherwise provides, dependent benefits paid to the child support obligee as a result of disability benefits awarded to the child support obligor fully satisfy and substitute for the support obligations for the same period of time for which the benefits are awarded.

2. For the purposes of calculating a support obligation under section 598.21, subsection 4, the dependent benefits paid for any child shall be included as income to the disabled parent.

3. *a.* Any order or judgment for support for a child for whom social security disability benefits are paid to the child support obligee as a result of disability benefits awarded to the child support obligor shall include all of the following:

(1) The dollar amount of the child support obligation as calculated by application of the guidelines under section 598.21, subsection 4, and a statement that the social security dependent benefits are included as income to the obligor in that calculation.

(2) The dollar amount of the social security dependent benefits paid to the obligee which shall be dollar-for-dollar satisfaction of the obligor's child support obligation.

(3) The dollar amount, if any, the obligor shall pay after application of the social security dependent benefits as a credit to or dollar-for-dollar satisfaction of the child support obligation.

b. The amount of the child support obligation stated in the order, and the amount the obligor shall pay after application of the social security disability dependent benefit credit or satisfaction stated in the order, shall continue until modified, as provided in section 598.21.

4. The amount of any child support obligation satisfied under this section based upon the receipt of dependent benefits paid to the child support obligee as a result of disability benefits awarded to the child support obligor shall not be considered delinquent.

2002 Acts, ch 1018, §19
NEW section

598.23 Contempt proceedings — alternatives to jail sentence.

1. If a person against whom a temporary order

or final decree has been entered willfully disobeys the order or decree, the person may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense.

2. The court may, as an alternative to punishment for contempt, make an order which, according to the subject matter of the order or decree involved, does the following:

a. Withholds income under the terms and conditions of chapter 252D.

b. Modifies visitation to compensate for lost visitation time or establishes joint custody for the child or transfers custody.

c. Directs the parties to provide contact with the child through a neutral party or neutral site or center.

d. Imposes sanctions or specific requirements or orders the parties to participate in mediation to enforce the joint custody provisions of the decree.

[C24, 27, 31, 35, 39, §**10482;** C46, 50, 54, 58, 62, 66, §598.15; C71, 73, 75, 77, 79, 81, §598.23]

84 Acts, ch 1133, §1; 85 Acts, ch 67, §56; 85 Acts, ch 178, §9; 88 Acts, ch 1218, §9; 97 Acts, ch 175, §196, 197

598.23A Contempt proceedings for provisions of support payments — activity governed by a license.

1. If a person against whom an order or decree for support has been entered pursuant to this chapter or chapter 234, 252A, 252C, 252F, 600B, or any other support chapter, or a comparable chapter of a foreign jurisdiction, fails to make payments or provide medical support pursuant to that order or decree, the person may be cited and punished by the court for contempt under section 598.23 or this section. Failure to comply with a seek employment order entered pursuant to section 252B.21 is evidence of willful failure to pay support.

2. If a person is cited for contempt, the court may do any of the following:

a. Require the posting of a cash bond, within seven calendar days, in an amount equivalent to the current arrearages and an additional amount which is equivalent to at least twelve months of future support obligations. If the arrearages are not paid within three months of the hearing, the bond shall be automatically forfeited to cover payment of the full portion of the arrearages and the portion of the bond representing future support obligations shall be automatically forfeited to cover future support payments as payments become due.

b. (1) Require the performance of community service work of up to twenty hours per week for six weeks for each finding of contempt. The contemnor may, at any time during the six-week period, apply to the court to be released from the community service work requirement under any of the following conditions:

(a) The contemnor provides proof to the court that the contemnor is gainfully employed and submits to an order for income withholding pursuant to chapter 252D or to a court-ordered wage assignment.

(b) The contemnor provides proof of payment of an amount equal to at least six months' child support. The payment does not relieve the contemnor's obligation for arrearages or future payments.

(c) The contemnor provides proof to the court that, subsequent to entry of the order, the contemnor's circumstances have so changed that the contemnor is no longer able to fulfill the terms of the community service order.

(2) The contemnor shall keep a record of and provide the following information to the court at the court's request, or to the child support recovery unit established pursuant to chapter 252B, at the unit's request, when the unit is providing enforcement services pursuant to chapter 252B:

(a) The duties performed as community service during each week that the contemnor is subject to the community service requirements.

(b) The number of hours of community service performed during each week that the contemnor is subject to the community service requirements.

(c) The name, address, and telephone number of the person supervising or arranging for the performance of the community service.

(3) The performance of community service does not relieve the contemnor of any unpaid accrued or accruing support obligation.

c. Enjoin the contemnor from engaging in the exercise of any activity governed by a license.

(1) If the court determines that an extreme hardship will result from the injunction, the court order may allow the contemnor to engage in the exercise of the activity governed by the license, subject to terms established by the court, which shall include, at a minimum, that the contemnor enter into an agreement to satisfy all obligations owing over a period of time satisfactory to the court.

(2) If the court order allows for the exercise of the activity governed by a license pending satisfaction of an obligation over time, and the contemnor fails to comply with the agreement, the contemnor shall be provided an opportunity for hearing, within ten days, to demonstrate why an order enjoining the contemnor from engaging in the exercise of any activity governed by a license should not be issued.

(3) The court order under this paragraph shall be vacated only after verification is provided to the court that the contemnor has satisfied all accrued obligations owing and that the contemnor has satisfied all terms established by the court and when the person entitled to receive support payments, or the child support recovery unit when the unit is providing enforcement services pursuant to chapter 252B, has been provided ten days' notice and

an opportunity to object.

(4) As used in this paragraph, *"license"* means any license or renewal of a license, certification, or registration issued by an agency to a person to conduct a trade or business, including but not limited to a license to practice a profession or occupation or to operate a commercial motor vehicle.

92 Acts, ch 1195, §510; 93 Acts, ch 79, §27 – 29; 94 Acts, ch 1101, §9, 10

598.24 Costs if party is in default or contempt.

When an action for a modification, order to show cause, or contempt of a dissolution, annulment, or separate maintenance decree is brought on the grounds that a party to the decree is in default or contempt of the decree, and the court determines that the party is in default or contempt of the decree, the costs of the proceeding, including reasonable attorney's fees, may be taxed against that party.

[C71, 73, 75, 77, 79, 81, §598.24]

84 Acts, ch 1133, §2

598.25 Termination of jurisdiction of court granting marriage dissolution decree.

Whenever a proceeding is initiated in a court for adoption involving the children of parents or guardians whose marriage has been dissolved, or for modification of a judgment of alimony, child support, or custody granted in an action for dissolution of marriage, the following requirements must be met if such proceedings are initiated in a court other than the court which granted the dissolution decree.

1. The party initiating such proceedings must present to the court the names and addresses of the parties to the dissolution decree if known, as well as the name and place of the court which granted the dissolution decree and the date of the decree.

2. The court in which the proceedings are initiated shall cause notice of such proceedings to be served upon the parties to the original action unless either or both parties are deceased.

Such court, or either of the parties to the dissolution decree, may request that a copy of the transcript of the proceedings of the court which granted the dissolution decree be made available for consideration in the new proceedings.

[C71, 73, 75, 77, 79, 81, §598.25]

598.26 Record — impounding — violation indictable.

The record and evidence in each case of marriage dissolution shall be kept pursuant to the following provisions:

1. Until a decree of dissolution has been entered, the record and evidence shall be closed to all but the court, its officers, and the child support recovery unit of the department of human services pursuant to section 252B.9. However, the payment records of a temporary support order, whether maintained by the clerk of the district court or the department of human services, are public records and may be released upon request. Payment records shall not include address or location information. No other person shall permit a copy of any of the testimony, or pleading, or the substance thereof, to be made available to any person other than a party to the action or a party's attorney. Nothing in this subsection shall be construed to prohibit publication of the original notice as provided by the rules of civil procedure.

2. The court shall, in the absence of objection by another party, grant a motion by a party to require the sealing of an answer to an interrogatory or of a financial statement filed pursuant to section 598.13. The court may in its discretion grant a motion by a party to require the sealing of any other information which is part of the record of the case except for court orders, decrees and any judgments. If the court grants a motion to require the sealing of information in the case, the sealed information shall not thereafter be made available to any person other than a party to the action or a party's attorney except upon order of the court for good cause shown.

3. If the action is dismissed, judgment for costs shall be entered in the judgment docket and lien index. The clerk shall maintain a separate docket for dissolution of marriage actions.

4. Violation of the provisions of this section shall be a serious misdemeanor.

[C71, 73, 75, 77, 79, 81, §598.26]

91 Acts, ch 177, §8; 98 Acts, ch 1170, §13

598.27 One-year wait. Repealed by 76 Acts, ch 1228, § 10.

598.28 Separate maintenance and annulment.

A petition shall be filed in separate maintenance and annulment actions as in actions for dissolution of marriage, and all applicable provisions of this chapter in relation thereto shall apply to separate maintenance and annulment actions.

[C73, §2232; C97, §3183; C24, 27, 31, 35, 39, §**10487;** C46, 50, 54, 58, 62, 66, §598.20; C71, 73, 75, 77, 79, 81, §598.28]

598.29 Annulling illegal marriage — causes.

Marriage may be annulled for the following causes:

1. Where the marriage between the parties is prohibited by law.

2. Where either party was impotent at the time of marriage.

3. Where either party had a husband or wife living at the time of the marriage, provided they have not, with a knowledge of such fact, lived and cohabited together after the death or marriage

dissolution of the former spouse of such party.

4. Where either party was a ward under a guardianship and was found by the court to lack the capacity to contract a valid marriage.

[C73, §2231; C97, §3182; C24, 27, 31, 35, 39, §**10486;** C46, 50, 54, 58, 62, 66, §598.19; C71, 73, 75, 77, 79, 81, §598.29]

91 Acts, ch 93, §3

598.30 Validity determined.

When the validity of a marriage is doubted, either party may file a petition, and the court shall decree it annulled or affirmed according to the proof.

[C73, §2233; C97, §3184; C24, 27, 31, 35, 39, §**10488;** C46, 50, 54, 58, 62, 66, §598.21; C71, 73, 75, 77, 79, 81, §598.30]

598.31 Children — legitimacy.

Children born to the parties, or to the wife, in a marriage relationship which may be terminated or annulled pursuant to the provisions of this chapter shall be legitimate as to both parties, unless the court shall decree otherwise according to the proof.

[C73, §2234, 2235; C97, §3185, 3186; C24, 27, 31, 35, 39, §**10489, 10490;** C46, 50, 54, 58, 62, 66, §598.22, 598.23; C71, 73, 75, 77, 79, 81, §598.31]

598.32 Annulment — compensation.

In case either party entered into the contract of marriage in good faith, supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the decree, and the court may decree such innocent party compensation as in case of dissolution of marriage.

[C73, §2236; C97, §3187; C24, 27, 31, 35, 39, §**10491;** C46, 50, 54, 58, 62, 66, §598.24; C71, 73, 75, 77, 79, 81, §598.32]

598.33 Order to vacate.

Notwithstanding section 561.15, the court may order either party to vacate the homestead pending entry of a decree of dissolution upon a showing that the other party or the children are in imminent danger of physical harm if the order is not issued.

[C81, §598.33]

598.34 Recipients of public assistance — assignment of support payments.

If public assistance is provided by the department of human services to or on behalf of a dependent child or a dependent child's caretaker, there is an assignment by operation of law to the department of any and all rights in, title to, and interest in any support obligation, payment, and arrearages owed to or for the child or caretaker not to exceed the amount of public assistance paid for or on behalf of the child or caretaker. The department shall immediately notify the clerk of court by mail when such a child or caretaker has been determined to be eligible for public assistance. Upon notification by the department, the clerk of court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of the assignment. For public assistance approved and provided on or after July 1, 1997, if the applicant for public assistance is a person other than a parent of the child, the department shall send a notice by regular mail to the last known addresses of the obligee and obligor. The clerk of court shall forward support payments received pursuant to section 598.22, to which the department is entitled, to the department, which may secure support payments in default through other proceedings.

The clerk shall furnish the department with copies of all orders or decrees and temporary or domestic abuse orders addressing support when the parties are receiving public assistance or services are otherwise provided by the child support recovery unit pursuant to chapter 252B. Unless otherwise specified in the order, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order or judgment for purposes of an assignment under this section.

[C71, 73, 75, 77, 79, 81, §598.34; 82 Acts, ch 1237, §4]

83 Acts, ch 96, §157, 159; 97 Acts, ch 175, §198

598.35 Grandparent — great-grandparent — visitation rights.

The grandparent or great-grandparent of a child may petition the district court for grandchild or great-grandchild visitation rights when any of the following circumstances occur:

1. The parents of the child are divorced.

2. A petition for dissolution of marriage has been filed by one of the parents of the child.

3. The parent of the child, who is the child of the grandparent, or who is the grandchild of the great-grandparent, has died.

4. The child has been placed in a foster home.

5. The parents of the child are divorced, and the parent who is not the child of the grandparent or who is not the grandchild of the great-grandparent has legal custody of the child, and the spouse of the child's custodial parent has been issued a final adoption decree pursuant to section 600.13.

6. The paternity of a child born out of wedlock is judicially established and the grandparent of the child is the parent of the mother or father of the child or the great-grandparent of the child is the grandparent of the mother or father of the child and the mother of the child has custody of the child, or the grandparent of a child born out of wedlock is the parent of the mother or father of the child or the great-grandparent of the child is the grandparent of the mother or father of the child

and custody has been awarded to the father of the child.

7. A parent of the child unreasonably refuses to allow visitation by the grandparent or great-grandparent or unreasonably restricts visitation. This subsection applies to but is not limited in application to a situation in which the parents of the child are divorced and the parent who is the child of the grandparent or who is the grandchild of the great-grandparent has legal custody of the child.

A petition for grandchild or great-grandchild visitation rights shall be granted only upon a finding that the visitation is in the best interests of the child and that the grandparent or great-grandparent had established a substantial relationship with the child prior to the filing of the petition.

[C75, 77, 79, 81, §598.35]

87 Acts, ch 159, §9; 96 Acts, ch 1041, §1; 97 Acts, ch 118, §1; 98 Acts, ch 1104, §1

598.36 Attorney fees in proceeding to modify order or decree.

In a proceeding for the modification of an order or decree under this chapter the court may award attorney fees to the prevailing party in an amount deemed reasonable by the court.

84 Acts, ch 1211, §1

598.37 Name change.

Either party to a marriage may request as a part of the decree of dissolution or decree of annulment a change in the person's name to either the name appearing on the person's birth certificate or to the name the person had immediately prior to the marriage. If a party requests a name change other than to the name appearing on the person's birth certificate or to the name the person had immediately prior to the marriage, the request shall be made under chapter 674.

88 Acts, ch 1142, §2

598.38 to 598.40 Reserved.

598.41 Custody of children.

1. *a.* The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent.

b. Notwithstanding paragraph *"a"*, if the court finds that a history of domestic abuse exists, a rebuttable presumption against the awarding of joint custody exists.

c. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Just cause may include a determination by the court pursuant to subsection 3, paragraph *"j"*, that a history of domestic abuse exists between the parents.

d. If a history of domestic abuse exists as determined by a court pursuant to subsection 3, paragraph *"j"*, and if a parent who is a victim of such domestic abuse relocates or is absent from the home based upon the fear of or actual acts or threats of domestic abuse perpetrated by the other parent, the court shall not consider the relocation or absence of that parent as a factor against that parent in the awarding of custody or visitation.

e. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. *a.* On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody.

b. If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed.

c. A finding by the court that a history of domestic abuse exists, as specified in subsection 3, paragraph *"j"*, which is not rebutted, shall outweigh consideration of any other factor specified in subsection 3 in the determination of the awarding of custody under this subsection.

d. Before ruling upon the joint custody petition in these cases, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph *"j"*, or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parties to participate in custody mediation to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation insofar as the court determines the child's participation is advisable.

e. The costs of custody mediation shall be paid in full or in part by the parties and taxed as court costs.

3. In considering what custody arrangement under subsection 2 is in the best interest of the minor child, the court shall consider the following factors:

a. Whether each parent would be a suitable custodian for the child.

b. Whether the psychological and emotional needs and development of the child will suffer due

to lack of active contact with and attention from both parents.

c. Whether the parents can communicate with each other regarding the child's needs.

d. Whether both parents have actively cared for the child before and since the separation.

e. Whether each parent can support the other parent's relationship with the child.

f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.

g. Whether one or both the parents agree or are opposed to joint custody.

h. The geographic proximity of the parents.

i. Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.

j. Whether a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court's consideration shall include, but is not limited to, commencement of an action pursuant to section 236.3, the issuance of a protective order against the parent or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a parent in contempt pursuant to section 236.8, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

4. Subsection 3 shall not apply when parents agree to joint custody.

5. Joint physical care may be in the best interest of the child, but joint legal custody does not require joint physical care. When the court determines such action would be in the best interest of the child and would preserve the relationship between each parent and the child, joint physical care may be awarded to both joint custodial parents or physical care may be awarded to one joint custodial parent. If one joint custodial parent is awarded physical care, the parent responsible for providing physical care shall support the other parent's relationship with the child. Physical care awarded to one parent does not affect the other parent's rights and responsibilities as a joint legal custodian of the child. Rights and responsibilities as joint legal custodian of the child include, but are not limited to, equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

6. If the parties have more than one minor child, and the court awards each party the physical custody of one or more of the children, upon application by either party, and if it is reasonable and in the best interest of the children, the court shall include a provision in the custody order directing the parties to allow visitation between the children in each party's custody.

7. When a parent awarded legal custody or physical care of a child cannot act as custodian or caretaker because the parent has died or has been judicially adjudged incompetent, the court shall award legal custody including physical care of the child to the surviving parent unless the court finds that such an award is not in the child's best interest.

8. If an application for modification of a decree or a petition for modification of an order is filed, based upon differences between the parents regarding the custody arrangement established under the decree or order, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph *"j"*, or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parents to participate in mediation to attempt to resolve the differences between the parents.

[82 Acts, ch 1250, §2]

84 Acts, ch 1088, §2, 3, 4, 5; 85 Acts, ch 67, §57, 58; 86 Acts, ch 1179, §5, 6; 95 Acts, ch 182, §22–24; 95 Acts, ch 183, §2; 97 Acts, ch 175, §199, 200; 99 Acts, ch 115, §1

598.41A Visitation — history of crimes against a minor.

Notwithstanding section 598.41, the court shall consider in the award of visitation rights to a parent of a child, the criminal history of the parent if the parent has been convicted of a criminal offense against a minor, a sexually violent offense against a minor, or sexual exploitation of a minor. As used in this section, *"criminal offense against a minor"*, *"sexually violent offense"*, and *"sexual exploitation"* mean as defined in section 692A.1.

98 Acts, ch 1070, §2

598.41B Visitation — restrictions — murder of parent.

1. Notwithstanding section 598.41, the court shall not do either of the following:

a. Enforce an existing order awarding visitation rights to a child's parent, which was obtained prior to that parent's conviction for first degree murder in the murder of the child's other parent, unless such enforcement is in the best interest of the child.

b. Award visitation rights to a child's parent who has been convicted of murder in the first degree of the child's other parent, unless the court finds that such visitation is in the best interest of the child.

2. In determining whether visitation would be in the best interest of the child pursuant to subsection 1, the court shall consider all of the following:

a. The age and level of maturity of the child.

b. If the child is developmentally mature

enough to provide assent and whether the child does assent.

c. The recommendation of the child's custodian or legal guardian.

d. The recommendation of a child counselor or mental health professional following evaluation of the child.

e. The recommendation of a guardian ad litem for the child if one has been appointed to represent the child in the proceeding.

f. Any other information which the court deems to be relevant.

3. Until such time as an order regarding visitation rights under subsection 1 is entered, the child of a parent who has been convicted of murder in the first degree of the child's other parent shall not visit the parent who has been convicted.

99 Acts, ch 38, §1

598.42 Notice of certain orders by clerk of court.

The clerk of the district court shall provide notice and copies of temporary or permanent protective orders and orders to vacate the homestead entered pursuant to this chapter to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

91 Acts, ch 218, §20; 92 Acts, ch 1163, §107

CHAPTER 598A

UNIFORM CHILD-CUSTODY JURISDICTION

Repealed by 99 Acts, ch 103, §47;
see chapter 598B

CHAPTER 598B

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT

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ARTICLE I

GENERAL PROVISIONS

598B.101 Short title.

This chapter shall be known and may be cited as the *"Uniform Child-custody Jurisdiction and Enforcement Act"*.

99 Acts, ch 103, §1

598B.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Abandoned"* means left without provision for reasonable and necessary care or supervision.

2. *"Child"* means an individual who has not attained eighteen years of age.

3. *"Child-custody determination"* means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

4. *"Child-custody proceeding"* means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under article III.

5. *"Commencement"* means the filing of the first pleading in a proceeding.

6. *"Court"* means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

7. *"Home state"* means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

8. *"Initial determination"* means the first child-custody determination concerning a particular child.

9. *"Issuing court"* means the court that makes a child-custody determination for which enforcement is sought under this chapter.

10. *"Issuing state"* means the state in which a child-custody determination is made.

11. *"Modification"* means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

12. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

13. *"Person acting as a parent"* means a person, other than a parent, to whom both of the following apply:

a. The person has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding.

b. The person has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

14. *"Physical custody"* means the physical care and supervision of a child.

15. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

16. *"Tribe"* means an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

17. *"Warrant"* means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

99 Acts, ch 103, §2

598B.103 Proceedings governed by other law.

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

99 Acts, ch 103, §3

598B.104 Application to Indian tribes.

1. A child-custody proceeding that pertains to an Indian child as defined in the federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this chapter to the extent that it is governed by the federal Indian Child Welfare Act.

2. A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this article and article II.

3. A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under article III.

99 Acts, ch 103, §4

598B.105 International application.

1. A court of this state shall treat a foreign country as if it were a state of the United States for

the purpose of applying this article and article II.

2. Except as otherwise provided in subsection 3, a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under article III.

3. A court of this state need not apply this chapter if the child-custody law of a foreign country violates fundamental principles of human rights.

99 Acts, ch 103, §5

598B.106 Effect of child-custody determination.

A child-custody determination made by a court of this state that had jursidiction under this chapter binds all persons who have been served in accordance with the laws of this state, or notified in accordance with section 598B.108, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

99 Acts, ch 103, §6

598B.107 Priority.

If a question of existence or exercise of jurisdiction under this chapter is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

99 Acts, ch 103, §7

598B.108 Notice to persons outside state.

1. Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

2. Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

3. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

99 Acts, ch 103, §8

598B.109 Appearance and limited immunity.

1. A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

2. A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

3. The immunity granted by subsection 1 does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

99 Acts, ch 103, §9

598B.110 Communication between courts.

1. A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

2. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

3. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

4. Except as otherwise provided in subsection 3, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

5. For the purposes of this section, *"record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

99 Acts, ch 103, §10

598B.111 Taking testimony in another state.

1. In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

2. A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the means of transmission.

99 Acts, ch 103, §11

598B.112 Cooperation between courts — preservation of records.

1. A court of this state may request the appropriate court of another state to do any or all of the following:

a. Hold an evidentiary hearing.

b. Order a person to produce or give evidence pursuant to procedures of that state.

c. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding.

d. Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request.

e. Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

2. Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection 1.

3. Travel and other necessary and reasonable expenses incurred under subsections 1 and 2 may be assessed against the parties according to the law of this state.

4. A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

99 Acts, ch 103, §12

ARTICLE II

JURISDICTION

598B.201 Initial child-custody jurisdiction.

1. Except as otherwise provided in section 598B.204, a court of this state has jurisdiction to make an initial child-custody determination only if any of the following applies:

a. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

b. A court of another state does not have jurisdiction under paragraph *"a"*, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 598B.207 or 598B.208 and both of the following apply:

(1) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(2) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

c. All courts having jurisdiction under paragraph *"a"* or *"b"* have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 598B.207 or 598B.208.

d. No court of any other state would have jurisdiction under the criteria specified in paragraph *"a"*, *"b"*, or *"c"*.

2. Subsection 1 is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

3. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

99 Acts, ch 103, §13

598B.202 Exclusive, continuing jurisdiction.

1. Except as otherwise provided in section 598B.204, a court of this state which has made a child-custody determination consistent with section 598B.201 or 598B.203 has exclusive, continuing jurisdiction over the determination until any of the following occurs:

a. A court of this state determines that the child does not have, the child and one parent do not have, or the child and a person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.

b. A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

2. A court of this state which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 598B.201.

99 Acts, ch 103, §14

598B.203 Jurisdiction to modify determination.

Except as otherwise provided in section 598B.204, a court of this state shall not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under

section 598B.201, subsection 1, paragraph *"a"* or *"b"*, and either of the following applies:

1. The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 598B.202 or that a court of this state would be a more convenient forum under section 598B.207.

2. A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

99 Acts, ch 103, §15

598B.204 Temporary emergency jurisdiction.

1. A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

2. If there is no previous child-custody determination that is entitled to be enforced under this chapter and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 598B.201 through 598B.203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.203, a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

3. If there is a previous child-custody determination that is entitled to be enforced under this chapter, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 598B.201 through 598B.203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

4. A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under sections 598B.201 through 598B.203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections 598B.201 through 598B.203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

99 Acts, ch 103, §16; 2000 Acts, ch 1154, §36

598B.205 Notice — opportunity to be heard — joinder.

1. Before a child-custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 598B.108 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

2. This chapter does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

3. The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this chapter are governed by the law of this state as in child-custody proceedings between residents of this state.

99 Acts, ch 103, §17

598B.206 Simultaneous proceedings.

1. Except as otherwise provided in section 598B.204, a court of this state shall not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 598B.207.

2. Except as otherwise provided in section 598B.204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 598B.209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

3. In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the determina-

tion has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may do any of the following:

a. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement.

b. Enjoin the parties from continuing with the proceeding for enforcement.

c. Proceed with the modification under conditions it considers appropriate.

99 Acts, ch 103, §18

598B.207 Inconvenient forum.

1. A court of this state which has jurisdiction under this chapter to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

2. Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including all of the following:

a. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

b. The length of time the child has resided outside this state.

c. The distance between the court in this state and the court in the state that would assume jurisdiction.

d. The relative financial circumstances of the parties.

e. Any agreement of the parties as to which state should assume jurisdiction.

f. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

g. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.

h. The familiarity of the court of each state with the facts and issues in the pending litigation.

3. If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

4. A court of this state may decline to exercise its jurisdiction under this chapter if a child-custody determination is incidental to an action for dissolution of marriage or another proceeding while still retaining jurisdiction over the dissolution of marriage or other proceeding.

99 Acts, ch 103, §19

598B.208 Jurisdiction declined by reason of conduct.

1. Except as otherwise provided in section 598B.204 or by any other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless any of the following applies:

a. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction.

b. A court of the state otherwise having jurisdiction under sections 598B.201 through 598B.203 determines that this state is a more appropriate forum under section 598B.207.

c. No court of any other state would have jurisdiction under the criteria specified in sections 598B.201 through 598B.203.

2. If a court of this state declines to exercise its jurisdiction pursuant to subsection 1, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under sections 598B.201 through 598B.203.

3. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection 1, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care expenses during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court shall not assess fees, costs, or expenses against this state unless authorized by law other than this chapter.

99 Acts, ch 103, §20; 2000 Acts, ch 1058, §50

598B.209 Information to be submitted to court.

1. In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party has or knows all of the following:

a. Has participated, as a party or a witness or in any other capacity, in any other proceeding con-

cerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any.

b. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding.

c. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

2. If the information required by subsection 1 is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

3. If the declaration as to any of the items described in subsection 1, paragraphs *"a"* through *"c"*, is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

4. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

5. Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the court shall order that the address of the party or child or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

99 Acts, ch 103, §21

598B.210 Appearance of parties and child.

1. In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

2. If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section 598B.108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

3. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

4. If a party to a child-custody proceeding who is outside this state is directed to appear under subsection 2 or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

99 Acts, ch 103, §22

ARTICLE III

ENFORCEMENT

598B.301 Definitions.

As used in this article, unless the context otherwise requires:

1. *"Petitioner"* means a person who seeks enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child-custody determination.

2. *"Respondent"* means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child-custody determination.

99 Acts, ch 103, §23

598B.302 Enforcement under Hague convention.

Under this article, a court of this state may enforce an order for the return of the child made under the Hague convention on the civil aspects of international child abduction as if it were a child-custody determination.

99 Acts, ch 103, §24

598B.303 Duty to enforce.

1. A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

2. A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in this article are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

99 Acts, ch 103, §25

598B.304 Temporary visitation.

1. A court of this state which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing any of the

following:

a. A visitation schedule made by a court of another state.

b. The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

2. If a court of this state makes an order under subsection 1, paragraph *"b"*, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in article II. The order remains in effect until an order is obtained from the other court or the period expires.

99 Acts, ch 103, §26

598B.305 Registration of child-custody determination.

1. A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the district court in this state all of the following:

a. A letter or other document requesting registration.

b. Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified.

c. Except as otherwise provided in section 598B.209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

2. On receipt of the documents required by subsection 1, the registering court shall do all of the following:

a. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.

b. Serve notice upon the persons named pursuant to subsection 1, paragraph *"c"*, and provide them with an opportunity to contest the registration in accordance with this section.

3. The notice required by subsection 2, paragraph *"b"*, must state all of the following:

a. That a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.

b. That a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice.

c. That failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

4. A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes any of the following:

a. That the issuing court did not have jurisdiction under article II.

b. That the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under article II.

c. That the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 598B.108, in the proceedings before the court that issued the order for which registration is sought.

5. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

6. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

99 Acts, ch 103, §27

598B.306 Enforcement of registered determination.

1. A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

2. A court of this state shall recognize and enforce, but shall not modify, except in accordance with article II, a registered child-custody determination of a court of another state.

99 Acts, ch 103, §28

598B.307 Simultaneous proceedings.

If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under article II, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

99 Acts, ch 103, §29

598B.308 Expedited enforcement of child-custody determination.

1. A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certi-

fied copy of an order may be attached instead of the original.

2. A petition for enforcement of a child-custody determination must state all of the following:

a. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was.

b. Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding.

c. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding.

d. The present physical address of the child and the respondent, if known.

e. Whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

f. If the child-custody determination has been registered and confirmed under section 598B.305, the date and place of registration.

3. Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

4. An order issued under subsection 3 must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under section 598B.312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes either of the following:

a. The child-custody determination has not been registered and confirmed under section 598B.305 and that any of the following apply:

(1) The issuing court did not have jurisdiction under article II.

(2) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under article II.

(3) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 598B.108, in the proceedings before the court that issued the order for which enforcement is sought.

b. The child-custody determination for which enforcement is sought was registered and confirmed under section 598B.305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article II.

99 Acts, ch 103, §30; 2000 Acts, ch 1154, §37

598B.309 Service of petition and order.

Except as otherwise provided in section 598B.311, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

99 Acts, ch 103, §31

598B.310 Hearing and order.

1. Unless the court issues a temporary emergency order pursuant to section 598B.204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that any of the following applies:

a. The child-custody determination has not been registered and confirmed under section 598B.305, and that any of the following applies:

(1) The issuing court did not have jurisdiction under article II.

(2) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article II.

(3) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 598B.108, in the proceedings before the court that issued the order for which enforcement is sought.

b. The child-custody determination for which enforcement is sought was registered and confirmed under section 598B.305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article II.

2. The court shall award the fees, costs, and expenses authorized under section 598B.312, and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

3. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

4. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child shall not be invoked in a proceeding under this article.

99 Acts, ch 103, §32

598B.311 Warrant to take physical custody of child.

1. Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this state.

2. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 598B.308, subsection 2.

3. A warrant to take physical custody of a child must provide all of the following:

a. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based.

b. Direct law enforcement officers to take physical custody of the child immediately.

c. Provide for the placement of the child pending final relief.

4. The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

5. A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

6. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

99 Acts, ch 103, §33

598B.312 Costs, fees, and expenses.

1. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care expenses during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

2. The court shall not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

99 Acts, ch 103, §34; 2000 Acts, ch 1058, §51

598B.313 Recognition and enforcement.

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under article II.

99 Acts, ch 103, §35

598B.314 Appeals.

An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 598B.204, the enforcing court shall not stay an order enforcing a child-custody determination pending appeal.

99 Acts, ch 103, §36

598B.315 Role of prosecutor.

1. In a case arising under this chapter or involving the Hague convention on the civil aspects of international child abduction, the prosecutor may take any lawful action, including resort to a proceeding under this article or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is any of the following:

a. An existing child-custody determination.

b. A request to do so from a court in a pending child-custody proceeding.

c. A reasonable belief that a criminal statute has been violated.

d. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague convention on the civil aspects of international child abduction.

2. A prosecutor acting under this section acts on behalf of the court and shall not represent any party.

99 Acts, ch 103, §37

598B.316 Role of law enforcement.

At the request of a prosecutor acting under section 598B.315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor with responsibilities under section 598B.315.

99 Acts, ch 103, §38

598B.317 Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor and law enforcement officers under section 598B.315 or 598B.316.

99 Acts, ch 103, §39

ARTICLE IV

MISCELLANEOUS PROVISIONS

598B.401 Application and construction.

In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

99 Acts, ch 103, §40

598B.402 Transitional provision.

A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before July 1, 1999, is governed by the law in effect at the time the motion or other request was made.

99 Acts, ch 103, §41

CHAPTER 599

MINORS

599.1 Period of minority — exception for certain inmates.
599.2 Contracts — disaffirmance.
599.3 Misrepresentations — engaging in business.
599.4 Payments.
599.5 Veterans minority disabilities.
599.6 Donation of blood by minors.

599.1 Period of minority — exception for certain inmates.

The period of minority extends to the age of eighteen years, but all minors attain their majority by marriage.

A person who is less than eighteen years old, but who is tried, convicted, and sentenced as an adult and committed to the custody of the director of the department of corrections shall be deemed to have attained the age of majority for purposes of making decisions and giving consent to medical care, related services, and treatment during the period of the person's incarceration.

[C51, §1487; R60, §2539; C73, §2237; C97, §3188; C24, 27, 31, 35, 39, §**10492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §599.1]

93 Acts, ch 46, §2

599.2 Contracts — disaffirmance.

A minor is bound not only by contracts for necessaries, but also by the minor's other contracts, unless the minor disaffirms them within a reasonable time after attaining majority, and restores to the other party all money or property received by the minor by virtue of the contract, and remaining within the minor's control at any time after attaining majority except as otherwise provided.

[C51, §1488; R60, §2540; C73, §2238; C97, §3189; C24, 27, 31, 35, 39, §**10493;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §599.2]

599.3 Misrepresentations — engaging in business.

No contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to the minor's majority, or from the minor's having engaged in business as an adult, the other party had good reason to believe the minor capable of contracting.

[C51, §1489; R60, §2541; C73, §2239; C97, §3190; C24, 27, 31, 35, 39, §**10494;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §599.3]

599.4 Payments.

Where a contract for the personal services of a minor has been made with the minor alone, and the services are afterwards performed, payment therefor made to the minor, in accordance with the terms of the contract, is a full satisfaction therefor, and the parent or guardian cannot recover a second time.

[C51, §1490; R60, §2542; C73, §2240; C97, §3191; C24, 27, 31, 35, 39, §**10495;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §599.4]

599.5 Veterans minority disabilities.

The disability of minority of any person otherwise eligible for guaranty or insurance of a loan pursuant to the Servicemen's Readjustment Act of 1944*, as amended and of the minor spouse of any eligible veteran, irrespective of age, in connection with any transaction entered into pursuant to said Act, as amended, is hereby removed for all purposes in connection with such transaction, including, but not limited to, incurring of indebtedness or obligations, and acquiring, encumbering, selling, releasing or conveying property or any interest therein, and litigating or settling controversies arising therefrom, if all or part of any obligations incident to such transaction be guaranteed or insured by the administrator of veterans affairs

pursuant to such Act; provided, nevertheless, that this section shall not be construed to impose any other or greater rights or liabilities than would exist if such person and such spouse were under no such disability.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §599.5]

*58 Stat. L. 291; recodified, 72 Stat. L. 1105, 1273; now covered by 38 U.S.C. §3701 et seq.

599.6 Donation of blood by minors.

A person who is seventeen years of age or older may consent to donate blood in a voluntary and noncompensatory blood program without the permission of a parent or guardian. The consent is not subject to later disaffirmance because of minority.

83 Acts, ch 13, §1

CHAPTER 600

ADOPTION

600.1 Construction.
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600.4 Qualifications to file adoption petition.
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600.6 Attachments to an adoption petition.
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600.7A Adoption services provided by or through department of human services — selection of adoptive parent criteria.
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600.18 Determination of assistance.
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600.20 Availability of assistance.
600.21 Termination of assistance.
600.22 Rules.
600.23 Adoption assistance compact.
600.24 Access to records.
600.25 Pending parental rights unaffected.

600.1 Construction.

This chapter* shall be construed liberally. The best interest of the person to be adopted shall be the paramount consideration in interpreting this chapter. However, the interests of the adopting parents shall be given due consideration in this interpretation. However, in determining the best interest of the person to be adopted and the interests of the adopting parents, any evidence of interests relating to a period of time during which the person to be adopted is placed with prospective adoptive parents and during which the placement is not in compliance with the law, adoption procedures, or any action by the juvenile court or court, shall not be considered in the determination.

[C77, 79, 81, §600.1]

94 Acts, ch 1174, §6, 22; 2000 Acts, ch 1145, §2

*Enacted as sections 600.1 to 600.16, Code 1977

600.2 Definitions.

1. *"Child"*, *"parent"*, *"parent-child relationship"*, *"termination of parental rights"*, *"biological parent"*, *"stepparent"*, *"guardian"*, *"custodian"*, *"guardian ad litem"*, *"minor"*, *"adult"*, *"agency"*, *"department"*, *"court"*, *"juvenile court"*, *"independent placement"* mean the same as defined in section 600A.2.

2. *"Investigator"* means a natural person who is certified or approved by the department of human services, after inspection by the department of inspections and appeals, as being capable of conducting an investigation under section 600.8.

[C77, 79, 81, §600.2]

90 Acts, ch 1204, §64; 94 Acts, ch 1046, §12

600.3 Commencement of adoption action — jurisdiction — forum non conveniens.

1. An action for the adoption of any natural person shall be commenced by the filing of an adoption petition, as prescribed in section 600.5, in the juvenile court or court of the county in which an adult person to be adopted is domiciled or resides, or in the juvenile court or court of the county in which the guardian of a minor person to be adopted or the petitioner is domiciled or resides.

2. An adoption petition shall not be filed until a termination of parental rights has been accomplished except in the following cases:

a. No termination of parental rights is required if the person to be adopted is an adult.

b. If the stepparent of the child to be adopted is the adoption petitioner, the parent-child relationship between the child and the parent who is not the spouse of the petitioner may be terminated as part of the adoption proceeding by the filing of that parent's consent to the adoption.

c. A termination of parental rights order is not required prior to the filing of an adoption petition if the adoption is a standby adoption as defined in section 600.14A.

For the purposes of this subsection, a consent to adopt recognized by the juvenile courts or courts of another jurisdiction in the United States and obtained from a resident of that jurisdiction shall be accepted in this state in lieu of a termination of parental rights proceeding.

Any adoption proceeding pending on or completed prior to July 1, 1978, is hereby legalized and validated to the extent that it is consistent with this subsection.

3. If upon filing of the adoption petition or at any later time in the adoption action the juvenile court or court finds that in the interest of substantial justice the adoption action should be conducted in another juvenile court or court, it may transfer, stay, or dismiss the adoption action on any conditions that are just.

[R60, §2600; C73, §2307; C97, §3250; C24, §10496; C27, 31, 35, §10501-b1; C39, §**10501.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.1; C77, 79, 81, §600.3]

2000 Acts, ch 1145, §3; 2001 Acts, ch 57, §2

600.4 Qualifications to file adoption petition.

Any person who may adopt may file an adoption petition under section 600.3. The following persons may adopt:

1. An unmarried adult.
2. Husband and wife together.
3. A husband or wife separately if the person to be adopted is not the other spouse and if the adopting spouse:

a. Is the stepparent of the person to be adopted;

b. Has been separated from the other spouse by reason of the other spouse's abandonment as prescribed in section 597.10; or

c. Is unable to petition with the other spouse because of the prolonged and unexplained absence, unavailability, or incapacity of the other spouse, or because of an unreasonable withholding of joinder by the other spouse, as determined by the juvenile court or court under section 600.5, subsection 7.

[R60, §2600; C73, §2307; C97, §3250; C24, §10496; C27, 31, 35, §10501-b1; C39, §**10501.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.1; C77, 79, 81, §600.4]

2000 Acts, ch 1145, §4

600.5 Contents of an adoption petition.

An adoption petition shall be signed and verified by the petitioner, shall be filed with the juvenile court or court designated in section 600.3, and shall state:

1. The name, as it appears on the birth certificate or in a verified birth record or as it appears as a result of marriage, and the residence or domicile of the person to be adopted.
2. The date and place of birth of the person to be adopted.
3. Any new name requested to be given the person to be adopted.
4. The name, residence, and domicile of any guardian or custodian of the person to be adopted and the name, residence, and domicile of that person's guardian ad litem if one is appointed for the adoption proceedings.
5. The name, residence, and domicile of the petitioner, if this is not required to be stated under subsection 4 of this section, and the date or expected date on which the person to be adopted, if a minor, began or will begin living with the petitioner.
6. The name, residence, and domicile of any parent of the person to be adopted.
7. A designation of the particular provision in section 600.4 under which the petitioner is qualified to adopt and, if under section 600.4, subsection 3, paragraph *"c"*, a request that the juvenile court or court approve the petitioner's qualification to adopt.
8. A description and estimate of the value of any property owned by or held for the person to be adopted.
9. A description of the facilities and resources, including those provided under a subsidy agreement pursuant to sections 600.17 to 600.22, that the petitioner is willing and able to supply for the nurture and care of any minor person to be adopted.
10. When and where termination of parental rights pertaining to the person to be adopted has occurred, if termination was required under section 600.3.

[R60, §2600; C73, §2307; C97, §3250; C24, §10496; C27, 31, 35, §10501-b1; C39, §**10501.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.1; C77, 79, 81, §600.5]

2000 Acts, ch 1145, §5, 6

600.6 Attachments to an adoption petition.

An adoption petition shall have attached to it the following:

1. A certified copy of the birth certificate showing parentage of the person to be adopted or, if such certificate is not available, a verified birth record.
2. A copy of any order terminating parental rights with respect to the person to be adopted.
3. Any written consent and verified statement

required under section 600.7, except the consent required under subsection 1, paragraph *"d"*, of that section.

4. Any preplacement investigation report that has been prepared at the time of filing pursuant to section 600.8.

5. In the case of a standby adoption as defined in section 600.14A, a form completed by the terminally ill parent consenting to termination of parental rights and adoption of the child by a person or persons specified in the consent form, effective at a future date when the terminally ill parent of the child has died or requests that a final adoption decree be issued.

[R60, §2601; C73, §2308; C97, §3251; C24, §10497; C27, 31, 35, §10501-b3; C39, §**10501.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.3; C77, 79, 81, §600.6]

89 Acts, ch 140, §1; 99 Acts, ch 43, §1; 2001 Acts, ch 57, §3

600.7 Consents to the adoption.

1. An adoption petition shall not be granted unless the following persons consent to the adoption or unless the juvenile court or court makes a determination under subsection 4:

a. Any guardian of the person to be adopted.

b. The spouse of a petitioner who is a stepparent.

c. The spouse of a petitioner who is separately petitioning to adopt an adult person.

d. The person to be adopted if that person is fourteen years of age or older.

2. A consent to the adoption shall be in writing, shall name the person to be adopted and the petitioner, shall be signed by the person consenting, and shall be made in the following manner:

a. If by any minor person to be adopted who is fourteen years of age or older, in the presence of the juvenile court or court in which the adoption petition is filed.

b. If by any other person, either in the presence of the juvenile court or court in which the adoption petition is filed or before a notary public.

3. A consent to the adoption may be withdrawn prior to the issuance of an adoption decree under section 600.13 by the filing of an affidavit of consent withdrawal with the juvenile court or court. Such affidavit shall be treated in the same manner as an attached verified statement is treated under subsection 4.

4. If any person required to consent under this section refuses to or cannot be located to give consent, the petitioner may attach to the petition a verified statement of such refusal or lack of location. The juvenile court or court shall then determine, at the adoption hearing prescribed in section 600.12, whether, in the best interests of the person to be adopted and the petitioner, any particular consent shall be unnecessary to the granting of an adoption petition.

[R60, §2600, 2601; C73, §2307, 2308; C97, §3250, 3251; C24, §10496, 10497; C27, 31, 35, §10501-b1, 10501-b3; C39, §**10501.1, 10501.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.1, 600.3; C77, 79, 81, §600.7]

2000 Acts, ch 1145, §7 – 9

600.7A Adoption services provided by or through department of human services — selection of adoptive parent criteria.

The department of human services shall adopt rules which provide that if adoption services are provided by or through the department, notwithstanding any other selection of adoptive parent criteria, the overriding criterion shall be a preference for placing a child in a stable home environment as expeditiously as possible.

96 Acts, ch 1174, §7

600.8 Placement investigations and reports.

1. *a.* A preplacement investigation shall be directed to and a report of this investigation shall answer the following:

(1) Whether the home of the prospective adoption petitioner is a suitable one for the placement of a minor person to be adopted.

(2) How the prospective adoption petitioner's emotional maturity, finances, health, relationships, and any other relevant factor may affect the petitioner's ability to accept, care, and provide a minor person to be adopted with an adequate environment as that person matures.

(3) Whether the prospective adoption petitioner has been convicted of a crime under a law of any state or has a record of founded child abuse.

b. A postplacement investigation and a report of this investigation shall:

(1) Verify the allegations of the adoption petition and its attachments and of the report of expenditures required under section 600.9.

(2) Evaluate the progress of the placement of the minor person to be adopted.

(3) Determine whether adoption by the adoption petitioner may be in the best interests of the minor person to be adopted.

c. A background information investigation and a report of the investigation shall be made by the agency, the person making an independent placement, or an investigator. The background information investigation and report shall not disclose the identity of the biological parents of the minor person to be adopted. The report shall be completed and filed with the court prior to the holding of the adoption hearing prescribed in section 600.12. The report shall be in substantial conformance with the prescribed medical and social history forms designed by the department pursuant to section 600A.4, subsection 2, paragraph *"f"*. A copy of the background information investigation report shall be furnished to the adoption petitioners within thirty days after the filing of the

adoption petition. Any person, including a juvenile court, who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of a background information investigation by disclosing any relevant background information, whether contained in sealed records or not.

2. *a.* A preplacement investigation and report of the investigation shall be completed and the prospective adoption petitioner approved for a placement by the person making the investigation prior to any agency or independent placement of a minor person in the petitioner's home in anticipation of an ensuing adoption. A report of a preplacement investigation that has approved a prospective adoption petitioner for a placement shall not authorize placement of a minor person with that petitioner after one year from the date of the report's issuance. However, if the prospective adoption petitioner is a relative within the fourth degree of consanguinity who has assumed custody of a minor person to be adopted, a preplacement investigation of this petitioner and a report of the investigation may be completed at a time established by the juvenile court or court or may be waived as provided in subsection 12.

b. (1) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph *"a"*, subparagraph (3), and an evaluation shall not be performed under subparagraph (2), if the petitioner has been convicted of any of the following felony offenses:

(a) Within the five-year period preceding the petition date, a drug-related offense.

(b) Child endangerment or neglect or abandonment of a dependent person.

(c) Domestic abuse.

(d) A crime against a child, including but not limited to sexual exploitation of a minor.

(e) A forcible felony.

(2) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph *"a"*, subparagraph (3), unless an evaluation has been made which considers the nature and seriousness of the crime or founded abuse in relation to the adoption, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

c. If the person making the investigation does not approve a prospective adoption petitioner under paragraph *"a"* of this subsection, the person investigated may appeal the disapproval as a contested case to the director of human services. Judicial review of any adverse decision by the director may be sought pursuant to chapter 17A.

3. The department, an agency or an investigator shall conduct all investigations and reports required under subsection 2 of this section.

4. A postplacement investigation and the report of the investigation shall be completed and filed with the juvenile court or court prior to the holding of the adoption hearing prescribed in section 600.12. Upon the filing of an adoption petition pursuant to section 600.5, the juvenile court or court shall immediately appoint the department, an agency, or an investigator to conduct and complete the postplacement report. Any person who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of the postplacement investigation by disclosing any relevant information requested, whether contained in sealed records or not.

5. Any person conducting an investigation under subsection 1, paragraph *"c"*, subsection 3, or subsection 4, may, in the investigation or subsequent report, include, utilize, or rely upon any reports, studies, or examinations to the extent they are relevant.

6. Any person conducting an investigation under subsection 1, paragraph *"c"*, subsection 3, or subsection 4, may charge a fee which does not exceed the reasonable cost of the services rendered and which is based on a sliding scale schedule relating to the investigated person's ability to pay.

7. Any investigation or report required under this section shall not apply when the person to be adopted is an adult or when the prospective adoption petitioner or adoption petitioner is a stepparent of the person to be adopted. However, in the case of a stepparent adoption, the juvenile court or court, upon the request of an interested person or on its own motion stating the reasons therefor of record, may order an investigation or report pursuant to this section.

8. Any person designated to make an investigation and report under this section may request an agency or state agency, within or outside this state, to conduct a portion of the investigation or the report, as may be appropriate, and to file a supplemental report of such investigation or report with the juvenile court or court. In the case of the adoption of a minor person by a person domiciled or residing in any other jurisdiction of the United States, any investigation or report required under this section which has been conducted pursuant to the standards of that other jurisdiction shall be recognized in this state.

9. The department may investigate, on its own initiative or on order of the juvenile court or court, any placement made or adoption petition filed under this chapter or chapter 600A and may report its resulting recommendation to the juvenile court or court.

10. The department or an agency or investigator may conduct any investigations required for an interstate or interagency placement. Any interstate investigations or placements shall follow the procedures and regulations under the interstate

compact on the placement of children. Such investigations and placements shall be in compliance with the laws of the states involved.

11. Any person who assists in or impedes the placement or adoption of a minor person in violation of the provisions of this section shall be, upon conviction, guilty of a simple misdemeanor.

12. Any investigation and report required under subsection 1 of this section may be waived by the juvenile court or court if the adoption petitioner is related within the fourth degree of consanguinity to the person to be adopted.

[C27, 31, 35, §10501-b2; C39, §**10501.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.2; C77, 79, 81, §600.8]

83 Acts, ch 96, §157, 159; 87 Acts, ch 153, §18, 19; 88 Acts, ch 1134, §101; 94 Acts, ch 1046, §13; 98 Acts, ch 1190, §30; 99 Acts, ch 138, §1, 2; 2000 Acts, ch 1145, §10, 11; 2001 Acts, ch 24, §67, 68, 74

600.9 Report of expenditures.

1. *a.* A biological parent shall not receive any thing of value as a result of the biological parent's child or former child being placed with and adopted by another person, unless that thing of value is an allowable expense under subsection 2.

b. Any person assisting in any way with the placement or adoption of a minor person shall not charge a fee which is more than usual, necessary, and commensurate with the services rendered.

c. If the biological parent receives any prohibited thing of value, if a person gives a prohibited thing of value, or if a person charges a prohibited fee under this subsection, the person is guilty of a simple misdemeanor.

2. An adoption petitioner of a minor person shall file with the juvenile court or court, prior to the adoption hearing, a full accounting of all disbursements of any thing of value paid or agreed to be paid by or on behalf of the petitioner in connection with the petitioned adoption. This accounting shall be made by a report prescribed by the juvenile court or court and shall be signed and verified by the petitioner. Only expenses incurred in connection with the following and any other expenses approved by the juvenile court or court are allowable:

a. The birth of the minor person to be adopted.

b. Placement of the minor person with the adoption petitioner and legal expenses related to the termination of parental rights and adoption processes.

c. Pregnancy-related medical care received by the biological parents or the minor person during the pregnancy or delivery of the minor person and for medically necessary postpartum care for the biological parent and the minor person.

d. Living expenses of the mother, permitted in an amount not to exceed the cost of room and board or rent and food, and transportation, for medical purposes only, on a common carrier of persons or an ambulance, for no longer than thirty days after the birth of the minor person.

e. Costs of the counseling provided to the biological parents prior to the birth of the child, prior to the release of custody, and any counseling provided to the biological parents for not more than sixty days after the birth of the child.

f. Living expenses of the minor person if the minor person is placed in foster care during the pendency of the termination of parental rights proceedings.

All payments for allowable expenses shall be made to the provider, if applicable, and not directly to the biological parents. The provisions of this subsection do not apply in a stepparent adoption.

[C77, 79, 81, §600.9]

94 Acts, ch 1046, §14, 15; 94 Acts, ch 1174, §7, 22; 99 Acts, ch 138, §3; 2000 Acts, ch 1145, §12; 2001 Acts, ch 24, §67, 74

600.10 Minimum residence of a minor child.

The adoption of a minor person shall not be decreed until that person has lived with the adoption petitioner for a minimum residence period of one hundred eighty days. However, the juvenile court or court may waive this period if the adoption petitioner is a stepparent or related to the minor person within the fourth degree of consanguinity or may shorten this period upon good cause shown when the juvenile court or court is satisfied that the adoption petitioner and the person to be adopted are suited to each other.

[C27, 31, 35, §10501-b2; C39, §**10501.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.2; C77, 79, 81, §600.10]

2000 Acts, ch 1145, §13

600.11 Notice of adoption hearing.

1. The juvenile court or court shall set the time and place of the adoption hearing prescribed in section 600.12 upon application of the petitioner. The juvenile court or court may continue the adoption hearing if the notice prescribed in subsections 2 and 3 is given, except that such notice shall only be given at least ten days prior to the date which has been set for the continuation of the adoption hearing.

2. At least twenty days before the adoption hearing, a copy of the petition and its attachments and a notice of the adoption hearing shall be given by the adoption petitioner to:

a. A guardian, guardian ad litem if appointed for the adoption proceedings, and custodian of, and a person in a parent-child relationship with the person to be adopted. This paragraph does not require notice to be given to a person whose parental rights have been terminated with regard to the person to be adopted.

b. The person to be adopted who is an adult.

c. Any person who is designated to make an investigation and report under section 600.8.

d. Any other person who is required to consent under section 600.7.

e. A person who has been granted visitation rights with the child to be adopted pursuant to section 598.35.

Nothing in this subsection shall require the petitioner to give notice to self or to petitioner's spouse. A duplicate copy of the petition and its attachments shall be mailed to the department by the clerk of court at the time the petition is filed.

f. A person who is ordered to pay support or a postsecondary education subsidy pursuant to section 598.21, subsection 5A, or chapter 234, 252A, 252C, 252F, 598, 600B, or any other chapter of the Code, for a person eighteen years of age or older who is being adopted by a stepparent, and the support order or order requires payment of support or postsecondary education subsidy for any period of time after the child reaches eighteen years of age.

3. A notice of the adoption hearing shall state the time, place, and purpose of the hearing and shall be served in accordance with rule of civil procedure 1.305. Proof of the giving of notice shall be filed with the juvenile court or court prior to the adoption hearing. Acceptance of service by the party being given notice shall satisfy the requirements of this subsection.

[C27, 31, 35, §10501-b4; C39, §**10501.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.4; C77, 79, 81, §600.11]

94 Acts, ch 1174, §8, 22; 2000 Acts, ch 1145, §14; 2002 Acts, ch 1018, §20

Subsection 2, NEW paragraph f

600.12 Adoption hearing.

1. An adoption hearing shall be conducted informally as a hearing in equity. The hearing shall be reported.

2. Only those persons notified under section 600.11 and their witnesses and legal counsel or persons requested by the juvenile court or court to be present shall be admitted to the court chambers while an adoption hearing is being conducted. The adoption petitioner and the person to be adopted shall be present at the hearing, unless the presence of either is excused by the juvenile court or court.

3. Any person admitted to the hearing shall be heard and allowed to present evidence upon request and according to the manner in which the juvenile court or court conducts the hearing.

[C27, 31, 35, §10501-b4; C39, §**10501.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.4; C77, 79, 81, §600.12]

2000 Acts, ch 1145, §15

600.12A Death of person to be adopted — process for final adoption decree.

1. If the person to be adopted dies following the filing of an adoption petition pursuant to section 600.3, but prior to issuance of a final adoption decree pursuant to section 600.13, the juvenile court or court may waive any investigations and reports required pursuant to section 600.8 that remain uncompleted, waive the minimum residence requirements pursuant to section 600.10, proceed to the adoption hearing, and issue a final adoption decree, unless any person to whom notice is to be provided pursuant to section 600.11 objects to the adoption.

2. If the person to be adopted dies following termination of the parental rights of the person's biological parents but prior to the filing of an adoption petition, the person who was the guardian or custodian of the person to be adopted prior to the person's death or the person who was in a parent-child relationship with the person to be adopted prior to the person's death may file an adoption petition and the juvenile court or court in the interest of justice may waive any other procedures or requirements related to the adoption, proceed to the adoption hearing, and issue a final adoption decree, unless any person to whom notice is to be provided pursuant to section 600.11 objects to the adoption.

3. A final adoption decree issued pursuant to this section terminates any parental rights existing prior to the time of its issuance and establishes the parent-child relationship between the adoption petitioner and the person adopted. However, the final adoption decree does not confer any rights on the adoption petitioner to the estate of the adopted person and does not confer any rights on the adopted person to the estate of the adoption petitioner.

98 Acts, ch 1064, §1, 3; 98 Acts, ch 1190, §31; 2000 Acts, ch 1145, §16

600.13 Adoption decrees.

1. At the conclusion of the adoption hearing, the juvenile court or court shall:

a. Issue a final adoption decree;

b. Issue an interlocutory adoption decree; or,

c. Issue a standby adoption decree pursuant to section 600.14A.

d. Dismiss the adoption petition if the requirements of this chapter have not been met or if dismissal of the adoption petition is in the best interest of the person whose adoption has been petitioned. Upon dismissal, the juvenile court or court shall determine who is to be guardian or custodian of a minor child, including the adoption petitioner if it is in the best interest of the minor person whose adoption has been petitioned.

2. An interlocutory adoption decree automatically becomes a final adoption decree at a date specified by the juvenile court or court in the interlocutory adoption decree, which date shall not be less than one hundred eighty days nor more than three hundred sixty days from the date the interlocutory decree is issued. However, an interlocutory adoption decree may be vacated prior to the date specified for it to become final. Also, the juve-

nile court or court may provide in the interlocutory adoption decree for further observation, investigation, and report of the conditions of and the relationships between the adoption petitioner and the person petitioned to be adopted.

3. If an interlocutory adoption decree is vacated under subsection 2, it shall be void from the date of issuance and the rights, duties, and liabilities of all persons affected by it shall, unless they have become vested, be governed accordingly. Upon vacation of an interlocutory adoption decree, the juvenile court or court shall proceed under the provisions of subsection 1, paragraph *"d"*.

4. A final adoption decree terminates any parental rights, except those of a spouse of the adoption petitioner, existing at the time of its issuance and establishes the parent-child relationship between the adoption petitioner and the person petitioned to be adopted. Unless otherwise specified by law, such parent-child relationship shall be deemed to have been created at the birth of the child.

5. An interlocutory or a final adoption decree shall be entered with the clerk of court. Such decree shall set forth any facts of the adoption petition which have been proven to the satisfaction of the juvenile court or court and any other facts considered to be relevant by the juvenile court or court and shall grant the adoption petition. If so designated in the adoption decree, the name of the adopted person shall be changed by issuance of that decree. The clerk of the court shall, within thirty days of issuance, deliver one certified copy of any adoption decree to the petitioner, one copy of any adoption decree to the department and any agency or person making an independent placement who placed a minor person for adoption, and one certification of adoption as prescribed in section 144.19 to the state registrar of vital statistics. Upon receipt of the certification, the state registrar shall prepare a new birth certificate pursuant to section 144.23 and deliver to the parents named in the decree and any adult person adopted by the decree a copy of the new birth certificate. The parents shall pay the fee prescribed in section 144.46. If the person adopted was born outside this state but in the United States, the state registrar shall forward the certification of adoption to the appropriate agency in the state of birth. A copy of any interlocutory adoption decree vacation shall be delivered and another birth certificate shall be prepared in the same manner as a certification of adoption is delivered and the birth certificate was originally prepared.

[R60, §2601, 2602, 2603; C73, §2308, 2309, 2310; C97, §3251, 3252, 3253; S13, §3253; C24, §10498, 10499, 10500; C27, 31, 35, §10501-b5, 10501-b6, 10501-b8; C39, §**10501.5, 10501.6, 10501.8;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §600.5, 600.6, 600.8; C77, 79, 81, §600.13]

89 Acts, ch 140, §2; 99 Acts, ch 43, §2; 2000 Acts, ch 1145, §17; 2000 Acts, ch 1232, §83; 2001 Acts, ch 24, §69, 74; 2001 Acts, ch 57, §4; 2002 Acts, ch 1040, §3, 5

Subsection 5 amended

600.14 Appeal — rules.

An appeal from any final order or decree rendered under this chapter or chapter 600A shall be taken in the same manner as an appeal is taken from a final judgment under the rules of civil procedure. However, a rule of civil procedure provision regarding a minimum amount of value in controversy shall not bar an adoption appeal. The supreme court shall review an adoption appeal de novo.

The supreme court may adopt rules which provide for the expediting of contested cases under this chapter and chapter 600A.

[C77, 79, 81, §600.14]

94 Acts, ch 1174, §9, 22

600.14A Standby adoption.

1. As used in this section:

a. "Standby adoption" means an adoption in which a terminally ill parent consents to termination of parental rights and the issuance of a final adoption decree effective upon the occurrence of a future event, which is either the death of the terminally ill parent or the request of the parent for the issuance of a final adoption decree.

b. "Terminally ill parent" means an individual who has a medical prognosis by a licensed physician that the individual has an incurable and irreversible condition which will lead to death.

2. A terminally ill parent may consent to termination of parental rights and adoption of a child under a standby adoption if the other parent of the child is not living or the other parent has previously had the parent's parental rights terminated.

3. A person who meets the qualifications to file an adoption petition pursuant to section 600.4 may file a petition for standby adoption. A standby adoption shall comply with the requirements of sections 600.7 through 600.12. However, the court may order that the completion of placement investigations and reports be expedited based on the circumstances of a particular case. The court may waive the minimum residence period requirement pursuant to section 600.10 to expedite the standby adoption if necessary.

4. If a consent to a standby adoption is attached to an adoption petition pursuant to section 600.6, the court determines that the requirements of this chapter relative to a standby adoption are met, and the court determines that the standby adoption is in the best interest of the child to be adopted, the court shall issue a standby adoption decree or a final adoption decree. However, the terminally ill parent's parental rights shall not be terminated and the standby adoption shall not be finalized until the death of the terminally ill par-

ent or the request of the terminally ill parent for issuance of the final adoption decree.

5. A standby adoption decree shall become final upon notice of the death of the terminally ill parent or upon the terminally ill parent's request that a final adoption decree be issued. If the court determines at the time of the notice or request that the standby adoption is still in the best interest of the child, the court shall issue a final adoption decree.

2001 Acts, ch 57, §5

600.15 Foreign and international adoptions.

A decree establishing a parent-child relationship by adoption which is issued pursuant to due process of law by a juvenile court or court of any other jurisdiction within or outside the United States shall be recognized in this state.

[C77, 79, 81, §600.15]

87 Acts, ch 140, §1 – 3; 98 Acts, ch 1064, §2; 99 Acts, ch 138, §4; 2000 Acts, ch 1145, §18; 2001 Acts, ch 24, §67, 74; 2002 Acts, ch 1040, §4, 5

Section amended

600.16 Adoption record — penalty for violations.

1. Any information compiled under section 600.8, subsection 1, paragraph *"c"*, relating to medical and developmental histories shall be made available at any time by the clerk of court, the department, or any agency which made the placement to:

a. The adopting parents.

b. The adopted person, provided that person is an adult at the time the request for information is made. For the purposes of this paragraph *"adult"* means a person twenty-one years of age or older or a person who attains majority by marriage.

c. Any person approved by the department if the person uses this information solely for the purposes of conducting a legitimate medical research project or of treating a patient in a medical facility.

d. A descendant of an adopted person.

2. Information regarding an adopted person's existing medical and developmental history and family medical history, which meets the definition of background information in section 600.8, subsection 1, paragraph *"c"*, shall be made available as provided in subsection 1. However, the identity of the adopted person's biological parents shall not be disclosed.

3. The provisions of this section also apply to information collected pursuant to section 600A.4, pertaining to the family medical history, medical and developmental history, and social history of the person to be adopted.

4. Any person other than the adopting parents or the adopted person, who discloses information in violation of this section, is guilty of a simple misdemeanor for the first offense, a serious misdemeanor for a second offense, and an aggravated misdemeanor for a third or subsequent offense.

[C46, §600.9; C50, 54, 58, 62, 66, 71, 73, 75, §600.9, 600.10; C77, 79, 81, §600.16]

89 Acts, ch 102, §7; 91 Acts, ch 243, §3; 92 Acts, ch 1142, §1; 92 Acts, ch 1196, §3; 94 Acts, ch 1046, §16; 94 Acts, ch 1174, §10, 11, 22; 99 Acts, ch 138, §5

600.16A Termination and adoption records closed — exceptions — penalty.

1. The permanent termination of parental rights record of the juvenile court under chapter 600A and the permanent adoption record of the juvenile court or court shall be sealed by the clerk of the juvenile court or the clerk of court, as appropriate, when they are complete and after the time for appeal has expired.

2. All papers and records pertaining to a termination of parental rights under chapter 600A and to an adoption shall not be open to inspection and the identity of the biological parents of an adopted person shall not be revealed except under any of the following circumstances:

a. An agency involved in placement shall contact the adopting parents or the adult adopted child regarding eligibility of the adopted child for benefits based on entitlement of benefits or inheritance from the terminated biological parents.

b. The juvenile court or court, for good cause, shall order the opening of the permanent adoption record of the juvenile court or court for the adopted person who is an adult and reveal the names of either or both of the biological parents following consideration of both of the following:

(1) A biological parent may file an affidavit requesting that the juvenile court or court reveal or not reveal the parent's identity. The juvenile court or court shall consider any such affidavit in determining whether there is good cause to order opening of the records. To facilitate the biological parents in filing an affidavit, the department shall, upon request of a biological parent, provide the biological parent with an adoption information packet containing an affidavit for completion and filing with the juvenile court or court.

(2) If the adopted person who applies for revelation of the biological parents' identity has a sibling who is a minor and who has been adopted by the same parents, the juvenile court or court may deny the application on the grounds that revelation to the applicant may also indirectly and harmfully permit the same revelation to the applicant's minor sibling.

c. A biological sibling of an adopted person may file or may request that the department file an affidavit in the juvenile court or court in which the adopted person's adoption records have been sealed requesting that the juvenile court or court reveal or not reveal the sibling's name to the adopted person. The juvenile court or court shall consider any such affidavit in determining wheth-

er there is good cause to order opening of the records upon application for revelation by the adopted person. However, the name of the biological sibling shall not be revealed until the biological sibling has attained majority.

d. The juvenile court or court may, upon competent medical evidence, open termination or adoption records if opening is shown to be necessary to save the life of or prevent irreparable physical or mental harm to an adopted person or the person's offspring. The juvenile court or court shall make every reasonable effort to prevent the identity of the biological parents from becoming revealed under this paragraph to the adopted person. The juvenile court or court may, however, permit revelation of the identity of the biological parents to medical personnel attending the adopted person or the person's offspring. These medical personnel shall make every reasonable effort to prevent the identity of the biological parents from becoming revealed to the adopted person.

3. In addition to other procedures by which adoption records may be opened under this section, if both of the following conditions are met, the department, the clerk of court, or the agency which made the placement shall open the adoption record for inspection and shall reveal the identity of the biological parents to the adult adopted child or the identity of the adult adopted child to the biological parents:

a. A biological parent has placed in the adoption record written consent to revelation of the biological parent's identity to the adopted child at an age specified by the biological parent, upon request of the adopted child.

b. An adult adopted child has placed in the adoption record written consent to revelation of the identity of the adult adopted child to a biological parent.

A person who has placed in the adoption record written consent pursuant to paragraph *"a"* or *"b"* of this subsection may withdraw the consent at any time by placing a written withdrawal of consent statement in the adoption record.

Notwithstanding the provisions of this subsection, if the adult adopted person has a sibling who is a minor and who has also been adopted by the same parents, the department, the clerk of court, or the agency which made the placement may deny the request of either the adult adopted person or the biological parent to open the adoption records and to reveal the identities of the parties pending determination by the juvenile court or court that there is good cause to open the records pursuant to subsection 2.

4. An adopted person whose adoption became final prior to July 4, 1941, and whose adoption record was not required to be sealed at the time when the adoption record was completed, shall not be required to show good cause for an order opening the adoption record under this subsection, provided that the juvenile court or court shall consider any affidavit filed under this subsection.

5. Notwithstanding subsection 2, a termination of parental rights order issued pursuant to section 600A.9 may be disclosed to the child support recovery unit, upon request, without court order.

6. Any person, other than the adopting parents or the adopted person, who discloses information in violation of this section, is guilty of a simple misdemeanor.

92 Acts, ch 1142, §2; 92 Acts, ch 1196, §4; 94 Acts, ch 1046, §17; 2000 Acts, ch 1145, §19 – 21; 2001 Acts, ch 79, §3

600.16B Fees.

The supreme court shall prescribe and the department of human services shall adopt rules, to defray the actual cost of the provision of information or the opening of records pursuant to section 600.16 or 600.16A.

92 Acts, ch 1196, §5

600.17 Financial assistance.

The department of human services shall, within the limits of funds appropriated to the department of human services and any gifts or grants received by the department for this purpose, provide financial assistance to any person who adopts a child with physical or mental disabilities or an older or otherwise hard-to-place child, if the adoptive parent has the capability of providing a suitable home for the child but the need for special services or the costs of maintenance are beyond the economic resources of the adoptive parent.

1. Financial assistance shall not be provided when the special services are available free of cost to the adoptive parent or are covered by an insurance policy of the adoptive parent.

2. *"Special services"* means any medical, dental, therapeutic, educational, or other similar service or appliance required by an adopted child by reason of a mental or physical disability.

[C73, 75, §600.11; C77, 79, 81, §600.17]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §102

600.18 Determination of assistance.

Any prospective adoptive parent desiring financial assistance shall state this fact in the petition for adoption. The department of human services shall investigate the person petitioning for adoption and the child and shall file with the juvenile court or court a statement of whether the department will provide assistance as provided in sections 600.17 to 600.22, the estimated amount, extent, and duration of assistance, and any other information the juvenile court or court may order.

If the department of human services is unable to determine that an insurance policy will cover the costs of special services, it shall proceed as if no policy existed, for the purpose of determining eligibility to receive assistance. The department shall, to the amount of financial assistance given, be

subrogated to the rights of the adoptive parent in the insurance contract.

[C73, 75, §600.12; C77, 79, 81, §600.18]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1145, §22

600.19 Amount of assistance.

The amount of financial assistance for maintenance shall not exceed the amount the department would normally spend for foster care of the child. The amount of financial assistance for special services shall not exceed the amount the department would normally spend if it were to provide these services.

[C73, 75, §600.13; C77, 79, 81, §600.19]

600.20 Availability of assistance.

Financial assistance shall be available only if the child to be adopted was under the guardianship of the state, county, or a licensed child-placing agency immediately prior to adoption. The one-hundred-eighty-day period of residence in the proposed home required in section 600.10 shall not apply to this section.

[C73, 75, §600.14; C77, 79, 81, §600.20]

600.21 Termination of assistance.

Financial assistance shall terminate when the need for assistance no longer exists. Financial assistance shall not extend beyond the adopted child's twenty-first birthday.

[C73, 75, §600.15; C77, 79, 81, §600.21]

600.22 Rules.

The department of human services shall adopt rules in accordance with the provisions of chapter 17A, which are necessary for the administration of sections 600.17 to 600.21 and 600.23.

[C73, 75, §600.16; C77, 79, 81, §600.22]

83 Acts, ch 96, §157, 159; 87 Acts, ch 102, §1

600.23 Adoption assistance compact.

1. *Purpose.* The department of human services may enter into interstate agreements with state agencies of other states for the protection of children on behalf of whom adoption subsidy is being provided by the department of human services and to provide procedures for interstate children's adoption assistance payments, including medical payments.

2. *Compact authorization and definitions.*

a. The Iowa department of human services may enter into interstate agreements with state agencies of other states for the provision of medical services to adoptive families who participate in the subsidized adoption or adoption assistance program.

b. The Iowa department of human services may develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in this section. When so entered into, and for so long as it shall remain in force, such a compact shall have the force and effect of law.

c. For the purposes of this section, the term *"state"* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

d. For the purposes of this section, the term *"adoption assistance or subsidized adoption state"* means the state that is signatory to an adoption assistance agreement in a particular case.

e. For the purposes of this section, the term *"residence state"* means the state of which the child is a resident by virtue of the residence of the adoptive parents.

3. *Compact contents.* A compact entered into pursuant to the authority conferred by this section shall have the following content:

a. A provision making it available for joinder by all states.

b. A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.

c. A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.

d. A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance, and that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state agency providing the adoption assistance.

e. Such other provisions as may be appropriate to implement the proper administration of the compact.

4. *Medical assistance.*

a. A child with special needs residing in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance card from this state upon the filing of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Iowa department of human services, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

b. The Iowa department of human services shall consider the holder of a medical assistance card pursuant to this section as any other holder of a medical assistance card under the laws of this state and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

c. The Iowa department of human services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption subsidy agreement made prior to July 1, 1987 by the Iowa department of human services for the coverage or benefits, if any, not provided by the residence state. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed for such expense. However, reimbursement shall not be made for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The additional coverages and benefit amounts provided pursuant to this subsection shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Such regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

d. A person who submits a claim for payment or reimbursement for services or benefits pursuant to this subsection or makes any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading, or fraudulent is guilty of an aggravated misdemeanor.

e. This subsection applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption subsidy agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive medical assistance in accordance with the laws and procedures applicable to medical assistance.

87 Acts, ch 102, §2

600.24 Access to records.

The department may allow access to adoption records held by the department or an agency if all of the following conditions are met:

1. The identity of the biological parents of the adopted person is concealed from the person gaining access to the records.

2. The person gaining access to the records uses them solely for the purposes of conducting a legitimate medical research project or of treating a patient in a medical facility.

[C79, 81, §600.24]

92 Acts, ch 1142, §3; 94 Acts, ch 1046, §18

600.25 Pending parental rights unaffected.

A termination of parental rights proceeding or an adoption proceeding pending on January 1, 1977, or a release of parental rights or affidavit of consent or consent to adopt properly given prior to January 1, 1977 shall not be affected by the provisions of chapter 600A.

[C79, 81, §600.25]

CHAPTER 600A

TERMINATION OF PARENTAL RIGHTS

Proceedings prior to January 1, 1977; see §600.25

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600A.1 Construction.

This chapter shall be construed liberally. The best interest of the child subject to the proceedings of this chapter shall be the paramount consideration in interpreting this chapter. However, the interests of the parents of this child or any natural

person standing in the place of the parents to this child shall be given due consideration in this interpretation.

The best interest of a child requires that each biological parent affirmatively assume the duties encompassed by the role of being a parent. In determining whether a parent has affirmatively assumed the duties of a parent, the court shall consider, but is not limited to consideration of, the fulfillment of financial obligations, demonstration of continued interest in the child, demonstration of a genuine effort to maintain communication with the child, and demonstration of the establishment and maintenance of a place of importance in the child's life. Application of this chapter is limited to termination of parental rights proceedings and shall not apply to actions to establish paternity or to overcome established paternity.

[C77, 79, 81, §600A.1]
94 Acts, ch 1174, §12, 22

600A.2 Definitions.

As used in this chapter:

1. *"Adult"* means a person who is married or eighteen years of age or older.

2. *"Agency"* means a child-placing agency as defined in section 238.2 or the department.

3. *"Biological parent"* means a parent who has been a biological party to the procreation of the child.

4. *"Child"* means a son or daughter of a parent, whether by birth or adoption.

5. *"Court"* means a district court.

6. *"Custodian"* means a stepparent or a relative within the fourth degree of consanguinity to a minor child who has assumed responsibility for that child, a person who has accepted a release of custody, or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child shall be as follows:

a. To maintain or transfer to another the physical possession of that child.

b. To protect, train, and discipline that child.

c. To provide food, clothing, housing, and ordinary medical care for that child.

d. To consent to emergency medical care, including surgery.

e. To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

7. *"Department"* means the state department of human services or its subdivisions.

8. *"Guardian"* means a person who is not the parent of a minor child, but who has been appointed by a court or juvenile court having jurisdiction over the minor child to make important decisions which have permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the minor child or by operation of law, the rights and duties of a guardian with respect to a minor child shall be as follows:

a. To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric or surgical treatment.

b. To serve as custodian, unless another person has been appointed custodian.

c. To make reasonable visitations if the guardian does not have physical possession or custody of the minor child.

d. To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

9. *"Guardian ad litem"* means a person appointed by a court or juvenile court having jurisdiction over the minor child to represent that child in a legal action. A guardian ad litem appointed under this chapter shall be a practicing attorney.

10. *"Independent placement"* means placement for purposes of adoption of a minor in the home of a proposed adoptive parent by a person who is not the proposed adoptive parent and who is not acting on behalf of the department or of a child-placing agency.

11. *"Juvenile court"* means the juvenile court established by section 602.7101.

12. *"Minor"* means an unmarried person who is under the age of eighteen years.

13. *"Parent"* means a father or mother of a child, whether by birth or adoption.

14. *"Parent-child relationship"* means the relationship between a parent and a child recognized by the law as conferring certain rights and privileges and imposing certain duties. The term extends equally to every child and every parent, regardless of the marital status of the parents of the child. The rights, duties, and privileges recognized in the parent-child relationship include those which are maintained by a guardian, custodian, and guardian ad litem.

15. *"Putative father"* means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of birth of the child.

16. *"Stepparent"* means a person who is the spouse of a parent in a parent-child relationship, but who is not a parent in that parent-child relationship.

17. *"Termination of parental rights"* means a complete severance and extinguishment of a parent-child relationship between one or both living parents and the child.

18. *"To abandon a minor child"* means that a parent, putative father, custodian, or guardian re-

jects the duties imposed by the parent-child relationship, guardianship, or custodianship, which may be evinced by the person, while being able to do so, making no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.

[C77, 79, 81, §600A.2]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10111, 10201; 90 Acts, ch 1271, §1510; 94 Acts, ch 1046, §19; 94 Acts, ch 1174, §13, 22; 97 Acts, ch 161, §1; 97 Acts, ch 209, §27, 30

600A.3 Exclusivity.

Termination of parental rights shall be accomplished only according to the provisions of this chapter. However, termination of parental rights between an adult child and the child's parents may be accomplished by a decree of adoption establishing a new parent-child relationship.

[C66, 71, 73, 75, §232.40; C77, 79, 81, §600A.3]

600A.4 Relationship unaltered — release of custody — voluntariness of release.

1. A parent shall not permanently alter the parent-child relationship, except as ordered by a juvenile court or court. However, custody of a minor child may be assumed by a stepparent or a relative of that child within the fourth degree of consanguinity or transferred by an acceptance of a release of custody. A person who assumes custody or an agency which accepts a release of custody under this section becomes, upon assumption or acceptance, the custodian of the minor child.

2. A release of custody:

a. Shall be accepted only by an agency or a person making an independent placement.

b. Shall not be accepted by a person who in any way intends to adopt the child who is the subject of the release.

c. Shall be in writing.

d. Shall contain written acknowledgment of the biological parents that after the birth of the child three hours of counseling have been offered to the biological parents by the agency, the person making an independent placement, an investigator as defined in section 600.2, or other qualified counselor regarding the decision to release custody and the alternatives available to the biological parents. The release of custody shall also contain written acknowledgment of the acceptance or refusal of the counseling. If accepted, the counseling shall be provided after the birth of the child and prior to the signing of a release of custody or the filing of a petition for termination of parental rights as applicable. Counseling shall be provided only by a person who is qualified under rules adopted by the department of human services which shall include a requirement that the person complete a minimum number of hours of training in the area of adoption-related counseling approved by the department. If counseling is accepted, the counselor shall provide an affidavit, which shall be attached to the release of custody, when practicable, certifying that the counselor has provided the biological parent with the requested counseling and documentation that the person is qualified to provide the requested counseling as prescribed by this paragraph. The requirements of this paragraph do not apply to a release of custody which is executed for the purposes of a stepparent adoption.

e. Shall contain a notice to the biological parent that if the biological parent chooses to identify the other biological parent and knowingly and intentionally identifies a person who is not the other biological parent in the written release of custody or in any other document related to the termination of parental rights proceedings, the biological parent who provides the incorrect identifying information is guilty of a simple misdemeanor.

f. Shall be accompanied by a report which includes, to the extent available, the complete family medical and social history of the person to be adopted including any known genetic, metabolic, or familial disorders and the complete medical and developmental history of the person to be adopted, and a social history of the minor child and the minor child's family but which does not disclose the identity of the biological parents of the person to be adopted. The social history may include but is not limited to the minor child's racial, ethnic, and religious background and a general description of the minor child's biological parents and an account of the minor child's prior and existing relationship with any relative, foster parent, or other individual with whom the minor child regularly lives or whom the child regularly visits.

A biological parent may also provide ongoing information to the adoptive parents, as additional medical or social history information becomes known, by providing information to the clerk of court, the department of human services, or the agency which made the placement, and may provide the current address of the biological parent. The clerk of court, the department of human services, or the agency which made the placement shall transmit the information to the adoptive parents if the address of the adoptive parents is known.

A person who furnishes a report required under this paragraph and the court shall not disclose any information upon which the report is based except as otherwise provided in this section and such a person is subject to the penalties provided in section 600.16, as applicable. A person who is the subject of any report may bring a civil action against a person who discloses the information in violation of this section.

Information provided under this paragraph shall not be used as evidence in any civil or criminal proceeding against a person who is the subject of the information.

The department shall prescribe forms designed

to obtain the family medical and social history and shall provide the forms at no charge to any agency or person who executes a release of custody of the minor child or who files a petition for termination of parental rights. The existence of this report does not limit a person's ability to petition the court for release of records in accordance with other provisions of law.

g. Shall be signed, not less than seventy-two hours after the birth of the child to be released, by all living parents. The seventy-two-hour minimum time period requirement shall not be waived.

h. Shall be witnessed by two persons familiar with the parent-child relationship.

i. Shall name the person who is accepting the release.

j. Shall be followed, within a reasonable time, by the filing of a petition for termination of parental rights under section 600A.5.

k. Shall state the purpose of the release, shall indicate that if it is not revoked it may be grounds for termination, and shall fully inform the signing parent of the manner in which a revocation of the release may be sought.

3. Notwithstanding the provisions of subsection 2, an agency or a person making an independent placement may assume custody of a minor child upon the signature of the one living parent who has possession of the minor child if the agency or a person making an independent placement immediately petitions the juvenile court designated in section 600A.5 to be appointed custodian and otherwise petitions, either in the same petition or within a reasonable time in a separate petition, for termination of parental rights under section 600A.5. Upon the custody petition, the juvenile court may appoint a guardian as well as a custodian.

4. Either a parent who has signed a release of custody, or a nonsigning parent, may, at any time prior to the entry of an order terminating parental rights, request the juvenile court designated in section 600A.5 to order the revocation of any release of custody previously executed by either parent. If such request is by a signing parent, and is within ninety-six hours of the time such parent signed a release of custody, the juvenile court shall order the release revoked. Otherwise, the juvenile court shall order the release or releases revoked only upon clear and convincing evidence that good cause exists for revocation. Good cause for revocation includes but is not limited to a showing that the release was obtained by fraud, coercion, or misrepresentation of law or fact which was material to its execution. In determining whether good cause exists for revocation, the juvenile court shall give paramount consideration to the best interests of the child including avoidance of a disruption of an existing relationship between a parent and child. The juvenile court shall also give due consideration to the interests of the parents of the child and of any person standing in the place of the parents.

[S13, §3260-c; C24, §3665; C27, 31, 35, §3661-a82, -a83, -a86; C39, §**3661.096, 3661.097, 3661.100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §238.25, 238.26, 238.29; C77, 79, 81, §600A.4]

92 Acts, ch 1192, §1, 5; 94 Acts, ch 1174, §14, 15, 22; 99 Acts, ch 138, §6

600A.5 Petition for termination.

1. The following persons may petition a juvenile court for termination of parental rights under this chapter if the child of the parent-child relationship is born or expected to be born within one hundred eighty days of the date of petition filing:

a. A parent or prospective parent of the parent-child relationship.

b. A custodian or guardian of the child.

2. A petition for termination of parental rights shall be filed with the juvenile court in the county in which the guardian or custodian of the child resides or the child, the biological mother or the pregnant woman is domiciled. If a juvenile court has made an order pertaining to a minor child under chapter 232, division III, and that order is still in force, the termination proceedings shall be conducted pursuant to the provisions of chapter 232, division IV.

3. A petition for termination of parental rights shall include the following:

a. The legal name, age and domicile, if any, of the child.

b. The names, residences, and domicile of any:

(1) Living parents of the child.

(2) Guardian of the child.

(3) Custodian of the child.

(4) Guardian ad litem of the child.

(5) Petitioner.

(6) Person standing in the place of the parents of the child.

c. A plain statement of the facts and grounds in section 600A.8 which indicate that the parent-child relationship should be terminated.

d. A plain statement explaining why the petitioner does not know any of the information required under paragraphs *"a"* and *"b"* of this subsection.

e. The signature and verification of the petitioner.

[C66, 71, 73, 75, §232.42, 232.43; C77, 79, 81, §600A.5]

94 Acts, ch 1046, §20; 95 Acts, ch 49, §21; 95 Acts, ch 182, §25

600A.6 Notice of termination hearing.

1. A termination of parental rights under this chapter shall, unless provided otherwise in this section, be ordered only after notice has been served on all necessary parties and these parties have been given an opportunity to be heard before the juvenile court except that notice need not be served on the petitioner or on any necessary party who is the spouse of the petitioner. *"Necessary*

party" means any person whose name, residence, and domicile are required to be included on the petition under section 600A.5, subsection 3, paragraphs *"a"* and *"b"*, and any putative father who files a declaration of paternity in accordance with section 144.12A, or any unknown putative father, if any, except a biological parent who has been convicted of having sexually abused the other biological parent while not cohabiting with that parent as husband and wife, thereby producing the birth of the child who is the subject of the termination proceedings.

2. Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a minor child if the child does not have a guardian or if the interests of the guardian conflict with the interests of the child. Such guardian ad litem shall be a necessary party under subsection 1 of this section.

A person who is appointed as a guardian ad litem for a minor child shall not also be the attorney for any party other than the minor child in any proceeding involving the minor child. The guardian ad litem may make an independent investigation of the interest of the child and may cause witnesses to appear before the court to provide testimony relevant to the best interest of the minor child.

3. Notice under this section may be served personally or constructively, as specified under subsections 4 and 5. This notice shall state:

a. The time and place of the hearing on termination of parental rights.

b. A clear statement of the purpose of the action and hearing.

4. A necessary party whose identity and location or address is known shall be served in accordance with rule of civil procedure 1.305 or sent by certified mail restricted delivery, whichever is determined to be the most effective means of notification. Such notice shall be served according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice pursuant to rule of civil procedure 1.305 shall be served not less than seven days prior to the hearing on termination of parental rights. Notice by certified mail restricted delivery shall be sent not less than fourteen days prior to the hearing on termination of parental rights. A notice by certified mail restricted delivery which is refused by the necessary party being noticed shall be sufficient notice to that party under this section. Acceptance of notice by the necessary party shall satisfy the requirements of this subsection.

5. A necessary party whose identity is known but whose location or address is unknown or all unknown putative fathers, if any, shall be served by published notice in the form provided in this subsection. If the identity of a necessary party is known but the location of the necessary party is unknown, notice by publication shall also include the name of the necessary party. The child's actual or expected date of birth and place of birth shall also be stated in the notice. Notice by publication shall be served according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice by publication shall be published once a week for two consecutive weeks in a medium which is reasonably expected to provide notice to the necessary party, the last publication to be not less than three days prior to the hearing on termination of parental rights. The notice shall be substantially in the following form:

TO: . . . . . (OR) ALL PUTATIVE FATHERS OF A CHILD (EXPECTED TO BE) BORN ON THE . . . . . DAY OF . . . . . , ... , IN . . . . . , IOWA.

You are notified that there is now on file in the office of the clerk of court for . . . . . county, a petition in case number . . . . . , which prays for a termination of your parent-child relationship to a child (expected to be) born on the . . . . . day of . . . . . , ... For further details contact the clerk's office. The petitioner's attorney is . . . . . .

You are notified that there will be a hearing on the petition to terminate parental rights before the Iowa District Court for . . . . . County, at the Courthouse in . . . . . , Iowa, at . . . . . .M. on the . . . . . day of . . . . . , ...

CLERK OF THE ABOVE COURT

6. Proof of service of notice in the manner prescribed shall be filed with the juvenile court prior to the hearing on termination of parental rights.

[C66, 71, 73, 75, §232.44, 232.45; C77, 79, 81, §600A.6]

94 Acts, ch 1046, §21; 94 Acts, ch 1174, §16 – 18, 22; 96 Acts, ch 1174, §8; 97 Acts, ch 173, §15

600A.7 Termination hearing — forum non conveniens.

1. The hearing on termination of parental rights shall be conducted in accordance with the provisions of sections 232.91 to 232.96 and otherwise in accordance with the rules of civil procedure. Such hearing shall be held no earlier than one week after the child is born.

2. Relevant information, including that contained in reports, studies or examinations and testified to by interested persons, may be admitted into evidence at the hearing and relied upon to the extent of its probative value. When such information is so admitted, the person submitting it or testifying shall be subject to both direct and cross-examination by a necessary party.

3. If a putative father files a declaration of paternity pursuant to section 144.12A, the putative father or the mother of the child may request that

paternity be established pursuant to section 600B.41 prior to the granting of a dismissal of the petition to terminate parental rights.

[C66, 71, 73, 75, §232.42, 232.46; C77, 79, 81, §600A.7]

94 Acts, ch 1174, §19, 22

600A.8 Grounds for termination.

The juvenile court shall base its findings and order under section 600A.9 on clear and convincing proof. The following shall be, either separately or jointly, grounds for ordering termination of parental rights:

1. A parent has signed a release of custody pursuant to section 600A.4 and the release has not been revoked.

2. A parent has petitioned for the parent's termination of parental rights pursuant to section 600A.5.

3. A parent has abandoned the child.

4. If the termination of parental rights relates to a putative father and the putative father has abandoned the child. For the purposes of this subsection, a putative father is deemed to have abandoned a child as follows:

a. (1) If the child is less than six months of age when the termination hearing is held, a putative father is deemed to have abandoned the child unless the putative father does all of the following:

(a) Demonstrates a willingness to assume custody of the child rather than merely objecting to the termination of parental rights.

(b) Takes prompt action to establish a parental relationship with the child.

(c) Demonstrates, through actions, a commitment to the child.

(2) In determining whether the requirements of this paragraph are met, the court may consider all of the following:

(a) The fitness and ability of the putative father in personally assuming custody of the child, including a personal and financial commitment which is timely demonstrated.

(b) Whether efforts made by the putative father in personally assuming custody of the child are substantial enough to evince a settled purpose to personally assume all parental duties.

(c) Whether the putative father publicly acknowledged paternity or held himself out to be the father of the child during the six continuing months immediately prior to the termination proceeding.

(d) Whether the putative father paid a fair and reasonable sum, in accordance with the putative father's means, for medical, hospital, and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child, or whether the putative father demonstrated emotional support as evidenced by the putative father's conduct toward the mother.

(e) Any measures taken by the putative father to establish legal responsibility for the child.

(f) Any other factors evincing a commitment to the child.

b. If the child is six months of age or older when the termination hearing is held, a putative father is deemed to have abandoned the child unless the putative father maintains substantial and continuous or repeated contact with the child as demonstrated by contribution toward support of the child of a reasonable amount, according to the putative father's means, and as demonstrated by any of the following:

(1) Visiting the child at least monthly when physically and financially able to do so and when not prevented from doing so by the person having lawful custody of the child.

(2) Regular communication with the child or with the person having the care or custody of the child, when physically and financially unable to visit the child or when prevented from visiting the child by the person having lawful custody of the child.

(3) Openly living with the child for a period of six months within the one-year period immediately preceding the termination of parental rights hearing and during that period openly holding himself out to be the father of the child.

c. The subjective intent of the putative father, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph *"a"* or *"b"* manifesting such intent, does not preclude a determination that the putative father has abandoned the child. In making a determination, the court shall not require a showing of diligent efforts by any person to encourage the putative father to perform the acts specified in paragraph *"a"* or *"b"*. In making a determination, the court may consider the conduct of the putative father toward the child's mother during the pregnancy. Demonstration of a commitment to the child is not met by the putative father marrying the mother of the child after adoption of the child.

5. A parent has been ordered to contribute to the support of the child or financially aid in the child's birth and has failed to do so without good cause.

6. A parent does not object to the termination after having been given proper notice and the opportunity to object.

7. A parent does not object to the termination although every reasonable effort has been made to identify, locate and give notice to that parent as required in section 600A.6.

8. An adoptive parent requests termination of parental rights and the parent-child relationship based upon a showing that the adoption was fraudulently induced in accordance with the procedures set out in section 600A.9, subsection 3.

9. Both of the following circumstances apply to a parent:

a. The parent has been determined to be a chronic substance abuser as defined in section

125.2 and the parent has committed a second or subsequent domestic abuse assault pursuant to section 708.2A.

b. The parent has abducted the child, has improperly removed the child from the physical custody of the person entitled to custody without the consent of that person, or has improperly retained the child after a visit or other temporary relinquishment of physical custody.

[C66, 71, 73, 75, §232.41; C77, 79, 81, §600A.8]

92 Acts, ch 1192, §2, 5; 95 Acts, ch 182, §26; 97 Acts, ch 161, §2; 97 Acts, ch 209, §27, 30

600A.9 Termination findings and order — vacation of order.

1. Subsequent to the hearing on termination of parental rights under this chapter, the juvenile court shall make a finding of facts and shall:

a. Order the petition dismissed; or,

b. Order the petition granted. The juvenile court shall appoint a guardian and a custodian or a guardian only. An order issued under this paragraph shall include the finding of facts. Such finding shall specify the factual basis for terminating the parent-child relationship and shall specify the ground or grounds upon which the termination is ordered.

2. If an order is issued under subsection 1, paragraph *"b"* of this section, the juvenile court shall retain jurisdiction to change a guardian or custodian and to allow a terminated parent or any putative biological parent to request vacation or appeal of the termination order which request must be made within thirty days of issuance of the granting of the order. The period for request by a terminated parent or by a putative biological parent for vacation or appeal shall not be waived or extended and a vacation or appeal shall not be granted after the expiration of this period. The juvenile court shall grant the vacation request only if it is in the best interest of the child. The supreme court shall prescribe rules to establish a period of thirty days, which shall not be waived or extended, in which a terminated or putative biological parent may request a vacation or appeal of a termination order.

3. If an order is issued under subsection 1, paragraph *"b"*, the juvenile court shall have jurisdiction to allow an adoptive parent to request termination of the adoptive parent's parental rights and of the parent-child relationship based upon a showing that the adoption was fraudulently induced and to request that the order issued under subsection 1, paragraph *"b"*, be vacated. The juvenile court shall grant the termination and vacation requests only after the parent whose rights have been terminated is given an opportunity to contest the vacation of the termination order and only if the termination of the adoptive parent's parental rights and the vacation of the termination order are in the best interest of the child.

4. A copy of any order made under this section shall be sent by the clerk of the juvenile court to:

a. The department.

b. The petitioner.

c. The parents whose rights have been terminated if they request such copies.

d. Any guardian, custodian, or guardian ad litem of the child.

[S13, §254-a21; C24, 27, 31, 35, 39, §**3638;** C46, 50, 54, 58, 62, §232.22; C66, 71, 73, 75, §232.47 – 232.50; C77, 79, 81, §600A.9]

92 Acts, ch 1192, §3, 5; 94 Acts, ch 1174, §20, 22

600A.10 Termination procedures — penalty for violation.

1. Any biological parent who chooses to identify the other biological parent and who knowingly and intentionally identifies a person who is not the other biological parent in the written release of custody or in any other document related to the termination of parental rights proceedings is guilty of a simple misdemeanor.

2. Any person who accepts a release of custody under section 600A.4 prior to the expiration of the seventy-two-hour period required is guilty of a serious misdemeanor.

94 Acts, ch 1174, §21, 22

CHAPTER 600B

PATERNITY AND OBLIGATION FOR SUPPORT

See also chapter 252A

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600B.1 Obligation of parents.

The parents of a child born out of wedlock and not legitimized (in this chapter referred to as "the child") owe the child necessary maintenance, education, and support. They are also liable for the child's funeral expenses. The father is also liable to pay the expense of the mother's pregnancy and confinement. The obligation of the parent to support the child under the laws for the support of poor relatives applies to children born out of wedlock.

[C27, 31, 35, §12667-a1; C39, §**12667.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.1]

C93, §600B.1

Analogous provision, §252.2

600B.2 Recovery by mother from father.

The mother may recover from the father a reasonable share of the necessary support of the child.

[C27, 31, 35, §12667-a2; C39, §**12667.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.2]

C93, §600B.2

600B.3 Reserved.

600B.4 Recovery by others than mother.

The obligation of the father as hereby provided creates also a cause of action on behalf of the legal representative of the mother, or on behalf of third persons furnishing support or defraying the reasonable expenses thereof, where paternity has been judicially established by proceedings brought by the mother or by or on behalf of the child or by the authorities charged with its support, or where paternity has been acknowledged by the father in writing or by the part performance of the obligations imposed upon him.

[C27, 31, 35, §12667-a4; C39, §**12667.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.4]

C93, §600B.4

600B.5 Discharge of father's obligation.

The obligation of the father other than that under the laws providing for the support of poor relatives is discharged by complying with a judicial decree for support or with the terms of a judicially approved settlement. The legal adoption of a child into another family discharges the obligation for the period subsequent to the adoption, unless the adoption was fraudulently induced and the adoptive father's parental rights have been terminated and the order terminating the biological father's parental rights has been vacated in accordance with the procedures set out in section 600A.9, subsection 3.

[C27, 31, 35, §12667-a5; C39, §**12667.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.5]

92 Acts, ch 1192, §4, 5

C93, §600B.5

94 Acts, ch 1046, §22

600B.6 Liability of the father's estate.

The obligation of the father, when his paternity has been judicially established in his lifetime, or has been acknowledged by him in writing or by the part performance of his obligations, is enforceable against his estate in such an amount as the court may determine, having regard to the age of the child, the ability of the mother to support it, the amount of property left by the father, the number, age, and financial condition of the lawful issue, if any, and the rights of the widow, if any. The court may direct the discharge of the obligation by periodical payments or by the payment of a lump sum.

[C27, 31, 35, §12667-a6; C39, §**12667.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.6]

C93, §600B.6

600B.7 Proceedings to establish paternity.

Proceedings to establish paternity and to compel support by the father may be brought in accordance with the provisions of this chapter. They shall not be exclusive of other proceedings that

may be available on principles of law and equity.

[C27, 31, 35, §12667-a7; C39, §**12667.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.7]

C93, §600B.7

Additional reference, §252.3

600B.8 Who may institute proceedings.

The proceedings may be brought by the mother, or other interested person, or if the child is or is likely to be a public charge, by the authorities charged with its support. After the death of the mother or in case of her disability, it may also be brought by the child acting through its guardian or next friend.

[C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a8; C39, §**12667.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.8]

C93, §600B.8

600B.9 Time of instituting proceedings.

The proceedings may be instituted during the pregnancy of the mother or after the birth of the child, but, except with the consent of all parties, the trial shall not be held until after the birth of the child and shall be held no earlier than twenty days from the date the alleged father is served with notice of the action or, if blood or genetic tests are conducted, no earlier than thirty days from the date the test results are filed with the clerk of the district court as provided under section 600B.41.

[C27, 31, 35, §12667-a9; C39, §**12667.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.9]

C93, §600B.9

94 Acts, ch 1171, §43; 97 Acts, ch 175, §204

600B.10 Venue.

The action shall be by ordinary proceedings entitled in the name of the complainant against the defendant and shall be brought in the district court in the county in which the alleged father is permanently or temporarily resident, or in which the mother or the child resides or is found.

[C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a10; C39, §**12667.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.10]

C93, §600B.10

600B.11 Nonresident complainant.

It is not a bar to the jurisdiction of the court, that the complaining mother or child resides in another state.

[C27, 31, 35, §12667-a11; C39, §**12667.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.11]

C93, §600B.11

600B.12 Complaint — where brought.

The complaint may be made to the county attorney.

[C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a12; C39, §**12667.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.12]

C93, §600B.12

600B.13 Form of complaint — verification.

The complaint may be made in writing, or oral and in the presence of the complainant reduced to writing by the prosecuting attorney. It shall be verified by oath or affirmation of the complainant.

[C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a13; C39, §**12667.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.13]

C93, §600B.13

600B.14 Substance of complaint.

The complainant shall charge the person named as defendant with being the father of the child.

[C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a14; C39, §**12667.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.14]

C93, §600B.14

600B.15 Original notice.

An original notice shall be issued as in other civil cases, which notice shall be served as in ordinary actions.

[C51, §849; R60, §1417; C73, §4716; C97, §5630; C24, §12659; C27, 31, 35, §12667-a16; C39, §**12667.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.15]

C93, §600B.15

Manner of service, R.C.P. 1.302 – 1.315

600B.16 Lis pendens.

From the time of the filing of such complaint, a lien shall be created upon the real property of the accused in the county where the action is pending for the payment of any money and the performance of any order adjudged by the proper court.

[C51, §850; R60, §1418; C73, §4717; C97, §5631; C24, §12660; C27, 31, 35, §12667-a17; C39, §**12667.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.16]

C93, §600B.16

600B.17 Writ of attachment.

The district court may order an attachment to issue thereon without bond, which order shall specify the amount of property to be seized thereunder, and may be revoked at any time by such court on a showing made for a revocation of the same, and on such terms as such court may deem proper in the premises.

[C73, §4718; C97, §5632; C24, §12661; C27, 31, 35, §12667-a18; C39, §**12667.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.17]

C93, §600B.17

600B.18 Method of trial.

The trial shall be by the court, and shall be conducted as in other civil cases.

[C51, §851, 854; R60, §1419, 1422; C73, §4720; C97, §5634; C24, §12663; C27, 31, 35, §12667-a27; C39, §**12667.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.18]

C93, §600B.18

97 Acts, ch 175, §205

600B.19 County attorney to prosecute.

The county attorney, on being notified of the facts justifying a complaint as provided in this chapter, or of the filing of such complaint, shall prosecute the matter in behalf of the complainant.

[C73, §4719; C97, §5633; C24, §12662; C27, 31, 35, §12667-a28; C39, §**12667.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.19]

C93, §600B.19

600B.20 Exclusion of bystanders.

Unless objection is raised by either party to the action the judge shall exclude from the hearing all persons except the employees of the court, witnesses, and immediate relatives of the parties involved.

[C27, 31, 35, §12667-a29; C39, §**12667.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.20]

C93, §600B.20

600B.21 Death, absence or mental illness of mother — testimony receivable.

If after the complaint the mother dies or becomes mentally ill or cannot be found within the jurisdiction, the proceeding does not abate, but the child shall be substituted as complainant. The testimony of the mother taken by deposition as in other civil cases, may in any such case be read as evidence and in all cases shall be read as evidence if demanded by the defendant.

[C27, 31, 35, §12667-a31; C39, §**12667.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.21]

C93, §600B.21

600B.22 Death of defendant.

In case of the death of the defendant the action may be prosecuted against the personal representative of the deceased with like effects as if he were living, subject as regards the measure of support to the provision of section 600B.6.

[C27, 31, 35, §12667-a32; C39, §**12667.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.22]

C93, §600B.22

600B.23 Costs payable by county.

If the finding of the court be in favor of the defendant the costs of the action shall be paid by the county.

[C24, §12666; C27, 31, 35, §12667-a33; C39, §**12667.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.23]

C93, §600B.23

97 Acts, ch 175, §206

600B.24 Judgment in general.

1. If the defendant, after being served with notice as required under section 600B.15, fails to timely respond to the notice, or to appear for blood or genetic tests pursuant to a court or administrative order, or to appear at a scheduled hearing after being provided notice of the hearing, the court shall find the defendant in default and enter a default judgment.

2. Upon a finding of paternity against the defendant, the court shall enter a judgment against the defendant declaring paternity and ordering support of the child.

[C51, §855; R60, §1423; C73, §4721; C97, §5635; C24, §12664; C27, 31, 35, §12667-a35; C39, §**12667.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.24]

C93, §600B.24

94 Acts, ch 1171, §44; 97 Acts, ch 175, §207

600B.25 Form of judgment — contents of support order — evidence — costs.

1. Upon a finding of paternity pursuant to section 600B.24, the court shall establish the father's monthly support payment and the amount of the support debt accrued or accruing pursuant to section 598.21, subsection 4, until the child reaches majority or until the child finishes high school, if after majority. The court may order the father to pay amounts the court deems appropriate for the past support and maintenance of the child and for the reasonable and necessary expenses incurred by or for the mother in connection with prenatal care, the birth of the child, and postnatal care of the child and the mother, and other medical support as defined in section 252E.1. The court may award the prevailing party the reasonable costs of suit, including but not limited to reasonable attorney fees.

2. A copy of a bill for the costs of prenatal care or the birth of the child shall be admitted as evidence, without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred.

[C51, §855; R60, §1423; C73, §4721; C97, §5635; C24, §12664; C27, 31, 35, §12667-a36; C39, §**12667.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.25]

85 Acts, ch 100, §10; 87 Acts, ch 98, §2; 89 Acts, ch 166, §7; 90 Acts, ch 1224, §49

C93, §600B.25

97 Acts, ch 175, §208

600B.26 Reserved.

600B.27 Payment to trustees.

The court may require the payment to be made to the mother, or to some person or corporation to be designated by the court as trustee. The payments shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court.

[C27, 31, 35, §12667-a38; C39, §**12667.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.27]
C93, §600B.27

600B.28 Report by trustee.

The trustee shall report to the court annually, or oftener as directed by the court, the amounts received and paid over.

[C27, 31, 35, §12667-a39; C39, §**12667.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.28]
C93, §600B.28

600B.29 Desertion statute applicable.

The provisions of sections 726.3 through 726.5 relating to desertion and abandonment of children, have the same effect in cases of illegitimacy where paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support, as in cases of children born in wedlock.

[C27, 31, 35, §12667-a45; C39, §**12667.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.29]
83 Acts, ch 101, §128
C93, §600B.29

600B.30 Agreement or compromise. Repealed by 97 Acts, ch 175, § 217.

600B.31 Continuing jurisdiction.

Subject to 28 U.S.C. § 1738B, the court has continuing jurisdiction over proceedings brought to compel support and to increase or decrease the amount thereof until the judgment of the court has been completely satisfied, and also has continuing jurisdiction to determine the custody in accordance with the interests of the child.

[C73, §4722; C97, §5636; C24, §12667; C27, 31, 35, §12667-a47; C39, §**12667.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.31]
C93, §600B.31
96 Acts, ch 1141, §30

600B.32 Concurrence of remedies.

A criminal prosecution shall not be a bar to, or be barred by, civil proceedings to compel support; but money paid toward the support of the child shall be allowed for and accredited in determining or enforcing any civil liability.

[C27, 31, 35, §12667-a49; C39, §**12667.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.32]
C93, §600B.32

600B.33 Limitations of actions.

1. An action to establish paternity and support under this chapter may be brought within the time limitations set forth in section 614.8.

2. Notwithstanding subsection 1, an action to establish paternity and support under this chapter may be brought concerning a person who was under age eighteen on August 16, 1984, regardless of whether any prior action was dismissed because a statute of limitations of less than eighteen years was then in effect. Such an action may be brought within the time limitations set forth in section 614.8, or until July 2, 1992, whichever is later.

90 Acts, ch 1224, §50
C91, §675.33
C93, §600B.33

600B.34 Foreign judgments. Repealed by 97 Acts, ch 175, § 220, 221. See chapter 252K.

600B.35 Reference to illegitimacy prohibited.

In all records, certificates, or other papers made or executed, other than birth records and certificates or records of judicial proceedings in which the question of birth out of wedlock is at issue, requiring a declaration by or notice to the mother of a child born out of wedlock, it shall be sufficient for all purposes to refer to the mother as the parent having the sole custody of the child or to the child as being in the sole custody of the mother and no explicit reference shall be made to illegitimacy, and the term biological shall be deemed equivalent to the term illegitimate when referring to parentage or birth out of wedlock.

[C27, 31, 35, §12667-a52; C39, §**12667.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.35]
C93, §600B.35
94 Acts, ch 1046, §23

600B.36 Report to registrar of vital statistics.

Upon the entry of a judgment determining the paternity of a child the clerk of the district court shall notify in writing the state registrar of vital statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by the records as may assist in identifying the record of the birth of the child as the same may appear in the office of said registrar. If such judgment shall thereafter be vacated that fact shall be reported by the clerk in the same manner.

[C27, 31, 35, §12667-a53; C39, §**12667.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.36]
C93, §600B.36
94 Acts, ch 1046, §24

600B.37 Contempt.

If the father fails to comply with or violates the terms or conditions of a support order made pur-

suant to the provisions of this chapter, he shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court in any other suit or proceeding cognizable by such court.

[C73, 75, 77, 79, 81, §675.37]
C93, §600B.37

600B.38 Recipients of public assistance — assignment of support payments.

If public assistance is provided by the department of human services to or on behalf of a dependent child or a dependent child's caretaker, there is an assignment by operation of law to the department of any and all rights in, title to, and interest in any support obligation, payment, and arrearages owed to or on behalf of the child or caretaker, not to exceed the amount of public assistance paid for or on behalf of the child or caretaker. The department shall immediately notify the clerk of court by mail when such a child or caretaker has been determined to be eligible for public assistance. Upon notification by the department, the clerk of court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of the assignment. For public assistance approved and provided on or after July 1, 1997, if the applicant for public assistance is a person other than a parent of the child, the department shall send notice by regular mail to the last known addresses of the obligee and obligor. The clerk of court shall forward support payments received pursuant to section 600B.25, to which the department is entitled, to the department, which may secure support payments in default through other proceedings. The clerk shall furnish the department with copies of all orders or decrees and temporary or domestic abuse orders addressing support when the parties are receiving public assistance or services are otherwise provided by the child support recovery unit. Unless otherwise specified in the order, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order or judgment for purposes of an assignment under this section.

[C77, 79, 81, §675.38; 82 Acts, ch 1237, §5]
83 Acts, ch 96, §157, 159
C93, §600B.38
97 Acts, ch 175, §209

600B.39 "Child" defined.

For the purposes of this chapter, *"child"* means a person less than eighteen years of age.

[C81, §675.39]
87 Acts, ch 98, §2
C93, §600B.39

600B.40 Custody and visitation.

The mother of a child born out of wedlock whose paternity has not been acknowledged and who has not been adopted has sole custody of the child unless the court orders otherwise. If a judgment of paternity is entered, the father may petition for rights of visitation or custody in an equity proceeding separate from any action to establish paternity.

In determining the visitation or custody arrangements of a child born out of wedlock, if a judgment of paternity is entered and the mother of the child has not been awarded sole custody, section 598.41 shall apply to the determination, as applicable, and the court shall consider the factors specified in section 598.41, subsection 3, including but not limited to the factor related to a parent's history of domestic abuse.

[C81, §675.40]
C93, §600B.40
95 Acts, ch 182, §27

600B.40A Temporary orders — support, custody, or visitation of a child.

Upon petition of either parent in a proceeding involving support, custody, or visitation of a child for whom paternity has been established and whose mother and father have not been and are not married to each other at the time of filing of the petition, the court may issue a temporary order for support, custody, or visitation of the child. The temporary orders shall be made in accordance with the provisions relating to issuance of and changes in temporary orders for support, custody, or visitation of a child by the court in a dissolution of marriage proceeding pursuant to chapter 598.

97 Acts, ch 160, §1

600B.41 Blood and genetic tests.

1. In a proceeding to establish paternity in law or in equity the court may on its own motion, and upon request of a party shall, require the child, mother, and alleged father to submit to blood or genetic tests.

2. If a blood or genetic test is required, the court shall direct that inherited characteristics be determined by appropriate testing procedures, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and to report to the court. Appropriate testing procedures shall include any genetic test generally acknowledged as reliable by accreditation bodies designated by the secretary of the United States department of health and human services and which are performed by a laboratory approved by such an accreditation body.

3. Verified documentation of the chain of custody of the blood or genetic specimen is competent evidence to establish the chain of custody. The testimony of the court-appointed expert at trial is not required.

4. A verified expert's report shall be admitted at trial. A copy of a bill for blood or genetic testing shall be admitted as evidence, without requiring third-party foundation testimony, and shall

constitute prima facie evidence of amounts incurred for blood or genetic testing.

5. The results of the tests shall have the following effects:

a. Test results which show a statistical probability of paternity are admissible. To challenge the test results, a party shall file a notice of the challenge, with the court, no later than twenty days after the filing of the expert's report with the clerk of the district court.

(1) Any subsequent rescheduling or continuances of the originally scheduled hearing shall not extend the original time frame.

(2) Any challenge filed after the time frame is not acceptable or admissible by the court.

(3) If a challenge is not timely filed, the test results shall be admitted as evidence of paternity without the need of additional proof of authenticity or accuracy.

b. If the expert concludes that the test results show that the alleged father is not excluded and that the probability of the alleged father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the alleged father is the father, and this evidence must be admitted.

(1) To challenge this presumption of paternity, a party must file a notice of the challenge with the court within the time frames prescribed in paragraph *"a"*.

(2) The party challenging the presumption of the alleged father's paternity has the burden of proving that the alleged father is not the father of the child.

(3) The presumption of paternity can be rebutted only by clear and convincing evidence.

c. If the expert concludes that the test results show that the alleged father is not excluded and that the probability of the alleged father's paternity is less than ninety-five percent, test results shall be weighed along with other evidence of the alleged father's paternity. To challenge the test results, a party must file a notice of the challenge with the court within the time frames prescribed in paragraph *"a"*.

6. If the results of the tests or the expert's analysis of inherited characteristics is disputed in a timely fashion, the court, upon reasonable request of a party, shall order that an additional test be made by the same laboratory or an independent laboratory at the expense of the party requesting additional testing. When a subsequent test is conducted, all time frames prescribed in this chapter associated with blood or genetic tests shall apply to the most recently completed test.

7. All costs shall be paid by the parties or parents in proportions and at times determined by the court, except as otherwise provided pursuant to section 600B.41A.

[C81, §675.41]
92 Acts, ch 1195, §210
C93, §600B.41
93 Acts, ch 79, §22, 23; 94 Acts, ch 1171, §45 – 47, 52; 95 Acts, ch 52, §9; 97 Acts, ch 175, §210, 211

600B.41A Actions to overcome paternity — applicability — conditions.

1. Paternity which is legally established may be overcome as provided in this section if subsequent blood or genetic testing indicates that the previously established father of a child is not the biological father of the child. Unless otherwise provided in this section, this section applies to the overcoming of paternity which has been established according to any of the means provided in section 252A.3, subsection 8, by operation of law when the established father and the mother of the child are or were married to each other, or as determined by a court of this state under any other applicable chapter.

2. This section does not apply to any of the following:

a. A paternity determination made in or by a foreign jurisdiction or a paternity determination which has been made in or by a foreign jurisdiction and registered in this state in accordance with section 252A.18 or chapter 252K.

b. A paternity determination based upon a court or administrative order if the order was entered based upon blood or genetic test results which demonstrate that the alleged father was not excluded and that the probability of the alleged father's paternity was ninety-five percent or higher, unless the tests were conducted prior to July 1, 1992.

3. Establishment of paternity may be overcome under this section if all of the following conditions are met:

a. The action to overcome paternity is filed with the court prior to the child reaching majority.

(1) A petition to overcome paternity may be filed only by the mother of the child, the established father of the child, the child, or the legal representative of any of these parties.

(2) If paternity was established by court or administrative order, a petition to overcome paternity shall be filed in the county in which the order is filed.

(3) In all other determinations of paternity, a petition to overcome paternity shall be filed in an appropriate county in accordance with the rules of civil procedure.

b. The petition contains, at a minimum, all of the following:

(1) The legal name, age, and domicile, if any, of the child.

(2) The names, residences, and domicile of the following:

(a) Living parents of the child.
(b) Guardian of the child.
(c) Custodian of the child.
(d) Guardian ad litem of the child.
(e) Petitioner.
(f) Person standing in the place of the parents

of the child.

(3) A plain statement that the petitioner believes that the established father is not the biological father of the child, any reasons for this belief, and that the petitioner wishes to have the paternity determination set aside.

(4) A plain statement explaining why the petitioner does not know any of the information required under subparagraphs (1) and (2).

c. Notice of the action to overcome paternity is served on any parent of the child not initiating the action and any assignee of the support obligation, in accordance with the rules of civil procedure and in accordance with the following:

(1) If enforcement services are being provided by the child support recovery unit pursuant to chapter 252B, notice shall also be served on the child support recovery unit.

(2) The responding party shall have twenty days from the date of the service of the notice to file a written response with the court.

d. A guardian ad litem is appointed for the child.

e. Blood or genetic testing is conducted in accordance with section 600B.41 or chapter 252F.

(1) Unless otherwise specified pursuant to subsection 2 or 9, blood or genetic testing shall be conducted in an action to overcome the establishment of paternity.

(2) Unless otherwise specified in this section, section 600B.41 applies to blood or genetic tests conducted as the result of an action brought to overcome paternity.

(3) The court may order additional testing to be conducted by the expert or an independent expert in order to confirm a test upon which an expert concludes that the established father is not the biological father of the child.

f. The court finds all of the following:

(1) That the conclusion of the expert as disclosed by the evidence based upon blood or genetic testing demonstrates that the established father is not the biological father of the child.

(2) If paternity was established pursuant to section 252A.3A, the signed affidavit was based on fraud, duress, or material mistake of fact, as shown by the petitioner.

4. If the court finds that the establishment of paternity is overcome, in accordance with all of the conditions prescribed, the court shall enter an order which provides all of the following:

a. That the established father is relieved of any and all future support obligations owed on behalf of the child from the date that the order determining that the established father is not the biological father is filed.

b. That any unpaid support due prior to the date the order determining that the established father is not the biological father is filed, is satisfied.

5. An action brought under this section shall be heard and decided by the court, and shall not be subject to a jury trial.

6. *a.* If the court determines that test results conducted in accordance with section 600B.41 or chapter 252F exclude the established father as the biological father, the court may dismiss the action to overcome paternity and preserve the paternity determination only if all of the following apply:

(1) The established father requests that paternity be preserved and that the parent-child relationship, as defined in section 600A.2, be continued.

(2) The court finds that it is in the best interest of the child to preserve paternity. In determining the best interest of the child, the court shall consider all of the following:

(a) The age of the child.

(b) The length of time since the establishment of paternity.

(c) The previous relationship between the child and the established father, including but not limited to the duration and frequency of any time periods during which the child and established father resided in the same household or engaged in a parent-child relationship as defined in section 600A.2.

(d) The possibility that the child could benefit by establishing the child's actual paternity.

(e) Additional factors which the court determines are relevant to the individual situation.

(3) The biological father is a party to the action and does not object to termination of the biological father's parental rights, or the established father petitions the court for termination of the biological father's parental rights and the court grants the petition pursuant to chapter 600A.

b. If the court dismisses the action to overcome paternity and preserves the paternity determination under this subsection, the court shall enter an order establishing that the parent-child relationship exists between the established father and the child, and including establishment of a support obligation pursuant to section 598.21 and provision of custody and visitation pursuant to section 598.41.

7. *a.* For any order entered under this section on or before May 21, 1997, in which the court's determination excludes the established father as the biological father but dismisses the action to overcome paternity and preserves paternity, the established father may petition the court to issue an order which provides all of the following:

(1) That the parental rights of the established father are terminated.

(2) That the established father is relieved of any and all future support obligations owed on behalf of the child from the date the order under this subsection is filed.

b. The established father may proceed pro se under this subsection. The supreme court shall prescribe standard forms for use under this subsection and shall distribute the forms to the clerks of the district court.

c. If a petition is filed pursuant to this section and notice is served on any parent of the child not filing the petition and any assignee of the support obligation, the court shall grant the petition.

8. The costs of testing, the fee of the guardian ad litem, and all court costs shall be paid by the person bringing the action to overcome paternity.

9. This section shall not be construed as a basis for termination of an adoption decree or for discharging the obligation of an adoptive father to an adoptive child pursuant to section 600B.5.

10. Unless specifically addressed in an order entered pursuant to this section, provisions previously established by the court order regarding custody or visitation of the child are unaffected by an action brought under this section.

11. Participation of the child support recovery unit created in section 252B.2 in an action brought under this section shall be limited as follows:

a. The unit shall only participate in actions if services are being provided by the unit pursuant to chapter 252B.

b. When services are being provided by the unit under chapter 252B, the unit may enter an administrative order for blood and genetic tests pursuant to chapter 252F.

c. The unit is not responsible for or required to provide for or assist in obtaining blood or genetic tests in any case in which services are not being provided by the unit.

d. The unit is not responsible for the costs of blood or genetic testing conducted pursuant to an action brought under this section.

e. Pursuant to section 252B.7, subsection 4, an attorney employed by the unit represents the state in any action under this section. The unit's attorney is not the legal representative of the mother, the established father, or the child in any action brought under this section.

94 Acts, ch 1171, §48, 52; 97 Acts, ch 175, §212 – 216, 218, 219, 221; 98 Acts, ch 1074, §32

600B.42 Security for payment of support — forfeiture.

Upon entry of an order for support or upon the failure of a father to make payments pursuant to an order for support, the court may require the father to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the father's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

85 Acts, ch 100, §11
CS85, §675.42
C93, §600B.42

CHAPTER 601

STATUS OF WOMEN

Repealed by 86 Acts, ch 1245, §1265; see §216A.51 et seq.

CHAPTER 601A

CIVIL RIGHTS COMMISSION

Transferred to chapter 216

CHAPTER 601B

COMMISSION FOR THE BLIND

Repealed by 86 Acts, ch 1245, §1265; see chapter 216B

CHAPTER 601C

OPERATION OF FOOD SERVICE IN PUBLIC BUILDINGS

Transferred to chapter 216D

CHAPTER 601D

RIGHTS OF BLIND, PARTIALLY BLIND AND PHYSICALLY DISABLED

Transferred to chapter 216C

CHAPTER 601E

DISTRESS FLAGS AND IDENTIFICATION DEVICES FOR HANDICAPPED

Chapter repealed effective January 1, 1990;
89 Acts, ch 247, §20, 21; see chapter 321L

CHAPTER 601F

GOVERNOR'S COMMITTEE ON EMPLOYMENT OF HANDICAPPED

Repealed by 86 Acts, ch 1245, §1265; see §216A.71 et seq.

CHAPTER 601G

CITIZENS' AIDE

Transferred to chapter 2C

CHAPTER 601H

PROGRAMS FOR LOW-INCOME, ELDERLY AND HANDICAPPED

Repealed by 86 Acts, ch 1190, §12; 86 Acts, ch 1245, §943;
see §84A.6, 84A.7, 231.51, 231.52

CHAPTER 601I

SERVICE PROGRAM FOR THE DEAF

Repealed by 86 Acts, ch 1245, §1265; see §216A.111 et seq.

CHAPTER 601J

TRANSPORTATION PROGRAMS

Transferred to chapter 324A

CHAPTER 601K

DEPARTMENT OF HUMAN RIGHTS

Transferred to chapter 216A
Section 601K.80 repealed; 92 Acts, ch 1237, §15; see §135.22A

CHAPTER 601L

DEPARTMENT FOR THE BLIND

Transferred to chapter 216B

SUBTITLE 2

COURTS

CHAPTER 602

JUDICIAL BRANCH

Chapter 602, Iowa District Court, in Code 1983 repealed by 83 Acts, ch 186, §10201, 10203
Gradual implementation and transition provisions, see article 11 of this chapter

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ARTICLE 1

JUDICIAL BRANCH

PART 1

DEFINITIONS AND COMPOSITION

602.1101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Book", "record",* or *"register"* means any mode of permanent recording, including but not limited to, card files, microfilm, microfiche, and electronic records.

2. *"Chief judge"* means the district judge selected to serve as the chief judge of the judicial district pursuant to section 602.1210.

3. *"Chief justice"* means the chief justice of the supreme court selected pursuant to section 602.4103.

4. *"Chief juvenile court officer"* means a person appointed under section 602.1217.

5. *"Court employee"* or *"employee of the judicial branch"* means an officer or employee of the judicial branch except a judicial officer.

6. *"District court administrator"* means a per-

son appointed pursuant to section 602.1214.

7. *"Judicial officer"* means a supreme court justice, a judge of the court of appeals, a district judge, a district associate judge, an associate juvenile judge, an associate probate judge, or a magistrate. The term also includes a person who is temporarily serving as a justice, judge, or magistrate as permitted by section 602.1612 or 602.9206.

8. *"Magistrate"* means a person appointed under article 6, part 4 to exercise judicial functions.

9. *"Senior judge"* means a person who qualifies as a senior judge under article 9, part 2.

10. *"State court administrator"* means the person appointed by the supreme court pursuant to section 602.1208.

83 Acts, ch 186, §1101, 10201, 10202; 96 Acts, ch 1153, §2; 98 Acts, ch 1047, §31, 32

602.1102 Judicial branch.

The judicial branch consists of all of the following:

1. The supreme court.
2. The court of appeals.
3. The district court.
4. The clerks of all of the courts of this state.
5. Juvenile court officers.
6. Court reporters.
7. All other court employees.

83 Acts, ch 186, §1102, 10201; 98 Acts, ch 1047, §33

PART 2

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602.1201 Supervision and administration.

The supreme court has supervisory and administrative control over the judicial branch and over all judicial officers and court employees.

83 Acts, ch 186, §1201, 10201; 98 Acts, ch 1047, §34

602.1202 Judicial council.

A judicial council is established, consisting of the chief judges of the judicial districts, the chief judge of the court of appeals, and the chief justice who shall be the chairperson. The council shall convene not less than twice each year at times and places as ordered by the chief justice. The council shall advise the supreme court with respect to the supervision and administration of the judicial branch.

83 Acts, ch 186, §1202, 10201; 98 Acts, ch 1047, §35

602.1203 Personnel conferences.

The chief justice may order conferences of judicial officers or court employees on matters relating to the administration of justice or the affairs of the judicial branch. For judges and other court employees who handle cases involving children and family law, the chief justice shall require regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

83 Acts, ch 186, §1203, 10201; 95 Acts, ch 182, §28; 98 Acts, ch 1047, §36

602.1204 Procedures for judicial branch.

1. The supreme court shall prescribe procedures for the orderly and efficient supervision and administration of the judicial branch. These procedures shall be executed by the chief justice.

2. The state court administrator may issue directives relating to the management of the judicial branch. The subject matters of these directives shall include, but need not be limited to, fiscal procedures, the judicial retirement system, and the collection and reporting of statistical and other data. The directives shall provide for an affirmative action plan which shall be based upon guidelines provided by the Iowa state civil rights commission. In addition, when establishing salaries and benefits the state court administrator shall not discriminate in the employment or pay between employees on the basis of gender by paying wages to employees at a rate less than the rate at which wages are paid to employees of the opposite gender for work of comparable worth. As used in this section *"comparable worth"* means the value of work as measured by the composite of the skill, effort, responsibility, and working conditions normally required in the performance of work.

3. The supreme court shall compile and publish all procedures and directives relating to the supervision and administration of the internal affairs of the judicial branch, and shall distribute a copy of the compilation and all amendments to each operating component of the judicial branch. Copies also shall be distributed to agencies referred to in section 18.97 upon request.

4. The supreme court shall accept bids for the printing of court forms from both public and private enterprises and shall attempt to contract with both public and private enterprises for a reasonable portion of the court forms.

83 Acts, ch 186, §1204, 10201; 98 Acts, ch 1047, §37

602.1205 Procedures for courts.

1. The supreme court shall prescribe procedures for the orderly and efficient administration of the judicial business of the courts. These procedures shall be executed by the chief justice.

2. Procedures for the district court shall provide for a court session at least once each week in each county to be fixed in advance and announced in the form of a printed schedule. However, court sessions may be at intervals other than once each week if in the opinion of the chief judge more effi-

cient operations in the district will result. The procedures shall also provide for additional sessions for the trial of cases in each county at a frequency which will promptly dispose of the cases that are ready for trial.

83 Acts, ch 186, §1205, 10201

602.1206 Rules for judges and attorneys.

1. The supreme court shall prescribe rules as necessary to supervise the conduct of attorneys and judicial officers. These rules shall be executed by the chief justice.

2. Supreme court rules shall be published as provided in section 2B.5.

83 Acts, ch 186, §1206, 10201; 92 Acts, ch 1163, §109

602.1207 Report of the condition of the judicial branch.

The chief justice shall communicate the condition of the judicial branch by message to each general assembly, and may recommend matters the chief justice deems appropriate.

83 Acts, ch 186, §1207, 10201; 98 Acts, ch 1047, §38

602.1208 State court administrator.

1. The supreme court, by majority vote, shall appoint a state court administrator and may remove the administrator for cause.

2. The state court administrator is the principal administrative officer of the judicial branch, subject to the immediate direction and supervision of the chief justice.

3. The state court administrator shall employ staff as necessary to perform the duties of the administrator, subject to the approval of the supreme court and budget limitations. The administrator shall implement the comparable worth directives issued under section 602.1204, subsection 2 in all court employment decisions.

4. All judicial officers and court employees shall comply with procedures and requests of the state court administrator with respect to information and statistical data bearing on the state of the dockets of the courts, the progress of court business, and other matters reflecting judicial business and the expenditure of moneys for the maintenance and operation of the judicial system.

83 Acts, ch 186, §1208, 10201; 98 Acts, ch 1047, §39

602.1209 General duties of the state court administrator.

The state court administrator shall:

1. Manage the judicial branch.

2. Administer funds appropriated to the judicial branch.

3. Authorize the filling of vacant court-employee positions, review the qualifications of each person to be employed within the judicial branch, and assure that affirmative action goals are being met by the judicial branch. The state court administrator shall not approve the employment of a person when either the proposed terms and conditions of employment or the qualifications of the individual do not satisfy personnel policies of the judicial branch. The administrator shall implement the comparable worth directives issued under section 602.1204, subsection 2 in all court employment decisions.

4. Supervise the employees of the supreme court and court of appeals, and the clerk of the supreme court.

5. Administer the judicial retirement system as provided in article 9.

6. Collect and compile information and statistical data, and submit reports relating to judicial business, including juvenile court activities and other matters relating to the judicial branch.

7. Formulate and submit recommendations for improvement of the judicial system, with reference to the structure of the judicial branch and its organization and methods of operation, the selection, compensation, number, and tenure of judicial officers and court employees, and other matters as directed by the chief justice or the supreme court.

8. Call conferences of district court administrators as necessary in the administration of the judicial branch.

9. Provide a secretary and clerical services for the board of examiners of shorthand reporters under article 3.

10. Act as executive secretary of the commission on judicial qualifications under article 2.

11. Act as custodian of the bonds and oaths of office of judicial officers and court employees.

12. Issue vouchers for the payment of per diem and expenses from funds appropriated for purposes of articles 2, 3, and 10.

13. Collect and account for fees paid to the board of examiners of shorthand reporters under article 3.

14. Collect and account for fees paid to the board of bar examiners under article 10.

15. Distribute notices of interest rates and changes to interest rates as required by section 668.13, subsection 3.

16. Perform other duties as assigned by the supreme court, or the chief justice, or by law.

83 Acts, ch 186, §1209, 10201; 87 Acts, ch 157, §2; 89 Acts, ch 19, §2; 98 Acts, ch 1047, §40

602.1210 Selection of chief judges.

Not later than December 15 in each odd-numbered year the chief justice shall appoint chief judges of the judicial districts, subject to the approval of the supreme court. The chief judge of a judicial district shall be appointed from those district judges who are serving within the district. A chief judge shall serve for a two-year term and is eligible for reappointment. The supreme court, by

majority vote, may remove a person from the position of chief judge. Vacancies in the office of chief judge shall be filled in the same manner. An order appointing a chief judge shall be filed with the clerk of the supreme court, who shall mail a copy to the clerk of the district court in each county in the judicial district.

83 Acts, ch 186, §1210, 10201

602.1211 Duties of chief judges.

1. In addition to judicial duties, a chief judge of a judicial district shall supervise all judicial officers and court employees serving within the district. The chief judge shall by order fix the times and places of holding court, and shall designate the respective presiding judges, supervise the performance of all administrative and judicial business of the district, allocate the workloads of district associate judges and magistrates, and conduct judicial conferences to consider, study, and plan for improvement of the administration of justice.

2. A chief judge shall not attempt to direct or influence a judicial officer in a judicial ruling or decision.

3. A chief judge may appoint from among the other judicial officers of the district, excluding the magistrates, one or more assistants to serve throughout the judicial district. A chief judge may remove a person from the position of assistant. An assistant shall have administrative duties as specified in court rules or in the order of appointment. An appointment or removal shall be made by judicial order and shall be filed with the clerk of the district court in each county in the judicial district.

4. A chief judge may designate other public officers to accept bond money or security under section 232.23 or 811.2 at times when the office of the clerk of court is not open.

83 Acts, ch 186, §1211, 10201; 85 Acts, ch 17, §1; 96 Acts, ch 1153, §3; 97 Acts, ch 126, §43

602.1212 Judges for public utility rate cases.

1. The supreme court shall designate at least one district judge in each judicial district in the state who shall be subject to assignment by the chief justice to preside as necessary in this state in judicial review proceedings referred to in section 476.13, subsection 1. Designations shall be made on the basis of qualifications and experience, and shall be for the purpose of developing a pool of district judges who will have the knowledge and experience needed to expedite judicial review proceedings in those cases.

2. Upon receipt of notice from a district court clerk under section 476.13, subsection 2, the chief justice of the supreme court shall assign one of the district judges selected under subsection 1 to preside at the judicial review proceeding under section 476.13.

83 Acts, ch 127, §43

602.1213 District judicial conferences.

1. The judicial officers within a judicial district, excluding the magistrates, may convene as an administrative body as necessary to:

a. Prescribe local court procedures, subject to the approval of the supreme court.

b. Advise the chief judge respecting supervision and administration of the judicial district.

c. Exercise other duties, as established by law or by the supreme court.

2. A district judicial conference shall act by majority vote of its members.

83 Acts, ch 186, §1212, 10201; 96 Acts, ch 1153, §4

602.1214 District court administrator.

1. The chief judge of a judicial district shall appoint a district court administrator and may remove the administrator for cause.

2. The district court administrator shall assist the chief judge in the supervision and administration of the judicial district.

3. The district court administrator shall assist the state court administrator in the implementation of policies of the judicial branch and in the performance of the duties of the state court administrator.

4. The district court administrator shall employ and supervise all employees of the district court except court reporters, clerks of the district court, employees of the clerks of the district court, juvenile court officers, and employees of juvenile court officers.

5. The district court administrator shall comply with policies of the judicial branch and the judicial district.

6. The supreme court shall establish the qualifications for appointment as a district court administrator.

83 Acts, ch 186, §1213, 10201; 85 Acts, ch 67, §59; 98 Acts, ch 1047, §41

602.1215 Clerk of the district court.

1. The district judges of each judicial election district shall by majority vote appoint persons to serve as clerks of the district court, one for each county within the judicial election district. A person does not qualify for appointment to the office of clerk of the district court unless the person is at the time of application a resident of the state. Within three months of appointment the clerk of the district court must establish residence and physically reside in the county. A clerk of the district court may be removed from office for cause by a majority vote of the district judges of the judicial election district. Before removal, the clerk of the district court shall be notified of the cause for removal.

2. The clerk of the district court has the duties

specified in article 8, and other duties as prescribed by law or by the supreme court.

3. The clerk of the district court shall assist the state court administrator and the district court administrator in carrying out the rules, directives, and procedures of the judicial branch and the judicial district.

4. The clerk of the district court shall comply with rules, directives, and procedures of the judicial branch and the judicial district.

83 Acts, ch 186, §1214, 10201; 92 Acts, ch 1115, §1; 98 Acts, ch 1047, §42

602.1216 Retention of clerks of the district court.

A clerk of the district court shall stand for retention in office, in the county of the clerk's office, upon the petition signed by eligible electors residing in the county equal in number to at least ten percent of all registered voters in the county to the state commissioner of elections, at the judicial election in 1988 and every four years thereafter, under sections 46.17 through 46.24. The petition shall be filed in the office of the state commissioner not later than one hundred twenty days before the general election. A clerk who is not retained in office is ineligible to serve as clerk, in the county in which the clerk was not retained, for the four years following the retention vote.

83 Acts, ch 186, §1215, 10201; 89 Acts, ch 136, §74; 2001 Acts, ch 56, §37

602.1217 Chief juvenile court officer.

1. The district judges within a judicial district, by majority vote, shall appoint a chief juvenile court officer and may remove the officer for cause.

2. The chief juvenile court officer is subject to the immediate supervision and direction of the chief judge of the judicial district.

3. The chief juvenile court officer, in addition to performing the duties of a juvenile court officer, shall supervise juvenile court officers and administer juvenile court services within the judicial district in accordance with law and with the rules, directives, and procedures of the judicial branch and the judicial district.

4. The chief juvenile court officer shall assist the state court administrator and the district court administrator in implementing rules, directives, and procedures of the judicial branch and the judicial district.

5. A chief juvenile court officer shall have other duties as prescribed by the supreme court or by the chief judge of the judicial district.

83 Acts, ch 186, §1216, 10201; 98 Acts, ch 1047, §43

602.1218 Removal for cause.

Inefficiency, insubordination, incompetence, failure to perform assigned duties, inadequacy in performance of assigned duties, narcotics addiction, dishonesty, unrehabilitated alcoholism, negligence, conduct which adversely affects the performance of the individual or of the judicial branch, conduct unbecoming a public employee, misconduct, or any other just and good cause constitutes cause for removal.

83 Acts, ch 186, §1217, 10201; 98 Acts, ch 1047, §44

PART 3

BUDGETING AND FUNDING

602.1301 Budget and fiscal procedures.

1. The supreme court shall prepare an annual operating budget for the judicial branch, and shall submit a budget request to the general assembly for the fiscal period for which the general assembly is appropriating funds.

2. *a.* As early as possible, but not later than December 1, the supreme court shall submit to the legislative fiscal bureau the annual budget request and detailed supporting information for the judicial branch. The submission shall be designed to assist the legislative fiscal bureau in its preparation for legislative consideration of the budget request. The information submitted shall contain and be arranged in a format substantially similar to the format specified by the director of management and used by all departments and establishments in transmitting to the director estimates of their expenditure requirements pursuant to section 8.23, except the estimates of expenditure requirements shall be based upon one hundred percent of funding for the current fiscal year accounted for by program, and using the same line item definitions of expenditures as used for the current fiscal year's budget request, and the remainder of the estimate of expenditure requirements prioritized by program. The supreme court shall also make use of the department of management's automated budget system when submitting information to the director of management to assist the director in the transmittal of information as required under section 8.35A. The supreme court shall budget and track expenditures by the following separate organization codes:

(1) Iowa court information system.
(2) Appellate courts.
(3) Central administration.
(4) District court administration.
(5) Judges and magistrates.
(6) Court reporters.
(7) Juvenile court officers.
(8) District court clerks.
(9) Jury and witness fees.

b. Before December 1, the supreme court shall submit to the director of management an estimate of the total expenditure requirements of the judicial branch. The director of management shall submit this estimate received from the supreme court to the governor for inclusion without change

in the governor's proposed budget for the succeeding fiscal year. The estimate shall also be submitted to the chairpersons of the committees on appropriations.

3. The state court administrator shall prescribe the procedures to be used by the operating components of the judicial branch with respect to the following:

a. The preparation, submission, review, and revision of budget requests.

b. The allocation and disbursement of funds appropriated to the judicial branch.

c. The purchase of forms, supplies, equipment, and other property.

d. Other matters relating to fiscal administration.

4. The state court administrator shall prescribe practices and procedures for the accounting and internal auditing of funds of the judicial branch, including uniform practices and procedures to be used by judicial officers and court employees with respect to all funds, regardless of source.

83 Acts, ch 186, §1301, 10201; 85 Acts, ch 262, §7; 86 Acts, ch 1245, §121; 88 Acts, ch 1271, §10; 89 Acts, ch 316, §19; 90 Acts, ch 1268, §10; 91 Acts, ch 267, §414; 98 Acts, ch 1047, §45

602.1302 State funding.

1. Except as otherwise provided by sections 602.1303 and 602.1304 or other applicable law, the expenses of operating and maintaining the judicial branch shall be paid out of the general fund of the state from funds appropriated by the general assembly for the judicial branch. State funding shall be phased in as provided in section 602.11101.

2. The supreme court may accept federal funds to be used in the operation of the judicial branch, but shall not expend any of these funds except pursuant to appropriation of the funds by the general assembly.

3. A revolving fund is created in the state treasury for the payment of jury and witness fees, mileage, and costs related to summoning jurors by the judicial branch. The judicial branch shall deposit any reimbursements to the state for the payment of jury and witness fees and mileage in the revolving fund. Notwithstanding section 8.33, unencumbered and unobligated receipts in the revolving fund at the end of a fiscal year do not revert to the general fund of the state. The judicial branch shall on or before February 1 file a financial accounting of the moneys in the revolving fund with the legislative fiscal bureau. The accounting shall include an estimate of disbursements from the revolving fund for the remainder of the fiscal year and for the next fiscal year.

4. The judicial branch shall reimburse counties for the costs of witness and mileage fees and for attorney fees paid pursuant to section 232.141, subsection 1.

83 Acts, ch 186, §1302, 10201; 85 Acts, ch 197, §11; 87 Acts, ch 152, §2; 95 Acts, ch 207, §23; 98 Acts, ch 1047, §46; 2002 Acts, ch 1175, §43

Local court property devoted for use of judicial branch; §602.11107
Use of revolving fund moneys for interpreter fees; see §622A.4
Subsection 3 amended

602.1303 Local funding.

1. A county or city shall provide the district court for the county with physical facilities, including heat, water, electricity, maintenance, and custodial services, as follows:

a. A county shall provide courtrooms, offices, and other physical facilities which in the judgment of the board of supervisors are suitable for the district court, and for judicial officers of the district court, the clerk of the district court, juvenile court officers, and other court employees.

b. The counties within the judicial districts shall provide suitable offices and other physical facilities for the district court administrator and staff at locations within the judicial districts determined by the chief judge of the respective judicial districts. The county auditor of the host county shall apportion the costs of providing the offices and other physical facilities among the counties within the judicial district in the proportion that the population of each county in the judicial district is to the total population of all counties in the district.

c. If court is held in a city other than the county seat, the city shall provide courtrooms and other physical facilities which in the judgment of the city council are suitable.

2. A county shall pay the expenses of the members of the county magistrate appointing commission as provided in section 602.6501.

3. A county shall pay the compensation and expenses of the jury commission and assistants under chapter 607A.

4. A county shall provide the district court with bailiff and other law enforcement services upon the request of a judicial officer of the district court.

5. A county shall pay the costs incurred in connection with the administration of juvenile justice under section 232.141.

6. A county shall pay the costs and expenses incurred in connection with grand juries.

7. A county or city shall pay the costs of its depositions and transcripts in criminal actions prosecuted by that county or city and shall pay the court fees and costs provided by law in criminal actions prosecuted by that county or city under county or city ordinance. A county or city shall pay witness fees and mileage in trials of criminal actions prosecuted by the county or city under county or city ordinance.

8. A county shall pay the fees and expenses allowed under sections 815.2 and 815.3.

9. If a county board of supervisors, with the approval of the supreme court, elects not to maintain

space for the district court, the county may enter into an agreement with a contiguous county in the same judicial district to share the costs under subsections 1 through 8. For the purposes of this subsection, two counties are contiguous if they share a common boundary, including a corner.

83 Acts, ch 186, §1303, 10201; 84 Acts, ch 1301, §14; 85 Acts, ch 197, §12; 86 Acts, ch 1108, §6; 87 Acts, ch 192, §1; 92 Acts, ch 1164, §2

Certain bailiffs employed as court attendants; §602.11113

602.1304 Revenues — enhanced court collections fund.

1. Except as provided in article 8 and subsection 2 of this section, all fees and other revenues collected by judicial officers and court employees shall be paid into the general fund of the state.

2. *a.* The enhanced court collections fund is created in the state treasury under the authority of the supreme court. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund, unless and to the extent the total amount of moneys deposited into the fund in a fiscal year would exceed the maximum annual deposit amount established for the collections fund by the general assembly. The initial maximum annual deposit amount for a fiscal year is four million dollars. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the collections fund shall remain in the collections fund and any interest and earnings shall be in addition to the maximum annual deposit amount.

b. For each fiscal year, a judicial collection estimate for that fiscal year shall be equally and proportionally divided into a quarterly amount. The judicial collection estimate shall be calculated by using the state revenue estimating conference estimate made by December 15 pursuant to section 8.22A, subsection 3, of the total amount of fines, fees, civil penalties, costs, surcharges, and other revenues collected by judicial officers and court employees for deposit into the general fund of the state. The revenue estimating conference estimate shall be reduced by the maximum amounts allocated to the Iowa prison infrastructure fund pursuant to section 602.8108A, the court technology and modernization fund pursuant to section 602.8108, and the road use tax fund pursuant to section 602.8108, subsection 6, and the remainder shall be the judicial collection estimate. In each quarter of a fiscal year, after revenues collected by judicial officers and court employees equal to that quarterly amount are deposited into the general fund of the state and after the required amount is deposited during the quarter into the Iowa prison infrastructure fund pursuant to section 602.8108A and into the court technology and modernization fund pursuant to section 602.8108, the director of revenue and finance shall deposit the remaining revenues for that quarter into the enhanced court collections fund in lieu of the general fund. However, after total deposits into the collections fund for the fiscal year are equal to the maximum deposit amount established for the collections fund, remaining revenues for that fiscal year shall be deposited into the general fund. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a lesser amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of revenue and finance shall recalculate the judicial collection estimate accordingly. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a greater amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of revenue and finance shall recalculate the judicial collection estimate accordingly but only to the extent that the greater amount is due to an increase in the fines, fees, civil penalties, costs, surcharges, or other revenues allowed by law to be collected by judicial officers and court employees.

c. Moneys in the collections fund shall be used by the judicial branch for the Iowa court information system; records management equipment, services, and projects; other technological improvements; electronic legal research equipment, systems, and projects; and the study, development, and implementation of other innovations and projects that would improve the administration of justice. The moneys in the collection fund may also be used for capital improvements necessitated by the installation of or connection with the Iowa court information system, the Iowa communications network, and other technological improvements approved by the judicial branch.

83 Acts, ch 186, §1304, 10201; 95 Acts, ch 207, §24; 96 Acts, ch 1034, §55; 96 Acts, ch 1216, §29; 97 Acts, ch 205, §23; 98 Acts, ch 1047, §47

For provisions concerning the deposit of certain delinquent amounts collected in criminal proceedings in the revolving fund established under §602.1302, see §909.10

Use of enhanced court collections funds; 2002 Acts, ch 1166, §21; 2002 Acts, 2nd Ex, ch 1003, §173

602.1305 Distribution of revenues of the district court.

All fees, costs, forfeited bail, and other court revenues collected by the district court shall be distributed as provided in article 8.

83 Acts, ch 186, §1305, 10201

PART 4

PERSONNEL

602.1401 Personnel system.

1. The supreme court shall establish, and may amend, a personnel system and a pay and benefits

plan for court employees. The personnel system shall include a designation by position title, classification, and function of each position or class of positions within the judicial branch. Reasonable efforts shall be made to accommodate the individual staffing and management practices of the respective clerks of the district court. The personnel system, in the employment of court employees, shall not discriminate on the basis of race, creed, color, sex, national origin, religion, physical disability, or political party preference. The supreme court, in establishing the personnel system, shall implement the comparable worth directives issued by the state court administrator under section 602.1204, subsection 2. The personnel system shall include the prohibitions against sexual harassment of full-time, part-time, and temporary employees set out in section 19B.12, and shall include a grievance procedure for discriminatory harassment. The personnel system shall develop and distribute at the time of hiring or orientation, a guide that describes for employees the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures. This subsection does not supersede the remedies provided under chapter 216.

2. The supreme court shall compile and publish all documents that establish the personnel system, and shall distribute a copy of the compilation and all amendments to each operating component of the judicial branch.

3. The state court administrator is the public employer of judicial branch employees for purposes of chapter 20, relating to public employment relations.

For purposes of chapter 20, the certified representative, which on July 1, 1983, represents employees who become judicial branch employees as a result of 1983 Iowa Acts, chapter 186, shall remain the certified representative when the employees become judicial branch employees and thereafter, unless the public employee organization is decertified in an election held under section 20.15 or amended or absorbed into another certified organization pursuant to chapter 20. Collective bargaining negotiations shall be conducted on a statewide basis and the certified employee organizations which engage in bargaining shall negotiate on a statewide basis, although bargaining units shall be organized by judicial district. The public employment relations board shall adopt rules pursuant to chapter 17A to implement this subsection.

4. The supreme court may establish reasonable classes of employees and a pay and benefits plan for the classes of employees as necessary to accomplish the purposes of the personnel system.

5. The pay and benefits plan shall set the compensation and benefits of court employees within the funds appropriated by the general assembly.

6. The benefits plan established by the supreme court may provide for benefits to court employees not covered under a collective bargaining agreement entered into pursuant to chapter 20, notwithstanding any contrary provision of section 70A.1 or 70A.23, consistent with benefits provided to court employees covered under a collective bargaining agreement entered into with the state court administrator pursuant to chapter 20.

83 Acts, ch 186, §1401, 10201; 85 Acts, ch 117, §1; 91 Acts, ch 116, §6; 92 Acts, ch 1086, §4; 98 Acts, ch 1047, §48; 2000 Acts, ch 1057, §6 – 9

602.1402 Personnel control.

The employment of court employees within an operating component of the judicial branch is subject to prior authorization by the supreme court, and to approval by the state court administrator under section 602.1209.

83 Acts, ch 186, §1402, 10201; 98 Acts, ch 1047, §49

PART 5

COMPENSATION OF JUDICIAL OFFICERS AND COURT EMPLOYEES

602.1501 Judicial salaries.

1. The chief justice and each justice of the supreme court shall receive the salary set by the general assembly.

2. The chief judge and each judge of the court of appeals shall receive the salary set by the general assembly.

3. The chief judge of each judicial district and each district judge shall receive the salary set by the general assembly.

4. District associate judges shall receive the salary set by the general assembly. However, an alternate district associate judge whose appointment is authorized under section 602.6303 shall receive a salary for each day of actual duty equal to a district associate judge's daily salary.

5. Full-time associate juvenile judges and full-time associate probate judges shall receive the salary set by the general assembly.

6. Magistrates shall receive the salary set by the general assembly, subject to section 602.6402.

83 Acts, ch 186, §1501, 10201; 99 Acts, ch 93, §5

602.1502 State court administration salaries.

1. The supreme court shall set the compensation of the state court administrator. The salaries of other employees of the judicial branch shall be set pursuant to the judicial branch's pay plan established under section 602.1401.

2. Court reporters who are employed on an emergency basis in the district court shall be paid not more than their usual and customary fees, while employed by the court. Payments shall be made at least once each month.

3. Court reporters shall be paid compensation

for transcribing their notes as provided in section 602.3202, but shall not work on outside depositions during the hours for which they are compensated as a court employee.

83 Acts, ch 186, §1502, 10201; 91 Acts, ch 116, §7; 98 Acts, ch 1047, §50

602.1503 through 602.1507 Repealed by 91 Acts, ch 116, § 23. See § 602.1502.

602.1508 Compensation of referees.

Referees and other persons referred to in section 602.6602 shall receive a salary or other compensation as set by the supreme court.

83 Acts, ch 186, §1508, 10201

602.1509 Expenses.

1. When a judicial officer, court employee, or other person providing professional services to the courts is required to travel in the discharge of official duties, the person shall be paid actual and necessary expenses incurred in the performance of duties, not to exceed a maximum amount established by the supreme court. The supreme court shall prescribe procedures to establish the maximum amount, terms, and conditions for reimbursement of the expenses.

2. The supreme court may authorize juvenile court officers to receive a monthly allowance for use of an automobile in the discharge of official duties in lieu of receiving an expense reimbursement based on mileage.

83 Acts, ch 186, §1509, 10201

602.1510 Bond expense.

The cost of a bond that is required of a judicial officer or court employee in the discharge of duties shall be paid by the judicial branch.

83 Acts, ch 186, §1510, 10201; 98 Acts, ch 1047, §51

602.1511 Board of examiners for shorthand reporters.

Members of the board of examiners for certified shorthand reporters appointed under article 3 shall receive actual and necessary expenses pursuant to section 602.1509 and per diem compensation for each day actually engaged in the discharge of duties.

83 Acts, ch 186, §1511, 10201

602.1512 Commission on judicial qualifications.

The members of the commission on judicial qualifications established under section 602.2102, other than the judicial member, shall receive per diem compensation for each day that they are actually engaged in the performance of duties. All of the members shall be reimbursed for actual and necessary expenses pursuant to section 602.1509.

83 Acts, ch 186, §1512, 10201

602.1513 Per diem compensation.

The supreme court shall set the per diem compensation under sections 602.1511 and 602.1512 at a rate per day not exceeding the rate specified in section 7E.6.

83 Acts, ch 186, §1513, 10201; 90 Acts, ch 1256, §53

602.1514 Judicial compensation commission.

1. A judicial compensation commission is established. The commission is composed of eight members, four of whom shall be appointed by the governor and four of whom shall be appointed by the legislative council. Members of the commission shall be appointed without regard to political affiliation and shall not be state officials or employees, employees of any state department, board, commission, or agency or of any political subdivision of the state.

2. Members of the commission shall serve for a term of office of four years, and for the initial commission, two members determined by lot shall be appointed by each appointing authority to a term of two years. Thereafter, all members shall be appointed to four-year terms. Vacancies on the commission shall be filled for the unexpired term in the same manner as the original appointment.

3. Members of the commission shall serve without compensation, but shall receive actual and necessary expenses, including travel at the state rate. Payment shall be made from funds available pursuant to section 2.12; however, members appointed by the governor shall be paid from funds appropriated to the office of the governor.

4. The commission shall elect its own chairperson from among its membership and shall meet on the call of the chairperson to review judicial salaries and related benefits. The commission shall review the compensation and related benefits paid to statutory judicial officers, and shall review the compensation and related benefits paid for comparable positions in other states, the federal government, and private enterprise. Based on the review and other factors deemed relevant, the commission shall make its recommendation as to judicial salaries and related benefits to the governor and the members of the general assembly. No later than February 1 of each odd-numbered year the commission shall report to the governor and to the general assembly its recommendations.

5. The governor and the general assembly shall consider the recommendations of the commission in determining judicial salaries and related benefits.

87 Acts, ch 227, §31

PART 6

GENERAL PROVISIONS

602.1601 Judicial proceedings public.

All judicial proceedings shall be public, unless otherwise specially provided by statute or agreed to by the parties.

83 Acts, ch 186, §1601, 10201

602.1602 Sunday — permissible acts.

A court shall not be opened on Sunday and judicial business shall not be transacted on Sunday, except to:

1. Give instructions to a jury then deliberating on its verdict.
2. Receive a verdict or discharge a jury.
3. Exercise the powers of a magistrate in a criminal proceeding.
4. Perform other acts as provided by law.

83 Acts, ch 186, §1602, 10201

Analogous or related provisions, §626.6, 639.5, 643.3, and 667.3

602.1603 Judge to be attorney.

A person is not eligible for, and shall not hold the office of supreme court justice, court of appeals judge, district judge, or district associate judge unless admitted to the practice of law in this state.

83 Acts, ch 186, §1603, 10201

602.1604 Judges shall not practice law.

While holding office, a supreme court justice, court of appeals judge, district judge, or district associate judge shall not practice as an attorney or counselor or give advice in relation to any action pending or about to be brought in any of the courts of the state. A person whose appointment as an alternate district associate judge is authorized under section 602.6303 may practice law except when actually serving as a district associate judge.

83 Acts, ch 186, §1604, 10201

602.1605 Special conditions for magistrates.

1. A magistrate shall not accept any compensation, fee, or reward from or on behalf of anyone for services rendered in the conduct of official business except the compensation provided by law.
2. If a magistrate who practices law appears as counsel for a client in a matter that is within the jurisdiction of a magistrate, that matter shall be heard only by a district judge or a district associate judge. A disqualification under this section shall be had upon motion of the magistrate or of any party, either orally or in writing, and the clerk of the district court shall reassign the matter to a proper judicial officer.

83 Acts, ch 186, §1605, 10201

602.1606 Judicial officer disqualified.

A judicial officer is disqualified from acting in a proceeding, except upon the consent of all of the parties, if any of the following circumstances exists:

1. The judicial officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.
2. The judicial officer served as a lawyer in the matter in controversy, or a lawyer with whom the judicial officer previously practiced law served during that association as a lawyer concerning the matter, or the judicial officer or such lawyer has been a material witness concerning the matter.
3. The judicial officer knows that the officer, individually or as a fiduciary, or the officer's spouse or a person related to either of them by consanguinity or affinity within the third degree or the spouse of such a person has a financial interest in the subject matter in controversy or in a party to the proceeding, or has any other interest that could be substantially affected by the outcome of the proceeding.
4. The judicial officer or the officer's spouse, or a person related to either of them by consanguinity or affinity within the third degree or the spouse of such a person, is a party to the proceeding, or an officer, director, or trustee of a party, or is acting as a lawyer in the proceeding, or is known by the judicial officer to have an interest that could be substantially affected by the outcome of the proceeding, or is, to the judicial officer's knowledge, likely to be a material witness in the proceeding.

A judicial officer shall disclose to all parties in a proceeding any existing circumstances in subsections 1 through 4 before the parties consent to the judicial officer's presiding in the proceeding.

83 Acts, ch 186, §1606, 10201

602.1607 Court employees shall not practice law.

A full-time court employee shall not practice as an attorney or counselor of law.

83 Acts, ch 186, §1607, 10201

602.1608 Salaries exclusive.

Court employees shall not accept any compensation, fee, or reward for services rendered in connection with duties of court employment except the compensation provided by law.

83 Acts, ch 186, §1608, 10201

602.1609 Compliance with ethics law.

Judicial officers and court employees shall comply with rules prescribed by the supreme court with respect to ethical conduct including the acceptance and receipt of gifts and honoraria, interests in public contracts, services against the state, and financial disclosure. In prescribing rules, the supreme court shall include any appropriate pro-

visions and limitations contained in chapter 68B. Violations are subject to the imposition of criminal and civil penalties in the manner provided by law.

83 Acts, ch 186, §1609, 10201; 92 Acts, ch 1228, §30

602.1610 Mandatory retirement.

1. Judicial officers shall cease to hold office upon reaching the mandatory retirement age.

a. The mandatory retirement age is seventy-five years for all justices of the supreme court and district judges holding office on July 1, 1965.

b. The mandatory retirement age is seventy-two years for all justices of the supreme court, judges of the court of appeals, and district judges appointed to office after July 1, 1965.

c. The mandatory retirement age is seventy-two years for all district associate judges, associate juvenile judges, associate probate judges, and judicial magistrates. However, the mandatory retirement age does not apply to an associate juvenile judge or associate probate judge who is seventy-two years of age or older on July 1, 1996.

2. The mandatory retirement age for employees of the judicial branch is as provided in section 97B.46.

83 Acts, ch 186, §1610, 10201; 96 Acts, ch 1153, §5; 98 Acts, ch 1047, §52

602.1611 Judicial retirement programs.

1. Judges of the supreme court and court of appeals, district judges, and district associate judges are members of the judicial retirement system established in article 9, part 1, and are not members of the public employees' retirement system established in chapter 97B, except as provided in paragraphs *"a"* and *"b"*.

a. District associate judges who exercised the election under section 602.11115, subsection 1, are members of the public employees' retirement system and are not members of the judicial retirement system. District associate judges who exercised the election under section 602.11115, subsection 2, are members of the judicial retirement system and are inactive members of the public employees' retirement system.

b. District associate judges appointed after June 30, 1984, judges of the supreme court and court of appeals, and district judges, who were vested members of the public employees' retirement system at the time they became members of the judicial retirement system, and whose contributions in the public employees' retirement system were not refunded to them prior to the repeal of section 97B.69, are members of the judicial retirement system and are inactive vested members of the public employees' retirement system until they become qualified to receive retirement benefits from the judicial retirement system and become retired members of the public employees' retirement system or voluntarily withdraw their contributions from the public employees' retirement system.

2. Alternate district associate judges whose appointment is authorized under section 602.6303 are not members of either the judicial retirement system or the public employees' retirement system.

3. Magistrates shall be members of the Iowa public employees' retirement system unless the magistrate elects out of coverage under the Iowa public employees' retirement system as provided in section 97B.42A.

4. Commencing July 1, 1998, associate juvenile judges and associate probate judges, who are appointed on a full-time basis, are members of the judicial retirement system established in article 9, part 1, and are not members of the public employees' retirement system established in chapter 97B, except as provided in section 602.11116.

83 Acts, ch 186, §1611, 10201; 84 Acts, ch 1285, §26; 86 Acts, ch 1243, §34; 98 Acts, ch 1183, §72, 100, 104

602.1612 Temporary service by retired judges.

1. Justices of the supreme court, judges of the court of appeals, district judges, and district associate judges who are retired by reason of age or who are drawing benefits under section 602.9106, and senior judges who have retired under section 602.9207 or who have relinquished senior judgeship under section 602.9208, subsection 1, may with their consent be assigned by the supreme court to temporary judicial duties on a court in this state if the assignment is deemed necessary by the supreme court to expedite the administration of justice.

2. A retired justice or judge shall not engage in the practice of law unless the justice or judge files an election to practice law with the clerk of the supreme court. Upon electing to practice law, the justice or judge is ineligible for assignment to temporary judicial duties at any time.

3. While serving under temporary assignment, a retired justice or judge shall be paid the compensation and expense reimbursement provided by law for justices or judges on the court to which assigned, but shall not receive annuity payments under the judicial retirement system and a district associate judge covered under chapter 97B shall receive monthly benefits under that chapter only if the district associate judge has attained the age of seventy years.

4. A retired justice or judge may be authorized by the order of assignment to appoint a temporary court reporter, who shall receive the compensation and expense reimbursement provided by law for a regular court reporter in the court to which the justice or judge is assigned.

5. An order of assignment shall be filed in the office of the clerk of the court on which the justice

or judge is to serve.

83 Acts, ch 186, §1612, 10201; 90 Acts, ch 1271, §1511

Retired judicial magistrates; §602.11114

602.1613 Court employee retirement.

Court employees are members of the Iowa public employees' retirement system under chapter 97B, except as otherwise provided in chapter 97B or this chapter.

83 Acts, ch 186, §1613, 10201; 84 Acts, ch 1285, §27

ARTICLE 2

DISCIPLINE AND REMOVAL OF JUDICIAL OFFICERS

PART 1

SUPREME COURT ACTION

602.2101 Authority.

The supreme court may retire, discipline, or remove a judicial officer from office or may discipline or remove an employee of the judicial branch for cause as provided in this part.

83 Acts, ch 186, §3101, 10201; 92 Acts, ch 1228, §31; 98 Acts, ch 1047, §53

602.2102 Commission on judicial qualifications.

1. A seven-member "Commission on Judicial Qualifications" is established. The commission consists of one district judge and two members who are practicing attorneys in Iowa and who do not belong to the same political party, to be appointed by the chief justice; and four electors of the state who are not attorneys, no more than two of whom belong to the same political party, to be appointed by the governor, subject to confirmation by the senate. The commission members shall serve for six-year terms, are ineligible for a second term, and except for the judicial member shall not hold any other office of and shall not be employed by the United States or the state of Iowa or its political subdivisions. Members appointed by the chief justice shall serve terms beginning January 1 of the year for which the appointments are made and members appointed by the governor shall serve staggered terms beginning and ending as provided by section 69.19. Vacancies shall be filled by appointment by the chief justice or governor as provided in this subsection, for the unexpired portion of the term.

2. If the judicial member is the subject of a charge before the commission, the chief justice shall appoint a district judge of another judicial district to act as the judicial member of the commission until the person charged is exonerated, or for the unexpired portion of the term if the person charged is not exonerated. If the judicial member is a resident judge of the same judicial district as the judicial officer who is the subject of a charge before the commission, the chief justice shall appoint a district judge of another judicial district to act as the judicial member during that proceeding.

3. The commission shall elect its own chairperson, and the state court administrator or a designee of the state court administrator is the executive secretary of the commission.

83 Acts, ch 186, §3102, 10201

Confirmation, see §2.32

602.2103 Operation of commission.

A quorum of the commission is four members. Only those commission members that are present at commission meetings or hearings may vote. An application by the commission to the supreme court to retire, discipline, or remove a judicial officer, or discipline or remove an employee of the judicial branch, or an action by the commission which affects the final disposition of a complaint, requires the affirmative vote of at least four commission members. Notwithstanding chapter 21 and chapter 22, all records, papers, proceedings, meetings, and hearings of the commission are confidential, but if the commission applies to the supreme court to retire, discipline, or remove a judicial officer, or to discipline or remove an employee of the judicial branch, the application and all of the records and papers in that proceeding are public documents.

83 Acts, ch 186, §3103, 10201; 92 Acts, ch 1228, §32; 98 Acts, ch 1047, §54

602.2104 Procedure before commission.

1. Charges before the commission shall be in writing but may be simple and informal. The commission shall investigate each charge as indicated by its gravity. If the charge is groundless, it shall be dismissed by the commission. If the charge appears to be substantiated but does not warrant application to the supreme court, the commission may dispose of it informally by conference with or communication to the judicial officer or employee of the judicial branch involved. If the charge appears to be substantiated and if proved would warrant application to the supreme court, notice shall be given to the judicial officer and a hearing shall be held before the commission. The commission may employ investigative personnel, in addition to the executive secretary, as it deems necessary. The commission may also employ or contract for the employment of legal counsel.

2. In case of a hearing before the commission, written notice of the charge and of the time and place of hearing shall be mailed to a judicial officer or an employee of the judicial branch at the person's residence at least twenty days prior to the time set for hearing. Hearing shall be held in the county where the judicial officer or employee of the judicial branch resides unless the commission and

the judicial officer or employee of the judicial branch agree to a different location. The judicial officer shall continue to perform judicial duties during the pendency of the charge and the employee shall continue to perform the employee's assigned duties, unless otherwise ordered by the commission. The attorney general shall prosecute the charge before the commission on behalf of the state. A judicial officer or employee of the judicial branch may defend and has the right to participate in person and by counsel, to cross-examine, to be confronted by the witnesses, and to present evidence in accordance with the rules of civil procedure. A complete record shall be made of the evidence by a court reporter. In accordance with its findings on the evidence, the commission shall dismiss the charge or make application to the supreme court to retire, discipline, or remove the judicial officer or to discipline or remove an employee of the judicial branch.

3. The commission has subpoena power, which may be used in conducting investigations and during the hearing process. A person who disobeys the commission's subpoena or who refuses to testify or produce documents as required by a commission subpoena may be punished for contempt in the district court for the county in which the hearing is being held or the investigation is being conducted. Costs related to investigations and to the appearance of witnesses subpoenaed by the designated prosecutor shall be paid by the commission. Commission subpoenas may be issued as follows:

a. During an investigation, subpoenas shall be issued by the commission, at the request of the person designated to conduct the investigation, to compel the appearance of persons or the production of documents before the person who is designated to conduct the investigation. The person designated to conduct the investigation shall administer the required oath.

b. During the hearing process, subpoenas shall be issued by the commission at the request of the designated prosecutor or the judicial officer or employee of the judicial branch.

83 Acts, ch 186, §3104, 10201; 92 Acts, ch 1228, §33; 93 Acts, ch 85, §1, 2; 98 Acts, ch 1047, §55

602.2105 Rules.

The commission shall prescribe rules for its operation and procedure.

83 Acts, ch 186, §3105, 10201

Rules; see Iowa Court Rules, Fourth Edition

602.2106 Procedure before supreme court.

1. If the commission submits an application to the supreme court to retire, discipline, or remove a judicial officer or to discipline or remove an employee of the judicial branch, the commission shall promptly file in the supreme court a transcript of the hearing before the commission. The statutes and rules relative to proceedings in appeals of equity suits apply.

2. The attorney general shall prosecute the proceedings in the supreme court on behalf of the state, and the judicial officer or employee of the judicial branch may defend in person and by counsel.

3. Upon application by the commission, the supreme court may do any of the following:

a. Retire the judicial officer for permanent physical or mental disability which substantially interferes with the performance of judicial duties.

b. Discipline or remove the judicial officer for persistent failure to perform duties, habitual intemperance, willful misconduct in office, conduct which brings judicial office into disrepute, or substantial violation of the canons of judicial ethics. Discipline may include suspension without pay for a definite period of time not to exceed twelve months.

c. Discipline or remove an employee of the judicial branch for conduct which violates the code of ethics prescribed by the supreme court for court employees.

4. If the supreme court finds that the application should be granted in whole or in part, it shall render the decree that it deems appropriate.

83 Acts, ch 186, §3106, 10201; 92 Acts, ch 1228, §34; 98 Acts, ch 1047, §56

602.2107 Civil immunity.

The making of charges before the commission, the giving of evidence or information before the commission or to an investigator or legal counsel employed by the commission, and the presentation of transcripts, extensions of evidence, briefs, and arguments in the supreme court are privileged in actions for defamation.

83 Acts, ch 186, §3107, 10201; 92 Acts, ch 1228, §35

PART 2

OTHER PROCEEDINGS

602.2201 Impeachment.

Judicial officers may be removed from office by impeachment pursuant to chapter 68.

83 Acts, ch 186, §3201, 10201

ARTICLE 3

CERTIFICATION AND REGULATION OF SHORTHAND REPORTERS

PART 1

CERTIFICATION

602.3101 Board of examiners.

1. A five-member board of examiners of shorthand reporters is established, consisting of three certified shorthand reporters and two persons

who are not certified shorthand reporters and who shall represent the general public. Members shall be appointed by the supreme court. A certified member shall be actively engaged in the practice of certified shorthand reporting and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. Professional associations or societies composed of certified shorthand reporters may recommend the names of potential board members to the supreme court, but the supreme court is not bound by the recommendations. A board member shall not be required to be a member of a professional association or society composed of certified shorthand reporters.

2. The state court administrator or a designee of the state court administrator shall act as secretary to the board.

83 Acts, ch 186, §4101, 10201

602.3102 Terms of office.

Appointments shall be for three-year terms and each term shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment by the supreme court. Members shall serve a maximum of three terms or nine years, whichever is less.

83 Acts, ch 186, §4102, 10201

602.3103 Public members.

The public members of the board may participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

83 Acts, ch 186, §4103, 10201

602.3104 Meetings.

The board of examiners shall fix stated times for the examination of the candidates and shall hold at least one meeting each year at the seat of government. A majority of the members of the board constitutes a quorum.

83 Acts, ch 186, §4104, 10201

602.3105 Applications.

Applications for certification shall be on forms prescribed and furnished by the board and the board shall not require that the application contain a photograph of the applicant. An applicant shall not be denied certification because of age, citizenship, sex, race, religion, marital status, or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant. Character references may be required, but shall not be obtained from certified shorthand reporters.

83 Acts, ch 186, §4105, 10201; 89 Acts, ch 296, §80

602.3106 Fees.

1. The supreme court shall set the fee for certification examinations. The fee shall be based on the annual cost of administering the examinations and upon the administrative costs of sustaining the board, which shall include but shall not be limited to the cost for per diem, expenses, and travel for board members, and office facilities, supplies, and equipment.

2. The state court administrator shall collect and account for all fees payable to the board.

83 Acts, ch 186, §4106, 10201; 93 Acts, ch 85, §3

602.3107 Examinations.

The board may administer as many examinations per year as necessary, but shall administer at least one examination per year. The scope of the examinations and the methods of procedure shall be prescribed by the board. A written examination may be conducted by representatives of the board. Examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination also shall be concealed as far as possible. Applicants who fail the examination once may take the examination at the next scheduled time. Thereafter, the applicant may be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the board concerning the examination grade and subject areas or questions which the applicant failed to answer correctly, and the board shall provide the information. However, if the board administers a uniform, standardized examination, the board is only required to provide the examination grade and other information concerning the applicant's examination results that is available to the board.

83 Acts, ch 186, §4107, 10201

PART 2

REGULATION

602.3201 Requirement of certification — use of title.

A person shall not engage in the profession of shorthand reporting unless the person is certified pursuant to this chapter, or otherwise exempted pursuant to section 602.6603, subsection 4. Only a person who is certified by the board may assume the title of certified shorthand reporter, or use the abbreviation C.S.R., or any words, letters, or figures to indicate that the person is a certified shorthand reporter.

83 Acts, ch 186, §4201, 10201; 89 Acts, ch 296, §81

602.3202 Transcript fee.

Certified shorthand reporters are entitled to re-

ceive compensation for transcribing their official notes as set by rule of the supreme court, to be paid for in all cases by the party ordering the transcription.

83 Acts, ch 186, §4202, 10201

Fees; see R.App.P. 6.10(2), Iowa court rules

602.3203 Revocation or suspension.

A certification may be revoked or suspended if the person is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of shorthand reporting, or engaging in unethical conduct or in a practice that is harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony. A copy of the record of conviction or plea of guilty is conclusive evidence.
6. Fraud in representations relating to skill or ability.
7. Use of untruthful or improbable statements in advertisements.

83 Acts, ch 186, §4203, 10201; 89 Acts, ch 296, §82

PART 3

PENAL PROVISIONS

602.3301 Misuse of confidential information — penalty.

1. A member of the board shall not disclose information relating to the following:

a. Criminal history or prior misconduct of the applicant.

b. The contents of the examination.

c. Examination results other than final scores except for information about the results of an examination which is given to the person who took the examination.

2. A member of the board who willfully communicates or seeks to communicate information referred to in subsection 1, or a person who willfully requests, obtains, or seeks to obtain information referred to in subsection 1, is guilty of a simple misdemeanor.

83 Acts, ch 186, §4301, 10201

602.3302 Violations punished.

A person who violates any provision of this article is guilty of a simple misdemeanor.

83 Acts, ch 186, §4302, 10201

ARTICLE 4

SUPREME COURT

PART 1

GENERAL PROVISIONS

602.4101 Justices — quorum.

1. The supreme court consists of seven justices. A majority of the justices sitting constitutes a quorum, but fewer than three justices is not a quorum.

2. Justices of the supreme court shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. Justices of the supreme court shall qualify for office as provided in chapter 63.

83 Acts, ch 186, §5101, 10201; 98 Acts, ch 1184, §1, 4

602.4102 Jurisdiction.

1. The supreme court has appellate jurisdiction only in cases in chancery, and constitutes a court for the correction of errors at law. The jurisdiction of the supreme court is coextensive with the state.

2. A civil or criminal action or special proceeding filed with the supreme court for appeal or review, may be transferred by the supreme court to the court of appeals by issuing an order of transfer. The jurisdiction of the supreme court in the matter ceases upon the filing of that order by the clerk of the supreme court. A matter which has been transferred to the court of appeals pursuant to order of the supreme court is not thereafter subject to the jurisdiction of the supreme court, except as provided in subsection 4.

3. The supreme court shall prescribe rules for the transfer of matters to the court of appeals. These rules may provide for the selective transfer of individual cases and may provide for the transfer of cases according to subject matter or other general criteria. A rule shall not provide for the transfer of a matter other than by an order of transfer under subsection 2.

4. A party to an appeal decided by the court of appeals may, as a matter of right, file an application with the supreme court for further review. An application for further review shall not be granted by the supreme court unless the application was filed within twenty days following the filing of the decision of the court of appeals. The court of appeals shall extend the time for filing of an application if the court of appeals determines that a failure to timely file an application was due to the failure of the clerk of the court of appeals to notify the prospective applicant of the filing of the decision. If an application for further review is not acted upon by the supreme court within thirty days after the application was filed, the application is deemed denied, the supreme court loses jurisdiction, and the decision of the court of appeals is con-

clusive.

5. The supreme court shall prescribe rules of appellate procedure which shall govern further review by the supreme court of decisions of the court of appeals. These rules shall contain, but need not be limited to, a specification of the grounds upon which further review may, in the discretion of the supreme court, be granted.

83 Acts, ch 186, §5102, 10201; 98 Acts, ch 1115, §7, 21

602.4103 Chief justice.

The justices of the supreme court shall select one justice as chief justice, to serve during that justice's term of office. The chief justice is eligible for reselection. The chief justice shall appoint one of the other justices to act during the absence or inability of the chief justice to act, and when so acting the appointee has all the rights, duties, and powers of the chief justice.

83 Acts, ch 186, §5103, 10201

602.4104 Divisions — full court.

1. The supreme court may be divided into divisions of three or more justices in the manner it prescribes by rule. The divisions may hold open court separately and cases may be submitted to each division separately, in accordance with these rules.

2. The supreme court shall prescribe rules for the submission of a case or petition for rehearing whenever differences arise between members of divisions or whenever the chief justice orders or directs the submission of the question or petition for rehearing by the whole court.

3. The supreme court shall prescribe rules to provide for the submission of cases to the entire bench or to the separate divisions.

83 Acts, ch 186, §5104, 10201; 85 Acts, ch 197, §13

602.4105 Time and place court meets.

The supreme court shall hold court at the seat of state government and elsewhere as the court orders, and at the times the court orders.

83 Acts, ch 186, §5105, 10201

602.4106 Opinions — reports.

1. The decisions of the court on all questions passed upon by it, including motions and points of practice, shall be specifically stated, and shall be accompanied with an opinion upon those which are deemed of sufficient importance, together with any dissents, which dissents may be stated with or without an opinion. All decisions and opinions shall be in writing and filed with the clerk, except that rulings upon motions may be entered upon the announcement book.

2. The records and reports for each case shall show whether a decision was made by a full bench, and whether any, and if so which, of the judges dissented from the decision.

3. The supreme court may publish reports of its official opinions, or it may direct that publication of the opinions by a private publisher shall be considered the official reports.

4. If the decision, in the judgment of the court, is not of sufficient general importance to be published, it shall be so designated, in which case it shall not be included in the reports, and no case shall be reported except by order of the full bench.

83 Acts, ch 186, §5106, 10201

602.4107 Divided court.

When the supreme court is equally divided in opinion, the judgment of the court below shall stand affirmed, but the decision of the supreme court is of no further force or authority. Opinions may be filed in these cases.

83 Acts, ch 186, §5107, 10201

602.4108 Attendance of sheriff of Polk county.

The court may require the attendance and services of the sheriff of Polk county at any time.

83 Acts, ch 186, §5108, 10201

PART 2

RULES OF PROCEDURE

602.4201 Rules governing actions and proceedings.

1. The supreme court may prescribe all rules of pleading, practice, evidence, and procedure, and the forms of process, writs, and notices, for all proceedings in all courts of this state, for the purposes of simplifying the proceedings and promoting the speedy determination of litigation upon its merits.

2. Rules of appellate procedure relating to appeals to and review by the supreme court, discretionary review by the courts of small claims actions, review by the supreme court by writ of certiorari to inferior courts, appeal to or review by the court of appeals of a matter transferred to that court by the supreme court, and further review by the supreme court of decisions of the court of appeals, shall be known as "Rules of Appellate Procedure", and shall be published as provided in section 2B.5.

3. The following rules are subject to section 602.4202:

a. Rules of civil procedure.

b. Rules of criminal procedure.

c. Rules of evidence.

d. Rules of appellate procedure 6.1 through 6.9.

e. Rules of probate procedure.

f. Juvenile procedure.

g. Involuntary hospitalization of mentally ill.

h. Involuntary commitment or treatment of substance abusers.

83 Acts, ch 186, §5201, 10201; 92 Acts, ch 1163, §110; 98 Acts, ch 1115, §8, 21

602.4202 Rulemaking procedure.

1. The supreme court shall submit a rule or form prescribed by the supreme court under section 602.4201, subsection 3, or pursuant to any other rulemaking authority specifically made subject to this section to the legislative council and shall at the same time report the rule or form to the chairpersons and ranking members of the senate and house committees on judiciary. The legislative service bureau shall make recommendations to the supreme court on the proper style and format of rules and forms required to be submitted to the legislative council under this subsection.

2. A rule or form submitted as required under subsection 1 takes effect sixty days after submission to the legislative council, or at a later date specified by the supreme court, unless the legislative council, within sixty days after submission and by a majority vote of its members, delays the effective date of the rule or form to a date as provided in subsection 3.

3. The effective date of a rule or form submitted during the period of time beginning February 15 and ending February 14 of the next calendar year may be delayed by the legislative council until May 1 of that next calendar year.

4. If the general assembly enacts a bill changing a rule or form, the general assembly's enactment supersedes a conflicting provision in the rule or form as submitted by the supreme court.

83 Acts, ch 186, §5202, 10201; 85 Acts, ch 197, §14; 98 Acts, ch 1115, §9, 21

PART 3

ADMINISTRATION

602.4301 Clerk of supreme court.

1. The supreme court shall appoint a clerk of the supreme court and may remove the clerk for cause.

2. The clerk of the supreme court shall have an office at the seat of government, shall keep a complete record of the proceedings of the court, and shall not allow an opinion filed in the office to be removed. Opinions shall be open to examination and, upon request, may be copied and certified. The clerk promptly shall announce by mail to one of the attorneys on each side any ruling made or decision rendered, shall record every opinion rendered as soon as filed, shall mail a copy of each opinion rendered to each attorney of record and to each party not represented by counsel, and shall perform all other duties pertaining to the office of clerk.

3. The clerk of the supreme court shall collect and account to the state court administrator for all fees received by the supreme court.

4. The clerk of the supreme court shall give bond as provided in chapter 64.

83 Acts, ch 186, §5301, 10201

602.4302 Deputy clerk — staff.

1. The clerk of the supreme court may appoint a deputy clerk of the supreme court. In the absence or disability of the clerk, the deputy shall perform the duties of the clerk.

2. The clerk of the supreme court may employ necessary staff, as authorized by the supreme court.

83 Acts, ch 186, §5302, 10201

602.4303 Supreme court fees.

1. The supreme court shall by rule prescribe fees for the services of the court and clerk of the supreme court.

2. If any of the fees are not paid in advance, execution may issue for them, except for fees payable by the county or the state.

83 Acts, ch 186, §5303, 10201; 98 Acts, ch 1115, §10, 21

Fee schedule, R.App.P. 6.34

602.4304 Supreme court staff.

1. The supreme court may appoint attorneys or graduates of a reputable law school to act as legal assistants to the justices of the supreme court.

2. The supreme court may employ other professional and clerical staff as necessary to accomplish the judicial duties of the court.

83 Acts, ch 186, §5304, 10201; 98 Acts, ch 1115, §11

602.4305 Limitation on expenses.

A justice of the supreme court may choose whether to reside at the seat of government or elsewhere. The court administrator may approve necessary travel and actual expenses, incurred by a justice of the supreme court for attendance at oral arguments and judicial conferences, not to exceed the maximum amount established by the supreme court pursuant to section 602.1509.

83 Acts, ch 186, §5305, 10201

ARTICLE 5

COURT OF APPEALS

PART 1

GENERAL PROVISIONS

602.5101 Court of appeals.

The Iowa court of appeals is established as an intermediate court of appeals. The court of appeals is a court of record.

83 Acts, ch 186, §6101, 10201

602.5102 Judges — quorum.

1. The court of appeals consists of nine judges;

three judges of the court of appeals constitute a quorum.

2. Judges of the court of appeals shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. Judges of the court of appeals shall qualify for office as provided in chapter 63.

3. A person appointed as a judge of the court of appeals must satisfy all requirements for a justice of the supreme court.

4. The court of appeals may be divided into divisions of three or more judges in a manner as it may prescribe by rule. The divisions may hold open court separately and cases may be submitted to each division separately in accordance with rules the court may prescribe. The rules shall provide for submitting a case or petition for rehearing or hearing en banc at the direction of the chief judge or at the request of a specified number of judges designated in the rules. The court of appeals shall prescribe all rules necessary to provide for the submission of cases to the whole court or to a division.

83 Acts, ch 186, §6102, 10201; 83 Acts, ch 204, §11, 12; 98 Acts, ch 1184, §2, 4

602.5103 Jurisdiction.

1. The jurisdiction of the court of appeals is coextensive with the state. The court of appeals has appellate jurisdiction only in cases in chancery, and constitutes a court for the correction of errors at law.

2. The court of appeals has subject matter jurisdiction to review the following matters:

a. Civil actions and special civil proceedings, whether at law or in equity.

b. Criminal actions.

c. Postconviction remedy proceedings.

d. A judgment of a district judge in a small claims action.

3. The jurisdiction of the court of appeals with respect to actions and parties is limited to those matters for which an appeal or review proceeding properly has been brought before the supreme court, and for which the supreme court pursuant to section 602.4102 has entered an order transferring the matter to the court of appeals.

4. The court of appeals and judges of the court may issue writs and other process necessary for the exercise and enforcement of the court's jurisdiction, but a writ, order, or other process issued in a matter that is not before the court pursuant to an order of transfer issued by the supreme court is void.

83 Acts, ch 186, §6103, 10201

602.5104 Sessions — location.

The court of appeals shall meet at the seat of state government and elsewhere as the court orders, and at the times specified by order of the court.

83 Acts, ch 186, §6104, 10201; 99 Acts, ch 144, §6

602.5105 Chief judge.

1. At the first meeting in each odd-numbered year the judges of the court of appeals by majority vote shall designate one judge as chief judge, to serve for a two-year term. A vacancy in the office of chief judge shall be filled for the remainder of the unexpired term by majority vote of the judges of the court of appeals, after any vacancy on the court has been filled.

2. The chief judge shall supervise the business of the court and shall preside when present at a session of the court.

3. If the chief judge desires to be relieved of the duties of chief judge while retaining the status of judge of the court of appeals, the chief judge shall notify the chief justice and the other judges of the court of appeals. The office of chief judge shall be deemed vacant, and shall be filled as provided in this section.

4. In the absence of the chief judge, the duties of the chief judge shall be exercised by the judge next in precedence. Judges of the court of appeals other than the chief judge have precedence according to the length of time served on that court. Of several judges having equal periods of time served, the eldest has precedence.

83 Acts, ch 186, §6105, 10201

602.5106 Decisions of the court — finality.

1. The court of appeals may affirm, modify, vacate, set aside, or reverse any judgment, order, or decree of the district court or other tribunal which is under the jurisdiction of the court, and may remand the cause and direct the entry of an appropriate judgment, order, or decree, or require further proceedings to be had as is just. If the judges are equally divided on the ultimate decision, the judgment, order, or decree shall be affirmed.

2. A decision of the court of appeals is final and shall not be reviewed by any other court except upon the granting by the supreme court of an application for further review as provided in section 602.4102. Upon the filing of the application, the judgment and mandate of the court of appeals is stayed pending action of the supreme court or until the expiration of the time specified in section 602.4102, subsection 4.

83 Acts, ch 186, §6106, 10201

602.5107 Rules.

The court of appeals, subject to the approval of the supreme court, may prescribe rules for the conduct of business of the court of appeals. Rules prescribed shall not abridge, enlarge, or modify a substantive right.

83 Acts, ch 186, §6107, 10201

602.5108 When decisions effective.
A decision of the court of appeals shall be in writing, and shall be effective, except as provided in section 602.5106, subsection 2, when the decision of the court is filed with the clerk of the supreme court.
83 Acts, ch 186, §6108, 10201

602.5109 Process — style — seal.
1. Process of the court of appeals shall be styled: "In the Court of Appeals of Iowa".
2. The supreme court may adopt a seal for the court of appeals. Upon adoption, the clerk of the supreme court shall file a facsimile and description of the design in the office of the secretary of state. Judicial notice shall be taken of the official seal of the court of appeals.
83 Acts, ch 186, §6109, 10201

602.5110 Records.
The records of the court of appeals shall be kept by the clerk of the supreme court, and at the same place as, but segregated from the records of the supreme court. Records of the court of appeals shall be maintained in the same manner as records of the supreme court under article 4.
83 Acts, ch 186, §6110, 10201

602.5111 Publication of opinions.
The state court administrator shall cause the publication of opinions of the judges of the court of appeals in accordance with rules prescribed by the supreme court. Section 602.4106 applies to decisions of the court of appeals. The state court administrator shall cause the publication of abstracts of all decisions for which written opinions are not published.
83 Acts, ch 186, §6111, 10201

602.5112 Fees — costs.
Costs to be collected and awarded in the court of appeals shall be as prescribed from time to time by the supreme court. Fees and costs may be awarded to a party to the appeal in the discretion of the court of appeals. A fee shall not be charged for the docketing of a matter in the court of appeals upon transfer from the supreme court.
83 Acts, ch 186, §6112, 10201

PART 2

ADMINISTRATION

602.5201 Clerk of court.
1. The clerk of the supreme court or a deputy of that clerk shall act as clerk of the court of appeals. The clerk of the court of appeals shall keep a complete record of the proceedings of that court, shall collect the fees and costs prescribed by the supreme court, and shall account for all receipts and disbursements of the court of appeals.
2. The clerk of the supreme court, subject to the approval of the supreme court, may employ additional staff for the performance of duties relating to the court of appeals.
83 Acts, ch 186, §6201, 10201

602.5202 Secretary to judge.
Each judge of the court of appeals may employ one personal secretary.
83 Acts, ch 186, §6202, 10201

602.5203 Law clerks.
The court of appeals may employ attorneys or graduates of a reputable law school to act as legal assistants to the court.
83 Acts, ch 186, §6203, 10201; 83 Acts, ch 204, §13; 97 Acts, ch 128, §1

602.5204 Physical facilities.
The state court administrator shall obtain suitable facilities for the court of appeals at the seat of state government. To the extent practicable, the court administrator shall utilize existing supreme court facilities.
83 Acts, ch 186, §6204, 10201

602.5205 Limitation on expenses.
1. Each judge of the court of appeals shall be provided personal office space and equipment, and facilities for a secretary and law clerk at the seat of state government only. Each judge may choose whether to reside at the seat of government or elsewhere. The court administrator may approve necessary travel and actual expenses, incurred by a judge of the court of appeals for attendance at oral arguments and judicial conferences, not to exceed the maximum amount established by the supreme court pursuant to section 602.1509.
2. Offices may be provided for court of appeals judges or employees at any place other than the seat of state government with the approval of the supreme court within the funds available to the judicial branch.
83 Acts, ch 186, §6205, 10201; 94 Acts, ch 1127, §1; 98 Acts, ch 1047, §57

ARTICLE 6

DISTRICT COURT

PART 1

GENERAL PROVISIONS

602.6101 Unified trial court.
A unified trial court is established. This court is the "Iowa District Court". The district court has exclusive, general, and original jurisdiction of all actions, proceedings, and remedies, civil, crimi-

nal, probate, and juvenile, except in cases where exclusive or concurrent jurisdiction is conferred upon some other court, tribunal, or administrative body. The district court has all the power usually possessed and exercised by trial courts of general jurisdiction, and is a court of record.

83 Acts, ch 186, §7101, 10201

602.6102 Appeals and writs of error.

The district court has jurisdiction in appeals and writs of error taken in civil and criminal actions and special proceedings authorized to be taken from tribunals, boards, or officers under the laws of this state, and has general supervision thereof, in all matters, to prevent and correct abuses where no other remedy is provided.

83 Acts, ch 186, §7102, 10201

602.6103 Court in continuous session.

The district court of each judicial district shall be in continuous session for all of the several counties comprising the district.

83 Acts, ch 186, §7103, 10201; 92 Acts, ch 1164, §3

602.6104 Judicial officers.

1. The jurisdiction of the Iowa district court shall be exercised by district judges, district associate judges, associate juvenile judges, associate probate judges, and magistrates.

2. Judicial officers of the district court shall not sit together in the trial of causes nor upon the hearings of motions for new trials. They may hold court in the same county at the same time.

83 Acts, ch 186, §7104, 10201; 99 Acts, ch 93, §6

602.6105 Places of holding court — magistrate schedules.

1. Courts shall be held at the places in each county maintaining space for the district court as designated by the chief judge of the judicial district, except that the determination of actions, special proceedings, and other matters not requiring a jury may be done at some other place in the district with the consent of the parties. For the purposes of this subsection, contiguous counties which have entered into an agreement to share costs pursuant to section 331.381, subsection 17, paragraph *"b"*, shall be considered as one unit for the purpose of conducting all matters except as otherwise provided in this subsection.

2. In any county having two county seats, court shall be held at each, and, in the county of Pottawattamie, court shall be held at Avoca, as well as at the county seat.

3. The chief judge of a judicial district shall designate times and places for magistrates to hold court to ensure accessibility of magistrates at all times throughout the district. The schedule of times and places of availability of magistrates and any schedule changes shall be disseminated by the chief judge to the peace officers within the district.

83 Acts, ch 186, §7105, 10201; 92 Acts, ch 1164, §4

602.6106 Sessions not at county seats — effect — duty of clerk.

When court is held at a place that is not the county seat, all of the provisions of the Code relating to district courts are applicable, except as follows: All proceedings in the court have, within the territory over which the court has jurisdiction, the same force and effect as though ordered in the court at the county seat, but transcripts of judgments and decrees, levies of writs of attachment upon real estate, mechanics' liens, lis pendens, sales of real estate, redemption, satisfaction of judgments and mechanics' liens, and dismissals or decrees in lis pendens, together with all other matters affecting titles to real estate, shall be certified by the clerk's designee to the clerk of district court at the county seat who shall immediately enter them upon the records at the county seat.

83 Acts, ch 186, §7106, 10201; 90 Acts, ch 1233, §36

602.6107 Judicial districts.

For all judicial purposes except as provided in section 602.6109, the state is divided into eight judicial districts as follows:

1. The first district consists of the counties of Dubuque, Delaware, Clayton, Allamakee, Winneshiek, Chickasaw, Fayette, Buchanan, Black Hawk, Howard, and Grundy.

2. The second district consists of the counties of Mitchell, Floyd, Butler, Bremer, Worth, Winnebago, Hancock, Cerro Gordo, Franklin, Wright, Humboldt, Pocahontas, Sac, Calhoun, Webster, Hamilton, Carroll, Greene, Hardin, Marshall, Story, and Boone.

3. The third district consists of the counties of Kossuth, Emmet, Dickinson, Osceola, Lyon, O'Brien, Clay, Palo Alto, Cherokee, Buena Vista, Plymouth, Sioux, Woodbury, Ida, Monona, and Crawford.

4. The fourth district consists of the counties of Harrison, Shelby, Audubon, Pottawattamie, Cass, Mills, Montgomery, Fremont, and Page.

5. The fifth district consists of the counties of Guthrie, Dallas, Polk, Jasper, Madison, Warren, Marion, Adair, Adams, Union, Clarke, Lucas, Taylor, Ringgold, Decatur, and Wayne.

6. The sixth district consists of the counties of Tama, Benton, Linn, Jones, Iowa, and Johnson.

7. The seventh district consists of the counties of Jackson, Clinton, Cedar, Scott, and Muscatine.

8. The eighth district consists of the counties of Poweshiek, Mahaska, Keokuk, Washington, Monroe, Wapello, Jefferson, Appanoose, Davis, Van Buren, Louisa, Henry, Des Moines, and Lee.

83 Acts, ch 186, §7107, 10201

602.6108 Reassignment of personnel.

The chief justice of the supreme court shall assign judicial officers and court employees from one judicial district to another, on a continuing basis if need be, in order to handle the judicial business in all districts promptly and efficiently at all times.

83 Acts, ch 186, §7108, 10201

602.6109 Judicial election districts.

1. Judicial election districts are established for purposes of nomination, appointment, and retention of district judges and for other purposes specifically provided by law.

2. The judicial election districts are as follows:

a. Election district 1A consists of the counties of Dubuque, Delaware, Clayton, Allamakee, and Winneshiek.

b. Election district 1B consists of the counties of Chickasaw, Fayette, Buchanan, Black Hawk, Howard, and Grundy.

c. Election district 2A consists of the counties of Mitchell, Floyd, Butler, Bremer, Worth, Winnebago, Hancock, Cerro Gordo, and Franklin.

d. Election district 2B consists of the counties of Wright, Humboldt, Pocahontas, Sac, Calhoun, Webster, Hamilton, Carroll, Greene, Hardin, Marshall, Story, and Boone.

e. Election district 3A consists of the counties of Kossuth, Emmet, Dickinson, Osceola, Lyon, O'Brien, Clay, Palo Alto, Cherokee, and Buena Vista.

f. Election district 3B consists of the counties of Plymouth, Sioux, Woodbury, Ida, Monona, and Crawford.

g. Election district 4 consists of the fourth judicial district, as established by section 602.6107.

h. Election district 5A consists of the counties of Guthrie, Dallas, Jasper, Madison, Warren, and Marion.

i. Election district 5B consists of the counties of Adair, Adams, Union, Clarke, Lucas, Taylor, Ringgold, Decatur, and Wayne.

j. Election district 5C consists of Polk county.

k. Election district 6 consists of the sixth judicial district, as established by section 602.6107.

l. Election district 7 consists of the seventh judicial district, as established by section 602.6107.

m. Election district 8A consists of the counties of Poweshiek, Mahaska, Keokuk, Washington, Monroe, Wapello, Jefferson, Appanoose, Davis, and Van Buren.

n. Election district 8B consists of the counties of Louisa, Henry, Des Moines, and Lee.

83 Acts, ch 186, §7109, 10201

602.6110 Peer review court.

1. A peer review court may be established in each judicial district to divert certain juvenile offenders from the criminal or juvenile justice systems. The court shall consist of a qualified adult to act as judge while the duties of prosecutor, defense counsel, court attendant, clerk, and jury shall be performed by persons twelve through seventeen years of age.

2. The jurisdiction of the peer review court extends to those persons ten through seventeen years of age who have committed misdemeanor offenses, or delinquent acts which would be misdemeanor offenses if committed by an adult, who have admitted involvement in the misdemeanor or delinquent act, and who meet the criteria established for entering into an informal adjustment agreement for those offenses. Those persons may elect to appear before the peer review court for a determination of the terms and conditions of the informal adjustment or may elect to proceed with the informal or formal procedures established in chapter 232.

3. The peer review court shall not determine guilt or innocence and any statements or admissions made by the person before the peer review court are not admissible in any formal proceedings involving the same person. The peer review court shall only determine the terms and conditions of the informal adjustment for the offense. The terms and conditions may consist of fines, restrictions for damages, attendance at treatment programs, or community service work or any combination of these penalties as appropriate to the offense or delinquent act committed. A person appearing before the peer review court may also be required to serve as a juror on the court as a part of the person's sentence.

4. The chief judge of each judicial district which establishes a peer review court shall appoint a peer review court advisory board. The advisory board shall adopt rules for the peer review court advisory program, shall appoint persons to serve on the peer review court, and shall supervise the expenditure of funds appropriated to the program. Rules adopted shall include procedures which are designed to eliminate the influence of prejudice and racial and economic discrimination in the procedures and decisions of the peer review court.

89 Acts, ch 262, §1; 97 Acts, ch 126, §44; 98 Acts, ch 1100, §77

602.6111 Identification numbers on documents filed with the clerk.

1. Each petition or complaint, answer, appearance, first motion, or any document filed with the clerk of the district court which brings new parties into an action shall bear a personal identification number. The personal identification number shall be the employer identification number or the social security number of each separate party. If an individual party's driver's license lists a distinguishing number other than the party's social security number, the document filed with the clerk of the district court shall also contain the distin-

guishing number from the party's driver's license.

2. The clerk of the district court shall affix the identification numbers required pursuant to subsection 1 to any judgment, sentence, dismissal, or other paper finally disposing of an action.

3. The requirements of subsection 1 do not apply to actions filed by the child support recovery unit established pursuant to chapter 252B. For actions filed by the child support recovery unit, the clerk of the district court shall generate an alternative personal identification number if the party's social security number or driver's license number is not provided or available through other sources.

4. Beginning October 1, 1998, a party, except the child support recovery unit, filing a petition, complaint, answer, appearance, first motion, or any document with the clerk of district court to establish or modify an order for child support under chapter 236, 252A, 252K, 598, or 600B shall provide the clerk of the district court with the social security number of the child. The clerk of the district court shall keep the social security number of the child confidential, except the clerk shall provide the number to the child support recovery unit to be included in the records of the state case registry created under section 252B.24.

93 Acts, ch 171, §18; 94 Acts, ch 1171, §49; 98 Acts, ch 1170, §17

PART 2

DISTRICT JUDGES

602.6201 Office of district judge — apportionment.

1. District judges shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. District judges shall qualify for office as provided in chapter 63.

2. A district judge must be a resident of the judicial election district in which appointed and retained. Subject to the provision for reassignment of judges under section 602.6108, a district judge shall serve in the district of the judge's residence while in office, regardless of the number of judgeships to which the district is entitled under subsection 3.

3. *a.* A judicial election district containing a city of fifty thousand or more population is entitled to the number of judgeships equal to the average, rounded to the nearest whole number, of the following two quotients, each rounded to the nearest hundredth:

(1) The combined civil and criminal filings in the election district divided by five hundred fifty.

(2) The election district's population divided by forty thousand.

However, the seat of government is entitled to one additional judgeship.

b. All other judicial election districts are entitled to the number of judgeships equal to the average, rounded to the nearest whole number, of the following two quotients, each rounded to the nearest hundredth:

(1) The combined civil and criminal filings in the election district divided by four hundred fifty.

(2) The election district's population divided by forty thousand.

However, the judicial election district in which the Iowa state penitentiary at Fort Madison is located is entitled to one additional judgeship.

c. The filings included in the determinations to be made under this subsection shall not include small claims or nonindictable misdemeanors, and shall not include either civil actions for money judgment where the amount in controversy does not exceed five thousand dollars or indictable misdemeanors or felony violations of section 321J.2, which were assigned to district associate judges and magistrates as shown on their administrative reports, but shall include appeals from decisions of magistrates, district associate judges, and district judges sitting as magistrates. The figures on filings shall be the average for the latest available previous three-year period and when current census figures on population are not available, figures shall be taken from the Iowa department of public health computations.

4. For purposes of this section, a vacancy means the death, resignation, retirement, or removal of a district judge, or the failure of a district judge to be retained in office at the judicial election, or an increase in judgeships under this section.

5. In those judicial election districts having more district judges than the number of judgeships specified by the formula in subsection 3, vacancies shall not be filled.

6. In those judicial election districts having fewer or the same number of district judges as the number of judgeships specified by the formula in subsection 3, vacancies in the number of district judges shall be filled as they occur.

7. In those judicial districts that contain more than one judicial election district, a vacancy in a judicial election district shall not be filled if the total number of district judges in all judicial election districts within the judicial district equals or exceeds the aggregate number of judgeships to which all of the judicial election districts of the judicial district are authorized.

8. Vacancies shall not be filled in a judicial election district which becomes entitled to fewer judgeships under subsection 3, but an incumbent district judge shall not be removed from office because of a reduction in the number of authorized judgeships.

9. During February of each year, and at other times as appropriate, the state court administrator shall make the determinations required under this section, and shall notify the appropriate nominating commissions and the governor of appoint-

ments that are required.

10. Notwithstanding the formula for determining the number of judgeships in this section, the number of district judges shall not exceed one hundred sixteen during the period commencing July 1, 1999.

83 Acts, ch 186, §7201, 10201; 86 Acts, ch 1012, §1; 86 Acts, ch 1148, §1, 2; 90 Acts, ch 1055, §1, 2; 95 Acts, ch 207, §25; 96 Acts, ch 1216, §30; 97 Acts, ch 130, §1; 97 Acts, ch 205, §24; 99 Acts, ch 202, §22

602.6202 Jurisdiction.

District judges have the full jurisdiction of the district court, including the respective jurisdictions of district associate judges and magistrates. While exercising the jurisdiction of magistrates, district judges shall employ magistrates' practice and procedure.

83 Acts, ch 186, §7202, 10201

602.6203 Preparation and signing of record — alterations. Repealed by 93 Acts, ch 70, § 15.

PART 3

DISTRICT ASSOCIATE JUDGES

602.6301 Number and apportionment of district associate judges.

There shall be one district associate judge in counties having a population of more than thirty-five thousand and less than eighty thousand; two in counties having a population of eighty thousand or more and less than one hundred twenty-five thousand; three in counties having a population of one hundred twenty-five thousand or more and less than two hundred thousand; four in counties having a population of two hundred thousand or more and less than two hundred thirty-five thousand; five in counties having a population of two hundred thirty-five thousand or more and less than two hundred seventy thousand; six in counties having a population of two hundred seventy thousand or more and less than three hundred five thousand; and seven in counties having a population of three hundred five thousand or more. However, a county shall not lose a district associate judgeship solely because of a reduction in the county's population. If the formula provided in this section results in the allocation of an additional district associate judgeship to a county, implementation of the allocation shall be subject to prior approval of the supreme court and availability of funds to the judicial branch. A district associate judge appointed pursuant to section 602.6302 or 602.6303 shall not be counted for purposes of this section.

83 Acts, ch 186, §7301, 10201; 94 Acts, ch 1127, §2; 96 Acts, ch 1068, §1; 98 Acts, ch 1047, §58; 98 Acts, ch 1115, §12

602.6302 Appointment of district associate judge in lieu of magistrates.

1. The chief judge of the judicial district may designate by order of substitution that a district associate judge be appointed pursuant to this section in lieu of magistrates appointed under section 602.6403, subject to the following limitations:

a. The county in which the district associate judge is to be appointed, or the counties in which the district associate judge is to be appointed in combination, must have an apportionment of three or more magistrates.

b. The substitution must not result in a lack of a resident district associate judge or magistrate in one or more of the counties.

c. The substitution must be approved by the supreme court.

d. A majority of district judges in that judicial election district, or in the case of an appointment involving more than one judicial election district in the same judicial district, a majority of the district judges in each judicial election district, must vote in favor of the substitution and find that the substitution will provide more timely and efficient performance of judicial business within that judicial election district.

2. An order of substitution shall not take effect unless a copy of the order is received by the chairperson of the county magistrate appointing commission or commissions no later than May 31 of the year in which the substitution is to take effect. A copy of the order shall also be sent to the state court administrator.

3. For a county in which a substitution order is in effect, the number of magistrates actually appointed pursuant to section 602.6403 shall be reduced by three for each district associate judge substituted under this section. However, if the substitution order is for a district associate judge appointed to more than one county, the reduction of three magistrates shall be as provided in the order of the chief judge of the judicial district. Upon a subsequent reduction in the apportionment of magistrates to the county or counties, the magistrate appointing commission shall further reduce the number of magistrates appointed.

4. *a.* Except as provided in subsections 1 through 3, a substitution shall not increase or decrease the number of magistrates authorized by this article.

b. A substitution shall not be made where the apportionment of magistrates to a county is insufficient to permit the full reduction in appointments of magistrates as required by subsection 3.

5. If an apportionment by the state court administrator pursuant to section 602.6401 reduces the number of magistrates in the county or counties to less than the number required to be apportioned to allow a substitution order pursuant to subsection 1, or if a majority of the district judges

in the judicial election district or districts determines that a substitution is no longer desirable, then the substituted office shall be terminated. However, a reversion pursuant to this subsection, irrespective of cause, shall not take effect until the substitute district associate judge fails to be retained in office at a judicial election or otherwise leaves office, whether voluntarily or involuntarily. Upon the termination of office of that district associate judge, appointments shall be made pursuant to section 602.6403 as necessary to reestablish terms of office as provided in section 602.6403, subsection 4.

83 Acts, ch 186, §7302, 10201; 86 Acts, ch 1015, §1 – 3; 89 Acts, ch 114, §1

602.6303 Alternate district associate judge.

1. In a county having only one district associate judge, the county magistrate appointing commission, by majority vote, may authorize that an alternate district associate judge be appointed.

2. A person whose appointment is authorized under this section shall be designated as an alternate and is subject to this section.

3. An alternate district associate judge shall serve initial and regular terms and shall stand for retention in office in the same manner as regular district associate judges. However, a vacancy in the office of alternate district associate judge shall not be filled unless the conditions of subsection 1 are satisfied after the vacancy occurs.

4. The chief judge of the judicial district may order that the alternate temporarily sit in place of the regular district associate judge while the latter is unable to act. The words "unable to act" mean a temporary absence from court duties, including a reasonable vacation period.

5. The appointment of an alternate district associate judge does not affect the rights, duties, or remuneration of the regularly appointed district associate judge, and the appointment of an alternate does not affect the number or apportionment of district associate judges authorized by this part.

83 Acts, ch 186, §7303, 10201

602.6304 Appointment and resignation of district associate judges.

1. The district associate judges authorized by sections 602.6301, 602.6302, and 602.6303 shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a district associate judge to be appointed to more than one county, the appointment shall be from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a district associate judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a district associate judge is not retained in office pursuant to a judicial election, the county magistrate appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as district associate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of district associate judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as district associate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a district associate judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of district associate judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A district associate judge who seeks to resign from the office of district associate judge shall notify in writing the chief judge of the judicial district as to the district associate judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court admin-

istrator of the actual or impending vacancy in the office of district associate judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate appointing commissions when exercising the duties specified in this section.

83 Acts, ch 186, §7304, 10201; 86 Acts, ch 1015, §4; 98 Acts, ch 1115, §13

602.6305 Term, retention, qualifications.

1. District associate judges shall serve initial terms and shall stand for retention in office within the judicial election districts of their residences at the judicial election in 1982 and every four years thereafter, under sections 46.17 to 46.24.

2. A person does not qualify for appointment to the office of district associate judge unless the person is at the time of appointment a resident of the county in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for district associate judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A district associate judge must be a resident of a county in which the office is held during the entire term of office. A district associate judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

4. District associate judges shall qualify for office as provided in chapter 63 for district judges.

83 Acts, ch 186, §7305, 10201; 86 Acts, ch 1015, §5; 89 Acts, ch 114, §2; 89 Acts, ch 212, §2; 89 Acts, ch 296, §83

602.6306 Jurisdiction, procedure, appeals.

1. District associate judges have the jurisdiction provided in section 602.6405 for magistrates, and when exercising that jurisdiction shall employ magistrates' practice and procedure.

2. District associate judges also have jurisdiction in civil actions for money judgment where the amount in controversy does not exceed ten thousand dollars; jurisdiction over involuntary commitment, treatment, or hospitalization proceedings under chapters 125 and 229; jurisdiction of indictable misdemeanors, class "D" felony violations, and other felony arraignments; jurisdiction to enter a temporary or emergency order of protection under chapter 236, and to make court appointments and set hearings in criminal matters; jurisdiction to enter orders in probate which do not require notice and hearing and to set hearings in actions under chapter 633; and the jurisdiction provided in section 602.7101 when designated as a judge of the juvenile court. While presiding in these subject matters a district associate judge shall employ district judges' practice and procedure.

3. When a district judge is unable to serve as a result of temporary incapacity, a district associate judge may, by order of the chief judge of the judicial district enrolled in the records of the clerk of the district court, temporarily exercise any judicial authority within the jurisdiction of a district judge during the time of incapacity with respect to the matters or classes of matters specified in that order.

4. Appeals from judgments or orders of district associate judges while exercising the jurisdiction of magistrates shall be governed by the laws relating to appeals from judgments and orders of magistrates. Appeals from judgments or orders of district associate judges while exercising any other jurisdiction shall be governed by the laws relating to appeals from judgments or orders of district judges.

83 Acts, ch 186, §7306, 10201; 86 Acts, ch 1012, §2; 91 Acts, ch 108, §7; 94 Acts, ch 1122, §1; 96 Acts, ch 1131, §2; 2002 Acts, ch 1110, §1

Subsection 2 amended

PART 4

MAGISTRATES

602.6401 Number and apportionment.

1. One hundred ninety-one magistrates shall be apportioned among the counties as provided in this section. Magistrates appointed pursuant to section 602.6402 shall not be counted for purposes of this section.

2. By February of each year in which magistrates' terms expire, the state court administrator shall apportion magistrate offices among the counties in accordance with the following criteria:

a. The number and type of proceedings contained in the administrative reports required by section 602.6606.

b. The existence of either permanent, temporary, or seasonal populations not included in the current census figures.

c. The geographical area to be served.

d. Any inordinate number of cases over which magistrates have jurisdiction that were pending at the end of the preceding year.

e. The number and types of juvenile proceedings handled by district associate judges.

3. Notwithstanding subsection 2, each county shall be allotted at least one resident magistrate.

4. By March of each year in which magistrates' terms expire, the state court administrator shall give notice to the clerks of the district court and to the chief judges of the judicial districts of the number of magistrates to which each county is entitled.

83 Acts, ch 186, §7401, 10201; 2000 Acts, ch 1057, §10, 11

602.6402 Additional magistrate allowed.

In those counties which are allotted one magistrate under section 602.6401 or which are restricted to one magistrate by section 602.6302, the county magistrate appointing commission may, by majority vote, decide to appoint one additional magistrate. If a county appoints an additional magistrate under this section, each of the two magistrates shall receive one-half of the regular salary of a magistrate.

83 Acts, ch 186, §7402, 10201

602.6403 Appointment, qualification, and resignation of magistrates.

1. By June 1 of each year in which magistrates' terms expire, the county magistrate appointing commission shall appoint, except as otherwise provided in section 602.6302, the number of magistrates apportioned to the county by the state court administrator under section 602.6401, and may appoint an additional magistrate when allowed by section 602.6402. The commission shall not appoint more magistrates than are authorized for the county by this article.

2. The magistrate appointing commission for each county shall prescribe the contents of an application, in addition to any application form provided by the supreme court, for an appointment pursuant to this section. The commission shall publicize notice of any vacancy to be filled in at least two publications in all official county newspapers in the county. The commission shall accept applications for a minimum of fifteen days prior to making an appointment, and shall make available during that period of time any printed application forms the commission prescribes.

3. Within thirty days following receipt of notification of a vacancy in the office of magistrate, the commission shall appoint a person to the office to serve the remainder of the unexpired term. For purposes of this section, vacancy means a death, resignation, retirement, or removal of a magistrate, or an increase in the number of positions authorized.

4. The term of office of a magistrate is four years, commencing August 1, 1989. However, the terms of all magistrates in a county are deemed to expire if a substitution under section 602.6302 or the allocation under section 602.6401 results in a reduction in the number of magistrates in a county where the magistrates hold office.

5. The commission shall promptly certify the names and addresses of appointees to the clerk of the district court and to the chief judge of the judicial district. The clerk of the district court shall certify to the state court administrator the names and addresses of these appointees.

6. Before assuming office, a magistrate shall subscribe and file in the office of the state court administrator the oath of office specified in section 63.6.

7. Before the commencement of the term of a magistrate, the members of the magistrate appointing commission may reconsider the appointment. Written notification of the reasons for reconsideration and time and place for the meeting must be sent to the magistrate appointee and the clerk of the district court. The commission may reconvene and decertify the magistrate appointee for good cause. Notice of the decertification and a statement of the reasons justifying the decertification shall be promptly sent to the clerk of the district court, the chief judge of the judicial district, and the state court administrator.

8. Annually, the state court administrator shall cause a school of instruction to be conducted for magistrates, and each magistrate shall attend prior to the time of taking office unless excused by the chief justice for good cause. A magistrate appointed to fill a vacancy shall attend the first school of instruction that is held following the appointment, unless excused by the chief justice for good cause.

9. A magistrate who seeks to resign from the office of magistrate shall notify in writing the chief judge of the judicial district as to the magistrate's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the vacancy in the office of magistrate due to resignation.

83 Acts, ch 186, §7403, 10201; 89 Acts, ch 114, §3, 4; 89 Acts, ch 212, §3, 4; 90 Acts, ch 1168, §59; 98 Acts, ch 1115, §14, 15

602.6404 Qualifications.

1. A magistrate shall be a resident of the county of appointment during the magistrate's term of office. A magistrate shall serve within the judicial district in which appointed, as directed by the chief judge, provided that the chief judge may assign a magistrate to hold court outside of the county of the magistrate's residence for the orderly administration of justice. A magistrate is subject to reassignment under section 602.6108.

2. A person is not qualified for appointment as a magistrate unless the person files a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission. A person is not qualified for appointment as a magistrate if at the time of appointment the person has reached age seventy-two.

3. A person is not required to be admitted to the practice of law in this state as a condition of being appointed to the office of magistrate, but the magistrate appointing commission shall first consider applicants who are admitted to practice law in this state when selecting persons for the office of magistrate.

83 Acts, ch 186, §7404, 10201; 87 Acts, ch 115,

§76; 89 Acts, ch 114, §5; 89 Acts, ch 212, §5; 96 Acts, ch 1153, §6

602.6405 Jurisdiction — procedure.

1. Magistrates have jurisdiction of simple misdemeanors, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, county and municipal infractions, and small claims. Magistrates have jurisdiction to determine the disposition of livestock or another animal, as provided in sections 717.5 and 717B.4, if the magistrate determines the value of the livestock or animal is less than ten thousand dollars. Magistrates have jurisdiction to exercise the powers specified in sections 556F.2 and 556F.12, and to hear complaints or preliminary informations, issue warrants, order arrests, make commitments, and take bail. Magistrates have jurisdiction over violations of section 123.49, subsection 2, paragraph *"h"*. Magistrates who are admitted to the practice of law in this state have jurisdiction over all proceedings for the involuntary commitment, treatment, or hospitalization of individuals under chapters 125 and 229, except as otherwise provided under section 229.6A; nonlawyer magistrates have jurisdiction over emergency detention and hospitalization proceedings under sections 125.91 and 229.22. Magistrates have jurisdiction to conduct hearings authorized under section 809.4.

2. *a.* Magistrates shall hear and determine violations of and penalties for violations of section 453A.2, subsection 2.

b. Magistrates shall forward copies of citations issued for violations of section 453A.2, subsection 2, and of their dispositions to the clerk of the district court. The clerk of the district court shall maintain records of citations issued and the dispositions of citations, and shall forward a copy of the records to the Iowa department of public health.

3. The criminal procedure before magistrates is as provided in chapters 804, 806, 808, 811, 820 and 821 and rules of criminal procedure 2.1, 2.2, 2.5, 2.7, 2.8, and 2.51 to 2.75. The civil procedure before magistrates shall be as provided in chapters 631 and 648.

83 Acts, ch 186, §7405, 10201; 84 Acts, ch 1275, §7; 87 Acts, ch 99, §7; 88 Acts, ch 1092, §1; 90 Acts, ch 1251, §54; 91 Acts, ch 108, §8; 92 Acts, ch 1231, §53; 94 Acts, ch 1103, §5; 96 Acts, ch 1133, §46; 2000 Acts, ch 1105, §8

PART 5

MAGISTRATE APPOINTING COMMISSIONS

602.6501 Composition of county magistrate appointing commissions.

1. A magistrate appointing commission is established in each county. The commission shall be composed of the following members:

a. A district judge designated by the chief judge of the judicial district to serve until a successor is designated.

b. Three members appointed by the board of supervisors, or the lesser number provided in section 602.6503, subsection 1.

c. Two attorneys elected by the attorneys in the county, or the lesser number provided in section 602.6504, subsection 1.

2. The clerk of the district court shall maintain a permanent record of the name, address, and term of office of each commissioner.

3. A member of a magistrate appointing commission shall be reimbursed for actual and necessary expenses reasonably incurred in the performance of official duties. Reimbursements are payable by the county in which the member serves, upon certification of the expenses to the county auditor by the clerk of the district court. The district judges of each judicial district may prescribe rules for the administration of this subsection.

83 Acts, ch 186, §7501, 10201; 84 Acts, ch 1219, §36

602.6502 Member of commission not to be appointed to office.

A member of a county magistrate appointing commission shall not be appointed to the office of magistrate, and shall not be nominated for or appointed to the office of district associate judge.

83 Acts, ch 186, §7502, 10201

602.6503 Commissioners appointed by a county.

1. The board of supervisors of each county shall appoint three electors to the magistrate appointing commission for the county for six-year terms beginning January 1, 1979 and each sixth year thereafter. However, if there is only one attorney elected pursuant to section 602.6504, the county board of supervisors shall only appoint two commissioners, and if no attorney is elected, the board of supervisors shall only appoint one commissioner.

2. The board of supervisors shall not appoint an attorney or an active law enforcement officer to serve as a commissioner.

3. The county auditor shall certify to the clerk of the district court the name, address, and expiration date of term for all appointees of the board of supervisors.

83 Acts, ch 186, §7503, 10201

602.6504 Commissioners elected by attorneys.

1. The resident attorneys of each county shall elect two resident attorneys of the county to the magistrate appointing commission for six-year terms beginning on January 1, 1979, and each sixth year thereafter. An election shall be held in December preceding the commencement of new

terms. The attorneys in a county may elect only one commissioner if there is only one who is qualified and willing to serve and if there are no resident attorneys in a county or none is willing to serve as a commissioner, none shall be elected.

2. A county attorney shall not be elected to the commission.

3. An attorney is eligible to vote in elections of magistrate appointing commissioners within a county if eligible to vote under sections 46.7 and 46.8, and if a resident of the county.

4. In order to be placed on the ballot for county magistrate appointing commission, an eligible attorney elector shall file a nomination petition in the office of the clerk of court on or before November 30 of the year in which the election for attorney positions is to occur. This subsection does not preclude write-in votes at the time of the election.

5. When an election of magistrate appointing commissioners is to be held, the clerk of the district court for each county shall cause to be mailed to each eligible attorney a ballot that is in substantially the following form:

BALLOT

County Magistrate Appointing Commission

To be cast by the resident members of the bar of . . . . . county.

Vote for (state number) for . . . . . county judicial magistrate appointing commissioner(s) for term commencing . . . . . .
. . . . . .
. . . . . .

To be counted, this ballot must be completed and mailed or delivered to clerk of the district court, ... , no later than December 31, ... (year) (or the appropriate date in case of an election to fill a vacancy).

83 Acts, ch 186, §7504, 10201; 86 Acts, ch 1119, §3; 2000 Acts, ch 1058, §64

602.6505 Vacancy.

A vacancy in the office of magistrate appointing commissioner shall be filled for the unexpired term in the same manner as the original appointment was made.

83 Acts, ch 186, §7505, 10201

PART 6

DISTRICT COURT ADMINISTRATION

602.6601 Court attendants.

1. The district court administrator of each judicial district shall employ and supervise court attendants as authorized by the chief judge.

2. A court attendant shall assist judicial officers during proceedings in court and shall perform other duties as prescribed by the supreme court or by the chief judge of the judicial district.

83 Acts, ch 186, §7601, 10201

Certain bailiffs employed as court attendants; §602.11101, 602.11113

602.6602 Referees and special masters.

A person who is appointed as a referee or special master, or who otherwise is appointed by a court pursuant to law or court rule to exercise a judicial function, is subject to the supervision of the judicial officer making the appointment.

83 Acts, ch 186, §7602, 10201

602.6603 Court reporters.

1. Each district judge shall appoint a court reporter who shall, upon the request of a party in a civil or criminal case, report the evidence and proceedings in the case, and perform all duties as provided by law.

2. Each district associate judge may appoint a court reporter, subject to the approval of the chief judge of the judicial district.

3. If a chief judge of a judicial district determines that it is necessary to employ an additional court reporter because of an extraordinary volume of work, or because of the temporary illness or incapacity of a regular court reporter, the chief judge may appoint a temporary court reporter who shall serve as required by the chief judge.

4. If a regularly appointed court reporter becomes disabled, or if a vacancy occurs in a regularly appointed court reporter position, the judge may appoint a competent uncertified shorthand reporter for a period of time of up to six months, upon verification by the chief judge that a diligent but unsuccessful search has been conducted to appoint a certified shorthand reporter to the position and, in a disability case, that the regularly appointed court reporter is disabled. An uncertified shorthand reporter shall not be reappointed to the position unless the reporter becomes a certified shorthand reporter within the period of appointment under this subsection.

5. Except as provided in subsection 4, a person shall not be appointed to the position of court reporter of the district court unless the person has been certified as a shorthand reporter by the board of examiners under article 3.

6. Each court reporter shall take an oath faithfully to perform the duties of office, which shall be filed in the office of the clerk of district court.

7. A court reporter may be removed for cause with due process by the judicial officer making the appointment.

8. If a judge dies, resigns, retires, is removed from office, becomes disabled, or fails to be retained in office and the judicial vacancy is eligible to be filled, the court reporter appointed by the judge shall serve as a court reporter, as directed by the chief judge or the chief judge's designee, until the successor judge appoints a successor court re-

porter. The court reporter shall receive the reporter's regular salary and benefits during the period of time until a successor court reporter is appointed or until the currently appointed court reporter is reappointed.

83 Acts, ch 186, §7603, 10201; 85 Acts, ch 197, §15, 16; 89 Acts, ch 110, §1; 2000 Acts, ch 1057, §12

602.6604 Dockets.

1. The clerk of the district court shall furnish a magistrate, district associate judge, or district judge acting as a magistrate, with a docket in which the officer shall enter all proceedings except small claims. The docket shall be indexed and shall contain for each case the title and nature of the action, the place of hearing, appearances, and notations of the documents filed with the judicial officer, the proceedings in the case and orders made, the verdict and judgment including costs, any satisfaction of the judgment, whether the judgment was certified to the clerk of the district court, whether an appeal was taken, and the amount of any appeal bond.

2. The chief judge of a judicial district may order that criminal proceedings which are within the jurisdictions of magistrates and district associate judges be combined into centralized dockets for the county if the chief judge determines that administration could be improved by this procedure. When so ordered, a centralized docket shall be maintained in lieu of individual dockets, and the clerk of the district court shall compile a centralized docket in the manner prescribed for an individual docket. The chief judge may assign actions and proceedings on centralized dockets to judicial officers having jurisdiction as the chief judge deems necessary.

83 Acts, ch 186, §7604, 10201

602.6605 Funds, reports.

Each magistrate, and each district associate judge and district judge acting as a magistrate, shall file once each month with the clerk of the district court an itemized statement of all cases disposed of and all funds received and disbursed per case, and at least monthly shall remit all funds received to the clerk. The clerk shall provide adequate clerical assistance to judicial officers to carry out this section.

83 Acts, ch 186, §7605, 10201

602.6606 Administrative reports.

Each magistrate, and each district associate judge and district judge acting as a magistrate, shall report all judicial business handled to the clerk of the district court and to the chief judge of the judicial district. Reports shall be in the form and filed at the times prescribed by the state court administrator. The administrator may require the clerk to forward copies of individual reports or require a consolidated report for the county.

83 Acts, ch 186, §7606, 10201

602.6607 Control of records — vacancies.

Whenever a magistrate, or a district associate judge or district judge acting as a magistrate, leaves office, all funds, dockets, and records relating to the vacated office shall be delivered by the judicial officer to the clerk who issued the docket.

83 Acts, ch 186, §7607, 10201

602.6608 Child support referee.

1. The chief judge may appoint and may remove for cause with due process a referee to preside over child support proceedings.

2. Qualifications for a referee appointed under this section include, at a minimum, all of the following:

a. The referee shall be an attorney currently licensed to practice law in the state.

b. The referee shall have at least five years of experience in the practice of law.

c. The referee shall have at least two years of experience in the practice of family law, including experience in the area of child support, in the state of Iowa.

3. Duties of the referee are limited to presiding over child and medical support proceedings which are delegated to the referee by the chief judge or jointly by the chief judges of the affected judicial districts if the referee is authorized to preside over proceedings in more than one judicial district.

4. The compensation of the referee shall be established by the court.

93 Acts, ch 79, §30

PART 7

SPECIAL PROVISIONS

602.6701 Circuit court records.

1. The district court shall succeed to and have jurisdiction over the records of the circuit court, and may enforce all judgments, decrees, and orders of the circuit court in the same manner and to the same extent as it exercises jurisdiction over its own records, and, for the purposes of the issuance of process and any other acts necessary to the enforcement of the orders, judgments, and decrees of the circuit court, the records of the circuit court shall be deemed records of the district court.

2. Transcripts and process from the judgments, decrees, and records of the circuit court shall be issued by the clerk of the district court, and under the seal of the clerk's office.

83 Acts, ch 186, §7701, 10201

602.6702 Counties bordering on Missouri river.

The jurisdiction of the courts of the state in all civil and criminal actions and proceedings, shall

extend in counties bordering on the Missouri river to the boundary of the state as provided in the compact with the state of Nebraska, and to all lands and territory lying along the river which have been adjudged by the United States supreme court or the supreme court of this state to be within the state of Iowa, and to the other lands and territory along the river over which the courts of this state have exercised jurisdiction.

83 Acts, ch 186, §7702, 10201

ARTICLE 7

JUVENILE COURT

PART 1

THE COURT

602.7101 Juvenile court.

1. A juvenile court is established in each county. The juvenile court is within the district court and has the jurisdiction provided in chapter 232.

2. The jurisdiction of the juvenile court may be exercised by any district judge, and by any district associate judge who is designated by the chief judge as a judge of the juvenile court.

3. The chief judge shall designate one or more of the district judges and district associate judges to act as judges of the juvenile court for a county. The chief judge may designate a juvenile court judge to preside in more than one county.

4. The designation of a judicial officer as a juvenile court judge does not deprive the officer of other judicial functions. Any district judge may act as a juvenile court judge during the absence or inability to act, or upon the request, of the designated juvenile court judge.

5. The juvenile court is always open for the transaction of business, but the hearing of a matter that requires notice shall be had at a time and place fixed by the juvenile court judge.

83 Acts, ch 186, §8101, 10201

602.7102 Court records.

1. The juvenile court is a court of record, and its proceedings, orders, findings, and decisions shall be entered in books that are kept for that purpose and that are identified as juvenile court records.

2. The clerk of the district court is the clerk of the juvenile court for the county.

3. The clerk shall, if practicable, notify a convenient juvenile court officer in advance when a child is to be brought before the court.

83 Acts, ch 186, §8102, 10201

602.7103 Associate juvenile judge — jurisdiction — appeals.

1. An associate juvenile judge shall have the same jurisdiction to conduct juvenile court proceedings, to issue warrants, nontestimonial identification orders, and contempt arrest warrants for adults in juvenile court proceedings, and to issue orders, findings, and decisions as the judge of the juvenile court. However, the chief judge may limit the exercise of juvenile court jurisdiction by the associate juvenile judge.

2. The parties to a proceeding heard by an associate juvenile judge are entitled to appeal the order, finding, or decision of an associate juvenile judge, in the manner of an appeal from orders, findings, or decisions of district court judges. An appeal does not automatically stay the order, finding, or decision of an associate juvenile judge.

83 Acts, ch 186, §8103, 10201; 88 Acts, ch 1095, §1; 89 Acts, ch 296, §84; 92 Acts, ch 1124, §4; 94 Acts, ch 1172, §39; 96 Acts, ch 1134, §5; 99 Acts, ch 93, §7; 99 Acts, ch 208, §60

602.7103A Part-time associate juvenile judge — appointment — removal — qualifications.

The chief judge may appoint and may remove for cause with due process a part-time associate juvenile judge. The part-time associate juvenile judge shall be an attorney admitted to practice law in this state, and shall be qualified for duties by training and experience.

99 Acts, ch 93, §8

602.7103B Appointment and resignation of full-time associate juvenile judges.

1. Full-time associate juvenile judges shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a full-time associate juvenile judge to be appointed to more than one county, the appointment shall be from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a full-time associate juvenile judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a full-time associate juvenile judge is not retained in office pursuant to a judicial election, the county magistrate appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate juvenile judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants,

the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of full-time associate juvenile judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate juvenile judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a full-time associate juvenile judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of full-time associate juvenile judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A full-time associate juvenile judge who seeks to resign from the office of full-time associate juvenile judge shall notify in writing the chief judge of the judicial district as to the full-time associate juvenile judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of full-time associate juvenile judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate appointing commissions when exercising the duties specified in this section.

99 Acts, ch 93, §9, 15; 99 Acts, ch 208, §61

602.7103C Full-time associate juvenile judges — term, retention, qualifications.

1. Full-time associate juvenile judges shall serve terms and shall stand for retention in office within the judicial election districts of their residences as provided under sections 46.16 through 46.24.

2. A person does not qualify for appointment to the office of full-time associate juvenile judge unless the person is at the time of appointment a resident of the county in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for full-time associate juvenile judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A full-time associate juvenile judge must be a resident of a county in which the office is held during the entire term of office. A full-time associate juvenile judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

4. Full-time associate juvenile judges shall qualify for office as provided in chapter 63 for district judges.

99 Acts, ch 93, §10, 15

602.7104 Physicians and nurses.

1. In a county having a population of one hundred twenty-five thousand or more, the judges of the juvenile court may appoint a physician and a nurse, prescribe their duties, and remove them.

2. Appointees shall receive salaries and shall be reimbursed for expenses incurred in the performance of duties, as prescribed by the supreme court.

83 Acts, ch 186, §8104, 10201

PART 2

PROBATION AND COURT SERVICES

602.7201 Administration and supervision.

1. Probation and other juvenile court services within a judicial district shall be administered and supervised by the chief juvenile court officer.

2. The juvenile court officers and other personnel employed in juvenile court service offices are subject to the supervision of the chief juvenile court officer.

3. The chief juvenile court officer may employ, shall supervise, and may remove for cause with due process secretarial, clerical, and other staff within juvenile court service offices as authorized by the chief judge.

83 Acts, ch 186, §8201, 10201

602.7202 Juvenile court officers.

1. Subject to the approval of the chief judge of the judicial district, the chief juvenile court officer shall appoint juvenile court officers to serve the ju-

venile court. Juvenile court officers may be required to serve in two or more counties within the judicial district.

2. Juvenile court officers shall be selected, appointed, and removed in accordance with rules, standards, and qualifications prescribed by the supreme court.

3. Juvenile court officers have the duties prescribed in chapter 232, subject to the direction of the judges of the juvenile court. A judge of the juvenile court shall not attempt to direct or influence a juvenile court officer in the performance of the officer's duties.

4. A juvenile court officer has the powers of a peace officer while engaged in the discharge of duties.

83 Acts, ch 186, §8202, 10201

602.7203 Juvenile victim restitution.

The judicial branch shall administer the juvenile victim restitution program created in chapter 232A.

90 Acts, ch 1247, §19; 98 Acts, ch 1047, §59

ARTICLE 8

CLERK OF DISTRICT COURT

602.8101 Office of the clerk of the district court.

1. The office of clerk of the district court is an appointive office, as provided in section 602.1215.

2. A person appointed to the office of clerk shall qualify by taking the oath of office as provided in section 63.10 and giving bond as provided in chapter 64.

3. The clerk may employ deputies, assistants, and clerks when authorized under section 602.1402 and when authorized by the chief judge of the judicial district. The clerk is responsible for the acts of these employees. Each first deputy shall give bond as provided in chapter 64.

83 Acts, ch 186, §9101, 10201

602.8102 General duties.

The clerk shall:

1. Keep the office of the clerk at the county seat.

2. Attend sessions of the district court.

3. Keep the records, papers, and seal, and record the proceedings of the district court as provided by law under the direction of the chief judge of the judicial district.

4. Upon the death of a judge or magistrate of the district court, give written notice to the department of management and the department of revenue and finance of the date of death. The clerk shall also give written notice of the death of a justice of the supreme court, a judge of the court of appeals, or a judge or magistrate of the district court who resides in the clerk's county to the state commissioner of elections, as provided in section 46.12.

5. When money in the amount of five hundred dollars or more is paid to the clerk to be paid to another person and the money is not disbursed within thirty days, notify the person who is entitled to the money or for whose account the money is paid or the attorney of record of the person. The notice shall be given by certified mail within forty days of the receipt of the money to the last known address of the person or the person's attorney and a memorandum of the notice shall be made in the proper record. If the notice is not given, the clerk and the clerk's sureties are liable for interest at the rate specified in section 535.2, subsection 1, on the money from the date of receipt to the date that the money is paid to the person entitled to it or the person's attorney.

6. On each process issued, indicate the date that it is issued, the clerk's name who issued it, and the seal of the court.

7. Upon return of an original notice to the clerk's office, enter in the appearance or combination docket information to show which parties have been served the notice and the manner and time of service.

8. When entering a lien or indexing an action affecting real estate in the clerk's office, enter the year, month, day, hour, and minute when the entry is made. The clerk shall mail a copy of a mechanic's lien to the owner of the building, land, or improvement which is charged with the lien as provided in section 572.8.

9. Enter in the appearance docket a memorandum of the date of filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause. A pleading of any description is considered filed when the clerk entered the date the pleading was received on the pleading and the pleading shall not be taken from the clerk's office until the memorandum is made. The memorandum shall be made before the end of the next working day. Thereafter, when a demurrer or motion is sustained or overruled, a pleading is made or amended, or the trial of the cause, rendition of the verdict, entry of judgment, issuance of execution, or any other act is done in the progress of the cause, a similar memorandum shall be made of the action, including the date of action and the number of the book and page of the record where the entry is made. The appearance docket is an index of each suit from its commencement to its conclusion.

10. When title to real estate is finally established in a person by a judgment or decree of the district court or by decision of an appellate court or when the title to real estate is changed by judgment, decree, will, proceeding, or order in probate, certify the final decree, judgment, or decision under seal of the court to the auditor of the county in which the real estate is located.

11. Refund amounts less than one dollar only upon written application.

12. At the order of a justice of the supreme court, docket without fee any civil or criminal case transferred from a military district under martial law as provided in section 29A.45.

13. Carry out duties as a member of a nominations appeal commission as provided in section 44.7.

14. Maintain a bar admission list as provided in section 46.8.

15. Monthly, notify the county commissioner of registration and the state registrar of voters of persons seventeen and one-half years of age and older who have been convicted of a felony during the preceding calendar month or persons who at any time during the preceding calendar month have been legally declared to be a person who is incompetent to vote as that term is defined in section 48A.2.

16. Reserved.

17. Reserved.

18. Reserved.

19. Keep a book of the record of official bonds and record the official bonds of magistrates as provided in section 64.24.

20. Carry out duties relating to proceedings for the removal of a public officer as provided in sections 66.4 and 66.17.

21. Reserved.

22. Reserved.

23. Carry out duties relating to enforcing orders of the employment appeal board as provided in section 88.9, subsection 2.

24. Certify the imposition of a mulct tax against property creating a public nuisance to the auditor as provided in section 99.28.

25. Carry out duties relating to the judicial review of orders of the employment appeal board as provided in section 89A.10, subsection 2.

26. With sufficient surety, approve an appeal bond for judicial review of an order or action of the department of natural resources relating to dams and spillways as provided in section 464A.8.

27. Docket an appeal from the fence viewer's decision or order as provided in section 359A.23.

28. Certify to the recorder the fact that a judgment has been rendered upon an appeal of a fence viewer's order as provided in section 359A.24.

29. Reserved.

30. Approve bond sureties and enter in the lien index the undertakings of bonds for abatement relating to the illegal manufacture, sale, or consumption of alcoholic liquors as provided in sections 123.76, 123.79, and 123.80.

31. Destroy all records and files of a court proceeding maintained under section 135L.3 in accordance with section 135L.3, subsection 3, paragraph *"o"*.

32. Reserved.

33. Furnish to the Iowa department of public health a certified copy of a judgment suspending or revoking a professional license as provided in section 147.66.

34. Reserved.

35. Send notice of the conviction, judgment, and sentence of a person violating the uniform controlled substances laws to the state board or officer who issued a license or registered the person to practice a profession or to conduct business as provided in section 124.412.

36. Carry out duties relating to the commitment of a person with mental retardation as provided in sections 222.37 through 222.40.

37. Keep a separate docket of proceedings of cases relating to persons with mental retardation as provided in section 222.57.

38. Order the commitment of a voluntary public patient to the state psychiatric hospital under the circumstances provided in section 225.16.

39. Refer persons applying for voluntary admission to a community mental health center for a preliminary diagnostic evaluation as provided in section 225C.16, subsection 2.

40. Reserved.

41. Carry out duties relating to the involuntary commitment of persons with mental impairments as provided in chapter 229.

42. Serve as clerk of the juvenile court and carry out duties as provided in chapter 232 and article 7 of this chapter.

43. Submit to the director of the division of child and family services of the department of human services a duplicate of the findings of the court related to adoptions as provided in section 235.3, subsection 7.

44. Forward to the superintendent of each correctional institution a copy of the sheriff's certification concerning the number of days that have been credited toward completion of an inmate's sentence as provided in section 903A.5.

45. Reserved.

46. Carry out duties relating to reprieves, pardons, commutations, remission of fines and forfeitures, and restoration of citizenship as provided in sections 914.5 and 914.6.

47. Record support payments made pursuant to an order entered under chapter 252A, 252F, 598, or 600B, or under a comparable statute of a foreign jurisdiction and through setoff of a state or federal income tax refund or rebate, as if the payments were received and disbursed by the clerk; forward support payments received under section 252A.6 to the department of human services and furnish copies of orders and decrees awarding support to parties receiving welfare assistance as provided in section 252A.13.

47A. Accept a check, share draft, draft, or written order on a bank, savings and loan association, credit union, corporation, or person as payment of a support obligation which is payable to the clerk, in accordance with procedures established by the clerk to assure that such negotiable instruments will not be dishonored. The friend of

court may perform the clerk's responsibilities under this subsection.

47B. Perform the duties relating to establishment and operation of a state case registry pursuant to section 252B.24.

47C. Perform duties relating to implementation and operation of requirements for the collection services center pursuant to section 252B.13A, subsection 2.

48. Carry out duties relating to the provision of medical care and treatment for indigent persons as provided in chapter 255.

49. Enter a judgment based on the transcript of an appeal to the state board of education against the party liable for payment of costs as provided in section 290.4.

50. Certify the final order of the district court upon appeal of an assessment within a secondary road assessment district to the auditor as provided in section 311.24.

50A. Assist the department of transportation in suspending, pursuant to section 321.210A, the driver's licenses of persons who fail to timely pay criminal fines or penalties, surcharges, or court costs related to the violation of a law regulating the operation of a motor vehicle.

51. Forward to the department of transportation a copy of the record of each conviction or forfeiture of bail of a person charged with the violation of the laws regulating the operation of vehicles on public roads as provided in sections 321J.2 and 321.491.

52. Reserved.

53. If a person fails to satisfy a judgment relating to motor vehicle financial responsibility within sixty days, forward to the director of the department of transportation a certified copy of the judgment as provided in section 321A.12.

54. Approve a bond of a surety company or a bond with at least two individual sureties owning real estate in this state as proof of financial responsibility as provided in section 321A.24.

55. Carry out duties under the Iowa motor vehicle dealers licensing Act as provided in sections 322.10 and 322.24.

56. Carry out duties relating to the enforcement of motor fuel tax laws as provided in sections 452A.66 and 452A.67.

57. Carry out duties relating to the platting of land as provided in chapter 354.

58. Upon order of the director of revenue and finance, issue a commission for the taking of depositions as provided in section 421.17, subsection 8.

58A. Assist the department of revenue and finance in setting off against debtors' income tax refunds or rebates under section 421.17, subsection 25, debts which are due, owing, and payable to the clerk of the district court as criminal fines, civil penalties, surcharges, or court costs.

59. Reserved.

60. With acceptable sureties, approve the bond of a petitioner for a tax appeal as provided in section 422.29, subsection 2.

61. Certify the final decision of the district court in an appeal of the tax assessments as provided in section 441.39. Costs of the appeal to be assessed against the board of review or a taxing body shall be certified to the treasurer as provided in section 441.40.

62. Certify a final order of the district court relating to the apportionment of tax receipts to the auditor as provided in section 449.7.

63. Carry out duties relating to the inheritance tax as provided in chapter 450.

64. Deposit funds held by the clerk in an approved depository as provided in section 12C.1.

65. Carry out duties relating to appeals and certification of costs relating to levee and drainage districts as provided in sections 468.86 through 468.95.

66. Carry out duties relating to the condemnation of land as provided in chapter 6B.

67. Forward civil penalties collected for violations relating to the siting of electric power generators to the treasurer of state as provided in section 476A.14, subsection 1.

68. Certify a copy of a decree of dissolution of a business corporation to the secretary of state as provided in section 490.1433.

69. With acceptable sureties, approve the bond of a petitioner filing an appeal for review of an order of the commissioner of insurance as provided in section 502.606 or 507A.7.

70. Certify a copy of a decree of dissolution of a nonprofit corporation to the secretary of state and the recorder in the county in which the corporation is located as provided in section 504A.62.

71. Carry out duties relating to the enforcement of decrees and orders of reciprocal states under the Iowa unauthorized insurers Act as provided in section 507A.11.

72. Certify copies of a decree of involuntary dissolution of a state bank to the secretary of state and the recorder of the county in which the bank is located as provided in section 524.1311, subsection 4.

73. Certify copies of a decree dissolving a credit union as provided in section 533.21, subsection 4.

74. Refuse to accept the filing of papers to institute legal action under the Iowa consumer credit code if proper venue is not adhered to as provided in section 537.5113.

75. Receive payment of money due to a person who is absent from the state if the address or location of the person is unknown as provided in section 538.5.

76. Carry out duties relating to the appointment of the department of agriculture and land stewardship as receiver for agricultural commodities on behalf of a warehouse operator whose license is suspended or revoked as provided in section 203C.3.

77. Reserved.

78. Certify an acknowledgment of a written instrument relating to real estate as provided in section 558.20.

79. Collect on behalf of, and pay to, the treasurer the fee for the transfer of real estate as provided in section 558.66.

80. With acceptable sureties, endorse a bond sufficient to settle a dispute between adjoining owners of a common wall as provided in section 563.11.

81. Carry out duties relating to cemeteries as provided in sections 566.4, 566.7, and 566.8.

82. Carry out duties relating to liens as provided in chapters 249A, 570, 571, 572, 574, 580, 581, 582, and 584.

83. Reserved.

84. Carry out duties relating to the dissolution of a marriage as provided in chapter 598.

85. Carry out duties relating to the custody of children as provided in chapter 598B.

86. Carry out duties relating to adoptions as provided in chapter 600.

87. Enter upon the clerk's records actions taken by the court at a location which is not the county seat as provided in section 602.6106.

88. Maintain a record of the name, address, and term of office of each member of the county magistrate appointing commission as provided in section 602.6501.

89. Certify to the state court administrator the names and addresses of the magistrates appointed by the county magistrate appointing commission as provided in section 602.6403.

90. Furnish an individual or centralized docket for the magistrates of the county as provided in section 602.6604.

91. Serve as an ex officio jury commissioner and notify appointive commissioners of their appointment as provided in sections 607A.9 and 607A.13.

92. Carry out duties relating to the selection of jurors as provided in chapter 607A.

93. Carry out duties relating to the revocation or suspension of an attorney's authority to practice law as provided in article 10 of this chapter.

94. File and index petitions affecting real estate as provided in sections 617.10 through 617.15.

95. Designate the newspapers in which the notices pertaining to the clerk's office shall be published as provided in section 618.7.

96. With acceptable surety, approve a bond of the plaintiff in an action for the payment of costs which may be adjudged against the plaintiff as provided in section 621.1.

97. Issue subpoenas for witnesses as provided in section 622.63.

98. Carry out duties relating to trials and judgments as provided in sections 624.8 through 624.20 and 624.37.

99. Collect jury fees and court reporter fees as required by chapter 625.

100. Reserved.

101. Carry out duties relating to executions as provided in chapter 626.

102. Carry out duties relating to the redemption of property as provided in sections 628.13, 628.18, and 628.20.

103. Record statements of expenditures made by the holder of a sheriff's sale certificate in the encumbrance book and lien index as provided in section 629.3.

104. Carry out duties relating to small claim actions as provided in chapter 631.

105. Carry out duties of the clerk of the probate court as provided in chapter 633.

105A. Provide written notice to all duly appointed guardians and conservators of their liability as provided in sections 633.633A and 633.633B.

106. Carry out duties relating to the administration of small estates as provided in sections 635.1, 635.7, 635.9, and 635.11.

107. Carry out duties relating to the attachment of property as provided in chapter 639.

108. Carry out duties relating to garnishment as provided in chapter 642.

109. With acceptable surety, approve bonds of the plaintiff desiring immediate delivery of the property in an action of replevin as provided in sections 643.7 and 643.12.

110. Carry out duties relating to the disposition of lost property as provided in chapter 556F.

111. Carry out duties relating to the recovery of real property as provided in section 646.23.

112. Endorse the court's approval of a restored record as provided in section 647.3.

113. When a judgment of foreclosure is entered, file with the recorder an instrument acknowledging the foreclosure and the date of decree and upon payment of the judgment, file an instrument with the recorder acknowledging the satisfaction as provided in sections 655.4 and 655.5.

114. Carry out duties relating to the issuance of a writ of habeas corpus as provided in sections 663.9, 663.43, and 663.44.

115. Accept and docket an application for postconviction review of a conviction as provided in section 822.3.

116. Report all fines, forfeited recognizances, penalties, and forfeitures as provided in section 602.8106, subsection 4, and section 666.6.

117. Issue a warrant for the seizure of a boat or raft as provided in section 667.2.

118. Carry out duties relating to the changing of a person's name as provided in chapter 674.

119. Notify the state registrar of vital statistics of a judgment determining the paternity of a child as provided in section 600B.36.

120. Enter a judgment made by confession and issue an execution of the judgment as provided in section 676.4.

121. With acceptable surety, approve the bond of a receiver as provided in section 680.3.

122. Carry out duties relating to the assignment of property for the benefit of creditors as provided in chapter 681.

123. Carry out duties relating to the certification of surety companies and the investment of trust funds as provided in chapter 636.

124. Maintain a separate docket for petitions requesting that the record and evidence in a judicial review proceeding be closed as provided in section 692.5.

125. Furnish a disposition of each criminal complaint or information or juvenile delinquency petition, alleging a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, filed in the district or juvenile court to the department of public safety as provided in section 692.15.

126. Carry out duties relating to the issuance of warrants to persons who fail to appear to answer citations as provided in section 805.5.

126A. Upon the failure of a person charged to appear in person or by counsel to defend against the offense charged pursuant to a uniform citation and complaint as provided in section 805.6, enter a conviction and render a judgment in the amount of the appearance bond in satisfaction of the penalty plus court costs.

127. Provide for a traffic and scheduled violations office for the district court and service the locked collection boxes at weigh stations as provided in section 805.7.

128. Issue a summons to corporations to answer an indictment as provided in section 807.5.

129. Carry out duties relating to the disposition of seized property as provided in chapter 809.

130. Docket undertakings of bail as liens on real estate and enter them upon the lien index as provided in section 811.4.

131. Hold the amount of forfeiture and judgment of bail in the clerk's office for sixty days as provided in section 811.6.

132. Carry out duties relating to appeals from the district court as provided in chapter 814.

133. Certify costs and fees payable by the state as provided in section 815.1.

134. Notify the director of the Iowa department of corrections of the commitment of a convicted person as provided in section 901.7.

135. Carry out duties relating to deferred judgments, probations, and restitution as provided in sections 907.4 and 907.8, and chapter 910.

135A. Assess the drug abuse resistance education surcharge as provided by section 911.2.

135B. Assess the law enforcement initiative surcharge as provided by section 911.3.

136. Carry out duties relating to the impaneling and proceedings of the grand jury as provided in rule of criminal procedure 2.3, Iowa court rules.

137. Issue subpoenas upon application of the prosecuting attorney and approval of the court as provided in rule of criminal procedure 2.5, Iowa court rules.

138. Issue summons or warrants to defendants as provided in rule of criminal procedure 2.7, Iowa court rules.

139. Carry out duties relating to the change of venue as provided in rule of criminal procedure 2.11, Iowa court rules.

140. Issue blank subpoenas for witnesses at the request of the defendant as provided in rule of criminal procedure 2.15, Iowa court rules.

141. Carry out duties relating to the entry of judgment as provided in rule of criminal procedure 2.23, Iowa court rules.

142. Carry out duties relating to the execution of a judgment as provided in rule of criminal procedure 2.26, Iowa court rules.

143. Carry out duties relating to the trial of simple misdemeanors as provided in rules of criminal procedure 2.51 through 2.75, Iowa court rules.

144. Serve notice of an order of judgment entered as provided in rule of civil procedure 1.442, Iowa court rules.

145. If a party is ordered or permitted to plead further by the court, serve notice to attorneys of record as provided in rule of civil procedure 1.444, Iowa court rules.

146. Maintain a motion calendar as provided in rule of civil procedure 1.431, Iowa court rules.

147. Provide notice of a judgment, order, or decree as provided in rule of civil procedure 1.453, Iowa court rules.

148. Issue subpoenas as provided in rules of civil procedure 1.715 and 1.1701, Iowa court rules.

149. Tax the costs of taking a deposition as provided in rule of civil procedure 1.716, Iowa court rules.

150. With acceptable sureties, approve a bond filed for change of venue under rule of civil procedure 1.801, Iowa court rules.

151. Transfer the papers relating to a case transferred to another court as provided in rule of civil procedure 1.807, Iowa court rules.

152. Reserved.

153. Reserved.

154. Carry out duties relating to the impaneling of jurors as provided in rules of civil procedure 1.915 through 1.918, Iowa court rules.

155. Furnish a referee, auditor, or examiner with a copy of the order of appointment as provided in rule of civil procedure 1.935, Iowa court rules.

156. Mail notice of the filing of the referee's, auditor's, or examiner's report to the attorneys of record as provided in rule of civil procedure 1.942, Iowa court rules.

157. Carry out duties relating to the entry of judgments as provided in rules of civil procedure 1.955, 1.958, 1.960, 1.961, and 1.962, Iowa court rules.

158. Carry out duties relating to defaults and judgments on defaults as provided in rules of civil procedure 1.972, 1.973, and 1.974, Iowa court rules.

159. Notify the attorney of record if exhibits used in a case are to be destroyed as provided in rule of civil procedure 1.1014, Iowa court rules.

160. Docket the request for a hearing on a sale of property as provided in rule of civil procedure 1.221, Iowa court rules.

161. With acceptable surety, approve the bond of a citizen commencing an action of quo warranto as provided in rule of civil procedure 1.1302, Iowa court rules.

162. Carry out duties relating to the issuance of a writ of certiorari as provided in rules of civil procedure 1.401 through 1.412, Iowa court rules.

163. Carry out duties relating to the issuance of an injunction as provided in rules of civil procedure 1.1501 through 1.1511, Iowa court rules.

164. Carry out other duties as provided by law.

83 Acts, ch 96, §159, 160; 83 Acts, ch 186, §9102, 10201; 85 Acts, ch 21, §45, 46; 85 Acts, ch 82, §2; 85 Acts, ch 178, §10, 11; 85 Acts, ch 195, §53; 85 Acts, ch 197, §17 – 19; 85 Acts, ch 201, §3; 86 Acts, ch 1108, §7; 86 Acts, ch 1112, §12; 86 Acts, ch 1140, §2; 86 Acts, ch 1220, §40; 87 Acts, ch 41, §1; 87 Acts, ch 115, §77, 78; 87 Acts, ch 157, §3; 88 Acts, ch 1134, §102 – 104; 88 Acts, ch 1158, §97; 89 Acts, ch 50, §13; 89 Acts, ch 83, §80; 89 Acts, ch 178, §6; 90 Acts, ch 1035, §2; 90 Acts, ch 1081, §3; 90 Acts, ch 1205, §61; 90 Acts, ch 1236, §52; 91 Acts, ch 86, §2; 91 Acts, ch 116, §8; 91 Acts, ch 267, §415; 92 Acts, ch 1163, §111 – 114; 93 Acts, ch 70, §8, 9; 93 Acts, ch 79, §52; 93 Acts, ch 110, §7; 93 Acts, ch 180, §51; 94 Acts, ch 1046, §25; 94 Acts, ch 1124, §1; 94 Acts, ch 1169, §62; 94 Acts, ch 1173, §39; 95 Acts, ch 67, §46; 95 Acts, ch 91, §3; 95 Acts, ch 124, §22, 26; 95 Acts, ch 143, §10; 95 Acts, ch 191, §26; 96 Acts, ch 1129, §103, 113; 97 Acts, ch 23, §75; 97 Acts, ch 126, §45; 97 Acts, ch 173, §16; 98 Acts, ch 1071, §1; 98 Acts, ch 1073, §10; 98 Acts, ch 1115, §16; 98 Acts, ch 1170, §14, 18; 98 Acts, ch 1185, §9; 99 Acts, ch 96, §49; 99 Acts, ch 103, §46; 99 Acts, ch 151, §84, 89; 2000 Acts, ch 1145, §23; 2001 Acts, ch 168, §1; 2002 Acts, ch 1119, §107; 2002 Acts, ch 1134, §112, 115

2002 amendment to subsection 15 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsections 15, 136 – 151, and 154 – 163 amended

602.8103 General powers.

The clerk may:

1. Administer oaths and take affirmations as provided in section 63A.1.

2. Reproduce original records of the court by any reasonably permanent legible means including, but not limited to, reproduction by photographing, photostating, microfilming, computer cards, and electronic digital format. The reproduction shall include proper indexing. The reproduced record has the same authenticity as the original record. The supreme court shall adopt rules to provide for continued evaluation of the accessibility of records stored or reproduced in electronic digital format.

3. After the original record is reproduced and after approval of a majority of the judges of the district court by court order, destroy the original records including, but not limited to, dockets, journals, scrapbooks, files, and marriage license applications. The order shall state the specific records which are to be destroyed. An original court file shall not be destroyed until after the contents have been reproduced. As used in this subsection and subsection 4, *"destroy"* includes the transmission of the original records which are of general historical interest to any recognized historical society or association.

4. Destroy the following original records without prior court order or reproduction except as otherwise provided in this subsection:

a. Records including, but not limited to, journals, scrapbooks, and files, forty years after final disposition of the case. However, judgments, decrees, stipulations, records in criminal proceedings, probate records, and orders of court shall not be destroyed unless they have been reproduced as provided in subsection 2.

b. Administrative records, after five years, including, but not limited to, warrants, subpoenas, clerks' certificates, statements, praecipes, and depositions.

c. Records, dockets, and court files of civil and criminal actions heard in the municipal court which were transferred to the clerk, other than juvenile and adoption proceedings, or heard in justice of the peace proceedings, after a period of twenty years from the date of filing of the actions.

d. Original court files on dissolutions of marriage, one year after dismissal by the parties or under rule of civil procedure 1.943, Iowa court rules.

e. Small claims files, one year after dismissal with or without prejudice.

f. Uniform traffic citations in the magistrate court or traffic and scheduled violations office, one year after final disposition.

g. Court reporters' notes and certified transcripts of those notes in civil cases, ten years after final disposition of the case. For purposes of this section, *"final disposition"* means one year after dismissal of the case, after judgment or decree without appeal, or after procedendo or dismissal of appeal is filed in cases where appeal is taken.

h. Court reporters' notes and certified transcripts of those notes in criminal cases, ten years after dismissal of all charges, or ten years after the expiration of all sentences imposed or the date probation is granted, whichever later occurs. For purposes of this subsection *"sentences imposed"* include all sentencing options pursuant to section 901.5.

i. Court files, as provided by rules prescribed by the supreme court, ten years after final disposition in civil cases, or ten years after expiration of all sentences in criminal cases. For purposes of this paragraph, *"purging"* means the removal and

destruction of documents in the court file which have no legal, administrative, or historical value. Purging shall be done without reproduction of the removed documents. For purposes of this paragraph, *"civil cases"* does not include juvenile, mental health, probate, or adoption proceedings.

j. Court reporters' notes and certified transcripts of those notes in mental health hearings under section 229.12 and substance abuse hearings under section 125.82, ninety days after the respondent has been discharged from involuntary custody.

5. Invest money which is paid to the clerk to be paid to any other person in a savings account of a supervised financial organization as defined in section 537.1301, subsection 42, except a credit union operating pursuant to chapter 533. The provisions of chapter 12C relating to the deposit and investment of public funds apply to the deposit and investment of the money except that a supervised financial organization other than a credit union may be designated as a depository and the money shall be available upon demand. The interest earnings shall be paid into the general fund of the state, except as otherwise provided by law.

In addition, the money may be invested in an open-end management investment company organized in trust form registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to obligations of the United States of America or agencies or instrumentalities of the United States of America and to repurchase agreements fully collateralized by obligations of the United States of America or an agency or instrumentality of the United States of America if the investment company takes delivery of the collateral either directly or through an authorized custodian.

6. Establish and maintain a procedure to set off against amounts held by the clerk of the district court and payable to the person any debt which is in the form of a liquidated sum due, owing and payable to the clerk. The procedure shall meet all of the following conditions:

a. Before setoff, the clerk shall provide written notice to the debtor of the clerk's claim to all or a portion of the amount held by the clerk for the debtor and the clerk's right to recover the amount of the claim through the setoff procedure, the opportunity to request in writing, that a jointly or commonly owned right to payment be divided among owners, and the opportunity to give written notice to the clerk of the district court of the person's intent to contest the amount of the claim. The debtor must file a notice of intent to contest the claim within fifteen days after the mailing of the notice of claim by the clerk or, if the notice of claim was provided by the clerk at the time the debtor appeared in the clerk's office to claim payment, within fifteen days of that date.

b. Upon the request of the debtor or the owner of a jointly or commonly owned right to payment, the clerk of the district court shall divide the payment. Unless otherwise stated in a judgment or court order, any jointly or commonly owned right to payment is presumed to be owned in equal portions by joint or common owners.

c. Upon timely filing of a notice of intent to contest the setoff, the matter shall be set for hearing before a judge or magistrate. The clerk shall notify the debtor in writing of the time and date of the hearing.

d. If the claim is not contested or upon final determination of a contested claim authorizing a setoff, the clerk shall set off the debt against any amount the clerk is holding for payment to the debtor and pay any balance of the amount to the debtor. The amount set off shall be applied by the clerk of the district court according to the order of priority set out in section 602.8107, subsection 2.

83 Acts, ch 186, §9103, 10201; 88 Acts, ch 1030, §1, 2; 89 Acts, ch 160, §1; 94 Acts, ch 1070, §1; 96 Acts, ch 1019, §2 – 4; 97 Acts, ch 128, §2; 99 Acts, ch 144, §7; 2002 Acts, ch 1119, §106

Subsection 4, paragraph d amended

602.8104 Records and books.

1. The records of the court consist of the original papers filed in all proceedings.

2. The following books shall be kept by the clerk:

a. A record book which contains the entries of the proceedings of the court and which has an index referring to each proceeding in each cause under the names of the parties, both plaintiff and defendant, and under the name of each person named in either party.

b. A judgment docket which contains an abstract of the judgments having separate columns for the names of the parties, the date of the judgment, the damages recovered, costs, the date of the issuance and return of executions, the entry of satisfaction, and other memoranda. The docket shall have an index containing the information specified in paragraph *"a"*.

c. A cash journal in which is listed in detail the costs and fees in each action or proceeding under the title of the action or proceeding. The cash journal shall also have an index containing the information specified in paragraph *"a"*.

d. An encumbrance book in which the sheriff shall enter a statement of the levy of each attachment on real estate.

e. An appearance docket in which the titles of all actions or special proceedings shall be entered. The actions or proceedings shall be numbered consecutively in the order in which they commence and shall include the full names of the parties, plaintiffs and defendants, as contained in the petition or as subsequently made parties by a pleading, proceeding, or order. The entries provided for in this paragraph and paragraphs *"b"* and *"c"* may

be combined in one book, the combination docket, which shall also have an index containing the information specified in paragraph *"a"*.

f. A lien book in which an index of all liens in the court are kept.

g. A record of official bonds as provided in section 64.24.

h. A cemetery record as provided in section 566.4.

i. A hospital lien docket as provided in section 582.4.

j. A book of surety company certificates and revocations as provided in section 636.13.

k. A book in which the deposits of funds, money, and securities kept by the clerk are recorded as provided in section 636.37.

83 Acts, ch 186, §9104, 10201; 85 Acts, ch 67, §60; 91 Acts, ch 116, §9, 10; 97 Acts, ch 23, §76

602.8105 Fees for civil cases and other services — collection and disposition.

1. The clerk of the district court shall collect the following fees:

a. For filing and docketing a petition, other than a modification of a dissolution decree to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of modification, one hundred dollars. In counties having a population of ninety-eight thousand or over, an additional five dollars shall be charged and collected to be known as the journal publication fee and used for the purposes provided for in section 618.13.

b. For filing and docketing an application for modification of a dissolution decree to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of modification, fifty dollars.

c. For entering a final decree of dissolution of marriage, fifty dollars. It is the intent of the general assembly that the funds generated from the dissolution fees be appropriated and used for sexual assault and domestic violence centers.

d. For filing and docketing a small claims action, the amounts specified in section 631.6.

e. For an appeal from a judgment in small claims or for a writ of error, seventy-five dollars.

f. For a motion to show cause in a civil case, fifty dollars.

2. The clerk of the district court shall collect the following fees for miscellaneous services:

a. For filing, entering, and endorsing a mechanic's lien, twenty dollars, and if a suit is brought, the fee is taxable as other costs in the action.

b. For filing and entering an agricultural supply dealer's lien and any other statutory lien, twenty dollars.

c. For a certificate and seal, ten dollars. However, there shall be no charge for a certificate and seal to an application to procure a pension, bounty, or back pay for a member of the armed services or other person.

d. For certifying a change in title of real estate, twenty dollars.

e. Other fees provided by law.

3. The clerk of the district court shall pay to the treasurer of state all fees which have come into the clerk's possession and which are unclaimed pursuant to section 556.8 accompanied by a form prescribed by the treasurer. Claims for payment of the moneys must be filed pursuant to chapter 556.

83 Acts, ch 186, §9105, 10201; 83 Acts, ch 204, §14; 85 Acts, ch 175, §11; 85 Acts, ch 195, §54; 85 Acts, ch 197, §20 – 23; 86 Acts, ch 1011, §1; 86 Acts, ch 1238, §24; 87 Acts, ch 98, §5; 87 Acts, ch 234, §312; 88 Acts, ch 1258, §1; 89 Acts, ch 83, §81; 89 Acts, ch 207, §1; 89 Acts, ch 287, §7; 91 Acts, ch 48, §1; 91 Acts, ch 116, §11 – 13; 91 Acts, ch 218, §21 – 24; 91 Acts, ch 219, §15, 16; 92 Acts, ch 1240, §20; 94 Acts, ch 1074, §5; 95 Acts, ch 91, §4; 95 Acts, ch 124, §23, 26; 2000 Acts, ch 1188, §3; 2002 Acts, ch 1126, §1

Subsections 1 and 2 amended

602.8106 Collection of fees in criminal cases and disposition of fees and fines.

1. The clerk of the district court shall collect the following fees:

a. Except as otherwise provided in paragraphs *"b"* and *"c"*, for filing and docketing a criminal case to be paid by the county or city which has the duty to prosecute the criminal action, payable as provided in section 602.8109, thirty dollars. When judgment is rendered against the defendant, costs collected from the defendant shall be paid to the county or city which has the duty to prosecute the criminal action to the extent necessary for reimbursement for fees paid. However, the fees which are payable by the county to the clerk of the district court for services rendered in criminal actions prosecuted under state law and the court costs taxed in connection with the trial of those actions or appeals from the judgments in those actions are waived.

b. For filing and docketing of a complaint or information for a simple misdemeanor and a complaint or information for a nonscheduled simple misdemeanor under chapter 321, twenty-five dollars.

c. For filing and docketing a complaint or information or uniform citation and complaint for parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, one dollar, effective January 1, 1991. The court costs in cases of parking meter and overtime parking violations which are denied, and charged and collected pursuant to section 321.236, subsection 1, or pursuant to a uniform citation and complaint, are eight dollars per information or complaint or per uniform citation and complaint effective January 1, 1991.

d. The court costs in scheduled violation cases where a court appearance is required are twenty-five dollars.

e. For court costs in scheduled violation cases where a court appearance is not required, fifteen dollars.

f. For an appeal of a simple misdemeanor to the district court, fifty dollars.

2. The clerk of the district court shall remit ninety percent of all fines and forfeited bail to the city that was the plaintiff in any action, and shall provide that city with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. The remaining ten percent shall be submitted to the state court administrator.

3. The clerk of the district court shall remit all fines and forfeited bail for violation of a county ordinance, except an ordinance relating to vehicle speed or weight restrictions, to the county treasurer of the county that was the plaintiff in the action, and shall provide that county with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. However, if a county ordinance provides a penalty for a violation which is also penalized under state law, the fines and forfeited bail collected for the violation shall be submitted to the state court administrator.

4. The clerk of the district court shall submit all other fines, fees, costs, and forfeited bail received from a magistrate to the state court administrator.

83 Acts, ch 186, §9106, 10201, 10204; 83 Acts, ch 204, §15, 16; 85 Acts, ch 195, §55, 56; 85 Acts, ch 197, §24, 25; 89 Acts, ch 293, §17; 90 Acts, ch 1170, §4; 91 Acts, ch 116, §14; 91 Acts, ch 218, §25; 91 Acts, ch 219, §17; 92 Acts, 2nd Ex, ch 1001, §502; 93 Acts, ch 47, §18; 94 Acts, ch 1074, §6; 95 Acts, ch 143, §11

602.8107 Collection of fines, penalties, fees, court costs, surcharges, and restitution.

1. Restitution as defined in section 910.1 and all other fines, penalties, fees, court costs, and surcharges owing and payable to the clerk shall be paid to the clerk of the district court. All amounts collected shall be distributed pursuant to sections 602.8106 and 602.8108 or as otherwise provided by this Code. The clerk may accept payment of an obligation or a portion thereof by credit card. Any fees charged to the clerk with respect to payment by credit card may be paid from receipts collected by credit card.

2. If the clerk receives payment from a person who is an inmate of a state institution or who is under the supervision of a judicial district department of correctional services, the payment shall be applied to the balance owed under the identified case number of the case which has resulted in the placement of the person in a state institution or under the supervision of the judicial district department of correctional services. If a case number is not identified, the clerk shall apply the payment to the balance owed in the criminal case with the oldest judgment against the person. Payments received under this section shall be applied in the following priority order:

a. Pecuniary damages as defined in section 910.1, subsection 3.

b. Fines or penalties and criminal penalty and law enforcement initiative surcharges.

c. Crime victim compensation program reimbursement.

d. Court costs, including correctional fees assessed pursuant to sections 356.7 and 904.108, court-appointed attorney fees, or public defender expenses.

3. A fine, penalty, court cost, fee, or surcharge is deemed delinquent if it is not paid within six months after the date it is assessed. An amount which was ordered by the court to be paid on a date fixed in the future pursuant to section 909.3 is deemed delinquent if it is not received by the clerk within six months after the fixed future date set out in the court order. If an amount was ordered to be paid by installments, and an installment is not received within thirty days after the date it is due, the entire amount of the judgment is deemed delinquent.

4. All fines, penalties, court costs, fees, surcharges, and restitution for court-appointed attorney fees or for expenses of a public defender which are delinquent may be collected by the county attorney or the county attorney's designee. Thirty-five percent of the amounts collected by the county attorney or the person procured or designated by the county attorney shall be deposited in the general fund of the county if the county attorney has filed the notice required in section 331.756, subsection 5, unless the county attorney has discontinued collection efforts on a particular delinquent amount. The remainder shall be paid to the clerk for distribution under section 602.8108.

This subsection does not apply to amounts collected for victim restitution, the victim compensation fund, criminal penalty surcharge, law enforcement initiative surcharge, amounts collected as a result of procedures initiated under subsection 5 or under section 421.17, subsection 25, or sheriff's room and board fees.

The county attorney shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

5. If a county attorney does not file the notice and list of cases required in section 331.756, subsection 5, the judicial branch may assign cases to the centralized collection unit of the department of revenue and finance or its designee to collect debts

owed to the clerk of the district court.

The department of revenue and finance may impose a fee established by rule to reflect the cost of processing which shall be added to the debt owed to the clerk of the district court. Any amounts collected by the unit will first be applied to the processing fee. The remaining amounts shall be remitted to the clerk of the district court for the county in which the debt is owed. The judicial branch may prescribe rules to implement this section. These rules may provide for remittance of processing fees to the department of revenue and finance or its designee.

Satisfaction of the outstanding obligation occurs only when all fees or charges and the outstanding obligation are paid in full. Payment of the outstanding obligation only shall not be considered payment in full for satisfaction purposes.

The department of revenue and finance or its collection designee shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

93 Acts, ch 110, §8; 94 Acts, ch 1023, §118; 94 Acts, ch 1142, §2, 3; 95 Acts, ch 169, §6 – 8, 10; 96 Acts, ch 1219, §72; 97 Acts, ch 128, §3; 98 Acts, ch 1047, §60; 98 Acts, ch 1116, §2; 2001 Acts, ch 168, §2; 2002 Acts, ch 1119, §96

Subsection 2, paragraph b amended

602.8108 Distribution of court revenue.

1. The clerk of the district court shall establish an account and deposit in this account all revenue and other receipts. Not later than the fifteenth day of each month, the clerk shall distribute all revenues received during the preceding calendar month. Each distribution shall be accompanied by a statement disclosing the total amount of revenue received during the accounting period and any adjustments of gross revenue figures that are necessary to reflect changes in the balance of the account, including but not limited to reductions resulting from the dishonor of checks previously accepted by the clerk.

2. Except as otherwise provided, the clerk of the district court shall report and submit to the state court administrator, not later than the fifteenth day of each month, the fines and fees received during the preceding calendar month. Except as provided in subsections 4 and 5, the state court administrator shall deposit the amounts received with the treasurer of state for deposit in the general fund of the state. The state court administrator shall report to the legislative fiscal bureau within thirty days of the beginning of each fiscal quarter the amount received during the previous quarter in the account established under this section.

3. When a court assesses a criminal surcharge under section 911.2, the amounts collected shall be distributed as follows:

a. The clerk of the district court shall submit to the state court administrator, not later than the fifteenth day of each month, ninety-five percent of the surcharge collected during the preceding calendar month. The clerk shall remit the remainder to the county treasurer of the county that was the plaintiff in the action or to the city that was the plaintiff in the action.

b. Of the amount received from the clerk, the state court administrator shall allocate eighteen percent to be deposited in the fund established in section 915.94 and eighty-two percent to be deposited in the general fund.

c. Notwithstanding provisions of this subsection to the contrary, all moneys collected from the drug abuse resistance education surcharge provided in section 911.2 shall be remitted to the treasurer of state for deposit in the general fund of the state and the amount deposited is appropriated to the governor's office of drug control policy for use by the drug abuse resistance education program and other programs directed for a similar purpose.

4. When a court assesses the law enforcement initiative surcharge under section 911.3, the clerk of court shall remit to the treasurer of the state, no later than the fifteenth day of each month, all the moneys collected during the preceding month, for deposit in the general fund of the state.

5. A court technology and modernization fund is established as a separate fund in the state treasury. The state court administrator shall allocate one million dollars of the moneys received under subsection 2 to be deposited in the fund, which shall be administered by the supreme court and shall be used to enhance the ability of the judicial branch to process cases more quickly and efficiently, to electronically transmit information to state government, local governments, law enforcement agencies, and the public, and to improve public access to the court system.

6. The state court administrator shall allocate all of the fines and fees attributable to commercial vehicle violation citations issued by motor vehicle division personnel of the state department of transportation to the treasurer of state for deposit in the road use tax fund.

83 Acts, ch 186, §9108, 10201; 91 Acts, ch 116, §15; 94 Acts, ch 1074, §7; 96 Acts, ch 1216, §31; 96 Acts, ch 1218, §38, 39, 71; 98 Acts, ch 1047, §61; 98 Acts, ch 1090, §73, 84; 98 Acts, ch 1212, §8; 2000 Acts, ch 1222, §15; 2001 Acts, ch 168, §3; 2001 Acts, ch 182, §10; 2002 Acts, ch 1175, §44

Subsection 5 amended

602.8108A Prison infrastructure fund.

1. The Iowa prison infrastructure fund is created and established as a separate and distinct fund in the state treasury. Notwithstanding any other provision of this chapter to the contrary, the first eight million dollars and, beginning July 1, 1997, the first nine million five hundred thousand

dollars, of moneys remitted to the treasurer of state from fines, fees, costs, and forfeited bail collected by the clerks of the district court in criminal cases, including those collected for both scheduled and nonscheduled violations, collected in each fiscal year commencing with the fiscal year beginning July 1, 1995, shall be deposited in the fund. Interest and other income earned by the fund shall be deposited in the fund. However, beginning with the fiscal year beginning July 1, 1998, all fines and fees attributable to commercial vehicle violation citations issued after July 1, 1998, shall be deposited as provided in section 602.8108, subsection 6. If the treasurer of state determines pursuant to 1994 Iowa Acts, chapter 1196, that bonds can be issued pursuant to this section and section 16.177, then the moneys in the fund are appropriated to and for the purpose of paying the principal of, premium, if any, and interest on bonds issued by the Iowa finance authority under section 16.177. Except as otherwise provided in subsection 2, amounts in the funds shall not be subject to appropriation for any purpose by the general assembly, but shall be used only for the purposes set forth in this section. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the department of corrections including the automatic disbursement of funds pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund subject to any limitations contained in any applicable bond proceedings. Any amounts remaining in the fund at the end of each fiscal year shall be transferred to the general fund of the state.

2. If the treasurer of state determines that bonds cannot be issued pursuant to this section and section 16.177, the treasurer of state shall deposit the moneys in the prison infrastructure fund into the general fund of the state.

94 Acts, ch 1196, §21; 95 Acts, ch 202, §12; 96 Acts, ch 1216, §32; 98 Acts, ch 1212, §9

602.8109 Settlement of accounts of cities and counties.

1. A city or a county shall pay court costs and other fees payable to the clerk of the district court for services rendered upon receipt of a statement from the clerk disclosing the amount due.

2. No later than the fifteenth day of each calendar month the clerk of the district court shall deliver to the county auditor a statement disclosing all of the following:

a. The specific amounts of statutory fees and costs that are payable by the county to the clerk for services rendered by the clerk or other state officers or employees during the preceding month in connection with each civil or criminal action, and the total of all of these fees and costs.

b. Any amounts collected by the clerk of the district court during the preceding month as costs in an action when these amounts are payable by law to the county as reimbursement for costs incurred by the county in connection with a civil or criminal action, and the total of all of these amounts.

3. If the amount owed by the county under subsection 2, paragraph *"a"* for a calendar month is greater than the amount due to the county under subsection 2, paragraph *"b"* for that month, the county shall remit the difference to the clerk of the district court no later than the last day of the month in which the statement under subsection 2 is received.

4. If the amount due to the county under subsection 2, paragraph *"b"* for a calendar month is greater than the amount owed by the county under subsection 2, paragraph *"a"* for that month, the clerk of the district court shall remit the difference to the county treasurer no later than the last day of the month in which the statement under subsection 2 is delivered.

5. The clerk of the district court shall submit a statement to the city clerk of a city for statutory fees and costs that are payable by the city for services rendered by the clerk of the district court or other state officers or employees in connection with civil or criminal actions. The city shall pay amounts due within thirty days after the date the statement is mailed.

6. The clerk of the district court shall remit to a city within thirty days after receipt any amounts collected by the clerk as costs in an action when these amounts are payable by law to the city as reimbursement for costs incurred by the city in connection with a civil or criminal action.

7. Amounts not paid as required under subsection 3, 4, 5, or 6 shall bear interest for each day of delinquency at the rate in effect as of the day of delinquency for time deposits of public funds for eighty-nine days, as established under section 12C.6.

83 Acts, ch 186, §9109, 10201

ARTICLE 9

JUDICIAL RETIREMENT

PART 1

JUDICIAL RETIREMENT SYSTEM

602.9101 System created.

A retirement system is hereby created and established to be known as the "Judicial Retirement System", hereinafter called the "system".

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.1]

83 Acts, ch 186, §10202(2)

CS83, §602.9101

602.9102 Administered by court administrator.

The court administrator shall be vested with authority to administer the system and related reports and may promulgate rules therefor not inconsistent with the provisions of this article.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.2]

83 Acts, ch 186, §10202(2)

CS83, §602.9102

602.9103 Application. Repealed by 86 Acts, ch 1243, § 44.

602.9104 Deductions from judges' salaries — contributions by state.

1. A judge to whom this article applies shall be paid an amount equal to ninety-five percent of the basic salary of the judge as set by the general assembly. An amount equal to five percent of the basic salary of the judge as set by the general assembly is designated as the judge's contribution to the judicial retirement fund, and shall be paid by the state in the manner provided in subsection 2.

2. The amount designated in subsection 1 as the judge's contribution to the judicial retirement fund shall be paid by the department of revenue and finance from the general fund of the state to the court administrator for deposit with the treasurer of state to the credit of the judicial retirement fund. Moneys in the fund are appropriated for the payment of annuities, refunds, and allowances provided by this article, except that the amount of the appropriations affecting payment of annuities, refunds, and allowances to judges of the municipal and superior court is limited to that part of the fund accumulated for their benefit as provided in this article. The corpus and income of the fund shall be used only for the exclusive benefit of the judges covered under this article, their survivors, or an alternate payee who is assigned benefits pursuant to a domestic relations order.

3. A judge covered under this article is deemed to consent to the reduction in basic salary as provided in subsection 1.

4. *a.* As used in this subsection, unless the context otherwise requires:

(1) *"Actuarial valuation"* means an actuarial valuation of the judicial retirement system or an annual actuarial update of an actuarial valuation, as required pursuant to section 602.9116.

(2) *"Fully funded status"* means that the most recent actuarial valuation reflects that, using the projected unit credit method in accordance with generally recognized and accepted actuarial principles and practices set forth by the American academy of actuaries, the funded status of the system is at least one hundred percent.

(3) *"Required contribution rate"* means that percentage of the basic salary of all judges covered under this article which, in addition to the judge's contribution established in subsection 1, the actuary of the system determines is necessary to maintain fully funded status.

b. Effective with the fiscal year commencing July 1, 1994, and for each subsequent fiscal year until the system attains fully funded status, based upon the benefits provided for judges through the judicial retirement system as of July 1, 2001, the state shall contribute annually to the judicial retirement fund an amount equal to at least twenty-three and seven-tenths percent of the basic salary of all judges covered under this article. Commencing with the first fiscal year in which the system attains fully funded status, based upon the benefits provided for judges through the judicial retirement system as of July 1, 2001, and for each subsequent fiscal year, the state shall contribute to the judicial retirement fund the required contribution rate. The state's contribution shall be appropriated directly to the judicial retirement fund.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.4]

83 Acts, ch 186, §10202(2)

CS83, §602.9104

86 Acts, ch 1243, §35; 91 Acts, ch 116, §16; 94 Acts, ch 1183, §82; 2000 Acts, ch 1077, §112 – 114

Legislative intent regarding contribution rates when system attains fully funded status; notification, study, and report regarding adequate financing of system when fully funded status achieved; 2000 Acts, ch 1077, §117

602.9104A Moneys deposited in the judicial retirement fund — limitations — intent.

1. As used in this section, unless the context otherwise requires, *"court revenues"* means any court costs, fees, fines, penalties, surcharges, forfeited bail, or similar charges collected by the court, or interest on such amounts.

2. Notwithstanding section 602.8105, 602.8106, or 631.6, or any other provision of law to the contrary, court revenues shall not be deposited in the judicial retirement fund established in section 602.9104. If a provision of law provides for the deposit of court revenues in the judicial retirement fund, those court revenues shall be deposited in the general fund.

3. The judicial retirement fund shall consist of the contributions specified in section 602.9104, as well as the corpus and income of the fund as provided in section 602.9104.

4. It is the intent of the general assembly that the judicial retirement system be funded from contributions based upon the basic salary of the judges covered by this article, rather than from court revenues.

94 Acts, ch 1183, §83

602.9105 Rollovers of judges' accounts.

1. As used in this section, unless the context otherwise requires:

a. *"Direct rollover"* means a payment by the system to the eligible retirement plan specified by the judge covered under this article or the judge's

surviving spouse.

b. "Eligible retirement plan" means either of the following that accepts an eligible rollover distribution from a judge covered by this article or a judge's surviving spouse:

(1) An individual retirement account in accordance with section 408(a) of the federal Internal Revenue Code.

(2) An individual retirement annuity in accordance with section 408(b) of the federal Internal Revenue Code.

In addition, an *"eligible retirement plan"* includes an annuity plan in accordance with section 403(a) of the federal Internal Revenue Code, or a qualified trust in accordance with section 401(a) of the federal Internal Revenue Code, that accepts an eligible rollover distribution from a judge covered by this article.

c. "Eligible rollover distribution" means all or any portion of a judge's account, except that an eligible rollover distribution does not include any of the following:

(1) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or made for a specified period of ten years or more.

(2) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the federal Internal Revenue Code.

(3) The portion of any distribution that is not includible in the gross income of the distributee, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(4) A distribution of less than two hundred dollars of taxable income.

2. Effective January 1, 1993, a judge covered by this article or a judge's surviving spouse may elect, at the time and in the manner prescribed by the state court administrator, to have the system pay all or a portion of an eligible rollover distribution directly to an eligible retirement plan, specified by the judge or the judge's surviving spouse, in a direct rollover. If a judge or a judge's surviving spouse elects a partial direct rollover, the amount of funds elected for the partial direct rollover must equal or exceed five hundred dollars.

94 Acts, ch 1183, §84

602.9106 Retirement.

Any person who shall have become separated from service as a judge of any of the courts included in this article and who has had an aggregate of at least six years of service as a judge of one or more of such courts and shall have attained the age of sixty-five years or who has had twenty-five years of consecutive service as a judge of one or more of said courts, and who shall have otherwise qualified as provided in this article, shall be entitled to an annuity as hereinafter provided.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.6]

83 Acts, ch 186, §10202(2)

CS83, §602.9106

602.9107 Amount of annuity.

1. *a.* The annual annuity of a judge under this system is an amount equal to three percent of the judge's average annual basic salary for the judge's highest three years as a judge of one or more of the courts included in this article, multiplied by the judge's years of service as a judge of one or more of the courts for which contributions were made to the system. However, an annual annuity shall not exceed an amount equal to a specified percentage of the highest basic annual salary which the judge is receiving or had received as of the time the judge became separated from service. Forfeitures shall not be used to increase the annuities a judge or survivor would otherwise receive under the system.

b. "Specified percentage", for purposes of this section, means as follows:

(1) For judges who retire and receive an annuity prior to July 1, 1998, the specified percentage shall be fifty percent.

(2) For judges who retire and receive an annuity on or after July 1, 1998, but before July 1, 2000, the specified percentage shall be fifty-two percent.

(3) For judges who retire and receive an annuity on or after July 1, 2000, but before July 1, 2001, the specified percentage shall be fifty-six percent.

(4) For judges who retire and receive an annuity on or after July 1, 2001, the specified percentage shall be sixty percent.

2. A judge shall not receive under this article in any calendar year an annuity benefit which, if received in the form of a straight life annuity with no ancillary benefits, exceeds the lesser of the following:

a. A dollar limitation of ninety thousand dollars adjusted each January 1 to the dollar limitation determined by the federal commissioner of internal revenue pursuant to section 415(d) of the United States Internal Revenue Code, as amended.

b. A compensation limit of one hundred percent of the average compensation paid to the judge during those three consecutive calendar years as a judge of one or more of the courts included in this article which give the highest average.

The limitations of this subsection do not apply to an annuity benefit which is less than ten thousand dollars.

3. The limitations in subsection 2 shall be adjusted as follows:

a. If the annuity begins prior to the sixty-second birthday of the judge, the dollar limitation shall be equal to an annual annuity benefit which is equal to the actuarial equivalent of an annuity

benefit commencing on the sixty-second birthday of the judge, but not below seventy-five thousand dollars.

b. If the annuity begins after the sixty-fifth birthday of the judge, the dollar limitation shall be equal to an annual annuity benefit which is the actuarial equivalent of an annuity benefit commencing on the sixty-fifth birthday of the judge.

c. If the annuity begins prior to the judge having ten years of creditable service, the dollar limitation, the one hundred percent of average compensation limitation, and the exception for an annuity benefit which is less than ten thousand dollars, shall be reduced by a fraction, the numerator of which is the total years and months of creditable service, and the denominator of which is ten.

For purposes of the limitations of this subsection, the actuarial equivalent shall be determined from actuarial tables using the 1983 group annuity table for males and five percent interest compounded annually. The value of the joint and survivorship feature of an annuity shall not be taken into account in applying the limitations of this section.

4. This section is intended to meet the requirements of section 415 of the United States Internal Revenue Code and shall be construed in accordance with that section, and shall, by this reference, incorporate any subsequent changes to that section which apply to the judicial retirement system.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.7]

83 Acts, ch 186, §10202(2)

CS83, §602.9107

86 Acts, ch 1243, §36; 98 Acts, ch 1183, §101; 2000 Acts, ch 1077, §115; 2002 Acts, ch 1135, §54

Legislative intent regarding increases in maximum percentage multiplier for calculating annuities; 98 Acts, ch 1183, §105

Subsection 1, paragraph a amended

602.9107A Optional retirement and decreased annuity.

1. Notwithstanding section 602.9106, a judge who is fifty-five years of age or older and who has served at least twenty consecutive years as a judge of one or more of the courts included in this article shall be entitled to receive a decreased annuity.

2. The amount of the decreased annuity shall be the actuarial equivalent of the amount of the annuity payable to judges pursuant to section 602.9107, subsections 1 and 2. A judge shall make an election request in writing to the state court administrator prior to retirement in order to receive an annuity pursuant to this section. A judge may revoke the election prior to retirement by providing a written request to the state court administrator.

3. The decreased annuity provided in this section shall be in lieu of the annuities provided for in sections 602.9107, 602.9204, 602.9208, and 602.9209.

92 Acts, ch 1201, §72; 92 Acts, ch 1236, §401

602.9107B Minimum annuity benefit.

A judge, or a survivor of a judge, who retired before July 1, 1977, and who is receiving an annuity pursuant to this article, shall, commencing with an annuity paid on or after July 1, 1998, be paid a minimum monthly annuity payment of five hundred dollars.

98 Acts, ch 1183, §102

602.9107C Iowa public employees' retirement system — service credit.

1. A judge under this system who has at least six years of service as a judge of any of the courts included in this article and who was a member of the Iowa public employees' retirement system as provided in chapter 97B, but who was not retired under that system, upon submitting verification of membership and service in the Iowa public employees' retirement system to the court administrator, including proof that the judge has no further claim upon a retirement benefit from that public system, may make contributions as provided by this section to the system either for the entire period of service in the other public system, or for partial service in the other public system in increments of one or more calendar quarters, and receive credit for that service under the system.

2. The contributions required to be made for purposes of this section shall be in an amount equal to the actuarial cost of the service purchase. For purposes of this subsection, the actuarial cost of the service purchase is an amount determined by the court administrator in accordance with actuarial tables, as reported to the court administrator by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement annuity resulting from the purchase of additional service.

3. A judge eligible for an increased retirement annuity because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the judge pays contributions under this section.

4. The court administrator shall ensure that the judge, in exercising an option provided in this section, does not exceed the amount of annual additions to a judge's account permitted pursuant to section 415 of the Internal Revenue Code.

2002 Acts, ch 1135, §55

NEW section

602.9108 Individual accounts — refunding.

The amount designated as the judge's contribution to the judicial retirement fund in section 602.9104, subsection 1, and all amounts paid into the fund by a judge shall be credited to the individual account of the judge. If a judge covered under

this article becomes separated from service as a judge before the judge completes an aggregate of six years of service as a judge of one or more of the courts, the total amount in the judge's individual account shall be returned to the judge or the judge's legal representatives within one year of the separation. If a judge, who is covered under this article and who has completed an aggregate of six years or more of service as a judge of one or more of the courts, dies before retirement, without a survivor, the total amount in the judge's individual account shall be paid in one sum to the judge's legal representatives within one year of the judge's death. If an annuitant under this section dies without a survivor, and without having received in annuities an amount equal to the total amount in the judge's individual account at the time of separation from service, the amount remaining to the annuitant's credit shall be paid in one sum to the annuitant's legal representatives within one year of the annuitant's death.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.8]

83 Acts, ch 186, §10202(2)

CS83, §602.9108

86 Acts, ch 1243, §37

602.9109 Payment of annuities.

Annuities granted under the terms of this article are due and payable in monthly installments on the last business day of each month following the month or other period for which the annuity has accrued and shall continue during the life of the annuitant; and payment of all annuities, refunds, and allowances granted under this article shall be made by checks or warrants drawn and issued by the director of revenue and finance. Applications for annuities shall be in such form as the director of revenue and finance may prescribe.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.9]

83 Acts, ch 186, §10202(2)

CS83, §602.9109

85 Acts, ch 197, §28; 89 Acts, ch 228, §8

602.9110 Other public employment prohibited.

No annuity shall be paid to any person, except a survivor, entitled to receive an annuity hereunder while the person is serving as a state officer or employee.

However, this section does not prohibit the payment of an annuity to a senior judge while serving as provided in section 602.9206.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.10]

83 Acts, ch 186, §10202(2)

CS83, §602.9110

602.9111 Investment of fund.

1. So much of the judicial retirement fund as may not be necessary to be kept on hand for the making of disbursements under this article shall be invested by the treasurer of state in any investments authorized for the Iowa public employees' retirement system in section 97B.7A, and the earnings therefrom shall be credited to the fund. The treasurer of state may execute contracts and agreements with investment advisors, consultants, and investment management and benefit consultant firms in the administration of the judicial retirement fund.

2. Investment management expenses shall be charged to the investment income of the fund and there is appropriated from the fund an amount required for the investment management expenses. The court administrator shall report the investment management expenses for the fiscal year as a percent of the market value of the system.

3. For purposes of this section, investment management expenses are limited to the following:

a. Fees for investment advisors, consultants, and investment management and benefit consultant firms hired by the treasurer of state in administering the fund.

b. Fees and costs for safekeeping fund assets.

c. Costs for performance and compliance monitoring, and accounting for fund investments.

d. Any other costs necessary to prudently invest or protect the assets of the fund.

4. The state court administrator and the treasurer of state, and their employees, are not personally liable for claims based upon an act or omission of the person performed in the discharge of the person's duties concerning the judicial retirement fund, except for acts or omissions which involve malicious or wanton misconduct.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §605A.11]

83 Acts, ch 186, §10202(2)

CS83, §602.9111

84 Acts, ch 1180, §10; 96 Acts, ch 1187, §109; 2001 Acts, ch 68, §18, 24

2001 amendment to subsection 1 takes effect July 1, 2002; 2001 Acts, ch 68, §24

Subsection 1 amended

602.9112 Voluntary retirement for disability.

Any judge of the supreme, district or municipal court, including a district associate judge, or a judge of the court of appeals, who shall have served as a judge of one or more of such courts for a period of six years in the aggregate and who believes the judge has become permanently incapacitated, physically or mentally, to perform the duties of the judge's office may personally or by the judge's next friend or guardian file with the court administrator a written application for retirement. The application shall be filed in duplicate and accompanied by an affidavit as to the duration

and particulars of the judge's service and the nature of the judge's incapacity. The court administrator shall forthwith transmit one copy of the application and affidavit to the chief justice who shall request the attorney general in writing to cause an investigation to be made relative to the claimed incapacity and report back the results thereof in writing. If the chief justice finds from the report of the attorney general that the applicant is permanently incapacitated, physically or mentally, to perform the duties of the applicant's office the chief justice shall by endorsement thereon declare the applicant retired, and the office vacant, and shall file the report in the office of the court administrator, and a copy in the office of the secretary of state. From the date of such filing the applicant shall be deemed retired from the applicant's office and entitled to the benefits of this article to the same extent as if the applicant had retired under the provisions of section 602.9106.

[C66, 71, 73, 75, 77, 79, 81, §605A.12]
83 Acts, ch 186, §10202(2)
CS83, §602.9112

602.9113 Retirement benefits for disability.

An adjudication as to permanent physical or mental disability under the provisions of article 2, part 1 shall entitle the judge to the same retirement benefits as provided for voluntary retirement for such cause.

[C66, 71, 73, 75, 77, 79, 81, §605A.13]
83 Acts, ch 186, §10202(2)
CS83, §602.9113

602.9114 Forfeiture of benefits — refund.

If a judge covered under this part is removed for cause other than permanent disability the judge and the judge's survivor shall forfeit the right to any retirement benefits under the system but the total amount in the judge's individual account shall be returned to the judge or the judge's legal representatives within one year of the removal.

[C66, 71, 73, 75, 77, 79, 81, §605A.14]
83 Acts, ch 186, §10202(2)
CS83, §602.9114
86 Acts, ch 1243, §38

602.9115 Annuity for survivor of annuitant.

The survivor of a judge who was qualified for retirement compensation under the system at the time of the judge's death, is entitled to receive an annuity of one-half of the amount of the annuity the judge was receiving or would have been entitled to receive at the time of the judge's death, or if the judge died before age sixty-five, then one-half of the amount the judge would have been entitled to receive at age sixty-five based on the judge's years of service for which contributions were made to the system. The annuity shall begin on the judge's death or upon the survivor's reaching age sixty, whichever is later. However, a survivor less than sixty years old may elect to receive a decreased retirement annuity to begin on the judge's death by filing a written election with the state court administrator. The election is subject to the approval of the state court administrator. The amount of the decreased retirement annuity shall be the actuarial equivalent of the amount of the annuity otherwise payable to the survivor under this section.

For the purposes of this article *"survivor"* means the surviving spouse of a person who was a judge, if married to the judge for at least one year preceding the judge's death.

If the judge dies leaving a survivor but without receiving in annuities an amount equal to the judge's credit, the balance shall be credited to the account of the judge's survivor, and if the survivor dies without receiving in annuities an amount equal to the balance, the amount remaining shall be paid to the survivor's legal representatives within one year of the survivor's death.

[C73, 75, 77, 79, 81, §605A.15]
83 Acts, ch 186, §10202(2)
CS83, §602.9115
84 Acts, ch 1285, §29; 86 Acts, ch 1243, §39

602.9115A Optional annuity for judge and survivor.

In lieu of the annuities and refunds provided for judges and judges' survivors under sections 602.9107, 602.9107A, 602.9108, 602.9115, 602.9204, 602.9208, and 602.9209, judges may elect to receive an optional retirement annuity during the judge's lifetime and have the optional retirement annuity, or a designated fraction of the optional retirement annuity, continued and paid to the judge's survivor after the judge's death and during the lifetime of the survivor.

The judge shall make the election request in writing to the state court administrator prior to retirement. The election is subject to the approval of the state court administrator. The judge may revoke the election prior to retirement by written request to the state court administrator, but cannot revoke the election after retirement.

The optional retirement annuity shall be the actuarial equivalent of the amounts of the annuities payable to judges and survivors under sections 602.9107, 602.9107A, 602.9115, 602.9204, 602.9208, and 602.9209. The actuarial equivalent shall be based on the mortality and interest assumptions set out in section 602.9107, subsection 3.

If the judge dies without a survivor, prior to retirement or prior to receipt in annuities of an amount equal to the total amount remaining to the judge's credit at the time of separation from service, the election is null and void and the refunding provisions of section 602.9108 apply.

If the judge dies with a survivor prior to retire-

ment, the election remains valid and the survivor is entitled to receive the annuity beginning at the death of the judge.

If the judge dies with a survivor and the survivor subsequently dies prior to receipt in annuities by both the judge and the survivor of an amount equal to the total amount remaining to the judge's credit at the time of separation from service, the election remains valid and the refunding provision of section 602.9115 applies.

86 Acts, ch 1243, §40; 92 Acts, ch 1236, §402, 403

602.9116 Actuarial valuation.

1. The court administrator shall cause an actuarial valuation to be made of the assets and liabilities of the judicial retirement fund at least once every four years commencing with the fiscal year beginning July 1, 1981. For each fiscal year in which an actuarial valuation is not conducted, the court administrator shall cause an annual actuarial update to be prepared for the purpose of determining the adequacy of the contribution rates specified in section 602.9104, subsection 4. The court administrator shall adopt mortality tables and other necessary factors for use in the actuarial calculations required for the valuation upon the recommendation of the actuary. Following the actuarial valuation or annual actuarial update, the court administrator shall determine the condition of the system and shall report its findings and recommendations to the general assembly.

2. The cost of the actuarial valuation or annual actuarial update shall be paid from the judicial retirement fund.

[C81, §605A.18]
83 Acts, ch 186, §10202(2)
CS83, §602.9116
94 Acts, ch 1183, §85

PART 2

IOWA SENIOR JUDGE ACT

602.9201 Short title.

This part may be cited and referred to as the *"Iowa Senior Judge Act"*.

[C81, §605A.21]
83 Acts, ch 186, §10202(2)
CS83, §602.9201

602.9202 Definitions.

As used in this part unless the context otherwise requires:

1. *"Retired senior judge"* means a senior judge who has been retired from a senior judgeship as provided in section 602.9207.

2. *"Roster of senior judges"* means the roster maintained by the clerk of the supreme court under section 602.9203, subsection 3.

3. *"Senior judge"* means a supreme court judge, court of appeals judge, district court judge, district associate judge, full-time associate juvenile judge, or full-time associate probate judge, who meets the requirements of section 602.9203 and who has not been retired or removed from the roster of senior judges under section 602.9207 or 602.9208.

4. *"Twelve-month period"* means each successive one-year period commencing on the date a retired judge becomes a senior judge and while the judge continues to be a senior judge.

[C81, §605A.22]
83 Acts, ch 186, §10202(2)
CS83, §602.9202
2002 Acts, ch 1135, §56
Former subsections 1, 2, and 3 editorially renumbered as 3, 1, and 2 respectively to alphabetize
Subsection 3 amended

602.9203 Senior judgeship requirements — appointment and term.

1. A supreme court judge, court of appeals judge, district judge, district associate judge, full-time associate juvenile judge, or full-time associate probate judge, who qualifies under subsection 2 may become a senior judge by filing with the clerk of the supreme court a written election in the form specified by the court administrator. The election shall be filed within six months of the date of retirement.

2. A judicial officer referred to in subsection 1 may be appointed, at the discretion of the supreme court, for a two-year term as a senior judge if the judicial officer meets all of the following requirements:

a. Retires from office on or after July 1, 1977, whether or not the judicial officer is of mandatory retirement age.

b. Meets the minimum requirements for entitlement to an annuity as specified in section 602.9106. However, a judge who elects to retire prior to attaining the age of sixty-five and who has not had twenty-five years of consecutive service, may serve as a senior judge, but shall not be paid an annuity pursuant to section 602.9204 until attaining age sixty-five.

c. Agrees in writing on a form prescribed by the court administrator to be available as long as the judicial officer is a senior judge to perform judicial duties as assigned by the supreme court for an aggregate period of thirteen weeks out of each successive twelve-month period.

d. Submits evidence to the satisfaction of the supreme court that as of the date of retirement the judicial officer does not suffer from a permanent physical or mental disability which would substantially interfere with the performance of duties agreed to under paragraph *"c"* of this subsection.

e. Submits evidence to the satisfaction of the supreme court that since the date of retirement the judicial officer has not engaged in the practice of law.

3. The clerk of the supreme court shall main-

tain a book entitled "Roster of Senior Judges", and shall enter in the book the name of each judicial officer who files a timely election under subsection 1 and qualifies under subsection 2. A person shall be a senior judge upon entry of the person's name in the roster of senior judges and until the person becomes a retired senior judge as provided in section 602.9207, or until the person's name is stricken from the roster of senior judges as provided in section 602.9208, or until the person dies.

4. The supreme court shall cause each senior judge on the roster to actually perform judicial duties during each successive twelve-month period.

5. A senior judge may be reappointed to additional two-year terms, at the discretion of the supreme court, if the judicial officer meets the requirements of subsection 2.

[C81, §605A.23]

83 Acts, ch 186, §10202(2)

CS83, §602.9203

85 Acts, ch 94, §1, 2; 89 Acts, ch 162, §1; 95 Acts, ch 145, §1, 2; 2002 Acts, ch 1135, §57

Subsection 1 amended

602.9204 Salary — annuity of senior judge and retired senior judge.

1. A judge who retires on or after July 1, 1994, and who is appointed a senior judge under section 602.9203 shall be paid a salary as determined by the general assembly. A senior judge or retired senior judge shall be paid an annuity under the judicial retirement system in the manner provided in section 602.9109, but computed under this section in lieu of section 602.9107, as follows: The annuity paid to a senior judge or retired senior judge shall be an amount equal to three percent of the basic senior judge salary, multiplied by the judge's years of service prior to retirement as a judge of one or more of the courts included under this article, for which contributions were made to the system, except the annuity of the senior judge or retired senior judge shall not exceed an amount equal to the applicable specified percentage of the basic senior judge salary used in calculating the annuity. However, following the twelve-month period during which the senior judge or retired senior judge attains seventy-eight years of age, the annuity paid to the person shall be an amount equal to three percent of the basic senior judge salary cap, multiplied by the judge's years of service prior to retirement as a judge of one or more of the courts included under this article, for which contributions were made to the system, except that the annuity shall not exceed an amount equal to the applicable specified percentage of the basic senior judge salary cap. A senior judge or retired senior judge shall not receive benefits calculated using a basic senior judge salary established after the twelve-month period in which the senior judge or retired senior judge attains seventy-eight years of age. The state shall provide, regardless of age, to an active senior judge or a senior judge with six years of service as a senior judge and to the judge's spouse, and pay for medical insurance until the judge attains the age of seventy-eight years.

2. As used in this section, unless the context otherwise requires:

a. "Applicable specified percentage" means, for a senior judge or retired senior judge, the specified percentage, as defined in section 602.9107, subsection 1, that applied on the date the judge was separated from full-time service.

b. "Basic senior judge salary" means the highest basic annual salary which the judge is receiving or had received as of the time the judge became separated from full-time service, as would be used in computing an annuity pursuant to section 602.9107 without service as a senior judge, plus seventy-five percent of the escalator.

c. "Basic senior judge salary cap" means the basic senior judge salary, at the end of the twelve-month period during which the senior judge or retired senior judge attained seventy-eight years of age, of the office in which the person last served as a judge before retirement as a judge or senior judge.

d. "Escalator" means the difference between the current basic salary, as of the time each payment is made up to and including the twelve-month period during which the senior judge or retired senior judge attains seventy-eight years of age, of the office in which the senior judge last served as a judge before retirement as a judge or senior judge, and the basic annual salary which the judge is receiving at the time the judge becomes separated from full-time service as a judge of one or more of the courts included in this article, as would be used in computing an annuity pursuant to section 602.9107 without service as a senior judge.

[C81, §605A.24]

83 Acts, ch 186, §10202(2)

CS83, §602.9204

86 Acts, ch 1243, §41; 89 Acts, ch 162, §2; 92 Acts, ch 1201, §73, 76; 92 Acts, 2nd Ex, ch 1001, §116; 94 Acts, ch 1183, §86, 90; 95 Acts, ch 145, §3, 4; 99 Acts, ch 200, §22; 2000 Acts, ch 1077, §116; 2002 Acts, ch 1135, §58

Interpretive memorandum by Supreme Court filed July 22, 1982

Subsection 2, paragraph b amended

602.9205 Practice of law prohibited.

A senior judge shall not practice law.

[C81, §605A.25]

83 Acts, ch 186, §10202(2)

CS83, §602.9205

602.9206 Temporary service by senior judge.

Section 602.1612 does not apply to a senior judge but does apply to a retired senior judge. During the tenure of a senior judge, if the judge is able to serve, the judge may be assigned by the supreme court to temporary judicial duties on courts

of this state without salary for an aggregate of thirteen weeks out of each twelve-month period, and for additional weeks with the judge's consent. A senior judge shall not be assigned to judicial duties on the supreme court unless the judge has been appointed to serve on the supreme court prior to retirement. While serving on temporary assignment, a senior judge has and may exercise all of the authority of the office to which the judge is assigned, shall continue to be paid the judge's annuity as senior judge, shall be reimbursed for the judge's actual expenses to the extent expenses of a district judge are reimbursable under section 602.1509, may, if permitted by the assignment order, appoint a temporary court reporter, who shall be paid the remuneration and reimbursement for actual expenses provided by law for a reporter in the court to which the senior judge is assigned, and, if assigned to the court of appeals or the supreme court, shall be given the assistance of a law clerk and a secretary designated by the court administrator of the judicial branch from the court administrator's staff. Each order of temporary assignment shall be filed with the clerks of court at the places where the senior judge is to serve.

A senior judge also shall be available to serve in the capacity of administrative law judge under chapter 17A, and the supreme court may assign a senior judge for temporary duties as an administrative law judge. A senior judge shall not be required to serve a period of time as an administrative law judge which, when added to the period of time being served by the person as a judge, if any, would exceed the maximum period of time the person agreed to serve pursuant to section 602.9203, subsection 2.

[C81, §605A.26]
83 Acts, ch 186, §10202(2)
CS83, §602.9206
88 Acts, ch 1109, §30; 90 Acts, ch 1271, §1512; 98 Acts, ch 1047, §62; 98 Acts, ch 1202, §43, 46

602.9207 Retirement of senior judge.

1. A senior judge shall cease to be a senior judge upon completion of the twelve-month period during which the judge attains seventy-eight years of age. The clerk of the supreme court shall make a notation of the retirement of a senior judge in the roster of senior judges, at which time the senior judge shall become a retired senior judge.

2. A senior judge is subject to retirement under article 2, part 1 for the causes specified in section 602.2106, subsection 3, paragraph *"a"*. A senior judge may request and be granted retirement in the manner provided in section 602.9112. When a senior judge is retired as provided in this subsection the clerk of the supreme court shall make a notation of the retirement of the senior judge in the roster of senior judges, at which time the senior judge shall become a retired senior judge.

[C81, §605A.27]
83 Acts, ch 186, §10202(2)
CS83, §602.9207

602.9208 Relinquishment of senior judgeship — removal for cause — retirement annuity.

1. A senior judge, at any time prior to the end of the twelve-month period during which the judge attains seventy-eight years of age, may submit to the clerk of the supreme court a written request that the judge's name be stricken from the roster of senior judges. Upon the receipt of the request the clerk shall strike the name of the person from the roster of senior judges, at which time the person shall cease to be a senior judge. A person who relinquishes a senior judgeship as provided in this subsection may be assigned to temporary judicial duties as provided in section 602.1612.

2. A senior judge is subject to removal under the provisions of article 2, part 1 for any of the causes specified in section 602.2106, subsection 3, paragraph *"b"*. When a person is removed from a senior judgeship as provided in this subsection the clerk of the supreme court shall strike the name of the person from the roster of senior judges, at which time the person shall cease to be a senior judge.

3. A person who relinquishes a senior judgeship in the manner provided in subsection 1 or who is not reappointed shall be paid a retirement annuity that commences on the effective date of the relinquishment or the date of the completion of the term or appointment and shall be based upon the number of years the person served as a senior judge. A person who serves six or more years as a senior judge shall be paid a retirement annuity that is in an amount equal to the amount of the annuity the person is receiving on the effective date of the relinquishment or the date of the completion of the term or appointment in lieu of an amount determined according to section 602.9204. If the person serves less than six years as a senior judge, the person shall be paid a retirement annuity that is in an amount equal to an amount determined according to section 602.9107 added to an amount equal to the number of years the person served as a senior judge, divided by six, multiplied by the difference between the amount of the annuity the person is receiving on the effective date of the relinquishment and the amount determined according to section 602.9107. A person who is removed from a senior judgeship as provided in subsection 2 shall be paid a retirement annuity that commences on the effective date of the removal and is in an amount determined according to section 602.9107 in lieu of section 602.9204, and any service and annuity of the person as a senior judge is disregarded.

[C81, §605A.28]
83 Acts, ch 186, §10202(2)
CS83, §602.9208
84 Acts, ch 1234, §1; 95 Acts, ch 145, §5

602.9209 Survivor's annuity.

1. A survivor of a senior judge, a retired senior judge, or a person who relinquished a senior judgeship under section 602.9208, subsection 1, shall be paid an annuity in lieu of that specified in section 602.9115, which is equal to one-half the amount of the annuity the senior judge, retired senior judge, or person who relinquished a senior judgeship was receiving at the time of death, provided the survivor is qualified under section 602.9115 to receive an annuity.

2. A survivor of a person whose name is stricken from the roster of senior judges because of removal from a senior judgeship under section 602.9208, subsection 2, shall be paid an annuity equal to one-half of the amount the person was receiving at the time of death, provided the survivor is qualified under section 602.9115 to receive an annuity.

[C81, §605A.29]
83 Acts, ch 186, §10202(2)
CS83, §602.9209
84 Acts, ch 1234, §2

ARTICLE 10

ATTORNEYS AND COUNSELORS

See also Iowa Ct.R., ch 31 – 50

602.10101 Admission to practice.

The power to admit persons to practice as attorneys and counselors in the courts of this state, or any of them, is vested exclusively in the supreme court which shall adopt and promulgate rules to carry out the intent and purpose of this article.

[C97, §309, 315; S13, §315; C24, 27, 31, 35, 39, §**10907, 10918;** C46, 50, 54, 58, 62, 66, 71, 73, §610.1, 610.12; C75, 77, 79, 81, §610.1]
83 Acts, ch 186, §10202(2)
CS83, §602.10101
See Iowa Ct.R., ch 31 in the publication, "Iowa Court Rules"

602.10102 Qualifications for admission.

Every applicant for such admission shall be a person of honesty, integrity, trustworthiness, truthfulness and one who appreciates and will adhere to a code of conduct for lawyers as adopted by the supreme court. The applicant shall be an inhabitant of this state, and shall have actually and in good faith pursued a regular course of study of the law and shall have graduated from some reputable law school. The application form shall not contain a recent photograph of the applicant. An applicant shall not be ineligible for registration because of age, citizenship, sex, race, religion, marital status or national origin although the application form may require citizenship information. The board may consider the past record of guilty pleas and convictions of public offenses of an applicant. Character references may be required; however, such references shall not be restricted to lawyers.

[C51, §1610; R60, §2700; C73, §208; C97, §310; S13, §310; C24, 27, 31, 35, 39, §**10908;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.2]
83 Acts, ch 186, §10202(2)
CS83, §602.10102

602.10103 Board of law examiners.

There is established a board of law examiners which shall consist of five persons admitted to practice law in this state and two persons not admitted to practice law in this state who shall represent the general public. Members shall be appointed by the supreme court. A member admitted to practice law shall be actively engaged in the practice of law in this state.

[S13, §311-a; C24, 27, 31, 35, 39, §**10910;** C46, 50, 54, 58, 62, 66, 71, 73, §610.4; C75, 77, 79, 81, §610.3]
83 Acts, ch 186, §10202(2)
CS83, §602.10103

602.10104 Examinations.

Every applicant shall be examined by the board concerning the applicant's learning and skill in the law. The sufficiency of the education of the applicant may be determined by written examination or in such other manner as the board shall prescribe. The board shall hold at least one meeting each year at the seat of government. Examinations shall be given as often as deemed necessary as determined by the court, but shall be conducted at least one time per year. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible.

An applicant who fails the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the court. An applicant who has failed the examination may request in writing information from the court concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the court administers a uniform, standardized examination, the court shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the court.

[C97, §311; S13, §311; C24, 27, 31, 35, 39, §**10909;** C46, 50, 54, 58, 62, 66, 71, 73, §610.3; C75,

77, 79, 81, §610.4]
83 Acts, ch 186, §10202(2)
CS83, §602.10104

602.10105 Term of office.

Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the supreme court. Members shall serve no more than three terms or nine years, whichever is less.

[S13, §311-a; C24, 27, 31, 35, 39, §**10911;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.5]
83 Acts, ch 186, §10202(2)
CS83, §602.10105

602.10106 Oath — compensation.

The members thus appointed shall take and subscribe an oath to be administered by one of the judges of the supreme court to faithfully and impartially discharge the duties of the office. The members shall, in addition to receiving actual and necessary expenses, set the per diem compensation for themselves and the temporary examiners appointed under section 602.10107 at a rate not exceeding the per diem specified in section 7E.6 for each day actually engaged in the discharge of their duties. The duties shall include the traveling to and from the place of examination, the preparation and conducting of examinations, and the reading of the examination papers. The per diem authorized under this section shall be reasonably apportioned in relation to the funds appropriated to the board.

[S13, §311-a; C24, 27, 31, 35, 39, §**10912;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.6]
83 Acts, ch 186, §10202(2)
CS83, §602.10106
90 Acts, ch 1256, §54

602.10107 Temporary appointments — expenses.

The supreme court may appoint from time to time, when necessary, temporary examiners to assist the board, who shall receive their actual and necessary expenses to be paid from funds appropriated to the board.

The members of the board authorized to grade examinations shall make the final decision on passage or failure of each applicant, subject to the rules of the supreme court. The board shall, also, recommend to the supreme court for admission to practice law in this state all applicants who pass the examination and who meet the requisite character requirements. The supreme court shall make the final decision in determining who shall be admitted.

[S13, §311-a; C24, 27, 31, 35, 39, §**10913;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.7]
83 Acts, ch 186, §10202(2)
CS83, §602.10107

602.10108 Fees.

The board shall set the fees for examination and for admission. The fees for examination shall be based upon the annual cost of administering the examinations. The fees for admission shall be based upon the costs of conducting an investigation of the applicant and the administrative costs of sustaining the board, which shall include but shall not be limited to:

1. Expenses and travel for board members and temporary examiners.
2. Office facilities, supplies, and equipment.
3. Clerical assistance.

Fees shall be collected by the board and transmitted to the treasurer of state who shall deposit the fees in the general fund of the state.

[S13, §311-b; C24, 27, 31, 35, 39, §**10914;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.8]
83 Acts, ch 186, §10202(2)
CS83, §602.10108

602.10109 Practitioners from other states.

Any person who is a resident of this state, and has been admitted to the bar of any other state in the United States or the District of Columbia, may, in the discretion of the court, be admitted to practice in this state without examination or proof of a period of study. The person, in the application for admission to practice law in this state, in addition to all other requirements stated in this chapter, shall establish that the person has practiced law for five full years under license in such jurisdiction within the seven years immediately preceding the date of application and still holds a license to practice law. The teaching of law as a full-time instructor in a recognized law school in this state or some other state shall for the purpose of this section be deemed the practice of law. Any person who has discharged actual legal duties as a member of the armed services of the United States shall be deemed to have practiced law for the purposes of this section if certified to as such by the judge advocate general of the service. The court may charge an investigation fee based upon the cost of conducting the investigation as determined by the court.

[C97, §313; S13, §313; C24, 27, 31, 35, 39, §**10916;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.10]
83 Acts, ch 186, §10202(2)
CS83, §602.10109

602.10110 Oath.

All persons on being admitted to the bar shall take an oath or affirmation to support the Constitutions of the United States and of the state of Iowa, and to faithfully discharge the duties of an attorney and counselor of this state according to the best of their ability.

[C51, §1613; R60, §2703; C73, §208; C97, §314; C24, 27, 31, 35, 39, §**10917;** C46, 50, 54, 58, 62, 66,

71, 73, 75, 77, 79, 81, §610.11]
83 Acts, ch 186, §10202(2)
CS83, §602.10110

602.10111 Nonresident attorney — appointment of local attorney.

Any member of the bar of another state, actually engaged in any cause or matter pending in any court of this state, may be permitted by such court to appear in and conduct such cause or matter while retaining the attorney's residence in another state, without being subject to the foregoing provisions of this article; provided that at the time the attorney enters an appearance the attorney files with the clerk of such court the written appointment of some attorney resident and admitted to practice in the state of Iowa, upon whom service may be had in all matters connected with said action, with the same effect as if personally made on such foreign attorney within this state. In case of failure to make such appointment, such attorney shall not be permitted to practice as aforesaid, and all papers filed by the attorney shall be stricken from the files.

[C51, §1612; R60, §2702; C73, §210; C97, §316; S13, §316; C24, 27, 31, 35, 39, §**10919;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.13]
83 Acts, ch 186, §10202(2)
CS83, §602.10111

602.10112 Duties of attorneys and counselors.

It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.

2. To counsel or maintain no other actions, proceedings, or defenses than those which appear to the attorney or counselor legal and just, except the defense of a person charged with a public offense.

3. To employ, for the purpose of maintaining the causes confided to the attorney or counselor, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.

4. To maintain inviolate the confidence, and, at any peril to the attorney or counselor, to preserve the secret of a client.

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which the attorney or counselor is charged.

6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.

7. Never to reject for any consideration personal to the attorney or counselor the cause of the defenseless or oppressed.

[C51, §1614; R60, §2704; C73, §211; C97, §317; C24, 27, 31, 35, 39, §**10920;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.14]
83 Acts, ch 186, §10202(2)
CS83, §602.10112

602.10113 Deceit or collusion.

An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages to be recovered in a civil action.

[C51, §1615; R60, §2705; C73, §212; C97, §318; C24, 27, 31, 35, 39, §**10921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.15]
83 Acts, ch 186, §10202(2)
CS83, §602.10113

602.10114 Authority.

An attorney and counselor has power to:

1. Execute in the name of a client a bond, or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced, or for the prosecution or defense of any right growing out of an action, proceeding, or final judgment rendered therein.

2. Bind a client to any agreement, in respect to any proceeding within the scope of the attorney's or counselor's proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney in person, the attorney's or counselor's written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

3. Receive money claimed by a client in an action or proceeding during the pendency thereof, or afterwards, unless the attorney or counselor has been previously discharged by the client, and, upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

[C51, §1616; R60, §2706; C73, §213; C97, §319; C24, 27, 31, 35, 39, §**10922;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.16]
83 Acts, ch 186, §10202(2)
CS83, §602.10114

602.10115 Proof of authority.

The court may, on motion of either party and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of the several adverse parties, to produce or prove by the attorney's own oath, or otherwise, the authority under which the attorney appears, and, until the attorney does so, may stay all proceedings by the attorney on behalf of the parties for whom the attorney assumes to appear.

[C51, §1617; R60, §2707; C73, §214; C97, §320; C24, 27, 31, 35, 39, §**10923;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.17]
83 Acts, ch 186, §10202(2)
CS83, §602.10115

602.10116 Attorney's lien — notice.

An attorney has a lien for a general balance of compensation upon:

1. Any papers belonging to a client which have come into the attorney's hands in the course of professional employment.

2. Money in the attorney's hands belonging to a client.

3. Money due a client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record, such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment or combination docket, opposite the entry of the judgment.

[C51, §1618; R60, §2708; C73, §215; C97, §321; C24, 27, 31, 35, 39, §**10924;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.18]

83 Acts, ch 186, §10202(2)

CS83, §602.10116

Attorney as surety; §621.7, 636.5

602.10117 Release of lien by bond.

Any person interested may release such lien by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by any district judge, payable to the attorney, with security to be approved by the clerk of the supreme or district court, conditioned to pay any amount finally found due the attorney for the attorney's services, which amount may be ascertained by suit on the bond.

[C51, §1619; R60, §2709; C73, §216; C97, §322; C24, 27, 31, 35, 39, §**10925;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.19]

83 Acts, ch 186, §10202(2)

CS83, §602.10117

602.10118 Automatic release.

Such lien will be released, unless the attorney, within ten days after demand therefor, files with the clerk a full and complete bill of particulars of the services and amount claimed for each item, or written contract with the party for whom the services were rendered.

[C73, §216; C97, §322; C24, 27, 31, 35, 39, §**10926;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.20]

83 Acts, ch 186, §10202(2)

CS83, §602.10118

602.10119 Unlawful retention of money.

An attorney who receives the money or property of a client in the course of the attorney's professional business, and refuses to pay or deliver it in a reasonable time, after demand, is guilty of a theft and punished accordingly.

[C51, §1627; R60, §2717; C73, §224; C97, §330; C24, 27, 31, 35, 39, §**10927;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.21]

83 Acts, ch 186, §10202(2)

CS83, §602.10119

602.10120 Excuse for nonpayment.

When the attorney claims to be entitled to a lien upon the money or property, the attorney is not liable to the penalties of section 602.10119 until the person demanding the money proffers sufficient security for the payment of the amount of the attorney's claim, when it is legally ascertained. Nor is the attorney in any case liable as aforesaid, provided the attorney gives sufficient security that the attorney will pay over the whole or any portion thereof to the claimant when the claimant is found entitled thereto.

[C51, §1628, 1629; R60, §2718, 2719; C73, §225, 226; C97, §331; C24, 27, 31, 35, 39, §**10928;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.22]

83 Acts, ch 186, §10202(2)

CS83, §602.10120

602.10121 Revocation of license.

The supreme court may revoke or suspend the license of an attorney to practice law in this state.

[C51, §1620; R60, §2710; C73, §217; C97, §323; C24, 27, 31, 35, 39, §**10929;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.23]

83 Acts, ch 186, §10202(2)

CS83, §602.10121

602.10122 Grounds of revocation.

The following are sufficient causes for revocation or suspension:

1. When the attorney has been convicted of a felony. The record of conviction is conclusive evidence.

2. When the attorney is guilty of a willful disobedience or violation of the order of the court, requiring the attorney to do or forbear an act connected with or in the course of the attorney's profession.

3. A willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. Doing any other act to which such a consequence is by law attached.

5. Soliciting legal business for the attorney or office, either by the attorney or representative. Nothing herein contained shall be construed to prevent or prohibit listing in legal or other directories, law lists and other similar publications, or the publication of professional cards in any such lists, directories, newspapers or other publication.

[C51, §1621; R60, §2711; C73, §218; C97, §324; C24, 27, 31, 35, 39, §**10930;** C46, 50, 54, 58, 62, 66,

71, 73, 75, 77, 79, 81, §610.24]
83 Acts, ch 186, §10202(2)
CS83, §602.10122

602.10123 Proceedings.
The proceedings to remove or suspend an attorney may be commenced by the direction of the court or on the petition of any individual. In the former case, the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it.
[C51, §1622; R60, §2712; C73, §219; C97, §325; S13, §325; C24, 27, 31, 35, 39, §**10931;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.25]
83 Acts, ch 186, §10202(2)
CS83, §602.10123
93 Acts, ch 85, §4

602.10124 Costs.
If an action is commenced by direction of the court, the costs shall be taxed and disposed of as in criminal cases; provided that no allowance shall be made in such case for the payment of attorney fees.
[S13, §325; C24, 27, 31, 35, 39, §**10932;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.26]
83 Acts, ch 186, §10202(2)
CS83, §602.10124

602.10125 Attorney general — appropriateness of procedure — order for appearance.
If an action is commenced on the petition of an individual, the court shall notify and refer the matter to the attorney general. The attorney general, within thirty days of the referral, shall submit a report to the court concerning the appropriateness of bringing the action under this chapter. The court shall not proceed with consideration of the merits of the complaint until the report from the attorney general is received. If the court deems the accusation sufficient to justify further action, the court shall determine whether the complaint is more appropriately pursued under this chapter rather than the procedures established under Iowa court rules, chapter 35. If the court finds that proceeding under this chapter is more appropriate, it shall cause an order to be entered requiring the accused to appear and answer in the court where the accusation has been filed on the day fixed in the order, and shall cause a copy of the accusation and order to be served upon the accused personally.
[C51, §1623; R60, §2713; C73, §220; C97, §326; C24, §10933; C27, 31, 35, §10934-b1; C39, §**10934.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.27]
83 Acts, ch 101, §122; 83 Acts, ch 186, §10202(2)
CS83, §602.10125
93 Acts, ch 85, §5

602.10126 Copy of accusation — duty of clerk.
The clerk of the district court shall immediately certify to the clerk of the supreme court a copy of the accusation.
[C27, 31, 35, §10934-b2; C39, §**10934.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.28]
83 Acts, ch 186, §10202(2)
CS83, §602.10126

602.10127 Notice to attorney general — duty.
Thereupon the chief justice of the supreme court shall notify the attorney general of such accusation and cause a copy thereof to be delivered to the attorney general, and it shall thereupon become the duty of the attorney general to superintend either through the attorney general's office, or through a special assistant to be designated by the attorney general, the prosecution of such charges.
[C27, 31, 35, §10934-b3; C39, §**10934.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.29]
83 Acts, ch 186, §10202(2)
CS83, §602.10127

602.10128 Trial court.
The supreme court shall designate three district judges to sit as a court to hear and decide such charges.
[C27, 31, 35, §10934-b4; C39, §**10934.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.30]
83 Acts, ch 186, §10202(2)
CS83, §602.10128

602.10129 Time and place of hearing.
The hearing shall be at such time as the chief justice of the supreme court may designate, and shall be held within the county where the accusation was originally filed.
[C27, 31, 35, §10934-b5; C39, §**10934.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.31]
83 Acts, ch 186, §10202(2)
CS83, §602.10129

602.10130 Determination of issues.
The determination of all issues shall be heard before the said judges selected by the supreme court as herein provided for.
[C27, 31, 35, §10934-b6; C39, §**10934.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.32]
83 Acts, ch 186, §10202(2)
CS83, §602.10130

602.10131 Record and judgment.
The records and judgment at such trial shall constitute a part of the records of the district court in the county in which the accusations are originally filed.
[C27, 31, 35, §10934-b7; C39, §**10934.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.33]
83 Acts, ch 186, §10202(2)
CS83, §602.10131

602.10132 Pleadings — evidence — preservation.

To the accusation, the accused may plead or demur and the issues joined thereon shall in all cases be tried by said judges so selected and all of the evidence at such trial shall be reduced to writing, filed and preserved.

[C51, §1624; R60, §2714; C73, §221; C97, §327; C24, §10934; C27, 31, 35, §10934-b8; C39, §**10934.8;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.34]

83 Acts, ch 186, §10202(2)

CS83, §602.10132

602.10133 Costs and expenses.

The court costs incident to such proceedings, and the reasonable expense of said judges in attending said hearing after being approved by the supreme court shall be paid as court costs by the executive council.

[C27, 31, 35, §10934-b9; C39, §**10934.9;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.35]

83 Acts, ch 186, §10202(2)

CS83, §602.10133

602.10134 Plea of guilty or failure to plead.

If the accused plead guilty, or fail to answer, the court shall proceed to render such judgment as the case requires.

[C51, §1625; R60, §2715; C73, §222; C97, §328; C24, 27, 31, 35, 39, §**10935;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.36]

83 Acts, ch 186, §10202(2)

CS83, §602.10134

602.10135 Appeal.

In case of a removal or suspension being ordered, an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the record, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal by a court of record is final.

[C51, §1626; R60, §2716; C73, §223; C97, §329; C24, 27, 31, 35, 39, §**10936;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.37]

83 Acts, ch 186, §10202(2)

CS83, §602.10135

602.10136 Certification of judgment.

When a judgment has been entered in any court of record in the state revoking or suspending the license of any attorney at law to practice in the said court, the clerk of the court in which the judgment is rendered shall immediately certify to the clerk of the supreme court the order or judgment of the court in said cause.

[S13, §329-a; C24, 27, 31, 35, 39, §**10937;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §610.38]

83 Acts, ch 186, §10202(2)

CS83, §602.10136

602.10137 Renewals.

The right to practice law in this state shall be renewed in multiyear intervals by the supreme court upon such conditions as the court shall determine. Any moneys received from those persons admitted to practice law and which are designated for a client security fund or similar fund created by the supreme court shall be separately retained and administered by said court in accordance with rules promulgated by it.

[C75, 77, 79, 81, §610.45]

83 Acts, ch 186, §10202(2)

CS83, §602.10137

602.10138 Client security fund not an insurance company.

A client security fund established by the supreme court is not an insurance company and the insurance laws of this state and the rules of the commissioner of insurance are not applicable to such a client security fund.

[C75, 77, 79, 81, §610.46]

83 Acts, ch 186, §10202(2)

CS83, §602.10138

See Iowa Ct.R. 39.3

602.10139 Officers.

The board shall organize following its appointment and shall elect a chairperson and vice chairperson.

[S13, §311-a; C24, 27, 31, 35, 39, §**10910;** C46, 50, 54, 58, 62, 66, 71, 73, §610.4; C75, 77, 79, 81, §610.47]

83 Acts, ch 186, §10202(2)

CS83, §602.10139

602.10140 Public members.

The public members of the board shall be allowed to participate in the administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers. The public members shall participate in the determination of whether or not each applicant meets the requisite character requirements.

[C75, 77, 79, 81, §610.48]

83 Acts, ch 186, §10202(2)

CS83, §602.10140

602.10141 Disclosure of confidential information.

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.

2. Information relating to the contents of the

examination.

3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §610.49]
83 Acts, ch 186, §10202(2)
CS83, §602.10141

ARTICLE 11

TRANSITION PROVISIONS

602.11101 Implementation by court component.

The state shall assume responsibility for components of the court system according to the following schedule:

1. On October 1, 1983 the state shall assume the responsibility for and the costs of jury fees and mileage as provided in section 607A.8 and on July 1, 1984 the state shall assume the responsibility for and the costs of prosecution witness fees and mileage and other witness fees and mileage assessed against the prosecution in criminal actions prosecuted under state law as provided in sections 622.69 and 622.72.

2. Court reporters shall become court employees on July 1, 1984. The state shall assume the responsibility for and the costs of court reporters on July 1, 1984.

3. Bailiffs who perform services for the court, other than law enforcement services, shall become court employees on January 1, 1985, and shall be called court attendants. The state shall assume the responsibility for and the costs of court attendants on January 1, 1985. Section 602.6601 takes effect on January 1, 1985.

4. Juvenile probation officers shall become court employees on July 1, 1985. The state shall assume the responsibility for and the costs of juvenile probation officers on July 1, 1985.

Until July 1, 1985 the county shall remain responsible for the compensation of juvenile court referees. Effective July 1, 1985 the state shall assume the responsibility for the compensation of juvenile court referees.

5. Clerks of the district court shall become court employees on July 1, 1986. The state shall assume the responsibility for and the costs of the offices of the clerks of the district court on July 1, 1986. Persons who are holding office as clerks of the district court on July 1, 1986 are entitled to continue to serve in that capacity until the expiration of their respective terms of office. The district judges of a judicial election district shall give first and primary consideration for appointment of a clerk of the district court to serve the court beginning in 1989 to a clerk serving on and after July 1, 1986 until the expiration of the clerk's elected term of office. A vacancy in the office of clerk of the district court occurring on or after July 1, 1986 shall be filled as provided in section 602.1215.

Until July 1, 1986, the county shall remain responsible for the compensation of and operating costs for court employees not presently designated for state financing and for miscellaneous costs of the judicial branch related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. Effective July 1, 1986, the state shall assume the responsibility for the compensation of and operating costs for court employees presently designated for state financing and for miscellaneous costs of the judicial branch related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. However, the county shall at all times remain responsible for the provision of suitable courtrooms, offices, and other physical facilities pursuant to section 602.1303, subsection 1, including paint, wall covering, and fixtures in the facilities.

Until July 1, 1986 the county shall remain responsible for the compensation of and operating costs for probate referees and judicial hospitalization referees and their staffs. Effective July 1, 1986 the state shall assume the responsibility for the compensation of and operating costs for probate referees and judicial hospitalization referees and their staffs.

Until July 1, 1986 the county shall remain responsible for necessary fees and costs related to certain court reporters. Effective July 1, 1986 the state shall assume the responsibility for necessary fees and costs related to certain court reporters.

6. The state shall assume the responsibility for the costs of indigent defense on July 1, 1987. However, an attorney appointed to represent an indigent person pursuant to section 331.777* is not a court employee, as defined in section 602.1101, subsection 5, and the judicial branch does not have supervisory power over personnel of public defender offices established pursuant to section 331.776.*

7. The county shall remain responsible for the court-ordered costs of conciliation procedures under section 598.16.

For the period beginning July 1, 1983, and ending June 30, 1987, the provisions of division I (articles 1 through 10) take effect only to the extent that the provisions do not conflict with the scheduled state assumption of responsibility for the components of the court system, and the amendments and repeals of divisions II and III take effect only to the extent necessary to implement that scheduled state assumption of responsibility. If an amendment or repeal to a Code section in division

II or III is not effective during the period beginning July 1, 1983, and ending June 30, 1987, the Code section remains in effect for that period. On July 1, 1987, this Act** takes effect in its entirety.

However, if the state does not fully assume the costs for a fiscal year of a component of the court system in accordance with the scheduled assumption of responsibility, the state shall not assume responsibility for that component, and the schedule of state assumption of responsibility shall be delayed. The delayed schedule of state assumption of responsibility shall again be followed for the fiscal year in which the state fully assumes the costs of that component. For the fiscal year for which the state's assumption of the responsibility for a court component is delayed, the clerk of the district court shall not reduce the percentage remittance to the counties from the court revenue distribution account under section 602.8108. The clerk shall resume the delayed schedule of reductions in county remittances for the fiscal year in which the state fully assumes the costs of that court component. If the schedules of state assumption of responsibility and reductions in county remittances are delayed, the transition period beginning July 1, 1983, and ending June 30, 1987 is correspondingly lengthened, and this Act** takes effect in its entirety only at the end of the lengthened transition period.

The supreme court shall prescribe temporary rules, prior to the dates on which the state assumes responsibility for the components of the court system, as necessary to implement the administrative and supervisory provisions of this Act**, and as necessary to determine the applicability of specific provisions of this Act** in accordance with the scheduled state assumption of responsibility for the components of the court system.

83 Acts, ch 186, §10201, 10301; 84 Acts, ch 1301, §15; 85 Acts, ch 197, §29 – 31; 86 Acts, ch 1108, §8; 86 Acts, ch 1111, §1; 98 Acts, ch 1047, §63, 64

*Sections 331.776 and 331.777 repealed effective May 5, 1988; 88 Acts, ch 1161, §18

**See 83 Acts, ch 186

602.11102 Accrued employee rights.

1. Persons who were paid salaries by the counties or judicial districts immediately prior to becoming state employees as a result of this chapter shall not forfeit accrued vacation, accrued sick leave, or longevity, except as provided in this section.

2. As a part of its rulemaking authority under section 602.11101, the supreme court, after consulting with the state comptroller, shall prescribe rules to provide for the following:

a. Each person referred to in subsection 1 shall have to the person's credit as a state employee commencing on the date of becoming a state employee the number of accrued vacation days that was credited to the person as a county employee as of the end of the day prior to becoming a state employee.

b. Each person referred to in subsection 1 shall have to the person's credit as a state employee commencing on the date of becoming a state employee the number of accrued days of sick leave that was credited to the person as a county employee as of the end of the day prior to becoming a state employee. However, the number of days of sick leave credited to a person under this subsection and eligible to be taken when sick or eligible to be received upon retirement shall not respectively exceed the maximum number of days, if any, or the maximum dollar amount as provided in section 70A.23 that state employees generally are entitled to accrue or receive according to rules in effect as of the date the person becomes a state employee.

c. Commencing on the date of becoming a state employee, each person referred to in subsection 1 is entitled to claim the person's most recent continuous period of service in full-time county employment as full-time state employment for purposes of determining the number of days of vacation which the person is entitled to earn each year. The actual vacation benefit, including the limitation on the maximum accumulated vacation leave, shall be determined as provided in section 70A.1 according to rules in effect for state employees of comparable longevity, irrespective of any greater or lesser benefit as a county employee.

d. Notwithstanding paragraphs *"b"* and *"c"*, for the period beginning July 1, 1984, and ending June 30, 1986, court reporters who become state employees as a result of this chapter are not subject to the sick leave and vacation accrual limitations generally applied to state employees. However, court reporters are subject to the maximum dollar limitation upon retirement as provided in section 70A.23.

83 Acts, ch 186, §10201, 10302; 85 Acts, ch 195, §57; 85 Acts, ch 197, §32

602.11103 Life, health, and disability insurance.

Persons who were covered by county employee life insurance and accident and health insurance plans prior to becoming state employees as a result of this chapter shall be permitted to apply prior to becoming state employees for life insurance and health and accident insurance plans that are available to state employees so that those persons do not suffer a lapse of insurance coverage as a result of this chapter. The supreme court, after consulting with the state comptroller, shall prescribe rules and distribute application forms and take other actions as necessary to enable those persons to elect to have insurance coverage that is in effect on the date of becoming state employees. The actual insurance coverage available to a person shall be determined by the plans that are available to state employees, irrespective of any

greater or lesser benefits as a county or judicial district employee.

Commencing on the date of becoming a state employee, each person referred to in this section is entitled to claim the person's most recent continuous period of service in full-time county or judicial district employment as full-time state employment for purposes of determining disability benefits as provided in section 70A.20 according to rules in effect for state employees of comparable longevity, irrespective of any greater or lesser benefit as a county or judicial district employee.

83 Acts, ch 186, §10201, 10303; 85 Acts, ch 197, §33

602.11104 Compensation and benefits. Repealed by 84 Acts, ch 1301, § 17.

602.11105 Hiring moratorium.

1. Commencing one year prior to each category of employees becoming state employees as a result of this Act*, new employees shall not be hired and vacancies shall not be filled, except as provided in subsection 2, with respect to any of the following agencies or positions:

a. Offices of the clerks of the district court.

b. District court administrators.

c. Juvenile probation offices.

d. Court reporters.

e. Any other position of employment that is supervised by a district court judicial officer or by a person referred to or employed in an office referred to in paragraph *"a", "b", "c",* or *"d"*.

2. A new employee position or vacancy that is subject to subsection 1 may be filled upon approval by the chief judge of the judicial district. The employer seeking to fill the new position or vacancy shall submit a request to the chief judge in the form prescribed by the supreme court, and shall be governed by the decision of the chief judge. The chief judge shall obtain the advice of the district judges of the judicial district respecting decisions to be made under this subsection.

83 Acts, ch 186, §10201, 10305

*See 83 Acts, ch 186

602.11106 Employee reclassification moratorium.

Commencing one year prior to county employees becoming state employees as a result of this Act,* the county employees shall not be promoted or demoted, and shall not be subject to a reduction in salary or a reduction in other employee benefits, except after approval by the chief judge of the judicial district. An employer wishing to take any of these actions shall apply to the chief judge in a writing that discloses the proposed action, the reasons for the action, and the statutory or other authority for the action. The chief judge shall not approve any proposed action that is in violation of an employee's rights or that is extraordinary when compared with customary practices and procedures of the employer. The chief judge shall obtain the advice of the district judges of the judicial district respecting decisions to be made under this section.

83 Acts, ch 186, §10201, 10306

*See 83 Acts, ch 186

602.11107 Court property.

1. Commencing on the date when each category of employees becomes state employees as a result of this Act,* public property referred to in subsection 2 that on the day prior to that date is in the custody of a person or agency referred to in subsection 3 shall not become property of the judicial branch but shall be devoted for the use of the judicial branch in its course of business. The judicial branch shall only be responsible for maintenance contracts or contracts for purchase entered into by the judicial branch. Upon replacement of the property by the judicial branch, the property shall revert to the use of the appropriate county. However, if the property is personal property of a historical nature, the property shall not become property of the judicial branch, and the county shall make the property available to the judicial branch for the judicial branch's use within the county courthouse until the court no longer wishes to use the property, at which time the property shall revert to the use of the appropriate county.

2. This section applies to the following property:

a. Books, accounts and records that pertain to the operation of the district court.

b. Forms, materials, and supplies that are consumed in the usual course of business.

c. Tables, chairs, desks, lamps, curtains, window blinds, rugs and carpeting, flags and flag standards, pictures and other wall decorations, and other similar furnishings.

d. Typewriters, adding machines, desk calculators, cash registers and similar business machines, reproduction machines and equipment, microfiche projectors, tape recorders and associated equipment, microphones, amplifiers and speakers, film projectors and screens, overhead projectors, and similar personal property.

e. Filing cabinets, shelving, storage cabinets, and other property used for storage.

f. Books of statutes, books of ordinances, books of judicial decisions, and reference books, except those that are customarily held in a law library for use by the public.

g. All other personal property that is in use in the operation of the district court.

3. This section applies to the following persons and agencies:

a. Clerks of the district court.

b. Judicial officers.

c. District court administrators.

d. Juvenile probation officers.

e. Court reporters.

f. Persons who are employed by a person referred to in paragraphs *"a"* through *"e"*.

4. Subsections 1 through 3 and 5 do not apply to electronic data storage equipment, commonly referred to as computers, or to computer terminals or any machinery, equipment, or supplies used in the operation of computers. Those counties that were providing computer services to the district court shall continue to provide these services until the general assembly provides otherwise. The state shall reimburse these counties for the cost of providing these services. Each county providing computer services to the district court shall submit a bill for these services to the supreme court at the end of each calendar quarter. Reimbursement shall be payable from funds appropriated to the supreme court for operating expenses of the district court, and shall be paid within thirty days after receipt by the supreme court of the quarterly billing.

5. Personal property of a type that is subject to subsections 1 through 3 shall be subject to the control of the chief judge of the judicial district commencing on the date when each category of employees becomes state employees as a result of this Act.* On and after that date the chief judge of the judicial district may issue necessary orders to preserve the use of the property by the district court. Commencing on that date, the chief judge, subject to the direction of the supreme court, shall establish and maintain an inventory of property used by the district court.

83 Acts, ch 186, §10201, 10307; 98 Acts, ch 1047, §65

*See 83 Acts, ch 186

602.11108 Collective bargaining.

A person who becomes a state employee as a result of this chapter is a public employee, as defined in section 20.3, subsection 10, for purposes of chapter 20. The person may bargain collectively on and after July 1, 1983 as provided by law for a court employee. However, if the person is subject to a collective bargaining agreement negotiated prior to July 1, 1983, the person is entitled to the rights and benefits obtained by the person pursuant to that contract after July 1, 1983, until that contract expires. If the person is subject to a collective bargaining agreement negotiated by a public employer other than the state court administrator on or after July 1, 1983, the person is not entitled to any rights or benefits obtained by the person pursuant to that contract after becoming a state employee.

Commencing one year prior to each category of employees becoming state employees as a result of this chapter, the state court administrator shall assume the position of public employer of those employees of that category for the sole purpose of negotiating a collective bargaining agreement with those employees to be effective upon the date those employees became state employees as a result of this chapter.

83 Acts, ch 186, §10201, 10308; 85 Acts, ch 197, §34

602.11109 Additional judgeships. Repealed by 85 Acts, ch 195, § 67.

602.11110 Judgeships for election districts 5A and 5C.

As soon as practicable after January 1, 1985, the supreme court administrator shall recompute the number of judgeships to which judicial election districts 5A and 5C are entitled. Notwithstanding section 602.6201, subsection 2, the seventeen incumbent district judges in judicial election district 5A on December 31, 1984 may reside in either judicial election district 5A or 5C beginning January 1, 1985. The supreme court administrator shall apportion to judicial election district 5C those incumbent district judges who were appointed to replace district judges residing in Polk county or who were appointed to fill newly created judgeships while residing in Polk county. The incumbent district judges residing in Polk county on January 1, 1985 who are not so apportioned to judicial election district 5C shall be apportioned to judicial election district 5A but shall be reapportioned to judicial election district 5C, in the order of their seniority as district judges, as soon as the first vacancies occur in judicial election district 5C due to death, resignation, retirement, removal, or failure of retention. Such a reapportionment constitutes a vacancy in judicial election district 5A for purposes of section 602.6201. Notwithstanding section 602.6201, subsection 2, the seventeen incumbent district judges in judicial election district 5A on December 31, 1984 shall stand for retention in the judicial election district to which the district judges are apportioned or reapportioned under this section. Commencing on January 1, 1985, vacancies within judicial election districts 5A and 5C shall be determined and filled under section 602.6201, subsections 4 through 8. For purposes of the recomputations, the supreme court administrator shall determine the average case filings for the latest available three-year period by reallocating the actual case filings during the three-year period to judicial election districts 5A and 5C as if they existed throughout the three-year period.

83 Acts, ch 186, §10201, 10310; 85 Acts, ch 197, §35

602.11111 Judicial nominating commissions for election districts 5A and 5C.

The membership of district judicial nominating commissions for judicial election districts 5A and 5C shall be as provided in chapter 46, subject to the following transition provisions:

1. Those judicial nominating commissioners of judicial election district 5A who are residents of Polk county shall be disqualified from serving in

election district 5A on January 1, 1985, and their offices shall be deemed vacant. The vacancies thus created shall be filled as provided in section 46.5 for the remainder of the unexpired terms.

2. After January 1, 1985 the governor shall appoint five eligible electors of judicial election district 5C to the district judicial nominating commission for terms commencing immediately upon appointment. Two of the appointees shall serve terms ending January 31, 1988, two of the appointees shall serve terms ending January 31, 1990, and the remaining appointee shall serve a term ending January 31, 1992, as determined by the governor. At the end of these terms and each six years thereafter the governor shall appoint commissioners pursuant to section 46.3.

3. After January 1, 1985 elective judicial nominating commissioners for judicial election district 5C shall be elected as provided in chapter 46 to terms of office commencing immediately upon election. One of those elected shall serve a term ending January 31, 1988, two shall serve terms ending January 31, 1990, and two shall serve terms ending January 31, 1992, as determined by the drawing of lots by the persons elected. At the end of these terms and every six years thereafter elective commissioners shall be elected pursuant to chapter 46.

83 Acts, ch 186, §10201, 10311

602.11112 Fifth judicial election district.

The provisions of section 602.6109 relating to the division of the fifth judicial district into judicial election districts 5A, 5B, and 5C take effect January 1, 1985.

83 Acts, ch 186, §10201, 10312

602.11113 Bailiffs employed as court attendants.

Persons who were employed as bailiffs and who were performing services for the court, other than law enforcement services, immediately prior to the effective date of section 602.6601, shall be employed by the district court administrators as court attendants under section 602.6601 on the effective date of that section.

83 Acts, ch 186, §10201, 10313

602.11114 Temporary service by certain retired judicial magistrates.

Persons who retired before January 1, 1981 and who were judicial magistrates at the time of retirement and who meet the qualifications of a district associate judge are considered to be district associate judges for the purposes of section 602.1612.

83 Acts, ch 186, §10201, 10314

602.11115 District associate judges' retirement.

If a full-time judicial magistrate who became a district associate judge on January 1, 1981 pursuant to statute or a person who was appointed a district associate judge between January 1, 1981 and June 30, 1984 is a member of the Iowa public employees' retirement system on June 30, 1984, the district associate judge may elect, by informing the state court administrator by June 30, 1984, one of the following retirement benefit options to be effective July 1, 1984:

1. To remain covered under the Iowa public employees' retirement system pursuant to chapter 97B.

2. To commence coverage under the judicial retirement system pursuant to article 9, part 1, effective July 1, 1984, but to become an inactive member of the Iowa public employees' retirement system pursuant to chapter 97B and remain eligible for benefits under sections 97B.49A through 97B.49H for the period of membership service under chapter 97B.

3. To commence coverage under the judicial retirement system pursuant to article 9, part 1, retroactive to the date the district associate judge became a district associate judge or a full-time judicial magistrate, whichever was earlier, and to cease to be a member of the Iowa public employees' retirement system, effective July 1, 1984. The department of personnel shall transmit by January 1, 1985 to the state court administrator for deposit in the judicial retirement fund the district associate judge's accumulated contributions as defined in section 97B.1A, subsection 2 for the judge's period of membership service as a district associate judge or full-time judicial magistrate, or both. Before July 1, 1986, or at retirement previous to that date, a district associate judge who becomes a member of the judicial retirement system pursuant to this subsection shall contribute to the judicial retirement fund an amount equal to the difference between four percent of the district associate judge's total basic salary for the entire period of service before July 1, 1984 as a district associate judge or judicial magistrate, or both, and the district associate judge's accumulated contributions transmitted by the department of personnel to the state court administrator pursuant to this subsection. The district associate judge's contribution shall not be limited to the amount specified in section 602.9104, subsection 1. The state court administrator shall credit a district associate judge with service under the judicial retirement system for the period of service for which contributions at the four percent level are made.

84 Acts, ch 1285, §28; 98 Acts, ch 1183, §73, 82

602.11116 Associate juvenile judges and associate probate judges — retirement.

If a full-time associate juvenile judge or full-time associate probate judge is a member of the Iowa public employees' retirement system on June 30, 1998, the associate juvenile judge or associate probate judge shall elect, by informing the state

court administrator by June 30, 1998, one of the following retirement benefit options to be effective July 1, 1998:

1. To remain a member under the Iowa public employees' retirement system pursuant to chapter 97B.

2. To commence membership under the judicial retirement system pursuant to article 9, part 1, effective July 1, 1998, but to become an inactive member of the Iowa public employees' retirement system pursuant to chapter 97B and remain eligible for benefits under sections 97B.49A through 97B.49H, as applicable, for the period of membership service under chapter 97B.

3. To commence membership under the judicial retirement system pursuant to article 9, part 1, retroactive to the date the associate juvenile judge or associate probate judge became an associate juvenile judge or associate probate judge, and to cease to be a member of the Iowa public employees' retirement system, effective July 1, 1998. The department of personnel shall transmit by January 1, 1999, to the state court administrator for deposit in the judicial retirement fund the associate juvenile judge's or associate probate judge's accumulated contributions as defined in section 97B.1A, subsection 2, for the judge's period of membership service as an associate juvenile judge or associate probate judge. Before July 1, 2000, or at retirement previous to that date, an associate juvenile judge or associate probate judge who becomes a member of the judicial retirement system pursuant to this subsection shall contribute to the judicial retirement fund an amount equal to the difference between four percent of the associate juvenile judge's or associate probate judge's total salary received for the entire period of service before July 1, 1998, as an associate juvenile judge or associate probate judge, and the associate juvenile judge's or associate probate judge's accumulated contributions transmitted by the department of personnel to the state court administrator pursuant to this subsection. The associate juvenile judge's or associate probate judge's contribution shall not be limited to the amount specified in section 602.9104, subsection 1. The state court administrator shall credit an associate juvenile judge or associate probate judge with service under the judicial retirement system for the period of service for which contributions at the four percent level are made.

98 Acts, ch 1183, §103, 104

CHAPTER 603

SUPERIOR COURT

Repealed by 72 Acts, ch 1124, §282

CHAPTER 604

DISTRICT COURT

Transferred to ch 602 in Code 1973 and rearranged; repealed by 83 Acts, ch 186, §10201, 10203; see chapter 602, article 6

CHAPTER 605

GENERAL PROVISIONS RELATING TO JUDGES AND COURTS

Repealed by 83 Acts, ch 186, §10201, 10203; see chapter 602; for transition provisions, see chapter 602, article 11

CHAPTER 605A

JUDICIAL RETIREMENT SYSTEM

Transferred to article 9 of chapter 602; 83 Acts, ch 186, §10202(2)

CHAPTER 606

CLERK OF THE DISTRICT COURT

Repealed by 81 Acts, ch 117, §1244

CHAPTER 607

JURORS IN GENERAL

Repealed by 86 Acts, ch 1108, §57. See chapter 607A, especially §607A.1 – 607A.8

CHAPTER 607A

JURIES

See also R.C.P. 1.915 – 1.918 and R.Cr.P. 2.18

607A.1 Declaration of policy.
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607A.44 Notice to ex officio jury commission or jury manager.
607A.45 Employer prohibited from penalizing employee — penalty — action for lost wages.
607A.46 Delinquency of officers.

607A.1 Declaration of policy.

It is the policy of this state that all persons be selected at random from a fair cross section of the population of the area served by the court, and that a person shall have both the opportunity in accordance with the provisions of law to be considered for jury service in this state and the obligation to serve as a juror when selected.

86 Acts, ch 1108, §9

607A.2 Prohibition of discrimination.

A person shall not be excluded from jury service or from consideration for jury service in this state on account of age if the person is eighteen years of age or older, race, creed, color, sex, national origin, religion, economic status, physical disability, or occupation.

86 Acts, ch 1108, §10

607A.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Clerk"* means clerk of the district court or the clerk's designee.

2. *"Court"* means the district court of this state and includes, when the context requires, a judicial officer as defined in section 602.1101.

3. *"Juror"* means any person selected for service on either the grand or petit jury who attends court when originally instructed to report or is deferred to a future date uncertain, or is on-call and available to report to court when so needed and so requested by the court.

4. *"Jury wheel"* means a physical device or electronic data processing system for storage of the names and addresses or identifying numbers of prospective jurors.

5. *"Master list"* means the list of names taken

from the source lists for possible jury service.

6. *"Motor vehicle operators list"* means the official records maintained by the state of the names and addresses of those individuals in the respective counties retaining valid motor vehicle operator's licenses on or before March 15 of each odd-numbered year.

7. *"Panel"* means those jurors drawn or assigned for service to a courtroom, judge, or trial.

8. *"Person with a disability"* means a person who is not physically able to operate a motor vehicle or use public transportation without assistance due to a physical disability.

9. *"Pool"* means the sum total of prospective jurors reporting for service and not drawn or assigned to a courtroom, judge or trial.

10. *"Random selection"* means the selection of names in a manner immune to any subjective bias so that no recognizable class of the population from which names are being selected can be purposefully included or excluded.

11. *"Source lists"* means the voter registration list, the motor vehicle operators list and other comprehensive lists of persons residing in a county as identified pursuant to section 607A.22.

12. *"Term of service"* means the period of time a juror is requested to serve.

13. *"Voter registration list"* means the official records maintained by the state of names and addresses of persons registered to vote on or before March 15 of each odd-numbered year.

86 Acts, ch 1108, §11; 87 Acts, ch 85, §1, 2; 90 Acts, ch 1233, §37; 96 Acts, ch 1163, §1; 96 Acts, ch 1219, §31

607A.4 Jury service — minimum qualifications — disqualification — documentation.

1. To serve or to be considered for jury service, a person must possess the following minimum qualifications:

a. Be eighteen years of age or older.

b. Be a citizen of the United States.

c. Be able to understand the English language in a written, spoken, or manually signed mode.

d. Be able to receive and evaluate information such that the person is capable of rendering satisfactory juror service.

2. However, a person possessing the minimum qualifications for service or consideration for service may be disqualified for service or consideration for service if the person has, directly or indirectly, requested to be placed on a list for juror service.

3. A person who claims disqualification for any of the grounds identified in this section may, upon the person's own volition, or shall, upon the court's volition, submit in writing to the court's satisfaction, documentation that verifies disqualification from juror service.

86 Acts, ch 1108, §12

607A.5 Automatic excuse from jury service.

A person shall be excused from jury service if the person submits written documentation verifying, to the court's satisfaction, that the person is solely responsible for the daily care of a person with a permanent disability living in the person's household and that the performance of juror service would cause substantial risk of injury to the health of the person with a disability, or that the person is the mother of a breastfed child and is responsible for the daily care of the child. However, if the person is regularly employed at a location other than the person's household, the person shall not be excused under this section.

86 Acts, ch 1108, §13; 94 Acts, ch 1196, §22; 96 Acts, ch 1129, §104

607A.6 Discretionary excuse from jury service.

The court may defer a term of grand or petit juror service upon a finding of hardship, inconvenience, or public necessity; however the juror may be required to serve at a later date established by the court. The court may excuse a person from grand juror service, considering the length of grand juror service, in part or in full, upon a finding that such service would threaten the person's economic, physical, or emotional well-being, or the well-being of another person who is dependent upon the person, or other similar findings of extreme hardship. The courts shall exercise this authority strictly. However, in exercising this authority the court shall allow the employer of the person being asked to serve to give testimony in support of a request by the person for deferral or excuse. The court may dismiss a juror at any time in the interest of justice.

86 Acts, ch 1108, §14

607A.7 False excuse — prohibited requests — penalty.

A person who knowingly makes a false affidavit, statement, or claim, for the purpose of relieving the person or another person from juror service, or a person who requests the court to select the person as a juror for a particular case, commits contempt.

86 Acts, ch 1108, §15

607A.8 Fees and expenses for jurors.

Grand jurors and petit jurors in all courts shall receive ten dollars as compensation for each day's service or attendance, including attendance required for the purpose of being considered for service, reimbursement for mileage expenses at the rate specified in section 602.1509 for each mile traveled each day to and from their residences to the place of service or attendance, and reimbursement for actual expenses of parking, as determined by the clerk. A juror who is a person with a disability may receive reimbursement for the

costs of alternate transportation from the juror's residence to the place of service or attendance. A juror shall not receive reimbursement for mileage expenses or actual expenses of parking when the juror travels in a vehicle for which another juror is receiving reimbursement for mileage and parking expenses.

86 Acts, ch 1108, §16; 96 Acts, ch 1163, §2; 96 Acts, ch 1219, §32

607A.9 Ex officio commissions.

In counties utilizing a jury commission for the drawing of jurors, the clerk of the district court, the county auditor, and the county recorder shall ex officio constitute the jury commission but shall receive no extra compensation for acting as jury commissioners. If any of the above offices have been consolidated, the chief judge of the judicial district shall select another elected county officer to serve as a jury commissioner.

86 Acts, ch 1108, §17

607A.10 Appointive commission — master list.

In each county, the chief judge of the judicial district in which the county is located shall, on or before March 1 of each odd-numbered year, appoint three competent electors as a jury commission to draw up the master list for the two years beginning the following July 1. The names for the master list shall be taken from the source lists. If all of the source lists are not used to draw up the master list, then the names drawn must be selected in a random manner.

86 Acts, ch 1108, §18; 87 Acts, ch 85, §3; 2000 Acts, ch 1057, §13

607A.11 Limitation on appointment.

More than two members of the appointive commission shall not be residents of the city in which the courthouse of the county in which they are appointed, is located, and a person shall not be appointed who has solicited the appointment; nor shall any county officer or attorney at law be appointed a member of the commission.

86 Acts, ch 1108, §19

607A.12 Manner of appointment.

The appointment shall be in writing signed by the chief judge of the judicial district and shall be filed and made a matter of record in the office of the clerk of the district court.

86 Acts, ch 1108, §20; 2000 Acts, ch 1057, §14

607A.13 Clerk to notify.

The clerk of the district court shall at once notify each appointive commissioner of the appointment.

86 Acts, ch 1108, §21

607A.14 Vacancy.

If a vacancy occurs in the appointive commission through death, removal, or inability of a member of the commission to act, the chief judge of the judicial district shall appoint a person to act during the remainder of the unexpired term.

86 Acts, ch 1108, §22; 2000 Acts, ch 1057, §15

607A.15 Qualification — tenure.

The appointive commissioners shall qualify on or before the tenth day of March, following their appointment, by taking the oath of office required of civil officers. The oath shall be subscribed by them and filed in the office of the clerk of the district court. They shall hold office for the term of two years and until their successors are duly appointed and qualified.

86 Acts, ch 1108, §23; 87 Acts, ch 85, §4

607A.16 Instructions to appointive commission.

The chief judge of the judicial district shall give instructions to appointive jury commissioners at the time of their appointment as to their duties, and shall call their attention to sections 607A.1, 607A.2, 607A.4 and 607A.22.

86 Acts, ch 1108, §24; 2000 Acts, ch 1057, §16

607A.17 Compensation and expenses.

Each appointive commissioner shall, in addition to actual expenses, receive a compensation of ten dollars for each day employed by the appointive commissioner in the discharge of the appointive commissioner's official duties.

86 Acts, ch 1108, §25

607A.18 Assistants.

The commissioners may employ assistants in preparing the jury lists as they may deem necessary, and the board of supervisors shall allow reasonable compensation to the assistants.

86 Acts, ch 1108, §26

607A.19 Jury commissions not required.

In counties utilizing electronic data processing techniques and equipment for the drawing of jurors, ex officio or appointive jury commissions need not be appointed provided that proper records are retained by the jury manager that document, to the court's satisfaction, that the procedures utilized to randomly select the names of the prospective petit and grand jurors meet the requirements of this chapter. The decision to use electronic data processing techniques and equipment in lieu of a jury commission shall be made by the chief judge of the judicial district in which the county is located.

86 Acts, ch 1108, §27

607A.20 Jury manager.

If the chief judge of the judicial district uses elec-

tronic data processing techniques and equipment for the drawing of jurors in lieu of a jury commission, the chief judge shall, after consultation with the clerk, district court administrator and county auditor, appoint an individual to serve as the jury manager for the county. The jury manager shall be responsible for the implementation of this chapter for the county. The jury manager shall update the master list from the source lists at least once every two years beginning January 1 after the general election is held.

86 Acts, ch 1108, §28

607A.21 Jury lists.

The appointive jury commission or jury manager shall select and return to the clerk of the district court the following:

1. The list of grand jurors: A list of names and addresses of one hundred and fifty persons selected from the source lists from which to draw grand jurors.

2. The list of petit jurors: A list of names and addresses of persons selected from the source lists equal to the number of names necessary to provide jurors needed by the court, with the number to be determined by the jury commission or jury manager.

86 Acts, ch 1108, §29; 87 Acts, ch 85, §5

607A.22 Use of source lists — information provided.

The appointive jury commission or the jury manager shall use both of the following source lists in preparing grand and petit jury lists:

1. The current voter registration list.

2. The current motor vehicle operators list.

The appointive jury commission or the jury manager may use any other current comprehensive list of persons residing in the county, including but not limited to the lists of public utility customers, which the appointive jury commission or jury manager determines are useable for the purpose of a juror source list.

The applicable state and local government officials shall furnish, upon request, the appointive jury commission or jury manager with copies of lists necessary for the formulation of source lists at no cost to the commission, manager, or county.

The jury manager or jury commission may request a consolidated source list. A consolidated source list contains all the names and addresses found in either the voter registration list or the motor vehicle operators list, but does not duplicate an individual's name within the consolidated list. State officials shall cooperate with one another to prepare consolidated lists. The jury manager or jury commission may further request that only a randomly chosen portion of the consolidated list be prepared which may consist of either a certain number of names or a certain percentage of all the names in the consolidated list, as specified by the jury manager or jury commission.

86 Acts, ch 1108, §30; 87 Acts, ch 85, §6; 92 Acts, ch 1093, §1

607A.23 Judicial division of county.

In counties which are divided for judicial purposes, and in which court is held at more than one place, each division shall be treated as a separate county, and the grand and petit jurors, selected to serve in the respective courts, shall be drawn from the division of the county in which the court is held and at which the persons are required to serve.

86 Acts, ch 1108, §31

607A.24 Certification.

The jury lists required to be prepared by this chapter shall be certified by the appointive jury commission or the jury manager in substantially the following form:

We/I, ... constituting the jury commission/the jury manager for . . . . . county, certify that the foregoing lists do not, to our/my knowledge and belief, contain the name of any person who is not qualified for juror service under Iowa Code section 607A.4 and that the lists were selected in compliance with Iowa Code sections 607A.1, 607A.2, and 607A.21 through 607A.23.

86 Acts, ch 1108, §32

607A.25 Filing of lists.

The appointive jury commission or jury manager, after certifying the jury lists, shall place the lists in sealed containers, and deposit the lists in the office of the clerk or jury manager who shall keep them in a secure area. The lists may also be stored by means of electronic data processing procedures and equipment.

86 Acts, ch 1108, §33

607A.26 Preservation of records.

The clerk or jury manager shall preserve all records and lists compiled and maintained in connection with the selection and service of jurors for four years, or for any longer period ordered by the chief judge of the judicial district.

86 Acts, ch 1108, §34

607A.27 Preparation for drawing of panels.

The names entered upon the appointive jury commission's or jury manager's lists and deposited in the office of the clerk or jury manager constitute the grand and petit master lists, from which grand and petit jurors shall be drawn.

Within ten days after the lists are deposited in the office of the clerk or jury manager, the clerk or jury manager shall do either of the following:

1. Prepare from the lists separate ballots, uniform in size, shape, and appearance, and folded to conceal information on the ballot. The ballots for

grand and petit jurors shall be kept separate and each ballot shall contain the name and place of residence of each prospective juror.

2. Use electronic data processing equipment for the storage of names of the grand and petit jurors. The numerical division required in section 607A.21 need not be used when a jury wheel is used for the preparation of the lists.

86 Acts, ch 1108, §35

607A.28 Ballot boxes — sealed and custody — security of programs.

In counties using an ex officio jury commission, the ballots containing the names of the grand and petit jurors shall be deposited in separate boxes which shall be plainly marked to show the class of jurors whose names are contained in each box, and shall have only one aperture through which a hand may be inserted. The boxes shall then be sealed by the auditor, in the presence of the clerk, and deposited with the clerk or jury manager.

In counties using a jury manager, the lists containing the names of the grand and petit jurors shall be stored electronically or manually processed by the jury manager and shall be accessible to only the manager or the manager's designee.

86 Acts, ch 1108, §36

607A.29 Length of service.

In any two-year period, a person shall not be required:

1. To serve or attend court for prospective juror service for more than a term of service ordered by the court, not to exceed three months, unless necessary to complete service in a particular case.

2. To serve on more than one grand jury.

3. To serve or attend as both a grand and a petit juror.

86 Acts, ch 1108, §37

607A.30 Time of drawing.

In counties using an ex officio jury commission, the required number of jurors shall be drawn by the commission, or a majority of its members, at the office of the clerk at a time agreed to by the commissioners.

In counties using a jury manager, the manager shall arrange for the selection of the required number of jurors at a time and place chosen by the manager.

The chief judge of the judicial district may by order prescribe the time for the drawing by the ex officio commission or the manager.

The jurors thus selected constitute the jury pool and shall be notified by the clerk or jury manager by regular mail when called.

86 Acts, ch 1108, §38

607A.31 Notice of drawing.

In counties using ex officio jury commissions, the clerk, at least five days prior to the day for drawing, shall notify in writing the other jury commissioners of the time and place of the drawing.

86 Acts, ch 1108, §39

607A.32 Absence of commissioner.

In counties using an ex officio jury commission, in the absence or inability to act of any one of the commissioners, the jury commissioner's deputy or designee shall act as the commissioner.

86 Acts, ch 1108, §40

607A.33 Details of drawing.

1. In counties using an ex officio jury commission, at the time of drawing the appropriate ballot box shall first be thoroughly shaken in the presence of the commissioners attending the drawing. Next, the seal on the opening of the box shall be broken in the presence of the commissioners. A commissioner shall then, without looking at the ballots, successively draw the required number of names from the box, and successively pass the ballots to another commissioner, who shall open the ballots as they are drawn, and read aloud the names on the ballots, and enter the names in writing on the appropriate list.

2. In counties using a jury manager, a computerized program for the random selection and printing of the names may be used to draw the required number of jurors needed.

86 Acts, ch 1108, §41

607A.34 Resealing of box.

In counties using an ex officio jury commission, after the required number of grand or petit jurors have been drawn in the manner provided, and their names entered on the lists, the ballot box or boxes shall again be sealed by the commissioners and returned to the custody of the clerk.

86 Acts, ch 1108, §42

607A.35 Filing list — notice to report.

After the list or lists have been drawn in the manner provided in section 607A.33, the list or lists shall be filed in the office of the clerk or jury manager and immediately upon the request of the court the clerk or manager shall issue a notice to report, by regular mail, to the persons so drawn to appear at the courthouse at times as the court prescribes, for service as petit or grand jurors.

86 Acts, ch 1108, §43

607A.36 Contempt.

If a person fails to appear when notified to report or at a regularly scheduled meeting, without providing a sufficient cause, the court may issue an order requiring the person to appear and show cause why the person should not be punished for contempt, and unless the person provides a sufficient cause for the failure, the person may be punished for contempt.

86 Acts, ch 1108, §44

607A.37 Cancellation for illegality.

If the court determines that the petit or grand jurors have been illegally selected, drawn, or notified to report, the court may set aside the order under which the jurors were notified and direct that a new drawing, selection and notification of a sufficient number of replacement jurors take place. In that case, the ex officio jury commission shall meet at the office of the clerk, at the time the court directs, and proceed in the manner provided for the drawing of the original panel, to draw the required number of replacement jurors.

86 Acts, ch 1108, §45

607A.38 Discharged jurors — notification.

Jurors who have been discharged for any reason may, during the calendar quarter, be instructed to again report if the business of the court necessitates such action.

86 Acts, ch 1108, §46

607A.39 Additional jurors.

The court may order as many additional jurors drawn for a pool or panel as the court deems necessary.

86 Acts, ch 1108, §47

607A.40 Discharge of panel.

The court may at any time discharge the panel of jurors, or any part of it, and order a new panel, or the number of jurors as deemed necessary, to be drawn.

86 Acts, ch 1108, §48

607A.41 Method of subsequent drawing.

The names of the jurors drawn under sections 607A.39 and 607A.40 shall be drawn by the ex officio commission or the jury manager in the manner provided for the drawing of an original pool or panel.

86 Acts, ch 1108, §49

607A.42 Disposition of names drawn.

The names of prospective jurors who have been drawn and are eligible to serve on the petit or grand jury and who do not serve shall be omitted from the respective ballot box or selection program.

At the discretion of the court, the jury manager, or the clerk, a person excused from service on one panel may be required to serve on a succeeding panel if the reason for the person's being excused is authorized under section 607A.6. In counties using an ex officio jury commission, the ballots of jurors who appear and serve during any term of service shall be destroyed. In counties using a jury manager, the names of jurors who appear and serve during any term of service shall be stricken from the selection program.

86 Acts, ch 1108, §50

607A.43 Correcting illegality in original lists.

If the court for any reason determines that there has been such substantial failure to comply with the law relative to selection, preparation, or return of grand or petit lists that lawful grand or petit jurors cannot be drawn, or that the lists are exhausted or insufficient for the needs of the court, the court shall order the ex officio jury commission or the jury manager to convene at a fixed time and place to prepare lists in lieu of the lists which have been found to be illegal, or an additional list or lists as the court deems necessary.

86 Acts, ch 1108, §51

607A.44 Notice to ex officio jury commission or jury manager.

If the commission or manager is required to meet for the purpose of drawing jurors under the order of the court, the clerk shall at once notify each commissioner or the jury manager of the order, if appropriate, and the time and place fixed for the meeting and, if necessary, the court may order the notice to be served by the sheriff.

86 Acts, ch 1108, §52

607A.45 Employer prohibited from penalizing employee — penalty — action for lost wages.

1. An employer shall not deprive an employee of employment or threaten or otherwise coerce an employee with respect to the employee's employment because the employee receives a notice to report, responds to the notice, serves as a juror, or attends court for prospective juror service. An employer who violates this subsection commits contempt.

2. If an employer discharges an employee in violation of subsection 1, the employee may within sixty days of the discharge bring a civil action for the recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for a period of six weeks. If the employee prevails, the employee shall be allowed reasonable attorney fees as determined by the court.

86 Acts, ch 1108, §53

607A.46 Delinquency of officers.

A judicial officer, court employee, or other governmental official who intentionally fails to perform a legal duty imposed by this chapter, or who acts with willful malfeasance in the discharge of a legal duty imposed by this chapter, commits a serious misdemeanor.

86 Acts, ch 1108, §54

CHAPTER 608

JURY COMMISSIONS

Repealed by 86 Acts, ch 1108, §58.
See chapter 607A, especially §607A.9 – 607A.19

CHAPTER 609

SELECTION OF JURORS

Repealed by 86 Acts, ch 1108, §58.
See chapter 607A, especially §607A.21 – 607A.46

CHAPTER 610

DEFERRAL OF COSTS
(In forma pauperis)

610.1 Affidavit — contents — tolling of limitations.
610.2 Directions by court.
610.3 Deferral of costs.
610.4 Order to pay fees, costs, or security — dismissal for failure.
610.5 Penalty.

610.1 Affidavit — contents — tolling of limitations.

A court of the district court, court of appeals, or supreme court shall authorize the commencement, prosecution, or defense of a suit, action, proceeding, or appeal, whether civil or criminal, without the prepayment of fees, costs, or security upon a showing that the person is unable to pay such costs or give security. The person shall submit an affidavit stating the nature of the suit, action, proceeding, or appeal and the affiant's belief that there is an entitlement to redress. Such affidavit shall also include a brief financial statement showing the person's inability to pay costs, fees, or give security. Any authorization to proceed without prepayment of fees, costs, or security under this chapter may be made by the court without hearing. The filing of an affidavit to proceed without the prepayment of fees, costs, or security tolls the applicable statute of limitations. Upon the denial of an application and affidavit to proceed without the prepayment of fees, costs, or security, the person shall have the remainder of the limitations period in which to pay fees, costs, or give security. This section does not allow the deferral of the cost of a transcript.

Notwithstanding the provisions of this section, the court shall deny the application and affidavit of an inmate who has had three or more actions dismissed pursuant to section 610A.2. Such inmate shall not be permitted to proceed without prepayment of fees, cost, or security pursuant to this chapter.

86 Acts, ch 1088, §1; 87 Acts, ch 115, §79; 98 Acts, ch 1147, §1, 6

610.2 Directions by court.

When an application and supporting affidavit pursuant to this chapter are filed with the court and approved by the court in a civil or criminal action, the court shall direct the appropriate officers of the court to issue and serve all necessary writs, process, and proceedings.

86 Acts, ch 1088, §2; 88 Acts, ch 1134, §105

610.3 Deferral of costs.

When an application and supporting affidavit are filed and approved by the court and a civil or criminal proceeding is instituted, the court shall order that all fees, costs, and security be deferred until final disposition of the proceeding.

86 Acts, ch 1088, §3; 88 Acts, ch 1134, §106

610.4 Order to pay fees, costs, or security — dismissal for failure.

If after entry of an order authorizing prosecution of the case without prepayment of fees, costs, or security, the court finds that the affidavit of inability to pay was without merit, the court may order the person to pay the fees, costs, or security within fourteen days or the case will be dismissed.

86 Acts, ch 1088, §4

610.5 Penalty.

A person who knowingly and wrongfully invokes the privileges of this chapter without just cause, or who knowingly makes a false statement regarding the person's inability to pay fees, costs, or security, is guilty of perjury and shall be punished as provided in section 720.2.

86 Acts, ch 1088, §5

CHAPTER 610A

CIVIL LITIGATION BY INMATES AND PRISONERS

610A.1 Actions or appeals brought by inmates or prisoners.
610A.2 Dismissal of action or appeal.
610A.3 Penalties.
610A.4 Cost setoff.

610A.1 Actions or appeals brought by inmates or prisoners.

1. Notwithstanding section 610.1 or 822.5, if the person bringing a civil action or appeal is an inmate of an institution or facility under the control of the department of corrections or a prisoner of a county or municipal jail or detention facility, the inmate or prisoner shall pay in full all fees and costs associated with the action or appeal.

a. Upon filing of the action or appeal, the court shall order the inmate or prisoner to pay a minimum of twenty percent of the required filing fee before the court will take any further action on the inmate's or prisoner's action or appeal and shall also order the inmate or prisoner to make monthly payments of ten percent of all outstanding fees and costs associated with the inmate's or prisoner's action or appeal.

b. If the inmate has an inmate account under section 904.702, the department of corrections shall withdraw moneys maintained in the account for the payment of fees and costs associated with the inmate's action or appeal in accordance with the court's order until the required fees and costs are paid in full. The inmate shall file a certified copy of the inmate's account balance with the court at the time the action or appeal is filed.

c. An inmate may authorize the department of corrections to make or the inmate may make an initial or subsequent payment beyond that required by this section.

d. The court may dismiss any civil action or appeal in which the inmate or prisoner has previously failed to pay fees and costs in accordance with this section.

e. If the inmate has unsuccessfully prosecuted three or more frivolous actions in the preceding five-year period, the court may stay the proceeding in accordance with section 617.16.

f. If the inmate has had three or more actions dismissed pursuant to section 610A.2, the inmate shall not be permitted to file an action pursuant to chapter 610.

2. The court may make the authorization provided for in section 610.1 if it finds that the inmate does not have sufficient moneys in the inmate's account or sufficient moneys flowing into the account to make the payments required in this section or, in the case of a prisoner of a county or municipal jail or detention facility, that the prisoner otherwise meets the requirements of section 610.1.

3. In any civil case filed by a petitioner who is an inmate or prisoner, the respondent may review the petition and, if applicable, file a pre-answer motion asserting, in addition to any other defense that must be asserted in such a motion under the rules of civil procedure, that the action or any portion of the action should be dismissed pursuant to this chapter because the action or any portion of the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or is otherwise subject to dismissal under section 610A.2.

95 Acts, ch 167, §1; 96 Acts, ch 1079, §17; 98 Acts, ch 1147, §2, 3, 6

610A.2 Dismissal of action or appeal.

1. In addition to the penalty provided in section 610.5, if applicable, or any other applicable penalty under the Code, the court may dismiss an action or appeal that is subject to this chapter, in whole or in part, on a finding of any of the following:

a. The allegation of inability to pay asserted in an accompanying affidavit is false.

b. The action, claim, defense, or appeal is frivolous or malicious in whole or in part.

c. The inmate or prisoner has knowingly presented false testimony or evidence, or has attempted to create or present false testimony or evidence in support of the action, claim, defense, or appeal.

d. The actions of the inmate or prisoner in pursuing the action, claim, defense, or appeal consti-

tute an abuse of the discovery process.

2. In determining whether an action or appeal is frivolous or malicious, the court may consider the following:

a. Whether the action, claim, defense, or appeal is without substantial justification, or otherwise has no arguable basis in law or fact, including that the action, claim, defense, or appeal fails to state a claim upon which relief could be granted, or the action, claim, defense, or appeal cannot be supported by a reasonable argument for a change in existing law.

b. Whether the action, claim, defense, or appeal is substantially similar to a previous action, claim, defense, or appeal, that was determined to be frivolous or malicious, either in that it is brought against the same party or in that the claim arises from the same operative facts.

c. Whether the action, claim, defense, or appeal is intended solely or primarily for harassment.

d. The fact that evidentiary support for the action, claim, defense, or appeal is unavailable, or is not likely to be discovered after investigation.

e. Whether the action, claim, defense, or appeal is asserted with an improper purpose, including but not limited to, causing an unnecessary expansion or delay in proceedings, increasing the cost of proceedings, or harassing an opponent.

f. Whether the defendant is immune from providing the relief sought.

3. In making the determination under subsection 1, the court may hold a hearing before or after service of process on its own motion or on the motion of a party. The hearing may be held by telephone or video conference on the motion of the court or of a party.

4. The court may dismiss the entire action or appeal or a portion of the action or appeal before or after service of process. If a portion of the action or appeal is dismissed, the court shall also designate the issues and defendants on which the action or appeal is to proceed without paying fees and costs. This order is not subject to interlocutory appeal.

95 Acts, ch 167, §2; 98 Acts, ch 1147, §4, 6

610A.3 Penalties.

1. If an action or appeal brought by an inmate or prisoner in state court is dismissed pursuant to section 610A.2, or, if brought in federal court, is dismissed under any of the principles enumerated in section 610A.2, the inmate shall be subject to the following penalties:

a. The loss of some or all of the earned time credits acquired by the inmate or prisoner. Previous dismissals under section 610A.2 may be considered in determining the appropriate level of penalty.

b. If the inmate or prisoner has no earned time credits to deduct, the order of the court or the disciplinary hearing may deduct up to fifty percent of the average balance of the inmate account under section 904.702 or of any prisoner account.

2. The court may make an order deducting the credits or the credits may be deducted pursuant to a disciplinary hearing pursuant to chapter 903A at the facility at which the inmate is held.

95 Acts, ch 167, §3; 98 Acts, ch 1147, §5, 6; 2000 Acts, ch 1173, §1, 10

610A.4 Cost setoff.

The state or a county or municipality shall have the right to set off the cost of incarceration of an inmate or prisoner at any time, following notice and hearing, against any claim made by or monetary obligation owed to an inmate or prisoner for whom the cost of incarceration can be calculated.

95 Acts, ch 167, §4; 96 Acts, ch 1079, §18

SUBTITLE 3

CIVIL PROCEDURE

Rules of civil and appellate procedure and rules of evidence
are published in the compilation "Iowa Court Rules"

CHAPTER 611

ACTIONS

For Iowa court rules concerning substitution of parties,
see R.C.P. 1.221 – 1.227

611.1 "Proceedings" classified.
611.2 Civil and special actions.
611.3 Forms of action.
611.4 Equitable proceedings.
611.5 Action on note and mortgage.
611.6 Ordinary proceedings.
611.7 Error — effect of.
611.8 Correction by plaintiff.
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611.11 Court may order change.
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611.13 Uniformity of procedure.
611.14 Title of cause.
611.15 Judgments annulled in equity.
611.16 Action to obtain discovery.
611.17 Petition for discovery.
611.18 Costs.
611.19 Successive actions.
611.20 Actions survive.
611.21 Civil remedy not merged in crime.
611.22 Actions by or against legal representatives — substitution.
611.23 Civil actions involving allegations of sexual abuse or domestic abuse — counseling.

611.1 "Proceedings" classified.

Every proceeding in court is an action, and is civil, special, or criminal.

[R60, §2605; C73, §2504; C97, §3424; C24, 27, 31, 35, 39, §**10938;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.1]

611.2 Civil and special actions.

A civil action is a proceeding in a court of justice in which one party, known as the plaintiff, demands against another party, known as the defendant, the enforcement or protection of a private right, or the prevention or redress of a private wrong. It may also be brought for the recovery of a penalty or forfeiture.

Every other proceeding in a civil case is a special action.

[R60, §2606, 2607, 2609; C73, §2505, 2506; C97, §3425; C24, 27, 31, 35, 39, §**10939;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.2]

611.3 Forms of action.

All forms of action are abolished, but proceedings in civil actions may be of two kinds, ordinary or equitable.

[R60, §2608, 2610; C73, §2507; C97, §3426; C24, 27, 31, 35, 39, §**10940;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.3]

611.4 Equitable proceedings.

The plaintiff may prosecute an action by equitable proceedings in all cases where courts of equity, before the adoption of this Code, had jurisdiction, and must so proceed in all cases where such jurisdiction was exclusive.

[R60, §2611; C73, §2508; C97, §3427; C24, 27, 31, 35, 39, §**10941;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.4]

611.5 Action on note and mortgage.

An action on a note, together with a mortgage or deed of trust for the foreclosure of the same, shall be by equitable proceedings. An action on the bond or note alone, without regard therein to the mortgage or deed of trust, shall be by ordinary proceedings.

[R60, §4179; C73, §2509; C97, §3428; C24, 27, 31, 35, 39, §**10942;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.5]

Actions on certain judgments prohibited, chapter 615
Related provision, §654.4

611.6 Ordinary proceedings.

In all other cases, unless otherwise provided, the plaintiff must prosecute an action by ordinary proceedings.

[R60, §2612; C73, §2513; C97, §3431; C24, 27, 31, 35, 39, §**10943;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.6]

611.7 Error — effect of.

An error of the plaintiff as to the kind of proceedings adopted shall not cause the abatement or dismissal of the action, but merely a change into the proper proceedings, and a transfer to the proper docket.

[R60, §2613; C73, §2514; C97, §3432; C24, 27, 31, 35, 39, §**10944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.7]

611.8 Correction by plaintiff.

Such error may be corrected by the plaintiff without motion at any time before the defendant has answered, or afterwards on motion in court.

[R60, §2614; C73, §2515; C97, §3433; C24, 27, 31, 35, 39, §**10945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.8]

611.9 Correction on motion.

The defendant may have the correction made by motion at or before the filing of an answer, where it appears by the provisions of this Code wrong proceedings have been adopted.

[R60, §2615, 2616; C73, §2516; C97, §3434; C24, 27, 31, 35, 39, §**10946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.9]

611.10 Equitable issues.

Where the action has been properly commenced by ordinary proceedings, either party shall have the right, by motion, to have any issue heretofore exclusively cognizable in equity tried in the manner hereinafter prescribed in cases of equitable proceedings; and if all the issues were such, though none were exclusively so, the defendant shall be entitled to have them all tried as in cases of equitable proceedings.

[R60, §2617; C73, §2517; C97, §3435; C24, 27, 31, 35, 39, §**10947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.10]

611.11 Court may order change.

If there is more than one party plaintiff or defendant, who fail to unite on the kind of proceedings to be adopted, the court, on its own motion, may direct such proceedings to be changed to the same extent as if the parties had united in asking it to be done.

[C73, §2518; C97, §3436; C24, 27, 31, 35, 39, §**10948;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.11]

611.12 Errors waived.

An error as to the kind of proceedings adopted in the action is waived by a failure to move for its correction at the time and in the manner prescribed in this chapter; and all errors in the decisions of the court are waived unless excepted to at the time, save final judgments and interlocutory or final decrees entered of record.

[R60, §2619; C73, §2519; C97, §3437; C24, 27, 31, 35, 39, §**10949;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.12]

611.13 Uniformity of procedure.

The provisions of this Code concerning the prosecution of a civil action apply to both ordinary and equitable proceedings unless the contrary appears, and shall be followed in special actions not otherwise regulated, so far as applicable.

[C51, §2516; R60, §2620, 4173; C73, §2520; C97, §3438; C24, 27, 31, 35, 39, §**10950;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.13]

611.14 Title of cause.

The title of the cause shall not be changed in any of its stages of transit from one court to another.

[R60, §2949; C73, §2721; C97, §3631; C24, 27, 31, 35, 39, §**10951;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.14]

611.15 Judgments annulled in equity.

Judgment obtained in an action by ordinary proceedings shall not be annulled or modified by any order in an action by equitable proceedings, except for a defense which has arisen or been discovered since the judgment was rendered. But such judgment does not prevent the recovery of any claim, though such claim might have been used by way of counterclaim in the action on which the judgment was recovered.

[R60, §2621; C73, §2522; C97, §3440; C24, 27, 31, 35, 39, §**10952;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.15]

See R.C.P. 1.241

611.16 Action to obtain discovery.

No action to obtain a discovery shall be brought, except, where a person or corporation is liable either jointly or severally with others by the same contract, an action may be brought against any parties who are liable, to obtain discovery of the names and residences of the others.

[R60, §4127; C73, §2523; C97, §3441; C24, 27, 31, 35, 39, §**10953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.16]

611.17 Petition for discovery.

In such action the plaintiff shall state in the petition, in effect, that the plaintiff has used due diligence, without success, to obtain the information asked to be discovered, and that the plaintiff does not believe the parties to the contract who are known to the plaintiff have property sufficient to satisfy the plaintiff's claim. The petition shall be verified.

[R60, §4127; C73, §2523; C97, §3441; C24, 27, 31, 35, 39, §**10954;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.17]

611.18 Costs.

The cost of such action shall be paid by the plaintiff unless the discovery be resisted.

[R60, §4127; C73, §2523; C97, §3441; C24, 27, 31, 35, 39, §**10955;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.18]

611.19 Successive actions.

Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action has arisen thereon or therefrom.

[R60, §4128; C73, §2524; C97, §3442; C24, 27, 31, 35, 39, §**10956;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.19]

611.20 Actions survive.

All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same.

[C51, §2502; R60, §3467; C73, §2525; C97, §3443; C24, 27, 31, 35, 39, §**10957;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.20]

611.21 Civil remedy not merged in crime.

The right of civil remedy is not merged in a public offense and is not restricted for other violation of law, but may in all cases be enforced independently of and in addition to the punishment of the former.

[C51, §2500; R60, §4110; C73, §2526; C97, §3444; C24, 27, 31, 35, 39, §**10958;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.21]

85 Acts, ch 197, §36

611.22 Actions by or against legal representatives — substitution.

Any action contemplated in sections 611.20 and 611.21 may be brought, or the court, on motion, may allow the action to be continued, by or against the legal representatives or successors in interest of the deceased. Such action shall be deemed a continuing one, and to have accrued to such representative or successor at the time it would have accrued to the deceased if the deceased had survived. If such is continued against the legal representative of the defendant, a notice shall be served on the legal representative as in case of original notices.

[C51, §1699; R60, §4111; C73, §2527; C97, §3445; C24, 27, 31, 35, 39, §**10959;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.22]

Manner of service, R.C.P. 1.302 – 1.315

611.23 Civil actions involving allegations of sexual abuse or domestic abuse — counseling.

In a civil case in which a plaintiff is seeking relief or damages for alleged sexual abuse as defined in section 709.1 or domestic abuse as defined in section 236.2, the plaintiff may seek, and the court may grant, an order requiring the defendant to receive professional counseling, in addition to any other appropriate relief or damages.

91 Acts, ch 181, §1

CHAPTER 612

JOINDER OF ACTIONS

For Iowa court rules concerning joinder, misjoinder, and nonjoinder, see R.C.P. 1.231 – 1.237

CHAPTER 613

PARTIES — CAUSES OF ACTION — LIABILITY

For Iowa court rules concerning parties and capacity, see R.C.P. 1.201 – 1.212
For Iowa court rules concerning substitution of parties, see R.C.P. 1.221 – 1.227
For Iowa court rules concerning interpleader, see R.C.P. 1.251 – 1.257
For Iowa court rules concerning class actions, see R.C.P. 1.261 – 1.279

613.1 Joint and several obligations.
613.2 Adjudication.
613.3 Joint and several liability if comparative negligence. Repealed by 84 Acts, ch 1293, §12.
613.4 to 613.6 Repealed by 65 Acts, ch 413, §10102.
613.7 Written instrument.
613.8 Actions against state.
613.9 Service on state.
613.10 Status of state as defendant.
613.11 Actions against department of transportation.
613.12 Venue.
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613.1 Joint and several obligations.

Where two or more persons are bound by contract or by judgment, decree, or statute, whether jointly only, or jointly and severally, or severally only, including the parties to negotiable paper, common orders, and checks, and sureties on the same or separate instruments, or by any liability growing out of the same, the action thereon may, at the plaintiff's option, be brought against any or all of them. When any of those so bound are dead, the action may be brought against any or all of the survivors, with any or all of the representatives of the decedents, or against any or all such representatives.

[C51, §1681, 1682; R60, §2764; C73, §2550; C97, §3465; C24, 27, 31, 35, 39, §**10975;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §613.1]

Separate trials, R.C.P. 1.914

613.2 Adjudication.

An action or judgment against any one or more of several persons jointly bound shall not be a bar to proceedings against the others.

[R60, §2764; C73, §2550; C97, §3465; C24, 27, 31, 35, 39, §**10976;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §613.2]

613.3 Joint and several liability if comparative negligence. Repealed by 84 Acts, ch 1293, § 12. See chapter 668.

613.4 to 613.6 Repealed by 65 Acts, ch 413, § 10102.

613.7 Written instrument.

When an action is founded on a written instrument, it may be brought by or against any of the parties thereto by the same name and description as those by which they are designated in such instrument.

[C51, §1692; R60, §2786; C73, §2558; C97, §3473; C24, 27, 31, 35, 39, §**10988;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §613.7]

613.8 Actions against state.

Upon the conditions herein provided for the protection of the state, the consent of the state be and it is hereby given, to be made a party in any suit or action which is now pending or which may hereafter be brought in any of the district courts of Iowa, any of the United States district courts within the state or in any other court of or in Iowa having jurisdiction of the subject matter, involving the title to real estate, the partition of real estate, the foreclosure of liens or mortgages against real estate or the determination of the priorities of liens or claims against real estate, for the purpose of obtaining an adjudication touching or pertaining to any mortgage or other lien or claim which the state may have or claim to the real estate involved. The petition in such action shall specifically allege the interest or apparent interest of the state and the specific facts upon which the claim against the state is based and it shall be legally insufficient to allege said claim in general terms.

[C35, §10990-g1; C39, §**10990.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §613.8]

613.9 Service on state.

Service upon the state shall be made by serving a copy of the original notice with a copy of the petition upon the county attorney for the county, or counties, in which the real estate is located, and by sending a copy of the original notice and petition by certified mail to the attorney general, at Des Moines. The state shall appear within thirty days after the day such notice is served upon the county attorney or within thirty days after such notice is mailed to the attorney general, whichever is later.

[C35, §10990-g2; C39, §**10990.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §613.9]

613.10 Status of state as defendant.

After compliance with sections 613.11 and 613.12 and sections 613.8 and 613.9 the state of Iowa shall have the same standing as any other plaintiff or defendant and any and all orders, judgments, or decrees rendered and entered in any such action shall be binding on the state of Iowa in the same manner and degree as any other party to an action against whom such an order, judgment, or decree is entered, and the state of Iowa shall have the same rights in respect to the trial of such cause and in respect to any orders, judgments, or decrees entered therein, together with all rights of appeal, as any other similarly situated party would have.

[C35, §10990-g3; C39, §**10990.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §613.10]

613.11 Actions against department of transportation.

The state of Iowa hereby waives immunity from suit and consents to the jurisdiction of any court in which an action is brought against the state department of transportation respecting any claim, right, or controversy arising out of the work performed, or by virtue of the provisions of any construction contract entered into by the department. Such action shall be heard and determined pursuant to rules otherwise applicable to civil actions brought in the particular court having jurisdiction of the suit and the parties to the suit shall have the right of appeal from any judgment, decree, or decision of the trial court to the appropriate appellate court under applicable rules of appeal.

[C66, 71, 73, 75, 77, 79, 81, §613.11]

613.12 Venue.

Any such action shall name the Iowa state department of transportation as defendant and the venue for trial shall be in the county, or in the federal court district, where all or part of the construction work was performed.

[C66, 71, 73, 75, 77, 79, 81, §613.12]

613.13 Service of notice.

Service upon the state of Iowa shall be made by serving an original notice or summons, with a copy of the petition attached, upon any member of the Iowa state department of transportation in the manner provided for the service of original notices in actions brought in the district courts of the state of Iowa, or by serving summonses upon any member of the said department in the manner provided for service of summons in actions brought in United States district courts, except only that the state shall be required to appear within thirty days after the day such notice or summons is served upon a member of the said department.

[C66, 71, 73, 75, 77, 79, 81, §613.13]

613.14 Limitation.

Actions against the state of Iowa authorized under the provisions of section 613.11 may be instituted within three years from the date of the completion or acceptance of the work, whichever date is later, except that this should not apply to contracts completed and accepted and for which final payment was made previous to July 4, 1963.

[C66, 71, 73, 75, 77, 79, 81, §613.14]

613.15 Injury or death of spouse — measure of recovery.

In any action for damages because of the wrongful or negligent injury or death of a woman, there shall be no disabilities or restrictions, and recovery may be had on account thereof in the same manner as in cases of damage because of the wrongful or negligent injury or death of a man. In addition she, or her administrator for her estate, may recover for physician's services, nursing and hospital expense, and in the case of both women and men, such person, or the appropriate administrator, may recover the value of services and support as spouse or parent, or both, as the case may be, in such sum as the jury deems proper; provided, however, recovery for these elements of damage may not be had by the spouse and children, as such, of any person who, or whose administrator, is entitled to recover same.

[SS15, §3477-a; C24, 27, §10463; C31, 35, §10991-d1; C39, §**10991.1;** C46, 50, 54, 58, 62, §613.11; C66, 71, 73, 75, 77, 79, 81, §613.15]

613.16 Parental responsibility for actions of children.

1. The parent or parents of an unemancipated minor child under the age of eighteen years shall be liable for actual damages to person or property caused by unlawful acts of such child. However, a parent who is not entitled to legal custody of the minor child at the time of the unlawful act shall not be liable for such damages.

2. The legal obligation of the parent or parents of an unemancipated minor child under the age of eighteen years to pay damages shall be limited as follows:

a. Not more than two thousand dollars for any one act.

b. Not more than five thousand dollars, payable to the same claimant, for two or more acts.

3. The word *"person"* for the purpose of this section shall include firm, association, partnership or corporation.

4. When an action is brought on parental responsibility for acts of their children, the parents shall be named as defendants therein and, in addition, the minor child shall be named as a defendant. The filing of an answer by the parents shall remove any requirement that a guardian ad litem be required.

[C71, 73, 75, 77, 79, 81, §613.16]

94 Acts, ch 1172, §40

613.17 Emergency assistance in an accident.

A person, who in good faith renders emergency care or assistance without compensation, shall not be liable for any civil damages for acts or omissions occurring at the place of an emergency or accident or while the person is in transit to or from the emergency or accident or while the person is at or being moved to or from an emergency shelter unless such acts or omissions constitute recklessness. For purposes of this section, if a volunteer fire fighter, a volunteer operator or attendant of an ambulance or rescue squad service, a volunteer paramedic, a volunteer emergency medical technician, or a volunteer registered member of the national ski patrol system receives nominal compensation not based upon the value of the services per-

formed, that person shall be considered to be receiving no compensation. The operation of a motor vehicle in compliance with section 321.231 by a volunteer fire fighter, volunteer operator, or attendant of an ambulance or rescue squad service, a volunteer paramedic, or volunteer emergency medical technician shall be considered rendering emergency care or assistance for purposes of this section. For purposes of this section, a person rendering emergency care or assistance includes a person involved in a workplace rescue arising out of an emergency or accident.

[C71, 73, 75, 77, 79, 81, §613.17; 82 Acts, ch 1198, §1]

91 Acts, ch 182, §1; 96 Acts, ch 1219, §74

See also §915.3

613.18 Limitation on products liability of nonmanufacturers.

1. A person who is not the assembler, designer, or manufacturer, and who wholesales, retails, distributes, or otherwise sells a product is:

a. Immune from any suit based upon strict liability in tort or breach of implied warranty of merchantability which arises solely from an alleged defect in the original design or manufacture of the product.

b. Not liable for damages based upon strict liability in tort or breach of implied warranty of merchantability for the product upon proof that the manufacturer is subject to the jurisdiction of the courts of this state and has not been judicially declared insolvent.

2. A person who is a retailer of a product and who assembles a product, such assembly having no causal relationship to the injury from which the claim arises, is not liable for damages based upon strict liability in tort or breach of implied warranty of merchantability which arises from an alleged defect in the original design or manufacture of the product upon proof that the manufacturer is subject to the jurisdiction of the courts of this state and has not been judicially declared insolvent.

3. An action brought pursuant to this section, where the claimant certifies that the manufacturer of the product is not yet identifiable, tolls the statute of limitations against such manufacturer until such time as discovery in the case has identified the manufacturer.

86 Acts, ch 1211, §32

613.19 Personal liability.

A director, officer, employee, member, trustee, or volunteer, of a nonprofit organization is not liable on the debts or obligations of the nonprofit organization and a director, officer, employee, member, trustee, or volunteer is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, *"nonprofit organization"* includes an unincorporated club, association, or other similar entity, however named, if no part of its income or profit is distributed to its members, directors, or officers.

87 Acts, ch 212, §19

613.20 Limitation on liability for motor vehicle operation — felons.

1. Except as provided in subsection 2, in an action to recover damages arising out of the operation or use of a motor vehicle, a person shall not recover noneconomic losses including, but not limited to, pain and suffering if the injured person was the operator of a motor vehicle, a passenger in a motor vehicle, or a pedestrian and the person's injuries were proximately caused by the person's commission of any felony, or immediate flight therefrom, and the injured person was duly convicted of that felony.

2. This section does not apply if the injured person is found to have no fault in the accident.

3. If a person injured in a motor vehicle accident has been formally charged with the violation of the felony referred to in subsection 1, but a final determination regarding guilt has not been made, liability and uninsured and underinsured motorist insurers, to whom a claim for damages has been presented, shall advise the injured party that settlement of the claim will not be resolved until a final judgment is rendered on the charges. The injured party claiming damages shall provide evidence of the outcome of any criminal charges.

2000 Acts, ch 1062, §1

613.21 Immunity from civil suit.

An employee of an accredited public school district, accredited nonpublic school, or area education agency shall be immune from civil suit for reasonable acts undertaken in good faith relating to participation in the making of a report and any resulting investigation or administrative or judicial proceedings regarding violence, threats of violence, or other inappropriate activity against a school employee or student, pursuant to the provisions of section 280.27.

2000 Acts, ch 1162, §2

CHAPTER 613A

TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

Transferred to chapter 670

CHAPTER 614

LIMITATIONS OF ACTIONS

For Iowa court rule concerning commencement of actions, tolling, and coversheet, see R.C.P. 1.301
Method of computing time, §4.1(34)
Limitations of criminal actions, chapter 802
National guard military service excluded in computation of period limited by law, rule, or order; §29A.98

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GENERAL PROVISIONS

614.1 Period.

Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

1. *Penalties or forfeitures under ordinance.* Those to enforce the payment of a penalty or forfeiture under an ordinance, within one year.

2. *Injuries to person or reputation — relative rights — statute penalty.* Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.

2A. *With respect to products.*

a. Those founded on the death of a person or injuries to the person or property brought against the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of a product based upon an alleged defect in the design, inspection, testing, manufacturing, formulation, marketing, packaging, warning, labeling of the product, or any other alleged defect or failure of whatever nature or kind, based on the theories of strict liability in tort, negligence, or breach of an implied warranty shall not be commenced more than fifteen years after the product was first purchased, leased, bailed, or installed for use or consumption unless expressly warranted for a longer period of time by the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product. This subsection shall not affect the time during which a person found liable may seek and obtain contribution or indemnity from another person whose actual fault caused a product to be defective. This subsection shall not apply if the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product intentionally misrepresents facts about the product or fraudulently conceals information about the product and that conduct was a substantial cause of the claimant's harm.

b. (1) The fifteen-year limitation in paragraph *"a"* shall not apply to the time period in which to discover a disease that is latent and caused by exposure to a harmful material, in which event the cause of action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause. This subsection shall not apply to cases governed by subsection 11 of this section.

(2) As used in this paragraph, *"harmful material"* means silicone gel breast implants, which were implanted prior to July 12, 1992; and chemical substances commonly known as asbestos, dioxins, tobacco, or polychlorinated biphenyls, whether alone or as part of any product; or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., or by this state, if that risk is regulated by the United States environmental protection agency or this state.

3. *Against sheriff or other public officer.* Those against a sheriff or other public officer for the nonpayment of money collected on execution within three years of collection.

4. *Unwritten contracts — injuries to property — fraud — other actions.* Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years, except as provided by subsections 8 and 10.

5. *Written contracts — judgments of courts not of record — recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subsection, and those brought for the recovery of real property, within ten years.

6. *Judgments of courts of record.* Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years, except that a time period limitation shall not apply to an action to recover a judgment for child support, spousal support, or a judgment of distribution of marital assets.

7. *Judgment quieting title.* No action shall be brought to set aside a judgment or decree quieting title to real estate unless the same shall be commenced within ten years from and after the rendition thereof.

8. *Wages.* Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years.

9. *Malpractice.*

a. Except as provided in paragraph *"b"*, those founded on injuries to the person or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, physician assistant, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death.

b. An action subject to paragraph *"a"* and brought on behalf of a minor who was under the age of eight years when the act, omission, or occurrence alleged in the action occurred shall be commenced no later than the minor's tenth birthday or as provided in paragraph *"a"*, whichever is later.

10. *Secured interest in farm products.* Those founded on a secured interest in farm products, within two years from the date of sale of the farm products against the secured interest of the creditor.

11. *Improvements to real property.* In addition to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death. However, this subsection does not bar an action against a person solely in the person's capacity as an owner, occupant, or operator of an improvement to real property.

12. *Sexual abuse or sexual exploitation by a counselor or therapist.* An action for damages for injury suffered as a result of sexual abuse, as defined in section 709.1, by a counselor or therapist, as defined in section 709.15, or as a result of sexual exploitation by a counselor or therapist, shall be brought within five years of the date the victim was last treated by the counselor or therapist.

13. *Public bonds or obligations.* Those founded on the cancellation, transfer, redemption, or replacement of public bonds or obligations by an issuer, trustee, transfer agent, registrar, depository, paying agent, or other agent of the public bonds or obligations, within eleven years of the cancellation, transfer, redemption, or replacement of the public bonds or obligations.

[C51, §1659; R60, §1075, 1865, 2740; C73, §486, 2529; C97, §3447; S13, §2963-g, 3447; C24, 27, 31,

35, 39, §**11007;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.1]

83 Acts, ch 69, §1, 2; 86 Acts, ch 1120, §1; 91 Acts, ch 130, §3; 92 Acts, ch 1199, §1; 93 Acts, ch 89, §3; 95 Acts, ch 108, §21; 97 Acts, ch 175, §235; 97 Acts, ch 197, §5, 6, 16; 98 Acts, ch 1100, §78; 2002 Acts, ch 1050, §51

Subsection 2A, paragraph b amended

614.2 Death of party to be charged.

In all cases where by the death of the party to be charged, the bringing of an action against the party's estate shall have been delayed beyond the period provided for by statute, the time within which action may be brought against the estate is hereby extended for six months from the date of the death of said decedent.

[S13, §3447-a; C24, 27, 31, 35, 39, §**11008;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.2]

614.3 Judgments.

No action shall be brought upon any judgment against a defendant therein, rendered in any court of record of this state, within nine years after the rendition thereof, without leave of the court for good cause shown, and, if the adverse party is a resident of this state, upon reasonable notice of the application therefor to the adverse party; nor on a judgment of a justice of the peace in the state within nine years after the same is rendered, unless the docket of the justice or record of such judgment is lost or destroyed; but the time during which an action on a judgment is prohibited by this section shall not be excluded in computing the statutory period of limitation for an action thereon.

[C73, §2521; C97, §3439; S13, §3439; C24, 27, 31, 35, 39, §**11009;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.3]

Action on certain judgments prohibited, chapter 615
Lien of judgments, §624.23

614.4 Fraud — mistake — trespass.

In actions for relief on the ground of fraud or mistake, and those for trespass to property, the cause of action shall not be deemed to have accrued until the fraud, mistake, or trespass complained of shall have been discovered by the party aggrieved.

[C51, §1660; R60, §2741; C73, §2530; C97, §3448; C24, 27, 31, 35, 39, §**11010;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.4]

614.5 Open account.

When there is a continuous, open, current account, the cause of action shall be deemed to have accrued on the date of the last item therein, as proved on the trial.

[C51, §1662; R60, §2743; C73, §2531; C97, §3449; C24, 27, 31, 35, 39, §**11011;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.5]

614.6 Nonresident or unknown defendant.

The period of limitation above described shall be computed omitting any time when:

1. The defendant is a nonresident of the state, or

2. In those cases involving personal injuries or death resulting from a felony or indictable misdemeanor, while the identity of the defendant is unknown after diligent effort has been made to discover it. The provisions of this section shall be effective January 1, 1970, and to this extent the provisions are retroactive.

[C51, §1664; R60, §2745; C73, §2533; C97, §3451; C24, 27, 31, 35, 39, §**11013;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.6]

614.7 Bar in foreign jurisdiction.

When a cause of action has been fully barred by the laws of any country where the defendant has previously resided, such bar shall be the same defense here as though it had arisen under the provisions of this chapter; but this section shall not apply to causes of action arising within this state.

[C51, §1665; R60, §2746; C73, §2534; C97, §3452; C24, 27, 31, 35, 39, §**11014;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.7]

614.8 Minors and persons with mental illness.

1. The times limited for actions in this chapter, except those brought for penalties and forfeitures, are extended in favor of persons with mental illness, so that they shall have one year from and after the termination of the disability within which to commence an action.

2. Except as provided in section 614.1, subsection 9, the times limited for actions in this chapter, except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall have one year from and after attainment of majority within which to commence an action.

[C51, §1666; R60, §2747; C73, §2535; C97, §3453; C24, 27, 31, 35, 39, §**11015;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.8]

96 Acts, ch 1129, §113; 97 Acts, ch 197, §7, 16

614.8A Damages for child sexual abuse — time limitation.

An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the injured person is of the age of majority, shall be brought within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.

90 Acts, ch 1241, §2

614.9 Exception in case of death.

If the person having a cause of action dies within one year next previous to the expiration of the limitation above provided for, such limitation shall not apply until one year after such death.

[C51, §1667; R60, §2748; C73, §2536; C97, §3454; C24, 27, 31, 35, 39, §**11016;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.9]

614.10 Failure of action.

If, after the commencement of an action, the plaintiff, for any cause except negligence in its prosecution, fails therein, and a new one is brought within six months thereafter, the second shall, for the purposes herein contemplated, be held a continuation of the first.

[C51, §1668; R60, §2749; C73, §2537; C97, §3455; C24, 27, 31, 35, 39, §**11017;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.10]

614.11 Admission in writing — new promise.

Causes of action founded on contract are revived by an admission in writing, signed by the party to be charged, that the debt is unpaid, or by a like new promise to pay the same.

[C51, §1670; R60, §2751; C73, §2539; C97, §3456; C24, 27, 31, 35, 39, §**11018;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.11]

614.12 Counterclaim.

A counterclaim may be pleaded as a defense to any cause of action, notwithstanding it is barred by the provisions of this chapter, if it was the property of the party pleading it at the time it became barred, and was not barred at the time the claim sued on originated; but no judgment thereon, except for costs, can be rendered in favor of the party so pleading it.

[R60, §2752; C73, §2540; C97, §3457; C24, 27, 31, 35, 39, §**11019;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.12]

614.13 Injunction.

When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of such injunction or prohibition shall not be part of the time limited for the commencement of the action, except as herein otherwise provided.

[C73, §2541; C97, §3458; C24, 27, 31, 35, 39, §**11020;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.13]

614.13A Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

SPECIAL LIMITATIONS

614.14 Real estate interest transferred by trustee.

1. If an interest in real estate is held of record by a trustee, a bona fide purchaser acquires all rights in the real estate which the trustee and the beneficiary of the trust had and any rights of persons claiming by, through or under them, free of any adverse claim.

2. A bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim, who has relied on a current, recorded affidavit in substantially the following form delivered to the purchaser:

[Individual trustee]
Affidavit in re
[insert legal description]

I, ... , being first duly sworn and under oath state of my personal knowledge that:

1. I am the trustee under the trust dated . . . . . , to which the above-described real estate was conveyed to the trustee by . . . . . , pursuant to an instrument recorded the . . . . . day of . . . . . (month), ... (year), recorded in the office of the . . . . . County Recorder in . . . . . [insert recording data].

2. I am the presently existing trustee under the trust and am authorized to . . . . . [describe the transfer to be made by the trustee to the bona fide purchaser], without any limitation or qualification whatsoever.

3. The trust is in existence and I as trustee am authorized to transfer the interests in the real estate as described in paragraph 2, free and clear of any adverse claims.

. . . . . .
[signature of affiant]

Sworn to and subscribed before me by . . . . . on this . . . . . day of . . . . . (month), ... (year)

. . . . . .
[Notary Public in and for
the State of . . . . .]

[Corporate trustee]
Affidavit in re
[insert legal description]

I, ... , being first duly sworn and under oath state of my personal knowledge that:

1. . . . . is the trustee under the trust dated . . . . . , to which the above-described real estate was conveyed to the trustee by . . . . . , pursuant to an instrument recorded the . . . . . day of . . . . . (month), ... (year), recorded in the office of the . . . . . County Recorder in . . . . . [insert recording data].

2. . . . . is the presently existing trustee under the trust and is authorized to . . . . . [describe the transfer to be made by the trustee to the bona fide purchaser], without any limitation or qualification whatsoever, and I am . . . . . [officer] of the corporate trustee.

3. The trust is in existence and . . . . . as trustee is authorized to transfer the interests in the real estate as described in paragraph 2, free and clear of any adverse claims.

. . . . . .
[signature of affiant]

Sworn to and subscribed before me by . . . . . , on this . . . . . day of . . . . . (month), ... (year)

. . . . . .
[Notary Public in and for
the State of . . . . .]

3. As used in this section, *"adverse claim"* includes a claim that a transfer was or would be wrongful, a claim that a particular adverse person is the owner of or has an interest in the real estate, and a claim that would be disclosed by the examination of any document not of record.

4. Unless clearly provided to the contrary by the instrument of transfer to a purchaser, a trustee transferring an interest in real estate warrants to the transferee all of the following:

a. That the trust pursuant to which the transfer is made is duly executed and in existence.

b. That, to the knowledge of the trustee, the person creating the trust was under no disability or infirmity at the time the trust was created.

c. That the transfer by the trustee to the purchaser is effective and rightful.

d. That the trustee knows of no facts or legal claims which might impair the validity of the trust or the validity of the transfer.

5. *a.* A person holding an adverse claim arising or existing prior to January 1, 1992, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not file an action to enforce such claim after December 31, 1993, at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate.

b. An action based upon an adverse claim arising on or after January 1, 1992, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not be maintained either at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate, legal or equitable, more than one year after the date of recording of the instrument from which such claim may arise.

6. This section shall not be construed to limit any personal action against the trustee or purported trustee.

[S13, §3447; C24, 27, 31, 35, 39, §**11021;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.14]

91 Acts, ch 183, §33; 92 Acts, ch 1014, §1, 2; 92 Acts, ch 1163, §115; 99 Acts, ch 56, §1; 2000 Acts, ch 1058, §65

614.15 Spouse failing to join in conveyance.

1. In all cases where the holder of the legal or equitable title or estate to real estate situated within this state, prior to July 1, 1981, conveyed the real estate or any interest in the real estate by deed, mortgage, or other instrument, and the spouse failed to join in the conveyance, the spouse or the heirs at law, personal representatives, devisees, grantees, or assignees of the spouse are barred from recovery unless suit is brought for recovery within one year after July 1, 1991. But in case the right to the distributive share has not accrued by the death of the spouse executing the instrument, then the one not joining is authorized to file in the recorder's office of the county where the land is situated, a notice with affidavit setting forth affiant's claim, together with the facts upon which the claim rests, and the residence of the claimants. If the notice is not filed within two years from July 1, 1991, the claim is barred forever. Any action contemplated in this section may include land situated in different counties, by giving notice as provided by section 617.13.

2. In all cases where the holder of the legal or equitable title or estate to real estate situated within this state, after July 1, 1981, conveyed the real estate or any interest in the real estate by deed, mortgage, or other instrument, and the spouse failed to join in the conveyance, the spouse or the heirs at law, personal representative, devisees, grantees, or assignees of the spouse are barred from recovery unless suit is brought for recovery within ten years from the date of the conveyance. However, in the case where the right to the distributive share has not accrued by the death of the spouse executing the instrument, then the party not joining is authorized to file in the recorder's office in the county where the land is situated, a notice with affidavit setting forth the affiant's claim, together with the facts upon which the claim is based, and the residence of the claimants. If the notice is not filed within ten years from the date of the execution of the instrument the claim is barred forever. Any action contemplated in this section may include land situated in differ-

ent counties by giving notice as provided in section 617.13. The effect of filing the notice with affidavit shall extend for a further period of ten years the time within which the action may be brought. Successive notices may be filed extending this period.

[S13, §3447-b; C24, 27, 31, 35, 39, §**11022;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.15]

91 Acts, ch 183, §34; 93 Acts, ch 14, §1

614.16 Interpretative clause.

Sections 614.14 and 614.15 do not affect litigation pending on July 1, 1991, nor do they operate to revive rights or claims barred previous to that date, nor permit an action to be brought or maintained upon any claim or cause of action which is barred by a statute in force prior to July 1, 1991.

[C24, 27, 31, 35, 39, §**11023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.16]

91 Acts, ch 183, §35

614.17 Claims to real estate antedating 1980.

An action based upon a claim arising or existing prior to January 1, 1980, shall not be maintained, either at law or in equity, in any court to recover real estate in this state or to recover or establish any interest in or claim to real estate, legal or equitable, against the holder of the record title to the real estate in possession, when the holder of the record title and the holder's immediate or remote grantors are shown by the record to have held chain of title to the real estate, since January 1, 1980, unless the claimant in person, or by the claimant's attorney or agent, or if the claimant is a minor or under legal disability, by the claimant's guardian, trustee, or either parent, within one year from and after July 1, 1991, files in the office of the recorder of deeds of the county in which the real estate is situated, a statement in writing, which is duly acknowledged, definitely describing the real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the claim is based.

For the purposes of this section, section 614.17A, and sections 614.18 to 614.20, a person who holds title to real estate by will or descent from a person who held the title of record to the real estate at the date of that person's death or who holds title by decree or order of a court, or under a tax deed, trustee's, referee's, guardian's, executor's, administrator's, receiver's, assignee's, master's in chancery, or sheriff's deed, holds chain of title the same as though holding by direct conveyance.

For the purposes of this section and section 614.17A, such possession of real estate may be shown of record by affidavits showing the possession, and when the affidavits have been filed and recorded, it is the duty of the recorder to enter upon the margin of the record, a certificate to the effect that the affidavits were filed by the owner in possession, as named in the affidavits, or by the owner's attorney in fact, as shown by the records and in like manner, the affidavits may be filed and recorded where any action was barred on any claim by this section as in force prior to July 1, 1991.

[C24, 27, 31, 35, 39, §**11024;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.17]

91 Acts, ch 183, §36

614.17A Claims to real estate after 1992.

1. After July 1, 1992, an action shall not be maintained in a court, either at law or in equity, in order to recover or establish an interest in or claim to real estate if all the following conditions are satisfied:

a. The action is based upon a claim arising more than ten years earlier or existing for more than ten years.

b. The action is against the holder of the record title to the real estate in possession.

c. The holder of the record title to the real estate in possession and the holder's immediate or remote grantors are shown by the record to have held chain of title to the real estate for more than ten years.

2. The claimant within ten years of the date on which the claim arose or first existed must file with the county recorder in the county where the real estate is located a written statement which is duly acknowledged and definitely describes the real estate involved, the nature and extent of the right of interest claimed, and the facts upon which the claim is based. The claimant must file the statement in person or by the claimant's attorney or agent. If the claimant is a minor or under a legal disability, the statement must be filed by the claimant's guardian, trustee, or by either parent.

The filing of a claim shall extend for a further period of ten years the time within which such action may be brought by any person entitled to bring the claim. The person may file extensions for successive claims.

3. Nothing in this section shall be construed to revive any cause of action barred by section 614.17.

91 Acts, ch 183, §37

614.18 Claim indexed.

Any such claim so filed, shall be indexed under the description of the real estate involved in a book set apart and specially designed for that purpose to be known as the "claimant's book" and kept in the office of the recorder of the county where such real estate is situated, and said statement, when so indexed, shall be recorded as other instruments affecting real estate.

[C24, 27, 31, 35, 39, §**11025;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.18]

614.19 Inapplicability of provision regarding minors and persons with mental illness.

The provisions of section 614.8 as to the rights of minors and persons with mental illness shall not be applicable against the provisions of sections 614.17, 614.17A, 614.18, and 614.20.

[C24, 27, 31, 35, 39, §**11026;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.19]

96 Acts, ch 1129, §113; 2000 Acts, ch 1069, §1

614.20 Limitation on Act.

Sections 614.17 to 614.19 do not limit or extend the time within which actions by a spouse to recover dower or distributive share in real estate within this state may be brought or maintained under the provisions of section 614.15, nor do they limit or extend the time within which actions may be brought or maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate under the provisions of section 614.21, nor do they revive or permit an action to be brought or maintained upon any claim or cause of action which is barred by a statute which is in force prior to July 1, 1991; nor do they affect litigation pending on July 1, 1991.

[C24, 27, 31, 35, 39, §**11027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.20]

91 Acts, ch 183, §38

614.21 Foreclosure of ancient mortgages.

No action shall be maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate, after twenty years from the date thereof, as shown by the record of such instrument, unless the record of such instrument shows that less than ten years have elapsed since the date of maturity of the indebtedness or part thereof, secured thereby, or since the right of action has accrued thereon, or unless the record shows an extension of the maturity of the instrument or of the debt or a part thereof, and that ten years from the expiration of the time of such extension have not yet expired. The date of maturity, when different than as appears by the record of the instrument, and the date of maturity of any extension of said indebtedness or part thereof, may be shown at any time prior to the expiration of the above periods of limitation by the holder of the debt or the owner or assignee of the instrument filing an extension agreement, duly acknowledged as the original instrument was required to be acknowledged, in the office of the recorder where the instrument is recorded, or by noting on the margin of the record of such instrument in the recorder's office an extension of the maturity of the instrument or of the debt secured, or any part thereof; each notation to be witnessed by the recorder and entered upon the index of mortgages in the name of the mortgagor and mortgagee.

From and after July 4, 1946, this section shall also apply to any instrument of the kind described in this section which is not of record but which is described or referred to in any other instrument which is filed of record and the limitation shall be ten years from the due date of the instrument referred to if disclosed in the record and if not so disclosed then within ten years from the date of the record of the instrument containing such reference.

[S13, §3447-c; C24, 27, 31, 35, 39, §**11028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.21]

614.22 Action affecting ancient deeds.

1. An action shall not be maintained to set aside, cancel, annul, declare void or invalid, or to redeem from a tax deed, guardian's deed, executor's deed, administrator's deed, receiver's deed, referee's deed, assignee's deed, or sheriff's deed which has been recorded in the office of the recorder of the county or counties in this state in which the land described in the deed is situated prior to January 1, 1980, unless the action is commenced prior to January 1, 1992, and if an action to set aside, cancel, annul, declare void or invalid, or to redeem from the deed is not commenced prior to January 1, 1992, then the deed and all the proceedings upon which the deed is based are valid and unimpeachable and effective to convey title as stated in the deed, without exception for infancy, mental illness, absence from the state, or other disability or cause; provided that this subsection and section 614.23 do not apply to real property described in a deed which is not in the possession of those claiming title under the deed.

2. On and after January 1, 1992, an action shall not be maintained to set aside, cancel, annul, declare void or invalid, or to redeem from a tax deed, guardian's deed, executor's deed, administrator's deed, receiver's deed, referee's deed, assignee's deed, or sheriff's deed, if the deed has been recorded in the office of the recorder for more than ten years. The deed must be recorded in the office of the recorder of the county or counties in which the land described in the deed is situated. If an action under this subsection is not commenced within ten years of the recording of the deed, then the deed and all proceedings upon which the deed is based are valid and unimpeachable and effective to convey title as stated in the deed, without exception for infancy, mental illness, absence from the state, or other disability or cause.

However, this subsection and section 614.23 do not apply to real property described in a deed which is not in the possession of those claiming title under the deed.

[SS15, §3447-d; C24, 27, 31, 35, 39, §**11029;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.22]

91 Acts, ch 183, §39; 2000 Acts, ch 1069, §2

Legalizing Acts, chapter 589

614.23 How "possession" established.

The possession of the persons claiming title as provided for in section 614.22 may be established by affidavit recorded in the office of the recorder of the county or counties in this state in which the deed to the land referred to in said affidavit is recorded.

[SS15, §3447-e; C24, 27, 31, 35, 39, §**11030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §614.23]

614.24 Reversion or use restrictions on land — preservation.

No action based upon any claim arising or existing by reason of the provisions of any deed or conveyance or contract or will reserving or providing for any reversion, reverted interests or use restrictions in and to the land therein described shall be maintained either at law or in equity in any court to recover real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed of conveyance or contract or after twenty-one years from the admission of said will to probate unless the claimant shall, personally, or by the claimant's attorney or agent, or if the claimant is a minor or under legal disability, by the claimant's guardian, trustee, or either parent or next friend, shall file a verified claim with the recorder of the county wherein said real estate is located within said twenty-one year period. In the event said deed was recorded or will was admitted to probate more than twenty years prior to July 4, 1965, then said claim may be filed on or before one year after July 4, 1965. Such claims shall set forth the nature thereof, also the time and manner in which such interest was acquired. For the purposes of this section, the claimant shall be any person or persons claiming any interest in and to said land or in and to such reversion, reverter interest or use restriction, whether the same is a present interest or an interest which would come into existence if the happening or contingency provided in said deed or will were to happen at once. Said claimant further shall include any member of a class of persons entitled to or claiming such rights or interests.

The provisions of this section requiring the filing of a verified claim shall not apply to the reversion of railroad property if the reversion is caused by the property being abandoned for railway purposes and the abandonment occurs after July 1, 1980. The holder of such a reversionary interest may bring an action based upon the interest regardless of whether a verified claim has been filed under this section at any time after July 4, 1965.

[C66, 71, 73, 75, 77, 79, 81, §614.24]

614.25 Effect of filing claim.

The filing of such claim shall extend for a further period of twenty-one years the time within which such action may be brought by any person entitled thereto, and successive claims for further like extensions may be filed.

[C66, 71, 73, 75, 77, 79, 81, §614.25]

614.26 Indexing.

The provisions of section 614.18 are made applicable to the provisions of sections 614.24 to 614.28.

[C66, 71, 73, 75, 77, 79, 81, §614.26]

614.27 Persons under disability.

The provisions of section 614.8 as to the rights of minors and persons with mental illness shall not be applicable against the provisions of sections 614.24 to 614.28.

[C66, 71, 73, 75, 77, 79, 81, §614.27]
96 Acts, ch 1129, §113

614.28 Barred claims.

The provisions of sections 614.24 to 614.27, inclusive, or the filing of a claim or claims, hereunder, shall not revive or permit an action to be brought or maintained upon any claim or cause of action which is barred by any other statute. Provided further, that nothing contained in these sections shall affect litigation pending on July 4, 1965.

[C66, 71, 73, 75, 77, 79, 81, §614.28]

MARKETABLE RECORD TITLE

614.29 Definitions.

As used in this division:

1. *"Marketable record title"* means a title of record, as indicated in section 614.31, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in section 614.33.

2. *"Records"* includes probate and other official public records, as well as records in the office of the county recorder.

3. *"Recording",* when applied to the official public records of a probate or other court, includes filing.

4. *"Person dealing with the land"* includes a purchaser of any estate or interest therein, a mortgagee, a levying or attaching creditor, a land contract vendee, or any other person, corporation, or entity seeking to acquire an estate or interest therein, or impose a lien thereon.

5. *"Root of title"* means that conveyance or other title transaction or other link in the chain of title of a person, purporting to create the interest claimed by such person, upon which the person relies as a basis for the marketability of the person's title, and which was the most recent to be recorded or established as of a date forty years prior to the time when marketability is being determined. The effective date of the *"root of title"* is the date on which it is recorded.

6. *"Title transaction"* means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or deed by trustee, referee, guardian, executor, administrator, master in chancery, sheriff, or any other form of deed or decree of any court, as well as warranty deed, quitclaim deed, mortgage, or transfer or conveyance of any kind.

[C71, 73, 75, 77, 79, 81, §614.29]

614.30 Construction liberal.

This division shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in section 614.31, subject only to such limitations as appear in section 614.32.

[C71, 73, 75, 77, 79, 81, §614.30]

614.31 Forty-year chain of title.

Any person who has an unbroken chain of title of record to any interest in land for forty years or more, shall be deemed to have a marketable record title to such interest as defined in section 614.29, subject only to the matters stated in section 614.32. A person shall be deemed to have such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than forty years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in:

1. The person claiming such interest, or

2. Some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest; with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

[C71, 73, 75, 77, 79, 81, §614.31]

614.32 What interests and rights subject.

Such marketable record title shall be subject to:

1. All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided however, that a general reference in such muniments, or any of them, to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such easement, use restriction, or other interest.

2. All interest preserved by the filing of proper notice or by possession by the same owner continuously for a period of forty years or more, in accordance with section 614.34.

3. The rights of any person arising from a period of adverse possession or user, which was in whole or in part subsequent to the effective date of the root of title.

4. Any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record is started; provided such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of section 614.33.

5. The exceptions as stated and set forth in section 614.36.

[C71, 73, 75, 77, 79, 81, §614.32]

614.33 Free and clear of other interests not stated.

Subject to the matters stated in section 614.32, such marketable record title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims or charges whatsoever, the existence of which depends upon any act, transaction, event or omission that occurred prior to the effective date of the root of title. All such interests, claims or charges, however denominated, whether legal or equitable, present or future, whether such interest, claims or charges are asserted by a person able to assert a claim on the person's own behalf or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void.

[C71, 73, 75, 77, 79, 81, §614.33]

614.34 Preserving interest during forty-year period.

1. Any person claiming an interest in land may preserve and keep effective such interest by filing for record during the forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing duly verified by oath or affirmation setting forth the nature of the claim. No disability or lack of knowledge of any kind on the part of anyone shall suspend the running of said forty-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

a. Under a disability,

b. Unable to assert a claim on the claimant's own behalf, or

c. One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

2. If the same record owner of any possessory interest in land has been in possession of such land continuously for a period of forty years or more, during which period no title transaction with respect to such interest appears of record in the chain of title, and no notice has been filed by the record owner or on the record owner's behalf as provided in subsection 1, and such possession continues to the time when marketability is being determined, such period of possession shall be

deemed equivalent to the filing of the notice immediately preceding the termination of the forty-year period described in subsection 1.

[C71, 73, 75, 77, 79, 81, §614.34]

614.35 Recording interest.

To be effective and to be entitled to record the notice above referred to shall contain an accurate and full description of all land affected by such notice which description shall be set forth in particular terms and not by general inclusions; but if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument. Such notice shall be filed for record in the office of the county recorder of the county or counties where the land described therein is situated. The recorder of each county shall accept all such notices presented to the recorder which describe land located in the county in which the recorder serves and shall enter and record full copies thereof in the same way that deeds and other instruments are recorded, and each recorder shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing such notices in the recorder's office each recorder shall enter such notices under the grantee indexes of deeds in the names of the claimants appearing in such notices. Such notices shall also be indexed under the description of the real estate involved in a book set apart for that purpose to be known as the "claimant's book."

[C71, 73, 75, 77, 79, 81, §614.35]

614.36 Lessors, reversioners and easements.

This division shall not be applied to bar any lessor or lessor's successor as a reversioner of the lessor's right to possession on the expiration of any lease; or to bar or extinguish any easement or interest in the nature of an easement, the existence of which is apparent from or can be proved by physical evidence of its use; or to bar any right, title or interest of the United States, by reason of failure to file the notice herein required.

[C71, 73, 75, 77, 79, 81, §614.36]

614.37 Limitation statutes not extended.

Nothing contained in this division shall be construed to extend the period for the bringing of an action or for the doing of any other required act under any statutes of limitations, nor, except as herein specifically provided, to effect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land. It is intended that nothing contained in this division be interpreted to revive or extend the period of filing a claim or bringing an action that may be limited or barred by any other statute.

[C71, 73, 75, 77, 79, 81, §614.37]

614.38 Period extension in certain cases.

If the forty-year period specified in this division shall have expired prior to one year after July 1, 1969, such period shall be extended one year after July 1, 1969.

[C71, 73, 75, 77, 79, 81, §614.38]

CHAPTER 615

LIMITATIONS ON JUDGMENTS

Method of computing time, §4.1(34)

615.1 Execution on certain judgments prohibited.
615.2 Revival of certain judgments prohibited.
615.3 Future judgments without foreclosure.
615.4 Chapter inapplicable in certain situations.

615.1 Execution on certain judgments prohibited.

From and after January 1, 1934, no judgment in an action for the foreclosure of a real estate mortgage, deed of trust, or real estate contract upon property which at the time of judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor, or in any action on a claim for rent or judgment assigned by a receiver of a closed bank or rendered upon credits assigned by the receiver of a closed bank when the assignee is not a trustee for depositors or creditors of the bank, the reconstruction finance corporation or any other federal governmental agency to which the bank or the receiver is or may be indebted shall be enforced and no execution issued thereon and no force or vitality given thereto for any purpose other than as a setoff or counterclaim after the expiration of a period of two years from the entry thereof. As used in this section, *"mortgagor"* means a mortgagor or a borrower executing a deed of trust as provided in chapter 654 or a vendee of a real estate contract.

[C35, §11033-e1; C39, §**11033.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §615.1]
94 Acts, ch 1115, §1
See also §654.6

615.2 Revival of certain judgments prohibited.
After January 1, 1934, no action or proceedings shall be brought in any court of this state for the purpose of renewing or extending such judgment or prolonging the life thereof. Provided, however, that nothing herein shall prevent the continuance of such judgment in force for a longer period by the voluntary written stipulation of the parties, filed in said cause.
[C35, §11033-e2; C39, §**11033.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §615.2]

615.3 Future judgments without foreclosure.
A judgment hereafter rendered on a promissory obligation secured by a mortgage, deed of trust, or real estate contract upon property which at the time of the judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor, but without foreclosure against the security, shall not be subject to renewal by action thereon, and, after the lapse of two years from the date of rendition, shall be without force and effect for any purpose whatsoever except as a setoff or counterclaim. As used in this section, *"mortgagor"* means a mortgagor of a mortgage or a borrower executing a deed of trust as provided in chapter 654 or the vendee of a real estate contract.
[C35, §11033-g1; C39, §**11033.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §615.3]
94 Acts, ch 1115, §2; 94 Acts, ch 1199, §67; 95 Acts, ch 49, §22

615.4 Chapter inapplicable in certain situations.
This chapter shall not be applied to actions which are subject to an agreement entered into pursuant to either section 628.26A or section 654.19.
85 Acts, ch 252, §42

CHAPTER 616

PLACE OF BRINGING ACTIONS

For Iowa court rules concerning change of venue,
see R.C.P. 1.801 – 1.808
Change of venue, chapter 623

616.1 Real property.
616.2 Injuries to real property.
616.3 Local actions.
616.4 Nonresident — attachment.
616.5 Resident — attachment.
616.6 Transfer — attached property held.
616.7 Place of contract.
616.8 Certain carriers and transmission companies — actions against.
616.9 Construction companies.
616.10 Insurance companies.
616.11 Nonlife insurance assessments.
616.12 Nonlife insurance premiums or notes.
616.13 Operators of coal mines.
616.14 Office or agency.
616.15 Surety companies.
616.16 Municipal corporations in certain counties.
616.17 Personal actions.
616.18 Personal injury or damage actions.
616.19 Negotiable paper.
616.20 Right of nonresident defendant.
616.21 Change of residence.

616.1 Real property.
Actions for the recovery of real property, or of an estate therein, or for the determination of such right or interest, or for the partition of real property, must be brought in the county in which the subject of the action or some part thereof is situated.
[C51, §1703; R60, §2795; C73, §2576; C97, §3491; C24, 27, 31, 35, 39, §**11034;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.1]
Real estate foreclosure, §654.3

616.2 Injuries to real property.
Actions for injuries to real property may be brought either in the county where the property is, or where the defendant resides.
[C73, §2577; C97, §3492; C24, 27, 31, 35, 39, §**11035;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.2]

616.3 Local actions.
Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:
1. *For fines, penalties, or forfeitures.* Those for the recovery of a fine, penalty, or forfeiture imposed by a statute; but when the offense for which the claim is made was committed on a watercourse

or road which is the boundary of two counties, the action may be brought in either of them.

2. *Against public officers.* Those against a public officer or person specially appointed to execute the public officer's duties, for an act done by the officer or person in virtue or under color of the public office, or against one who by the officer's or person's command or in the officer's or person's aid shall do anything touching the duties of such officer, or for neglect of official duty.

3. *On official bonds.* Those on the official bond of a public officer.

4. *Actions on bonds of executor or guardian.* Those on the bond of an executor, administrator, or guardian may be brought in the county in which the appointment was made and such bond filed.

5. *Actions on other bonds.* Actions on all other bonds provided for or authorized by law may be brought in the county in which such bond was filed and approved.

[R60, §2796; C73, §2579; C97, §3494; S13, §3494; C24, 27, 31, 35, 39, §**11036;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.3]

616.4 Nonresident — attachment.

An action against a nonresident of the state, when aided by an attachment, may be brought in any county of the state wherein any part of the property sought to be attached may be found, or wherein any part was situated when the action was commenced, or where the defendant is personally served in this state.

[C51, §1703; R60, §2797; C73, §2580; C97, §3495; C24, 27, 31, 35, 39, §**11037;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.4]

616.5 Resident — attachment.

Except as hereinafter provided, an action against a resident of this state must be brought in the county of the defendant's residence, or that in which the contract was to be performed, except that, if an action be duly brought against such defendant in any other county by virtue of any of the provisions of this chapter, then such action may, if legal cause for an attachment exist, be aided by attachment.

[R60, §2797; C73, §2580; C97, §3495; C24, 27, 31, 35, 39, §**11038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.5]

616.6 Transfer — attached property held.

Should such action be brought against a resident of this state in any other county than that of the defendant's residence, the defendant may have the place of trial changed to the district court of the county wherein the defendant resides, in the same manner and upon the same terms as provided in rule of civil procedure 1.808, and the property attached shall not be released because said action was brought in the wrong county, but shall be held and subject in the same manner as if said action had been brought in the county of defendant's residence.

[R60, §2797; C73, §2580; C97, §3495; C24, 27, 31, 35, 39, §**11039;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.6]

616.7 Place of contract.

When, by its terms, a written contract is to be performed in any particular place, action for a breach thereof may, except as otherwise provided, be brought in the county wherein such place is situated.

[C51, §1704; R60, §2798; C73, §2581; C97, §3496; C24, 27, 31, 35, 39, §**11040;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.7]

616.8 Certain carriers and transmission companies — actions against.

An action may be brought against any railway corporation, the owner of stages, or other line of coaches or cars, express, canal, steamboat and other river crafts, telegraph and telephone companies, or the owner of any line for the transmission of electric current for lighting, power, or heating purposes, and the lessees, companies, or persons operating the same, in any county through which such road or line passes or is operated.

[C73, §2582; C97, §3497; S13, §3497; C24, 27, 31, 35, 39, §**11041;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.8]

616.9 Construction companies.

An action may be brought against any corporation, company, or person engaged in the construction of a railway, canal, telegraph or telephone line, oil, gas, or gasoline transmission lines, highway, or public drainage improvement, on any contract relating thereto, or to any part thereof, or for damages in any manner growing out of the contract or work thereunder, in any county where such contract was made, or performed in whole or in part, or where the work was done out of which the damage claimed arose.

[C73, §2583; C97, §3498; C24, 27, 31, 35, 39, §**11042;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.9]

616.10 Insurance companies.

Insurance companies may be sued in any county in which their principal place of business is kept, or in which the contract of insurance was made, or in which the loss insured against occurred, or, in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred, or in the county of plaintiff's residence. As used in this section the term *"insurance companies"* includes nonprofit hospital service corporations and nonprofit medical service corporations which have incorporated under the provisions of chapter 504 or chapter 504A.

[C73, §2584; C97, §3499; C24, 27, 31, 35, 39, §**11043;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.10]

91 Acts, ch 97, §60

616.11 Nonlife insurance assessments.

No court other than that of the county in which the member resides shall have jurisdiction of actions to collect assessments levied by associations organized under the provisions of chapter 518A but such actions shall be brought in the county of the member's residence, any statement or agreement in the policy or contract of insurance, the application therefor, or any other contract entered into between the member and the association to the contrary notwithstanding.

[C24, 27, 31, 35, 39, §**11044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.11]

616.12 Nonlife insurance premiums or notes.

No court other than that of the county in which the policyholder resides shall have jurisdiction of actions to collect premiums or premium notes payable or given for insurance other than life, but such actions shall be brought in the county of the policyholder's residence, any statement or agreement in the policy or contract of insurance, the application therefor, or any other contract entered into between the policyholder and the company or its agent to the contrary notwithstanding.

[C27, 31, 35, §11044-a1; C39, §**11044.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.12]

616.13 Operators of coal mines.

An action may be brought against any corporation, company, or person, owning, leasing, operating, or maintaining a coal mine, in the county where said mine is located, on any contract, or for any tort, in any manner connected with or growing out of the construction, use, or operation of said mine.

[S13, §3499-a; C24, 27, 31, 35, 39, §**11045;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.13]

616.14 Office or agency.

When a corporation, company, or individual has an office or agency in any county for the transaction of business, any actions growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located.

[C51, §1705; R60, §2801; C73, §2585; C97, §3500; C24, 27, 31, 35, 39, §**11046;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.14]

616.15 Surety companies.

Suit may be brought against any company or corporation furnishing or pretending to furnish surety, fidelity, or other bonds in this state, in any county in which the principal place of business of such company or corporation is maintained in this state, or in any county wherein is maintained its general office for the transaction of its Iowa business, or in the county where the principal resides at the time of bringing suit, or in the county where the principal did reside at the time the bond or other undertaking was executed; and in the case of bonds furnished by any such company or corporation for any building or improvement, either public or private, action may be brought in the county wherein said building or improvement, or any part thereof is located.

[S13, §3500-a; C24, 27, 31, 35, 39, §**11047;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.15]

616.16 Municipal corporations in certain counties.

Actions against municipal corporations in all counties where the district court convenes in more than one place must be brought in the county and at the place where court is held nearest to where the cause or subject of the action originated.

[S13, §3504-a; C24, 27, 31, 35, 39, §**11048;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.16]

616.17 Personal actions.

Personal actions, except as otherwise provided, must be brought in a county in which some of the defendants actually reside, but if neither of them have a residence in the state, they may be sued in any county in which either of them may be found.

[C51, §1701; R60, §2800; C73, §2586; C97, §3501; C24, 27, 31, 35, 39, §**11049;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.17]

616.18 Personal injury or damage actions.

Actions arising out of injuries to a person or damage to property may be brought in the county in which the defendant, or one of the defendants, is a resident or in the county in which the injury or damage is sustained.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.18]

616.19 Negotiable paper.

In all actions upon negotiable paper, except when made payable at a particular place, in which any maker thereof, being a resident of the state, is defendant, the place of trial shall be limited to a county wherein some one of such makers resides.

[C73, §2586; C97, §3501; C24, 27, 31, 35, 39, §**11050;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.19]

616.20 Right of nonresident defendant.

Where an action provided for in sections 616.17 and 616.19 is against several defendants, some of whom are residents and others nonresidents of the county, and the action is dismissed as to the resi-

dents, or judgment is rendered in their favor, or there is a failure to obtain judgment against such residents, such nonresidents may, upon motion, have said cause dismissed, with reasonable compensation for trouble and expense in attending at the wrong county, unless they, having appeared to the action, fail to object before judgment is rendered against them.

[C73, §2587; C97, §3502; C24, 27, 31, 35, 39, §**11051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.20]

616.21 Change of residence.

If, after the commencement of an action in the county of the defendant's residence, the defendant removes therefrom, the service of notice upon the defendant in another county shall have the same effect as if it had been made in the county from which the defendant removed.

[C73, §2588; C97, §3503; C24, 27, 31, 35, 39, §**11052;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §616.21]

CHAPTER 617

COMMENCING ACTIONS

For Iowa court rules concerning commencement of actions, see R.C.P. 1.301 – 1.315

617.1 Process — criminal defendant.
617.2 Penalty — amendment.
617.3 Foreign corporations or nonresidents contracting or committing torts in Iowa.
617.4 Consolidated railways.
617.5 Insurance company.
617.6 Other corporations.
617.7 Unknown defendants.
617.8 Holidays.
617.9 Unserved parties — optional procedure.
617.10 Real estate — action indexed.
617.11 Lis pendens.
617.12 Exceptions.
617.13 Real estate in other county.
617.14 Constructive notice.
617.15 Notice perpetuated.
617.16 Frivolous actions.

617.1 Process — criminal defendant.

Any defendant in any criminal action pending or to be brought in any court in the state of Iowa may be served with process, either civil or criminal, in any other action pending or to be brought against the defendant in the courts of this state while the defendant is present in this state, either voluntarily or involuntarily.

[C39, §**11056.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.1]

617.2 Penalty — amendment.

If a notice is not filed or returned by the sheriff to the person from whom it was received, or if the return thereon is defective, the officer making the same shall be guilty of a simple misdemeanor, and the officer shall be liable to an action for damages by any person aggrieved thereby. The court may, before or after judgment is entered, permit an amendment according to the truth of the case.

[R60, §2820; C73, §2606; C97, §3521; C24, 27, 31, 35, 39, §**11063;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.2]

617.3 Foreign corporations or nonresidents contracting or committing torts in Iowa.

If the action is against any corporation or person owning or operating any railway or canal, steamboat or other rivercraft, or any telegraph, telephone, stage, coach, or carline, or against any express company, or against any foreign corporation, service may be made upon any general agent of such corporation, company, or person, wherever found, or upon any station, ticket, or other agent, or person transacting the business thereof or selling tickets therefor in the county where the action is brought; if there is no such agent in said county, then service may be had upon any such agent or person transacting said business in any other county.

If a foreign corporation makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such foreign corporation commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such foreign corporation for the purpose of service of process or original notice on such foreign corporation under this section, and, if the corporation does not have a registered agent or agents in the state of Iowa, shall be deemed to constitute the appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. If a nonresident person

makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such person commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such person for the purpose of service of process or original notice on such person under this section, and shall be deemed to constitute the appointment of the secretary of state of the state of Iowa to be the true and lawful attorney of such person upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. The term *"nonresident person"* shall include any person who was, at the time of the contract or tort, a resident of the state of Iowa but who removed from the state before the commencement of such action or proceedings and ceased to be a resident of Iowa or, a resident who has remained continuously absent from the state for at least a period of six months following commission of the tort. The making of the contract or the committing of the tort shall be deemed to be the agreement of such corporation or such person that any process or original notice so served shall be of the same legal force and effect as if served personally upon such defendant within the state of Iowa. The term *"resident of Iowa"* shall include any Iowa corporation, any foreign corporation holding a certificate of authority to transact business in Iowa, any individual residing in Iowa, and any partnership or association one or more of whose members is a resident of Iowa.

Service of such process or original notice shall be made (1) by filing duplicate copies of said process or original notice with said secretary of state, together with a fee of ten dollars, and (2) by mailing to the defendant and to each of them if more than one, by registered or certified mail, a notification of said filing with the secretary of state, the same to be so mailed within ten days after such filing with the secretary of state. Such notification shall be mailed to each foreign corporation at the address of its principal office in the state or country under the laws of which it is incorporated and to each such nonresident person at an address in the state of residence. The defendant shall have sixty days from the date of such filing with the secretary of state within which to appear. Proof of service shall be made by filing in court the duplicate copy of the process or original notice with the secretary of state's certificate of filing, and the affidavit of the plaintiff or the plaintiff's attorney of compliance herewith.

The secretary of state shall keep a record of all processes or original notices so served upon the secretary of state, recording therein the time of service and the secretary of state's actions with reference thereto, and the secretary of state shall promptly return one of said duplicate copies to the plaintiff or the plaintiff's attorney, with a certificate showing the time of filing thereof in the secretary of state's office.

The original notice of suit filed with the secretary of state shall be in form and substance the same as provided in rule of civil procedure 1.901, form 3, Iowa court rules.

The notification of filing shall be in substantially the following form, to wit:

To . . . . . (Here insert the name of each defendant with proper address.) You will take notice that an original notice of suit or process against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa by filing a copy of said notice or process on the . . . . . day of . . . . . (month), ... (year), with the secretary of state of the state of Iowa.

Dated at . . . . . , Iowa, this . . . . . day of . . . . . (month), ... (year)

. . . . . .
Plaintiff
By
. . . . . .
Attorney for Plaintiff

Actions against foreign corporations or nonresident persons as contemplated by this law may be brought in the county of which plaintiff is a resident, or in the county in which any part of the contract is or was to be performed or in which any part of the tort was committed.

[C51, §1727; R60, §2825; C73, §2611; C97, §3529; S13, §3529; C24, 27, 31, 35, 39, §**11072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.3; 81 Acts, ch 21, §20]

83 Acts, ch 101, §123; 2000 Acts, ch 1058, §56; 2002 Acts, ch 1119, §106

Unnumbered paragraph 5 amended

617.4 Consolidated railways.

If the action is against any railway corporation which has sold or leased its property and franchises to any other railway corporation as authorized by section 327E.2, service of the original notice may be made upon any station, ticket, or other agent of the merged, vendee, or lessee corporation in the county where the action is brought; if there is no such agent in said county, then service may be made upon such agent or person in any other county.

[S13, §3529; C24, 27, 31, 35, 39, §**11073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.4]

617.5 Insurance company.

If the action is against an insurance company, for loss or damage upon any contract of insurance or indemnity, service may be had upon any general agent of the company wherever found, or upon any recording agent or agent who has authority to issue policies.

[C97, §3530; C24, 27, 31, 35, 39, §**11074;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.5]

Actions against bonding companies, §636.20, 636.21

617.6 Other corporations.

When the action is against any other corporation, service may be made on any trustee or officer thereof, or on any agent employed in the general management of its business, or on any of the last known or acting officers of such corporation.

[C51, §1726; R60, §2824; C73, §2612; C97, §3531; C24, 27, 31, 35, 39, §**11077;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.6]

617.7 Unknown defendants.

Where it is necessary to make an unknown person defendant, the petition shall be sworn to and state the claim of plaintiff with reference to the property involved in the action, that the name and residence of such person is unknown to the plaintiff, and that the plaintiff has sought diligently to learn the same.

[R60, §2836; C73, §2622; C97, §3538; SS15, §3538; C24, 27, 31, 35, 39, §**11082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.7]

617.8 Holidays.

No person shall be held to answer or appear in any court on any day now or hereafter made a legal holiday.

[C97, §3541; S13, §3541; C24, 27, 31, 35, 39, §**11090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.8]

Legal public holidays, §1C.1

617.9 Unserved parties — optional procedure.

When the action is against two or more defendants, and one or more of them shall have been served, but not all, the plaintiff may proceed as follows:

If the action is against defendants who are jointly, or jointly and severally, or severally liable only, the plaintiff may, without prejudice to the plaintiff's rights in that or any other action against those not served, proceed against those served in the same manner as if they were the only defendants; if the plaintiff recovers against those jointly liable only, the plaintiff may take judgment against all thus liable, which may be enforced against the joint and separate property of those served, but not against the separate property of those not served, until they have had opportunity to show cause why judgment should not be enforced against their separate property.

[R60, §2841; C73, §2627; C97, §3542; C24, 27, 31, 35, 39, §**11091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.9]

617.10 Real estate — action indexed.

When a petition affecting real estate is filed, the clerk of the district court where filed shall forthwith index same in an index book to be provided therefor, under the tract number which describes the property, entering in each instance the cause number as a guide to the record of court proceedings which affect such real estate. If the petition be amended to include other parties or other lands, same shall be similarly indexed. When the cause is finally determined the result shall be indicated in said book wherever indexed.

[R60, §2842; C73, §2628; C97, §3543; S13, §3543; C24, 27, 31, 35, 39, §**11092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.10]

617.11 Lis pendens.

When so indexed said action shall be considered pending so as to charge all third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's rights.

[R60, §2842; C73, §2628; C97, §3543; S13, §3543; C24, 27, 31, 35, 39, §**11093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.11]

617.12 Exceptions.

If the real property affected be situated in the county where the petition is filed it shall be unnecessary to show in said index lands not situated in said county.

[R60, §2842; C73, §2628; C97, §3543; S13, §3543; C24, 27, 31, 35, 39, §**11094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.12]

617.13 Real estate in other county.

When any part of real property, the subject of an action, is situated in any other county than the one in which the action is brought, the plaintiff must, in order to affect third persons with constructive notice of the pendency of the action, file with the clerk of the district court of the other county a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected by the action. The clerk shall at once index and enter a memorandum of the notice in the encumbrance book.

[R60, §2843; C73, §2629; C97, §3544; C24, 27, 31, 35, 39, §**11095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.13]

89 Acts, ch 83, §83

617.14 Constructive notice.

From the time of such indexing, the pendency of the action shall be constructive notice to subsequent purchasers or encumbrancers thereof, who shall be bound by all the proceedings taken after the filing of such notice, to the same extent as if parties to the action.

[R60, §2843; C73, §2629; C97, §3544; C24, 27, 31, 35, 39, §**11096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.14]

617.15 Notice perpetuated.

Within two months after the determination of the action, there shall also be filed with such clerk a certified copy of the final order, judgment, or decree, who shall enter and index the same as though rendered in that county, or such notice of pendency shall cease to be constructive notice.

[R60, §2843; C73, §2629; C97, §3544; C24, 27, 31, 35, 39, §**11097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §617.15]

617.16 Frivolous actions.

If a party commencing an action has in the preceding five-year period unsuccessfully prosecuted three or more actions, the court may, if it deems the actions to have been frivolous, stay the proceedings until that party furnishes an undertaking secured by cash or approved sureties to pay all costs resulting to opposing parties to the action including a reasonable attorney fee.

86 Acts, ch 1211, §36

CHAPTER 618

PUBLICATION AND POSTING OF NOTICES

For Iowa court rule concerning effect of notice by posting, see R.C.P. 1.1804
Counties; see also chapter 349

618.1 Publications in English.
618.2 Violation.
618.3 Requirements for newspaper for official publication.
618.4 Change in name — effect.
618.5 Permissible selection.
618.6 Selection by plaintiff.
618.7 Selection by county officers.
618.8 Refusal to publish.
618.9 Days of publication.
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618.12 Fee for posting.
618.13 Publication of docket in certain counties.
618.14 Publication of matters of public importance.
618.15 Service by certified mail.
618.16 Zoned editions of same newspaper.
618.17 Minimum type size.
618.18 Timely publication required.

618.1 Publications in English.

All notices, proceedings, and other matter whatsoever, required by law or ordinance to be published in a newspaper, shall be published only in the English language and in newspapers published wholly in the English language.

[C73, §306, 307; C97, §549; S13, §549; C24, 27, 31, 35, 39, §**11098;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.1]

618.2 Violation.

Any public official who violates the provisions of section 618.1 or who willfully fails to make publication as now required of the public official by law of any notice, report of proceedings or other matter whatsoever, shall be guilty of a simple misdemeanor.

[C97, §550; C24, 27, 31, 35, 39, §**11099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.2]

618.3 Requirements for newspaper for official publication.

For the purpose of establishing and giving assured circulation to all notices and reports of proceedings required by statute to be published within the state, if newspapers are required to be used, only a newspaper which meets all of the following requirements shall be designated for official publication purposes:

1. Is a newspaper of general circulation issued at a regular frequency that has been published within the area and regularly mailed through the post office of entry for at least two years.
2. Has a list of subscribers who have paid, or promised to pay, at more than a nominal rate, for copies to be received during a stated period.
3. Devotes at least twenty-five percent of its total column space in more than one-half of its issues during any twelve-month period to information of a public character other than advertising.
4. Is paid for by at least fifty percent of the persons or subscribers to whom it is distributed.

[C35, §11099-e1; C39, §**11099.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.3]

86 Acts, ch 1183, §4

618.4 Change in name — effect.

A change of name or ownership of a newspaper thus designated that does not affect its general circulation as above required shall in no way disqualify such newspaper for selection in making such publication of legal notices.

[C35, §11099-e2; C39, §**11099.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.4]

618.5 Permissible selection.

Publications may be made in a newspaper published once a week or oftener.

[C73, §3832; C97, §1293; S13, §1293; C24, 27, 31, 35, 39, §**11100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.5]

618.6 Selection by plaintiff.

The plaintiff or executor or the plaintiff's or executor's attorney, in all publications concerning actions, executions, and estates, may designate the newspaper in which such publication shall be made.

[C73, §3832; C97, §1293; S13, §1293; C24, 27, 31, 35, 39, §**11101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.6]

618.7 Selection by county officers.

The clerk of the district court, sheriff, auditor, treasurer, and recorder shall designate the newspapers in which the notices pertaining to their respective offices shall be published and the board of supervisors shall designate the newspapers in which all other county notices and proceedings, not required to be published in the official county newspapers, shall be published.

[R60, §314; C73, §306; C97, §549; S13, §549; C24, 27, 31, 35, 39, §**11102;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.7]

618.8 Refusal to publish.

If publication be refused when copy therefor, with the cost or security for payment of the cost, is tendered, such publication may be made in some other newspaper of general circulation at or nearest to the county seat, with the same effect as if made in the newspaper so refusing.

[C73, §3832; C97, §1293; S13, §1293; C24, 27, 31, 35, 39, §**11103;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.8]

618.9 Days of publication.

When the publication is in a newspaper which is published oftener than once a week, the succeeding publications of such notice shall be on the same day of the week as the first publication. This section shall not apply to any notice for the publication of which provision inconsistent herewith is specially made.

[S13, §1293-a; C24, 27, 31, 35, 39, §**11104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.9]

618.10 Payment for publication.

Publications required by law shall, in the first instance, be paid for by the party causing publication, and shall be taxed as costs in the proceeding.

[C51, §2558; R60, §4165; C73, §3838; C97, §1296; C24, 27, 31, 35, 39, §**11105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.10]

618.11 Fees for publication.

The compensation, when not otherwise fixed, for the publication in a newspaper of any notice, order, citation, or other publication required or allowed by law shall be at a rate of thirty-four cents for one insertion and twenty-three cents for each subsequent insertion for each line of eight point type two inches in length, or its equivalent. Beginning June 1, 2001, and each June 1 thereafter, the state printing administrator shall calculate a new rate for the following fiscal year as prescribed in this section, and shall publish this rate as a notice in the Iowa administrative bulletin prior to the first day of the following calendar month. The new rate shall be effective on the first day of the calendar month following its publication. The rate shall be calculated by applying the percentage change in the consumer price index for all urban consumers for the last available twelve-month period published in the federal register by the federal department of labor, bureau of labor statistics, to the existing rate as an increase or decrease in the rate rounded to the nearest one-tenth of a cent. The calculation and publication of the rate by the state printing administrator shall be exempt from the provisions of chapters 17A and 25B.

[C73, §3832; C97, §1293; S13, §1293; C24, 27, 31, 35, 39, §**11106;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.11]

86 Acts, ch 1183, §5; 96 Acts, ch 1098, §4; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2000 Acts, ch 1148, §2

618.12 Fee for posting.

In all cases where an officer in the discharge of the officer's duty is required to post an advertisement or notice, the officer shall, when not otherwise provided, be allowed twenty-five cents, and the same mileage as a sheriff.

[C51, §2558; R60, §4165; C73, §3838; C97, §1296; C24, 27, 31, 35, 39, §**11107;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.12]

618.13 Publication of docket in certain counties.

When the petition provided for in rule of civil procedure 1.403 is filed with the clerk of the district court in a county of ninety-eight thousand population or over, the names of the parties plaintiff and defendant in such action, the description of the real estate involved, if any, except for quieting title, partition, and suits involving tax assessments, and the names of the attorneys for the plaintiff, and the docket number assigned to such case, may, in the event the majority of the judges of the judiciary district in which such county lies, so direct, be published once in a daily newspaper having a general circulation in said county; such paper to be designated by a majority of the judges of the district court. Provided, that whenever thereafter such case is assigned for trial or any other pleadings are filed therein, or court action

taken with reference thereto, except general orders of court for continuations, the title of such case and kind of pleading shall be published, and if it is in an assignment for trial it shall be carried in printed assignment from day to day until final disposition.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.13]

92 Acts, ch 1240, §21

618.14 Publication of matters of public importance.

The governing body of any municipality or other political subdivision of the state may publish, as straight matter or display, any matter of general public importance, in one or more newspapers, as defined in section 618.3 published in and having general circulation in such municipality or political subdivision, at the legal or appropriate commercial rate, according to the character of the matter published.

In the event there is no such newspaper published in such municipality or political subdivision or in the event publication in more than one such newspaper is desired, publication may be made in any such newspaper having general circulation in such municipality or political subdivision.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §618.14]

87 Acts, ch 221, §34

618.15 Service by certified mail.

Wherever used in this Code, the following words shall have the meanings respectively ascribed to them unless such meanings are repugnant to the context:

1. The words, "certified mail" mean any form of mail service, by whatever name, provided by the United States post office where the post office provides the mailer with a receipt to prove mailing.

2. The words, "restricted certified mail" mean any form of certified mail as defined in subsection 1 which carries on the face thereof, in a conspicuous place where it will not be obliterated, the endorsement, "Deliver to addressee only", and for which the post office provides the mailer with a return receipt showing the date of delivery, the place of delivery, and person to whom delivered.

[C31, 35, §5079-d16; C39, §**5038.06;** C46, 50, 54, §321.503; C58, 62, 66, 71, 73, 75, 77, 79, 81, §618.15]

618.16 Zoned editions of same newspaper.

Publication requirements for governmental subdivisions of the state shall be deemed satisfied when publication is made in editions or zoned editions which are delivered to an area within the jurisdiction of the subdivision making the publication even though publication is not made in other editions of the same newspaper.

86 Acts, ch 1183, §6; 89 Acts, ch 214, §6

618.17 Minimum type size.

A publication required by law shall be printed in type no smaller than six point.

89 Acts, ch 214, §7

618.18 Timely publication required.

When a publication required by law is not published within one month of submission to the newspaper, the maximum compensation established by law shall be reduced by twenty-five percent.

89 Acts, ch 214, §8

CHAPTER 619

PLEADINGS AND MOTIONS

For Iowa court rules concerning pleadings and motions, see R.C.P. 1.401 – 1.458
For Iowa court rules concerning discovery and inspection, see R.C.P. 1.501 – 1.517

619.1 Nonnecessity for prayer.
619.2 Exception.
619.3 Exception — limit on pleading extension.
619.4 Taking files from office.
619.5 Withdrawal of motion or demurrer.
619.6 Counterclaim by comaker or surety.
619.7 Mitigating facts.
619.8 Necessity to plead.
619.9 Amount of proof.
619.10 Evidence under denial.
619.11 Pleading conveyance.
619.12 Pleading estate.
619.13 Injuries to goods.
619.14 Injuries to real property.
619.15 Bond — breaches of.
619.16 Immaterial errors disregarded.
619.17 Contributory fault — burden.
619.18 Money damages not to be stated.
619.19 Verification not required — affidavits.

619.1 Nonnecessity for prayer.

In the defense part of an answer or reply, it shall not be necessary to make a prayer for judgment.

[R60, §2883; C73, §2658; C97, §3569; C24, 27, 31, 35, 39, §**11118;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.1]

619.2 Exception.

If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the defendant shall plead within three days after service of the original notice.

[C31, 35, §11121-d1; C39, §**11121.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.2]

619.3 Exception — limit on pleading extension.

If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the court shall not extend the time to plead more than two days beyond the time fixed in section 619.2.

[C31, 35, §11123-d1; C39, §**11123.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.3]

619.4 Taking files from office.

The original files shall be taken from the clerk's office only on order of the judge by leaving with the clerk a receipt for the same.

[C97, §3558; SS15, §3558; C24, 27, 31, 35, 39, §**11126;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.4]

619.5 Withdrawal of motion or demurrer.

A motion or demurrer once filed shall not be withdrawn without the consent of the adverse party in writing, or given in open court, or of the court.

[R60, §2870; C73, §2642; C97, §3556; C24, 27, 31, 35, 39, §**11139;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.5]

619.6 Counterclaim by comaker or surety.

A comaker or surety, when sued alone, may, with the consent of the comaker or principal, make use of by way of counterclaim of a debt or liquidated demand due from the plaintiff at the commencement of the action to such comaker or principal, but the plaintiff may meet such counterclaim in the same way as if made by the comaker or principal.

[R60, §2887; C73, §2661; C97, §3572; C24, 27, 31, 35, 39, §**11153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.6]

619.7 Mitigating facts.

In any action brought to recover damages for an injury to person, character, or property, the defendant may set forth, in a distinct division of the defendant's answer, any facts, of which evidence is legally admissible, to mitigate or otherwise reduce the damages, whether a complete defense or justification be pleaded or not, and the defendant may give in evidence the mitigating circumstances, whether the defendant proves the defense or justification or not.

[R60, §2929; C73, §2682; C97, §3593; C24, 27, 31, 35, 39, §**11172;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.7]

619.8 Necessity to plead.

No mitigating circumstances shall be proved unless pleaded, except such as are shown by or grow out of the testimony introduced by the adverse party.

[R60, §2929; C73, §2682; C97, §3593; C24, 27, 31, 35, 39, §**11173;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.8]

619.9 Amount of proof.

A party shall not be compelled to prove more than is necessary to entitle the party to the relief asked for, or any lower degree included therein, nor more than sufficient to sustain the party's defense.

[R60, §2966; C73, §2729; C97, §3639; C24, 27, 31, 35, 39, §**11181;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.9]

619.10 Evidence under denial.

Under a denial of an allegation, no evidence shall be introduced which does not tend to negative some fact the party making the controverted allegation is bound to prove.

[R60, §2944; C73, §2704; C97, §3615; C24, 27, 31, 35, 39, §**11196;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.10]

619.11 Pleading conveyance.

When a party claims by conveyance, the party may state it according to its legal effect or name.

[R60, §2952; C73, §2723; C97, §3633; C24, 27, 31, 35, 39, §**11212;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.11]

619.12 Pleading estate.

It shall not be necessary to allege the commencement of either a particular or a superior estate, unless it be essential to the merits of the case.

[R60, §2954; C73, §2724; C97, §3634; C24, 27, 31, 35, 39, §**11213;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.12]

619.13 Injuries to goods.

In actions for injuries to goods and chattels, their kind or species shall be alleged.

[R60, §2956; C73, §2725; C97, §3635; C24, 27, 31, 35, 39, §**11214;** C46, 50, 54, 58, 62, 66, 71, 73,

75, 77, 79, 81, §619.13]

619.14 Injuries to real property.

In actions for injuries to real property, the petition shall describe the property, and when the injury is to an incorporeal hereditament, shall describe the property in respect of which the right is claimed, as well as the right itself, either by the numbers by which the property is designated in the national survey, or by its abuttals, or by its courses and distances, or by any name which it has acquired by reputation certain enough to identify it.

[R60, §2958; C73, §2726; C97, §3636; C24, 27, 31, 35, 39, §**11215;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.14]

619.15 Bond — breaches of.

In an action on a bond with conditions, the party suing thereon shall notice the conditions and allege the facts constituting the breaches relied on.

[C51, §1818; R60, §2960; C73, §2728; C97, §3638; C24, 27, 31, 35, 39, §**11217;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.15]

619.16 Immaterial errors disregarded.

The court, in every stage of an action, must disregard any error or defect in the proceeding which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

[R60, §2978; C73, §2690; C97, §3601; C24, 27, 31, 35, 39, §**11228;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §619.16]

Immaterial exceptions, §624.15

619.17 Contributory fault — burden.

A plaintiff does not have the burden of pleading and proving the plaintiff's freedom from contributory fault. If a defendant relies upon contributory fault of a plaintiff to diminish the amount to be awarded as compensatory damages, the defendant has the burden of pleading and proving fault of the plaintiff, if any, and that it was a proximate cause of the injury or damage. As used in this section, "plaintiff" includes a defendant filing a counterclaim or cross-petition, and the term "defendant" includes a plaintiff against whom a counterclaim or cross-petition has been filed.

[C66, 71, 73, 75, 77, 79, 81, §619.17]
84 Acts, ch 1293, §13

Comparative fault; see chapter 668

619.18 Money damages not to be stated.

In an action for personal injury or wrongful death, the amount of money damages demanded shall not be stated in the petition, original notice, or any counterclaim or cross-petition. However, a party filing the petition, original notice, counterclaim, or cross-petition shall certify to the court that the action meets applicable jurisdictional requirements for amount in controversy.

[C77, 79, 81, §619.18]
86 Acts, ch 1211, §37

619.19 Verification not required — affidavits.

Pleadings need not be verified unless otherwise required by statute. Where a pleading is verified, it is not necessary that subsequent pleadings be verified unless otherwise required by statute.

The signature of a party, the party's legal counsel, or any other person representing the party, to a motion, pleading, or other paper is a certificate that:

1. The person has read the motion, pleading, or other paper.

2. To the best of the person's knowledge, information, and belief, formed after reasonable inquiry, it is grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

3. It is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation.

If a motion, pleading, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

If a motion, pleading, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose upon the person signing, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee.

86 Acts, ch 1211, §38

CHAPTER 620

MOTIONS AND ORDERS

For Iowa court rules concerning motions,
see R.C.P. 1.431 – 1.435
For Iowa court rules concerning court action,
see R.C.P. 1.451 – 1.458
For Iowa court rules concerning pretrial procedure,
see R.C.P. 1.601 – 1.604

CHAPTER 621

SECURITY FOR COSTS

Deferral of costs in civil and criminal proceedings; see chapter 610

621.1 Bond for costs.
621.2 Nonresident intervenor — action in probate.
621.3 Procedure.
621.4 Dismissal for failure to furnish.
621.5 Becoming nonresident.
621.6 Additional security.
621.7 Prohibited sureties.
621.8 Judgment on bond.
621.9 Cash in lieu of bond.

621.1 Bond for costs.

If a defendant, at any time before answering shall make and file an affidavit stating that the defendant has a good defense in whole or in part, the plaintiff, or party bringing the action or proceeding, if the plaintiff or party is a nonresident of this state, or a private or foreign corporation, before any other proceedings in the action, must file in the clerk's office a bond with sureties to be approved by the clerk, in an amount to be fixed by the court, for the payment of all costs which may legally be adjudged against plaintiff.

[R60, §3442; C73, §2927; C97, §3847; S13, §3847; C24, 27, 31, 35, 39, §**11245;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §621.1]

621.2 Nonresident intervenor — action in probate.

A nonresident intervenor or party bringing an action in probate shall be required in like manner to give bond on motion of any party required to answer or defend.

[S13, §3847; C24, 27, 31, 35, 39, §**11246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §621.2]

621.3 Procedure.

The application for such security shall be by motion, filed with the case, and the facts supporting it must be shown by affidavits annexed thereto, which may be responded to by counter affidavits on or before the hearing of the motion, and each party shall file all the affidavits at once, and none thereafter.

[R60, §3448; C73, §2927; C97, §3847; S13, §3847; C24, 27, 31, 35, 39, §**11247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §621.3]

621.4 Dismissal for failure to furnish.

An action in which a bond for costs is required by sections 621.1 to 621.3, inclusive, shall be dismissed, if a bond is not given in such time as the court allows.

[R60, §3443; C73, §2928; C97, §3848; C24, 27, 31, 35, 39, §**11248;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §621.4]

621.5 Becoming nonresident.

If the plaintiff or any intervenor in an action, after its institution and at any time before its final determination, becomes a nonresident of this state, the plaintiff or intervenor may be required to give security for costs in the manner provided in sections 621.1 to 621.4, inclusive.

[R60, §3444; C73, §2929; C97, §3849; S13, §3849; C24, 27, 31, 35, 39, §**11249;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §621.5]

621.6 Additional security.

In an action in which a bond for costs has been given, the defendant may, at any time before trial, make a motion for additional security, and if on such motion the court is satisfied that the surety in the plaintiff's bond has removed from the state, or it is not sufficient for the amount thereof, it may dismiss the action unless, in a reasonable time to be fixed by the court, sufficient security is given by the plaintiff.

[R60, §3445; C73, §2930; C97, §3850; C24, 27, 31, 35, 39, §**11250;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §621.6]

621.7 Prohibited sureties.

No attorney or other officer of the court shall be received as security in any proceeding in court.

[R60, §3446; C73, §2931; C97, §3851; C24, 27, 31, 35, 39, §**11251;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §621.7]

Similar provision, §636.5

621.8 Judgment on bond.

After final judgment has been rendered in an action in which security for costs has been given as above required, the court may, on motion of the defendant or any other person having the right to such costs or any part thereof, render judgment summarily, in the name of the defendant or the defendant's legal representatives, against the sureties for costs, for the amount of costs adjudged against the plaintiff, or so much thereof as may remain unpaid.

[R60, §3447; C73, §2932; C97, §3852; C24, 27, 31, 35, 39, §**11252;** C46, 50, 54, 58, 62, 66, 71, 73,

75, 77, 79, 81, §621.8]

621.9 Cash in lieu of bond.

In all cases in which a bond for security for costs is required, the party required to give such security may deposit in cash the amount fixed in said bond with the clerk of the district court in lieu of said bond.

[S13, §3852-a; C24, 27, 31, 35, 39, §**11253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §621.9]

CHAPTER 622

EVIDENCE

For Iowa court rules concerning depositions, see R.C.P. 1.701 – 1.717
For Iowa court rules concerning perpetuation of testimony, see R.C.P. 1.721 – 1.728
Presumption of death of person missing in action, §633.517

GENERAL PRINCIPLES

622.1 Certification under penalty of perjury.
622.2 Credibility.
622.3 Interest.
622.4 Transaction with person since deceased or mentally ill. Repealed by 83 Acts, ch 37, §7.
622.5 Exceptions. Repealed by 83 Acts, ch 37, §7.
622.6 Depositions taken conditionally. Repealed by 83 Acts, ch 37, §7.
622.7 Husband or wife as witness. Repealed by 83 Acts, ch 37, §7.
622.8 Witness for each other.
622.9 Communications between husband and wife.
622.10 Communications in professional confidence — exceptions — required consent to release of medical records after commencement of legal action — application to court.
622.10A Tax advice — confidential communications.
622.11 Public officers.
622.12 Judge as witness. Repealed by 83 Acts, ch 37, §7.
622.13 Civil liability.
622.14 to 622.16 Repealed by 74 Acts, ch 1272, §4.
622.17 Previous conviction. Repealed by 83 Acts, ch 37, §7.
622.18 Moral character. Repealed by 83 Acts, ch 37, §7.
622.19 Whole of a writing or conversation. Repealed by 83 Acts, ch 37, §7.
622.20 Detached acts, declarations, or conversations. Repealed by 83 Acts, ch 37, §7.
622.21 Writing and printing.
622.22 Understanding of parties to agreement.
622.23 Historical and scientific works.
622.24 Subscribing witness — substitute proof.
622.25 Handwriting.
622.26 Private writing — acknowledgment.
622.27 Entries and writings of deceased person.
622.28 Writing or record — when admissible — absence of record — effect.
622.29 Facsimiles of signatures.
622.30 Photographic copies — originals destroyed.
622.31 Repealed by 65 Acts, ch 413, §10102.
622.32 Statute of frauds.
622.33 Exception.
622.34 Contract not denied in the pleadings.
622.35 Party made witness.
622.36 Instruments affecting real estate — adoption of minors.
622.37 Record or certified copy. Repealed by 83 Acts, ch 37, §7.
622.38 Absence of seal. Repealed by 83 Acts, ch 37, §7.
622.39 Retrospective. Repealed by 83 Acts, ch 37, §7.
622.40 Presumption rebuttable. Repealed by 83 Acts, ch 37, §7.
622.41 United States and state patents.
622.42 Field notes and plats.
622.43 Records and entries in public offices.
622.44 Copies of books of original entries.
622.45 Additional entries.
622.46 Officer to give copies of records.
622.47 Maps in office of surveyor general.
622.48 Certificate as to loss of paper.
622.49 Duplicate receipt of receiver of land office.
622.50 Certificate of register or receiver.
622.51 Official signature presumed genuine.
622.51A Computer printouts.
622.52 Effect on rules.
622.53 Judicial record — state or federal courts.
622.54 Of a justice of the peace.
622.55 Of a foreign country.
622.56 Presumption of regularity.
622.57 Executive acts.
622.58 Proceedings of legislature.
622.59 Printed copies of statutes.
622.60 Written law or public writing.
622.61 Foreign unwritten law.
622.62 Ordinances of city.
622.63 Subpoenas.
622.64 Proof of service — costs.
622.65 To whom directed — duces tecum.
622.66 How far compelled to attend.
622.67 Deposit — effect.
622.68 Thirty-mile limit. Repealed by 83 Acts, ch 186, §10201, 10203.
622.69 Witness fees.
622.70 Attorney, juror, or officer.

622.71 Peace officer.
622.71A Volunteer fire fighters — witness compensation.
622.72 Expert witnesses — fee.
622.73 Fees payable by county or city. Repealed by 83 Acts, ch 186, §10201, 10203.
622.74 Fees in advance.
622.75 Reimbursement to party, county or city.
622.76 Failure to attend or testify — liability.
622.77 Proceedings for contempt.
622.78 Serving subpoena.
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622.97 Authorized use.
622.98 Transcript must be complete.
622.99 Certification.
622.100 Sworn verification.
622.101 Identification of exhibits.

DEPOSITIONS

622.102 Refusal to appear or testify.
622.103 Repealed by 70 Acts, ch 1268, §4.
622.104 Witness fees.

DOCUMENTS FILED WITH STATE OR DIVISIONS

622.105 Evidence of date mailed.
622.106 Certified or registered mail.

GENERAL PRINCIPLES

622.1 Certification under penalty of perjury.

1. When the laws of this state or any lawful requirement made under them requires or permits a matter to be supported by a sworn statement written by the person attesting the matter, the person may attest the matter by an unsworn written statement if that statement recites that the person certifies the matter to be true under penalty of perjury under the laws of this state, states the date of the statement's execution and is subscribed by that person. This section does not apply to acknowledgments where execution is required by law, to a document which is to be recorded under chapter 558 or to a self-proved will under section 633.279, subsection 2.

2. The certification described in subsection 1 may be in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

. . . .
Date Signature

84 Acts, ch 1048, §1

622.2 Credibility.

Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of lessening its credibility.

[C51, §2389; R60, §3979; C73, §3637; C97, §4602; C24, 27, 31, 35, 39, §**11255;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.2]

622.3 Interest.

No person offered as a witness in any action or proceeding in any court, or before any officer acting judicially, shall be excluded by reason of the person's interests in the event of the action or proceeding, or because the person is a party thereto, except as provided in this chapter.

[R60, §3980; C73, §3638; C97, §4603; C24, 27, 31, 35, 39, §**11256;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.3]

622.4 Transaction with person since deceased or mentally ill. Repealed by 83 Acts, ch 37, § 7.

622.5 Exceptions. Repealed by 83 Acts, ch 37, § 7.

622.6 Depositions taken conditionally. Repealed by 83 Acts, ch 37, § 7.

622.7 Husband or wife as witness. Repealed by 83 Acts, ch 37, § 7.

622.8 Witness for each other.

In all civil and criminal cases the husband and wife may be witnesses for each other.

[C51, §2391; R60, §3983; C73, §3641; C97, §4606; S13, §4606; C24, 27, 31, 35, 39, §**11261;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.8]

622.9 Communications between husband and wife.

Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal in testimony any such communication made while the marriage subsisted.

[C51, §2392; R60, §3984; C73, §3642; C97, §4607; C24, 27, 31, 35, 39, §**11262;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.9]

622.10 Communications in professional confidence — exceptions — required consent to release of medical records after commencement of legal action — application to court.

1. A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

2. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician assistants, advanced registered nurse practitioners, or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.

3. *a.* In a civil action in which the condition of the plaintiff in whose favor the prohibition is made is an element or factor of the claim or defense of the adverse party or of any party claiming through or under the adverse party, the adverse party shall make a written request for records relating to the condition alleged upon the plaintiff's counsel for a legally sufficient patient's waiver under federal and state law. Upon receipt of a written request, the plaintiff shall execute the patient's waiver and release it to the adverse party making the request within sixty days of receipt of the written request. The patient's waiver may require a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to do all of the following:

(1) Provide a complete copy of the patient's records including, but not limited to, any reports or diagnostic imaging relating to the condition alleged.

(2) Consult with the attorney for the adverse party prior to providing testimony regarding the plaintiff's medical history and the condition alleged and opinions regarding health etiology and prognosis for the condition alleged subject to the limitations in paragraph *"c"*.

b. If a plaintiff fails to sign a waiver within the prescribed time period, the court may order disclosure or compliance. The failure of a party to comply with the court's order may be grounds for dismissal of the action or any other relief authorized under the rules of civil procedure.

c. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records, provides information during consultation, or otherwise responds in good faith to a request pursuant to paragraph *"a"* shall be immune with respect to all civil or criminal penalties, claims, or actions of any kind with respect to this section.

d. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records or consults with the counsel for the adverse party shall be entitled to charge a reasonable fee for production of the records, diagnostic imaging, and consultation. Any party seeking consultation shall be responsible for payment of all charges. The fee for copies of any records shall be based upon actual cost of production.

e. Defendant's counsel shall provide a written notice to plaintiff's counsel in a manner consistent with the Iowa rules of civil procedure providing for notice of deposition at least ten days prior to any meeting with plaintiff's physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional. Plaintiff's counsel has the right to be present at all such meetings, or participate in telephonic communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional and counsel for the defendant. Plaintiff's counsel may seek a protective order structuring all communication by making application to the court at any time.

f. The provisions of this subsection do not apply to actions or claims brought pursuant to chapter 85, 85A, or 85B.

4. If an adverse party desires the oral deposition, either discovery or evidentiary, of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental

health professional or desires to call a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional as a witness at the trial of the action, the adverse party shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant permission unless the court finds that the evidence sought does not relate to the condition alleged and shall fix a reasonable fee to be paid to the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional by the party taking the deposition or calling the witness.

5. For the purposes of this section, *"mental health professional"* means a psychologist licensed under chapter 154B, a registered nurse licensed under chapter 152, a social worker licensed under chapter 154C, a marital and family therapist licensed under chapter 154D, a mental health counselor licensed under chapter 154D, or an individual holding at least a master's degree in a related field as deemed appropriate by the board of behavioral science examiners.

6. A qualified school guidance counselor, who has met the certification and accreditation standards of the department of education as provided in section 256.11, subsection 10, who obtains information by reason of the counselor's employment as a qualified school guidance counselor shall not be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

[C51, §2393, 2394; R60, §3985, 3986; C73, §3643; C97, §4608; S13, §4608; C24, 27, 31, 35, 39, §**11263;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.10; 82 Acts, ch 1242, §1]

88 Acts, ch 1134, §107; 88 Acts, ch 1262, §10; 91 Acts, ch 229, §11; 97 Acts, ch 197, §8, 16

622.10A Tax advice — confidential communications.

1. With respect to communications involving tax advice between a taxpayer and a federally authorized tax practitioner, the same protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to that communication to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

2. The confidentiality privilege under this section applies to either of the following:

a. A noncriminal tax matter before the Iowa department of revenue and finance.

b. A noncriminal tax proceeding in federal or state court brought by or against the state of Iowa.

3. As used in this section:

a. "Federally authorized tax practitioner" means an individual who is authorized under federal law to practice before the Internal Revenue Service if such practice is subject to federal regulation under 31 U.S.C. § 330.

b. "Tax advice" means advice given by an individual with respect to a matter which is within the scope of the individual's authority to practice described in paragraph *"a"*.

4. The confidentiality privilege under this section shall not apply to a written communication between a federally authorized tax practitioner and a director, shareholder, officer, employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of that corporation in a tax shelter as defined in section 6662(d)(2)(C)(iii) of the Internal Revenue Code.

99 Acts, ch 25, §1

622.11 Public officers.

A public officer cannot be examined as to communications made to the public officer in official confidence, when the public interests would suffer by the disclosure.

[C51, §2395; R60, §3987; C73, §3644; C97, §4609; C24, 27, 31, 35, 39, §**11264;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.11]

622.12 Judge as witness. Repealed by 83 Acts, ch 37, § 7.

622.13 Civil liability.

No witness is excused from answering a question upon the mere ground that the witness would be thereby subjected to a civil liability.

[C51, §2396; R60, §3988; C73, §3646; C97, §4611; C24, 27, 31, 35, 39, §**11266;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.13]

622.14 to 622.16 Repealed by 74 Acts, ch 1272, § 4.

622.17 Previous conviction. Repealed by 83 Acts, ch 37, § 7.

622.18 Moral character. Repealed by 83 Acts, ch 37, § 7.

622.19 Whole of a writing or conversation. Repealed by 83 Acts, ch 37, § 7.

622.20 Detached acts, declarations, or conversations. Repealed by 83 Acts, ch 37, § 7.

622.21 Writing and printing.

When an instrument consists partly of written and partly of printed form, the former controls the latter, if the two are inconsistent.

[C51, §2400; R60, §3993; C73, §3651; C97, §4616; C24, 27, 31, 35, 39, §**11274;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.21]

622.22 Understanding of parties to agreement.

When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which a party had reason to suppose the other understood it.

[C51, §2401; R60, §3994; C73, §3652; C97, §4617; C24, 27, 31, 35, 39, §**11275;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.22]

622.23 Historical and scientific works.

Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest therein stated.

[C51, §2402; R60, §3995; C73, §3653; C97, §4618; C24, 27, 31, 35, 39, §**11276;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.23]

622.24 Subscribing witness — substitute proof.

When a subscribing witness denies or does not recollect the execution of the instrument to which the witness' name is subscribed as such witness, its execution may be proved by other evidence.

[C51, §2403; R60, §3996; C73, §3654; C97, §4619; C24, 27, 31, 35, 39, §**11277;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.24]

622.25 Handwriting.

Evidence respecting handwriting may be given by experts, by comparison, or by comparison by the jury, with writings of the same person which are proved to be genuine.

[C51, §2404; R60, §3997; C73, §3655; C97, §4620; C24, 27, 31, 35, 39, §**11278;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.25]

622.26 Private writing — acknowledgment.

Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof.

[C51, §2407; R60, §4000; C73, §3656; C97, §4621; C24, 27, 31, 35, 39, §**11279;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.26]

622.27 Entries and writings of deceased person.

The entries and other writings of a person deceased, who was in a position to know the facts therein stated, made at or near the time of the transaction, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it, or when made in a professional capacity or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law.

[C51, §2405; R60, §3998; C73, §3657; C97, §4622; C24, 27, 31, 35, 39, §**11280;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.27]

622.28 Writing or record — when admissible — absence of record — effect.

Any writing or record, whether in the form of an entry in a book, or otherwise, including electronic means and interpretations thereof, offered as memoranda or records of acts, conditions or events to prove the facts stated therein, shall be admissible as evidence if the judge finds that they were made in the regular course of a business at or about the time of the act, condition or event recorded, and that the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness, and if the judge finds that they are not excludable as evidence because of any rule of admissibility of evidence other than the hearsay rule.

Evidence of the absence of a memorandum or record from the memoranda or records of a business of an asserted act, event or condition, shall be admissible as evidence to prove the nonoccurrence of the act or event, or the nonexistence of the condition, if the judge finds that it was in the regular course of that business to make such memoranda of all such acts, events or conditions at the time thereof or within a reasonable time thereafter, and to preserve them.

The term business, as used in this section, includes business, profession, occupation, and calling of every kind.

[C51, §2406; R60, §3999; C73, §3658; C97, §4623; S13, §4623; C24, 27, 31, 35, 39, §**11281, 11282;** C46, 50, 54, 58, §622.28, 622.29; C62, 66, 71, 73, 75, 77, 79, 81, §622.28]

622.29 Facsimiles of signatures.

1. The judicial council shall prescribe rules and procedures for the use of a signature facsimile by a justice of the supreme court or a judge of the court of appeals, or a district judge, district associate judge, magistrate, clerk of the district court, county attorney, court reporter, or a law enforcement officer in all instances where a law of this state requires a written signature.

2. The judicial council shall prescribe rules and procedures for the use of a signature facsimile by a person other than an individual named in

subsection 1, when directed and authorized by an individual named in subsection 1.

83 Acts, ch 186, §10112, 10201

See Iowa Ct.R. 22.30

622.30 Photographic copies — originals destroyed.

1. In all cases where depositions are taken by either method provided by law, outside of the county in which the case is for trial where books of account are competent evidence in the case, the party desiring to offer the entries of said books as evidence may cause the same to be photographed by or under the direction of the officer taking the deposition and such photographic copy when certified by such officer with the officer's seal attached shall be attached to the deposition, and if the record shows affirmatively the preliminary proof required by section 622.28, such copy shall be admitted in evidence with the same force and effect as the original.

2. If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry print, representation or combination thereof, of any act, transaction, occurrence or event and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, electronic imaging, electronic data processing, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law, except if the originals are records, reports, or other papers of a county officer they shall not be destroyed until they have been preserved for ten years. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original recording, copy, or reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

[S13, §4623; C24, 27, 31, 35, 39, §**11283;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.30]

91 Acts, ch 83, §1

622.31 Repealed by 65 Acts, ch 413, § 10102.

622.32 Statute of frauds.

Except when otherwise specially provided, no evidence of the following enumerated contracts is competent, unless it be in writing and signed by the party charged or by the party's authorized agent:

1. Those made in consideration of marriage.

2. Those wherein one person promises to answer for the debt, default, or miscarriage of another, including promises by executors to pay the debt of the decedent from their own estate.

3. Those for the creation or transfer of any interest in lands, except leases for a term not exceeding one year.

4. Those that are not to be performed within one year from the making thereof.

[C51, §2409, 2410; R60, §4006, 4007; C73, §3663, 3664; C97, §4625; C24, 27, 31, 35, 39, §**11285;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.32]

Declarations of trust, §557.10

Party walls, §563.12

622.33 Exception.

The provisions of subsection 3 of section 622.32 do not apply where the purchase money, or any portion thereof, has been received by the vendor, or when the vendee, with the actual or implied consent of the vendor, has taken and held possession of the premises under and by virtue of the contract, or when there is any other circumstance which, by the law heretofore in force, would have taken the case out of the statute of frauds.

[C51, §2411; R60, §4008; C73, §3665; C97, §4626; C24, 27, 31, 35, 39, §**11286;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.33]

622.34 Contract not denied in the pleadings.

The above regulations, relating merely to the proof of contracts, shall not prevent the enforcement of those not denied in the pleadings, except in cases when the contract is sought to be enforced, or damages recovered for the breach thereof, against some person other than the person who made it.

[C51, §2412; R60, §4009; C73, §3666; C97, §4627; C24, 27, 31, 35, 39, §**11287;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.34]

622.35 Party made witness.

The oral evidence of the maker against whom the unwritten contract is sought to be enforced shall be competent to establish the same.

[C51, §2413; R60, §4010; C73, §3667; C97, §4628; C24, 27, 31, 35, 39, §**11288;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.35]

622.36 Instruments affecting real estate — adoption of minors.

Every instrument in writing affecting real estate, or the adoption of minors, which is acknowledged or proved and certified as required, may be read in evidence without further proof.

[C51, §1227; R60, §2235, 4001; C73, §3659; C97, §4629; C24, 27, 31, 35, 39, §**11289;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.36]

622.37 Record or certified copy. Repealed by 83 Acts, ch 37, § 7.

622.38 Absence of seal. Repealed by 83 Acts, ch 37, § 7.

622.39 Retrospective. Repealed by 83 Acts, ch 37, § 7.

622.40 Presumption rebuttable. Repealed by 83 Acts, ch 37, § 7.

622.41 United States and state patents.
United States and state patents for land in the state, and duly certified copies thereof from the general land office of the United States, or the state land office, that have been or may be recorded in the recorder's office of the county in which the land is situated, shall be matters of record and such record, and copies thereof, certified to by the recorder, may be received and read in evidence in all courts, with like effect as the record of other instruments, and other certified copies of original papers recorded in the recorder's office; and such patents and certified copies may be recorded without an acknowledgment.
[C97, §4633; S13, §4633; C24, 27, 31, 35, 39, §**11294;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.41]

622.42 Field notes and plats.
A copy of the field notes of any surveyor, or a plat made by the surveyor and certified under oath as correct, may be received as evidence to show the shape or dimensions of a tract of land, or any other fact the ascertainment of which requires the exercise of scientific skill or calculation only.
[C51, §2431; R60, §4046; C73, §3701; C97, §4634; C24, 27, 31, 35, 39, §**11295;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.42]

622.43 Records and entries in public offices.
Duly certified copies of all records and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original record or papers so filed.
[C51, §2432; R60, §4047; C73, §3702; C97, §4635; C24, 27, 31, 35, 39, §**11296;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.43]
See Authentication of Records, preceding U.S. Const., Vol I
Similar provision, §446.36

622.44 Copies of books of original entries.
Copies of entries made in the book of "copies of original entries", kept as a record in the office of the county recorder, when such book has been compared with the originals and certified as true copies by the register of the United States land office at which such original entries were made, may, when certified by the recorder to be true copies, be received and read in evidence in all of the courts, with like effect as certified copies of original papers recorded in the recorder's office.
[R60, §4049; C73, §3704; C97, §4636; C24, 27, 31, 35, 39, §**11297;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.44]

622.45 Additional entries.
Copies of additional entries shall, from time to time, be procured as made, certified as required in section 622.44, and entered in the book of "copies of original entries", until all the lands in the county have been entered and so certified.
[R60, §4050; C73, §3705; C97, §4637; C24, 27, 31, 35, 39, §**11298;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.45]

622.46 Officer to give copies of records.
Every officer having the custody of a public record or writing shall furnish any person, upon demand and payment of the legal fees therefor, a certified copy thereof.
[C51, §2433; R60, §4051; C73, §3706; C97, §4638; C24, 27, 31, 35, 39, §**11299;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.46]

622.47 Maps in office of surveyor general.
Copies of all maps, official letters, and other documents in the office of the surveyor general of the United States, when certified by that officer according to law, shall be received by the courts of this state as presumptive evidence of the existence and contents of the originals, and that they are copies of the originals, notwithstanding such maps, official letters, or other papers, may themselves be copied.
[R60, §4052; C73, §3707; C97, §4639; C24, 27, 31, 35, 39, §**11300;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.47]

622.48 Certificate as to loss of paper.
The certificate of a public officer, that the public officer has made diligent and ineffectual search for a paper in the officer's office, is of the same efficacy in all cases as if such officer had personally appeared and sworn to such facts.
[C51, §2434; R60, §4053; C73, §3708; C97, §4640; C24, 27, 31, 35, 39, §**11301;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.48]

622.49 Duplicate receipt of receiver of land office.
The usual duplicate receipt of the receiver of any

land office, or the certificate of such receiver that the books of the receiver's office show the sale of a tract of land to a certain individual, is proof of title, equivalent to a patent, against all but the holder of an actual patent.

[C51, §2435; R60, §4054; C73, §3709; C97, §4641; C24, 27, 31, 35, 39, §**11302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.49]

622.50 Certificate of register or receiver.

The certificate of the register or receiver of any land office of the United States, as to the entry of land within the register's or receiver's district, shall be presumptive evidence of title, in the person entering, to the real estate therein named.

[R60, §4055; C73, §3710; C97, §4642; C24, 27, 31, 35, 39, §**11303;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.50]

622.51 Official signature presumed genuine.

In the cases contemplated in sections 622.41 to 622.50, the signature of the officer shall be presumed to be genuine until the contrary is shown.

[C51, §2436; R60, §4056; C73, §3711; C97, §4643; C24, 27, 31, 35, 39, §**11304;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.51]

622.51A Computer printouts.

For purposes of chapters 714 and 716, computer printouts shall be admitted as evidence of any computer software, program, or data contained in or taken from a computer, notwithstanding an applicable rule of evidence to the contrary.

2000 Acts, ch 1201, §5

622.52 Effect on rules.

Sections 622.53 through 622.63, are not a limitation of the Iowa rules of evidence.

[C51, §2437; R60, §4057; C73, §3712; C97, §4644; C24, 27, 31, 35, 39, §**11305;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.52]

83 Acts, ch 37, §3

622.53 Judicial record — state or federal courts.

A judicial record of this state, including the filed certified shorthand notes of the official court reporter as transcribed or a court of the United States may be proved by the production of the original, or a copy of it certified by the clerk or person having the legal custody of it, authenticated by the custodian's seal of office, if there is a seal. That of another state may be proved by the attestation of the clerk and the seal of the court annexed, if there is a seal, together with a certificate of a judge, chief justice, or presiding magistrate that the attestation is in due form of law.

[C51, §2438; R60, §4058; C73, §3713; C97, §4645; C24, 27, 31, 35, 39, §**11306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.53]

83 Acts, ch 37, §4

622.54 Of a justice of the peace.

The official certificate of a justice of the peace of any of the United States to any judgment and the preliminary proceedings before the justice of the peace, supported by the official certificate of the clerk of any court of record within the county in which such justice resides, stating that the justice is an acting justice of the peace of that county, and that the signature to the justice's certificate is genuine, is sufficient evidence of such proceedings and judgment.

[C51, §2439; R60, §4059; C73, §3714; C97, §4646; C24, 27, 31, 35, 39, §**11307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.54]

622.55 Of a foreign country.

Copies of records and proceedings in the courts of a foreign country may be admitted in evidence upon being authenticated as follows:

1. By the official attestation of the clerk or officer in whose custody such records are legally kept.
2. By the certificate of one of the judges or magistrates of such court, that the person so attesting is the clerk or officer legally entrusted with the custody of such records, and that the signature to the clerk's or officer's attestation is genuine.
3. By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal, stating that such court is duly constituted, specifying the general nature of its jurisdiction, and verifying the seal of the court.

[C51, §2440; R60, §4060; C73, §3715; C97, §4647; C24, 27, 31, 35, 39, §**11308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.55]

622.56 Presumption of regularity.

The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular, except in regard to matters required to be entered of record, and except where otherwise expressly declared.

[C51, §2512; R60, §4120; C73, §3669; C97, §4648; C24, 27, 31, 35, 39, §**11309;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.56]

622.57 Executive acts.

Acts of the executive of the United States, or of this or any other state of the Union, or of a foreign government, are proved by the records of the state department of the respective governments, or by public documents purporting to have been printed by order of the legislatures of those governments, respectively, or by either branch thereof.

[C51, §2441; R60, §4061; C73, §3716; C97, §4649; C24, 27, 31, 35, 39, §**11310;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.57]

622.58 Proceedings of legislature.

The proceedings of the legislature of this or any other state of the Union, or of the United States, or of any foreign government, are proved by the journals of those bodies, respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceeding was had, or by a copy purporting to have been printed by its order.

[C51, §2442; R60, §4062; C73, §3717; C97, §4650; C24, 27, 31, 35, 39, §**11311;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.58]

622.59 Printed copies of statutes.

Printed copies of the statute laws of this or any other of the United States, or of Congress, or of any foreign government, purporting or proved to have been published under the authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this state as presumptive evidence of such laws.

[C51, §2443; R60, §4063; C73, §3718; C97, §4651; C24, 27, 31, 35, 39, §**11312;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.59]

622.60 Written law or public writing.

The public seal of the state or county, affixed to a copy of the written law or other public writing, is admissible as evidence of such law or writing, respectively.

[C51, §2444; R60, §4064; C73, §3719; C97, §4652; C24, 27, 31, 35, 39, §**11313;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.60]

622.61 Foreign unwritten law.

The unwritten laws of any other state or government may be proved as facts by parol evidence, or by the books of reports of cases adjudged in their courts.

[C51, §2444; R60, §4064; C73, §3719; C97, §4652; C24, 27, 31, 35, 39, §**11314;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.61]

622.62 Ordinances of city.

1. The printed copies of a city code and of supplements to it which are purported or proved to have been compiled pursuant to section 380.8 shall be admitted in the courts of this state as presumptive evidence of the ordinances contained therein. When properly pleaded, the courts of this state shall take judicial notice of ordinances contained in a city code or city code supplement.

2. The printed copies of an ordinance of any city which has not been compiled in a city code or a supplement pursuant to section 380.8 but which has been published by authority of the city, or transcripts of any ordinance, act, or proceeding thereof recorded in any book, or entries on any minutes or journals kept under direction of the city, and certified by the city clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes, or journals would be received, and with the same effect. The clerk shall furnish such transcripts, and be entitled to charge therefor at the rate that the clerk of the district court is entitled to charge for transcripts of records from that court.

3. The actions of any court of this state in taking judicial notice of the existence and content of a city ordinance in any proceeding which was commenced between the first day of July, 1973 and April 17, 1976 shall be conclusively presumed to be lawful, and to the extent required by this section this section is retroactive.

[R60, §1076; C73, §3720; C97, §4653; C24, 27, 31, 35, 39, §**11315;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.62]

622.63 Subpoenas.

The clerks of the several courts shall, on application of any person having a cause or matter pending in court, issue a subpoena for witnesses under the seal of the court, inserting all the names required by the applicant in one subpoena, if practicable, which may be served by the sheriff of the county, or by the party or any other person.

[R60, §4012; C73, §3671; C97, §4658; C24, 27, 31, 35, 39, §**11320;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.63]

622.64 Proof of service — costs.

When a subpoena is served by any person other than the sheriff or constable, proof thereof shall be shown by affidavit; but no costs for serving the same shall be allowed.

[R60, §4012; C73, §3671; C97, §4658; C24, 27, 31, 35, 39, §**11321;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.64]

622.65 To whom directed — duces tecum.

The subpoena shall be directed to the person therein named, requiring the person to attend at a particular time or place to testify as a witness, and it may contain a clause directing the witness to bring with the witness any book, writing, or other thing under the witness' control, which the witness is bound by law to produce as evidence.

[C51, §2415; R60, §4013; C73, §3672; C97, §4659; C24, 27, 31, 35, 39, §**11322;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.65]

622.66 How far compelled to attend.

Witnesses in civil cases cannot be compelled to attend the district or appellate court out of the state where they are served.

[C51, §2416; R60, §4014; C73, §3673; C97, §4660; C24, 27, 31, 35, 39, §**11323;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.66]

87 Acts, ch 137, §1

Limit on taxation of costs, §625.2

622.67 Deposit — effect.

The court, for good cause shown, upon deposit with the clerk of the court of sufficient money to pay the fee and mileage of a witness, may order the clerk to issue a subpoena requiring the attendance of the witness from a greater distance within the state. The subpoena shall show that it is issued under this section. If the party requesting the subpoena is a county or the state, the court may order the issuance of the subpoena without the deposit of the fee and mileage.

[C24, 27, 31, 35, 39, §**11324;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.67]

83 Acts, ch 186, §10113, 10201

622.68 Thirty-mile limit. Repealed by 83 Acts, ch 186, § 10201, 10203. See chapter 602, article 11.

622.69 Witness fees.

Witnesses shall receive ten dollars for each full day's attendance, and five dollars for each attendance less than a full day, and mileage expenses pursuant to section 602.1509 for each mile actually traveled.

Witness fees to be received by an inmate, while in the custody of the department of corrections, shall be applied either toward payment of any restitution owed by the inmate or to the crime victim compensation program established in sections 915.80 through 915.94.

[C51, §2544; R60, §4153; C73, §3814; C97, §4661; C24, 27, 31, 35, 39, §**11326;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.69; 81 Acts, ch 191, §2]

93 Acts, ch 46, §3; 96 Acts, ch 1163, §3; 98 Acts, ch 1090, §74, 84

622.70 Attorney, juror, or officer.

An attorney, juror, or officer, who is in habitual attendance on the court for the court session at which the attorney, juror, or officer is examined as a witness, shall be entitled to but one day's attendance.

[C51, §2544; R60, §4153; C73, §3814; C97, §4661; C24, 27, 31, 35, 39, §**11327;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.70]

622.71 Peace officer.

No peace officer who receives a regular salary, or any other public official shall, in any case, receive fees as a witness for testifying in regard to any matter coming to the officer's or official's knowledge in the discharge of the officer's or official's official duties in such case in a court in the county of the officer's or official's residence, except police officers who are called as witnesses when not on duty.

[C97, §4661; C24, 27, 31, 35, 39, §**11328;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.71]

622.71A Volunteer fire fighters — witness compensation.

A volunteer fire fighter, as defined in section 85.61, who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction which the fire fighter perceived or investigated in the course of duty as a volunteer fire fighter, shall receive reasonable compensation as determined by the court from the party who subpoenaed the volunteer fire fighter. The daily compensation shall be equal to the average daily wage paid to full-time fire fighters of the same rank within the judicial district. However, the requirements of this section are not applicable if a volunteer fire fighter will receive the volunteer fire fighter's regular salary or other compensation pursuant to the policy of the volunteer fire fighter's regular employer, for the period of time required for travel to and from where the court or other tribunal is located and while the volunteer fire fighter is required to remain at that place pursuant to the subpoena.

95 Acts, ch 19, §1

622.72 Expert witnesses — fee.

Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, shall receive additional compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed one hundred fifty dollars per day while so employed.

[C73, §3814; C97, §4661; C24, 27, 31, 35, 39, §**11329;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.72]

Superintendent of state hospital, §226.5

622.73 Fees payable by county or city. Repealed by 83 Acts, ch 186, § 10201, 10203.

622.74 Fees in advance.

Witnesses, except parties to the action, are entitled to receive in advance, if demanded when subpoenaed, their traveling fees to and from the court, with their fees for one day's attendance. At the commencement of each day after the first, they are further entitled, on demand, to receive the legal fees for that day in advance. If not thus paid, they are not compelled to attend or remain as witnesses.

[C51, §2417; R60, §4015; C73, §3674; C97, §4662; C24, 27, 31, 35, 39, §**11331;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.74]

See chapter 602, article 11

622.75 Reimbursement to party, county or city.

When a county or city or any party has paid the fees of any witness, and the same is afterward collected from the defendant or adverse party, the county, city or person so paying the same shall, upon the production of the receipt of such witness or other satisfactory evidence, be entitled to such fee.

[C73, §3817; C97, §4663; C24, 27, 31, 35, 39, §**11332;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.75]

622.76 Failure to attend or testify — liability.

For a failure to obey a valid subpoena without a sufficient cause or excuse, or for a refusal to testify after appearance, the delinquent is guilty of a contempt of court and subject to be proceeded against by attachment. The delinquent is also liable to the party by whom the delinquent was subpoenaed for all consequences of such delinquency, with fifty dollars additional damages.

[C51, §2418; R60, §4016; C73, §3675; C97, §4664; C24, 27, 31, 35, 39, §**11333;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.76]

Contempts, chapter 665

622.77 Proceedings for contempt.

Before a witness is so liable for a contempt for not appearing, the witness must be served personally with the process, by reading it to the witness, and leaving a copy thereof with the witness, if demanded, and it must be shown that the fees and traveling expenses allowed by law were tendered to the witness, if required; or it must appear that a copy of the subpoena, if left at the witness' usual place of residence, came into the witness' hands, with the fees and traveling expenses above mentioned.

[C51, §2419; R60, §4017; C73, §3676; C97, §4665; C24, 27, 31, 35, 39, §**11334;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.77]

622.78 Serving subpoena.

If a witness hides, or in any manner attempts to avoid being personally served with a subpoena, any sheriff having the subpoena may use all necessary and proper means to serve the same, and may for that purpose break into any building or other place where the witness is to be found, having first made known the sheriff's business and demanded admission.

[C51, §2420; R60, §4018; C73, §3677; C97, §4666; C24, 27, 31, 35, 39, §**11335;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.78]

622.79 When party fails to obey subpoena.

In addition to the above remedies, if a party to an action in the party's own right, on being duly subpoenaed, fails to appear and give testimony, the other party may, at the other party's election, have a continuance of the cause at the cost of the delinquent.

[C51, §2421; R60, §4024; C73, §3683; C97, §4667; C24, 27, 31,35, 39, §**11336;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.79]

622.80 Pleading taken true.

Or if the delinquent party shows by the party's own testimony, or otherwise, that the party could not have a full personal knowledge of the transaction, the court may order the party's pleading to be taken as true; subject to be reconsidered by the court within a reasonable time thereafter, upon satisfactory reasons being shown for the delinquency.

[C51, §2422; R60, §4025; C73, §3684; C97, §4668; C24, 27, 31, 35, 39, §**11337;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.80]

622.81 Authority to subpoena.

Any officer or board authorized to hear evidence shall have authority to subpoena witnesses and compel them to attend and testify, in the same manner as officers authorized to take depositions.

[C97, §4669; C24, 27, 31, 35, 39, §**11338;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.81]

Enforcing attendance, §622.84, 622.102

622.82 Prisoner produced.

A person confined in a penitentiary or jail in the state may, by order of any court of record, be required to be produced for oral examination in the county where the person is imprisoned, and in a criminal case in any county in the state; but in all other cases the person's examination must be by a deposition.

[R60, §4019; C73, §3678; C97, §4670; C24, 27, 31, 35, 39, §**11339;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.82]

622.83 Deposition of.

While a prisoner's deposition is being taken, the prisoner shall remain in the custody of the officer having the prisoner in charge, who shall afford reasonable facilities for the taking thereof.

[R60, §4020; C73, §3679; C97, §4671; C24, 27, 31, 35, 39, §**11340;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.83]

622.84 Subpoenas — enforcing obedience.

1. When, by the laws of this or any other state or country, testimony may be taken in the form of depositions to be used in any of the courts thereof, the person authorized to take the depositions may issue subpoenas for witnesses, which must be served by the same officers and returned in the same manner as is required in district court, and

obedience to the subpoenas may be enforced in the same way and to the same extent, or the person may report the matter to the district court who may enforce obedience as though the action was pending in the district court.

2. If a witness is located in any other state or country and refuses to voluntarily submit to the deposition, the court of jurisdiction in this state may, upon the application of any party, petition the court of competent jurisdiction in the foreign jurisdiction where the witness is located to issue subpoenas or make other appropriate orders to compel the witness' attendance at the deposition.

[C51, §2477 – 2479; R60, §4021 – 4023; C73, §3680 – 3682; C97, §4672; C24, 27, 31, 35, 39, §**11341;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.84]

89 Acts, ch 230, §22; 90 Acts, ch 1041, §1

Similar provision, §622.102

622.85 Affidavits — before whom made.

An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state.

[R60, §4030, 4035; C73, §3689, 3690; C97, §4673; C24, 27, 31, 35, 39, §**11342;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.85]

Perpetuating testimony, R.C.P. 1.721 et seq.

622.86 Foreign affidavits.

Those taken out of the state before any judge or clerk of a court of record, or before a notary public, or a commissioner appointed by the governor of this state to take acknowledgment of deeds in the state where such affidavit is taken, are of the same credibility as if taken within the state.

[C51, §2475; R60, §4036; C73, §3691; C97, §4674; C24, 27, 31, 35, 39, §**11343;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.86]

622.87 How affidavits compelled.

When a person is desirous of obtaining the affidavit of another who is unwilling to make the same fully, the person may apply by petition to any officer competent to take depositions, stating the object for which the person desires the affidavit.

[C51, §2480; R60, §4038; C73, §3692; C97, §4675; C24, 27, 31, 35, 39, §**11344;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.87]

622.88 Subpoena issued.

If the officer is satisfied that the object is legal and proper, the officer shall issue a subpoena to bring the witness before the officer, and, if the witness fails then to make a full affidavit of the facts within the witness' knowledge to the extent required of the witness by the officer, the latter may proceed to take the witness' deposition by question and answer in the usual way, which may be used instead of an ordinary affidavit.

[C51, §2481; R60, §4039; C73, §3693; C97, §4676; C24, 27, 31, 35, 39, §**11345;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.88]

622.89 Notice.

The officer may, in the officer's discretion, require notice of the taking of such affidavit or deposition to be given to any person interested in the subject matter, and allow the person to be present and cross-examine such witness.

[C51, §2482; R60, §4040; C73, §3694; C97, §4677; C24, 27, 31, 35, 39, §**11346;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.89]

622.90 Cross-examination.

The court or officer to whom any affidavit is presented as a basis for some action, in relation to which any discretion is lodged with such court or officer, may require the witness to be brought before it or the officer and submit to a cross-examination by the opposite party.

[C51, §2483; R60, §4041; C73, §3695; C97, §4678; C24, 27, 31, 35, 39, §**11347;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.90]

622.91 Signature and seal — presumption.

The signature and seal of such officers as are authorized to take depositions or affidavits, having a seal, and the simple signature of such as have no seal, are presumptive evidence of the genuineness thereof, as well as of the official character of the officer, except as otherwise declared.

[C51, §2476; R60, §4037; C73, §3696; C97, §4679; C24, 27, 31, 35, 39, §**11348;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.91]

622.92 Newspaper publications — how proved.

Publications required to be made in a newspaper may be proved by the affidavit of any person having knowledge of the fact, specifying the times when and the paper in which the publication was made, but such affidavit must be made within six months after the last day of publication.

[C51, §2427; R60, §4042; C73, §3697; C97, §4680; C24, 27, 31, 35, 39, §**11349;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.92]

Proof of publication, R.C.P. 1.314

622.93 Applicability in certain counties.

Proof of the publication of the filing in the district court of the petitions as provided for in section 618.13 and a charge on the basis of one dollar for each petition shall be made once each month by the publisher, presented to the clerk of the district court for verification and approval, and filed with the county auditor to be presented to the board of supervisors, which shall order the claim for the publications paid.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81,

§622.93; 81 Acts, ch 117, §1096]
83 Acts, ch 123, §198, 209

622.94 Proof of serving or posting notices.
The posting up or service of any notice or other paper required by law may be proved by the affidavit of any competent witness attached to a copy of said notice or paper, and made within six months of the time of such posting up.
[C51, §2428; R60, §4043; C73, §3698; C97, §4681; C24, 27, 31, 35, 39, §**11350;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.94]

622.95 Other facts.
Any other fact which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding, may be proved by pursuing the course above indicated, as nearly as the circumstances of the case will admit.
[C51, §2429; R60, §4044; C73, §3699; C97, §4682; C24, 27, 31, 35, 39, §**11351;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.95]

622.96 How perpetuated — presumption of fact.
Proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the clerk of the district court of the county where the act is done. The original affidavit appended to the notice or paper, if there is one, and, if not, the affidavit by itself is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient.
[C51, §2430; R60, §4045; C73, §3700; C97, §4683; C24, 27, 31, 35, 39, §**11352;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.96]

REPORTER'S NOTES AS EVIDENCE

622.97 Authorized use.
The original shorthand notes of the evidence or any part thereof heretofore or hereafter taken upon the trial of any cause or proceeding, in any court of record of this state, by the shorthand reporter of such court, or any transcript thereof, duly certified by such reporter, when material and competent, shall be admissible in evidence on any retrial of the case or proceeding in which the same were taken, and for purposes of impeachment in any case, and shall have the same force and effect as a deposition, subject to the same objections so far as applicable.
[S13, §245-a; C24, 27, 31, 35, 39, §**11353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.97]

622.98 Transcript must be complete.
No portion of the transcript of the shorthand notes of the evidence of any witness shall be admissible as such deposition, unless it shall appear from the certificate or verification thereof that the whole of the shorthand notes of the evidence of such witness, upon the trial or hearing in which the same was given, is contained in such transcript, but the party offering the same shall not be compelled to offer the whole of such transcript.
[S13, §245-a; C24, 27, 31, 35, 39, §**11354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.98]

622.99 Certification.
It shall be the duty of any such reporter, upon demand by any party to any cause or proceeding, or by the attorney of such party, when such shorthand notes are offered in evidence, to read the same before the court, judge, referee, or jury, or to furnish to any person when demanded a certified transcript of the shorthand notes of the evidence of any one or more witnesses, upon payment of the reporter's fees therefor.
[S13, §245-a; C24, 27, 31, 35, 39, §**11355;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.99]

622.100 Sworn verification.
When the reporter taking such notes in any case or proceeding in court has ceased to be the reporter of such court, any transcript by the reporter made therefrom and sworn to by the reporter before any person authorized to administer an oath as a full, true, and complete transcript of the notes of the testimony of the witness, a transcript of whose testimony is demanded, shall have the same force and effect as though duly certified by the reporter of said court.
[S13, §245-a; C24, 27, 31, 35, 39, §**11356;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.100]

622.101 Identification of exhibits.
When any exhibit, record, or document is referred to in such shorthand notes or transcript thereof, the identity of such exhibit, record, or document, as the one referred to by the witness, may be proven either by the reporter or any other person who heard the evidence of the witness given on the stand.
[S13, §245-a; C24, 27, 31, 35, 39, §**11357;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.101]

DEPOSITIONS

622.102 Refusal to appear or testify.
Any witness who refuses to obey such subpoena or after appearance refuses to testify shall be reported by the officer or commissioner to the district court of the county where the subpoena was issued.
[C24, 27, 31, 35, 39, §**11367;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.102]
Similar provision, §622.84

622.103 Repealed by 70 Acts, ch 1268, § 4.

622.104 Witness fees.

A witness appearing before an officer directed to take the witness' deposition is entitled to the same fees and mileage as a witness in the court in which the deposition is to be used. If subpoenaed, such a witness is entitled to fees and mileage in advance, as in other cases.

[C97, §4716; C24, 27, 31, 35, 39, §**11398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §622.104]

Fees and mileage, §622.69 et seq.

DOCUMENTS FILED WITH STATE OR DIVISIONS

622.105 Evidence of date mailed.

Any report, claim, tax return, statement, or any payment required or authorized to be filed or made to the state, or any political subdivision which is transmitted through the United States mail or mailed but not received by the state or political subdivision or received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, or payment was deposited in the United States mail on or before the date for filing or paying. In the event of nonreceipt of any such report, tax return, statement, or payment, the sender shall file a duplicate within thirty days of receiving written notification of nonreceipt of such report, tax return, statement, or payment. Filing of a duplicate within thirty days of receiving written notification shall be considered to be a filing made on the date of the original filing.

For the purposes of this section "competent evidence" means evidence, in addition to the testimony of the sender, sufficient or adequate to prove that the document was mailed on a specified date which evidence is credible and of such a nature to reasonably support the determination that the letter was mailed on a specified date.

[C77, 79, 81, §622.105]

622.106 Certified or registered mail.

If any report, claim, tax return, statement, or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office shall be considered competent evidence that the report, claim, tax return, statement, or payment was delivered to the state or political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date.

[C77, 79, 81, §622.106]

CHAPTER 622A

INTERPRETERS IN LEGAL PROCEEDINGS

622A.1 Definition.
622A.2 Who entitled to interpreter.
622A.3 Costs — when taxed.
622A.4 Fee set by court — payment.
622A.5 Oath.
622A.6 Qualifications and integrity.
622A.7 Rules.
622A.8 Tape recording.

622A.1 Definition.

As used in this chapter, *"legal proceeding"* means any action before any court, or any legal action preparatory to appearing before any court, whether civil or criminal in nature; and any administrative proceeding before any state agency or governmental subdivision which is quasi-judicial in nature and which has direct legal implications to any person.

[C71, 73, 75, 77, 79, 81, §622A.1]

622A.2 Who entitled to interpreter.

Every person who cannot speak or understand the English language and who is a party to any legal proceeding or a witness therein, shall be entitled to an interpreter to assist such person throughout the proceeding.

[C71, 73, 75, 77, 79, 81, §622A.2]

622A.3 Costs — when taxed.

1. An interpreter shall be appointed without expense to the person requiring assistance in the following cases:

a. If the person requiring assistance is a witness in the civil legal proceeding.

b. If the person requiring assistance is indigent and financially unable to secure an interpreter.

2. In civil cases, every court shall tax the cost of an interpreter the same as other court costs. In criminal cases, where the defendant is indigent, the interpreter shall be considered as a defen-

dant's witness under rule of criminal procedure 2.15 for the purpose of receiving fees, except that subpoenas shall not be required. If the proceeding is before an administrative agency, that agency shall provide such interpreter but may require that a party to the proceeding pay the expense thereof.

3. Moneys recovered as court costs for interpreters paid through the revolving fund established in section 602.1302, subsection 3, shall be deposited in that fund.

[C71, 73, 75, 77, 79, 81, §622A.3]
99 Acts, ch 144, §8

622A.4 Fee set by court — payment.

Every interpreter appointed by a court or administrative agency shall receive a fee to be set by the court or administrative agency. If the interpreter is appointed by the court in a civil case for a person who is indigent and unable to secure an interpreter, the fee for the interpreter shall be paid from the revolving fund established in section 602.1302, subsection 3.

[C71, 73, 75, 77, 79, 81, §622A.4]
99 Acts, ch 144, §9

622A.5 Oath.

Every interpreter in any legal proceeding shall take the same oath as any other witness.

[C71, 73, 75, 77, 79, 81, §622A.5]

622A.6 Qualifications and integrity.

Any court or administrative agency may inquire into the qualifications and integrity of any interpreter, and may disqualify any person from serving as an interpreter.

[C71, 73, 75, 77, 79, 81, §622A.6]

622A.7 Rules.

The supreme court, after consultation with the commission of Latino affairs of the department of human rights and other appropriate departments, shall adopt rules governing the qualifications and compensation of interpreters appearing in proceedings before a court or grand jury under this chapter. However, an administrative agency which is subject to chapter 17A may adopt rules differing from those of the supreme court governing the qualifications and compensation of interpreters appearing in proceedings before that agency.

84 Acts, ch 1137, §1

622A.8 Tape recording.

A tape recording of the portion of proceedings where non-English testimony is given shall be made and maintained.

84 Acts, ch 1137, §2

CHAPTER 622B

DEAF AND HARD-OF-HEARING PERSONS — INTERPRETERS

Procedures upon arrest of deaf or hard-of-hearing persons; see §804.31

622B.1 Definitions — rules.
622B.2 Interpreter appointed.
622B.3 Notice of need.
622B.4 List.
622B.5 Oath.
622B.6 Privileged.
622B.7 Fee.
622B.8 Disqualification.

622B.1 Definitions — rules.

1. As used in this chapter, unless the context otherwise requires:

a. "Administrative agency" means any department, board, commission, or agency of the state or any political subdivision of the state.

b. "Deaf person" means an individual who uses sign language as the person's primary mode of communication and who may use interpreters to facilitate communication.

c. "Hard-of-hearing person" means an individual who is unable to hear and distinguish sounds within normal conversational range and who needs to use speechreading, assistive listening devices, or oral interpreters to facilitate communication.

d. "Interpreter" means an oral interpreter or sign language interpreter.

e. "Oral interpreter" means an interpreter who is fluent in transliterating, paraphrasing, and voicing.

f. "Sign language interpreter" means an interpreter who is able to interpret from sign language to English and English to sign language.

2. The supreme court, after consultation with the department of human rights, shall adopt rules governing the qualifications and compensation of interpreters appearing in a proceeding before a

court, grand jury, or administrative agency under this chapter. However, an administrative agency which is subject to chapter 17A may adopt rules differing from those of the supreme court governing the qualifications and compensation of interpreters appearing in proceedings before that agency.

[C81, §622B.1]

85 Acts, ch 131, §1; 88 Acts, ch 1134, §108; 93 Acts, ch 75, §7

Rules adopted by the supreme court are published in the compilation "Iowa Court Rules"

622B.2 Interpreter appointed.

If a deaf or hard-of-hearing person is a party to, a witness at, or a participant in a proceeding before a grand jury, court, or administrative agency of this state, the court or administrative agency shall appoint an interpreter without expense to the deaf or hard-of-hearing person to interpret or translate the proceedings to the deaf or hard-of-hearing person and to interpret or translate the person's testimony unless the deaf or hard-of-hearing person waives the right to an interpreter.

[C81, §622B.2]

93 Acts, ch 75, §8

622B.3 Notice of need.

When a deaf or hard-of-hearing person is entitled to an interpreter, the deaf or hard-of-hearing person shall notify the presiding official within three days after receiving notice of the proceeding, stating the disability and requesting the services of an interpreter. If the deaf or hard-of-hearing person receives notification of an appearance less than five days prior to the proceeding, that person shall notify the presiding official requesting an interpreter as soon as practicable or may apply for a continuance until an interpreter is appointed.

[C81, §622B.3]

93 Acts, ch 75, §9

622B.4 List.

The division of deaf services of the department of human rights shall prepare and continually update a listing of qualified and available interpreters. The courts and administrative agencies shall maintain a directory of qualified interpreters for deaf and hard-of-hearing persons as furnished by the department of human rights. The division of deaf services shall maintain a list of interpreters which shall be made available to a court, administrative agency, or interested parties to an action using the services of an interpreter.

[C81, §622B.4]

88 Acts, ch 1134, §109; 93 Acts, ch 75, §10; 96 Acts, ch 1162, §1

622B.5 Oath.

Before participating in a proceeding, an interpreter shall take an oath that the interpreter will make a true interpretation in an understandable manner to the person for whom the interpreter is appointed and that the interpreter will interpret or translate the statements of the deaf or hard-of-hearing person to the best of the interpreter's skills and judgment.

[C81, §622B.5]

93 Acts, ch 75, §11

622B.6 Privileged.

Communication between a deaf or hard-of-hearing person and a third party which is privileged under chapter 622 in which the interpreter participates as an interpreter shall be privileged to the interpreter.

[C81, §622B.6]

93 Acts, ch 75, §12

622B.7 Fee.

An interpreter appointed under this chapter is entitled to a reasonable fee and expenses as determined by the rules applying to that proceeding. This schedule shall be furnished to all courts and administrative agencies and maintained by them. If the interpreter is appointed by the court, the fee and expenses shall be paid by the county and if the interpreter is appointed by an administrative agency, the fee and expenses shall be paid out of funds available to the administrative agency.

[C81, §622B.7]

83 Acts, ch 123, §199, 209; 93 Acts, ch 75, §13

622B.8 Disqualification.

On motion of a party or on its own motion, a court or administrative agency shall inquire into the qualifications and integrity of an interpreter. A court or administrative agency may disqualify for good reason any person from serving as an interpreter in that proceeding. If an interpreter is disqualified, the court or administrative agency shall appoint another interpreter.

[C81, §622B.8]

CHAPTER 623

CHANGE OF VENUE

For Iowa court rules concerning change of venue in civil actions, see R.C.P. 1.801 – 1.808
For Iowa court rule concerning change of venue in criminal actions, see R.Cr.P. 2.11(10)

CHAPTER 624

TRIAL AND JUDGMENT

For Iowa court rules concerning trials,
see R.C.P. 1.901 – 1.947
For Iowa court rules concerning judgments generally,
see R.C.P. 1.951 – 1.962
For Iowa court rules concerning defaults and judgments thereon,
see R.C.P. 1.971 – 1.977
For Iowa court rules concerning summary judgments,
see R.C.P. 1.981 – 1.983
For Iowa court rules concerning proceedings after judgment,
see R.C.P. 1.1001 – 1.1020
For Iowa court rules concerning declaratory judgments,
see R.C.P. 1.1101 – 1.1109

624.1 Evidence in ordinary actions.
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624.35 Recorded.
624.36 Repealed by 67 Acts, ch 400, §164.
624.37 Satisfaction of judgment — penalty.

MINOR'S LIABILITY

624.38 Minor's liability for own acts.

624.1 Evidence in ordinary actions.

All issues of fact in ordinary actions shall be tried upon oral evidence taken in open court, except that depositions may be used as provided by law.

A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate the party or person by leading questions and contradict and impeach the party or person in all respects as if the party or person had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of the examination in chief.

[R60, §2999; C73, §2741; C97, §3651; C24, 27, 31, 35, 39, §**11430;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.1]

Depositions, R.C.P. 1.701 – 1.717

624.2 Ordinary actions — evidence on appeal.

Upon appeal, in ordinary actions no evidence shall go to the appellate court except such as may be necessary to explain any exception taken in the cause, and such court shall hear and try the case only on the legal errors so presented.

[R60, §2999; C73, §2741; C97, §3651; C24, 27, 31, 35, 39, §**11431;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.2]

Constitution, Art. V, §4

624.3 Evidence in equitable actions.

In actions cognizable in equity, wherein issues of fact are joined, the court may order the evidence or any part thereof to be taken in the form of depositions, or either party may take depositions as authorized by law, and may in the discretion of the court be granted a continuance for that purpose.

[R60, §2999; C73, §2742; C97, §3652; S13, §3652; C24, 27, 31, 35, 39, §**11432;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.3]

624.4 Equitable actions — evidence on appeal.

The evidence in actions cognizable in equity shall be presented on appeal to the appellate court, which shall try such causes anew. However, upon further review by the supreme court of equity actions heard by the court of appeals the review may be limited in scope as provided in the rules of appellate procedure.

[R60, §2999; C73, §2742; C97, §3652; S13, §3652; C24, 27, 31, 35, 39, §**11433;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.4]

624.5 Abstracts in equity causes.

In equitable causes, where the evidence is taken in the form of depositions, the district court may require to be submitted with the arguments an abstract of the pleadings and evidence, substantially as required by the rules of appellate procedure for abstracts in appeals in equitable causes, except that the same need not be printed.

[C97, §3653; C24, 27, 31, 35, 39, §**11434;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.5]

624.6 When triable.

Causes shall be triable at any time after the expiration of twenty days after legal and timely service has been made.

[C51, §1763; R60, §3007; C73, §2744; C97, §3655; C24, 27, 31, 35, 39, §**11436;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.6]

624.7 Exception.

If the action challenges the legality, validity, or constitutionality of a proposed constitutional amendment, the cause shall be tried within three days after the issues are made up.

[C31, 35, §11436-d1; C39, §**11436.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.7]

624.8 Calendar.

The clerk shall keep a calendar of criminal causes, arranging them in the order of their commencement and, if the court so order, shall, under the direction of the court, apportion the same to as many days as is believed necessary, and, at the request of any party to a cause or the party's attorney, shall issue subpoenas accordingly. The clerk shall furnish the court and bar with a sufficient number of copies of the calendar on or before January 15, April 15, July 15 and October 15 of each year, furnish the court and bar with a sufficient number of copies of a supplement thereto, which shall include the new causes only, but the publication of the assignments as provided in section 618.13 shall be in lieu of the publishing of a court calendar except that the first two daily publications of said paper shall be furnished free by the publisher to any attorney who shall request the clerk for the same.

[C51, §1761, 1762; R60, §3005; C73, §2747; C97, §3661; C24, 27, 31, 35, 39, §**11441;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.8]

624.9 Detailed report of trial.

In all appealable actions triable by ordinary or equitable proceedings, any party thereto shall be entitled to have reported the whole proceedings upon the trial or hearing, and the court shall direct the reporter to make such report in writing or shorthand, which shall contain the date of the commencement of the trial, the proceedings impaneling the jury, and any objections thereto with the rulings thereon, the oral testimony at length, and all offers thereof, all objections thereto, the rulings thereon, the identification as exhibits, by letter or number or other appropriate mark, of all written or other evidence offered, and by sufficient reference thereto, made in the report, to make certain the object or thing offered, all objections to such evidence and the rulings thereon, all motions or other pleas orally made and the rulings thereon, the fact that the testimony was closed, the portions of arguments objected to, when so ordered by the court, all objections thereto with the rulings thereon, all oral comments or statements of the court during the progress of the trial, and any exceptions taken thereto, the fact that the jury is instructed, all objections and exceptions to instructions given by the court on its own motion, the fact that the case is given to the jury, the return of the verdict and action thereon of whatever kind, and any other proceedings before the court or jury which might be preserved and made of record by bill of exceptions, and shall note that exception was saved by the party adversely affected to every ruling made by the court.

[C97, §3675; C24, 27, 31, 35, 39, §**11456;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.9]

624.10 Certification — ipso facto bill.

Such report shall be certified by the trial judge and reporter, when demanded by either party, to the effect that it contains a full, true, and complete report of all proceedings had that are required to be kept, and, when so certified, the same shall be filed by the clerk and, with all matters set out or identified therein, shall be a part of the record in such action, and constitute a complete bill of exceptions.

[C97, §3675; C24, 27, 31, 35, 39, §**11457;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.10]

When bill necessary, R.C.P. 1.1001

Certification by successor, R.C.P. 1.1001(4)

624.11 Matters excluded.

On a trial before a jury it shall not be necessary to take down arguments of counsel or statements of the court, except the rulings, when not made in the presence of the jury.

[C97, §3675; C24, 27, 31, 35, 39, §**11458;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.11]

624.11A Juror challenge — municipal taxpayers.

When selecting a jury in a trial in which a municipality is a defendant, a juror challenge based on the potential juror's status as a taxpayer of that municipality shall not be allowed unless a real, substantial, and immediate interest is shown which would unfairly prejudice the plaintiff.

84 Acts, ch 1181, §10

624.12 Panel exhausted.

If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapters upon selecting, drawing, and summoning juries.

[C97, §3698; C24, 27, 31, 35, 39, §**11482;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.12]

Juries, see chapter 607A

624.13 Interlocutory questions.

Upon interlocutory questions, the party moving the court or objecting to testimony shall be heard first; the respondent may then reply by one counsel, and the mover rejoining, confining remarks to the points first stated and a pertinent answer to respondent's argument. Argument on the questions shall then be closed, unless further requested by the court.

[R60, §3046; C73, §2779; C97, §3700; C24, 27, 31, 35, 39, §**11486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.13]

624.14 Juror as witness — grounds to set aside verdict.

If a juror has personal knowledge respecting a fact in controversy in a cause, the juror must declare the fact of the knowledge in accordance with rule of evidence 5.606(a), and the juror may not testify in the trial of the case in which the juror is sitting. Proof of such a declaration may be made by any juror in support of a motion to set aside a verdict.

[C51, §3010; R60, §4801; C73, §4433; C97, §5381; C24, §13858; C27, 31, 35, §11496-b1, 13858; C39, §**11496.1, 13858;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §624.14, 780.17; C79, 81, §624.14]

83 Acts, ch 37, §5

624.15 Must be on material point.

No exception shall be regarded in an appellate court unless the ruling has been on a material point, and the effect thereof prejudicial to the rights of the party excepting.

[R60, §3111; C73, §2836; C97, §3754; C24, 27, 31, 35, 39, §**11548;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.15]

Errors disregarded, §619.16

624.16 Costs of new trial.

The cost of all new trials shall either abide the event of the action or be paid by the party to whom such new trial is granted, according to the order of the court, to be made at the time of granting such new trial.

[R60, §3117; C73, §2840; C97, §3762; C24, 27, 31, 35, 39, §**11560;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.16]

624.17 Special execution — pleading.

Where any other than a general execution of the common form is required, the party must state in the pleading the facts entitling the party thereto, and the judgment may be entered in accordance with the finding of the court or jury thereon.

[R60, §3125; C73, §2852; C97, §3772; C24, 27, 31, 35, 39, §**11570;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.17]

624.18 Designation and calculation of damages.

1. In all actions where the plaintiff recovers a sum of money, the amount to which the plaintiff is entitled may be awarded the plaintiff by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of debt or damages.

2. In all personal injury actions where the plaintiff recovers a sum of money that, according to special verdict, is intended, in whole or in part, to address the future damages of the plaintiff, that portion of the judgment that reflects the future damages shall be adjusted by the court or the finder of fact to reflect the present value of the sum.

3. Under no circumstances shall there be a reduction to present value more than one time by either the trier of fact or the court.

[R60, §3144; C73, §2862; C97, §3782; C24, 27, 31, 35, 39, §**11580;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.18]

97 Acts, ch 197, §9, 16

624.19 Court acting as jury.

The provisions of this chapter relative to juries are intended to be applied to the court when acting as a jury on the trial of a cause, so far as they are applicable and not incompatible with other provisions herein contained.

[C51, §1823; R60, §3145; C73, §2863; C97, §3783; C24, 27, 31, 35, 39, §**11581;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.19]

624.20 Satisfaction of judgment.

Where a judgment is set aside or satisfied by execution or otherwise, the clerk shall at once enter a memorandum thereof on the column left for that purpose in the judgment docket. However, the clerk may enter satisfaction of judgment if the amount of the judgment that is unsatisfied is one dollar or less.

[C51, §1819; R60, §3141; C73, §2865; C97, §3785; C24, 27, 31, 35, 39, §**11583;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §624.20]
2000 Acts, ch 1032, §3

624.21 Complete record. Repealed by 93 Acts, ch 70, § 15.

624.22 Personal judgment — when authorized.

A personal judgment may be rendered against a defendant, whether the defendant appears or not, who has been served in any mode provided in this Code other than by publication, whether served within or without this state, if such defendant is a resident of the state.

[R60, §3164; C73, §2881; C97, §3800; C24, 27, 31, 35, 39, §**11601;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.22]

624.23 Liens of judgments — real estate — homesteads — support judgments.

1. Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment.

2. Judgment liens described in subsection 1 do not remain a lien upon real estate of the defendant, platted as a homestead pursuant to section 561.4, unless execution is levied within thirty days of the time the defendant or the defendant's agent has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits derived from the lien as to the real estate platted as a homestead shall be forfeited unless the owner of the judgment levies execution against that real estate within thirty days from the date of service of the demand. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure. A copy of the written demand and proof of service of the written demand shall be recorded in the office of the county recorder of the county where the real estate platted as a homestead is located.

3. Judgment liens described in subsection 1 shall not attach to subsequently acquired real estate owned by the defendant if the personal liability of the defendant on the judgment has been discharged under the bankruptcy laws of the United States.

4. In addition to other provisions relating to the attachment of liens, full faith and credit shall be afforded to liens arising for overdue support due on support judgments entered by a court or administrative agency of another state on real estate in this state owned by the obligor, for the period of ten years from the date of the judgment. Notwithstanding any other provisions of law, including but not limited to the formatting of forms or requirement of signatures, the lien attaches on the date that a notice of interstate lien promulgated by the United States secretary of health and human services is filed with the clerk of district court in the county where the real estate is located.

The lien shall apply only prospectively as of the date of attachment to all real estate the obligor may subsequently acquire and does not retroactively apply to the chain of title for any real estate that the obligor had disposed of prior to the date of attachment.

5. A judgment lien attaching to the real estate of a city may be discharged at any time by the city filing with the clerk of the district court in which the judgment was entered a bond in the amount for which the judgment was entered, including court costs and accruing interest, with surety or sureties to be approved by the clerk, conditioned for the payment of the judgment amount, interest, and court costs. If the real estate is located in a county other than that in which the judgment was entered, the clerk of the district court in which the judgment was entered shall certify to the clerk of the district court of the county in which the real estate is located that the bond has been filed.

6. A judgment against a city shall not give rise to a lien attaching to the streets, alleys, or utility easements of a city or attaching to the real estate of a city which is used by the city for transportation, health, safety, or utility purposes.

[C51, §2485, 2489; R60, §4105, 4109; C73, §2882; C97, §3801; C24, 27, 31, 35, 39, §**11602;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.23; 82 Acts, ch 1002, §1 – 3]

85 Acts, ch 100, §8; 86 Acts, ch 1014, §1; 89 Acts, ch 102, §8; 97 Acts, ch 175, §202; 2002 Acts, ch 1089, §1

Judgment lien, §123.113
Special limitations on judgments, chapter 615
NEW subsections 5 and 6

624.24 When judgment lien attaches.

When the real estate lies in the county wherein the judgment of the district court of this state or of the circuit or district courts of the United States was entered in the judgment docket and lien index kept by the clerk of the court having jurisdiction, the lien shall attach from the date of such entry of judgment, but if in another it will not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies.

[C51, §2486, 2487; R60, §4106, 4107; C73, §2883, 2884; C97, §3802; S13, §3802; C24, 27, 31, 35, 39, §**11603;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.24]

85 Acts, ch 100, §9; 86 Acts, ch 1014, §2

Intent; liens for child or spousal support; 86 Acts, ch 1014, §3

624.24A Liens of support judgments — titled personal property.

1. In addition to other provisions relating to

the attachment of liens, support judgments in the appellate or district courts of this state are liens upon the personal property titled in this state and owned by the obligor at the time of such rendition or subsequently acquired by the obligor.

2. The lien shall attach from the date of the notation on the title.

3. In addition to other provisions relating to the attachment of liens, full faith and credit shall be afforded to a lien arising for overdue support due on support judgments entered by a court or administrative agency of another state on personal property titled in this state and owned by the obligor. In this state a lien attaches on the date that a notice of interstate lien promulgated by the United States secretary of health and human services is filed with the clerk of district court in the county where the personal property is titled and the lien is noted on the title.

The lien shall apply only prospectively as of the date of attachment, shall attach to any titled personal property the obligor may subsequently acquire, and does not retroactively apply to the chain of title for any personal property that the obligor had disposed of prior to the date of attachment.

97 Acts, ch 175, §203

624.25 Appellate court judgments.

The lien of judgments of the appellate courts of Iowa shall not attach to any real estate until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies.

[S13, §3802; C24, 27, 31, 35, 39, §**11604;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.25]

624.26 Docketing transcript.

Such clerk shall, on the filing of such transcript of the judgment of the appellate or district court of this state or of the circuit or district court of the United States in the clerk's office, immediately proceed to docket and index the same, in the same manner as though rendered in the court of the clerk's own county.

[C51, §2488; R60, §4108; C73, §2885; C97, §3803; C24, 27, 31, 35, 39, §**11605;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.26]

624.27 Judgment against railway.

A judgment against any railway, interurban railway, or street railway corporation or copartnership, for an injury to any person or property, and any claim for compensation under the workers' compensation Act for personal injuries sustained by their employees arising out of and in the course of their employment, shall be a lien upon the property of such corporation or copartnership within the county where the judgment was recovered or in which occurred the injury for which compensation is due.

[C73, §1309; C97, §2075; C24, 27, 31, 35, 39, §**11606;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.27]

624.28 Priority.

Said lien shall be prior and superior to the lien of any mortgage or trust deed executed since July 4, 1862, by any railway corporation or partnership, and prior and superior to the lien of any mortgage or trust deed executed after August 9, 1897, by any interurban railway or street railway corporation or copartnership.

[C73, §1309; C97, §2075; C24, 27, 31, 35, 39, §**11607;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.28]

624.29 Conveyance by commissioner.

Real property may be conveyed by a commissioner appointed by the court:

1. Where, by judgment in an action, a party is ordered to convey such property to another.

2. Where such property has been sold under a judgment or order of the court, and the purchase price has been paid.

[R60, §3165; C73, §2886; C97, §3805; C24, 27, 31, 35, 39, §**11613;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.29]

624.30 Deed.

The deed of the commissioner shall refer to the judgment, orders, and proceedings authorizing the conveyance.

[R60, §3166; C73, §2887; C97, §3806; C24, 27, 31, 35, 39, §**11614;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.30]

624.31 Conveys title.

A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land.

[R60, §3167; C73, §2888; C97, §3807; C24, 27, 31, 35, 39, §**11615;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.31]

624.32 Other parties.

A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding.

[R60, §3168; C73, §2889; C97, §3808; C24, 27, 31, 35, 39, §**11616;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.32]

624.33 Approval by court.

A conveyance by a commissioner shall not pass any right until it has been approved by the court, which approval shall be endorsed on the conveyance and recorded with it.

[R60, §3169; C73, §2890; C97, §3809; C24, 27, 31, 35, 39, §**11617;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.33]

624.34 Form.

The conveyance shall be signed by the commis-

sioner only, without affixing the names of the parties whose title is conveyed, but the names of such parties shall be recited in the body of the conveyance.

[R60, §3170; C73, §2891; C97, §3810; C24, 27, 31, 35, 39, §**11618;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.34]

624.35 Recorded.

The conveyance shall be recorded in the office in which, by law, it should have been recorded had it been made by the parties whose title is conveyed by it.

[R60, §3171; C73, §2892; C97, §3811; C24, 27, 31, 35, 39, §**11619;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.35]

624.36 Repealed by 67 Acts, ch 400, § 164.

624.37 Satisfaction of judgment — penalty.

When the amount due upon judgment is paid off, or satisfied in full, the party entitled to the proceeds thereof, or those acting for that party, must acknowledge satisfaction of the judgment by the execution of an instrument referring to it, duly acknowledged and filed in the office of the clerk in every county wherein the judgment is a lien. A failure to do so within thirty days after having been requested in writing shall subject the delinquent party to a penalty of one hundred dollars plus reasonable attorney fees incurred by the party aggrieved, to be recovered in an action for the satisfaction or acknowledgment by the party aggrieved.

[C97, §3804; C24, 27, 31, 35, 39, §**11621;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §624.37]

90 Acts, ch 1030, §1; 99 Acts, ch 144, §10

MINOR'S LIABILITY

624.38 Minor's liability for own acts.

The provisions of section 613.16 shall not limit any liability of any minor for the minor's own acts and shall not limit any liability imposed by the common law or by any other provision of the Code.

[C71, 73, 75, 77, 79, 81, §624.38]

CHAPTER 624A

PROCEDURE TO VACATE OR MODIFY JUDGMENTS

For Iowa court rules concerning proceedings after judgment, see R.C.P. 1.1001 – 1.1020

624A.1 Time limit.
624A.2 Cause of action or defense — necessity.
624A.3 Injunction.

624A.1 Time limit.

Such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto is a minor or person of unsound mind, and then within one year after the removal of such disability.

[R60, §3501; C73, §3157; C97, §4094; C24, 27, 31, 35, 39, §**12793;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §683.1]

C93, §624A.1

624A.2 Cause of action or defense — necessity.

The judgment shall not be vacated on motion or petition until it is adjudged there is a cause of action or defense to the action in which the judgment is rendered.

[R60, §3503; C73, §3159; C97, §4096; C24, 27, 31, 35, 39, §**12796;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §683.2]

C93, §624A.2

624A.3 Injunction.

The party seeking to vacate or modify a judgment or order may have an injunction suspending proceedings on the whole or part thereof, which shall be granted by the court upon its being rendered probable, by affidavit or verified petition, or by exhibition of the record, that the party is entitled to the relief asked.

[R60, §3505; C73, §3161; C97, §4098; C24, 27, 31, 35, 39, §**12799;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §683.3]

C93, §624A.3

CHAPTER 625

COSTS

See transition provisions in chapter 602, article 11
Deferral of costs in civil and criminal proceedings; see chapter 610

625.1 Recoverable by successful party.
625.2 Witness fees — limitation.
625.3 Apportionment generally.
625.4 Apportionment among numerous parties.
625.5 Liability of successful party.
625.6 Cost of procuring testimony.
625.7 Postage.
625.8 Jury and reporter fees.
625.9 Transcripts — retaxation.
625.10 Defense arising after action brought.
625.11 Dismissal of action or abatement.
625.12 Between coparties.
625.13 Dismissal for want of jurisdiction.
625.14 Costs taxable.
625.15 Liability of nonparty.
625.16 Retaxation.
625.17 Liability of clerk.
625.18 Bill of costs on appeal.
625.19 Costs in appellate courts.
625.20 Repealed by 75 Acts, ch 249, §2.
625.21 Interest.
625.22 Attorney's fees — costs.
625.23 Limitations.
625.24 Affidavit required.
625.25 Opportunity to pay.
625.26 and 625.27 Reserved.
625.28 Definitions.
625.29 Fees — expenses.

625.1 Recoverable by successful party.

Costs shall be recovered by the successful against the losing party.

[C51, §1811; R60, §3449; C73, §2933; C97, §3853; S13, §3853; C24, 27, 31, 35, 39, §**11622;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.1]

625.2 Witness fees — limitation.

The losing party, however, shall not be assessed with the cost of mileage of any witness for a distance of more than one hundred miles from the place of trial, unless otherwise ordered by the court at the time of entering judgment.

[S13, §3853; C24, 27, 31, 35, 39, §**11623;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.2]

625.3 Apportionment generally.

Where the party is successful as to a part of the party's demand, and fails as to part, unless the case is otherwise provided for, the court on rendering judgment may make an equitable apportionment of costs.

[C51, §1811; R60, §3449; C73, §2933; C97, §3853; S13, §3853; C24, 27, 31, 35, 39, §**11624;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.3]

625.4 Apportionment among numerous parties.

In actions where there are several plaintiffs or several defendants, the costs shall be apportioned according to the several judgments rendered; and where there are several causes of action embraced in the same petition, or several issues, the plaintiff shall recover costs upon the issues determined in the plaintiff's favor, and the defendant upon those determined in the defendant's favor.

[R60, §3451; C73, §2934; C97, §3854; C24, 27, 31, 35, 39, §**11625;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.4]

Apportionment between heirs and devisees, §633.476

625.5 Liability of successful party.

All costs accrued at the instance of the successful party, which cannot be collected of the other party, may be recovered on motion by the person entitled to them against the successful party.

[R60, §3452; C73, §2935; C97, §3855; C24, 27, 31, 35, 39, §**11626;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.5]

625.6 Cost of procuring testimony.

The necessary fees paid by the successful party in procuring copies of deeds, bonds, wills, or other records filed as a part of the testimony shall be taxed in the bill of costs.

[R60, §3453; C73, §2936; C97, §3856; C24, 27, 31, 35, 39, §**11627;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.6]

625.7 Postage.

Postage paid by the officers of the court, or by the parties, in sending process, depositions, and other papers being part of the record, by mail, shall be taxed in the bill of costs.

[R60, §3454; C73, §2937; C97, §3857; C24, 27, 31, 35, 39, §**11628;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.7]

625.8 Jury and reporter fees.

1. The clerk of the district court shall tax as a court cost a jury fee of one hundred dollars in every action tried to a jury.

2. The clerk of the district court shall tax as a

court cost a fee of fifteen dollars per day for the services of a court reporter.

3. Revenue from the fees required by this section shall be deposited in the account established under section 602.8108.

[C73, §3812; C97, §3872; C24, 27, 31, 35, 39, §**11629;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.8]

83 Acts, ch 186, §10114, 10201; 94 Acts, ch 1074, §8; 2002 Acts, ch 1126, §2

Subsection 1 amended

625.9 Transcripts — retaxation.

The fees of shorthand reporters for making transcripts of the notes in any case or any portion thereof, as directed by any party thereto, shall be taxed as costs, as shall also the fees of the clerk for making any transcripts of the record required on appeal, but such taxation may be revised by an appellate court on motion on the appeal, without any motion in the lower court for the retaxation of costs.

[C97, §3875; C24, 27, 31, 35, 39, §**11631;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.9]

625.10 Defense arising after action brought.

When a pleading contains as a defense matter which arose after the commencement of the action, whether such matter of defense is pleaded alone or with other matter of defense which arose before the action, the party affected by such matter may confess the same, and shall be entitled to the costs of the action to the time of such pleading.

[R60, §3455; C73, §2938; C97, §3858; C24, 27, 31, 35, 39, §**11632;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.10]

625.11 Dismissal of action or abatement.

When a plaintiff dismisses the action or any part thereof, or suffers it to abate by the death of the defendant or other cause, or where the action abates by the death of the plaintiff, and the plaintiff's representatives fail to revive the same, judgment for costs may be rendered against such plaintiff or representative, and, if against a representative, shall be paid as other claims against the estate.

[R60, §3456; C73, §2939; C97, §3859; C24, 27, 31, 35, 39, §**11633;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.11]

625.12 Between coparties.

Coparties against whom judgment has been recovered are entitled, as between themselves, to a taxation of the costs of witnesses whose testimony was obtained at the instance of one of the coparties and inured exclusively to a coparty's benefits.

[R60, §3457; C73, §2940; C97, §3860; C24, 27, 31, 35, 39, §**11634;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.12]

625.13 Dismissal for want of jurisdiction.

Where an action is dismissed from any court for want of jurisdiction the costs shall be adjudged against the party attempting to institute or bring up the same.

[R60, §3458; C73, §2941; C97, §3861; C24, 27, 31, 35, 39, §**11635;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.13]

625.14 Costs taxable.

The clerk shall tax in favor of the party recovering costs the allowance of the party's witnesses, the fees of officers, the compensation of referees, the necessary expenses of taking depositions by commission or otherwise, and any further sum for any other matter which the court may have awarded as costs in the progress of the action, or may allow.

[R60, §3459; C73, §2942; C97, §3862; C24, 27, 31, 35, 39, §**11636;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.14]

625.15 Liability of nonparty.

In actions in which the cause of action shall, by assignment after the commencement thereof, or in any other manner, become the property of a person not a party to the action, such party shall be liable for the costs in the same manner as if the person were a party.

[R60, §3460; C73, §2943; C97, §3863; C24, 27, 31, 35, 39, §**11637;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.15]

625.16 Retaxation.

Any person aggrieved by the taxation of a bill of costs may, upon application, have the same retaxed by the court, or by a referee appointed by the court in which the application or proceeding was had, and in such retaxation all errors shall be corrected.

[C51, §1813; R60, §3461; C73, §2944; C97, §3864; C24, 27, 31, 35, 39, §**11638;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.16]

625.17 Liability of clerk.

If the party aggrieved shall have paid any unlawful charge by reason of the first taxation, the clerk shall pay the costs of retaxation, and also to the party aggrieved the amount which the party may have paid by reason of the allowing of such unlawful charges.

[C51, §1813; R60, §3461; C73, §2944; C97, §3864; C24, 27, 31, 35, 39, §**11639;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.17]

625.18 Bill of costs on appeal.

In cases of appeals from a trial court, the supreme court clerk, if judgment is rendered in the supreme court or court of appeals or both, shall make a complete bill of costs in that court which shall be filed in the office of the clerk of the trial

court and taxed with the costs in the action therein.

[R60, §3462; C73, §2945; C97, §3865; C24, 27, 31, 35, 39, §**11640;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.18]

625.19 Costs in appellate courts.

When the costs accrued in the appellate courts and the trial court are paid to the clerk of the trial court, the clerk shall pay them to the persons entitled thereto.

[R60, §3463; C73, §2946; C97, §3866; C24, 27, 31, 35, 39, §**11641;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.19]

625.20 Repealed by 75 Acts, ch 249, § 2.

625.21 Interest.

Except for an action brought pursuant to chapter 668, when the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally entered shall be added to the costs of the party entitled to the costs.

[R60, §3466; C73, §2948; C97, §3868; C24, 27, 31, 35, 39, §**11643;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.21]

87 Acts, ch 157, §4; 91 Acts, ch 116, §17

Interest on judgments, §535.3

625.22 Attorney's fees — costs.

When judgment is recovered upon a written contract containing an agreement to pay an attorney's fee, the court shall allow and tax as a part of the costs a reasonable attorney's fee to be determined by the court.

In an action against the maker to recover payment on a dishonored check or draft, as defined in section 554.3104, the plaintiff, if successful, may recover, in addition to all other costs or surcharges provided by law, all court costs incurred, including a reasonable attorney's fee, or an individual's cost of processing a small claims recovery such as lost time and transportation costs from the maker of the check or draft. However, lost time and transportation costs of an assignee shall not be awarded under section 631.14 to a person who in the regular course of business takes assignments of instruments or accounts pursuant to chapter 539. Only actual out-of-pocket expenses incurred in obtaining the small claim recovery may be awarded to the assignee. Any additional charges shall be determined by the court. If the defendant is successful in the action and the court determines the action was frivolous, the court may award the defendant reasonable attorney's fees.

[C97, §3869; C24, 27, 31, 35, 39, §**11644;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.22]

84 Acts, ch 1217, §2; 87 Acts, ch 137, §2

625.23 Limitations.

If action is commenced and the claim paid off before return day, the amount shall be one-half of the sum above provided, and if it is paid after the return day but before judgment, three-fourths of said sum; but no fee shall be allowed in any case if an action has not been commenced, or expense incurred, nor shall any greater sum be allowed, any agreement in the contract to the contrary notwithstanding.

[C97, §3869; C24, 27, 31, 35, 39, §**11645;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.23]

625.24 Affidavit required.

The attorney's fee allowed in sections 625.22 and 625.23 shall not be taxed in any case unless it appears by affidavit of the attorney that there is not and has not been an agreement between the attorney and the attorney's client or any other person, express or implied, for any division or sharing of the fee to be taxed. This limitation does not apply to a practicing attorney engaged with the attorney as an attorney in the cause. The affidavit shall be filed prior to any attorney's fees being taxed. When fees are taxed, they shall be only in favor of a regular attorney and as compensation for services actually rendered in the action.

[C97, §3870; C24, 27, 31, 35, 39, §**11646;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.24]

85 Acts, ch 72, §1

625.25 Opportunity to pay.

No such attorney fee shall be taxed if the defendant is a resident of the county and the action is not aided by an attachment, unless it shall be made to appear that such defendant had information of and a reasonable opportunity to pay the debt before action was brought. This provision, however, shall not apply to contracts made payable by their terms at a particular place, the maker of which has not tendered the sum due at the place named in the contract.

[C97, §3871; C24, 27, 31, 35, 39, §**11647;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §625.25]

625.26 and 625.27 Reserved.

625.28 Definitions.

As used in section 625.29, unless the context otherwise requires:

1. *"Fees and other expenses"* include the reasonable attorney fees and reasonable expenses of expert witnesses plus court costs, but they do not include any portion of an attorney's fees or salary paid by a unit of local, state, or federal government for the attorney's services in the case.

2. *"State"* includes the state of Iowa, an agency of the state, or any official of the state acting in an official capacity.

83 Acts, ch 107, §1, 3

625.29 Fees — expenses.

1. Unless otherwise provided by law, and if the prevailing party meets the eligibility requirements of subsection 2, the court in a civil action brought by the state or an action for judicial review brought against the state pursuant to chapter 17A other than for a rulemaking decision, shall award fees and other expenses to the prevailing party unless the prevailing party is the state. However, the court shall not make an award under this section if it finds one of the following:

a. The position of the state was supported by substantial evidence.

b. The state's role in the case was primarily adjudicative.

c. Special circumstances exist which would make the award unjust.

d. The action arose from a proceeding in which the role of the state was to determine the eligibility or entitlement of an individual to a monetary benefit or its equivalent or to adjudicate a dispute or issue between private parties or to establish or fix a rate.

e. The proceeding was brought by the state pursuant to Title XVI.*

f. The proceeding involved eminent domain, foreclosure, collection of judgment debts, or was a proceeding in which the state was a nominal party.

g. The proceeding involved the department of personnel under chapter 19A.

h. The proceeding is a tort claim.

2. To be eligible for an award of fees and other expenses under this section, the prevailing party shall be one of the following:

a. A natural person.

b. A sole proprietorship, partnership, corporation, association, or public or private organization, any of which meets the following criteria:

(1) Its average daily employment was twenty persons or less for the twelve months preceding the filing of the action.

(2) Its gross receipts for the twelve-month period preceding the filing of the action were one million dollars or less, or its average gross receipts for the three twelve-month periods preceding the filing of the action were two million dollars or less.

3. A party seeking an award for fees and other expenses under this section must file a claim for relief as a part of the civil action or as a part of the action for judicial review brought against the state pursuant to chapter 17A. If the amount sought includes an attorney's fees or fees for an expert, the application shall include an itemized statement for these fees indicating the actual time expended in representing the party and the rate at which the fees were computed. The party seeking relief must establish that the state's case was not supported by substantial evidence.

4. The court, in its discretion, may reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party, during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

5. An award pursuant to this section shall not personally obligate any officer or employee of this state for payment.

6. Fees and other expenses awarded under this section may be ordered in addition to any compensation awarded in a judgment. When awarding fees and other expenses against the state under this section, the court shall order the auditor of state to issue a warrant drawn on the state general fund for the amount of the award. The treasurer of state shall pay the warrant. However, if the court finds that an agency of state government, against which fees and other expenses are awarded for an action for judicial review of an agency proceeding under chapter 17A, has acted in bad faith in initiating an action deemed frivolous or without merit, then the agency shall make the payment ordered from the moneys appropriated to that agency.

7. Each agency that pays fees or other expenses for an action for judicial review of an agency proceeding under chapter 17A shall report annually to the chairs and ranking members of the appropriate appropriations subcommittees of the general assembly the amount of fees or other expenses paid during the preceding fiscal year by that agency. In its report the agency shall describe the number, nature, and amount of the awards, the claims involved in the action, and other relevant information which might aid the general assembly in evaluating the scope and impact of these awards.

83 Acts, ch 107, §2, 3; 88 Acts, ch 1134, §110

*This provision does not include chapters 709A, 718A, 822, 904, 913, and 914, which were moved into Title XVI by the Code editor. Chapters 709A, 718A, 822, 904, 913, and 914 contain the applicable provisions pertaining to those chapters.

CHAPTER 625A

APPELLATE COURT PROCEDURE

See Rules of Appellate Procedure in the publication "Iowa Court Rules"

625A.1 Mistake of clerk below.
625A.2 Motion for new trial.
625A.3 Time for appealing in re constitutional test.
625A.4 Coparties not joining.
625A.5 Appeal from part of judgment or order — effect.

625A.6 Filing in re action to test constitutionality.
625A.7 Transmission.
625A.8 Return of original papers.
625A.9 Execution on unstayed part of judgment.
625A.10 Execution recalled.
625A.11 Surrender of property.
625A.12 Bond for costs.
625A.13 Arguments in re constitutional test.
625A.14 Remand — process.
625A.15 Restitution of property.
625A.16 Title not affected.
625A.17 Death of party — continuance.
625A.18 Executions.

625A.1 Mistake of clerk below.

A mistake of the clerk shall not be ground for an appeal until the same has been presented to and acted upon by the court below.

[R60, §3498; C73, §3167; C97, §4104; C24, 27, 31, 35, 39, §**12826;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.1]

C93, §625A.1

625A.2 Motion for new trial.

An appellate court on appeal may review and reverse any judgment or order of the district court, although no motion for a new trial was made in such court.

[C73, §3169; C97, §4106; C24, 27, 31, 35, 39, §**12828;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.2]

C93, §625A.2

625A.3 Time for appealing in re constitutional test.

If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, notice of appeal may be taken within three days from and after the entry of the decree in district court, and not afterwards.

[C31, 35, §12832-d1; C39, §**12832.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.3]

C93, §625A.3

625A.4 Coparties not joining.

Coparties, refusing to join in an appeal, cannot afterward appeal, or derive any benefit therefrom, unless from the necessity of the case, but they shall be held to have joined, and be liable for their proportion of the costs, unless they appear and object thereto.

[C51, §1980, 1981; R60, §3518, 3519; C73, §3175, 3176; C97, §4112; C24, 27, 31, 35, 39, §**12835;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.4]

C93, §625A.4

625A.5 Appeal from part of judgment or order — effect.

An appeal from part of an order, or from one of the judgments of a final adjudication, or from part of a judgment, shall not disturb, delay, or affect the rights of any party to any judgment or order, or part of a judgment or order, not appealed from.

[R60, §3510; C73, §3177; C97, §4113; C24, 27, 31, 35, 39, §**12836;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.5]

C93, §625A.5

625A.6 Filing in re action to test constitutionality.

If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, an abstract of record shall be filed within five days after the service of notice of appeal, unless additional time, not to exceed three days, be granted by the chief justice.

[C31, 35, §12847-d1; C39, §**12847.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.6]

C93, §625A.6

625A.7 Transmission.

The transcript of any paper or exhibit required for use in an appellate court may be transmitted thereto by the clerk of the trial court by express or other safe and speedy method, but not by a party or any attorney of a party.

[C51, §1975, 1976; R60, §3511; C73, §3179; C97, §4125; C24, 27, 31, 35, 39, §**12855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.7]

C93, §625A.7

625A.8 Return of original papers.

If a new trial is granted by an appellate court, the clerk, as soon as the cause is at an end therein, shall transmit to the clerk of the court below all original papers or exhibits certified up from said court, and may at any time return any such papers when no new trial is awarded.

[C97, §4126; C24, 27, 31, 35, 39, §**12856;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.8]

C93, §625A.8

625A.9 Execution on unstayed part of judgment.

The taking of the appeal from part of a judgment or order, and the filing of a bond as above directed, does not stay execution as to that part of the judgment or order not appealed from.

[C51, §1985; R60, §3532; C73, §3191; C97, §4129; C24, 27, 31, 35, 39, §**12862;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §686.9]
C93, §625A.9

625A.10 Execution recalled.
If execution has issued prior to the filing of the bond, the clerk shall countermand the same.
[C51, §1987; R60, §3533; C73, §3192; C97, §4130; C24, 27, 31, 35, 39, §**12863;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.10]
C93, §625A.10

625A.11 Surrender of property.
Property levied upon and not sold at the time such countermand is received by the sheriff shall be at once delivered to the judgment debtor.
[C51, §1988; R60, §3534; C73, §3193; C97, §4131; C24, 27, 31, 35, 39, §**12864;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.11]
C93, §625A.11

625A.12 Bond for costs.
The appellant may be required to give security for costs under the same circumstances and upon the same showing as plaintiffs in civil actions in the inferior court may be.
[R60, §3526; C73, §3210; C97, §4135; C24, 27, 31, 35, 39, §**12868;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.12]
C93, §625A.12
Cost bond, chapter 621

625A.13 Arguments in re constitutional test.
If the action challenges the legality, validity or constitutionality of a proposed constitutional amendment, the appellant shall file a written argument with the supreme court within ten days after the filing of the abstract and appellee shall file an argument within ten days thereafter, and appellant shall then file a reply within three days. The cause shall then be submitted to the supreme court in regular or special en banc session as soon thereafter as the chief justice may order.
[C31, 35, §1287-d1; C39, §**12871.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.13]
C93, §625A.13

625A.14 Remand — process.
If an appellate court affirms the judgment or order of an inferior court, it may send the cause to the appropriate court below to have the same carried into effect, or may issue the necessary process for this purpose, directed to the sheriff of the proper county, as the party may require.
[C51, §1991; R60, §3539; C73, §3197; C97, §4143; C24, 27, 31, 35, 39, §**12875;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.14]
C93, §625A.14

625A.15 Restitution of property.
If, by the decision of an appellate court, the appellant becomes entitled to a restoration of any part of the money or property that was taken from the appellant by means of a judgment or order, either the appellate court or the court below may direct execution or writ of restitution to issue for the purpose of restoring to the appellant such property or its value.
[C51, §1992; R60, §3540; C73, §3198; C97, §4145; C24, 27, 31, 35, 39, §**12877;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.15]
C93, §625A.15

625A.16 Title not affected.
Property acquired by a purchaser in good faith under a judgment subsequently reversed shall not be affected thereby.
[C51, §1993; R60, §3541; C73, §3199; C97, §4146; C24, 27, 31, 35, 39, §**12878;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.16]
C93, §625A.16

625A.17 Death of party — continuance.
The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the district court, and the case may proceed. The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice.
[R60, §3520; C73, §3211; C97, §4150; C24, 27, 31, 35, 39, §**12884;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.17]
C93, §625A.17

625A.18 Executions.
Executions issued from the appellate courts shall be like those from the district court, attended with the same consequences, and returnable in the same time.
[R60, §3552; C73, §3215; C97, §4153; C24, 27, 31, 35, 39, §**12888;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §686.18]
C93, §625A.18
Execution generally, chapter 626

CHAPTER 626

EXECUTION

For Iowa court rules concerning execution and duty of officer, endorsement, and levy on personalty, see R.C.P. 1.1018 – 1.1020
See also reference in §639.23

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626.1 Enforcement of judgments and orders.

Judgments or orders requiring the payment of money, or the delivery of the possession of property, are to be enforced by execution. Obedience to those requiring the performance of any other act is to be coerced by attachment as for a contempt.

[C51, §1885; R60, §3247; C73, §3026; C97, §3954; C24, 27, 31, 35, 39, §**11648;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.1]

Contempts, chapter 665; exceptions, §598.23

Enjoining enforcement, R.C.P. 1.1510

626.2 Within what time — to what counties.

Executions may issue at any time before the judgment is barred by the statute of limitations; and upon those in the district and appellate courts, into any county which the party ordering may direct.

[C51, §1886, 1888; R60, §3246, 3248; C73, §3025, 3027; C97, §3955; S13, §3955; C24, 27, 31, 35, 39, §**11649;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.2]

Issuance prohibited, chapter 615

626.3 Limitation on number.

Only one execution shall be in existence at the same time.

[R60, §3246; C73, §3025; C97, §3955; S13, §3955; C24, 27, 31, 35, 39, §**11650;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.3]

626.4 Lost writ.

When the plaintiff in judgment shall file in any court in which a judgment has been entered an affidavit made by the plaintiff, the plaintiff's agent or attorney, or by the officer to whom the execution was issued, that an outstanding execution has been lost or destroyed, the clerk of such court may issue a duplicate execution as of the date of the lost execution, which shall have the same force and effect as the original execution, and any levy made under the execution so lost shall have the same force and effect under the duplicate execution as under the original.

[S13, §3955; C24, 27, 31, 35, 39, §**11651;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.4]

626.5 Expiration of lost writ — effect.

When the lost execution shall have expired by limitation and such affidavit is filed, an execution may issue as it might if such lost execution had been duly returned.

[S13, §3955; C24, 27, 31, 35, 39, §**11652;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.5]

626.6 Issuance on Sunday.

An execution may be issued and executed on Sunday, when an affidavit is filed by the plaintiff, or some person in the plaintiff's behalf, stating that the plaintiff or person believes the plaintiff or person will lose the plaintiff's judgment unless process issues on that day.

[R60, §3263; C73, §3028; C97, §3956; C24, 27, 31, 35, 39, §**11653;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.6]

Analogous or related provisions, §602.1602, 639.5, 643.3, and 667.3

626.7 Issuance on demand.

Upon the rendition of judgment, execution may be at once issued by the clerk on the demand of the party entitled thereto.

[R60, §3265; C73, §3029; C97, §3957; C24, 27, 31, 35, 39, §**11654;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.7]

626.8 Record kept.

The clerk shall enter on the judgment docket the date of its issuance and to what county and officer issued, the return of the officer, with the date thereof; the dates and amount of all moneys received or paid out of the office thereon; which entries shall be made at the time each act is done.

[R60, §3265; C73, §3029; C97, §3957; C24, 27, 31, 35, 39, §**11655;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.8]

626.9 Entries in foreign county.

In case execution is issued to a county other than that in which judgment is rendered, and is levied upon real estate in such county, an entry thereof shall be made upon the encumbrance book of that county by the officer making it, showing the same particulars as are required in case of the attachment of real estate, which shall be bound from the time of such entry.

[R60, §3249; C73, §3031; C97, §3958; S13, §3958; C24, 27, 31, 35, 39, §**11656;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.9]

626.10 Duplicate returns and record.

If real estate is sold under said execution the officer shall make return thereof in duplicate, one of which shall be appended to the execution and returned to the court from which it is issued, the other with a copy of the execution to the district court of the county in which the real estate is situated, which shall be filed by the clerk and handled in the same manner as if such judgment had been rendered and execution issued from the court.

[S13, §3958; C24, 27, 31, 35, 39, §**11657;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.10]

95 Acts, ch 91, §5

626.11 Return from foreign county.

When sent into any county other than that in which the judgment was rendered, return may be made by mail. Money cannot thus be sent, except by direction of the party entitled thereto, or the party's attorney.

[C51, §1889; R60, §3250; C73, §3032; C97,

§3959; C24, 27, 31, 35, 39, §**11658;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.11]

626.12 Form of execution.

The execution must intelligibly refer to the judgment, stating the time when and place at which it was rendered, the names of the parties to the action as well as to the judgment, its amount, and the amount still to be collected thereon, if for money; if not, it must state what specific act is required to be performed. If it is against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment and interest out of property of the debtor subject to execution.

[C51, §1890; R60, §3251; C73, §3033; C97, §3960; C24, 27, 31, 35, 39, §**11659;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.12]

626.13 Property in hands of others.

If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment and interest out of such property.

[R60, §3252; C73, §3034; C97, §3961; C24, 27, 31, 35, 39, §**11660;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.13]

626.14 Delivery of possession and money recovery.

If it is for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the party to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered subject to execution.

The value of the property for which judgment was recovered shall be specified therein, if a delivery thereof cannot be had, and it shall in that respect be regarded as an execution against property.

[R60, §3253; C73, §3035; C97, §3962; C24, 27, 31, 35, 39, §**11661;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.14]

626.15 Performance of other acts.

When it requires the performance of any other act, a certified copy of the judgment may be served on the person against whom it is rendered, or upon the person or officer who is required thereby, or by law, to obey the same, and the person's obedience thereto enforced.

[R60, §3254; C73, §3036; C97, §3963; C24, 27, 31, 35, 39, §**11662;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.15]

626.16 Receipt and return.

Every officer to whose hands an execution may come shall give a receipt therefor, if required, stating the hour when the same was received, and shall make sufficient return thereof, together with the money collected, on or before the seventieth day from the date of its issuance.

[R60, §3255; C73, §3037; C97, §3964; C24, 27, 31, 35, 39, §**11663;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.16]

626.17 Principal and surety — order of liability.

The clerk issuing an execution on a judgment against principal and surety shall state in the execution the order of liability recited in the judgment, and the officer serving it shall exhaust the property of the principal first, and of the other defendants in the order of liability thus stated. To obtain the benefits of this section, the order of liability must be recited in the execution, and the officer holding it must separately return thereon the amount collected from the principal debtor and surety.

[C51, §1915; R60, §3258, 3260, 3261, 3303; C73, §3039, 3041, 3042, 3071; C97, §3966; C24, 27, 31, 35, 39, §**11665;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.17]

Analogous provisions, §626.64, and R.C.P. 1.956

626.18 Duty to point out property.

Each person subsequently liable shall, if requested by the officer, point out property owned by the party liable, before that person, to obtain the benefits of the provision of section 626.17.

[R60, §3259; C73, §3040; C97, §3966; C24, 27, 31, 35, 39, §**11666;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.18]

626.19 Surety subrogated.

When the principal and surety are liable for any claim, such surety may pay the same, and recover thereon against all liable to the surety. If a judgment against principal and surety has been paid by the surety, the surety shall be subrogated to all the rights of the creditor, and may take an assignment thereof, and enforce the same by execution or otherwise, as the creditor could have done. All questions between the parties thereto may be heard and determined on motion by the court upon such notice as may be prescribed by it.

[C97, §3967; C24, 27, 31, 35, 39, §**11667;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.19]

See R.C.P. 1.982

626.20 Entry on encumbrance book.

If real estate is levied upon, except by virtue of a special execution issued in cases foreclosing recorded liens, the officer making the levy shall make an entry in the encumbrance book in the office of the clerk of the district court of the county where the real estate is located, which entry shall

constitute notice to all persons of such levy. Such entry shall contain the number and title of the case, date of levy, date of the entry, amount claimed, description of the real estate levied upon, and signature of the officer.

[C31, 35, §11668-c1; C39, §**11668.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.20]

Analogous provision, §639.28

626.21 Choses in action.

Judgments, money, bank bills, and other things in action may be levied upon, and sold or appropriated thereunder, and an assignment thereof by the officer shall have the same effect as if made by the defendant.

[C51, §1893; R60, §3272; C73, §3046; C97, §3971; C24, 27, 31, 35, 39, §**11672;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.21]

626.22 Levy on judgment.

The levy upon a judgment shall be made by entering upon the judgment docket a memorandum of such fact, giving the names of the parties plaintiff and defendant, the court from which the execution issued, and the date and hour of such entry, which shall be signed by the officer serving the execution, and a return made on the execution of the officer's doings in the premises.

[C97, §3971; C24, 27, 31, 35, 39, §**11673;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.22]

626.23 Persons indebted may pay officer.

After the rendition of judgment, any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness, or so much thereof as is necessary to satisfy the execution, and the person's receipt shall be a sufficient discharge therefor.

[C51, §1894; R60, §3273; C73, §3047; C97, §3972; C24, 27, 31, 35, 39, §**11674;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.23]

626.24 Levy against municipal corporation — tax.

If no property of a municipal corporation against which execution has issued can be found, or if the judgment creditor elects not to issue execution against such corporation, a tax must be levied as early as practicable to pay off the judgment. When a tax has been so levied and any part thereof shall be collected, the treasurer of such corporation shall pay the same to the clerk of the court in which the judgment was rendered, in satisfaction thereof.

[C51, §1896; R60, §3275; C73, §3049; C97, §3973; C24, 27, 31, 35, 39, §**11675;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.24]

626.25 Unsecured interest in hands of third persons.

Any interest which is not represented by a security as defined in the Uniform Commercial Code, section 554.8102, owned by the defendant in any company or corporation, and also debts due the defendant and property of the defendant in the hands of third persons, may be levied upon in the manner provided for attaching the same.

[C51, §1892; R60, §3269; C73, §3050; C97, §3974; C24, 27, 31, 35, 39, §**11676;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.25]

Garnishment, chapter 642

626.26 Garnishment.

Property of the defendant in the possession of another, or debts due the defendant, may be reached by garnishment.

[R60, §3270; C73, §3051; C97, §3975; C24, 27, 31, 35, 39, §**11677;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.26]

626.27 Expiration or return of execution.

Proceedings by garnishment on execution shall not be affected by its expiration or its return.

[R60, §3271; C73, §3052; C97, §3976; C24, 27, 31, 35, 39, §**11678;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.27]

626.28 Return of garnishment — action docketed.

Where parties have been garnished under it, the officer shall return to the clerk of court a copy of the execution with all the officer's doings thereon, so far as they relate to the garnishments, and the clerk shall docket an action thereon without fee, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be.

[R60, §3271; C73, §3052; C97, §3976; C24, 27, 31, 35, 39, §**11679;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.28]

Garnishment, chapter 642

626.29 Distress warrant by director of revenue and finance, director of inspections and appeals, or director of workforce development.

In the service of a distress warrant issued by the director of revenue and finance for the collection of taxes administered by or debts to be collected by the department of revenue and finance, in the service of a distress warrant issued by the director of inspections and appeals for the collection of overpayment debts owed to the department of human services, or in the service of a distress warrant issued by the director of the department of workforce development for the collection of employment security contributions, the property of the taxpayer or the employer in the possession of another, or debts due the taxpayer or the employer, may be reached by garnishment.

[C39, §**11679.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.29; 81 Acts, ch 192, §1]
93 Acts, ch 53, §3; 94 Acts, ch 1165, §41; 96 Acts, ch 1186, §23
Garnishment, chapter 642

626.30 Expiration or return of distress warrant.
Proceedings by garnishment under a distress warrant issued by the Iowa director of revenue and finance or the director of inspections and appeals shall not be affected by its expiration or its return.
[C39, §**11679.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.30]
93 Acts, ch 53, §4

626.31 Return of garnishment — action docketed — distress action.
Where parties have been garnished under a distress warrant issued by the director of revenue and finance or the director of inspections and appeals, the officer shall make return thereof to the court in the county where the garnishee lives, if the garnishee lives in Iowa, otherwise in the county where the taxpayer resides, if the taxpayer lives in Iowa; and if neither the garnishee nor the taxpayer lives in Iowa, then to the district court in Polk county, Iowa; the officer shall make return in the same manner as a return is made on a garnishment made under a writ of execution so far as they relate to garnishments, and the clerk of the district court shall docket an action thereon without fee the same as if a judgment had been recovered against the taxpayer in the county where the return is made, an execution issued thereon, and garnishment made thereunder, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be.
[C39, §**11679.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.31]
93 Acts, ch 53, §5

626.32 Joint or partnership property.
When an officer has an execution against a person who owns property jointly or in common with another, such officer may levy on and take possession of the property owned jointly or in common, sufficiently to enable the officer to appraise and inventory the same, and for that purpose shall call to the officer's assistance three disinterested persons, which inventory and appraisement shall be returned by the officer with the execution, and shall state in the officer's return who claims to own the property.
[C51, §1917; R60, §3287; C73, §3053; C97, §3977; C24, 27, 31, 35, 39, §**11680;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.32]
Analogous provisions, §639.37 et seq.

626.33 Lien — equitable proceeding — receiver.
The plaintiff shall, from the time such property is so levied on, have a lien on the interest of the defendant therein, and may commence an action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien; and, if deemed necessary or proper, the court may appoint a receiver under the circumstances provided in the chapter relating to receivers.
[R60, §3289 – 3291; C73, §3054; C97, §3978; C24, 27, 31, 35, 39, §**11681;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.33]
Receivers, chapter 680

626.34 Personal property subject to security interest — payment.
Personal property subject to a security interest not exempt from execution may be taken on attachment or execution issued against the debtor, if the officer, or the attachment or execution creditor, within ten days after such levy, shall pay to the secured party the amount of the secured debt and interest accrued, or deposit the same with the clerk of the district court of the county from which the attachment or execution issued, for the use of the secured party, or secure the same as in this chapter provided.
[C97, §3979; C24, 27, 31, 35, 39, §**11682;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.34]
Applicable to attachments, §639.40

626.35 Interest on secured debt.
When the secured debt is not due as shown by the security agreement, the officer or the attachment or execution creditor, must also pay or deposit with the clerk interest on the principal sum at the rate specified in the security agreement for the term of sixty days from the date of the deposit, unless the debt secured falls due in a less time, in which case interest shall be deposited for such shorter period.
[C97, §3980; C24, 27, 31, 35, 39, §**11683;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.35]

626.36 Failure to pay, deposit, or give security.
If within ten days after such levy the attachment or execution creditor does not pay the amount, make the deposit, or give the security required, the levy shall be discharged, and the property restored to the possession of the person from whom it was taken and the creditor shall be liable to the secured party for any damages sustained by reason of such levy.
[C97, §3981; C24, 27, 31, 35, 39, §**11684;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.36]

626.37 Creditor subrogated.
When such sum is paid to the secured party or deposited with the clerk, the attachment or execution creditor shall be subrogated to all the rights

of such holder, and the proceeds of the sale of the collateral shall be first applied to the discharge of such indebtedness and the costs incurred under the writ of attachment or execution.

[C97, §3982; C24, 27, 31, 35, 39, §**11685;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.37]

626.38 Holder reinstated.

If, for any reason, the levy upon the collateral is discharged or released without a sale thereof, the attachment or execution creditor who has paid or deposited the amount of the secured debt shall have all the rights under such security agreement possessed by the secured party at the time of the levy. If the secured party thereof desires to be reinstated in the party's rights thereunder, the party may repay the money received by the party, with interest thereon at the rate borne by the secured debt for the time it has been held by the party, and demand the return of the security agreement, whereupon the party's rights thereunder shall revest in the party, and the attachment or execution creditor shall be entitled to the deposit made, or any part thereof remaining in the hands of the clerk, or any money returned to the clerk by the secured party.

[C97, §3983; C24, 27, 31, 35, 39, §**11686;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.38]

626.39 Statement of amount due.

The secured party, before receiving the money tendered to the party by the attaching or execution creditor or which was deposited with the clerk, shall state by a signed memorandum the amount due or to become due and deliver the same along with the security agreement, unless it has been filed as the financing statement, to the person paying the said amount or the clerk with whom the deposit is made, and the secured party shall only receive the amount so stated to be due, and the surplus, if any, shall be returned to the person making the deposit.

[C97, §3984; C24, 27, 31, 35, 39, §**11687;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.39]

626.40 Indemnifying bond.

When the attaching or execution creditor thus pays or deposits the amount of the claim under the security agreement, the creditor shall not be required to give an indemnifying bond on notice to the sheriff by the holder of the security agreement of the holder's right to the property thereunder, or if one has been given, it shall be released.

[C97, §3985; C24, 27, 31, 35, 39, §**11688;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.40]

626.41 Sale — costs — surplus.

If under execution sale the collateral does not sell for enough to pay the secured debt, interest, and costs of sale, the judgment creditor shall be liable for all costs thus made, but if a greater sum is realized, the officer conducting the sale shall at once pay to the secured party the amount due thereunder, and apply the surplus on the execution.

[C97, §3986; C24, 27, 31, 35, 39, §**11689;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.41]

626.42 Statement of indebtedness.

For the purpose of enabling the attaching or execution creditor to determine the amount to be tendered or deposited to hold the levy under the writ of attachment or execution, the person entitled to receive payment of the secured debt shall deliver to any such person, upon written demand therefor, a statement in writing under oath, showing the nature and amount of the original debt, the date and the amount of each payment, if any, which has been made thereon, and an itemized statement of the amount then due and unpaid.

[C97, §3987; C24, 27, 31, 35, 39, §**11690;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.42]

626.43 Contest as to validity or amount.

If the right of the secured party to receive such or any sum is for any reason questioned by the levying creditor, the party may, within ten days after levy, or after demand is made for a statement of the amount due as above provided, commence an action in equity or contest such right upon filing a bond in a penalty double the amount of such security interest, or double the value of the property levied upon, conditioned either for the payment of any sum found due on said security interest to the person entitled thereto, or for the value of the property levied upon, as the party ordering the levy may elect, with sureties to be approved by the clerk.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §**11691;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.43]

626.44 Nonresident — service — transfer of action.

If such secured party is a nonresident or the party's residence is unknown, service may be made by publication as in other actions, but if such residence becomes known before final submission, the court may order personal service to be made. If commenced at law, the court may transfer the same to the equity side as in other cases.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §**11692;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.44]

Service by publication, R.C.P. 1.310

626.45 Receiver — decree — costs.

The court may appoint a receiver, and shall determine the amount due on the security agreement, the value of the property levied upon, and all other questions properly presented, and may con-

tinue and preserve or dismiss the lien of the levy, the costs to be taxed to the losing party as in other cases.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §**11693;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.45]

Costs, chapter 625

626.46 Various security agreements — priority.

If there are two or more security agreements, the creditor may admit the validity of one or more, and make the required deposit as to such, and contest the other, and where there are two or more such security agreements, each of which is questioned, a failure to establish the invalidity of all shall not defeat the rights of the levying creditor, but in such case the decree shall determine the priority of liens, and direct the order of payment out of the proceeds of the property which shall be sold under special execution to be awarded in said cause.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §**11694;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.46]

626.47 Other remedies.

Nothing in this chapter contained shall be construed to forbid or in any way affect the right of a creditor to contest in any other way the validity of any security agreement.

[C97, §3988; S13, §3988; C24, 27, 31, 35, 39, §**11695;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.47]

626.48 Failure to make statement — effect.

A failure to make the statement, when required as above provided, shall have the effect to postpone the priority of the security interest and give the levy of the writ of attachment or execution priority over the claim of the holder thereof.

[C97, §3989; C24, 27, 31, 35, 39, §**11696;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.48]

626.49 Where secured party garnished.

If the secured party, before the levy of a writ of attachment or execution, has been garnished at the suit of a creditor of a debtor, a creditor desiring to seize the collateral under a writ of attachment or execution shall pay to the secured party, or deposit with the clerk, in addition to the secured debt, the sum claimed under the garnishment, and the provisions of this chapter, so far as applicable, in all respects shall govern proceedings relating thereto.

[C97, §3990; C24, 27, 31, 35, 39, §**11697;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.49]

626.50 Duty to levy — notice of ownership or exemption — notice to defendant.

An officer is bound to levy an execution on any personal property in the possession of, or that the officer has reason to believe belongs to, the defendant, or on which the plaintiff directs the officer to levy, after having received written instructions for the levy from the plaintiff or the attorney who had the execution issued to the sheriff, unless the officer has received notice in writing under oath from some other person, or that person's agent or attorney, that the property belongs to the person, stating the nature of the person's interests in the property, how and from whom the person acquired the property, and the consideration paid for the property; or from the defendant, that the property is exempt from execution.

The officer making the levy shall promptly serve written notice of the levy on the defendant. The notice shall be served in the same manner as provided for original notice.

This section is not applicable to garnishment proceedings.

[C51, §1916; R60, §3277; C73, §3055; C97, §3991; C24, 27, 31, 35, 39, §**11698;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.50]

88 Acts, ch 1062, §1; 88 Acts, ch 1133, §3; 92 Acts, ch 1092, §1

Applicable to attachments, §639.41

626.51 Failure to give notice — effect.

Failure to give such notice shall not deprive the party of any other remedy.

[C97, §3991; C24, 27, 31, 35, 39, §**11699;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.51]

626.52 Right to release levy.

If after levy the officer receives such notice, such officer may release the property unless a bond is given as provided in section 626.54.

[C51, §1916; R60, §3277; C73, §3055; C97, §3991; C24, 27, 31, 35, 39, §**11700;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.52]

626.53 Exemption from liability.

The officer shall be protected from all liability by reason of such levy until the officer receives such written notice.

[C51, §1916; R60, §3277; C73, §3055; C97, §3991; C24, 27, 31, 35, 39, §**11701;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.53]

626.54 Indemnifying bond — sale and return.

When the officer receives such notice the officer may forthwith give the plaintiff, the plaintiff's agent, or attorney, notice that an indemnifying bond is required. Bond may thereupon be given by or for the plaintiff, with one or more sufficient sureties, to be approved by the officer, to the effect that the obligors will indemnify the officer against the damages which the officer may sustain in con-

sequence of the seizure or sale of the property, and will pay to any claimant thereof the damages the claimant may sustain in consequence of the seizure or sale, and will warrant to any purchaser of the property such estate or interest therein as is sold; and thereupon the officer shall proceed to subject the property to the execution, and shall return the indemnifying bond to the court from which the execution issued.

[R60, §3277; C73, §3056; C97, §3992; C24, 27, 31, 35, 39, §**11702;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.54]

Applicable to attachments, §639.41

626.55 Failure to give bond.

If such bond is not given, the officer may refuse to levy, or if the officer has done so, and the bond is not given in a reasonable time after it is required by the officer, the officer may restore the property to the person from whose possession it was taken, and the levy shall stand discharged.

[R60, §3278; C73, §3057; C97, §3993; C24, 27, 31, 35, 39, §**11703;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.55]

626.56 Application of proceeds.

Where property for the sale of which the officer is indemnified sells for more than enough to satisfy the execution under which it was taken, the surplus shall be paid into the court to which the indemnifying bond is directed to be returned. The court may order such disposition or payment of the money to be made, temporarily or absolutely, as may be proper in respect to the rights of the parties interested.

[R60, §3280; C73, §3059; C97, §3994; C24, 27, 31, 35, 39, §**11704;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.56]

626.57 Repealed by 72 Acts, ch 1124, § 282.

626.58 Stay of execution — exceptions.

On all judgments for the recovery of money, except those rendered on any appeal or writ of error, or in favor of a laborer or mechanic for wages, or against one who is surety in the stay of execution, or against any officer, person, or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a stay of execution, if the defendant therein shall, within ten days from the entry of judgment, procure one or more sufficient freehold sureties to enter into a bond, acknowledging themselves security for the defendant for the payment of the judgment, interest, and costs from the time of rendering judgment until paid, as follows:

1. If the sum for which judgment was rendered, inclusive of costs, does not exceed one hundred dollars, three months.

2. If such sum and costs exceed one hundred dollars, six months.

[R60, §3293; C73, §3061; C97, §3996; C24, 27, 31, 35, 39, §**11706;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.58]

626.59 Affidavit of surety.

Officers approving stay bonds shall require the affidavit of the signers thereof, unless waived in writing by the party in whose favor the judgment is rendered, that they own property not exempt from execution, and aside from encumbrance, to the value of twice the amount of the judgment.

[C73, §3062; C97, §3997; C24, 27, 31, 35, 39, §**11707;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.59]

626.60 Stay waives appeal.

No appeal shall be allowed after a stay of execution has been obtained.

[R60, §3294; C73, §3063; C97, §3998; C24, 27, 31, 35, 39, §**11708;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.60]

626.61 Bond — approval — recording — effect.

The sureties for stay of execution may be taken and approved by the clerk, and the bond shall be recorded in a book kept for that purpose, and have the force and effect of a judgment confessed from the date thereof against their property, and shall be indexed in the proper judgment docket, as in case of other judgments.

[R60, §3295, 3298; C73, §3064; C97, §3999; C24, 27, 31, 35, 39, §**11709;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.61]

626.62 Execution recalled.

When the bond is accepted and approved after execution has been issued, the clerk shall immediately notify the sheriff of the stay, and the officer shall forthwith return the execution with the officer's doings thereon.

[R60, §3296; C73, §3065; C97, §4000; C24, 27, 31, 35, 39, §**11710;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.62]

626.63 Property released.

All property levied on before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be relinquished by the officer, upon stay of execution being entered.

[R60, §3297; C73, §3066; C97, §4001; C24, 27, 31, 35, 39, §**11711;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.63]

626.64 Execution against principal and sureties.

At the expiration of the stay, the clerk shall issue a joint execution against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein, and the liability of

such sureties shall be subject to that of their principal as provided in this chapter.

[R60, §3299; C73, §3067; C97, §4002; C24, 27, 31, 35, 39, §**11712;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.64]

Analogous provisions, §626.17, R.C.P. 1.956

626.65 Objections by surety.

When any court shall render judgment against two or more persons, any of whom is surety for any other in the contract on which judgment is founded, there shall be no stay of execution allowed, if the surety objects thereto at or before the time of rendering the judgment, whereupon it shall be ordered by the court that there be no stay, unless the surety for the stay of execution will undertake specifically to pay the judgment in case the amount thereof cannot be levied of the principal defendant, and the judgment shall recite that the liability of such stay is prior to that of the objecting surety.

[R60, §3300; C73, §3068; C97, §4003; C24, 27, 31, 35, 39, §**11713;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.65]

626.66 Stay terminated by surety.

Any surety for the stay of execution may file with the clerk an affidavit, stating that the surety verily believes the surety will be compelled to pay the judgment, interest, and costs thereon unless execution issues immediately, and gives notice thereof in writing to the party for whom the surety is surety; and the clerk shall thereupon issue execution forthwith, unless other sufficient surety be entered before the clerk within five days after such notice is given as in other cases.

[R60, §3301; C73, §3069; C97, §4004; C24, 27, 31, 35, 39, §**11714;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.66]

626.67 Other security given.

If other sufficient surety is given, it shall have the force of the original surety entered before the filing of the affidavit, and shall discharge the original surety.

[R60, §3302; C73, §3070; C97, §4005; C24, 27, 31, 35, 39, §**11715;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.67]

626.68 Lien not released.

Where a stay of execution has been taken, such confessed judgment shall not release any judgment lien by virtue of the original judgment for the amount then due.

[R60, §3303; C73, §3071; C97, §4006; C24, 27, 31, 35, 39, §**11716;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.68]

626.69 Labor claims preferred.

When the property of any company, corporation, firm, or person shall be seized upon by any process of any court, or placed in the hands of a receiver, trustee, or assignee, or their property shall be seized by the action of creditors, for the purpose of paying or securing the payment of the debts of such company, corporation, firm, or person, the debts owing to employees for labor performed within the ninety days next preceding the seizure or transfer of such property, to an amount not exceeding one hundred dollars to each person, shall be a preferred debt and paid in full, or if there is not sufficient realized from such property to pay the same in full, then, after the payment of costs, ratably out of the fund remaining.

[C97, §4019; S13, §4019; C24, 27, 31, 35, 39, §**11717;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.69]

Labor claims preferred, §633.425, 680.7, 681.13

626.70 Exceptions.

Such preference shall be junior and inferior to mechanics' liens for labor in opening and developing coal mines.

[C97, §4019; S13, §4019; C24, 27, 31, 35, 39, §**11718;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.70]

626.71 Statement of claim — allowance.

Any employee desiring to enforce a claim for wages, at any time after the seizure of the property under execution or writ of attachment or under any other authority, and before sale thereof is ordered, shall present to the officer levying on such property or to such receiver, trustee, or assignee, or to the court having custody of such property or from which such process issued, or person charged with such property, a statement under oath, showing the amount due after allowing all just credits and setoffs, and the kind of work for which such wages are due, and when performed; and unless objection be made thereto as provided in section 626.72, such claim shall be allowed and paid to the person entitled thereto, after first paying all costs occasioned by the proceeding out of the proceeds of the sale of the property so seized or placed in the hands of a receiver, trustee, or assignee, or court, or person charged with the same, subject, however, to the provisions of section 626.69.

[C97, §4020; S13, §4020; C24, 27, 31, 35, 39, §**11719;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.71]

626.72 Contest.

Any person interested may contest any claim or part thereof by filing objections thereto, supported by affidavit, with such court, receiver, trustee, or assignee, and its validity shall be determined in the same way the validity of other claims are which are sought to be enforced against such property, provided that where the claim is filed with a person charged with the property other than the officers above enumerated and a contest is made,

the cause shall be transferred to the district court, and there docketed and determined.

[C97, §4021; S13, §4021; C24, 27, 31, 35, 39, §**11720;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.72]

626.73 Priority.

Claims of employees for labor, if not contested, or if allowed after contest, shall have priority over all claims against or liens upon such property, except prior mechanics' liens for labor in opening or developing coal mines as allowed by law.

[C97, §4022; C24, 27, 31, 35, 39, §**11721;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.73]

626.74 Notice of sale.

The officer must give four weeks' notice of the time and place of selling real property, and three weeks' notice of personal property.

[C51, §1905; R60, §3310; C73, §3079; C97, §4023; C24, 27, 31, 35, 39, §**11722;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.74]

626.75 Posting and publication — compensation.

Notice shall be posted in at least three public places of the county, one of which shall be at the county courthouse. In addition to which, in case of the sale of real estate, or where personal property with a value of two hundred dollars or greater is to be sold, there shall be two weekly publications of such notice in some newspaper printed in the county, to be selected by the party causing the notice to be given, the first at least four weeks in the case of real estate, or three weeks in the case of personal property, before the date of sale, and the second at a later time before the date of sale. The compensation for such publication shall be the same as is provided by law for legal notices.

[C51, §1906; R60, §3311; C73, §3080; C97, §4024; S13, §4024; C24, 27, 31, 35, 39, §**11723;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.75]

90 Acts, ch 1058, §1

626.76 Repealed by 72 Acts, ch 1124, § 282.

626.77 Penalty for selling without notice.

An officer selling without the notice prescribed in sections 626.74 and 626.75, shall forfeit one hundred dollars to the defendant in execution, in addition to the actual damages sustained by either party; but the validity of the sale is not thereby affected.

[C51, §1907; R60, §3312; C73, §3081; C97, §4027; S13, §4027; C24, 27, 31, 35, 39, §**11725;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.77]

626.78 Notice to defendant.

If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve the debtor with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale, which notice shall be served in the manner provided by rule of civil procedure 1.305(1).

[R60, §3318; C73, §3087; C97, §4025; S13, §4025; C24, 27, 31, 35, 39, §**11726;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.78]

626.79 Setting aside sale.

Sales made without the notice required in section 626.78 may be set aside on motion made within ninety days thereafter.

[R60, §3318; C73, §3087; C97, §4025; S13, §4025; C24, 27, 31, 35, 39, §**11727;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.79]

626.80 Time and manner.

The sale must be at public auction, between nine o'clock in the forenoon and four o'clock in the afternoon, and the hour of the commencement of the sale must be fixed in the notice.

The sheriff shall receive and give a receipt for a sealed written bid submitted prior to the public auction. The sheriff may require all sealed written bids to be accompanied by payment of any fees required to be paid at the public auction by the purchaser, to be returned if the person submitting the sealed written bid is not the purchaser. The sheriff shall keep all written bids sealed until the commencement of the public auction, at which time the sheriff shall open and announce the written bids as though made in person.

[C51, §1908; R60, §3313; C73, §3082; C97, §4028; C24, 27, 31, 35, 39, §**11728;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.80]

89 Acts, ch 123, §1

State or municipality as purchaser, chapter 569

626.81 Sale postponed.

When there are no bidders, or when the amount offered is grossly inadequate, or when from any cause the sale is prevented from taking place on the day fixed, or the parties so agree, the officer may postpone the sale for not more than three days without being required to give any further notice thereof, which postponement shall be publicly announced at the time the sale was to have been made, but not more than two such adjournments shall be made, except by agreement of the parties in writing and made a part of the return upon the execution.

[C51, §1909; R60, §3314; C73, §3083; C97, §4029; C24, 27, 31, 35, 39, §**11729;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.81]

626.82 Overplus.

When the property sells for more than the

amount required to be collected, the overplus must be paid to the debtor, unless the officer has another execution in the officer's hands on which said overplus may be rightfully applied, or unless there are liens upon the property which ought to be paid therefrom, and the holders thereof make claim to such surplus and demand application thereon, in which case the officer shall pay the same into the hands of the clerk of the district court, and it shall be applied as ordered by the court.

[C51, §1910; R60, §3315; C73, §3084; C97, §4030; C24, 27, 31, 35, 39, §**11730;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.82]

626.83 Deficiency — additional execution.

If the property levied on sells for less than sufficient to satisfy the execution, the judgment holder may order out another, which shall be credited with the amount of the previous sale. The proceedings under the second execution shall conform to those hereinbefore prescribed.

[C51, §1911; R60, §3316; C73, §3085; C97, §4031; C24, 27, 31, 35, 39, §**11731;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.83]

626.84 Plan of division of land.

At any time before nine o'clock a.m. of the day of the sale, the debtor may deliver to the officer a plan of division of the land levied on, subscribed by the debtor, and in that case the officer shall sell, according to said plan, so much of the land as may be necessary to satisfy the debt and costs, and no more. If no such plan is furnished, the officer may sell without any division.

[R60, §3319; C73, §3088; C97, §4032; C24, 27, 31, 35, 39, §**11732;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.84]

626.85 Failure of purchaser to pay — optional procedure.

When the purchaser fails to pay the money when demanded, the judgment holder or the holder's attorney may elect to proceed against the purchaser for the amount; otherwise the sheriff shall treat the sale as a nullity, and may sell the property on the same day, or after postponement as above authorized.

[C51, §1913; R60, §3320; C73, §3089; C97, §4033; C24, 27, 31, 35, 39, §**11733;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.85]

626.86 Sales vacated for lack of lien.

When any person shall purchase at a sheriff's sale any real estate on which the judgment upon which the execution issued was not a lien at the time of the levy, and which fact was unknown to the purchaser, the court shall set aside such sale on motion, notice having been given to the debtor as in case of action, and a new execution may be issued to enforce the judgment, and, upon the order being made to set aside the sale, the sheriff or judgment creditor shall pay over to the purchaser the purchase money; said motion may also be made by any person interested in the real estate.

[R60, §3321; C73, §3090; C97, §4034; C24, 27, 31, 35, 39, §**11734;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.86]

626.87 Money — things in action.

Money levied upon may be appropriated without being advertised or sold, and so may bank bills, drafts, promissory notes, or other papers of the like character, if the plaintiff will receive them at their par value as cash, or if the officer can exchange them for cash at that value.

[C51, §1914; R60, §3322; C73, §3091; C97, §4035; C24, 27, 31, 35, 39, §**11735;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.87]

626.88 Real estate of deceased judgment debtor.

When a judgment has been obtained against a decedent in the decedent's lifetime, the plaintiff may file a petition in the office of the clerk of the court where the judgment is rendered, against the executor, the heirs, and devisees of real estate, if such there be, setting forth the facts, and that there is real estate of the deceased, describing its location and extent, and praying the court to award execution against the same.

[C51, §1918; R60, §3323; C73, §3092; C97, §4036; C24, 27, 31, 35, 39, §**11736;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.88]

626.89 Notice.

The person against whom the petition is filed shall be notified by the plaintiff to appear within twenty days following completion of service and show cause, if any, why execution should not be awarded.

[C51, §1919; R60, §3324; C73, §3093; C97, §4037; C24, 27, 31, 35, 39, §**11737;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.89]

626.90 Service and return.

The notice must be served and returned in the ordinary manner, and the same length of time shall be allowed for appearance as in civil actions, and service of such notice on nonresident defendants may be had in such cases by publication.

[C51, §1920; R60, §3325; C73, §3094; C97, §4038; C24, 27, 31, 35, 39, §**11738;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.90]

See also R.C.P. 1.303

Service by publication, R.C.P. 1.310

626.91 Execution awarded.

At the proper time, the court shall award the execution, unless sufficient cause is shown to the contrary, but the nonage of the heirs or devisees shall not be held such sufficient cause.

[C51, §1921, 1922; R60, §3326, 3327; C73, §3095, 3096; C97, §4039; C24, 27, 31, 35, 39, §**11739;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.91]

626.92 Mutual judgments — setoff.

Mutual judgments, executions on which are in the hands of the same officer, may be set off the one against the other, except the costs, but if the amount collected on the large judgment is sufficient to pay the costs of both, such costs shall be paid therefrom.

[C51, §1923; R60, §3328; C73, §3097; C97, §4040; C24, 27, 31, 35, 39, §**11740;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.92]

626.93 Personal property and leasehold interests — appraisement.

Personal property, and leasehold interests in real property having less than two years of an unexpired term, levied upon and advertised for sale on execution, must be appraised before sale by two disinterested householders of the neighborhood, one of whom shall be chosen by the execution debtor and the other by the plaintiff, or, in case of the absence of either party, or if either or both parties neglect or refuse to make choice, the officer making the levy shall choose one or both, as the case may be, who shall forthwith return to said officer a just appraisement, under oath, of said property if they can agree; if they cannot, they shall choose another disinterested householder, and with that householder's assistance shall complete such appraisement, and the property shall not, upon the first offer, be sold for less than two-thirds of said valuation; but if offered at the same place and hour of the day as advertised upon three successive days, and no bid is received equal to two-thirds of the appraised value thereof, then it may be sold for one-half of said valuation.

[C73, §3100; C97, §4041; C24, 27, 31, 35, 39, §**11741;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.93]

626.94 Property unsold — optional procedure.

Subject to the provisions of section 626.93, when property is unsold for want of bidders, the levy still holds good; and, if there be sufficient time, it may again be advertised, or the execution returned and one issued commanding the officer to sell the property, describing it, previously levied on, to which a clause may be added that, if such property does not produce a sum sufficient to satisfy such execution, the officer shall proceed to make an additional levy, on which the officer shall proceed as on other executions; or the plaintiff may, in writing filed with the clerk, abandon such levy, upon paying the costs thereof; in which case execution may issue with the same effect as if none had ever been issued.

[C51, §1912; R60, §3317; C73, §3086; C97, §4042; C24, 27, 31, 35, 39, §**11742;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.94]

626.95 Deed or certificate.

If the property sold is not subject to redemption, the sheriff must execute a deed therefor to the purchaser; but, if subject to redemption, a certificate, containing a description of the property and the amount of money paid by such purchaser, and stating that, unless redemption is made within one year thereafter, or such other time as may be specifically provided for particular actions according to law, the purchaser or the purchaser's heirs or assigns will be entitled to a deed for the same.

[C51, §1925; R60, §3331; C73, §3101; C97, §4044; C24, 27, 31, 35, 39, §**11743;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.95]

626.96 Duplicate issued in case of loss.

When any person, firm, or corporation to whom a sheriff's certificate of sale has been issued or an assignee thereof shall file in the office of the clerk of the district court in which the certificate was issued and in said action, a verified application signed by the purchaser or assignee, the purchaser's or assignee's agent, legal representative or attorney that the outstanding sheriff's certificate of sale in said action has been lost or destroyed, the court shall fix a time for hearing thereon and prescribe the notice therefor and the manner of service thereof on the parties to said action or their successors in interest, and on said hearing if the court finds that the sheriff's certificate of sale issued in said cause has been lost or destroyed, shall order the sheriff of said county to issue a duplicate certificate of sale as of the date of the original certificate which shall have the same force and effect as the original, and any deed executed thereunder shall have the same force and effect as if executed under the original certificate of sale.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.96]

626.97 Cancellation after eight years.

After eight years have elapsed from the date of issuance of any sheriff's certificate of sale, and no action has been taken by the holder of such certificate to obtain a deed thereunder, it shall be the duty of the sheriff and clerk of the district court to cancel such sale and certificate of record and all rights thereunder shall be barred.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.97]

626.98 Deed.

If the debtor or the debtor's assignee fails to redeem, the sheriff then in office must, at the end of the period for redemption provided by law for the particular action, execute a deed to the person who is entitled to the certificate as hereinbefore provided, or to that person's assignee. If the person

entitled is dead, the deed shall be made to the person's heirs.

[C51, §1946; R60, §3354; C73, §348, 3124; C97, §4062; C24, 27, 31, 35, 39, §**11744;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.98]

626.99 Constructive notice — recording.

The purchaser of real estate at a sale on execution need not place any evidence of the person's purchase upon record until sixty days after the expiration of the full time of redemption. Up to that time the publicity of the proceedings is constructive notice of the rights of the purchaser.

[C51, §1947; R60, §3355; C73, §3125; C97, §4063; C24, 27, 31, 35, 39, §**11745;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.99]

626.100 Presumption.

Deeds executed by a sheriff in pursuance of the sales contemplated in this chapter are presumptive evidence of the regularity of all previous proceedings in the case, and may be given in evidence without preliminary proof.

[C51, §1948; R60, §3356; C73, §3126; C97, §4064; C24, 27, 31, 35, 39, §**11746;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.100]

626.101 Damages for injury to property.

When real estate has been sold on execution, the purchaser thereof, or any person who has succeeded to the purchaser's interest, may, after the estate becomes absolute, recover damages for any injury to the property committed after the sale and before possession is delivered under the conveyance.

[C51, §1949; R60, §3357; C73, §3127; C97, §4065; C24, 27, 31, 35, 39, §**11747;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.101]

Recovery for waste, §658.7

626.102 Repealed by 72 Acts, ch 1124, § 282.

626.103 Death of holder of judgment.

The death of any or all of the joint owners of a judgment shall not prevent an execution being issued thereon, but on any such execution the clerk shall endorse the fact of the death of such of them as are dead, and if all are dead, the names of their personal representatives, if the judgment passed to the personal representatives, or the names of the heirs of such deceased person, if the judgment was for real property.

[R60, §3482; C73, §3130; C97, §4067; C24, 27, 31, 35, 39, §**11749;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.103]

626.104 Officer's duty.

In acting upon an execution, so endorsed, the sheriff shall proceed as if the surviving owners, or the personal representatives or heirs as above provided, were the only owners of the judgment upon which it was issued, and take bonds accordingly.

[R60, §3483; C73, §3131; C97, §4068; C24, 27, 31, 35, 39, §**11750;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.104]

626.105 Affidavit required.

Before making the endorsements as above provided, an affidavit shall be filed with the clerk by one of the owners of such judgment, or one of such personal representatives or heirs, or their attorney, of the death of such owners as are dead, and that the persons named as such are the personal representatives or heirs, and in the case of personal representatives they shall file with the clerk a certificate of their qualification, unless their appointment is by the court from which the execution issues, in which case the record of such appointment shall be sufficient evidence of the fact.

[R60, §3484; C73, §3132; C97, §4069; C24, 27, 31, 35, 39, §**11751;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.105]

626.106 Execution quashed.

Any debtor in such a judgment may move the court to quash an execution on the ground that the personal representatives or heirs of a deceased judgment creditor are not properly stated in the endorsement on the execution.

[R60, §3486; C73, §3134; C97, §4070; C24, 27, 31, 35, 39, §**11752;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.106]

626.107 Death of part of defendants.

The death of part of the joint debtors in a judgment shall not prevent execution being issued thereon, but, when issued, it shall operate alone on the survivors and their property.

[R60, §3485; C73, §3133; C97, §4071; C24, 27, 31, 35, 39, §**11753;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.107]

626.108 Fee bill execution.

After the expiration of sixty days from the rendition of a final judgment not appealed, removed, or reversed, the clerk of the court may, and, upon demand of any party entitled to any part thereof, shall, issue a fee bill for all costs of such judgment, which shall have the same force and effect as an execution issued by such officer; and shall be served and executed in the same manner.

[C73, §3842; C97, §1299; C24, 27, 31, 35, 39, §**11754;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §626.108]

626.109 Public property — state.

A judgment against a department, agency, division, or official of the state does not create or constitute a lien against public property held by the state.

93 Acts, ch 87, §13

See also §627.18

Retroactive applicability to all judgments; 93 Acts, ch 87, §14

CHAPTER 626A

ENFORCEMENT OF FOREIGN JUDGMENTS

626A.1 Definition.
626A.2 Filing and status of foreign judgments.
626A.3 Notice of filing.
626A.4 Stay.
626A.5 Fee.
626A.6 Optional procedure.
626A.7 Uniformity of interpretation.
626A.8 Short title.

626A.1 Definition.

As used in this chapter unless the context otherwise requires, *"foreign judgment"* means a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

[C81, §626A.1]

626A.2 Filing and status of foreign judgments.

1. A copy of a foreign judgment authenticated in accordance with an Act of Congress or the statutes of this state may be filed in the office of the clerk of the district court of a county of this state which would have venue if the original action was being commenced in this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the district court of this state and may be enforced or satisfied in like manner.

2. A proceeding to enforce a child support order is governed by 28 U.S.C. § 1738B.

[C81, §626A.2]

96 Acts, ch 1141, §32; 97 Acts, ch 175, §236

626A.3 Notice of filing.

1. At the time of the filing of the foreign judgment, the judgment creditor or the creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

2. Promptly upon the filing of the foreign judgment and the affidavit as provided in subsection 1, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state.

3. No execution or other process for enforcement of a foreign judgment filed under this chapter shall issue until the expiration of twenty days after the date the judgment is filed.

[C81, §626A.3]

626A.4 Stay.

1. If the judgment debtor shows the district court in which the judgment is filed that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

2. If the judgment debtor shows the district court in which the judgment is filed that grounds exist upon which enforcement of a judgment of the district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

[C81, §626A.4]

626A.5 Fee.

For filing a foreign judgment, the clerk shall collect a fee in the amount collected for filing and docketing a petition under section 602.8105, subsection 1, paragraph *"a"*.

[C81, §626A.5]

94 Acts, ch 1074, §9

626A.6 Optional procedure.

The right of a judgment creditor to bring an action to enforce the creditor's judgment instead of proceeding under this chapter remains unimpaired.

[C81, §626A.6]

626A.7 Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[C81, §626A.7]

626A.8 Short title.

This chapter may be cited as the *"Uniform Enforcement of Foreign Judgments Act"*.

[C81, §626A.8]

CHAPTER 626B

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

626B.1 Definitions.
626B.2 Application and enforceability.
626B.3 Inconclusive judgments.
626B.4 Personal jurisdiction.
626B.5 Effect of appeal.
626B.6 Other foreign judgments.
626B.7 Uniformity of interpretation.
626B.8 Short title.

626B.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Foreign judgment"* means a judgment, decree, or order of a court of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support of dependents.

2. *"Foreign state"* means any governmental unit other than the United States, a state, district, commonwealth, territory, insular possession of the United States, the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands.

89 Acts, ch 173, §1

626B.2 Application and enforceability.

This chapter applies to any foreign judgment which is final and conclusive, and enforceable where rendered even though the judgment is subject to an appeal or an appeal from that judgment is pending. Except as provided in section 626B.3, a foreign judgment is conclusive between the parties to the extent that the judgment grants or denies recovery of a sum of money. The final and conclusive foreign judgment is enforceable in the same manner and to the same extent as the judgment of a sister state which is entitled to full faith and credit.

89 Acts, ch 173, §2

626B.3 Inconclusive judgments.

1. A foreign judgment is not conclusive in any of the following cases:

a. The foreign judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

b. Except as provided in section 626B.4, the court of the foreign state did not have personal jurisdiction over the defendant.

c. The court of the foreign state did not have jurisdiction over the subject matter involved in the action.

2. A foreign judgment need not be recognized in any of the following cases:

a. The defendant in the proceedings in the court of the foreign state did not receive notice of the proceedings in sufficient time to enable the defendant to defend against the action.

b. The foreign judgment was obtained by fraud.

c. The cause of action on which the foreign judgment was based is contrary to the public policy of this state.

d. The foreign judgment conflicts with a previous, final, and conclusive foreign judgment or other judgment.

e. The proceeding in the foreign court was contrary to a settlement agreement entered into between the parties prior to the foreign judgment's being rendered by the court in the foreign state.

f. The court where the plaintiff is seeking to enforce the foreign judgment determines that jurisdiction in the court of the foreign state was based upon personal service only, and the doctrine of forum non conveniens applies to the original action.

89 Acts, ch 173, §3

626B.4 Personal jurisdiction.

1. A foreign judgment shall not be refused recognition in a court of this state for lack of personal jurisdiction if any of the following occurred:

a. The defendant was served personally in the foreign state.

b. The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or for the purpose of contesting jurisdiction of the court in the foreign state over the defendant.

c. The defendant, prior to the commencement of the proceedings in the court of the foreign state, had agreed to submit to the jurisdiction of that court in the action concerning the subject matter involved.

d. The defendant was domiciled, had its principal place of business, or otherwise had acquired corporate status in the foreign state when the proceedings were instituted.

e. The defendant had a business office in the foreign state and the proceedings in the court of the foreign state involved a cause of action arising out of business done by the defendant through that office in the foreign state.

f. The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of that operation.

2. A court of this state may recognize other bases of jurisdiction.

89 Acts, ch 173, §4

626B.5 Effect of appeal.

Upon satisfactory proof by the defendant that an appeal is pending or that the defendant is entitled to and intends to appeal the foreign judgment, the court may stay the proceedings until the appeal has been determined or until a sufficient period of time has expired during which the defendant could have commenced an appeal in the court of the foreign state.

89 Acts, ch 173, §5

626B.6 Other foreign judgments.

This chapter does not prevent the recognition of a foreign judgment by a court of this state in a situation not specifically covered in this chapter.

89 Acts, ch 173, §6

626B.7 Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

89 Acts, ch 173, §7

626B.8 Short title.

This chapter may be cited as the *"Uniform Foreign Money-Judgments Recognition Act"*.

89 Acts, ch 173, §8

CHAPTER 626C

REAL ESTATE TITLES AND BANKRUPTCY

626C.1 Definition.
626C.2 Filing and status of bankruptcy transcripts.
626C.3 Notice of filing.
626C.4 Stay.
626C.5 Amendment.
626C.6 Fee.
626C.7 Optional procedure.

626C.1 Definition.

As used in this chapter, unless the context otherwise requires, *"bankruptcy transcript"* means a document or documents certified by the clerk or deputy clerk of any United States bankruptcy court as being true and correct copies of documents on file with the United States bankruptcy court of any district in the United States which is entitled to full faith and credit in this state. *"Bankruptcy transcript"* includes a bankruptcy court clerk's certificate of the proceedings that have transpired in a bankruptcy as is necessary to satisfy all applicable title standards of this state.

98 Acts, ch 1150, §1

626C.2 Filing and status of bankruptcy transcripts.

A bankruptcy transcript authenticated in accordance with an Act of Congress or the statutes of the state may be filed in the office of the clerk of the district court of a county in which real estate affected by the bankruptcy is located.

98 Acts, ch 1150, §2

626C.3 Notice of filing.

1. At the time of the filing of the bankruptcy transcript, the person filing the transcript shall make and file with the clerk of the district court an affidavit setting forth the name and last known post office address of the owner of the affected real estate and of the person filing the bankruptcy transcript.

2. Within three business days upon the filing of the bankruptcy transcript and the affidavit as provided in subsection 1, the clerk shall mail notice of the filing of the bankruptcy transcript to the owner of the affected real estate at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the person filing the bankruptcy transcript and the attorney for that person, if any, in this state.

98 Acts, ch 1150, §3

626C.4 Stay.

1. If the real estate owner files an application for stay within twenty days of the date of mailing the notice of filing the bankruptcy transcript by the clerk with the district court in which the bankruptcy transcript is filed that an appeal from any portion of the bankruptcy transcript is pending or will be taken, or that a stay of execution has been granted, the court shall stay the effect of the bankruptcy transcript until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

2. The district court for the county in which the bankruptcy transcript is filed has no jurisdiction to stay the effects of the bankruptcy transcript either as initially filed or as amended if the transcript contains a certificate by the clerk of the bankruptcy court of any of the following:

a. The order affecting real estate has not been appealed and the time for filing an appeal has expired.

b. The order affecting real estate has been appealed and the order has been affirmed on appeal and is not further appealable.

c. An appeal from the order affecting real estate has been filed and no stay from that order has been granted by the bankruptcy court to the appealing party.

3. An amendment to the bankruptcy transcript demonstrating the finality of the bankruptcy court proceedings shall terminate any jurisdiction of the district court to stay the effects of the bankruptcy transcript.

98 Acts, ch 1150, §4

626C.5 Amendment.

A bankruptcy transcript may be amended as necessary to clear title to all real estate located in the county of filing which is affected by any bankruptcy without payment of any additional fee.

98 Acts, ch 1150, §5

626C.6 Fee.

For filing a bankruptcy transcript, the clerk shall collect a fee in the amount collected for filing and docketing a petition under section 602.8105, subsection 1, paragraph *"a"*.

98 Acts, ch 1150, §6

626C.7 Optional procedure.

The right of a party in interest or the owner of real estate to record all documents necessary to clear title to real estate involved in a bankruptcy case, instead of proceeding under this chapter, remains unimpaired.

98 Acts, ch 1150, §7

CHAPTER 627

EXEMPTIONS

Avails of life and accident insurance and wrongful death, §633.333, 633.336

627.1 Repealed by 81 Acts, ch 182, §5.
627.2 Who deemed resident.
627.3 Failure to claim exemption.
627.4 Absconding debtor.
627.5 Purchase money.
627.6 General exemptions.
627.6A Exemptions for support — pensions and similar payments.
627.7 Motor vehicle.
627.8 Pension money.
627.9 Homestead bought with pension money.
627.10 Bankruptcy exemption.
627.11 Exception under decree for spousal support.
627.12 Exception under decree for child support.
627.13 Workers' compensation.
627.14 to 627.16 Repealed by 81 Acts, ch 182, §5.
627.17 Sending claims out of state.
627.18 Public property.
627.19 Adopted child assistance.

627.1 Repealed by 81 Acts, ch 182, § 5.

627.2 Who deemed resident.

Any person coming into this state with the intention of remaining shall be considered a resident.

[C51, §1902; R60, §3308; C73, §3076; C97, §4014; C24, 27, 31, 35, 39, §**11756;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.2]

627.3 Failure to claim exemption.

Any person entitled to any of the exemptions mentioned in this chapter does not waive the person's rights thereto by failing to designate or select such exempt property, or by failing to object to a levy thereon, unless the person fails or neglects to do so when required in writing by the officer about to levy thereon.

[C51, §1898, 1899; R60, §3304, 3305, 3308; C73, §3072; C97, §4017; C24, 27, 31, 35, 39, §**11757;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.3]

627.4 Absconding debtor.

When a debtor absconds and leaves the debtor's family, such property as is exempt to the debtor

under this chapter shall be exempt in the hands of the debtor's spouse and children, or either of them.

[R60, §3309; C73, §3078; C97, §4016; C24, 27, 31, 35, 39, §**11758;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.4]

627.5 Purchase money.

None of the exemptions prescribed in this chapter shall be allowed against an execution issued for the purchase money of property claimed to be exempt, and on which such execution is levied.

[C73, §3077; C97, §4015; C24, 27, 31, 35, 39, §**11759;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.5]

627.6 General exemptions.

A debtor who is a resident of this state may hold exempt from execution the following property:

1. All wearing apparel of the debtor and the debtor's dependents kept for actual use and the trunks or other receptacles necessary for the wearing apparel, not to exceed in value one thousand dollars in the aggregate. In addition, the debtor's interest in any wedding or engagement ring owned and received by the debtor or the debtor's dependents on or before the date of marriage.

2. One shotgun, and either one rifle or one musket.

3. Private libraries, family bibles, portraits, pictures and paintings not to exceed in value one thousand dollars in the aggregate.

4. An interment space or an interest in a public or private burying ground, not exceeding one acre for any defendant.

5. The debtor's interest in household furnishings, household goods, and appliances held primarily for the personal, family, or household use of the debtor or a dependent of the debtor, not to exceed in value two thousand dollars in the aggregate.

6. The interest of an individual in any accrued dividend or interest, loan or cash surrender value of, or any other interest in a life insurance policy owned by the individual if the beneficiary of the policy is the individual's spouse, child, or dependent. However, the amount of the exemption shall not exceed ten thousand dollars in the aggregate of any interest or value in insurance acquired within two years of the date execution is issued or exemptions are claimed, or for additions within the same time period to a prior existing policy which additions are in excess of the amount necessary to fund the amount of face value coverage of the policies for the two-year period. For purposes of this paragraph, acquisitions shall not include such interest in new policies used to replace prior policies to the extent of any accrued dividend or interest, loan or cash surrender value of, or any other interest in the prior policies at the time of their cancellation.

In the absence of a written agreement or assignment to the contrary, upon the death of the insured any benefit payable to the spouse, child, or dependent of the individual under a life insurance policy shall inure to the separate use of the beneficiary independently of the insured's creditors.

A benefit or indemnity paid under an accident, health, or disability insurance policy is exempt to the insured or in case of the insured's death to the spouse, child, or dependent of the insured, from the insured's debts.

In case of an insured's death the avails of all matured policies of life, accident, health, or disability insurance payable to the surviving spouse, child, or dependent are exempt from liability for all debts of the beneficiary contracted prior to death of the insured, but the amount thus exempted shall not exceed fifteen thousand dollars in the aggregate.

7. Professionally prescribed health aids for the debtor or a dependent of the debtor.

8. The debtor's rights in:

a. A social security benefit, unemployment compensation, or any public assistance benefit.

b. A veteran's benefit.

c. A disability or illness benefit.

d. Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and dependents of the debtor.

e. A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless the payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt.

f. Contributions and assets, including the accumulated earnings and market increases in value, in any of the plans or contracts as follows:

(1) All transfers, in any amount, from a trust forming part of a stock, bonus, pension, or profit-sharing plan of an employer defined in section 401(a) of the Internal Revenue Code and of which the trust assets are exempt from taxation under section 501(a) of the Internal Revenue Code and covered by the Employee Retirement Income Security Act of 1974 (ERISA), as codified at 29 U.S.C. 1001 et seq., to either of the following:

(a) A succeeding trust authorized under federal law on or after April 25, 2001.

(b) An individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, from which the total value, including accumulated earnings and market increases in value, may be contributed to a succeeding trust authorized under federal law on or after April 25, 2001. For purposes of this subparagraph, transfers, in any

amount, from an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code to an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, or an individual retirement account established under section 408(a) of the Internal Revenue Code, or an individual retirement annuity established under section 408(b) of the Internal Revenue Code, or a Roth individual retirement account, or a Roth individual retirement annuity established under section 408A of the Internal Revenue Code are exempt.

(2) All transfers, in any amount, from an eligible retirement plan to an individual retirement account, an individual retirement annuity, a Roth individual retirement account, or a Roth individual retirement annuity established under section 408A of the Internal Revenue Code shall be exempt from execution and from the claims of creditors.

As used in this subparagraph, *"eligible retirement plan"* means the funds or assets in any retirement plan established under state or federal law that meet all of the following requirements:

(a) Can be transferred to an individual retirement account or individual retirement annuity established under sections 408(a) and 408(b) of the Internal Revenue Code or Roth individual retirement accounts and Roth individual retirement annuities established under section 408A of the Internal Revenue Code.

(b) Are either exempt from execution under state or federal law or are excluded from a bankruptcy estate under 11 U.S.C. § 541(c)(2) et seq.

(3) Retirement plans established pursuant to qualified domestic relations orders, as defined in 26 U.S.C. § 414. However, nothing in this section shall be construed as making any retirement plan exempt from the claims of the beneficiary of a qualified domestic relations order or from claims for child support or alimony.

(4) For simplified employee pension plans, self-employed pension plans (also known as Keogh plans or H.R. 10 plans), individual retirement accounts established under section 408(a) of the Internal Revenue Code, individual retirement annuities established under section 408(b) of the Internal Revenue Code, savings incentive matched plans for employees, salary reduction simplified employee pension plans (also known as SARSEPs), and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution deducted on the debtor's tax return or the maximum amount which could be contributed to an individual retirement account established under section 408(a) of the Internal Revenue Code and deducted in the tax year of the contribution, whichever is less. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which is the total of exempt and nonexempt contributions to the plan.

(5) For Roth individual retirement accounts and Roth individual retirement annuities established under section 408A of the Internal Revenue Code and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution or the maximum amount which federal law allows to be contributed to such plans. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all of the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which is the total of exempt and nonexempt contributions to the plan.

(6) For all contributions to plans described in subparagraphs (4) and (5), the maximum contribution in each of the two tax years preceding the claim of exemption or filing of a bankruptcy shall be limited to the maximum deductible contribution to an individual retirement account established under section 408(a) of the Internal Revenue Code, regardless of which plan for retirement investment has been chosen by the debtor.

(7) Exempt assets transferred from any individual retirement account, individual retirement annuity, Roth individual retirement account, or Roth individual retirement annuity to any other individual retirement account, individual retirement annuity, Roth individual retirement annuity, or Roth individual retirement account established under section 408A of the Internal Revenue Code shall continue to be exempt regardless of the number of times transferred between individual retirement accounts, individual retirement annuities, Roth individual retirement annuities, or Roth individual retirement accounts.

For purposes of this paragraph *"f"*, *"market increases in value"* shall include, but shall not be limited to, dividends, stock splits, interest, and appreciation. *"Contributions"* means contributions by the debtor and by the debtor's employer.

9. Any combination of the following, not to exceed a value of five thousand dollars in the aggregate:

a. Musical instruments, not including radios, television sets, or record or tape playing machines, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

b. One motor vehicle.

c. In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars in the aggregate. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

10. If the debtor is engaged in any profession or occupation other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate.

11. If the debtor is engaged in farming and does not exercise the delay of the enforceability of a deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, any combination of the following, not to exceed a value of ten thousand dollars in the aggregate:

a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 9.

b. Livestock and feed for the livestock reasonably related to a normal farming operation.

12. If the debtor is engaged in farming the agricultural land upon the commencement of an action for the foreclosure of a mortgage on the agricultural land or for the enforcement of an obligation secured by a mortgage on the agricultural land, if a deficiency judgment is issued against the debtor, and if the debtor does not exercise the delay of the enforceability of the deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, the disposable earnings of the debtor are exempt from garnishment to enforce the deficiency judgment after two years from the entry of the deficiency judgment, sections 642.21 and 642.22 notwithstanding. However, earnings paid to the debtor directly or indirectly by the debtor are not exempt.

13. The debtor's interest, not to exceed one hundred dollars in the aggregate, in any cash on hand, bank deposits, credit union share drafts, or other deposits, wherever situated, or other personal property not otherwise specifically provided for in this chapter.

14. The debtor's interest, not to exceed five hundred dollars in the aggregate, in any combination of the following property:

a. Any residential rental deposit held by a landlord as a security deposit, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.

b. Any residential utility deposit held by any electric, gas, telephone, or water company as a condition for initiation or reinstatement of such utility service, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.

c. Any rent paid to the landlord in advance of the date due under any unexpired residential lease.

Notwithstanding the provisions of this subsection, a debtor shall not be permitted to claim these exemptions against a landlord or utility company, with regard to sums held under the terms of a rental agreement, or for utility services furnished to the debtor.

[C51, §1898, 1899; R60, §3304, 3305, 3308; C73, §3072; C97, §4008; C24, 27, 31, 35, 39, §**11760;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.6; 81 Acts, ch 182, §3]

86 Acts, ch 1216, §4 – 6; 88 Acts, ch 1255, §3 – 7; 92 Acts, ch 1061, §1, 2; 96 Acts, ch 1136, §1; 99 Acts, ch 131, §1 – 3; 2001 Acts, ch 80, §1 – 4; 2001 Acts, ch 176, §77

Exemptions denied, §123.113
Judgment for exempt property, §643.22

627.6A Exemptions for support — pensions and similar payments.

1. Notwithstanding the provisions of section 627.6, a debtor shall not be permitted to claim exemptions with regard to payment or a portion of payment under a pension, annuity, individual retirement account, profit-sharing plan, universal life insurance policy, or similar plan or contract due to illness, disability, death, age, or length of service for child, spousal, or medical support.

2. In addition to subsection 1, if another provision of law otherwise provides that payments, income, or property are subject to attachment for child, spousal, or medical support, those provisions shall supersede section 627.6.

97 Acts, ch 175, §237

627.7 Motor vehicle.

No motor vehicle shall be held exempt from any order, judgment, or decree for damages occasioned by the use of said motor vehicle upon a public highway of this state.

[C31, 35, §11760-c1; C39, §**11760.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.7]

627.8 Pension money.

All money received by any person, a resident of the state, as a pension from the United States government, whether the same shall be in the actual possession of such pensioner, or deposited, loaned, or invested by the pensioner, shall be exempt from execution, whether such pensioner shall be the head of a family or not.

[C97, §4009; C24, 27, 31, 35, 39, §**11761;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.8]

627.9 Homestead bought with pension money.

The homestead of every such pensioner, whether the head of a family or not, purchased and paid for with any such pension money, or the proceeds or accumulations thereof, shall also be exempt; and such exemption shall apply to debts of such pensioner contracted prior to the purchase of the homestead.

[C97, §4010; C24, 27, 31, 35, 39, §**11762;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.9]

627.10 Bankruptcy exemption.

A debtor to whom the law of this state applies on the date of filing of a petition in bankruptcy is not entitled to elect to exempt from property of the bankruptcy estate the property that is specified in 11 U.S.C. sec. 522(d) (1979). This section is enacted for the purpose set forth in 11 U.S.C. sec. 522(b)(1) (1979).

[81 Acts, ch 182, §2]

627.11 Exception under decree for spousal support.

If the party in whose favor the order, judgment, or decree for the support of a spouse was rendered has not remarried, the personal earnings of the debtor are not exempt from an order, judgment, or decree for temporary or permanent support, as defined in section 252D.16, of a spouse, nor from an installment of an order, judgment, or decree for the support of a spouse.

[C24, 27, 31, 35, 39, §**11764;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.11]

85 Acts, ch 178, §12; 97 Acts, ch 175, §238

627.12 Exception under decree for child support.

The personal earnings of the debtor are not exempt from an order, judgment, or decree for the support, as defined in section 252D.16, of a child, nor from an installment of an order, judgment, or decree for the support of a child.

[C24, 27, 31, 35, 39, §**11765;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.12]

85 Acts, ch 178, §13; 97 Acts, ch 175, §239

627.13 Workers' compensation.

Notwithstanding the provisions of sections 554.9406 and 554.9408, any compensation due or that may become due an employee or dependent under chapter 85, 85A, or 85B is exempt from garnishment, attachment, execution, and assignment of income, except for the purposes of enforcing child, spousal, or medical support obligations. For the purposes of enforcing child, spousal, or medical support obligations, an assignment of income, garnishment or attachment of or the execution against compensation due an employee under chapter 85, 85A, or 85B is not exempt but shall be limited as specified in 15 U.S.C. § 1673(b).

[C24, 27, 31, 35, 39, §**11766;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.13]

92 Acts, ch 1195, §511; 94 Acts, ch 1171, §50; 2001 Acts, ch 87, §8

627.14 to 627.16 Repealed by 81 Acts, ch 182, § 5.

627.17 Sending claims out of state.

Whoever, whether as principal, agent, or attorney, with intent to deprive a resident in good faith of the state of the benefit of the exemption laws thereof, sends a claim against such resident and belonging to a resident, to another state for action, or causes action to be brought on such claim in another state, or assigns or transfers such claim to a nonresident of the state, with intent that action thereon be brought in the courts of another state, the action in either case being one which might have been brought in this state, and the property or debt sought to be reached by such action being such as might, but for the exemptions laws of this state, have been reached by action in the courts of this state, shall be guilty of a simple misdemeanor.

[C97, §4018; C24, 27, 31, 35, 39, §**11770;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.17]

627.18 Public property.

Public buildings owned by the state, or any county, city, school district, or other municipal corporation, or any other public property which is necessary and proper for carrying out the general purpose for which such corporation is organized, are exempt from execution.

[C51, §1895; R60, §3274; C73, §3048; C97, §4007; C24, 27, 31, 35, 39, §**11771;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §627.18; 81 Acts, ch 182, §4]

See also §626.109

627.19 Adopted child assistance.

Any financial assistance due or that may become due, under the provisions of sections 600.17 through 600.22, shall be exempt from garnishment, attachment, and execution.

[C73, 75, 77, 79, 81, §627.19]

CHAPTER 628

REDEMPTION

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628.1 Place of redemption.

All redemptions made under the provisions of this chapter shall be made in the county where the sale is had.

[S13, §4051; C24, 27, 31, 35, 39, §**11772;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.1]

628.1A Application of this chapter.

This chapter does not apply in an action to foreclose a real estate mortgage if the plaintiff has elected foreclosure without redemption under section 654.20.

87 Acts, ch 142, §16

628.2 When sale absolute.

When real property has been levied upon, if the estate is less than a leasehold having two years of an unexpired term, the sale is absolute, but if of a larger amount, it is redeemable as hereinafter prescribed.

[C51, §1924; R60, §3329, 3330; C73, §3098, 3099; C97, §4043; C24, 27, 31, 35, 39, §**11773;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.2]

628.3 Redemption by debtor.

The debtor may redeem real property at any time within one year from the day of sale, and will, in the meantime, be entitled to the possession thereof; and for the first six months thereafter such right of redemption is exclusive. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which said real property was sold.

[C51, §1926, 1927; R60, §3332, 3333; C73, §3102, 3103; C97, §4045; C24, 27, 31, 35, 39, §**11774;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.3]

See §628.28 on redemption period and right

628.4 Redemption prohibited.

A party who has stayed execution on the judgment is not entitled to redeem.

[C73, §3102; C97, §4045; C24, 27, 31, 35, 39, §**11775;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.4]

83 Acts, ch 186, §10115, 10201; 87 Acts, ch 142, §1

628.5 Redemption by creditors.

If no redemption is made by the debtor as above provided, thereafter, and at any time within nine months from the day of sale, said redemption may be made by a mortgagee before or after the debt secured by the mortgage falls due, or by any creditor whose claim becomes a lien prior to the expiration of the time allowed for such redemption.

[C51, §1927, 1928; R60, §3333, 3334; C73, §3103, 3104; C97, §4046; C24, 27, 31, 35, 39, §**11776;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.5]

See §628.28 on redemption period and right

628.6 Mechanic's lien before judgment.

A mechanic's lien before judgment thereon is not of such character as to entitle the holder to redeem.

[C51, §1927; R60, §3333; C73, §3103; C97, §4046; C24, 27, 31, 35, 39, §**11777;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.6]

628.7 Probate creditor.

The owner of a claim which has been allowed and established against the estate of a decedent may redeem as in this chapter provided, by making application to the district court of the district where the real estate to be redeemed is situated. Such application shall be heard after notice to such parties as said court may direct, and shall be determined with due regard to rights of all persons interested.

[C97, §4046; C24, 27, 31, 35, 39, §**11778;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.7]

628.8 Redemption by creditors from each other.

Creditors having the right of redemption may redeem from each other within the time above limited, and in the manner herein provided.

[C51, §1929; R60, §3335; C73, §3105; C97, §4047; C24, 27, 31, 35, 39, §**11779;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.8]

628.9 Senior creditor.

When a senior creditor thus redeems from the senior creditor's junior, the senior creditor is required to pay off only the amount of those liens which are paramount to the senior creditor's own, with the interest and costs appertaining to those liens.

[C51, §1931; R60, §3337; C73, §3107; C97, §4048; C24, 27, 31, 35, 39, §**11780;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.9]

628.10 Junior may prevent.

The junior creditor may in all such cases prevent a redemption by the holder of the paramount lien by paying off the lien, or by leaving with the clerk beforehand the amount necessary therefor, and a junior judgment creditor may redeem from a senior judgment creditor.

[C51, §1932; R60, §3338, 3339; C73, §3108, 3109; C97, §4049; C24, 27, 31, 35, 39, §**11781;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.10]

628.11 Terms.

The terms of redemption, when made by a creditor, in all cases shall be the reimbursement of the amount bid or paid by the holder of the certificate, including all costs, with interest the same as the lien redeemed from bears on the amount of such bid or payment, from the time thereof.

[C51, §1930; R60, §3336; C73, §3106; C97, §4050; C24, 27, 31, 35, 39, §**11782;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.11]

Advancements to protect lien, §629.2

628.12 Mortgage not matured — interest.

Where a mortgagee whose claim is not yet due is the person from whom the redemption is thus to be made, the mortgagee shall receive on such mortgage only the amount of the principal thereby secured, with unpaid interest thereon to the time of such redemption.

[C51, §1930; R60, §3336; C73, §3106; C97, §4050; C24, 27, 31, 35, 39, §**11783;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.12]

628.13 By holder of title.

The terms of redemption, when made by the titleholder, shall be the payment into the clerk's office of the amount of the certificate, and all sums paid by the holder thereof in effecting redemptions, added to the amount of the holder's own lien, or the amount the holder has credited thereon, if less than the whole, with interest at contract rate on the certificate of sale from its date, and upon sums so paid by way of redemption from date of payment, and upon the amount credited on the holder's own judgment from the time of said credit, in each case including costs.

Redemption may also be made by the titleholder presenting to the clerk of the district court the sheriff's certificate of sale properly assigned to the titleholder, whereupon the clerk of the district court shall cancel the certificate.

[C51, §1930; R60, §3336; C73, §3106; C97, §4051; S13, §4051; C24, 27, 31, 35, 39, §**11784;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.13]

95 Acts, ch 91, §6

628.14 By junior from senior creditor.

When a senior redeems from a junior creditor, the latter may, in return, redeem from the former, and so on, as often as the land is taken from the creditor by virtue of a paramount lien.

[C51, §1933; R60, §3341; C73, §3111; C97, §4052; C24, 27, 31, 35, 39, §**11785;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.14]

628.15 After nine months.

After the expiration of nine months from the day of sale, the creditors can no longer redeem from each other, except as hereinafter provided.

[C51, §1934; R60, §3342; C73, §3112; C97, §4053; C24, 27, 31, 35, 39, §**11786;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.15]

See §628.28 on redemption period and right

628.16 Who gets property.

Unless the defendant redeems, the purchaser, or the creditor who has last redeemed prior to the expiration of the nine months aforesaid, will hold the property absolutely.

[C51, §1935; R60, §3343; C73, §3113; C97, §4054; C24, 27, 31, 35, 39, §**11787;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.16]

See §628.28 on redemption period and right

628.17 Claim extinguished.

In case it is thus held by a redeeming creditor,

the redeeming creditor's lien, and the claim out of which it arose, will be held to be extinguished, unless the redeeming creditor pursues the course pointed out in sections 628.18 to 628.20, inclusive.

[C51, §1936; R60, §3344; C73, §3114; C97, §4055; C24, 27, 31, 35, 39, §**11788;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.17]

628.18 Mode of redemption.

The mode of redemption by a lienholder shall be by paying into the clerk's office the amount necessary to effect the same, computed as above provided, and filing therein the lienholder's affidavit, or that of the lienholder's agent or attorney, stating as nearly as practicable the nature of the lien and the amount still due and unpaid thereon.

[C51, §1938, 1940; R60, §3346, 3348; C73, §3116, 3118; C97, §4056; C24, 27, 31, 35, 39, §**11789;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.18]

628.19 Credit on lien.

If the lienholder is unwilling to hold the property and credit the debtor thereon the full amount of the lienholder's lien, the lienholder must state the utmost amount the lienholder is willing to credit the debtor with.

[R60, §3345; C73, §3115; C97, §4056; C24, 27, 31, 35, 39, §**11790;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.19]

628.20 Excess payment — credit.

If the amount paid to the clerk is in excess of the prior bid and liens, the clerk shall refund the excess to the party paying the amount. If the clerk is the clerk of the district court where the judgment giving rise to the lien was entered, the clerk shall credit upon the lien the full amount thereof, including interest and costs, or such less amount as the lienholder is willing to credit therein, as shown by the affidavit filed.

[C51, §1937, 1939, 1941; R60, §3340, 3347, 3349; C73, §3110, 3117, 3119; C97, §4056; C24, 27, 31, 35, 39, §**11791;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.20]

95 Acts, ch 91, §7

628.21 Contest determined.

In case any question arises as to the right to redeem, or the amount of any lien, the person claiming such right may deposit the necessary amount therefor with the clerk, accompanied with the affidavit above required, and also stating therein the nature of such question or objection, which question or objection shall be submitted to the court as soon as practicable thereafter, upon such notice as it shall prescribe of the time and place of the hearing of the controversy, at which time and place the matter shall be tried upon such evidence and in such manner as may be prescribed, and the proper order made and entered of record in the cause in which execution issued, and the money so paid in shall be held by the clerk subject to the order made.

[C97, §4057; C24, 27, 31, 35, 39, §**11792;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.21]

628.22 Assignment of certificate.

A creditor redeeming as above contemplated is entitled to receive an assignment of the certificate issued by the sheriff to the original purchaser as hereinbefore directed.

[C51, §1942; R60, §3350; C73, §3120; C97, §4058; C24, 27, 31, 35, 39, §**11793;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.22]

628.23 Redemption of part of property.

When the property has been sold in parcels, any distinct portion may be redeemed by itself.

[C51, §1943; R60, §3351; C73, §3121; C97, §4059; C24, 27, 31, 35, 39, §**11794;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.23]

628.24 Interest of tenant in common.

When the interests of several tenants in common have been sold on execution, the undivided portion of any or either of them may be redeemed separately.

[C51, §1944; R60, §3352; C73, §3122; C97, §4060; C24, 27, 31, 35, 39, §**11795;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.24]

628.25 Transfer of debtor's right.

The rights of a debtor in relation to redemption are transferable, and the assignee has the like power to redeem.

[C51, §1945; R60, §3353; C73, §3123; C97, §4061; C24, 27, 31, 35, 39, §**11796;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §628.25]

628.26 Agreement to reduce period of redemption.

The mortgagor and the mortgagee of real property consisting of less than ten acres in size may agree and provide in the mortgage instrument that the period of redemption after sale on foreclosure of said mortgage as set forth in section 628.3 be reduced to six months, provided the mortgagee waives in the foreclosure action any rights to a deficiency judgment against the mortgagor which might arise out of the foreclosure proceedings. In such event the debtor will, in the meantime, be entitled to the possession of said real property; and if such redemption period is so reduced, for the first three months after sale such right of redemption shall be exclusive to the debtor, and the time periods in sections 628.5, 628.15, and 628.16, shall be reduced to four months.

[C62, 66, 71, 73, 75, 77, 79, 81, §628.26]

628.26A Agreement to extend period of redemption — agricultural land.

Notwithstanding section 628.3, the debtor and the mortgagee of agricultural land after the filing of the foreclosure petition, may enter into a written agreement to extend the debtor's period of redemption up to five years, and may set forth other terms and conditions of the extended redemption as agreed upon by the parties, including allowing the debtor to lease the property. However, the rights of the debtor and other parties who have a secured interest in the agricultural land shall not be reduced beyond those set forth in this chapter. The agreement entered into by the debtor and the mortgagee pursuant to this section must be approved by the court and shall be filed in the foreclosure proceedings. An agreement pursuant to this section does not constitute an equitable mortgage.

85 Acts, ch 252, §43

628.27 Redemption where property abandoned.

The mortgagor and the mortgagee of any tract of real property consisting of less than ten acres in size may also agree and provide in the mortgage instrument that the court in a decree of foreclosure may find affirmatively that the tract has been abandoned by the owners and those persons personally liable under the mortgage at the time of such foreclosure, and that should the court so find, and if the mortgagee shall waive any rights to a deficiency judgment against the mortgagor or the mortgagor's successors in interest in the foreclosure action, then the period of redemption after foreclosure shall be reduced to sixty days. If the redemption period is so reduced, the mortgagor or the mortgagor's successors in interest or the owner shall have the exclusive right to redeem for the first thirty days after such sale and the times of redemption by creditors provided in sections 628.5, 628.15 and 628.16 shall be reduced to forty days. Entry of appearance by pleading or docket entry by or on behalf of the mortgagor shall be a presumption that the property is not abandoned.

[C71, 73, 75, 77, 79, 81, §628.27]

628.28 Redemption of property not used for agricultural or certain residential purposes.

If real property is not used for agricultural purposes, as defined in section 535.13, and is not the residence of the debtor, or if it is the residence of the debtor but not a single-family or two-family dwelling, then the period of redemption after foreclosure is one hundred eighty days. For the first ninety days after the sale the right of redemption is exclusive to the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to one hundred thirty-five days. If a deficiency judgment has been waived the period of redemption is reduced to ninety days. For the first thirty days after the sale the redemption is exclusively the right of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to sixty days.

If real property is not used for agricultural purposes, as defined in section 535.13, and is a single-family or two-family dwelling which is the residence of the debtor at the time of foreclosure but the court finds that after foreclosure the dwelling has ceased to be the residence of the debtor and if there are no junior creditors, the court shall order the period of redemption reduced to thirty days from the date of the court order. If there is a junior creditor, the court shall order the redemption period reduced to sixty days. For the first thirty days redemption is the exclusive right of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to forty-five days.

84 Acts, ch 1116, §1; 85 Acts, ch 195, §58; 87 Acts, ch 98, §3

628.29 Redemption by creditor pursuant to alternative foreclosure.

A lienholder of record may redeem real property which has been foreclosed by a mortgagee pursuant to the alternative voluntary foreclosure procedure provided in section 654.18. The junior lienholders' redemption period shall be thirty days commencing the day the notice required by section 654.18, subsection 1, paragraph *"e"* is sent. The redemption shall be made by payment to the mortgagee of the amount of the debt secured by the mortgage including any protective advances made pursuant to chapter 629. Upon payment, the mortgagee shall convey the property by special warranty deed to the redeeming junior lienholder.

85 Acts, ch 252, §44

CHAPTER 629

PROTECTION OF ADVANCEMENTS

629.1 Lienholder's advancements protected — affidavit filed.
629.2 Redemption — payment of advances.
629.3 Record of lien.
629.4 Lienholder's advancements — enforcement.

629.1 Lienholder's advancements protected — affidavit filed.

The holder of a sheriff's sale certificate or junior or senior lien upon real estate after the payment of any delinquency of taxes or special assessment, insurance premiums or money for necessary repairs, maintenance or preservation of the property, interest on a senior lien, or any sum to cure a breach of a condition of a senior encumbrance, may file with the clerk of the district court in the county in which the land is situated, a verified statement of the expenditures and their dates, together with a description of the real estate, the name of the record owner, and a reference to the interest of the record owner.

[C24, 27, 31, 35, 39, §**11797;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §629.1]

84 Acts, ch 1248, §3

629.2 Redemption — payment of advances.

When such advancements have been made by the holder of a sheriff's sale certificate the sum so advanced shall be a part of the amount required to redeem from said sheriff's sale.

[C24, 27, 31, 35, 39, §**11798;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §629.2]

629.3 Record of lien.

It shall be the duty of the clerk of the district court to record the statements so filed in the encumbrance book and to enter the same in the lien index. Payments advanced after execution has been issued upon the junior lien, shall be added to the execution upon receipt, by the sheriff, of a verified statement of such advancements and when the redemption period has expired the clerk shall release them on the clerk's record.

[C24, 27, 31, 35, 39, §**11799;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §629.3]

629.4 Lienholder's advancements — enforcement.

When an advancement described in section 629.1 has been made by the holder of a junior or senior lien, the amount of that expenditure plus the interest on it shall be added to the amount of the lienholder's original lien and have the same priority as the original lien and the lienholder may recover the increased amount in any action brought for the foreclosure of the junior or senior lien referred to in the verified statement.

84 Acts, ch 1248, §2

CHAPTER 630

PROCEEDINGS AUXILIARY TO EXECUTION

630.1 Debtor examined.
630.2 Affidavit as to property.
630.3 By whom order granted.
630.3A Hearing to determine judgment debtor's income.
630.4 Debtor interrogated.
630.5 Witnesses examined.
630.6 Disposition of property.
630.7 Receiver — injunction.
630.8 Equitable interest sold.
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630.11 Debtor failing to appear — contempt.
630.12 Service of order.
630.13 Compensation.
630.14 Warrant of arrest.
630.15 Bond.
630.16 Equitable proceedings.
630.17 Answers verified — petition taken as true.
630.18 Lien created.
630.19 Surrender of property enforced.

630.1 Debtor examined.

When execution against the property of a judgment debtor, or one of several debtors in the same judgment, has been issued from the district court or an appellate court to the sheriff of the county where such debtor resides, or if the debtor does not reside in the state, to the sheriff of the county where the judgment was rendered, and execution issued thereon is returned unsatisfied in whole or in part, the owner of the judgment is entitled to an order for the appearance and examination of the debtor.

[C51, §1953; R60, §3375; C73, §3135; C97, §4072; C24, 27, 31, 35, 39, §**11800;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.1]

630.2 Affidavit as to property.

The like order may be obtained at any time after the issuing of an execution, upon proof, by the affidavit of the party or otherwise, to the satisfaction of the court who is to grant the same, that any judgment debtor has property which the debtor unjustly refuses to apply towards the satisfaction of the judgment.

[C51, §1954; R60, §3376; C73, §3136; C97, §4073; C24, 27, 31, 35, 39, §**11801;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.2]

630.3 By whom order granted.

Such order may be made by the district court in which the judgment was rendered, or by the district court of the county to which execution has been issued. The debtor may be required to appear and answer before either of such courts, or before a referee appointed for that purpose by the court who issued the order, to report either the evidence or the facts.

[C51, §1955; R60, §3377, 3385; C73, §3137; C97, §4074; C24, 27, 31, 35, 39, §**11802;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.3]

630.3A Hearing to determine judgment debtor's income.

At any time after the rendition of judgment the court, upon application of the judgment creditor or the judgment debtor and upon notice to the adverse party as the court shall direct, shall conduct a hearing to determine the reasonably expected annual earnings of the judgment debtor for the current calendar year and the applicable limitation upon garnishment as provided in section 642.21. The court shall also consider in the interest of justice whether a greater amount than provided in section 642.21 shall be exempt from garnishment. In making the determination the court shall consider the age, number and circumstances of the dependents of the debtor, existing federal poverty level guidelines, the debtor's maintenance and support needs, the debtor's other financial obligations and any other relevant information. An order reducing the garnishment may be modified or vacated upon the application of a party to the court, notice to the adverse party, and a showing at a hearing of changed circumstances. An additional filing fee shall not be assessed for proceedings under this section.

84 Acts, ch 1239, §8

630.4 Debtor interrogated.

The debtor, on the debtor's appearance, may be interrogated in relation to any facts calculated to show the amount of the debtor's property, or the disposition which has been made of it, or any other matter pertaining to the purpose for which the examination is permitted to be made. The interrogatories and answers shall be reduced to writing and preserved by the court or officer before whom they are taken. All examinations and answers under this chapter shall be on oath.

[C51, §1956; R60, §3378; C73, §3138; C97, §4075; C24, 27, 31, 35, 39, §**11803;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.4]

630.5 Witnesses examined.

Witnesses may be required by order of the court or by subpoenas from the referee, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue.

[R60, §3379; C73, §3139; C97, §4076; C24, 27, 31, 35, 39, §**11804;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.5]

630.6 Disposition of property.

If any property, rights, or credits subject to execution are thus ascertained, an execution may be issued and the same levied upon. The court may order any property of the judgment debtor not exempt, in the hands of the debtor or others or due the debtor, to be delivered up, or in any other mode applied towards the satisfaction of the judgment.

[C51, §1957; R60, §3380; C73, §3140; C97, §4077; C24, 27, 31, 35, 39, §**11805;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.6]

630.7 Receiver — injunction.

The court may also, by order, appoint the sheriff of the proper county or other suitable person, a receiver of the property of the judgment debtor, or by injunction forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, or any interference therewith.

[R60, §3381; C73, §3141; C97, §4078; C24, 27, 31, 35, 39, §**11806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.7]

630.8 Equitable interest sold.

If it shall appear that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor, mortgagee, or otherwise, and the interest of said debtor can be ascertained as between the debtor and the person holding the legal estate or having any lien on or interest in the same, without controversy as to the interest of such person, the receiver may be ordered to sell and convey the same, or the debtor's equitable interest therein, in the same manner as is provided for the sale of real estate upon execution.

[R60, §3382; C73, §3142; C97, §4079; C24, 27, 31, 35, 39, §**11807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.8]

Sale of real estate, §626.74 et seq.

630.9 Sheriff as receiver.

If the sheriff is appointed receiver, the sheriff and the sheriff's sureties shall be liable on the sheriff's official bond for the faithful discharge of the sheriff's duties as such.

[R60, §3383; C73, §3143; C97, §4080; C24, 27, 31, 35, 39, §**11808;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.9]

630.10 Continuance.

The court or referee acting under the provisions

of this chapter shall have power to continue the proceedings from time to time until they shall be completed.

[R60, §3384; C73, §3144; C97, §4081; C24, 27, 31, 35, 39, §**11809;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.10]

630.11 Debtor failing to appear — contempt.

Should the judgment debtor fail to appear after being personally served with notice to that effect, or should the debtor fail to make full answers to all proper interrogatories propounded to the debtor, the debtor will be guilty of contempt, and may be arrested and imprisoned until the debtor complies with the requirements of the law in this respect. If any person, party, or witness disobey an order of the court, judge, or referee, duly served, such person, party, or witness may be punished as for contempt.

[C51, §1958; R60, §3386; C73, §3145; C97, §4082; C24, 27, 31, 35, 39, §**11810;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.11]

Contempts, chapter 665

630.12 Service of order.

The order mentioned herein shall be in writing and signed by the court, judge, or referee making the same, and be served in the same manner as an original notice in other cases.

[R60, §3387; C73, §3146; C97, §4083; C24, 27, 31, 35, 39, §**11811;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.12]

630.13 Compensation.

Sheriffs, referees, receivers, and witnesses shall receive such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and the collection thereof from such party or parties as ought to pay the same shall be enforced by an order or execution.

[R60, §3388; C73, §3147; C97, §4084; C24, 27, 31, 35, 39, §**11812;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.13]

630.14 Warrant of arrest.

Upon proof, to the satisfaction of the court or judge authorized to grant the order aforesaid, that there is danger that the defendant will leave the state, or that the defendant will hide, such court or judge, instead of the order, may issue a warrant for the arrest of the debtor, and for bringing the debtor forthwith before the court or judge, upon which being done, the debtor may be examined in the same manner and with the like effect as is above provided.

[C51, §1959; R60, §3389; C73, §3148; C97, §4085; C24, 27, 31, 35, 39, §**11813;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.14]

Approval of warrant and expenses, §70A.12, 70A.13

630.15 Bond.

Upon being brought before the court or judge, the debtor may enter into an undertaking in such sum as the court or officer shall prescribe, with one or more sureties, that the debtor will attend from time to time for examination before the court or judge as shall be directed, and will not, in the meantime, dispose of the debtor's property, or any part thereof; in default whereof the debtor shall continue under arrest, and may be committed to jail for safekeeping until the examination shall be concluded.

[R60, §3390; C73, §3149; C97, §4086; C24, 27, 31, 35, 39, §**11814;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.15]

630.16 Equitable proceedings.

At any time after the rendition of a judgment, an action by equitable proceedings may be brought to subject any property, money, rights, credits, or interest therein belonging to the defendant to the satisfaction of such judgment. In such action, persons indebted to the judgment debtor, or holding any property or money in which such debtor has any interest, or the evidences of securities for the same, may be made defendants.

[R60, §3391; C73, §3150; C97, §4087; C24, 27, 31, 35, 39, §**11815;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.16]

Grantor deemed equitable owner, §639.30

630.17 Answers verified — petition taken as true.

The answers of all defendants shall be verified by their own oath, and not by that of an agent or attorney, and the court shall enforce full and explicit discoveries in such answers by process of contempt; or, upon failure to answer the petition, or any part thereof, as fully and explicitly as the court may require, the same, or such part not thus answered, shall be deemed true, and such order made or judgment rendered as the nature of the case may require.

[R60, §3392; C73, §3151; C97, §4088; C24, 27, 31, 35, 39, §**11816;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.17]

Contempts, chapter 665

630.18 Lien created.

In the case contemplated in sections 630.16 and 630.17, a lien shall be created on the property of the judgment debtor, or the debtor's interest therein, in the hands of any defendant or under the defendant's control, which is sufficiently described in the petition, from the time of the service of notice and copy of the petition on the defendant holding or controlling such property or any interest therein.

[R60, §3393, 3394; C73, §3152; C97, §4089; C24, 27, 31, 35, 39, §**11817;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.18]

630.19 Surrender of property enforced.

The court shall enforce the surrender of the money or securities therefor, or of any other property of the defendant in the execution, which may be discovered in the action, and for this purpose may commit to jail any defendant or garnishee failing or refusing to make such surrender until it shall be done, or the court is satisfied that it is out of the defendant's or garnishee's power to do so.

[R60, §3395; C73, §3153; C97, §4090; C24, 27, 31, 35, 39, §**11818;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §630.19]

Analogous provisions, §633.112, 680.10

CHAPTER 631

SMALL CLAIMS

631.1 Small claims.
631.2 Jurisdiction and procedures.
631.3 Commencement of actions — clerk to furnish forms — subpoena.
631.4 Service — time for appearance.
631.5 Appearance — default.
631.6 Fees and costs.
631.7 Parties, pleadings and motions.
631.8 Procedure.
631.9 Jurisdiction determined.
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631.11 Hearing.
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631.13 Appeals.
631.14 Representation in small claims actions.
631.15 Standard forms.
631.16 Discretionary review.
631.17 Prohibited practices.

631.1 Small claims.

1. The following actions or claims are small claims and shall be commenced, heard and determined as provided in this chapter:

A civil action for a money judgment where the amount in controversy is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002, exclusive of interest and costs.

2. The district court sitting in small claims shall have concurrent jurisdiction of an action for forcible entry and detainer which is based on those grounds set forth in section 648.1, subsections 1, 2, 3 and 5. When commenced under this chapter, the action shall be a small claim for the purposes of this chapter.

3. The district court sitting in small claims has concurrent jurisdiction of an action of replevin if the value of the property claimed is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002. When commenced under this chapter, the action is a small claim for the purposes of this chapter.

4. The district court sitting in small claims has concurrent jurisdiction of motions and orders relating to executions against personal property, including garnishments, where the value of the property or garnisheed money involved is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002.

5. The district court sitting in small claims has concurrent jurisdiction of an action for abandonment of a manufactured or mobile home or personal property pursuant to section 555B.3, if no money judgment in excess of four thousand dollars is sought for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002. If commenced under this chapter, the action is a small claim for the purposes of this chapter.

6. The district court sitting in small claims has concurrent jurisdiction of an action to challenge a mechanic's lien pursuant to sections 572.24 and 572.32.

[C73, 75, 77, 79, 81, §631.1]

83 Acts, ch 63, §1, 5; 86 Acts, ch 1077, §1; 90 Acts, ch 1038, §1; 93 Acts, ch 154, §18; 94 Acts, ch 1117, §1; 95 Acts, ch 49, §23; 99 Acts, ch 79, §5; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1087, §1, 2

Jurisdictional amount to revert to $4,000 if a proper court declares the $5,000 amount unconstitutional; 2002 Acts, ch 1087, §3

Jurisdictional amount to revert to $2,000 if a proper court declares the previous $3,000 or $4,000 jurisdictional amounts unconstitutional; 94 Acts, ch 1117, §2; 95 Acts, ch 49, §28

Subsection 1, unnumbered paragraph 2 amended

Subsections 3 – 5 amended

631.2 Jurisdiction and procedures.

1. The district court sitting in small claims shall exercise the jurisdiction conferred by this chapter, and shall determine small claims according to the statutes and the rules prescribed by this chapter. Except when transferred from the small claims docket as provided in section 631.8, small

claims may be tried by a judicial magistrate, a district associate judge, or a district judge.

2. The clerk of the district court shall maintain a separate small claims docket which shall contain all matters relating to small claims which are required by section 602.8104, subsection 2, paragraph *"e"*, to be contained in a combination docket.

3. Statutes and rules relating to venue and jurisdiction shall apply to small claims, except that a provision of this chapter which is inconsistent therewith shall supersede that statute or rule.

[C73, §631.2, 631.3; C75, 77, 79, 81, §631.2]

83 Acts, ch 101, §124; 83 Acts, ch 186, §10116, 10201

631.3 Commencement of actions — clerk to furnish forms — subpoena.

1. All actions shall be commenced by the filing of an original notice with the clerk. At the time of filing, the clerk shall enter on the original notice and the copies to be served, the file number and the date the action is filed.

2. The clerk shall furnish standard forms as provided in section 631.15, as such pleadings may be required. The clerk may furnish information to any party to enable the party to complete a form.

3. The clerk shall cause to be entered upon each copy of the original notice and in the docket the time within which the defendant is required to appear, which time shall be determined in accordance with section 631.4.

4. Upon the request of a party to the action, the clerk or a judicial officer shall issue subpoenas for the attendance of witnesses at a hearing. Sections 622.63 to 622.67, 622.69, 622.76 and 622.77 apply to subpoenas issued pursuant to this chapter.

[C73, §631.3, 631.5; C75, 77, 79, 81, §631.3]

83 Acts, ch 186, §10117, 10201; 84 Acts, ch 1322, §1

631.4 Service — time for appearance.

The manner of service of original notice and the times for appearance shall be as provided in this section.

1. *Actions for money judgment or replevin.* In an action for money judgment or an action of replevin the clerk shall cause service to be obtained as follows, and the defendant is required to appear within the period of time specified:

a. If the defendant is a resident of this state, or if the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 1.306, the plaintiff may elect service under this paragraph, and upon receipt of the prescribed costs the clerk shall mail to the defendant by certified mail, restricted delivery, return receipt to the clerk requested, a copy of the original notice together with a conforming copy of an answer form. The defendant is required to appear within twenty days following the date service is made.

b. If the defendant is a resident of this state, or if the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 1.306, the plaintiff may elect service under this paragraph, and upon receipt of the prescribed costs the clerk shall cause a copy of the original notice and a conforming copy of an answer form to be delivered to a peace officer or other person for personal service as provided in rule of civil procedure 1.302(5), 1.305, or 1.306. The defendant is required to appear within twenty days following the date service is made.

c. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under rule of civil procedure 1.306, the plaintiff may elect service in any other manner that is approved by the court as provided in that rule, and the defendant is required to appear within sixty days after the date of service.

d. If the defendant is a nonresident of this state and is subject to the jurisdiction of the court under section 617.3, the plaintiff may elect that service be made as provided in that section. The clerk shall collect the prescribed fees and costs, and shall cause duplicate copies of the original notice to be filed with the secretary of state and shall cause a copy of the original notice and a conforming copy of an answer form to be mailed to the defendant in the manner prescribed in section 617.3. The defendant is required to appear within sixty days from the date of filing with the secretary of state.

2. *Actions for forcible entry or detention.*

a. In an action for the forcible entry or detention of real property, the clerk shall set a date, time and place for hearing, and shall cause service as provided in this subsection.

b. Original notice shall be served personally upon each defendant as provided in rule of civil procedure 1.305, which service shall be made at least three days prior to the date set for hearing. Upon receipt of the prescribed costs the clerk shall cause the original notice to be delivered to a peace officer or other person for service upon each defendant.

c. If personal service cannot be made upon each defendant, as provided in rule of civil procedure 1.305, the plaintiff may elect to post, after at least two attempts to perfect service upon each defendant, one or more copies of the original notice upon the real property being detained by each defendant at least three days prior to the date set for hearing. The attempts to perfect personal service may be made on the same day. In addition to posting, the plaintiff shall also mail, by certified mail, to each defendant, at the place held out by each defendant as the place for receipt of such communications or, in the absence of such designation, at each defendant's last known place of residence, a copy of the original notice at least three days prior to the date set for hearing. Under this paragraph, service shall be deemed complete upon each defen-

dant by the filing with the clerk of the district court of one or more affidavits indicating that a copy of the original notice was both posted and mailed to each defendant as provided in this paragraph, whether or not the defendant signs a receipt for the notice.

d. If personal service cannot be made upon each defendant in an action for forcible entry or detention of real property joined with an action for rent or recovery pursuant to section 648.19, service may be made pursuant to paragraph *"c"*.

3. *Actions for abandonment of manufactured or mobile homes or personal property pursuant to chapter 555B.*

a. In an action for abandonment of a manufactured or mobile home or personal property, the clerk shall set a date, time, and place for hearing, and shall cause service to be made as provided in this subsection.

b. Original notice shall be served personally on each defendant as provided in section 555B.4.

[C73, §631.3 – 631.5; C75, 77, 79, 81, §631.4]

84 Acts, ch 1322, §2; 86 Acts, ch 1077, §2; 93 Acts, ch 154, §19, 20; 95 Acts, ch 125, §13; 96 Acts, ch 1203, §7; 99 Acts, ch 155, §13, 14; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

631.5 Appearance — default.

This section applies to all small claims except actions for forcible entry or detention of real property and actions for abandonment of mobile homes or personal property pursuant to chapter 555B.

1. *Appearance.* A defendant may appear in person or by attorney, and by the denial of a claim a defendant does not waive any defenses.

2. *Hearing set.* If all defendants either have entered a timely appearance or have defaulted, the clerk shall assign a contested claim to the small claims calendar for hearing at a place and time certain. The time of hearing shall be not less than five days nor more than twenty days after the latest timely appearance, unless otherwise ordered by the court. The clerk shall transmit the original notice and all other papers relating to the case to the judicial officer to whom the case is assigned, and copies of all papers so transmitted shall be retained in the clerk's office.

3. *Partial service.* If the plaintiff has joined more than one defendant, and less than all defendants are served with notice as determined by subsection 4, the plaintiff may elect to proceed against all defendants served or may elect to have a continuance, issuable by the clerk, to a date certain not more than sixty days thereafter. If the plaintiff elects to proceed, the action shall be dismissed without prejudice as against each defendant not served with notice.

4. *Return of service.* Proper notice shall be established by a signed return receipt or a return of service as provided in rule of civil procedure 1.308.

5. *Notification to parties.* When a small claim is set for hearing the clerk immediately shall notify by ordinary mail each party or the attorney representing the party, and the judicial officer to whom the action is assigned, of the date, time and place of hearing.

6. *Default.* If a defendant fails to appear and the clerk in accordance with subsection 4 determines that proper notice has been given, judgment shall be rendered against the defendant by the clerk if the relief is readily ascertainable. If the relief is not readily ascertainable the claim shall be assigned to a judicial magistrate for determination and the clerk shall immediately notify the plaintiff or the plaintiff's attorney and the judicial magistrate of such assignment by ordinary mail.

[C75, 77, 79, 81, §631.5]

84 Acts, ch 1322, §3, 4; 93 Acts, ch 154, §21

631.6 Fees and costs.

1. The clerk of the district court shall collect the following fees and costs in small claims actions, which shall be paid in advance and assessed as costs in the action:

a. Fees for filing and docketing shall be fifty dollars.

b. Fees for service of notice on nonresidents are as provided in section 617.3.

c. Postage charged for the mailing of original notice shall be the actual costs of the postage.

d. Fees for personal service by peace officers or other officials of the state are the amounts specified by law.

2. The amounts collected for filing and docketing shall be distributed as provided in section 602.8108.

[C73, §631.5, 631.6; C75, 77, 79, 81, §631.6; 81 Acts, ch 189, §5, 7]

83 Acts, ch 63, §2, 3, 4; 83 Acts, ch 101, §125; 83 Acts, ch 186, §10118, 10201; 85 Acts, ch 195, §59; 85 Acts, ch 197, §37, 38; 88 Acts, ch 1258, §2; 89 Acts, ch 83, §84; 91 Acts, ch 116, §18; 91 Acts, ch 218, §26; 91 Acts, ch 219, §34; 94 Acts, ch 1074, §10; 2002 Acts, ch 1126, §3

Subsection 1, paragraph a amended

631.7 Parties, pleadings and motions.

1. Except as specifically provided in this chapter, there shall be no written pleadings or motions unless the court in the interests of justice permits them, in which event they shall be similar in form to the original notice.

2. Motions, except a motion under rule of civil procedure 1.246, shall be heard only at the time set for a hearing on the merits.

3. Except as provided in section 631.8, subsection 4, a counterclaim, cross-petition or intervention shall be in writing and in the form promulgated under section 631.15. Copies shall be submitted for each party appearing, and shall be mailed by ordinary mail to those parties by the clerk. A cross-petition against persons not a party

to the action shall be made pursuant to rule of civil procedure 1.246 and the new party shall be served with notice as provided in this chapter.

4. The rules of civil procedure pertaining to actions, joinder of actions, parties and intervention shall apply to small claims actions, except that rule of civil procedure 1.241 shall not apply. No counterclaim is necessary to assert an offset arising out of the subject matter of the plaintiff's claim. A counterclaim, cross-petition, or intervention against an existing party is deemed denied and no responsive pleading by such party is required.

[C73, §631.7, 631.8; C75, 77, 79, 81, §631.7]

631.8 Procedure.

1. Small claims not determined within ninety days following the expiration of any period of continuance or following the last entry placed on the record for that action shall be dismissed by the clerk without prejudice.

2. In small claims actions, if a party joins a small claim with one which is not a small claim, the court shall:

a. Order the small claim to be heard under this chapter and dismiss the other claim without prejudice, or

b. As to parties who have appeared or are existing parties, either (1) order the small claim to be heard under this chapter and the other claim to be tried by regular procedure or (2) order both claims to be tried by regular procedure.

3. If commenced as a regular civil action or under the statutes relating to probate proceedings, a small claim shall be transferred to the small claims docket. A small claim commenced as a regular action shall not be dismissed but shall be transferred to the small claims docket. Civil and probate actions not small claims but commenced hereunder shall be dismissed without prejudice except for defendants who have appeared, as to whom such actions shall be transferred to the combination or probate docket, as appropriate.

4. In small claims actions, a counterclaim, cross claim, or intervention in a greater amount than that of a small claim shall be in the form of a regular pleading. A copy shall be filed for each existing party. New parties, when permitted by order, may be brought in under rule of civil procedure 1.246 and shall be given notice under the rules of civil procedure pertaining to commencement of actions. The court shall either order such counterclaim, cross claim, or intervention to be tried by regular procedure and the other claim to be heard under this division, or order the entire action to be tried by regular procedure.

5. In regular action, when a party joins a small claim with one which is not a small claim, regular procedure shall apply to both unless the court transfers the small claim to the small claims docket for hearing under this division.

6. In regular actions, a counterclaim, cross claim, or intervention in the amount of a small claim shall be pleaded, tried, and determined by regular procedure, unless the court transfers the small claim to the small claims docket for hearing under this division.

7. Pleadings which are not in correct form under this section shall be ordered amended so as to be in correct form; but a small claim which is proceeding under this chapter need not be amended although in the form of a regular pleading.

8. Copies of any papers filed by the parties which are not required to be served, shall be mailed or delivered by the clerk as provided in rule of civil procedure 1.442.

[C73, §631.2, 631.8; C75, 77, 79, 81, §631.8]

631.9 Jurisdiction determined.

At the time set for the hearing of a small claim, the court first shall determine that proper notice as provided in section 631.5, subsection 4, has been given a party before proceeding further as to that party, unless the party has appeared or is an existing party, and also shall determine that the action is properly brought as a small claim.

[C73, 75, 77, 79, 81, §631.9]

631.10 Failure to appear — effect.

Unless good cause to the contrary is shown, if the parties fail to appear at the time of hearing the claim shall be dismissed without prejudice by the court; if the plaintiff fails to appear but the defendant appears, the claim shall be dismissed with prejudice by the court with costs assessed to the plaintiff; and if the plaintiff appears but the defendant fails to appear, judgment may be rendered against the defendant by the court. The filing by the plaintiff of a verified account, or an instrument in writing for the payment of money with an affidavit the same is genuine, shall constitute an appearance by plaintiff for the purpose of this section.

[C73, 75, 77, 79, 81, §631.10]

631.11 Hearing.

1. *Informality.* The hearing shall be to the court, shall be simple and informal, and shall be conducted by the court itself, without regard to technicalities of procedure.

2. *Evidence.* The court shall swear the parties and their witnesses, and examine them in such a way as to bring out the truth. The parties may participate, either personally or by attorney. The court may continue the hearing from time to time and may amend new or amended pleadings, if justice requires.

3. *Record.* Upon the trial, the judicial magistrate shall make detailed minutes of the testimony of each witness and append the exhibits or copies thereof to the record. The proceedings upon trial shall not be reported by a certified court reporter, unless the party provides the reporter at such

party's expense. The magistrate, in the magistrate's discretion, may cause the proceedings upon trial to be reported electronically. If the proceedings are being electronically recorded both parties shall be notified in advance of that recording. If the proceedings have been reported electronically the recording shall be retained under the jurisdiction of the magistrate unless appealed, and upon appeal shall be transcribed only by a person designated by the court under the supervision of the magistrate.

4. *Judgment.* Judgment shall be rendered, based upon applicable law and upon a preponderance of the evidence.

5. *Destruction of recordings.* Unless an appeal is taken, an electronic recording of a proceeding in small claims shall be retained until the time for appeal has expired as specified in section 631.13. Thereafter, the magistrate may direct that the recording tape or other device be erased and used for subsequent recordings. If the proceeding is appealed, the recording may be erased following entry of judgment by the district judge hearing the appeal.

[C73, 75, 77, 79, 81, §631.11]

631.12 Entry of judgment — setting aside default judgment.

The clerk shall immediately enter the judgment in the small claims docket and district court lien book, without recording. Such relief shall be granted as is appropriate. Upon entering judgment, the court may provide for installment payments to be made directly by the party obligated to the party entitled thereto; and in such event execution shall not issue as long as such payments are made but execution shall issue for the full unpaid balance of the judgment upon the filing of an affidavit of default. When entered on the small claims docket and district court lien book, a small claims judgment shall constitute a lien to the same extent as regular judgments entered on the district court judgment docket and lien book; but if a small claims judgment requires installment payments, it shall not be enforceable until an affidavit of default is filed.

A defendant may move to set aside a default judgment in the manner provided for doing so in district court by rule of civil procedure 1.977.

[C73, 75, 77, 79, 81, §631.12]

84 Acts, ch 1322, §5; 99 Acts, ch 144, §11

631.13 Appeals.

1. *Notice.* An appeal from a judgment in small claims may be taken by any party by giving oral notice to the court at the conclusion of the hearing, or by filing a written notice of appeal with the clerk within twenty days after judgment is rendered. In either case, the appealing party shall pay to the clerk within that twenty days the usual district court docket fee to perfect the appeal. No appeal shall be taken after twenty days.

2. *Stay of judgment.* Execution of judgment shall be stayed upon the filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment.

3. *Transcript.* Within twenty days after an appeal is taken, unless extended by order of a district judge or by stipulation of the parties, any party may file with the clerk as part of the record a transcript of the official report, if any, or in the event the report was made electronically, a transcription of the recording. If a transcription of an electronic recording is filed, the record on appeal shall contain the tape or other medium on which the proceedings were preserved. A transcription of an electronic recording shall be provided any party upon request and upon payment by the party of the actual costs of transcription.

4. *Procedure on appeal.*

a. The appeal shall be promptly heard upon the record thus filed without further evidence. If the original action was tried by a district judge, the appeal shall be decided by a different district judge. If the original action was tried by a district associate judge, the appeal shall be decided by a district judge. If the original action was tried by a judicial magistrate, the appeal shall be decided by a district judge or a district associate judge. The judge shall decide the appeal without regard to technicalities or defects which have not prejudiced the substantial rights of the parties, and may affirm, reverse, or modify the judgment, or render judgment as the judge or magistrate should have rendered.

If the record, in the opinion of the deciding judge, is inadequate for the purpose of rendering a judgment on appeal, the judge may order that additional evidence be presented relative to one or more issues, and may enter any other order which is necessary to protect the rights of the parties. The judge shall take minutes of any additional evidence, but the hearing shall not be reported by a certified court reporter.

b. Upon entry of judgment the clerk may cause any recording tape or other device contained in the record to be erased for subsequent use.

[C73, 75, 77, 79, 81, §631.13]

84 Acts, ch 1322, §6, 7

631.14 Representation in small claims actions.

Actions constituting small claims may be brought or defended by an individual, partnership, association, corporation, or other entity. In actions in which a person other than an individual is a party, that person may be represented by an officer or an employee. A person who in the regular course of business takes assignments of instruments or accounts pursuant to chapter 539, which assignments constitute small claims, may bring an action on an assigned instrument or account in the person's own name and need not be repre-

sented by an attorney, provided that in an action brought to recover payment on a dishonored check or draft, as defined in section 554.3104, the action is brought in the county of residence of the maker of the check or draft or in the county where the draft or check was first presented. Any person, however, may be represented in a small claims action by an attorney.

[C75, 77, 79, 81, §631.14; 82 Acts, ch 1235, §3]
87 Acts, ch 137, §5

631.15 Standard forms.

The supreme court shall prescribe standard forms of pleadings to be used in small claims actions. Standard forms promulgated by the supreme court shall be the exclusive forms used.

[C73, §631.4; C75, 77, 79, 81, §631.15]
83 Acts, ch 101, §126

Forms prescribed by the supreme court are published in the compilation "Iowa Court Rules"

631.16 Discretionary review.

1. A civil action originally tried as a small claim shall not be appealed to the supreme court except by discretionary review as provided herein.

2. *"Discretionary review"* is the process by which the supreme court may exercise its discretion, in like manner as under the rules pertaining to interlocutory appeals and certiorari in civil cases, to review specified matters not subject to appeal as a matter of right. The supreme court may adopt additional rules to control access to discretionary review.

3. The party seeking review shall be known as the appellant and the adverse party as the appellee, but the title of the action shall not be changed from that in the court below.

4. The record and case shall be presented to the appellate court as provided by the rules of appellate procedure; and the provisions of law in civil procedure relating to the filing of decisions and opinions of the appellate court shall apply in such cases.

5. The appellate court, after an examination of the entire record, may dispose of the case by affirmation, reversal or modification of the lower court judgment, and may order a new trial.

6. The decision of the appellate court with any opinion filed or judgment rendered must be recorded by the supreme court clerk. Procedendo shall be issued as provided in the rules of appellate procedure.

7. The jurisdiction of the appellate court shall cease when procedendo is issued. All proceedings for executing the judgment shall be had in the trial court or by its clerk.

[C73, §602.71; C75, 77, 79, 81, §631.16]
85 Acts, ch 157, §1, 2

Rules adopted by the supreme court are published in the compilation "Iowa Court Rules"

631.17 Prohibited practices.

1. The district court, after due notice and hearing, may bar a person from appearing on the person's own behalf in any court governed by this chapter on a cause of action purchased by or assigned for collection to that person for any of the following:

a. Falsely holding oneself out as an attorney at law.

b. Repeatedly filing claims for costs allowed under section 625.22 which have been found by the court to have been exaggerated or without merit.

c. A pattern of conduct in violation of article 7 of chapter 537.

2. A person barred pursuant to subsection 1 shall not derive any benefit, directly or indirectly, from any case brought pursuant to this chapter within the purview of the order of bar issued by the district court.

3. The district court shall dismiss any pending case based on a cause of action purchased or assigned for collection brought on the person's own behalf by a person barred pursuant to subsection 1, and shall assess the costs against that person.

4. The district court shall dismiss any case subsequently brought directly or indirectly by a person subject to a bar pursuant to subsection 1 in violation of that subsection and shall assess all costs to that person, and the court shall assess a further civil fine of one hundred dollars against that person for each such case dismissed.

5. The district court shall retain jurisdiction over a person barred pursuant to subsection 1 and may punish violations of the court's order of bar as a matter of criminal contempt.

86 Acts, ch 1238, §25; 87 Acts, ch 98, §6

SUBTITLE 4

PROBATE — FIDUCIARIES

CHAPTER 632

CLERK OF PROBATE COURT

Repealed by 63 Acts, ch 326, §704

CHAPTER 633

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INTRODUCTION AND DEFINITIONS

PART 1

INTRODUCTION

633.1 Short title.

This chapter shall be known and may be cited as the *"Iowa Probate Code"*.

[C66, 71, 73, 75, 77, 79, 81, §633.1]

633.2 How Code to take effect.

1. *Effective date.* This Code shall take effect and be in force on and after January 1, 1964. The procedure herein prescribed shall govern all proceedings in probate brought after the effective date of this Code. It shall also govern further procedure in proceedings in probate then pending, except to the extent that, in the opinion of the court, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

2. *Rights not affected.* No act done in any proceeding commenced before this Code takes effect and no accrued or vested right shall be impaired by its provisions. When a right has been acquired, extinguished, or barred upon the expiration of a prescribed period of time governed by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be deemed a part of this Code with respect to such right.

[C66, 71, 73, 75, 77, 79, 81, §633.2]

PART 2

DEFINITIONS AND USE OF TERMS

633.3 Definitions and use of terms.

When used in this Code, unless otherwise required by the context, or another division of this Code, the following words and phrases shall be construed as follows:

1. *Administrator* — any person appointed by the court to administer an intestate estate.

2. *Bequeath* — includes the word *"devise"* when used as a verb.

3. *Bequest* — includes the word *"devise"* when used as a noun.

4. *Charges* — includes costs of administration, funeral expenses, cost of monument, and federal and state estate taxes.

5. *Child* — includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in sections 633.221 and 633.222, a biological child.

6. *Clerk* — *"Clerk of the District Court"* in the county in which the matter is pending and includes the term *"Clerk of the Probate Court"*.

7. *Conservator* — a person appointed by the court to have the custody and control of the property of a ward under the provisions of this Code.

8. *Costs of administration* — includes court costs, fiduciary's fees, attorney fees, all appraisers' fees, premiums on corporate surety bonds, statutory allowance for support of surviving spouse and children, cost of continuation of abstracts of title, recording fees, transfer fees, transfer taxes, agents' fees allowed by order of court, interest expense, including, but not limited to, interest payable on extension of federal estate tax, and all other fees and expenses allowed by order of court in

connection with the administration of the estate. Court costs shall include expenses of selling property.

9. *Court* — the Iowa district court sitting in probate and includes any Iowa district judge.

10. *Debts* — includes liabilities of the decedent which survive, whether arising in contract, tort or otherwise.

11. *Devise* — when used as a noun, includes testamentary disposition of property, both real and personal.

12. *Devise* — when used as a verb, to dispose of property, both real and personal, by a will.

13. *Devisee* — includes legatee.

14. *Distributee* — a person entitled to any property of the decedent under the decedent's will or under the statutes of intestate succession.

15. *Estate* — the real and personal property of a decedent, a ward, or a trust, as from time to time changed in form by sale, reinvestment or otherwise, and augmented by any accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom.

16. *Executor* — means any person appointed by the court to administer the estate of a testate decedent.

17. *Fiduciary* — includes personal representative, executor, administrator, guardian, conservator and trustee.

18. *Full age* — the state of legal majority attained through arriving at the age of eighteen years or through having married, even though such marriage is terminated by divorce.

19. *Functional limitations* — means the behavior or condition of a person which impairs the person's ability to care for the person's personal safety or to attend to or provide for necessities for the person.

20. *Guardian* — the person appointed by the court to have the custody of the person of the ward under the provisions of this Code.

21. *Guardian of the property* — at the election of the person appointed by the court to have the custody and care of the property of a ward, the term *"guardian of the property"* may be used, which term shall be synonymous with the term *"conservator"*.

22. *Heir* — any person, except the surviving spouse, who is entitled to property of a decedent under the statutes of intestate succession.

23. *Incompetent* — means the condition of any person who has been adjudicated by a court to meet at least one of the following conditions:

a. To have a decision-making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

b. To have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

c. To have a decision-making capacity which is so impaired that both paragraphs *"a"* and *"b"* are applicable to the person.

24. *Issue* — for the purposes of intestate succession, includes all lawful lineal descendants of a person, whether biological or adopted, except those who are the lineal descendants of the person's living descendants.

25. *Legacy* — a testamentary disposition of personal property.

26. *Legatee* — a person entitled to personal property under a will.

27. *Letters* — includes letters testamentary, letters of administration, letters of guardianship, letters of conservatorship, and letters of trusteeship.

28. *Minor* — a person who is not of full age.

29. *Person* — includes natural persons and corporations.

30. *Personal representative* — includes executor and administrator.

31. *Property* — includes both real and personal property.

32. *Surviving spouse* — the surviving wife or husband, as the case may be.

33. *Temporary administrator* — any person appointed by the court to care for an estate pending the probating of a proposed will, or to handle any special matter designated by the court.

34. *Trustee* — the person or persons appointed as trustee by the instrument creating the trust, or the person or persons appointed by the court to administer the trust.

35. *Trusts* — include only: Testamentary trusts; express trusts where jurisdiction is specifically conferred on the court by the trust instrument; express trusts where the jurisdiction of the court is invoked by the trustee, beneficiary or any interested party for a limited purpose, or otherwise; and trusts which are established by a judgment or a decree of court which results in administration of the trust by the court, and the court entering the judgment or decree establishing such trust orders the administration of the trust transferred to the probate court.

36. *Will* — includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will.

[C51, §1286; R60, §2318; C73, §2336; C97, §3280; C24, 27, 31, 35, 39, §**11860;** C46, 50, 54, 58, 62, §633.15; C66, 71, 73, 75, 77, 79, 81, §633.3]

94 Acts, ch 1046, §26; 97 Acts, ch 178, §1, 2

633.4 Gender and number. Repealed by 2000 Acts, ch 1188, § 4.

633.5 Nonestate property — insurance proceeds.

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

94 Acts, ch 1153, §7

633.6 through 633.9 Reserved.

DIVISION II

PROBATE COURT, CLERK OF PROBATE COURT, AND PROCEDURE IN PROBATE

PART 1

PROBATE COURT

633.10 Jurisdiction.

The district court sitting in probate shall have jurisdiction of:

1. *Estates of decedents and absentees.*

The probate and contest of wills; the appointment of personal representatives; the granting of letters testamentary and of administration; the administration, settlement and distribution of estates of decedents and absentees, whether such estates consist of real or personal property or both.

2. *Construction of wills and trust instruments.*

The construction of wills and trust instruments during the administration of the estate or trust, whether said construction be incident to such administration, or as a separate proceeding.

3. *Conservatorships and guardianships.*

The appointment of conservators and guardians; the granting of letters of conservatorship and guardianship; the administration, settlement and closing of conservatorships and guardianships.

4. *Trusts and trustees.*

a. Except as otherwise provided in this subsection, the appointment of trustees; the granting of letters of trusteeship; the administration of testamentary trusts; the administration of express trusts where jurisdiction is specifically conferred on the court by the trust instrument; the administration of express trusts where the administration of the court is invoked by the trustee, beneficiary, or any interested party; the administration of trusts which are established by a decree of court and result in the administration thereof by the court; and the settlement and closing of all such trusts.

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

c. The provisions of paragraph *"b"* shall be effective for applications filed on or after July 1, 1991.

d. A trust that is administered solely or jointly by an individual trustee or trustees is not subject to the jurisdiction of the court unless jurisdiction is invoked by a trustee or beneficiary, or if otherwise provided by the governing instrument. Upon application of all trustees administering a trust which is subject to the court's jurisdiction, and following notice to beneficiaries as provided in section 633.40, subsection 4, the court shall release the trust from further jurisdiction unless one or more beneficiaries object, on the condition that jurisdiction may thereafter be invoked by a trustee or beneficiary. The provisions of this paragraph shall be effective for applications filed on or after July 1, 1997.

5. *Actions for accounting.*

An action for an accounting against a beneficiary of a transfer on death security registration, pursuant to this chapter.

[C73, §2312; C97, §225; C24, 27, 31, 35, 39, §**10763, 10764;** C46, 50, 54, 58, 62, §604.3, 604.4; C66, 71, 73, 75, 77, 79, 81, §633.10]

85 Acts, ch 154, §1; 91 Acts, ch 36, §1; 97 Acts, ch 178, §3; 99 Acts, ch 56, §2

633.11 Declaratory judgments — determination of heirship — distribution.

During the administration of an estate, the district court sitting in probate shall have full, legal and equitable powers to make declaratory judgments in all matters involved in the administration of the estate, including those pertaining to the title of real estate, the determination of heirship, and the distribution of the estate. It shall have full, legal and equitable powers to enter final orders and decrees in all probate matters to effectuate its jurisdiction and to carry out its orders, judgments and decrees.

[C66, 71, 73, 75, 77, 79, 81, §633.11]

633.12 County of jurisdiction.

The court of each county shall have original and exclusive jurisdiction to administer the estates of all persons who are residents of the county, or who were residents at the time of their death, and all nonresidents of the state who have property, or who die leaving property in the county subject to administration, or whose property is afterwards brought into the county; to appoint conservators for nonresidents having property in the county; and to appoint conservators and guardians of residents of the county.

[C73, §2312; C97, §225; C24, 27, 31, 35, 39,

§**10763, 10764;** C46, 50, 54, 58, 62, §604.3, 604.4; C66, 71, 73, 75, 77, 79, 81, §633.12]

633.13 Extent of jurisdiction.

The court of the county in which a will is probated, or in which administration, conservatorship or guardianship is granted, shall have jurisdiction coextensive with the state in the settlement of the estate, and in the sale and distribution thereof.

A district judge or a district associate judge has statewide jurisdiction to enter orders in probate matters not requiring notice and hearing, although the judge is not a judge of or present in the district in which the probate matter is pending. The orders shall be made in conformity with the rules of the district in which the probate matter is pending.

[R60, §2472; C73, §2319; C97, §3265; C24, 27, 31, 35, 39, §**11825;** C46, 50, 54, 58, 62, §631.7; C66, 71, 73, 75, 77, 79, 81, §633.13]

83 Acts, ch 186, §10119, 10201; 94 Acts, ch 1122, §2

633.14 Concurrent jurisdiction.

When a case is originally within the jurisdiction of the courts of two or more counties, the one which first takes cognizance thereof by the commencement of the proceedings shall retain the same throughout.

[C51, §1274; R60, §2306; C73, §2318; C97, §3264; C24, 27, 31, 35, 39, §**11824;** C46, 50, 54, 58, 62, §631.6; C66, 71, 73, 75, 77, 79, 81, §633.14]

633.15 Probate court always open.

The court sitting in probate shall always be open for the transaction of probate business.

[C73, §2313; C97, §3261; C24, 27, 31, 35, 39, §**11819;** C46, 50, 54, 58, 62, §631.1; C66, 71, 73, 75, 77, 79, 81, §633.15]

633.16 Control of probate records.

The court shall have jurisdiction and supervision of the probate records of the clerk, and may direct the destruction of records it deems to be old, obsolete or unnecessary.

[C66, 71, 73, 75, 77, 79, 81, §633.16]

93 Acts, ch 70, §10

633.17 Judge disqualified — procedure.

When a judge is disqualified from acting in a probate matter, the matter shall be heard before another judge of the same district, or shall be transferred to the court of another district, or a judge of another district shall be procured to hold court for the hearing of the matter.

[C73, §2317; C97, §3263; C24, 27, 31, 35, 39, §**11823;** C46, 50, 54, 58, 62, §631.5; C66, 71, 73, 75, 77, 79, 81, §633.17]

83 Acts, ch 186, §10120, 10201

Disqualification of judicial officer, see §602.1606

633.18 Rules in probate.

1. Actions and proceedings under this chapter are subject to rules prescribed by the supreme court under section 602.4201.

2. The judicial officers of a judicial district, excluding the magistrates, acting under section 602.1213 may prescribe rules for probate actions and proceedings within the district, but these rules must be consistent with this chapter, and are subject to the approval of the supreme court.

[C66, 71, 73, 75, 77, 79, 81, §633.18]

83 Acts, ch 186, §10121, 10201; 96 Acts, ch 1153, §7

Rules adopted by the supreme court are published in the compilation "Iowa Court Rules"

633.19 Process revoked.

Any process or authority emanating from the court in probate matters may for good cause be revoked and a new one issued.

[C51, §1275; R60, §2307; C73, §2320; C97, §3266; C24, 27, 31, 35, 39, §**11827;** C46, 50, 54, 58, 62, §631.9; C66, 71, 73, 75, 77, 79, 81, §633.19]

633.20 Referee — clerk — associate probate judge.

1. The chief judge of the judicial district may appoint a referee in probate for the auditing of the accounts of fiduciaries and for the performance of other ministerial duties the chief judge prescribes. A person shall not be appointed as referee in a matter where the person is acting as a fiduciary or as the attorney.

2. The chief judge of the judicial district may appoint the clerk as referee in probate. In such cases, the fees received by the clerk for serving in the capacity of referee are fees of the office of the clerk of court and shall be deposited in the account established under section 602.8108.

3. A person appointed as an associate probate judge shall have jurisdiction to audit accounts of fiduciaries and to perform ministerial duties and judicial functions as the court prescribes.

[C73, §2412; C97, §3393; C24, 27, 31, 35, 39, §**12041;** C46, 50, 54, 58, 62, §638.1; C66, 71, 73, 75, 77, 79, 81, §633.20]

83 Acts, ch 186, §10122, 10201; 93 Acts, ch 70, §11; 94 Acts, ch 1074, §11; 99 Acts, ch 93, §11; 2000 Acts, ch 1057, §17

633.20A Part-time associate probate judge — appointment — removal — qualifications.

The chief judge of a judicial district may appoint a part-time associate probate judge and may remove the part-time associate probate judge for cause following a hearing. The part-time associate probate judge shall be an attorney admitted

to practice law in this state and shall be qualified for the position by training and experience.

99 Acts, ch 93, §12; 2000 Acts, ch 1154, §38

633.20B Appointment and resignation of full-time associate probate judges.

1. Full-time associate probate judges shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a full-time associate probate judge to be appointed to more than one county, the appointment shall be from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a full-time associate probate judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a full-time associate probate judge is not retained in office pursuant to a judicial election, the county magistrate appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate probate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of full-time associate probate judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate probate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a full-time associate probate judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of full-time associate probate judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A full-time associate probate judge who seeks to resign from the office of full-time associate probate judge shall notify in writing the chief judge of the judicial district as to the full-time associate probate judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of full-time associate probate judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate appointing commissions when exercising the duties specified in this section.

99 Acts, ch 93, §13, 15; 99 Acts, ch 208, §62

633.20C Full-time associate probate judges — term, retention, qualifications.

1. Full-time associate probate judges shall serve terms and shall stand for retention in office within the judicial election districts of their residences as provided under sections 46.16 through 46.24.

2. A person does not qualify for appointment to the office of full-time associate probate judge unless the person is at the time of appointment a resident of the county in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for full-time associate probate judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A full-time associate probate judge must be a resident of a county in which the office is held during the entire term of office. A full-time associate probate judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

4. Full-time associate probate judges shall qualify for office as provided in chapter 63 for district judges.

99 Acts, ch 93, §14, 15

633.21 Appraisers' fees and referees' fees fixed by rule.

The district judges of each judicial district shall by rule fix the fees of probate referees, and also provide, insofar as practicable, a uniform schedule of compensation for inheritance tax appraisers, other appraisers, brokers, and agents employed at estate expense.

[C66, 71, 73, 75, 77, 79, 81, §633.21]

83 Acts, ch 186, §10123, 10201

PART 2

CLERK OF PROBATE COURT

633.22 Probate powers of clerk.

The clerk shall have and may exercise within the county all the powers and jurisdiction of the court and of the judge thereof, in the following matters:

1. The appointment of personal representatives who are residents of the state, guardians and conservators for minors, the fixing and determining of the amount of the bond, or waiving the same when permitted by law or by will, and the approval of any and all bonds given by fiduciaries in the discharge of their duties.

2. The examination and approval of all intermediate and interlocutory accounts and reports of fiduciaries.

3. The admission of wills of decedents to probate, when not contested, and the making of necessary orders in relation thereto, including orders for the issuance of commissions to take depositions. Proof may be made before the clerk in the same manner as is made in open court.

4. The making of all necessary orders in relation to the personal effects of a deceased person, where no objection is filed, and perform all other acts within the clerk's jurisdiction, as provided in this Code.

5. The approval, when notice has been waived by all persons interested, of petitions and reports, or joint petitions and reports, in respect to the sale, mortgage, pledge, lease or exchange of property pursuant to sections 633.386 to 633.400.

6. The entering of routine scheduling orders in probate matters as established by the chief judge in each judicial district.

[C51, §1276; R60, §2308; C73, §2315, 2321; C97, §250, 3267, 3268; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11832, 11838;** C46, 50, 54, 58, 62, §631.10, 632.1, 632.7; C66, 71, 73, 75, 77, 79, 81, §633.22]

94 Acts, ch 1050, §1

633.23 Clerk's actions reviewed.

Any person aggrieved by any order made or entered by the clerk under the powers conferred in section 633.22, subsections 1 to 4, may have the same reviewed in court upon motion filed within six months or before the hearing on the final report of the fiduciary, whichever is the earlier, and upon such notice as provided in section 633.40.

[C97, §251; C24, 27, 31, 35, 39, §**11834;** C46, 50, 54, 58, 62, §632.3; C66, 71, 73, 75, 77, 79, 81, §633.23]

633.24 Docketing and hearing.

Upon the filing of such a motion, the clerk shall place the cause or proceeding on the docket without additional docket fee, and the matter shall stand for hearing or trial de novo in open court.

[C97, §251; C24, 27, 31, 35, 39, §**11835;** C46, 50, 54, 58, 62, §632.4; C66, 71, 73, 75, 77, 79, 81, §633.24]

633.25 Validity of clerk's orders.

The records, orders, and judgments made and entered by the clerk, as hereinbefore provided, and not reversed, set aside, or modified by the court, shall stand, and shall be of the same force, validity, and effect, and be entitled to the same faith and credit, as if they had been made by the court.

[C97, §252; C24, 27, 31, 35, 39, §**11836;** C46, 50, 54, 58, 62, §632.5; C66, 71, 73, 75, 77, 79, 81, §633.25]

633.26 Clerk not to prepare reports.

A clerk of the district court or employee of the clerk shall not act as attorney for a fiduciary, or make or assist in making, drafting, or filling out any report of any fiduciary or any other report to be filed in the clerk's office.

[C97, §252; C24, 27, 31, 35, 39, §**11837;** C46, 50, 54, 58, 62, §632.6; C66, 71, 73, 75, 77, 79, 81, §633.26]

90 Acts, ch 1233, §38

633.27 Probate docket.

The clerk shall keep a book to be known as the Probate Docket, which shall show:

1. The name of every deceased person whose estate is administered or whose will is admitted to probate, and the date of the person's death.

2. The name of each person as to whom application for conservatorship or guardianship is made.

3. The names of all the heirs in intestate estates and the surviving spouse of such deceased intestate, and their ages and places of residence, so far as they can be ascertained.

4. The title of each trust where letters of trusteeship are issued.

5. A note of every sale of real estate made under the order of the court, with a reference to the volume and page of the record where a complete record thereof may be found.

[C73, §2490; C97, §3411; C24, 27, 31, 35, 39, §**11841;** C46, 50, 54, 58, 62, §632.10; C66, 71, 73, 75, 77, 79, 81, §633.27]

633.27A Docketing guardianship and conservatorship proceedings.

When a petition is filed for a conservatorship or guardianship, or a combined petition as provided in section 633.627, the administration thereof shall be treated as a separate proceeding, with a separate docket number, from the date of the filing of the petition. The clerk shall clearly indicate on the docket whether the proceedings are voluntary or involuntary and whether a guardianship, a conservatorship, or combined.

89 Acts, ch 178, §7

633.28 Docketing trust proceedings.

When a trust is created by a will, the administration thereof shall be treated as a separate proceeding, with a separate docket number, from the date of the order of appointment or confirmation of the original trustee, unless otherwise ordered by the court. When the clerk dockets a trust proceedings under this section, the clerk shall place and keep in such file a true copy of the will creating such trust.

[C66, 71, 73, 75, 77, 79, 81, §633.28]

633.29 Probate record. Repealed by 99 Acts, ch 144, § 15.

633.30 Bonds given by fiduciaries. Repealed by 93 Acts, ch 70, § 15.

633.31 Calendar — fees in probate.

1. The clerk shall keep a court calendar, and enter thereon such matters as the court may prescribe.

2. The clerk shall charge and collect the following fees in connection with probate matters, which shall be deposited in the account established under section 602.8108:

a. For services performed in short form probates pursuant to sections 450.22 and 450.44 . . . . . $ 15.00

b. For services performed in probate of will without administration 15.00

c. For filing and indexing a transcript 5.00

d. For taking and approving a bond, or the sureties on a bond 20.00

e. For entering a rule or order 10.00

f. For certificate and seal 10.00

g. For making a complete record where real estate is sold . . . . . per 100 words .20

h. For making a transcript or copies of orders or records filed in the clerk's office . . . . . per 100 words .50

i. For certifying change of title 10.00

j. For issuing commission to appraisers 2.00

k. For other services performed in the settlement of the estate of any decedent, minor, person with mental illness, or other persons laboring under legal disability, except where actions are brought by the administrator, guardian, trustee, or person acting in a representative capacity or against that person, or as may be otherwise provided herein, where the value of the personal property and real estate of such a person falls within the following indicated amounts, the fee opposite such amount shall be charged.

Up to $3,000.00	5.00
3,000.00 to 5,000.00	10.00
5,000.00 to 7,000.00	15.00
7,000.00 to 10,000.00	20.00
10,000.00 to 15,000.00	25.00
15,000.00 to 25,000.00	30.00
For each additional $25,000.00 or major fraction thereof	25.00

l. For services performed in small estate administration 15.00

3. The fee set forth in subsection 2, paragraph *"k"*, shall not be charged on any property transferred to a testamentary trust from an estate that has been administered in this state and for which court costs have been assessed and paid.

[C97, §3269; C24, 27, 31, 35, 39, §**11844;** C46, 50, 54, 58, 62, §632.13; C66, 71, 73, 75, 77, 79, 81, §633.31]

83 Acts, ch 186, §10124, 10201; 88 Acts, ch 1258, §3; 89 Acts, ch 207, §2; 94 Acts, ch 1074, §12, 13; 96 Acts, ch 1129, §113; 99 Acts, ch 56, §3

633.32 Delinquent inventories and reports.

1. On June 1 and December 1 of each year, the clerk shall notify the fiduciary and the fiduciary's attorney of any delinquent inventories or reports due by law in any pending estate, trust, guardianship, or conservatorship, and that unless such delinquent inventory or report is filed within sixty days thereafter, the matter shall be reported to the presiding judge. If the delinquent inventory is not filed within the time so specified, the fiduciary will be subject to removal under the provisions of section 633.65 of this Code.

2. On August 1 and February 1 of each year, the clerk shall report to the presiding judge all delinquent inventories or reports in estates, trusts, guardianships, or conservatorships on which such notice has been given and no report or inventory has been filed in response to the notice.

3. The reports required by this section shall indicate thereon all cases in which the attorney, or the fiduciary or the fiduciary's surety, is deceased, or insolvent, or cannot be found, or has removed from this state, and where it is shown by said reports, or it otherwise appears that there are no known assets belonging to the estate, the judge may, on the judge's own motion, order said estate

closed, and may, in the judge's discretion, waive costs, or, on reasonable notice to the fiduciary, tax costs against the fiduciary. Such order shall not operate to prevent the reopening of such estate.

[C97, §3269; C24, 27, 31, 35, 39, §**11845;** C46, 50, 54, 58, 62, §632.14; C66, 71, 73, 75, 77, 79, 81, §633.32]

2000 Acts, ch 1150, §1

PART 3

PROCEDURE IN PROBATE

633.33 Nature of proceedings in probate.

Actions to set aside or contest wills, for the involuntary appointment of guardians and conservators, and for the establishment of contested claims shall be triable in probate as law actions, and all other matters triable in probate shall be tried by the probate court as a proceeding in equity.

[C66, 71, 73, 75, 77, 79, 81, §633.33]

633.34 Applicability of rules of civil procedure.

All actions triable in probate shall be governed by the rules of civil procedure, except as provided otherwise in this Code.

[C66, 71, 73, 75, 77, 79, 81, §633.34]

633.35 Reports and applications for orders.

All petitions, reports, and applications for orders in probate must be in writing, verified, acknowledged or certified, and self-explanatory. If the petition, report, or application is certified, substantially the following language shall be used: "I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct."

[C97, §3421; C24, 27, 31, 35, 39, §**12072;** C46, 50, 54, 58, 62, §638.35; C66, 71, 73, 75, 77, 79, 81, §633.35]

89 Acts, ch 35, §1

633.36 Orders in probate.

All orders and decrees of the court sitting in probate are final decrees as to the parties having notice and those who have appeared without notice.

[C66, 71, 73, 75, 77, 79, 81, §633.36]

633.37 Orders without notice.

All orders entered without notice or appearance are reviewable by the court at any time prior to the entry of the order approving the final report.

[C66, 71, 73, 75, 77, 79, 81, §633.37]

633.38 Time and place of hearing.

Except as otherwise provided in this Code, the hearing of any matter requiring notice shall be had at such time and place as the court may fix.

[C73, §2313; C97, §3261; C24, 27, 31, 35, 39, §**11820;** C46, 50, 54, 58, 62, §631.2; C66, 71, 73, 75, 77, 79, 81, §633.38]

633.39 Place of hearing — noncontest or agreement.

In cases where no objection, resistance or appearance has been filed, or by agreement, such hearing may be had at any place within the judicial district.

[C97, §3261; C24, 27, 31, 35, 39, §**11821;** C46, 50, 54, 58, 62, §631.3; C66, 71, 73, 75, 77, 79, 81, §633.39]

633.40 Notice in probate proceedings.

1. *Court prescribing notice.* Except as otherwise provided in this Code, the court shall fix the time and place of hearing of any matter requiring notice and shall prescribe the time and manner of service of the notice of such hearing.

2. *Notice by publication.* In the case of proceedings against unknown persons or persons whose address or whereabouts are unknown, the court shall prescribe that notice may be served by publication within the time and in the manner provided by the rules of civil procedure.

3. *No notice by posting.* No notice shall be served at any time by posting.

4. *Notice otherwise provided.* In lieu of the foregoing the notice may direct each interested party to file the party's objections thereto in writing, if any, on or before a date certain, to be set out in the notice and to be not less than twenty days after the day the notice is served upon the party and that unless the party does so file objections in writing that the party will be forever barred from making any objections thereto. Said notice shall be served upon each interested party personally in compliance with the rules of civil procedure, or upon those parties not under legal disability by ordinary United States mail. In the event objections thereto are timely filed, the court shall fix the time and place of the hearing for the judicial determination of the issues raised.

5. *Notice by mail.* When notice in probate proceedings is served upon an interested party by United States mail, the service is made and completed when the notice being served is enclosed in a sealed envelope with the proper postage thereon addressed to the interested party at the party's last known post office address and is deposited in a mail receptacle provided by the United States postal service.

[C73, §2314; C97, §3262; C24, 27, 31, 35, 39, §**11822;** C46, 50, 54, 58, 62, §631.4; C66, 71, 73, 75, 77, 79, 81, §633.40]

633.41 Consular representatives — notice.

Whenever in the course of the administration of any estate, it shall appear that any subject, citi-

zen, or national of a foreign country is interested as an heir, devisee, legatee, or otherwise, and the address of such person is unknown to the personal representative, the personal representative shall give notice by mail to the consular representative of such country for Iowa of the pendency of such proceedings and of the particular interest of such foreign subject. If such consular representative shall not have filed the representative's designation and address with the clerk, then such notice shall be mailed to the chief diplomatic representative of such foreign country at Washington, D.C. Failure to give such notice shall in no event and in no manner affect title to property.

[C27, 31, 35, §11845-b1; C39, §**11845.1;** C46, 50, 54, 58, 62, §632.15; C66, 71, 73, 75, 77, 79, 81, §633.41]

633.42 Requests for notice.

At any time after the issuance of letters testamentary or of administration upon a decedent's estate, any person interested in the estate may file with the clerk a written request, in triplicate, for notice of the time and place of all hearings in such estate for which notice is required by law, by rule of court, or by an order in such estate. The request for notice shall state the name and post office address of such person and the name and post office address of the attorney, if any, for the party requesting the notice. The clerk shall docket the request, and transmit the duplicates to the personal representative of the estate of the decedent and to the personal representative's attorney of record, if any. Thereafter, the personal representative shall, unless otherwise ordered by the court, serve, by ordinary mail, upon such person, or the person's attorney, if any, a notice of each hearing.

[C66, 71, 73, 75, 77, 79, 81, §633.42]

93 Acts, ch 111, §1

633.43 Notice and appearance.

In any matter pending in the probate court, the attorney general may request notice of all hearings therein as provided by section 633.42, and may, with the approval of the court, intervene in behalf of the public interest. The court, on its own motion, in any such matter involving the public interest, may direct the fiduciary to give notice of the hearing to the attorney general.

[C66, 71, 73, 75, 77, 79, 81, §633.43]

633.44 Waiver of service of notice.

Any notice required under this Code, or by order of court, may be waived in writing by the person, or the fiduciary, entitled to receive such notice.

[C66, 71, 73, 75, 77, 79, 81, §633.44]

633.45 Notice of order served on fiduciary and attorney.

When the court makes an order affecting a fiduciary, it shall be served upon the fiduciary and the fiduciary's attorney of record in such manner as the court may prescribe.

[R60, §2474, 2475, 2476; C73, §2479, 2480, 2481; C97, §3403, 3404; S13, §3403; C24, 27, 31, 35, 39, §**12055, 12056;** C46, 50, 54, 58, 62, §638.15, 638.16; C66, 71, 73, 75, 77, 79, 81, §633.45]

633.46 Proof of publication.

Proof of the publication of all notices that are by this Code or by order of court required to be published shall be made by an affidavit of the publisher or of any employee having knowledge of the facts.

[C66, 71, 73, 75, 77, 79, 81, §633.46]

633.47 Proof of service and taxation of costs.

Proof of service of any notice, required by this Code or by order of court, including those by publication, shall be filed with the clerk. The costs of serving any notice given by the fiduciary shall be taxed by the clerk as part of the costs of administration in said estate.

[C66, 71, 73, 75, 77, 79, 81, §633.47]

633.48 Certified copies affecting foreign real estate.

A certified copy of any proceedings, order, judgment, or deed, affecting real estate in any county other than that in which administration or conservatorship is originally granted, shall be furnished to the clerk of the court of the county where such real estate is situated. Upon receipt of the certified copy, the clerk of court shall assign a probate case number to the certified copy and file the copy using the name of the probate proceeding in the county sending the copy. The file created by the county receiving a certified copy as provided in this section shall not be considered an active file for administrative purposes.

[C97, §3265; C24, 27, 31, 35, 39, §**11826;** C46, 50, 54, 58, 62, §631.8; C66, 71, 73, 75, 77, 79, 81, §633.48]

99 Acts, ch 144, §12

633.49 Transfer to another county.

In any proceeding in probate, the court may, upon written showing, supported by affidavit, and on such notice to interested parties as the court may prescribe, transfer such proceeding to any other county, when it is made to appear that such transfer will be in furtherance of justice. Thereupon, the matter shall be pending in such other county.

[C24, 27, 31, 35, 39, §**11829;** C46, 50, 54, 58, 62, §631.11; C66, 71, 73, 75, 77, 79, 81, §633.49]

633.50 Certified copy of transferring court's records.

The clerk of the court which orders such a trans-

fer shall retain the original files and papers, but shall make a certified copy thereof and of all record entries pertaining to the proceedings. The clerk of court shall at once file the same in the office of the clerk of the court to which the transfer has been made.

[C24, 27, 31, 35, 39, §**11830;** C46, 50, 54, 58, 62, §631.12; C66, 71, 73, 75, 77, 79, 81, §633.50]

633.51 Filing of certified copy by receiving court.

The clerk of the court to which the proceedings are transferred shall file, within a new file of the clerk's county, the certified copy of the record entries referred to in section 633.50.

[C24, 27, 31, 35, 39, §**11831;** C46, 50, 54, 58, 62, §631.13; C66, 71, 73, 75, 77, 79, 81, §633.51]

99 Acts, ch 144, §13

633.52 Mistakes corrected.

Mistakes in settlements may be corrected at any time before the final discharge of any fiduciary on such notice, if any, as the court may direct.

[C51, §1432; R60, §2457; C73, §2474; C97, §3398; C24, 27, 31, 35, 39, §**12049;** C46, 50, 54, 58, 62, §638.9; C66, 71, 73, 75, 77, 79, 81, §633.52]

633.53 Submission and retention of vouchers and receipts.

In all accountings filed by fiduciaries, vouchers or receipts for all disbursements shall be filed or submitted by the fiduciary upon written request of any interested party, or upon order of court. After an order, or decree, has been entered approving such accounting, any vouchers or receipts which have been filed may be withdrawn under order of the court. Vouchers or receipts not filed, or which have been withdrawn, shall be preserved by the fiduciary until the accounting of such fiduciary becomes final.

[C66, 71, 73, 75, 77, 79, 81, §633.53]

633.54 to 633.62 Reserved.

DIVISION III

GENERAL PROVISIONS RELATING TO FIDUCIARIES

PART 1

QUALIFICATION, APPOINTMENT, SUBSTITUTION, AND REMOVAL OF FIDUCIARIES

633.63 Qualification of fiduciary — resident.

1. Any natural person of full age, who is a resident of this state, is qualified to serve as a fiduciary, except the following:

a. One who is under legal incompetency or is a chronic alcoholic or a spendthrift.

b. Any other person whom the court determines to be unsuitable.

2. Banks and trust companies organized under the laws of the United States or state banks, when approved by the superintendent of banking under section 524.1001, and trust companies authorized to engage in trust business pursuant to section 524.1005, are authorized to act in a fiduciary capacity in Iowa.

3. A private nonprofit corporation organized under chapter 504 or 504A is qualified to act as a guardian, as defined in section 633.3, subsection 20, or a conservator, as defined in section 633.3, subsection 7, where the assets subject to the conservatorship at the time when such corporation is appointed conservator are less than or equal to seventy-five thousand dollars and the corporation does not possess a proprietary or legal interest in an organization which provides direct services to the individual.

[C51, §1304, 1305; R60, §2336, 2337; C73, §2345, 2346; C97, §3288, 3289; C24, 27, 31, 35, 39, §**11871, 11872;** C46, 50, 54, 58, 62, §633.27, 633.28; C66, 71, 73, 75, 77, 79, 81, §633.63]

85 Acts, ch 31, §1; 86 Acts, ch 1131, §1; 89 Acts, ch 178, §8; 89 Acts, ch 257, §32; 96 Acts, ch 1129, §105; 98 Acts, ch 1118, §1

633.64 Qualification of fiduciary — nonresident.

The court may, upon application, appoint the following nonresidents as fiduciaries:

1. *Natural persons.* A natural person who is a nonresident of this state and who is otherwise qualified under the provisions of section 633.63, provided a resident fiduciary is appointed to serve with such nonresident fiduciary; and provided further that the court, for good cause shown, may appoint such nonresident fiduciary to serve alone without the appointment of a resident fiduciary.

2. *Banks and trust companies.* Banks and trust companies organized under the laws of the United States or of another state and authorized to act in a fiduciary capacity in another state, if banks and trust companies of this state are permitted to act as fiduciary under similar conditions in the state where such bank or trust company is located.

[C66, 71, 73, 75, 77, 79, 81, §633.64]

633.65 Removal of fiduciary.

When any fiduciary is, or becomes, disqualified under sections 633.63 and 633.64, has mismanaged the estate, failed to perform any duty imposed by law, or by any lawful order of court, or ceases to be a resident of the state, then the court may remove the fiduciary. The court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the fiduciary's bond, order the fiduciary to appear and show cause why the fidu-

ciary should not be removed. Any such petition shall specify the grounds of complaint. The removal of a fiduciary after letters are duly issued to the fiduciary shall not invalidate the fiduciary's official acts performed prior to removal.

[C51, §1306, 1509, 1510; R60, §2338, 2561, 2562; C73, §2247, 2251, 2496 – 2500; C97, §3198, 3201, 3416 – 3418; S13, §3228-g; C24, 27, §12066 – 12068, 12600, 12604, 12643; C31, 35, §12066 – 12068, 12600, 12604, 12643, 12644-c12; C39, §**12066 – 12068, 12600, 12604, 12643, 12644.12;** C46, 50, 54, 58, 62, §638.29 – 638.31, 668.27, 668.31, 671.12, 672.12; C66, 71, 73, 75, 77, 79, 81, §633.65]

633.66 Appointment of successor fiduciary.

When any fiduciary fails to qualify, dies, is removed by the court, or resigns, and such resignation is accepted by the court, the court may, and if the fiduciary were the sole or last surviving fiduciary, and the administration has not been completed, the court shall appoint another fiduciary in the former's place.

[C51, §1303, 1307; R60, §2335, 2339; C73, §2347, 2348; C97, §3290, 3291; C24, 27, 31, 35, 39, §**11873, 11874;** C46, 50, 54, 58, 62, §633.29, 633.30; C66, 71, 73, 75, 77, 79, 81, §633.66]

633.67 Powers of surviving cofiduciary.

When the instrument creating the estate or trust requires two or more fiduciaries, and a vacancy occurs on account of the death, resignation, or removal of one of the fiduciaries, during the period of the vacancy thus created, the remaining fiduciary or fiduciaries shall have all the rights, titles and powers, whether discretionary or otherwise, of all the fiduciaries.

[C66, 71, 73, 75, 77, 79, 81, §633.67]

633.68 Powers of successor fiduciary.

When a successor fiduciary is appointed, the successor shall have all the rights, powers, titles and duties of the predecessor, except that the successor shall not exercise powers given in the instrument creating the powers that by its express terms are personal to the fiduciary therein designated.

[C66, 71, 73, 75, 77, 79, 81, §633.68]

633.69 Substitution — effect.

The substitution of a fiduciary shall occasion no delay in the administration of an estate. The periods herein specified within which acts are to be performed after the appointment of a fiduciary shall, unless otherwise ordered by the court, be computed from the issuing of the letters to the first fiduciary.

[C51, §1308; R60, §2340; C73, §2349; C97, §3292; C24, 27, 31, 35, 39, §**11875;** C46, 50, 54, 58, 62, §633.31; C66, 71, 73, 75, 77, 79, 81, §633.69]

633.70 Property delivered — penalty.

Upon the removal of any fiduciary, the fiduciary shall be required by order of the court to deliver to the person who may be entitled thereto all the property in the fiduciary's hands or under the fiduciary's control belonging to the estate, and if the fiduciary fails or refuses to comply with any proper order of the court, the fiduciary may be committed to the jail of the county until the fiduciary does.

[C51, §1509; R60, §2561, 2563; C73, §2251, 2252, 2501, 2502; C97, §3201, 3419; C24, 27, 31, 35, 39, §**12069, 12601, 12602;** C46, 50, 54, 58, 62, §638.32, 668.28, 668.29; C66, 71, 73, 75, 77, 79, 81, §633.70]

Removal of fiduciary under §633.65 constitutes effective turnover order; see R.Prob.P. 7.1

633.71 Legal effect of appointment.

By qualifying as fiduciary any person, resident or nonresident, submits to the jurisdiction of the court making the appointment of the fiduciary and, in addition, shall be deemed to agree that:

1. All property coming into the fiduciary's hands is subject to the jurisdiction of the court wherein are pending the proceedings in which the fiduciary is serving, and

2. The fiduciary is subject to all orders entered by the court in the proceedings in which the fiduciary is serving and that notices served upon the fiduciary with respect thereto in compliance with the procedure prescribed by the Code shall have the same force and effect as if such service had been personally made upon the fiduciary within the state.

3. The fiduciary shall be subject to the jurisdiction of the courts of this state in all actions and proceedings against the fiduciary arising from or growing out of the fiduciary relationship and activities and that the service of process in such actions and proceedings may be made upon the fiduciary by serving the original notice upon the fiduciary outside this state and that such service shall have the same force and effect as though the service had been personally made upon the fiduciary within this state.

4. The clerk of the court in which is pending the proceedings in which the fiduciary is serving is the lawful attorney or resident agent of such nonresident fiduciary upon whom service of process may be made whether such process be an order of the court entered in the proceedings in which the fiduciary is serving or an original notice of an action arising from or growing out of the fiduciary relationship and activities of the nonresident fiduciary.

[C71, 73, 75, 77, 79, 81, §633.71]

633.72 Manner of service.

1. Service of an original notice of an action or process upon a nonresident fiduciary as herein

provided may be made upon such fiduciary either by:

a. Delivering four copies of said notice or of said process to the clerk of court wherein the proceedings in which such fiduciary is serving are pending; or

b. Mailing four copies of said original notice or of said process by certified mail addressed to said clerk of court by the clerk's official title.

2. Upon receipt of said copies, such clerk of court shall immediately acknowledge and accept service thereof on behalf of the nonresident fiduciary by writing thereon or attaching thereto written acknowledgment and acceptance of such service on behalf of such nonresident fiduciary, giving the date thereof.

3. The clerk of court shall forthwith:

a. File one copy in the action or proceedings to which it relates if pending in the court of which the clerk is clerk, or transmit such notice or process and acknowledgment and acceptance of the service thereof by certified mail to the clerk of court in which the action or proceedings is pending.

b. Mail one copy of such original notice or process and a copy of the written acknowledgment and acceptance of service thereof by certified mail to the nonresident fiduciary at the last address of such fiduciary as shown by the records in the proceedings in which such fiduciary is serving.

c. Mail one copy of such original notice or process and a copy of the written acknowledgment and acceptance of service thereof by certified mail to the attorney of record for such fiduciary.

d. Retain a copy of such original notice or process for the clerk's files.

4. Said service upon the clerk of court as herein provided shall have the same force and effect as if served upon the nonresident fiduciary personally within the state of Iowa on the date stated in said acknowledgment and acceptance of such service by the clerk of court.

[C71, 73, 75, 77, 79, 81, §633.72]

633.73 to 633.75 Reserved.

PART 2

POWERS APPLICABLE TO ALL FIDUCIARIES

633.76 Two or more fiduciaries — exercise of powers.

Where there are two or more fiduciaries, they shall all concur in the exercise of the powers conferred upon them, unless the instrument creating the estate provides to the contrary. In the event that the fiduciaries cannot concur upon the exercise of any power, any one of the fiduciaries may apply to the court for directions, and the court shall make such orders as it may deem to be to the best interests of the estate.

[C66, 71, 73, 75, 77, 79, 81, §633.76]

633.76A Exception — voting of publicly traded securities.

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

91 Acts, ch 36, §2

633.77 Receipts by one fiduciary.

One of the several fiduciaries may receive and receipt for any money, which receipt shall be given by the fiduciary in the fiduciary's own name only, and the fiduciary must individually account for all the money thus received and receipted for by the fiduciary, and this shall not charge any cofiduciary, except insofar as it can be shown to have come into the cofiduciary's hands.

[C51, §1442; R60, §2467; C73, §2478; C97, §3402; C24, 27, 31, 35, 39, §**12054;** C46, 50, 54, 58, 62, §638.14; C66, 71, 73, 75, 77, 79, 81, §633.77]

633.78 Third parties protected.

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

[C66, 71, 73, 75, 77, 79, 81, §633.78]

633.79 Fiduciaries considered as one.

In an action against several fiduciaries, in their fiduciary capacity, they shall be considered one person, and judgment may be taken against all as such, although not all were served with notice.

[C51, §1437; R60, §2462; C73, §2489; C97, §3410; C24, 27, 31, 35, 39, §**12062;** C46, 50, 54, 58, 62, §638.22; C66, 71, 73, 75, 77, 79, 81, §633.79]

633.80 Fiduciary of a fiduciary.

A fiduciary has no authority to act in a matter wherein the fiduciary's decedent or ward was merely a fiduciary, except that the fiduciary shall file a report and accounting on behalf of the decedent or ward in said matter.

[C51, §1438; R60, §2463; C73, §2483; C97, §3406; C24, 27, 31, 35, 39, §**12058;** C46, 50, 54, 58, 62, §638.18; C66, 71, 73, 75, 77, 79, 81, §633.80]

633.81 Suit by and against fiduciary.

Any fiduciary may sue, be sued and defend in such capacity.

[R60, §1452; C73, §2275; C97, §3224; C24, 27, 31, 35, 39, §**12582;** C46, 50, 54, 58, 62, §668.10; C66, 71, 73, 75, 77, 79, 81, §633.81]

633.82 Designation of attorney.

The designation of the attorney employed by the fiduciary to assist in the administration of the estate shall be filed in the estate proceedings. The designation shall state the attorney's name, postoffice address, and telephone number. The designation shall clearly state the name of the attorney who is in charge of the case and the attorney's name shall not be listed by firm name only.

[C66, 71, 73, 75, 77, 79, 81, §633.82; 82 Acts, ch 1060, §1]

633.83 Continuation of business.

Upon a showing of advantage to the estate, the court may authorize the fiduciary to continue any business of the estate for the benefit thereof. The order may be without notice, or after such notice as the court may prescribe. The court may on its own motion, and upon the application of any interested party shall, review such authorization, and upon such review, may revoke or modify the same. The order may provide:

1. For the conduct of the business solely by the fiduciary, or jointly with one or more other persons; for the formation of a partnership for the conduct of such business; or for the formation of, or for the fiduciary to join in the formation of a corporation for the conduct of such business;
2. For the extent of the liability of the estate, or any part thereof, or of the fiduciary, for obligations incurred in the continuation of the business;
3. As to whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business, or to the estate as a whole;
4. As to the period of time for which the business may be conducted; and
5. Such other conditions, restrictions, regulations and requirements as the court may order.

[C51, §1327; R60, §2359; C73, §2407; C97, §3337; C24, 27, 31, 35, 39, §**11956;** C46, 50, 54, 58, 62, §635.52; C66, 71, 73, 75, 77, 79, 81, §633.83]

633.84 Delegation of authority.

Under order of court, with or without notice, a fiduciary may engage, at estate expense, outside specialists, and may delegate to them, or consult with them for advice regarding the performance of aspects of the estate management which require professional skills or facilities which the fiduciary does not possess, or does not possess in sufficient degree, and the fiduciary may employ, at estate expense, subordinates and agents to perform ministerial acts and carry on or complete details of estate business under the policies and terms established by the fiduciary.

[C66, 71, 73, 75, 77, 79, 81, §633.84]

633.85 Liability of fiduciary employing agents.

The fiduciary shall not be personally liable for the acts or omissions of any such specialist, subordinate or agent, unless it can be shown that said acts or omissions would have been a breach of duty by the fiduciary had the fiduciary personally done it, and that,

1. The fiduciary directed or permitted the breach; or
2. The fiduciary did not select or retain the said specialist, subordinate or agent with reasonable care; or
3. The fiduciary did not properly supervise the specialist, subordinate or agent; or
4. The fiduciary approved, acquiesced or cooperated in the neglect, omission, misconduct or default by the specialist, subordinate or agent.

[C66, 71, 73, 75, 77, 79, 81, §633.85]

633.86 Reduction of fees when agents are employed.

The court shall, in fixing the fees of any fiduciary, consider the compensation allowed to any person employed by the fiduciary under the provisions of section 633.84. If the court determines that the services rendered by such person were services that would normally have been performed by the fiduciary, the compensation of the fiduciary may, in the court's discretion, be reduced by all or any part of the compensation allowed to any such person.

[C66, 71, 73, 75, 77, 79, 81, §633.86]

633.87 Deposit of money in banks.

A fiduciary may deposit moneys and other assets belonging to the estate in any banking institution authorized to do business in the state of Iowa.

[C66, 71, 73, 75, 77, 79, 81, §633.87]

633.88 Law governing administration of estates of nonresidents.

Except as otherwise provided in this Code, all provisions of the law relating to the administration of domestic estates and to the fiduciaries appointed therein, shall apply to the administration of the estate of a nonresident, the appointment of the fiduciary therein, and the granting of letters.

[C66, 71, 73, 75, 77, 79, 81, §633.88]

633.89 Power of fiduciary or custodian to deposit securities.

A fiduciary as defined in section 633.3, holding securities, and a bank as defined in section 524.103, which is holding securities as a managing agent or as a custodian, including a custodian for a fiduciary, may deposit securities in a clearing corporation, as defined in section 554.8102, which is located within or without the state of Iowa, if the clearing corporation is federally regulated. A depositing bank is subject to rules adopted by the su-

perintendent of banking, with respect to state banks, and by the comptroller of the currency, with respect to national banking associations.

Certificates representing deposited securities of the same class of the same issuer may merge securities deposited by a fiduciary, or by a bank acting as a managing agent or custodian, with securities deposited by any other person and may be held in the name of the clearing corporation or its nominee. The records of a depositing fiduciary and a depositing bank acting as a managing agent or custodian at all times must identify the persons on whose behalf securities have been deposited. Title to deposited securities may be transferred by entry on the books of a clearing corporation without physical delivery of the securities.

On demand by the owner, a bank depositing securities in a clearing corporation as a managing agent or as a custodian shall identify in writing the securities so deposited. On demand by any party to the accounting of a fiduciary, the fiduciary shall identify in writing the securities deposited in a clearing corporation for its account as fiduciary.

This section applies regardless of the date of the agreement, instrument, or court order under which the fiduciary or bank was appointed.

[C75, 77, 79, 81, §633.89]

96 Acts, ch 1138, §79, 84

633.90 to 633.92 Reserved.

PART 3

SPECIAL PROVISIONS RELATING TO PROPERTY

633.93 Limitation on actions affecting deeds.

No action for recovery of any real estate sold by any fiduciary can be maintained by any person claiming under the deceased, the ward, or a beneficiary, unless brought within five years after the date of the recording of the conveyance.

[C66, 71, 73, 75, 77, 79, 81, §633.93]

633.94 Platting.

When it is for the best interests of the estate in order to dispose of real property, the court may, upon application by the fiduciary, or any other interested person, after notice and upon good cause shown, authorize the fiduciary, either alone or together with other owners, to plat any land belonging to the estate in accordance with the statutes in regard to platting. The court may authorize the fiduciary to execute any instruments which may be required of the titleholder or proprietor in connection with the platting of such land.

[C66, 71, 73, 75, 77, 79, 81, §633.94]

See also chapter 354

633.95 Release of liens and mortgages.

Any fiduciary qualified under the laws of this state may, without prior order of court, release or discharge, in whole or in part any mortgage, judgment or other lien held by the estate.

[C51, §1337; R60, §2369; C73, §2383; C97, §3319; S13, §3307-a; C24, 27, 31, 35, 39, §**11897, 11929;** C46, 50, 54, 58, 62, §633.53, 635.18; C66, 71, 73, 75, 77, 79, 81, §633.95]

See §636.26

633.96 Specific performance voluntary.

When an estate is under such an obligation to convey property as might be enforced by suit for specific performance, the fiduciary may without prior order of court execute such conveyance.

[C51, §1435, 1436; R60, §2460, 2461; C73, §2487, 2488; C97, §3409; C24, 27, 31, 35, 39, §**12061;** C46, 50, 54, 58, 62, §638.21; C66, 71, 73, 75, 77, 79, 81, §633.96]

633.97 Specific performance involuntary.

When an estate is under obligation to convey property, the court may, upon application of any interested person, with or without notice as the court may direct, require the fiduciary to execute such a conveyance.

[C51, §1435, 1436; R60, §2460, 2461; C73, §2487, 2488; C97, §3409; C24, 27, 31, 35, 39, §**12061;** C46, 50, 54, 58, 62, §638.21; C66, 71, 73, 75, 77, 79, 81, §633.97]

633.98 Certificate of appointment and authority.

When any instrument executed in accordance with sections 633.95 to 633.97, inclusive, is to be recorded in a county other than the county in which the estate is pending, there shall also be recorded a certificate executed by the clerk of the court making the appointment, with seal affixed, showing the name of the court making the appointment, the date of the same, and that such fiduciary had not been discharged at the time of the execution of such instrument.

[C97, §3308; SS15, §3308; C24, 27, 31, 35, 39, §**11898;** C46, 50, 54, 58, 62, §633.54; C66, 71, 73, 75, 77, 79, 81, §633.98]

633.99 Federal stock authority to purchase.

When the court shall enter an order authorizing the fiduciary to execute a mortgage to encumber any property of the estate to secure a loan obtained from any association or corporation created, or which may be created, by authority of the United States and as an instrumentality of the United States, the court may authorize the fiduciary to purchase stock in an association or corporation, when such a purchase of stock is necessary or required as an incident to, or condition of, obtaining the loan, and to mortgage the estate property for such purpose, as well as to make payment for the

stock so purchased from the proceeds of the loan so obtained.

[C35, §11951-g1; C39, §**11951.1;** C46, 50, 54, 58, 62, §635.41; C66, 71, 73, 75, 77, 79, 81, §633.99]

633.100 Waiver of exemption.

Any deed or mortgage executed by a fiduciary under order of court shall have the effect of waiving any exemption as to homestead or otherwise of any person owning an interest in said real estate as fully as such owner could do if the owner were sui juris.

[C35, §11951-g3, 12644-g1, -g2, -g3, -g4, -g5; C39, §**11951.3, 12644.21 – 12644.25;** C46, 50, 54, 58, 62, §635.43, 673.1 – 673.5; C66, 71, 73, 75, 77, 79, 81, §633.100]

633.101 Appraisal.

At any time that the court may determine it to be to the best interests of the estate, it may order an appraisal of any or all of the property of an estate.

[C66, 71, 73, 75, 77, 79, 81, §633.101]

633.102 Costs and expenses.

In connection with the sale, mortgage, lease, pledge or exchange of property, the court may authorize the fiduciary to pay, out of the proceeds realized therefrom or out of other funds of the estate, the customary and reasonable auctioneers' and brokers' fees and any necessary expenses for abstracting, survey, revenue stamps, and other necessary costs and expenses in connection therewith.

[C66, 71, 73, 75, 77, 79, 81, §633.102]

633.103 Certain corporate distributions. Repealed by 99 Acts, ch 124, § 32.

633.104 to 633.107 Reserved.

PART 4

PROVISIONS RELATING TO ADMINISTRATION BY ALL FIDUCIARIES

GENERAL PROVISIONS

633.108 Small distributions to minors — payment.

Whenever a minor becomes entitled under the terms of a will to a bequest or legacy, to a share of the estate of an intestate, or to a beneficial interest in a trust fund upon the distribution of the trust fund, and the value of the bequest, legacy, share, or interest does not exceed the sum of ten thousand dollars, the personal representative or trustee may pay the bequest, legacy, share, or interest to a custodian under any uniform transfers to minors Act. Receipt by the custodian, when presented to the court or filed with the report of distribution of the fiduciary, shall have the same force and effect as though the payment had been made to a duly appointed and qualified conservator for the minor.

[C39, §**12077.1;** C46, 50, 54, 58, 62, §638.41; C66, 71, 73, 75, 77, 79, 81, §633.108; 81 Acts, ch 193, §1; 82 Acts, ch 1052, §1]

95 Acts, ch 63, §3; 2000 Acts, ch 1150, §2

See also chapter 565B, §633.574, 633.681; R.C.P. 1.228

633.109 Inability to distribute estate funds.

Any fiduciary having in the fiduciary's possession or under the fiduciary's control any funds, moneys or securities due or to become due to any other person to whom payment or delivery cannot be made as shown by the report of the fiduciary on file, may, upon order of court, deposit such property with the clerk and take the receipt of the clerk for the same. Such receipt shall specifically state from whom said property was derived, the description thereof, and the name of the person entitled to the same. Thereafter, such funds shall be held and disposed of by the clerk in accordance with the provisions of chapter 636.

[C66, 71, 73, 75, 77, 79, 81, §633.109]

See §636.31, 636.34

633.110 Receipts taken.

If such fiduciary shall otherwise discharge all the duties imposed by such appointment, the fiduciary may take the receipts of the clerk for such funds, moneys, or securities so deposited, which receipts shall specifically set forth from whom said funds, moneys, or securities were derived, the amount thereof, and the name of the person to whom due or to become due, if known.

[C66, 71, 73, 75, 77, 79, 81, §633.110]

See §636.32

633.111 Final discharge period.

Such fiduciary may file such receipts with the final report, and if it shall be made to appear to the satisfaction of the court that the fiduciary has in all other respects complied with the law governing the appointment and duties, the court may approve such final report and enter the fiduciary's discharge.

[C66, 71, 73, 75, 77, 79, 81, §633.111]

See §636.33

633.112 Discovery of property.

The court may require any person suspected of having possession of any property, including records and documents, of the decedent, ward, or the estate, or of having had such property under the person's control, to appear and submit to an examination under oath touching such matters, and if on such examination it appears that the person has the wrongful possession of any such property, the court may order the delivery thereof to the fi-

duciary. Such a person shall be liable to the estate for all damages caused by the person's acts.

[C51, §1334, 1439; R60, §2366, 2464; C73, §2379, 2484; C97, §3315, 3407; C24, 27, 31, 35, 39, §**11925, 12059;** C46, 50, 54, 58, 62, §635.14, 638.19; C66, 71, 73, 75, 77, 79, 81, §633.112]

Similar provisions, §630.19, 680.10

633.113 Commitment.

If, upon being served with an order of the court requiring appearance for interrogation, as provided in the preceding sections hereof, any person fails to appear in accordance therewith, or if, having appeared, the person refuses to answer any question which the court thinks proper to be put to the person in the course of such examination, or if the person fails to comply with the order of the court requiring the delivery of the property to the fiduciary, the person may be committed to the jail of the county until the person does.

[C51, §1335; R60, §2367; C73, §2380; C97, §3316; C24, 27, 31, 35, 39, §**11926;** C46, 50, 54, 58, 62, §635.15; C66, 71, 73, 75, 77, 79, 81, §633.113]

633.114 Compromise of claims held by an estate.

When it appears for the best interest of the estate, the fiduciary may, subject to approval of the court, effect a compromise with any debtor or other obligor, or extend, renew, or in any other manner, modify the terms of any obligation owing to the estate. If the fiduciary holds a mortgage, pledge, or other lien upon property of another person, the fiduciary may, in lieu of foreclosure, accept a conveyance or transfer of such encumbered assets from the owner thereof in satisfaction of the indebtedness secured by such lien, if it appears for the best interests of the estate, and if the court shall so order.

[C51, §1336; R60, §2368; C73, §2382; C97, §3318; C24, 27, 31, 35, 39, §**11928;** C46, 50, 54, 58, 62, §635.17; C66, 71, 73, 75, 77, 79, 81, §633.114]

633.115 Compromise of claims against an estate.

When a claim against an estate has been filed, or suit thereon is pending, the creditor and the fiduciary may, if it appears for the best interests of the estate, subject to approval of the court, compromise the claim, whether it is due or not due, absolute or contingent, liquidated or unliquidated.

[C51, §1336; R60, §2368; C73, §2382; C97, §3318; C24, 27, 31, 35, 39, §**11928;** C46, 50, 54, 58, 62, §635.17; C66, 71, 73, 75, 77, 79, 81, §633.115]

633.116 Abandonment of property.

When any property is valueless, or is so encumbered, or in such condition, that it is of no benefit to the estate, the court may order the fiduciary to abandon it, or make such other disposition of it as may be suitable in the premises.

[C66, 71, 73, 75, 77, 79, 81, §633.116]

633.117 Encumbered assets.

When any assets of the estate are encumbered by mortgage, pledge or other lien, the fiduciary may pay such encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or may convey or transfer such assets to the creditor in satisfaction of the lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, or the fiduciary may purchase lands claimed or contracted for by the decedent, if it appears to be for the best interests of the estate and if the court shall so order. The making of such payment shall not increase the share of the distributee entitled to such encumbered assets.

[C51, §1380; R60, §2412; C73, §2428; C97, §3354; C24, 27, 31, 35, 39, §**11977;** C46, 50, 54, 58, 62, §635.72; C66, 71, 73, 75, 77, 79, 81, §633.117]

See also §633.423

633.118 Attorney appointed for persons not represented.

At or before the hearing in any proceedings under this Code, where all the parties interested in the estate are required to be notified thereof, the court, in its discretion, may appoint some competent attorney to represent any interested person who has been served with notice and who is otherwise unrepresented. The appointment of an attorney under the provisions of this section, shall be in lieu of appointment of a guardian ad litem provided for in the rules of civil procedure.

[C97, §3423; C24, 27, 31, 35, 39, §**12074;** C46, 50, 54, 58, 62, §638.37; C66, 71, 73, 75, 77, 79, 81, §633.118]

633.119 Order and authority thereunder.

The order making the appointment of such attorney must specify the names of the parties, so far as known, for whom the attorney is appointed, and the attorney will be authorized to represent such parties in all such proceedings subsequent to the appointment.

[C97, §3423; C24, 27, 31, 35, 39, §**12075;** C46, 50, 54, 58, 62, §638.38; C66, 71, 73, 75, 77, 79, 81, §633.119]

633.120 Compensation.

Any attorney so appointed under the authority of section 633.118 shall be paid for services out of the estate, as a part of the costs of administration, a fee to be fixed by the court, and upon distribution of the estate, the fee may be charged to the party represented by the attorney.

[C97, §3423; C24, 27, 31, 35, 39, §**12076;** C46, 50, 54, 58, 62, §638.39; C66, 71, 73, 75, 77, 79, 81, §633.120]

633.121 Substitution — division of fee.

The court may substitute another attorney for

the one first appointed under the authority of section 633.118, in which case the fees must be divided in proportion to the services rendered.

[C97, §3423; C24, 27, 31, 35, 39, §**12077;** C46, 50, 54, 58, 62, §638.40; C66, 71, 73, 75, 77, 79, 81, §633.121]

633.122 Settlement contested.

The acts of the fiduciary without prior approval of court after notice, may be contested by any interested person at or before the entry of the order discharging the fiduciary.

[C51, §1431; R60, §2456; C73, §2475; C97, §3399; C24, 27, 31, 35, 39, §**12050;** C46, 50, 54, 58, 62, §638.10; C66, 71, 73, 75, 77, 79, 81, §633.122]

INVESTMENTS BY FIDUCIARIES

633.123 Model prudent person investment Act. Repealed by 1999 Acts, ch 125, § 108, 109. See § 633.4301 – 633.4309.

633.123A Investments in investment companies and investment trusts.

1. Notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, in addition to other investments authorized by law for the investment of funds by a fiduciary or by the instrument governing the fiduciary and in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the fiduciary, may invest and reinvest such funds in the securities of an open-end or closed-end management investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq. Investment and reinvestment under this section is allowed as long as the portfolio of such investment company or investment trust consists substantially of investments not otherwise prohibited by division XX, part 4, subpart C of this chapter, or by the governing instrument.

Investment and reinvestment under this section is not precluded merely because the bank or trust company or an affiliate of the bank or trust company provides the services of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, or manager to the investment company or investment trust and receives a reasonable fee for the services.

2. This section is applicable to all fiduciaries whether the will, agreement, or other instrument under which they are acting now exists on or before July 1, 1996.

96 Acts, ch 1008, §3; 99 Acts, ch 125, §105, 109

APPOINTMENT OF A NOMINEE BY BANKING INSTITUTIONS ACTING IN A FIDUCIARY CAPACITY

633.124 Investment may be held in name of nominee of bank or trust company.

Any state or national bank or trust company, when acting with the consent of its cofiduciary, if any, may cause any investment held in any such capacity to be registered and held in the name of a nominee or nominees of such bank or trust company. Such cofiduciary is hereby empowered to give such consent unless it is specifically forbidden in the instrument creating the fiduciary relationship. Such bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered.

[C66, 71, 73, 75, 77, 79, 81, §633.124]

633.125 Records of bank or trust company to show ownership.

The records of said bank or trust company shall at all times show the ownership of any such investment, which investment shall be in the possession and control of such bank or trust company and be kept separate and apart from the assets of such bank or trust company.

[C66, 71, 73, 75, 77, 79, 81, §633.125]

COMMON TRUST FUNDS

633.126 Definitions.

1. *"Common trust fund"* means a fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by that bank or trust company, or by another bank or trust company at least eighty percent of the voting stock of which is owned or controlled by a bank holding company which owns or controls at least eighty percent of the voting stock of the bank or trust company maintaining the common trust fund, in its capacity as a fiduciary or cofiduciary.

2. *"Fiduciary"*, for the purposes of this section and sections 633.127 to 633.129, means acting in any of the following capacities, namely: testamentary trustee appointed by any court, trustee under any written agreement, declaration or instrument of trust, executor, administrator, guardian, or conservator, custodian under chapter 565B, or other capacity permitted under any state or federal law or regulation governing collective investment funds maintained by a bank or trust company.

[C62, §533A.1 – 533A.5; C66, 71, 73, 75, 77, 79, 81, §633.126]

92 Acts, ch 1012, §2

633.127 Establishment of common trust funds.

Any bank or trust company qualified to act as fiduciary in this state may establish common trust

funds, or may utilize one or more common trust funds previously established by it, for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries, or to another bank or trust company as fiduciary or cofiduciary; and may, as a fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in common trust funds maintained by it or by another bank or trust company at least eighty percent of the voting stock of which is owned or controlled by a bank holding company which owns or controls at least eighty percent of the common stock of the bank or trust company investing such funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment. If the instrument creating the fiduciary relationship gives to the bank or trust company the exclusive right to select investments, the consent of the cofiduciary shall not be required.

[C58, §532.21; C62, §532.21, 533A.1 – 533A.5; C66, 71, 73, 75, 77, 79, 81, §633.127]

633.128 Court accountings.

Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the court, secure approval of such an accounting on such conditions as the court may establish.

When an accounting of a common trust fund is presented to a court for approval, the court shall assign a time and place for hearing, and order notice thereof by: (1) Publication once each week for three consecutive weeks in a newspaper of general circulation, published in the county in which the bank or trust company operating the common trust fund is located, the first publication to be not less than twenty days prior to the date of hearing, and (2) sending by ordinary mail not less than fourteen days prior to the date of hearing, a copy of the notice prescribed to all beneficiaries of the trust participating in the common trust fund whose names are known to the bank or trust company from the records kept by it in the regular course of business in the administration of said trusts, directed to them at the addresses shown by such records, and (3) such further notice, if any, as the court may order.

[C58, §532.21; C62, §532.21, 533A.1 – 533A.5; C66, 71, 73, 75, 77, 79, 81, §633.128]

633.129 Uniformity of interpretation.

Sections 633.126 to 633.128 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact the common trust funds.

[C62, §533A.4; C66, 71, 73, 75, 77, 79, 81, §633.129]

SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

633.130 through 633.138 Repealed by 96 Acts, ch 1138, § 82, 84.

633.139 to 633.143 Reserved.

PART 5

POWERS OF FOREIGN FIDUCIARIES

633.144 Mortgages and judgments.

Judgments rendered by any court in the state of Iowa and mortgages belonging to an estate, trust, or to a person under conservatorship may, without prior order of court, be released, discharged or assigned, in whole or in part as to any particular property, and deeds may be executed in performance of real estate contracts entered into before the creation of the estate, trust, or conservatorship, by any foreign fiduciary, receiver, referee, assignee or commissioner, or by any other person acting in a fiduciary capacity appointed by a court of record of any foreign state or country, where a statement is filed by said fiduciary that no fiduciary, receiver, referee, assignee, or commissioner has been appointed and qualified in this state. Such release, satisfaction, discharge, assignment or deed may be made without any order of court in any manner or by any instrument which would be valid and effective if made by a like officer qualified under the law of this state.

[S13, §3307-a; C24, 27, 31, 35, 39, §**11897;** C46, 50, 54, 58, 62, §633.53; C66, 71, 73, 75, 77, 79, 81, §633.144]

633.145 Certificate of appointment and authority.

Before any instrument executed by such foreign fiduciary or officer as authorized by section 633.144 shall be effective, a certificate executed by the court or clerk making the appointment, with seal attached, if such officer has a seal, shall be recorded. Such certificates shall state the name of the court making such appointment, the date of the appointment, and that such fiduciary or officer has not been discharged at the time of the execution of said instrument.

[C97, §3308; SS15, §3308; C24, 27, 31, 35, 39, §**11898;** C46, 50, 54, 58, 62, §633.54; C66, 71, 73, 75, 77, 79, 81, §633.145]

633.146 Filing of certificate.

The certificate aforesaid shall be filed for record:

1. In the case of judgments, in the office of the clerk in which the judgment is of record or in which it has been filed, and

2. In the case of mortgages and deeds executed in performance of real estate contracts, in the office of the appropriate county recorder.

[C97, §3308; SS15, §3308; C24, 27, 31, 35, 39, §**11899;** C46, 50, 54, 58, 62, §633.55; C66, 71, 73, 75, 77, 79, 81, §633.146]

633.147 Record.

Such certificate shall be recorded by the proper officer in the judgment records of the court in which the same appears of record, or in the appropriate chattel or real estate records, as the case may be.

[C97, §3308; SS15, §3308; C24, 27, 31, 35, 39, §**11900;** C46, 50, 54, 58, 62, §633.56; C66, 71, 73, 75, 77, 79, 81, §633.147]

633.148 Maintaining actions.

When there is no administration of an estate nor a petition therefor pending, in this state, a foreign fiduciary may maintain actions and proceedings in this state subject to the requirements and conditions imposed upon nonresident suitors generally.

[C66, 71, 73, 75, 77, 79, 81, §633.148]

633.149 Filing of bond.

At the time of commencing any action or proceeding in any court of this state, the foreign fiduciary shall file with the court an authenticated copy of the fiduciary's appointment, and of the fiduciary's official bond, if the fiduciary has given a bond. If the court believes that the security furnished by the fiduciary in the domiciliary administration is insufficient to cover the proceeds of the action or the proceeding, or for any other reason or cause, it may at any time order the action or proceeding stayed until sufficient security is furnished in the action or proceeding.

[C66, 71, 73, 75, 77, 79, 81, §633.149]

633.150 to 633.154 Reserved.

PART 6

LIABILITY OF FIDUCIARIES

633.155 Self-dealing by fiduciary prohibited.

No fiduciary shall in any manner engage in self-dealing, except on order of court after notice to all interested persons, and shall derive no profit other than the fiduciary's distributive share in the estate from the sale or liquidation of any property belonging to the estate. Every application of a fiduciary seeking an order under the provisions of this section shall specify in detail the reasons for such application and the facts justifying the requested order. The notice shall have a copy of the application attached, or, if published, it shall contain a detailed statement of the reasons and facts justifying the requested order.

[C51, §1427; R60, §2452; C73, §2473; C97, §3397; C24, 27, 31, 35, 39, §**12048;** C46, 50, 54, 58, 62, §638.8; C66, 71, 73, 75, 77, 79, 81, §633.155]

633.156 Deposits by corporate fiduciaries.

Section 633.155 shall not be construed to prohibit a corporate fiduciary from making a deposit of estate funds in its own banking department or in the banking department of an affiliated bank. For purposes of this section, *"affiliated bank"* means any bank that controls, directly or indirectly, the fiduciary or is controlled, directly or indirectly, by an entity which also controls, directly or indirectly, the fiduciary.

[C66, 71, 73, 75, 77, 79, 81, §633.156]

95 Acts, ch 164, §1

633.157 Liability for property of estate.

Every fiduciary shall be liable for, and chargeable in the fiduciary's accounts with, all of the estate that comes into the fiduciary's possession at any time, including all the income therefrom; but the fiduciary shall not be accountable for any debts due to the estate or other assets of the estate that remain uncollected without the fiduciary's fault. The fiduciary shall not be entitled to profit from the increase in value of any asset of the estate, nor shall the fiduciary be chargeable with loss resulting, without the fiduciary's fault, from the decrease in value or the destruction of any part of the estate, excepting, only to the extent of the fiduciary's pro rata share in such gain or loss as one of the distributees of the estate.

[C51, §1425, 1427; R60, §2450, 2452; C73, §2471, 2473; C97, §3395, 3397; C24, 27, 31, 35, 39, §**12046, 12048;** C46, 50, 54, 58, 62, §638.6, 638.8; C66, 71, 73, 75, 77, 79, 81, §633.157]

633.158 Liability for property not a part of estate.

Every fiduciary shall be chargeable in the fiduciary's accounts with property not a part of the estate that comes into the fiduciary's hands at any time, and shall be liable to the persons entitled thereto, if:

1. The property was received under a duty imposed upon the fiduciary by law in the capacity of fiduciary; or

2. The fiduciary has commingled such property with the assets of the estate.

[C66, 71, 73, 75, 77, 79, 81, §633.158]

633.159 Judgment — execution.

If judgment is rendered against a fiduciary for costs in any action prosecuted or defended by the fiduciary in that capacity, execution shall be awarded against the fiduciary as for the fiduciary's own debt, if it appears to the court that such

action was prosecuted or defended without reasonable cause.

[C51, §1433; R60, §2458; C73, §2477; C97, §3401; C24, 27, 31, 35, 39, §**12053;** C46, 50, 54, 58, 62, §638.13; C66, 71, 73, 75, 77, 79, 81, §633.159]

633.160 Breach of duty.

Every fiduciary shall be liable and chargeable in the fiduciary's accounts for neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property of the estate; for neglect in paying over money or delivering property of the estate the fiduciary shall have in the fiduciary's hands; for failure to account for or to close the estate within the time provided by this Code; for any loss to the estate arising from the fiduciary's embezzlement or commingling of the assets of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate arising from wrongful acts or omissions of any cofiduciaries which the fiduciary could have prevented by the exercise of ordinary care; and for any other negligent or willful act or nonfeasance in the fiduciary's administration of the estate by which loss to the estate arises.

[C51, §1428; R60, §2453; C73, §2482; C97, §3405; C24, 27, 31, 35, 39, §**12057;** C46, 50, 54, 58, 62, §638.17; C66, 71, 73, 75, 77, 79, 81, §633.160]

633.161 Examination of fiduciaries.

The fiduciary may be examined under oath by the court upon any matter relating to the fiduciary's accounts.

[C51, §1424; R60, §2449; C73, §2470; C97, §3395; C24, 27, 31, 35, 39, §**12045;** C46, 50, 54, 58, 62, §638.5; C66, 71, 73, 75, 77, 79, 81, §633.161]

633.162 Penalty.

In fixing the fees of any fiduciary, the court shall take into consideration any violation of this Code by the fiduciary, and may diminish the fee of such fiduciary to the extent the court may determine to be proper.

[C66, 71, 73, 75, 77, 79, 81, §633.162]

633.163 to 633.167 Reserved.

PART 7

OATH AND BOND OF FIDUCIARIES

633.168 Oath.

Every fiduciary, before entering upon the duties of the fiduciary's office and within such time as the court or clerk directs, shall subscribe an oath that the fiduciary will faithfully discharge the duties imposed by law, according to the best of the fiduciary's ability.

[C51, §1276, 1316, 1317, 1496; R60, §2308, 2348, 2349, 2548; C73, §2246, 2321, 2362, 2363; C97, §3197, 3267, 3268, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11887, 12577, 12579;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.43, 668.5, 668.7; C66, 71, 73, 75, 77, 79, 81, §633.168]

633.169 Bond.

Except as herein otherwise provided, every fiduciary shall execute and file with the clerk a bond with sufficient surety or sureties, as hereinafter provided. It shall be conditioned upon the faithful discharge of all the duties of the fiduciary's office according to law, including the duty to account. It shall be procured at the expense of the estate, if an approved surety company bond is furnished.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.169]

633.170 Amount of bond.

1. *How determined.* Except as herein otherwise provided, the court or the clerk shall fix the penalty of the bond in an amount equal to the value of the personal property of the estate, plus the estimated gross annual income of the estate during the period of administration.

2. *Bonds fixed by clerk.* Unless a bond is waived by will under the authority of section 633.172, or by other instrument creating the estate, or in accordance with section 633.173, or by prior order of court, the clerk shall fix the bond in the amount provided by subsection 1 of this section. The clerk shall not thereafter increase or decrease a bond.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887, 12578;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43, 668.6; C66, 71, 73, 75, 77, 79, 81, §633.170]

633.171 Approval by clerk.

The bond shall not be deemed sufficient until it has been examined and approved by the clerk who shall endorse such approval thereon. In the event that the bond is not approved, the fiduciary shall, within such time as the court or the clerk directs, secure and file a bond with satisfactory surety or sureties.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.171]

633.172 Will — waiver of bond.

1. When, by the terms of the will, the testator has directed or expressed the desire that no bond

shall be required, such direction or expression shall be construed to be a waiver of the posting of a bond by the fiduciary for all purposes, and no bond shall be required unless the court for good cause finds it proper to require one; if no bond is initially required, the court may nevertheless, for good cause, at any subsequent time require that a bond be given.

2. Unless otherwise required by the instrument creating the relationship, or by order of court, bank and trust companies shall not be required to provide any bond.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.172]

86 Acts, ch 1131, §2

633.173 Waiver of bond by distributees.

If the distributees, in writing waive the statutory requirement that a bond shall be filed by the fiduciary with the clerk, and the court finds that the interests of the creditors will not thereby be prejudiced, no bond shall be required.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.173]

Attorneys acting as fiduciaries, see Iowa Ct.R. 39.13

633.174 Guardians — bond.

When the guardian appointed for a person is not the conservator of the property of that person, no bond shall be required of the guardian, unless the court for good cause finds it proper to require one. If no bond is initially required, the court may, nevertheless, for good cause, at any subsequent time, require that a bond be given.

[C51, §1276, 1316, 1317, 1496; R60, §2308, 2348, 2349, 2548; C73, §2246, 2321, 2350, 2362, 2363; C97, §3197, 3267, 3268, 3293, 3301; S13, §3268; C24, 27, §11828, 11838, 11876, 11887, 12579; C31, 35, §11828, 11838, 11876, 11887, 12579, 12644-c10; C39, §**11828, 11838, 11876, 11887, 12579, 12644.10;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43, 668.7, 672.9; C66, 71, 73, 75, 77, 79, 81, §633.174]

633.175 Waiver of bond by court.

The court, for good cause shown, may exempt any fiduciary from giving bond, if the court finds that the interests of creditors and distributees will not thereby be prejudiced. However, the court, except as provided in section 633.172, subsection 2, shall not exempt a conservator from giving bond in a conservatorship with total assets of more than ten thousand dollars, excluding real property, unless it is a voluntary conservatorship in which the petitioner is eighteen years of age or older and has waived bond in the petition.

[C51, §1276, 1316, 1317, 1496; R60, §2308, 2348, 2349, 2548; C73, §2246, 2321, 2350, 2362, 2363; C97, §3197, 3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887, 12577;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43, 668.5; C66, 71, 73, 75, 77, 79, 81, §633.175]

91 Acts, ch 36, §5; 92 Acts, ch 1012, §3

Administering moneys paid by veterans administration, see §633.622

Attorneys acting as fiduciaries, see Iowa Ct.R. 39.13

633.176 Reduction of bond by deposit.

Personal property of the estate may be deposited with a bank or trust company located in the state of Iowa upon such terms as may be prescribed by order of the court. The amount of the bond of the fiduciary may be then reduced as the court may determine.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.176]

633.177 Deposit in lieu of bond.

The court may permit the fiduciary to deposit cash or other prescribed securities of the fiduciary's own in lieu of bond.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.177]

633.178 Letters.

Upon the filing of an oath of office and a bond, if any is required, the clerk shall issue letters under the seal of the court, giving the fiduciary the powers authorized by law.

[C51, §1319; R60, §2351; C73, §2365; C97, §3303; C24, 27, 31, 35, 39, §**11889;** C46, 50, 54, 58, 62, §633.45; C66, 71, 73, 75, 77, 79, 81, §633.178]

633.179 Review by clerk when inventory is filed.

At the time the inventory of the estate is filed, the clerk shall review the amount of bond, and report to the court as to any apparent insufficiency thereof.

[C66, 71, 73, 75, 77, 79, 81, §633.179]

633.180 Bond changed.

The court may at any time require a new bond, or increase or decrease the amount of the penalty of the bond of any fiduciary, when good cause therefor appears.

[C51, §1510; R60, §2562; C73, §2247; C97,

§3198; C24, 27, §12604; C31, 35, §12604, 12644-c9; C39, §**12604, 12644.09;** C46, 50, 54, 58, 62, §668.31, 672.9; C66, 71, 73, 75, 77, 79, 81, §633.180]

633.181 Obligees of bond — joint and several liability.

The bond of the fiduciary shall run to the use of all persons interested in the estate, and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the fiduciary, and with each other.

[C66, 71, 73, 75, 77, 79, 81, §633.181]

633.182 Qualifications for sureties.

Qualifications for sureties on probate bonds shall be the same as those provided by section 636.4 or section 636.14, provided, however, that no attorney shall act as surety on any such bond.

[C66, 71, 73, 75, 77, 79, 81, §633.182]

633.183 Authority for fiduciary and surety to enter into agreement for deposit of property or joint control.

It shall be lawful for the fiduciary to agree with the fiduciary's surety for the deposit of any or all moneys and other property of the estate with a bank, safe deposit or trust company, authorized by law to do business as such, or other depository approved by the court, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other property without the written consent of the surety, or on order of the court made on such notice to the surety as the court may direct.

[C66, 71, 73, 75, 77, 79, 81, §633.183]

See also §636.47

633.184 Release of sureties before estate fully administered.

1. *Release for cause.* For good cause, the court may, before the estate is fully administered, order the release of the sureties of the fiduciary and require the fiduciary to furnish a new bond.

2. *Extent of liability of original and new sureties.* The original sureties shall be liable for all breaches of the obligation of the bond up to the time of filing of the new bond and the approval thereof by the clerk, but not for acts and omissions of the fiduciary thereafter. The new bond shall bind the sureties thereon with respect to acts and omissions of the fiduciary from the time when the sureties on the original bond are no longer liable therefor.

[C51, §1318; R60, §2350; C73, §2364; C97, §3302; C24, 27, 31, 35, 39, §**11888;** C46, 50, 54, 58, 62, §633.44; C66, 71, 73, 75, 77, 79, 81, §633.184]

633.185 Insolvency of fiduciary.

If, at any time, a fiduciary becomes insolvent after qualifying as such fiduciary, and after the maturity of a debt owing by such fiduciary to the estate, then the fiduciary and the sureties on the bond shall be liable to the estate for the indebtedness owing by the fiduciary to the estate. If the fiduciary is not solvent at any time after qualification and after the maturity of the debt, the sureties on the bond shall not be liable to the estate for the indebtedness.

[C66, 71, 73, 75, 77, 79, 81, §633.185]

633.186 Suit on bond.

1. *Execution of bond deemed as appearance.* The execution and filing of the bond by a fiduciary, any other provisions of law notwithstanding, shall be deemed an appearance by the surety in the proceeding for the administration of the estate including all hearings with respect to the bond.

2. *Summary enforcement in proceedings for administration.* Subject to the provisions of subsection 3 hereof, the court may, upon the breach of the obligation of the bond of a fiduciary, after notice to the obligors on the bond and to such other persons as the court directs, summarily determine the damages as a part of the proceeding for the administration of the estate, and by appropriate process enforce the collection thereof from those liable on the bond. Such determination and enforcement may be made by the court upon its own motion or upon application of a successor fiduciary, or of any other interested person. The court may hear the application at the time of settling the accounts of the defaulting fiduciary or at such other time as the court may direct. Damages shall be assessed on behalf of all interested persons and may be paid over to the successor or other nondefaulting fiduciary and distributed as other assets held by the fiduciary in the fiduciary's official capacity.

3. *Enforcement by separate suit.* If the estate is already distributed, or if, for any reason, the procedure to recover on the bond provided in subsection 2 hereof, is inadequate, any interested person may bring a separate suit in a court of competent jurisdiction on the person's own behalf for damages suffered by the person by reason of the default of the fiduciary.

4. *Bond not void upon first recovery.* The bond of the fiduciary shall not be void upon the first recovery, but may be proceeded upon from time to time until the whole penalty is exhausted.

5. *Denial of liability by surety — intervention.* If the court has already determined the liability of the fiduciary, the sureties shall not be permitted thereafter to deny such liability in any action or hearing to determine their liability; but the surety may intervene in any hearing to determine the liability of the fiduciary.

[C51, §1387, 1389, 1509; R60, §2419, 2421, 2561; C73, §2251, 2435; C97, §3201, 3361; C24, 27, 31, 35, 39, §**11984, 11985, 12603;** C46, 50, 54, 58, 62,

§635.79, 635.80, 668.30; C66, 71, 73, 75, 77, 79, 81, §633.186]
See §636.20

633.187 Limitation of action on bond.
No proceedings upon the bond of a fiduciary shall be brought subsequent to two years after the discharge of the fiduciary or six months after the discovery of fraud, whichever is later.
[C66, 71, 73, 75, 77, 79, 81, §633.187]

633.188 to 633.196 Reserved.

PART 8

COMPENSATION OF FIDUCIARIES AND ATTORNEYS

633.197 Compensation.
Personal representatives shall be allowed such reasonable fees as may be determined by the court for services rendered, but not in excess of the following commissions upon the gross assets of the estate listed in the probate inventory for Iowa inheritance tax purposes, which shall be received as full compensation for all ordinary services:
For the first one thousand dollars, six percent;
For the overplus between one and five thousand dollars, four percent;
For all sums over five thousand dollars, two percent.
For purposes of this section, the gross assets of the estate shall not include life insurance proceeds, unless payable to the decedent's estate.
[C51, §1429; R60, §2454; C73, §2494; C97, §3415; C24, 27, 31, 35, 39, §**12063;** C46, 50, 54, 58, 62, §638.23; C66, 71, 73, 75, 77, 79, 81, §633.197]
94 Acts, ch 1153, §8
See also §633.86 and 633.162

633.198 Attorney fee.
There shall also be allowed and taxed as part of the costs of administration of estates as an attorney's fee for the personal representative's attorney, such reasonable fee as may be determined by the court, for services rendered, but not in excess of the schedule of fees herein provided for personal representatives.
[C24, 27, 31, 35, 39, §**12064;** C46, 50, 54, 58, 62, §638.24; C66, 71, 73, 75, 77, 79, 81, §633.198]

633.199 Expenses and extraordinary services.
Such further allowances as are just and reasonable may be made by the court to personal representatives and their attorneys for actual necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters.
[C51, §1430; R60, §2455; C73, §2495; C97, §3415; C24, 27, 31, 35, 39, §**12065;** C46, 50, 54, 58, 62, §638.25; C66, 71, 73, 75, 77, 79, 81, §633.199]

633.200 Compensation of other fiduciaries and their attorneys.
The court shall allow and fix from time to time the compensation for fiduciaries, other than personal representatives, and their attorneys for such services as they shall render as shown by an itemized claim or report made and filed setting forth what such services consist of during the period of time they continue to act in such capacities.
[C51, §1515; R60, §2567; C73, §2256; C97, §3205; C24, 27, §12599; C31, 35, §12065-d1, 12599; C39, §**12065.1, 12599;** C46, 50, 54, 58, 62, §638.26, 668.26; C66, 71, 73, 75, 77, 79, 81, §633.200]

633.201 Court officers as fiduciaries.
Judges, clerks and deputy clerks serving as fiduciaries shall not be allowed any compensation for services as such fiduciaries.
[C66, 71, 73, 75, 77, 79, 81, §633.201]

633.202 Affidavit relative to compensation.
In no case shall the compensation of fiduciaries and their attorneys be allowed or paid until there shall have been filed with the clerk of the district court in which administration of the estate is pending an affidavit of the fiduciary, or attorney, as the case may be, stating that there is no contract, agreement, or arrangement, either oral or written, express or implied, contemplating any division of compensation for such services, or participation therein, directly or indirectly, by any other person, firm, or corporation with such fiduciary or attorney, unless it be with a regular and bona fide law partner, or with one jointly serving with them in the same capacity in relation to the estate in which such compensation is allowed, in which event the affidavit shall show such fact.
[C31, 35, §12065-d2; C39, §**12065.2;** C46, 50, 54, 58, 62, §638.27; C66, 71, 73, 75, 77, 79, 81, §633.202]

633.203 Affidavit for corporate fiduciary.
In any case where a corporation is acting as a fiduciary under and by virtue of the provisions of chapter 524, division X, the affidavit required by section 633.202 shall be executed and made by an officer of such corporation.
[C31, 35, §12065-d3; C39, §**12065.3;** C46, 50, 54, 58, 62, §638.28; C66, 71, 73, 75, 77, 79, 81, §633.203]

633.204 Fees of deceased fiduciary.
When a fiduciary dies, all fees to which the fiduciary's personal representative and the fiduciary's attorney are entitled shall be a charge against the

estate assets until paid.
[C66, 71, 73, 75, 77, 79, 81, §633.204]

633.205 to 633.209 Reserved.

DIVISION IV

INTESTATE SUCCESSION

PART 1

RULES OF INHERITANCE

633.210 Rules of descent.
The estate of a person dying intestate shall descend as provided in sections 633.211 to 633.226.
[C51, §1390; R60, §2422; C73, §2436; C97, §3362; C24, 27, 31, 35, 39, §**11986;** C46, 50, 54, 58, 62, §636.1; C66, 71, 73, 75, 77, 79, 81, §633.210]

633.211 Share of surviving spouse if decedent left no issue or left issue all of whom are issue of surviving spouse.
If the decedent dies intestate leaving a surviving spouse and leaving no issue or leaving issue all of whom are the issue of the surviving spouse, the surviving spouse shall receive the following share:
1. All the value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or by other judicial sale, and to which the surviving spouse has made no relinquishment of right.
2. All personal property that, at the time of death, was, in the hands of the decedent as the head of a family, exempt from execution.
3. All other personal property of the decedent which is not necessary for the payment of debts and charges.
[C51, §1329, 1390, 1394, 1421; R60, §2361, 2422, 2477, 2479; C73, §2371, 2436, 2440; C97, §3312, 3362, 3366; C24, 27, 31, 35, 39, §**11918, 11986, 11990, 11991;** C46, 50, 54, 58, 62, §635.7, 636.1, 636.5, 636.6; C66, 71, 73, 75, 77, 79, 81, §633.211]
85 Acts, ch 19, §1

633.212 Share of surviving spouse if decedent left issue some of whom are not issue of surviving spouse.
If the decedent dies intestate leaving a surviving spouse and leaving issue some of whom are not the issue of the surviving spouse, the surviving spouse shall receive the following share:
1. One-half in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or by other judicial sale, and to which the surviving spouse has made no relinquishment of right.
2. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.
3. One-half of all other personal property of the decedent which is not necessary for the payment of debts and charges.
4. If the property received by the surviving spouse under subsections 1, 2 and 3 of this section is not equal in value to the sum of fifty thousand dollars, then so much additional of any remaining homestead interest and of the remaining real and personal property of the decedent that is subject to payment of debts and charges against the decedent's estate, after payment of the debts and charges, even to the extent of the whole of the net estate, as necessary to make the amount of fifty thousand dollars.
[C51, §1410; R60, §2495; C73, §2455; C97, §3379; S13, §3379, 3381-a; C24, 27, 31, 35, 39, §**12017;** C46, 50, 54, 58, 62, §636.32; C66, 71, 73, 75, 77, 79, 81, §633.212]
85 Acts, ch 19, §2

633.213 Appraisal.
Prior to the settlement of every intestate estate in which there is a surviving spouse, and in which appraisal has not been waived by the surviving spouse and all the heirs of the decedent, the court, upon application of the personal representative, the surviving spouse, or any of the heirs of the decedent, shall appoint three competent disinterested appraisers to appraise the estate and to make their report to the court, at the time as the court may direct by order, unless the court, after notice, finds further appraisal unnecessary. In the appraisement, the homestead, if any, shall be appraised separately.
[C24, 27, 31, 35, 39, §**12018;** C46, 50, 54, 58, 62, §636.33; C66, 71, 73, 75, 77, 79, 81, §633.213]
84 Acts, ch 1067, §47

633.214 Procedure determined by court.
At the time it appoints the appraisers provided for by section 633.213 the court shall prescribe the kind of notice and the method of service thereof, whether by publication or otherwise.
[C24, 27, 31, 35, 39, §**12019;** C46, 50, 54, 58, 62, §636.34; C66, 71, 73, 75, 77, 79, 81, §633.214]

633.215 Notice.
Such notice shall designate the names of the appraisers, the time and place of the appraisement, and the date on which the appraisers shall file with the clerk the report of their appraisement, directed to all persons interested in such appraisement.
[C24, 27, 31, 35, 39, §**12020;** C46, 50, 54, 58, 62, §636.35; C66, 71, 73, 75, 77, 79, 81, §633.215]

633.216 Objections.
All persons interested in such report and having objections to it and the appraisement, shall file their objections within ten days after the date

fixed in said notice for the filing of the report of such appraisement.

[C24, 27, 31, 35, 39, §**12021;** C46, 50, 54, 58, 62, §636.36; C66, 71, 73, 75, 77, 79, 81, §633.216]

633.217 Trial.

Such objections, if any, shall be tried to the court as in equity, and the court shall enter a final order in the matter.

[C24, 27, 31, 35, 39, §**12022;** C46, 50, 54, 58, 62, §636.37; C66, 71, 73, 75, 77, 79, 81, §633.217]

633.218 Right of spouse to select property.

After such proceedings, and after payment of debts and charges, the surviving spouse shall have the right to select from the property so appraised, at its appraised value thus fixed, property equal in value to the amount to which the spouse is entitled under section 633.211 or 633.212 which selection shall be in writing filed with the clerk of court.

[C24, 27, 31, 35, 39, §**12023;** C46, 50, 54, 58, 62, §636.38; C66, 71, 73, 75, 77, 79, 81, §633.218]

633.219 Share of others than surviving spouse.

The part of the intestate estate not passing to the surviving spouse, or if there is no surviving spouse, the entire net estate passes as follows:

1. To the issue of the decedent per stirpes.

2. If there is no surviving issue, to the parents of the decedent equally; and if either parent is dead, the portion that would have gone to such deceased parent shall go to the survivor.

3. If there is no person to take under either subsection 1 or 2 of this section, the estate shall be divided and set aside into two equal shares. One share shall be distributed to the issue of the decedent's mother per stirpes and one share shall be distributed to the issue of the decedent's father per stirpes. If there are no surviving issue of one deceased parent, the entire estate passes to the issue of the other deceased parent in accordance with this subsection.

4. If there is no person to take under subsection 1, 2, or 3 of this section, and the decedent is survived by one or more grandparents or issue of grandparents, half the estate passes to the paternal grandparents, if both survive, or to the surviving paternal grandparent if only one survives. If neither paternal grandparent survives, this half share shall be further divided into two equal subshares. One subshare shall be distributed to the issue of the decedent's paternal grandmother per stirpes and one subshare shall be distributed to the issue of the decedent's paternal grandfather per stirpes. If there are no surviving issue of one deceased paternal grandparent, the entire half share passes to the issue of the other deceased paternal grandparent and their issue in the same manner. The other half of the decedent's estate passes to the maternal grandparents and their issue in the same manner. If there are no surviving grandparents or issue of grandparents on either the paternal or maternal side, the entire estate passes to the decedent's surviving grandparents or their issue on the other side in accordance with this subsection.

5. If there is no person to take under subsection 1, 2, 3, or 4 of this section, and the decedent is survived by one or more great-grandparents or issue of great-grandparents, the estate passes equally to each set of great-grandparents, or to their issue, if any survive, per stirpes.

6. If there is no person to take under subsection 1, 2, 3, 4, or 5 of this section, the portion uninherited shall go to the issue of the deceased spouse of the intestate, per stirpes. If the intestate has had more than one spouse who died in lawful wedlock, it shall be equally divided between the issue, per stirpes, of those deceased spouses.

7. If there is no person who qualifies under either subsection 1, 2, 3, 4, 5, or 6 of this section, the intestate property shall escheat to the state of Iowa.

[C51, §1408 – 1411, 1413, 1414; R60, §2436, 2437, 2439, 2440, 2495 – 2497; C73, §2453 – 2458, 2460; C97, §3378 – 3382, 3387; S13, §3379, 3381-a, -b, -c; C24, 27, 31, 35, 39, §**12016, 12017, 12024 – 12028, 12035;** C46, 50, 54, 58, 62, §636.31, 636.32, 636.39 – 636.43, 636.50; C66, 71, 73, 75, 77, 79, 81, §633.219]

93 Acts, ch 111, §2; 95 Acts, ch 63, §4; 2000 Acts, ch 1012, §1

633.220 Afterborn heirs — time of determining relationship.

Heirs of an intestate, begotten before the intestate's death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived the intestate. With this exception, the intestate succession shall be determined by the relationships existing at the time of the death of the intestate.

[C51, §1284, 1285; R60, §2316, 2317; C73, §2334, 2335; C97, §3279; S13, §3279; C24, 27, 31, 35, 39, §**11858;** C46, 50, 54, 58, 62, §633.13; C66, 71, 73, 75, 77, 79, 81, §633.220]

633.221 Biological child — inherit from mother.

Unless the child has been adopted, a biological child shall inherit from the child's biological mother, and she from the child.

[C51, §1415; R60, §2441; C73, §2465; C97, §3384; C24, 27, 31, 35, 39, §**12030;** C46, 50, 54, 58, 62, §636.45; C66, 71, 73, 75, 77, 79, 81, §633.221]

94 Acts, ch 1046, §27

633.222 Biological child — inherit from father.

Unless the child has been adopted, a biological child inherits from the child's biological father if the evidence proving paternity is available during the father's lifetime, or if the child has been recognized by the father as his child; but the recognition must have been general and notorious, or in writing. Under such circumstances, if the recognition has been mutual, and the child has not been adopted, the father may inherit from his biological child.

[C51, §1416, 1417; R60, §2442, 2443; C73, §2466, 2467; C97, §3385; C24, 27, 31, 35, 39, §**12031;** C46, 50, 54, 58, 62, §636.46; C66, 71, 73, 75, 77, 79, 81, §633.222]

86 Acts, ch 1086, §1; 94 Acts, ch 1046, §28

633.223 Effect of adoption.

1. Except as provided in subsection 3, a lawful adoption extinguishes the right of intestate succession of an adopted person from and through the adopted person's biological parents. The adopted person inherits from and through the adoptive parents in the same manner as a biological child inherits from and through the child's biological parents.

2. Except as provided in subsection 3, a lawful adoption extinguishes the right of intestate succession of a biological parent from and through the parent's biological child who is adopted. The adoptive parents inherit from and through the adopted person in the same manner as biological parents inherit from and through the parents' biological child.

3. An adoption of a person by the spouse or surviving spouse of a biological parent has no effect on the relationship for inheritance purposes between the adopted person and that biological parent or biological parent's heirs. An adoption of a person by the spouse or surviving spouse of a biological parent after the death of the other biological parent has no effect on the relationship for inheritance purposes between the adopted person and the deceased biological parent's heirs.

4. A person inherits through an adopted person, an adoptive parent, or a biological parent of an adopted person only if the adopted person, adoptive parent, or biological parent of an adopted person would have inherited under subsection 1, 2, or 3.

[C66, 71, 73, 75, 77, 79, 81, §633.223; 81 Acts, ch 194, §1]

94 Acts, ch 1046, §29

633.224 Advancements — in general.

When the owner of property transfers it as an advancement to a person who would be an heir of such transferor were the latter to die at that time, and the transferor dies intestate, then the property thus advanced shall be counted toward the share of the transferee in the estate, (which for this purpose only shall be increased by the value of the advancement at the time the advancement was made). The transferee shall have no liability to the estate for such part, if any, of the advancement as may be in excess of the transferee's share in the estate as thus determined. Every gratuitous inter vivos transfer is presumed to be an absolute gift, and not an advancement. Such presumption is rebuttable.

[C51, §1419, 1420; R60, §2445, 2446; C73, §2459; C97, §3383; C24, 27, 31, 35, 39, §**12029;** C46, 50, 54, 58, 62, §636.44; C66, 71, 73, 75, 77, 79, 81, §633.224]

633.225 Valuation of advancements.

An advancement under section 633.224 shall be valued as of the time when the advancee came into possession or enjoyment or as of the date of the death of the intestate, whichever first occurs.

[C51, §1419, 1420; R60, §2445, 2446; C73, §2459; C97, §3383; C24, 27, 31, 35, 39, §**12029;** C46, 50, 54, 58, 62, §636.44; C66, 71, 73, 75, 77, 79, 81, §633.225]

633.226 Death of advancee before intestate.

If an advancee under section 633.224 dies before the intestate, leaving an heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled to, had the advancee survived the intestate, then the heir shall be charged with only such proportion of the advancement as the amount the heir would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement.

[C51, §1419, 1420; R60, §2445, 2446; C73, §2459; C97, §3383; C24, 27, 31, 35, 39, §**12029;** C46, 50, 54, 58, 62, §636.44; C66, 71, 73, 75, 77, 79, 81, §633.226]

PART 2

PROCEDURE FOR OPENING ADMINISTRATION OF INTESTATE ESTATES

633.227 Administration granted.

Where there is no will, administration shall be granted to any qualified person on the petition of:

1. The surviving spouse;
2. The heirs of the decedent;
3. Creditors of the decedent;
4. Other persons showing good grounds therefor.

[C51, §1311, 1312; R60, §2343, 2344; C73,

§2354, 2355; C97, §3297; C24, 27, 31, 35, 39, §**11883;** C46, 50, 54, 58, 62, §633.39; C66, 71, 73, 75, 77, 79, 81, §633.227]

633.228 Time allowed.

To file such petition, there shall be allowed, commencing with the death of the decedent:

1. To the surviving spouse, a period of twenty days;

2. To each other class in succession, a period of ten days.

The period allowed each class shall be advanced to the period allowed the preceding class if there is no member of such preceding class. Any member of any class may file such petition after the expiration of the period allowed to the member if letters have not been issued prior thereto.

[C51, §1313; R60, §2345; C73, §2356; C97, §3298; C24, 27, 31, 35, 39, §**11884;** C46, 50, 54, 58, 62, §633.40; C66, 71, 73, 75, 77, 79, 81, §633.228]

633.229 Petition for administration of an intestate estate.

The petition for administration of an intestate estate shall contain the following:

1. The name, domicile and date of death of the decedent.

2. If the decedent was domiciled outside the state at the time of the decedent's death, a statement that the decedent had property within the county in which the petition is filed, or any other basis for jurisdiction in such county.

3. The name and address of the surviving spouse, if any, and the name and address of each heir so far as known to the petitioner.

4. The estimated value of the personal property of the estate plus the estimated gross annual income of the estate during the period of administration.

[C66, 71, 73, 75, 77, 79, 81, §633.229]

633.230 Notice in intestate estates.

1. In intestate matters, the administrator, as soon as letters are issued, shall cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, and at any time during the pendency of administration that the administrator has knowledge of the name and address of a person believed to own or possess a claim which will not or may not be paid or otherwise satisfied during administration, provide by ordinary mail to each such claimant at the claimant's last known address, a notice of appointment which shall be in substantially the following form:

NOTICE OF APPOINTMENT OF
ADMINISTRATOR AND
NOTICE TO CREDITORS

In the District Court of Iowa
in and for . . . . . County.
In the Estate of . . . . . , Deceased
Probate No. . . . . .

To All Persons Interested in the Estate of . . . . . , Deceased, who died on or about . . . . . (date):

You are hereby notified that on the . . . . . day of . . . . . (month), ... (year), the undersigned was appointed administrator of the estate.

Notice is hereby given that all persons indebted to the estate are requested to make immediate payment to the undersigned, and creditors having claims against the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of this notice or one month from the date of the mailing of this notice (unless otherwise allowed or paid) a claim is thereafter forever barred.

Dated this . . . . . day of . . . . . (month), ... (year)

. . . . . .
Administrator of the estate

. . . . . .
Address

. . . . . .
Attorney for the administrator

. . . . . .
Address

Date of second publication . . . . . day of . . . . . (month), ... (year)

(Date to be inserted by publisher)

2. An action based upon the failure to give notice by mail required by this section, section 633.304 or 633.305, to heirs of a decedent or to persons known by the personal representative to own or possess a claim in any estate in which the personal representative was discharged prior to July 1, 1989, shall not be maintained in any court in this state unless commenced prior to July 1, 1991.

[C66, 71, 73, 75, 77, 79, 81, §633.230]

84 Acts, ch 1080, §1, 2; 89 Acts, ch 35, §2; 90 Acts, ch 1036, §1; 2000 Acts, ch 1058, §66

633.231 Notice in intestate estates — medical assistance claims.

Upon opening administration of an intestate estate, the administrator may, in accordance with section 633.410, provide by ordinary mail to the entity designated by the department of human services, a notice of opening administration of the estate and of the appointment of the administrator, which shall include a notice to file claims with the clerk within the later to occur of fifteen months

from the second publication of the notice to creditors or two months from the date of mailing of this notice, or thereafter be forever barred.

The notice shall be in substantially the following form:

NOTICE OF OPENING ADMINISTRATION OF ESTATE, OF APPOINTMENT OF ADMINISTRATOR, AND NOTICE TO CREDITOR

In the District Court of Iowa
In and for . . . . . County.
In the Estate of . . . . . , Deceased
Probate No. . . . . .

To the Department of Human Services Who May Be Interested in the Estate of . . . . . , Deceased, who died on or about . . . . . (date):

You are hereby notified that on the . . . . . day of . . . . . (month), ... (year), an intestate estate was opened in the above-named court and that . . . . . was appointed administrator of the estate.

You are further notified that the birthdate of the deceased is . . . . . and the deceased's social security number is . . . . . - . . . . - . . . . . The birthdate of the spouse is . . . . . and the spouse's social security number is . . . . . - . . . . - . . . . . , and that the spouse of the deceased is alive as of the date of this notice, or deceased as of . . . . . (date).

You are further notified that the deceased was/was not a disabled or a blind child of the medical assistance recipient by the name of . . . . . , who had a birthdate of . . . . . and a social security number of . . . . . - . . . . - . . . . . , and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.5, subsection 2, paragraph *"a"*, subparagraph (1), and is now collectible from this estate pursuant to section 249A.5, subsection 2, paragraph *"b"*.

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this notice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of fifteen months from the second publication of the notice to creditors or two months from the date of the mailing of this notice, unless otherwise allowed or paid, the claim is thereafter forever barred.

Dated this . . . . . day of . . . . . (month), ... (year)

. . . . . .
Administrator of estate
. . . . . .
Address
. . . . . .
Attorney for administrator
. . . . . .
Address
Date of second publication
. . . . . day of . . . . . (month), ... (year)

2001 Acts, ch 109, §1; 2002 Acts, ch 1119, §97
Section amended

633.232 through 633.235 Reserved.

DIVISION V

RIGHTS OF SURVIVING SPOUSE

PART 1

RIGHT TO TAKE AGAINST THE WILL

633.236 Right of surviving spouse to elect to take against will.

When a married person dies testate as to any part of the person's estate, the surviving spouse shall have the right to elect to take against the will under the provisions of sections 633.237 to 633.246. If the surviving spouse has a conservator, the court may authorize or direct the conservator to elect to take under or against the will as the court deems appropriate under the circumstances.

[C51, §1407; R60, §2435; C73, §2452; C97, §3376; S13, §3376; C24, 27, 31, 35, 39, §**12006, 12010;** C46, 50, 54, 58, 62, §636.21, 636.25; C66, 71, 73, 75, 77, 79, 81, §633.236]

88 Acts, ch 1064, §1

633.237 Presumption that surviving spouse elects to take under will.

If a voluntary election to take or refuse to take under a will has not been filed by a surviving spouse or the spouse's conservator, if any, within two months of the date of the second publication of notice of admission of the will to probate, and the surviving spouse is not the executor of the will, the executor shall cause to be served a written notice upon the surviving spouse and the spouse's conservator, if any, in the manner directed by the court, advising the surviving spouse and the spouse's conservator that the will of the decedent has been admitted to probate, stating the name of the court where the will was admitted and the date when the will was admitted to probate, and notifying the spouse and the spouse's conservator that

unless within four months after service of the notice, the spouse or the spouse's conservator files an election in writing with the clerk of that court refusing to take under the will, the spouse shall take under the will. If the surviving spouse or the spouse's conservator files an election to take under the will at any time the requirements of this section for serving notice are waived. If within the period of four months an affidavit is filed setting forth that the surviving spouse is incapable to make the election and does not have a conservator, the court shall determine whether there shall be an election to take under or against the will in accordance with section 633.238 as the court deems appropriate under the circumstances. The court on application may, prior to the expiration of the period of four months, for cause shown, enter an order extending the time for making the election.

If the surviving spouse is an executor of the will and fails, within four months after the date of the second publication of notice of admission of the will to probate, to file with the clerk of the court an election to refuse to take under the will of the deceased, it shall be conclusively presumed that the survivor consents to the provisions of the will and elects to take under it. However, the court on application may, prior to the expiration of the period of four months, on cause shown, enter an order extending the time for making the election.

[C73, §2452; C97, §3376; S13, §3376; C24, 27, 31, 35, 39, §**12007, 12010;** C46, 50, 54, 58, 62, §636.22, 636.25; C66, 71, 73, 75, 77, 79, 81, §633.237]

84 Acts, ch 1080, §3; 88 Acts, ch 1064, §2

633.238 Share of surviving spouse who elects to take against will.

If the surviving spouse elects to take against the will, the share of such surviving spouse will be:

1. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of right.

2. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

3. One-third of all other personal property of the decedent that is not necessary for the payment of debts and charges.

[C51, §1329, 1390, 1394, 1421; R60, §2361, 2422, 2477, 2479; C73, §2371, 2436, 2440; C97, §3312, 3362, 3366; C24, 27, 31, 35, 39, §**11918, 11986, 11990, 11991;** C46, 50, 54, 58, 62, §635.7, 636.1, 636.5, 636.6; C66, 71, 73, 75, 77, 79, 81, §633.238]

633.239 Share to embrace homestead.

The share of the surviving spouse in such real estate shall be set off in such manner as to include the ordinary dwelling house given by law to the homestead, or so much thereof as will be equal to the share allotted to the spouse by section 633.238 unless the spouse prefers a different arrangement; but no such different arrangement shall be permitted unless there be sufficient property remaining to pay the claims and charges against the decedent's estate.

[C51, §1395; R60, §2426; C73, §2441; C97, §3367; C24, 27, 31, 35, 39, §**11992;** C46, 50, 54, 58, 62, §636.7; C66, 71, 73, 75, 77, 79, 81, §633.239]

633.240 Election to occupy homestead.

In intestate estates, or where the surviving spouse elects to take against the will, the surviving spouse or the spouse's conservator, if any, may, in lieu of the spouse's share in the real property possessed by the decedent at any time during their marriage which has not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of right, elect to occupy the homestead. Such election shall be made and entered of record as provided in section 633.245. In making such election, the surviving spouse shall have all the rights as to personal property provided in subsections 2 and 3 of section 633.238. In case of failure to make such election, the right to occupy the homestead shall be waived.

[C97, §3377; S13, §3377; C24, 27, 31, 35, 39, §**12012;** C46, 50, 54, 58, 62, §636.27; C66, 71, 73, 75, 77, 79, 81, §633.240]

88 Acts, ch 1064, §3

633.241 Time for election to occupy homestead.

If the surviving spouse does not make an election to occupy the homestead and file it with the clerk within four months from the date of the second publication of the notice to creditors, it shall be conclusively presumed that the surviving spouse waives the right to make the election. The court on application may, prior to the expiration of the period of four months, for cause shown, enter an order extending the time for making the election.

[C97, §3377; S13, §3377; C24, 27, 31, 35, 39, §**12013;** C46, 50, 54, 58, 62, §636.28; C66, 71, 73, 75, 77, 79, 81, §633.241]

84 Acts, ch 1080, §4

633.242 Rights of election personal to surviving spouse.

The right of the surviving spouse to elect to take against the will and the right of the surviving spouse to occupy the homestead are personal. They are not transferable, and cannot be exercised for the spouse subsequent to the spouse's death. If the surviving spouse dies prior to filing an election to take against the will, it shall be conclusively presumed that the surviving spouse takes under the provisions of the will.

[C66, 71, 73, 75, 77, 79, 81, §633.242]

633.243 Filing elections.

The election to take against the will and the election to occupy the homestead shall be filed in the office of the clerk.

[C24, 27, 31, 35, 39, §**12010;** C46, 50, 54, 58, 62, §636.25; C66, 71, 73, 75, 77, 79, 81, §633.243]

633.244 Incompetent spouse — election by court.

In case an affidavit is filed that the surviving spouse is incapable of making an election to take against the will, or to elect to occupy the homestead, and does not have a conservator, the court shall fix a time and place of hearing on the matter, and cause a notice thereof to be served upon the surviving spouse in such manner and for such time as the court may direct. At the hearing, a guardian ad litem shall be appointed to represent the spouse, and the court shall enter such orders as it deems appropriate under the circumstances. The guardian ad litem shall be a practicing attorney.

[S13, §3376, 3377; C24, 27, 31, 35, 39, §**12011, 12014;** C46, 50, 54, 58, 62, §636.26, 636.29; C66, 71, 73, 75, 77, 79, 81, §633.244]

88 Acts, ch 1064, §4; 90 Acts, ch 1271, §1513

633.245 Record of election.

The elections of the surviving spouse under section 633.236, 633.240 or 633.244 shall be entered on the proper records of the court.

[C73, §2452; C97, §3376; S13, §3376; C24, 27, 31, 35, 39, §**12008;** C46, 50, 54, 58, 62, §636.23; C66, 71, 73, 75, 77, 79, 81, §633.245]

633.246 Election not subject to change.

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

[C66, 71, 73, 75, 77, 79, 81, §633.246]

633.246A Medical assistance eligibility.

Failure of a surviving spouse to take against a will under this division constitutes a transfer of assets for the purpose of determining eligibility for medical assistance pursuant to chapter 249A to the extent that the value received by taking against the will would have exceeded the value of the inheritance received under the will.

2000 Acts, ch 1060, §7

PART 2

PROCEDURE FOR SETTING OFF SHARE

633.247 Setting off share of surviving spouse when electing to take against the will.

The share of the surviving spouse under section 633.236 may be set off by the mutual consent of all parties in interest, or by referees appointed by the court. An application to have it set off by referees shall be made in writing. The application must describe the land in which the share is claimed, and pray for the appointment of referees to set it off.

[C51, §1396, 1397; R60, §2427, 2428; C73, §2443, 2444; C97, §3369; S13, §3377; C24, 27, 31, 35, 39, §**11994, 12015;** C46, 50, 54, 58, 62, §636.9, 636.30; C66, 71, 73, 75, 77, 79, 81, §633.247]

84 Acts, ch 1080, §5; 88 Acts, ch 1064, §5

633.248 Referee — notice.

In the absence of mutual consent to the appointment of referees, the court shall fix a time and place for hearing upon such application and of the fact that referees will be appointed if such application is granted, and shall prescribe the time and manner of the service of notice of the hearing.

[C51, §1398; R60, §2429; C73, §2445; C97, §3370; C24, 27, 31, 35, 39, §**11995;** C46, 50, 54, 58, 62, §636.10; C66, 71, 73, 75, 77, 79, 81, §633.248]

633.249 Mode of setting off share in real estate.

The referees may employ a surveyor, and may cause the shares in real estate to be set off by legally sufficient land descriptions. They shall make a report of their proceedings to the court as early as reasonably possible.

[C51, §1399; R60, §2430; C73, §2446; C97, §3371; C24, 27, 31, 35, 39, §**11996;** C46, 50, 54, 58, 62, §636.11; C66, 71, 73, 75, 77, 79, 81, §633.249]

633.250 Report — delinquency.

The court may require a report by such a time as it deems reasonable. If the referees fail to obey this or any other of its orders, the court may discharge them and appoint others in their stead, and impose upon the first referees the payment of all costs previously made, unless they show good cause against it.

[C51, §1400; R60, §2431; C73, §2447; C97, §3372; C24, 27, 31, 35, 39, §**11997;** C46, 50, 54, 58, 62, §636.12; C66, 71, 73, 75, 77, 79, 81, §633.250]

633.251 Confirmation — new reference.

The court may set the report for hearing and prescribe the notice to be given to interested parties. The court may confirm the report, or may set it aside and refer the matter to the same or other referees, at its discretion.

[C51, §1401; R60, §2432; C73, §2448; C97,

§3373; C24, 27, 31, 35, 39, §**11998;** C46, 50, 54, 58, 62, §636.13; C66, 71, 73, 75, 77, 79, 81, §633.251]

633.252 Confirmation conclusive — possession.

An order confirming a report of the referees shall be binding and conclusive unless appealed from within thirty days, and the surviving spouse may bring an action to obtain possession of the land set apart to the surviving spouse.

[C51, §1402; R60, §2433; C73, §2449; C97, §3373; C24, 27, 31, 35, 39, §**11999;** C46, 50, 54, 58, 62, §636.14; C66, 71, 73, 75, 77, 79, 81, §633.252]

633.253 Right contested.

Nothing in sections 633.247 through 633.252 shall prevent any person interested from controverting the right of the surviving spouse to the share thus set apart before confirmation of the report of the referees.

[C51, §1403; R60, §2434; C73, §2450; C97, §3374; C24, 27, 31, 35, 39, §**12000;** C46, 50, 54, 58, 62, §636.15; C66, 71, 73, 75, 77, 79, 81, §633.253]

633.254 Sale — division of proceeds.

If it appears to the court, upon application of the personal representative, the surviving spouse, or the report of the referee, that the property, or any part of it, cannot be advantageously divided, the court may order the whole, or any part of such property, sold, and the share of the surviving spouse in the proceeds paid over to the surviving spouse.

[C51, §1404; R60, §2478; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, §**12001;** C46, 50, 54, 58, 62, §636.16; C66, 71, 73, 75, 77, 79, 81, §633.254]

633.255 Purchase of new homestead.

In case the homestead is sold, the surviving spouse may use any or all of the spouse's share to procure a homestead which shall be exempt from liability for all debts from which the former homestead would have been exempt.

[C51, §1406; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, §**12002;** C46, 50, 54, 58, 62, §636.17; C66, 71, 73, 75, 77, 79, 81, §633.255]

633.256 Security to avoid sale.

No sale shall be made under section 633.254 if anyone interested gives security to the satisfaction of the court, conditioned to pay the surviving spouse the appraised value of the share with seven percent interest on the same, within such reasonable time as the court may fix, not exceeding one year.

[C51, §1405; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, §**12003;** C46, 50, 54, 58, 62, §636.18; C66, 71, 73, 75, 77, 79, 81, §633.256]

633.257 Security by surviving spouse.

If no such arrangement is made, the surviving spouse may keep the property by giving like security to pay the claims of all others interested upon like terms.

[C51, §1405; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, §**12004;** C46, 50, 54, 58, 62, §636.19; C66, 71, 73, 75, 77, 79, 81, §633.257]

633.258 Sale prohibited.

Such sale under section 633.254 shall not be ordered so long as those in interest shall express a contrary desire and agree upon some mode of sharing and dividing the rents, profits, or use thereof, or shall consent that the court shall order the division of such rents, profits or use.

[C51, §1405; R60, §2478; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, §**12005;** C46, 50, 54, 58, 62, §636.20; C66, 71, 73, 75, 77, 79, 81, §633.258]

633.259 to 633.263 Reserved.

DIVISION VI

WILLS

PART 1

GENERAL PROVISIONS RELATING TO WILLS

633.264 Disposal of property by will.

Subject to the rights of the surviving spouse to elect to take against the will as provided by section 633.236, any person of full age and sound mind may dispose by will of all the person's property, except sufficient to pay the debts and charges against the person's estate.

[C51, §1277, 1407; R60, §2309, 2435; C73, §2322, 2452; C97, §3270, 3376; S13, §3376; C24, 27, 31, 35, 39, §**11846, 12006;** C46, 50, 54, 58, 62, §633.1, 636.21; C66, 71, 73, 75, 77, 79, 81, §633.264]

633.265 Procedure prescribed by will.

When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which the testator's estate shall be administered, and, also, the manner in which the testator's affairs shall be conducted until the testator's estate is finally settled.

[C51, §1326; R60, §2358; C73, §2406; C97, §3336; C24, 27, 31, 35, 39, §**11955;** C46, 50, 54, 58, 62, §635.51; C66, 71, 73, 75, 77, 79, 81, §633.265]

See also §633.172

633.266 Adjusted gross estate.

Unless otherwise defined, *"adjusted gross estate"* in a will means the entire value of the gross estate as determined under the federal estate tax less the aggregate amount of the deductions allowed by sections 2053 and 2054 of the Internal Revenue Code as amended to and including Janu-

ary 1, 1982.
[82 Acts, ch 1053, §1]

633.267 Children born or adopted after execution of will.
When a testator fails to provide in the testator's will for any of the testator's children born to or adopted by the testator after the making of the testator's last will, such child, whether born before or after the testator's death, shall receive a share in the estate of the testator equal in value to that which the child would have received under section 633.211, 633.212, or 633.219, whichever section or sections are applicable, if the testator had died intestate, unless it appears from the will that such omission was intentional.
[C51, §1284, 1285; R60, §2316, 2317; C73, §2334, 2335; C97, §3279; S13, §3279; C24, 27, 31, 35, 39, §**11858;** C46, 50, 54, 58, 62, §633.13; C66, 71, 73, 75, 77, 79, 81, §633.267]
88 Acts, ch 1064, §6

633.268 Presumption attending devise to spouse.
Where the testator's spouse is named as a devisee in a will, it shall be presumed, unless the intent is clear and explicit to the contrary, and except as provided in section 633.272, that such devise is in lieu of the intestate share and homestead rights of the surviving spouse.
[C97, §3270; C24, 27, 31, 35, 39, §**11847;** C46, 50, 54, 58, 62, §633.2; C66, 71, 73, 75, 77, 79, 81, §633.268]

633.269 After acquired property.
Any property acquired by the testator after the making of the testator's will shall pass thereby, and in like manner as if title thereto were vested in the testator at the time of making the will, unless the intent is clear and explicit to the contrary.
[C51, §1278; R60, §2310; C73, §2323; C97, §3271; C24, 27, 31, 35, 39, §**11849;** C46, 50, 54, 58, 62, §633.4; C66, 71, 73, 75, 77, 79, 81, §633.269]

633.270 Contractual or mutual wills.
No will shall be construed to be contractual or mutual, unless in such will the testator shall expressly state the intent that such will shall be so construed.
[C66, 71, 73, 75, 77, 79, 81, §633.270]

633.271 Effect of divorce or dissolution.
If after making a will the testator is divorced or the marriage is dissolved, all provisions in the will in favor of the testator's spouse, including but not limited to dispositions, appointments relating to property, and nominations to serve in any fiduciary or representative capacity, are thereby revoked. In the event the testator and spouse remarry each other, the provisions of the will revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise revoked by the testator.
[C66, 71, 73, 75, 77, 79, 81, §633.271]
2000 Acts, ch 1150, §3

633.272 Partial intestacy.
If part but not all of the estate of a decedent is validly disposed of by will, the part not disposed of by will shall be distributed as provided herein for intestate estates. If the testator left a surviving spouse, and the spouse does not elect to take against the will, the spouse shall receive, in addition to the property given to the spouse by the will, all of the intestate property which shall be subject to the payment of its proportionate share of debts and charges against the estate.
[C66, 71, 73, 75, 77, 79, 81, §633.272]
94 Acts, ch 1165, §42

633.273 Antilapse statute.
1. If a devisee dies before the testator, leaving issue who survive the testator, the devisee's issue who survive the testator shall inherit the property devised to the devisee per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary.
2. A person who would have been a devisee under a class gift, if the person had survived the testator, is treated as a devisee for purposes of this section, provided the person's death occurred after the execution of the will, unless from the terms of the will, the intent is clear and explicit to the contrary.
[C51, §1287; R60, §2319; C73, §2337; C97, §3281; C24, 27, 31, 35, 39, §**11861;** C46, 50, 54, 58, 62, §633.16; C66, 71, 73, 75, 77, 79, 81, §633.273]
89 Acts, ch 130, §1; 95 Acts, ch 63, §5

633.274 Exception to antilapse statute.
The devise to a spouse of the testator, where the spouse does not survive the testator, shall lapse notwithstanding the provisions of section 633.273, unless from the terms of the will, the intent is clear and explicit to the contrary.
[C66, 71, 73, 75, 77, 79, 81, §633.274]

633.275 Testamentary additions to trusts.
A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established, or to be established, by the testator, or by the testator and some other person or persons, or by some other person or persons, including a funded or unfunded life insurance trust, although the trustor has reserved some or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will, and if its terms are set forth in a written instrument other than a will executed before or concurrently with the execution of the testator's will, or in the valid last will of a person who has predeceased the testator regardless of the ex-

istence, size, or character of the corpus of the trust. The devise or bequest is not invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised or bequeathed shall not be deemed to be held under a testamentary trust of the testator, but shall become a part of the trust to which it is given and shall be administered and disposed of in accordance with the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether any such amendment was made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise or bequest to lapse. This section does not invalidate a devise or bequest made by a will executed prior to January 1, 1964.

[C66, 71, 73, 75, 77, 79, 81, §633.275, 633.276; 81 Acts, ch 195, §1]

Adopted from uniform testamentary additions to trust Act

633.276 Separate identification of bequest.

A will may refer to a written statement, letter, or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, except tangible personal property used in trade or business. Tangible personal property, for purposes of this section, includes household goods, furnishings, furniture, personal effects, clothing, jewelry, books, works of art, ornaments, and automobiles. If the writing is dated and is either in the handwriting of the testator or is signed by testator, and if it describes the items and distributees with reasonable certainty, the personal representative shall distribute the described items of tangible personal property to the distributees entitled to them. The writing may be referred to as one to be in existence at the time of the testator's death. The writing may be prepared before or after the execution of the will. The writing may be altered, added to, or changed in any respect by the testator after its preparation, and it may be a writing which has no significance apart from its effect upon the dispositions made by the will. Property passing by the writing shall be considered as property passing as a specific bequest under will.

[81 Acts, ch 195, §2]

633.277 Uniformity of interpretation.

Section 633.275 shall be so construed as to effectuate its general purpose to make uniform the law of those states which have adopted a similar provision.

[C66, 71, 73, 75, 77, 79, 81, §633.277]

633.278 Devise of encumbered property.

When any property subject to a mortgage, other lien or security interest, is specifically devised, the devisee shall take such property so devised subject to such mortgage, other lien or security interest, unless the will provides expressly or by necessary implication that such mortgage, other lien or security interest be otherwise paid. If there is a testamentary direction to discharge such mortgage, other lien or security interest, the rules of abatement specified in section 633.436 shall be applied.

[C66, 71, 73, 75, 77, 79, 81, §633.278]

PART 2

EXECUTION AND REVOCATION

633.279 Signed and witnessed.

1. *Formal execution.* All wills and codicils, except as provided in section 633.283, to be valid, must be in writing, signed by the testator, or by some person in the testator's presence and by the testator's express direction writing the testator's name thereto, and declared by the testator to be the testator's will, and witnessed, at the testator's request, by two competent persons who signed as witnesses in the presence of the testator and in the presence of each other; provided, however, that the validity of the execution of any will or instrument which was executed prior to January 1, 1964, shall be determined by the law in effect immediately prior to said date.

2. *Self-proved will.* An attested will may be made self-proved at the time of its execution, or at any subsequent date, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a person authorized to administer oaths and take acknowledgments under the laws of this state, and evidenced by such person's certificate, under seal, attached or annexed to the will, in form and content substantially as follows:

Affidavit

State of . . . . .)
County of . . . . .) ss

We, the undersigned, ... , ... and . . . . . , the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, declare to the undersigned authority that said instrument is the testator's will and that the testator willingly signed and executed such instrument, or expressly directed another to sign the same in the presence of the witnesses, as a free and voluntary act for the purposes therein expressed; that said witnesses, and each of them, declare to the undersigned authority that such will was executed and acknowledged by the testator as the testator's will in their presence and that they, in the testator's presence, at the testa-

tor's request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the date of the date of such will; and that the testator, at the time of the execution of such instrument, was of full age and of sound mind and that the witnesses were sixteen years of age or older and otherwise competent to be witnesses.

. . . . . .
Testator
. . . . . .
Witness
. . . . . .
Witness

Subscribed, sworn and acknowledged before me by . . . . . , the testator; and subscribed and sworn before me by . . . . . and . . . . . , witnesses, this . . . . . day of . . . . . (month), ... (year)

. . . . . .
(Seal) Notary Public, or other officer authorized to take and certify acknowledgments and administer oaths

A self-proved will shall constitute proof of due execution of such instrument as required by section 633.293 and may be admitted to probate without testimony of witnesses.

[C51, §1281; R60, §2313; C73, §2326; C97, §3274; C24, 27, 31, 35, 39, §**11852;** C46, 50, 54, 58, 62, §633.7; C66, 71, 73, 75, 77, 79, 81, §633.279]

2000 Acts, ch 1058, §56

633.280 Competency of witnesses.

Any person who is sixteen years of age, or older, and who is competent to be a witness generally in this state, may act as an attesting witness to a will.

[C66, 71, 73, 75, 77, 79, 81, §633.280]

633.281 Interest of witnesses.

No will is invalidated because attested by an interested witness; but any interested witness shall, unless the will is also attested by two competent and disinterested witnesses, forfeit so much of the provisions therein made for the interested witness as in the aggregate exceeds in value, as of the date of the decedent's death, that which the interested witness would have received had the testator died intestate. No attesting witness is interested unless the witness is devised or bequeathed some portion of the testator's estate.

[C51, §1282, 1283; R60, §2314, 2315; C73, §2327, 2328; C97, §3275; C24, 27, 31, 35, 39, §**11854;** C46, 50, 54, 58, 62, §633.9; C66, 71, 73, 75, 77, 79, 81, §633.281]

633.282 Defect cured by codicil.

If a codicil to a defectively executed will is duly executed, and such will is clearly identified in said codicil, the will and the codicil shall be considered as one instrument and the execution of both shall be deemed sufficient.

[C97, §3274; C24, 27, 31, 35, 39, §**11853;** C46, 50, 54, 58, 62, §633.8; C66, 71, 73, 75, 77, 79, 81, §633.282]

633.283 Will executed in foreign state or country.

A will executed outside this state, in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided said will is in writing and subscribed by the testator.

[C97, §3309; C24, 27, 31, 35, 39, §**11893;** C46, 50, 54, 58, 62, §633.49; C66, 71, 73, 75, 77, 79, 81, §633.283]

633.284 Revocation — cancellation — revival.

A will can be revoked in whole or in part only by being canceled or destroyed by the act or direction of the testator, with the intention of revoking it, or by the execution of a subsequent will. When done by cancellation, the revocation must be witnessed in the same manner as the making of a new will. No will, nor any part thereof, which shall be in any manner revoked, or which shall be or become invalid, can be revived otherwise than by a re-execution thereof, or by the execution of another will or codicil in which the revoked or invalid will, or part thereof, is incorporated by reference.

[C51, §1288, 1289; R60, §2320, 2321; C73, §2329, 2330; C97, §3276; S13, §3276; C24, 27, 31, 35, 39, §**11855;** C46, 50, 54, 58, 62, §633.10; C66, 71, 73, 75, 77, 79, 81, §633.284]

PART 3

CUSTODY

633.285 Custodian — filing — penalty.

After being informed of the death of the testator, the person having custody of the testator's will shall deliver it to the court having jurisdiction of the testator's estate. Every person who willfully refuses or fails to deliver a will after being ordered by the court to do so shall be guilty of contempt of court. The person shall also be liable to any person aggrieved for the damages which may be sustained by such refusal or failure.

[C51, §1291, 1292; R60, §2323, 2324; C73, §2338, 2339; C97, §3282; C24, 27, 31, 35, 39, §**11862;** C46, 50, 54, 58, 62, §633.17; C66, 71, 73, 75, 77, 79, 81, §633.285]

633.286 Deposit of will with clerk.

The clerk shall maintain a file for the safekeeping of wills. There shall be placed therein wills deposited with the clerk by living testators or by per-

sons on their behalf, and wills of deceased testators not accompanied by petitions for the probate thereof, when deposited with the clerk by persons having custody thereof as provided in section 633.285.

[C51, §1290; R60, §2322; C73, §2331; C97, §3277; C24, 27, 31, 35, 39, §**11856;** C46, 50, 54, 58, 62, §633.11; C66, 71, 73, 75, 77, 79, 81, §633.286]

633.287 Manner of deposit.

Every such will shall be enclosed in a sealed wrapper. The clerk shall indorse thereon the name of the testator, the name of the depositor, the date of deposit, and, if provided, the name of the person to be notified of the deposit of such will upon the death of the testator. The clerk shall hold such will until disposed of as provided in section 633.288 or 633.289.

[C66, 71, 73, 75, 77, 79, 81, §633.287]

633.288 Delivery by clerk during lifetime of testator.

During the lifetime of the testator, such will shall be delivered only to the testator, or to some person authorized by the testator by an order in writing duly acknowledged.

[C66, 71, 73, 75, 77, 79, 81, §633.288]

633.289 Delivery by clerk after death of testator.

After being informed of the death of a testator, the clerk shall notify the person, if any, named in the indorsement on the wrapper of said will. If no petition for the probate thereof has been filed within thirty days after the death of the testator, it shall be publicly opened, and the court shall make such orders as it deems appropriate for the disposition of said will. The clerk shall notify the executor named therein and such other persons as the court shall designate of such action. If the proper venue is in another court, the clerk, upon request, shall transmit such will to such court, but before such transmission, the clerk shall make a true copy thereof and retain the same in the clerk's files.

[C66, 71, 73, 75, 77, 79, 81, §633.289]

PART 4

PROCEDURE FOR PROBATE OF WILLS

633.290 Petition for probate of will.

At the time the will of a decedent is filed with the clerk, or thereafter, any interested person may file a verified petition in the district court of the proper county:

1. To have the will admitted to probate;
2. For the appointment of the executor.

A petition for probate may be combined with a petition for appointment of the executor, and any person interested in either the probate of a will or in the appointment of the executor, may petition for both.

[C66, 71, 73, 75, 77, 79, 81, §633.290]

633.291 Contents of petition for probate of will.

A petition for probate of a will shall state:

1. The name, domicile, and date of death of the decedent.
2. If the decedent was not domiciled in the state at the time of the decedent's death, then, that the decedent had property within the county in which the petition is filed, or any other basis for jurisdiction in such county.

[C66, 71, 73, 75, 77, 79, 81, §633.291]

633.292 Contents of petition for appointment of executor.

A petition for the appointment of an executor shall state the name and address of the person nominated or proposed as executor, and that such person is qualified to act as executor. If the person proposed in said petition is not the person nominated in the will, the petition shall state the reason why the person nominated is not proposed as executor. Unless bond is waived in the will, the petition shall state the estimated value of the personal property of the estate plus the estimated gross annual income of the estate during the period of administration.

[C66, 71, 73, 75, 77, 79, 81, §633.292]

633.293 Hearing upon petition.

Upon the filing of a petition for probate of a will, the court or the clerk may, in its or the clerk's discretion, hear it forthwith, or at such time and place as the court or clerk may direct, with or without requiring notice, and upon proof of due execution of the will, admit the same to probate.

[C51, §1294; R60, §2326; C73, §2341; C97, §3284; S13, §3284; C24, 27, 31, 35, 39, §**11865;** C46, 50, 54, 58, 62, §633.20; C66, 71, 73, 75, 77, 79, 81, §633.293]

633.294 Order of preference for appointment of executor.

Letters testamentary may be granted to one or more persons found to be qualified. Preference for appointment shall be in the following order:

1. The person designated in the will;
2. Any beneficiary named in the will, or a person nominated by the beneficiaries;
3. Any creditor of the deceased, or a person nominated by such creditor;
4. Such other person as the court may find to be qualified.

[C66, 71, 73, 75, 77, 79, 81, §633.294]

633.295 Testimony of witnesses.

The proof may be made by the oral or written

testimony of one or more of the subscribing witnesses to the will. If such testimony is in writing, it shall be substantially in the following form executed and sworn to after the death of the decedent:

In the District Court of Iowa
In and for . . . . . County
In the Matter of the Estate of . . . . . .
. . . . . , Deceased
Probate No. . . . . .
Testimony of Subscribing
Witness on Probate of Will.
State of . . . . .)
. . . . . County) ss

I, ... , being first duly sworn, state:

I reside in the County of . . . . . , State of . . . . . ; I knew the testator on the . . . . . day of . . . . . (month), ... (year), the date of the instrument, the original or exact reproduction of which is attached hereto, now shown to me, and purporting to be the last will and testament of the said . . . . . , deceased; I am one of the subscribing witnesses to said instrument; at the said date of said instrument, I knew . . . . . , the other subscribing witness; that said instrument was exhibited to me and to the other subscribing witness by the testator, who declared the same to be the testator's last will and testament, and was signed by the testator at . . . . . , in the County of . . . . . , State of . . . . . , on the date shown in said instrument, in the presence of myself and the other subscribing witness; and the other subscribing witness and I then and there, at the request of the testator, in the presence of said testator and in the presence of each other, subscribed our names thereto as witnesses.

. . . . . .
Name of witness
. . . . . .
Address

Subscribed and sworn to before me this . . . . . day of . . . . . (month), ... (year)

. . . . . .
Notary Public in and for the
(Seal) State of . . . . . .

[C66, 71, 73, 75, 77, 79, 81, §633.295]
2000 Acts, ch 1058, §56

633.296 Deposition.

If it is desired to prove the execution of the will by deposition, rather than by use of the affidavit form provided in section 633.295, upon application, the clerk shall issue a commission to some officer authorized by the law of this state to take depositions, with the will annexed, and the officer taking the deposition shall exhibit it to the witness for identification, and, when identified by the witness, shall mark it as "Exhibit ...." and cause the witness to connect the witness' identification with it as such exhibit. Before sending out the commission, the clerk shall make and retain in the clerk's office a true copy of such will.

[C97, §3285; C24, 27, 31, 35, 39, §**11866;** C46, 50, 54, 58, 62, §633.21; C66, 71, 73, 75, 77, 79, 81, §633.296]

633.297 Witnesses unavailable.

If all of such witnesses are deceased or otherwise not available, then it shall be permissible to prove said will by the sworn testimony of two credible disinterested witnesses that the signature to the will is in the handwriting of the person whose will it purports to be, and that the signatures of the witnesses are in the handwriting of such witnesses, or it may be proved by other sufficient evidence of the execution of such will.

[C46, 50, 54, 58, 62, §633.22; C66, 71, 73, 75, 77, 79, 81, §633.297]

Other evidence, proof, §622.24

633.298 Order admitting or disallowing probate of will.

The court or the clerk shall enter an order either admitting said will to probate, or disallowing probate because of insufficient proof thereof.

[C66, 71, 73, 75, 77, 79, 81, §633.298]

633.299 Order appointing executor.

If a petition for appointment of an executor has been filed, the order admitting the will to probate shall include appointment of an executor thereof, unless the court or clerk shall determine that no appointment should be made at such time.

[C51, §1299, 1302; R60, §2331, 2334; C73, §2332, 2333; C97, §3278; C24, 27, 31, 35, 39, §**11857;** C46, 50, 54, 58, 62, §633.12; C66, 71, 73, 75, 77, 79, 81, §633.299]

633.300 Certificate of probate.

When a will has been admitted to probate the clerk shall have a certificate of such fact, endorsed thereon or annexed thereto, signed by the clerk and attested by the seal of the court; and, when so certified, it, or the transcript of the record properly authenticated, may be read in evidence in all courts without further proof.

[C51, §1300; R60, §2332; C73, §2342; C97, §3286; C24, 27, 31, 35, 39, §**11867;** C46, 50, 54, 58, 62, §633.23; C66, 71, 73, 75, 77, 79, 81, §633.300]
93 Acts, ch 70, §13

633.301 Copy of will for executor.

When a will has been admitted to probate and certified pursuant to section 633.300, the clerk shall cause an authenticated copy thereof to be placed in the hands of the executor to whom letters are issued. The clerk shall retain the will in a separate file provided for that purpose until the time

for contest has expired, and promptly thereafter shall place it with the files of the estate.

[C51, §1295, 1298; R60, §2327, 2330; C73, §2343, 2344; C97, §3287; S13, §3287; C24, 27, 31, 35, 39, §**11868;** C46, 50, 54, 58, 62, §633.24; C66, 71, 73, 75, 77, 79, 81, §633.301]

93 Acts, ch 70, §14

633.302 Clerk filing copies of will.

When the clerk places an original will in a separate file as provided in section 633.301, the clerk shall place and keep a true copy of such will in the probate file containing the proceedings in the estate which it governs.

[C66, 71, 73, 75, 77, 79, 81, §633.302]

633.303 Charitable trusts — copy of wills to attorney general.

When a will creating a charitable trust has been admitted to probate, or when any instrument establishing a charitable trust has been filed with the clerk, the clerk shall forthwith mail a copy of such will or instrument to the attorney general. At any time, the attorney general may investigate for the purpose of determining and ascertaining whether or not such estate or trust is being administered in accordance with law and within the terms and purposes thereof, and may, at any time, make application to the court for such orders therein as may appear to be reasonable and proper to carry out the purposes of the trust. The words *"charitable trust"* as used in this section shall mean any fiduciary relationship with respect to property arising as a result of manifestation of an intention to create it and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable, educational or religious purposes.

[C66, 71, 73, 75, 77, 79, 81, §633.303]

633.304 Notice of probate of will with administration.

On admission of a will to probate, the executor, as soon as letters are issued, shall cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending and at any time during the pendency of administration that the executor has knowledge of the name and address of a person believed to own or possess a claim which will not or may not be paid or otherwise satisfied during administration, provide by ordinary mail to each such claimant at the claimant's last known address, and as soon as practicable give notice, except to any executor, by ordinary mail to the surviving spouse, each heir of the decedent and each devisee under the will admitted to probate whose identities are reasonably ascertainable, at such persons' last known addresses, a notice of admission of the will to probate and of the appointment of the executor, in which shall be included a notice that any action to set aside the probate of the will must be brought within the later to occur of four months from the date of the second publication of the notice or one month from the date of mailing of this notice or thereafter be forever barred, and in which shall be included a notice to debtors to make payment, and to creditors having claims against the estate to file them with the clerk within four months from the second publication of the notice, or thereafter be forever barred.

As used in this section, *"heir"* means only such person as would, in an intestate estate, be entitled to a share under section 633.219.

The notice shall be substantially in the following form:

Notice of Probate of Will,
of Appointment of Executor,
and Notice to Creditors

In the District Court of Iowa
in and for . . . . . County. Probate No.
. . . . . .
In the Estate of . . . . . , Deceased

To All Persons Interested in the Estate of . . . . . , Deceased, who died on or about . . . . . (date):

You are hereby notified that on the . . . . . day of . . . . . (month), ... (year), the last will and testament of . . . . . , deceased, bearing date of the . . . . . day of . . . . . (month), ... (year), was admitted to probate in the above named court and that . . . . . was appointed executor of the estate. Any action to set aside the will must be brought in the district court of said county within the later to occur of four months from the date of the second publication of this notice or one month from the date of mailing of this notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, or thereafter be forever barred.

Notice is further given that all persons indebted to the estate are requested to make immediate payment to the undersigned, and creditors having claims against the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of this notice or one month from the date of mailing of this notice (unless otherwise allowed or paid) a claim is thereafter forever barred.

Dated this ..... day of ..... (month), ... (year)

.....
Executor of estate
.....
Address
.....
Attorney for executor
.....
Address
Date of second publication
..... day of ..... (month), ... (year)
(Date to be inserted by publisher)

[C51, §1357, 1358; R60, §2389, 2390; C73, §2366; C97, §3304; C24, 27, 31, 35, 39, §**11890;** C46, 50, 54, 58, 62, §633.46; C66, 71, 73, 75, 77, 79, 81, §633.304]

84 Acts, ch 1080, §6; 89 Acts, ch 35, §3; 93 Acts, ch 111, §3; 2000 Acts, ch 1058, §67; 2000 Acts, ch 1150, §4; 2002 Acts, ch 1119, §98
Unnumbered paragraph 2 amended

633.304A Notice of probate of will — medical assistance claims.

On admission of a will to probate, the executor may, in accordance with section 633.410, provide by ordinary mail to the entity designated by the department of human services, a notice of admission of the will to probate and of the appointment of the executor, which shall include a notice to file claims with the clerk within the later to occur of fifteen months from the second publication of the notice to creditors or two months from the date of mailing of this notice, or thereafter be forever barred.

The notice shall be in substantially the following form:

NOTICE OF PROBATE OF WILL,
OF APPOINTMENT OF EXECUTOR,
AND NOTICE TO CREDITORS

In the District Court of Iowa
In and for ..... County.
In the Estate of ....., Deceased
Probate No. .....

To the Department of Human Services, Who May Be Interested in the Estate of ....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ... (year), the last will and testament of ....., deceased, bearing date of the ..... day of ..... (month), ... (year), was admitted to probate in the above-named court and that ..... was appointed executor of the estate.

You are further notified that the birthdate of the deceased is ..... and the deceased's social security number is .....-.....-..... The birthdate of the spouse is ..... and the spouse's social security number is .....-.....-....., and that the spouse of the deceased is alive as of the date of this notice, or deceased as of ..... (date).

You are further notified that the deceased was/was not a disabled or a blind child of the medical assistance recipient by the name of ...., who had a birthdate of ..... and a social security number of .....-.....-....., and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.5, subsection 2, paragraph *"a"*, subparagraph (1), and is now collectible from this estate pursuant to section 249A.5, subsection 2, paragraph *"b"*.

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this notice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of fifteen months from the second publication of the notice to creditors or two months from the date of mailing of this notice, unless otherwise allowed or paid, the claim is thereafter forever barred.

Dated this ..... day of ..... (month), ... (year)

.....
Executor of estate
.....
Address
.....
Attorney for executor
.....
Address
Date of second publication
..... day of ..... (month), ... (year)

2001 Acts, ch 109, §2; 2002 Acts, ch 1119, §99
Section amended

633.305 Notice if no administration.

On admission of a will to probate without administration of the estate, and upon advanced payment of the costs by the proponent, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate. As soon as practicable following the admission of the will to probate, the proponent shall give notice of the admission of the will to probate by ordinary mail addressed to the surviving spouse, each heir of the decedent, and each devisee under the will admitted to probate whose identities are reasonably ascertainable, at such persons' last known addresses. The notice of the admission of the will to probate shall include a notice that any action to set aside the will must be brought within the later to occur of four months from the date of the second publication of the notice or one month from the date of mailing of this notice, or thereafter be barred.

As used in this section, *"heir"* means only such person as would, in an intestate estate, be entitled to a share under section 633.219.

The notice shall be substantially in the following form:

Notice of Proof of Will
Without Administration

In the District Court of Iowa
in and for ..... County. Probate No.
.....
In the Estate of ....., Deceased

To All Persons Interested in the Estate of ....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ... (year), the last will and testament of ....., deceased, bearing date of the ..... day of ..... (month), ... (year), was admitted to probate in the above named court and there will be no present administration of the estate. Any action to set aside the will must be brought in the district court of the county within the later to occur of four months from the date of the second publication of this notice or one month from the date of mailing of this notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, or thereafter be forever barred.

Dated this ..... day of ..... (month), ... (year)

.....
Clerk of the district court

.....
Attorney for estate

.....
Address
Date of second publication
..... day of ..... (month), ... (year)
(Date to be inserted by publisher)

[C66, 71, 73, 75, 77, 79, 81, §633.305]

84 Acts, ch 1080, §7; 89 Acts, ch 35, §4; 93 Acts, ch 111, §4; 2000 Acts, ch 1058, §68; 2000 Acts, ch 1150, §5; 2002 Acts, ch 1119, §100

Unnumbered paragraph 2 amended

633.306 Record in foreign county.

Whenever it shall appear that the testator died seized of real estate located in a county of this state other than that in which probate is granted, a complete transcript, properly authenticated, of the record entry of the order of court admitting the will to probate, and, if a copy of such will is not contained therein, a certified copy of such will shall be attached thereto, and the same shall be filed by the clerk in the office of the clerk of the district court in such other county, who shall cause the same to be entered in the probate docket, and said transcript shall be recorded in full in the book kept for the recording of wills in such county. When so recorded, such record may be read in evidence in all courts without further proof.

[S13, §3287; C24, 27, 31, 35, 39, §**11869;** C46, 50, 54, 58, 62, §633.25; C66, 71, 73, 75, 77, 79, 81, §633.306]

See also §633.401

633.307 Costs of transcript.

The cost of such transcript and of the recording thereof shall be taxed against the estate of the decedent unless administration thereof is closed, in which event it shall be paid by the owner of the real estate involved.

[S13, §3287; C24, 27, 31, 35, 39, §**11870;** C46, 50, 54, 58, 62, §633.26; C66, 71, 73, 75, 77, 79, 81, §633.307]

PART 5

ACTIONS TO SET ASIDE OR
CONTEST OF WILLS

633.308 Setting aside probate of will.

Any interested person may petition to set aside the probate of a will by filing a written petition in the probate proceedings. The petition for such purpose shall state the grounds therefor.

[C51, §1297; R60, §2329; C73, §2353; C97, §3296; C24, 27, 31, 35, 39, §**11882;** C46, 50, 54, 58, 62, §633.38; C66, 71, 73, 75, 77, 79, 81, §633.308]

633.309 Time within which action must be commenced.

An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within the later to occur of four months from the date of second publication of notice of admission of the will to probate or one month following the mailing of the notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, at such persons' last known addresses.

[C51, §1659; R60, §1075, 1865, 2740; C73, §486, 2529; C97, §3447; S13, §2963-g, 3447; C24, 27, 31, 35, 39, §**11007;** C46, 50, 54, 58, 62, §614.1(3); C66, 71, 73, 75, 77, 79, 81, §633.309]

84 Acts, ch 1080, §8; 89 Acts, ch 35, §5

633.310 Objections prior to admission of will to probate.

Nothing herein contained shall prevent any interested person from filing objections to probate of a proposed will prior to probate thereof. If such objections are filed prior to the admission of the will to probate, the will shall not be admitted to probate pending trial and determination as to whether or not said instrument is the last will of the de-

cedent.

[C24, 27, 31, 35, 39, §**11833;** C46, 50, 54, 58, 62, §632.2; C66, 71, 73, 75, 77, 79, 81, §633.310]

633.311 Contest or objection shall be tried as a law action.

An action objecting to the probate of a proffered will, or to set aside a will, is triable in the probate court as an action at law, and the rules of civil procedure governing law actions, including demand for jury trial, shall be applicable thereto.

[C97, §3283; C24, 27, 31, 35, 39, §**11864;** C46, 50, 54, 58, 62, §633.19; C66, 71, 73, 75, 77, 79, 81, §633.311]

633.312 Joinder of parties.

In all actions to contest or set aside a will, all known interested parties who have not joined with the contestants as plaintiffs in the action, shall be joined with proponents as defendants. When additional interested parties become known, the court shall order them brought in as party defendants. All such defendants shall be brought in by serving them with notice pursuant to the rules of civil procedure.

[C66, 71, 73, 75, 77, 79, 81, §633.312]

633.313 Election of defendants to join with contestants.

Any person named as a defendant in an action to contest or set aside a will may, at time of appearance, or by leave of court at any time thereafter, elect to join with the contestants.

[C66, 71, 73, 75, 77, 79, 81, §633.313]

633.314 Taxation of costs.

The court shall tax the costs in an action to contest or set aside a will. No costs shall be taxed against a losing party who has been joined in the action but who does not appear.

[C66, 71, 73, 75, 77, 79, 81, §633.314]

633.315 Allowance for defending will.

When any person is designated as executor in a will, or has been appointed as executor, and defends or prosecutes any proceedings in good faith and with just cause, whether successful or not, that person shall be allowed out of the estate necessary expenses and disbursements, including reasonable attorney fees in such proceedings.

[C66, 71, 73, 75, 77, 79, 81, §633.315]

633.316 Notice to devisees in other wills.

If the ground of objection is that another will of the decedent has been discovered, each devisee named in such other will shall be joined in the action.

[C66, 71, 73, 75, 77, 79, 81, §633.316]

633.317 Where will is filed after letters of administration have been granted.

If, after letters of administration have been granted, a will of the decedent is admitted to probate, such letters of administration are thereby revoked, and the person to whom such letters were issued shall promptly file a final report and make an accounting to the court.

[C66, 71, 73, 75, 77, 79, 81, §633.317]

633.318 Where will is filed after letters testamentary have been granted.

If, after a will has been admitted to probate, another instrument purporting to be the will of the decedent, which has not been previously presented for probate, is filed, the court shall determine whether or not the former grant of letters should be revoked pending determination of which instrument constitutes the will of the decedent.

[C66, 71, 73, 75, 77, 79, 81, §633.318]

633.319 Proof of execution.

If the lack of the due execution of a will constitutes a ground for objection, proof of such execution shall not be made by affidavit as provided in section 633.295.

[C66, 71, 73, 75, 77, 79, 81, §633.319]

633.320 Declaratory judgment to determine last will.

The executor or any person named as a beneficiary in a will may bring an action for a declaratory judgment to have such will declared to be the last will of the decedent. In such action, all known interested persons, including heirs of the decedent and persons named as beneficiaries in said instrument and other known instruments purporting to be wills of the decedent, shall be joined as parties.

[C66, 71, 73, 75, 77, 79, 81, §633.320]

633.321 to 633.329 Reserved.

DIVISION VII

ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1

GENERAL PROVISIONS
LIMITATION

633.330 Character of proceedings.

The administration of the estate of a decedent from the filing of the petition for probate and admission or for administration until the order approving the final report and discharge of the last personal representative shall be considered as one proceeding for purposes of jurisdiction. Such entire proceeding is a proceeding in rem.

[C66, 71, 73, 75, 77, 79, 81, §633.330]

633.331 Limitation of administration.

Probate of a will, original administration of an

intestate estate, or ancillary administration of an estate, shall not be granted after five years from the death of the decedent, whether the decedent died within or without this state, unless a petition for probate or administration is filed prior to the expiration of the five-year period. However, this section does not apply to the probate of a will of a decedent who died prior to January 1, 1964.

[C51, §1325; R60, §2357; C73, §2367; C97, §3305; S13, §3305; C24, 27, 31, 35, 39, §**11891;** C46, 50, 54, 58, 62, §633.47; C66, 71, 73, 75, 77, 79, 81, §633.331; 81 Acts, ch 196, §1; 82 Acts, ch 1076, §1]

EXEMPT PROPERTY AND INSURANCE

633.332 Exempt personal property.

When the decedent left a surviving spouse, all personal property which in the hands of the decedent as head of a family would be exempt from execution, which is bequeathed or set aside to the surviving spouse in accordance with the provisions of this chapter, shall be exempt in the hands of such surviving spouse as in the hands of the decedent.

[C51, §1329; R60, §2361; C73, §2371; C97, §3312; C24, 27, 31, 35, 39, §**11918;** C46, 50, 54, 58, 62, §635.7; C66, 71, 73, 75, 77, 79, 81, §633.332]

633.333 Proceeds of insurance.

The avails of any life or accident insurance, or other sum of money made payable to the decedent's estate by any mutual aid or benevolent society upon the death or disability of a member thereof, are not subject to the debts of the decedent, except by contract or by express provision in the will, and shall be disposed of like other property left by the decedent.

[C51, §1330; R60, §2362; C73, §1182, 2372; C97, §3313; C24, 27, 31, 35, 39, §**11919;** C46, 50, 54, 58, 62, §635.8; C66, 71, 73, 75, 77, 79, 81, §633.333]

633.334 Surviving spouse included as "heir".

The words *"heirs"* and *"legal heirs"*, and other equivalent words used to designate the beneficiaries in any life insurance policy or certificate of membership in any mutual aid or benevolent association, where no contrary intention is expressed in such instrument, shall be construed to include the surviving husband or wife of the insured.

[C97, §3313; C24, 27, 31, 35, 39, §**11921;** C46, 50, 54, 58, 62, §635.10; C66, 71, 73, 75, 77, 79, 81, §633.334]

633.335 Share of survivor.

The share of such survivor in the proceeds of such policy or certificate made payable as aforesaid shall be the same as that provided by law for the distribution of the personal property of intestates.

[C97, §3313; C24, 27, 31, 35, 39, §**11922;** C46, 50, 54, 58, 62, §635.11; C66, 71, 73, 75, 77, 79, 81, §633.335]

WRONGFUL DEATH

633.336 Damages for wrongful death.

When a wrongful act produces death, damages recovered as a result of the wrongful act shall be disposed of as personal property belonging to the estate of the deceased; however, if the damages include damages for loss of services and support of a deceased spouse and parent, the damages shall be apportioned by the court among the surviving spouse and children of the decedent in a manner as the court may deem equitable consistent with the loss of services and support sustained by the surviving spouse and children respectively. If the decedent leaves a spouse, child, or parent, damages for wrongful death shall not be subject to debts and charges of the decedent's estate, except for amounts to be paid to the department of human services for payments made for medical assistance pursuant to chapter 249A, paid on behalf of the decedent from the time of the injury which gives rise to the decedent's death up until the date of the decedent's death.

[R60, §4111; C73, §2526; C97, §3313; C24, 27, 31, 35, 39, §**11920;** C46, 50, 54, 58, 62, §635.9; C66, 71, 73, 75, 77, 79, 81, §633.336]

89 Acts, ch 111, §2

633.337 to 633.341 Reserved.

PART 2

TEMPORARY ADMINISTRATION

633.342 Appointment of temporary administrator pending administration.

1. When, from any cause, probate of a will or administration cannot be immediately granted, a temporary administrator may be appointed to collect, manage, preserve and dispose of the property of the deceased, as the court may prescribe, and no appeal from such appointment shall prevent the administrator's proceeding in the discharge of the administrator's duties.

2. Such temporary administrator shall make and file an inventory of the property of the deceased in the same manner as is required of personal representative, and shall preserve such property from injury, and may do all needful acts under the direction of the court, including the sale of property and the payment of claims as directed by the court. Upon the granting of administration, the powers of the temporary administrator shall cease, and the administration of the estate shall be transferred to the personal representative to whom letters are granted.

[C51, §1320 – 1324; R60, §2352 – 2356; C73,

§2357 – 2361; C97, §3299, 3300; C24, 27, 31, 35, 39, §**11885, 11886;** C46, 50, 54, 58, 62, §633.41, 633.42; C66, §633.342, 633.343; C71, 73, 75, 77, 79, 81, §633.342]

633.343 Appointment of temporary administrator during administration.

At any time during the administration of an estate, the court, for good cause shown, may appoint a temporary administrator to carry out such orders of the court as may be necessary for the proper administration of such estate. No appeal from such appointment shall prevent the temporary administrator from proceeding in the discharge of the administrator's duties.

[C71, 73, 75, 77, 79, 81, §633.343]

633.344 to 633.347 Reserved.

PART 3

TITLE AND POSSESSION
OF DECEDENT'S PROPERTY

633.348 Right to retain existing property.

Notwithstanding the provisions of division XX, part 4, subpart C, of this chapter, any personal representative may continue to hold any investment or property originally received by the personal representative and also any increase thereof.

[C66, 71, 73, 75, 77, 79, 81, §633.348]

99 Acts, ch 125, §106, 109

633.349 Security to sustain devise or bequest.

When a person by will makes such a disposition of the person's property as to prejudice the rights of creditors, the will may be sustained, by giving security to the satisfaction of the court for the payment of the debts and charges to the extent of the value of the property devised.

[C51, §1339; R60, §2371; C73, §2384; C97, §3320; C24, 27, 31, 35, 39, §**11930;** C46, 50, 54, 58, 62, §635.19; C66, 71, 73, 75, 77, 79, 81, §633.349]

633.350 Title to decedent's estate — when property passes — possession and control thereof — liability for administration expenses, debts and family allowance.

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

[C66, 71, 73, 75, 77, 79, 81, §633.350]

633.351 Possession of real and personal property.

If there is no distributee of the real estate present and competent to take possession, or if there is a lease of such real estate outstanding, or if the distributees present and competent consent thereto, the personal representative shall take possession of such real estate, except the homestead and other property exempt to the surviving spouse. Every personal representative shall take possession of all the personal property of the decedent, except the property exempt to the surviving spouse. The personal representative may maintain an action for the possession of such real and personal property or to determine the title to any property of the decedent.

[C51, §1327; R60, §2359; C73, §2402 – 2404, 2407; C97, §3333, 3334, 3337; C24, 27, 31, 35, 39, §**11952, 11953, 11956;** C46, 50, 54, 58, 62, §635.48, 635.49, 635.52; C66, 71, 73, 75, 77, 79, 81, §633.351]

633.352 Collection of rents and payment of taxes and charges.

Unless otherwise provided by the will, the personal representative shall allocate and distribute income of an estate in accordance with chapter 637.

[C73, §2403 – 2405; C97, §3334, 3335; C24, 27, 31, 35, 39, §**11953, 11954;** C46, 50, 54, 58, 62, §635.49, 635.50; C66, 71, 73, 75, 77, 79, 81, §633.352]

99 Acts, ch 124, §31

633.353 Surrender of possession upon application by personal representative.

Upon application by the personal representative, and after such notice, if any, as the court may prescribe, for good cause shown, the court may enter an order authorizing said personal representative to surrender any of such property to the person or persons who, under the will or under the rules of intestate succession, will ultimately be entitled to such property.

[C66, 71, 73, 75, 77, 79, 81, §633.353]

633.354 Surrender of possession upon application by any interested person.

Upon application of any interested person and after such notice to the personal representative and to such other persons, if any, as the court may prescribe, and for good cause shown, the court may

enter an order authorizing said personal representative to surrender any of such property to the person or persons who, under the will or under the rules of intestate succession, will ultimately be entitled to such property. The court may require a bond or other security conditioned as it may determine in connection with the delivery of such property.

[C66, 71, 73, 75, 77, 79, 81, §633.354]

633.355 Delivery of specific devise after nine months.

Unless the court, for cause shown, determines that the possession of the personal representative shall continue for a longer period, the personal representative shall deliver all specifically devised property to the devisees entitled thereto after the expiration of nine months from the date of appointment of the personal representative. This section shall not preclude the court from directing that such delivery be made before such period has expired, nor shall the personal representative be prevented from sooner settling the estate and delivering such property.

[C51, §1381 – 1383; R60, §2413 – 2415; C73, §2429 – 2431; C97, §3355 – 3357; C24, 27, 31, 35, 39, §**11978 – 11980;** C46, 50, 54, 58, 62, §635.73 – 635.75; C66, 71, 73, 75, 77, 79, 81, §633.355]

633.356 Distribution of property by affidavit.

1. When the gross value of the decedent's personal property does not exceed twenty-five thousand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship, and if forty days have elapsed since the death of the decedent, the successor of the decedent as defined in subsection 2 may, by filing an affidavit prepared pursuant to subsection 3, and without procuring letters of appointment, do any of the following with respect to one or more particular items of personal property:

a. Receive any particular item of property that is tangible personal property of the decedent.

b. Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred.

c. Collect the proceeds from any life insurance policy or any other item of property for which a beneficiary has not been designated.

2. *"Successor of the decedent"* means:

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

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

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

a. The decedent's name and the date and place of the decedent's death.

b. That at least forty days have elapsed since the death of the decedent, as shown by an attached certified copy of the death certificate of the decedent.

c. That the gross value of the decedent's personal property does not exceed twenty-five thousand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship.

d. A description of the property of the decedent that is to be paid, transferred, or delivered to the successor.

e. The name, address, and social security number of the successor of the decedent to the described property, and whether the successor is under a legal disability.

f. If applicable, that attached copy of the decedent's will is the last will of the decedent and has been admitted to probate or otherwise filed in the office of a clerk of the district court.

g. That no persons other than those listed in the affidavit have a right to the interest of the decedent in the described property.

h. That the affiant requests that the described property be paid, delivered, or transferred to the successors of the decedent to the described property.

i. That the affiant affirms under penalty of perjury that the affidavit is true and correct.

More than one person may execute an affidavit under this subsection.

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

If the evidence of ownership is not presented to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the successor provide the holder with a bond in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder

may incur or suffer by reason of the payment, delivery, or transfer of the property. This subsection does not preclude the holder and the successor from dispensing with the requirement that a bond be provided, and instead entering into an agreement satisfactory to the holder concerning the duty of the successor to indemnify the holder.

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

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

6. If the requirements of this section are satisfied:

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

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

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

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

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

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

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

91 Acts, ch 36, §6; 2001 Acts, ch 140, §3 – 5

2001 amendments to subsection 1 and subsection 3, paragraph c, apply to estates of decedents dying on or after July 1, 2001; 2001 Acts, ch 140, §5

633.357 Custodial independent retirement accounts.

1. As used in this section, unless the context otherwise requires:

a. "Custodial independent retirement account" means an individual retirement account in accordance with section 408(a) of the Internal Revenue Code or a Roth individual retirement account in accordance with section 408A of the Internal Revenue Code, the assets of which are not held in trust.

b. "Designator" means a person entitled to designate the beneficiary or beneficiaries of a custodial independent retirement account.

2. The assets of a custodial independent retirement account shall pass on or after the death of the designator of the custodial independent retirement account to the beneficiary or beneficiaries specified in the custodial independent retirement account agreement signed by the designator or designated by the designator in writing pursuant to the custodial independent retirement account agreement. Assets that pass to a beneficiary pursuant to this section shall not be considered part of the designator's probate estate except to the extent that the designator's estate is a beneficiary. The designation of a beneficiary shall not be considered testamentary and does not have to be witnessed.

3. This section applies to a custodial independent retirement account established and a beneficiary designation made prior to, on, or after July 1, 1999. This section shall be considered to be declarative of the law as the law existed immediately prior to July 1, 1999.

4. This section shall not be construed to imply that assets or benefits that are payable upon the death of a person to a beneficiary or beneficiaries designated in or pursuant to a written arrangement not described in this section, other than a

will, are part of the person's probate estate or that the arrangement is testamentary.

99 Acts, ch 56, §4

633.358 through 633.360 Reserved.

PART 4

INVENTORY

633.361 Report and inventory.

Within ninety days after qualification by the personal representative, unless a longer time is granted by the court, the personal representative shall file with the clerk a report and inventory of the property of the decedent, so far as the same has come to the knowledge of the personal representative. The report and inventory shall be verified or affirmed under penalty of perjury. It shall include the following information:

1. Name, age and residence of decedent.
2. Date of death.
3. Whether decedent died testate or intestate.
4. Name and post office address of the personal representative.
5. Name and post office address of the surviving spouse, if any.
6. Name, relationship and post office address of each beneficiary under the will (if the decedent died testate) or of each heir (if the decedent died intestate). If any persons take by representation, the personal representative shall list the deceased person through whom those persons take and shall also list the persons taking under that deceased person.
7. If the decedent died testate, the name and address of each child, if any, born to or adopted by decedent after execution of the will.
8. Legal descriptions and estimated values of all the real estate of the decedent in the state of Iowa.
9. Legal descriptions and estimated values of all real estate of the decedent outside of the state of Iowa.
10. Personal property regarded as exempt from execution, with estimated values.
11. All other personal property of the decedent, with estimated values.
12. A listing of all other items, with estimated values, which are subject to Iowa inheritance tax or federal estate tax.
13. A report concerning any reductions in the amount of unified credit available for federal estate tax purposes.

[C51, §1328; R60, §2360; C73, §2370; C97, §3310; S13, §1481-a26; C24, §7319, 11913; C27, 31, 35, 39, §**11913;** C46, 50, 54, 58, 62, §635.1; C66, 71, 73, 75, 77, 79, 81, §633.361]

83 Acts, ch 177, §36, 38; 84 Acts, ch 1092, §1

633.362 Filing mandatory.

Such inventory must be filed in all cases, notwithstanding the provisions of any will or the action of any heirs or devisees waiving the filing thereof, and no administration shall be closed until the same has been filed.

[C97, §3310; C24, 27, 31, 35, 39, §**11915;** C46, 50, 54, 58, 62, §635.4; C66, 71, 73, 75, 77, 79, 81, §633.362]

633.363 Reporting failure to court.

The failure of the personal representative promptly to make said inventory and report shall be forthwith reported by the clerk to the court for such order as may be necessary to enforce the making and filing of the same.

[C27, 31, 35, §11913-b1; C39, §**11913.1;** C46, 50, 54, 58, 62, §635.2; C66, 71, 73, 75, 77, 79, 81, §633.363]

633.364 Supplementary inventory.

Whenever any additional information or property not mentioned in the inventory comes to the knowledge of a personal representative, the personal representative shall make a supplementary inventory thereof, such supplementary inventory to be filed within thirty days after such discovery.

[C51, §1333; R60, §2365; C73, §2376; C97, §3310; C24, 27, 31, 35, 39, §**11914;** C46, 50, 54, 58, 62, §635.3; C66, 71, 73, 75, 77, 79, 81, §633.364]

633.365 Appraisement.

Property belonging to the estate need not be appraised unless required for inheritance tax purposes, under the provisions of this Code, or by order of court.

[C51, §1331, 1332; R60, §2363, 2364; C73, §2373, 2374, 2378; C97, §3311; S13, §3311; C24, 27, 31, 35, 39, §**11916, 11917;** C46, 50, 54, 58, 62, §635.5, 635.6; C66, 71, 73, 75, 77, 79, 81, §633.365]

633.366 Debts of executor.

The naming of any person as executor in a will shall not operate as a discharge or bequest of any right of action owned by the testator against such persons, if it is a right that otherwise survives against such person. Every such right of action shall be included among the assets of the decedent in the inventory.

[C66, 71, 73, 75, 77, 79, 81, §633.366]

633.367 Inventory and appraisement as evidence.

Inventories and appraisements may be given in evidence in all proceedings, but shall not be conclusive, and other evidence may be introduced to vary the effect thereof.

[C66, 71, 73, 75, 77, 79, 81, §633.367]

633.368 Property for payment of creditor's claims.

The property liable for the payment of debts and

charges against a decedent's estate shall include all property transferred by the decedent with intent to defraud the decedent's creditors or any of them, or transferred by any other means which is in law void or voidable as against the creditors or any of them; and the right to recover such property, so far as necessary for the payment of the debts and charges against the estate of the decedent, shall be exclusively in the personal representative, who shall take such steps as may be necessary to recover the same. Such property shall constitute general assets for the payment of all creditors.

[C73, §2381; C97, §3317; C24, 27, 31, 35, 39, §**11927;** C46, 50, 54, 58, 62, §635.16; C66, 71, 73, 75, 77, 79, 81, §633.368]

633.369 to 633.373 Reserved.

PART 5

ALLOWANCE FOR SURVIVING SPOUSE AND MINOR CHILDREN

633.374 Allowance to surviving spouse.

The court shall, upon application, set off and order paid to the surviving spouse, as part of the costs of administration, sufficient of the decedent's property as it deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the decedent. When said application is not made by the personal representative, notice of hearing upon the application shall be given to the personal representative. The court shall take into consideration the station in life of the surviving spouse and the assets and condition of the estate. The allowance shall also include such additional amount as the court deems reasonable for the proper support, during such period, of dependents of the decedent who reside with the surviving spouse. Such allowance to the surviving spouse shall not abate upon the death or remarriage of such spouse.

[C51, §1338; R60, §2370; C73, §2375, 2377; C97, §3314; C24, 27, 31, 35, 39, §**11923, 11924;** C46, 50, 54, 58, 62, §635.12, 635.13; C66, 71, 73, 75, 77, 79, 81, §633.374]

633.375 Review of allowance to surviving spouse.

The court may, upon the petition of the spouse, or other person interested, and after hearing pursuant to notice to all interested parties, review such allowance and increase or decrease the same.

[C51, §1338; R60, §2370; C73, §2375, 2377; C97, §3314; C24, 27, 31, 35, 39, §**11923;** C46, 50, 54, 58, 62, §635.12; C66, 71, 73, 75, 77, 79, 81, §633.375]

633.376 Allowance to children who do not reside with surviving spouse.

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

[C66, 71, 73, 75, 77, 79, 81, §633.376]

83 Acts, ch 101, §127; 86 Acts, ch 1245, §1497; 90 Acts, ch 1253, §120

633.377 Review of allowance to minor children.

The court may, upon the petition of any interested person, review the allowance made to the minor children who do not reside with the surviving spouse and may increase or decrease the same and make such other orders as it may deem proper.

[C51, §1338; R60, §2370; C73, §2375, 2377; C97, §3314; C24, 27, 31, 35, 39, §**11923;** C46, 50, 54, 58, 62, §635.12; C66, 71, 73, 75, 77, 79, 81, §633.377]

633.378 to 633.382 Reserved.

PART 6

SALE OF PROPERTY

633.383 When power given in will.

When power to sell, mortgage, lease, pledge or exchange property of the estate has been given to any personal representative under the terms of any will, the statutory requirements with reference to procedure for such purposes shall not apply.

[C51, §1297; R60, §2329; C73, §2353; C97, §3295, 3296; C24, 27, 31, 35, 39, §**11879 – 11882;** C46, 50, 54, 58, 62, §633.35 – 633.38; C66, 71, 73, 75, 77, 79, 81, §633.383]

633.384 Equitable conversion and power of sale.

A testamentary direction to sell real property, and the exercise of a testamentary power of sale of real property, shall constitute an equitable conversion of real estate into personal property, but shall

not affect distribution of the estate under the provisions of the will.

[C51, §1297; R60, §2329; C73, §2353; C97, §3295, 3296; C24, 27, 31, 35, 39, §**11879 – 11882;** C46, 50, 54, 58, 62, §633.35 – 633.38; C66, 71, 73, 75, 77, 79, 81, §633.384]

633.385 Conversion.

1. *When realty treated as personalty.* Real property acquired by the personal representative by the completion of foreclosure proceedings, or by the forfeiture of real estate contracts, after the death of the decedent shall be deemed to be personal property for the purpose of administration and distribution of the estate.

2. *When personalty treated as realty.* In all cases of sale of real property by a personal representative under order of court, the surplus of the proceeds of such sale remaining after the payment of debts and charges shall be deemed to be real property and disposed of in the same proportions as the real property would have been if it had not been sold.

[C66, 71, 73, 75, 77, 79, 81, §633.385]

633.386 Sale, mortgage, pledge, lease or exchange of property — purposes.

1. Any real or personal property belonging to the decedent, except exempt personal property and the homestead, may be sold, mortgaged, pledged, leased or exchanged by the personal representative for any of the following purposes:

a. The payment of debts and charges against the estate;

b. The distribution of the estate or any part thereof;

c. Any other purpose in the best interests of the estate.

2. Exempt personal property under such provisions as the court may direct, if not set off to the surviving spouse, may be sold, mortgaged, pledged, leased, or exchanged, provided that the surviving spouse consents thereto.

3. The homestead, under such provisions as the court may direct, if not set off to the surviving spouse and if the surviving spouse has not elected to occupy the homestead, may be sold, mortgaged, pledged, leased or exchanged.

4. The proceeds from the sale of any exempt personal property or from the sale of the homestead shall be held by the personal representative subject to the rights of the surviving spouse or issue, unless such surviving spouse or issue has expressly waived the rights to such proceeds.

[C51, §1341 – 1343; R60, §2373 – 2375; C73, §2386 – 2388; C97, §3322, 3323; C24, 27, 31, §11932, 11933; C35, §11932, 11933, 11951-g2; C39, §**11932, 11933, 11951.2;** C46, 50, 54, 58, 62, §635.21 – 635.23, 635.42; C66, 71, 73, 75, 77, 79, 81, §633.386]

633.387 Sale of personal property without order of court.

Personal property of a perishable nature and personal property for which there is a regularly established market may be sold by the personal representative without order of court.

[C51, §1341; R60, §2373; C73, §2386; C97, §3322; C24, 27, 31, 35, 39, §**11932;** C46, 50, 54, 58, 62, §635.21; C66, 71, 73, 75, 77, 79, 81, §633.387]

633.388 Petition to sell, mortgage, exchange, pledge or lease property.

A petition to sell, mortgage, exchange, pledge or lease any real or personal property shall set forth the reasons for the application and describe the property involved. It may apply for different authority as to separate parts of the property; or it may apply in the alternative for authority to sell, mortgage, exchange, pledge or lease. Whenever it is for the best interests of the estate, real and personal property of the estate may be sold, mortgaged, exchanged, pledged or leased as a unit.

[C51, §1342, 1343; R60, §2374, 2375; C73, §2387, 2388; C97, §3323; C24, 27, §11933; C35, §11933, 11951-g4; C39, §**11933, 11951.4;** C46, 50, 54, 58, 62, §635.23, 635.44; C66, 71, 73, 75, 77, 79, 81, §633.388]

633.389 Notice on sale, mortgage, exchange, pledge or lease of property.

Upon the filing of the petition unless notice is waived in writing, notice in accordance with section 633.40, shall be served on all persons interested in the property, provided that as to personal property and as to the lease of real property not specifically devised, for a period not to exceed one year, the court may hear the petition without notice. When notice is required, the notice shall state briefly the nature of the application. Upon satisfactory proof, the court may order the sale, mortgage, exchange, pledge or lease of the property described, or any part of the property, at a price and upon terms and conditions as the court may authorize. For the purposes of this section, the term *"all persons interested"* includes only distributees in the estate and persons who have requested notice as provided by this Code.

[C51, §1342 – 1344; R60, §2374 – 2376; C73, §2387 – 2389; C97, §3323, 3324; C24, §11933, 11934, 11935; C27, 31, §11933, 11935; C35, §11933, 11935, 11951-g5; C39, §**11933, 11935, 11951.5;** C46, 50, 54, 58, 62, §635.23 – 635.25, 635.45; C66, 71, 73, 75, 77, 79, 81, §633.389; 81 Acts, ch 193, §2]

633.390 Sale subject to mortgage.

When a claim is secured by a mortgage on property, the court may, with the consent of the mortgagee, order the sale of the property subject to the mortgage, and such consent shall release the estate should a deficiency later appear.

[C66, 71, 73, 75, 77, 79, 81, §633.390]

633.391 Quieting adverse claims.

A petition to determine questions of conflicting and controverted title, or to remove clouds from any title or interest of property involved, may be combined with the petition provided in section 633.388.

[C66, 71, 73, 75, 77, 79, 81, §633.391]

633.392 Terms of sale.

In all sales of property, the court may authorize credit to be given by the personal representative on such terms as the court may prescribe. Credit for more than twelve months shall be extended only after hearing pursuant to notice to interested parties.

[C51, §1347, 1348, 1350; R60, §2379, 2380, 2382; C73, §2392, 2393, 2395; C97, §3326; C24, 27, 31, 35, 39, §**11938;** C46, 50, 54, 58, 62, §635.27; C66, 71, 73, 75, 77, 79, 81, §633.392]

633.393 Purchase by holder of lien.

At any sale of real or personal property upon which there is a mortgage, pledge or other lien, the holder of such lien may become the purchaser, and may apply the amount of the lien on the purchase price in the following manner. If no claim thereon has been filed or allowed, the court, at the hearing on the report of sale and for confirmation of the sale, may examine into the validity and enforceability of the lien or charge and the amount due thereunder and secured thereby, and may authorize the personal representative to accept the receipt of such purchaser for the amount due thereunder and secured thereby as payment pro tanto. If such mortgage, pledge or other lien is a valid claim against the estate and has been allowed, the receipt of the purchaser for the amount due the purchaser from the proceeds of the sale is a payment pro tanto. If the amount for which the property is purchased, whether or not a claim for it has been filed or allowed, is insufficient to defray the expenses and discharge the mortgage, pledge or other lien, the purchaser must pay an amount sufficient to pay the balance of such expenses. Nothing permitted under the terms of this section shall be deemed to be an allowance of a claim based upon such mortgage, pledge or other lien.

[C66, 71, 73, 75, 77, 79, 81, §633.393]

633.394 Order to sell, mortgage, pledge, exchange or lease to be refused if bond given.

1. *Bond to prevent sale.* Any person interested in the estate may prevent a sale, mortgage, pledge, exchange or lease of the whole or any part of the real estate or personal property for any purpose, by giving bond to the satisfaction of the court, conditioned that the person will pay such demands against the estate as the court shall require, not to exceed the value of the property thus kept from sale, mortgage, pledge, exchange, or lease, as soon as called upon by the court for that purpose.

2. *Breach of bond — procedure.* If the conditions of such bond are broken, the property will be liable for the debts, unless it has passed into the hands of innocent purchasers, and the executor or administrator may take possession thereof and sell it under the direction of the court, or may prosecute the bond, or pursue both remedies at the same time, if the court so directs.

3. *Effect of bond.* If the conditions of the bond are complied with, the property shall pass by devise, bequest, distribution, or descent in the same manner as though there had been no debts against the estate.

[C51, §1351 – 1353; R60, §2383 – 2385; C73, §2396 – 2398; C97, §3328, 3329; C24, 27, 31, 35, 39, §**11941 – 11943;** C46, 50, 54, 58, 62, §635.30 – 635.32; C66, 71, 73, 75, 77, 79, 81, §633.394]

633.395 Validity of proceedings.

No proceedings for sale, mortgage, pledge, lease, exchange or conveyance by a personal representative of property belonging to the estate shall be subject to collateral attack on account of any irregularity in the proceedings which is not such as to deprive the court of jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §633.395]

633.396 Order for sale, mortgage, pledge, exchange or lease of real property.

The order shall describe the property to be sold, mortgaged, pledged, exchanged or leased, and may designate the sequence in which the several parcels shall be sold, mortgaged, pledged, exchanged or leased. An order for sale may direct whether the property shall be sold at private sale or public auction, and, if the latter, the place or places of sale. The order of sale may prescribe the terms, conditions and manner of sale. The court may, in its discretion, provide for appraisal for its guidance as to value of the property, and determine whether or not additional bond shall be deposited by the personal representative. If real property is to be mortgaged, it may fix the maximum amount of principal, the earliest and latest dates of maturity, and the purposes for which the proceeds shall be used. An order for sale, mortgage, pledge, exchange or lease shall remain in force until terminated by the court.

[C51, §1345 – 1350; R60, §2377 – 2382; C73, §2390 – 2395; C97, §3325 – 3327; C24, 27, 31, 35, 39, §**11937 – 11940;** C46, 50, 54, 58, 62, §635.26 – 635.29; C66, 71, 73, 75, 77, 79, 81, §633.396]

633.397 Sale at public auction.

In all sales of property at public auction, the personal representative shall give such notice, in such form and manner, and to such persons or parties, as the court may prescribe. If no provision for notice is made by the court, the notice shall be pub-

lished once each week for two consecutive weeks in some newspaper of general circulation in the county where sale is to be held, the last publication to be not less than one day nor more than seven days before the day of sale. If the property to be sold is located in more than one county, the sale may be held and notice given in any one or more of said counties. Unless otherwise provided by order of the court, the notice shall state the time and place of the sale and describe the property to be sold. Proof of service of the notice required shall be filed before confirmation of the sale.

[C51, §1347, 1348, 1350; R60, §2379, 2380, 2382; C73, §2392, 2393, 2395; C97, §3326; C24, 27, 31, 35, 39, §**11938;** C46, 50, 54, 58, 62, §635.27; C66, 71, 73, 75, 77, 79, 81, §633.397]

633.398 Adjournment of sale at public auction.

The personal representative may adjourn any sale from time to time when, in the personal representative's discretion, it is deemed for the best interests of the estate to do so, but no adjournment shall be to a time more than three months from the date first fixed for the sale. Every adjournment shall be announced publicly at the time and place at which adjournment is made.

[C51, §1347, 1348, 1350; R60, §2379, 2380, 2382; C73, §2392, 2393, 2395; C97, §3326; C24, 27, 31, 35, 39, §**11938;** C46, 50, 54, 58, 62, §635.27; C66, 71, 73, 75, 77, 79, 81, §633.398]

633.399 Report for approval.

After making any such sale, mortgage, exchange or lease of real property, the personal representative shall make a verified report thereof to the court. The court shall examine said report, and if satisfied that the sale, mortgage, exchange, or lease has been at a price and upon terms advantageous to the estate, and, in all respects, made in conformity with law, and that it ought to be confirmed, shall confirm the same and order the personal representative to deliver a deed, mortgage, lease or other proper instruments to the persons entitled thereto; provided, however, that in the event said real property has been sold at private sale without an appraisal for inheritance tax purposes or for purpose of such sale, or, if it has been so appraised and has been sold at private sale for less than the appraised value thereof, then, upon the filing of such report, the court may enter an order fixing a time and place for hearing thereon and prescribe a notice of such hearing to be served upon all interested persons, any one of whom, prior to the time fixed for such hearing, may file written objections to the entry of an order approving said sale. If not satisfied that the sale, mortgage, exchange, or lease has been made in conformity with law and that it is to the best interests of the estate, the court may reject the sale, mortgage, exchange, or lease, and enter such orders as the court may deem advisable.

[C51, §1354, 1355; R60, §2386, 2387; C73, §2399, 2400; C97, §3330, 3331; C24, 27, 31, §11944 – 11947; C35, §11944 – 11947, 11951-g6, -g7; C39, §**11944 – 11947, 11951.6, 11951.7;** C46, 50, 54, 58, 62, §635.33 – 635.36, 635.46, 635.47; C66, 71, 73, 75, 77, 79, 81, §633.399]

633.400 Joining report with petition.

The report of any private sale, mortgage, exchange, or lease of real property, as provided in section 633.399, may be joined with the petition provided in section 633.388.

[C66, 71, 73, 75, 77, 79, 81, §633.400]

633.401 Record in foreign county.

When real property so conveyed or encumbered is located in a county other than that in which such proceedings are had, a complete transcript of the record of all proceedings relating thereto shall be filed by the personal representative in the office of the clerk in such county.

[C97, §3331; C24, 27, 31, 35, 39, §**11949;** C46, 50, 54, 58, 62, §635.38; C66, 71, 73, 75, 77, 79, 81, §633.401]

633.402 Sale defined.

For purposes of part 6 of this division, sale of property includes but is not limited to the granting of an easement, the granting of an option, the granting of a right of refusal and the granting or conveyance of any other interest, title or right regarding property.

[81 Acts, ch 193, §3]

633.403 to 633.409 Reserved.

PART 7

CLAIMS AGAINST DECEDENT'S ESTATE, AND TIME AND MANNER OF FILING CLAIMS

633.410 Limitation on filing claims against decedent's estate.

1. All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address.

2. Notwithstanding subsection 1, claims for debts created under section 249A.5, subsection 2, relating to the recovery of medical assistance payments shall be barred under this section unless filed with the clerk within the later to occur of fif-

teen months after the date of the second publication of the notice to creditors, or two months after service of notice by ordinary mail, on the form prescribed in section 633.231 for intestate estates or on the form prescribed in section 633.304A for testate estates, to the entity designated by the department of human services to receive notice.

3. Notice is not required to be given by mail to any creditor whose claim will be paid or otherwise satisfied during administration and the personal representative may waive the limitation on filing provided under this section. This section does not bar claims for which there is insurance coverage, to the extent of the coverage, or claimants entitled to equitable relief due to peculiar circumstances.

[C51, §1373; R60, §2405; C73, §2421; C97, §3349; C24, 27, 31, 35, 39, §**11972;** C46, 50, 54, 58, 62, §635.68; C66, 71, 73, 75, 77, 79, 81, §633.410]

84 Acts, ch 1080, §9; 85 Acts, ch 92, §1; 89 Acts, ch 35, §6; 95 Acts, ch 68, §7; 2001 Acts, ch 109, §3

633.411 Pleading statute of limitations.

It shall be within the discretion of the personal representative to determine whether or not the applicable statute of limitations shall be pleaded to bar a claim which the personal representative believes to be just, provided, however, that this section shall not apply where the personal representative was appointed upon the application of a creditor.

[C66, 71, 73, 75, 77, 79, 81, §633.411]

633.412 When claim not affected by statute of limitations.

A claim shall not be barred by the statute of limitations if the claim was not barred at the time of the decedent's death and is filed against the decedent's estate within four months from the date of the decedent's death.

[C51, §1373; R60, §2405; C73, §2421; C97, §3349; C24, 27, 31, 35, 39, §**11972;** C46, 50, 54, 58, 62, §635.68; C66, 71, 73, 75, 77, 79, 81, §633.412]

84 Acts, ch 1080, §10

633.413 Claims barred when no administration commenced.

All claims barrable under the provisions of section 633.410 shall, in any event, be barred if administration of the estate, whether testate or intestate, original or ancillary is not commenced within five years after the death of the decedent.

[C51, §1325, 1356; R60, §2357, 2388; C73, §2367, 2401; C97, §3305, 3332; S13, §3305; C24, 27, 31, 35, 39, §**11891, 11951;** C46, 50, 54, 58, 62, §633.47, 635.40; C66, 71, 73, 75, 77, 79, 81, §633.413]

633.414 Liens not affected by failure to file claim.

Nothing in sections 633.410, 633.412 and 633.413 shall affect or prevent any action or proceeding to enforce any mortgage, pledge or other lien upon property of the estate.

[C66, 71, 73, 75, 77, 79, 81, §633.414]

633.415 Commencement or continuance of separate action.

Any action pending against the decedent at the time of the decedent's death that survives, shall also be considered a claim filed against the estate if notice of substitution is served upon the personal representative as defendant within the time provided for filing claims in section 633.410; however, this provision shall not bar parties entitled to equitable relief due to peculiar circumstances. A copy of the proof of service of notice of such proceedings shall be filed in the probate proceedings but shall not be jurisdictional.

A separate action based on a debt or other liability of the decedent may be commenced against a personal representative of the decedent in lieu of filing a claim in the estate. Such an action shall be commenced by serving an original notice on the personal representative within the time provided for filing claims in section 633.410 and such action shall also be considered a claim filed against the estate. Such action may be commenced only in a county wherein the venue would have been proper had the decedent survived and the action been commenced against the decedent. A copy of the proof of service of notice shall be filed in the probate proceedings but shall not be jurisdictional.

A judgment or decree in favor of the plaintiff in any such action shall constitute an adjudication against the estate.

In all cases where by the death of the party to be charged, the bringing of the action against the estate shall have been delayed beyond the period provided by the statute of limitations, the action may be brought if the original notice is served on the personal representative as defendant, and proof of service of notice of such proceeding is filed in the probate proceedings within the time provided for filing claims in section 633.410.

[C51, §1373; R60, §2405; C73, §2421; C97, §3349; C24, 27, 31, 35, 39, §**11972;** C46, 50, 54, 58, 62, §635.68; C66, 71, 73, 75, 77, 79, 81, §633.415]

633.416 Compulsory counterclaims — rules of civil procedure.

In an action commenced by or against the fiduciary under the provisions of section 633.415, or in any action pending by or against the decedent that survives under the provisions of section 633.415, the rules of civil procedure as to compulsory counterclaims shall apply in such action.

[C66, 71, 73, 75, 77, 79, 81, §633.416]

See R.C.P. 1.241 et seq.

633.417 Separate action in lieu of proceeding on claims.

The provisions of sections 633.438 to 633.448

are not applicable to actions continued or commenced under section 633.415.

[C66, 71, 73, 75, 77, 79, 81, §633.417]

633.418 Form and verification of claims — general requirements.

No claim shall be allowed against an estate on application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, describing the nature and the amount thereof, if ascertainable, and accompanied by the affidavit of the claimant, or someone for the claimant, that the amount is justly due, or if not yet due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. If the claim is contingent, the nature of the contingency shall also be stated. The duplicate of said claim shall be mailed by the clerk to the personal representative or the personal representative's attorney of record.

[C51, §1359; R60, §2391; C73, §2408; C97, §3338; C24, 27, 31, 35, 39, §**11957, 11958;** C46, 50, 54, 58, 62, §635.53, 635.54; C66, 71, 73, 75, 77, 79, 81, §633.418]

633.419 Requirements when claim founded on written instrument.

If a claim is founded on a written instrument, the original or a copy thereof with all endorsements must be attached to the claim. The original instrument must be exhibited to the personal representative or court, upon demand, unless it is lost or destroyed, in which case its loss or destruction must be stated in the claim.

[C51, §1359; R60, §2391; C73, §2408; C97, §3338; C24, 27, 31, 35, 39, §**11957;** C46, 50, 54, 58, 62, §635.53; C66, 71, 73, 75, 77, 79, 81, §633.419]

633.420 How claim entitled.

All claims filed against the estate shall be entitled in the name of the claimant against the personal representative as such, naming the estate, and in all further proceedings thereon that title shall be preserved.

[C73, §2409; C97, §3339; C24, 27, 31, 35, 39, §**11960;** C46, 50, 54, 58, 62, §635.56; C66, 71, 73, 75, 77, 79, 81, §633.420]

633.421 Unsecured claims not yet due.

Upon proof of an unsecured claim which will become due at some future time, the same may be paid if the claimant will consent to such discount as the court thinks reasonable; otherwise, the court shall direct the investment of an amount which will provide for the payment of the claim when it becomes due.

[C51, §1364, 1377; R60, §2396, 2409; C73, §2413, 2425; C97, §3342, 3352; C24, 27, 31, 35, 39, §**11964, 11975;** C46, 50, 54, 58, 62, §635.60, 635.70; C66, 71, 73, 75, 77, 79, 81, §633.421]

633.422 Secured claims not yet due.

When a creditor holds any security for a claim not yet due, the creditor may file the claim as a claim not yet due with the right of withdrawing the claim if the compromise offer is not satisfactory, and, after such withdrawal, rely entirely on the creditor's security, or the creditor may elect to rely entirely on the creditor's security without the necessity of filing a claim.

[C51, §1364, 1377; R60, §2396, 2409; C73, §2413, 2425; C97, §3342, 3352; C24, 27, 31, 35, 39, §**11964, 11975;** C46, 50, 54, 58, 62, §635.60, 635.70; C66, 71, 73, 75, 77, 79, 81, §633.422]

633.423 Procedure for secured claims.

When a creditor holds any security for the creditor's claim, the security shall be described in the claim. If the claim is secured by a mortgage, pledge or other lien which has been recorded, it shall be sufficient to describe the lien by date, and refer to the volume, page and place of recording. The claim shall be allowed in the amount remaining unpaid at the time of its allowance, and the judgment allowing it shall describe the security. Payment of the claim shall be upon the basis of the full amount thereof if the creditor shall surrender the creditor's security; otherwise payment shall be upon the basis of one of the following:

1. If the creditor shall exhaust the security before receiving payment, then upon the full amount of the claim allowed, less the amount realized upon exhausting the security; or

2. If the creditor shall not have exhausted, or shall not have the right to exhaust, the security, then upon the full amount of the claim allowed, less the value of the security determined by agreement, or as the court may direct.

[C66, 71, 73, 75, 77, 79, 81, §633.423]

633.424 Contingent claims.

Contingent claims which cannot be allowed as absolute debts shall, nevertheless, be filed in the court and proved. If allowed as a contingent claim, the order of allowance shall state the nature of the contingency. If such claim shall become absolute before distribution of the estate, it shall be paid in the same manner as absolute claims of the same class. In all other cases, the court may provide for the payment of contingent claims in any one of the following methods:

1. The creditor and personal representative may determine, by agreement, arbitration or compromise, the value thereof, according to its probable present worth, and upon approval thereof by the court, it may be allowed and paid in the same manner as an absolute claim, or

2. The court may order the personal representative to make distribution of the estate but to retain sufficient funds to pay the claim if and when

the same becomes absolute; but, for this purpose, the estate shall not be kept open longer than two years after distribution of the remainder of the estate; and if such claim has not become absolute within that time, distribution shall be made to the distributees of the funds so retained, after paying any costs and expenses accruing during such period, and such distributees shall be liable to the creditor to the extent of the estate received by them, if such contingent claim thereafter becomes absolute. When distribution is so made to distributees, the court may require such distributees to give bond for the satisfaction of their liability to the contingent creditor, or

3. The court may order distribution of the estate as though such contingent claim did not exist, but the distributees shall be liable to the creditor to the extent of the estate received by them, if the contingent claim thereafter becomes absolute; and the court may require such distributees to give bond for the performance of their liability to the contingent creditor, or

4. Such other method as the court may order.

[C51, §1365; R60, §2397; C73, §2414; C97, §3343; C24, 27, 31, 35, 39, §**11965;** C46, 50, 54, 58, 62, §635.61; C66, 71, 73, 75, 77, 79, 81, §633.424]

CLASSIFICATION, ALLOWANCE, AND PAYMENT OF DEBTS AND CHARGES

633.425 Classification of debts and charges.

In any estate in which the assets are, or appear to be, insufficient to pay in full all debts and charges of the estate, the personal representative shall classify the debts and charges as follows:

1. Court costs.
2. Other costs of administration.
3. Reasonable funeral and burial expenses.
4. All debts and taxes having preference under the laws of the United States.
5. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending at the decedent's last illness.
6. All taxes having preferences under the laws of this state.
7. Any debt for medical assistance paid pursuant to section 249A.5, subsection 2.
8. All debts owing to employees for labor performed during the ninety days next preceding the death of the decedent.
9. All unpaid support payments as defined in section 598.1, subsection 9, and all additional unpaid awards and judgments against the decedent in any dissolution, separate maintenance, uniform support, or paternity action to the extent that the support, awards, and judgments have accrued at the time of death of the decedent.
10. All other claims allowed.

[C51, §1370 – 1372, 1374, 1376, 1378, 1379; R60, §2402 – 2404, 2406, 2408, 2410, 2411; C73, §2418 – 2420, 2422, 2424, 2426, 2427; C97, §3347, 3348, 3350, 3353; S13, §3348; C24, 27, 31, 35, 39, §**11969 – 11971, 11973, 11976;** C46, 50, 54, 58, 62, §635.65 – 635.67, 635.69, 635.71; C66, 71, 73, 75, 77, 79, 81, §633.425; 82 Acts, ch 1197, §1]

94 Acts, ch 1120, §11

Labor claims preferred, §626.69, 680.7, 681.13

633.426 Order of payment of debts and charges.

Payment of debts and charges of the estate shall be made in the order provided in the preceding section, without preference of any claim over another of the same class. If the assets of the estate are insufficient to pay in full all of the claims of a class, then such claims shall be paid on a pro rata basis, without preference between claims then due and those of the same class not due.

[C51, §1378, 1379; R60, §2410, 2411; C73, §2426, 2427; C97, §3353; C24, 27, 31, 35, 39, §**11976;** C46, 50, 54, 58, 62, §635.71; C66, 71, 73, 75, 77, 79, 81, §633.426]

633.427 Payment of contingent claims by distributees — contribution.

If a contingent claim has been filed and allowed against an estate and all the assets of the estate have been distributed, and the claim becomes absolute, the creditor has the right to recover on the claim against those distributees whose distributive shares have been increased because the amount of the claim as finally determined was not paid prior to final distribution, if an action for recovery is commenced within four months after the claim becomes absolute. Such distributees are jointly and severally liable, but a distributee is not liable for an amount exceeding the amount of the estate or fund so distributed to that distributee. If more than one distributee is liable to the creditor, the creditor shall make parties to the action all such distributees who can be reached by process. By its judgment, the court shall determine the amount of the liability of each of the distributees as between themselves, but if any distributee is insolvent or unable to pay that distributee's proportion, or is beyond the reach of process, the others, to the extent of their respective liabilities, are nevertheless liable to the creditor for the whole amount of the creditor's debt. If any person liable for the debt fails to pay that person's just proportion to the creditors, the person is liable to indemnify all who, by reason of the failure, have paid more than their just proportion of the debt, the indemnity to be recovered in the same action or in separate actions.

[C66, 71, 73, 75, 77, 79, 81, §633.427]

84 Acts, ch 1080, §11

633.428 Allowance by personal representative.

Where a claim has been filed and is admitted in writing by the personal representative, it shall stand allowed in the absence of fraud or collusion.

[C73, §2410; C97, §3340; S13, §3340; C24, 27, 31, 35, 39, §**11961;** C46, 50, 54, 58, 62, §635.57; C66, 71, 73, 75, 77, 79, 81, §633.428]

633.429 Compelling payment of claims.

No claimant shall be entitled to compel payment unless the claimant's claim has been duly filed and allowed.

[C66, 71, 73, 75, 77, 79, 81, §633.429]

633.430 Execution and levies prohibited.

No execution shall issue upon, nor shall any levy be made against, any property of the estate under any judgment against a decedent or a personal representative, but the provisions of this section shall not be construed to prevent the enforcement of mortgages.

[C51, §1368; R60, §2400; C73, §2416; C97, §3345; C24, 27, 31, 35, 39, §**11967;** C46, 50, 54, 58, 62, §635.63; C66, 71, 73, 75, 77, 79, 81, §633.430]

633.431 Claims of personal representative.

If the personal representative is a creditor of the decedent, the personal representative shall file the claim as other creditors, and the court shall appoint some competent person as temporary administrator to represent the estate in the matter of allowing or disallowing such claim. The same procedure shall be followed in the case of corepresentatives where all such representatives are creditors of the estate; but if one of the corepresentatives is not a creditor of the estate, such disinterested representative shall represent the estate in the matter of allowing or disallowing such claim against the estate by a corepresentative.

[C51, §1369; R60, §2401; C73, §2417; C97, §3346; C24, 27, 31, 35, 39, §**11968;** C46, 50, 54, 58, 62, §635.64; C66, 71, 73, 75, 77, 79, 81, §633.431]

633.432 Allowance or disallowance of claim of personal representative.

The temporary administrator shall, after investigation, file a report with the court recommending the allowance or disallowance of such claim. Unless the court allows the claim, it shall then be disposed of as a contested claim in accordance with the provisions of sections 633.439 to 633.448.

[C66, 71, 73, 75, 77, 79, 81, §633.432]

633.433 Payment of debts and charges before expiration of four months' period.

As soon as the personal representative is possessed of sufficient means over and above the other costs of administration, the personal representative shall pay any allowance made by the court for the surviving spouse and children of the decedent, and may pay the expenses of funeral, burial and last illness. Prior to the expiration of four months after the date of the second publication of notice to creditors, the personal representative shall pay other debts and charges against the estate as the court orders, and the court may require bond or other security to be given by the creditor to refund such part of the payment as may be necessary to make payment in accordance with this Code. All payments made by the personal representative without order of court are at the personal representative's own peril.

[C51, §1370, 1371, 1374, 1376, 1378, 1379; R60, §2402, 2403, 2406, 2408, 2410, 2411; C73, §2418, 2419, 2422, 2424, 2426, 2427; C97, §3347, 3350, 3353; C24, 27, 31, 35, 39, §**11969, 11973, 11976;** C46, 50, 54, 58, 62, §635.65, 635.69, 635.71; C66, 71, 73, 75, 77, 79, 81, §633.433]

84 Acts, ch 1080, §12

633.434 Payment of debts and charges after expiration of four months' period.

The personal representative shall, as soon as practicable following appointment, make reasonably diligent efforts to ascertain the names and addresses of all persons believed to own or possess claims against a decedent's estate.

Upon the expiration of the later to occur of four months after the date of the second publication of notice to creditors or one month after the service of the notice by ordinary mail upon all claimants whose identities are reasonably ascertainable, at their last known addresses and whose claims will not or may not be paid or otherwise satisfied during administration, the personal representative shall pay the debts and charges against the estate in accordance with this code. If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good and sufficient cause, the personal representative may report that fact to the court and apply for any order that the personal representative deems necessary.

[C51, §1370, 1371, 1374, 1376, 1378, 1379; R60, §2402, 2403, 2406, 2408, 2410, 2411; C73, §2418, 2419, 2422, 2424, 2426, 2427; C97, §3347, 3350, 3353; C24, 27, 31, 35, 39, §**11969, 11973, 11976;** C46, 50, 54, 58, 62, §635.65, 635.69, 635.71; C66, 71, 73, 75, 77, 79, 81, §633.434]

84 Acts, ch 1080, §13; 89 Acts, ch 35, §7

633.435 Debts and charges not filed.

The personal representative may pay any valid debts and charges against the estate even though no claim for such debts and charges has been filed, but all such payments made by the personal representative shall be at the personal representative's own peril.

[C66, 71, 73, 75, 77, 79, 81, §633.435]

633.436 General order for abatement.

Except as provided in section 633.211 and 633.212, shares of the distributees shall abate, for the payment of debts and charges, federal and state estate taxes, legacies, the shares of children born or adopted after the making of a will, or the share of the surviving spouse who elects to take against the will, without any preference or priority as between real and personal property, in the following order:

1. Property not disposed of by the will;
2. Property devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;
3. Property disposed of by the will, but not specifically devised and not devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;
4. Property specifically devised, except property devised to a surviving spouse who takes under the will;
5. Property devised to a surviving spouse who takes under the will.

A general devise charged on any specific property or fund shall, for purposes of abatement, be deemed property specifically devised to the extent of the value of the property on which it is charged. Upon the failure or insufficiency of the property on which it is charged, it shall be deemed property not specifically devised to the extent of such failure or insufficiency.

[C51, §1284, 1285; R60, §2316, 2317; C73, §2334, 2335; C97, §3279; S13, §3279, 3279-a; C24, 27, 31, 35, 39, §**11858, 11859;** C46, 50, 54, 58, 62, §633.13, 633.14; C66, 71, 73, 75, 77, 79, 81, §633.436]

85 Acts, ch 19, §3

633.437 Contrary provision as to abatement.

1. When provisions of the will, trust or other testamentary instrument of the decedent provide explicitly for an order of abatement contrary to the provisions of section 633.436, the provisions of the will or other testamentary instrument shall determine the order of abatement.

2. Except as provided in subsection 1 of this section, if the provisions of the will, the testamentary plan, or the express or the implied purpose of the devise would be defeated by the order of abatement as provided in section 633.436, then upon application to the court by a fiduciary or a distributee, and after notice to all interested parties, the court shall determine the order for abatement of the shares of distributees in such other manner as may be found necessary to give effect to the intention of the testator. In order to change the order of abatement as provided in section 633.436, it will be necessary for the court to find it clear and convincing that the provisions of the will, the testamentary plan, or the express or implied purpose of the devise would be defeated by the order of abatement stated in section 633.436.

[C66, 71, 73, 75, 77, 79, 81, §633.437]

DENIAL AND CONTEST OF CLAIMS

633.438 General denial of claims.

Where a claim has been filed, but not admitted in writing by the personal representative before a request for hearing has been given as hereinafter provided, the claim shall be considered as denied without any pleading on behalf of the personal representative.

[C73, §2410; C97, §3340; S13, §3340; C24, 27, 31, 35, 39, §**11961;** C46, 50, 54, 58, 62, §635.57; C66, 71, 73, 75, 77, 79, 81, §633.438]

633.439 Disallowance by personal representative.

At any time after the filing of a claim against an estate, the personal representative may give the claimant and the claimant's attorney of record, if any, written notice of disallowance of claim. The notice shall be given by certified mail addressed to the claimant at the address stated in the claim and to the claimant's attorney of record, if any.

[C66, 71, 73, 75, 77, 79, 81, §633.439; 81 Acts, ch 193, §4]

633.440 Contents of notice of disallowance.

Such a notice of disallowance shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall within twenty days after the date of mailing the notice, file a request for hearing on the claim with the clerk, and mail a copy of such request for hearing to the personal representative and the attorney of record, if any, by certified mail.

[C66, 71, 73, 75, 77, 79, 81, §633.440]

99 Acts, ch 56, §5

633.441 Proof of service.

Proof of service of the notice of disallowance shall be made by affidavit, shall show the date and place of mailing, and shall be filed with the clerk.

[C66, 71, 73, 75, 77, 79, 81, §633.441]

633.442 Claims barred after twenty days.

Unless the claimant shall within twenty days after the date of mailing the notice of disallowance, file a request for hearing with the clerk and mail a copy of the request for hearing to the personal representative and to the attorney of record, if any, the claim shall be deemed disallowed, and shall be forever barred.

[C66, 71, 73, 75, 77, 79, 81, §633.442]

633.443 Request for hearing by claimant.

At the time of the filing of a claim against an es-

tate, or at any time thereafter prior to the time that the claim may be barred by the provisions of section 633.442, or the approval of the final report of the personal representative after notice to the claimant, the claimant may file a request for hearing with the clerk, and mail a copy of the request for hearing to the personal representative and attorney of record, if any.

[C51, §1359, 1361; R60, §2391, 2393; C73, §2408; C97, §3338; C24, 27, 31, 35, 39, §**11959;** C46, 50, 54, 58, 62, §635.55; C66, 71, 73, 75, 77, 79, 81, §633.443]

633.444 Applicability of rules of civil procedure.

Within twenty days from the filing of the request for hearing on a claim, the personal representative shall move or plead to said claim in the same manner as though the claim were a petition filed in an ordinary action, and thereafter, all provisions of law and rules of civil procedure applicable to motions, pleadings and the trial of ordinary actions shall apply; provided, however, that a restatement of such claim shall not be barred by the provisions of section 633.410.

[C66, 71, 73, 75, 77, 79, 81, §633.444]

633.445 Offsets and counterclaims.

At the time of the filing of an answer to a claim, the personal representative shall plead all offsets against the claim, and shall plead all counterclaims against the claimant of which the personal representative has knowledge. An offset or counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding the amount, or different in kind, from that sought in the claim.

[C66, 71, 73, 75, 77, 79, 81, §633.445]

633.446 Burden of proof.

The burden of proving that a claim is unpaid shall not be placed upon the party filing a claim against the estate; but the personal representative may on the trial of the cause, subject the claimant to an examination on the question of payment or consideration, and the estate shall not be concluded or bound thereby.

[C97, §3340; S13, §3340; C24, 27, 31, 35, 39, §**11962;** C46, 50, 54, 58, 62, §635.58; C66, 71, 73, 75, 77, 79, 81, §633.446]

633.447 Trial and hearing.

The trial of a claim and the offsets or counterclaims, if any, shall be to the court without a jury; provided, however, that the court may, in its discretion, either on its own motion or upon the motion of any party, submit the same to a jury; and provided further, that in the event that the amount of the claim or a counterclaim exceeds the sum of three hundred dollars, either party shall be entitled to a jury trial, if written demand therefor is made as provided in the rules of civil procedure in relation to the trial of ordinary actions.

[C51, §1360, 1362, 1366; R60, §2392, 2394, 2398; C73, §2411, 2415; C97, §3341, 3344; C24, 27, 31, 35, 39, §**11963, 11966;** C46, 50, 54, 58, 62, §635.59, 635.62; C66, 71, 73, 75, 77, 79, 81, §633.447]

See R.C.P. 1.902

633.448 Allowance and judgment.

Upon the trial of a claim, offsets and counterclaims, the amount owing by or to the estate, if any, shall be determined. A claim against the estate shall be allowed for the net amount. Judgment shall be rendered for any amount found to be due the estate. If a judgment is rendered against a claimant for any net amount, execution may issue in the same manner as on judgments in civil cases.

[C66, 71, 73, 75, 77, 79, 81, §633.448]

633.449 Payment of federal estate taxes.

All federal and state estate taxes (as distinguished from state inheritance taxes) owing by the estate of a decedent shall be paid from the property of the estate, unless the will of the decedent, or other trust instrument, provides expressly to the contrary.

[C66, 71, 73, 75, 77, 79, 81, §633.449]

633.450 to 633.468 Reserved.

PART 8

ACCOUNTING, DISTRIBUTION, FINAL REPORT, AND DISCHARGE

633.469 Interlocutory report.

The personal representative may at any time file an interlocutory accounting to the court showing the condition of the estate, its debts and property, the amount of money received, and the disposition made of any of the assets of the estate.

The court may on application of any interested party, or on its own motion, order such an accounting at any time. Such an accounting shall embrace all matters directed by the court. The court may order such further accountings from time to time as it may determine to be to the best interests of the estate.

[C51, §1422, 1423; R60, §2447, 2448; C73, §2469; C97, §3394, 3420; C24, 27, 31, 35, 39, §**12042, 12043, 12070;** C46, 50, 54, 58, 62, §638.2, 638.3, 638.33; C66, 71, 73, 75, 77, 79, 81, §633.469]

633.470 Waiver of accounting.

The distributee, if under no legal disability, may waive the accounting.

[C66, 71, 73, 75, 77, 79, 81, §633.470]

633.471 Right of retainer.

When a distributee of an estate is indebted to the estate, or if a distributee takes as an heir of a deceased devisee indebted to the estate, the amount of such indebtedness, if due, or the present worth of the indebtedness, if not due, shall be treated as a setoff and retained by the personal representative out of any testate or intestate property, real or personal, of the estate to which such distributee is entitled. In intestate estates, the personal representative shall have the same right of setoff and retainer against an heir whose ancestor was indebted to the estate. The right of setoff and retainer shall be prior and superior to the rights of judgment creditors, heirs or assigns of such distributee and shall not be barred by the statute of limitations, nor by a discharge in bankruptcy.

[C51, §1383 – 1386; R60, §2415 – 2418; C73, §2431 – 2434; C97, §3357 – 3360; C24, 27, 31, 35, 39, §**11980 – 11983;** C46, 50, 54, 58, 62, §635.75 – 635.78; C66, 71, 73, 75, 77, 79, 81, §633.471]

633.472 Property distributed in kind.

Property not otherwise disposed of by the personal representative may be distributed in kind.

[C51, §1384, 1385, 1392; R60, §2416, 2417, 2424; C73, §2432, 2433, 2438; C97, §3358, 3359, 3364; C24, 27, 31, 35, 39, §**11981, 11982, 11988;** C46, 50, 54, 58, 62, §635.76, 635.77, 636.3; C66, 71, 73, 75, 77, 79, 81, §633.472]

633.473 Final settlement — time limit.

Final settlement shall be made within three years, after the second publication of the notice to creditors, unless otherwise ordered by the court after notice to all interested parties.

[C51, §1393; R60, §2425; C73, §2439, 2469; C97, §3365, 3394; C24, 27, 31, 35, 39, §**11989, 12044;** C46, 50, 54, 58, 62, §636.4, 638.4; C66, 71, 73, 75, 77, 79, 81, §633.473]

633.474 Certificate as to payment of personal taxes. Repealed by 83 Acts, ch 44, § 2.

633.475 Compromise of personal taxes.

For the purpose of facilitating the speedy settlement and distribution of estates, the county treasurer of such county, by and with the consent of the board of supervisors may compromise and agree upon the amount of personal taxes at any time due or to become due the county from an estate, and payment in accordance with such compromise or agreement shall be for the satisfaction of all taxes in such estate matter. No compensation shall be allowed any person because of such compromise or agreement.

[C39, §**12781.1, 12781.2;** C46, 50, 54, 58, 62, §682.35, 682.36; C66, 71, 73, 75, 77, 79, 81, §633.475]

633.476 Action against distributees — costs — tender.

In an action against the distributees, where the judgment is to be against them in proportion to the respective amounts received by them from the estate, costs awarded against them shall be in like proportion, and anyone may tender the amount due from that distributee to the plaintiff, which shall have the same effect, as far as the distributee is concerned, as though that distributee were the sole defendant.

[C51, §1440, 1441; R60, §2465, 2466; C73, §2485, 2486; C97, §3408; C24, 27, 31, 35, 39, §**12060;** C46, 50, 54, 58, 62, §638.20; C66, 71, 73, 75, 77, 79, 81, §633.476]

633.477 Final report.

Each personal representative shall, in the personal representative's final report, set forth:

1. An accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the decedent's interest therein, which has not been sold and conveyed by the personal representative.
2. Whether the deceased died testate or intestate.
3. The name and place of residence of the surviving spouse, or that none survived the deceased.
4. In intestate estates, the name and place of residence of each of the heirs and their relationship to the deceased.
5. In testate estates, the name and place of residence of each of the devisees and their relationship to the deceased, and the name and residence of after-born children, if any, as defined in section 633.267.
6. Whether any legacy or devise remains a charge on the real estate, and, if so, the nature and amount thereof.
7. Whether any distributee is under any legal disability.
8. The name of the conservator or trustee for any distributee, and the court from which the letters were issued.
9. An accounting of all property coming into the hands of the personal representative and a detailed accounting of all cash receipts and disbursements. The accounting may be omitted if waived by all interested parties.
10. A statement as to whether or not all statutory requirements pertaining to taxes have been complied with and a statement as to whether the federal estate tax due has been paid and whether a lien continues to exist for any federal estate tax.

11. Upon the request of the personal representative, an itemization of services performed, time spent for such services, and responsibilities assumed by the personal representative's attorney for all estates of decedents dying after January 1, 1981. If the itemization is not included, there shall be set forth a statement that the personal representative was informed of the provisions of this subsection and did not request the itemization.

12. A statement as to whether all statutory requirements pertaining to claims have been complied with and a statement as to whether all claims, including charges, have been paid and whether a lien continues to exist on any property as security for any claim.

[C73, §2491; C97, §3412; C24, 27, 31, 35, 39, §**12071;** C46, 50, 54, 58, 62, §638.34; C66, 71, 73, 75, 77, 79, 81, §633.477]

87 Acts, ch 54, §1; 89 Acts, ch 35, §8

633.478 Notice of application for discharge.

A personal representative shall not be discharged from further duty or responsibility upon final settlement until notice of the final report or of an application for discharge has been served upon all persons interested, in accordance with section 633.40, unless notice is waived. An order prescribing notice may be made before or after the filing of the final report.

[C97, §3422; C24, 27, 31, 35, 39, §**12073;** C46, 50, 54, 58, 62, §638.36; C66, 71, 73, 75, 77, 79, 81, §633.478; 81 Acts, ch 193, §5]

633.479 Discharge.

Upon final settlement of an estate, an order shall be entered discharging the personal representative from further duties and responsibilities. The order approving the final report shall constitute a waiver of the omission from the final report of any of the recitals required in section 633.477.

An order approving the final report and discharging the personal representative shall not be required if all distributees otherwise entitled to notice are adults, under no legal disability, have signed waivers of notice as provided in section 633.478, have signed statements of consent agreeing that the prayer of the final report shall constitute an order approving the final report and discharging the personal representative, and if the statements of consent are dated not more than thirty days prior to the date of the final report, and if compliance with sections 422.27 and 450.58 have been fulfilled and receipts and certificates are on file. In those instances final order shall not be required and the prayer of the final report shall be considered as granted and shall have the same force and effect as an order of discharge of the personal representative and an order approving the final report. The clerk shall comply with section 633.480 with respect to issuing a change of title.

[C51, §1434; R60, §2459; C73, §2476; C97, §3400; C24, 27, 31, 35, 39, §**12052;** C46, 50, 54, 58, 62, §638.12; C66, 71, 73, 75, 77, 79, 81, §633.479]

83 Acts, ch 44, §1

633.480 Certificate to county recorder for tax purposes with administration.

After discharge as provided in section 633.479, the clerk shall certify under chapter 558 relative to each parcel of real estate described in the final report of the personal representative which has not been sold by the personal representative, and deliver the certificate to the county recorder of the county in which the real estate is situated. The certificate shall include the name and complete mailing address, as shown on the final report, of the individual or entity in whose name each parcel of real estate is to be taxed. The county recorder shall deliver the certificate to the county auditor as provided in section 558.58.

[C66, 71, 73, 75, 77, 79, 81, §633.480; 82 Acts, ch 1054, §2, ch 1118, §1]

84 Acts, ch 1221, §7; 91 Acts, ch 116, §19; 2001 Acts, ch 45, §10

633.481 Certificate to county recorder for tax purposes without administration.

When an inventory or report is filed under section 450.22, without administration of the estate of the decedent, the clerk shall issue and deliver to the county recorder of the county in which the real estate is situated a certificate pertaining to each parcel of real estate described in the inventory or report. Any fees for certificates or recording fees required by this section or section 633.480 shall be assessed as costs of administration. The fee for recording and indexing the instrument shall be as provided in section 331.604. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58.

[C66, 71, 73, 75, 77, 79, 81, §633.481; 82 Acts, ch 1054, §3]

84 Acts, ch 1221, §8; 86 Acts, ch 1079, §6; 90 Acts, ch 1081, §4

633.482 to 633.486 Reserved.

PART 9

REOPENING

633.487 Limitation on rights.

No person, having been served with notice of the hearing upon the final report and accounting of a personal representative or having waived such notice, shall, after the entry of the final order approving the same and discharging the said personal representative, have any right to contest, in any proceeding, other than by appeal, the correctness or the legality of the inventory, the accounting, distribution, or other acts of the personal representa-

tive, or the list of heirs set forth in the final report of the personal representative, provided, however, that nothing contained in this section shall prohibit any action against the personal representative and the personal representative's surety under the provisions of section 633.186 on account of any fraud committed by the personal representative.

[C97, §3422; C24, 27, 31, 35, 39, §**12073;** C46, 50, 54, 58, 62, §638.36; C66, 71, 73, 75, 77, 79, 81, §633.487]

633.488 Reopening settlement.

Whenever a final report has been approved and a final accounting has been settled in the absence of any person adversely affected and without notice to the person, the hearing on such report and accounting may be reopened at any time within five years from the entry of the order approving the same, upon the application of such person, and, upon a hearing, after such notice as the court may prescribe to be served upon the personal representative and the distributees, the court may require a new accounting, or a redistribution from the distributees. In no event, however, shall any distributee be liable to account for more than the property distributed to that distributee. If any property of the estate shall have passed into the hands of good faith purchasers for value, the rights of such purchasers shall not, in any way, be affected.

[C51, §1431; R60, §2456; C73, §2475; C97, §3399; C24, 27, 31, 35, 39, §**12051;** C46, 50, 54, 58, 62, §638.11; C66, 71, 73, 75, 77, 79, 81, §633.488]

633.489 Reopening administration.

Upon the petition of any interested person, the court may, with such notice as it may prescribe, order an estate reopened if other property be discovered, if any necessary act remains unperformed, or for any other proper cause appearing to the court. It may reappoint the personal representative, or appoint another personal representative, to administer any additional property or to perform other such acts as may be deemed necessary. The provisions of law as to original administration shall apply, insofar as applicable, to accomplish the purpose for which the estate is reopened, but a claim which is already barred can, in no event, be asserted in the reopened administration.

[S13, §3305; C24, 27, 31, 35, 39, §**11892;** C46, 50, 54, 58, 62, §633.48; C66, 71, 73, 75, 77, 79, 81, §633.489]

633.490 to 633.494 Reserved.

DIVISION VIII

FOREIGN WILLS AND ANCILLARY ADMINISTRATION

PART 1

FOREIGN WILLS

633.495 Admission of wills of nonresidents.

A will of a nonresident of this state, not probated in any other state or county, may be admitted to probate in any county of this state where either real or personal property of the deceased nonresident is located.

[C66, 71, 73, 75, 77, 79, 81, §633.495]

633.496 Foreign probated wills.

A will probated in any other state or country shall be admitted to probate in this state upon the production of a copy thereof and of the original record of probate, authenticated by the certificate of the clerk of the court in which such probation was made, or, if there be no clerk, then by the certificate of the judge of such court, and by the seal of office of such officer if the officer or office has a seal.

[C51, §1296; R60, §2328; C73, §2351; C97, §3294; C24, 27, 31, 35, 39, §**11877;** C46, 50, 54, 58, 62, §633.33; C66, 71, 73, 75, 77, 79, 81, §633.496]

633.497 Foreign wills as a muniment of title.

After the expiration of the five-year period from the date of the death of the decedent, an exemplified copy of a will which has not been denied probate in Iowa, and of the order admitting it to probate in a foreign state or country, may be recorded in the office of the county recorder of any county where real estate owned by the testator is located. The record of such a will and of the order admitting the will to probate shall operate to dispose of said property as though said will had been admitted to probate in this state. Nothing contained in this section shall operate to defeat the rights, acquired prior to such record, of purchasers for value whose rights are shown of record.

[C66, 71, 73, 75, 77, 79, 81, §633.497]

633.498 Foreign wills — procedure.

All provisions of law relating to the carrying of domestic wills into effect after their probate shall apply, so far as applicable, to foreign wills admitted to probate in this state.

[C73, §2352; C97, §3295; C24, 27, 31, 35, 39, §**11878;** C46, 50, 54, 58, 62, §633.34; C66, 71, 73, 75, 77, 79, 81, §633.498]

633.499 Reserved.

PART 2

ANCILLARY ADMINISTRATION

633.500 Appointment of foreign administrator.

Notwithstanding any other provision of this Code, if administration of the estate of a deceased intestate nonresident has been granted in accordance with the law of the state where the nonresident resided, the duly qualified administrator of the estate of the nonresident may upon application be appointed administrator in this state, unless another has already been appointed and provided that a resident administrator be appointed to serve with the nonresident administrator; provided further, however, that for good cause shown, the court may appoint the nonresident administrator to act alone without the appointment of a resident administrator.

[C51, §1309; R60, §2341; C73, §2368; C97, §3306; C24, 27, 31, 35, 39, §**11894;** C46, 50, 54, 58, 62, §633.50; C66, 71, 73, 75, 77, 79, 81, §633.500]

633.501 Application for appointment of foreign administrator.

The application for any such appointment under section 633.500 shall contain the name and address of the foreign administrator and of the resident administrator, if any, to be appointed, and shall be accompanied by a certificate of the clerk of the court of original jurisdiction certifying that such estate is under administration, and a certification of the original letters or other authority authorizing the nonresident administrator to act in that estate.

[C66, 71, 73, 75, 77, 79, 81, §633.501]

633.502 Appointment of foreign fiduciary.

Notwithstanding any other provision of this Code, the duly qualified fiduciary under a will admitted to probate in another state, may upon application be appointed fiduciary in this state, after said will has been admitted to probate in this state, provided that a resident fiduciary be appointed to serve with the nonresident fiduciary; provided further, however, that, for good cause shown, the court may appoint, the nonresident fiduciary to act alone without the appointment of a resident fiduciary.

[C51, §1310; R60, §2342; C73, §2369; C97, §3306; C24, 27, 31, 35, 39, §**11895;** C46, 50, 54, 58, 62, §633.51; C66, 71, 73, 75, 77, 79, 81, §633.502]

633.503 Application for appointment of foreign executor or trustee.

The application for appointment of a nonresident executor or trustee shall include the name and address of the nonresident executor or trustee, and the name and address of the resident executor or trustee, if any, to be appointed. It shall be accompanied by a certificate of the clerk of the foreign court granting the original letters or other authority conferring the power upon the nonresident executor or trustee to act as such. The application shall also state the cause for the appointment of the nonresident executor or trustee to act as the sole executor or trustee, if such appointment is desired. When the will has not been admitted to probate in any other state, the application shall include the name and address of the executor or trustee, if any, named in the will of the nonresident, and of the resident executor or trustee to be appointed.

[C66, 71, 73, 75, 77, 79, 81, §633.503]

633.504 Removal of property — payment of claims.

In all estates of nonresidents, being administered in this state, the court may require payment of all claims filed and allowed belonging to residents of this state, and all legacies or distributive shares payable to residents of this state, before allowing any of the property in the estate to be removed from the state.

[C97, §3306; C24, 27, 31, 35, 39, §**11896;** C46, 50, 54, 58, 62, §633.52; C66, 71, 73, 75, 77, 79, 81, §633.504]

633.505 to 633.509 Reserved.

DIVISION IX

ESTATES OF ABSENTEES

633.510 Administration authorized — petition.

Administration may be had upon the estate of an absentee. A petition therefor must be filed in the office of the clerk and must allege:

1. Whether the absentee was a resident or a nonresident of this state, and the absentee's address at the absentee's last known domicile; that the absentee has, without known cause, left the absentee's usual place of residence, and concealed the absentee's whereabouts from the absentee's family, for a period of five years.

2. That the said absentee has property in this state (describing it with reasonable certainty), all or part of which is situated in the county in which the petition is filed.

3. The names of the persons, so far as known to the petitioner, who would be entitled to share in the estate of the absentee if the absentee were dead.

4. In the case of a nonresident, whether administration upon the estate has been granted in the state of last known domicile.

5. Facts showing that the petitioner is a party who would be entitled to administer the estate of

the said absentee in case the absentee were known to be dead.

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11901;** C46, 50, 54, 58, 62, §634.1; C66, 71, 73, 75, 77, 79, 81, §633.510]

633.511 Notice.

Upon filing of such petition, the court shall, by a proper order, prescribe the notice and the return day therein, which shall be addressed to and served upon such absentee and the alleged distributees of the absentee's estate.

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11902;** C46, 50, 54, 58, 62, §634.2; C66, 71, 73, 75, 77, 79, 81, §633.511]

633.512 Service.

Said notice shall in all cases be served:

1. By publication in the county in which the petition is filed, once each week for three consecutive weeks, in a newspaper designated by the court; and

2. Upon all the alleged distributees of the estate of said absentee by ordinary mail addressed to them at their last known address.

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11903;** C46, 50, 54, 58, 62, §634.3; C66, 71, 73, 75, 77, 79, 81, §633.512]

633.513 Proof of service — filing.

Proof of the publication and service of such notice shall be filed with the clerk aforesaid on or before the day set for hearing.

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11904;** C46, 50, 54, 58, 62, §634.4; C66, 71, 73, 75, 77, 79, 81, §633.513]

633.514 Hearing — continuance — orders.

If, on the day set for hearing, the absentee fails to appear, the court shall appoint some disinterested person as guardian ad litem to appear for the absentee and all distributees not appearing, and said cause shall thereupon stand continued for twenty days. The guardian ad litem shall be a practicing attorney. The court shall have authority to make further continuance upon proper showing. The guardian ad litem shall investigate the matter and things alleged in the petition. Upon the further hearing, the court shall hear the proofs, and, if satisfied of the truth of the allegations of the petition, shall enter an order establishing the death of the absentee as a matter of law.

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11905;** C46, 50, 54, 58, 62, §634.5; C66, 71, 73, 75, 77, 79, 81, §633.514]

90 Acts, ch 1271, §1514

633.515 Administration.

Upon the entry of such further order under section 633.514, administration of the estate of such absentee, whether testate or intestate, shall proceed as provided herein for the administration of the estates of other decedents, notwithstanding the provisions of section 633.330.

[S13, §3307, 3307-a; C24, 27, 31, 35, 39, §**11906 – 11910;** C46, 50, 54, 58, 62, §634.6 – 634.10; C66, 71, 73, 75, 77, 79, 81, §633.515]

633.516 Rights of absentee barred — sale by spouse.

An order establishing the death of an absentee forever bars the rights of homestead and distributive share of the absentee, and the absentee's interest in and to any real estate owned or held by the spouse of the absentee, and in which the spouse may have a legal or equitable interest. Conveyance of any such real estate by the spouse, after four months from date of publication of second notice of the appointment of a personal representative, is free and clear of any claim or right of homestead or distributive share on the part of the absentee.

[S13, §3307-b; C24, 27, 31, 35, 39, §**11911;** C46, 50, 54, 58, 62, §634.11; C66, 71, 73, 75, 77, 79, 81, §633.516]

84 Acts, ch 1080, §14

633.517 Missing soldiers or sailors — presumption of death.

1. A written finding of presumed death, made by the secretary of defense, or other officer or employee of the United States authorized to make such finding, pursuant to the federal Missing Persons Act [56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Session 78th Congress; 50 U.S.C. App. Supp. 1001-17], as now or hereafter amended, or a duly certified copy of such a finding, shall be received in any court, office or other place in this state, as evidence of the death of the person therein found to be dead, and of the date, circumstances, and place of the disappearance.

2. An official written report or record, or a duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the Act referred to in subsection 1 of this section, or by any other law of the United States, to make such a report or record, shall be received in any court, office or other place in this state as evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be.

3. For the purposes of subsections 1 and 2 of this section, any finding, report, or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said subsections, shall prima facie be deemed to have been signed and is-

sued by such an officer or employee pursuant to law, and the person signing the same shall prima facie be deemed to have acted within the scope of the person's authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of the person's authority so to certify.

[C46, 50, 54, 58, 62, §634.12; C66, 71, 73, 75, 77, 79, 81, §633.517]

633.518 Presumption of death — petition and inquiry.

If a petition is presented by an interested person to a district judge or magistrate alleging that a designated person has disappeared and after a diligent search cannot be found, and if it appears to the satisfaction of the judge or magistrate that the circumstances surrounding the disappearance afford reasonable grounds for the belief that the person has suffered death from accidental or other violent means, the judge or magistrate shall summon and impanel a jury of six qualified persons to inquire into the facts surrounding and the presumption to be raised from the disappearance. If no one submits a petition within forty days of the reported disappearance, a judge or magistrate may submit the petition from personal knowledge of the case.

2002 Acts, ch 1108, §28
NEW section

633.519 Presumption of death — verdict and entry of order.

If a jury in an inquiry regarding the disappearance of an individual renders a unanimous verdict in writing that sufficient evidence has been presented to them from which it fairly may be presumed that the missing person has met death, and if the judge or magistrate concurs in the verdict, then, after a period of six months has elapsed, the person shall be presumed to be dead and the judge or magistrate shall enter an order to that effect. However, in cases where there is clear and convincing evidence of the presumed death, the judge or magistrate may enter the order prior to the elapsing of the six-month period.

2002 Acts, ch 1108, §29
NEW section

633.520 Presumption of death — natural or man-made disaster.

A written finding of presumed death of a person resulting from a natural or man-made disaster, made by a local, state, or federal officer or employee authorized to make such a finding, or a duly certified copy of such a finding, shall be received by a judge or magistrate as evidence of the death of the person therein found to be dead, and of the date, circumstances, and place of the disappearance. Upon receipt of such evidence the judge or magistrate may enter an order of presumption of death of the person. Upon presentation of a certified court order, a certificate of death shall be filed pursuant to section 144.26.

2002 Acts, ch 1108, §30
NEW section

633.521 and 633.522 Reserved.

DIVISION X

UNIFORM SIMULTANEOUS DEATH ACT

633.523 No sufficient evidence of survivorship.

Where the title to property or the devolution thereof depends upon priority of death, and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if the person had survived, except as provided otherwise in sections 633.524 to 633.527.

[C46, 50, 54, 58, 62, §637.1; C66, 71, 73, 75, 77, 79, 81, §633.523]

633.524 Beneficiaries of another person's disposition of property.

Where two or more beneficiaries are designated to take successively, by reason of survivorship, under another person's disposition of property, and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

[C46, 50, 54, 58, 62, §637.2; C66, 71, 73, 75, 77, 79, 81, §633.524]

633.525 Joint tenants.

Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

[C46, 50, 54, 58, 62, §637.3; C66, 71, 73, 75, 77, 79, 81, §633.525]

633.526 Insurance policies.

Where the insured and the beneficiary in a policy of life or accident insurance have died, and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

[C46, 50, 54, 58, 62, §637.4; C66, 71, 73, 75, 77,

79, 81, §633.526]

633.527 Limitation of application.

Sections 633.523, 633.524 and 633.526 shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of said sections.

[C46, 50, 54, 58, 62, §637.6; C66, 71, 73, 75, 77, 79, 81, §633.527]

633.528 Uniformity of interpretation.

Sections 633.523 to 633.527 shall be so construed and interpreted as to effectuate their general purpose to make uniform the law relating to simultaneous death.

[C46, 50, 54, 58, 62, §637.7; C66, 71, 73, 75, 77, 79, 81, §633.528]

633.529 to 633.534 Reserved.

DIVISION XI

FELONIOUS DEATH

633.535 Person causing death.

1. A person who intentionally and unjustifiably causes or procures the death of another shall not receive any property, benefit, or other interest by reason of the death as an heir, distributee, beneficiary, appointee, or in any other capacity whether the property, benefit, or other interest passed under any form of title registration, testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance. The property, benefit, or other interest shall pass as if the person causing death died before the decedent.

2. A joint tenant who intentionally and unjustifiably causes or procures the death of another joint tenant which affects their interests so that the share of the decedent passes as the decedent's property has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entireties in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship rights.

3. A named beneficiary of a bond, life insurance policy, or any other contractual arrangement who intentionally and unjustifiably causes or procures the death of the principal obligee or person upon whose life the policy is issued or whose death generates the benefits under any other contractual arrangement is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the benefits become payable as though the person causing death had predeceased the decedent.

[C97, §3386; S13, §3386; C24, 27, 31, 35, 39, §**12032;** C46, 50, 54, 58, 62, §636.47; C66, 71, 73, 75, 77, 79, 81, §633.535]

87 Acts, ch 9, §1; 88 Acts, ch 1134, §111

633.536 Procedure to deny benefits to a person causing death.

A determination under section 633.535 may be made by any court of competent jurisdiction by a preponderance of the evidence separate and apart from any criminal proceeding arising from the death. However, such a civil proceeding shall not proceed to trial, and the person causing death is not required to submit to discovery in such a civil proceeding until the criminal proceeding has been finally determined by the trial court, or in the event no criminal charge has been brought, until six months after the date of death. A person convicted of murder or voluntary manslaughter of the decedent is conclusively presumed to have intentionally and unjustifiably caused the death for purposes of this section and section 633.535.

[C97, §3386; S13, §3386; C24, 27, 31, 35, 39, §**12033;** C46, 50, 54, 58, 62, §636.48; C66, 71, 73, 75, 77, 79, 81, §633.536]

87 Acts, ch 9, §2

633.537 Third party nonliability.

Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of section 633.535 unless prior to payment it has received at its home office or principal address written notice of the claimed applicability of section 633.535.

[C97, §3386; S13, §3386; C24, 27, 31, 35, 39, §**12034;** C46, 50, 54, 58, 62, §636.49; C66, 71, 73, 75, 77, 79, 81, §633.537]

87 Acts, ch 9, §3

633.538 to 633.542 Reserved.

DIVISION XII

PROCEEDINGS FOR ESCHEAT

633.543 Proceedings for escheat.

When the court has reason to believe that any property of the estate of a decedent within the county should by law escheat, the court must forthwith inform the attorney general of the state of Iowa thereof, and appoint some suitable person as personal representative to take charge of such property, unless a personal representative has already been appointed.

[C51, §1443; R60, §2468; C73, §2461; C97, §3388; C24, 27, 31, 35, 39, §**12036;** C46, 50, 54, 58, 62, §636.51; C66, 71, 73, 75, 77, 79, 81, §633.543]

633.544 Notice to persons interested.

The personal representative must give such notice of the death of the deceased, and of the amount

and kind of property left by the decedent within the state, as, in the opinion of the court appointing the personal representative shall be best calculated to notify those interested, or supposed to be interested, in the property.

[C51, §1444; R60, §2469; C73, §2462; C97, §3389; C24, 27, 31, 35, 39, §**12037;** C46, 50, 54, 58, 62, §636.52; C66, 71, 73, 75, 77, 79, 81, §633.544]

633.545 Sale — proceeds.

If within six months from the giving of notice, a claimant does not appear, the property may be sold and the proceeds paid over by the personal representative to the department of revenue and finance for the benefit of the permanent school fund.

[C51, §1445; R60, §2470; C73, §2463; C97, §3390; C24, 27, 31, 35, 39, §**12038;** C46, 50, 54, 58, 62, §636.53; C66, 71, 73, 75, 77, 79, 81, §633.545]

83 Acts, ch 185, §56, 62; 88 Acts, ch 1134, §112

633.546 Payment to person entitled.

The money or any portion of it shall be paid at any time within ten years after the sale of the property or the appropriation of the money, but not afterwards, to anyone showing entitlement thereto.

[C51, §1446; R60, §2471; C73, §2464; C97, §3391; C24, 27, 31, 35, 39, §**12039;** C46, 50, 54, 58, 62, §636.54; C66, 71, 73, 75, 77, 79, 81, §633.546]

633.547 to 633.550 Reserved.

DIVISION XIII

OPENING GUARDIANSHIPS AND CONSERVATORSHIPS

633.551 Guardianships and conservatorships — general provisions.

1. The determination of incompetency of the proposed ward or ward and the determination of the need for the appointment of a guardian or conservator or of the modification or termination of a guardianship or conservatorship shall be supported by clear and convincing evidence.

2. The burden of persuasion is on the petitioner in an initial proceeding to appoint a guardian or conservator. In a proceeding to modify or terminate a guardianship or conservatorship, if the guardian or conservator is the petitioner, the burden of persuasion remains with the guardian or conservator. In a proceeding to terminate a guardianship or conservatorship, if the ward is the petitioner, the ward shall make a prima facie showing of some decision-making capacity. Once a prima facie showing is made, the burden of persuasion is on the guardian or conservator to show by clear and convincing evidence that the ward is incompetent.

3. In determining whether a guardianship or conservatorship is to be established, modified, or terminated, the district court shall consider if a limited guardianship or conservatorship pursuant to section 633.635 or 633.637 is appropriate. In making the determination, the court shall make findings of fact to support the powers conferred on the guardian or conservator.

4. In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the proposed ward or ward is incompetent as defined in section 633.3, the court shall consider credible evidence from any source to the effect of third-party assistance in meeting the needs of the proposed ward or ward. However, neither party to the action shall have the burden to produce such evidence relating to third-party assistance.

97 Acts, ch 178, §4

PART 1

OPENING GUARDIANSHIPS

633.552 Petition for appointment of guardian.

Any person may file with the clerk a verified petition for the appointment of a guardian. The petition shall state the following information so far as known to the petitioner.

1. The name, age and post office address of the proposed ward.

2. That the proposed ward is in either of the following categories:

a. Is a person whose decision-making capacity is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.

b. Is a minor.

3. The name and post office address of the proposed guardian, and that such person is qualified to serve in that capacity.

4. That the proposed ward is a resident of the state of Iowa or is present in the state, and that the ward's best interests require the appointment of a guardian in this state.

5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.

[R60, §1449; C73, §2272; C97, §3219; C24, 27, §12614, 12616; C31, 35, §12614, 12616, 12644-c3; C39, §**12614, 12616, 12644.03;** C46, 50, 54, 58, 62, §670.2, 670.4, 672.3; C66, 71, 73, 75, 77, 79, 81, §633.552]

84 Acts, ch 1299, §10; 85 Acts, ch 29, §1; 97 Acts, ch 178, §5

633.553 No notice required — minor. Repealed by 84 Acts, ch 1299, § 19.

633.554 Notice to proposed ward.

1. *a.* If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

b. Except where the proposed ward is the petitioner, notice shall also be served upon the ward's spouse. If the proposed ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

2. *a.* If the proposed ward is a minor or if the proposed ward is an adult under a standby petition and the court determines, pursuant to section 633.561, subsection 1, paragraph *"b"*, that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

b. Notice shall also be served upon:

(1) The parents of the proposed ward, if the proposed ward is a minor.

(2) The spouse of the proposed ward, if the proposed ward is an adult. If the proposed ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

3. Service of notice under this section upon persons other than the proposed ward shall be made upon such persons whose identities are reasonably ascertainable pursuant to section 633.40, subsection 5. Proof of service shall be made by affidavit, to which copies of all documents served shall be attached.

[C31, 35, §12644-c4; C39, §**12644.04;** C46, 50, 54, 58, 62, §672.4; C66, 71, 73, 75, 77, 79, 81, §633.554]

84 Acts, ch 1299, §11; 85 Acts, ch 29, §2; 85 Acts, ch 148, §6; 2000 Acts, ch 1036, §1

633.555 Pleadings and trial — rules of civil procedure.

All other pleadings and the trial of the cause shall be governed by the rules of civil procedure. The cause shall be tried as a law action, and either party shall be entitled to a jury trial if demand is made therefor as provided by the rules of civil procedure.

[C73, §2273; C97, §3220; C24, 27, §12621; C31, 35, §12621, 12644-c6; C39, §**12621, 12644.06;** C46, 50, 54, 58, 62, §670.9, 672.6; C66, 71, 73, 75, 77, 79, 81, §633.555]

See R.C.P. 1.902

633.556 Appointment of guardian.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the court may appoint a guardian. If the court appoints a guardian based upon mental incapacity of the proposed ward because the proposed ward is a person described in section 222.2, subsection 4, the court shall make a separate determination as to the ward's competency to vote. The court shall find a ward incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

2. In all proceedings to appoint a guardian, the court shall consider the functional limitations of the proposed ward and whether a limited guardianship, as authorized in section 633.635, is appropriate.

3. Section 633.551 applies to the appointment of a guardian.

[R60, §1449; C73, §2272; C97, §3219; C24, 27, 31, 35, 39, §**12614;** C46, 50, 54, 58, 62, §670.2; C66, 71, 73, 75, 77, 79, 81, §633.556]

97 Acts, ch 178, §6; 98 Acts, ch 1100, §79; 98 Acts, ch 1185, §10; 2002 Acts, ch 1134, §113, 115

2002 amendment to subsection 1 takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Subsection 1 amended

633.557 Appointment of guardian on voluntary petition.

1. A guardian may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a guardian's powers as provided in section 633.562.

2. In all proceedings to appoint a guardian, the court shall consider whether a limited guardianship, as authorized in section 633.635, is appropriate.

[C51, §1495; R60, §2547; C73, §2244; C97, §3195; C24, 27, 31, 35, 39, §**12576, 12617;** C46, 50, 54, 58, 62, §668.4, 670.5; C66, 71, 73, 75, 77, 79, 81, §633.557]

89 Acts, ch 178, §9; 97 Acts, ch 178, §7

See also §633.572

633.558 Appointment of temporary guardian.

A temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

[C73, §2273; C97, §3220; C24, 27, 31, §12620; C35, §12620, 12644-c5; C39, §**12620, 12644.05;** C46, 50, 54, 58, 62, §670.8, 672.5; C66, 71, 73, 75, 77, 79, 81, §633.558]

633.559 Preference as to appointment of guardian.

The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian. Preference shall

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

[C51, §1491, 1492, 1495, 1498; R60, §2543, 2544, 2547, 2550; C73, §2241, 2242, 2244, 2249; C97, §3192, 3193, 3195; C24, 27, 31, 35, 39, §**12573, 12574, 12576;** C46, 50, 54, 58, 62, §668.1, 668.2, 668.4; C66, 71, 73, 75, 77, 79, 81, §633.559]

94 Acts, ch 1153, §9

633.560 Appointment of guardian on a standby basis.

A petition for the appointment of a guardian on a standby basis may be filed by any person under the same procedure and requirements as provided in sections 633.591 to 633.597, for appointment of standby conservator, insofar as applicable. In all proceedings to appoint a guardian, the court shall consider whether a limited guardianship, as authorized in section 633.635, is appropriate.

[C66, 71, 73, 75, 77, 79, 81, §633.560]

97 Acts, ch 178, §8

633.561 Representation.

1. In a proceeding for the appointment of a guardian:

a. If the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. Upon the filing of the petition, the court shall appoint an attorney to represent the proposed ward, set a hearing on the petition, and provide for notice of the appointment of counsel and the date for hearing.

b. If the proposed ward is either a minor or an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.

c. The court may take action under paragraph *"a"* or *"b"* prior to the service of the original notice upon the proposed ward.

d. The court may reconsider the determination regarding representation upon application by any interested person.

e. The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

3. If the proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents shall be assessed against the county in which the proceedings are pending. For the purposes of this subsection, the court shall find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.

4. An attorney appointed pursuant to this section shall:

a. Ensure that the proposed ward has been properly advised of the nature and purpose of the proceeding.

b. Ensure that the proposed ward has been properly advised of the ward's rights in a guardianship proceeding.

c. Personally interview the proposed ward.

d. File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs *"a"* through *"c"* has been made or stating the inability to comply by reason of the proposed ward's condition.

e. Represent the proposed ward.

f. Ensure that the guardianship procedures conform to the statutory and due process requirements of Iowa law.

5. In the event that an order of appointment is entered, the attorney appointed pursuant to this section, to the extent possible, shall:

a. Inform the proposed ward of the effects of the order entered for appointment of guardian.

b. Advise the ward of the ward's rights to petition for modification or termination of the guardianship.

c. Advise the ward of the rights retained by the ward.

6. If the court determines that it would be in the ward's best interest to have legal representation with respect to any proceedings in a guardianship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate, or if the ward is indigent the cost of

the court appointed attorney shall be assessed against the county in which the proceedings are pending.

84 Acts, ch 1299, §12; 85 Acts, ch 29, §3; 85 Acts, ch 148, §7; 89 Acts, ch 178, §10; 2000 Acts, ch 1036, §2

633.562 Notification of guardianship powers.

In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice which advises the proposed ward that if a guardian is appointed, the guardian may, without court approval, provide for the care of the ward, manage the ward's personal property and effects, assist the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the court's approval, the guardian may change the ward's permanent residence to a more restrictive residence, and arrange for major elective surgery or any other nonemergency major medical procedure. The notice shall clearly advise the proposed ward in boldface type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the court. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.554.

89 Acts, ch 178, §11; 2000 Acts, ch 1036, §3

633.563 to 633.565 Reserved.

PART 2

OPENING CONSERVATORSHIPS

633.566 Petition for appointment of conservator.

Any person may file with the clerk a verified petition for the appointment of a conservator. The petition shall state the following information, so far as known to the petitioner:

1. The name, age and post-office address of the proposed ward.

2. That the proposed ward is in either of the following categories:

a. Is a person whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

b. Is a minor.

3. The name and post-office address of the proposed conservator, and that such person is qualified to serve in that capacity.

4. The estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate. If any money is payable, or to become payable, to the proposed ward by the United States through the veterans administration, the petition shall so state.

5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.

6. That the proposed ward resides in the state of Iowa, is a nonresident, or that the proposed ward's residence is unknown, and that the proposed ward's best interests require the appointment of a conservator in the state of Iowa.

[C51, §1493, 1494; R60, §1449, 2545, 2546; C73, §2243, 2253, 2272, 2273; C97, §3194, 3202, 3219, 3220; C24, 27, §12575, 12605, 12614, 12619; C31, 35, §12575, 12605, 12614, 12619, 12644-c3; C39, §**12575, 12605, 12614, 12619, 12644.03;** C46, 50, 54, 58, 62, §668.3, 668.32, 670.2, 670.7, 672.3; C66, 71, 73, 75, 77, 79, 81, §633.566]

84 Acts, ch 1299, §13; 85 Acts, ch 29, §4; 97 Acts, ch 178, §9

633.567 No notice required — minor. Repealed by 84 Acts, ch 1299, § 19.

633.568 Notice to proposed ward.

1. *a.* If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

b. Except where the ward is the petitioner, notice shall also be served upon the ward's spouse. If the ward has no spouse, notice shall be served upon the ward's adult children, if any.

2. *a.* If the proposed ward is a minor or if the proposed ward is an adult under a standby petition and the court determines, pursuant to section 633.575, subsection 1, paragraph *"b"*, that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

b. Notice shall also be served upon:

(1) The parents of the proposed ward, if the ward is a minor.

(2) The spouse of the proposed ward, if the proposed ward is an adult. If the ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

3. Service of notice under this section upon persons other than the proposed ward shall be made upon such persons whose identities are reasonably ascertainable pursuant to section 633.40, subsection 5. Proof of service shall be made by affidavit, to which copies of all documents served shall be attached.

[C31, 35, §12644-c4; C39, §**12644.04;** C46, 50, 54, 58, 62, §672.4; C66, 71, 73, 75, 77, 79, 81, §633.568]

84 Acts, ch 1299, §14; 85 Acts, ch 29, §5; 85 Acts, ch 148, §8; 2000 Acts, ch 1036, §4; 2002 Acts, ch 1119, §190

Section amended

633.569 Pleadings and trial — rules of civil procedure.

All other pleadings and the trial of the cause shall be governed by the rules of civil procedure. The cause shall be tried as a law action, and either party shall be entitled to a jury trial if demand is made therefor as provided by the rules of civil procedure.

[C73, §2273; C97, §3220; C24, 27, §12621; C31, 35, §12621, 12644-c6; C39, §**12621, 12644.06;** C46, 50, 54, 58, 62, §670.9, 672.6; C66, 71, 73, 75, 77, 79, 81, §633.569]

See R.C.P. 1.902

633.570 Appointment of conservator.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by clear and convincing evidence, the court may appoint a conservator.

2. In all proceedings to appoint a conservator, the court shall consider the functional limitations of the person and whether a limited conservatorship, as authorized in section 633.637, is appropriate.

3. Section 633.551 applies to the appointment of a conservator.

[R60, §1449; C73, §2272; C97, §3219; C24, 27, §12614, 12616; C31, 35, §12614, 12616, 12644-c8; C39, §**12614, 12616, 12644.08;** C46, 50, 54, 58, 62, §670.2, 670.4, 672.8; C66, 71, 73, 75, 77, 79, 81, §633.570]

97 Acts, ch 178, §10

633.571 Preference as to appointment of conservator.

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

[C51, §1491, 1492, 1495, 1498; R60, §2543, 2544, 2547, 2550; C73, §2241, 2242, 2244, 2249; C97, §3192, 3193, 3195; C24, 27, 31, 35, 39, §**12573, 12574, 12576;** C46, 50, 54, 58, 62, §668.1, 668.2, 668.4; C66, 71, 73, 75, 77, 79, 81, §633.571]

94 Acts, ch 1153, §10

633.572 Appointment of conservator on voluntary petition.

1. A conservator may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a conservator's powers as provided in section 633.576.

2. In all proceedings to appoint a conservator, the court shall consider whether a limited conservatorship, as authorized in section 633.637, is appropriate.

[C51, §1495; R60, §2547; C73, §2244; C97, §3195; C24, 27, 31, 35, 39, §**12576, 12617, 12618;** C46, 50, 54, 58, 62, §668.4, 670.5, 670.6; C66, 71, 73, 75, 77, 79, 81, §633.572]

89 Acts, ch 178, §12; 97 Acts, ch 178, §11

See also §633.557

633.573 Appointment of temporary conservator.

A temporary conservator may be appointed but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

[C73, §2273; C97, §3220; C24, 27, §12620; C31, 35, §12620, 12644-c5; C39, §**12620, 12644.05;** C46, 50, 54, 58, 62, §670.8, 672.5; C66, 71, 73, 75, 77, 79, 81, §633.573]

633.574 Procedure in lieu of conservatorship.

If a conservator has not been appointed, money due a minor or other property to which a minor is entitled, not exceeding in the aggregate ten thousand dollars in value, shall be paid or delivered to a custodian under any uniform transfers to minors Act. The written receipt of the custodian constitutes an acquittance of the person making the payment of money or delivery of property.

[C51, §1493, 1494; R60, §2545, 2546; C73, §2243; C97, §3194; C24, 27, 31, 35, 39, §**12575;** C46, 50, 54, 58, 62, §668.3; C66, 71, 73, 75, 77, 79, 81, §633.574; 82 Acts, ch 1052, §2]

84 Acts, ch 1067, §48; 95 Acts, ch 63, §6

See also chapter 565B, §633.108, 633.681, R.C.P. 1.1228

633.575 Representation.

1. In a proceeding for the appointment of a conservator:

a. If the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. Upon the filing of the petition, the court shall appoint an attorney to represent the proposed ward, set a hearing on the petition, and

provide for notice of the appointment of counsel and the date for hearing.

b. If the proposed ward is either a minor or an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.

c. The court may take action under paragraph *"a"* or *"b"* prior to the service of the original notice upon the proposed ward.

d. The court may reconsider the determination regarding representation upon application by any interested person.

e. The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

3. If the proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents shall be assessed against the county in which the proceedings are pending. For the purposes of this subsection, the court may find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.

4. An attorney appointed pursuant to this section, to the extent possible, shall:

a. Ensure that the proposed ward has been properly advised of the nature of the proceeding and its purpose.

b. Ensure that the proposed ward has been properly advised of the ward's rights in a conservatorship proceeding.

c. Personally interview the proposed ward.

d. File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs *"a"* through *"c"* has been made or stating the inability to comply by reason of the proposed ward's condition.

e. Represent the proposed ward.

f. Ensure that the conservatorship procedures conform to the statutory and due process requirements of Iowa law.

5. In the event that an order of appointment is entered, the attorney appointed pursuant to this section, to the extent possible, shall:

a. Inform the proposed ward of the effects of the order entered for appointment of conservator.

b. Advise the ward of the ward's rights to petition for modification or termination of conservatorship.

c. Advise the ward of the rights retained by the ward.

6. If the court determines that it would be in the ward's best interest to have legal representation with respect to any proceedings in a conservatorship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate, or if the ward is indigent the cost of the court appointed attorney shall be assessed against the county in which the proceedings are pending.

84 Acts, ch 1299, §15; 85 Acts, ch 29, §6; 85 Acts, ch 148, §9; 89 Acts, ch 178, §13; 2000 Acts, ch 1036, §5

633.576 Notification of conservatorship powers.

In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advises the proposed ward that if a conservator is appointed, the conservator may, without court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the court determines is in the ward's best interests. The notice shall clearly advise the proposed ward, in boldface type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the court. In an involuntary conservatorship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.568.

89 Acts, ch 178, §14; 2000 Acts, ch 1036, §6

633.577 to 633.579 Reserved.

PART 3

CONSERVATORSHIPS FOR ABSENTEES

633.580 Petition for appointment of conservator for absentee.

When a person owns property located in the state of Iowa, the person's whereabouts are unknown, and no provision for the care, control and supervision of such property has been made, with the result that such property is likely to be lost or damaged, or that the dependents of such owner are likely to be deprived of means of support because of such absence, it shall be proper for any person to file with the clerk a petition for the appointment of a conservator of such property of the absentee. The petition shall state the following information, so far as known to the petitioner:

1. The name, age and last known post office address of the proposed ward.
2. The facts concerning the disappearance of the absentee.
3. The name and post office address of the proposed conservator, and that the proposed conservator is qualified to serve in that capacity.
4. A general description of the property of the proposed ward within this state and of the proposed ward's right to receive property; also, the estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate. If any money is payable, or to become payable, to the proposed ward by the United States through the veterans administration, the petition shall so state.
5. That the property of the absentee is likely to be lost or damaged, or that the absentee's dependents are likely to be deprived of means of support, because of the absence, and that no proper provision has been made for the care, control and supervision over such property.

[S13, §3228-a; C24, 27, 31, 35, 39, §**12632;** C46, 50, 54, 58, 62, §671.1; C66, 71, 73, 75, 77, 79, 81, §633.580]

633.581 Original notice governed by rules of civil procedure.

Notice of the filing of such a petition and of the hearing thereon shall be served upon the absentee by publication in the manner of an original notice and the rules of civil procedure governing original notices by publication shall also govern such a notice as to content.

[S13, §3228-a; C24, 27, 31, 35, 39, §**12633;** C46, 50, 54, 58, 62, §671.2; C66, 71, 73, 75, 77, 79, 81, §633.581]

633.582 Notice on county attorney.

Such notice shall also be served on the county attorney of the county in which the petition is filed and on the spouse and children of the absentee as provided by the rules of civil procedure. If there is no spouse or children, such notice shall be served on such persons and in such manner as the court may prescribe.

[S13, §3228-a; C24, 27, 31, 35, 39, §**12634;** C46, 50, 54, 58, 62, §671.3; C66, 71, 73, 75, 77, 79, 81, §633.582]

633.583 Pleadings and trial — rules of civil procedure.

All other pleadings and the trial of the cause shall be governed by the rules of civil procedure.

[S13, §3228-a; C24, 27, 31, 35, 39, §**12635;** C46, 50, 54, 58, 62, §671.4; C66, 71, 73, 75, 77, 79, 81, §633.583]

633.584 Appointment of conservator.

In the event that the absentee does not appear at said hearing, the court shall hear the petition and the proof offered. All evidence shall be made a part of a transcript to be filed in such proceedings. If the allegations of the petition are proved, the court may appoint a conservator.

[S13, §3228-b, -c; C24, 27, 31, 35, 39, §**12636, 12637, 12639;** C46, 50, 54, 58, 62, §671.5, 671.6, 671.8; C66, 71, 73, 75, 77, 79, 81, §633.584]

633.585 Appointment of temporary conservator.

A temporary conservator may be appointed, but only after a hearing on such notice, and subject to such conditions as the court shall prescribe.

[C66, 71, 73, 75, 77, 79, 81, §633.585]

633.586 to 633.590 Reserved.

PART 4

STANDBY CONSERVATORSHIPS

633.591 Voluntary petition for appointment of conservator — standby basis.

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of the person's property upon the express condition that such petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition. The petition, if executed on or after January 1, 1991, shall advise the proposed ward of a conservator's powers as provided in section 633.576.

[C66, 71, 73, 75, 77, 79, 81, §633.591]

89 Acts, ch 178, §15; 90 Acts, ch 1036, §2; 91 Acts, ch 36, §7

633.591A Voluntary petition for appointment of conservator for a minor — standby basis.

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

94 Acts, ch 1153, §11

633.592 Petition may nominate conservator.

Such petition may nominate a person for appointment to serve as such conservator, and may request that the appointment be made without bond, or with bond of a certain stated sum. The court in appointing the conservator shall give due regard to such nomination and other requests and recommendations contained in the petition.

[C66, 71, 73, 75, 77, 79, 81, §633.592]

633.593 Deposit of petition.

Such petition may be deposited with the clerk of the county in which the party resides, or with any person, firm, bank or trust company selected by the petitioner.

[C66, 71, 73, 75, 77, 79, 81, §633.593]

633.594 Revocation of petition.

Such petition may be revoked by the petitioner at any time before appointment of a conservator by the court, provided that the petitioner is of sound mind. Revocation shall be accomplished by the destruction of the petition by the petitioner, or by the execution of an acknowledged instrument of revocation. If the petition has been deposited with the clerk, the revocation may likewise be deposited there.

[C66, 71, 73, 75, 77, 79, 81, §633.594]

633.595 Filing petition upon occurrence of condition.

At any time after the deposit of the petition with the clerk, and before its revocation, it may be brought on for hearing by the filing of a verified statement to the effect that the occurrence of the event or the condition provided for in the petition has come to pass. If the petition has not been deposited with the clerk under the provisions of section 633.593, then it may be brought on for hearing at any time by the filing of it and such a verified statement with the clerk of the county in which the person who executed the petition then resides.

[C66, 71, 73, 75, 77, 79, 81, §633.595]

633.596 Considerations — appointment of conservator.

At the time a standby petition is filed under this part, the court shall consider whether a limited conservatorship, as authorized in section 633.637, is appropriate.

[C66, 71, 73, 75, 77, 79, 81, §633.596]

97 Acts, ch 178, §12

633.597 Conservator shall have same powers and duties.

The powers and duties of such a conservator shall be the same as those of a conservator appointed in response to any of the other petitions authorized in this Code.

[C66, 71, 73, 75, 77, 79, 81, §633.597]

633.598 to 633.602 Reserved.

PART 5

FOREIGN CONSERVATORS

633.603 Appointment of foreign conservators.

When there is no conservatorship, nor any application therefor pending, in this state, the duly qualified foreign conservator or guardian of a nonresident ward may, upon application, be appointed conservator of the property of such person in this state; provided that a resident conservator is appointed to serve with the foreign conservator; and provided further, that for good cause shown, the court may appoint the foreign conservator to act alone without the appointment of a resident conservator.

[C51, §1512; R60, §2564; C73, §2266; C97, §3213; C24, 27, 31, 35, 39, §**12606;** C46, 50, 54, 58, 62, §669.1; C66, 71, 73, 75, 77, 79, 81, §633.603]

633.604 Application.

The application for appointment of a foreign conservator or guardian as conservator in this state shall include the name and address of the nonresident ward, and of the nonresident conservator or guardian, and the name and address of the resident conservator to be appointed. It shall be accompanied by a certified copy of the original letters or other authority conferring the power upon the foreign conservator or guardian to act as such. The application shall also state the cause for the appointment of the foreign conservator to act as sole conservator, if such be the case.

[C51, §1513; R60, §2565; C73, §2267; C97, §3214; C24, 27, 31, 35, 39, §**12607;** C46, 50, 54, 58, 62, §669.2; C66, 71, 73, 75, 77, 79, 81, §633.604]

633.605 Personal property.

A foreign conservator or guardian of a nonresident may be authorized by the court of the county

wherein such ward has personal property to receive the same upon compliance with the provisions of sections 633.606, 633.607 and 633.608.

[C73, §2269; C97, §3216; C24, 27, 31, 35, 39, §**12609;** C46, 50, 54, 58, 62, §669.4; C66, 71, 73, 75, 77, 79, 81, §633.605]

633.606 Copy of bond.

Such foreign conservator or guardian shall file in the office of the clerk in the county where the property is situated, a certified copy of the conservator's or guardian's official bond, duly authenticated by the court granting the letters, and shall also execute a receipt for the property received by the conservator or guardian.

[C51, §1514; R60, §2566; C73, §2268, 2270; C97, §3215, 3217; C24, 27, 31, 35, 39, §**12608, 12610;** C46, 50, 54, 58, 62, §669.3, 669.5; C66, 71, 73, 75, 77, 79, 81, §633.606]

633.607 Order for delivery.

Upon the filing of the bond as above provided, and the court being satisfied with the amount thereof, it shall order the personal property of the ward delivered to such conservator or guardian.

[C73, §2271; C97, §3218; C24, 27, 31, 35, 39, §**12611;** C46, 50, 54, 58, 62, §669.6; C66, 71, 73, 75, 77, 79, 81, §633.607]

633.608 Recording of bond — notice to court.

The clerk shall record the bonds and the receipt, and notify by mail the court which granted the letters of conservatorship or guardianship of the amount of property delivered to the fiduciary and the date of delivery thereof.

[C73, §2271; C97, §3218; C24, 27, 31, 35, 39, §**12612;** C46, 50, 54, 58, 62, §669.7; C66, 71, 73, 75, 77, 79, 81, §633.608]

633.609 to 633.613 Reserved.

PART 6

CONSERVATORSHIPS INVOLVING VETERANS ADMINISTRATION

633.614 Application of other provisions to veterans' conservatorships.

Whenever moneys are paid or are payable pursuant to any law of the United States through the veterans administration to a conservator or a guardian, the provisions of sections 633.615, 633.617 and 633.622 shall apply to the administration of said moneys. However, such provisions shall be construed to be supplementary to the other provisions for conservators, and shall not be exclusive of such provisions.

[C31, 35, §12644-c2; C39, §**12644.02;** C46, 50, 54, 58, 62, §672.2; C66, 71, 73, 75, 77, 79, 81, §633.614]

633.615 Administrator of veterans affairs — party in interest.

The administrator of veterans affairs of the United States, the administrator's successor, or the designee of either, shall be a party in interest in any proceeding for the appointment or removal of a conservator, or for the termination of the conservatorship, and in any suit or other proceeding, including reports and accountings, affecting in any manner the administration of those assets that were derived in whole or in part from benefits paid by the veterans administration. Not less than fifteen days prior to the time set for a hearing in any such matters, notice, in writing, of the time and place thereof shall be given by mail to the office of the veterans administration having jurisdiction over the area in which such matter is pending.

[C31, 35, §12644-c4, -c11; C39, §**12644.04, 12644.11;** C46, 50, 54, 58, 62, §672.4, 672.11; C66, 71, 73, 75, 77, 79, 81, §633.615]

633.616 Repealed by 75 Acts, ch 208, § 17.

633.617 Ward rated incompetent by veterans administration.

Upon the trial of an issue arising upon a prayer for the appointment of either a temporary or a permanent conservator, a certificate of the administrator of veterans administration, or the administrator's representative, setting forth the fact that the defendant veteran has been rated incompetent by the veterans administration upon examination in accordance with the laws and regulations governing the veterans administration, shall be prima facie evidence of the necessity for such appointment, and the court may appoint a conservator for the property of such person.

[C31, 35, §12644-c3, -c7; C39, §**12644.03, 12644.07;** C46, 50, 54, 58, 62, §672.3, 672.7; C66, 71, 73, 75, §633.616; C77, 79, 81, §633.617]

633.618 to 633.621 Repealed by 75 Acts, ch 208, § 17.

633.622 Bond requirements.

In administering moneys paid by the veterans administration the conservator, unless it is a bank or trust company qualified to act as a fiduciary in this state, shall execute and file with the clerk a bond by a recognized surety company equal to such moneys and the annual income therefrom, plus the expected annual veterans administration benefit payments.

[C31, 35, §12644-c14, -c15; C39, §**12644.14, 12644.15;** C46, 50, 54, 58, 62, §672.14, 672.15; C66, 71, 73, 75, 77, 79, 81, §633.622]

633.623 to 633.626 Reserved.

PART 7

COMBINING PETITION FOR GUARDIAN AND CONSERVATOR

633.627 Combining petitions.

The petitions for the appointment of a guardian and a conservator may be combined and the cause tried in the same manner as a petition for the appointment of a conservator.

[C66, 71, 73, 75, 77, 79, 81, §633.627]

633.628 Same person as guardian and conservator.

The same person may be appointed to serve as both guardian and conservator.

[C66, 71, 73, 75, 77, 79, 81, §633.628]

633.629 to 633.632 Reserved.

DIVISION XIV

ADMINISTRATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

PART 1

APPOINTMENT AND QUALIFICATION OF GUARDIANS AND CONSERVATORS

633.633 Provisions applicable to all fiduciaries shall govern.

The provisions of this Code applicable to all fiduciaries shall govern the appointment, qualification, oath and bond of guardians and conservators, except that a guardian shall not be required to give bond unless the court, for good cause, finds that the best interests of the ward require a bond. The court shall then fix the terms and conditions of such bond.

[C51, §1496; R60, §2548; C73, §2246; C97, §3197; S13, §3228-d; C24, 27, §12577 – 12579, 12640; C31, 35, §12577 – 12579, 12640, 12644-c9; C39, §**12577 – 12579, 12640, 12644.09;** C46, 50, 54, 58, 62, §668.5 – 668.7, 671.9, 672.9; C66, 71, 73, 75, 77, 79, §633.634; C81, §633.633]

633.633A Liability of guardians and conservators.

Guardians and conservators shall not be held personally liable for actions or omissions taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

1. A breach of fiduciary duty imposed by this Code.

2. Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties.

89 Acts, ch 178, §16

633.633B Tort liability of guardians and conservators.

The fact that a person is a guardian or conservator shall not in itself make the person personally liable for damages for the acts of the ward.

89 Acts, ch 178, §17

633.634 Combination of voluntary and standby petitions with involuntary petition for hearing.

If prior to the time of hearing on a petition for the appointment of a guardian or a conservator, a petition is filed under the provisions of section 633.557, 633.572 or 633.591, the court shall combine the hearing on such petitions and determine who shall be appointed guardian or conservator, and such petition shall be triable to the court.

[C66, 71, 73, 75, 77, 79, §633.635; C81, §633.634]

633.635 Responsibilities of guardian.

1. Based upon the evidence produced at the hearing, the court may grant a guardian the following powers and duties which may be exercised without prior court approval:

a. Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward's potential.

b. Taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects.

c. Assisting the ward in developing maximum self-reliance and independence.

d. Ensuring the ward receives necessary emergency medical services.

e. Ensuring the ward receives professional care, counseling, treatment, or services as needed. If necessitated by the physical or mental disability of the ward, the provision of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia is included, if the anesthesia is provided within the scope of the health care practitioner's scope of practice.

f. Any other powers or duties the court may specify.

2. A guardian may be granted the following powers which may only be exercised upon court approval:

a. Changing, at the guardian's request, the ward's permanent residence if the proposed new residence is more restrictive of the ward's liberties than the current residence.

b. Arranging the provision of major elective surgery or any other nonemergency major medical procedure. For the purposes of this paragraph, *"major elective surgery"* and *"nonemergency major medical procedure"* do not include the provision to the ward of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia, if the use of anesthesia is

necessitated by the physical or mental disability of the ward, and if the anesthesia is provided within the scope of the health care practitioner's scope of practice.

c. Consent to the withholding or withdrawal of life-sustaining procedures in accordance with chapter 144A.

3. For the purposes of this section:

a. "Routine dental examinations and procedures" includes preventive services, diagnostic services, restorative services, periodontal services, endodontic services, oral surgery, prosthetic services, and orthodontic procedures.

b. "Routine physical examinations and procedures" includes examinations and procedures performed for the purpose of general treatment or diagnosis or for the purpose of treatment or diagnosis related to a specific illness, symptom, complaint, or injury.

4. The court may take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, including the availability of third-party assistance to meet the needs of the ward or proposed ward, and may direct that the guardian have only a specially limited responsibility for the ward. In that event, the court shall state those areas of responsibility which shall be supervised by the guardian and all others shall be retained by the ward. The court may make a finding that the ward lacks the capacity to contract a valid marriage.

5. From time to time, upon a proper showing, the court may modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be based on clear and convincing evidence that the ward continues to fall within the categories of section 633.552, subsection 2, paragraph *"a"* or *"b"*, and that the facts justify a modification of the guardianship. Section 633.551 applies to the modification proceedings. Any modification that would be less restrictive for the ward shall be based upon proof in accordance with the requirements of section 633.675.

[C81, §633.635]

84 Acts, ch 1299, §16; 85 Acts, ch 29, §7; 87 Acts, ch 100, §2; 91 Acts, ch 93, §4; 97 Acts, ch 178, §13, 14; 2000 Acts, ch 1063, §1 – 3

PART 2

RIGHTS AND TITLE OF WARD

633.636 Effect of appointment of guardian or conservator.

The appointment of a guardian or conservator shall not constitute an adjudication that the ward is of unsound mind.

[C66, 71, 73, 75, 77, 79, 81, §633.636]

633.637 Powers of ward.

A ward for whom a conservator has been appointed shall not have the power to convey, encumber, or dispose of property in any manner, other than by will if the ward possesses the requisite testamentary capacity, unless the court determines that the ward has a limited ability to handle the ward's own funds. If the court makes such a finding, it shall specify to what extent the ward may possess and use the ward's own funds.

Any modification of the powers of the ward that would be more restrictive of the ward's control over the ward's financial affairs shall be based upon clear and convincing evidence and the burden of persuasion is on the conservator. Any modification that would be less restrictive of the ward's control over the ward's financial affairs shall be based upon proof in accordance with the requirements of section 633.675.

[C66, 71, 73, 75, 77, 79, 81, §633.637]

97 Acts, ch 178, §15

633.638 Presumption of fraud.

If a conservator be appointed, all contracts, transfers and gifts made by the ward after the filing of the petition shall be presumed to be a fraud against the rights and interest of the ward except as otherwise directed by the court pursuant to section 633.637.

[C24, 27, 31, 35, 39, §**12622;** C46, 50, 54, 58, 62, §670.10; C66, 71, 73, 75, 77, 79, 81, §633.638]

See also §633.650

633.639 Title to ward's property.

The title to all property of the ward is in the ward and not the conservator subject, however, to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition, under the provisions of the law.

[C66, 71, 73, 75, 77, 79, 81, §633.639]

633.640 Conservator's right to possession.

Every conservator shall have a right to, and shall take, possession of all of the real and personal property of the ward. The conservator shall pay the taxes and collect the income therefrom until the conservatorship is terminated. The conservator may maintain an action for the possession of the property, and to determine the title to the same.

[C73, §2245; C97, §3196; C24, 27, 31, 35, 39, §**12584, 12585;** C46, 50, 54, 58, 62, §668.11, 668.12; C66, 71, 73, 75, 77, 79, 81, §633.640]

PART 3

DUTIES AND POWERS OF CONSERVATOR

633.641 Duties of conservator.

It is the duty of the conservator of the estate to protect and preserve it, to invest it prudently, to account for it as herein provided, and to perform all other duties required of the conservator by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto.

The conservator shall report to the department of human services the assets and income of any ward receiving medical assistance under chapter 249A. Reports shall be made upon establishment of a conservatorship for an individual applying for or receiving medical assistance, upon application for benefits on behalf of the ward, upon annual or semiannual review of continued medical assistance eligibility, when any significant change in principal or income occurs in the conservatorship account, or as otherwise requested by the department of human services. Written reports shall be provided to the department of human services county office for the county in which the ward resides or the county office in which the ward's medical assistance is administered.

[C51, §1499; R60, §2551; C73, §2250; C97, §3200; S13, §3228-d; C24, 27, 31, 35, 39, §**12581, 12640;** C46, 50, 54, 58, 62, §668.9, 671.9; C66, 71, 73, 75, 77, 79, 81, §633.641]

94 Acts, ch 1112, §2

633.642 Inventory of ward's property. Repealed by 85 Acts, ch 29, § 11. See § 633.670.

633.643 Disposal of will by conservator.

When an instrument purporting to be the will of the ward comes into the hands of a conservator, the conservator shall immediately deliver it to the court.

[C66, 71, 73, 75, 77, 79, 81, §633.643]

633.644 Court order to preserve testamentary intent of ward.

Upon receiving an instrument purporting to be the will of a living ward under the provisions of section 633.643, the court may open said will and read it. The court with or without notice, as it may determine, may enter such orders in the conservatorship as it deems advisable for the proper administration of the conservatorship in light of the expressed testamentary intent of the ward.

[C66, 71, 73, 75, 77, 79, 81, §633.644]

633.645 Court to deliver will to clerk.

An instrument purporting to be the will of a ward coming into the hands of the court under the provisions of section 633.643, shall thereafter be resealed by the court and be deposited with the clerk to be held by said clerk as provided in sections 633.286 through 633.289.

[C66, 71, 73, 75, 77, 79, 81, §633.645]

633.646 Powers of the conservator without order of court.

The conservator shall have the full power, without prior order of court, with relation to the estate of the ward:

1. To collect, receive, receipt for any principal or income, and to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against, the ward or the conservator.
2. To sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market.
3. To vote at corporate meetings in person or by proxy.
4. To receive additional property from any source.
5. Notwithstanding the provisions of division XX, part 4, subpart C, of this chapter, to continue to hold any investment or other property originally received by the conservator, and also any increase thereof, pending the timely filing of the first annual report.

[S13, §3228-d; C24, 27, 31, 35, 39, §**12640;** C46, 50, 54, 58, 62, §671.9; C66, 71, 73, 75, 77, 79, 81, §633.646]

99 Acts, ch 125, §107, 109

633.647 Powers of conservator subject to the approval of the court.

Conservators shall have the following powers subject to the approval of the court after hearing on such notice, if any, as the court may prescribe:

1. To invest the funds belonging to the ward.
2. To execute leases.
3. To make payments to, or for the benefit of, the ward in any of the following ways:

a. Directly to the ward;

b. Directly for the maintenance, welfare and education of the ward;

c. To the legal guardian of the person of the ward; or

d. To anyone who at the time shall have the custody and care of the person of the ward.

4. To apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable.
5. To compromise or settle any claim by or against the ward or the conservator; to adjust, arbitrate or compromise claims in favor of or against the ward or the conservator.
6. To make an election for the ward who is a surviving spouse as provided in sections 633.236 and 633.240.
7. To exercise the right to disclaim on behalf of the ward as provided in section 633.704.

8. To do any other thing that the court determines to be to the best interests of the ward and the ward's estate.

[C97, §3225; S13, §3225, 3228-d; C24, 27, 31, 35, 39, §**12629, 12640;** C46, 50, 54, 58, 62, §670.17, 671.9; C66, 71, 73, 75, 77, 79, 81, §633.647]

88 Acts, ch 1064, §7; 2002 Acts, ch 1086, §3, 21
NEW subsection 7 and former subsection 7 renumbered as 8

633.648 Appointment of attorney in compromise of personal injury settlements.

Notwithstanding the provisions of section 633.647 prior to authorizing a compromise of a claim for damages on account of personal injuries to the ward, the court may order an independent investigation by an attorney other than by the attorney for the conservator. The cost of such investigation, including a reasonable attorney fee, shall be taxed as part of the cost of the conservatorship.

[C66, 71, 73, 75, 77, 79, 81, §633.648]

633.649 Powers of conservators — same as all fiduciaries.

Except as expressly modified herein, conservators shall have the powers relating to all fiduciaries as set out in sections 633.63 to 633.162.

[S13, §3228-d; C24, 27, 31, 35, 39, §**12640;** C46, 50, 54, 58, 62, §671.9; C66, 71, 73, 75, 77, 79, 81, §633.649]

633.650 Breach of contracts.

Under order of court, for good cause shown, after such notice as the court may prescribe, a conservator shall have the power to breach contracts of the ward entered into by the ward prior to the appointment of the conservator, thereby incurring such liability of the ward's estate for such breach as the ward would have incurred for such breach if the ward had been competent.

[R60, §1454; C73, §2277; C97, §3226; C24, 27, 31, 35, 39, §**12586;** C46, 50, 54, 58, 62, §668.13; C66, 71, 73, 75, 77, 79, 81, §633.650]
See also §633.638

633.651 Tort liability of conservator. Repealed by 89 Acts, ch 178, § 21. See § 633.633B.

PART 4

TRANSFERRING, ENCUMBERING, AND LEASING PROPERTY BY CONSERVATOR

633.652 Procedure applicable to personal representatives shall govern.

Conservators shall have the power to sell, mortgage, exchange, pledge and lease real and personal property belonging to the ward, including the homestead and exempt personal property, when it appears to be to the best interests of the ward, in the same manner and by the same procedure that is provided in this Code for sale, mortgage, exchange, pledge and lease by personal representatives in administration of estates of decedents.

[C51, §1500 – 1508; R60, §1453, 2552 – 2560; C73, §2257 – 2265, 2276; C97, §3206 – 3212, 3225; S13, §3225; C24, 27, 31, §12587 – 12596, 12628; C35, §12587 – 12596, 12628, 12644-g1, -g2, -g3, -g4, -g5; C39, §**12587 – 12596, 12628, 12644.21 – 12644.25;** C46, 50, 54, 58, 62, §668.14 – 668.23, 670.16, 673.1 – 673.5; C66, 71, 73, 75, 77, 79, 81, §633.652]
See §597.6 to 597.9

PART 5

CLAIMS

633.653 Claims against the ward, the conservatorship or the conservator in that capacity.

Claims accruing before or after the appointment of the conservator, and whether arising in contract or tort or otherwise, after being allowed or established as provided in sections 633.654 to 633.656, shall be paid by the conservator from the assets of the conservatorship.

[C66, 71, 73, 75, 77, 79, 81, §633.653]

633.653A Claims for cost of medical care or services.

The provision of medical care or services to a ward who is a recipient of medical assistance under chapter 249A creates a claim against the conservatorship for the amount owed to the provider under the medical assistance program for the care or services. The amount of the claim, after being allowed or established as provided in this part, shall be paid by the conservator from the assets of the conservatorship.

93 Acts, ch 106, §9

633.654 Form and verification of claims — general requirements.

No claim shall be allowed against the estate of a ward upon application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, and describing the nature and the amount thereof, if ascertainable. It shall be accompanied by the affidavit of the claimant, or of someone for the claimant, that the amount is justly due, or if not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. The duplicate of said claim shall be mailed by the clerk to the conservator or the conservator's attorney of record; however, valid contract claims arising in the ordinary course of the conduct of the business or affairs of the ward by the conservator may be paid by the conservator without requiring

affidavit or filing.

[C66, 71, 73, 75, 77, 79, 81, §633.654]

633.655 Requirements when claim founded on written instrument.

If a claim is founded upon a written instrument, the original of such instrument, or a copy thereof, with all endorsements, must be attached to the claim. The original instrument must be exhibited to the conservator or to the court, upon demand, unless it has been lost or destroyed, in which case, its loss or destruction must be stated in the claim.

[C51, §1359; R60, §2391; C73, §2408; C97, §3338; C24, 27, 31, 35, 39, §**11957, 11958;** C46, 50, 54, 58, 62, §635.53, 635.54; C66, 71, 73, 75, 77, 79, 81, §633.655]

633.656 How claim entitled.

All claims filed against the estate of the ward shall be entitled in the name of the claimant against the conservator as such, naming the conservator, and in all further proceedings thereon, this title shall be preserved.

[C73, §2409; C97, §3339; C24, 27, 31, 35, 39, §**11960;** C46, 50, 54, 58, 62, §635.56; C66, 71, 73, 75, 77, 79, 81, §633.656]

633.657 Filing of claim required.

The filing of a claim in the conservatorship tolls the statute of limitations applicable to such claim.

[C66, 71, 73, 75, 77, 79, 81, §633.657]

633.658 Compelling payment of claims.

No claimant shall be entitled to compel payment until the claimant's claim has been duly filed and allowed.

[C66, 71, 73, 75, 77, 79, 81, §633.658]

633.659 Allowance by conservator.

When a claim has been filed and has been admitted in writing by the conservator, it shall stand allowed, in the absence of fraud or collusion.

[C66, 71, 73, 75, 77, 79, 81, §633.659]

633.660 Execution and levy prohibited.

No execution shall issue upon, nor shall any levy be made against, any property of the estate of a ward under any judgment against the ward or a conservator, but the provisions of this section shall not be so construed as to prevent the enforcement of a mortgage, pledge or other lien upon property in an appropriate proceeding.

[C66, 71, 73, 75, 77, 79, 81, §633.660]

633.661 Claims of conservators.

If the conservator is a creditor of the ward, the conservator shall file the claim as other creditors, and the court shall appoint some competent person as temporary conservator to represent the ward at the hearing on the conservator's claim. The same procedure shall be followed in the case of coconservators where all such conservators are creditors of the ward; but if one of the coconservators is not a creditor of the ward, such disinterested conservator shall represent the ward at the hearing on any claim against the ward by a coconservator.

[C51, §1369; R60, §2401; C73, §2417; C97, §3346; C24, 27, 31, 35, 39, §**11968;** C46, 50, 54, 58, 62, §635.64; C66, 71, 73, 75, 77, 79, 81, §633.661]

633.662 Claims not filed.

The conservator may pay any valid claim against the estate of the ward even though such claim has not been filed, but all such payments made by the conservator shall be at the conservator's own peril.

[C66, 71, 73, 75, 77, 79, 81, §633.662]

633.663 Waiver of statute of limitations by conservator.

It shall be within the discretion of the conservator to determine whether or not the applicable statute of limitation shall be invoked to bar a claim which the conservator believes to be just, and the conservator's decision as to the invoking of such statute shall be final.

[C66, 71, 73, 75, 77, 79, 81, §633.663]

633.664 Liens not affected by failure to file claim.

Nothing in sections 633.654 and 633.658 shall affect or prevent an action or proceeding to enforce any mortgage, pledge or other lien upon the property of the ward.

[C66, 71, 73, 75, 77, 79, 81, §633.664]

633.665 Separate actions and claims.

Any action pending against the ward at the time the conservator is appointed shall also be considered a claim filed in the conservatorship if notice of substitution is served on the conservator as defendant, and a duplicate of the proof of service of notice of such proceeding is filed in the conservatorship proceeding.

A separate action based on a debt or other liability of the ward may be commenced against the conservator as such in lieu of filing a claim in the conservatorship. Such an action shall be commenced by serving an original notice on the conservator and filing a duplicate of the proof of service of notice of such proceeding in the conservatorship proceeding. Such an action shall also be considered a claim filed in the conservatorship. Such an action may be commenced only in a county where the venue would have been proper if there were no conservatorship and the action had been commenced against the ward.

[C66, 71, 73, 75, 77, 79, 81, §633.665]

633.666 Denial and contest of claims.

The provisions of sections 633.438 to 633.448 shall be applicable to the denial and contest of claims against conservatorships, but shall not be applicable to actions continued or commenced under section 633.665.

[C66, 71, 73, 75, 77, 79, 81, §633.666]

633.667 Payment of claims in insolvent conservatorships.

When it appears that the assets in a conservatorship are insufficient to pay in full all the claims against such conservatorship, the conservator shall report such matter to the court, and the court shall, upon hearing, with notice to all persons who have filed claims in the conservatorship, make an order for the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ward were not under conservatorship.

[R60, §1455; C73, §2278; C97, §3227; C24, 27, 31, 35, 39, §**12630;** C46, 50, 54, 58, 62, §670.18; C66, 71, 73, 75, 77, 79, 81, §633.667]

PART 6

GIFTS

633.668 Conservator may make gifts.

For good cause shown and under order of court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, educational, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship, or on a showing to the court that such gifts would benefit the ward or the ward's estate from the standpoint of income, gift, estate or inheritance taxes. The making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ward.

[C66, 71, 73, 75, 77, 79, 81, §633.668]

85 Acts, ch 29, §8

PART 7

GUARDIAN'S REPORTS

633.669 Reporting requirements — assistance by clerk.

1. A guardian appointed under this chapter shall file with the court the following written verified reports:

a. An initial report within sixty days of the guardian's appointment.

b. An annual report unless the court otherwise orders on good cause shown.

c. A final report within thirty days of the termination of the guardianship under section 633.675 unless that time is extended by the court.

2. Reports required by this section must include:

a. The current mental and physical condition of the ward.

b. The present living arrangement of the ward, including a description of each residence where the ward has resided during the reporting period.

c. A summary of the medical, educational, vocational and other professional services provided for the ward.

d. A description of the guardian's visits with and activities on behalf of the ward.

e. A recommendation as to the need for continued guardianship.

f. Other information requested by the court or useful in the opinion of the guardian.

3. The court shall develop a simplified uniform reporting form for use in filing the required reports.

4. The clerk of the court shall notify the guardian in writing of the reporting requirements and shall provide information and assistance to the guardian in filing the reports.

5. Reports of guardians shall be reviewed and approved by a district court judge or referee.

6. Reports required by this section shall, if requested, be served on the attorney appointed to represent the ward in the guardianship proceeding and all other parties appearing in the proceeding.

[C66, 71, 73, 75, 77, 79, 81, §633.669]

84 Acts, ch 1299, §17; 85 Acts, ch 29, §9

PART 8

CONSERVATOR'S INVENTORY AND REPORTS

633.670 Inventory — reporting requirements.

1. A conservator appointed under this chapter shall file with the court:

a. An inventory within sixty days of the conservator's appointment. This inventory shall include all property of the ward that has come into the conservator's possession or of which the conservator has knowledge. When additional property comes into the possession of the conservator or to the knowledge of the conservator, a supplemental inventory shall be filed within thirty days.

b. Written verified reports and accountings as follows:

(1) Annually unless the court otherwise orders on good cause shown.

(2) Within thirty days following the date of removal.

(3) Upon filing resignation and before the resignation is accepted by the court.

(4) Within sixty days following the date of termination.

(5) At other times as the court may order.

2. The clerk of court shall notify the conserva-

tor in writing of the reporting requirements.

3. Reports of conservators shall be reviewed and approved by a district court judge or referee.

[R60, §2568, 2569; C73, §2254, 2255; C97, §3203, 3204, 3222; C24, 27, §12597, 12598, 12627; C31, 35, §12597, 12598, 12627, 12644-c11; C39, §**12597, 12598, 12627, 12644.11;** C46, 50, 54, 58, 62, §668.24, 668.25, 670.15, 672.11; C66, 71, 73, 75, 77, 79, 81, §633.670]

84 Acts, ch 1299, §18; 85 Acts, ch 29, §10

633.671 Requirements of report and accounting.

The report and accounting required by section 633.670 shall account for all of the period since the close of the accounting contained in the next previous report, and shall include the following information as far as applicable:

1. The balance of funds on hand at the close of the last previous accounting, and all amounts received from whatever source during the period covered by the accounting.

2. All disbursements made during the period covered by the accounting.

3. Any changes in investments since the last previous report, including a list of all assets, and recommendations of the conservator for the retention or disposition of any property held by the conservator.

4. The amount of the bond and the name of the surety on it.

5. The residence or physical location of the ward.

6. The general physical and mental condition of the ward.

7. Such other information as shall be necessary to show the condition of the affairs of the conservatorship.

[R60, §2568, 2569; C73, §2254, 2255; C97, §3203, 3204; C24, 27, §12597, 12598; C31, 35, §12597, 12598, 12644-c11; C39, §**12597, 12598, 12644.11;** C46, 50, 54, 58, 62, §668.24, 668.25, 672.11; C66, 71, 73, 75, 77, 79, 81, §633.671]

PART 9

COSTS AND ACCOUNTS

633.672 Payment of court costs in conservatorships.

No order shall be entered approving an annual report of a conservator until the court costs which have been docketed have been paid or provided for. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the conservatorship subsequently becomes financially capable of paying any waived costs, the conservator shall immediately pay the costs.

[C66, 71, 73, 75, 77, 79, 81, §633.672]

89 Acts, ch 178, §18

633.673 Court costs in guardianships.

The ward or the ward's estate shall be charged with the court costs of a ward's guardianship, including the guardian's fees and the fees of the attorney for the guardian. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the ward or ward's estate becomes financially capable of paying any waived costs, the costs shall be paid immediately.

[C97, §3222; S13, §3228-f; C24, 27, 31, 35, 39, §**12626, 12642;** C46, 50, 54, 58, 62, §670.14, 671.11; C66, 71, 73, 75, 77, 79, 81, §633.673]

89 Acts, ch 178, §19

633.674 Settlement of accounts.

The court shall settle each account filed by a conservator by allowing or disallowing it, either in whole or in part, or by surcharging the account against the conservator.

[C66, 71, 73, 75, 77, 79, 81, §633.674]

PART 10

TERMINATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

633.675 Cause for termination.

A guardianship shall cease, and a conservatorship shall terminate, upon the occurrence of any of the following circumstances:

1. If the ward is a minor, when the ward reaches full age.

2. The death of the ward.

3. A determination by the court that the ward is no longer a person whose decision-making capacity is so impaired as to bring the ward within the categories of section 633.552, subsection 2, paragraph *"a"*, or section 633.566, subsection 2, paragraph *"a"*. In a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity. Once the ward has made that showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the ward's decision-making capacity is so impaired, as provided in section 633.552, subsection 2, paragraph *"a"*, or section 633.566, subsection 2, paragraph *"a"*, that the guardianship or conservatorship should not be terminated.

4. Upon determination by the court that the conservatorship or guardianship is no longer necessary for any other reason.

[S13, §3228-e; C24, 27, 31, 35, 39, §**12641;** C46, 50, 54, 58, 62, §671.10, 672.21; C66, 71, 73, 75, 77, 79, 81, §633.675]

97 Acts, ch 178, §16

633.676 Assets exhausted.

At any time that the assets of the ward's estate do not exceed the amount of the charges and claims against it, the court may direct the conservator to proceed to terminate the conservatorship.

[C46, 50, 54, 58, 62, §668.33; C66, 71, 73, 75, 77, 79, 81, §633.676]

633.677 Accounting to ward — notice.

Upon the termination of a conservatorship, the conservator shall pay the costs of administration and shall render a full and complete accounting to the ward or the ward's personal representative and to the court. Notice of the final report of a conservator shall be served on the ward or the ward's personal representative, in accordance with section 633.40, unless notice is waived. An order prescribing notice may be made before or after the filing of the final report.

[C46, 50, 54, 58, 62, §672.21; C66, 71, 73, 75, 77, 79, 81, §633.677; 81 Acts, ch 193, §6]

633.678 Delivery of assets.

Upon the termination of a conservatorship, all assets of the conservatorship shall be delivered, under direction of the court, to the person or persons entitled to them.

[C46, 50, 54, 58, 62, §668.33; C66, 71, 73, 75, 77, 79, 81, §633.678]

633.679 Petition to terminate — request for voting rights reinstatement.

At any time after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that the person is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated. A person under an order appointing a guardian which order found the person incompetent to vote may include a request for reinstatement of the person's voting rights in a petition to terminate the guardianship or by filing a separate petition for modification of this determination.

[C97, §3222; C24, 27, 31, 35, 39, §**12623;** C46, 50, 54, 58, 62, §670.11; C66, 71, 73, 75, 77, 79, 81, §633.679]

89 Acts, ch 178, §20; 98 Acts, ch 1185, §11

633.680 Limit on application to terminate.

If any petition for terminating such guardianship or conservatorship shall be denied, no other petition shall be filed therefor until at least six months shall have elapsed since the denial of the former one.

[C97, §3222; C24, 27, 31, 35, 39, §**12627;** C46, 50, 54, 58, 62, §670.15; C66, 71, 73, 75, 77, 79, 81, §633.680]

633.681 Assets of minor ward exhausted.

When the assets of a minor ward's conservatorship are exhausted or consist of personal property only of an aggregate value not in excess of ten thousand dollars, the court, upon application or upon its own motion, may terminate the conservatorship. The order for termination shall direct the conservator to deliver any property remaining after the payment of allowed claims and expenses of administration to a custodian under any uniform transfers to minors Act. Such delivery shall have the same force and effect as if delivery had been made to the ward after attaining majority.

[C46, 50, 54, 58, 62, §668.33; C66, 71, 73, 75, 77, 79, 81, §633.681; 82 Acts, ch 1052, §3]

98 Acts, ch 1118, §2

633.682 Discharge of conservator and release of bond.

Upon settlement of the final accounting of a conservator, and upon determining that the property of the ward has been delivered to the person or persons lawfully entitled thereto, the court shall discharge the conservator and exonerate the surety on the conservator's bond.

[S13, §3228-h; C24, 27, 31, 35, 39, §**12644;** C46, 50, 54, 58, 62, §671.13, 672.21; C66, 71, 73, 75, 77, 79, 81, §633.682]

633.683 to 633.698 Reserved.

DIVISION XV

TRUSTS

633.699 Powers of trustees.

Unless it is otherwise provided by the will creating a testamentary trust, the instrument creating an express trust, or by an order or decree duly entered by a court of competent jurisdiction, a trustee shall have all the general powers of a fiduciary, including, but not limited to, the following powers:

1. To collect, receive and receipt for any principal or income, belonging to the trust estate, and to enforce, sue upon, defend against, prosecute, abandon, adjust, compromise, arbitrate or settle, any claim by or against the trust.

2. To acquire, manage, invest, reinvest, exchange, retain, grant options on, contract to sell, to sell at public auction or private sale, and, to convey, any or all property, real or personal, at any time, forming a part of the trust estate, in such manner and upon such terms and conditions as shall be deemed by such trustee to be for the best interests of the trust.

3. To vote in person, or to execute proxies to vote, corporate shares belonging to the trust at all regular and special meetings of shareholders.

4. To borrow money for the benefit of the trust estate, and to secure loans by pledge or mortgage of trust property, upon good cause shown and sub-

ject to the approval and direction of the court.

5. To execute leases for a customary period for the type of real estate involved, not to extend beyond the termination date of the trust without the specific approval and direction of the court, provided that in any event, leases may be made for as long as one year.

6. To make payments to, or for the benefit of, any beneficiary in any of the following ways:

a. Directly to the beneficiary;

b. Directly for the maintenance, and education of the beneficiary;

c. To the guardian or conservator of the beneficiary; or

d. To anyone who at the time shall have the custody and care of the person of the beneficiary. A trustee shall not be obliged to see to the application of the funds so paid, but the receipt of the person to whom the funds were paid shall constitute a full acquittance of the trustee.

7. To make any required division, allocation, or distribution in whole or in part in money, securities, or other property, and in undivided interests therein pro rata, non-pro rata, or in any combination of these methods, and to continue to hold any remaining undivided interest in trust.

8. To receive additional property from any source.

[C66, 71, 73, 75, 77, 79, 81, §633.699]

97 Acts, ch 158, §45

See also §524.538

633.699A Modification or termination of uneconomical testamentary trust.

1. On petition by a trustee or beneficiary, and after notice to all interested parties as determined by the court, if the court determines that the fair market value of a testamentary trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion, order termination of the trust, modification of the trust, or appointment of a new trustee.

a. If the court orders the termination of the trust, disposition of all property shall be made according to the will provisions that address the disposition of the property in the event the trust is terminated. However, if the will does not address the disposition of the property in the event the trust is terminated, the court shall determine the disposition of the trust property, according to what the court determines would be most consistent with the trustor's original intent.

b. The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this subsection.

2. In the case of a charitable testamentary trust, the attorney general shall be considered an interested party under this section. This section shall not be construed to limit intervention by the attorney general according to section 633.303.

96 Acts, ch 1188, §1

633.700 Intermediate report of trustees.

Unless specifically relieved from so doing, by the instrument creating the trust, or by order of the court, the trustee shall make a written report, under oath, to the court, once each year, and oftener, if required by the court. Such report shall state:

1. The period covered by the report.

2. All changes in beneficiaries since the last previous report.

3. Any changes in investments since the last previous report, including a list of all assets, and recommendations of the trustee for the retention or disposition of any property held by the trustee.

4. A detailed accounting for all cash receipts and disbursements, and for all property of the trust, unless such accounting shall be waived in writing by all beneficiaries.

[C66, 71, 73, 75, 77, 79, 81, §633.700]

633.701 Final report of trustee.

Upon the partial or total termination of a trust, or upon the transfer of the trusteeship due to resignation, removal, dissolution, or other disqualification of the trustee of any trust pending in court, the trustee shall make a final report to the court, showing for the period since the filing of the last report the facts required for an intermediate report; provided, however, that unless specifically required by the court to do so, the trustee shall not in any event, be required to report such facts for any period of time as to which the trustee has, under any of the provisions of section 633.700, been expressly relieved from reporting. In any event, the final report of the trustee shall include the following:

1. The name and last known address of each beneficiary.

2. A statement as to those beneficiaries who are known to be minors or under any other legal disability.

3. Distributions made or to be made to each beneficiary at the time of such termination.

[C66, 71, 73, 75, 77, 79, 81, §633.701]

633.702 Notice of application for discharge.

No final report of a trustee of a trust pending in court shall be approved, and no such trustee shall be discharged from further duty or responsibility upon final settlement, until notice of the trustee's application for discharge shall have been served upon all persons interested, in accordance with section 633.40, unless notice is waived. An order prescribing notice may be made before or after the filing of the final report.

[C66, 71, 73, 75, 77, 79, 81, §633.702]

633.703 Discharge.

Upon final settlement of a trust, an order shall be entered discharging the trustee from further duties and responsibilities. The order approving the final report shall constitute a waiver of the omission from the final report of any of the recitals required in section 633.701.

[C66, 71, 73, 75, 77, 79, 81, §633.703]

633.703A Creation and establishment of separate trusts.

1. In order to allow a trust to qualify as a marital deduction trust for federal estate tax purposes, as a qualified subchapter S trust for federal income tax purposes, as separate trusts for federal generation-skipping tax purposes, or for any other federal or state income, estate, excise, or inheritance tax benefit or to facilitate the administration of a trust or trusts, the governing instrument of a trust may be amended as follows to permit the trust to be divided in cash or in kind, including in undivided interests, by pro rata or non-pro rata division, or in any combination thereof, into one or more separate trusts or be consolidated with one or more other trusts into a single trust:

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

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

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

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

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

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

94 Acts, ch 1153, §12; 97 Acts, ch 158, §46

633.703B Availability of amendment procedures.

Amendment procedures in section 633.703A and this section shall be available to trusts created in any manner, whether by trust agreement, will, deed, or otherwise, and may be used on or after July 1, 1994, for any trust created before or after that date.

94 Acts, ch 1153, §13; 95 Acts, ch 67, §47

DIVISION XVI

DISCLAIMER OF SUCCESSION TO REAL AND PERSONAL PROPERTY

633.704 Disclaimer.

1. *Right of disclaimer.* A person, including a person designated to take pursuant to a power of appointment, is not required to take as a distributee, as a beneficiary, as an annuitant, or as a transferee including as a transferee in joint tenancy, or otherwise, and a person, as a donee of a power, is not required to accept any right of appointment. If the requirements of this section are met, a person may disclaim, in whole or in part, the transfer of a power, or the transfer, receipt of, or entitlement or succession to, any property, real or personal, or any interest in property, including but not limited to an interest in trust, and including but not limited to ownership, proceeds of, or other benefits to or under a life insurance policy or annuity contract, by delivering a written instrument of disclaimer within the time and in the manner provided in this section. The instrument shall:

a. Describe the property, interest, or right disclaimed.

b. Declare the disclaimer and the extent of the disclaimer.

c. Be signed and acknowledged by the disclaimant.

2. *Time of disclaimer — filing — irrevocability.*

a. *Time of disclaimer.* The disclaimer instrument shall be received by the transferor of the property, interest, or right, the transferor's fiduciary, or the holder of the legal title to which the property, interest, or right relates, not later than the date which is nine months after the later of the date on which the transfer of the property, interest, or right is made, or the date on which the disclaimant attains eighteen years of age. The nine-month period for making a disclaimer shall be determined with reference to each transfer. With respect to a testamentary transfer, the transfer occurs upon the date of the decedent's death. Any property, interest, or right may be disclaimed nine months after the date of the disclaimant's eighteenth birthday even though the disclaimant received benefits from the property, interest, or right without any action on the disclaimant's part before attaining eighteen years of age. However, if a person entitled to disclaim does not have actual knowledge of the existence of the transfer, the disclaimer may be made not later than nine months after the person has actual knowledge of the existence of the transfer.

b. *Filing.* A copy of an instrument of disclaimer affecting real estate shall be filed in the office of the county recorder of the county where the

real estate is located. Failure to file with the county recorder within the time permitted for disclaimer does not invalidate the disclaimer. A copy of an instrument of disclaimer, regardless of subject, may be filed with the clerk of court of the county in which proceedings for administration have been commenced, if applicable.

c. Irrevocability. An instrument of disclaimer shall be unqualified and is irrevocable from and after the date of its receipt.

3. *Effective disclaimer.*

a. Passage of disclaimed interest or property. Unless the transferor has otherwise provided, the property, interest, or right disclaimed, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest or right disclaimed, descends or shall be distributed as if the disclaimant has died prior to the date of the transfer, or if the disclaimant is one designated to take pursuant to a power of appointment exercised by testamentary instrument, then as if the disclaimant has predeceased the donee of the power unless the donee of the power has otherwise provided. In every case, the disclaimer relates back for all purposes to the date of the transfer. In the case of a disclaimer under a will by a spouse, the property, interest, or right disclaimed lapses unless from the terms of the transferor's will the intent is clear and explicit to the contrary.

b. Future interest. A person who has a present and a future interest in property and who disclaims the present interest, in whole or in part, shall be deemed to have disclaimed the future interest to the same extent. However, if such person disclaims only the future interest, in whole or in part, that person shall retain the present interest, and the disclaimer shall only affect the future interest involved.

c. Death or disability of disclaimant. If a person eligible to disclaim dies within the time allowed for a disclaimer, the right to disclaim continues for the time allowed and the personal representative of the person eligible to disclaim has the same right to disclaim as the disclaimant. If a person entitled to disclaim is disabled, the court may authorize or direct a conservator or guardian to exercise the right to disclaim on behalf of the person under disability if the court finds it is in the person's best interests pursuant to section 633.647.

d. Disclaimer by attorney in fact. Whenever a principal designates in writing another as the principal's attorney in fact or agent by a power of attorney, and the designation authorizes the attorney in fact to disclaim the principal's interest in any property, the attorney in fact has the same right to disclaim as the disclaimant and may disclaim on behalf of the attorney in fact's principal.

4. *Waiver and bar.* An assignment, conveyance, encumbrance, pledge, or transfer of any property, interest, or right, or a contract therefor, or a written waiver of the right to disclaim, or an acceptance of any property, interest, or right, by an heir, devisee, donee, transferee, joint owner, person succeeding to a disclaimed interest, annuitant, beneficiary under a life insurance policy, or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or a sale of property by execution, made before the expiration of the period in which a person may disclaim as provided in this section, bars the right to disclaim that property, interest, or right. An election by a surviving spouse under sections 633.236 to 633.246 is not a waiver or bar of the right to disclaim. The right to disclaim exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. A disclaimer, when received, as provided in this section, or a written waiver of the right to disclaim, is binding upon the disclaimant or person waiving and all parties claiming by, through, and under the disclaimant or person waiving. If a beneficiary who disclaims any property, interest, or right is also a fiduciary, actions taken by the person in the exercise of fiduciary powers to preserve or maintain the property, interest, or right shall not be treated as an acceptance of the property, interest, or right. A fiduciary power to distribute any property, interest, or right to designated beneficiaries, if subject to an ascertainable standard, does not bar the right to disclaim by a beneficiary who is also a fiduciary.

5. *Medical assistance eligibility.* A disclaimer of any property, interest, or right under this section constitutes a transfer of assets for the purpose of determining eligibility for medical assistance under chapter 249A, in an amount equal to the value of the property, interest, or right disclaimed.

6. *Exclusiveness of remedy.* This section does not abridge the right of a person to assign, convey, release, or renounce any property, interest, or right arising under any other statute.

7. *Effective date.* This section applies only to transfers occurring on or after July 1, 1981.

[C73, 75, 77, 79, 81, §633.704; 81 Acts, ch 197, §1, 2]

88 Acts, ch 1045, §1; 95 Acts, ch 63, §7; 99 Acts, ch 56, §6; 2000 Acts, ch 1060, §8; 2002 Acts, ch 1086, §4, 21

See chapter 559, power of appointment
Subsection 3, paragraph c amended

DIVISION XVII

POWERS OF ATTORNEY

See also chapter 144B concerning
durable power of attorney for health care

633.705 When power of attorney not affected by disability.

1. Whenever a principal designates another the principal's attorney in fact or agent by a power

of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal", or "This power of attorney shall become effective upon the disability of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal and the principal's heirs, devisees and personal representatives as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal, and the conservator shall have the power to revoke the power of attorney on behalf of the principal.

2. An affidavit, executed by the attorney in fact or agent stating that the attorney in fact or agent did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death or by the act of the principal, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when properly acknowledged is also recordable.

[C77, 79, 81, §633.705]

2000 Acts, ch 1150, §6

633.706 Other powers of attorney not revoked until notice of death or disability.

1. The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 633.705, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives.

2. An affidavit, executed by the attorney in fact or agent stating that the attorney in fact or agent did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney, by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when properly acknowledged is likewise recordable.

3. This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

[C77, 79, 81, §633.706]

DIVISION XVIII

MEDICAL ASSISTANCE TRUSTS

633.707 Definitions.

For purposes of this division, unless the context otherwise requires:

1. *"Available monthly income"* means in reference to a medical assistance income trust beneficiary, any income received directly by the beneficiary, not from the trust, that counts as income in determining eligibility for medical assistance and any amounts paid to or otherwise made available to the beneficiary by the trustee pursuant to section 633.709, subsection 1, paragraph *"b"*, or section 633.709, subsection 2, paragraph *"b"*.

2. *"Beneficiary"* means the original beneficiary of a medical assistance special needs trust or medical assistance income trust, whose assets funded the trust.

3. *"Institutionalized individual"* means an individual receiving nursing facility services, a level of care in any institution equivalent to nursing facility services, or home and community-based services under the medical assistance home and community-based waiver program.

4. *"Maximum monthly medical assistance payment rate for services in an intermediate care facility for persons with mental retardation"* means the allowable rate established by the department of human services and as published in the Iowa administrative bulletin.

5. *"Medical assistance"* means medical assistance as defined in section 249A.2.

6. *"Medical assistance income trust"* means a trust or similar legal instrument or device that meets the criteria of 42 U.S.C. § 1396p(d)(4)(B)(i)-(ii).

7. *"Medical assistance special needs trust"* means a trust or similar legal instrument or device that meets the criteria of 42 U.S.C. § 1396p(d)(4)(A) or (C).

8. *"Special needs of the beneficiary attributable to the beneficiary's disability"* means only those needs that would not exist but for the beneficiary's disability, not including ordinary needs, such as ordinary support and maintenance, education, and entertainment, that would exist regardless of disability.

9. *"Statewide average charge for state mental health institute care"* means the statewide average

charge for such care as calculated by the department of human services and as published in the Iowa administrative bulletin.

10. *"Statewide average charge to private-pay patients for hospital-based, medicare-certified, skilled nursing facility care"* means the statewide average charge for such care, excluding nonhospital-based, medicare-certified, skilled nursing facilities, as calculated by the department of human services and as published in the Iowa administrative bulletin.

11. *"Statewide average charge to private-pay patients for nonhospital-based, medicare-certified, skilled nursing facility care"* means the statewide average charge for such care, excluding hospital-based, medicare-certified, skilled nursing facilities, as calculated by the department of human services and as published in the Iowa administrative bulletin.

12. *"Statewide average charge for nursing facility services"* means the statewide average charge for such care, excluding charges by medicare-certified, skilled nursing facilities, as calculated by the department of human services and as published in the Iowa administrative bulletin.

13. *"Statewide average charge to private-pay patients for psychiatric medical institutions for children care"* means the statewide average charge for such care as calculated by the department of human services and as published in the Iowa administrative bulletin.

14. *"Total monthly income"* means in reference to a medical assistance income trust beneficiary, income received directly by the beneficiary, not from the trust, that counts as income in determining eligibility for medical assistance, income of the beneficiary received by the trust that would otherwise count as income in determining the beneficiary's eligibility for medical assistance, and income or earnings of the trust received by the trust.

94 Acts, ch 1120, §3; 96 Acts, ch 1129, §106

633.708 Disposition of medical assistance special needs trusts.

Regardless of the terms of a medical assistance special needs trust, any income received or asset added to the trust during a one-month period shall be expended as provided for medical assistance income trusts under section 633.709, on a monthly basis, during the life of the beneficiary. Any increase in income or principal retained in the trust from a previous month may be expended, during the life of the beneficiary, only for reasonable and necessary expenses of the trust, not to exceed ten dollars per month without court approval, for special needs of the beneficiary attributable to the beneficiary's disability and approved by the district court, for medical care or services that would otherwise be covered by medical assistance under chapter 249A, or to reimburse the state for medical assistance paid on behalf of the beneficiary.

94 Acts, ch 1120, §4; 95 Acts, ch 68, §8

633.709 Disposition of medical assistance income trusts.

1. Regardless of the terms of a medical assistance income trust, if the beneficiary's total monthly income is less than the average statewide charge for nursing facility services to a private pay resident of a nursing facility, then, during the life of the beneficiary, any property received or held by the trust shall be expended only as follows, as applicable, and in the following order of priority:

a. A reasonable amount may be paid or set aside each month for necessary expenses of the trust, not to exceed ten dollars per month without court approval.

b. From the remaining principal or income of the trust, an amount sufficient to bring the beneficiary's available income up to three hundred percent of the benefit for an individual under the federal supplemental security income program shall be paid to or otherwise made available to the beneficiary on a monthly basis, to be counted as income or a resource in determining eligibility for medical assistance under chapter 249A.

c. If the beneficiary is an institutionalized individual, the remaining principal or income of the trust shall be paid directly to the provider of institutional care, on a monthly basis, for any cost not paid by the beneficiary from the beneficiary's available income, to reduce any amount paid as medical assistance under chapter 249A.

d. Any remaining principal or income of the trust may, at the trustee's discretion or as directed by the terms of the trust, be paid directly to providers of other medical care or services that would otherwise be covered by medical assistance, paid to the state as reimbursement for medical assistance paid on behalf of the beneficiary, or retained by the trust.

2. Regardless of the terms of a medical assistance income trust, if the beneficiary's total monthly income is at or above the average statewide charge for nursing facility services to a private-pay resident, then, during the life of the beneficiary, any property received or held by the trust shall be expended only as follows, as applicable, in the following order of priority:

a. A reasonable amount may be paid or set aside each month for necessary expenses of the trust, not to exceed ten dollars per month without court approval.

b. All remaining property received or held by the trust shall be paid to or otherwise made available to the beneficiary on a monthly basis, to be counted as income or a resource in determining eligibility for medical assistance under chapter 249A.

3. Subsections 1 and 2 shall apply to the following beneficiaries; however, the following amounts indicated shall be applied in lieu of the

statewide average charge for nursing facility services:

a. For a beneficiary who meets the medical assistance level of care requirements for services in an intermediate care facility for persons with mental retardation and who either resides in an intermediate care facility for persons with mental retardation or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the maximum monthly medical assistance payment rate for services in an intermediate care facility for persons with mental retardation.

b. For a beneficiary who meets the medical assistance level of care requirements for hospital-based, medicare-certified, skilled nursing facility care and who either resides in a hospital-based, medicare-certified, skilled nursing facility or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge to private-pay patients for hospital-based, medicare-certified, skilled nursing facility care.

c. For a beneficiary who meets the medical assistance level of care requirements for nonhospital-based, medicare-certified, skilled nursing facility care and who either resides in a nonhospital-based, medicare-certified, skilled nursing facility or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge to private-pay patients for nonhospital-based, medicare-certified, skilled nursing facility care.

d. For a beneficiary who meets the medical assistance level of care requirements for services in a psychiatric medical institution for children and who resides in a psychiatric medical institution for children, the applicable rate is the statewide average charge to private-pay patients for psychiatric medical institution for children care.

e. For a beneficiary who meets the medical assistance level of care requirements for services in a state mental health institute and who either resides in a state mental health institute or is eligible for medical assistance home and community-based waiver services except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge for state mental health institute care.

94 Acts, ch 1120, §5; 96 Acts, ch 1129, §113

633.710 Other powers of trustees.

1. Sections 633.708 and 633.709 shall not be construed to limit the authority of the trustees to invest, sell, or otherwise manage property held in trust.

2. The trustee of a medical assistance income trust or a medical assistance special needs trust is a fiduciary for purposes of this chapter and, in the exercise of the trustee's fiduciary duties, the state shall be considered a beneficiary of the trust. Regardless of the terms of the trust, the trustee shall not take any action that is not prudent in light of the state's interest in the trust.

94 Acts, ch 1120, §6

633.711 Cooperation.

1. The department of human services shall cooperate with the trustee of a medical assistance special needs trust or a medical assistance income trust in determining the appropriate disposition of the trust under sections 633.708 and 633.709.

2. The trustee of a medical assistance special needs trust or medical assistance income trust shall cooperate with the department of human services in supplying information regarding a trust established under this division.

94 Acts, ch 1120, §7

633.712 through 633.799 Reserved.

DIVISION XIX

TRANSFER ON DEATH
SECURITY REGISTRATION

633.800 Short title — rules of construction.

1. This division shall be known and may be cited as the uniform transfer on death security registration Act.

2. The provisions of this division shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of its provisions among states enacting this uniform Act.

3. Unless displaced by the particular provisions of this division, the principles of law and equity supplement the provisions of this division.

97 Acts, ch 178, §17

633.801 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Beneficiary form"* means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

2. *"Devisee"* means any person designated in a will to receive a disposition of real or personal property.

3. *"Heir"* means a person, including the surviving spouse, who is entitled under the statutes of intestate succession to the property of a decedent.

4. *"Register"* means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or

transfer an account showing ownership of the security.

5. *"Registering entity"* means a person who originates or transfers a security title by registration, including a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

6. *"Security"* means a security as defined in section 502.102. For purposes of this chapter, *"security"* includes, but is not limited to, a certificated security, an uncertificated security, and a security account.

7. *"Security account"* means any of the following:

a. Any of the following:

(1) A reinvestment account associated with a security.

(2) A securities account with a broker.

(3) A cash balance in a brokerage account.

(4) Cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death.

b. A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

c. An investment management or custody account with a bank, trust company, or a trust division of a bank with trust powers, including the securities in the account, cash balance in the account, cash, cash equivalents, interest, earnings, and dividends earned or declared on a security in the account whether or not credited to the account before the owner's death. For purposes of this paragraph, *"bank"* means an entity as defined in section 12C.1.

8. *"State"* includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

97 Acts, ch 178, §18; 2000 Acts, ch 1147, §33; 2002 Acts, ch 1002, §2

Subsection 7 amended

633.802 Registration in beneficiary form — sole or joint tenancy ownership.

Only an individual whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form shall hold as joint tenants with rights of survivorship, tenants by the entireties, or owners of community property held in survivorship form and not as tenants in common.

97 Acts, ch 178, §19

633.803 Registration in beneficiary form — applicable law.

1. A security may be registered in beneficiary form if the form is authorized by this division or a similar statute of the state of any of the following:

a. The state of organization of the issuer or registering entity.

b. The state of location of the registering entity's principal office.

c. The state of location of the office of the entity's transfer agent or the office of the entity making the registration.

d. The state of the address listed as the owner's at the time of registration.

2. A registration governed by the law of a jurisdiction in which this division or a similar statute is not in force or was not in force when a registration in beneficiary form was made is presumed to be valid and authorized as a matter of contract law.

97 Acts, ch 178, §20

633.804 Origination of registration in beneficiary form.

A security, whether evidenced by a certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

97 Acts, ch 178, §21

633.805 Form of registration in beneficiary form.

Registration in beneficiary form may be shown by any of the following, appearing after the name of the registered owner and before the name of a beneficiary:

1. The words "transfer on death" or the abbreviation "TOD".

2. The words "pay on death" or the abbreviation "POD".

97 Acts, ch 178, §22

633.806 Effect of registration in beneficiary form.

The designation of a transfer on death or pay on death beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all surviving owners without the consent of the beneficiary.

97 Acts, ch 178, §23

633.807 Claims against a beneficiary of a transfer on death security registration.

1. If other assets of the estate of a deceased owner are insufficient to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children, a

transfer at death of a security registered in beneficiary form is not effective against the estate of the deceased sole owner, or if multiple owners, against the estate of the last owner to die, to the extent needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children.

2. A beneficiary of a transfer on death security registration under this division is liable to account to the personal representative of the deceased owner for the value of the security as of the time of the deceased owner's death to the extent necessary to discharge debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children. A proceeding against a beneficiary to assert liability shall not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a minor child of the deceased owner.

3. An action for an accounting under this section must be commenced within two years after the death of the owner.

4. A beneficiary against whom a proceeding is brought may elect to transfer to the personal representative the security registered in the name of the beneficiary if the beneficiary still owns the security, or the net proceeds received by the beneficiary upon disposition of the security by the beneficiary. Such transfer fully discharges the beneficiary from all liability under this section.

5. A beneficiary against whom a proceeding for an accounting is brought may join as a party to the proceeding a beneficiary of any other security registered in beneficiary form by the deceased owner.

6. Amounts recovered by the personal representative with respect to a security shall be administered as part of the deceased owner's estate.

7. A district court in this state shall have subject matter jurisdiction over a claim against a designated beneficiary brought by the decedent's personal representative or by a claimant to an interest in a security registered under this division. Any provision in a security registration form restricting jurisdiction over a claim, or restricting a choice of forum, to a forum outside this state is void.

8. In an action for an accounting brought under this section, where the deceased owner was domiciled in this state, the laws of this state shall apply.

97 Acts, ch 178, §24

633.808 Death of the owner.

On the death of a sole owner or on the death of the sole surviving owner of multiple owners, the ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. A registering entity shall provide notice to the department of revenue and finance of all reregistrations made pursuant to this division. The notice shall include the name, address, and social security number of the decedent and all transferees. Until the division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of multiple owners.

97 Acts, ch 178, §25

633.809 Protection of registering entity.

1. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections provided to the registering entity by this division.

2. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration in beneficiary form shall be implemented on the death of the deceased owners as provided in this division.

3. A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if the registering entity registers a transfer of the security in accordance with section 633.808 and does so in good faith reliance on all of the following:

a. The registration.

b. The provisions of this division.

c. Information provided by affidavit of the personal representative of the deceased owner, the surviving beneficiary, or the surviving beneficiary's representative, or other information available to the registering entity.

The protections of this division do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this division.

4. The protection provided by this division to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the transferred security, its value, or its proceeds.

97 Acts, ch 178, §26

633.810 Nontestamentary transfer on death.

1. A transfer on death resulting from a regis-

tration in beneficiary form shall be effective by reason of the contract regarding the registration between the owner and the registering entity under the provisions of this division, and is not testamentary.

2. The provisions of this division do not limit the rights of creditors or security owners against beneficiaries and other transferees under other laws of this state.

97 Acts, ch 178, §27

633.811 Terms, conditions, and forms for registration.

1. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which the registering entity receives requests for either of the following:

a. Registration in beneficiary form.

b. Implementation of registrations in beneficiary form, including requests for cancellation of previously registered transfer on death or pay on death beneficiary designations and requests for reregistration to effect a change of beneficiary.

2. *a.* The terms and conditions established by the registering entity may provide for proving death, avoiding or resolving problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the beneficiary the letters "LDPS" standing for "lineal descendants per stirpes". This designation shall substitute a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to survive, with the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

b. The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: OWNER'S NAME transfer on death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

(2) Multiple owners-sole beneficiary: OWNERS' NAMES, as joint tenants or tenants in the entirety, transfer on death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

(3) Multiple owners-primary and secondary (substituted) beneficiaries: OWNERS' NAMES as joint tenants or tenants in the entirety, transfer on death (TOD) or pay on death (POD) to BENEFICIARY'S NAME, or lineal descendants per stirpes.

97 Acts, ch 178, §28

633.812 through 633.1100 Reserved.

DIVISION XX

IOWA TRUST CODE

PART 1

DEFINITIONS AND GENERAL PROVISIONS

Division effective July 1, 2000; 99 Acts, ch 125, §109

633.1101 Short title.

This division may be cited as the *"Iowa Trust Code"* or *"Trust Code"*.

99 Acts, ch 125, §1, 109

633.1102 Definitions.

For purposes of this division:

1. *"Beneficiary"*, as it relates to a trust beneficiary, includes a person who has any present or future interest in the trust, vested or contingent, and also includes the owner of an interest by assignment or other transfer.

2. *"Charitable trust"* means a trust created for a charitable purpose as specified in section 633.5101.

3. *"Competency"* means any one of the following:

a. In the case of a revocable transfer, *"competency"* means the degree of understanding required to execute a will.

b. In the case of an irrevocable transfer, *"competency"* means the degree of understanding required to execute a contract.

c. In other circumstances not clearly relating to a revocable or irrevocable transfer, *"competency"* means the ability to make rational decisions regarding one's financial affairs.

4. *"Conservator"* means a person appointed by a court to manage the estate of a minor or adult individual.

5. *"Court"* means any Iowa district court.

6. *"Fiduciary"* includes a personal representative, executor, administrator, guardian, conservator, and trustee.

7. *"Guardian"* means a person appointed by a court to make decisions with respect to the support, care, education, health, and welfare of a minor or adult individual, but excludes one who is merely a guardian ad litem. A minor's custodial parent shall be deemed to be the child's guardian in the absence of a court-appointed guardian.

8. *"Instrument"* means a signed writing.

9. *"Interested person"* includes a trustee, an acting successor trustee, a beneficiary who may receive income or principal currently from the trust, or would receive principal of the trust if the

trust were terminated at the time relevant to the determination, and a fiduciary representing an interested person. The meaning as it relates to particular persons may vary from time to time according to the particular purpose of, and matters involved in, any proceeding.

10. *"Person"* means an individual or any legal or commercial entity.

11. *"Petition"* includes a complaint or statement of claim.

12. *"Property"* means anything that may be the subject of ownership, whether real or personal, legal or equitable, tangible or intangible, and includes any interest in such item, including a chose in action, claim, or beneficiary designation under a policy of insurance, employees' trust, or other arrangement, whether revocable or irrevocable.

13. *"Qualified beneficiary"* means a beneficiary who, on the date the beneficiary's qualification is determined, is any of the following:

a. Eligible to receive distributions of income or principal from the trust.

b. Would receive property from the trust upon immediate termination of the trust.

14. *"Settlor"* means a person, including a testator, who creates a trust.

15. *"State"* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

16. *"Term"* or *"terms"*, when used in relation to a trust, means the manifestation of the settlor's intent regarding a trust's provisions at the time of the trust's creation or amendment. *"Term"* includes those concepts expressed directly in writing, as well as those inferred from constructional preferences or rules, or by other proof admissible under the rules of evidence.

17. *"Trust"* means an express trust, charitable or noncharitable, with additions thereto, wherever and however created, including a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. *"Trust"* does not include any of the following:

a. A Totten trust account.

b. A custodial arrangement pursuant to the uniform transfers to minors Act of any state.

c. A business trust that is taxed as a partnership or corporation.

d. An investment trust subject to regulation under the laws of this state or any other jurisdiction.

e. A common trust fund.

f. A voting trust.

g. A security arrangement.

h. A transfer in trust for purpose of suit or enforcement of a claim or right.

i. A liquidation trust.

j. A trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind.

k. An arrangement under which a person is a nominee or escrow agent for another.

l. Constructive or resulting trusts.

18. *"Trust company"* means a person who has qualified to engage in and conduct a trust business in this state.

19. *"Trustee"* includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

99 Acts, ch 125, §2, 109; 2000 Acts, ch 1150, §7; 2002 Acts, ch 1107, §1

NEW subsection 13 and former subsections 13 – 18 renumbered as 14 – 19

633.1103 Per stirpes rule of descent.

Unless the trust instrument provides otherwise, all gifts to multigeneration classes shall be per stirpes.

99 Acts, ch 125, §3, 109

633.1104 Common law of trusts.

Except to the extent that this division modifies the common law governing trusts, the common law of trusts shall supplement this trust code.

99 Acts, ch 125, §4, 109

633.1105 Trust provisions control.

The provisions of a trust shall always control and take precedence over any section of this trust code to the contrary.

99 Acts, ch 125, §5, 109

633.1106 General rule concerning application of the Iowa trust code.

1. This trust code applies to all trusts within the scope of this trust code, regardless of whether the trust was created before, on, or after July 1, 2000, except as otherwise stated in this trust code.

2. This trust code applies to all proceedings concerning trusts within the scope of this trust code commenced on or after July 1, 2000.

3. This trust code applies to all trust proceedings commenced before July 1, 2000, unless the court finds that application of a particular provision of this trust code would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons. In that case, the particular provision of this trust code at issue shall not apply, and the court shall apply prior law.

99 Acts, ch 125, §6, 109

633.1107 Scope of trust code.

This trust code is intended to apply to trusts, as defined in section 633.1102, subsection 17, that are intentionally created, or deemed to be intentionally created, by individuals and other entities.

99 Acts, ch 125, §7, 109

PART 2

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUSTS

SUBPART A

CREATION AND VALIDITY OF TRUSTS

633.2101 Methods of creating trusts.

A trust may be created by any of the following methods:

1. Transfer of property to another person as trustee during the settlor's lifetime, or by will taking effect upon the settlor's death.

2. Declaration by the owner of property that the owner holds property as trustee.

3. Exercise of a power of appointment in favor of another person as trustee.

4. A promise enforceable by the trustee to transfer property to the trustee.

99 Acts, ch 125, §8, 109

633.2102 Requirements for validity.

1. A trust is created only if all of the following elements are satisfied:

a. The settlor was competent and indicated an intention to create a trust.

b. The same person is not the sole trustee and sole beneficiary.

c. The trust has a definite beneficiary or a beneficiary who will be definitely ascertained within the period of the applicable rule against perpetuities, unless the trust is a charitable trust, an honorary trust, or a trust for pets.

2. A definite or definitely ascertainable beneficiary includes a beneficiary or class of beneficiaries designated under a power to select the beneficiaries granted by the terms of the trust to the trustee or another person. If the power is not exercised within a reasonable time, the power fails and the property passes to the person or persons who would have taken the property had the power not been conferred.

99 Acts, ch 125, §9, 109; 2002 Acts, ch 1107, §2
Section amended

633.2103 Statute of frauds.

1. A trust is enforceable when evidenced by either of the following:

a. A written instrument signed by the trustee, or by the trustee's agent if authorized in writing.

b. A written instrument conveying the trust property signed by the settlor, or by the settlor's agent if authorized in writing.

2. If an owner of property declares that property is held upon a trust for which a written instrument is required, the written instrument evidencing the trust must be signed by the settlor according to one of the following:

a. Before or at the time of the declaration.

b. After the time of the declaration but before the settlor has transferred the property.

3. If an owner of property while living transfers property to another person to hold upon a trust for which a written instrument is required, the written instrument evidencing the trust must be signed according to one of the following:

a. By the settlor, concurrently with or before the transfer.

b. By the trustee, concurrently with or before the transfer, or after the transfer but before the trustee has transferred the property to a third person.

99 Acts, ch 125, §10, 109

633.2104 Trust purposes.

1. A trust is created only if it has a private or charitable purpose that is not unlawful or against public policy.

2. A trust created for a private purpose must be administered for the benefit of its beneficiaries.

99 Acts, ch 125, §11, 109

633.2105 Honorary trusts — trusts for pets.

1. A trust for a lawful noncharitable purpose for which there is no definite or definitely ascertainable beneficiary is valid but may be performed by the trustee for only twenty-one years, whether or not the terms of the trust contemplate a longer duration.

2. A trust for the care of an animal living at the settlor's death is valid. The trust terminates when no living animal is covered by its terms.

3. A portion of the property of a trust authorized by this section shall not be converted to any use other than its intended use unless the terms of the trust so provide or the court determines that the value of the trust property substantially exceeds the amount required.

4. The intended use of a trust authorized by this section may be enforced by a person designated for that purpose in the terms of the trust or, if none, by a person appointed by the court.

99 Acts, ch 125, §12, 109

633.2106 Resulting trusts.

1. Where the owner of property gratuitously transfers the property and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or the transferor's estate, unless either of the following is true:

a. The transferor manifested in the trust instrument an intention that no resulting trust should arise.

b. The intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

2. Where the owner of property gratuitously transfers the property subject to a trust which is properly declared and which has been fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or the transferor's estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

3. If the transferor's estate is the recipient of property under this section and the administration of that estate has been closed and there is no question as to the proper recipients of the property, it is not necessary to reopen the estate administration for the purpose of distribution.

99 Acts, ch 125, §13, 109; 2000 Acts, ch 1150, §8

633.2107 Constructive trusts.

A constructive trust arises when a person holding title to property is subject to an equitable duty to convey the property to another, on the ground that the person holding title would be unjustly enriched if the person were permitted to retain the property.

99 Acts, ch 125, §14, 109

SUBPART B

MODIFICATION AND TERMINATION OF TRUSTS

633.2201 Termination of trust.

1. In addition to the methods specified in sections 633.2202 through 633.2206, a trust terminates when any of the following occurs:

a. The term of the trust expires.

b. The trust purpose is fulfilled.

c. The trust purpose becomes unlawful or impossible to fulfill.

d. The trust is revoked.

2. On termination of a trust, the trustee may exercise the powers necessary to wind up the affairs of the trust and distribute the trust property to those entitled to the trust property.

99 Acts, ch 125, §15, 109; 2000 Acts, ch 1150, §9; 2002 Acts, ch 1107, §3

Subsection 3 stricken

633.2202 Modification or termination by settlor and all beneficiaries.

1. An irrevocable trust may be modified or terminated upon the consent of the settlor and all of the beneficiaries.

2. Upon termination of the trust, the trustee shall distribute the trust property as agreed by the settlor and all beneficiaries, or in the absence of unanimous agreement, as ordered by the court.

3. For purposes of this section, the consent of a person who may bind a beneficiary or otherwise act on a beneficiary's behalf is considered the consent of the beneficiary.

99 Acts, ch 125, §16, 109

633.2203 Modification or termination of irrevocable trust by court.

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

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

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

99 Acts, ch 125, §17, 109; 2000 Acts, ch 1150, §10

633.2204 Modification of administrative provisions by court for change of circumstances.

On petition by a trustee or beneficiary, the court may modify the administrative provisions of the trust, if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. If necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

2000 Acts, ch 1150, §11

633.2205 Noncharitable trust with uneconomically low value.

1. On petition by a trustee or beneficiary, the court may terminate or modify a noncharitable trust or appoint a new trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration involved and that continuation of the trust under its existing terms would defeat or significantly impair the accomplishment of the trust purposes.

2. Upon termination of a trust under this section, the trustee shall distribute the trust property in accordance with the probable intention of the settlor under the circumstances. Extrinsic evidence is admissible for the purpose of ascertaining the probable intention of the settlor.

99 Acts, ch 125, §18, 109; 2002 Acts, ch 1107, §4

Subsection 2 amended

633.2206 Reformation — tax objectives.

1. The court may reform the terms of the trust, even if unambiguous, to conform to the settlor's intent if it is proved by clear and convincing evidence that the settlor's intent and the terms of the trust were affected by a mistake of fact or law whether expressed or induced.

2. The terms of the trust may be construed or modified, in a manner that does not violate the settlor's probable intent, to achieve the settlor's tax

objectives.

99 Acts, ch 125, §19, 109; 2002 Acts, ch 1107, §5
Subsection 1 stricken and rewritten

633.2207 Combination of trusts.

1. A trustee, without approval of court, may combine two or more trusts with substantially similar beneficial interests unless the trust is a court reporting trust.

2. On petition by a trustee or beneficiary, the court may combine two or more trusts, whether or not the beneficial interests are substantially similar, if the court determines that administration as a single trust will not defeat or significantly impair the accomplishment of the trust purposes or the rights of the beneficiaries.

3. Where the court orders the combination of two trusts that are not essentially identical, the court shall include in its order a finding as to which trust provisions control.

99 Acts, ch 125, §20, 109; 2000 Acts, ch 1150, §12

633.2208 Division of trusts.

1. Without approval of a court, a trustee may divide a trust into two or more separate trusts with substantially similar terms if the division will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries unless the trust is a court reporting trust.

2. On petition by a trustee or beneficiary, the court may divide a trust into two or more separate trusts, whether or not their terms are similar, if the court determines that dividing the trust is in the best interest of the beneficiaries and will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries. To facilitate the division, the trustee may divide the trust assets in kind, by pro rata or non-pro rata division, or by any combination of the methods.

99 Acts, ch 125, §21, 109; 2000 Acts, ch 1150, §13

SUBPART C

SPENDTHRIFT PROTECTION

633.2301 Spendthrift protection recognized.

Except as otherwise provided in section 633.2302, if the terms of the trust provide that a beneficiary's interest in the income and principal is not subject to either voluntary or involuntary transfer, the beneficiary's interest shall not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

99 Acts, ch 125, §22, 109

633.2302 Exceptions to spendthrift protection.

A term of a trust prohibiting an involuntary transfer of a beneficiary's interest shall be invalid as against claims by any of the following:

1. Any creditor of the beneficiary if the beneficiary is the settlor.

2. Any creditor of the beneficiary as to a distribution to be made upon an event terminating or partially terminating the trust.

99 Acts, ch 125, §23, 109

633.2303 Amount reachable by creditors or transferees.

1. If a settlor is a beneficiary of a trust created by the settlor, a transferee or creditor of the settlor may reach the maximum amount that the trustee could pay to or for the settlor's benefit.

2. In the case of a trust with multiple settlors, the amount the creditor or transferee of a particular settlor may reach shall not exceed the portion of the trust attributable to that settlor's contribution.

99 Acts, ch 125, §24, 109

PART 3

PROVISIONS RELATING TO REVOCABLE TRUSTS

633.3101 Competency to create, revoke, or modify a revocable trust.

1. To create, revoke, or modify a revocable trust, the settlor must be competent. An aggrieved person shall have all causes of action and remedies available to the aggrieved person in attacking the creation, revocation, or modification of a revocable trust as one would if attacking the propriety of the execution of a will.

2. The level of competency required of a settlor to direct the actions of the trustee, or to contribute property to, or to withdraw property from, a trust is the same as that required to create a revocable trust.

99 Acts, ch 125, §25, 109; 2000 Acts, ch 1150, §14

633.3102 Revocation or modification.

1. Unless the terms of the trust expressly provide that the trust is irrevocable, the settlor may revoke or modify the trust. This subsection does not apply to trusts created under instruments executed before July 1, 2000.

2. Except as otherwise provided by the terms of the trust, if a trust is created or funded by more than one settlor, each settlor may revoke or modify the trust as to the portion of the trust contributed by that settlor.

3. A trust that is revocable by the settlor may be revoked or modified by any of the following methods:

a. By compliance with any method specified by the terms of the trust.

b. Unless the terms of the trust expressly make the method specified exclusive, then either of the following:

(1) By a writing, other than a will, signed by the settlor and delivered to the trustee during the settlor's lifetime.

(2) By a later will or codicil expressly referring to the trust and which makes a devise of the property that would otherwise have passed by the terms of the trust.

4. Upon termination of a revocable trust, the trustee must distribute the trust property as the settlor directs.

5. The settlor's powers with respect to revocation or modification may be exercised by an agent under a power of attorney only and to the extent the power of attorney expressly so authorizes.

6. Except to the extent prohibited by the terms of the trust, a conservator may revoke or modify a trust with the approval of the court supervising the conservatorship.

99 Acts, ch 125, §26, 109

633.3103 Other rights of settlor.

Except to the extent the terms of the trust otherwise provide, while a trust is revocable and the individual holding the power to revoke the trust is competent, all of the following apply:

1. The holder of the power, and not the beneficiary, has the rights afforded beneficiaries.

2. The duties of the trustee are owed to the holder of the power.

3. The trustee shall follow a written direction given by the holder of the power, or a person to whom the power has been delegated in writing, without liability for so doing, so long as the action by the delegate is authorized by the trust.

99 Acts, ch 125, §27, 109

633.3104 Creditor claims against revocable trust.

1. During the lifetime of the settlor, the trust property of a revocable trust is subject to the claims of the settlor's creditors to the extent of the settlor's power of revocation.

2. Following the death of a settlor, the property of a revocable trust subject to the settlor's power of revocation at the time of death is subject to the claims of the settlor's creditors and costs of administration of the settlor's estate to the extent of the value of the property over which the settlor had a power of revocation, if the settlor's estate is inadequate to satisfy those claims and costs.

99 Acts, ch 125, §28, 109; 2000 Acts, ch 1150, §15

633.3105 Rights of and creditor claims against holder of general power of appointment.

1. The holder of a presently exercisable general power of appointment over trust property has the rights of a holder of the power to revoke a trust under section 633.3103 to the extent of the property subject to the power.

2. Property in trust subject to a presently exercisable general power of appointment is chargeable with the claims of the holder's creditors and costs of administration of the holder's estate to the same extent as if the holder was a settlor and the power of appointment was a power of revocation.

99 Acts, ch 125, §29, 109

633.3106 Children born or adopted after execution of a revocable trust.

When a settlor fails to provide in a revocable trust for any of the settlor's children born to or adopted by the settlor after the making of the trust, such child, whether born before or after the settlor's death, shall receive a share of the trust equal in value to that which the child would have received under section 633.211, 633.212, or 633.219, whichever is applicable, as if the settlor had died intestate, unless it appears from the terms of the trust or decedent's will that such omission was intentional.

99 Acts, ch 125, §30, 109

633.3107 Effect of divorce or dissolution.

1. If, after executing a revocable trust, the settlor is divorced or the settlor's marriage is dissolved, all provisions in the trust in favor of the settlor's spouse including, but not limited to, dispositions, appointments of property, and nominations to serve in any fiduciary or representative capacity are revoked by divorce or dissolution of marriage.

2. In the event the settlor and spouse remarry each other, the provisions of the revocable trust revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise modified by the settlor.

99 Acts, ch 125, §31, 109; 2000 Acts, ch 1150, §16

633.3108 Limitation on contest of revocable trust.

Unless notice is given as provided in section 633.3109, the following provisions shall apply:

1. Unless previously barred by adjudication, consent, or other limitation, a proceeding to contest the validity of a revocable trust must be brought no later than one year following the death of the settlor.

2. Unless the trustee is a party to a pending proceeding contesting its validity, six months following the death of the settlor, the trustee of a revocable trust may assume the trust's validity and proceed to distribute the trust property in accordance with the terms of the trust, without liability for so doing. Liability for an improper distribution in such a case is solely on the beneficiaries.

99 Acts, ch 125, §32, 109; 2000 Acts, ch 1150, §17

633.3109 Notice to creditors, heirs, spouse, and beneficiaries.

1. As used in this section, *"heir"* means only such person as would, in an intestate estate, be entitled to a share under section 633.219.

2. A creditor of a deceased settlor of a revocable trust must bring suit to enforce its claim against the assets of the decedent's trust within one year of the decedent's death or be forever barred from collection against the trust assets. If a probate administration is commenced for the decedent and notice is properly given pursuant to section 633.230 or 633.304, a creditor's rights shall be determined under those sections and section 633.3104.

3. If no notice is given to creditors and heirs pursuant to subsection 2, a creditor's rights may be established or terminated if the trustee gives notice as follows:

a. The trustee shall publish a notice once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the decedent was a resident at the time of death, and in any county of which the decedent was a nonresident but in which some real estate of the trust is located. If the decedent was not a resident of Iowa, but the principal place of administration is in Iowa, the trustee shall publish notice in the county that is the principal place of administration pursuant to section 633.6102.

b. If at any time during the pendency of the trust administration the trustee has knowledge of the name and address of a person believed to own or possess a claim which will not, or may not, be paid or otherwise satisfied during administration, the trustee shall provide a notice by ordinary mail to each such claimant at the claimant's last known address.

c. As soon as practicable, the trustee shall give a notice by ordinary mail to the surviving spouse, the heirs of the decedent, and each beneficiary under the trust whose identities are reasonably ascertainable, at such persons' last known addresses.

d. The notice in paragraphs *"a"*, *"b"*, and *"c"* shall include notification of the decedent's death, and the fact that any action to contest the validity of the trust must be brought within the later to occur of sixty days from the date of the second publication of the notice made pursuant to paragraph *"a"* or thirty days from the date of mailing of the notice pursuant to paragraph *"b"* or *"c"*. A person who does not make a claim within the appropriate period is forever barred.

e. The trustee shall give notice to debtors to make payment, and to creditors having claims against the trust assets to mail proof of their claim to the trustee via certified mail, return receipt requested, within the later to occur of sixty days from the second publication of the notice or thirty days from the date of mailing of the notice, or thereafter be forever barred.

4. The notice described in subsection 3 shall be substantially in the following form:

To all persons regarding . . . . . , deceased, who died on or about . . . . . , (year) . . . . . You are hereby notified that . . . . . is the trustee of the . . . . . Trust. At this time, no probate administration is contemplated with regard to the above-referenced decedent's estate.

Any action to contest the validity of the trust must be brought in the District Court of . . . . . County, Iowa, within the later to occur of sixty days from the date of second publication of this notice, or thirty days from the date of mailing this notice to all heirs of the decedent, spouse of the decedent, and beneficiaries under the trust whose identities are reasonably ascertainable. Any claim not filed within this period shall be forever barred.

Notice is further given that all persons indebted to the decedent or to the trust are requested to make immediate payment to the undersigned trustee. Creditors having claims against the trust must mail them to the trustee at the address listed below via certified mail, return receipt requested. Unless creditor claims are mailed by the later to occur of sixty days from the second publication of this notice or thirty days from the date of mailing this notice, a claim shall be forever barred, unless otherwise allowed or paid.

Dated this . . . . . day of . . . . . , (year) . . . . . .

. . . . . Trust
. . . . . .
Trustee
Address: . . . . . .
. . . . . .

Date of second publication . . . . . day of . . . . . , (year) . . . . . .

5. The claimant either must receive satisfaction of its claim, or must file suit against the trust to enforce collection of the creditor's claim within sixty days of mailing its claim to the trustee. The trustee and creditor may agree to extend the limitations period for filing an action to enforce the claim. If the claimant fails to properly file its claim within the established time period or bring an action to enforce its claim within the established time period, the creditor's claim shall be forever barred.

99 Acts, ch 125, §33, 109; 2000 Acts, ch 1150, §18; 2002 Acts, ch 1119, §101

Subsection 1 amended

633.3110 Rights of trustee regarding claims in a probate administration.

1. If a probate administration has been commenced for which a revocable trust could be held responsible for the payment of claims, expenses,

or taxes, the trustee shall be an interested party in that probate administration.

2. The trustee shall receive notice of all potential charges against the trust assets and must either authorize the payments for which the trust may be found liable or be given the opportunity to dispute or defend any such payment.

99 Acts, ch 125, §34, 109

633.3111 Trustee's liability for distributions.

1. A trustee who distributes trust assets without making adequate provisions for the payment of creditor claims that are known or reasonably ascertainable shall be jointly and severally liable with the beneficiaries to the extent of the distributions made.

2. A trustee shall be entitled to indemnification from the beneficiaries for all amounts paid to creditors under this section, to the extent of distributions made.

99 Acts, ch 125, §35, 109; 2000 Acts, ch 1150, §19

PART 4

TRUST ADMINISTRATION

SUBPART A

OFFICE OF TRUSTEE

633.4101 Acceptance or declination to serve as trustee.

1. A person named as trustee accepts the office of trustee by doing one of the following:

a. Signing the trust instrument, or signing a separate written acceptance.

b. Except as provided in subsection 3, knowingly accepting delivery of the trust property or exercising powers or performing duties as trustee.

2. A person named as trustee who has not yet accepted the office of trustee may in writing decline to serve as trustee.

3. If there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the office of trustee, if within a reasonable time after acting, the person delivers a written declination to serve to the settlor, or if the settlor is dead or lacks capacity, to the beneficiaries eligible to receive income or principal distributions from the trust.

99 Acts, ch 125, §36, 109; 2000 Acts, ch 1150, §20

633.4102 Trustee's bond.

1. A trustee is not required to give a bond to secure performance of the trustee's duties unless one of the following applies:

a. A bond is expressly required by the terms of the trust.

b. A bond is found by the court to be necessary to protect the interests of beneficiaries, regardless of the terms of the trust.

2. If a bond is required, it must be filed, and be in an amount and with sureties and liabilities as the court may order. The court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, or permit the substitution of another bond with the same or different sureties.

3. The amount of a bond otherwise required may be reduced by the value of trust property deposited with a financial institution in a manner that prevents its unauthorized disposition, and by the value of real property which the trustee, by express limitation of power, lacks power to convey without court authorization.

4. Except as otherwise provided by the terms of the trust or ordered by the court, the cost of a bond is charged to the trust.

5. A bank or trust company shall not be required to give a bond, whether or not the terms of the trust require a bond.

99 Acts, ch 125, §37, 109

633.4103 Actions by cotrustees.

Unless the terms of the trust provide otherwise, the following apply to actions of cotrustees:

1. A power held by cotrustees may be exercised by majority action.

2. If impasse occurs due to the failure to reach a majority decision, any trustee may petition the court to decide the issue, or a majority of the trustees may consent to an alternative form of dispute resolution.

3. If a vacancy occurs in the office of a cotrustee, the remaining cotrustees may act for the trust as if they are the only trustees.

4. If a cotrustee is unavailable to perform duties because of absence, illness, or other temporary incapacity, the remaining cotrustees may act for the trust, as if they were the only trustees, if necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property.

99 Acts, ch 125, §38, 109

633.4104 Vacancy in office of trustee.

A vacancy in the office of trustee exists if any of the following occurs:

1. The person named as trustee declines to serve as trustee.

2. The person named as trustee cannot be identified or does not exist.

3. The trustee resigns or is removed.

4. The trustee dies.

5. A guardian or conservator of the trustee's person or estate is appointed.

99 Acts, ch 125, §39, 109; 2000 Acts, ch 1150, §21

633.4105 Filling vacancy.

1. A trustee must be appointed to fill a vacancy in the office of the trustee only if the trust has no trustee or the terms of the trust require a vacancy

in the office of cotrustee to be filled.

2. A vacancy in the office of trustee shall be filled according to the following:

a. By the person named in or nominated pursuant to the method specified by the terms of the trust.

b. If the terms of the trust do not name a person or specify a method for filling the vacancy, or if the person named or nominated pursuant to the method specified fails to accept, one of the following methods shall be used:

(1) By majority vote of all qualified beneficiaries, who are adults, and the representative of any minor or incompetent qualified beneficiary, as defined by section 633.6303.

(2) By a person appointed by the court on petition of an interested person or of a person named as trustee by the terms of the trust. The court, in selecting a trustee, shall consider any nomination made by the adult beneficiaries and representatives of any minor and incompetent beneficiaries.

99 Acts, ch 125, §40, 109; 2000 Acts, ch 1150, §22; 2002 Acts, ch 1107, §6, 7

Subsection 2, paragraph b, subparagraphs (1) and (2) amended
Subsection 3 stricken

633.4106 Resignation of trustee.

1. A trustee who has accepted a trust may resign by any of the following methods:

a. As provided by the terms of the trust.

b. With the consent of the person holding the power to revoke the trust if the holder is competent or is represented by a guardian, conservator, or agent.

c. With the consent of the qualified beneficiaries who are adults if the trust is irrevocable or the holder of the power to revoke lacks competency or is not represented by a guardian, conservator, or agent.

d. Upon written notice to the holder of the power to revoke if the holder substantially changes the trustee's duties and the trustee does not concur.

e. By filing a petition to resign under section 633.6202. The resignation takes effect ninety days after the filing, or upon approval of the petition by the court, whichever first occurs. The court must accept the trustee's resignation but may impose such orders and conditions as are reasonably necessary for the protection of the trust property, including the appointment of a receiver or temporary trustee.

2. The liability for acts or omissions of a resigning trustee or of any sureties on the trustee's bond is not released or affected by the trustee's resignation.

99 Acts, ch 125, §41, 109; 2002 Acts, ch 1107, §8

Subsection 1, paragraph c amended

633.4107 Removal of trustee.

1. A trustee may be removed in accordance with the terms of the trust, or on petition of a settlor, cotrustee, or beneficiary under section 633.6202.

2. The court may remove a trustee, or order other appropriate relief if any of the following occurs:

a. If the trustee has committed a material breach of the trust.

b. If the trustee is unfit to administer the trust.

c. If hostility or lack of cooperation among cotrustees impairs the administration of the trust.

d. If the trustee's investment performance is consistently and substantially substandard.

e. If the trustee's compensation is excessive under the circumstances.

f. For other good cause shown.

3. If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a final decision on a petition for removal of a trustee, the court may suspend the powers of the trustee, compel the trustee to surrender trust property to a cotrustee, receiver, or temporary trustee, or order other appropriate relief.

99 Acts, ch 125, §42, 109; 2000 Acts, ch 1150, §23

633.4108 Delivery of property by former trustee.

Unless a cotrustee remains in office, a former trustee, or if the trustee's appointment terminated because of death or disability, the former trustee's personal representative or guardian or conservator, is responsible for and has the powers necessary to protect the trust property and other powers essential to the trust's administration until the property is delivered to a successor trustee or a person appointed by the court to receive the property.

99 Acts, ch 125, §43, 109

633.4109 Compensation of trustee.

1. If the terms of the trust do not specify the trustee's compensation, a trustee or cotrustee is entitled to compensation that is reasonable under the circumstances.

2. If the terms of the trust specify the trustee's compensation, the trustee is entitled to be compensated as so provided, except that upon proper showing, the court may allow more or less compensation in the following instances:

a. If the duties of the trustee are substantially different from those contemplated when the trust was created.

b. If the compensation specified by the terms of the trust would be inequitable, or unreasonably low or high.

c. In extraordinary circumstances calling for equitable relief.

99 Acts, ch 125, §44, 109

633.4110 Repayment for expenditures.

A trustee is entitled to be repaid out of the trust property, with interest as appropriate, for all of the

following expenditures:

1. Expenditures that were properly incurred in the administration of the trust.

2. To the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

99 Acts, ch 125, §45, 109

633.4111 Notice of increased trustee's fee.

1. As used in this section, *"trustee's fee"* includes a trustee's periodic base fee, rate of percentage compensation, minimum fee, hourly rate, and transaction charge, but does not include fees for extraordinary services.

2. A trustee shall not charge an increased trustee's fee for administration of a trust unless the trustee first gives at least thirty days' written notice of the increased fee to all of the following beneficiaries:

a. Each qualified beneficiary.

b. Each beneficiary who was given the last preceding accounting.

c. Each beneficiary who has made a written request to the trustee for notice of an increased trustee's fee, and has given an address for receiving notice by mail.

3. If a beneficiary files a petition for review of an increased trustee's fee or for removal of a trustee and serves a copy of the petition on the trustee within the thirty-day period, the increased fee does not take effect until otherwise ordered by the court or the petition is dismissed.

99 Acts, ch 125, §46, 109; 2000 Acts, ch 1150, §24; 2002 Acts, ch 1107, §9

Subsection 2, paragraph a amended

SUBPART B

FIDUCIARY DUTIES OF TRUSTEE

633.4201 Duty to administer trust — alteration by terms of trust.

1. On acceptance of a trust, the trustee shall administer the trust according to the terms of the trust and according to this trust code, except to the extent the terms of the trust provide otherwise.

2. The terms of the trust may expand, restrict, eliminate, or otherwise alter the duties prescribed by this trust code, and the trustee may reasonably rely on those terms, but nothing in this trust code authorizes a trustee to act in bad faith or in disregard of the purposes of the trust or the interest of the beneficiaries.

99 Acts, ch 125, §47, 109

633.4202 Duty of loyalty — impartiality — confidential relationship.

1. A trustee shall administer the trust solely in the interest of the beneficiaries, and shall act with due regard to their respective interests.

2. Any transaction involving the trust which is affected by a material conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless one of the following applies:

a. The transaction was expressly authorized by the terms of the trust.

b. The beneficiary consented to or affirmed the transaction or released the trustee from liability as provided in section 633.4506.

c. The transaction is approved by the court after notice to interested persons.

3. A transaction affected by a material conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the trust property entered into by the trustee, the spouse, descendant, agent, or attorney of a trustee, or corporation or other enterprise in which the trustee has a substantial beneficial interest.

4. A transaction not involving trust property between a trustee and a beneficiary which occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is an abuse of a confidential relationship unless the trustee establishes that the transaction was fair.

5. This section does not apply to any of the following:

a. An agreement between a trustee and a beneficiary relating to the appointment of the trustee.

b. The payment of compensation to the trustee, whether by agreement, the terms of the trust, or this trust code.

c. A transaction between a trust and another trust, decedent's or conservatorship estate of which the trustee is a fiduciary if the transaction is fair to the beneficiaries of the trust.

d. An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee if the investment complies with the prudent investor rule. The trustee may be compensated by the investment company or investment trust for providing services from fees charged to the trust if the trustee provides annual notice and a copy of the trustee's annual report, including the rate and method by which the trustee's compensation was determined, to the persons specified in section 633.4213.

e. A deposit of trust money in a regulated financial service institution operated by the trustee.

99 Acts, ch 125, §48, 109; 2002 Acts, ch 1107, §10

Subsections 2, 3, and 5 amended

633.4203 Standard of prudence.

A trustee shall administer the trust with the reasonable care, skill, and caution as a prudent person would, by considering the purposes, terms,

distribution requirements, and other circumstances of the trust.

99 Acts, ch 125, §49, 109

633.4204 Costs of administration.

A trustee may only incur costs that are reasonable in relation to the trust property, purposes, and other circumstances of the trust.

99 Acts, ch 125, §50, 109

633.4205 Special skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

99 Acts, ch 125, §51, 109

633.4206 Delegation.

1. A trustee shall not delegate to an agent or cotrustee the entire administration of the trust or the responsibility to make or participate in the making of decisions with respect to discretionary distributions, but a trustee may otherwise delegate the performance of functions that a prudent trustee of comparable skills might delegate under similar circumstances.

2. The trustee shall exercise reasonable care, skill, and caution in the following activities:

a. Selecting an agent.

b. Establishing the scope and terms of a delegation, consistent with the purposes and terms of the trust.

c. Periodically reviewing an agent's overall performance and compliance with the terms of the delegation.

d. Redressing an action or decision of an agent which would constitute a breach of trust if performed by the trustee.

3. A trustee who complies with the requirements of subsections 1 and 2 is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom a function was delegated.

4. In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.

5. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

99 Acts, ch 125, §52, 109

633.4207 Directory powers.

1. If the terms of the trust grant a person other than the trustee power to direct certain actions of the trustee, the trustee shall act in accordance with the exercise of the power unless an attempted exercise violates the terms of the trust or the trustee is aware that the attempted exercise violates a fiduciary duty which the person owes the beneficiaries of the trust or the trustee believes or has reason to know that the individual is incompetent.

2. The holder of a directory power who violates a fiduciary duty owed to the beneficiaries is liable for any loss which results.

99 Acts, ch 125, §53, 109

633.4208 Cotrustees.

1. If a trust has more than one trustee, each trustee shall perform all of the following duties:

a. Participate in the administration of the trust.

b. Take reasonable steps to prevent a cotrustee from committing a breach of trust, and to compel a cotrustee to redress a breach of trust.

2. A trustee who complies with subsection 1 is not liable to the beneficiaries or to the trust for the decisions or actions of a cotrustee.

99 Acts, ch 125, §54, 109

633.4209 Control and safeguarding of trust property.

A trustee shall take reasonable steps under the circumstances to take control of and to safeguard the trust property unless it is in the best interests of the trust to abandon or refuse acceptance of the property.

99 Acts, ch 125, §55, 109

633.4210 Separation and identification of trust property.

A trustee shall do all of the following:

1. Keep the trust property separate from other property of the trustee unless the trust provides otherwise.

2. Cause the trust property to be designated in such a manner that the interest of the trust clearly appears.

99 Acts, ch 125, §56, 109

633.4211 Enforcement and defense of claims and actions.

A trustee shall take reasonable steps to enforce claims of the trust, to defend claims against the trust, and to defend against actions that may result in a loss to the trust.

99 Acts, ch 125, §57, 109; 2002 Acts, ch 1107, §11
Section amended

633.4212 Prior fiduciaries.

A trustee shall take reasonable steps to do all of the following:

1. Compel a former trustee or other fiduciary to deliver trust property to the trustee.

2. Redress a breach of trust known to the trustee to have been committed by a prior trustee or other fiduciary.

99 Acts, ch 125, §58, 109

633.4213 Duty to inform and account.

A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and the material facts necessary to protect the beneficiaries' interests.

1. The trustee shall inform each qualified beneficiary of the beneficiary's right to receive an annual accounting and a copy of the trust instrument. The trustee shall also inform each qualified beneficiary about the process necessary to obtain an annual accounting or a copy of the trust instrument, if not provided. The trustee shall further inform the beneficiary whether the beneficiary will, or will not, receive an annual accounting if the beneficiary fails to take any action. If a beneficiary has previously been provided the notice required by this section, additional notice shall not be required due to a change of trustees or a change in the composition of the qualified beneficiaries.

2. The trustee shall provide the notice required in subsection 1 to each qualified beneficiary within a reasonable time following any of the following events:

a. The commencement of the trust administration.

b. The trustee becoming aware that there is a new qualified beneficiary or a representative of any minor or incompetent beneficiary.

c. The trust becoming irrevocable.

d. The time that no person, except the trustee, has the right to change the beneficiaries of the trust.

3. A trustee of an irrevocable trust shall provide annually to each adult beneficiary and the representative of any minor or incompetent beneficiary who may receive a distribution of income or principal during the accounting time period, an accounting, unless an accounting has been waived specifically for a particular accounting time period.

4. This section does not apply to any trust where the grantor has retained the right, or has transferred the right, to change the beneficiaries of the trust.

5. The only consequence to a trustee's failure to provide a required accounting or notice is that the trustee shall not be able to rely upon the statute of limitations under section 633.4504. If the trustee has refused, after a reasonable request, to provide an accounting to a qualified beneficiary, the court may assess costs, including attorney fees, against the trustee personally.

6. The format and content of an accounting required by this section shall be within the discretion of the trustee, if sufficient to reasonably inform the beneficiary of the condition and activities of the trust during the accounting period.

7. This section applies to any trust created on or after July 1, 2002, unless the trustor has specifically waived the requirements of this section in the trust instrument. Waiver of this section shall not bar any beneficiary's common-law right to an accounting, and shall not provide any immunity to a trustee, acting under the terms of the trust, for liability to any beneficiary who discovers facts giving rise to a cause of action against the trustee.

99 Acts, ch 125, §59, 109; 2001 Acts, ch 176, §78; 2002 Acts, ch 1107, §12; 2002 Acts, ch 1175, §93

Section stricken and rewritten

633.4214 Duties with regard to discretionary powers.

1. A trustee shall exercise a discretionary power within the bounds of reasonable judgment and in accordance with applicable fiduciary principles and the terms of the trust.

2. Notwithstanding the use of such terms as "absolute", "sole", or "uncontrolled" in the grant of discretion, a trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust or the power. Absent an abuse of discretion, a trustee's exercise of discretion is not subject to control by a court.

3. Subject to paragraph *"c"* and unless the terms of the trust expressly indicate that a rule in this subsection does not apply, all of the following shall apply:

a. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee the power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986.

b. A trustee shall not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes to another person.

c. This subsection does not apply to the following:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, that was previously allowed.

(2) A trust that may be revoked or amended by the settlor.

(3) A trust, if contributions to the trust which qualify for an annual exclusion under section 2503(c) of the Internal Revenue Code of 1986.

4. A power whose exercise is limited or prohibited by subsection 3 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

99 Acts, ch 125, §60, 109; 2002 Acts, ch 1107, §13

NEW subsections 3 and 4

SUBPART C

UNIFORM PRUDENT INVESTOR ACT

633.4301 Short title.

This subpart may be cited as the *"Uniform Prudent Investor Act"*.

99 Acts, ch 125, §61, 109

633.4302 Standard of care — portfolio strategy — risk and return objectives.

1. A trustee shall invest and manage trust property as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

2. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

3. A trustee shall consider all of the following circumstances, to the extent relevant to the trust or its beneficiaries in investing and managing trust property:

a. General economic conditions.

b. The possible effect of inflation or deflation.

c. The expected tax consequences of investment decisions or strategies.

d. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property.

e. The expected total return from income and the appreciation of capital.

f. Other resources of the beneficiaries.

g. Needs for liquidity, regularity of income, and preservation or appreciation of capital.

h. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

4. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust property.

5. A trustee may invest in any kind of property or type of investment consistent with the standards of this subpart.

99 Acts, ch 125, §62, 109

633.4303 Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that the purposes of the trust are better served without diversifying.

99 Acts, ch 125, §63, 109

633.4304 Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust property, a trustee shall review the trust property and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this subpart.

99 Acts, ch 125, §64, 109

633.4305 Loyalty.

A trustee shall invest and manage the trust property solely in the interest of the beneficiaries.

99 Acts, ch 125, §65, 109

633.4306 Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust property, taking into account any differing interests of the beneficiaries.

99 Acts, ch 125, §66, 109

633.4307 Investment costs.

In investing and managing trust property, a trustee may only incur costs that are appropriate and reasonable in relation to the property, the purposes of the trust, and the skills of the trustee.

99 Acts, ch 125, §67, 109

633.4308 Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

99 Acts, ch 125, §68, 109

633.4309 Language invoking prudent investor rule.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this trust code:

1. Investments permissible by law for investment of trust funds.

2. Legal investments.

3. Authorized investments.

4. Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

5. Prudent man rule.

6. Prudent trustee rule.

7. Prudent person rule.

8. Prudent investor rule.

99 Acts, ch 125, §70, 109

SUBPART D

POWERS OF TRUSTEES

633.4401 General powers — fiduciary duties.

1. A trustee, without authorization by the court, may exercise the following powers:

a. The powers conferred by the terms of the trust.

b. Except as limited by the terms of the trust, powers conferred by this trust code.

2. This subpart does not affect the power of the court to relieve a trustee from restrictions in the terms of the trust on the exercise of powers, to confer on a trustee additional powers whether or not authorized by the terms of the trust, or to restrict the exercise of a power otherwise given to the trustee by the terms of the trust or this trust code.

3. The grant of a power to a trustee, whether by the terms of the trust, this trust code, or the court, does not in itself govern the exercise of the power. In exercising a power, the trustee shall act in accordance with fiduciary principles.

99 Acts, ch 125, §71, 109

633.4402 Specific powers of trustees.

In addition to the powers conferred by the terms of the trust, a trustee may perform all actions necessary to accomplish the proper management, investment, and distribution of the trust property, including the following powers:

1. Collect, hold, and retain trust property received from a settlor or any other person. The property may be retained even though it includes property in which the trustee is personally interested.

2. Accept or refuse to accept additions to the property of the trust from a settlor or any other person.

3. With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue or participate in the operation of a business or other enterprise that is part of the trust and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of a business organization and contributing additional capital.

4. Deposit trust funds in an account in a financial institution, including a financial institution operated by the trustee.

5. Acquire or dispose of property, for cash or on credit, at public or private sale, or by exchange.

6. Manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property. Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, deposit securities with and transfer title and delegate discretion to any protective or other committee as the trustee considers advisable.

7. Encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of a power vested in the trustee.

8. Make ordinary or extraordinary repairs, alterations, or improvements in buildings or other trust property; demolish improvements; and raze existing or erect new party walls or buildings.

9. Subdivide or develop land, dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving consideration, and dedicate easements to public use without consideration.

10. Enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

11. Enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals or geothermal energy, and enter into a community oil lease or a pooling or unitization agreement.

12. Grant an option involving disposition of trust property or take an option for the acquisition of property, including an option that is exercisable beyond the duration of the trust.

13. With respect to shares of stock of a domestic or foreign corporation, any membership in a nonprofit corporation, or other property, the trustee may do the following:

a. Vote in person, and give proxies to exercise, any voting rights with respect to the shares, memberships, or property.

b. Waive notice of a meeting or give consent to the holding of a meeting.

c. Authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

14. Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

15. Sell or exercise stock subscription or conversion rights.

16. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, and exercise rights thereunder, including the right to indemnification for expenses and against liabilities, and take appropriate action to collect proceeds.

17. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery.

18. Deposit securities in a securities' depository.

19. Insure the property of the trust against

damage or loss and insure the trustee against liability with respect to third persons.

20. Borrow money for any trust purpose to be repaid from trust property.

21. Pay or contest any claim; settle a claim by or against the trust by compromise, arbitration, or otherwise; and release, in whole or in part, a claim belonging to the trust.

22. Pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

23. Make loans out of trust property to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and guarantee loans to the beneficiary by encumbrances on trust property.

24. Pay an amount distributable to a beneficiary, whether or not the beneficiary is under a legal disability, by paying the amount to the beneficiary or by paying the amount to another person for the use or benefit of the beneficiary.

25. Upon distribution of trust property or the division or termination of a trust, make distribution in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation.

26. Employ accountants, attorneys, investment advisors, appraisers, or other persons, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

27. With respect to any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, a trustee shall do all of the following:

a. Inspect or investigate property the trustee holds or has been asked to hold or property owned or operated by an organization in which the trustee holds an interest in or has been asked to hold an interest in, and expend trust funds therefore, for the purpose of determining any potential environmental law violations with respect to the property.

b. Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement.

c. Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of any environmental law.

d. Negotiate claims against the trust which may be asserted for an alleged violation of environmental law.

e. Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

28. Withhold funds from distribution for the purpose of maintaining a reserve for any valid business purpose, or as a depletion reserve, if, in the trustee's discretion, the failure to do so would unfairly, and materially, reduce the value of the interest of the remainder.

29. Execute and deliver instruments that are useful to accomplish or facilitate the exercise of the trustee's powers.

30. Prosecute or defend an action, claim, or proceeding in order to protect trust property.

31. Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

32. Upon termination of the trust, exercise the powers necessary to conclude the administration of the trust and distribute the trust property to the person or persons entitled to the trust property.

99 Acts, ch 125, §72, 109; 2002 Acts, ch 1107, §14, 15

Subsections 3, 6, 16, 25, and 27 amended
NEW subsections 31 and 32

SUBPART E

LIABILITY OF TRUSTEES TO BENEFICIARIES

633.4501 Violations of duties — breach of trust.

1. A violation by a trustee of a duty the trustee owes a beneficiary is a breach of trust.

2. The remedies of a beneficiary for breach of trust are exclusively equitable and any action shall be brought in a court of equity.

99 Acts, ch 125, §73, 109

633.4502 Breach of trust — actions.

To remedy a breach of trust which has occurred or may occur, a beneficiary or cotrustee of the trust may request the court to do any of the following:

1. Compel the trustee to perform the trustee's duties.

2. Enjoin the trustee from committing a breach of trust.

3. Compel the trustee to redress a breach of trust by payment of money or otherwise.

4. Appoint a receiver or temporary trustee to take possession of the trust property and administer the trust.

5. Remove the trustee.

6. Reduce or deny compensation to the trustee.

7. Subject to section 633.4603, nullify an act of the trustee, impose an equitable lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds.

8. Order any other appropriate relief.

99 Acts, ch 125, §74, 109; 2002 Acts, ch 1107, §16
NEW subsection 8

633.4503 Breach of trust — liability.

A beneficiary may charge a trustee who commits a breach of trust with the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred, or, if greater, the amount of profit lost by reason of the breach.

99 Acts, ch 125, §75, 109

633.4504 Limitation of action against trustee.

1. Unless previously barred by adjudication, consent, or other limitation, a claim against a trustee for breach of trust is barred as to a beneficiary who has received a final account or other report adequately disclosing the existence of the claim, unless a proceeding to assert the claim is commenced within one year after the earlier of the receipt of the accounting or report of the termination of the trust relationship between the trustee and beneficiary. An account or report adequately discloses the existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence.

2. For the purpose of subsection 1, a beneficiary is deemed to have received an account or report in the following instances:

a. In the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally.

b. In the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the adult's legal representative, including a guardian ad litem or other person appointed for this purpose.

c. In the case of a minor, if it is received by the minor's guardian or conservator or, if the minor does not have a guardian or conservator, if it is received by a parent of the minor who does not have a conflict of interest.

3. Any claim for breach of trust against a trustee who has presented a final report to a beneficiary more than one year prior to July 1, 2000, shall be time barred unless some exception stated in this section applies which tolls the statute. Any claim arising under this section within one year of July 1, 2000, shall be time barred after one year unless an exception applies to toll the statute.

99 Acts, ch 125, §76, 109; 2000 Acts, ch 1150, §25

633.4505 Exculpation of trustee.

A provision in the terms of the trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it does either of the following:

1. Relieves a trustee of liability for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary, or for any profit derived by the trustee from the breach.

2. Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

99 Acts, ch 125, §77, 109

633.4506 Beneficiary's consent, release, or affirmance — nonliability of trustee.

1. A beneficiary shall not hold a trustee liable for a breach of trust if the beneficiary does any of the following:

a. Consents to the conduct constituting the breach.

b. Releases the trustee from liability for the breach.

c. Affirms the transaction constituting the breach.

2. A beneficiary may hold a trustee liable for breach of trust despite a consent, release, or affirmance by the beneficiary if, at the time of the consent, release, or affirmance, all of the following applied:

a. The beneficiary did not know of the beneficiary's rights.

b. The beneficiary did not know the material facts known to the trustee or which the trustee should have known.

c. The trustee did not reasonably believe that the beneficiary knew the beneficiary's rights or that the beneficiary knew material facts known to the trustee or which the trustee should have known.

3. A beneficiary may hold a trustee liable for breach of a trust despite a consent, release, or affirmance by the beneficiary if the consent, release, or affirmance was induced by improper conduct of the trustee.

99 Acts, ch 125, §78, 109; 2002 Acts, ch 1107, §17, 18
Subsection 2 amended
NEW subsection 3

SUBPART F

RIGHTS OF THIRD PARTIES

633.4601 Personal liability — limitations.

1. Except as otherwise provided in the contract or in this subpart, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the representative capacity or identify the trust in the contract.

2. A trustee is personally liable for obligations arising from ownership or control of trust property, including liability for environmental law viola-

tions, and for torts committed in the course of administering a trust only if the trustee is personally at fault.

3. A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable on the claim.

4. A question of liability as between the trust and the trustee personally may be determined in a proceeding brought under section 633.6202.

99 Acts, ch 125, §79, 109; 2002 Acts, ch 1107, §19
Subsection 2 amended

633.4602 Dissenting cotrustees.

1. A cotrustee who does not join in exercising a power is not liable to a third party for the consequences of the exercise of the power.

2. A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to a third party for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the action is taken.

3. This section does not excuse a cotrustee from liability for failure to discharge a cotrustee's duties as a trustee.

99 Acts, ch 125, §80, 109

633.4603 Obligations of third parties.

1. With respect to a third party dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third party acts in good faith and for a valuable consideration and without knowledge that the trustee is exceeding the trustee's powers or is improperly exercising them, the following apply:

a. A third party is not bound to inquire as to whether a trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise.

b. A third party is fully protected in dealing with or assisting a trustee, as if the trustee has and is properly exercising the power the trustee purports to exercise.

2. A third party who acts in good faith is not bound to ensure the proper application of trust property paid or delivered to the trustee.

3. If a third party acting in good faith and for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third party is fully protected as if the former trustee were still a trustee.

99 Acts, ch 125, §81, 109

633.4604 Certification of trust.

1. A trustee may present a certification of trust to any person in lieu of providing a copy of the trust instrument to establish the existence or terms of the trust.

2. The certification must contain a statement that the trust has not been revoked, modified, or amended in any manner which would cause the representations contained in the certification of trust to be incorrect and must contain a statement that it is being signed by all of the currently acting trustees of the trust and is sworn and subscribed to under penalty of perjury before a notary public.

3. A certification of trust need not contain the dispositive provisions of the trust which set forth the distribution of the trust estate.

4. A person may require that the trustee offering the certification of trust provide copies of those excerpts from the original trust instrument and amendments to the original trust instrument which designate the trustee and confer upon the trustee the power to act in the pending transaction.

5. A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the trust certification. A transaction, and a lien created by a transaction, entered into by the trustee and a person acting in reliance upon a certification of trust is enforceable against the trust assets.

6. A person making a demand for the trust instrument in addition to a certification of trust or excerpts shall be liable for damages, including attorney fees, incurred as a result of the refusal to accept the certification of trust or excerpts in lieu of the trust instrument if the court determines that the person acted unreasonably in requesting the trust instrument.

7. This section does not limit the rights of beneficiaries to obtain copies of the trust instrument or rights of others to obtain copies in a proceeding concerning the trust.

99 Acts, ch 125, §82, 109

633.4605 Liability for wrongful taking, concealing, or disposing of trust property.

A person who, in bad faith, wrongfully takes, conceals, or disposes of trust property is liable for twice the value of the property, attorney fees, court costs, and where consistent with existing law, punitive damages, recoverable in an action by a trustee for the benefit of the trust.

99 Acts, ch 125, §83, 109

SUBPART G

TRUST CONSTRUCTION

633.4701 Survivorship with respect to future interests under terms of trust — substitute takers.

1. Unless otherwise specifically stated by the terms of the trust, the interest of each beneficiary is contingent on the beneficiary surviving until the date on which the beneficiary becomes entitled to possession or enjoyment of the beneficiary's interest in the trust.

2. If a beneficiary dies prior to becoming entitled to possession or enjoyment of the beneficiary's interest and the terms of the trust provide for an alternate beneficiary who is living on the date the interest becomes possessory, the alternate beneficiary succeeds to the interest in accordance with the terms of the trust.

3. If a beneficiary dies prior to becoming entitled to possession or enjoyment of the beneficiary's interest and no alternate beneficiary is named in the trust, and the beneficiary has issue who are living on the date the interest becomes possessory, the issue of the beneficiary who are living on such date shall receive the interest of the beneficiary.

4. If both a beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and the beneficiary has no issue who are living on the date the interest becomes possessory, the issue of the alternate beneficiary who are living on such date shall take the interest of the beneficiary.

5. If both the beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and neither the beneficiary nor the alternate beneficiary has issue who are living on the date the interest becomes possessory, the beneficiary's interest shall be distributed in accordance with section 633.2106.

99 Acts, ch 125, §84, 109

PART 5

CHARITABLE TRUSTS

633.5101 Charitable purposes.

1. A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, or any other purpose the accomplishment of which is beneficial to the community.

2. If the terms of the trust do not indicate a particular charitable purpose or beneficiaries, the trustee may select one or more charitable purposes or beneficiaries.

99 Acts, ch 125, §85, 109

633.5102 Application of cy-pres.

Unless the terms of the trust provide to the contrary the following apply:

1. A charitable trust does not fail, in whole or in part, if a particular purpose for which the trust was created becomes impracticable, unlawful, or impossible to fulfill.

2. If a particular charitable purpose for which a trust was created becomes impracticable, unlawful, or impossible to fulfill, the court may modify the terms of the trust or direct that the property of the trust be distributed in whole or in part in a manner best meeting the settlor's general charitable purposes. If an administrative provision of a charitable trust becomes impracticable, unlawful, impossible to fulfill, or otherwise impairs the effective administration of the trust, the court may modify the provision.

99 Acts, ch 125, §86, 109

633.5103 Trust with uneconomically low value.

1. On petition by a trustee or other interested person, if the court determines that the value of the trust property is insufficient to justify the cost of administration involved, the court may appoint a new trustee or may modify or terminate the charitable trust.

2. Upon termination of a trust under this section, the court shall distribute the trust property in a manner consistent with the settlor's charitable purposes.

99 Acts, ch 125, §87, 109

633.5104 Interested persons — proceedings.

The settlor, the trustee, the attorney general, and any charitable entity or other person with a special interest in the trust shall be interested persons in a proceeding involving a charitable trust.

99 Acts, ch 125, §88, 109

PART 6

PROCEEDINGS CONCERNING TRUSTS

SUBPART A

JURISDICTION AND VENUE

633.6101 Subject matter jurisdiction.

The district court has exclusive jurisdiction of proceedings concerning the internal affairs of a trust and of actions and proceedings to determine the existence of a trust, actions and proceedings by or against creditors or debtors of a trust, and other actions and proceedings involving a trust and third persons.

99 Acts, ch 125, §89, 109; 2002 Acts, ch 1107, §20
Section stricken and rewritten

633.6102 Principal place of administration of trust.

1. Unless otherwise designated in the terms of

the trust, the principal place of administration of a trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or the trustee's representative who is primarily responsible for the administration of the trust.

2. If the principal place of administration of the trust cannot be determined under subsection 1, it must be determined as follows:

a. If the trust has one trustee, the principal place of administration of the trust is the trustee's residence or usual place of business.

b. If the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them or, if not, the residence or usual place of business of any of the cotrustees.

99 Acts, ch 125, §90, 109

633.6103 Jurisdiction over trustees and beneficiaries.

1. By accepting the trusteeship of a trust having its principal place of administration in this state, the trustee submits personally to the jurisdiction of the court.

2. To the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court.

99 Acts, ch 125, §91, 109

633.6104 County of venue.

1. A proceeding may be commenced in the county in which the trust's principal place of administration is or is to be located and if the trust is created by will, also in the county in which the decedent's estate is administered.

2. If a trust not created by will has no trustee, a proceeding for appointing a trustee shall be commenced in the county in which a beneficiary resides or the trust property, or some portion of the trust property, is located.

3. Except as otherwise provided in subsections 1 and 2, a proceeding shall be commenced in accordance with the rules applicable to civil actions generally.

99 Acts, ch 125, §92, 109

633.6105 Transfer of jurisdiction.

1. The court may transfer the place of administration of a trust to or from this state or transfer some or all of the trust property to a trustee in or outside this state if it finds that the transfer of the trust property to a trustee in this or another jurisdiction, or the transfer of the place of administration of a trust to this or another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the economical and convenient administration of the trust and the views of the qualified beneficiaries.

2. A new trustee to whom the trust property is to be transferred shall be qualified, willing, and able to administer the trust or trust property under the terms of the trust.

3. If the trust or any portion of the trust property is transferred to another jurisdiction and if approval of the transfer by the other court is required under the law of the other jurisdiction, the proper court in the other jurisdiction must have approved the transfer in order for the transfer to be effective.

4. If a transfer is ordered, the court may direct the manner of transfer and impose terms and conditions as may be just, including a requirement for the substitution of a successor trustee in any pending litigation in this state. A delivery of property in accordance with the order of the court is a full discharge of the trustee with respect to all property specified in the order.

5. If the court grants a petition to transfer a trust or trust property to this state, the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in section 633.4102.

99 Acts, ch 125, §93, 109; 2002 Acts, ch 1107, §21
Section stricken and rewritten

SUBPART B

JUDICIAL PROCEEDINGS CONCERNING TRUSTS

633.6201 Judicial intervention intermittent.

The administration of trusts shall proceed expeditiously and free of judicial intervention, except to the extent the jurisdiction of the court is invoked by interested parties or otherwise exercised as provided by law.

99 Acts, ch 125, §94, 109

633.6202 Petitions — purposes of proceedings.

1. Except as otherwise provided in section 633.3103, a trustee or beneficiary of a trust may petition the court concerning the internal affairs of the trust or to determine the existence of the trust.

2. Proceedings concerning the internal affairs of a trust include proceedings to do any of the following:

a. Construe and determine the terms of a trust.

b. Determine the existence of any immunity, power, privilege, duty, or right.

c. Determine the validity of a trust provision.

d. Ascertain beneficiaries and determine to whom property shall pass or be delivered upon final or partial termination of the trust.

e. Settle accounts and pass upon the acts of the

trustee, including the exercise of discretionary powers.

f. Instruct the trustee.

g. Compel the trustee to report information about the trust or account to the beneficiary.

h. Grant powers to or modify powers of the trustee.

i. Fix or allow payment of the trustee's compensation or review the reasonableness of the compensation.

j. Appoint or remove a trustee.

k. Accept the resignation of a trustee.

l. Compel redress of a breach of trust by any available remedy.

m. Approve or direct the modification or termination of the trust.

n. Approve or direct the combination or division of trusts.

o. Authorize or direct transfer of a trust or trust property to or from another jurisdiction.

p. Determine liability of a trust for debts or the expenses of administration of the estate of a deceased settlor.

q. Determine any other issue that will aid in the administration of the trust.

99 Acts, ch 125, §95, 109; 2002 Acts, ch 1119, §191

Subsection 2, paragraph o amended

SUBPART C

SETTLEMENT AGREEMENTS AND REPRESENTATION

633.6301 Definition and applicability.

1. For purposes of this subpart, *"fiduciary matter"* includes any item listed in section 633.6202, subsection 2.

2. Persons interested in a fiduciary matter may approve a judicial settlement and represent and bind other persons interested in the fiduciary matter.

3. Except to the extent the terms of the trust indicate that the procedures specified are not to apply, a person interested in a fiduciary matter may approve a nonjudicial settlement containing such terms and conditions as a court could properly approve and represent and bind other persons interested in the fiduciary matter.

4. Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the person represented.

5. The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

99 Acts, ch 125, §96, 109; 2002 Acts, ch 1107, §22

NEW subsections 4 and 5

633.6302 Representation by holders of powers.

1. The holders or all coholders of a power of revocation or presently exercisable general power of appointment, including one in the form of a power of amendment, may represent and bind the persons whose interests, as objects, takers in default, or otherwise, are subject to the power.

2. To the extent there is no conflict of interest between the holders and the persons represented with respect to the fiduciary matter, persons whose interests are subject to a general testamentary power of appointment may be represented and bound by the holder or holders of the power.

99 Acts, ch 125, §97, 109

633.6303 Representation by fiduciaries and parents.

To the extent there is no conflict of interest between the representer and those represented with respect to the fiduciary matter, the following are permitted:

1. A conservator may represent and bind the person whose estate the conservator controls.

2. A trustee may represent and bind the beneficiaries of the trust.

3. A personal representative may represent and bind the persons interested in the decedent's estate.

4. If no conservator has been appointed, a parent may represent and bind a minor child.

99 Acts, ch 125, §98, 109

633.6304 Representation by holders of similar interests.

Unless otherwise represented, a minor or an incompetent, unborn, or unascertained person may be represented by and bound by another person having a substantially identical interest with respect to the fiduciary matter but only to the extent that the person's interest is adequately represented.

99 Acts, ch 125, §99, 109

633.6305 Notice of judicial settlement.

1. Notice of a judicial settlement shall be given to every interested person or to one who can bind an interested person as described in sections 633.6302 and 633.6303.

2. Notice may be given to a person or to another who may bind the person.

3. Notice is given to unborn or unascertained persons who are not represented under sections 633.6302 and 633.6303, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn

or unascertained persons.
99 Acts, ch 125, §100, 109

633.6306 Appointment of guardian ad litem.
1. At any point in a judicial proceeding, the court may appoint a guardian ad litem to represent and approve a settlement on behalf of the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate.
2. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.
3. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.
4. In approving a judicially supervised settlement, a guardian ad litem may consider general family benefit.
99 Acts, ch 125, §101, 109

633.6307 Appointment of special representative.
1. In connection with a nonjudicial settlement, the court may appoint a special representative to represent the interests of and approve a settlement on behalf of designated persons.
2. If not precluded by a conflict of interest, a special representative may be appointed to represent several persons or interests.
3. In approving a settlement, a special representative may consider general family benefit. As a condition for approval, a special representative may require that those represented receive a benefit.
99 Acts, ch 125, §102, 109

PART 7

MISCELLANEOUS PROVISIONS

633.7101 Division prevails.
Notwithstanding any Code provision to the contrary, the provisions of this division shall prevail over any other applicable Code provision.
2002 Acts, ch 1107, §23
NEW section

CHAPTER 634

PRIVATE FOUNDATIONS AND CHARITABLE TRUSTS

634.1 Applicability.
634.2 Statutory provisions as part of the trust.
634.3 Distribution to avoid tax liability.
634.4 Limitations.
634.5 Internal Revenue Code defined.
634.6 Statutory exception in trust.
634.7 Public grants by private foundations or trusts.

634.1 Applicability.
This chapter shall apply only to trusts which are private foundations as defined in section 509 of the Internal Revenue Code, charitable trusts as described in section 4947(a) (1) of the Internal Revenue Code, or split-interest trusts as described in section 4947(a) (2) of the Internal Revenue Code. With respect to any such trust created after December 31, 1969, this chapter shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, this chapter shall apply only to such trust's federal taxable years beginning after December 31, 1971.
[C73, 75, 77, 79, 81, §634.1]

634.2 Statutory provisions as part of the trust.
The trust instrument of each trust to which this chapter applies shall be deemed to contain provisions prohibiting the trustee from:
1. Engaging in any act of self-dealing, as defined in section 4941(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code;
2. Retaining any excess business holdings, as defined in section 4943(c) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Rev-

enue Code;

3. Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and

4. Making any taxable expenditures, as defined in section 4945(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code.

However, this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code.

[C73, 75, 77, 79, 81, §634.2]

634.3 Distribution to avoid tax liability.

The trust instrument of each trust to which this chapter applies, except split-interest trusts, shall be deemed to contain a provision requiring the trustee to distribute for the purposes specified in the trust instrument for each taxable year of the trust amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code.

[C73, 75, 77, 79, 81, §634.3]

634.4 Limitations.

Nothing in this chapter shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

[C73, 75, 77, 79, 81, §634.4]

634.5 Internal Revenue Code defined.

All references to sections of the Internal Revenue Code mean the Internal Revenue Code as defined in section 422.3.

[C73, 75, 77, 79, 81, §634.5]

84 Acts, ch 1305, §41

634.6 Statutory exception in trust.

Nothing in this chapter shall limit the power of a person who creates a trust after July 1, 1971, or the power of a person who has retained or has been granted the right to amend a trust created before July 1, 1971, to include a specific provision in the trust instrument or an amendment to the trust instrument as the case may be, which provides that some or all of the provisions of sections 634.2 and 634.3 shall have no application to such trust.

[C73, 75, 77, 79, 81, §634.6]

634.7 Public grants by private foundations or trusts.

A grant, by a trust organized and funded prior to January 1, 1992, to which this chapter applies, to the state of Iowa, or a political subdivision, or agency of the state or political subdivision, for purposes of economic development, shall be regarded as a charitable contribution if made prior to January 1, 1994.

92 Acts, ch 1244, §48

CHAPTER 634A

SUPPLEMENTAL NEEDS TRUSTS FOR PERSONS WITH DISABILITIES

634A.1 Definitions.
634A.2 Supplemental needs trust — requirements.

634A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Person with a disability"* means a person to whom one of the following applies, prior to creation of a trust which otherwise qualifies as a supplemental needs trust for the person's benefit:

a. Is considered to be a person with a disability under the disability criteria specified in Title II or Title XVI of the federal Social Security Act.

b. Has a physical or mental illness or condition which, in the expected natural course of the illness or condition, to a reasonable degree of medical certainty, is expected to continue for a continuous period of twelve months or more and substantially impairs the person's ability to provide for the person's care or custody.

2. *"Supplemental needs trust"* means an inter vivos or testamentary trust created for the benefit of a person with a disability and funded by a person other than the trust beneficiary or the beneficiary's spouse, and which is declared to be a supplemental needs trust in the instrument creating the trust. *"Supplemental needs trust"* shall include, but is not limited to, a trust created for the benefit of a person with a disability and funded solely with moneys awarded as damages in a personal injury case or moneys received in the settlement of a personal injury case provided that the trust is created within six months of receiving the

award or settlement, the trust is irrevocable, the beneficiary is not named a trustee of the trust, and the instrument creating the trust declares the trust to be a supplemental needs trust.

97 Acts, ch 112, §1

634A.2 Supplemental needs trust — requirements.

1. A supplemental needs trust established in compliance with this chapter is in keeping with the public policy of this state and is enforceable.

2. A supplemental needs trust established under this chapter shall comply with all of the following:

a. Shall be established as a discretionary trust for the purpose of providing a supplemental source for payment of expenses which include but are not limited to the reasonable living expenses and basic needs of a person with a disability only if benefits from publicly funded benefit programs are not sufficient to provide adequately for those expenses and needs.

b. Shall contain provisions which prohibit disbursements that would result in replacement, reduction, or substitution for publicly funded benefits otherwise available to the beneficiary or in rendering the beneficiary ineligible for publicly funded benefits. The supplemental needs trust shall provide for distributions only in a manner and for purposes that supplement or complement the benefits available under medical assistance, state supplementary assistance, and other publicly funded benefit programs for persons with disabilities.

3. For the purpose of establishing eligibility of a person as a beneficiary of a supplemental needs trust, disability may be established conclusively by the written opinion of a licensed professional who is qualified to diagnose the illness or condition, if confirmed by the written opinion of a second licensed professional who is also qualified to diagnose the illness or condition.

4. A supplemental needs trust is not enforceable if the trust beneficiary becomes a patient or resident after sixty-four years of age in a state institution or nursing facility for six months or more and, due to the beneficiary's medical need for care in an institutional setting, there is no reasonable expectation, as certified by the beneficiary's attending physician, that the beneficiary will be discharged from the facility. For the purposes of this subsection, a beneficiary participating in a group residential program is not a patient or resident of a state institution or nursing facility.

5. The trust income and assets of a supplemental needs trust are considered available to the beneficiary for medical assistance or other public assistance program purposes to the extent that income and assets are considered available in accordance with the methodology applicable to a particular program.

6. A supplemental needs trust is not subject to administration in the Iowa district court sitting in probate. A trustee of a supplemental needs trust has all powers and shall be subject to all the duties and liabilities of a trustee as provided in the probate code, except the duty of reporting to or obtaining approval of the court.

7. Notwithstanding the prohibition of the funding of a supplemental needs trust by the beneficiary or the beneficiary's spouse, a supplemental needs trust may be established with the proceeds of back payments made by the United States social security administration resulting from a judgment regarding the regulatory schemes for determination of the disability of a child.

97 Acts, ch 112, §2

For medical assistance trusts, see §633.707 – 633.711

CHAPTER 635

ADMINISTRATION OF SMALL ESTATES

635.1 When applicable.
635.2 Petition requirements.
635.3 Possession of estate.
635.4 Turning over assets to executor or administrator.
635.5 Transfer of stock or securities.
635.6 Property of perishable nature.
635.7 Report and inventory — excess value and termination.
635.8 Closing by sworn statement.
635.9 Petition for administration on other basis.
635.10 Effect of termination.
635.11 Statement in notice by clerk.
635.12 Sale of property.
635.13 Notice — claims.
635.14 Minimum time before distribution.

635.1 When applicable.

1. When the gross value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state does not exceed fifty thou-

sand dollars in property subject to taxation under section 450.3, upon the petition of the spouse or a child of the decedent, the clerk shall issue to a resident of the state of Iowa designated by the petitioner letters of appointment of executor or administrator for administration of a small estate if either of the following occurs:

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

b. The decedent leaves a last will and testament and the only beneficiaries are a spouse, or children, or both.

2. When the gross value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state does not exceed fifteen thousand dollars in property subject to taxation under section 450.3, upon the petition of a parent or grandchild of the decedent the clerk shall issue to a resident of the state of Iowa designated by the petitioner, letters of appointment as executor or administrator for administration of a small estate if either of the following occurs:

a. The decedent dies intestate without a surviving spouse or children but with a surviving parent or parents or surviving grandchild or grandchildren.

b. The decedent dies without a surviving spouse or children and leaves a last will and testament and the only beneficiaries are a surviving parent or parents or surviving grandchild or grandchildren.

3. When the entire estate of the decedent does not exceed the sum of ten thousand dollars after deducting the debts, as defined in chapter 450, upon the petition of a person related within the fourth degree of consanguinity to the decedent, the clerk shall issue to a resident of the state of Iowa designated by the petitioner, letters of appointment as executor or administrator for administration of a small estate if either of the following occurs:

a. The decedent dies intestate without a surviving spouse, issue, or parent, but with heirs that are all within the fourth degree of consanguinity.

b. The decedent dies without a surviving spouse, issue, or parent, and leaves a last will and testament and the only beneficiaries are surviving persons related to the decedent within the fourth degree of consanguinity.

[C75, 77, 79, 81, §635.1; 81 Acts, ch 199, §1; 82 Acts, ch 1204, §1 – 4]

89 Acts, ch 25, §1

635.2 Petition requirements.

The petition for administration of a small estate must contain the following:

1. The name, domicile, and date of death of the decedent.

2. The name and address of the surviving spouse, if any, the name and address of each child of the decedent, the name and address of each parent of the decedent, if the parent is an heir or beneficiary of the decedent, and the name and address of each grandchild of the decedent if the grandchild is an heir or beneficiary of the decedent, unless none are beneficiaries under the will of the decedent, and the name and address of each relative within the fourth degree of consanguinity of the decedent who is an heir or beneficiary of the decedent, unless none are beneficiaries under the will of the decedent.

3. Whether the decedent died intestate or testate, and, if testate, the date of the will.

4. A statement that the probate and nonprobate property of the decedent subject to the jurisdiction of this state does not have an aggregate gross value of more than the amount permitted under the provisions of section 635.1.

5. The name and address of the proposed executor or administrator.

[C75, 77, 79, 81, §635.2; 81 Acts, ch 199, §2, 3]

89 Acts, ch 25, §2

635.3 Possession of estate.

The letters of appointment of the executor or administrator of a small estate shall entitle the executor or administrator to possession of any property of the estate.

[C75, 77, 79, 81, §635.3; 81 Acts, ch 199, §4]

635.4 Turning over assets to executor or administrator.

Any debtor, financial institution or other possessor of property shall deliver to the executor or administrator of a small estate all property of the estate in its possession unless the value of the property exceeds the amount permitted the small estate under the applicable provision of section 635.1. The possessor of property shall be exonerated from any liability for the delivery of property to the executor or administrator and shall not be responsible for its disposition after the delivery.

[C75, 77, 79, 81, §635.4; 81 Acts, ch 199, §5]

635.5 Transfer of stock or securities.

The letters of appointment are authority for the transfer of stock or other securities to the persons entitled by law to the stock or other securities as stated to the transfer agent by the executor or administrator for the small estate. The transfer agent shall be exonerated from all liability for making the transfer.

[C75, 77, 79, 81, §635.5; 81 Acts, ch 199, §6]

635.6 Property of perishable nature.

The executor or administrator of a small estate may sell personal property of a perishable nature and personal property for which there is a regularly established market without order of court.

[C75, 77, 79, 81, §635.6; 81 Acts, ch 199, §7]

635.7 Report and inventory — excess value and termination.

The executor or administrator is required to file the report and inventory for which provision is made in section 633.361. Nothing in sections 635.1 to 635.3 shall exempt the executor or administrator from complying with the requirements of section 422.27, 450.22 or 450.58, or the clerk from complying with the requirements of section 633.481. If the inventory and report shows assets subject to the jurisdiction of this state which exceed the total gross value of the amount permitted the small estate under the applicable provision of section 635.1, the clerk shall terminate the letters issued under section 635.1 without prejudice to the rights of persons who delivered property as permitted under section 635.3. The executor or administrator shall then be required to petition for administration of the estate as provided in chapter 633.

[C75, 77, 79, 81, §635.7; 81 Acts, ch 199, §8]
89 Acts, ch 25, §3

635.8 Closing by sworn statement.

1. Unless an interested person petitions for administration of the estate on a basis other than for a small estate within four months after letters of administration for a small estate are issued, if those letters of administration are not terminated under the provisions of section 635.7, any property of the estate shall then be free of debts and charges, unless a claim has been filed as provided in section 635.13. The executor or administrator is personally liable for the payment of debts and charges against the estate to the extent the assets of the estate would be subject to the payment of those debts and charges under estate administration other than a small estate.

2. The executor or administrator shall file with the court a closing statement within six months from the date of issuance of the letters of appointment, and the closing statement shall be verified or affirmed under penalty of perjury, stating all of the following:

a. To the best knowledge of the person, the gross value of the estate subject to the jurisdiction of this state does not exceed the amount permitted the small estate under the applicable provision of section 635.1.

b. The estate has been fully administered, dispersed, and distributed to persons entitled to the estate and a description of the disbursement and distribution of the estate including an accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the interest in the real estate and its disposition.

c. A copy of the closing statement has been sent to all distributees of the estate and to all known creditors and a full account in writing of the administration of the estate has been furnished to the distributees whose interests are affected.

3. If no actions or proceedings involving the estate are pending in the court sixty days after the closing statement is filed, the estate shall close and the clerk shall discharge the administrator or executor.

4. The closing statement shall include a statement as to the amount of fees paid for services rendered by the executor or administrator and the executor's or administrator's attorney in administration of the estate. The fees for the executor or administrator and the executor's or administrator's attorney shall not be in excess of the fees permitted by section 633.197.

5. A closing statement filed under this section has the same effect as final settlement of the estate under chapter 633.

[C75, 77, 79, 81, §635.8; 81 Acts, ch 199, §9]
89 Acts, ch 25, §4

635.9 Petition for administration on other basis.

At any time within four months after letters of administration are issued for a small estate, any interested person may petition for appointment of an executor or administrator for administration of the estate other than as a small estate. In that event the clerk shall notify the person holding letters of appointment for administration of a small estate by ordinary mail not less than ten days before a hearing on the petition. The notice shall be directed to the executor or administrator of the small estate at the executor's or administrator's last known address as reflected in the petition filed under section 635.2 or the report and inventory filed under section 633.361, whichever is filed later.

[C75, 77, 79, 81, §635.9; 81 Acts, ch 199, §10]
89 Acts, ch 25, §5

635.10 Effect of termination.

If letters of administration of a small estate are terminated under section 635.7, the time period for estate proceedings under section 633.331 shall apply.

[C75, 77, 79, 81, §635.10]

635.11 Statement in notice by clerk.

If a petition for administration of a small estate is filed at the time a will is admitted to probate without administration, the clerk's notice under section 633.305 shall state that a small estate administration is contemplated.

[C75, 77, 79, 81, §635.11]

635.12 Sale of property.

The executor or administrator of a small estate may sell property of the estate if the sale is in compliance with sections 633.383 to 633.401 inclusive.

[81 Acts, ch 199, §11]

635.13 Notice — claims.

If a petition for administration of a small estate of a decedent is granted, the notice as provided in section 633.230 or section 633.304 shall indicate administration as a small estate. Creditors having claims against the estate must file them with the clerk within four months from the second publication of the notice. The notice has the same force and effect as in chapter 633.

[81 Acts, ch 199, §12]

84 Acts, ch 1080, §15; 89 Acts, ch 25, §6

635.14 Minimum time before distribution.

The executor or administrator shall not distribute property of the estate not exempt from execution, prior to four months after the issuance of the letters of appointment.

[81 Acts, ch 199, §13]

89 Acts, ch 25, §7

CHAPTER 636

SURETIES — FIDUCIARIES — TRUSTS — INVESTMENTS

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SURETY BONDS

636.1 Security to be by bond.

Whenever security is required to be given by law or by order or judgment of a court, and no particular mode is prescribed, it shall be by bond.

[C51, §2505; R60, §4113; C73, §246; C97, §355; C24, 27, 31, 35, 39, §**12751;** C46, 50, 54, 58, 62, 66,

71, 73, 75, 77, 79, 81, §682.1]
C93, §636.1
See §633.169 to 633.177

636.2 Payee.
Such security, when not otherwise directed, may, if for the benefit of individuals, be given to the party intended to be secured thereby; if in relation to the public matters concerning the inhabitants of one county or part of a county, it may be made payable to the county; if concerning the inhabitants of more than one county, it may be made payable to the state, but a mere mistake in these respects will not vitiate the security.
[C51, §2506; R60, §4114; C73, §247; C97, §356; C24, 27, 31, 35, 39, §**12752;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.2]
C93, §636.2
See §633.181

636.3 Defects rectified.
No defective bond or other security or affidavit in any case shall prejudice the party giving or making it, provided it be so rectified, within a reasonable time after the defect is discovered, as not to cause essential injury to the other party.
[C51, §2511; R60, §4119; C73, §248; C97, §357; C24, 27, 31, 35, 39, §**12753;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.3]
C93, §636.3

636.4 Qualifications of sureties.
Each personal surety shall execute and file with the clerk an affidavit that the surety owns real estate subject to execution, other than real estate held in joint tenancy between persons other than cosureties, equal to double the amount of the bond, and shall include in the affidavit the total amount of the surety's obligations as surety on other official or statutory bonds. If there are two or more sureties on the same bond, they must in the aggregate have the qualification prescribed in this section.
[R60, §4126; C73, §249; C97, §358; S13, §358; C24, 27, 31, 35, 39, §**12754;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.4]
85 Acts, ch 71, §1
C93, §636.4

636.5 Attorneys not receivable as surety.
Attorneys at law shall not be accepted as sureties upon any official bonds provided for in section 636.4.
[S13, §358; C24, 27, 31, 35, 39, §**12755;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.5]
C93, §636.5
See §633.182
Similar provision, §621.7

636.6 New bond required.
Whenever the board of supervisors of any county shall have knowledge that any attorney at law is surety upon any official bond, above referred to, it shall require said officer to forthwith file a new bond.
[S13, §358; C24, 27, 31, 35, 39, §**12756;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.6]
C93, §636.6
See §633.180

636.7 Surety bound notwithstanding disqualification.
Nothing in sections 636.5 and 636.6 shall exempt such person from any liability upon the bond signed by the person.
[S13, §358; C24, 27, 31, 35, 39, §**12757;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.7]
C93, §636.7

636.8 Affidavit of sureties — effect of.
The officer whose duty it is to take a surety in any bond provided for or authorized by law shall require the person offered as surety to make affidavit of the person's qualification, which affidavit may be made before such officer, or other officer authorized to administer oaths.
[R60, §4125; C73, §250; C97, §359; C24, 27, 31, 35, 39, §**12758;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.8]
C93, §636.8

636.9 Effect of affidavit.
The taking of such an affidavit shall not exempt the officer from any liability to which the officer might otherwise be subject for taking insufficient security.
[R60, §4125; C73, §250; C97, §359; C24, 27, 31, 35, 39, §**12759;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.9]
C93, §636.9

636.10 Appeal bonds — presumption.
The filing by an approving officer of a duly tendered appeal bond in an appeal to any court shall carry the presumption until the contrary is established that said officer approved the bond even though no formal approval is endorsed on the bond.
[C31, 35, §12759-c1; C39, §**12759.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.10]
C93, §636.10

SURETY COMPANIES

636.11 Authority to act as surety — agent qualifications.
1. The commissioner of insurance shall annually file with the clerk of the district court of each county a complete list of the corporate sureties to whom the commissioner has issued a current certificate of authority to transact the business of a

surety in this state.

2. An agent for a company authorized to engage in the business of becoming surety upon bonds pursuant to subsection 1 must be a resident of this state for the purpose of acting on behalf of the surety company with respect to any bond or bail in criminal cases.

[C97, §359; C24, 27, 31, 35, 39, §**12760;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.11]

88 Acts, ch 1034, §1; 91 Acts, ch 213, §33

C93, §636.11

636.12 Certificate revoked — notice.

Should said authority be withdrawn at any time, the commissioner of insurance shall at once notify the clerk of each district court to that effect.

[C97, §359; C24, 27, 31, 35, 39, §**12761;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.12]

C93, §636.12

636.13 Record by clerk.

The clerk shall keep a book, properly indexed, in which shall be recorded all such annual lists from the commissioner of insurance and subsequent notices of revocations.

[C97, §359; C24, 27, 31, 35, 39, §**12762;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.13]

91 Acts, ch 213, §34

C93, §636.13

636.14 Guaranty company as surety.

Whenever any person who now or hereafter may be required or permitted to give a bond applies for the approval thereof, any officer or body who is now or shall hereafter be required to approve the sufficiency of such bond shall accept and approve the same, whenever its conditions are guaranteed by a company or corporation duly organized or incorporated under the laws of this state, or authorized to do business therein, and to guarantee the fidelity of persons holding positions of public or private trust, or secure any bond above referred to, and which company shall have the certificate of the commissioner of insurance authorizing it to do business therein, as provided in chapter 515.

[C97, §360; SS15, §360; C24, 27, 31, 35, 39, §**12763;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.14]

C93, §636.14

636.15 Payment of premiums.

The premium for any such guaranty or surety company bond as defined in section 636.14, may, by the approval of the court, be paid out of the trust funds in the hands of the party of whom the bond is required.

[SS15, §360; C24, 27, 31, 35, 39, §**12764;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.15]

C93, §636.15

636.16 Certificate as authority.

The certificate of the commissioner of insurance, to the effect that such company has complied with the requirements of chapter 515 and is authorized to do business in this state, shall be sufficient evidence to authorize the officer or body having the approval of such bond to accept and approve the same.

[C97, §360; SS15, §360; C24, 27, 31, 35, 39, §**12765;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.16]

C93, §636.16

636.17 Limitation on acceptance.

No such security shall be accepted on any bond for an amount in excess of ten percent of the paid-up cash capital of such company or corporation unless the excess shall be reinsured in some other company or corporation authorized to do business in the state and in no case to exceed ten percent of the capital of the reinsuring company and provided that a certificate of such reinsurance shall be furnished to the insured.

[C97, §360; SS15, §360; C24, 27, 31, 35, 39, §**12766;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.17]

C93, §636.17

636.18 Criminal bonds.

Nothing contained in sections 636.14 to 636.17 shall apply to bonds in criminal cases.

[C97, §360; SS15, §360; C24, 27, 31, 35, 39, §**12767;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.18]

C93, §636.18

636.19 Release.

Such company or corporation may be released from its liability as such surety on any bond on the same terms and conditions, and in the same manner, as is by law prescribed for the release of natural persons as such sureties; it being the intent of this chapter to enable companies created, incorporated, or chartered for such purposes to become surety on bonds required by law, subject to all the rights and liabilities of natural persons.

[C97, §361; C24, 27, 31, 35, 39, §**12768;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.19]

C93, §636.19

Discharge of sureties, chapter 65

636.20 Suit on bond — service.

Whenever suit is required to be brought on any bond given by such company, service shall be had upon any agent of such company in this state, and if there is no agent in the state, then service may be had by serving the commissioner of insurance fifteen days before the term of court in which the suit is sought to be brought.

[C97, §362; C24, 27, 31, 35, 39, §**12769;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.20]

C93, §636.20

See §633.186

636.21 Commissioner as process agent.

It shall be the duty of the commissioner of insurance, upon service being made upon the commissioner, to immediately mail a copy of such notice to such company at their principal place of business, and any notice so served shall be deemed to be good and sufficient service on any such company.

[C97, §362; C24, 27, 31, 35, 39, §**12770;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.21]

C93, §636.21

See §633.186

636.22 Estoppel — stockholders liable.

Any company which shall execute any bond as surety under the provisions of this chapter shall be estopped, in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability; and the private property of the stockholders shall be liable for the debts of the corporation to the full amount of the capital stock held by such stockholders.

[C97, §363; C24, 27, 31, 35, 39, §**12771;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.22]

C93, §636.22

INVESTMENT OF FUNDS

636.23 Authorized securities.

All proposed investments of trust funds by fiduciaries shall first be reported to the court or a judge for approval and be approved and unless otherwise authorized or directed by the court under authority of which the fiduciary acts, or by the will, trust agreement, or other document which is the source of authority, a trustee, executor, administrator, or guardian shall invest all moneys received by such fiduciary, to be by the fiduciary invested, in securities which at the time of the purchase thereof are included in one or more of the following classes:

1. *Federal bonds.* Bonds or other interest-bearing obligations of the United States for the payment of which the faith and credit of the United States is pledged.

2. *Federal bank bonds.* Bonds, notes or other obligations issued by any federal land bank, federal intermediate credit bank, bank for cooperatives, or any or all of the federal farm credit banks, and in bonds issued by any federal home loan bank under the Act of Congress known and cited as the federal Home Loan Bank Act, [12 USC, § 1421 – 1449] and the Acts amendatory thereof.

3. *State bonds.* Bonds or other interest-bearing obligations of any state in the United States for the payment of which the faith and credit of such state is pledged and which state has not defaulted in the payment of any of its bonded debts within the ten preceding years.

4. *Municipal bonds.* Bonds, or other interest-bearing obligations, which are a direct obligation of a county, township, city, school district, or other municipal corporation or district, having power to levy general taxes in the state of Iowa, and also bonds or other interest-bearing obligations which are a direct obligation of a county, township, city, village, school district, or other municipal corporation or district, having power to levy general taxes in any adjoining state, and having a population of not less than five thousand. However, the total funded indebtedness of a municipality enumerated in this subsection shall not exceed ten percent of the assessed value of the taxable property in the municipality, as ascertained by the last assessment for tax purposes, and the municipality or district shall not have defaulted in the payment of any of its bonded indebtedness within the ten preceding years.

5. *Real estate mortgage bonds.* Notes or bonds of any individual secured by a first mortgage on improved real estate located in this state, provided the aggregate amount of such notes and/or bonds secured by such first mortgage, does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary; any such loan may be made in an amount not to exceed seventy-five percentum of the appraised value of the real estate offered as security and for a term not longer than twenty years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within the period ending on the date of its maturity.

6. *Corporate mortgages.* Notes or bonds of any corporation secured by a first mortgage on improved real estate located in this or any adjoining state upon which no default in payment of principal or interest shall have occurred within five preceding years provided the aggregate amount of such notes and/or bonds secured by such first mortgage does not exceed fifty percent of the value of the mortgage property as determined by the fiduciary.

7. *Railroad bonds.* Bonds of any railroad corporation which are secured by a first lien mortgage or trust deed upon not less than one hundred miles of main track in the United States and which mortgage or trust deed has been outstanding not less than fifteen years and upon which bonds issued thereunder there has been no default in the payment of principal and/or interest since the date of said such trust deed.

8. *Bonds guaranteed by railroad.* Bonds of any corporation secured by a first lien upon any railroad terminal depot, tunnel, or bridge in the United States used by two or more railroad companies which have guaranteed the payment of principal and interest of such bonds and have otherwise covenanted or agreed to pay the same, provided at least one of said railroad companies meets the following requirements:

a. Has earned net income equal to at least four percent of the par value of its outstanding capital stock for five preceding years, and

b. Has regularly and punctually paid interest and maturing principal on all of its mortgage indebtedness for five preceding years.

c. Has outstanding capital stock of the par value of at least one-third of its total mortgage indebtedness.

9. *Public utility bonds.* Bonds of any corporation supplying either water, electric energy, or artificial manufactured gas or two or more thereof for light, heat, power, water, or other purposes, or furnishing telephone or telegraph service, provided that such bonds are secured by a first mortgage on all property used in the business of the issuing corporation or by a first and refunding mortgage containing provision for retiring all prior liens, and provided further, that the issuing corporation is incorporated within the United States, and if operating entirely outside this state is operating in a state or other jurisdiction having a public utilities commission with regulatory powers, and providing such operating corporation has annual gross earnings of at least one million dollars, seventy-five percent of which gross earnings have come from the sale of water, gas, or electricity, or the rendering of telephone or telegraph service and not more than fifteen percent from any other one kind of business and which corporation has a record on its behalf or for its predecessors or constituent companies, of having officially reported net earnings at least twice its interest charges on all mortgage indebtedness for the period of five years immediately preceding the investment and having outstanding stock the book value of which is not less than two-thirds of its total funded debt, and which corporation shall have all franchises to operate in the territory it serves in which at least seventy-five percent of its gross income is earned, which franchise shall extend at least five years beyond the maturity of such bonds or which have indeterminate permits or agreements with duly constituted public authorities, or in the bonds of any constituent or subsidiary company of any such operating company which are secured by a first mortgage on all property of such constituent or subsidiary company, provided such bonds are to be retired or refunded by a junior mortgage, the bonds of which are eligible hereunder.

10. *Building and loan associations.* Shares of building and loan associations and savings and loan associations, incorporated under the laws of Iowa and in shares of federal savings and loan associations organized under the laws of the United States of America.

11. *Bonds and debentures guaranteed by the federal government.* Bonds, debentures, or other interest-bearing obligations, the payment of which is guaranteed by the United States of America.

12. *Stock in federal government instrumentalities.* Stock in any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States, when the purchase of said stock is necessary or required as an incident or condition of obtaining a loan from any association or corporation created or which may be created by authority of the United States and as an instrumentality of the United States.

13. *Life, endowment or annuity contracts of legal reserve life insurance companies authorized to do business in Iowa.* The purchase of contracts authorized by this subsection shall be limited to executors or the successors to their powers when specifically authorized by will, and to guardians and trustees, in an amount not to exceed twenty-five percent of the value of the ward's property in possession of the fiduciary. Such contract may be issued on the life or lives of a ward or wards or beneficiary or beneficiaries of a trust fund created by will or trust agreement, or upon the life or lives of persons in whose life or lives such ward or beneficiary has an insurable interest. The proceeds or avails of such contract shall be the sole property of the person or persons whose funds are invested therein.

14. *Limitation as to court-approved investments.* This section does not prohibit investment of such funds in a savings account or time certificate of deposit of a bank or savings and loan association, located within the city or its county of this state and when first approved by the court. However, a city that is the trustee of a cemetery as provided in section 566.14 may invest perpetual care funds in a savings account or certificates of deposit at a bank or savings and loan association, located in this state without court approval.

15. *When court approval not required.* Nothing in this section contained shall be construed as modifying the probate code nor be construed as requiring investments of trust funds by fiduciaries to be reported to any court or judge for approval where the trust agreement or other document under which the fiduciary is acting is not being administered under the jurisdiction of any court or by its terms specifically exempts the fiduciary from reporting any such investments for approval.

16. *Investments included — government obligations.* Federal bonds, federal bank bonds, and bonds and debentures guaranteed by the federal government which are authorized investments under subsections 1, 2, and 11 include investments in an investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to the United States government obligations described in subsections 1, 2, and 11 and to repurchase agreements fully collateralized by such United States government obligations, if the investment company or investment trust takes delivery of the collateral either directly or

through an authorized custodian.

[C51, §2507; R60, §4115; C73, §251; C97, §364; S13, §364; C24, 27, 31, 35, 39, §**12772;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.23]

86 Acts, ch 1032, §2; 89 Acts, ch 296, §85

C93, §636.23

See §633.127, 633.4302

Institutional funds, investment authority; §540A.5

636.24 Population and indebtedness.

The population specified in section 636.23 shall be determined by the last preceding official federal census. The indebtedness of any municipality or governmental subdivision shall be determined by the official certificate of the officer of such municipality or district in charge of its public accounts.

[C31, 35, §12772-c1; C39, §**12772.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.24]

C93, §636.24

See §633.127

636.25 Existing investments.

Any fiduciary not governed by the probate code may by and with the consent of the court having jurisdiction over such fiduciary or under permission of the instrument creating the trust, continue to hold any investment originally received by the fiduciary under the trust or any increase thereof. Such fiduciary may also make investments which the fiduciary may deem necessary to protect and safeguard investments already made according to the provisions of this and sections 636.23 and 636.24.

[C31, 35, §12772-c2; C39, §**12772.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.25]

C93, §636.25

See §633.127, 633.4302

636.26 Security subject to court order.

When any investment is made pursuant to approval of the court as required by section 636.23 or made or held by and with the consent of the court as provided in section 636.25, such investment shall not be transferred and any security taken to secure such investment shall not be discharged or impaired prior to payment or satisfaction thereof without an order of the court to that effect, unless otherwise authorized by the will, trust agreement or other document under which the fiduciary is acting. Nothing herein contained shall be construed as requiring the approval of any court to release or discharge of record any mortgage or other lien held by any fiduciary upon the payment or satisfaction thereof in full.

All releases or discharges of record of mortgages or other liens prior to July 4, 1951, by any fiduciary without an order of court where such order was required by section 682.26, Code 1950, are hereby declared to be valid and effective from the filing or recording thereof without such order of court being had and obtained, unless within six months after said date a statement is filed under oath by the claimant or on the claimant's behalf if under disability with the county recorder where such release or discharge was filed or recorded setting forth the claim upon which the invalidity of such release or discharge is based. Nothing herein contained shall affect pending litigation.

[C51, §2508; R60, §4116; C73, §252; C97, §365; C24, 27, 31, 35, 39, §**12773;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.26]

C93, §636.26

See §633.95

636.27 Collection, application of funds, and reinvestment.

The clerk or other person appointed in such cases to make the investment must receive all moneys as they become due thereon, and apply or reinvest the same under the direction of the court, unless the court appoints some other person to do such acts.

[C51, §2509; R60, §4117; C73, §253; C97, §366; C24, 27, 31, 35, 39, §**12774;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.27]

C93, §636.27

636.28 Annual accounting.

Once in each year, and oftener if required by the court, the person so appointed must, on oath, render to the court an account in writing of all moneys so received by that person, and of the application thereof.

[C51, §2510; R60, §4118; C73, §254; C97, §367; C24, 27, 31, 35, 39, §**12775;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.28]

C93, §636.28

See §633.469, 633.470, 633.671, 633.700

ESTATE AND TRUST FUNDS

636.29 Property or funds in litigation — deposit.

When it is admitted by the pleadings, or shown by the examination of a party, that the party has in the party's possession, or under the party's control, any money or property capable of delivery, which is in any degree the subject of litigation, and which is held by the party as trustee for another party, the court may order the same to be deposited in the office of the clerk, or delivered to such party, with or without security, subject to the further direction of the court; or may order such money to be deposited in a bank, with the consent of the parties in interest, to the credit of the court in which the action is pending, and the same shall be paid out by such bank only upon the check of the clerk, annexed to a certified copy of the order of the court directing such payment.

[R60, §3416; C73, §255; C97, §368; C24, 27, 31, 35, 39, §**12776;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.29]

C93, §636.29

636.30 Enforcement of order.

Whenever a court, in the exercise of its authority, has ordered the deposit or delivery of money or other property, and the order is disobeyed, such court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or property, and deposit or deliver it in conformity with the directions of the court, and in such cases the sheriff has the same power as when acting under an order for the delivery of personal property.

[R60, §3417, 3418; C73, §256, 257; C97, §369; C24, 27, 31, 35, 39, §**12777;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.30]

C93, §636.30

636.31 Inability to distribute trust funds — deposit.

Whenever any fiduciary not governed by the probate code shall desire to make a final report, and shall then have in the fiduciary's possession or under the fiduciary's control any funds, moneys, or securities due, or to become due, to any heir, legatee, devisee, or other person, whose place of residence is unknown to such fiduciary, or to whom payment of the amount due cannot be made as shown by the report on file, such funds, moneys, or securities may upon order of the court and after such notice as the court may prescribe, be deposited with the clerk of the district court of the county wherein such appointment was made.

[C97, §370; S13, §370; C24, 27, 31, 35, 39, §**12778;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.31]

C93, §636.31

See §633.109

636.32 Receipt taken.

If said fiduciary shall otherwise discharge all the duties imposed upon that fiduciary by such appointment, the fiduciary may take the receipt of the clerk of the district court for such funds, moneys, or securities so deposited, which receipt shall specifically set forth from whom said funds, moneys, or securities, were derived, the amount thereof, and the name of the person to whom due or to become due, if known.

[C97, §370; S13, §370; C24, 27, 31, 35, 39, §**12779;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.32]

C93, §636.32

See §633.110

636.33 Final discharge.

Said fiduciary may file such receipt with the fiduciary's final report, and if it shall be made to appear to the satisfaction of the court that the fiduciary has in all other respects complied with the law governing the fiduciary's appointment and duties, the court may approve such final report and enter the fiduciary's discharge.

[C97, §370; S13, §370; C24, 27, 31, 35, 39, §**12780;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.33]

C93, §636.33

Fiduciaries' reports, §422.27

See §633.111

636.34 Notice of deposit.

Notice of such contemplated deposit, and of final report, shall be given for the same time and in the same manner as is now required in cases of final report by personal representatives under the probate code.

[C97, §370; S13, §370; C24, 27, 31, 35, 39, §**12781;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.34]

C93, §636.34

Notice, §633.478, 633.487

See §633.109

636.35 and 636.36 Reserved.

636.37 Duty of clerk.

The clerk of the district court with whom any deposit of funds, moneys, or securities shall be made, as provided by any law or an order of court, shall enter in a book, to be provided and kept for that purpose, the amount of such deposit, the character thereof, the date of its deposit, from whom received, from what source derived, to whom due or to become due, if known.

[C97, §371; S13, §371; C24, 27, 31, 35, 39, §**12782;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.37]

C93, §636.37

636.38 Liability.

The clerk shall be liable upon the clerk's bond for all such funds, moneys, or securities which may be deposited with the clerk and shall make complete verified statements thereof as required by the supreme court.

[C97, §371; S13, §371; C24, 27, 31, 35, 39, §**12783;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.38]

91 Acts, ch 258, §63

C93, §636.38

636.39 to 636.44 Reserved.

FEDERAL SECURITIES

636.45 Federally insured loans.

Insurance companies, building and loan associations, trustees, guardians, executors, administrators, and other fiduciaries, the state and its political subdivisions, and institutions and agencies thereof, and all other persons, associations, and corporations (1) may make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligi-

ble for insurance pursuant to Title I, section 2, of the National Housing Act [12 U.S.C., ch 13], and may obtain such insurance, (2) may make such loans, secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure pursuant to Title II of the National Housing Act, and may obtain such insurance, and (3) may make real property loans which are guaranteed or insured by the administrator of veterans' affairs under the provisions of Title 38, sections 1801 through 1824, inclusive, United States Code.

It shall be lawful for insurance companies, building and loan associations, trustees, guardians, executors, administrators, and other fiduciaries, the state and its political subdivisions, and institutions and agencies thereof, and all other persons, associations, and corporations, subject to the laws of this state, to originate real estate loans which are guaranteed or insured by the administrator of veterans' affairs under the provisions of Title 38, sections 1801 through 1824, inclusive, United States Code, and originate loans secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure pursuant to Title II of the National Housing Act, and may obtain such insurance and may invest their funds, and the moneys in their custody or possession, eligible for investment, in bonds and notes secured by mortgage or trust deed insured by the federal housing administrator, and in the debentures issued by the federal housing administrator pursuant to Title II of the National Housing Act, and in securities issued by national mortgage associations or similar credit institutions now or hereafter organized under Title III of the National Housing Act, and in real estate loans which are guaranteed or insured by the administrator of veterans' affairs under the provisions of Title 38, sections 1801 through 1824, inclusive, United States Code.

[C35, §12786-g1; C39, §**12786.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.45]
C93, §636.45

636.46 Inapplicable statutes.

No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments which may be made, shall be deemed to apply to loans or investments pursuant to section 636.45.

[C35, §12786-g2; C39, §**12786.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.46]
C93, §636.46

VOLUNTARY AGREEMENTS

636.47 Deposit and joint control agreements.

It shall be lawful for any party of whom a bond, undertaking or other obligation is required, to agree with the party's surety or sureties for the deposit of any or all moneys and assets for which the party and the party's surety or sureties are or may be held responsible, with a bank, savings bank, safe-deposit or trust company, authorized by law to do business as such, or with other depository approved by the court if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court made on such notice to such surety or sureties as such court may direct; provided, however, that such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the said bond.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §682.47]
C93, §636.47
See §633.183

636.48 to 636.59 Reserved.

TRUSTS NOT IN PROBATE COURT

636.60 Powers and duties of trustees not subject to court administration.

Trustees of trusts not being administered in the probate court, shall have all the powers and shall be subject to all the duties and liabilities as provided in the probate code, except the duty of reporting to or obtaining approval of the court.

[C66, 71, 73, 75, 77, 79, 81, §682.60]
85 Acts, ch 154, §2
C93, §636.60

636.60A Validity of voluntary trusts.

A voluntary trust is not invalid, merged, or terminated if the trustor is also the sole trustee or a cotrustee, and a beneficiary during the trustor's lifetime.

90 Acts, ch 1036, §3
C91, §682.60A
C93, §636.60A

636.61 Adjusted gross estate defined.

Unless otherwise defined, *"adjusted gross estate"* in an express trust not being administered in the probate court means the entire value of the gross estate as determined under the federal estate tax less the aggregate amount of the deductions allowed by sections 2053 and 2054 of the Internal Revenue Code as amended to and including January 1, 1982.

[82 Acts, ch 1053, §2]
C83, §682.61
C93, §636.61

CHAPTER 637

UNIFORM PRINCIPAL AND INCOME ACT

Chapter applies to every trust or decedent's estate on and after July 1, 2000, except as otherwise provided; see §637.601

SUBCHAPTER 1

DEFINITIONS AND FIDUCIARY DUTIES

637.101 Short title.
637.102 Definitions.
637.103 Fiduciary duties — general principles.

SUBCHAPTER 2

DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

637.201 Determination and distribution of net income.
637.202 Distribution to residuary and remainder beneficiaries.

SUBCHAPTER 3

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

637.301 When right to income begins and ends.
637.302 Apportionment of receipts and disbursements when decedent dies or income interest begins.
637.303 Apportionment when income interest ends.

SUBCHAPTER 4

ADMINISTRATION OF TRUST

PART 1

RECEIPTS FROM ENTITIES

637.401 Character of receipts.
637.402 Distribution from trust or estate.
637.403 Business and other activities conducted by trustee.
637.404 through 637.409 Reserved.

PART 2

RECEIPTS NOT NORMALLY APPORTIONED

637.410 Principal receipts.
637.411 Rental property.
637.412 Obligation to pay money.
637.413 Insurance policies and similar contracts.
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SUBCHAPTER 1

DEFINITIONS AND FIDUCIARY DUTIES

637.101 Short title.

This Act may be cited as the *"Uniform Principal and Income Act"*.

99 Acts, ch 124, §1

637.102 Definitions.

As used in this chapter:

1. *"Accounting period"* means a calendar year, unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

2. *"Beneficiary"* includes, in the case of a decedent's estate, an heir, legatee, and devisee, and, in the case of a trust, an income beneficiary and a remainder beneficiary.

3. *"Fiduciary"* means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

4. *"Income"* means money or property a fiduciary receives as the current return from a principal asset. The term includes a portion of the receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in subchapter 4.

5. *"Income beneficiary"* means a person to whom a trust's net income is or may be payable.

6. *"Income interest"* means an income beneficiary's right to receive all or part of the net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

7. *"Mandatory income interest"* means an income beneficiary's right to receive net income that the terms of the trust require the fiduciary to distribute.

8. *"Net income"* means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period. In this definition, receipts and disbursements include items transferred to or from income during the period under this chapter.

9. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

10. *"Principal"* means property held in trust for distribution to a remainder beneficiary when the trust terminates.

11. *"Remainder beneficiary"* means a person, including another trust, entitled to receive principal when an income interest ends.

12. *"Terms of a trust"* means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

13. *"Trustee"* includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

99 Acts, ch 124, §2

637.103 Fiduciary duties — general principles.

1. In allocating receipts and disbursements to or between principal and income, and in any matter within the scope of subchapters 2 and 3, a fiduciary shall do all of the following:

a. Administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter.

b. Administer a trust or estate by the exercise of a discretionary power of administration given the fiduciary by the terms of the trust or the will, although the fiduciary may exercise that power in a manner different from a provision of this chapter.

c. Administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.

d. Add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

2. In exercising a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, unless the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

99 Acts, ch 124, §3

SUBCHAPTER 2

DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

637.201 Determination and distribution of net income.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

1. A fiduciary of an estate or a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in subchapters 3 through 5 that apply to trustees, and under the rules in subsection 5. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

2. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in subchapters 3 through 5 that apply to trustees, and by doing the following:

a. Including in net income all income from property used to discharge liabilities.

b. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the loss of the deduction.

c. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

3. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the amount, if any, provided by the will, the terms of the trust, or applicable law, from net income determined under subsection 2 or from principal to the extent the net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

4. A fiduciary shall distribute the net income remaining after distributions required by subsection 3 in the manner described in section 637.202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

5. A fiduciary shall not reduce principal or income receipts from property described in subsection 1 because of a payment described in section 637.501 or 637.502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The property's net income and principal receipts are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

99 Acts, ch 124, §4

637.202 Distribution to residuary and remainder beneficiaries.

1. Each beneficiary described in section 637.201, subsection 4, is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

2. In determining a beneficiary's share of net income, the following rules apply:

a. The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

b. The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

c. The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

d. The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

3. The rules in this section apply to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

4. If a fiduciary does not distribute all of the collected but undistributed net income or gain to each person as of a distribution date, the fiduciary

shall maintain appropriate records showing the interest of each beneficiary in that net income or gain.

99 Acts, ch 124, §5; 2000 Acts, ch 1058, §52

SUBCHAPTER 3

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

637.301 When right to income begins and ends.

1. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

2. An asset becomes subject to a trust at the first occurrence of one of the following events:

a. On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life.

b. On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate.

c. On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

3. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection 4, even if there is an intervening period of administration to wind up the preceding income interest.

4. An income interest ends on the day before an income beneficiary dies or another terminating event occurs. For purposes of this chapter, an income interest also ends on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

99 Acts, ch 124, §6

637.302 Apportionment of receipts and disbursements when decedent dies or income interest begins.

1. An income receipt or disbursement other than one to which section 637.201, subsection 1, applies must be allocated to principal if its due date occurs before a decedent dies in the case of an estate, or before an income interest begins in the case of a trust or successive income interest.

2. An income receipt or disbursement must be allocated to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

3. An item of income or an obligation is due on the date on which the payor is required to make a payment. If there is no stated payment date, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 637.401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

99 Acts, ch 124, §7

637.303 Apportionment when income interest ends.

1. For purposes of this section, *"undistributed income"* means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal pursuant to the terms of the trust.

2. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of pursuant to the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

3. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

99 Acts, ch 124, §8

SUBCHAPTER 4

ADMINISTRATION OF TRUST

PART 1

RECEIPTS FROM ENTITIES

637.401 Character of receipts.

1. For purposes of this section, *"entity"* means a corporation, partnership, joint venture, limited liability company, regulated investment company,

real estate investment trust, common trust fund, and any other organization in which a trustee has an interest other than a trust or estate to which section 637.402 applies or a business or activity to which section 637.403 applies.

2. Except as otherwise provided in this section, cash received by a trustee from an entity must be allocated to income.

3. Receipts from an entity which must be allocated to principal include the following items:

a. Property other than cash, except as otherwise provided in paragraph *"d"*.

b. Cash or property received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.

c. Cash or property received in total or partial liquidation of the entity.

d. Cash or property received from an entity that is a regulated investment company or a real estate investment trust if the distribution is a capital gain dividend for federal income tax purposes.

4. Cash or property is received in partial liquidation according to one of the following principles:

a. To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation.

b. If the total amount received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

5. Cash shall not be received in partial liquidation, nor shall it be taken into account under subsection 4, paragraph *"b"*, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the cash.

6. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

99 Acts, ch 124, §9

637.402 Distribution from trust or estate.

1. Subject to the terms of a recipient trust, an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest shall be allocated to income.

2. An amount received as a distribution of principal from such a trust or estate shall be allocated to principal.

3. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 637.401 applies to a receipt from the trust.

99 Acts, ch 124, §10

637.403 Business and other activities conducted by trustee.

1. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

2. A trustee who accounts separately for a business or other activity shall determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

3. The trustee may maintain separate accounting records for any of the following activities:

a. Retail, manufacturing, service, and other traditional business activities.

b. Farming.

c. Raising and selling livestock and other animals.

d. Management of rental properties.

e. Extraction of minerals and other natural resources.

f. Timber operations.

g. Activities to which section 637.426 applies.

99 Acts, ch 124, §11

637.404 through 637.409 Reserved.

PART 2

RECEIPTS NOT NORMALLY APPORTIONED

637.410 Principal receipts.

The following items must be allocated to principal:

1. To the extent not allocated to income under this chapter, assets received from any of the following sources:

a. A transferor during the transferor's lifetime.

b. A decedent's estate.

c. A trust with a terminating income interest.

d. A payor pursuant to a contract naming the trust or its trustee as beneficiary.

2. Cash or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subchapter.

3. Amounts recovered from third parties to reimburse the trust because of disbursements described in section 637.502, subsection 1, paragraph *"g"*, or for other reasons to the extent not based on the loss of income.

4. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.

5. Net income received in a period during which there is no beneficiary to whom a trustee may or must distribute income.

6. Other receipts, as provided in part 3.

99 Acts, ch 124, §12

637.411 Rental property.

1. An amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease, must be allocated to income.

2. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

99 Acts, ch 124, §13

637.412 Obligation to pay money.

1. An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

2. An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity, must be allocated to principal. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

3. This section does not apply to obligations to which sections 637.421 through 637.424, 637.426, and 637.427 apply.

99 Acts, ch 124, §14

637.413 Insurance policies and similar contracts.

1. Proceeds from a life insurance policy whose beneficiary is the trust or its trustee or a policy that insures the trust or its trustee against loss for the damage or destruction of, or loss of title to, a principal asset must be allocated to principal. Dividends received from an insurance policy and the proceeds of any other contract in which the trust or its trustee is named as beneficiary must also be allocated to principal.

2. Insurance proceeds must be allocated to income if they are from a policy that insures the trustee against the loss of occupancy or other use by an income beneficiary, the loss of income, or, subject to section 637.403, the loss of profits from a business.

3. This section does not apply to a contract to which section 637.421 applies.

99 Acts, ch 124, §15

637.414 through 637.419 Reserved.

PART 3

RECEIPTS NORMALLY APPORTIONED

637.420 Insubstantial allocations not required.

1. If a trustee determines that an allocation between principal and income required by sections 637.421 through 637.424 or section 637.427 is insubstantial, the trustee may allocate the entire receipt to principal.

2. An allocation is presumed to be insubstantial if either of the following would be true if an allocation was made:

a. The amount of the allocation would increase or decrease an accounting period's net income, as determined before the allocation, by less than ten percent.

b. The value of the asset producing the receipt for which the allocation would be made is less than ten percent of the total value of the trust's assets at the beginning of the accounting period.

99 Acts, ch 124, §16

637.421 Deferred compensation, annuities, and similar payments.

1. This section applies to payments that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The payments include those made in cash or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan. This section does not apply to payments to which section 637.422 applies.

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

dividend, or an equivalent payment must be allocated to principal.

3. If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the entire payment must be allocated to principal.

4. If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

99 Acts, ch 124, §17

637.422 Liquidating asset.

1. In this section, *"liquidating asset"* means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes leaseholds, patents, trademarks, copyrights, royalty rights, and rights to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include deferred compensation that is subject to section 637.421, natural resources that are subject to section 637.423, timber that is subject to section 637.424, an activity that is subject to section 637.426, or any asset for which the trustee establishes a reserve for depreciation under section 637.503.

2. A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

99 Acts, ch 124, §18

637.423 Minerals, water, and other natural resources.

1. Receipts from an interest in minerals or other natural resources must be allocated according to the type of payment, as follows:

a. If received as nominal delay rental or annual rent on a lease, a receipt must be allocated to income.

b. If received from a production payment, a receipt must be allocated to income to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

c. If an amount received as a royalty, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income.

d. If an amount is received from a working interest or any other interest not provided for in paragraph *"a"*, *"b"*, or *"c"*, ninety percent of the net amount received must be allocated to principal and the balance to income.

2. An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.

3. This chapter applies without regard to whether a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

4. If a trust owns an interest in minerals, water, or other natural resources on or before July 1, 2000, the trustee may allocate receipts from the interest as provided in this section or in the manner used by the trustee before July 1, 2000. If the trust acquires an interest in minerals, water, or other natural resources after July 1, 2000, the trustee shall allocate receipts from the interest as provided in this section.

99 Acts, ch 124, §19; 2000 Acts, ch 1154, §39

637.424 Timber.

1. A trustee may account for net receipts from the sale of timber and related products under subsection 2 or section 637.403 or, if the trustee determines that net receipts are insubstantial, may allocate the net receipts to principal. The presumptions in section 637.420 apply in determining whether net receipts are insubstantial. If a trust owns more than one block of timberland, the trustee may use different methods to account for net receipts from different blocks.

2. If a trustee does not account under section 637.403 for net receipts from the sale of timber and related products or allocate the net receipts to principal because they are insubstantial, the trustee shall allocate the net receipts according to one of the following rules:

a. Allocate the net receipts to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the block as a whole during the accounting periods in which a beneficiary has a mandatory income interest.

b. Allocate the net receipts to principal to the extent that the amount of timber removed from the land exceeds the block's rate of growth or the net receipts are from the sale of standing timber.

c. Allocate the net receipts to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs *"a"* and *"b"*.

d. Allocate the net receipts to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph *"a"*, *"b"*, or *"c"*.

3. In determining the net receipts from the sale of timber, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

4. This chapter applies regardless of whether a decedent or transferor was harvesting timber from the property before it became subject to the trust.

5. If a trust owns an interest in timberland on or before July 1, 2000, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before July 1, 2000. If the trust acquires an interest in timberland after July 1, 2000, the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

99 Acts, ch 124, §20; 2000 Acts, ch 1154, §40

637.425 Property not productive of income.

1. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or use of the trust assets, the spouse may require the trustee to make property productive of income or convert property within a reasonable time. The trustee may decide which action or combination of actions to take.

2. In all other cases, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

99 Acts, ch 124, §21

637.426 Derivatives and options.

1. For purposes of this section, *"derivative"* means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

2. To the extent that a trustee does not account under section 637.403 for transactions in derivatives, receipts from and disbursements made in connection with those transactions must be allocated to principal.

3. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal, and an amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

99 Acts, ch 124, §22

637.427 Asset-backed securities.

1. For purposes of this section, *"asset-backed security"* means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive only the interest or other current return from the collateral financial assets or only the proceeds from the capital investment in the collateral financial assets. It does not include an asset to which section 637.401 or 637.421 applies.

2. If a trust receives a payment from the interest or other current return and the capital investment of the collateral financial assets, the trustee shall allocate to income the portion of a payment that the payor identifies as being from the interest or other current return, and shall allocate the balance of the payment to principal.

3. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

99 Acts, ch 124, §23

SUBCHAPTER 5

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

637.501 Disbursements from income.

A trustee shall make disbursements from income, to the extent that they are not disbursements to which section 637.201, subsection 2, paragraph *"b"* or *"c"*, applies, according to the following:

1. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.

2. One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.

3. All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.

4. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

99 Acts, ch 124, §24

637.502 Disbursements from principal.

1. A trustee shall make disbursements from principal according to the following:

a. The remaining one-half of the disbursements described in section 637.501, subsections 1 and 2.

b. All of the trustee's compensation calculated on principal as an acceptance, distribution, or termination fee, and disbursements made to prepare property for sale.

c. Payments on the principal of a trust debt.

d. Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property.

e. Insurance premiums paid on a policy not described in section 637.501, subsection 4, of which the trust is the owner and beneficiary.

f. Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

g. Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

2. If a trust owns a policy of insurance on the life of an individual and the trust is not the beneficiary of the policy, premiums paid on the policy are a distribution from principal to the policy beneficiary.

3. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the obligation's principal balance.

99 Acts, ch 124, §25

637.503 Transfers from income to principal for depreciation.

1. For purposes of this section, *"depreciation"* means a reduction in value of a fixed asset having a useful life of more than one year due to wear, tear, decay, corrosion, or gradual obsolescence.

2. A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but a transfer shall not be made for depreciation under any of the following circumstances:

a. When the depreciation involves the portion of real property used or available for use by a beneficiary as a residence, or tangible personal property held or made available for the personal use or enjoyment of a beneficiary.

b. When the depreciation occurs during the administration of a decedent's estate.

c. If the trustee is accounting under section 637.403 for the business or activity in which the asset is used.

3. An amount transferred to principal need not be held as a separate fund.

99 Acts, ch 124, §26

637.504 Transfers from income to reimburse principal.

1. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

2. Principal disbursements to which subsection 1 applies include all of the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

a. An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs.

b. A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments.

c. Disbursements made to prepare property for rental, including leasehold improvements and broker's commissions.

d. Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments.

e. Disbursements described in section 637.502, subsection 1, paragraph *"g"*.

3. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection 1.

99 Acts, ch 124, §27

637.505 Income taxes.

1. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

2. A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

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

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

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

(1) Receipts from the entity are allocated to principal.

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

4. For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

99 Acts, ch 124, §28

637.506 Adjustments between principal and income because of taxes.

1. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from any of the following:

a. Elections and decisions, other than those described in subsection 2, that the fiduciary makes from time to time regarding tax matters.

b. An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust.

c. The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

2. If the amount of an estate tax marital deduction or charitable contributions deduction is reduced because a fiduciary deducts an amount that is paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contributions deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

99 Acts, ch 124, §29

SUBCHAPTER 6

TOTAL RETURN UNITRUSTS

637.601 Definitions.

For purposes of this section:*

1. *"Disinterested person"* means a person who is not a related or subordinate party as defined in section 672(c) of the Internal Revenue Code with respect to the person acting as trustee of the trust and excludes the trustor of the trust and any interested trustee.

2. *"Income trust"* means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. However, a trust that does not meet this definition is nonetheless an income trust if the trust is subject to taxation under section 2001 or 2501 of the Internal Revenue Code, until the expiration of the period for filing the return, including extensions.

3. *"Interested distributee"* means a person, to whom distributions of income or principal can currently be made, who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party, as defined in section 672(c) of the Internal Revenue Code, with respect to such distributee.

4. *"Interested trustee"* means any of the following:

a. An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were to terminate and be distributed.

b. Any trustee who may be removed and replaced by an interested distributee.

c. An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

5. *"Total return unitrust"* means an income trust which has been converted under and meets the provisions of this subchapter.

6. *"Trustee"* means a person acting as trustee of the trust, except where expressly noted otherwise, whether acting in the trustee's discretion or on the direction of one or more persons acting in a fiduciary capacity.

7. *"Trustor"* means an individual who creates an inter vivos or a testamentary trust.

8. *"Unitrust amount"* means an amount computed as a percentage of the fair market value of the trust.

99 Acts, ch 124, §30; 2002 Acts, ch 1086, §5, 21

*"Subchapter" probably intended; corrective legislation is pending

Section stricken and rewritten

637.602 Trustee's authority to convert.

A trustee, other than an interested trustee, or, where two or more persons are acting as trustee, a majority of the trustees who are not interested trustees, may, in the trustee's sole discretion and without the approval of the court, do any of the following subject to the requirements of section 637.603:

1. Convert an income trust to a total return unitrust.

2. Reconvert a total return unitrust to an income trust.

3. Change the method used to determine the fair market value of the trust.

2002 Acts, ch 1086, §6, 21
NEW section

637.603 Trustee requirements to convert or change computation method.

A trustee may proceed to take action under section 637.602 if all of the following apply:

1. The trustee adopts a written policy for the trust as follows:

a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.

b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.

c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.

2. The trustee sends written notice of the trustee's intention to take any action described in subsection 1,* along with copies of such written policy and this subchapter, to all of the following persons:

a. The trustor of the trust, if living.

b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in paragraph *"b"* were deceased.

d. All persons named in the governing instrument as adviser to or protector of the trust.

3. At least one person receiving notice under subsection 2, paragraphs *"b"* and *"c"*, is legally competent.

4. No person receiving such notice under subsection 2, objects, by written instrument delivered to the trustee, to the proposed action of the trustee within sixty days of receipt of such notice.

2002 Acts, ch 1086, §7, 21
*"Section 637.602" may be intended; corrective legislation is pending
NEW section

637.604 Interested trustee's authority to convert.

If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in the trustee's sole discretion and without the approval of the court, do any of the following subject to the requirements of section 637.605:

1. Convert an income trust to a total return unitrust.

2. Reconvert a total return unitrust to an income trust.

3. Change the method used to determine the fair market value of the trust.

2002 Acts, ch 1086, §8, 21
NEW section

637.605 Interested trustee requirements to convert or change computation method.

An interested trustee may proceed to take action under section 637.604 if all of the following apply:

1. The trustee adopts a written policy for the trust as follows:

a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.

b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.

c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.

2. The trustee appoints a disinterested person who, in its* sole discretion, but acting in a fiduciary capacity, determines for the trustee the method to be used in determining the fair market value of the trust, and which assets, if any, are to be excluded in determining the unitrust amount.

3. The trustee sends written notice of the trustee's intention to take any action described in subsection 1,** along with copies of such written policy, this subchapter, and the determination of the disinterested person to all of the following persons:

a. The trustor of the trust, if living.

b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in paragraph *"b"* were deceased.

d. All persons named in the governing instrument as adviser to or protector of the trust.

4. At least one person receiving notice under subsection 3, paragraphs *"b"* and *"c"*, is legally competent.

5. No person receiving the notice described in subsection 3 objects, by written instrument delivered to the trustee, to the proposed action of the

trustee within sixty days of receipt of such notice.

2002 Acts, ch 1086, §9, 21

*"The person's" may be intended; corrective legislation is pending

**"Section 637.604" may be intended; corrective legislation is pending

NEW section

637.606 Petition to court to convert trust.

If any trustee desires to do any of the following but does not have the ability to or elects not to do so under the provisions of section 637.602 or 637.604, the trustee may petition the court for such order as the trustee deems appropriate:

1. Convert an income trust to a total return unitrust.

2. Reconvert a total return unitrust to an income trust.

3. Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust.

If, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or upon the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as necessary to enable the court to make its determinations.

2002 Acts, ch 1086, §10, 21

NEW section

637.607 Valuation of trust.

The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Such assets may be excluded from valuation, provided all income received with respect to such assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

2002 Acts, ch 1086, §11, 21

NEW section

637.608 Payout percentage.

The annual unitrust payout percentage shall be four percent unless the governing instrument specifically provides a different percentage or the court approves a percentage of not less than three percent or more than five percent after notice of intent to seek a payout percentage other than four percent has been given to all of the following persons:

1. The trustor of the trust, if living.

2. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

3. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in subsection 2 were deceased.

4. All persons named in the governing instrument as adviser to or protector of the trust.

2002 Acts, ch 1086, §12, 21

NEW section

637.609 Unitrust amount.

The unitrust amount shall not be less than the net income of the trust, determined without regard to the provisions of section 637.610 for any of the following:

1. A trust for which a marital deduction has been taken for federal tax purposes under section 2056 or 2523 of the Internal Revenue Code, during the lifetime of the spouse for whom the trust was created.

2. A trust to which the generation-skipping transfer tax due under section 2601 of the Internal Revenue Code does not apply by reason of any effective date or transition rule.

2002 Acts, ch 1086, §13, 21

NEW section

637.610 Procedure upon conversion of income trust to total return unitrust.

Following the conversion of an income trust to a total return unitrust, the trustee:

1. Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust.

2. Shall allocate an amount to trust income, not in excess of the annual unitrust payout amount, in the following order:

a. The amount derived from net income, as determined if the trust were other than a total return unitrust.

b. The amount derived from other ordinary income as determined for federal income tax purposes.

c. The amount derived from net realized short-term capital gains as determined for federal income tax purposes.

d. The amount derived from net realized long-term capital gains as determined for federal income tax purposes.

e. The amount derived from trust principal.

2002 Acts, ch 1086, §14, 21

NEW section

637.611 Total return unitrust administration.

In administering a total return unitrust, the trustee may, in the trustee's sole discretion but subject to the provisions of the governing instru-

ment, determine all of the following:

1. The effective date of the conversion.

2. The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.

3. Whether distributions are to be made in cash or in kind or partly in cash and partly in kind.

4. If the trust is reconverted to an income trust, the effective date of such reconversion.

5. Such other administrative issues as may be necessary or appropriate to carry out the purposes of this subchapter.

2002 Acts, ch 1086, §15, 21
NEW section

637.612 Principal distributions subject to governing instrument.

Conversion to a total return unitrust under the provisions of this subchapter shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

2002 Acts, ch 1086, §16, 21
NEW section

637.613 Construction and applicability.

This subchapter shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Iowa under Iowa law unless any of the following apply:

1. The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust.

2. The trust is a trust described in section 170(f)(2)(B), 664(d), 1361(d), 2702(a)(3), or 2702(b) of the Internal Revenue Code.

3. One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust that is not subject to an ascertainable standard under section 2041 or 2514 of the Internal Revenue Code or that can be exercised to discharge a duty of support the person possesses.

4. The governing instrument expressly prohibits use of this subchapter by specific reference to the subchapter. A provision in the governing instrument that the provisions of sections 637.601 through 637.615 or any corresponding provision of future law shall not be used in the administration of this trust or similar words reflecting such intent shall be sufficient to preclude the use of this subchapter.

2002 Acts, ch 1086, §17, 21
NEW section

637.614 Good faith actions.

Any trustee or disinterested person who in good faith takes or fails to take any action under this subchapter shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this subchapter and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, or to reconvert a total return unitrust to an income trust.

2002 Acts, ch 1086, §18, 21
NEW section

637.615 Effective date.

This subchapter takes effect April 5, 2002, and applies to trusts in existence on that date or created after that date.

2002 Acts, ch 1086, §19, 21
NEW section

SUBCHAPTER 7

MISCELLANEOUS PROVISIONS

637.701 Application of chapter to existing trusts and estates — chapter prevails.

This chapter applies to every trust or decedent's estate on and after July 1, 2000, except as otherwise expressly provided in the will, the terms of the trust, or this chapter. Notwithstanding any Code provision to the contrary, the provisions of this chapter shall prevail over any other applicable Code provision.

2002 Acts, ch 1086, §20, 21
NEW section

CHAPTER 638

ACCOUNTING OF EXECUTORS AND ADMINISTRATORS

Repealed by 63 Acts, ch 326, §704; see §633.469 – 633.481

SUBTITLE 5

SPECIAL ACTIONS

CHAPTER 639

ATTACHMENT

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639.1 Method.

The plaintiff in a civil action may cause the property of the defendant not exempt from execution to be attached at the commencement or during the progress of the proceeding, by pursuing the course hereinafter prescribed.

[C51, §1846; R60, §3172; C73, §2949; C97, §3876; C24, 27, 31, 35, 39, §**12078;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.1]

639.2 Proceedings auxiliary.

If it be subsequent to the commencement of the action, a separate petition or an amendment to the petition must be filed, and in all cases the proceedings relative to the attachment are to be deemed independent of the ordinary proceedings and only auxiliary thereto.

[C51, §1847; R60, §3173; C73, §2950; C97, §3877; C24, 27, 31, 35, 39, §**12079;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.2]

639.3 Grounds.

The petition or amendment to petition which asks an attachment, must in all cases be sworn to. It must state one or more of the following grounds:

1. That the defendant is a foreign corporation

or acting as such.

2. That the defendant is a nonresident of the state.

3. That the defendant is about to remove the defendant's property out of the state without leaving sufficient remaining for the payment of the defendant's debts.

4. That the defendant has disposed of the defendant's property, in whole or in part, with intent to defraud the defendant's creditors.

5. That the defendant is about to dispose of the defendant's property with intent to defraud the defendant's creditors.

6. That the defendant has absconded, so that the ordinary process cannot be served upon the defendant.

7. That the defendant is about to remove permanently out of the county, and has property therein not exempt from execution, and that the defendant refuses to pay or secure the plaintiff.

8. That the defendant is about to remove permanently out of the state, and refuses to pay or secure the debt due the plaintiff.

9. That the defendant is about to remove the defendant's property or a part thereof out of the county with intent to defraud the defendant's creditors.

10. That the defendant is about to convert the defendant's property or a part thereof into money for the purpose of placing it beyond the reach of the defendant's creditors.

11. That the defendant has property or rights in action which the defendant conceals.

12. That the debt is due for property obtained under false pretenses.

13. That the defendant is about to dispose of property belonging to the plaintiff.

14. That the defendant is about to convert the plaintiff's property or a part thereof into money for the purpose of placing it beyond the reach of the plaintiff.

15. That the defendant is about to move permanently out of state, and refuses to return property belonging to the plaintiff.

[C51, §1848; R60, §3174; C73, §2951; C97, §3878; C24, 27, 31, 35, 39, §**12080;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.3]

87 Acts, ch 80, §25

639.4 Alternative statement of grounds.

The causes for the attachment shall not be stated in the alternative.

[R60, §3242; C73, §3021; C97, §3878; C24, 27, 31, 35, 39, §**12081;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.4]

639.5 Issued on Sunday.

Where the petition states, in addition to the other facts required, that the plaintiff will lose the plaintiff's claim unless the attachment issues and is served on Sunday, it may be issued and served on that day.

[C73, §2952; C97, §3879; C24, 27, 31, 35, 39, §**12082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.5]

Analogous or related provisions, §602.1602, 626.6, 643.3, and 667.3

639.6 On contract — amount due.

If the plaintiff's demand is founded on contract, the petition must state that something is due, and, as nearly as practicable, the amount, which must be more than five dollars in order to authorize an attachment.

[C51, §1849; R60, §3175; C73, §2953; C97, §3880; C24, 27, 31, 35, 39, §**12083;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.6]

639.7 Value of property attached.

The amount thus sworn to is intended as a guide to the sheriff, who must, as nearly as the circumstances of the case will permit, levy upon property fifty percent greater in value than that amount.

[C51, §1850; R60, §3176; C73, §2954; C97, §3881; C24, 27, 31, 35, 39, §**12084;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.7]

639.8 Allowance of value in other cases.

If the demand is not founded on contract, the original petition must be presented to some judge of the supreme or district court, or the judge of the court from which the issuance of a writ of attachment is sought, who shall make an allowance thereon of the amount in value of the property that may be attached.

[C51, §1851; R60, §3177; C73, §2955; C97, §3882; C24, 27, 31, 35, 39, §**12085;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.8]

639.9 For debts not due — grounds.

The property of a debtor may be attached on debts not due, when nothing but time is wanting to fix an absolute indebtedness, and when the petition, in addition to that fact, states one or more of the following grounds:

1. That the defendant is about to dispose of the defendant's property with intent to defraud the defendant's creditors.

2. That the defendant is about to remove or has removed from the state, and refuses to secure the payment of the debt when it falls due, and which removal or contemplated removal was not known to the plaintiff at the time the debt was contracted.

3. That the defendant has disposed of the defendant's property in whole or in part with intent to defraud the defendant's creditors.

4. That the debt was incurred for property obtained under false pretenses.

[C51, §1852; R60, §3178; C73, §2956; C97, §3883; C24, 27, 31, 35, 39, §**12086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.9]

639.10 Appearance — judgment — perishable property.

If, at the time of the service of the attachment, the claim upon which suit is brought is not due, the defendant need not appear in the action until the maturity of the demand, unless the defendant elects to plead, in which event the cause shall stand for trial when it is reached in its regular order, and no final judgment shall be rendered therein before the maturity of the debt unless such election is made, but if perishable property is levied upon, it may be sold as in other attachment cases.

[R60, §3179, 3180; C73, §2957, 2958; C97, §3884; C24, 27, 31, 35, 39, §**12087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.10]

639.11 Bond.

In all cases before it can be issued, the plaintiff must file with the clerk a bond for the use of the defendant, with sureties to be approved by such clerk, in a penalty at least double the value of the property sought to be attached, and in no case less than two hundred fifty dollars conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing out of the attachment.

[C51, §1853; R60, §3181; C73, §2959; C97, §3885; C24, 27, 31, 35, 39, §**12088;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.11]

639.12 Bond for levy on real property only.

In any case where only real property is sought to be attached, the plaintiff shall file such bond in a penalty to be fixed by the court or the clerk, and in such cases, the clerk shall issue a writ thereunder and shall direct therein that real property only shall be attached.

[C31, 35, §12088-d1; C39, §**12088.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.12]

639.13 Additional security.

The defendant may, at any time before judgment, move the court for additional security on the part of the plaintiff, and if, on such motion, the court is satisfied that the surety on the plaintiff's bond has removed from the state, or is not sufficient, the attachment may be vacated and restitution directed of any property taken under it, unless, in a reasonable time, to be fixed by the court, security is given by the plaintiff.

[R60, §3182; C73, §2960; C97, §3886; C24, 27, 31, 35, 39, §**12089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.13]

639.14 Action on bond.

In an action on such bond, the plaintiff therein may recover, if the plaintiff shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained, and reasonable attorney's fees to be fixed by the court; and if it be shown such attachment was sued out maliciously, the plaintiff may recover exemplary damages, nor need the plaintiff wait until the principal suit is determined before suing on the bond.

[C51, §1854; R60, §3183; C73, §2961; C97, §3887; C24, 27, 31, 35, 39, §**12090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.14]

639.15 Remedy for falsely suing out — counterclaim.

The fact stated as a cause of attachment shall not be contested in the action by a mere defense. The defendant's remedy shall be on the bond, but the defendant may in the defendant's discretion sue thereon by way of counterclaim, and in such case shall recover damages as in an original action on such bond.

[R60, §3238; C73, §3017; C97, §3888; C24, 27, 31, 35, 39, §**12091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.15]

639.16 Writ to sheriff.

The clerk shall issue a writ of attachment, directing the sheriff of the county therein named to attach the property of the defendant to the requisite amount therein stated.

[C51, §1856; R60, §3185; C73, §2962; C97, §3889; C24, 27, 31, 35, 39, §**12092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.16]

639.17 Several writs to different counties.

Attachments may be issued from the district court to different counties, and several may, at the option of the plaintiff, be issued at the same time, or in succession and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court.

[C51, §1855, 1858; R60, §3184; C73, §2963; C97, §3890; C24, 27, 31, 35, 39, §**12093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.17]

639.18 Surplus levy.

If more property is attached in the aggregate than the plaintiff is entitled to, the surplus must be abandoned, and the plaintiff pay all costs incurred in relation to such surplus.

[C51, §1858; R60, §3184; C73, §2963; C97, §3890; C24, 27, 31, 35, 39, §**12094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.18]

639.19 Property attached.

The sheriff shall in all cases attach the amount of property directed, if sufficient, not exempt from execution, is found in the sheriff's county, giving that in which the defendant has a legal and unquestionable title a preference over that in which

the defendant's title is doubtful or only equitable.

[C51, §1857; R60, §3186; C73, §2964; C97, §3891; C24, 27, 31, 35, 39, §**12095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.19]

639.20 Several attachments.

Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff.

[R60, §3187; C73, §2965; C97, §3892; C24, 27, 31, 35, 39, §**12096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.20]

639.21 Following property.

If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county within twenty-four hours after removal.

[R60, §3188; C73, §2966; C97, §3893; C24, 27, 31, 35, 39, §**12097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.21]

Analogous provisions, §643.8, 643.9

639.22 Repealed by 65 Acts, ch 413, § 10102.

639.23 Judgments — money — things in action.

Judgments, money, bank bills, and other things in action may be levied upon by the officer under an attachment in the same manner as levies are made under execution, except that notice of such levy shall be given as in levies by attachment, and after judgment such property shall be sold, appropriated, or transferred as provided for in the chapter on executions.

[C51, §1859, 1860; R60, §3194; C73, §2967; C97, §3895; C24, 27, 31, 35, 39, §**12099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.23]

Executions, chapter 626

Levy on judgments, moneys, etc., §626.21, 626.22

639.24 Property in possession of another.

Property of defendant in possession of another, and of which defendant is entitled to the immediate possession, may be seized under attachment by taking possession thereof, in the same manner as though found in the defendant's possession.

[C51, §1859, 1860; R60, §3194; C73, §2967; C97, §3896; C24, 27, 31, 35, 39, §**12100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.24]

639.25 Garnishment.

Property of the defendant in the possession of another, or debts due the defendant, may be attached by garnishment as hereinafter provided.

[C51, §1859, 1860; R60, §3194; C73, §2967; C97, §3897; C24, 27, 31, 35, 39, §**12101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.25]

Garnishment, chapter 642

639.26 When property bound.

Property capable of manual delivery, and attached otherwise than by garnishment, is bound thereby from the time manual custody thereof is taken by the officer under the attachment.

[C51, §1859, 1860, 1874; R60, §3194, 3215; C73, §2967, 2969; C97, §3898; C24, 27, 31, 35, 39, §**12102;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.26]

639.27 Real estate.

Real estate or equitable interests therein may be attached.

[R60, §3243; C73, §3022; C97, §3899; C24, 27, 31, 35, 39, §**12103;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.27]

639.28 Lien.

The levy shall be a lien thereon from the time of an entry made and signed by the officer making the same upon the encumbrance book in the office of the clerk of the county in which the land is situated, showing the levy, the date thereof, name of the county from which the attachment issued, title of the action, and a description of the land levied on.

[R60, §3243; C73, §3022; C97, §3899; C24, 27, 31, 35, 39, §**12104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.28]

Analogous provision, §626.20

639.29 Levy on equitable interest.

In case of a levy upon any equitable interest in real estate, such entry shall show, in addition to the foregoing matters, the name of the person holding the legal title, and the owner of the alleged equitable interest, where known.

[C97, §3899; C24, 27, 31, 35, 39, §**12105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.29]

639.30 Lands fraudulently conveyed.

The grantor of real estate conveyed in fraud of creditors shall, as to such creditors, be deemed the equitable owner thereof, and such interest may be attached as above provided, when the petition alleges such fraudulent conveyance and the holder of the legal title is made a party to the action.

[C97, §3899; C24, 27, 31, 35, 39, §**12106;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.30]

Conveyances annulled in auxiliary proceedings, §630.16

639.31 Notice to defendant — return.

When any property is attached, the officer making the levy shall at once give written notice thereof to the defendant, if found within the county in which the levy is made, and the fact of the giving of such notice, or that the defendant is not found within the county, shall be shown by the officer's return.

[C51, §1859, 1860; R60, §3194; C73, §2967; C97, §3900; C24, 27, 31, 35, 39, §**12107;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.31]

639.32 Notice to party in possession.

A like notice shall be given to the party in possession of the property attached.

[C51, §1860; R60, §3194; C73, §2967; C97, §3900; C24, 27, 31, 35, 39, §**12108;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.32]

639.33 Service when party absent.

If the party required to be notified is not found at the party's usual place of business or residence, such notice may be served upon a member of the party's family over fourteen years of age at such place.

[C97, §3900; C24, 27, 31, 35, 39, §**12109;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.33]

639.34 Examination of defendant.

Whenever it appears by the affidavit of the plaintiff, or by the return of the attachment, that no property is known to the plaintiff or the officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the court by affidavit that the defendant has property within the state not exempt, the defendant may be required to attend before the court in which the action is pending, or a commissioner appointed for that purpose, and give information on oath respecting the defendant's property.

[R60, §3189; C73, §2968; C97, §3901; C24, 27, 31, 35, 39, §**12110;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.34]

639.35 Money paid clerk.

Money attached by the sheriff, or coming into the sheriff's hands by virtue of the attachment, shall be paid, less the sheriff's costs, to the clerk. The clerk shall retain the money until directed otherwise by the court.

[C51, §1875, 1882; R60, §3217; C73, §2971; C97, §3902; C24, 27, 31, 35, 39, §**12111;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.35]

92 Acts, ch 1044, §2

For duties of officer pertaining to execution, see R.C.P. 1.1018

639.36 Other property.

The sheriff shall make such disposition of other attached property as may be directed by the court, and, where there is no direction upon the subject, the sheriff shall safely keep the property subject to the order of the court.

[R60, §3218; C73, §2972; C97, §3903; C24, 27, 31, 35, 39, §**12112;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.36]

639.37 Common or joint property.

In executing an attachment against a person who owns property jointly or in common with another, the officer may take possession of such property so owned jointly or in common, sufficiently to enable the officer to inventory and appraise the same, and for that purpose shall call to the officer's assistance three disinterested persons; which inventory and appraisement shall be returned by the officer with the attachment, and such return shall state who claims to own such property.

[R60, §3190; C73, §2973; C97, §3904; C24, 27, 31, 35, 39, §**12113;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.37]

Analogous provision, §626.32

639.38 Lien acquired — action to determine interest.

The plaintiff shall, from the time such property is taken possession of by the officer, have a lien on the interest of the defendant therein, and may, either before or after the plaintiff obtains judgment in the action in which the attachment issued, commence action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien.

[C73, §2974; C97, §3904; C24, 27, 31, 35, 39, §**12114;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.38]

639.39 Receiver.

If deemed necessary or proper, the court may appoint a receiver under the circumstances and conditions provided in chapter 680.

[C73, §2974; C97, §3904; C24, 27, 31, 35, 39, §**12115;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.39]

639.40 Personal property subject to security interest.

Personal property subject to a security interest may be levied on under attachment in the method provided for levying execution thereon.

[C97, §3905; C24, 27, 31, 35, 39, §**12116;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.40]

Manner of levying, §626.34 et seq.

639.41 Indemnifying bond.

The provisions as to notice of ownership and indemnifying bond to be given in cases of levies under execution shall in all respects be applicable to levies made under writs of attachment.

[C97, §3906; C24, 27, 31, 35, 39, §**12117;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.41]

Indemnifying bond, §626.54 et seq.
Notice of ownership, §626.50 et seq.

639.42 Bond to discharge.

If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or after the return thereof, by the clerk, to the effect that the defendant will perform the judgment of the court, the attachment shall be discharged, and restitution made of property taken or proceeds thereof.

[R60, §3191; C73, §2994; C97, §3907; C24, 27, 31, 35, 39, §**12118;** C46, 50, 54, 58, 62, 66, 71, 73,

75, 77, 79, 81, §639.42]
Similar provisions, §639.45, 643.12, 667.7

639.43 Automatic appearance.
The execution of such bond shall be deemed an appearance of such defendant to the action.
[R60, §3192; C73, §2994; C97, §3907; C24, 27, 31, 35, 39, §**12119;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.43]

639.44 Judgment on bond.
Such bond shall be part of the record. If judgment go against the defendant, the same shall be entered against the defendant and sureties.
[R60, §3193; C73, §2995; C97, §3908; C24, 27, 31, 35, 39, §**12120;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.44]

639.45 Delivery bond.
The defendant, or any person in whose possession any attached property is found, or any person making affidavit that the person has an interest in it, may, at any time before judgment, discharge the property attached, or any part thereof, by giving bond with security, to be approved by the sheriff, or after the return of the writ, by the clerk, in a penalty at least double the value of the property sought to be released, but if that sum would exceed double the amount of the claim for which an attachment is sued out, then in such sum as equals double the amount of such claim, conditioned that such property or its appraised value shall be delivered to the sheriff, to satisfy any judgment which may be obtained against the defendant in that suit, within twenty days after the rendition thereof. This bond shall be filed with the clerk of the court.
[C51, §1876; R60, §3219; C73, §2996; C97, §3909; C24, 27, 31, 35, 39, §**12121;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.45]
Similar provisions, §639.42, 643.12, 667.7

639.46 Appraisement.
To determine the value of property in cases where a bond is to be given, unless the parties agree otherwise, the sheriff shall summon two disinterested persons having the qualification of jurors, who, after having been sworn by the sheriff to make the appraisement faithfully and impartially, shall proceed to the discharge of their duty. If such persons disagree as to the value of the property, the sheriff shall decide between them.
[C51, §1877, 1878; R60, §3220; C73, §2997; C97, §3910; C24, 27, 31, 35, 39, §**12122;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.46]

639.47 Defense in action on delivery bond.
In an action brought upon such bond, it shall be a sufficient defense that the property for the delivery of which the bond was given did not, at the time of the levy, belong to the defendant against whom the attachment was issued, or was exempt from seizure under such attachment.
[C51, §1879; R60, §3221; C73, §2998; C97, §3911; C24, 27, 31, 35, 39, §**12123;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.47]

639.48 Perishable property — examination.
When the sheriff thinks the property attached in danger of serious and immediate waste and decay, or when the keeping of the same will necessarily be attended with such expense as greatly to depreciate the amount of proceeds to be realized therefrom, or when the plaintiff makes affidavit to that effect, the sheriff may summon three persons having the qualifications of jurors to examine the same.
[C51, §1881; R60, §3222; C73, §2999; C97, §3912; S13, §3912-a; C24, 27, 31, 35, 39, §**12124;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.48]

639.49 Notice.
The sheriff shall give the defendant, if within the county, three days' notice of such hearing, and the defendant may appear before such jury and have a personal hearing.
[C51, §1881; R60, §3222; C73, §2999; C97, §3912; S13, §3912-a; C24, 27, 31, 35, 39, §**12125;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.49]

639.50 Determination and sale.
If they are of the opinion that the property requires soon to be disposed of, they shall specify in writing a day beyond which they do not deem it prudent that it should be kept in the hands of the sheriff. If such day occurs before the trial day, the sheriff shall thereupon give the same notice as for sale of goods on execution, and for the same length of time, unless the condition of the property renders a more immediate sale necessary. The sale shall be made accordingly. If the defendant gives written consent, such sale may be made without such finding.
[C51, §1881; R60, §3222; C73, §2999; C97, §3912; S13, §3912-a; C24, 27, 31, 35, 39, §**12126;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.50]
Notice of sale, §626.74 et seq.

639.51 Sheriff's return.
The sheriff shall return upon every attachment what the sheriff has done under it, which must show the property attached, the time it was attached, and the disposition made of it, by a full and particular inventory; also the appraisement above contemplated when such has been made.
[R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §**12127;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.51]

639.52 Garnishment.

When garnishees are summoned, their names and the time each was summoned must be stated, with a copy of each notice of garnishment served attached as a part of the sheriff's return.

[R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §**12128;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.52]

639.53 Description of real estate.

Where real property is attached, the sheriff shall describe it with certainty to identify it, and, where the sheriff can do so, by a reference to the document reference number where the deed under which the defendant holds is recorded.

[R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §**12129;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.53]

2001 Acts, ch 44, §29

639.54 Bonds, notices and moneys.

The sheriff shall return with the writ all bonds taken under it, any notice of claim to such property by another than the defendant, any indemnifying bond given by the plaintiff in consequence of such notice, and all money and bank bills levied upon or paid to the sheriff thereunder.

[R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §**12130;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.54]

639.55 Time of return.

Such return must be made immediately after the sheriff has attached sufficient property, or all that the sheriff can find.

[R60, §3224; C73, §3010; C97, §3923; C24, 27, 31, 35, 39, §**12131;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.55]

639.56 Judgment — satisfaction — special execution.

If judgment is rendered for the plaintiff in any case in which an attachment has been issued, the court shall apply, in satisfaction thereof, any money seized by or paid to the sheriff under such attachment and by the sheriff delivered to the clerk, and any money arising from the sales of perishable property, and if the same is not sufficient to satisfy the plaintiff's claim, the court shall order the issuance of a special execution for the sale of any other attached property which may be under the sheriff's control.

[R60, §3232; C73, §3011; C97, §3924; C24, 27, 31, 35, 39, §**12132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.56]

639.57 Court may control property.

The court may from time to time make and enforce proper orders respecting the property, sales, and application of the money collected.

[R60, §3233; C73, §3012; C97, §3925; C24, 27, 31, 35, 39, §**12133;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.57]

639.58 Expenses for keeping.

The sheriff shall be allowed by the court the necessary expenses of keeping the attached property, to be paid by the plaintiff and taxed in the costs.

[R60, §3234; C73, §3013; C97, §3926; C24, 27, 31, 35, 39, §**12134;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.58]

639.59 Surplus.

Any surplus of the attached property and its proceeds shall be returned to the defendant.

[R60, §3235; C73, §3014; C97, §3927; C24, 27, 31, 35, 39, §**12135;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.59]

639.60 Intervention — petition.

Any person other than the defendant may, before the sale of any attached property, or before the payment to the plaintiff of the proceeds thereof, or any attached debt, present a petition verified by oath to the court, disputing the validity of the attachment, or stating a claim to the property or money, or to an interest in or lien on it, under any other attachment or otherwise, and setting forth the facts upon which the claim is founded.

[R60, §3237; C73, §3016; C97, §3928; C24, 27, 31, 35, 39, §**12136;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.60]

Intervention generally, R.C.P. 1.407

639.61 Hearing and orders.

The petitioner's claim shall be in a summary manner investigated. The court may hear the proof or order a reference, or may impanel a jury to inquire into the facts. If it is found that the petitioner has a title to, a lien on, or any interest in such property, the court shall make such order as may be necessary to protect the petitioner's rights.

[R60, §3237; C73, §3016; C97, §3928; C24, 27, 31, 35, 39, §**12137;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.61]

639.62 Costs.

The costs of such proceedings shall be paid by either party at the discretion of the court.

[R60, §3237; C73, §3016; C97, §3928; C24, 27, 31, 35, 39, §**12138;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.62]

639.63 Discharge on motion.

A motion may be made to discharge the attachment or any part thereof, at any time before trial, for insufficiency of statement of cause thereof, or for other cause making it apparent of record that the attachment should not have issued, or should not have been levied on all or on some part of the property held.

[R60, §3239; C73, §3018; C97, §3929; C24, 27, 31, 35, 39, §**12139;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.63]

639.64 Automatic discharge — canceling entry on encumbrance book.

If the judgment is rendered in the action for the defendant, or, if the action is dismissed by the court, by the plaintiff, or, by agreement of the parties, or, if judgment has been entered for the plaintiff and has been satisfied of record, the attachment shall, subject to the right of appeal, automatically be discharged and the property attached, or its proceeds, shall be returned to the defendant. If the attachment has been entered on the encumbrance book, it shall be the duty of the clerk to cancel such attachment, and in the entry of cancellation, the clerk shall refer to the entry in the case showing the clerk's authority to cancel said attachment.

[R60, §3236; C73, §3015; C97, §3930; C24, 27, 31, 35, 39, §**12140;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.64]

639.65 Perfecting appeal from order of discharge.

When an attachment has been discharged, if the plaintiff then announces the plaintiff's purpose to appeal from such order of discharge, the plaintiff shall have two days in which to perfect an appeal, and during that time such discharge shall not operate to divest any lien or claim under the attachment, nor shall the property be returned, and the appeal, if so perfected, shall operate as a supersedeas thereof.

[R60, §3240; C73, §3019; C97, §3931; C24, 27, 31, 35, 39, §**12141;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.65]

639.66 Appeal from judgment against plaintiff.

If a judgment in the action be also given against the plaintiff, the plaintiff must, within the same time, take an appeal thereon, or such discharge shall be final.

[R60, §3241; C73, §3020; C97, §3932; C24, 27, 31, 35, 39, §**12142;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.66]

639.67 Liberal construction — amendments.

This chapter shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the petition, affidavit, bond, writ, or other proceeding; and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has or can be amended so as to show that a legal cause for the attachment existed at the time it was issued; and the court shall give the plaintiff a reasonable time to perfect such defective proceedings.

[R60, §3242; C73, §3021; C97, §3933; C24, 27, 31, 35, 39, §**12143;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.67]

Amendments generally, R.C.P. 1.402(4), (5) and 1.1009

639.68 Sheriff or officer.

The word *"sheriff"*, or *"officer"*, as used in this chapter is meant to apply to the like officer of any other court.

[C51, §1883; R60, §3244; C73, §3023; C97, §3934; C24, 27, 31, 35, 39, §**12144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.68]

639.69 Certificate of release.

When real estate or an equitable interest therein is attached in any county other than that in which the action is commenced, or is pending, and the action is dismissed, or the attachment is dissolved and discharged or satisfied, the clerk of the court of the county wherein such action is pending must issue a certificate directed to the clerk of the court in which the land is situated giving date of release and setting forth a true copy of the order or release and the clerk shall be allowed as compensation for such service the sum of fifty cents, to be taxed as a part of the costs in the case.

[S13, §3934-a; C24, 27, 31, 35, 39, §**12145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.69]

639.70 Filing and recording.

The clerk of the court receiving such certificate shall file and record the same upon the margin of the encumbrance book at place where the original entry of attachment is found.

[S13, §3934-b; C24, 27, 31, 35, 39, §**12146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §639.70]

CHAPTER 640

SPECIFIC ATTACHMENT

Seizure of boats or rafts, chapter 667

640.1 When authorized.
640.2 Fraudulently induced sales.
640.3 Granted by court or judge — terms.
640.4 Form of writ.
640.5 Bond to discharge.

640.1 When authorized.

In an action to enforce a security interest in or a lien upon personal property, or for the recovery, sale, or partition of such property, or by a plaintiff having a future estate or interest therein for the security of the plaintiff's rights, where it satisfactorily appears by the petition, verified on oath, or by affidavits or the proofs in the cause, that the plaintiff has a just claim, and that the property has been or is about to be sold, concealed, or removed from the state, or where plaintiff states on oath that the plaintiff has reasonable cause to believe, and does believe, that unless prevented by the court the property will be sold, concealed, or removed, an attachment may be granted against the property.

[R60, §3225; C73, §3000; C97, §3913; C24, 27, 31, 35, 39, §**12147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §640.1]

640.2 Fraudulently induced sales.

In an action by a vendor of property fraudulently purchased to vacate the contract and have a restoration of the property or compensation therefor, where the petition shows such fraudulent purchase of property and the amount of the plaintiff's claim, and is verified, an attachment against the property may be granted.

[R60, §3226; C73, §3001; C97, §3914; C24, 27, 31, 35, 39, §**12148;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §640.2]

640.3 Granted by court or judge — terms.

The attachment in the cases mentioned in sections 640.1 and 640.2 may be granted by the court in which the action is brought, upon such terms and conditions as to security by the plaintiff for the damages which may be occasioned, and with such directions as to the disposition to be made of the property attached as may be just and proper under the circumstances of each case.

[R60, §3227; C73, §3002; C97, §3915; C24, 27, 31, 35, 39, §**12149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §640.3]

640.4 Form of writ.

The attachment shall describe the specific property against which it is issued, and have endorsed upon it the direction of the court as to the disposition to be made of the attached property, and be directed, executed, and returned as other attachments.

[R60, §3230; C73, §3003; C97, §3916; C24, 27, 31, 35, 39, §**12150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §640.4]

640.5 Bond to discharge.

The court may, in any of the cases mentioned under this head of specific attachments, direct the terms and conditions of the bond to be executed by the defendant, with security, in order to obtain a discharge of the attachment or to release the attached property.

[R60, §3231; C73, §3004; C97, §3917; C24, 27, 31, 35, 39, §**12151;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §640.5]

CHAPTER 641

ATTACHMENT BY THE STATE

Actions by state, R.C.P. 1.207

641.1 Indebtedness due the state.
641.2 Attachment authorized.
641.3 No bond required.
641.4 Bond to discharge or release.
641.5 Sheriff indemnified.

641.1 Indebtedness due the state.

In all cases in which any person is indebted to the state, or to any officer or agent thereof for the use or benefit of the state, the attorney general shall demand payment or security therefor, when, in the opinion of the attorney general, the debt is not sufficiently secured.

[C73, §3005; C97, §3918; C24, 27, 31, 35, 39, §**12152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §641.1]

94 Acts, ch 1173, §40

641.2 Attachment authorized.

In all actions for money due to the state, or to any agent or officer for the use of the state, it shall be lawful for an attachment to issue against the property or debts of the defendant not exempt from execution, upon the filing of an affidavit of the attorney general, that the attorney general verily believes that a specific amount therein stated is justly due, and the defendant therein has refused to pay or secure the same, and unless an attachment is issued against the property of the

defendant there is danger that the amount due will be lost to the state.

[C73, §3006; C97, §3919; C24, 27, 31, 35, 39, §**12153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §641.2]

94 Acts, ch 1173, §41

641.3 No bond required.

The attachment so issued shall be levied as in other cases of attachment, and no bond shall be required of the plaintiff in such cases, and the sheriff shall not be authorized to require any indemnifying bond in case of such levy.

[C73, §3007; C97, §3920; C24, 27, 31, 35, 39, §**12154;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §641.3]

641.4 Bond to discharge or release.

An attachment levied under the provisions of sections 641.2 and 641.3 may be discharged, or any property taken thereunder may be released, by the execution of a bond with sufficient sureties, as provided by law in other cases of attachment.

[C73, §3008; C97, §3921; C24, 27, 31, 35, 39, §**12155;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §641.4]

Delivery bond, §639.45

641.5 Sheriff indemnified.

In case any sheriff shall be held liable to pay any damages by reason of the wrongful execution of any writ of attachment issued under sections 641.2 to 641.4 and if a judgment is rendered therefor, the amount thereof, when paid by such sheriff, shall become a claim against the state in the sheriff's favor, and a warrant therefor shall be drawn by the director of revenue and finance upon proper proof.

[C73, §3009; C97, §3922; C24, 27, 31, 35, 39, §**12156;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §641.5]

CHAPTER 642

GARNISHMENT

642.1 Who may be garnished.
642.2 Garnishment of public employer.
642.3 Fund in court.
642.4 Death of garnishee.
642.5 Sheriff may take answers.
642.6 Garnishee required to appear.
642.7 Examination in court.
642.8 Witness fees.
642.9 Failure to appear or answer — cause shown.
642.10 Paying or delivering.
642.11 Answer controverted.
642.12 Notice of controverting pleadings.
642.13 Judgment against garnishee.
642.14 Notice.
642.15 Pleading by defendant — discharge of garnishee.
642.16 When debt not due.
642.17 Negotiable paper — indemnity.
642.18 Judgment conclusive.
642.19 Docket to show garnishments.
642.20 Appeal.
642.21 Exemption from net earnings.
642.22 Validity of garnishment notice — duty to monitor account.
642.23 Support disbursements by the clerk.
642.24 Garnishments — support payment priority.

642.1 Who may be garnished.

A sheriff may be garnished for money of the defendant in the sheriff's hands; a judgment debtor of the defendant, when the judgment has not been assigned on the record, or by writing filed in the office of the clerk and by the clerk minuted as an assignment on the margin of the judgment docket; and an executor, for money due from decedent.

[C51, §1862; R60, §3196; C73, §2976; C97, §3936; C24, 27, 31, 35, 39, §**12158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.1]

Garnishment proceedings by director of revenue and finance, director of inspections and appeals, or director of workforce development, §626.29 – 626.31

Response of garnishee, see R.C.P. 1.304

642.2 Garnishment of public employer.

1. The state of Iowa, and all of its governmental subdivisions and agencies, may be garnished, only as provided in this section and the consent of the state and of its governmental subdivisions and agencies to those garnishment proceedings is hereby given. However, notwithstanding the requirements of this chapter, income withholding notices shall be served on the state, and all of its governmental subdivisions and agencies, pursuant to the requirements of chapter 252D.

2. Garnishment pursuant to this section may be made only upon a judgment against an employee of the state, or of a governmental subdivision or agency thereof.

3. No debt of the garnishee is subject to garnishment other than the wages of the public employee.

4. Notwithstanding subsections 3 and 6, any

moneys owed to the child support obligor by the state and payments owed to the child support obligor through the Iowa public employees' retirement system are subject to garnishment, attachment, execution, or assignment by the child support recovery unit if the child support recovery unit is providing enforcement services pursuant to chapter 252B.

5. Except as provided in subsection 1, service upon the garnishee shall be made by serving an original notice with a copy of the judgment against the defendant, and with a copy of the questions specified in section 642.5, by certified mail or by personal service upon the attorney general, county attorney, city attorney, secretary of the school district, or legal counsel of the appropriate governmental unit. The garnishee shall be required to answer within thirty days following receipt of the notice.

6. If it is established that the garnishee owed wages to the defendant at the time of being served with the notice of garnishment, judgment shall be entered, subject to the requirement of section 642.14 against the garnishee in an amount not exceeding the amount recoverable upon the judgment against the defendant employee, but in no event shall the judgment granted be for any amount in excess of that permitted by section 642.21 and section 537.5105.

7. A judgment in garnishment issued pursuant to this section shall be enforceable against a garnishee only to the extent of the defendant's wages actually in the possession of the garnishee, and shall not be enforceable against any property, claims or other rights of the garnishee.

8. A person garnisheed pursuant to this section shall be subject to the provisions of this chapter not inconsistent with this section.

[R60, §3196; C73, §2976; C97, §3936; C24, 27, 31, 35, 39, §**12159;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.2; 81 Acts, ch 200, §1]

92 Acts, ch 1195, §209; 97 Acts, ch 175, §240

642.3 Fund in court.

Where the property to be attached is a fund in court, the execution of a writ of attachment shall be by leaving with the clerk of the court a copy thereof, with notice, specifying the fund.

[R60, §3197; C73, §2977; C97, §3937; C24, 27, 31, 35, 39, §**12160;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.3]

642.4 Death of garnishee.

If the garnishee dies after the garnishee has been summoned by garnishment and pending the litigation, the proceedings may be revived by or against the garnishee's heirs or legal representatives.

[R60, §3198; C73, §2978; C97, §3938; C24, 27, 31, 35, 39, §**12161;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.4]

642.5 Sheriff may take answers.

When the plaintiff, in writing, directs the sheriff to take the answer of the garnishee, the sheriff shall put to the garnishee the following questions:

1. Are you in any manner indebted to the defendant in this suit, or do you owe the defendant money or property which is not yet due? If so, state the particulars.

2. Have you in your possession or under your control any property, rights, or credits of the said defendants? If so, what is the value of the same? State all particulars.

3. Do you know of any debts owing the said defendant, whether due or not due, or any property, rights, or credits belonging to the defendant and now in the possession or under the control of others? If so, state the particulars.

4. Do you compensate the defendant in this suit for any personal services whether denominated as wages, salary, commission, bonus or otherwise, including periodic payments pursuant to a pension or retirement program? If so, state the amount of the compensation reasonably anticipated to be paid defendant during the calendar year.

The sheriff shall append the examination to the sheriff's return.

[C51, §1864, 1865; R60, §3200, 3201; C73, §2980; C97, §3939; C24, 27, 31, 35, 39, §**12162;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.5]

84 Acts, ch 1239, §9

642.6 Garnishee required to appear.

If the garnishee refuses to answer fully and unequivocally all the foregoing interrogatories, the garnishee shall be notified to appear and answer as above provided, and the garnishee may be so required in any event, if the plaintiff so notifies the garnishee.

[C51, §1866; R60, §3202; C73, §2981; C97, §3940; C24, 27, 31, 35, 39, §**12163;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.6]

642.7 Examination in court.

The questions propounded to the garnishee in court may be such as are above prescribed to be asked by the sheriff, and such others as the court may think proper.

[C51, §1867; R60, §3203; C73, §2982; C97, §3941; C24, 27, 31, 35, 39, §**12164;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.7]

642.8 Witness fees.

Where the garnishee is required to appear at court, unless the garnishee has refused to answer as contemplated above, the garnishee is entitled to the pay and mileage of a witness, and may, in like manner, require advance payment before any liability shall arise for nonattendance.

[C51, §1868; R60, §3204; C73, §2983; C97, §3942; C24, 27, 31, 35, 39, §**12165;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §642.8]
Witness fees and mileage, §622.69 et seq.

642.9 Failure to appear or answer — cause shown.

If, duly summoned, and the garnishee's fees tendered when demanded, the garnishee fails to appear and answer the interrogatories propounded to the garnishee without sufficient excuse, the garnishee shall be presumed to be indebted to the defendant to the full amount of the plaintiff's demand, but for a mere failure to appear no judgment shall be rendered against the garnishee until the garnishee has had an opportunity to show cause against the same.

[C51, §1869, 1870; R60, §3205, 3206; C73, §2984, 2985; C97, §3943; C24, 27, 31, 35, 39, §**12166;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.9]

642.10 Paying or delivering.

A garnishee may, at any time after answer, be exonerated from further responsibility by paying over to the sheriff the amount owing by the garnishee to the defendant, and placing at the sheriff's disposal the property of the defendant, or so much of said debts and property as is equal to the value of the property to be attached.

[C51, §1871; R60, §3207; C73, §2986; C97, §3944; C24, 27, 31, 35, 39, §**12167;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.10]

642.11 Answer controverted.

When the garnishee has answered the interrogatories propounded to the garnishee, the plaintiff may controvert them by pleading thereto, and an issue may be joined, which shall be tried in the usual manner, upon which trial such answer of the garnishee shall be competent testimony.

[C51, §1872; R60, §3208; C73, §2987; C97, §3945; C24, 27, 31, 35, 39, §**12168;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.11]

642.12 Notice of controverting pleadings.

No judgment shall be rendered against a garnishee on a pleading which controverts the garnishee's answer until notice of the filing of the controverting pleading and of the time and place of trial thereon is served on the garnishee for such time and in such manner as the court or judge shall order. A garnishee who has been so notified shall not be entitled to notice of the filing of amendments or of trial thereon.

[C27, 31, 35, §12168-b1; C39, §**12168.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.12]

642.13 Judgment against garnishee.

If in any of the above methods it is made to appear that the garnishee was indebted to the defendant, or had any of the defendant's property in the garnishee's hands, at the time of being served with the notice of garnishment, the garnishee will be liable to the plaintiff, in case judgment is finally recovered by the plaintiff, to the full amount thereof, or to the amount of such indebtedness or property held by the garnishee, and the plaintiff may have a judgment against the garnishee for the amount of money due from the garnishee to the defendant in the main action, or for the delivery to the sheriff of any money or property in the garnishee's hands belonging to the defendant in the main action within a time to be fixed by the court, and for the value of the same, as fixed in said judgment, if not delivered within the time thus fixed, unless before such judgment is entered the garnishee has delivered to the sheriff such money or property. Property so delivered shall thereafter be treated as if levied upon under the writ of attachment in the usual manner.

[C51, §1871, 1873; R60, §3207, 3209; C73, §2986, 2988; C97, §3946; C24, 27, 31, 35, 39, §**12169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.13]

642.14 Notice.

Judgment against the garnishee shall not be entered until the principal defendant has had ten days' notice of the garnishment proceedings, to be served in the same manner as original notices. However, if the garnishment is to earnings owed the defendant by the garnishee, judgment may be entered if notice to the defendant is served with the notice of garnishment to the garnishee who shall deliver the notice to the defendant with the remainder of or in lieu of the defendant's earnings. The garnishee shall state in answer to the service of notice of garnishment whether or not service of notice was delivered to the defendant.

The notice required by this section shall contain the full text of section 630.3A.

[C51, §1861; R60, §3195; C73, §2975; C97, §3947; S13, §3947; C24, 27, 31, 35, 39, §**12170;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.14]

84 Acts, ch 1239, §10; 88 Acts, ch 1076, §1

642.15 Pleading by defendant — discharge of garnishee.

The defendant in the main action may, by a suitable pleading filed in the garnishment proceedings, set up facts showing that the debt or the property with which it is sought to charge the garnishee is exempt from execution, or for any other reason is not liable for plaintiff's claim, and if issue thereon be joined by the plaintiff, it shall be tried with the issues as to the garnishee's liability. If such debt or property, or any part thereof, is found to be thus exempt or not liable, the garnishee shall be discharged as to that part which is exempt or not liable.

[C97, §3948; S13, §3948; C24, 27, 31, 35, 39, §**12171;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79,

81, §642.15]

642.16 When debt not due.

If the debt of the garnishee to the defendant is not due, execution shall be suspended until its maturity.

[R60, §3210; C73, §2989; C97, §3949; C24, 27, 31, 35, 39, §**12172;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.16]

642.17 Negotiable paper — indemnity.

The garnishee shall not be made liable on a debt due by negotiable paper other than negotiable documents of title, or securities as defined in Uniform Commercial Code, section 554.8102, unless such paper is delivered, or the garnishee completely exonerated or indemnified from all liability thereon after the garnishee may have satisfied the judgment.

[R60, §3211; C73, §2990; C97, §3950; C24, 27, 31, 35, 39, §**12173;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.17]

642.18 Judgment conclusive.

The judgment in the garnishment action, condemning the property or debt in the hands of the garnishee to the satisfaction of the plaintiff's demand, is conclusive between the garnishee and defendant.

[R60, §3212; C73, §2991; C97, §3951; C24, 27, 31, 35, 39, §**12174;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.18]

642.19 Docket to show garnishments.

The docketing of the original case shall contain a statement of all the garnishments therein, and when judgment is rendered against a garnishee, the same shall distinctly refer to the original judgment.

[R60, §3213; C73, §2992; C97, §3952; C24, 27, 31, 35, 39, §**12175;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.19]

642.20 Appeal.

An appeal lies in all garnishment cases at the instance of the plaintiff, the defendant, the garnishee, or an intervenor claiming the money or property.

[R60, §3214; C73, §2993; C97, §3953; C24, 27, 31, 35, 39, §**12176;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §642.20]

642.21 Exemption from net earnings.

1. The disposable earnings of an individual are exempt from garnishment to the extent provided by the federal Consumer Credit Protection Act, Title III, 15 U.S.C. secs. 1671 – 1677 (1982). The maximum amount of an employee's earnings which may be garnished during any one calendar year is two hundred fifty dollars for each judgment creditor, except as provided in chapter 252D and sections 598.22, 598.23, and 627.12, or when those earnings are reasonably expected to be in excess of twelve thousand dollars for that calendar year as determined from the answers taken by the sheriff or by the court pursuant to section 642.5, subsection 4. When the employee's earnings are reasonably expected to be more than twelve thousand dollars the maximum amount of those earnings which may be garnished during a calendar year for each creditor is as follows:

a. Employees with expected earnings of twelve thousand dollars or more, but less than sixteen thousand dollars, not more than four hundred dollars may be garnished.

b. Employees with expected earnings of sixteen thousand dollars or more, but less than twenty-four thousand dollars, not more than eight hundred dollars may be garnished.

c. Employees with expected earnings of twenty-four thousand dollars or more, but less than thirty-five thousand dollars, not more than one thousand five hundred dollars may be garnished.

d. Employees with expected earnings of thirty-five thousand dollars or more, but less than fifty thousand dollars, not more than two thousand dollars may be garnished.

e. Employees with expected earnings of fifty thousand dollars or more, not more than ten percent of an employee's expected earnings.

2. No employer shall:

a. Withhold from the earnings of an individual an amount greater than that provided by law.

b. Dispose of garnished wages in any manner other than ordered by a court of law.

c. Discharge an individual by reason of the individual's earnings having been subject to garnishment for indebtedness.

d. Be held liable for an amount not earned at the time of the service of notice of garnishment or for the costs of a garnishment action.

3. For the purpose of this section:

a. The term *"earnings"* means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

b. The term *"disposable earnings"* means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

[C51, §1901; R60, §3307; C73, §3074; C97, §4011; C24, 27, 31, 35, 39, §**11763;** C46, 50, 54, 58, 62, 66, 71, §627.10; C73, 75, 77, 79, 81, §642.21]

84 Acts, ch 1239, §11; 85 Acts, ch 178, §14

642.22 Validity of garnishment notice — duty to monitor account.

1. A notice of garnishment served upon a garnishee is effective without serving another notice until the earliest of the following:

a. The annual maximum permitted to be garnished under section 642.21 has been withheld.

b. The writ of execution expires.

c. The judgment is satisfied.

d. The garnishment is released by the sheriff at the request of the plaintiff or the plaintiff's attorney.

2. A supervised financial organization, as defined in section 537.1301, subsection 42, which is garnished for an account of a defendant, after paying the sheriff any amounts then in the account, shall monitor the account for any additional amounts at least monthly while the garnishment notice is effective.

3. Expiration of the execution does not affect a garnishee's duties and liabilities respecting property already withheld pursuant to the garnishment.

84 Acts, ch 1239, §12; 85 Acts, ch 93, §1; 86 Acts, ch 1238, §26; 87 Acts, ch 98, §7; 2001 Acts, ch 92, §2

642.23 Support disbursements by the clerk.

Notwithstanding the seventy-day period in section 626.16 for the return of an execution in garnishment for the payment of a support obligation, the sheriff shall promptly deposit any amounts collected with the clerk of the district court, and the clerk shall disburse the amounts, after subtracting applicable fees, within two working days of the filing of an order condemning funds as follows:

1. To the person entitled to the support payments when the clerk of the district court is the official entity responsible for the receipt and disbursement of support payments pursuant to section 252B.14.

2. To the collection services center when the collection services center is the official entity responsible for the receipt and disbursement of support payments pursuant to section 252B.14.

85 Acts, ch 178, §15; 93 Acts, ch 79, §53

642.24 Garnishments — support payment priority.

The court shall include in any order for garnishment a requirement that any amount garnisheed for the payment of a support obligation, whether or not the amount represents a current or delinquent support obligation, shall first be paid out of the garnisheed funds, after subtracting applicable fees related to the issuance of the specific garnishment, before any amounts garnisheed for other purposes are paid out of the garnisheed funds.

90 Acts, ch 1050, §1

CHAPTER 643

REPLEVIN

Small claims jurisdiction; §631.1

643.1 Where brought — petition.
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643.17 Judgment.
643.18 Execution.
643.19 Plaintiff's option.
643.20 Judgment on bond.
643.21 Concealment.
643.22 Exemption.

643.1 Where brought — petition.

An action of replevin may be brought in any county in which the property or some part thereof is situated. The petition must be verified and must state:

1. A particular description of the property claimed.

2. Its actual value, and, where there are several articles, the actual value of each.

3. The facts constituting the plaintiff's right to the present possession thereof, and the extent of the plaintiff's interest in the property, whether it be full or qualified ownership.

4. That it was neither taken on the order or judgment of a court against the plaintiff, nor under an execution or attachment against the plaintiff or against the property; but if it was taken by either of these modes, then it must state the facts

constituting an exemption from seizure by such process.

5. The facts constituting the alleged cause of detention thereof, according to the plaintiff's best belief.

6. The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof.

[C51, §1703, 1994, 1995; R60, §3553; C73, §3225; C97, §4163; C24, 27, 31, 35, 39, §**12177;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.1]

643.2 Ordinary proceedings — joinder or counterclaim.

The action shall be by ordinary proceedings, but there shall be no joinder of any cause of action not of the same kind, nor shall there be allowed any counterclaim.

[R60, §4175; C73, §3226; C97, §4164; C24, 27, 31, 35, 39, §**12178;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.2]

643.3 Process on Sunday.

If the plaintiff alleges in the petition that the plaintiff will lose the property unless process issues on Sunday, the order may be issued and served on that day.

[C73, §3227; C97, §4165; C24, 27, 31, 35, 39, §**12179;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.3]

Analogous or related provisions, §602.1602, 626.6, 639.5, and 667.3

643.4 New parties.

If a third person claims the property or any part thereof, the plaintiff may amend and bring the third person in as a codefendant, or the defendant may obtain the substitution by the proper mode, or the claimant may intervene by the process of intervention.

[C51, §1684, 1999; R60, §3561; C73, §3228; C97, §4166; C24, 27, 31, 35, 39, §**12180;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.4]

Interpleader, R.C.P. 1.251 – 1.257

Intervention, R.C.P. 1.407

643.5 Writ issued.

Upon direction of the court after notice and opportunity for such hearing as it may prescribe, the clerk shall issue a writ under the clerk's hand, and the seal of the court, directed to the proper officer, requiring the officer to take the property therein described and deliver it to the plaintiff.

[C51, §1997; R60, §3555; C73, §3230; C97, §4168; C24, 27, 31, 35, 39, §**12183;** C46, 50, 54, 58, 62, 66, 71, 73, §643.7; C75, 77, 79, 81, §643.5]

643.6 Filing — purpose of bond.

A bond shall be filed with the clerk, and be for the use of any person injured by the proceeding.

[C51, §1996; R60, §3554; C73, §3229; C97, §4167; C24, 27, 31, 35, 39, §**12182;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.6]

643.7 Bond.

When the plaintiff desires the immediate delivery of the property, the plaintiff shall execute a bond to the defendant, with sureties to be approved by the clerk, in a penalty at least equal to twice the value of the property sought to be taken, conditioned that the plaintiff will appear in court on or before the day fixed in the original notice, and prosecute the action to judgment, and return the property, if a return is awarded, and pay all costs and damages that may be adjudged against the plaintiff.

[C51, §1996; R60, §3554; C73, §3229; C97, §4167; C24, 27, 31, 35, 39, §**12181;** C46, 50, 54, 58, 62, 66, 71, 73, §643.5; C75, 77, 79, 81, §643.7]

643.8 Wrongful removal — service.

If the petition shows that the property has been wrongfully removed into another county from the one in which the action is commenced, the writ may issue from the county whence the property was wrongfully taken, and may be served in any county where it may be found.

[C73, §3230; C97, §4168; C24, 27, 31, 35, 39, §**12184;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.8]

Analogous provision, §639.21

643.9 Following property — duplicate writs.

When any of the property is removed to another county after the commencement of the action, the officer to whom the writ is issued may follow the same and execute the writ in any county of the state where the property is found. For the purpose of following the property, duplicate writs may be issued, if necessary, and served as the original.

[R60, §3556; C73, §3231; C97, §4169; C24, 27, 31, 35, 39, §**12185;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.9]

Analogous provision, §639.21

643.10 Execution of writ.

The officer must forthwith execute the writ by taking possession of the property therein described, if it is found in the possession of the defendant or the defendant's agent, or of any other person who obtained possession thereof from the defendant, directly or indirectly, after the writ was placed in the officer's hands, for which purpose the officer may break open any dwelling house or other enclosure, having first demanded entrance and exhibited the officer's authority, if demanded.

[C51, §1998; R60, §3557; C73, §3232; C97, §4170; C24, 27, 31, 35, 39, §**12186;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.10]

643.11 Defendant examined.

When it appears by affidavit that the property claimed has been disposed of or concealed so that the writ cannot be executed, the court upon verified petition therefor, may compel the attendance of the defendant or other person claiming or concealing the property, and examine the person on oath as to the situation of the property, and punish a willful obstruction or hindrance or disobedience of the order of the court in this respect as in case of contempt.

[R60, §3558; C73, §3233; C97, §4171; C24, 27, 31, 35, 39, §**12187;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.11]

Contempts, chapter 665

643.12 Delivery bond.

The officer, having taken the property or any part thereof, shall forthwith deliver the same to the plaintiff, unless, before the actual delivery to the plaintiff, the defendant executes a bond to the plaintiff, with sureties to be approved by the clerk or officer, conditioned that the defendant will appear in and defend the action, and deliver the property to the plaintiff, if the plaintiff recovers judgment therefor, in as good condition as it was when the action was commenced, and that the defendant will pay all costs and damages that may be adjudged against the defendant for the taking or detention of the property.

[R60, §3560; C73, §3234, 3235; C97, §4172; C24, 27, 31, 35, 39, §**12188;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.12]

Similar provisions, §639.42, 639.45, 667.7

643.13 Release — return of bond.

Said bond shall be delivered to the officer, who shall return the property to the defendant, append the bond to the writ, return it therewith to the officer issuing it, and refer thereto in the sheriff's return on the writ.

[R60, §3559; C73, §3237; C97, §4172; C24, 27, 31, 35, 39, §**12189;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.13]

643.14 Inspection — appraisement.

When the property is so retained by the defendant, the defendant shall permit the officer and plaintiff to inspect the same, and, if the plaintiff so requests, the officer shall cause it to be examined and appraised by two sworn appraisers chosen by the parties to the action, or, in their default, by the officer personally, in the manner provided for other cases of appraisement, and in case they cannot agree the officer shall select a third, and an appraisement agreed to by two of them shall be sufficient, and the officer shall return their appraisement with the writ.

[C73, §3236; C97, §4173; C24, 27, 31, 35, 39, §**12190;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.14]

643.15 Return of writ.

The officer must return the writ within sixty days after its issuance or at an earlier time if the court shall order, and shall state fully what the officer has done thereunder. If the officer has taken any property, the officer shall describe the same particularly.

[R60, §3559; C73, §3237; C97, §4174; C24, 27, 31, 35, 39, §**12191;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.15]

643.16 Assessment of value and damages — right of possession.

The jury must assess the value of the property and the damages for the taking or detention thereof, whenever by their verdict there will be a judgment for the recovery or the return of the property, and, when required so to do by either party, must find the value of each article, and find which is entitled to the possession, designating the party's right therein, and the value of such right.

[R60, §3082; C73, §3238; C97, §4175; C24, 27, 31, 35, 39, §**12192;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.16]

643.17 Judgment.

The judgment shall determine which party is entitled to the possession of the property, and shall designate the party's right therein, and if such party have not the possession thereof, shall also determine the value of the right of such party, which right shall be absolute as to an adverse party, and shall also award such damages to either party as the party may be entitled to for the illegal detention thereof. If the judgment be against the plaintiff for the money value of the property, it shall also be against the sureties on the plaintiff's bond.

[C51, §2000, 2001; R60, §3554, 3562, 3567; C73, §3229, 3239; C97, §4176; C24, 27, 31, 35, 39, §**12193;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.17]

643.18 Execution.

The execution shall require the officer to deliver the possession of the property, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered, subject to execution, and the value of the property for which judgment was recovered to be specified therein if a delivery thereof cannot be had, and shall in that respect be deemed an execution against property.

[R60, §3253; C73, §3240; C97, §4177; C24, 27, 31, 35, 39, §**12194;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.18]

643.19 Plaintiff's option.

If the party found to be entitled to the property be not already in possession thereof by delivery under the provisions of this chapter or otherwise, the party may at the party's option have an execution for the delivery of the specific property, or for the value thereof as determined by the jury, and if any article of the property cannot be obtained on execution, the party may take the remainder, with the value of the missing articles.

[R60, §3563, 3568; C73, §3241; C97, §4178; C24, 27, 31, 35, 39, §**12195;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.19]

643.20 Judgment on bond.

When property for which a bond has been given as hereinbefore provided is not forthcoming to answer the judgment, and the party entitled thereto so elects, a judgment may be entered against the principal and sureties in the bond for its value.

[C73, §3242; C97, §4179; C24, 27, 31, 35, 39, §**12196;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.20]

643.21 Concealment.

When it appears by the return of the officer or by the affidavit of the plaintiff that any specific property which has been adjudged to belong to one party has been concealed or removed by the other, the court may require the concealer or remover to attend and be examined on oath respecting such matter, and may enforce its order in this respect as in case of contempt.

[R60, §3564; C73, §3243; C97, §4180; C24, 27, 31, 35, 39, §**12197;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.21]

Contempts, chapter 665

643.22 Exemption.

A money judgment rendered under the provisions of this chapter for property exempt from execution shall also be to the same extent exempt from execution, and from all setoff or diminution by any person, which exemption may, at the election of the party in interest, be stated in the judgment.

[R60, §4176; C73, §3244; C97, §4181; C24, 27, 31, 35, 39, §**12198;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.22]

CHAPTER 644

LOST PROPERTY

Transferred to chapter 556F per directive in 94 Acts, ch 1188, §27

CHAPTER 645

RECOVERY OF MERCHANDISE OR DAMAGES

645.1 Definitions.
645.2 Actions for merchandise or damages.
645.3 Liability.

645.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Mercantile establishment"* includes any place where merchandise is displayed, held, or offered for sale, either retail or wholesale.

2. *"Merchandise"* includes any object, ware, good, commodity, or other similar item displayed or offered for sale.

3. *"Owner"* means an owner of a mercantile establishment and includes a designated representative of the owner.

89 Acts, ch 99, §1; 97 Acts, ch 97, §1

645.2 Actions for merchandise or damages.

An action for recovery of merchandise or the purchase price, damages, and costs may be brought by an owner pursuant to this chapter in any court of competent jurisdiction, including a court of small claims if the claim does not exceed jurisdictional limits.

A conviction under chapter 714 is not required as a condition precedent to the maintenance of an action pursuant to this chapter.

89 Acts, ch 99, §2

645.3 Liability.

1. A person who knowingly and without claim of right wrongfully appropriates, takes possession of, or alters the price indicia of merchandise of a mercantile establishment without the consent of the owner and with the intent to convert the merchandise to the person's own use without having paid the full purchase price for it, is liable for:

a. The return of the merchandise or the purchase price of the merchandise, provided that the merchandise is not evidence in a criminal proceeding under chapter 714.

b. Actual damages for any decrease in value of the merchandise returned.

c. The greater of fifty dollars or actual costs, not to exceed two hundred dollars, incurred by the owner in recovering the merchandise or damages pursuant to this chapter.

2. Damages awarded under this section shall be reduced by any amount received by the owner pursuant to court ordered restitution under chapter 232A or 910.

3. The parent or parents of an unemancipated minor child under the age of eighteen years are liable for any judgment awarded against the child pursuant to subsection 1 in accordance with, and subject to the limits established in, section 613.16.

89 Acts, ch 99, §3

CHAPTER 646

RECOVERY OF REAL PROPERTY

646.1 Ordinary proceedings — joinder — counterclaim.
646.2 Parties.
646.3 Title.
646.4 Tenant in common.
646.5 Service on agent.
646.6 Petition.
646.7 Abstract of title.
646.8 Unwritten muniments of title — unrecorded conveyances.
646.9 Evidence — abstract amended.
646.10 Answer.
646.11 Landlord substituted.
646.12 Possession.
646.13 Purchase pending suit.
646.14 Order to enter and survey.
646.15 Service.
646.16 Verdict — special.
646.17 General verdict.
646.18 Judgment for damages.
646.19 Use and occupation.
646.20 Improvements set off.
646.21 Wanton aggression.
646.22 Tenant — extent of liability.
646.23 Growing crops — bond.
646.24 Writ of possession.
646.25 Judgment for rent accruing.

646.1 Ordinary proceedings — joinder — counterclaim.

Actions for the recovery of real property shall be by ordinary proceedings, and there shall be no joinder and no counterclaim therein, except of like proceedings, and as provided in this chapter.

[R60, §4177; C73, §3245; C97, §4182; C24, 27, 31, 35, 39, §**12230;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.1]

646.2 Parties.

Any person having a valid subsisting interest in real property, and a right to the immediate possession thereof, may recover the same by action against any person acting as owner, landlord, or tenant of the property claimed.

[C51, §2002; R60, §3569; C73, §3246; C97, §4183; C24, 27, 31, 35, 39, §**12231;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.2]

646.3 Title.

The plaintiff must recover on the strength of the plaintiff's own title.

[C51, §2020; R60, §3591; C73, §3247; C97, §4184; C24, 27, 31, 35, 39, §**12232;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.3]

646.4 Tenant in common.

In an action by a tenant in common or joint tenant of real property against the cotenant, the plaintiff must show, in addition to the plaintiff's evidence of right, that the defendant either denied the plaintiff's right, or did some act amounting to such denial.

[C51, §2027; R60, §3605; C73, §3248; C97, §4185; C24, 27, 31, 35, 39, §**12233;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.4]

646.5 Service on agent.

When the defendant is a nonresident having an agent of record for the property in the state, service may be made upon such agent in the same manner and with the like effect as though made on the principal.

[C51, §2004; R60, §3572; C73, §3249; C97,

§4186; C24, 27, 31, 35, 39, §**12234;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.5]

646.6 Petition.

The petition may state generally that the plaintiff is entitled to the possession of the premises, particularly describing them, also the quantity of the plaintiff's estate and the extent of the plaintiff's interest therein, and that the defendant unlawfully keeps the plaintiff out of possession, and the damages, if any, which the plaintiff claims for withholding the same; but if the plaintiff claims other damages than the rents and profits, the plaintiff shall state the facts constituting the cause thereof.

[R60, §3570; C73, §3250; C97, §4187; C24, 27, 31, 35, 39, §**12235;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.6]

646.7 Abstract of title.

The plaintiff shall attach to the petition, and the defendant to the answer, if the party claims title, an abstract of the title relied on, showing from and through whom such title was obtained, together with a statement showing the page and book where the same appears of record.

[C73, §3251; C97, §4188; C24, 27, 31, 35, 39, §**12236;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.7]

Abstracts, R.C.P. 1.1204

646.8 Unwritten muniments of title — unrecorded conveyances.

If such title, or any portion thereof, is not in writing, or does not appear of record, such fact shall be stated in the abstract, and either party shall furnish the adverse party with a copy of any unrecorded conveyance, or furnish a satisfactory reason for not so doing within a reasonable time after demand therefor.

[C73, §3251; C97, §4188; C24, 27, 31, 35, 39, §**12237;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.8]

646.9 Evidence — abstract amended.

No written evidence of title shall be introduced on the trial unless it has been sufficiently referred to in such abstract, which, on motion, may be made more specific, or may be amended by the party setting it out.

[C73, §3251; C97, §4188; C24, 27, 31, 35, 39, §**12238;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.9]

646.10 Answer.

The answer of the defendant, and each if more than one, must set forth what part of the land the defendant claims and what interest the defendant claims therein generally, and if as mere tenant, the name and residence of the landlord.

[C51, §2005; R60, §3573; C73, §3252; C97, §4189; C24, 27, 31, 35, 39, §**12239;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.10]

646.11 Landlord substituted.

When it appears that the defendant is only a tenant, the landlord may be substituted by the service upon the landlord of original notice, or by the landlord's voluntary appearance, in which case the judgment shall be conclusive against the landlord.

[C51, §2003; R60, §3571, 3589; C73, §3253; C97, §4190; C24, 27, 31, 35, 39, §**12240;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.11]

646.12 Possession.

When the defendant makes defense it is not necessary to prove the defendant in possession of the premises.

[C51, §2007; R60, §3575; C73, §3254; C97, §4191; C24, 27, 31, 35, 39, §**12241;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.12]

646.13 Purchase pending suit.

Any person acquiring title to land or any interest therein, after commencement of an action under this chapter to recover the same, shall take subject to notice of and without prejudice to the rights of the parties to such action.

[R60, §3578; C73, §3255; C97, §4192; C24, 27, 31, 35, 39, §**12242;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.13]

646.14 Order to enter and survey.

The court on motion, and after notice to the opposite party, may for cause shown grant an order allowing the party applying therefor to enter upon the land in controversy and make survey thereof for the purposes of the action.

[C51, §2021; R60, §3592; C73, §3256; C97, §4193; C24, 27, 31, 35, 39, §**12243;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.14]

646.15 Service.

The order must describe the property, and a copy thereof must be served upon the owner or person having the occupancy and control of the land.

[C51, §2022; R60, §3593; C73, §3257; C97, §4194; C24, 27, 31, 35, 39, §**12244;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.15]

646.16 Verdict — special.

The verdict may specify the extent and quantity of the plaintiff's estate and the premises to which the plaintiff is entitled, with reasonable certainty, by metes and bounds and other sufficient description, according to the facts as proved.

[R60, §3594; C73, §3258; C97, §4195; C24, 27, 31, 35, 39, §**12245;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.16]

646.17 General verdict.

A general verdict in favor of the plaintiff, without such specifications, entitles the plaintiff to the quantity of interest or estate in the premises as set forth and described in the petition.

[R60, §3595; C73, §3259; C97, §4196; C24, 27, 31, 35, 39, §**12246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.17]

646.18 Judgment for damages.

If the interest of the plaintiff expires before the time in which the plaintiff could be put in possession, the plaintiff can obtain a judgment for damages only.

[C51, §2010; R60, §3579; C73, §3260; C97, §4197; C24, 27, 31, 35, 39, §**12247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.18]

646.19 Use and occupation.

The plaintiff cannot recover for the use and occupation of the premises for more than five years prior to the commencement of the action.

[C51, §2008; R60, §3576; C73, §3261; C97, §4198; C24, 27, 31, 35, 39, §**12248;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.19]

646.20 Improvements set off.

When the plaintiff is entitled to damages for withholding or using or injuring the plaintiff's property, the defendant may set off the value of any permanent improvements made thereon to the extent of the damages, unless the defendant prefers to take advantage of the law for the benefit of occupying claimants.

[C51, §2023; R60, §3596; C73, §3262; C97, §4199; C24, 27, 31, 35, 39, §**12249;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.20]

Occupying claimants, chapter 560

646.21 Wanton aggression.

In case of wanton aggression on the part of the defendant, the jury may award exemplary damages.

[C51, §2024; R60, §3597; C73, §3263; C97, §4200; C24, 27, 31, 35, 39, §**12250;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.21]

646.22 Tenant — extent of liability.

A tenant in possession in good faith, under a lease or license from another, is not liable beyond the rent in arrear at the time of suit brought for the recovery of land, and that which may afterward accrue during the continuance of the tenant's possession.

[R60, §3598; C73, §3264; C97, §4201; C24, 27, 31, 35, 39, §**12251;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.22]

646.23 Growing crops — bond.

If the defendant avers that the defendant has a crop sowed, planted, or growing on the premises, the jury, finding for the plaintiff, and also finding that fact, shall further find the value of the premises from the date of the trial until the first day of January next succeeding, and no execution for possession shall be issued until that time, if the defendant executes, with surety to be approved by the clerk, a bond in double such sum to the plaintiff, conditioned to pay at said date the sum so assessed, which shall be part of the record, and shall have the force and effect of a judgment, and if not paid at maturity the clerk, on the application of the plaintiff, shall issue execution thereon against all the obligors.

[R60, §3599; C73, §3265; C97, §4202; C24, 27, 31, 35, 39, §**12252;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.23]

646.24 Writ of possession.

When the plaintiff shows that the plaintiff is entitled to the immediate possession of the premises, judgment shall be entered and an execution issued accordingly.

[C51, §2009; R60, §3577; C73, §3266; C97, §4203; C24, 27, 31, 35, 39, §**12253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.24]

646.25 Judgment for rent accruing.

The plaintiff may have judgment for the rent or rental value of the premises which accrues after judgment and before delivery of possession, by motion in the court in which the judgment was rendered, ten days' notice thereof in writing being given, unless judgment is stayed by appeal and bond given to suspend the judgment, in which case the motion may be made after the affirmance thereof.

[R60, §3600; C73, §3267; C97, §4204; C24, 27, 31, 35, 39, §**12254;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §646.25]

CHAPTER 647

RESTORATION OF LOST RECORDS

647.1 Action in rem.
647.2 Proceedings.
647.3 Proof required.
647.4 Filing of restored records — effect.
647.5 Costs of restoration — how paid.

647.1 Action in rem.

Whenever the public records in the office of any county official in this state have been or shall hereafter be lost or destroyed in any material part, the said county on relation of said public officer or the owner of any real estate affected thereby, may bring an action in rem in equity in the district court of the state in and for the county in which said real estate is situated against all known and unknown persons, firms, or corporations that might have any interest in said real estate affected by said record, to have said lost or destroyed records restored in whole or in part.

Any number of parcels of land may be included in the same suit; and whenever said action is brought by the owner, the public official in whose office said lost or destroyed public records are required by law to be kept shall be made a defendant therein.

[S13, §4227-a; C24, 27, 31, 35, 39, §**12258;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §647.1]

647.2 Proceedings.

The petition, notice, and decree in said action to restore any lost or destroyed records, and all proceedings in said suit, so far as the same relate to unknown defendants, shall conform to the statutes of this state applicable to actions against unknown defendants and unknown claimants; and all known defendants shall be served with notice in the time and manner now provided by law; and whenever said action is brought by the owner of said real estate, all clouds upon said title and defects therein and all adverse claims thereto may be adjudicated in the same suit and title quieted therein.

The provisions of rule of civil procedure 1.1011 shall be applicable to defendants served with original notice in such action by publication.

[S13, §4227-b; C24, 27, 31, 35, 39, §**12259;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §647.2]

Unknown defendants, §617.7

647.3 Proof required.

No judgment or decree restoring any lost or destroyed record in such action shall be entered by default, but the court must require proof of the facts alleged in reference thereto and the court shall make such finding of facts and decree as may be sustained by the evidence and may order such lost or destroyed record to be prepared by said public official as completely as the circumstances and proof will permit, and said record when so prepared shall be approved by the court and its approval endorsed thereon by the clerk.

[S13, §4227-c; C24, 27, 31, 35, 39, §**12260;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §647.3]

647.4 Filing of restored records — effect.

All public records restored as provided by this chapter shall be filed, bound, and indexed the same as original records are required to be, and shall have the same force and effect as the original records before their loss or destruction.

[S13, §4227-d; C24, 27, 31, 35, 39, §**12261;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §647.4]

647.5 Costs of restoration — how paid.

Whenever any public record is restored, as provided in this chapter, all court costs and necessary expenses of restoring the same shall be paid by the county to which said records belong, whether said action is commenced or prosecuted by a county official or by the owner of any real estate authorized to maintain such action.

[SS15, §4227-e; C24, 27, 31, 35, 39, §**12262;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §647.5]

CHAPTER 648

FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY

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648.1 Grounds.

A summary remedy for forcible entry or detention of real property is allowable:

1. Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same.

2. Where the lessee holds over after the termination of the lease.

3. Where the lessee holds contrary to the terms of the lease.

4. Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution, unless the defendant claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale; in either of which cases such title shall be clearly and concisely set forth in the defendant's pleading.

5. For the nonpayment of rent, when due.

6. When the defendant or defendants remain in possession after the issuance of a valid tax deed.

[C51, §2362, 2363; R60, §3952, 3953; C73, §3611, 3612; C97, §4208; C24, 27, 31, 35, 39, §**12263;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.1]

648.2 By legal representatives.

The legal representative of a person who, if alive, might have been plaintiff may bring this action after the person's death.

[C51, §2364; R60, §3954; C73, §3613; C97, §4209; C24, 27, 31, 35, 39, §**12264;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.2]

648.3 Notice to quit.

Before action can be brought in any except the first of the above classes, three days' notice to quit must be given to the defendant in writing. However, a landlord who has given a tenant three days' notice to pay rent and has terminated the tenancy as provided in section 562A.27, subsection 2, or section 562B.25, subsection 2, if the tenant is renting the manufactured or mobile home or the land from the landlord may commence the action without giving a three-day notice to quit.

[C51, §2365; R60, §3955; C73, §3614; C97, §4210; C24, 27, 31, 35, 39, §**12265;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.3; 81 Acts, ch 183, §2]

84 Acts, ch 1054, §1; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

Owner, landlord and tenant provisions, chapters 562, 562A, 562B

648.4 Notice terminating tenancy.

When the tenancy is at will and the action is based on the ground of the nonpayment of rent when due, no notice of the termination of the tenancy other than the three-day notice need be given before beginning the action.

[C24, 27, 31, 35, 39, §**12266;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.4]

Farm tenancies, §562.5 – 562.8

See also §562.4, chapters 562A, 562B

648.5 Jurisdiction — hearing — personal service.

The court within the county shall have jurisdiction of actions for the forcible entry or detention of real property. They shall be tried as equitable actions. Unless commenced as a small claim, a petition shall be presented to a district court judge. Upon receipt of the petition, the court shall order a hearing which shall not be later than seven days from the date of the order. Personal service shall be made upon the defendant not less than three days prior to the hearing. In the event that personal service cannot be completed in time to give the defendant the minimum notice required by this section, the court may set a new hearing date. A default cannot be made upon a defendant unless the three days' notice has been given.

[C51, §2367; R60, §3957; C73, §3616; C97, §4211; C24, 27, 31, 35, 39, §**12267;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.5]

86 Acts, ch 1130, §1; 95 Acts, ch 125, §14

648.6 Delayed vacation — notice to lienholders.

In cases covered by chapter 562B, a plaintiff may preserve the option of consenting to delayed vacation of a premises as provided in section 648.22A, by sending a copy of the petition, prior to the date set for hearing, by certified or restricted certified mail to the county treasurer and to each lienholder whose name and address are of record in the office of the county treasurer of the county where the mobile home or manufactured home is located.

98 Acts, ch 1107, §31

648.7 and 648.8 Repealed by 72 Acts, ch 1124, § 282.

648.9 Change of venue.

In any such action a change of place of trial may be had as in other cases.

[C51, §2367; R60, §3957; C73, §3616; C97, §4212; C24, 27, 31, 35, 39, §**12270;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.9]

648.10 Service by publication.

Notwithstanding the requirements of section 648.5, service may be made by publishing such notice for one week in a newspaper of general circulation published in the county where the petition is filed, provided the petitioner files with the court an affidavit stating that an attempt at personal service made by the sheriff was unsuccessful because the defendant is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the defen-

dant at the defendant's last known address or that the defendant's last known address is not known to the petitioner. Service under this section is complete seven days after publication. The court shall set a new hearing date if necessary to allow the defendant the five-day minimum notice required under section 648.5.

[C97, §4213; C24, 27, 31, 35, 39, §**12271;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.10]

86 Acts, ch 1130, §2

Publication, R.C.P. 1.310

648.11 to 648.14 Repealed by 72 Acts, ch 1124, § 282.

648.15 How title tried.

When title is put in issue, the cause shall be tried by equitable proceedings.

[C97, §4216; C24, 27, 31, 35, 39, §**12276;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.15]

648.16 Priority of assignment.

Such actions shall be accorded reasonable priority for assignment to assure their prompt disposition. No continuance shall be granted for the purpose of taking testimony in writing.

[C97, §4216; C24, 27, 31, 35, 39, §**12277;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.16]

648.17 Remedy not exclusive.

Nothing contained in sections 648.15 and 648.16 shall prevent a party from suing for trespass or from testing the right of property in any other manner.

[C51, §2371; R60, §3961; C73, §3620; C97, §4216; C24, 27, 31, 35, 39, §**12278;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.17]

648.18 Possession — bar.

Thirty days' peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding.

[C51, §2372; R60, §3962; C73, §3621; C97, §4217; C24, 27, 31, 35, 39, §**12279;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.18]

648.19 No joinder or counterclaim — exception.

1. An action under this chapter shall not be filed in connection with any other action, with the exception of a claim for rent or recovery as provided in section 555B.3, 562A.24, 562A.32, 562B.22, 562B.25, or 562B.27, nor shall it be made the subject of counterclaim.

2. When filed with an action for rent or recovery as provided in section 555B.3, 562A.24, 562A.32, 562B.22, 562B.25, or 562B.27, notice of hearing as provided in section 648.5 is sufficient.

3. An action under this chapter that is filed in connection with another action in accordance with this section shall be treated only as a joint filing of separate cases assigned separate case numbers, but with a single filing fee. The court shall not merge the causes of action. The court shall consider the jointly filed cases separately and shall consider each case according to the rules applicable to that type of case.

[C51, §2373; R60, §3963; C73, §3622; C97, §4218; C24, 27, 31, 35, 39, §**12280;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.19]

86 Acts, ch 1130, §3; 88 Acts, ch 1138, §17; 93 Acts, ch 154, §22; 2000 Acts, ch 1210, §1

648.20 Order for removal.

The order for removal can be executed only in the daytime.

[C51, §2374; R60, §3964; C73, §3623; C97, §4219; C24, 27, 31, 35, 39, §**12281;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.20]

648.21 Repealed by 72 Acts, ch 1124, § 282.

648.22 Judgment — execution — costs.

If the defendant is found guilty, judgment shall be entered that the defendant be removed from the premises, and that the plaintiff be put in possession of the premises, and an execution for the defendant's removal within three days from the judgment shall issue accordingly, to which shall be added a clause commanding the officer to collect the costs as in ordinary cases.

[C51, §2370; R60, §3960; C73, §3619; C97, §4221; C24, 27, 31, 35, 39, §**12283;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.22]

86 Acts, ch 1130, §4; 95 Acts, ch 125, §15

648.22A Executions involving mobile homes and manufactured homes.

1. In cases covered by chapter 562B, upon expiration of three days from the date the judgment is entered pursuant to section 648.22, the defendant may elect to leave a mobile home or manufactured home and its contents in the manufactured home community or mobile home park for up to thirty days provided all of the following occur:

a. The plaintiff consents and the plaintiff has complied with the provisions of section 648.6.

b. All utilities to the mobile home or manufactured home are disconnected prior to expiration of three days from the entry of judgment. Payment of any reasonable costs incurred in disconnecting utilities is the responsibility of the defendant.

2. During the thirty-day period the defendant may have reasonable access to the home site to show the home to prospective purchasers, prepare the home for removal, or remove the home, provided that the defendant gives the plaintiff and sheriff at least twenty-four hours' notice prior to each exercise of the defendant's right of access.

3. During the thirty-day period the defendant

shall not occupy the home or be present on the premises between the hours of seven p.m. and seven a.m. A violation of this subsection shall be punishable as contempt.

4. If the defendant finds a purchaser of the home, who is a prospective tenant of the manufactured home community or mobile home park, the provisions of section 562B.19, subsection 3, paragraph *"c"*, shall apply.

5. If, within the thirty-day period, the home is not sold to an approved purchaser or removed from the manufactured home community or mobile home park, all of the following shall occur:

a. The home, its contents, and any other property of the defendant remaining on the premises shall become the property of the plaintiff free and clear of all rights of the defendant to the property and of all liens, claims, or encumbrances of third parties, and any tax levied pursuant to chapter 435 may be abated by the board of supervisors.

b. Any money judgment against the defendant and in favor of the plaintiff relating to the previous tenancy shall be deemed satisfied.

c. The county treasurer, upon receipt of a fee equal to the fee specified in section 321.42 for replacement of certificates of title for motor vehicles, and upon receipt of an affidavit submitted by the plaintiff verifying that the home was not sold to an approved purchaser or removed within the time specified in this subsection, shall issue to the plaintiff a new title for the home.

6. A purchaser of the home shall be liable for any unpaid sums due the plaintiff, sheriff, or county treasurer. For the purposes of this section, *"purchaser"* includes a lienholder or other claimant acquiring title to the home in whole or in part by reason of a lien or other claim.

7. A mobile home or manufactured home shall not be removed without the prior payment to the plaintiff of all sums owing at the time of entry of judgment, interest accrued on such sums as provided by law, and per diem rent for that portion of the thirty-day period which has expired prior to removal, and payment of any taxes due on the home which are not abated pursuant to subsection 5.

98 Acts, ch 1107, §32; 2001 Acts, ch 153, §16

648.22B Cases where mobile or manufactured home is the subject of a foreclosure action.

1. When a mobile or manufactured home located in a manufactured home community or mobile home park is the subject of an action by a lienholder to foreclose a lienhold interest, the plaintiff may advance all moneys due and owing to the landlord and enter into an agreement with the court to pay to the landlord before delinquency all rent, reasonable upkeep, and other reasonable charges thereafter accruing on the home and space that it occupies, in which case any writ of execution on a judgment under this chapter will be stayed until the home is sold in place as provided by law or removed from the manufactured home community or mobile home park at the plaintiff's expense.

2. When the conditions of subsection 1 have been satisfied, the clerk of court shall so notify the sheriff of the county in which the mobile or manufactured home is located.

3. The landlord shall have standing to intervene in the foreclosure proceedings or to file a separate action to compel compliance with the lienholder's undertaking pursuant to subsection 1 and shall be entitled to recover costs and attorney fees incurred.

4. All expenditures made by a lienholder pursuant to subsection 1 shall be recoverable from the lien debtor in the foreclosure proceedings as protective disbursements whether or not provision is made for such recovery in the documentation of the subject lien.

5. In any case where this section has become operative, the provisions of section 648.18 shall not apply.

2000 Acts, ch 1210, §2; 2001 Acts, ch 153, §16

648.23 Restitution.

The court, on the trial of an appeal, may issue an execution for removal or restitution, as the case may require.

[C51, §2376; R60, §3966; C73, §3624; C97, §4222; C24, 27, 31, 35, 39, §**12284;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §648.23]

CHAPTER 649

QUIETING TITLE

649.1 Who may bring action.
649.2 Petition.
649.3 Notice.
649.4 Disclaimer — costs.
649.5 Demand for quitclaim — attorney's fees.
649.6 Equitable proceedings.
649.7 Deeds — recitals — rebuttable and conclusive presumptions.
649.8 Construction of Act.

649.1 Who may bring action.

An action to determine and quiet the title of real property may be brought by anyone, whether in or out of possession, having or claiming an interest therein, against any person claiming title thereto, though not in possession.

[C51, §2025; R60, §3601; C73, §3273; C97, §4223; C24, 27, 31, 35, 39, §**12285;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §649.1]

649.2 Petition.

The petition therefor must be under oath, setting forth the nature and extent of the petitioner's estate, and describing the premises as accurately as may be, and that the petitioner is credibly informed and believes the defendant makes or may make some claims adverse to the petitioner, and praying for the establishment of the plaintiff's estate, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to the plaintiff.

[R60, §3602; C73, §3274; C97, §4224; C24, 27, 31, 35, 39, §**12286;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §649.2]

649.3 Notice.

The notice in such action shall accurately describe the property, and, in general terms, the nature and extent of the plaintiff's claim, and shall be served as in other cases.

[C73, §3274; C97, §4224; C24, 27, 31, 35, 39, §**12287;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §649.3]

649.4 Disclaimer — costs.

If the defendant appears and disclaims all right and title adverse to the plaintiff, the defendant shall recover the defendant's costs. In all other cases the costs shall be in the discretion of the court.

[R60, §3603; C73, §3275; C97, §4225; C24, 27, 31, 35, 39, §**12288;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §649.4]

649.5 Demand for quitclaim — attorney's fees.

If a party, twenty days or more before bringing suit to quiet a title to real estate, requests of the person holding an apparent adverse interest or right therein the execution of a quitclaim deed thereto, and also tenders to the person one dollar and twenty-five cents to cover the expense of the execution and delivery of the deed, and if the person refuses or neglects to comply, the filing of a disclaimer of interest or right shall not avoid the costs in an action afterwards brought, and the court may, in its discretion, if the plaintiff succeeds, assess, in addition to the ordinary costs of court, an attorney's fee for plaintiff's attorney, not exceeding twenty-five dollars if there is but a single tract not exceeding forty acres in extent, or a single lot in a city, involved, and forty dollars, if but a single tract exceeding forty acres and not more than eighty acres. In cases in which two or more tracts are included that may not be embraced in one description, or single tracts covering more than eighty acres, or two or more city lots, a reasonable fee may be assessed, not exceeding, proportionately, those provided for in this section.

[C97, §4226; C24, 27, 31, 35, 39, §**12289;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §649.5]

86 Acts, ch 1237, §37

649.6 Equitable proceedings.

In all other respects, the action contemplated in this chapter shall be conducted as other actions by equitable proceedings, so far as the same may be applicable, with the modifications prescribed.

[C51, §2026; R60, §3604; C73, §3276; C97, §4227; C24, 27, 31, 35, 39, §**12290;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §649.6]

649.7 Deeds — recitals — rebuttable and conclusive presumptions.

In the proof of title to real estate derived from deeds or other conveyances affecting real estate, executed prior to January 1, 1905, where it appears from recitals therein that such deeds or other conveyances have been executed in pursuance to a contract assigned by the original vendee or the vendee's assignee to the grantee in such deeds or other conveyances, the recitals thereof shall be presumptive evidence of the truth of said recitals, and of the fact of said assignment, and that such assignment was made in good faith for a valuable consideration, and no action shall be maintained by such original vendee, assignee, or any person or persons holding by, through, or under such vendee or assignee, against the grantee in said deed or other conveyance, and the grantee's grantees in the record chain of title, and said recitals shall be conclusive evidence of the fact of such assignment and that it was made in good faith and for a valuable consideration.

[C24, 27, 31, 35, 39, §**12291;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §649.7]

649.8 Construction of Act.

Section 649.7 shall not be construed to remove the bar of any other statute of limitations.

[C24, 27, 31, 35, 39, §**12292;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §649.8]

CHAPTER 650

DISPUTED CORNERS AND BOUNDARIES

650.1 When allowed.
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650.1 When allowed.

When one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court of the county where such lost, destroyed, or disputed corners or boundaries, or part thereof, are situated, against the owners of the other tracts which will be affected by the determination or establishment thereof, to have such corners or boundaries ascertained and permanently established.

[C97, §4228; C24, 27, 31, 35, 39, §**12293;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.1]

650.2 County as party.

If any public road is likely to be affected thereby, the proper county shall be made defendant.

[C97, §4228; C24, 27, 31, 35, 39, §**12294;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.2]

650.3 Notice.

Notice of such action shall be given as in other cases, and if the defendants or any of them are nonresidents of the state, or unknown, they may be served by publication as is provided by law.

[C97, §4229; C24, 27, 31, 35, 39, §**12295;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.3]

650.4 Nature of action.

The action shall be a special one.

[C97, §4230; C24, 27, 31, 35, 39, §**12296;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.4]

650.5 Petition.

The only necessary pleading therein shall be the petition of plaintiff describing the land involved, and, so far as may be, the interest of the respective parties, and asking that certain corners and boundaries therein described, as accurately as may be, shall be established.

[C97, §4230; C24, 27, 31, 35, 39, §**12297;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.5]

650.6 Specific issues — acquiescence.

Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years, which issue may be tried before commission is appointed, in the discretion of the court.

[C97, §4230; C24, 27, 31, 35, 39, §**12298;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.6]

650.7 Commission.

The court in which said action is brought shall appoint a commission of one or more disinterested surveyors, who shall, at a date and place fixed by the court in the order of appointment, proceed to locate the lost, destroyed, or disputed corners and boundaries.

[C97, §4231; C24, 27, 31, 35, 39, §**12299;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.7]

650.8 Oath — assistants.

The commissioners so appointed shall subscribe and file with the clerk, within ten days from the date of their appointment, an oath for the faithful and impartial discharge of their duties, and shall have the power to appoint necessary assistants.

[C97, §4232; C24, 27, 31, 35, 39, §**12300;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.8]

650.9 Hearing.

At the time and in the manner specified in the order of court, the commission shall proceed to locate said boundaries and corners, and for that purpose may take the testimony of witnesses as to where the true boundaries and corners are located.

[C97, §4233; C24, 27, 31, 35, 39, §**12301;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.9]

650.10 Finding as to acquiescence.

If that issue is presented, the commission shall also take testimony as to whether the boundaries and corners alleged to have been recognized and acquiesced in for ten years or more have in fact been recognized and acquiesced in, and, if it finds affirmatively on such issue, shall incorporate the same into the report to the court.

[C97, §4233; C24, 27, 31, 35, 39, §**12302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.10]

650.11 Adjournments — report.

The proceedings may be adjourned by the commission from time to time as may be necessary, but the survey and location of the corners and boundaries must be completed and the report thereof filed with the clerk of the court within sixty days after its appointment, unless there are good and sufficient reasons for delay.

[C97, §4234; C24, 27, 31, 35, 39, §**12303;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.11]

650.12 Exceptions — hearing in court.

Within twenty days after such report is filed, any party interested may file exceptions thereto and the court shall hear and determine them, hearing evidence in addition to that reported by the commission, if necessary, and may approve or modify such report, or again refer the matter to the same or another commission for further report.

[C97, §4235; C24, 27, 31, 35, 39, §**12304;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.12]

650.13 Decree conclusive.

The corners and boundaries finally established by the court in such proceeding, or on appeal therefrom, shall be binding upon the parties as the corners or boundaries which had been lost, destroyed, or in dispute.

[C97, §4236; C24, 27, 31, 35, 39, §**12305;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.13]

650.14 Boundaries by acquiescence established.

If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established.

[C97, §4236; C24, 27, 31, 35, 39, §**12306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.14]

650.15 Appeal.

There shall be no appeal in such proceeding, except from final judgment of the court, taken in the time and manner that other appeals are, and heard as in an action by ordinary proceedings.

[C97, §4237; C24, 27, 31, 35, 39, §**12307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.15]

650.16 Costs.

The costs in the proceeding shall be assessed as the court deems just, and shall be a lien on the land or interest therein owned by the party or parties against whom they are assessed, so far as such land is involved in the proceeding.

[C97, §4238; C24, 27, 31, 35, 39, §**12308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.16]

86 Acts, ch 1237, §38

650.17 Boundaries by agreement.

Any lost or disputed corner or boundary may be determined by written agreement of all parties thereby affected, signed and acknowledged by each as required for conveyances of real estate, clearly designating the same, and accompanied by a plat thereof, which shall be recorded as an instrument affecting real estate, and shall be binding upon their heirs, successors, and assigns.

[C97, §4239; C24, 27, 31, 35, 39, §**12309;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §650.17]

Acknowledgment, §558.20 et seq.

CHAPTER 651

PARTITION

For Iowa court rules concerning partition of real and personal property, see R.C.P. 1.1201 – 1.1228

651.1 Share of absent owner.
651.2 Answer.
651.3 Partition of part.
651.4 Costs attending transcript.
651.5 Sales disapproved.
651.6 Security to refund money.

651.1 Share of absent owner.

The ascertained share of any absent owner shall be retained, or the proceeds invested for the owner's benefit, under like order.

[C51, §2070; R60, §3648; C73, §3280; C97, §4243; C24, 27, 31, 35, 39, §**12317;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §651.1]

651.2 Answer.

The answers of the defendants must state, among other things, the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs, and by supplemental pleading, if necessary, may deny the interest of any of the other defendants.

[C51, §2032; R60, §3610; C73, §3282; C97, §4245; C24, 27, 31, 35, 39, §**12318;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §651.2]

651.3 Partition of part.

When partition can be conveniently made of part of the premises but not of all, one portion may be partitioned and the other sold, as provided in this chapter.

[C51, §2062; R60, §3640; C73, §3294; C97, §4257; C24, 27, 31, 35, 39, §**12332;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §651.3]

651.4 Costs attending transcript.

The costs of making and recording such transcript shall be assessed as part of the costs in the case.

[S13, §4259; C24, 27, 31, 35, 39, §**12338;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §651.4]

86 Acts, ch 1237, §39

651.5 Sales disapproved.

If the sales are disapproved, the money paid and the securities given must be returned to the persons respectively entitled thereto.

[C51, §2058; R60, §3636; C73, §3304; C97, §4269; C24, 27, 31, 35, 39, §**12348;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §651.5]

651.6 Security to refund money.

The court in its discretion may require all or any of the parties, before they receive the moneys arising from any sale authorized in this chapter, to give satisfactory security to refund the same, with interest, in case it afterward appears that such parties were not entitled thereto.

[C51, §2054; R60, §3632; C73, §3305; C97, §4270; C24, 27, 31, 35, 39, §**12349;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §651.6]

CHAPTER 652

FORECLOSURE OF CHATTEL MORTGAGES

Repealed by 65 Acts, ch 413, §10102; see chapter 554

CHAPTER 653

FORECLOSURE OF PLEDGES

Repealed by 65 Acts, ch 413, §10102; see chapter 554

CHAPTER 654

FORECLOSURE OF REAL ESTATE MORTGAGES

See also chapter 615

654.1 Equitable proceedings.
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654.1 Equitable proceedings.

Except as provided in section 654.18, a deed of trust or mortgage of real estate shall not be foreclosed in any other manner than by action in court by equitable proceedings.

[C51, §2083, 2096; R60, §3660, 3673, 4179; C73, §3319; C97, §4287; C24, 27, 31, 35, 39, §**12372;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.1]

85 Acts, ch 252, §45

654.2 Deeds of trust.

Deeds of trust of real property may be executed as securities for the performance of contracts, and shall be considered as, and foreclosed like, mortgages.

[C51, §2096; R60, §3673; C73, §3318; C97, §4284; C24, 27, 31, 35, 39, §**12373;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.2]

654.2A Agricultural land — notice, right to cure default.

1. A creditor shall not initiate an action pursuant to this chapter to foreclose on a deed of trust or mortgage on agricultural land, as defined in section 9H.1, until the creditor has complied with this section.

2. A creditor who believes in good faith that a borrower on a deed of trust or mortgage on agricultural land is in default may give the borrower notice of the alleged default, and, if the borrower has a right to cure the default, shall give the borrower the notice of right to cure provided in section 654.2B. The notice is deemed received if sent by certified mail to the borrower.

3. The borrower has a right to cure the default unless the creditor has given the borrower a proper notice of right to cure with respect to two prior defaults on the obligation secured by the deed of trust or mortgage, or the borrower has voluntarily surrendered possession of the agricultural land and the creditor has accepted it in full satisfaction of any debt owing on the obligation in default. The borrower does not have a right to cure the default if the creditor has given the borrower a proper notice of right to cure with respect to a prior default within twelve months prior to the alleged default.

4. If the borrower has a right to cure a default:

a. A creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or otherwise take possession of the land, other than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until forty-five days after a proper notice of right to cure is given. The time period for a request for mediation pursuant to chapter 654A shall run concurrently with the period for the notice to cure under this section.

b. Until the expiration of forty-five days after notice is given, the borrower may cure the default by tendering either the amount of all unpaid installments due at the time of tender, without acceleration, plus a delinquency charge of the scheduled annual interest rate plus five percent per annum for the period between the giving of the notice of right to cure and the tender, or the amount stated in the notice of right to cure, whichever is less, or by tendering any performance necessary to cure a default other than nonpayment of amounts due, which is described in the notice of right to cure.

5. The act of curing a default restores to the borrower the borrower's rights under the obligation and the deed of trust or mortgage, except as provided in subsection 3.

6. This section does not prohibit a borrower from voluntarily surrendering possession of the agricultural land, and does not prohibit the creditor from enforcing the creditor's interest in the land at any time after compliance with this section.

86 Acts, ch 1214, §10

Legislative findings; 86 Acts, ch 1214, §1

654.2B Requirements of notice of right to cure.

The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor or other person to which payment is to be made, a brief identifica-

tion of the obligation secured by the deed of trust or mortgage and of the borrower's right to cure the default, a statement of the nature of the right to cure the default, a statement of the nature of the alleged default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered and a statement that if the borrower does not cure the alleged default the creditor or a person acting on behalf of the creditor is entitled to proceed with initiating a foreclosure action or procedure. The failure of the notice of right to cure to comply with one or more provisions of this section is not a defense or claim in any action pursuant to this chapter and does not invalidate any procedure pursuant to chapter 655A, unless the person asserting the defense, claim, or invalidity proves that the person was substantially prejudiced by such failure.

86 Acts, ch 1214, §11; 87 Acts, ch 142, §13; 91 Acts, ch 46, §1

Legislative findings; 86 Acts, ch 1214, §1

654.2C Mediation notice — foreclosure on agricultural property.

A person shall not initiate a proceeding under this chapter to foreclose a deed of trust or mortgage on agricultural property, as defined in section 654A.1, which is subject to chapter 654A and which is subject to a debt of twenty thousand dollars or more under the deed of trust or mortgage unless the person receives a mediation release under section 654A.11, or unless the court determines after notice and hearing that the time delay required for the mediation would cause the person to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release, regardless of its validity.

86 Acts, ch 1214, §12; 87 Acts, ch 73, §1

Legislative findings; 86 Acts, ch 1214, §1

654.2D Nonagricultural land — notice, right to cure default.

1. Except as provided in section 654.2A, a creditor shall comply with this section before initiating an action pursuant to this chapter or initiating the procedure established pursuant to chapter 655A to foreclose on a deed of trust or mortgage.

2. A creditor who believes in good faith that a borrower on a deed of trust or mortgage on a homestead is in default shall give the borrower a notice of right to cure as provided in section 654.2B. A creditor gives the notice when the creditor delivers the notice to the consumer or mails the notice to the borrower's residence as defined in section 537.1201, subsection 4.

3. The borrower has a right to cure the default within thirty days from the date the creditor gives the notice.

4. *a.* The creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or otherwise take possession of the land, otherwise than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until thirty days after a proper notice of right to cure is given.

b. Until the expiration of thirty days after notice is given, the borrower may cure the default by tendering either the amount of all unpaid installments due at the time of tender, without acceleration, or the amount stated in the notice of right to cure, whichever is less, or by tendering any other performance necessary to cure a default which is described in the notice of right to cure.

5. The act of curing a default restores to the borrower the borrower's rights under the obligation and the deed of trust or mortgage.

6. This section does not prohibit the creditor from enforcing the creditor's interest in the land at any time after the creditor has complied with this section and the borrower did not cure the alleged default.

7. A borrower has a right to cure the default unless the creditor has given the borrower a proper notice of right to cure with respect to a prior default which occurred within three hundred sixty-five days of the present default.

8. This section does not apply if the creditor is an individual or individuals, or if the mortgaged property is property other than a one-family or two-family dwelling which is the residence of the mortgagor.

9. An affidavit signed by an officer of the creditor that the creditor has complied with this section is deemed to be conclusive evidence of compliance by all persons other than the creditor and the mortgagor.

10. As used in this section, *"creditor"* includes a person acting on behalf of a creditor.

87 Acts, ch 142, §14; 91 Acts, ch 46, §2

654.3 Venue.

An action for the foreclosure of a mortgage of real property, or for the sale thereof under an encumbrance or charge thereon, shall be brought in the county in which the property to be affected, or some part thereof, is situated.

[C73, §2578; C97, §3493; C24, 27, 31, 35, 39, §**12374;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.3]

654.4 Separate suits on note and mortgage.

If separate actions are brought in the same county on the bond or note, and on the mortgage given to secure it, the plaintiff must elect which to prosecute. The other will be discontinued at the plaintiff's cost.

[C51, §2086; R60, §3663; C73, §3320; C97, §4288; C24, 27, 31, 35, 39, §**12375;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §654.4]
Action on certain judgments prohibited, chapter 615
Related provision, §611.5

654.5 Judgment — sale and redemption.
When a mortgage or deed of trust is foreclosed, the court shall render judgment for the entire amount found to be due, and must direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the judgment, with interest and costs. A special execution shall issue accordingly, and the sale under the special execution is subject to redemption as in cases of sale under general execution unless the plaintiff has elected foreclosure without redemption under section 654.20.
[C51, §2084; R60, §3661; C73, §3321; C97, §4289; C24, 27, 31, 35, 39, §**12376;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.5]
87 Acts, ch 142, §2
Redemption, chapter 628

654.6 Deficiency — general execution.
If the mortgaged property does not sell for sufficient to satisfy the execution, a general execution may be issued against the mortgagor, unless the parties have stipulated otherwise.
[C51, §2085; R60, §3662; C73, §3322; C97, §4290; C24, 27, 31, 35, 39, §**12377;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.6]
86 Acts, ch 1216, §3, 14
See also §615.1

654.7 Overplus.
If there is an overplus remaining after satisfying the mortgage and costs, and if there is no other lien upon the property, such overplus shall be paid to the mortgagor.
[C51, §2089; R60, §3666; C73, §3324; C97, §4291; C24, 27, 31, 35, 39, §**12378;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.7]

654.8 Junior encumbrancer entitled to assignment.
At any time prior to the sale, a person having a lien on the property which is junior to the mortgage will be entitled to an assignment of all the interest of the holder of the mortgage, by paying the holder the amount secured, with interest and costs, together with the amount of any other liens of the same holder which are paramount to the person's. The person may then proceed with the foreclosure, or discontinue it, at the person's option.
[C51, §2088; R60, §3665; C73, §3323; C97, §4292; C24, 27, 31, 35, 39, §**12379;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.8]

654.9 Payment of other liens — rebate of interest.
If there are any other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order. If the money secured by any such lien is not yet due, a rebate of interest, to be fixed by the court must be made by the holder, or the holder's lien on such property will be postponed to those of a junior date, and if there are none such, the balance shall be paid to the mortgagor.
[C51, §2090; R60, §3667; C73, §3325; C97, §4293; C24, 27, 31, 35, 39, §**12380;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.9]

654.10 Amount sold.
As far as practicable, the property sold must be only sufficient to satisfy the mortgage foreclosed.
[C51, §2091; R60, §3668; C73, §3326; C97, §4294; C24, 27, 31, 35, 39, §**12381;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.10]

654.11 Foreclosure of title bond.
In cases where the vendor of real estate has given a bond or other writing to convey the same on payment of the purchase money, and such money or any part thereof remains unpaid after the day fixed for payment, whether time is or is not of the essence of the contract, the vendor may file a petition asking the court to require the purchaser to perform the purchaser's contract, or to foreclose and sell the purchaser's interest in the property.
[C51, §2094; R60, §3671; C73, §3329; C97, §4297; C24, 27, 31, 35, 39, §**12382;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.11]

654.12 Vendee deemed mortgagor.
The vendee shall in such cases, for the purpose of the foreclosure, be treated as a mortgagor of the property purchased, and the vendee's rights may be foreclosed in a similar manner.
[C51, §2095; R60, §3672; C73, §3330; C97, §4298; C24, 27, 31, 35, 39, §**12383;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.12]

654.12A Priority of advances under mortgages.
Subject to section 572.18, if a prior recorded mortgage contains the notice prescribed in this section and identifies the maximum credit available to the borrower, then loans and advances made under the mortgage, up to the maximum amount of credit together with interest thereon, are senior to indebtedness to other creditors under subsequently recorded mortgages and other subsequently recorded or filed liens even though the holder of the prior recorded mortgage has actual notice of indebtedness under a subsequently recorded mortgage or other subsequently recorded or filed lien. So long as credit is available to the borrower, payment of the outstanding mortgage balance to zero shall not extinguish the prior recorded mortgage if it contains the notice prescribed by this section. The notice prescribed by

this section for the prior recorded mortgage is as follows:

NOTICE: This mortgage secures credit in the amount of . . . . . Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

However, the priority of a prior recorded mortgage under this section does not apply to loans or advances made after receipt of notice of foreclosure or action to enforce a subsequently recorded mortgage or other subsequently recorded or filed lien.

84 Acts, ch 1272, §2; 90 Acts, ch 1001, §1

654.12B Priority of recorded purchase money mortgage lien.

The lien created by a recorded purchase money mortgage shall have priority over and is senior to preexisting judgments against the purchaser and any other right, title, interest, or lien arising either directly or indirectly by, through, or under the purchaser. A mortgage is a purchase money mortgage to the extent it is either:

1. Taken or retained by the seller of the real estate to secure all or part of its price, including all costs in connection with the purchase.

2. Taken by a lender who, by making an advance or incurring an obligation, provides funds to enable the purchaser to acquire rights in the real estate, including all costs in connection with the purchase, if the funds are in fact so used. Except when it is a refinancing of an existing purchase money mortgage between the same lender and purchaser and no new funds are advanced, a mortgage given to secure funds which are used to pay off another mortgage is not a purchase money mortgage.

If more than one purchase money mortgage exists, the first mortgage to be recorded has priority. In order to be entitled to the rights provided by this section, the mortgage must contain a recital that it is a purchase money mortgage. However, failure to include the recital in the mortgage shall not prevent a mortgage otherwise qualifying as a purchase money mortgage from being a purchase money mortgage for purposes other than this section. The rights in this section are in addition to, and the obligations are not in derogation of, all rights provided by common law.

95 Acts, ch 175, §2; 96 Acts, ch 1137, §1, 2

654.13 Pledge of rents — priority.

Whenever any real estate is encumbered by two or more real estate mortgages which in addition to the lien upon the real estate grant to the mortgagee the right to subject the rents, profits, avails and/or income from said real estate to the payment of the debt secured by such mortgage, the priority of the respective mortgagees under the provisions of their mortgages affecting the rents, profits, avails and/or incomes from the said real estate shall, as between such mortgagees, be in the same order as the priority of the lien of their respective mortgages on the real estate.

[C35, §12383-e1; C39, §**12383.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.13]

654.14 Preference in receivership — application of rents.

In an action to foreclose a real estate mortgage, if a receiver is appointed to take charge of the real estate, preference shall be given to the owner or person in actual possession, subject to approval of the court, in leasing the mortgaged premises. If the real estate is agricultural land used for farming, as defined in section 9H.1, the owner or person in actual possession shall be appointed as receiver without bond, provided that all parties agree to the appointment. The rents, profits, avails, and income derived from the real estate shall be applied as follows:

1. To the cost of receivership.

2. To the payment of taxes due or becoming due during said receivership.

3. To pay the insurance on buildings on the premises and/or such other benefits to the real estate as may be ordered by the court.

4. The balance shall be paid and distributed as determined by the court.

If the owner or person in actual possession of agricultural land as defined in section 9H.1 is not afforded a right of first refusal in leasing the mortgaged premises by the receiver, the owner or person in actual possession has a cause of action against the receiver to recover either actual damages or a one thousand dollar penalty, and costs, including reasonable attorney's fees. The receiver shall deliver notice to the owner or person in actual possession or the attorney of the owner or person in actual possession, of an offer made to the receiver, the terms of the offer, and the name and address of the person making the offer. The delivery shall be made personally with receipt returned or by certified or registered mail, with the proper postage on the envelope, addressed to the owner or person in actual possession or the attorney of the owner or person in actual possession. An offer shall be deemed to have been refused if the owner or person in actual possession or the attorney of the owner or person in actual possession does not respond within ten days following the date that the notice is mailed.

[C35, §12383-e2; C39, §**12383.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.14]

86 Acts, ch 1214, §13; 87 Acts, ch 142, §3

654.15 Continuance — moratorium.

1. In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, when the owner enters an appearance and files an answer

admitting some indebtedness and breach of the terms of the designated instrument, which admissions cannot be withdrawn or denied after a continuance is granted, the owner may apply for a continuance of the foreclosure action if the default or inability of the owner to pay or perform is mainly due or brought about by reason of drought, flood, heat, hail, storm, or other climatic conditions or by reason of the infestation of pests which affect the land in controversy. The application must be in writing and filed at or before final decree. Upon the filing of the application the court shall set a day for hearing on the application and provide by order for notice to be given to the plaintiff of the time fixed for the hearing. If the court finds that the application is made in good faith and is supported by competent evidence showing that default in payment or inability to pay is due to drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests, the court may continue the foreclosure proceeding as follows:

a. If the default or breach of terms of the written instrument on which the action is based occurs on or before the first day of March of any year by reason of any of the causes specified in this subsection, causing the loss and failure of crops on the land involved in the previous year, the continuance shall end on the first day of March of the succeeding year.

b. If the default or breach of terms of the written instrument occurs after the first day of March, but during that crop year and that year's crop fails by reason of any of the causes set out in this subsection, the continuance shall end on the first day of March of the second succeeding year.

c. Only one continuance shall be granted, except upon a showing of extraordinary circumstances in which event the court may grant a second continuance for a further period as the court deems just and equitable, not to exceed one year.

d. The order shall provide for the appointment of a receiver to take charge of the property and to rent the property. The owner or person in possession shall be given preference in the occupancy of the property. The receiver, who may be the owner or person in possession, shall collect the rents and income and distribute the proceeds as follows:

(1) For the payment of the costs of receivership.

(2) For the payment of taxes due or becoming due during the period of receivership.

(3) For the payment of insurance on the buildings on the premises.

(4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure is based, to be credited on the instrument.

An owner of a small business may apply for a continuance as provided in this subsection if the real estate subject to foreclosure is used for the small business. The court may continue the foreclosure proceeding if the court finds that the application is made in good faith and is supported by competent evidence showing that the default in payment or inability to pay is due to the economic condition of the customers of the small business, because the customers of the small business have been significantly economically distressed as a result of drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests. The length of the continuance shall be determined by the court, but shall not exceed two years.

2. In all actions for the foreclosure of real estate mortgages, deeds of trust of real estate, and contracts for the purchase of real estate, an owner of real estate may apply for a moratorium as provided in this subsection if the governor declares a state of economic emergency. The governor shall state in the declaration the types of real estate eligible for a moratorium continuance, which may include real estate used for farming; designated types of real estate not used for farming, including real estate used for small business; or all real estate. Only property of a type specified in the declaration which is subject to a mortgage, deed of trust, or contract for purchase entered into before the date of the declaration is eligible for a moratorium. In an action for the foreclosure of a mortgage, deed of trust, or contract for purchase of real estate eligible for a moratorium, the owner may apply for a continuation of the foreclosure if the owner has entered an appearance and filed an answer admitting some indebtedness and breach of the terms of the designated instrument. The admissions cannot be withdrawn or denied after a continuance is granted. Applications for continuance made pursuant to this subsection must be filed within one year of the governor's declaration of economic emergency. Upon the filing of an application as provided in this subsection, the court shall set a date for hearing and provide by order for notice to the parties of the time for the hearing. If the court finds that the application is made in good faith and the owner is unable to pay or perform, the court may continue the foreclosure proceeding as follows:

a. If the application is made in regard to real estate used for farming, the continuance shall terminate two years from the date of the order. If the application is made in regard to real estate not used for farming, the continuance shall terminate one year from the date of the order.

b. Only one continuance shall be granted the applicant for each written instrument or contract under each declaration.

c. The court shall appoint a receiver to take charge of the property and to rent the property. The applicant shall be given preference in the occupancy of the property. The receiver, who may be the applicant, shall collect the rents and income and distribute the proceeds as follows:

(1) For the payment of the costs of receivership, including the required interest on the writ-

ten instrument and the costs of operation.

(2) For the payment of taxes due or becoming due during the period of receivership.

(3) For the payment of insurance deemed necessary by the court including but not limited to insurance on the buildings on the premises and liability insurance.

(4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure was based, to be credited against the principal due on the written instrument.

d. A continuance granted under this subsection may be terminated if the court finds, after notice and hearing, all of the following:

(1) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to restructure the debt obligations of the applicant.

(2) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to utilize state and federal programs designed and implemented to provide debtor relief options. For the purposes of subparagraph (1) and this subparagraph, the determination of reasonableness shall take into account the financial condition of the party seeking foreclosure, and the financial strength and the long-term financial survivorship potential of the applicant.

(3) The applicant has failed to pay interest due on the written instrument.

3. As used in this section, *"small business"* means the same as defined in section 16.1.

[C39, §**12383.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.15]

85 Acts, ch 250, §1, 2; 86 Acts, ch 1216, §7 – 9; 87 Acts, ch 115, §80

654.16 Separate redemption of homestead.

If a sheriff's sale is ordered on agricultural land used for farming, as defined in section 175.2, the mortgagor may, by a date set by the court but not later than ten days before the sale, designate to the court the portion of the land which the mortgagor claims as a homestead. The homestead may be any contiguous portion of forty acres or less of the real estate subject to the sheriff's sale. The homestead shall contain the residence of the mortgagor and shall be as compact as practicable.

If a homestead is designated, the court shall determine the fair market value of the designated homestead before the sheriff's sale. The court may consult with the county appraisers appointed pursuant to section 450.24, or with one or more independent appraisers, to determine the fair market value of the designated homestead.

The mortgagor may redeem the designated homestead by tendering the lesser of either any amount separately bid for the designated homestead at the sheriff's sale pursuant to procedures set forth in chapter 628, or the fair market value, as determined pursuant to this section, of the designated homestead at any time within one year from the date of the sheriff's sale, pursuant to the procedures set forth in chapter 628.

86 Acts, ch 1216, §2; 87 Acts, ch 142, §4, 5; 90 Acts, ch 1245, §2

654.16A Right of first refusal following recording of sheriff's deed to agricultural land.

1. Not later than the time a sheriff's deed to agricultural land used for farming, as defined in section 175.2, is recorded, the grantee recording the sheriff's deed shall notify the mortgagor of the mortgagor's right of first refusal. The grantee shall record the sheriff's deed within one year and sixty days from the date of the sheriff's sale. A copy of this section, titled "Notice of Right of First Refusal" is sufficient notice.

2. If, after a sheriff's deed is recorded, the grantee proposes to sell or otherwise dispose of the agricultural land, in a transaction other than a public auction, the grantee shall first offer the mortgagor the opportunity to repurchase the agricultural land on the same terms and at the same price that the grantee proposes to sell or dispose of the agricultural land. If the grantee seeks to sell or otherwise dispose of the agricultural land by public auction, the mortgagor must be given sixty days' notice of all of the following:

a. The date, time, place, and procedures of the auction sale.

b. Any minimum terms or limitations imposed upon the auction.

3. The grantee is not required to offer the mortgagor financing for the purchase of the agricultural land.

4. The mortgagor has ten business days after being given notice of the terms and price of the proposed sale or disposition, other than a public auction, in which to exercise the right to repurchase the agricultural land by submitting a binding offer to the grantee on the same terms as the proposed sale or other disposition, with closing to occur within thirty days after the offer unless otherwise agreed by the grantee. After the expiration of either the period for offer or the period for closing, without submission of an offer or a closing occurring, the grantee may sell or otherwise dispose of the agricultural land to any other person on the terms upon which it was offered to the mortgagor.

5. Notice of the mortgagor's right of first refusal, a proposed sale, auction, or other disposition, or the submission of a binding offer by the mortgagor, is considered given on the date that notice or offer is personally served on the other party or on the date that notice or offer is mailed to the other party's last known address by registered or certified mail, return receipt requested. The right of first refusal provided in this section is not assignable, but may be exercised by the mortgagor's successor in interest, receiver, personal representa-

tive, executor, or heir only in case of bankruptcy, receivership, or death of the mortgagor.

90 Acts, ch 1245, §3

654.17 Reserved.

ALTERNATIVE PROCEDURES

654.18 Alternative nonjudicial voluntary foreclosure procedure.

1. Upon the mutual written agreement of the mortgagor and mortgagee, a real estate mortgage may be foreclosed pursuant to this section by doing all of the following:

a. The mortgagor shall convey to the mortgagee all interest in the real property subject to the mortgage.

b. The mortgagee shall accept the mortgagor's conveyance and waive any rights to a deficiency or other claim against the mortgagor arising from the mortgage.

c. The mortgagee shall have immediate access to the real property for the purposes of maintaining and protecting the property.

d. The mortgagor and mortgagee shall file a jointly executed document with the county recorder in the county where the real property is located stating that the mortgagor and mortgagee have elected to follow the alternative voluntary foreclosure procedures pursuant to this section.

e. The mortgagee shall send by certified mail a notice of the election to all junior lienholders as of the date of the conveyance under paragraph *"a"*, stating that the junior lienholders have thirty days from the date of mailing to exercise any rights of redemption. The notice may also be given in the manner prescribed in section 656.3 in which case the junior lienholders have thirty days from the completion of publication to exercise the rights of redemption.

f. At the time the mortgagor signs the written agreement pursuant to this subsection, the mortgagee shall furnish the mortgagor a completed form in duplicate, captioned "Disclosure and Notice of Cancellation". The form shall be attached to the written agreement, shall be in ten point boldface type and shall be in the following form:

DISCLOSURE AND NOTICE OF CANCELLATION

. . . . . .
(enter date of transaction)

Under a forced foreclosure Iowa law requires that you have the right to reclaim your property within one year of the date of the foreclosure and that you may continue to occupy your property during that time. If you agree to a voluntary foreclosure under this procedure you will be giving up your right to reclaim or occupy your property.

Under a forced foreclosure, if your mortgage lender does not receive enough money to cover what you owe when the property is sold, you will still be required to pay the difference. If your mortgage lender receives more money than you owe, the difference must be paid to you. If you agree to a voluntary foreclosure under this procedure you will not have to pay the amount of your debt not covered by the sale of your property but you also will not be paid any extra money, if any, over the amount you owe.

NOTE: There may be other advantages and disadvantages, including an effect on your income tax liability, to you depending on whether you agree or do not agree to a voluntary foreclosure. If you have any questions or doubts, you are advised to discuss them with your mortgage lender or an attorney.

You may cancel this transaction, without penalty or obligation, within five business days from the above date.

This transaction is entirely voluntary. You cannot be required to sign the attached foreclosure agreement.

This voluntary foreclosure agreement will become final unless you sign and deliver or mail this notice of cancellation to . . . . . (name of mortgagee) before midnight of . . . . . (enter proper date).

I HEREBY CANCEL THIS TRANSACTION.

. . . . . . **. . . . . .**
DATE **SIGNATURE**

2. A junior lienholder may redeem the real property pursuant to section 628.29. If a junior lienholder fails to redeem its lien as provided in subsection 1, its lien shall be removed from the property.

3. Until the completion of foreclosure pursuant to this section, the mortgagee shall hold the real property subject to liens of record at the time of the conveyance by the mortgagor. However, the lien of the mortgagee shall remain prior to liens which were junior to the mortgage at the time of conveyance by the mortgagor to the mortgagee and may be foreclosed as provided otherwise by law.

4. A mortgagee who agrees to a foreclosure pursuant to this section shall not report to a credit bureau that the mortgagor is delinquent on the mortgage. However, the mortgagee may report that this foreclosure procedure was used.

85 Acts, ch 252, §46

654.19 Deed in lieu of foreclosure — agricultural land.

In lieu of a foreclosure action in court due to default on a recorded mortgage or deed of trust of

real property, if the subject property is agricultural land used for farming, as defined in section 9H.1, the mortgagee and mortgagor may enter into an agreement in which the mortgagor agrees to transfer the agricultural land to the mortgagee in satisfaction of all or part of the mortgage obligation as agreed upon by the parties. The agreement may grant the mortgagor a right to purchase the agricultural land for a period not to exceed five years, and may entitle the mortgagor to lease the agricultural land. The agreement shall be recorded with the deed transferring title to the mortgagee. A transfer of title and agreement pursuant to this section does not constitute an equitable mortgage.

85 Acts, ch 252, §47

654.20 Foreclosure without redemption — nonagricultural land.

If the mortgaged property is not used for an agricultural purpose as defined in section 535.13, the plaintiff in an action to foreclose a real estate mortgage may include in the petition an election for foreclosure without redemption. The election is effective only if the first page of the petition contains the following notice in capital letters of the same type or print size as the rest of the petition:

NOTICE

THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION. THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE COURT A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A WRITTEN DEMAND, THE SALE WILL BE DELAYED UNTIL TWELVE MONTHS (or SIX MONTHS if the petition includes a waiver of deficiency judgment) FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING OR UNTIL TWO MONTHS FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS YOUR RESIDENCE BUT NOT A ONE-FAMILY OR TWO-FAMILY DWELLING. YOU WILL HAVE NO RIGHT OF REDEMPTION AFTER THE SALE. THE PURCHASER AT THE SALE WILL BE ENTITLED TO IMMEDIATE POSSESSION OF THE MORTGAGED PROPERTY. YOU MAY PURCHASE AT THE SALE.

If the plaintiff has not included in the petition a waiver of deficiency judgment, then the notice shall include the following:

IF YOU DO NOT FILE A WRITTEN DEMAND TO DELAY THE SALE AND IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT WILL NOT BE ENTERED AGAINST YOU. IF YOU DO FILE A WRITTEN DEMAND TO DELAY THE SALE, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU IF THE PROCEEDS FROM THE SALE OF THE MORTGAGED PROPERTY ARE INSUFFICIENT TO SATISFY THE AMOUNT OF THE MORTGAGE DEBT AND COSTS.

IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS NOT A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU WHETHER OR NOT YOU FILE A WRITTEN DEMAND TO DELAY THE SALE.

If the election for foreclosure without redemption is made, then sections 654.21 through 654.26 apply.

87 Acts, ch 142, §6

654.20A Rights reserved.

A mortgage or deed of trust shall not contain the notice under section 654.20.

87 Acts, ch 142, §15

654.21 Demand for delay of sale.

At any time prior to entry of judgment, the mortgagor may file a demand for delay of sale. If the demand is filed, the sale shall be held promptly after the expiration of two months from entry of judgment. However, if the demand is filed and the mortgaged property is the residence of the mortgagor and is a one-family or two-family dwelling, the sale shall be held promptly after the expiration of twelve months, or six months if the petition includes a waiver of deficiency judgment, from entry of judgment. If the demand is filed, the mortgagor and mortgagee subsequently may file a stipulation that the sale may be held promptly after the stipulation is filed and that the mortgagee waives the right to entry of a deficiency judgment. If the stipulation is filed, the sale shall be held promptly after the filing. At any time prior to judgment, the mortgagor may pay the plaintiff the amount claimed in the petition and, if paid, the foreclosure action shall be dismissed. At any time after judgment and before the sale, the mortgagor may pay the plaintiff the amount of the judgment and, if paid, the judgment shall be satisfied of record and the sale shall not be held.

87 Acts, ch 142, §7

654.22 No demand for delay of sale.

If the mortgagor does not file a demand for delay of sale, the sale shall be held promptly after entry of judgment.

87 Acts, ch 142, §8

654.23 No redemption rights after sale.

The mortgagor has no right to redeem after sale. Junior lienholders have no right to redeem after sale. The mortgagor or a junior lienholder may purchase at the sale and, if so, acquire the same title as would any other purchaser. If the mortgagor at the sale bids an amount equal to the judgment, the property shall be sold to the mortgagor even though other persons may bid an amount which is more than the judgment. If the mortgagor purchases at the sale, the liens of junior lienholders shall not be extinguished. If a person other than the mortgagor purchases at the sale, the liens of junior lienholders are extinguished.

87 Acts, ch 142, §9

654.24 Deed and possession.

The purchaser at the sale is entitled to an immediate deed and immediate possession.

87 Acts, ch 142, §10

654.25 Application of other statutes.

If the plaintiff has elected foreclosure without redemption, chapter 628 does not apply. A provision in a mortgage permitted by section 628.26 or 628.27 shall not be construed as an agreement by the mortgagee not to elect foreclosure without redemption. The election may be made in any petition filed on or after June 4, 1987. The election for foreclosure without redemption is not a waiver of the plaintiff's rights under section 654.6 except as provided in section 654.26.

87 Acts, ch 142, §11

654.26 No deficiency judgment in certain cases.

If the plaintiff has elected foreclosure without redemption, the plaintiff may include in the petition a waiver of deficiency judgment. If the plaintiff has elected foreclosure without redemption and does not include in the petition a waiver of deficiency judgment, if the mortgaged property is the residence of the mortgagor and is a one-family or two-family dwelling, and if the mortgagor does not file a demand for delay of sale under section 654.21, then the plaintiff shall not be entitled to the entry of a deficiency judgment under section 654.6.

87 Acts, ch 142, §12

CHAPTER 654A

FARM MEDIATION — FARMER-CREDITOR DISPUTES

Legislative findings; 90 Acts, ch 1143, §1

654A.1 Definitions.
654A.2 Farm crisis program coordinator. Repealed by 90 Acts, ch 1143, §30.
654A.3 Farm mediation service. Repealed by 90 Acts, ch 1143, §30.
654A.4 Applicability of chapter.
654A.5 Voluntary mediation proceedings.
654A.6 Mandatory mediation proceedings.
654A.7 Financial analyst and legal assistance.
654A.8 Initial mediation meeting.
654A.9 Duties of mediator.
654A.10 Mediation period.
654A.11 Mediation release.
654A.12 Extension of deadlines.
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654A.14 Rules and forms. Repealed by 90 Acts, ch 1143, §30.
654A.15 Limitation on liability — immunity from special actions. Repealed by 90 Acts, ch 1143, §30.
654A.16 Wetland designation.
654A.17 Repeal of chapter. Repealed by 94 Acts, ch 1106, §1.

654A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agricultural property"* means agricultural land that is principally used for farming as defined in section 9H.1, and personal property that is used as security to finance a farm operation or used as part of a farm operation including equipment, crops, livestock, and proceeds of the security.

2. *"Coordinator"* means the farm assistance program coordinator provided in section 13.13.

3. *"Creditor"* means the holder of a mortgage on agricultural property, a vendor of a real estate contract for agricultural property, a person with a lien or security interest in agricultural property, or a judgment creditor with a judgment against a

debtor with agricultural property.

4. *"Farm mediation service"* means the organization selected pursuant to section 13.13.

5. *"File"* means to deliver by the required date by certified mail or another method acknowledging receipt.

6. *"Mediation release"* means an agreement or statement signed by all parties or by less than all the parties and the mediator pursuant to section 654A.11.

7. *"Participate"* or *"participation"* means attending a mediation meeting, and discussing issues, stating a position regarding restructuring, and exchanging information, relating to any of the following: a debt against agricultural property which is real estate under chapter 654; a forfeiture of a contract to purchase agricultural property under chapter 656; a secured interest in agricultural property under chapter 554; or a garnishment, levy, execution, seizure, or attachment of agricultural property; all as referenced in section 654A.6.

86 Acts, ch 1214, §14; 90 Acts, ch 1143, §9, 10

654A.2 Farm crisis program coordinator. Repealed by 90 Acts, ch 1143, § 30. See § 13.13.

654A.3 Farm mediation service. Repealed by 90 Acts, ch 1143, § 30. See § 13.13.

654A.4 Applicability of chapter.

1. This chapter applies to all creditors of a borrower described under subsection 2 with a secured debt against the borrower of twenty thousand dollars or more.

2. This chapter applies to a borrower who is a natural person operating a farm or any corporation, trust, or limited partnership as defined in section 9H.1.

86 Acts, ch 1214, §17; 89 Acts, ch 108, §2

654A.5 Voluntary mediation proceedings.

A borrower who owns agricultural property or a creditor of that borrower may request mediation of the indebtedness by applying to the farm mediation service. The farm mediation service shall make voluntary mediation application forms available. The farm mediation service shall evaluate each request and may direct a mediator to meet with the borrower and creditor to assist in mediation.

86 Acts, ch 1214, §18

654A.6 Mandatory mediation proceedings.

1. *a.* A creditor subject to this chapter desiring to initiate a proceeding to enforce a debt against agricultural property which is real estate under chapter 654, to forfeit a contract to purchase agricultural property under chapter 656, to enforce a secured interest in agricultural property under chapter 554, or to otherwise garnish, levy on, execute on, seize, or attach agricultural property, shall file a request for mediation with the farm mediation service. The creditor shall not begin the proceeding subject to this chapter until the creditor receives a mediation release, or until the court determines after notice and hearing that the time delay required for the mediation would cause the creditor to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release regardless of its validity. The time period for the notice of right to cure provided in section 654.2A shall run concurrently with the time period for the mediation period provided in this section and section 654A.10.

b. The requirements of paragraph *"a"* are jurisdictional prerequisites to a creditor filing a civil action that initiates a proceeding subject to this chapter.

2. Upon the receipt of a request for mediation, the farm mediation service shall conduct an initial consultation with the borrower without charge. The borrower may waive mediation after the initial consultation.

3. Unless the borrower waives mediation, the borrower shall file a list containing at least the name and place of business for each creditor as defined in section 654A.1 or apply for an extension to file the list with the farm mediation service within twenty-one days of the service's receipt of a request for mediation.

86 Acts, ch 1214, §19; 87 Acts, ch 73, §2; 89 Acts, ch 108, §3; 2000 Acts, ch 1129, §1

654A.7 Financial analyst and legal assistance.

1. After receiving a mediation request, the farm mediation service shall refer the borrower to a financial analyst associated with the Iowa state university extension service ASSIST program. The financial analyst shall assist the borrower in the preparation of information relative to the finances of the borrower for the initial mediation meeting.

2. After receiving the mediation request, the farm mediation service shall notify the borrower that legal assistance may be available without charge through the legal assistance for farmers program provided in chapter 13.

86 Acts, ch 1214, §20

654A.8 Initial mediation meeting.

1. Unless the borrower waives mediation, within twenty-one days after receiving a mediation request the farm mediation service shall send a mediation meeting notice to the borrower and to all known creditors of the borrower setting a time and place for an initial mediation meeting between the borrower, the creditors, and a media-

tor directed by the farm mediation service to assist in mediation. An initial mediation meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.

2. If a creditor subject to this chapter receives a mediation meeting notice under subsection 1, the creditor and the creditor's successors in interest may not continue proceedings to enforce a debt against agricultural property of the borrower under chapter 654, to forfeit a real estate contract for the purchase of agricultural property of the borrower under chapter 656, to enforce a secured interest in agricultural property under chapter 554, or to otherwise garnish, levy on, execute on, seize, or attach agricultural property. Time periods under and affecting those procedures stop running until the farm mediation service issues a mediation release to the creditor.

86 Acts, ch 1214, §21

654A.9 Duties of mediator.

At the initial mediation meeting and subsequent meetings, the mediator shall:

1. Listen to the borrower and the creditors desiring to be heard.

2. Attempt to mediate between the borrower and the creditors.

3. Advise the borrower and the creditors as to the existence of available assistance programs.

4. Encourage the parties to adjust, refinance, or provide for payment of the debts.

5. Advise, counsel, and assist the borrower and creditors in attempting to arrive at an agreement for the future conduct of financial relations among them.

86 Acts, ch 1214, §22

654A.10 Mediation period.

The mediator may call mediation meetings during the mediation period, which is up to forty-two days after the farm mediation service received the mediation request. However, if all parties consent, mediation may continue after the end of the mediation period.

86 Acts, ch 1214, §23

654A.11 Mediation release.

1. If an agreement is reached between the borrower and the creditors, the mediator shall draft a written mediation agreement, have it signed by the creditors, and submit the agreement to the farm mediation service.

2. The borrower and the creditors who are parties to the mediation agreement may enforce the mediation agreement as a legal contract. The agreement constitutes a mediation release.

3. *a.* If the borrower waives mediation, or if a mediation agreement is not reached, the borrower and the creditors may sign a statement prepared by the mediator that mediation was waived or that the parties did not reach an agreement. If any party does not sign the statement, the mediator shall sign the statement. The statement constitutes a mediation release.

b. The mediator shall issue a mediation release unless the creditor fails to personally attend and participate in all mediation meetings. The mediator shall issue a mediation release if the borrower waives or fails to personally attend and participate in all mediation meetings, regardless of participation by the creditor. However, if a creditor or borrower is not a natural person, the creditor or borrower must be represented by a natural person who is an officer, director, employee, or partner of the creditor or borrower. If a person acts in a fiduciary capacity for the creditor or borrower, the fiduciary may represent the creditor or borrower. If the creditor or borrower or eligible representative is not able to attend and participate as required in this paragraph due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the creditor or borrower must be represented by another natural person. Any representative of the creditor or borrower must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. This section does not require the creditor or borrower to reach an agreement, including restructuring a debt, in order to receive a mediation release.

4. The mediator shall promptly notify a creditor by certified mail of a denial to issue a mediation release and the reasons for the denial. The notice shall state that the creditor has seven days from the date that the notice is delivered to appeal the mediator's decision to the administrative head of the mediation service, pursuant to procedures adopted by the service. The notice shall state that the creditor may also request another mediation meeting. The action for judicial review shall be brought in equity, and the action shall be limited to whether, based on clear and convincing evidence, the decision of the administrative head is an abuse of discretion. The action may be brought either in the district court of Polk county or in the district court in which the farmer or creditor resides. Upon reversing the decision by the service, the court shall order that the service issue the mediation release.

86 Acts, ch 1214, §24; 89 Acts, ch 108, §4; 90 Acts, ch 1143, §11, 12; 98 Acts, ch 1122, §1

654A.12 Extension of deadlines.

Upon petition by the borrower and all known creditors, the farm mediation service may, for good cause, extend a deadline imposed by section 654A.8 or section 654A.10 for up to thirty days.

86 Acts, ch 1214, §25

654A.13 Confidentiality.
If mediation is conducted pursuant to this chapter, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.
86 Acts, ch 1214, §26; 89 Acts, ch 108, §5; 90 Acts, ch 1143, §13, 14; 98 Acts, ch 1062, §11

654A.14 Rules and forms. Repealed by 90 Acts, ch 1143, § 30. See § 13.15.

654A.15 Limitation on liability — immunity from special actions. Repealed by 90 Acts, ch 1143, § 30. See § 13.16.

654A.16 Wetland designation.
The farm mediation service shall provide for mediation between the department of natural resources and a landowner affected by the preliminary wetland designation provided in section 456B.12. The department shall cease actions relating to inventorying or designating affected land until a mediation release is issued by the farm mediation service. The mediation process shall be conducted according to rules adopted by the attorney general after consultation with the farm mediation service. The rules shall to the extent practical be based on mediation provided under this chapter for borrowers and lenders.
90 Acts, ch 1199, §9

654A.17 Repeal of chapter. Repealed by 94 Acts, ch 1106, § 1.

CHAPTER 654B

FARM MEDIATION — CARE AND FEEDING CONTRACTS — NUISANCES

Legislative findings; 90 Acts, ch 1143, §1

654B.1 Definitions.
654B.2 Voluntary mediation proceedings.
654B.3 Mandatory mediation proceedings.
654B.4 Initial mediation meeting.
654B.5 Duties of the mediator — training program.
654B.6 Reserved.
654B.7 Mediation period.
654B.8 Mediation release.
654B.9 Extension of deadlines.
654B.10 Judicial review.
654B.11 Effect of mediation.
654B.12 Repeal of chapter. Repealed by 94 Acts, ch 1106, §1.

654B.1 Definitions.
1. *"Care and feeding contract"* means an agreement, either oral or written, between a farm resident and the owner of livestock, under which the farm resident agrees to act as a feeder by promising to care for and feed the livestock on the farm resident's premises.
2. *"Dispute"* means a controversy between a person who is a farm resident and another person, which arises from a claim eligible to be resolved in a civil proceeding in law or equity, if the claim relates to either of the following:
a. The performance of either person under a care and feeding contract, if both persons are parties to the contract.
b. An action of one person which is alleged to be a nuisance interfering with the enjoyment of the other person.
3. *"Farmland"* means agricultural land that is principally used for farming as defined in section 9H.1.
4. *"Farm mediation service"* means the organization selected pursuant to section 13.13.
5. *"Farm resident"* means a person holding an interest in farmland, in fee, under a real estate contract, or under a lease, if the person manages farming operations on the land. A farm resident includes a natural person, or any corporation, trust, or limited partnership as defined in section 9H.1.
6. *"Mediation release"* means an agreement or statement signed by all parties or by less than all the parties and the mediator pursuant to section 654B.8.
7. *"Nuisance"* means an action injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, including but not limited to nuisances defined in section 657.2, subsections 1 through 5, and 7.
8. *"Other party"* means any person having a dispute with a farm resident.
9. *"Participate"* or *"participation"* means attending a mediation meeting, and having knowledge about and discussing issues concerning a

subject relating to a dispute.
90 Acts, ch 1143, §16

654B.2 Voluntary mediation proceedings.
A farm resident or other party may request mediation of a dispute by applying to the farm mediation service. The farm mediation service shall make voluntary mediation application forms available. The farm mediation service shall evaluate each request and may direct a mediator to meet with the farm resident and other party to assist in mediation.
90 Acts, ch 1143, §17

654B.3 Mandatory mediation proceedings.
1. *a.* A person who is a farm resident, or other party, desiring to initiate a civil proceeding to resolve a dispute, shall file a request for mediation with the farm mediation service. The person shall not begin the proceeding until the person receives a mediation release or until the court determines after notice and hearing that one of the following applies:
(1) The time delay required for the mediation would cause the person to suffer irreparable harm.
(2) The dispute involves a claim which has been brought as a class action.
b. The requirements of paragraph *"a"* are jurisdictional prerequisites to a person filing a civil action that initiates a civil proceeding to resolve a dispute subject to this chapter.
2. Upon receipt of the request for mediation, the farm mediation service shall conduct an initial consultation with each party to the dispute privately and without charge. Mediation may be waived after the initial consultation, if the parties agree.
3. Unless mediation is waived by the parties to the dispute, the parties shall file with the farm mediation service information required by the service to conduct mediation.
90 Acts, ch 1143, §18; 2000 Acts, ch 1129, §2

654B.4 Initial mediation meeting.
1. Unless both parties to the dispute waive mediation, within twenty-one days after receiving a mediation request, the farm mediation service shall send a mediation meeting notice to all parties to the dispute setting a time and place for an initial mediation meeting between the parties and a mediator directed by the farm mediation service to assist in mediation. An initial mediation meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.
2. If a person receives a mediation meeting notice under this section, the person shall not continue civil proceedings based on a claim relating to a dispute subject to this chapter, unless the court determines after notice and hearing that one of the following applies:
a. The time delay required for the mediation would cause the person to suffer irreparable harm.
b. The dispute involves a claim which has been brought as a class action.
3. At the meeting, a party participating in mediation may be accompanied by counsel or a consultant to assist the party in mediation.
90 Acts, ch 1143, §19; 98 Acts, ch 1122, §2

654B.5 Duties of the mediator — training program.
1. The farm mediation service, with the assistance of knowledgeable persons, shall provide a program to train mediators to assist in the mediation of nuisance disputes.
2. At the initial mediation meeting and subsequent meetings, the mediator shall:
a. Listen to all involved parties.
b. Attempt to mediate between all involved parties.
c. Encourage compromise and workable solutions.
d. Advise, counsel, and assist the parties in attempting to arrive at an agreement for the future conduct of relations among them.
90 Acts, ch 1143, §20

654B.6 Reserved.

654B.7 Mediation period.
The mediator may call mediation meetings during the mediation period, which is up to forty-two days after the farm mediation service received the mediation request. However, if all parties consent, mediation may continue after the end of the mediation period.
90 Acts, ch 1143, §21

654B.8 Mediation release.
1. If an agreement is reached between all parties, the mediator shall draft a written mediation agreement, have it signed by the parties, and submit the agreement to the farm mediation service.
2. *a.* The mediator shall issue a mediation release unless the other party desiring to initiate a civil proceeding to resolve the dispute fails to personally attend and participate in all mediation meetings. The mediator shall issue a mediation release if the farm resident waives or fails to personally attend and participate in all mediation meetings, regardless of participation by the other party. However, if the other party or the farm resident is not a natural person, the other party or farm resident must be represented by a natural person who is an officer, director, employee, or partner of the other party or farm resident. If a person acts in a fiduciary capacity for the other party or farm resident, the fiduciary may represent the other party or farm resident. If the other party or farm resident or eligible representative is

not able to attend and participate as required in this paragraph due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the other party or farm resident must be represented by another natural person. Any representative of the other party or the farm resident must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. This section does not require a party to reach an agreement. This section does not require a person to change a position, alter an activity which is a subject of the dispute, or restructure a contract in order to receive a mediation release.

b. The mediator shall promptly notify a party by certified mail of a denial to issue a mediation release and the reasons for the denial. The notice shall state that the party has seven days from the date that the notice is delivered to appeal the mediator's decision, pursuant to procedures adopted by the service. After a final decision by the farm mediation service, the party may seek an action for judicial review pursuant to section 654B.10.

3. The parties to the mediation agreement may enforce the mediation agreement as a legal contract. The agreement constitutes a mediation release.

4. If the parties waive mediation, or if a mediation agreement is not reached, the parties may sign a statement prepared by the mediator that mediation was waived or that the parties did not reach an agreement. If any party does not sign the statement, the mediator shall sign the statement. The statement constitutes a mediation release.

90 Acts, ch 1143, §22; 90 Acts, ch 1199, §10; 98 Acts, ch 1122, §3

654B.9 Extension of deadlines.

Upon petition by all parties, the farm mediation service may, for good cause, extend a deadline imposed by section 654B.4 or section 654B.7 for up to thirty days.

90 Acts, ch 1143, §23

654B.10 Judicial review.

An action for judicial review shall be brought in equity, and the action shall be limited to whether, based on clear and convincing evidence, the decision by the administrative head of the mediation service is an abuse of discretion. The action may be brought in either the district court of Polk county or in the district court in which the affected farm resident resides. Upon reversing the decision by the service, the court shall order that the service issue a mediation release.

90 Acts, ch 1143, §24

654B.11 Effect of mediation.

An interest in property, or rights and obligations under a contract are not affected by the failure of a person to obtain a mediation release regardless of its validity.

Time periods relating to a claim, including applicable statutes of limitations, shall be suspended upon filing a mediation request. Time periods affecting a claim in a civil proceeding shall be suspended upon filing a mediation request. The suspension shall terminate upon signing a mediation release.

90 Acts, ch 1143, §25

654B.12 Repeal of chapter. Repealed by 94 Acts, ch 1106, § 1.

CHAPTER 654C

FARM MEDIATION — ANIMAL FEEDING OPERATION STRUCTURES

654C.1 Definitions.
654C.2 Mediation proceedings.
654C.3 Duties of the mediator.
654C.4 Mediation period.
654C.5 Mediation agreement.
654C.6 Extension of deadlines.
654C.7 Effect of mediation.

654C.1 Definitions.

As used in this chapter, unless otherwise required:

1. *"Animal feeding operation structure"* means the same as defined in section 459.102.

2. *"Dispute"* means a controversy between an owner and a neighbor, which arises from negotiations between the parties to establish an animal feeding operation structure within the separation distance.

3. *"Farm mediation service"* means the organization selected pursuant to section 13.13.

4. *"Neighbor"* means a person benefiting from a separation distance required pursuant to section

459.202 or 459.204, including a person owning a residence other than the owner of the animal feeding operation, a commercial enterprise, bona fide religious institution, educational institution, or a city, authorized to execute a waiver.

5. *"Owner"* means the owner of an animal feeding operation, as defined in section 459.102, which utilizes an animal feeding operation structure.

6. *"Participate"* or *"participation"* means attending a mediation meeting, and having knowledge about and discussing issues concerning a subject relating to a dispute.

7. *"Waiver"* means a waiver executed between an owner and a neighbor as provided in section 459.205.

95 Acts, ch 195, §27

654C.2 Mediation proceedings.

1. A person who is an owner or a neighbor may file a request for mediation with the farm mediation service. Upon receipt of the request for mediation, the farm mediation service shall conduct an initial consultation with each party to the dispute privately and without charge. Mediation shall be canceled after the initial consultation, unless both parties agree to proceed.

2. Both parties to the dispute shall file with the farm mediation service information required by the service to conduct mediation.

3. Unless mediation is canceled, within twenty-one days after receiving a mediation request, the farm mediation service shall send a mediation meeting notice to all parties to the dispute setting a time and place for an initial mediation meeting between the parties and a mediator directed by the farm mediation service to assist in mediation. An initial mediation meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.

95 Acts, ch 195, §28

654C.3 Duties of the mediator.

At the initial mediation meeting and subsequent meetings, the mediator shall:

1. Listen to all involved parties.

2. Attempt to mediate between all involved parties.

3. Encourage compromise and workable solutions.

4. Advise, counsel, and assist the parties in attempting to arrive at an agreement for the future conduct of relations among themselves.

95 Acts, ch 195, §29

654C.4 Mediation period.

The mediator may call mediation meetings during the mediation period, which is up to forty-two days after the farm mediation service received the mediation request. However, if all parties consent, mediation may continue after the end of the mediation period.

95 Acts, ch 195, §30

654C.5 Mediation agreement.

1. If an agreement is reached between all parties, the mediator shall draft a written mediation agreement, which shall be signed by the parties. The mediation agreement shall provide for a waiver which the mediator shall file in the office of the recorder of deeds of the county in which the benefited land is located, as provided in section 459.205. The mediator shall forward a mediation agreement to the farm mediation service.

2. The parties agreeing to mediation shall personally attend and participate in all mediation meetings. However, if a party is not a natural person, the party must be represented by a natural person who is an officer, director, employee, or partner of the party. If a person acts in a fiduciary capacity for a party, the fiduciary may represent the party. If the party or an eligible representative is not able to attend and participate as required in this subsection due to physical infirmity, mental infirmity, or other exigent circumstances determined reasonable by the farm mediation service, the party must be represented by another natural person. Any representative of a party must be authorized to sign instruments provided by this chapter, including a mediation agreement or a statement prepared by the mediator that mediation was waived. This section does not require a party to reach an agreement. This section does not require a person to change a position, alter an activity which is a subject of the dispute, alter an application for a permit for construction of an animal feeding operation, or restructure a contract.

3. The parties to the mediation agreement may enforce the mediation agreement as a legal contract.

4. If the parties do not agree to proceed with mediation, or if a mediation agreement is not reached, the parties may sign a statement prepared by the mediator that mediation proceedings were not conducted or concluded or that the parties did not reach an agreement.

95 Acts, ch 195, §31; 98 Acts, ch 1122, §4

654C.6 Extension of deadlines.

Upon petition by all parties, the farm mediation service may, for good cause, extend a deadline imposed by section 654C.2 or 654C.4 for up to thirty days.

95 Acts, ch 195, §32

654C.7 Effect of mediation.

An interest in property or rights and obligations under a contract are not affected by the failure of a person to obtain a mediation agreement.

95 Acts, ch 195, §33

CHAPTER 655

SATISFACTION OF MORTGAGES

655.1 Written instrument acknowledging satisfaction.
655.2 Penalty — attorney fees. Repealed by 99 Acts, ch 54, §3.
655.3 Penalty for failure to discharge.
655.4 Entry of foreclosure.
655.5 Instrument of satisfaction.

655.1 Written instrument acknowledging satisfaction.

When the amount due on a mortgage is paid off, the mortgagee, the mortgagee's personal representative or assignee, or those legally acting for the mortgagee, and in case of payment of a school fund mortgage the county auditor, must acknowledge satisfaction thereof by execution of an instrument in writing, referring to the mortgage, and duly acknowledged and recorded.

[C51, §2093; R60, §3670; C73, §3327; C97, §4295; C24, 27, 31, 35, 39, §**12384;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §655.1]

Duty of recorder, §558.45

655.2 Penalty — attorney fees. Repealed by 99 Acts, ch 54, § 3.

655.3 Penalty for failure to discharge.

If a mortgagee, or a mortgagee's personal representative or assignee, upon full performance of the conditions of the mortgage, fails to discharge such mortgage within thirty days after a request for discharge, the mortgagee is liable to the mortgagor and the mortgagor's heirs or assigns, for all actual damages caused by such failure, including reasonable attorney fees. A claim for such damages may be asserted in an action for discharge of the mortgage. If the defendant is not a resident of this state, such action may be maintained upon the expiration of thirty days after the conditions of the mortgage have been performed, without such previous request or tender.

99 Acts, ch 54, §2

655.4 Entry of foreclosure.

When a judgment of foreclosure is entered in any court, the clerk shall record with the recorder an instrument in writing referring to the mortgage and duly acknowledging that the mortgage was foreclosed and giving the date of the decree. The fee for recording and indexing an instrument shall be as provided in section 331.604.

[C73, §3328; C97, §4296; C24, 27, 31, 35, 39, §**12387;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §655.4]

88 Acts, ch 1040, §1; 90 Acts, ch 1081, §5

655.5 Instrument of satisfaction.

When the judgment is fully paid and satisfied upon the judgment docket of the court, the clerk shall record with the recorder an instrument in writing, referring to the mortgage and duly acknowledging a satisfaction of the mortgage. The fee for recording and indexing an instrument shall be as provided in section 331.604.

[C73, §3328; C97, §4296; C24, 27, 31, 35, 39, §**12388;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §655.5]

85 Acts, ch 159, §11; 90 Acts, ch 1081, §6

CHAPTER 655A

NONJUDICIAL FORECLOSURE OF NONAGRICULTURAL MORTGAGES

655A.1 Title.
655A.2 Conditions prescribed.
655A.3 Notice.
655A.4 Service.
655A.5 Compliance with notice.
655A.6 Rejection of notice.
655A.7 Proof and record of service.
655A.8 Effect of foreclosure.
655A.9 Application of chapter.

655A.1 Title.

This chapter shall be known as the *"Nonjudicial Foreclosure of Nonagricultural Mortgages"*.

87 Acts, ch 142, §17

655A.2 Conditions prescribed.

Except as provided in section 655A.9, a mortgage may be foreclosed, at the option of the mortgagee, as provided in this chapter.

87 Acts, ch 142, §18

655A.3 Notice.

1. The nonjudicial foreclosure is initiated by the mortgagee by serving on the mortgagor a written notice which shall:

a. Reasonably identify by a document reference number the mortgage and accurately describe the real estate covered.

b. Specify the terms of the mortgage with which the mortgagor has not complied. The terms shall not include any obligation arising from acceleration of the indebtedness secured by the mortgage.

c. State that, unless within thirty days after the completed service of the notice the mortgagor performs the terms in default or files with the recorder of the county where the mortgaged property is located a rejection of the notice pursuant to section 655A.6 and serves a copy of the rejection upon the mortgagee, the mortgage will be foreclosed.

The notice shall contain the following in capital letters of the same type or print size as the rest of the notice:

WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER CURE THE DEFAULTS DESCRIBED IN THIS NOTICE OR FILE WITH THE RECORDER OF THE COUNTY WHERE THE MORTGAGED PROPERTY IS LOCATED A REJECTION OF THIS NOTICE AND SERVE A COPY OF YOUR REJECTION ON THE MORTGAGEE IN THE MANNER PROVIDED BY THE RULES OF CIVIL PROCEDURE FOR SERVICE OF ORIGINAL NOTICES. IF YOU WISH TO REJECT THIS NOTICE, YOU SHOULD CONSULT AN ATTORNEY AS TO THE PROPER MANNER TO MAKE THE REJECTION.

IF YOU DO NOT TAKE EITHER OF THE ACTIONS DESCRIBED ABOVE WITHIN THE THIRTY-DAY PERIOD, THE FORECLOSURE WILL BE COMPLETE AND YOU WILL LOSE TITLE TO THE MORTGAGED PROPERTY. AFTER THE FORECLOSURE IS COMPLETE THE DEBT SECURED BY THE MORTGAGED PROPERTY WILL BE EXTINGUISHED.

2. The mortgagee shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the mortgagor, and on all junior lienholders of record.

3. As used in this chapter, *"mortgagee"* and *"mortgagor"* include a successor in interest.

87 Acts, ch 142, §19; 2001 Acts, ch 44, §30

655A.4 Service.

Notice or rejection of notice under this chapter shall be served as provided in the rules of civil procedure for service of original notice.

87 Acts, ch 142, §20

Notice; R.C.P. 1.302 et seq.

655A.5 Compliance with notice.

If the mortgagor or a junior lienholder performs, within thirty days of completed service of notice, the breached terms specified in the notice, then the right to foreclose for the breach is terminated.

87 Acts, ch 142, §21

655A.6 Rejection of notice.

If either the mortgagor, or successor in interest of record including a contract purchaser, within thirty days of service of the notice pursuant to section 655A.3, files with the recorder of the county where the mortgaged property is located, a rejection of the notice reasonably identifying by a document reference number the notice which is rejected together with proofs of service required under section 655A.4 that the rejection has been served on the mortgagee, the notice served upon the mortgagor pursuant to section 655A.3 is of no force or effect.

87 Acts, ch 142, §22; 2001 Acts, ch 44, §31

655A.7 Proof and record of service.

If the terms and conditions as to which there is default are not performed within the thirty days, the party serving the notice or causing it to be served shall file for record in the office of the county recorder a copy of the notice with proofs of service required under section 655A.4 attached or endorsed on it and, in case of service by publication, a personal affidavit that personal service could not be made within this state, and when those documents are filed and recorded, the record is constructive notice to all parties of the due foreclosure of the mortgage.

87 Acts, ch 142, §23

655A.8 Effect of foreclosure.

Upon completion of the filings required under section 655A.7 and if no rejection of notice has been filed pursuant to section 655A.6, then without further act or deed:

1. The mortgagee acquires and succeeds to all interest of the mortgagor in the real estate.

2. All liens which are inferior to the lien of the foreclosed mortgage are extinguished.

3. The indebtedness secured by the foreclosed mortgage is extinguished.

87 Acts, ch 142, §24

655A.9 Application of chapter.

This chapter does not apply to real estate used for an agricultural purpose as defined in section 535.13.

87 Acts, ch 142, §25

CHAPTER 656

FORFEITURE OF REAL ESTATE CONTRACTS

656.1 Conditions prescribed.
656.2 Notice.
656.3 Service.
656.4 Compliance with notice.
656.5 Proof and record of service.
656.6 Scope of chapter.
656.7 Attorney fees.
656.8 Mediation notice.
656.9 Defect in forfeiture proceedings — limitation of actions.

656.1 Conditions prescribed.

A contract which provides for the sale of real estate located in this state, and for the forfeiture of the vendee's rights in such contract in case the vendee fails, in specified ways, to comply with said contract, shall, nevertheless, not be forfeited or canceled except as provided in this chapter.

[C97, §4299; S13, §4299; C24, 27, 31, 35, 39, §**12389;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §656.1]

656.2 Notice.

1. The forfeiture shall be initiated by the vendor by serving on the vendee a written notice which shall:

a. Reasonably identify the contract by a document reference number and accurately describe the real estate covered.

b. Specify the terms of the contract with which the vendee has not complied.

c. State that unless, within thirty days after the completed service of the notice, the vendee performs the terms in default and pays the reasonable costs of serving the notice, the contract will be forfeited.

d. Specify the amount of attorney fees claimed by the vendor pursuant to section 656.7 and state that payment of the attorney fees is not required to comply with the notice and prevent forfeiture.

2. The vendor shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the vendee; on all the vendee's mortgagees of record; and on a person who asserts a claim against the vendee's interest, except a government or governmental subdivision or agency holding a lien for real estate taxes or assessments, if the person has done both of the following:

a. Requested, on a form which substantially complies with the following form, that notice of forfeiture be served on the person at an address specified in the request.

REQUEST FOR NOTICE PURSUANT TO IOWA CODE SECTION 656.2, SUBSECTION 2

The undersigned requests service of notice under Iowa Code sections 656.2 and 656.3 to forfeit the contract recorded on the ..... day of ..... (month), ... (year), in book or roll ....., image or page ....., office of the ..... county recorder, ... county, Iowa, wherein ..... is/are seller(s) and ..... is/are buyer(s), for sale of real estate legally described as: [insert complete legal description]

.....
NAME
.....
.....
.....
ADDRESS

CAUTION: Your name and address must be correct. If not correct, you will not receive notice requested because notice need only be served on you at the above address. If your address changes, a new request for notice must be filed.

The request for notice shall be indexed pursuant to section 558.50.*

b. Filed the request form for record in the office of the county recorder after acquisition of the vendee's interest but prior to the date of recording of the proof and record of service of notice of forfeiture required by section 656.5 and paid a fee of five dollars.

The request for notice is valid for a period of five years from the date of filing with the county re-

corder. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection. The request for notice may be amended at any time by the procedure specified in this subsection.

The vendee's mortgagees of record include all assignees of record for collateral purposes.

3. As used in this section, the terms *"vendor"* and *"vendee"* include a successor in interest but the term *"vendee"* excludes a vendee who assigned or conveyed of record all of the vendee's interest in the real estate.

[C97, §4299; S13, §4299; C24, 27, 31, 35, 39, §**12390;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §656.2]

84 Acts, ch 1203, §2; 86 Acts, ch 1237, §41; 87 Acts, ch 166, §1; 91 Acts, ch 161, §1; 2000 Acts, ch 1058, §56; 2001 Acts, ch 44, §32

*Section 558.50 repealed by 2001 Acts, ch 44, §33; corrective legislation is pending

656.3 Service.

Said notice may be served personally or by publication, on the same conditions, and in the same manner as is provided for the service of original notices, except that when the notice is served by publication no affidavit therefor shall be required before publication. Service by publication shall be deemed complete on the day of the last publication.

[C97, §4299; S13, §4299; C24, 27, 31, 35, 39, §**12391;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §656.3]

Manner and publication of service, R.C.P. 1.302 – 1.315

656.4 Compliance with notice.

If the vendee or a mortgagee of the real estate performs, within thirty days of completed service of notice, the breached terms specified in the notice and pays the vendor the reasonable cost of serving the notice, then the right to forfeit for the breach is terminated. The payment of attorney fees pursuant to section 656.7 is not necessary to comply with the notice and prevent forfeiture.

[C97, §4300; S13, §4300; C24, 27, 31, 35, 39, §**12392;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §656.4]

84 Acts, ch 1203, §3

656.5 Proof and record of service.

If the terms and conditions as to which there is default are not performed within said thirty days, the party serving said notice or causing the same to be served, may file for record in the office of the county recorder a copy of the notice aforesaid with proofs of service attached or endorsed thereon (and, in case of service by publication, a personal affidavit that personal service could not be made within this state), and when so filed and recorded, the said record shall be constructive notice to all parties of the due forfeiture and cancellation of said contract.

[S13, §4300; C24, 27, 31, 35, 39, §**12393;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §656.5]

656.6 Scope of chapter.

This chapter shall be operative in all cases where the intention of the parties, as gathered from the contract and surrounding circumstances, is to sell or to agree to sell an interest in real estate, any contract or agreement of the parties to the contrary notwithstanding.

[C97, §4301; C24, 27, 31, 35, 39, §**12394;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §656.6]

656.7 Attorney fees.

1. The vendee is liable to the vendor for reasonable attorney fees actually incurred by the vendor necessary for the forfeiture of a contract governed by this chapter. The demand for attorney fees must be stated in the notice served. The maximum liability under this section is fifty dollars. *"Attorney fees"*, as used in this chapter, is limited to reasonable fees for services requiring a lawyer. *"Attorney fees"* does not include clerical services even if the services are performed in a lawyer's office.

2. A vendor seeking payment of attorney fees, when the vendee fails or refuses to pay them, may file a small claims action for enforcement.

84 Acts, ch 1203, §1

656.8 Mediation notice.

Notwithstanding sections 656.1 through 656.5, a person shall not initiate proceedings under this chapter to forfeit a real estate contract for the purchase of agricultural property, as defined in section 654A.1, which is subject to an outstanding obligation on the contract of twenty thousand dollars or more unless the person received a mediation release under section 654A.11, or unless the court determines after notice and hearing that the time delay required for the mediation would cause the person to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release, regardless of its validity.

86 Acts, ch 1214, §28; 87 Acts, ch 73, §3

656.9 Defect in forfeiture proceedings — limitation of actions.

An action shall not be commenced after July 1, 1992, which asserts a claim against real estate previously subject to a forfeiture proceeding, based upon a defect in the forfeiture proceeding, in which the proof and record of service of notice of forfeiture required by section 656.5 has been filed for record in the office of the county recorder prior to July 1, 1991.

91 Acts, ch 161, §2

CHAPTER 657

NUISANCES

Anhydrous ammonia plants, see §200.21
Farm operations, see §352.11

657.1 Nuisance — what constitutes — action to abate.
657.2 What deemed nuisances.
657.3 Penalty — abatement.
657.4 Process.
657.5 Repealed by 72 Acts, ch 1124, §282.
657.6 Stay of execution.
657.7 Expenses — how collected.
657.8 Feedlots.
657.9 Shooting ranges.
657.10 Mediation notice.
657.11 Animal feeding operations.

657.1 Nuisance — what constitutes — action to abate.

Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to unreasonably interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof.

[C51, §2131 – 2133; R60, §3713 – 3715; C73, §3331; C97, §4302; C24, 27, 31, 35, 39, §**12395;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.1]

95 Acts, ch 195, §34

657.2 What deemed nuisances.

The following are nuisances:

1. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.

2. The causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.

3. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.

4. The corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

5. The obstructing or encumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.

6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, places resorted to by persons participating in criminal gang activity prohibited by chapter 723A, or places resorted to by persons using controlled substances, as defined in section 124.101, subsection 5, in violation of law, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others.

7. Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or street railway track as to render dangerous the use thereof.

8. Any object or structure hereafter erected within one thousand feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

9. The depositing or storing of flammable junk, such as old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles within the fire limits of a city, unless in a building of fireproof construction, is a public nuisance.

10. The emission of dense smoke, noxious fumes, or fly ash in cities is a nuisance and cities may provide the necessary rules for inspection, regulation and control.

11. Dense growth of all weeds, vines, brush, or other vegetation in any city so as to constitute a health, safety, or fire hazard is a public nuisance.

12. Trees infected with Dutch elm disease in cities.

[C51, §2759, 2761; R60, §4409, 4411; C73, §4089, 4091; C97, §5078, 5080; S13, §713-a, -b, 1056-a19; C24, 27, 31, 35, 39, §**5740, 5741, 6567, 6743, 12396;** C46, 50, §368.3, 368.4, 416.92, 420.54, 657.2; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.2]

92 Acts, ch 1163, §116; 92 Acts, ch 1231, §56; 95 Acts, ch 195, §35; 98 Acts, ch 1072, §1

See also abandoned or unsafe buildings, chapter 657A; airport hazards, chapter 329; bee colonies, §160.7; billboards or advertising along highways, §306B.5, 306C.19, 319.10; construction in floodways and floodplains, §455B.275; crop pests and diseases, §177A.5; dams or pumping stations,

§481A.14; farm operations, §352.11; highway obstructions, §319.8; levees and drainage ditches, §468.149, 468.150; liquor law violations, §123.60; livestock care and feeding contracts, §654B.1; junkyards, §306C.6; nongame species, §481A.42; property used in hunting and fishing violations, §483A.32; prostitution and gambling, chapter 99; restricted residence district violations, §414.24; slaughterhouse violations, §172A.10; unauthorized signs on highways, §321.259

657.3 Penalty — abatement.

Whoever is convicted of erecting, causing, or continuing a public or common nuisance as provided in this chapter, or at common law when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be guilty of an aggravated misdemeanor and the court may order such nuisance abated, and issue a warrant as hereinafter provided.

[C51, §2762; R60, §4412; C73, §4092; C97, §5081; S13, §5081; C24, 27, 31, 35, 39, §**12397;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.3]

657.4 Process.

When upon indictment, complaint, or civil action any person is found guilty of erecting, causing, or continuing a nuisance, the court before whom such finding is had may, in addition to the fine imposed, if any, or to the judgment for damages or cost for which a separate execution may issue, order that such nuisance be abated or removed at the expense of the defendant, and, after inquiry into and estimating as nearly as may be the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor.

[C51, §2763; R60, §4413; C73, §4093; C97, §5082; C24, 27, 31, 35, 39, §**12398;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.4]

657.5 Repealed by 72 Acts, ch 1124, § 282.

657.6 Stay of execution.

Instead of issuing such warrant, the court may order the same to be stayed upon motion of the defendant, and upon the defendant's entering into an undertaking to the state, in such sum and with such surety as the court may direct, conditioned either that the defendant will discontinue said nuisance, or that, within a time limited by the court, and not exceeding six months, the defendant will cause the same to be abated and removed, as either is directed by the court; and, upon the defendant's failure to perform the condition of the defendant's undertaking, the same shall be forfeited, and the court, upon being satisfied of such default, may order such warrant forthwith to issue, and action may be brought on such undertaking.

[C51, §2765; R60, §4415; C73, §4095; C97, §5084; C24, 27, 31, 35, 39, §**12400;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.6]

657.7 Expenses — how collected.

The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant, or to the owner of the property levied upon; and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof.

[C51, §2766; R60, §4416; C73, §4096; C97, §5085; C24, 27, 31, 35, 39, §**12401;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.7]

657.8 Feedlots.

This chapter shall apply to the operation of a livestock feedlot, only as provided in chapter 172D.

[C77, 79, 81, §657.8]

657.9 Shooting ranges.

Before a person improves property acquired to establish, use, and maintain a shooting range by the erection of buildings, breastworks, ramparts, or other works or before a person substantially changes the existing use of a shooting range, the person shall obtain approval of the county zoning commission or the city zoning commission, whichever is appropriate. The appropriate commission shall comply with section 335.8 or 414.6. In the event a county or city does not have a zoning commission, the county board of supervisors or the city council shall comply with section 335.6 or 414.5 before granting the approval.

A person who acquires title to or who owns real property adversely affected by the use of property with a permanently located and improved range shall not maintain a nuisance action against the person who owns the range to restrain, enjoin, or impede the use of the range where there has not been a substantial change in the nature of the use of the range. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

[82 Acts, ch 1193, §1]
84 Acts, ch 1067, §49

657.10 Mediation notice.

Notwithstanding this chapter, a person, required under chapter 654B to participate in mediation, shall not begin a proceeding subject to this chapter until the person receives a mediation release under section 654B.8, or until the court determines after notice and hearing that one of the following applies:

1. The time delay required for the mediation would cause the person to suffer irreparable harm.
2. The dispute involves a claim which should

be resolved as a class action.

90 Acts, ch 1143, §27

657.11 Animal feeding operations.

1. The purpose of this section is to protect animal agricultural producers who manage their operations according to state and federal requirements from the costs of defending nuisance suits, which negatively impact upon Iowa's competitive economic position and discourage persons from entering into animal agricultural production. This section is intended to promote the expansion of animal agriculture in this state by protecting persons engaged in the care and feeding of animals. The general assembly has balanced all competing interests and declares its intent to protect and preserve animal agricultural production operations.

2. An animal feeding operation, as defined in section 459.102, shall not be found to be a public or private nuisance under this chapter or under principles of common law, and the animal feeding operation shall not be found to interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action. However, this section shall not apply if the person bringing the action proves that an injury to the person or damage to the person's property is proximately caused by either of the following:

a. The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

b. Both of the following:

(1) The animal feeding operation unreasonably and for substantial periods of time interferes with the person's comfortable use and enjoyment of the person's life or property.

(2) The animal feeding operation failed to use existing prudent generally accepted management practices reasonable for the operation.

3. This section does not apply to a person during any period that the person is classified as a chronic violator under this subsection as to any confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. This section shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of this subsection, *"confinement feeding operation"* means an animal feeding operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

a. A person shall be classified as a chronic violator if the person has committed three or more violations as described in this subsection prior to, on, or after July 1, 1996. In addition, in relation to each violation, the person must have been subject to either of the following:

(1) The assessment of a civil penalty by the department or the commission in an amount equal to three thousand dollars or more.

(2) A court order or judgment for a legal action brought by the attorney general after referral by the department or commission.

Each violation must have occurred within five years prior to the date of the latest violation, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A violation occurs on the date the department issues an administrative order to the person assessing a civil penalty of three thousand dollars or more, or on the date the department notifies a person in writing that the department will recommend that the commission refer, or the commission refers the case to the attorney general for legal action, or the date of entry of the court order or judgment, whichever occurs first. A violation under this subsection shall not be counted if the civil penalty ultimately imposed is less than three thousand dollars, the department or commission does not refer the action to the attorney general, the attorney general does not take legal action, or a court order or judgment is not entered against the person. A person shall be removed from the classification of chronic violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years.

b. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. The violation must be a violation of a state statute, or a rule adopted by the department, which applies to a confinement feeding operation and any related animal feeding operation structure, including an anaerobic lagoon, earthen manure storage basin, formed manure storage structure, or egg washwater storage structure; or any related pollution control device or practice. The structure, device, or practice must be part of the confinement feeding operation. The violation must be one of the following:

(1) Constructing or operating a related animal feeding operation structure or installing or using a related pollution control device or practice, for which the person must obtain a permit, in violation of statute or rules adopted by the department, including the terms or conditions of the permit.

(2) Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for the related animal feeding operation structure, or the installation of the related pollution control device or practice, for which the person must obtain a construction permit from the department.

(3) Failing to obtain a permit or approval by

the department for a permit to construct or operate a confinement feeding operation or use a related animal feeding operation structure or pollution control device or practice, for which the person must obtain a permit from the department.

(4) Operating a confinement feeding operation, including a related animal feeding operation structure or pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

(5) Failing to submit a manure management plan as required, or operating a confinement feeding operation required to have a manure management plan without having submitted the manure management plan.

4. This section shall apply regardless of the established date of operation or expansion of the animal feeding operation. A defense against a cause of action provided in this section includes, but is not limited to, a defense for actions arising out of the care and feeding of animals; the handling or transportation of animals; the treatment or disposal of manure resulting from animals; the transportation and application of animal manure; and the creation of noise, odor, dust, or fumes arising from an animal feeding operation.

5. If a court determines that a claim is frivolous, a person who brings the claim as part of a losing cause of action against a person who may raise a defense under this section shall be liable to the person against whom the action was brought for all costs and expenses incurred in the defense of the action.

6. This section does not apply to an injury to a person or damages to property caused by the animal feeding operation before May 21, 1998.

95 Acts, ch 195, §36; 96 Acts, ch 1118, §1; 98 Acts, ch 1209, §38, 39, 53; 99 Acts, ch 114, §58, 59

CHAPTER 657A

ABANDONED OR UNSAFE BUILDINGS — ABATEMENT BY REHABILITATION

657A.1 Definitions.
657A.2 Petition.
657A.3 Interested persons — opportunity to abate public nuisance.
657A.4 Appointment of receiver.
657A.5 Determination of costs of abatement.
657A.6 Powers and duties of receiver.
657A.7 Priority of receiver's mortgage.
657A.8 Assessment of costs.
657A.9 Discharge of receiver.
657A.10 Compensation and liability of receiver.
657A.11 Jurisdiction — remedies.

657A.1 Definitions.

As used in this chapter, unless context requires otherwise:

1. *"Abandoned"* or *"abandonment"* means that a building has remained vacant and has been in violation of the housing code of the city in which the property is located or the housing code applicable in the county in which the property is located if outside the limits of a city for a period of six consecutive months.

2. *"Abate"* or *"abatement"* in connection with property means the removal or correction of hazardous conditions deemed to constitute a public nuisance or the making of improvements needed to effect a rehabilitation of the property consistent with maintaining safe and habitable conditions over the remaining useful life of the property. However, the closing or boarding up of a building or structure that is found to be a public nuisance is not an abatement of the nuisance.

3. *"Building"* means a building or structure located in a city or outside the limits of a city in a county, which is used or intended to be used for residential purposes, and includes a building or structure in which some floors may be used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and other floors are used, designed, or intended to be used for residential purposes.

4. *"Interested person"* means an owner, mortgagee, lienholder, or other person that possesses an interest of record or an interest otherwise provable in property that becomes subject to the jurisdiction of the court pursuant to this chapter, the city in which the property is located, the county in which the property is located if the property is located outside the limits of a city, and an applicant for the appointment as receiver pursuant to this chapter.

5. *"Neighboring landowner"* means an owner of property which is located within five hundred feet of property that becomes subject to the jurisdiction of the court pursuant to this chapter.

6. *"Owner"* includes a person who is purchasing property by land installment contract or under a duly executed purchase contract.

7. *"Public nuisance"* means a building that is a menace to the public health, welfare, or safety, or that is structurally unsafe, unsanitary, or not provided with adequate safe egress, or that constitutes a fire hazard, or is otherwise dangerous to human life, or that in relation to the existing use constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

85 Acts, ch 222, §1; 86 Acts, ch 1059, §1; 96 Acts, ch 1204, §27

657A.2 Petition.

1. A petition for abatement under this chapter may be filed in the district court of the county in which the property is located, by the city in which the property is located, by the county if the property is located outside the limits of a city, by a neighboring landowner, or by a duly organized nonprofit corporation which has as one of its goals the improvement of housing conditions in the county or city in which the property in question is located. Service on the owner shall be by personal service or by certified mail, or if service cannot be made by either method, by posting the notice in a conspicuous place on the building and by publication.

2. If a petition filed pursuant to this chapter alleges that a building is abandoned or is in a dangerous or unsafe condition, the city, county, if the property is located outside the limits of a city, neighboring landowner, or nonprofit corporation may apply for an injunction requiring the owner of the building to correct the condition or to eliminate the condition or violation. The court shall conduct a hearing at least twenty days after written notice of the application for an injunction and of the date and time of the hearing is served upon the owner of the building. Notice of the hearing shall be served in the manner provided in subsection 1.

3. If the court finds at the hearing that the building is abandoned or is in a dangerous or unsafe condition, the court shall issue an injunction requiring the owner to correct the condition or to eliminate the violation, or another order that the court considers necessary or appropriate to correct the condition or to eliminate the violation.

4. In a proceeding under this chapter, if the court makes the finding described in subsection 3 and additionally finds that the building in question is a public nuisance and that the owner of the building has been afforded reasonable opportunity to correct the dangerous or unsafe condition found or to eliminate the violation found but has refused or failed to do so, the judge shall cause notice of the findings to be served upon the owner, each mortgagee or other lienholder of record, and other known interested persons, and shall order the persons served to show cause why a receiver should not be appointed to perform work and to furnish material that reasonably may be required to abate the public nuisance. The notice shall be served in the manner provided in subsection 1.

5. In a proceeding under this chapter, if the court determines the building is not abandoned or is not in a dangerous or unsafe condition, the court shall dismiss the petition and may require the petitioner to pay the owner's reasonable attorney fees actually incurred.

6. For the purpose of abatement in connection with property in a city with a population of less than one hundred thousand a petition for abatement must include the allegation that a building is abandoned and is in a dangerous or unsafe condition.

85 Acts, ch 222, §2; 87 Acts, ch 113, §1, 2; 96 Acts, ch 1204, §28

657A.3 Interested persons — opportunity to abate public nuisance.

1. Before appointing a receiver to perform work or to furnish material to abate a public nuisance under this chapter, the court shall conduct a hearing at which the court shall offer mortgagees of record, lienholders of record, or other known interested persons in the order of priority of interest in title, the opportunity to undertake the work and to furnish the materials necessary to abate the public nuisance. The court shall require the person selected to demonstrate the ability to undertake promptly the work required and to post security for the performance of the work. All amounts expended by the person toward abating the public nuisance are a lien on the property if the expenditures were approved in advance by the judge and if the person desires the lien. The lien shall bear interest at the rate provided for judgments pursuant to section 535.3, and shall be payable upon terms approved by the judge. If a certified copy of the court order that approved the expenses and the terms of payment for the lien, and a description of the property in question are filed for record within thirty days of the date of issuance of the order in the office of the county recorder of the county in which the property is located, the lien has the same priority as the mortgage of a receiver as provided in section 657A.7.

2. If the court determines at the hearing conducted pursuant to subsection 1, that no interested person can undertake the work and furnish the materials required to abate the public nuisance, or if the court determines at any time after the hearing that an interested person who is undertaking corrective work pursuant to this section cannot or will not proceed, or has not proceeded with due diligence, the court may appoint a receiver to take possession and control of the property. The receiver shall be appointed in the manner provided in section 657A.4.

85 Acts, ch 222, §3

657A.4 Appointment of receiver.

After conducting a hearing pursuant to section

657A.3, the court may appoint a receiver to take possession and control of the property in question. A person shall not be appointed as a receiver unless the person has first provided the court with a viable financial and construction plan for the rehabilitation of the property in question and has demonstrated the capacity and expertise to perform the required work in a satisfactory manner. The appointed receiver may be a financial institution that possesses an interest of record in the property, a nonprofit corporation that is duly organized and exists for the primary purpose of improving housing conditions in the county or city in which the property in question is located, or any person deemed qualified by the court. No part of the net earnings of a nonprofit corporation serving as a receiver under this section shall benefit a private shareholder or individual. Membership on the board of trustees of a nonprofit corporation does not constitute the holding of a public office or employment and is not an interest, either direct or indirect, in a contract or expenditure of money by a city or county. No member of a board of trustees of a nonprofit corporation appointed as receiver is disqualified from holding public office or employment, nor is a member required to forfeit public office or employment by reason of the membership on the board of trustees.

85 Acts, ch 222, §4; 96 Acts, ch 1204, §29

657A.5 Determination of costs of abatement.

1. Prior to ordering work or the furnishing of materials to abate a public nuisance under this chapter, the court shall make all of the following findings:

a. The estimated cost of the labor, materials, and financing required to abate the public nuisance.

b. The estimated income and expenses of the property after the furnishing of the materials and the completion of the repairs and improvements.

c. The need for and terms of financing for the performance of the work and the furnishing of the materials.

d. If repair and rehabilitation of the property are not found to be feasible, the cost of demolition of the property or the portions of the property that constitute the public nuisance.

2. Upon the written request of all the known interested persons to have the property or portions of the property demolished, the court may order the demolition. However, demolition shall not be ordered unless the requesting persons have paid the costs of demolition, the costs of the receivership, and all notes and mortgages of the receivership.

85 Acts, ch 222, §5

657A.6 Powers and duties of receiver.

Before proceeding with the receiver's duties, a receiver appointed by the court shall post a bond in an amount designated by the court. The court may empower the receiver to do the following:

1. Take possession and control of the property, operate and manage the property, establish and collect rents and income, lease and rent the property, and evict tenants. An existing housing or building ordinance violation does not restrict the receiver's authority pursuant to this subsection.

2. Pay all expenses of operating and conserving the property, including but not limited to the cost of electricity, gas, water, sewerage, heating fuel, repairs and supplies, custodian services, taxes, assessments, and insurance premiums, and hire and pay reasonable compensation to a managing agent.

3. Pay prereceivership mortgages and other liens and installments of prereceivership mortgages and other liens.

4. Perform or enter into contracts for the performance of work and the furnishing of materials necessary to abate the public nuisance, and obtain financing for the abatement of the public nuisance.

5. Pursuant to court order, remove and dispose of personal property which is abandoned, stored, or otherwise located on the property, that creates a dangerous or unsafe condition or that constitutes a violation of housing or building regulations or ordinances.

6. Obtain mortgage insurance for a receiver's mortgage from an agency of the federal government.

7. Enter into agreements and take actions necessary to maintain and preserve the property and to comply with housing and building regulations and ordinances.

8. Give the custody of the property and the opportunity to abate the nuisance and operate the property to the owner or to a mortgagee or a lienholder of record.

9. Issue notes and secure the notes by mortgages bearing interest at the rate provided for judgments pursuant to section 535.3, and terms and conditions as approved by the court. When transferred by the receiver in return for valuable consideration in money, material, labor, or services, the notes issued by the receiver are freely transferable.

85 Acts, ch 222, §6

657A.7 Priority of receiver's mortgage.

1. If the receiver's mortgage is filed for record in the office of the county recorder of the county in which the property is located within sixty days of the issuance of a secured note, the receiver's mortgage is a first lien upon the property and is superior to claims of the receiver and to all prior or subsequent liens and encumbrances except taxes and assessments. Priority among the receiver's mortgages is determined by the order in which the mortgages are recorded.

2. The creation of a mortgage lien under this chapter prior to or superior to a mortgage of record at the time the receiver's mortgage lien was created does not disqualify a prior recorded mortgage as a legal investment.

85 Acts, ch 222, §7

657A.8 Assessment of costs.

The court may assess the costs and expenses set out in section 657A.6, subsection 2, and may approve receiver's fees to the extent that the fees are not covered by the income from the property.

85 Acts, ch 222, §8

657A.9 Discharge of receiver.

The receiver may be discharged at any time in the discretion of the court. The receiver shall be discharged when all of the following have occurred:

1. The public nuisance has been abated.
2. The costs of the receivership have been paid.
3. Either all the receiver's notes and mortgages issued pursuant to this chapter have been paid, or all the holders of the notes and mortgages request in writing that the receiver be discharged.

85 Acts, ch 222, §9

657A.10 Compensation and liability of receiver.

1. A receiver appointed under this chapter is entitled to receive fees and commissions in the same manner and to the same extent as receivers appointed in actions to foreclose mortgages.
2. The receiver appointed under this chapter is not civilly or criminally liable for actions pursuant to this chapter taken in good faith.

85 Acts, ch 222, §10; 86 Acts, ch 1238, §27

657A.11 Jurisdiction — remedies.

1. An action pursuant to this chapter is exclusively within the jurisdiction of district judges as provided in section 602.6202.
2. This chapter does not prevent a person from using other remedies or procedures to enforce building or housing ordinances or to correct or remove public nuisances.

85 Acts, ch 222, §11

CHAPTER 658

WASTE AND TRESPASS

658.1	Definitions.
658.1A	Treble damages.
658.2	Forfeiture and eviction.
658.3	Who deemed to have committed.
658.4	Treble damages for injury to trees.
658.5	Estate of remainder or reversion.
658.6	Action by heir.
658.7	Purchaser at execution sale.
658.8	Settlers on lands of state.
658.9	Holder of tax certificate.
658.10	Disposition of money.

658.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

Former §658.1 transferred to §658.1A

658.1A Treble damages.

If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commit waste thereon, that person is liable to pay three times the damages which have resulted from such waste, to the person who is entitled to sue therefor.

[C51, §2134; R60, §3716; C73, §3332; C97, §4303; C24, 27, 31, 35, 39, §**12402;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.1]

C2001, §658.1A

658.2 Forfeiture and eviction.

Judgment of forfeiture and eviction may be rendered against the defendant whenever the amount of damages so recovered is more than two-thirds the value of the interest such defendant has in the property injured, when the action is brought by the person entitled to the reversion.

[C51, §2135; R60, §3717; C73, §3333; C97, §4304; C24, 27, 31, 35, 39, §**12403;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.2]

658.3 Who deemed to have committed.

Any person whose duty it is to prevent waste, and who fails to use reasonable and ordinary care to avert the same, shall be held to have committed it.

[C51, §2136; R60, §3718; C73, §3334; C97, §4305; C24, 27, 31, 35, 39, §**12404;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.3]

658.4 Treble damages for injury to trees.

For willfully injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or city lot, or on the public grounds of any city, or any land held by the state for any purpose whatever, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property.

[C51, §2137; R60, §3719; C73, §3335; C97, §4306; C24, 27, 31, 35, 39, §**12405;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.4]

658.5 Estate of remainder or reversion.

The owner of an estate in remainder or reversion may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years.

[C51, §2139; R60, §3721; C73, §3337; C97, §4307; C24, 27, 31, 35, 39, §**12406;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.5]

658.6 Action by heir.

An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of the heir's ancestor as well as in the heir's own time, unless barred by the statute of limitations.

[C51, §2140; R60, §3722; C73, §3338; C97, §4308; C24, 27, 31, 35, 39, §**12407;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.6]

658.7 Purchaser at execution sale.

The purchaser of lands or tenements at execution sale may have and maintain an action against any person for either of the causes above mentioned, occurring or existing after such purchase; but this provision shall not be construed to forbid the person occupying the lands in the meantime from using them in the ordinary course of husbandry, or taking timber with which to make suitable repairs thereon, unless the timber so taken shall be of higher grade than required, in which case the person shall be held guilty of waste and liable accordingly.

[C51, §2141 – 2143; R60, §3723 – 3725; C73, §3339 – 3341; C97, §4309; C24, 27, 31, 35, 39, §**12408;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.7]

Right of purchaser, §626.101

658.8 Settlers on lands of state.

Any person settled upon and occupying any portion of the public lands held by the state is not liable as a trespasser for improving or cultivating it in the ordinary course of husbandry, nor for taking and using timber or other materials necessary and proper to enable the person to do so, provided the timber and other materials are taken from land properly constituting a part of the *"claim"* or tract of land so settled upon and occupied by the person.

[C51, §2144; R60, §3726; C73, §3342; C97, §4310; C24, 27, 31, 35, 39, §**12409;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.8]

658.9 Holder of tax certificate.

The owner of a treasurer's certificate of purchase of land sold for taxes may recover treble damages of any person willfully committing waste or trespass thereon.

[C73, §3343; C97, §4311; C24, 27, 31, 35, 39, §**12410;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.9]

658.10 Disposition of money.

All money recovered in an action brought under section 658.9 shall be paid by the officer collecting it to the auditor of the county in which the lands are situated, which shall be held by the auditor, and an entry thereof made in a book kept for that purpose, until the lands are redeemed, or a treasurer's deed therefor executed to the holder of said certificate. If redemption is made, the money shall be paid to the owner of the land, and if not, to the person to whom the deed is executed.

[C73, §3344; C97, §4312; C24, 27, 31, 35, 39, §**12411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §658.10]

CHAPTER 659

LIBEL AND SLANDER

659.1 Pleading.
659.2 Libel — retraction — actual damages.
659.3 Retraction — actual, special, and exemplary damages.
659.4 Candidate — retraction — time — imputing sexual misconduct.
659.5 Defamatory statement by radio.
659.6 Proof of malice.

659.1 Pleading.

In an action for slander or libel, it shall not be necessary to state any extrinsic facts for the purpose of showing the application to the plaintiff of any defamatory matter out of which the cause of action arose, or that the matter was used in a defamatory sense; but it shall be sufficient to state the defamatory sense in which such matter was used, and that the same was spoken or published concerning the plaintiff.

[R60, §2928; C73, §2681; C97, §3592; C24, 27, 31, 35, 39, §**12412;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.1]

659.2 Libel — retraction — actual damages.

In any action for damages for the publication of a libel in a newspaper, free newspaper or shopping guide, or for defamatory statements made on a radio or television station, if the defendant can show that such libelous matter was published or broadcast through misinformation or mistake, the plaintiff shall recover no more than actual damages, unless a retraction be demanded and refused as hereinafter provided. Plaintiff shall serve upon the publisher at the principal place of publication or upon the owner of a radio or television station at the owner's principal place of business a notice specifying the statements claimed to be libelous, and requesting that the same be withdrawn.

[SS15, §3592-a; C24, 27, 31, 35, 39, §**12413;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.2]

659.3 Retraction — actual, special, and exemplary damages.

If a retraction or correction thereof be not published in as conspicuous a place and type in said newspaper, free newspaper or shopping guide, as were the statements complained of, in a regular issue thereof published within two weeks after such service, or in case of a defamatory statement on a radio or television station if a retraction or correction thereof be not broadcast at a time considered as favorable as that of the defamatory statement within two weeks after such service, plaintiff may allege such notice, demand, and failure to retract in the complaint and may recover both actual, special, and exemplary damages if the plaintiff's cause of action be maintained. If such retraction be so published or broadcast, the plaintiff may still recover such actual, special, and exemplary damages, unless the defendant shall show that the libelous publication or defamatory statement was made in good faith, without malice, and under a mistake as to the facts.

[SS15, §3592-a; C24, 27, 31, 35, 39, §**12414;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.3]

659.4 Candidate — retraction — time — imputing sexual misconduct.

If the plaintiff was a candidate for office at the time of the libelous publication, no retraction shall be available unless published in a conspicuous place on the editorial page, nor if the libel was published within two weeks next before the election. This section and sections 659.2 and 659.3 do not apply to libel imputing sexual misconduct to any persons.

[SS15, §3592-a; C24, 27, 31, 35, 39, §**12415;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.4]

85 Acts, ch 99, §11

659.5 Defamatory statement by radio.

The owner, lessee, licensee, or operator of a radio broadcasting station, and the agents or employees of any such owner, lessee, licensee, or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a radio broadcast, by one other than such owner, lessee, licensee, or operator, or agent or employee thereof, if such owner, lessee, licensee, operator, agent, or employee shall prove the exercise of due care to prevent the publication or utterance of such statement in such broadcasts.

[C39, §**12415.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.5]

659.6 Proof of malice.

In actions for slander or libel, an unproved allegation of the truth of the matter charged shall not be deemed proof of malice, unless the jury on the whole case finds that such defense was made with malicious intent.

[R60, §2929; C73, §2682; C97, §3593; C24, 27, 31, 35, 39, §**12416;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.6]

CHAPTER 660

QUO WARRANTO

For Iowa court rules concerning quo warranto, see R.C.P. 1.1301 – 1.1307

660.1 Books and papers.
660.2 Action for damages.
660.3 Action against officers of corporation.
660.4 Corporation dissolved.
660.5 Bond.
660.6 Action.

660.7 Duty of trustees.
660.8 Books delivered.
660.9 Inventory.
660.10 Powers.
660.11 Penalty for refusing to obey order.

660.1 Books and papers.
The court, after such judgment, shall order the defendant to deliver over all books and papers in the defendant's custody or under the defendant's control belonging to said office.
[C51, §2159; R60, §3741; C73, §3354; C97, §4322; C24, 27, 31, 35, 39, §**12426;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.1]

660.2 Action for damages.
When judgment has been rendered in favor of the claimant, the claimant may, at any time within one year thereafter, bring an action against the defendant, and recover the damages the claimant has sustained by reason of the act of the defendant.
[C51, §2160; R60, §3742; C73, §3355; C97, §4323; C24, 27, 31, 35, 39, §**12427;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.2]

660.3 Action against officers of corporation.
When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by anyone injured thereby.
[C51, §2173; R60, §3755; C73, §3359; C97, §4327; C24, 27, 31, 35, 39, §**12431;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.3]

660.4 Corporation dissolved.
If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders.
[C51, §2166; R60, §3748; C73, §3360; C97, §4328; C24, 27, 31, 35, 39, §**12432;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.4]

660.5 Bond.
Said trustees shall enter into a bond in such a penalty and with such security as the court approves, conditioned for the faithful discharge of their trust.
[C51, §2167; R60, §3749; C73, §3361; C97, §4329; C24, 27, 31, 35, 39, §**12433;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.5]

660.6 Action.
Action may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties.
[C51, §2168; R60, §3750; C73, §3362; C97, §4330; C24, 27, 31, 35, 39, §**12434;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.6]

660.7 Duty of trustees.
The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled.
[C51, §2169; R60, §3751; C73, §3363; C97, §4331; C24, 27, 31, 35, 39, §**12435;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.7]

660.8 Books delivered.
The court shall, upon application for that purpose, order any officer of such corporation, or any other person having possession of any of the effects, books, or papers thereof, in any wise necessary for the settlement of its affairs, to deliver the same to the trustees.
[C51, §2170; R60, §3752; C73, §3364; C97, §4332; C24, 27, 31, 35, 39, §**12436;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.8]

660.9 Inventory.
As soon as practicable after their appointment, the trustees shall make and file in the office of the clerk of the court an inventory, sworn to by each of them, of all the effects, rights, and credits which come to their possession or knowledge.
[C51, §2171; R60, §3753; C73, §3365; C97, §4333; C24, 27, 31, 35, 39, §**12437;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.9]

660.10 Powers.
They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders, respectively, to the extent of the effects which come into their hands.
[C51, §2172; R60, §3754; C73, §3366; C97, §4334; C24, 27, 31, 35, 39, §**12438;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.10]

660.11 Penalty for refusing to obey order.
Any person who without good reason refuses to obey an order of the court, as herein provided, shall be guilty of contempt, and shall be punished accordingly, and shall be further liable for the damages resulting to any person on account of the

disobedience of the person who refuses to obey.

[C51, §2174; R60, §3756; C73, §3367; C97, §4335; C24, 27, 31, 35, 39, §**12439;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §660.11]

CHAPTER 661

MANDAMUS

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661.1 Definition.

The action of mandamus is one brought to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station.

[R60, §3761; C73, §3373; C97, §4341; S13, §4341; C24, 27, 31, 35, 39, §**12440;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.1]

661.2 Discretion — exercise of.

Where discretion is left to the inferior tribunal or person, the mandamus can only compel it to act, but cannot control such discretion.

[C51, §2180; R60, §3763; C73, §3373; C97, §4341; S13, §4341; C24, 27, 31, 35, 39, §**12441;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.2]

661.3 Nature of action.

All such actions shall be tried as equitable actions.

[S13, §4341; C24, 27, 31, 35, 39, §**12442;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.3]

661.4 Order issued.

The order may be issued by the district court to any inferior tribunal, or to any corporation, officer, or person; and by the supreme court or the court of appeals to any inferior court, if necessary, and in any other case where it is found necessary for either of those courts to exercise its legitimate power.

[C51, §2179, 2181; R60, §3761, 3764; C73, §3374; C97, §4342; C24, 27, 31, 35, 39, §**12443;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.4]

661.5 Auxiliary remedy.

The plaintiff in any action, except those brought for the recovery of specific real or personal property, may also, as an auxiliary relief, have an order of mandamus to compel the performance of a duty established in such action.

[R60, §3767; C73, §3375; C97, §4343; C24, 27, 31, 35, 39, §**12444;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.5]

661.6 "Enforceable duty" defined.

If such duty, the performance of which is sought to be compelled, is not one resulting from an office, trust, or station, it must be one for the breach of which a legal right to damages is already complete at the commencement of the action, and must also be a duty of which a court of equity would enforce the performance.

[R60, §3767; C73, §3375; C97, §4343; C24, 27, 31, 35, 39, §**12445;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.6]

661.7 Other plain, speedy and adequate remedy.

An order of mandamus shall not be issued in any case where there is a plain, speedy and adequate remedy in the ordinary course of the law, save as herein provided.

[C51, §2182; R60, §3765; C73, §3376; C97, §4344; C24, 27, 31, 35, 39, §**12446;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.7]

661.8 When order granted.

The order of mandamus is granted on the petition of any private party aggrieved, without the concurrence of the prosecutor for the state, or on the petition of the state by the county attorney, when the public interest is concerned, and is in the name of such private party or of the state, as the

case may be in fact brought.

[R60, §3761; C73, §3377; C97, §4345; C24, 27, 31, 35, 39, §**12447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.8]

661.9 Petition.

The plaintiff in such action shall state the plaintiff's claim, and shall also state facts sufficient to constitute a cause for such claim, and shall also set forth that the plaintiff, if a private individual, is personally interested therein, and that the plaintiff sustains and may sustain damage by the nonperformance of such duty, and that performance thereof has been demanded by the plaintiff, and refused or neglected, and shall pray an order of mandamus commanding the defendant to fulfill such duty.

[R60, §3762; C73, §3378; C97, §4346; C24, 27, 31, 35, 39, §**12448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.9]

661.10 Other pleadings.

The pleadings and other proceedings in any action in which a mandamus is claimed shall be the same, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages.

[R60, §3766; C73, §3379; C97, §4347; C24, 27, 31, 35, 39, §**12449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.10]

661.11 Repealed by 67 Acts, ch 400, § 197.

661.12 Injunction may issue — joinder.

When the action is brought by a private person, it may be joined with a cause of action for such an injunction as may be obtained by ordinary proceedings, or with the causes of actions specified in this chapter, but no other joinder and no counterclaim shall be allowed.

[R60, §4181; C73, §3380; C97, §4348; C24, 27, 31, 35, 39, §**12450;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.12]

661.13 Peremptory order.

When the plaintiff recovers judgment, the court may include therein a peremptory order of mandamus directed to the defendant, commanding the defendant forthwith to perform the duty to be enforced, together with a money judgment for damages and costs, upon which an ordinary execution may issue.

[R60, §3768; C73, §3381; C97, §4349; C24, 27, 31, 35, 39, §**12451;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.13]

661.14 Form of order — return.

The order commanding the performance of the duty shall be directed to the party and shall be returnable forthwith. No return except that of compliance shall be allowed; however, the court may upon sufficient grounds allow reasonable time for making the return.

[R60, §3769; C73, §3382; C97, §4350; C24, 27, 31, 35, 39, §**12452;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.14]

661.15 Performance by another — costs.

The court may, upon application of the plaintiff, besides or instead of proceeding against the defendant by attachment, direct that the act required to be done may be done by the plaintiff or some other person appointed by the court, at the expense of the defendant, and, upon the act being done, the amount of such expense may be ascertained by the court, or by a referee appointed by the court, and the court may render judgment for the amount of the expense and cost, and enforce payment thereof by execution.

[R60, §3770; C73, §3383; C97, §4351; C24, 27, 31, 35, 39, §**12453;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.15]

661.16 Temporary orders.

During the pendency of the action, the court may make temporary orders for preventing damage or injury to the plaintiff until the action is decided.

[R60, §3771; C73, §3384; C97, §4352; C24, 27, 31, 35, 39, §**12454;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.16]

661.17 Appeal by state.

When the state is a party, it may appeal without security.

[R60, §3772; C73, §3385; C97, §4353; C24, 27, 31, 35, 39, §**12455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §661.17]

CHAPTER 662

CERTIORARI

For Iowa court rules concerning certiorari, see R.C.P. 1.1401 – 1.1500

CHAPTER 663

HABEAS CORPUS

Postconviction procedure, see chapter 822

663.1 Petition.
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663.40 Plaintiff retained in custody.
663.41 Right to be present waived.
663.42 Disobedience of order.
663.43 Papers filed with clerk.
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663.1 Petition.

The petition for the writ of habeas corpus must state:

1. That the person in whose behalf it is sought is restrained of the person's liberty, and the person by whom and the place where the person is so restrained, mentioning the names of the parties, if known, and if unknown describing them with as much particularity as practicable.

2. The cause or pretense of such restraint, according to the best information of the applicant; and if by virtue of any legal process, a copy thereof must be annexed, or a satisfactory reason given for its absence.

3. That the restraint is illegal, and wherein.

4. That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of the applicant.

5. Whether application for the writ has been before made to and refused by any court or judge, and if so, a copy of the petition in that case must be attached, with the reasons for the refusal, or satisfactory reasons given for the failure to do so.

[C51, §2213; R60, §3801; C73, §3449; C97, §4417; C24, 27, 31, 35, 39, §**12468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.1]

663.2 Verification — presentation to court.

The petition must be sworn to by the person confined, or by someone in the confined person's behalf, and presented to some court or officer authorized to allow the writ.

[C51, §2214; R60, §3802; C73, §3450; C97, §4418; C24, 27, 31, 35, 39, §**12469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.2]

663.3 Writ allowed — service.

The writ may be allowed by the supreme or district court, or by a supreme court judge or district judge, and may be served in any part of the state.

[C51, §2215; R60, §3803; C73, §3451; C97, §4419; C24, 27, 31, 35, 39, §**12470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.3]

663.4 Application — to whom made.

Application for the writ must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge, if applied to therefor, may refuse the same unless a sufficient reason be stated in the petition for not making the application to the more convenient court or a judge thereof.

[C51, §2217; R60, §3805; C73, §3452; C97, §4420; S13, §4420; C24, 27, 31, 35, 39, §**12471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.4]

663.5 Inmates of state or federal institutions.

When the applicant is confined in a state or federal institution, other than a penal institution, the provisions of section 663.4 relating to the court to

which or the judge to whom applications must be made are mandatory, and the convenience or preference of an attorney or witness or other person interested in the release of the applicant shall not be a sufficient reason to authorize a more remote court or judge to assume jurisdiction.

[S13, §4420; C24, 27, 31, 35, 39, §**12472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.5]

663.6 Writ refused.

If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the court or judge must refuse to allow the writ.

[C51, §2218; R60, §3806; C73, §3453; C97, §4421; C24, 27, 31, 35, 39, §**12473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.6]

663.7 Reasons endorsed.

If the writ is disallowed, the court or judge shall cause the reasons thereof to be appended to the petition and returned to the person applying for the writ.

[C51, §2221; R60, §3809; C73, §3454; C97, §4422; C24, 27, 31, 35, 39, §**12474;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.7]

663.8 Form of writ.

If the petition is in accordance with the foregoing requirements, and states sufficient grounds for the allowance of the writ, it shall issue, and may be substantially as follows:

The State of Iowa,

To . . . . . :

You are hereby commanded to have the body of . . . . . , by you unlawfully detained, as is alleged, before the court (or before me, or before . . . . . , judge, etc., as the case may be), at . . . . . , on . . . . . (or immediately after being served with this writ), to be dealt with according to law, and have you then and there this writ, with a return thereon of your doings in the premises.

[C51, §2219; R60, §3807; C73, §3455; C97, §4423; C24, 27, 31, 35, 39, §**12475;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.8]

2000 Acts, ch 1058, §53

663.9 How issued.

When the writ is allowed by a court, it must be issued by the clerk, but when by a judge, the judge must issue it personally, subscribing the judge's name thereto.

[C51, §2220; R60, §3808; C73, §3456; C97, §4424; C24, 27, 31, 35, 39, §**12476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.9]

663.10 Penalty for refusing.

Any judge, whether acting individually or as a member of the court, who wrongfully and willfully refuses the allowance of the writ when properly applied for, shall forfeit to the party aggrieved the sum of one thousand dollars.

[C51, §2222; R60, §3810; C73, §3457; C97, §4425; C24, 27, 31, 35, 39, §**12477;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.10]

663.11 Issuance on judge's own motion.

When any court or judge authorized to grant the writ has evidence, from a judicial proceeding before the court or judge, that any person within the jurisdiction of such court or officer is illegally restrained of the person's liberty, such court or judge shall issue the writ or cause it to be issued, on the court's or judge's own motion.

[C51, §2223; R60, §3811; C73, §3458; C97, §4426; C24, 27, 31, 35, 39, §**12478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.11]

663.12 County attorney notified.

The court or officer allowing the writ must cause the county attorney of the proper county to be informed thereof, and of the time and place where and when it is made returnable.

[C51, §2240; R60, §3828; C73, §3459; C97, §4427; C24, 27, 31, 35, 39, §**12479;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.12]

663.13 Service of writ.

The writ may be served by the sheriff, or by any other person appointed in writing for that purpose by the court or judge by whom it is issued or allowed. If served by any other than the sheriff, the person appointed possesses the same power, and is liable to the same penalty for a nonperformance of the duty, as though the person were the sheriff.

[C51, §2224; R60, §3812; C73, §3460; C97, §4428; C24, 27, 31, 35, 39, §**12480;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.13]

663.14 Mode.

The service shall be made by leaving the original writ with the defendant, and preserving a copy thereof on which to make the return of service, but a failure in this respect shall not be held material.

[C51, §2225; R60, §3813; C73, §3461; C97, §4429; C24, 27, 31, 35, 39, §**12481;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.14]

663.15 Defendant not found.

If the defendant cannot be found, or if the defendant has not the plaintiff in custody, the service may be made upon any person who has, in the same manner and with the same effect as though the person had been made defendant therein.

[C51, §2226; R60, §3814; C73, §3462; C97, §4430; C24, 27, 31, 35, 39, §**12482;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.15]

663.16 Power of officer.
If the defendant hides, or refuses admittance to the person attempting to serve the writ, or if the defendant attempts wrongfully to carry the plaintiff out of the county or the state after the service of the writ, the sheriff, or the person who is attempting to serve or who has served it, is authorized to arrest the defendant and bring the defendant, together with the plaintiff, forthwith before the officer or court before whom the writ is made returnable.
[C51, §2227; R60, §3815; C73, §3463; C97, §4431; C24, 27, 31, 35, 39, §**12483;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.16]

663.17 Arrest.
In order to make the arrest, the sheriff or other person having the writ possesses the same power as is given to a sheriff for the arrest of a person charged with a felony.
[C51, §2228; R60, §3816; C73, §3464; C97, §4432; C24, 27, 31, 35, 39, §**12484;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.17]

663.18 Repealed by 70 Acts, ch 1276, § 16.

663.19 Defects in writ.
The writ must not be disobeyed for any defects of form or misdescription of the plaintiff or defendant, provided enough is stated to show the meaning and intent thereof.
[C51, §2234; R60, §3822; C73, §3466; C97, §4434; C24, 27, 31, 35, 39, §**12486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.19]

663.20 Penalty for eluding writ.
If the defendant attempts to elude the service of the writ, or to avoid the effect thereof by transferring the plaintiff to another, or by concealing the plaintiff, the defendant shall be guilty of a serious misdemeanor, and any person knowingly aiding or abetting in any such act shall be subject to like punishment.
[C51, §2253; R60, §3841; C73, §3467; C97, §4435; C24, 27, 31, 35, 39, §**12487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.20]

663.21 Refusal to give copy of process.
An officer refusing to deliver a copy of any legal process by which the officer detains the plaintiff in custody to any person who demands it and tenders the fees therefor, shall forfeit two hundred dollars to the person who demands it.
[C51, §2254; R60, §3842; C73, §3468; C97, §4436; C24, 27, 31, 35, 39, §**12488;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.21]

663.22 Preliminary writ.
The court or judge to whom the application for the writ is made, if satisfied that the plaintiff would suffer any irreparable injury before the plaintiff could be relieved by the proceedings above authorized, may issue an order to the sheriff, or any other person selected instead, commanding the sheriff or other person to bring the plaintiff forthwith before such court or judge.
[C51, §2230; R60, §3818; C73, §3469; C97, §4437; C24, 27, 31, 35, 39, §**12489;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.22]

663.23 Arrest of defendant.
If the evidence is sufficient to justify the arrest of the defendant for a criminal offense committed in connection with the illegal detention of the plaintiff, the order must also direct the arrest of the defendant.
[C51, §2231; R60, §3819; C73, §3470; C97, §4438; C24, 27, 31, 35, 39, §**12490;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.23]

663.24 Execution of writ — return.
The officer or person to whom the order is directed must execute the same by bringing the defendant, and also the plaintiff if required, before the court or judge issuing it, and the defendant must make return to the writ in the same manner as if the ordinary course had been pursued.
[C51, §2232; R60, §3820; C73, §3471; C97, §4439; C24, 27, 31, 35, 39, §**12491;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.24]

663.25 Examination.
The defendant may also be examined and committed, or bailed, or discharged, according to the nature of the case.
[C51, §2233; R60, §3821; C73, §3472; C97, §4440; C24, 27, 31, 35, 39, §**12492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.25]

663.26 Informalities.
Any person served with the writ is to be presumed to be the person to whom it is directed, although it may be directed to the person served by a wrong name or description, or to another person.
[C51, §2235; R60, §3823; C73, §3473; C97, §4441; C24, 27, 31, 35, 39, §**12493;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.26]

663.27 Appearance — answer.
Service being made in any of the modes herein provided, the defendant must appear at the proper time and answer the petition, but no verification shall be required to the answer.
[C51, §2236; R60, §3824, 4182; C73, §3474; C97, §4442; C24, 27, 31, 35, 39, §**12494;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.27]

663.28 Body to be produced.
The defendant must also produce the body of the

plaintiff, or show good cause for not doing so.

[C51, §2237; R60, §3825; C73, §3475; C97, §4443; C24, 27, 31, 35, 39, §**12495;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.28]

663.29 Penalty — contempt.

A willful failure to comply with the above requirements will render the defendant liable to be attached for contempt, and to be imprisoned till the defendant complies, and shall subject the defendant to the forfeiture of one thousand dollars to the party thereby aggrieved.

[C51, §2238; R60, §3826; C73, §3476; C97, §4444; C24, 27, 31, 35, 39, §**12496;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.29]

663.30 Attachment.

Such attachment may be served by the sheriff or any other person authorized by the court or judge, who shall also be empowered to produce the body of the plaintiff forthwith, and has, for this purpose, the same powers as are above conferred in similar cases.

[C51, §2239; R60, §3827; C73, §3477; C97, §4445; C24, 27, 31, 35, 39, §**12497;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.30]

663.31 Answer.

The defendant in the answer must state whether the defendant then has, or at any time has had, the plaintiff under the defendant's control and restraint, and if so the cause thereof.

[C51, §2241; R60, §3829; C73, §3478; C97, §4446; C24, 27, 31, 35, 39, §**12498;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.31]

663.32 Transfer of plaintiff.

If the defendant has transferred the plaintiff to another person, the defendant must state that fact, and to whom, and the time thereof, as well as the reason or authority therefor.

[C51, §2242; R60, §3830; C73, §3479; C97, §4447; C24, 27, 31, 35, 39, §**12499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.32]

663.33 Copy of process.

If the defendant holds the plaintiff by virtue of a legal process or written authority, a copy thereof must be annexed.

[C51, §2243; R60, §3831; C73, §3480; C97, §4448; C24, 27, 31, 35, 39, §**12500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.33]

663.34 Demurrer or reply — trial.

The plaintiff may demur or reply to the defendant's answer, but no verification shall be required to the reply, and all issues joined therein shall be tried by the judge or court.

[C51, §2244; R60, §3832; C73, §3481; C97, §4449; C24, 27, 31, 35, 39, §**12501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.34]

663.35 Commitment questioned.

The reply may deny the sufficiency of the testimony to justify the action of the committing magistrate, on the trial of which issue all written testimony before such magistrate may be given in evidence before the court or judge, in connection with any other testimony which may then be produced.

[C51, §2245; R60, §3833; C73, §3482; C97, §4450; C24, 27, 31, 35, 39, §**12502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.35]

663.36 Nonpermissible issues.

It is not permissible to question the correctness of the action of a court or judge when lawfully acting within the scope of their authority.

[C51, §2246; R60, §3834; C73, §3483; C97, §4451; C24, 27, 31, 35, 39, §**12503;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.36]

663.37 Discharge.

If no sufficient legal cause of confinement is shown, the plaintiff must be discharged.

[C51, §2247; R60, §3835; C73, §3484; C97, §4452; C24, 27, 31, 35, 39, §**12504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.37]

663.38 Plaintiff held.

Although the commitment of the plaintiff may have been irregular, if the court or judge is satisfied from the evidence that the plaintiff ought to be held or committed, the order may be made accordingly.

[C51, §2248; R60, §3836; C73, §3485; C97, §4453; C24, 27, 31, 35, 39, §**12505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.38]

663.39 Repealed by 70 Acts, ch 1276, § 20.

663.40 Plaintiff retained in custody.

Until the sufficiency of the cause of restraint is determined, the defendant may retain the plaintiff in the defendant's custody, and may use all necessary and proper means for that purpose.

[C51, §2250; R60, §3838; C73, §3487; C97, §4455; C24, 27, 31, 35, 39, §**12507;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.40]

663.41 Right to be present waived.

The plaintiff may, in writing, or by attorney, waive the right to be present at the trial, in which case the proceedings may be had in the plaintiff's absence. The writ will in such cases be modified accordingly.

[C51, §2251; R60, §3839; C73, §3488; C97, §4456; C24, 27, 31, 35, 39, §**12508;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.41]

663.42 Disobedience of order.

Disobedience to any order of discharge will subject the defendant to attachment for contempt, and also to the forfeiture of one thousand dollars to the party aggrieved, besides all damages sustained by the plaintiff in consequence thereof.

[C51, §2252; R60, §3840; C73, §3489; C97, §4457; C24, 27, 31, 35, 39, §**12509;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.42]

663.43 Papers filed with clerk.

When the proceedings are before a judge, except when the writ is refused, all the papers in the case, including the judge's final order, shall be filed with the clerk of the district court of the county wherein the final proceedings were had, and a memorandum thereof shall be entered by the clerk upon the judgment docket.

[C51, §2255; R60, §3843; C73, §3490; C97, §4458; C24, 27, 31, 35, 39, §**12510;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.43]

663.44 Costs.

If the plaintiff is discharged, the costs shall be assessed to the defendant, unless the defendant is an officer holding the plaintiff in custody under a commitment, or under other legal process, in which case the costs shall be assessed to the county. If the plaintiff's application is refused, the costs shall be assessed against the plaintiff, and, in the discretion of the court, against the person who filed the petition in the plaintiff's behalf.

However, where the plaintiff is confined in any state institution, and is discharged in habeas corpus proceedings, or where the habeas corpus proceedings fail and costs and fees cannot be collected from the person liable to pay the same, such costs and fees shall be paid by the county in which such state institution is located. The facts of such payment and the proceedings on which it is based, with a statement of the amount of fees or costs incurred, with approval in writing by the presiding judge appended to such statement or endorsed thereon, shall then be certified by the clerk of the district court under the seal of office to the state executive council. The executive council shall then review the proceedings and authorize reimbursement for all such fees and costs or such part thereof as the executive council shall find justified, and shall notify the director of revenue and finance to draw a warrant to such county treasurer on the state general fund for the amount authorized. The costs and fees referred to above shall include any award of fees made to a court appointed attorney representing an indigent party bringing the habeas corpus action.

[C97, §4459; C24, 27, 31, 35, 39, §**12511;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §663.44]

86 Acts, ch 1237, §40

Appropriation limited for fiscal years beginning July 1, 1993; see §8.59

CHAPTER 663A

WRONGFUL IMPRISONMENT

663A.1 Wrongful imprisonment — cause of action.

663A.1 Wrongful imprisonment — cause of action.

1. As used in this section, a *"wrongfully imprisoned person"* means an individual who meets all of the following criteria:

a. The individual was charged, by indictment or information, with the commission of a public offense classified as an aggravated misdemeanor or felony.

b. The individual did not plead guilty to the public offense charged, or to any lesser included offense, but was convicted by the court or by a jury of an offense classified as an aggravated misdemeanor or felony.

c. The individual was sentenced to incarceration for a term of imprisonment not to exceed two years if the offense was an aggravated misdemeanor or to an indeterminate term of years under chapter 902 if the offense was a felony, as a result of the conviction.

d. The individual's conviction was vacated or dismissed, or was reversed, and no further proceedings can be or will be held against the individual on any facts and circumstances alleged in the proceedings which had resulted in the conviction.

e. The individual was imprisoned solely on the basis of the conviction that was vacated, dismissed, or reversed and on which no further proceedings can be or will be had.

2. Upon receipt of an order vacating, dismissing, or reversing the conviction and sentence in a case for which no further proceedings can be or will be held against an individual on any facts and circumstances alleged in the proceedings which

resulted in the conviction, the district court shall make a determination whether there is clear and convincing evidence to establish either of the following findings:

a. That the offense for which the individual was convicted, sentenced, and imprisoned, including any lesser included offenses, was not committed by the individual.

b. That the offense for which the individual was convicted, sentenced, and imprisoned was not committed by any person, including the individual.

3. If the district court finds that there is clear and convincing evidence to support either of the findings specified in subsection 2, the district court shall do all of the following:

a. Enter an order finding that the individual is a wrongfully imprisoned person.

b. Orally inform the person and the person's attorney that the person has a right to commence a civil action against the state under chapter 669 on the basis of wrongful imprisonment.

4. Within seven days of entry of the order finding that an individual is a wrongfully imprisoned person, the clerk of court shall forward a copy of the order, together with a copy of this section, to the individual named in the order.

5. A claim for wrongful imprisonment under this section is a "claim" for purposes of chapter 669, notwithstanding anything in section 669.14 to the contrary. Notwithstanding section 669.8, however, an action brought under this section shall not preclude or otherwise limit any action or claim for relief based on any negligent or wrongful acts or omissions which arose during the period of the wrongful imprisonment, but which are not related to the facts and circumstances underlying the conviction or proceedings to obtain relief from the conviction.

6. Damages recoverable from the state by a wrongfully imprisoned person under this section are limited to the following:

a. The amount of restitution for any fine, surcharge, other penalty, or court costs imposed and paid and any reasonable attorney's fees and expenses incurred in connection with all criminal proceedings and appeals regarding the wrongfully imposed judgment and sentence and such fees and expenses incurred in connection with any civil actions and proceedings for postconviction relief which are related to the wrongfully imposed judgment and sentence.

b. An amount of liquidated damages in an amount equal to fifty dollars per day of wrongful imprisonment.

c. The value of any lost wages, salary, or other earned income which directly resulted from the individual's conviction and imprisonment, up to twenty-five thousand dollars per year.

d. The value of reasonable attorney's fees for services provided in connection with an action under this section.

7. In awarding damages under this section, the state appeal board or the court shall not offset the award by any expenses incurred by the state or any political subdivision of the state in connection with the arrest, prosecution, and imprisonment of the individual, including, but not limited to, expenses for food, clothing, shelter, and medical care.

8. Actions under this section shall be commenced within two years of entry of the district court order adjudging the individual to be a wrongfully imprisoned person.

97 Acts, ch 196, §1

CHAPTER 664

INJUNCTIONS

CHAPTER 665

CONTEMPTS

665.1 "Court" defined.
665.2 Acts constituting contempt.
665.3 In courts of record.
665.4 Punishment.
665.5 Imprisonment.
665.6 Affidavit necessary.
665.7 Notice to show cause.
665.8 Testimony reduced to writing.
665.9 Personal knowledge of court — record required.
665.10 Warrant of commitment.
665.11 Revision by certiorari.
665.12 Indictment not barred.

665.1 "Court" defined.

Any officer authorized to punish for contempt is a court within the meaning of this chapter.

[C51, §1608; R60, §2698; C73, §3501; C97, §4470; C24, 27, 31, 35, 39, §**12540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.1]

665.2 Acts constituting contempt.

The following acts or omissions are contempts, and are punishable as such by any of the courts of this state, or by any judicial officer, including judicial magistrates, acting in the discharge of an official duty, as hereinafter provided:

1. Contemptuous or insolent behavior toward such court while engaged in the discharge of a judicial duty which may tend to impair the respect due to its authority.
2. Any willful disturbance calculated to interrupt the due course of its official proceedings.
3. Illegal resistance to any order or process made or issued by it.
4. Disobedience to any subpoena issued by it and duly served, or refusing to be sworn or to answer as a witness.
5. Unlawfully detaining a witness or party to an action or proceeding pending before such court, while going to or remaining at the place where the action or proceeding is thus pending, after being summoned, or knowingly assisting, aiding or abetting any person in evading service of the process of such court.
6. Any other act or omission specially declared a contempt by law.

[C51, §1598; R60, §2688; C73, §3491; C97, §4460; C24, 27, 31, 35, 39, §**12541;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.2]

665.3 In courts of record.

In addition to the above, any court of record may punish the following acts or omissions as contempts:

1. Failure to testify before a grand jury, when lawfully required to do so.
2. Assuming to be an officer, attorney, or counselor of the court, and acting as such without authority.
3. Misbehavior as a juror, by improperly conversing with a party or with any other person in relation to the merits of an action in which the juror is acting or is to act as a juror, or receiving a communication from any person in respect to it without immediately disclosing the same to the court.
4. Bribing, attempting to bribe, or in any other manner improperly influencing or attempting to influence a juror to render a verdict, or suborning or attempting to suborn witness.
5. Disobedience by an inferior tribunal, magistrate, or officer to any lawful judgment, order or process of a superior court, or proceeding in any matter in a manner contrary to law, after it has been removed from such tribunal, magistrate or officer.

[C51, §1599; R60, §2689; C73, §3492; C97, §4461; C24, 27, 31, 35, 39, §**12542;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.3]

665.4 Punishment.

The punishment for contempt, where not otherwise specifically provided, shall be:

1. In the supreme court or the court of appeals, by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.
2. Before district judges, district associate judges, and associate juvenile judges by a fine not exceeding five hundred dollars or imprisonment in a county jail not exceeding six months or by both such fine and imprisonment.
3. Before judicial magistrates, by a fine not exceeding one hundred dollars or imprisonment in a county jail not exceeding thirty days.

[C51, §1600; R60, §2690; C73, §3493; C97, §4462; C24, 27, 31, 35, 39, §**12543;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.4]

85 Acts, ch 27, §1; 96 Acts, ch 1134, §6

665.5 Imprisonment.

If the contempt consists in an omission to perform an act which is yet in the power of the person to perform, the person may be imprisoned until the person performs it. In that case the act to be performed must be specified in the warrant of the commitment.

[C51, §1601; R60, §2691; C73, §3494; C97, §4463; C24, 27, 31, 35, 39, §**12544;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.5]

665.6 Affidavit necessary.

Unless the contempt is committed in the immediate view and presence of the court, or comes officially to its knowledge, an affidavit showing the nature of the transaction is necessary as a basis for further action in the premises.

[C51, §1602; R60, §2692; C73, §3495; C97, §4464; C24, 27, 31, 35, 39, §**12545;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.6]

665.7 Notice to show cause.

Before punishing for contempt, unless the offender is already in the presence of the court, the offender must be served personally with a rule to show cause against the punishment, and a reasonable time given the offender therefor; or the offender may be brought before the court forthwith, or on a given day, by warrant, if necessary. In either case the offender may, at the offender's option, make a written explanation of the offender's conduct under oath, which must be filed and preserved.

[C51, §1603; R60, §2693; C73, §3496; C97, §4465; C24, 27, 31, 35, 39, §**12546;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, 79, 81, §665.7]

665.8 Testimony reduced to writing.

Where the action of the court is founded upon evidence given by others, such evidence must be in writing, and be filed and preserved.

[C51, §1604; R60, §2694; C73, §3497; C97, §4466; C24, 27, 31, 35, 39, §**12547;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.8]

665.9 Personal knowledge of court — record required.

If the court or judge acts upon personal knowledge in the premises, a statement of the facts upon which the order is founded must be entered on the records of the court, or be filed and preserved when the court keeps no record, and shall be a part of the record.

[C51, §1604; R60, §2694; C73, §3497; C97, §4466; C24, 27, 31, 35, 39, §**12548;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.9]

665.10 Warrant of commitment.

When the offender is committed, the warrant must state the particular facts and circumstances on which the court acted in the premises, and whether the same was in the knowledge of the court or was proved by witnesses.

[C51, §1605; R60, §2695; C73, §3498; C97, §4467; C24, 27, 31, 35, 39, §**12549;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.10]

665.11 Revision by certiorari.

No appeal lies from an order to punish for a contempt, but the proceedings may, in proper cases, be taken to a higher court for revision by certiorari.

[C51, §1606; R60, §2696; C73, §3499; C97, §4468; C24, 27, 31, 35, 39, §**12550;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.11]

665.12 Indictment not barred.

The punishment for a contempt constitutes no bar to an indictment, but if the offender is indicted and convicted for the same offense, the court, in passing sentence, must take into consideration the punishment before inflicted.

[C51, §1607; R60, §2697; C73, §3500; C97, §4469; C24, 27, 31, 35, 39, §**12551;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §665.12]

CHAPTER 666

OFFICIAL BONDS, FINES AND FORFEITURES

See also chapter 64

666.1 Official bonds construed.
666.2 Prior judgment no bar.
666.3 Fines and forfeitures.
666.4 By whom action prosecuted.
666.5 Collusion.
666.6 Annual report of outstanding fines, penalties, forfeitures, and recognizances.

666.1 Official bonds construed.

The official bond of a public officer is to be construed as a security to the body politic or civil corporation of which the person is an officer, and to all the members thereof, severally, who are intended to be secured thereby.

[C51, §2145; R60, §3727; C73, §3368; C97, §4336; C24, 27, 31, 35, 39, §**12552;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §666.1]

Conditions of bond, §64.2

666.2 Prior judgment no bar.

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency, except that sureties can be made liable in the aggregate only to the extent of their undertaking.

[C51, §2147; R60, §3728; C73, §3369; C97, §4337; C24, 27, 31, 35, 39, §**12553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §666.2]

666.3 Fines and forfeitures.

Fines and forfeitures, after deducting court costs, court expenses collectible through the clerk of the court, and fees of collection, if any, and not otherwise disposed of, shall be paid to the treasurer of state for deposit in the general fund of the state.

[C51, §1158, 2148; R60, §3729; C73, §3370; C97, §4338; C24, 27, 31, 35, 39, §**12554;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §666.3]

83 Acts, ch 185, §58, 62; 83 Acts, ch 186, §10126, 10201, 10204

666.4 By whom action prosecuted.

Actions for their recovery may be prosecuted by the officers or persons to whom they by law belong, in whole or in part, or by the public officer into whose hands they are to be paid when collected.

[C51, §2149; R60, §3730; C73, §3371; C97, §4339; C24, 27, 31, 35, 39, §**12555;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §666.4]

666.5 Collusion.

A judgment for a penalty or forfeiture, rendered by collusion, does not prevent another action for the same subject matter.

[C51, §2150; R60, §3731; C73, §3372; C97, §4340; C24, 27, 31, 35, 39, §**12556;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §666.5]

666.6 Annual report of outstanding fines, penalties, forfeitures, and recognizances.

The clerk of the district court shall make an annual report in writing to the state court administrator no later than August 15 of the fines, penalties, forfeitures, and recognizances which have not been paid, remitted, canceled, or otherwise satisfied during the previous fiscal year.

[C73, §3974; C97, §1302; C24, 27, 31, 35, 39, §**12557;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §666.6; 81 Acts, ch 117, §1239]

83 Acts, ch 185, §59, 62; 83 Acts, ch 186, §10127, 10201; 85 Acts, ch 197, §39; 91 Acts, ch 185, §1; 95 Acts, ch 169, §9

CHAPTER 667

SEIZURE OF BOATS OR RAFTS

667.1 Seizure.
667.2 Petition and warrant.
667.3 Warrant issued on Sunday.
667.4 Service of notice.
667.5 Service of warrant.
667.6 Who may appear.
667.7 Bond to discharge.
667.8 Special execution.
667.9 Sale.
667.10 Fractional share sold.
667.11 Appeal.
667.12 Rights saved.
667.13 Contract alleged.
667.14 Lien.
667.15 Appearance by executing bond.

667.1 Seizure.

In an action brought against the owners of any boat or raft to recover any debt contracted by such owner, or by the master, agent, clerk, or consignee thereof, for supplies furnished, or for labor done in, about, or on such boat or raft, or for materials furnished in building, repairing, fitting out, furnishing, or equipping the same, or to recover for the nonperformance of any contract relative to the transportation of persons or property thereon, made by any of the persons aforementioned, or to recover damages for injuries to persons or property done by such boat or raft or the officers or crew thereof in connection with its business, a warrant may issue for the seizure of the same as herein provided.

[C51, §2116; R60, §3693, 3698, 3700; C73, §3432, 3445, 3447; C97, §4402; C24, 27, 31, 35, 39, §**12558;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.1]

667.2 Petition and warrant.

The petition must be in writing, sworn to, and filed with the clerk who shall thereupon issue a warrant to the proper officer, commanding the officer to seize the boat or raft, its apparel, tackle, furniture, and appendages, and detain the same until released by due course of law.

[C51, §2121; R60, §3701; C73, §3433; C97, §4403; C24, 27, 31, 35, 39, §**12559;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.2]

667.3 Warrant issued on Sunday.

The warrant may be issued on Sunday, if the plaintiff, the plaintiff's agent, or attorney states in the petition that it would be unsafe to delay proceedings.

[R60, §3702; C73, §3434; C97, §4404; C24, 27, 31, 35, 39, §**12560;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.3]

Analogous or related provisions, §602.1602, 626.6, 639.5, and 643.3

667.4 Service of notice.

It shall be sufficient service of the original notice in such an action to serve it on the defendant, or on the master, agent, clerk, or consignee of such boat or raft; if neither of them can be found, it may be served by posting a copy thereof on some conspicuous part of the same.

[C51, §2122; R60, §3703; C73, §3435; C97, §4405; C24, 27, 31, 35, 39, §**12561;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.4]

667.5 Service of warrant.

Any marshal of any city may execute the warrant.

[R60, §3704; C73, §3436; C97, §4406; C24, 27, 31, 35, 39, §**12562;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.5]

Approval of warrant and expenses, §70A.12, 70A.13

667.6 Who may appear.

Any persons interested in the property seized may appear for the defendant in person or by an agent or attorney, and defend the action, and no continuance shall be granted to the plaintiff while the property is held in custody.

[C51, §2123; R60, §3705; C73, §3437; C97, §4407; C24, 27, 31, 35, 39, §**12563;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.6]

667.7 Bond to discharge.

The property seized may be discharged at any time before final judgment, by giving a bond with sureties, to be approved by the officer executing the warrant, or by the clerk who issued it, in a penalty double the plaintiff's demand, conditioned that the obligors therein will pay the amount which may be found due to the plaintiff, together with the costs.

[C51, §2124; R60, §3706; C73, §3438; C97, §4408; C24, 27, 31, 35, 39, §**12564;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.7]

Similar provisions, §639.42, 639.45, 643.12

667.8 Special execution.

If judgment is rendered for the plaintiff before the property is thus discharged, a special execution shall be issued against it. If it has been previously discharged, the execution shall issue against the principal and sureties in the bond without further proceedings.

[C51, §2125; R60, §3707; C73, §3439; C97, §4409; C24, 27, 31, 35, 39, §**12565;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.8]

667.9 Sale.

The officer must first sell the furniture or appendages of the boat or raft, if by so doing the officer can satisfy the demand. If the officer sells the boat or raft, the officer must do so to the bidder who will advance the amount required to satisfy the execution for lowest fractional share thereof, unless the person defending desires a different and equally convenient mode of sale. The officer making the sale shall execute a bill of sale to the purchaser for the interest sold.

[C51, §2126; R60, §3708; C73, §3440; C97, §4410; C24, 27, 31, 35, 39, §**12566;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.9]

667.10 Fractional share sold.

If a fractional share of the boat or raft is thus sold, the purchaser shall hold such share or interest jointly with the other owners.

[C51, §2127; R60, §3709; C73, §3441; C97, §4411; C24, 27, 31, 35, 39, §**12567;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.10]

667.11 Appeal.

If an appeal is taken by the defendant before the property is discharged as above provided, the appeal bond, if one is filed, will have the same effect in discharging it as the bond above contemplated, and execution shall issue against the obligors therein after judgment in the same manner.

[C51, §2128; R60, §3710; C73, §3442; C97, §4412; C24, 27, 31, 35, 39, §**12568;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.11]

Presumption of approval of bond, §636.10

667.12 Rights saved.

Nothing herein contained is intended to affect the rights of a plaintiff to sue in the same manner as though the provisions of this chapter had not been enacted.

[C51, §2129; R60, §3711; C73, §3443; C97, §4413; C24, 27, 31, 35, 39, §**12569;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.12]

667.13 Contract alleged.

In actions commenced in accordance with the provisions of this chapter, it is sufficient to allege the contract to have been made with the boat or raft itself.

[C51, §2130; R60, §3712; C73, §3444; C97, §4414; C24, 27, 31, 35, 39, §**12570;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.13]

667.14 Lien.

Claims growing out of either of the above causes shall be liens upon the boat or raft, its tackle, and appendages, for the term of twenty days from the time the right of action therefor accrued.

[R60, §3699; C73, §3446; C97, §4415; C24, 27, 31, 35, 39, §**12571;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.14]

667.15 Appearance by executing bond.

The execution by or for the owner of such boat or raft of a bond, whereby possession of the same is obtained or retained by the owner, shall be an appearance of such owner as a defendant to the action.

[R60, §4130; C73, §3448; C97, §4416; C24, 27, 31, 35, 39, §**12572;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §667.15]

CHAPTER 668

LIABILITY IN TORT — COMPARATIVE FAULT

668.1 Fault defined.
668.2 Party defined.
668.3 Comparative fault — effect — payment method.
668.4 Joint and several liability.
668.5 Right of contribution.
668.6 Enforcement of contribution.
668.7 Effect of release.
668.8 Tolling of statute.
668.9 Insurance practice.
668.10 Governmental exemptions.
668.11 Disclosure of expert witnesses in liability cases involving licensed professionals.
668.12 Liability for products — state of the art defense.
668.13 Interest on judgments.
668.14 Evidence of previous payment or future right of payment.
668.15 Damages resulting from sexual abuse — evidence.
668.16 Applicability of this chapter.

668.1 Fault defined.

1. As used in this chapter, *"fault"* means one or more acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages.

2. The legal requirements of cause in fact and proximate cause apply both to fault as the basis for liability and to contributory fault.

84 Acts, ch 1293, §1

See also §619.17

668.2 Party defined.

As used in this chapter, unless otherwise required, *"party"* means any of the following:

1. A claimant.
2. A person named as defendant.
3. A person who has been released pursuant to section 668.7.
4. A third-party defendant.

84 Acts, ch 1293, §2

668.3 Comparative fault — effect — payment method.

1. *a.* Contributory fault shall not bar recovery in an action by a claimant to recover damages for fault resulting in death or in injury to person or property unless the claimant bears a greater percentage of fault than the combined percentage of fault attributed to the defendants, third-party defendants and persons who have been released pursuant to section 668.7, but any damages allowed shall be diminished in proportion to the amount of fault attributable to the claimant.

b. Contributory fault shall not bar recovery in an action by a claimant to recover damages for loss of services, companionship, society, or consortium, unless the fault attributable to the person whose injury or death provided the basis for the damages is greater in percentage than the combined percentage of fault attributable to the defendants, third-party defendants, and persons who have been released pursuant to section 668.7, but any damages allowed shall be diminished in proportion to the amount of fault attributable to the person whose injury or death provided the basis for the damages.

2. In the trial of a claim involving the fault of more than one party to the claim, including third-party defendants and persons who have been released pursuant to section 668.7, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:

a. The amount of damages each claimant will be entitled to recover if contributory fault is disregarded.

b. The percentage of the total fault allocated to each claimant, defendant, third-party defendant, person who has been released from liability under section 668.7, and injured or deceased person whose injury or death provides a basis for a claim to recover damages for loss of consortium, services, companionship, or society. For this purpose the court may determine that two or more persons are to be treated as a single party.

3. In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party and the extent of the causal relation between the conduct and the damages claimed.

4. The court shall determine the amount of damages payable to each claimant by each other party, if any, in accordance with the findings of the court or jury.

5. If the claim is tried to a jury, the court shall give instructions and permit evidence and argu-

ment with respect to the effects of the answers to be returned to the interrogatories submitted under this section.

6. In an action brought under this chapter and tried to a jury, the court shall not discharge the jury until the court has determined that the verdict or verdicts are consistent with the total damages and percentages of fault, and if inconsistencies exist the court shall do all of the following:

a. Inform the jury of the inconsistencies.

b. Order the jury to resume deliberations to correct the inconsistencies.

c. Instruct the jury that it is at liberty to change any portion or portions of the verdicts to correct the inconsistencies.

7. When a final judgment or award is entered, any party may petition the court for a determination of the appropriate payment method of such judgment or award. If so petitioned the court may order that the payment method for all or part of the judgment or award be by structured, periodic, or other nonlump-sum payments. However, the court shall not order a structured, periodic, or other nonlump-sum payment method if it finds that any of the following are true:

a. The payment method would be inequitable.

b. The payment method provides insufficient guarantees of future collectibility of the judgment or award.

c. Payments made under the payment method could be subject to other claims, past or future, against the defendant or the defendant's insurer.

8. In an action brought pursuant to this chapter the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings on each specific item of requested or awarded damages indicating that portion of the judgment or decree awarded for past damages and that portion of the judgment or decree awarded for future damages. All awards of future damages shall be calculated according to the method set forth in section 624.18.

84 Acts, ch 1293, §3; 86 Acts, ch 1211, §39; 87 Acts, ch 157, §5, 6; 97 Acts, ch 197, §10 – 12, 16

668.4 Joint and several liability.

In actions brought under this chapter, the rule of joint and several liability shall not apply to defendants who are found to bear less than fifty percent of the total fault assigned to all parties. However, a defendant found to bear fifty percent or more of fault shall only be jointly and severally liable for economic damages and not for any noneconomic damage awards.

84 Acts, ch 1293, §4; 97 Acts, ch 197, §13, 16

668.5 Right of contribution.

1. A right of contribution exists between or among two or more persons who are liable upon the same indivisible claim for the same injury, death, or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligations, including the share of fault of a claimant, as determined in accordance with section 668.3.

2. Contribution is available to a person who enters into a settlement with the claimant only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable.

3. Contractual or statutory rights of persons not enumerated in section 668.2 for subrogation for losses recovered in proceedings pursuant to this chapter shall not exceed that portion of the judgment or verdict specifically related to such losses, as shown by the itemization of the judgment or verdict returned under section 668.3, subsection 8, and according to the findings made pursuant to section 668.14, subsection 3, and such contractual or statutory subrogated persons shall be responsible for a pro rata share of the legal and administrative expenses incurred in obtaining the judgment or verdict.

4. Subrogation payment restrictions imposed pursuant to subsection 3 apply to settlement recoveries, but only to the extent that the settlement was reasonable.

84 Acts, ch 1293, §5; 87 Acts, ch 157, §7

668.6 Enforcement of contribution.

1. If the percentages of fault of each of the parties to a claim for contribution have been established previously by the court as provided in section 668.3, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action.

2. If the percentages of fault of each of the parties to a claim for contribution have not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is sought.

3. If a judgment has been rendered, an action for contribution must be commenced within one year after the judgment becomes final. If a judgment has not been rendered, a claim for contribution is enforceable only upon satisfaction of one of the following sets of conditions:

a. The person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought by payment made within the period of the statute of limitations applicable to the claimant's right of action and must have commenced the action for contribution within one year after the date of that payment.

b. The person seeking contribution must have

agreed while the action of the claimant was pending to discharge the liability of the person from whom contribution is sought and within one year after the date of the agreement must have discharged that liability and commenced the action for contribution.

84 Acts, ch 1293, §6

668.7 Effect of release.

A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, as determined in section 668.3, subsection 4.

84 Acts, ch 1293, §7

668.8 Tolling of statute.

The filing of a petition under this chapter tolls the statute of limitations for the commencement of an action against all parties who may be assessed any percentage of fault under this chapter.

84 Acts, ch 1293, §8

668.9 Insurance practice.

It shall be an unfair trade practice, as defined in chapter 507B, if an insurer assigns a percentage of fault to a claimant, for the purpose of reducing a settlement, when there exists no reasonable evidence upon which the assigned percentage of fault could be based. The prohibitions and sanctions of chapter 507B shall apply to violations of this section.

84 Acts, ch 1293, §9

668.10 Governmental exemptions.

In any action brought pursuant to this chapter, the state or a municipality shall not be assigned a percentage of fault for any of the following:

1. The failure to place, erect, or install a stop sign, traffic control device, or other regulatory sign as defined in the uniform manual for traffic control devices adopted pursuant to section 321.252. However, once a regulatory device has been placed, created or installed, the state or municipality may be assigned a percentage of fault for its failure to maintain the device.

2. The failure to remove natural or unnatural accumulations of snow or ice, or to place sand, salt, or other abrasive material on a highway, road, or street if the state or municipality establishes that it has complied with its policy or level of service for snow and ice removal or placing sand, salt or other abrasive material on its highways, roads, or streets.

3. For contribution unless the party claiming contribution has given the state or municipality notice of the claim pursuant to sections 669.13 and 670.5.

84 Acts, ch 1293, §10

668.11 Disclosure of expert witnesses in liability cases involving licensed professionals.

1. A party in a professional liability case brought against a licensed professional pursuant to this chapter who intends to call an expert witness of their own selection, shall certify to the court and all other parties the expert's name, qualifications and the purpose for calling the expert within the following time period:

a. The plaintiff within one hundred eighty days of the defendant's answer unless the court for good cause not ex parte extends the time of disclosure.

b. The defendant within ninety days of plaintiff's certification.

2. If a party fails to disclose an expert pursuant to subsection 1 or does not make the expert available for discovery, the expert shall be prohibited from testifying in the action unless leave for the expert's testimony is given by the court for good cause shown.

3. This section does not apply to court appointed experts or to rebuttal experts called with the approval of the court.

86 Acts, ch 1211, §40

668.12 Liability for products — state of the art defense.

In any action brought pursuant to this chapter against an assembler, designer, supplier of specifications, distributor, manufacturer or seller for damages arising from an alleged defect in the design, testing, manufacturing, formulation, packaging, warning, or labeling of a product, a percentage of fault shall not be assigned to such persons if they plead and prove that the product conformed to the state of the art in existence at the time the product was designed, tested, manufactured, formulated, packaged, provided with a warning, or labeled. Nothing contained in this section shall diminish the duty of an assembler, designer, supplier of specifications, distributor, manufacturer or seller to warn concerning subsequently acquired knowledge of a defect or dangerous condition that would render the product unreasonably dangerous for its foreseeable use or diminish the liability for failure to so warn.

86 Acts, ch 1211, §41

668.13 Interest on judgments.

Interest shall be allowed on all money due on judgments and decrees on actions brought pursuant to this chapter, subject to the following:

1. Interest, except interest awarded for future damages, shall accrue from the date of the commencement of the action.

2. If the interest rate is fixed by a contract on which the judgment or decree is rendered, the interest allowed shall be at the rate expressed in the contract, not exceeding the maximum rate permitted under section 535.2.

3. Interest shall be calculated as of the date of judgment at a rate equal to the treasury constant maturity index published by the federal reserve in the H15 report settled immediately prior to the date of the judgment plus two percent. The state court administrator shall distribute notice monthly of that rate and any changes to that rate to all district courts.

4. Interest awarded for future damages shall not begin to accrue until the date of the entry of the judgment.

5. Interest shall be computed daily to the date of the payment, except as may otherwise be ordered by the court pursuant to a structured judgment under section 668.3, subsection 7.

6. Structured, periodic, or other nonlump-sum payments ordered pursuant to section 668.3, subsection 7, shall reflect interest in accordance with annuity principles.

87 Acts, ch 157, §8; 97 Acts, ch 197, §14, 16; 2001 Acts, ch 87, §9, 10

2001 amendment to subsection 3 takes effect April 26, 2001, and applies retroactively to February 28, 2001; 2001 Acts, ch 87, §10

668.14 Evidence of previous payment or future right of payment.

1. In an action brought pursuant to this chapter seeking damages for personal injury, the court shall permit evidence and argument as to the previous payment or future right of payment of actual economic losses incurred or to be incurred as a result of the personal injury for necessary medical care, rehabilitation services, and custodial care except to the extent that the previous payment or future right of payment is pursuant to a state or federal program or from assets of the claimant or the members of the claimant's immediate family.

2. If evidence and argument regarding previous payments or future rights of payment is permitted pursuant to subsection 1, the court shall also permit evidence and argument as to the costs to the claimant of procuring the previous payments or future rights of payment and as to any existing rights of indemnification or subrogation relating to the previous payments or future rights of payment.

3. If evidence or argument is permitted pursuant to subsection 1 or 2, the court shall, unless otherwise agreed to by all parties, instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating the effect of such evidence or argument on the verdict.

4. This section does not apply to actions governed by section 147.136.

87 Acts, ch 157, §9

668.15 Damages resulting from sexual abuse — evidence.

1. In a civil action alleging conduct which constitutes sexual abuse, as defined in section 709.1, sexual assault, or sexual harassment, a party seeking discovery of information concerning the plaintiff's sexual conduct with persons other than the person who committed the alleged act of sexual abuse, as defined in section 709.1, sexual assault, or sexual harassment, must establish specific facts showing good cause for that discovery, and that the information sought is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence.

2. In an action against a person accused of sexual abuse, as defined in section 709.1, sexual assault, or sexual harassment, by an alleged victim of the sexual abuse, sexual assault, or sexual harassment, for damages arising from an injury resulting from the alleged conduct, evidence concerning the past sexual behavior of the alleged victim is not admissible.

89 Acts, ch 138, §1; 90 Acts, ch 1241, §1

668.16 Applicability of this chapter.

This chapter does not apply to Article 3 or 4 of chapter 554.

94 Acts, ch 1167, §119, 122

CHAPTER 668A

PUNITIVE OR EXEMPLARY DAMAGES

668A.1 Punitive or exemplary damages.

668A.1 Punitive or exemplary damages.

1. In a trial of a claim involving the request for punitive or exemplary damages, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:

a. Whether, by a preponderance of clear, convincing, and satisfactory evidence, the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another.

b. Whether the conduct of the defendant was directed specifically at the claimant, or at the person from which the claimant's claim is derived.

2. An award for punitive or exemplary damages shall not be made unless the answer or finding pursuant to subsection 1, paragraph *"a"*, is affirmative. If such answer or finding is affirmative, the jury, or court if there is no jury, shall fix the amount of punitive or exemplary damages to be awarded, and such damages shall be ordered paid as follows:

a. If the answer or finding pursuant to subsection 1, paragraph *"b"*, is affirmative, the full amount of the punitive or exemplary damages awarded shall be paid to the claimant.

b. If the answer or finding pursuant to subsection 1, paragraph *"b"*, is negative, after payment of all applicable costs and fees, an amount not to exceed twenty-five percent of the punitive or exemplary damages awarded may be ordered paid to the claimant, with the remainder of the award to be ordered paid into a civil reparations trust fund administered by the state court administrator. Funds placed in the civil reparations trust shall be under the control and supervision of the executive council, and shall be disbursed only for purposes of indigent civil litigation programs or insurance assistance programs.

3. The mere allegation or assertion of a claim for punitive damages shall not form the basis for discovery of the wealth or ability to respond in damages on behalf of the party from whom punitive damages are claimed until such time as the claimant has established that sufficient admissible evidence exists to support a prima facie case establishing the requirements of subsection 1, paragraph *"a"*.

86 Acts, ch 1211, §42; 87 Acts, ch 157, §10

CHAPTER 669

STATE TORT CLAIMS

Comparative fault, see chapter 668
This chapter not enacted as a part of this title;
transferred from chapter 25A in Code 1993

669.1 Citation and applicability.
669.2 Definitions.
669.3 Adjustment and settlement of claims.
669.4 District court to hold hearings.
669.5 When suit permitted.
669.6 Applicable rules.
669.7 Appeal.
669.8 Judgment as bar.
669.9 Compromise and settlement.
669.10 Award conclusive on state.
669.11 Payment of award.
669.12 Report by director.
669.13 Limitation of actions.
669.14 Exceptions.
669.15 Attorney's fees and expenses.
669.16 Remedies exclusive.
669.17 Adjustment of other claims.
669.18 Extension of time.
669.19 Claims before appeal board.
669.20 Liability insurance.
669.21 Employees defended and indemnified.
669.22 Actions in federal court.
669.23 Employee liability.
669.24 State volunteers.

669.1 Citation and applicability.

This chapter may be cited as the *"Iowa Tort Claims Act"*. Every provision of this chapter is applicable and of full force and effect notwithstanding any inconsistent provision of the Iowa administrative procedure Act.

[C66, 71, 73, 75, 77, 79, 81, §25A.1]
C93, §669.1

669.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Acting within the scope of the employee's office or employment"* means acting in the employee's line of duty as an employee of the state.

2. *"Award"* means any amount determined by the state appeal board to be payable to a claimant under section 669.3, and the amount of any compromise or settlement under section 669.9.

3. *"Claim"* means:

a. Any claim against the state of Iowa for money only, on account of damage to or loss of property or on account of personal injury or death,

caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee's office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death.

b. Any claim against an employee of the state for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee's office or employment.

4. *"Employee of the state"* includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation, but does not include a contractor doing business with the state. Professional personnel, including physicians, osteopathic physicians and surgeons, osteopathic physicians, optometrists, dentists, nurses, physician assistants, and other medical personnel, who render services to patients or inmates of state institutions under the jurisdiction of the department of human services or the Iowa department of corrections, and employees of the commission of veterans affairs, are to be considered employees of the state, whether the personnel are employed on a full-time basis or render services on a part-time basis on a fee schedule or other arrangement. Criminal defendants while performing unpaid community service ordered by the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, and persons supervising those inmates under and according to the terms of the chapter 28E agreement, are to be considered employees of the state.

"Employee of the state" also includes an individual performing unpaid community service under an order of the district court pursuant to section 598.23A.

5. *"State agency"* includes all executive departments, agencies, boards, bureaus, and commissions of the state of Iowa, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the state of Iowa, whether or not authorized to sue and be sued in their own names. This definition does not include a contractor with the state of Iowa. Soil and water conservation districts as defined in section 161A.3, subsection 6, judicial district departments of correctional services as established in section 905.2, and library service area boards of trustees as established in chapter 256 are state agencies for purposes of this chapter.

6. *"State appeal board"* means the state appeal board as defined in section 73A.1.

[C66, 71, 73, 75, 77, 79, 81, §25A.2]

83 Acts, ch 96, §56, 159; 84 Acts, ch 1259, §1; 86 Acts, ch 1172, §1; 87 Acts, ch 23, §1; 89 Acts, ch 83, §13; 90 Acts, ch 1251, §2

C93, §669.2

93 Acts, ch 48, §53; 94 Acts, ch 1171, §51; 96 Acts, ch 1165, §1; 97 Acts, ch 33, §12, 15; 98 Acts, ch 1086, §1; 2001 Acts, ch 158, §37

669.3 Adjustment and settlement of claims.

Authority is hereby conferred upon the state appeal board, acting on behalf of the state of Iowa, subject to the advice and approval of the attorney general, to consider, ascertain, adjust, compromise, settle, determine, and allow any claim as defined in this chapter. If any claim is compromised, settled, or allowed in an amount of more than five thousand dollars, the unanimous approval of all members of the state appeal board and the attorney general shall be required and the approval of the district court of the state of Iowa for Polk county shall also be required.

Claims made under this chapter shall be filed with the director of management, who shall acknowledge receipt on behalf of the state appeal board.

The state appeal board shall adopt rules and procedures for the handling, processing and investigation of claims, according to the provisions of the Iowa administrative procedure Act.

[C66, 71, 73, 75, 77, 79, 81, §25A.3]

C93, §669.3

669.4 District court to hold hearings.

The district court of the state of Iowa for the district in which the plaintiff is resident or in which the act or omission complained of occurred, or where the act or omission occurred outside of Iowa and the plaintiff is a nonresident, the Polk county district court has exclusive jurisdiction to hear, determine, and render judgment on any suit or claim as defined in this chapter. However, the laws and rules of civil procedure of this state on change of place of trial apply to such suits.

The state shall be liable in respect to such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the state shall not be liable for interest prior to judgment or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the state were a private litigant.

The immunity of the state from suit and liability is waived to the extent provided in this chapter.

A suit is commenced under this chapter by serving the attorney general or the attorney general's duly authorized delegate in charge of the tort claims division by service of an original notice. The state shall have thirty days within which to enter its general or special appearance.

If suit is commenced against an employee of the state pursuant to the provisions of this chapter, an original notice shall be served upon the employee in addition to the requirements of this section. The employee of the state shall have the same period to enter a general or special appearance as the state.

[C66, 71, 73, 75, 77, 79, 81, §25A.4; 82 Acts, ch 1055, §1, 2]
C93, §669.4

669.5 When suit permitted.

No suit shall be permitted under this chapter unless the state appeal board has made final disposition of the claim; except that if the state appeal board does not make final disposition of a claim within six months after the claim is made in writing to the state appeal board, the claimant may, by notice in writing, withdraw the claim from consideration of the state appeal board and begin suit under this chapter. Disposition of or offer to settle any claim made under this chapter shall not be competent evidence of liability or amount of damages in any suit under this chapter.

[C66, 71, 73, 75, 77, 79, 81, §25A.5]
C93, §669.5

669.6 Applicable rules.

In suits under this chapter, the forms of process, writs, pleadings, and actions, and the practice and procedure, shall be in accordance with the rules of civil procedure. The same provisions for counterclaims, setoff, interest upon judgments, and payment of judgments, are applicable as in other suits brought in the district court. However, no writ of execution shall issue against the state or any state agency by reason of a judgment under this chapter.

[C66, 71, 73, 75, 77, 79, 81, §25A.6]
83 Acts, ch 186, §10013, 10201
C93, §669.6

669.7 Appeal.

Judgments in the district courts in suits under this chapter shall be subject to appeal to the supreme court of the state in the same manner and to the same extent as other judgments of the district courts.

[C66, 71, 73, 75, 77, 79, 81, §25A.7]
C93, §669.7

669.8 Judgment as bar.

The final judgment in any suit under this chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the state or the employee of the state whose act or omission gave rise to the claim. However, this section shall not apply if the court rules that the claim is not permitted under this chapter.

[C66, 71, 73, 75, 77, 79, 81, §25A.8]
C93, §669.8

669.9 Compromise and settlement.

With a view to doing substantial justice, the attorney general is authorized to compromise or settle any suit permitted under this chapter, with the approval of the court in which suit is pending.

[C66, 71, 73, 75, 77, 79, 81, §25A.9]
C93, §669.9

669.10 Award conclusive on state.

Any award made under this chapter and accepted by the claimant shall be final and conclusive on all officers of the state of Iowa, except when procured by means of fraud, notwithstanding any other provisions of law to the contrary.

The acceptance by the claimant of such award shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of any claim against the state and against the employee of the state whose act or omission gave rise to the claim, by reason of the same subject matter.

[C66, 71, 73, 75, 77, 79, 81, §25A.10]
C93, §669.10

669.11 Payment of award.

Any award to a claimant under this chapter, and any judgment in favor of any claimant under this chapter, shall be paid promptly out of appropriations which have been made for such purpose, if any; but any such amount or part thereof which cannot be paid promptly from such appropriations shall be paid promptly out of any money in the state treasury not otherwise appropriated. Payment shall be made only upon receipt of a written release by the claimant in a form approved by the attorney general.

[C66, 71, 73, 75, 77, 79, 81, §25A.11]
C93, §669.11

669.12 Report by director.

The director of management shall annually report to the general assembly all claims and judgments paid under this chapter. Such report shall include the name of each claimant, a statement of the amount claimed and the amount awarded, and a brief description of the claim.

[C66, 71, 73, 75, 77, 79, 81, §25A.12]
C93, §669.12

669.13 Limitation of actions.

Every claim and suit permitted under this chapter shall be forever barred, unless within two years after such claim accrued, the claim is made in writing to the state appeal board under this chapter. The time to begin a suit under this chapter shall be extended for a period of six months from the date of mailing of notice to the claimant

by the state appeal board as to the final disposition of the claim or from the date of withdrawal of the claim from the state appeal board under section 669.5, if the time to begin suit would otherwise expire before the end of such period.

If a claim is made or filed under any other law of this state and a determination is made by a state agency or court that this chapter provides the exclusive remedy for the claim, the time to make a claim and to begin a suit under this chapter shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by a state agency, if the time to make the claim and to begin the suit under this chapter would otherwise expire before the end of such period. The time to begin a suit under this chapter may be further extended as provided in the preceding paragraph.

This section is the only statute of limitations applicable to claims as defined in this chapter.

[C66, 71, 73, 75, 77, 79, 81, §25A.13]
C93, §669.13

669.14 Exceptions.

The provisions of this chapter shall not apply with respect to any claim against the state, to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

2. Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.

3. Any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.

4. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

5. Any claim by an employee of the state which is covered by the Iowa workers' compensation law or the Iowa occupational disease law.

6. Any claim by an inmate as defined in section 85.59.

7. A claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when the damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "state active duty" as defined in section 29A.1.

8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 78, that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, sealcoating, asphalting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.

9. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public improvement as defined in section 384.37, subsection 19, or other public facility that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984, and applies to all cases tried or retried on or after July 1, 1984.

10. Any claim based upon the enforcement of chapter 89B.

11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to chapters 87, 203, 203A, 203C, 203D, 421B, 486, 487, and 490 through 553, excluding chapters 540A, 542, 542B, 543B, 543C, 543D, 544A, and 544B.

This subsection applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.

12. Any claim based upon the actions of a resident advocate committee member in the performance of duty if the action is undertaken and carried out in good faith.

13. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected in accordance with chapter 135I, or a swimming pool or spa inspection program, which has been established or certified by the state in accordance with that chapter, unless the claim is

based upon an act or omission of an officer or employee of the state and the act or omission constitutes actual malice or a criminal offense.

14. Any claim arising in respect to technical assistance provided by the department of education pursuant to section 279.14A.

[C66, 71, 73, 75, 77, 79, 81, §25A.14]

83 Acts, ch 198, §11, 12, 27, 29; 84 Acts, ch 1067, §7; 84 Acts, ch 1085, §20; 86 Acts, ch 1211, §8, 9; 88 Acts, ch 1068, §1; 89 Acts, ch 291, §7; 91 Acts, ch 160, §2

C93, §669.14

98 Acts, ch 1216, §37; 99 Acts, ch 129, §18; 2001 Acts, ch 55, §35, 38; 2001 Acts, 2nd Ex, ch 1, §26, 28

Legislative intent that subsection 8 not apply to areas of litigation other than highway or road construction or reconstruction; applicability of rule of exclusion; see 83 Acts, ch 198, §27

*Chapter 486 repealed effective January 1, 2001, by 98 Acts, ch 1201, §78; chapter 486A probably intended; corrective legislation is pending

2001 amendment to subsection 11 is effective July 1, 2002; 2001 Acts, ch 55, §38

Subsection 11, unnumbered paragraph 1 amended

669.15 Attorney's fees and expenses.

The court rendering a judgment for the claimant under this chapter, or the state appeal board, with the advice and approval of the attorney general, making an award under section 669.3, or the attorney general making an award under section 669.9, as the case may be, shall, as a part of the judgment or award, determine and allow reasonable attorney's fees and expenses, to be paid out of but not in addition to the amount of judgment or award recovered, to the attorneys representing the claimant. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be guilty of a serious misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §25A.15]

C93, §669.15

669.16 Remedies exclusive.

From and after March 31, 1965, the authority of any state agency to sue or be sued in its own name shall not be construed to authorize suits against such state agency on claims as defined in this chapter. The remedies provided by this chapter in such cases shall be exclusive.

[C66, 71, 73, 75, 77, 79, 81, §25A.16]

C93, §669.16

669.17 Adjustment of other claims.

Nothing contained herein shall be deemed to repeal any provision of law authorizing any state agency to consider, ascertain, adjust, compromise, settle, determine, allow, or pay any claim other than a claim as defined in this chapter.

[C66, 71, 73, 75, 77, 79, 81, §25A.17]

C93, §669.17

669.18 Extension of time.

If a claim is made or a suit is begun under this chapter, and if a determination is made by the state appeal board or by the court that the claim or suit is not permitted under this chapter for any reason other than lapse of time, the time to make a claim or to begin a suit under any other applicable law of this state shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by the state appeal board, if the time to make the claim or begin the suit under such other law would otherwise expire before the end of such period.

[C66, 71, 73, 75, 77, 79, 81, §25A.18]

C93, §669.18

669.19 Claims before appeal board.

Chapter 25 does not apply to claims as defined in this chapter. However, any or all of the provisions of sections 25.1, 25.4, and 25.5 may be made applicable to claims as defined in this chapter by agreement between the attorney general and the state appeal board from time to time.

[C66, 71, 73, 75, 77, 79, 81, §25A.19]

85 Acts, ch 67, §6

C93, §669.19

669.20 Liability insurance.

Whenever a claim or suit against the state is covered by liability insurance, the provisions of the liability insurance policy on defense and settlement shall be applicable notwithstanding any inconsistent provisions of this chapter. The attorney general and the state appeal board shall cooperate with the insurance company.

[C66, 71, 73, 75, 77, 79, 81, §25A.20]

C93, §669.20

669.21 Employees defended and indemnified.

The state shall defend any employee, and shall indemnify and hold harmless an employee against any claim as defined in section 669.2, subsection 3, paragraph *"b"*, including claims arising under the Constitution, statutes, or rules of the United States or of any state. The duty to indemnify and hold harmless shall not apply and the state shall be entitled to restitution from an employee if the employee fails to cooperate in the investigation or defense of the claim, as defined in this section, or if, in an action commenced by the state against the employee, it is determined that the conduct of the employee upon which a tort claim or demand was based constituted a willful and wanton act or omission or malfeasance in office.

[C77, 79, 81, §25A.21]
84 Acts, ch 1259, §2
C93, §669.21
98 Acts, ch 1086, §2

669.22 Actions in federal court.
The state shall defend any employee, and shall indemnify and hold harmless an employee of the state in any action commenced in federal court under section 1983, Title 42, United States Code, against the employee for acts of the employee while acting in the scope of employment. The duty to indemnify and hold harmless shall not apply and the state shall be entitled to restitution from an employee if the employee fails to cooperate in the investigation or defense of the claim or demand, or if, in an action commenced by the state against the employee, it is determined that the conduct of the employee upon which the claim or demand was based constituted a willful and wanton act or omission or malfeasance in office.
[C77, 79, 81, §25A.22]
84 Acts, ch 1259, §3
C93, §669.22
98 Acts, ch 1086, §3

669.23 Employee liability.
Employees of the state are not personally liable for any claim which is exempted under section 669.14.
84 Acts, ch 1259, §4
C85, §25A.23
C93, §669.23

669.24 State volunteers.
A person who performs services for the state government or any agency or subdivision of state government and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, *"compensation"* does not include payments to reimburse a person for expenses.
87 Acts, ch 212, §1
CS87, §25A.24
C93, §669.24

CHAPTER 670

TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

Comparative fault; see chapter 668

670.1 Definitions.
670.2 Liability imposed.
670.3 Actual knowledge of defect as defense.
670.4 Claims exempted.
670.5 Limitation of actions.
670.6 Death — claim presented by another.
670.7 Insurance.
670.8 Officers and employees defended.
670.9 Compromise and settlement.
670.10 Tax to pay judgment or settlement.
670.11 Claims not retrospective.
670.12 Officers and employees — personal liability.
670.13 Default judgments.

670.1 Definitions.
As used in this chapter, the following terms shall have the following meanings:
1. *"Governing body"* means the council of a city, county board of supervisors, board of township trustees, local school board, and other boards and commissions exercising quasi-legislative, quasi-executive, and quasi-judicial power over territory comprising a municipality.
2. *"Municipality"* means city, county, township, school district, and any other unit of local government except soil and water conservation districts as defined in section 161A.3, subsection 6.
3. *"Officer"* includes but is not limited to the members of the governing body.
4. *"Tort"* means every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty or denial or impairment of any right under any constitutional provision, statute or rule of law.
[C71, 73, 75, 77, 79, 81, §613A.1]
86 Acts, ch 1172, §2; 86 Acts, ch 1238, §61; 87 Acts, ch 23, §57; 89 Acts, ch 83, §82
C93, §670.1

670.2 Liability imposed.
Except as otherwise provided in this chapter, every municipality is subject to liability for its torts

and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

For the purposes of this chapter, employee includes a person who performs services for a municipality whether or not the person is compensated for the services, unless the services are performed only as an incident to the person's attendance at a municipality function.

A person who performs services for a municipality or an agency or subdivision of a municipality and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, *"compensation"* does not include payments to reimburse a person for expenses.

[C71, 73, 75, 77, 79, 81, §613A.2; 82 Acts, ch 1018, §3]

87 Acts, ch 212, §20

C93, §670.2

670.3 Actual knowledge of defect as defense.

In any action subject to the provisions of this chapter, an affirmative showing that the injured party had actual knowledge of the existence of the alleged obstruction, disrepair, defect, accumulation, or nuisance at the time of the occurrence of the injury, and a further showing that an alternate safe route was available and known to the injured party, shall constitute a defense to the action.

[C71, 73, 75, 77, 79, 81, §613A.3]

C93, §670.3

670.4 Claims exempted.

The liability imposed by section 670.2 shall have no application to any claim enumerated in this section. As to any such claim, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability.

1. Any claim by an employee of the municipality which is covered by the Iowa workers' compensation law.

2. Any claim in connection with the assessment or collection of taxes.

3. Any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused.

4. Any claim against a municipality as to which the municipality is immune from liability by the provisions of any other statute or where the action based upon such claim has been barred or abated by operation of statute or rule of civil procedure.

5. Any claim for punitive damages.

6. Any claim for damages caused by a municipality's failure to discover a latent defect in the course of an inspection.

7. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 78, that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, sealcoating, asphalting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.

8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public improvement as defined in section 384.37, subsection 19, or other public facility that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984 and applies to all cases tried or retried on or after July 1, 1984.

9. Any claim based upon an act or omission by an officer or employee of the municipality or the municipality's governing body, in the granting, suspension, or revocation of a license or permit, where the damage was caused by the person to whom the license or permit was issued, unless the act of the officer or employee constitutes actual malice or a criminal offense.

10. Any claim based upon an act or omission of an officer or employee of the municipality, whether by issuance of permit, inspection, investigation, or otherwise, and whether the statute, ordinance, or

regulation is valid, if the damage was caused by a third party, event, or property not under the supervision or control of the municipality, unless the act or omission of the officer or employee constitutes actual malice or a criminal offense.

11. A claim based upon or arising out of an act or omission in connection with an emergency response including but not limited to acts or omissions in connection with emergency response communications services.

12. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected by a municipality or the state in accordance with chapter 135I, or a swimming pool or spa inspection program which has been certified by the state in accordance with that chapter, whether or not owned or operated by a municipality, unless the claim is based upon an act or omission of an officer or employee of the municipality and the act or omission constitutes actual malice or a criminal offense.

13. A claim based on an act or omission by a county or city pursuant to section 717.2A or chapter 717B relating to either of the following:

a. Rescuing neglected livestock or another animal by a law enforcement officer.

b. Maintaining or disposing of neglected livestock or another animal by a county or city.

14. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public facility designed for purposes of skateboarding or in-line skating that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction.

15. Any claim based upon or arising out of an act or omission of an officer or employee of the municipality or the municipality's governing body by a person skateboarding or in-line skating on public property when the person knew or reasonably should have known that the skateboarding or in-line skating created a substantial risk of injury to the person and was voluntarily in the place of risk. The exemption from liability contained in this subsection shall only apply to claims for injuries or damage resulting from the risks inherent in the activities of skateboarding or in-line skating.

The remedy against the municipality provided by section 670.2 shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer, employee or agent whose act or omission gave rise to the claim, or the officer's, employee's, or agent's estate.

This section does not expand any existing cause of action or create any new cause of action against a municipality.

[C71, 73, 75, 77, 79, 81, §613A.4; 82 Acts, ch 1018, §4, 5]

83 Acts, ch 198, §24, 25, 26, 27, 29; 86 Acts, ch 1211, §33; 88 Acts, ch 1177, §9, 10; 89 Acts, ch 291, §8

C93, §670.4

94 Acts, ch 1103, §6; 98 Acts, ch 1159, §1

Execution of chapter 89B exempt; see §89B.6

Legislative intent that subsection 7 not apply to areas of litigation other than highway or road construction or reconstruction; applicability of rule of exclusion; see 83 Acts, ch 198, §27

670.5 Limitation of actions.

Every person who claims damages from any municipality or any officer, employee or agent of a municipality for or on account of any wrongful death, loss or injury within the scope of section 670.2 or section 670.8 or under common law shall commence an action therefor within six months, unless said person shall cause to be presented to the governing body of the municipality within sixty days after the alleged wrongful death, loss or injury a written notice stating the time, place, and circumstances thereof and the amount of compensation or other relief demanded. Failure to state time or place or circumstances or the amount of compensation or other relief demanded shall not invalidate the notice; providing, the claimant shall furnish full information within fifteen days after demand by the municipality. No action therefor shall be maintained unless such notice has been given and unless the action is commenced within two years after such notice. The time for giving such notice shall include a reasonable length of time, not to exceed ninety days, during which the person injured is incapacitated by the injury from giving such notice.

[C71, 73, 75, 77, 79, 81, §613A.5]

C93, §670.5

670.6 Death — claim presented by another.

When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury resulting in such death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without additional notice.

[C71, 73, 75, 77, 79, 81, §613A.6]

C93, §670.6

670.7 Insurance.

The governing body of a municipality may purchase a policy of liability insurance insuring against all or any part of liability which might be incurred by the municipality or its officers, employees, and agents under section 670.2 and section 670.8 and may similarly purchase insurance

covering torts specified in section 670.4. The governing body of a municipality may adopt a self-insurance program, including but not limited to the investigation and defense of claims, the establishment of a reserve fund for claims, the payment of claims, and the administration and management of the self-insurance program, to cover all or any part of the liability. The governing body of a municipality may join and pay funds into a local government risk pool to protect itself against any or all liability. The governing body of a municipality may enter into insurance agreements obligating the municipality to make payments beyond its current budget year to provide or procure the policies of insurance, self-insurance program, or local government risk pool. The premium costs of the insurance, the costs of a self-insurance program, the costs of a local government risk pool, and the amounts payable under the insurance agreements may be paid out of the general fund or any available funds or may be levied in excess of any tax limitation imposed by statute. However, for school districts, the costs shall be included in the district management levy as provided in section 296.7 if the district has certified a district management levy. If the district has not certified a district management levy, the cost shall be paid from the general fund. Any independent or autonomous board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly enter into insurance agreements, procure liability insurance, adopt a self-insurance program, or join a local government risk pool within the field of its operation.

The procurement of this insurance constitutes a waiver of the defense of governmental immunity as to those exceptions listed in section 670.4 to the extent stated in the policy but shall have no further effect on the liability of the municipality beyond the scope of this chapter, but if a municipality adopts a self-insurance program or joins and pays funds into a local government risk pool the action does not constitute a waiver of the defense of governmental immunity as to the exceptions listed in section 670.4.

The existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff, or lack of any such insurance, shall not be material in the trial of any action brought against the governing body of a municipality, or its officers, employees, or agents and any reference to such insurance, or lack of insurance, is grounds for a mistrial. A self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C.

[C71, 73, 75, 77, 79, 81, §613A.7]
86 Acts, ch 1211, §34; 89 Acts, ch 135, §123
C93, §670.7
94 Acts, ch 1175, §17

670.8 Officers and employees defended.

The governing body shall defend its officers and employees, whether elected or appointed and shall save harmless and indemnify the officers and employees against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties. However, the duty to save harmless and indemnify does not apply to awards for punitive damages. The exception for punitive damages does not prohibit a governing body from purchasing insurance to protect its officers and employees from punitive damages. The duty to save harmless and indemnify does not apply and the municipality is entitled to restitution by an officer or employee if, in an action commenced by the municipality against the officer or employee, it is determined that the conduct of the officer or employee upon which the tort claim or demand was based constituted a willful and wanton act or omission. Any independent or autonomous board or commission of a municipality having authority to disburse funds for a particular municipal function without approval of the governing body shall similarly defend, save harmless and indemnify its officers and employees against tort claims or demands.

The duties to defend and to save harmless and indemnify shall apply whether or not the municipality is a party to the action and shall include but not be limited to cases arising under title 42 United States Code section 1983.

In the event the officer or employee fails to cooperate in the defense against the claim or demand, the municipality shall have a right of indemnification against that officer or employee.

[C71, 73, 75, 77, 79, 81, §613A.8; 82 Acts, ch 1018, §6]
83 Acts, ch 130, §1
C93, §670.8

670.9 Compromise and settlement.

The governing body of any municipality may compromise, adjust and settle tort claims against the municipality, its officers, employees and agents, for damages under sections 670.2 or 670.8 and may appropriate money for the payment of amounts agreed upon.

[C71, 73, 75, 77, 79, 81, §613A.9]
C93, §670.9

670.10 Tax to pay judgment or settlement.

When a final judgment is entered against or a settlement is made by a municipality for a claim within the scope of section 670.2 or 670.8, payment shall be made and the same remedies apply in the case of nonpayment as in the case of other judgments against the municipality. If a judgment or settlement is unpaid at the time of the adoption of the annual budget, the municipality shall budget an amount sufficient to pay the judgment or settle-

ment together with interest accruing on it to the expected date of payment. A tax may be levied in excess of any limitation imposed by statute. However, for school districts the costs of a judgment or settlement under this section shall be included in the district management levy pursuant to section 298.4.

[C71, 73, 75, 77, 79, 81, §613A.10]
89 Acts, ch 135, §124
C93, §670.10

670.11 Claims not retrospective.

This chapter shall have no application to any occurrence or injury claim or action arising prior to January 1, 1968.

[C71, 73, 75, 77, 79, 81, §613A.11]
C93, §670.11

670.12 Officers and employees — personal liability.

All officers and employees of municipalities are not personally liable for claims which are exempted under section 670.4, except claims for punitive damages, and actions permitted under section 85.20. An officer or employee of a municipality is not liable for punitive damages as a result of acts in the performance of a duty, unless actual malice or willful, wanton and reckless misconduct is proven.

[82 Acts, ch 1018, §1]
C83, §613A.12
83 Acts, ch 130, §2; 86 Acts, ch 1211, §35
C93, §670.12

670.13 Default judgments.

A default judgment shall not be taken against an employee, officer, or agent of a municipality unless the municipality is a party to the action and the time for special appearance, motion or answer by the municipality under rule of civil procedure 1.303 has expired.

[82 Acts, ch 1018, §2]
C83, §613A.13
C93, §670.13

CHAPTER 670A

FORCIBLE FELON LIABILITY

670A.1 Definitions.
670A.2 Perpetrator liability.

670A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Act"* means an act as defined under section 702.2.
2. *"Convicted"* means a finding of guilt, irrespective of imposition or execution of any sentence; a final and valid admission of guilt or a guilty plea; an entry of judgment of conviction; an adjudication of delinquency; a plea of guilty to a delinquency petition; the entry into an informal adjustment agreement or an agreement to the entry of a consent decree regarding a delinquent act.
3. *"Course of criminal conduct"* means an act which when committed constitutes a crime and includes any acts of a victim in defending or attempting to defend against the crime.
4. *"Crime"* means a forcible felony as defined under section 702.11.
5. *"Perpetrator"* means a person who has committed the acts constituting a crime and includes a person who has been convicted of a crime and any person who jointly participates or aids and abets in the commission of a crime.
6. *"Victim"* means a person who is the object of a course of criminal conduct and also includes persons who provide reasonable assistance to or who defend another person who is exposed to or has suffered serious injury at the time of or immediately after the commission of a crime.

98 Acts, ch 1111, §1

670A.2 Perpetrator liability.

1. A perpetrator assumes the risk of and is liable for any loss, injury, or death which results from or arises out of the perpetrator's course of criminal conduct. A crime victim is not liable for any damages caused by any acts of the victim in defending or attempting to defend against the crime if the victim used reasonable force when committing the acts. A perpetrator's assumption of risk and liability does not eliminate a victim's duty to protect against any conditions which the victim knows or has reason to know may create an unreasonable risk of harm. This section shall not apply to perpetrators who, because of mental illness or defect, are incapable of knowing the nature and quality of their acts or are incapable of distinguishing between right and wrong in relation to those acts.

2. For purposes of this section, a certified copy of a guilty plea, an order entering a judgment of guilt, a court record of conviction or adjudication, an order adjudicating a child delinquent, or a record of an informal adjustment agreement shall be conclusive proof of a perpetrator's assumption of risk of and liability for any damage or harm caused to a victim.

3. In addition to any claim for damages, the court shall award a victim reasonable expenses, including attorney's fees and disbursements, which are incurred in the prosecution of the damages claim.

4. Except as necessary to preserve evidence, the court shall stay any action for damages under this section during the pendency of any criminal action which pertains to the course of criminal conduct which forms the basis for a claim for relief under this section.

98 Acts, ch 1111, §2

CHAPTER 671

LIABILITY OF HOTELKEEPERS AND STEAMBOAT OWNERS

This chapter not enacted as a part of this title;
transferred from chapter 105 in Code 1993

671.1 Liability for precious articles — safe deposit.
671.2 Exception.
671.3 Nature of liability.
671.4 Limitation on liability.
671.5 Leaving baggage after registering off.
671.6 Forwarding baggage.
671.7 Nonliability — conveyance.
671.8 Liability — conveyance.
671.9 Liability during transit.

671.1 Liability for precious articles — safe deposit.

No keeper of any hotel, inn, or eating house, nor the owner of any steamboat, shall be liable to any guest for more than one hundred dollars for the loss of or injury to any money, jewelry, articles of gold or silver manufacture, precious stones, personal ornaments, documents of any kind, or other similar property, if such keeper or owner at all times provides:

1. A metal safe or vault, in good order and fit for the safekeeping of such property.

2. Locks or bolts on the door and proper fastenings on the transoms and windows of the sleeping quarters used by guests.

3. Printed notices posted up in a conspicuous place in the office or other public room and in the quarters occupied by guests, stating that such places for safe deposit are provided for the use and accommodation of guests and patrons.

[C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §**1685;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §105.1]

C93, §671.1

671.2 Exception.

The limited liability provided in section 671.1 shall not apply where:

1. A guest has offered to deliver such valuables to said keeper or owner for custody in such metal safe or vault, and

2. Said keeper or owner has omitted or refused to receive and deposit the same in such safe or vault and give such guest a receipt therefor.

But such keeper or owner shall not be required to receive from any one guest for deposit in such safe or vault, property having a market value of more than five hundred dollars.

[C97, §3138; S13, §3138; C24, 27, 31, 35, 39, §**1686;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §105.2]

C93, §671.2

671.3 Nature of liability.

The liability of such keeper or owner for loss of or injury to personal property placed by any guest in the keeper's or owner's care, other than that described in sections 671.1 and 671.2, shall be that of a depository for hire.

[C24, 27, 31, 35, 39, §**1687;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §105.3]

C93, §671.3

671.4 Limitation on liability.

In no event shall the liability of such keeper or owner exceed the following amounts:

1. For each trunk and its contents, two hundred fifty dollars.

2. For each valise and its contents, one hundred fifty dollars.

3. For each box, bundle, or package and its contents, fifty dollars.

4. For any and all other miscellaneous effects of each guest, not exceeding one hundred dollars.

[C24, 27, 31, 35, 39, §**1688;** C46, 50, 54, 58, 62,

66, 71, 73, 75, 77, 79, 81, §105.4]
C93, §671.4

671.5 Leaving baggage after registering off.

In case baggage or other personal property of a guest has remained in any hotel, inn, eating house, or steamboat forty-eight hours after the guest has paid the guest's bill and registered off and the relation of keeper and guest has ceased, such keeper or owner may hold such baggage or property at the risk of the owner.

[C24, 27, 31, 35, 39, §**1689;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §105.5]
C93, §671.5

671.6 Forwarding baggage.

In case baggage or other property has been forwarded to any hotel, inn, eating house, or steamboat, and the owner of such baggage or property does not within forty-eight hours become a guest, such keeper or owner may hold such baggage or property at the risk of the owner.

[C24, 27, 31, 35, 39, §**1690;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §105.6]
C93, §671.6

671.7 Nonliability — conveyance.

No keeper or owner of any hotel, inn or eating house shall be liable by reason of the keeper's or owner's liability or responsibility as innkeeper to any guest for the loss of or damage to the automobile or other conveyance of such guest left in any garage not personally owned and operated by such hotel, inn or eating house or the owner or keeper thereof.

[C31, 35, §1690-c1; C39, §**1690.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §105.7]
C93, §671.7

671.8 Liability — conveyance.

The liability of the keeper or owner of any hotel, inn or eating house, for the loss of or damage to the conveyance of any guest or the personal property of such guest left in such conveyance, where said hotel, inn or eating house keeper, is the owner and operator of such garage, shall be that of a bailee for hire, except that such hotel, inn, rooming house or eating house keeper or owner shall not be liable to the guest in an amount in excess of fifty dollars for loss or damage to personal property left in the conveyance unless said guest shall have listed with said hotel, inn, rooming house or eating house, the personal property contained in said automobile or conveyance, at the time the same is left in said garage so owned by and operated by the said hotel, inn, rooming house or eating house.

[C31, 35, §1690-c2; C39, §**1690.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §105.8]
C93, §671.8

671.9 Liability during transit.

Except as provided in section 671.8 no keeper or owner of any hotel, inn, rooming house or eating house shall be liable for the loss of or damage to the personal property kept therein of any guest, while the said conveyance is in transit between the said hotel, inn, rooming house or eating house and any garage in which the same is temporarily stored, nor for any damage done by said conveyance while in transit, unless in said transit the same is being driven or operated by an employee or agent of the said hotel, inn, rooming house or eating house.

[C31, 35, §1690-c3; C39, §**1690.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §105.9]
C93, §671.9

CHAPTER 672

DONATIONS OF PERISHABLE FOOD

This chapter not enacted as a part of this title;
transferred from chapter 122B in Code 1993

672.1 Donations of perishable food — donor liability — penalty.

672.1 Donations of perishable food — donor liability — penalty.

1. As used in this section unless the context otherwise requires:

a. "Canned foods" means canned foods that have been hermetically sealed or commercially processed and prepared for human consumption.

b. "Charitable or nonprofit organization" means an organization which is exempt from federal or state income taxation, except that the term does not include organizations which sell or offer to sell donated items of food. The assessment of a

nominal fee or request for a donation in connection with the distribution of food by the charitable or nonprofit organization is not a sale.

c. "Gleaner" means a person who harvests, for free distribution, an agriculture crop that has been donated by the owner.

d. "Perishable food" means food which may spoil or otherwise become unfit for human consumption because of its nature or type of physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, eggs in the shell, fresh fruits and vegetables, and foods which have been packaged, refrigerated, or frozen.

2. A gleaner, or a restaurant, food establishment, food service establishment, school, manufacturer of foodstuffs, meat or poultry establishment licensed pursuant to chapter 189A, or other person who, in good faith, donates food to a charitable or nonprofit organization for ultimate free distribution to needy individuals is not subject to criminal or civil liability arising from the condition of the food if the donor reasonably inspects the food at the time of the donation and finds the food fit for human consumption. The immunity provided by this subsection does not extend to a donor or gleaner if damages result from the negligence, recklessness, or intentional misconduct of the donor, or if the donor or gleaner has, or should have had, actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.

3. A bona fide charitable or nonprofit organization which receives, in good faith, donated food for ultimate distribution to needy individuals either for free or for a nominal fee is not subject to criminal or civil liability arising from the condition of the food, if the charitable or nonprofit organization reasonably inspects the food at the time of donation and at the time of distribution and finds the food fit for human consumption. The immunity provided by this subsection does not extend to a charitable or nonprofit organization if damages result from the negligence, recklessness, or intentional misconduct of the charitable or nonprofit organization or if the charitable or nonprofit organization has or should have had actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.

4. The immunity provided by this section is applicable to the good faith donation of canned or perishable food or farm products not readily marketable due to appearance, freshness, grade, surplus or other considerations, but does not apply to canned goods that are defective or cannot be otherwise offered for sale to members of the general public. This does not restrict the authority of a lawful agency to otherwise regulate or ban the use of such food for human consumption. Charitable or nonprofit organizations which regularly accept donated food for distribution pursuant to this section shall request the appropriate local health authorities to inspect the food at regular intervals.

5. A person, including an employee or volunteer for a charitable or nonprofit organization, who sells, or offers to sell, for profit, food that the person knows to be donated pursuant to this section is guilty of a simple misdemeanor. For purposes of this subsection, the assessment of a nominal fee or request for a donation by the charitable or nonprofit organization is not a sale.

[82 Acts, ch 1168, §1]
C83, §122B.1
89 Acts, ch 181, §1
C93, §672.1
2001 Acts, ch 23, §2; 2002 Acts, ch 1050, §52
Subsection 2 amended

CHAPTER 673

DOMESTICATED ANIMAL ACTIVITIES

673.1 Definitions.
673.2 Liability.
673.3 Notice required.

673.1 Definitions.

1. *"Claim"* means a claim, counterclaim, cross-claim, complaint, or cause of action recognized by the Iowa rules of civil procedure and brought in court on account of damage to or loss of property or on account of personal injury or death.

2. *"Domesticated animal"* means an animal commonly referred to as a bovine, swine, sheep, goat, domesticated deer, llama, poultry, rabbit, horse, pony, mule, jenny, donkey, or hinny.

3. *"Domesticated animal activity"* means any of the following:

a. Riding or driving a domesticated animal.

b. Riding as a passenger on a vehicle powered by a domesticated animal.

c. Teaching or training a person to ride or drive

a domesticated animal or a vehicle powered by a domesticated animal.

d. Participating in an activity sponsored by a domesticated animal activity sponsor.

e. Participating or assisting a participant in a domesticated animal event.

f. Managing or assisting in managing a domesticated animal in a domesticated animal event.

g. Inspecting or assisting an inspection of a domesticated animal for the purpose of purchase.

h. Providing hoof care including, but not limited to, horseshoeing.

i. Providing or assisting in providing veterinary care to a domesticated animal.

j. Boarding or keeping a domesticated animal, by the owner of the domesticated animal or on behalf of another person.

k. Loading, hauling, or transporting a domesticated animal.

l. Breeding domesticated animals.

m. Participating in racing.

n. Showing or displaying a domesticated animal.

4. *"Domesticated animal activity sponsor"* means a person who owns, organizes, manages, or provides facilities for a domesticated animal activity, including, but not limited to, any of the following:

a. Clubs involved in riding, hunting, competing, or performing.

b. Youth clubs, including 4-H clubs.

c. Educational institutions.

d. Owners, operators, instructors, and promoters of a domesticated animal event or domesticated animal facility, including, but not limited to, stables, boarding facilities, clubhouses, rides, fairs, and arenas.

e. Breeding farms.

f. Training farms.

5. *"Domesticated animal event"* means an event in which a domesticated animal activity occurs, including, but not limited to, any of the following:

a. A fair.

b. A rodeo.

c. An exposition.

d. A show.

e. A competition.

f. A 4-H event.

g. A sporting event.

h. An event involving driving, pulling, or cutting.

i. Hunting.

j. An equine event or discipline including, but not limited to, dressage, a hunter or jumper show, polo, steeplechasing, English or western performance riding, a western game, or trail riding.

6. *"Domesticated animal professional"* means a person who receives compensation for engaging in a domesticated animal activity by doing one of the following:

a. Instructing a participant.

b. Renting the use of a domesticated animal to a participant for the purposes of riding, driving, or being a passenger on a domesticated animal or a vehicle powered by a domesticated animal.

c. Renting equipment or tack to a participant.

7. *"Inherent risks of a domesticated animal activity"* means a danger or condition which is an integral part of a domesticated animal activity, including, but not limited to, the following:

a. The propensity of a domesticated animal to behave in a manner that is reasonably foreseeable to result in damages to property, or injury or death to a person.

b. Risks generally associated with an activity which may include injuries caused by bucking, biting, stumbling, rearing, trampling, scratching, pecking, falling, kicking, or butting.

c. The unpredictable reaction by a domesticated animal to unfamiliar conditions, including, but not limited to, a sudden movement; loud noise; an unfamiliar environment; or the introduction of unfamiliar persons, animals, or objects.

d. A collision by the domesticated animal with an object or animal.

e. The failure of a participant to exercise reasonable care, take adequate precautions, or use adequate control when engaging in the activity, including failing to maintain reasonable control or failing to act in a manner consistent with the person's abilities.

8. *"Participant"* means a person who engages in a domesticated animal activity, regardless of whether the person receives compensation.

9. *"Spectator"* means a person who is in the vicinity of a domesticated animal activity, but who is not a participant.

97 Acts, ch 61, §1

673.2 Liability.

A person, including a domesticated animal professional, domesticated animal activity sponsor, the owner of the domesticated animal, or a person exhibiting the domesticated animal, is not liable for the damages, injury, or death suffered by a participant or spectator resulting from the inherent risks of a domesticated animal activity. This section shall not apply to the extent that the claim for damages, injury, or death is caused by any of the following:

1. An act committed intentionally, recklessly, or while under the influence of an alcoholic beverage or other drug or a combination of such substances which causes damages, injury, or death.

2. The use of equipment or tack used in the domesticated animal activity which the defendant provided to a participant, if the defendant knew or reasonably should have known that the equipment or tack was faulty or defective.

3. The failure to notify a participant of a dangerous latent condition on real property in which the defendant holds an interest, which is known or should have been known. The notice may be made

by posting a clearly visible warning sign on the property.

4. A domesticated animal activity which occurs in a place designated or intended by an animal activity sponsor as a place for persons who are not participants to be present.

5. A domesticated animal activity which causes damages, injury, or death to a spectator who is in a place where a reasonable person who is alert to inherent risks of domesticated animal activities would not expect a domesticated animal activity to occur.

97 Acts, ch 61, §2

673.3 Notice required.

A domesticated animal professional shall post and maintain a sign on real property in which the professional holds an interest, if the professional conducts domesticated animal activities on the property. The location of the sign may be near or on a stable, corral, or arena owned or controlled by the domesticated animal professional. The sign must be clearly visible to a participant. This section does not require a sign to be posted on a domesticated animal or a vehicle powered by a domesticated animal. The notice shall appear in black letters a minimum of one inch high and in the following form:

WARNING

UNDER IOWA LAW, A DOMESTICATED ANIMAL PROFESSIONAL IS NOT LIABLE FOR DAMAGES SUFFERED BY, AN INJURY TO, OR THE DEATH OF A PARTICIPANT RESULTING FROM THE INHERENT RISKS OF DOMESTICATED ANIMAL ACTIVITIES, PURSUANT TO IOWA CODE CHAPTER 673. YOU ARE ASSUMING INHERENT RISKS OF PARTICIPATING IN THIS DOMESTICATED ANIMAL ACTIVITY.

If a written contract is executed between a domesticated animal professional and a participant involving domesticated animal activities, the contract shall contain the same notice in clearly readable print. In addition, the contract shall include the following disclaimer:

A number of inherent risks are associated with a domesticated animal activity. A domesticated animal may behave in a manner that results in damages to property or an injury or death to a person. Risks associated with the activity may include injuries caused by bucking, biting, stumbling, rearing, trampling, scratching, pecking, falling, or butting.

The domesticated animal may react unpredictably to conditions, including, but not limited to, a sudden movement, loud noise, an unfamiliar environment, or the introduction of unfamiliar persons, animals, or objects.

The domesticated animal may also react in a dangerous manner when a condition or treatment is considered hazardous to the welfare of the animal; a collision occurs with an object or animal; or a participant fails to exercise reasonable care, take adequate precautions, or use adequate control when engaging in a domesticated animal activity, including failing to maintain reasonable control of the animal or failing to act in a manner consistent with the person's abilities.

97 Acts, ch 61, §3; 98 Acts, ch 1100, §80

CHAPTER 674

CHANGING NAMES

674.1 Authorization.
674.2 Petition to court.
674.3 Petition copy.
674.4 When granted.
674.5 Contents of decree.
674.6 Notice — consent.
674.7 Copy to Iowa department of public health.
674.8 Copy to counties.
674.9 Former name indicated.
674.10 Fee.
674.11 County clerk's record.
674.12 Repealed by 77 Acts, ch 136, §5.
674.13 Further change barred.
674.14 Indexing in real property record.

674.1 Authorization.

A person who has attained the age of majority and who does not have any civil disabilities may apply to the court to change the person's name by filing a verified petition as provided in this chapter. The verified petition may request a name change for minor children of the petitioner as well as the petitioner or a parent may file a verified petition requesting a name change on behalf of a minor child of the parent.

[C51, §2256 – 2260; R60, §3844 – 3848; C73, §3502 – 3506; C97, §4471 – 4475; S13, §4471-b;

C24, 27, 31, 35, 39, §**12645;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §674.1; 81 Acts, ch 201, §1]

674.2 Petition to court.

The verified petition shall be addressed to the district court of the county where the applicant resides and shall state and provide for each person seeking a name change:

1. The name at the time the petition is filed of the person whose name is to be changed and the person's county of residence. If the person whose name is to be changed is a minor child, the petition shall state the name of the petitioner and the petitioner's relationship to the minor child.
2. A description including height, weight, color of hair, color of eyes, race, sex, and date and place of birth.
3. Residence at time of petition and any prior residences for the past five years.
4. Reason for change of name, briefly and concisely stated.
5. A legal description of all real property in this state owned by the petitioner.
6. The name the petitioner proposes to take.
7. A certified copy of the birth certificate to be attached to the petition. If a certified copy of the birth certificate is not available, the reason for the unavailability shall be stated and another form of identification, which may include documents provided by the United States department of immigration and naturalization service, shall be attached in lieu of the certified copy of the birth certificate.

[S13, §4471-c; C24, 27, 31, 35, 39, §**12646, 12647;** C46, 50, 54, 58, 62, 66, 71, §674.2, 674.3; C73, 75, 77, 79, 81, §674.2, 674.6; 81 Acts, ch 201, §2]

90 Acts, ch 1008, §1, 2; 99 Acts, ch 150, §2

674.3 Petition copy.

A copy of the petition shall be filed by the clerk of court with the division for records and statistics of the Iowa department of public health.

[C73, 75, 77, 79, 81, §674.3]

674.4 When granted.

A decree of change of name may be granted any time after thirty days of the filing of the petition.

[S13, §4471-h; C24, 27, 31, 35, 39, §**12653;** C46, 50, 54, 58, 62, 66, 71, §674.9; C73, 75, 77, 79, 81, §674.4]

674.5 Contents of decree.

The decree shall describe the petitioner, giving the petitioner's name and former name, height, weight, color of hair, color of eyes, race, sex, date and place of birth and the given name of the spouse and any minor children affected by the change. The decree shall also give a legal description of all real property owned by the petitioner.

[C73, 75, 77, 79, 81, §674.5]

674.6 Notice — consent.

If the petitioner is married, the petitioner must give legal notice to the spouse, in the manner of an original notice, of the filing of the petition.

If the petition includes or is filed on behalf of a minor child fourteen years of age or older, the child's written consent to the change of name of that child is required.

If the petition includes or is filed on behalf of a minor child under fourteen, both parents as stated on the birth certificate of the minor child shall file their written consent to the name change. If one of the parents does not consent to the name change, a hearing shall be set on the petition on twenty days' notice to the nonconsenting parent pursuant to the rules of civil procedure. At the hearing the court may waive the requirement of consent as to one of the parents if it finds:

1. That the parent has abandoned the child;
2. That the parent has been ordered to contribute to the support of the child or to financially aid in the child's birth and has failed to do so without good cause; or
3. That the parent does not object to the name change after having been given due and proper notice.

[C73, 75, 77, 79, 81, §674.6; 81 Acts, ch 201, §3]

85 Acts, ch 99, §12

674.7 Copy to Iowa department of public health.

When the court grants a decree of change of name, the clerk of the court shall furnish the petitioner with a certified copy of the decree and mail an abstract of a decree requiring a name change to be reflected on a birth certificate to the state registrar of vital statistics of the Iowa department of public health on a form provided by the state registrar.

[C73, 75, 77, 79, 81, §674.7]

674.8 Copy to counties.

The clerk of the court shall send a certified copy of the decree to the recorder's office in every county in this state where real property is owned by the petitioner.

[S13, §4471-i; C24, 27, 31, 35, 39, §**12656;** C46, 50, 54, 58, 62, 66, 71, §674.12; C73, 75, 77, 79, 81, §674.8]

674.9 Former name indicated.

Any new birth certificate issued to a person granted a change of name shall reflect the former name of the person issued the new birth certificate.

[C73, 75, 77, 79, 81, §674.9; 81 Acts, ch 201, §4]

674.10 Fee.

For filing a petition for change of name, the clerk

shall collect a fee in the amount collected for filing and docketing a petition under section 602.8105, subsection 1, paragraph *"a"*.

[S13, §4471-g; C24, 27, 31, 35, 39, §**12651, 12652;** C46, 50, 54, 58, 62, 66, 71, §674.7, 674.8; C73, 75, 77, 79, 81, §674.10]

94 Acts, ch 1074, §14

674.11 County clerk's record.

The clerk of the district court shall keep a record entitled "Change of Name Record." The entire proceedings shall be recorded in this record and the action shall be indexed under the original name and the new name.

[S13, §4471-e, 4471-f; C24, 27, 31, 35, 39, §**12649, 12650;** C46, 50, 54, 58, 62, 66, 71, §674.5, 674.6; C73, 75, 77, 79, 81, §674.11]

674.12 Repealed by 77 Acts, ch 136, § 5.

674.13 Further change barred.

A person shall not change the person's name more than once under this chapter unless just cause is shown. However, in a decree dissolving a person's marriage, the person's name may be changed back to the name appearing on the person's original birth certificate or to a legal name previously acquired in a former marriage.

[S13, §4471-h; C24, 27, 31, 35, 39, §**12655;** C46, 50, 54, 58, 62, 66, 71, §674.11; C73, 75, 77, 79, 81, §674.13]

88 Acts, ch 1158, §98

674.14 Indexing in real property record.

The county recorder and county auditor of each county in which the petitioner owns real property shall charge fees in the amounts specified in sections 331.604 and 331.507, subsection 2, paragraph *"b"*, for indexing a change of name for each parcel of real estate.

[S13, §4471-i; C24, 27, 31, 35, 39, §**12656;** C46, 50, 54, 58, 62, 66, 71, §674.12; C73, 75, 77, 79, 81, §674.14]

85 Acts, ch 159, §12

CHAPTER 675

PATERNITY OF CHILDREN AND OBLIGATION FOR SUPPORT

Transferred to chapter 600B

CHAPTER 676

JUDGMENT BY CONFESSION

676.1 Judgment by confession — how entered.
676.2 For money only — contingent liability.
676.3 Statement.
676.4 Judgment — execution.

676.1 Judgment by confession — how entered.

A judgment by confession, without action, may be entered by the clerk of the district court.

[C51, §1837; R60, §3397; C73, §2894; C97, §3813; C24, 27, 31, 35, 39, §**12668;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §676.1]

676.2 For money only — contingent liability.

The judgment can be only for money due or to become due, or to secure a person against contingent liabilities on behalf of the defendant, and must be for a specified sum.

[C51, §1838; R60, §3398; C73, §2895; C97, §3814; C24, 27, 31, 35, 39, §**12669;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §676.2]

676.3 Statement.

A statement in writing must be made, signed, and verified by the defendant, and filed with the clerk, to the following effect:

1. If for money due or to become due, it must state concisely the facts out of which the indebtedness arose, and that the sum confessed therefor is justly due, or to become due, as the case may be.

2. If for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting such liability, and must show that the sum confessed therefor does not exceed the same.

[C51, §1839; R60, §3399; C73, §2896; C97, §3815; C24, 27, 31, 35, 39, §**12670;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §676.3]

676.4 Judgment — execution.

The clerk shall thereupon make an entry of judgment in the clerk's court record for the amount confessed and costs, and shall issue execution thereon as in other cases, when ordered by the party entitled thereto.

[C51, §1840; R60, §3400; C73, §2897; C97, §3816; C24, 27, 31, 35, 39, §**12671;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §676.4]

CHAPTER 677

OFFER TO CONFESS JUDGMENT

677.1 Offer to confess before action brought.
677.2 Nonacceptance — costs.
677.3 Effect of nonaccepted offer.
677.4 Offer to confess judgment after action brought.
677.5 Nonacceptance — costs.
677.6 Effect of nonaccepted offer.
677.7 Offer to confess after action brought.
677.8 Acceptance — judgment.
677.9 Effect of nonaccepted offer.
677.10 Costs.
677.11 Conditional offer.
677.12 Acceptance — effect.
677.13 Nonacceptance — effect.
677.14 No cause for continuance.

677.1 Offer to confess before action brought.

Before an action for the recovery of money is brought against any person, the person may go before the clerk of the county of the person's residence, or of that in which the person having the cause of action resides, and offer to confess judgment in favor of such person for a specified sum on such cause of action, as provided for in chapter 676.

[R60, §3403; C73, §2898; C97, §3817; C24, 27, 31, 35, 39, §**12672;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.1]

677.2 Nonacceptance — costs.

If such person, having had the same notice as if the person was a defendant in an action that the offer would be made, of its amount, and of the time and place of making it, refuses to accept it, and afterwards commences an action upon such cause, and does not recover more than the amount so offered to be confessed, the person to whom the offer was made shall pay all the costs of the action.

[R60, §3403; C73, §2898; C97, §3817; C24, 27, 31, 35, 39, §**12673;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.2]

677.3 Effect of nonaccepted offer.

On the trial thereof the offer shall not be treated as an admission of the cause of action or amount to which the plaintiff was entitled, nor be given in evidence.

[R60, §3403; C73, §2898; C97, §3817; C24, 27, 31, 35, 39, §**12674;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.3]

677.4 Offer to confess judgment after action brought.

After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action.

[R60, §3404; C73, §2899; C97, §3818; C24, 27, 31, 35, 39, §**12675;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.4]

677.5 Nonacceptance — costs.

If the plaintiff, being present, refuses to accept judgment for such sum in full of the plaintiff's demands in the action, or, having had three days' notice that the offer would be made, of its amount, and of the time of making it, fails to attend, and on the trial does not recover more than was offered to be confessed, the plaintiff shall pay the costs of the defendant incurred after the offer.

[R60, §3404; C73, §2899; C97, §3818; C24, 27, 31, 35, 39, §**12676;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.5]

677.6 Effect of nonaccepted offer.

The offer shall not be treated as an admission of the cause of action or amount to which the plaintiff was entitled nor be given in evidence upon the trial.

[R60, §3404; C73, §2899; C97, §3818; C24, 27, 31, 35, 39, §**12677;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.6]

677.7 Offer to confess after action brought.

The defendant in an action for the recovery of money only may, at any time after service of notice and before the trial, serve upon the plaintiff or the

plaintiff's attorney an offer in writing to allow judgment to be taken against the defendant for a specified sum with costs.

[R60, §3405; C73, §2900; C97, §3819; C24, 27, 31, 35, 39, §**12678;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.7]

677.8 Acceptance — judgment.

If the plaintiff accepts the offer, and gives notice thereof to the defendant or the defendant's attorney within five days after the offer is made, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance with a copy of the offer, verified by affidavit; and in either case a minute of the offer and acceptance shall be entered upon the judge's calendar, and judgment shall be rendered by the court accordingly.

[R60, §3405; C73, §2900; C97, §3819; C24, 27, 31, 35, 39, §**12679;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.8]

677.9 Effect of nonaccepted offer.

If the notice of acceptance is not given in the period limited, the offer shall be treated as withdrawn, and shall not be given in evidence or mentioned on the trial.

[R60, §3405; C73, §2900; C97, §3819; C24, 27, 31, 35, 39, §**12680;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.9]

677.10 Costs.

If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff cannot recover costs, but shall pay the defendant's costs from the time of the offer.

[R60, §3405; C73, §2900; C97, §3819; C24, 27, 31, 35, 39, §**12681;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.10]

677.11 Conditional offer.

In an action for the recovery of money only, the defendant, having answered, may serve upon the plaintiff or the plaintiff's attorney an offer in writing that, if the defendant fails in the defendant's defense, the amount of recovery shall be assessed at a specified sum.

[R60, §3406; C73, §2901; C97, §3820; C24, 27, 31, 35, 39, §**12682;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.11]

677.12 Acceptance — effect.

If the plaintiff accepts the offer, and gives notice thereof to the defendant or the defendant's attorney within five days after it was served, or within three days if served in term time, and the defendant fails in the defendant's defense, the judgment shall be for the amount so agreed upon.

[R60, §3406; C73, §2901; C97, §3820; C24, 27, 31, 35, 39, §**12683;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.12]

677.13 Nonacceptance — effect.

If the plaintiff does not accept the offer, the plaintiff shall prove the amount to be recovered as if the offer had not been made, and the offer shall not be given in evidence or mentioned on the trial, and if the amount recovered by the plaintiff does not exceed the sum mentioned in the offer, the defendant shall recover the defendant's costs incurred in the defense.

[R60, §3406; C73, §2901; C97, §3820; C24, 27, 31, 35, 39, §§**12684;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.13]

677.14 No cause for continuance.

The making of any offer pursuant to the provisions of this chapter shall not be cause for a continuance of the action or a postponement of the trial.

[R60, §3407; C73, §2902; C97, §3821; C24, 27, 31, 35, 39, §**12685;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §677.14]

CHAPTER 678

SUBMITTING CONTROVERSIES WITHOUT ACTION OR IN ACTION

678.1 Agreed statement of facts.
678.2 Affidavit.
678.3 Judgment.
678.4 Record.
678.5 Judgment enforced.
678.6 Submission of cause pending.
678.7 Pleadings abandoned — lien and custody of property.
678.8 Submission of question of law — agreement as to judgment.
678.9 Costs.

678.1 Agreed statement of facts.

Parties to a question in difference, which might be the subject of a civil action, may, without action, present an agreed statement of the facts to any court having jurisdiction of the subject matter.

[C51, §1843; R60, §3408; C73, §3408; C97, §4377; C24, 27, 31, 35, 39, §**12686;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §678.1]

678.2 Affidavit.

It must be shown by affidavit that the controversy is real, and that the proceeding is in good faith to determine the rights of the parties thereto.

[C51, §1844; R60, §3409; C73, §3409; C97, §4378; C24, 27, 31, 35, 39, §**12687;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §678.2]

678.3 Judgment.

The court shall hear and determine the case and render judgment as if an action were pending.

[C51, §1845; R60, §3410; C73, §3410; C97, §4379; C24, 27, 31, 35, 39, §**12688;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §678.3]

678.4 Record.

The statement, the submission, and the judgment shall constitute the record.

[R60, §3411; C73, §3411; C97, §4380; C24, 27, 31, 35, 39, §**12689;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §678.4]

678.5 Judgment enforced.

The judgment shall be with costs, and it may be enforced and shall be subject to review in the same manner as if it had been rendered in an action, unless otherwise provided for in the submission.

[R60, §3412; C73, §3412; C97, §4381; C24, 27, 31, 35, 39, §**12690;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §678.5]

678.6 Submission of cause pending.

The same may also be done at any time before trial in an action pending, subject to the same requirements and attended by the same results as in a case without action.

[R60, §3413; C73, §3413; C97, §4382; C24, 27, 31, 35, 39, §**12691;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §678.6]

678.7 Pleadings abandoned — lien and custody of property.

Such submission of a stated case shall be an abandonment by both parties of all pleadings filed in such cause, and the cause shall stand on the agreed case alone, which must provide for any lien created for attachment, and for any property in the custody of the law, else such lien and custody will be held to be waived.

[R60, §3413; C73, §3413; C97, §4382; C24, 27, 31, 35, 39, §**12692;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §678.7]

678.8 Submission of question of law — agreement as to judgment.

The parties may, if they think fit, enter into an agreement in writing that, upon the judgment of the court being given on the question of law raised, particular property therein described, or a sum of money fixed by the parties or to be ascertained by the court or in such manner as the court may direct, shall be delivered to and vested in one of the parties by the other, or, in case of money, shall be paid by one of such parties to the other of them, either with or without costs of the action; and the judgment of the court may be entered for the transfer and delivery of such property, or for such sum as shall be so agreed or ascertained, with or without costs, as the case may be.

[R60, §3414; C73, §3414; C97, §4383; C24, 27, 31, 35, 39, §**12693;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §678.8]

678.9 Costs.

In case no agreement is entered into as to the costs, they shall follow the event of the action, and be recovered by the successful party.

[R60, §3415; C73, §3415; C97, §4384; C24, 27, 31, 35, 39, §**12694;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §678.9]

CHAPTER 679

INFORMAL DISPUTE RESOLUTION

Desirability of informal dispute resolution procedures; general assembly's findings; see 85 Acts, ch 134, §1

679.1 Definitions.
679.2 Dispute resolution program — administration.
679.3 Establishment and approval of dispute resolution centers.
679.4 Funding of dispute resolution centers.
679.5 Referrals to dispute resolution centers.
679.6 Preliminary information.
679.7 Fees.
679.8 Mediators.
679.9 Agreement.
679.10 Rules.
679.11 Report.
679.12 Confidentiality.
679.13 Limitation on liability.
679.14 Tolling of statute of limitations.

679.1 Definitions.

As used in this chapter:

1. *"Approved center"* or *"approved dispute resolution center"* means a center that has applied for and received approval from the executive director under section 679.3.

2. *"Center"* or *"dispute resolution center"* means a program which is organized by one or more governmental subdivisions or nonprofit organizations and which makes informal dispute resolution procedures available.

3. *"Council"* means the prosecuting attorneys training coordination council in the department of justice, established by chapter 13A.

4. *"Dispute resolution process"* or *"informal dispute resolution process"* means a process by which the parties involved in a minor dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator or member of the center's staff in order to resolve their dispute.

5. *"Executive director"* means the executive director of the prosecuting attorneys training coordination council.

6. *"Mediator"* means a person who assists parties involved in a minor dispute to reach a mutually acceptable resolution of their dispute.

85 Acts, ch 134, §2

679.2 Dispute resolution program — administration.

1. There is established in the office of prosecuting attorneys training coordinator of the department of justice a program for the establishment and support of locally organized dispute resolution centers which make informal dispute resolution procedures available. The executive director of the prosecuting attorneys training coordination council shall administer the program under the direction of the council.

2. The executive director, subject to approval by the council, may appoint an advisory committee to advise the executive director and the council on the administration of the dispute resolution program. If an advisory committee is appointed it shall consist of not more than seven members and shall include at least three representatives of existing dispute resolution centers. The committee shall meet at the call of the executive director. Members shall serve without compensation but are entitled to actual expenses incurred in the performance of their duties. Payment shall be made from funds appropriated to the council for the administration of the dispute resolution program.

85 Acts, ch 134, §3

679.3 Establishment and approval of dispute resolution centers.

A center, or entity proposing a center, may apply to the executive director for approval to participate in the dispute resolution program. The application shall set forth a plan for operation of the center, including such information as the center's objectives, areas or populations to be served, administrative organization, budget, recordkeeping, criteria for accepting cases, availability of mediators, and procedures for receiving and screening requests, scheduling and conducting sessions with the mediator, and terminating the dispute resolution process through agreement or otherwise. The executive director shall prescribe the form of application and specify the information to be included and shall set the deadline for filing. A center must submit an application for each year in which it desires to participate in the program.

The executive director shall review the applications and shall approve for participation in the program all applicants which meet the requirements of this chapter and rules adopted pursuant to this chapter.

85 Acts, ch 134, §4

679.4 Funding of dispute resolution centers.

1. The executive director, subject to approval by the council, shall distribute state grants to approved dispute resolution centers from funds appropriated for that purpose. The amount distributed may vary among the centers based on need. The state grant shall not exceed fifty percent of the estimated annual cost of a center.

2. The administrator of each center may accept and disburse the state grants and grants and gifts from federal and other public and private sources for the operation of the center. Centers are encouraged to make use of local resources whenever possible, including the use of volunteers and available space in public facilities.

3. The executive director may accept and disburse grants and gifts from federal and other public and private sources for the dispute resolution program.

85 Acts, ch 134, §5

679.5 Referrals to dispute resolution centers.

1. The following types of cases may be accepted for dispute resolution at an approved dispute resolution center, subject to such limitations as the council prescribes by rule:

a. Civil claims and disputes, including but not limited to neighborhood disputes, landlord-tenant disputes, debtor-creditor disputes and consumer complaints.

b. Disputes concerning child custody and visitation rights.

c. Juvenile offenses.

d. Criminal complaints.

2. A center may accept cases referred by a court, prosecuting attorney, law enforcement officer, social service agency or any other interested person or agency, or at the request of the parties involved in the dispute. A case may be referred

prior to the commencement of formal judicial proceedings or at any stage of such proceedings. The center shall provide follow-up information on the disposition of a case if the case was referred by a court and the court requests the information.

85 Acts, ch 134, §6

679.6 Preliminary information.

Before the dispute resolution process begins, the approved dispute resolution center shall provide the parties with a written statement setting forth the procedures to be followed. The statement shall be in the form prescribed in the rules adopted by the council under this chapter.

85 Acts, ch 134, §7

679.7 Fees.

Except as otherwise provided in this section, an approved dispute resolution center shall require each party to pay a fee to help defray the administrative costs of the dispute resolution process. The council shall establish a sliding scale of fees to be charged, based upon ability to pay. A person shall not be denied the services of a dispute resolution center solely because of inability to pay the fee.

85 Acts, ch 134, §8

679.8 Mediators.

An impartial mediator shall be assigned to each case scheduled for a mediation session. A person is not eligible to serve as a mediator in an approved center until the person has completed at least twenty-five hours of training in conflict resolution techniques approved by the executive director. The council may by rule establish classifications of disputes and provide that a person is not eligible to serve as a mediator in a particular class of dispute unless the person possesses additional credentials or completes additional specialized training, or both.

A center may provide for the compensation of mediators or utilize the services of volunteer mediators, or both.

The mediator shall assist the parties to reach a mutually acceptable resolution of their dispute through discussion and negotiation. The mediator shall officially terminate the dispute resolution process if the parties are unable to agree. The termination shall be without prejudice to either party in any other proceeding. The mediator and the center have no authority to make or impose any adjudication, sanction or penalty upon the parties.

85 Acts, ch 134, §9

679.9 Agreement.

If the parties involved in the dispute reach agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party.

85 Acts, ch 134, §10

679.10 Rules.

The council shall adopt rules to carry out the purposes of this chapter. In addition to matters expressly required elsewhere in this chapter, the rules may include the following:

1. Requirements relating to the administration of a dispute resolution center, including budgeting, recordkeeping, reporting, evaluation and administrative organization.
2. Requirements for advisory committees to assist dispute resolution centers.
3. Procedures to be followed in the dispute resolution process.
4. Forms to assist dispute resolution centers in carrying out their duties.

85 Acts, ch 134, §11

679.11 Report.

The executive director shall report annually to the general assembly and the governor concerning the operation of the dispute resolution program.

85 Acts, ch 134, §12

679.12 Confidentiality.

If mediation is conducted pursuant to this chapter, the confidentiality of all mediation communications and mediation documents is protected as provided in section 679C.2.

85 Acts, ch 134, §13; 98 Acts, ch 1062, §12

679.13 Limitation on liability.

No mediator, employee or agent of a center, or member of a center's board may be held liable for civil damages for any statement or decision made in the process of dispute resolution unless the mediator, employee, agent or member acted in bad faith, with malicious purpose or in a manner exhibiting willful and wanton disregard of human rights, safety or property.

85 Acts, ch 134, §14

679.14 Tolling of statute of limitations.

During the period of the dispute resolution process, any applicable statute of limitations is tolled as to the participants. The tolling shall commence on the date the center accepts the case and shall end on the date the parties are notified in writing that the case has been closed by the center. Notices of the closing of cases shall be provided in accordance with appropriate rules adopted under this chapter.

85 Acts, ch 134, §15

CHAPTER 679A

ARBITRATION

679A.1 Validity of arbitration agreement.
679A.2 Proceedings to compel or stay arbitration.
679A.3 Appointment of arbitrators by district court.
679A.4 Majority action by arbitrators.
679A.5 Hearing.
679A.6 Representation by attorney.
679A.7 Witnesses, subpoenas, depositions.
679A.8 Award.
679A.9 Change of award by arbitrators.
679A.10 Fees and expenses of arbitration.
679A.11 Confirmation of an award.
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679A.13 Modification or correction of award.
679A.14 Judgment or decree on award.
679A.15 Applications to district court.
679A.16 Venue.
679A.17 Appeals.
679A.18 Chapter not retroactive.
679A.19 Disputes between governmental agencies.

679A.1 Validity of arbitration agreement.

1. A written agreement to submit to arbitration an existing controversy is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the written agreement.

2. A provision in a written contract to submit to arbitration a future controversy arising between the parties is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the contract. This subsection shall not apply to any of the following:

a. A contract of adhesion.

b. A contract between employers and employees.

c. Unless otherwise provided in a separate writing executed by all parties to the contract, any claim sounding in tort whether or not involving a breach of contract.

[C51, §2098, 2101; R60, §3675, 3678; C73, §3416, 3418; C97, §4385, 4387; C24, 27, 31, 35, 39, §**12695, 12697;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.1, 679.3; 81 Acts, ch 202, §1]

C83, §679A.1

679A.2 Proceedings to compel or stay arbitration.

1. On application of a party showing an agreement described in section 679A.1 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration. However, if the opposing party denies the existence of a valid and enforceable agreement to arbitrate, the district court shall proceed to the determination of the issue and shall order arbitration if a valid and enforceable agreement is found to exist. If no such agreement exists, the court shall deny the application.

2. On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no valid and enforceable agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be tried and the stay ordered if a valid and enforceable agreement to arbitrate does not exist. If an agreement is found to exist, the court shall order the parties to proceed to arbitration.

3. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a district court, the application shall be made to that court. Otherwise, the application may be made in a district court as provided in section 679A.16.

4. An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for an order to arbitrate has been made under this section or, if the issue is severable, the stay may be made with respect to the part of the issue which is subject to arbitration only. When the application is made in such an action or proceeding, the order for arbitration shall include the stay.

5. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or because any fault or grounds for the claim sought to be arbitrated have not been shown.

[C51, §2102; R60, §3679; C73, §3419; C97, §4388; C24, 27, 31, 35, 39, §**12698;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.4; 81 Acts, ch 202, §2]

C83, §679A.2

679A.3 Appointment of arbitrators by district court.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence of a method of appointing, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and a successor has not been appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator appointed by the district court has the same powers as an arbitrator specifically named in the agreement.

[C97, §4395; C24, 27, 31, 35, 39, §**12712;** C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.18; 81 Acts, ch 202, §3]
C83, §679A.3

679A.4 Majority action by arbitrators.
The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.
[81 Acts, ch 202, §4]

679A.5 Hearing.
Unless otherwise provided by the agreement:
1. The arbitrators shall determine a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives the notice. The arbitrators may adjourn the hearing as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award. The arbitrators may hear and determine the controversy upon the evidence produced even if a party duly notified fails to appear.
2. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.
3. The hearing shall be conducted by all the arbitrators. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy.
[C51, §2105; R60, §3682; C73, §3422; C97, §4391; C24, 27, 31, 35, 39, §**12701;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.7; 81 Acts, ch 202, §5]
C83, §679A.5

679A.6 Representation by attorney.
A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver of this right before the proceeding or hearing is ineffective.
[81 Acts, ch 202, §6]

679A.7 Witnesses, subpoenas, depositions.
1. The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and may administer oaths. Subpoenas shall be served, and upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.
2. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
3. All provisions of the law compelling a person under subpoena to testify are applicable.
4. Unless otherwise agreed, fees for attendance as a witness shall be the same as for a witness in the district court.
[C51, §2103; R60, §3680; C73, §3420; C97, §4389; C24, 27, 31, 35, 39, §**12699;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.5; 81 Acts, ch 202, §7]
C83, §679A.7

679A.8 Award.
1. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally, by registered mail, or as provided in the agreement.
2. A party waives the objection that an award was not made within the proper time unless the party notifies the arbitrators of the party's objection before the award is received.
3. Unless otherwise agreed, an award shall be made within thirty days after the arbitration hearing.
[C51, §2106 – 2108; R60, §3683 – 3685; C73, §3423 – 3425; C97, §4392 – 4394; C24, 27, 31, 35, 39, §**12702 – 12704;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.8 – 679.10; 81 Acts, ch 202, §8]
C83, §679A.8

679A.9 Change of award by arbitrators.
On application of a party or, if an application to the district court is pending under sections 679A.11 to 679A.13, on submission to the arbitrators by the district court under the conditions the district court orders, the arbitrators may modify or correct the award upon the grounds stated in section 679A.13, subsection 1, paragraphs *"a"* and *"c"*, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice of the application shall be given to the opposing party, stating that the opposing party must serve any objections to the application within ten days from the notice. The modified or corrected award is subject to sections 679A.11 to 679A.13.
[C51, §2110; R60, §3687; C73, §3427; C97, §4397; C24, 27, 31, 35, 39, §**12706;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.12; 81 Acts, ch 202, §9]
C83, §679A.9

679A.10 Fees and expenses of arbitration.
Unless otherwise provided in the agreement to arbitrate, and except for counsel fees, the arbitrators' expenses and fees and any other expenses incurred in the conduct of the arbitration shall be paid as provided in the award.
[C51, §2114; R60, §3691; C73, §3834; C97,

§3873; C24, 27, 31, 35, 39, §**12711;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.17; 81 Acts, ch 202, §10]

C83, §679A.10

87 Acts, ch 115, §81

679A.11 Confirmation of an award.

Upon application of a party, the district court shall confirm an award, unless within the time limits imposed under sections 679A.12 and 679A.13 grounds are urged for vacating, modifying, or correcting the award, in which case the district court shall proceed as provided in sections 679A.12 and 679A.13.

[81 Acts, ch 202, §11]

679A.12 Vacating an award.

1. Upon application of a party, the district court shall vacate an award if any of the following apply:

a. The award was procured by corruption, fraud, or other illegal means.

b. There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of a party.

c. The arbitrators exceeded their powers.

d. The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or conducted the hearing contrary to the provisions of section 679A.5, in a manner which prejudiced substantially the rights of a party.

e. There was no arbitration agreement, the issue was not adversely determined in proceedings under section 679A.2, and the party did not participate in the arbitration hearing without raising the objection.

f. Substantial evidence on the record as a whole does not support the award. The court shall not vacate an award on this ground if a party urging the vacation has not caused the arbitration proceedings to be reported, if the parties have agreed that a vacation shall not be made on this ground, or if the arbitration has been conducted under the auspices of the American arbitration association.

2. The fact that the relief awarded could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

3. An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant. However, if the application to vacate an award is predicated upon corruption, fraud, or other illegal means, it shall be made within ninety days after those grounds are known or should have been known.

4. In vacating the award on grounds other than stated in subsection 1, paragraph *"e"*, the district court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a method in the agreement, by the district court in accordance with section 679A.3, or if the award is vacated on grounds set forth in subsection 1, paragraph *"c"* or *"d"* of this section, the district court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 679A.3. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

[C51, §2110; R60, §3617; C73, §3427; C97, §4397; C24, 27, 31, 35, 39, §**12706;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.12; 81 Acts, ch 202, §12]

C83, §679A.12

679A.13 Modification or correction of award.

1. Upon application made within ninety days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if any of the following apply:

a. There is an evident miscalculation of figures or an evident mistake in the description of a person, thing, or property referred to in the award.

b. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted.

c. The award is imperfect in a matter of form, not affecting the merits of the controversy.

2. If the application is granted, the district court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected.

[81 Acts, ch 202, §13]

679A.14 Judgment or decree on award.

Upon the granting of an order confirming, modifying, or correcting an award, a judgment or decree shall be entered in conformity with the order enforced as any other judgment or decree. Costs of the application and the subsequent proceedings and disbursements may be awarded by the district court.

[C51, §2111, 2113; R60, §3688, 3690; C73, §3428, 3430; C97, §4398, 4400; C24, 27, 31, 35, 39, §**12707, 12709;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.13, 679.15; 81 Acts, ch 202, §14]

C83, §679A.14

679A.15 Applications to district court.

Except as otherwise provided, an application to the district court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of civil procedure, for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an

initial application for an order shall be served in the manner provided by the Iowa rules of civil procedure for the service of original notice in an action.

[81 Acts, ch 202, §15]

679A.16 Venue.

An initial application shall be made to the district court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the district court of the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this state, to the district court of any county. All subsequent applications shall be made to the district court hearing the initial application unless the district court otherwise directs.

[81 Acts, ch 202, §16]

679A.17 Appeals.

1. An appeal may be taken from:

a. An order denying an application to compel arbitration made under section 679A.2.

b. An order granting an application to stay arbitration made under section 679A.2, subsection 2.

c. An order confirming or denying confirmation of an award.

d. An order modifying or correcting an award.

e. An order vacating an award without directing a rehearing.

f. A judgment or decree entered pursuant to the provisions of this chapter.

2. The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

[C51, §2112; R60, §3689; C73, §3429; C97, §4399; C24, 27, 31, 35, 39, §**12708;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §679.14; 81 Acts, ch 202, §17]

C83, §679A.17

679A.18 Chapter not retroactive.

This chapter applies only to arbitration agreements made on or after July 1, 1981. Sections 679.1 to 679.18, Code 1981, do not apply to agreements to arbitrate entered into after July 1, 1981.

[81 Acts, ch 202, §18]

679A.19 Disputes between governmental agencies.

Any litigation between administrative departments, commissions or boards of the state government is prohibited. All disputes between said governmental agencies shall be submitted to a board of arbitration of three members to be composed of two members to be appointed by the departments involved in the dispute and a third member to be appointed by the governor. The decision of the board shall be final.

[C62, 66, 71, 73, 75, 77, 79, 81, §679.19; 81 Acts, ch 202, §19]

C83, §679A.19

CHAPTER 679B

BOARDS OF ARBITRATION AND CONCILIATION

679B.1 Petition for appointment.
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FIRE DEPARTMENT DISPUTES IN CERTAIN CITIES

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679B.1 Petition for appointment.

When any dispute arises between any person, firm, corporation, or association of employers and their employees or association of employees, of this state, except employers or employees having trade relations directly or indirectly based upon interstate trade relations operating through or by state or international boards of conciliation, which has or is likely to cause a strike or lockout, involving ten or more wage earners, and which does or is likely to interfere with the due and ordinary course of business, or which menaces the public peace, or which jeopardizes the welfare of the community, and the parties thereto are unable to adjust the same, either or both parties to the dispute, or the mayor of the city, or the chairperson of the board of supervisors of the county in which said employment is carried on, or on petition of any twenty-five citizens thereof over the age of eighteen years, or the labor commissioner, after investigation, may make written application to the governor for the appointment of a board of arbitration and conciliation, to which board such dispute may be referred under the provisions of this chapter; and the manager of the business of any person, firm, corporation, or association of such employers, or any organization representing such employees, or if such employees are not members of any organization, then a majority of such employees affected may make the application as provided in this chapter, but in no case shall more than twenty employees be required to join in such application.

[S13, §2477-n; C24, 27, 31, 35, 39, §**1496;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.1]

86 Acts, ch 1245, §944

C87, §679B.1

679B.2 Notification by governor.

The governor shall at once upon application made to the governor as herein provided, and upon the governor's satisfaction that the dispute comes within the provisions of section 679B.1, notify the parties to the dispute of the application for the appointment of a board of arbitration and conciliation and make request upon each party to the dispute that each of them recommend within three days from the date of notice, the names of five persons who have no direct interest in such dispute and are willing and ready to act as members of the board, and the governor shall appoint from each list submitted one of such persons recommended.

[S13, §2477-n1; C24, 27, 31, 35, 39, §**1497;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.2]

86 Acts, ch 1245, §944

C87, §679B.2

679B.3 Governor to appoint for parties.

Should either of the parties fail or neglect to make any recommendation within the said period, the governor shall, as soon thereafter as possible, appoint a fit person who shall be deemed to be appointed on the recommendation of the parties in default.

[S13, §2477-n1; C24, 27, 31, 35, 39, §**1498;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.3]

86 Acts, ch 1245, §944

C87, §679B.3

679B.4 Third appointee.

The members of the board so appointed shall within five days of their appointment recommend to the governor the name of one person who is ready and willing to act as a third member of the board, and upon failure or neglect upon their part to make such recommendation within the said period, or upon the failure or refusal of the person so recommended to act, the governor shall as soon thereafter as possible appoint some person to act as the third member of the board.

[S13, §2477-n1; C24, 27, 31, 35, 39, §**1499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.4]

86 Acts, ch 1245, §944

C87, §679B.4

679B.5 Agreement to be bound by decision.

In all cases when the application is made by both parties to the dispute, they shall set forth in the application whether or not they agree to be bound by the decision of the board of arbitration and conciliation; and if both parties agree to be so bound by such decision, then the same shall be binding and enforceable as set out in section 679B.12.

[S13, §2477-n2; C24, 27, 31, 35, 39, §**1500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.5]

86 Acts, ch 1245, §944

C87, §679B.5

679B.6 Oath — organization.

Each member of the board shall, before entering upon the duties of the member's office, be sworn to a faithful and impartial discharge thereof; they shall organize at once by the choice of one of their number as chairperson, and one of their number as secretary, and shall have power to employ all necessary clerks and stenographers to properly carry out the duties of their appointment.

[S13, §2477-n3; C24, 27, 31, 35, 39, §**1501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.6]

86 Acts, ch 1245, §944

C87, §679B.6

679B.7 Compensation and expenses.

The members of the board shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses, these

moneys to be payable out of the state treasury upon warrants drawn by the director of revenue and finance.

[S13, §2477-n3; C24, 27, 31, 35, 39, §**1502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.7]
86 Acts, ch 1245, §944
C87, §679B.7
90 Acts, ch 1256, §55

679B.8 Evidence — witnesses.

For the purpose of this inquiry the board shall have all the powers of summoning before it and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence, to produce books, papers, and other documents or things as the board may deem requisite to the full investigation of the matters into which it is inquiring, as are vested in the district court in civil cases.

[S13, §2477-n4; C24, 27, 31, 35, 39, §**1503;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.8]
86 Acts, ch 1245, §944
C87, §679B.8

679B.9 Oath — rule of evidence.

Any member of the board may administer an oath, and the board may accept, admit, and call for such evidence as in equity and good conscience it thinks material and proper, whether strictly legal evidence or not.

[S13, §2477-n4; C24, 27, 31, 35, 39, §**1504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.9]
86 Acts, ch 1245, §944
C87, §679B.9

679B.10 Subpoenas — by whom served — fees.

A subpoena or any notice may be delivered or sent to any sheriff, constable, or any police officer who shall forthwith serve the same, and make due return thereof, according to directions. Witnesses in attendance and officers serving subpoenas or notices shall receive the same fees as are allowed in the district court, payable from the state treasury, upon the certificate of the board that such fees are due and correct. The board shall have the same power and authority to maintain and enforce order at the hearings and obedience to its writs of subpoena as is by law conferred upon the district court for like purposes.

[S13, §2477-n4; C24, 27, 31, 35, 39, §**1505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.10]
86 Acts, ch 1245, §944
C87, §679B.10
Contempts, chapter 665
Witness fees, §622.69 et seq.

679B.11 Investigation — report filed — public inspection.

The board shall as soon as practical visit the place where the controversy exists and make careful inquiry into the cause, and the said board may, with the consent of the governor, conduct such inquiry beyond the limits of the state. The board shall hear all persons interested who come before it, advise the respective parties what ought to be done or submitted to by either or both of the parties to the dispute to adjust said controversy, and make a written decision thereof, which shall at once be made public and open to public inspection and shall be recorded by the secretary of the board, and a copy of such report shall be filed in the office of the clerk of the city in which the controversy arose and shall be open for public inspection.

[S13, §2477-n5; C24, 27, 31, 35, 39, §**1506;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.11]
86 Acts, ch 1245, §944
C87, §679B.11

679B.12 Investigation — decision.

The board of arbitration and conciliation shall within ten days from the date of their appointment, unless such time shall be extended by the governor, complete the investigation of any controversy submitted to them, and during the pendency of such period neither party shall engage in any strike or lockout. Any decision made by the board shall date from the date of the appointment of the board and shall be binding upon the parties who join in the application as herein provided for a period of one year.

[S13, §2477-n6; C24, 27, 31, 35, 39, §**1507;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.12]
86 Acts, ch 1245, §944
C87, §679B.12

679B.13 Decision — report to governor.

Within five days after the completion of the investigation, unless the time is extended by the governor for good cause shown, the board or a majority thereof shall render a decision, stating such details as will clearly show the nature of the controversy and the point disposed of by them, and make a written report to the governor of their findings of fact and of their recommendation to each party to the controversy.

[S13, §2477-n7; C24, 27, 31, 35, 39, §**1508;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.13]
86 Acts, ch 1245, §944
C87, §679B.13

679B.14 Decision filed and published.

Every decision and report shall be filed in the office of the governor, and a copy served upon each party to the controversy, and a copy furnished to the labor commissioner for publication in the report of the commissioner, who shall cause such decision and report to be published at a rate of not to exceed thirty-three and one-third cents per ten

lines of brevier type or its equivalent in two newspapers of general circulation in the county in which the business is located upon which the dispute arose.

All evidence taken and exhibits and documents offered shall be carefully preserved and at the close of the investigation shall be filed in the office of the governor of the state and shall only be subject to inspection upon the governor's order.

[S13, §2477-n7; C24, 27, 31, 35, 39, §**1509;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §90.14]
86 Acts, ch 1245, §944
C87, §679B.14

FIRE DEPARTMENT DISPUTES IN CERTAIN CITIES

679B.15 Board of arbitration.

When any dispute arises between a city having a population of ten thousand or more, or a city under civil service of whatever population, and any city-recognized association of employees of the paid fire department of such city, and the parties are unable to adjust the dispute, either or both parties may make written application to a judge of the district court of the county in which the dispute arises for the appointment of a board of arbitration and conciliation, to which board such dispute may be referred under the provisions of this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.15]
86 Acts, ch 1245, §944
C87, §679B.15

679B.16 Recommendations for appointees.

The judge shall, within ten days after application is made to the judge as provided, notify the parties to the dispute of the application for the appointment of a board of arbitration and conciliation, and shall request each party to recommend within ten days from the date of receipt of notice, the name of a person who has no direct interest in the dispute and is willing and ready to act as a member of the board.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.16]
86 Acts, ch 1245, §944
C87, §679B.16

679B.17 Failure to act.

Should either of the parties fail or neglect to make any recommendation within the ten-day period, or if the person recommended fails or refuses to act, the judge shall, as soon thereafter as possible, appoint a person who meets the qualifications provided in section 679B.16. Such person shall be deemed to be appointed on the recommendation of the party in default.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.17]
86 Acts, ch 1245, §944
C87, §679B.17

679B.18 Third member of board.

The parties to the dispute and the members of the board so appointed shall, within five days of the appointment, recommend to the judge the name of an additional person who is willing and ready to act as the third member of the board. The person recommended shall meet the qualifications provided in section 679B.16. If the recommendation is not made within the period, or if the person recommended refuses or fails to act, the judge shall as soon thereafter as possible appoint a qualified person to act as the third member of the board.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.18]
86 Acts, ch 1245, §944
C87, §679B.18

679B.19 Organization of board.

Each member of the board shall, before entering upon the duties of the member's office, be sworn to a faithful and impartial discharge thereof. The board shall organize at once by the choice of one of their number as chairperson, and one of their number as secretary, and shall have the power to employ all clerks and stenographers necessary to properly carry out the duties of their appointment.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.19]
86 Acts, ch 1245, §944
C87, §679B.19

679B.20 Costs.

Each party to the dispute shall assume its own costs of the arbitration proceedings and shall share equally the costs of the third member as well as the general expenses of the board of arbitration and conciliation.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.20]
86 Acts, ch 1245, §944
C87, §679B.20

679B.21 Powers of board.

For the purpose of this inquiry the board shall have all the powers vested in the district court in civil cases which the board deems necessary to a full investigation of the dispute, including but not limited to the power to summon and enforce the attendance of witnesses, to administer oaths and to require witnesses to give evidence and produce books and papers. Any member of the board may administer oaths.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.21]
86 Acts, ch 1245, §944
C87, §679B.21

679B.22 Witnesses.

A subpoena or any notice may be delivered or sent to any sheriff, or any police officer who shall

forthwith serve it and make due return thereof according to direction. Every person who is summoned by an arbitration board and who duly attends as a witness, except witnesses summoned at the request of a party, shall be entitled to an allowance for expenses determined in accordance with the scale in effect at the time with respect to witnesses in the district court in civil cases, and the allowance paid shall be a part of the general expenses of the arbitration board. The board shall have the same power and authority to maintain and enforce order at the hearings and obedience to its writs of subpoena as is by law conferred upon the district court for like purposes.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.22]
86 Acts, ch 1245, §944
C87, §679B.22

679B.23 Findings and report.

The board shall as soon as practical visit the place where the dispute exists and make careful inquiry into its cause. The board shall hear all interested persons who come before it and advise the respective parties concerning courses of action to adjust the dispute, and shall put in writing its findings and recommendations. A copy of such report shall be filed by the board secretary in the office of the clerk of the city in which the dispute arose and shall be open for public inspection. All hearings shall be open to the public and press.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.23]
86 Acts, ch 1245, §944
C87, §679B.23

679B.24 Time limit.

The board of arbitration and conciliation shall within twenty days from the date of their appointment, unless such time shall be extended by the judge, complete the investigation of any dispute submitted to them.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.24]
86 Acts, ch 1245, §944
C87, §679B.24

679B.25 Decision.

Within five days after the completion of the investigation, unless the time is extended by the judge for good cause shown, the board or a majority thereof shall render a decision, stating such details as will clearly show the nature of the controversy and the point disposed of by them, and make a written report to the judge of their findings of fact and of their recommendation to each party to the controversy.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.25]
86 Acts, ch 1245, §944
C87, §679B.25

679B.26 Filing.

Every decision and report shall be filed in the office of the clerk of the district court of the county in which the dispute arose, and a copy served upon each party to the controversy, and a copy furnished to the labor commissioner for publication in the report of the commissioner, who shall cause such decision and report to be published in at least one newspaper in the city in which the dispute arose. All evidence taken and exhibits and documents offered shall be carefully preserved and at the close of the investigation shall be filed in the office of the clerk of the district court.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.26]
86 Acts, ch 1245, §944
C87, §679B.26

679B.27 Nature of decision.

A decision or report shall be advisory only and shall not be binding on either party.

[C62, 66, 71, 73, 75, 77, 79, 81, §90.27]
86 Acts, ch 1245, §944
C87, §679B.27

CHAPTER 679C

MEDIATION

679C.1 Definitions.
679C.2 Confidentiality.
679C.3 Mediator privilege.
679C.4 Mediator immunity.
679C.5 Exclusions.

679C.1 Definitions.

As used in this chapter, unless the context suggests otherwise:

1. *"Mediation"* means a process in which an impartial person facilitates the resolution of a dispute by promoting voluntary agreement of the parties to the dispute. In a mediation, the decision-making authority rests with the parties. A mediation commences at the time of initial contact with a mediator or mediation program and in-

cludes all contacts between the mediator or a mediation program and any party until such time as a resolution is reached by the parties or the mediation process concludes.

2. *"Mediation communication"* means any communication or behavior in connection with a mediation by or between any party, mediator, mediation program, or any other person present during a mediation.

3. *"Mediation document"* means any written material, including copies of written material, prepared for the purpose of or in the course of, or pursuant to, a mediation, including, but not limited to, memoranda, notes, files, records, and work product of a mediator, mediation program, or party, except that a *"mediation document"* shall not include either of the following:

a. An agreement by the parties which specifies that the mediation documents may be disclosed or enforced.

b. Summary records of a mediation program necessary to evaluate or monitor the performance of the program.

4. *"Mediation program"* means a plan or organization through which mediators and mediations may be provided.

5. *"Mediator"* means an impartial person who facilitates the resolution of a dispute between parties in the mediation process.

6. *"Party"* means a mediation participant other than the mediator and may be a person, public officer, corporation, association, or other organization or entity, either public or private.

98 Acts, ch 1062, §1

679C.2 Confidentiality.

If a mediation is conducted pursuant to a court order, a court-connected mediation program, a written agreement between the parties, or a provision of law, all mediation communications and mediation documents are privileged and confidential and not subject to disclosure in any judicial or administrative proceeding except under any of the following circumstances:

1. When all parties to a mediation agree, in writing, to disclosure.

2. When a written agreement by the parties to mediate permits disclosure.

3. When disclosure is required by statute.

4. When a mediation communication or mediation document provides evidence of an ongoing or future criminal activity.

5. When a mediation communication or mediation document provides evidence of child abuse as defined in section 232.68, subsection 2.

6. When a mediation communication or mediation document is relevant to the legal claims of a party against a mediator or mediation program arising out of a breach of the legal obligations of the mediator or mediation program.

7. When a mediation communication or mediation document is relevant to determining the existence of an agreement that resulted from the mediation or is relevant to the enforcement of such an agreement.

98 Acts, ch 1062, §2

679C.3 Mediator privilege.

If a mediation is conducted pursuant to a court order, a court-connected mediation program, a written agreement between the parties, or a provision of law, a mediator or a representative of a mediation program shall not testify about a mediation communication or mediation document in any judicial or administrative proceeding except under any of the following circumstances:

1. When all parties and the mediator agree, in writing, to disclosure.

2. When disclosure is required by statute.

3. When a mediation communication or mediation document provides evidence of an ongoing or future criminal activity.

4. When a mediation communication or mediation document provides evidence of child abuse as defined in section 232.68, subsection 2.

5. When a mediation communication or mediation document is relevant to the legal claims of a party against a mediator or mediation program arising out of a breach of the legal obligations of the mediator or mediation program.

6. Provided all parties agree to disclosure, when a mediation communication or mediation document is relevant to determining the existence of an agreement that resulted from the mediation or is relevant to the enforcement of such an agreement.

98 Acts, ch 1062, §3

679C.4 Mediator immunity.

A mediator or a mediation program shall not be liable for civil damages for a statement, decision, or omission made in the process of mediation unless the act or omission by the mediator or mediation program is made in bad faith, with malicious purpose, or in a manner exhibiting willful or wanton disregard of human rights, safety, or property. This section shall apply to mediation conducted before the workers' compensation commissioner and mediation conducted pursuant to chapter 216.

98 Acts, ch 1062, §4

679C.5 Exclusions.

Mediation conducted pursuant to sections 20.20 and 20.31 shall not be subject to this chapter. Except as provided in section 679C.4, mediation conducted before the workers' compensation commissioner shall not be subject to this chapter. Except as provided in section 679C.4 and except for mediation conducted pursuant to section 216.15B, mediation conducted pursuant to chapter 216 shall not be subject to this chapter.

98 Acts, ch 1062, §5

CHAPTER 680

RECEIVERS

See also reference in §626.33

680.1 Appointment.
680.2 Permissible proofs.
680.3 Oath and bond.
680.4 Powers.
680.5 Priority of liens.
680.6 Taxes as prior claim — nonnecessity to file.
680.7 Claims entitled to priority.
680.8 Nonapplicability.
680.9 Legislative intent.
680.10 Discovery of assets.
680.11 Contempt.

680.1 Appointment.

On the petition of either party to a civil action or proceeding, wherein the party shows that the party has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court shall prescribe, the court, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to the receiver.

[C51, §1656; R60, §3216, 3419; C73, §2903, 2970; C97, §3822; C24, 27, 31, 35, 39, §**12713;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.1]

Orders executed outside district, R.C.P. 1.453

680.2 Permissible proofs.

Upon the hearing of the application, affidavits, and such other proof as the court or judge permits, may be introduced, and upon the whole case such order made as will be for the best interest of all parties concerned.

[C73, §2903; C97, §3822; C24, 27, 31, 35, 39, §**12714;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.2]

680.3 Oath and bond.

Before entering upon the discharge of the receiver's duties, the receiver must be sworn faithfully to discharge the trust to the best of the receiver's ability, and must also file with the clerk a bond with sureties, to be approved by the clerk, in a penalty to be fixed by the court, and conditioned for the faithful discharge of the receiver's duties, and that the receiver will obey the orders of the court in respect thereto.

[C51, §1657; R60, §3420; C73, §2904; C97, §3823; C24, 27, 31, 35, 39, §**12715;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.3]

680.4 Powers.

Subject to the control of the court, a receiver has power to bring and defend actions, to take and keep possession of property, to collect debts, to receive the rents and profits of real property, and, generally, to do such acts in respect to the property committed to the receiver as may be authorized by law or ordered by the court.

[C51, §1658; R60, §3421; C73, §2905; C97, §3824; C24, 27, 31, 35, 39, §**12716;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.4]

680.5 Priority of liens.

Persons having liens upon the property placed in the hands of a receiver shall, if there is a contest as to their priority, submit them to the court for determination.

[C97, §3825; S13, §3825; C24, 27, 31, 35, 39, §**12717;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.5]

680.6 Taxes as prior claim — nonnecessity to file.

When the assets of any corporation, partnership, or person shall be placed in the hands of a receiver, all taxes against said corporation, partnership, or person, whether levied under the laws of the state or ordinances of municipal corporations, shall be entitled to priority and be first paid in full by the receiver and claims therefor need not be filed with said receiver.

[S13, §3825; C24, 27, 31, 35, 39, §**12718;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.6]

680.7 Claims entitled to priority.

When the property of any person, partnership, company, or corporation has been placed in the hands of a receiver for distribution, after the payment of all costs the following claims shall be entitled to priority of payment in the order named:

1. Taxes or other debts entitled to preference under the laws of the United States.
2. Debts due or taxes assessed and levied for the benefit of the state, county, or other municipal corporation in this state.
3. Debts owing to employees for labor per-

formed as defined by section 626.69.

[S13, §3825-a; C24, 27, 31, 35, 39, §**12719;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.7]

Bank receivership, see chapter 524

Labor claims preferred, §626.69, 633.425, 681.13

680.8 Nonapplicability.

The provisions of section 680.7 shall not apply to the receivership of state banks, as defined in section 524.105, trust companies, or private banks, and in the receivership of such state banks and trust companies, or private banks, no such preference or priority shall be allowed as is provided in said section except for labor as provided by statute.

[C27, 31, 35, §12719-a1; C39, §**12719.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.8]

680.9 Legislative intent.

The provisions of section 680.8 are declaratory of the intent of the legislature and of its interpretation of the provisions of section 680.7.

[C27, 31, 35, §12719-a2; C39, §**12719.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.9]

680.10 Discovery of assets.

The court having direction or control of a receiver may, on its own motion, or on motion of the receiver, require any person suspected of having taken wrongful possession of any of the effects of any person, corporation, or partnership for which said receiver has been appointed, or of having had such effects under the person's control, or any officer or agent of any such suspected person, to appear and submit to an examination, under oath, touching such matters, and if, on such examination, it appears that the person examined has the wrongful possession of any such property, the court may order the delivery thereof to the receiver.

[C27, 31, 35, §12719-b1; C39, §**12719.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.10]

Analogous provisions, §630.19, 633.112

680.11 Contempt.

If, on being served with the order of the court requiring the person to do so, any person fails to appear in accordance therewith, or if, having appeared, the person refuses to answer any questions which the court thinks proper to be put to the person in the course of such examination, or if the person fails to comply with the order of the court requiring the person to deliver any such property or effects to the receiver, the person may be committed to the jail of the county until the person does.

[C27, 31, 35, §12719-b2; C39, §**12719.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §680.11]

CHAPTER 681

ASSIGNMENT FOR BENEFIT OF CREDITORS

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681.28 Accounting and delivery.
681.29 Death of assignee — failure to act.
681.30 Additional security — misconduct.
681.31 Repealed by 67 Acts, ch 400, §216.

681.1 Must be without preferences.

No general assignment of property by an insolvent person, firm, or corporation, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all the creditors in proportion to the amount of their respective claims; and in every such assignment the assent of the creditors shall be presumed.

[C51, §977, 978; R60, §1826, 1827; C73, §2115, 2116; C97, §3071; C24, 27, 31, 35, 39, §**12720;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.1]

681.2 How made.

Every such assignment shall be by an instrument in writing, setting forth the name of the assignor, the assignor's residence and business, the name of the assignee and the assignee's residence and business, and, in a general way, the property assigned and its location, and the purpose of the assignment.

[C97, §3072; C24, 27, 31, 35, 39, §**12721;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.2]

681.3 Execution — record and index.

It shall be signed and acknowledged in the manner prescribed for the execution and acknowledgment of deeds, and recorded in the office of the recorder of the county where the assignor resides, and in any other county in the state in which the assignor has real property to be assigned thereby, in the records of deeds, and indexed in the proper index books.

[R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §**12722;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.3]

681.4 Inventory — list of creditors.

The assignor shall annex to such instrument an inventory, under oath, of the assignor's estate, real and personal, according to the best of the assignor's knowledge, and a list of the assignor's creditors and the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate.

[R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §**12723;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.4]

681.5 Effect of assignment.

Such assignment shall vest in the assignee the title to any other property belonging to the debtor at the time of making the assignment, not exempt from execution.

[R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §**12724;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.5]

681.6 Filing with clerk.

As soon as such assignment is recorded, it shall be filed, with the inventory and list of creditors, in the office of the clerk of the district court, as shall all subsequent papers connected with such proceedings.

[R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §**12725;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.6]

681.7 Inventory and appraisement — bond.

The assignee shall forthwith file with the clerk of the district court where such assignor resides a true and full inventory and valuation of said estate under oath, so far as the same has come to the assignee's knowledge, and shall then enter into bonds to said clerk, for the use of the creditors, in double the amount of the inventory and valuation, with one or more sureties to be approved by said clerk, for the faithful performance of said trust, and the assignee may thereupon proceed to perform any duty necessary to carry into effect the purpose of said assignment.

[R60, §1830; C73, §2118; C97, §3073; C24, 27, 31, 35, 39, §**12726;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.7]

681.8 Notice of assignment — notice to creditors.

The assignee shall forthwith give notice of such assignment by publication in some newspaper in the county, which shall be continued, once each week, at least six weeks, and forthwith send a notice by mail to each creditor of whom the assignee shall be informed, directed to the creditor's usual place of residence, requiring such creditor to file in the office of the clerk of the district court within three months thereafter the creditor's claims under oath.

[R60, §1829; C73, §2119; C97, §3074; S13, §3074; C24, 27, 31, 35, 39, §**12727;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.8]

681.9 Claims filed.

The claims of all creditors, clearly and distinctly stated and sworn to by the claimant, or by some person acquainted with the facts, shall be filed in the office of the clerk of the district court within three months from the date of the first publication provided for in section 681.8, unless the court extends such time for all or some of such claimants, which it may do in its discretion where peculiar circumstances seem to justify such extension, but in no case shall such time be extended beyond nine months.

[C97, §3075; C24, 27, 31, 35, 39, §**12728;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.9]

681.10 Report required.

At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list, under oath, of all such creditors of the assignor as shall have claimed to be such, with a statement of their claims, an affidavit of publication of notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing the same.

[R60, §1831; C73, §2120; C97, §3076; C24, 27, 31, 35, 39, §**12729;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.10]

681.11 Claims contested.

Any person interested may appear within three months after such report is filed and contest the

claim or demand of any creditor by written exceptions thereto filed with the clerk, who shall forthwith cause notice thereof to be given to the creditor, which shall be served as in case of an original notice.

The action shall be accorded reasonable priority for assignment to assure its prompt disposition. The court may order a trial by jury but if it does not, it shall hear the proofs and allegations of the parties in the case and render such judgment thereon as shall be just.

[R60, §1832; C73, §2121; C97, §3077; C24, 27, 31, 35, 39, §**12730;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.11]

681.12 Priority of taxes — nonnecessity to file claim.

In all assignments of property for the benefit of creditors, assessments thereof, or taxes levied thereon, whether under the laws of the state or ordinances of municipal corporations, shall be entitled to priority, and paid in full by the assignee, and claims therefor need not be filed with the assignee.

[C97, §3078; C24, 27, 31, 35, 39, §**12731;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.12]

681.13 Labor claims preferred.

If the claim of any creditor is for personal services rendered the assignor within ninety days next preceding the execution of the assignment, it shall be paid in full.

[C97, §3079; C24, 27, 31, 35, 39, §**12732;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.13]

Labor claims preferred, §626.69, 633.425, 680.7

681.14 Dividends — compensation.

Subject to the provisions contained in sections 681.12 and 681.13, if no exception be made to the claim of any creditor, or if the same has been adjudicated, the court shall order the assignee to make, from time to time, fair and equal dividends among the creditors of the assets in the assignee's hands in proportion to their claims, and as soon as may be to render a final account of said trust to said court, which may allow such compensation to said assignee in the final settlement as may be considered just and right.

[C73, §2122; C97, §3079; C24, 27, 31, 35, 39, §**12733;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.14]

681.15 Absent creditor.

If, upon making the final dividend to the creditors, the assignee shall be unable, after reasonable efforts, to ascertain the place of residence of any creditor, or any person who is authorized to receive the dividend due the person, the assignee shall report the same to the court, with evidence showing diligent attempts to find such creditor or person authorized to receive the dividend, whereupon the court may, in its discretion, order the distribution of the unclaimed dividend among the other creditors.

[C97, §3079; C24, 27, 31, 35, 39, §**12734;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.15]

681.16 Power of court.

The assignee shall be at all times subject to the order and supervision of the court, and from time to time may be compelled by citation or attachment to file reports of the assignee's proceedings and of the situation and condition of the trust, and to proceed in the execution of the duties required by this chapter.

[R60, §1834, 1842; C73, §2123; C97, §3080; C24, 27, 31, 35, 39, §**12735;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.16]

681.17 Disposal of property — time limit.

The assignee shall dispose of all personal property and divide the proceeds of the same among creditors as they may be entitled thereto within six months from the date of the assignment, and shall dispose of real estate within one year from such date, and make full settlement by that time, unless the court, for good reason shown, shall extend the time within which such disposition or settlement shall be made.

[C97, §3080; C24, 27, 31, 35, 39, §**12736;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.17]

681.18 Neglect to file inventory or list.

No assignment shall be declared fraudulent or void for want of any list or inventory, as provided in this chapter.

[R60, §1835; C73, §2124; C97, §3081; C24, 27, 31, 35, 39, §**12737;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.18]

681.19 Examination of debtor.

The court may, upon application of the assignee or any creditor, compel the appearance in person of the debtor before such court or forthwith to answer under oath such matters as may be inquired of the debtor, and such debtor may be fully examined under oath as to the amount and situation of the debtor's estate, and the names of the creditors and amounts due to each, with their places of residence, and may be compelled to deliver to the assignee any property or estate embraced in the assignment.

[R60, §1835; C73, §2124; C97, §3081; C24, 27, 31, 35, 39, §**12738;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.19]

681.20 Additional inventory and security.

The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into the assignee's hands under said assignment after

the filing of the first inventory, and the clerk may thereupon require the assignee to give additional security.

[R60, §1836; C73, §2125; C97, §3082; C24, 27, 31, 35, 39, §**12739;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.20]

681.21 Claims not due.

Any creditor may claim debts to become due, as well as debts due, but on debts not due a reasonable rebate shall be made when the same are not drawing interest.

[R60, §1837; C73, §2126; C97, §3083; C24, 27, 31, 35, 39, §**12740;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.21]

681.22 Claims filed after three months.

All creditors who shall not file their claims within three months from the publication of notice, as aforesaid, shall not participate in the dividends until after the payment in full of all claims presented within said term, and allowed by the court, unless the court has extended the time for filing such claims, except as provided by this chapter.

[R60, §1837; C73, §2126; C97, §3083; C24, 27, 31, 35, 39, §**12741;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.22]

681.23 Sale of property generally.

The assignee may dispose of and sell all the estate assigned, real and personal, which the debtor had at the time of the assignment, may sue for and recover in the assignee's name everything belonging or appertaining to said estate, and generally do whatever the debtor might have done in the premises.

[R60, §1838; C73, §2127; C97, §3084; C24, 27, 31, 35, 39, §**12742;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.23]

681.24 Sale of real estate.

No sale of real estate belonging to said trust shall be made without notice, published as in case of sales of real estate on execution, unless the court shall otherwise order.

[R60, §1838; C73, §2127; C97, §3084; C24, 27, 31, 35, 39, §**12743;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.24]

Sale of real estate, §626.74 et seq.

681.25 Approval of sales.

No such sales shall be valid until approved by such court.

[C97, §3084; C24, 27, 31, 35, 39, §**12744;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.25]

681.26 Mandatory removal of assignee.

Upon a written application of two-thirds of the creditors in number, and two-thirds in amount, the court shall remove the assignee and appoint in the assignee's stead a person approved by the creditors in the same number and amount.

[C97, §3085; C24, 27, 31, 35, 39, §**12745;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.26]

681.27 Permissive removal of assignee.

If an assignee shall reside out of the state, or become mentally ill or otherwise incapable of discharging the trust, the court may, upon ten days' notice to the assignee or the assignee's attorney remove the assignee and appoint another in the assignee's stead.

[C97, §3085; C24, 27, 31, 35, 39, §**12746;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.27]

96 Acts, ch 1129, §113

681.28 Accounting and delivery.

The person so removed shall immediately turn over to the clerk of the district court, or any person appointed by the court, all moneys and property of the estate in the person's hands.

[C97, §3085; C24, 27, 31, 35, 39, §**12747;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.28]

681.29 Death of assignee — failure to act.

If an assignee dies before the closing of the assignee's trust, or in case any assignee shall fail or neglect for the period of twenty days after the making of any assignment to file an inventory and valuation, and give bond as required by this chapter, the district court of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust, who shall, on giving bond with sureties as required of an assignee, have all of the powers of the assignee first appointed, and be subject to all the duties hereby imposed.

[R60, §1839; C73, §2128; C97, §3086; C24, 27, 31, 35, 39, §**12748;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.29]

681.30 Additional security — misconduct.

In case any bond or surety is found to be insufficient, or, on complaint before the court, it shall be made to appear that any assignee is guilty of wasting or misapplying the trust estate, such court may require additional security, may remove the assignee and appoint another in the assignee's place, and such person so appointed, on giving bond, shall execute such duties, and may demand and sue for all estate in the hands of the person removed, and recover the amount and value of all moneys and property or estate wasted and misapplied, from such person and the person's sureties.

[R60, §1839; C73, §2128; C97, §3086; C24, 27, 31, 35, 39, §**12749;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.30]

681.31 Repealed by 67 Acts, ch 400, § 216.

CHAPTER 682

STRUCTURED SETTLEMENT PROTECTION

Chapter applies to transfers of payment rights under agreements entered into on or after the thirtieth day after July 1, 2001; effectiveness of transfers under agreements reached prior to date that chapter applies not implied; 2001 Acts, ch 85, §8

682.1 Short title.
682.2 Definitions.
682.3 Required disclosures to payee.
682.4 Approval of transfers of structured settlement payment rights.
682.5 Effects of transfer of structured settlement payment rights.
682.6 Procedure for approval of transfers.
682.7 General provisions — construction — penalties.

682.1 Short title.

This chapter shall be known and may be cited as the *"Structured Settlement Protection Act"*.

2001 Acts, ch 85, §1, 8

682.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Annuity issuer"* means an issuer that has issued an insurance contract used to fund periodic payments under a structured settlement.

2. *"Dependents"* means a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony.

3. *"Discounted present value"* means the fair present value of future payments, as determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service.

4. *"Gross advance amount"* means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

5. *"Independent professional advice"* means advice of an attorney, certified public accountant, actuary, or other licensed professional advisor.

6. *"Interested parties"* means, with respect to a structured settlement, the payee, a beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the structured settlement.

7. *"Net advance amount"* means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under section 682.3, subsection 5.

8. *"Payee"* means an individual who is receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights.

9. *"Periodic payments"* means both recurring payments and scheduled future lump sum payments.

10. *"Qualified assignment agreement"* means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code.

11. *"Responsible administrative authority"* means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

12. *"Settled claim"* means the original tort claim or workers' compensation claim resolved by a structured settlement.

13. *"Structured settlement"* means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim.

14. *"Structured settlement agreement"* means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

15. *"Structured settlement obligor"* means, with respect to a structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

16. *"Structured settlement payment rights"* means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, if any of the following exists:

a. One of the following is true:

(1) The payee is domiciled in this state.

(2) The domicile or principal place of business of a structured settlement obligor or the annuity issuer is located in this state.

b. The structured settlement agreement was

approved by a court or responsible administrative authority in this state.

c. The structured settlement agreement is expressly governed by the laws of this state.

17. *"Terms of the structured settlement"* means, with respect to a structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving the structured settlement.

18. *"Transfer"* means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration. *"Transfer"* does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

19. *"Transfer agreement"* means the agreement providing for transfer of structured settlement payment rights.

20. *"Transferee"* means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

21. *"Transfer expenses"* means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorney fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary. *"Transfer expenses"* does not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

2001 Acts, ch 85, §2, 8

682.3 Required disclosures to payee.

Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen points, setting forth all of the following:

1. The amounts and due dates of the structured settlement payments to be transferred.

2. The aggregate amount of the structured settlement payments.

3. The discounted present value of the payments to be transferred which shall be identified as the *"calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities"*, and the amount of the applicable federal rate used in calculating the discounted present value.

4. The gross advance amount.

5. An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements.

6. The net advance amount.

7. The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee.

8. A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the agreement is signed by the payee.

2001 Acts, ch 85, §3, 8

682.4 Approval of transfers of structured settlement payment rights.

1. A transfer of structured settlement payment rights shall not be effective and a structured settlement obligor or annuity issuer shall not be required to make any payment directly or indirectly to a transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority regarding all of the following:

a. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents.

b. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing.

c. The transfer does not contravene any applicable statute or the order of any court or other government authority.

2. If the structured settlement agreement or transfer agreement includes a provision requiring the terms of the structured settlement agreement or transfer agreement to remain confidential, the court or responsible administrative authority shall conduct in camera proceedings relating to the approval of the transfer agreement and shall not include any financial terms from the structured settlement agreement or the transfer agreement in the order required under subsection 1.

2001 Acts, ch 85, §4, 8

682.5 Effects of transfer of structured settlement payment rights.

1. The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.

2. The transferee shall be liable to the structured settlement obligor and the annuity issuer for all of the following:

a. If the transfer contravenes the terms of the structured settlement, any taxes incurred by the structured settlement obligor and the annuity issuer as a consequence of the transfer.

b. Any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with this chapter.

3. An annuity issuer and the structured settlement obligor shall not be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.

4. Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

2001 Acts, ch 85, §5, 8

682.6 Procedure for approval of transfers.

1. An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

2. Not less than twenty days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 682.4, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization. All of the following shall be included with the notice:

a. A copy of the transferee's application.

b. A copy of the transfer agreement.

c. A copy of the disclosure statement required under section 682.3.

d. A listing of each of the payee's dependents, together with each dependent's age.

e. Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority, or by participating in the hearing.

f. Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall not be less than fifteen days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

3. If a structured settlement agreement or transfer agreement includes a provision requiring the terms of the structured settlement agreement or transfer agreement to remain confidential, the financial terms of the structured settlement agreement and the transfer agreement shall be made available to the court or responsible administrative authority for purposes of any in camera proceedings, but shall not be disclosed in the copies of the transfer agreement and disclosure statement filed as a part of the public record.

2001 Acts, ch 85, §6, 8

682.7 General provisions — construction — penalties.

1. The provisions of this chapter shall not be waived by a payee.

2. A transfer agreement entered into on or after the thirtieth day after July 1, 2001, by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined under the laws of this state. A transfer agreement shall not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

3. A transfer of structured settlement payment rights shall not extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for both of the following:

a. Periodically confirming the payee's survival.

b. Giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

4. A payee who proposes to make a transfer of structured settlement payment rights shall not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the conditions of this chapter.

5. This chapter shall not be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to July 1, 2001, is valid or invalid.

6. Compliance with the requirements set forth in section 682.3 and fulfillment of the conditions set forth in section 682.4 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

2001 Acts, ch 85, §7

CHAPTER 683

PROCEDURE TO VACATE OR MODIFY JUDGMENTS

Transferred to chapter 624A

CHAPTER 684

FRAUDULENT TRANSFERS

684.1 Definitions.
684.2 Insolvency.
684.3 Value.
684.4 Transfers fraudulent as to present and future creditors.
684.5 Transfers fraudulent as to present creditors.
684.6 When transfer is made or obligation is incurred.
684.7 Remedies of creditors.
684.8 Defenses, liability, and protection of transferee.
684.9 Extinguishment of cause of action.
684.10 Supplementary provisions.
684.11 Uniformity of application and construction.
684.12 Short title.

684.1 Definitions.

As used in this chapter:

1. *"Affiliate"* means any of the following:

a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as either of the following:

(1) As a fiduciary or agent without sole discretionary power to vote the securities.

(2) Solely to secure a debt, if the person has not exercised the power to vote.

b. A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as either of the following:

(1) As a fiduciary or agent without sole power to vote the securities.

(2) Solely to secure a debt, if the person has not in fact exercised the power to vote.

c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor.

d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

2. *"Asset"* means property of a debtor, but does not include any of the following:

a. Property to the extent it is encumbered by a valid lien.

b. Property to the extent it is generally exempt under nonbankruptcy law.

c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

3. *"Claim"* means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

4. *"Creditor"* means a person who has a claim.

5. *"Debt"* means liability on a claim.

6. *"Debtor"* means a person who is liable on a claim.

7. *"Insider"* includes all of the following:

a. If the debtor is an individual, all of the following:

(1) A relative of the debtor or of a general partner of the debtor.

(2) A partnership in which the debtor is a general partner.

(3) A general partner in a partnership described in subparagraph (2).

(4) A corporation of which the debtor is a director, officer, or person in control.

b. If the debtor is a corporation, all of the following:

(1) A director of the debtor.

(2) An officer of the debtor.

(3) A person in control of the debtor.

(4) A partnership in which the debtor is a general partner.

(5) A general partner in a partnership described in subparagraph (4).

(6) A relative of a general partner, director, officer, or person in control of the debtor.

c. If the debtor is a partnership, all of the following:

(1) A general partner in the debtor.

(2) A relative of a general partner in, or a general partner of, or a person in control of the debtor.

(3) Another partnership in which the debtor is a general partner.

(4) A general partner in a partnership described in subparagraph (3).

(5) A person in control of the debtor.

d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor.

e. A managing agent of the debtor.

8. *"Lien"* means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

9. *"Property"* means anything that may be the subject of ownership.

10. *"Relative"* means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

11. *"Transfer"* means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

12. *"Valid lien"* means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

94 Acts, ch 1121, §5

684.2 Insolvency.

1. A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

2. A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

3. A partnership is insolvent under subsection 1 if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

4. Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

5. Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

94 Acts, ch 1121, §6

684.3 Value.

1. Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

2. For the purposes of section 684.4, subsection 1, paragraph *"b"*, and section 684.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

3. A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

94 Acts, ch 1121, §7

684.4 Transfers fraudulent as to present and future creditors.

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation under any of the following circumstances:

a. With actual intent to hinder, delay, or defraud any creditor of the debtor.

b. Without receiving a reasonably equivalent value in exchange for the transfer or obligation, if either of the following applies:

(1) The debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(2) The debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

2. In determining actual intent under subsection 1, paragraph *"a"*, consideration may be given, among other factors, to any or all of the following:

a. Whether the transfer or obligation was to an insider.

b. Whether the debtor retained possession or control of the property transferred after the transfer.

c. Whether the transfer or obligation was disclosed or concealed.

d. Whether, before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

e. Whether the transfer was of substantially

all the debtor's assets.

f. Whether the debtor absconded.

g. Whether the debtor removed or concealed assets.

h. Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

i. Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

j. Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

k. Whether the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

94 Acts, ch 1121, §8

684.5 Transfers fraudulent as to present creditors.

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

2. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

94 Acts, ch 1121, §9

684.6 When transfer is made or obligation is incurred.

For the purposes of this chapter:

1. A transfer is made under either of the following circumstances:

a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee.

b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee.

2. If applicable law permits the transfer to be perfected as provided in subsection 1 and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

3. If applicable law does not permit the transfer to be perfected as provided in subsection 1, the transfer is made when it becomes effective between the debtor and the transferee.

4. A transfer is not made until the debtor has acquired rights in the asset transferred.

5. An obligation is incurred under either of the following circumstances:

a. If oral, when it becomes effective between the parties.

b. If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

94 Acts, ch 1121, §10

684.7 Remedies of creditors.

1. In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in section 684.8, may obtain any of the following:

a. Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

b. A remedy by any special action available under this subtitle, including attachment or other provisional remedy, against the asset transferred or other property of the transferee.

c. Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, any of the following:

(1) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property.

(2) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee.

(3) Any other relief the circumstances may require.

2. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

94 Acts, ch 1121, §11

684.8 Defenses, liability, and protection of transferee.

1. A transfer or obligation is not voidable under section 684.7, subsection 1, paragraph *"a"*, against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

2. Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 684.7, subsection 1, paragraph *"a"*, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against either of the following:

a. The first transferee of the asset or the person for whose benefit the transfer was made.

b. Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

3. If the judgment under subsection 2 is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

4. Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to any of the following:

a. A lien on or a right to retain any interest in the asset transferred.

b. Enforcement of any obligation incurred.

c. A reduction in the amount of the liability on the judgment.

5. A transfer is not voidable under section 684.4, subsection 1, paragraph *"b"*, or section 684.5 if the transfer results from either of the following:

a. Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law.

b. Enforcement of a security interest in compliance with chapter 554, article 9.

6. A transfer is not voidable under section 684.5, subsection 2, in any of the following circumstances:

a. To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien.

b. If made in the ordinary course of business or financial affairs of the debtor and the insider.

c. If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

94 Acts, ch 1121, §12

684.9 Extinguishment of cause of action.

A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought as follows:

1. Under section 684.4, subsection 1, paragraph *"a"*, within five years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

2. Under section 684.4, subsection 1, paragraph *"b"*, or section 684.5, subsection 1, within five years after the transfer was made or the obligation was incurred.

3. Under section 684.5, subsection 2, within one year after the transfer was made or the obligation was incurred.

94 Acts, ch 1121, §13

684.10 Supplementary provisions.

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

94 Acts, ch 1121, §14

684.11 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

94 Acts, ch 1121, §15

684.12 Short title.

This chapter may be cited as the *"Uniform Fraudulent Transfer Act."*

94 Acts, ch 1121, §16

CHAPTER 684A

QUESTIONS OF LAW IN SUPREME COURT CERTIFIED

684A.1 Power to answer.
684A.2 Method of invoking.
684A.3 Contents of certification order.
684A.4 Preparation of certification order.
684A.5 Costs of certification.
684A.6 Procedure.
684A.7 Opinion.
684A.8 Power to certify.
684A.9 Procedure on certifying.
684A.10 Construction.
684A.11 Title.

684A.1 Power to answer.

The supreme court may answer questions of law certified to it by the supreme court of the United States, a court of appeals of the United States, a United States district court or the highest appellate court or the intermediate appellate court of another state, when requested by the certifying court, if there are involved in a proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the appellate courts of this state.

[C81, §684A.1]

684A.2 Method of invoking.

This chapter may be invoked by an order of a court referred to in section 684A.1 upon the court's own motion or upon the motion of a party to the cause.

[C81, §684A.2]

684A.3 Contents of certification order.

A certification order shall set forth the questions of law to be answered and a statement of facts relevant to the questions certified, showing fully the nature of the controversy in which the questions arose.

[C81, §684A.3]

684A.4 Preparation of certification order.

The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the supreme court by the clerk of the certifying court under its official seal. The supreme court may require the original or copies of all or of a portion of the record before the certifying court to be filed with the certification order, if, in the opinion of the supreme court, the record or portion of it is necessary in answering the questions.

[C81, §684A.4]

684A.5 Costs of certification.

Fees and costs shall be the same as in civil appeals docketed before the supreme court and shall be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

[C81, §684A.5]

684A.6 Procedure.

The supreme court may prescribe rules of procedure concerning the answering and certification of questions of law under this chapter.

[C81, §684A.6]

83 Acts, ch 186, §10128, 10201; 98 Acts, ch 1115, §17, 21

Rules adopted by the supreme court are published in the compilation "Iowa Court Rules"

684A.7 Opinion.

The written opinion of the supreme court stating the law governing the questions certified shall be sent by the clerk under the seal of the supreme court to the certifying court and to the parties.

[C81, §684A.7]

684A.8 Power to certify.

The supreme court or the court of appeals, on its own motion or the motion of a party, may order certification of questions of law to the highest court of another state when it appears to the certifying court that there are involved in a proceeding before the court questions of law of the receiving state which may be determinative of the cause then pending in the certifying court and it appears to the certifying court that there are no controlling precedents in the decisions of the highest court or intermediate appellate courts of the receiving state.

[C81, §684A.8]

684A.9 Procedure on certifying.

The procedures for certification from this state to the receiving state are those provided in the laws of the receiving state.

[C81, §684A.9]

684A.10 Construction.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[C81, §684A.10]

684A.11 Title.

This chapter may be cited as the *"Uniform Certification of Questions of Law Act"*.

[C81, §684A.11]

CHAPTER 685

CLERK OF THE SUPREME COURT AND COURT ADMINISTRATOR

Repealed by 83 Acts, ch 186, §10201, 10203; see chapter 602, article 11

CHAPTER 686

PROCEDURE IN THE APPELLATE COURT IN CIVIL ACTIONS

Transferred to chapter 625A

TITLE XVI

CRIMINAL LAW AND PROCEDURE

SUBTITLE 1

CRIME CONTROL AND CRIMINAL ACTS

CHAPTER 687

PUBLIC OFFENSES

Repealed by 76 Acts, ch 1245(4), §526; see §701.2 et seq. and 903.1

CHAPTER 688

PRINCIPALS AND ACCESSORIES

Repealed by 76 Acts, ch 1245(4), §526; see §703.1 et seq.

CHAPTER 689

TREASON AND OFFENSES AGAINST THE GOVERNMENT

Repealed by 76 Acts, ch 1245(4), §526; see §718.1 et seq.

CHAPTER 690

BUREAU OF CRIMINAL IDENTIFICATION

690.1 Criminal identification.
690.2 Finger and palm prints — photographs — duty of sheriff and chief of police.
690.3 Equipment.
690.4 Fingerprints and photographs at institutions.
690.5 Administrative sanctions.

690.1 Criminal identification.

The commissioner of public safety may provide in the department a bureau of criminal identification. The commissioner may adopt rules for the same. The sheriff of each county and the chief of police of each city shall furnish to the department criminal identification records and other information as directed by the commissioner of public safety.

[C24, 27, 31, 35, 39, §**13416;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §749.1; C79, 81, §690.1]

97 Acts, ch 23, §77

690.2 Finger and palm prints — photographs — duty of sheriff and chief of police.

The sheriff of every county, and the chief of police of each city regardless of the form of government thereof, shall take the fingerprints of all unidentified dead bodies in their respective jurisdictions and all persons who are taken into custody for the commission of a serious misdemeanor, aggravated misdemeanor, or felony and shall forward such fingerprint records on such forms and in such manner as may be prescribed by the commissioner of public safety, within two working days after the fingerprint records are taken, to the department of public safety and, if appropriate, to the federal bureau of investigation. Fingerprints may be taken of a person who has been arrested for a simple misdemeanor subject to an enhanced penalty for conviction of a second or subsequent offense. In addition to the fingerprints as herein

provided, any such officer may also take the photograph and palm prints of any such person and forward them to the department of public safety. If a defendant is convicted by a court of this state of an offense which is a simple misdemeanor subject to an enhanced penalty for conviction of a second or subsequent offense, a serious misdemeanor, an aggravated misdemeanor, or a felony, the court shall determine whether such defendant has previously been fingerprinted in connection with the criminal proceedings leading to the conviction and, if not, shall order that the defendant be fingerprinted and those prints submitted to the department of public safety. The court shall also order that a juvenile adjudicated delinquent for an offense which would be an offense other than a simple misdemeanor if committed by an adult, be fingerprinted and the prints submitted to the department of public safety if the juvenile has not previously been fingerprinted. The taking of fingerprints for a serious misdemeanor offense under chapter 321 or 321A is not required under this section.

[C27, 31, 35, §13417-b1; C39, §**13417.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §749.2; C79, 81, §690.2]

93 Acts, ch 115, §1; 96 Acts, ch 1135, §1; 99 Acts, ch 37, §2

See also §232.148

690.3 Equipment.

The board of supervisors of each county and the council of each city affected by the provisions of section 690.2 shall furnish all necessary equipment and materials for the carrying out of the provisions of said section.

[C27, 31, 35, §13417-b2; C39, §**13417.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §749.3; C79, 81, §690.3]

690.4 Fingerprints and photographs at institutions.

The warden of the Iowa medical and classification center and superintendent of the state training school shall take or procure the taking of the fingerprints, and, in the case of the Iowa medical and classification center only, Bertillon photographs of any person received on commitment to their respective institutions, and shall forward such fingerprint records and photographs within ten days after they are taken to the department of public safety and to the federal bureau of investigation. Information obtained from fingerprint cards submitted pursuant to this section may be retained by the department of public safety as criminal history records. If a charge for a serious misdemeanor, aggravated misdemeanor, or felony is brought against a person already in the custody of a law enforcement or correctional agency and the charge is filed in a case separate from the case for which the person was previously arrested or confined, the agency shall take the fingerprints of the person in connection with the new case and submit them to the department of public safety.

The wardens and superintendents of all department of corrections facilities shall procure the taking of a photograph showing the facial features of each inmate of a state correctional institution prior to the inmate's discharge. The photograph shall be placed in the inmate's file and shall be made available to the Iowa department of public safety upon request.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §749.4; C79, 81, §690.4; 82 Acts, ch 1260, §37]

83 Acts, ch 96, §116, 159; 84 Acts, ch 1184, §18; 86 Acts, ch 1075, §4; 93 Acts, ch 115, §2

690.5 Administrative sanctions.

An agency subject to fingerprinting and disposition requirements under this chapter shall take all steps necessary to ensure that all agency officials and employees understand the requirements and shall provide for and impose administrative sanctions, as appropriate, for failure to report as required.

If a criminal or juvenile justice agency subject to fingerprinting and disposition requirements fails to comply with the requirements, the commissioner of public safety shall order that the agency's access to criminal history record information maintained by the repository be denied or restricted until the agency complies with the reporting requirements.

The state court administrator shall develop a policy to ensure that court personnel understand and comply with the fingerprinting and disposition requirements and shall also develop sanctions for court personnel who fail to comply with the requirements.

93 Acts, ch 115, §3; 95 Acts, ch 191, §27

CHAPTER 691

STATE CRIMINALISTICS LABORATORY AND MEDICAL EXAMINER

691.1 Laboratory created.
691.2 Presumption of qualification — evidence — testimony.
691.3 Commissioner to make rules.
691.4 Copy of finding to defendant.
691.5 State medical examiner.
691.6 Duties of state medical examiner.
691.6A Deputy state medical examiner — creation and duties.
691.6B Interagency coordinating council.

691.6C State medical examiner advisory council.
691.7 Commissioner to accept federal or private grants.
691.8 Governor to transfer laboratory.
691.9 Deposit and disposition of ammunition and firearms. Repealed by 85 Acts, ch 201, §21.

691.1 Laboratory created.

There is hereby created under the control, direction and supervision of the commissioner of public safety a state criminalistics laboratory. The commissioner of public safety may assign the criminalistics laboratory to a division or bureau within the public safety department. The laboratory shall, within its capabilities, conduct analyses, comparative studies, fingerprint identification, firearms identification, questioned documents studies, and other studies normally performed by a criminalistics laboratory when requested by a county attorney, medical examiner, or law enforcement agency of this state to aid in any criminal investigation. Agents of the division of criminal investigation and bureau of identification may be assigned to the criminalistics laboratory by the commissioner. New employees shall be appointed pursuant to chapter 19A, and need not qualify as agents for the division of criminal investigation and bureau of identification, and shall not participate in the peace officers' retirement plan established pursuant to chapter 97A.

[C71, 73, 75, 77, §749A.1; C79, 81, §691.1]

691.2 Presumption of qualification — evidence — testimony.

It shall be presumed that any employee or technician of the criminalistics laboratory is qualified or possesses the required expertise to accomplish any analysis, comparison, or identification done by the employee in the course of the employee's employment in the criminalistics laboratory. Any report, or copy of a report, or the findings of the criminalistics laboratory shall be received in evidence, if determined to be relevant, in any court, preliminary hearing, grand jury proceeding, civil proceeding, administrative hearing, and forfeiture proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison, or identification had testified in person.

A party or the party's attorney may request that an employee or technician testify in person at a criminal trial, administrative hearing, or forfeiture proceeding on behalf of the state or the adverse agency of the state, by notifying the proper county attorney, or in the case of an administrative proceeding the adverse agency, at least ten days before the date of the criminal trial, administrative hearing, or forfeiture proceeding. A party or the party's attorney in any other civil proceeding may require an employee or technician to testify in person pursuant to a subpoena.

[C71, 73, 75, 77, §749A.2; C79, 81, §691.2]
86 Acts, ch 1147, §1; 88 Acts, ch 1029, §1

691.3 Commissioner to make rules.

The commissioner of public safety shall make rules defining the capabilities of the criminalistics laboratory. The commissioner shall make rules governing the handling of items to be processed by the criminalistics laboratory from the time they are forwarded to the laboratory by a county medical examiner or a city or state law enforcement agency or county sheriff until their return to the forwarder. The rules shall prescribe a method of identifying, forwarding, handling and returning items that will maintain the identity and integrity of the item. An item handled in conformity with the rules shall be presumed to be admissible in evidence as to the period in transit to and from and while in custody of the laboratory without further foundation.

[C71, 73, 75, 77, §749A.3; C79, 81, §691.3]

691.4 Copy of finding to defendant.

The county attorney shall give the accused person, or the accused person's attorney, after an indictment or county attorney's information has been returned, a copy of each report of the findings of the criminalistics laboratory conducted in the investigation of the indictable criminal charge against the accused person at the time of arraignment, or if such report is received after arraignment, upon receipt, whether or not such findings are to be used in evidence against the accused person. If such report is not given to the accused or the accused person's attorney at least four days prior to trial, such fact shall be grounds for a continuance.

[C71, 73, 75, 77, §749A.4; C79, 81, §691.4]

691.5 State medical examiner.

The office and position of state medical examiner is established for administrative purposes within the Iowa department of public health. Other state agencies shall cooperate with the state medical examiner in the use of state-owned facilities when appropriate for the performance of nonadministrative duties of the state medical examiner. The state medical examiner shall be a physician and surgeon or osteopathic physician and surgeon, be licensed to practice medicine in the state

of Iowa, and be board certified or eligible to be board certified in anatomic and forensic pathology by the American board of pathology. The state medical examiner shall be appointed by and serve at the pleasure of the director of public health upon the advice of and in consultation with the director of public safety and the governor. The state medical examiner, in consultation with the director of public health, shall be responsible for developing and administering the medical examiner's budget and for employment of medical examiner staff and assistants. The state medical examiner may be a faculty member of the university of Iowa college of medicine or the college of law at the university of Iowa, and any of the examiner's assistants or staff may be members of the faculty or staff of the university of Iowa college of medicine or the college of law at the university of Iowa.

[C71, 73, 75, 77, §749A.5; C79, 81, §691.5]

86 Acts, ch 1245, §1602; 99 Acts, ch 208, §6, 14; 2001 Acts, ch 74, §20

691.6 Duties of state medical examiner.

The duties of the state medical examiner shall be:

1. To provide assistance, consultation, and training to county medical examiners and law enforcement officials.

2. To keep complete records of all relevant information concerning deaths or crimes requiring investigation by the state medical examiner.

3. To adopt rules pursuant to chapter 17A, and subject to the approval of the director of public health, with the advice and approval of the state medical examiner advisory council.

4. To collect and retain autopsy fees as established by rule. Autopsy fees collected and retained under this subsection are appropriated for purposes of the state medical examiner's office. Notwithstanding section 8.33, any fees collected by the state medical examiner that remain unexpended at the end of the fiscal year shall not revert to the general fund of the state or any other fund but shall be available for use for the following fiscal year for the same purpose.

5. To conduct an inquiry, investigation, or hearing and administer oaths and receive testimony under oath relative to the matter of inquiry, investigation, or hearing, and to subpoena witnesses and require the production of records, papers, and documents pertinent to the death investigation. However, the medical examiner shall not conduct any activity pursuant to this subsection, relating to a homicide or other criminally suspicious death, without coordinating such activity with the county medical examiner, and without obtaining approval of the investigating law enforcement agency, the county attorney, or any other prosecutorial or law enforcement agency of the jurisdiction to conduct such activity.

6. To adopt rules pursuant to chapter 17A relating to the duties, responsibilities, and operations of the office of the state medical examiner and to specify the duties, responsibilities, and operations of the county medical examiner in relationship to the office of the state medical examiner.

[C71, 73, 75, 77, §749A.6; C79, 81, §691.6]

86 Acts, ch 1245, §1603; 90 Acts, ch 1233, §39; 99 Acts, ch 208, §7, 14; 2000 Acts, ch 1140, §46; 2000 Acts, ch 1222, §16, 17

2000 amendment adding new subsection 4 is effective May 8, 2000, and is retroactively applicable to July 1, 1999; 2000 Acts, ch 1222, §16, 17

691.6A Deputy state medical examiner — creation and duties.

The position of deputy state medical examiner is created within the office of the state medical examiner. The deputy state medical examiner shall report to and be responsible to the state medical examiner. The deputy state medical examiner shall meet the qualification criteria established in section 691.5 for the state medical examiner and shall be subject to rules adopted by the state medical examiner as provided in section 691.6, subsection 3. The state medical examiner and the deputy state medical examiner shall function as a team, providing peer review as necessary, fulfilling each other's job responsibilities during times of absence, and working jointly to provide services and education to county medical examiners, law enforcement officials, hospital pathologists, and other individuals and entities. The deputy medical examiner may be, but is not required to be, a full-time salaried faculty member of the department of pathology of the university of Iowa college of medicine. If the medical examiner is a full-time salaried faculty member of the department of pathology of the university of Iowa college of medicine, the Iowa department of public health and the state board of regents shall enter into a chapter 28E agreement to define the activities and functions of the deputy medical examiner, and to allocate deputy medical examiner costs, consistent with the requirements of this section.

99 Acts, ch 208, §8, 14; 2001 Acts, ch 74, §21

691.6B Interagency coordinating council.

An interagency coordinating council is created to advise the state medical examiner concerning the assurance of effective coordination of the functions and operations of the office of the state medical examiner with the needs and interests of the departments of public safety and public health. Members of the interagency coordinating council shall include the state medical examiner, or when the state medical examiner is not available, the deputy state medical examiner; the commissioner of public safety or the commissioner's designee; the director of public health or the director's designee; and the governor or the governor's designee. The interagency coordinating council shall meet

on a regular basis.
99 Acts, ch 208, §9, 14

691.6C State medical examiner advisory council.
A state medical examiner advisory council is established to advise and consult with the state medical examiner on a range of issues affecting the organization and functions of the office of the state medical examiner and the effectiveness of the medical examiner system in the state. Membership of the state medical examiner advisory council shall be determined by the state medical examiner, in consultation with the director of public health, and shall include, but not necessarily be limited to, representatives from the office of the attorney general, the Iowa county attorneys association, the Iowa medical society, the Iowa association of pathologists, the Iowa association of county medical examiners, the departments of public safety and public health, the statewide emergency medical system, and the Iowa funeral directors association. The advisory council shall meet on a quarterly or more frequent basis, and shall be organized and function as established by the state medical examiner by rule.
99 Acts, ch 208, §10, 14

691.7 Commissioner to accept federal or private grants.
The commissioner of public safety may accept federal or private funds or grants to aid in the establishment or operation of the state criminalistics laboratory, and the director of public health or the state board of regents may accept federal or private funds or grants to aid in the establishment or operation of the position of state medical examiner.
[C71, 73, 75, 77, §749A.7; C79, 81, §691.7]
86 Acts, ch 1245, §1604; 99 Acts, ch 208, §11, 14

691.8 Governor to transfer laboratory.
The governor shall by executive order provide for the transfer of any appropriate laboratory facilities, equipment, and technical personnel of the state to the state criminalistics laboratory if such transfer will more effectively and efficiently aid the investigation of crime.
[C71, 73, 75, 77, §749A.8; C79, 81, §691.8]

691.9 Deposit and disposition of ammunition and firearms. Repealed by 85 Acts, ch 201, § 21. See chapter 809.

CHAPTER 692

CRIMINAL HISTORY AND INTELLIGENCE DATA

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692.1 Definitions of words and phrases.
As used in this chapter, unless the context otherwise requires:
1. *"Adjudication data"* means information that an adjudication of delinquency for an act which would be a serious or aggravated misdemeanor or felony if committed by an adult was entered against a juvenile and includes the date and location of the delinquent act and the place and court of adjudication.
2. *"Arrest data"* means information pertaining to an arrest for a public offense and includes the charge, date, time and place. Arrest data includes arrest warrants for all public offenses outstanding and not served and includes the filing of charges, by preliminary information when filed by a peace

officer or law enforcement officer or indictment, the date and place of alleged commission and county of jurisdiction.

3. *"Bureau"* means the department of public safety, division of criminal investigation and bureau of identification.

4. *"Conviction data"* means information that a person was convicted of or entered a plea of guilty to a public offense and includes the date and location of commission and place and court of conviction.

5. *"Correctional data"* means information pertaining to the status, location, and activities of persons under the supervision of the county sheriff, the Iowa department of corrections, the board of parole, or any other state or local agency performing the same or similar function, but does not include investigative, sociological, psychological, economic, or other subjective information maintained by the Iowa department of corrections or board of parole.

6. *"Criminal history data"* means any or all of the following information maintained by the department or bureau in a manual or automated data storage system and individually identified:

a. Arrest data.
b. Conviction data.
c. Disposition data.
d. Correctional data.
e. Adjudication data.
f. Custody data.

7. *"Criminal investigative data"* means information collected in the course of an investigation where there are reasonable grounds to suspect that specific criminal acts have been committed by a person.

8. *"Criminal or juvenile justice agency"* means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

9. *"Custody data"* means information pertaining to the taking into custody, pursuant to section 232.19, of a juvenile for a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, and includes the date, time, place, and facts and circumstances of the delinquent act. Custody data includes warrants for the taking into custody for all delinquent acts outstanding and not served and includes the filing of a petition pursuant to section 232.35, the date and place of the alleged delinquent act, and the county of jurisdiction.

10. *"Department"* means the department of public safety.

11. *"Disposition data"* means information pertaining to a recorded court proceeding subsequent and incidental to a public offense arrest and includes dismissal of the charge, suspension or deferral of sentence.

12. *"Individually identified"* means criminal history data which relates to a specific person by one or more of the following means of identification:

a. Name and alias, if any.
b. Social security number.
c. Fingerprints.
d. Other index cross-referenced to paragraph *"a", "b",* or *"c."*
e. Other individually identifying characteristics.

13. *"Intelligence data"* means information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor possible criminal activity.

14. *"Public offense"* as used in subsections 2, 4 and 11 does not include nonindictable offenses under either chapter 321 or local traffic ordinances.

15. *"Surveillance data"* means information on individuals, pertaining to participation in organizations, groups, meetings or assemblies, where there are no reasonable grounds to suspect involvement or participation in criminal activity by any person.

[C75, 77, §749B.1; C79, 81, §692.1; 81 Acts, ch 38, §2, 3]

83 Acts, ch 96, §117, 159; 83 Acts, ch 113, §1; 95 Acts, ch 191, §28 – 31; 97 Acts, ch 126, §46

692.2 Dissemination of criminal history data — fees.

1. The department may provide copies or communicate information from criminal history data to the following:

a. Criminal or juvenile justice agencies.

b. A person or public or private agency, upon written application on a form approved by the commissioner of public safety and provided by the department to law enforcement agencies, subject to the following restrictions:

(1) A request for criminal history data must be submitted in writing by mail or as otherwise provided by rule. However, the department shall accept a request presented in person if it is from an individual or an individual's attorney and requests the individual's personal criminal history data.

(2) The request must identify a specific person by name and date of birth. Fingerprints of the person named may be required.

(3) Criminal history data that does not contain any disposition data after eighteen months from the date of arrest may only be disseminated by the department to criminal or juvenile justice agencies, to the person who is the subject of the criminal history data or the person's attorney, or to a person requesting the criminal history data with a signed release from the person who is the subject of the criminal history data authorizing the requesting person access to criminal history data.

(4) Upon receipt of official notification of the

successful completion of probation following a deferred judgment, criminal history data regarding the person who successfully completed the probation shall only be disseminated by the department to a criminal or juvenile justice agency, to the person who is the subject of the criminal history data or the person's attorney, or to another person with a signed release from the person who is the subject of the criminal history data authorizing the requesting person access to the criminal history data.

(5) Any release of criminal history data by the department shall prominently display the statement: "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF GUILT".

(6) Records of acquittals or dismissals by reason of insanity and records of adjudications of mental incompetence to stand trial in cases in which physical or mental injury or an attempt to commit physical or mental injury to another was alleged shall not be disseminated to persons or agencies other than criminal or juvenile justice agencies or persons employed in or by those agencies.

2. Requests for criminal history data from criminal or juvenile justice agencies shall take precedence over all other requests.

3. A person who requests criminal history data shall not be liable for damages to the person whose criminal history data is requested for actions the person requesting the information may reasonably take in reliance on the accuracy and completeness of the criminal history data received from the department if all of the following are true:

a. The person requesting the criminal history data in good faith believes the criminal history data to be accurate and complete.

b. The person requesting the criminal history data has complied with the requirements of this chapter.

c. The identifying information submitted to the department by the person requesting the criminal history data is accurate regarding the person whose criminal history data is sought.

4. Unless otherwise provided by law, access under this section to criminal history data by a person or public or private agency does not create a duty upon a person, or employer, member, or volunteer of a public or private agency to examine the criminal history data of an applicant, employee, or volunteer.

5. A person other than the department of public safety shall not disseminate criminal history data maintained by the department to persons who are not criminal or juvenile justice agencies.

6. The department may charge a fee to any nonlaw-enforcement person or agency to conduct criminal history data checks. Notwithstanding any other limitation, the department may use revenues generated from the fee to administer this section and other sections of the Code providing access to criminal history data and to employ personnel to process criminal history data checks.

However, the fee for conducting a criminal history data check for a person seeking release of a certified copy of the person's own criminal history data to a potential employer, if that employer requests the release in writing, shall not be paid by the person but shall be paid by the employer.

[C75, 77, §749B.2; C79, 81, §692.2; 82 Acts, ch 1120, §1]

83 Acts, ch 96, §157, 159; 83 Acts, ch 113, §2, 3; 84 Acts, ch 1061, §1; 84 Acts, ch 1265, §6; 85 Acts, ch 33, §124; 86 Acts, ch 1245, §1605, 1606; 87 Acts, ch 59, §1; 88 Acts, ch 1249, §19; 88 Acts, ch 1252, §3; 89 Acts, ch 10, §1, 2; 89 Acts, ch 283, §32; 90 Acts, ch 1248, §3; 90 Acts, ch 1249, §19; 91 Acts, ch 138, §9; 93 Acts, ch 53, §8; 93 Acts, ch 115, §4; 94 Acts, ch 1130, §16, 17; 95 Acts, ch 191, §32 – 34; 96 Acts, ch 1150, §3, 4; 98 Acts, ch 1021, §1

692.2A Criminal history data check prepayment fund.

1. A criminal history data check prepayment fund is created in the state treasury under the control of the department for the purpose of allowing any non-law enforcement agency or person to deposit moneys as an advance on fees required to conduct criminal history data checks as provided in section 692.2.

2. The department shall adopt rules governing the fund, including the crediting of deposits made to the fund. Prepaid fees deposited in the fund are appropriated to the department for use as provided in section 692.2.

3. Interest or earnings on moneys deposited in the fund shall not be credited to the fund or to the agency or person who deposited the money but shall be deposited in the general fund of the state as provided in section 12C.7. Notwithstanding section 8.33, moneys remaining in the criminal history data check prepayment fund at the end of a fiscal year shall not revert to the general fund of the state.

97 Acts, ch 209, §24

692.3 Redissemination. Repealed by 96 Acts, ch 1150, § 10. See § 692.8A.

692.4 Statistics.

The department, bureau, or a criminal or juvenile justice agency may compile and disseminate criminal history data in the form of statistical reports derived from such information or as the basis of further study provided individual identities are not ascertainable.

The bureau may with the approval of the commissioner of public safety disseminate criminal history data to persons conducting bona fide research, provided the data is not individually identified.

[C75, 77, §749B.4; C79, 81, §692.4]

95 Acts, ch 191, §36

692.5 Right of notice, access and challenge.

Any person or the person's attorney shall have the right to examine and obtain a copy of criminal history data filed with the department that refers to the person. The person or person's attorney shall present or mail to the department written authorization and the person's fingerprint identification. The department shall not copy the fingerprint identification and shall return or destroy the identification after the copy of the criminal history data is made. The department may prescribe reasonable hours and places of examination.

Any person who files with the bureau a written statement to the effect that a statement contained in the criminal history data that refers to the person is nonfactual, or information not authorized by law to be kept, and requests a correction or elimination of that information that refers to that person shall be notified within twenty days by the bureau, in writing, of the bureau's decision or order regarding the correction or elimination. Judicial review of the actions of the bureau may be sought in accordance with the terms of the Iowa administrative procedure Act. Immediately upon the filing of the petition for judicial review the court shall order the bureau to file with the court a certified copy of the criminal history data and in no other situation shall the bureau furnish an individual or the individual's attorney with a certified copy, except as provided by this chapter.

Upon the request of the petitioner, the record and evidence in a judicial review proceeding shall be closed to all but the court and its officers, and access thereto shall be refused unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. A person, other than the petitioner, shall not permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or the party's attorney. Violation of this section shall be a public offense, punishable under section 692.7. The provisions of this section shall be the sole right of action against the department, its subdivisions, or employees regarding improper storage or release of criminal history data.

Whenever the bureau corrects or eliminates data as requested or as ordered by the court, the bureau shall advise all agencies or individuals who have received the incorrect information to correct their files. Upon application to the district court and service of notice on the commissioner of public safety, any individual may request and obtain a list of all persons and agencies who received criminal history data referring to the individual, unless good cause be shown why the individual should not receive said list.

[C75, 77, §749B.5; C79, 81, §692.5]

93 Acts, ch 115, §5; 96 Acts, ch 1150, §5

692.6 Civil remedy.

Any person may institute a civil action for damages under chapter 669 or 670 or to restrain the dissemination of the person's criminal history data or intelligence data in violation of this chapter, and any person, agency or governmental body proven to have disseminated or to have requested and received criminal history data or intelligence data in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses and reasonable attorneys' fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

[C75, 77, §749B.6; C79, 81, §692.6]

692.7 Criminal penalties.

1. A person who willfully requests, obtains, or seeks to obtain criminal history data under false pretenses, or who willfully communicates or seeks to communicate criminal history data to any agency or person except in accordance with this chapter, or a person connected with a research program authorized pursuant to this chapter who willfully falsifies criminal history data or any records relating thereto, shall, upon conviction, for each such offense be guilty of an aggravated misdemeanor.

2. Any person who willfully requests, obtains, or seeks to obtain intelligence data under false pretenses, or who willfully communicates or seeks to communicate intelligence data to any agency or person except in accordance with this chapter, shall for each such offense be guilty of a class "D" felony. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate intelligence data except in accordance with this chapter shall for each such offense be guilty of a serious misdemeanor.

3. If a person convicted under this section is a peace officer, the conviction shall be grounds for discharge or suspension from duty without pay and if the person convicted is a public official or public employee, the conviction shall be grounds for removal from office.

4. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to criminal history data and intelligence data.

[C75, 77, §749B.7; C79, 81, §692.7]

96 Acts, ch 1150, §6

692.8 Intelligence data.

Intelligence data contained in the files of the department of public safety or a criminal or juvenile justice agency may be placed within a computer data storage system, provided that access to the computer data storage system is restricted to au-

thorized employees of the department or criminal or juvenile justice agency. The department shall adopt rules to implement this paragraph.

Intelligence data in the files of the department may be disseminated only to a peace officer, criminal or juvenile justice agency, or state or federal regulatory agency, and only if the department is satisfied that the need to know and the intended use are reasonable. Whenever intelligence data relating to a defendant or juvenile who is the subject of a petition under section 232.35 for the purpose of sentencing or adjudication has been provided a court, the court shall inform the defendant or juvenile or the defendant's or juvenile's attorney that it is in possession of such data and shall, upon request of the defendant or juvenile or the defendant's or juvenile's attorney, permit examination of such data.

If the defendant or juvenile disputes the accuracy of the intelligence data, the defendant or juvenile shall do so by filing an affidavit stating the substance of the disputed data and wherein it is inaccurate. If the court finds reasonable doubt as to the accuracy of such information, it may require a hearing and the examination of witnesses relating thereto on or before the time set for sentencing or adjudication.

[C75, 77, §749B.8; C79, 81, §692.8]

84 Acts, ch 1145, §2; 94 Acts, ch 1096, §1; 95 Acts, ch 191, §37

692.8A Redissemination of intelligence data.

A criminal or juvenile justice agency, state or federal regulatory agency, or a peace officer shall not disseminate intelligence data, which has been received from the department or bureau or from any other source, outside the agency or the peace officer's agency unless all of the following apply:

1. The intelligence data is for official purposes in connection with prescribed duties of a criminal or juvenile justice agency.
2. The agency maintains a list of the persons receiving the intelligence data and the date and purpose of the dissemination.
3. The request for intelligence data is based upon name, fingerprints, or other individually identified characteristics.

96 Acts, ch 1150, §7

692.9 Surveillance data prohibited.

No surveillance data shall be placed in files or manual or automated data storage systems by the department or bureau or by any peace officer or criminal or juvenile justice agency. Violation of the provisions of this section shall be a public offense punishable under section 692.7.

[C75, 77, §749B.9; C79, 81, §692.9]

95 Acts, ch 191, §38

692.10 Rules.

The department shall adopt rules designed to assure the security and confidentiality of all systems established for the exchange of criminal history data and intelligence data between criminal or juvenile justice agencies and for the authorization of officers or employees to access a department or agency computer data storage system in which criminal intelligence data is stored.

[C75, 77, §749B.10; C79, 81, §692.10; 81 Acts, ch 38, §5]

84 Acts, ch 1145, §3; 95 Acts, ch 191, §39

692.11 Education program.

The department shall require an educational program for its employees and the employees of criminal or juvenile justice agencies on the proper use and control of criminal history data and intelligence data.

[C75, 77, §749B.11; C79, 81, §692.11]

95 Acts, ch 191, §40

692.12 Data processing.

Nothing in this chapter shall preclude the use of the equipment and hardware of the data processing service center for the storage and retrieval of criminal history data. Files shall be stored on the computer in such a manner that the files cannot be modified, destroyed, accessed, changed, or overlaid in any fashion by terminals or personnel not belonging to a criminal or juvenile justice agency. That portion of any computer, electronic switch, or manual terminal having access to criminal history data stored in the state computer must be under the management control of a criminal or juvenile justice agency.

[C75, 77, §749B.12; C79, 81, §692.12]

95 Acts, ch 191, §41; 96 Acts, ch 1034, §56

692.13 Review.

The department shall initiate periodic review procedures designed to determine compliance with the provisions of this chapter within the department and by criminal or juvenile justice agencies and to determine that data furnished to them is factual and accurate.

[C75, 77, §749B.13; C79, 81, §692.13]

95 Acts, ch 191, §42

692.14 Systems for the exchange of criminal history data.

The department shall regulate the participation by all state and local agencies in any system for the exchange of criminal history data, and shall be responsible for assuring the consistency of such participation with the terms and purposes of this chapter.

Direct access to such systems shall be limited to such criminal or juvenile justice agencies as are expressly designated for that purpose by the department. The department shall, with respect to

telecommunications terminals employed in the dissemination of criminal history data, insure that security is provided over an entire terminal or that portion actually authorized access to criminal history data.

[C75, 77, §749B.14; C79, 81, §692.14]

95 Acts, ch 191, §43

692.15 Reports to department.

1. If it comes to the attention of a sheriff, police department, or other law enforcement agency that a public offense or delinquent act has been committed in its jurisdiction, the law enforcement agency shall report information concerning the public offense or delinquent act to the department on a form to be furnished by the department not more than thirty-five days from the time the public offense or delinquent act first comes to the attention of the law enforcement agency. The reports shall be used to generate crime statistics. The department shall submit statistics to the governor, the general assembly, and the division of criminal and juvenile justice planning of the department of human rights on a quarterly and yearly basis.

2. If a sheriff, police department, or other law enforcement agency makes an arrest or takes a juvenile into custody which is reported to the department, the law enforcement agency making the arrest or taking the juvenile into custody and any other law enforcement agency which obtains custody of the arrested person or juvenile taken into custody shall furnish a disposition report to the department if the arrested person or juvenile taken into custody is transferred to the custody of another law enforcement agency or is released without having a complaint or information or petition under section 232.35 filed with any court.

3. The law enforcement agency making an arrest and securing fingerprints pursuant to section 690.2 or taking a juvenile into custody and securing fingerprints pursuant to section 232.148 shall fill out a final disposition report on each arrest or taking into custody on a form and in the manner prescribed by the commissioner of public safety. The final disposition report shall be forwarded to the county attorney in the county where the arrest or taking into custody occurred or to the juvenile court officer who received the referral.

4. The county attorney of each county or juvenile court officer who received the referral shall complete the final disposition report and submit it to the department within thirty days if a preliminary information or citation is dismissed without a new charge being filed. If an indictment is returned or a county attorney's information is filed, or a petition is filed under section 232.35, the final disposition form shall be forwarded to either the clerk of the district court or juvenile court of that county.

5. If a criminal complaint or information or petition under section 232.35 is filed in any court, the clerk shall furnish a disposition report of the case.

6. Any disposition report shall be sent to the department within thirty days after disposition on a form provided by the department.

7. The hate crimes listed in section 729A.2 are subject to the reporting requirements of this section.

8. The fact that a person was convicted for a sexually predatory offense under chapter 901A shall be reported with other conviction data regarding that person.

[C75, 77, §749B.15; C79, 81, §692.15]

86 Acts, ch 1237, §42; 92 Acts, ch 1157, §2; 93 Acts, ch 115, §6; 95 Acts, ch 191, §44; 96 Acts, ch 1082, §1; 99 Acts, ch 37, §3; 2000 Acts, ch 1154, §41

692.16 Review and removal.

At least every year the bureau shall review and determine current status of all Iowa arrests or takings into custody reported, which are at least one year old with no disposition data. Any Iowa arrest or taking of a juvenile into custody recorded within a computer data storage system which has no disposition data after four years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

[C75, 77, §749B.16; C79, 81, §692.16]

93 Acts, ch 115, §7; 95 Acts, ch 191, §45

692.17 Exclusions — purposes.

Criminal history data in a computer data storage system shall not include arrest or disposition data or custody or adjudication data after the person has been acquitted or the charges dismissed, except that records of acquittals or dismissals by reason of insanity and records of adjudications of mental incompetence to stand trial in cases in which physical or mental injury or an attempt to commit physical or mental injury to another was alleged may be included. Criminal history data shall not include custody or adjudication data after the juvenile has reached twenty-one years of age, unless the juvenile was convicted of or pled guilty to a serious or aggravated misdemeanor or felony between age eighteen and age twenty-one.

For the purposes of this section, *"criminal history data"* includes the following:

1. In the case of an adult, information maintained by any criminal justice agency if the information otherwise meets the definition of criminal history data in section 692.1, except that source documents shall be retained.

2. In the case of a juvenile, information maintained by any criminal or juvenile justice agency if the information otherwise meets the definition of criminal history data in section 692.1. In the case of a juvenile, criminal history data and source documents, other than fingerprint records, shall not be retained.

Fingerprint cards received that are used to establish a criminal history data record shall be re-

tained in the automated fingerprint identification system when the criminal history data record is expunged.

Criminal history data may be collected for management or research purposes.

[C75, 77, §749B.17; C79, 81, §692.17]

90 Acts, ch 1053, §1; 91 Acts, ch 116, §20; 93 Acts, ch 115, §8; 95 Acts, ch 191, §46; 98 Acts, ch 1021, §2

692.18 Public records.

Nothing in this chapter shall prohibit the public from examining and copying the public records of any public body or agency as authorized by chapter 22.

Intelligence data in the possession of the department or bureau, or disseminated by the department or bureau, are not public records within the provisions of chapter 22.

[C75, 77, §749B.18; C79, 81, §692.18]

96 Acts, ch 1150, §8

692.19 Confidential records — commissioner's responsibility.

The commissioner of public safety shall have the following responsibilities and duties:

1. Shall periodically monitor the operation of governmental information systems which deal with the collection, storage, use and dissemination of criminal history or intelligence data.

2. Shall review the implementation and effectiveness of legislation and administrative rules concerning such systems.

3. May recommend changes in said rules and legislation to the legislature and the appropriate administrative officials.

4. May require such reports from state agencies as may be necessary to perform its duties.

5. May receive and review complaints from the public concerning the operation of such systems.

6. May conduct inquiries and investigations the commissioner finds appropriate to achieve the purposes of this chapter. Each criminal or juvenile justice agency in this state and each state and local agency otherwise authorized access to criminal history data is authorized and directed to furnish to the commissioner of public safety, upon the commissioner's request, statistical data, reports, and other information in its possession as the commissioner deems necessary to implement this chapter.

7. Shall annually approve rules adopted in accordance with section 692.10 and rules to assure the accuracy, completeness and proper purging of criminal history data.

8. Shall approve all agreements, arrangements and systems for the interstate transmission and exchange of criminal history data.

[C75, 77, §749B.19; C79, 81, §692.19]

86 Acts, ch 1245, §1607; 88 Acts, ch 1134, §113; 95 Acts, ch 191, §47

692.20 Motor vehicle operator's record exempt.

The provisions of section 692.2 shall not apply to the certifying of an individual's operating record pursuant to section 321A.3.

[C75, 77, §749B.20; C79, 81, §692.20]

96 Acts, ch 1150, §9

692.21 Data to agency making arrest or taking juvenile into custody.

The clerk of the district court shall forward conviction and disposition data to the criminal or juvenile justice agency making the arrest or taking a juvenile into custody within thirty days of final court disposition of the case.

[C81, §692.21]

95 Acts, ch 191, §48; 96 Acts, ch 1034, §57

692.22 Stalking information.

Criminal or juvenile justice agencies, as defined in section 692.1, shall collect and maintain information on incidents involving stalking, as defined in section 708.11, and shall provide the information to the department of public safety in the manner prescribed by the department of public safety.

The department of public safety may compile statistics and issue reports on stalking in Iowa, provided individual identifying details of the stalking are deleted. The statistics and reports may include nonidentifying information on the personal characteristics of perpetrators and victims. The department of public safety may request the cooperation of the department of justice in compiling the statistics and issuing the reports. The department of public safety may provide nonidentifying information on individual incidents of stalking to persons conducting bona fide research, including but not limited to personnel of the department of justice.

98 Acts, ch 1021, §3

CHAPTER 692A

SEX OFFENDER REGISTRY

Applicability to persons convicted prior to July 1, 1995; transition provisions; 95 Acts, ch 146, §17

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692A.1 Definitions.

As used in this chapter and unless the context otherwise requires:

1. *"Aggravated offense"* means a conviction for any of the following offenses:

a. Sexual abuse in the first degree in violation of section 709.2.

b. Sexual abuse in the second degree in violation of section 709.3.

c. Sexual abuse in the third degree in violation of section 709.4, subsection 1.

d. Lascivious acts with a child in violation of section 709.8, subsection 1.

e. Assault with intent to commit sexual abuse in violation of section 709.11.

f. Burglary in the first degree in violation of section 713.3, subsection 1, paragraph *"d"*.

g. Kidnapping, if sexual abuse as defined in section 709.1 is committed during the offense.

h. Murder, if sexual abuse as defined in section 709.1 is committed during the offense.

i. Criminal transmission of human immunodeficiency virus in violation of section 709C.1, subsection 1, paragraph *"a"*.

2. *"Child care facility"* means as defined in section 237A.1.

3. *"Convicted"* or *"conviction"* means a person who is found guilty of, pleads guilty to, or is sentenced or adjudicated delinquent for an act which is an indictable offense in this state or in another jurisdiction, including, but not limited to, a juvenile who has been adjudicated delinquent, but whose juvenile court records have been sealed under section 232.150, and a person who has received a deferred sentence or a deferred judgment or has been acquitted by reason of insanity. *"Convicted"* or *"conviction"* does not mean a plea, sentence, adjudication, deferral of sentence or judgment which has been reversed or otherwise set aside.

4. *"Criminal or juvenile justice agency"* means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

5. *"Criminal offense against a minor"* means any of the following criminal offenses or conduct:

a. Kidnapping of a minor, except for the kidnapping of a minor in the third degree committed by a parent.

b. False imprisonment of a minor, except if committed by a parent.

c. Any indictable offense involving sexual conduct directed toward a minor.

d. Solicitation of a minor to engage in an illegal sex act.

e. Use of a minor in a sexual performance.

f. Solicitation of a minor to practice prostitution.

g. Any indictable offense against a minor involving sexual contact with the minor.

h. An attempt to commit an offense enumerated in this subsection.

i. Incest committed against a minor.

j. Dissemination and exhibition of obscene material to minors in violation of section 728.2.

k. Admitting minors to premises where obscene material is exhibited in violation of section 728.3.

l. Stalking in violation of section 708.11, subsection 3, paragraph *"b"*, subparagraph (3), if the fact-finder determines by clear and convincing evidence that the offense was sexually motivated.

m. Sexual exploitation of a minor in violation of section 728.12.

n. Enticing away a minor in violation of section 710.10, subsection 1.

o. An indictable offense committed in another jurisdiction which would constitute an indictable offense under paragraphs *"a"* through *"n"*.

6. *"Department"* means the department of public safety.

7. *"Other relevant offense"* means any of the following offenses:

a. Telephone dissemination of obscene materials in violation of section 728.15.

b. Rental or sale of hard-core pornography in violation of section 728.4.

c. Indecent exposure in violation of section 709.9.

d. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs *"a"* through *"c"* if committed in this state.

8. *"Residence"* means the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

9. *"Sexually violent offense"* means any of the following indictable offenses:

a. Sexual abuse as defined under section 709.1.

b. Assault with intent to commit sexual abuse in violation of section 709.11.

c. Sexual misconduct with offenders in violation of section 709.16.

d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.

e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs *"a"* through *"d"* if committed in this state.

10. *"Sexual exploitation"* means sexual exploitation by a counselor or therapist under section 709.15.

11. *"Sexually violent predator"* means a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14071(a)(3)(B), (C), (D), and (E).

95 Acts, ch 146, §1; 96 Acts, ch 1034, §58; 96 Acts, ch 1132, §1 – 3; 97 Acts, ch 33, §13; 98 Acts, ch 1169, §1 – 5; 99 Acts, ch 23, §1 – 3, 5; 99 Acts, ch 112, §2, 3; 2001 Acts, ch 17, §1, 2; 2001 Acts, ch 73, §1, 2; 2002 Acts, ch 1119, §102; 2002 Acts, ch 1157, §1

Legislative intent for development of single contact repository; 98 Acts, ch 1217, §36

NEW subsection 2 and former subsections 2 – 10 renumbered as 3 – 11

Subsection 5, paragraph m amended

692A.2 Persons required to register.

1. A person who has been convicted of a criminal offense against a minor, an aggravated offense, sexual exploitation, an other relevant offense, or a sexually violent offense in this state or in another state, or in a federal, military, tribal, or foreign court, or a person required to register in another state under the state's sex offender registry, shall register as provided in this chapter. A person required to register under this chapter shall, upon a first conviction, register for a period of ten years commencing as follows:

a. From the date of placement on probation.

b. From the date of release on parole or work release.

c. From the date of release as a juvenile from foster care or residential treatment.

d. From the date of any other release from custody.

2. If a person is placed on probation, parole, or work release and the probation, parole, or work release is revoked, the ten years shall commence anew upon release from custody. If the person who is required to register under this chapter is incarcerated for a crime which does not require registration under this chapter, the period of registration is tolled until the person is released from incarceration for that crime.

3. A person who is required to register under this chapter shall, upon a second or subsequent conviction that requires a second registration, or upon conviction of an aggravated offense, or who has previously been convicted of one or more offenses that would have required registration under this chapter, register for the rest of the person's life.

4. A person is not required to register while incarcerated, in foster care, or in a residential treatment program. A person who is convicted, as defined in section 692A.1, of a criminal offense against a minor, sexual exploitation, a sexually violent offense, or an other relevant offense as a result of adjudication of delinquency in juvenile court shall be required to register as required in this chapter unless the juvenile court finds that the person should not be required to register under this chapter. If a juvenile is required to register and the court later modifies the order regarding the requirement to register, the court shall immediately notify the department. Convictions of more than one offense which require registration under this chapter but which are prosecuted within a single indictment shall be considered as a single offense for purposes of registration.

5. A person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator shall register as provided in this chapter for life.

95 Acts, ch 146, §2; 96 Acts, ch 1134, §7; 98 Acts, ch 1169, §6; 99 Acts, ch 96, §50; 99 Acts, ch 112, §4 – 6

692A.2A Residency restrictions — child care facilities and schools.

1. For purposes of this section, *"person"* means a person who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor.

2. A person shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility.

3. A person who resides within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school, or a child care facility, commits an aggravated misdemeanor.

4. A person residing within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this section

if any of the following apply:

a. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility.

b. The person is subject to an order of commitment under chapter 229A.

c. The person has established a residence prior to July 1, 2002, or a school or child care facility is newly located on or after July 1, 2002.

d. The person is a minor or a ward under a guardianship.

2002 Acts, ch 1157, §3
NEW section

692A.3 Registration process.

1. A person required to register under this chapter shall register with the sheriff of the county of the person's residence within five days of establishment of residence in this state or within five days of any conviction for which the person is not incarcerated, a release from custody, or placement on probation, parole, or work release. A sheriff shall accept the registration of a nonresident of the county if the person required to register is a full-time or part-time student or is employed on a full-time or part-time basis in the county.

2. A person required to register under this chapter shall, within five days of changing residence within a county in this state or within five days of a change in the person's name as a result of marriage, dissolution of marriage, or a legal name change, notify the sheriff of the county in which the person is registered of the change of address, name, and any changes in the person's telephone number in writing on a form provided by the sheriff. The sheriff shall send a copy of the change of information to the department within three working days of receipt of notice of the change. The sex offender registry shall maintain and make available information from the registry cross-referenced by name at the time of conviction and by name subsequent to any change.

3. A person required to register under this chapter shall register with the sheriff of a county in which residence has been newly established and notify the sheriff of the county in which the person was registered, within five days of changing residence to a location outside the county in which the person was registered. Registration shall be in writing on a form provided by the sheriff and shall include the person's change of address and any changes to the person's telephone number or name. The sheriff shall send a copy of the change of information to the department within three working days of receipt of notice of the change.

4. A person required to register under this chapter shall notify the sheriff of the county in which the person is registered, within five days of changing residence to a location outside this state, of the new residence address and any changes in telephone number or name. The sheriff shall send a copy of the change to the department within three working days of receipt of notice of the change. The person must register with the registering agency of the other state within five days of changing residency, if persons are required to register under the laws of the other state. The department shall notify the registering agency in the other state of the registrant's new address, telephone number, or name.

5. The collection of information by a court or releasing agency under section 692A.5 shall serve as the person's initial registration for purposes of this section. The court or releasing agency shall forward a copy of the registration to the department within three working days of completion of registration.

95 Acts, ch 146, §3; 98 Acts, ch 1169, §7; 99 Acts, ch 112, §7, 8; 2000 Acts, ch 1044, §1

692A.3A Additional registration requirements — institutions of higher education.

1. *Registration in county other than county of residence.* In addition to the registration requirements in section 692A.3, a person required to register under this chapter, who is a full-time or part-time student or is employed or engaged in a vocation on a full-time or part-time basis at an institution of higher education in a county other than the county of residence, shall register with the sheriff of the county in which the institution is located, and provide the sheriff with the name of the institution. The person must register within five days of becoming a student, being employed, or engaging in a vocation at the institution.

2. *Registration in a county of residence.* In addition to the registration requirements in section 692A.3, a person required to register under this chapter, who is a full-time or part-time student or is employed or engaged in a vocation on a full-time or part-time basis at an institution of higher education in the county of residence, shall notify the sheriff of the name of the institution. The person must notify the sheriff within five days of becoming a student, being employed, or engaging in a vocation at the institution.

3. *Change in status.* A person required to register under this chapter, within five days of the person's change in status as a student, or in employment or vocation, shall notify the sheriff of the county in which the information was provided of the changes. The sheriff shall send a copy of the information regarding the change to the department within three working days of receipt of the notice of the change.

2002 Acts, ch 1020, §1
NEW section

692A.4 Verification of address.

1. The address of a person required to register under this chapter shall be verified annually as follows:

a. On a date which falls within the month in which the person was initially required to register, the department shall mail a verification form to the last reported address of the person. Verification forms shall not be forwarded to the person who is required to register under this chapter if the person no longer resides at the address, but shall be returned to the department.

b. The person shall complete and mail the verification to the department within ten days of receipt of the form.

c. The verification form shall be signed by the person, and state the address at which the person resides. If the person is in the process of changing residences, the person shall state that fact as well as the old and new addresses or places of residence.

2. Verification of address for a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator shall be accomplished in the same manner as in subsection 1, except that the verification shall be done every three months at times established by the department.

95 Acts, ch 146, §4; 98 Acts, ch 1169, §8

692A.5 Duty to facilitate registration.

1. When a person who is required to register under this chapter is released from confinement from a jail, prison, juvenile facility, or other correctional institution or facility, or when such a person is convicted but not incarcerated, the sheriff, warden, or superintendent or, in the case of release from foster care or residential treatment or conviction without incarceration, the court shall do the following prior to release or sentencing of the convicted person:

a. Obtain fingerprints, the social security number, and a photograph of the person if fingerprints and a photograph and the social security number have not already been obtained in connection with the offense that triggers registration. A current photograph shall also be required. Additional information for a person required to register as a sexually violent predator shall include, but not be limited to, other identifying factors, anticipated future places of residence, offense history, and documentation of any treatment received by the person for a mental abnormality or personality disorder.

b. Inform the person of the duty to register.

c. Inform the person that, within five days of changing residence, registration with the sheriff in the county in which residence is established is required, if the residence is within the state.

d. Inform the person that if the person moves the person's residence to another state, the person must give the person's new address to the sheriff's department in the county of the person's old residence within five days of changing addresses, and that, if the other state has a registration requirement, the person is also required to register in the new state of residence, not later than five days after establishing residence in the other state, and to verify the address at least annually.

e. Require the person to read and sign a form stating that the duty of the person to register under this chapter has been explained. If the person cannot read, is unable to write, or refuses to cooperate, the duty and the form shall be explained orally and a written record maintained by the person explaining the duty and the form.

f. Inform the person that if the person is a nonresident of a state where the person is a full-time or part-time student or is employed on a full-time or part-time basis, the person must register with the sheriff of the county where the person is employed or attending school. Full-time or part-time means a period of time exceeding fourteen days or an aggregate period of time exceeding thirty days during any calendar year pursuant to 42 U.S.C. § 14071(a)(3)(F).

g. Inform the person that if the person is a resident or a nonresident of a county where the person is a full-time or part-time student, or employed or engaged in a vocation on a full-time or part-time basis at an institution of higher education, the person must register in the county where the institution is located and notify the sheriff of the name of the institution, within five days of becoming a student, being employed, or engaging in a vocation at the institution. Inform the person that if the person changes status as a student, or in employment or vocation, the person shall notify the sheriff of the county in which the information was provided of the change within five days of the change.

h. Inform the person, if the person's residency is restricted under section 692A.2A, that the person shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school, or a child care facility.

2. When a person who is required to register under this chapter is released from confinement from a jail, prison, juvenile facility, or other correctional institution or facility, or when such a person is convicted but not incarcerated, the sheriff, warden, or superintendent or, in the case of release from foster care or residential treatment or conviction without incarceration, the court shall verify that the person has completed initial registration forms, and accept the forms on behalf of the sheriff of the county of registration. The sheriff, warden, superintendent, or the court shall send the initial registration information to the department within three working days of completion of the registration. Probation, parole, work release, or any other form of release after conviction shall not be granted unless the person has registered as required under this chapter.

If the offender refuses to register, the sheriff, warden, or superintendent shall immediately

notify a prosecuting attorney in the county in which the offender was convicted or, if the offender no longer resides in that county, in the county in which the offender resides of the refusal to register. The prosecuting attorney shall bring a contempt of court action against the offender in the county in which the offender was convicted or, if the offender no longer resides in that county, in the county in which the offender resides. An offender who refuses to register shall be held in contempt and may be incarcerated following the entry of judgment by the court on the contempt action until the offender complies with the registration requirements.

3. The sheriff, warden, or superintendent or, in the case the person is placed on probation, the court shall forward one copy of the registration information to the department and to the sheriff of the county in which the person is to reside within three days after completion of the registration.

4. The court may order an appropriate law enforcement agency or the county attorney to assist the court in performing the requirements of subsection 1.

95 Acts, ch 146, §5; 96 Acts, ch 1132, §4; 96 Acts, ch 1134, §8, 9; 97 Acts, ch 128, §4; 98 Acts, ch 1169, §9, 10; 99 Acts, ch 112, §9; 2000 Acts, ch 1044, §2; 2002 Acts, ch 1020, §2; 2002 Acts, ch 1157, §2

Subsection 1, NEW paragraphs g and h

692A.6 Registration fees and civil penalty for offenders.

1. At the time of filing a registration statement, or a change of registration, with the sheriff of the county of residence, a person who is required to register under this chapter shall pay a fee of ten dollars to the sheriff. If, at the time of registration, the person who is required to register is unable to pay the fee, the sheriff may allow the person time to pay the fee, permit the payment of the fee in installments, or may waive payment of the fee. Fees paid to the sheriff shall be used to defray the costs of duties related to the registration of persons under this chapter.

2. In addition to any other penalty, at the time of conviction for a public offense committed on or after July 1, 1995, which requires a person to register under this chapter, the person shall be assessed a civil penalty of two hundred dollars, to be payable in the same manner as a fine. The clerk of the district court shall transmit money collected under this subsection each month to the treasurer of state, who shall deposit ten percent of the moneys transmitted by the clerk into the court technology and modernization fund, for use for the purposes established in section 602.8108, subsection 5, and deposit the balance of the moneys transmitted by the clerk into the sex offender registry fund established under section 692A.11.

3. The fees required by this section shall not be assessed against a person who has been acquitted by reason of insanity of the offense which requires registration under this chapter.

95 Acts, ch 146, §6

692A.7 Failure to comply — penalty.

1. A person required to register under this chapter who violates any requirements specified under sections 692A.2, 692A.3, and 692A.4 commits an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense. A person required to register under this chapter who violates any requirements specified under section 692A.3A commits a serious misdemeanor for a first offense and a class "D" felony for a second or subsequent offense. However, a person required to register under this chapter who violates any of the requirements specified under section 692A.2, 692A.3, 692A.3A, or 692A.4 and who commits a criminal offense against a minor, sexual exploitation, an other relevant offense, or a sexually violent offense is guilty of a class "C" felony. Any fine imposed for a second or subsequent violation shall not be suspended. The court shall not defer judgment or sentence for any violation of any requirements specified under section 692A.2, 692A.3, 692A.3A, or 692A.4. A violation by a person, who is on probation, parole, work release, or any other form of release, of any requirements specified under section 692A.2, 692A.3, 692A.3A, or 692A.4 shall result in the automatic revocation of the person's probation, parole, or work release. For purposes of this subsection, a violation occurs when a person knows or reasonably should know of the duty to fulfill a requirement specified in the offense charged.

2. In determining if a violation is a second or subsequent offense, a conviction for a violation of this section which occurred more than ten years prior to the date of the violation charged shall not be considered in determining that the violation charged is a second, third, or subsequent offense. Violations in any other states under sex offender registry provisions that are substantially similar to those contained in this section shall be counted as previous offenses. The court shall judicially notice the statutes of other states which are substantially equivalent to this section.

95 Acts, ch 146, §7; 98 Acts, ch 1169, §11; 2000 Acts, ch 1044, §3, 4; 2002 Acts, ch 1020, §3; 2002 Acts, ch 1119, §192

See Code editor's note to §8.55 at the end of Vol IV

Subsection 1 amended

692A.8 Determination of requirement to register.

1. A person who is registered under this chapter may request that the department determine whether the offense for which the person has been convicted requires the person to register under this chapter or whether the period of time during which the person is obligated to register under this chapter has expired.

2. Application for determination shall be made

on forms provided by the department and accompanied by copies of sentencing or adjudicatory orders with respect to each offense for which the person asks that a determination be made.

3. The department shall, within ninety days of the filing of the request, determine whether the person is required to register under this chapter.

95 Acts, ch 146, §8

692A.9 Registration forms.

Registration forms shall be prepared by the department and shall include the registrant's name at the time of conviction and any change of name as a result of marriage, dissolution of marriage, or legal name change, the registrant's social security number, date of birth, the registrant's current address, and, if applicable, the registrant's telephone number. The forms may provide for the reporting of additional relevant information such as, but not limited to, fingerprints and photographs but shall not include information identifying the victim of the crime of which the registrant was convicted. Additional information for persons required to register as a sexually violent predator shall include, but not be limited to, other identifying factors, anticipated future places of residence, offense history, and documentation of any treatment received by the person for mental abnormality or personality disorder. Copies of blank forms shall be available upon request to any person from the sheriff.

95 Acts, ch 146, §9; 98 Acts, ch 1169, §12

692A.10 Department duties — registry.

The department shall perform all of the following duties:

1. Develop and disseminate standard forms for use in registering of, verifying addresses of, and verifying understanding of registration requirements by persons required to register under this chapter. Forms used to verify addresses of persons required to register under this chapter shall contain a warning against forwarding of the forms and of the requirement to return the forms if the person to whom the form is directed no longer resides at the address listed on the form or the mailing.

2. Maintain a central registry of information collected from persons required to register under this chapter, which shall be known as the sex offender registry.

3. In consultation with the attorney general, adopt rules under chapter 17A which list specific offenses under present and former law which constitute criminal offenses against a minor under this chapter.

4. Adopt rules under chapter 17A, as necessary, to ensure compliance with registration and verification requirements of this chapter, to provide guidelines for persons required to assist in obtaining registry information, and to provide a procedure for the dissemination of information contained in the registry. The procedure for the dissemination of information shall include, but not be limited to, practical guidelines for use by criminal or juvenile justice agencies in determining when public release of information contained in the registry is appropriate and a requirement that if a member of the general public requests information regarding a specific individual in the manner provided in section 692A.13 the information shall be released. The department, in developing the procedure, shall consult with associations which represent the interests of law enforcement officers. Rules adopted shall also include a procedure for removal of information from the registry upon the reversal or setting aside of a conviction of a person who is registered under this chapter.

5. Submit sex offender registry data to the federal bureau of investigation for entry of the data into the national sex offender registry.

95 Acts, ch 146, §10; 96 Acts, ch 1034, §59; 99 Acts, ch 112, §10, 11

692A.11 Sex offender registry fund.

A sex offender registry fund is established as a separate fund within the state treasury under the control of the department. The fund shall consist of moneys received as a result of the imposition of the penalty imposed under section 692A.6 and other funds allocated for purposes of establishing and maintaining the sex offender registry, conducting research and analysis related to sex crimes and offenders, and to perform other duties required under this chapter. Notwithstanding section 8.33, unencumbered or unobligated moneys and any interest remaining in the fund on June 30 of any fiscal year shall not revert to the general fund of the state, but shall remain available for expenditure in subsequent fiscal years.

95 Acts, ch 146, §11

692A.12 Duties of the sheriff.

The sheriff of each county shall comply with the requirements of this chapter and rules adopted by the department pursuant to this chapter.

95 Acts, ch 146, §12

692A.13 Availability of records.

Information contained in the sex offender registry is a confidential record under section 22.7, subsection 9, and shall only be disseminated or redisseminated as provided in section 692A.13A or as follows:

1. The department, sheriff, or a police department may disclose information to criminal or juvenile justice agencies for law enforcement or prosecution purposes.

2. A department listed under section 692A.13A or a juvenile court officer conducting a risk assessment may disclose information to government agencies which are conducting confidential background investigations.

3. The department or a criminal or juvenile justice agency may release relevant information from the registry except as otherwise provided in section 692A.13A, subsection 3, to members of the general public concerning a specific person who is required to register under this chapter as follows:

a. Any person may contact a sheriff's office or a police department in writing to request information regarding any person required to register. A request for information shall include the name and one or more of the following identifiers pertaining to the person about whom information is sought:

(1) The person's date of birth.

(2) The person's social security number.

(3) The person's address.

b. A county sheriff or a police department shall also provide to any person upon request, access to the list of all registrants in that county who have been classified as "at-risk" in this state, however, records of persons protected under 18 U.S.C. § 3521 shall not be disclosed.

c. Upon the appropriation of sufficient funds, the department shall provide electronic access to relevant information from the registry for the following:

(1) Persons who commit a criminal offense against a minor, an aggravated offense, sexual exploitation, a sexually violent offense, or an other relevant offense on or after July 1, 1999, and who have been assessed to be "moderate-risk" or "high-risk".

(2) Persons who committed an offense prior to July 1, 1999, and who have been assessed to be "moderate-risk" or "high-risk" and whose opportunity to request a hearing regarding the assessment of risk has lapsed.

4. The department may disseminate departmental analyses of information contained in the sex offender registry to persons conducting bona fide research, if the data does not contain individually identified information, as defined under section 692.1.

5. Criminal history data contained in the registry may be released as provided in chapter 692 or used by criminal or juvenile justice agencies as an index for purposes of locating a relevant conviction record.

6. A criminal or juvenile justice agency shall not initiate affirmative public notification regarding an individual who has been convicted of kidnapping or false imprisonment, and the crime did not involve attempted sexual abuse or sexual abuse, and the person has not committed another offense that would require the person to register.

7. Notwithstanding sections 232.147 through 232.151, records concerning convictions for criminal offenses against a minor, sexual exploitation, other relevant offenses, or sexually violent offenses which are committed by a minor may be released in the same manner as records of convictions of adults.

8. The department shall provide information for purposes of the single contact repository established pursuant to section 135C.33, in accordance with rules adopted by the department.

95 Acts, ch 146, §13; 96 Acts, ch 1034, §60; 96 Acts, ch 1132, §5; 98 Acts, ch 1169, §13 – 15; 98 Acts, ch 1223, §31; 99 Acts, ch 23, §4, 5; 99 Acts, ch 112, §12 – 18; 99 Acts, ch 192, §32; 2000 Acts, ch 1058, §54; 2002 Acts, ch 1119, §193

Subsection 3, paragraph c, subparagraph (1) amended

692A.13A Risk assessment and public notification.

1. The department of corrections, the department of human services, and the department of public safety shall, in consultation with one another, develop methods and procedures for the assessment of the risk that persons required to register under this chapter pose of reoffending. The department of corrections, in consultation with the department of human services, the department of public safety, and the attorney general, shall adopt rules relating to assessment procedures. The assessment procedures shall include procedures for the sharing of information between the department of corrections, department of human services, the juvenile court, and the division of criminal investigation of the department of public safety, as well as the communication of the results of the risk assessment to criminal and juvenile justice agencies. The assignment of responsibility for the assessment of risk shall be as follows:

a. The department of corrections or a judicial district department of correctional services shall perform the assessment of risk for persons who are incarcerated in institutions under the control of the director of the department of corrections, persons who are under the supervision of the department of corrections or a judicial district department of correctional services, and persons who are under the supervision or control of the department of corrections or a judicial district department of correctional services through an interstate compact.

b. The department of human services shall perform the assessment of risk for persons who are confined in institutions under the control of the director of human services, persons who are under the supervision of the department of human services, and persons who are under the supervision or control of the department of human services through an interstate compact.

c. The division of criminal investigation of the department of public safety shall perform the assessment of risk for persons who have moved to Iowa but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department

of correctional services, a juvenile court officer of the judicial branch, or the department of human services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Assessments of persons who have moved to Iowa and persons on federal parole or probation shall be performed on an expedited basis if the person was classified as a person with a high degree of likelihood of reoffending by the other jurisdiction or the federal government.

d. A juvenile court officer shall perform the assessment of risk for a juvenile who is adjudicated delinquent for a criminal offense listed in section 692A.1 and who is under the juvenile court officer's supervision.

2. Each department under subsection 1 or each juvenile court officer conducting the assessment of risk shall notify the offender as to the determination of the assessment conducted by that department or officer. An appeal of an assessment of risk determination performed by a department shall be made in accordance with chapter 17A. An appeal of an assessment of risk determination performed by a juvenile court officer shall be made in accordance with rules adopted by the department of public safety in consultation with the judicial branch.

3. The department of public safety shall be responsible for disclosing the assessment of risk information to a criminal or juvenile justice agency for law enforcement, prosecution, or for public notification purposes. A department, or a criminal or juvenile justice agency, may release the offender's name, address, a photograph, locations frequented by the offender, and relevant criminal history information from the registry and other relevant information. The degree of public notification utilized by a criminal or juvenile justice agency shall be determined as follows:

a. For offenders classified as "low-risk", registry information may be distributed to a criminal or juvenile justice agency or to members of the public upon requests made through a criminal or juvenile justice agency or by electronic access as provided in section 692A.13, subsection 3.

b. For offenders classified as "at-risk", including "moderate-risk" or "high-risk", registry information may be provided to any criminal or juvenile justice agency and to the public which includes public and private agencies, organizations, public places, public and private schools, child care facilities, religious and youth organizations, neighbors, and employers. However, if an offender is classified as "high-risk", information may also be provided to neighborhood associations or at community meetings. Registry information may be distributed to the public by printed materials, visual or audio press releases, and by a criminal or juvenile justice agency's web page. The scope of notification may include where the registrant resides, works, attends school, or frequents.

99 Acts, ch 112, §19

692A.14 Cooperation with registration.

Each agency of state and local government which possesses information relevant to requirements that a person register under this chapter shall provide that information to the court or the department upon request. All confidential records provided under this section shall remain confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information.

95 Acts, ch 146, §14

692A.15 Immunity for good faith conduct.

Criminal or juvenile justice agencies, officials, and employees of criminal or juvenile justice agencies and state agencies and their employees shall be immune from liability for acts or omissions arising from a good faith effort to comply with this chapter.

95 Acts, ch 146, §15; 96 Acts, ch 1034, §61

692A.16 Applicability of chapter.

1. The registration requirements of this chapter shall apply to persons convicted of a criminal offense against a minor, sexual exploitation, an other relevant offense, or a sexually violent offense prior to July 1, 1995, who are released on or after July 1, 1995, who are participating in a work release or institutional work release program on or after July 1, 1995, or who are under parole or probation supervision by a judicial district department of correctional services on or after July 1, 1995.

2. Persons required to register under subsection 1 shall register for a period of ten years commencing with the later of either July 1, 1995, or the date of the person's release from confinement, release on work release or institutional work release, or release on parole or probation. For persons released from confinement, registration shall be initiated by the warden, sheriff, or superintendent in charge of the place of confinement in the same manner as provided in section 692A.5. For persons who are under parole or probation supervision, the person's parole or probation officer shall inform the person of the person's duty to register and shall obtain the registration information from the person as required under section 692A.5.

98 Acts, ch 1169, §16; 99 Acts, ch 96, §51

CHAPTER 692B

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT

692B.1 Citation.
692B.2 Crime prevention and privacy compact.
692B.3 Duty of commissioner.

692B.1 Citation.

This chapter may be cited as the *"National Crime Prevention and Privacy Compact Act"*.

2000 Acts, ch 1065, §1

692B.2 Crime prevention and privacy compact.

The national crime prevention and privacy compact is enacted into law and entered into by this state with any other state or jurisdiction legally joining the compact in the form substantially as follows:

ARTICLE I — DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(1) *ATTORNEY GENERAL.* The term *"attorney general"* means the attorney general of the United States.

(2) *COMPACT OFFICER.* The term *"compact officer"* means

(A) with respect to the federal government, an official so designated by the director of the FBI; and

(B) with respect to a party state, the chief administrator of the state's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) *COUNCIL.* The term *"council"* means the compact council established under Article VI.

(4) *CRIMINAL HISTORY RECORDS.* The term *"criminal history records"*

(A) means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) *CRIMINAL HISTORY RECORD REPOSITORY.* The term *"criminal history record repository"* means the state agency designated by the governor or other appropriate executive official or the legislature of a state to perform centralized record-keeping functions for criminal history records and services in the state.

(6) *CRIMINAL JUSTICE.* The term *"criminal justice"* includes activities relating to the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) *CRIMINAL JUSTICE AGENCY.* The term *"criminal justice agency"*

(A) means

(i) courts; and

(ii) a governmental agency or any subunit thereof that

(I) performs the administration of criminal justice pursuant to a statute or executive order; and

(II) allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) includes federal and state inspectors general offices.

(8) *CRIMINAL JUSTICE SERVICES.* The term *"criminal justice services"* means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) *CRITERION OFFENSE.* The term *"criterion offense"* means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) *DIRECT ACCESS.* The term *"direct access"* means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) *EXECUTIVE ORDER.* The term *"executive order"* means an order of the president of the United States or the chief executive officer of a state that has the force of law and that is promulgated in accordance with applicable law.

(12) *FBI.* The term *"FBI"* means the federal bureau of investigation.

(13) *INTERSTATE IDENTIFICATION INDEX SYSTEM.* The term *"interstate identifica-*

tion index system" or *"III system"*

(A) means the cooperative federal-state system for the exchange of criminal history records; and

(B) includes the national identification index, the national fingerprint file and, to the extent of their participation in such system, the criminal history record repositories of the states and the FBI.

(14) *NATIONAL FINGERPRINT FILE.* The term *"national fingerprint file"* means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III system.

(15) *NATIONAL IDENTIFICATION INDEX.* The term *"national identification index"* means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III system.

(16) *NATIONAL INDICES.* The term *"national indices"* means the national identification index and the national fingerprint file.

(17) *NONPARTY STATE.* The term *"nonparty state"* means a state that has not ratified this compact.

(18) *NONCRIMINAL JUSTICE PURPOSES.* The term *"noncriminal justice purposes"* means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) *PARTY STATE.* The term *"party state"* means a state that has ratified this compact.

(20) *POSITIVE IDENTIFICATION.* The term *"positive identification"* means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III system. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) *SEALED RECORD INFORMATION.* The term *"sealed record information"* means

(A) with respect to adults, that portion of a record that is

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and

(B) with respect to juveniles, whatever each state determines is a sealed record under its own law and procedure.

(22) *STATE.* The term *"state"* means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II — PURPOSES

The purposes of this compact are to

(1) provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) require the FBI to permit use of the national identification index and the national fingerprint file by each party state, and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(3) require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(4) provide for the establishment of a council to monitor III system operations and to prescribe system rules and procedures for the effective and proper operation of the III system for noncriminal justice purposes; and

(5) require the FBI and each party state to adhere to III system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III — RESPONSIBILITIES OF COMPACT PARTIES

(a) *FBI RESPONSIBILITIES.* The director of the FBI shall

(1) appoint an FBI compact officer who shall

(A) administer this compact within the department of justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

(B) ensure that compact provisions and rules, procedures, and standards prescribed by the council under Article VI are complied with by the department of justice and the federal agencies and

other agencies and organizations referred to in Article III(a)(1)(A); and

(C) regulate the use of records received by means of the III system from party states when such records are supplied by the FBI directly to other federal agencies;

(2) provide to federal agencies and to state criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including

(A) information from nonparty states; and

(B) information from party states that is available from the FBI through the III system, but is not available from the party state through the III system;

(3) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) *STATE RESPONSIBILITIES*. Each party state shall

(1) appoint a compact officer who shall

(A) administer this compact within that state;

(B) ensure that compact provisions and rules, procedures, and standards established by the council under Article VI are complied with in the state; and

(C) regulate the in-state use of records received by means of the III system from the FBI or from other party states;

(2) establish and maintain a criminal history record repository, which shall provide

(A) information and records for the national identification index and the national fingerprint file; and

(B) the state's III system-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) participate in the national fingerprint file; and

(4) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this compact.

(c) *COMPLIANCE WITH III SYSTEM STANDARDS*. In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III system rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation.

(d) *MAINTENANCE OF RECORD SERVICES*.

(1) Use of the III system for noncriminal justice purposes authorized in this compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact*.

ARTICLE IV — AUTHORIZED RECORD DISCLOSURES

(a) *STATE CRIMINAL HISTORY RECORD REPOSITORIES*. To the extent authorized by section 552a of title 5, United States Code (commonly known as the Privacy Act of 1974), the FBI shall provide on request criminal history records (excluding sealed records) to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general and that authorizes national indices checks.

(b) *CRIMINAL JUSTICE AGENCIES AND OTHER GOVERNMENTAL OR NONGOVERNMENTAL AGENCIES*. The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the Privacy Act of 1974), and state criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general, that authorizes national indices checks.

(c) *PROCEDURES*. Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each compact officer shall establish procedures, consistent with this compact and with rules, procedures, and standards established by the council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall

(1) ensure that records obtained under this compact are used only by authorized officials for authorized purposes;

(2) require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate *"no record"* response is communicated to the requesting official.

ARTICLE V — RECORD REQUEST PROCEDURES

(a) *POSITIVE IDENTIFICATION.* Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) *SUBMISSION OF STATE REQUESTS.* Each request for a criminal history record check utilizing the national indices made under any approved state statute shall be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another state criminal history record repository or the FBI.

(c) *SUBMISSION OF FEDERAL REQUESTS.* Each request for criminal history record checks utilizing the national indices made under federal authority shall be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which such request originated. Direct access to the national identification index by entities other than the FBI and state criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) *FEES.* A state criminal history record repository or the FBI

(1) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) *ADDITIONAL SEARCH.*

(1) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a state criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III system indexed record or records

(A) the FBI shall so advise the state criminal history record repository; and

(B) the state criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

ARTICLE VI — ESTABLISHMENT OF COMPACT COUNCIL

(a) *ESTABLISHMENT.*

(1) *IN GENERAL.* There is established a council to be known as the compact council, which shall have the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes.

(2) *ORGANIZATION.* The council shall

(A) continue in existence as long as this compact remains in effect;

(B) be located, for administrative purposes, within the FBI; and

(C) be organized and hold its first meeting as soon as practicable after the effective date of this compact*.

(b) *MEMBERSHIP.* The council shall be composed of fifteen members, each of whom shall be appointed by the attorney general, as follows:

(1) Nine members, each of whom shall serve a two-year term, who shall be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that, in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the director of the FBI, each of whom shall serve a three-year term, of whom

(A) One shall be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

(B) One shall be a representative of the noncriminal justice agencies of the federal government.

(3) Two at-large members, nominated by the chairperson of the council, once the chairperson is elected pursuant to Article VI(c), each of whom shall serve a three-year term, of whom

(A) One shall be a representative of state or local criminal justice agencies; and

(B) One shall be a representative of state or local noncriminal justice agencies.

(4) One member, who shall serve a three-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the director of the FBI, who shall serve a three-year term, and who shall be an employee of the FBI.

(c) *CHAIRPERSON AND VICE CHAIRPERSON.*

(1) *IN GENERAL.* From its membership,

the council shall elect a chairperson and a vice chairperson of the council, respectively. Both the chairperson and vice chairperson of the council

(A) shall be a compact officer, unless there is no compact officer on the council who is willing to serve, in which case the chairperson may be an at-large member; and

(B) shall serve a two-year term and may be re-elected to only one additional two-year term.

(2) *DUTIES OF VICE CHAIRPERSON.* The vice chairperson of the council shall serve as the chairperson of the council in the absence of the chairperson.

(d) *MEETINGS.*

(1) *IN GENERAL.* The council shall meet at least once each year at the call of the chairperson. Each meeting of the council shall be open to the public. The council shall provide prior public notice in the federal register of each meeting of the council, including the matters to be addressed at such meeting.

(2) *QUORUM.* A majority of the council or any committee of the council shall constitute a quorum of the council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) *RULES, PROCEDURES, AND STANDARDS.* The council shall make available for public inspection and copying at the council office within the FBI, and shall publish in the federal register, any rules, procedures, or standards established by the council.

(f) *ASSISTANCE FROM FBI.* The council may request from the FBI such reports, studies, statistics, or other information or materials as the council determines to be necessary to enable the council to perform its duties under this compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) *COMMITTEES.* The chairperson may establish committees as necessary to carry out this compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII — RATIFICATION OF COMPACT

This compact shall take effect upon being entered into by two or more states as between those states and the federal government. Upon subsequent entering into this compact by additional states, it shall become effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing state.

ARTICLE VIII — MISCELLANEOUS PROVISIONS

(a) *RELATION OF COMPACT TO CERTAIN FBI ACTIVITIES.*

Administration of this compact shall not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) *NO AUTHORITY FOR NONAPPROPRIATED EXPENDITURES.* Nothing in this compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) *RELATING TO PUBLIC LAW 92-544.* Nothing in this compact shall diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under Article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX — RENUNCIATION

(a) *IN GENERAL.* This compact shall bind each party state until renounced by the party state.

(b) *EFFECT.* Any renunciation of this compact by a party state shall

(1) be effected in the same manner by which the party state ratified this compact; and

(2) become effective one hundred eighty days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

ARTICLE X — SEVERABILITY

The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state, or to the Constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this compact is held contrary to the constitution of any party state, all other portions of this compact shall remain in full force and effect as to the remaining party states and in full force and

effect as to the party state affected, as to all other provisions.

ARTICLE XI — ADJUDICATION OF DISPUTES

(a) *IN GENERAL.* The council shall

(1) have initial authority to make determinations with respect to any dispute regarding

(A) interpretation of this compact;

(B) any rule or standard established by the council pursuant to Article VI; and

(C) any dispute or controversy between any parties to this compact; and

(2) hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) *DUTIES OF FBI.* The FBI shall exercise immediate and necessary action to preserve the integrity of the III system, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the council holds a hearing on such matters.

(c) *RIGHT OF APPEAL.* The FBI or a party state may appeal any decision of the council to the attorney general, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

2000 Acts, ch 1065, §2; 2000 Acts, ch 1232, §84

*Legislation enacting compact is effective July 1, 2000; 2000 Acts, ch 1065, §1 – 3

692B.3 Duty of commissioner.

The commissioner of public safety shall be responsible to implement and administer this compact.

2000 Acts, ch 1065, §3

CHAPTER 693

POLICE RADIO BROADCASTING SYSTEM

693.1 Contract authorized.
693.2 Expenses.
693.3 Notification to supervisors.
693.4 Duty of supervisors to install — costs.
693.5 Option of city council to install — costs.
693.6 Repealed by 81 Acts, ch 117, §1097.
693.7 Communication with local agencies.
693.8 Repealed by 80 Acts, ch 1008, §2.

693.1 Contract authorized.

The commissioner of public safety may enter into such contracts as the commissioner may deem necessary for the purpose of utilizing a special radio broadcasting system for law enforcement and police work and for direct and rapid communication with the various peace officers of the state. The said commissioner shall be empowered, subject to the approval of the governor and executive council, to equip divisional headquarters, cars, and motorcycles in the department with radio sending or receiving apparatus or both.

[C31, 35, §13417-d1; C39, §**13417.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §750.1; C79, 81, §693.1]

693.2 Expenses.

Any such contract authorized in section 693.1 shall involve no expense to the state, except that the state may buy its own radio remote control system and install the same in the offices of the department of public safety in broadcasting communications and information direct to the peace officers of the state.

[C31, 35, §13417-d2; C39, §**13417.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §750.2; C79, 81, §693.2]

693.3 Notification to supervisors.

Whenever the commissioner of public safety has entered into a contract and has established radio broadcasting facilities as is provided in this chapter, the commissioner shall at once notify the boards of supervisors of the respective counties that such a radio service has been established.

[C31, 35, §13417-d3; C39, §**13417.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §750.3; C79, 81, §693.3]

693.4 Duty of supervisors to install — costs.

The board of supervisors of each county shall install in the office of the sheriff a radio receiving set, and a set in at least one motor vehicle used by the sheriff, for use in connection with the state radio broadcasting system. The board of supervisors may install as many additional radio receiving sets as it deems necessary.

[C31, 35, §13417-d4; C39, §**13417.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §750.4; C79, 81, §693.4]

83 Acts, ch 123, §200, 209

693.5 Option of city council to install — costs.

The council of each city of two thousand or more population may install at least one radio receiving set for use in law enforcement and police work.

[C31, 35, §13417-d5; C39, §**13417.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §750.5; C79, 81, §693.5]

693.6 Repealed by 81 Acts, ch 117, § 1097.

693.7 Communication with local agencies.

The department of public safety shall maintain law enforcement communications with local enforcement agencies.

[C75, 77, §750.7; C79, 81, §693.7]

693.8 Repealed by 80 Acts, ch 1008, § 2. See § 2.35, 2.36.

CHAPTER 694

MISSING PERSONS

694.1 Missing persons.
694.2 Complaint of missing person.
694.3 Report on missing person.
694.4 Dissemination of report.
694.5 Unemancipated minors.
694.6 False information — penalty.
694.7 to 694.9 Reserved.
694.10 Missing person information clearinghouse.

694.1 Missing persons.

As used in this chapter, unless the context otherwise indicates, *"missing person"* means a person who is missing and meets one of the following characteristics:

1. Is a person with a physical or mental disability.
2. Is missing under circumstances indicating that the person's safety may be in danger.
3. Is missing under circumstances indicating that the disappearance was not voluntary.
4. Is an unemancipated minor.

For purposes of this chapter an *"unemancipated minor"* means a minor who has not married and who resides with a parent or other legal guardian.

84 Acts, ch 1084, §1; 90 Acts, ch 1051, §1; 90 Acts, ch 1233, §40; 96 Acts, ch 1129, §107

694.2 Complaint of missing person.

1. A person may file a complaint of a missing person with a law enforcement agency having jurisdiction. The complaint shall include, but is not limited to, the following information:

a. The name of the complainant.

b. The relationship of the complainant to the missing person.

c. The name, age, address, and all identifying characteristics of the missing person.

d. The length of time the person has been missing.

e. All other information deemed relevant by either the complainant or the law enforcement agency.

2. A report of the complaint of missing person shall be given to all law enforcement personnel currently on active duty for that agency through internal means and over the law enforcement administration network immediately upon its being filed.

84 Acts, ch 1084, §2

694.3 Report on missing person.

1. A law enforcement agency in which a complaint of a missing person has been filed shall prepare, as soon as practicable, a report on a missing person. That report shall include, but is not limited to, the following:

a. All information contained in the complaint on a missing person.

b. All information or evidence gathered by a preliminary investigation, if one was made.

c. A statement, by the law enforcement officer in charge, setting forth that officer's assessment of the case based upon all evidence and information received.

d. An explanation of the next steps to be taken by the law enforcement agency filing the report.

84 Acts, ch 1084, §3

694.4 Dissemination of report.

Upon completion of the report, a copy of the report shall be forwarded to:

1. All law enforcement agencies having jurisdiction of the location in which the missing person lives or was last seen.
2. All law enforcement agencies considered to be potentially involved by the law enforcement agency filing the report.
3. All law enforcement agencies which the complainant requests the report to be sent to, if the request is reasonable in light of the informa-

tion contained in the report.

4. Any law enforcement agency requesting a copy of the missing person report.

84 Acts, ch 1084, §4

694.5 Unemancipated minors.

1. If a report of missing person involves an unemancipated minor, the law enforcement agency shall immediately transmit the proper information for inclusion in the national crime information center computer.

2. If a report of missing person involves an unemancipated minor, a law enforcement agency shall not prevent an immediate active investigation on the basis of an agency rule which specifies an automatic time limitation for a missing person investigation.

84 Acts, ch 1084, §5

694.6 False information — penalty.

A person who knowingly makes a false report of missing person, or knowingly makes a false statement in the report, to a law enforcement agency is guilty of a simple misdemeanor.

84 Acts, ch 1084, §6

694.7 to 694.9 Reserved.

694.10 Missing person information clearinghouse.

1. As used in this section:

a. "Missing person" means a missing person as defined in section 694.1 whose temporary or permanent residence is in Iowa, or is believed to be in Iowa, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

b. "Missing person report" is a report prepared on a form designed by the department of public safety for use by private citizens and law enforcement agencies to report missing person information to the missing person information clearinghouse.

2. The department of public safety shall establish a statewide missing person information clearinghouse. In connection with the clearinghouse, the department shall:

a. Collect, process, maintain, and disseminate information concerning missing persons in Iowa.

b. Develop training programs for local law enforcement personnel concerning appropriate procedures to report missing persons to the clearinghouse and to comply with legal procedures relating to missing person cases.

c. Provide specialized training to law enforcement officers, in conjunction with the law enforcement academy, to enable the officers to more efficiently handle the tracking of missing persons and unidentified bodies on the local level.

d. Develop training programs to assist parents in avoiding child kidnapping.

e. Cooperate with other states and the national crime information center in efforts to locate missing persons.

f. Maintain a toll-free telephone line, available twenty-four hours a day, seven days a week, to receive and disseminate information related to missing persons.

g. Distribute monthly bulletins to all local law enforcement agencies and to media outlets which request missing person information, containing the names, photos, and descriptions of missing persons, information related to the events surrounding the disappearance of the missing persons, the law enforcement agency or person to contact if missing persons are located or if other relevant information is discovered relating to missing persons, and the names of persons reported missing whose locations have been determined and confirmed.

h. Produce, update at least weekly, and distribute public service announcements to media outlets which request missing person information, containing the same or similar information as contained in the monthly bulletins.

i. Encourage and seek both financial and in-kind support from private individuals and organizations in the production and distribution of clearinghouse bulletins and public service announcements under paragraphs *"g"* and *"h"*.

j. Maintain a registry of approved prevention and education materials and programs regarding missing and runaway children.

k. Coordinate public and private programs for missing and runaway children.

3. A law enforcement agency shall submit all missing person reports compiled pursuant to section 694.3 and updated information relating to the reports to the clearinghouse.

4. Subsequent to the filing of a complaint of a missing person with a law enforcement agency pursuant to section 694.2, the person filing the complaint may submit information regarding the missing person to the clearinghouse. If the person reported missing is an unemancipated minor, any person may submit information regarding the missing unemancipated minor to the clearinghouse.

5. A person who has filed a missing person complaint with a law enforcement agency shall immediately notify that law enforcement agency when the location of the missing person has been determined.

6. After the location of a person reported missing to the clearinghouse has been determined and confirmed, the clearinghouse shall only release information described in subsection 2, paragraphs *"g"* and *"h"* concerning the located person. After the location of a missing person has been determined and confirmed, other information concerning the history of the missing person case shall be disclosed only to law enforcement officers of this

state and other jurisdictions when necessary for the discharge of their official duties and to the juvenile court in the county of a formerly missing child's residence. All information relating to a missing person in the clearinghouse shall be purged when the person's location has been determined and confirmed, except that information relating to a missing child shall be purged when the child reaches eighteen years of age and the child's location has been determined and confirmed.

85 Acts, ch 173, §29

CHAPTER 695

WEAPONS, FIREARMS AND TOY PISTOLS

Repealed by 76 Acts, ch 1245(4), §526; see §708.8 and 724.1 et seq.

CHAPTER 696

MACHINE GUNS

Repealed by 76 Acts, ch 1245(4), §526; see §724.1 et seq.

CHAPTER 697

INJURIES BY EXPLOSIVES — BOMB THREATS

Repealed by 76 Acts, ch 1245(4), §526; see chapters 707 and 712, also §708.4 and 724.1

CHAPTER 698

RAPE

Repealed by 76 Acts, ch 1245(4), §526; see §709.1 et seq.

CHAPTER 699

FORCIBLE MARRIAGE AND DEFILEMENT

Repealed by 76 Acts, ch 1245(4), §526; see §709.1 et seq.

CHAPTER 700

SEDUCTION

Repealed by 76 Acts, ch 1245(4), §526

CHAPTER 701

GENERAL CRIMINAL LAW PROVISIONS

701.1 Short title.
701.2 Public offense.
701.3 Presumption of innocence.
701.4 Insanity.
701.5 Intoxicants or drugs.
701.6 Ignorance or mistake.
701.7 Felony defined and classified.
701.8 Misdemeanor defined and classified.
701.9 Merger of lesser included offenses.
701.10 Civil remedies preserved.

701.1 Short title.

Chapters 701 to 728 shall be known and may be cited as the *"Iowa Criminal Code"*.

[C79, 81, §701.1]

701.2 Public offense.

A public offense is that which is prohibited by statute and is punishable by fine or imprisonment.

[C51, §2816 – 2818; R60, §4428 – 4430; C73, §4103 – 4105; C97, §5092 – 5094; C24, 27, 31, 35, 39, §**12889 – 12891;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §687.1, 687.2, 687.4; C79, 81, §701.2]

701.3 Presumption of innocence.

Every person is presumed innocent until proved guilty. No person shall be convicted of any offense unless the person's guilt thereof is proved beyond a reasonable doubt.

[C51, §2819; R60, §4431, 4807; C73, §4106, 4428; C97, §5095, 5376; C24, 27, 31, 35, 39, §**12892, 13917;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §687.5, 785.3; C79, 81, §701.3]

See R.Cr.P. 2.22(9)

701.4 Insanity.

A person shall not be convicted of a crime if at the time the crime is committed the person suffers from such a diseased or deranged condition of the mind as to render the person incapable of knowing the nature and quality of the act the person is committing or incapable of distinguishing between right and wrong in relation to that act. Insanity need not exist for any specific length of time before or after the commission of the alleged criminal act. If the defense of insanity is raised, the defendant must prove by a preponderance of the evidence that the defendant at the time of the crime suffered from such a deranged condition of the mind as to render the defendant incapable of knowing the nature and quality of the act the defendant was committing or was incapable of distinguishing between right and wrong in relation to the act.

[C79, 81, §701.4]

84 Acts, ch 1320, §1

701.5 Intoxicants or drugs.

The fact that a person is under the influence of intoxicants or drugs neither excuses the person's act nor aggravates the person's guilt, but may be shown where it is relevant in proving the person's specific intent or recklessness at the time of the person's alleged criminal act or in proving any element of the public offense with which the person is charged.

[C79, 81, §701.5]

701.6 Ignorance or mistake.

All persons are presumed to know the law. Evidence of an accused person's ignorance or mistake as to a matter of either fact or law shall be admissible in any case where it shall tend to prove the existence or nonexistence of some element of the crime with which the person is charged.

[C79, 81, §701.6]

701.7 Felony defined and classified.

A public offense is a felony of a particular class when the statute defining the crime declares it to be a felony. Felonies are class "A" felonies, class "B" felonies, class "C" felonies, and class "D" felonies. Where the statute defining the offense declares it to be a felony but does not state what class of felony it is or provide for a specific penalty, that felony shall be a class "D" felony.

[C51, §2817; R60, §4429; C73, §4104; C97, §5093; C24, 27, 31, 35, 39, §**12890;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §687.2; C79, 81, §701.7]

See §902.9; see also §724.25

701.8 Misdemeanor defined and classified.

All public offenses which are not felonies are misdemeanors. Misdemeanors are aggravated misdemeanors, serious misdemeanors, or simple misdemeanors. Where an act is declared to be a public offense, crime or misdemeanor, but no other designation is given, such act shall be a simple misdemeanor.

[C51, §2675, 2818; R60, §4302, 4430; C73, §3966, 4105; C97, §4905, 5094; C24, 27, 31, 35, 39, §**12891,12893;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §687.4, 687.6; C79, 81, §701.8]

See also §903.1

701.9 Merger of lesser included offenses.

No person shall be convicted of a public offense which is necessarily included in another public offense of which the person is convicted. If the jury returns a verdict of guilty of more than one offense and such verdict conflicts with this section, the court shall enter judgment of guilty of the greater of the offenses only.

[C79, 81, §701.9]

See R.Cr.P. 2.6(1), 2.22(3)

701.10 Civil remedies preserved.

The fact that one may be subjected to a criminal prosecution in no way limits the right which anyone may have to a civil remedy.

[C79, 81, §701.10]

CHAPTER 702

DEFINITIONS

702.1 Policy of uniformity.
702.1A Computer terminology.
702.2 Act.
702.3 Animal.
702.4 Brothel.
702.5 Child.
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702.7 Dangerous weapon.
702.8 Death.
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702.12 Occupied structure.
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702.14 Property.
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702.17 Sex act.
702.18 Serious injury.
702.19 Steal.
702.20 Viability.
702.20A Video rental property.
702.21 Incendiary device.
702.22 Library materials and equipment.
702.23 Strip search.

702.1 Policy of uniformity.

Wherever a term, word or phrase is defined in the criminal code, such meaning shall be given wherever it appears in the Code, unless it is being specially defined for a special purpose.

[C79, 81, §702.1]

702.1A Computer terminology.

For purposes of section 714.1, subsection 8, and section 716.6B:

1. *"Computer"* means an electronic device which performs logical, arithmetical, and memory functions by manipulation of electronic or magnetic impulses, and includes all input, output, processing, storage, computer software, and communication facilities which are connected or related to the computer in a computer system or computer network.

2. *"Computer access"* means to instruct, communicate with, store data in, or retrieve data from a computer, computer system, or computer network.

3. *"Computer data"* means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed in a computer. Computer data may be in any form including, but not limited to, printouts, magnetic storage media, punched cards, and as stored in the memory of a computer.

4. *"Computer network"* means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities.

5. *"Computer program"* means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data.

6. *"Computer services"* means the use of a computer, computer system, or computer network and includes, but is not limited to, computer time, data processing, and storage functions.

7. *"Computer software"* means a set of computer programs, procedures, or associated documentation used in the operation of a computer.

8. *"Computer system"* means related, connected or unconnected, computers or peripheral equipment.

9. *"Loss of property"* means the greatest of the following:

a. The retail value of the property involved.

b. The reasonable replacement or repair cost, whichever is less.

10. *"Loss of services"* means the reasonable value of the damage created by the unavailability or lack of utility of the property or services involved until repair or replacement can be effected.

2000 Acts, ch 1201, §6

702.2 Act.

The term *"act"* includes a failure to do any act which the law requires one to perform.

[C79, 81, §702.2]

702.3 Animal.

An *"animal"* is a nonhuman vertebrate.

[C79, 81, §702.3]

702.4 Brothel.

A *"brothel"* is any building, structure, or part thereof, or other place offering shelter or seclusion, which is principally or regularly used for the purpose of prostitution, with the consent or connivance of the owner, tenant, or other person in possession of it.

[C79, 81, §702.4]

702.5 Child.

For purposes of title XVI,* unless another age is specified, a *"child"* is any person under the age of fourteen years.

[C79, 81, §702.5]

*This provision does not include chapters 709A, 718A, 822, 904, 913, and 914, which were moved into title XVI by the Code editor. Chapters 709A, 718A, 822, 904, 913, and 914 contain the applicable provisions pertaining to those chapters.

702.6 Controlled substance.

The term *"controlled substance"* means controlled substance as that term is defined and used in chapter 124.

[C79, 81, §702.6]

702.7 Dangerous weapon.

A *"dangerous weapon"* is any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the defendant intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length.

[S13, §4775-1a; C24, 27, 31, §12936; C35, §12935-g1, 12936; C39, §**12935.1, 12936;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.1, 695.2; C79, 81, §702.7]

88 Acts, ch 1164, §1

702.8 Death.

"Death" means the condition determined by the following standard: A person will be considered dead if in the announced opinion of a physician licensed pursuant to chapter 148, 150, or 150A, a physician assistant licensed pursuant to chapter 148C, or a registered nurse or a licensed practical nurse licensed pursuant to chapter 152, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of two physicians, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased.

[C79, 81, §702.8]

2001 Acts, ch 113, §5

702.9 Deception.

"Deception" consists of knowingly doing any of the following:

1. Creating or confirming another's belief or impression as to the existence or nonexistence of a fact or condition which is false and which the actor does not believe to be true.

2. Failing to correct a false belief or impression as to the existence or nonexistence of a fact or condition which the actor previously has created or confirmed.

3. Preventing another from acquiring information pertinent to the disposition of the property involved in any commercial or noncommercial transaction or transfer.

4. Selling or otherwise transferring or encumbering property and failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record.

5. Promising payment, the delivery of goods, or other performance which the actor does not intend to perform or knows the actor will not be able to perform. Failure to perform, standing alone, is not evidence that the actor did not intend to perform.

6. Inserting anything other than lawful money or authorized token into the money slot of any machine which dispenses goods or services.

[C79, 81, §702.9]

702.10 Dwelling.

A *"dwelling"* is any building or structure, permanent or temporary, or any land, water or air vehicle, adapted for overnight accommodation of persons, and actually in use by some person or persons as permanent or temporary sleeping quarters, whether such person is present or not.

[C79, 81, §702.10]

702.11 Forcible felony.

1. A *"forcible felony"* is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree.

2. Notwithstanding subsection 1, the following offenses are not forcible felonies:

a. Willful injury in violation of section 708.4, subsection 2.

b. Sexual abuse in the third degree committed between spouses.

c. Sexual abuse in violation of section 709.4, subsection 2, paragraph *"c"*, subparagraph (4).

d. Sexual exploitation by a counselor or therapist in violation of section 709.15.

e. Child endangerment resulting in bodily injury to a child or a minor in violation of section 726.6, subsection 5.

[C79, 81, §702.11]

85 Acts, ch 180, §2; 89 Acts, ch 138, §2; 91 Acts, ch 130, §1; 92 Acts, ch 1163, §117; 94 Acts, ch 1023,

§69; 99 Acts, ch 65, §2; 2001 Acts, ch 3, §1; 2001 Acts, ch 176, §79

702.12 Occupied structure.

An *"occupied structure"* is any building, structure, appurtenances to buildings and structures, land, water or air vehicle, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value. Such a structure is an *"occupied structure"* whether or not a person is actually present. However, for purposes of chapter 713, a box, chest, safe, changer, or other object or device which is adapted or used for the deposit or storage of anything of value but which is too small or not designed to allow a person to physically enter or occupy it is not an "occupied structure".

[C79, 81, §702.12]

84 Acts, ch 1247, §1

702.13 Participating in a public offense.

A person is *"participating in a public offense,"* during part or the entire period commencing with the first act done directly toward the commission of the offense and for the purpose of committing that offense, and terminating when the person has been arrested or has withdrawn from the scene of the intended crime and has eluded pursuers, if any there be. A person is *"participating in a public offense"* during this period whether the person is successful or unsuccessful in committing the offense.

[C79, 81, §702.13]

702.14 Property.

"Property" is anything of value, whether publicly or privately owned, including but not limited to computers and computer data, computer software, and computer programs. The term includes both tangible and intangible property, labor, and services. The term includes all that is included in the terms *"real property"* and *"personal property"*.

[C79, 81, §702.14]

2000 Acts, ch 1201, §7

702.15 Prostitute.

A *"prostitute"* is a person who sells or offers for sale the person's services as a participant in a sex act.

[C79, 81, §702.15]

702.16 Reckless.

A person is *"reckless"* or acts recklessly when the person willfully or wantonly disregards the safety of persons or property.

[C79, 81, §702.16]

702.17 Sex act.

The term *"sex act"* or *"sexual activity"* means any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to chapter 148, 148C, 150, 150A, 151, or 152; or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

[C75, 77, §725.1(7); C79, 81, §702.17]

89 Acts, ch 105, §1; 89 Acts, ch 296, §86

702.18 Serious injury.

1. *"Serious injury"* means any of the following:

a. Disabling mental illness.

b. Bodily injury which does any of the following:

(1) Creates a substantial risk of death.

(2) Causes serious permanent disfigurement.

(3) Causes protracted loss or impairment of the function of any bodily member or organ.

c. Any injury to a child that requires surgical repair and necessitates the administration of general anesthesia.

2. *"Serious injury"* includes but is not limited to skull fractures, rib fractures, and metaphyseal fractures of the long bones of children under the age of four years.

[C51, §2577; R60, §4200; C73, §3857; C97, §4752; C24, 27, 31, 35, 39, §**12928;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §693.1; C79, 81, §702.18]

94 Acts, ch 1172, §41; 99 Acts, ch 11, §1

702.19 Steal.

"Steal" means to take by theft.

[C79, 81, §702.19]

702.20 Viability.

"Viability" is that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life support systems. The time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is a matter of responsible medical judgment.

[C79, 81, §702.20]

702.20A Video rental property.

"Video rental property" means an audiovisual recording, including a videotape, videodisc, or other tangible medium of expression on which an audiovisual work is recorded or otherwise stored, or any equipment or supplies used to view the recording, and which is held out for rental to the public in the ordinary course of business.

2000 Acts, ch 1201, §8

702.21 Incendiary device.

An *"incendiary device"* is a device, contrivance, or material causing or designed to cause destruction of property by fire.

[C71, 73, 75, 77, §697.10(2); C79, 81, §702.21]

702.22 Library materials and equipment.

1. *"Library materials"* include books, plates, pictures, photographs, engravings, paintings, drawings, maps, newspapers, magazines, pamphlets, broadsides, manuscripts, documents, letters, public records, microforms, sound recordings, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, artifacts, and written or printed materials regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of any of the following:

a. A public library.

b. A library of an educational, historical, or eleemosynary institution, organization, or society.

c. A museum.

d. A repository of public records.

2. *"Library equipment"* includes audio, visual, or audiovisual machines, machinery or equipment belonging to, on loan to or otherwise in the custody of one of the institutions or agencies listed in subsection 1.

[C81, §702.22]

85 Acts, ch 187, §1

702.23 Strip search.

"Strip search" means having a person remove or arrange some or all of the person's clothing so as to permit an inspection of the genitalia, buttocks, anus, female breasts or undergarments of that person or a physical probe of any body cavity.

[C81, §702.23]

CHAPTER 703

PARTIES TO CRIME

703.1 Aiding and abetting.
703.2 Joint criminal conduct.
703.3 Accessory after the fact.
703.4 Responsibility of employers.
703.5 Liability of corporations, partnerships and voluntary associations.

703.1 Aiding and abetting.

All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid and abet its commission, shall be charged, tried and punished as principals. The guilt of a person who aids and abets the commission of a crime must be determined upon the facts which show the part the person had in it, and does not depend upon the degree of another person's guilt.

[C51, §2928; R60, §4668; C73, §4314; C97, §5299; C24, 27, 31, 35, 39, §**12895;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §688.1; C79, 81, §703.1]

703.2 Joint criminal conduct.

When two or more persons, acting in concert, knowingly participate in a public offense, each is responsible for the acts of the other done in furtherance of the commission of the offense or escape therefrom, and each person's guilt will be the same as that of the person so acting, unless the act was one which the person could not reasonably expect to be done in the furtherance of the commission of the offense.

[C79, 81, §703.2]

703.3 Accessory after the fact.

Any person having knowledge that a public offense has been committed and that a certain person committed it, and who does not stand in the relation of husband or wife to the person who committed the offense, who harbors, aids or conceals the person who committed the offense, with the intent to prevent the apprehension of the person who committed the offense, commits an aggravated misdemeanor if the public offense committed was a felony, or commits a simple misdemeanor if the public offense was a misdemeanor.

[C51, §2929; R60, §4669; C73, §4315; C97, §5300; C24, 27, 31, 35, 39, §**12896;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §688.2; C79, 81, §703.3; 81 Acts, ch 204, §1]

703.4 Responsibility of employers.

An employer or an employer's agent, officer, director, or employee who supervises or directs the work of other employees, is guilty of the same public offense committed by an employee acting under the employer's control, supervision, or direction in any of the following cases:

1. The person has directed the employee to commit a public offense.

2. The person knowingly permits an employee

to commit a public offense, under circumstances in which the employer expects to benefit from the illegal activity of the employee.

3. The person assigns the employee some duty or duties which the person knows cannot be accomplished, or are not likely to be accomplished, unless the employee commits a public offense, provided that the offense committed by the employee is one which the employer can reasonably anticipate will follow from this assignment.

[C79, 81, §703.4]

703.5 Liability of corporations, partnerships and voluntary associations.

A public or private corporation, partnership, or other voluntary association shall have the same level of culpability as an individual committing the crime when any of the following is true:

1. The conduct constituting the offense consists of an omission to discharge a specific duty or an affirmative performance imposed on the accused by law.

2. The conduct or act constituting the offense is committed by an agent, officer, director, or employee of the accused while acting within the scope of the authority of the agent, officer, director or employee and in behalf of the accused and when said act or conduct is authorized, requested, or tolerated by the board of directors or by a high managerial agent.

"High managerial agent" means an officer of the corporation, partner, or other agent in a position of comparable authority with respect to the formulation of policy or the supervision in a managerial capacity of subordinate employees.

[C79, 81, §703.5]

CHAPTER 704

FORCE — REASONABLE OR DEADLY — DEFENSES

704.1 Reasonable force.
704.2 Deadly force.
704.3 Defense of self or another.
704.4 Defense of property.
704.5 Aiding another in the defense of property.
704.6 When defense not available.
704.7 Resisting forcible felony.
704.8 Escape from place of confinement.
704.9 Death.
704.10 Compulsion.
704.11 Police activity.
704.12 Use of force in making an arrest.

704.1 Reasonable force.

"Reasonable force" is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat. Reasonable force, including deadly force, may be used even if an alternative course of action is available if the alternative entails a risk to life or safety, or the life or safety of a third party, or requires one to abandon or retreat from one's dwelling or place of business or employment.

[C51, §2773; R60, §4442; C73, §4112; C97, §5102; C24, 27, 31, 35, 39, §**12921;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §691.1; C79, 81, §704.1; 81 Acts, ch 204, §2]

"Dwelling" defined, see §702.10

704.2 Deadly force.

The term *"deadly force"* means any of the following:

1. Force used for the purpose of causing serious injury.

2. Force which the actor knows or reasonably should know will create a strong probability that serious injury will result.

3. The discharge of a firearm, other than a firearm loaded with less lethal munitions and discharged by a peace officer, corrections officer, or corrections official in the line of duty, in the direction of some person with the knowledge of the person's presence there, even though no intent to inflict serious physical injury can be shown.

4. The discharge of a firearm, other than a firearm loaded with less lethal munitions and discharged by a peace officer, corrections officer, or corrections official in the line of duty, at a vehicle in which a person is known to be.

As used in this section, *"less lethal munitions"* means projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body.

[C79, 81, §704.2]

97 Acts, ch 166, §1, 2

704.3 Defense of self or another.

A person is justified in the use of reasonable force when the person reasonably believes that

such force is necessary to defend oneself or another from any imminent use of unlawful force.

[C51, §2773 – 2775; R60, §4442 – 4444; C73, §4112 – 4114; C97, §5102 – 5104; C24, 27, 31, 35, 39, §**12921 – 12923;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §691.1, 691.2(1), 691.3; C79, 81, §704.3]

704.4 Defense of property.

A person is justified in the use of reasonable force to prevent or terminate criminal interference with the person's possession or other right in property. Nothing in this section authorizes the use of any spring gun or trap which is left unattended and unsupervised and which is placed for the purpose of preventing or terminating criminal interference with the possession of or other right in property.

[C51, §2774; R60, §4443; C73, §4113; C97, §5103; C24, 27, 31, 35, 39, §**12922;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §691.2(2); C79, 81, §704.4]

704.5 Aiding another in the defense of property.

A person is justified in the use of reasonable force to aid another in the lawful defense of the other person's rights in property or in any public property.

[C51, §2775; R60, §4444; C73, §4114; C97, §5104; C24, 27, 31, 35, 39, §**12923;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §691.3; C79, 81, §704.5]

704.6 When defense not available.

The defense of justification is not available to the following:

1. One who is participating in a forcible felony, or riot, or a duel.

2. One who initially provokes the use of force against oneself, with the intent to use such force as an excuse to inflict injury on the assailant.

3. One who initially provokes the use of force against oneself by one's unlawful acts, unless:

a. Such force is grossly disproportionate to the provocation, and is so great that the person reasonably believes that the person is in imminent danger of death or serious injury or

b. The person withdraws from physical contact with the other and indicates clearly to the other that the person desires to terminate the conflict but the other continues or resumes the use of force.

[C79, 81, §704.6]

704.7 Resisting forcible felony.

A person who knows that a forcible felony is being perpetrated is justified in using, against the perpetrator, reasonable force to prevent the completion of that felony.

[C79, 81, §704.7]

704.8 Escape from place of confinement.

A correctional officer or peace officer is justified in using reasonable force, including deadly force, which is necessary to prevent the escape of any person from any jail, penal institution, correctional facility, or similar place of confinement, or place of trial or other judicial proceeding, or to prevent the escape from custody of any person who is being transported from any such place of confinement, trial or judicial proceeding to any other such place, except that deadly force may not be used to prevent the escape of one who the correctional officer or peace officer knows is confined on a charge or conviction of any class of misdemeanor.

[C79, 81, §704.8]

2001 Acts, ch 131, §2

704.9 Death.

A physician or a person acting on the direct orders of a physician who ceases to provide medical attention to a person who is dead, as death is defined in section 702.8, shall not be criminally liable for such cessation of medical attention.

[C79, 81, §704.9]

704.10 Compulsion.

No act, other than an act by which one intentionally or recklessly causes physical injury to another, is a public offense if the person so acting is compelled to do so by another's threat or menace of serious injury, provided that the person reasonably believes that such injury is imminent and can be averted only by the person doing such act.

[C79, 81, §704.10]

704.11 Police activity.

A peace officer or person acting as an agent of or directed by any police agency who participates in the commission of a crime by another person solely for the purpose of gathering evidence leading to the prosecution of such other person shall not be guilty of that crime or of the crime of solicitation as set forth in section 705.1, provided that all of the following are true:

1. The officer or person is not an instigator of the criminal activity.

2. The officer or person does not intentionally injure a nonparticipant in the crime.

3. The officer or person acts with the consent of superiors, or the necessity of immediate action precludes obtaining such consent.

4. The officer's or person's actions are reasonable under the circumstances.

This section is not intended to preclude the use of undercover or surveillance persons by law enforcement agencies in appropriate circumstances and manner. It is intended to discourage such activity to tempt, urge or persuade the commission of offenses by persons not already disposed to commit offenses of that kind.

[C79, 81, §704.11]

704.12 Use of force in making an arrest.
A peace officer or other person making an arrest or securing an arrested person may use such force as is permitted by sections 804.8, 804.10, 804.13 and 804.15.
[C51, §2844; R60, §4553; C73, §4205; C97, §5200; C24, 27, 31, 35, 39, §**13472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.8; C79, 81, §704.12]

CHAPTER 705

SOLICITATION

705.1 Solicitation.
705.2 Renunciation.

705.1 Solicitation.
Any person who commands, entreats, or otherwise attempts to persuade another to commit a particular felony or aggravated misdemeanor, with the intent that such act be done and under circumstances which corroborates that intent by clear and convincing evidence, solicits such other to commit that felony or aggravated misdemeanor. One who solicits another to commit a felony of any class commits a class "D" felony. One who solicits another to commit an aggravated misdemeanor commits an aggravated misdemeanor.
[C79, 81, §705.1]

705.2 Renunciation.
It is a defense to a prosecution for solicitation that the defendant, after soliciting another person to commit a felony or aggravated misdemeanor, persuaded the person not to do so or otherwise prevented the commission of the offense, under circumstances manifesting a complete and voluntary renunciation of the defendant's criminal intent. A renunciation is not *"voluntary and complete"* if it is motivated in whole or in part by *(a)* the person's belief that circumstances exist which increase the possibility of detection or apprehension of the defendant or another or which make more difficult the consummation of the offense or *(b)* the person's decision to postpone the offense until another time or to substitute another victim or another but similar objective.
[C79, 81, §705.2]

CHAPTER 706

CONSPIRACY

706.1 Conspiracy.
706.2 Locus of conspiracy.
706.3 Penalties.
706.4 Multiple convictions.

706.1 Conspiracy.
1. A person commits conspiracy with another if, with the intent to promote or facilitate the commission of a crime which is an aggravated misdemeanor or felony, the person does either of the following:
a. Agrees with another that they or one or more of them will engage in conduct constituting the crime or an attempt or solicitation to commit the crime.
b. Agrees to aid another in the planning or commission of the crime or of an attempt or solicitation to commit the crime.
2. It is not necessary for the conspirator to know the identity of each and every conspirator.
3. A person shall not be convicted of conspiracy unless it is alleged and proven that at least one conspirator committed an overt act evidencing a design to accomplish the purpose of the conspiracy by criminal means.
4. A person shall not be convicted of conspiracy if the only other person or persons involved in the conspiracy were acting at the behest of or as agents of a law enforcement agency in an investigation of the criminal activity alleged at the time of the formation of the conspiracy.
[C51, §2758, 2996; R60, §4408, 4790; C73, §4087, 4425; C97, §5059, 5490; C24, 27, 31, 35, 39,

§**13162, 13902;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §719.1, 782.6; C79, 81, §706.1]
87 Acts, ch 129, §1

706.2 Locus of conspiracy.
A person commits a conspiracy in any county where the person is physically present when the person makes such agreement or combination, and in any county where the person with whom the person makes such agreement or combination is physically present at such time, whether or not any of the other conspirators are also present in that county or in this state, and in any county in which any criminal act is done by any person pursuant to the conspiracy, whether or not the person is or has ever been present in such county; provided, that a person may not be prosecuted more than once for a conspiracy based on the same agreement or combination.
[C79, 81, §706.2]

706.3 Penalties.
A person who commits a conspiracy to commit a forcible felony is guilty of a class "C" felony. A person who commits a conspiracy to commit a felony, other than a forcible felony, is guilty of a class "D" felony. A person who commits a conspiracy to commit a misdemeanor is guilty of a misdemeanor of the same class.
[C51, §2758; R60, §4408; C73, §4087; C97, §5059; C24, 27, 31, 35, 39, §**13162;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §719.1; C79, 81, §706.3]
See §702.11

706.4 Multiple convictions.
A conspiracy to commit a public offense is an offense separate and distinct from any public offense which might be committed pursuant to such conspiracy. A person may not be convicted and sentenced for both the conspiracy and for the public offense.
[C79, 81, §706.4]

CHAPTER 706A

ONGOING CRIMINAL CONDUCT

706A.1 Definitions.
706A.2 Violations.
706A.3 Civil remedies — actions.
706A.4 Criminal sanctions.
706A.5 Uniformity of construction and application.

706A.1 Definitions.
In this chapter, unless the context otherwise requires:
1. *"Criminal network"* means any combination of persons engaging, for financial gain on a continuing basis, in conduct which is an indictable offense under the laws of this state regardless of whether such conduct is charged or indicted. As used in this subsection, persons combine if they collaborate or act in concert in carrying on or furthering the activities or purposes of a network even though such persons may not know each other's identity, membership in the network changes from time to time, or one or more members of the network stand in a wholesaler-retailer, service provider, or other arm's length relationship with others as to conduct in the furtherance of the financial goals of the network.
2. *"Enterprise"* includes any sole proprietorship, partnership, corporation, trust, or other legal entity, or any unchartered union, association, or group of persons associated in fact although not a legal entity, and includes unlawful as well as lawful enterprises.
3. *"Proceeds"* means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.
4. *"Property"* means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.
5. *"Specified unlawful activity"* means any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable as an indictable offense under the laws of the state in which it occurred and under the laws of this state.
96 Acts, ch 1133, §26

706A.2 Violations.
1. *Specified unlawful activity influenced enterprises.*
a. It is unlawful for any person who has knowingly received any proceeds of specified unlawful activity to use or invest, directly or indirectly, any part of such proceeds in the acquisition of any in-

terest in any enterprise or any real property, or in the establishment or operation of any enterprise.

b. It is unlawful for any person to knowingly acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through specified unlawful activity.

c. It is unlawful for any person to knowingly conduct the affairs of any enterprise through specified unlawful activity or to knowingly participate, directly or indirectly, in any enterprise that the person knows is being conducted through specified unlawful activity.

d. It is unlawful for any person to conspire or attempt to violate or to solicit or facilitate the violations of the provisions of paragraph *"a"*, *"b"*, or *"c"*.

2. *Facilitation of a criminal network.* It is unlawful for a person acting with knowledge of the financial goals and criminal objectives of a criminal network to knowingly facilitate criminal objectives of the network by doing any of the following:

a. Engaging in violence or intimidation or inciting or inducing another to engage in violence or intimidation.

b. Inducing or attempting to induce a person believed to have been called or who may be called as a witness to unlawfully withhold any testimony, testify falsely, or absent themselves from any official proceeding to which the potential witness has been legally summoned.

c. Attempting by means of bribery, misrepresentation, intimidation, or force to obstruct, delay, or prevent the communication of information or testimony relating to a violation of any criminal statute to a peace officer, magistrate, prosecutor, grand jury, or petit jury.

d. Injuring or damaging another person's body or property because that person or any other person gave information or testimony to a peace officer, magistrate, prosecutor, or grand jury.

e. Attempting to suppress by an act of concealment, alteration, or destruction any physical evidence that might aid in the discovery, apprehension, prosecution, or conviction of any person.

f. Making any property available to a member of the criminal network.

g. Making any service other than legal services available to a member of the criminal network.

h. Inducing or committing any act or omission by a public servant in violation of the public servant's official duty.

i. Obtaining any benefit for a member of a criminal network by means of false or fraudulent pretenses, representation, promises, or material omissions.

j. Making a false sworn statement regarding a material issue, believing it to be false, or making any statement, believing it to be false, regarding a material issue to a public servant in connection with an application for any benefit, privilege, or license, or in connection with any official investigation or proceeding.

3. *Money laundering.* It is unlawful for a person to commit money laundering in violation of chapter 706B.

4. *Acts of specified unlawful activity.* It is unlawful for a person to commit specified unlawful activity as defined in section 706A.1.

5. *Negligent empowerment of specified unlawful activity.*

a. It is unlawful for a person to negligently allow property owned or controlled by the person or services provided by the person, other than legal services, to be used to facilitate specified unlawful activity, whether by entrustment, loan, rent, lease, bailment, or otherwise.

b. Damages for negligent empowerment of specified unlawful activity shall include all reasonably foreseeable damages proximately caused by the specified unlawful activity, including, in a case brought or intervened in by the state, the costs of investigation and criminal and civil litigation of the specified unlawful activity incurred by the government for the prosecution and defense of any person involved in the specified unlawful activity, and the imprisonment, probation, parole, or other expense reasonably necessary to detain, punish, and rehabilitate any person found guilty of the specified unlawful activity, except for the following:

(1) If the person empowering the specified unlawful activity acted only negligently and was without knowledge of the nature of the activity and could not reasonably have known of the unlawful nature of the activity or that it was likely to occur, damages shall be limited to the greater of the following:

(a) The cost of the investigation and litigation of the person's own conduct plus the value of the property or service involved as of the time of its use to facilitate the specified unlawful activity.

(b) All reasonably foreseeable damages to any person, except any person responsible for the specified unlawful activity, and to the general economy and welfare of the state proximately caused by the person's own conduct.

(2) If the property facilitating the specified unlawful activity was taken from the possession or control of the person without that person's knowledge and against that person's will in violation of the criminal law, damages shall be limited to reasonably foreseeable damages to any person, except persons responsible for the taking or the specified unlawful activity, and to the general economy and welfare of the state proximately caused by the person's negligence, if any, in failing to prevent its taking.

(3) If the person was aware of the possibility that the property or service would be used to facilitate some form of specified unlawful activity and acted to prevent the unlawful use, damages shall be limited to reasonably foreseeable damages to any person, except any person responsible for the

specified unlawful activity, and to the general economy and welfare of the state proximately caused by the person's failure, if any, to act reasonably to prevent the unlawful use.

(4) The plaintiff shall carry the burden of proof by a preponderance of the evidence that the specified unlawful activity occurred and was facilitated by the property or services. The defendant shall have the burden of proof by a preponderance of the evidence as to circumstances constituting lack of negligence and on the limitations on damages in this subsection.

96 Acts, ch 1133, §27; 98 Acts, ch 1074, §33

706A.3 Civil remedies — actions.

1. The prosecuting attorney or an aggrieved person may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this chapter or to prevent, restrain, or remedy such violation.

2. The district court has jurisdiction to prevent, restrain, or remedy such violations by issuing appropriate orders. Prior to a determination of liability such orders may include, but are not limited to, entering restraining orders or injunctions, requiring the execution of satisfactory performance bonds, creating receiverships, and enforcing constructive trusts in connection with any property or interest subject to damages, forfeiture, or other remedies or restraints pursuant to this chapter.

3. If the plaintiff in such a proceeding proves the alleged violation by a preponderance of the evidence, the district court, after making due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including any of the following:

a. Ordering any defendant to divest the defendant of any interest in any enterprise, or in any real property.

b. Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as any enterprise in which the defendant was engaged in a violation of this chapter.

c. Ordering the dissolution or reorganization of any enterprise.

d. Ordering the payment of all reasonable costs and expenses of the investigation and prosecution of any violation, civil or criminal, including reasonable attorney fees in the trial and appellate courts. Such payments received by the state, by judgment, settlement, or otherwise, shall be considered forfeited property and disposed of pursuant to section 809A.17.

e. Ordering the forfeiture of any property subject to forfeiture under chapter 809A, pursuant to the provisions and procedures of that chapter.

f. Ordering the suspension or revocation of any license, permit, or prior approval granted to any person by any agency of the state.

g. Ordering the surrender of the certificate of existence of any corporation organized under the laws of this state or the revocation of any certificate authorizing a foreign corporation to conduct business within this state, upon finding that for the prevention of future violations, the public interest requires the certificate of the corporation to be surrendered and the corporation dissolved or the certificate revoked.

4. Relief under subsection 3, paragraphs *"e"*, *"f"*, and *"g"*, shall not be granted in civil proceedings instituted by an aggrieved person unless the prosecuting attorney has instituted the proceedings or intervened. In any action under this section brought by the state or in which the state has intervened, the state may employ any of the powers of seizure and restraint of property as are provided for forfeiture actions under chapter 809A, or as are provided for the collection of taxes payable and past due, and whose collection has been determined to be in jeopardy.

5. In a proceeding initiated under this section, injunctive relief shall be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other civil cases, but no showing of special or irreparable injury is required. Pending final determination of a proceeding initiated under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that a judgment for money damages might be difficult to execute, and, in a proceeding initiated by a nongovernmental aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.

6. Any person who is in possession or control of proceeds of any violation of this chapter, is an involuntary trustee and holds the property in constructive trust for the benefit of the person entitled to remedies under this chapter, unless the holder acquired the property as a bona fide purchaser for value who was not knowingly taking part in an illegal transaction.

7. Any person whose business or property is directly or indirectly injured by conduct constituting a violation of this chapter, by any person, may bring a civil action, subject to the in pari delicto defense, and shall recover threefold the actual damages sustained and the costs and expenses of the investigation and prosecution of the action including reasonable attorney fees in the trial and appellate courts. Damages shall not include pain and suffering. Any person injured shall have a claim to any property against which any fine, or against which treble damages under subsection 11 or 12, may be imposed, superior to any right or claim of the state to the property, up to the value of actual damages and costs awarded in an action under this subsection. The state shall have a right of subrogation to the extent that an award made to

a person so injured is satisfied out of property against which any fine or civil remedy in favor of the state may be imposed.

8. *a.* If liability of a legal entity is based on the conduct of another, through respondeat superior or otherwise, the legal entity shall not be liable for more than actual damages and costs, including a reasonable attorney fee, if the legal entity affirmatively shows by a preponderance of the evidence that both of the following apply:

(1) The conduct was not engaged in, authorized, solicited, commanded, or recklessly tolerated by the legal entity, by the directors of the legal entity, or by a high managerial agent of the legal entity acting within the scope of employment.

(2) The conduct was not engaged in by an agent of the legal entity acting within the scope of employment and in behalf of the legal entity.

b. For the purposes of this subsection:

(1) *"Agent"* means any officer, director, or employee of the legal entity, or any other person who is authorized to act in behalf of the legal entity.

(2) *"High managerial agent"* means any officer of the legal entity or, in the case of a partnership, a partner, or any other agent in a position of comparable authority with respect to the formulation of policy of the legal entity.

9. Notwithstanding any other provision of law, any pleading, motion, or other paper filed by a nongovernmental aggrieved party in connection with a proceeding or action under subsection 7 shall be verified. If such aggrieved person is represented by an attorney, such pleading, motion, or other paper shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated.

If such pleading, motion, or other paper includes an averment of fraud, coercion, accomplice, respondent superior, conspiratorial, enterprise, or other vicarious accountability, it shall state, insofar as practicable, the circumstances with particularity. The verification and the signature by an attorney required by this subsection shall constitute a certification by the signer that the attorney has carefully read the pleading, motion, or other paper and, based on a reasonable inquiry, believes that all of the following exist:

a. It is well grounded in fact.

b. It is warranted by existing law, or a good faith argument for the extension, modification, or reversal of existing law.

c. It is not made for an improper purpose, including to harass, to cause unnecessary delay, or to impose a needless increase in the cost of litigation.

The court may, after a hearing and appropriate findings of fact, impose upon any person who verified the complaint, cross-claim, or counterclaim, or any attorney who signed it in violation of this subsection, or both, a fit and proper sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the complaint or claim, including reasonable attorney fees. If the court determines that the filing of a complaint or claim under subsection 7 by a nongovernmental party was frivolous in whole or in part, the court shall award double the actual expenses, including attorney fees, incurred because of the frivolous portion of the complaint or claim.

10. Upon the filing of a complaint, cross-claim, or counterclaim under this section, an aggrieved person, as a jurisdictional prerequisite, shall immediately notify the attorney general of its filing and serve one copy of the pleading on the attorney general. Service of the notice on the attorney general does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action and does not authorize the aggrieved person to name the state or the attorney general as a party to the action. The attorney general, upon timely application, may intervene or appear as amicus curiae in any civil proceeding or action brought under this section if the attorney general certifies that, in the opinion of the attorney general, the proceeding or action is of general public importance. In any proceeding or action brought under this section by an aggrieved person, the state shall be entitled to the same relief as if it had instituted the proceeding or action.

11. *a.* Any prosecuting attorney may bring a civil action on behalf of a person whose business or property is directly or indirectly injured by conduct constituting a violation of this chapter, and shall recover threefold the damages sustained by such person and the costs and expenses of the investigation and prosecution of the action, including reasonable attorney fees in the trial and appellate courts. The court shall exclude from the amount of monetary relief awarded any amount of monetary relief which is any of the following:

(1) Which duplicates amounts which have been awarded for the same injury.

(2) Which is properly allocable to persons who have excluded their claims under paragraph *"c"*.

b. In any action brought under this subsection, the prosecuting attorney, at such times, in such manner, and with such content as the court may direct, shall cause notice of the action to be given by publication. If the court finds that notice given solely by publication would deny due process to any person, the court may direct further notice to such person according to the circumstances of the case.

c. A person on whose behalf an action is brought under this subsection may elect to exclude from adjudication the portion of the state claim for monetary relief attributable to the person by filing notice of such election within such time as specified in the notice given under this subsection.

d. A final judgment in an action under this subsection shall preclude any claim under this subsection by a person on behalf of whom such action was brought who fails to give notice of exclu-

sion within the times specified in the notice given under paragraph *"b"*.

e. An action under this subsection on behalf of a person other than the state shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

12. The attorney general may bring a civil action as parens patriae on behalf of the general economy, resources, and welfare of this state, and shall recover threefold the proceeds acquired, maintained, produced, or realized by or on behalf of the defendant by reason of a violation of this chapter, plus the costs and expenses of the investigation and prosecution of the action, including reasonable attorney fees in the trial and appellate courts.

a. A person who has knowingly conducted or participated in the conduct of an enterprise in violation of section 706A.2, subsection 1, paragraph *"c"*, is also jointly and severally liable for the greater of threefold the damage sustained directly or indirectly by the state by reason of conduct in furtherance of the violation or threefold the total of all proceeds acquired, maintained, produced, or realized by, or on behalf of, any person by reason of participation in the enterprise except for the following:

(1) A person is not liable for conduct occurring prior to the person's first knowing participation in or conduct of the enterprise.

(2) If a person shows that, under circumstances manifesting a voluntary and complete renunciation of culpable intent, the person withdrew from the enterprise by giving a complete and timely warning to law enforcement authorities or by otherwise making a reasonable and substantial effort to prevent the conduct or result which is the criminal objective of the enterprise, the person is not liable for conduct occurring after the person's withdrawal.

b. A person who has facilitated a criminal network in violation of section 706A.2, subsection 2, is also jointly and severally liable for all of the following:

(1) The damages resulting from the conduct in furtherance of the criminal objectives of the criminal network, to the extent that the person's facilitation was of substantial assistance to the conduct.

(2) The proceeds of conduct in furtherance of the criminal objectives of the criminal network, to the extent that the person's facilitation was of substantial assistance to the conduct.

(3) A person who has engaged in money laundering in violation of chapter 706B is also jointly and severally liable for the greater of threefold the damages resulting from the person's conduct or threefold the property that is the subject of the violation.

96 Acts, ch 1133, §28; 98 Acts, ch 1074, §34

706A.4 Criminal sanctions.

A person who violates section 706A.2, subsection 1, 2, or 4, commits a class "B" felony.

96 Acts, ch 1133, §29

706A.5 Uniformity of construction and application.

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. Civil remedies under this chapter do not preclude and are not precluded by other provisions of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law.

3. The attorney general may enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

96 Acts, ch 1133, §30

CHAPTER 706B

MONEY LAUNDERING

706B.1 Definitions.
706B.2 Money laundering penalty — civil remedies.
706B.3 Uniformity of construction and application.

706B.1 Definitions.

In this chapter, unless the context otherwise requires:

1. *"Proceeds"* means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or

omission and includes any property of any kind.

2. *"Property"* means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible.

3. *"Specified unlawful activity"* means any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable by confinement of one year or more under the laws of this state, or, if the act occurred outside this state, would be punishable by confinement of one year or more under the laws of the state in which it occurred and under the laws of this state.

4. *"Transaction"* includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase, or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

5. *"Unlawful activity"* means any act which is chargeable or indictable as a public offense of any degree under the laws of the state in which the act occurred or under federal law and, if the act occurred in a state other than this state, would be chargeable or indictable as a public offense of any degree under the laws of this state or under federal law.

96 Acts, ch 1133, §31

706B.2 Money laundering penalty — civil remedies.

1. It is unlawful for a person to commit money laundering by doing any of the following:

a. To knowingly transport, receive, or acquire property or to conduct a transaction involving property, knowing that the property involved is the proceeds of some form of unlawful activity, when, in fact, the property is the proceeds of specified unlawful activity.

b. To make property available to another, by transaction, transportation, or otherwise, knowing that it is intended to be used for the purpose of committing or furthering the commission of specified unlawful activity.

c. To conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction-reporting requirement under chapter 529, the Iowa financial transaction reporting Act, or federal law.

d. To knowingly engage in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising, or facilitating transactions involving property, knowing that the property involved in the transaction is the proceeds of some form of unlawful activity, that, in fact, is the proceeds of specified unlawful activity.

2. A person who violates:

a. Subsection 1, paragraph *"a"*, *"b"*, or *"c"*, commits a class "C" felony, and may be fined not more than ten thousand dollars or twice the value of the property involved, whichever is greater, or be imprisoned for not more than ten years, or both.

b. Subsection 1, paragraph *"d"*, commits a class "D" felony, and may be fined not more than seven thousand five hundred dollars or twice the value of the property involved, whichever is greater, or be imprisoned for not more than five years, or both.

3. A person who violates subsection 1, paragraph *"a"*, *"b"*, *"c"*, or *"d"*, is subject to a civil penalty of three times the value of the property involved in the transaction, in addition to any criminal sanction imposed.

4. A person who is found guilty of a violation under this section also may be charged with violations of chapter 706A, and property involved in a violation under this chapter is subject to forfeiture under chapter 809A.

96 Acts, ch 1133, §32; 98 Acts, ch 1074, §35, 36

706B.3 Uniformity of construction and application.

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. The civil remedies do not preclude and are not precluded by other provisions of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law.

3. The attorney general may enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

96 Acts, ch 1133, §33

CHAPTER 707

HOMICIDE AND RELATED CRIMES

707.1 Murder defined.
707.2 Murder in the first degree.
707.3 Murder in the second degree.
707.4 Voluntary manslaughter.

707.5 Involuntary manslaughter.
707.6 Civil liability.
707.6A Homicide or serious injury by vehicle.
707.7 Feticide.
707.8 Nonconsensual termination — serious injury to a human pregnancy.
707.8A Partial-birth abortion prohibited — exceptions — penalties.
707.9 Murder of fetus aborted alive.
707.10 Duty to preserve the life of the fetus.
707.11 Attempt to commit murder.

707.1 Murder defined.

A person who kills another person with malice aforethought either express or implied commits murder.

[C51, §2568; R60, §4191; C73, §3848; C97, §4727, 4796; C24, 27, 31, 35, 39, §**12910, 12961;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §690.1, 697.1; C79, 81, §707.1]

707.2 Murder in the first degree.

A person commits murder in the first degree when the person commits murder under any of the following circumstances:

1. The person willfully, deliberately, and with premeditation kills another person.
2. The person kills another person while participating in a forcible felony.
3. The person kills another person while escaping or attempting to escape from lawful custody.
4. The person intentionally kills a peace officer, correctional officer, public employee, or hostage while the person is imprisoned in a correctional institution under the jurisdiction of the Iowa department of corrections, or in a city or county jail.
5. The person kills a child while committing child endangerment under section 726.6, subsection 1, paragraph *"b"*, or while committing assault under section 708.1 upon the child, and the death occurs under circumstances manifesting an extreme indifference to human life.
6. The person kills another person while participating in an act of terrorism as defined in section 708A.1.

Murder in the first degree is a class "A" felony.

[C51, §2569, 2572; R60, §4192, 4195; C73, §3849, 3852; C97, §4728, 4747, 4796; C24, 27, 31, 35, 39, §**12911, 12924, 12961;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §690.2, 692.1, 697.1; C79, 81, §707.2]

83 Acts, ch 96, §118, 159; 94 Acts, ch 1172, §42; 2002 Acts, ch 1075, §1

Definition of forcible felony, see §702.11

NEW subsection 6

707.3 Murder in the second degree.

A person commits murder in the second degree when the person commits murder which is not murder in the first degree.

Murder in the second degree is a class "B" felony. However, notwithstanding section 902.9, subsection 2, the maximum sentence for a person convicted under this section shall be a period of confinement of not more than fifty years.

[C51, §2570; R60, §4193; C73, §3850; C97, §4729; C24, 27, 31, 35, 39, §**12912;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §690.3; C79, 81, §707.3; 82 Acts, ch 1239, §1]

Definition of forcible felony, §702.11

Eligibility for deferred judgment, deferred sentence, suspended sentence, §907.3

707.4 Voluntary manslaughter.

A person commits voluntary manslaughter when that person causes the death of another person, under circumstances which would otherwise be murder, if the person causing the death acts solely as the result of sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a person and there is not an interval between the provocation and the killing in which a person of ordinary reason and temperament would regain control and suppress the impulse to kill.

Voluntary manslaughter is an included offense under an indictment for murder in the first or second degree.

Voluntary manslaughter is a class "C" felony.

[C51, §2576; R60, §4199; C73, §3856; C97, §4751; C24, 27, 31, 35, 39, §**12919;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §690.10; C79, 81, §707.4]

707.5 Involuntary manslaughter.

1. A person commits a class "D" felony when the person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony or escape.
2. A person commits an aggravated misdemeanor when the person unintentionally causes the death of another person by the commission of an act in a manner likely to cause death or serious injury.

Involuntary manslaughter as defined in this section is an included offense under an indictment for murder in the first or second degree or voluntary manslaughter.

[C51, §2576; R60, §4199; C73, §3856; C97, §4751; C24, 27, 31, 35, 39, §**12919, 12920;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §690.10, 690.11; C79, 81, §707.5]

Definition of forcible felony, §702.11

707.6 Civil liability.

No person who injures the aggressor through application of reasonable force in defense of the person's person or property may be held civilly liable for such injury.

No person who injures the aggressor through application of reasonable force in defense of a second person may be held civilly liable for such injury.

[C79, 81, §707.6]

707.6A Homicide or serious injury by vehicle.

1. A person commits a class "B" felony when the person unintentionally causes the death of another by operating a motor vehicle while intoxicated, as prohibited by section 321J.2. Upon a plea or verdict of guilty of a violation of this subsection, the court shall do the following:

a. Order the state department of transportation to revoke the defendant's driver's license or nonresident operating privileges for a period of six years. The defendant shall surrender to the court any Iowa license or permit and the court shall forward the license or permit to the department with a copy of the revocation order. The defendant shall not be eligible for a temporary restricted license for at least two years after the revocation.

b. Order the defendant, at the defendant's expense, to do the following:

(1) Enroll, attend, and satisfactorily complete a course for drinking drivers, as provided in section 321J.22.

(2) Submit to evaluation and treatment or rehabilitation services.

c. A driver's license or nonresident operating privilege shall not be reinstated until proof of completion of the requirements of paragraph *"b"* is presented to the department.

d. Where the program is available and appropriate for the defendant, the court shall also order the defendant to participate in a reality education substance abuse prevention program as provided in section 321J.24.

2. A person commits a class "C" felony when the person unintentionally causes the death of another by any of the following means:

a. Driving a motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property, in violation of section 321.277.

b. Eluding or attempting to elude a pursuing law enforcement vehicle, in violation of section 321.279, if the death of the other person directly or indirectly results from the violation.

3. A person commits a class "D" felony when the person unintentionally causes the death of another while drag racing, in violation of section 321.278.

4. A person commits a class "D" felony when the person unintentionally causes a serious injury, as defined in section 321J.1, by any of the means described in subsection 1 or 2.

5. As used in this section, *"motor vehicle"* includes any vehicle defined as a motor vehicle in section 321.1.

6. Except for the purpose of sentencing under section 321J.2, subsection 2, a conviction or deferral of judgment for a violation of this section, where a violation of section 321J.2 is admitted or proved, shall be treated as a conviction or deferral of judgment for a violation of section 321J.2 for the purposes of chapters 321, 321A, and 321J, and section 907.3, subsection 1.

7. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any part of the sentence applicable to the defendant for a violation of subsection 1, or for a violation of subsection 4 involving the operation of a motor vehicle while intoxicated.

86 Acts, ch 1220, §41; 89 Acts, ch 211, §1; 90 Acts, ch 1251, §55; 94 Acts, ch 1069, §2; 97 Acts, ch 177, §26 – 28; 98 Acts, ch 1073, §9

But see penalties applicable under §707.5, 707.8, and 708.2

707.7 Feticide.

Any person who intentionally terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, after the end of the second trimester of the pregnancy where death of the fetus results commits feticide. Feticide is a class "C" felony.

Any person who attempts to intentionally terminate a human pregnancy, with the knowledge and voluntary consent of the pregnant person, after the end of the second trimester of the pregnancy where death of the fetus does not result commits attempted feticide. Attempted feticide is a class "D" felony.

This section shall not apply to the termination of a human pregnancy performed by a physician licensed in this state to practice medicine or surgery when in the best clinical judgment of the physician the termination is performed to preserve the life or health of the pregnant person or of the fetus and every reasonable medical effort not inconsistent with preserving the life of the pregnant person is made to preserve the life of a viable fetus.

Any person who terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, who is not a person licensed to practice medicine and surgery under the provisions of chapter 148, or an osteopathic physician and surgeon licensed to practice osteopathic medicine and surgery under the provisions of chapter 150A, commits a class "C" felony.

[R60, §4221; C73, §3864; C97, §4759; SS15, §4759; C24, 27, 31, 35, 39, §**12973;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §701.1; C79, 81, §707.7]

96 Acts, ch 1077, §1

Definition of "viability", §702.20

707.8 Nonconsensual termination — serious injury to a human pregnancy.

1. A person who terminates a human pregnancy without the consent of the pregnant person during the commission of a forcible felony is guilty of a class "B" felony.

2. A person who terminates a human pregnancy without the consent of the pregnant person during the commission of a felony or felonious assault is guilty of a class "C" felony.

3. A person who intentionally terminates a human pregnancy without the knowledge and voluntary consent of the pregnant person is guilty of a class "C" felony.

4. A person who unintentionally terminates a human pregnancy by any of the means provided pursuant to section 707.6A, subsection 1, is guilty of a class "C" felony.

5. A person who by force or intimidation procures the consent of the pregnant person to a termination of a human pregnancy is guilty of a class "C" felony.

6. A person who unintentionally terminates a human pregnancy while drag racing in violation of section 321.278 is guilty of a class "D" felony.

7. A person who unintentionally terminates a human pregnancy without the knowledge and voluntary consent of the pregnant person by the commission of an act in a manner likely to cause the termination of or serious injury to a human pregnancy is guilty of an aggravated misdemeanor.

8. A person commits an aggravated misdemeanor when the person intentionally causes serious injury to a human pregnancy by the commission of an act in a manner likely to cause the termination of or serious injury to a human pregnancy.

9. A person commits an aggravated misdemeanor when the person unintentionally causes serious injury to a human pregnancy by any of the means described in section 707.6A, subsection 1.

10. A person commits a serious misdemeanor when the person unintentionally causes serious injury to a human pregnancy by the commission of an act in a manner likely to cause the termination of or serious injury to the human pregnancy.

11. For the purposes of this section *"serious injury to a human pregnancy"* means, relative to the human pregnancy, disabling mental illness, or bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ, and includes but is not limited to skull fractures, rib fractures, and metaphyseal fractures of the long bones.

12. As used in this section, actions which cause the termination of or serious injury to a pregnancy do not apply to any of the following:

a. An act or omission of the pregnant person.

b. A termination of or a serious injury to a pregnancy which is caused by the performance of an approved medical procedure performed by a person licensed in this state to practice medicine and surgery or osteopathic medicine and surgery, irrespective of the duration of the pregnancy and with or without the voluntary consent of the pregnant person when circumstances preclude the pregnant person from providing consent.

c. An act committed in self-defense or in defense of another person or any other act committed if legally justified or excused.

[C79, 81, §707.8]

96 Acts, ch 1077, §2

707.8A Partial-birth abortion prohibited — exceptions — penalties.

1. As used in this section, unless the context otherwise requires:

a. *"Abortion"* means abortion as defined in section 146.1.

b. *"Fetus"* means a human fetus.

c. *"Partial-birth abortion"* means an abortion in which a person partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

d. *"Vaginally delivers a living fetus before killing the fetus"* means deliberately and intentionally delivering into the vagina a living fetus or a substantial portion of a living fetus for the purpose of performing a procedure the person knows will kill the fetus, and then killing the fetus.

2. A person shall not knowingly perform or attempt to perform a partial-birth abortion. This prohibition shall not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury.

3. This section shall not be construed to create a right to an abortion.

4. *a.* The mother on whom a partial-birth abortion is performed, the father of the fetus, or, if the mother is less than eighteen years of age or unmarried at the time of the partial-birth abortion, a maternal grandparent of the fetus may bring an action against a person violating subsection 2 to obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the partial-birth abortion.

b. In an action brought under this subsection, appropriate relief may include any of the following:

(1) Statutory damages which are equal to three times the cost of the partial-birth abortion.

(2) Compensatory damages for all injuries, psychological and physical, resulting from violation of subsection 2.

5. A person who violates subsection 2 is guilty of a class "C" felony.

6. A mother upon whom a partial-birth abortion is performed shall not be prosecuted for violation of subsection 2 or for conspiracy to violate sub-

section 2.

7. *a.* A licensed physician subject to the authority of the state board of medical examiners who is accused of a violation of subsection 2 may seek a hearing before the board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury.

b. The board's findings concerning the physician's conduct are admissible at the criminal trial of the physician. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty days to permit the hearing before the board of medical examiners to take place.

98 Acts, ch 1009, §1

707.9 Murder of fetus aborted alive.

A person who intentionally kills a viable fetus aborted alive shall be guilty of a class "B" felony.

[C79, 81, §707.9]

Definition of "viability", §702.20

707.10 Duty to preserve the life of the fetus.

A person who performs or induces a termination of a human pregnancy and who willfully fails to exercise that degree of professional skill, care, and diligence available to preserve the life and health of a viable fetus shall be guilty of a serious misdemeanor.

[C79, 81, §707.10]

Definition of "viability", §702.20

707.11 Attempt to commit murder.

A person commits a class "B" felony when, with the intent to cause the death of another person and not under circumstances which would justify the person's actions, the person does any act by which the person expects to set in motion a force or chain of events which will cause or result in the death of the other person.

It is not a defense to an indictment for attempt to commit murder that the acts proved could not have caused the death of any person, provided that the actor intended to cause the death of some person by so acting, and the actor's expectations were not unreasonable in the light of the facts known to the actor.

[C51, §2591, 2596; R60, §4214, 4219; C73, §3872, 3877; C97, §4768, 4773, 4797; S13, §4768; C24, 27, 31, 35, 39, §**12915, 12918, 12962;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §690.6, 690.9, 697.2; C79, 81, §707.11; 82 Acts, ch 1239, §2]

CHAPTER 707A

ASSISTING SUICIDE

707A.1 Definitions.
707A.2 Assisting suicide.
707A.3 Acts or omissions not considered assisting suicide.

707A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Licensed health care professional"* means a physician and surgeon, podiatric physician, osteopath, osteopathic physician and surgeon, physician assistant, nurse, dentist, or pharmacist required to be licensed under chapter 147.

2. *"Suicide"* means the act or instance of taking a person's own life voluntarily and intentionally.

96 Acts, ch 1002, §1; 96 Acts, ch 1079, §19

707A.2 Assisting suicide.

A person commits a class "C" felony if the person intentionally or knowingly assists, solicits, or incites another person to commit or attempt to commit suicide, or participates in a physical act by which another person commits or attempts to commit suicide.

96 Acts, ch 1002, §2

707A.3 Acts or omissions not considered assisting suicide.

1. A licensed health care professional who administers, prescribes, or dispenses medications or who performs or prescribes procedures to relieve another person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, does not violate section 707A.2 unless the medications or procedures are intentionally or knowingly administered, prescribed, or dispensed with the primary intention of causing death.

2. A licensed health care professional who withholds or withdraws a life-sustaining procedure in compliance with chapter 144A or 144B does not violate section 707A.2.

96 Acts, ch 1002, §3

CHAPTER 707B

HUMAN CLONING

707B.1 Title.
707B.2 Purpose.
707B.3 Definitions.
707B.4 Human cloning — prohibitions — exceptions — penalty.

707B.1 Title.

This chapter shall be known and may be cited as the *"Human Cloning Prohibition Act"*.

2002 Acts, ch 1127, §1
NEW section

707B.2 Purpose.

It is the purpose of this chapter to prohibit human cloning for any purpose, whether for reproductive cloning or therapeutic cloning.

2002 Acts, ch 1127, §2
NEW section

707B.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Fetus"* means a living organism of the species homo sapiens from eight weeks' development until complete expulsion or extraction from a woman's body, or until removal from an artificial womb or other similar environment designed to nurture the development of such organism.

2. *"Human cloning"* means human asexual reproduction, accomplished by introducing the genetic material of a human somatic cell into a fertilized or unfertilized oocyte whose nucleus has been or will be removed or inactivated, to produce a living organism with a human or predominantly human genetic constitution.

3. *"Human embryo"* means a living organism of the species homo sapiens from the single-celled stage to eight weeks' development.

4. *"Human somatic cell"* means a cell having a complete set of chromosomes obtained from a living or deceased human organism of the species homo sapiens at any stage of development.

5. *"Oocyte"* means a human ovum.

2002 Acts, ch 1127, §3
NEW section

707B.4 Human cloning — prohibitions — exceptions — penalty.

1. A person shall not intentionally or knowingly do any of the following:

a. Perform or attempt to perform human cloning.

b. Participate in performing or in an attempt to perform human cloning.

c. Transfer or receive a cloned human embryo for any purpose.

d. Transfer or receive, in whole or in part, any oocyte, human embryo, fetus, or human somatic cell, for the purpose of human cloning.

2. This section shall not restrict areas of scientific research not specifically prohibited, including in vitro fertilization; the administration of fertility-enhancing drugs; or research in the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid, tissues, organs, plants, animals other than humans, or cells other than human embryos.

3. *a.* A person who violates subsection 1, paragraph *"a"* or *"b"*, is guilty of a class "C" felony.

b. A person who violates subsection 1, paragraph *"c"* or *"d"*, is guilty of an aggravated misdemeanor.

4. A person who violates this section in a manner that results in a pecuniary gain to the person is subject to a civil penalty in an amount that is twice the amount of the gross gain.

5. A person who violates this section and who is licensed pursuant to chapter 148, 150, or 150A is subject to revocation of the person's license.

6. A violation of this section is grounds for denial of an application for, denial of renewal of, or revocation of any license, permit, certification, or any other form of permission required to practice or engage in any trade, occupation, or profession regulated by the state.

2002 Acts, ch 1127, §4
NEW section

CHAPTER 708

ASSAULT

Definition of forcible felony; §702.11

708.1 Assault defined.
708.2 Penalties for assault.
708.2A Domestic abuse assault — mandatory minimums, penalties enhanced — extension of no-contact order.
708.2B Treatment of domestic abuse offenders.
708.2C Assault in violation of individual rights — penalties.
708.3 Assault while participating in a felony.
708.3A Assaults on peace officers, jailers, correctional staff, fire fighters, and health care providers.
708.3B Inmate assaults — bodily fluids or secretions.
708.4 Willful injury.
708.5 Administering harmful substances.
708.6 Intimidation with a dangerous weapon.
708.7 Harassment.
708.8 Going armed with intent.
708.9 Spring guns and traps.
708.10 Hazing.
708.11 Stalking.
708.12 Harassment and stalking — no-contact.
708.13 Disarming a peace officer of a dangerous weapon.

708.1 Assault defined.

An assault as defined in this section is a general intent crime. A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

Provided, that where the person doing any of the above enumerated acts, and such other person, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk of serious injury or breach of the peace, the act shall not be an assault.

Provided, that where the person doing any of the above enumerated acts is employed by a school district or accredited nonpublic school, or is an area education agency staff member who provides services to a school or school district, and intervenes in a fight or physical struggle, or other disruptive situation, that takes place in the presence of the employee or staff member performing employment duties in a school building, on school grounds, or at an official school function regardless of the location, the act shall not be an assault, whether the fight or physical struggle or other disruptive situation is between students or other individuals, if the degree and the force of the intervention is reasonably necessary to restore order and to protect the safety of those assembled.

[C51, §2594, 2597; R60, §4217, 4220; C73, §3875, 3878, 3879; C97, §4771, 4774, 4775; S13, §4771; C24, 27, 31, 35, 39, §**12929, 12930, 12934;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §694.1, 694.2, 694.6; C79, 81, §708.1]

95 Acts, ch 191, §49; 2002 Acts, ch 1094, §1
Unnumbered paragraph 1 and subsections 1 – 3 amended

708.2 Penalties for assault.

1. A person who commits an assault, as defined in section 708.1, with the intent to inflict a serious injury upon another, is guilty of an aggravated misdemeanor.

2. A person who commits an assault, as defined in section 708.1, and who causes bodily injury or mental illness, is guilty of a serious misdemeanor.

3. A person who commits an assault, as defined in section 708.1, and uses or displays a dangerous weapon in connection with the assault, is guilty of an aggravated misdemeanor. This subsection does not apply if section 708.6 or 708.8 applies.

4. A person who commits an assault, as defined in section 708.1, and who causes serious injury, is guilty of a class "D" felony.

5. Any other assault, except as otherwise provided, is a simple misdemeanor.

[C51, §2593 – 2595, 2597; R60, §4216 – 4218, 4220; C73, §3874 – 3876, 3878, 3879; C97, §4770 – 4772, 4774, 4775; C24, 27, 31, 35, 39, §**12929 –**

12935; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §694.1 – 694.7; C79, 81, §708.2; 81 Acts, ch 204, §3]

87 Acts, ch 154, §8; 98 Acts, ch 1026, §1; 99 Acts, ch 65, §3

Definition of forcible felony, §702.11

708.2A Domestic abuse assault — mandatory minimums, penalties enhanced — extension of no-contact order.

1. For the purposes of this chapter, *"domestic abuse assault"* means an assault, as defined in section 708.1, which is domestic abuse as defined in section 236.2, subsection 2, paragraph *"a"*, *"b"*, *"c"*, or *"d"*.

2. On a first offense of domestic abuse assault, the person commits:

a. A simple misdemeanor for a domestic abuse assault, except as otherwise provided.

b. A serious misdemeanor, if the domestic abuse assault causes bodily injury or mental illness.

c. An aggravated misdemeanor, if the domestic abuse assault is committed with the intent to inflict a serious injury upon another, or if the person uses or displays a dangerous weapon in connection with the assault. This paragraph does not apply if section 708.6 or 708.8 applies.

3. Except as otherwise provided in subsection 2, on a second domestic abuse assault, a person commits:

a. A serious misdemeanor, if the first offense was classified as a simple misdemeanor, and the second offense would otherwise be classified as a simple misdemeanor.

b. An aggravated misdemeanor, if the first offense was classified as a simple or aggravated misdemeanor, and the second offense would otherwise be classified as a serious misdemeanor, or the first offense was classified as a serious or aggravated misdemeanor, and the second offense would otherwise be classified as a simple or serious misdemeanor.

4. On a third or subsequent offense of domestic abuse assault, a person commits a class "D" felony.

5. *a.* A conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall not be considered in determining that the violation charged is a second or subsequent offense.

b. For the purpose of determining if a violation charged is a second or subsequent offense, deferred judgments issued pursuant to section 907.3 for violations of section 708.2 or this section, which were issued on domestic abuse assaults, and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the offenses defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the offense charged shall be considered and counted as a separate previous offense.

c. An offense shall be considered a prior offense regardless of whether it was committed upon the same victim.

6. *a.* A person convicted of violating subsection 2 or 3 shall serve a minimum term of two days of the sentence imposed by law, and shall not be eligible for suspension of the minimum sentence. The minimum term shall be served on consecutive days. The court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence. This section does not prohibit the court from sentencing and the person from serving the maximum term of confinement or from paying the maximum fine permitted pursuant to chapters 902 and 903, and does not prohibit the court from entering a deferred judgment or sentence pursuant to section 907.3, if the person has not previously received a deferred sentence or judgment for a violation of section 708.2 or this section which was issued on a domestic abuse assault.

b. A person convicted of violating subsection 4 shall be sentenced as provided under section 902.9, subsection 5, and shall be denied parole or work release until the person has served a minimum of one year of the person's sentence. Notwithstanding section 901.5, subsections 1, 3, and 5 and section 907.3, the person cannot receive a suspended or deferred sentence or a deferred judgment; however, the person sentenced shall receive credit for any time the person was confined in a jail or detention facility following arrest.

7. If a person is convicted for, receives a deferred judgment for, or pleads guilty to a violation of this section, the court shall modify the no-contact order issued upon initial appearance in the manner provided in section 236.14, regardless of whether the person is placed on probation.

8. The clerk of the district court shall provide notice and copies of a judgment entered under this section to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications of the judgment in the same manner.

9. In addition to the mandatory minimum term of confinement imposed by subsection 6, paragraph *"a"*, the court shall order a person convicted under subsection 2 or 3 to participate in a batterers' treatment program as required under section 708.2B. In addition, as a condition of deferring judgment or sentence pursuant to section 907.3, the court shall order the person to participate in a batterers' treatment program. The clerk of the district court shall send a copy of the judg-

ment or deferred judgment to the judicial district department of correctional services.

87 Acts, ch 154, §9; 91 Acts, ch 218, §27; 91 Acts, ch 219, §19, 20; 92 Acts, ch 1163, §118; 93 Acts, ch 157, §9; 94 Acts, ch 1093, §2; 95 Acts, ch 90, §1; 96 Acts, ch 1131, §3; 97 Acts, ch 33, §14; 98 Acts, ch 1192, §1; 99 Acts, ch 65, §4; 99 Acts, ch 114, §45; 2002 Acts, ch 1004, §4

Subsection 1 amended

708.2B Treatment of domestic abuse offenders.

As used in this section, *"district department"* means a judicial district department of correctional services, established pursuant to section 905.2. A person convicted of, or receiving a deferred judgment for, domestic abuse assault as defined in section 708.2A, shall report to the district department in order to participate in a batterers' treatment program for domestic abuse offenders. In addition, a person convicted of, or receiving a deferred judgment for, an assault, as defined in section 708.1, which is domestic abuse, as defined in section 236.2, subsection 2, paragraph *"e"*, may be ordered by the court to participate in a batterers' treatment program. Participation in the batterers' treatment program shall not require a person to be placed on probation, but a person on probation may participate in the program. The district departments may contract for services in completing the duties relating to the batterers' treatment programs. The district departments shall assess the fees for participation in the program, and shall either collect or contract for the collection of the fees to recoup the costs of treatment, but may waive the fee or collect a lesser amount upon a showing of cause. The fees shall be used by each of the district departments or contract service providers for the establishment, administration, coordination, and provision of direct services of the batterers' treatment programs.

District departments or contract service providers shall receive upon request peace officers' investigative reports regarding persons participating in programs under this section. The receipt of reports under this section shall not waive the confidentiality of the reports under section 22.7.

91 Acts, ch 218, §28; 91 Acts, ch 219, §35; 95 Acts, ch 180, §15; 2002 Acts, ch 1004, §5

Section amended

708.2C Assault in violation of individual rights — penalties.

1. For the purposes of this chapter, *"assault in violation of individual rights"* means an assault, as defined in section 708.1, which is a hate crime as defined in section 729A.2.

2. A person who commits an assault in violation of individual rights, with the intent to inflict a serious injury upon another, is guilty of a class "D" felony.

3. A person who commits an assault in violation of individual rights, and who causes bodily injury or mental illness, is guilty of an aggravated misdemeanor.

4. A person who commits an assault in violation of individual rights and uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.

5. Any other assault in violation of individual rights, except as otherwise provided, is a serious misdemeanor.

92 Acts, ch 1157, §3; 95 Acts, ch 90, §2

708.3 Assault while participating in a felony.

Any person who commits an assault as defined in section 708.1 while participating in a felony other than a sexual abuse is guilty of a class "C" felony if the person thereby causes serious injury to any person; if no serious injury results, the person is guilty of a class "D" felony.

[C51, §2592, 2593, 2595; R60, §4215, 4216, 4218; C73, §3873, 3874, 3876; C97, §4769, 4770, 4772; C24, 27, 31, 35, 39, §**12933, 12935, 12968;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §694.5, 694.7, 698.4; C79, 81, §708.3; 81 Acts, ch 204, §4]

708.3A Assaults on peace officers, jailers, correctional staff, fire fighters, and health care providers.

1. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, with the knowledge that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter and with the intent to inflict a serious injury upon the peace officer, jailer, correctional staff, health care provider, or fire fighter, is guilty of a class "D" felony.

2. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter and who uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.

3. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter, and who causes bodily injury or mental illness, is guilty of an aggravated misdemeanor.

4. Any other assault, as defined in section 708.1, committed against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, by a person who knows that the person against whom the assault

is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter, is a serious misdemeanor.

5. As used in this section, *"health care provider"* means an emergency medical care provider as defined in chapter 147A or a person licensed or registered under chapter 148, 148C, 148D, 150, 150A, or 152 who is providing or who is attempting to provide emergency medical services, as defined in section 147A.1, or who is providing or who is attempting to provide health services as defined in section 135.61 in a hospital. A person who commits an assault under this section against a health care provider in a hospital, or at the scene or during out-of-hospital patient transportation in an ambulance, is presumed to know that the person against whom the assault is committed is a health care provider.

6. As used in this section, *"correctional staff"* means a person who is not a peace officer but who is employed by the department of corrections or a judicial district department of correctional services to work at or in a correctional institution, community-based correctional facility, or an institution under the management of the Iowa department of corrections which is used for the purposes of confinement of persons who have committed public offenses.

7. As used in this section, *"jailer"* means a person who is employed by a county or other political subdivision of the state to work at a county jail or other facility used for purposes of the confinement of persons who have committed public offenses, but who is not a peace officer.

95 Acts, ch 90, §3; 96 Acts, ch 1069, §1; 98 Acts, ch 1026, §2; 99 Acts, ch 64, §1

708.3B Inmate assaults — bodily fluids or secretions.

A person who, while confined in a jail or in an institution or facility under the control of the department of corrections, commits any of the following acts commits a class "D" felony:

1. An assault, as defined under section 708.1, upon an employee of the jail or institution or facility under the control of the department of corrections, which results in the employee's contact with blood, seminal fluid, urine, or feces.

2. An act which is intended to cause pain or injury or be insulting or offensive and which results in blood, seminal fluid, urine, or feces being cast or expelled upon an employee of the jail or institution or facility under the control of the department of corrections.

97 Acts, ch 79, §1

708.4 Willful injury.

Any person who does an act which is not justified and which is intended to cause serious injury to another commits the following:

1. A class "C" felony, if the person causes serious injury to another.

2. A class "D" felony, if the person causes bodily injury to another.

[C51, §2577, 2594; R60, §4200, 4217; C73, §3857, 3875; C97, §4752, 4771, 4797; S13, §4771; C24, 27, 31, 35, 39, §**12928, 12934, 12962;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §693.1, 694.6, 697.2; C79, 81, §708.4]

99 Acts, ch 65, §5

708.5 Administering harmful substances.

Any person who administers to another or causes another to take, without the other person's consent or by threat or deception, and for other than medicinal purposes, any poisonous, stupefying, stimulating, depressing, tranquilizing, narcotic, hypnotic, hallucinating, or anesthetic substance in sufficient quantity to have such effect, commits a class "D" felony.

[C79, 81, §708.5]

708.6 Intimidation with a dangerous weapon.

A person commits a class "C" felony when the person, with the intent to injure or provoke fear or anger in another, shoots, throws, launches, or discharges a dangerous weapon at, into, or in a building, vehicle, airplane, railroad engine, railroad car, or boat, occupied by another person, or within an assembly of people, and thereby places the occupants or people in reasonable apprehension of serious injury or threatens to commit such an act under circumstances raising a reasonable expectation that the threat will be carried out.

A person commits a class "D" felony when the person shoots, throws, launches, or discharges a dangerous weapon at, into, or in a building, vehicle, airplane, railroad engine, railroad car, or boat, occupied by another person, or within an assembly of people, and thereby places the occupants or people in reasonable apprehension of serious injury or threatens to commit such an act under circumstances raising a reasonable expectation that the threat will be carried out.

[C97, §4799, 4810; C24, 27, 31, 35, 39, §**13081, 13123;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §714.2, 716.11; C79, 81, §708.6; 81 Acts, ch 204, §5]

93 Acts, ch 112, §1, 2; 2002 Acts, ch 1075, §8

Section amended

708.7 Harassment.

1. *a.* A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:

(1) Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.

(2) Places a simulated explosive or simulated incendiary device in or near a building, vehicle,

airplane, railroad engine or railroad car, or boat occupied by another person.

(3) Orders merchandise or services in the name of another, or to be delivered to another, without the other person's knowledge or consent.

(4) Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the act did not occur.

b. A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person. As used in this section, unless the context otherwise requires, *"personal contact"* means an encounter in which two or more people are in visual or physical proximity to each other. *"Personal contact"* does not require a physical touching or oral communication, although it may include these types of contacts.

2. A person commits harassment in the first degree when the person commits harassment involving a threat to commit a forcible felony, or commits harassment and has previously been convicted of harassment three or more times under this section or any similar statute during the preceding ten years.

Harassment in the first degree is an aggravated misdemeanor.

3. A person commits harassment in the second degree when the person commits harassment involving a threat to commit bodily injury, or commits harassment and has previously been convicted of harassment two times under this section or any similar statute during the preceding ten years.

Harassment in the second degree is a serious misdemeanor.

4. Any other act of harassment is harassment in the third degree. Harassment in the third degree is a simple misdemeanor.

[C71, 73, 75, 77, §714.37, 714.42; C79, 81, §708.7; 82 Acts, ch 1209, §19]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1238, §28; 87 Acts, ch 13, §4; 89 Acts, ch 226, §1; 94 Acts, ch 1093, §3; 2000 Acts, ch 1132, §3

708.8 Going armed with intent.

A person who goes armed with any dangerous weapon with the intent to use without justification such weapon against the person of another commits a class "D" felony.

[C35, §12935-g1; C39, §**12935.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.1; C79, 81, §708.8]

708.9 Spring guns and traps.

Any person who in any place sets a spring gun or a trap which is intended to be sprung by a person and which can cause such person serious injury commits an aggravated misdemeanor.

[C79, 81, §708.9]

708.10 Hazing.

1. *a.* A person commits an act of hazing when the person intentionally or recklessly engages in any act or acts involving forced activity which endanger the physical health or safety of a student for the purpose of initiation or admission into, or affiliation with, any organization operating in connection with a school, college, or university. Prohibited acts include, but are not limited to, any brutality of a physical nature such as whipping, forced confinement, or any other forced activity which endangers the physical health or safety of the student.

b. For purposes of this section, *"forced activity"* means any activity which is a condition of initiation or admission into, or affiliation with, an organization, regardless of a student's willingness to participate in the activity.

2. A person who commits an act of hazing is guilty of a simple misdemeanor.

3. A person who commits an act of hazing which causes serious bodily injury to another is guilty of a serious misdemeanor.

89 Acts, ch 41, §1

708.11 Stalking.

1. As used in this section, unless the context otherwise requires:

a. "Accompanying offense" means any public offense committed as part of the course of conduct engaged in while committing the offense of stalking.

b. "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person without legitimate purpose or repeatedly conveying oral or written threats, threats implied by conduct, or a combination thereof, directed at or toward a person.

c. "Immediate family member" means a spouse, parent, child, sibling, or any other person who regularly resides in the household of a specific person, or who within the prior six months regularly resided in the household of a specific person.

d. "Repeatedly" means on two or more occasions.

2. A person commits stalking when all of the following occur:

a. The person purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to, or the death of, that specific person or a member of the specific person's immediate family.

b. The person has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to, or the death of, that specific person or a member of the specific person's immediate family by the course of conduct.

c. The person's course of conduct induces fear

in the specific person of bodily injury to, or the death of, the specific person or a member of the specific person's immediate family.

3. *a.* A person who commits stalking in violation of this section commits a class "C" felony for a third or subsequent offense.

b. A person who commits stalking in violation of this section commits a class "D" felony if any of the following apply:

(1) The person commits stalking while subject to restrictions contained in a criminal or civil protective order or injunction, or any other court order which prohibits contact between the person and the victim, or while subject to restrictions contained in a criminal or civil protective order or injunction or other court order which prohibits contact between the person and another person against whom the person has committed a public offense.

(2) The person commits stalking while in possession of a dangerous weapon, as defined in section 702.7.

(3) The person commits stalking by directing a course of conduct at a specific person who is under eighteen years of age.

(4) The offense is a second offense.

c. A person who commits stalking in violation of this section commits an aggravated misdemeanor if the offense is a first offense which is not included in paragraph *"b"*.

4. Violations of this section and accompanying offenses shall be considered prior offenses for the purpose of determining whether an offense is a second or subsequent offense. A conviction for, deferred judgment for, or plea of guilty to a violation of this section or an accompanying offense which occurred at any time prior to the date of the violation charged shall be considered in determining that the violation charged is a second or subsequent offense. Deferred judgments pursuant to section 907.3 for violations of this section or accompanying offenses and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section or accompanying offenses shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the offenses defined in this section and its accompanying offenses and can therefore be considered corresponding statutes. Each previous violation of this section or an accompanying offense on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense. In addition, however, accompanying offenses committed as part of the course of conduct engaged in while committing the violation of stalking charged shall be considered prior offenses for the purpose of that violation, even though the accompanying offenses occurred at approximately the same time. An offense shall be considered a second or subsequent offense regardless of whether it was committed upon the same person who was the victim of any other previous offense.

5. Notwithstanding section 804.1, rule of criminal procedure 2.7, Iowa court rules, or any other provision of law to the contrary, upon the filing of a complaint and a finding of probable cause to believe an offense has been committed in violation of this section, or after the filing of an indictment or information alleging a violation of this section, the court shall issue an arrest warrant, rather than a citation or summons. A peace officer shall not issue a citation in lieu of arrest for a violation of this section. Notwithstanding section 804.21 or any other provision of law to the contrary, a person arrested for stalking shall be immediately taken into custody and shall not be released pursuant to pretrial release guidelines, a bond schedule, or any similar device, until after the initial appearance before a magistrate. In establishing the conditions of release, the magistrate may consider the defendant's prior criminal history, in addition to the other factors provided in section 811.2.

92 Acts, ch 1179, §1; 94 Acts, ch 1093, §4; 98 Acts, ch 1021, §4; 2002 Acts, ch 1119, §106

Subsection 5 amended

708.12 Harassment and stalking — no-contact.

1. When a person arrested for harassment in violation of section 708.7 or stalking in violation of section 708.11, is brought before a magistrate for initial appearance under section 804.21, 804.22, or 804.24, and the magistrate finds probable cause to believe that a violation of section 708.7 or 708.11 has occurred and that the presence of or contact with the defendant poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the defendant to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, in addition to any other conditions of release determined and imposed by the magistrate under section 811.2. A no-contact order requiring the defendant to have no contact with the alleged victim's children shall prevail over any existing order which may be in conflict with the no-contact order.

The court order shall contain the court's directives restricting the defendant from having contact with the victim, persons residing with the victim, or the victim's immediate family. The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

2. The clerk of the district court or other person designated by the court shall provide a copy of

this order to the victim pursuant to this chapter. The order has force and effect until it is modified or terminated by subsequent court action in a contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. Upon final disposition of the criminal or juvenile court action, the court shall make a determination whether the no-contact order should be modified or terminated. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of section 708.7 or 708.11, the court shall modify the no-contact order issued by the magistrate to provide that the no-contact order shall continue in effect for a period of five years from the date that the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation. Upon the filing of an affidavit by the victim which states that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family within ninety days prior to the expiration of the modified no-contact order, the court shall modify and extend the no-contact order for an additional period of five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. The number of modifications extending the no-contact order permitted by this subsection is not limited.

The clerk of the district court shall also provide notice and copies of the no-contact order to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the same manner as provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

3. If a peace officer has probable cause to believe that a person has violated a no-contact order issued under this section, the peace officer shall take the person into custody and shall take the person without unnecessary delay before the nearest or most accessible magistrate in the judicial district in which the person was taken into custody.

4. Violation of a no-contact order issued under this section, including modified no-contact orders, is punishable by summary contempt proceedings. A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as set by the court. If held in contempt for violation of a no-contact order or a modified no-contact order, the defendant shall be confined in the county jail for a minimum of seven days. A jail sentence imposed pursuant to this paragraph shall be served on consecutive days. No portion of the mandatory minimum term of confinement imposed by this section shall be deferred or suspended. A deferred judgment, deferred sentence, or suspended sentence shall not be entered for violation of a no-contact order or a modified no-contact order, and the court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence.

5. This section shall not be construed to limit a pretrial release order issued pursuant to chapter 811.

98 Acts, ch 1021, §5

708.13 Disarming a peace officer of a dangerous weapon.

1. A person who knowingly or intentionally removes or attempts to remove a dangerous weapon, as defined in section 702.7, from the possession of a peace officer, as defined in section 724.2A, when the officer is in the performance of any act which is within the scope of the lawful duty or authority of that officer and the person knew or should have known the individual to be a peace officer, commits the offense of disarming a peace officer.

2. A person who disarms or attempts to disarm a peace officer is guilty of a class "D" felony.

3. A person who discharges the dangerous weapon while disarming or attempting to disarm the peace officer commits a class "C" felony.

99 Acts, ch 44, §1

CHAPTER 708A

TERRORISM

708A.1 Definitions.
708A.2 Terrorism.
708A.3 Value for purposes of material support and resources.
708A.4 Soliciting or providing material support or resources for terrorism.
708A.5 Threat of terrorism.
708A.6 Obstruction of terrorism prosecution.

708A.1 Definitions.

For purposes of this chapter:

1. *"Material support or resources"* means knowingly assisting or providing money, financial

securities, financial services, lodging, training, safe houses, false documentation or identification, communication equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials, for the purpose of assisting a person in the commission of an act of terrorism.

2. *"Renders criminal assistance"* means a person who, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, knowingly does any of the following acts:

a. Destroys, alters, conceals, or disguises physical evidence which would be admissible in the trial of another for a public offense, or makes available false evidence or furnishes false information with the intent that it be used in the trial of that case.

b. Induces a witness having knowledge material to the subject at issue to leave the state or hide, or to fail to appear when subpoenaed.

c. Provides concealment or warns of impending apprehension to any person being sought for the subject at issue.

d. Provides a weapon, disguise, transportation, or money to any person being sought for the subject at issue.

e. Prevents or obstructs, by means of force, intimidation, or deception, another person from performing an act which might aid in the apprehension or prosecution or defense of any person.

3. *"Terrorism"* means an act intended to intimidate or coerce a civilian population, or to influence the policy of a unit of government by intimidation or coercion, or to affect the conduct of a unit of government, by shooting, throwing, launching, discharging, or otherwise using a dangerous weapon at, into, or in a building, vehicle, airplane, railroad engine, railroad car, or boat, occupied by another person, or within an assembly of people. The terms *"intimidate"*, *"coerce"*, *"intimidation"*, and *"coercion"*, as used in this definition, are not to be construed to prohibit picketing, public demonstrations, and similar forms of expressing ideas or views regarding legitimate matters of public interest protected by the United States and Iowa constitutions.

2002 Acts, ch 1075, §2
NEW section

708A.2 Terrorism.

A person who commits or attempts to commit an act of terrorism commits a class "B" felony. However, notwithstanding section 902.9, subsection 2, the maximum sentence for a person convicted under this section shall be a period of confinement of not more than fifty years.

2002 Acts, ch 1075, §3
See also, §707.2(6)
NEW section

708A.3 Value for purposes of material support and resources.

The value of property or services is its highest value by any reasonable standard at the time the material support or resources is given. Any reasonable standard includes but is not limited to market value within the community, actual value, or replacement value.

If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the material support or resources are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single act of support or resources and the value may be the total value of all credit, property, and services involved.

2002 Acts, ch 1075, §4
NEW section

708A.4 Soliciting or providing material support or resources for terrorism.

1. A person who provides material support or resources to a person who commits or attempts to commit terrorism and the value of the material support or resources is in excess of one thousand dollars commits a class "B" felony.

2. A person who provides material support or resources to a person who commits or attempts to commit terrorism and the value of the material support or resources does not exceed one thousand dollars commits a class "C" felony.

2002 Acts, ch 1075, §5
NEW section

708A.5 Threat of terrorism.

A person who threatens to commit terrorism or threatens to cause terrorism to be committed and who causes a reasonable expectation or fear of the imminent commission of such an act of terrorism commits a class "D" felony.

2002 Acts, ch 1075, §6
NEW section

708A.6 Obstruction of terrorism prosecution.

1. A person who renders criminal assistance to another person who commits terrorism that results in the murder of a third person while knowing that the other person was engaged in terrorism commits a class "B" felony.

2. A person who renders criminal assistance to another person who commits terrorism while knowing that the other person was engaged in an act of terrorism commits a class "C" felony.

2002 Acts, ch 1075, §7
NEW section

CHAPTER 709

SEXUAL ABUSE

Victim counselor privilege; see §915.20A

709.1 Sexual abuse defined.
709.1A Incapacitation.
709.2 Sexual abuse in the first degree.
709.3 Sexual abuse in the second degree.
709.4 Sexual abuse in the third degree.
709.5 Resistance to sexual abuse.
709.6 Jury instructions for offenses of sexual abuse.
709.7 Detention in brothel.
709.8 Lascivious acts with a child.
709.9 Indecent exposure.
709.10 Cost of medical examination in crimes of sexual abuse. Repealed by 98 Acts, ch 1090, §80, 84.
709.11 Assault with intent to commit sexual abuse.
709.12 Indecent contact with a child.
709.13 Child in need of assistance complaints.
709.14 Lascivious conduct with a minor.
709.15 Sexual exploitation by a counselor or therapist.
709.16 Sexual misconduct with offenders and juveniles.
709.17 Polygraph examinations of victims or witnesses — limitations. Repealed by 98 Acts, ch 1090, §80, 84.
709.18 Abuse of a corpse.
709.19 No-contact order upon defendant's release from jail or prison.
709.20 Sexual abuse — no-contact order.

709.1 Sexual abuse defined.

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.

2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.

3. Such other person is a child.

[C51, §2581, 2583; R60, §4204, 4206; C73, §3861, 3863; C97, §4756, 4758; C24, 27, 31, 35, 39, §**12966, 12967;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §698.1, 698.3; C79, 81, §709.1]

84 Acts, ch 1188, §1; 99 Acts, ch 159, §1

Definition of sex act, §702.17

709.1A Incapacitation.

As used in this chapter, *"incapacitated"* means a person is disabled or deprived of ability, as follows:

1. *"Mentally incapacitated"* means that a person is temporarily incapable of apprising or controlling the person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance.

2. *"Physically helpless"* means that a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited.

3. *"Physically incapacitated"* means that a person has a bodily impairment or handicap that substantially limits the person's ability to resist or flee.

99 Acts, ch 159, §2

709.2 Sexual abuse in the first degree.

A person commits sexual abuse in the first degree when in the course of committing sexual abuse the person causes another serious injury.

Sexual abuse in the first degree is a class "A" felony.

[C51, §2581; R60, §4204; C73, §3861; C97, §4756; C24, 27, 31, 35, 39, §**12966;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §698.1; C79, 81, §709.2]

Definition of forcible felony, §702.11

709.3 Sexual abuse in the second degree.

A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:

1. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.

2. The other person is under the age of twelve.

3. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other person against whom the sex act is committed.

Sexual abuse in the second degree is a class "B" felony.

[C51, §2581; R60, §4204; C73, §3861; C97,

§4756; C24, 27, 31, 35, 39, §**12966;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §698.1; C79, 81, §709.3]

84 Acts, ch 1188, §2; 99 Acts, ch 159, §3

Definition of forcible felony, §702.11

Definition of sex act, §702.17

709.4 Sexual abuse in the third degree.

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

1. The act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person.

2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

a. The other person is suffering from a mental defect or incapacity which precludes giving consent.

b. The other person is twelve or thirteen years of age.

c. The other person is fourteen or fifteen years of age and any of the following are true:

(1) The person is a member of the same household as the other person.

(2) The person is related to the other person by blood or affinity to the fourth degree.

(3) The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.

(4) The person is four or more years older than the other person.

3. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:

a. The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.

b. The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.

4. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.

Sexual abuse in the third degree is a class "C" felony.

[C51, §2581, 2583; R60, §4204, 4206; C73, §3861, 3863; C97, §4756, 4758; C24, 27, 31, 35, 39, §**12966, 12967;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §698.1, 698.3; C79, 81, §709.4]

89 Acts, ch 138, §3; 94 Acts, ch 1128, §1; 97 Acts, ch 78, §1; 99 Acts, ch 159, §4

Definition of forcible felony, see §702.11

Definition of sex act, see §702.17

709.5 Resistance to sexual abuse.

Under the provisions of this chapter it shall not be necessary to establish physical resistance by a person in order to establish that an act of sexual abuse was committed by force or against the will of the person. However, the circumstances surrounding the commission of the act may be considered in determining whether or not the act was done by force or against the will of the other.

[C79, 81, §709.5]

99 Acts, ch 159, §5

709.6 Jury instructions for offenses of sexual abuse.

No instruction shall be given in a trial for sexual abuse cautioning the jury to use a different standard relating to a victim's testimony than that of any other witness to that offense or any other offense.

[C79, 81, §709.6]

709.7 Detention in brothel.

Any person who, by force, intimidation, or false pretense entices another who is not a prostitute to enter a brothel with the intent to cause such other to become an inmate thereof, or who detains another, whether a prostitute or not, in any brothel, against the will of such other, with the intent that such other engage in prostitution therein, commits a class "C" felony.

[C51, §2713; R60, §4355; C73, §4016; C97, §4942; S13, §4944-j; C24, 27, 31, 35, 39, §**13180, 13181;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §724.8, 724.9; C79, 81, §709.7]

709.8 Lascivious acts with a child.

It is unlawful for any person eighteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a child.

2. Permit or cause a child to fondle or touch the person's genitals or pubes.

3. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.

4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

Any person who violates a provision of this section shall, upon conviction, be guilty of a class "D" felony. A person who violates a provision of this section and who is sentenced to a term of confinement shall also be sentenced to an additional term of parole or work release not to exceed two years. The board of parole shall determine whether the person should be released on parole or placed in a work release program. The sentence of an additional term of parole or work release supervision shall commence immediately upon the expiration of the preceding sentence and shall be under the terms and conditions as set out in chapter 906.

Violations of parole or work release shall be subject to the procedures set out in chapter 905 or 908 or rules adopted under those chapters. The sentence of an additional term of parole or work release shall be consecutive to the original term of confinement.

[S13, §4938-a; C24, 27, 31, 35, 39, §**13184;** C46, 50, 54, 58, 62, 66, 71, 73, §725.2; C75, 77, §725.10; C79, 81, §709.8]

85 Acts, ch 181, §1; 96 Acts, ch 1062, §1; 2000 Acts, ch 1165, §1

Definition of sex act, §702.17

709.9 Indecent exposure.

A person who exposes the person's genitals or pubes to another not the person's spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:

1. The person does so to arouse or satisfy the sexual desires of either party; and

2. The person knows or reasonably should know that the act is offensive to the viewer.

[C79, 81, §709.9]

Definition of sex act, §702.17

709.10 Cost of medical examination in crimes of sexual abuse. Repealed by 98 Acts, ch 1090, § 80, 84. See § 915.41.

709.11 Assault with intent to commit sexual abuse.

Any person who commits an assault, as defined in section 708.1, with the intent to commit sexual abuse is guilty of a class "C" felony if the person thereby causes serious injury to any person and guilty of a class "D" felony if the person thereby causes any person a bodily injury other than a serious injury. The person is guilty of an aggravated misdemeanor if no injury results.

[81 Acts, ch 204, §6]

709.12 Indecent contact with a child.

A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.

2. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.

3. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.

4. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, 2, or 4.

The provisions of this section shall also apply to a person sixteen or seventeen years of age who commits any of the enumerated acts with a child who is at least five years the person's junior, in which case the juvenile court shall have jurisdiction under chapter 232.

[81 Acts, ch 204, §7]

85 Acts, ch 181, §2; 88 Acts, ch 1252, §4

709.13 Child in need of assistance complaints.

During or following an investigation into allegations of violations of this chapter or of chapter 726 or 728 involving an alleged victim under the age of eighteen and an alleged offender who is not a person responsible for the care of the child, anyone with knowledge of the alleged offense may file a complaint pursuant to section 232.83 alleging the child to be a child in need of assistance. In all cases, the complaint shall be filed by any peace officer with knowledge of the investigation when the peace officer has reason to believe that the alleged victim may require treatment as a result of the alleged offense and that the child's parent, guardian, or custodian will be unwilling or unable to provide the treatment.

88 Acts, ch 1252, §5

709.14 Lascivious conduct with a minor.

It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them.

Lascivious conduct with a minor is a serious misdemeanor.

89 Acts, ch 105, §2

709.15 Sexual exploitation by a counselor or therapist.

1. As used in this section:

a. "Counselor or therapist" means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.

b. "Emotionally dependent" means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to sexual conduct, as described in paragraph *"f"*, by the counselor or therapist.

For the purposes of paragraph *"f"*, a former patient or client is presumed to be emotionally dependent for one year following the termination of the provision of mental health services.

c. "Former patient or client" means a person who received mental health services from the counselor or therapist.

d. "Mental health service" means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction.

e. "Patient or client" means a person who receives mental health services from the counselor or therapist.

f. "Sexual exploitation by a counselor or therapist" occurs when any of the following are found:

(1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2) or (3).

(2) Any sexual conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

(3) Any sexual conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

"Sexual exploitation by a counselor or therapist" does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

2. A counselor or therapist who commits sexual exploitation in violation of subsection 1, paragraph *"f"*, subparagraph (1), commits a class "D" felony.

3. A counselor or therapist who commits sexual exploitation in violation of subsection 1, paragraph *"f"*, subparagraph (2), commits an aggravated misdemeanor.

4. A counselor or therapist who commits sexual exploitation in violation of subsection 1, paragraph *"f"*, subparagraph (3), commits a serious misdemeanor. In lieu of the sentence provided for under section 903.1, subsection 1, paragraph *"b"*, the offender may be required to attend a sexual abuser treatment program.

91 Acts, ch 130, §2; 92 Acts, ch 1163, §119; 92 Acts, ch 1199, §2 – 6

709.16 Sexual misconduct with offenders and juveniles.

1. An officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor.

2. An officer, employee, contractor, vendor, volunteer, or agent of a juvenile placement facility who engages in a sex act with a juvenile placed at such facility commits an aggravated misdemeanor.

For purposes of this subsection, a *"juvenile placement facility"* means any of the following:

a. A child foster care facility licensed under section 237.4.

b. Institutions controlled by the department of human services listed in section 218.1.

c. Juvenile detention and juvenile shelter care homes approved under section 232.142.

d. Psychiatric medical institutions for children licensed under chapter 135H.

e. Substance abuse facilities as defined in section 125.2.

3. An officer, employee, contractor, vendor, volunteer, or agent of a county who engages in a sex act with a prisoner incarcerated in a county jail commits an aggravated misdemeanor.

91 Acts, ch 219, §21; 98 Acts, ch 1094, §1

709.17 Polygraph examinations of victims or witnesses — limitations. Repealed by 98 Acts, ch 1090, § 80, 84. See § 915.44.

709.18 Abuse of a corpse.

A person commits abuse of a human corpse if the person knowingly and intentionally engages in a sex act, as defined in section 702.17, with a human corpse. Abuse of a human corpse is a class "D" felony.

96 Acts, ch 1006, §1

709.19 No-contact order upon defendant's release from jail or prison.

1. Upon the filing of an affidavit by a victim, or a parent or guardian on behalf of a minor who is a victim, of a crime of a sexual offense in violation of section 709.2, 709.3, 709.4, 709.8, 709.9, 709.11, 709.12, 709.14, 709.15, or 709.16, which states that the presence of or contact with the defendant whose release from jail or prison is imminent or who has been released from jail or prison continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family, the court shall enter a temporary no-contact order which shall require the defendant to have no contact with the victim, persons residing with the victim, or members of the victim's immediate family.

2. A temporary restraining order issued under this section shall expire at such time as the court directs, not to exceed ten days from the date of issuance. The court, for good cause shown before expiration of the order, may extend the expiration date of the order for up to ten days, or for a longer period agreed to by the adverse party.

3. Upon motion of the party, the court shall issue a no-contact order which shall require the defendant to have no contact with the victim, persons residing with the victim, or members of the victim's immediate family if the court, after a hearing, finds by a preponderance of the evidence, that the defendant poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family.

4. A no-contact order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the purpose of the order.

5. The court shall set the duration of the no-contact order for the period it determines is necessary to protect the safety of the victim, persons residing with the victim, or members of the victim's immediate family, but the duration shall not be set for a period in excess of one year from the date of the issuance of the order. The victim, at any time within ninety days before the expiration of the order, may apply for a new no-contact order under this section.

6. Violation of a no-contact order issued under this section constitutes contempt of court and may be punished by contempt proceedings.

2002 Acts, ch 1085, §1
NEW section

709.20 Sexual abuse — no-contact order.

1. When a person arrested for sexual abuse in violation of section 709.2, 709.3, or 709.4 is brought before a magistrate for initial appearance under section 804.21, 804.22, or 804.24, and the magistrate finds probable cause to believe that a violation of section 709.2, 709.3, or 709.4 has occurred and that the presence of or contact with the defendant poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the defendant to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, in addition to any other conditions of release determined and imposed by the magistrate under section 811.2. A no-contact order requiring the defendant to have no contact with the alleged victim's children shall prevail over any existing order which may be in conflict with the no-contact order.

The court order shall contain the court's directives restricting the defendant from having contact with the victim, persons residing with the victim, or the victim's immediate family. The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

2. The clerk of the district court or other person designated by the court shall provide a copy of this order to the victim pursuant to this chapter. The order has force and effect until it is modified or terminated by subsequent court action in a contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. Upon final disposition of the criminal or juvenile court action, the court shall make a determination whether the no-contact order should be modified or terminated. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of section 709.2, 709.3, or 709.4, the court shall modify the no-contact order issued by the magistrate to provide that the no-contact order shall continue in effect for a period of five years from the date that the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation. Upon the filing of an affidavit by the victim which states that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family within ninety days prior to the expiration of the modified no-contact order, the court shall modify and extend the no-contact order for an additional period of five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. The number of modifications extending the no-contact order permitted by this subsection is not limited.

The clerk of the district court shall also provide notice and copies of the no-contact order to the applicable law enforcement agencies and the twenty-four-hour dispatcher for the law enforcement agencies, in the same manner as provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

2002 Acts, ch 1099, §1
NEW section

CHAPTER 709A

CONTRIBUTING TO JUVENILE DELINQUENCY

This chapter not enacted as a part of this title;
transferred from chapter 233 in Code 1993
See §218.95 for provisions pertaining to
construction of synonymous terms

709A.1 Contributing to delinquency.
709A.2 Penalty — not a bar.
709A.3 Suspension of sentence.
709A.4 Preliminary examination.
709A.5 Interpretative clause.
709A.6 Using a juvenile to commit certain offenses.

709A.1 Contributing to delinquency.

It shall be unlawful:

1. To encourage any child under eighteen years of age to commit any act of delinquency defined in chapter 232.

2. To knowingly send, cause to be sent, or induce to go, any child under the age of eighteen to any of the following:

a. A brothel or other premises used for the purposes of prostitution, with the intent that the child engage the services of a prostitute.

b. An unlicensed premises where alcoholic liquor, wine, or beer is unlawfully sold or kept for sale.

c. Any premises the use of which constitutes a violation of sections 725.5, 725.10, or 725.11.

3. To knowingly encourage, contribute, or in any manner cause such child to violate any law of this state, or any ordinance of any city.

4. To knowingly permit, encourage, or cause such child to be guilty of any vicious or immoral conduct.

5. For a parent willfully to fail to support the parent's child under eighteen years of age whom the parent has a legal obligation to support.

[C24, 27, 31, 35, 39, §**3658;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §233.1]

86 Acts, ch 1046, §1

C93, §709A.1

709A.2 Penalty — not a bar.

A violation of section 709A.1 is a simple misdemeanor. A conviction does not bar a prosecution of the convicted person for an indictable offense when the acts which caused or contributed to the delinquency or dependency of the child are indictable.

[C24, 27, 31, 35, 39, §**3659;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §233.2]

84 Acts, ch 1219, §11

C93, §709A.2

See §709A.5, 903.1

709A.3 Suspension of sentence.

Upon said conviction being had, the court may, for a period not exceeding two years, suspend sentence under such conditions as to good behavior as it may prescribe. Should said conditions be fulfilled, the court may at any time enter an order setting said conviction aside and wholly releasing the defendant therefrom. Should said condition be not fulfilled to the satisfaction of the court, an order of sentence may at any time be entered which shall be effective from the date thereof.

[C24, 27, 31, 35, 39, §**3660;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §233.3]

C93, §709A.3

709A.4 Preliminary examination.

If, in proceedings in juvenile court, it appears probable that an indictable offense has been committed and that the commission thereof caused, or contributed to, the delinquency or dependency of such a child, said court may order the issuance of a warrant for the arrest of such suspected person, and on the appearance of such person said court may proceed to hold a preliminary examination, and in so doing shall exercise all the powers of a committing magistrate.

[C24, 27, 31, 35, 39, §**3661;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §233.4]

C93, §709A.4

709A.5 Interpretative clause.

For the purposes of this chapter the word *"dependency"* shall mean all the conditions as enumerated in section 232.2, subsection 6.

[C31, 35, §3661-c1; C39, §**3661.001;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §233.5]

C93, §709A.5

709A.6 Using a juvenile to commit certain offenses.

1. As used in this section, unless the context otherwise requires, *"profit"* means a monetary gain, monetary advantage, or monetary benefit.

2. It is unlawful for a person to act with, enter into a common scheme or design with, conspire with, recruit or use a person under the age of eigh-

teen, through threats, monetary payment, or other means, to commit an indictable offense for the profit of the person acting with, entering into the common scheme or design with, conspiring with, recruiting or using the juvenile. A person who violates this section commits a class "C" felony.

92 Acts, ch 1231, §34; 95 Acts, ch 191, §50

CHAPTER 709B

TESTS FOR CERTAIN SEXUAL OFFENDERS

Repealed effective January 1, 1999, by
98 Acts, ch 1090, §82, 84; see chapter 915

CHAPTER 709C

CRIMINAL TRANSMISSION OF HUMAN IMMUNODEFICIENCY VIRUS

For provisions relating to testing of
offenders and alleged criminal offenders,
see §915.40 – 915.43

709C.1 Criminal transmission of human immunodeficiency virus.

709C.1 Criminal transmission of human immunodeficiency virus.

1. A person commits criminal transmission of the human immunodeficiency virus if the person, knowing that the person's human immunodeficiency virus status is positive, does any of the following:

a. Engages in intimate contact with another person.

b. Transfers, donates, or provides the person's blood, tissue, semen, organs, or other potentially infectious bodily fluids for transfusion, transplantation, insemination, or other administration to another person.

c. Dispenses, delivers, exchanges, sells, or in any other way transfers to another person any nonsterile intravenous or intramuscular drug paraphernalia previously used by the person infected with the human immunodeficiency virus.

2. For the purposes of this section:

a. *"Human immunodeficiency virus"* means the human immunodeficiency virus identified as the causative agent of acquired immune deficiency syndrome.

b. *"Intimate contact"* means the intentional exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of the human immunodeficiency virus.

c. *"Intravenous or intramuscular drug paraphernalia"* means any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into or withdrawing a bodily fluid from the human body.

3. Criminal transmission of the human immunodeficiency virus is a class "B" felony.

4. This section shall not be construed to require that an infection with the human immunodeficiency virus has occurred for a person to have committed criminal transmission of the human immunodeficiency virus.

5. It is an affirmative defense that the person exposed to the human immunodeficiency virus knew that the infected person had a positive human immunodeficiency virus status at the time of the action of exposure, knew that the action of exposure could result in transmission of the human immunodeficiency virus, and consented to the action of exposure with that knowledge.

98 Acts, ch 1087, §7

CHAPTER 710

KIDNAPPING AND RELATED OFFENSES

710.1 Kidnapping defined.
710.2 Kidnapping in the first degree.
710.3 Kidnapping in the second degree.
710.4 Kidnapping in the third degree.
710.5 Child stealing.
710.6 Violating custodial order.
710.7 False imprisonment.
710.8 Harboring a runaway child prohibited — penalty.
710.9 Civil liability for harboring a runaway child.
710.10 Enticing away a minor.
710.11 Purchase or sale of individual.

710.1 Kidnapping defined.

A person commits kidnapping when the person either confines a person or removes a person from one place to another, knowing that the person who confines or removes the other person has neither the authority nor the consent of the other to do so; provided, that to constitute kidnapping the act must be accompanied by one or more of the following:

1. The intent to hold such person for ransom.
2. The intent to use such person as a shield or hostage.
3. The intent to inflict serious injury upon such person, or to subject the person to a sexual abuse.
4. The intent to secretly confine such person.
5. The intent to interfere with the performance of any government function.

[C51, §2588; R60, §4211; C73, §3869; C97, §4765; S13, §4750-b; C24, 27, 31, 35, 39, §**12981, 12983;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §706.1, 706.3; C79, 81, §710.1]

710.2 Kidnapping in the first degree.

Kidnapping is kidnapping in the first degree when the person kidnapped, as a consequence of the kidnapping, suffers serious injury, or is intentionally subjected to torture or sexual abuse.

Kidnapping in the first degree is a class "A" felony.

[C51, §2588; R60, §4211; C73, §3869; C97, §4765; C24, 27, 31, 35, 39, §**12981;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §706.1; C79, 81, §710.2]

Definition of forcible felony, §702.11

710.3 Kidnapping in the second degree.

Kidnapping where the purpose is to hold the victim for ransom or where the kidnapper is armed with a dangerous weapon is kidnapping in the second degree. Kidnapping in the second degree is a class "B" felony.

[C51, §2588; R60, §4211; C73, §3869; C97, §4765; S13, §4750-b; C24, 27, 31, 35, 39, §**12981, 12983;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §706.1, 706.3; C79, 81, §710.3]

Definition of forcible felony, §702.11

710.4 Kidnapping in the third degree.

All other kidnappings are kidnappings in the third degree. Kidnapping in the third degree is a class "C" felony.

[C51, §2588; R60, §4211; C73, §3869; C97, §4765; C24, 27, 31, 35, 39, §**12981;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §706.1; C79, 81, §710.4]

Definition of forcible felony, §702.11

710.5 Child stealing.

A person commits a class "C" felony when, knowing that the person has no authority to do so, the person forcibly or fraudulently takes, decoys, or entices away any child with intent to detain or conceal such child from its parents or guardian, or other persons or institution having the lawful custody of such child, unless the person is a relative of such child, and the person's sole purpose is to assume custody of such child.

[S13, §254-a46; C24, 27, 31, 35, 39, §**12982;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §706.2; C79, 81, §710.5]

710.6 Violating custodial order.

A relative of a child who, acting in violation of an order of any court which fixes, permanently or temporarily, the custody or physical care of the child in another, takes and conceals the child, within or outside the state, from the person having lawful custody or physical care, commits a class "D" felony.

A parent of a child living apart from the other parent who conceals that child or causes that child's whereabouts to be unknown to a parent with visitation rights or parental time in violation of a court order granting visitation rights or parental time and without the other parent's consent, commits a serious misdemeanor.

[C79, 81, §710.6]

85 Acts, ch 132, §1; 86 Acts, ch 1145, §1

710.7 False imprisonment.

A person commits false imprisonment when, having no reasonable belief that the person has any right or authority to do so, the person intentionally confines another against the other's will.

A person is confined when the person's freedom to move about is substantially restricted by force, threat, or deception. False imprisonment is a serious misdemeanor.

[C79, 81, §710.7]

710.8 Harboring a runaway child prohibited — penalty.

1. As used in this section and section 710.9 unless the context otherwise requires:

a. "Criminal act" means the violation of any federal or state law.

b. "Harbor" means to provide aid, support, or shelter.

c. "Runaway child" means a person under eighteen years of age who is voluntarily absent from the person's home without the consent of the person's parent, guardian, or custodian.

2. A person shall not harbor a runaway child with the intent of committing a criminal act involving the child or with the intent of enticing or forcing the runaway child to commit a criminal act.

3. A person shall not harbor a runaway child with the intent of allowing the runaway child to remain away from home against the wishes of the child's parent, guardian, or custodian. However, the provisions of this subsection do not apply to a shelter care home which is licensed or approved by the department of human services.

4. A person convicted of a violation of this section is guilty of an aggravated misdemeanor.

85 Acts, ch 183, §1; 96 Acts, ch 1219, §75

710.9 Civil liability for harboring a runaway child.

A parent, guardian, or custodian of a runaway child has a right of action against a person who harbored the runaway child in violation of section 710.8 for expenses sustained in the search for the child, for damages sustained due to physical or emotional distress due to the absence of the child, and for punitive damages.

85 Acts, ch 183, §2

710.10 Enticing away a minor.

1. A person commits a class "C" felony when, without authority and with the intent to commit sexual abuse or sexual exploitation upon a minor under the age of thirteen, the person entices away the minor under the age of thirteen, or entices away a person reasonably believed to be under the age of thirteen.

2. A person commits a class "D" felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices away a minor under the age of sixteen, or entices away a person reasonably believed to be under the age of sixteen.

3. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to entice away a minor under the age of sixteen, or attempts to entice away a person reasonably believed to be under the age of sixteen.

4. A person's intent to commit a violation of this section may be inferred when the person is not known to the person being enticed away and the person does not have the permission of the parent, guardian, or custodian to contact the person being enticed away.

5. For purposes of determining jurisdiction under section 803.1, an offense is considered committed in this state if the communication to entice away a minor or a person believed to be a minor who is present in this state originates from another state, or the communication to entice away a minor or a person believed to be a minor is sent from this state.

85 Acts, ch 183, §3; 86 Acts, ch 1238, §29; 96 Acts, ch 1082, §2; 2001 Acts, ch 17, §3

710.11 Purchase or sale of individual.

A person commits a class "C" felony when the person purchases or sells or attempts to purchase or sell an individual to another person. This section does not apply to a surrogate mother arrangement. For purposes of this section, a *"surrogate mother arrangement"* means an arrangement whereby a female agrees to be artificially inseminated with the semen of a donor, to bear a child, and to relinquish all rights regarding that child to the donor or donor couple.

89 Acts, ch 116, §1

CHAPTER 711

ROBBERY AND EXTORTION

711.1 Robbery defined.
711.2 Robbery in the first degree.
711.3 Robbery in the second degree.
711.4 Extortion.

711.1 Robbery defined.

A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:

1. Commits an assault upon another.
2. Threatens another with or purposely puts another in fear of immediate serious injury.
3. Threatens to commit immediately any forcible felony.

It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen.

[C51, §2578; R60, §4201; C73, §3858; C97, §4753; C24, 27, 31, 35, 39, §**13038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §711.1]

Definition of forcible felony, §702.11

711.2 Robbery in the first degree.

A person commits robbery in the first degree when, while perpetrating a robbery, the person purposely inflicts or attempts to inflict serious injury, or is armed with a dangerous weapon. Robbery in the first degree is a class "B" felony.

[C51, §2579; R60, §4202; C73, §3859; C97, §4754; C24, 27, 31, 35, 39, §**13039;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §711.2]

Definition of forcible felony, §702.11

711.3 Robbery in the second degree.

All robbery which is not robbery in the first degree is robbery in the second degree. Robbery in the second degree is a class "C" felony.

[C51, §2580; R60, §4203; C73, §3860; C97, §4755; C24, 27, 31, 35, 39, §**13040;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §711.3]

Definition of forcible felony, §702.11

711.4 Extortion.

A person commits extortion if the person does any of the following with the purpose of obtaining for oneself or another anything of value, tangible or intangible, including labor or services:

1. Threatens to inflict physical injury on some person, or to commit any public offense.
2. Threatens to accuse another of a public offense.
3. Threatens to expose any person to hatred, contempt, or ridicule.
4. Threatens to harm the credit or business or professional reputation of any person.
5. Threatens to take or withhold action as a public officer or employee, or to cause some public official or employee to take or withhold action.
6. Threatens to testify or provide information or to withhold testimony or information with respect to another's legal claim or defense.
7. Threatens to wrongfully injure the property of another.

It is a defense to a charge of extortion that the person making a threat other than a threat to commit a public offense, reasonably believed that the person had a right to make such threats in order to recover property, or to receive compensation for property or services, or to recover a debt to which the person has a good faith claim.

Extortion is a class "D" felony.

[C51, §2590; R60, §4213; C73, §3871; C97, §4767; S13, §4767; C24, 27, 31, 35, 39, §**13164;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §720.1; C79, 81, §711.4]

CHAPTER 712

ARSON

712.1 Arson defined.
712.2 Arson in the first degree.
712.3 Arson in the second degree.
712.4 Arson in the third degree.
712.5 Reckless use of fire or explosives.
712.6 Possession of explosive or incendiary materials or devices.
712.7 False reports.
712.8 Threats.
712.9 Violations of individual rights — penalties.

712.1 Arson defined.

Causing a fire or explosion, or placing any burning or combustible material, or any incendiary or explosive device or material, in or near any property with the intent to destroy or damage such property, or with the knowledge that such property will probably be destroyed or damaged, is arson, whether or not any such property is actually destroyed or damaged. Provided, that where a person who owns said property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, consented to the de-

fendant's acts, and where no insurer has been exposed fraudulently to any risk, and where the act was done in such a way as not to unreasonably endanger the life or property of any other person the act shall not be arson.

[C51, §2598 – 2603; R60, §4222 – 4227; C73, §3880 – 3885; C97, §4776 – 4781, 4795, 4798; C24, §12963, 12964, 12984 – 12989; C27, 31, 35, §12963, 12964, 12991-b1 – b3, -b5; C39, §**12963, 12964, 12991.1 – 12991.3, 12991.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §697.3, 697.4, 707.1 – 707.3, 707.5; C79, 81, §712.1]

712.2 Arson in the first degree.

Arson is arson in the first degree when the property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, is property in which the presence of one or more persons can be reasonably anticipated, or the arson results in the death of a fire fighter, whether paid or volunteer.

Arson in the first degree is a class "B" felony.

[C51, §2598, 2599; R60, §4222, 4223; C73, §3880, 3881; C97, §4776, 4777, 4795; C24, §12964, 12984, 12985; C27, 31, 35, §12964, 12991-b1; C39, §**12964, 12991.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §697.4, 707.1; C79, 81, §712.2]

84 Acts, ch 1064, §1

Definition of forcible felony, §702.11

712.3 Arson in the second degree.

Arson which is not arson in the first degree is arson in the second degree when the property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, is a building or a structure, or real property of any kind, or standing crops, or is personal property the value of which exceeds five hundred dollars. Arson in the second degree is a class "C" felony.

[C51, §2600 – 2602; R60, §4224 – 4226; C73, §3882 – 3884; C97, §4778 – 4780; C24, §12986 – 12988; C27, 31, 35, §12991-b1, 12991-b3; C39, §**12991.2, 12991.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §707.2, 707.3; C79, 81, §712.3]

712.4 Arson in the third degree.

Arson which is not arson in the first degree or arson in the second degree is arson in the third degree. Arson in the third degree is an aggravated misdemeanor.

[C79, 81, §712.4]

712.5 Reckless use of fire or explosives.

Any person who shall so use fire or any incendiary or explosive device or material as to recklessly endanger the property or safety of another shall be guilty of a serious misdemeanor.

[C51, §2607; R60, §4231; C73, §3889; C97, §4785; C24, 27, 31, 35, 39, §**12992;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §707.7; C79, 81, §712.5]

712.6 Possession of explosive or incendiary materials or devices.

Any person who shall possess any incendiary or explosive device or material with the intent to use such device or material to commit any public offense shall be guilty of a class "C" felony.

[C71, 73, 75, 77, §697.11; C79, 81, §712.6]

712.7 False reports.

A person who, knowing the information to be false, conveys or causes to be conveyed to any person any false information concerning the placement of any incendiary or explosive device or material or other destructive substance or device in any place where persons or property would be endangered commits a class "D" felony.

[C71, 73, 75, 77, §697.6; C79, 81, §712.7]

712.8 Threats.

Any person who threatens to place or attempts to place any incendiary or explosive device or material, or any destructive substance or device in any place where it will endanger persons or property, commits a class "D" felony.

[C71, 73, 75, 77, §697.7; C79, 81, §712.8]

712.9 Violations of individual rights — penalties.

A violation of sections 712.3 through 712.8, which is also a hate crime as defined in section 729A.2, shall be classified and punished as an offense one degree higher than the underlying offense.

92 Acts, ch 1157, §4

CHAPTER 713

BURGLARY

713.1 Burglary defined.
713.2 Attempted burglary defined.
713.3 Burglary in the first degree.
713.4 Attempted burglary in the first degree.
713.5 Burglary in the second degree.
713.6 Attempted burglary in the second degree.
713.6A Burglary in the third degree.
713.6B Attempted burglary in the third degree.

713.7 Possession of burglar's tools.
713.8 to 713.16 Repealed by 76 Acts, ch 1245(4), §525.
713.17 to 713.21 Repealed by 70 Acts, ch 1255, §16.
713.22 and 713.23 Repealed by 76 Acts, ch 1245(4), §525.
713.24 Transferred to §714.16.
713.25 Repealed by 65 Acts, ch 438, §2.
713.26 to 713.43 Repealed by 76 Acts, ch 1245(4), §525.
713.44 and 713.45 Transferred to §714.15.

713.1 Burglary defined.

Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure, such occupied structure not being open to the public, or who remains therein after it is closed to the public or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure, commits burglary.

[C51, §2608, 2611; R60, §4232, 4235; C73, §3891, 3894; C97, §4787, 4791, 4792, 4794; C24, 27, 31, 35, 39, §**12994, 13001 – 13004;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §708.1, 708.8 – 708.11; C79, 81, §713.1]

84 Acts, ch 1247, §2

Definition of occupied structure, §702.12

713.2 Attempted burglary defined.

Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license, or privilege to do so, attempts to enter an occupied structure, the occupied structure not being open to the public, or who attempts to remain therein after it is closed to the public or after the person's right, license, or privilege to be there has expired, or any person having such intent who attempts to break an occupied structure, commits attempted burglary.

[81 Acts, ch 204, §8]

84 Acts, ch 1247, §3

713.3 Burglary in the first degree.

1. A person commits burglary in the first degree if, while perpetrating a burglary in or upon an occupied structure in which one or more persons are present, any of the following circumstances apply:

a. The person has possession of an explosive or incendiary device or material.

b. The person has possession of a dangerous weapon.

c. The person intentionally or recklessly inflicts bodily injury on any person.

d. The person performs or participates in a sex act with any person which would constitute sexual abuse under section 709.1.

2. Burglary in the first degree is a class "B" felony.

[C51, §2609; R60, §4233; C73, §3892; C97, §4788; S13, §4799-a; C24, 27, 31, 35, 39; §**12995, 12997 – 12999;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §708.2, 708.4-708.6, C79, 81, §713.2]

C83, §713.3

90 Acts, ch 1233, §41; 92 Acts, ch 1231, §57; 94 Acts, ch 1107, §15; 98 Acts, ch 1059, §1

Definition of forcible felony, see §702.11

713.4 Attempted burglary in the first degree.

A person commits attempted burglary in the first degree if, while perpetrating an attempted burglary in or upon an occupied structure in which one or more persons are present, the person has possession of an explosive or incendiary device or material, or a dangerous weapon, or intentionally or recklessly inflicts bodily injury on any person. Attempted burglary in the first degree is a class "C" felony.

[81 Acts, ch 204, §8]

C83, §713.4

92 Acts, ch 1231, §58; 94 Acts, ch 1107, §16

713.5 Burglary in the second degree.

A person commits burglary in the second degree in either of the following circumstances:

1. While perpetrating a burglary in or upon an occupied structure in which no persons are present, the person has possession of an explosive or incendiary device or material, or a dangerous weapon, or a bodily injury results to any person.

2. While perpetrating a burglary in or upon an occupied structure in which one or more persons are present, the person does not have possession of an explosive or incendiary device or material, nor a dangerous weapon, and no bodily injury is caused to any person.

Burglary in the second degree is a class "C" felony.

[C79, 81, §713.3]

C83, §713.5

92 Acts, ch 1231, §59; 94 Acts, ch 1107, §17

713.6 Attempted burglary in the second degree.

A person commits attempted burglary in the second degree in either of the following circumstances:

1. While perpetrating an attempted burglary in or upon an occupied structure in which no persons are present, the person has possession of an explosive or incendiary device or material, or a dangerous weapon, or a bodily injury results to any person.

2. While perpetrating an attempted burglary in or upon an occupied structure in which one or more persons are present, the person does not have possession of an explosive or incendiary device or material, nor a dangerous weapon, and no bodily injury is caused to any person.

Attempted burglary in the second degree is a class "D" felony.

[81 Acts, ch 204, §8]

92 Acts, ch 1231, §60; 94 Acts, ch 1107, §18

713.6A Burglary in the third degree.

1. All burglary which is not burglary in the first degree or burglary in the second degree is burglary in the third degree. Burglary in the third degree is a class "D" felony, except as provided in subsection 2.

2. Burglary in the third degree involving a burglary of an unoccupied motor vehicle or motor truck as defined in section 321.1, or a vessel defined in section 462A.2, is an aggravated misdemeanor for a first offense. A second or subsequent conviction under this subsection is punishable under subsection 1.

92 Acts, ch 1231, §61; 2001 Acts, ch 165, §1; 2002 Acts, ch 1050, §53

Subsection 2 amended

713.6B Attempted burglary in the third degree.

1. All attempted burglary which is not attempted burglary in the first degree or attempted burglary in the second degree is attempted burglary in the third degree. Attempted burglary in the third degree is an aggravated misdemeanor, except as provided in subsection 2.

2. Attempted burglary in the third degree involving an attempted burglary of an unoccupied motor vehicle or motor truck as defined in section 321.1, or a vessel defined in section 462A.2, is a serious misdemeanor for a first offense. A second or subsequent conviction under this subsection is punishable under subsection 1.

92 Acts, ch 1231, §62; 2001 Acts, ch 165, §2; 2002 Acts, ch 1050, §54

Subsection 2 amended

713.7 Possession of burglar's tools.

Any person who possesses any key, tool, instrument, device or any explosive, with the intent to use it in the perpetration of a burglary, commits an aggravated misdemeanor.

[C97, §4790; S13, §4790; C24, 27, 31, 35, 39, §**13000;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §708.7; C79, 81, §713.4]

C83, §713.7

92 Acts, ch 1231, §63

713.8 to 713.16 Repealed by 76 Acts, ch 1245(4), § 525. See § 714.1, 714.8, and 716.5.

713.17 to 713.21 Repealed by 70 Acts, ch 1255, § 16.

713.22 and 713.23 Repealed by 76 Acts, ch 1245(4), § 525.

713.24 Transferred to § 714.16.

713.25 Repealed by 65 Acts, ch 438, § 2.

713.26 to 713.43 Repealed by 76 Acts, ch 1245(4), § 525. See § 714.8, 720.5, and 727.9.

713.44 and 713.45 Transferred to § 714.15.

CHAPTER 713A

ADVERTISING AND SELLING COURSES OF INSTRUCTION

Transferred to §714.17 through 714.22

CHAPTER 713B

DOOR-TO-DOOR SALES

Transferred to chapter 555A

CHAPTER 714

THEFT, FRAUD, AND RELATED OFFENSES

714.1 Theft defined.
714.2 Degrees of theft.
714.3 Value.
714.4 Claim of right.
714.5 Library materials and equipment — unpurchased merchandise — evidence of intention.
714.6 Land.
714.6A Video rental property theft — evidence of intention — affirmative defense.
714.7 Operating vehicle without owner's consent.
714.7A Veterans' grave markers.
714.7B Theft detection devices — shield or removal prohibited.
714.8 Fraudulent practices defined.
714.9 Fraudulent practice in the first degree.
714.10 Fraudulent practice in the second degree.
714.11 Fraudulent practice in the third degree.
714.12 Fraudulent practice in the fourth degree.
714.13 Fraudulent practice in the fifth degree.
714.14 Value for purposes of fraudulent practices.
714.15 Reproduction of sound recordings.
714.16 Consumer frauds.
714.16A Additional civil penalty for consumer frauds committed against elderly — fund established.
714.16B Identity theft — civil cause of action.
714.17 Unlawful advertising and selling courses of instruction.
714.18 Evidence of financial responsibility.
714.19 Nonapplicability.
714.20 One contract per person.
714.21 Penalty.
714.22 Trade and vocational schools — exemption — conditions.
714.23 Refund policies.
714.24 Reserved.
714.25 Disclosure.

714.1 Theft defined.

A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.

2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person. Failure by a bailee or lessee of personal property to return the property within seventy-two hours after a time specified in a written agreement of lease or bailment shall be evidence of misappropriation.

3. Obtains the labor or services of another, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another, by deception. Where compensation for goods and services is ordinarily paid immediately upon the obtaining of such goods or the rendering of such services, the refusal to pay or leaving the premises without payment or offer to pay or without having obtained from the owner or operator the right to pay subsequent to leaving the premises gives rise to an inference that the goods or services were obtained by deception.

4. Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen, unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer. The fact that the person is found in possession of property which has been stolen from two or more persons on separate occasions, or that the person is a dealer or other person familiar with the value of such property and has acquired it for a consideration which is far below its reasonable value, shall be evidence from which the court or jury may infer that the person knew or believed that the property had been stolen.

5. Takes, destroys, conceals or disposes of property in which someone else has a security interest, with intent to defraud the secured party.

6. Makes, utters, draws, delivers, or gives any check, share draft, draft, or written order on any bank, credit union, person, or corporation, and obtains property, the use of property, including rental property, or service in exchange for such instrument, if the person knows that such check, share draft, draft, or written order will not be paid when presented.

Whenever the drawee of such instrument has refused payment because of insufficient funds, and the maker has not paid the holder of the instrument the amount due thereon within ten days of the maker's receipt of notice from the holder that payment has been refused by the drawee, the court or jury may infer from such facts that the maker knew that the instrument would not be

paid on presentation. Notice of refusal of payment shall be by certified mail, or by personal service in the manner prescribed for serving original notices.

Whenever the drawee of such instrument has refused payment because the maker has no account with the drawee, the court or jury may infer from such fact that the maker knew that the instrument would not be paid on presentation.

7. Obtains gas, electricity or water from a public utility or obtains cable television or telephone service from an unauthorized connection to the supply or service line or by intentionally altering, adjusting, removing or tampering with the metering or service device so as to cause inaccurate readings.

8. Knowingly and without authorization accesses or causes to be accessed a computer, computer system, or computer network, or any part thereof, for the purpose of obtaining computer services, information, or property or knowingly and without authorization and with the intent to permanently deprive the owner of possession, takes, transfers, conceals, or retains possession of a computer, computer system, or computer network or any computer software or computer program, or computer data contained in a computer, computer system, or computer network.

9. *a.* Obtains the temporary use of video rental property with the intent to deprive the owner of the use and possession of the video rental property without the consent of the owner.

b. Lawfully obtains the temporary use of video rental property and fails to return the video rental property by the agreed time with the intent to deprive the owner of the use and possession of the video rental property without the consent of the owner. The aggregate value of the video rental property involved shall be the original retail value of the video rental property.

10. Any act that is declared to be theft by any provision of the Code.

[C51, §2612, 2615 – 2618, 2620, 2621; R60, §806, 807, 4236, 4237, 4240 – 4243, 4245, 4246, 4251; C73, §3895, 3902, 3905 – 3911, 3915; C97, §4831, 4837 – 4842, 4844, 4845, 4850, 4852, 5076; S13, §4850, 4852-c, -d, -e; C24, §13005, 13010, 13014 – 13016, 13018, 13027, 13030, 13031, 13035 – 13037, 13042, 13046 – 13048, 13052; C27, 31, 35, §13005, 13010, 13014 – 13016, 13018, 13027, 13030, 13031, 13034 – a1 – 13037, 13042, 13046 – 13048, 13052; C39, §**13005, 13010, 13014 – 13016, 13018, 13027, 13030, 13031, 13034.1 – 13037, 13042, 13046 – 13048, 13052;** C46, 50, 54, 58, §709.1, 709.6 – 709.9, 709.11, 710.1, 710.4, 710.5, 710.9 – 710.12, 712.1, 713.2 – 713.4, 713.7; C62, 66, §709.1, 709.6 – 709.9, 709.11, 709.20, 710.1, 710.4, 710.5, 710.9 – 710.12, 712.1, 713.2 – 713.4, 713.7; C71, 73, 75, 77, §709.1, 709.6 – 709.9, 709.11, 709.20, 709.25, 710.1, 710.4, 710.5, 710.9 – 710.12, 710.14, 712.1, 713.2 – 713.4, 713.7; C79, 81, §714.1]

85 Acts, ch 164, §1; 89 Acts, ch 170, §1; 97 Acts, ch 167, §1; 2000 Acts, ch 1201, §9

Computer terminology, see §702.1A

714.2 Degrees of theft.

1. The theft of property exceeding ten thousand dollars in value, or the theft of property from the person of another, or from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing, or the proximity of battle, or the theft of property which has been removed from a building because of a physical disaster, riot, bombing, or the proximity of battle, is theft in the first degree. Theft in the first degree is a class "C" felony.

2. The theft of property exceeding one thousand dollars but not exceeding ten thousand dollars in value or theft of a motor vehicle as defined in chapter 321 not exceeding ten thousand dollars in value, is theft in the second degree. Theft in the second degree is a class "D" felony. However, for purposes of this subsection, *"motor vehicle"* does not include a motorized bicycle as defined in section 321.1, subsection 40, paragraph *"b"*.

3. The theft of property exceeding five hundred dollars but not exceeding one thousand dollars in value, or the theft of any property not exceeding five hundred dollars in value by one who has before been twice convicted of theft, is theft in the third degree. Theft in the third degree is an aggravated misdemeanor.

4. The theft of property exceeding two hundred dollars in value but not exceeding five hundred dollars in value is theft in the fourth degree. Theft in the fourth degree is a serious misdemeanor.

5. The theft of property not exceeding two hundred dollars in value is theft in the fifth degree. Theft in the fifth degree is a simple misdemeanor.

[C51, §2612, 2618; R60, §4237, 4243, 4247, 4251; C73, §3902, 3908, 3915; C97, §4831, 4840, 4846, 4850; S13, §4850; C24, 27, 31, 35, 39, §**13006, 13016, 13026, 13028;** C46, 50, 54, 58, §709.2, 709.9, 709.19, 710.2; C62, 66, 71, 73, 75, 77, §709.2, 709.9, 709.19, 709.20, 710.2; C79, 81, §714.2; 81 Acts, ch 204, §9]

83 Acts, ch 134, §1; 92 Acts, ch 1060, §1; 99 Acts, ch 153, §11

714.3 Value.

The value of property is its highest value by any reasonable standard at the time that it is stolen. Reasonable standard includes but is not limited to market value within the community, actual value, or replacement value.

If money or property is stolen from the same person or location by two or more acts, or from different persons by two or more acts which occur in approximately the same location or time period so that the thefts are attributable to a single scheme,

plan or conspiracy, these acts may be considered a single theft and the value may be the total value of all the property stolen.

[C51, §2625; R60, §4250; C73, §3909, 3914; C97, §4842, 4849; C24, 27, 31, 35, 39, §**13007, 13032;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §709.3, 710.6; C79, 81, §714.3]

84 Acts, ch 1162, §1; 85 Acts, ch 195, §60

714.4 Claim of right.

No person who takes, obtains, disposes of, or otherwise uses or acquires property, is guilty of theft by reason of such act if the person reasonably believes that the person has a right, privilege or license to do so, or if the person does in fact have such right, privilege or license.

[C79, 81, §714.4]

714.5 Library materials and equipment — unpurchased merchandise — evidence of intention.

The fact that a person has concealed library materials or equipment as defined in section 702.22 or unpurchased property of a store or other mercantile establishment, either on the premises or outside the premises, is material evidence of intent to deprive the owner, and the finding of library materials or equipment or unpurchased property concealed upon the person or among the belongings of the person, is material evidence of intent to deprive and, if the person conceals or causes to be concealed library materials or equipment or unpurchased property, upon the person or among the belongings of another, the finding of the concealed materials, equipment or property is also material evidence of intent to deprive on the part of the person concealing the library materials, equipment or goods.

The fact that a person fails to return library materials for two months or more after the date the person agreed to return the library materials, or fails to return library equipment for one month or more after the date the person agreed to return the library equipment, is evidence of intent to deprive the owner, provided a reasonable attempt, including the mailing by restricted certified mail of notice that such material or equipment is overdue and criminal actions will be taken, has been made to reclaim the materials or equipment. Notices stating the provisions of this section and of section 808.12 with regard to library materials or equipment shall be posted in clear public view in all public libraries, in all libraries of educational, historical or charitable institutions, organizations or societies, in all museums and in all repositories of public records.

After the expiration of three days following the due date, the owner of borrowed library equipment may request the assistance of a dispute resolution center, mediation center or appropriate law enforcement agency in recovering the equipment from the borrower.

The owner of library equipment may require deposits by borrowers and in the case of late returns the owner may impose graduated penalties of up to twenty-five percent of the value of the equipment, based upon the lateness of the return.

In the case of lost library materials or equipment, arrangements may be made to make a monetary settlement.

[C62, 66, 71, 73, 75, 77, §709.21; C79, 81, §714.5]

85 Acts, ch 187, §2; 87 Acts, ch 56, §1

714.6 Land.

The mere trespass on or occupation of land, contrary to the rights of the owner thereof, is not theft.

[C79, 81, §714.6]

714.6A Video rental property theft — evidence of intention — affirmative defense.

1. The fact that a person obtains possession of video rental property by means of deception, including but not limited to furnishing a false name, address, or other identification to the owner, is evidence that possession was obtained with intent to knowingly deprive the owner of the use and possession of the video rental property.

2. The fact that a person, having lawfully obtained possession of video rental property, fails to pay the owner the fair market value of the video rental property or to return or make arrangements acceptable to the owner to return the video rental property to the owner within forty-eight hours after receipt of written notice and demand from the owner is evidence of an intent to knowingly deprive the owner of the use and possession of the video rental property.

3. It shall be an affirmative defense to a prosecution under section 714.1, subsection 9, paragraph *"a"*, if the defendant in possession of video rental property pays the owner the fair market value of the video rental property or returns the property to the owner within forty-eight hours of arrest, together with any standard overdue charges for the period that the owner was unlawfully deprived of possession, but not to exceed one hundred twenty days, and the value of the damage to the property, if any.

2000 Acts, ch 1201, §10

714.7 Operating vehicle without owner's consent.

Any person who shall take possession or control of any railroad vehicle, or any self-propelled vehicle, aircraft, or motor boat, the property of another, without the consent of the owner of such, but without the intent to permanently deprive the owner thereof, shall be guilty of an aggravated misdemeanor. A violation of this section may be proved as a lesser included offense on an indictment or information charging theft.

[C97, §4813, 4814; S13, §4823; C24, 27, 31, 35, §13092, 13125 – 13127; C39, §**5006.05, 13125 –**

13127; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §321.76, 716.13 – 716.15; C79, 81, §714.7]

714.7A Veterans' grave markers.

A person commits a simple misdemeanor when the person takes possession or control of a veteran's grave marker which was provided pursuant to section 35B.16, with the intention to deprive the owner of the marker, regardless of the value of the marker. The person shall also be liable for reimbursement in an amount equal to three times the cost of the marker to be paid to the county commission of veteran affairs or other person who furnished the marker.

89 Acts, ch 47, §1; 94 Acts, ch 1142, §4

714.7B Theft detection devices — shield or removal prohibited.

1. A person shall not intentionally manufacture or attempt to manufacture, sell or attempt to sell, possess, use, distribute or attempt to distribute, a theft detection shielding device.

2. A person shall not remove or attempt to remove a theft detection device with the intent of committing a theft and without the permission of the merchant who is displaying or selling the goods, wares, or merchandise.

3. A person shall not possess any tool, instrument, or device with the intent to use it in the unlawful removal of a theft detection device.

4. For purposes of this section, *"theft detection shielding device"* means any laminated or coated bag or device designed to shield merchandise from detection by an electronic or magnetic theft alarm system or any other system designed to alert a person of a possible theft. *"Theft detection device"* means any electronic or other device attached to goods, wares, or merchandise on display or for sale by a merchant.

5. A person who violates subsection 1 or 3 commits a serious misdemeanor.

6. A person who violates subsection 2 commits the following:

a. A simple misdemeanor if the value of the goods, wares, or merchandise does not exceed two hundred dollars.

b. A serious misdemeanor if the value of the goods, wares, or merchandise exceeds two hundred dollars.

2000 Acts, ch 1108, §1

714.8 Fraudulent practices defined.

A person who does any of the following acts is guilty of a fraudulent practice:

1. Makes, tenders or keeps for sale any warehouse receipt, bill of lading, or any other instrument purporting to represent any right to goods, with knowledge that the goods represented by such instrument do not exist.

2. Knowingly attaches or alters any label to any goods offered or kept for sale so as to materially misrepresent the quality or quantity of such goods, or the maker or source of such goods.

3. Knowingly executes or tenders a false certification under penalty of perjury, false affidavit, or false certificate, if the certification, affidavit, or certificate is required by law or given in support of a claim for compensation, indemnification, restitution, or other payment.

4. Makes any entry in or alteration of any public records, or any records of any corporation, partnership, or other business enterprise or nonprofit enterprise, knowing the same to be false.

5. Removes, alters or defaces any serial or other identification number, or any owners' identification mark, from any property not the person's own.

6. For the purpose of soliciting assistance, contributions, or other thing of value, falsely represents oneself to be a veteran of the armed forces of the United States, or a member of any fraternal, religious, charitable, or veterans organization, or any pretended organization of a similar nature, or to be acting on behalf of such person or organization.

7. Manufactures, sells, or keeps for sale any token or device suitable for the operation of a coin-operated device or vending machine, with the intent that such token or device may be so used, or with the representation that they can be so used; provided, that the owner or operator of any coin-operated device or vending machine may sell slugs or tokens for use in the person's own devices.

8. Manufactures or possesses any false or counterfeit label, with the intent that it be placed on merchandise to falsely identify its origin or quality, or who sells any such false or counterfeit label with the representation that it may be so used.

9. Alters or renders inoperative or inaccurate any meter or measuring device used in determining the value of or compensation for the purchase, use or enjoyment of property, with the intent to defraud any person.

10. Does any act expressly declared to be a fraudulent practice by any other section of the Code.

11. Removes, defaces, covers, alters, or destroys any component part number as defined in section 321.1, vehicle identification number as defined in section 321.1, or product identification number as defined in section 321.1, for the purpose of concealing or misrepresenting the identity or year of manufacture of the component part or vehicle.

12. Knowingly transfers or assigns a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6, or accepts a transfer of or an assignment of a legal or equitable interest in property, as defined in section 702.14, for less than fair consid-

eration, with the intent of enabling the party transferring the property to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6. A transfer or assignment of property for less than fair consideration within one year prior to an application for public assistance benefits shall be evidence of intent to transfer or assign the property in order to obtain public assistance for which a person is not eligible by reason of the amount of the person's assets. If a person is found guilty of a fraudulent practice in the transfer or assignment of property under this subsection the maximum sentence shall be the penalty established for a serious misdemeanor and sections 714.9, 714.10 and 714.11 shall not apply.

13. *Fraudulent practices in connection with targeted small business programs.*

a. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a woman or minority person primarily for the purpose of obtaining benefits under targeted small business programs if the transferor would otherwise not be qualified for such programs.

b. Solicits and is awarded a state contract on behalf of a targeted small business for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

c. Knowingly falsifying information on an application for the purpose of obtaining benefits under targeted small business programs.

A violation under this subsection is grounds for decertification of the targeted small business connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this section.

14. Makes payment pursuant to an agreement with a dealer or market agency for livestock held by the dealer or market agency by use of a financial instrument which is a check, share draft, draft, or written order on any financial institution, as defined in section 203C.1, if after seven days from the date that possession of the livestock is transferred pursuant to the purchase, the financial institution refuses payment on the instrument because of insufficient funds in the maker's account.

This subsection is not applicable if the maker pays the holder of the instrument the amount due on the instrument within one business day from a receipt of notice by certified mail from the holder that payment has been refused by the financial institution.

As used in this subsection, *"dealer"* means a person engaged in the business of buying or selling livestock, either on the person's own account, or as an employee or agent of a vendor or purchaser. *"Market agency"* means a person engaged in the business of buying or selling livestock on a commission basis.

15. Obtains or attempts to obtain the transfer of possession, control, or ownership, of the property of another by deception through communications conducted primarily by telephone and involving direct or implied claims that the other person contacted has won or is about to win a prize, or involving direct or implied claims that the other person contacted may be able to recover any losses suffered by such other person in connection with a prize promotion.

16. Knowingly provides false information to the treasurer of state when claiming, pursuant to section 556.19, an interest in unclaimed property held by the state, or knowingly provides false information to a person or fails to disclose the nature, value, and location of unclaimed property prior to entering into a contract to receive compensation to recover or assist in the recovery of property reported as unclaimed pursuant to section 556.11.

17. A packer who includes a confidentiality provision in a contract with a livestock seller in violation of section 202A.4.

18. Manufactures, creates, reproduces, alters, possesses, uses, transfers, or otherwise knowingly contributes to the production or use of a fraudulent retail sales receipt or universal price code label with intent to defraud another person engaged in the business of retailing.

For purposes of this subsection:

a. *"Retail sales receipt"* means a document intended to evidence payment for goods or services.

b. *"Universal price code label"* means the unique ten-digit bar code placed on the packaging of an item that may be used for purposes including but not limited to tracking inventory, maintaining price information in a computerized database, and serving as proof of purchase of a particular item.

19. A contractor who enforces a provision in a production contract that provides that information contained in the production contract is confidential as provided in section 202.3.

20. A contract seller who intentionally provides inaccurate information with regard to any matter required to be disclosed under section 558.70, subsection 1, or section 558A.4.

[C51, §2744, 2755; R60, §4394, 4405; C73, §4073, 4084, 4088; C97, §5041, 5056, 5068; C24, 27, §13045, 13058, 13059, 13071; C31, 35, §13045, 13058, 13059, 13071, 13092-d1; C39, §**13045, 13058, 13059, 13071, 13092.1;** C46, §713.1, 713.13, 713.14, 713.26, 714.12; C50, 54, 58, 62, §713.1, 713.13, 713.14, 713.26, 713.36 – 713.38, 714.12; C66, 71, 73, 75, 77, §713.1, 713.13, 713.14, 713.26, 713.36 – 713.38, 713.40, 714.12; C79, 81, §714.8]

84 Acts, ch 1048, §2; 85 Acts, ch 195, §61; 90 Acts, ch 1156, §12; 91 Acts, ch 15, §1; 91 Acts, ch 258, §65; 94 Acts, ch 1023, §70; 94 Acts, ch 1185, §1; 96 Acts, ch 1038, §2; 99 Acts, ch 88, §9, 13; 99 Acts,

ch 107, §1; 99 Acts, ch 108, §11; 99 Acts, ch 169, §21, 22, 24; 2002 Acts, ch 1136, §5, 6
Subsection 3, see also §720.2
For applicability provisions pertaining to subsection 20, see 2002 Acts, ch 1136, §6
NEW subsection 20

714.9 Fraudulent practice in the first degree.

Fraudulent practice in the first degree is a fraudulent practice where the amount of money or value of property involved exceeds ten thousand dollars.

Fraudulent practice in the first degree is a class "C" felony.

[C79, 81, §714.9]
92 Acts, ch 1060, §2

714.10 Fraudulent practice in the second degree.

Fraudulent practice in the second degree is the following:

1. A fraudulent practice where the amount of money or value of property or services involved exceeds one thousand dollars but does not exceed ten thousand dollars.

2. A fraudulent practice where the amount of money or value of property or services involved does not exceed one thousand dollars by one who has been convicted of a fraudulent practice twice before.

Fraudulent practice in the second degree is a class "D" felony.

[C79, 81, §714.10]
92 Acts, ch 1060, §3

714.11 Fraudulent practice in the third degree.

Fraudulent practice in the third degree is the following:

1. A fraudulent practice where the amount of money or value of property or service involved exceeds five hundred dollars but does not exceed one thousand dollars.

2. A fraudulent practice as set forth in section 714.8, subsections 2, 8 and 9.

3. A fraudulent practice where it is not possible to determine an amount of money or value of property and service involved.

Fraudulent practice in the third degree is an aggravated misdemeanor.

[C79, 81, §714.11]
92 Acts, ch 1060, §4

714.12 Fraudulent practice in the fourth degree.

Fraudulent practice in the fourth degree is a fraudulent practice where the amount of money or value of property or services involved exceeds two hundred dollars but does not exceed five hundred dollars.

Fraudulent practice in the fourth degree is a serious misdemeanor.

[C79, 81, §714.12]
92 Acts, ch 1060, §5; 99 Acts, ch 153, §12

714.13 Fraudulent practice in the fifth degree.

Fraudulent practice in the fifth degree is a fraudulent practice where the amount of money or value of property or services involved does not exceed two hundred dollars.

Fraudulent practice in the fifth degree is a simple misdemeanor.

[C79, 81, §714.13]
92 Acts, ch 1060, §6; 99 Acts, ch 153, §13

714.14 Value for purposes of fraudulent practices.

The value of property or service is its highest value by any reasonable standard at the time the fraudulent practice is committed. Reasonable standard includes but is not limited to market value within the community, actual value, or replacement value.

If money or property or service is obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the fraudulent practices are attributable to a single scheme, plan, or conspiracy, these acts may be considered as a single fraudulent practice and the value may be the total value of all money, property, and service involved.

[C79, 81, §714.14]
84 Acts, ch 1162, §2

714.15 Reproduction of sound recordings.

For the purposes of this section:

"Person" shall mean person as defined in section 4.1, subsection 20.

"Owner" means any person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are derived.

1. Except as provided in subsection 3, it is unlawful for a person knowingly to:

a. Transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film or other article without the consent of the owner; or

b. Sell; distribute; circulate; offer for sale, distribution or circulation; possess for the purpose of sale, distribution or circulation; or cause to be sold, distributed, circulated; offered for sale, distribution or circulation; or possessed for sale, distribution or circulation, any article or device on which sounds have been transferred without the consent of the person who owns the master phonograph

record, master disc, master tape or other device or article from which the sounds are derived.

2. It is unlawful for a person to sell, distribute, circulate, offer for sale, distribution or circulation or possess for the purposes of sale, distribution or circulation, any phonograph record, disc, wire, tape, film or other article on which sounds have been transferred unless the phonograph record, disc, wire, tape, film or other article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.

3. This section does not apply to a person who transfers or causes to be transferred sounds intended for or in connection with radio or television broadcast transmission or related uses, synchronized sound tracks of motion pictures or sound tracks recorded for synchronizing with motion pictures, for archival purposes or for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

4. A person who violates the provisions of this section is guilty of theft.

[C77, §713.44, 713.45; C79, 81, §714.15]

714.16 Consumer frauds.

1. Definitions:

a. The term *"advertisement"* includes the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

b. *"Buyer"*, as used in subsection 2, paragraph *"h"*, means the person to whom the water system is being sold, leased, or rented.

c. *"Consumer information pamphlet"* means a publication which explains water quality, health effects, quality expectations for drinking water, and the effectiveness of water treatment systems.

d. *"Consummation of sale"* means completion of the act of selling, leasing, or renting.

e. *"Contaminant"* means any particulate, chemical, microbiological, or radiological substance in water which has a potentially adverse health effect and for which a maximum contaminant level (MCL) or treatment technique requirement or an action level established in lieu of a maximum contaminant level (MCL), has been specified in the national primary drinking water regulations.

f. *"Deception"* means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

g. *"Label"*, as used in subsection 2, paragraph *"h"*, means the written, printed, or graphic matter permanently affixed or attached to or printed on the water treatment system.

h. *"Manufacturer's performance data sheet"* means a booklet, document, or other printed material containing, at a minimum, the information required pursuant to subsection 2, paragraph *"h"*.

i. The term *"merchandise"* includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.

j. The term *"person"* includes any natural person or the person's legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.

k. The term *"sale"* includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit.

l. *"Seller"*, as used in subsection 2, paragraph *"h"*, means the person offering the water treatment system for sale, lease, or rent.

m. The term *"subdivided lands"* refers to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, it does not apply to the leasing of apartments, offices, stores or similar space within an apartment building, industrial building or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure.

n. *"Unfair practice"* means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

o. *"Water treatment system"* means a device or assembly for which a claim is made that it will improve the quality of drinking water by reducing one or more contaminants through mechanical, physical, chemical, or biological processes or combinations of the processes. As used in this paragraph and in subsection 2, paragraph *"h"*, each model of a water treatment system shall be deemed a distinct water treatment system.

2. *a.* The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale, or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits or that certain services are performed on behalf of clients or customers of that person if, at the time of the representation, no reasonable basis for the claim existed. The burden is

on the person making the representation to demonstrate that a reasonable basis for the claim existed.

A retailer who uses advertising for a product, other than a drug or other product claiming to have a health related benefit or use, prepared by a supplier shall not be liable under this section unless the retailer participated in the preparation of the advertisement; knew or should have known that the advertisement was deceptive, false, or misleading; refused to withdraw the product from sales upon the request of the attorney general pending a determination of whether the advertisement was deceptive, false, or misleading; refused upon the request of the attorney general to provide the name and address of the supplier; or refused to cooperate with the attorney general in an action brought against the supplier under this section.

"Material fact" as used in this subsection does not include repairs of damage to or adjustments on or replacements of parts with new parts of otherwise new merchandise if the repairs, adjustments or replacements are made to achieve compliance with factory specifications and are made before sale of the merchandise at retail and the actual cost of any labor and parts charged to or performed by a retailer for any such repairs, adjustments and parts does not exceed three hundred dollars or ten percent of the actual cost to a retailer including freight of the merchandise, whichever is less, providing that the seller posts in a conspicuous place notice that repairs, adjustments or replacements will be disclosed upon request. The exemption provided in this paragraph does not apply to the concealment, suppression or omission of a material fact if the purchaser requests disclosure of any repair, adjustment or replacement.

b. The advertisement for sale, lease or rent, or the actual sale, lease, or rental of any merchandise at a price or with a rebate or payment or other consideration to the purchaser which is contingent upon the procurement of prospective customers provided by the purchaser, or the procurement of sales, leases, or rentals to persons suggested by the purchaser, is declared to be an unlawful practice rendering any obligation incurred by the buyer in connection therewith, completely void and a nullity. The rights and obligations of any contract relating to such contingent price, rebate, or payment shall be interdependent and inseverable from the rights and obligations relating to the sale, lease, or rental.

c. It is an unlawful practice for any person to advertise the sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first such advertisement remain in business under the same or substantially the same ownership, or under the same or substantially the same trade name, or to continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days. As used in this paragraph *"person"* includes a person who acquires an ownership interest in the business either within sixty days before the initial advertisement of the sale or at any time after the initial advertisement of the sale. In addition, a person acquiring an ownership interest shall comply with paragraph *"g"* if the person adds additional merchandise to the sale.

d. (1) No person shall offer or advertise within this state for sale or lease, any subdivided lands without first filing with the real estate commission true and accurate copies of all road plans, plats, field notes, and diagrams of water, sewage, and electric power lines as they exist at the time of the filing, however, this filing is not required for a subdivision subject to section 306.21 or chapter 354. A filing shall be accompanied by a fee of fifty dollars for each subdivision included, payable to the real estate commission.

(2) False or misleading statements filed pursuant to subparagraph (1) or section 306.21 or chapter 354, and advertising, offers to sell, or contracts not in substantial conformity with the filings made pursuant to section 306.21 or chapter 354 are unlawful.

e. Any violations of chapter 123 or any other provisions of law by a manufacturer, distiller, vintner, importer, or any other person participating in the distribution of alcoholic liquor or beer as defined in chapter 123.

f. A violation of a provision of sections 535C.1 through 535C.10 is an unlawful practice.

g. It is an unlawful practice for a person to acquire directly or indirectly an interest in a business which has either gone out of business or is going out of business and conduct or continue a going-out-of-business sale where additional merchandise has been added to the merchandise of the liquidating business for the purposes of the sale, unless the person provides a clear and conspicuous notice in all advertisements that merchandise has been added. The advertisement shall also state the customary retail price of the merchandise that has been added or brought in for the sale. The person acquiring the interest shall obtain a permit to hold the sale before commencing the sale. If the sale is to be held in a city which has an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the city. If the sale is to be located outside of a city or in a city which does not have an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the county in which the proposed sale is to be held. The county board of supervisors shall prescribe the procedures necessary to obtain the permit. The permit shall state the percentage of merchandise for sale that was obtained from the liquidating business and the percentage of merchandise for sale that was added from other sources. The permit or an accurate reproduction of the permit shall be clearly and conspicuously posted at all entrances to the site of the sale and at all locations where sales are consummated. A

person who violates this paragraph, including any misrepresentation of the presence and the percentage of additional merchandise that had been added to that of the liquidating company, is liable for a civil penalty of not to exceed one thousand dollars for each day of each violation. The civil penalties collected shall be deposited in the general fund of the political entity which prosecutes the violation. The civil penalty is in addition to and not in lieu of any criminal penalty. A political entity enforcing this paragraph may obtain a preliminary injunction without posting a bond to enjoin a violation of paragraph *"c"* and this paragraph pending a hearing.

This paragraph does not prohibit a city or county from adopting an ordinance prohibiting the conducting of a going-out-of-business sale in which additional merchandise is added to the merchandise of the liquidating business for the purposes of the sale.

h. It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state, for which claims or representations of removing health-related contaminants are made, unless the water treatment system:

(1) Has been performance tested by a third-party testing agency that has been authorized by the Iowa department of public health. Alternatively, in lieu of third-party performance testing of the manufacturer's water treatment system, the manufacturer may rely upon the manufacturer's own test data after approval of the data by an accepted third-party evaluator as provided in this subparagraph. The Iowa department of public health shall review the qualifications of a third-party evaluator proposed by the manufacturer. The department may accept or reject a proposed third-party evaluator based upon the required review. If a third-party evaluator, accepted by the Iowa department of public health, finds that the manufacturer's test data is reliable, adequate, and fairly presented, the manufacturer may rely upon that data to satisfy the requirements of this subparagraph after filing a copy of the test data and the report of the third-party evaluator with the Iowa department of public health. The testing agency shall use, or the evaluator shall review for the use of, approved methods of performance testing determined to be appropriate by the state hygienic laboratory.

(2) Has met the performance testing requirements specified in the testing protocol.

(3) Bears a conspicuous and legible label stating, *"IMPORTANT NOTICE — Read the Manufacturer's Performance Data Sheet"* and is accompanied by a manufacturer's performance data sheet.

The manufacturer's performance data sheet shall be given to the buyer and shall be signed and dated by the buyer and the seller prior to the consummation of the sale of the water treatment system. The manufacturer's performance data sheet shall contain information including, but not limited to:

(a) The name, address, and telephone number of the seller.

(b) The name, brand, or trademark under which the unit is sold, and its model number.

(c) Performance and test data including, but not limited to, the list of contaminants certified to be reduced by the water treatment system; the test influent concentration level of each contaminant or surrogate for that contaminant; the percentage reduction or effluent concentration of each contaminant or surrogate; where applicable, the maximum contaminant level (MCL) or a treatment technique requirement or an action level established in lieu of a maximum contaminant level (MCL) specified in the national primary drinking water regulations; where applicable, the approximate capacity in gallons; where applicable, the period of time during which the unit is effective in reducing contaminants based upon the contaminant or surrogate influent concentrations used for the performance tests; where applicable, the flow rate, pressure, and operational temperature of the water during the performance tests.

(d) Installation instructions.

(e) The recommended operational procedures and requirements necessary for the proper operation of the unit including, but not limited to, electrical requirements; maximum and minimum pressure; flow rate; temperature limitations; maintenance requirements; and where applicable, replacement frequencies.

(f) The seller's limited warranty.

(4) Is accompanied by the consumer information pamphlet compiled by the Iowa department of public health.

The consumer information pamphlet provided to the buyer of a water treatment system shall be compiled by the Iowa department of public health, reviewed annually, and updated as necessary. The consumer information pamphlet shall be distributed to persons selling water treatment systems and the costs of the consumer information pamphlet shall be borne by persons selling water treatment systems. The Iowa department of public health shall adopt rules pursuant to chapter 17A and charge all fees necessary to administer this section.

i. It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state for which false or deceptive claims or representations of removing health-related contaminants are made.

j. It is an unlawful practice for a person to make any representation or claim that the seller's water treatment system has been approved or endorsed by any agency of the state.

k. It is an unlawful practice for a supplier to commit a deceptive act or practice under chapter 537B.

l. It is an unlawful practice for a repair facility or manufacturer or distributor of aftermarket crash parts, as defined in section 537B.4, to commit a deceptive act or practice under chapter 537B.

m. It is an unlawful practice for a person to advertise the sale of wood products without disclosing information which may affect the price of the product.

An advertisement for all plywood and dimension lumber products shall include the grade and species, in accordance with federal products standards 1 and 20, and the measure. The products advertised shall also be labeled according to the federal products standards.

An advertisement for any other wood product shall include the grade and species, according to the applicable federal product standards, and the measure. These products need not be labeled.

An advertisement for any wood products must also include the following:

(1) The condition of the wood product, including but not limited to the following designations:

(a) Green.

(b) Kiln-dried.

(c) Air-dried or partially air-dried.

(2) Whether the wood product consists of seconds, culls, shop grade, or ungraded material.

Use of any contrived or unrecognized grading standard is prohibited, and any factors affecting the final delivered price of the products shall be disclosed and displayed in a conspicuous place.

This paragraph applies only to persons who offer wood products for sale in the ordinary course of business, except that this paragraph does not apply to any person who produces rough-sawed lumber, commonly referred to as native lumber, in this state. For purposes of this paragraph:

"Dimension lumber" means softwood lumber nominally referred to as *"two inch by four inch"* or greater.

"Labeling" means all labels and other written, printed, branded, or graphic matter upon any building material.

"Plywood" means a structural material consisting of sheets or chips of wood glued or cemented together.

"Wood products" means any wood products derived from trees as a result of any work or manufacturing process upon the wood, and intended primarily for use as a building material.

n. (1) It is an unlawful practice for a person to misrepresent the geographic location of a supplier of a service or product by listing a fictitious business name or an assumed business name in a local telephone directory or directory assistance database if all of the following apply:

(a) The name purportedly represents the geographic location of the supplier.

(b) The listing does not identify the address, including the city and state, of the supplier.

(c) Calls made to a local telephone number are routinely forwarded to or otherwise transferred to a business location that is outside the local calling area covered by the local telephone directory or directory assistance database.

(2) A telephone company, provider of directory assistance, publisher of a local telephone directory, or officer, employee, or agent of such company, provider, or publisher shall not be liable in a civil action under this section for publishing in any directory or directory assistance database the listing of a fictitious or assumed business name of a person in violation of subparagraph (1) unless the telephone company, directory assistance provider, directory publisher, or officer, employee, or agent of the company, provider, or publisher is the person committing such violation.

(3) For purposes of this paragraph:

(a) *"Local telephone directory"* means a telephone classified advertising directory or the business section of a telephone directory that is distributed free of charge to some or all telephone subscribers in a local area.

(b) *"Local telephone number"* means a telephone number that has a three-number prefix used by the provider of telephone service for telephone customers physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800, 888, or 900 exchange numbers listed in the telephone directory.

3. When it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this section or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, the attorney general may:

a. Require such person to file on such forms as the attorney general may prescribe a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as the attorney general may deem necessary;

b. Examine under oath any person in connection with the sale or advertisement of any merchandise;

c. Examine any merchandise or sample thereof, record, book, document, account or paper as the attorney general may deem necessary; and

d. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this section, and retain the same in the attorney general's possession until the completion of all proceedings in connection with which the same are produced.

4. *a.* To accomplish the objectives and to carry out the duties prescribed by this section, the attorney general, in addition to other powers conferred

upon the attorney general by this section, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules as may be necessary, which rules shall have the force of law.

b. Subject to paragraph *"c"*, information, documents, testimony, or other evidence provided to the attorney general by a person pursuant to paragraph *"a"* or subsection 3, or provided by a person as evidence in any civil action brought pursuant to this section, shall not be admitted in evidence, or used in any manner whatsoever, in any criminal prosecution or forfeiture proceeding against that person. If a criminal prosecution or forfeiture proceeding is initiated in a state court against a person who has provided information pursuant to paragraph *"a"* or subsection 3, the state shall have the burden of proof that the information provided was not used in any manner to further the criminal investigation, prosecution, or forfeiture proceeding.

c. Paragraph *"b"* does not apply unless the person has first asserted a right against self-incrimination and the attorney general has elected to provide the person with a written statement that the information, documents, testimony, or other evidence at issue are subject to paragraph *"b"*. After a person has been provided with such a written statement by the attorney general, a claim of privilege against self-incrimination is not a defense to any action or proceeding to obtain the information, documents, testimony, or other evidence. The limitation on the use of evidence in a criminal proceeding contained in this section does not apply to any prosecution or proceeding for perjury or contempt of court committed in the course of the giving or production of the information, documents, testimony, or other evidence.

5. Service by the attorney general of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

a. Personal service thereof without this state; or

b. The mailing thereof by registered mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended; or

c. As to any person other than a natural person, in the manner provided in the Rules of Civil Procedure as if a petition had been filed; or

d. Such service as a district court may direct in lieu of personal service within this state.

6. If a person fails or refuses to file a statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to the Polk county district court or the district court for the county in which the person resides or is located and, after hearing, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons.

b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice.

c. Granting such other relief as may be required until the person files the statement or report, or obeys the subpoena.

7. A civil action pursuant to this section shall be by equitable proceedings. If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section. If a person has acquired moneys or property by any means declared to be unlawful by this section and if the cost of administering reimbursement outweighs the benefit to consumers or consumers entitled to the reimbursement cannot be located through reasonable efforts, the court may order disgorgement of moneys or property acquired by the person by awarding the moneys or property to the state to be used by the attorney general for the administration and implementation of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for reimbursement may be proved by any competent evidence, including evidence that would be appropriate in a class action.

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate

and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.6113. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

8. When a receiver is appointed by the court pursuant to this section, the receiver shall have the power to sue for, collect, receive and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this section, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

9. Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this section, the provisions of this section shall not bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

10. A civil action pursuant to this section may be commenced in the county in which the person against whom it is brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction occurred, or where one or more of the victims reside.

11. In an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

12. If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

13. The attorney general or the designee of the attorney general is deemed to be a regulatory agency under chapter 692 for the purpose of receiving criminal intelligence data relating to violations of this section.

14. This section does not apply to the newspaper, magazine, publication, or other print media in which the advertisement appears, or to the radio station, television station, or other electronic media which disseminates the advertisement if the newspaper, magazine, publication, radio station, television station, or other print or electronic media has no knowledge of the fraudulent intent, design, or purpose of the advertiser at the time the advertisement is accepted; and provided, further, that nothing herein contained shall apply to any advertisement which complies with the rules and regulations of, and the statutes administered by the federal trade commission.

15. The attorney general may bring an action on behalf of the residents of this state, or as parens patriae, under the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, Pub. L. No. 103-297, and pursue any and all enforcement options available under that Act. Subsequent amendments to that Act which do not substantially alter its structure and purpose shall not be construed to affect the authority of the attorney general to pursue an action pursuant to this section, except to the extent the amendments specifically restrict the authority of the attorney general.

[S13, §5051-a; C24, 27, 31, 35, 39, §**13069, 13070;** C46, 50, 54, 58, 62, §713.24, 713.25; C66, 71, 73, 75, 77, §713.24; C79, 81, §714.16]

83 Acts, ch 146, §12; 85 Acts, ch 16, §1, 2; 87 Acts, ch 164, §1 – 7; 88 Acts, ch 1016, §1, 2; 89 Acts, ch 93, §7; 89 Acts, ch 129, §1; 90 Acts, ch 1010, §6; 90 Acts, ch 1236, §53; 91 Acts, ch 212, §1; 92 Acts, ch 1062, §3; 94 Acts, ch 1142, §5; 98 Acts, ch 1200, §1 – 3; 2000 Acts, ch 1079, §1; 2000 Acts, ch 1232, §85; 2001 Acts, ch 58, §15, 16; 2002 Acts, ch 1119, §194, 203

2002 amendment to subsection 2, paragraph n, subparagraph (1) takes effect April 22, 2002, and applies retroactively to July 1, 2000; 2002 Acts, ch 1119, §203

Subsection 2, paragraph n, subparagraph (1), unnumbered paragraph 1 amended

714.16A Additional civil penalty for consumer frauds committed against elderly — fund established.

1. If a person violates section 714.16, and the violation is committed against an older person, in an action brought by the attorney general, in addition to any other civil penalty, the court may impose an additional civil penalty not to exceed five

thousand dollars for each such violation. Additionally, the attorney general may accept a civil penalty as determined by the attorney general in settlement of an investigation of a violation of section 714.16, regardless of whether an action has been filed pursuant to section 714.16.

A civil penalty imposed by a court or determined and accepted by the attorney general pursuant to this section shall be paid to the treasurer of state, who shall deposit the money in the elderly victim fund, a separate fund created in the state treasury and administered by the attorney general for the investigation and prosecution of frauds against the elderly. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state. An award of reimbursement pursuant to section 714.16 has priority over a civil penalty imposed by the court pursuant to this subsection.

2. In determining whether to impose a civil penalty under subsection 1, and the amount of any such penalty, the court shall consider the following:

a. Whether the defendant's conduct was in willful disregard of the rights of the older person.

b. Whether the defendant knew or should have known that the defendant's conduct was directed to an older person.

c. Whether the older person was substantially more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability, than other persons.

d. Any other factors the court deems appropriate.

3. As used in this section, *"older person"* means a person who is sixty-five years of age or older.

91 Acts, ch 102, §1; 94 Acts, ch 1142, §6; 98 Acts, ch 1200, §4

714.16B Identity theft — civil cause of action.

In addition to any other remedies provided by law, a person as defined under section 714.16, subsection 1, suffering a pecuniary loss as a result of an identity theft by another person under section 715A.8, may bring an action against such other person to recover the following:

1. One thousand dollars or three times the actual damages, whichever is greater.

2. Reasonable attorney fees and court costs.

99 Acts, ch 47, §1

714.17 Unlawful advertising and selling courses of instruction.

It shall be unlawful for any person, firm, association, or corporation maintaining, advertising, or conducting in Iowa any course of instruction for profit, or for tuition charge, whether by classroom instructions or by correspondence, to:

1. Falsely advertise or represent to any person any matter material to such course of instruction. All advertising of such courses of instruction shall adhere to and comply with the rules and regulations of the federal trade commission as of July 4, 1965.

2. Collect tuition or other charges in excess of one hundred fifty dollars in the case of correspondence courses of study, in advance of the receipt and approval by the pupil of the first assignment or lesson of such course. Any contract providing for advance payment of more than one hundred fifty dollars shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract.

3. Promise or guarantee employment utilizing information, training, or skill purported to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers the student or prospective student a bona fide contract of employment agreeing to employ said student or prospective student for a period of not less than one hundred twenty days in a business or other enterprise regularly conducted by the promisor or guarantor and in which such information, training, or skill is a normal condition of employment.

[C66, 71, 73, 75, 77, §713A.1; C79, 81, §714.17]

714.18 Evidence of financial responsibility.

Except as otherwise provided in subsection 4, every person, firm, association, or corporation maintaining or conducting in Iowa any such course of instruction, by classroom instruction or by correspondence, or soliciting in Iowa the sale of such course, shall file with the secretary of state:

1. A continuous corporate surety bond to the state of Iowa in the sum of fifty thousand dollars conditioned for the faithful performance of all contracts and agreements with students made by such person, firm, association, or corporation, or their salespersons; but the aggregate liability of the surety for all breaches of the conditions of the bond shall not exceed the sum of the bond. The surety on the bond may cancel the bond upon giving thirty days' written notice to the secretary of state and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

2. A statement designating a resident agent for the purpose of receiving service in civil actions. In the absence of such designation, service may be had upon the secretary of state if service cannot otherwise be made in this state.

3. A copy of any catalog, prospectus, brochure, or other advertising material intended for distribution in Iowa. Such material shall state the cost of the course offered, the schedule of refunds for portions of the course not completed, and if no refunds are to be paid, the material shall so state. Any contract induced by advertising materials not

previously filed as provided in this chapter shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract.

4. A school licensed under the provisions of section 157.8 or 158.7 shall file with the secretary of state:

a. A continuous corporate surety bond to the state of Iowa in the sum of fifty thousand dollars or ten percent of the total annual tuition collected, whichever is less, conditioned for the faithful performance of all contracts and agreements with students made by such school. A school desiring to file a surety bond based on a percentage of annual tuition shall provide to the secretary of state, in the form prescribed by the secretary, a notarized statement attesting to the total amount of tuition collected in the preceding twelve-month period. The secretary shall determine the sufficiency of the statement and the amount of the bond. Tuition information submitted pursuant to this paragraph shall be kept confidential.

If the school has filed a performance bond with an agency of the United States government pursuant to federal law, the secretary of state shall reduce the bond required by this paragraph by an amount equal to the amount of the federal bond.

The aggregate liability of the surety for all breaches of the conditions of the bond shall not exceed the sum of the bond. The surety on the bond may cancel the bond upon giving thirty days' written notice to the secretary of state and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

The secretary of state may accept a letter of credit from a bank in lieu of the corporate surety bond required by this paragraph.

b. The statement required in subsection 2.

c. The materials required in subsection 3.

[C66, 71, 73, 75, 77, §713A.2; C79, 81, §714.18]

85 Acts, ch 212, §21; 89 Acts, ch 240, §6; 90 Acts, ch 1222, §1, 2; 2002 Acts, ch 1140, §40 – 42

Unnumbered paragraph 1 amended

Subsections 1, 2, and 4 amended

714.19 Nonapplicability.

None of the provisions of sections 714.17 to 714.22 shall apply to the following:

1. Colleges or universities authorized by the laws of Iowa or any other state or foreign country to grant degrees.

2. Schools of nursing accredited by the board of nursing or an equivalent public board of another state or foreign country.

3. Public schools.

4. Private and nonprofit schools recognized by the department of education or a local school board for the purpose of complying with chapter 299 and employing certified teachers.

5. Nonprofit schools exclusively engaged in training persons with physical disabilities in the state of Iowa.

6. Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees, for which no fee is charged.

7. Seminars, refresher courses and schools of instruction sponsored by professional, business, or farming organizations or associations for the members and employees of members of such organizations or associations.

8. Private business schools accredited by the accrediting commission for business schools or an acknowledged accrediting agency.

9. Private college preparatory schools accredited or probationally accredited under section 256.11, subsection 13.

[C66, 71, 73, 75, 77, §713A.3; C79, 81, §714.19]

86 Acts, ch 1245, §1498; 89 Acts, ch 240, §7; 96 Acts, ch 1129, §108; 2001 Acts, ch 24, §59

714.20 One contract per person.

It shall be unlawful to sell more than one lifetime contract to any one person.

[C66, 71, 73, 75, 77, §713A.4; C79, 81, §714.20]

714.21 Penalty.

Violation of any of the provisions of section 714.17, 714.18 or 714.20 shall be a serious misdemeanor.

[C66, 71, 73, 75, 77, §713A.5; C79, 81, §714.21]

714.22 Trade and vocational schools — exemption — conditions.

The provisions of sections 714.17 to 714.22 shall not apply to trade or vocational schools if they meet either of the following conditions:

1. File a bond or a bond is filed on their behalf by a parent corporation with the secretary of state as required by section 714.18.

2. File an annual sworn statement, or such statement is filed on their behalf by a parent corporation, certified by a certified public accountant, showing all assets and liabilities of the trade or vocational school and the assets of any parent corporation. The statement shall show the trade or vocational school's net worth, or the net worth of the parent corporation, to be not less than five times the amount of the bond required by section 714.18. If a parent corporation files the statement or its net worth is included in the statement to comply with this subsection, the parent corporation shall appoint a registered agent and otherwise is subject to section 714.18, subsection 2 and is liable for the breach of any contract or agreement with students as well as liable for any fraud in connection with the contract or agreement or for any violation of section 714.16 by the trade or vocational school or any of its agents or salespersons.

[C73, 75, 77, §713A.6; C79, 81, §714.22]

85 Acts, ch 212, §21; 86 Acts, ch 1237, §43; 2002

Acts, ch 1140, §43
Subsection 1 amended

714.23 Refund policies.

1. A person offering a course of instruction at the postsecondary level, for profit, that is more than four months in length and leads to a degree, diploma, or license, shall make a pro rata refund of no less than ninety percent of the tuition for a terminating student to the appropriate agency based upon the ratio of completed number of scheduled school days to sixty percent of the scheduled school days of the school term or course.

2. Notwithstanding the provisions of subsection 1, the following refund policy shall apply:

a. If a terminating student has completed sixty percent or more of a school term or course that is more than four months in length, the person offering the course of instruction is not required to refund tuition for the student. However, if, at any time, a student terminates a school term or course that is more than four months in length due to the student's physical incapacity or due to the transfer of the student's spouse's employment to another city, the terminating student shall receive a refund of tuition in an amount which equals the amount of tuition multiplied by the ratio of the remaining number of school days to the total school days of the school term or course.

b. A refund of ninety percent of the tuition for a terminating student shall be paid to the appropriate agency based upon the ratio of completed number of school days to the total school days of the school term or course. This paragraph applies to those persons offering courses of instruction at the postsecondary level, for profit, whose cohort default rate for students under the Stafford loan program as defined by the United States department of education is more than one hundred ten percent of the national average cohort default rate for that program for that period or six percent, whichever is higher.

3. If the financial obligations of a student are for three or fewer months duration, this section does not apply.

4. Refunds shall be paid to the appropriate agency within thirty days following the student's termination.

5. A student who terminates a course of instruction or term shall not be charged any fee or other monetary penalty for terminating a course of instruction or term other than a reduction in tuition refund as specified in this section.

6. A violation of this section is a simple misdemeanor.

85 Acts, ch 220, §1; 90 Acts, ch 1222, §3; 91 Acts, ch 97, §61

714.24 Reserved.

714.25 Disclosure.

For purposes of this chapter, unless the context otherwise requires, *"proprietary school"* means a person offering a course of instruction at the postsecondary level, for profit, that is more than four months in length and leads to a degree, diploma, or license.

A proprietary school shall, prior to the time a student is obligated for payment of any moneys, inform the student, the college student aid commission, and in the case of a school licensed under section 157.8, the board of cosmetology examiners or in the case of a school licensed under section 158.7, the board of barber examiners, of all of the following:

1. The total cost of the course of instruction as charged by the school.

2. An estimate of any fees which may be charged the student by others which would be required if the student is to successfully complete the course and, if applicable, obtain a degree, diploma, or license.

3. The percentage of students who successfully complete the course, the percentage who terminate prior to completing the course, and the period of time upon which the school has based these percentages. The reporting period shall not be less than one year in length and shall not extend more than five years into the past.

4. If claims are made by the school as to successful placement of students in jobs upon completion of the course of study, the school shall provide the student with all of the following:

a. The percentage of graduating students who were placed in jobs in fields related to the course of instruction.

b. The percentage of graduating students who went on to further education immediately upon graduation.

c. The percentage of students who, ninety days after graduation, were without a job and had not gone on to further education.

d. The period of time upon which the reports required by paragraphs *"a"* through *"c"* were based. The reporting period shall not be less than one year in length and shall not extend more than five years into the past.

5. If claims are made by the school as to income levels of students who have graduated and are working in fields related to the school's course of instruction, the school shall inform the student of the method used to derive such information.

88 Acts, ch 1274, §47; 89 Acts, ch 296, §87; 90 Acts, ch 1222, §4

CHAPTER 714A

PAY-PER-CALL SERVICE

714A.1 Definitions.
714A.2 Disclosure of charges.
714A.3 Advertisements.
714A.4 Billing and collection.
714A.5 Enforcement.

714A.1 Definitions.

As used in this chapter:

1. *"Advertisement"* means advertisement as defined in section 714.16, subsection 1, paragraph *"a"*. However, for purposes of this chapter, advertisement does not include a residential listing or a listing in any section of the directory in which businesses or professions are listed alphabetically rather than grouped by subject category, or a standard listing in the subject category section of a telephone directory. Advertisement also does not include a display advertisement or a listing which is made to appear more conspicuous than other listings in the subject category section of a telephone directory, provided that such display advertisement or listing includes a conspicuous disclosure that the call is a pay-per-call service and refers a reader in a clear and conspicuous manner to a page number of the directory where the reader may find an explanation of pay-per-call services. Such explanation of pay-per-call services shall include all of the following:

a. The disclosure and preamble requirements under the law.

b. The availability and costs of blocking options, if any.

c. Whether a consumer's phone service may be terminated for failure to pay for pay-per-call services.

d. The procedures for handling consumer inquiries and complaints.

2. *"Amount of time necessary to complete a call"* means for purposes of a fixed length call, the total length of the call in minutes, and for purposes of a variable length call, a reasonable, good faith estimate in minutes of the likely length of the call.

3. *"Merchandise"* means merchandise as defined in section 714.16, subsection 1, paragraph *"i"*.

4. *a.* *"Pay-per-call service"* means electronic communications products and services which are provided to end users by information or service providers, and which meet all of the following requirements:

(1) The end users send or receive information, services, or communications whose general subject matter is determined or influenced by the service provider.

(2) The end users send or receive the information, services, or communications via a telephone connection using audio input which is not modulated or demodulated by the end user.

(3) The charge to the end user for the information, services, or communications is determined by the information or service provider and is made on a per-call or per-minute basis.

b. (1) Where the requirements under paragraph *"a"* are met, pay-per-call service includes, but is not limited to, the following:

(a) Information retrieval from a remote database.

(b) Information collection for polling and data entry.

(c) Services offered for public entertainment in which users participate in or listen to a conversation.

(2) Pay-per-call service does not include electronic communication for the purpose of conducting financial transactions, or any service the price of which is established pursuant to a tariff approved by a regulatory agency.

5. *"Person"* means person as defined in section 714.16, subsection 1, paragraph *"j"*, and includes a long distance company and local exchange company as defined in section 477.10.

91 Acts, ch 171, §1

714A.2 Disclosure of charges.

With respect to each pay-per-call service, the call shall contain an introductory disclosure message that specifies clearly, and at the same audio volume of the ensuing program, if the charge for the call is on a flat rate basis, the total charge for the call, or if charged on a per-minute basis, the charge per minute for the call, the charge for each additional minute, and the amount of time necessary to complete the call, and all other fees, and which informs the caller of the option to disconnect the call at the end of the introductory message without incurring a charge. However, an introductory message is not required if the total charge for the call is one dollar or less.

91 Acts, ch 171, §2

714A.3 Advertisements.

Advertisements for pay-per-call service shall clearly state if the charge for the service is on a flat rate basis, the total charge for the call or, if

charged on a per-minute basis, the charge per minute for the call, the charge for each additional minute, and the amount of time necessary to complete the call. Additionally, if in order to obtain the full advertised services or other merchandise, a caller will be required to make any payments in addition to the cost of the initial call, that fact shall be disclosed, along with the amounts of such additional payments. If the advertisement is oral, all cost information must be disclosed clearly and at the same audio volume of the ensuing program prior to providing the pay-per-call number and each time the number is mentioned.

91 Acts, ch 171, §3

714A.4 Billing and collection.

A person shall not bill or collect for a pay-per-call service if such person has actual knowledge of the failure of the pay-per-call service to comply with the requirements of this chapter. A person shall cease billing and collecting for a pay-per-call service which fails to comply with the requirements of this chapter as soon as practicable, but in no event more than thirty days, after acquiring knowledge of the noncompliance. Billing and collection contracts shall contain a provision which refers the pay-per-call service to chapter 714A, which provides for an introductory disclosure message and the requirements for such message.

Additionally, a person shall not bill or collect a charge for a pay-per-call service unless the call for which the charge is being made is completed.

91 Acts, ch 171, §4

714A.5 Enforcement.

A violation of this chapter is an unfair or deceptive trade practice and is subject to the provisions of section 714.16, except that the remedies and penalties provided pursuant to that section shall not be applied to a newspaper, magazine, publication, directory, or other print media in which an advertisement appears, or to a radio station, television station, or other electronic media which disseminates the advertisement, and no other penalty or cause of action under this chapter shall accrue against the media in or by which the advertisement appears or is disseminated, where the particular advertisement is not sponsored by the media, unless the media also performs the billing or collecting for the pay-per-call service.

91 Acts, ch 171, §5

CHAPTER 714B

PRIZE PROMOTIONS

714B.1 Definitions.
714B.2 Written prize notice — content — form.
714B.3 Prohibited practices.
714B.4 Prize award required.
714B.5 Information requested by attorney general.
714B.6 Criminal penalties.
714B.7 Civil enforcement.
714B.8 Private action.
714B.9 Compliance with other laws.
714B.10 Exemptions.

714B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Advertisement"* means as defined in section 714.16, subsection 1.

2. *"Merchandise"* means as defined in section 714.16, subsection 1.

3. *"Person"* means as defined in section 714.16, subsection 1.

4. *"Prize"* means a gift, award, cash award, or other merchandise of value that is offered or awarded to a person in a real or purported contest, competition, sweepstakes, puzzle, drawing, scheme, plan, or other selection process.

5. *"Retail value"* of a prize means the following:

a. A price at which the sponsor of the prize can substantiate that a substantial number of the items of merchandise have been sold to the public in the year preceding the date of the written prize notice in the regular course of business other than through a prize promotion.

b. No more than one and one-half times the amount the sponsor paid for the prize in a bona fide purchase from an unaffiliated seller, if the sponsor is unable to substantiate a price pursuant to paragraph *"a"*.

6. *"Sponsor"* means a person who awards another person a prize or who allows the person to receive, use, compete for, or obtain information about a prize.

94 Acts, ch 1185, §2

714B.2 Written prize notice — content — form.

1. *a.* A sponsor of a prize shall not require a person to purchase merchandise or pay or donate money as a condition of awarding a prize or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, unless the person has first received a written prize notice which satisfies the requirements of subsections 2 and 3. A sponsor shall not create the reasonable impression that such a purchase, payment, or donation is required, unless the person has first received a written prize notice which satisfies the requirements of subsections 2 and 3.

b. For purposes of this chapter, a sponsor is deemed to have created the reasonable impression that a payment, purchase, or donation is required as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, if the sponsor does any of the following:

(1) Fails to clearly and conspicuously disclose that a purchase, payment, or donation is not required in immediate proximity to, and in the same type and boldness as, each written reference to a purchase, payment, or donation, or in immediate proximity to, and in the same audio volume as, each verbal reference to a purchase, payment, or donation.

(2) Uses a verbal or written solicitation, or other advertisement which contains any express or implied representations that a participant's likelihood of receiving a prize or other favorable treatment is enhanced by making a purchase, payment, or donation.

(3) Uses a verbal or written solicitation, course of solicitation, or other advertisement which when considered in its totality creates an overall impression that a participant's likelihood of receiving a prize or other favorable treatment is enhanced by making a purchase, payment, or donation.

c. A written prize notice satisfying the requirements of subsections 2 and 3 must precede every verbal advertisement by a sponsor which requires a person to purchase merchandise or pay or donate money, or gives the reasonable impression that such a purchase, payment, or donation is required, as a condition of awarding a prize, or as a condition of allowing a person to receive, use, compete for, or obtain information about a prize.

d. Each written advertisement by a sponsor which requires a person to purchase merchandise or pay or donate money, or gives the reasonable impression that such a purchase, payment, or donation is required as a condition of awarding a prize or as a condition of allowing a person to receive, use, compete for, or obtain information about a prize, must satisfy the requirements of subsections 2 and 3.

2. A written prize notice must contain each of the following:

a. The true name or names of the sponsor and the street address of the sponsor's actual principal place of business.

b. The retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive.

c. A statement of the odds the person has of receiving each prize identified in the notice.

d. Any requirement that the person pay shipping or handling fees, or any other charges to obtain or use a prize, including the nature and amount of the charge.

e. A statement that a restriction applies and a description of the restriction, if receipt of the prize is subject to a restriction.

f. Any limitations on eligibility to receive a prize.

g. If a sponsor represents that a person is a winner or finalist, has been specially selected, is in first place, or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize; or that a person is entering a contest, sweepstakes, drawing, or other competitive enterprise from which a single winner or select group of winners will receive a prize, and if the notice is not prohibited under section 714B.3, subsection 1, paragraph *"c"*, a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize.

h. Any requirement or invitation for the person to view, hear, or attend a sales presentation in order to claim a prize, a good faith estimate of the length of the sales presentation, a description of the merchandise that is the subject of the sales presentation, and the total cost of such merchandise.

3. The information required in the written prize notice pursuant to subsection 2 must be provided as follows:

a. The retail value and the statement of odds required under subsection 2 must be stated in immediate proximity to each identification of a prize on the written notice, and must be in the same size and boldness of type as the reference to the prize.

b. The retail value must be stated in Arabic numerals, and must be in the following form: retail value: $ . . . . . .

c. The statement of odds must include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be distributed. The number of prizes and written prize notices must be stated in Arabic numerals. The statement of odds must be in the following form: . . . . . (number of prizes) out of . . . . . (notices distributed).

d. If a person is required to pay shipping or handling fees or any other charges to obtain a prize, to be eligible to obtain a prize, or to participate in a contest, a statement must appear in immediate proximity to each listing of the prize in the written prize notice in not less than ten point boldface type as follows: **YOU MUST PAY**

$ . . . . . IN ORDER TO RECEIVE OR USE THIS ITEM, or, **YOU MUST PAY $ . . . . . IN ORDER TO COMPETE FOR THIS ITEM**, as applicable.

e. The information required under subsection 2, paragraphs *"e"*, *"f"*, and *"h"* must be on the first page of the written prize notice in not less than ten point boldface type.

f. A statement required under subsection 2, paragraph *"g"*, must appear in immediate proximity to each representation that the person is among a group of persons with an enhanced likelihood of receiving a prize, and must be in the same type size and boldness as the representation.

94 Acts, ch 1185, §3

714B.3 Prohibited practices.

1. A sponsor of a prize shall not do any of the following:

a. Deliver a written prize notice, or an envelope containing a written prize notice, that contains language, or is designed in a manner, that would have the tendency or capacity to mislead intended recipients as to the source of the written prize notice. This prohibition includes, but is not limited to, a written prize notice or envelope which indicates that the notice or envelope originates from a government agency, public utility, insurance company, consumer reporting agency, debt collector, or law firm, unless the written prize notice or envelope originates from such source.

b. Represent directly or by implication that the number of persons eligible for the prize is limited or that a person has been selected to receive a particular prize, unless the representation is true.

c. Represent that a person is a winner or finalist, has been specially selected, is in first place, or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, or that a person is entering a contest, sweepstakes, drawing, or other competitive enterprise, from which a single winner or select group of winners will receive a prize, when in fact the enterprise is a promotional scheme designed to make contact with prospective customers and all or a substantial number of those receiving the notice are awarded the same prize.

d. Represent directly or by implication that a person will have an increased chance of receiving a prize by making multiple or duplicate purchases, payments or donations, or by entering a game, drawing, sweepstakes, or other contest more than one time, unless the representation is true. A sponsor is deemed to have made such representation if the sponsor delivers one or more prize notices to a person after the person has already made a purchase, payment, or donation to the sponsor for the same promotion, or has already entered the same game, drawing, sweepstakes, or other contest, unless the sponsor can demonstrate a bona fide error even though the sponsor has implemented procedures reasonably designed to prevent such duplication.

e. Represent directly or by implication that a person is being notified a second or final time of the opportunity to receive or compete for a prize, unless the representation is true.

f. Represent directly or by implication that a prize notice is urgent, or otherwise convey an impression of urgency by use of description, narrative copy, phrasing on an envelope, or similar method, unless there is a limited time period in which the recipient must take some action to claim or be eligible to receive a prize, and the date by which such action is required appears in immediate proximity to each representation of urgency and in the same type size and boldness as each representation of urgency.

g. Knowingly sell, rent, exchange, transfer, or otherwise furnish to or purchase from other persons, financial data regarding Iowans disclosed in connection with a prize promotion not in compliance with this chapter. For purposes of this chapter, financial data includes credit card numbers, bank account numbers, other payment device numbers, and dollars spent on prize promotions which are not in compliance with this chapter.

h. Request an individual to disclose the individual's phone number, age, birthdate, credit card ownership, or financial data in connection with a prize promotion which is not in compliance with this chapter.

2. If a written prize notice requires or invites a person to view, hear, or attend a sales presentation in order to claim a prize, the sales presentation shall not begin until the sponsor does all of the following:

a. Informs the person of the prize, if any, that has been awarded to the person.

b. If the person is awarded a prize, delivers to the person the prize or the item selected by the person as provided in section 714B.4, if the prize awarded is not available.

94 Acts, ch 1185, §4

714B.4 Prize award required.

A sponsor of a prize who represents to a person that the person has been awarded a prize shall, no later than thirty days after making the representation, provide the person with the prize; with a voucher, certificate, or other document indicating the person's unconditional right to receive the prize; or with either of the following items as selected by the person:

1. Any other prize listed in the written prize notice that is available and that is of equal or greater value.

2. The retail value of the prize, as stated in the written notice, in the form of cash, a money order, or a certified check.

94 Acts, ch 1185, §5

714B.5 Information requested by attorney general.

A sponsor shall provide, upon the request of the attorney general made within one year after the termination date of the promotion, a record of the names and addresses of all winners of prizes of one hundred dollars or more.

94 Acts, ch 1185, §6

714B.6 Criminal penalties.

A person who intentionally violates this chapter is guilty of an aggravated misdemeanor. A person intentionally violates this chapter if the act or acts in violation occur or continue after the attorney general or county attorney has notified the person by certified mail that the person is in violation of this chapter.

94 Acts, ch 1185, §7

714B.7 Civil enforcement.

A violation of this chapter constitutes a violation of section 714.16, subsection 2, paragraph *"a"*.

94 Acts, ch 1185, §8

714B.8 Private action.

In addition to any other remedies, a person suffering pecuniary loss as a result of a violation of this chapter by another person may bring an action against such other person to recover all of the following:

1. The greater of five hundred dollars or twice the amount of the pecuniary loss.
2. Costs and reasonable attorney fees.

94 Acts, ch 1185, §9

714B.9 Compliance with other laws.

This chapter shall not be construed to permit an activity prohibited by section 714.16, or rules adopted pursuant to that section, or by chapter 725, or other applicable law.

94 Acts, ch 1185, §10

714B.10 Exemptions.

This chapter does not apply to the following:

1. Advertising by sponsors registered pursuant to chapter 557B, licensed pursuant to chapter 99B, or regulated pursuant to chapter 99D, 99E, or 99F.
2. Advertising in connection with the sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the federal trade commission pursuant to code of federal regulations, Title 16, part 4525.1, concerning use of negative option plans by sellers in commerce.
3. Advertising in connection with the sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and who, after the receipt of the goods, is given an opportunity to examine the goods and to receive a full refund of charges for the goods upon return of the goods undamaged.
4. Advertising in connection with sales by a catalog seller. For purposes of this section *"catalog seller"* means a person at least fifty percent of whose annual revenues are derived from the sale of merchandise sold in connection with the distribution of catalogs of at least twenty-four pages, which contain written descriptions or illustrations and sale prices for each item of merchandise and which are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand.

94 Acts, ch 1185, §11

CHAPTER 714C

VIDEO RENTAL PROPERTY THEFT

Repealed by 2000 Acts, ch 1201, §16;
see §702.20A, 714.1, 714.6A

CHAPTER 714D

TELECOMMUNICATIONS SERVICE PROVIDER FRAUD

714D.1 Legislative intent.
714D.2 Definitions.
714D.3 Unfair and deceptive practices.
714D.4 Prohibition of sweepstakes boxes.
714D.5 Conditions on use of prize promotions to solicit authority to provide or change telecommunications services.
714D.6 Private action.
714D.7 Civil enforcement.

714D.1 Legislative intent.

The general assembly finds that customers of telephone services have been subjected to fraud in the sale and advertisement of telephone long distance and local service, as well as other services related to residential and business telephone service. The general assembly further finds that companies acting in a lawful manner have lost customers to companies that obtain customers through fraud and deception.

It is the intent of the general assembly to protect telephone service subscribers from fraud and to provide statutory remedies for the victims of fraud in the sale of telecommunications service. It is the intent of the general assembly to provide the attorney general with additional remedies to address the issue of fraud in the sale of telecommunications service. It is further the intent of the general assembly that this chapter does not limit the rights or remedies that are otherwise available to a consumer or the attorney general under any other law.

99 Acts, ch 16, §2

714D.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Advertisement"* means the same as defined in section 714.16, subsection 1.

2. *"Consumer"* means a person who is not a telecommunications service provider and who uses telecommunications services.

3. *"Deception"* means the same as defined in section 714.16, subsection 1.

4. *"Person"* means the same as defined in section 714.16, subsection 1.

5. *"Sweepstakes box"* means the box or receptacle into which a person may place an entry form or document used to enter a sweepstakes, contest, or drawing of any description, and promotional materials attached to such entry form or document.

6. *"Telecommunications Act"* means 47 U.S.C. § 258, a portion of the federal Telecommunications Act of 1996, relating to changes in telephone service, and including regulations adopted pursuant to that section.

7. *"Telecommunications service"* means local exchange or long distance telephone service, and any additional service or merchandise for which any charge or assessment appears on a billing statement directed to a person by a provider of local exchange or long distance telephone service, but does not include commercial mobile radio service or charges or assessments imposed on consumers of local exchange or long distance telephone service or on such additional service or merchandise by governmental entities.

8. *"Telecommunications service provider"* means a person who advertises, sells, leases, or provides telecommunications services to another person.

9. *"Unfair practice"* means the same as defined in section 714.16, subsection 1, and also means any failure of a person to comply with the Telecommunications Act or with any statute or rule enforced by the utilities board within the utilities division of the department of commerce relating to a telecommunications service selection or change.

99 Acts, ch 16, §3

714D.3 Unfair and deceptive practices.

The act, use, or employment by a person of deception or an unfair practice in connection with the lease, sale, or advertisement of a telecommunications service or the solicitation of authority to provide or execute a change of a telecommunications service is an unlawful practice.

99 Acts, ch 16, §4

714D.4 Prohibition of sweepstakes boxes.

The use of a sweepstakes box by a person to solicit authority to provide or execute a change of a consumer's telecommunications service is an unlawful practice.

99 Acts, ch 16, §5

714D.5 Conditions on use of prize promotions to solicit authority to provide or change telecommunications services.

1. It is an unlawful practice for a person to use a form or document which is to be used or intended to be used by another person to enter a sweepstakes, contest, or drawing of any description as written authority to provide or execute a change of a consumer's telecommunications service.

2. It is an unlawful practice for a person to solicit the lease or sale of or to solicit the authority to provide or execute a change of a telecommunications service to another person through or in conjunction with a sweepstakes, contest, or drawing without clearly, conspicuously, and fully disclosing in all direct mail solicitations to the other person the fact that the sweepstakes, contest, or drawing is intended to solicit authority to provide or execute a change of a telecommunications service. The disclosure required shall include, at a minimum, all of the following:

a. A statement that an acceptance or change of telecommunications service is not required to enter the sweepstakes, contest, or drawing.

b. An alternative means by which a person may enter the sweepstakes, contest, or drawing without accepting or authorizing a change in a telecommunications service.

c. The name and telephone number of the entity soliciting the person to accept or to authorize a change of telecommunications service through the

use of or in conjunction with the sweepstakes, contest, or drawing.

d. A brief description of the nature of the telecommunications service for which authorization is sought through the use of or in conjunction with the sweepstakes, contest, or drawing.

99 Acts, ch 16, §6

714D.6 Private action.

1. In addition to any other remedy, a consumer may bring an action against a person who commits an unlawful practice under this chapter to recover from the person all of the following:

a. The amount of any moneys or property acquired by the person from the consumer by means of an unlawful practice under this section, or two hundred dollars, whichever is greater.

b. If a court finds that the consumer prevails in the action and that the unlawful practice was an intentional violation of this chapter, five hundred dollars or twice the amount of the consumer's actual damages, whichever is greater.

c. Costs and reasonable attorney fees.

2. A cause of action under this section shall not apply unless, prior to filing the action, the consumer has submitted a complaint to the utilities board within the utilities division of the department of commerce, the utilities board has failed to resolve the complaint to the consumer's satisfaction within one hundred twenty days of the date the complaint was submitted, and the consumer dismisses the complaint before the utilities board. The requirement that a consumer complaint be submitted to the utilities board and resolved by the utilities board to the consumer's satisfaction within one hundred twenty days of filing before the consumer may file an action pursuant to this section shall not apply to an action by the attorney general to recover moneys for the consumer pursuant to section 714D.7 or any other law. A finding by the utilities board that a respondent has complied with rules governing carrier selection procedures adopted by the utilities board shall be an affirmative defense to any claim brought under this section or section 476.103 or 714D.7 that an unauthorized change in service has occurred.

99 Acts, ch 16, §7

714D.7 Civil enforcement.

1. A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*. The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

2. In seeking reimbursement pursuant to section 714.16, subsection 7, from a person who has committed an unlawful practice under this chapter, the attorney general may seek an order from the court that the person pay to the attorney general on behalf of consumers the amounts for which the person would be liable under section 714D.6 for each consumer who has a cause of action pursuant to section 714D.6. Section 714.16, as it relates to consumer reimbursement, applies to amounts recovered by the attorney general as reimbursement under this chapter. However, a consumer who is awarded monetary damages pursuant to section 714D.6 is not eligible for monetary relief under this section for the same unlawful practice.

3. The remedies provided pursuant to this chapter are in addition to any other remedies provided to the state or to a person under other law.

4. The attorney general shall not file a civil enforcement action under this chapter or under section 714.16 against a person for an act which is the subject of an administrative proceeding to impose a civil penalty which has been initiated against the person by the utilities board within the utilities division of the department of commerce. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against a person for violating a prior agreement entered into by the person with the attorney general or a court order obtained by the attorney general against the person. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against the person for acts which are not the subject of an administrative proceeding which has been initiated against the person by the utilities board.

99 Acts, ch 16, §8

CHAPTER 714E

ELECTRONIC MAIL TRANSMISSIONS

714E.1 Restrictions on use of electronic mail — damages — exceptions.
714E.2 Civil enforcement.

714E.1 Restrictions on use of electronic mail — damages — exceptions.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. "Advertisement" means an electronic mail message sent to a computer for the purpose of promoting real property, goods, or services for sale, lease, barter, or auction.

b. "Computer" means an electronic device that performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer, including a computer network. As used in this paragraph, *"computer"* includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. "Computer network" means a set of related, remotely connected devices and communication facilities, including two or more computers with capability to transmit data among them through communication facilities.

d. "Electronic mail" means an electronic message, file, data, or other electronic information that is transmitted using an internet or intranet computer network to one or more persons.

e. "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet, and such systems operated or services offered by a library or an educational institution.

f. "Internet domain name" means a globally unique, hierarchical reference to an internet host or service, assigned through a centralized internet naming authority, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

g. "Recipient" means a person who receives electronic mail.

2. *Prohibited acts.* It is unlawful for a person to use an interactive computer service to initiate the sending of bulk electronic mail that the sender knows, or has reason to know, violates any of the following:

a. Uses the name of a third party in the return address field without permission of the third party.

b. Misrepresents any information in identifying the point of origin of the transmission path of the electronic mail.

c. Does not contain information identifying the point of origin or the transmission path of the electronic mail message.

d. With respect to an unsolicited advertisement, does not, at a minimum, provide an electronic mail address readily identifiable in the advertisement to which the recipient may send a request for declining such electronic mail.

e. Demonstrates a pattern of sending unsolicited advertisements to a recipient who has sent the person a request for declining such electronic mail following a reasonable time, which in no event shall be more than five business days, after the receipt by the person of such request.

3. *Civil damages.*

a. (1) Except as provided in paragraph *"b"*, a person who is injured in person or property as a result of a violation of this section may bring an action to recover damages. Such damages shall include, but are not limited to, actual damages including lost profits.

(2) Notwithstanding subparagraph (1), a person who transmits or causes to be transmitted electronic mail in violation of subsection 2 is liable to the recipient of the electronic mail for monetary damages in an amount equal to any actual damages, including lost profits, caused by such transmittal. The recipient, in lieu of actual damages, may elect to recover from the person transmitting or causing to be transmitted such electronic mail the greater of ten dollars for each bulk electronic mail message transmitted to the recipient in violation of this section, or five hundred dollars. In addition to the monetary damages, the recipient is also entitled to costs and reasonable attorney fees.

b. (1) Notwithstanding paragraph *"a"*, if the person injured is an interactive computer service and such injury arises from a person who transmits bulk electronic mail without authority, such

service may recover actual damages, attorney fees, and costs. Such service, in lieu of recovering actual damages, may also elect to recover the greater of ten dollars for each unsolicited bulk electronic mail message transmitted in violation of this section, or twenty-five thousand dollars.

(2) For purposes of this paragraph, a person is *"without authority"* when the person has no right or permission of the owner to use a computer, or the person uses the computer in a manner which exceeds the person's right or permission; or the person uses a computer, a computer network, or the computer services or an interactive computer service to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the interactive computer service to the extent the person has received actual notice of such policies. Transmission of electronic mail from an organization or similar entity to the members of such organization or similar entity shall not be deemed to be unsolicited bulk electronic mail.

c. In an action brought under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, including but not limited to granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering a person involved in the litigation not to disclose an alleged trade secret without prior court approval.

d. This section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

4. *Injunction.* In addition to any other remedy under this section, a recipient may also petition the district court for an injunction to prohibit the person from transmitting to the recipient any other electronic mail that includes an advertisement.

5. *Jurisdiction.* Transmitting or causing the transmission of unsolicited bulk electronic mail to or through an interactive computer service's computer network located in this state shall constitute an act in this state. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against that person. However, this chapter does not limit, restrict, or otherwise affect the jurisdiction of any court of this state over foreign corporations which are subject to service of process pursuant to any other statute, or the jurisdiction of any court of this state over a person for engaging in acts which result in jurisdiction under this section.

6. *Exceptions.*

a. This section does not apply to any of the following:

(1) A person who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person knowingly transmits electronic mail that includes an advertisement which the person prepared or caused to be prepared.

(2) A person who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person transmits electronic mail on behalf of those users which the person knows, or should have known was transmitted in violation of subsection 2.

(3) Electronic mail which is accessed by the recipient from an electronic bulletin board.

(4) A person who provides users with access at no charge to electronic mail, including receiving and transmitting such electronic mail, and as a condition of providing such access requires such users to receive unsolicited advertisements.

b. An interactive computer service is not liable under this section for an action voluntarily taken in good faith to block or prevent the receipt or transmission through its service of any commercial electronic mail which is reasonably believed to be in violation of subsection 2.

99 Acts, ch 185, §1

714E.2 Civil enforcement.

1. A violation of section 714E.1, subsection 2, is a violation of section 714.16, subsection 2, paragraph *"a"*. All the powers conferred upon the attorney general to accomplish the objectives and carry out the duties prescribed pursuant to section 714.16 are also conferred upon the attorney general to enforce section 714E.1, including, but not limited to the power to issue subpoenas, adopt rules which shall have the force of law, and seek injunctive relief and civil penalties.

2. In seeking reimbursement pursuant to section 714.16, subsection 7, from a person who has committed a violation of section 714E.1, subsection 2, the attorney general may seek an order from the court that the person pay to the attorney general on behalf of consumers the amounts for which the person would be liable under section 714E.1, subsection 3, for each consumer who has a cause of action pursuant to section 714E.1, subsection 3. Section 714.16, as it relates to consumer reimbursement, shall apply to consumer reimbursement pursuant to this section.

99 Acts, ch 185, §2

CHAPTER 715

FALSE USE OF A FINANCIAL INSTRUMENT

Repealed by 87 Acts, ch 150, §8; see chapter 715A

CHAPTER 715A

FORGERY AND RELATED FRAUDULENT CRIMINAL ACTS

715A.1 Definitions.
715A.2 Forgery.
715A.2A Accommodation of forgery — penalty.
715A.3 Simulating objects of antiquity or rarity.
715A.4 Fraudulent destruction, removal, or concealment of recordable instruments.
715A.5 Tampering with records.
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715A.1 Definitions.

1. As used in this chapter the term *"writing"* includes printing or any other method of recording information, and includes money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

2. As used in this chapter the term *"credit card"* means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer and includes a debit card or access device used to engage in an electronic transfer of funds through a satellite terminal as defined in section 527.2, subsection 20.

87 Acts, ch 150, §1

715A.2 Forgery.

1. A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:

a. Alters a writing of another without the other's permission.

b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.

c. Utters a writing which the person knows to be forged in a manner specified in paragraph *"a"* or *"b"*.

d. Possesses a writing which the person knows to be forged in a manner specified in paragraph *"a"* or *"b"*.

2. *a.* Forgery is a class "D" felony if the writing is or purports to be any of the following:

(1) Part of an issue of money, securities, postage or revenue stamps, or other instruments issued by the government.

(2) Part of an issue of stock, bonds, credit-sale contracts as defined in section 203.1, or other instruments representing interests in or claims against any property or enterprise.

(3) A check, draft, or other writing which ostensibly evidences an obligation of the person who has purportedly executed it or authorized its execution.

(4) A document prescribed by statute, rule, or regulation for entry into or as evidence of authorized stay or employment in the United States.

b. Forgery is an aggravated misdemeanor if the writing is or purports to be a will, deed, contract, release, commercial instrument, or any other writing or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations.

87 Acts, ch 150, §2; 92 Acts, ch 1239, §80; 96 Acts, ch 1181, §2, 3

715A.2A Accommodation of forgery — penalty.

1. An employer is subject to the civil penalty in this section if the employer does either of the following:

a. Hires a person when the employer or an agent or employee of the employer knows that the document evidencing the person's authorized stay or employment in the United States is in violation of section 715A.2, subsection 2, paragraph *"a"*, subparagraph (4), or knows that the person is not authorized to be employed in the United States.

b. Continues to employ a person when the employer or an agent or employee of the employer knows that the document evidencing the person's authorized stay or employment in the United States is in violation of section 715A.2, subsection 2, paragraph *"a"*, subparagraph (4), or knows that the person is not authorized to be employed in the United States.

2. An employer who establishes that it has complied in good faith with the requirements of 8 U.S.C. § 1324(b) with respect to the hiring or continued employment of an alien in the United States has established an affirmative defense that the employer has not violated this section.

3. An employer who violates this section shall cease and desist from further violations and shall pay the following civil penalty:

a. For a first violation, not less than two hundred and fifty dollars and not more than two thousand dollars for each unauthorized alien hired or employed.

b. For a second violation, not less than two thousand dollars and not more than five thousand dollars for each unauthorized alien hired or employed.

c. For a third or subsequent violation, not less than three thousand dollars and not more than ten thousand dollars for each unauthorized alien hired or employed.

In addition, an employer found to have violated this section shall be assessed the costs of the action to enforce the civil penalty, including the reasonable costs of investigation and attorney fees.

4. A civil action to enforce this provision shall be by equitable proceedings instituted by the attorney general or county attorney.

5. Penalties ordered pursuant to this section shall be paid to the treasurer of state for deposit in the general fund of the state.

96 Acts, ch 1181, §4

715A.3 Simulating objects of antiquity or rarity.

A person commits a serious misdemeanor if, with intent to defraud anyone or with knowledge that the person is facilitating a fraud to be perpetrated by anyone, the person makes, alters, or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

87 Acts, ch 150, §3

715A.4 Fraudulent destruction, removal, or concealment of recordable instruments.

A person commits an aggravated misdemeanor if, with the intent to deceive or injure anyone, the person destroys, removes, or conceals a will, deed, mortgage, security instrument, or other writing for which the law provides public recording.

87 Acts, ch 150, §4

715A.5 Tampering with records.

A person commits an aggravated misdemeanor if, knowing that the person has no privilege to do so, the person falsifies, destroys, removes, or conceals a writing or record, with the intent to deceive or injure anyone or to conceal any wrongdoing.

87 Acts, ch 150, §5

715A.6 Credit cards.

1. A person commits a public offense by using a credit card for the purpose of obtaining property or services with knowledge of any of the following:

a. The credit card is stolen or forged.

b. The credit card has been revoked or canceled.

c. For any other reason the use of the credit card is unauthorized.

It is an affirmative defense to prosecution under paragraph *"c"* if the person proves by a preponderance of the evidence that the person had the intent and ability to meet all obligations to the issuer arising out of the use of the credit card.

2. An offense under this section is a class "D" felony if the value of the property or services secured or sought to be secured by means of the credit card is greater than one thousand dollars, otherwise the offense is an aggravated misdemeanor.

87 Acts, ch 150, §6; 92 Acts, ch 1060, §7

715A.6A Prohibitions relating to false academic degrees, grades, or honors.

1. As used in this section, *"academic degree"* means a diploma, certificate, license, transcript, or other document which signifies or purports to signify completion of the academic requirements of a secondary, postsecondary, professional, or governmental program of study.

2. A person commits a serious misdemeanor if the person, knowingly and willingly, does any of the following:

a. Falsely makes or alters, procures to be falsely made or altered, or assists in falsely making or altering, an academic degree.

b. Uses, offers, or presents as genuine, a falsely made or altered academic degree.

c. Sells, gives, purchases, or obtains, procures to be sold, given, purchased, or obtained, or assists in selling, giving, buying, or obtaining, a false academic degree.

d. Makes a false written representation relating to the person's academic grades, honors, or awards, or makes a false written representation that the person has received an academic degree from a specific secondary, postsecondary, professional institution, or governmental program of study, in an application for any of the following:

(1) Employment.

(2) Admission to an educational program.

(3) An award or other recognition.

(4) The issuance of an academic degree to the person.

96 Acts, ch 1039, §1

715A.7 Filing multiple counts in one information, indictment, or complaint.

A single information, indictment, or complaint charging a violation of a provision of this chapter may allege more than one such violation against a person. The multiple charges shall be set out in separate counts, and the accused person shall be acquitted or convicted upon each count by a separate verdict. A convicted person shall be sentenced upon each verdict of guilty. The court may consider separate verdicts of guilty returned at the same time as one offense for the purpose of sentencing.

87 Acts, ch 150, §7; 88 Acts, ch 1134, §114

715A.8 Identity theft.

1. For purposes of this section, *"identification information"* means the name, address, date of birth, telephone number, driver's license number, nonoperator's identification number, social security number, place of employment, employee identification number, parent's legal surname prior to marriage, demand deposit account number, savings or checking account number, or credit card number of a person.

2. A person commits the offense of identity theft if the person with the intent to obtain a benefit fraudulently obtains identification information of another person and uses or attempts to use that information to obtain credit, property, or services without the authorization of that other person.

3. If the value of the credit, property, or services exceeds one thousand dollars, the person commits a class "D" felony. If the value of the credit, property, or services does not exceed one thousand dollars, the person commits an aggravated misdemeanor.

4. A violation of this section is an unlawful practice under section 714.16.

99 Acts, ch 47, §2

715A.9 Value for purposes of identity theft.

The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes but is not limited to market value within the community, actual value, or replacement value.

If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

99 Acts, ch 47, §3

CHAPTER 715B

PROTECTION OF BUYERS OF FINE ART AND VISUAL ART MULTIPLES

715B.1 Definitions.
715B.2 Express warranties.
715B.3 Falsifying certificates of authenticity or false representation — penalty.
715B.4 Remedies to buyer.

715B.1 Definitions.

As used in this chapter:

1. *"Artist"* means the creator of a work of fine art or, in the case of multiples, the person who conceived or created the image which is contained in or which constitutes the master from which the in-

dividual print was made.

2. *"Art merchant"* means a person who is in the business of dealing, exclusively or nonexclusively, in works of fine art or multiples, or a person who by the person's occupation claims or impliedly claims to have knowledge or skill peculiar to such works, or to whom such knowledge or skill may be attributed by the person's employment of an agent or other intermediary who by occupation claims or impliedly claims to have such knowledge or skill. The term *"art merchant"* includes an auctioneer who sells such works at public auction, and except for multiples, includes persons not otherwise defined or treated as art merchants in this chapter who are consignors or principals of auctioneers.

3. *"Author"* or *"authorship"* refers to the creator of a work of fine art or multiple or to the period, culture, source, or origin, as the case may be, with which the creation of the work is identified in the description of the work.

4. *"Counterfeit"* means a work of fine art or multiple made, altered, or copied, with or without intent to deceive, in such a manner that it appears or is claimed to have an authorship which it does not in fact possess.

5. *"Certificate of authenticity"* means a written statement by an art merchant confirming, approving, or attesting to the authorship of a work of fine art or multiple, which is capable of being used to the advantage or disadvantage of some person.

6. *"Fine art"* means a painting, sculpture, drawing, work of graphic art, or print, but not multiples.

7. *"Limited edition"* means works of art produced from a master, all of which are the same image and bear numbers or other markings to denote a limited production to a stated maximum number of multiples, or which are otherwise held out as limited to a maximum number of multiples.

8. *"Master"* includes a printing plate, stone, block, screen, photographic negative, or other like material which contains an image used to produce visual art objects in multiples.

9. *"Print"* means a multiple produced by, but not limited to, such processes as engraving, etching, woodcutting, lithography, and serigraphy, a multiple produced or developed from a photographic negative, or a multiple produced or developed by any combination of such processes.

10. *"Proof"* means a multiple which is the same as, and which is produced from the same master as the multiples in a limited edition, but which, whether so designated or not, is set aside from and is in addition to the limited edition to which it relates.

11. *"Signed"* means autographed by the artist's own hand, and not by mechanical means of reproduction, and if a multiple, after the multiple was produced, whether or not the master was signed.

12. *"Visual art multiple"* or *"multiple"* means a print, photograph, positive or negative, or similar art object produced in more than one copy and sold, offered for sale, or consigned in, into, or from this state for an amount in excess of one hundred dollars exclusive of any frame. The term includes a page or sheet taken from a book or magazine and offered for sale or sold as a visual art object, but excludes a book or magazine.

13. *"Written instrument"* means a written or printed agreement, bill of sale, invoice, certificate of authenticity, catalogue, or any other written or printed note, memorandum, or label describing the work of fine art or multiple which is to be sold, exchanged, or consigned by an art merchant.

87 Acts, ch 49, §1

715B.2 Express warranties.

1. If an art merchant sells or exchanges a work of fine art or multiple and furnishes to a buyer of the work who is not an art merchant a certificate of authenticity or any similar written instrument presumed to be part of the basis of the bargain, the art merchant creates an express warranty for the material facts stated as of the date of the sale or exchange.

2. Except as provided in subsection 4, an express warranty shall not be negated or limited; however, in construing the degree of warranty, due regard shall be given the terminology used and the meaning accorded the terminology by the customs and usage of the trade at the time and in the locality where the sale or exchange took place.

3. Language used in a certificate of authenticity or similar written instrument, stating that:

a. The work is by a named author or has a named authorship, without any limiting words, means unequivocally, that the work is by such named author or has such named authorship.

b. The work is *"attributed to a named author"* means a work of the period of the author, attributed to the author, but not with certainty by the author.

c. The work is of the *"school of a named author"* means a work of the period of the author, by a pupil or close follower of the author, but not by the author.

4. An express warranty and any disclaimer intended to negate or limit the warranty shall be construed wherever reasonable as consistent with each other but subject to the provisions of section 554.2202 on parol and extrinsic evidence. However, the negation or limitation is inoperative to the extent that the negation or limitation is unreasonable or that such construction is unreasonable. A negation or limitation is unreasonable if:

a. The disclaimer is not conspicuous, written, and apart from the warranty, in words which clearly and specifically inform the buyer that the seller assumes no risk, liability, or responsibility

for the material facts stated concerning the work of fine art. Words of general disclaimer are not sufficient to negate or limit an express warranty.

b. The work of fine art is proved to be a counterfeit and this was not clearly indicated in the description of the work.

c. The information provided is proved to be, as of the date of sale or exchange, false, mistaken, or erroneous.

5. This section shall apply to an art merchant selling or exchanging a multiple who furnishes the buyer with the name of the artist and any other information including, but not limited to, whether the multiple is a limited edition, a proof, or signed. The warranty provided under this subsection shall include sales to buyers who are art merchants.

87 Acts, ch 49, §2

715B.3 Falsifying certificates of authenticity or false representation — penalty.

A person who makes, alters, or issues a certificate of authenticity or any similar written instrument for a work of fine art or multiple attesting to material facts about the work which are not true, or who makes representations regarding a work of fine art or a multiple attesting to material facts about the work which are not true, with intent to defraud, deceive, or injure another is guilty, upon conviction, of an aggravated misdemeanor.

87 Acts, ch 49, §3

715B.4 Remedies to buyer.

1. An art merchant who sells a work of fine art or a multiple to a buyer under a warranty attesting to facts about the work which are not true is liable to the buyer to whom the work was sold.

a. If the warranty was untrue through no fault of the art merchant, the merchant's liability is the consideration paid by the buyer upon return of the work in substantially the same condition in which it was received by the buyer.

b. If the warranty is untrue and the buyer is able to establish that the art merchant failed to make reasonable inquiries according to the custom and the usage of the trade to confirm the warranted facts about the work, or that the warranted facts would have been found to be untrue if reasonable inquiries had been made, the merchant's liability is the consideration paid by the buyer with interest from the time of the payment at the rate prescribed by section 535.3 upon the return of the work in substantially the same condition in which it was received by the buyer.

c. If the warranty is untrue and the buyer is able to establish that the art merchant knowingly provided false information on the warranty or willfully and falsely disclaimed knowledge of information relating to the warranty, the merchant is liable to the buyer in an amount equal to three times the amount provided in paragraph *"b"*.

This remedy shall not bar or be deemed inconsistent with a claim for damages or with the exercise of additional remedies otherwise available to the buyer.

2. In an action to enforce this section, the court may allow a prevailing buyer the costs of the action together with reasonable attorneys' and expert witnesses' fees. If the court determines that an action to enforce this section was brought in bad faith, the court may allow those expenses to the art merchant that it deems appropriate.

3. An action to enforce any liability under this section shall be brought within the time period prescribed for such actions under section 614.1.

87 Acts, ch 49, §4

CHAPTER 716

DAMAGE AND TRESPASS TO PROPERTY

716.1 Criminal mischief defined.
716.2 Multiple acts.
716.3 Criminal mischief in the first degree.
716.4 Criminal mischief in the second degree.
716.5 Criminal mischief in the third degree.
716.6 Criminal mischief in the fourth and fifth degrees.
716.6A Criminal mischief in violation of individual rights.
716.6B Unauthorized computer access — penalties — civil cause of action.
716.7 Trespass defined.
716.8 Penalties.
716.9 Stowing away.
716.10 Railroad vandalism.

716.1 Criminal mischief defined.

Any damage, defacing, alteration, or destruction of property is criminal mischief when done intentionally by one who has no right to so act.

[C51, §2679, 2681 – 2683, 2686 – 2688, 2690, 2715, 2753; R60, §1766, 4319, 4321 – 4323, 4326 – 4328, 4330 – 4332, 4357, 4403; C73, §1564, 3897 – 3899, 3978, 3980 – 3982, 3985 – 3987, 3989 – 3992, 4021, 4082; C97, §588, 2466, 4800 – 4806, 4808, 4809, 4812, 4822 – 4828, 5054; S13, §1989-a15, 4808, 4822, 4823, 4830-a, -b, -c; SS15, §2900-e; C24, 27, 31, 35, 39, §**13080, 13082, 13083, 13085, 13088 – 13091, 13093 – 13099, 13102, 13107, 13112 – 13117, 13122, 13124;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §714.1, 714.3 – 714.5, 714.8 – 714.11, 714.14 – 714.20, 714.23, 714.28, 716.1 – 716.6, 716.9, 716.12; C79, 81, §716.1]

2002 Acts, ch 1049, §1

Section amended

716.2 Multiple acts.

Whenever criminal mischief is committed upon more than one item of property at approximately the same location or time period, so that all of these acts of mischief can be attributed to a single scheme, plan or conspiracy, such acts shall be considered as a single act of criminal mischief.

[C79, 81, §716.2]

716.3 Criminal mischief in the first degree.

Criminal mischief is criminal mischief in the first degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed is more than ten thousand dollars, or if such acts are intended to or do in fact cause a substantial interruption or impairment of service rendered to the public by a gas, electric, steam or waterworks corporation, telephone or telegraph corporation, common carrier, or a public utility operated by a municipality. Criminal mischief in the first degree is a class "C" felony.

[C51, §2680; R60, §4320; C73, §3979; C97, §4807; S13, §4807; C24, 27, 31, 35, 39, §**13120;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §716.7; C79, 81, §716.3]

92 Acts, ch 1060, §8

716.4 Criminal mischief in the second degree.

Criminal mischief is criminal mischief in the second degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds one thousand dollars but does not exceed ten thousand dollars. Criminal mischief in the second degree is a class "D" felony.

[C79, 81, §716.4]

92 Acts, ch 1060, §9

716.5 Criminal mischief in the third degree.

Criminal mischief is criminal mischief in the third degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds five hundred dollars, but does not exceed one thousand dollars, or if the property is a deed, will, commercial paper or any civil or criminal process or other instrument having legal effect, or if the act consists of rendering substantially less effective than before any light, signal, obstruction, barricade, or guard which has been placed or erected for the purpose of enclosing any unsafe or dangerous place or of alerting persons to an unsafe or dangerous condition. Criminal mischief in the third degree is an aggravated misdemeanor.

A person commits criminal mischief in the third degree who does either of the following:

1. Intentionally disinters human remains from a burial site without lawful authority.

2. Intentionally disinters human remains that have state and national significance from an historical or scientific standpoint for the inspiration and benefit of the United States without the permission of the state archaeologist.

[C51, §2638, 2714, 2746; R60, §4265, 4356, 4396; C73, §3929, 4017, 4075; C97, §4865, 4945, 5043; C24, 27, 31, 35, 39, §**13050, 13100, 13148;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §713.5, 714.21, 718.10; C79, 81, §716.5]

83 Acts, ch 99, §1; 92 Acts, ch 1060, §10

716.6 Criminal mischief in the fourth and fifth degrees.

Criminal mischief is criminal mischief in the fourth degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds two hundred dollars, but does not exceed five hundred dollars. Criminal mischief in the fourth degree is a serious misdemeanor. All criminal mischief which is not criminal mischief in the first degree, second degree, third degree, or fourth degree is criminal mischief in the fifth degree. Criminal mischief in the fifth degree is a simple misdemeanor.

[C79, 81, §716.6]

83 Acts, ch 99, §2; 92 Acts, ch 1060, §11; 99 Acts, ch 153, §14

716.6A Criminal mischief in violation of individual rights.

A violation of sections 716.5 and 716.6, which is also a hate crime as defined in section 729A.2, shall be classified and punished as an offense one degree higher than the underlying offense.

92 Acts, ch 1157, §5

716.6B Unauthorized computer access — penalties — civil cause of action.

1. A person who knowingly and without authorization accesses a computer, computer system, or computer network commits the following:

a. An aggravated misdemeanor if computer data is accessed that contains a confidential record, as defined in section 22.7, operational or support data of a public utility, as defined in section 476.1, operational or support data of a public airport, or a trade secret, as defined in section 550.2.

b. A serious misdemeanor if computer data is copied, altered, or deleted.

c. A simple misdemeanor for any access which is not an aggravated or serious misdemeanor.

2. The prosecuting attorney or an aggrieved person may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this section or to prevent, restrain, or remedy such a violation.

2000 Acts, ch 1201, §11; 2002 Acts, ch 1049, §2

Computer terminology, see §702.1A

Section amended

716.7 Trespass defined.

1. The term *"property"* shall include any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure whether publicly or privately owned.

2. The term *"trespass"* shall mean one or more of the following acts:

a. Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense, to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate, or to hunt, fish or trap on or in the property. This paragraph does not prohibit the unarmed pursuit of game or furbearing animals lawfully injured or killed which come to rest on or escape to the property of another.

b. Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

c. Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

d. Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

e. Entering or remaining upon or in railway property without lawful authority or without the consent of the railway corporation which owns, leases, or operates the railway property. This paragraph does not apply to passage over a railroad right-of-way, other than a track, railroad roadbed, viaduct, bridge, trestle, or railroad yard, by an unarmed person if the person has not been notified or requested to abstain from entering on to the right-of-way or to vacate the right-of-way and the passage over the right-of-way does not interfere with the operation of the railroad.

3. The term *"trespass"* shall not mean entering upon the property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property.

4. The term *"trespass"* does not mean the entering upon the right-of-way of a public road or highway.

5. For purposes of this section, *"railway property"* means all tangible real and personal property owned, leased, or operated by a railway corporation with the exception of any administrative building or offices of the railway corporation.

For purposes of this section, *"railway corporation"* means a corporation, company, or person

owning, leasing, or operating any railroad in whole or in part within this state.

6. This section shall not apply to the following persons:

a. Representatives of the state department of transportation, the federal railroad administration, or the national transportation safety board who enter or remain upon or in railway property while engaged in the performance of official duties.

b. Employees of a railway corporation who enter or remain upon or in railway property while acting in the course of employment.

c. Any person who is engaged in the operation of a lawful business on railway station grounds or in the railway depot.

[C51, §2684; R60, §4324; C73, §3983; C97, §4793, 4829; C24, 27, 31, 35, 39, §**13086, 13374;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §714.6, 729.1; C79, 81, §716.7; 81 Acts, ch 205, §1]

88 Acts, ch 1212, §1; 98 Acts, ch 1067, §1, 2

716.8 Penalties.

1. Any person who knowingly trespasses upon the property of another commits a simple misdemeanor.

2. Any person committing a trespass as defined in section 716.7 which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits a serious misdemeanor.

3. A person who knowingly trespasses on the property of another with the intent to commit a hate crime, as defined in section 729A.2, commits a serious misdemeanor.

4. A person committing a trespass as defined in section 716.7 with the intent to commit a hate crime which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits an aggravated misdemeanor.

[C73, 75, 77, §729.2, 729.3; C79, 81, §716.8]

92 Acts, ch 1157, §6; 99 Acts, ch 153, §15, 16

716.9 Stowing away.

A person commits the simple misdemeanor offense of stowing away when, without lawful authority or the consent of a railway corporation, the person does either of the following:

1. Rides on the outside of a train or train component.

2. Rides on the inside of a train or train component which is not a passenger car.

98 Acts, ch 1067, §3

716.10 Railroad vandalism.

1. A person commits railroad vandalism when the person does any of the following:

a. Shoots, fires, or otherwise discharges a firearm or other device at a train or train component.

b. Launches, releases, propels, casts, or directs a projectile, missile, or other device at a train or train component.

c. Intentionally throws or drops an object on or onto a train or train component.

d. Intentionally places or drops an object on or onto a railroad track.

e. Without the consent of the railway corporation, takes, removes, defaces, alters, or obscures any of the following:

(1) A railroad signal.
(2) A train control system.
(3) A train dispatching system.
(4) A warning signal.
(5) A highway-railroad grade crossing signal or gate.
(6) A railroad sign, placard, or marker.

f. Without the consent of the railway corporation, removes parts or appurtenances from, damages, impairs, disables, interferes with the operation of, or renders inoperable any of the following:

(1) A railroad signal.
(2) A train control system.
(3) A train dispatching system.
(4) A warning signal.
(5) A highway-railroad grade crossing signal or gate.
(6) A railroad sign, placard, or marker.

g. Without the consent of the railway corporation, taking, removing, disabling, tampering, changing, or altering a part or component of any operating mechanism or safety device of any train or train component.

h. Without the consent of the railway corporation, takes, removes, tampers, changes, alters, or interferes with any of the following:

(1) A railroad roadbed.
(2) A railroad rail.
(3) A railroad tie.
(4) A railroad frog.
(5) A railroad sleeper.
(6) A railroad switch.
(7) A railroad viaduct.
(8) A railroad bridge.
(9) A railroad trestle.
(10) A railroad culvert.
(11) A railroad embankment.
(12) Any other structure or appliance which pertains or is appurtenant to a railroad.

2. *a.* A person commits railroad vandalism in the first degree if the person intentionally commits railroad vandalism which results in the death of any person. Railroad vandalism in the first degree is a class "B" felony. However, notwithstanding section 902.9, subsection 2, the maximum sentence for a person convicted under this section shall be a period of confinement of not more than fifty years.

b. A person commits railroad vandalism in the second degree if the person intentionally commits railroad vandalism which results in serious injury

to any person. Railroad vandalism in the second degree is a class "B" felony.

c. A person commits railroad vandalism in the third degree if the person intentionally commits railroad vandalism which results in bodily injury to any person or results in property damage which costs more than ten thousand dollars to replace, repair, or restore. Railroad vandalism in the third degree is a class "C" felony.

d. A person commits railroad vandalism in the fourth degree if the person intentionally commits railroad vandalism which results in property damage which costs ten thousand dollars or less but more than one thousand dollars to replace, repair, or restore. Railroad vandalism in the fourth degree is a class "D" felony.

e. A person commits railroad vandalism in the fifth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than five hundred dollars but does not exceed one thousand dollars to replace, repair, or restore. Railroad vandalism in the fifth degree is an aggravated misdemeanor.

f. A person commits railroad vandalism in the sixth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than one hundred dollars but does not exceed five hundred dollars to replace, repair, or restore. Railroad vandalism in the sixth degree is a serious misdemeanor.

g. A person commits railroad vandalism in the seventh degree if the person intentionally commits railroad vandalism which results in property damage which costs one hundred dollars or less to replace, repair, or restore. Railroad vandalism in the seventh degree is a simple misdemeanor.

3. For purposes of this section, *"railway corporation"* means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within the state.

For purposes of this section, *"train component"* means any locomotive, engine, tender, railroad car, passenger car, freight car, box car, tank car, hopper car, flatbed, container, work equipment, rail-mounted equipment, or any other railroad rolling stock.

For purposes of this section, *"train"* means a series of two or more train components which are coupled together in a line.

98 Acts, ch 1067, §4

CHAPTER 716A

COMPUTER CRIME

Repealed by 2000 Acts, ch 1201, §17;
see §622.51A, 702.1A, 702.14, 714.1, 716.6B

CHAPTER 716B

HAZARDOUS WASTE OFFENSES

716B.1 Definitions.
716B.2 Unlawful disposal of hazardous waste — penalties.
716B.3 Unlawful transportation of hazardous waste — penalties.
716B.4 Unlawful storage or treatment of hazardous waste — penalties.
716B.5 Enforcement.

716B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of natural resources.

2. *"Disposal"* or *"dispose"* means disposal as defined in section 455B.411, subsection 1.

3. *"Hazardous waste"* means a hazardous waste as defined in section 455B.411, subsection 3, or a hazardous substance as defined in 42 U.S.C. § 9601, or a hazardous substance as designated by regulations adopted by the administrator of the United States environmental protection agency pursuant to 42 U.S.C. § 9602.

4. *"Person"* means an agency of the state or federal government, a municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity, and includes an officer, or governing or managing body of a municipality, governmental subdivision, interstate body, or public or private corporation.

5. *"Storage"* or *"store"* means storage as defined in section 455B.411, subsection 9.

6. *"Treatment"* or *"treat"* means treatment as

defined in section 455B.411, subsection 10.
88 Acts, ch 1080, §3

716B.2 Unlawful disposal of hazardous waste — penalties.
A person who knowingly or with reason to know, disposes of hazardous waste or arranges for or allows the disposal of hazardous waste at any location other than one authorized by the department or the United States environmental protection agency, or in violation of any material term or condition of a hazardous waste facility permit, is guilty of an aggravated misdemeanor and upon conviction shall be punished by a fine of not more than twenty-five thousand dollars for each day of violation or imprisonment for not more than two years, or both. If the conviction is for a violation committed after a first conviction under this section, the person is guilty of a class "D" felony and shall be punished by a fine of not more than fifty thousand dollars for each day of violation or imprisonment for not more than five years, or both.
88 Acts, ch 1080, §4

716B.3 Unlawful transportation of hazardous waste — penalties.
A person who knowingly or with reason to know, transports or causes to be transported any hazardous waste to any location other than a facility that is authorized to receive, treat, store, or dispose of the hazardous waste under rules adopted pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 – 6992, is guilty of an aggravated misdemeanor and upon conviction shall be punished by a fine of not more than twenty-five thousand dollars for each day of violation or imprisonment for not more than two years, or both. If the conviction is for a violation committed after a first conviction under this section, the person is guilty of a class "D" felony and shall be punished by a fine of not more than fifty thousand dollars for each day of violation or imprisonment for not more than five years, or both.
88 Acts, ch 1080, §5; 95 Acts, ch 49, §24

716B.4 Unlawful storage or treatment of hazardous waste — penalties.
A person who knowingly or with reason to know, treats or stores hazardous waste without a permit issued pursuant to 42 U.S.C. § 6925 or § 6926 is guilty of an aggravated misdemeanor and upon conviction shall be punished by a fine of not more than twenty-five thousand dollars for each day of violation or imprisonment for not more than two years, or both. If the conviction is for a violation committed after a first conviction under this section, the person is guilty of a class "D" felony and shall be punished by a fine of not more than fifty thousand dollars for each day of violation or imprisonment for not more than five years, or both.
88 Acts, ch 1080, §6

716B.5 Enforcement.
The attorney general or the county attorney for the county in which a violation occurs is responsible for enforcement of this chapter.
88 Acts, ch 1080, §7

CHAPTER 717

INJURY TO LIVESTOCK

717.1 Definitions.
717.1A Livestock abuse.
717.2 Livestock neglect.
717.2A Rescue of neglected livestock.
717.3 Exhibitions and fights. Repealed by 94 Acts, ch 1103, §23.
717.4 Abandonment of cats and dogs — penalty. Repealed by 94 Acts, ch 1103, §23.
717.5 Disposition of neglected livestock.
717.6 Injury or interference with a police service dog. Repealed by 94 Acts, ch 1103, §23.

717.1 Definitions.
As used in this chapter, unless the context otherwise requires:
1. *"Law enforcement officer"* means a regularly employed member of a police force of a city or county, including a sheriff, who is responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state.
2. *"Livestock"* means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus; farm deer, as defined in section 481A.1; or poultry.
3. *"Livestock care provider"* means a person designated by a local authority to provide care to livestock which is rescued by the local authority pursuant to section 717.2A.

4. *"Local authority"* means a city as defined in section 362.2 or a county as provided in chapter 331.

5. *"Maintenance"* means to provide on-site or off-site care to neglected livestock.

6. *"Sustenance"* means food, water, or a nutritional formulation customarily used in the production of livestock.

[C51, §2678; R60, §4318; C73, §3977; C97, §4818; C24, 27, 31, 35, 39, §**13132;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §717.1]

94 Acts, ch 1103, §7; 95 Acts, ch 43, §14; 95 Acts, ch 134, §6

717.1A Livestock abuse.

A person is guilty of livestock abuse if the person intentionally injures or destroys livestock owned by another person, in any manner, including, but not limited to, intentionally doing any of the following: administering drugs or poisons to the livestock, or disabling the livestock by using a firearm or trap. A person guilty of livestock abuse commits an aggravated misdemeanor. This section shall not apply to any of the following:

1. A person acting with the consent of the person owning the livestock, unless the action constitutes livestock neglect as provided in section 717.2.

2. A person acting to carry out an order issued by a court.

3. A licensed veterinarian practicing veterinary medicine as provided in chapter 169.

4. A person acting in order to carry out another provision of law which allows the conduct.

5. A person reasonably acting to protect the person's property from damage caused by estray livestock.

6. A person reasonably acting to protect a person from injury or death caused by estray livestock.

7. An institution, as defined in section 145B.1, or a research facility, as defined in section 162.2, provided that the institution or research facility performs functions within the scope of accepted practices and disciplines associated with the institution or research facility.

94 Acts, ch 1103, §8

717.2 Livestock neglect.

1. A person who impounds or confines livestock, in any place, and does any of the following commits the offense of livestock neglect:

a. Fails to provide livestock with care consistent with customary animal husbandry practices.

b. Deprives livestock of necessary sustenance.

c. Injures or destroys livestock by any means which causes pain or suffering in a manner inconsistent with customary animal husbandry practices.

2. A person who commits the offense of livestock neglect is guilty of a simple misdemeanor. A person who intentionally commits the offense of livestock neglect which results in serious injury to or the death of livestock is guilty of a serious misdemeanor. However, a person shall not be guilty of more than one offense of livestock neglect punishable as a serious misdemeanor, when care or sustenance is not provided to multiple head of livestock during any period of uninterrupted neglect.

3. This section does not apply to an institution, as defined in section 145B.1, or a research facility, as defined in section 162.2, provided that the institution or research facility performs functions within the scope of accepted practices and disciplines associated with the institution or research facility.

[C51, §2716; R60, §4358; C73, §4031, 4034; C97, §4969, 4972; S13, §4969; C24, 27, 31, 35, 39, §**13133, 13134;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §717.2, 717.3; C79, 81, §717.2]

86 Acts, ch 1121, §3; 87 Acts, ch 179, §1; 94 Acts, ch 1103, §9

717.2A Rescue of neglected livestock.

1. *a.* A law enforcement officer may rescue livestock neglected as provided in section 717.2 on public or private property, as provided in this subsection.

b. The officer may enter onto property of a person to rescue neglected livestock if the officer obtains a search warrant issued by a court, or enters onto the premises in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, or the fourth amendment to the Constitution of the United States.

c. Livestock neglected as provided in section 717.2 may be rescued pursuant to the following conditions:

(1) If a criminal proceeding has not been commenced against the person owning or caring for the livestock, the following shall apply:

(a) The local authority shall receive a written statement from a veterinarian licensed pursuant to chapter 169, providing that, in the veterinarian's opinion, the livestock is neglected.

(b) The local authority shall provide written notice to the person owning or caring for the livestock by delivery at the last known address of the person. The local authority shall deliver the notice by certified mail or make a good faith effort to personally deliver the notice to the person owning or caring for the livestock. The notice shall include all of the following:

(i) The name and address of the local authority.

(ii) A description of the livestock subject to rescue.

(iii) A statement informing the person that the livestock may be rescued pursuant to this chapter within one day following receipt of the notice by the person. The statement must specify a date, time, and a location for delivery of the response

designated by the local authority, as provided in this subsection.

(iv) A statement informing the person that in order to avoid rescue of the livestock, the person must respond to the notice in writing signed by a veterinarian licensed pursuant to chapter 169. The veterinarian must state that, in the opinion of the veterinarian, the livestock is not neglected, or the person is taking immediate measures required to rehabilitate the livestock.

(c) A law enforcement officer may rescue the livestock, if the local authority fails to receive a written response by the person owning or caring for the livestock by the end of normal office hours of the next day that the local authority is available to receive the response at the offices of the local authority. However, if the local authority is not available to receive a response at its offices, the local authority may designate another location in the county to receive the response.

(2) If a criminal proceeding has been commenced against the person owning or caring for the livestock, the local authority must receive a written statement from a veterinarian licensed pursuant to chapter 169, providing that, in the veterinarian's opinion, the livestock is neglected.

(3) Regardless of whether a criminal proceeding has commenced, the local authority may immediately rescue livestock without providing notice as otherwise required in this section. However, the local authority must receive a written statement from a veterinarian licensed pursuant to chapter 169, providing that in the veterinarian's opinion, the livestock is neglected. In order to rescue the livestock, the local authority must determine that the livestock has been abandoned or that no person is able or willing to care for the livestock, and the livestock is permanently distressed by disease or injury to a degree that would result in severe and prolonged suffering.

2. If livestock is rescued pursuant to this section, the local authority shall post a notice in a conspicuous place at the location where the livestock was rescued. The notice shall state that the livestock has been rescued by the local authority pursuant to this section. The local authority shall provide for the maintenance of the neglected livestock. The local authority may contract with a livestock care provider for the maintenance of the neglected livestock. The local authority shall pay the livestock care provider for the livestock's maintenance regardless of proceeds received from the sale of the livestock or any reimbursement ordered by a court, pursuant to section 717.5.

3. The livestock shall be subject to disposition pursuant to section 717.5.

94 Acts, ch 1103, §10

717.3 Exhibitions and fights. Repealed by 94 Acts, ch 1103, § 23. See chapter 717D.

717.4 Abandonment of cats and dogs — penalty. Repealed by 94 Acts, ch 1103, § 23. See § 717B.8.

717.5 Disposition of neglected livestock.

1. A court shall order the disposition of livestock neglected as provided in section 717.2 after a hearing upon application or petition to the court by a local authority or a person owning or caring for the livestock. The matter shall be heard within ten days from the filing of a petition by the local authority or the person. The court may continue the hearing for up to forty days upon petition by the person. However, the person shall post a bond or other security with the local authority in an amount determined by the court, which shall not be more than the amount sufficient to provide for the maintenance of the livestock for forty days. The court may grant a subsequent continuance by the person for the same length of time if the person submits a new bond or security. However, the court shall order the immediate disposition of the livestock if the livestock is permanently distressed by disease or injury to a degree that would result in severe or prolonged suffering.

2. The hearing to determine if livestock has been neglected for purposes of disposition shall be a civil proceeding. If the case is related to a criminal proceeding, the disposition shall not be part of that proceeding and shall not be considered a criminal penalty imposed on a person found in violation of section 717.2.

3. A court may order a person owning the neglected livestock to pay an amount which shall not be more than the expenses incurred in maintaining the neglected livestock rescued pursuant to section 717.2A, and reasonable attorney fees and expenses related to the investigation of the case. The remaining amount of a bond or other security posted pursuant to this section shall be used to reimburse the local authority. If more than one person has a divisible interest in the livestock, the amount required to be paid shall be prorated based on the percentage of interest in the livestock owned by each person. The moneys shall be paid to the local authority incurring the expense. The amount shall be subtracted from proceeds owed to the owner or owners of the livestock, which are received from the sale of the livestock ordered by the court. Moneys owed to the local authority from the sale of neglected livestock shall be paid to the local authority before satisfying indebtedness secured by any security interest in or lien on the livestock. If an owner of the livestock is a landowner, the local authority may submit an amount to the clerk of the county board of supervisors who shall report the amount to the county treasurer. The amount shall equal the balance remaining after the sale of the livestock. If the livestock owner owns a percentage of the livestock, the reported amount shall equal the remaining balance owed by all landowners who own a percentage of the livestock. That

amount shall be prorated among the landowners based on the percentage of interest in the livestock attributable to each landowner. The amount shall be placed upon the tax books, and collected with interest and penalties after due, in the same manner as other unpaid property taxes. The county shall reimburse a city within thirty days from the collection of the property taxes.

4. Neglected livestock ordered to be destroyed shall be destroyed only by a humane method, including euthanasia as defined in section 162.2.

86 Acts, ch 1121, §4; 94 Acts, ch 1103, §11

717.6 Injury or interference with a police service dog. Repealed by 94 Acts, ch 1103, § 23. See § 717B.9.

CHAPTER 717A

OFFENSES RELATING TO AGRICULTURAL PRODUCTION

717A.1 Definitions.
717A.2 Animal facilities — civil action — criminal penalties.
717A.3 Crops or crop operation property damage — civil action — criminal penalties.

717A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agricultural animal"* means any of the following:

a. An animal that is maintained for its parts or products having commercial value, including but not limited to its muscle tissue, organs, fat, blood, manure, bones, milk, wool, hide, pelt, feathers, eggs, semen, embryos, or honey.

b. An animal belonging to the equine species, including horse, pony, mule, jenny, donkey, or hinny.

2. *"Agricultural production"* means any activity related to maintaining an agricultural animal at an animal facility or a crop on crop operation property.

3. *"Animal"* means a warm-blooded or cold-blooded animal, including but not limited to an animal belonging to the bovine, canine, feline, equine, ovine, or porcine species; farm deer as defined in section 189A.2; ostriches, rheas, or emus; an animal which belongs to a species of poultry or fish; mink or other pelt-bearing mammals; any invertebrate; or honey bees.

4. *"Animal facility"* means any of the following:

a. A location where an agricultural animal is maintained for agricultural production purposes, including but not limited to a location dedicated to farming as defined in section 9H.1, a livestock market, exhibition, or a vehicle used to transport the animal.

b. A location where an animal is maintained for educational or scientific purposes, including an institution as defined in section 145B.1, a research facility as defined in section 162.2, an exhibition, or a vehicle used to transport the animal.

c. A location operated by a person licensed to practice veterinary medicine pursuant to chapter 169.

d. A pound as defined in section 162.2.

e. An animal shelter as defined in section 162.2.

f. A pet shop as defined in section 162.2.

g. A boarding kennel as defined in section 162.2.

h. A commercial kennel as defined in section 162.2.

5. *"Consent"* means express or apparent assent by a person authorized to provide such assent.

6. *a.* *"Crop"* means any plant maintained for its parts or products having commercial value, including but not limited to stalks, trunks and branches, cuttings, grafts, scions, leaves, buds, fruit, vegetables, roots, bulbs, or seeds, if the plant is any of the following:

(1) A plant produced from an agricultural seed or vegetable seed as defined in section 199.1, including any plant producing a commodity listed in section 210.10.

(2) A plant which is a tree, shrub, vine, berry plant, greenhouse plant, or flower.

b. A plant produced from a noxious weed seed as defined in section 199.1 is not a crop unless the plant is produced as a research crop.

7. *"Crop operation"* means a commercial enterprise where a crop is maintained on the property of the commercial enterprise.

8. *"Crop operation property"* means any of the following:

a. Real property that is a crop field, orchard, nursery, greenhouse, garden, elevator, seedhouse, barn, warehouse, any other associated land or structures located on the land, and personal prop-

erty located on the land including machinery or equipment, that is part of a crop operation.

b. A vehicle used to transport a crop that was maintained on the crop operation property.

9. *"Deprive"* means to do any of the following:

a. For an animal maintained at an animal facility or property belonging to an animal facility, *"deprive"* means to do any of the following:

(1) Withhold the animal or property for a period of time sufficient to significantly reduce the value or enjoyment of the animal or property.

(2) Withhold the animal or property for ransom or upon condition to restore the animal or property in return for compensation.

(3) Dispose of the animal or property in a manner that makes recovery of the animal or property by its owner unlikely.

b. For crops maintained on crop operation property or for crop operation property, *"deprive"* means to do any of the following:

(1) Occupy any part of a crop operation property for a period of time sufficient to prevent access to the crop or crop operation property.

(2) Dispose of a crop maintained on the crop operation property or belonging to the crop operation in a manner that makes recovery of the crop or crop operation property by its owner unlikely.

10. *"Maintain"* means to do any of the following:

a. Keep and provide for the care and feeding of any animal, including any activity relating to confining, handling, breeding, transporting, or exhibiting the animal.

b. Keep and preserve any crop by planting, nurturing, harvesting, and storing the crop; or storing, planting, or nurturing the crop's seed.

11. *"Owner"* means any of the following:

a. A person, including a public or private entity, who has a legal interest in an animal or property belonging to an animal facility or who is authorized by the holder of the legal interest to act on the holder's behalf in maintaining the animal.

b. A person, including a public or private entity, who has a legal interest in a crop or crop operation property or who is authorized by the holder of the legal interest to act on the holder's behalf in maintaining the crop.

12. *"Research crop"* means a crop, including the crop's seed, that is maintained for purposes of scientific research regarding the study or alteration of the genetic characteristics of a plant or associated seed, including its deoxyribonucleic acid, which is accomplished by breeding or by using biotechnological systems or techniques.

2001 Acts, ch 120, §1

Former §717A.1 transferred to §717A.2

717A.2 Animal facilities — civil action — criminal penalties.

1. A person shall not, without the consent of the owner, do any of the following:

a. Willfully destroy property of an animal facility, or kill or injure an animal maintained at an animal facility, including by an act of violence or the transmission of a disease including but not limited to any disease designated by the department of agriculture and land stewardship pursuant to section 163.2.

b. Exercise control over an animal facility including property of the animal facility, or an animal maintained at an animal facility, with intent to deprive the animal facility of an animal or property.

c. Enter onto or into an animal facility, or remain on or in an animal facility, if the person has notice that the facility is not open to the public, if the person has an intent to do one of the following:

(1) Disrupt operations conducted at the animal facility, if the operations directly relate to agricultural production, animal maintenance, educational or scientific purposes, or veterinary care.

(2) Kill or injure an animal maintained at the animal facility.

A person has notice that an animal facility is not open to the public if the person is provided notice before entering onto or into the facility, or the person refuses to immediately depart from the facility after being informed to leave. The notice may be in the form of a written or verbal communication by the owner, a fence or other enclosure designed to exclude intruders or contain animals, or a sign posted which is reasonably likely to come to the attention of an intruder and which indicates that entry is forbidden.

2. A person suffering damages resulting from an action which is in violation of subsection 1 may bring an action in the district court against the person causing the damage to recover all of the following:

a. An amount equaling three times all actual and consequential damages.

b. Court costs and reasonable attorney fees.

3. A person violating this section is guilty of the following penalties:

a. A person who violates subsection 1, paragraph *"a"*, is guilty of a class "C" felony if the injury to an animal or damage to property exceeds fifty thousand dollars, a class "D" felony if the injury to an animal or damage to property exceeds five hundred dollars but does not exceed fifty thousand dollars, an aggravated misdemeanor if the injury to an animal or damage to property exceeds one hundred dollars but does not exceed five hundred dollars, a serious misdemeanor if the injury to an animal or damage to property exceeds fifty dollars but does not exceed one hundred dollars, or a simple misdemeanor if the injury to an animal or damage to property does not exceed fifty dollars.

b. A person who violates subsection 1, paragraph *"b"*, is guilty of a class "D" felony.

c. A person who violates subsection 1, paragraph *"c"*, is guilty of an aggravated misdemeanor.

4. *a.* This section does not prohibit any con-

duct of a person holding a legal interest in an animal or property which is superior to the interest held by a person suffering from damages resulting from the conduct.

b. This section does not apply to a governmental agency that is taking lawful action against an animal or animal facility.

c. This section does not apply to a licensed veterinarian practicing veterinary medicine as provided in chapter 169 and according to customary standards of care.

91 Acts, ch 227, §1
CS91, §717A.1
95 Acts, ch 43, §15; 2001 Acts, ch 120, §2 – 5
CS2001, §717A.2

717A.3 Crops or crop operation property damage — civil action — criminal penalties.

1. A person shall not, without the consent of the owner, do any of the following:

a. Willfully destroy or damage a crop maintained on crop operation property or crop operation property.

b. Exercise control over a crop maintained on crop operation property or crop operation property with an intent to deprive the owner of the crop or crop operation property.

c. Enter onto or remain on crop operation property if the person has notice that the property is not open to the public, and the person has an intent to do one of the following:

(1) Disrupt agricultural production conducted on the crop operation property if the agricultural production directly relates to the maintenance of crops. A person is presumed to intend disruption if the person moves, removes, or defaces any sign posted on the crop operation property or label used by the owner and the sign or label identifies a crop maintained on the crop operation property.

(2) Destroy or damage a crop or any portion of a crop maintained on the crop operation property.

A person has notice that a crop operation property is not open to the public if the person is provided notice prohibiting entry before the person enters onto the crop operation property, or the person refuses to immediately depart from the crop operation property after being notified to leave. The notice may be in the form of a written or verbal communication by the owner, a fence or other enclosure designed to exclude intruders, or a sign posted which is reasonably likely to come to the attention of an intruder and which indicates that entry is prohibited.

2. *a.* A person suffering damages resulting from an act which is in violation of this section may bring an action in the district court against the person causing the damage to recover all of the following:

(1) For damages that are not to a research crop, an amount equaling three times all actual and consequential losses.

(2) For damages to a research crop, all of the following:

(a) Twice the amount of damages directly incurred by market losses, based on the lost market value of the research crop due to the damage, assuming that the research crop would have matured undamaged and been sold in normal commercial channels. If the research crop has no market value, the damages shall be twice the amount of actual damages incurred in producing, harvesting, and storing the damaged research crop.

(b) Twice the amount of damages directly incurred by developmental losses, based on the losses associated with the research crop's expected scientific value. The research crop's scientific value shall be determined by calculating the amount expended in developing the research crop, including costs associated with researching, testing, breeding, or engineering. However, such damages shall not be awarded to the extent that the losses are mitigated by undamaged research crops that have been identically developed.

b. A prevailing plaintiff in an action brought under this section shall be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the action.

3. A person who violates this section as it applies to a research crop or crop operation property where a research crop is maintained is guilty of the following:

a. For a violation of subsection 1, paragraph *"a"*, the person is guilty of criminal mischief as provided in section 716.1, and commits the same class of offense as provided in sections 716.3 through 716.6 based on the amount of damage to the research crop or crop operation property where the research crop is maintained.

b. For a violation of subsection 1, paragraph *"b"*, the person is guilty of a class "D" felony.

c. For a violation of subsection 1, paragraph *"c"*, the person is guilty of an aggravated misdemeanor.

4. A person who violates this section as it applies to a crop other than a research crop or crop operation property where a research crop is not maintained is guilty of the following:

a. For a violation of subsection 1, paragraph *"a"*, the person is guilty of criminal mischief as provided in section 716.1, and commits the same class of offense as provided in sections 716.3 through 716.6 based on the amount of damage to the crop or crop operation property where the crop is maintained.

b. For a violation of subsection 1, paragraph *"b"*, the person is guilty of an aggravated misdemeanor.

c. For a violation of subsection 1, paragraph *"c"*, the person is guilty of a serious misdemeanor.

5. *a.* This section does not prohibit any conduct of a person holding a legal interest in a crop operation that is superior to the interest held by a person suffering from damages resulting from the

conduct.

b. This section does not apply to a governmental agency that is taking lawful action against a crop or crop operation property.

2001 Acts, ch 120, §6

CHAPTER 717B

INJURY TO ANIMALS OTHER THAN LIVESTOCK

Injury to livestock; see chapter 717

717B.1 Definitions.
717B.2 Animal abuse.
717B.3 Animal neglect.
717B.3A Animal torture.
717B.4 Dispositional proceedings.
717B.5 Rescue of threatened animals.
717B.6 Destruction and disposition of wild animals.
717B.7 Exhibitions and fights. Repealed by 2002 Acts, ch 1130, §10.
717B.8 Abandonment of cats and dogs — penalties.
717B.9 Injury or interference with a police service dog.

717B.1 Definitions.

As used in this chapter:

1. *"Animal"* means a nonhuman vertebrate. However, *"animal"* does not include any of the following:

a. Livestock, as defined in section 717.1.

b. Any game, fur-bearing animal, fish, reptile, or amphibian, as defined in section 481A.1, unless a person owns, confines, or controls the game, fur-bearing animal, fish, reptile, or amphibian.

c. Any nongame species declared to be a nuisance pursuant to section 481A.42.

2. *"Animal care provider"* means a person designated by a local authority to provide care to an animal which is rescued by the local authority pursuant to section 717B.5.

3. Unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

4. *"Dispositional expenses"* means expenses incurred by a local authority in rescuing an animal as provided in section 717B.5, maintaining the animal until the conclusion of a dispositional proceeding as provided in section 717B.4, or disposing of the animal as provided in section 717B.4.

5. *"Law enforcement officer"* means a regularly employed member of a police force of a city or county, including a sheriff, who is responsible for the prevention and dedication of crime and the enforcement of the criminal laws of this state.

6. *"Local authority"* means a city as defined in section 362.2 or a county as provided in chapter 331.

7. *"Maintenance"* means to provide on-site or off-site care to neglected animals.

8. *"Responsible party"* means a person who owns or maintains an animal.

9. *"Threatened animal"* means an animal that is abused as provided in section 717B.2, neglected as provided in section 717B.3, or tortured as provided in section 717B.3A.

94 Acts, ch 1103, §12; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201; 2002 Acts, ch 1130, §2

NEW subsection 4 and former subsections 4 – 6 renumbered as 5 – 7
NEW subsections 8 and 9

717B.2 Animal abuse.

A person is guilty of animal abuse if the person intentionally injures, maims, disfigures, or destroys an animal owned by another person, in any manner, including intentionally poisoning the animal. A person guilty of animal abuse is guilty of an aggravated misdemeanor. This section shall not apply to any of the following:

1. A person acting with the consent of the person owning the animal, unless the action constitutes animal neglect as provided in section 717B.3.

2. A person acting to carry out an order issued by a court.

3. A licensed veterinarian practicing veterinary medicine as provided in chapter 169.

4. A person acting in order to carry out another provision of law which allows the conduct.

5. A person taking, hunting, trapping, or fishing for a wild animal as provided in chapter 481A.

6. A person acting to protect the person's property from a wild animal as defined in section 481A.1.

7. A person acting to protect a person from injury or death caused by a wild animal as defined

in section 481A.1.

8. A person reasonably acting to protect the person's property from damage caused by an unconfined animal.

9. A person reasonably acting to protect a person from injury or death caused by an unconfined animal.

10. A local authority reasonably acting to destroy an animal, if at the time of the destruction, the owner of the animal is absent or unable to care for the animal, and the animal is permanently distressed by disease or injury to a degree that would result in severe and prolonged suffering.

11. An institution, as defined in section 145B.1, or a research facility, as defined in section 162.2, provided that the institution or research facility performs functions within the scope of accepted practices and disciplines associated with the institution or research facility.

94 Acts, ch 1103, §13

717B.3 Animal neglect.

1. A person who impounds or confines, in any place, an animal is guilty of animal neglect, if the person does any of the following: fails to supply the animal during confinement with a sufficient quantity of food or water; fails to provide a confined dog or cat with adequate shelter; or tortures, deprives of necessary sustenance, mutilates, beats, or kills an animal by any means which causes unjustified pain, distress, or suffering.

2. This section does not apply to an institution, as defined in section 145B.1, or a research facility, as defined in section 162.2, provided that the institution or research facility performs functions within the scope of accepted practices and disciplines associated with the institution or research facility.

3. A person who negligently or intentionally commits the offense of animal neglect is guilty of a simple misdemeanor. A person who intentionally commits the offense of animal neglect which results in serious injury to or the death of an animal is guilty of a serious misdemeanor.

94 Acts, ch 1103, §14; 95 Acts, ch 49, §25

717B.3A Animal torture.

1. A person is guilty of animal torture, regardless of whether the person is the owner of the animal, if the person inflicts upon the animal severe physical pain with a depraved or sadistic intent to cause prolonged suffering or death.

2. This section shall not apply to any of the following:

a. A person acting to carry out an order issued by a court.

b. A licensed veterinarian practicing veterinary medicine as provided in chapter 169.

c. A person carrying out a practice that is consistent with animal husbandry practices.

d. A person acting in order to carry out another provision of law which allows the conduct.

e. A person taking, hunting, trapping, or fishing for a wild animal as provided in chapter 481A.

f. A person acting to protect the person's property from a wild animal as defined in section 481A.1.

g. A person acting to protect a person from injury or death caused by a wild animal as defined in section 481A.1.

h. A person reasonably acting to protect the person's property from damage caused by an unconfined animal.

i. A person reasonably acting to protect a person from injury or death caused by an unconfined animal.

j. A local authority reasonably acting to destroy an animal, if at the time of the destruction, the owner of the animal is absent or unable to care for the animal, and the animal is permanently distressed by disease or injury to a degree that would result in severe and prolonged suffering.

k. An institution, as defined in section 145B.1, or a research facility, as defined in section 162.2, provided that the institution or research facility performs functions within the scope of accepted practices and disciplines associated with the institution or research facility.

3. *a.* The following shall apply to a person who commits animal torture:

(1) For the first conviction, the person is guilty of an aggravated misdemeanor. The sentencing order shall provide that the person submit to psychological evaluation and treatment according to terms required by the court. The costs of the evaluation and treatment shall be paid by the person. In addition, the sentencing order shall provide that the person complete a community work requirement, which may include a work requirement performed at an animal shelter or pound, as defined in section 162.2, according to terms required by the court.

(2) For a second or subsequent conviction, the person is guilty of a class "D" felony. The sentencing order shall provide that the person submit to psychological evaluation and treatment according to terms required by the court. The costs of the psychological evaluation and treatment shall be paid by the person.

b. The juvenile court shall have exclusive original jurisdiction in a proceeding concerning a child who is alleged to have committed animal torture, in the manner provided in section 232.8. The juvenile court shall not waive jurisdiction in a proceeding concerning an offense alleged to have been committed by a child under the age of seventeen.

2000 Acts, ch 1152, §3

717B.4 Dispositional proceedings.

1. Upon a petition brought by a local authority, a court in the county where an animal is maintained by a responsible party or a local authority shall determine if the animal is a threatened ani-

mal and order its disposition after a hearing.

a. The matter shall be heard within ten days from the filing of the petition for disposition by the local authority.

b. If the animal has been rescued, the court may order that the animal be placed under the custody of the local authority and maintained in the same manner as a rescued animal under section 717B.5.

c. The court may continue the hearing for up to thirty days upon petition by the responsible party. However, the court shall not grant a continuance unless the animal is maintained by the local authority. The responsible party must post a bond or other security with the local authority as a condition of the continuance. The amount of the bond or other security shall be determined by the court, which shall not be more than the amount sufficient to provide maintenance of the animal for thirty days. The court may grant a subsequent continuance upon petition by the responsible party. The continuance shall be for not more than thirty days. The responsible party must post a new bond or security as a condition of the subsequent continuance in the same manner as the original bond or security or as otherwise ordered by the court. However, the court shall order the immediate disposition of the animal if the animal is permanently distressed by disease or injury to a degree that would result in severe or prolonged suffering.

2. The hearing to determine if the animal is a threatened animal for purposes of disposition shall be a civil proceeding. If the case is related to a criminal proceeding, the disposition shall not be part of that proceeding and shall not be considered a criminal penalty imposed on a person found in violation of this chapter.

3. If the court determines that an animal is not a threatened animal, the court shall order that the animal be returned to the custody of the responsible party. If the court determines that an animal is a threatened animal, the court shall order the local authority to dispose of the threatened animal in any manner deemed appropriate for the welfare of the animal. In addition, all of the following apply:

a. The court may order the responsible party to pay an amount which shall not be more than the dispositional expenses incurred by the local authority. The court may also award the local authority court costs, reasonable attorney fees and expenses related to the investigation and prosecution of the case, which shall be taxed as part of the costs of the action.

b. If a bond or other security was posted as a condition for a continuance of a disposition hearing as provided in this section, the local authority may use the posted amount to offset the local authority's dispositional expenses.

c. If any moneys are realized from the disposition of a threatened animal, the moneys shall be used to offset the local authority's dispositional expenses before satisfying indebtedness secured by any security interest in or lien on the threatened animal.

d. If the threatened animal is owned by more than one responsible party, the amount required to offset the local authority's dispositional expenses shall be prorated among the responsible parties based on the percentage of interest owned in the threatened animal attributable to the responsible parties as the threatened animal's titleholders. For purposes of this paragraph, a responsible party who does not own an interest in the threatened animal shall be deemed to be an owner holding a percentage interest in the animal equal to the largest percentage interest held by a landowner who is attributed an interest as the threatened animal's titleholder. If the responsible party is a landowner, the local authority may submit the amount to reimburse the local authority for its dispositional expenses to the clerk of the county board of supervisors who shall report the amount to the county treasurer. If the threatened animal is owned by more than one landowner, the amount shall be prorated among the landowners based on the percentage of interest owned in the threatened animal attributable to each landowner as the animal's titleholders. The amount shall be placed upon the tax books, and collected with interest and penalties after due, in the same manner as other unpaid property taxes. The county shall reimburse a city within thirty days from the collection of the property taxes.

4. A threatened animal that is ordered by a court to be destroyed under this section shall be destroyed only by euthanasia as defined in section 162.2.

94 Acts, ch 1103, §15; 2002 Acts, ch 1130, §3
Section amended

717B.5 Rescue of threatened animals.

A local authority may provide for the rescue of an animal as follows:

1. The rescue must be made by a law enforcement officer having cause to believe that the animal is a threatened animal after consulting with a veterinarian licensed pursuant to chapter 169. The law enforcement officer may rescue the animal by entering on public or private property, as provided in this subsection. The officer may enter onto property of a person to rescue the animal if the officer obtains a search warrant issued by a court, or enters onto the premises in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, or the fourth amendment to the Constitution of the United States.

2. If an animal is rescued pursuant to this section, the local authority shall provide for the maintenance of the animal. The local authority may contract with an animal care provider for the maintenance of the animal. The local authority

shall provide the responsible party for the animal with notice of the rescue. The notice may be accomplished by doing any of the following:

a. Delivering written notice to the responsible party's last known address by the United States postal service or personal service.

b. Posting a notice in a conspicuous place at the location where the animal was rescued.

The notice shall state that the animal has been rescued by the local authority pursuant to this section.

3. Within ten days after the date that an animal is rescued, the local authority shall initiate a dispositional proceeding pursuant to section 717B.4.

4. The local authority shall pay the animal care provider for the animal's maintenance regardless of proceeds received from the disposition of the animal or any reimbursement ordered by a court, pursuant to section 717B.4.

94 Acts, ch 1103, §16; 2002 Acts, ch 1130, §4
Section amended

717B.6 Destruction and disposition of wild animals.

A person may humanely destroy a wild animal as defined in section 481A.1, if the wild animal is permanently distressed by injury or disease to a degree that results in severe and prolonged suffering. The destroyed animal shall be subject to disposition as provided by rules adopted by the natural resource commission pursuant to chapter 17A.

94 Acts, ch 1103, §17

717B.7 Exhibitions and fights. Repealed by 2002 Acts, ch 1130, § 10. See chapter 717D.

717B.8 Abandonment of cats and dogs — penalties.

A person who has ownership or custody of a cat or dog shall not abandon the cat or dog, except the person may deliver the cat or dog to another person who will accept ownership and custody or the person may deliver the cat or dog to an animal shelter or pound as defined in section 162.2. A person who violates this section is guilty of a simple misdemeanor.

94 Acts, ch 1103, §19

717B.9 Injury or interference with a police service dog.

1. A person who knowingly, and willfully or maliciously torments, strikes, administers a nonpoisonous desensitizing substance to, or otherwise interferes with a police service dog, without inflicting serious injury on the dog, commits a serious misdemeanor.

2. A person who knowingly, and willfully or maliciously does any of the following commits a class "D" felony:

a. Tortures a police service dog.

b. Injures, so as to disfigure or disable, a police service dog.

c. Sets a booby trap device for purposes of injuring, so as to disfigure or disable, or killing a police service dog.

d. Pays or agrees to pay a bounty for purposes of injury, so as to disfigure or disable, or killing a police service dog.

e. Kills a police service dog.

f. Administers poison to a police service dog.

3. As used in this section, *"police service dog"* means a dog used by a peace officer or correctional officer in the performance of the officer's duties, whether or not the dog is on duty.

4. This section does not apply to a peace officer or veterinarian who terminates the life of such a dog for the purpose of relieving the dog of undue pain or suffering, or to a person who justifiably acts in defense of self or another.

94 Acts, ch 1103, §20; 95 Acts, ch 107, §1

CHAPTER 717C

BESTIALITY

717C.1 Bestiality.

717C.1 Bestiality.

1. For purposes of this section:

a. *"Animal"* means any nonhuman vertebrate, either dead or alive.

b. *"Sex act"* means any sexual contact between a person and an animal by penetration of the penis into the vagina or anus, contact between the mouth and genitalia, or by contact between the genitalia of one and the genitalia or anus of the other.

2. A person who performs a sex act with an animal is guilty of an aggravated misdemeanor.

3. Upon a conviction for a violation of this section, and in addition to any sentence authorized by

law, the court shall require the person to submit to a psychological evaluation and treatment at the person's expense.

2001 Acts, ch 131, §3

CHAPTER 717D

ANIMAL CONTEST EVENTS

717D.1 Definitions.
717D.2 Prohibitions — contest events.
717D.3 Exceptions.
717D.4 Penalties.
717D.5 Confiscation and disposition of animals.

717D.1 Definitions.

1. *"Animal"* means a nonhuman vertebrate.

2. *"Contest animal"* means a bull, bear, chicken, or dog.

3. *"Contest device"* means equipment designed to enhance a contest animal's entertainment value during training or a contest event, including a device to improve the contest animal's competitiveness.

4. *"Contest event"* means a function organized for the entertainment or profit of spectators where a contest animal is injured, tormented, or killed, if the contest animal is a bull involved in a bullfight or bull baiting, a bear involved in bear baiting, a chicken involved in cock fighting, or a dog involved in dog fighting.

5. *"Establishment"* means the location where a contest event occurs or is to occur, regardless of whether a contest animal is present at the establishment or the contest animal is witnessed by means of an electronic signal transmitted to the location.

6. *"Livestock"* means the same as defined in section 717.1.

7. *"Local authority"* means the same as defined in section 717B.1.

8. *"Promoter"* means a person who charges admission for entry into an establishment or organizes, holds, advertises, or otherwise conducts a contest event.

9. *"Spectator"* means a person who attends an establishment for purposes of witnessing a contest event.

10. *"Trainer"* means a person who trains a contest animal for purposes of engaging in a contest event, regardless of where the contest event is located. A trainer includes a person who uses a contest device.

11. *"Transporter"* means a person who moves a contest animal for delivery to a training location or a contest event location.

2002 Acts, ch 1130, §5
NEW section

717D.2 Prohibitions — contest events.

A person shall not do any of the following:

1. Own or operate an establishment located in this state in which a contest event occurs or is to occur.

2. Act as a promoter of a contest event, regardless of whether the contest event occurs in this state or another state. For purposes of this subsection, a person who aids, abets, or assists in the promotion of a contest event shall be deemed to act as a promoter.

3. Act as a trainer of a contest animal engaged or to be engaged in a contest event conducted in this state or another state. For purposes of this subsection, a person who aids, abets, or assists in the training of a contest animal engaged or to be engaged in a contest event shall be deemed to act as a trainer.

4. Act as a transporter moving a contest animal in this state.

5. Act as a spectator of a contest event conducted in this state, regardless of whether the person paid admission to witness the contest event.

2002 Acts, ch 1130, §6
NEW section

717D.3 Exceptions.

1. This chapter does not apply to a function other than a contest event. A contest event does not involve any of the following events:

a. A race, including but not limited to a race regulated under chapter 99D.

b. A fair as defined in section 174.1.

c. A rodeo or rodeo event.

d. A 4-H function.

e. A hunting or fishing party.

f. A field meet or trial in which the skill of dogs is demonstrated in pointing, retrieving, trailing, or chasing any game bird, game animal, or fur-bearing animal.

g. The raising or selling of game or fur-bearing animals as provided in chapter 481A.

2. This chapter shall not apply to any of the fol-

lowing:

a. An action to carry out an order issued by a court.

b. An action by a licensed veterinarian practicing veterinary medicine as provided in chapter 169.

c. An action that is consistent with animal husbandry practices.

d. An action allowed in order to carry out another provision of law which allows the action.

e. The taking, hunting, trapping, or fishing for a wild animal as provided in chapter 481A.

f. An action to protect the person's property from a wild animal as defined in section 481A.1.

g. An action to protect a person from injury or death caused by a wild animal as defined in section 481A.1.

h. A person reasonably acting to protect the person's property from damage caused by an unconfined animal.

i. A person reasonably acting to protect a person from injury or death caused by an unconfined animal.

j. A local authority reasonably acting to destroy an animal if, at the time of the destruction, the owner of the animal is absent or unable to care for the animal, and the animal is permanently distressed by disease or injury to a degree that would result in severe and prolonged suffering.

k. An institution, as defined in section 145B.1, or a research facility, as defined in section 162.2, provided that the institution or research facility performs functions within the scope of accepted practices and disciplines associated with the institution or research facility.

2002 Acts, ch 1130, §7
NEW section

717D.4 Penalties.

A person who violates a provision of this chapter is guilty of a serious misdemeanor.

2002 Acts, ch 1130, §8
NEW section

717D.5 Confiscation and disposition of animals.

A local authority may confiscate a contest animal that is trained with a contest device or is part of a contest event. The contest animal may be rescued and disposed of as neglected livestock or other animal pursuant to section 717.5 or 717B.4. If the contest animal is not rescued and disposed of pursuant to section 717.5 or 717B.4, it shall be forfeited to the state and subject to disposition as ordered by the court. In addition, the court shall order the owner of the contest animal to pay an amount which shall not be more than the expenses incurred in maintaining or disposing of the contest animal. The court may also order that the person pay reasonable attorney fees and expenses related to the investigation of the case that shall be taxed as other court costs. If more than one person has a divisible interest in the contest animal, the amount required to be paid shall be prorated based on the percentage of interest in the contest animal owned by each person. The moneys shall be paid to the local authority incurring the expense. The amount shall be subtracted from proceeds which are received from the sale of the contest animal ordered by the court.

2002 Acts, ch 1130, §9
NEW section

CHAPTER 718

OFFENSES AGAINST THE GOVERNMENT

718.1 Insurrection.
718.2 Impersonating a public official.
718.3 Willful disturbance.
718.4 Harassment of public officers and employees.
718.5 Falsifying public documents.
718.6 False reports to or communications with public safety entities.

718.1 Insurrection.

An insurrection is three or more persons acting in concert and using physical violence against persons or property, with the purpose of interfering with, disrupting, or destroying the government of the state or any subdivision thereof, or to prevent any executive, legislative, or judicial officer or body from performing its lawful function. Participation in insurrection is a class "C" felony.

[C51, §2565, 2567; R60, §4188, 4190; C73, §3845, 3847; C97, §4724, 4726; C24, 27, 31, 35, 39, §**12897, 12898, 12900, 12904;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §689.1, 689.2, 689.4, 689.8; C79, 81, §718.1]

718.2 Impersonating a public official.

Any person who falsely claims to be or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of the state or any subdivision thereof, having no authority to do so, commits an aggravated misdemeanor.

[C51, §2671, 2672; R60, §4298, 4299; C73, §3962, 3963; C97, §4901, 4902; C24, 27, 31, 35, 39, §**13306, 13307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.4, 740.5; C79, 81, §718.2]

718.3 Willful disturbance.

Any person who willfully disturbs any deliberative body or agency of the state, or subdivision thereof, with the purpose of disrupting the functioning of such body or agency by tumultuous behavior, or coercing by force or the threat of force any official conduct or proceeding, commits a serious misdemeanor.

[C79, 81, §718.3]

718.4 Harassment of public officers and employees.

Any person who willfully prevents or attempts to prevent any public officer or employee from performing the officer's or employee's duty commits a simple misdemeanor.

[C79, 81, §718.4]

718.5 Falsifying public documents.

A person who, having no right or authority to do so, makes or alters any public document, or any instrument which purports to be a public document, or who possesses a seal or any counterfeit seal of the state or of any of its subdivisions, or of any officer, employee, or agency of the state or of any of its subdivisions, commits a class "D" felony.

[C51, §2628, 2642, 2677; R60, §4255, 4269, 4304; C73, §3919, 3933, 3968; C97, §1136, 4855, 4869, 4907; C24, 27, 31, 35, 39, §**13141, 13156, 13283, 13314;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §718.3, 718.8, 738.21, 740.12; C79, 81, §718.5]

718.6 False reports to or communications with public safety entities.

1. A person who reports or causes to be reported false information to a fire department, a law enforcement authority, or other public safety entity, knowing that the information is false, or who reports the alleged occurrence of a criminal act knowing the act did not occur, commits a simple misdemeanor, unless the alleged criminal act reported is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.

2. A person who telephones an emergency 911 communications center knowing that the person is not reporting an emergency or otherwise needing emergency information or assistance commits a simple misdemeanor.

3. A person who knowingly provides false information to a law enforcement officer who enters the information on a citation commits a simple misdemeanor, unless the criminal act for which the citation is issued is a serious or aggravated misdemeanor or felony, in which case the person commits a serious misdemeanor.

[R60, §1768; C73, §1566; C97, §2468; S13, §2468; C24, 27, 31, 35, 39, §**13110, 13111;** C46, 50, 54, 58, 62, 66, §714.31, 714.32; C71, 73, 75, 77, §714.31, 714.32, 714.42; C79, 81, §718.6]

95 Acts, ch 89, §1

CHAPTER 718A

DESECRATION OF FLAG OR OTHER INSIGNIA

This chapter not enacted as a part of this title;
transferred from chapter 32 in Code 1993

718A.1 Desecration of flag or insignia.
718A.2 Actions for penalty.
718A.3 Federal flag and insignia — definition.
718A.4 State flag and insignia — definition.
718A.5 Presumptive evidence of desecration.
718A.6 Enforcement.

718A.1 Desecration of flag or insignia.

Any person who in any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement of any nature, upon any flag, standard, color, ensign, shield, or other insignia of the United States, or upon any flag, ensign, great seal, or other insignia of this state, or shall expose or cause to be exposed to public view, any such flag, standard, color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, upon which shall have been printed, painted, or otherwise placed, or to which shall be attached, appended,

affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose any article or substance, being an article of merchandise or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed, a representation of any such flag, standard, color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, to advertise, call attention to, decorate, mark, or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defile or defy, trample upon, cast contempt upon, satirize, deride or burlesque, either by words or act, such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, or who shall, for any purpose, place such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, upon the ground or where the same may be trod upon, shall be deemed guilty of a simple misdemeanor.

[S13, §5028-a; C24, 27, 31, 35, 39, §**472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §32.1]

C93, §718A.1

718A.2 Actions for penalty.

The action or suit may be brought by and in the name of the state, on the relation of a citizen of the state, and the penalty, when collected, less the reasonable cost and expense of action or suit and recovery, to be certified by the clerk of the district court of the county in which the offense is committed, shall be paid to the treasurer of state for deposit in the general fund of the state, and two or more penalties may be sued for and recovered in the same action or suit.

[S13, §5028-a; C24, 27, 31, 35, 39, §**473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §32.2]

83 Acts, ch 185, §1, 62; 83 Acts, ch 186, §10014, 10201, 10204

C93, §718A.2

718A.3 Federal flag and insignia — definition.

The words *"flag, standard, color, ensign, shield, or other insignia of the United States"* as used in this chapter, shall include any flag, standard, color, ensign, shield, or other insignia of the United States, or any picture or representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be any such flag, standard, color, insignia, shield, or other insignia of the United States of America, or a picture or a representation of any of them.

[S13, §5028-a; C24, 27, 31, 35, 39, §**474;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §32.3]

C93, §718A.3

718A.4 State flag and insignia — definition.

The words *"flag, ensign, great seal, or other insignia of this state"* as used in this chapter, shall include any flag, ensign, great seal, or other insignia, or any picture or any representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be any such flag, ensign, great seal, or other insignia of the state, or a picture or a representation of any of them.

[S13, §5028-a; C24, 27, 31, 35, 39, §**475;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §32.4]

C93, §718A.4

718A.5 Presumptive evidence of desecration.

The possession by any person other than a public officer, as such, of any flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, on which shall be anything made unlawful by this chapter, or of any article or substance or thing on which shall be anything made unlawful by this chapter, shall be presumptive evidence that the same is in violation of this chapter.

[S13, §5028-a; C24, 27, 31, 35, 39, §**476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §32.5]

C93, §718A.5

718A.6 Enforcement.

It shall be the duty of the sheriffs of the various counties, chiefs of police, and city marshals to enforce the provisions of this chapter, and for failure to do so they may be removed as by law provided.

This chapter shall not be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in private correspondence, on any of which shall be printed, painted, or placed, said flag, disconnected from any advertisement.

Nothing in this chapter shall be construed as rendering unlawful the use of any trademark or trade emblem actually adopted by any person, firm, corporation, or association prior to January 1, 1895.

[C24, 27, 31, 35, 39, §**477;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §32.6]

C93, §718A.6

General removal law, §66.1A

CHAPTER 719

OBSTRUCTING JUSTICE

719.1 Interference with official acts.
719.2 Refusing to assist officer.
719.3 Preventing apprehension, obstructing prosecution, or obstructing defense.
719.4 Escape or absence from custody.
719.5 Permitting prisoner to escape.
719.6 Assisting prisoner to escape.
719.7 Possessing contraband.
719.8 Furnishing a controlled substance or intoxicating beverage to inmates at a detention facility.

719.1 Interference with official acts.

1. A person who knowingly resists or obstructs anyone known by the person to be a peace officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of not less than two hundred fifty dollars. However, if a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts bodily injury other than serious injury, that person commits an aggravated misdemeanor. If a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, that person commits a class "D" felony.

2. A person under the custody, control, or supervision of the department of corrections who knowingly resists, obstructs, or interferes with a correctional officer, agent, employee, or contractor, whether paid or volunteer, in the performance of the person's official duties, commits a serious misdemeanor. If a person violates this subsection and in so doing commits an assault, as defined in section 708.1, the person commits an aggravated misdemeanor. If a person violates this subsection and in so doing inflicts or attempts to inflict bodily injury other than serious injury to another, displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, the person commits a class "D" felony. If a person violates this subsection and uses or attempts to use a dangerous weapon, as defined in section 702.7, or inflicts serious injury to another, the person commits a class "C" felony.

3. The terms *"resist"* and *"obstruct"*, as used in this section, do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

[C51, §2669; R60, §4296; C73, §3960; C97, §4899; C24, 27, 31, 35, 39, §**13331;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §742.1; C79, 81, §719.1]

84 Acts, ch 1246, §4; 91 Acts, ch 219, §22; 95 Acts, ch 90, §4; 96 Acts, ch 1034, §63; 99 Acts, ch 153, §21

719.2 Refusing to assist officer.

Any person who is requested or ordered by any magistrate or peace officer to render the magistrate or officer assistance in making or attempting to make an arrest, or to prevent the commission of any criminal act, shall render assistance as required. A person who, unreasonably and without lawful cause, refuses or neglects to render assistance when so requested commits a simple misdemeanor.

[C51, §2670, 2793, 2795, 2799; R60, §4297, 4489, 4491, 4495; C73, §3961, 4145, 4147, 5149; C97, §4900, 5143, 5145, 5149; C24, 27, 31, 35, 39, §**13332, 13333, 13335, 13344;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §742.2, 742.3, 742.5, 743.6; C79, 81, §719.2]

719.3 Preventing apprehension, obstructing prosecution, or obstructing defense.

A person who, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, knowingly does any of the following acts, commits an aggravated misdemeanor:

1. Destroys, alters, conceals or disguises physical evidence which would be admissible in the trial of another for a public offense, or makes available false evidence or furnishes false information with the intent that it be used in the trial of that case.

2. Induces a witness having knowledge material to the subject at issue to leave the state or hide, or to fail to appear when subpoenaed.

[C51, §2654; R60, §4281; C73, §3946; C97, §4882; C24, 27, 31, 35, 39, §**13170;** C46, 50, 54, 58,

62, 66, 71, 73, 75, 77, §723.1; C79, 81, §719.3]

719.4 Escape or absence from custody.

1. A person convicted of a felony, or charged with or arrested for the commission of a felony, who intentionally escapes, or attempts to escape, from a detention facility, community-based correctional facility, or institution to which the person has been committed by reason of the conviction, charge, or arrest, or from the custody of any public officer, public employee, or any other person to whom the person has been entrusted, commits a class "D" felony.

2. A person convicted of, charged with, or arrested for a misdemeanor, who intentionally escapes, or attempts to escape, from a detention facility, community-based correctional facility, or institution to which the person has been committed by reason of the conviction, charge, or arrest, or from the custody of any public officer, public employee, or any other person to whom the person has been entrusted, commits a serious misdemeanor.

3. A person who has been committed to an institution under the control of the Iowa department of corrections, to a community-based correctional facility, or to a jail or correctional institution, who knowingly and voluntarily is absent from a place where the person is required to be, commits a serious misdemeanor.

4. A person who flees from the state to avoid prosecution for a public offense which is a felony or aggravated misdemeanor commits a class "D" felony.

5. Except for subsection 4, an offense committed under this section includes any offense committed wholly outside the state.

[C51, §2668; R60, §4295; C73, §3959; C97, §4898; S13, §4897-a, 4898; C24, 27, 31, 35, 39, §**13351, 13353, 13358;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §745.1, 745.3, 745.8; C79, 81, §719.4; 82 Acts, ch 1082, §1]

83 Acts, ch 96, §119, 159; 86 Acts, ch 1040, §1; 86 Acts, ch 1238, §30; 99 Acts, ch 182, §3; 2000 Acts, ch 1037, §1, 2

719.5 Permitting prisoner to escape.

Any jailer or other public officer or employee who voluntarily permits, aids or abets in the escape or attempted escape of any person in custody by reason of a conviction or charge of any crime, commits the crime of permitting a prisoner to escape which is subject to the following penalties:

1. If the prisoner is in custody by reason of a conviction or charge of a class "A" felony, the defendant commits a class "C" felony.

2. If the prisoner is in custody by reason of a conviction or charge of any public offense other than a class "A" felony, the defendant commits a class "D" felony.

[C51, §2661 – 2663; R60, §4288 – 4290; C73, §3953 – 3955; C97, §4891 – 4893; C24, 27, 31, 35, 39, §**13359 – 13361;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §745.9 – 745.11; C79, 81, §719.5]

719.6 Assisting prisoner to escape.

Any person who introduces into any detention facility or correctional institution any weapon, explosive or incendiary substance, rope, ladder, or any instrument or device by which that person intends to facilitate the escape of any prisoner, or any person who, not being authorized by law, knowingly causes any such weapon, explosive or incendiary substance, rope, ladder, instrument or device to come into the possession of any prisoner, commits the crime of assisting a prisoner to escape which is subject to the following penalties:

1. If the prisoner was confined by reason of a conviction of a class "A" felony, the defendant commits a class "C" felony.

2. If the prisoner was confined by reason of a conviction of any public offense other than a class "A" felony, the defendant commits a class "D" felony.

[C51, §2664 – 2666; R60, §4291 – 4293; C73, §1663, 3956 – 3958; C97, §2712, 4894 – 4896; C13, §4913-a; SS15, §2713-n16; C24, 27, 31, 35, 39, §**13362 – 13368;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §745.12 – 745.18; C79, 81, §719.6]

719.7 Possessing contraband.

1. *"Contraband"* includes but is not limited to any of the following:

a. A controlled substance or a simulated or counterfeit controlled substance, hypodermic syringe, or intoxicating beverage.

b. A dangerous weapon, offensive weapon, pneumatic gun, stun gun, firearm ammunition, knife of any length or any other cutting device, explosive or incendiary material, instrument, device, or other material fashioned in such a manner as to be capable of inflicting death or injury.

c. Rope, ladder components, key or key pattern, metal file, instrument, device, or other material designed or intended to facilitate escape of an inmate.

2. The department of corrections may x-ray a person under the control of the department if there is reason to believe that the person is in possession of contraband. A licensed physician or x-ray technician under the supervision of a licensed physician must x-ray the person.

3. A person commits the offense of possessing contraband if the person, not authorized by law, does any of the following:

a. Knowingly introduces contraband into, or onto, the grounds of a correctional institution or institution under the management of the department of corrections.

b. Knowingly conveys contraband to any person confined in a correctional institution or institution under the management of the department of corrections.

c. Knowingly makes, obtains, or possesses contraband while confined in a correctional institution or institution under the management of the department of corrections or while being transported or moved incidental to confinement.

4. A person who possesses contraband or fails to report an offense of possessing contraband commits the following:

a. A class "C" felony for the possession of contraband if the contraband is of the type described in subsection 1, paragraph *"b"*.

b. A class "D" felony for the possession of contraband if the contraband is any other type of contraband.

c. An aggravated misdemeanor for failing to report a known violation or attempted violation of this section to an official or officer at a correctional institution or institution under the management of the department of corrections.

5. Nothing in this section is intended to limit the authority of the administrator of any correctional institution or institution under the management of the department of corrections to prescribe or enforce rules concerning the definition of contraband, and the transportation, making, or possession of substances, devices, instruments, materials, or other items in the institutions.

[C73, §1663; C97, §2712; S13, §4913-a; SS15, §2713-n16; C24, 27, 31, 35, 39, §**13365, 13366, 13368;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §745.15, 745.16, 745.18; C79, 81, §719.7]

83 Acts, ch 96, §120, 159; 99 Acts, ch 163, §1

719.8 Furnishing a controlled substance or intoxicating beverage to inmates at a detention facility.

A person not authorized by law who furnishes or knowingly makes available a controlled substance or intoxicating beverage to an inmate at a detention facility, or who introduces a controlled substance or intoxicating beverage into the premises of such a facility, commits a class "D" felony.

[C73, §1663; C97, §2712; S13, §4913-a; SS15, §2713-n16; C24, 27, 31, 35, 39, §**13365, 13366, 13368;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §745.15, 745.16, 745.18; C79, 81, §719.8]

83 Acts, ch 96, §121, 159; 99 Acts, ch 163, §2

CHAPTER 720

INTERFERENCE WITH JUDICIAL PROCESS

720.1 Compounding a felony.
720.2 Perjury, contradictory statements, and retraction.
720.3 Suborning perjury.
720.4 Tampering with witnesses or jurors.
720.5 False representation of records or process.
720.6 Malicious prosecution.

720.1 Compounding a felony.

A person having knowledge of the commission by another of a felony indictable in this state who receives any consideration for a promise to conceal such crime, or not to prosecute or aid or give evidence to the prosecution of such crime, compounds that felony. Compounding any felony is an aggravated misdemeanor.

[C51, §2659, 2660; R60, §4286, 4287; C73, §3951, 3952; C97, §4889, 4890; C24, 27, 31, 35, 39, §**13168, 13169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §722.1, 722.2; C79, 81, §720.1]

720.2 Perjury, contradictory statements, and retraction.

A person who, while under oath or affirmation in any proceeding or other matter in which statements under oath or affirmation are required or authorized by law, knowingly makes a false statement of material facts or who falsely denies knowledge of material facts, commits a class "D" felony. Where, while under oath or affirmation, in the same proceeding or different proceedings where oath or affirmation is required, a person has made contradictory statements, the indictment will be sufficient if it states that one or the other of the contradictory statements was false, to the knowledge of such person, and it shall be sufficient proof of perjury that one of the statements must be false, and that the person making the statements knew that one of them was false when the person made the statement, provided that both statements have been made within the period prescribed by the applicable statute of limitations. No person shall be guilty of perjury if the person retracts the false statement in the course of the proceedings where it was made before the false statement has substantially affected the proceeding.

[C51, §2644; R60, §4271; C73, §3936; C97, §4872; S13, §4919-c; C24, 27, 31, 35, 39, §**13165, 13290;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §721.1, 738.28; C79, 81, §720.2]

See also §714.8(3)

720.3 Suborning perjury.

A person who procures or offers any inducement to another to make a statement under oath or affirmation in any proceeding or other matter in which statements under oath or affirmation are required or authorized, with the intent that such person will make a false statement, or who procures or offers any inducement to one who the person reasonably believes will be called upon for a statement in any such proceeding or matter, to conceal material facts known to such person, commits a class "D" felony.

[C51, §2645, 2646; R60, §4272, 4273; C73, §3937, 3938; C97, §4873, 4874; C24, 27, 31, 35, 39, §**13166, 13167;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §721.2, 721.3; C79, 81, §720.3]

720.4 Tampering with witnesses or jurors.

A person who offers any bribe to any person who the offeror believes has been or may be summoned as a witness or juror in any judicial or arbitration proceeding, or any legislative hearing, or who makes any threats toward such person or who forcibly or fraudulently detains or restrains such person, with the intent to improperly influence such witness or juror with respect to the witness' or juror's testimony or decision in such case, or to prevent such person from testifying or serving in such case, or who, in retaliation for anything lawfully done by any witness or juror in any case, harasses such witness or juror, commits an aggravated misdemeanor.

[C51, §2646, 2652, 2654; R60, §4273, 4279, 4281; C73, §3938, 3944, 3946; C97, §4874, 4880, 4882; C24, 27, 31, 35, 39, §**13167, 13172, 13297;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §721.3, 723.1, 739.6; C79, 81, §720.4]

720.5 False representation of records or process.

Any person who represents any document or paper to be any public record or any civil or criminal process, when the person knows such representation to be false, commits a simple misdemeanor.

[C51, §2627; R60, §4254; C73, §3918; C97, §4854; C24, 27, 31, 35, 39, §**13140;** C46, 50, 54, 58, 62, §718.2; C66, 71, 73, 75, 77, §713.43, 718.2; C79, 81, §720.5]

720.6 Malicious prosecution.

A person who causes or attempts to cause another to be indicted or prosecuted for any public offense, having no reasonable grounds for believing that the person committed the offense commits a serious misdemeanor.

[C51, §2757; R60, §4407; C73, §4086; C97, §5058; C24, 27, 31, 35, 39, §**13163;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §719.2; C79, 81, §720.6]

CHAPTER 721

OFFICIAL MISCONDUCT

Candidates; see also §49.120, 49.121

721.1 Felonious misconduct in office.
721.2 Nonfelonious misconduct in office.
721.3 Solicitation for political purposes.
721.4 Using public motor vehicles for political purposes.
721.5 State employees not to participate.
721.6 Exception to sections 721.3 to 721.5.
721.7 Penalty for violating sections 721.3 to 721.6.
721.8 Labeling publicly owned motor vehicles.
721.9 Punishment for violation of section 721.8.
721.10 Misuse of public records and files.
721.11 Interest in public contracts.
721.12 Profiting from inmates — penalty.

721.1 Felonious misconduct in office.

Any public officer or employee, who knowingly does any of the following, commits a class "D" felony:

1. Makes or gives any false entry, false return, false certificate, or false receipt, where such entries, returns, certificates, or receipts are authorized by law.

2. Falsifies any public record, or issues any document falsely purporting to be a public document.

3. Falsifies a writing, or knowingly delivers a falsified writing, with the knowledge that the writing is falsified and that the writing will become a public record of a government body.

4. For purposes of this section, *"government body"* and *"public record"* mean the same as defined in section 22.1.

[C51, §2677; R60, §4304, 4309; C73, §3968, 3971; C97, §1136, 4907, 4910; C24, 27, 31, 35, 39, §**13283, 13311, 13314;** C46, 50, 54, 58, 62, 66, 71,

73, 75, 77, §738.21, 740.9, 740.12; C79, 81, §721.1]
2001 Acts, ch 31, §1

721.2 Nonfelonious misconduct in office.
Any public officer or employee, or any person acting under color of such office or employment, who knowingly does any of the following, commits a serious misdemeanor:

1. Makes any contract which contemplates an expenditure known by the person to be in excess of that authorized by law.

2. Fails to report to the proper officer the receipt or expenditure of public moneys, together with the proper vouchers therefor, when such is required of the person by law.

3. Requests, demands, or receives from another for performing any service or duty which is required of the person by law, or which is performed as an incident of the person's office or employment, any compensation other than the fee, if any, which the person is authorized by law to receive for such performance.

4. By color of the person's office and in excess of the authority conferred on the person by that office, requires any person to do anything or to refrain from doing any lawful thing.

5. Uses or permits any other person to use the property owned by the state or any subdivision or agency of the state for any private purpose and for personal gain, to the detriment of the state or any subdivision thereof.

6. Fails to perform any duty required of the person by law.

7. Demands that any public employee contribute or pay anything of value, either directly or indirectly, to any person, organization or fund, or in any way coerces or attempts to coerce any public employee to make any such contributions or payments, except where such contributions or payments are expressly required by law.

8. Permits persons to use the property owned by the state or a subdivision or agency of the state to operate a political phone bank for any of the following purposes:

a. To poll voters on their preferences for candidates or ballot measures at an election; however, this paragraph does not apply to authorized research at an educational institution.

b. To solicit funds for a political candidate or organization.

c. To urge support for a candidate or ballot measure to voters.

1. [R60, §216, 2184; C73, §3976; C97, §4913; C24, 27, 31, 35, 39, §**13313;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.11; C79, 81, §721.2]

2. [R60, §216, 2184, 4308 – 4310; C73, §3970 – 3972, 3976; C97, §4909 – 4911, 4913; C24, 27, 31, 35, 39, §**13309 – 13311, 13313;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.7 – 740.9, 740.11; C79, 81, §721.2]

3. [C51, §2560, 2658; R60, §4167, 4285; C73, §3840, 3950; C97, §1297, 4888; S13, §5028-n; C24, 27, 31, 35, 39, §**13304, 13312, 13317, 13318;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.1, 740.10, 741.1, 741.2; C79, 81, §721.2]

4. [C51, §2672; R60, §4299, 4305, 4306; C73, §3963, 3969; C97, §4902, 4908; C24, 27, 31, 35, 39, §**13305, 13306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.3, 740.4; C79, 81, §721.2]

5. [C35, §13316-e1; C39, §**13316.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.20; C79, 81, §721.2]

6. [C51, §2657, 2674, 2703, 2800; R60, §4284, 4301, 4345, 4496; C73, §3949, 3965, 4005, 4152; C97, §4887, 4904, 4929, 5150; C24, 27, 31, 35, 39, §**13280, 13316, 13338, 13345;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §738.18, 740.19, 742.8, 743.7; C79, 81, §721.2]

7. [C79, 81, §721.2]

87 Acts, ch 221, §35

721.3 Solicitation for political purposes.
It shall be unlawful for any person or political organization either directly or indirectly to solicit or demand from any employee of any commission, board or agency created under the statutes of Iowa, any contribution of money or any other thing of value for election purposes or for the purpose of paying expenses of any political organization or any person seeking election to public office.

[S13, §2727-a36; C24, 27, 31, 35, §13315; C39, §**13315.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.13; C79, 81, §721.3]

721.4 Using public motor vehicles for political purposes.
It shall be unlawful for any person to use or permit to be used any motor vehicle owned by the state of Iowa or any political subdivision thereof for the purpose of transporting any political literature or any person or persons engaging in a political campaign for any political party or any person seeking an elective office.

[C39, §**13315.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.15; C79, 81, §721.4]

721.5 State employees not to participate.
It shall be unlawful for any state officer, any state appointive officer, or state employee to leave the place of employment or the duties of office for the purpose of soliciting votes or engaging in campaign work during the hours of employment of any such officer or employee.

[C39, §**13315.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.16; C79, 81, §721.5]

721.6 Exception to sections 721.3 to 721.5.
The provisions of sections 721.3 to 721.5 shall not be construed as prohibiting any such officer or employee who is a candidate for political office to engage in campaigning at any time or at any place for the officer's or employee's self.

[C39, §**13315.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.17; C79, 81, §721.6]

721.7 Penalty for violating sections 721.3 to 721.6.

Any person who violates any provision of sections 721.3 to 721.6 shall be guilty of a serious misdemeanor.

[S13, §2727-a36; C24, 27, 31, 35, §13315; C39, §**13315.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.18; C79, 81, §721.7]

721.8 Labeling publicly owned motor vehicles.

All publicly owned motor vehicles shall bear at least two labels in a conspicuous place, one on each side of the vehicle. This label shall be designed to cover not less than one square foot of surface. This section does not apply to a motor vehicle which is specifically assigned by the head of the department or office owning or controlling it, to enforcement of police regulations or to motor vehicles issued ordinary registration plates pursuant to section 321.19, subsection 1.

[C35, §13316-e2; C39, §**13316.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.21; C79, 81, §721.8]

85 Acts, ch 115, §3

721.9 Punishment for violation of section 721.8.

A violation of section 721.8 shall be a serious misdemeanor.

[C35, §13316-e3; C39, §**13316.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §740.22; C79, 81, §721.9]

721.10 Misuse of public records and files.

A public officer or employee who, by reason of the officer's or employee's employment, has access to any public record, or to any file, dossier, or accumulation of information of any kind, and who gives or transfers to any person, in exchange for anything of value other than fees authorized by law, any such record, file, dossier, or accumulation of information, or any part thereof, or who imparts to any person any information contained therein, in exchange for anything of value other than fees authorized by law, commits a serious misdemeanor.

[C79, 81, §721.10]

721.11 Interest in public contracts.

Any officer or employee of the state or of any subdivision thereof who is directly or indirectly interested in any contract to furnish anything of value to the state or any subdivision thereof where such interest is prohibited by statute commits a serious misdemeanor. This section shall not apply to any contract awarded as a result of open, public and competitive bidding.

[S13, §468-a; C24, 27, 31, 35, 39, §**13327;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §741.11; C79, 81, §721.11]

721.12 Profiting from inmates — penalty.

A peace officer as defined by section 801.4, subsection 11, a jailer, or an employee of a penal or correctional facility shall not be the purchaser, directly or indirectly, of property being sold by a prisoner who is in the person's custody. However, a peace officer, jailer, or employee of a penal or correctional facility may purchase inmate made items at an art or craft sale or show, but only when the items are offered for sale to the public and the price paid for the item is the same price offered to any other prospective purchaser. A sale made in violation of this section is void. A peace officer, jailer, or employee of a penal or correctional facility who violates this section, commits a simple misdemeanor.

[82 Acts, ch 1145, §1]

CHAPTER 722

BRIBERY AND CORRUPTION

Chapter applicable to primary elections, §43.5

722.1 Bribery.
722.2 Accepting bribe.
722.3 Bribery in sports.
722.4 Bribery of elector or election officials. Repealed by 2002 Acts, ch 1071, §15.
722.5 Improper voting. Repealed by 2002 Acts, ch 1071, §15.
722.6 Bribery of election officials. Repealed by 2000 Acts, ch 1201, §18.
722.7 Misconduct by election official. Repealed by 2002 Acts, ch 1071, §16.
722.8 Duress to prevent or procure voting. Repealed by 2002 Acts, ch 1071, §15.
722.9 Duress to procure voting. Repealed by 2000 Acts, ch 1201, §18.
722.10 Commercial bribery.
722.11 Student athlete prohibitions.

722.1 Bribery.

A person who offers, promises, or gives anything of value or any benefit to a person who is serving or has been elected, selected, appointed, employed, or otherwise engaged to serve in a public capacity, including a public officer or employee, a referee, juror, or jury panel member, or a witness in a judicial or arbitration hearing or any official inquiry, or a member of a board of arbitration, pursuant to an agreement or arrangement or with the understanding that the promise or thing of value or benefit will influence the act, vote, opinion, judgment, decision, or exercise of discretion of the person with respect to the person's services in that capacity commits a class "D" felony. In addition, a person convicted under this section is disqualified from holding public office under the laws of this state.

[C51, §2647, 2649, 2650, 2652; R60, §4274, 4276, 4277, 4279; C73, §3939, 3941, 3942, 3944; C97, §4875, 4877, 4878, 4880, 4886; C24, 27, 31, 35, 39, §**13292, 13294, 13295, 13297, 13302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §739.1, 739.3, 739.4, 739.6, 739.11; C79, 81, §722.1]

87 Acts, ch 213, §9

722.2 Accepting bribe.

A person who is serving or has been elected, selected, appointed, employed, or otherwise engaged to serve in a public capacity, including a public officer or employee, a referee, juror, or jury panel member, or a witness in a judicial or arbitration hearing or any official inquiry, or a member of a board of arbitration who solicits or knowingly accepts or receives a promise or anything of value or a benefit given pursuant to an understanding or arrangement that the promise or thing of value or benefit will influence the act, vote, opinion, judgment, decision, or exercise of discretion of the person with respect to the person's services in that capacity commits a class "C" felony. In addition, a person convicted under this section is disqualified from holding public office under the laws of this state.

[C51, §2648, 2649, 2651, 2653, 2655, 2656; R60, §4275, 4276, 4278, 4280, 4282, 4283; C73, §3940, 3941, 3943, 3945, 3947, 3948; C97, §4876, 4877, 4879, 4881, 4883 – 4885; C24, 27, 31, 35, 39, §**13293, 13294, 13296, 13298 – 13301;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §739.2, 739.3, 739.5, 739.7 – 739.10; C79, 81, §722.2]

87 Acts, ch 213, §10

722.3 Bribery in sports.

A person who offers, solicits, gives or receives anything of value or any benefit or promise of anything of value or any benefit, with the intent that the recipient thereof do any of the following, commits an aggravated misdemeanor:

1. If the person is a participant or prospective participant in any professional or amateur sport, match, or contest as a contestant or player, lose or in some way affect the outcome of such sport, match, or contest.

2. If the person is an umpire, referee, judge, or other official in any professional or amateur sport, match, or contest, or an owner, manager, coach, trainer or relative of any participant, use the person's position or influence to affect the outcome of any such sport, match, or contest or the score thereof.

[C54, 58, 62, 66, 71, 73, 75, 77, §739.12; C79, 81, §722.3]

722.4 Bribery of elector or election officials. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.2.

722.5 Improper voting. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.2.

722.6 Bribery of election officials. Repealed by 2000 Acts, ch 1201, § 18. See § 39A.2.

722.7 Misconduct by election official. Repealed by 2002 Acts, ch 1071, § 16. See § 39A.3 and 39A.4.

722.8 Duress to prevent or procure voting. Repealed by 2002 Acts, ch 1071, § 15. See § 39A.3.

722.9 Duress to procure voting. Repealed by 2000 Acts, ch 1201, § 18. See § 39A.2.

722.10 Commercial bribery.

1. As used in subsection 2, the following definitions shall apply unless the context otherwise requires:

a. "Employer" means any sole proprietor, partnership, corporation, association, or other entity or organization.

b. "Employee" includes every officer, employee, agent or representative.

c. "Gratuity" means consideration in any form, including but not limited to a gift, commission, discount and bonus.

2. It is unlawful for a person to offer or deliver directly or indirectly for the personal benefit of an employee acting on behalf of the employee's employer in a business transaction or course of transactions with the person a gratuity in consideration of an act or omission which the person has reason to know is in conflict with the employment relation and duties of the employee to the employer. It is unlawful for an employee acting on behalf of the employee's employer in a business transaction or course of transactions with a person to solicit or receive from the person a gratuity directly or indirectly for the personal benefit of the employee in consideration of an act or omission which the em-

ployee has reason to know is in conflict with the employment relation and duties of the employee to the employer.

3. A violation of subsection 2 is a class "D" felony.

[C79, 81, §722.10]

722.11 Student athlete prohibitions.

1. *Definitions.* As used in this section:

a. "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or guardian of a person named in this paragraph.

b. "Institution of higher education" means an institution of higher education under the control of the state board of regents, a community college, or a private college or university located in this state.

c. "Student athlete" means a person who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program. The term includes a person who has applied, is eligible to apply, or who may be eligible to apply in the future to an institution of higher education.

2. *Prohibitions.*

a. Except as provided in paragraphs *"c"* and *"d"*, a person shall not give, offer, promise, or attempt to give any money or other thing of value to a student athlete or immediate family member of a student athlete for either of the following purposes:

(1) To induce, encourage, or reward the student athlete's application, enrollment, or attendance at an institution of higher education in order to have the student athlete participate in intercollegiate sporting events, contests, exhibitions, or programs at that institution.

(2) To induce, encourage, or reward the student athlete's participation in an intercollegiate sporting event, contest, exhibition, or program.

b. A person shall not aid or abet an act described in paragraph *"a"*.

c. As used in this subsection, *"person"* does not include any of the following:

(1) An institution of higher education or any of its officers or employees if the institution, officer, or employee is acting in accordance with an official written policy of the institution.

(2) An immediate family member of the student athlete.

d. An intercollegiate athletic award approved or administered by the institution of higher education that the student athlete attends is not an inducement, encouragement or reward under paragraph *"a"*.

e. A person who engages in conduct knowing or having reason to know that the conduct violates this subsection commits an aggravated misdemeanor.

3. *Prohibitions for student athletes.*

a. Except as provided in paragraph *"b"*, a student athlete or immediate family member of the student athlete, shall not solicit or accept money or anything of value for any of the purposes described in subsection 2, paragraph *"a"*. A person shall not aid or abet an act described in this paragraph.

b. This subsection does not apply to money or other things of value that a student athlete receives from any of the following:

(1) An institution of higher education, its officers, or employees if the institution, officer, or employee offered money or other thing of value in accordance with an official written policy of the institution or if the thing of value is an intercollegiate athletic award approved or administered by that institution.

(2) An immediate family member of the student athlete.

c. A person who engages in conduct knowing or having reason to know that the conduct violates this subsection commits a serious misdemeanor.

88 Acts, ch 1248, §13

CHAPTER 723

PUBLIC DISORDER

723.1 Riot.
723.2 Unlawful assembly.
723.3 Failure to disperse.
723.4 Disorderly conduct.

723.1 Riot.

A riot is three or more persons assembled together in a violent manner, to the disturbance of others, and with any use of unlawful force or violence by them or any of them against another person, or causing property damage. A person who willingly joins in or remains a part of a riot, knowing or having reasonable grounds to believe that it

is such, commits an aggravated misdemeanor.

[C51, §2740, 2741, 2743; R60, §4388, 4389, 4391; C73, §4067, 4068, 4070; C97, §5031, 5032, 5035; C24, 27, 31, 35, 39, §**13340, 13341, 13347;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §743.2, 743.3, 743.9; C79, 81, §723.1]

723.2 Unlawful assembly.

An unlawful assembly is three or more persons assembled together, with them or any of them acting in a violent manner, and with intent that they or any of them will commit a public offense. A person who willingly joins in or remains a part of an unlawful assembly, knowing or having reasonable grounds to believe that it is such, commits a simple misdemeanor.

[C51, §2739, 2741; R60, §4387, 4389; C73, §4066, 4068; C97, §5030, 5032; C24, 27, 31, 35, 39, §**13339, 13341;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §743.1, 743.3; C79, 81, §723.2]

723.3 Failure to disperse.

A peace officer may order the participants in a riot or unlawful assembly or persons in the immediate vicinity of a riot or unlawful assembly to disperse. Any person within hearing distance of such command, who refuses to obey, commits a simple misdemeanor.

[C51, §2797, 2798, 2801; R60, §4493, 4494, 4497; C73, §4149, 4150, 4153; C97, §5147, 5148, 5151; C24, 27, 31, 35, 39, §**13342, 13343, 13346;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §743.4, 743.5, 743.8; C79, 81, §723.3]

723.4 Disorderly conduct.

A person commits a simple misdemeanor when the person does any of the following:

1. Engages in fighting or violent behavior in any public place or in or near any lawful assembly of persons, provided, that participants in athletic contests may engage in such conduct which is reasonably related to that sport.

2. Makes loud and raucous noise in the vicinity of any residence or public building which causes unreasonable distress to the occupants thereof.

3. Directs abusive epithets or makes any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.

4. Without lawful authority or color of authority, the person disturbs any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.

5. By words or action, initiates or circulates a report or warning of fire, epidemic, or other catastrophe, knowing such report to be false or such warning to be baseless.

6. Knowingly and publicly uses the flag of the United States in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit a public offense.

7. Without authority or justification, the person obstructs any street, sidewalk, highway, or other public way, with the intent to prevent or hinder its lawful use by others.

[C51, §2718, 2738, 2742; R60, §1768, 4360, 4386, 4390; C73, §1566, 4023, 4065, 4069; C97, §2468, 4959, 5029, 5033, 5034; S13, §2468, 5034; C24, 27, 31, 35, 39, §**13110, 13111, 13221, 13226, 13348, 13349;** C46, 50, 54, 58, 62, 66, §714.31, 714.32, 727.1, 728.1, 744.1, 744.2; C71, 73, 75, 77, §714.31, 714.32, 714.42, 727.1, 728.1, 744.1, 744.2; C79, 81, §723.4]

88 Acts, ch 1093, §1

CHAPTER 723A

CRIMINAL STREET GANGS

723A.1 Definitions.
723A.2 Criminal gang participation.
723A.3 Gang recruitment — penalty.

723A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Criminal acts"* means any of the following or any combination of the following:

a. An offense constituting a violation of section 124.401 involving a controlled substance, a counterfeit substance, or a simulated controlled substance.

b. An offense constituting a violation of chapter 711 involving a robbery or extortion.

c. An offense constituting a violation of section 708.6 involving intimidation with a dangerous weapon.

d. An offense constituting a violation of section 708.8.

e. An offense constituting a violation of section 720.4.

f. Any other offense constituting a forcible felony as defined in section 702.11.

g. An offense constituting a violation of chapter 724.

h. Brandishing a dangerous weapon. For purposes of this paragraph:

(1) *"Brandishing a dangerous weapon"* means the display or exhibition of a dangerous weapon, with the intent to use, intimidate, or threaten another person without justification, or the actual use of the dangerous weapon in a manner which is intended to or does cause serious injury or death without justification.

(2) *"Dangerous weapon"* means either of the following:

(a) An instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and that is capable of inflicting death upon a human being when used in the manner for which it was designed.

(b) An instrument or device of any sort whatsoever that is actually used in a manner that indicates the defendant intends to inflict death or serious injury upon another person without justification, and that, when so used, is capable of inflicting death or serious injury upon a human being.

2. *"Criminal street gang"* means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

3. *"Pattern of criminal gang activity"* means the commission, attempt to commit, conspiring to commit, or solicitation of two or more criminal acts, provided the criminal acts were committed on separate dates or by two or more persons who are members of, or belong to, the same criminal street gang.

90 Acts, ch 1251, §57; 95 Acts, ch 191, §51; 96 Acts, ch 1134, §10; 97 Acts, ch 119, §1, 2, 4; 2002 Acts, ch 1075, §9

Subsection 1, paragraph h affirmed and reenacted effective May 6, 1997; legislative findings; 97 Acts, ch 119, §1, 2, 4

Subsection 1, paragraph c amended

723A.2 Criminal gang participation.

A person who actively participates in or is a member of a criminal street gang and who willfully aids and abets any criminal act committed for the benefit of, at the direction of, or in association with any criminal street gang, commits a class "D" felony.

90 Acts, ch 1251, §58

723A.3 Gang recruitment — penalty.

1. A person who solicits, recruits, entices, or intimidates a minor to join a criminal street gang commits a class "C" felony.

2. A person who conspires to solicit, recruit, entice, or intimidate a minor to join a criminal street gang commits a class "D" felony.

95 Acts, ch 191, §52

CHAPTER 724

WEAPONS

Restrictions on shooting over public waters or roads; §481A.54

724.1 Offensive weapons.
724.2 Authority to possess offensive weapons.
724.2A Peace officer defined.
724.3 Unauthorized possession of offensive weapons.
724.4 Carrying weapons.
724.4A Weapons free zones — enhanced penalties.
724.4B Carrying weapons on school grounds — penalty — exceptions.
724.5 Duty to carry permit to carry weapons.
724.6 Professional permit to carry weapons.
724.7 Nonprofessional permit to carry weapons.
724.8 Persons eligible for permit to carry weapons.
724.9 Firearm training program.
724.10 Application for permit to carry weapons — criminal history check required.
724.11 Issuance of permit to carry weapons.
724.12 Permit to carry weapons not transferable.
724.13 Revocation of permit to carry weapons.
724.14 Repealed by 78 Acts, ch 1174, §19.
724.15 Annual permit to acquire pistols or revolvers.
724.16 Annual permit to acquire required — transfer prohibited.
724.16A Trafficking in stolen weapons.
724.17 Application for annual permit to acquire — criminal history check required.
724.18 Procedure for making application for annual permit to acquire.
724.19 Issuance of annual permit to acquire.
724.20 Validity of annual permit to acquire pistols or revolvers.
724.21 Giving false information when acquiring weapon.
724.22 Persons under twenty-one — sale, loan, gift, making available — possession.
724.23 Records kept by commissioner.
724.24 Purchase or sale of firearms in contiguous states. Repealed by 2002 Acts, ch 1055, §5.
724.25 Felony and antique firearm defined.

724.26 Possession, receipt, transportation, or dominion and control of firearms and offensive weapons by felons.
724.27 Offenders' rights restored.
724.28 Prohibition of regulation by political subdivisions.
724.29 Firearm devices.
724.30 Reckless use of a firearm.

724.1 Offensive weapons.

An offensive weapon is any device or instrumentality of the following types:

1. A machine gun. A machine gun is a firearm which shoots or is designed to shoot more than one shot, without manual reloading, by a single function of the trigger.

2. A short-barreled rifle or short-barreled shotgun. A short-barreled rifle or short-barreled shotgun is a rifle with a barrel or barrels less than sixteen inches in length or a shotgun with a barrel or barrels less than eighteen inches in length, as measured from the face of the closed bolt or standing breech to the muzzle, or any rifle or shotgun with an overall length less than twenty-six inches.

3. Any weapon other than a shotgun or muzzle loading rifle, cannon, pistol, revolver or musket, which fires or can be made to fire a projectile by the explosion of a propellant charge, which has a barrel or tube with the bore of more than six-tenths of an inch in diameter, or the ammunition or projectile therefor, but not including antique weapons kept for display or lawful shooting.

4. A bomb, grenade, or mine, whether explosive, incendiary, or poison gas; any rocket having a propellant charge of more than four ounces; any missile having an explosive charge of more than one-quarter ounce; or any device similar to any of these.

5. A ballistic knife. A ballistic knife is a knife with a detachable blade which is propelled by a spring-operated mechanism, elastic material, or compressed gas.

6. Any part or combination of parts either designed or intended to be used to convert any device into an offensive weapon as described in subsections 1 to 5 of this section, or to assemble into such an offensive weapon, except magazines or other parts, ammunition, or ammunition components used in common with lawful sporting firearms or parts including but not limited to barrels suitable for refitting to sporting firearms.

7. Any bullet or projectile containing any explosive mixture or chemical compound capable of exploding or detonating prior to or upon impact, or any shotshell or cartridge containing exothermic pyrophoric misch metal as a projectile which is designed to throw or project a flame or fireball to simulate a flamethrower.

Notwithstanding section 724.2, no person is authorized to possess in this state a shotshell or cartridge intended to project a flame or fireball of the type described in this section.

8. Any mechanical device specifically constructed and designed so that when attached to a firearm silences, muffles, or suppresses the sound when fired. However, this subsection does not apply to a mechanical device possessed and used by a person solely for the purpose of shooting a deer pursuant to an approved city special deer population control plan if the person has a valid federal permit to possess and use the mechanical device.

9. An offensive weapon or part or combination of parts therefor shall not include the following:

a. An antique firearm. An antique firearm is any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898 or any firearm which is a replica of such a firearm if such replica is not designed or redesigned for using conventional rimfire or centerfire ammunition or which uses only rimfire or centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

b. A collector's item. A collector's item is any firearm other than a machine gun that by reason of its date of manufacture, value, design, and other characteristics is not likely to be used as a weapon. The commissioner of public safety shall designate by rule firearms which the commissioner determines to be collector's items and shall revise or update the list of firearms at least annually.

c. Any device which is not designed or redesigned for use as a weapon; any device which is designed solely for use as a signaling, pyrotechnic, line-throwing, safety, or similar device; or any firearm which is unserviceable by reason of being unable to discharge a shot by means of an explosive and is incapable of being readily restored to a firing condition.

[C27, 31, 35, §12960-b1; C39, §**12960.01;** C46, 50, 54, 58, 62, 66, §696.1; C71, 73, 75, 77, §696.1, 697.10, 697.11; C79, 81, §724.1]

83 Acts, ch 7, §1; 88 Acts, ch 1164, §2, 3; 92 Acts, ch 1004, §1, 2; 2000 Acts, ch 1116, §7

724.2 Authority to possess offensive weapons.

Any of the following is authorized to possess an offensive weapon when the person's duties or lawful activities require or permit such possession:

1. Any peace officer.

2. Any member of the armed forces of the United States or of the national guard.

3. Any person in the service of the United

States.

4. A correctional officer, serving in an institution under the authority of the Iowa department of corrections.

5. Any person who under the laws of this state and the United States, is lawfully engaged in the business of supplying those authorized to possess such devices.

6. Any person, firm or corporation who under the laws of this state and the United States is lawfully engaged in the improvement, invention or manufacture of firearms.

7. Any museum or similar place which possesses, solely as relics, offensive weapons which are rendered permanently unfit for use.

8. A resident of this state who possesses an offensive weapon which is a curio or relic firearm under the federal Firearms Act, 18 U.S.C. ch. 44, solely for use in the official functions of a historical reenactment organization of which the person is a member, if the offensive weapon has been permanently rendered unfit for the firing of live ammunition. The offensive weapon may, however, be adapted for the firing of blank ammunition.

9. A nonresident who possesses an offensive weapon which is a curio or relic firearm under the federal Firearms Act, 18 U.S.C. ch. 44, solely for use in official functions in this state of a historical reenactment organization of which the person is a member, if the offensive weapon is legally possessed by the person in the person's state of residence and the offensive weapon is at all times while in this state rendered incapable of firing live ammunition. A nonresident who possesses an offensive weapon under this subsection while in this state shall not have in the person's possession live ammunition. The offensive weapon may, however, be adapted for the firing of blank ammunition.

[C27, 31, 35, §12960-b4, 12960-b5, 12960-b7; C39, §**12960.04, 12960.05, 12960.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §696.4 – 696.7; C79, 81, §724.2]

83 Acts, ch 96, §122, 159; 97 Acts, ch 166, §3

724.2A Peace officer defined.

As used in sections 724.6 and 724.11 regarding obtaining or renewing a permit for the carrying of weapons, *"peace officer"* includes a reserve peace officer as defined in section 80D.1A.

96 Acts, ch 1078, §1

724.3 Unauthorized possession of offensive weapons.

Any person, other than a person authorized herein, who knowingly possesses an offensive weapon commits a class "D" felony.

[C27, 31, 35, §12960-b3; C39, §**12960.03;** C46, 50, 54, 58, 62, 66, §696.3; C71, 73, 75, 77, §696.3, 697.11; C79, 81, §724.3]

724.4 Carrying weapons.

1. Except as otherwise provided in this section, a person who goes armed with a dangerous weapon concealed on or about the person, or who, within the limits of any city, goes armed with a pistol or revolver, or any loaded firearm of any kind, whether concealed or not, or who knowingly carries or transports in a vehicle a pistol or revolver, commits an aggravated misdemeanor.

2. A person who goes armed with a knife concealed on or about the person, if the person uses the knife in the commission of a crime, commits an aggravated misdemeanor.

3. A person who goes armed with a knife concealed on or about the person, if the person does not use the knife in the commission of a crime:

a. If the knife has a blade exceeding eight inches in length, commits an aggravated misdemeanor.

b. If the knife has a blade exceeding five inches but not exceeding eight inches in length, commits a serious misdemeanor.

4. Subsections 1 through 3 do not apply to any of the following:

a. A person who goes armed with a dangerous weapon in the person's own dwelling or place of business, or on land owned or possessed by the person.

b. A peace officer, when the officer's duties require the person to carry such weapons.

c. A member of the armed forces of the United States or of the national guard or person in the service of the United States, when the weapons are carried in connection with the person's duties as such.

d. A correctional officer, when the officer's duties require, serving under the authority of the Iowa department of corrections.

e. A person who for any lawful purpose carries an unloaded pistol, revolver, or other dangerous weapon inside a closed and fastened container or securely wrapped package which is too large to be concealed on the person.

f. A person who for any lawful purpose carries or transports an unloaded pistol or revolver in a vehicle inside a closed and fastened container or securely wrapped package which is too large to be concealed on the person or inside a cargo or luggage compartment where the pistol or revolver will not be readily accessible to any person riding in the vehicle or common carrier.

g. A person while the person is lawfully engaged in target practice on a range designed for that purpose or while actually engaged in lawful hunting.

h. A person who carries a knife used in hunting or fishing, while actually engaged in lawful hunting or fishing.

i. A person who has in the person's possession and who displays to a peace officer on demand a valid permit to carry weapons which has been issued to the person, and whose conduct is within

the limits of that permit. A person shall not be convicted of a violation of this section if the person produces at the person's trial a permit to carry weapons which was valid at the time of the alleged offense and which would have brought the person's conduct within this exception if the permit had been produced at the time of the alleged offense.

j. A law enforcement officer from another state when the officer's duties require the officer to carry the weapon and the officer is in this state for any of the following reasons:

(1) The extradition or other lawful removal of a prisoner from this state.

(2) Pursuit of a suspect in compliance with chapter 806.

(3) Activities in the capacity of a law enforcement officer with the knowledge and consent of the chief of police of the city or the sheriff of the county in which the activities occur or of the commissioner of public safety.

k. A person engaged in the business of transporting prisoners under a contract with the Iowa department of corrections or a county sheriff, a similar agency from another state, or the federal government.

[S13, §4775-1a, -3a, -4a, -7a, -11a; C24, 27, 31, 35, 39, §**12936 – 12939;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.2 – 695.5; C79, 81, §724.4]

83 Acts, ch 7, §2; 83 Acts, ch 96, §123, 159; 87 Acts, ch 13, §5; 88 Acts, ch 1164, §4; 98 Acts, ch 1131, §3

724.4A Weapons free zones — enhanced penalties.

1. As used in this section, *"weapons free zone"* means the area in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, or in or on the real property comprising a public park. A weapons free zone shall not include that portion of a public park designated as a hunting area under section 461A.42.

2. Notwithstanding sections 902.9 and 903.1, a person who commits a public offense involving a firearm or offensive weapon, within a weapons free zone, in violation of this or any other chapter shall be subject to a fine of twice the maximum amount which may otherwise be imposed for the public offense.

94 Acts, ch 1172, §53

724.4B Carrying weapons on school grounds — penalty — exceptions.

1. A person who goes armed with, carries, or transports a firearm of any kind, whether concealed or not, on the grounds of a school commits a class "D" felony. For the purposes of this section, *"school"* means a public or nonpublic school as defined in section 280.2.

2. Subsection 1 does not apply to the following:

a. A person listed under section 724.4, subsection 4, paragraphs *"b"* through *"f"* or *"j"*.

b. A person who has been specifically authorized by the school to go armed, carry, or transport a firearm on the school grounds, including for purposes of conducting an instructional program regarding firearms.

95 Acts, ch 191, §53

724.5 Duty to carry permit to carry weapons.

A person armed with a revolver, pistol, or pocket billy concealed upon the person shall have in the person's immediate possession the permit provided for in section 724.4, subsection 4, paragraph *"i"*, and shall produce the permit for inspection at the request of a peace officer. Failure to so produce a permit is a simple misdemeanor.

[S13, §4775-8a; C24, 27, 31, 35, 39, §**12947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.15; C79, 81, §724.5]

90 Acts, ch 1168, §60

724.6 Professional permit to carry weapons.

1. A person may be issued a permit to carry weapons when the person's employment in a private investigation business or private security business licensed under chapter 80A, or a person's employment as a peace officer, correctional officer, security guard, bank messenger or other person transporting property of a value requiring security, or in police work, reasonably justifies that person going armed. The permit shall be on a form prescribed and published by the commissioner of public safety, shall identify the holder, and shall state the nature of the employment requiring the holder to go armed. A permit so issued, other than to a peace officer, shall authorize the person to whom it is issued to go armed anywhere in the state, only while engaged in the employment, and while going to and from the place of the employment. A permit issued to a certified peace officer shall authorize that peace officer to go armed anywhere in the state at all times. Permits shall expire twelve months after the date when issued except that permits issued to peace officers and correctional officers are valid through the officer's period of employment unless otherwise canceled. When the employment is terminated, the holder of the permit shall surrender it to the issuing officer for cancellation.

2. Notwithstanding subsection 1, fire fighters, as defined in section 411.1, subsection 9, airport fire fighters included under section 97B.49C, emergency rescue technicians, and emergency medical care providers, as defined in section 147A.1, shall not, as a condition of employment, be required to obtain a permit under this section. However, the provisions of this subsection shall not apply to a person designated as an arson investigator by the chief fire officer of a political subdivision.

[S13, §4775-4a, -7a; C24, 27, 31, 35, 39, §**12939, 12943 – 12945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.5, 695.11 – 695.13; C79, 81, §724.6]

83 Acts, ch 7, §3; 84 Acts, ch 1235, §17; 93 Acts, ch 31, §1; 94 Acts, ch 1183, §87; 95 Acts, ch 41, §26; 98 Acts, ch 1183, §74

724.7 Nonprofessional permit to carry weapons.

Any person who can reasonably justify going armed may be issued a nonprofessional permit to carry weapons. Such permits shall be on a form prescribed and published by the commissioner of public safety, which shall be readily distinguishable from the professional permit, and shall identify the holder thereof, and state the reason for the issuance of the permit, and the limits of the authority granted by such permit. All permits so issued shall be for a definite period as established by the issuing officer, but in no event shall exceed a period of twelve months.

[S13, §4775-3a; C24, 27, 31, 35, 39, §**12938, 12945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.4, 695.13; C79, 81, §724.7]

724.8 Persons eligible for permit to carry weapons.

No person shall be issued a professional or nonprofessional permit to carry weapons unless:

1. The person is eighteen years of age or older.
2. The person has never been convicted of a felony.
3. The person is not addicted to the use of alcohol or any controlled substance.
4. The person has no history of repeated acts of violence.
5. The issuing officer reasonably determines that the applicant does not constitute a danger to any person.
6. The person has never been convicted of any crime defined in chapter 708, except *"assault"* as defined in section 708.1 and *"harassment"* as defined in section 708.7.

[C79, 81, §724.8]

Exception to subsection 2; see §724.27

724.9 Firearm training program.

A training program to qualify persons in the safe use of firearms shall be provided by the issuing officer of permits, as provided in section 724.11. The commissioner of public safety shall approve the training program, and the county sheriff or the commissioner of public safety conducting the training program within their respective jurisdictions may contract with a private organization or use the services of other agencies, or may use a combination of the two, to provide such training. Any person eligible to be issued a permit to carry weapons may enroll in such course. A fee sufficient to cover the cost of the program may be charged each person attending. Certificates of completion, on a form prescribed and published by the commissioner of public safety, shall be issued to each person who successfully completes the program. No person shall be issued either a professional or nonprofessional permit unless the person has received a certificate of completion or is a certified peace officer. No peace officer or correctional officer, except a certified peace officer, shall go armed with a pistol or revolver unless the officer has received a certificate of completion, provided that this requirement shall not apply to persons who are employed in this state as peace officers on January 1, 1978 until July 1, 1978, or to peace officers of other jurisdictions exercising their legal duties within this state.

[C79, 81, §724.9]

724.10 Application for permit to carry weapons — criminal history check required.

A person shall not be issued a permit to carry weapons unless the person has completed and signed an application on a form to be prescribed and published by the commissioner of public safety. The application shall state the full name, driver's license or nonoperator's identification card number, residence, and age of the applicant, and shall state whether the applicant has ever been convicted of a felony, whether the person is addicted to the use of alcohol or any controlled substance, and whether the person has any history of mental illness or repeated acts of violence. The applicant shall also display an identification card that bears a distinguishing number assigned to the cardholder, the full name, date of birth, sex, residence address, and a brief description and colored photograph of the cardholder. The sheriff shall conduct immediately a criminal history check concerning each applicant by obtaining criminal history data from the department of public safety. A person who knowingly makes a false statement of material fact on the application commits a class "D" felony.

[S13, §4775-4a, -7a; C24, 27, 31, 35, 39, §**12939, 12940;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.5, 695.6; C79, 81, §724.10]

90 Acts, ch 1147, §1; 2002 Acts, ch 1055, §1

Section amended

724.11 Issuance of permit to carry weapons.

Applications for permits to carry weapons shall be made to the sheriff of the county in which the applicant resides. Applications from persons who are nonresidents of the state, or whose need to go armed arises out of employment by the state, shall be made to the commissioner of public safety. In either case, the issuance of the permit shall be by and at the discretion of the sheriff or commissioner, who shall, before issuing the permit, determine that the requirements of sections 724.6 to 724.10 have been satisfied. However, the training program requirements in section 724.9 may be

waived for renewal permits. The issuing officer shall collect a fee of ten dollars, except from a duly appointed peace officer or correctional officer, for each permit issued. Renewal permits or duplicate permits shall be issued for a fee of five dollars. The issuing officer shall notify the commissioner of public safety of the issuance of any permit at least monthly and forward to the commissioner an amount equal to two dollars for each permit issued and one dollar for each renewal or duplicate permit issued. All such fees received by the commissioner shall be paid to the treasurer of state and deposited in the operating account of the department of public safety to offset the cost of administering this chapter. Any unspent balance as of June 30 of each year shall revert to the general fund as provided by section 8.33.

[S13, §4775-3a; C24, 27, §12941; C31, 35, §12941, 12941-c1, 12941-d1; C39, §**12941, 12941.1, 12941.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.7 – 695.9; C79, 81, §724.11]

91 Acts, ch 207, §1; 97 Acts, ch 23, §78

724.12 Permit to carry weapons not transferable.

Permits to carry weapons shall be issued to a specific person only, and may not be transferred from one person to another.

[C24, 27, 31, 35, 39, §**12942;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.10; C79, 81, §724.12]

724.13 Revocation of permit to carry weapons.

The issuing officer may revoke any permit to carry weapons when the officer learns that any of the conditions required for the issuance of that permit as stated in sections 724.6 to 724.10 have ceased to exist, or when the officer learns that that permit was improperly issued. When the issuing officer revokes a permit, the officer shall notify the permit holder of such revocation on a form prescribed and published by the commissioner of public safety, and shall forward a copy of the form to the commissioner of public safety. From the time the permit holder receives notice of revocation, the permit shall cease to have any force or effect. Permit revocations may be reviewed by writ of certiorari.

[S13, §4775-6a; C24, 27, 31, 35, 39, §**12946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.14; C79, 81, §724.13]

724.14 Repealed by 78 Acts, ch 1174, § 19.

724.15 Annual permit to acquire pistols or revolvers.

1. Any person who acquires ownership of any pistol or revolver shall first obtain an annual permit. An annual permit shall not be issued to any person unless:

a. The person is twenty-one years of age or older.

b. The person has never been convicted of a felony.

c. The person is not addicted to the use of alcohol or a controlled substance.

d. The person has no history of repeated acts of violence.

e. The person has never been convicted of a crime defined in chapter 708, except "assault" as defined in section 708.1 and "harassment" as defined in section 708.7.

f. The person has never been adjudged mentally incompetent.

2. Any person who acquires ownership of a pistol or revolver shall not be required to obtain an annual permit if:

a. The person transferring the pistol or revolver and the person acquiring the pistol or revolver are licensed firearms dealers under federal law;

b. The pistol or revolver acquired is an antique firearm, a collector's item, a device which is not designed or redesigned for use as a weapon, a device which is designed solely for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, or a firearm which is unserviceable by reason of being unable to discharge a shot by means of an explosive and is incapable of being readily restored to a firing condition; or

c. The person acquiring the pistol or revolver is authorized to do so on behalf of a law enforcement agency.

d. The person has obtained a valid permit to carry weapons, as provided in section 724.11.

e. The person transferring the pistol or revolver and the person acquiring the pistol or revolver are related to one another within the second degree of consanguinity or affinity unless the person transferring the pistol or revolver knows that the person acquiring the pistol or revolver would be ineligible to obtain a permit.

3. The annual permit to acquire pistols or revolvers shall authorize the permit holder to acquire one or more pistols or revolvers during the period that the permit remains valid. If the issuing officer determines that the applicant has become disqualified under the provisions of subsection 1, the issuing officer may immediately invalidate the permit.

[C79, 81, §724.15]

90 Acts, ch 1147, §2, 3

Exception to subsection 1, paragraphs b and e; see §724.27

724.16 Annual permit to acquire required — transfer prohibited.

1. Except as otherwise provided in section 724.15, subsection 2, a person who acquires ownership of a pistol or revolver without a valid annual permit to acquire pistols or revolvers or a person who transfers ownership of a pistol or revolver to a person who does not have in the person's possession a valid annual permit to acquire pistols or re-

volvers is guilty of an aggravated misdemeanor.

2. A person who transfers ownership of a pistol or revolver to a person that the transferor knows is prohibited by section 724.15 from acquiring ownership of a pistol or revolver commits a class "D" felony.

[C79, 81, §724.16]

90 Acts, ch 1147, §4; 94 Acts, ch 1172, §54

724.16A Trafficking in stolen weapons.

A person who knowingly transfers or acquires possession, or who facilitates the transfer, of a stolen firearm commits a class "D" felony for a first offense and a class "C" felony for second and subsequent offenses or if the weapon is used in the commission of a public offense. However, this section shall not apply to a person purchasing stolen firearms through a buy-back program sponsored by a law enforcement agency if the firearms are returned to their rightful owners or destroyed.

94 Acts, ch 1172, §55; 97 Acts, ch 119, §1, 3, 4

Section affirmed and reenacted effective May 6, 1997; legislative findings; 97 Acts, ch 119, §1, 3, 4

724.17 Application for annual permit to acquire — criminal history check required.

The application for an annual permit to acquire pistols or revolvers may be made to the sheriff of the county of the applicant's residence and shall be on a form prescribed and published by the commissioner of public safety. The application shall state the full name of the applicant, the driver's license or nonoperator's identification card number of the applicant, the residence of the applicant, and the age of the applicant. The applicant shall also display an identification card that bears a distinguishing number assigned to the cardholder, the full name, date of birth, sex, residence address, and brief description and colored photograph of the cardholder, or other identification as specified by rule of the department of public safety. The sheriff shall conduct a criminal history check concerning each applicant by obtaining criminal history data from the department of public safety. A person who knowingly makes a false statement of material fact on the application commits a class "D" felony.

[C79, 81, §724.17]

90 Acts, ch 1147, §5; 2002 Acts, ch 1055, §2

Section amended

724.18 Procedure for making application for annual permit to acquire.

A person may personally request the sheriff to mail an application for an annual permit to acquire pistols or revolvers, and the sheriff shall immediately forward to such person an application for an annual permit to acquire pistols or revolvers. A person shall upon completion of the application personally deliver such application to the sheriff who shall note the period of validity on the application and shall immediately issue the annual permit to acquire pistols or revolvers to the applicant. For the purposes of this section the date of application shall be the date on which the sheriff received the completed application.

[C79, 81, §724.18]

724.19 Issuance of annual permit to acquire.

The annual permit to acquire pistols or revolvers shall be issued to the applicant immediately upon completion of the application unless the applicant is disqualified under the provisions of section 724.15 and shall be on a form prescribed and published by the commissioner of public safety. The permit shall contain the name of the permittee, the residence of the permittee, and the effective date of the permit.

[C79, 81, §724.19]

2002 Acts, ch 1055, §3

Section amended

724.20 Validity of annual permit to acquire pistols or revolvers.

The permit shall be valid throughout the state and shall be valid three days after the date of application and shall be invalid one year after the date of application.

[C79, 81, §724.20]

724.21 Giving false information when acquiring weapon.

A person who gives a false name or presents false identification, or otherwise knowingly gives false material information to one from whom the person seeks to acquire a pistol or revolver, commits a class "D" felony.

[S13, §4775-10a; C24, 27, 31, 35, 39, §**12955;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.23; C79, 81, §724.21]

90 Acts, ch 1147, §6

724.22 Persons under twenty-one — sale, loan, gift, making available — possession.

1. Except as provided in subsection 3, a person who sells, loans, gives, or makes available a rifle or shotgun or ammunition for a rifle or shotgun to a minor commits a serious misdemeanor for a first offense and a class "D" felony for second and subsequent offenses.

2. Except as provided in subsections 4 and 5, a person who sells, loans, gives, or makes available a pistol or revolver or ammunition for a pistol or revolver to a person below the age of twenty-one commits a serious misdemeanor for a first offense and a class "D" felony for second and subsequent offenses.

3. A parent, guardian, spouse who is eighteen years of age or older, or another with the express consent of the minor's parent or guardian or spouse who is eighteen years of age or older may allow a minor to possess a rifle or shotgun or the ammunition therefor which may be lawfully used.

4. A person eighteen, nineteen, or twenty years of age may possess a firearm and the ammunition therefor while on military duty or while a peace officer, security guard or correctional officer, when such duty requires the possession of such a weapon or while the person receives instruction in the proper use thereof from an instructor who is twenty-one years of age or older.

5. A parent or guardian or spouse who is twenty-one years of age or older, of a person fourteen years of age but less than twenty-one may allow the person to possess a pistol or revolver or the ammunition therefor for any lawful purpose while under the direct supervision of the parent or guardian or spouse who is twenty-one years of age or older, or while the person receives instruction in the proper use thereof from an instructor twenty-one years of age or older, with the consent of such parent, guardian or spouse.

6. For the purposes of this section, caliber .22 rimfire ammunition shall be deemed to be rifle ammunition.

7. *Access to loaded firearms by children restricted — penalty.* It shall be unlawful for any person to store or leave a loaded firearm which is not secured by a trigger lock mechanism, placed in a securely locked box or container, or placed in some other location which a reasonable person would believe to be secure from a minor under the age of fourteen years, if such person knows or has reason to believe that a minor under the age of fourteen years is likely to gain access to the firearm without the lawful permission of the minor's parent, guardian, or person having charge of the minor, the minor lawfully gains access to the firearm without the consent of the minor's parent, guardian, or person having charge of the minor, and the minor exhibits the firearm in a public place in an unlawful manner, or uses the firearm unlawfully to cause injury or death to a person. This subsection does not apply if the minor obtains the firearm as a result of an unlawful entry by any person. A violation of this subsection is punishable as a serious misdemeanor.

[C97, §5004; C24, 27, 31, 35, 39, §**12958;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §695.26; C79, 81, §724.22]

90 Acts, ch 1147, §7; 94 Acts, ch 1023, §119; 94 Acts, ch 1172, §56

724.23 Records kept by commissioner.

The commissioner of public safety shall maintain a permanent record of all valid permits to carry weapons and of current permit revocations.

[C79, 81, §724.23]

83 Acts, ch 7, §4

724.24 Purchase or sale of firearms in contiguous states. Repealed by 2002 Acts, ch 1055, § 5.

724.25 Felony and antique firearm defined.

1. As used in sections 724.8, subsection 2, and 724.26, the word *"felony"* means any offense punishable in the jurisdiction where it occurred by imprisonment for a term exceeding one year, but does not include any offense, other than an offense involving a firearm or explosive, classified as a misdemeanor under the laws of the state and punishable by a term of imprisonment of two years or less.

2. As used in this chapter an *"antique firearm"* means any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898. An antique firearm also means a replica of a firearm so described if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if the replica uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

[C79, 81, §724.25]

86 Acts, ch 1065, §1

724.26 Possession, receipt, transportation, or dominion and control of firearms and offensive weapons by felons.

A person who is convicted of a felony in a state or federal court, or who is adjudicated delinquent on the basis of conduct that would constitute a felony if committed by an adult, and who knowingly has under the person's dominion and control or possession, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class "D" felony.

[C79, 81, §724.26]

90 Acts, ch 1147, §8; 97 Acts, ch 126, §47; 2002 Acts, ch 1055, §4; 2002 Acts, ch 1175, §94; 2002 Acts, 2nd Ex, ch 1003, §243, 262

Exception; see §724.27
Section amended
Section affirmed and reenacted

724.27 Offenders' rights restored.

The provisions of section 724.8, subsection 2, section 724.15, subsection 1, paragraphs *"b"* and *"e"*, and section 724.26 shall not apply to a person who is eligible to have the person's civil rights regarding firearms restored under section 914.7 and who is pardoned or has had the person's civil rights restored by the President of the United States or the chief executive of a state and who is expressly authorized by the President of the United States or such chief executive to receive, transport, or possess firearms or destructive devices.

[C79, 81, §724.27]

94 Acts, ch 1172, §57

724.28 Prohibition of regulation by political subdivisions.

A political subdivision of the state shall not enact an ordinance regulating the ownership, possession, legal transfer, lawful transportation, registration, or licensing of firearms when the ownership, possession, transfer, or transportation is otherwise lawful under the laws of this state. An ordinance regulating firearms in violation of this section existing on or after April 5, 1990, is void.

90 Acts, ch 1147, §9

724.29 Firearm devices.

A person who sells or offers for sale a manual or power-driven trigger activating device constructed and designed so that when attached to a firearm increases the rate of fire of the firearm is guilty of an aggravated misdemeanor.

90 Acts, ch 1147, §10

724.30 Reckless use of a firearm.

A person who intentionally discharges a firearm in a reckless manner commits the following:

1. A class "C" felony if a serious injury occurs.
2. A class "D" felony if a bodily injury which is not a serious injury occurs.
3. An aggravated misdemeanor if property damage occurs without a serious injury or bodily injury occurring.
4. A simple misdemeanor if no injury to a person or damage to property occurs.

94 Acts, ch 1172, §58

CHAPTER 725

VICE

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725.1 Prostitution.

A person who sells or offers for sale the person's services as a partner in a sex act, or who purchases or offers to purchase such services, commits an aggravated misdemeanor.

[C97, §4943; C24, 27, 31, 35, 39, §**13173;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §724.1; C79, 81, §725.1]

725.2 Pimping.

A person who solicits a patron for a prostitute, or who knowingly takes or shares in the earnings of a prostitute, or who knowingly furnishes a room or other place to be used for the purpose of prostitution, whether for compensation or not, commits a class "D" felony.

[C51, §2710; R60, §4352; C73, §4013; C97, §4939; S13, §4975-c; C24, 27, 31, 35, 39, §**13174, 13175;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §724.2, 724.3; C79, 81, §725.2]

725.3 Pandering.

1. A person who persuades, arranges, coerces, or otherwise causes another, not a minor, to become a prostitute or to return to the practice of prostitution after having abandoned it, or keeps or maintains any premises for the purposes of prostitution or takes a share in the income from such premises knowing the character and content of such income, commits a class "D" felony.

2. A person who persuades, arranges, coerces, or otherwise causes a minor to become a prostitute or to return to the practice of prostitution after having abandoned it, or keeps or maintains any premises for the purpose of prostitution involving minors or knowingly shares in the income from such premises knowing the character and content of such income, commits a class "C" felony.

[C51, §2584; R60, §4207; C73, §3865; C97, §4760; S13, §4944-i, -j; C24, 27, 31, 35, 39, §**13179, 13181, 13182;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §724.7, 724.9, 724.10; C79, 81, §725.3]

86 Acts, ch 1046, §2; 87 Acts, ch 115, §82

725.4 Leasing premises for prostitution.

A person who has rented or let any building, structure or part thereof, boat, trailer or other

place offering shelter or seclusion, and who knows, or has reason to know, that the lessee or tenant is using such for the purposes of prostitution, and who does not, immediately upon acquiring such knowledge, terminate the tenancy or effectively put an end to such practice of prostitution in such place, commits a serious misdemeanor.

[C51, §2712; R60, §4354; C73, §4015; C97, §4941; C24, 27, 31, 35, 39, §**13178;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §724.6; C79, 81, §725.4]

725.5 Keeping gambling houses.

Any person who keeps a house, shop, or place resorted to for the purpose of gambling, or permits any person in any house, shop, or other place under the person's control or care to conduct bookmaking or to play at cards, dice, faro, roulette, equality, punchboard, slot machine or other game for money or other thing, commits a serious misdemeanor.

[C51, §2721; R60, §4363; C73, §4026; C97, §4962; C24, 27, 31, 35, 39, §**13198;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §726.1; C79, 81, §725.5]

725.6 "Keeper" defined.

In a prosecution under section 725.5, any person who has the charge of or attends to any such house, shop, or place is the keeper thereof.

[C51, §2721; R60, §4363; C73, §4026; C97, §4962; C24, 27, 31, 35, 39, §**13199;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §726.2; C79, 81, §725.6]

725.7 Gaming and betting — penalty.

1. Except as permitted in chapters 99B and 99D, a person shall not do any of the following:

a. Participate in a game for any sum of money or other property of any value.

b. Make any bet.

c. For a fee, directly or indirectly, give or accept anything of value to be wagered or to be transmitted or delivered for a wager to be placed within or without the state of Iowa.

d. For a fee, deliver anything of value which has been received outside the enclosure of a racetrack licensed under chapter 99D to be placed as wagers in the pari-mutuel pool or other authorized systems of wagering.

e. Engage in bookmaking.

2. A person who violates this section is guilty of the following:

a. Illegal gaming in the fourth degree if the sum of money or value of other property involved does not exceed one hundred dollars. Illegal gaming in the fourth degree constitutes the following:

(1) A serious misdemeanor for a first offense.

(2) An aggravated misdemeanor for a second offense.

(3) A class "D" felony for a third offense.

(4) A class "C" felony for a fourth or subsequent offense.

b. Illegal gaming in the third degree if the sum of money or value of other property involved exceeds one hundred dollars but does not exceed five hundred dollars. Illegal gaming in the third degree constitutes the following:

(1) An aggravated misdemeanor for a first offense.

(2) A class "D" felony for a second offense.

(3) A class "C" felony for a third or subsequent offense.

c. Illegal gaming in the second degree if the sum of money or value of other property involved exceeds five hundred dollars but does not exceed five thousand dollars. Illegal gaming in the second degree constitutes the following:

(1) A class "D" felony for a first offense.

(2) A class "C" felony for a second or subsequent offense.

d. Illegal gaming in the first degree if the sum of money or value of other property involved exceeds five thousand dollars. Illegal gaming in the first degree constitutes a class "C" felony.

[C51, §2723; R60, §4365; C73, §4028; C97, §4964; C24, 27, 31, 35, 39, §**13202;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §726.3; C79, 81, §725.7]

83 Acts, ch 187, §34; 89 Acts, ch 296, §88

725.8 Wagers — forfeiture.

Property, whether real or personal, offered as a stake, or any moneys, property, or other thing of value staked, paid, bet, wagered, laid, or deposited in connection with or as a part of any game of chance, lottery, gambling scheme or device, gift enterprise, or other trade scheme unlawful under the laws of this state shall be forfeited to the state and said personal property may be seized and disposed of under chapter 809.

[C24, 27, 31, 35, 39, §**13203;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §726.4; C79, 81, §725.8]

725.9 Possession of gambling devices prohibited — exception for manufacturing.

1. *"Antique slot machine"* means a slot machine which is twenty-five years old or older.

2. *"Antique pinball machine"* means a pinball machine which is twenty-five years old or older.

3. *"Gambling device"* means a device used or adapted or designed to be used for gambling and includes, but is not limited to, roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pinball machines, push cards, jar tickets and pull-tabs. However, "gambling device" does not include an antique slot machine, antique pinball machine, or any device regularly manufactured and offered for sale and sold as a toy, except that any use of such a toy, antique slot machine or antique pinball machine for gambling purposes constitutes unlawful gambling.

4. A person who, in any manner or for any purpose, except under a proceeding to destroy the device, has in possession or control a gambling device is guilty of a serious misdemeanor.

5. This chapter does not prohibit the possession of gambling devices by a manufacturer or distributor if the possession is solely for sale out of the state in another jurisdiction where possession of the device is legal or for sale in the state or use in the state if the use is licensed pursuant to either chapter 99B or chapter 99E.

[S13, §4965-a; C24, 27, 31, 35, 39, §**13210;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §726.5; C79, 81, §725.9]

85 Acts, ch 32, §118; 86 Acts, ch 1052, §3; 90 Acts, ch 1062, §2

See chapter 99A

725.10 Pool selling — places used.

Any person who records or registers bets or wagers or sells pools upon the result of any trial or contest of skill, speed, or power of endurance of human or beast, or upon the result of any political nomination or election, and any person who keeps a place for the purpose of doing any such thing, and any owner, lessee, or occupant of any premises, who knowingly permits the same, or any part thereof, to be used for any such purpose, and anyone who, as custodian or depositary thereof, for hire or reward, receives any money, property, or thing of value staked, wagered, or bet upon any such result, shall be guilty of a serious misdemeanor.

[C97, §4966; C24, 27, 31, 35, 39, §**13216;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §726.6; C79, 81, §725.10]

725.11 Bullfights and other contests.

If any person keep or use, or in any way be connected with, or be interested in the management of, or receive money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock, or other creature, or engage in, aid, abet, encourage, or assist in any bull, bear, dog, or cock fight, or a fight between any other creatures, the person shall be guilty of a serious misdemeanor.

[C73, §4033; C97, §4971; C24, 27, 31, 35, 39, §**13217;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §726.7; C79, 81, §725.11]

725.12 Lotteries and lottery tickets — definition.

If any person make or aid in making or establishing, or advertise or make public a scheme for a lottery; or advertise, offer for sale, sell, negotiate, dispose of, purchase, or receive a ticket or part of a ticket in a lottery or number of a ticket in a lottery; or have in the person's possession a ticket, part of a ticket, or paper purporting to be the number of a ticket of a lottery, with intent to sell or dispose of the ticket, part of a ticket, or paper on the person's own account or as the agent of another, the person commits a serious misdemeanor. However, this section does not prohibit the advertising of a lottery or possession by a person of a lottery ticket, part of a ticket, or number of a lottery ticket from a lottery legally operated or permitted under the laws of another jurisdiction. This section also does not prohibit the advertising of a lottery, game of chance, contest, or activity conducted by a not-for-profit organization that would qualify as tax exempt under section 501 of the Internal Revenue Code, as defined in section 422.3, or conducted as a promotional activity by a commercial organization which is clearly occasional and ancillary to the primary business of that organization.

When used in this section, *"lottery"* shall mean any scheme, arrangement, or plan whereby a prize is awarded by chance or any process involving a substantial element of chance to a participant who has paid or furnished a consideration for such chance.

For the purpose of determining the existence of a lottery under this section, a consideration shall be deemed to have been paid or furnished only in such cases where as a direct or indirect requirement or condition of obtaining a chance to win a prize, the participants are required to make an expenditure of money or something of monetary value through a purchase, payment of an entry or admission fee, or other payment or the participants are required to make a substantial expenditure of effort; provided, however, that no substantial expenditure of effort shall be deemed to have been expended by any participant solely by reason of the registration of the participant's name, address, and related information, the obtaining of an entry blank or participation sheet, by permitting or taking part in a demonstration of any article or commodity, by making a personal examination of posted lists of prize winners, or by acts of a comparable nature, whether performed or accomplished in person at any store, place of business, or other designated location, through the mails, or by telephone; and further provided, that no participant shall be required to be present in person or by representative at any designated location at the time of the determination of the winner of the prize, and that the winner shall be notified either by the same method used to communicate the offering of the prize or by regular mail.

[C51, §2730; R60, §4377; C73, §4043; C97, §5000; C24, 27, 31, 35, 39, §**13218;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §726.8; C79, 81, §725.12]

85 Acts, ch 33, §125; 89 Acts, ch 48, §1

725.13 Definition of bookmaking.

"Bookmaking" means advancing gambling activity by accepting bets upon the outcome of future contingent events as a business other than as permitted in chapters 99B, 99D, and 99F. These events include, but are not limited to, the results of a trial or contest of skill, speed, power, or endurance of a person or beast or between persons, beasts, fowl, motor vehicles, or mechanical apparatus or upon the result of any chance, casualty,

unknown, or contingent event.
83 Acts, ch 187, §35; 89 Acts, ch 67, §27

725.14 Exception for state racing and gaming commission and pari-mutuel betting.
This chapter does not prohibit the establishment and operation of a state racing and gaming commission and pari-mutuel betting on horse or dog races as provided in chapter 99D.
83 Acts, ch 187, §35

725.15 Exceptions for legal gambling.
Sections 725.5 to 725.10 and 725.12 do not apply to a game, activity, ticket, or device when lawfully possessed, used, conducted, or participated in pursuant to chapter 99B, 99E, or 99F.
[C75, 77, §726.11; C79, 81, §725.15]
85 Acts, ch 33, §126; 86 Acts, ch 1125, §5; 88 Acts, ch 1136, §2; 89 Acts, ch 67, §28

725.16 Gambling penalty.
A person who commits an offense declared in chapter 99B to be a misdemeanor shall be guilty of a serious misdemeanor except if an owner of an electrical or mechanical amusement device commits an offense in violation of section 99B.10, the owner is guilty of a class "D" felony.
[C51, §2721, 2730; R60, §4363, 4377; C73, §4026, 4043; C97, §4962, 5000; C24, 27, 31, 35, 39, §**13198, 13218;** C46, 50, 54, 58, 62, 66, 71, 73, §726.1, 726.8; C75, §99B.9, 726.1, 726.8; C77, §726.14; C79, 81, §725.16]
92 Acts, ch 1203, §20

725.17 Protection money prohibited.
Any officer or employee of this state, or of a county, city, or judicial district who asks for, receives or collects any money or other consideration for and with the understanding that the officer or employee will aid, exempt, or otherwise protect another person from detection, arrest or conviction of any violation of this chapter or chapter 99B commits an aggravated misdemeanor.
[C77, §726.15; C79, 81, §725.17]

725.18 Collection service prohibited.
Any person who knowingly offers, gives or sells the person's services for use in collecting or enforcing any debt arising from gambling, whether or not lawful gambling, commits an aggravated misdemeanor.
[C77, §726.16; C79, 81, §725.18]

CHAPTER 726

PROTECTION OF THE FAMILY AND DEPENDENT PERSONS

Victim counselor privilege; see §915.20A
Complaint alleging a child is in need of assistance; see §709.13

726.1 Bigamy.
726.2 Incest.
726.3 Neglect or abandonment of a dependent person.
726.4 Husband or wife may be witness.
726.5 Nonsupport.
726.6 Child endangerment.
726.6A Multiple acts of child endangerment — penalty.
726.7 Wanton neglect of a resident of a health care facility.
726.8 Wanton neglect or nonsupport of a dependent adult.

726.1 Bigamy.
Any person, having a living husband or wife, who marries another, commits bigamy. Any of the following is a defense to the charge of bigamy:
1. The prior marriage was terminated in accordance with applicable law, or the person reasonably believes on reasonably convincing evidence that the prior marriage was so terminated.
2. The person believes, on reasonably convincing evidence, that the prior spouse is dead.
3. The person has, for three years, had no evidence by which the person can reasonably believe that the prior spouse is alive.

Any person who marries another who the person knows has another living husband or wife commits bigamy. Bigamy is a serious misdemeanor.
[C51, §2706 – 2708; R60, §4348 – 4350; C73, §4009 – 4011; C97, §4933 – 4935; C24, 27, 31, 35, 39, §**12975 – 12977;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §703.1 – 703.3; C79, 81, §726.1]

726.2 Incest.
A person, except a child as defined in section 702.5, who performs a sex act with another whom the person knows to be related to the person, ei-

ther legitimately or illegitimately, as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew, commits incest. Incest is a class "D" felony.

[R60, §4367 – 4369; C73, §4030; C97, §4936; C24, 27, 31, 35, 39, §**12978;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §704.1; C79, 81, §726.2]

86 Acts, ch 1105, §1

726.3 Neglect or abandonment of a dependent person.

A person who is the father, mother, or some other person having custody of a child, or of any other person who by reason of mental or physical disability is not able to care for the person's self, who knowingly or recklessly exposes such person to a hazard or danger against which such person cannot reasonably be expected to protect such person's self or who deserts or abandons such person, knowing or having reason to believe that the person will be exposed to such hazard or danger, commits a class "C" felony. However, a parent or person authorized by the parent shall not be prosecuted for a violation of this section involving abandonment of a newborn infant, if the parent or the person authorized by the parent has voluntarily released custody of the newborn infant in accordance with section 233.2.

[C51, §2589; R60, §4212; C73, §3870; C97, §4766; C24, 27, 31, 35, 39, §**13236;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §731.7; C79, 81, §726.3]

2001 Acts, ch 67, §11, 13; 2002 Acts, ch 1119, §103

Section amended

726.4 Husband or wife may be witness.

In all prosecutions under section 726.3, 726.5 or 726.6, the husband or wife is a competent witness for the state and may testify to relevant acts or communications between them.

[S13, §4775-b; C24, 27, 31, 35, 39, §**13231;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §731.2; C79, 81, §726.4]

83 Acts, ch 37, §6

726.5 Nonsupport.

A person, who being able to do so, fails or refuses to provide support for the person's child or ward under the age of eighteen years commits nonsupport; provided that no person shall be held to have violated this section who fails to support any child or ward under the age of eighteen who has left the home of the parent or other person having legal custody of the child or ward without the consent of that parent or person having legal custody of the child or ward. Support, for the purposes of this section, means any support which has been fixed by court order, or, in the absence of any such order or decree, the minimal requirements of food, clothing or shelter. Nonsupport is a class "D" felony.

[S13, §4775-a; C24, 27, 31, 35, 39, §**13230;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §731.1; C79, 81, §726.5]

726.6 Child endangerment.

1. A person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person does any of the following:

a. Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety.

b. By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in bodily injury, or that is intended to cause serious injury.

c. By an intentional act or series of intentional acts, evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor.

d. Willfully deprives a child or minor of necessary food, clothing, shelter, health care or supervision appropriate to the child or minor's age, when the person is reasonably able to make the necessary provisions and which deprivation substantially harms the child or minor's physical, mental or emotional health. For purposes of this paragraph, the failure to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care if the person can show that such treatment would conflict with the tenets and practice of a recognized religious denomination of which the person is an adherent or member. This exception does not in any manner restrict the right of an interested party to petition the court on behalf of the best interest of the child or minor.

e. Knowingly permits the continuing physical or sexual abuse of a child or minor. However, it is an affirmative defense to this subsection if the person had a reasonable apprehension that any action to stop the continuing abuse would result in substantial bodily harm to the person or the child or minor.

f. Abandons the child or minor to fend for the child or minor's self, knowing that the child or minor is unable to do so.

2. A parent or person authorized by the parent shall not be prosecuted for a violation of subsection 1, paragraph *"f"*, relating to abandonment, if the parent or person authorized by the parent has voluntarily released custody of a newborn infant in accordance with section 233.2.

3. For the purposes of subsection 1, *"person having control over a child or a minor"* means any of the following:

a. A person who has accepted, undertaken, or assumed supervision of a child or such a minor from the parent or guardian of the child or minor.

b. A person who has undertaken or assumed

temporary supervision of a child or such a minor without explicit consent from the parent or guardian of the child or minor.

c. A person who operates a motor vehicle with a child or such a minor present in the vehicle.

4. A person who commits child endangerment resulting in serious injury to a child or minor is guilty of a class "C" felony.

5. A person who commits child endangerment resulting in bodily injury to a child or minor is guilty of a class "D" felony.

6. A person who commits child endangerment not resulting in bodily injury or serious injury to a child or minor is guilty of an aggravated misdemeanor.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §731A.1 – 731A.3; C79, 81, §726.6]

85 Acts, ch 180, §3; 96 Acts, ch 1129, §109; 2001 Acts, ch 3, §2 – 5; 2001 Acts, ch 67, §12, 13; 2002 Acts, ch 1119, §104

Definition of forcible felony; §702.11
Subsection 2 amended

726.6A Multiple acts of child endangerment — penalty.

A person who engages in a course of conduct including three or more acts of child endangerment as defined in section 726.6 within a period of twelve months involving the same child or a minor with a mental or physical disability, where one or more of the acts results in serious injury to the child or minor or results in a skeletal injury to a child under the age of four years, is guilty of a class "B" felony. Notwithstanding section 902.9, subsection 2, a person convicted of a violation of this section shall be confined for no more than fifty years.

94 Acts, ch 1172, §59; 96 Acts, ch 1129, §110

726.7 Wanton neglect of a resident of a health care facility.

1. A person commits wanton neglect of a resident of a health care facility when the person knowingly acts in a manner likely to be injurious to the physical or mental welfare of a resident of a health care facility as defined in section 135C.1.

2. A person who commits wanton neglect resulting in serious injury to a resident of a health care facility is guilty of a class "C" felony.

3. A person who commits wanton neglect not resulting in serious injury to a resident of a health care facility is guilty of an aggravated misdemeanor.

[C79, 81, §726.7]

91 Acts, ch 107, §13

726.8 Wanton neglect or nonsupport of a dependent adult.

1. A caretaker commits wanton neglect of a dependent adult if the caretaker knowingly acts in a manner likely to be injurious to the physical, mental, or emotional welfare of a dependent adult. Wanton neglect of a dependent adult is a serious misdemeanor.

2. A person who has legal responsibility either through contract or court order for support of a dependent adult and who fails or refuses to provide support commits nonsupport. Nonsupport is a class "D" felony.

3. A person alleged to have committed wanton neglect or nonsupport of a dependent adult shall be charged with the respective offense unless a charge may be brought based upon a more serious offense, in which case the charge of the more serious offense shall supersede the less serious charge.

4. For the purposes of this section, *"dependent adult"* means a dependent adult as defined in section 235B.2, subsection 4, and *"caretaker"* means a caretaker as defined in section 235B.2, subsection 1.

87 Acts, ch 182, §10

CHAPTER 727

HEALTH, SAFETY AND WELFARE

727.1 Distributing dangerous substances.
727.2 Fireworks.
727.3 Abandoned or unattended refrigerators.
727.4 Exposing persons to X-ray radiation.
727.5 Obstruction of emergency communications.
727.6 Falsely claiming emergency.
727.7 Publication required.
727.8 Electronic and mechanical eavesdropping.
727.9 Transacting business without a license.
727.10 Exhibiting persons.
727.11 Disclosure of information concerning use of videotapes — penalty.

727.1 Distributing dangerous substances.

Any person who distributes samples of any drugs or medicine, or any corrosive, caustic, poisonous or other injurious substance, commits a simple misdemeanor unless the person delivers

such into the hands of a competent person, or otherwise takes reasonable precautions that the substance will not be taken by children or animals from the place where the substance is deposited.

[S13, §4999-a42, 4999-a43; C24, 27, 31, 35, 39, §**13244, 13245;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §732.8, 732.9; C79, 81, §727.1]

727.2 Fireworks.

The term *"fireworks"* includes any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes blank cartridges, firecrackers, torpedoes, skyrockets, roman candles, or other fireworks of like construction and fireworks containing any explosive or flammable compound, or other device containing any explosive substance. The term *"fireworks"* does not include goldstar-producing sparklers on wires which contain no magnesium or chlorate or perchlorate, flitter sparklers in paper tubes that do not exceed one-eighth of an inch in diameter, toy snakes which contain no mercury, or caps used in cap pistols.

A person, firm, copartnership, or corporation who offers for sale, exposes for sale, sells at retail, or uses or explodes any fireworks, commits a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this section shall include assessment of a fine of not less than two hundred fifty dollars. However, the council of a city or a county board of supervisors may, upon application in writing, grant a permit for the display of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals approved by the city or the county board of supervisors when the fireworks display will be handled by a competent operator, but no such permit shall be required for the display of fireworks at the Iowa state fairgrounds by the Iowa state fair board, at incorporated county fairs, or at district fairs receiving state aid. Sales of fireworks for such display may be made for that purpose only.

This section does not prohibit the sale by a resident, dealer, manufacturer, or jobber of such fireworks as are not prohibited by this section, or the sale of any kind of fireworks if they are to be shipped out of the state, or the sale or use of blank cartridges for a show or the theater, or for signal purposes in athletic sports or by railroads or trucks, for signal purposes, or by a recognized military organization.

This section does not apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

[C39, §**13245.08 – 13245.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §732.17 – 732.19; C79, 81, §727.2]

92 Acts, ch 1163, §120; 99 Acts, ch 153, §22

727.3 Abandoned or unattended refrigerators.

Any person who abandons or otherwise leaves unattended any refrigerator, icebox, or similar container, with doors that may become locked, outside of buildings and accessible to children, or any person who allows any such refrigerator, ice box, or similar container, to remain outside of buildings on premises in the person's possession or control, abandoned or unattended and so accessible to children, commits a simple misdemeanor.

[C58, 62, 66, 71, 73, 75, 77, §732.20 – 732.23; C79, 81, §727.3]

727.4 Exposing persons to X-ray radiation.

Any person other than one licensed to practice medicine, osteopathic medicine, chiropractic, or dentistry, or one acting under the direction of a person so licensed, who knowingly exposes any other person to X-ray radiation, commits a simple misdemeanor.

[C62, 66, 71, 73, 75, 77, §732.24; C79, 81, §727.4]

727.5 Obstruction of emergency communications.

An emergency communication is any telephone call or radio transmission to a fire department or police department for aid, or a call or transmission for medical aid or ambulance service, when human life or property is in jeopardy and the prompt summoning of aid is essential. A person who fails to relinquish a telephone or telephone line which the person is using when informed that the phone or line is needed for an emergency call or knowingly and intentionally obstructs or interferes with an emergency call or transmission commits a simple misdemeanor.

[C62, 66, 71, 73, 75, 77, §714.33, 714.34; C79, 81, §727.5]

87 Acts, ch 12, §1

727.6 Falsely claiming emergency.

Any person who secures the use of a telephone or telephone line by falsely stating that such telephone or line is needed for an emergency call commits a simple misdemeanor.

[C62, 66, 71, 73, 75, 77, §714.35; C79, 81, §727.6]

727.7 Publication required.

Every telephone company doing business in this state shall print a copy of sections 727.5 and 727.6 in a prominent place in every telephone directory published by it. Any person, firm, or corporation providing telephone service which distributes or causes to be distributed in this state copies of a telephone directory which is subject to the provisions of this section which does not contain the notice herein provided for commits a simple misdemeanor.

[C62, 66, 71, 73, 75, 77, §714.36; C79, 81, §727.7]

727.8 Electronic and mechanical eavesdropping.

Any person, having no right or authority to do so, who taps into or connects a listening or recording device to any telephone or other communication wire, or who by any electronic or mechanical means listens to, records, or otherwise intercepts a conversation or communication of any kind, commits a serious misdemeanor; provided, that the sender or recipient of a message or one who is openly present and participating in or listening to a communication shall not be prohibited hereby from recording such message or communication; and further provided, that nothing herein shall restrict the use of any radio or television receiver to receive any communication transmitted by radio or wireless signal.

[C97, §4816; C24, 27, 31, 35, 39, §**13121;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §716.8; C79, 81, §727.8]

727.9 Transacting business without a license.

Unless another penalty is specifically provided, any person who without a license carries on or transacts any business or occupation for which a license is required by any law of this state, commits a simple misdemeanor.

[C51, §2737; R60, §4380; C73, §4046; C97, §5010; C24, 27, 31, 35, 39, §**13072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §713.27; C79, 81, §727.9]

727.10 Exhibiting persons.

A person shall not exhibit, place on exhibition, or cause to be exhibited any person without the permission of the person exhibited or the person's parent or guardian. A parent or guardian of an exhibited person shall not receive compensation from the exhibition. A person who violates this section commits a serious misdemeanor.

[S13, §4975-1a; C24, 27, 31, 35, 39, §**13197;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §725.12; C79, 81, §727.10]

95 Acts, ch 168, §1

727.11 Disclosure of information concerning use of videotapes — penalty.

1. Except as provided in subsection 2, a person engaged in the business of renting, leasing, loaning, or otherwise distributing for a fee videotapes or other like items to individuals for personal use shall not disclose any information which would reveal the identity of an individual renting, leasing, borrowing, or otherwise obtaining through the business a videotape or other like item, except to the extent permitted by the individual as evidenced by the individual's written consent or as otherwise provided in this section.

2. In the absence of consent, the information may be released in any of the following situations:

a. To a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The information shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

b. To the extent reasonably necessary to collect payment for the rental, lease, or other distribution fee for the materials, if the individual has been given written notice that the payment is due and the individual has failed to pay or arrange for payment within a reasonable time after this notice.

c. If the disclosure is for the exclusive purpose of marketing goods and services directly to the consumer. The person disclosing the information shall inform the customer in writing that the customer may, by written notice, require the person to refrain from disclosing the information pursuant to this paragraph.

3. A person who violates this section commits a simple misdemeanor.

88 Acts, ch 1256, §2; 89 Acts, ch 296, §89; 96 Acts, ch 1034, §64

CHAPTER 727A

PROFESSIONAL BOXING AND WRESTLING

Chapter 727A, Code 1977, transferred to chapter 99C;
chapter 99C, Code 1985, transferred to chapter 90A

CHAPTER 728

OBSCENITY

Victim counselor privilege; see §915.20A
Complaint alleging a child in need of assistance; see §709.13

728.1 Definitions.
728.2 Dissemination and exhibition of obscene material to minors.
728.3 Admitting minors to premises where obscene material is exhibited.
728.4 Rental or sale of hard-core pornography.
728.5 Public indecent exposure in certain establishments.
728.6 Civil suit to determine obscenity.
728.7 Exemptions for public libraries and educational institutions.
728.8 Suspension of licenses or permits.
728.9 Evidence considered.
728.10 Affirmative defense.
728.11 Uniform application.
728.12 Sexual exploitation of a minor.
728.13 Forfeiture. Repealed by 85 Acts, ch 201, §21.
728.14 Commercial film and photographic print processor reports of depictions of minors engaged in prohibited sexual acts.
728.15 Telephone dissemination of obscene material to minors.

728.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Disseminate"* means to transfer possession, with or without consideration.

2. *"Knowingly"* means being aware of the character of the matter.

3. *"Material"* means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

4. *"Minor"* means any person under the age of eighteen.

5. *"Obscene material"* is any material depicting or describing the genitals, sex acts, masturbation, excretory functions or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political or artistic value.

6. *"Place of business"* means the premises of a business required to obtain a sales tax permit pursuant to chapter 422, the premises of a nonprofit or not-for-profit organization, and the premises of an establishment which is open to the public at large or where entrance is limited by a cover charge or membership requirement.

7. Unless otherwise provided, *"prohibited sexual act"* means any of the following:

a. A sex act as defined in section 702.17.

b. An act of bestiality involving a minor.

c. Fondling or touching the pubes or genitals of a minor.

d. Fondling or touching the pubes or genitals of a person by a minor.

e. Sadomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.

f. Sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.

g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the nude minor.

8. *"Promote"* means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do any of these acts.

9. *"Sadomasochistic abuse"* means the infliction of physical or mental pain upon a person or the condition of a person being fettered, bound or otherwise physically restrained.

10. *"Sex act"* means any sexual contact, actual or simulated, either natural or deviate, between two or more persons, or between a person and an animal, by penetration of the penis into the vagina or anus, or by contact between the mouth or tongue and genitalia or anus, or by contact between a finger of one person and the genitalia of another person or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

[C75, 77, §725.1; C79, 81, §728.1]

83 Acts, ch 167, §1; 89 Acts, ch 263, §1; 97 Acts, ch 125, §2

728.2 Dissemination and exhibition of obscene material to minors.

Any person, other than the parent or guardian of the minor, who knowingly disseminates or exhibits obscene material to a minor, including the exhibition of obscene material so that it can be observed by a minor on or off the premises where it is displayed, is guilty of a public offense and shall upon conviction be guilty of a serious misdemeanor.

[C51, §2717; R60, §4359; C73, §4022; C97, §4951, 4955; C24, 27, 31, 35, 39, §**13189, 13193;** C46, 50, 54, 58, 62, 66, 71, 73, §725.4, 725.8; C75, 77, §725.2; C79, 81, §728.2]

728.3 Admitting minors to premises where obscene material is exhibited.

1. A person who knowingly sells, gives, delivers, or provides a minor who is not a child with a pass or admits the minor to premises where obscene material is exhibited is guilty of a public offense and upon conviction is guilty of a serious misdemeanor.

2. A person who knowingly sells, gives, delivers, or provides a child with a pass or admits a child to premises where obscene material is exhibited is guilty of a public offense and upon conviction is guilty of an aggravated misdemeanor.

[C51, §2717; R60, §4359; C73, §4022; C97, §4951; S13, §4944-k; C24, 27, 31, 35, 39, §**13185, 13189;** C46, 50, 54, 58, 62, 66, 71, 73, §725.3, 725.4; C75, 77, §725.3; C79, 81, §728.3]

83 Acts, ch 167, §2

728.4 Rental or sale of hard-core pornography.

A person who knowingly rents, sells, or offers for rental or sale material depicting patently offensive representations of oral, anal, or vaginal intercourse, actual or simulated, involving humans, or depicting patently offensive representations of masturbation, excretory functions, or bestiality, or lewd exhibition of the genitals, which the average adult taking the material as a whole in applying statewide contemporary community standards would find appeals to the prurient interest; and which material, taken as a whole, lacks serious literary, scientific, political, or artistic value, upon conviction is guilty of an aggravated misdemeanor. However, second and subsequent violations of this section by a person who has been previously convicted of violating this section are class "D" felonies. Charges under this section may only be brought by a county attorney or by the attorney general.

[C79, 81, §728.4; 82 Acts, ch 1115, §1]

83 Acts, ch 167, §3; 89 Acts, ch 263, §2

728.5 Public indecent exposure in certain establishments.

An owner, manager, or person who exercises direct control over a place of business required to obtain a sales tax permit shall be guilty of a serious misdemeanor under any of the following circumstances:

1. If such person allows or permits the actual or simulated public performance of any sex act upon or in such place of business.

2. If such person allows or permits the exposure of the genitals or buttocks or female breast of any person who acts as a waiter or waitress.

3. If such person allows or permits the exposure of the genitals or female breast nipple of any person who acts as an entertainer, whether or not the owner of the place of business in which the activity is performed employs or pays any compensation to such person to perform such activity.

4. If such person allows or permits any person to remain in or upon the place of business who exposes to public view the person's genitals, pubic hair, or anus.

5. If such person advertises that any activity prohibited by this section is allowed or permitted in such place of business.

6. If such person allows or permits a minor to engage in or otherwise perform in a live act intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons. However, if such person allows or permits a minor to participate in any act included in subsections 1 through 4, the person shall be guilty of an aggravated misdemeanor.

The provisions of this section shall not apply to a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

[C79, 81, §728.5]

92 Acts, ch 1029, §1; 97 Acts, ch 125, §3

728.6 Civil suit to determine obscenity.

Whenever the county attorney of any county has reasonable cause to believe that any person is engaged or plans to engage in the dissemination or exhibition of obscene material within the county attorney's county to minors the county attorney may institute a civil proceeding in the district court of the county to enjoin the dissemination or exhibition of obscene material to minors. Such application for injunction is optional and not mandatory and shall not be construed as a prerequisite to criminal prosecution for a violation of this chapter.

[C75, 77, §725.4; C79, 81, §728.6]

728.7 Exemptions for public libraries and educational institutions.

Nothing in this chapter prohibits the use of appropriate material for educational purposes in any accredited school, or any public library, or in any educational program in which the minor is partici-

pating. Nothing in this chapter prohibits the attendance of minors at an exhibition or display of art works or the use of any materials in any public library.

[C75, 77, §725.5; C79, 81, §728.7]

728.8 Suspension of licenses or permits.

Any person who knowingly permits a violation of section 728.2, 728.3, or 728.5, subsection 6, to occur on premises under the person's control shall have all permits and licenses issued to the person under state or local law as a prerequisite for doing business on such premises revoked for a period of six months. The county attorney shall notify all agencies responsible for issuing licenses and permits of any conviction under section 728.2, 728.3, or 728.5, subsection 6.

[C75, 77, §725.6; C79, 81, §728.8]

92 Acts, ch 1029, §2; 97 Acts, ch 125, §4

728.9 Evidence considered.

At a trial for violation of section 728.2 or 728.3 the court may consider the material, and receive into evidence in addition to other competent evidence, the offered testimony of experts pertaining to:

1. The artistic, literary, political or scientific value, if any, of the challenged material.
2. The degree of public acceptance within the community of the material or material of similar character.
3. The intent of the author, artist, producer, publisher or manufacturer in creating the material.
4. The advertising promotion and other circumstances relating to the sale of the material.

[C75, 77, §725.7; C79, 81, §728.9]

728.10 Affirmative defense.

In any prosecution for disseminating or exhibiting obscene material to minors, it is an affirmative defense that the defendant had reasonable cause to believe that the minor involved was eighteen years old or more and the minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more or was accompanied by a parent or spouse eighteen years of age or more.

[C75, 77, §725.8; C79, 81, §728.10]

728.11 Uniform application.

In order to provide for the uniform application of the provisions of this chapter relating to obscene material applicable to minors within this state, it is intended that the sole and only regulation of obscene material shall be under the provisions of this chapter, and no municipality, county or other governmental unit within this state shall make any law, ordinance or regulation relating to the availability of obscene materials. All such laws, ordinances or regulations shall be or become void, unenforceable and of no effect on January 1, 1978. Nothing in this section shall restrict the zoning authority of cities and counties.

[C75, 77, §725.9; C79, 81, §728.11]

728.12 Sexual exploitation of a minor.

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, knowingly permit, or otherwise cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or be preserved in an electronic, magnetic, or optical storage system, or in any other type of storage system. A person who commits a violation of this subsection commits a class "C" felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. It shall be unlawful to knowingly promote any material visually depicting a live performance of a minor or what appears to be a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class "D" felony. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. It shall be unlawful to knowingly purchase or possess a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or an electronic, magnetic, or optical storage system, or any other type of storage system which depicts a minor or what appears to be a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense. For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person's having been convicted under this subsection, any of the following apply:

a. The person has a prior conviction or deferred judgment under this subsection.

b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.

4. This section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

[C79, 81, §728.12]

83 Acts, ch 167, §4; 86 Acts, ch 1176, §1 – 3; 89 Acts, ch 263, §3; 2001 Acts, ch 17, §4

728.13 Forfeiture. Repealed by 85 Acts, ch 201, § 21. See chapter 809.

728.14 Commercial film and photographic print processor reports of depictions of minors engaged in prohibited sexual acts.

1. A commercial film and photographic print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a film, photograph, video tape, negative, or slide which depicts a minor whom the processor knows or reasonably should know to be under the age of eighteen, engaged in a prohibited sexual act or in the simulation of a prohibited sexual act, shall report the depiction to the county attorney immediately or as soon as possible as required in this section. The processor shall not report to the county attorney depictions involving mere nudity of the minor, but shall report depictions involving a prohibited sexual act. This section shall not be construed to require a processor to review all films, photographs, video tapes, negatives, or slides delivered to the processor within the processor's professional capacity or employment.

For purposes of this section, *"prohibited sexual act"* means any of the following:

a. A sex act as defined in section 702.17.

b. An act of bestiality involving a minor.

c. Fondling or touching the pubes or genitals of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act.

d. Fondling or touching the pubes or genitals of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the act.

e. Sadomasochistic abuse of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.

f. Sadomasochistic abuse of a person by a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the abuse.

g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a depiction of the nude minor.

2. A person who violates this section is guilty of a simple misdemeanor.

89 Acts, ch 263, §4; 94 Acts, ch 1128, §2

728.15 Telephone dissemination of obscene material to minors.

1. A person shall not knowingly disseminate obscene material by the use of telephones or telephone facilities to a minor. A person who violates this subsection upon conviction is guilty of an aggravated misdemeanor. However, second and subsequent offenses of this subsection by a person who has been previously convicted of violating this subsection are class "D" felonies. As used in this subsection, a "person" excludes any information-access service provider that merely provides transmission capacity without control over the content of the transmission.

2. It shall be a defense in any prosecution for a violation of subsection 1 by a person who knowingly disseminates obscene material by the use of telephones or telephone facilities to a minor that the defendant has taken either of the following measures to restrict access to the obscene material:

a. Required the person receiving the obscene material to use an authorized access or identification code, as provided by the information provider, before transmission of the obscene material begins, where the defendant has previously issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was eighteen years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of eighteen years or that the code is no longer desired.

b. Required payment by credit card before transmission of the obscene material.

3. Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with subsection 2 is confidential and shall not be sold or otherwise disseminated except upon order of the court.

89 Acts, ch 263, §5

CHAPTER 729

INFRINGEMENT OF INDIVIDUAL RIGHTS

See also chapters 216 and 729A

729.1 Religious test.
729.2 Evidence.
729.3 Penalty.
729.4 Fair employment practices.
729.5 Violation of individual rights — penalty.
729.6 Genetic testing.

729.1 Religious test.

Any violation of section 4, Article I of the Constitution of Iowa is hereby declared to be a simple misdemeanor unless a greater penalty is otherwise provided by law.

[C35, §13252-f1; C39, §**13252.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §735.3; C79, 81, §729.1]

95 Acts, ch 49, §26

729.2 Evidence.

If any person, agency, bureau, corporation, or association employed or maintained to obtain, or aid in obtaining, positions for others in the public schools, or positions in any other public institutions in the state, or any individual or official connected with any public school or public institution shall ask, indicate, or transmit orally or in writing the religion or religious affiliations of any person seeking employment in the public schools or any other public institutions, it shall constitute evidence of a violation of section 729.1.

[C35, §13252-f2; C39, §**13252.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §735.4; C79, 81, §729.2]

729.3 Penalty.

Any person, agency, bureau, corporation, or association that violates provisions of section 729.2 shall be guilty of a simple misdemeanor.

[C35, §13252-f3; C39, §**13252.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §735.5; C79, 81, §729.3]

95 Acts, ch 49, §27

729.4 Fair employment practices.

1. Every person in this state is entitled to the opportunity for employment on equal terms with every other person. A person or employer shall not discriminate in the employment of individuals because of race, religion, color, sex, national origin, or ancestry. However, as to employment an individual must be qualified to perform the services or work required.

2. A labor union or organization or an officer thereof shall not discriminate against any person as to membership therein because of race, religion, color, sex, national origin or ancestry.

3. Any person, employer, labor union or organization or officer of a labor union or organization convicted of a violation of subsection 1 or 2 shall be guilty of a simple misdemeanor.

[C66, 71, 73, 75, 77, §735.6; C79, 81, §729.4]

87 Acts, ch 74, §1

729.5 Violation of individual rights — penalty.

1. A person, who acts alone, or who conspires with another person or persons, to injure, oppress, threaten, or intimidate or interfere with any citizen in the free exercise or enjoyment of any right or privilege secured to that person by the constitution or laws of the state of Iowa or by the constitution or laws of the United States, and assembles with one or more persons for the purpose of teaching or being instructed in any technique or means capable of causing property damage, bodily injury or death when the person or persons intend to employ those techniques or means in furtherance of the conspiracy, is on conviction, guilty of a class "D" felony.

A person intimidates or interferes with another person if the act of the person results in any of the following:

a. Physical injury to the other person.

b. Physical damage to or destruction of the other person's property.

c. Communication in a manner, or action in a manner, intended to result in either of the following:

(1) To place the other person in fear of physical contact which will be injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

(2) To place the other person in fear of harm to the other person's property, or harm to the person or property of a third person.

2. This section does not make unlawful the teaching of any technique in self-defense.

3. This section does not make unlawful any activity of any of the following officials or persons:

a. Law enforcement officials of this or any other jurisdiction while engaged in the lawful performance of their official duties.

b. Federal officials required to carry firearms while engaged in the lawful performance of their official duties.

c. Members of the armed forces of the United States or the national guard while engaged in the lawful performance of their official duties.

d. Any conservation commission, law enforcement agency, or any agency licensed to provide security services, or any hunting club, gun club, shooting range, or other organization or entity whose primary purpose is to teach the safe handling or use of firearms, archery equipment, or other weapons or techniques employed in connection with lawful sporting or other lawful activity.

88 Acts, ch 1163, §1; 90 Acts, ch 1139, §2; 92 Acts, ch 1157, §7

729.6 Genetic testing.

1. As used in this section, unless the context otherwise requires:

a. *"Employer"* means the state of Iowa, or any political subdivision, board, commission, department, institution, or school district, and every other person employing employees within the state.

b. *"Employment agency"* means a person, including the state, who regularly undertakes to procure employees or opportunities for employment for any other person.

c. *"Genetic testing"* means a test of a person's genes, gene products, or chromosomes, for abnor-

malities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment, or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors.

d. "Labor organization" means any organization which exists for the purpose in whole or in part of collective bargaining, or dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

e. "Licensing agency" means a board, commission, committee, council, department, examining board, or officer, except a judicial officer, in the state, or in a city, county, township, or local government, authorized to grant, deny, renew, revoke, suspend, annul, withdraw, or amend a license or certificate of registration.

f. "Unfair genetic testing" means any test or testing procedure that violates this section.

2. An employer, employment agency, labor organization, licensing agency, or its employees, agents, or members shall not directly or indirectly do any of the following:

a. Solicit, require, or administer a genetic test to a person as a condition of employment, preemployment application, labor organization membership, or licensure.

b. Affect the terms, conditions, or privileges of employment, preemployment application, labor organization membership, or licensure, or terminate the employment, labor organization membership, or licensure of any person who obtains a genetic test.

3. Except as provided in subsection 7, a person shall not sell to or interpret for an employer, employment agency, labor organization, or licensing agency, or its employees, agents, or members, a genetic test of an employee, labor organization member, or licensee, or of a prospective employee, member, or licensee.

4. An agreement between a person and an employer, prospective employer, employment agency, labor organization, or licensing agency, or its employees, agents, or members offering the person employment, labor organization membership, licensure, or any pay or benefit in return for taking a genetic test is prohibited.

5. An employee, labor organization member, or licensee, or prospective employee, member, or licensee who acted in good faith shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of this section. An employee, labor organization member, or licensee, or prospective employee, member, or licensee discharged, disciplined, or otherwise discriminated against in violation of this section shall be compensated by the employer, employment agency, labor organization, or licensing agency in the amount of any loss of wages and benefits arising out of the discrimination.

6. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee, labor organization member, or licensee, or aggrieved prospective employee, member, or licensee, for affirmative relief including reinstatement or hiring, with or without back pay, membership, licensing, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. If a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee, labor organization member, or licensee, or aggrieved prospective employee, member, or licensee, the county attorney, or the attorney general.

A person who in good faith brings an action under this subsection alleging that an employer, employment agency, labor organization, or licensing agency has required or requested a genetic test in violation of this section shall establish that sufficient evidence exists upon which a reasonable person could find that a violation has occurred. Upon proof that sufficient evidence exists upon which a finding could be made that a violation has occurred as required under this paragraph, the employer, employment agency, labor organization, or licensing agency has the burden of proving that the requirements of this section were met.

7. This section does not prohibit the genetic testing of an employee who requests a genetic test and who provides written and informed consent to taking a genetic test for any of the following purposes:

a. Investigating a workers' compensation claim under chapters 85, 85A, 85B, and 86.

b. Determining the employee's susceptibility or level of exposure to potentially toxic chemicals or potentially toxic substances in the workplace, if the employer does not terminate the employee, or take any other action that adversely affects any term, condition, or privilege of the employee's employment as a result of the genetic test.

92 Acts, ch 1059, §1

CHAPTER 729A

VIOLATION OF INDIVIDUAL RIGHTS — HATE CRIMES

See also chapters 216 and 729

729A.1 Violations of an individual's rights prohibited.
729A.2 Violation of individual rights — hate crime.
729A.3 Local ordinances.
729A.4 Violation of individual rights — sensitivity training.
729A.5 Civil remedies.

729A.1 Violations of an individual's rights prohibited.

Persons within the state of Iowa have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability.

92 Acts, ch 1157, §8

729A.2 Violation of individual rights — hate crime.

"Hate crime" means one of the following public offenses when committed against a person or a person's property because of the person's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability, or the person's association with a person of a certain race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability:

1. Assault in violation of individual rights under section 708.2C.
2. Violations of individual rights under section 712.9.
3. Criminal mischief in violation of individual rights under section 716.6A.
4. Trespass in violation of individual rights under section 716.8, subsections 3 and 4.

92 Acts, ch 1157, §9

729A.3 Local ordinances.

This chapter does not prohibit political subdivisions from enacting ordinances which are consistent with this chapter. Local ordinances reasonably regulating the time, place, or manner of the exercise of constitutional rights are permissible.

92 Acts, ch 1157, §10

729A.4 Violation of individual rights — sensitivity training.

The prosecuting attorneys training coordinator shall develop a course of instruction for law enforcement personnel and prosecuting attorneys designed to sensitize those persons to the existence of violations of individual rights and the criteria for determining whether a violation of individual rights has occurred. The prosecuting attorneys training coordinator shall consult with the civil rights commission, the office of the attorney general, and the department of public safety regarding the content and provision of this course of instruction.

92 Acts, ch 1157, §11

729A.5 Civil remedies.

A victim who has suffered physical, emotional, or financial harm as a result of a violation of this chapter due to the commission of a hate crime is entitled to and may bring an action for injunctive relief, general and special damages, reasonable attorneys fees, and costs.

An action brought pursuant to this section must be brought within two years after the date of the violation of this chapter.

In an action brought pursuant to this section, the burden of proof shall be the same as in other civil actions for similar relief.

This section does not apply to complaints or discriminatory or unfair practices under chapter 216.

92 Acts, ch 1157, §12

CHAPTER 730

EMPLOYER-EMPLOYEE OFFENSES

730.1 Punishment.
730.2 Blacklisting employees — treble damages.
730.3 False charges concerning honesty.
730.4 Polygraph examination prohibited.
730.5 Private sector drug-free workplaces.

730.1 Punishment.

If any person, agent, company, or corporation, after having discharged any employee from service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company, or corporation, except by furnishing in writing on request a truthful statement as to the cause of the person's discharge, such person, agent, company, or corporation shall be guilty of a serious misdemeanor and shall be liable for all damages sustained by any such person.

[C97, §5027; C24, 27, 31, 35, 39, §**13253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §736.1; C79, 81, §730.1]

730.2 Blacklisting employees — treble damages.

If any railway company or other company, partnership, or corporation shall authorize or allow any of its or their agents to blacklist any discharged employee, or attempt by word or writing or any other means whatever to prevent such discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with any other person or company, except as provided for in section 730.1, such company or copartnership shall be liable in treble damages to such employee so prevented from obtaining employment.

[C97, §5028; C24, 27, 31, 35, 39, §**13254;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §736.2; C79, 81, §730.2]

730.3 False charges concerning honesty.

Every person who shall by any letter, mark, sign, or designation whatever, or by any verbal statement, falsely and without probable cause, report to any railroad or any other company or corporation, or to any person or firm, or to any of the officers, servants, agents, or employees of any such corporation, person, or firm, that any conductor, crew member, engineer, stoker, station agent, or any employee of such railroad company, corporation, person, or firm has received any money or thing of value for the transportation of persons or property or for other service for which the person has not accounted to such corporation, person, or firm, or shall falsely and without probable cause report that any conductor, crew member, engineer, stoker, station agent, or other employee of any railroad company, corporation, firm, or person, neglected, failed, or refused to collect any money or ticket for transportation of persons or property or other service when it was their duty so to do, shall, on conviction, be guilty of a simple misdemeanor.

[SS15, §5028-w1; C24, 27, 31, 35, 39, §**13255;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §736.3; C79, 81, §730.3]

730.4 Polygraph examination prohibited.

1. As used in this section, *"polygraph examination"* means any procedure which involves the use of instrumentation or a mechanical or electrical device to enable or assist the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding either of these, and includes a lie detector or similar test.

2. An employer shall not as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, knowingly do any of the following:

a. Request or require that an employee or applicant for employment take or submit to a polygraph examination.

b. Administer, cause to be administered, threaten to administer, or attempt to administer a polygraph examination to an employee or applicant for employment.

c. Request or require that an employee or applicant for employment give an express or implied waiver of a practice prohibited by this section.

3. *a.* Subsection 2 does not apply to the state or a political subdivision of the state when in the process of selecting any of the following:

(1) A candidate for employment as a peace officer.

(2) A candidate for employment as a corrections officer.

(3) An applicant for a position with a law enforcement agency of a political subdivision of the state when the applicant is being considered for a position in which the employee filling the position has direct access to prisoner funds, any other cash assets, and confidential information.

b. Polygraph examinations under this subsection shall adhere to the published antidiscrimination policy of the state or political subdivision conducting the examination.

4. An employee who acted in good faith shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of this section. An employee discharged, disciplined, or otherwise discriminated against in violation of this section shall be compensated by the employer in the amount of any loss of wages and benefits arising out of the discrimination and shall be restored to the employee's previous position of employment.

5. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee or applicant for employment for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or applicant for employment, the county attorney, or the attorney general.

A person who in good faith brings an action under this subsection alleging that an employer has required or requested a polygraph examination in violation of this section shall establish that sufficient evidence exists upon which a reasonable person could find that a violation has occurred. Upon proof that sufficient evidence exists upon which a finding could be made that a violation has occurred as required under this paragraph, the employer has the burden of proving that the requirements of this section were met.

6. A person who violates this section commits a simple misdemeanor. In addition to any other penalties, the punishment imposed for a violation of this section shall include assessment of a fine of not less than two hundred fifty dollars.

83 Acts, ch 86, §1 – 3; 88 Acts, ch 1227, §1; 99 Acts, ch 153, §23; 2000 Acts, ch 1059, §1

730.5 Private sector drug-free workplaces.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Alcohol" means ethanol, isopropanol, or methanol.

b. "Drug" means a substance considered a controlled substance and included in schedule I, II, III, IV, or V under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

c. "Employee" means a person in the service of an employer in this state and includes the employer, and any chief executive officer, president, vice president, supervisor, manager, and officer of the employer who is actively involved in the day-to-day operations of the business.

d. "Employer" means a person, firm, company, corporation, labor organization, or employment agency, which has one or more full-time employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, in this state. *"Employer"* does not include the state, a political subdivision of the state, including a city, county, or school district, the United States, the United States postal service, or a Native-American tribe.

e. "Good faith" means reasonable reliance on facts, or that which is held out to be factual, without the intent to be deceived, and without reckless, malicious, or negligent disregard for the truth.

f. "Medical review officer" means a licensed physician, osteopathic physician, chiropractor, nurse practitioner, or physician assistant authorized to practice in any state of the United States, who is responsible for receiving laboratory results generated by an employer's drug or alcohol testing program, and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the individual's medical history and any other relevant biomedical information.

g. "Prospective employee" means a person who has made application, whether written or oral, to an employer to become an employee.

h. "Reasonable suspicion drug or alcohol testing" means drug or alcohol testing based upon evidence that an employee is using or has used alcohol or other drugs in violation of the employer's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

(1) Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.

(2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.

(3) A report of alcohol or other drug use provided by a reliable and credible source.

(4) Evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the current employer.

(5) Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

(6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

i. "Safety-sensitive position" means a job wherein an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, including a job with duties that include immediate supervision of a person in a job that meets the requirement of this paragraph.

j. "Sample" means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites. However, sample does not mean blood except as authorized pursuant to subsection 7, paragraph *"l"*.

k. "Unannounced drug or alcohol testing" means testing for the purposes of detecting drugs or alcohol which is conducted on a periodic basis,

without advance notice of the test to employees, other than employees whose duties include responsibility for administration of the employer's drug or alcohol testing program, subject to testing prior to the day of testing, and without individualized suspicion. The selection of employees to be tested from the pool of employees subject to testing shall be done based on a neutral and objective selection process by an entity independent from the employer and shall be made by a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers in which each member of the employee population subject to testing has an equal chance of selection for initial testing, regardless of whether the employee has been selected or tested previously. The random selection process shall be conducted through a computer program that records each selection attempt by date, time, and employee number.

2. *Applicability.* This section does not apply to drug or alcohol tests conducted on employees required to be tested pursuant to federal statutes, federal regulations, or orders issued pursuant to federal law. In addition, an employer, through its written policy, may exclude from the pools of employees subject to unannounced drug or alcohol testing pursuant to subsection 8, paragraph *"a"*, employee populations required to be tested as described in this subsection.

3. *Testing optional.* This section does not require or create a legal duty on an employer to conduct drug or alcohol testing and the requirements of this section shall not be construed to encourage, discourage, restrict, limit, prohibit, or require such testing. In addition, an employer may implement and require drug or alcohol testing at some but not all of the work sites of the employer and the requirements of this section shall only apply to the employer and employees who are at the work sites where drug or alcohol testing pursuant to this section has been implemented. A cause of action shall not arise in favor of any person against an employer or agent of an employer based on the failure of the employer to establish a program or policy on substance abuse prevention or to implement any component of testing as permitted by this section.

4. *Testing as condition of employment — requirements.* To the extent provided in subsection 8, an employer may test employees and prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring. An employer shall adhere to the requirements of this section concerning the conduct of such testing and the use and disposition of the results of such testing.

5. *Collection of samples.* In conducting drug or alcohol testing, an employer may require the collection of samples from its employees and prospective employees, and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of a sample shall be in conformance with the requirements of this section. The employer may designate the type of sample to be used for this testing.

6. *Scheduling of tests.*

a. Drug or alcohol testing of employees conducted by an employer shall normally occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees.

b. An employer shall pay all actual costs for drug or alcohol testing of employees and prospective employees required by the employer.

c. An employer shall provide transportation or pay reasonable transportation costs to employees if drug or alcohol sample collection is conducted at a location other than the employee's normal work site.

7. *Testing procedures.* All sample collection and testing for drugs or alcohol under this section shall be performed in accordance with the following conditions:

a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen. If the sample collected is urine, procedures shall be established to provide for individual privacy in the collection of the sample unless there is a reasonable suspicion that a particular individual subject to testing may alter or substitute the urine specimen to be provided, or has previously altered or substituted a urine specimen provided pursuant to a drug or alcohol test. For purposes of this paragraph, *"individual privacy"* means a location at the collection site where urination can occur in private, which has been secured by visual inspection to ensure that other persons are not present, which provides that undetected access to the location is not possible during urination, and which provides for the ability to effectively restrict access to the location during the time the specimen is provided. If an individual is providing a sample and collection of the sample is directly monitored or observed by another individual, the individual who is directly monitoring or observing the collection shall be of the same gender as the individual from whom the sample is being collected.

b. Sample collection for testing of current employees, except for the collection of a sample for alcohol testing conducted pursuant to paragraph *"f"*, subparagraph (2), shall be performed so that the specimen is split into two components at the time of collection in the presence of the individual from whom the sample or specimen is collected. The second portion of the specimen or sample shall be of sufficient quantity to permit a second, independent confirmatory test as provided in paragraph

"i". If the specimen is urine, the sample shall be split such that the primary sample contains at least thirty milliliters and the secondary sample contains at least fifteen milliliters. Both portions of the sample shall be forwarded to the laboratory conducting the initial confirmatory testing. In addition to any requirements for storage of the initial sample that may be imposed upon the laboratory as a condition for certification or approval, the laboratory shall store the second portion of any sample until receipt of a confirmed negative test result or for a period of at least forty-five calendar days following the completion of the initial confirmatory testing, if the first portion yielded a confirmed positive test result.

c. Sample collections shall be documented, and the procedure for documentation shall include the following:

(1) Samples, except for samples collected for alcohol testing conducted pursuant to paragraph *"f"*, subparagraph (2), shall be labeled so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided, and samples shall be handled and tracked in a manner such that control and accountability are maintained from initial collection to each stage in handling, testing, and storage, through final disposition.

(2) An employee or prospective employee shall be provided an opportunity to provide any information which may be considered relevant to the test, including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information. To assist an employee or prospective employee in providing the information described in this subparagraph, the employer shall provide an employee or prospective employee with a list of the drugs to be tested.

d. Sample collection, storage, and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification.

e. All confirmatory drug testing shall be conducted at a laboratory certified by the United States department of health and human services' substance abuse and mental health services administration or approved under rules adopted by the Iowa department of public health.

f. Drug or alcohol testing shall include confirmation of any initial positive test results. An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive drug or alcohol test.

(1) For drug or alcohol testing, except for alcohol testing conducted pursuant to subparagraph (2), confirmation shall be by use of a different chemical process than was used in the initial screen for drugs or alcohol. The confirmatory drug or alcohol test shall be a chromatographic technique such as gas chromatography/mass spectrometry, or another comparably reliable analytical method.

(2) Notwithstanding any provision of this section to the contrary, alcohol testing, including initial and confirmatory testing, may be conducted pursuant to requirements established by the employer's written policy. The written policy shall include requirements governing evidential breath testing devices, alcohol screening devices, and the qualifications for personnel administering initial and confirmatory testing, which shall be consistent with regulations adopted as of January 1, 1999, by the United States department of transportation governing alcohol testing required to be conducted pursuant to the federal Omnibus Transportation Employee Testing Act of 1991.

g. A medical review officer shall, prior to the results being reported to an employer, review and interpret any confirmed positive test results, including both quantitative and qualitative test results, to ensure that the chain of custody is complete and sufficient on its face and that any information provided by the individual pursuant to paragraph *"c"*, subparagraph (2), is considered. However, this paragraph shall not apply to alcohol testing conducted pursuant to paragraph *"f"*, subparagraph (2).

h. In conducting drug or alcohol testing pursuant to this section, the laboratory, the medical review officer, and the employer shall ensure, to the extent feasible, that the testing only measure, and the records concerning the testing only show or make use of information regarding, alcohol or drugs in the body.

i. (1) If a confirmed positive drug or alcohol test for a current employee is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test, the employee's right to request and obtain a confirmatory test of the second sample collected pursuant to paragraph *"b"* at an approved laboratory of the employee's choice, and the fee payable by the employee to the employer for reimbursement of expenses concerning the test. The fee charged an employee shall be an amount that represents the costs associated with conducting the second confirmatory test, which shall be consistent with the employer's cost for conducting the initial confirmatory test on an employee's sample. If the employee, in person or by certified mail, return receipt requested, requests a second confirmatory test, identifies an approved laboratory to conduct the test, and pays the employer the fee for the test within seven days from the date the employer mails by certified mail, return receipt requested, the written notice to the employee of the employee's right to request a test, a second confirmatory test shall be conducted at the laboratory chosen by the employee. The results of the second confirmatory test shall be reported to the medical review officer who reviewed the initial confirmatory test results and the medical review officer shall

review the results and issue a report to the employer on whether the results of the second confirmatory test confirmed the initial confirmatory test as to the presence of a specific drug or alcohol. If the results of the second test do not confirm the results of the initial confirmatory test, the employer shall reimburse the employee for the fee paid by the employee for the second test and the initial confirmatory test shall not be considered a confirmed positive drug or alcohol test for purposes of taking disciplinary action pursuant to subsection 10.

(2) If a confirmed positive drug or alcohol test for a prospective employee is reported to the employer by the medical review officer, the employer shall notify the prospective employee in writing of the results of the test, of the name and address of the medical review officer who made the report, and of the prospective employee's right to request records under subsection 13.

j. A laboratory conducting testing under this section shall dispose of all samples for which a negative test result was reported to an employer within five working days after issuance of the negative test result report.

k. Except as necessary to conduct drug or alcohol testing pursuant to this section and to submit the report required by subsection 16, a laboratory or other medical facility shall only report to an employer or outside entity information relating to the results of a drug or alcohol test conducted pursuant to this section concerning the determination of whether the tested individual has engaged in conduct prohibited by the employer's written policy with regard to alcohol or drug use.

l. Notwithstanding the provisions of this subsection, an employer may rely and take action upon the results of any blood test for drugs or alcohol made on any employee involved in an accident at work if the test is administered by or at the direction of the person providing treatment or care to the employee without request or suggestion by the employer that a test be conducted, and the employer has lawfully obtained the results of the test. For purposes of this paragraph, an employer shall not be deemed to have requested or required a test in conjunction with the provision of medical treatment following a workplace accident by providing information concerning the circumstance of the accident.

8. *Drug or alcohol testing*. Employers may conduct drug or alcohol testing as provided in this subsection:

a. Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees:

(1) The entire employee population at a particular work site of the employer except for employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

(2) The entire full-time active employee population at a particular work site except for employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee, or who have been excused from work pursuant to the employer's working policy.

(3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

b. Employers may conduct drug or alcohol testing of employees during, and after completion of, drug or alcohol rehabilitation.

c. Employers may conduct reasonable suspicion drug or alcohol testing.

d. Employers may conduct drug or alcohol testing of prospective employees.

e. Employers may conduct drug or alcohol testing as required by federal law or regulation or by law enforcement.

f. Employers may conduct drug or alcohol testing in investigating accidents in the workplace in which the accident resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

9. *Written policy and other testing requirements*.

a. (1) Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees. If an employee or prospective employee is a minor, the employer shall provide a copy of the written policy to a parent of the employee or prospective employee and shall obtain a receipt or acknowledgement from the parent that a copy of the policy has been received. Providing a copy of the written policy to a parent of a minor by certified mail, return receipt requested, shall satisfy the requirements of this subparagraph.

(2) In addition, the written policy shall provide that any notice required by subsection 7, paragraph *"i"*, to be provided to an individual pursuant to a drug or alcohol test conducted pursuant to this section, shall also be provided to the parent of the individual by certified mail, return receipt requested, if the individual tested is a minor.

(3) In providing information or notice to a parent as required by this paragraph, an employer shall rely on the information regarding the identi-

ty of a parent as provided by the minor.

(4) For purposes of this paragraph, *"minor"* means an individual who is under eighteen years of age and is not considered by law to be an adult, and *"parent"* means one biological or adoptive parent, a stepparent, or a legal guardian or custodian of the minor.

b. The employer's written policy shall provide uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive drug or alcohol test result or upon the refusal of the employee or prospective employee to provide a testing sample. The policy shall provide that any action taken against an employee or prospective employee shall be based only on the results of the drug or alcohol test. The written policy shall also provide that if rehabilitation is required pursuant to paragraph *"g"*, the employer shall not take adverse employment action against the employee so long as the employee complies with the requirements of rehabilitation and successfully completes rehabilitation.

c. Employers shall establish an awareness program to inform employees of the dangers of drug and alcohol use in the workplace and comply with the following requirements in order to conduct drug or alcohol testing under this section:

(1) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(2) If an employer does not have an employee assistance program, the employer must maintain a resource file of alcohol and other drug abuse programs certified by the Iowa department of public health, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file.

d. An employee or prospective employee whose drug or alcohol test results are confirmed as positive in accordance with this section shall not, by virtue of those results alone, be considered as a person with a disability for purposes of any state or local law or regulation.

e. If the written policy provides for alcohol testing, the employer shall establish in the written policy a standard for alcohol concentration which shall be deemed to violate the policy. The standard for alcohol concentration shall not be less than .04, expressed in terms of grams of alcohol per two hundred ten liters of breath, or its equivalent.

f. An employee of an employer who is designated by the employer as being in a safety-sensitive position shall be placed in only one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph *"a"*, subparagraph (3). An employer may have more than one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph *"a"*, subparagraph (3), but shall not include an employee in more than one safety-sensitive pool.

g. Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer's substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph *"a"*, subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph.

(1) If the employer has an employee benefit plan, the costs of rehabilitation shall be apportioned as provided under the employee benefit plan.

(2) If no employee benefit plan exists and the employee has coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned as provided by the health care plan with any costs not covered by the plan apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars toward the costs not covered by the employee's health care plan.

(3) If no employee benefit plan exists and the employee does not have coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars towards the cost of rehabilitation under this subparagraph.

Rehabilitation required pursuant to this paragraph shall not preclude an employer from taking any adverse employment action against the employee during the rehabilitation based on the employee's failure to comply with any requirements of the rehabilitation, including any action by the employee to invalidate a test sample provided by the employee pursuant to the rehabilitation.

h. In order to conduct drug or alcohol testing under this section, an employer shall require su-

pervisory personnel of the employer involved with drug or alcohol testing under this section to attend a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file maintained by the employer pursuant to paragraph *"c"*, subparagraph (2).

10. *Disciplinary procedures.*

a. Upon receipt of a confirmed positive drug or alcohol test result which indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary or rehabilitative actions pursuant to the requirements of the employer's written policy and the requirements of this section, which may include, among other actions, the following:

(1) A requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, participation in and successful completion of which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies.

(2) Suspension of the employee, with or without pay, for a designated period of time.

(3) Termination of employment.

(4) Refusal to hire a prospective employee.

(5) Other adverse employment action in conformance with the employer's written policy and procedures, including any relevant collective bargaining agreement provisions.

b. Following a drug or alcohol test, but prior to receipt of the final results of the drug or alcohol test, an employer may suspend a current employee, with or without pay, pending the outcome of the test. An employee who has been suspended shall be reinstated by the employer, with back pay, and interest on such amount at eighteen percent per annum compounded annually, if applicable, if the result of the test is not a confirmed positive drug or alcohol test which indicates a violation of the employer's written policy.

11. *Employer immunity.* A cause of action shall not arise against an employer who has established a policy and initiated a testing program in accordance with the testing and policy safeguards provided for under this section, for any of the following:

a. Testing or taking action based on the results of a positive drug or alcohol test result, indicating the presence of drugs or alcohol, in good faith, or on the refusal of an employee or prospective employee to submit to a drug or alcohol test.

b. Failure to test for drugs or alcohol, or failure to test for a specific drug or controlled substance.

c. Failure to test for, or if tested for, failure to detect, any specific drug or other controlled substance.

d. Termination or suspension of any substance abuse prevention or testing program or policy.

e. Any action taken related to a false negative drug or alcohol test result.

12. *Employer liability — false positive test results.*

a. Except as otherwise provided in paragraph *"b"*, a cause of action shall not arise against an employer who has established a program of drug or alcohol testing in accordance with this section, unless all of the following conditions exist:

(1) The employer's action was based on a false positive test result.

(2) The employer knew or clearly should have known that the test result was in error and ignored the correct test result because of reckless, malicious, or negligent disregard for the truth, or the willful intent to deceive or to be deceived.

b. A cause of action for defamation, libel, slander, or damage to reputation shall not arise against an employer establishing a program of drug or alcohol testing in accordance with this section unless all of the following apply:

(1) The employer discloses the test results to a person other than the employer, an authorized employee, agent, or representative of the employer, the tested employee or the tested applicant for employment, an authorized substance abuse treatment program or employee assistance program, or an authorized agent or representative of the tested employee or applicant.

(2) The test results disclosed incorrectly indicate the presence of alcohol or drugs.

(3) The employer negligently discloses the results.

c. In any cause of action based upon a false positive test result, all of the following conditions apply:

(1) The results of a drug or alcohol test conducted in compliance with this section are presumed to be valid.

(2) An employer shall not be liable for monetary damages if the employer's reliance on the false positive test result was reasonable and in good faith.

13. *Confidentiality of results — exception.*

a. All communications received by an employer relevant to employee or prospective employee drug or alcohol test results, or otherwise received through the employer's drug or alcohol testing program, are confidential communications and shall not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except as otherwise provided or authorized by this section.

b. An employee, or a prospective employee,

who is the subject of a drug or alcohol test conducted under this section pursuant to an employer's written policy and for whom a confirmed positive test result is reported shall, upon written request, have access to any records relating to the employee's drug or alcohol test, including records of the laboratory where the testing was conducted and any records relating to the results of any relevant certification or review by a medical review officer. However, a prospective employee shall be entitled to records under this paragraph only if the prospective employee requests the records within fifteen calendar days from the date the employer provided the prospective employee written notice of the results of a drug or alcohol test as provided in subsection 7, paragraph *"i"*, subparagraph (2).

c. Except as provided by this section and as necessary to conduct drug or alcohol testing under this section and to file a report pursuant to subsection 16, a laboratory and a medical review officer conducting drug or alcohol testing under this section shall not use or disclose to any person any personally identifiable information regarding such testing, including the names of individuals tested, even if unaccompanied by the results of the test.

d. An employer may use and disclose information concerning the results of a drug or alcohol test conducted pursuant to this section under any of the following circumstances:

(1) In an arbitration proceeding pursuant to a collective bargaining agreement, or an administrative agency proceeding or judicial proceeding under workers' compensation laws or unemployment compensation laws or under common or statutory laws where action taken by the employer based on the test is relevant or is challenged.

(2) To any federal agency or other unit of the federal government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract.

(3) To any agency of this state authorized to license individuals if the employee tested is licensed by that agency and the rules of that agency require such disclosure.

(4) To a union representing the employee if such disclosure would be required by federal labor laws.

(5) To a substance abuse evaluation or treatment facility or professional for the purpose of evaluation or treatment of the employee.

However, positive test results from an employer drug or alcohol testing program shall not be used as evidence in any criminal action against the employee or prospective employee tested.

14. *Civil penalties — jurisdiction.*

a. Any laboratory or medical review officer which discloses information in violation of the provisions of subsection 7, paragraph *"h"* or *"k"*, or any employer who, through the selection process described in subsection 1, paragraph *"k"*, improperly targets or exempts employees subject to unannounced drug or alcohol testing, shall be subject to a civil penalty of one thousand dollars for each violation. The attorney general or the attorney general's designee may maintain a civil action to enforce this subsection. Any civil penalty recovered shall be deposited in the general fund of the state.

b. A laboratory or medical review officer involved in the conducting of a drug or alcohol test pursuant to this section shall be deemed to have the necessary contact with this state for the purpose of subjecting the laboratory or medical review officer to the jurisdiction of the courts of this state.

15. *Civil remedies.* This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section, is liable to an aggrieved employee or prospective employee for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or prospective employee, the county attorney, or the attorney general.

In an action brought under this subsection alleging that an employer has required or requested a drug or alcohol test in violation of this section, the employer has the burden of proving that the requirements of this section were met.

16. *Reports.* A laboratory doing business for an employer who conducts drug or alcohol tests pursuant to this section shall file an annual report with the Iowa department of public health by March 1 of each year concerning the number of drug or alcohol tests conducted on employees who work in this state pursuant to this section, the number of positive and negative results of the tests, during the previous calendar year. In addition, the laboratory shall include in its annual report the specific basis for each test as authorized in subsection 8, the type of drug or drugs which were found in the positive drug tests, and all significant available demographic factors relating to the positive test pool.

87 Acts, ch 208, §1; 90 Acts, ch 1188, §1; 90 Acts, ch 1233, §42; 94 Acts, ch 1023, §120; 98 Acts, ch 1011, §1; 98 Acts, ch 1100, §81; 98 Acts, ch 1138, §32, 33, 35; 99 Acts, ch 60, §1 – 8; 99 Acts, ch 114, §56, 59

CHAPTER 731

LABOR UNION MEMBERSHIP

731.1 Right to join union.
731.2 Refusal to employ prohibited.
731.3 Contracts to exclude unlawful.
731.4 Union dues as prerequisite to employment — prohibited.
731.5 Deducting dues from pay unlawful.
731.6 Penalty.
731.7 Injunction.
731.8 Exception.
731.9 Relinquishment of seniority rights as a condition of employment prohibited.

731.1 Right to join union.

It is declared to be the policy of the state of Iowa that no person within its boundaries shall be deprived of the right to work at the person's chosen occupation for any employer because of membership in, affiliation with, withdrawal or expulsion from, or refusal to join, any labor union, organization, or association, and any contract which contravenes this policy is illegal and void.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736A.1; C79, 81, §731.1]

731.2 Refusal to employ prohibited.

It shall be unlawful for any person, firm, association or corporation to refuse or deny employment to any person because of membership in, or affiliation with, or resignation or withdrawal from, a labor union, organization or association, or because of refusal to join or affiliate with a labor union, organization or association.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736A.2; C79, 81, §731.2]

731.3 Contracts to exclude unlawful.

It shall be unlawful for any person, firm, association, corporation or labor organization to enter into any understanding, contract, or agreement, whether written or oral, to exclude from employment members of a labor union, organization or association, or persons who do not belong to, or who refuse to join, a labor union, organization or association, or because of resignation or withdrawal therefrom.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736A.3; C79, 81, §731.3]

731.4 Union dues as prerequisite to employment — prohibited.

It shall be unlawful for any person, firm, association, labor organization or corporation, or political subdivision, either directly or indirectly, or in any manner or by any means as a prerequisite to or a condition of employment to require any person to pay dues, charges, fees, contributions, fines or assessments to any labor union, labor association or labor organization.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736A.4; C79, 81, §731.4]

731.5 Deducting dues from pay unlawful.

It shall be unlawful for any person, firm, association, labor organization or corporation to deduct labor organization dues, charges, fees, contributions, fines or assessments from an employee's earnings, wages or compensation, unless the employer has first been presented with an individual written order therefor signed by the employee, which written order shall be terminable at any time by the employee giving at least thirty days' written notice of such termination to the employer.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736A.5; C79, 81, §731.5]

731.6 Penalty.

Any person, firm, association, labor organization, or corporation or any director, officer, representative, agent or member thereof, who shall violate any of the provisions of this chapter or who shall aid and abet in such violation shall be guilty of a serious misdemeanor.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736A.6; C79, 81, §731.6]

731.7 Injunction.

Additional to the penal provisions of this chapter, any person, firm, corporation, association, or any labor union, labor association or labor organization, or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this chapter, and all of the provisions of the law relating to the granting of restraining orders and injunctions, either temporary or permanent, shall be applicable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736A.7; C79, 81, §731.7]

731.8 Exception.

The provisions of this chapter shall not apply to employers or employees covered by the federal Railroad Labor Act.*

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736A.8; C79, 81, §731.8]

*45 U.S.C. §151 et seq.

731.9 Relinquishment of seniority rights as a condition of employment prohibited.

It is unlawful for any person to refuse or deny employment to a person because the person refuses to relinquish seniority rights earned at a prior place of employment.

86 Acts, ch 1089, §1

CHAPTER 731A

WANTON NEGLECT OF CHILDREN

Repealed by 76 Acts, ch 1245(4), §526; see §726.6

CHAPTER 732

LABOR BOYCOTTS AND STRIKES

732.1 Contracting to boycott or strike in sympathy.
732.2 Carrying out boycott or strike.
732.3 Jurisdictional strike or slowdown.
732.4 Penalty.
732.5 Injunction.
732.6 Hiring professional strikebreakers prohibited.

732.1 Contracting to boycott or strike in sympathy.

It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents or members thereof, to enter into any contract, agreement, arrangement, combination or conspiracy for the purpose of, by strikes or threats of strikes, by violence or threats of violence, by coercion, or by concerted refusal to make, manufacture, assemble, or use, handle, transport, deliver or otherwise deal with any articles, products or materials:

1. To force or require any person, firm or corporation to cease using, selling, handling, transporting or dealing in the goods or products of any other person, firm or corporation, or

2. To force or require any person, firm or corporation to cease selling, transporting or delivering goods or products to any other person, firm or corporation, or

3. To force or require any employer other than their own employer to recognize, deal with, comply with the demands of, or employ members of any labor union, association or organization, or

4. To force or require any employer to break an existing collective bargaining agreement which such employer may have with any labor union, association or organization.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736B.1; C79, 81, §732.1]

732.2 Carrying out boycott or strike.

It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents, or a member or members thereof to carry out or attempt to carry out in this state any contract, agreement, arrangement, combination or conspiracy declared unlawful in section 732.1.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736B.2; C79, 81, §732.2]

732.3 Jurisdictional strike or slowdown.

It shall be unlawful for any labor union, group, association or organization, or the officers, representatives, agents or members thereof, to cause a stoppage or slowdown of the work or a part of the work of an employer because of a dispute between labor unions, groups, associations or organizations, or the officers, representatives, agents or members thereof, with respect to jurisdiction over, or the right to do the work or a part of the work of such employer.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736B.3; C79, 81, §732.3]

732.4 Penalty.

Any person, or any labor union, labor association or labor organization or any officer, representative, agent or member thereof who shall violate any of the provisions of this chapter shall be guilty of a simple misdemeanor.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736B.4; C79, 81, §732.4]

732.5 Injunction.

Additionally to the penal provisions of this chapter, any person, or any labor union, labor association or labor organization or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this chapter, and all of the provisions of the law relating to the granting of restraining orders and injunctions, either temporary or permanent, shall be applicable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §736B.5; C79, 81, §732.5]

732.6 Hiring professional strikebreakers prohibited.

It shall be unlawful for any person, persons, partnership, agency, firm, or corporation, or agent thereof:

1. Unless directly involved in a labor dispute, to knowingly recruit, procure, supply or refer for employment in the place of employees involved in such labor dispute any person or persons who customarily or repeatedly offer themselves as replacements for employees involved in labor disputes.

2. If directly involved in a labor dispute, to knowingly employ in place of employees involved in such dispute persons who customarily or repeatedly offer themselves as replacements for employees involved in labor disputes.

3. To solicit or advertise for employees to replace employees involved in a labor dispute without notice in such solicitation or advertisement that the employment offered is in place of employees engaged in a labor dispute.

4. To enter into an agreement, contract or arrangement with other persons, partnerships, agencies, firms or corporations, or agents thereof, to commit acts prohibited by subsection 1, 2 or 3 of this section.

[C66, 71, 73, 75, 77, §736B.6; C79, 81, §732.6]

CHAPTER 733

DISEASED PLANTS

Repealed by 76 Acts, ch 1056, §45

CHAPTER 734

DESTRUCTION OF FOOD PRODUCTS

Repealed by 76 Acts, ch 1245(4), §526

CHAPTER 735

INFRINGEMENT OF CIVIL RIGHTS

Transferred to chapter 729

CHAPTER 736

BLACKLISTING EMPLOYEES

Transferred to chapter 730

CHAPTER 736A

LABOR UNION MEMBERSHIP

Transferred to chapter 731

CHAPTER 736B

LABOR BOYCOTTS AND STRIKES

Transferred to chapter 732

CHAPTER 737

LIBEL

Repealed by 76 Acts, ch 1245(4), §526

CHAPTER 738

BRIBERY AND CORRUPTION IN ELECTIONS

Repealed by 76 Acts, ch 1245(4), §526; see §722.4 – 722.8

CHAPTER 739

BRIBERY AND CORRUPTION

Repealed by 76 Acts, ch 1245(4), §526; see §722.1 to 722.3

CHAPTER 740

MISCONDUCT OR NEGLECT IN OFFICE

Sections 740.1 to 740.12, 740.19 and 740.20, repealed by 76 Acts, ch 1245(4), §525; see §718.2, 718.5, 721.1 and 721.2
Sections 740.13 to 740.18, 740.21 and 740.22, transferred to §721.3 to 721.9

CHAPTER 741

GRATUITIES AND TIPS

Repealed by 76 Acts, ch 1245(4), §526; see §721.2(3) and 721.11

CHAPTER 742

RESISTANCE TO EXECUTION OF PROCESS

Repealed by 76 Acts, ch 1245(4), §526; see §719.1 and 719.2

CHAPTER 743

UNLAWFUL ASSEMBLY AND SUPPRESSION OF RIOTS

Repealed by 76 Acts, ch 1245(4), §526; see §719.2 and chapter 723

CHAPTER 744

DISTURBING PUBLIC ASSEMBLIES

Repealed by 76 Acts, ch 1245(4), §526; see §723.4

CHAPTER 745

ESCAPES

Repealed by 76 Acts, ch 1245(4), §526; see §719.4 – 719.8

CHAPTER 746

VAGRANCY

Repealed by 76 Acts, ch 1245(4), §526

CHAPTER 747

HABITUAL CRIMINALS

Repealed by 76 Acts, ch 1245(4), §526; see §902.8

SUBTITLE 2

CRIMINAL PROCEDURE

CHAPTER 748

MAGISTRATES, PEACE OFFICERS AND SPECIAL AGENTS

Repealed by 76 Acts, ch 1245(4), §526; see §602.6405, 801.4, 817.2, R.Cr.P. 2.1

CHAPTER 749

BUREAU OF CRIMINAL IDENTIFICATION

Transferred to chapter 690

CHAPTER 749A

STATE CRIMINALISTICS LABORATORY AND MEDICAL EXAMINER

Transferred to chapter 691

CHAPTER 749B

CRIMINAL HISTORY AND INTELLIGENCE DATA

Transferred to chapter 692

CHAPTER 750

POLICE RADIO BROADCASTING SYSTEM

Transferred to chapter 693

CHAPTER 751

SEARCH WARRANTS

Repealed by 76 Acts, ch 1245(4), §526; see chapters 808, 809, R.Cr.P. 2.36

CHAPTER 752

LIMITATION OF CRIMINAL ACTIONS

Repealed by 76 Acts, ch 1245(4), §526; see chapter 802

CHAPTER 753

JURISDICTION OF PUBLIC OFFENSES AND PLACE OF TRIAL

Sections 753.1 to 753.9 repealed by 76 Acts, ch 1245(4), §525;
see §803.1 to 803.4, 805.1 to 805.5
Sections 753.13 to 753.21 transferred to §805.6 to 805.14

CHAPTER 754

PRELIMINARY INFORMATION AND WARRANTS OF ARREST

Repealed by 76 Acts, ch 1245(4), §526; see §801.4, 804.1 to 804.4, R.Cr.P. 2.37

CHAPTER 755

ARREST: GENERAL PROVISIONS

Repealed by 76 Acts, ch 1245(4), §526; see §704.12, chapter 804

CHAPTER 756

UNIFORM FRESH PURSUIT LAW

Repealed by 76 Acts, ch 1245(4), §526; see chapter 806

CHAPTER 757

ARREST BY WARRANT

Repealed by 76 Acts, ch 1245(4), §526; see §804.21, 804.25, R.Cr.P. 2.37

CHAPTER 758

ARREST WITHOUT WARRANT

Repealed by 76 Acts, ch 1245(4), §526; see §804.22, 804.25, 804.26

CHAPTER 759

UNIFORM CRIMINAL EXTRADITION ACT

Transferred to chapter 820

CHAPTER 759A

AGREEMENT ON DETAINERS COMPACT

Transferred to chapter 821

CHAPTER 760

SECURITY TO KEEP THE PEACE

Repealed by 76 Acts, ch 1245(4), §526

CHAPTER 761

PRELIMINARY EXAMINATIONS

Repealed by 76 Acts, ch 1245(4), §526; see §804.11, 804.23, 811.2, R.Cr.P. 2.2

CHAPTER 762

TRIAL OF NONINDICTABLE OFFENSES

Repealed by 76 Acts, ch 1245(4), §526; see §909.3, 909.5, R.Cr.P. 2.51 – 2.75

CHAPTER 763

BAIL OR RELEASE ON RECOGNIZANCE

Repealed by 76 Acts, ch 1245(4), §526; see §811.1 to 811.3, 811.5, R.Cr.P. 2.37

CHAPTER 764

UNDERTAKINGS OF BAIL AS LIENS

Repealed by 76 Acts, ch 1245(4), §526; see §811.4

CHAPTER 765

CASH BAIL

Repealed by 76 Acts, ch 1245(4), §526

CHAPTER 766

FORFEITURE OF BAIL

Repealed by 76 Acts, ch 1245(4), §526; see §811.6

CHAPTER 767

RECOMMITMENT AFTER BAIL

Repealed by 76 Acts, ch 1245(4), §526; see §811.7

CHAPTER 768

SURRENDER OF DEFENDANT

Repealed by 76 Acts, ch 1245(4), §526; see §811.8

CHAPTER 769

INFORMATION BY COUNTY ATTORNEY

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.5, 2.6, 2.11, 2.37

CHAPTER 770

IMPANELING GRAND JURY

Repealed by 76 Acts, ch 1245(4), §526; see §815.2, R.Cr.P. 2.3

CHAPTER 771

DUTIES OF GRAND JURY

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.3, 2.4, 2.14

CHAPTER 772

FINDING AND PRESENTATION OF INDICTMENT

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.4

CHAPTER 773

INDICTMENT

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.4, 2.6, 2.11, 2.37

CHAPTER 774

PROCESS AFTER INDICTMENT

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.7, 2.37

CHAPTER 775

ARRAIGNMENT OF DEFENDANT

Repealed by 76 Acts, ch 1245(4), §526; see §815.7, R.Cr.P. 2.2, 2.8, 2.27

CHAPTER 776

SETTING ASIDE INDICTMENT

Repealed by 76 Acts, ch 1245(4), §526; see §802.9, R.Cr.P. 2.11

CHAPTER 777

PLEADINGS OF DEFENDANT

Repealed by 76 Acts, ch 1245(4), §526; see §802.9, 816.1, 816.2, R.Cr.P. 2.8, 2.11

CHAPTER 778

CHANGE OF VENUE

Repealed by 76 Acts, ch 1245(4), §526; see §815.8, R.Cr.P. 2.11, 2.65

CHAPTER 779

TRIAL JURY

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.18

CHAPTER 780

TRIAL

Repealed by 76 Acts, ch 1245(4), §526; see §816.4, R.Cr.P. 2.6, 2.17, 2.19, 2.21

CHAPTER 781

WITNESSES

Repealed by 76 Acts, ch 1245(4), §526; see chapter 819, R.Cr.P. 2.13, 2.15, 2.20

CHAPTER 782

EVIDENCE

Repealed by 76 Acts, ch 1245(4), §526; see §817.1, R.Cr.P. 2.20, 2.21

CHAPTER 783

INSANITY OF DEFENDANT DURING TRIAL

Repealed by 76 Acts, ch 1245(4), §526; see §812.3 to 812.5

CHAPTER 784

JURY AFTER SUBMISSION

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.19

CHAPTER 785

VERDICT

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.19, 2.22, 2.27

CHAPTER 786

EXCEPTIONS

Repealed by 76 Acts, ch 1245(4), §526

CHAPTER 787

NEW TRIAL

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.24

CHAPTER 788

ARREST OF JUDGMENT

Repealed by 76 Acts, ch 1245(4), §526; see R.Cr.P. 2.24

CHAPTER 789

JUDGMENT

Repealed by 76 Acts, ch 1245(4), §526;
see §815.1, 901.6, 902.3, 909.3, 909.5,
R.Cr.P. 2.23, 2.24, 2.27

CHAPTER 789A

SENTENCING IN CRIMINAL CASES

Repealed by 76 Acts, ch 1245(4), §526; see §901.2 to 901.4, chapter 907

CHAPTER 790

LIEN OF JUDGMENTS AND STAY OF EXECUTIONS

Repealed by 76 Acts, ch 1245(4), §526; see §909.6, R.Cr.P. 2.6

CHAPTER 791

EXECUTIONS

Repealed by 76 Acts, ch 1245(4), §526; see §909.6, R.Cr.P. 2.26

CHAPTER 792

EXECUTION OF DEATH PENALTY

Repealed by 65 Acts, ch 435, §4

CHAPTER 793

APPEALS

Repealed by 76 Acts, ch 1245(4), §526; see chapter 814,
R.Cr.P. 2.24, 2.26, 2.29, 2.30, 2.31

CHAPTER 794

COMPROMISING CERTAIN OFFENSES

Repealed by 76 Acts, ch 1245(4), §526

CHAPTER 795

DISMISSAL OF CRIMINAL ACTIONS

Repealed by 76 Acts, ch 1245(4), §526; see §802.9, R.Cr.P. 2.33

CHAPTERS 796 to 800

RESERVED

CHAPTER 801

CRIMINAL PROCEDURE SCOPE AND DEFINITIONS

801.1 Short title.
801.2 Scope.
801.3 General purposes.
801.4 Definitions.
801.5 Applicability to offenses committed before the effective date.

801.1 Short title.

Chapters 801 to 819 shall be known and may be cited as the *"Iowa Code of Criminal Procedure"*.

[C79, 81, §801.1]

801.2 Scope.

The provisions of the Iowa code of criminal procedure shall govern procedure in the courts of Iowa in all criminal proceedings except where a different procedure is specifically provided by law.

[C79, 81, §801.2]

801.3 General purposes.

The provisions of the Iowa code of criminal procedure shall be liberally construed to give effect to the general purposes thereof, which shall be to provide for:

1. Simplicity in criminal procedure.
2. Fairness in administration of the criminal laws.
3. Elimination of unjustifiable delay in pretrial, trial, and post-trial proceedings.
4. Just determination of every criminal proceeding by a fair and impartial trial and review.
5. The effective apprehension and trial of persons suspected of committing public offenses without violation of fundamental human rights.

[C79, 81, §801.3]

801.4 Definitions.

For the purposes of title XVI,* unless the context otherwise requires:

1. The words *"accused person", "accused", "defendant",* and similar words mean an individual, a public or private corporation, a partnership, or an unincorporated or voluntary association.
2. *"Attorney general"* includes an authorized assistant of the attorney general.
3. *"Charge"* means a written statement presented to a court accusing a person of the commission of a public offense, including but not limited to a complaint, information, or indictment.
4. *"Complaint"* means a statement in writing, under oath or affirmation, made before a magistrate or district court clerk or clerk's designee as the case may be, of the commission of a public offense, and accusing someone of committing the public offense. A complaint shall be substantially in the form provided in the Iowa rules of criminal procedure.
5. *"County attorney"* includes an authorized assistant of the county attorney.
6. *"Court"* means a place where justice is administered by a magistrate and includes such magistrate while acting in a judicial capacity.
7. *"Criminal proceeding"* is a proceeding in which a person is accused of a public offense.
8. *"Indictable offense"* means an offense other than a simple misdemeanor.
9. *"Indigent person"* means a person who is indigent as determined in accordance with section 815.9.
10. *"Magistrate"* means all judges of the district court, including district associate judges and judicial magistrates throughout the state.
11. *"Peace officers"*, sometimes designated "law enforcement officers", include:

a. Sheriffs and their regular deputies who are subject to mandated law enforcement training.

b. Marshals and police officers of cities.

c. Peace officer members of the department of

public safety as defined in chapter 80.

d. Parole officers acting pursuant to section 906.2.

e. Probation officers acting pursuant to section 602.7202, subsection 4, and section 907.2.

f. Special security officers employed by board of regents institutions as set forth in section 262.13.

g. Conservation officers as authorized by section 456A.13.

h. Such employees of the department of transportation as are designated *"peace officers"* by resolution of the department under section 321.477.

i. Employees of an aviation authority designated as *"peace officers"* by the authority under section 330A.8, subsection 16.

j. Such persons as may be otherwise so designated by law.

12. *"Prosecuting attorney",* sometimes designated *"prosecutor",* means any attorney who is authorized by law to appear on the behalf of the state in a criminal case, and includes the attorney general, an assistant attorney general, the county attorney, an assistant county attorney, or a special or substitute prosecutor whose appearance is approved by a court having jurisdiction to try the defendant for the offense with which the defendant is charged. In the case of prosecution for a municipal ordinance violation, *"prosecuting attorney"* means a city attorney or an assistant city attorney.

13. *"Prosecution"* means the commencement, including the filing of a complaint, and continuance of a criminal proceeding, and pursuit of that proceeding to final judgment on behalf of the state or other political subdivision.

[C51, §2778, 2822, 2823, 2830; R60, §4439, 4440, 4447, 4530; C73, §4108, 4109, 4111; C97, §5097, 5099, 5101; C24, 27, 31, 35, 39, §**13403, 13405, 13458;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §748.1, 748.3, 754.1; C79, 81, S81, §801.4; 81 Acts, ch 117, §1240]

83 Acts, ch 186, §10129, 10130, 10201; 84 Acts, ch 1019, §1, 2; 89 Acts, ch 182, §11; 90 Acts, ch 1233, §43

*This provision does not include chapters 709A, 718A, 822, 904, 913, and 914, which were moved into title XVI by the Code editor. Chapters 709A, 718A, 822, 904, 913, and 914 contain the applicable provisions pertaining to those chapters.

801.5 Applicability to offenses committed before the effective date.

1. Except as provided in subsections 2 and 3 of this section, title XVI* does not apply to offenses committed before January 1, 1978. Prosecutions for offenses committed before that date are governed by the prior law, which is continued in effect for that purpose, as if this title* were not in force. For purposes of this section, an offense is committed before said date if any of the elements of the offense occurred before that date.

2. In any case pending on or commenced after said date, involving an offense committed before that date:

a. Upon the request of the defendant a defense or mitigation under this title,* whether specifically provided for herein or based upon the failure of said statutes to define an applicable offense, shall apply; and

b. Upon the request of the defendant and the approval of the court:

(1) Procedural provisions of this title* shall apply insofar as they are justly applicable; and

(2) The court may impose a sentence or suspended imposition of a sentence under the provisions of this title* applicable to the offense and the offender.

3. Provisions of this title* governing the release or discharge of prisoners, probationers, and parolees shall apply to persons under sentence for offenses committed before January 1, 1978, except that the minimum or maximum period of their detention or supervision shall in no case be increased, nor shall the provisions of this title* affect the substantive or procedural validity of any judgment of conviction entered before said date, regardless of the fact that appeal time has not run or that an appeal is pending.

[C79, 81, §801.5]

*This provision does not include chapters 709A, 718A, 822, 904, 913, and 914, which were moved into title XVI by the Code editor. Chapters 709A, 718A, 822, 904, 913, and 914 contain the applicable provisions pertaining to those chapters.

CHAPTER 802

LIMITATION OF CRIMINAL ACTIONS

802.1 Murder.
802.2 Sexual abuse — first, second, or third degree.
802.2A Incest — sexual exploitation by a counselor or therapist.
802.3 Felony — aggravated or serious misdemeanor.
802.4 Simple misdemeanor — ordinance.
802.5 Extension for fraud, fiduciary breach.
802.6 Periods excluded from limitation.
802.7 Continuing crimes.
802.8 Time of finding indictment and information.
802.9 Indictment or information where a defect is found.

802.1 Murder.

A prosecution for murder in the first or second degree may be commenced at any time after the death of the victim.

[C51, §2811; R60, §4513; C73, §4165; C97, §5163; C24, 27, 31, 35, 39, §**13442;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §752.1; C79, 81, §802.1]

802.2 Sexual abuse — first, second, or third degree.

1. An information or indictment for sexual abuse in the first, second, or third degree committed on or with a person who is under the age of eighteen years shall be found within ten years after the person upon whom the offense is committed attains eighteen years of age.

2. An information or indictment for any other sexual abuse in the first, second, or third degree shall be found within ten years after its commission.

85 Acts, ch 174, §2; 90 Acts, ch 1066, §1; 94 Acts, ch 1128, §3; 2000 Acts, ch 1027, §1

802.2A Incest — sexual exploitation by a counselor or therapist.

1. An information or indictment for incest under section 726.2 committed on or with a person who is under the age of eighteen shall be found within ten years after the person upon whom the offense is committed attains eighteen years of age. An information or indictment for any other incest shall be found within ten years after its commission.

2. An indictment or information for sexual exploitation by a counselor or therapist under section 709.15 committed on or with a person who is under the age of eighteen shall be found within ten years after the person upon whom the offense is committed attains eighteen years of age. An information or indictment for any other sexual exploitation shall be found within ten years of the date the victim was last treated by the counselor or therapist.

2001 Acts, ch 63, §1

802.3 Felony — aggravated or serious misdemeanor.

In all cases, except those enumerated in sections 802.1, 802.2, and 802.2A, an indictment or information for a felony or aggravated or serious misdemeanor shall be found within three years after its commission.

[C51, §2813; R60, §4515; C73, §4167; C97, §5165; C24, 27, 31, 35, 39, §**13444;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §752.3; C79, 81, §802.3; 81 Acts, ch 204, §10]

85 Acts, ch 174, §3; 92 Acts, ch 1199, §7; 2000 Acts, ch 1027, §2; 2001 Acts, ch 63, §2

Other exceptions, see §802.5, 802.6, 802.9

802.4 Simple misdemeanor — ordinance.

A prosecution for a simple misdemeanor or violation of a municipal or county rule or ordinance shall be commenced within one year after its commission.

[C73, §4168; C97, §5166; C24, 27, 31, 35, 39, §**13445;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §752.4; C79, 81, §802.4]

802.5 Extension for fraud, fiduciary breach.

If the period prescribed in sections 802.3 and 802.4 has expired, prosecution may nevertheless be commenced for any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has legal duty to represent an aggrieved party and who is not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

[C79, 81, §802.5; 81 Acts, ch 204, §11]

802.6 Periods excluded from limitation.

1. When a person leaves the state, the indictment or information may be found within the time herein limited after the person's coming into the state, and no period during which the party charged was not publicly resident within the state is a part of the limitation.

2. The time within which an indictment or information must be found shall not include the time during which the defendant is a public officer or employee and the offense arises from misconduct relating to the duties and trust of that office or employment.

[C51, §2814; R60, §4516; C73, §4169; C97, §5167; C24, 27, 31, 35, 39, §**13446;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §752.5; C79, 81, §802.6]

2002 Acts, ch 1116, §1

Subsection 1 amended

802.7 Continuing crimes.

When an offense is based on a series of acts committed at different times, the period of limitation prescribed by this division shall commence upon the commission of the last of such acts.

[C79, 81, §802.7]

802.8 Time of finding indictment and information.

Within the meaning of this chapter:

1. An indictment is found when it is duly presented by the grand jury in open court and filed.

2. An information is found when it is filed.

[C51, §2815; R60, §4517; C73, §4170; C97, §5168; C24, 27, 31, 35, 39, §**13447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §752.6; C79, 81, §802.8]

802.9 Indictment or information where a defect is found.

If a defect, error, or irregularity is discovered in any indictment or information which, on motion of either party, causes same to be dismissed or the prosecution to be set aside or reversed on appeal, a new indictment or information may be found within thirty days after such action notwithstanding the time limitations enumerated in this chapter.

[C51, §2949, 3251, 3252; R60, §4699, 4711, 4712, 5011 – 5013; C73, §4344, 4356, 4357, 4617 – 4619; C97, §5326, 5331, 5539; C24, 27, 31, 35, 39, §**13788, 13796, 13797, 14027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §776.9, 777.8, 777.9, 795.5; C79, 81, §802.9]

CHAPTER 803

JURISDICTION OF PUBLIC OFFENSES AND PLACE OF TRIAL

803.1 State criminal jurisdiction.
803.2 Place of trial — general.
803.3 Place of trial — special provisions.
803.4 Bar to action.
803.5 Transfer of jurisdiction.
803.6 Transfer of jurisdiction — juvenile.

803.1 State criminal jurisdiction.

1. A person is subject to prosecution in this state for an offense which the person commits within or outside this state, by the person's own conduct or that of another for which the person is legally accountable, if:

a. The offense is committed either wholly or partly within this state.

b. Conduct of the person outside the state constitutes an attempt to commit an offense within this state.

c. Conduct of the person outside the state constitutes a conspiracy to commit an offense within this state.

d. The offense is based upon a statute that specifically prohibits conduct wholly outside of the state, and the conduct bears a reasonable relation to a legitimate state interest, and the person knows or should know that the conduct is likely to affect that interest.

e. Conduct of the person within this state constitutes an attempt, solicitation or conspiracy to commit an offense in another jurisdiction, which conduct is punishable under the laws of both this state and such other jurisdiction.

2. An offense may be committed partly within this state if conduct which is an element of the offense, or a result which constitutes an element of the offense, occurs within this state. If the body of a murder victim is found within the state, the death is presumed to have occurred within the state. If a kidnapping victim, or the body of a kidnapping victim, is found within the state, the confinement or removal of the victim from one place to another is presumed to have occurred within the state.

3. An offense which is based on an omission to perform a duty imposed upon a person by the law of this state is committed within the state, regardless of the location of the person at the time of the omission.

4. The jurisdiction of the criminal court includes the prosecution of any individual arrested who is eighteen years of age or older and who is charged with committing a criminal offense. If the individual is alleged to have committed the offense prior to having reached the age of eighteen, that individual or the county attorney may petition the criminal court to transfer the matter to juvenile court, pursuant to section 803.5.

[C51, §2803; R60, §4500; C73, §4155; C97, §5153; C24, 27, 31, 35, 39, §**13448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §753.1; C79, 81, §803.1]

88 Acts, ch 1167, §4; 95 Acts, ch 178, §1; 2000 Acts, ch 1037, §3

803.2 Place of trial — general.

1. A criminal action shall be tried in the county in which the crime is committed, except as otherwise provided by law.

2. The court, may on its own motion or on the motion of any of the parties to the proceeding reconsider and grant a pretrial motion for change of venue whenever it appears during jury selection that sufficient grounds would exist for granting the motion under the provisions of rule of criminal procedure 2.11.

3. All objections to venue are waived by a defendant unless the defendant objects thereto and secures a ruling by the trial court on a pretrial motion for change of venue. However, if venue is changed pursuant to subsection 2, all objections to venue in the county to which the action is transferred are waived by a defendant unless the defen-

dant objects by a motion for change of venue filed within five days after entry of the order transferring the action and secures a ruling by the trial court on the motion before a jury has been impaneled and sworn.

[R60, §4502; C73, §4156; C97, §5154; C24, 27, 31, 35, 39, §**13449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §753.2; C79, 81, §803.2; 82 Acts, ch 1021, §7, 12(1)]

803.3 Place of trial — special provisions.

The following special provisions apply:

1. If conduct or results which constitute elements of an offense occur in two or more counties, prosecution of the offense may be had in any of such counties. In such cases, where a dominant number of elements occur in one county, that county shall have the primary right to proceed with prosecution of the offender.

2. If an offense commenced outside the state is consummated within this state, trial of the offense shall be held in the county or counties in which the offense is consummated or the interest protected by the involved penal statute is impaired.

3. If an offense is committed in or upon any conveyance in transit, and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed in the course of its journey.

4. If an offense is committed on the boundary of two or more counties, and it cannot readily be determined within which county the commission took place, trial of the offense may be held in any of the counties concerned.

5. If the offense is a traffic offense, or a scheduled offense under section 805.8A, 805.8B, or 805.8C, section 805.13 shall apply.

6. *a.* If a person is charged with a violation of the tax laws arising out of individual tax liability, venue is in the county of residence of the person charged with the offense, unless the person is a nonresident of this state or the residence of the person cannot be established, in which event venue is in Polk county.

b. If a person is charged with a violation of the tax laws arising out of a business, venue is in any county where business was conducted. If a specific county cannot be established as a situs, venue is in Polk county.

c. If a person is charged with a violation of section 453B.12, venue is in the county of the residence of the person charged with the offense or the county in which the drugs were found.

d. If a person is charged with a violation of the tax laws in which venue is set under multiple provisions of this section, venue is in any county in which one of the charges may be prosecuted.

[C51, §2804, 2806 – 2808; R60, §4505, 4507 – 4509; C73, §4157, 4159 – 4161; C97, §5155, 5157 – 5159; C24, 27, 31, 35, 39, §**13450, 13451 – 13453;** C46, 50, 54, 58, 62, 66, 71, §753.3 – 753.6; C73, 75, 77, §753.3; C79, 81, §803.3]

99 Acts, ch 152, §37, 40; 2001 Acts, ch 137, §5

803.4 Bar to action.

A conviction or acquittal of an offense in a court having jurisdiction thereof is a bar to a prosecution of the offense in another court.

[R60, §4512; C73, §4164; C97, §5162; C24, 27, 31, 35, 39, §**13457;** C46, 50, 54, 58, 62, 66, 71, §753.10; C73, 75, 77, §753.4; C79, 81, §803.4]

803.5 Transfer of jurisdiction.

1. An adult who is alleged to have committed a criminal offense prior to having reached the age of eighteen may be transferred to juvenile court for adjudication and disposition as a juvenile, provided that the taking of that person into custody for the alleged act or the filing of a complaint, information, or indictment alleging the act, occurs within the time periods and under the conditions specified in chapter 802 and further provided that the juvenile court has not already waived its jurisdiction over the person and the alleged offense.

2. The defendant or the county attorney may file a motion for the transfer any time within ten days of the initial appearance.

3. The court shall hold a transfer hearing on all such motions. A notice of the time and place of the transfer hearing shall be given to all parties to the hearing.

4. Prior to the transfer hearing, the juvenile probation officer, or other person or agency designated by the court, shall conduct an investigation for the purpose of collecting information relevant to the court's decision to waive its jurisdiction over the defendant for the alleged commission of the public offense and shall submit a report concerning the investigation to the court. The report shall include any recommendations made concerning transfer. Prior to the hearing the court shall provide the defendant's counsel and the county attorney with access to the report and to all written material to be considered by the court.

5. After the hearing, the court may transfer jurisdiction to the juvenile court if the court determines that there is probable cause to believe that the adult committed an offense while still a juvenile, and waiver to the criminal court would be inappropriate under the criteria set forth in section 232.45, subsection 6, paragraph *"c"*, and section 232.45, subsection 8, if the adult were still a child.

6. If after the hearing the court transfers jurisdiction over the adult to the juvenile court for the alleged commission of the public offense, the court shall forward the transfer order together with all papers, documents, and a transcript of all testimony filed or admitted into evidence in connection with the case to the clerk of the juvenile court in the same manner as provided in section 232.8, subsection 2.

88 Acts, ch 1167, §5

803.6 Transfer of jurisdiction — juvenile.

1. The court, in the case of a juvenile who is alleged to have committed a criminal offense listed in section 232.8, subsection 1, paragraph *"c"*, may direct a juvenile court officer to provide a report regarding whether the child should be transferred to juvenile court for adjudication and disposition as a juvenile.

2. If the court believes that transfer may be appropriate the court shall hold a hearing on whether the child should be transferred. A notice of the time and place of the transfer hearing shall be given to all parties to the case. Prior to the hearing, the court shall provide the defendant's counsel and the county attorney with access to the report provided by the juvenile court officer and to all written material to be considered by the court.

3. After the hearing, the court may transfer jurisdiction to the juvenile court if the court determines that waiver to the criminal court would be inappropriate under the criteria set forth in section 232.45, subsection 6, paragraph *"c"*, and section 232.45, subsection 8.

4. If after the hearing the court transfers jurisdiction over the defendant to the juvenile court for the alleged commission of the public offense, the court shall forward the transfer order together with all papers, documents, and a transcript of all testimony filed or admitted into evidence in connection with the case to the clerk of the juvenile court in the same manner as provided in section 232.8, subsection 2.

5. A defendant transferred to the jurisdiction of the juvenile court shall be placed in detention under section 232.22.

95 Acts, ch 191, §54

CHAPTER 804

COMMENCEMENT OF ACTIONS — ARREST — DISPOSITIONS OF PRISONERS

See chapter 805

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804.1 Arrest by warrant — complaint and citation defined.

A criminal proceeding may be commenced by the filing of a complaint before a magistrate. When such complaint is made, charging the commission of some designated public offense in which such magistrate has jurisdiction, and it appears from the complaint or from affidavits filed with it that there is probable cause to believe an offense has been committed and a designated person has committed it, the magistrate shall, except as otherwise provided, issue a warrant for the arrest of such person.

If the complaint charges a public offense, the magistrate may issue a citation instead of a warrant of arrest. The citation shall set forth substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the magistrate issuing the citation at a time and place stated in the citation. The magistrate shall prescribe the manner of service for the citation at the time the citation is issued.

The citation may be served in the same manner as an original notice in a civil action.

If the person named in the citation is actually served as provided herein and willfully fails without good cause to appear as commanded by the citation, the person shall be guilty of a simple misdemeanor and the magistrate may issue a warrant of arrest for the offense originally charged.

If after issuing a citation the magistrate becomes satisfied that the person to whom such citation has been directed will not appear, the magistrate may at once issue a warrant of arrest without waiting for the date mentioned in the citation.

[C51, §2822; R60, §4530; C73, §4111, 4185; C97, §5101, 5182; C24, 27, 31, 35, 39, §**13458 – 13460;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §754.1 – 754.3; C79, 81, §804.1]

83 Acts, ch 50, §1, 7

See §805.1, 805.4, 805.6; R.Cr.P. 2.54, 2.72, 2.76 – Form 1

804.2 Contents of arrest warrant.

The warrant must be directed to any peace officer in the state; give the name of the defendant, if known to the magistrate; if unknown, may designate "name unknown"; and must state by name or general description an offense which authorizes a warrant to issue, the date of issuing it, the county or city where issued, and be signed by the magistrate with the magistrate's name of office.

[C51, §2828, 2829; R60, §4535, 4536; C73, §4187, 4188; C97, §5184; C24, 27, 31, 35, 39, §**13462;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §754.5; C79, 81, §804.2]

See R.Cr.P. 2.36 – Form 5

804.3 Order for bail — endorsed on warrant.

If the offense stated in the warrant be bailable, the magistrate issuing it must make an endorsement thereon as follows: "Let the defendant, when arrested, be (admitted to bail in the sum of . . . . . dollars) or (stating other conditions of release)."

[R60, §4537; C73, §4189; C97, §5185; C24 27, 31, 35, 39, §**13463;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §754.6; C79, 81, §804.3]

See R.Cr.P. 2.36 – Form 6

804.4 Manner of executing warrant.

The warrant may be delivered to any peace officer for execution, and served in any county in the state.

[R60, §4538; C73, §4190; C97, §5186; C24, 27, 31, 35, 39, §**13464;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §754.7; C79, 81, §804.4]

804.5 Arrest defined.

Arrest is the taking of a person into custody when and in the manner authorized by law, including restraint of the person or the person's submission to custody.

[C51, §2837, 2838, 2850; R60, §4545, 4551, 4557 – 4559; C73, §4197, 4203, 4209 – 4211; C97, §5193, 5194; C24, 27, 31, 35, 39, §**13465, 13466;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.1, 755.2; C79, 81, §804.5]

804.6 Persons authorized to make an arrest.

An arrest pursuant to a warrant shall be made only by a peace officer; in other cases, an arrest may be made by a peace officer or by a private person as provided in this chapter.

[R60, §4546; C73, §4198; C97, §5195; C24, 27, 31, 35, 39, §**13467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.3; C79, 81, §804.6]

804.7 Arrests by peace officers.

A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:

1. For a public offense committed or attempted in the peace officer's presence.

2. Where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it.

3. Where the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.

4. Where the peace officer has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official communication by bulletin, radio, telegraph, telephone, or otherwise, informing the peace officer that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge.

5. If the peace officer has reasonable grounds for believing that domestic abuse, as defined in section 236.2, has occurred and has reasonable grounds for believing that the person to be arrested has committed it.

6. As required by section 236.12, subsection 2.

[C51, §2840; R60, §4547, 4548; C73, §4199, 4200; C97, §5196; C24, 27, 31, 35, 39, §**13468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.4; C79, 81, §804.7]

85 Acts, ch 175, §12; 86 Acts, ch 1179, §7

See R.Cr.P. 2.36 – Form 6

804.7A Arrests by federal law enforcement officers.

1. For purposes of this section, *"federal law enforcement officer"* means a person employed full time by the United States government who is empowered to effect an arrest with or without a warrant for a violation of the United States Code and who is authorized to carry a firearm in the performance of the person's duties as a federal law enforcement officer.

2. A federal law enforcement officer has the

same authority, as provided in section 804.7, subsection 3, and has the same immunity from suit in this state as a peace officer, as defined in section 801.4, subsection 11, when making an arrest in this state for a nonfederal crime if either of the following exists:

a. The federal law enforcement officer has reasonable grounds for believing that an indictable public offense has been committed and has reasonable grounds for believing that the person to be arrested has committed it.

b. The federal law enforcement officer is rendering assistance to a peace officer of this state in an emergency or at the request of the peace officer.

90 Acts, ch 1014, §1

804.7B Arrests by out-of-state peace officers.

1. For purposes of this section, *"out-of-state peace officer"* means a person employed full time as a peace officer by a state other than Iowa or a political subdivision of a state other than Iowa who is empowered to effect an arrest with or without a warrant under the laws of that jurisdiction, who is authorized to carry a firearm in the performance of the person's duties, and who is certified or licensed as a regular peace officer in the jurisdiction in which the person's employing agency or appointing authority is located. Notwithstanding section 804.7A, for purposes of this section *"out-of-state peace officer"* also means a person employed full time by the United States government who is empowered to effect an arrest with or without a warrant for a violation of the United States Code and who is authorized to carry a firearm in the performance of the person's duties as a federal law enforcement officer.

2. *a.* An out-of-state peace officer may make arrests and conduct other law enforcement activities in this state pursuant to an agreement entered into under chapter 28E by the peace officer's employing agency or appointing authority and the state of Iowa or a political subdivision of the state of Iowa. Any arrests made or activities conducted by an out-of-state peace officer shall be in accordance with any conditions and specifications contained in the agreement and shall be in accordance with Iowa law. An out-of-state peace officer who makes an arrest or conducts an activity in this state shall immediately contact and cooperate with a law enforcement agency having jurisdiction over the area in which the activities have occurred. An out-of-state peace officer who acts in accordance with an agreement entered into pursuant to this section and Iowa law has the same immunity from suit in this state as a peace officer, as defined in section 801.4.

b. Out-of-state peace officers making arrests or conducting law enforcement activities in this state pursuant to a chapter 28E agreement are not employees or agents of the state of Iowa or any political subdivision of the state of Iowa. To the extent permitted by law, the employing agency or appointing agency of the out-of-state peace officer and the out-of-state peace officer are liable for any acts or omissions which arise out of the arrests or law enforcement activities of the out-of-state peace officer.

c. Agreements made under this section shall not exceed any jurisdictional limitations to which the state or the political subdivision of this state are subject. Agreements made under this section shall not permit out-of-state peace officers to perform regularly scheduled or routine patrol functions. This section shall not be construed to limit the authority of an employing agency or appointing authority to restrict the exercise of power or authority of peace officers who are employed by or are the agents of the agency or authority.

98 Acts, ch 1140, §1

804.8 Use of force by peace officer making an arrest.

A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. However, the use of deadly force is only justified when a person cannot be captured any other way and either

1. The person has used or threatened to use deadly force in committing a felony or

2. The peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.

A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which the peace officer would be justified in using if the warrant were valid, unless the peace officer knows that the warrant is invalid.

[C51, §2844; R60, §4553; C73, §4205; C97, §5200; C24, 27, 31, 35, 39, §**13472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.8; C79, 81, §804.8]

See §704.1 – 704.3

804.9 Arrests by private persons.

A private person may make an arrest:

1. For a public offense committed or attempted in the person's presence.

2. When a felony has been committed, and the person has reasonable ground for believing that the person to be arrested has committed it.

[C51, §2846; R60, §4549; C73, §4201; C97, §5197; C24, 27, 31, 35, 39, §**13469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.5; C79, 81, §804.9]

804.10 Use of force in arrest by private person.

A private person who makes or assists another private person in making a lawful arrest is justified in using any force which the person reasonably believes to be necessary to make the arrest or which the person reasonably believes to be neces-

sary to prevent serious injury to any person.

A private person who is summoned or directed by a peace officer to assist in making an arrest may use whatever force the peace officer could use under the circumstances, provided that, if the arrest is unlawful, the private person assisting the officer shall be justified as if the arrest were a lawful arrest, unless the person knows that the arrest is unlawful.

[C79, 81, §804.10]

See §704.1 – 704.3

804.11 Arrest of material witness.

When a law enforcement officer has probable cause to believe that a person is a necessary and material witness to a felony and that such person might be unavailable for service of a subpoena, the officer may arrest such person as a material witness with or without an arrest warrant.

At the time of the arrest, the law enforcement officer shall inform the person of:

1. The officer's identity as a law enforcement officer; and

2. The reason for the arrest which is that the person is believed to be a material witness to an identified felony and that the person might be unavailable for service of a subpoena.

[C51, §2876 – 2879; R60, §4601 – 4604; C73, §4248 – 4251; C97, §5232 – 5235; C24, 27, 31, 35, 39, §**13547 – 13550;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §761.21 – 761.24; C79, 81, §804.11]

See §815.6

804.12 Use of force in resisting arrest.

A person is not authorized to use force to resist an arrest, either of the person's self, or another which the person knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if the person believes that the arrest is unlawful or the arrest is in fact unlawful.

[C51, §2669; R60, §4296; C73, §3960; C97, §4899; C24, 27, 31, 35, 39, §**13331;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §742.1; C79, 81, §804.12]

804.13 Use of force in preventing an escape.

A peace officer or other person who has an arrested person in custody is justified in the use of such force to prevent the escape of the arrested person from custody as the officer or other person would be justified in using if the officer or other person were arresting such person.

[C51, §2844; R60, §4553; C73, §4205; C97, §5200; C24, 27, 31, 35, 39, §**13472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.8; C79, 81, §804.13]

804.14 Manner of making arrest.

The person making the arrest must inform the person to be arrested of the intention to arrest the person, the reason for arrest, and that the person making the arrest is a peace officer, if such be the case, and require the person being arrested to submit to the person's custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so; if acting under the authority of a warrant, the law enforcement officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer shall show the warrant to the person being arrested as soon as possible. If the officer does not have the warrant in the officer's possession at the time of arrest, the officer shall inform the person being arrested of the fact that a warrant has been issued.

[C51, §2839, 2841, 2847; R60, §4552; C73, §4204; C97, §5199; C24, 27, 31, 35, 39, §**13471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.7; C79, 81, §804.14]

804.15 Breaking and entering premises — demand to enter.

If a law enforcement officer has reasonable cause to believe that a person whom the officer is authorized to arrest is present on any private premises, the officer may upon identifying the officer as such, demand that the officer be admitted to such premises for the purpose of making the arrest. If such demand is not promptly complied with, the officer may thereupon enter such premises to make the arrest, using such force as is reasonably necessary.

[C51, §2843, 2848; R60, §4554; C73, §4206; C97, §5201; C24, 27, 31, 35, 39, §**13473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.9; C79, 81, §804.15]

804.16 Time of arrest.

An arrest may be made on any day and at any time of the day or night.

[C51, §2837, 2850; R60, §4545, 4551; C73, §4197, 4203; C97, §5193; C24, 27, 31, 35, 39, §**13465;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.1; C79, 81, §804.16]

804.17 Summoning aid.

Any peace officer making a legal arrest may orally summon as many persons as the officer reasonably finds necessary to aid the officer in making the arrest.

[R60, §4556; C73, §4208; C97, §5203; C24, 27, 31, 35, 39, §**13475;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.11; C79, 81, §804.17]

804.18 Taking weapons.

Any person who makes an arrest may take from the person arrested all items which are capable of causing bodily harm which the arrested person may have within the arrested person's control to be disposed of according to law.

[R60, §4560; C73, §4212; C97, §5204; C24, 27, 31, 35, 39, §**13476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.12; C79, 81, §804.18]

804.19 Receipt given.

When money or other property is taken from the defendant arrested on a charge of a public offense, the officer taking it shall, at the time, give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken. The officer shall deliver one of the receipts to the defendant, and shall retain the other receipt with the defendant's file.

[C79, 81, §804.19]

94 Acts, ch 1047, §1

804.20 Communications by arrested persons.

Any peace officer or other person having custody of any person arrested or restrained of the person's liberty for any reason whatever, shall permit that person, without unnecessary delay after arrival at the place of detention, to call, consult, and see a member of the person's family or an attorney of the person's choice, or both. Such person shall be permitted to make a reasonable number of telephone calls as may be required to secure an attorney. If a call is made, it shall be made in the presence of the person having custody of the one arrested or restrained. If such person is intoxicated, or a person under eighteen years of age, the call may be made by the person having custody. An attorney shall be permitted to see and consult confidentially with such person alone and in private at the jail or other place of custody without unreasonable delay. A violation of this section shall constitute a simple misdemeanor.

[C62, 66, 71, 73, 75, 77, §755.17; C79, 81, §804.20]

804.21 Initial appearance before magistrate required — exceptions — arrest by warrant.

1. A person arrested in obedience to a warrant shall be taken without unnecessary delay before the nearest or most accessible magistrate. The officer shall at the same time deliver to the magistrate the warrant with the officer's return endorsed on it and subscribed by the officer with the officer's official title. However, this section, and sections 804.22 and 804.23, do not preclude the release of an arrested person within the period of time the person would otherwise remain incarcerated while waiting to be taken before a magistrate if the release is pursuant to pretrial release guidelines or a bond schedule promulgated by the judicial council. If, however, a person is released pursuant to pretrial release guidelines, a magistrate must, within twenty-four hours of the release, or as soon as practicable on the next subsequent working day of the court, either approve in writing of the release, or disapprove of the release and issue a warrant for the person's arrest.

2. Where the offense is bailable, the magistrate shall fix bail giving due consideration to the bail endorsed on the warrant or other conditions stipulated on the warrant for the defendant's appearance in the court which issued the warrant; if such person is not released on bail, the magistrate must redeliver the warrant to the officer, and the officer shall retain custody of the arrested person until the person's removal to appear before the magistrate who issued the warrant.

3. If the magistrate who issued the warrant is absent or unable to act, the arrested person shall be taken to the nearest or most accessible magistrate in the judicial district where the offense occurred or a magistrate in an approved judicial district, and all documents on which the warrant was issued must be sent to such magistrate, or if they cannot be procured, the informant and the informant's witnesses must be subpoenaed to make new affidavits. For purposes of this subsection, an *"approved judicial district"* means, as to any particular arrest of a person described in this subsection, any judicial district in this state in which the chief judge of that judicial district and the chief judge of the judicial district in which the offense occurred have previously entered an order permitting a person arrested or described in this subsection to be taken to a magistrate from any judicial district subject to the order.

4. When the court is not in session, a person arrested and placed in jail may be released on the person's own recognizance with or without other conditions, by the verbal or written order of a judge or magistrate. The verbal order may be communicated by telephone. The judge or magistrate may issue such order of release only upon the request of an attorney or person believed by the judge or magistrate to be reliable.

5. *a.* The judicial council shall promulgate rules and bond levels to be contained within a bond schedule for the release of an arrested person.

b. The bond schedule shall not be used unless both the following conditions are met:

(1) The person was arrested for a crime other than a forcible felony, and

(2) The courts are not in session.

6. This section does not prevent the release of the arrested person pending initial appearance upon the furnishing of bail in the amount endorsed on the warrant. The initial appearance of a person so released shall be scheduled for a time not more than thirty days after the date of release.

[C51, §2831 – 2836; R60, §4539 – 4544, 4565; C73, §4191 – 4196, 4217; C97, §5187 – 5192, 5207; C24, 27, 31, 35, 39, §**13480 – 13487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §757.1 – 757.8; C79, 81, §804.21]

83 Acts, ch 50, §2, 3, 7; 83 Acts, ch 51, §5, 9; 89 Acts, ch 83, §85; 98 Acts, ch 1115, §18; 2000 Acts, ch 1032, §4

804.22 Initial appearance before magistrate — arrest without warrant.

When an arrest is made without a warrant, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the judicial district in which such arrest was made or before a magistrate in an approved judicial district, and the grounds on which the arrest was made shall be stated to the magistrate by complaint, subscribed and sworn to by the complainant, or supported by the complainant's affirmation, and such magistrate shall proceed as follows:

1. If the magistrate believes from such complaint that the offense charged is triable in the magistrate's court, the magistrate shall proceed with the case.

2. If the magistrate believes from such complaint that the offense charged is triable in another court, the magistrate shall by written order, commit the person arrested to a peace officer, to be taken before the appropriate magistrate in the district in which the offense is triable, and shall fix the amount of bail or other conditions of release which the person arrested may give for the person's appearance at the other court.

This section and the rules of criminal procedure do not affect the provisions of chapter 805 authorizing the release of a person on citation or bail prior to initial appearance. The initial appearance of a person so released shall be scheduled for a time not more than thirty days after the date of release.

For purposes of this section, an *"approved judicial district"* means, as to any particular arrest of a person made without a warrant, any judicial district in this state in which the chief judge of that judicial district and the chief judge of the judicial district in which the arrest was made have previously entered an order permitting a person arrested without warrant to be taken to a magistrate from any judicial district subject to the order.

[R60, §4566, 4567, 4569; C73, §4218, 4219, 4221; C97, §5208, 5209, 5211; C24, 27, 31, 35, 39, §**13488, 13489, 13492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §758.1, 758.2, 758.5; C79, 81, §804.22]

83 Acts, ch 50, §4, 7; 98 Acts, ch 1115, §19, 20; 2000 Acts, ch 1032, §5

See R.Cr.P. 2.2, 2.51 – 2.62; chapters 805, 811

804.23 Initial appearance of arrested material witness before magistrate.

The officer shall, without unnecessary delay, take the person arrested pursuant to section 804.11 before the nearest or most accessible magistrate to the place where the arrest occurred.

At the appearance before the magistrate, the law enforcement officer shall make a showing to the magistrate, by sworn affidavit, that probable cause exists to believe that a person is a necessary and material witness to a felony and that such person might be unavailable for service of a subpoena. The magistrate may order the person released pursuant to section 811.2.

[C51, §2876 – 2879; R60, §4601 – 4604; C73, §4248 – 4251; C97, §5232 – 5235; C24, 27, 31, 35, 39, §**13547 – 13550;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §761.21 – 761.24; C79, 81, §804.23]

804.24 Arrests by private persons — disposition of prisoner.

A private citizen who has arrested another for the commission of an offense must, without unnecessary delay, take the arrested person before a magistrate, or deliver the arrested person to a peace officer, who may take the arrested person before a magistrate, but the person making the arrest must also accompany the officer before the magistrate.

[C51, §2842, 2849; R60, §4562 – 4564; C73, §4214-4216; C97, §5206; C24, 27, 31, 35, 39, §**13478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.14; C79, 81, §804.24]

804.25 Bail — discharge.

Any magistrate who receives bail as provided for in sections 804.21, subsection 2, and 804.22, subsection 2, shall endorse, on the order of commitment or on the warrant, an order for the discharge from custody of the arrested person, who shall forthwith be discharged, and shall transmit by mail, or otherwise, as soon as it can be conveniently done, to the court at which the person is bound to appear, the affidavits, order of commitment or warrant, and discharge, together with the undertaking of bail.

[C51, §2833; R60, §4541, 4570; C73, §4193, 4222; C97, §5189, 5212; C24, 27, 31, 35, 39, §**13483, 13493;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §757.4, 758.6; C79, 81, §804.25]

See R.Cr.P. 2.37 – Forms 2 and 3

804.26 Officer's return.

In all cases, the peace officer, when the officer takes a person committed to the officer under an order as provided in this chapter before a magistrate, either for the purpose of giving bail, if bail be taken, or for trial or preliminary examination, must make a return on such order, and sign such return with the officer's name of office, and deliver the same to the magistrate.

[R60, §4573; C73, §4225; C97, §5215; C24, 27, 31, 35, 39, §**13496;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §758.9; C79, 81, §804.26]

804.27 Conveying prisoner to jail — fees and expenses.

Every officer or person who shall arrest anyone with a warrant or order issued by any court or officer, or who shall be required to convey a prisoner to such jail on an order of commitment, may be allowed the same fees and expenses as provided for

in case of such services by the sheriff.

[C73, §3820; C97, §1292; C24, 27, 31, 35, 39, §**13479;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.15; C79, 81, §804.27]

804.28 Department of public safety prisoners.

The sheriff of any county shall accept for custody in the county jail of the sheriff's respective county any person handed over to the sheriff for safekeeping and lodging by any member of the department of public safety. The county shall not be liable for medical treatment for injuries incurred by a person before the person is transferred to the custody of the sheriff. Any expenses payable by the state pursuant to this section shall be paid out of any moneys in the state treasury not otherwise appropriated. The expenses shall be paid on claims filed with the department of revenue and finance.

[C39, §**13479.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.16; C79, 81, §804.28]

98 Acts, ch 1086, §4

804.29 Confidentiality.

All information filed with the court for the purpose of securing a warrant for an arrest, including but not limited to a citation and affidavits, shall be a confidential record until such time as a peace officer has made the arrest and has made the officer's return on the warrant. During the period of time that information is confidential, it shall be sealed by the court and the information contained therein shall not be disseminated to any person other than a peace officer, magistrate, or another court employee, in the course of official duties.

[C79, 81, §804.29]

804.30 Strip searches.

A person arrested for a scheduled violation or a simple misdemeanor shall not be subjected to a strip search unless there is probable cause to believe the person is concealing a weapon or contraband. A strip search pursuant to this section shall not be conducted except under all of the following conditions:

1. Written authorization of the supervisor on duty is obtained.

2. A search warrant is obtained for the probing of any body cavity other than the mouth, ears or nose.

3. A visual search or probing of any body cavity shall be performed under sanitary conditions. A physical probe of a body cavity other than the mouth, ears or nose shall be performed only by a licensed physician unless voluntarily waived in writing by the arrested person.

4. The search is conducted in a place where it cannot be observed by persons not conducting the search.

5. The search is conducted by a person of the same sex as the arrested person, unless conducted by a physician.

Subsequent to a strip search a written report shall be prepared which includes the written authorization required by subsection 1, the name of the person subjected to the search, the names of the persons conducting the search, the time, date and place of the search and, if required by subsection 2, a copy of the search warrant authorizing the search. A copy of the report shall be provided to the person searched.

[C81, §804.30]

804.31 Arrest of deaf or hard-of-hearing person — use of interpreters — fee.

When a person is detained for questioning or arrested for an alleged violation of a law or ordinance and there is reason to believe that the person is deaf or hard-of-hearing, the peace officer making the arrest or taking the person into custody or any other officer detaining the person shall determine if the person is a deaf or hard-of-hearing person as defined in section 622B.1. If the officer so determines, the officer, at the earliest possible time and prior to commencing any custodial interrogation of the person, shall procure a qualified interpreter in accordance with section 622B.2 and the rules adopted by the supreme court under section 622B.1 unless the deaf or hard-of-hearing person knowingly, voluntarily, and intelligently waives the right to an interpreter in writing by executing a form prescribed by the department of human rights and the Iowa county attorneys association. The interpreter shall interpret the officer's warnings of constitutional rights and protections and all other warnings, statements, and questions spoken or written by any officer, attorney, or other person present and all statements and questions communicated in sign language by the deaf or hard-of-hearing person.

This section does not prohibit the request for and administration of a preliminary breath screening test or the request for and administration of a chemical test of a body substance or substances under chapter 321J prior to the arrival of a qualified interpreter for a deaf or hard-of-hearing person who is believed to have committed a violation of section 321J.2. However, upon the arrival of the interpreter the officer who requested the chemical test shall explain through the interpreter the reason for the testing, the consequences of the person's consent or refusal, and the ramifications of the results of the test, if one was administered.

When an interpreter is not readily available and the deaf or hard-of-hearing person's identity is known, the person may be released by the law enforcement agency into the temporary custody of a reliable family member or other reliable person to await the arrival of the interpreter, if the person is eligible for release on bail and is not believed to be an immediate threat to the person's own safety or the safety of others.

An answer, statement, or admission, oral or written, made by a deaf or hard-of-hearing person in reply to a question of a law enforcement officer or any other person having a prosecutorial function in a criminal proceeding is not admissible in court and shall not be used against the deaf or hard-of-hearing person if that answer, statement, or admission was not made or elicited through a qualified interpreter, unless the deaf or hard-of-hearing person had waived the right to an interpreter pursuant to this section. In the event of a waiver and criminal proceeding, the court shall determine whether the waiver and any subsequent answer, statement, or admission made by the deaf or hard-of-hearing person were knowingly, voluntarily, and intelligently made.

When communication occurs with a person through an interpreter pursuant to this section, all questions or statements and responses shall be relayed through the interpreter. The role of the interpreter is to facilitate communication between the hearing and deaf or hard-of-hearing parties. An interpreter shall not be compelled to answer any question or respond to any statement that serves to violate that role at the time of questioning or arrest or at any subsequent administrative or judicial proceeding.

An interpreter procured under this section shall be paid a reasonable fee and expenses by the governmental subdivision funding the law enforcement agency that procured the interpreter.

84 Acts, ch 1264, §1; 85 Acts, ch 131, §2; 86 Acts, ch 1220, §42; 88 Acts, ch 1134, §115; 93 Acts, ch 75, §14

CHAPTER 805

CITATIONS IN LIEU OF ARREST

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POLICE CITATIONS

805.1 Issuance of citation — release.

1. Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11, a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest without a warrant or, if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

2. The citation procedure for traffic and other violations designated as scheduled violations is governed by sections 805.6 through 805.15.

3. *a.* State and local law enforcement agencies in the state of Iowa may cooperate to formulate uniform guidelines that will provide for the maximum possible use of citations in lieu of arrest and in lieu of continued custody for offenses for which citations are authorized. These guidelines shall be submitted to the Iowa law enforcement academy council for review. The Iowa law enforcement academy council shall then submit recommendations to the general assembly no later than January 1, 1984.

b. Factors to be considered by the agencies in formulating the guidelines relating to the issuance of citations for simple misdemeanors not governed by subsection 2, shall include but shall not be limited to all of the following:

(1) Whether a person refuses or fails to produce means for a satisfactory identification.

(2) Whether a person refuses to sign the citation.

(3) Whether detention appears reasonably necessary in order to halt a continuing offense or disturbance or to prevent harm to a person or persons.

(4) Whether a person appears to be under the influence of intoxicants or drugs and no one is available to take custody of the person and be responsible for the person's safety.

(5) Whether a person has insufficient ties to the jurisdiction to assure that the person will appear or it reasonably appears that there is a substantial likelihood that the person will refuse to appear in response to a citation.

(6) Whether a person has previously failed to appear in response to a citation or after release on pretrial release guidelines.

c. Additional factors to be considered in the formulation of guidelines relating to the issuance of citations for other offenses for which citations are authorized shall include but shall not be limited to all of the following concerning the person:

(1) Place and length of residence.

(2) Family relationships.

(3) References.

(4) Present and past employment.

(5) Criminal record.

(6) Nature and circumstances of the alleged offense.

(7) Other facts relevant to the likelihood of the person's response to a citation.

4. The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements of rule of criminal procedure 2.33(2)(a), Iowa court rules.

5. Even if a citation is issued, the officer may take the cited person to an appropriate medical facility if it reasonably appears that the person needs care.

6. When a citation is not issued for an offense for which a citation is authorized, the arrested person may be released pending initial appearance on bail or on other conditions determined by pretrial release guidelines. When an arrested person furnishes bail, the officer then in charge of the place of detention shall secure it in safekeeping and shall see that it is forwarded to the office of the clerk of court during the clerk's next regular business day.

7. When the offense is one for which a citation is not authorized, the person does not qualify for release under pretrial release guidelines and the person cannot be released under a bond schedule, the person may be released on bail or otherwise only after initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure.

[C73, 75, 77, §753.5; C79, 81, §805.1]

83 Acts, ch 51, §6, 9; 87 Acts, ch 149, §6; 88 Acts, ch 1158, §99; 88 Acts, ch 1167, §6; 94 Acts, ch 1093, §5; 2001 Acts, ch 24, §60; 2002 Acts, ch 1119, §109

See §804.1, 804.7, 805.6

Persons under eighteen years; see §805.16

Subsection 4 amended

805.2 Form.

The citation shall include the name and address of the person, the nature of the offense, the time and place at which the person is to appear in court, and the penalty for nonappearance.

[C73, 75, 77, §753.6; C79, 81, §805.2]

805.3 Procedure.

Before the cited person is released, the person shall sign the citation, either in a paper or electronic format, under penalty of providing false information under section 719.3, properly identifying the person cited. The person's signature shall also serve as a written promise to appear in court at the time and place specified. A copy of the citation shall be given to the person.

[C73, 75, 77, §753.7; C79, 81, §805.3]

95 Acts, ch 81, §1; 95 Acts, ch 118, §34

805.4 Complaint.

The law enforcement officer issuing the citation shall cause to be filed a complaint in the court in which the cited person is required to appear, as soon as practicable, charging the crime stated in said notice.

[C73, 75, 77, §753.8; C79, 81, §805.4]

See §804.1; R.Cr.P. 2.54 – 2.56

805.5 Failure to appear.

Any person who willfully fails to appear in court as specified by the citation shall be guilty of a simple misdemeanor. Where a defendant fails to make a required court appearance, the court shall issue an arrest warrant for the offense of failure to appear, and shall forward the warrant and the original or electronically produced citation to the clerk. The clerk shall enter a transfer to the issuing agency on the docket, and shall return the warrant with the original or electronically produced citation attached to the law enforcement agency which issued the citation for enforcement of the warrant. Upon arrest of the defendant, the warrant and the original or electronically produced citation shall be returned to the court, and the offenses shall be heard and disposed of simultaneously.

[C73, 75, 77, §753.9; C79, 81, §805.5]

95 Acts, ch 118, §35; 96 Acts, ch 1034, §65

TRAFFIC AND SCHEDULED VIOLATIONS

Surcharge on penalty, chapter 911

805.6 Uniform citation and complaint.

1. *a.* The commissioner of public safety, the director of transportation, and the director of natural resources, acting jointly, shall adopt a uniform, combined citation and complaint which shall be used for charging all traffic violations in Iowa under state law or local regulation or ordinance, and

which shall be used for charging all other violations which are designated by sections 805.8A, 805.8B, and 805.8C to be scheduled violations. The filing fees and court costs in cases of parking meter and overtime parking violations which are denied are as stated in section 602.8106, subsection 1. The court costs in scheduled violation cases where a court appearance is not required are as stated in section 602.8106, subsection 1. The court costs in scheduled violation cases where a court appearance is required are as stated in section 602.8106, subsection 1. This subsection does not prevent the charging of any of those violations by information, by private complaint filed under chapter 804, or by a simple notice of fine where permitted by section 321.236, subsection 1. Each uniform citation and complaint shall be serially numbered and shall be in quintuplicate, and the officer shall deliver the original and a copy to the court where the defendant is to appear, two copies to the defendant, and a copy to the law enforcement agency of the officer. The court shall forward an abstract of the uniform citation and complaint in accordance with section 321.491 when applicable.

The uniform citation and complaint shall contain spaces for the parties' names; the address of the alleged offender; the registration number of the offender's vehicle; the information required by section 805.2, a warning which states, "I hereby swear and affirm that the information provided by me on this citation is true under penalty of providing false information"; and a statement that providing false information is a violation of section 719.3; a list of the scheduled fines prescribed by sections 805.8A, 805.8B, and 805.8C, either separately or by group, and a statement of the court costs payable in scheduled violation cases, whether or not a court appearance is required or is demanded; a brief explanation of sections 805.9 and 805.10; and a space where the defendant may sign an admission of the violation when permitted by section 805.9; and the uniform citation and complaint shall require that the defendant appear before a court at a specified time and place. The uniform citation and complaint also may contain a space for the imprint of a credit card, and may contain any other information which the commissioner of public safety and the director of natural resources may determine.

Notwithstanding other contrary requirements of this section, a uniform citation and complaint may be originated from a computerized device. The officer issuing the citation through a computerized device shall obtain electronically the signature of the person cited as provided in section 805.3 and shall give two copies of the citation to the person cited and shall provide a record of the citation to the court where the person cited is to appear and to the law enforcement agency of the officer by an electronic process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or copy of the citation.

b. The uniform citation and complaint shall contain the following:

(1) A promise to appear as provided in section 805.3.

(2) The following statement:

I hereby give my unsecured appearance bond in the amount of . . . . . dollars and enter my written appearance. I agree that if I fail to appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of my appearance bond in satisfaction of the penalty plus court costs.

(3) A space immediately below the items in subparagraphs (1) and (2) for the signature of the person being charged which shall serve for each of the items in subparagraphs (1) and (2).

c. Unless the officer issuing the citation arrests the alleged offender, or permits admission or requires submission of bail as provided in section 805.9, subsection 3, the officer shall enter in the blank contained in the statement required by paragraph *"b"* one of the following amounts and shall require the person to sign the written appearance:

(1) If the offense is one to which an assessment of a minimum fine is applicable and the entry is otherwise not prohibited by this section, an amount equal to one and one-half times the minimum fine plus court costs.

(2) If the offense is one to which a scheduled fine is applicable, an amount equal to one and one-half times the scheduled fine plus court costs.

(3) If the violation charged involved or resulted in an accident or injury to property and the total damages are less than one thousand dollars, the amount of fifty dollars plus court costs.

(4) If the violation is for any offense for which a court appearance is mandatory, and an assessment of a minimum fine is not applicable, the amount of one hundred dollars plus court costs.

d. The written appearance defined in paragraph *"b"* shall not be used for any offense other than a simple misdemeanor and shall not be used for any offense under section 321.218 or 321A.32.

2. In addition to those violations which are required by subsection 1 to be charged upon a uniform citation and complaint, a violation of chapter 321 which is punishable as a simple, serious, or aggravated misdemeanor may be charged upon a uniform citation and complaint, whether or not the alleged offender is arrested by the officer making the charge.

3. The uniform citation and complaint shall contain a place for citing a person in violation of section 453A.2, subsection 2.

4. Supplies of the uniform citation and complaint for municipal corporations and county agencies shall be paid for out of the budget of the municipal corporation or county receiving the fine resulting from use of the citation and complaint. Supplies of the uniform citation and complaint form used by other agencies shall be paid for out of the budget of the agency concerned and not out of the budget of the judicial branch.

5. The uniform citation and complaint shall contain a place for the verification of the officer issuing the complaint. The complaint may be verified before the chief officer of the law enforcement agency, or the chief officer's designee. The chief officer of each law enforcement agency of the state may designate specific individuals to administer oaths and certify verifications.

6. The commissioner of public safety and the director of the department of natural resources, acting jointly, shall design and publish a compendium of scheduled violations and scheduled fines, containing other information which they deem appropriate, and shall distribute copies to all courts and law enforcement officers and agencies of the state upon request. The cost of the publication shall be paid out of the budget of the department of public safety and out of the budget of the department of natural resources, each budget being liable for half of those costs. Copies shall be made available to individuals upon request, and a charge may be collected which does not exceed the cost of printing.

7. Supplies of uniform citation and complaint forms existing or on order on July 1, 1995, may be used until exhausted.

[C73, 75, 77, §753.13; C79, 81, §805.6]

83 Acts, ch 123, §201, 209; 83 Acts, ch 204, §8, 9; 85 Acts, ch 197, §40, 41; 86 Acts, ch 1237, §44; 86 Acts, ch 1238, §31; 89 Acts, ch 167, §1; 89 Acts, ch 296, §90; 90 Acts, ch 1170, §5; 90 Acts, ch 1230, §93; 91 Acts, ch 116, §21; 94 Acts, ch 1074, §15, 16; 95 Acts, ch 81, §2 – 5; 95 Acts, ch 118, §36; 98 Acts, ch 1047, §66; 98 Acts, ch 1178, §13; 2000 Acts, ch 1105, §9; 2000 Acts, ch 1131, §1 – 3; 2001 Acts, ch 6, §1; 2001 Acts, ch 137, §5

Scheduled fine for purposes of calculating unsecured appearance bond, see §805.8A, subsection 1, paragraph a

805.7 Traffic and scheduled violations offices — fine collection boxes.

1. *Offices.* Each district court clerk's office shall constitute a traffic and scheduled violations office of the district court. Additional offices may be established at other locations, as needed, if authorized by the chief judge of the district.

2. *Collection boxes.* The chief judge of the district may permit the maintenance of locked collection boxes to be used at weigh stations and other locations where vehicles are inspected and weighed with portable scales. The boxes shall be used solely for the deposit of fines, costs, and guaranteed arrest bond certificates received for scheduled violations applicable to commercial carriers. The collection boxes shall remain locked at all times and shall be opened only by the clerk of the district court or the clerk's designee. The chief judge of the district may prescribe procedures for the system and may discontinue its use if necessary.

[C73, 75, 77, §753.14; C79, 81, §805.7]

89 Acts, ch 296, §91

805.8 Scheduled violations.

1. *Application.* Except as otherwise indicated, violations of sections of the Code specified in sections 805.8A, 805.8B, and 805.8C are scheduled violations, and the scheduled fine for each of those violations is as provided in those sections, whether the violation is of state law or of a county or city ordinance. The criminal penalty surcharge required by section 911.2 shall be added to the scheduled fine.

2. *Description of violations.* The descriptions of offenses used in sections 805.8A, 805.8B, and 805.8C are for convenience only and shall not be construed to define any offense or to include or exclude any offense other than those specifically included or excluded by reference to the Code. A reference to a section or subsection of the Code without further limitation includes every offense defined by that section or subsection.

[C73, 75, 77, §753.15; C79, 81, §805.8; 81 Acts, ch 49, §14, ch 103, §9, ch 109, §2, ch 110, §4; 82 Acts, ch 1028, §37 – 39, ch 1104, §26]

82 Acts, ch 1062, §33, 38; 83 Acts, ch 58, §2; 83 Acts, ch 125, §6 – 8; 84 Acts, ch 1016, §5; 84 Acts, ch 1174, §5; 84 Acts, ch 1219, §37; 85 Acts, ch 40, §5; 85 Acts, ch 195, §62; 86 Acts, ch 1007, §41; 86 Acts, ch 1116, §6; 86 Acts, ch 1221, §3; 87 Acts, ch 120, §9; 87 Acts, ch 170, §19; 87 Acts, ch 219, §6; 88 Acts, ch 1222, §11; 89 Acts, ch 84, §3; 89 Acts, ch 184, §2, 3; 89 Acts, ch 247, §19; 90 Acts, ch 1102, §2; 90 Acts, ch 1151, §9; 90 Acts, ch 1170, §6; 90 Acts, ch 1189, §4; 90 Acts, ch 1216, §1 – 4; 90 Acts, ch 1230, §94; 92 Acts, ch 1122, §3; 92 Acts, ch 1149, §3; 92 Acts, ch 1175, §40, 41; 92 Acts, ch 1216, §12; 92 Acts, ch 1231, §64; 93 Acts, ch 38, §3; 93 Acts, ch 47, §10 – 13; 93 Acts, ch 114, §3; 94 Acts, ch 1023, §121; 94 Acts, ch 1147, §2; 94 Acts, ch 1172, §60, 61; 95 Acts, ch 48, §22; 96 Acts, ch 1042, §2; 96 Acts, ch 1079, §20, 21; 96 Acts, ch 1090, §14 – 18; 97 Acts, ch 74, §4; 97 Acts, ch 104, §58, 59; 97 Acts, ch 108, §47, 48; 97 Acts, ch 126, §48; 97 Acts, ch 139, §15, 17 – 19; 97 Acts, ch 141, §2; 97 Acts, ch 147, §8, 9; 98 Acts, ch 1073, §9, 12; 98 Acts, ch 1075, §31; 98 Acts, ch 1100, §82 – 86; 98 Acts, ch 1112, §13, 16; 98 Acts, ch 1121, §7 – 9; 98 Acts, ch 1178, §14; 98 Acts, ch 1204, §4 – 6; 97 Acts, ch 139, §16, 19; 99 Acts, ch 13, §26; 99 Acts, ch 77, §3; 2000 Acts, ch 1016, §28; 2000 Acts, ch 1105, §10, 11; 2000 Acts, ch 1134, §6; 2000 Acts, ch 1203, §25 – 35; 2000 Acts, ch 1206, §6; 2001 Acts, ch 24, §61; 2001 Acts, ch 137, §1

805.8A Motor vehicle and transportation scheduled violations.

1. *Parking violations.*

a. For parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, the scheduled fine is five dollars. The scheduled fine for a parking violation of section 321.236 increases in an amount up to ten dollars, as authorized by ordinance pursuant to section 321.236, subsection 1, paragraph *"a"*, if the parking violation is not paid within thirty days of the date upon which the violation occurred. For purposes of calculating the unsecured appearance bond required under section 805.6, the scheduled fine shall be five dollars. However, violations charged by a city or county upon simple notice of a fine instead of a uniform citation and complaint as permitted by section 321.236, subsection 1, paragraph *"a"*, are not scheduled violations, and this section shall not apply to any offense charged in that manner. For a parking violation under section 321.362 or 461A.38, the scheduled fine is ten dollars.

b. For a parking violation under section 321L.2A, subsection 2, the scheduled fine is twenty dollars.

c. For violations under section 321L.2A, subsection 3, sections 321L.3, 321L.4, subsection 2, and section 321L.7, the scheduled fine is one hundred dollars.

2. *Title or registration violations.*

a. For violations under sections 321.32, 321.34, 321.37, 321.38, and 321.41, the scheduled fine is ten dollars.

b. For violations under sections 321.17, 321.47, 321.55, 321.98, and 321.115, the scheduled fine is thirty dollars.

c. For violations under sections 321.25, 321.45, 321.46, 321.48, 321.52, 321.57, 321.62, 321.67, and 321.104, the scheduled fine is fifty dollars.

d. For a violation under section 321.99, the scheduled fine is one hundred dollars.

3. *Equipment violations.*

a. For violations under sections 321.317, 321.386, 321.387, 321.388, 321.389, 321.390, 321.392, 321.393, 321.422, 321.432, 321.436, 321.439, 321.440, 321.441, 321.442, and 321.444, the scheduled fine is ten dollars.

b. For improperly used or nonused, or defective or improper equipment, other than brakes, driving lights and brake lights, under section 321.437, the scheduled fine is ten dollars.

c. For violations under sections 321.382, 321.404A, and 321.438, the scheduled fine is fifteen dollars.

d. For violations of sections 321.383, 321.384, 321.385, 321.398, 321.402, 321.403, 321.404, 321.409, 321.415, 321.419, 321.420, 321.421, 321.423, and 321.433, the scheduled fine is twenty dollars.

e. For a violation of section 321.430, the scheduled violation* is thirty-five dollars.

f. For violations under sections 321.234A, 321.247, 321.381, and 321.381A, the scheduled fine is fifty dollars.

4. *Driver's license violations.*

a. For violations under sections 321.174A, 321.180, 321.180B, 321.193, and 321.194, the scheduled fine is thirty dollars.

b. For a violation of section 321.216, the scheduled violation* is seventy-five dollars.

c. For violations under sections 321.174, 321.216B, 321.216C, 321.219, and 321.220, the scheduled fine is one hundred dollars.

5. *Speed violations.*

a. For excessive speed violations in excess of the limit under section 321.236, subsections 5 and 11, sections 321.285, and 461A.36, the scheduled fine shall be the following:

(1) Ten dollars for speed not more than five miles per hour in excess of the limit.

(2) Twenty dollars for speed greater than five but not more than ten miles per hour in excess of the limit.

(3) Thirty dollars for speed greater than ten but not more than fifteen miles per hour in excess of the limit.

(4) Forty dollars for speed greater than fifteen but not more than twenty miles per hour in excess of the limit.

(5) Forty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

b. Notwithstanding paragraph *"a"*, for excessive speed violations in speed zones greater than fifty-five miles per hour, the scheduled fine shall be:

(1) Ten dollars for speed not more than five miles per hour in excess of the limit.

(2) Twenty dollars for speed greater than five but not more than ten miles per hour in excess of the limit.

(3) Forty dollars for speed greater than ten but not more than fifteen miles per hour in excess of the limit.

(4) Sixty dollars for speed greater than fifteen but not more than twenty miles per hour in excess of the limit.

(5) Sixty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

c. Excessive speed in whatever amount by a school bus is not a scheduled violation under any section listed in this subsection.

d. Excessive speed in conjunction with a violation of section 321.278 is not a scheduled violation, whatever the amount of excess speed.

e. For a violation under section 321.295, the scheduled fine is thirty dollars.

6. *Operating violations.*

a. For a violation under section 321.236, subsections 3, 4, 9, and 12, the scheduled fine is

twenty dollars.

b. For violations under section 321.275, subsections 1 through 7, sections 321.277A, 321.315, 321.316, 321.318, 321.363, and 321.365, the scheduled fine is twenty-five dollars.

c. For violations under sections 321.288, 321.297, 321.299, 321.303, 321.304, subsections 1 and 2, sections 321.305, 321.306, 321.311, 321.312, 321.314, 321.323, 321.340, 321.353, 321.354, and 321.395, the scheduled fine is thirty-five dollars.

d. For violations under sections 321.302 and 321.366, the scheduled fine is fifty dollars.

7. *Failure to yield or obey violations.*

a. For a violation by an operator of a motor vehicle under section 321.257, subsection 2, the scheduled fine is thirty-five dollars.

b. For violations under sections 321.298, 321.307, 321.308, 321.313, 321.319, 321.320, 321.321, 321.327, 321.329, and 321.333, the scheduled fine is thirty-five dollars.

8. *Traffic sign or signal violations.* For violations under section 321.236, subsections 2 and 6, sections 321.256, 321.294, 321.304, subsection 3, and section 321.322, the scheduled fine is thirty-five dollars.

9. *Bicycle or pedestrian violations.* For violations by a pedestrian or a bicyclist under section 321.234, subsections 3 and 4, section 321.236, subsection 10, section 321.257, subsection 2, section 321.275, subsection 8, section 321.325, 321.326, 321.328, 321.331, 321.332, 321.397, or 321.434, the scheduled fine is fifteen dollars.

9A. *Electric personal assistive mobility device violations.* For violations under section 321.235A, the scheduled fine is fifteen dollars.

10. *School bus violations.*

a. For violations by an operator of a school bus under sections 321.285 and 321.372, subsections 1 and 2, the scheduled fine is thirty-five dollars. However, an excessive speed violation by a school bus of more than ten miles per hour in excess of the limit is not a scheduled violation.

b. For a violation under section 321.372, subsection 3, the scheduled violation* is one hundred dollars.

11. *Emergency vehicle violations.*

a. For violations under sections 321.231, 321.367, and 321.368, the scheduled fine is thirty-five dollars.

b. For a violation under section 321.323A or 321.324, the scheduled fine is fifty dollars.

12. *Restrictions on vehicles.*

a. For violations under sections 321.309, 321.310, 321.394, 321.461, and 321.462, the scheduled fine is twenty-five dollars.

b. For height, weight, length, width, load violations, and towed vehicle violations under section 321.437, the scheduled fine is twenty-five dollars.

c. For violations under sections 321.454, 321.455, 321.456, 321.457, and 321.458, the scheduled fine is one hundred dollars.

d. For violations under section 321.466, the scheduled fine is twenty dollars for each two thousand pounds or fraction thereof of overweight.

e. Violations of the schedule of axle and tandem axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the provisions, procedures, and exceptions contained in sections 805.6 through 805.11, irrespective of the amount of the fine under that schedule. Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one thousand dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one thousand dollars shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information, but otherwise shall be chargeable only upon indictment or county attorney's information.

In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one thousand dollars, the conviction shall be of an indictable offense although section 805.9 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney's information.

f. For a violation under section 321E.16, other than the provisions relating to weight, the scheduled fine is one hundred dollars.

13. *Motor carrier violations.*

a. For violations under sections 321.54, 326.22, and 326.23, the scheduled fine is twenty dollars.

b. For a violation under section 321.449, the scheduled fine is twenty-five dollars.

c. For violations under sections 321.208A, 321.364, 321.450, 321.460, and 452A.52, the scheduled fine is one hundred dollars.

d. For violations of section 325A.3, subsection 5, or section 325A.8, the scheduled fine is fifty dollars.

e. For violations of chapter 325A, other than a violation of section 325A.3, subsection 5, or section 325A.8, the scheduled fine is two hundred fifty dollars.

f. For failure to have proper carrier identification markings under section 327B.1, the scheduled fine is fifty dollars.

g. For failure to have proper evidence of interstate authority carried or displayed under section 327B.1, and for failure to register, carry, or display evidence that interstate authority is not required under section 327B.1, the scheduled fine is two hundred fifty dollars.

14. *Miscellaneous violations.*

a. Failure to obey a peace officer. For a violation under section 321.229, the scheduled fine is

thirty-five dollars.

b. Abandoning a motor vehicle. For a violation under section 321.91, the scheduled fine is one hundred dollars.

c. Seat belt or restraint violations. For violations under sections 321.445 and 321.446, the scheduled fine is twenty-five dollars.

d. Litter and debris violations. For violations under sections 321.369 and 321.370, the scheduled fine is thirty-five dollars.

e. Open container violations. For violations under sections 321.284 and 321.284A, the scheduled fine is one hundred dollars.

f. Proof of financial responsibility. If, in connection with a motor vehicle accident, a person is charged and found guilty of a violation of section 321.20B, subsection 1, the scheduled fine is five hundred dollars; otherwise, the scheduled fine for a violation of section 321.20B, subsection 1, is two hundred fifty dollars. Notwithstanding section 805.12, fines collected pursuant to this paragraph shall be submitted to the state court administrator and distributed fifty percent to the victim compensation fund established in section 915.94, twenty-five percent to the county in which such fine is imposed, and twenty-five percent to the general fund of the state.

g. Radar-jamming devices. For a violation under section 321.232, the scheduled fine is fifty dollars.

h. Railroad crossing violations.

(1) For violations under sections 321.341, 321.342, 321.343, and 321.344, the scheduled fine is one hundred dollars.

(2) For a violation under section 321.344B, the scheduled fine is two hundred dollars.

i. Road work zone violations. The scheduled fine for any moving traffic violation under chapter 321, as provided in this section, shall be doubled if the violation occurs within any road work zone, as defined in section 321.1.

2001 Acts, ch 137, §2; 2002 Acts, ch 1013, §2; 2002 Acts, ch 1063, §53

*The word "fine" probably intended; corrective legislation is pending

NEW subsection 9A

Subsection 11, paragraph b amended

805.8B Navigation, recreation, hunting, and fishing scheduled violations.

1. *Navigation violations.*

a. For violations of registration, inspections, identification, and record provisions under sections 462A.5, 462A.35, and 462A.37, and for unused or improper or defective lights and warning devices under section 462A.9, subsections 3, 4, 5, 9, and 10, the scheduled fine is ten dollars.

b. For violations of registration, identification, and record provisions under sections 462A.4 and 462A.10, and for unused or improper or defective equipment under section 462A.9, subsections 2, 6, 7, 8, and 13, and section 462A.11, and for operation violations under sections 462A.26, 462A.31, and 462A.33, the scheduled fine is twenty dollars.

c. For operating violations under sections 462A.12, 462A.15, subsection 1, sections 462A.24, and 462A.34, the scheduled fine is twenty-five dollars. However, a violation of section 462A.12, subsection 2, is not a scheduled violation.

d. For violations of use, location, and storage of vessels, devices, and structures under sections 462A.27, 462A.28, and 462A.32, the scheduled fine is fifteen dollars.

e. For violations of all subdivision ordinances under section 462A.17, subsection 2, except those relating to matters subject to regulation by authority of section 462A.31, subsection 5, the scheduled fine is the same as prescribed for similar violations of state law. For violations of subdivision ordinances for which there is no comparable state law, the scheduled fine is ten dollars.

2. *Snowmobile and all-terrain vehicle violations.*

a. For registration violations under section 321G.3, the scheduled fine is twenty dollars. When the scheduled fine is paid, the violator shall submit sufficient proof that a valid registration has been obtained.

b. For operating violations under section 321G.9, subsections 1, 2, 3, 4, 5, and 7, sections 321G.11, and 321G.13, subsection 1, paragraph *"d"*, the scheduled fine is twenty dollars.

c. For improper or defective equipment under section 321G.12, the scheduled fine is ten dollars.

d. For violations of section 321G.19, the scheduled fine is fifteen dollars.

e. For identification violations under section 321G.5, the scheduled fine is ten dollars.

3. *Hunting and fishing violations.*

a. For violations of section 484A.2, the scheduled fine is ten dollars.

b. For violations of sections 481A.54, 481A.69, 481A.71, 481A.72, 482.6, 483A.3, 483A.6, 483A.19, and 483A.27, the scheduled fine is twenty dollars.

c. For violations of sections 481A.6, 481A.21, 481A.22, 481A.26, 481A.50, 481A.56, 481A.60 through 481A.62, 481A.83, 481A.84, 481A.92, 481A.123, 481A.145, subsection 3, sections 482.7, 483A.7, 483A.8, 483A.23, and 483A.24, the scheduled fine is twenty-five dollars.

d. For violations of sections 481A.7, 481A.24, 481A.47, 481A.52, 481A.53, 481A.55, 481A.58, 481A.76, 481A.90, 481A.91, 481A.97, 481A.122, 481A.126, 481A.142, 481A.145, subsection 2, sections 482.8, and 483A.37, the scheduled fine is fifty dollars.

e. For violations of sections 481A.57, 481A.85, 481A.93, 481A.95, 481A.120, 481A.137, 481B.5, 482.3, 482.9, 482.15, and 483A.42, the scheduled fine is one hundred dollars.

f. For violations of section 481A.38 relating to the taking, pursuing, killing, trapping or ensnaring, buying, selling, possessing, or transporting

any game, protected nongame animals, fur-bearing animals, or fur or skin of the animals, mussels, frogs, or fish or part of them, the scheduled fines are as follows:

(1) For deer or turkey, the scheduled fine is one hundred dollars.

(2) For protected nongame, the scheduled fine is one hundred dollars.

(3) For mussels, frogs, spawn, or fish, the scheduled fine is twenty-five dollars.

(4) For other game, the scheduled fine is fifty dollars.

(5) For fur-bearing animals, the scheduled fine is seventy-five dollars.

g. For violations of section 481A.38 relating to an attempt to take, pursue, kill, trap, buy, sell, possess, or transport any game, protected nongame animals, fur-bearing animals, or fur or skin of the animals, mussels, frogs, or fish or part of them, the scheduled fines are as follows:

(1) For game or fur-bearing animals, the scheduled fine is fifty dollars.

(2) For protected nongame, the scheduled fine is fifty dollars.

(3) For mussels, frogs, spawn, or fish, the scheduled fine is ten dollars.

h. For violations of section 481A.48 relating to restrictions on game birds and animals, the scheduled fines are as follows:

(1) Out-of-season, the scheduled fine is one hundred dollars.

(2) Over limit, the scheduled fine is one hundred dollars.

(3) Attempt to take, the scheduled fine is fifty dollars.

(4) General waterfowl restrictions, the scheduled fine is fifty dollars.

(a) No federal stamp, the scheduled fine is fifty dollars.

(b) Unplugged shotgun, the scheduled fine is ten dollars.

(c) Possession of other than steel shot, the scheduled fine is twenty-five dollars.

(d) Early or late shooting, the scheduled fine is twenty-five dollars.

(5) Possession of a prohibited pistol or revolver while hunting deer, the scheduled fine is one hundred dollars.

i. For violations of section 481A.67 relating to general violations of fishing laws, the scheduled fine is twenty-five dollars.

(1) For over limit catch, the scheduled fine is thirty dollars.

(2) For under minimum length or weight, the scheduled fine is twenty dollars.

(3) For out-of-season fishing, the scheduled fine is fifty dollars.

j. For violations of section 481A.73 relating to trotlines and throwlines:

(1) For trotline or throwline violations in legal waters, the scheduled fine is twenty-five dollars.

(2) For trotline or throwline violations in illegal waters, the scheduled fine is fifty dollars.

k. For violations of section 481A.144, subsection 4, or section 481A.145, subsections 4, 5, and 6, relating to minnows:

(1) For general minnow violations, the scheduled fine is twenty-five dollars.

(2) For commercial purposes, the scheduled fine is fifty dollars.

l. For violations of section 481A.87 relating to the taking or possessing of fur-bearing animals out of season:

(1) For red fox, gray fox, or mink, the scheduled fine is one hundred dollars.

(2) For all other furbearers, the scheduled fine is fifty dollars.

m. For violations of section 482.4 relating to gear tags:

(1) For commercial license violations, the scheduled fine is one hundred dollars.

(2) For no gear tags, the scheduled fine is twenty-five dollars.

n. For violations of section 482.11 relating to turtles:

(1) For commercial turtle violations, the scheduled fine is one hundred dollars.

(2) For sport turtle violations, the scheduled fine is fifty dollars.

o. For violations of section 482.12 relating to mussels:

(1) For commercial mussel violations, the scheduled fine is one hundred dollars.

(2) For sport mussel violations, the scheduled fine is fifty dollars.

p. For violations of section 483A.1 relating to licenses and permits, the scheduled fines are as follows:

(1) For a license or permit costing ten dollars or less, the scheduled fine is twenty dollars.

(2) For a license or permit costing more than ten dollars but not more than twenty dollars, the scheduled fine is thirty dollars.

(3) For a license or permit costing more than twenty dollars but not more than forty dollars, the scheduled fine is fifty dollars.

(4) For a license or permit costing more than forty dollars but not more than fifty dollars, the scheduled fine is seventy dollars.

(5) For a license or permit costing more than fifty dollars, the scheduled fine is one hundred dollars.

q. For violations of section 483A.26 relating to false claims for licenses:

(1) For making a false claim for a license by a resident, the scheduled fine is fifty dollars.

(2) For making a false claim for a license by a nonresident, the scheduled fine is one hundred dollars.

r. For violations of section 483A.36 relating to the conveyance of guns:

(1) For conveying an assembled, unloaded gun, the scheduled fine is twenty-five dollars.

(2) For conveying a loaded gun, the scheduled

fine is fifty dollars.

4. *Ginseng violations.* For a violation of section 456A.24, subsection 11, the scheduled fine is one hundred dollars.

5. *Eurasian water milfoil violations.* For violations of section 456A.37, subsection 5, the scheduled fine is one hundred dollars.

6. *Misuse of parks and preserves.*

a. For violations under sections 461A.39, 461A.45, and 461A.50, the scheduled fine is ten dollars.

b. For violations under sections 461A.40, 461A.43, 461A.46, and 461A.49, the scheduled fine is fifteen dollars.

c. For violations of section 461A.44, the scheduled fine is fifty dollars.

d. For violations of section 461A.48, the scheduled fine is twenty-five dollars.

2001 Acts, ch 137, §3; 2002 Acts, ch 1001, §3; 2002 Acts, ch 1147, §3

Subsection 2, paragraph b amended
Subsection 3, paragraph e amended

805.8C Miscellaneous scheduled violations.

1. *Energy emergency violations.* For violations of an executive order issued by the governor under the provisions of section 473.8, the scheduled fine is fifty dollars.

2. *Alcoholic beverage violations.* For violations of section 123.49, subsection 2, paragraph *"h"*, the scheduled fine for a licensee or permittee is one thousand five hundred dollars, and the scheduled fine for a person who is employed by a licensee or permittee is five hundred dollars.

3. *Smoking violations.*

a. For violations of section 142B.6, the scheduled fine is twenty-five dollars, and is a civil penalty, and the criminal penalty surcharge under section 911.2 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed. If the civil penalty assessed for a violation of section 142B.6 is not paid in a timely manner, a citation shall be issued for the violation in the manner provided in section 804.1. However, a person under age eighteen shall not be detained in a secure facility for failure to pay the civil penalty. The complainant shall not be charged a filing fee.

b. For violations of section 453A.2, subsection 1, by an employee of a retailer, the scheduled fine is as follows:

(1) If the violation is a first offense, the scheduled fine is one hundred dollars.

(2) If the violation is a second offense, the scheduled fine is two hundred fifty dollars.

(3) If the violation is a third or subsequent offense, the scheduled fine is five hundred dollars.

c. For violations of section 453A.2, subsection 2, the scheduled fine is as follows and is a civil penalty, and the criminal penalty surcharge under section 911.2 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed:

(1) If the violation is a first offense, the scheduled fine is fifty dollars.

(2) If the violation is a second offense, the scheduled fine is one hundred dollars.

(3) If the violation is a third or subsequent offense, the scheduled fine is two hundred fifty dollars.

2001 Acts, ch 137, §4

805.9 Admission of scheduled violations.

1. In cases of scheduled violations, the defendant, before the time specified in the citation and complaint for appearance before the court, may sign the admission of violation on the citation and complaint and deliver or mail a copy of the citation and complaint, together with the minimum fine for the violation, plus court costs, to a scheduled violations office in the county. The office shall, if the offense is a moving violation under chapter 321, forward an abstract of the citation and complaint and admission to the state department of transportation as required by section 321.491. In this case the defendant is not required to appear before the court. The admission constitutes a conviction.

2. A defendant charged with a scheduled violation by information may obtain two copies of the information from the court and, before the time the defendant is required to appear before the court, deliver or mail the copies, together with the defendant's admission, fine, and court costs, to the scheduled violations office in the county. The procedure, fine, and costs are the same as when the charge is by citation and complaint, with the admission and the number of the defendant's driver's license as defined in section 321.1 placed upon the information when the violation involves the use of a motor vehicle.

3. When section 805.8 and this section are applicable but the officer does not deem it advisable to release the defendant and no court in the county is in session:

a. If the defendant wishes to admit the violation, the officer may release the defendant upon observing the person mail the citation and complaint, admission, and minimum fine, together with court costs, to a traffic violations office in the county, in an envelope furnished by the officer. The admission constitutes a conviction and judgment in the amount of the scheduled fine plus court costs. The officer may allow the defendant to use a credit card pursuant to rules adopted under section 805.14 by the department of public safety or to mail a check in the proper amount in lieu of cash. If the check is not paid by the drawee for any reason, the defendant may be held in contempt of court. The officer shall advise the defendant of the penalty for nonpayment of the check.

b. If the defendant does not comply with paragraph *"a"*, the officer may release the defendant

upon observing the defendant mail to a court in the county the citation and complaint and one and one-half times the minimum fine together with court costs, or in lieu of one and one-half times the fine and the court costs, a guaranteed arrest bond certificate as provided in section 321.1, subsection 30, as bail together with the following statement signed by the defendant:

"I agree that either (1) I will appear pursuant to this citation or (2) if I do not appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of one and one-half times the scheduled fine plus court costs."

c. If the defendant does not comply with paragraph *"a"* or *"b"*, or when section 804.7 is applicable, the officer may arrest and confine the defendant if authorized by the latter section, and proceed according to chapter 804.

4. A defendant who admits a scheduled violation may appear before court. The procedure, costs, and fine, without suspension of the fine, after the hearing are the same as in the traffic violations office.

5. A defendant charged with a scheduled violation who does not fully comply with subsection 1, 2, 3, or 4 of this section before the time required to appear before the court must, at that time, appear before the court. If the defendant admits the violation, the procedure, costs, and fine, without suspension of the fine, after the hearing are the same before the court as before the traffic violations office, and are without prejudice, when applicable, to proceedings under section 321.487.

6. The court costs imposed by this section are the total costs collectible from a defendant upon either an admission of a violation without hearing, or upon a hearing pursuant to subsection 4.

[C73, 75, 77, §753.16; C79, 81, §805.9; 82 Acts, ch 1104, §27]

83 Acts, ch 186, §10131, 10201; 83 Acts, ch 204, §10; 85 Acts, ch 195, §63; 85 Acts, ch 197, §42; 90 Acts, ch 1230, §95; 98 Acts, ch 1073, §9

805.10 Required court appearance.

1. Section 805.9 shall not apply to a scheduled violation in any of the following circumstances:

a. When the violation charged involved or resulted in a death or caused serious injury to person as defined under section 702.18.

b. When the violation charged involved or resulted in an accident or injury to property and based upon the violator's driving record, or failure to pay any fine, surcharge, or court costs, or any other circumstances involving the accident, the officer determines a court appearance is necessary.

c. When the violation created an immediate threat to the safety of other persons or property because of highway conditions, visibility, traffic, repetition, or other circumstances.

d. When the violation charged involves the taking of an animal for which there is a civil damage assessment in addition to a criminal penalty.

2. In such cases, the defendant shall appear before the court and regular procedure shall apply. If an information is used, the officer shall endorse thereon, "Court appearance required." If a citation and complaint is used, the officer shall strike out the space in which the defendant may admit the violation before a scheduled violations office and shall endorse thereon "Court appearance required" and the defendant shall appear before the court either in person or by attorney.

[C73, 75, 77, §753.17; C79, 81, §805.10]

83 Acts, ch 125, §9; 84 Acts, ch 1067, §50; 89 Acts, ch 296, §92; 90 Acts, ch 1216, §5; 98 Acts, ch 1178, §15; 2000 Acts, ch 1131, §4, 5; 2000 Acts, ch 1154, §42

805.11 Other penalties.

If the defendant is convicted of a scheduled violation, the penalty is the scheduled fine, without suspension of the fine prescribed in section 805.8A, 805.8B, or 805.8C together with costs assessed and distributed as prescribed by section 602.8106, unless it appears from the evidence that the violation was of the type set forth in section 805.10, subsection 1, paragraph *"a"* or *"c"*, in which event the scheduled fine does not apply and the penalty shall be increased within the limits provided by law for the offense.

[C73, 75, 77, §753.18; C79, 81, §805.11; 82 Acts, ch 1104, §28]

83 Acts, ch 186, §10132, 10201; 85 Acts, ch 195, §64; 2000 Acts, ch 1154, §43; 2001 Acts, ch 137, §5

805.12 Disposition of traffic fines and costs.

Fines, forfeiture of bail, fees, and costs collected for all traffic violations, whether or not scheduled, and for all other scheduled violations shall be distributed in accordance with section 602.8106.

[C73, 75, 77, §753.19; C79, 81, §805.12]

83 Acts, ch 186, §10133, 10201

805.13 Venue.

1. Traffic violations, whether or not scheduled, and all other scheduled violations may be tried before the nearest magistrate in the judicial district in which the offense is committed.

2. Upon written consent of the defendant and the officer issuing the citation, traffic violations, whether or not scheduled, and any other scheduled violations, other than those for which a court appearance is required under section 805.10 may be prosecuted in any county in the state irrespective of where committed, and in such event the documents in the case shall be sent to the court or traffic and scheduled violations office designated by the defendant and the officer.

[C73, 75, 77, §753.20; C79, 81, §805.13]

805.14 Credit cards.

Fines for scheduled traffic violations enumerated in section 805.8A may be paid by credit cards, as defined in section 537.1301, subsection 16, approved for that purpose by the commissioner of public safety. The commissioner shall enter agreements with financial institutions extending credit through the use of credit cards to insure reimbursement of the amount of the fine plus appropriate costs to the proper traffic violations office in the state. The commissioner shall adopt rules pursuant to chapter 17A to implement the provisions of this section.

[C77, §753.21; C79, 81, §805.14]

2001 Acts, ch 137, §5

805.15 Other citation forms.

The provisions of sections 321.485 to 321.487 shall govern with respect to offenses charged in the manner provided in section 321.485. The provisions of sections 805.6 to 805.14 shall govern with respect to offenses chargeable upon a uniform citation and complaint.

[C79, 81, §805.15]

805.16 Citations to persons under eighteen years of age — arrest — nonsecure custody.

1. Except as provided in subsection 2 of this section, a peace officer shall issue a police citation or uniform citation and complaint, in lieu of making a warrantless arrest, to a person under eighteen years of age accused of committing a simple misdemeanor under chapter 321, 321G, 461A, 461B, 462A, 481A, 481B, 483A, 484A, 484B, or a local ordinance not subject to the jurisdiction of the juvenile court, and shall not detain or confine the person in a facility regulated under chapter 356 or 356A.

2. A person under the age of eighteen who refuses to sign the citation without qualification, who persists in engaging in the conduct for which the citation was issued, who refuses to provide proper identification or to identify the person's self, or who constitutes an immediate threat to the person's own safety or the safety of the public may be arrested in the manner provided in subsection 3. In addition, or alternatively, the peace officer may require that person to surrender the person's driver's license as defined in section 321.1 until the time of the person's initial court appearance. The peace officer shall immediately send the person's driver's license along with a copy of the unsigned citation indicating the juvenile's refusal to sign to the clerk of the district court for the district in which the peace officer issued the citation.

3. A person arrested pursuant to subsection 2 shall only be arrested for the limited purpose of holding the person in nonsecure custody in an area not intended for secure detention while awaiting transfer to an appropriate juvenile facility or to court, for booking, for implied consent testing, for contacting and release to the person's parents, or for other administrative purposes.

For purposes of this subsection, *"nonsecure custody"* means custody in an unlocked multipurpose area, such as a lobby, office, or interrogation room which is not designed, set aside, or used as a secure detention area, and the person arrested is not physically secured during the period of custody in the area, the person is physically accompanied by a peace officer or a person employed by the facility where the person arrested is being held, and the use of the area is limited to providing nonsecure custody only long enough for the purposes stated in the preceding paragraph and not for a period of time in excess of six hours without the oral or written order of a judge or magistrate authorizing the detention. A judge shall not extend the period of time in excess of six hours beyond the initial six-hour period.

4. This section does not prohibit the execution of an arrest warrant by a peace officer.

88 Acts, ch 1167, §7; 90 Acts, ch 1230, §96; 92 Acts, ch 1160, §24; 97 Acts, ch 126, §49; 98 Acts, ch 1073, §9

CHAPTER 806

UNIFORM FRESH PURSUIT LAW

806.1 Authority of officers from another state.
806.2 Procedure following arrest.
806.3 Construction of statute.
806.4 Officers from District of Columbia.
806.5 Definitions of terms.
806.6 Chapter title.

806.1 Authority of officers from another state.

Any member of a duly organized state, county, or municipal law enforcing unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such

fresh pursuit, of a person in order to arrest the person on the ground that the person is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county, or municipal law enforcing unit of this state, to arrest and hold in custody a person on the ground that the person is believed to have committed a felony in this state.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §756.1; C79, 81, §806.1]

806.2 Procedure following arrest.

If an arrest is made in this state by an officer of another state in accordance with the provisions of section 806.1, the officer shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful the magistrate shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state or admit the person to bail for such purpose. If the magistrate determines that the arrest was unlawful the magistrate shall discharge the person arrested.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §756.2; C79, 81, §806.2]

806.3 Construction of statute.

Section 806.1 shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §756.3; C79, 81, §806.3]

806.4 Officers from District of Columbia.

For the purpose of this chapter the word *"state"* shall include the District of Columbia.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §756.4; C79, 81, §806.4]

806.5 Definitions of terms.

The term *"fresh pursuit"* as used in this chapter shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §756.5; C79, 81, §806.5]

806.6 Chapter title.

This chapter may be cited as the *"Uniform Act on Fresh Pursuit"*.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §756.6; C79, 81, §806.6]

CHAPTER 807

PROCEEDINGS AGAINST CORPORATIONS

807.1 Summons upon a complaint against a corporation, by whom issued, and when returnable.
807.2 Form of the summons.
807.3 When and how served.
807.4 Examination of the charge.
807.5 Bringing an indicted corporation into court.
807.6 Collection of fines.
807.7 Attachment.

807.1 Summons upon a complaint against a corporation, by whom issued, and when returnable.

Upon the filing of a complaint against a corporation, the magistrate shall issue a summons, signed by the magistrate, requiring the corporation to appear before the magistrate, at a specified time and place, to answer the charge, the time to be not less than twenty days after the issuing of the summons.

[C79, 81, §807.1]

807.2 Form of the summons.

The summons may be in substantially the following form:

County of . . . . . (as the case may be).
In the name of the people of the State of Iowa:
To the (naming the corporation).

You are hereby summoned to appear before me, at (naming the place) on (specifying the day and hour), to answer a charge made against you, upon the complaint of A.B., for (designating the offense, generally).

Dated at the city of . . . . . , the . . . . . day of . . . . . , ...
G.H. Magistrate
(or as the case may be).

[C79, 81, §807.2]

807.3 When and how served.

The summons for the appearance of a corporation shall be served in the manner provided for service of original notice upon a corporation in a civil action.

[C79, 81, §807.3]

807.4 Examination of the charge.

At the time appointed in the summons, the magistrate shall proceed to investigate the charge, in the same manner as in the case of a natural person brought before the magistrate, so far as those proceedings are applicable. If the corporation does not appear or plead at the time and place specified in the summons, the court shall make inquiry into the service of process, and being satisfied that same has been carried out as provided herein, the court may proceed with the matter without further process.

[C79, 81, §807.4]

807.5 Bringing an indicted corporation into court.

When an indictment or a trial information is filed against any corporation, such corporation shall be arraigned thereon. Prior to arraignment the court shall proceed as follows:

1. The clerk of the court wherein such indictment is found or the information filed, or the judge, must issue a summons signed by the clerk or judge with the clerk's or judge's name of office, requiring such corporation to appear and plead to the indictment, at a time and place to be specified in such summons, such time to be not less than twenty days after the issue thereof. The summons may be substantially in the following form:

District Court, ... County.
The People of the State of Iowa
vs.
The A.B. Company,

You are hereby summoned to appear in this court at (naming the place) on (stating the day and hour), and plead to an indictment filed against you by the grand jury of this county, on the . . . . . day of . . . . . , charging you with the crime of (designating the offense, generally), and in case of your failure to so appear and answer, judgment will be pronounced against you.

Dated at the city of . . . . . , the . . . . . day of . . . . . , ...
C.D.,
Clerk of the District Court.
(or by order of the court)

2. The summons shall be served at least ten days before the appearance fixed therein, in the same manner as is provided for the service of an original notice upon a corporation in a civil action; and if the corporation does not appear or plead at the time and place specified in the summons, the court may proceed to trial and judgment without further process.

3. Nothing contained in this section shall be construed as preventing the appearance of a corporation by counsel to plead to an indictment, with or without the issuance or service of the summons provided herein. And when an indictment shall have been filed against a corporation it may voluntarily appear and plead to the same by counsel duly authorized to so appear for it.

[C79, 81, §807.5]

807.6 Collection of fines.

When a corporation is convicted of an offense and the court imposes a fine as penalty, it may be collected in the same manner as a judgment in a civil action.

[C79, 81, §807.6]

807.7 Attachment.

Upon the filing of a complaint or indictment, the court wherein same is filed shall have authority to issue a writ of attachment to secure the maximum fine allowable by law for the offense charged, and costs.

[C79, 81, §807.7]

CHAPTER 808

SEARCH AND SEIZURE

See R.Cr.P. 2.12, 2.36
For student search restrictions, see chapter 808A

808.1 Definitions.
808.2 Authorization.
808.3 Application for search warrant.
808.4 Issuance.
808.5 Execution.
808.6 Forcible execution.
808.7 Detention and search of persons on premises.
808.8 Return.
808.9 Safekeeping of seized property.
808.10 Maliciously suing out a warrant — officer exceeding authority.
808.11 Transmission of papers to district court clerk.
808.12 Detention and search in theft of library materials and shoplifting.
808.13 Confidentiality.
808.14 Administrative warrants.

808.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Search warrant"* means an order in writing pursuant to the requirements of section 808.3, in the name of the state, signed by a magistrate, and directed to a peace officer commanding the officer to search a person, premises, or thing.

2. *"Affidavit"* means a written declaration or statement of fact made under oath, or legally sufficient affirmation, before any person authorized to administer oaths within or without the state.

[C51, §3291; R60, §5024; C73, §4629; C97, §5545; C24, 27, 31, §13418; C35, §13441-g1; C39, §**13441.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §751.1; C79, 81, §808.1]

See §622.85; R.Cr.P. 2.36

808.2 Authorization.

A search warrant may be issued:

1. For property which has been obtained in violation of law.

2. For property, the possession of which is unlawful.

3. For property used or possessed with the intent to be used as the means of committing a public offense or concealed to prevent an offense from being discovered.

4. For any other property relevant and material as evidence in a criminal prosecution.

[C51, §3292; R60, §5025; C73, §4630; C97, §5546; C24, 27, 31, §13419; C35, §13441-g3; C39, §**13441.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §751.3; C79, 81, §808.2]

808.3 Application for search warrant.

A person may make application for the issuance of a search warrant by submitting before a magistrate a written application, supported by the person's oath or affirmation, which includes facts, information, and circumstances tending to establish sufficient grounds for granting the application, and probable cause for believing that the grounds exist. The application shall describe the person, place, or thing to be searched and the property to be seized with sufficient specificity to enable an independent reasonable person with reasonable effort to ascertain and identify the person, place, or thing. If the magistrate issues the search warrant, the magistrate shall endorse on the application the name and address of all persons upon whose sworn testimony the magistrate relied to issue the warrant together with the abstract of each witness' testimony, or the witness' affidavit. However, if the grounds for issuance are supplied by an informant, the magistrate shall identify only the peace officer to whom the information was given. The application or sworn testimony supplied in support of the application must establish the credibility of the informant or the credibility of the information given by the informant. The magistrate may in the magistrate's discretion require that a witness upon whom the applicant relies for information appear personally and be examined concerning the information.

[C51, §2722; R60, §1565, 4364; C73, §1544, 1545, 4027; C97, §2413, 2414, 4963; S13, §4965-b, 5007-a; SS15, §2413; C24, 27, 31, §1578, 1968, 1969, 13200, 13211; C35, §13441-g4; C39, §**13441.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §751.4; C79, 81, §808.3]

85 Acts, ch 39, §1; 98 Acts, ch 1117, §1

See R.Cr.P. 2.36

808.4 Issuance.

Upon a finding of probable cause for grounds to issue a search warrant, the magistrate shall issue a warrant, signed by the magistrate with the magistrate's name of office, directed to any peace officer, commanding that peace officer forthwith to

search the named person, place, or thing within the state for the property specified, and to bring any property seized before the magistrate.

[C51, §2722, 3294 – 3296; R60, §1565, 4364, 5027 – 5029; C73, §1544, 4027, 4632 – 4634; C97, §2413, 4963, 5548 – 5550; S13, §5007-a; SS15, §2413; C24, 27, 31, §1578, 1970, 13200, 13421, 13423; C35, §13441-g5; C39, §**13441.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §751.5; C79, 81, §808.4]

See R.Cr.P. 2.36

808.5 Execution.

A search warrant may be executed by any peace officer. No persons other than those authorized by this section shall execute search warrants except in aid of those so authorized and on such authorized person's request, the authorized person being present and acting. The warrant may be executed in the daytime or in the nighttime. The warrant, when executed, shall be forthwith returned to the issuing magistrate. Where the property to be seized has been, or is susceptible of being, removed from the officer's jurisdiction, the officer executing the warrant may pursue it and search for property designated in the warrant.

[C51, §3297; R60, §1565, 5032, 5035; C73, §1544, 4637, 4640; C97, §2413, 5552, 5555; S13, §5007-a; SS15, §2413, 2415; C24, 27, 31, §1578, 1970, 1971, 13425, 13428; C35, §13441-g7, -g8; C39, §**13441.07, 13441.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §751.7, 751.8; C79, 81, §808.5]

808.6 Forcible execution.

The officer may break into any structure or vehicle where reasonably necessary to execute the warrant if, after notice of this authority and purpose the officer's admittance has not been immediately authorized. The officer may use reasonable force to enter a structure or vehicle to execute a search warrant without notice of the officer's authority and purpose in the case of vacated or abandoned structures or vehicles.

The officer executing a search warrant may break restraints when necessary for the officer's own liberation or to effect the release of a person who has entered a place to aid the officer.

[C51, §3298; R60, §5033, 5034; C73, §4638, 4639; C97, §5553, 5554; C24, 27, 31, §13426, 13427; C35, §13441-g9, -g10; C39, §**13441.09, 13441.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §751.9, 751.10; C79, 81, §808.6]

808.7 Detention and search of persons on premises.

In the execution of a search warrant the person executing the same may reasonably detain and search any person or thing in the place at the time for any of the following reasons:

1. To protect the searcher from attack.
2. To prevent the disposal or concealment of any property subject to seizure described in the warrant.
3. To remove any item which is capable of causing bodily harm that the person may use to resist arrest or effect an escape.

[C79, 81, §808.7]

808.8 Return.

A search warrant shall be executed within ten days from its date; failure to execute within that period shall void the warrant. Property seized and its containers, if any, shall be safely kept by the officer, and incident thereto:

1. Upon such seizure the officer shall furnish an itemized receipt for such property to the person from whom taken or in whose possession it was found, if such person can be located, or a copy of the inventory may be left on the premises searched.
2. The officer must file, with the officer's return, a complete inventory of the property taken, and state under oath that it is accurate to the best of the officer's knowledge. The magistrate must, if requested, deliver a copy of the inventory of seized property to the person from whose possession it was taken and to the applicant for the warrant.

[C51, §3299 – 3302; R60, §1565, 5036 – 5039; C73, §1544, 4641 – 4644; C97, §2413, 2415, 5556 – 5559; SS15, §2413, 2415; C24, 27, 31, §1581, 1971, 13429 – 13432; C35, §13441-g12-15; C39, §**13441.12 – 13441.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §751.12 – 751.15; C79, 81, §808.8]

See R.Cr.P. 2.36

808.9 Safekeeping of seized property.

Property of an evidentiary nature seized in the execution of a search warrant shall be safely kept, subject to the orders of any court having jurisdiction to try any offense involved therewith, so long as reasonably necessary to enable its production at trials. The disposition of such property shall be in accordance with chapter 809.

[R60, §5048; C73, §4653; C97, §5568; C24, 27, 31, §13441; C35, §13441-g36; C39, §**13441.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §751.36; C79, 81, §808.9]

808.10 Maliciously suing out a warrant — officer exceeding authority.

Whoever maliciously and without just cause procures a search warrant to be issued and executed is guilty of a serious misdemeanor. Anyone who, in executing a search warrant, willfully exceeds the person's authority, or exercises it with unnecessary severity, is guilty of a serious misdemeanor.

[C51, §3308; R60, §5045, 5046; C73, §4650, 4651; C97, §5565, 5566; C24, 27, 31, §13438,

13439; C35, §13441-g38, -g39; C39, §**13441.38, 13441.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §751.38, 751.39; C79, 81, §808.10]

808.11 Transmission of papers to district court clerk.

The magistrate who has issued a search warrant shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the county in which the property was seized.

[C79, 81, §808.11]

808.12 Detention and search in theft of library materials and shoplifting.

1. Persons concealing property as set forth in section 714.5, may be detained and searched by a peace officer, person employed in a facility containing library materials, merchant, or merchant's employee, provided that the detention is for a reasonable length of time and that the search is conducted in a reasonable manner by a person of the same sex and according to subsection 2 of this section.

2. No search of the person under this section shall be conducted by any person other than someone acting under the direction of a peace officer except where permission of the one to be searched has first been obtained.

3. The detention or search under this section by a peace officer, person employed in a facility containing library materials, merchant, or merchant's employee does not render the person liable, in a criminal or civil action, for false arrest or false imprisonment provided the person conducting the search or detention had reasonable grounds to believe the person detained or searched had concealed or was attempting to conceal property as set forth in section 714.5.

[C62, 66, 71, 73, 75, 77, §709.22 – 709.24; C79, 81, §808.12]

808.13 Confidentiality.

All information filed with the court for the purpose of securing a warrant for a search, including but not limited to an application and affidavits, shall be a confidential record until such time as a peace officer has executed the warrant and has made return thereon. During the period of time that information is confidential it shall be sealed by the court, and the information contained therein shall not be disseminated to any person other than a peace officer, magistrate, or another court employee, in the course of official duties.

[C79, 81, §808.13]

808.14 Administrative warrants.

The courts and other appropriate agencies of the judicial branch of the government of this state may issue administrative search warrants, in accordance with the statutory and common law requirements for the issuance of such warrants, to all governmental agencies or bodies expressly or impliedly provided with statutory or constitutional home rule authority for inspections to the extent necessary for the agency or body to carry out such authority, to be executed or otherwise carried out by an officer or employee of the agency or body.

85 Acts, ch 38, §1

CHAPTER 808A

STUDENT SEARCHES

For general search and seizure law, see chapter 808

808A.1 Definitions.
808A.2 Searches of students, protected student areas, lockers, desks, and other facilities or spaces.
808A.3 Student search by peace officer.
808A.4 Exclusion of evidence.

808A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Protected student area"* includes, but is not limited to:

a. A student's body.

b. Clothing worn or carried by a student.

c. A student's pocketbook, briefcase, duffel bag, bookbag, backpack, knapsack, or any other container used by a student for holding or carrying personal belongings of any kind and in the possession or immediate proximity of the student.

2. *"School"* means a public or nonpublic educational institution offering any of grades kindergarten through twelve.

3. *"School official"* means a licensed school employee, and includes unlicensed school employees employed for security or supervision purposes.

4. *"Student"* means a person enrolled in a school for any of grades kindergarten through twelve.

5. *"Student search rule"* means a rule established by the school board of a public school, pursuant to section 279.8 or 279.9, or the authorities in charge of a nonpublic school controlling the manner of the searching of students or protected student areas and school lockers, desks, and other facilities or spaces owned by the school. A student search rule, to be valid for purposes of this chapter, shall require that all searches of students or protected student areas be reasonably related in scope to the circumstances which gave rise to the need for the search and based upon consideration of relevant factors which include, but are not limited to, the following:

a. The nature of the violation for which the search is being instituted.

b. The age or ages and gender of the students who may be searched pursuant to the rule.

c. The objectives to be accomplished by the search.

86 Acts, ch 1129, §1; 89 Acts, ch 265, §40; 95 Acts, ch 191, §55; 97 Acts, ch 84, §1, 2

808A.2 Searches of students, protected student areas, lockers, desks, and other facilities or spaces.

1. The school board of each public school and the authorities in charge of each nonpublic school shall establish and may search a student or protected student area pursuant to a student search rule. The student search rule shall be published in each public school's and each nonpublic school's student handbook. A school official may search individual students and individual protected student areas if both of the following apply:

a. The official has reasonable grounds for suspecting that the search will produce evidence that a student has violated or is violating either the law or a school rule or regulation.

b. The search is conducted in a manner which is reasonably related to the objectives of the search and which is not excessively intrusive in light of the age and gender of the student and the nature of the infraction.

2. School officials may conduct periodic inspections of all, or a randomly selected number of, school lockers, desks, and other facilities or spaces owned by the school and provided as a courtesy to a student. The furnishing of a school locker, desk, or other facility or space owned by the school and provided as a courtesy to a student shall not create a protected student area, and shall not give rise to an expectation of privacy on a student's part with respect to that locker, desk, facility, or space. Allowing students to use a separate lock on a locker, desk, or other facility or space owned by the school and provided to the student shall also not give rise to an expectation of privacy on a student's part with respect to that locker, desk, facility, or space. However, each year when school begins, the school district shall provide written notice to all students and the students' parents, guardians, or legal custodians, that school officials may conduct periodic inspections of school lockers, desks, and other facilities or spaces owned by the school and provided as a courtesy to a student without prior notice. An inspection under this subsection shall either occur in the presence of the students whose lockers are being inspected or the inspection shall be conducted in the presence of at least one other person.

3. Under no circumstances may a search be made which is unreasonable in light of the following:

a. The age of the student.

b. The nonseriousness of the violation.

c. The sex of the student.

d. The nature of the suspected violation.

4. A school official shall not conduct a search which involves:

a. A strip search.

b. A body cavity search.

c. The use of a drug sniffing animal to search a student's body.

d. The search of a student by a school official not of the same sex as the student.

5. If a student is not or will not be present at the time a search of a protected student area is conducted pursuant to subsection 1, the student shall be informed of the search either prior to or as soon as is reasonably practicable after the search is conducted.

86 Acts, ch 1129, §2; 94 Acts, ch 1172, §62; 95 Acts, ch 191, §56; 97 Acts, ch 84, §3 – 6; 98 Acts, ch 1100, §91

808A.3 Student search by peace officer.

The search of a student or of a protected student area by a peace officer who is not a school official, or by a school official at the invitation or direction of a peace officer who is not a school official, shall be governed by the statutory and common law requirements for police searches.

86 Acts, ch 1129, §3

808A.4 Exclusion of evidence.

Material or evidence obtained directly or indirectly as a result of a search conducted in violation of this chapter is inadmissible in a criminal proceeding against a student.

86 Acts, ch 1129, §4

CHAPTER 808B

INTERCEPTION OF COMMUNICATIONS

808B.1 Definitions.
808B.2 Unlawful acts — penalty.
808B.3 Court order for interception by special agents.
808B.4 Permissible disclosure and use.
808B.5 Application and order.
808B.6 Reports to state court administrator.
808B.7 Contents of intercepted wire, oral, or electronic communication as evidence.
808B.8 Civil damages authorized — civil and criminal immunity — injunctive relief.
808B.9 Future repeal. Repealed by 98 Acts, ch 1157, §1.
808B.10 Restrictions on use and installation of a pen register or a trap and trace device.
808B.11 Application and order to install and use a pen register or trap and trace device.
808B.12 Emergency application and order.
808B.13 Assistance in installation and use of a pen register or a trap and trace device.
808B.14 Reporting installation and use of pen registers and trap and trace devices.

808B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Aggrieved person"* means a person who was a party to an intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

2. *"Contents"*, when used with respect to a wire, oral, or electronic communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purpose, or meaning of that communication.

3. *"Court"* means a district court in this state.

4. *"Electronic communication"* means any transfer of signals, signs, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects intrastate, interstate, or foreign commerce, but excludes the following:

a. Wire or oral communication.

b. Communication made through a tone-only paging device.

c. Communication from a tracking device.

5. *"Electronic, mechanical, or other device"* means a device or apparatus which can be used to intercept a wire, oral, or electronic communication other than either of the following:

a. A telephone or telegraph instrument, equipment, or facility, or any component of it which is either of the following:

(1) Furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of the subscriber's or user's business.

(2) Being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties.

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal hearing.

6. *"Intercept"* or *"interception"* means the aural acquisition of the contents of a wire, oral, or electronic communication through the use of an electronic, mechanical, or other device.

7. *"Investigative or law enforcement officer"* means a peace officer of this state or one of its political subdivisions or of the United States who is empowered by law to conduct investigations of or to make arrests for criminal offenses, the attorney general, or a county attorney authorized by law to prosecute or participate in the prosecution of criminal offenses.

8. *"Oral communication"* means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances justifying that expectation.

9. *"Pen register"* means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached. However, such term excludes any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider of any device used by a provider, or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

10. *"Special state agent"* means a sworn peace officer member of the department of public safety.

11. *"Trap and trace device"* means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or elec-

tronic communication was transmitted.

12. *"Wire communication"* means a communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, furnished or operated by a person engaged as a common carrier in providing or operating the facilities for the transmission of communications.

89 Acts, ch 225, §22; 99 Acts, ch 78, §1 – 5

808B.2 Unlawful acts — penalty.

1. Except as otherwise specifically provided in this chapter, a person who does any of the following commits a class "D" felony:

a. Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, a wire, oral, or electronic communication.

b. Willfully uses, endeavors to use, or procures any other person to use or endeavor to use an electronic, mechanical, or other device to intercept any oral communication when either of the following applies:

(1) The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication.

(2) The device transmits communications by radio, or interferes with the transmission of radio communications.

c. Willfully discloses, or endeavors to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection.

d. Willfully uses, or endeavors to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection.

2. *a.* It is not unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in an activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication. However, communications common carriers shall not use service observing or random monitoring except for mechanical or service quality control checks.

b. It is not unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, if the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

c. It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

3. An operator of a switchboard, or an officer, employee, or agent of a communications common carrier, whose facilities are used in the transmission or interception of a wire, oral, or electronic communication shall not disclose the existence of any transmission or interception or the device used to accomplish the transmission or interception with respect to a court order under this chapter, except as may otherwise be required by legal process or court order. Violation of this subsection is a class "D" felony.

89 Acts, ch 225, §23; 99 Acts, ch 78, §6 – 9

808B.3 Court order for interception by special agents.

The attorney general shall authorize and prepare any application for an order authorizing the interception of wire, oral, or electronic communications. The attorney general may apply to any district court of this state, or request that the county attorney in the district where application is to be made deliver the application of the attorney general, for an order authorizing the interception of wire, oral, or electronic communications, and the court may grant, subject to this chapter, an order authorizing the interception of wire, oral, or electronic communications by special state agents having responsibility for the investigation of the offense as to which application is made, when the interception may provide or has provided evidence of the following:

1. A felony offense involving dealing in controlled substances, as defined in section 124.101.

2. A felony offense involving money laundering in violation of chapter 706B.

89 Acts, ch 225, §24; 99 Acts, ch 78, §10

808B.4 Permissible disclosure and use.

1. A special state agent who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire, oral, or electronic communication, or has obtained evidence derived from a wire, oral, or electronic communication, may disclose the contents to another investigative or law enforcement officer to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

2. An investigative or law enforcement officer

who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire, oral, or electronic communication or has obtained evidence derived from a wire, oral, or electronic communication may use the contents to the extent the use is appropriate to the proper performance of the officer's official duties.

3. A person who has received, by any means authorized by this chapter, any information concerning a wire, oral, or electronic communication, or evidence derived from a wire, oral, or electronic communication intercepted in accordance with this chapter may disclose the contents of that communication or derivative evidence while giving testimony under oath or affirmation in a criminal proceeding in any court of the United States or of this state or in any federal or state grand jury proceeding.

4. An otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this chapter does not lose its privileged character.

5. If a special state agent, while engaged in intercepting a wire, oral, or electronic communication in the manner authorized, intercepts a communication relating to an offense other than those specified in the order of authorization, the contents of the communication, and the evidence derived from the communication, may be disclosed or used as provided in subsections 1 and 2. The contents of and the evidence derived from the communication may be used under subsection 3 when authorized by a court if the court finds on subsequent petition that the contents were otherwise intercepted in accordance with this chapter. The petition shall be made as soon as practicable.

89 Acts, ch 225, §25; 99 Acts, ch 78, §11

808B.5 Application and order.

1. An application for an order authorizing or approving the interception of a wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a court and shall state the applicant's authority to make the application. An application shall include the following information:

a. The identity of the special state agent requesting the application, the supervisory officer reviewing and approving the request, and the approval of the administrator of a division of the department of public safety under whose command the special state agent making the application is operating or the administrator's designee.

b. A full and complete statement of the facts and circumstances relied upon by the applicant to justify the belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, a particular description of the type of communications sought to be intercepted, and the identity of the person, if known, committing the offense and whose communications are to be intercepted.

c. A full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

d. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will subsequently occur.

e. A full and complete statement of the facts concerning all previous applications known to the individuals authorizing and making the application, made to any court for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the court on those applications.

f. If the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

2. The court may require the applicant to furnish additional testimony or documentary evidence in support of the application.

3. Upon application the court may enter an ex parte order, as requested or as modified, authorizing interception of wire, oral, or electronic communications within the territorial jurisdiction of the court, if the court finds on the basis of the facts submitted by the applicant all of the following:

a. There is probable cause for belief that an individual is committing, has committed, or is about to commit a felony offense involving dealing in controlled substances, as defined in section 124.101, subsection 5.

b. There is probable cause for belief that particular communications concerning the offense will be obtained through the interception.

c. Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

d. There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

4. Each order authorizing the interception of a wire, oral, or electronic communication shall specify all of the following:

a. The identity of the person, if known, whose

communications are to be intercepted.

b. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

c. A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which the communication relates.

d. The identity of the agency authorized to intercept the communications, and of the person requesting the application.

e. The period of time during which interception is authorized, including a statement as to whether the interception shall automatically terminate when the described communication has been first obtained.

5. Each order authorizing the interception of a wire, oral, or electronic communication shall, upon request of the applicant, direct that a communications common carrier, landlord, custodian, or other person shall furnish to the applicant all information, facilities, and technical assistance necessary to accomplish the interception inconspicuously and with a minimum of interference with the services that the carrier, landlord, custodian, or person is giving to the person whose communications are to be intercepted. Any communications common carrier, landlord, custodian, or other person furnishing facilities or technical assistance shall be compensated by the applicant at the prevailing rates.

6. An order entered under this section shall not authorize the interception of a wire, oral, or electronic communication for a period longer than is necessary to achieve the objective of the authorized interception, or in any event longer than thirty days. The thirty-day period shall commence on the date specified in the order upon which the commencement of the interception is authorized or ten days after the order is entered, whichever is earlier. An extension of an order may be granted, but only upon application for an extension made in accordance with subsection 1 and the court making the findings required by subsection 3. The period of extension shall be no longer than the authorizing court deems necessary to achieve the purposes for which it was granted and in no event longer than thirty days. Every order and its extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this section and sections 808B.1 through 808B.4, 808B.6, and 808B.7, and shall terminate upon attainment of the authorized objective, or in any event in thirty days.

7. If an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the court which issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at intervals as the court requires.

8. The contents of a wire, oral, or electronic communication intercepted by a means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of a wire, oral, or electronic communication under this subsection shall be done in a way which will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions of it, the recordings shall be made available to the court issuing the order and shall be sealed under the court's directions. Custody of the recordings shall be in accordance with the court order. Recordings shall be kept for five years and shall then be destroyed unless it is necessary to keep the recordings due to a continued legal process or court order, but the recordings shall not be kept for longer than ten years. Duplicate recordings may be made for disclosure or use pursuant to section 808B.4, subsections 1 and 2. The presence of a seal, or a satisfactory explanation for its absence, is a prerequisite for the disclosure or use of the contents of a wire, oral, or electronic communication or evidence derived from a communication under section 808B.4, subsection 3.

Applications made and orders granted under this chapter shall be sealed by the court. Custody of the applications and orders shall be in accordance with the directives of the court. The applications and orders shall be disclosed only upon a showing of good cause before a court and shall be kept for five years and shall then be destroyed unless it is necessary to keep the applications or orders due to a continued legal process or court order, but the applications and orders shall not be kept for longer than ten years.

A violation of this subsection may be punished as contempt of court.

9. Within a reasonable time, but not longer than ninety days, after the termination of the period of an order or its extensions, the court shall cause a notice to be served on all persons named in the order or the application which includes the following:

a. The names of other parties to intercepted communications if the court determines disclosure of the names to be in the interest of justice.

b. An inventory which shall include all of the following:

(1) The date of the application.

(2) The date of the entry of the court order and the period of authorized, approved, or disapproved interception, or the denial of the application.

(3) Whether, during the period, wire, oral, or electronic communications were or were not intercepted.

The court, upon the filing of a motion by a person whose communications were intercepted, shall make available to the person or the person's attor-

ney for inspection the intercepted communications, applications, and orders. On an ex parte showing of good cause to a court, the service of the inventory required by this subsection may be postponed.

10. The contents of an intercepted wire, oral, or electronic communication or evidence derived from the wire, oral, or electronic communication shall not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. This ten-day period may be waived by the court if it finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information. If the ten-day period is waived by the court, the court may grant a continuance or enter such other order as it deems just under the circumstances.

11. An aggrieved person in a trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this state, may move to suppress the contents of an intercepted wire, oral, or electronic communication, or evidence derived from the wire, oral, or electronic communication, on the grounds that the communication was unlawfully intercepted, the order of authorization under which it was intercepted was insufficient on its face, or the interception was not made in conformity with the order of authorization. The motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic communication, or evidence derived from the wire, oral, or electronic communication, shall be treated as having been obtained in violation of this chapter.

12. An appeal by the attorney general from an order granting a motion to suppress or from the denial of an application for an order of approval shall be pursuant to section 814.5, subsection 2.

89 Acts, ch 225, §26; 99 Acts, ch 78, §12 – 21; 99 Acts, ch 208, §63

808B.6 Reports to state court administrator.

1. Within thirty days after the denial of an application or after the expiration of an order granting an application, or after an extension of an order, the court shall report to the state court administrator all of the following:

a. The fact that an order or extension was applied for.

b. The kind of order or extension applied for.

c. The fact that the order or extension was granted as applied for, was granted as modified, or that an application was denied.

d. The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

e. The offense specified in the order or application, or extension of an order.

f. The identity of the prosecutor making the application and the court reviewing and approving the request.

g. The nature of the facilities from which or the place where communications were to be intercepted.

2. In January of each year, the attorney general and the county attorneys of this state shall report to the state court administrator and to the administrative offices of the United States district courts all of the following:

a. The fact that an order or extension was applied for.

b. The kind of order or extension applied for.

c. The fact that the order or extension was granted as applied for, was granted as modified, or that an application was denied.

d. The period of interceptions authorized by the order, and the number and duration of any extensions of the order.

e. The offense specified in the order or application, or extension of an order.

f. The nature of the facilities from which or the place where communications were to be intercepted.

g. A general description of the interceptions made under such order or extension, including:

(1) The approximate nature and frequency of incriminating communications intercepted.

(2) The approximate nature and frequency of other communications intercepted.

(3) The approximate number of persons whose communications were intercepted.

(4) The approximate nature, amount, and cost of personnel and other resources used in the interceptions.

h. The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made.

i. The number of trials resulting from such interceptions.

j. The number of motions to suppress made with respect to such interceptions, and the number granted or denied.

k. The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions.

l. The information required by paragraphs *"b"* through *"f"* with respect to orders or extensions obtained in a preceding calendar year and not yet reported.

m. Other information required by the rules of the administrative offices of the United States dis-

trict courts.

3. In March of each year the state court administrator shall transmit to the general assembly a full and complete report concerning the number of applications for orders authorizing the interception of wire communications or oral communications and the number of applications, orders, and extensions granted or denied during the preceding calendar year. The report shall include a summary and analysis of the data required to be filed with the state court administrator by the attorney general, county attorneys, and the courts.

89 Acts, ch 225, §27

808B.7 Contents of intercepted wire, oral, or electronic communication as evidence.

The contents or any part of the contents of an intercepted wire, oral, or electronic communication and any evidence derived from the wire, oral, or electronic communication shall not be received in evidence in a trial, hearing, or other proceeding in or before a court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or political subdivision of a state if the disclosure of that information would be in violation of this chapter.

89 Acts, ch 225, §28; 99 Acts, ch 78, §22

808B.8 Civil damages authorized — civil and criminal immunity — injunctive relief.

1. A person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter shall:

a. Have a civil cause of action against any person who intercepts, discloses, or uses or procures any other person to intercept, disclose, or use such communications.

b. Be entitled to recover from any such person all of the following:

(1) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars a day for each day of violation, or one thousand dollars, whichever is higher.

(2) Punitive damages upon a finding of a willful, malicious, or reckless violation of this chapter.

(3) A reasonable attorney's fee and other litigation costs reasonably incurred.

2. A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action brought under this chapter.

3. A person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter may seek an injunction, either temporary or permanent, against any person who violates this chapter.

89 Acts, ch 225, §29; 99 Acts, ch 78, §23, 24

808B.9 Future repeal. Repealed by 98 Acts, ch 1157, § 1.

808B.10 Restrictions on use and installation of a pen register or a trap and trace device.

1. A person shall not install or use a pen register or a trap and trace device without first obtaining a court order pursuant to either section 808B.11 or 808B.12. However, a pen register or a trap and trace device may be used or installed without court order if any of the following apply:

a. It relates to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of the provider of the service, or to the protection of users of the service from abuse of the service or unlawful use of the service.

b. If a wire or electronic communication was initiated or completed in order to protect the provider of the wire or electronic communication service, another provider furnishing service toward the completion of the wire or electronic communication, or a user of the service, from fraudulent, unlawful, or abusive use of the service.

c. If consent was obtained from the user of the electronic or wire communication service.

2. A person who knowingly violates this section commits a serious misdemeanor.

99 Acts, ch 78, §25

808B.11 Application and order to install and use a pen register or trap and trace device.

1. An application for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device shall be made in writing by a prosecuting attorney upon oath or affirmation to a district court. Only a special state agent may conduct an investigation authorized under this section or section 808B.12. An application shall include the following information:

a. The identity of the prosecuting attorney, and the identity of the special state agent authorized to conduct the investigation.

b. A certified statement by the special state agent that the information likely to be obtained is relevant to an ongoing criminal investigation of an offense listed under section 808B.3 or an offense that may lead to an immediate danger of death of or serious injury to a person.

2. Upon application, the court may enter an ex parte order or an ex parte extension of an order authorizing the installation and use of a pen register or trap and trace device within the territorial jurisdiction of the court, if the court finds that the special state agent has certified to the court that the information likely to be obtained by the use of a pen register or trap and trace device is relevant to an ongoing criminal investigation of an offense listed under section 808B.3, or an offense that may lead to an immediate danger of death of or serious injury to a person.

3. Each order authorizing the interception of a

communication under this section shall specify all of the following:

a. The identity of the person, if known, who owns or leases the telephone line where the pen register or trap and trace device will be attached.

b. The identity of the person, if known, who is the subject of the criminal investigation.

c. The telephone number if known, and the physical location of the telephone line where the pen register or trap and trace device will be attached, and the geographic limits of the trap and trace device.

d. Upon request of the applicant, direct the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of a pen register or trap and trace device.

e. The period of time during which the use of the pen register or trap and trace device is authorized, which shall be no greater than sixty days.

f. If the application is for the extension of an order and after a judicial finding required under subsection 2, authorize the extension of an order. Each extension of an order shall not exceed sixty days.

4. Except as otherwise provided in paragraph *"b"*, any order granted under this section shall be sealed until otherwise ordered by the court.

a. Any person owning or leasing the telephone line to which the pen register or trap and trace device is attached, or who has been ordered by the court to furnish information, facilities, or technical assistance to the applicant, shall not disclose the existence of the pen register or trap and trace device or the existence of the investigation of the listed subscriber, to any person, unless or until otherwise ordered by the court.

b. A prosecuting attorney or special state agent may utilize or share any information obtained from the use of a pen register or trap and trace device with other prosecuting attorneys or law enforcement agencies while acting within the scope of their employment.

c. A violation of this subsection may be punished as contempt of court.

99 Acts, ch 78, §26; 99 Acts, ch 208, §64, 65

808B.12 Emergency application and order.

1. Notwithstanding any other provision of this chapter, the issuance of an order under this section may be based upon sworn oral testimony communicated by the director of the division of criminal investigation, the director of the division of narcotics enforcement, a special state agent authorized by the prosecuting attorney, or the prosecuting attorney, via the telephone, if the judge who is asked to issue the order is satisfied that the circumstances make it reasonable to dispense with a written affidavit. A pen register or trap and trace device may only be installed and used if both of the following occur:

a. The court reasonably determines that an emergency situation exists that involves an immediate danger of death of or serious injury to any person.

b. A written order approving the installation or use of a pen register or trap and trace device is obtained under section 808B.11 within forty-eight hours of the issuance of an order under this section.

2. In the absence of an authorizing order, under section 808B.11, an emergency order shall immediately terminate upon the earlier of obtainment of the information sought, denial of the application under section 808B.11, or the lapse of forty-eight hours after the authorization of the installation of the pen register or trap and trace device under subsection 1.

3. An investigative or law enforcement officer who knowingly uses a pen register or trap and trace device pursuant to this section after the effectiveness of the emergency order has terminated pursuant to subsection 2 due to the lapse of the forty-eight hours commits a serious misdemeanor.

4. A provider for a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

99 Acts, ch 78, §27; 99 Acts, ch 208, §66, 67

808B.13 Assistance in installation and use of a pen register or a trap and trace device.

1. Upon the request of the prosecuting attorney or the special state agent authorized to install and use a pen register under this chapter, and as directed by court order, a provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith with all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the service that the person so ordered by the court accords the party with respect to whom the installation and use is to take place.

2. Upon the request of the prosecuting attorney or the special state agent authorized to receive the results of a trap and trace device under this chapter, and as directed by court order, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate telephone line and shall furnish such investigative or law enforcement officer with all additional information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference

with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the authorized law enforcement agency designated in the court order at reasonable intervals during regular business hours for the duration of the order.

3. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be compensated for reasonable expenses incurred in providing such facilities and assistance.

4. A cause of action shall not lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under section 808B.11 or 808B.12.

5. A good faith reliance on a court order under section 808B.11 or 808B.12 is a complete defense against any civil or criminal action brought under this chapter or any other statute.

99 Acts, ch 78, §28

808B.14 Reporting installation and use of pen registers and trap and trace devices.

In January of each year, the attorney general and the county attorneys of this state shall report to the state court administrator the number of pen register orders and orders for trap and trace devices applied for and obtained by their offices during the preceding calendar year.

99 Acts, ch 78, §29

CHAPTER 809

DISPOSITION OF SEIZED PROPERTY

Forfeiture; see chapter 809A

809.1 Definitions.
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809.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Seizable property"* means any of the following:

a. Property which is relevant in a criminal prosecution or investigation.

b. Property defined by law to be forfeitable property.

c. Property which if not seized by the state poses an imminent danger to a person's health, safety, or welfare.

2. *"Seized property"* means property taken or held by any law enforcement agency without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody. Seized property does not include property taken into custody solely for safekeeping purposes or property taken into custody with the consent of the owner or the person who had possession at the time of the taking. If consent to the taking of property was given by the person in possession of the property and later withdrawn or found to be insufficient, the property shall then be returned or the property shall be deemed seized as of the time of the demand and refusal.

3. The definitions contained in subsections 1 and 2 shall not apply to violations of chapter 321.

86 Acts, ch 1140, §3; 95 Acts, ch 48, §23; 96 Acts, ch 1133, §47

809.2 Notice of seizure.

The officer taking possession of seized property shall make a written inventory of the property and deliver a copy of the inventory to the person from whom it was seized. The inventory shall include the name of the person taking custody of the seized

property, the date and time of the seizure, and the law enforcement agency seizing the property.

86 Acts, ch 1140, §4

809.3 Application for immediate return of seized property.

1. Any person claiming a right to immediate possession of seized property may make application for its return in the office of the clerk of court for the county in which the property was seized.

2. The application for the return of seized property shall state the specific item or items sought, the nature of the claimant's interest in the property, and the grounds upon which the claimant seeks to have the property immediately returned. Mere ownership is insufficient as grounds for immediate return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set out in the application for immediate return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If no specific grounds are set out in the application for return, or the grounds set out are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

3. The claimant shall cause a copy of the application to be delivered to the county attorney.

86 Acts, ch 1140, §5

809.4 Hearing — appeal.

An application for the return of seized property shall be set for hearing not less than five nor more than thirty days after the filing of the application and shall be tried to the court. All claims to the same property shall be heard in one proceeding unless it is shown that the proceeding would result in prejudice to one or more of the parties. If the total value of the property sought to be returned is less than five thousand dollars, the proceeding may be conducted by a magistrate or a district associate judge with appeal to be as in the case of small claims. In all other cases, the hearing shall be conducted by a district judge, with appeal as provided in section 809.12A.

86 Acts, ch 1140, §6; 96 Acts, ch 1133, §48

809.5 Disposition of seized property.

1. Seized property which is no longer required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, provided that the person's possession of the property is not prohibited by law and there is no forfeiture claim filed on behalf of the state. The seizing agency or prosecuting attorney shall send notice by regular mail, if the value of the property is less than fifty dollars, or certified mail, if the value of the property is equal to or greater than fifty dollars, to the last known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Such notice shall state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of notice, the property shall be deemed abandoned and disposed of accordingly. In the event that there is more than one party who may assert a right to possession or ownership of the property, the seizing agency shall not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. In the event that there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency or prosecuting attorney shall file a copy of all such claims with the clerk of court and the clerk shall proceed as if such claims were filed by the parties under section 809.3. In the event that no owner can be located or no claim is filed under this section, the property shall be deemed abandoned and the seizing agency shall become the owner of such property and may dispose of it in any reasonable manner.

2. Upon the filing of a claim and following hearing by the court, property which has been seized shall be returned to the person who demonstrates a right to possession, unless one or more of the following is true:

a. The possession of the property by the claimant is prohibited by law.

b. There is a forfeiture notice on file and not disposed of in favor of the claimant prior to or in the same hearing.

c. The state has demonstrated that the evidence is needed in a criminal investigation or prosecution.

3. The court shall, subject to any unresolved forfeiture hearing, make orders appropriate to the final disposition of the property including, but not limited to, the destruction of contraband once it is no longer needed in an investigation or prosecution.

86 Acts, ch 1140, §7

809.6 through 809.11 Repealed by 96 Acts, ch 1133, § 53. See chapter 809A.

809.12 Appeals. Repealed by 96 Acts, ch 1133, § 53. See § 809.12A and chapter 809A.

809.12A Appeals.

An appeal from a denial of an application for the return of seized property or from an order for the return of seized property shall be made within thirty days after the entry of a judgment order. The appellant, other than the state, shall post a bond of a reasonable amount as the court may fix

and approve, conditioned to pay all costs of the proceedings if the appellant is unsuccessful on appeal. The appellant, other than the state, may be required to post a supersedeas bond or other security, as the court finds to be reasonable, in order to stay the operation of a forfeiture order under section 809A.16.

96 Acts, ch 1133, §49

809.13 and 809.14 Repealed by 96 Acts, ch 1133, § 53. See chapter 809A.

809.15 Combining proceedings.

In cases involving seized property and property subject to forfeiture pursuant to section 809A.4, the court may order that the proceedings be combined for purposes of this chapter.

86 Acts, ch 1140, §17; 96 Acts, ch 1133, §50

809.16 Rulemaking.

The attorney general shall adopt, amend, or repeal rules pursuant to chapter 17A to carry out the provisions of this chapter.

86 Acts, ch 1140, §18; 96 Acts, ch 1133, §51

809.17 Proceeds applied to various programs.

Except as provided in section 809.21, proceeds from the disposal of seized property pursuant to this chapter may be transferred in whole or in part to the victim compensation fund created in section 915.94 at the discretion of the recipient agency, political subdivision, or department.

90 Acts, ch 1251, §60; 91 Acts, ch 181, §16; 91 Acts, ch 258, §66; 96 Acts, ch 1133, §52; 98 Acts, ch 1090, §75, 84

809.18 to 809.20 Reserved.

809.21 Sale of certain ammunition and firearms.

Ammunition and firearms which are not illegal and which are not offensive weapons as defined by section 724.1 may be sold by the department of public safety at public auction. The department of public safety may sell at public auction forfeited legal weapons received from the director of the department of natural resources, except that rifles and shotguns shall be retained by the department of natural resources for disposal according to its rules. The sale of ammunition or firearms pursuant to this section shall be made only to federally licensed firearms dealers or to persons who have a permit to purchase the firearms. Persons who have not obtained a permit may bid on firearms at the public auction. However, persons who bid without a permit must post a fifty percent of purchase price deposit with the commissioner of public safety on any winning bid. No transfer of firearms may be made to a person bidding without a permit until such time as the person has obtained a permit. If the person is unable to produce a permit within two weeks from the date of the auction, the person shall forfeit the fifty percent deposit to the department of public safety. All proceeds of a public auction pursuant to this section, less department expenses reasonably incurred, shall be deposited in the general fund of the state. The department of public safety shall be reimbursed from the proceeds for the reasonable expenses incurred in selling the property at the auction.

86 Acts, ch 1238, §33; 87 Acts, ch 13, §7, 8; 90 Acts, ch 1042, §1

CHAPTER 809A

FORFEITURE REFORM ACT

Seized property; see also chapter 809

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809A.1 Definitions.

As used in this chapter:

1. *"Interest holder"* means a secured party within the meaning of chapter 554, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest is perfected against a good faith purchaser for value. A person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an interest holder.

2. *"Omission"* means the failure to perform an act that is required by law.

3. *"Owner"* means a person, other than an interest holder, who has an interest in property. A person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an owner.

4. *"Proceeds"* means property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

5. *"Property"* means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible.

6. *"Prosecuting attorney"* means an attorney who is authorized by law to appear on the behalf of the state in a criminal case, and includes the attorney general, an assistant attorney general, the county attorney, an assistant county attorney, or a special or substitute prosecutor whose appearance is approved by a court having jurisdiction to try a defendant for the offense with which the defendant is charged.

7. *"Regulated interest holder"* means an interest holder that is a business authorized to do business in this state and is under the jurisdiction of any state or federal agency regulating banking, insurance, real estate, or securities.

8. *"Seizing agency"* means a department or agency of this state or its political subdivisions that regularly employs law enforcement officers, and that employs the law enforcement officer who seizes property for forfeiture, or such other agency as the department or agency may designate by its chief executive officer or the officer's designee.

9. *"Seizure for forfeiture"* means seizure of property by a law enforcement officer, including a constructive seizure, accompanied by an assertion by the seizing agency or by a prosecuting attorney that the property is seized for forfeiture, in accordance with section 809A.6.

96 Acts, ch 1133, §1; 98 Acts, ch 1074, §37, 38

809A.2 Jurisdiction and venue.

1. The district court has jurisdiction under this chapter over:

a. All interests in property within this state at the time a forfeiture action is filed.

b. The interest in the property of an owner or interest holder who is subject to personal jurisdiction in this state.

2. In addition to the venue provided for under chapter 803 or any other provision of law, a proceeding for forfeiture under this chapter may be maintained in the county in which any part of the property is found or in the county in which a civil or criminal action could be maintained against an owner or interest holder for the conduct alleged to give rise to the forfeiture.

96 Acts, ch 1133, §2

809A.3 Conduct giving rise to forfeiture.

The following conduct may give rise to forfeiture:

1. An act or omission which is a public offense and which is a serious or aggravated misdemeanor or felony.

2. An act or omission occurring outside of this state, that would be punishable by confinement of one year or more in the place of occurrence and would be a serious or aggravated misdemeanor or felony if the act or omission occurred in this state.

3. An act or omission committed in furtherance of any act or omission described in subsection 1, which is a serious or aggravated misdemeanor or felony, including any inchoate or preparatory offense.

4. Notwithstanding subsections 1 through 3, violations of chapter 321 or 321J shall not be considered conduct giving rise to forfeiture, except for violations of the following:

a. A second or subsequent violation of section 321J.4B, subsection 2, paragraph *"b"*.

b. Section 321J.4B, subsection 9.

96 Acts, ch 1133, §3; 97 Acts, ch 177, §29

809A.4 Property subject to forfeiture.

The following are subject to forfeiture:

1. All controlled substances, raw materials, controlled substance analogs, counterfeit controlled substances, imitation controlled substances, or precursor substances, that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state.

2. *a.* All property, except as provided in paragraph *"b"*, including the whole of any lot or tract of land and any appurtenances or improvements to real property, including homesteads that are otherwise exempt from judicial sale pursuant to

section 561.16, that is either:

(1) Furnished or intended to be furnished by a person in an exchange that constitutes conduct giving rise to forfeiture.

(2) Used or intended to be used in any manner or part to facilitate conduct giving rise to forfeiture.

b. If the only conduct giving rise to forfeiture is a violation of section 124.401, subsection 5, real property is not subject to forfeiture and other property subject to forfeiture pursuant to paragraph *"a"*, subparagraph (2), may be forfeited only pursuant to section 809A.14.

3. All proceeds of any conduct giving rise to forfeiture.

4. All weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture.

5. Any interest or security in, claim against, or property or contractual right of any kind affording a source of control over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct or through conduct giving rise to forfeiture.

6. *a.* Any property of a person up to the value of property which is either of the following:

(1) Described in subsection 2 that the person owned or possessed for the purpose of a use described in subsection 2.

(2) Described in subsection 3 and is proceeds of conduct engaged in by the person or for which the person is criminally responsible.

b. Property described in this subsection may be seized for forfeiture pursuant to a constructive seizure or an actual seizure pursuant to section 809A.6. Actual seizure may only be done pursuant to a seizure warrant issued on a showing, in addition to the showing of probable cause for the forfeiture of the subject property, that the subject property is not available for seizure for reasons described in section 809A.15, subsection 1, and that the value of the property to be seized is not greater than the total value of the subject property, or pursuant to a constructive seizure. If property of a defendant up to the total value of all interests in the subject property is not seized prior to final judgment in an action under this section, the remaining balance shall be ordered forfeited as a personal judgment against the defendant.

7. As used in this section, *"facilitate"* means to have a substantial connection between the property and the conduct giving rise to forfeiture.

96 Acts, ch 1133, §4; 98 Acts, ch 1074, §39, 40; 98 Acts, ch 1100, §87

809A.5 Exemptions.

1. All property, including all interests in property, described in section 809A.4 is subject to forfeiture, except that property is exempt from forfeiture if either of the following occurs:

a. The owner or interest holder acquired the property before or during the conduct giving rise to its forfeiture, and did not know and could not reasonably have known of the conduct or that the conduct was likely to occur, or acted reasonably to prevent the conduct giving rise to forfeiture.

b. The owner or interest holder acquired the property, including acquisition of proceeds of conduct giving rise to forfeiture, after the conduct giving rise to its forfeiture and acquired the property in good faith, for value and did not knowingly take part in an illegal transaction.

2. Notwithstanding subsection 1, property is not exempt from forfeiture, even though the owner or interest holder lacked knowledge or reason to know that the conduct giving rise to its forfeiture had occurred or was likely to occur, if any of the following exists:

a. The person whose conduct gave rise to its forfeiture had the authority to convey the property of the person claiming the exemption to a good faith purchaser for value at the time of the conduct.

b. The owner or interest holder is criminally responsible for the conduct giving rise to its forfeiture, whether or not the owner or interest holder is prosecuted or convicted.

c. The owner or interest holder acquired the property with notice of its actual or constructive seizure for forfeiture under section 809A.6, or with reason to believe that it was subject to forfeiture.

96 Acts, ch 1133, §5

809A.6 Seizure of property for forfeiture.

1. A peace officer may seize property for forfeiture upon process issued by any district judge, district associate judge, or magistrate. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The court may order that the property be seized on such terms and conditions as are reasonable in the discretion of the court. The order may be made on or in connection with a search warrant.

2. Peace officers may seize property for forfeiture without process on probable cause to believe that the property is subject to forfeiture under this chapter and if exigent circumstances exist or if the property has already been seized for a purpose other than forfeiture.

3. The seizure of inhabited residential real property for forfeiture which is accompanied by removing or excluding its residents shall be done pursuant to a preseizure adversarial judicial determination of probable cause, except that this determination may be made ex parte if the prosecuting attorney has demonstrated exigent circumstances.

4. Property may be seized constructively by:

a. Posting notice of seizure for forfeiture or notice of pending forfeiture on the property.

b. Giving notice pursuant to section 809A.8.

c. Filing or recording in the public records relating to that type of property notice of seizure for forfeiture, notice of pending forfeiture, a forfeiture lien, or a notice of lis pendens.

Filings or recordings made pursuant to this subsection are not subject to a filing fee or other charge.

5. The seizing agency, or the prosecuting attorney, shall make a reasonable effort to provide notice of the seizure to the person from whose possession or control the property was seized and to any person who has a security interest in the property. If no person is in possession or control of the property, the seizing agency may attach the notice to the property or to the place of its seizure or may make a reasonable effort to deliver it to the owner of the property. The notice shall contain a general description of the property seized, the date and place of seizure, the name of the seizing agency, and the address and telephone number of the seizing officer or other person or agency from whom information about the seizure may be obtained.

6. A person who acts in good faith and in a reasonable manner pursuant to this section to comply with an order of the court or a request of a law enforcement officer is not liable to any person for acts done in reasonable compliance with the order or request. In addition, an inference of guilt shall not be drawn from the fact that a person refuses a law enforcement officer's request to deliver the property.

7. A possessory lien of a person from whose possession property is seized is not affected by the seizure.

96 Acts, ch 1133, §6

809A.7 Property management and preservation.

1. Property seized for forfeiture under this chapter is not subject to alienation, conveyance, sequestration, attachment, or an application for return of seized property under chapter 809.

2. The seizing agency or the prosecuting attorney may authorize the release of the seizure for forfeiture on the property if forfeiture or retention of actual custody is unnecessary.

3. The prosecuting attorney may discontinue forfeiture proceedings and transfer the action to another state or federal agency or prosecuting attorney who has initiated forfeiture proceedings.

4. Property seized for forfeiture under this chapter is deemed to be in the custody of the district court subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings and to the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

5. An owner of property seized for forfeiture under this chapter may obtain release of the property by posting with the court a surety bond or cash in an amount determined by the court to be reasonable in light of the fair market value of the property. Property shall not be released if any of the following apply:

a. The owner fails to post the required bond.

b. The property is retained as contraband or as evidence.

c. The property is particularly altered or designed for use in conduct giving rise to forfeiture.

If a surety bond or cash is posted and the property is forfeited, the court shall forfeit the surety bond or cash in lieu of the property.

6. If property is seized for forfeiture under this chapter, the prosecuting attorney, subject to any need to retain the property as evidence, may do any of the following:

a. Remove the property to an appropriate place designated by the district court.

b. Place the property under constructive seizure.

c. Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest-bearing account.

d. Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value, in any appropriate location within the jurisdiction of the court.

e. Require the seizing agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

7. As soon as practicable after seizure for forfeiture, the seizing agency shall conduct a written inventory and estimate the value of the property seized.

8. The court may order property which has been seized for forfeiture sold, leased, rented, or operated to satisfy a specified interest of any interest holder, or to preserve the interests of any party on motion of such party. The court may enter orders under this subsection after notice to persons known to have an interest in the property, and an opportunity for a hearing, if either of the following exists:

a. The interest holder has timely filed a proper claim and is a regulated interest holder.

b. The interest holder has an interest which the prosecuting attorney has stipulated is exempt from forfeiture.

9. A sale may be ordered under subsection 8 if the property is liable to perish, to waste, or to be foreclosed upon or significantly reduced in value, or if the expenses of maintaining the property are disproportionate to its value. A third party designated by the court shall dispose of the property by commercially reasonable public sale and distribute the proceeds in the following order of priority:

a. For the payment of reasonable expenses incurred in connection with the sale or disposal.

b. For the satisfaction of exempt interests in

the order of their priority.

c. Any balance of the proceeds shall be preserved in the actual or constructive custody of the court, in an interest-bearing account, subject to the proceedings under this chapter.

96 Acts, ch 1133, §7

809A.8 Commencement of forfeiture proceedings — property release requirements.

1. Forfeiture proceedings shall be commenced as follows:

a. Property seized for forfeiture shall be released on the request of an owner or interest holder to the owner's or interest holder's custody, as custodian for the court, pending further proceedings pursuant to this chapter if the prosecuting attorney fails to do either of the following:

(1) File a notice of pending forfeiture against the property within ninety days after seizure.

(2) File a judicial forfeiture proceeding within ninety days after notice of pending forfeiture of property upon which a proper claim has been timely filed pursuant to section 809A.11.

b. Within thirty days after the effective date of the notice of pending forfeiture, an owner of or interest holder in the property may elect to file with the prosecuting attorney any of the following:

(1) A claim pursuant to section 809A.11.

(2) A petition for recognition of exemption pursuant to section 809A.11, except that no petition may be filed after the state commences a court action.

(3) A request for an extension of time in which to file a claim or petition for recognition of exemption.

c. An extension of time for the filing of a claim shall only be granted for good cause shown for mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty.

d. If a petition is timely filed, the prosecuting attorney may delay filing a judicial forfeiture proceeding for one hundred eighty days after the notice of pending forfeiture, and the following procedures shall apply:

(1) The prosecuting attorney shall provide the seizing agency and the petitioning party with a written recognition of exemption and statement of nonexempt interests relating to any or all interests in the property in response to each petitioning party as follows:

(a) Within sixty days after the effective date of the notice of pending forfeiture if the petitioner is a regulated interest holder. The recognition of exemption shall recognize the interest of the petitioner to the extent of documented outstanding principal plus interest at the contract rate until paid.

(b) Within one hundred twenty days after the effective date of the notice of pending forfeiture for all other petitioners.

(2) An owner or interest holder in any property declared nonexempt may file a claim pursuant to section 809A.11 within thirty days after the effective date of the notice of the recognition of exemption and statement of nonexempt interest.

(3) If a petitioning party does not timely file a proper claim under paragraph *"b"*, the recognition of exemption and statement of nonexempt interests becomes final, and the prosecuting attorney shall proceed as provided in sections 809A.16 and 809A.17.

(4) The prosecuting attorney may elect to proceed under this section for judicial forfeiture at any time.

(5) If a judicial forfeiture proceeding follows the application of procedures in this paragraph, the following apply:

(a) A duplicate or repetitive notice is not required. If a proper claim has been timely filed pursuant to subparagraph (2), the claim shall be determined in a judicial forfeiture proceeding after the commencement of such a proceeding under sections 809A.13, 809A.14, and 809A.15.

(b) The proposed recognition of exemption and statement of nonexempt interest responsive to all petitioning parties who subsequently filed claims are void and are regarded as rejected offers to compromise.

e. If a proper petition for recognition of exemption or proper claim is not timely filed, the prosecuting attorney shall proceed as provided in sections 809A.16 and 809A.17.

2. *a.* Notice of pending forfeiture, service of an in rem complaint, or notice of a recognition of exemption and statement of nonexempt interests required under this chapter shall be given in accordance with one of the following:

(1) If the owner's or interest holder's name and current address are known, by either personal service by any person qualified to serve process or by any law enforcement officer or by mailing a copy of the notice by restricted certified mail to that address.

(2) If the owner's or interest holder's name and address are required by law to be on record with the county recorder, secretary of state, the motor vehicle division of the state department of transportation, or another state or federal agency to perfect an interest in the property, and the owner's or interest holder's current address is not known, by mailing a copy of the notice by restricted certified mail to any address of record with any of the described agencies.

(3) If the owner's or interest holder's address is not known and is not on record as provided in subparagraph (2), or the owner or interest holder's interest is not known, by publication in one issue of a newspaper of general circulation in the county in which the seizure occurred.

b. Notice is effective upon the earlier of personal service, publication, or the mailing of a written notice, except that notice of pending forfeiture of real property is not effective until it is recorded.

Notice of pending forfeiture shall include a description of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged, and a summary of procedures and procedural rights applicable to the forfeiture action.

96 Acts, ch 1133, §8

809A.9 Liens.

1. The prosecuting attorney may file, without a filing fee, a lien for the forfeiture of property if any of the following apply:

a. Upon the initiation of any civil or criminal proceeding relating to conduct giving rise to forfeiture under this chapter.

b. Upon seizure for forfeiture.

c. In connection with a proceeding or seizure for forfeiture in any other state under a state or federal statute substantially similar to the relevant provisions of this chapter.

The filing constitutes notice to any person claiming an interest in the seized property or in property owned by the named person.

2. The lienor, as soon as practical, but not later than ten days, after filing a lien, shall furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection shall not invalidate or otherwise affect the lien.

3. The lien notice shall set forth all of the following:

a. The name of the person and, in the discretion of the lienor, any aliases, or the name of any corporation, partnership, trust, or other entity, including nominees, that are owned entirely or in part, or controlled by the person.

b. The description of the seized property or the criminal or civil proceeding that has been brought relating to conduct giving rise to forfeiture under the chapter.

c. The amount claimed by the lienor.

d. The name of the district court where the proceeding or action has been brought.

e. The case number of the proceeding or action if known at the time of the filing of the lien.

4. The notice of forfeiture lien shall be filed in accordance with the provisions of the laws of this state relating to the type of property that is subject to the lien. The validity and priority of the forfeiture lien shall be determined in accordance with applicable law pertaining to liens.

5. A lien filed pursuant to this section applies to the described property or to one named person, any aliases, fictitious names, or other names, including the names of any corporation, partnership, trust, or other entity, owned entirely or in part, or controlled by the named person, and any interest in real property owned or controlled by the named person. A separate forfeiture lien shall be filed for each named person.

6. The lien notice creates, upon filing, a lien in favor of the lienor as it relates to the property or the named person or related entities. The lien secures the amount of potential liability for civil judgment, and, if applicable, the fair market value of property relating to all proceedings under this chapter enforcing the lien.

7. The lienor may amend or release, in whole or in part, a lien filed under this section at any time by filing, without a filing fee, an amended lien.

8. Upon entry of judgment in its favor, the state may proceed to execute on the lien as provided by law.

96 Acts, ch 1133, §9

809A.10 Trustees — penalties.

1. Except as provided in subsection 2, a trustee, constructive or otherwise, who has notice that a notice of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture proceeding has been filed against the property or against any person or entity for whom the person holds title or appears as record owner, shall furnish within fifteen days of such notice, to the seizing agency, or the prosecuting attorney all of the following:

a. The name and address of each person or entity for whom the property is held.

b. The description of all other property whose legal title is held for the benefit of the named person.

c. A copy of the applicable trust agreement or other instrument, if any, under which the trustee or other person holds legal title or appears as record owner of the property.

2. Subsection 1 is inapplicable if any of the following applies:

a. A trustee is acting under a recorded subdivision trust agreement or a recorded deed of trust.

b. All of the information is of record in the public records giving notice of liens on that type of property.

3. A trustee with notice who knowingly fails to comply with the provisions of this section commits a class "D" felony, and shall be fined not less than ten thousand dollars per day for each day of noncompliance.

4. A trustee with notice who fails to comply with subsection 1 is subject to a civil penalty of three hundred dollars for each day of noncompliance. The court shall enter judgment ordering payment of three hundred dollars for each day of noncompliance from the effective date of the notice until the required information is furnished or the state executes its judgment lien under this section.

5. To the extent permitted by the Constitution of the United States and the Constitution of the State of Iowa, the duty to comply with subsection 1 shall not be excused by any privilege or provision of law of this state or any other state or country which authorizes or directs that testimony or records required to be furnished pursuant to subsec-

tion 1 are privileged or confidential or otherwise may not be disclosed.

6. A trustee who furnishes information pursuant to subsection 1 is immune from civil liability for the release of information.

7. An employee of the seizing agency or the prosecuting attorney who releases the information obtained pursuant to subsection 1, except in the proper discharge of official duties, commits a serious misdemeanor.

8. If any information furnished pursuant to subsection 1 is offered in evidence, the court may seal that portion of the record or may order that the information be disclosed in a designated way.

9. A judgment or an order of payment entered pursuant to this section becomes a judgment lien against the property alleged to be subject to forfeiture.

96 Acts, ch 1133, §10

809A.11 Claims — petitions for recognition of exemption.

1. Only an owner of or interest holder in property seized for forfeiture may file a claim, and shall do so in the manner provided in this section. The claim shall be mailed to the seizing agency and to the prosecuting attorney by restricted certified mail or other service which indicates the date on which the claim was received by the seizing agency and prosecuting attorney within thirty days after the effective date of notice of pending forfeiture. An extension of time for the filing of a claim shall only be granted for good cause shown for mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty.

2. The prosecuting attorney shall make an opportunity to file a petition for recognition of exemption available by so indicating in the notice of pending forfeiture described in section 809A.8, subsection 2.

3. The claim or petition and all supporting documents shall be in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath, under penalty of perjury and shall set forth all of the following:

a. The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint, the name of the claimant or petitioner, and the name of the prosecuting attorney who authorized the notice of pending forfeiture or complaint.

b. The address where the claimant or petitioner will accept mail.

c. The nature and extent of the claimant's or petitioner's interest in the property.

d. The date, the identity of the transferor, and the circumstances of the claimant's or petitioner's acquisition of the interest in the property.

e. The specific provision of law relied on in asserting that the property is not subject to forfeiture.

f. All essential facts supporting each assertion.

g. The specific relief sought.

96 Acts, ch 1133, §11

809A.12 Judicial proceedings generally.

1. A judicial forfeiture proceeding under this chapter is subject to the provisions of this section.

2. The court, before or after the filing of a notice of pending forfeiture or complaint and on application of the prosecuting attorney, may do any of the following:

a. Enter a restraining order or injunction.

b. Require the execution of satisfactory performance bonds.

c. Create receiverships.

d. Appoint conservators, custodians, appraisers, accountants, or trustees.

e. Take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this chapter, including a writ of attachment or a warrant for its seizure.

3. The court, after five days' notice to the prosecuting attorney, may issue an order to show cause to the seizing agency, for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists if all of the following exist:

a. Property is seized for forfeiture or a forfeiture lien is filed without a previous judicial determination of probable cause, order of forfeiture, or a hearing under section 809A.14, subsection 4.

b. An owner of or interest holder in the property files an application for a hearing within ten days after notice of its seizure for forfeiture or lien, or actual knowledge of its seizure, whichever is earlier.

c. The owner of or interest holder in the property complies with the requirements for claims or petitions in section 809A.11.

The hearing shall be held within thirty days of the order to show cause unless continued for good cause on motion of either party.

4. If the court finds in a hearing under subsection 3 that no probable cause exists for forfeiture of the property, or if the state elects not to contest the issue, the property shall be released to the custody of the applicant, as custodian for the court, or from the lien pending the outcome of a judicial proceeding pursuant to this chapter. If the court finds that probable cause for the forfeiture of the property exists, the court shall not order the property released.

5. All applications filed within the ten-day period prescribed by subsection 3 shall be consolidated for a single hearing relating to each applicant's interest in the property seized for forfeiture.

6. A defendant convicted in any criminal proceeding is precluded from later denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding pur-

suant to this section. For the purposes of this section, a conviction results from a verdict or a plea of guilty. A defendant whose conviction is overturned on appeal may file a motion to correct, vacate, or modify a judgment of forfeiture under this subsection.

7. In any proceeding under this chapter, if a claim is based on an exemption provided for in this chapter, the burden of proving the existence of the exemption is on the claimant. However, once the claimant comes forward with some evidence supporting the existence of the exemption, the state must provide some evidence to negate the assertion of the exemption. The state's evidence must be substantial, though not necessarily rising to the level of a preponderance of the evidence, and more than a simple assertion of the claimant's interest in the property. The agency or political subdivision bringing the forfeiture action shall pay the reasonable attorney fees and costs, as determined by the court, incurred by a claimant who prevails on a claim for exemption in a proceeding under this chapter.

8. In hearings and determinations pursuant to this section, the court may receive and consider, in making any determination of probable cause, all evidence admissible in determining probable cause at a preliminary hearing or by a judge pursuant to chapter 808 together with inferences therefrom.

9. The fact that money or a negotiable instrument was found in close proximity to any contraband or an instrumentality of conduct giving rise to forfeiture shall give rise to the presumption that the money or negotiable instrument was the proceeds of conduct giving rise to forfeiture or was used or intended to be used to facilitate the conduct.

10. Subject to the exemptions contained in section 809A.5, a presumption arises that any property of a person is subject to forfeiture under this chapter if the state establishes any of the following:

a. The person has engaged in conduct giving rise to forfeiture.

b. The property was acquired by the person during that period of the conduct giving rise to forfeiture or within a reasonable time after that period.

c. No likely source for acquisition of the property exists other than the conduct giving rise to the forfeiture.

11. A finding that property is the proceeds of conduct giving rise to forfeiture does not require proof that the property is the proceeds of any particular exchange or transaction.

12. A person who acquires property subject to forfeiture is a constructive trustee of the property, and its fruits, for the benefit of the state, to the extent that the person's interest is not exempt from forfeiture. If property subject to forfeiture has been commingled with other property, the court shall order the forfeiture of the commingled property, and of any fruits of the commingled property, to the extent of the property subject to forfeiture, unless an owner or interest holder proves that specified property does not contain property subject to forfeiture, or that the person's interest in specified property is exempt from forfeiture.

13. Title to all property declared forfeited under this chapter vests in the state on the commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing under the provisions of this chapter that the transferee's interest is exempt under section 809A.5.

14. An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter.

15. For good cause shown, on motion by either party, the court may stay discovery in civil forfeiture proceedings during a criminal trial for a related criminal indictment or information alleging the same conduct, after making provision to prevent loss to any party resulting from the stay. Such a stay shall not be available pending an appeal.

16. Except as otherwise provided by this chapter, all proceedings hereunder shall be governed by the rules of civil procedure.

17. An action brought pursuant to this chapter shall be consolidated with any other action or proceeding brought pursuant to this chapter or chapter 626 or 654 relating to the same property on motion of the prosecuting attorney, and may be consolidated on motion of an owner or interest holder.

96 Acts, ch 1133, §12

809A.13 In rem proceedings.

1. A judicial in rem forfeiture proceeding may be brought by the prosecuting attorney in addition to, or in lieu of, civil in personam forfeiture procedures, and is also subject to the provisions of this section. If a forfeiture is authorized by this chapter, it shall be ordered by the court in the in rem action.

2. An action in rem may be brought by the prosecuting attorney pursuant to a notice of pending forfeiture or verified complaint for forfeiture. The state may serve the complaint in the manner provided in section 809A.8, subsection 2, or as provided by the rules of civil procedure.

3. Only an owner of or an interest holder in the property who has timely filed a proper claim pursuant to section 809A.11 may file an answer in an action in rem. For the purposes of this section, an owner of or interest holder in property who has filed a claim and answer shall be referred to as a claimant.

4. The answer shall be signed by the owner or

interest holder under penalty of perjury and shall be in accordance with rule of civil procedure 1.405 and shall also set forth all of the following:

a. The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint and the name of the claimant.

b. The address where the claimant will accept mail.

c. The nature and extent of the claimant's interest in the property.

d. The date, the identity of the transferor, and the circumstances of the claimant's acquisition of the interest in the property.

e. The specific provision of this chapter relied on in asserting that it is not subject to forfeiture.

f. All essential facts supporting each assertion.

g. The specific relief sought.

5. The answer shall be filed within twenty days after service on the claimant of the civil in rem complaint.

6. The rules of civil procedure shall apply to discovery by the state and any claimant who has timely answered the complaint.

7. The forfeiture hearing shall be held without a jury and within sixty days after service of the complaint unless continued for good cause. The prosecuting attorney shall have the initial burden of proving the property is subject to forfeiture by a preponderance of the evidence. If the state so proves the property is subject to forfeiture, the claimant has the burden of proving that the claimant has an interest in the property which is exempt from forfeiture under this chapter by a preponderance of the evidence.

8. The court shall order the interest in the property returned or conveyed to the claimant if the prosecuting attorney fails to meet the state's burden or the claimant establishes by a preponderance of the evidence that the claimant has an interest that is exempt from forfeiture. The court shall order all other property forfeited to the state and conduct further proceedings pursuant to sections 809A.16 and 809A.17.

96 Acts, ch 1133, §13

809A.14 In personam proceedings.

1. A judicial in personam forfeiture proceeding brought by a prosecuting attorney pursuant to an in personam civil action alleging conduct giving rise to forfeiture is subject to the provisions of this section. If a forfeiture is authorized by this chapter, it shall be ordered by the court in the in personam action. This action shall be in addition to or in lieu of in rem forfeiture procedures.

2. The court, on application of the prosecuting attorney, may enter any order authorized by section 809A.12, or any other appropriate order to protect the state's interest in property forfeited or subject to forfeiture.

3. The court may issue a temporary restraining order on application of the prosecuting attorney, if the state demonstrates both of the following:

a. Probable cause exists to believe that in the event of a final judgment, the property involved would be subject to forfeiture under this chapter.

b. Provision of notice would jeopardize the availability of the property for forfeiture.

4. Notice of the issuance of a temporary restraining order and an opportunity for a hearing shall be given to persons known to have an interest in the property. A hearing shall be held at the earliest possible date in accordance with R.C.P. 326, and shall be limited to the following issues:

a. Whether a probability exists that the state will prevail on the issue of forfeiture.

b. Whether the failure to enter the order will result in the property being destroyed, conveyed, encumbered, removed from the jurisdiction of the court, concealed, or otherwise made unavailable for forfeiture.

c. Whether the need to preserve the availability of property outweighs the hardship on any owner or interest holder against whom the order is to be entered.

5. On a determination that a person committed conduct giving rise to forfeiture under this chapter, the court shall do both of the following:

a. Enter a judgment of forfeiture of the property found to be subject to forfeiture described in the complaint.

b. Authorize the prosecuting attorney or designee or any law enforcement officer to seize all property ordered forfeited which was not previously seized or is not under seizure.

6. Except as provided in section 809A.12, a person claiming an interest in property subject to forfeiture under this chapter shall not intervene in a trial or appeal of a criminal action or in an in personam civil action involving the forfeiture of the property.

7. Following the entry of an in personam forfeiture order, the prosecuting attorney may proceed with an in rem action to resolve the remaining interests in the property. The following procedures shall apply:

a. The prosecuting attorney shall give notice of pending forfeiture, in the manner provided in section 809A.8, to all owners and interest holders who have not previously been given notice.

b. An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim as described in section 809A.11, within thirty days after initial notice of pending forfeiture or after notice under paragraph *"a"*, whichever is earlier.

c. If the state does not recognize the claimed exemption, the prosecuting attorney shall file a complaint and the court shall hold an in rem forfeiture hearing as provided for in section 809A.13.

d. In accordance with the findings made at the hearing, the court may amend the order of forfeiture if it determines that any claimant has established by a preponderance of the evidence that the claimant has an interest in the property which is exempt under the provisions of section 809A.5.

96 Acts, ch 1133, §14

809A.15 Substituted assets — supplemental remedies.

1. The court shall order the forfeiture of any other property of a person, including a claimant, up to the value of that person's property found by the court to be subject to forfeiture under this chapter, if any of the following applies to the person's forfeitable property:

a. The forfeitable property cannot be located.

b. The forfeitable property has been transferred or conveyed to, sold to, or deposited with a third party.

c. The forfeitable property is beyond the jurisdiction of the court.

d. The forfeitable property has been substantially diminished in value while not in the actual physical custody of the court, the seizing agency, the prosecuting attorney, or their designee.

e. The forfeitable property has been commingled with other property that cannot be divided without difficulty.

f. The forfeitable property is subject to any interest of another person which is exempt from forfeiture under this chapter.

2. *a.* The prosecuting attorney may institute a civil action in district court against any person with notice or actual knowledge who destroys, conveys, encumbers, removes from the jurisdiction of the court, conceals, or otherwise renders unavailable property alleged to be subject to forfeiture if either of the following applies:

(1) A forfeiture lien or notice of pending forfeiture has been filed and notice given pursuant to section 809A.8.

(2) A complaint pursuant to section 809A.13 alleging conduct giving rise to forfeiture has been filed and notice given pursuant to section 809A.8.

b. The court shall enter a final judgment in an amount equal to the value of the lien not to exceed the fair market value of the property, or if a lien does not exist, in an amount equal to the fair market value of the property, together with reasonable investigative expenses and attorney fees.

c. If a civil proceeding under this chapter is pending in court, the action shall be heard by that court.

96 Acts, ch 1133, §15

809A.16 Disposition of property.

1. If notice of pending forfeiture is properly served in an action in rem or in personam in which personal property, having an estimated value of five thousand dollars or less, as established by affidavit provided by the prosecuting attorney, is seized, and no claim opposing forfeiture is filed within thirty days of service of such notice, the prosecuting attorney shall prepare a written declaration of forfeiture of the subject property to the state and allocate the property according to the provisions of section 809A.17.

2. Within one hundred eighty days of the date of a declaration of forfeiture, an owner or interest holder in property declared forfeited pursuant to subsection 1 may petition the court to have the declaration of forfeiture set aside, after making a prima facie showing that the state failed to serve proper notice as provided by section 809A.13. Upon such a showing the court shall allow the state to demonstrate by a preponderance of the evidence that notice was properly served. If the state fails to meet its burden of proof, the court may order the declaration of forfeiture set aside. The state may proceed with judicial proceedings pursuant to this chapter.

3. Except as provided in subsection 1, if a proper claim is not timely filed in an action in rem, or if a proper answer is not timely filed in response to a complaint, the prosecuting attorney may apply for an order of forfeiture and an allocation of forfeited property pursuant to section 809A.17. Under such circumstance and upon a determination by the court that the state's written application established the court's jurisdiction, the giving of proper notice, and facts sufficient to show probable cause for forfeiture, the court shall order the property forfeited to the state.

4. After final disposition of all claims timely filed in an action in rem, or after final judgment and disposition of all claims timely filed in an action in personam, the court shall enter an order that the state has clear title to the forfeited property interest. Title to the forfeited property interest and its proceeds shall be deemed to have vested in the state on the commission of the conduct giving rise to the forfeiture under this chapter.

5. The court, on application of the prosecuting attorney, may release or convey forfeited personal property to a regulated interest holder or interest holder if any of the following applies:

a. The prosecuting attorney, in the attorney's discretion, has recognized in writing that the regulated interest holder or interest holder has an interest in the property and informs the court that the property interest is exempt from forfeiture.

b. The regulated interest holder's or interest holder's interest was acquired in the regular course of business as a regulated interest holder or interest holder.

c. The amount of the regulated interest holder's or interest holder's encumbrance is readily determinable and has been reasonably established by proof made available by the prosecuting attorney to the court.

d. The encumbrance held by the regulated interest holder or interest holder seeking possession

is the only interest exempted from forfeiture and the order forfeiting the property to the state transferred all of the rights of the owner prior to forfeiture, including rights to redemption, to the state.

6. After the court's release or conveyance under subsection 5, the regulated interest holder or interest holder shall dispose of the property by a commercially reasonable public sale. Within ten days of disposition the regulated interest holder or interest holder shall tender to the state the amount received at disposition less the amount of the regulated interest holder's or interest holder's encumbrance and reasonable expense incurred by the regulated interest holder or interest holder in connection with the sale or disposal. For the purposes of this section, *"commercially reasonable"* means a sale or disposal that would be commercially reasonable under chapter 554, article 7.

7. On order of the court or declaration of forfeiture forfeiting the subject property, the state may transfer good and sufficient title to any subsequent purchaser or transferee. The title shall be recognized by all courts and agencies of this state, and any political subdivision. On entry of judgment in favor of a person claiming an interest in the property that is subject to forfeiture proceedings under this chapter, the court shall enter an order that the property or interest in property shall be released or delivered promptly to that person free of liens and encumbrances under this chapter, and that the person's cost bond shall be discharged.

8. Upon motion by the prosecuting attorney, if it appears after a hearing that reasonable cause existed for the seizure for forfeiture or for the filing of the notice of pending forfeiture or complaint, the court shall find all of the following:

a. That reasonable cause existed, or that the action was taken under a reasonable good faith belief that it was proper.

b. That the claimant is not entitled to costs or damages.

c. That the person or seizing agency who made the seizure and the prosecuting attorney are not liable to suit or judgment for the seizure, suit, or prosecution.

96 Acts, ch 1133, §16

809A.17 Allocation of forfeited property.

1. A person having control over forfeited property shall communicate that fact to the attorney general or the attorney general's designee.

2. Forfeited property not needed as evidence in a criminal case shall be delivered to the department of justice, or, upon written authorization of the attorney general or the attorney general's designee, the property may be destroyed, sold, or delivered to an appropriate agency for disposal in accordance with this section.

3. Forfeited property may be used by the department of justice in the enforcement of the criminal law. The department may give, sell, or trade property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state.

4. Forfeited property which is not used by the department of justice in the enforcement of the law may be requisitioned by the department of public safety or any law enforcement agency within the state for use in enforcing the criminal laws of this state. Forfeited property not requisitioned may be delivered to the director of the department of general services to be disposed of in the same manner as property received pursuant to section 18.15.

5. Notwithstanding subsection 1, 2, 3, or 4, the following apply:

a. Forfeited property which is a controlled substance or a simulated, counterfeit, or imitation controlled substance shall be disposed of as provided in section 124.506.

b. Forfeited property which is a weapon or ammunition shall be deposited with the department of public safety to be disposed of in accordance with the rules of the department. All weapons or ammunition may be held for use in law enforcement, testing, or comparison by the criminalistics laboratory, or destroyed. Ammunition and firearms which are not illegal and are not offensive weapons as defined by section 724.1 may be sold by the department as provided in section 809.21.

c. Material in violation of chapter 728 shall be destroyed.

d. Property subject to the rules of the natural resource commission shall be delivered to that commission for disposal in accordance with its rules.

96 Acts, ch 1133, §17

809A.18 Powers of enforcement personnel.

1. A prosecuting attorney may conduct an investigation of any conduct that gives rise to forfeiture. The prosecuting attorney is authorized, before the commencement of a proceeding or action under this chapter, to subpoena witnesses, and compel their attendance, examine them under oath, and require the production of documentary evidence for inspection, reproducing, or copying. Except as otherwise provided by this section, the prosecuting attorney shall proceed under this subsection with the powers and limitations, and judicial oversight and enforcement, and in the manner provided by this chapter and by the Iowa rules of civil procedure. Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel.

2. The examination of all witnesses under this section shall be conducted by the prosecuting attorney before an officer authorized to administer oaths. The testimony shall be taken by a certified

shorthand reporter or by a sound recording device and shall be transcribed or otherwise preserved. The prosecuting attorney may exclude from the examination all persons except the witness, the witness's counsel, the officer before whom the testimony is to be taken, law enforcement officials, and a certified shorthand reporter. Prior to oral examination, the person shall be advised of the person's right to refuse to answer any questions on the basis of the privilege against self-incrimination. The examination shall be conducted in a manner consistent with the rules dealing with the taking of depositions.

3. Except as otherwise provided in this section, prior to the filing of a civil or criminal proceeding or action relating to such a proceeding, documentary material, transcripts, or oral testimony, in the possession of the prosecuting attorney, shall not be available for examination by any individual other than a law enforcement official or agent of such official without the consent of the person who produced the material, transcripts, or oral testimony.

4. A person shall not knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any documentary material that is the subject of a subpoena, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the prosecuting attorney under this section. A violation of this subsection is a class "D" felony. The prosecuting attorney shall investigate and prosecute suspected violations of this subsection.

96 Acts, ch 1133, §18; 98 Acts, ch 1074, §41

809A.19 Immunity orders.

1. If a person is or may be called to produce evidence at a deposition, hearing, or trial under this chapter or at an investigation brought by the prosecuting attorney under section 809A.18, the district court in which the deposition, hearing, trial, or investigation is or may be held shall, upon certification in writing of a request of the prosecuting attorney, issue an order, ex parte or after a hearing, requiring the person to produce evidence, notwithstanding that person's refusal to do so on the basis of the privilege against self-incrimination.

2. The prosecuting attorney may certify in writing a request for an ex parte order under subsection 1 if in the prosecuting attorney's judgment both of the following apply:

a. The production of the evidence may be necessary to the public interest.

b. The person has refused or is likely to refuse to produce evidence on the basis of the privilege against self-incrimination.

3. A person shall not refuse to comply with an order issued under subsection 1 on the basis of a self-incrimination privilege. If the person refuses to comply with the order after being informed of its existence by the presiding officer, the person may be compelled or punished by the district court issuing an order for civil or criminal contempt.

4. The production of evidence compelled by order issued under subsection 1, and any information directly or indirectly derived from the production of evidence, shall not be used against the person in a subsequent criminal case, except in a prosecution for perjury, false swearing, or an offense otherwise involving a failure to comply with the order.

96 Acts, ch 1133, §19

809A.20 Statute of limitations.

A civil action under this chapter shall be commenced within five years after the last conduct giving rise to forfeiture or the cause of action becomes known or should have become known, excluding any time during which either the property or defendant is out of the state or in confinement, or during which criminal proceedings relating to the same conduct are pending.

96 Acts, ch 1133, §20

809A.21 Summary forfeiture of controlled substances.

Controlled substances included in chapter 124 which are contraband and any controlled substance whose owners are unknown are summarily forfeited to the state. The court may include in any judgment under this chapter an order forfeiting any controlled substance involved in the conduct giving rise to forfeiture to the extent of the defendant's interest.

96 Acts, ch 1133, §21

809A.22 Bar to collateral action.

A person claiming an interest in property subject to forfeiture shall not commence or maintain any action against the state concerning the validity of the alleged interest other than as provided in this chapter.

96 Acts, ch 1133, §22

809A.23 Statutory construction.

The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. The civil remedies do not preclude and are not precluded by any other provision of law.

96 Acts, ch 1133, §23

809A.24 Uniformity of application.

1. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting this law.

2. The attorney general may enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

96 Acts, ch 1133, §24

809A.25 Rulemaking.

The attorney general shall adopt, amend, or repeal rules pursuant to chapter 17A to carry out the provisions of this chapter.

96 Acts, ch 1133, §25

CHAPTER 810

NONTESTIMONIAL IDENTIFICATION

810.1 Definition.
810.2 Nontestimonial identification order at request of defendant.
810.3 Authority to issue order.
810.4 Time of application.
810.5 Contents of application.
810.6 Basis for order.
810.7 Issuance of order.
810.8 Contents of order.
810.9 Modification of order.
810.10 Vacation of order.
810.11 Service of order.
810.12 Time of service.
810.13 Implementation of order.
810.14 Failure to comply.
810.15 Return.
810.16 Disposition of evidence.

810.1 Definition.

As used in this chapter, the term *"nontestimonial identification"* includes, but is not limited to, identification by fingerprints, palm prints, footprints, measurements, hair strands, handwriting samples, voice samples, photographs, blood and saliva samples, ultraviolet or black-light examinations, paraffin tests, and lineups.

[C79, 81, §810.1]

810.2 Nontestimonial identification order at request of defendant.

A person arrested for or charged with an offense may request a district court judge to order a nontestimonial identification procedure. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge shall order such identification procedures involving the defendant under such terms and conditions as the judge shall prescribe.

[C79, 81, §810.2]

810.3 Authority to issue order.

A nontestimonial identification order authorized by this chapter may be issued only by a district court or district associate court judge upon written application of a prosecuting attorney in the investigation of a felony offense.

[81 Acts, ch 206, §2]

810.4 Time of application.

Applications for a nontestimonial identification order under this chapter may be made prior to the arrest of a suspect. The procedural provisions of this chapter shall not limit the conduct of lineups or other nontestimonial procedures after arrest.

[81 Acts, ch 206, §3]

810.5 Contents of application.

The application shall:

1. Describe the felony offense that is being investigated;

2. Name or describe with particularity the person to be detained for the desired nontestimonial identification procedure;

3. State the time when and place where the applicant requests that the nontestimonial identification procedure be conducted; and

4. Be supported by one or more affidavits setting forth the facts and circumstances showing that the basis for issuance of an order under this chapter exist. If an affidavit is based in whole or in part on hearsay, the affiant shall set forth particular facts bearing on the informant's reliability and shall disclose, as far as is practicable, the means by which the information was obtained.

[81 Acts, ch 206, §4]

810.6 Basis for order.

An order authorized by this chapter shall be issued only if the court finds that the application and the affidavit or affidavits in support of the application establish each of the following:

1. That there is probable cause to believe that a felony described in the application has been committed.

2. That there are reasonable grounds to suspect that the person named or described in the application committed the felony and it is reasonable in view of the seriousness of the offense to subject

that person to the requested nontestimonial identification procedures.

3. That the results of the requested nontestimonial identification procedures will be of material aid in determining whether the person named or described in the application committed the felony.

4. That such evidence cannot practicably be obtained from other sources.

[81 Acts, ch 206, §5]

810.7 Issuance of order.

Upon a showing that the required grounds exist, the court shall issue an order directing the person named or described in the application to appear at a designated time and place for nontestimonial identification procedures. The order shall be maintained by the clerk of the district court along with the application and the affidavits in support of the application in a confidential file until a charge is filed, at which time the order, application, and affidavits in support of the application shall become public records unless the court upon an in camera hearing orders that they be kept confidential.

[81 Acts, ch 206, §6; 82 Acts, ch 1138, §1]

810.8 Contents of order.

The order shall be directed to the person named or described in the application and shall inform the person of all of the following:

1. That the presence of the person is required for the purpose of conducting or permitting nontestimonial identification procedures in order to aid in the investigation of the felony specified therein.

2. The time and place of the required appearance.

3. The nontestimonial identification procedures to be conducted, the methods to be used, and the approximate length of time the procedures will require.

4. The grounds to suspect that the person named in the affidavit committed the felony specified therein.

5. That the person will be under no legal obligation to submit to any interrogation or to make any statement during the period of the person's appearance except for that required for voice identification.

6. That the person may request the judge to make a reasonable modification of the order with respect to time and place of appearance, including a request to have any nontestimonial identification procedure other than a lineup conducted at the person's place of residence.

7. That if the person fails to appear, the person may be held in contempt of court.

8. That the right to counsel shall apply during nontestimonial identification procedures, including the right of indigent persons to appointed counsel.

9. That the person may request that the court modify or vacate the order as provided in this chapter.

[81 Acts, ch 206, §7]

810.9 Modification of order.

At the request of the person named or described in the application, the issuing court may modify a nontestimonial identification order with respect to time, place or manner of conducting the identification procedures if it appears reasonable under the circumstances to do so.

[81 Acts, ch 206, §8]

810.10 Vacation of order.

On motion of the person named or described in the application, the issuing court shall vacate the nontestimonial identification order if the court finds that the order was improperly issued or that there are no longer sufficient grounds for issuance of the order.

[81 Acts, ch 206, §9]

810.11 Service of order.

The order issued pursuant to this chapter shall be served by a law enforcement officer by delivery of a copy of the order to the person named or described in the order.

[81 Acts, ch 206, §10]

810.12 Time of service.

1. The nontestimonial identification order shall be served upon the person named or described in the order within five days after its issuance, excluding Saturdays, Sundays, and legal holidays, between the hours of 8:00 a.m. and 12:00 midnight, and shall be so served not later than twelve hours prior to the time of the person's required participation.

2. If the issuing court finds reasonable cause to believe that the person named or described in the application may either flee or alter or destroy the nontestimonial evidence sought, the court may direct a law enforcement officer to bring the person before the court. Upon presentation of the person, the court shall read the nontestimonial identification order to the person and afford a reasonable opportunity for the person to consult with a lawyer and to seek modification or vacation of the order. The court may then direct the person to participate immediately in the designated nontestimonial identification procedures. After the procedures have been completed, the person shall be released or charged with a felony.

[81 Acts, ch 206, §11]

810.13 Implementation of order.

Nontestimonial identification procedures may be conducted by any law enforcement officer or other person designated by the judge. The judge

may require medical supervision for any test ordered pursuant to this chapter when the judge deems such supervision necessary. A person who appears under an order of appearance issued pursuant to this chapter shall not be detained longer than is reasonably necessary to conduct the specified nontestimonial identification procedures unless the person is arrested for a felony.

[81 Acts, ch 206, §12]

810.14 Failure to comply.

Any person who, without adequate excuse, fails to comply with a nontestimonial identification order served upon the person pursuant to this chapter may be held in contempt of the court which issued the order.

[81 Acts, ch 206, §13]

810.15 Return.

Within ten days after the nontestimonial identification procedure, the order shall be returned to the issuing court. The court, the prosecuting attorney, and the person who was the subject of the order, shall be furnished with a written report of the results of any tests or comparisons utilizing the evidence obtained in the authorized procedures. This report shall be disclosed promptly after it becomes available unless the court directs that disclosure be delayed.

[81 Acts, ch 206, §14]

810.16 Disposition of evidence.

If at the time of the return probable cause does not exist to believe that the person committed the felony specified in the application, the court shall order that the products of the nontestimonial identification procedures and all copies thereof, be promptly destroyed. Upon motion of the prosecuting attorney, the court may authorize further retention of the nontestimonial evidence so obtained for such time as reasonably necessary to facilitate a continuing investigation or prosecution.

[81 Acts, ch 206, §15]

CHAPTER 811

PRETRIAL RELEASE — BAIL

811.1 Bail and bail restrictions.
811.2 Conditions of release — penalty for failure to appear.
811.3 Qualification and examination of surety.
811.4 Undertaking of bail as liens on real estate.
811.5 Bail on appeal.
811.6 Forfeiture of bail.
811.7 Recommitment after bail.
811.8 Surrender of defendant.
811.9 Forfeiture of appearance bond.
811.10 Discharge of surety.
811.11 Bail after deferred judgment.
811.12 Limitations.

811.1 Bail and bail restrictions.

All defendants are bailable both before and after conviction, by sufficient surety, or subject to release upon condition or on their own recognizance, except that the following defendants shall not be admitted to bail:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, any class "B" felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph *"a"* or *"b"*; or a second or subsequent offense under section 124.401, subsection 1, paragraph *"c"*; any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to chapter 229A.

2. A defendant appealing a conviction of a class "A" felony; murder; any class "B" or "C" felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph *"a"* or *"b"*; or a second or subsequent conviction under section 124.401, subsection 1, paragraph *"c"*; any felony punishable under section 902.9, subsection 1; any public offense committed while detained pursuant to section 229A.5; or any public offense committed while subject to an order of commitment pursuant to

chapter 229A.

3. Notwithstanding subsections 1 and 2, a defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of, or appealing a conviction of, any felony offense included in section 708.11, subsection 3, or a felony offense under chapter 124 not provided for in subsection 1 or 2 is presumed to be ineligible to be admitted to bail unless the court determines that such release reasonably will not result in the person failing to appear as required and will not jeopardize the personal safety of another person or persons.

[C51, §3211 – 3213; R60, §4885, 4962; C73, §3845, 4107, 4511; C97, §5096, 5442; S13, §5096; C24, 27, 31, 35, 39, §**13609, 13610, 13966;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §763.1, 763.2, 789.19; C79, 81, §811.1; 82 Acts, ch 1236, §1]

89 Acts, ch 138, §4, 5; 90 Acts, ch 1251, §61; 92 Acts, ch 1179, §2; 94 Acts, ch 1093, §6; 95 Acts, ch 87, §1; 97 Acts, ch 177, §30; 98 Acts, ch 1138, §27; 99 Acts, ch 12, §10; 99 Acts, ch 71, §1; 99 Acts, ch 123, §1; 2000 Acts, ch 1099, §10; 2002 Acts, ch 1139, §22, 27

See R.Cr.P. 2.37 – Form 1
See also §124.416
Subsections 1 and 2 amended

811.2 Conditions of release — penalty for failure to appear.

1. *Conditions for release of defendant.* All bailable defendants shall be ordered released from custody pending judgment or entry of deferred judgment on their personal recognizance, or upon the execution of an unsecured appearance bond in an amount specified by the magistrate unless the magistrate determines in the exercise of the magistrate's discretion, that such a release will not reasonably assure the appearance of the defendant as required or that release will jeopardize the personal safety of another person or persons. When such determination is made, the magistrate shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or deferral of judgment and the safety of other persons, or, if no single condition gives that assurance, any combination of the following conditions:

a. Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant.

b. Place restrictions on the travel, association or place of abode of the defendant during the period of release.

c. Require the execution of an appearance bond in a specified amount and the deposit with the clerk of the district court or a public officer designated under section 602.1211, subsection 4, in cash or other qualified security, of a sum not to exceed ten percent of the amount of the bond, the deposit to be returned to the person who deposited the specified amount with the clerk upon the performance of the appearances as required in section 811.6.

d. Require the execution of a bail bond with sufficient surety, or the deposit of cash in lieu of bond. However, except as provided in section 811.1, bail initially given remains valid until final disposition of the offense or entry of an order deferring judgment. If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase of bail and the defendant must provide the additional undertaking, written or in cash, to secure release.

e. Impose any other condition deemed reasonably necessary to assure appearance as required, or the safety of another person or persons including a condition requiring that the defendant return to custody after specified hours, or a condition that the defendant have no contact with the victim or other persons specified by the court.

Any bailable defendant who is charged with unlawful possession, manufacture, delivery, or distribution of a controlled substance or other drug under chapter 124 and is ordered released shall be required, as a condition of that release, to submit to a substance abuse evaluation and follow any recommendations proposed in the evaluation for appropriate substance abuse treatment.

2. *Determination of conditions.* In determining which conditions of release will reasonably assure the defendant's appearance and the safety of another person or persons, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, including the defendant's failure to pay any fine, surcharge, or court costs, and the defendant's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

3. *Release at initial appearance.* This chapter does not preclude the release of an arrested person as authorized by section 804.21.

4. *Statement to all defendants.* When a defendant appears before a magistrate pursuant to rule of criminal procedure 2.2 or 2.3, the defendant shall be informed of the defendant's right to have said conditions of release reviewed. If the defendant indicates that the defendant desires such a review and is indigent and unable to retain legal counsel, the magistrate shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the magistrate shall set forth in writing the reasons for requiring conditions imposed. A defendant who is ordered released by a magistrate other than a district court judge or district asso-

ciate judge on a condition which required that the defendant return to custody after specified hours, shall, upon application, be entitled to review by the magistrate who imposed the condition in the same manner as a defendant who remains in full-time custody. In the event that the magistrate who imposed conditions of release is not available, any other magistrate in the judicial district may review such conditions.

5. *Statement of conditions when defendant is released.* A magistrate authorizing the release of a defendant under this section shall issue a written order containing a statement of the conditions imposed if any, shall inform the defendant of the penalties applicable to violation of the conditions of release and shall advise the defendant that a warrant for the defendant's arrest will be issued immediately upon such violation.

6. *Amendment of release conditions.* A magistrate ordering the release of the defendant on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release, provided that, if the imposition of different or additional conditions results in the detention of the defendant as a result of the defendant's inability to meet such conditions, the provisions of subsection 3 of this section shall apply.

7. *Appeal from conditions of release.*

a. A defendant who is detained, or whose release on a condition requiring the defendant to return to custody after specified hours is continued, after review of the defendant's application pursuant to subsection 3 or 5 of this section, by a magistrate, other than a district judge or district associate judge having original jurisdiction of the offense with which the defendant is charged, may make application to a district judge or district associate judge having jurisdiction to amend the order. Said motion shall be promptly set for hearing and a record made thereof.

b. In any case in which a court denied a motion under paragraph *"a"* of this subsection to amend an order imposing conditions of release, or a defendant is detained after conditions of release have been imposed or amended upon such a motion, an appeal may be taken from the district court. The appeal shall be determined summarily, without briefs, on the record made. However, the defendant may elect to file briefs and may be heard in oral argument, in which case the prosecution shall have a right to respond as in an ordinary appeal from a criminal conviction. The appellate court may, on its own motion, order the parties to submit briefs and set the time in which such briefs shall be filed. Any order so appealed shall be affirmed if it is supported by the proceeding below. If the order is not so supported, the court may remand the case for a further hearing or may, with or without additional evidence, order the defendant released pursuant to subsection 1 of this section.

8. *Failure to appear — penalty.* Any person who, having been released pursuant to this section, willfully fails to appear before any court or magistrate as required shall, in addition to the forfeiture of any security given or pledged for the person's release, if the person was released in connection with a charge which constitutes a felony, or while awaiting sentence or pending appeal after conviction of any public offense, be guilty of a class "D" felony. If the defendant was released before conviction or acquittal in connection with a charge which constitutes any public offense not a felony, the defendant shall be guilty of a serious misdemeanor. If the person was released for appearance as a material witness, the person shall be guilty of a simple misdemeanor. In addition, nothing herein shall limit the power of the court to punish for contempt.

[C51, §2876, 3216 – 3218; R60, §4601, 4967; C73, §4248, 4573; C97, §5232, 5500; C24, 27, 31, 35, 39, §**13547, 13611;** C46, 50, 54, 58, 62, 66, §761.21, 763.3; C71, 73, 75, 77, §761.21, 763.17 – 763.19; C79, 81, §811.2]

83 Acts, ch 19, §1 – 3; 83 Acts, ch 50, §6, 7; 84 Acts, ch 1152, §1, 2; 85 Acts, ch 17, §2; 88 Acts, ch 1033, §1; 93 Acts, ch 157, §10; 99 Acts, ch 12, §11; 2000 Acts, ch 1131, §6

See R.Cr.P. 2.37 – Forms 2 and 3

811.3 Qualification and examination of surety.

1. Insurance companies doing business in this state under the provisions of section 515.48, subsection 2, may act as surety. Resident owners of property which is located within the state and which is worth the amount specified in the undertaking, may act as surety, and must in all cases justify by an affidavit taken before an officer authorized to administer oaths that such surety possesses such qualifications.

2. In taking bail each signer may justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to one sufficient bail.

3. The court in which the action is pending, or the clerk thereof, or magistrate may require the personal appearance of sureties offered, and may thereupon further examine them upon oath concerning their sufficiency, and may also receive other evidence for or against the sufficiency of the bail. When such examination is closed, the official conducting such examination must make an order, either allowing or disallowing the bail, and forthwith cause the same, with the affidavits or justification and undertaking of bail, to be filed with the clerk of the court to which the papers on the preliminary examination are required to be sent.

[C51, §3220 – 3224; R60, §4969 – 4973; C73, §4575 – 4579; C97, §5507 – 5510; C24, 27, 31, 35, 39, §**13619 – 13622;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §763.11 – 763.14; C79, 81, §811.3]

811.4 Undertaking of bail as liens on real estate.

Undertakings of bail, immediately after such undertakings are filed with the clerk of the district court, shall be docketed as liens on real estate, entered upon the lien index as required for judgments in civil cases, and from the time of such entries, shall be liens upon real estate of the persons executing the same. Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated, in the same manner and with like effect as attested copies of civil judgments, and shall be immediately docketed and indexed in the same manner.

[R60, §5000 – 5002; C73, §4606 – 4608; C97, §5513, 5514; C24, 27, 31, 35, 39, §**13625, 13626;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §764.1, 764.2; C79, 81, §811.4]

811.5 Bail on appeal.

After conviction, upon appeal to the appellate court, the defendant must be admitted to bail, if it be from the judgment imposing a fine, upon the undertaking of bail that the defendant will, in all respects, abide the orders and the judgment of the appellate court upon appeal; if from a judgment of imprisonment, except as provided in section 811.1 upon the undertaking of bail that the defendant will surrender in execution of the judgment and direction of the appellate court, and in all respects abide the orders and judgment of the appellate court upon the appeal. Such bail may be taken, either by the court where the judgment was rendered, or the district court of the county in which the defendant is imprisoned, or by the appellate court, or a judge or clerk of any of such courts. Provided, that in lieu of bail, bailable defendants as described herein may be released in accordance with the provisions of section 811.2.

[R60, §4966, 4981; C73, §4587; C97, §5506; C24, 27, 31, 35, 39, §**13617, 13618;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §763.9, 763.10; C79, 81, §811.5]

811.6 Forfeiture of bail.

1. A defendant released pursuant to this chapter shall appear at arraignment, trial, judgment, or such other proceedings where the defendant's appearance is required. If the defendant fails to appear at the time and place when the defendant's personal appearance is lawfully required, or to surrender in execution of the judgment, the court must direct an entry of the failure to be made of record, and the undertaking of the defendant's bail, or the money deposited, is thereupon forfeited. As a part of the entry, except as provided in rule of criminal procedure 2.72, the court shall direct the clerk of the district court of the county to give ten days' notice in writing to the defendant and the defendant's sureties to appear and show cause, if any, why judgment should not be entered for the amount of bail. If such appearance is not made, judgment shall be entered by the court. If appearance is made, the court shall set the case down for immediate hearing as an ordinary action.

2. Where a forfeiture and judgment have been entered as provided in this section, and the amount of the judgment has been paid to the clerk, the clerk shall hold the same as funds of the clerk's office for a period of sixty days from the date of judgment.

3. The court may, upon application, set aside such judgment if, within sixty days from the date thereof, the defendant shall voluntarily surrender to the sheriff of the county, or the defendant's sureties shall, at their own expense, deliver the defendant to the custody of the sheriff. Such judgment shall not be set aside, however, unless as a condition precedent thereto, the defendant and the defendant's sureties shall have paid all costs and expenses incurred in connection therewith.

[R60, §4990 – 4994; C73, §4596 – 4600; C97, §5515 – 5517, 5519; C24, 27, 31, 35, 39, §**13631, 13633, 13635, 13636;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §766.1 – 766.3, 766.5, 766.6; C79, 81, §811.6]

2000 Acts, ch 1032, §6

811.7 Recommitment after bail.

1. The magistrate may, by an order entered on the record, direct the defendant to be arrested and committed to jail until legally discharged, after the defendant has given bail or deposited money in lieu thereof, or otherwise is released pursuant to this chapter, when it satisfactorily appears to the court that the defendant has failed to appear as required, or the defendant has violated a condition of release, or when, after the filing of an indictment or information, the court finds the bail taken or money deposited is insufficient.

2. Such order for recommitment must recite generally the facts upon which it is founded, and must direct that the defendant be arrested and committed to the custody of the sheriff of the county in which such order is entered. The defendant may be arrested pursuant to such order, upon a certified copy thereof, in any county of the state.

3. If the order recite, as the ground on which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirements of the order; if made for any other cause and the offense is bailable, the court must cause a direction to be inserted in the order that the defendant be admitted to bail, in a sum to be stated in the order.

[C51, §3243 – 3247; R60, §4995-4999; C73, §4601 – 4605; C97, §5520 – 5523; C24, 27, 31, 35, 39, §**13637 – 13640;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §767.1 – 767.4; C79, 81, §811.7]

811.8 Surrender of defendant.

1. At any time before the forfeiture of the undertaking, the surety may surrender the defendant, or the defendant may surrender, to the officer to whose custody the defendant was committed at the time of giving bail, and such officer shall detain the defendant as upon a commitment and must, upon such surrender and the receipt of a certified copy of the undertaking of bail, acknowledge the surrender by a certificate in writing.

2. Upon the filing of the undertaking and the certificate of the officer, or the certificate of the officer alone if money has been deposited instead of bail, the court or clerk shall immediately order return of the money deposited to the person who deposited the same, or order an exoneration of the surety.

3. For the purpose of surrendering the defendant, the surety, subject to the limitations of section 811.12 and chapter 80A, at any time may arrest the defendant, or, by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so. In making an arrest pursuant to this subsection, the surety or any person empowered by the surety shall possess no more authority than a peace officer would possess in making a lawful arrest under section 804.8, 804.13, 804.14, or 804.15.

[C51, §3236 – 3238; R60, §4987 – 4989; C73, §4593 – 4595; C97, §5528 – 5530; C24, 27, 31, 35, 39, §**13641 – 13643;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §768.1 – 768.3; C79, 81, §811.8]

98 Acts, ch 1149, §12

811.9 Forfeiture of appearance bond.

Sections 811.6 through 811.8 shall not apply in a case where a simple misdemeanor is charged upon a uniform citation and complaint and where the defendant has submitted an unsecured appearance bond or has submitted bail in the form of cash, check, credit card as provided in section 805.14, or guaranteed arrest bond certificate as defined in section 321.1. When a defendant fails to appear as required in such cases, the court, or the clerk of the district court, shall enter a judgment of forfeiture of the bond or bail. The judgment shall be final upon entry and shall not be set aside.

[C79, 81, §811.9]

99 Acts, ch 144, §14

811.10 Discharge of surety.

When a defendant is admitted to bail by means of a surety bail bond pursuant to section 811.2, subsection 1, paragraph *"d"*, the obligation of surety shall be discharged, and the surety released, upon any of the following conditions:

1. Dismissal of the charges against the defendant.

2. Judgment of acquittal against the defendant.

3. Judgment of conviction against the defendant.

4. Entry of an order deferring judgment of the defendant.

5. Entry of an order by the court which, by its terms, continues the case against the defendant for a period exceeding six months.

84 Acts, ch 1152, §3

811.11 Bail after deferred judgment.

Upon entry of an order by the court deferring judgment, effecting a discharge of the surety as required under section 811.10, the defendant may be admitted to bail, as a condition of the deferral of judgment. Admittance to bail under this section, if required by the court, requires a new bail undertaking by the defendant. The surety under this section is responsible only for the failure of the defendant to appear at required court appearances during the period of deferral of judgment.

84 Acts, ch 1152, §4

811.12 Limitations.

1. A person shall not take or attempt to take into custody the principal on a bail bond, either as a surety on a bail bond in a criminal proceeding or as an agent of such surety, unless such person has complied with all of the following, if applicable:

a. Notification or registration with a chief law enforcement officer under section 80A.3A.

b. Licensing requirements for bail enforcement businesses and bail enforcement agents under chapter 80A.

2. A person other than a certified peace officer shall not be authorized to apprehend, detain, or arrest a principal on a bail bond, wherever issued, unless one of the following applies:

a. The person is a bail enforcement agent licensed under chapter 80A and has notified the chief law enforcement officer under section 80A.3A.

b. The person is a bail enforcement agent licensed under the laws of another state and has registered with the chief law enforcement officer under section 80A.3A.

c. The person is a bail enforcement agent from a state that does not license such businesses who has registered with the chief law enforcement officer under section 80A.3A.

d. The person is a bail enforcement agent exempt from licensing requirements pursuant to section 80A.2, subsection 3.

98 Acts, ch 1149, §13; 99 Acts, ch 105, §1

CHAPTER 812

CONFINEMENT OF DANGEROUS PERSONS AND PERSONS WITH MENTAL INCOMPETENCE

812.1 When detention allowed.
812.2 Hearing.
812.3 Mental incompetency of accused.
812.4 Cessation of criminal prosecution.
812.5 Effect of restoration of mental capacity.

812.1 When detention allowed.

When a person is awaiting sentence after conviction of a felony or following sentence of confinement is pursuing an appeal in such case, and the person would be otherwise eligible for release under chapter 811, but it appears by clear and convincing evidence that if released the person is likely to pose a danger to another person or to the property of others, such person may be detained under the authority of this chapter.

[C79, 81, §812.1]

812.2 Hearing.

The following procedures shall apply to detention hearings held pursuant to this chapter:

1. The prosecuting attorney may initiate a detention hearing by ex parte written motion. Upon such motion, the district court may issue a warrant for the arrest of the person, if the person is not in custody.

2. The detention hearing shall be held immediately upon the person being brought before the district court for such hearing unless the person or the prosecuting attorney moves for a continuance. A continuance granted on motion of the person shall not exceed three calendar days. A continuance on motion of the prosecuting attorney shall be granted only upon good cause shown and shall not exceed three calendar days. The person may be detained pending the hearing.

3. The person shall be entitled to representation by counsel, including appointed counsel for indigent persons, and shall be entitled to the right of cross-examination and to present information, to testify, and to present witnesses in the person's own behalf.

4. Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the formal rules of evidence.

5. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, subject only to the following exceptions: Such testimony shall be admissible in proceedings under sections 811.2, subsection 8 and 811.8, and in perjury proceedings.

6. Unless the defendant otherwise requests in writing, the district court shall conduct the hearing as a private hearing, and any order entered shall remain confidential as to the public generally until the conclusion of the trial.

7. Appeals from orders of detention may be taken in the manner provided under section 811.2, subsection 7.

8. If the trial court issues an order of detention, it shall be accompanied by a written finding of fact and the reasons for the detention order.

9. For the purposes of such proceedings, the trial court is not divested of jurisdiction by the filing of a notice of appeal.

[C79, 81, §812.2]

812.3 Mental incompetency of accused.

If at any stage of a criminal proceeding it reasonably appears that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, further proceedings must be suspended and a hearing had upon that question.

[C51, §3260, 3261; R60, §5015, 5016; C73, §4620, 4621; C97, §5540; C24, 27, 31, 35, 39, §**13905;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §783.1; C79, 81, §812.3]

812.4 Cessation of criminal prosecution.

If, upon hearing conducted by the court, the accused is found to be incapacitated in the manner described in section 812.3, no further proceedings shall be taken under the complaint or indictment until the accused's capacity is restored, and, if the accused's release will endanger the public peace or safety, the court must order the accused committed for treatment to the custody of the department of human services or to the custody of the department of corrections for placement at the Iowa medical and classification center.

[C51, §3262, 3263; R60, §5018, 5019; C73, §4623, 4624; C97, §5542; C24, 27, 31, 35, 39, §**13907;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §783.3; C79, 81, §812.4]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1079, §1; 97 Acts, ch 64, §1

812.5 Effect of restoration of mental capacity.

If the accused is committed to the department of human services or to the department of corrections for placement at the Iowa medical and classification center under section 812.4, after the expiration of a period not to exceed six months, the court shall upon hearing review the confinement and determine whether there is a substantial probability the accused will regain capacity within a reasonable time. If not, the state shall be directed to institute civil commitment proceedings. When it thereafter appears that the accused can effectively assist in the accused's defense, the department shall give notice to the sheriff and county attorney of the proper county of such fact, and the sheriff, without delay, shall receive and hold the accused in custody until the accused is brought to trial or judgment, as the case may be, or is legally discharged, the expense for conveying and returning the accused, or any other, to be paid in the first instance by the county from which the accused is sent, but such county may recover the same from another county or municipal body required to provide for or maintain the accused elsewhere, and the sheriff shall be allowed for the sheriff's services the same fees as are allowed for conveying persons to institutions under section 331.655.

[C51, §3264 – 3267; R60, §5020 – 5023; C73, §4625 – 4628; C97, §5543; C24, 27, 31, 35, 39, §**13908;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §783.4; C79, 81, §812.5]

83 Acts, ch 96, §157, 159; 85 Acts, ch 21, §47; 94 Acts, ch 1079, §2

CHAPTER 813

IOWA RULES OF CRIMINAL PROCEDURE

813.1 Title.
813.2 Provisions relating to hearing and trial in indictable cases.
813.3 Trial of simple misdemeanors.
813.4 Additions to and amendment of rules.

813.1 Title.

These rules shall be known as the rules of criminal procedure. (R.Cr.P.)

[76 Acts, ch 1245(2), §1301, Rule 31; 77 Acts, ch 153, §106; C79, 81, §813.1]

813.2 Provisions relating to hearing and trial in indictable cases.

[The rules of criminal procedure are published in the compilation "Iowa Court Rules."]

813.3 Trial of simple misdemeanors.

[See § 813.2]

813.4 Additions to and amendment of rules.

The rules of criminal procedure may be amended, provisions deleted, and new rules added by the supreme court, subject to section 602.4202.

[C79, 81, §813.4]

83 Acts, ch 186, §10134, 10201

CHAPTER 814

APPEALS FROM THE DISTRICT COURT

814.1 Definition of appeal and discretionary review.
814.2 Parties — how designated on appeal.
814.3 Appeals in cases involving more than one defendant.
814.4 Perfection of an appeal and application for discretionary review. Repealed by 85 Acts, ch 157, §9.
814.5 The state as appellant or applicant.
814.6 The defendant as appellant or applicant.
814.7 Duty of clerk when appeal is perfected or application made. Repealed by 85 Acts, ch 157, §9.
814.8 Duties of prosecuting attorney.
814.9 Indigent's right to transcript on appeal.
814.10 Indigent's application for transcript in other cases.
814.11 Indigent's right to counsel.
814.12 Appeal by the state — effect.
814.13 Appeal or application by the defendant — effect.
814.14 Certificate of release.
814.15 Appeals and applications — docketing — when determined.
814.16 Failure of clerk to transmit papers as required. Repealed by 85 Acts, ch 157, §9.

814.17 Personal appearance of the defendant.
814.18 Closing argument. Repealed by 85 Acts, ch 157, §9.
814.19 Hearing in the appellate court — rules of procedure.
814.20 Decisions on appeals or applications by defendant.
814.21 Costs.
814.22 Reversal — effect.
814.23 Affirmance — effect.
814.24 Decision recorded and procedendo.
814.25 Cessation of jurisdiction of appellate court.
814.26 Judgment enforced.
814.27 Time of confinement deducted.

814.1 Definition of appeal and discretionary review.

For the purposes of this chapter, unless the context otherwise requires:

1. *"Appeal"* is the right of both the defendant and the state to have specified actions of the district court considered by an appellate court.

2. *"Discretionary review"* is the process by which an appellate court may exercise its discretion, in like manner as under the rules pertaining to interlocutory appeals and certiorari in civil cases, to review specified matters not subject to appeal as a matter of right. The supreme court may adopt additional rules to control access to discretionary review.

[R60, §4904, 4905; C73, §4520, 4521; C97, §5448; S13, §5448; C24, 27, 31, 35, 39, §**13994;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.1; C79, 81, §814.1]

814.2 Parties — how designated on appeal.

The party seeking review shall be known as the appellant and the adverse party as the appellee, but the title of the action shall not be changed from that in the district court.

[R60, §4818, 4819; C73, §4531, 4532; C97, §5455; C24, 27, 31, 35, 39, §**14004;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.12; C79, 81, §814.2]

814.3 Appeals in cases involving more than one defendant.

When defendants are tried jointly, they may seek discretionary review or may appeal separately or may join. The appellate court may, in the interest of justice, consolidate appeals or applications for discretionary review.

[R60, §4917; C73, §4526; C97, §5451; C24, 27, 31, 35, 39, §**13996;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.3; C79, 81, §814.3]

814.4 Perfection of an appeal and application for discretionary review. Repealed by 85 Acts, ch 157, § 9.

814.5 The state as appellant or applicant.

1. Right of appeal is granted the state from:

a. An order dismissing an indictment, information, or any count thereof.

b. A judgment for the defendant on a motion to the indictment or the information.

c. An order arresting judgment or granting a new trial.

2. Discretionary review may be available in the following cases:

a. An order dismissing an arrest or search warrant.

b. An order suppressing or admitting evidence.

c. An order granting or denying a motion for a change of venue.

d. A final judgment or order raising a question of law important to the judiciary and the profession.

[C79, 81, §814.5; 82 Acts, ch 1021, §8, 12(1)]

814.6 The defendant as appellant or applicant.

1. Right of appeal is granted the defendant from:

a. A final judgment of sentence, except in case of simple misdemeanor and ordinance violation convictions.

b. An order for the commitment of the defendant for insanity or drug addiction.

2. Discretionary review may be available in the following cases:

a. An order suppressing or admitting evidence.

b. An order granting or denying a motion for a change of venue.

c. An order denying probation.

d. Simple misdemeanor and ordinance violation convictions.

e. An order raising a question of law important to the judiciary and the profession.

[C79, 81, §814.6; 82 Acts, ch 1021, §9, 12(1)]

814.7 Duty of clerk when appeal is perfected or application made. Repealed by 85 Acts, ch 157, § 9.

814.8 Duties of prosecuting attorney.

1. When an appeal is taken or an application made by the state or the defendant the prosecuting attorney shall promptly prepare and deliver to

the attorney general so much of the proceedings as are material to the proper disposition of the matter.

2. When a notice of appeal or application has been filed by an adverse party, the prosecuting attorney shall immediately furnish the attorney general with a copy of said notice.

[C97, §301; SS15, §301; C24, 27, 31, 35, 39, §**13999;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.7; C79, 81, §814.8]

814.9 Indigent's right to transcript on appeal.

If a defendant in a criminal cause has perfected an appeal from a judgment and is determined by the court to be indigent, the court may order a transcript to be made. When an attorney of record is representing an indigent, the attorney shall apply to the district court for the transcript.

[C73, §3777; C97, §254; SS15, §254-a2; C24, 27, 31, 35, 39, §**14000;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.8; C79, 81, §814.9]

83 Acts, ch 186, §10135, 10201; 96 Acts, ch 1193, §6

814.10 Indigent's application for transcript in other cases.

If a defendant in a criminal cause has been granted discretionary review from an action of the district court and the appellate court deems a transcript or portions thereof are necessary to proper review of the question or questions raised, the district court shall order the transcript to be made if the defendant is determined to be indigent.

[C79, 81, §814.10]

83 Acts, ch 186, §10136, 10201; 96 Acts, ch 1193, §7

814.11 Indigent's right to counsel.

1. An indigent person is entitled to appointed counsel on the appeal of all cases if the person is entitled to appointment of counsel under section 815.9.

2. If the appeal involves an indictable offense or denial of postconviction relief, the appointment shall be made to the state appellate defender unless the state appellate defender is unable to handle the case due to a conflict of interest or because of a temporary overload of cases.

3. If the appeal is other than an indictable offense or denial of postconviction relief or if the state appellate defender is unable to handle the case, the court shall appoint an attorney who has a contract with the state public defender to handle such an appeal.

4. If the court determines that no contract attorney is available to handle the appeal, the court may appoint a noncontract attorney. The order of appointment shall include a specific finding that no contract attorney was available.

5. The appointment of an attorney shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

6. An attorney who has been retained or has agreed to represent a person on appeal and subsequently applies to the court for appointment to represent that person on appeal because the person is indigent shall notify the state public defender of the application. Upon the filing of the application, the attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

7. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

[C79, 81, §814.11]

99 Acts, ch 135, §23; 2002 Acts, ch 1067, §14

Section amended

814.12 Appeal by the state — effect.

An appeal taken by the state does not stay the operation of a judgment in favor of the defendant, nor does an application for discretionary review.

[R60, §4911; C73, §4527; C97, §5452; C24, 27, 31, 35, 39, §**14001;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.9; C79, 81, §814.12]

814.13 Appeal or application by the defendant — effect.

An appeal or application for discretionary review taken by the defendant does not stay the execution of the judgment unless the defendant is released on bail or otherwise as provided by law.

[R60, §4914, 4915; C73, §4528, 4529; C97, §5453; C24, 27, 31, 35, 39, §**14002;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.10; C79, 81, §814.13]

814.14 Certificate of release.

When an appeal is taken by the defendant and the defendant is released, the clerk of the district court must give to the defendant or the defendant's attorney a certificate, under the seal of the court, that an appeal has been taken and the defendant released. The sheriff or other officer having the defendant in custody must, upon receipt of

this certificate, discharge the defendant from custody and return to the clerk of court who issued it the execution under which the sheriff or other officer acted with the sheriff's or officer's return thereon.

[R60, §4916; C73, §4530; C97, §5454; C24, 27, 31, 35, 39, §**14003;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.11; C79, 81, §814.14]

814.15 Appeals and applications — docketing — when determined.

Appeals and applications for discretionary review in criminal cases shall be docketed in the supreme court as provided in the rules of appellate procedure. Such causes shall take precedence over other business, and the appellate court shall consider and determine appeals and applications for discretionary review in criminal actions at the earliest time it may be done considering the rights of parties and proper administration of justice.

[R60, §4818, 4819; C73, §4531, 4532; C97, §5455; C24, 27, 31, 35, 39, §**14004;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.12; C79, 81, §814.15]

85 Acts, ch 157, §4

814.16 Failure of clerk to transmit papers as required. Repealed by 85 Acts, ch 157, § 9.

814.17 Personal appearance of the defendant.

The personal appearance of the defendant in the appellate court on the trial of an appeal, or upon the hearing of a matter of discretionary review, is in no case necessary.

[R60, §4920; C73, §4533; C97, §5456; C24, 27, 31, 35, 39, §**14005;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.13; C79, 81, §814.17]

814.18 Closing argument. Repealed by 85 Acts, ch 157, § 9.

814.19 Hearing in the appellate court — rules of procedure.

The record and case shall be presented to the appellate court as provided in the rules of appellate procedure; the provisions of law in civil procedure relating to the filing of decisions and opinions of the appellate court shall apply in such cases.

[C97, §5461; C24, 27, 31, 35, 39, §**14009;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.17; C79, 81, §814.19]

Rules adopted by the supreme court are published in the compilation "Iowa Court Rules"

814.20 Decisions on appeals or applications by defendant.

An appeal or application taken by the defendant shall not be dismissed for an informality or defect in taking it if corrected as directed by the appellate court. The appellate court, after an examination of the entire record, may dispose of the case by affirmation, reversal or modification of the district court judgment. The appellate court may also order a new trial, or reduce the punishment, but shall not increase it.

[C51, §3097, 3098; R60, §4921, 4925; C73, §4534, 4538; C97, §5457, 5462; C24, 27, 31, 35, 39, §**14006, 14010;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.14, 793.18; C79, 81, §814.20]

85 Acts, ch 157, §5

814.21 Costs.

Costs shall be taxed as provided by the rules of appellate procedure.

[C97, §5462; C24, 27, 31, 35, 39, §**14011;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.19; C79, 81, §814.21]

85 Acts, ch 157, §6

814.22 Reversal — effect.

If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the appellate court shall direct a different disposition. In reversing the case, the appellate court may direct that the defendant be discharged and the defendant's bail exonerated, or if money is deposited instead, that it be returned to the defendant.

[C51, §3099; R60, §4927; C73, §4540; C97, §5464; C24, 27, 31, 35, 39, §**14013;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.21; C79, 81, §814.22]

814.23 Affirmance — effect.

On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the appellate court shall direct.

[C51, §3100; R60, §4928; C73, §4541; C97, §5465; C24, 27, 31, 35, 39, §**14014;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.22; C79, 81, §814.23]

814.24 Decision recorded and procedendo.

The decision of the appellate court with any opinion filed or judgment rendered must be recorded by its clerk. Procedendo shall be issued as provided in the rules of appellate procedure.

[C51, §3101, 3102; R60, §4929, 4930; C73, §4542, 4543; C97, §5466; C24, 27, 31, 35, 39, §**14016;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.24; C79, 81, §814.24]

85 Acts, ch 157, §7

814.25 Cessation of jurisdiction of appellate court.

The jurisdiction of the appellate court shall cease when procedendo is issued. All proceedings for executing the judgment shall be had in the district court or by its clerk.

[C51, §3101, 3102; R60, §4929, 4930; C73, §4542, 4543; C97, §5466; C24, 27, 31, 35, 39, §**14016;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,

§793.24; C79, 81, §814.25]
85 Acts, ch 157, §8

814.26 Judgment enforced.

Unless some proceeding in the district court is directed, copies of the judgment of the district court and of the decision on appeal or review, or a copy of the judgment and decision on appeal or review, certified by the clerk of the district court, shall be delivered to the sheriff or proper officer as an execution. The sheriff or proper officer shall be authorized to execute the judgment of the court or take any legal measures required to bring the action to a conclusion.

[R60, §4931; C73, §4544; C97, §5467; C24, 27, 31, 35, 39, §**14017;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.25; C79, 81, §814.26]

814.27 Time of confinement deducted.

A defendant, confined during the pendency of an unsuccessful review or appeal, or convicted at a new trial ordered by the appellate court, shall have the period of the defendant's former confinement deducted from the period of confinement fixed on the last verdict of conviction by the district court.

[R60, §4933; C73, §4545; C97, §5468; C24, 27, 31, 35, 39, §**14018;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §793.26; C79, 81, §814.27]

CHAPTER 815

COSTS — COMPENSATION AND FEES — INDIGENT DEFENSE

Deferral of costs in civil and criminal proceedings; see chapter 610

815.1 Costs payable by state in special cases.
815.2 Grand jury clerks and other officers.
815.3 Witnesses called to county attorney investigations.
815.4 Special witnesses for indigents.
815.5 Expert witnesses for state and defense.
815.6 Fees to material witnesses.
815.7 Fees to attorneys.
815.8 Sheriffs' fees.
815.9 Indigency determined — penalty.
815.9A Recovery of indigent defense costs. Repealed by 99 Acts, ch 135, §31.
815.10 Appointment of counsel by court.
815.10A Claims for compensation.
815.11 Appropriations for indigent defense.
815.12 Trial jury expenses.
815.13 Payment of prosecution costs.
815.14 Fee for public defender.

815.1 Costs payable by state in special cases.

All costs and fees incurred in a parole revocation proceeding or in a criminal case brought against an inmate of a state institution for a crime committed while confined in the institution, or for a crime committed by the inmate while placed outside the walls or confines of the institution under the control and direction of a warden, supervisor, officer, or employee of the institution, or for a crime committed by the inmate during an escape or other unauthorized departure from the institution or from the control of a warden, supervisor, officer, or employee of the institution, or from wherever the inmate may have been placed by authorized personnel of the institution, are waived if the prosecution fails, or if the person liable to pay the costs and fees cannot pay the costs and fees. An award of attorney fees to a court-appointed attorney incurred in these cases shall be paid out of the state treasury from the general fund if the prosecution fails or if the person liable to pay the attorney fees cannot pay them. The facts shall be certified by the clerk of the district court under the clerk's seal of office to the director of the department of corrections, including a statement of the amount of fees or costs incurred, approved by the presiding judge in writing. When a conviction is rendered and the court orders restitution for costs of the prosecution, the inmate, work releasee, or parolee shall make restitution to the general fund pursuant to section 910.2.

[C24, 27, 31, 35, 39, §**13968;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §789.20; C79, 81, §815.1]
86 Acts, ch 1075, §5; 86 Acts, ch 1238, §34; 90 Acts, ch 1233, §44; 92 Acts, ch 1212, §39

815.2 Grand jury clerks and other officers.

The clerk of the grand jury and any assistant clerks and bailiffs of the grand jury appointed by the court, shall receive such compensation as may be set by the court with the approval of the county board of supervisors for time actually and necessarily employed in the performance of the duties prescribed in rule of criminal procedure 2.3.

[C97, §5256; S13, §5256; C24, 27, 31, 35, 39, §**13696, 13699;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §770.19, 770.22; C79, 81, §815.2]

815.3 Witnesses called to county attorney investigations.

Witnesses subpoenaed by the county attorney pursuant to rule of criminal procedure 2.5 shall receive the same fees and mileage as are allowed witnesses in the district court, and shall be paid in the same manner in which witnesses before the grand jury are paid except that such fees and mileage shall be certified only by the county attorney.

[C79, 81, §815.3]

815.4 Special witnesses for indigents.

Witnesses secured for indigent defendants under rule of criminal procedure 2.20 must file a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant.

[C79, 81, §815.4]

93 Acts, ch 175, §21; 99 Acts, ch 135, §24

815.5 Expert witnesses for state and defense.

Notwithstanding the provisions of section 622.72, reasonable compensation as determined by the court shall be awarded expert witnesses, expert witnesses for an indigent person referred to in section 815.4, or called by the state in criminal cases.

[C79, 81, §815.5]

93 Acts, ch 175, §22; 99 Acts, ch 135, §25

See R.Cr.P. 2.20(4)

815.6 Fees to material witnesses.

Persons confined as material witnesses shall, for each day of confinement, receive such fees as are set by the district court.

[C79, 81, §815.6]

815.7 Fees to attorneys.

An attorney who has not entered into a contract authorized under section 13B.4 and who is appointed by the court to represent any person charged with a crime in this state, seeking postconviction relief, against whom a contempt action is pending, appealing a criminal conviction, appealing a denial of postconviction relief, or subject to a proceeding under chapter 229A, or to serve as counsel for any person or guardian ad litem for any child in juvenile court, shall be entitled to reasonable compensation and expenses. For appointments made on or after July 1, 1999, the reasonable compensation shall be calculated on the basis of sixty dollars per hour for class "A" felonies, fifty-five dollars per hour for class "B" felonies, and fifty dollars per hour for all other cases. The expenses shall include any sums as are necessary for investigations in the interest of justice, and the cost of obtaining the transcript of the trial record and briefs if an appeal is filed. The attorney need not follow the case into another county or into the appellate court unless so directed by the court. If the attorney follows the case into another county or into the appellate court, the attorney shall be entitled to compensation as provided in this section. Only one attorney fee shall be so awarded in any one case except that in class "A" felony cases, two may be authorized.

[C51, §2561 – 2563; R60, §1578, 4168 – 4170; C73, §3829 – 3831; C97, §5314; C24, 27, 31, 35, 39, §**13774;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §775.5; C79, 81, §815.7]

94 Acts, ch 1187, §23; 96 Acts, ch 1193, §8; 97 Acts, ch 126, §50; 99 Acts, ch 135, §26; 2000 Acts, ch 1115, §5

Compensation rates for attorneys appointed prior to July 1, 1999; determination of appointment date and compensation rate in juvenile cases; 2000 Acts, ch 1115, §10

815.8 Sheriffs' fees.

For delivering defendants under the change of venue provisions of rule of criminal procedure 2.11 or transferring arrested persons under section 804.24, sheriffs are entitled to the same fees as are allowed for the conveyance of persons to institutions under section 331.655.

[C51, §3277; R60, §4741; C73, §4382; C97, §5355; C24, 27, 31, 35, 39, §**13825;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §778.16; C79, 81, §815.8]

85 Acts, ch 21, §48

815.9 Indigency determined — penalty.

1. For purposes of this chapter, chapter 13B, chapter 229A, chapter 232, chapter 665, chapter 814, chapter 822, and the rules of criminal procedure, a person is indigent if the person is entitled to an attorney appointed by the court as follows:

a. A person is entitled to an attorney appointed by the court to represent the person if the person has an income level at or below one hundred twenty-five percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, unless the court determines that the person is able to pay for the cost of an attorney to represent the person on the pending case. In making the determination of a person's ability to pay for the cost of an attorney, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

b. A person with an income level greater than one hundred twenty-five percent, but at or below two hundred percent, of the most recently revised poverty income guidelines published by the United States department of health and human

services shall not be entitled to an attorney appointed by the court, unless the court makes a written finding that not appointing counsel on the pending case would cause the person substantial hardship. In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

c. A person with an income level greater than two hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to an attorney appointed by the court, unless the person is charged with a felony and the court makes a written finding that not appointing counsel would cause the person substantial hardship. In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the seriousness of the charge or nature of the case.

2. A determination of whether a person is entitled to an appointed attorney shall be made on the basis of an affidavit of financial status submitted at the time of the person's initial appearance or at such later time as a request for court appointment of counsel is made. The state public defender shall adopt rules prescribing the form and content of the affidavit of financial status. The affidavit of financial status shall be signed under penalty of perjury and shall contain sufficient information to allow the determination to be made of whether the person is entitled to an appointed attorney under this section. If the person is granted an appointed attorney, the affidavit of financial status shall be filed and permanently retained in the person's court file.

3. If a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person. *"Legal assistance"* as used in this section shall include not only an appointed attorney, but also transcripts, witness fees, expenses, and any other goods or services required by law to be provided to an indigent person entitled to an appointed attorney.

4. If the case is a criminal case, all costs and fees incurred for legal assistance shall become due and payable to the clerk of the district court by the person receiving the legal assistance not later than the date of sentencing, or if the person is acquitted or the charges are dismissed, within thirty days of the acquittal or dismissal.

5. If the case is other than a criminal case, all costs and fees incurred for legal assistance shall become due and payable to the clerk of the district court by the person receiving the legal assistance not later than ten days from the date of any court ruling or trial held in the case, or if the case is dismissed, within ten days of the dismissal.

6. An appointed attorney shall submit a report pertaining to the costs and fees for legal assistance to the court at the times specified in subsections 4 and 5. If the appointed attorney is a public defender, the report shall specify the total hours of service plus other expenses. If the appointed attorney is a private attorney, the total amount of legal assistance shall be the total amount of the fees claimed by the appointed attorney together with other expenses.

7. If all costs and fees incurred for legal assistance are not paid at the times specified in subsections 4 and 5, the court shall order payment of the costs and fees in reasonable installments.

8. If a person is granted an appointed attorney or has received legal assistance in accordance with this section and the person is employed, the person shall execute an assignment of wages. An order for assignment of income, in a reasonable amount to be determined by the court, shall be entered by the court. The state public defender shall prescribe forms for use in wage assignments and court orders entered under this subsection.

9. If any costs and fees are not paid at the times specified under subsections 4 and 5, a judgment shall be entered against the person for any unpaid amounts.

83 Acts, ch 186, §10137, 10201; 93 Acts, ch 175, §23, 24; 96 Acts, ch 1193, §9 – 11; 99 Acts, ch 135, §27; 2000 Acts, ch 1115, §6; 2002 Acts, ch 1067, §15
Subsection 8 amended

815.9A Recovery of indigent defense costs. Repealed by 99 Acts, ch 135, § 31.

815.10 Appointment of counsel by court.

1. The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender's designee pursuant to section 13B.4, to represent an indigent person at any stage of the criminal, postconviction, contempt, commitment under chapter 229A, or juvenile proceedings or on appeal of any criminal, postconviction, contempt, commitment under chapter 229A, or juvenile action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases, the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815.9. Only one attorney shall be appointed in all cases, except that in class "A" felony cases the court may appoint two attorneys.

2. If the state public defender or the state public defender's designee is unable to represent an indigent person, the court shall appoint an attorney who has a contract with the state public defender to represent the person.

3. If the court determines that no contract attorney is available to represent the person, the court may appoint a noncontract attorney. The order of appointment shall include a specific finding that no contract attorney was available.

4. The appointment of an attorney shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

5. An attorney who has been retained or has agreed to represent a person and subsequently applies to the court for appointment to represent that person because the person is indigent shall notify the state public defender of the application. Upon the filing of the application, the attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

6. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel, and the ineffective assistance of counsel claim is the proximate cause of the damage.

83 Acts, ch 186, §10138, 10201; 91 Acts, ch 268, §436, 439; 94 Acts, ch 1187, §24; 96 Acts, ch 1040, §5; 99 Acts, ch 135, §28; 2000 Acts, ch 1115, §7; 2002 Acts, ch 1067, §16

Section amended

815.10A Claims for compensation.

1. An attorney other than a public defender who has been appointed by the court under this chapter must apply to the state public defender for compensation and reimbursement of expenses incurred in the representation of an indigent person.

2. An attorney shall obtain court approval prior to exceeding the fee limitations established by the state public defender pursuant to section 13B.4. An attorney may exceed the fee limitations, if good cause is shown. An attorney may obtain court approval after exceeding the fee limitations, if good cause is shown. The order approving an application to exceed the fee limitations shall be effective from the date of filing the application unless the court order provides an alternative effective date. Failure to timely file an application to exceed a fee limitation after exceeding the fees shall not constitute good cause. The application and the court order approving the application to exceed fee limitations shall be submitted with any claim for compensation.

3. If the information is not submitted as required under this section and under the rules of the state public defender, the claim for compensation may be denied until the information is provided. Upon submitting the required information, the state public defender may approve reasonable and necessary compensation, as provided for in the administrative rules and the law.

2002 Acts, ch 1067, §17

NEW section

815.11 Appropriations for indigent defense.

Costs incurred under chapter 229A, 665, or 822, or section 232.141, subsection 3, paragraph *"c"*, or section 814.9, 814.10, 814.11, 815.4, 815.5, 815.7, 815.10, or 908.11 on behalf of an indigent shall be paid from funds appropriated by the general assembly to the office of the state public defender in the department of inspections and appeals for those purposes. Costs incurred under other provisions of the Code or administrative rules are not payable from these funds.

83 Acts, ch 186, §10139, 10201; 85 Acts, ch 195, §65; 90 Acts, ch 1233, §45; 94 Acts, ch 1187, §25; 98 Acts, ch 1171, §18; 99 Acts, ch 135, §29; 2000 Acts, ch 1115, §8; 2002 Acts, ch 1067, §18

Section amended

815.12 Trial jury expenses.

The clerk of the district court shall pay fees and mileage due petit jurors, and the costs of food, lodging, and transportation when provided for petit jurors.

83 Acts, ch 186, §10140, 10201

815.13 Payment of prosecution costs.

The county or city which has the duty to prosecute a criminal action shall pay the costs of depositions taken on behalf of the prosecution, the costs of transcripts requested by the prosecution, and in criminal actions prosecuted by the county or city under county or city ordinance the fees that are payable to the clerk of the district court for services rendered and the court costs taxed in connection with the trial of the action or appeals from the judgment. The county or city shall pay witness fees and mileage in trials of criminal actions prosecuted by the county or city under county or city ordinance. These fees and costs are recoverable by the county or city from the defendant unless the defendant is found not guilty or the action is dismissed, in which case the state shall pay the witness fees and mileage in cases prosecuted under state law.

83 Acts, ch 186, §10141, 10201; 84 Acts, ch 1178,

§12; 84 Acts, ch 1301, §16; 85 Acts, ch 197, §43

815.14 Fee for public defender.

When determining the amount of restitution for each case under section 910.3, the expense of the public defender shall be calculated at the same hourly rate of compensation specified under section 815.7. However, the expense of the public defender shall not exceed the fee limitations established in section 13B.4.

2002 Acts, ch 1067, §19
NEW section

CHAPTER 816

DOUBLE JEOPARDY

816.1 Conviction or acquittal — when a bar.
816.2 Prosecutions barred.
816.3 Exceptions — limitation.
816.4 Trial of former jeopardy issue.

816.1 Conviction or acquittal — when a bar.

A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the conviction or acquittal took place.

[R60, §4719; C73, §4364; C97, §5339; C24, 27, 31, 35, 39, §**13807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §777.20; C79, 81, §816.1]

816.2 Prosecutions barred.

When a defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the same offense charged in the former or for any lower degree of that offense, or for an offense necessarily included therein.

[R60, §4720; C73, §4365; C97, §5340; C24, 27, 31, 35, 39, §**13808;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §777.21; C79, 81, §816.2]

816.3 Exceptions — limitation.

A prosecution is not barred:

1. By a former prosecution before a court which lacked jurisdiction over the defendant or the offense.

2. By a former prosecution procured by the defendant without the knowledge of a prosecuting officer authorized to commence a prosecution for the maximum offense which might have been charged on the facts known to the defendant, and with the purpose of avoiding the sentence which otherwise might be imposed.

3. If subsequent proceedings resulted in the invalidation, setting aside, reversal or vacating of the conviction, unless the defendant was adjudged not guilty; but in no case where a conviction for a lesser included crime has been invalidated, set aside, reversed or vacated shall the defendant be subsequently prosecuted for a higher degree of the crime for which the defendant was originally convicted.

[C79, 81, §816.3]
86 Acts, ch 1237, §45

816.4 Trial of former jeopardy issue.

When the defendant's only plea to the indictment is a former conviction or acquittal, the order of trial prescribed in rule of criminal procedure 2.19 shall be reversed, and the defendant shall first offer evidence in support of the defense.

[R60, §4787; C73, §4422; C97, §5374; C24, 27, 31, 35, 39, §**13855;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §780.14; C79, 81, §816.4]

CHAPTER 817

SPECIAL POWERS OF POLICE, GOVERNOR, AND ATTORNEY GENERAL

817.1 Photographs — measurements — Bertillon system.
817.2 Power of governor and attorney general.

817.1 Photographs — measurements — Bertillon system.

It shall be lawful for the sheriff of any county or the chief of police in any city in this state, to take or procure the taking of the photograph of any person held to answer on a charge of any felony, such person being in the custody of such officer, or to make and record any measurements of such prisoner, by the Bertillon or other system, and to exchange such photographs, or measurements, or copies of the same, with other sheriffs and police officers, or to distribute the same by mail for the purpose of securing evidence for the identification of such person held to answer, if the identity and past record of the said person are unknown to the sheriff or chief of police; and the cost of such photographs and measurements, and of distributing the same, may be allowed by the court as a part of the costs in the case.

[S13, §5499-a; C24, 27, 31, 35, 39, §**13904;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §782.8; C79, 81, §817.1]

817.2 Power of governor and attorney general.

The governor and attorney general shall each have the power to call to their aid in the enforcement of the law any peace officer; and when such officers are so called upon it shall be their duty faithfully to render such assistance as may be required, in any part of the state, and such peace officers while so acting shall have the same powers throughout the state as possessed by the sheriff of the county in which such peace officer is acting.

[C24, 27, 31, 35, 39, §**13411;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §748.6; C79, 81, §817.2]

CHAPTER 818

INTERSTATE EXTRADITION COMPACT

See chapter 820

818.1 Agreement with other states.
818.2 Findings.
818.3 Definitions.
818.4 Demand for return.
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818.1 Agreement with other states.

The interstate extradition compact is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE EXTRADITION COMPACT

The contracting states solemnly agree that:

[C79, 81, §818.1]

818.2 Findings.

The states which are parties to this agreement find that existing* extradition procedures are cumbersome, costly and frequently result in unnecessary delay in the extradition of fugitives. They find further that the provisions of the United States Constitution and United States Code relating to extradition are meant to facilitate the return of fugitives; do not prescribe the exclusive means for return of fugitives; and do not prevent the states from establishing other procedures for this purpose.

[C79, 81, §818.2]

*76 Acts, ch 1245(2), §1802 effective January 1, 1978

818.3 Definitions.

As used in this compact, unless the context clearly requires otherwise:

1. *"State"* means any state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

2. *"Demanding state"* means the state in which a crime has been committed and where a charge has been filed against a fugitive whose return for trial is sought.

3. *"Asylum state"* means the state in which a

person for whom the warrant was issued has been found or arrested and from which the person's return to the demanding state is sought.

4. *"Fugitive"* means any person who is charged with a crime in the demanding state, or any person who has been convicted of a crime in the demanding state and has escaped from confinement or has broken the terms of the person's bail, probation or parole, and is no longer within the demanding state, whether the person's leaving the demanding state was voluntary or involuntary. For purposes of this division the term "fugitive" further includes a person in the asylum state charged with committing a crime in the demanding state by the doing of an intentional act outside the demanding state which resulted in such crime, as set forth in section 818.15.

5. *"Local prosecuting authority"* means the chief prosecuting attorney or the attorney's designee, of the governmental unit of the demanding state which has jurisdiction over the crime committed by the fugitive. When the return to the demanding state is required of a person who has been convicted of a crime in the demanding state and the fugitive has escaped from confinement or broken the terms of bail, probation or parole, the term "local prosecuting authority" includes the chief prosecuting attorney of the county in which the offense was committed, the parole board, and in the case of escapes the warden of the institution or the sheriff of the county from which the escape was made, and in such cases these officials may make demand for return of the fugitive in accordance with the provisions of this compact.

6. *"Chief law enforcement officer"* means county sheriff, chief of police or other chief law enforcement officer in the local governmental unit wherein the fugitive is located, and when the fugitive is confined in a penitentiary or reformatory, it includes the warden or chief administrative officer of that institution.

[C79, 81, §818.3]

818.4 Demand for return.

The local prosecuting authority of the demanding state shall have the authority to issue a demand for the return of a fugitive. The demand shall be made to a chief law enforcement officer of the local governmental unit in the asylum state where the accused has been found.

[C79, 81, §818.4]

818.5 Contents of demand.

Demand for the extradition of a fugitive under this chapter shall be in writing or by other official communication setting forth the crime with which the fugitive is charged, or that the fugitive has escaped confinement or broken the terms of the fugitive's bail, probation, or parole. Said demand shall allege that a crime was committed in the demanding state and that the person sought is a fugitive within the meaning of this compact.

[C79, 81, §818.5]

818.6 Arrest of fugitive.

A chief law enforcement officer of the local governmental unit in the asylum state who receives the demand is authorized to cause the arrest of the fugitive in accordance with the laws of the asylum state.

[C79, 81, §818.6]

818.7 Procedure after arrest.

When an arrest has been made the fugitive shall be taken for an appearance before a judge of court of record who shall inform the fugitive of the demand made for the fugitive's surrender and of the crime with which the fugitive is charged, or other reason for the demand as set forth in section 818.15. Said judge shall apprise the fugitive of the fugitive's legal rights and shall advise said fugitive of the fugitive's right to apply for a writ of habeas corpus.

[C79, 81, §818.7]

818.8 Confinement of fugitive.

If, at the fugitive's appearance, it appears that the person held is the person charged with having committed the crime alleged or has escaped confinement or broken the terms of the person's bail, probation, or parole and, except in cases arising under section 818.15, that the fugitive has fled from justice, the judge or magistrate before whom the fugitive is taken must, by warrant reciting the accusation, commit the fugitive to jail. Such commitment shall occur unless the accused give bail as provided in section 818.14 or is otherwise legally discharged. When the accused is confined pursuant to this section, said confinement shall be for the time specified in the warrant, but not exceeding fifteen days, as will enable the arrest of the fugitive to be made under a warrant issued by the authorities of the state having jurisdiction of the crime. If a writ of habeas corpus is applied for, the time established in this section shall be extended until such writ is disposed of.

[C79, 81, §818.8]

818.9 Warrant for conveyance.

The local prosecuting authority of the demanding state shall cause a warrant to be issued to an agent, commanding the agent to receive the fugitive when delivered to the agent and convey the fugitive to the proper officer of the local jurisdiction in the demanding state.

[C79, 81, §818.9]

818.10 Surrender of fugitive.

Said designated agent of the demanding state may at all times enter the asylum state for the purpose of making demand for the surrender of the fugitive. Upon demand and proof of authority, the fugitive shall be released and surrendered to the agent's custody subject to the provisions of sections 818.11 and 818.12 unless a petition for habeas corpus has been applied for and is pending before the court. All requirements to obtain extradition other than provided in this compact are hereby waived on the part of the state party hereto as to such fugitive.

[C79, 81, §818.10]

818.11 Prosecution pending.

If a criminal prosecution has been instituted against the fugitive under the laws of the asylum state and is still pending, the prosecuting authority of the asylum state in its discretion may either surrender the fugitive on demand or hold the fugitive until the fugitive has been tried and discharged or convicted and punished in the asylum state.

[C79, 81, §818.11]

818.12 Extradition during imprisonment.

When it is desired to have returned to the demanding state a person sentenced in the asylum state with a crime, and such person is imprisoned, the governor of the asylum state may agree with the governor of the demanding state for the extradition of such person before the conclusion of the prisoner's term or sentence upon condition that such person be returned to the asylum state as soon as the prosecution in the demanding state is terminated.

[C79, 81, §818.12]

818.13 Review — habeas corpus hearing.

The guilt or innocence of the fugitive as to the crime of which the fugitive is charged is not reviewable by any official of the asylum state or in any proceeding in the asylum state after the demand for extradition. When a habeas corpus hearing is held pursuant to section 818.5, the judge shall cause to be presented to the fugitive a certified copy of the indictment found or information from the state having jurisdiction of the crime, or a copy of any warrant which was issued thereupon; or a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the local prosecuting authority of the demanding state that the fugitive has escaped from confinement or has broken the terms of the fugitive's bail, probation or parole. Notice of such habeas corpus hearing including the time and place thereof shall be given to the local prosecuting authority of the demanding state.

[C79, 81, §818.13]

818.14 Bail.

Unless the crime with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the demanding state, a judge or magistrate in the asylum state may admit the person arrested to bail by bond with sufficient sureties, and in such sum as the judge or magistrate deems proper, conditioned for the prisoner's appearance before the judge or magistrate at a time specified in such bond, and for the prisoner's surrender. In the event of a violation of the conditions of said bond, forfeiture thereof and recovery thereon may be had as in the case of appearance bonds given by accused persons in criminal proceedings in the asylum state.

[C79, 81, §818.14]

818.15 Interstate crimes.

A chief law enforcement officer of the local governmental unit in the asylum state may surrender, on demand of the local prosecuting authority of the demanding state, any person in the asylum state charged in the demanding state in the manner provided in section 818.5 with committing an act in the asylum state, or in a third state, intentionally resulting in a crime in the demanding state. The provisions of this compact not otherwise inconsistent shall apply to such cases, even though the accused was not in the demanding state at the time of the commission of the crime, and has not fled therefrom.

[C79, 81, §818.15]

818.16 Expenses and costs.

The expenses incurred in extradition shall be assessed to the governmental unit of the demanding state seeking the return of the fugitive, but this provision shall not be construed to alter or affect any internal arrangements between a party state and its subdivisions as to the payment of costs or responsibilities therefor. These expenses shall include fees paid to the officers of the asylum state and all necessary and actual traveling expenses incurred in returning the prisoner.

[C79, 81, §818.16]

818.17 Administrator's duties.

Each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact, and who shall provide, within and without the state, information necessary to the effective operation of this compact.

[C79, 81, §818.17]

818.18 Administrator of interstate extradition.

The governor of this state shall appoint an administrator of interstate extradition to serve in such capacity for a period and under terms determined by the governor. Said administrator shall fulfill the duties set forth in section 818.17 and such other necessary duties as may be required for the administration of this compact.

[C79, 81, §818.18]

818.19 Effective date — withdrawal.

This compact shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this compact may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated at the time such withdrawal takes effect.

[C79, 81, §818.19]

818.20 Uniform criminal extradition Act unaffected.

This compact provides an alternate procedure to the uniform criminal extradition Act, which remains in full force and effect; a state seeking return of a fugitive may proceed under this compact, or under the uniform criminal extradition Act. Where another state seeks return of a fugitive under this compact, the governor of this state may intervene at any time prior to surrender of the fugitive and require the proceedings to be stayed subject to investigation and appropriate orders relating to custody of the fugitive by the governor.

[C79, 81, §818.20]

818.21 Construction — validity — constitutionality.

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party hereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[C79, 81, §818.21]

818.22 Enforcement.

All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the interstate extradition compact and to co-operate with one another and with other party states in enforcing the compact and effectuating its purpose.

[C79, 81, §818.22]

818.23 Copies of compact transmitted.

Copies of this chapter shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments.

[C79, 81, §818.23]

818.24 Short title.

This compact may be cited as the interstate extradition compact.

[C79, 81, §818.24]

CHAPTER 819

UNIFORM ACT TO SECURE WITNESSES FROM WITHOUT THE STATE

Rendition of prisoners as witnesses; see chapter 819A

819.1 Witnesses required to testify in another state.
819.2 Witnesses from another state required to testify in this state.
819.3 Fees and enforcement of order.
819.4 Exemptions — arrest — service of process.
819.5 Definition of state.

819.1 Witnesses required to testify in another state.

A person residing or physically present within this state may be required to attend as a witness in a criminal action pending or grand jury investigation commenced in another state if compliance with the following criteria is accomplished:

1. The laws of such other state require or command persons residing or physically present within that state to attend and testify in this state.

2. A judge of a court of record in the other state certifies under the seal of such court that there is a criminal action pending in such court or that a grand jury investigation has commenced; that a person residing or physically present within this state is a material witness in such action or grand jury investigation; and that the person's presence will be required for a number of days which shall be specified in such certification.

3. The certification described in subsection 2 of this section shall have been presented to any judge of the district court of the county in which the prospective witness is found.

4. The judge described in subsection 3 of this section shall make an order directing the witness to appear at a specific time and place for the hearing. If at the hearing the judge determines that the witness is material and necessary, either for the prosecution or defense in a criminal action, or for a grand jury investigation, and that it will not cause undue hardship to the witness to be compelled to attend and testify in such proceedings and that the provisions of subsections 2 and 3 of this section are complied with, the judge shall make an order, with a copy of the certificate attached, directing the witness to attend and testify in the court where the action is pending or the place where such grand jury has commenced at the time and place specified in the certificate.

[S13, §5499-b; C24, 27, 31, 35, 39, §**13893;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §781.14; C79, 81, §819.1]

819.2 Witnesses from another state required to testify in this state.

If a person, in any state whose law makes provision for commanding persons within that state to attend and testify in criminal actions pending or grand jury investigations commenced in this state, is a material witness in a district court action pending or a grand jury investigation commenced in this state, a judge of such court shall, in order to obtain the presence of such witness, issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required.

[S13, §5499-d; C24, 27, 31, 35, 39, §**13895;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §781.16; C79, 81, §819.2]

819.3 Fees and enforcement of order.

A witness named in an order described in section 819.2 is entitled to ten cents per mile for each mile traveled by the most direct route to and from the proceedings the witness is required to attend, and is also entitled to ten dollars per day for each day spent in such travel or in attending the proceedings as a witness.

If such witness fails without good cause to attend and testify as directed by such order the witness shall forfeit the right to receive mileage and per diem, and shall be guilty of contempt of court for which the witness may be punished accordingly.

[S13, §5499-e; C24, 27, 31, 35, 39, §**13896;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §781.17; C79, 81, §819.3]

83 Acts, ch 123, §203, 209

819.4 Exemptions — arrest — service of process.

If a person comes into this state in obedience to an order directing the person to attend and testify in this state, the person shall not while in this state pursuant to such order be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state under the order.

If a person passes through this state while going to another state in obedience to an order to attend and testify in that state or while returning therefrom, the person shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state pursuant to the order to testify.

[S13, §5499-e; C24, 27, 31, 35, 39, §**13896;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §781.17; C79, 81, §819.4]

819.5 Definition of state.

The word *"state"* shall include any state or territory of the United States and the District of Columbia.

[C79, 81, §819.5]

CHAPTER 819A

UNIFORM ACT FOR RENDITION OF PRISONERS AS WITNESSES IN CRIMINAL PROCEEDINGS

819A.1 Definitions.
819A.2 Testimony of in-state witness in out-of-state proceeding.
819A.3 Order for transfer.
819A.4 Terms and conditions.
819A.5 Exceptions.
819A.6 Testimony of out-of-state witness in in-state proceeding.
819A.7 Compliance.
819A.8 Exemption from arrest and service of process.
819A.9 Uniformity of interpretation.
819A.10 Short title.

819A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Criminal proceeding"* means a criminal action which is pending or is before a court in a state. For purposes of this subsection, a criminal action includes, but is not limited to, a prosecution of a complaint, indictment, or information, and an investigation by a grand jury.

2. *"Penal institution"* means a jail, prison, penitentiary, house of correction, or other place of penal detention which is located in a state and includes, but is not limited to, a city or county jail or detention facility, an institution or facility under the control of the department of corrections, the state training school or other facility under the control of the director of the department of human services, and a facility or electronic monitoring program under the control of a judicial district department of correctional services in this state.

3. *"State"* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory of the United States.

4. *"Witness"* means a person, who is confined in a penal institution in a state, whose testimony is requested in another state in a criminal proceeding.

95 Acts, ch 88, §1

819A.2 Testimony of in-state witness in out-of-state proceeding.

1. A judge of a court of record in another state, which has enacted a law that requires persons confined in penal institutions within that state to appear and testify in this state, may certify to the district court in the county in this state in which the witness is confined, as follows:

a. That a criminal proceeding is pending or before a court in the other state.

b. That a person who is confined in a penal institution in this state may be a material witness in the criminal proceeding.

c. That the person's appearance and testimony will be required at a specified time or during a specified time period.

2. Upon the filing of the certification, the district court shall set the matter for hearing and shall direct the person having custody of the witness to produce the witness at the hearing. The clerk of the district court shall send copies of the order for hearing, together with a copy of the certification, to the attorney general, the person having custody of the witness, and the witness.

95 Acts, ch 88, §2

819A.3 Order for transfer.

1. At the hearing on the certification, the district court shall determine all of the following issues:

a. That the testimony of the witness may be material and necessary to the criminal proceeding in the other state.

b. That the appearance of and testimony by the witness are not adverse to the interests of this state or the health or legal rights of the witness.

c. That the laws of the other state in which the witness is requested to testify will protect the witness from arrest and the service of civil and criminal process based on any act committed prior to the witness's arrival in the other state under a transfer order.

d. That the possibility that the witness may be subject to arrest or to service of civil or criminal process in any other state through which the witness will be required to pass is remote.

2. If the district court makes affirmative findings on all of the issues, the district court shall issue an order for transfer, with a copy of the certificate attached, that provides for all of the following orders:

a. An order directing the witness to attend and testify.

b. An order directing the person having custody of the witness to produce the witness in the court in which the criminal proceeding is taking place.

c. An order prescribing such other terms and conditions as the district court may require, including, but not limited to, the terms and condi-

tions provided in section 819A.4.

95 Acts, ch 88, §3

819A.4 Terms and conditions.

1. The order directing the witness to attend and testify and the order directing the person having custody of the witness to produce the witness shall provide for either of the following:

a. The return of the witness at the conclusion of the witness's testimony, proper safeguards on the witness's custody, and that the requesting jurisdiction provide proper financial reimbursement or prepayment of all expenses incurred in the production of the witness.

b. That the person having custody of the witness transfer custody of the witness to an officer of the requesting jurisdiction who comes to the penal institution in which the witness is confined to accept custody of the witness.

2. If the requesting jurisdiction sends an officer from the requesting jurisdiction to accept custody of the witness, the district court shall require that the requesting jurisdiction provide proper safeguards for the witness's custody while in transfer, and pay and be liable for all expenses incurred in producing and returning the witness.

3. The order shall not be effective until an order is entered by the court of the other state that submitted the request for transfer that directs compliance with the terms and conditions required by the district court in this state.

95 Acts, ch 88, §4

819A.5 Exceptions.

This chapter shall not apply to persons confined in a penal institution because of insanity or other mental disorder which prevents the person from appreciating the charge, understanding the proceedings, or assisting effectively in the person's defense.

95 Acts, ch 88, §5

819A.6 Testimony of out-of-state witness in in-state proceeding.

1. If a person confined in a penal institution in any other state may be a material witness in a criminal proceeding in a court of this state, a judicial officer of the district court in this state may certify to a court of record in another state having jurisdiction over the witness as follows:

a. That a criminal proceeding is pending and before a court in this state.

b. That a person who is confined in a penal institution in the other state may be a material witness in the criminal proceeding.

c. That the person's appearance and testimony will be required at a specified time or during a specified time period.

2. The certification shall be filed with the court of record in the other state and notice of the certification shall be given to the attorney general in that state.

95 Acts, ch 88, §6

819A.7 Compliance.

A judicial officer of the district court in this state may enter an order directing compliance with any terms and conditions prescribed by a judicial officer of the other state in which the witness is confined.

95 Acts, ch 88, §7

819A.8 Exemption from arrest and service of process.

If a witness from another state comes into or passes through this state under an order directing the witness to attend and testify in this or another state, the witness shall not be subject to arrest or the service of civil or criminal process during the time that the witness is in this state, if the service of process is based on any act committed prior to the witness's arrival in this state pursuant to a transfer order.

95 Acts, ch 88, §8

819A.9 Uniformity of interpretation.

This chapter shall be construed to effectuate the purpose of making uniform the law of those states which enact a uniform rendition of prisoners as witnesses in criminal proceedings Act.

95 Acts, ch 88, §9

819A.10 Short title.

This chapter may be cited as the *"Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act"*.

95 Acts, ch 88, §10

CHAPTER 820

UNIFORM CRIMINAL EXTRADITION ACT

820.1 Definitions.
820.2 Arrest of fugitives.
820.3 Demand in writing.
820.4 Investigation by attorney general.
820.5 Persons imprisoned in another state.
820.6 Criminal acts committed in third state.
820.7 Warrant for arrest.
820.8 Authority of warrant.
820.9 Authority of peace officer.
820.10 Testing legality of arrest.

820.11 Penalty for willful disobedience.
820.12 Confinement in jail.
820.13 Arrest on affidavit.
820.14 Arrest without warrant.
820.15 Holding to await requisition.
820.16 Bail — exceptions.
820.17 Discharge or recommitment.
820.18 Forfeiture of bond.
820.19 Criminal prosecution pending.
820.20 Guilt or innocence of person held.
820.21 Warrant recalled.
820.22 Receiving person extradited.
820.23 Application for extradition.
820.24 Expenses — how paid.
820.25 Waiver by person arrested.
820.26 State's rights not deemed waived.
820.27 Trial for other crimes.
820.28 Construction of chapter.
820.29 Title.

820.1 Definitions.

Where appearing in this chapter, the term *"governor"* includes any person performing the functions of governor by authority of the law of this state. The term *"executive authority"* includes the governor, and any person performing the functions of governor in a state other than this state, and the term *"state"*, referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.1; C79, 81, §820.1]

820.2 Arrest of fugitives.

Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

[C51, §3283; R60, §4522; C73, §4175; C97, §5172; C24, 27, 31, 35, 39, §**13502;** C46, §759.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.2; C79, 81, §820.2]

820.3 Demand in writing.

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 820.6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter the accused fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of the person's bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

[R60, §4521; C73, §4174; C97, §5171; C24, 27, 31, 35, 39, §**13501;** C46, §759.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.3; C79, 81, §820.3]

820.4 Investigation by attorney general.

When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to the governor the situation and circumstances of the person so demanded, and whether the person ought to be surrendered.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.4; C79, 81, §820.4]

820.5 Persons imprisoned in another state.

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against the person in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or the person's term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in section 820.23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.5; C79, 81, §820.5]

820.6 Criminal acts committed in third state.

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 820.3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.6; C79, 81, §820.6]

820.7 Warrant for arrest.

If the governor decides that the demand should be complied with, the governor shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom the governor may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

[C51, §3283; R60, §4522; C73, §4175; C97, §5172; C24, 27, 31, 35, 39, §**13502;** C46, §759.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.7; C79, 81, §820.7]

820.8 Authority of warrant.

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where the accused may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter to the duly authorized agent of the demanding state.

[C51, §3283, 3289; R60, §4522, 4528; C73, §4175, 4181; C97, §5172, 5178; C24, 27, 31, 35, 39, §**13502, 13508;** C46, §759.6, 759.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.8; C79, 81, §820.8]

820.9 Authority of peace officer.

Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.9; C79, 81, §820.9]

820.10 Testing legality of arrest.

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding the person shall have appointed to receive the person unless the person shall first be taken forthwith before a judge of a court of record in this state, who shall inform the person of the demand made for surrender and of the crime with which the person is charged, and that the person has the right to demand and procure legal counsel; and if the prisoner or the prisoner's counsel shall state that the prisoner or they desire to test the legality of the prisoner's arrest, the judge of such court of record shall fix a reasonable time to be allowed the prisoner within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.10; C79, 81, §820.10]

820.11 Penalty for willful disobedience.

Any officer who shall deliver to the agent for extradition of the demanding state a person in the officer's custody under the governor's warrant, in willful disobedience to the last section, shall be guilty of a simple misdemeanor.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.11; C79, 81, §820.11]

820.12 Confinement in jail.

The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which the officer or person may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of the prisoner is ready to proceed on the officer's or person's route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which the officer or agent may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of the prisoner is ready to proceed on the officer's or agent's route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper

of such jail satisfactory written evidence of the fact that the officer or agent is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

[C24, 27, 31, 35, 39, §**13512;** C46, §759.16; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.12; C79, 81, §820.12]

820.13 Arrest on affidavit.

Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases under section 820.6, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 820.6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein, wherever the person may be found in this state, and to bring the person before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

[C51, §3284; R60, §4523; C73, §4176; C97, §5173; C24, 27, 31, 35, 39, §**13503;** C46, §759.7; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.13; C79, 81, §820.13]

820.14 Arrest without warrant.

The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against the accused under oath setting forth the ground for the arrest as in the preceding section; and thereafter the accused's answer shall be heard as if the accused had been arrested on a warrant.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.14; C79, 81, §820.14]

820.15 Holding to await requisition.

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under section 820.6, that the person has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit the person to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until the accused shall be legally discharged.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.15; C79, 81, §820.15]

820.16 Bail — exceptions.

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as the judge or magistrate deems proper, conditioned for the prisoner's appearance before the judge or magistrate at a time specified in such bond, and for the prisoner's surrender, to be arrested upon the warrant of the governor of this state.

[C51, §3285, 3286; R60, §4524, 4525; C73, §4177, 4178; C97, §5174, 5175; C24, 27, 31, 35, 39, §**13504, 13505;** C46, §759.8, 759.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.16; C79, 81, §820.16]

820.17 Discharge or recommitment.

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge or recommit the accused for a further period not to exceed sixty days, or a judge or magistrate may again take bail for the accused's appearance and surrender, as provided in section 820.16, but within a period not to exceed sixty days after the date of such new bond.

[C51, §3288; R60, §4527; C73, §4180; C97, §5177; C24, 27, 31, 35, 39, §**13507;** C46, §759.11; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.17; C79, 81, §820.17]

820.18 Forfeiture of bond.

If the prisoner is admitted to bail, and fails to appear and surrender according to the conditions of the prisoner's bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order the prisoner's immediate arrest without

warrant if the prisoner be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

[C51, §3287; R60, §4526; C73, §4179; C97, §5176; C24, 27, 31, 35, 39, §**13506;** C46, §759.10; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.18; C79, 81, §820.18]

820.19 Criminal prosecution pending.

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending the governor, in the governor's discretion, either may surrender the person on demand of the executive authority of another state or hold the person until the person has been tried and discharged or convicted and punished in this state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.19; C79, 81, §820.19]

820.20 Guilt or innocence of person held.

The guilt or innocence of the accused as to the crime of which the accused is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.20; C79, 81, §820.20]

820.21 Warrant recalled.

The governor may recall the governor's warrant of arrest or may issue another warrant whenever the governor deems proper.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.21; C79, 81, §820.21]

820.22 Receiving person extradited.

Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of the person's bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, the governor shall issue a warrant under the seal of this state, to some agent, commanding the agent to receive the person so charged if delivered to the agent and convey the person to the proper officer of the county in this state in which the offense was committed.

[C51, §3282; R60, §4518; C73, §4171; C97, §5169; C24, 27, 31, 35, 39, §**13497;** C46, §759.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.22; C79, 81, §820.22]

820.23 Application for extradition.

When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor the prosecuting attorney's written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against the person, the approximate time, place and circumstances of its commission, the state in which the person is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of the person's bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which the person was convicted, the circumstances of the person's escape from confinement or of the breach of the terms of the person's bail, probation or parole, the state in which the person is believed to be, including the location of the person therein at the time application is made.

The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as the prosecuting officer, parole board, warden or sheriff shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits or of the judgment of conviction or of the sentence shall be filed in the office of the governor to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.23; C79, 81, §820.23]

820.24 Expenses — how paid.

When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and war-

rant of the director of revenue and finance; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and all necessary and actual traveling expenses incurred in returning the prisoner.

[C51, §3282; R60, §4518; C73, §4171, 4184; C97, §5169, 5181; C24, 27, 31, 35, 39, §**13498, 13499, 13511;** C46, §759.2, 759.3, 759.15; C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.24; C79, 81, §820.24]

820.25 Waiver by person arrested.

Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of bail, probation or parole may waive the issuance and service of the warrant provided for in sections 820.7 and 820.8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that the person consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of the person's rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 820.10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.25; C79, 81, §820.25]

820.26 State's rights not deemed waived.

Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.26; C79, 81, §820.26]

820.27 Trial for other crimes.

After a person has been brought back to this state by, or after waiver of extradition proceedings, the person may be tried in this state for other crimes which the person may be charged with having committed here as well as that specified in the requisition for the person's extradition.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.27; C79, 81, §820.27]

820.28 Construction of chapter.

The provisions of this chapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.28; C79, 81, §820.28]

820.29 Title.

This chapter may be cited as the *"Uniform Criminal Extradition Act"*.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, §759.29; C79, 81, §820.29]

CHAPTER 821

AGREEMENT ON DETAINERS COMPACT

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821.1 Agreement with other states.

The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of co-operative procedures. It is the further purpose of this agreement to provide such co-operative procedures.

ARTICLE II

As used in this agreement:

a. *"State"* shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

b. *"Sending state"* shall mean a state in which a prisoner is incarcerated at the time that the prisoner initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

c. *"Receiving state"* shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

a. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, the prisoner shall be brought to trial within one hundred eighty days after the prisoner shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of the prisoner's imprisonment and the prisoner's request for a final disposition to be made of the indictment, information or complaint: Provided that for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

b. The written notice and request for final disposition referred to in paragraph *"a"* hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of the prisoner, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

c. The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform the prisoner of the source and contents of any detainer lodged against the prisoner and shall also inform the prisoner of the prisoner's right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

d. Any request for final disposition made by a prisoner pursuant to paragraph *"a"* hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

e. Any request for final disposition made by a prisoner pursuant to paragraph *"a"* hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of para-

graph *"d"* hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon the prisoner, after completion of the prisoner's term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of the prisoner's body in any court where the prisoner's presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

f. Escape from custody by the prisoner subsequent to the prisoner's execution of the request for final disposition referred to in paragraph *"a"* hereof shall void the request.

ARTICLE IV

a. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom the officer has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V *"a"* hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: And provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon the governor's own motion or upon motion of the prisoner.

b. Upon receipt of the officer's written request as provided in paragraph *"a"* hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

c. In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

d. Nothing contained in this Article shall be construed to deprive any prisoner of any right which the prisoner may have to contest the legality of the prisoner's delivery as provided in paragraph *"a"* hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

e. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V *"e"* hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

a. In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

b. The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of the officer's or other representative's authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

c. If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

d. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for the prisoner's attendance at court and while being transported to or from any place at which the prisoner's presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

e. At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

f. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

g. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

h. From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

a. In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

b. No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[C66, 71, 73, 75, 77, §759A.1; C79, 81, §821.1]

821.2 Court defined.

The phrase *"appropriate court"* as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction in the matter involved.

[C66, 71, 73, 75, 77, §759A.2; C79, 81, §821.2]

821.3 Co-operation.

All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to co-operate with one another and with other party states in enforcing the agreement and effectuating its purpose.

[C66, 71, 73, 75, 77, §759A.3; C79, 81, §821.3]

821.4 Habitual criminals.

Nothing in this chapter or in the agreement on detainers shall be construed to require the application of section 902.8 to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of this agreement.

[C66, 71, 73, 75, 77, §759A.4; C79, 81, §821.4]

821.5 Escape in another state.

Escape from custody while in another state, pursuant to this agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution.

[C66, 71, 73, 75, 77, §759A.5; C79, 81, §821.5]

821.6 Transfer of custody.

It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

[C66, 71, 73, 75, 77, §759A.6; C79, 81, §821.6]

821.7 Detainer administrator.

Pursuant to the agreement on detainers, the governor is hereby authorized to designate an officer or alternate who shall be the central administrator of and information agent for the agreement on detainers and who, acting jointly with like officers of other party states, shall have power to formulate rules and regulations to carry out more effectively the terms of the agreement, and shall serve subject to the pleasure of the governor.

[C66, 71, 73, 75, 77, §759A.7; C79, 81, §821.7]

821.8 Copies of law transmitted.

Copies of this chapter shall, upon its approval, be transmitted to the governor of each state, the attorney general, and the administrator of general services of the United States, and the council of state governments.

[C66, 71, 73, 75, 77, §759A.8; C79, 81, §821.8]

CHAPTER 822

POSTCONVICTION PROCEDURE

This chapter not enacted as a part of this title;
transferred from chapter 663A in Code 1993

822.1 Statutes not applicable to convicted persons.
822.2 Situations where law applicable.
822.3 How to commence proceeding — limitation.
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822.11 Citation.

822.1 Statutes not applicable to convicted persons.

The provisions of sections 663.1 through 663.44, inclusive, shall not apply to persons convicted of, or sentenced for, a public offense.

[C71, 73, 75, 77, 79, 81, §663A.1]
C93, §822.1

822.2 Situations where law applicable.

Any person who has been convicted of, or sentenced for, a public offense and who claims that:

1. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state;

2. The court was without jurisdiction to impose sentence;

3. The sentence exceeds the maximum authorized by law;

4. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

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

6. The person's reduction of sentence pursuant to sections 903A.1 through 903A.7 has been unlawfully forfeited and the person has exhausted the appeal procedure of section 903A.3, subsection 2; or

7. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged

error formerly available under any common law, statutory or other writ, motion, petition, proceeding, or remedy, except alleged error relating to restitution, court costs, or fees under section 904.702 or chapter 815 or 910;

may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

This remedy is not a substitute for nor does it affect any remedy, incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory, or other remedies formerly available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

[C71, 73, 75, 77, 79, 81, §663A.2; 81 Acts, ch 198, §1, 2]

83 Acts, ch 147, §10, 14; 86 Acts, ch 1075, §3

C93, §822.2

822.3 How to commence proceeding — limitation.

A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction or sentence took place. However, if the applicant is seeking relief under section 822.2, subsection 6, the application shall be filed with the clerk of the district court of the county in which the applicant is being confined within ninety days from the date the disciplinary decision is final. All other applications must be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the county attorney and the attorney general.

[C71, 73, 75, 77, 79, 81, §663A.3]

84 Acts, ch 1193, §1; 89 Acts, ch 96, §1

C93, §822.3

822.4 Facts to be presented.

The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment of conviction or sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in section 822.3. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from the conviction or sentence. Argument, citations, and discussion of authorities are unnecessary.

[C71, 73, 75, 77, 79, 81, §663A.4]

C93, §822.4

822.5 Payment of costs.

If the applicant is unable to pay court costs and stenographic and printing expenses, these costs and expenses shall be made available to the applicant in the trial court, and on review. Unless the applicant is confined in a state institution and is seeking relief under section 822.2, subsections 5 and 6, the costs and expenses of legal representation shall also be made available to the applicant in the preparation of the application, in the trial court, and on review if the applicant is unable to pay. However, nothing in this section shall be interpreted to require payment of expenses of legal representation, including stenographic, printing, or other legal services or consultation, when the applicant is self-represented or is utilizing the services of an inmate.

[C71, 73, 75, 77, 79, 81, §663A.5; 82 Acts, ch 1108, §1]

91 Acts, ch 219, §18

C93, §822.5

98 Acts, ch 1016, §1, 3; 98 Acts, ch 1132, §1

822.6 Determination of relief.

Within thirty days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall take account of substance regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for dismissal. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant

leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if a material issue of fact exists.

The court may grant a motion by either party for summary disposition of the application, when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

[C71, 73, 75, 77, 79, 81, §663A.6]
C93, §822.6

822.7 Court to hear application.

The application shall be heard in, and before any judge of the court in which the conviction or sentence took place. However, if the applicant is seeking relief under section 822.2, subsection 6, the application shall be heard in, and before any judge of the court of the county in which the applicant is being confined. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings including pretrial and discovery procedures are available to the parties. The court may receive proof of affidavits, depositions, oral testimony, or other evidence, and may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

[C71, 73, 75, 77, 79, 81, §663A.7; 81 Acts, ch 198, §3]
C93, §822.7

822.8 Grounds must be all-inclusive.

All grounds for relief available to an applicant under this chapter must be raised in the applicant's original, supplemental or amended application. Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

[C71, 73, 75, 77, 79, 81, §663A.8]
C93, §822.8

822.9 Appeal.

An appeal from a final judgment entered under this chapter may be taken, perfected, and prosecuted either by the applicant or by the state in the manner and within the time after judgment as provided in the rules of appellate procedure for appeals from final judgments in criminal cases. However, if a party is seeking an appeal under section 822.2, subsection 6, the appeal shall be by writ of certiorari.

[C71, 73, 75, 77, 79, 81, §663A.9]
85 Acts, ch 157, §3; 90 Acts, ch 1043, §1; 92 Acts, ch 1212, §38
C93, §822.9
96 Acts, ch 1018, §1

822.10 Rule of construction.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[C71, 73, 75, 77, 79, 81, §663A.10]
C93, §822.10

822.11 Citation.

This chapter may be cited as the *"Uniform Postconviction Procedure Act"*.

[C71, 73, 75, 77, 79, 81, §663A.11]
C93, §822.11

CHAPTERS 823 to 899

RESERVED

SUBTITLE 3

CRIMINAL CORRECTIONS

CHAPTER 900

RESERVED

CHAPTER 901

JUDGMENT AND SENTENCING PROCEDURES

901.1 Short title.
901.2 Presentence investigation.
901.3 Presentence investigation report.
901.4 Presentence investigation report confidential — distribution.
901.4A Substance abuse evaluation.
901.5 Pronouncing judgment and sentence.
901.5A Reopening of a sentence.
901.6 Judgment entered.
901.7 Commitment to custody.
901.8 Consecutive sentences.
901.9 Information for parole board.
901.10 Reduction of sentences.

901.1 Short title.

Chapters 901 to 909 shall be known and may be cited as the *"Iowa Corrections Code."*

[C79, 81, §901.1]

94 Acts, ch 1023, §71

901.2 Presentence investigation.

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a public offense may be rendered, the court shall receive from the state, from the judicial district department of correctional services, and from the defendant any information which may be offered which is relevant to the question of sentencing. The court may consider information from other sources.

The court shall not order a presentence investigation when the offense is a class "A" felony. If, however, the board of parole determines that the Iowa medical and classification center reception report for a class "A" felon is inadequate, the board may request and shall be provided with additional information from the appropriate judicial district department of correctional services. The court shall order a presentence investigation when the offense is any felony punishable under section 902.9, subsection 1, or a class "B", class "C", or class "D" felony. A presentence investigation for any felony punishable under section 902.9, subsection 1, or a class "B", class "C", or class "D" felony shall not be waived. The court may order, with the consent of the defendant, that the presentence investigation begin prior to the acceptance of a plea of guilty, or prior to a verdict of guilty. The court may order a presentence investigation when the offense is an aggravated misdemeanor. The court may order a presentence investigation when the offense is a serious misdemeanor only upon a finding of exceptional circumstances warranting an investigation. Notwithstanding section 901.3, a presentence investigation ordered by the court for a serious misdemeanor shall include information concerning only the following:

1. A brief personal and social history of the defendant.
2. The defendant's criminal record.
3. The harm to the victim, the victim's immediate family, and the community, including any completed victim impact statement or statements and restitution plan.

The court may withhold execution of any judgment or sentence for such time as shall be reasonably necessary for an investigation with respect to deferment of judgment, deferment of sentence, or suspension of sentence and probation. The investigation shall be made by the judicial district department of correctional services.

The purpose of the report by the judicial district department of correctional services is to provide the court pertinent information for purposes of sentencing and to include suggestions for correctional planning for use by correctional authorities subsequent to sentencing.

[S13, §5447-a; C24, 27, 31, 35, 39, §**3800;** C46, 50, 54, 58, 62, 66, 71, 73, §247.20; C75, 77, §789A.3; C79, 81, §901.2]

83 Acts, ch 38, §2; 84 Acts, ch 1126, §1; 89 Acts,

ch 156, §2; 90 Acts, ch 1251, §62; 94 Acts, ch 1099, §1; 99 Acts, ch 12, §12; 2000 Acts, ch 1122, §2

901.3 Presentence investigation report.

If a presentence investigation is ordered by the court, the investigator shall promptly inquire into all of the following:

1. The defendant's characteristics, family and financial circumstances, needs, and potentialities, including the presence of any previously diagnosed mental disorder.
2. The defendant's criminal record and social history.
3. The circumstances of the offense.
4. The time the defendant has been in detention.
5. The harm to the victim, the victim's immediate family, and the community. Additionally, the presentence investigator shall provide a victim impact statement form to each victim, if one has not already been provided, and shall file the completed statement or statements with the presentence investigation report.
6. The defendant's potential as a candidate for the community service sentence program established pursuant to section 907.13.
7. Any mitigating circumstances relating to the offense and the defendant's potential as a candidate for deferred judgment, deferred sentencing, a suspended sentence, or probation, if the defendant is charged with or convicted of assisting suicide pursuant to section 707A.2.

All local and state mental and correctional institutions, courts, and police agencies shall furnish to the investigator on request the defendant's criminal record and other relevant information. With the approval of the court, a physical examination or psychiatric evaluation of the defendant may be ordered, or the defendant may be committed to an inpatient or outpatient psychiatric facility for an evaluation of the defendant's personality and mental health. The results of any such examination or evaluation shall be included in the report of the investigator.

[C75, 77, §789A.4; C79, 81, §901.3; 82 Acts, ch 1069, §1]

86 Acts, ch 1178, §2; 90 Acts, ch 1251, §63; 91 Acts, ch 219, §23; 96 Acts, ch 1002, §4

901.4 Presentence investigation report confidential — distribution.

The presentence investigation report is confidential and the court shall provide safeguards to ensure its confidentiality, including but not limited to sealing the report, which may be opened only by further court order. At least three days prior to the date set for sentencing, the court shall serve all of the presentence investigation report upon the defendant's attorney and the attorney for the state, and the report shall remain confidential except upon court order. However, the court may conceal the identity of the person who provided confidential information. The report of a medical examination or psychological or psychiatric evaluation shall be made available to the attorney for the state and to the defendant upon request. The reports are part of the record but shall be sealed and opened only on order of the court. If the defendant is committed to the custody of the Iowa department of corrections and is not a class "A" felon, a copy of the presentence investigation report shall be forwarded to the director with the order of commitment by the clerk of the district court and to the board of parole at the time of commitment. The presentence investigation report may also be released by the department of corrections or a judicial district department of correctional services pursuant to section 904.602 to another jurisdiction for the purpose of providing interstate probation and parole compact services or evaluations. The defendant or the defendant's attorney may file with the presentence investigation report, a denial or refutation of the allegations, or both, contained in the report. The denial or refutation shall be included in the report. If the person is sentenced for an offense which requires registration under chapter 692A, the court shall release the report to the department which is responsible under section 692A.13A for performing the assessment of risk.

[C75, 77, §789A.5; C79, 81, §901.4]

83 Acts, ch 38, §3; 83 Acts, ch 96, §124, 159, 160; 89 Acts, ch 279, §7; 98 Acts, ch 1095, §1; 98 Acts, ch 1169, §17; 99 Acts, ch 112, §20

901.4A Substance abuse evaluation.

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court may order the defendant to submit to and complete a substance abuse evaluation, if the court determines that there is reason to believe that the defendant regularly abuses alcohol or other controlled substances and may be in need of treatment. An order made pursuant to this section may be made in addition to any other sentence or order of the court.

90 Acts, ch 1251, §64

901.5 Pronouncing judgment and sentence.

After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

At the time fixed by the court for pronounce-

ment of judgment and sentence, the court shall act accordingly:

1. If authorized by section 907.3, the court may defer judgment and sentence for an indefinite period in accordance with chapter 907.

2. If the defendant is not an habitual offender as defined by section 902.8, the court may pronounce judgment and impose a fine.

3. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both, and suspend the execution of the sentence or any part of it as provided in chapter 907.

4. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both.

5. If authorized by section 907.3, the court may defer the sentence and assign the defendant to the judicial district department of correctional services.

6. The court may pronounce judgment and sentence the defendant to confinement and then reconsider the sentence as provided by section 902.4 or 903.2.

7. The court shall inform the defendant of the mandatory minimum sentence, if one is applicable.

8. The court may order the defendant to complete any treatment indicated by a substance abuse evaluation ordered pursuant to section 901.4A or any other section.

8A. *a.* The court shall order DNA profiling of a defendant convicted of an offense that requires profiling under section 13.10.

b. Notwithstanding section 13.10, the court may order the defendant to provide a physical specimen to be submitted for DNA profiling if appropriate. In determining the appropriateness of ordering DNA profiling, the court shall consider the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense.

9. If the defendant is being sentenced for an aggravated misdemeanor or a felony, the court shall publicly announce the following:

a. That the defendant's term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits, and program credits.

b. That the defendant may be eligible for parole before the sentence is discharged.

c. In the case of multiple sentences, whether the sentences shall be served consecutively or concurrently.

10. In addition to any sentence imposed pursuant to chapter 902 or 903, the court shall order the state department of transportation to revoke the defendant's driver's license or motor vehicle operating privilege for a period of one hundred eighty days, or to delay the issuance of a driver's license for one hundred eighty days after the person is first eligible if the defendant has not been issued a driver's license, and shall send a copy of the order in addition to the notice of conviction required under section 124.412, 126.26, or 453B.16, to the state department of transportation, if the defendant is being sentenced for any of the following offenses:

a. A controlled substance offense under section 124.401, 124.401A, 124.402, or 124.403.

b. A drug or drug-related offense under section 126.3.

c. A controlled substance tax offense under chapter 453B.

If the person's operating privileges are suspended or revoked at the time of sentencing, the order shall provide that the one hundred eighty-day revocation period shall not begin until all other suspensions or revocations have terminated. Any order under this section shall also provide that the department shall not issue a temporary restricted license to the defendant during the revocation period, without further order by the court.

11. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the provisions of 21 U.S.C. § 862, regarding the denial of federal benefits to drug traffickers and possessors convicted under state or federal law, and may enter an order specifying the range and scope of benefits to be denied to the defendant, according to the provisions of 21 U.S.C. § 862. For the purposes of this subsection, *"federal benefit"* means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or through the appropriation of funds of the United States, but does not include any retirement, welfare, social security, health, disability, veterans, public housing, or similar benefit for which payments or services are required for eligibility. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to the denial of federal benefits program of the United States department of justice, along with any other forms and information required by the department.

12. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the denial of state benefits to the defendant, and may enter an order specifying the range and scope of benefits to be denied to the defendant, comparable to the federal benefits denied under subsection 11. For the purposes of this subsection, *"state benefit"* means the issuance of any grant, contract, loan, professional license, or commercial license provided by a state agency, department, program, or otherwise through the appropriation of funds of the state, but does not include any retirement, welfare, health, disability, veterans, public hous-

ing, or similar benefit. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and comparable to the guidelines for denial of federal benefits in 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to each state agency, department, or program required to deny benefits pursuant to such an order.

13. In addition to any sentence or other penalty imposed against the defendant, the court shall sentence the defendant to an additional indeterminate term of years if required under section 902.3A, subsection 2.

[C79, 81, §901.5]

84 Acts, ch 1063, §1; 86 Acts, ch 1178, §3; 90 Acts, ch 1251, §65; 92 Acts, ch 1023, §1; 96 Acts, ch 1218, §68; 98 Acts, ch 1073, §9; 98 Acts, ch 1138, §26; 2000 Acts, ch 1122, §3; 2000 Acts, ch 1173, §2, 10; 2001 Acts, ch 165, §3

Surcharge on penalty, chapter 911

For future amendment to subsection 8A effective upon appropriation or receipt of funds, see 2002 Acts, ch 1080, §2, 6

901.5A Reopening of a sentence.

1. A defendant sentenced by the court to the custody of the director of the department of corrections for an offense punishable under section 902.9, subsection 1, may have the judgment and sentence entered under section 901.5 reopened for resentencing if the following apply:

a. The county attorney from the county which prosecuted the defendant files a motion to reopen the sentence of the defendant based upon the defendant's cooperation in the prosecution of other persons.

b. The court finds the defendant cooperated in the prosecution of other persons.

2. Upon a finding by the court that the defendant cooperated in the prosecution of other persons, the court may reduce the maximum sentence imposed under the original sentencing order.

3. For purposes of calculating earned time under section 903A.2, the sentencing date for a defendant whose sentence has been reopened under this section shall be the date of the original sentencing order.

4. The filing of a motion or the reopening of a sentence under this section shall not constitute grounds to stay any other court proceedings, or to toll or restart the time for filing of any post-trial motion or any appeal.

5. The defendant may request appointment of counsel, if eligible under section 815.10, prior to and during any negotiations and proceedings pursuant to this section.

99 Acts, ch 12, §13; 2000 Acts, ch 1173, §3, 10

901.6 Judgment entered.

If judgment is not deferred, and no sufficient cause is shown why judgment should not be pronounced and none appears to the court upon the record, judgment shall be pronounced and entered. In every case in which judgment is entered, the court shall include in the judgment entry the number of the particular section of the Code and the name of the offense under which the defendant is sentenced and a statement of the days credited pursuant to section 903A.5 shall be incorporated into the sentence.

[C51, §3066; R60, §4873, 4874; C73, §4506, 4507; C97, §5438; C24, §13958; C27, 31, 35, §13958-a1; C39, §**13958.2;** C46, 50, 54, 58, 62, 66, §789.11; C71, 73, 75, 77, §789.11, 791.8; C79, 81, §901.6]

83 Acts, ch 38, §4; 83 Acts, ch 147, §11, 14

901.7 Commitment to custody.

In imposing a sentence of confinement for more than one year, the court shall commit the defendant to the custody of the director of the Iowa department of corrections. Upon entry of judgment and sentence, the clerk of the district court immediately shall notify the director of the commitment. The court shall make an order as appropriate for the temporary custody of the defendant pending the defendant's transfer to the custody of the director. The court shall order the county where a person was convicted to pay the cost of temporarily confining the person and of transporting the person to the state institution where the person is to be confined in execution of the judgment. The order shall require that a person transported to a state institution pursuant to this section shall be accompanied by a person of the same sex.

[C79, 81, §901.7]

83 Acts, ch 96, §125, 159; 85 Acts, ch 21, §49

901.8 Consecutive sentences.

If a person is sentenced for two or more separate offenses, the sentencing judge may order the second or further sentence to begin at the expiration of the first or succeeding sentence. If a person is sentenced for escape under section 719.4 or for a crime committed while confined in a detention facility or penal institution, the sentencing judge shall order the sentence to begin at the expiration of any existing sentence. If the person is presently in the custody of the director of the Iowa department of corrections, the sentence shall be served at the facility or institution in which the person is already confined unless the person is transferred by the director. Except as otherwise provided in section 903A.7, if consecutive sentences are specified in the order of commitment, the several terms shall be construed as one continuous term of imprisonment.

[S13, §5718-a13; C24, 27, 31, 35, 39, §**13961;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §789.14; C79, 81, §901.8]

83 Acts, ch 96, §126, 159; 97 Acts, ch 131, §1, 4

901.9 Information for parole board.

At the time of committing a defendant to the custody of the director of the Iowa department of corrections for incarceration, the trial judge and prosecuting attorney shall, and the defense attorney may, furnish the board of parole with a full statement of their recommendations relating to release or parole.

83 Acts, ch 38, §1; 83 Acts, ch 96, §160

901.10 Reduction of sentences.

1. A court sentencing a person for the person's first conviction under section 124.406, 124.413, or 902.7 may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record.

2. Notwithstanding subsection 1, if the sentence under section 124.413 involves an amphetamine or methamphetamine offense under section 124.401, subsection 1, paragraph *"a"* or *"b"*, the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the mandatory minimum sentence by up to one-third. If the defendant additionally cooperates in the prosecution of other persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in the defendant's sentence because of such cooperation, the court may grant a further reduction in the defendant's mandatory minimum sentence, up to one-half of the remaining mandatory minimum sentence.

3. A court sentencing a person for the person's first conviction under section 124.401D may, at its discretion, sentence the person to a term less than the maximum term provided under section 902.9, subsection 1, if mitigating circumstances exist and those circumstances are stated specifically in the record. However, the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the maximum sentence by up to one-third. If the defendant cooperates in the prosecution of other persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in the defendant's sentence because of such cooperation, the court may grant a further reduction in the defendant's maximum sentence.

4. The state may appeal the discretionary decision on the grounds that the stated mitigating circumstances do not warrant a reduction of the sentence.

85 Acts, ch 41, §1; 98 Acts, ch 1138, §28; 99 Acts, ch 12, §14; 2000 Acts, ch 1144, §5

CHAPTER 901A

SEXUALLY PREDATORY OFFENSES

901A.1 Definitions.
901A.2 Enhanced sentencing.
901A.3 Trial information or indictment. Repealed by 2000 Acts, ch 1030, §3, 4.
901A.4 Sexually predatory offenses — finding of fact — notice. Repealed by 2000 Acts, ch 1030, §3, 4.

901A.1 Definitions.

1. As used in this chapter, the term *"sexually predatory offense"* means any serious or aggravated misdemeanor or felony which constitutes:

a. A violation of any provision of chapter 709.

b. Sexual exploitation of a minor in violation of section 728.12, subsection 1.

c. Enticing a minor away in violation of section 710.10, subsection 1.

d. Pandering involving a minor in violation of section 725.3, subsection 2.

e. Any offense involving an attempt to commit an offense contained in this section.

f. An offense under prior law of this state or an offense committed in another jurisdiction which would constitute an equivalent offense under paragraphs *"a"* through *"e"*.

2. As used in this chapter, the term *"prior conviction"* includes a plea of guilty, deferred judgment, deferred or suspended sentence, or adjudication of delinquency, regardless of whether a prior conviction occurred before, on, or after March 31, 2000.

3. As used in this chapter, the term *"sexually violent offense"* means the same as defined in section 229A.2.

96 Acts, ch 1082, §3; 97 Acts, ch 23, §79; 2000 Acts, ch 1030, §1, 2, 4; 2001 Acts, ch 17, §5; 2002 Acts, ch 1139, §23, 27

NEW subsection 3

901A.2 Enhanced sentencing.

1. A person convicted of a sexually predatory offense which is a serious or aggravated misdemeanor, who has a prior conviction for a sexually predatory offense, shall be sentenced to and shall serve twice the maximum period of incarceration for the offense, notwithstanding any other provision of the Code to the contrary, prior to being eligible for parole or work release. However, a person sentenced under this subsection shall not have the person's sentence reduced under chapter 903A or otherwise by more than fifteen percent.

2. A person convicted of a sexually predatory offense which is a serious or aggravated misdemeanor, who has two or more prior convictions for sexually predatory offenses, shall be sentenced to and shall serve a period of incarceration of ten years, notwithstanding any other provision of the Code to the contrary. A person sentenced under this subsection shall not have the person's sentence reduced under chapter 903A or otherwise by more than fifteen percent.

3. Except as otherwise provided in subsection 5, a person convicted of a sexually predatory offense which is a felony, who has a prior conviction for a sexually predatory offense, shall be sentenced to and shall serve twice the maximum period of incarceration for the offense, or twenty-five years, whichever is greater, notwithstanding any other provision of the Code to the contrary. A person sentenced under this subsection shall not have the person's sentence reduced under chapter 903A or otherwise by more than fifteen percent.

4. Except as otherwise provided in subsection 5, a person convicted of a sexually predatory offense which is a felony who has previously been sentenced under subsection 3 shall be sentenced to life in prison on the same terms as a class "A" felon under section 902.1, notwithstanding any other provision of the Code to the contrary. In order for a person to be sentenced under this subsection, the prosecuting attorney shall allege and prove that this section is applicable to the person.

5. A person who has been convicted of a violation of section 709.3, subsection 2, shall, upon a second conviction for a violation of section 709.3, subsection 2, be committed to the custody of the director of the Iowa department of corrections for the rest of the person's life. In determining whether a conviction is a first or second conviction under this subsection, a prior conviction for a criminal offense committed in another jurisdiction which would constitute a violation of section 709.3, subsection 2, if committed in this state, shall be considered a conviction under this subsection. The terms and conditions applicable to sentences for class "A" felons under chapters 901 through 909 shall apply to persons sentenced under this subsection.

6. A person who has been placed in a transitional release program, released with or without supervision, or discharged pursuant to chapter 229A, and who is subsequently convicted of a sexually predatory offense or a sexually violent offense, shall be sentenced to life in prison on the same terms as a class "A" felon under section 902.1, notwithstanding any other provision of the Code to the contrary. The terms and conditions applicable to sentences for class "A" felons under chapters 901 through 909 shall apply to persons sentenced under this subsection. However, if the person commits a sexually violent offense which is a misdemeanor offense under chapter 709, the person shall be sentenced to life in prison, with eligibility for parole as provided in chapter 906.

7. A person sentenced under the provisions of this section shall not be eligible for deferred judgment, deferred sentence, or suspended sentence.

8. In addition to any other sentence imposed on a person convicted of a sexually predatory offense pursuant to subsection 1, 2, or 3, the person shall be sentenced to an additional term of parole or work release not to exceed two years. The board of parole shall determine whether the person should be released on parole or placed in a work release program. The sentence of parole supervision shall commence immediately upon the person's release by the board of parole and shall be under the terms and conditions as set out in chapter 906. Violations of parole or work release shall be subject to the procedures set out in chapter 905 or 908 or rules adopted under those chapters. For purposes of disposition of a parole violator upon revocation of parole or work release, the sentence of an additional term of parole or work release shall be considered part of the original term of commitment to the department of corrections.

96 Acts, ch 1082, §4; 98 Acts, ch 1171, §19, 20; 2002 Acts, ch 1139, §24, 27

NEW subsection 6 and former subsections 6 and 7 renumbered as 7 and 8

901A.3 Trial information or indictment. Repealed by 2000 Acts, ch 1030, § 3, 4.

901A.4 Sexually predatory offenses — finding of fact — notice. Repealed by 2000 Acts, ch 1030, § 3, 4.

CHAPTER 901B

INTERMEDIATE CRIMINAL SANCTIONS

901B.1 Corrections continuum — intermediate criminal sanctions program.

901B.1 Corrections continuum — intermediate criminal sanctions program.

1. The corrections continuum consists of the following:

a. LEVEL ONE. Noncommunity-based corrections sanctions including the following:

(1) Self-monitored sanctions. Self-monitored sanctions which are not monitored for compliance including, but not limited to, fines and community service.

(2) Other than self-monitored sanctions. Other than self-monitored sanctions which are monitored for compliance by other than the district department of correctional services including, but not limited to, mandatory mediation, victim and offender reconciliation, and noncommunity-based corrections supervision.

b. LEVEL TWO. Probation and parole options consisting of the following:

(1) Monitored sanctions. Monitored sanctions are administrative supervision sanctions which are monitored for compliance by the district department of correctional services and include, but are not limited to, low-risk offender-diversion programs.

(2) Supervised sanctions. Supervised sanctions are regular probation or parole supervision and any conditions established in the probation or parole agreement or by court order.

(3) Intensive supervision sanctions. Intensive supervision sanctions provide levels of supervision above sanctions in subparagraph (2) but are less restrictive than sanctions under paragraph *"c"* and include electronic monitoring, day reporting, day programming, live-out programs for persons on work release or who have violated chapter 321J, and institutional work release under section 904.910.

c. LEVEL THREE. Quasi-incarceration sanctions. Quasi-incarceration sanctions are those supported by residential facility placement or twenty-four hour electronic monitoring including, but not limited to, the following:

(1) Residential treatment facilities.

(2) Operating while intoxicated offender treatment facilities.

(3) Work release facilities.

(4) House arrest with electronic monitoring.

(5) A substance abuse treatment facility as established and operated by the Iowa department of public health.

d. LEVEL FOUR. Short-term incarceration designed to be of short duration, including, but not limited to, the following:

(1) Twenty-one day shock incarceration for persons who violate chapter 321J.

(2) Jail for less than thirty days.

(3) Violators' facilities.

(4) Prison with sentence reconsideration.

e. LEVEL FIVE. Incarceration which consists of the following:

(1) Prison.

(2) Jail for thirty days or longer.

2. *"Intermediate criminal sanctions program"* means a program structured around the corrections continuum in subsection 1, describing sanctions and services available in each level of the continuum in the district and containing the policies of the district department of correctional services regarding placement of a person in a particular level of sanction and the requirements and conditions under which a defendant will be transferred between levels in the corrections continuum under the program.

3. Each judicial district and judicial district department of correctional services shall implement an intermediate criminal sanctions program by July 1, 2001. An intermediate criminal sanctions program shall consist of only levels two, three, and sublevels one and three of level four of the corrections continuum and shall be operated in accordance with an intermediate criminal sanctions plan adopted by the chief judge of the judicial district and the director of the judicial district department of correctional services. The plan adopted shall be designed to reduce probation revocations to prison through the use of incremental, community-based sanctions for probation violations.

The plan shall be subject to rules adopted by the department of corrections. The rules shall include provisions for transferring individuals between levels in the continuum. The provisions shall include a requirement that the reasons for the transfer be in writing and that an opportunity for the individual to contest the transfer be made available.

A copy of the program and plan shall be filed with the chief judge of the judicial district, the department of corrections, and the division of criminal and juvenile justice planning of the department of human rights by July 1, 2001.

4. *a.* The district department of correctional services shall place an individual committed to it under section 907.3 to the sanction and level of supervision which is appropriate to the individual based upon a current risk assessment evaluation. Placements may be to levels two and three of the corrections continuum. The district department may, with the approval of the Iowa department of public health and the department of corrections, place an individual in a level three substance abuse treatment facility established pursuant to section 135.130, to assist the individual in complying with a condition of probation. The district department may, with the approval of the department of corrections, place an individual in a level four violator facility established pursuant to section 904.207 only as a penalty for a violation of a condition imposed under this section.

b. The district department may transfer an individual along the intermediate criminal sanctions program operated pursuant to subsection 3

as necessary and appropriate during the period the individual is assigned to the district department. However, nothing in this section shall limit the district department's ability to seek a revocation of the individual's probation pursuant to section 908.11.

96 Acts, ch 1193, §15; 2000 Acts, ch 1201, §14; 2001 Acts, ch 184, §10, 11

CHAPTER 902

FELONIES

902.1 Class "A" felony.
902.2 Commutation procedure for class "A" felons.
902.3 Indeterminate sentence.
902.3A Determinate sentencing and additional term of years for class "D" felons.
902.4 Reconsideration of felon's sentence.
902.5 Place of confinement.
902.6 Release.
902.7 Minimum sentence — use of a dangerous weapon.
902.8 Minimum sentence — habitual offender.
902.8A Minimum sentence for conspiring to manufacture, or delivery of, amphetamine or methamphetamine to a minor.
902.9 Maximum sentence for felons.
902.10 Application for involuntary hospitalization.
902.11 Minimum sentence — eligibility of prior forcible felon for parole or work release.
902.12 Minimum sentence for certain felonies — eligibility for parole or work release.
902.13 Reserved.

902.1 Class "A" felony.

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction of a class "A" felony may be rendered, the court shall enter a judgment of conviction and shall commit the defendant into the custody of the director of the Iowa department of corrections for the rest of the defendant's life. Nothing in the Iowa corrections code pertaining to deferred judgment, deferred sentence, suspended sentence, or reconsideration of sentence applies to a class "A" felony, and a person convicted of a class "A" felony shall not be released on parole unless the governor commutes the sentence to a term of years.

[C79, 81, §902.1]

83 Acts, ch 96, §127, 159

902.2 Commutation procedure for class "A" felons.

A person who has been sentenced to life imprisonment under section 902.1 may, no more frequently than once every ten years, make an application to the governor requesting that the person's sentence be commuted to a term of years. The director of the Iowa department of corrections may make a request to the governor that a person's sentence be commuted to a term of years at any time. Upon receipt of a request for commutation, the governor shall send a copy of the request to the Iowa board of parole for investigation and recommendations as to whether the person should be considered for commutation. The board shall conduct an interview of the class "A" felon and shall make a report of its findings and recommendations to the governor.

[S13, §5718-a18; C24, 27, 31, 35, 39, §**3786;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.5; C79, 81, §902.2]

95 Acts, ch 128, §1

902.3 Indeterminate sentence.

When a judgment of conviction of a felony other than a class "A" felony is entered against a person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the Iowa department of corrections for an indeterminate term, the maximum length of which shall not exceed the limits as fixed by section 902.9, unless otherwise prescribed by statute, nor shall the term be less than the minimum term imposed by law, if a minimum sentence is provided. However, if the court suspends a person's sentence under section 321J.2, subsection 2, paragraph *"c"*, the court shall order the offender to serve time in the county jail as provided in section 321J.2, subsection 2, paragraph *"c"*, notwithstanding any provision to the contrary in section 903.4.

[S13, §5718-a13; C24, 27, 31, 35, 39, §**13960;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §789.13; C79, 81, §902.3; 82 Acts, ch 1239, §3]

83 Acts, ch 96, §128, 159; 86 Acts, ch 1220, §43; 99 Acts, ch 12, §15; 2002 Acts, ch 1042, §2

Section amended

902.3A Determinate sentencing and additional term of years for class "D" felons.

1. Notwithstanding section 902.3, when a conviction for a class "D" felony is entered against a person, the court, at its discretion, in imposing a sentence of confinement pursuant to section

901.5, may commit the person into the custody of the director of the Iowa department of corrections for a determinate term of less than the maximum length of the sentence prescribed by section 902.9, subsection 5, if mitigating circumstances exist and those circumstances are stated specifically on the record.

a. The determinate term of confinement shall not be for less than one year and if a mandatory minimum sentence is required by law, the determinate term of confinement imposed under this section shall not be less than the mandatory minimum term of confinement prescribed by law.

b. A person sentenced to a determinate term of confinement under this section shall not be eligible for parole until the person has served one-half of the determinate term of confinement under the sentence.

c. Earned time shall be calculated as provided in chapter 903A. However, earned time accrued and not forfeited shall not apply to cause the person to become eligible for parole until the person has served one-half of the determinate term of confinement.

d. A person on parole or work release under a determinate term of confinement imposed under this section shall be subject to the terms and conditions of parole or work release as set out in chapter 906. Violations of parole or work release shall be subject to the procedures set out in chapters 905 and 908 and rules adopted under those chapters.

e. This section does not apply to an offense classified as a forcible felony, a felony under section 321J.2, felonies in chapters 707, 708, and 709, a person sentenced as a habitual offender, felonies listed in section 901A.1, felonies listed in section 902.12, or a felony committed by a person on parole or work release, or while in the custody of the director of the department of corrections.

2. When the person is sentenced and committed into the custody of the director of the department of corrections pursuant to subsection 1, the person shall also be sentenced to an additional indeterminate term of years not to exceed two years. The sentence of an additional term shall be consecutive to the determinate term of confinement.

a. The sentence of an additional indeterminate term of years shall commence immediately upon the expiration of the determinate term of confinement and the person shall be assigned to the judicial district department of correctional services by the department of corrections. The district department shall place a person assigned to it under this paragraph in a level of sanction and supervision which is appropriate to the person pursuant to the district's intermediate criminal sanctions program operated under chapter 901B.

b. The district department may transfer a person along the continuum of the intermediate criminal sanctions program operated pursuant to chapter 901B as necessary and appropriate during the period the person is assigned to the district department. If the person violates the terms and conditions of the placement, the district may transfer the person to a more restrictive placement as provided in the program.

c. A person serving an additional indeterminate term of years may be discharged from that sentence in the same manner as a person serving probation may be discharged under section 907.9. Discharge from an additional indeterminate term of years terminates the person's sentence of an additional indeterminate term of years.

d. A person serving an additional indeterminate term of years shall receive credit for any time served after discharge from the preceding determinate term of confinement against the person's sentence of an additional indeterminate term of years.

3. Notwithstanding subsection 2, if a person is paroled at least six months prior to the expiration of the person's determinate term of confinement, the person shall not serve an additional indeterminate term of years.

4. Section 907.3 governs the inapplicability of deferred judgments and deferred or suspended sentences to sentences imposed under this section.

2001 Acts, ch 165, §4; 2002 Acts, ch 1119, §105
Subsection 1, paragraph d amended

902.4 Reconsideration of felon's sentence.

For a period of one year from the date when a person convicted of a felony, other than a class "A" felony or a felony for which a minimum sentence of confinement is imposed, begins to serve a sentence of confinement, the court, on its own motion or on the recommendation of the director of the Iowa department of corrections, may order the person to be returned to the court, at which time the court may review its previous action and reaffirm it or substitute for it any sentence permitted by law. Copies of the order to return the person to the court shall be provided to the attorney for the state, the defendant's attorney, and the defendant. Upon a request of the attorney for the state, the defendant's attorney, or the defendant if the defendant has no attorney, the court may, but is not required to, conduct a hearing on the issue of reconsideration of sentence. The court shall not disclose its decision to reconsider or not to reconsider the sentence of confinement until the date reconsideration is ordered or the date the one-year period expires, whichever occurs first. The district court retains jurisdiction for the limited purposes of conducting such review and entering an appropriate order notwithstanding the timely filing of a notice of appeal. The court's final order in the proceeding shall be delivered to the defendant personally or by certified mail. The court's decision to take the action or not to take the action is not subject to appeal. However, for the purposes of ap-

peal, a judgment of conviction of a felony is a final judgment when pronounced.

[C79, 81, §902.4]

83 Acts, ch 96, §129, 159; 84 Acts, ch 1139, §1; 84 Acts, ch 1149, §1; 97 Acts, ch 189, §1; 2001 Acts, ch 165, §5

902.5 Place of confinement.

The director of the Iowa department of corrections shall determine the appropriate place of confinement of any person committed to the director's custody, in any institution administered by the director, and may transfer the person from one institution to another during the person's period of confinement.

[S13, §5718-a5; C24, 27, 31, 35, 39, §**13963;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §789.16; C79, 81, §902.5]

83 Acts, ch 96, §130, 159

902.6 Release.

A person who has been committed to the custody of the director of the Iowa department of corrections shall remain in custody until released by the order of the board of parole, in accordance with the law governing paroles, or by order of the judge after reconsideration of a felon's sentence pursuant to section 902.4 or until the maximum term of the person's confinement, as fixed by law, has been completed.

[S13, §5718-a18; C24, 27, 31, 35, 39, §**3786;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.5; C79, 81, §902.6]

83 Acts, ch 96, §131, 159

902.7 Minimum sentence — use of a dangerous weapon.

At the trial of a person charged with participating in a forcible felony, if the trier of fact finds beyond a reasonable doubt that the person is guilty of a forcible felony and that the person represented that the person was in the immediate possession and control of a dangerous weapon, displayed a dangerous weapon in a threatening manner, or was armed with a dangerous weapon while participating in the forcible felony the convicted person shall serve a minimum of five years of the sentence imposed by law. A person sentenced pursuant to this section shall not be eligible for parole until the person has served the minimum sentence of confinement imposed by this section.

[C79, 81, §902.7]

95 Acts, ch 126, §1

Definition of forcible felony, §702.11

902.8 Minimum sentence — habitual offender.

An habitual offender is any person convicted of a class "C" or a class "D" felony, who has twice before been convicted of any felony in a court of this or any other state, or of the United States. An offense is a felony if, by the law under which the person is convicted, it is so classified at the time of the person's conviction. A person sentenced as an habitual offender shall not be eligible for parole until the person has served the minimum sentence of confinement of three years.

[S13, §4871-a, 5091-a; C24, 27, 31, 35, 39, §**13396, 13400;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §747.1, 747.5; C79, 81, §902.8]

See §901.5(7)

902.8A Minimum sentence for conspiring to manufacture, or delivery of, amphetamine or methamphetamine to a minor.

A person who has been convicted for a first violation under section 124.401D shall not be eligible for parole until the person has served a minimum term of confinement of ten years.

99 Acts, ch 12, §16

902.9 Maximum sentence for felons.

The maximum sentence for any person convicted of a felony shall be that prescribed by statute or, if not prescribed by statute, if other than a class "A" felony shall be determined as follows:

1. A felon sentenced for a first conviction for a violation of section 124.401D, shall be confined for no more than ninety-nine years.
2. A class "B" felon shall be confined for no more than twenty-five years.
3. An habitual offender shall be confined for no more than fifteen years.
4. A class "C" felon, not an habitual offender, shall be confined for no more than ten years, and in addition shall be sentenced to a fine of at least one thousand dollars but not more than ten thousand dollars.
5. A class "D" felon, not an habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars.

The criminal penalty surcharge required by sections 911.2 and 911.3 shall be added to a fine imposed on a class "C" or class "D" felon, as provided by those sections, and is not a part of or subject to the maximums set in this section.

[C79, 81, §902.9]

84 Acts, ch 1134, §1; 84 Acts, ch 1219, §38; 86 Acts, ch 1220, §44; 92 Acts, ch 1163, §121; 93 Acts, ch 110, §9; 99 Acts, ch 12, §17; 99 Acts, ch 65, §6, 7; 2001 Acts, ch 168, §4; 2002 Acts, ch 1042, §3; 2002 Acts, ch 1050, §55

Enhanced penalties in weapons free zones, see §724.4A
Habitual offender, §902.8
Surcharge on penalty, chapter 911
Subsection 5 amended
Unnumbered paragraph 2 amended

902.10 Application for involuntary hospitalization.

For the purposes of chapter 229, the director of the Iowa department of corrections is an interested person and all applicable provisions of chapter 229, relating to involuntary hospitalization, apply to persons who have been committed to the custody of the Iowa department of corrections as a result of a conviction of a public offense.

[C79, 81, §902.10]

83 Acts, ch 96, §132, 159

902.11 Minimum sentence — eligibility of prior forcible felon for parole or work release.

A person serving a sentence for conviction of a felony, other than a forcible felony under section 902.12, who has a criminal record of one or more prior convictions for a forcible felony or a crime of a similar gravity in this or any other state, shall be denied parole or work release unless the person has served at least one-half of the maximum term of the defendant's sentence. However, the mandatory sentence provided for by this section does not apply if either of the following apply:

1. The sentences for the prior forcible felonies expired at least five years before the date of conviction for the present felony.

2. The sentence being served is on a conviction for operating a motor vehicle while under the influence of alcohol or a drug under chapter 321J.

88 Acts, ch 1091, §2; 96 Acts, ch 1151, §1, 2

902.12 Minimum sentence for certain felonies — eligibility for parole or work release.

Except as otherwise provided in section 903A.2, a person serving a sentence for conviction of the following forcible felonies shall serve one hundred percent of the maximum term of the person's sentence and shall not be released on parole or work release:

1. Murder in the second degree in violation of section 707.3.

2. Attempted murder in violation of section 707.11.

3. Sexual abuse in the second degree in violation of section 709.3.

4. Kidnapping in the second degree in violation of section 710.3.

5. Robbery in the first or second degree in violation of section 711.2 or 711.3.

Except as otherwise provided in section 903A.2, a person serving a sentence for conviction under section 707.6A, subsection 1 or 2, shall serve one hundred percent of the maximum term of the person's sentence and shall not be released on parole or work release if the person was also convicted under section 321.261, subsection 3, based on the same facts or event that resulted in the conviction under section 707.6A, subsection 1 or 2.

96 Acts, ch 1151, §3; 98 Acts, ch 1007, §1, 2; 98 Acts, ch 1088, §3

902.13 Reserved.

For future text of this section effective upon appropriation or receipt of funds, see 2002 Acts, ch 1080, §3, 6

CHAPTER 903

MISDEMEANORS

903.1 Maximum sentence for misdemeanants.
903.2 Reconsideration of misdemeanant's sentence.
903.3 Work release.
903.4 Providing place of confinement.
903.5 Local facilities preferred for misdemeanants.
903.6 Segregation of prisoners.

903.1 Maximum sentence for misdemeanants.

1. If a person eighteen years of age or older is convicted of a simple or serious misdemeanor and a specific penalty is not provided for or if a person under eighteen years of age has been waived to adult court pursuant to section 232.45 on a felony charge and is subsequently convicted of a simple, serious, or aggravated misdemeanor, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, which fine shall not be suspended by the court, within the following limits:

a. For a simple misdemeanor, there shall be a fine of at least fifty dollars but not to exceed five hundred dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.

b. For a serious misdemeanor, there shall be a fine of at least two hundred fifty dollars but not to exceed one thousand five hundred dollars. In addition, the court may also order imprisonment not to exceed one year.

2. When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not to exceed two years. There shall be a fine of at least five hundred dollars but not to exceed five thousand dollars. When a judgment of conviction of an aggravated misdemeanor is entered

against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term.

3. A person under eighteen years of age convicted of a simple misdemeanor under chapter 321, 321G, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, or a violation of a county or municipal curfew or traffic ordinance, except for an offense subject to section 805.8, may be required to pay a fine, not to exceed one hundred dollars, as fixed by the court, or may be required to perform community service as ordered by the court.

4. The criminal penalty surcharge required by sections 911.2 and 911.3 shall be added to a fine imposed on a misdemeanant, and is not a part of or subject to the maximums set in this section.

[C51, §2676; R60, §4303; C73, §3967; C97, §4906; C24, 27, 31, 35, 39, §**12894;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §687.7; C79, 81, §903.1]

83 Acts, ch 183, §2, 3; 84 Acts, ch 1219, §39; 87 Acts, ch 149, §7; 88 Acts, ch 1158, §100; 88 Acts, ch 1167, §8, 9; 90 Acts, ch 1251, §66; 91 Acts, ch 240, §10; 92 Acts, ch 1160, §25; 93 Acts, ch 110, §10; 99 Acts, ch 153, §24; 2001 Acts, ch 168, §5

See also §701.8
Enhanced penalties in weapons free zones, see §724.4A
Surcharge on penalty, chapter 911

903.2 Reconsideration of misdemeanant's sentence.

For a period of thirty days from the date when a person convicted of a misdemeanor begins to serve a sentence of confinement, the court may order the person to be returned to the court, at which time the court may review its previous action and reaffirm it or substitute for it any sentence permitted by law. The sentencing court retains jurisdiction for the limited purposes of conducting such review and entering an appropriate order notwithstanding the timely filing of a notice of appeal or an application for discretionary review. The court's final order in the proceeding shall be delivered to the defendant personally or by certified mail. Such action is discretionary with the court and its decision to take the action or not to take the action is not subject to appeal. The other provisions of this section notwithstanding, for the purposes of appeal a judgment of conviction is a final judgment when pronounced.

[C79, 81, §903.2]

84 Acts, ch 1139, §2

903.3 Work release.

The court may direct that a prisoner sentenced to confinement in a county jail, alternate jail facility, or community correctional residential treatment facility, be released from custody during specified hours, as provided by sections 356.26 to 356.35.

[C79, 81, §903.3]

83 Acts, ch 39, §1

903.4 Providing place of confinement.

All persons sentenced to confinement for a period of one year or less shall be confined in a place to be furnished by the county where the conviction was had unless the person is presently committed to the custody of the director of the Iowa department of corrections, in which case the provisions of section 901.8 apply, or unless the person is serving a determinate term of confinement of one year pursuant to section 902.3A. All persons sentenced to confinement for a period of more than one year shall be committed to the custody of the director of the Iowa department of corrections to be confined in a place to be designated by the director and the cost of the confinement shall be borne by the state. The director may contract with local governmental units for the use of detention or correctional facilities maintained by the units for the confinement of such persons.

[C79, 81, §903.4]

83 Acts, ch 96, §133, 159; 2001 Acts, ch 165, §6

903.5 Local facilities preferred for misdemeanants.

In designating places of confinement of misdemeanants, the department shall make optimum use of local facilities offering correctional programs, where such are available. Where a choice of facilities is offered, a choice of the facility nearest the prisoner's home shall be preferred, if such choice is compatible with the rehabilitation of the prisoner.

[C79, 81, §903.5]

903.6 Segregation of prisoners.

In any detention facility, persons who are serving a sentence of confinement shall be segregated from persons who are being detained for any other purpose, whenever such is possible.

[C79, 81, §903.6]

CHAPTER 903A

REDUCTION OF SENTENCES

903A.1 Conduct review.
903A.2 Earned time.
903A.3 Loss or forfeiture of earned time.
903A.4 Policies and procedures.
903A.5 Time to be served — credit.
903A.6 Good and honor time application.
903A.7 Separate sentences.

903A.1 Conduct review.

The director of the Iowa department of corrections shall appoint independent administrative law judges whose duties shall include but are not limited to review, as provided in section 903A.3, of the conduct of inmates in institutions under the department. Sections 10A.801 and 17A.11 do not apply to administrative law judges appointed pursuant to this section.

83 Acts, ch 147, §2, 14, 15; 88 Acts, ch 1109, §31; 98 Acts, ch 1202, §44, 46

903A.2 Earned time.

1. Each inmate committed to the custody of the director of the department of corrections is eligible to earn a reduction of sentence in the manner provided in this section. For purposes of calculating the amount of time by which an inmate's sentence may be reduced, inmates shall be grouped into the following two sentencing categories:

a. Category "A" sentences are those sentences which are not subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12. To the extent provided in subsection 5, category "A" sentences also include life sentences imposed under section 902.1. An inmate of an institution under the control of the department of corrections who is serving a category "A" sentence is eligible for a reduction of sentence equal to one and two-tenths days for each day the inmate demonstrates good conduct and satisfactorily participates in any program or placement status identified by the director to earn the reduction. The programs include but are not limited to the following:

(1) Employment in the institution.

(2) Iowa state industries.

(3) An employment program established by the director.

(4) A treatment program established by the director.

(5) An inmate educational program approved by the director.

b. Category "B" sentences are those sentences which are subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12. An inmate of an institution under the control of the department of corrections who is serving a category "B" sentence is eligible for a reduction of sentence equal to fifteen eighty-fifths of a day for each day of good conduct by the inmate.

2. Earned time accrued pursuant to this section may be forfeited in the manner prescribed in section 903A.3.

3. Time served in a jail or another facility prior to actual placement in an institution under the control of the department of corrections and credited against the sentence by the court shall accrue for the purpose of reduction of sentence under this section. Time which elapses during an escape shall not accrue for purposes of reduction of sentence under this section.

4. Time which elapses between the date on which a person is incarcerated, based upon a determination of the board of parole that a violation of parole has occurred, and the date on which the violation of parole was committed shall not accrue for purposes of reduction of sentence under this section.

5. Earned time accrued by inmates serving life sentences imposed under section 902.1 shall not reduce the life sentence, but shall be credited against the inmate's sentence if the life sentence is commuted to a term of years under section 902.2.

83 Acts, ch 147, §3, 14, 15; 90 Acts, ch 1251, §67; 96 Acts, ch 1151, §4; 97 Acts, ch 131, §2, 4; 98 Acts, ch 1100, §88; 2000 Acts, ch 1173, §4, 10

Conversion of good conduct time to earned time effective January 1, 2001; 2000 Acts, ch 1173, §9, 10

903A.3 Loss or forfeiture of earned time.

1. Upon finding that an inmate has violated an institutional rule, or has had an action or appeal dismissed under section 610A.2, the independent administrative law judge may order forfeiture of any or all earned time accrued and not forfeited up to the date of the violation by the inmate and may order forfeiture of any or all earned time accrued and not forfeited up to the date the action or appeal is dismissed, unless the court entered such an order under section 610A.3. The independent administrative law judge has discretion within the guidelines established pursuant to section 903A.4, to determine the amount of time that should be forfeited based upon the severity of the violation. Prior violations by the inmate may be considered by the administrative law judge in the decision.

2. The orders of the administrative law judge are subject to appeal to the superintendent or warden of the institution, or the superintendent's or warden's designee, who may either affirm, modify, remand for correction of procedural errors, or reverse an order. However, sanctions shall not be increased on appeal. A decision of the superintendent, warden, or designee is subject to review by the director of the Iowa department of corrections who may either affirm, modify, remand for correction of procedural errors, or reverse the decision. However, sanctions shall not be increased on review.

3. The director of the Iowa department of corrections or the director's designee may restore all or any portion of previously forfeited earned time for acts of heroism or for meritorious actions. The director shall establish by rule the requirements as to which activities may warrant the restoration of earned time and the amount of earned time to be restored.

4. The inmate disciplinary procedure, including but not limited to the method of awarding or

forfeiting time pursuant to this chapter, is not a contested case subject to chapter 17A.

83 Acts, ch 147, §4, 14, 15; 84 Acts, ch 1244, §3; 88 Acts, ch 1109, §32; 95 Acts, ch 167, §5; 2000 Acts, ch 1173, §5, 10

903A.4 Policies and procedures.

The director of the Iowa department of corrections shall develop policy and procedural rules to implement sections 903A.1 through 903A.3. The rules may specify disciplinary offenses which may result in the loss of earned time, and the amount of earned time which may be lost as a result of each disciplinary offense. The director shall establish rules as to what constitutes *"satisfactory participation"* for purposes of a reduction of sentence under section 903A.2, for programs that are available or unavailable. The rules shall specify that earned time shall be calculated on a monthly basis as it accrues. The department shall generate an earned time report for each inmate which shall include the amount of actual time served, the number of earned time credits which have not been lost or forfeited, and the amount of time remaining on an inmate's sentence.

83 Acts, ch 147, §5, 14, 15; 2000 Acts, ch 1173, §6, 10

903A.5 Time to be served — credit.

An inmate shall not be discharged from the custody of the director of the Iowa department of corrections until the inmate has served the full term for which the inmate was sentenced, less earned time and other credits earned and not forfeited, unless the inmate is pardoned or otherwise legally released. Earned time accrued and not forfeited shall apply to reduce a mandatory minimum sentence being served pursuant to section 124.406, 124.413, 902.7, 902.8, 902.8A, or 902.11. An inmate shall be deemed to be serving the sentence from the day on which the inmate is received into the institution. If an inmate was confined to a county jail or other correctional or mental facility at any time prior to sentencing, or after sentencing but prior to the case having been decided on appeal, because of failure to furnish bail or because of being charged with a nonbailable offense, the inmate shall be given credit for the days already served upon the term of the sentence. However, if a person commits any offense while confined in a county jail or other correctional or mental health facility, the person shall not be granted jail credit for that offense. Unless the inmate was confined in a correctional facility, the sheriff of the county in which the inmate was confined shall certify to the clerk of the district court from which the inmate was sentenced and to the department of corrections' records administrator at the Iowa medical and classification center the number of days so served. The department of corrections' records administrator, or the administrator's designee, shall apply jail credit as ordered by the court of proper jurisdiction or as authorized by this section and section 907.3, subsection 3, and shall forward a copy of the number of days served to the clerk of the district court from which the inmate was sentenced.

An inmate shall not receive credit upon the inmate's sentence for time spent in custody in another state resisting return to Iowa following an escape. However, an inmate may receive credit upon the inmate's sentence while incarcerated in an institution or jail of another jurisdiction during any period of time the person is receiving credit upon a sentence of that other jurisdiction.

83 Acts, ch 147, §6, 14, 15; 90 Acts, ch 1168, §61; 95 Acts, ch 91, §8; 99 Acts, ch 12, §18; 99 Acts, ch 182, §4; 2000 Acts, ch 1173, §7, 10; 2000 Acts, ch 1204, §1

903A.6 Good and honor time application.

Sections 246.38, 246.39, 246.41, 246.42, 246.43, and 246.45, as the sections appear in the 1983 Code, remain in effect for inmates sentenced for offenses committed prior to July 1, 1983.

83 Acts, ch 147, §7, 13, 14

903A.7 Separate sentences.

Consecutive multiple sentences that are within the same category under section 903A.2 shall be construed as one continuous sentence for purposes of calculating reductions of sentence for earned time. If a person is sentenced to serve sentences of both categories, category "B" sentences shall be served before category "A" sentences are served, and earned time accrued against the category "B" sentences shall not be used to reduce the category "A" sentences. If an inmate serving a category "A" sentence is sentenced to serve a category "B" sentence, the category "A" sentence shall be interrupted, and no further earned time shall accrue against that sentence until the category "B" sentence is completed.

83 Acts, ch 147, §8, 14; 97 Acts, ch 131, §3, 4; 98 Acts, ch 1100, §89; 2000 Acts, ch 1173, §8, 10

CHAPTER 903B

HORMONAL INTERVENTION THERAPY FOR SEX OFFENDERS

903B.1 Hormonal intervention therapy — certain sex offenses.

903B.1 Hormonal intervention therapy — certain sex offenses.

1. A person who has been convicted of a serious sex offense may, upon a first conviction and in addition to any other punishment provided by law, be required to undergo medroxyprogesterone acetate treatment as part of any conditions of release imposed by the court or the board of parole. The treatment prescribed in this section may utilize an approved pharmaceutical agent other than medroxyprogesterone acetate. Upon a second or subsequent conviction, the court or the board of parole shall require the person to undergo medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of release, unless, after an appropriate assessment, the court or board determines that the treatment would not be effective. In determining whether a conviction is a first or second conviction under this section, a prior conviction for a criminal offense committed in another jurisdiction which would constitute a violation of section 709.3, subsection 2, if committed in this state, shall be considered a conviction under this section. This section shall not apply if the person voluntarily undergoes a permanent surgical alternative approved by the court or the board of parole.

2. If a person is placed on probation and is not in confinement at the time of sentencing, the presentence investigation shall include a plan for initiation of treatment as soon as is reasonably possible after the person is sentenced. If the person is in confinement prior to release on probation or parole, treatment shall commence prior to the release of the person from confinement. Conviction of a serious sex offense shall constitute exceptional circumstances warranting a presentence investigation under section 901.2.

3. If the serious sex offense is a felony, the court may include, in addition to any other punishment provided by law, that the person receive a special sentence committing the person into the custody of the director of the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906. The special sentence imposed under this subsection shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying serious sex offense and shall be supervised as if on parole, shall include the same treatment terms and conditions as required in subsection 1, and may include any other terms and conditions deemed appropriate to protect the public and promote the rehabilitation of the person. Notwithstanding section 906.15, a person receiving an additional special sentence pursuant to this subsection shall not be discharged from parole.

4. For purposes of this section, a *"serious sex offense"* means any of the following offenses in which the victim was a child who was, at the time the offense was committed, twelve years of age or younger:

a. Sexual abuse in the first degree, in violation of section 709.2.

b. Sexual abuse in the second degree, in violation of section 709.3.

c. Sexual abuse in the third degree, in violation of section 709.4.

d. Lascivious acts with a child, in violation of section 709.8.

e. Assault with intent, in violation of section 709.11.

f. Indecent contact with a minor, in violation of section 709.12.

g. Lascivious conduct with a minor, in violation of section 709.14.

h. Sexual exploitation by a counselor in violation of section 709.15.

i. Sexual exploitation of a minor, in violation of section 728.12, subsections 1 and 2.

5. The department of corrections, in consultation with the board of parole, shall adopt rules which provide for the initiation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment prior to the parole or work release of a person who has been convicted of a serious sex offense and who is required to undergo treatment as a condition of release by the board of parole. The department's rules shall also establish standards for the supervision of the treatment by the judicial district department of correctional services during the period of release. Each district department of correctional services shall adopt policies and procedures which provide for the initiation or continuation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of release for each person who is required to undergo the treatment by the court or the board of parole. The board of parole shall, in consultation with the department of corrections, adopt rules which relate to initiation or continuation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of any parole or work release. Any rules, standards, and policies and procedures adopted shall provide for the continuation of the treatment until the agency in charge of supervising the treatment determines that the treatment is no longer necessary.

6. A person who is required to undergo medroxyprogesterone acetate treatment, or treatment utilizing another approved pharmaceutical agent, pursuant to this section, shall be required to pay a reasonable fee to pay for the costs of providing the treatment. A requirement that a person pay a fee shall include provision for reduction, deferral, or waiver of payment if the person is financially unable to pay the fee.

98 Acts, ch 1171, §21

CHAPTER 904

DEPARTMENT OF CORRECTIONS

This chapter not enacted as a part of this title;
transferred from chapter 246 in Code 1993
See §218.95 for provisions pertaining to construction of
synonymous terms

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DIVISION I

ADMINISTRATION GENERALLY

904.101 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Department"* means the Iowa department of corrections established in section 904.102.
2. *"Board"* means the board of corrections established in section 904.104.
3. *"Director"* means the director of the department.

83 Acts, ch 96, §2, 159
CS83, §217A.1
85 Acts, ch 21, §54
CS85, §246.101
C93, §904.101

904.102 Department established — institutions.

The Iowa department of corrections is established to be responsible for the control, treatment, and rehabilitation of offenders committed under law to the following institutions:

1. Iowa correctional institution for women.
2. Anamosa state penitentiary.
3. Iowa state penitentiary.
4. Iowa medical and classification center.
5. North central correctional facility at Rockwell City.
6. Mount Pleasant correctional facility.
7. Clarinda correctional facility.
8. Newton correctional facility.
9. Fort Dodge correctional facility.
10. Rehabilitation camps.
11. Other institutions related to an institution in subsections 1 through 10 but not attached to the campus of the main institution as program developments require.

83 Acts, ch 96, §3, 159
CS83, §217A.2
84 Acts, ch 1184, §1; 84 Acts, ch 1219, §9; 85 Acts, ch 21, §13, 54
CS85, §246.102
C93, §904.102
97 Acts, ch 130, §2 – 4

904.103 Responsibilities of department.

The department shall administer the institutions listed in section 904.102. The department shall be responsible to the extent provided for by law for all of the following:

1. Accreditation and funding of community-based corrections programs including but not limited to pretrial release, probation, residential facilities, presentence investigation, parole, and work release.
2. Iowa state industries.
3. Jail inspections.

4. Other duties provided for by law.
83 Acts, ch 96, §4, 159
CS83, §217A.3
85 Acts, ch 21, §54
CS85, §246.103
C93, §904.103

904.104 Board created.
A board of corrections is created within the department. The board shall consist of seven members appointed by the governor subject to confirmation by the senate. Not more than four of the members shall be from the same political party. Members shall be electors of this state. Members of the board shall serve four-year staggered terms.
83 Acts, ch 96, §5, 158, 159
CS83, §217A.4
85 Acts, ch 21, §54
CS85, §246.104
92 Acts, ch 1163, §56
C93, §904.104
93 Acts, ch 46, §4
Confirmation, see §2.32

904.105 Board — duties.
The board of corrections shall:
1. Organize annually and select a chairperson and vice chairperson.
2. Adopt and establish policies for the operation and conduct of the department and the implementation of all department programs.
3. Recommend to the governor the names of individuals qualified for the position of director when a vacancy exists in the office.
4. Report immediately to the governor any failure by the director of the department to carry out any of the policy decisions or directives of the board.
5. Approve the budget of the department prior to submission to the governor.
6. Report biennially to the governor a summary of releases recommended, paroles granted, parole revocations, and other information relating to the parole of inmates as the board deems advisable.
7. Adopt rules in accordance with chapter 17A as the board deems necessary to transact its business and for the administration and exercise of its powers and duties.
8. Make recommendations from time to time to the governor and the general assembly.
9. Approve the locations for all state institutions which are penal, reformatory, or corrective.
10. Perform other functions as provided by law.
83 Acts, ch 96, §6, 159
CS83, §217A.5
85 Acts, ch 21, §14, 54
CS85, §246.105
86 Acts, ch 1245, §1501
C93, §904.105

904.106 Meetings — expenses.
The board shall meet at least twelve times a year. Special meetings may be called by the chairperson or upon written request of any three members of the board. The chairperson shall preside at all meetings or in the chairperson's absence, the vice chairperson shall preside. The members of the board shall be paid their actual expenses while attending the meetings. Each member of the board may also be able to receive compensation as provided in section 7E.6.
83 Acts, ch 96, §7, 159
CS83, §217A.6
85 Acts, ch 21, §54
CS85, §246.106
86 Acts, ch 1245, §1502
C93, §904.106

904.107 Director — appointment and qualifications.
The chief administrative officer for the department is the director. The director shall be appointed by the governor subject to confirmation by the senate and shall serve at the pleasure of the governor. The director shall be qualified in reformatory and prison management, knowledgeable in community-based corrections, and shall possess administrative ability. The director shall also have experience in the field of criminology and discipline and in the supervision of inmates in corrective penal institutions. The director shall not be selected on the basis of political affiliation, and while employed as the director, shall not be a member of a political committee, participate in a political campaign, be a candidate for a partisan elective office, and shall not contribute to a political campaign fund, except that the director may designate on the checkoff portion of the state or federal income tax return, or both, a party or parties to which a contribution is made pursuant to the checkoff. The director shall not hold any other office under the laws of the United States or of this or any state or hold any position for profit and shall devote full time to the duties of office.
83 Acts, ch 96, §8, 159
CS83, §217A.7
85 Acts, ch 21, §54
CS85, §246.107
C93, §904.107
Confirmation, see §2.32

904.108 Director — duties, powers.
1. The director shall:
a. Supervise the operations of the institutions under the department's jurisdiction and may delegate the powers and authorities given the director by statute to officers or employees of the department.
b. Supervise state agents whose duties relate primarily to the department.
c. Establish and maintain a program to oversee women's institutional and community correc-

tions programs and to provide community support to ensure continuity and consistency of programs. The person responsible for implementing this section shall report to the director.

d. Establish and maintain acceptable standards of treatment, training, education, and rehabilitation in the various state penal and corrective institutions which shall include habilitative services and treatment for offenders with mental retardation. For the purposes of this paragraph, *"habilitative services and treatment"* means medical, mental health, social, educational, counseling, and other services which will assist a person with mental retardation to become self-reliant. However, the director may also provide rehabilitative treatment and services to other persons who require the services. The director shall identify all individuals entering the correctional system who are persons with mental retardation, as defined in section 222.2, subsection 4. Identification shall be made by a qualified professional in the area of mental retardation. In assigning an offender with mental retardation, or an offender with an inadequately developed intelligence or with impaired mental abilities, to a correctional facility, the director shall consider both the program needs and the security needs of the offender. The director shall consult with the department of human services in providing habilitative services and treatment to offenders with mental illness or mental retardation. The director may enter into agreements with the department of human services to utilize mental health institutions and share staff and resources for purposes of providing habilitative services and treatment, as well as providing other special needs programming. Any agreement to utilize mental health institutions and to share staff and resources shall provide that the costs of the habilitative services and treatment shall be paid from state funds. Not later than twenty days prior to entering into any agreement to utilize mental health institution staff and resources, other than the use of a building or facility, for purposes of providing habilitative services and treatment, as well as other special needs programming, the directors of the departments of corrections and human services shall each notify the chairpersons and ranking members of the joint appropriations subcommittees that last handled the appropriation for their respective departments of the pending agreement. Use of a building or facility shall require approval of the general assembly if the general assembly is in session or, if the general assembly is not in session, the legislative council may grant temporary authority, which shall be subject to final approval of the general assembly during the next succeeding legislative session.

e. Employ, assign, and reassign personnel as necessary for the performance of duties and responsibilities assigned to the department. Employees shall be selected on the basis of fitness for work to be performed with due regard to training and experience and are subject to chapter 19A.

f. Establish standards of mental fitness which shall govern the initial recruitment, selection, and appointment of correctional officers. To promote these standards, the director shall by rule require a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of all applicants for a correctional career.

g. Examine all state institutions which are penal, reformatory, or corrective to determine their efficiency for adequate care, custody, and training of their inmates and report the findings to the board.

h. Prepare a budget for the department, subject to the approval of the board, and other reports as required by law.

i. Develop long-range correctional planning and an ongoing five-year corrections master plan. The director shall annually report to the general assembly to inform its members as to the status and content of the planning and master plan.

j. Supervise rehabilitation camps within the state as may be established by the director. Persons committed to institutions under the department may be transferred to the facilities of the camp system and upon transfer shall be subject to the same laws as pertain to the transferring institution.

k. Adopt rules subject to the approval of the board, pertaining to the internal management of institutions and agencies under the director's charge and necessary to carry out the duties and powers outlined in this section.

l. Adopt rules, policies, and procedures, subject to the approval of the board, pertaining to the supervision of parole and work release.

m. Provide routine administrative and support services to the board of parole.

n. Cooperate with Iowa state university of science and technology to provide, for purposes of agricultural research, development, and testing, the use of resources, including property, facilities, labor, and services, connected with institutions listed in section 904.102. However, use of the resources by the university is subject to approval by the director. Before granting approval, the director shall require that the university compensate the department for the use of the resources, on terms specified by the director.

o. Establish and maintain a correctional training program.

2. The director, with the express approval of the board, may establish for any inmate sentenced pursuant to section 902.3 a furlough program under which inmates sentenced to and confined in any institution under the jurisdiction of the department may be temporarily released. A furlough for a period not to exceed fourteen days may be granted when an immediate member of an inmate's family is seriously ill or has died, when an inmate is to be interviewed by a prospective employer, or when an inmate is authorized to partici-

pate in a training program not available within the institution. Furloughs for a period not to exceed fourteen days may also be granted in order to allow inmates to participate in programs or activities that serve rehabilitative objectives.

3. The director may establish a sales bonus system for the sales representatives for prison industry products. If a sales bonus system is established, the system shall not affect the status of the sales representatives under chapter 19A.

4. The director may expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The director shall establish rules in accordance with chapter 17A to carry out the purpose of this subsection.

5. The director may obtain assistance for the department for construction, facility planning, and project accomplishment with the department of general services and by contracting under chapter 28E for data processing with the department of human services or the department of general services.

6. The director may charge an inmate a correctional fee for custodial expenses incurred or which may be incurred while the inmate is in the custody of the department. The custodial expenses may include, but are not limited to, board and room, medical and dental fees, education costs, clothing costs, and the costs of supervision, services, and treatment to the inmate. The correctional fee shall not exceed the actual cost of keeping the inmate in custody. The correctional fees collected pursuant to this subsection shall be credited as a reimbursement to the appropriate correctional institution. This subsection does not limit the right of the director to obtain any other remedy authorized by law.

83 Acts, ch 96, §9, 159
CS83, §217A.8
84 Acts, ch 1150, §1; 84 Acts, ch 1245, §4; 85 Acts, ch 21, §15, 54
CS85, §246.108
86 Acts, ch 1245, §315, 1503, 1504; 87 Acts, ch 139, §1
C93, §904.108
96 Acts, ch 1111, §3; 96 Acts, ch 1129, §111; 96 Acts, ch 1219, §76; 97 Acts, ch 190, §3; 98 Acts, ch 1090, §76, 84; 98 Acts, ch 1131, §4; 99 Acts, ch 114, §46; 2002 Acts, ch 1175, §47
For the fiscal year beginning July 1, 2002, and ending June 30, 2003, the correctional training center need not be maintained at the Mount Pleasant facility; 2002 Acts, 2nd Ex, ch 1003, §156, 172
Subsection 1, paragraph o amended

904.109 Powers of governor — report of abuses.

Section 904.108, subsection 1, paragraph *"a"*, does not limit the general supervisory or examining powers vested in the governor by the laws or constitution of the state, or legally vested by the governor in a committee appointed by the governor.

The superintendent of an institution shall make reports to the board and the director as requested by the board and the director and the director shall report, in writing, to the governor any abuses found to exist in any of the institutions.

83 Acts, ch 96, §15, 159
CS83, §217A.20
85 Acts, ch 21, §54
CS85, §246.109
C93, §904.109

904.110 Official seal.

The department shall have an official seal with the words "Iowa Department of Corrections" and other engraved design as the board prescribes. Every commission, order, or other paper of an official nature executed by the department may be attested with the seal.

83 Acts, ch 96, §10, 159
CS83, §217A.9
85 Acts, ch 21, §54
CS85, §246.110
C93, §904.110

904.111 Chapter 28E agreements.

The department of corrections may enter into agreements, as provided for in chapter 28E, with a district department of correctional services as necessary.

84 Acts, ch 1184, §20
C85, §217A.10
85 Acts, ch 21, §54
CS85, §246.111
C93, §904.111

904.112 Institutional receipts.

Institutional receipts of the department of corrections shall be deposited in the general fund of the state except as follows:

1. Reimbursement for services provided to another institution or state agency, rentals charged to employees or other persons for room, apartment, or housing, and charges for meals.

2. Receipts which are specifically required to be otherwise expended or deposited under this chapter.

84 Acts, ch 1184, §3
C85, §217A.11
85 Acts, ch 21, §54
CS85, §246.112
C93, §904.112
97 Acts, ch 190, §4

904.113 Gifts.

The department may accept gifts of real or personal property from the federal government or any

source. The director may exercise powers with reference to the property so accepted as necessary or appropriate to its preservation and the purposes for which it is given.

83 Acts, ch 96, §53, 159
CS83, §217A.75
85 Acts, ch 21, §54
CS85, §246.113
C93, §904.113

904.114 Travel expenses.

The director, staff members, assistants, and employees, in addition to salary, shall receive their necessary traveling expenses by the nearest practicable route, when engaged in the performance of official business. Permission shall not be granted to any person to travel to another state except by approval of the board and the executive council.

83 Acts, ch 96, §11, 159
CS83, §217A.16
85 Acts, ch 21, §54
CS85, §246.114
C93, §904.114

904.115 Report by department.

Annually at the time provided by law, the department shall make a report to the governor and the general assembly, which shall cover the annual period ending with June thirtieth preceding the date of the report and shall include:

1. An itemized statement of the department's expenditures for each program under the department's administration.
2. Adequate and complete statistical reports for the state as a whole concerning payments made under the department's administration.
3. Recommendations concerning changes in laws under the department's administration as the board deems necessary.
4. Observations and recommendations of the board and the director relative to the programs of the department.
5. Information concerning long-range planning and the master plan as provided by section 904.108, subsection 1, paragraph *"i"*.
6. Other information the board or the director deems advisable, or which is requested by the governor or the general assembly.

83 Acts, ch 96, §12, 159
CS83, §217A.17
85 Acts, ch 21, §54
CS85, §246.115
C93, §904.115

904.116 Institutional appropriations and expenditures — legislative oversight.

1. The department of corrections shall not revise the allocations to the correctional institutions under the control of the department from the amounts allocated to the institutions, unless notice of the revisions is given prior to their effective date to the legislative fiscal bureau. The notice shall include information on the department's rationale for making the changes and details concerning the workload and performance measures upon which the revisions are based.

2. The department of corrections shall report to the legislative fiscal bureau on a monthly basis the current expenditures and full-time equivalent positions of the department's various allocations with a comparison of actual to budgeted expenditures and full-time equivalent positions.

The department of corrections shall furnish performance measure data designed to enable comparison of this data with historical expenditure information, and shall assist the legislative fiscal bureau in developing information to be used in legislative oversight of all programs operated by the department.

90 Acts, ch 1247, §9
C91, §246.116
C93, §904.116

DIVISION II

INSTITUTIONS

904.201 Iowa medical and classification center.

1. The Iowa medical and classification center at Oakdale shall be utilized as a forensic psychiatric hospital for persons displaying evidence of mental illness or psychosocial disorders and requiring diagnostic services or treatment in a security setting, as a security unit for persons requiring confinement in a security setting, and as a classification unit for the reception, orientation, and classification of inmates before placement in the most appropriate correctional institutions according to necessary security and custody arrangements and the assessed service needs of the inmates.

2. The superintendent of the center shall secure the professional care and treatment of each person confined at the center and maintain a complete record on the condition of each person confined at the center.

3. The forensic psychiatric hospital may admit the following persons:

a. Residents transferred from an institution under the jurisdiction of the department of human services or the Iowa department of corrections.

b. Persons committed by the courts as mentally incompetent to stand trial under section 812.4.

c. Persons referred by the courts for psychosocial diagnosis and recommendations as part of the pretrial or presentence procedure or determination of mental competency to stand trial.

d. Prisoners transferred from county and city jails for diagnosis, evaluation, or treatment for mental illness.

Other persons may be admitted providing the admissions are not inconsistent with law and are

within the capacity of the facilities and staff to accommodate the persons.

4. The classification unit shall admit inmates for purposes of orientation and classification before placement in the most appropriate correctional institutions.

5. The director may house inmates from any correctional institution at the center in order to provide the inmates with suitable security or medical treatment, or both. Unless an inmate is determined to be mentally ill, the inmate shall not be subjected involuntarily to psychiatric treatment.

6. All admissions to the forensic psychiatric hospital shall be by written application only. Application shall be made by the head of the state institution, agency, governmental body, or court requesting admission to the superintendent of the center. An application may be denied by the superintendent, with the approval of the director, if the admission will result in an overcrowded condition or if adequate staff or facilities are not available. The decision regarding admission and discharge of persons shall be made by the superintendent of the center, subject to approval of the director.

7. When a person transferred to the center from any other state institution or admitted by request or order of any agency, governmental body, or court no longer requires special treatment in the security setting, the person may be returned to the source from which received. The state institution, agency, governmental body, or court that referred the person for hospitalization shall retain constructive jurisdiction over the person. Persons without legal encumbrances may be discharged directly from the center upon concurrence of the superintendent of the center and the head of the referring institution, agency, governmental body, or court. The support, commitment, and release statutes applicable to a person at the state institution from which transferred shall remain applicable while the person is at the center.

8. Chapter 230 governs the determination of costs and charges for the care and treatment of persons with mental illness admitted to the forensic psychiatric hospital, except that charges for the care and treatment of any person transferred to the forensic psychiatric hospital from an adult correctional institution or from a state training school shall be paid entirely from state funds. Charges for all other persons at the forensic psychiatric hospital shall be billed to the respective counties at the same ratio as for patients at state mental health institutes under section 230.20.

85 Acts, ch 21, §29, 54
CS85, §246.201
C93, §904.201
96 Acts, ch 1129, §113

904.202 Intake and classification center.

The director may provide facilities and personnel for a diagnostic intake and classification center. The work of the center shall include a scientific study of each inmate, the inmate's career and life history, the causes of the inmate's criminal acts and recommendations for the inmate's custody, care, training, employment, and counseling with a view to rehabilitation and to the protection of society. To facilitate the work of the center and to aid in the rehabilitation of the inmates, the trial judge, prosecuting attorney, and presentence investigators shall furnish the director with any previously authorized presentence investigation report and a full statement of facts and circumstances attending the commission of the offense so far as known or believed by them. If the department develops and utilizes an inmate classification system, it must, within a reasonable time, present evidence from independent experts as to the effectiveness and validity of the classification system.

83 Acts, ch 96, §36, 159
CS83, §217A.52
84 Acts, ch 1184, §2; 85 Acts, ch 21, §54
CS85, §246.202
C93, §904.202
2001 Acts, ch 131, §4

904.203 Rockwell City correctional facility.

The state correctional facility at Rockwell City shall be utilized as a medium security correctional facility for men.

85 Acts, ch 21, §30, 54
CS85, §246.203
C93, §904.203

904.204 Mount Pleasant correctional facility — special treatment unit.

The correctional facility at Mount Pleasant shall be utilized as a medium security facility for men primarily for treatment of inmates who exhibit treatable personality disorders, with or without accompanying history of drug or alcohol abuse. Such inmates may apply for and upon their application may be selected for treatment by the staff of the treatment facility at Mount Pleasant in accordance with section 904.503.

85 Acts, ch 21, §31, 54
CS85, §246.204
C93, §904.204

904.205 Clarinda correctional facility.

The state correctional facility at Clarinda shall be utilized as a secure men's correctional facility primarily for offenders with chemical dependence, mental retardation, or social inadequacies.

85 Acts, ch 21, §32, 54
CS85, §246.205
C93, §904.205
96 Acts, ch 1129, §112

904.206 Newton correctional facility.

The correctional facility at Newton shall be utilized as a correctional facility. The facility shall include minimum security facilities and violator facilities pursuant to section 904.207.

85 Acts, ch 21, §33, 54
CS85, §246.206
91 Acts, ch 219, §6
C93, §904.206
93 Acts, ch 46, §5; 97 Acts, ch 130, §5

904.207 Violator facility.

The director shall establish a violator facility as a freestanding facility, or designate a portion of an existing correctional facility for the purpose. A violator facility is for the temporary confinement of offenders who have violated conditions of release under work release or parole as defined in section 906.1, or probation granted as a result of suspension of a sentence to the custody of the director of the department of corrections. The director shall adopt rules pursuant to chapter 17A, subject to the approval of the board, to implement this section.

91 Acts, ch 219, §7
CS91, §246.207
C93, §904.207
93 Acts, ch 46, §6

DIVISION III

PERSONNEL AND GENERAL MANAGEMENT OF INSTITUTIONS

904.301 Appointment of superintendents.

The director shall appoint, subject to the approval of the board, the superintendents of the institutions provided for in section 904.102.

The superintendent has the immediate custody and control, subject to the orders and policies of the director, of all property used in connection with the institution except as otherwise provided by statute. The tenure of office of a superintendent shall be at the pleasure of the appointing authority but a superintendent may be removed for inability or refusal to properly perform the duties of the office. Removal shall occur only after an opportunity is given the person to be heard before the board and the director and upon preferred written charges. The removal when made is final.

83 Acts, ch 96, §16, 159
CS83, §217A.21
85 Acts, ch 21, §54
CS85, §246.301
C93, §904.301

904.302 Farm operations administrator.

The director may appoint a farm operations administrator for institutions under the control of the departments of corrections and human services. If appointed, the farm operations administrator, subject to the direction of the director shall do all of the following:

1. Manage and supervise all farming and nursery operations at institutions, farms and gardens of the departments of corrections and human services.
2. Determine priorities on the use of agricultural resources and labor for farming and nursery operations, and cooperate with Iowa state university of science and technology in all approved uses connected with the institution.
3. Develop an annual operations plan for crop and livestock production and utilization that will provide work experience and contribute to developing vocational skills of the institutions' inmates and residents. The department of human services must approve the parts of the plan that affect farm operations on property of institutions having programs of the department of human services.
4. Coordinate farm lease arrangements, farm input purchases, farm product distribution, machinery maintenance and replacement, and renovation of farm buildings, fences and livestock facilities.
5. Develop and maintain accounting records, budgeting and cash flow systems, and inventory records.
6. Advise and instruct institution staff and inmates in application of agricultural technology.
7. Implement actions to restore and maintain productivity of soil resources at the institutions through crop rotation, minimum tillage, contouring, terracing, waterways, pasture renovation, windbreaks, buffer zones, and wildlife habitat in accordance with United States department of agriculture natural resources conservation service plans and recommendations.
8. Administer the revolving farm fund created in section 904.706.
9. Do any other farm management duties assigned by the director.

83 Acts, ch 96, §17, 159
CS83, §217A.22
85 Acts, ch 21, §54
CS85, §246.302
87 Acts, ch 139, §2
C93, §904.302
95 Acts, ch 216, §25

904.303 Officers and employees — compensation.

The director shall determine the number and compensation of subordinate officers and employees for each institution subject to chapter 19A. Subject to this chapter, the officers and employees shall be appointed and discharged by the superintendent who shall keep in the record of each subordinate officer and employee, the date of employ-

ment, the compensation, and the date of and the reasons for each discharge.

The superintendents and employees of the correctional institutions shall receive salaries or compensation as determined by the director, shall receive a midshift meal when on duty, and shall be provided uniforms if uniforms are required to be worn when on duty. The uniforms shall be maintained and replaced by the department at no cost to the employees and shall remain the property of the department.

83 Acts, ch 96, §18, 159
CS83, §217A.23
85 Acts, ch 21, §16, 54
CS85, §246.303
C93, §904.303

904.303A Training — fund.

A training fund is established under the control of the department. The director shall provide training to all new officers or employees of the department free of charge. The department shall also offer in-service training which shall include classes for officers and employees in the areas of safety, first aid, emergency preparedness, and any other appropriate class determined by the director. Employees of a judicial district may also attend any in-service training offered by the department. The department may recover from the correctional institution or judicial district the actual costs of planning and conducting the training classes if an employee of the institution or judicial district attends an in-service training class. The costs that may be recovered by the department include the costs of course development, training materials, equipment and facility rental, instruction, and administration. Moneys received as reimbursement of the costs shall be deposited in the training fund for use in conducting future training classes. All cost reimbursement moneys, grants, or appropriations related to training shall be deposited in the fund. Notwithstanding section 8.33, moneys remaining in the training fund at the end of a fiscal year shall not revert to the general fund of the state. Notwithstanding section 12C.7, interest and earnings deposited in the training fund shall be credited to the training fund.

2001 Acts, ch 131, §5

904.304 Bonds.

The director shall require officers and employees of institutions under the director's control who are charged with the custody or control of money or property belonging to the state, to give an official bond properly conditioned and signed by sufficient sureties in a sum to be fixed by the director. The bond is subject to approval by the director and shall be filed in the office of the secretary of state.

83 Acts, ch 96, §19, 159
CS83, §217A.24
85 Acts, ch 21, §54
CS85, §246.304
C93, §904.304

904.305 Dwelling house or quarters.

The director may furnish the superintendent of each of the institutions, in addition to salary, with a dwelling house or with appropriate quarters in lieu of a house, or the director may compensate the superintendent of each of the institutions in lieu of furnishing a house or quarters. If a superintendent of the institution is furnished with a dwelling house or quarters, either of which is owned by the state, the superintendent may also be furnished with water, heat, and electricity.

The director may furnish assistant superintendents or other employees, or both, with dwelling houses or with appropriate quarters, owned by the state. The assistant superintendent or employee, who is so furnished shall pay rent for the dwelling house or quarters in an amount to be determined by the superintendent of the institution, which shall be the fair market rental value of the house or quarters. If an assistant superintendent or employee is furnished with a dwelling house or quarters either of which is owned by the state, the assistant superintendent or employee may also be furnished with water, heat, and electricity. However, the furnishing of these utilities shall be considered in determining the fair market rental value of the house or quarters.

83 Acts, ch 96, §20, 159
CS83, §217A.25
85 Acts, ch 21, §54
CS85, §246.305
C93, §904.305
Analogous provision, §218.14

904.306 Conferences.

Quarterly conferences of the superintendents of the institutions shall be held with the director for the consideration of all matters relative to the management of the institutions. Full minutes of the meetings shall be preserved in the records of the director. The director may cause papers to be prepared and read at the conferences on appropriate subjects.

83 Acts, ch 96, §35, 159
CS83, §217A.51
85 Acts, ch 21, §54
CS85, §246.306
C93, §904.306

904.307 Annual reports.

The superintendent of each institution shall

make an annual report to the director.
83 Acts, ch 96, §37, 159
CS83, §217A.53
85 Acts, ch 21, §54
CS85, §246.307
88 Acts, ch 1049, §1
C93, §904.307

904.308 Cooperation.
The department and the director shall cooperate with any department or agency of the state government in any manner, including the exchange of employees, calculated to improve administration of the affairs of the institutions. Joint use of facilities by the department and another public agency as defined in section 28E.2 shall be only according to an agreement entered into under chapter 28E. All joint campuses shall have one superintendent and one business manager who shall be employed by the department with supervisory responsibility for the majority of the facility's population. Employment of the superintendent and business manager shall be done in consultation with the department which has responsibility for services for the other population at the facility.
83 Acts, ch 96, §49, 159
CS83, §217A.71
85 Acts, ch 21, §54
CS85, §246.308
C93, §904.308

904.309 Consultants.
The director may secure the services of consultants to furnish advice on administrative, professional, or technical problems to the director or the employees of institutions under the director's jurisdiction or to provide in-service training and instruction for the employees. The director may pay the consultants from funds appropriated to the department or to any institution under the department's jurisdiction.
83 Acts, ch 96, §50, 159
CS83, §217A.72
85 Acts, ch 21, §54
CS85, §246.309
C93, §904.309

904.310 Canteens.
The director may maintain a canteen at an institution under the director's jurisdiction for the sale to persons confined in the institution of items such as toilet articles, candy, tobacco products, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise for the canteen. The director shall specify the items to be sold in the canteen. The department may establish and maintain a permanent operating fund for each canteen. The fund shall consist of the receipts from the sale of commodities at the canteen and donations designated by inmates for reimbursement of victims' travel expenses. Any money in the fund over the amount needed to do normal business transactions, to reimburse any accounts which have subsidized the canteen fund, and to reimburse victims' travel expenses shall be considered profit. This money may remain in the canteen fund and be used for any purchase which the superintendent approves that will directly and collectively benefit the inmates of the institution or to reimburse victims' travel expenses.
83 Acts, ch 96, §54, 159
CS83, §217A.76
85 Acts, ch 21, §54
CS85, §246.310
86 Acts, ch 1075, §1; 89 Acts, ch 142, §1; 91 Acts, ch 260, §1220
C93, §904.310
2001 Acts, ch 131, §6

904.310A Institution reading rooms.
The director shall, as necessary, provide suitable space for reading material for inmates. For purposes of this section, *"reading material"* does not include material depicting or describing the genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for inmates, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value. The space shall be located so that any visitors, other than those authorized pursuant to section 904.512, shall not be able to view the space or the materials located within that space.
90 Acts, ch 1251, §29
C91, §246.310A
91 Acts, ch 258, §38
C93, §904.310A

904.311 Contingent fund — inmate tort claim fund.
The director may permit the superintendent of each institution to retain a stated amount of funds in possession as a contingent fund for the payment of freight, postage, commodities purchased on authority of the director on a cash basis, salaries, inmate allowances, and bills granting discount for cash. If necessary, the director shall make proper requisition upon the director of revenue and finance for a warrant on the treasurer of state to secure the contingent fund for each institution.

There is established in the office of the director an inmate tort claim fund. This fund shall be used to reimburse inmates for the damage or loss of personal property caused by the department. Reimbursement for a single loss may be up to one hundred dollars. Section 8.33 notwithstanding, moneys in the fund shall not revert but shall remain in

the fund. The fund shall be replenished from the general appropriation to the institutions as necessary to meet the obligations of the fund.

Tort claims denied at the institution shall be forwarded to the state appeal board for its consideration as if originally filed with that body. This procedure shall be used in lieu of the procedure in chapter 669 for inmate tort claims of less than one hundred dollars.

83 Acts, ch 96, §38, 159
CS83, §217A.54
85 Acts, ch 21, §54
CS85, §246.311
88 Acts, ch 1049, §2
C93, §904.311
94 Acts, ch 1142, §7

904.311A Prison recycling funds.

A recycling fund for each prison institution is created as a separate and distinct fund in the state treasury. All moneys remitted to the department for the recycling operations of a prison institution shall be deposited in the fund established for that institution. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in each fund shall be credited to that fund. Notwithstanding section 8.33, moneys in each fund shall not revert to the general fund of the state at the close of a fiscal year but shall remain in that fund and be used as directed in this section in the succeeding fiscal year. The treasurer of state shall act as custodian of each fund and disburse moneys from each fund as directed by the department for the purpose of payment of operating expenses for recycling.

95 Acts, ch 207, §26; 97 Acts, ch 190, §5

904.312 Purchase of supplies.

The director shall adopt rules governing the purchase of all articles and supplies needed at the various institutions and the form and verification of vouchers for the purchases. When purchases are made by sample, the sample shall be properly marked and retained until after an award or delivery of the items is made. The director may purchase supplies from any institution under the director's control, for use in any other institution, and reasonable reimbursement shall be made for these purchases.

The director shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, *"packing material"* means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

83 Acts, ch 96, §39, 159
CS83, §217A.55
85 Acts, ch 21, §54
CS85, §246.312
C93, §904.312
93 Acts, ch 176, §48

904.312A Motor vehicles.

1. A motor vehicle purchased by the department shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

2. Of all new passenger vehicles and light pickup trucks purchased by the department, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

a. A flexible fuel which is either of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

94 Acts, ch 1119, §31

904.312B Purchase of bio-based hydraulic fluids, greases, and other industrial lubricants.

The department when purchasing hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing bio-based hydraulic fluids, greases, and other industrial lubricants as provided in section 18.22.

98 Acts, ch 1082, §7; 2000 Acts, ch 1109, §7

904.313 Emergency purchases.

The purchase of materials or equipment for penal or correctional institutions under the department is exempted from the requirements of centralized purchasing and bidding by the department of general services if the materials or equipment are needed to make an emergency repair at an institution or the security of the institution would be jeopardized because the materials or equipment could not be purchased soon enough through centralized purchasing and bidding and, in either case, if the director approves the emergency purchase.

83 Acts, ch 96, §40, 159
CS83, §217A.56
85 Acts, ch 21, §54
CS85, §246.313
C93, §904.313

904.314 Plans and specifications for improvements.

The director shall cause plans and specifications to be prepared by the department of general services for all improvements authorized and costing over twenty-five thousand dollars. An appropriation for any improvement costing over twenty-five thousand dollars shall not be expended until the adoption of suitable plans and specifications, prepared by a competent architect and accompanied by a detailed statement of the amount, quality, and description of all material and labor required for the completion of the improvement.

A plan shall not be adopted, and an improvement shall not be constructed, which contemplates an expenditure of money in excess of the appropriation.

83 Acts, ch 96, §41, 159
CS83, §217A.57
85 Acts, ch 21, §54
CS85, §246.314
86 Acts, ch 1245, §316
C93, §904.314

904.315 Contracts for improvements.

The director of the department of general services shall, in writing, let all contracts for authorized improvements costing in excess of twenty-five thousand dollars under chapter 18. Upon prior authorization by the director, improvements costing five thousand dollars or less may be made by the superintendent of any institution.

A contract is not required for improvements at a state institution where the labor of inmates is to be used if the contract is not for a construction, reconstruction, demolition, or repair project or improvement with an estimated cost in excess of twenty-five thousand dollars.

83 Acts, ch 96, §42, 159
CS83, §217A.58
85 Acts, ch 21, §54
CS85, §246.315
86 Acts, ch 1245, §317
C93, §904.315
2000 Acts, ch 1229, §22

904.316 Payment for improvements.

The director of the department of general services shall not authorize payment for construction purposes until satisfactory proof has been furnished to the director of the department of general services by the proper officer or supervising architect, that the contract has been complied with by the parties. Payments shall be made in a manner similar to that in which the current expenses of the institutions are paid.

83 Acts, ch 96, §43, 159
CS83, §217A.59
85 Acts, ch 21, §54
CS85, §246.316
86 Acts, ch 1245, §318
C93, §904.316

904.317 Director may buy and sell real estate — options.

The director, subject to the approval of the board, may secure options to purchase real estate and acquire and sell real estate for the proper uses of the institutions. Real estate shall be acquired and sold upon terms and conditions the director recommends subject to the approval of the board. Upon sale of the real estate, the proceeds shall be deposited with the treasurer of state and credited to the general fund of the state. There is appropriated from the general fund of the state to the department a sum equal to the proceeds so deposited and credited to the general fund of the state which may be used to purchase other real estate or for capital improvements upon property under the director's supervision.

The costs incident to the securing of options and acquisition and sale of real estate including, but not limited to, appraisals, invitations for offers, abstracts, and other necessary costs, may be paid from moneys appropriated for support and maintenance to the institution at which the real estate is located. The fund shall be reimbursed from the proceeds of the sale.

83 Acts, ch 96, §51, 159
CS83, §217A.73
85 Acts, ch 21, §54
CS85, §246.317
86 Acts, ch 1244, §31
C93, §904.317

904.318 Fire protection contracts.

The director may enter into contracts with the governing body of any city for the protection from fire of any property under the director's primary control, located in any city or in territory contiguous to a city.

The state fire marshal shall cause an annual inspection to be made of all the institutions listed in section 904.102 and shall make a written report of the inspection to the director.

83 Acts, ch 96, §52, 159
CS83, §217A.74
85 Acts, ch 21, §54
CS85, §246.318
C93, §904.318

904.319 Temporary quarters in emergency.

If the buildings at any institution under the management of the director are destroyed or rendered unfit for habitation by reason of fire, storms, or other like causes, to such an extent that the inmates cannot be confined and cared for at the institution, the director shall make temporary provision for the confinement and care of the inmates at some other place in the state. Like provision may be made in case of an epidemic among the inmates. The reasonable cost of the change including the cost of transfer of inmates, shall be paid from any money in the state treasury not otherwise appropriated.

83 Acts, ch 96, §46, 159
CS83, §217A.68
85 Acts, ch 21, §54
CS85, §246.319
C93, §904.319

904.320 Private transportation of prisoners.

1. If the director contracts with a private person or entity for the transportation of inmates to or from an institution, the contract shall include provisions which require the following:

a. The private person or any officers or employees of the private person or private entity shall not have been convicted of any of the following:

(1) A felony.

(2) Within the three-year period immediately preceding the date of the execution of the contract, a violation of the laws pertaining to operation of motor vehicles punishable as a serious misdemeanor or greater offense.

(3) Domestic abuse assault in which bodily injury was inflicted or attempted to be inflicted.

(4) A crime involving illegal manufacture, use, possession, sale, or an attempt to illegally manufacture, use, possess, or sell alcohol or a controlled substance or other drug.

b. The person or persons actually transporting the prisoners shall be trained and proficient in the safe use of firearms.

c. Any employees of a private entity which has entered into the contract for transportation of prisoners shall only possess and use security and restraint equipment, including any firearms, which has been issued by the private entity.

d. The person or persons actually transporting the prisoners shall be trained and proficient in appropriate transportation procedures.

e. The person or entity complies, within one year of publication, with any applicable standards for the transportation of prisoners promulgated by the American corrections association.

2. The department shall adopt rules pertaining to contracts with private persons or entities providing transportation of inmates of institutions under the control of the department.

98 Acts, ch 1131, §5

DIVISION IV

INVESTIGATIONS

904.401 Investigation.

The director or director's designee shall visit and inspect the institutions under the director's control, and investigate the financial condition and management of the institutions at least once in six months.

83 Acts, ch 96, §28, 159
CS83, §217A.41
85 Acts, ch 21, §54
CS85, §246.401
C93, §904.401
94 Acts, ch 1142, §8

904.402 Investigation of other institutions.

The director may investigate charges of abuse, neglect or mismanagement on the part of any officer or employee of any public or private institution subject to the director's supervision or control.

83 Acts, ch 96, §29, 159
CS83, §217A.42
85 Acts, ch 21, §54
CS85, §246.402
C93, §904.402

904.403 Investigatory powers — witnesses.

The director may exercise the following powers in an investigation:

1. Summon and compel the attendance of witnesses.

2. Examine the witnesses under oath, which the director may administer.

3. Have access to all books, papers, and property material to the investigation.

4. Order the production of books or papers material to the investigation.

Witnesses other than those in the employ of the

state are entitled to the same fees as in civil cases in the district court.

83 Acts, ch 96, §30, 159
CS83, §217A.43
85 Acts, ch 21, §54
CS85, §246.403
C93, §904.403

904.404 Contempt.

If a person fails or refuses to obey the orders of the director issued under section 904.403, or fails or refuses to give or produce evidence when required, the director shall petition the district court in the county where the offense occurs for an order of contempt and the court shall proceed as for contempt of court.

83 Acts, ch 96, §31, 159
CS83, §217A.44
85 Acts, ch 21, §54
CS85, §246.404
C93, §904.404

904.405 Recording of testimony.

The director shall cause the testimony taken at the investigation to be recorded. The recording of the testimony shall not be transcribed unless the testimony is part of a case that is appealed or an interested party requests a transcript and pays the cost of preparing the transcript. The recording of the testimony, or the transcription thereof, shall be filed and maintained in the director's office at the seat of government for at least five years from the date the testimony is taken or the date of a final decision in a case involving the testimony, whichever is later. However, a recording of testimony involving any employee of the department shall continue to be filed and maintained until the employee no longer is employed by the department.

83 Acts, ch 96, §32, 159
CS83, §217A.45
85 Acts, ch 21, §54
CS85, §246.405
C93, §904.405
2001 Acts, ch 131, §7

DIVISION V

COMMITMENT, TRANSFER, AND GENERAL SUPERVISION OF INMATES

904.501 Reports to director.

The superintendent of each institution shall, within ten days after the commitment or entrance of a person to the institution, cause a true copy of the person's entrance record to be made and forwarded to the director. When an inmate leaves, is discharged, transferred, or dies in any institution, the superintendent or person in charge shall within ten days thereafter send the information to the office of the director on forms which the director prescribes.

83 Acts, ch 96, §24, 159
CS83, §217A.34
85 Acts, ch 21, §54
CS85, §246.501
C93, §904.501

904.502 Questionable commitment.

The superintendent shall within three days of the commitment or entrance of a person at the institution notify the director if there is any question as to the propriety of the commitment or detention of any person received at the institution, and the director upon notification shall inquire into the matter presented, and take appropriate action.

83 Acts, ch 96, §25, 159
CS83, §217A.35
85 Acts, ch 21, §54
CS85, §246.502
C93, §904.502

904.503 Transfers — persons with mental illness.

1. The director may transfer at the expense of the department an inmate of one institution to another institution under the director's control if the director is satisfied that the transfer is in the best interests of the institutions or inmates.

The director may transfer at the expense of the department an inmate under the director's jurisdiction from any institution supervised by the director to another institution under the control of an administrator of a division of the department of human services with the consent and approval of the administrator and may transfer an inmate to any other institution for mental or physical examination or treatment retaining jurisdiction over the inmate when so transferred.

If the juvenile court waives its jurisdiction over a child over thirteen and under eighteen years of age pursuant to section 232.45 so that the child may be prosecuted as an adult and if the child is convicted of a public offense in the district court and committed to the custody of the director under section 901.7, the director may request transfer of the child to the state training school under this section. If the administrator of a division of the department of human services consents and approves the transfer, the child may be retained in temporary custody by the state training school until attaining the age of eighteen, at which time the child shall be returned to the custody of the director of the department of corrections to serve the remainder of the sentence imposed by the district court. If the child becomes a security risk or becomes a danger to other residents of the state training school at any time before reaching eighteen years of age, the administrator of the division of the department of human services may immediately return the child to the custody of the director of the department of corrections to serve the re-

mainder of the sentence.

2. When the director has cause to believe that an inmate in a state correctional institution is mentally ill, the Iowa department of corrections may cause the inmate to be transferred to the Iowa medical and classification center for examination, diagnosis, or treatment. The inmate shall be confined at that institution or a state hospital for persons with mental illness until the expiration of the inmate's sentence or until the inmate is pronounced in good mental health. If the inmate is pronounced in good mental health before the expiration of the inmate's sentence, the inmate shall be returned to the state correctional institution until the expiration of the inmate's sentence.

3. When the director has reason to believe that a prisoner in a state correctional institution, whose sentence has expired, is mentally ill, the director shall cause examination to be made of the prisoner by competent physicians who shall certify to the director whether the prisoner is in good mental health or mentally ill. The director may make further investigation and if satisfied that the prisoner is mentally ill, the director may cause the prisoner to be transferred to one of the hospitals for persons with mental illness, or may order the prisoner to be confined in the Iowa medical and classification center.

2. [SS15, §5709-b, -e; C24, 27, 31, 35, 39, §**3755;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §246.16; 82 Acts, ch 1100, §11]

3. [C97, §5710; C24, 27, 31, 35, 39, §**3756;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §246.17; 82 Acts, ch 1100, §12]

83 Acts, ch 96, §21, 92, 159
CS83, §217A.31, 246.16
84 Acts, ch 1184, §14, 15; 84 Acts, ch 1214, §1
C85, §217A.31
85 Acts, ch 21, §17 – 19, 54
CS85, §246.503
89 Acts, ch 80, §1
C93, §904.503
96 Acts, ch 1129, §113

904.504 Federal prisoners.

Inmates sentenced for any term by any court of the United States may be received by the superintendent of a state correctional institution and kept there in pursuance of their sentences. The director may transfer inmates at state correctional institutions to the federal bureau of prisons.

[C51, §3119; R60, §5138; C73, §4771; C97, §5676; C24, 27, 31, 35, 39, §**3750**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §246.11]

83 Acts, ch 96, §91, 159; 84 Acts, ch 1184, §13
C85, §217A.39
85 Acts, ch 21, §22, 54
CS85, §246.504
C93, §904.504

904.505 Disciplinary procedures — use of force.

1. Inmates who disobey the disciplinary rules of the institution to which they are committed shall be punished by the imposition of the penalties prescribed in the disciplinary rules, according to the following guidelines:

a. To ensure that sanctions are imposed only at such times and to such a degree as is necessary to regulate inmate behavior within the limits of the disciplinary rules and to promote a safe and orderly institutional environment.

b. To control inmate behavior in an impartial and consistent manner.

c. To ensure that disciplinary procedures are fair and that sanctions are not capricious or retaliatory.

d. To prevent the commission of offenses through the deterrent effect of the sanctions available.

e. To define the elements of each offense and the penalties which may be imposed for violations, in order to give fair warning of prohibited conduct.

f. To provide procedures for preparation of reports of disciplinary actions, for conducting disciplinary hearings, and for processing of disciplinary appeals.

2. The superintendent of each institution shall maintain a register of all penalties imposed on inmates and the cause for which the penalties were imposed.

3. A correctional officer of a correctional institution or the officer's assistant shall, in case an inmate resists the officer's or assistant's lawful authority, or refuses to obey the officer's or assistant's lawful command, only use such force as is reasonably necessary under all attendant circumstances. The use of a deadly weapon is justified under conditions of extreme necessity and as a last resort to protect the life or safety of a person. The use of a deadly weapon is not justified solely to prevent damage to or destruction of property where there is no danger to the life or safety of a person. An officer or assistant is justified in using force which causes injury or death to an inmate if the officer's or assistant's actions comply with the requirements of this subsection.

85 Acts, ch 21, §21
CS85, §246.505
C93, §904.505

904.506 Confiscation of currency.

1. Except as provided for by the director by rule, it is unlawful for an inmate of one of the penal or correctional facilities under the department to possess United States or foreign currency in the penal or correctional facility.

2. The director shall adopt rules as to circumstances under which the possession of currency by an inmate of a penal or correctional facility under the department is authorized.

3. The department may confiscate currency unlawfully possessed in violation of this section. Money confiscated pursuant to this section shall be deposited in a special fund in the state treasury which fund shall be established by the treasurer of state. Money deposited in the fund may be drawn upon by the department to pay for expenses incurred in operating the division's penal and correctional facilities and programs.

83 Acts, ch 51, §2, 7, 9; 83 Acts, ch 96, §159, 160
CS83, §217A.77
85 Acts, ch 21, §54
CS85, §246.506
C93, §904.506

904.507 Escape.

An inmate of a state correctional institution who escapes from it may be arrested and returned to the institution, by an officer or employee of a state correctional institution without any other authority than this chapter, and by any peace officer or other person on the request in writing of the superintendent or the state director.

[SS15, §2713-n15; C24, 27, 31, 35, 39, §**3738;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §245.15]

83 Acts, ch 96, §88, 159; 83 Acts, ch 101, §52; 84 Acts, ch 1184, §12
C85, §217A.38
85 Acts, ch 21, §54
CS85, §246.507
C93, §904.507

904.507A Liability for escapee expenses.

If a person escapes from a state correctional institution including but not limited to those institutions listed in section 904.102, all necessary and legal expenses incurred by that person while absent from the state institution shall be paid out of any moneys in the state treasury not otherwise appropriated. The expenses shall be paid on claims filed with the department of revenue and finance.

98 Acts, ch 1086, §5

904.508 Property of inmate — inmate savings fund.

1. The superintendent of each institution shall receive and care for any property an inmate may possess on the inmate's person upon entering the institution, and on the discharge of the inmate, return the property to the inmate or the inmate's legal representatives, unless the property has been previously disposed of according to the inmate's written designation or policies prescribed by the board. The superintendent may place an inmate's money at interest, keeping an account of the money and returning the remaining money upon discharge.

2. The director shall establish and maintain an inmate savings fund in an interest-bearing account for the deposit of all or part of an inmate's allowances, as provided in section 904.702. All or part of an inmate's allowances shall be deposited into the savings fund, until the inmate's deposit is equal to the amount due the inmate upon discharge, parole, or placement on work release, as provided in section 906.9. If an inmate's deposits equal this amount, the inmate may voluntarily withdraw from the savings fund. The director shall notify the inmate of this right to withdraw and shall provide the inmate with a written request form to facilitate the withdrawal. If the inmate withdraws and the inmate's deposits exceed the amount due as provided in section 906.9, the director shall disburse the excess amount as provided for allowances under section 904.702, except the director shall not deposit the excess amount in the inmate savings fund. If the inmate chooses to continue to participate in the savings fund, the inmate's deposits shall be returned to the inmate upon discharge, parole, or placement on work release. Otherwise, the inmate's deposits shall be disposed of as provided in subsection 3. An inmate's deposits into the savings fund may be used to provide the money due the inmate upon discharge, parole, or placement on work release, as required under section 906.9. Interest earned from the savings fund shall be placed in a separate account, and may be used for purchases approved by the director to directly and collectively benefit inmates.

3. Upon the death of an inmate, the superintendent of the institution shall immediately take possession of the decedent's property left at the institution, including the inmate's deposits into the inmate savings fund, and shall deliver the property to the person designated by the inmate to be contacted in case of an emergency. However, if the property left by the decedent cannot be delivered to the designated person, delivery may be made to the surviving spouse or an heir of the decedent. If the decedent's property cannot be delivered to the designated person and no surviving spouse or heir is known, the superintendent shall deliver the property to the treasurer of state for disposition as unclaimed property pursuant to chapter 556, after deducting expenses incurred in disposing of the decedent's body or property.

83 Acts, ch 96, §44, 159
CS83, §217A.66
85 Acts, ch 21, §25, 54
CS85, §246.508
89 Acts, ch 46, §1; 91 Acts, ch 219, §8
C93, §904.508

904.508A Inmate telephone rebate fund.

The department is authorized to establish and maintain an inmate telephone rebate fund in each institution for the deposit of moneys received for inmate telephone rebates. All funds deposited in this fund shall be used for the benefit of inmates. The director shall adopt rules providing for the

disbursement of moneys from the fund.
95 Acts, ch 207, §27

904.509 Money deposited with treasurer of state.

Money from property converted pursuant to section 904.508 shall be transmitted to the treasurer of state as soon after one year after the death of the inmate as practicable. A complete permanent record of the property, showing by whom and with whom it was left, its amount when converted to money, the date of the death of the owner, the owner's reputed place of residence before becoming an inmate of the institution, the date on which the money was sent to the treasurer of state, and any other facts which may tend to identify the decedent and explain the case, shall be kept by the superintendent of the institution, and a transcript of the record shall be sent to and kept by the treasurer of state.

Money deposited with the treasurer of state pursuant to this section shall be paid at any time within ten years from the death of the inmate to any person who is shown to be entitled to it.
83 Acts, ch 96, §45, 159
CS83, §217A.67
85 Acts, ch 21, §54
CS85, §246.509
C93, §904.509

904.510 Religious preference.

The superintendent receiving a person committed to any of the institutions shall ask the person to state the person's religious preference, shall enter the stated preference in a book kept for that purpose, and shall request that the person sign the entry. If the person is a minor and has formed no choice, the preference may be expressed at any later time by the person.
83 Acts, ch 96, §26, 159
CS83, §217A.36
85 Acts, ch 21, §54
CS85, §246.510
C93, §904.510

904.511 Time for religion.

Any inmate, during the time of detention, shall be allowed for at least one hour on each Sunday or other holy day or in times of extreme sickness, and at other suitable and reasonable times consistent with proper discipline in the institution, to receive spiritual advice, instruction, and ministration from any recognized member of the clergy who represents the inmate's religious belief.
83 Acts, ch 96, §27, 159
CS83, §217A.37
85 Acts, ch 21, §54
CS85, §246.511
C93, §904.511

904.512 Visits.

Members of the executive council, the attorney general, the lieutenant governor, members of the general assembly, judges of the supreme and district court and court of appeals, judicial magistrates, county attorneys and persons ordained or designated as regular leaders of a religious community are authorized to visit all institutions under the control of the Iowa department of corrections at reasonable times. No other person shall be granted admission except by permission of the superintendent.
84 Acts, ch 1004, §1
C85, §217A.80
85 Acts, ch 21, §28, 54
CS85, §246.512
C93, §904.512

904.513 Assignment of OWI violators to treatment facilities.

1. *a.* The department of corrections, in cooperation with the judicial district departments of correctional services, shall establish in each judicial district a continuum of programming for the supervision and treatment of offenders convicted of violating chapter 321J who are sentenced to the custody of the director. The continuum shall include a range of sanctioning options that include, but are not limited to, prisons and residential facilities.

b. (1) The department of corrections shall develop standardized assessment criteria for the assignment of offenders pursuant to this chapter.

(2) Offenders convicted of violating chapter 321J, sentenced to the custody of the director, and awaiting placement in a community residential substance abuse treatment program for such offenders shall be placed in an institutional substance abuse program for such offenders within sixty days of admission to the institution or as soon as practical. When placing offenders convicted of violating chapter 321J in community residential substance abuse treatment programs for such offenders, the department shall give priority as appropriate to the placement of those offenders currently in institutional substance abuse programs for such offenders. The department shall work with each judicial district to enable such offenders to enter community residential substance abuse treatment programs at a level comparable to their prior institutional program participation.

(3) Assignment shall be for the purposes of risk management and substance abuse treatment and may include education or work programs when the offender is not participating in other program components.

(4) Assignment may also be made on the basis of the offender's treatment program performance, as a disciplinary measure, for medical needs, and for space availability at community residential facilities. If there is insufficient space at a community residential facility, the court may order an of-

fender to be released to the supervision of the judicial district department of correctional services or held in jail.

2. Upon request by the director a county shall provide temporary confinement for offenders allegedly violating the conditions of assignment to a program under this chapter, if space is available in the county. The department shall negotiate a reimbursement rate with each county. The amount to be reimbursed shall be determined by multiplying the number of days a person is confined by the average daily cost of confining a person in the county facility as negotiated with the department. A county holding offenders in jail due to insufficient space in a community residential facility shall be reimbursed. Payment shall be made upon submission of a voucher executed by the sheriff and approved by the director.

3. The department shall adopt rules for the implementation of this section. The rules shall include the requirement that the treatment programs established pursuant to this chapter meet the licensure standards of the division of substance abuse for the department of public health. The rules shall also include provisions for the funding of the program by means of self-contribution by the offenders, insurance reimbursement on behalf of offenders, or other forms of funding, program structure, criteria for the evaluation of offenders and programs, and all other issues the director shall deem appropriate.

86 Acts, ch 1220, §26
C87, §246.513
87 Acts, ch 118, §1, 2; 90 Acts, ch 1251, §30; 91 Acts, ch 219, §9; 92 Acts, ch 1163, §57
C93, §904.513
96 Acts, ch 1165, §2; 2000 Acts, ch 1202, §1

904.514 Required test.

A person committed to an institution under the control of the department who bites another person, who causes an exchange of bodily fluids with another person, or who causes any bodily secretion to be cast upon another person, shall submit to the withdrawal of a bodily specimen for testing to determine if the person is infected with a contagious infectious disease. The bodily specimen to be taken shall be determined by the staff physician of the institution. The specimen taken shall be sent to the state hygienic laboratory at the state university at Iowa City or some other laboratory approved by the Iowa department of public health. If a person to be tested pursuant to this section refuses to submit to the withdrawal of a bodily specimen, application may be made by the superintendent of the institution to the district court for an order compelling the person to submit to the withdrawal and, if infected, to available treatment. An order authorizing the withdrawal of a specimen for testing may be issued only by a district judge or district associate judge upon application by the superintendent of the institution.

Failure to comply with an order issued pursuant to this section may result in the forfeiture of good conduct time, not to exceed one year, earned up to the time of the failure to comply.

Personnel at an institution under the control of the department or of a residential facility operated by a judicial district department of correctional services shall be notified if a person committed to any of these institutions is found to have a contagious infectious disease.

The department shall adopt policies and procedures to prevent the transmittal of a contagious infectious disease to other persons.

For purposes of this section, *"infectious disease"* means any infectious condition which if spread by contamination would place others at a serious health risk.

87 Acts, ch 185, §1
CS87, §246.514
C93, §904.514

904.515 Human immunodeficiency virus-related matters — exemption.

The provisions of chapter 141A relating to knowledge and consent do not apply to persons committed to the custody of the department. The department may provide for medically acceptable procedures to inform employees, visitors, and persons committed to the department of possible infection and to protect them from possible infection.

88 Acts, ch 1234, §6
C89, §246.515
C93, §904.515
99 Acts, ch 181, §18

904.516 Academic achievement of inmates — literacy and high school equivalency programs.

1. Effective July 1, 1997, a person who is committed to the custody of the director of the department of corrections may be evaluated for purposes of determining the level of achievement in the basic skills of arithmetic, the communicative arts of reading, writing, grammar, and spelling, social studies, and the sciences.

2. Persons who demonstrate functional literacy competence below the sixth grade level may be required to participate in literacy programs established by the department. Participation shall be voluntary, but shall be reflected as part of the person's record at the institution. Persons who are required to participate in literacy programs and who refuse to participate shall be subject to the following penalties:

a. Eligibility only for a minimum allowance.
b. Placement on idle status.
c. Ineligibility for work bonuses.
d. Ineligibility for minimum out or minimum live out status.
e. Ineligibility for other privileges as determined by the department.

3. Persons who have not completed the requirements for high school or a high school equivalency diploma may be required to complete the requirements for and to obtain a high school equivalency diploma under chapter 259A.

4. The department, in cooperation with the board of parole, shall adopt rules which establish a procedure for evaluation of inmates to determine basic skills achievement, and criteria for placement of inmates in educational programs. Rules adopted may include, but shall not be limited to, the establishment of standards for the development of appropriate programming, imposition of any applicable penalties, and for waiver of any educational requirements.

95 Acts, ch 179, §1

DIVISION VI

RECORDS — CONFIDENTIALITY

904.601 Records of inmates.

The director shall keep the following record of every person committed to any of the department's institutions: Name, residence, sex, age, place of birth, occupation, civil condition, date of entrance or commitment, date of discharge, whether a discharge is final, condition of the person when discharged, the name of the institutions from which and to which the person has been transferred, and if the person is dead, the date and cause of death. The director may permit the division of libraries and information services of the department of education and the historical division of the department of cultural affairs to copy or reproduce by any photographic, photostatic, microfilm, microcard, or other process which accurately reproduces in a durable medium and to destroy in the manner described by law the records of inmates required by this paragraph.

The director shall keep other records for the use of the board of parole as the board of parole may request.

83 Acts, ch 96, §22, 159
CS83, §217A.32
84 Acts, ch 1148, §3; 85 Acts, ch 21, §20, 54
CS85, §246.601
C93, §904.601
93 Acts, ch 48, §54

904.602 Confidentiality of records — penalty.

1. The following information regarding individuals receiving or who have received services from the department or from the judicial district departments of correctional services under chapter 905 is public information and may be given to anyone:

a. Name.
b. Age.
c. Sex.
d. Status (inmate, parolee, or probationer).
e. Location, except home street address.
f. Duration of supervision.
g. Offense or offenses for which the individual was placed under supervision.
h. County of commitment.
i. Arrest and detention orders.
j. Physical description.
k. Type of services received.
l. Disciplinary reports and decisions which have been referred to the county attorney or prosecutor for prosecution, and the following information of all other disciplinary reports:

(1) The name of the subject of the investigation.
(2) The alleged infraction involved.
(3) The finding of fact and the penalty, if any, imposed as a result of the infraction.

2. The following information regarding individuals receiving or who have received services from the department or from the judicial district departments of correctional services under chapter 905 is confidential and shall not be disseminated by the department to the public:

a. Home street address of the individual receiving or who has received services or that individual's family.
b. Department evaluations.
c. Medical, psychiatric or psychological information.
d. Names of associates or accomplices.
e. Name of employer.
f. Social security number.
g. Prior criminal history including information on offenses where no conviction occurred.
h. Family and personal history.
i. Financial information.
j. Information from disciplinary reports and investigations other than that identified in subsection 1, paragraph *"l"*.
k. Investigations by the department or other agencies which are contained in the individual's file.
l. Department committee records which include any information identified in paragraphs *"a"* through *"k"*. A record containing information which is both public and confidential which is reasonably segregable shall not be confidential after deletion of the confidential information.
m. Presentence investigations as provided under chapter 901.
n. Pretrial information that is not otherwise available in public court records or proceedings.
o. Correspondence directed to department officers or staff from an individual's family, victims, or employers of a personal or confidential nature. If the custodian of the record determines that the correspondence is confidential, in any proceeding under chapter 22 the burden of proof shall be on the person seeking release of the correspondence, and the writer of the correspondence shall be notified of the proceeding.

3. Information identified in subsection 2 shall not be disclosed or used by any person or agency except for purposes of the administration of the department's programs of services or assistance and shall not, except as otherwise provided in this section, be disclosed by the department or be used by persons or agencies outside the department unless they are subject to, or agree to, comply with standards of confidentiality comparable to those imposed on the department by this section.

4. This section does not restrict the disclosure or use of information regarding the cost, purpose, number of persons served or assisted by or results of any program administered by the department, and other general statistical information so long as the information does not identify particular individuals served or assisted except as provided in subsection 1 of this section.

5. Information restricted in subsection 2 may be disclosed to persons or agencies with the approval of the director for the limited purpose of research and program evaluation or educational purposes when those persons or agencies agree to keep confidential that information restricted in subsection 2, and any reports of the research shall not contain any of the information restricted in subsection 2 except as allowed in subsection 4. However, the persons or agencies eligible to receive information under this subsection include only those which are state employees or those whom the department retains under contract to perform the services.

6. Confidential information described in subsection 2 may be disclosed to public officials for use in connection with their official duties relating to law enforcement, audits and other purposes directly connected with the administration of their programs. Full disclosure by the department of any information on an individual may be made to the board of parole and to judicial district departments of correctional services created under chapter 905, and the board and those departments are subject to the same standards as the department in dissemination or redissemination of information on persons served or supervised by those departments, and all provisions of this section pertain to the board of parole and to the judicial district departments as if they were a part of the department. Information may be disseminated about individuals while under the supervision of the department to public or private agencies to which persons served or supervised by the department are referred for specific services not otherwise provided by the department but only to the extent that the information is needed by those agencies to provide the services required, and they shall keep information received from the department confidential.

7. Information described in subsection 2 which pertains to the name and address of the employer of an individual who is receiving or has received services shall be released upon request to an individual for the purpose of executing a judgment resulting from the individual's current or past criminal activity.

8. If it is established that a provision of this section would cause any of the department's programs of services or assistance to be ineligible for federal funds, the provision shall be limited or restricted to the extent which is essential to make the program eligible for federal funds. The department shall adopt, pursuant to chapter 17A, rules necessary to implement this subsection.

9. A supervised individual or former supervised individual shall be given access to the individual's own records in the custody of the department, except that records which could result in physical or psychological harm to another person or the supervised individual or adversely affect an investigation into a supervised individual's possible violation of departmental rules, shall not be disclosed without a court order. Psychiatric information may be withheld by the department if its release would jeopardize the supervised individual's treatment. Upon the supervised individual's written authorization, that information which the supervised individual has access to may be released to any third party. A reasonable fee for copying and services may be charged.

10. Regulations, procedures, and policies that govern the internal administration of the department and the judicial district departments of correctional services under chapter 905, which if released may jeopardize the secure operation of a correctional institution operation or program are confidential unless otherwise ordered by a court. These records include procedures on inmate movement and control, staffing patterns and regulations, emergency plans, internal investigations, equipment use and security, building plans, operation, and security, security procedures for inmate, staff, and visits, daily operation records, and contraband and medicine control.

These records are exempt from the public inspection requirements in section 17A.3 and section 22.2.

11. Violation of this section is a serious misdemeanor.

12. This section does not preclude the disclosure of otherwise confidential material if it is necessary to civil or criminal court proceedings. The review of the court may, however, limit the confidential information to an in camera inspection where the court determines that the confidential nature of the information needs to be protected.

83 Acts, ch 96, §13, 159
CS83, §217A.18
84 Acts, ch 1148, §1; 85 Acts, ch 21, §54
CS85, §246.602
C93, §904.602
94 Acts, ch 1142, §9, 10; 98 Acts, ch 1090, §77, 78, 84

904.603 Action for damages.

A person receiving or who has received services, or that person's family, victim or employer may institute a civil action for damages under chapter 669 or other action to restrain the release of confidential records set out in section 904.602, subsection 2, which is in violation of that section, and a person, agency or governmental body proven to have released confidential records in violation of section 904.602, subsection 2, is liable for actual damages for each violation and is liable for court costs and reasonable attorney's fees incurred by the party bringing the action.

83 Acts, ch 96, §14, 159
CS83, §217A.19
84 Acts, ch 1148, §2; 85 Acts, ch 21, §54
CS85, §246.603
C93, §904.603
94 Acts, ch 1142, §11

DIVISION VII

INMATE WORK

904.701 Services required — gratuitous allowances — hard labor — rules.

1. An inmate of an institution shall be required to perform hard labor which is suited to the inmate's age, gender, physical and mental condition, strength, and attainments in the institution proper, in the industries established in connection with the institution, or at such other places as may be determined by the director. Substantially equivalent hard labor programs shall be available to both male and female inmates. When an inmate of an institution is working outside the institution proper, the inmate shall be deemed at all times to be in the actual custody of the superintendent of the institution. Inmates performing hard labor on chain gangs at a location other than within or on the grounds of a correctional institution shall be attired in brightly colored uniforms that readily identify them as inmates of correctional institutions. Inmates performing other types of hard labor at locations other than within or on the grounds of a correctional institution may also be required by the department to wear the brightly colored uniforms. Inmates not required to wear brightly colored uniforms while performing hard labor shall be otherwise clearly designated as inmates of correctional institutions. The employment of inmates in hard labor shall not displace employed workers, shall not be applied to skills, crafts, or trades in which a local surplus of labor exists, and shall not impair existing contracts for employment or services.

2. The director may when practicable pay the inmate an allowance as the director deems proper in view of the circumstances, and in view of the cost attending the maintenance of the inmate. The allowance is a gratuitous payment and is not a wage arising out of an employment relationship. The payment shall not exceed the amount paid to free labor for a like or equivalent service.

3. For purposes of this section, *"hard labor"* means physical or mental labor which is performed for a period of time which shall average, as nearly as possible, forty hours each week, and may include useful and productive work, chain gangs, menial labor, treatment or education programs, any training necessary to perform any work required, and, if possible, work providing an inmate with marketable vocational skills. *"Hard labor"* does not include labor which is dangerous to an inmate's life or health, is unduly painful, or is required to be performed under conditions that would violate occupational safety and health standards applicable to such labor if performed by a person who is not an inmate.

4. Notwithstanding subsection 1, an inmate who has been determined by the director to be unsuitable for the performance of hard labor due to the inmate's age, gender, physical or mental condition, strength, or security status shall not be required to perform hard labor.

5. The department shall adopt rules to implement this section.

83 Acts, ch 96, §33, 159
CS83, §217A.46
85 Acts, ch 21, §23, 54
CS85, §246.701
C93, §904.701
95 Acts, ch 166, §1; 96 Acts, ch 1216, §33
Reports concerning progress made in implementing inmate labor requirements; 2002 Acts, 2nd Ex, ch 1003, §158, 172

904.702 Deductions from inmate accounts.

If allowances are paid pursuant to section 904.701, the director shall establish an inmate account, for deposit of those allowances and for deposit of moneys sent to the inmate from a source other than the department of corrections. The director may deduct an amount, not to exceed ten percent of the amount of the allowance, unless the inmate requests a larger amount, to be deposited into the inmate savings fund as required under section 904.508, subsection 2. The director shall deduct from the inmate account an amount established by the inmate's restitution plan of payment. The director shall also deduct from any remaining account balance an amount sufficient to pay all or part of any judgment against the inmate, including but not limited to judgments for taxes and child support, and court costs and fees assessed either as a result of the inmate's confinement or amounts required to be paid under section 610A.1. Written notice of the amount of the deduction shall be given to the inmate, who shall have five days after receipt of the notice to submit in writing any and all objections to the deduction to the director, who shall consider the objections prior to transmitting the deducted amount to the clerk of the

district court. The director need give only one notice for each action or appeal under section 610A.1 for which periodic deductions are to be made. The director shall next deduct from any remaining account balance an amount sufficient to pay all or part of any costs assessed against the inmate for misconduct or damage to the property of others. The director may deduct from the inmate's account an amount sufficient to pay for the inmate's share of the costs of health services requested by the inmate and for the treatment of injuries inflicted by the inmate on the inmate or others. The director may deduct and disburse an amount sufficient for industries' programs to qualify under the eligibility requirements established in the Justice Assistance Act of 1984, Pub. L. No. 98-473, including an amount to pay all or part of the cost of the inmate's incarceration. The director may pay all or any part of remaining allowances paid pursuant to section 904.701 directly to a dependent of the inmate, or may deposit the allowance to the account of the inmate, or may deposit a portion and allow the inmate a portion for the inmate's personal use.

The director, the institutional division, and the department shall not be liable to any person for any damages caused by the withdrawal or failure to withdraw money or the payment or failure to make any payment under this section.

83 Acts, ch 96, §34, 159
CS83, §217A.47
85 Acts, ch 21, §24, 54; 85 Acts, ch 195, §24
CS85, §246.702
87 Acts, ch 13, §3; 88 Acts, ch 1166, §1; 91 Acts, ch 219, §10
C93, §904.702
95 Acts, ch 167, §6; 96 Acts, ch 1165, §3

904.703 Services of inmates — institutions and public service.

Inmates shall work on state account in the maintenance of state institutions, in the erection, repair, authorized demolition, or operation of buildings and works used in connection with the institutions, and in industries established and maintained in connection with the institutions by the director. The director shall encourage the making of agreements, including chapter 28E agreements, with departments and agencies of the state or its political subdivisions to provide products or services under an inmate work program to the departments and agencies. The director may implement an inmate work program for trustworthy inmates of state correctional institutions, under proper supervision, whether at work centers located outside the state correctional institutions or in construction or maintenance work at public or charitable facilities and for other agencies of state, county, or local government. The supervision, security, and transportation of, and allowances paid to inmates used in public service projects shall be provided pursuant to agreements, including chapter 28E agreements, made by the director and the agency for which the work is done. Housing and maintenance shall also be provided pursuant to the agreement, including a chapter 28E agreement, unless the inmate is housed and maintained in the correctional facility. All such work, including but not limited to that provided in this section, shall have as its primary purpose the development of attitudes, skills, and habit patterns which are conducive to inmate rehabilitation. The director may adopt rules allowing inmates participating in an inmate work program to receive educational or vocational training outside the state correctional institutions and away from the work centers or public or charitable facilities used under a program.

However, an inmate shall not work in a public service project if the work of that inmate would replace a person employed by the state agency or political subdivision, which employee is performing the work of the public service project at the time the inmate is being considered for work in the project.

[S13, §5702-a; SS15, §5718-a11; C24, 27, 31, 35, 39, §**3757**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §246.18]
83 Acts, ch 51, §3, 7, 9; 83 Acts, ch 96, §159, 160
CS83, §217A.78
85 Acts, ch 21, §26, 54
CS85, §246.703
88 Acts, ch 1165, §2; 90 Acts, ch 1251, §31
C93, §904.703
98 Acts, ch 1086, §6; 99 Acts, ch 182, §5

904.704 Limitation on contracts.

The director or the superintendents of the institutions shall not, nor shall any other person employed by the state, make any contract by which the labor or time of an inmate in the institution is given, loaned, or sold to any person unless as provided by division VIII or section 904.703.

[S13, §2727-a51, 5718-a28a; C24, 27, 31, 35, 39, §**3764**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §246.25]
83 Acts, ch 51, §4, 7, 9; 83 Acts, ch 96, §159, 160
CS83, §217A.79
85 Acts, ch 21, §27, 54
CS85, §246.704
C93, §904.704

904.705 Industries — forestry nurseries.

The director may establish industries at or in connection with any of the institutions under the director's control and may make contractual agreements with the United States, other states, state departments and agencies, and subdivisions of the state, for purchase of industry products.

The director may with the assistance of the department of natural resources establish and operate forestry nurseries on state-owned land under the control of the department. Residents of the adult correctional institutions shall provide the

labor for the operation. Nursery stock shall be sold in accordance with the rules of the natural resource commission. The department shall pay the costs of establishing and operating the forestry nurseries out of the revolving farm fund created in section 904.706. The department of natural resources shall pay the costs of transporting, sorting, and distributing nursery stock to and from or on state-owned land under the control of the department of natural resources. Receipts from the sale of nursery stock produced under this section shall be divided between the department and the department of natural resources in direct proportion to their respective costs as a percentage of the total costs. The department shall deposit its receipts in the revolving farm fund created in section 904.706.

83 Acts, ch 96, §47, 159
CS83, §217A.69
85 Acts, ch 21, §54
CS85, §246.705
C93, §904.705

904.706 Revolving farm fund.

A revolving farm fund is created in the state treasury in which the department shall deposit receipts from agricultural products, nursery stock, agricultural land rentals, and the sale of livestock. However, before any agricultural operation is phased out, the department which proposes to discontinue this operation shall notify the governor, chairpersons and ranking members of the house and senate appropriations committees, and cochairpersons and ranking members of the subcommittee in the senate and house of representatives which has handled the appropriation for this department in the past session of the general assembly. Before the department sells farmland under the control of the department, the director shall notify the governor, chairpersons and ranking members of the house and senate appropriations committees, and cochairpersons and ranking members of the joint appropriations subcommittee that handled the appropriation for the department during the past session of the general assembly. The department may pay from the fund for the operation, maintenance, and improvement of farms and agricultural or nursery property under the control of the department. A purchase order for five thousand dollars or less payable from the fund is exempt from the general purchasing requirements of chapter 18. Notwithstanding section 8.33, unencumbered or unobligated receipts in the revolving farm fund at the end of a fiscal year shall not revert to the general fund of the state.

Notwithstanding section 8.36, the department shall annually prepare a financial statement covering the previous calendar year to provide for an accounting of the funds in the revolving farm fund. The financial statement shall be filed with the legislative fiscal bureau on or before February 1 each year.

As used in this section, "department" means the Iowa department of corrections and the Iowa department of human services.

The farm operations administrator appointed under section 904.302 shall perform the functions described under section 904.302 for agricultural operations on property of the Iowa department of human services.

The Iowa department of human services shall enter into an agreement under chapter 28D with the Iowa department of corrections to implement this section.

83 Acts, ch 96, §48, 159
CS83, §217A.70
85 Acts, ch 21, §54
CS85, §246.706
86 Acts, ch 1075, §2; 89 Acts, ch 9, §1; 91 Acts, ch 260, §1221
C93, §904.706

DIVISION VIII

IOWA STATE INDUSTRIES

904.801 Statement of intent.

It is the intent of this division that there be made available to inmates of the state correctional institutions opportunities for work in meaningful jobs with the following objectives:

1. To develop within those inmates willing to accept and persevere in such work:

a. Positive attitudes which will enable them to eventually function as law-abiding, self-supporting members of the community;

b. Good work habits that will assist them in eventually securing and holding gainful employment outside the correctional system; and

c. To the extent feasible, marketable skills that can lead directly to gainful employment upon release from a correctional institution.

2. To enable those inmates willing to accept and persevere in such work to:

a. Provide or assist in providing for their dependents, thus tending to strengthen the inmates' family ties while reducing the likelihood that inmates' families will have to rely upon public assistance for subsistence;

b. Make restitution, as the opportunity to do so becomes available, to the victims of the offenses for which the inmates were incarcerated, so as to assist the inmates in accepting responsibility for the consequences of their acts;

c. Make it feasible to require that such inmates pay some portion of the cost of board and maintenance in a correctional institution, in a manner similar to what would be necessary if they were employed in the community; and

d. Accumulate savings so that such inmates will have funds for necessities upon their eventual return to the community.

[C79, 81, §216.1; 82 Acts, ch 1007, §1]
85 Acts, ch 21, §1, 2, 54
CS85, §246.801
C93, §904.801

904.802 Definitions.

As used in this division:

1. *"Industries board"* means the state prison industries advisory board.

2. *"Iowa state industries"* means prison industries that are established and maintained by the Iowa department of corrections, in consultation with the industries board, at or adjacent to the state's adult correctional institutions, except that an inmate work program established by the state director under section 904.703 is not restricted to industries at or adjacent to the institutions.

3. *"State director"* means the director of the Iowa department of corrections, or the director's designee.

[C79, 81, §216.2; 82 Acts, ch 1007, §2, ch 1100, §3]
83 Acts, ch 96, §61, 159; 85 Acts, ch 21, §3, 54
CS85, §246.802
C93, §904.802
94 Acts, ch 1023, §72

904.803 Prison industries advisory board.

1. There is established a state prison industries advisory board, consisting of seven members selected as prescribed by this subsection.

a. Five members shall be appointed by the governor for terms of four years beginning July 1 of the year of appointment. They shall be chosen as follows:

(1) One member shall represent agriculture and one member shall represent manufacturing, with particular reference to the roles of their constituencies as potential employers of former inmates of the state's correctional institutions.

(2) One member shall represent labor organizations, membership in which may be helpful to former inmates of the state's correctional institutions who seek to train for and obtain gainful employment.

(3) One member shall represent agencies, groups and individuals in this state which plan and maintain programs of vocational and technical education oriented to development of marketable skills.

(4) One member shall represent the financial industry and be familiar with accounting practices in private industry.

b. One member each shall be designated by and shall serve at the pleasure of the state director and the state board of parole, respectively.

c. Upon the resignation, death or removal of any member appointed under paragraph *"a"* of this subsection, the vacancy shall be filled by the governor for the balance of the unexpired term. In making the initial appointments under that paragraph, the governor shall designate two appointees to serve terms of two years and three to serve terms of four years from July 1, 1977.

2. Biennially, the industries board shall organize by election of a chairperson and a vice chairperson, as soon as reasonably possible after the new appointees have been named. Other meetings shall be held at the call of the chairperson or of any three members, as necessary to enable the industries board to discharge its duties. Board members shall be reimbursed for expenses actually and necessarily incurred in the discharge of their duties, and those members not state employees shall also be entitled to a per diem as specified in section 7E.6 for each day they are so engaged.

3. The state director shall provide such administrative and technical assistance as is necessary to enable the industries board to discharge its duties. The industries board shall be provided necessary office and meeting space at the seat of government.

[C79, 81, §216.3; 82 Acts, ch 1149, §1]
85 Acts, ch 21, §4, 54
CS85, §246.803
90 Acts, ch 1256, §40
C93, §904.803

904.804 Duties of industries board.

The industries board's principal duties shall be to promulgate and adopt rules and to advise the state director regarding the management of Iowa state industries so as to further the intent stated by section 904.801.

[C79, 81, §216.4]
85 Acts, ch 21, §54
CS85, §246.804
C93, §904.804

904.805 Duties of state director.

The state director, with the advice of the industries board, shall:

1. Conduct market studies and consult with public bodies and officers who are listed in section 904.807, and with other potential purchasers, for the purpose of determining items or services needed and design features desired or required by potential purchasers of Iowa state industries products or services.

2. Receive, investigate and take appropriate action upon any complaints from potential purchasers of Iowa state industries products or services regarding lack of co-operation by Iowa state industries with public bodies and officers who are listed in section 904.807, and with other potential purchasers.

3. Establish, transfer and close industrial operations as deemed advisable to maximize opportunities for gainful work for inmates and to adjust to actual or potential market demand for particular products or services.

4. Establish and from time to time adjust, as necessary, levels of allowances paid to inmates working in Iowa state industries.

5. Co-ordinate Iowa state industries, and other opportunities for gainful work available to inmates of adult correctional institutions, with vocational and technical training opportunities and apprenticeship programs, to the greatest extent feasible.

6. Promote, plan, and when deemed advisable, assist in the location of privately owned and operated industrial enterprises on the grounds of adult correctional institutions, pursuant to section 904.809.

[C79, 81, §216.5; 82 Acts, ch 1007, §3]
85 Acts, ch 21, §5 – 7, 54
CS85, §246.805
86 Acts, ch 1245, §1505; 88 Acts, ch 1165, §3
C93, §904.805

904.806 Authority of state director not impaired.

Nothing in this division shall be construed to impair the authority of the state director over the adult correctional institutions of this state, nor over the inmates thereof. It is, however, the duty of the state director to obtain the advice of the industries board to further the intent stated by section 904.801.

[C79, 81, §216.6]
85 Acts, ch 21, §54
CS85, §246.806
C93, §904.806

904.807 Price lists to public officials.

The state director shall cause to be prepared from time to time classified and itemized price lists of the products manufactured by Iowa state industries. Such lists shall be furnished to all boards of supervisors, boards of directors of school corporations, city councils, and all other state, county, city and school departments and officials empowered to purchase supplies and equipment for public purposes.

[C24, 27, 31, 35, 39, §**3760;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §246.21; C79, 81, §216.7]
85 Acts, ch 21, §54
CS85, §246.807
C93, §904.807

904.808 State purchasing requirements — exceptions.

1. A product possessing the performance characteristics of a product listed in the price lists prepared pursuant to section 904.807 shall not be purchased by any department or agency of state government from a source other than Iowa state industries, except:

a. When the purchase is made under emergency circumstances, which shall be explained in writing by the public body or officer who made or authorized the purchase if the state director so requests; or

b. When the state director releases, in writing, the obligation of the department or agency to purchase the product from Iowa state industries, after determining that Iowa state industries is unable to meet the performance characteristics of the purchase request for the product, and a copy of the release is attached to the request to the director of revenue and finance for payment for a similar product, or when Iowa state industries is unable to furnish needed products, comparable in both quality and price to those available from alternative sources, within a reasonable length of time. Any disputes arising between a purchasing department or agency and Iowa state industries regarding similarity of products, or comparability of quality or price, or the availability of the product, shall be referred to the director of the department of general services, whose decision shall be subject to appeal as provided in section 18.7. However, if the purchasing department is the department of general services, any matter which would be referred to the director under this paragraph shall be referred to the executive council in the same manner as if the matter were to be heard by the director of the department of general services. The decision of the executive council is final.

2. The state director shall adopt and update as necessary rules setting specific delivery schedules for each of the products manufactured by Iowa state industries. These delivery schedules shall not apply where a different delivery schedule is specifically negotiated by Iowa state industries and a particular purchaser.

3. A department or agency of the state shall cooperate and enter into agreements, if possible, for the provision of products and services under an inmate work program established by the state director under section 904.703.

[C79, 81, §216.8; 82 Acts, ch 1007, §4]
83 Acts, ch 203, §14; 85 Acts, ch 21, §8, 54
CS85, §246.808
88 Acts, ch 1071, §1
C93, §904.808
94 Acts, ch 1023, §73

904.809 Private industry employment of inmates of correctional institutions.

1. The following conditions shall apply to all agreements to provide private industry employment for inmates of correctional institutions:

a. The state director and the industries board shall comply with the intent of section 904.801.

b. An inmate shall not be compelled to take private industry employment.

c. Inmates shall receive allowances commensurate with those wages paid persons in similar jobs outside the correctional institutions. This may include piece rating in which the inmate is paid only for what is produced.

d. Employment of inmates in private industry

shall not displace employed workers, apply to skills, crafts, or trades in which there is a local surplus of labor, or impair existing contracts for employment or services.

e. Inmates employed in private industry shall be eligible for workers' compensation in accordance with section 85.59.

f. Inmates employed in private industry shall not be eligible for unemployment compensation while incarcerated.

g. The state director shall implement a system for screening and security of inmates to protect the safety of the public.

2. *a.* Any other provision of the Code to the contrary notwithstanding, the state director may, after obtaining the advice of the industries board, lease one or more buildings or portions thereof on the grounds of any state adult correctional institution, together with the real estate needed for reasonable access to and egress from the leased buildings, for a term not to exceed twenty years, to a private corporation for the purpose of establishing and operating a factory for the manufacture and processing of products, or any other commercial enterprise deemed by the state director to be consistent with the intent stated in section 904.801.

b. Each lease negotiated and concluded under this subsection shall include, and shall be valid only so long as the lessee adheres to, the following provisions:

(1) Persons working in the factory or other commercial enterprise operated in the leased property, except the lessee's supervisory employees and necessary support personnel approved by the industries board, shall be inmates of the institution where the leased property is located who are approved for such work by the state director and the lessee.

(2) The factory or other commercial enterprise operated in the leased property shall observe at all times such practices and procedures regarding security as the lease may specify, or as the state director may temporarily stipulate during periods of emergency.

3. The state director with the advice of the prison industries advisory board may provide an inmate work force to private industry. Under the program inmates will be employees of a private business.

4. Private or nonprofit organizations may subcontract with Iowa state industries to perform work in Iowa state industries shops located on the grounds of a state institution. The execution of the subcontract is subject to the following conditions:

a. The private employer shall pay to Iowa state industries a per unit price sufficient to fund allowances for inmate workers commensurate with similar jobs outside corrections institutions.

b. Iowa state industries shall negotiate a per unit price which takes into account staff supervision and equipment provided by Iowa state industries.

5. *a.* An inmate of a correctional institution employed pursuant to this section shall surrender to the department of corrections the inmate's total earnings less deductions for federal, state, and local taxes, and any other payroll deductions required by law.

The inmate's employer shall provide each employed inmate with the withholding statement required under section 422.16, and any other employment information necessary for the receipt of the remainder of an inmate's payroll earnings.

b. From the inmate's gross payroll earnings, the following amounts shall be deducted:

(1) Twenty percent, to be deposited in the inmate's general account.

(2) All required tax deductions, to be collected by the inmate's employer.

(3) Five percent, to be deducted for the victim compensation fund created in section 915.94.

c. From the balance remaining after deduction of the amounts under paragraph *"b"*, the following amounts shall be deducted in the following order of priority:

(1) An amount which the inmate may be legally obligated to pay for the support of the inmate's dependents, which shall be paid through the department of human services collection services center, and which shall include an amount for delinquent child support not to exceed fifty percent of net earnings.

(2) Restitution as ordered by the court under chapter 910.

(3) Any balance remaining after the deductions made under subparagraphs (1) and (2) shall represent the costs of the inmate's incarceration and shall be deposited, effective July 1, 2000, in the general fund of the state.

d. Of the amount credited to the inmate's general account, the department shall deduct an amount representing any other legal or administrative financial obligations of the inmate.

[C79, 81, §216.10]
85 Acts, ch 21, §10, 54
CS85, §246.809
C93, §904.809
93 Acts, ch 46, §7; 97 Acts, ch 190, §6; 98 Acts, ch 1090, §79, 84; 99 Acts, ch 182, §6; 2000 Acts, ch 1154, §44

904.810 Private industry work force. Repealed by 93 Acts, ch 46, § 13. See § 904.809.

904.811 Subcontracting with Iowa state industries. Repealed by 93 Acts, ch 46, § 13. See § 904.809.

904.812 Restriction on goods made available.

Effective July 1, 1978, and notwithstanding any other provisions of this division, goods made available by Iowa state industries shall be restricted to

items, materials, supplies and equipment which are formulated or manufactured by Iowa state industries and shall not include goods, materials, supplies or equipment which are merely purchased by Iowa state industries for repacking or resale except with approval of the state director when such repacking for resale items are directly related to product lines.

[C79, 81, §216.12]
CS83, §216.14
85 Acts, ch 21, §54
CS85, §246.812
C93, §904.812

904.813 Industries revolving fund — uses.

1. There is established in the treasury of the state a permanent Iowa state industries revolving fund. This revolving fund shall be created by the transfer thereto of all moneys in the revolving fund formerly established under section 246.26 as that section appeared in the Code of 1977 and prior editions, and shall be maintained by depositing therein all receipts from the sale of products manufactured by Iowa state industries, and from sale of any property of Iowa state industries found by the state director to be obsolete or unneeded.

2. The Iowa state industries revolving fund shall be used only for the following purposes:

a. Establishment, maintenance, transfer, or closure of industrial operations, or vocational, technical, and related training facilities and services for inmates as authorized by the state director in consultation with the industries board.

b. Payment of all costs incurred by the industries board, including but not limited to per diem and expenses of its members, and of salaries, allowances, support, and maintenance of Iowa state industries.

c. Direct purchases from vendors of raw materials and capital items used for the manufacturing processes of Iowa state industries, in accordance with rules which meet state bidding requirements. The rules shall be adopted by the state director in consultation with the industries board.

Payments from the revolving fund, other than salary payments, shall be made directly to the vendors.

3. The Iowa state industries revolving fund shall not be used for the operation of farms at any adult correctional institution unless such farms are operated directly by Iowa state industries.

4. The fund established by this section shall not revert to the general fund of the state at the end of any annual or biennial period and the investment proceeds earned from the balance of the fund shall be credited to the fund and used for the purposes provided for in this section.

[C27, 31, 35, §3764-b1, 3764-b2, 3764-b3; C39, §**3764.1, 3764.2, 3764.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §246.26, 246.27, 246.28; C79, 81, §216.9; 82 Acts, ch 1007, §5]
83 Acts, ch 96, §62, 159; 83 Acts, ch 203, §15; 85 Acts, ch 21, §9, 54
CS85, §246.813
88 Acts, ch 1048, §1
C93, §904.813

904.814 Inmate allowance supplement revolving fund.

There is established in the treasury of the state a permanent adult correctional institutions inmate allowance supplement revolving fund, consisting solely of money paid as board and maintenance by inmates working in Iowa state industries, or working pursuant to section 904.809. The fund established by this section may be used to supplement the allowances of inmates who perform other institutional work within and about the adult correctional institutions including those who are working in Iowa state industries. Payments made from the fund shall supplement and not replace all or any part of the allowances otherwise received by, and shall be equably distributed among such inmates. The work of inmates in other institutional or industry work shall, to the greatest extent feasible, be in accord with the intent stated in section 904.801. The fund may also be used to supplement other rehabilitation activities within the adult correctional institutions. Determination of the use of the funds is the responsibility of the state director who shall first seek the advice of the prison industries advisory board.

[C79, 81, §216.11; 82 Acts, ch 1149, §3]
C83, §216.13
85 Acts, ch 21, §12, 54
CS85, §246.814
C93, §904.814

904.815 Sale of products.

1. Iowa state industries may produce and sell products to any tax-supported institution or governmental subdivision in any level of government which includes the state, county, city, or school corporation. Iowa state industries may sell products to employees of those entities.

2. Iowa state industries may sell products to nonprofit organizations including parochial schools, churches, or fraternal organizations.

3. Iowa state industries may sell products to nonprofit health care facilities serving Medicaid or social security patients.

88 Acts, ch 1230, §5
C93, §904.815

DIVISION IX

WORK RELEASE

904.901 Work release program.

The Iowa department of corrections, in consultation with the board of parole, shall establish

a work release program under which the board of parole may grant inmates sentenced to an institution under the jurisdiction of the department the privilege of leaving actual confinement during necessary and reasonable hours for the purpose of working at gainful employment. Under appropriate conditions the program may also include an out-of-state work or treatment placement or release for the purpose of seeking employment, attendance at an educational institution, or family visitation. An inmate may be placed on work release status in the inmate's own home, under appropriate circumstances, which may include child care and housekeeping in the inmate's own home. This work release program is in addition to the institutional work release program established in section 904.910.

[C71, 73, 75, 77, 79, 81, §247A.2]
83 Acts, ch 96, §103, 159; 84 Acts, ch 1244, §1; 85 Acts, ch 21, §54
CS85, §246.901
86 Acts, ch 1245, §1506; 87 Acts, ch 118, §3; 91 Acts, ch 219, §11
C93, §904.901
93 Acts, ch 46, §8

904.902 Work release — persons serving mandatory minimum sentence.

An inmate serving a mandatory minimum sentence of one year or more, who is approved to participate in the work release program, shall serve the final six months of the inmate's mandatory minimum sentence performing labor in the program. Duties, if possible, shall consist of physical labor in plain view of the public. However, an inmate shall not be required to perform work which is beyond an inmate's physical ability, which constitutes a physical hardship, or which is dangerous or threatening to the inmate's life or health, medically prohibited, or unduly painful.

90 Acts, ch 1251, §32
C91, §246.902
C93, §904.902

904.903 Agreement by inmate.

An inmate approved to participate in the work release program shall sign a work release agreement. The agreement shall include all terms and conditions of the particular plan adopted for the inmate by the board of parole and shall include a statement that the inmate agrees to abide by all terms and conditions in the agreement. The agreement shall be signed by the inmate prior to participation in the program. Following the release of the inmate, the agreement may be terminated by the department in accordance with rules of the department.

[C71, 73, 75, 77, 79, 81, §247A.4]
85 Acts, ch 21, §54
CS85, §246.903
86 Acts, ch 1245, §1507
C93, §904.903
93 Acts, ch 98, §1

904.904 Housing facilities — halfway houses.

Unless the inmate returns after working hours to the institution under jurisdiction of the department of corrections, the department of corrections shall contract with a judicial district department of correctional services for the quartering and supervision of the inmate in local housing facilities. The board of parole shall include as a specific term or condition in the work release plan of any inmate the place where the inmate is to be housed when not on the work assignment. The board of parole shall not place an inmate on work release for longer than six months in any twelve-month period unless approval is given by a majority of the full board of parole. Inmates may be temporarily released to the supervision of a responsible person to participate in family and selected community, religious, educational, social, civic, and recreational activities when it is determined that the participation will directly facilitate the release transition from institution to community. The department of corrections shall provide a copy of the work release plan and a copy of any restitution plan of payment to the judicial district department of correctional services quartering and supervising the inmate.

[C71, 73, 75, 77, 79, 81, §247A.5]
83 Acts, ch 96, §105, 159; 85 Acts, ch 21, §54
CS85, §246.904
86 Acts, ch 1245, §1508
C93, §904.904
97 Acts, ch 130, §6

904.905 Surrender of earnings.

An inmate employed in the community under a work release plan shall surrender to the judicial district department of correctional services the inmate's total earnings less payroll deductions required by law. The judicial district department of correctional services shall deduct from the earnings in the following order of priority:

1. An amount the inmate may be legally obligated to pay for the support of the inmate's dependents, the amount of which shall be paid to the dependents through the department of human services located in the county or city in which the dependents reside.
2. Restitution as ordered by the court pursuant to chapter 910.
3. An amount determined to be the cost to the judicial district department of correctional services for providing food, lodging, and clothing for the inmate while under the program.
4. Any other financial obligations which are

acknowledged by the inmate or any unsatisfied judgment against the inmate.

Any balance remaining after deductions and payments shall be credited to the inmate's personal account at the judicial district department of correctional services and shall be paid to the inmate upon release. An inmate so employed shall be paid a fair and reasonable wage in accordance with the prevailing wage scale for such work and shall work at fair and reasonable hours per day and per week.

[C71, 73, 75, 77, 79, 81, §247A.7]
83 Acts, ch 96, §106, 157, 159; 84 Acts, ch 1184, §16; 85 Acts, ch 21, §54
CS85, §246.905
C93, §904.905
94 Acts, ch 1142, §12

904.906 Status of inmates on work release.

An inmate employed in the community under this chapter is not an agent, employee, or involuntary servant of the department of corrections, the board of parole, or the judicial district department of correctional services while released from confinement under the terms of a work release plan. If an inmate suffers an injury arising out of or in the course of the inmate's employment under this chapter, the inmate's recovery shall be from the insurance carrier of the employer of the project and no proceedings for compensation shall be maintained against the insurance carrier of the state institution, the state, the insurance carrier of the judicial district department of correctional services, or the judicial district department of correctional services, and there is no employer-employee relationship between the inmate and the state institution, the board of parole, or the judicial district department of correctional services.

[C71, 73, 75, 77, 79, 81, §247A.8]
83 Acts, ch 96, §107, 159; 85 Acts, ch 21, §54
CS85, §246.906
86 Acts, ch 1245, §1509
C93, §904.906

904.907 Parole not affected.

This division does not affect eligibility for parole under chapter 906 or diminution of confinement of any inmate released under a work release plan.

[C71, 73, 75, 77, 79, 81, §247A.9]
83 Acts, ch 101, §55; 85 Acts, ch 21, §54
CS85, §246.907
C93, §904.907

904.908 Alleged work release violators — temporary confinement by counties — reimbursement.

1. Upon request by the Iowa department of corrections, the board of parole, or a judicial district department of correctional services a county shall provide temporary confinement for alleged violators of work release conditions if space is available.

2. The Iowa department of corrections shall negotiate a reimbursement rate with each county for the temporary confinement of alleged violators of work release conditions who are in the custody of the director of the Iowa department of corrections or who are housed or supervised by the judicial district department of correctional services. The amount to be reimbursed shall be determined by multiplying the number of days a person is confined by the average daily cost of confining a person in the county facility as negotiated with the department. Payment shall be made upon submission of a voucher executed by the sheriff and approved by the director of the Iowa department of corrections.

[C79, 81, §247A.10]
83 Acts, ch 96, §108, 159; 83 Acts, ch 123, §95, 209; 84 Acts, ch 1244, §2; 85 Acts, ch 21, §40, 54
CS85, §246.908
86 Acts, ch 1245, §1510
C93, §904.908

904.909 Work release and OWI violators — reimbursement to department for transportation costs.

The department of corrections shall arrange for the return of a work release client, or offender convicted of violating chapter 321J, who escapes from the facility to which the client is assigned or violates the conditions of supervision. The client or offender shall reimburse the department of corrections for the cost of transportation incurred because of the escape or violation. The amount of reimbursement shall be the actual cost incurred by the department and shall be credited to the support account from which the billing occurred. The director of the department of corrections shall recommend rules pursuant to chapter 17A, subject to approval by the board of corrections pursuant to section 904.105, subsection 7, to implement this section.

83 Acts, ch 51, §1, 7, 9; 83 Acts, ch 96, §159, 160
CS83, §247A.11
85 Acts, ch 21, §54
CS85, §246.909
88 Acts, ch 1091, §1; 91 Acts, ch 219, §12
C93, §904.909
93 Acts, ch 46, §9

904.910 Institutional work release program.

1. In addition to the work release program established in section 904.901, the department of corrections shall establish an institutional work release program for each institution. The program shall provide that the department may grant inmates sentenced to an institution under its jurisdiction the privilege of leaving actual confinement during necessary and reasonable hours for the purpose of working at gainful employment. Under

appropriate conditions, the program may also include an out-of-state work or treatment placement or release for the purpose of seeking employment or attendance at an educational institution. An inmate may be placed on work release status in the inmate's own home, under appropriate circumstances, which may include child care and housekeeping in the inmate's own home.

2. A committee shall be established by the department for the work release program at each institution to review applications for participation in the program.

3. An inmate who is eligible to participate in the work release program may apply to the superintendent of the institution for permission to participate in the program. The application shall include a statement that, if the application is approved, the inmate agrees to abide by all terms and conditions of the inmate's work release plan adopted by the committee. In addition, the application shall state the name and address of the proposed employer, if any, and shall contain other information as required by the committee. The committee may approve, disapprove, or defer action on the application. If the application is approved, the committee shall adopt an institutional work release plan for the applicant. The plan shall contain the elements required by this section and other conditions as the committee deems necessary and proper. The plan shall be signed by the inmate prior to participation in the program. Approval of a plan may be revoked at any time by the superintendent or the committee.

4. The department may contract with a judicial district department of correctional services for the housing and supervision of an inmate in local facilities as provided in section 904.904. The institutional work release plan shall indicate the place where the inmate is to be housed when not on work assignment. The plan shall not allow for placement of an inmate on work release for more than six months in any twelve-month period without unanimous committee approval to do so. However, an inmate may be temporarily released to the supervision of a responsible person to participate in family and selected community, religious, educational, social, civic, and recreational activities when the committee determines that the participation will directly facilitate the release of the inmate from the institution to the community. The department shall provide a copy of the work release plan and a copy of any restitution plan of payment to the judicial district department of correctional services housing and supervising the inmate.

5. An inmate employed in the community under an institutional work release plan approved pursuant to this section shall surrender the inmate's total earnings less payroll deductions required by law to the superintendent, or to the judicial district department of correctional services if it is housing or supervising the inmate. The superintendent or the judicial district department of correctional services shall deduct from the earnings in the priority established in section 904.905.

6. The department of corrections shall adopt rules for the implementation of this section.

91 Acts, ch 219, §13
CS91, §246.910
C93, §904.910

CHAPTER 904A

BOARD OF PAROLE

904A.1 Board of parole.
904A.2 Composition of board.
904A.3 Appointment to board of parole.
904A.4 Duties of the board of parole.
904A.4A Chairperson of the board of parole — duties.
904A.4B Executive director of the board of parole — duties.
904A.4C Vice chairperson of the board of parole.
904A.5 Administration of board of parole.
904A.6 Salaries and expenses.
904A.7 Risk assessment program. Repealed by 89 Acts, ch 282, §15.

904A.1 Board of parole.

The board of parole is created to consist of five members. Each member, except the chairperson and the vice chairperson, shall be compensated on a day-to-day basis. Each member shall serve a term of four years beginning and ending as provided by section 69.19, except for members appointed to fill vacancies who shall serve for the balance of the unexpired term. The terms shall be staggered. The chairperson and vice chairperson of the board shall be full-time, salaried members of the board. A majority of the members of the board constitutes a quorum to transact business.

86 Acts, ch 1245, §1511; 89 Acts, ch 282, §1; 90 Acts, ch 1233, §46; 2000 Acts, ch 1177, §1, 5

904A.2 Composition of board.

The membership of the board shall be of good character and judicious background, shall include a member of a minority group, may include a person ordained or designated as a regular leader of a religious community and who is knowledgeable in correctional procedures and issues, and shall meet at least two of the following three requirements:

1. Contain one member who is a disinterested layperson.
2. Contain one member who is an attorney licensed to practice law in this state and who is knowledgeable in correctional procedures and issues.
3. Contain one member who is a person holding at least a master's degree in social work or counseling and guidance and who is knowledgeable in correctional procedures and issues.

86 Acts, ch 1245, §1512

904A.3 Appointment to board of parole.

The governor shall appoint the chairperson and other members of the board of parole, subject to confirmation by the senate. The chairperson shall serve at the pleasure of the governor. Vacancies shall be filled in the same manner as regular appointments are made.

86 Acts, ch 1245, §1513; 89 Acts, ch 282, §2

Confirmation, see §2.32

904A.4 Duties of the board of parole.

1. The board of parole shall interview and consider inmates for parole and work release and a majority vote of the members is required to grant a parole or work release.
2. The board of parole shall interview inmates according to administrative rules adopted by the board.
3. The board of parole shall gather and review information regarding new parole and work release programs being instituted or considered nationwide and determine which programs may be useful for this state. The board shall review the current parole and work release programs and procedures used in this state on an annual basis.
4. The board of parole shall increase utilization of data processing and computerization to assist in the orderly conduct of the parole and work release system.
5. The board of parole shall conduct such studies of the parole and work release system as are requested by the governor and the general assembly.
6. The board of parole shall provide technical assistance and counseling related to the board's purposes to public and private entities.
7. The board of parole shall review and make recommendations to the governor regarding all applications for reprieves, pardons, commutation of sentences, remission of fines or forfeitures, or restoration of citizenship rights as required by chapter 914.
8. The board of parole shall implement a risk assessment program which shall provide risk assessment analysis for the board.

86 Acts, ch 1245, §1514; 88 Acts, ch 1091, §3; 89 Acts, ch 282, §3

904A.4A Chairperson of the board of parole — duties.

The chairperson of the board of parole shall do all of the following:

1. Act as the board's liaison with the governor regarding executive clemency, parole, and work release matters.
2. Direct, supervise, evaluate, and assign the day-to-day administration of the board of parole.
3. Supervise and monitor parole revocations and appeals.
4. Supervise final work release revocation case reviews.
5. Supervise the development of rules, policies, and procedures, subject to the approval of the board, in cooperation with the department of corrections, pertaining to the supervision of executive clemency, parole, and work release.
6. Supervise the development of long-range parole and work release planning.

89 Acts, ch 282, §4

904A.4B Executive director of the board of parole — duties.

The chief administrative officer of the board of parole shall be the executive director. The executive director shall be appointed by the chairperson, subject to the approval of the board and shall serve at the pleasure of the board. The executive director shall do all of the following:

1. Advise the board on matters relating to parole, work release, and executive clemency, and advise the board on matters involving automation and word processing.
2. Carry out all directives of the board.
3. Hire and supervise all of the board's staff pursuant to the provisions of chapter 19A.
4. Act as the board's liaison with the general assembly.
5. Prepare a budget for the board, subject to the approval of the board, and prepare all other reports required by law.
6. Develop long-range parole and work release planning, in cooperation with the department of corrections.

89 Acts, ch 282, §5

904A.4C Vice chairperson of the board of parole.

The vice chairperson of the board of parole shall be appointed from the membership of the board of parole by the governor. The vice chairperson shall serve at the pleasure of the governor and shall have such responsibilities and duties as are deter-

mined by the chairperson. The vice chairperson shall act as the chairperson in the absence or disability of the chairperson or in the event of a vacancy in that office, until such time as a new chairperson is appointed by the governor.

2000 Acts, ch 1177, §2, 5

904A.5 Administration of board of parole.

The chairperson of the board of parole is responsible directly to the governor. The board of parole is attached to the department of corrections for routine administrative and support services only.

86 Acts, ch 1245, §1515; 89 Acts, ch 282, §6

904A.6 Salaries and expenses.

Each member, except the chairperson and the vice chairperson, of the board shall be paid per diem as determined by the general assembly. The chairperson and vice chairperson of the board shall be paid a salary as determined by the general assembly. Each member of the board and all employees are entitled to receive, in addition to their per diem or salary, their necessary maintenance and travel expenses while engaged in official business.

86 Acts, ch 1245, §1516; 89 Acts, ch 282, §7; 2000 Acts, ch 1177, §3, 5

See also §7E.6

904A.7 Risk assessment program. Repealed by 89 Acts, ch 282, § 15.

CHAPTER 905

COMMUNITY-BASED CORRECTIONAL PROGRAM

905.1 Definitions.
905.2 District departments established.
905.3 Board of directors — executive committee — expenses reimbursed.
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905.12 Surrender of earnings.
905.13 Compliance with building codes.
905.14 Fees for probation and parole.

905.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Administrative agent"* means the county selected by the district board to perform accounting, budgeting, personnel, facilities management, insurance, payroll and other supportive services on the behalf of the district board, or the district department itself, if so designated by the district board.

2. *"Community-based correctional program"* means correctional programs and services, including but not limited to an intermediate criminal sanctions program in accordance with the corrections continuum in section 901B.1, designed to supervise and assist individuals who are charged with or have been convicted of a felony, an aggravated misdemeanor or a serious misdemeanor, or who are on probation or parole in lieu of or as a result of a sentence of incarceration imposed upon conviction of any of these offenses, or who are contracted to the district department for supervision and housing while on work release.

An intermediate criminal sanctions program shall be designed by a district department in a manner that provides services in a manner free of disparities based upon an individual's race or ethnic origin.

3. *"Director"* means the director of a judicial district department of correctional services.

4. *"District board"* means the board of directors of a judicial district department of correctional services.

5. *"District department"* means a judicial district department of correctional services, established as required by section 905.2.

6. *"Project"* means a locally functioning part of a community-based correctional program, officed and operating in a physical location separate from the offices of the district department.

7. *"Project advisory committee"* means a committee of no more than seven persons which shall act in an advisory capacity to the director on matters pertaining to the planning, operation, and other pertinent functions of each project in the judicial district. The members of the project advisory committee for each project shall be initially appointed by the director from among the general

public. Not more than one half of the project advisory committee shall hold public office or public employment during membership on the committee. A person who holds public office as a county supervisor and serves on the board of directors under section 905.3 shall not be a member of a project advisory committee under this section. The terms of the initial members of the project advisory committee shall be staggered to permit the terms of just over half of the members to expire in two years and those of the remaining members to expire in one year. Subsequent appointments to the project advisory committee shall be by vote of a majority of the whole project advisory committee for two-year terms.

[C75, 77, §217.24, 217.25; C79, 81, §905.1; 81 Acts, ch 207, §1]

83 Acts, ch 89, §1; 83 Acts, ch 96, §134, 159; 91 Acts, ch 99, §1; 96 Acts, ch 1193, §16

905.2 District departments established.

There is established in each judicial district in this state a public agency to be known as the ". . . . . judicial district department of correctional services." Each district department shall furnish or contract for those services necessary to provide a community-based correctional program which meets the needs of that judicial district. The district department is under the direction of a board of directors, selected as provided in section 905.3, and shall be administered by a director employed by the board. A district department is a state agency for purposes of chapter 669.

[C79, 81, §905.2]

86 Acts, ch 1172, §3

Probation, see §907.1

905.3 Board of directors — executive committee — expenses reimbursed.

1. The board of directors of each district department shall be composed as follows:

a. One member shall be chosen from and by the board of supervisors of each county in the judicial district and shall be so designated annually by the respective boards of supervisors at the organizational meetings held under section 331.211.

b. One member shall be chosen from each of the project advisory committees within the judicial district, which person shall be designated annually, no later than January 15, by and from the project advisory committee. However, in lieu of the designation of project advisory committee members as members of the district board, the district board may on or before December 31 appoint two citizen members to serve on the district board for the following calendar year.

c. A number of members equal to the number of authorized board members from project advisory committees or equal to the number of citizen members shall be appointed by the chief judge of the judicial district no later than January 15 of each year.

Within thirty days after the members of the district board have been so designated for the year, the district board shall organize by election of a chairperson, a vice chairperson, and members of the executive committee as required by subsection 2. The district board shall meet at least quarterly during the calendar year but may meet more frequently upon the call of the chairperson or upon a call signed by a majority, determined by weighted vote computed as in subsection 4, of the members of the board.

2. Each district board shall have an executive committee consisting of the chairperson and vice chairperson and at least one but no more than five other members of the district board. Either the chairperson or the vice chairperson shall be a supervisor, and the remaining representation on the executive committee shall be divided as equally as possible among supervisor members, project advisory committee members or citizen members, and judicially appointed members. The executive committee may exercise all of the powers and discharge all of the duties of the district board, as prescribed by this chapter, except those specifically withheld from the executive committee by action of the district board.

3. The members of the district board and of the executive committee shall be reimbursed from funds of the district department for travel and other expenses necessarily incurred in attending meetings of those bodies, or while otherwise engaged on business of the district department.

4. Each member of the district board shall have one vote on the board. However, upon the request of any supervisory member, the vote on any matter before the board shall be taken by weighted vote. In each such case, the vote of the supervisor representative of the least populous county in the judicial district shall have a weight of one unit, and the vote of each of the other supervisor members shall have a weight which bears the same proportion to one unit as the population of the county that supervisor member represents bears to the population of the least populous county in the district. In the event of weighted vote, the vote of each member appointed from a project advisory committee or of each citizen member and of each judicially appointed member shall have a weight of one unit.

[C79, 81, S81, §905.3; 81 Acts, ch 117, §1243]

86 Acts, ch 1062, §1; 2000 Acts, ch 1057, §18

905.4 Duties of the board.

The district board shall:

1. Adopt bylaws and rules for the conduct of its own business and for the government of the district department's community-based correctional program.

2. Employ a director having the qualifications required by section 905.6 to head the district de-

partment's community-based correctional program and, within a range established by the Iowa department of corrections, fix the compensation of and have control over the director and the district department's staff. For purposes of collective bargaining under chapter 20, employees of the district board who are not exempt from chapter 20 are employees of the state, and the employees of all of the district boards shall be included within one collective bargaining unit.

3. Designate one of the counties in the judicial district to serve as the district department's administrative agent to provide, in that capacity, all accounting, personnel, facilities management and supportive services needed by the district department, on terms mutually agreeable in regard to advancement of funds to the county for the added expense it incurs as a result of being so designated. However, the district board may designate the district department itself as the district department's administrative agent, if the district board determines that it would be more efficient and less costly than designating a county as the administrative agent.

4. File with the board of supervisors of each county in the district and with the Iowa department of corrections, within ninety days after the close of each fiscal year, a report covering the district board's proceedings and a statement of receipts and expenditures during the preceding fiscal year.

5. Arrange for, by contract or on such alternative basis as may be mutually acceptable, and equip suitable quarters at one or more sites in the district as may be necessary for the district department's community-based correctional program, provided that the board shall to the greatest extent feasible utilize existing facilities and shall keep capital expenditures for acquisition, renovation and repair of facilities to a minimum. The district board shall not enter into lease-purchase agreements for the purposes of constructing, renovating, expanding, or otherwise improving a community-based correctional facility or office unless express authorization has been granted by the general assembly, and current funding is adequate to meet the lease-purchase obligation.

6. Have authority to accept property by gift, devise, bequest or otherwise and to sell or exchange any property so accepted and apply the proceeds thereof, or the property received in exchange therefor, to the purposes enumerated in subsection 5.

7. Recruit, promote, accept and use local financial support for the district department's community-based correctional program from private sources such as community service funds, business, industrial and private foundations, voluntary agencies and other lawful sources.

8. Accept and expend state and federal funds available directly to the district department for all or any part of the cost of its community-based correctional program.

9. Arrange, by contract or on an alternative basis mutually acceptable, and with approval of the director of the Iowa department of corrections or that director's designee for utilization of existing local treatment and service resources, including but not limited to employment, job training, general, special, or remedial education; psychiatric and marriage counseling; and alcohol and drug abuse treatment and counseling. It is the intent of this chapter that a district board shall approve the development and maintenance of such resources by its own staff only if the resources are otherwise unavailable to the district department within reasonable proximity to the community where these services are needed in connection with the community-based correctional program.

10. Establish a project advisory committee to act in an advisory capacity on matters pertaining to the planning, operation, and other pertinent functions of each project in the judicial district.

11. Have authority to establish a force of reserve peace officers, either separately or collectively through a chapter 28E agreement, as provided in chapter 80D.

[C79, 81, §905.4; 81 Acts, ch 207, §2]

83 Acts, ch 89, §2; 83 Acts, ch 96, §135, 159; 84 Acts, ch 1244, §4; 91 Acts, ch 267, §420; 2001 Acts, ch 104, §7

905.5 Functions of administrative agents.

1. The county designated under section 905.4, subsection 3, as administrative agent for each district department, or the district department itself, if designated as administrative agent by the district board, shall submit that district department's budget and supporting information to the Iowa department of corrections in accordance with the provisions of chapter 8. The state department shall incorporate the budgets of each of the district departments into its own budget request, to be processed as prescribed by the uniform budget, accounting and administrative procedures established by the department of management. Funds appropriated pursuant to the budget requests of the respective district departments shall be allocated on a quarterly basis, and the department of management shall authorize advancement of the funds so allocated to each district department's administrative agent, or to the district department itself if the district department acts as administrative agent, at the beginning of each fiscal quarter.

2. For all administrative purposes, all employees of each district department shall be considered employees of the district department.

3. A county designated as the administrative agent shall perform only those administrative functions assigned to it by the district board and shall not perform any activity unless directed to do so by the district board.

[C79, 81, §905.5; 81 Acts, ch 207, §3]
83 Acts, ch 96, §136, 159

905.6 Duties of director.

The director employed by the district board under section 905.4, subsection 2, shall be qualified in the administration of correctional programs. The director shall:

1. Perform the duties and have the responsibilities delegated by the district board or specified by the Iowa department of corrections pursuant to this chapter.

2. Manage the district department's community-based correctional program, in accordance with the policies of the district board and the Iowa department of corrections.

3. Employ, with approval of the district board, and supervise the employees of the district department, including reserve peace officers, if a force of reserve peace officers has been established.

4. Prepare all budgets and fiscal documents, and certify for payment all expenses and payrolls lawfully incurred by the district department. The director may invest funds which are not needed for current expenses, jointly with one or more cities, city utilities, counties, or rural water districts created under chapter 357A pursuant to a joint investment agreement. All investment of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

5. Act as secretary to the district board, prepare its agenda and record its proceedings. The district shall provide a copy of minutes from each meeting of the district board to the legislative fiscal bureau.

6. Develop and submit to the district board a plan for the establishment, implementation, and operation of a community-based correctional program in that judicial district, which program conforms to the guidelines drawn up by the Iowa department of corrections under this chapter and which conform to rules, policies, and procedures pertaining to the supervision of parole and work release adopted by the director of the Iowa department of corrections concerning the community-based correctional program.

7. Negotiate and, upon approval by the district board, implement contracts or other arrangements for utilization of local treatment and service resources authorized by section 905.4, subsection 9.

8. Administer the batterers' treatment program for domestic abuse offenders required in section 708.2B.

[C79, 81, §905.6; 81 Acts, ch 207, §4]
83 Acts, ch 96, §137, 159; 88 Acts, ch 1084, §3; 91 Acts, ch 218, §29; 91 Acts, ch 267, §421; 95 Acts, ch 77, §7; 2001 Acts, ch 104, §8

905.7 Assistance by state department.

The Iowa department of corrections shall provide assistance and support to the respective judicial districts to aid them in complying with this chapter, and shall promulgate rules pursuant to chapter 17A establishing guidelines in accordance with and in furtherance of the purposes of this chapter. The guidelines shall include, but need not be limited to, requirements that each district department:

1. Provide pretrial release, presentence investigations, probation services, parole services, work release services, programs for offenders convicted under chapter 321J, and residential treatment centers throughout the district, as necessary.

2. Locate community-based correctional program services in or near municipalities providing a substantial number of treatment and service resources.

3. Follow practices and procedures which maximize the availability of federal funding for the district department's community-based correctional program and assist the department of transportation which is authorized to follow practices and procedures designed to maximize the availability of federal funding for the enforcement and implementation of drunk driver prevention and other highway safety programs.

4. Provide for gathering and evaluating performance data relative to the district department's community-based correctional program and make other detailed reports to the Iowa department of corrections as requested by the board of corrections or the director of the department of corrections.

5. Maintain personnel and fiscal records on a uniform basis.

6. Provide a program to assist the court in placing defendants who as a condition of probation are sentenced to perform unpaid community service.

7. Provide for community participation in the planning and programming of the district department's community-based correctional program.

8. Provide for standards by rule for mental fitness which shall govern the initial recruitment, selection, and appointment of parole and probation officers.

[C75, 77, §217.26, 217.28, 217.29; C79, 81, §905.7; 82 Acts, ch 1069, §2]
83 Acts, ch 89, §3; 83 Acts, ch 96, §138, 139, 159; 85 Acts, ch 21, §51; 87 Acts, ch 118, §6; 93 Acts, ch 171, §21; 99 Acts, ch 182, §7

905.8 State funds allocated — long-range planning — reports to fiscal bureau.

The Iowa department of corrections shall provide for the allocation among judicial districts in the state of state funds appropriated for the establishment, operation, support, and evaluation of community-based correctional programs and services. However, state funds shall not be allocated under this section to a judicial district unless the

Iowa department of corrections has reviewed and approved that district department's community-based correctional program for compliance with the requirements of this chapter and the guidelines adopted under section 905.7.

The deputy director of the department of corrections responsible for community-based correctional programs shall reallocate funds allocated by the department among the judicial districts as necessary to assure an equitable allocation of district departmental staff throughout the state and to comply with section 905.10.

The deputy director of the department of corrections responsible for community-based correctional programs shall comply with section 904.108, subsection 1, paragraph *"i"*.

The department of corrections shall not revise the allocations to the district departments of correctional services from the amounts allocated to the district departments, unless notice of the revisions is given prior to their effective date to the legislative fiscal bureau. The notice shall include information on the department's rationale for making the changes and details concerning the workload and performance measures upon which the revisions are based.

The department of corrections shall report to the legislative fiscal bureau on a quarterly basis the current expenditures of the department's various allocations to the district departments of correctional services with a comparison of actual to budgeted expenditures.

The department of corrections shall use the department of management's budget system in developing the budget information for the eight district departments of correctional services, and each of the district departments shall be treated as a separate budget unit with each program modality classified as a separate organization code.

The department of corrections shall furnish performance measure data designed to enable comparison of this data with historical expenditure information, and shall assist the legislative fiscal bureau in developing information to be used in legislative oversight of all district department programs operated by the department.

[C75, 77, §217.27; C79, 81, §905.8]

83 Acts, ch 96, §140, 159; 88 Acts, ch 1160, §1; 90 Acts, ch 1247, §20

905.9 Report of review — sanction.

Upon completion of a review of a district community-based correctional program, made under section 905.8, the Iowa department of corrections shall submit its findings to the district board in writing. If the Iowa department of corrections concludes that the district department's community-based correctional program fails to meet any of the requirements of this chapter and of the guidelines adopted under section 905.7, it shall also request in writing a response to this finding from the district board. If a response is not received within sixty days after the date of that request, or if the response is unsatisfactory, the Iowa department of corrections may call a public hearing on the matter. If after the hearing, the Iowa department of corrections is not satisfied that the district's community-based correctional program will expeditiously be brought into compliance with the requirements of this chapter and of the guidelines adopted under section 905.7, it may assume responsibility for administration of the district's community-based correctional program on an interim basis.

[C79, 81, §905.9]

83 Acts, ch 96, §141, 159

905.10 Postinstitutional programs and services.

Persons participating in postinstitutional services, except those persons paroled and those persons contracted to the district department, remain under the jurisdiction of the Iowa department of corrections. The district department of correctional services shall maintain adequate personnel to provide postinstitutional residential services, programs for offenders convicted under chapter 321J, parole services, and supervision of persons transferred into the state under the interstate compact for supervision of parolees and probationers.

[C79, 81, §905.10]

83 Acts, ch 96, §142, 159; 87 Acts, ch 118, §7

905.11 Biennial plan. Repealed by 88 Acts, ch 1021, § 1.

905.12 Surrender of earnings.

When committing a person to a residential treatment center operated by a judicial district department of correctional services, the court shall order the person to surrender to the district department their total earnings less payroll deductions required by law. The court shall establish the person's legal obligations by order and the district department shall deduct from the earnings to satisfy the court order in the following order of priority:

1. An amount the resident may be legally obligated to pay for the support of dependents, which shall be paid to the dependents directly or through the department of human services in the county in which the dependents reside. For the purpose of this subsection, *"legally obligated"* means under a court order.

2. Restitution ordered by the court under chapter 910.

3. An amount determined to be the cost to the judicial district department of correctional services for food, lodging, and other expenses incurred by or on behalf of the resident.

4. Any other financial obligations which are admitted to by the resident or any judgment granted by the court to another person to whom

the resident owes money, but no earnings of a resident are subject to garnishment while the person is committed to the center.

Any balance remaining after deductions and payments shall be credited to the resident's personal account at the district department and shall be paid to the resident upon release. The director shall establish a plan to comply with the provisions of court orders entered pursuant to this section.

84 Acts, ch 1029, §1; 88 Acts, ch 1160, §2; 94 Acts, ch 1142, §13; 97 Acts, ch 205, §25

905.13 Compliance with building codes.

The department of corrections and the district departments of correctional services shall comply with local building regulations and zoning ordinances in the construction, reconstruction, alteration, conversion, repair, and use of buildings owned and operated by the department as part of a community-based correctional program.

89 Acts, ch 316, §20

905.14 Fees for probation and parole.

1. A person placed on probation or parole and subject to supervision by a district department shall be required to pay an enrollment fee of two hundred fifty dollars to the district department to offset the costs of supervision.

2. The fees established pursuant to this section shall not be waived by the sentencing court. Each district department shall retain fees collected for administrative and program services.

3. The department of corrections may adopt rules for the administration of this section. If adopted, the rules shall include a provision for waiving the collection of fees for persons determined to be unable to pay.

97 Acts, ch 190, §7; 2000 Acts, ch 1229, §24

CHAPTER 906

PAROLES AND WORK RELEASE

See compact for adult offender supervision, chapter 907B

906.1 Definition of parole and work release.
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906.3 Duties of parole board.
906.4 Standards for release on parole or work release — community service — academic achievement.
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906.10 Parole relief fund. Repealed by 91 Acts, ch 267, §526.
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906.14 Detainers.
906.15 Discharge from parole.
906.16 Parole or work release time applied.
906.17 Alleged parole violators — temporary confinement by counties — reimbursement.
906.18 Parole violators — reimbursement to department.

906.1 Definition of parole and work release.

Parole is the release of a person who has been committed to the custody of the director of the Iowa department of corrections by reason of the person's commission of a public offense, which release occurs prior to the expiration of the person's term, is subject to supervision by the district department of correctional services, and is on conditions imposed by the district department.

Work release is the release of a person, who has been committed to the custody of the director of the Iowa department of corrections, pursuant to sections 904.901 through 904.909.

A person who has been released on parole or work release may be temporarily assigned to the supervision of the director of the department of corrections as a result of placement in a violator facility established pursuant to section 904.207.

[C79, 81, §906.1]

83 Acts, ch 96, §143, 159; 86 Acts, ch 1245, §1518; 93 Acts, ch 46, §10

906.2 Parole officers.

Parole officers, while performing their duties as parole officers, are peace officers and have all the powers and authority of peace officers. Parole officers shall investigate all persons referred to them for investigation by the chief parole officer to which they may be assigned or by the director of a

judicial district department of correctional services. They shall furnish to each person released under their supervision a written statement of conditions. They shall keep informed of each person's conduct and condition and shall use all suitable methods to aid and encourage the person to bring about improvement in the person's conduct or condition. Parole officers shall keep records of their work, make reports as required, and perform other duties as may be assigned to them by the chief parole officer or the director of a judicial district department of correctional services. They shall co-ordinate their work with that of other social welfare agencies which offer services of a corrective nature operating in the area to which they are assigned.

[S13, §5447-a, 5718-a19, -a26; C24, 27, §3793, 3804; C31, 35, §3793, 3803-c1, 3804; C39, §**3793, 3803.1, 3804;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.13, 247.24, 247.25; C79, 81, §906.2]

84 Acts, ch 1019, §3

Probation officers; see §907.2

906.3 Duties of parole board.

The board of parole shall adopt rules regarding a system of paroles from correctional institutions, and shall direct, control, and supervise the administration of the system of paroles. The board of parole shall consult with the director of the department of corrections on rules regarding a system of work release and shall assist in the direction, control, and supervision of the work release system. The board shall determine which of those persons who have been committed to the custody of the director of the Iowa department of corrections, by reason of their conviction of a public offense, shall be released on parole or work release. The grant or denial of parole or work release is not a contested case as defined in section 17A.2.

[S13, §5718-a18; C24, 27, 31, 35, 39, §**3786, 3787;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.5, 247.6; C79, 81, §906.3]

83 Acts, ch 96, §144, 159; 86 Acts, ch 1245, §1519

Parole board, chapter 904A

906.4 Standards for release on parole or work release — community service — academic achievement.

A parole or work release shall be ordered only for the best interest of society and the offender, not as an award of clemency. The board shall release on parole or work release any person whom it has the power to so release, when in its opinion there is reasonable probability that the person can be released without detriment to the community or to the person. A person's release is not a detriment to the community or the person if the person is able and willing to fulfill the obligations of a law-abiding citizen, in the board's determination.

Notwithstanding section 13.10, the board may order the defendant to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release, if appropriate. In determining the appropriateness of ordering DNA profiling, the board shall consider the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense.

The board may establish as a condition of a person's parole or work release that the person perform a specified number of hours of unpaid community service. The board shall not make community service a uniform or mandatory requirement for all or substantially all parolees or work release inmates but shall exercise discretion in ordering community service as a condition of parole or work release. The board shall report to the general assembly on the implementation of community service as a condition of parole or work release. The report shall be submitted on or before January 1, 1991.

The board may, effective July 1, 1997, subject to such exceptions as may be deemed necessary by the board, require each inmate who is physically and mentally capable to demonstrate functional literacy competence at or above the sixth grade level or make progress towards completion of the requirements for a high school equivalency diploma under chapter 259A prior to release of the inmate on parole or work release.

[C79, 81, §906.4]

86 Acts, ch 1245, §1520; 89 Acts, ch 156, §3; 90 Acts, ch 1251, §68; 95 Acts, ch 179, §2; 2000 Acts, ch 1122, §4

For future amendment to unnumbered paragraph 2 effective upon appropriation or receipt of funds, see 2002 Acts, ch 1080, §4, 6

906.5 Record reviewed — rules.

1. The board shall establish and implement a plan by which the board systematically reviews the status of each person who has been committed to the custody of the director of the Iowa department of corrections and considers the person's prospects for parole or work release. The board at least annually shall review the status of a person other than a class "A" felon, a class "B" felon serving a sentence of more than twenty-five years, or a felon serving an offense punishable under section 902.9, subsection 1, or a felon serving a mandatory minimum sentence other than a class "A" felon, and provide the person with notice of the board's parole or work release decision.

Not less than twenty days prior to conducting a hearing at which the board will interview the person, the board shall notify the department of corrections of the scheduling of the interview, and the department shall make the person available to the board at the person's institutional residence as scheduled in the notice. However, if health, safety, or security conditions require moving the person to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

2. It is the intent of the general assembly that

the board shall implement a plan of early release in an effort to assist in controlling the prison population and assuring prison space for the confinement of offenders whose release would be detrimental to the citizens of this state. The board shall report to the legislative fiscal bureau on a monthly basis concerning the implementation of this plan and the number of inmates paroled pursuant to this plan and the average length of stay of those paroled.

3. At the time of a review conducted under this section, the board shall consider all pertinent information regarding the person, including the circumstances of the person's offense, any presentence report which is available, the previous social history and criminal record of the person, the person's conduct, work, and attitude in prison, and the reports of physical and mental examinations that have been made.

4. A person while on parole or work release is under the supervision of the district department of correctional services of the district designated by the board of parole. The department of corrections shall prescribe rules for governing persons on parole or work release. The board may adopt other rules not inconsistent with the rules of the department of corrections as the board deems proper or necessary for the performance of its functions.

[S13, §5718-a18; C24, 27, 31, 35, 39, §**3787, 3790;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.6, 247.9; C79, 81, §906.5]

83 Acts, ch 96, §145, 159; 83 Acts, ch 147, §12, 14; 85 Acts, ch 21, §52; 86 Acts, ch 1245, §1521; 87 Acts, ch 118, §8; 88 Acts, ch 1091, §4; 89 Acts, ch 282, §8; 90 Acts, ch 1251, §69; 93 Acts, ch 98, §2, 3; 99 Acts, ch 12, §19

906.6 Co-operation of correction personnel.

All persons employed in a correctional institution shall grant to the members of the board of parole, or its properly accredited representatives, access at all reasonable times to any person over whom the board has jurisdiction, shall provide for the board or its representatives facilities for communicating with and observing the person, and shall furnish to the board reports the board requires concerning the conduct and character of any person in their custody and any other facts deemed by the board pertinent in determining whether the person shall be released on parole or work release.

[S13, §5718-a19, -a26; C24, 27, 31, 35, 39, §**3793;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.13; C79, 81, §906.6]

86 Acts, ch 1245, §1522

906.7 Information from other sources — written statements.

The board shall not be required to hear oral statements or arguments either by attorneys or other persons. All persons presenting information or arguments to the board shall put their statements in writing, and shall submit therewith an affidavit stating whether any fee has been paid or is to be paid for their services in the case, and by whom such fee is paid or to be paid.

[C79, 81, §906.7]

906.8 Subpoena powers.

The board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas so issued may be served by any peace officer, in the same manner as similar processes in the district court. Any person who testifies falsely or fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before a court is subject. Any district court in this state, upon application of the board, may compel the attendance of witnesses, the production of such material, and the giving of testimony before the board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such district court.

[C79, 81, §906.8]

906.9 Clothing, transportation, and money.

When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall furnish the inmate, at state expense, appropriate clothing and transportation to the place in this state indicated in the inmate's discharge, parole, or work release plan. When an inmate is discharged, paroled, or placed on work release, the warden or superintendent shall provide the inmate, at state expense or through inmate savings as provided in section 904.508, money in accordance with the following schedule:

1. Upon discharge or parole, one hundred dollars.

2. Upon being placed on work release, fifty dollars.

Those inmates receiving payment under subsection 2 shall not be eligible for payment under subsection 1 unless they are returned to the institution. An inmate shall only be eligible to receive one payment under this section during any twelve-month period. The warden or superintendent shall maintain an account of all funds expended pursuant to this section.

[C51, §3150; R60, §5163; C73, §4779; C97, §5684; S13, §5718-a22; SS15, §2713-n14; C24, 27, 31, 35, 39, §**3737, 3779, 3796;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §245.14, 246.44, 247.16; C77, §245.14, 246.44; C79, 81, §906.9]

87 Acts, ch 118, §9; 90 Acts, ch 1251, §70; 91 Acts, ch 219, §24; 93 Acts, ch 46, §11

906.10 Parole relief fund. Repealed by 91 Acts, ch 267, § 526.

906.11 Assignment to parole officer.

A person released on parole shall be assigned to a parole officer by the director of the judicial district department of correctional services. Both the person and the person's parole officer shall be furnished in writing with the conditions of parole including a copy of the plan of restitution and the restitution plan of payment, if any, and the regulations which the person will be required to observe. The parole officer shall explain these conditions and regulations to the person, and supervise, assist, and counsel the person during the term of the person's parole.

[C79, 81, §906.11; 82 Acts, ch 1162, §11, 14]
83 Acts, ch 96, §147, 159
See also chapter 910

906.12 Parole outside state authorized.

The parole may be to a place outside the state when the board of parole shall determine it to be to the best interest of the state and the prisoner, under such rules as the board of parole may impose.

[S13, §5718-a18; C24, 27, 31, 35, 39, §**3786;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.5; C79, 81, §906.12]

906.13 Reciprocal agreements with other states.

The governor of the state of Iowa is hereby authorized and empowered to enter into compacts and agreements with other states, through their duly constituted authorities, in reference to reciprocal supervision of persons on parole or probation and for the reciprocal return of such persons to the contracting states for violation of the terms of their parole or probation.

[C39, §**3790.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.10; C79, 81, §906.13]

906.14 Detainers.

Prisoners against whom detainers have been filed, may, after serving a portion of their sentence, be released by parole to the institution or authorities filing the detainer.

Any detainer filed against a prisoner must within six months be supported by a grand jury indictment or county attorney's information. In the event such indictment is returned or information is filed, the prisoner shall have the right to demand immediate trial at the next term of court where the charge is filed. The prosecuting agency shall pay all costs of transportation, necessary expenses incurred by the prisoner and such guards and other safety measures as the warden shall deem necessary for the prisoner to appear at the prisoner's trial.

In the event a detainer is not supported within six months by a county attorney's information or grand jury indictment, or in the event the prosecuting agency refuses or fails to give the prisoner immediate trial, or refuses or fails to furnish transportation and pay all other necessary and related costs incident to the prisoner appearing at the prisoner's trial, the detainer shall be held to be invalid and the parole board shall disregard such detainer in considering a prisoner for parole.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.5; C79, 81, §906.14]
See chapter 821

906.15 Discharge from parole.

Unless sooner discharged, a person released on parole shall be discharged when the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement. Discharge from parole may be granted prior to such time, when an early discharge is appropriate. The board shall periodically review all paroles, and when the board determines that any person on parole is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the board shall discharge the person from parole. A parole officer shall periodically review all paroles assigned to the parole officer, and when the parole officer determines that any person assigned to the officer is able and willing to fulfill the obligations of a law-abiding citizen without further supervision, the officer may discharge the person from parole after notification and approval of the district director and notification of the board of parole. In any event, discharge from parole shall terminate the person's sentence. However, a person convicted of a violation of section 709.3, 709.4 or 709.8 committed on or with a child shall not be discharged from parole until the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

A parole officer or the district director who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from parole by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

[C62, 66, 71, 73, 75, 77, §247.5; C79, 81, §906.15]
86 Acts, ch 1005, §1; 90 Acts, ch 1251, §71

906.16 Parole or work release time applied.

1. Except as otherwise provided in this section, the time when a prisoner is on parole or work release from the institution shall apply to the sentence against the parolee or work releasee.

2. If a parole revocation hearing is held, the administrative parole judge or the board of parole shall determine the amount of time on parole that

shall apply to the sentence against the parolee. In making the determination, the administrative parole judge or the board of parole shall apply any time that has elapsed prior to the violation during which the parolee was in compliance with the terms of the person's parole.

3. If a work release is revoked, the board of parole shall determine the amount of time on work release that shall apply to the sentence against the work releasee. In making the determination, the board shall apply any time that has elapsed prior to the violation during which the work releasee was in compliance with the terms of the person's work release.

4. The time when a prisoner is absent from the institution by reason of an escape shall not apply upon the sentence against the prisoner.

[S13, §5718-a18; C24, 27, 31, 35, 39, §**3792;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.12; C79, 81, §906.16]

86 Acts, ch 1245, §1523; 88 Acts, ch 1091, §5; 94 Acts, ch 1048, §1; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

1998 amendments are effective July 1, 2002; 98 Acts, ch 1197; §13; 2000 Acts, ch 1177, §4, 5

Section amended

906.17 Alleged parole violators — temporary confinement by counties — reimbursement.

1. Upon request by the Iowa department of corrections a county shall provide temporary confinement for alleged parole violators if space is available.

2. The Iowa department of corrections shall reimburse a county for the temporary confinement of alleged parole violators. The amount to be reimbursed shall be determined by multiplying the number of days confined by the average daily cost of confining a person in the county facility as negotiated by the department. Payment shall be made upon submission of a voucher executed by the sheriff and approved by the director of the Iowa department of corrections.

[C79, 81, §906.17]

83 Acts, ch 96, §148, 159; 83 Acts, ch 123, §204, 209; 84 Acts, ch 1244, §5

906.18 Parole violators — reimbursement to department.

The department of corrections shall arrange for the return of parolees who escape from the facility to which they are assigned or violate the conditions of supervision. The parolee shall reimburse the department of corrections for the costs incurred because of the escape or violation. The amount of reimbursement shall be the actual cost incurred by the department, and shall be credited to the support account from which the billing occurred. The department shall adopt rules to implement this section.

96 Acts, ch 1165, §4

CHAPTER 907

DEFERRED JUDGMENT, DEFERRED OR SUSPENDED SENTENCE, AND PROBATION

907.1 Definitions.
907.2 Probation service — probation officers.
907.3 Deferred judgment, deferred sentence or suspended sentence.
907.3A Youthful offender deferred sentence — youthful offender status.
907.4 Deferred judgment docket.
907.5 Standards for release on probation — written reasons.
907.6 Conditions of probation — regulations.
907.7 Length of probation.
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907.9 Discharge from probation.
907.10 Release on probation after completing program.
907.11 Maximum period of confinement.
907.12 Repealed, effective for persons sentenced after July 1, 1982, by 82 Acts, ch 1162, §13.
907.13 Community service sentencing — liability — workers' compensation.

907.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Deferred judgment"* means a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court. The court retains the power to pronounce judgment and impose sentence subject to the de-

fendant's compliance with conditions set by the court as a requirement of the deferred judgment.

2. *"Deferred sentence"* means a sentencing option whereby the court enters an adjudication of guilt but does not impose a sentence. The court retains the power to sentence the defendant to any sentence it originally could have imposed subject to the defendant's compliance with conditions set by the court as a requirement of the deferred sentence.

3. *"Suspended sentence"* means a sentencing option whereby the court pronounces judgment and imposes a sentence and then suspends execution of the sentence subject to the defendant's compliance with conditions set by the court as a requirement of the suspended sentence. Revocation of the suspended sentence results in the execution of sentence already pronounced.

4. *"Probation"* means the procedure under which a defendant, against whom a judgment of conviction of a public offense has been or may be entered, is released by the court subject to supervision by a resident of this state or by the judicial district department of correctional services.*

[C79, 81, §907.1]

88 Acts, ch 1168, §2

*See §905.2

907.2 Probation service — probation officers.

Pursuant to designation by the court, probation services shall be provided by the judicial district department of correctional services. Probation officers shall perform the duties assigned to them by law and by the director of the judicial district department of correctional services.

Probation officers employed by the judicial district department of correctional services, while performing the duties prescribed by that department, are peace officers. Probation officers shall investigate all persons referred to them for investigation by the director of the judicial district department of correctional services which employs them. They shall furnish to each person released under their supervision or committed to a community corrections residential facility operated by the judicial district department of correctional services, a written statement of the conditions of probation or commitment. They shall keep informed of each person's conduct and condition and shall use all suitable methods prescribed by the judicial district department of correctional services to aid and encourage the person to bring about improvements in the person's conduct and condition. Probation officers shall keep records of their work and shall make reports to the court when alleged violations occur and within no less than thirty days before the period of probation will expire. Probation officers shall coordinate their work with other social welfare agencies which offer services of a corrective nature operating in the area to which they are assigned.

[C79, 81, §907.2]

84 Acts, ch 1019, §4; 97 Acts, ch 125, §5; 98 Acts, ch 1197, §4, 13; 2000 Acts, ch 1177, §4, 5

Parole officers; see §906.2

1998 amendment to unnumbered paragraph 2 is effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

Unnumbered paragraph 2 amended

907.3 Deferred judgment, deferred sentence or suspended sentence.

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony or to a violation of chapter 709 committed by a person who is a mandatory reporter of child abuse under section 232.69 in which the victim is a person who is under the age of eighteen.

1. With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon conditions as it may require. Upon a showing that the defendant is not cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation and the payment of fees imposed and not waived by the judicial district department of correctional services under section 905.14, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

However, this subsection shall not apply if any of the following is true:

a. The offense is a violation of section 709.8 and the child is twelve years of age or under.

b. The defendant previously has been convicted of a felony. *"Felony"* means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which the defendant was convicted at the time of the defendant's conviction.

c. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.

d. Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

e. The defendant committed an assault as defined in section 708.1, against a peace officer in the

performance of the peace officer's duty.

f. The defendant is a corporation.

g. The offense is a violation of section 321J.2 and the person has been convicted of a violation of that section or the person's driver's license has been revoked under chapter 321J, and any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

h. Prior to the commission of the offense the defendant had been granted a deferred judgment or deferred sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or was granted similar relief anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A, and the current offense is a violation of section 708.2A.

i. The offense is a conviction for or plea of guilty to a violation of section 236.8 or a finding of contempt pursuant to section 236.8 or 236.14.

j. The offense is a violation of section 707.6A, subsection 1; or a violation of section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

k. The offense is a violation of section 124.401, subsection 1, paragraph *"a"* or *"b"*, and the controlled substance is methamphetamine.

l. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

m. The sentence is for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. The court may assign the defendant to supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate. However, the court shall not defer the sentence for a violation of any of the following:

a. Section 708.2A, if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A.

b. Section 236.8 or for contempt pursuant to section 236.8 or 236.14.

c. Section 321J.2, subsection 1, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. Section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph *"a"* or *"b"*, and the controlled substance is methamphetamine.

f. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

g. The sentence is for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

3. By record entry at the time of or after sen-

tencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility to be followed by a term of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate and the payment of fees imposed under section 905.14. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend any of the following sentences:

a. The minimum term of two days imposed pursuant to section 708.2A, subsection 6, paragraph *"a"*, or a sentence imposed under section 708.2A, subsection 6, paragraph *"b"*.

b. A sentence imposed pursuant to section 236.8 or 236.14 for contempt.

c. A mandatory minimum sentence of incarceration imposed pursuant to a violation of section 321J.2, subsection 1; furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsection 2, beyond the mandatory minimum if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

d. A sentence imposed pursuant to section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

e. The offense is a violation of section 124.401, subsection 1, paragraph *"a"* or *"b"*, and the controlled substance is methamphetamine.

f. A mandatory minimum sentence or fine imposed for a violation of section 462A.14.

g. The sentence for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

[S13, §5447-a; C24, 27, 31, 35, 39, §**3800;** C46, 50, 54, 58, 62, 66, 71, 73, §247.20; C75, 77, §789A.1; C79, 81, §907.3; 81 Acts, ch 206, §17; 82 Acts, ch 1167, §28]

86 Acts, ch 1220, §45; 88 Acts, ch 1168, §3, 4; 89 Acts, ch 296, §93; 91 Acts, ch 218, §30; 91 Acts, ch 219, §25, 26; 93 Acts, ch 157, §11, 12; 95 Acts, ch 180, §16, 17; 96 Acts, ch 1131, §4; 96 Acts, ch 1193, §17 – 19; 97 Acts, ch 177, §31 – 33; 97 Acts, ch 189, §2; 97 Acts, ch 190, §8, 9; 98 Acts, ch 1138, §6 – 9, 29 – 31, 37; 99 Acts, ch 182, §8; 2000 Acts, ch 1099, §11 – 13; 2000 Acts, ch 1201, §15; 2001 Acts, ch 165, §7 – 9; 2002 Acts, ch 1050, §56, 57

Definition of forcible felony, §702.11
For bail after deferred judgment, see §811.2, 811.11
Subsection 1, paragraph m amended
Subsection 2, paragraph g amended

907.3A Youthful offender deferred sentence — youthful offender status.

1. Notwithstanding section 907.3 but subject to any conditions of the waiver order, the trial court shall, upon a plea of guilty or a verdict of guilty, defer sentence of a youthful offender over whom the juvenile court has waived jurisdiction pursuant to section 232.45, subsection 7, and place the juvenile on youthful offender status. The court shall transfer supervision of the youthful offender to the juvenile court for disposition in accordance with section 232.52. The court shall require supervision of the youthful offender in accordance with section 232.54, subsection 8, or subsection 2 of this section. Notwithstanding section 901.2, a presentence investigation shall not be ordered by the court subsequent to an entry of a plea of guilty or verdict of guilty or prior to deferral of sentence of a youthful offender under this section.

2. The court shall hold a hearing prior to a youthful offender's eighteenth birthday to determine whether the youthful offender shall continue on youthful offender status after the youthful offender's eighteenth birthday under the supervision of the court or be discharged. The court shall review the report of the juvenile court regarding the youthful offender and shall hear evidence by or on behalf of the youthful offender, by the county attorney, and by the person or agency to whom custody of the youthful offender was transferred. The court shall make its decision after considering the services available to the youthful offender, the evidence presented, the juvenile court's report, the interests of the youthful offender, and interests of the community.

3. Notwithstanding any provision of the Code which prescribes a mandatory minimum sentence for the offense committed by the youthful offender, following transfer of the youthful offender from the juvenile court back to the court having jurisdiction over the criminal proceedings involving

the youthful offender, the court may continue the youthful offender deferred sentence or enter a sentence, which may be a suspended sentence. Notwithstanding anything in section 907.7 to the contrary, if the district court either continues the youthful offender deferred sentence or enters a sentence, suspends the sentence, and places the youthful offender on probation, the term of formal supervision shall commence upon entry of the order by the district court and may continue for a period not to exceed five years. If the district court enters a sentence of confinement, and the youthful offender was previously placed in secure confinement by the juvenile court under the terms of the initial disposition order or any modification to the initial disposition order, the person shall receive credit for any time spent in secure confinement. During any period of probation imposed by the district court, a youthful offender who violates the terms of probation is subject to section 908.11.

97 Acts, ch 126, §51

907.4 Deferred judgment docket.

A deferment of judgment under section 907.3 shall be reported promptly by the clerk of the district court, or the clerk's designee, to the state court administrator for entry in the deferred judgment docket. The docket shall contain a permanent record of the deferred judgment including the name and date of birth of the defendant, the district court docket number, the nature of the offense, and the date of the deferred judgment. Before granting deferred judgment in any case, the court shall request of the state court administrator a search of the deferred judgment docket and shall consider any prior record of a deferred judgment against the defendant. The permanent record provided for in this section is a confidential record exempted from public access under section 22.7 and shall be available only to justices of the supreme court, judges of the court of appeals, district judges, district associate judges, judicial magistrates, clerks of the district court, and county attorneys requesting information pursuant to this section, or the designee of a justice, judge, magistrate, clerk, or county attorney.

[C75, 77, §789A.1; C79, 81, §907.4]

84 Acts, ch 1292, §20; 85 Acts, ch 197, §44; 88 Acts, ch 1168, §5; 97 Acts, ch 128, §5

907.5 Standards for release on probation — written reasons.

Before deferring judgment, deferring sentence, or suspending sentence, the court first shall determine which option, if available, will provide maximum opportunity for the rehabilitation of the defendant and protection of the community from further offenses by the defendant and others. In making this determination the court shall consider the age of the defendant; the defendant's prior record of convictions and prior record of deferments of judgment if any; the defendant's employment circumstances; the defendant's family circumstances; the nature of the offense committed; and such other factors as are appropriate. The court shall file a specific written statement of its reasons for and the facts supporting its decision to defer judgment, to defer sentence, or to suspend sentence, and its decision on the length of probation.

[C75, 77, §789A.1(2); C79, 81, §907.5]

907.6 Conditions of probation — regulations.

Probationers are subject to the conditions established by the judicial district department of correctional services subject to the approval of the court, and any additional reasonable conditions which the court or district department may impose to promote rehabilitation of the defendant or protection of the community. Conditions may include but are not limited to adherence to regulations generally applicable to persons released on parole and including requiring unpaid community service as allowed pursuant to section 907.13.

[C79, 81, §907.6; 82 Acts, ch 1069, §3]

83 Acts, ch 39, §2; 96 Acts, ch 1193, §20

907.7 Length of probation.

The length of the probation shall be for a term as the court shall fix but not to exceed five years if the offense is a felony or not to exceed two years if the offense is a misdemeanor.

The length of the probation shall not be less than one year if the offense is a misdemeanor and shall not be less than two years if the offense is a felony. However, the court may subsequently reduce the length of the probation if the court determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services. The purposes of probation are to provide maximum opportunity for the rehabilitation of the defendant and to protect the community from further offenses by the defendant and others.

In determining the length of the probation, the court shall determine what period is most likely to provide maximum opportunity for the rehabilitation of the defendant, to allow enough time to determine whether or not rehabilitation has been successful, and to protect the community from further offenses by the defendant and others.

[C66, 71, 73, §247.20; C75, 77, §789A.2; C79, 81, §907.7]

97 Acts, ch 125, §6; 97 Acts, ch 190, §10; 98 Acts, ch 1197, §5, 13; 2000 Acts, ch 1177, §4, 5

1998 amendment to unnumbered paragraph 2 is effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

Unnumbered paragraph 2 amended

907.8 Supervision during probationary period.

A person released on probation shall be as-

signed to a probation officer. Both the person and the person's probation officer shall be furnished with the conditions of the person's probation including a copy of the plan of restitution and the restitution plan of payment, if any, and the regulations which the person will be required to observe, in writing. The probation officer shall explain these conditions and regulations to the person and shall supervise, assist, and counsel the person during the term of the person's probation.

When probation is granted, the court shall order said person committed to the custody, care, and supervision:

1. Of any suitable resident of this state; or
2. Of the judicial district department of correctional services.

Jurisdiction over these persons shall remain with the sentencing court.

In each case wherein the court shall order said person committed to the custody, care, and supervision of the judicial district department of correctional services, the clerk of the district court shall at once furnish the director of the judicial district department of correctional services with certified copies of the indictment or information, the minutes of testimony attached thereto, the judgment entry if judgment is not deferred, and the original mittimus. The county attorney shall at once advise the director, by letter, that the defendant has been placed under the supervision of the judicial district department of correctional services and give the director a detailed statement of the facts and circumstances surrounding the crime committed and the record and history of the defendant as may be known to the county attorney. If the defendant is confined in the county jail at the time of sentence, the court may order the defendant held until arrangements are made by the judicial district department of correctional services for the defendant's employment and the defendant has signed the necessary probation papers. If the defendant is not confined in the county jail at the time of sentence, the court may order the defendant to remain in the county wherein the defendant has been convicted and sentenced and report to the sheriff as to the defendant's whereabouts.

[S13, §5447-a; C24, 27, 31, 35, 39, §**3801;** C46, 50, 54, 58, 62, 66, 71, 73, §247.21; C75, 77, §789A.7; C79, 81, §907.8; 82 Acts, ch 1162, §12, 14]

97 Acts, ch 125, §7; 98 Acts, ch 1197, §6, 13; 2000 Acts, ch 1177, §4, 5

1998 amendments to unnumbered paragraph 3 are effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

Unnumbered paragraph 3 amended

907.8A Sixth judicial district — determination of issues during probationary period. Repealed by 98 Acts, ch 1197, § 10, 13; 2000 Acts, ch 1177, § 4, 5.

Repeal is effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

907.9 Discharge from probation.

1. At any time that the court determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services, the court may order the discharge of a person from probation.

2. At any time that a probation officer determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services, the officer may order the discharge of a person from probation after approval of the district director and notification of the sentencing court and the county attorney who prosecuted the case.

3. The sentencing judge may order a hearing on its own motion, or shall order a hearing upon the request of the county attorney, for review of such discharge. If the sentencing judge is no longer serving or unable to order such hearing, the chief judge of the district or the chief judge's designee shall order any hearing pursuant to this section. Following the hearing, the court shall approve or rescind such discharge. If a hearing is not ordered within thirty days after notification by the probation officer, the person shall be discharged and the probation officer shall notify the state court administrator of such discharge.

4. At the expiration of the period of probation and if the fees imposed under section 905.14 have been paid to or waived by the judicial district department of correctional services, the court shall order the discharge of the person from probation, and the court shall forward to the governor a recommendation for or against restoration of citizenship rights to that person. A person who has been discharged from probation shall no longer be held to answer for the person's offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the state court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

5. A probation officer or the director of the judicial district department of correctional services who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from probation by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

[S13, §5447-a; C24, 27, 31, 35, 39, §**3800;** C46, 50, 54, 58, 62, 66, 71, 73, §247.20; C75, 77, §789A.6; C79, 81, §907.9]

88 Acts, ch 1168, §6; 90 Acts, ch 1251, §72; 91 Acts, ch 219, §27; 97 Acts, ch 125, §9; 97 Acts, ch 190, §11; 98 Acts, ch 1197, §7, 13; 2000 Acts, ch

1177, §4, 5
1998 amendments to subsections 1 – 4 are effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5
Subsections 1 – 4 amended

907.10 Release on probation after completing program.

When the court has determined that any person ordered to participate in a locally administered correctional program, pursuant to section 907.3, subsection 1, has successfully completed such program, the court shall order such person to be released on probation.

[C79, 81, §907.10]

907.11 Maximum period of confinement.

In no case shall the total time served in confinement and in any locally administered correctional program exceed the maximum period of confinement authorized for the public offense of which the defendant stands convicted.

[C79, 81, §907.11]

907.12 Repealed, effective for persons sentenced after July 1, 1982, by 82 Acts, ch 1162, § 13. See chapter 910.

907.13 Community service sentencing — liability — workers' compensation.

1. The court may establish as a condition of probation that the defendant perform unpaid community service for a time not to exceed the maximum period of confinement for the offense of which the defendant is convicted. If this condition is established, the defendant in co-operation with the probation officer assigned to the defendant and in co-operation with the judicial district department of correctional services, shall promptly prepare a plan to implement the community service condition. The plan shall include but shall not be limited to the suggested placement of the defendant and the suggested number of hours of services to be required.

2. The defendant's plan of community service, the comments of the defendant's probation officer, and the comments of the representative of the judicial district department of correctional services responsible for the unpaid community service program, shall be submitted promptly to the court. The court shall promptly enter an order approving the plan or modifying it. Compliance with the plan of community service as approved or modified by the court shall be a condition of the defendant's probation. The court thereafter may modify the plan at any time upon the defendant's request, upon the request of the judicial district department of correctional services, or upon the court's own motion. As an option for modification of a plan, the court may allow a defendant to complete some part or all of the defendant's community service obligation through the donation of property to a charitable organization other than a governmental subdivision. A donation of property to a charitable organization offered in satisfaction of some part or all of a community service obligation under this subsection is not a deductible contribution for the purposes of federal or state income taxes.

3. At any time during the probation period the defendant may request and the court shall grant a hearing on any matter related to the plan of community service.

4. Failure of the defendant to comply with subsection 1 or to comply with the plan of community service as approved or modified by the court shall constitute a violation of the conditions of probation. Without limitation, the court may modify the plan of community service or modify the required hours of service, but not beyond the maximum hours of service specified in subsection 1.

5. The state of Iowa is exclusively liable, according to and under chapter 669, for a tortious act committed by a defendant while performing unpaid community service.

6. The state of Iowa is exclusively liable for and shall pay any compensation becoming due any person under section 85.59.

[82 Acts, ch 1069, §4]
84 Acts, ch 1280, §3; 88 Acts, ch 1168, §7
Community service as restitution; see §910.2

CHAPTER 907A

INTERSTATE PROBATION AND PAROLE COMPACT

Repealed by 2001 Acts, ch 15, §8; 2001 Acts, 2nd Ex, ch 6, §25, 26;
see chapter 907B
Chapter repeal is effective July 1, 2002;
2001 Acts, 2nd Ex, ch 6, §25, 26

CHAPTER 907B

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

Chapter is effective July 1, 2002; status of offenders under prior Act; 2001 Acts, ch 15; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

907B.1 Citation.
907B.2 Interstate compact for adult offender supervision.
907B.3 State council.

907B.1 Citation.

This chapter may be cited as the *"Interstate Compact for Adult Offender Supervision"*.

2001 Acts, ch 15, §5; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

Section is effective July 1, 2002; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37
NEW section

907B.2 Interstate compact for adult offender supervision.

The national interstate compact for adult offender supervision is enacted into law and entered into by this state with any other state or jurisdiction legally joining the compact in the form substantially as follows:

ARTICLE I
DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

1. *Adult. "Adult"* means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

2. *Bylaws. "Bylaws"* means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

3. *Compact administrator. "Compact administrator"* means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

4. *Compacting state. "Compacting state"* means any state which has enacted the enabling legislation for this compact.

5. *Commissioner. "Commissioner"* means the voting representative of each compacting state appointed pursuant to article II of this compact.

6. *Interstate commission. "Interstate commission"* means the interstate commission for adult offender supervision established by this compact.

7. *Member. "Member"* means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

8. *Noncompacting state. "Noncompacting state"* means any state which has not enacted the enabling legislation for this compact.

9. *Offender. "Offender"* means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

10. *Person. "Person"* means any individual, corporation, business enterprise, or other legal entity, either public or private.

11. *Rules. "Rules"* means acts of the interstate commission, duly promulgated pursuant to article VII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

12. *State. "State"* means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

13. *State council. "State council"* means the resident members of the state council for interstate adult offender supervision created by each state under article III of this compact.

ARTICLE II
THE COMPACT COMMISSION

1. The compacting states hereby create the interstate commission for adult offender supervision. The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

2. The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult of-

fender supervision for each state. The commission shall include at least one commissioner from a minority group.

3. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the interstate commission shall be ex officio members. The interstate commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

4. Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

5. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

6. The interstate commission shall establish an executive committee which shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff, administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the interstate commission, and performs other duties as directed by commission or set forth in the bylaws.

ARTICLE III
THE STATE COUNCIL

Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary. In addition to appointment of its commissioner to the interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

ARTICLE IV
POWERS AND DUTIES OF THE
INTERSTATE COMMISSION

The interstate commission shall have the following powers:

1. To adopt a seal and suitable bylaws governing the management and operation of the interstate commission.

2. To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission.

4. To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

5. To establish and maintain offices.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, or contract for services of personnel, including but not limited to members and their staffs.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions, including but not limited to an executive committee as required by article II which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve,

or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

13. To establish a budget and make expenditures and levy dues as provided in article IX of this compact.

14. To sue and be sued.

15. To provide for dispute resolution among compacting states.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

18. To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.

19. To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE V
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

1. *Bylaws*. The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the interstate commission.

b. Establishing an executive committee and such other committees as may be necessary.

c. Providing reasonable standards and procedures:

(1) For the establishment of committees.

(2) Governing any general or specific delegation of any authority or function of the interstate commission.

d. Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting.

e. Establishing the titles and responsibilities of the officers of the interstate commission.

f. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission.

g. Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations.

h. Providing transition rules for startup administration of the compact.

i. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

2. *Officers and staff*.

a. The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

b. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

3. *Corporate records of the interstate commission*. The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

4. *Qualified immunity, defense and indemnification*.

a. The members, officers, executive director, and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

b. The interstate commission shall defend the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of

interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

c. The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee, or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VI
ACTIVITIES OF THE INTERSTATE COMMISSION

1. The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

2. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

3. Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

4. The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

5. The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

6. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the federal Government in the Sunshine Act, 5 U.S.C. § 552(6), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

a. Relate solely to the interstate commission's internal personnel practices and procedures.

b. Disclose matters specifically exempted from disclosure by statute.

c. Disclose trade secrets or commercial or financial information which is privileged or confidential.

d. Involve accusing any person of a crime, or formally censuring any person.

e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

f. Disclose investigatory records compiled for law enforcement purposes.

g. Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity.

h. Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity.

i. Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

7. For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote, reflected in the vote of

each member on the question. All documents considered in connection with any action shall be identified in such minutes.

8. The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

ARTICLE VII
RULEMAKING FUNCTIONS OF THE
INTERSTATE COMMISSION

1. The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

2. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the federal Advisory Committee Act, 5 U.S.C. app. 2, § 1 et seq., as may be amended.

3. All rules and amendments shall become binding as of the date specified in each rule or amendment.

4. If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

5. When promulgating a rule, the interstate commission shall do all of the following:

a. Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule.

b. Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available.

c. Provide an opportunity for an informal hearing.

d. Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

6. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the United States district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, as defined in the federal Administrative Procedure Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside.

7. Subjects to be addressed within twelve months after the first meeting must at a minimum include:

a. Notice to victims and opportunity to be heard.

b. Offender registration and compliance.

c. Violations and returns.

d. Transfer procedures and forms.

e. Eligibility for transfer.

f. Collection of restitution and fees from offenders.

g. Data collection and reporting.

h. The level of supervision to be provided by the receiving state.

i. Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact.

j. Mediation, arbitration and dispute resolution. The existing rules governing the operation of the previous compact superseded by this Act* shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

8. Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE VIII
OVERSIGHT, ENFORCEMENT, AND DISPUTE
RESOLUTION BY THE
INTERSTATE COMMISSION

1. *Oversight.*

a. The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

b. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

2. *Dispute resolution.*

a. The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

b. The interstate commission shall attempt to

resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

c. The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. *Enforcement.* The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XI, subsection 2, of this compact.

ARTICLE IX
FINANCE

1. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

2. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff, which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state, and shall promulgate a rule binding upon all compacting states which governs the assessment.

3. The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

4. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE X
COMPACTING STATES, EFFECTIVE DATE
AND AMENDMENT

1. Any state, as defined in article I of this compact, is eligible to become a compacting state.

2. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2002, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

3. Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI
WITHDRAWAL, DEFAULT, AND TERMINATION,
AND JUDICIAL ENFORCEMENT

1. *Withdrawal.*

a. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law.

b. The effective date of withdrawal is the effective date of the repeal.

c. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.

d. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

e. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

f. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

2. *Default.*

a. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(1) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission.

(2) Remedial training and technical assistance as directed by the interstate commission.

(3) Suspension and termination of member-

ship in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice of the state, the majority and minority leaders of the defaulting state's legislature, and the executive council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension.

b. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice, and the majority and minority leaders of the defaulting state's legislature, and the executive council of such termination.

c. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

d. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state.

e. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

3. *Judicial enforcement.* The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the United States district court where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules, and bylaws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney fees.

4. *Dissolution of compact.*

a. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

b. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII
SEVERABILITY AND CONSTRUCTION

1. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

2. The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

1. *Other laws.*

a. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

b. All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

2. *Binding effect of the compact.*

a. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

b. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

c. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

2001 Acts, ch 15, §6; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

*2001 Acts, ch 15

Section is effective July 1, 2002; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

NEW section

907B.3 State council.

The state council established in section 907B.2 shall consist of five members plus the compact administrator. The council shall include at least one member from a minority group. The chief justice of the supreme court shall appoint one member to represent the judicial branch. The president of the senate shall appoint one member to represent the senate. The speaker of the house of representatives shall appoint one member to represent the house of representatives. The governor shall appoint one member to represent the executive branch and one member to represent crime victim groups. The governor, in consultation with the legislative and judicial branches, shall also appoint the compact administrator.

2001 Acts, ch 15, §7; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

Section is effective July 1, 2002; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37

NEW section

CHAPTER 908

VIOLATIONS OF PAROLE OR PROBATION

908.1 Arrest of alleged parole violator — newly discovered evidence.
908.2 Initial appearance — bail.
908.3 Place of parole revocation hearing.
908.4 Parole revocation hearing.
908.5 Disposition.
908.6 Appeal or review.
908.7 Waiver of parole revocation hearing.
908.8 Proceeding without arrest or probable cause. Repealed by 88 Acts, ch 1091, §15.
908.9 Disposition of violator.
908.10 Conviction of a felony while on parole.
908.10A Conviction of an aggravated misdemeanor while on parole.
908.11 Violation of probation.

908.1 Arrest of alleged parole violator — newly discovered evidence.

A parole officer having probable cause to believe that any person released on parole has violated the parole plan or the conditions of parole may arrest such person, or the parole officer may make a complaint before a magistrate, charging such violation, and if it appears from such complaint, or from affidavits filed with it, that there is probable cause to believe that such person has violated the parole plan or the terms of parole, the magistrate shall issue a warrant for the arrest of such person. If a parole officer has newly discovered evidence which indicates that a person released on parole should not have been granted parole originally, the parole officer shall present the evidence to the board of parole and the board may issue an order to rescind the parole.

[C79, 81, §908.1]

88 Acts, ch 1091, §6

908.2 Initial appearance — bail.

An officer making an arrest of an alleged parole violator shall take the arrested person before a magistrate without unnecessary delay for an initial appearance. At that time the alleged parole violator shall be furnished with a written notice of the claimed violation and shall be given notice that a parole revocation hearing will take place and that its purpose is to determine whether the alleged parole violation occurred and whether the alleged violator's parole should be revoked.

The magistrate may order the alleged parole violator confined in the county jail or may order the alleged parole violator released on bail under terms and conditions as the magistrate may require. Admittance to bail is discretionary with the magistrate and is not a matter of right. A person for whom bail is set may make application for amendment of bail to a district judge or district associate judge having jurisdiction to amend the order. The motion shall be promptly set for hearing and a record shall be made of the hearing.

[C79, 81, §908.2]

84 Acts, ch 1089, §1; 88 Acts, ch 1091, §7; 2002 Acts, ch 1067, §20

Unnumbered paragraph 1 amended

908.3 Place of parole revocation hearing.

The parole revocation hearing shall be held in any county in the same judicial district in which the alleged parole violator had the initial appearance or in the county from which the warrant for the arrest of the alleged parole violator was issued.

[C79, 81, §908.3]

88 Acts, ch 1091, §8

908.4 Parole revocation hearing.

1. The parole revocation hearing shall be conducted by an administrative parole judge who is an attorney. The revocation hearing shall determine the following:

a. Whether the alleged parole violation occurred.

b. Whether the violator's parole should be revoked.

2. The administrative parole judge shall make a verbatim record of the proceedings. The alleged violator shall not have the right to appointed counsel, shall be informed of the evidence against the violator, shall be given an opportunity to be heard, shall have the right to present witnesses and other evidence, and shall have the right to cross-examine adverse witnesses, except if the judge finds that a witness would be subjected to risk or harm if the witness's identity were disclosed. The revocation hearing may be conducted electronically.

[C79, 81, §908.4]

86 Acts, ch 1245, §1524; 88 Acts, ch 1091, §9; 89 Acts, ch 282, §9; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5; 2002 Acts, ch 1067, §21

1998 amendment replacing the words "administrative parole and probation judge" with "administrative parole judge" takes effect July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

See Code editor's note to §8.55 at the end of Vol IV

Section amended

908.5 Disposition.

If a violation of parole is established, the administrative parole judge may continue the parole with or without any modification of the conditions of parole. The administrative parole judge may revoke the parole and require the parolee to serve the sentence originally imposed, or may revoke the parole and reinstate the parolee's work release status. The order of the administrative parole judge shall contain findings of fact, conclusions of law, and a disposition of the matter.

[C79, 81, §908.5]

83 Acts, ch 96, §149, 159; 88 Acts, ch 1091, §10; 89 Acts, ch 282, §10; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

1998 amendments to this section are effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

Section amended

908.6 Appeal or review.

The order of the administrative parole judge shall become the final decision of the board of parole unless, within the time provided by rule, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion. On appeal or review of the administrative parole judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge.

[C79, 81, §908.6]

83 Acts, ch 96, §150, 159; 88 Acts, ch 1091, §11; 89 Acts, ch 282, §11; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

1998 amendments to this section are effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

Section amended

908.7 Waiver of parole revocation hearing.

The alleged parole violator may waive the parole revocation hearing, in which event the administrative parole judge shall proceed to determine the disposition of the matter. The administrative parole judge shall dispose of the case as provided in section 908.4. The administrative parole judge shall make a verbatim record of the proceedings. The waiver proceeding may be conducted electronically.

[C24, 27, 31, 35, 39, §**3807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.28; C79, 81, §908.7]

83 Acts, ch 96, §151, 159; 84 Acts, ch 1156, §1; 88 Acts, ch 1091, §12; 89 Acts, ch 282, §12; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

1998 amendments to this section are effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

Section amended

908.8 Proceeding without arrest or probable cause. Repealed by 88 Acts, ch 1091, § 15.

908.9 Disposition of violator.

If the parole of a parole violator is revoked, the violator shall remain in the custody of the Iowa department of corrections under the terms of the parolee's original commitment. If the parole of a parole violator is not revoked, the parole revocation officer or board panel shall order the person's release subject to the terms of the person's parole with any modifications that the parole revocation officer or board panel determines proper, or may order that the violator be placed in a violator facility, established pursuant to section 904.207, if the parole revocation officer or board panel determines that placement in a violator facility is necessary.

[C79, 81, §908.9]

83 Acts, ch 96, §153, 159; 88 Acts, ch 1091, §13; 91 Acts, ch 219, §28; 93 Acts, ch 46, §12

908.10 Conviction of a felony while on parole.

When a person is convicted and sentenced to incarceration in this state for a felony committed while on parole, or is convicted and sentenced to incarceration under the laws of any other state of the United States or a foreign government or country for an offense committed while on parole, and which if committed in this state would be a felony, the person's parole shall be deemed revoked as of the date of the commission of the new felony offense.

The parole officer shall inform the sentencing judge that the convicted defendant is a parole violator. The term for which the defendant shall be

imprisoned as a parole violator shall be the same as that provided in cases of revocation of parole for violation of the conditions of parole. The new sentence of imprisonment for conviction of a felony shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court.

The parolee shall be notified in writing that parole has been revoked on the basis of the new felony conviction, and a copy of the commitment order shall accompany the notification. The inmate's record shall be reviewed pursuant to the provisions of section 906.5, or as soon as practical after a final reversal of the new felony conviction.

An inmate may appeal the revocation of parole under this section according to the board of parole's rules relating to parole revocation appeals. Neither the administrative parole judge nor the board panel shall retry the facts underlying any conviction.

[C79, 81, §908.10]

88 Acts, ch 1091, §14; 89 Acts, ch 282, §13; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

1998 amendments to this section are effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

Section amended

908.10A Conviction of an aggravated misdemeanor while on parole.

When a person is convicted and sentenced to incarceration in a state correctional institution in this state for an aggravated misdemeanor committed while on parole, or is convicted and sentenced to incarceration under the laws of any other state of the United States or a foreign government or country for an offense committed while on parole, and which if committed in this state would be an aggravated misdemeanor, the person's parole shall be deemed revoked as of the date of the commission of the new aggravated misdemeanor offense.

The parole officer shall inform the sentencing judge that the convicted defendant is a parole violator. The term for which the defendant shall be imprisoned as a parole violator shall be the same as that provided in cases of revocation of parole for violation of the conditions of parole. The new sentence of imprisonment for conviction of an aggravated misdemeanor shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court.

The parolee shall be notified in writing that parole has been revoked on the basis of the new aggravated misdemeanor conviction, and a copy of the commitment order shall accompany the notification. The inmate's record shall be reviewed pursuant to the provisions of section 906.5, or as soon as practical after a final reversal of the new aggravated misdemeanor conviction.

An inmate may appeal the revocation of parole under this section according to the board of parole's rules relating to parole revocation appeals. Neither the administrative parole judge nor the board panel shall retry the facts underlying any conviction.

94 Acts, ch 1048, §2; 97 Acts, ch 125, §12; 98 Acts, ch 1197, §9, 13; 2000 Acts, ch 1177, §4, 5

1998 amendments to this section are effective July 1, 2002; 98 Acts, ch 1197, §13; 2000 Acts, ch 1177, §4, 5

Section amended

908.11 Violation of probation.

1. A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation.

2. The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense.

3. If the probation officer proceeds by arrest, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger.

4. If the violation is established, the court may continue the probation or youthful offender status with or without an alteration of the conditions of probation or a youthful offender status. If the defendant is an adult or a youthful offender the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation or youthful offender status, order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation or youthful offender status, or revoke the probation or youthful offender status and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

[S13, §5447-b; C24, 27, 31, 35, 39, §**3805, 3806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §247.26, 247.27; C79, 81, §908.11]

84 Acts, ch 1244, §6; 91 Acts, ch 219, §29; 97 Acts, ch 125, §10; 97 Acts, ch 126, §52; 98 Acts, ch 1197, §2, 3, 8, 13; 2000 Acts, ch 1177, §4, 5

For repeal of 1998 amendments and for 1998 amendments to subsections 2 and 3, striking former subsections 4 and 5, and amending and renumbering subsection 6 as 4 effective July 1, 2002, see 98 Acts, ch 1197, §8, 13; 2000 Acts, ch 1177, §4, 5

Subsections 2 and 3 amended

Subsections 4 and 5 stricken

Subsection 6 amended and renumbered as 4

CHAPTER 909

FINES

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909.1 Fine without imprisonment.

Upon a verdict or plea of guilty of any public offense for which a fine is authorized, the court may impose a fine instead of any other sentence where it appears that the fine will be adequate to deter the defendant and to discourage others from similar criminal activity.

[C79, 81, §909.1]

909.2 Fine in addition to imprisonment.

The court may impose a fine in addition to confinement, where such is authorized.

[C79, 81, §909.2]

909.3 Payment in installments or on a fixed date.

1. All fines imposed by the court shall be paid on the day the fine is imposed.

2. The court may, in its discretion, order a fine to be paid in installments, or may fix a date in the future which is not more than one hundred twenty days from the date the fine is imposed for the payment of the fine, whenever it appears that the defendant cannot make immediate payment, or should not be made to do so.

For good cause, the court may order that the date for payment of the fine be extended beyond one hundred twenty days from the date the fine was imposed.

[C51, §3071, 3349; R60, §4881, 5084; C73, §4509, 4689; C97, §5440, 5604; C24, 27, 31, 35, 39, §**13588, 13964;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §762.32, 789.17; C79, 81, §909.3]

93 Acts, ch 110, §11

909.3A Community service option.

The court may, in its discretion, order the defendant to perform community service work of an equivalent value to the fine imposed where it appears that the community service work will be adequate to deter the defendant and to discourage others from similar criminal activity. The rate at which community service shall be calculated shall be the federal minimum wage.

93 Acts, ch 110, §12

909.4 Treble damage liability for corporations, partnerships and associations.

Whenever a corporation, partnership or other association, not subject to imprisonment is found guilty of any public offense, the court may impose a fine within the limits authorized by law. In addition to such fine, if the offense be a felony or aggravated misdemeanor, the corporation, partnership or association shall be liable as follows:

1. Any person who has suffered loss because of the public offense may recover from the corporation, partnership or association in an action at law damages equal to three times the amount of such loss.

2. If the corporation, partnership or association has received pecuniary benefit from the commission of the offense, the attorney general may recover from such corporation, partnership or association in an action at law for the use of the state damages equal to three times the amount of such benefit, provided, that any amount which is recovered under subsection 1 of this section shall be subtracted from the damages recovered by the state.

[C79, 81, §909.4]

Liability of corporations, partnerships and voluntary associations, §703.5

909.5 Nonpayment of fines and court costs — contempt.

A person who is able to pay a fine, court-imposed court costs for a criminal proceeding, or both, or an installment of the fine or the court-imposed court costs, or both, and who refuses to do so, or who fails to make a good faith effort to pay the fine, court costs, or both, or any installment thereof, shall be held in contempt of court.

[C51, §3071, 3349; R60, §4881, 5084; C73, §4509, 4689; C97, §5440, 5604; C24, 27, 31, 35, 39, §**13588, 13964;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §762.32, 789.17; C79, 81, §909.5]

85 Acts, ch 52, §1

909.6 Fine as judgment.

Whenever a court has imposed a fine on any defendant, the judgment in such case shall state the amount of the fine, and shall have the force and effect of a judgment against the defendant for the amount of the fine. The law relating to judgment liens, executions, and other process available to creditors for the collection of debts shall be applicable to such judgments; provided, that no law exempting the personal property of the defendant from any lien or legal process shall be applicable to such judgments.

At the time of imposing the sentence, the court shall inform the offender of the amount of the fine and that the judgment includes the imposition of a criminal surcharge, court costs, and applicable fees. The court shall also inform the offender of the duty to pay the judgment in a timely manner.

[R60, §4902, 5003; C73, §4518, 4609; C97, §5446, 5531; C24, 27, 31, 35, 39, §**13969, 13976;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §790.1, 791.6; C79, 81, §909.6]

93 Acts, ch 110, §13; 94 Acts, ch 1142, §14

909.7 Ability to pay fine presumed.

A defendant is presumed to be able to pay a fine. However, if the defendant proves to the satisfaction of the court that the defendant cannot pay the fine, the defendant shall not be sentenced to confinement for the failure to pay the fine.

A defendant who proves that the defendant cannot pay the fine may, at the discretion of the court, be ordered to perform community service pursuant to section 909.3A.

85 Acts, ch 197, §45; 93 Acts, ch 110, §14

909.8 Payment and collection provisions apply to surcharge.

The provisions of this chapter governing the payment and collection of a fine, except section 909.3A, also apply to the payment and collection of surcharges imposed pursuant to chapter 911. However, section 909.10 shall not apply to surcharges assessed under section 911.3.

87 Acts, ch 72, §1; 93 Acts, ch 110, §15; 2001 Acts, ch 168, §6

909.9 Collection of delinquent fines and court costs — disposition. Repealed by 93 Acts, ch 110, § 17. See § 602.8107.

909.10 Collection of delinquent amounts by the court.

1. As used in this section, unless the context otherwise requires, *"delinquent amounts"* means a fine, court-imposed court costs in a criminal proceeding, or criminal surcharge imposed pursuant to section 911.2, which remains unpaid after two years from the date that the fine, court costs, or surcharge was imposed, and which is not collected by the county attorney pursuant to section 602.8107. However, if the fine may be paid in installments pursuant to section 909.3, the fine is not a delinquent amount unless the installment remains unpaid after two years from the date the installment was due.

2. Notwithstanding the disposition sections of sections 602.8106 and 602.8108, subsection 3, upon the collection of delinquent amounts, the clerks of the district court shall remit the delinquent amounts to the treasurer of state for deposit into the revolving fund established pursuant to section 602.1302, to be used for the payment of jury and witness fees and mileage.

93 Acts, ch 110, §16; 93 Acts, ch 171, §22; 96 Acts, ch 1034, §66

For provisions concerning deposits of certain court revenues in the enhanced court collections fund, see §602.1304

CHAPTER 910

RESTITUTION

Victim compensation, see chapter 915, subchapter VI

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910.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Criminal activities"* means any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982, which is admitted or not contested by the offender, whether or not prosecuted. However, *"criminal activities"* does not include simple misdemeanors under chapter 321.

2. *"Local anticrime organization"* means an entity organized for the primary purpose of crime prevention which has been officially recognized by the chief of police of the city in which the organization is located or the sheriff of the county in which the organization is located.

3. *"Pecuniary damages"* means all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, *"pecuniary damages"* includes damages for wrongful death and expenses incurred for psychiatric or psychological services or counseling or other counseling for the victim which became necessary as a direct result of the criminal activity.

4. *"Restitution"* means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. *"Restitution"* also includes fines, penalties, and surcharges, the contribution of funds to a local anticrime organization which provided assistance to law enforcement in an offender's case, the payment of crime victim compensation program reimbursements, payment of restitution to public agencies pursuant to section 321J.2, subsection 9, paragraph *"b"*, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender.

5. *"Victim"* means a person who has suffered pecuniary damages as a result of the offender's criminal activities. However, for purposes of this chapter, an insurer is not a victim and does not have a right of subrogation. The crime victim compensation program is not an insurer for purposes of this chapter, and the right of subrogation provided by section 915.92 does not prohibit restitution to the crime victim compensation program.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §2]

83 Acts, ch 15, §1, 3; 90 Acts, ch 1251, §73, 74; 91 Acts, ch 181, §2, 16; 94 Acts, ch 1142, §15; 96 Acts, ch 1091, §1, 2; 97 Acts, ch 140, §2; 97 Acts, ch 177, §34; 98 Acts, ch 1090, §83, 84; 2002 Acts, ch 1119, §195

Subsection 4 amended

910.2 Restitution or community service to be ordered by sentencing court.

In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities, to the clerk of court for fines, penalties, surcharges, and, to the extent that the offender is reasonably able to pay, for crime victim assistance reimbursement, restitution to public agencies pursuant to section 321J.2, subsection 9, paragraph *"b"*, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, when applicable, or contribution to a local anticrime organization. However, victims shall be paid in full before fines, penalties, and surcharges, crime victim compensation program reimbursement, public agencies, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expenses of a public defender, or contributions to a local anticrime organization are paid. In structuring a plan of restitution, the court shall provide for payments in the following order of priority: victim, fines, penalties, and surcharges, crime victim compensation program reimbursement, public agencies, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and contribution to a local anticrime organization.

When the offender is not reasonably able to pay all or a part of the crime victim compensation program reimbursement, public agency restitution, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, or contribution to a local anticrime organization, the court may require the offender in lieu of that portion of the crime victim compensation program reimbursement, public agency restitution, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, or contribution to a local anticrime organization for which the offender is not reasonably able to pay, to perform a needed public service for a governmental agency or for a private nonprofit agency which provides a service

to the youth, elderly, or poor of the community. When community service is ordered, the court shall set a specific number of hours of service to be performed by the offender which, for payment of court-appointed attorney fees ordered pursuant to section 815.9, including the expenses of a public defender, shall be approximately equivalent in value to those costs. The judicial district department of correctional services shall provide for the assignment of the offender to a public agency or private nonprofit agency to perform the required service.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §3]

83 Acts, ch 15, §2, 3; 85 Acts, ch 195, §66; 90 Acts, ch 1251, §75; 92 Acts, ch 1242, §36; 94 Acts, ch 1142, §16; 95 Acts, ch 75, §1; 96 Acts, ch 1091, §3; 96 Acts, ch 1193, §21; 97 Acts, ch 140, §3; 97 Acts, ch 177, §35; 2000 Acts, ch 1115, §9; 2002 Acts, ch 1119, §196

Section amended

910.3 Determination of amount of restitution.

The county attorney shall prepare a statement of pecuniary damages to victims of the defendant and, if applicable, any award by the crime victim compensation program and expenses incurred by public agencies pursuant to section 321J.2, subsection 9, paragraph *"b"*, and shall provide the statement to the presentence investigator or submit the statement to the court at the time of sentencing. The clerk of court shall prepare a statement of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and court costs including correctional fees claimed by a sheriff pursuant to section 356.7, which shall be provided to the presentence investigator or submitted to the court at the time of sentencing. If these statements are provided to the presentence investigator, they shall become a part of the presentence report. If pecuniary damage amounts are not available at the time of sentencing, the county attorney shall provide a statement of pecuniary damages incurred up to that time to the clerk of court. The statement shall be provided no later than thirty days after sentencing. If a defendant believes no person suffered pecuniary damages, the defendant shall so state. If the defendant has any mental or physical impairment which would limit or prohibit the performance of a public service, the defendant shall so state. The court may order a mental or physical examination, or both, of the defendant to determine a proper course of action. At the time of sentencing or at a later date to be determined by the court, the court shall set out the amount of restitution including the amount of public service to be performed as restitution and the persons to whom restitution must be paid. If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable amount for restitution identified up to that time. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution. The court shall enter further supplemental orders, if necessary. These court orders shall be known as the plan of restitution.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §4]

84 Acts, ch 1041, §1; 91 Acts, ch 219, §30; 94 Acts, ch 1142, §17; 97 Acts, ch 140, §4; 97 Acts, ch 177, §36; 2002 Acts, ch 1119, §197

Section amended

910.3A Notification of a homicide victim's county of residence.

The county attorney of a county in which a judgment of conviction and sentence under section 707.2, 707.3, 707.4, 707.5, or 707.6A is rendered against a defendant relating to a person's death shall notify in writing the clerk of the district court of the county of the person's residence. Such notification shall be for the purpose of the county of the person's residence recovering from the defendant the fee and expenses incurred investigating the person's death pursuant to section 331.802, subsection 2.

96 Acts, ch 1139, §2

910.3B Restitution for death of victim.

1. In all criminal cases in which the offender is convicted of a felony in which the act or acts committed by the offender caused the death of another person, in addition to the amount determined to be payable and ordered to be paid to a victim for pecuniary damages, as defined under section 910.1, and determined under section 910.3, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate. The obligation to pay the additional amount shall not be dischargeable in any proceeding under the federal Bankruptcy Act. Payment of the additional amount shall have the same priority as payment of a victim's pecuniary damages under section 910.2, in the offender's plan for restitution.

2. An award under this section does not preclude or supersede the right of a victim's estate to bring a civil action against the offender for damages arising out of the same facts or event. However, no evidence relating to the entry of the judgment against the offender pursuant to this section or the amount of the award ordered pursuant to this section shall be permitted to be introduced in any civil action for damages arising out of the same facts or event.

3. An offender who is ordered to pay a victim's estate under this section is precluded from denying the elements of the felony offense which resulted in the order for payment in any subsequent civil action for damages arising out of the same

facts or event.

97 Acts, ch 125, §11

910.4 Condition of probation — payment plan.

1. When restitution is ordered by the sentencing court and the offender is placed on probation, restitution shall be a condition of probation.

a. Failure of the offender to comply with the plan of restitution, plan of payment, or community service requirements when community service is ordered by the court as restitution, shall constitute a violation of probation and shall constitute contempt of court.

b. If an offender fails to comply with restitution requirements during probation, the court may hold the offender in contempt, revoke probation, or extend the period of probation.

(1) If the court extends the period of probation, it shall not be for more than the maximum period of probation for the offense committed as provided in section 907.7. After discharge from probation or after the expiration of the period of probation, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court.

(2) If an offender's probation is revoked, the offender's assigned probation officer shall forward to the director of the Iowa department of corrections, information concerning the offender's restitution plan, restitution plan of payment, the restitution payment balance, and any other pertinent information concerning or affecting restitution by the offender.

2. When the offender is committed to a county jail, or to an alternate facility, the office or individual charged with supervision of the offender shall prepare a restitution plan of payment taking into consideration the offender's income, physical and mental health, age, education, employment and family circumstances.

a. The office or individual charged with supervision of the offender shall review the plan of restitution ordered by the court, and shall submit a restitution plan of payment to the sentencing court.

b. When community service is ordered by the court as restitution, the restitution plan of payment shall set out a plan to meet the requirement for the community service.

c. The court may approve or modify the plan of restitution and restitution plan of payment.

d. When there is a significant change in the offender's income or circumstances, the office or individual which has supervision of the plan of payment shall submit a modified restitution plan of payment to the court.

3. When there is a transfer of supervision from one office or individual charged with supervision of the offender to another, the sending office or individual shall forward to the receiving office or individual all necessary information regarding the balance owed against the original amount of restitution ordered and the balance of public service required.

When the offender's circumstances and income have significantly changed, the receiving office or individual shall submit a new plan of payment to the sentencing court for approval or modification based on the considerations enumerated in this section.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §5]

83 Acts, ch 56, §1; 89 Acts, ch 13, §1; 95 Acts, ch 127, §1; 96 Acts, ch 1193, §22

910.5 Condition of work release or parole.

1. *a.* When an offender is committed to the custody of the director of the Iowa department of corrections pursuant to a sentence of confinement, the sentencing court shall forward to the director a copy of the offender's restitution plan, present restitution payment plan if any, and other pertinent information concerning or affecting restitution by the offender.

b. If the offender is committed to the custody of the director after revocation of probation, all information regarding the offender's restitution plan shall be forwarded by the offender's probation officer.

c. An offender committed to a penal or correctional facility of the state shall make restitution while placed in that facility.

d. Upon commitment to the custody of the director of the Iowa department of corrections, the director or the director's designee shall prepare a restitution plan of payment or modify any existing plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances.

(2) The director or the director's designee may modify the plan of payment at any time to reflect the offender's present circumstances.

e. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court.

2. If an offender is to be placed on work release from an institution under the control of the director of the Iowa department of corrections, restitution shall be a condition of work release.

a. The chief of the bureau of community correctional services of the Iowa department of corrections shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family cir-

cumstances.

(2) The bureau chief may modify the plan of payment at any time to reflect the offender's present circumstances.

b. Failure of the offender to comply with the restitution plan of payment, including the community service requirement, if any, shall constitute a violation of a condition of work release and the work release privilege may be revoked.

c. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court.

3. If an offender is to be placed on work release from a facility under control of a county sheriff or the judicial district department of correctional services, restitution shall be a condition of work release.

a. The office or individual charged with supervision of the offender shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment and family circumstances.

(2) Failure of the offender to comply with the restitution plan of payment including the community service requirement, if any, constitutes a violation of a condition of work release.

(3) The office or individual charged with supervision of the offender may modify the plan of restitution at any time to reflect the offender's present circumstances.

b. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court.

4. If an offender is to be placed on parole, restitution shall be a condition of parole.

a. The district department of correctional services to which the offender will be assigned shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment.

(1) The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances.

(2) Failure of the offender to comply with the restitution plan of payment including a community service requirement, if any, shall constitute a violation of a condition of parole.

(3) The parole officer may modify the plan of payment any time to reflect the offender's present circumstances.

(4) A restitution plan of payment or modified plan of payment, prepared by a parole officer, must meet the approval of the director of the district department of correctional services.

b. After the expiration of the offender's sentence, the failure of an offender to comply with the plan of restitution ordered by the court shall constitute contempt of court.

5. The director of the Iowa department of corrections shall adopt rules pursuant to chapter 17A concerning the policies and procedures to be used in preparing and implementing restitution plans of payment for offenders who are committed to an institution under the control of the director of the Iowa department of corrections, for offenders who are to be released on work release from institutions under the control of the director of the Iowa department of corrections, for offenders who are placed on probation, and for offenders who are released on parole.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §6]

83 Acts, ch 56, §2; 83 Acts, ch 96, §154, 159; 95 Acts, ch 127, §2, 3; 96 Acts, ch 1193, §23

910.6 Payment plan — copy to victims.

An office or individual preparing a restitution plan of payment or modified restitution plan of payment, when it is approved by the court if approval is required under section 910.4, or when the plan is completed if court approval under section 910.4 is not required, shall forward a copy to the clerk of court in the county in which the offender was sentenced. The clerk of court shall forward a copy of the plan of payment or modified plan of payment to the victim or victims.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §7]

83 Acts, ch 56, §3

910.7 Petition for hearing.

1. At any time during the period of probation, parole, or incarceration, the offender or the office or individual who prepared the offender's restitution plan may petition the court on any matter related to the plan of restitution or restitution plan of payment and the court shall grant a hearing if on the face of the petition it appears that a hearing is warranted.

2. After a petition has been filed, the court, at any time prior to the expiration of the offender's sentence, provided the required notice has been given pursuant to subsection 3, may modify the plan of restitution or the restitution plan of payment, or both, and may extend the period of time for the completion of restitution.

3. If a petition related to a plan of restitution has been filed, the offender, the county attorney, the department of corrections if the offender is currently confined in a correctional institution, the office or individual who prepared the offender's restitution plan, and the victim shall receive notice prior to any hearing under this section.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §8]

83 Acts, ch 56, §4; 86 Acts, ch 1075, §6; 2001

Acts, ch 133, §1

910.7A Judgment — enforcement.

1. An order requiring an offender to pay restitution constitutes a judgment and lien against all property of a liable defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property.

2. A judgment of restitution may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim's estate, or any other beneficiary of the judgment in the same manner as a civil judgment.

92 Acts, ch 1242, §37

910.8 Civil liability.

This chapter and proceedings under this chapter do not limit or impair the rights of victims to sue and recover damages from the offender in a civil action. The institution of a restitution plan shall toll the applicable statute of limitations for a civil action arising out of the same facts or event for the period of time that the restitution plan is effective. However, any restitution payment by the offender to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event.

[C75, 77, §789A.8; C79, 81, §907.12; 82 Acts, ch 1162, §9]

84 Acts, ch 1047, §1

910.9 Collection of payments — payment by clerk of court.

An offender making restitution pursuant to a restitution plan of payment shall make the payment monthly to the clerk of court of the county from which the offender was sentenced, unless the restitution plan of payment provides otherwise. If the restitution plan authorizes payment to an entity other than the clerk of court, that entity shall regularly file a partial or full satisfaction of judgment with the clerk of court concerning amounts collected by that entity.

The clerk of court shall maintain a record of all receipts and disbursements of restitution payments and shall disburse all moneys received to the victims designated in the plan of restitution. If there is more than one victim, disbursements to the victims shall be on the basis of the victim's percentage of the total owed by the offender to all victims, except that the clerk of court may decide the allocation of payments owed to a victim of twenty-five dollars or less.

Fines, penalties, and surcharges, crime victim compensation program reimbursement, public agency restitution, court costs including correctional fees claimed by a sheriff pursuant to section 356.7, and court-appointed attorney fees ordered pursuant to section 815.9, including the expenses for public defenders, shall not be withheld by the clerk of court until all victims have been paid in full. Payments to victims shall be made by the clerk of court at least quarterly. Payments by a clerk of court shall be made no later than the last business day of the quarter, but may be made more often at the discretion of the clerk of court. The clerk of court receiving final payment from an offender shall notify all victims that full restitution has been made. Each office or individual charged with supervising an offender who is required to perform community service as full or partial restitution shall keep records to assure compliance with the portions of the plan of restitution and restitution plan of payment relating to community service and, when the offender has complied fully with the community service requirement, notify the sentencing court.

[82 Acts, ch 1162, §10]

83 Acts, ch 56, §5; 91 Acts, ch 116, §22; 94 Acts, ch 1142, §18; 97 Acts, ch 177, §37; 98 Acts, ch 1100, §90; 2000 Acts, ch 1032, §7; 2002 Acts, ch 1119, §198

Unnumbered paragraph 3 amended

910.10 Restitution lien.

1. The state or a person entitled to restitution under a court order may file a restitution lien.

2. The restitution lien shall set forth all of the following information, if known:

a. The name and date of birth of the person whose property or other interests are subject to the lien.

b. The present address of the residence and principal place of business of the person named in the lien.

c. The criminal proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number.

d. The name and business address of the attorney representing the state in the proceeding pursuant to which the lien is filed or the name and residence and business address of each person entitled to restitution pursuant to a court order.

e. A statement that the notice is being filed pursuant to this section.

f. The amount of restitution the person has been ordered to pay or is likely to be ordered to pay.

3. A restitution lien may be filed by either of the following:

a. A prosecuting attorney in a criminal proceeding in which restitution is likely to be sought after the filing of an information or indictment. At the time of arraignment, the prosecuting attorney shall give the defendant notice of any restitution lien filed.

b. A victim in a criminal proceeding after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.

4. The filing of a restitution lien in accordance with this section creates a lien in favor of the state and the victim in any personal or real property

identified in the lien to the extent of the interest held in that property by the person named in the lien.

5. This section does not limit the right of the state or any other person entitled to restitution to obtain any other remedy authorized by law.

91 Acts, ch 219, §31

910.11 to 910.14 Reserved.

910.15 Distribution of moneys received as a result of the commission of crime.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Convicted felon" means a person initially convicted, or found not guilty by reason of insanity, of a felony committed in Iowa, either by a court or jury trial or by entry of a guilty plea in court.

b. "Escrow account" includes, but is not limited to, property in which the attorney general has assumed the powers of a receiver as provided in this section.

c. "Felony" means a felony defined by any Iowa or United States statute.

d. "Fruits of the crime" means any profit which, were it not for the commission of the felony, would not have been realized.

e. "Proceeds" means all of the fruits of the crime from whatever source received by or owing to a felon or the felon's representatives, whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.

f. "Representative of the convicted felon" means any person or entity receiving proceeds by designation of that convicted felon, or on behalf of that convicted felon, or in the stead of that convicted felon, whether by the felon's designation or by operation of law.

g. "Victim" means a person who has suffered physical, mental, or emotional harm or financial loss as the result of a felony committed in this state, for which the felon was convicted. The term also includes the father, mother, son, or daughter of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.

2. *Due process hearing — action by attorney general.*

a. The attorney general may bring an action to require all proceeds received by a convicted felon or representative of the convicted felon to be deposited in an escrow account as provided in this section.

b. The action may be brought in the county where the convicted felon resides, or the county in which the proceeds are located.

c. The action shall be preceded by notice to any interested party.

d. The court shall order that all proceeds be deposited in the escrow account until an order of disposition is made by the court pursuant to subsection 3, 4, or 5 or until the expiration of the escrow account as specified in subsection 8, if the attorney general proves both of the following:

(1) The proceeds are fruits of the crime for which the convicted felon was convicted.

(2) It is more probable than not that there are victims who may recover a money judgment against the felon for physical, mental, or emotional injury or pecuniary loss proximately caused by the convicted felon as a result of the felony for which the felon was convicted or there is an unpaid order of restitution under chapter 910 against the convicted felon for the felony for which the felon was convicted.

e. If the court orders that proceeds be deposited in an escrow account and the nature of the proceeds to the person initially convicted of the crime is such that it cannot be placed in an escrow account, the attorney general shall assume the powers of a receiver under chapter 680 in taking charge of the property for benefit of and payable to any victim or representative of the victim. In those instances, the date the attorney general assumed the power of a receiver shall be considered the date the escrow account was established for purposes of this section.

3. *Notice of establishment of escrow account.* Once an escrow account is established, the attorney general shall make reasonable efforts to notify victims and representatives of victims of the escrow account and their possible rights under this section. The reasonable efforts shall include, but are not limited to, mailing the notification to known victims or representatives of known victims. The cost of notification shall be paid from the escrow account or from the sale of property held in receivership.

4. *Proceeds for legal defense of felon.* The attorney general shall make payments from the escrow account or property held in receivership to the person accused of the crime upon the order of a court of competent jurisdiction after a showing by the person that the money or other property shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against the person, including the appeals process.

5. *Payment of escrow funds to victims.* The remaining proceeds in escrow may be levied upon to satisfy an order for restitution under chapter 910 or a money judgment entered against the convicted felon, by a court of competent jurisdiction, for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the felony for which the felon was convicted.

6. *Priority and proration of claims.* Proceeds distributed under subsection 3 shall have first priority, and proceeds distributed for the cost of legal defense under subsection 4 shall have second

priority in the distribution of proceeds in the escrow account. If there are multiple orders for restitution and judgments by victims under subsection 5 against the convicted felon, and the remaining proceeds in the escrow account are insufficient to satisfy all of the orders for restitution and judgments, the proceeds shall be distributed on a pro rata basis based on the ratio that the amount of an order for restitution or an individual victim's judgment bears to the total amount of all restitution orders and victims' judgments against the convicted felon which have been claimed under this section.

7. *Limitation of action.* Notwithstanding section 614.1, a victim or the victim's representative who has a cause of action for a crime for which an escrow account or receivership is established pursuant to this section may bring the action against the escrow account or against the property in receivership within five years of the date the escrow account is established.

8. *Duration of escrow account.* Notwithstanding the other provisions of this section, upon a disposition of charges favorable to the person accused of committing the felony, or upon a showing by the person that five years have elapsed from the date of establishment of the escrow account and further that no actions are pending against the person or unpaid orders for restitution or monetary judgments outstanding relating to the felony for which the felon was convicted, the attorney general shall immediately pay over any money in the escrow account to the person.

9. *Purpose.* The purpose of this section is to meet the following compelling state interests:

a. The state has an interest in ensuring that victims of crime are compensated by those who harm them.

b. The state has an interest in ensuring that criminals do not profit from their felonious crimes at the expense of their victims.

[82 Acts, ch 1155, §1]
92 Acts, ch 1154, §1

CHAPTER 910A

VICTIM AND WITNESS PROTECTION

Repealed effective January 1, 1999, by
98 Acts, ch 1090, §82, 84; see chapter 915

CHAPTER 911

SURCHARGE ADDED TO CRIMINAL PENALTIES

911.1 Criminal penalty surcharge established.
911.2 Surcharge.
911.3 Law enforcement initiative surcharge.

911.1 Criminal penalty surcharge established.

A criminal penalty surcharge shall be levied against certain law violators as provided in section 911.2. The surcharge shall be deposited as provided in section 602.8108, subsection 3, and shall be used for the maintenance and improvement of criminal justice programs, law enforcement efforts, victim compensation, crime prevention, and improvement of the professional training of personnel, and the planning and support services of the criminal justice system.

[82 Acts, ch 1258, §1]
91 Acts, ch 181, §16; 94 Acts, ch 1074, §17

911.2 Surcharge.

When a court imposes a fine or forfeiture for a violation of a state law, or of a city or county ordinance except an ordinance regulating the parking of motor vehicles, the court shall assess an additional penalty in the form of a surcharge equal to thirty percent of the fine or forfeiture imposed. An additional drug abuse resistance education surcharge of ten dollars shall be assessed by the clerk of the district court if the violation arose out of a violation of an offense provided for in chapter 321J or chapter 124, division IV. In the event of multiple offenses, the surcharge shall be based upon the total amount of fines or forfeitures imposed for all offenses. When a fine or forfeiture is suspended in whole or in part, the surcharge shall be reduced in proportion to the amount suspended.

The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

[82 Acts, ch 1258, §2]
84 Acts, ch 1274, §2; 87 Acts, ch 72, §2; 90 Acts, ch 1264, §36; 91 Acts, ch 260, §816, 818; 91 Acts, ch 263, §35; 96 Acts, ch 1216, §34; 98 Acts, ch 1071, §2; 2001 Acts, ch 182, §11

911.3 Law enforcement initiative surcharge.

1. In addition to the surcharge assessed in section 911.2, a law enforcement initiative surcharge of one hundred twenty-five dollars shall be assessed by the clerk of the district court if an adjudication of guilt or a deferred judgment has been entered for a criminal violation under any of the following:

a. Chapter 124, 155A, 453B, 713, 714, 715A, or 716.

b. Section 719.8, 725.1, 725.2, or 725.3.

2. The surcharge shall be deposited in the general fund of the state.

3. The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

2001 Acts, ch 168, §7

CHAPTER 912

CRIME VICTIM COMPENSATION

Repealed effective January 1, 1999, by
98 Acts, ch 1090, §82, 84; see chapter 915

CHAPTER 913

INTERSTATE CORRECTIONS COMPACT

This chapter not enacted as a part of this title;
transferred from chapter 247 in Code 1993
See §218.95 for provisions pertaining to construction of
synonymous terms

913.1 Citation.
913.2 Corrections compact.
913.3 Duty of director.

913.1 Citation.

This chapter may be cited as the "Interstate Corrections Compact."

[C75, 77, 79, 81, §218B.1]
85 Acts, ch 21, §54
CS85, §247.1
C93, §913.1

913.2 Corrections compact.

The interstate corrections compact is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

ARTICLE I — PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of co-operation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II — DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

1. *"State"* means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico.

2. *"Sending state"* means a state party to this compact in which conviction or court commitment was had.

3. *"Receiving state"* means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or

court commitment was had.

4. *"Inmate"* means an offender who is committed, under sentence to or confined in a penal or correctional institution.

5. *"Institution"* means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

ARTICLE III — CONTRACTS

Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate work, if any; the disposition or crediting of payments received by inmates on account of the work; and the crediting of proceeds from or disposal of products resulting from the work.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV — PROCEDURES AND RIGHTS

Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of article III.

Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of the inmate's record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

Any inmate confined pursuant to the terms of this compact shall have any and all rights to par-

ticipate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the inmate's status changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in their exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V — ACTS NOT REVIEWABLE IN RECEIVING STATE — EXTRADITION

Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI — FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII — ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII — WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX — OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of co-operative institutional arrangements.

ARTICLE X — CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[C75, 77, 79, 81, §218B.2]
85 Acts, ch 21, §34, 54
CS85, §247.2
C93, §913.2

913.3 Duty of director.
The director of the Iowa department of corrections shall do all things necessary or incidental to the carrying out of the compact.

[C75, 77, 79, 81, §218B.3]
83 Acts, ch 96, §70, 159; 85 Acts, ch 21, §54
CS85, §247.3
C93, §913.3

CHAPTER 914

REPRIEVES, PARDONS, COMMUTATIONS, REMISSIONS, AND RESTORATIONS OF RIGHTS

This chapter not enacted as a part of this title;
transferred from chapter 248A in Code 1993
See §218.95 for provisions pertaining to construction of
synonymous terms

914.1 Power of governor.
914.2 Right of application.
914.3 Recommendations by board of parole.
914.4 Response to recommendation.
914.5 Evidence — testimony — recommendation.
914.6 Procedures — filing.
914.7 Rights not restorable.

914.1 Power of governor.
The power of the governor under the constitution to grant a reprieve, pardon, commutation of sentence, remission of fines and forfeitures, or restoration of the rights of citizenship shall not be impaired.
86 Acts, ch 1112, §4
C87, §248A.1
C93, §914.1

914.2 Right of application.
Except as otherwise provided in section 902.2, a person convicted of a criminal offense has the right to make application to the board of parole for recommendation or to the governor for a reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of rights of citizenship at any time following the conviction.
86 Acts, ch 1112, §5
C87, §248A.2
C93, §914.2
95 Acts, ch 128, §2

914.3 Recommendations by board of parole.
1. Except as otherwise provided in section 902.2, the board of parole shall periodically review all applications by persons convicted of criminal offenses and shall recommend to the governor the reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of the rights of citizenship for persons who have by their conduct given satisfactory evidence that they will become or continue to be law-abiding citizens.
2. The board of parole shall, upon request of the governor, take charge of all correspondence in reference to an application filed with the governor and shall, after careful investigation, provide the governor with the board's advice and recommendation concerning any person for whom the board has not previously issued a recommendation.
3. All recommendations and advice of the board of parole shall be entered in the proper records of the board.
86 Acts, ch 1112, §6
C87, §248A.3
87 Acts, ch 115, §35
C93, §914.3
95 Acts, ch 128, §3

914.4 Response to recommendation.
The governor shall respond to all recommendations made by the board of parole within ninety days of the receipt of the recommendation. The response shall state whether or not the recommendation will be granted and shall specifically set out the reasons for such action. If the governor does not grant the recommendation, the recommendation shall be returned to the board of parole and may be refiled with the governor at any time. Any recommendation may be withdrawn by the board of parole at any time prior to its being granted. However, if the board withdraws a recommendation, a statement of the withdrawal, and the reasons upon which it was based, shall be entered in the proper records of the board.
86 Acts, ch 1112, §7
C87, §248A.4
C93, §914.4

914.5 Evidence — testimony — recommendation.
1. When an application or recommendation is

made to the governor for a reprieve, pardon, commutation of sentence, remission of fines and forfeitures, or restoration of rights of citizenship, the governor may require the judge or clerk of the appropriate court, or the county attorney or attorney general by whom the action was prosecuted, to furnish the governor without delay a copy of the minutes of evidence taken on the trial, and any other facts having reference to the propriety of the governor's exercise of the governor's powers in the premises.

2. The governor may take testimony as the governor deems advisable relating to any application or recommendation. A person who provides written or oral testimony pursuant to this subsection is subject to chapter 720.

3. With regard to an application for the restoration of the rights of citizenship, the warden or superintendent, upon request of the governor, shall furnish the governor with a statement of the person's deportment during the period of imprisonment and a recommendation as to the propriety of restoration.

86 Acts, ch 1112, §8
C87, §248A.5
C93, §914.5

914.6 Procedures — filing.

1. Pardons, commutations of sentences, and remissions of fines and forfeitures shall be issued in duplicate. Restorations of rights of citizenship and reprieves shall be issued in triplicate.

2. In the case of a pardon, commutation of sentence, or reprieve, if the person is in custody, the executive instruments shall be forwarded to the officer having custody of the person. The officer, upon receipt of the instruments, shall do the following:

a. Retain one copy of the instrument.

b. Enter the appropriate notations on the records of the office.

c. Carry out the orders of the instrument.

d. On one copy, make a written return as required by the order and forward the copy to the clerk of court where the judgment is of record.

e. In the case of reprieves, deliver the third copy to the person whose sentence is reprieved.

3. In the case of a remission of fines and forfeitures, restoration of rights of citizenship, or a pardon, commutation of sentence, or reprieve, if the person is not in custody, one copy of the executive instrument shall be delivered to the person and one copy to the clerk of court where the judgment is of record. A list of the restorations of rights of citizenship issued by the governor shall be delivered to the state registrar of voters at least once each month.

4. The clerk of court shall, upon receipt of the copy of the executive instrument, immediately file and preserve the copy in the clerk's office and note the filing on the judgment docket of the case, except that remissions of fines and forfeitures shall be spread at length on the record books of the court, and indexed in the same manner as the original case.

86 Acts, ch 1112, §9
C87, §248A.6
C93, §914.6
94 Acts, ch 1169, §63

914.7 Rights not restorable.

Notwithstanding any other provision of this chapter, a person who has been convicted of a forcible felony, a felony violation of chapter 124 involving a firearm, or a felony violation of chapter 724 shall not have the person's rights of citizenship restored to the extent of allowing the person to receive, transport, or possess firearms.

Notwithstanding any provision of this chapter, a person seventeen years of age or younger who commits a public offense involving a firearm which is an aggravated misdemeanor against a person or a felony shall not have the person's rights of citizenship restored to the extent of allowing the person to receive, transport, or possess firearms.

89 Acts, ch 316, §21
CS89, §248A.7
C93, §914.7
94 Acts, ch 1172, §64

CHAPTER 915

VICTIM RIGHTS

915.1 Title.
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915.3 Immunity — citizen intervention.
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915.81 Award of compensation.
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915.92 Right of action against perpetrator — subrogation.
915.93 Rulemaking.
915.94 Victim compensation fund.
915.95 through 915.99 Reserved.

SUBCHAPTER VII

VICTIM RESTITUTION

915.100 Victim restitution rights.

915.1 Title.

This chapter shall be known and may be cited as *"Victim Rights Act"*.

98 Acts, ch 1090, §1, 84

915.2 Immunity.

This chapter does not create a civil cause of action except where expressly stated, and a person is not liable for damages resulting from an act or omission in regard to any responsibility or authority created by this chapter, and such acts or omissions shall not be used in any proceeding for damages. This section does not apply to acts or omissions which constitute a willful and wanton disregard for the rights or safety of another.

98 Acts, ch 1090, §2, 84

915.3 Immunity — citizen intervention.

Any person who, in good faith and without remuneration, renders reasonable aid or assistance to another against whom a crime is being committed or, if rendered at the scene of the crime, to another against whom a crime has been committed, is not liable for any civil damages for acts or omissions resulting from the aid or assistance, and is eligible to file a claim for reimbursement as a victim under this chapter.

98 Acts, ch 1090, §3, 84

See also §613.17

915.4 through 915.9 Reserved.

SUBCHAPTER I

REGISTRATION, NOTIFICATION, AND RIGHTS IN CRIMINAL PROCEEDINGS

915.10 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Notification"* means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit an agency from also providing appropriate information to a registered victim by telephone.

2. *"Registered"* means having provided the county attorney with the victim's written request for registration and current mailing address and telephone number.

3. *"Victim"* means a person who has suffered physical, emotional, or financial harm as the result of a public offense or a delinquent act, other than a simple misdemeanor, committed in this state. *"Victim"* also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.

4. *"Victim impact statement"* means a written or oral presentation to the court by the victim or the victim's representative that indicates the physical, emotional, financial, or other effects of the offense upon the victim.

5. *"Violent crime"* means a forcible felony, as defined in section 702.11, and includes any other felony or aggravated misdemeanor which involved the actual or threatened infliction of physical or emotional injury on one or more persons.

98 Acts, ch 1090, §5, 84; 99 Acts, ch 114, §47

915.11 Initial notification by law enforcement.

A local police department or county sheriff's department shall advise a victim of the right to register with the county attorney, and shall provide a request-for-registration form to each victim.

98 Acts, ch 1090, §6, 84

915.12 Registration.

1. The county attorney shall be the sole registrar of victims under this subchapter.

2. A victim may register by filing a written request-for-registration form with the county attorney. The county attorney shall notify the victims in writing and advise them of their registration and rights under this subchapter.

3. The county attorney shall provide a registered victim list to the offices, agencies, and departments required to provide information under this subchapter for notification purposes.

4. Notwithstanding chapter 22 or any other contrary provision of law, a victim's registration shall be strictly maintained in a separate confidential file, and shall be available only to the offices, agencies, and departments required to provide information under this subchapter.

98 Acts, ch 1090, §7, 84

915.13 Notification by county attorney.

1. The county attorney shall notify a victim registered with the county attorney's office of the following:

a. The scheduled date, time, and place of trial, and the cancellation or postponement of a court proceeding that was expected to require the victim's attendance, in any criminal case relating to the crime for which the person is a registered victim.

b. The possibility of assistance through the crime victim compensation program, and the procedures for applying for that assistance.

c. The right to restitution for pecuniary losses suffered as a result of crime, and the process for seeking such relief.

d. The victim's right to make a victim impact statement, in any of the following formats:

(1) Written victim impact statement, delivered in court in the presence of the defendant. Notification shall include the procedures for filing such a statement.

(2) Oral victim impact statement, delivered in court in the presence of the defendant. The victim shall also be notified of the time and place for such statement.

(3) Video victim impact statement, delivered in court in the presence of the defendant. Notification shall include the procedures for making and filing the video recording.

(4) Audio victim impact statement, delivered in court in the presence of the defendant. Notification shall include the procedures for making and filing the audio recording.

e. The date on which the offender is released on bail or appeal, pursuant to section 811.5.

f. Except where the prosecuting attorney determines that disclosure of such information would unreasonably interfere with the investigation, at the request of the registered victim, notice of the status of the investigation shall be provided by law enforcement authorities investigating the case, until the alleged assailant is apprehended or the investigation is closed.

g. The right to be informed of any plea agreements related to the crime for which the person is a registered victim.

2. The county attorney and the juvenile court shall coordinate efforts so as to prevent duplication of notification under this section and section 915.24.

98 Acts, ch 1090, §8, 84; 2002 Acts, ch 1039, §1
Subsection 1, paragraph d amended

915.14 Notification by clerk of the district court.

The clerk of the district court shall notify a registered victim of all dispositional orders of the case in which the victim was involved and may advise the victim of any other orders regarding custody or confinement.

98 Acts, ch 1090, §9, 84

915.15 Notification by department of justice.

The department of justice shall notify a registered victim of the filing of an appeal, the expected date of decision on the appeal as the information becomes available to the department, all dispositional orders in the appeal, and the outcome of the appeal of a case in which the victim was involved.

98 Acts, ch 1090, §10, 84

915.16 Notification by local correctional institutions.

The county sheriff or other person in charge of the local jail or detention facility shall notify a registered victim of the following:

1. The offender's release from custody on bail and the terms or conditions of the release.
2. The offender's final release from local custody.
3. The offender's escape from custody.
4. The offender's transfer from local custody to custody in another locality.

98 Acts, ch 1090, §11, 84

915.17 Notification by department of corrections.

1. The department of corrections shall notify a registered victim, regarding an offender convicted of a violent crime and committed to the custody of the director of the department of corrections, of the following:

a. The date on which the offender is expected to be released from custody on work release, and whether the offender is expected to return to the community where the registered victim resides.

b. The date on which the offender is expected to be temporarily released from custody on furlough, and whether the offender is expected to return to the community where the registered victim resides.

c. The offender's escape from custody.

d. The recommendation by the department of the offender for parole consideration.

e. The date on which the offender is expected to be released from an institution pursuant to a plan of parole or upon discharge of sentence.

f. The transfer of custody of the offender to another state or federal jurisdiction.

g. The procedures for contacting the department to determine the offender's current institution of residence.

h. Information which may be obtained upon request pertaining to or the procedures for obtaining information upon request pertaining to the offender's current employer.

2. The director of the department of corrections, or the director's designee, having probable cause to believe that a person has escaped from a state correctional institution or a person convicted of a forcible felony who is released on work release has absconded from a work release facility shall:

a. Make a complaint before a judge or magistrate. If it is determined from the complaint or accompanying affidavits that there is probable cause to believe that the person has escaped from a state correctional institution or that the forcible felon has absconded from a work release facility, the judge or magistrate shall issue a warrant for the arrest of the person.

b. Issue an announcement regarding the fact of the escape of the person or the abscondence of the forcible felon to the law enforcement authorities in, and to the news media covering, communities in a twenty-five mile radius of the point of escape or abscondence.

98 Acts, ch 1090, §12, 84

915.18 Notification by board of parole.

1. The board of parole shall notify a registered victim regarding an offender who has committed a violent crime as follows:

a. Not less than twenty days prior to conducting a hearing at which the board will interview an offender, the board shall notify the victim of the interview and inform the victim that the victim may submit the victim's opinion concerning the release of the offender in writing prior to the hearing or may appear personally or by counsel at the hearing to express an opinion concerning the offender's release.

b. Whether or not the victim appears at the hearing or expresses an opinion concerning the offender's release on parole, the board shall notify the victim of the board's decision regarding release of the offender.

2. Offenders who are being considered for release on parole may be informed of a victim's registration with the county attorney and the substance of any opinion submitted by the victim regarding the release of the offender.

3. If the board of parole makes a recommendation to the governor for a reprieve, pardon, or commutation of sentence of an offender, as provided in section 914.3, the board shall forward with the recommendation information identifying a registered victim for the purposes of notification by the governor as required in section 915.19.

98 Acts, ch 1090, §13, 84

915.19 Notification by the governor.

1. Prior to the governor granting a reprieve, pardon, or commutation to an offender convicted of a violent crime, the governor shall notify a regis-

tered victim that the victim's offender has applied for a reprieve, pardon, or commutation. The governor shall notify a registered victim regarding the application not less than forty-five days prior to issuing a decision on the application. The governor shall inform the victim that the victim may submit a written opinion concerning the application.

2. The county attorney may notify an offender being considered for a reprieve, pardon, or commutation of sentence of a victim's registration with the county attorney and the substance of any opinion submitted by the victim concerning the reprieve, pardon, or commutation of sentence.

98 Acts, ch 1090, §14, 84

915.20 Presence of victim counselors.

1. As used in this section, unless the context otherwise requires:

a. "Proceedings related to the offense" means any activities engaged in or proceedings commenced by a law enforcement agency, judicial district department of correctional services, or a court pertaining to the commission of a public offense against the victim, in which the victim is present, as well as examinations of the victim in an emergency medical facility due to injuries from the public offense which do not require surgical procedures. *"Proceedings related to the offense"* includes, but is not limited to, law enforcement investigations, pretrial court hearings, trial and sentencing proceedings, and proceedings relating to the preparation of a presentence investigation report in which the victim is present.

b. "Victim counselor" means a victim counselor as defined in section 915.20A.

2. A victim counselor who is present as a result of a request by a victim shall not be denied access to any proceedings related to the offense.

3. This section does not affect the inherent power of the court to regulate the conduct of discovery pursuant to the Iowa rules of criminal or civil procedure or to preside over and control the conduct of criminal or civil hearings or trials.

98 Acts, ch 1090, §15, 84

915.20A Victim counselor privilege.

1. As used in this section:

a. "Confidential communication" means information shared between a crime victim and a victim counselor within the counseling relationship, and includes all information received by the counselor and any advice, report, or working paper given to or prepared by the counselor in the course of the counseling relationship with the victim.

Confidential information is confidential information which, so far as the victim is aware, is not disclosed to a third party with the exception of a person present in the consultation for the purpose of furthering the interest of the victim, a person to whom disclosure is reasonably necessary for the transmission of the information, or a person with whom disclosure is necessary for accomplishment of the purpose for which the counselor is consulted by the victim.

b. "Crime victim center" means any office, institution, agency, or crisis center offering assistance to victims of crime and their families through crisis intervention, accompaniment during medical and legal proceedings, and follow-up counseling.

c. "Victim" means a person who consults a victim counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a violent crime committed against the person.

d. "Victim counselor" means a person who is engaged in a crime victim center, is certified as a counselor by the crime victim center, and is under the control of a direct services supervisor of a crime victim center, whose primary purpose is the rendering of advice, counseling, and assistance to the victims of crime. To qualify as a *"victim counselor"* under this section, the person must also have completed at least twenty hours of training provided by the center in which the person is engaged, by the Iowa organization of victim assistance, by the Iowa coalition against sexual abuse, or by the Iowa coalition against domestic violence, which shall include but not be limited to, the dynamics of victimization, substantive laws relating to violent crime, sexual assault, and domestic violence, crisis intervention techniques, communication skills, working with diverse populations, an overview of the state criminal justice system, information regarding pertinent hospital procedures, and information regarding state and community resources for victims of crime.

2. A victim counselor shall not be examined or required to give evidence in any civil or criminal proceeding as to any confidential communication made by a victim to the counselor, nor shall a clerk, secretary, stenographer, or any other employee who types or otherwise prepares or manages the confidential reports or working papers of a victim counselor be required to produce evidence of any such confidential communication, unless the victim waives this privilege in writing or disclosure of the information is compelled by a court pursuant to subsection 7. Under no circumstances shall the location of a crime victim center or the identity of the victim counselor be disclosed in any civil or criminal proceeding.

3. If a victim is deceased or has been declared to be incompetent, this privilege specified in subsection 2 may be waived by the guardian of the victim or by the personal representative of the victim's estate.

4. A minor may waive the privilege under this section unless, in the opinion of the court, the minor is incapable of knowingly and intelligently waiving the privilege, in which case the parent or guardian of the minor may waive the privilege on

the minor's behalf if the parent or guardian is not the defendant and does not have such a relationship with the defendant that the parent or guardian has an interest in the outcome of the proceeding being favorable to the defendant.

5. The privilege under this section does not apply in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the counselor's first contact with the victim after the injury, or where the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

6. The failure of a counselor to testify due to this section shall not give rise to an inference unfavorable to the cause of the state or the cause of the defendant.

7. Upon the motion of a party, accompanied by a written offer of proof, a court may compel disclosure of certain information if the court determines that all of the following conditions are met:

a. The information sought is relevant and material evidence of the facts and circumstances involved in an alleged criminal act which is the subject of a criminal proceeding.

b. The probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the counseling relationship, and the treatment services.

c. The information cannot be obtained by reasonable means from any other source.

8. In ruling on a motion under subsection 7, the court, or a different judge, if the motion was filed in a criminal proceeding to be tried to the court, shall adhere to the following procedure:

a. The court may require the counselor from whom disclosure is sought or the victim claiming the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the victim and any other persons the victim is willing to have present.

b. If the court determines that the information is privileged and not subject to compelled disclosure, the information shall not be disclosed by any person without the consent of the victim.

c. If the court determines that certain information may be subject to disclosure, as provided in subsection 7, the court shall so inform the party seeking the information and shall order a subsequent hearing out of the presence of the jury, if any, at which the parties shall be allowed to examine the counselor regarding the information which the court has determined may be subject to disclosure. The court may accept other evidence at that time.

d. At the conclusion of a hearing under paragraph *"c"*, the court shall determine which information, if any, shall be disclosed and may enter an order describing the evidence which may be introduced by the moving party and prescribing the line of questioning which may be permitted. The moving party may then offer evidence pursuant to the court order. However, no victim counselor is subject to exclusion under rule of evidence 5.615.

9. This section does not relate to the admission of evidence of the victim's past sexual behavior which is strictly subject to rule of evidence 5.412.

98 Acts, ch 1090, §16, 84

915.21 Victim impact statement.

1. A victim may present a victim impact statement to the court using one or more of the following methods:

a. A victim may file a signed victim impact statement with the county attorney, and a filed impact statement shall be included in the presentence investigation report. If a presentence investigation report is not ordered by the court, a filed victim impact statement shall be provided to the court prior to sentencing. Unless requested otherwise by the victim, the victim impact statement shall be presented at the sentencing hearing in the presence of the defendant, and at any hearing regarding reconsideration of sentence. The victim impact statement may be presented by the victim or the victim's attorney or designated representative.

b. A victim may orally present a victim impact statement at the sentencing hearing, in the presence of the defendant, and at any hearing regarding reconsideration of sentence.

c. A victim may make a video recording of a statement or, if available, may make a statement from a remote location through a video monitor at the sentencing hearing, in the presence of the defendant, and at any hearing regarding reconsideration of sentence.

d. A victim may make an audio recording of the statement or appear by audio via a speakerphone to make a statement, to be delivered in court in the presence of the defendant, and at any hearing regarding reconsideration of sentence.

e. If the victim is unable to make an oral or written statement because of the victim's age, or mental, emotional, or physical incapacity, the victim's attorney or a designated representative shall have the opportunity to make a statement on behalf of the victim.

2. A victim impact statement shall include the identification of the victim of the offense, and may include the following:

a. Itemization of any economic loss suffered by the victim as a result of the offense. For purposes of this paragraph, a pecuniary damages statement prepared by a county attorney pursuant to section 910.3 may serve as the itemization of economic loss.

b. Identification of any physical injury suffered by the victim as a result of the offense with detail as to its seriousness and permanence.

c. Description of any change in the victim's personal welfare or familial relationships as a re-

sult of the offense.

d. Description of any request for psychological services initiated by the victim or the victim's family as a result of the offense.

e. Any other information related to the impact of the offense upon the victim.

3. A victim shall not be placed under oath and subjected to cross-examination at the sentencing hearing.

4. Nothing in this section shall be construed to affect the inherent power of the court to regulate the conduct of persons present in the courtroom.

98 Acts, ch 1090, §17, 84; 2002 Acts, ch 1039, §2 – 4

Subsection 1, paragraph a amended

Subsection 1, NEW paragraphs c and d and former paragraph c redesignated as e

NEW subsections 3 and 4

915.22 Civil injunction to restrain harassment or intimidation of victims or witnesses.

1. Upon application, the court shall issue a temporary restraining order prohibiting the harassment or intimidation of a victim or witness in a criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment or intimidation of an identified victim or witness in a criminal case exists or that the order is necessary to prevent and restrain an offense under this subchapter.

a. A temporary restraining order may be issued under this subsection without written or oral notice to the adverse party or the party's attorney in a civil action under this section or in a criminal case if the court finds, upon written certification of facts, that the notice should not be required and that there is a reasonable probability that the party will prevail on the merits. The temporary restraining order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the act or acts being restrained.

b. A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed immediately in the office of the clerk of the district court issuing the order.

c. A temporary restraining order issued under this section shall expire at such time as the court directs, not to exceed ten days from issuance. The court, for good cause shown before expiration of the order, may extend the expiration date of the order for up to ten days, or for a longer period agreed to by the adverse party.

d. When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. If the party does not proceed with the application for a protective order when the motion is heard, the court shall dissolve the temporary restraining order.

e. If, after two days' notice to the party or after a shorter notice as the court prescribes, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine the motion as expeditiously as possible.

2. Upon motion of the party, the court shall issue a protective order prohibiting the harassment or intimidation of a victim or witness in a criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment or intimidation of an identified victim or witness in a criminal case exists or that the order is necessary to prevent and restrain an offense under this chapter.

a. At the hearing, any adverse party named in the complaint has the right to present evidence and cross-examine witnesses.

b. A protective order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the act or acts being restrained.

c. The court shall set the duration of the protective order for the period it determines is necessary to prevent the harassment or intimidation of the victim or witness, but the duration shall not be set for a period in excess of one year from the date of the issuance of the order. The party, at any time within ninety days before the expiration of the order, may apply for a new protective order under this section.

3. Violation of a restraining or protective order issued under this section constitutes contempt of court and may be punished by contempt proceedings.

4. An application may be made pursuant to this section in a criminal case, and if made, a district associate judge or magistrate having jurisdiction of the highest offense charged in the criminal case or a district judge shall have jurisdiction to enter an order under this section.

5. The clerk of the district court shall provide notice and copies of restraining orders issued pursuant to this section in a criminal case involving an alleged violation of section 708.2A to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

98 Acts, ch 1090, §18, 84

915.23 Employment discrimination against witnesses prohibited.

1. An employer shall not discharge an employee, or take or fail to take action regarding an employee's promotion or proposed promotion, or take action to reduce an employee's wages or benefits

for actual time worked, due to the service of an employee as a witness in a criminal proceeding.

2. An employer who violates this section commits a simple misdemeanor.

3. An employee whose employer violates this section shall also be entitled to recover damages from the employer. Damages recoverable under this section include, but are not limited to, actual damages, court costs, and reasonable attorney fees.

4. The employee may also petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment.

98 Acts, ch 1090, §19, 84; 99 Acts, ch 96, §52

SUBCHAPTER II

VICTIMS OF JUVENILES

915.24 Notification of victim of juvenile by juvenile court officer.

1. If a complaint is filed alleging that a child has committed a delinquent act, the alleged victim, as defined in section 915.10, has and a juvenile court officer shall notify the alleged victim of the following rights:

a. To be notified of the names and addresses of the child and of the child's custodial parent or guardian.

b. To be notified of the specific charge or charges filed in a petition resulting from the complaint and regarding any dispositional orders or informal adjustments.

c. To be informed of the person's rights to restitution.

d. To be notified of the person's right to offer a written victim impact statement and to orally present the victim impact statement.

e. To be informed of the availability of assistance through the crime victim compensation program.

2. The juvenile court and the county attorney shall coordinate efforts so as to prevent duplication of notification under this section and section 915.13.

98 Acts, ch 1090, §21, 84; 99 Acts, ch 96, §53

915.25 Right to review complaint against juvenile.

1. A complaint filed with the court or its designee pursuant to chapter 232 which alleges that a child who is at least ten years of age has committed a delinquent act, which if committed by an adult would be a public offense, is a public record and shall not be confidential under section 232.147.

2. The court, its designee, or law enforcement officials are authorized to release the complaint, including the identity of the child named in the complaint.

98 Acts, ch 1090, §22, 84

915.26 Victim impact statement by victim of juvenile.

1. If a complaint is filed under section 232.28, alleging a child has committed a delinquent act, the alleged victim may file a signed victim impact statement with the juvenile court.

2. The victim impact statement shall be considered by the court and the juvenile court officer handling the complaint in any proceeding or informal adjustment associated with the complaint.

3. Unless the matter is disposed of at the preliminary inquiry conducted by the intake officer under section 232.28, the victim may also be allowed to orally present the victim impact statement.

98 Acts, ch 1090, §23, 84

915.27 Sexual assault by juvenile.

A victim of a sexual assault by a juvenile adjudicated to have committed the assault is entitled to the rights listed in sections 915.40 through 915.44.

98 Acts, ch 1090, §24, 84

915.28 Restitution for delinquent acts of juvenile.

1. If a judge of a juvenile court finds that a juvenile has committed a delinquent act and requires the juvenile to compensate the victim of that act for losses due to the delinquent act of the juvenile, the juvenile shall make such restitution according to a schedule established by the judge from funds earned by the juvenile pursuant to employment engaged in by the juvenile at the time of disposition.

2. If a juvenile enters into an informal adjustment agreement pursuant to section 232.29 to make such restitution, the juvenile shall make such restitution according to a schedule which shall be a part of the informal adjustment agreement.

3. The restitution shall be made under the direction of a juvenile court officer working under the direction of the juvenile court.

a. In those counties where the county maintains an office to provide juvenile victim restitution services, the juvenile court officer may use that office's services.

b. If the juvenile is not employed, the juvenile's juvenile court officer shall make a reasonable effort to find private or other public employment for the juvenile.

c. If the juvenile offender does not have employment at the time of disposition and private or other public employment is not obtained in spite of the efforts of the juvenile's juvenile court officer, the judge may direct the juvenile offender to perform work pursuant to section 232.52, subsection 2, paragraph *"a"*, and arrange for compensation of the juvenile in the manner provided for under chapter 232A.

98 Acts, ch 1090, §25, 84

915.29 Notification of victim of juvenile by department of human services.

The department of human services shall notify a registered victim regarding a juvenile adjudicated delinquent for a violent crime, committed to the custody of the department of human services, and placed at the state training school at Eldora or Toledo, of the following:

1. The date on which the juvenile is expected to be temporarily released from the custody of the department of human services, and whether the juvenile is expected to return to the community where the registered victim resides.
2. The juvenile's escape from custody.
3. The recommendation by the department to consider the juvenile for release or placement.
4. The date on which the juvenile is expected to be released from a facility pursuant to a plan of placement.

98 Acts, ch 1090, §26, 84

915.30 through 915.34 Reserved.

SUBCHAPTER III

PROTECTIONS FOR CHILDREN AND OTHER SPECIAL VICTIMS

915.35 Child victim services.

1. As used in this section, *"victim"* means a child under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony.
2. A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services to a victim may provide the services without the prior consent or knowledge of the victim's parents or guardians.
3. Such a professional shall notify the victim if the professional is required to report an incidence of child abuse involving the victim pursuant to section 232.69.
4. To the greatest extent possible, a multidisciplinary team involving the county attorney, law enforcement personnel, community-based child advocacy organizations, and personnel of the department of human services shall be utilized in investigating and prosecuting cases involving a violation of chapter 709 or 726 or other crime committed upon a victim as defined in subsection 1. A multidisciplinary team may also consult with or include juvenile court officers, medical and mental health professionals, court-appointed special advocates, guardians ad litem, and members of a multidisciplinary team created by the department of human services for child abuse investigations. The department of justice may provide training and other assistance to support the activities of a multidisciplinary team referred to in this subsection.

98 Acts, ch 1090, §28, 84

915.36 Protection of child victim's privacy.

1. Prior to an arrest or the filing of an information or indictment, whichever occurs first, against a person charged with a violation of chapter 709, section 726.2, or section 728.12, committed with or on a child, as defined in section 702.5, the identity of the child or any information reasonably likely to disclose the identity of the child shall not be released to the public by any public employee except as authorized by the court of jurisdiction.
2. In order to protect the welfare of the child, the name of the child and identifying biographical information shall not appear on the information or indictment or any other public record. Instead, a nondescriptive designation shall appear on all public records. The nonpublic records containing the child's name and identifying biographical information shall be kept by the court. This subsection does not apply to the release of information to an accused or accused's counsel; however, the use or release of this information by the accused or accused's counsel for purposes other than the preparation of defense constitutes contempt.
3. A person who willfully violates this section or who willfully neglects or refuses to obey a court order made pursuant to this section commits contempt.
4. A release of information in violation of this section does not bar prosecution or provide grounds for dismissal of charges.

98 Acts, ch 1090, §29, 84

915.37 Guardian ad litem for prosecuting child witnesses.

A prosecuting witness who is a child, as defined in section 702.5, in a case involving a violation of chapter 709 or section 726.2, 726.3, 726.6, or 728.12, is entitled to have the witness's interests represented by a guardian ad litem at all stages of the proceedings arising from such violation. The guardian ad litem shall be a practicing attorney and shall be designated by the court after due consideration is given to the desires and needs of the child and the compatibility of the child and the child's interests with the prospective guardian ad litem. If a guardian ad litem has previously been appointed for the child in a proceeding under chapter 232 or a proceeding in which the juvenile court has waived jurisdiction under section 232.45, the court shall appoint the same guardian ad litem under this section. The guardian ad litem shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child but shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. However, the guardian ad litem shall

file reports to the court as required by the court. If a prosecuting witness is fourteen, fifteen, sixteen, or seventeen years of age, and would be entitled to the appointment of a guardian ad litem if the prosecuting witness were a child, the court may appoint a guardian ad litem if the requirements for guardians ad litem in this section are met, and the guardian ad litem agrees to participate without compensation.

References in this section to a guardian ad litem shall be interpreted to include references to a court-appointed special advocate as defined in section 232.2, subsection 9.

98 Acts, ch 1090, §30, 84

915.38 Televised, videotaped, and recorded evidence — limited court testimony — minors and others.

1. Upon its own motion or upon motion of any party, a court may protect a minor, as defined in section 599.1, from trauma caused by testifying in the physical presence of the defendant where it would impair the minor's ability to communicate, by ordering that the testimony of the minor be taken in a room other than the courtroom and be televised by closed-circuit equipment for viewing in the courtroom. However, such an order shall be entered only upon a specific finding by the court that such measures are necessary to protect the minor from trauma. Only the judge, prosecuting attorney, defendant's attorney, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the minor may be present in the room with the minor during the minor's testimony. The judge shall inform the minor that the defendant will not be present in the room in which the minor will be testifying but that the defendant will be viewing the minor's testimony through closed-circuit television.

During the minor's testimony the defendant shall remain in the courtroom and shall be allowed to communicate with the defendant's counsel in the room where the minor is testifying by an appropriate electronic method.

In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

2. The court may, upon its own motion or upon motion of a party, order that the testimony of a minor, as defined in section 599.1, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 2.13(2)(b). In addition to requiring that such testimony be recorded by stenographic means, the court may on motion and hearing, and upon a finding that the minor is unavailable as provided in rule of evidence 5.804(a), order the videotaping of the minor's testimony for viewing in the courtroom by the court. The videotaping shall comply with the provisions of rule of criminal procedure 2.13(2)(b), and shall be admissible as evidence in the trial. In addition, upon a finding of necessity, the court may allow the testimony of a victim or witness with a mental illness, mental retardation, or other developmental disability to be taken as provided in this subsection, regardless of the age of the victim or witness.

3. The court may upon motion of a party admit into evidence the recorded statements of a child, as defined in section 702.5, describing sexual contact performed with or on the child, not otherwise admissible in evidence by statute or court rule if the court determines that the recorded statements substantially comport with the requirements for admission under rule of evidence 5.803(24) or 5.804(b)(5).

4. A court may, upon its own motion or upon the motion of a party, order the court testimony of a child to be limited in duration in accordance with the developmental maturity of the child. The court may consider or hear expert testimony in order to determine the appropriate limitation on the duration of a child's testimony. However, the court shall, upon motion, limit the duration of a child's uninterrupted testimony to one hour, at which time the court shall allow the child to rest before continuing to testify.

98 Acts, ch 1090, §31, 84

915.39 Reserved.

SUBCHAPTER IV

VICTIMS OF SEXUAL ASSAULT

See also chapter 141A

915.40 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"AIDS"* means acquired immune deficiency syndrome as defined by the centers for disease control of the United States department of health and human services.

2. *"Alleged offender"* means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as the result of actions that would constitute a sexual assault.

3. *"Authorized representative"* means an individual authorized by the victim to request an HIV-related test of a convicted or alleged offender who is any of the following:

a. The parent, guardian, or custodian of the victim if the victim is a minor.

b. The physician of the victim.

c. The victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results.

d. The victim's spouse.

e. The victim's legal counsel.

4. *"Convicted offender"* means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault.

5. *"Department"* means the Iowa department of public health.

6. *"Division"* means the crime victims assistance division of the office of the attorney general.

7. *"HIV"* means the human immunodeficiency virus identified as the causative agent of AIDS.

8. *"HIV-related test"* means a test for the antibody or antigen to HIV.

9. *"Petitioner"* means a person who is the victim of a sexual assault which resulted in alleged significant exposure or the parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV-related test.

10. *"Sexual assault"* means sexual abuse as defined in section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted or an alleged offender to be deemed a significant exposure.

11. *"Significant exposure"* means contact of the victim's ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration of the convicted or alleged offender. *"Significant exposure"* is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender's penis into the victim's vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

12. *"Victim"* means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV-related test. *"Victim"* includes an alleged victim.

13. *"Victim counselor"* means a person who is engaged in a crime victim center as defined in section 915.20A, who is certified as a counselor by the crime victim center, and who has completed at least twenty hours of training provided by the Iowa coalition against sexual assault or a similar agency.

98 Acts, ch 1087, §3, 4; 98 Acts, ch 1090, §33, 84; 98 Acts, ch 1128, §2; 99 Acts, ch 181, §19

915.41 Medical examination costs.

The cost of a medical examination of a victim for the purpose of gathering evidence and the cost of treatment of a victim for the purpose of preventing venereal disease shall be paid from the fund established in section 915.94.

98 Acts, ch 1090, §34, 84; 99 Acts, ch 114, §48

915.42 Right to HIV-testing of convicted or alleged assailant.

1. Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim's interest in all proceedings under this subchapter.

2. If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV-related test, provided that all of the following conditions are met:

a. The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to section 915.40.

b. The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender to the testing.

c. Written informed consent was not provided by the convicted offender.

3. If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with chapter 808, for the purpose of requiring the alleged offender to submit to an HIV-related test, if all of the following conditions are met:

a. The application states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to section 915.40 and states the factual basis for the belief that a significant exposure exists.

b. The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

c. Written informed consent was not provided by the alleged offender.

4. Upon receipt of the petition or application filed under subsection 2 or 3, the court shall:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim to provide counseling regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the convicted or alleged offender.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted or alleged offender who is the subject of the proceeding, in accordance with the rules of civil procedure relating to the service of original notice, or if the convicted or alleged offender is repre-

sented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

5. *a.* A hearing under this section shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa rules of evidence. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent or for which the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

c. The victim may testify at the hearing but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceedings shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings unless waived by the parties.

6. Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV-related test only if the petitioner or victim proves all of the following by a preponderance of the evidence:

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner or victim, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

c. Written informed consent was not provided by the convicted or alleged offender.

7. A convicted offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

98 Acts, ch 1087, §5; 98 Acts, ch 1090, §35, 84; 98 Acts, ch 1128, §2; 99 Acts, ch 114, §49, 50; 99 Acts, ch 181, §20

915.43 Testing, reporting, and counseling — penalties.

1. The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under this subchapter shall disclose the results of the test to the convicted or alleged offender, and to the victim counselor or a person requested by the victim to provide counseling regarding the HIV-related test and results who shall disclose the results to the petitioner.

2. All testing under this chapter shall be accompanied by counseling as required under section 141A.7.

3. Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of this subchapter.

4. Results of a test performed under this subchapter, except as provided in subsection 13, shall be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim, the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results, the physician of the victim if requested by the victim, the parent, guardian, or custodian of the victim, if the victim is a minor, and the county attorney who filed the petition for HIV-related testing under this chapter, who may use the results to file charges of criminal transmission of HIV under chapter 709C. Results of a test performed under this subchapter shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under this subchapter is subject to the confidentiality provisions of section 141A.9, and shall not disclose the results to another person except as authorized by section 141A.9, subsection 1, paragraph *"m"*.

5. If testing is ordered under this subchapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who or-

dered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the test conducted pursuant to this subsection shall be released only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results who shall disclose the results to the petitioner, the physician of the victim, if requested by the victim, and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV under chapter 709C.

6. The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

7. The fact that an HIV-related test was performed under this subchapter and the results of the test shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

8. The fact that an HIV-related test was performed under this subchapter and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

9. If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in this subchapter, legal protections which attach to such testing shall be the same as those which attach to an initial test under this subchapter, and the rights to a predisclosure hearing and to appeal provided under section 915.42 shall apply.

10. HIV-related testing required under this subchapter shall be conducted by the state hygienic laboratory.

11. Notwithstanding the provisions of this subchapter requiring initial testing, if a petition is filed with the court under section 915.42 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted or alleged offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted or alleged offender, in accordance with this subchapter.

12. In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

13. In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under this subchapter, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

14. A person to whom disclosure of a convicted or alleged offender's HIV-related test results is authorized under this subchapter shall not disclose the results to any other person for whom disclosure is not authorized under this subchapter. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subsection is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this subchapter. Proceedings maintained under this subsection shall provide for the anonymity of the test subject and all documentation shall be maintained in a confidential manner.

98 Acts, ch 1087, §6; 98 Acts, ch 1090, §36, 84; 98 Acts, ch 1128, §2; 99 Acts, ch 114, §51; 99 Acts, ch 181, §21

915.44 Polygraph examinations of victims or witnesses — limitations.

1. A criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual assault or claiming to be a witness regarding the sexual assault of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter.

2. An agency wishing to perform a polygraph examination of a person claiming to be a victim or witness of sexual assault shall inform the person of the following:

a. That taking the polygraph examination is voluntary.

b. That the results of the examination are not admissible in court.

c. That the person's decision to submit or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.

3. An agency which declines to investigate an alleged case of sexual assault following a decision by a person claiming to be a victim not to submit to a polygraph examination shall provide to that person, in writing, the reasons why the agency did not pursue the investigation at the request of the person.

98 Acts, ch 1090, §37, 84

915.45 Notice to victims of discharge of persons committed.

In addition to any other information required to be released under chapter 229A, prior to the dis-

charge of a person committed under chapter 229A, the director of human services shall give written notice of the person's discharge to any living victim of the person's activities or crime whose address is known to the director or, if the victim is deceased, to the victim's family, if the family's address is known. Failure to notify shall not be a reason for postponement of discharge. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this action.

98 Acts, ch 1171, §13

915.46 through 915.49 Reserved.

SUBCHAPTER V

VICTIMS OF DOMESTIC ABUSE

915.50 General rights of domestic abuse victims.

In addition to other victim rights provided in this chapter, victims of domestic abuse shall have the following rights:

1. The right to file a pro se petition for relief from domestic abuse in the district court, pursuant to sections 236.3 through 236.10.

2. The right, pursuant to section 236.12, for law enforcement to remain on the scene, to assist the victim in leaving the scene, to assist the victim in obtaining transportation to medical care, and to provide the person with a written statement of victim rights and information about domestic abuse shelters, support services, and crisis lines.

3. The right to receive a criminal no-contact order upon a finding of probable cause, pursuant to section 236.14.

98 Acts, ch 1090, §39, 84; 99 Acts, ch 114, §52

915.51 through 915.79 Reserved.

SUBCHAPTER VI

VICTIM COMPENSATION

915.80 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Compensation"* means moneys awarded by the department as authorized in this subchapter.

2. *"Crime"* means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony or misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. *"Crime"* does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section 321.261, 321.277, 321J.2, 462A.14, or 707.6A, or when the intention is to cause personal injury or death. A license revocation under section 321J.9 or 321J.12 shall be considered by the department as evidence of a violation of section 321J.2 for the purposes of this subchapter.

3. *"Department"* means the department of justice.

4. *"Dependent"* means a person wholly or partially dependent upon a victim for care or support and includes a child of the victim born after the victim's death.

5. *"Secondary victim"* means the victim's spouse, children, parents, and siblings, and any person who resides in the victim's household at the time of the crime or at the time of the discovery of the crime. *"Secondary victim"* does not include persons who are the survivors of a victim who dies as a result of a crime.

6. *"Victim"* means a person who suffers personal injury or death as a result of any of the following:

a. A crime.

b. The good faith effort of a person attempting to prevent a crime.

c. The good faith effort of a person to apprehend a person suspected of committing a crime.

98 Acts, ch 1090, §41, 84

915.81 Award of compensation.

The department shall award compensation authorized by this subchapter if the department is satisfied that the requirements for compensation have been met.

98 Acts, ch 1090, §42, 84

915.82 Crime victim assistance board.

1. A crime victim assistance board is established, and shall consist of the following members to be appointed pursuant to rules adopted by the department:

a. A county attorney or assistant county attorney.

b. Two persons engaged full-time in law enforcement.

c. A public defender or an attorney practicing primarily in criminal defense.

d. A hospital medical staff person involved with emergency services.

e. Two public members who have received victim services.

f. A victim service provider.

g. A person licensed pursuant to chapter 154B or 154C.

h. A person representing the elderly.

Board members shall be reimbursed for expenses actually and necessarily incurred in the discharge of their duties.

2. The board shall adopt rules pursuant to chapter 17A relating to program policies and pro-

cedures.

3. A victim aggrieved by the denial or disposition of the victim's claim may appeal to the district court within thirty days of receipt of the board's decision.

98 Acts, ch 1090, §43, 84

915.83 Duties of department.

The department shall:

1. Adopt rules pursuant to chapter 17A relating to the administration of the crime victim compensation program, including the filing of claims pursuant to the program, and the hearing and disposition of the claims.

2. Hear claims, determine the results relating to claims, and reinvestigate and reopen cases as necessary.

3. Publicize through the department, county sheriff departments, municipal police departments, county attorney offices, and other public or private agencies, the existence of the crime victim compensation program, including the procedures for obtaining compensation under the program.

4. Request from the department of human services, the department of workforce development and its division of workers' compensation, the department of public safety, the county sheriff departments, the municipal police departments, the county attorneys, or other public authorities or agencies reasonable assistance or data necessary to administer the crime victim compensation program.

5. Require medical examinations of victims as needed. The victim shall be responsible for the cost of the medical examination if compensation is made. The department shall be responsible for the cost of the medical examination from funds appropriated to the department for the crime victim compensation program if compensation is not made to the victim unless the cost of the examination is payable as a benefit under an insurance policy or subscriber contract covering the victim or the cost is payable by a health maintenance organization.

6. Receive moneys collected pursuant to section 904.702 for the purpose of compliance with Pub. L. No. 98-473.

98 Acts, ch 1061, §10; 98 Acts, ch 1090, §44, 84; 98 Acts, ch 1128, §2

915.84 Application for compensation.

1. To claim compensation under the crime victim compensation program, a person shall apply in writing on a form prescribed by the department and file the application with the department within two years after the date of the crime, the discovery of the crime, or the date of death of the victim. The department may waive the time limitation if good cause is shown.

2. A person is not eligible for compensation unless the crime was reported to the local police department or county sheriff department within seventy-two hours of its occurrence. If the crime cannot reasonably be reported within that time period, the crime shall have been reported within seventy-two hours of the time a report can reasonably be made. The department may waive this requirement if good cause is shown.

3. Notwithstanding subsection 2, a victim under the age of eighteen or dependent adult as defined in section 235B.2 who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony is not required to report the crime to the local police department or county sheriff department to be eligible for compensation if the crime was allegedly committed upon a child by a person responsible for the care of a child, as defined in section 232.68, subsection 7, or upon a dependent adult by a caretaker as defined in section 235B.2, and was reported to an employee of the department of human services and the employee verifies the report to the department.

4. When immediate or short-term medical services or mental health services are provided to a victim under section 915.35, the department of human services shall file the claim for compensation as provided in subsection 3 for the victim.

5. When immediate or short-term medical services to a victim are provided pursuant to section 915.35 by a professional licensed or certified by the state to provide such services, the professional shall file the claim for compensation, unless the department of human services is required to file the claim under this section. The requirement to report the crime to the local police department or county sheriff department under subsection 2 does not apply to this subsection.

6. The victim shall cooperate with reasonable requests by the appropriate law enforcement agencies in the investigation or prosecution of the crime.

98 Acts, ch 1090, §45, 84; 99 Acts, ch 10, §1

915.85 Compensation payable.

The department may order the payment of compensation:

1. To or for the benefit of the person filing the claim.

2. To a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of personal injury to the victim.

3. To or for the benefit of one or more dependents of the victim, in the case of death of the victim. If two or more dependents are entitled to compensation, the compensation may be apportioned by the department as the department determines to be fair and equitable among the dependents.

4. To a victim of an act committed outside this state who is a resident of this state, if the act would be compensable had it occurred within this state

and the act occurred in a state that does not have an eligible crime victim compensation program, as defined in the federal Victims of Crime Act of 1984, Pub. L. No. 98-473, section 1403(b), as amended and codified in 42 U.S.C. § 10602(b).

5. To or for the benefit of a resident of this state who is a victim of an act of terrorism as defined in 18 U.S.C. § 2331, which occurred outside of the United States.

98 Acts, ch 1090, §46, 84

915.86 Computation of compensation.

The department shall award compensation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed fifteen thousand dollars. Reasonable charges incurred for mental health care not to exceed three thousand dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work or counseling and guidance, or a victim counselor as defined in section 915.20A.

2. Loss of income from work the victim would have performed and for which the victim would have received remuneration if the victim had not been injured, not to exceed six thousand dollars.

3. Loss of income from work that the victim's parent or caretaker would have performed and for which the victim's parent or caretaker would have received remuneration when the victim's parent or caretaker accompanies the victim to medical and counseling services, not to exceed one thousand dollars.

4. Loss of income from work that the victim, the victim's parent or caretaker, or the survivor of a homicide victim as described in subsection 10 would have performed and for which that person would have received remuneration, where the loss of income is a direct result of cooperation with the investigation and prosecution of the crime or attendance at criminal justice proceedings including the trial and sentencing in the case, not to exceed one thousand dollars.

5. Reasonable replacement value of clothing that is held for evidentiary purposes not to exceed one hundred dollars.

6. Reasonable funeral and burial expenses not to exceed seven thousand five hundred dollars.

7. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed two thousand dollars per dependent.

8. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 915.20A, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 147 or 150A. The allowable charges under this subsection shall not exceed three thousand dollars per person.

9. In the event of a homicide, reasonable charges incurred for health care for the victim's spouse; child, foster child, stepchild, son-in-law, or daughter-in-law; parent, foster parent, or stepparent; sibling, foster sibling, stepsibling, brother-in-law, or sister-in-law; grandparent; grandchild; aunt, uncle, or first cousin; legal ward; or person cohabiting with the victim, not to exceed three thousand dollars per survivor.

10. In the event of a homicide, loss of income from work that, but for the death of the victim, would have been earned by the victim's spouse; child, foster child, stepchild, son-in-law, or daughter-in-law; parent, foster parent, or stepparent; sibling, foster sibling, stepsibling, brother-in-law, or sister-in-law; grandparent; grandchild; aunt, uncle, or first cousin; legal ward; or person cohabiting with the victim, not to exceed six thousand dollars.

11. Reasonable expenses incurred for cleaning the scene of a crime, if the scene is a residence, not to exceed one thousand dollars.

12. Reasonable charges incurred for mental health care for secondary victims which include the services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work, counseling, or a related field, a victim counselor as defined in section 915.20A, or a psychiatrist licensed under chapter 147, 148, or 150A. The allowable charges under this subsection shall not exceed one thousand dollars per secondary victim.

98 Acts, ch 1090, §47, 84; 98 Acts, ch 1128, §1, 2; 99 Acts, ch 10, §2; 2000 Acts, ch 1064 §1, 2

915.87 Reductions and disqualifications.

Compensation is subject to reduction and disqualification as follows:

1. Compensation shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:

a. From or on behalf of a person who committed the crime or who is otherwise responsible for damages resulting from the crime.

b. From an insurance payment or program, including but not limited to workers' compensation or unemployment compensation.

c. From public funds.

d. As an emergency award under section 915.91.

2. Compensation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following:

a. Consent, provocation, or incitement by the

victim.

b. The victim assisting, attempting, or committing a criminal act.

98 Acts, ch 1090, §48, 84

915.88 Compensation when money insufficient.

Notwithstanding this subchapter, a victim otherwise qualified for compensation under the crime victim compensation program is not entitled to the compensation when there is insufficient money from the appropriation for the program to pay the compensation.

98 Acts, ch 1090, §49, 84

915.89 Erroneous or fraudulent payment — penalty.

1. If a payment or overpayment of compensation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipient, the recipient is liable for repayment of the compensation. The department may waive, decrease, or adjust the amount of the repayment of the compensation. However, if the department does not notify the recipient of the erroneous payment or overpayment within one year of the date the compensation was made, the recipient is not liable for the repayment of the compensation.

2. If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment of the compensation.

98 Acts, ch 1090, §50, 84

915.90 Release of information.

A person in possession or control of investigative or other information pertaining to an alleged crime or a victim filing for compensation shall allow the inspection and reproduction of the information by the department upon the request of the department, to be used only in the administration and enforcement of the crime victim compensation program. Information and records which are confidential under section 22.7 and information or records received from the confidential information or records remain confidential under this section.

A person does not incur legal liability by reason of releasing information to the department as required under this section.

98 Acts, ch 1090, §51, 84

915.91 Emergency payment compensation.

If the department determines that compensation may be made and that undue hardship may result to the person if partial immediate payment is not made, the department may order emergency compensation to be paid to the person, not to exceed five hundred dollars.

98 Acts, ch 1090, §52, 84

915.92 Right of action against perpetrator — subrogation.

A right of legal action by the victim against a person who has committed a crime is not lost as a consequence of a person receiving compensation under the crime victim compensation program. If a person receiving compensation under the program seeks indemnification which would reduce the compensation under section 915.87, subsection 1, the department is subrogated to the recovery to the extent of payments by the department to or on behalf of the person. The department has a right of legal action against a person who has committed a crime resulting in payment of compensation by the department to the extent of the compensation payment. However, legal action by the department does not affect the right of a person to seek further relief in other legal actions.

98 Acts, ch 1090, §53, 84

915.93 Rulemaking.

The department shall adopt rules pursuant to chapter 17A to implement the procedures for reparation payments with respect to section 915.35 and section 915.84, subsections 3, 4, and 5.

98 Acts, ch 1090, §54, 84

915.94 Victim compensation fund.

A victim compensation fund is established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the department and dedicated to and used for the purposes of section 915.41 and this subchapter. In addition, the department may use moneys from the fund for the purpose of the department's prosecutor-based victim service coordination, including the duties defined in sections 910.3 and 910.6 and this chapter, and for the award of funds to programs that provide services and support to victims of domestic abuse or sexual assault as provided in chapter 236. The department may also use up to one hundred thousand dollars from the fund to provide training for victim service providers. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

98 Acts, ch 1090, §55, 84; 2001 Acts, ch 84, §1

915.95 through 915.99 Reserved.

SUBCHAPTER VII

VICTIM RESTITUTION

915.100 Victim restitution rights.

1. Victims, as defined in section 910.1, have the right to recover pecuniary damages, as defined

in section 910.1.

2. The right to restitution includes the following:

a. In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to victims of the offender's criminal activities.

b. A judge may require a juvenile who has been found to have committed a delinquent act to compensate the victim of that act for losses due to the act.

c. In cases where the act committed by an offender causes the death of another person, in addition to the amount ordered for payment of the victim's pecuniary damages, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate, pursuant to the provisions of section 910.3B.

d. The clerk of court shall forward a copy of the plan of payment or the modified plan of payment to the victim or victims.

e. Victims shall be paid in full pursuant to an order of restitution, before fines, penalties, surcharges, crime victim compensation program reimbursement, public agency reimbursement, court costs, correctional fees, court-appointed attorney fees, expenses of a public defender, or contributions to local anticrime organizations are paid.

f. A judgment of restitution may be enforced by a victim entitled under the order to receive restitution, or by a deceased victim's estate, in the same manner as a civil judgment.

g. A victim in a criminal proceeding who is entitled to restitution under a court order may file a restitution lien.

h. If a convicted felon or the representative of a convicted felon receives or is owed any profit which is realized as a result of the commission of the crime, and the attorney general brings an action to recover such profits, the victim may be entitled to funds held in escrow, pursuant to the provisions of section 910.15.

i. The right to victim restitution for the pecuniary damages incurred by a victim as the result of a crime does not limit or impair the right of the victim to sue and recover damages from the offender in a civil action.

98 Acts, ch 1090, §57, 84; 99 Acts, ch 10, §3; 99 Acts, ch 114, §53

MORTALITY TABLES

The following tables are published for those who may have use for appropriate life expectancy figures. The 1980 Commissioners Standard Ordinary Mortality Tables are the legal standard for the reserves and nonforfeiture benefits of currently issued ordinary life insurance policies (see sections 508.36 and 508.37).

1980 C.S.O. MORTALITY TABLES

Age	Male Life Expectation	Female Life Expectation	Age	Male Life Expectation	Female Life Expectation
0	70.83	75.83	50	25.36	29.53
1	70.13	75.04	51	24.52	28.67
2	69.20	74.11	52	23.70	27.82
3	68.27	73.17	53	22.89	26.98
4	67.34	72.23	54	22.08	26.14
5	66.40	71.28	55	21.29	25.31
6	65.46	70.34	56	20.51	24.49
7	64.52	69.39	57	19.74	23.67
8	63.57	68.44	58	18.99	22.86
9	62.62	67.48	59	18.24	22.05
10	61.66	66.53	60	17.51	21.25
11	60.71	65.58	61	16.79	20.44
12	59.75	64.62	62	16.08	19.65
13	58.80	63.67	63	15.38	18.86
14	57.86	62.71	64	14.70	18.08
15	56.93	61.76	65	14.04	17.32
16	56.00	60.82	66	13.39	16.57
17	55.09	59.87	67	12.76	15.83
18	54.18	58.93	68	12.14	15.10
19	53.27	57.98	69	11.54	14.38
20	52.37	57.04	70	10.96	13.67
21	51.47	56.10	71	10.39	12.97
22	50.57	55.16	72	9.84	12.28
23	49.66	54.22	73	9.30	11.60
24	48.75	53.28	74	8.79	10.95
25	47.84	52.34	75	8.31	10.32
26	46.93	51.40	76	7.84	9.71
27	46.01	50.46	77	7.40	9.12
28	45.09	49.52	78	6.97	8.55
29	44.16	48.59	79	6.57	8.01
30	43.24	47.65	80	6.18	7.48
31	42.31	46.71	81	5.80	6.98
32	41.38	45.78	82	5.44	6.49
33	40.46	44.84	83	5.09	6.03
34	39.54	43.91	84	4.77	5.59
35	38.61	42.98	85	4.46	5.18
36	37.69	42.05	86	4.18	4.80
37	36.78	41.12	87	3.91	4.43
38	35.87	40.20	88	3.66	4.09
39	34.96	39.28	89	3.41	3.77
40	34.05	38.36	90	3.18	3.45
41	33.16	37.46	91	2.94	3.15
42	32.26	36.55	92	2.70	2.85
43	31.38	35.66	93	2.44	2.55
44	30.50	34.77	94	2.17	2.24
45	29.62	33.88	95	1.87	1.91
46	28.76	33.00	96	1.54	1.56
47	27.90	32.12	97	1.20	1.21
48	27.04	31.25	98	.84	.84
49	26.20	30.39	99	.50	.50

DEPARTMENT OF REVENUE AND FINANCE MORTALITY TABLES

TABLES FOR LIFE ESTATES AND REMAINDERS

(for estates of decedents dying on or after January 1, 1986)

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING
50% MALE–50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

The two factors across the page equal one hundred percent. Multiply the corpus of the estate by the first factor to obtain value of the life estate.

Use the second factor to obtain the remainder interest if the tax is to be paid at the time of probate, or to determine if there would be any tax due.

Age of Life Tenant	Life Estate	Remainder
0	.91904	.08096
1	.91919	.08081
2	.91689	.08311
3	.91443	.08557
4	.91186	.08814
5	.90914	.09086
6	.90629	.09371
7	.90329	.09671
8	.90014	.09986
9	.89683	.10317
10	.89338	.10662
11	.88977	.11023
12	.88603	.11397
13	.88219	.11781
14	.87828	.12172
15	.87429	.12571
16	.87027	.12973
17	.86617	.13383
18	.86200	.13800
19	.85773	.14227
20	.85333	.14667
21	.84878	.15122
22	.84404	.15596
23	.83912	.16088
24	.83399	.16601
25	.82865	.17135
26	.82306	.17694
27	.81724	.18276
28	.81117	.18883
29	.80487	.19513
30	.79833	.20167
31	.79155	.20845
32	.78451	.21549
33	.77723	.22277
34	.76970	.23030
35	.76192	.23808
36	.75389	.24611
37	.74562	.25438
38	.73710	.26290
39	.72836	.27164
40	.71940	.28060
41	.71022	.28978
42	.70083	.29917
43	.69122	.30878
44	.68138	.31862
45	.67131	.32869
46	.66101	.33899
47	.65046	.34954
48	.63966	.36034
49	.62860	.37140
50	.61730	.38270
51	.60576	.39424
52	.59399	.40601
53	.58199	.41801
54	.56979	.43021
55	.55740	.44260
56	.54483	.45517
57	.53206	.46794
58	.51906	.48094
59	.50582	.49418
60	.49234	.50766
61	.47862	.52138
62	.46471	.53529
63	.45064	.54936
64	.43647	.56353
65	.42226	.57774
66	.40801	.59199
67	.39372	.60628
68	.37936	.62064
69	.36489	.63511
70	.35031	.64969
71	.33565	.66435
72	.32098	.67902
73	.30639	.69361
74	.29199	.70801
75	.27787	.72213
76	.26405	.73595
77	.25053	.74947
78	.23727	.76273
79	.22422	.77578
80	.21134	.78866
81	.19866	.80134
82	.18625	.81375
83	.17419	.82581
84	.16260	.83740
85	.15151	.84849
86	.14093	.85907
87	.13081	.86919
88	.12108	.87892
89	.11163	.88837
90	.10235	.89765
91	.09309	.90691
92	.08368	.91632
93	.07390	.92610
94	.06350	.93650
95	.05221	.94779
96	.03994	.96006
97	.02678	.97322
98	.01321	.98679
99	.00000	1.00000

TABLE FOR AN ANNUITY FOR LIFE

(for estates of decedents dying on or after January 1, 1986)

1980 CSO-D MORTALITY TABLE
BASED ON BLENDING
50% MALE–50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

To find the present value of an Annuity or a given amount (specified sum) for life, multiply the Annuity by the Annuity Factor opposite the age at the nearest birthday of the person receiving the Annuity.

Age In Years	Life Expectancy In Years	Annuities $1.00
0	73.30	22.976
1	72.56	22.980
2	71.63	22.922
3	70.70	22.861
4	69.76	22.796
5	68.82	22.728
6	67.87	22.657
7	66.93	22.582
8	65.98	22.504
9	65.03	22.421
10	64.07	22.334
11	63.12	22.244
12	62.16	22.151
13	61.21	22.055
14	60.27	21.957
15	59.32	21.857
16	58.39	21.757
17	57.46	21.654
18	56.53	21.550
19	55.61	21.443
20	54.69	21.333
21	53.77	21.219
22	52.85	21.101
23	51.93	20.978
24	51.01	20.850
25	50.08	20.716
26	49.15	20.576
27	48.23	20.431
28	47.30	20.279
29	46.36	20.122
30	45.43	19.958
31	44.50	19.789
32	43.57	19.613
33	42.64	19.431
34	41.72	19.242
35	40.79	19.048
36	39.87	18.847
37	38.94	18.640
38	38.03	18.428
39	37.11	18.209
40	36.21	17.985
41	35.30	17.756
42	34.41	17.521
43	33.52	17.280
44	32.63	17.035
45	31.75	16.783
46	30.88	16.525
47	30.01	16.261
48	29.15	15.991
49	28.30	15.715
50	27.45	15.433
51	26.61	15.144
52	25.77	14.850
53	24.94	14.550
54	24.13	14.245
55	23.32	13.935
56	22.52	13.621
57	21.73	13.301
58	20.95	12.976
59	20.18	12.645
60	19.41	12.308
61	18.66	11.966
62	17.91	11.618
63	17.18	11.266
64	16.45	10.912
65	15.75	10.557
66	15.05	10.200
67	14.38	9.843
68	13.71	9.484
69	13.06	9.122
70	12.42	8.758
71	11.79	8.391
72	11.17	8.024
73	10.57	7.660
74	10.00	7.300
75	9.44	6.947
76	8.91	6.601
77	8.39	6.263
78	7.90	5.932
79	7.42	5.605
80	6.96	5.283
81	6.52	4.967
82	6.09	4.656
83	5.68	4.355
84	5.29	4.065
85	4.93	3.788
86	4.58	3.523
87	4.26	3.270
88	3.95	3.027
89	3.66	2.791
90	3.37	2.559
91	3.09	2.327
92	2.81	2.092
93	2.52	1.848
94	2.22	1.588
95	1.90	1.305
96	1.56	.999
97	1.20	.670
98	.84	.330
99	.50	.000

HISTORICAL CHRONOLOGICAL OUTLINE

OF

CODES AND SESSION LAWS

1. Territorial or other governmental jurisdictions over the territory which is now the state of Iowa.
2. Assemblies and session laws — territorial and state.
3. Official and private codes with code revision publications.

(Date shown at each Iowa territorial and state session is starting date.)

LOUISIANA PURCHASE — Treaty of Paris, April 30, 1803.

LOUISIANA DISTRICT — U.S. Authority established October 31, 1803 (2 Stat. L. 245).

INDIANA TERRITORY — Louisiana District attached thereto for governmental purposes from October 1, 1804 (2 Stat. L. 287, 289), to July 4, 1805 (2 Stat. L. 331). Capital at Saint Vincennes (now Vincennes, Indiana).

STATUTES APPLICABLE:

Laws Adopted by the Governor and the Judges of the Territory. (1 vol., reprint of 1886) passed at the following sessions:

1. January 12, 1801
2. January 30, 1802
3. February 16, 1802
4. October 1, 1804 (Republished with laws governing Missouri Territory, see Missouri Territory below).

LOUISIANA TERRITORY from July 4, 1805 (2 Stat. L. 331), to December 7, 1812 (2 Stat. L. 743).

STATUTES APPLICABLE:

Laws Passed by the Governor and Judges Assembled in Legislature October 1810 (1 vol.). Capital at St. Louis. This territory renamed Missouri Territory, December 7, 1812.

MISSOURI TERRITORY from December 7, 1812 (2 Stat. L. 743), to August 10, 1821 (Proclamation of James Monroe in "Messages and Papers of the Presidents", vol. II, page 97). Capital at St. Louis.

STATUTES APPLICABLE:

Laws of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri, and of the State of Missouri up to the year 1824 (1 vol. reprint). Covers period from October 1, 1804, to August 10, 1821.

Digest of the Laws of Missouri Territory to 1818 with Spanish Land Grant Regulations.

UNDIVIDED U.S. TERRITORY from August 10, 1821, to June 28, 1834 (4 Stat. L. 701). This was the part of Missouri Territory remaining after the state of Missouri, containing the seat of the government of the territory, was admitted to the Union. This remaining territory had no local constitutional status nor capital.

MICHIGAN TERRITORY from June 28, 1834 (4 Stat. L. 701) to July 4, 1836 (5 Stat. L. 10). Capital at Detroit.

STATUTES APPLICABLE:

Ordinance for Government of the Northwest Territory, July 13, 1787

Laws of the Territory of Michigan, 1827 (1 vol.)

Laws of Legislative Boards, 1821-1823 (1 vol.)

Acts of Legislative Councils — First to Sixth sessions and Sixth special session — 1824 to 1835 (several volumes).

WISCONSIN TERRITORY from July 4, 1836 (5 Stat. L. 10), to July 4, 1838 (5 Stat. L. 235). Capital at Belmont until March 4, 1837; then at Madison, but legislative sessions held at Burlington (now Iowa) until June 23, 1838, awaiting completion of buildings at Madison.

STATUTES APPLICABLE:

Laws of Wisconsin Territory, 1836-1838, first session starting October 25, 1836; second session starting November 6, 1837; special session held at Burlington (now Iowa) from June 11, 1838, to June 23, 1838. Act of Congress creating the Territory of Iowa approved June 12, 1838, effective July 4, 1838.

IOWA TERRITORY from July 4, 1838 (5 Stat. L. 235), to December 28, 1846 (9 Stat. L. 117). Capital at Burlington until 1841, and Iowa City until February 1, 1857, when finally located at Des Moines.

STATUTES APPLICABLE:

Statute Laws of Iowa Territory, 1838-1839. November 12, 1838, enacted wholly at first session — commonly called "Old Blue Book".
Territorial Session Laws — 1839-1840, November 4, 1839
Territorial Session Laws, extra session — 1840, July 6, 1840
Territorial Session Laws — 1840-1841, November 2, 1840
Territorial Session Laws — 1841-1842, December 6, 1841
Territorial Session Laws — 1842-1843, December 5, 1842

Revised Statutes of Iowa Territory, 1843 (compilation, commonly called "Blue Book")
Territorial Session Laws — 1843-1844, December 4, 1843
Territorial Session Laws, extra session — 1844, June 17, 1844
Territorial Session Laws — 1845, May 5, 1845
Territorial Session Laws — 1845-1846, December 1, 1845

STATE OF IOWA (Territorial Sessions end — State Sessions begin).
1 G.A. November 30, 1846 (Ch. 78, § 5 made Territorial Laws applicable to the state of Iowa. Iowa became a state December 28, 1846)
1 G.A. January 3, 1848, extra session
2 G.A. December 3, 1848
3 G.A. December 3, 1850

Code 1851 (enacted) effective July 1, 1851. See 3 G.A., Ch 98, § 5.
4 G.A. December 6, 1852
5 G.A. December 4, 1854
5 G.A. July 2, 1856, extra session
6 G.A. December 1, 1856
Constitutional Debates (2 vols.) 1857
Journal of Convention (1 vol.) 1857
7 G.A. January 4, 1858
Laws of the Board of Education, 1858–1861
Report of Code Commission on Civil Practice, 1859 (1 vol.)
8 G.A. January 9, 1860

Revision of 1860 (compiled, except part III Civil Practice and part IV Criminal Practice, which were enacted July 4, 1860). Acts do not appear in session laws.
8 G.A. May 15, 1861, extra session
9 G.A. January 13, 1862
9 G.A. September 3, 1862, extra session
10 G.A. January 11, 1864
11 G.A. January 8, 1866
12 G.A. January 13, 1868
13 G.A. January 10, 1870

Templin's Compendium of Repeals and Amendments, 1871 (a private publication).
Proposed revision, 1872 (2 vols.) as reported to 14th G.A.
Code Commission's Report, 1872 (1 vol.)
14 G.A. January 8, 1872
Report of Code Commissioners [with proposed revision] 1873 (1 vol.) as reported to 14th Adj. G.A.
14 G.A. January 15, 1873, adjourned session

Code 1873 (enacted), effective September 1, 1873, see § 49 thereof. Acts do not appear in session laws of adjourned session.
15 G.A. January 12, 1874

Overton's Annotated Code of Civil Procedure for Iowa and Wisconsin, 1875 (a private publication)
16 G.A. January 10, 1876
17 G.A. January 14, 1878

Templin's Compendium of Repeals and Amendments, 1878 (a private publication)

Stacy's Code of Civil Procedure, 1878 (a private publication)

Davis' Criminal Code 1879 (a private publication)
18 G.A. January 12, 1880

McClain's Annotated Statutes, 1880 (2 vols., a private publication)

Miller's Rev. and Anno. Code 1880 (includes statutes to July 4, 1880, and annotations including vol. 51 Iowa — some editions in 1 vol.; other editions in 2 vols., a private publication)
19 G.A. January 9, 1882

Miller's Rev. and Anno. Code 1883 (includes statutes to July 4, 1882, and annotations including vol. 59 Iowa, a private publication)
20 G.A. January 14, 1884

McClain's Supplement, 1882-1884 (a private publication)

McClain's Annotated Statutes, 1884 (1 vol., same as McClain's Statutes, 1880, 2 vols., with the supplement 1882-1884 bound therein)

Miller's Rev. and Anno. Code 1884 (includes statutes to July 4, 1884, and annotations including vol. 61 Iowa, a private publication)

Miller's Annotated Code 1886 (published in 1885 includes statutes to July 4, 1884, and annotations including vol. 64 Iowa — some editions in 1 vol.; other editions in 2 vols., a private publication)
21 G.A. January 11, 1886
22 G.A. January 9, 1888

McClain's Annotated Code 1888 (some editions in 1 vol.; other editions in 2 vols., a private publication)

Miller's Rev. and Anno. Code 1888 (includes statutes to July 4, 1888, and annotations including May term, 1888, a private publication)
23 G.A. January 13, 1890

Miller's Rev. and Anno. Code 1888-1890 (same as edition of 1888 together with Acts 23 G.A., and annotations including May term 1890 — some editions in 1 vol.; other editions in 2 vols., a private publication)
24 G.A. January 11, 1892

McClain's Supplement 1888-1892 (a private publication)
25 G.A. January 8, 1894
26 G.A. January 13, 1896
Proposed revision, 1896 (commonly called "Black Code")
Code Commission's Report, 1896 (1 vol.)
Black Code substitute bills, 1897
26 G.A. January 19, 1897, extra session

Code 1897 (enacted), effective October 1, 1897, see § 50 thereof, [two editions]. Acts do not appear in session laws of extra session.
27 G.A. January 10, 1898
28 G.A. January 8, 1900
29 G.A. January 13, 1902

Supplement of 1902 (compiled)
30 G.A. January 11, 1904
31 G.A. January 8, 1906
32 G.A. January 14, 1907

Supplement of 1907 (compiled — contained all of supplement of 1902)
32 G.A. August 31, 1908, extra session
33 G.A. January 11, 1909
34 G.A. January 9, 1911
35 G.A. January 13, 1913

Supplement of 1913 (compiled — contained all of supplements of 1902 and 1907)
36 G.A. January 11, 1915

Supplemental Supplement of 1915 (compiled)
37 G.A. January 8, 1917
38 G.A. January 13, 1919
38 G.A. July 2, 1919, extra session

Compiled Code of 1919 (included all law to date as determined by the Code Commission, with repealed and obsolete matter omitted; only a limited edition published as a preliminary step in Code Revision)
Code Commission's Report, 1919 (1 vol.)
39 G.A. January 10, 1921

Supplement to Compiled Code 1921
Supplement to Code Commission's Report, 1922
Code Revision Bills, 1922 (as revised after 39 G.A.)
Briefs of Code Commission Bills, 1922
40 G.A. January 8, 1923

Supplement to Compiled Code 1923
Code Revision Bills, 1923 (as revised after 40 G.A.)
Minutes of Code Supervising Committee, 1924 (original in Code Editor's office)
40 G.A. December 4, 1923, extra session
40 G.A. July 22, 1924, adjourned session

Code 1924 (compiled, except for those chapters which were revised and enacted by the 40th ExG.A.). Only those acts which were effective on publication appear in session laws. The remaining Code Revision acts were effective on October 28, 1924.
41 G.A. January 12, 1925
42 G.A. January 10, 1927

Code 1927 (compiled)
42 G.A. March 5, 1928, extra session
43 G.A. January 14, 1929
44 G.A. January 12, 1931

Code 1931 (compiled)
45 G.A. January 9, 1933
45 G.A. November 6, 1933, extra session
46 G.A. January 14, 1935

Code 1935 (compiled)
46 G.A. December 21, 1936, extra session
47 G.A. January 11, 1937
48 G.A. January 9, 1939

Code 1939 (compiled)
49 G.A. January 13, 1941
50 G.A. January 11, 1943
50 G.A. January 26, 1944, extra session
51 G.A. January 8, 1945

Code 1946 (compiled)
52 G.A. January 13, 1947
52 G.A. December 16, 1947, extra session
53 G.A. January 10, 1949

Code 1950 (compiled)
54 G.A. January 8, 1951
55 G.A. January 12, 1953

Code 1954 (compiled)
56 G.A. January 10, 1955
57 G.A. January 14, 1957

Code 1958 (compiled)
58 G.A. January 12, 1959
59 G.A. January 9, 1961

Code 1962 (compiled)
60 G.A. January 14, 1963
60 G.A. February 24, 1964, extra session
61 G.A. January 11, 1965

Code 1966 (compiled)
62 G.A. January 9, 1967
63 G.A. (1st Session) January 13, 1969
63 G.A. (2nd Session) January 12, 1970

Code 1971 (compiled)
64 G.A. (1st Session) January 11, 1971
64 G.A. (2nd Session) January 10, 1972

Code 1973 (compiled)
65 G.A. (1st Session) January 8, 1973
65 G.A. (2nd Session) January 14, 1974

Code 1975 (compiled)
66 G.A. (1st Session) January 13, 1975
66 G.A. (2nd Session) January 12, 1976

Code 1977 (compiled)
67 G.A. (1st Session) January 10, 1977
67 G.A. June 21, 1977, extra session
67 G.A. (2nd Session) January 9, 1978

Code 1979 (compiled)
68 G.A. (1st Session) January 8, 1979
68 G.A. (2nd Session) January 14, 1980

Code 1981 (compiled)
69 G.A. (1st Session) January 12, 1981
69 G.A. June 24, 1981, extra session
69 G.A. August 12, 1981, extra session

Supplement of 1981
69 G.A. (2nd Session) January 11, 1982

Code 1983 (compiled)
70 G.A. (1st Session) January 10, 1983

Code Supplement 1983
70 G.A. (2nd Session) January 9, 1984

Code 1985 (compiled)
71 G.A. (1st Session) January 14, 1985

Code Supplement 1985
71 G.A. (2nd Session) January 13, 1986

Code 1987 (compiled)
72 G.A. (1st Session) January 12, 1987
72 G.A. May 21, 1987, extra session
72 G.A. October 27, 1987, extra session

Code Supplement 1987
72 G.A. (2nd Session) January 11, 1988

Code 1989 (compiled)
73 G.A. (1st Session) January 9, 1989

Code Supplement 1989
73 G.A. (2nd Session) January 8, 1990

Code 1991 (compiled)
74 G.A. (1st Session) January 14, 1991

Code Supplement 1991
74 G.A. (2nd Session) January 13, 1992
74 G.A. May 20, 1992, extra session
74 G.A. June 25, 1992, extra session

Code 1993 (compiled)
75 G.A. (1st Session) January 11, 1993

Code Supplement 1993
75 G.A. (2nd Session) January 10, 1994

Code 1995 (compiled)
76 G.A. (1st Session) January 9, 1995

Code Supplement 1995
76 G.A. (2nd Session) January 8, 1996

Code 1997 (compiled)
77 G.A. (1st Session) January 13, 1997

Code Supplement 1997
77 G.A. (2nd Session) January 12, 1998

Code 1999 (compiled)
78 G.A. (1st Session) January 11, 1999

Code Supplement 1999
78 G.A. (2nd Session) January 10, 2000

Code 2001 (compiled)
79 G.A. (1st Session) January 8, 2001
79 G.A. June 19, 2001, extra session
79 G.A. November 8, 2001, extra session

Code Supplement 2001
79 G.A. (2nd Session) January 14, 2002
79 G.A. April 22, 2002, extra session
79 G.A. May 28, 2002, extra session

For a summary of the history of codification in Iowa the reader is referred to Emlin McClain's discussion in 1 Iowa Law Bulletin 1-28; also, Dan E. Clark's paper in Statute Law-Making in Iowa in 3 Iowa Applied History Series 399-427. For a more detailed treatment of the subject see a series of articles by Clifford Powell in The Iowa Journal of History and Politics, volumes 9-12, and an article by O.K. Patton on "The Iowa Code of 1924" published in the Iowa Law Bulletin, Volume X, No. 1.

IOWA-MISSOURI BOUNDARY COMPROMISE

48th GENERAL ASSEMBLY

State of Iowa

CHAPTER 304
H. F. 651

AN ACT to provide for the relinquishment of jurisdiction over certain lands lying in Lee County, State of Iowa, to the State of Missouri.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. The Des Moines river in its present course, as heretofore declared by the Congress of the United States, shall be and remain the true boundary line between the State of Missouri and the State of Iowa.

SEC. 2. The State of Iowa hereby relinquishes all jurisdiction to all lands in Lee County lying south and west of the Des Moines River, being south and east of the east and west boundary line between the States of Iowa and Missouri.

SEC. 3. The title of record in Missouri to any lands, the jurisdiction of which is relinquished to the State of Iowa, shall be accepted as the record title by the courts of Iowa.

SEC. 4. Nothing in this act shall be deemed or construed to affect pending litigation, if any, affecting the title to any of the land being relinquished by the State of Missouri to the State of Iowa. Provided further that any matter now in controversy and affecting the title to the land being relinquished by the State of Missouri to the State of Iowa shall be continued in the courts of the State of Missouri until the final determination thereof and such final determination shall be accepted by the courts of the State of Iowa with full force and effect.

SEC. 5. The land being relinquished to the State of Iowa, upon which taxes have been lawfully imposed in the State of Missouri during the year preceding transfer, shall not thereafter be subject to the imposition of taxes in the State of Iowa until the next succeeding year.

SEC. 6. The effective date of the relinquishment of jurisdiction over the lands herein described shall be midnight of the thirty-first (31st) day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction.

SEC. 7. This Act shall be void and of no effect unless a similar Act relinquishing and waiving to the State of Iowa all claim of jurisdiction over land lying north and east of the Des Moines River is passed by the legislature of the State of Missouri at its present session.

SEC. 8. (Effective on publication, April 23, 1939.)

60th GENERAL ASSEMBLY

State of Missouri

Laws 1939, P. 475
S. B. 350

AN ACT authorizing the compromising and settling of a controversy between the State of Missouri and the State of Iowa over a part of the boundary between said states caused by a shifting of the channel of the Des Moines River and providing for the re-affirmance and re-establishing of said boundary line as being the Des Moines River, as heretofore established by Congress, and providing for the relinquishment of all claim of jurisdiction by Missouri to all lands lying north and east of the Des Moines River, and providing that the title of record in Iowa to any lands, the jurisdiction of which is relinquished by the State of Missouri, shall be accepted as the record title by the Courts of the State of Missouri, and providing further for the disposition of pending litigation, and providing for the jurisdiction of the courts over said land, the imposition of taxes thereon, and the effective date of this Act, and providing that said Act shall be void and of no effect unless a similar Act is passed by the Legislature of the State of Iowa,

at its present session, relinquishing all claim of jurisdiction over all land lying south and west of the Des Moines River, with an emergency clause, and declaring this to be a revision bill, and also a subject matter recommended by the Governor in a special message to the General Assembly.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. The Des Moines River shall be the true boundary line as between Missouri and Iowa.

SEC. 2. The State of Missouri hereby relinquishes all jurisdiction to all lands lying north and east of the Des Moines River.

SEC. 3. The title of record in Iowa to any lands, the jurisdiction of which is relinquished to the State of Missouri, shall be accepted as the record title by the Courts of the State of Missouri.

SEC. 4. Nothing in this Act shall be deemed or construed to affect pending litigation, if any, affecting the title to any of the land being relinquished by the State of Iowa to the State of Missouri. Provided further that any matter now in controversy and affecting the title to the land being relinquished by the State of Iowa to the State of Missouri shall be continued in the courts of the State of Iowa until the final determination thereof, and such final determination shall be accepted by the Courts of the State of Missouri with full force and effect.

SEC. 5. The land being relinquished to the State of Missouri, upon which taxes have been lawfully imposed in the State of Iowa during the year preceding transfer, shall not thereafter be subject to the imposition of taxes in the State of Missouri until the next succeeding year.

SEC. 6. The effective date of the relinquishment of jurisdiction over the land herein described shall be midnight of the thirty-first (31st) day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction.

SEC. 7. This Act shall be void and of no effect unless a similar act relinquishing and waiving to the State of Missouri, all claim of jurisdiction over land in Lee County, Iowa, lying south and west of the Des Moines River is passed by the Legislature of the State of Iowa at its present session.

SEC. 8. A controversy existing between the Courts of the State of Missouri and the Courts of the State of Iowa as to which has jurisdiction over certain land abutting upon the Des Moines River and between the County of Lee in Iowa and the County of Clark in Missouri as to the right to levy and collect taxes on said land and so that the public peace may be preserved, creates and there is an emergency which exists within the meaning of the Constitution and this Act shall take effect and be in force from and after its passage and approval.

SEC. 9. By reason of revising the Statutes relating to boundaries of counties and settling a dispute as to the boundary between this state and the State of Iowa which is the northern boundary of Clark County, the General Assembly hereby declares this bill to be a revision bill within the meaning of Section 41, Article IV, of the Constitution of Missouri; and also, this bill has in pursuance of Section 41, Article IV, of the Constitution of Missouri been recommended by the Governor, by special message, for the consideration of the General Assembly.

[House committee substitute for Senate Bill No. 350. Effective June 16, 1939.]

ACT OF CONGRESS

Approved August 10, 1939

53 U. S. Public Laws 1345

WHEREAS, under date of December 13, 1937, the State of Missouri commenced suit against the State of Iowa in the Supreme Court of the United States for the purpose of determining the boundary line between the County of Clark in the State of Missouri and the County of Lee in the State of Iowa; and

WHEREAS, by stipulation filed in the said Supreme Court of the United States, it was proposed that the legislature of Iowa and the legislature of Missouri pass like bills, the State of Missouri waiving and relinquishing to the State of Iowa all jurisdiction to lands lying North and East of the Des Moines River, now in the County of Clark, State of Missouri, and the State of Iowa waiving and relinquishing to the State of Missouri all lands lying South and West of the Des Moines River, and now in the County of Lee, State of Iowa, and that said Acts be submitted to the Congress of the United States for its approval; and

WHEREAS, in accordance with said stipulation, the Forty-eighth General Assembly of the State of Iowa did at such session pass such Act, this Act being known and designated as House File No. 651, Acts of the Forty-eighth General Assembly of Iowa, bearing the signatures of John R. Irwin, Speaker of the House; Bourke B. Hickenlooper, President of the Senate; and the signature and approval of George A. Wilson, Governor of Iowa, under date of April 18th, 1939, said Act being thereupon properly published and becoming law under date of April 23, 1939; and

WHEREAS, said Act provided in substance that the Des Moines River in its present course as heretofore declared by the Congress of the United States, shall be and remain the true boundary line between the State of Missouri and the State of Iowa; that the State of Iowa relinquishes all jurisdiction to all lands in Lee County lying South and West of the Des Moines River, being South and East of the East and West boundary line between the States of Iowa and Missouri, and that the effective date of the relinquishment of jurisdiction shall be as of midnight of the 31st day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction; and

WHEREAS, in accordance with stipulation as aforesaid, the Sixtieth General Assembly of the State of Missouri did, at such session, pass a like Act, this Act being known and designated as Senate Bill 350 of the Acts of the Sixtieth General Assembly of Missouri and bearing the signature and approval of Lloyd C. Stark, Governor of Missouri, under the date of June 16, 1939; and

WHEREAS, said Act provides in substance that the Des Moines River shall be the true boundary line as between Missouri and Iowa; that the State of Missouri relinquishes all jurisdiction to all lands lying North and East of the Des Moines River and that the effective date of the relinquishment of jurisdiction over the land herein described shall be as of midnight of the 31st day of December following the passage of the Act of Congress approving the relinquishment of jurisdiction; and

WHEREAS, the said Acts of the States of Iowa and Missouri constitute an agreement between said States establishing a boundary between said States; Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress is hereby given to such agreement and to the establishment of such boundary; and said Acts of the States of Iowa and Missouri are hereby approved. [Pub. Res. No. 47, 76th Congress.]

Approved, August 10, 1939.

IOWA-NEBRASKA BOUNDARY COMPROMISE

50th GENERAL ASSEMBLY

State of Iowa

Chapter 306
H. F. 437

AN ACT to establish the boundary line between Iowa and Nebraska, by agreement; to cede to Nebraska and to relinquish jurisdiction over lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska; to provide that the provisions of this Act become effective upon the enactment of a similar and reciprocal law by Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America and to declare an emergency.

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

SECTION 1. On and after the enactment of a similar and reciprocal law by the State of Nebraska, and the approval and consent of the Congress of the United States of America, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861 1/2 feet west of the S. E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian, 2,275 feet east of the S. W. corner of the N. W. 1/4 of the S. E. 1/4 of said section 10; thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a point on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said section 10; thence northerly, to a point 312 feet west of the S. E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S. E. 1/4 of the N. W. 1/4 of section 2 aforesaid; thence east, to the center of the W. 1/2 of lot 5, otherwise described as the S. W. 1/4 of the N. W. 1/4 of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S. W. corner of the N. E. 1/4 of the S. W. 1/4 of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point 660 feet south of the N. E. corner of the N. W. 1/4 of the N. E. 1/4 of section 28, in township 75 N., range 44 W., aforesaid; and said line produced to the center of the channel of the Missouri river; thence up the middle of the main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861 1/2 feet west of S. E. corner of said section, and running thence southeasterly to a point 660 feet east of the S. W. corner of the N. W. 1/4 of the N. W. 1/4 of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle of the main channel of the Missouri river to the northern boundary of the State of Missouri.

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940, and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the secretary of state of the State of Iowa and with the secretary of state of the State of Nebraska.

SEC. 2. The State of Iowa hereby cedes to the State of Nebraska and relinquishes jurisdiction over all lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska.

SEC. 3. Titles, mortgages, and other liens good in Nebraska shall be good in Iowa as to any lands Nebraska may cede to Iowa and any pending suits or actions concerning said lands may be prosecuted to final judgment in Nebraska and such judgment shall be accorded full force and effect in Iowa.

SEC. 4. Taxes for the current year may be levied and collected by Nebraska or its authorized governmental subdivisions and agencies on lands ceded to Iowa and any liens or other rights accrued or accruing, including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section: *Provided,* that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

SEC. 5. The provisions of this act shall become effective only upon the enactment of a similar and reciprocal law by the State of Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America. Said similar and reciprocal law shall contain provisions identical with those contained herein for the cession to Iowa of all lands now in Nebraska but lying easterly of said boundary line described in section 1 of this act and contiguous to lands in Iowa and also contain provisions identical with those contained in sections 3 and 4 of this act but applying to lands ceded to Nebraska.

SEC. 6. (Effective on publication, April 21, 1943.)

56th GENERAL ASSEMBLY

State of Nebraska

Chapter 130
L. B. 438

AN ACT to establish the boundary line between Iowa and Nebraska by agreement; to cede to Iowa and to relinquish jurisdiction over lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa; to provide that the provisions of this act shall become effective upon the approval of and consent of the Congress of the United States of America to the compact effected by this act and House File 437 of the 1943 Session of the Iowa Legislature; to repeal Chapter 121, Session Laws of Nebraska, 1941; and to declare an emergency.

Be it enacted by the people of the state of Nebraska,

SECTION 1. That on and after the approval and consent of the Congress of the United States of America to this act and a similar and reciprocal act enacted by the Legislature of the State of Iowa, as hereinafter provided, the boundary line between the States of Iowa and Nebraska shall be described as follows:

Commencing at a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861 1/2 feet west of the S. E. corner of said section, and running thence northwesterly to a point on the south line of lot 4 of section 10, in township 15 N., of range 13 E. of the sixth principal meridian, 2,275 feet east of the S. W. corner of the N. W. 1/4 of the S. E. 1/4 of said section 10; thence northerly, to a point on the north line of lot 4 aforesaid, 2,068 feet east of the center line of said section 10; thence north, to a point on the north line of section 10, 2,068 feet east of the quarter section corner on the north line of said section 10; thence northerly, to a point 312 feet west of the S. E. corner of lot 1, in section 3, township 15 N., range 13 E., aforesaid; thence northerly, to a point on the section line between sections 2 and 3, 358 feet south of the quarter section corner on said line; thence northeasterly, to the center of the S. E. 1/4 of the N. W. 1/4 of section 2 aforesaid; thence east, to the center of the W. 1/2 of lot 5, otherwise described as the S. W. 1/4 of the N. W. 1/4 of section 1, in township 15, range 13, aforesaid; thence southeasterly, to a point on the south line of lot 5 aforesaid, 1,540 feet west of the center of section 1, last aforesaid; thence south 2,050 feet, to a point 1,540 feet west of the north and south open line through said section 1; thence southwesterly, to the S. W. corner of the N. E. 1/4 of the S. W. 1/4 of section 21, in township 75 N., range 44 W. of the fifth principal meridian; thence southeasterly, to a point 660 feet south of the N. E. corner of the N. W. 1/4 of the N. E. 1/4 of section 28, in township 75 N., range 44 W., aforesaid; and line produced to the center of the channel of the Missouri river; thence up the middle of the main channel of the Missouri river to a point opposite the middle of the main channel of the Big Sioux river.

Commencing again at the point of beginning first named, namely, a point on the south line of section 20, in township 75 N., range 44 W. of the fifth principal meridian, produced 861 1/2 feet west of S. E. corner of said section, and running thence southeasterly to a point 660 feet east of the S. W. corner of the N. W. 1/4 of the N. W. 1/4 of section 28, in township 75 N., range 44 W. of the fifth principal meridian, and said line produced to the center of the channel of the Missouri river; thence down the middle of the main channel of the Missouri river to the northern boundary of the State of Missouri.

The said middle of the main channel of the Missouri river referred to in this act shall be the center line of the proposed stabilized channel of the Missouri river as established by the United States engineers' office, Omaha, Nebraska, and shown on the alluvial plain maps of the Missouri river from Sioux City, Iowa, to Rulo, Nebraska, and identified by file numbers AP-1 to 4 inclusive, dated January 30, 1940, and file numbers AP-5 to 10 inclusive, dated March 29, 1940, which maps are now on file in the United States engineers' office at Omaha, Nebraska, and copies of which maps are now on file with the Secretary of State of the State of Iowa and with the Secretary of State of the State of Nebraska.

SEC. 2. The State of Nebraska hereby cedes to the State of Iowa and relinquishes jurisdiction over all lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa.

SEC. 3. Titles, mortgages, and other liens good in Iowa shall be good in Nebraska as to any lands Iowa may cede to Nebraska, and any pending suits or actions concerning said lands may be prosecuted to final judgment in Iowa and such judgment shall be accorded full force and effect in Nebraska.

SEC. 4. Taxes for the current year may be levied and collected by Iowa, or its authorized governmental subdivisions and agencies, on lands ceded to Nebraska and any liens or other rights accrued or accruing including the right of collection, shall be fully recognized and the county treasurers of the counties affected shall act as agents in carrying out the provisions of this section; Provided, that all liens or other rights accrued or accruing, as aforesaid, shall be claimed or asserted within five years after this act becomes effective, and if not so claimed or asserted, shall be forever barred.

SEC. 5. The provisions of this act shall become effective only upon the approval and consent of the Congress of the United States of America to the compact effected by this act and the similar and reciprocal act enacted by the 1943 Session of the Legislature of Iowa as House File 437 of that body.

SEC. 6. That Chapter 121, Session Laws of Nebraska, 1941, is repealed.

SEC. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

Approved May 7, 1943.

ACT OF CONGRESS

Approved July 12, 1943

U. S. Public Laws
[Public Law 134 — 78th Congress]
[Chapter 220 — 1st Session]
[H. R. 2794]

AN ACT to approve and consent to the compact entered into by Iowa and Nebraska establishing the boundary between Iowa and Nebraska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the approval and consent of the Congress is hereby given to the compact effected by an Act enacted by the Legislature of the State of Iowa entitled "An Act to establish the boundary line between Iowa and Nebraska by agreement; to cede to Nebraska and to relinquish jurisdiction over lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska; to provide that the provisions of this Act become effective upon the enactment of a similar and reciprocal law by Nebraska and the approval of and consent to the compact thereby effected by the Congress of the United States of America and to declare an emergency", approved April 15, 1943 (House File 437, Acts of the Fiftieth General Assembly), and the similar and reciprocal Act enacted by the State of Nebraska entitled "A bill for an Act to establish the boundary line between Iowa and Nebraska by agreement; to cede to Iowa and to relinquish jurisdiction over lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa; to provide that the provisions of this Act shall become effective upon the approval of and consent of the Congress of the United States of America to the compact effected by this Act and House File 437 of the 1943 Session of the Iowa Legislature; to repeal Chapter 121, Session Laws of Nebraska, 1941; and to declare an emergency", approved May 7, 1943 (Legislative bill 438, Fifty-sixth session of the Nebraska State Legislature).

Approved July 12, 1943.

ADMISSION OF IOWA INTO THE UNION

AN ACT FOR THE ADMISSION OF THE STATES OF IOWA AND FLORIDA INTO THE UNION.

[*Approved March 3, 1845.*]

WHEREAS, the people of the Territory of Iowa did, on the seventh day of October, eighteen hundred and forty-four, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government; and whereas, the people of the Territory of Florida did, in like manner, by their delegates, on the eleventh day of January, eighteen hundred and thirty-nine, form for themselves a constitution and State government, both of which said constitutions are republican; and said conventions having asked the admission of their respective Territories into the Union as States, on equal footing with the original States;

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

SEC. 2. *And be it further enacted,* That the following shall be the boundaries of the said State of Iowa, to wit: Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato or Blue-Earth river, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary line of the State of Missouri, thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.

SEC. 3. *And be it further enacted,* That the said State of Iowa shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said State of Iowa, so far as the said rivers shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same: Such rivers to be common to both: And that the said river Mississippi, and the navigable waters leading into the same, shall be common highways, and forever free as well to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State of Iowa.

SEC. 4. *And be it further enacted,* That it is made and declared to be a fundamental condition of the admission of said State of Iowa into the Union, that so much of this act as relates to the said State of Iowa shall be assented to by a majority of the qualified electors at their township elections, in the manner and at the time prescribed in the sixth section of the thirteenth article of the constitution adopted at Iowa city the first day of November, anno Domini eighteen hundred and forty-four, or by the legislature of said State. And as soon as such assent shall be given, the President of the United States shall announce the same by proclamation; and therefrom and without further proceedings on the part of Congress, the admission of the said State of Iowa into the Union, on an equal footing in all respects whatever with the original States, shall be considered as complete.

SEC. 5. *And be it further enacted,* That said State of Florida shall embrace the territories of East and West Florida, which by the treaty of amity, settlement and limits between the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, were ceded to the United States.

SEC. 6. *And be it further enacted,* That until the next census and apportionment shall be made, each of said States of Iowa and Florida shall be entitled to one representative in the House of Representatives of the United States.

SEC. 7. *And be it further enacted,* That said States of Iowa and Florida are admitted into the Union on the express condition that they shall never interfere with the primary disposal of the public lands lying within them, nor levy any tax on the same whilst remaining the property of the United States: *Provided,* That the ordinance of the convention that formed the constitution of Iowa, and which is appended to the said constitution, shall not be deemed or taken to have any effect or validity, or to be recognized as in any manner obligatory upon the Government of the United States.

AN ACT SUPPLEMENTAL TO THE ACT FOR THE ADMISSION OF THE STATES OF IOWA AND FLORIDA INTO THE UNION.

[*Approved March 3, 1845.*]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the State of Iowa as elsewhere within the United States.

SEC. 2. *And be it further enacted,* That the said State shall be one district, and be called the district of Iowa; and a district court shall be held therein, to consist of one judge, who shall reside in the said district, and be called a district judge. He shall hold, at the seat of government of the said State, two sessions of the said district court annually, on the first Monday in January, and he shall, in all things, have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled "An act to establish the judicial courts of the United States." He shall appoint a clerk for the said district, who shall reside and keep the records of the said court at the place of holding the same; and shall receive, for the services performed by him, the same fees to which the clerk of the Kentucky district is by law entitled for similar services.

SEC. 3. *And be it further enacted,* That there shall be allowed to the judge of the said district court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly at the treasury of the United States.

SEC. 4. *And be it further enacted,* That there shall be appointed in the said district, a person learned in the law, to act as attorney for the United States; who shall, in addition to his stated fees, be paid annually by the United States two hundred dollars, as a full compensation for all extra services: the said payments to be made quarterly, at the treasury of the United States.

SEC. 5. *And be it further enacted,* That a marshal shall be appointed for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed and allowed to marshals in other districts; and shall, moreover, be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

SEC. 6. *And be it further enacted,* That in lieu of the propositions submitted to the Congress of the United States, by an ordinance passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates at Iowa city, assembled for the purpose of making a constitution for the State of Iowa, which are hereby rejected, the following propositions be, and the same are hereby, offered to the legislature of the State of Iowa, for their acceptance or rejection; which, if accepted, under the authority conferred on the said legislature, by the convention which framed the constitution of the said State, shall be obligatory upon the United States:

First. That section numbered sixteen in every township of the public lands, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools.

Second. That the seventy-two sections of land set apart and reserved for the use and support of a university, by an act of Congress approved on the twentieth day of July, eighteen hundred and forty, entitled "An act granting two townships of land for the use of a university in the Territory of Iowa," are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe.

Third. That five entire sections of land, to be selected and located under the direction of the legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States within the said State, are hereby granted to the State for the purpose of completing the public buildings of the said State, or for the erection of public buildings at the seat of government of the said State, as the legislature may determine and direct.

Fourth. That all salt springs within the State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said State for its use; the same to be selected by the legislature thereof, within one year after the admission of said State, and the same, when so selected, to be used on such terms, conditions, and regulations, as the legislature of the State shall direct: *Provided,* That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: *And provided, also,* That the General Assembly shall never lease or sell the same, at any one time, for a longer period than ten years, without the consent of Congress.

Fifth. That five per cent. of the net proceeds of sales of all public lands lying within the said State, which have been, or shall be sold by Congress, from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct: *Provided,* That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance, irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors to be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents, respectively.

AN ACT TO DEFINE THE BOUNDARIES OF THE STATE OF IOWA

[*Approved August 4, 1846.*]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following shall be, and they are hereby, declared to be the boundaries of the State of Iowa, in lieu of those prescribed by the second section of the act of the third of March, eighteen hundred and forty-five, entitled "An Act for the Admission of the States of Iowa and Florida into the Union," viz. Beginning in the middle of the main channel of the Mississippi River, at a point due east of the middle of the mouth of the main channel of the Des Moines River; thence up the middle of the main channel of the said Des Moines River, to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June twelfth, eighteen hundred and twenty, crosses the said middle of the main channel of the said Des Moines River; thence, westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersect the middle of the main channel of the Missouri River; thence, up the middle of the main channel of the said Missouri River, to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollet's map; thence, up the main channel of the said Big Sioux River, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi River; thence, down the middle of the main channel of said Mississippi River, to the place of beginning.

SEC. 2. * * * * *

SEC. 3. * * * * *

SEC. 4. *And be it further enacted,* That so much of the act of the third of March, eighteen hundred and forty-five, entitled "An Act for the Admission of the States of Iowa and Florida into the Union," relating to the said State of Iowa, as is inconsistent with the provisions of this act, be and the same is hereby repealed. [9 Stat. L. 52]

AN ACT FOR THE ADMISSION OF THE STATE OF IOWA INTO THE UNION

[*Approved December 28, 1846.*]

WHEREAS, the people of the Territory of Iowa did, on the eighteenth day of May, anno Domini eighteen hundred and forty-six, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government — which constitution is republican in its character and features — and said convention has asked admission of the said Territory into the Union as a State, on an equal footing with the original States, in obedience to "An Act for the Admission of the States of Iowa and Florida into the Union," approved March third, eighteen hundred forty-five [5 Stat. L. 742, 743.], and "An Act to define the Boundaries of the State of Iowa, and to repeal so much of the Act of the third of March, one thousand eight hundred and forty-five as relates to the Boundaries of Iowa," which said last act was approved August fourth, anno Domini eighteen hundred and forty-six [9 Stat. L. 52.]; Therefore–

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Iowa shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever.

SEC. 2. *And be it further enacted,* That all the provisions of "An Act supplemental to the Act for the Admission of the States of Iowa and Florida into the Union," approved March third, eighteen hundred and forty-five [5 Stat. L. 788-790.], be, and the same are hereby declared to continue and remain in full force as applicable to the State of Iowa, as hereby admitted and received into the Union.

Approved, December 28, 1846. [9 Stat. L. 117.]

AN ACT AND ORDINANCE ACCEPTING THE PROPOSITIONS MADE BY CONGRESS ON THE ADMISSION OF IOWA INTO THE UNION AS A STATE

[*Approved January 15, 1849.*]

SECTION 1. *Be it enacted and ordained by the General Assembly of the State of Iowa,* That the propositions to the State of Iowa on her admission into the Union, made by the act of Congress, entitled "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," approved March 3, 1845, and which are contained in the sixth section of that act, are hereby accepted in lieu of the propositions submitted to Congress by an ordinance, passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates which assembled at Iowa City on the first Monday of October, eighteen hundred and forty-four, for the purpose of forming a Constitution for said State, and which were rejected by Congress: *Provided,* The General Assembly shall have the right, in accordance with the provisions of the second section of the tenth article of the Constitution of Iowa, to appropriate the five percent. of the net proceeds of sales of all public lands lying within the State, which have been or shall be sold by Congress from and after the admission of said State, after deducting all expenses incident to the same, to the support of common schools.

SECTION 2. *And be it further enacted and ordained,* as conditions of the grants specified in the propositions first mentioned in the foregoing section, irrevocable and unalterable without the consent of the United States, that the State of Iowa will never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands, the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war with Great Britain, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, County, Township, or other purposes, for the term of three years from and after the dates of the patents respectively.

SECTION 3. It is hereby made the duty of the Secretary of State, after the taking effect of this act, to forward one copy of the same to each of our Senators and Representatives in Congress, who are hereby required to procure the consent of Congress to the diversion of the five per cent. fund indicated in the proviso to the first section of this act.

SECTION 4. This act shall take effect from and after its publication in the weekly newspapers printed in Iowa City.

IOWA*

Iowa was organized as a Territory by Act of June 12, 1838, effective July 3, from a portion of Wisconsin Territory. The limits were defined as follows in the Act[1] creating it:

all that part of the present Territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the headwaters or sources of the Mississippi to the Territorial line.

The approximate position of the outlet of Lake Itasca, which is generally accepted as the source of the Mississippi, is latitude 47° 15 1/3′, longitude 95° 12 1/2′. The river runs north-westward for about 6 miles before it turns east. The north-south boundary line across the western part of the Lake of the Woods is in longitude 95° 09′ 11.6″ (p.14).

The following clause from an Act passed in 1839 is supplementary to the Act above quoted:[2]

That the middle or center of the main channel of the Mississippi shall be deemed, and is hereby declared, to be the eastern boundary line of the Territory of Iowa, so far or to such extent as the said Territory is bounded eastwardly by or upon said river.

On March 3, 1845, an Act was approved for the admission of Iowa to the Union as a State, but the Act required that the assent of the people of Iowa be given to it by popular vote. In this Act the boundaries were given as follows:[3]

That the following shall be the boundaries of said State of Iowa, to wit: Beginning at the mouth of the Des Moines River, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato or Blue-Earth river [latitude 44° 10′], thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south** to the northern boundary line of the State of Missouri, thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.

These boundaries were not acceptable to the people and by a popular vote were rejected.

Another constitutional convention was held in May, 1846, and Congress passed an Act, approved August 4, 1846, fixing the boundaries in accordance with the wishes of the people and described as follows:

Beginning at the middle of the main channel of the Mississippi River at a point due east of the middle of the mouth of the main channel of the Des Moines River; thence up the middle of the main channel of the said Des Moines River to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June twelfth, eighteen hundred and twenty, crosses the said middle of the main channel of the said Des Moines River; thence westwardly along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersect the middle of the main channel of the Missouri River, thence up the middle of the main channel of the said Missouri River, to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollet's map; thence up the main channel of the said Big Sioux River, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning.

Iowa was finally declared admitted to full statehood by Act of December 28, 1846.

The admission of Iowa appears to have left a large area to the north and west unattached, which so remained until Minnesota Territory was organized in 1849.

The Act of August 4, 1846, directed that a long-standing dispute between Missouri and Iowa Territory regarding their common boundary*** be referred to the United States Supreme Court for adjudication. The area claimed by both was a strip of land about 10 miles wide and 200 miles long, north of the present boundary. Missouri maintained that the clause in that state's enabling Act, "the rapids of the river Des Moines," referred to rapids in the river of that name and not to rapids of a similar name in the Mississippi, also that the Indian boundary line run and marked in 1816 by authority of the United States, known as the Sullivan line,**** was erroneously established. A line claimed by Missouri was run by J. C. Brown in 1837 by order of the State legislature.

The United States Supreme Court decided in 1849 that the Sullivan line of 1816 is the correct boundary and ordered that it be resurveyed. The report of the commissioners appointed by the court to re-mark the line was accepted in 1851.

So many of the marks on this line as established in 1850 had become lost or destroyed that the United States Supreme Court in 1896 ordered that certain parts be re-established, especially those between mileposts 50 and 55. Accordingly 20 miles of line was resurveyed by officers of the United States Coast and Geodetic Survey in 1896, and durable monuments of granite or iron were established thereon. The geographic position of milepost No. 40 was determined as latitude 40° 34.4′, longitude 95° 51′, and that of No. 60 as latitude 40° 34.6′, longitude 93° 28′.

The survey of the north boundary of Iowa on the parallel of 43° 30′, authorized by congressional Act of March 3, 1849, was completed in 1852. The position for each end of the line and for several intermediate points was determined astronomically.

This is the first State thus far noted having a boundary referred to the Washington meridian. Congress by Act approved September 28, 1850, ordered:

That hereafter the meridian of the observatory at Washington shall be adopted and used as the American meridian for all astronomic purposes and * * * Greenwich for nautical purposes.

[1]5 Stat. L. 235.
[2]5 Stat. L. 357.
[3]5 Stat. L. 742.

*Reprinted from "Geological Survey Bulletin 817."

**This north-south line is a few miles west of the city of Des Moines.

***The northern boundary of Missouri had been established as "100 miles north of the junction of the Missouri and Kaw (Kansas) rivers and thence east * * *." (See 7 Howard 660 and 10 Howard 1.)

****Sullivan had disregarded the changing declination of his compass as he proceeded east; hence the southern boundary of Iowa is a curve. The following is a quotation from the commissioner's records as reported in 10 Howard (U.S.) 1,5: "We soon satisfied ourselves that the line run by Sullivan was not only not a due east line, but that it was not straight. That more or less northing should have been made in the old line was to have been expected from the fact that Sullivan ran the whole line with one variation of the needle, and that variation too great. This would account for the fact that the northing increases as he progressed east."

CODE EDITOR'S NOTES

Code Section

8.55 The multiple amendments do not conflict, so they were harmonized to give effect to each as required by Code section 4.11. In some cases where the note for this section is referred to, the amendments are identical. It was generally assumed that a strike or repeal prevails over an amendment to the same material and does not create a conflict.

455G.3(6) 2002 Acts, chapter 1050, section 42, amends subsection 6, unnumbered paragraph 1, effective July 1, 2002. Subsection 6 is stricken pursuant to its own terms, however, effective July 1, 2002. Because it is generally assumed that a strike prevails over an amendment, the codified directive to strike the subsection was implemented and the amendment in 2002 Acts, ch 1050, section 42, was not codified.

455I
460.101
460.201 2002 Acts, chapter 1137, section 68, requires the Code editor to transfer section 455I.1, subsections 1 through 4 and subsections 6 through 13, to subchapter I within a new chapter, but omits directions for the disposition of subsection 5. The same section of that Act directs the Code editor to create a new section within new subchapter II of the new chapter for purposes of defining the term department, and further directs the transfer of the balance of chapter 455I to new subchapter II of the new chapter. Because the language of the new definition is nearly identical to the language of the definition contained in former section 455I.1, subsection 5, and because it applies to the same language that it did when it existed as former section 455I.1, subsection 5, the directives were treated as a transfer of all of section 455I.1. The various subsections were codified accordingly at new Code sections 460.101 and 460.201 and everything was deleted from the old location in chapter 455I.

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This index is intended to be used as a quick reference to enable the user to locate general subjects and specific statutes in the Code, including the popular name version of many statutes. References in the Skeleton and Popular Name Index are made primarily to chapters. For detailed indexing of a topic please consult the Code Detailed Index, commonly referred to as the blue index.

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